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CASE # 1791

AL SESSIONS OF THE PEACE,
and County of New York.

THE PEOPLE

against

MEYER LEVINSKY, indicted as SAM
LEVY.

2113

Indictment filed May 15th, 1913.

Indicted for gaming house, &c.

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

For the People,

ASSISTANT DISTRICT ATTORNEY COLLIGAN

For the Defendant,

HAROLD SPIELBERG and MR. SCHIMMEL.

Tried before HON. JOSEPH F. MULQUEEN, Judge, and
a Jury, on the 4th day of December, 1913.

(The jury are duly empaneled and sworn).

Thomas W. Osborne,
Official Stenographer.

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RY KUTN called as a witness in behalf of the
People, being sworn and examined, testified as follows:
(First Inspection District)

DIRECT EXAMINATION BY MR. COLLIGAN:

Q You were a member of the First Inspection District on the
8th of April, 1913? A Yes.

BY THE COURT:

That is, you are a police officer? A Yes.

BY MR. COLLIGAN:

Q Do you know the defendant at the bar? A Only that I
played with him.

Q When did you first see the defendant? A On the 8th day
of April, about 6:05 P.M.

Q Where? A In the rear room at a fake cigar store, 98
Rivington Street.

MR. SPIELBERG: I object and ask to strike that out.

THE COURT: Strike out the words "fake cigar store." The
jury will disregard that, and I want to tell the officer he
must be very careful in making statements, or the jury will
disregard all his testimony. Just state facts and not
opinions. You were asked where you saw him.

BY MR. COLLIGAN:

Q I want you to describe this store to the jury? A At the
front of the store there is one long counter. On this counter is
a row of glass cases. At the end of the counter there is a

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little gate. After going inside this gate there is a partition and in this partition there is an icebox door about three inches thick, and this icebox door leads into a room, which is a rear room. In this room there were --

MR. SPIELBERG: I ask that the characterization "icebox door" be stricken out.

THE COURT: Strike it out.

BY MR. COLLIGAN:

Q Describe the door, the thickness of the door? A The door is about three inches thick and the handle on this door is a big brass handle I should judge about seven or eight inches long. You have to turn the handle around to get into the rear room. In this rear room --

Q How many rooms are there? A Two -- one long room but partitioned off, which makes it two rooms. In this rear room there are three round tables. One of these was against the partition which divides the front room from the back room. In this partition was a peep hole. By that I mean a hole I should judge about one foot square. This peep hole, by sitting at this table which was up against this here partition, you could look from the rear room into the front room, clear right to the door which opens up from the street.

Q When you entered that place, whom did you first see?

A One Julius Weintraub.

Q You had a conversation with him? A Yes.

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Q You made certain representations to him? A Yes.

Q As to who you were, &c.? A Yes.

Q Then you got through the gate? A He allowed me through the gate and through this here door.

Q And brought you into the back room? A Into the back room where I seen this defendant sitting at a table with a deck of cards in front of him.

Q What did you do and what did you say?

BY THE COURT:

Q Who else was in the rear room? A This here Weintraub walked in the rear room with me.

Q No one else but you, Weintraub and this defendant? A Yes.

BY MR. COLLIGAN:

Q What was the conversation, if any, and what was done?

A Do you mean conversation in the presence of this defendant?

THE COURT: Give any conversation in which he took part, not otherwise.

A In the rear room?

Q Do you understand that question? A Yes.

Q In which he took part -- if he asked questions or made statements or answers, you can give the whole conversation? A If it was in his presence would that be different?

BY THE COURT:

Q Do not state anything unless he took part in it -- you know what taking part in a conversation means. If all three are

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there and one remains absolutely quiet, he is not taking part?

A Yes.

Q But if he says anything about what is being done, then he is taking part in the conversation? A Yes. While sitting at this table playing this game of stuss, I says to Weintraub -- Weintraub handed me a deck of cards and this defendant says "What is it you are going to bet?" I said "Two dollars on my card, which was a two." Weintraub dealt the cards, one to myself, one to him. I won this bet and this defendant handed me \$2. I made a second bet. This defendant says "What do you bet?" I said \$2., which was on the two. I won this bet, and this defendant paid me \$2.

BY THE COURT:

Q What did he pay you with? A With United States currency.

Q Where did he have it? A He had this -- he had a stack of bills on the table at which we were playing.

Q He paid you from that? A Yes. I made a third bet of \$2. which was on the three. I won. This defendant paid me \$2. I made several other bets, winning and losing, and every time I would win, this defendant would pay me, and every time I lost I would pay this defendant.

BY MR. COLLIGAN:

Q Did he make any deduction when you lost? A No deduction made while the game was in progress.

Q Was there anything said about 10%? A Nothing while the

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game was in progress. This other defendant Weintraub says "Where have you got your swag"? And I said --

BY MR. SPIELBERG:

Q Who did he say that to? A To me.

MR. SPIELBERG: I object as entirely irrelevant, incompetent and improper and immaterial. Overruled. Exception.

THE WITNESS (continuing) He said "Where have you got your swag?" I said "I have three cases of socks down on Water Street underneath the bridge." I said "If you want to buy this swag you have to buy the three cases which contain ninety dozen at a \$1. a dozen." Weintraub says to this defendant --

MR. SPIELBERG: I object to this conversation between Weintraub and this policeman in reference to swag, as not binding upon this defendant.

THE COURT: If it is not made binding, it will be excluded. I gave him the rule -- any conversation in which the defendant took part.

BY MR. COLLIGAN:

Q Tell the jury what you mean by "swag"? A Swag --

Objected to. Objection sustained.

THE COURT: I will allow anything that was said in which the defendant took part.

BY MR. COLLIGAN:

Q Continue just as you were going along --

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BY THE COURT:

Q What did the defendant say to Weintraub? A Weintraub asked me where I had --

MR. SPIELBERG: I object unless the defendant said it. Objection overruled. Exception.

THE WITNESS (continuing): Weintraub asked me where I had this swag. I said I had it in Water Street underneath the bridge, I had three cases, if he wanted to buy them.

BY THE COURT:

Q You have told us all that? A Weintraub said to this defendant in Jewish, "Go get a wagon." I said to Weintraub "You don't need to talk to him in Jewish, because I understand you, and then this defendant said to Weintraub "Where can I get the wagon" and Weintraub said "You ought to be able to get a wagon around the corner." Then we continued the game. After playing about an extra five or ten minutes, an unknown man came in this rear room.

BY THE COURT:

Q That is, a man whom you do not know? A A man I do not know. Weintraub and this here defendant told this unknown man to close the door. They did so, and Weintraub said to me "Are you not a cop?" I said "No." He said "Who are the cops you are working for?" I said "I ain't working for any cops. I came in here to sell my swag, and if you don't want to buy my swag, go to hell", and I called him a son of a bitch and walked out of the place.

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BY MR. COLLIGAN:

Q Explain to the jury how you played that game? A They handed me one of these decks of cards -- one deck.

BY THE COURT:

Q Who handed you? A Weintraub handed me a deck of cards.

Q By a deck you mean a pack? A One pack containing fifty-two cards. They handed me one deck and told me to take a card out of the deck.

Objected to.

BY THE COURT:

Q Who said that? Weintraub gave you a deck of cards and said what? A "Take your card out." I took a card out of my deck.

Q Have you that pack of cards that he gave you?

BY MR. COLLIGAN:

Q Have you the pack you used? A No.

BY THE COURT:

Q Was it similar to this you hold in your hand? A Yes.

Q You know cards when you see them? A Yes.

MR. SPIELBERG: I object to the illustration with this deck, unless it is the original deck.

THE COURT: The objection is overruled. He says it is the same in every respect.

BY THE COURT:

Q You know a pack of cards? A Yes.

Q You have played cards, A Yes.

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Q You know the denominations and the numbers and one thing and another? A Yes.

Q And you swear that this deck that you hold in your hand is identical in every respect with the deck of cards they gave you? A Yes.

Q You call it a deck? A Yes.

Q You mean a combination of fifty-two cards? A Yes.

Q Go on? A Told me to take a card. Weintraub told me to take a card out of my deck. I took out of my pack the first card which was a two. I then cut -- took one card, the card which I had in and divided the pile which Weintraub had in this manner (indicating). Weintraub then held the cards that way and dealt them, one for himself, one for me, one for himself and one for me. If two came on his pile, I would lose my bet, \$2. The house had preference on me --

BY MR. COLLIGAN:

Q I will ask you what percentage the house had in the game?

