

In addition, the Court of Appeals of this Circuit also said that the fact that in some cases it may be difficult to determine the side of the line on which a particular fact situation falls is not sufficient reason to hold the language too ambiguous to define a criminal offense.

165 Now, let's take the example that Mr. Marks has given, that is, somebody in California who may be a bettor's or a handicapper's livelihood calling up somebody else and in casual conversation saying, "It's hot and sunny out here today." Well, of course, that is possible and I don't think we are in a position at this point to determine whether or not it actually would be so, because that case is not before us.

But it is possible that if the statute were construed to apply to that individual it might be unconstitutional because, of course, we all know that when we are considering felonies of this type you, of course, have to have specific intent, intent to convey the information, intent to give information which will assist in the wagering field.

In the example given by appellant it would appear that there would be no specific intent, and if the statute were construed to apply there it might be unconstitutional as applied in that case.

Now, we would respectfully submit that in this case we don't have to worry about peripheral problems at all. We don't have to worry about uncertain factual situations because we believe—and, of course, if we are incorrect then the court could act subsequent to the evidence coming into this court—but we believe that the evidence  
166 in this case will show that bets were placed as such and that wagering information such as the line and that wagering information also involved discussions of credit line pertaining to wagers.

So we do not see that there was any unconstitutional abridgment of freedom of speech, nor that this statute is unconstitutionally vague.

Mr. Marks: May I speak from here?

The Court: Yes.

Mr. Marks: The difference between the Turf Center case and the statutes of 1952 and 1408 which we are dealing with—I guess it is—

Mr. Farber: Excuse me. 1084, counsel.

Mr. Marks: I am sorry. 1084.

1952 deals with conduct.

1084 deals with speech.

Now, true, there is always a strong presumption of validity in any enactment of Congress or any legislature. However, this strong presumption of validity does not apply where the statute encroaches upon freedom of speech.

The cases which I have cited, although they deal with obscenity, most of them do specifically go into this fact of what is the encroachment upon the freedom of speech, is it direct or indirect? Strong presumption  
167 of validity does not apply where there is abridgment or encroachment upon the right of free speech. You can't lightly toss it off by saying, "Well, in some cases it might apply and in some cases it may not apply."

What you have to look to is, does the statute in effect say to the person, the track handicapper, "You may not speak over a telephone in interstate commerce, you may not transmit any information regarding race track even though that's your business, even though it is legal."

Once that statute—it seems to be that exact prohibition without any clear and present danger, then I believe it is invalid, and that is the distinction.

1952 again talks about other terms. What they were talking about was specific terms in 1952 dealing with vagueness. They didn't talk about in the business of betting or wagering. I don't believe that the case is in point except as any case might be in point that deals either with generalities of whether or not a statute is void for vagueness.

Some statutes are clearer than other statutes. I don't think that this statute is clear. I don't think that any person by looking at the face of the statute, who wished to make a phone call and place a bet, could tell whether or not  
168 his act was a felony under the federal laws or he was free to engage in that conversation under the federal law.

**Denial of Defendant's Motion to Dismiss and the Motion to Suppress Evidence**

The Court: Well, we have had this question up several times and it has been in the courts a good many times, some phases of it. I don't think that there is any vagueness in the statute in itself. If there is any vagueness it may be as to its application. It is pretty clear that anybody who is engaged in the business of wagering is put in a classification and he is prohibited from entering interstate communications for the imparting of any information relative to gambling.

This business of wagering may not be a crime, but it does become so, that very act becomes so when Congress says that it shall not be done.

So the motion will be denied.

Mr. Marks: I assume the motion to suppress—

The Court: The motion to suppress will also be denied.

Mr. Farber: Shall we proceed, your Honor?

The Court: Yes, you may proceed.

Mr. Farber: May it please the court, in view of the fact that this is a court trial as opposed to a jury trial, and in view of the fact that this court has some familiarity with this case, unless the court desires I will not make an opening statement.

169 The Court: All right.

Mr. Farber: The Government calls as its—

The Court: Before we get the Government started here we will hear this other matter.

(Other matter heard.)

The Court: All right, Mr. Farber, I guess you may start again.

Mr. Farber: Thank you.

**Transcript of Court Trial—May 19, 1965**

The Government calls as its first witness Mr. Jacobs. We will call him out of order because we understand he will take a certain position.

**MANUEL JACOBS.**

called as a witness by the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name for the record.

The Witness: Manuel Jacobs.

Mr. Farber: Is it stipulated between defendant and the Government that Mr. Jacobs has the nickname of Rickey?

Mr. Marks: Yes, stipulated.

Mr. Farber: Thank you.

170 Direct Examination

By Mr. Farber:

Q. Now, Mr. Jacobs, do you know the defendant, Mr. Charles Katz? A. I respectfully decline to answer on the grounds that my answer may tend to incriminate me or degrade me in violation of my rights under the Fifth Amendment to the Constitution of the United States.

Q. Now, Mr. Jacobs, to your knowledge, on January 19, 1965, did Mr. Katz place a call out of state pertaining to wagering? A. I respectfully decline to answer on the grounds that my answer may tend to incriminate me or degrade me in violation of my rights under the Fifth Amendment to the Constitution of the United States.