MR. SPIELBERG: I object as calling for a conclusion upon the part of the witness.

THE COURT: I will sustain the objection to that. Ask the witness to just explain the game, what was done, then you can qualify him if you like, as an expert on this stuss game, and he can give us conclusions, if he is an expert.

BY MR. COLLIGAN:

Q Continue and explain how the game was played? A After I

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picked one card out of my deck or pile, I cut -- by that I mean I put my card and divided his pack in half. He put one pack on top of the other and then dealt the cards on the table, one for himself, one for me. He would get the first card and I would get the second.

BY THE COURT:

Q Show the jury how the dealing was done? A The dealing is done one for himself, one for me, then himself and me and himself and me, himself and me, himself and me, and himself and me, himself and me, and himself -- now, the two came on his pile and I would have to pay him the amount of the bet, whatever was specified.

Q That two you say was the card you cut -- show the jury what you mean by cutting -- he gave you a deck of cards? A He gave me a deck of cards and I would pull out any card I wanted to bet on. If I bet on two --

Q You picked out a two? A Yes.

Q You gave him the two? A No, I kept this two, and I cut the deck with my card. He would put one pile on top of the other and then hold my card, and he would deal the cards on this table, one for himself, and if it happened to be the first card was a two, the house would win that \$2.

BY THE COURT:

Q Then you made another bet? A Make another bet, taking another card out of my pile, and continuing.

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BY MR. COLLIGAN:

Q How many times have you played cards in your life?

THE COURT: This particular game.

BY MR. COLLIGAN:

Q This particular game? A Played about sixty or 70 hands.

Q Have you been going into these places securing evidence?

A Yes.

Q And you have played in these places? A I did.

Q You understand this game thoroughly? A I do.

Q Now tell us what advantage the house has over the player before a card is cut? A 100%.

Objected to as incompetent, irrelevant and immaterial, not binding upon this defendant, and in no way connecting him with it. Objection overruled. Exception.

BY MR. COLLIGAN:

Q 100% -- explain to the jury why you say 100? A The house gets a card before the player gets a card. He has one and the player has none.

Q Take the cards and operate them, and demonstrate what you mean? A I bet on the first card which is two. The first card the house gets the two, and the house wins, and I have not had a chance for my money.

Q Explain what you mean by one hundred? A The house has one card where the player has not got a card.

Q The advantage is always with the house? A With the house.

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BY THE COURT:

Q You say you understand this game called stuss, is that so? A Yes.

Q You know all about it, you have played it and you know the rules of the game, and in your opinion it is a gambling game?

A Yes, sir.

Q And conducted or played for the purpose of profit? A Yes.

Q And that the house receives an advantage in the playing over the player? A Yes, sir.

Q That they are not on even terms? A No.

THE COURT: That is one of the elements in the law-- it is for the jury to decide whether this is so or not. The officer is merely giving his statement.

BY MR. COLLIGAN:

Q Have you told us practically all you did on that occasion?

A Yes, with this defendant -- while this defendant -- in the hearing of this defendant.

Q In his presence and hearing? A Yes.

THE COURT: Now, if you said anything else in those premises concerning playing cards, not in his presence, I will allow you to state it.

BY MR. COLLIGAN:

Q Did you have any conversation with anybody else?

MR. SPIELBERG: In the absence of this defendant?

THE COURT: Yes.

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MR. SPIELBERG: I object as not binding upon him.
Objection overruled. Exception.

THE COURT: The rule is, if he and another person were engaged in the operation of a room there for gambling, or a device for gambling, any statement made by either of them in the carrying out of that business, is binding on the other although made in the absence of the defendant -- if the statement related to the business of the premises. I do not want any statement about the weather, or anything of that kind, but any statement as to gambling made then.

Exception.

BY MR. COLLIGAN:

Q Now, how did you get in this place? A I entered these premises with a box under my arm through the front door. In this box were contained three boxes of hosiery. As I entered I saw one, Julius Weintraub, behind the counter. I said to Julius Weintraub "Is it all right?" He said "What?" I said "To play a little stuss." He said "Did you ever play here before?" I said "No, I played before at the Jefferson, they all know me up there". He said "Who do you know at the Jefferson?" I said "I know Butch and two other unknown men," whom I described. I said "I lost \$150. up there last Sunday." He said "Are you the kid that came out after serving four and a half years in Sing Sing?" I said "Yes." He said "Where did you do the trick?" I said "I done the trick in Brooklyn." "What part of Brooklyn?" I told him I

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done the trick in Varick Street, Brooklyn." He said "Who do you know over there?"

MR. SPIELBERG: I renew the motion to strike out the entire testimony given by this witness as not in the presence of this defendant, and not relevant to this case, having absolutely nothing to do with keeping and maintaining a gambling house, and in no way connected or brought home to the defendant, whom I appear for.

THE COURT: The jury will decide whether it is relevant or not. As I have told the jury before, if they find that this defendant and any one else, and more particularly Weintraub and this defendant, were acting in concert in the maintaining of a gambling house there, anything said by either of them on the premises in reference to gambling, or the business carried on there, is binding against the other, even though said in his absence. Anything done by Weintraub to carry out or effect the purpose for which the place was maintained, to conduct the game there, is binding on the defendant if he was acting in concert with him but, the jury have to find first, before any statement of Weintraub is binding on the defendant, that he and Weintraub were acting together, or that he was employed by Weintraub or aiding or assisting or abetting Weintraub in the running of the game. One of the charges is that he maintained a disorderly house. And the way to prove that is to prove what is done in the

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disorderly house. A house which is maintained for gambling is a disorderly house. That is one of the charges in this indictment. There are two ways to prove that, first by the general repute of the neighborhood, what they say about it, and second by showing what was done on the premises. If you want to show a house is a disorderly house, you have to prove that disorderly acts were committed there; that gambling was committed, not single isolated games of cards, but a room or a device or a table maintained for the purpose of gambling, wagering against all comers. That testimony is perfectly relevant on that point. The jury will understand that. The People have a right to prove in this way that there was a gaming house there, and that this defendant was concerned in the management and conduct of it.

MR. SPIELBERG: I ask your Honor to strike out the testimony given by this witness in reference to him being confined in Sing Sing, or convicted and doing four and a half years, as being incompetent, irrelevant and immaterial and not proving anything at all in reference to gambling or a gambling house, and as not binding upon this defendant, in whose absence this conversation took place.

THE COURT: I have endeavored to make the rule clear. I overrule the objection. Exception.

MR. SPIELBERG: I also ask your Honor to strike out this evidence as tending only to prejudice the minds of the jury,

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by showing that acts of an illegal nature were discussed there and that men of bad morals associated there. That is only brought in to throw a shadow on the entire transaction.

THE COURT: The motion is denied. The jury will understand the reason for the admission of this testimony.

MR. SPIELBERG: I except to your explanation or ruling.

THE COURT: I made no explanation. I am ruling, and trying to make it clear to you and to the jury.

BY MR. COLLIGAN:

Q Continue your conversation with Weintraub, in your attempt to get in?

Same objection, ruling and exception.

A I told Weintraub I done time in Brooklyn. He said to me "Who is the judge sent you away?" I said "Judge Dike sent me away for four and a half years." He then led me in the back room and said "Show us your swag" and I opened up this box and showed him a few of those pairs of socks, and in the rear room he then said to me "Are you the guy they call nigger over there." I said "Yes." "Where do you generally hang out?" I said "Around the Broadway Theatre, Brooklyn." He said "Do you know Jack Brown?" I said "No, I don't know him." He said "Who do you know" and I told him a few names, and he said "All right." We sat down and played this game.

BY MR. COLLIGAN:

Q You have told us practically everything that happened?

A Yes.

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Q Who accompanied you there? A I went in alone.

Q Did any officer come and join you there at all? A I left
Officer Kasinsky on the opposite side of the street.

Q You had never seen this man before? A No.

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CROSS EXAMINATION BY MR. SPIELBERG:

Q How long have you been a policeman? A About twenty months.

Q How long have you been in plain clothes? A Since last April.

Q This happened in the month of April? A Yes.

Q You just about got into plain clothes when you made the arrest? A I was in plain clothes about four days when I got the evidence against this place.

Q You were familiar with the game of stuss before that time? A I was.

Q Before you got into plain clothes I mean? A Before I got in the police department I was familiar with it.

Q You played it before you became a policeman? A Yes.

Q Played stuss in gambling houses? A I don't say gambling houses. I played it in clubs in Brooklyn.

Q In a club in Brooklyn? A Yes.

Q A club organized for the purpose of playing cards?
A I don't say exactly that.

Q You played cards for money? A Well, we did.

Q You played stuss for money? A We did.

Q You were familiar with the intricacies of stuss and all the different rules? A Not all the rules. I knew just the plain game, what I call a plain game of stuss.

Q Now, what time of the day or night was it that you

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entered these premises? A About 6:05 P. M.

Q What day in April? A On April 8th.

Q Broad daylight? A It was pretty light this time of the year.

Q Where are the premises? A In 98 Rivington Street.

Q Have you ever been there before that day? A No, never there before in my life.

Q Did you know the man who you described as Julius Weintraub? A Never saw him before.

Q And you never saw this defendant before? A No, never saw him.

Q You did not at that time know what his business was? A I did not.

Q Your conversation, as I understand, took place with Weintraub? A Part of it with Weintraub and part of it with this defendant.

Q So far the entire conversation which I heard, which you told us about, took place with Weintraub? A Not the entire, only part of the conversation.

Q The conversation in reference to your admission to the premises took place with Weintraub? A Yes.

Q This defendant did not hear a word about that, did he? A I don't know.

Q It took place outside in the store? A Yes, but there is a partition.

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Q A heavy door? A Yes.

Q Leading into the back room? A Yes.

Q You did not see the defendant when you talked to Weintraub? A No.

Q Or made representation, of which the District Attorney spoke about, as to your admissibility in the place-- your conversation was with Weintraub? A Yes.

Q This conversation about swag was with Weintraub? A At the start off.

Q This conversation about you doing some time and being convicted of a crime in prison in Sing Sing was with Weintraub? A Yes, sir.

Q In the absence of this defendant? A He was there and heard part of the conversation.

Q Did he come out? A No. We continued walking into the rear room.

Q Didn't you say this conversation took place before you were admitted and only after you said that Judge Dyke sent you away? A Yes, that took place in front of the store.

Q Didn't you say a moment ago that after you said Judge Dyke sent you away you were then conducted in the rear room? A Yes.

Q So after the entire conversation showing your eligibility, if you please, into these premises took place, you were admitted to the back room? A Yes.

Q And there you saw this defendant sitting? A Yes, at

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a table.

Q Did you say hellow to him-- say anything to him? A I didn't say hello-- I don't remember whether I said hello or not to him.

Q Did you say anything to him? A Why, looking at my swag-- he looked the socks over.

Q I asked you what was said-- did you say anything to him? A Not at the start off.

Q You looked at him? A I did.

Q You knew he was a man you never saw before in your life? A Yes.

Q Did he say anything to you? A He asked me where I had my swag.

Q He asked you that? A Weintraub asked me and this defendant asked me.

Q Both asked you at the same time? A Yes, both.

Q At the same time? A Not at exactly the same time.

Q Let us understand each other, the minute you entered the back room you saw this defendant sitting at a table? A Yes.

Q And the minute you entered he said to you - where have you got your swag? A No.

Q You did not tell him anything about the swag, did you? A Weintraub asked me to show him my socks.

BY THE COURT:

Q To show the socks to whom? A To show the socks. Did

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not say to whom.

Q You said he said show him the socks. A Show him the socks.

Q Who is he? A Weintraub.

THE COURT: Not to show the defendant.

BY MR. SPIELBERG:

Q The first one who spoke after you entered that room behind the door three inches thick was Weintraub? A He was.

Q And he said show me the socks? A Show us your swag.

Q Show us your swag? A Yes.

Q What did you do? A Opened up my boxes and showed him the socks.

Q What did the defendant say, A He looked them over.

Q It was a small room? A I should judge a room from here to that door (indicating).

Q You say you showed your merchandise to Weintraub and this defendant glanced over it? A He handled them and touched them.

Q What did he say? A Weintraub asked me what I wanted for these socks. I told him a dollar a dozen, that I had 19 dozen, in three cases. He asked me where I had them. I said in Water Street underneath the bridge in a stable. He said to the defendant in Jewish, get a wagon. I said to Weintraub there's no use talking to him in Jewish because I understand you. This defendant then said to Weintraub where can I get a wagon. Weintraub told him he could get it around the corner,

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and then we continued this game.

Q I ask you again now, this is the second time you have had the chance to tell your tale-- did this defendant say anything else during the entire time you were there except the words where can I get a wagon, yes or no? A Yes, he said what do you bet, while the game was continuing.

Q Did he say anything else? A I don't remember saying anything else outside of the game going on.

Q As you were sitting and playing with you he asked you what you were betting? A He said what do you bet.

Q And as to general conversation, all you remember is, where can I get a wagon? A Yes.

Q That was all? A Yes.

Q Weintraub did the rest of the talking? A Yes.

Q In reference to your admission? A Yes.

Q Before you were allowed to participate in any game at all, you had to qualify with Weintraub? A Well, yes.

BY THE COURT:

Q Do you understand that question? A Qualify, that is I had to pass Weintraub to get in.

BY MR. SPIELBERG:

Q What you mean by that, to satisfy Weintraub that you were a safe person to be admitted? A Yes.

Q Weintraub passed upon the subject, upon your safety, did he not? A He allowed me in the rear room.

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Q He let you in? A Yes.

Q Did this defendant have anything to do with admitting you from the store to the rear room? A No.

Q Did he participate in any of that part of the transaction? A No.

Q And was it Weintraub who invited you to take a hand in the game? A Yes, he got the cards out of this closet which hung on the wall.

Q Was this closet locked? A It was locked.

Q Weintraub had a key to it? A Yes, he had a key to it.

Q Weintraub unlocked the closet? A Yes.

Q And took out a pack of cards? A Two.

Q And threw them on the table? A Took out two and gave me one and held a deck for himself and then this defendant took out a roll of bills out of his pocket and laid it on the counter in front of him.

Q And you played with whom? A I played with Weintraub. Every time I would win this defendant would pay me the amount of money, whatever was bet.

Q Did you ever play with this defendant? A What do you mean?

Q Play with him? A I said he paid me and I paid him.

Q Did you play with him? A No, he did not handle the cards at all.

Q He did not touch the cards? A No.

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Q He paid up? A He paid out and received.

Q As you won or lost? A Yes.

Q And you say you never saw this man before in your life?

A No.

BY THE COURT:

Q What do you call the person who pays out and receives in a stuss game? A Call him the banker.

Q There is a name in the game of stuss? A Yes, he is called the banker.

Q So he was the banker? A Yes, he was the banker in this case.

MR. SPIELBERG: I object to that and ask to strike it out for the reason there is no proof that this was a gambling house.

Objection overruled. Exception.

Motion denied. Exception.

THE COURT: He says as an expert on the game of stuss, that there is a banker in it, as I understand-- is that so?

THE WITNESS: Yes.

Q The banker receives and pays out the money, receives the losing bet and pays the winning bet? A Yes.

Q And that operation was performed in your particular case by this defendant? A Yes.

Q There was no other banker present? A No other man.

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BY MR. SPIELBERG:

Q Any other persons present in the place? A A man walked in but had nothing to do with this game at all.

Q Was there any card playing besides the one you were engaged in going on the premises? A No.

Q You said before you never had been there before and consequently you don't know whether prior to the time you engaged in a game of cards, any other game of cards took place there? A I don't know. I never was there before in my life.

Q The only game of cards you saw in your life there in that place was the game you engaged in yourself? A Yes.

Q Your past experience in the game of stuss, as you told it, took place in Brooklyn, in a club house? A Yes.

Q Did you play with your fellow members of the club? A Yes, members of the club only.

Q Did they have what you call and designate as a banker there too? A Why--

Q Or did you pay one another as you played? A No, it was generally the man who probably had the most money at the time would take the banker.

Q Was there a third person interested in the game as you played in your club house? A The man would sit there and be banker himself and dealer himself.

Q When you played in your club house, you played with a fellow clubman and he paid you and you paid him? A Yes.

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Q There was no third person there at all? A No.

Q Did you ever play any game in which there was a third person, a man whom you designated as a banker? A Yes.