Mr. Farber: So that I won't waste the court's time—

The Court: Is it your intention, Mr. Jacobs, to make a similar reply to any question which is asked you in connection with this case?

The Witness: Yes, your Honor.

Mr. Farber: I think I have nothing further, then, your Honor, of this witness.

The Court: Very well.

You may step down.

171 The Witness: Thank you.

Mr. Farber: The Government calls as its next witness Mr. Barron.

Mr. Marks: May the witness be excused?

The Court: I guess so.

Mr. Farber: It is agreeable with the Government, your Honor.

The Witness: Thank you.

Mr. Farber: The Government calls as its next witness Mr. Barron.

JOHN ROBERT BARRON,

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name for the record.

The Witness: John Robert Barron.

Direct Examination

By Mr. Farber:

Q. Now, Mr. Barron, are you familiar with one Charles Katz? A. Yes, I am.

Q. Do you see Mr. Katz in the courtroom today? A. Yes, I do.

172 Q. Where is he sitting, sir? A. Alongside of Attorney Burton Marks.

Mr. Farber: May the record—

The Court: The record may show the witness has identified the defendant.

Mr. Farber: Thank you, your Honor.

Q. Now, Mr. Barron, for the record, what is your occupation? A. I am a special agent with the Federal Bureau of Investigation.

Q. For how long have you been so employed? A. 11 years.

Q. And you are assigned to the Los Angeles office? A. Yes.

Q. For how long have you been so assigned? A. Since 1956.

Q. Now, were you the special agent who participated in the investigation of Defendant Katz? A. Yes, I am.

Q. And approximately when did the investigation begin pertaining to telephone calls, if you understand my question? I don't want to go—

Mr. Marks: Objection; irrelevant and immaterial and hearsay.

The Court: Overruled.

173 The Witness: February 4, 1965.

By Mr. Farber:

Q. Was a surveillance commenced pertaining to Defendant Katz? A. It was started. Yes, surveillance did commence at that time.

Q. On January 4th? A. On February 4th.

Q. February 4th. I am sorry.

Directing your attention to February 11, 1965, did you see Defendant Katz take any action on that date? A. Yes.

Q. What time? A. At 8:30 in the morning.

Q. And where? A. In the lobby of his apartment building, the Sunset Towers West, located at 8400 Sunset Boulevard.

We observed him in the lobby and walked to the east wing of the building where we knew to be located a telephone.

Q. Did you see him take any action with respect to that telephone?

Mr. Marks: Well, your Honor, I will object to the form of the question "take any action." It is vague and  
174 ambiguous. Furthermore, that February 11th seems to be outside the scope of the Indictment. It commences on February 19, 1965.

The Court: Well, we have to give him some latitude in order to lay the groundwork, I suppose, for what happened, to interpret what happened.

Mr. Marks: Also "take some action" has a definite meaning in bookmaking circles.

The Court: All right. It is unfortunate.

Mr. Farber: May I reframe the question to satisfy counsel?

Q. Did you see Mr. Katz do anything with respect to the telephone?

Mr. Farber: That has no bookmaking connotation, does it, Mr. Marks?

Mr. Marks: I don't know.

The Witness: Might I explain that?

Mr. Farber: Yes.

The Witness: We did not see Mr. Katz enter the phone booth in that area. We observed him depart our view. We were outside in the front of the building.

Three minutes later he returned to the area wherein was located the phone booth. That is the only action we observed of Mr. Katz that date.

By Mr. Farber :

Q. Directing your attention to February 19, 1965,  
175 did you see Defendant Katz on that date? A. Yes,  
I did.

Q. And approximately when? A. At approximately 8:30  
or just prior to that, minutes prior to that, in the morning  
of the 19th.

Q. And where did you see him? A. We saw him in a  
phone booth where there were located public phone booths  
in the area of approximately 8200 Sunset Boulevard on  
the Sunset Strip.

Q. What activity was he participating in, if any? A. He  
entered a phone booth, the middle phone booth of three  
phone booths, wherein is located telephone No. OL 4-9275,  
and appeared to be making a phone call.

Q. Approximately what time was this that he— A. He  
entered the booth, as I recall, at 8:29 in the morning and  
departed the booth approximately ten minutes later.

Q. Now, had you prepared the outside of the phone booth  
in any manner? A. Yes, I had.

Q. Would you describe that, please? A. Utilizing a  
tape recorder given the name of Edwards Recorder, we  
placed the recorder on the top of the middle phone booth  
in the back section, and from this tape recorder there ema-  
nated two microphones.

176 One was placed at the top of the middle phone  
booth in the back section on the outside and placed  
there, adhered there by tape.

The second was placed across to the easternmost booth  
and affixed to the outside of the booth in the same manner  
so as to record the conversation of Mr. Katz when we  
would so desire.

Q. Was there any penetration of the phone booth by  
anything physical? A. No, there was not.

Mr. Marks: Objection. It calls for a conclusion of the  
witness. As a matter of fact, there is physical penetra-  
tion. There are sound waves.

The Court: Well, maybe you can restrict your question somewhat, counsel.