Q Where? A The Jefferson, 218 East 14th.

Q That was on the same day? A No, sir; two days before I got the evidence for this place.

Q Within the four days since you became a plain clothes man? A Yes.

Q And the game you engaged in with your fellow members in the club house in Brooklyn was exactly the same as the one you engaged in on Rivington Street? A Yes, sir.

Q The same way? A Yes.

Q And the same manner of procedure? A Yes.

BY THE COURT:

Q With the exception of the banker? A Yes, with the exception of the banker, but the cards were played the same way.

Q In your game in Brooklyn, one person would represent the player and the other would represent the banker? A Yes, banker and dealer.

Q But here the banker and dealer were-- A Two separate persons.

Q Two separate persons? A Yes.

Q That you met in the way you have described? A Yes.

Q Have you talked to people in that neighborhood about

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these premises? A No. I never spoke to anyone.

Q In that neighborhood? A No.

BY MR. SPIELBERG:

Q Now, when you were playing in Brooklyn, you were playing with men like yourself, fellow members? A Yes.

Q Not gamblers, A No, no gamblers.

Q Just chums? A Chums.

Q Some men in your own social life? A Yes.

Q How high did you play over there? A Why, 25 cents, 15 cents, small.

Q When you played with your fellow members in the Brooklyn club, you considered it an even game, didn't you? A Why, yes.

Q No advantage being taken by you or your fellow member?

A Well, every man had a chance of being banker over there and every man had a chance of being banker and dealer-- that was why I call it an even game over there.

Q It was a perfectly even game in Brooklyn? A Yes.

Q When you sat down in this particular place did you ask Weintraub or this defendant if you could be banker? A No.

Q Did not ask them? A No.

Q Accepted the conditions as they were? A Yes.

Q As far as you observed, the game you played in Rivington Street was perfectly fair and honest, the game between yourself and Weintraub? A The dealing of the cards, he did not cheat me in any way that I could see, in the dealing of the

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cards.

Q You talked of the advantage of the house, you mean the advantage of Weintraub? A This here defendant was in on it.

Q Do you know that of your own knowledge? A He was banker of the game.

Q He paid out the money? A He paid out and received the money.

Q But you were playing with Weintraub, were you not?
A Playing with both.

Q Both? A I should say so, because this defednant received money and was paying out the money.

Q But, Weintraub got a card and you got a card? A Weintraub was dealing the cards.

Q There was nothing dishonest in the game as far as you could observe? A The way the cards were dealt out, no.

Q They were perfectly honest? A As far as I could see they were perfectly honest.

MR. SCHIMMEL: If your Honor please, may I examine the witness?

THE COURT: Yes.

CROSS EXAMINATION (Continued) BY MR. SCHIMMEL:

Q Will you take these cards and deal them the way Mr. Weintraub dealt them-- shuffle them first.

THE COURT: Mr. Schimmel, suppose you come in here and play stuss before the jury. We want the jury to know

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exactly what to place there.

BY MR. SCHIMMEL:

Q Assume that I am Mr. Weintraub? A Yes.

Q You take the cards and shuffle them? A Yes.

Q You got a separate deck? A Yes, I have.

Q That is your deck? A Yes.

Q I shuffle the cards a few times in your presence?

A Yes.

Q You saw me shuffle them? A Yes.

Q I place the cards on the table? A Yes.

Q You pick out a card? A I pick a card out of my deck.

Q Do I know what your card is when you take it out? A No.

Q Do you tell me? A No.

Q Have I any means of knowing what card you have in your hand when you take it out of your deck? A No.

Q You keep that card? A Yes.

Q Take a card out of your deck-- now you put your other deck down? A Yes.

Q And hold the card in your hand? A Yes.

Q I don't know your card? A No.

Q You cut the deck? A Yes.

Q Cut it. (The witness indicates.)

Q You cut it-- I place these cards there (indicating).

A Yes.

Q And I place these on top? A Yes.

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Q You bet? A The dealer says to me what do you bet.

Q How much do you bet? A Two dollars.

Q Do I know what your card is? A No.

Q Do I know what the bottom card is? A Not that I know.

Q You shuffled them? A Yes.

Q And cut them yourself? A Yes.

Q Do I know what the bottom card is? A No.

Q I turn it up? A Yes.

Q The first card is mine? A Yes.

Q You claim that is the advantage, you claim the nine showed on here that you would lose? A Yes.

Q That would be the only advantage? A Yes.

Q Supposing the nine showed there, on the second card?

A I would win.

Q And where is the advantage if the card is first shown up or shown up second? A Suppose that nine was right on top and the second card was a nine.

Q Then what, A That first card was nine and the second card was nine, you would win and you would get all even breaks.

BY THE COURT:

Q How many cards are played, laid on the table, one or two? A They are laid one at a time.

Q Are there two piles? A Yes.

Q So that you do not stop when the first card is put down? A No.

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THE COURT: You have explained how the game begins and after the deck is cut you invert the deck, turn it face up in your hand and put the first card down, and that is for the house?

DEFENDANT'S COUNSEL: That is for the banker or player.

THE COURT: If there is a house, it is for the house.

DEFENDANT'S COUNSEL: Yes.

THE COURT: Then the house would win the bet whatever it was. Now the officer says if the second card were also a nine, that he would lose.

THE WITNESS: Yes.

DEFENDANT'S COUNSEL: That is the only advantage there is in that one case but there is no one hundred per cent advantage.

THE COURT: That ends the game?

DEFENDANT'S COUNSEL: Yes.

THE COURT: He takes another card out of his deck?

DEFENDANT'S COUNSEL: Yes. I will take all possibilities--

THE COURT: Ask the witness some questions.

BY MR. SCHIMMEL:

Q Pick out a card, cut. (The witness does as requested.)

Q I do not know your card? A No.

Q I turn face up? A Yes.

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Q When for the first time do I know what your card number is? A When the card shows up on any of the piles.

Q When you tell me so? A Yes.

Q I do not know what it is? A No.

THE COURT: You has gone over that. He takes any card he wishes out of his deck that he is given to him and conceals the denomination of that card from the dealer.

BY MR. SCHIMMEL:

Q I am dealing? A Yes.

Q One, two--

THE WITNESS: You win.

Q This is your number? A Yes.

Q That is when you tell me I win? A Yes.

Q How many cards in the deck? A Fifty-two.

Q How many aces? A Four.

Q How many twos? A Four.

Q How many threes? A Four.

Q How many fours? A Four.

Q How many fives? A Four.

Q How many sixes? A Four.

Q How many sevens? A Four.

Q How many eights? A Four.

Q How many tens? A Four.

Q How many jacks? A Four.

Q How many queens? A Four.

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Q How many kings? A Four.

Q What is the number of your card? A Six.

Q I will take out four sixes-- we will assume the game is being played. A Yes, sir.

Q You are playing on a six? A Yes.

Q I do not know the number six in your hand-- that is one possibility? A Yes.

Q The dealer loses? A Yes.

Q You play on a six, the cards are shuffled? A Yes.

Q Now first, who wins? A The dealer wins.

Q Now in the other case the player wins? A Yes.

Q Because it turned second? A Yes.

Q In this case by reason of the fact that the six came up first, the player lost? A Yes.

Q You are playing six? A Yes.

Q One, two-- two sixes show up? A Yes.

Q The card you are playing? A Yes.

Q The player loses? A Yes.

Q There are fifty-two cards? A Yes.

Q Two sixes are left in the deck? A Yes.

Q Leaving fifty cards in the deck? A Yes.

Q What are the chances, are not the chances twenty-five to one or greater that the two sixes in the card you play will come out as you say? A What?

Q Are not the chances twenty-five to one against the

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possibility that two sixes will show up at the same time on the first two draws? A I don't know.

Q You say the only advantage to the so-called banker or the man playing against the player is, that at the time when the card is being played against-- and we have taken for example number six-- is when the two sixes turn up on the first two throws? A Yes.

Q Or at any time mind you-- or at any time during the procedure of the game? A Yes, sir.

THE COURT: As I understand his testimony, he says the house or banker has this advantage, first that the house gets the first card.

MR. SCHIMMEL: That is not an advantage.

THE COURT: The house gets the first card so that if that card comes out, then the house wins, so that that is an advantage-- the jury can find out how much-- and secondly, if the two cards come out at the same time the house wins, so that he has lost his chance to win under those circumstances. He loses the whole bet.

MR. SCHIMMEL: I will show how is mistaken.

THE COURT: Is there any technical name for that happening?

MR. SCHIMMEL: No.

THE WITNESS: No, sir.

THE COURT: Where two sixes come out together?

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A No.

BY MR. SCHIMMEL:

Q Don't they call it a double split? A Call it an even break-- I don't know all the names.

THE COURT: That is you are not entirely familiar-- you do not know all about the game of stuss?

A I know about the playing but I don't know the different names-- what they may call them.

The Court admonishes the Jury in accordance with Section 415 in the Code of Criminal Procedure and takes a recess until two o'clock.

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AFTER RECESS. TRIAL RESUMED.

HARRY KUTNER resumes the stand:

CROSS EXAMINATION CONTINUED BY MR. SCHIMMEL:

Q Have you another deck of cards there -- we were playing on a six -- you say the advantage to the dealer is when the six card comes up first? A Yes.

Q Is there not just as equal an advantage to the man who is playing against the dealer, when the six card comes out second?

A When two cards are shown, there is an even advantage. When there is more than one card shown, there is an even advantage, except when splits turn up.

THE COURT: He says the game keeper has the advantage, or the banker, until the first card is drawn. If that is his card, he wins and the other man has no chance to win -- is that what you mean?

THE WITNESS: Yes.

Q And that advantage is lost as soon as that card is drawn, if it is not the card that wins for the house? A Yes.

BY MR. SCHIMMEL:

Q Don't you know, or, having qualified as an expert in the game of stuss, you know the gambling percentage, of gambling against the first two cards showing up -- if the card you play -- we will take No.6 -- it is twelve to one that it won't show up?

A Yes.

Q So the chance of the first two cards showing up -- take

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No.6 -- the chance of that No.6 showing up on the first two cards is twelve against one? A Yes.

Q So that the percentage of the No.6 showing up on the first two cards is eight and a half percent in favor of the dealer? A What do you mean?

Q Twelve to one of 100% is eight and a half? A That is the way you figure it out.

Q How would you figure it out, is it not eight and a half?
A I figure out if the first card comes up, you get the preference on the first card, where the man who is playing has no preference.

Q If the second card shows up in your favor, it is an even break? A Yes, as soon as the first card shows up -- the house has 100 -- and as soon as the second card, then the -- it is an even break.

Q What difference is there in percentage to the house, as follows, first card 2, second card 8, third card a 6, is there any difference in the percentage? A Yes.

Q What difference? A Two to one.

Q Against whom, against the player or the house? A The house has two cards against the player's one.

Q So as you run along the percentage decreases? A It decreases.

Q You do know, as a fact, that the gambling percentage on the number that you are playing on, showing up on the first two

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cards, is twelve to one? A It is twelve to one that the card won't show up on top.

Q On the first two? A Yes, on the first two.

Q So being twelve to one that the number you are playing on won't show up on the first two cards, don't you know the gambling percentage is twenty-four to one that it won't show up on the first card? A I don't see the way you make that out.

THE COURT: That is a matter for argument.

MR. SCHIMMEL: That is the gambling percentage, twenty-four to one.

THE COURT: He says he does not know it.

BY MR. SCHIMMEL:

Q You were talking about so-called splits -- and splits are what is known when the card you are playing on shows up in consecutive order? A Yes.

Q For instance, you are playing the game of stuss, the first card is a deuce, the second a king, and the third is six and the fourth is six, that is a split? A Yes.

Q That percentage is against the player? A Yes.

Q And in favor of the house? A Of the house.

Q Is there not just as equal a percentage in favor of the player on splits I talk of now, in this case -- the first card is a deuce -- the house loses on that? A Yes.

THE COURT: Nobody wins.

BY MR. SCHIMMEL:

Q Nobody wins -- the second is a 6? A Yes.

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Q You win? A Yes.

Q The third is a split? A Yes.

Q You are playing on the 6? A Yes.

Q You do not lose? A You play all over again. It is an even break.

Q In that case it is an even break, where the splits follow in consecutive order? A Yes.

Q If you were to play all the while or continue the game, you would have the first card, a deuce, second a 6 that you are playing on, and you win? A Yes.

THE COURT: That ends the game and you take another card.

I understand his testimony. After the card wins or loses, that ends that game and you draw another card, is not that what you said?

THE WITNESS: Yes.

BY MR. SCHIMMEL:

Q That ends that particular game? A Yes.

Q Did you ever play the game of stuss, officer, in your clubroom -- we will take the No.6 all the way through? A No.

Q Do you know what is known as a repeat? A Why yes.

Q What is a repeat? A Play double.

Q Playing the same card double? A Yes.

Q Therefore it is possible, where you play on No.6, that same card may follow in consecutive order -- in a split, I talk of, as follows, 2, 6 and third a consecutive 6? A Yes.

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Q And you would necessarily lose? A Yes.

Q And the house would win? A Yes.

Q That is a consecutive 6? A Yes.

Q That is another contingency that can take place in the game of stuss? A Yes.

Q So it is just as even a break for you as it will be for the house? A Yes, but you have the advantage over that one card.

Q Haven't you got the same advantage? A You have a card more than I have.

Q Where is it? A Put the 6 down -- put another 6 down and I lose.

Q What is the possibility of that thing ever happening. I only say where the house has the advantage of that one card all the time. There is the percentage of the house.

Q If the house has its benefit of that one card, there being four of such cards, the house would necessarily have the advantage of one-thirteenth? A One-fourth -- one out of four.

Q One out of four against fifty-two? A No, one out of those four cards in the deck.

Q There are fifty-two? A Yes, but you only play on four 6's and you have the advantage of the first 6 all the time.

THE COURT: You have shown his estimate of the percentage, and it does not amount to anything. What percentage do you admit the house has?

MR. SCHIMMEL: Less than 10%.

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THE COURT: If the People cannot contradict it by some one that knows more about it than this officer, they will concede that.

MR. COLLIGAN: Will you concede that the house has the advantage of at least 10%?

MR. SCHIMMEL: Yes, not more than 10%.

THE COURT: Then it is conceded by the defendant that in playing the game of stuss against a house, the house has the advantage over the player of no more than 10%?

MR. COLLIGAN: I will consent to that.

MR. SCHIMMEL: Yes.

BY MR. SCHIMMEL:

Q In this club of yours in Brooklyn, where you were playing stuss on several occasions, you say that the reason that game was an even break for yourself was because at that time and in that game you had the opportunity of dealing out or being banker? A Yes.

Q And in this so-called game, with this man Weintraub and this defendant, did you at any time ask to deal? A I did not.

Q So that you never asked for an opportunity to deal or bank? A No, I did not.

Q You do not know therefore whether it would have been refused or granted, do you, A I don't know.

Q How much money did you lose in that game? A \$8.

Q When you finished that game and lost \$8., how much of that \$8. did you get back? A I did not finish the game. I

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was willing to play on, but they shut the doors when this other man came in, and started to cross-examine me.

Q Did you get any money back? A No, I did not get a chance of getting any money back, no.

Q But there is a chance of getting some money back? A Yes.

Q How much of that money do you get back? A 10%.

Q In other words, if you were to lose \$10. in a game of stuss, and you stopped playing the game, they would return you 10% of what you lost? A Yes, sir, they do.

Q In this so-called game of stuss, that 10% was not returned to you because you claim there was some scrap?

BY MR. COLLIGAN:

Q Had you spoken about the 10%? A No.

BY MR. SCHIMMEL:

Q You know it is the custom and rule in gambling houses that you get 10% back of whatever you lose in a game of stuss?

A I did get 10% in another gambling house.

Q And having played the game of stuss, don't you know you get 10%? A Yes.

Q That is a general rule in stuss houses, they return 10% of whatever is lost? A Yes.

Q And the only reason you did not get it back here was because of the fact --

THE COURT: Do you concede that this house was a stuss house?

MR. SCHIMMEL: No, I do not concede that at all. And

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if they claim there was an advantage, I will show that advantage, and I believe I have shown that the 10% advantage is counteracted by the 10% returned.

THE COURT: The jury are sworn to decide this case on the sworn statements of witnesses and not on the statements of counsel.

BY MR. SCHIMMEL:

Q You do know, officer, that in the game of stuss, 10% is returned to you? A Yes.

Q Of the loss? A Yes.

A B R A H A M S. K A S I N S K Y, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

(First Inspection District).

DIRECT EXAMINATION BY MR. COLLIGAN:

Q You were a member of that First Inspection District at the time the defendant was arrested? A Yes.

Q Was he arrested in conjunction with one Weindraub? A Yes.

Q Where? A Premises 98 Rivington Street.

Q Those are the premises in question? A Yes.

Q Do you remember the date of the arrest? A Yes.

Q What was the date? A April 9th.

Q You found him on the premises that day? A Yes.

Q Who was with you? A Officer Hickson.

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Q Any one else, A Officer Kutner.

Q Was anything said at that time by you to the defendant?

THE COURT: Which defendant?

MR. COLLIGAN: Either of them.

THE COURT: There is a different rule now. After the completion of the crime, declarations made by alleged co-conspirators are admissible only against the person making the declaration, so you must confine yourself to declarations made by the defendant. During the perpetration of the crime anything they say or do to accomplish the object of the corrupt agreement, is admissible against all the persons concerned, but after the crime is complete the rule is different and statements made by Weintraub would not be admissible against this defendant unless there was a conversation in which the defendant took part.

BY MR. COLLIGAN:

Q Did the defendant take part in any of the conversation?

A No.

Q Then we will cut that out -- now, how long have you played cards, A About ten years.

Q Have you ever played the game of stuss, A I have.

BY THE COURT:

Q Before you come to that -- you said you arrested this defendant? A Yes.

Q On those premises? A Yes.

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Q At what time? A About 4:55 P.M.

Q Under what circumstances did you go there? A We had a warrant for this defendant.

Q You and how many other officers went there? A I, Officer Kutner and Officer Hickson.

Q How did you get in? A We sent Officer Kutner in first to see if the men described in those warrants --

Q You sent him in first? A Yes.

Q He came out? A We went in about two minutes after he entered.

Q You arrested the defendant and several other people, how many others? A One more.

Q Did this defendant make any statement to you, did you tell him why he was under arrest? A He did not make any statement to me at all.

Q He said nothing? A He said nothing. Officer Kutner said "This is the man I want", and we kept him in there.

BY MR. COLLIGAN:

Q Now, how many years have you played the game of stuss?

A I am familiar with the game the past ten years.

Q I want you to be very frank and tell where you played it, and under what circumstances you played it, and when and how often, and if you have played it in a regular gambling house, say so? A I have played it at clubs and at regular gambling houses.

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Q Before you were a police officer? A Yes.

Q How many years have you played it? A I have played it for probably five years.

Q Five years? A Yes.

Q If you will, briefly state to the jury how the game is played and what advantage there is, if any, to the house in all games? A Now, the game of stuss can be played by one or more persons -- that is, what I mean, one or more persons can play against the dealer or banker -- the more persons playing the merrier for the dealer. The dealer will deal the cards and the player cuts them -- cuts it with the card he holds in his hand like that (indicating). After they are cut, the player will announce how much he plays on each card -- he can play one, two or thirteen cards. After the money is bet on the cards, the dealer turns his deck of cards. The first card is the dealer's. The dealer can win before he can lose. If the player's card is an eight spot, the player will lose -- it happens to be a king -- he then goes on to deal. There are two 8's, that is called a split. Now there is an advantage for the dealer, because he cannot lose on the next card. He can win. He turns his cards again -- the five spot loses and the ten wins -- that is the dealer's card. That is when a split falls.

BY THE COURT:

Q You mean the ten wins for the player? A Yes.

Q For the house -- if that was the card the man was betting

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on, the house would win? A Yes.

Q On every turn of the cards the house has the first chance to win? A Yes.

Q And the player can only win if the house does not win on that play -- that ends the play as soon as the house wins? A Yes, as soon as the house wins, unless he wants to play a second card.

Q Now, if the second card is the player's card, he would win ordinarily but he won't win if it follows the same card on that deal -- that is, if it is what you call a split -- what happens when there is a split, who gets the money, if there is a bet of \$2.? A The banker gets the money, the house gets the money.

Q When there is a split, although the player's card comes up second and he ought to win, he does not win because the bank has already won that? A Yes.

Q So that he loses his chance of winning altogether, even if his card comes up? A Yes, sir, but not on all occasions does the split win for the banker.

Q Tell us when it loses to the banker? A I will.

THE COURT: The jury must find that the stuss game is a gambling game -- what you call a house game.

THE WITNESS: The next card after the two 8's is a 5-- the 5 loses and the 10 wins -- the next is 4 -- the 4 loses.

BY THE COURT:

Q Before you go any further, nobody wins on that deal at all -- they are betting on 8's, you say? A I am giving an in-

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stance where a split falls in -- what advantage the dealer would have.

Q What advantage? A After the split there is four cards drawn off. The dealer wins two cards and the player wins one out of the four.

BY MR. SCHIMMEL:

Q You are playing on a king? A Yes.

MR. SCHIMMEL: Play on the king.

THE COURT: It is the same thing whether it is the king or an 8.

THE WITNESS: The king wins.

BY THE COURT:

Q That is, who gets the money on that? A The player.

Q That is ended now? A Yes.

BY THE COURT:

Q Unless you continue the bet for the remaining three king's? A Yes.

Q There are four kings in the deck? A Yes.

BY MR. COLLIGAN:

Q The jury would like to know what you mean by the advantage or disadvantage of the cards played after the split, to whom does that advantage accrue? A To the dealer.

Q Explain to the jury?

THE COURT: Is it of benefit to the house any more than 10% -- that has been stipulated by the defendant -- he is willing to concede that.

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MR. COLLIGAN: It was accepted by the District Attorney.

MR. SCHIMMEL: It was conceded by the District Attorney.

BY THE COURT:

Q You have always heard of stuss as a gambling game? A Yes.

Q In which the house or the dealer has an advantage? A Yes.

Q Now, do you know what the percentage of advantage to the dealer is? A The first card.

Q What percentage -- you have been talking about percentage? A I guess about 10%.

Q That is, in one hundred plays, he will win ten times oftener than he loses, A Yes.

Q That is what is meant -- that is a very big advantage?
A He will win sixty times out of one hundred cards played.

Q If they make one hundred bets and the dealer wins ten more than the player, it is only a question of time when he will win all the player's money? A I wouldn't say --

Q You don't understand what they mean by percentage? A I do.

Q What is the effect of percentage against the player?
A Percentage of the dealer's advantage --

Q What is the effect of percentage in favor of the house against the player -- it must be of financial benefit if it hurts the player, must it not? A I should figure about 10%.

Q What is the effect of that -- explain to the jury?

BY MR. COLLIGAN:

Q What advantage has the house, what do you mean by 10%,

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who gets the money and who loses the money? A When a man loses--

Q Answer the question if you know, you say you are an expert -- what is the effect -- what do you mean by saying the house has 10% advantage, what is the result of that advantage, the effect of that advantage on the player, A It is the first card dealt up.

BY MR. COLLIGAN:

Q Suppose the player had spent \$100.? A Yes.

Q And the house had bet \$100. against him, now do you see what the judge means? A If the player lost 100, as a rule they give him back 10%.

THE COURT: We do not care anything about that.

BY MR. COLLIGAN:

Q You understand what the judge means, what is the effect of having the advantage?

THE COURT: Giving back 10% does not affect, whether it is gambling or not -- if a man wants to be charitable after he wins a man's money -- do you understand English?

THE WITNESS: Yes.

BY THE COURT:

Q What do you mean by 10% advantage? A 10% of the game in his favor.

Q What is the effect of that, what is the result of that-- how can he turn that into money -- the money is on the table? A Yes.

Q That never occurred to you -- that means that he will

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win out of one hundred plays -- he has ten chances more to win than the player? A Yes.

Q The house has ten chances more ? A Yes.

Q It does not mean that he always will win -- the element of luck comes in? A Yes.

Q But in a long series of plays, according to the gambling fraternity, the percentage determines who will have all the money, A Yes.

Q So that the player is playing against that advantage all the time? A Yes.

Q If there is \$100. bet in the course of a play, that 10% advantage will net the dealer \$10., is not that what it means? A Yes.

Q So that he has 10% of the \$100. in his favor? A Yes.

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Q And then if that is ten dollars and he gives back ten per cent of that ten per cent, he is only giving back one per cent to the player? A Yes.

Q What is ten per cent of ten dollar? A One dollar.

Q He had a chance not to win one dollar but ten dollars?
A Yes.

Q So giving back one does not equalize the play? A No.

Q Does not make the game on even terms? A No.

Q And if it is pretended that it does, that is only a trick and device, is not that so? A Yes.

CROSS EXAMINATION BY MR. SPIELBERG:

Q What does the word per cent mean, do you know? A A certain part.

THE COURT: You do not know, do you?

A Percentage is a certain part.

Q What do you mean by percentage-- what do you mean by four and six per cent interest? A It is a certain amount.

Q What does per cent mean? Generally, you mean, do you not?

MR. SPIELBERG: That is my meaning.

BY MR. COLLIGAN:

Q You never studied Latin? A No.

BY MR. SPIELBERG:

Q You know what percentage is, you studied it in public school? A Yes.

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THE COURT: Per cent is English-- it was Latin but it is English now.

BY MR. SPIELBERG:

Q If I understand you right, you say that the banker has the advantage in that he gets the first card? A Yes.

Q That is the only advantage? Yes.

Q There are fifty-two cards? A Yes.

Q So that his advantage may be one in fifty-two? A One in thirteen.

Q Because there are four times thirteen? A Yes.

Q So his percentage is one to thirteen?

THE COURT: It has been conceded by the defense that the bank has an advantage of ten per cent. All I want to do is to let the jury know what that means. That is a technical term. Gamblers know what it means and I want the jury to know what it means-- what the effect of it is.

BY MR. SPIELBERG:

Q You have been in plain clothes some time? A Yes.

Q In the Thirteenth Precinct and First Inspection District? A Yes.

Q Were you ever in the premises 98 Rivington Street prior to the day you made that arrest? A I was on the same day.

Q That is the first time you were there? A Yes.

BY THE COURT:

Q You were twice there on that day? A Yes.

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BY MR. SPIELBERG:

Q And this is the first time in your life that you saw this defendant? A No, I saw him in 90 Rivington Street at one time.

Q In another place? A Yes.

BY THE COURT:

Q What kind of a place was that? A It was an alleged gambling house.

BY MR. SPIELBERG:

Q A cigar store? A Yes.

Q You saw him in there? A Yes.

Q Did you see him do anything at all? A No.

Q Just saw him? A Just saw him in there.

Q As you passed by and looked in you saw him? A He was inside when I saw him.

Q Did you see him talk to the people over there? A Yes, he was talking to people in there.

Q In the store? A Yes.

Q In the front-- he was not playing, was he? A No.

BY MR. COLLIGAN:

Q Was he in the front? A He was in the front and in the rear but he was not playing.

BY MR. SPIELBERG:

Q Talking to the people in the store? A Yes.

Q But he was not engaged in any game? A No.

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Q Did you see him at any other time? A No.

Q These are the only two occasions that you saw this defendant in your life? A Three times I saw him.

Q You never saw him play? A No.

Q When you came there to make the arrest did you tell the people you had a warrant? A Officer Kutner went in first.

Q When you came in there? A They were under arrest already. Officer Kutner placed them under arrest.

Q Do you know if this defendant had made any statement to Officer Kutner? A No.

Q He did not make any statement while you were there?
A No.

Q Now you testified that before you became a policeman you engaged in gambling? A Yes.

Q On and off? A I did not engage in it. I played gambling games socially-- social gambling games.

Q Played for money? A Yes.

Q In gambling houses? A Yes.

BY THE COURT:

Q How long have you been in that precinct or district?

A Ten months.

Q Is 98 Rivington Street in that precinct? A Yes.

Q Do you know the reputation that 98 Rivington Street had in the neighborhood?

MR. SPIELBERG: I object as calling for a conclusion.

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Let him state the basis of his information.

THE COURT: You may find that out on cross examination. There are two ways to go that it is a gambling house, first by proving what took place in there and also by common report, what people in the neighborhood say of it.

BY THE COURT:

Q Have you ever talked to anyone in that neighborhood about this house? A No.

Q What? A No, sir. I have not talked to anyone in the neighborhood. We have received complaints--

Objected to.

BY THE COURT:

Q Never mind about that now.

BY MR. COLLIGAN:

Q When you went into No. 90, you saw the defendant?

A Yes.

Q How long was that prior to April 8th? A About a month prior to April 8th.

Q It looked like a cigar store? A Yes.

Q Did you see any cigars in there? A There were some boxes, with some cigars in the boxes.

Q How many rooms did that place take up? A There is a partition which made it in two rooms.

Q Was there a gate as was the case in this particular

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one? A Yes.

Q Was there a large door, heavy door, between the two rooms? A There was no door there.

Q Were there tables in the back room? A Yes.

Q You saw him there one month prior? A Yes.

Q Is it not a fact that the defendant moved from there to No. 98 Rivington Street, the house in question?

MR. SPIELBERG: I object unless he knows.

BY MR. SPIELBERG:

Q In No. 90 you saw other people? A Yes.

Q Besides the defendant? A Yes.

Q You saw the defendant doing the same thing that the other people were doing, talking to one another? A Yes.

Q Standing in a group talking? A Yes.

Q Did not see any gambling going on or any game of cards at No. 90? A No.

Q You do not know of any conviction against 90 Rivington Street? A I do not know.

Q You were not present in court when anybody was convicted? A I don't know of any conviction.

BY MR. COLLIGAN:

Q You went there under inspection duties as a member of the department? A Yes.

Q How many times did you go there? A I believe I only went there on two or three occasions.

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BY MR. SPIELBERG:

Q You found nothing? A Nothing.

J A C O B B. R O S S , called as a witness on behalf of the people, being duly sworn and examined, testified as follows: (First Inspection District.)

BY MR. COLLIGAN:

Q Do you know the defendant? A Yes.

Q Are you familiar with the premises 98 Rivington? A Yes.

Q Are you familiar with premises No. 90? A Yes.

Q Have you ever seen the defendant in No. 90 Rivington?

A No.

Q Did you ever at any time see any property moved from 90 to 98 Rivington Street? A Yes.

Q What was that property and when was it moved? A The 27th of March, 1913.

Q What was the property you saw moved? A I saw an ice-- a thick door commonly called an ice box door, and partition; I saw a cigar counter, tables.

Q Did you know at that time the defendant? A Yes.

Q I ask you when you first saw him if you ever saw him at No. 90? A I never did.

Q Where did you first see him? A In 188 Suffolk Street, in an alleged gambling house.

MR. SPIELBERG: I object and move to strike out the

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last words, in an alleged gambling house.

THE COURT: Strike it out.

BY MR. COLLIGAN:

Q Have you ever discussed with anybody in the neighborhood the reputation of this place No. 98? A Yes.

Q What is the general reputation in the neighborhood?

Objected to.

THE COURT: Ask him if he knows it.

BY MR. COLLIGAN:

Q Do you know the general reputation? A Yes, I know.

BY THE COURT:

Q How many people have you talked to? A I have talked to three people?

Q In that neighborhood? A Not just in that neighborhood but people who were interested in that neighborhood.

BY MR. COLLIGAN:

Q Have you ever talked with representatives of Jewish societies?

MR. SPIELBERG: I object and ask that the date be fixed.

BY MR. COLLIGAN:

Q When? A I spoke to Mr. Newberger.

Q I asked you if you ever spoke with any representative of any Jewish organization? A Mr. Greenbaum.

Q When? A About the first part of April, after they

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started to open up this place.

Q And was complaint made to you by the Jewish organization?

Objected to. Sustained.

THE COURT: I will allow the testimony of people in the neighborhood, but not of Mr. Newberger or Mr. Greenbaum, because their information is only hearsay. You must call the people of the neighborhood or one who has talked to the people in the neighborhood, to prove reputation by that means.

BY MR. COLLIGAN:

Q You have not talked with anybody in the neighborhood?

A No.

No cross-examination.

THE COURT: If you call Mr. Newberger here or Mr. Greenbaum, so that they can be cross examined to the extent of their knowledge, I will permit them to testify.

MR. COLLIGAN: It is too late now.

THE COURT: It is not too late. I will give you an adjournment until to-morrow if you want it.

MR. COLLIGAN: I would like to call Commissioner Newberger.

THE COURT: There are two ways of proving the reputation of a disorderly house. The old common law way was by proof of what the people in the neighborhood said of it.

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MR. COLLIGAN: Personally I do not know.

THE COURT: Of course not, except the knowledge you get from preparing your case.

T H O M A S F . K E L L Y , called as a witness on behalf of the people, being duly sworn and examined, testified as follows: (First Inspection District.)

BY MR. COLLIGAN:

Q You are a member of the police force and were such during the months of March and April of this year? A Yes.

Q Did you ever inspect premises No. 90 Rivington Street?
A Yes.

Q On how many occasions and when? A Every day from March 12th to March 27th.

Q You went in there on police duty? A Yes.

Q You were known as an officer in there? A Yes.

Q Did you see the defendant in there? A Yes.

Q How manytimes? A Every day.

Q Didyou make inquiries at night? A In the afternoon and also at night.

Q Three times a day for how long? A From March 12th to March 27th.

Q I ask you ifyou made an inspection at No. 98, the place in question? A Yes.

Q When? A From March 28th to April 9th.

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Q I ask you if you saw the defendant there on each inspection? A Yes.

CROSS EXAMINATION BY MR. SPIELBERG:

Q When was the first time you went to No. 90 Rivington?

A March 12.

Q In the daytime? A I couldn't say whether it was in the afternoon or evening. I worked in two shifts.

Q You don't remember? A No.

Q You saw the defendant there? A Yes.

Q More people besides the defendant there? A The defendant and two other men.

Q What were they doing, anything at all? A They were in the rear room sometimes reading and sometimes playing a game of cards and sometimes sitting around.

Q You never participated in the game? A No.

BY MR. COLLIGAN:

Q You made it known you were an officer when you went in there? A Yes.

Q You went there to prohibit the playing? A Yes.

BY MR. SPIELBERG:

Q You stopped the playing when you saw it? A Yes.

Q Each time you saw them playing you stopped them from playing? A Yes.

Q And they stopped when you told them to? A Yes.

Q Did you have any conversation with the defendant?

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A Just as to why we were coming in there all the time.

Q Who asked you? A The defendant and another.

BY THE COURT:

Q Whatever you said to the defendant you may tell but not what you said to anybody else.

BY MR. SPIELBERG:

Q Did you say anything to this defendant? A I don't remember any conversation.

Q Don't remember having any talk with him at all? A No.

Q Upon any occasion? A No.

Q How many times did you go to 98 Rivington? A Every day from March 28th to April 9th.

Q What time in the day or night? A Between one P. M. and four A. M. in the morning.

Q After noon? A Afternoon and evening usually.

Q You saw people in there? A Yes.

Q You never saw the defendant playing cards over there?

A Yes, I saw him playing pinochle in the rear room.

Q With somebody else? A Yes.

Q Did not see any money? A No.

Q Just a friendly game between himself and somebody else?

A Yes.

BY MR. COLLIGAN:

Q You made yourself known there also? A Yes.

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BY MR. SPIELBERG:

Q You told them you were a policeman? A Yes.

Q He knew you were a policeman? A Yes.

Q You told them you were coming into the place as part of your police duty? A Yes.

Q Before you came in they were playing pinochle? A Yes.

Q And they continued playing after you came in? A Yes.

Q You did not stop them from playing? A No.

Q Did not take a hand either, did you? A No.

Q Did not participate? A No.

J O H N . J . H A N I G A N ; called as a witness on behalf of the people being duly sworn and examined, testified as follows: (First inspection district)

DIRECT EXAMINATION BY MR. COLLIGAN:

Q You are a member of the police force and were such during the month of March and April, 1913? A Yes.

Q Did you visit the premises No. 90-- not 98? A Yes.

Q How many times? A I visited No. 90 from March 12th to March 27th.

Q How many times did you visit it? A On an average of two or three times a day.

Q Did you make it know that you were a police officer?
A Yes.

Q Did you see the defendant there? A I did.

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Q How many other people did you see there? A At times I would see another man there-- at times I would see two other men besides him there.

Q Did you visit premises 98 Rivington? A Yes.

Q Can you recollect the date? A From March 27th to April 9th.

Q Did you see the defendant there? A Yes.

Q Who else did you see there if anyone? A Another strange man with him.

Q Someone with him? A Yes.

Q Did you make it known on both occasions, in both places, that you were a police officer? A Yes.

Q Did you have any conversation with the defendant?
A None at all.

Q Simply told him you were a police officer? A Yes, and wanted an inspection of the place.

Q You told him you wanted an inspection of the place?
A Yes.

CROSS EXAMINATION BY MR. SPIELBERG:

Q During all those investigations that you have made during the month of March, you found nothing wrong? A I never found anything going on wrong.

Q You saw several people assemble in a cigar store talking? A No, in the back room.

Q Sitting and chatting? A Sitting down playing cards,

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pinochle or some other game.

Q You would come in and go out? A Go in, take an inspection of the place.

Q After you told them you were a policeman, you simply came in, said hello and walked out? A Yes.

MR. COLLIGAN: With the exception of Commissioner Newberger, whom I may call, the people rest.

THE COURT: If you think you want to put in further *proof* as to the character of that place I will allow it. I am very liberal in my construction of the law. I think one of the counts, the eighth count in this indictment, is the maintaining of a public nuisance.

MR. COLLIGAN: I would prefer to see the Commissioner.

THE COURT: If you want an adjournment for the purpose of seeing if you can get proof of the common report of that place, I will give it to you.

MR. COLLIGAN: I respectfully request it, unless he wants to go on with his case and let me put it in tomorrow.

THE COURT: Will you go on with your side of the case, Mr. Spielberg?

MR. SPIELBERG: I feel the case ought to be closed. Here is an isolated case of a game engaged in between officer Kutner and Weintraub. I am not called upon to put in any defense-- your Honor knows that. If they can

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make out a prima facie case I will meet it when the proper time comes.

THE COURT: You do not wish the people to rest now with permission to re-open?

MR. SPIELBERG: I want to say, in all fairness, that if the people are not ready to go on further, they ought to close their case now. This defendant was compelled to go on this morning in the absence of his attorney who prepared the case and I have had to jump in and never saw the defendant before in my life and never had a chance to talk with him. I came in simply to help Mr. Aaron J. Levy who could not be here this morning. He was wined and dined last night and could not be here to try the case.

THE COURT: No advantage was taken of the defendant. He pleaded guilty and as you know, you called that fact to the attention of the jury and then he withdrew his plea yesterday and in the exercise of my discretion I let him withdraw his plea. That was not taking any advantage of him, and in order that there might ^{not} be any long delay, I ordered the defendant on trial at once, so there was nothing done to-day but carrying out of the court's statement that the case would be tried to-day. There was no advantage taken of this defendant whatever.

MR. SPIELBERG: I did not say there was.

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THE COURT: On the contrary all his legal rights were respected, so that the jury will disregard the statement that the defendant has been placed to any disadvantage. The defendant has been favored and not injured by the action of the court and if the people want an adjournment for further evidence I allow them that adjournment.

MR. COLLIGAN: I respectfully request it.

THE COURT: I shall rule that proof of common report, common reputation of that house in the neighborhood, is legal proof of its character. Of course, the jury must determine how much weight they will give that, and the people must be brought here so that they can be cross examined as to the sources of their knowledge. I could not let the lieutenant, the witness Ross, testify what somebody else, not in the neighborhood, told him. That would be mere hearsay.

MR. SPIELBERG: On this point I simply desire to say that Commissioner Newberger gets his information from the lieutenant and from officers.

THE COURT: I do not know if he does or not. If he does it is worthless. That is what we want to find out. You will have your chance on cross examination. I do not want any testimony to go before the jury unless I think it is legal and proper testimony. We want to have a fair

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trial. The people are entitled to a fair chance, to present this evidence if they want to.

MR. COLLIGAN: I would prefer it. I am going to do my level best to represent the people of the County of New York.

THE COURT: You ask for an adjournment until to-morrow?

MR. COLLIGAN: I do.

THE COURT: You can present such further proof at that time as you have.

MR. COLLIGAN: I would like an adjournment until I ascertain.

THE COURT: I will give you an adjournment until to-morrow morning at 10:30.

The Court admonishes the jury in accordance with Section 415 of the Code of Criminal procedure and takes an adjournment until to-morrow morning, December 5th, 1913, at 10:30 o'clock.

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