Mr. Farber: Fine. Thank you, your Honor.

Q. Did the microphone itself physically penetrate the phone booth? A. No, it did not.

Q. What about the method that you used to attach the microphone to the phone booth? Were any of the fasteners physically penetrating the phone booth? A. No, they did not. It was tape.

Q. Now, as a result of that telephone conversation  
177 did you obtain a tape? A. Yes, we did.

Q. And from that tape did you prepare a transcript? A. Yes, we did.

Mr. Farber: May I have Government's Exhibit No. 1?

Counsel, is it stipulated that Government's Exhibit No. 1, which is a transcript, is an accurate transcript of the tape?

Mr. Marks: Yes.

By Mr. Farber:

Q. I show you Government's Exhibit No. 1, sir. Is Government's Exhibit No. 1 the transcript of that tape? A. Yes, it is.

Mr. Farber: Your Honor, I move that Government's Exhibit No. 1 be received in evidence.

Mr. Marks: Objection, your Honor.

This is purported to be—may I object to the introduction of this particular "statement" in evidence for the following two reasons?

No. 1—and I will state it again—it was obtained as a result of an unlawful search and seizure in violation of the rights of privacy of the defendant.

Furthermore, there has been no corpus delicti of the offense established and statements of the defendant  
178 are not admissible for the purpose of establishing a corpus delicti.

Mr. Farber: May I be heard, your Honor, or is it necessary?

These are not confessions or statements as such. These would fall in the category of a statement of a defendant who is holding a gun during a robbery saying, "This is a bank robbery." That is in and of itself the corpus delicti.



I think counsel is confusing the question of admission or confession with perpetration of crime.

Mr. Marks: There is a certain corpus delicti in the statute. The first prerequisite before a statement of a defendant can be used is that he be engaged in the business of betting or wagering. Before you can establish or can use the statements that he made over the telephone to show that they were unlawful statements or unlawful information he must first establish that he was one of the persons within the purview of the statute and that they have now established. They can't establish it by the statements of the defendant. They must establish it by independent evidence.

The Court: Well, I don't know what the statements are. I am inclined to believe you are right.

It will be admitted subject to a motion to strike if they are not connected up and if there is not a corpus delicti proved by some other means.

Mr. Farber: Thank you.

Mr. Marks: Thank you.

The Clerk: Your Honor, for the record here I had better indicate that Government's Exhibits 1 through 18 are marked for identification.

The Court: Very well.

(Documents were marked Plaintiff's Exhibits 1 to 18, inclusive, for identification.)

#### **Offers in Evidence**

(Document marked Plaintiff's Exhibit 1 was received in evidence.)

Mr. Marks: On that basis, your Honor, may it be stipulated that the same objection is made to the rest of the transcripts of the tapes, that they be admitted subject to a motion to strike?

Mr. Farber: Certainly.

The Court: Very well.

Mr. Marks: Very well. It will save a lot of time.

By Mr. Farber:

Q. Now, with respect to the date—excuse me. Before we go to the next date, when Mr. Katz finished his tele-

phone conversation, sir, did he leave the phone booth?

180 A. Yes, he did.

Q. Then what action did he take, if any? A. I immediately deactivated the microphone, which merely means turning off the microphone by switching a switch located elsewhere. The Edwards Recorder was located atop the booth.

Q. I think probably we should establish this for the record: Did you take any precautions to make sure that you did not pick up conversations of other individuals who might use the same phone booth?

Mr. Marks: Objection; irrelevant and immaterial.

The Court: Overruled.

The Witness: Yes, I did.

By Mr. Farber:

Q. What were those precautions? A. We had radio cars for our utilization in the FBI, and we communicated with each other on the surveillance. We have located agents in a radio car outside of the residence wherein Charles Katz resided. We had rehearsed, so to speak, the manner in which we would relay to me located at the phone booth that he was en route to that location through the radio transmission.

Therefore, on the morning of the 19th and thereafter an agent after seeing him leave the residence and  
181 walk into the area of the booths, which would be in an eastern direction from his residence—I waited until I heard a radio transmission that he was in a specific location which we had so marked and noted, which was in front of a place called The Body Shop some block and a half removed from the phone booth area.

When he would reach this location I received this information by radio and would then at that time go over and actuate the microphone by switching it on.

We immediately when he left the booth would follow the same manner and deactivate. As soon as he was out of sight we turned it off and removed the equipment.

Q. Was this the procedure followed on each occasion?

A. Yes, it was.

Q. Now, directing your attention to February 20, 1965, on that date did you see Defendant Katz? A. Yes, I did.

Q. Approximately when? A. At approximately, again, 8:30 in the morning.

Q. Where? A. In the same location at 8210 Sunset Boulevard wherein are located the three telephone booths.

182 Q. What did Mr. Katz do? A. He entered one of these phone booths, the middle booth, and again appeared to make a telephone call.

Q. Do you remember the phone number for that middle booth? A. Yes. OL 4-9275.

Q. At approximately what time was this? A. This was again at 8:30, 8:31, 8:29 in the morning; in that area.

Q. For how long was he in the phone booth? A. Again, I think this call was a short call of four minutes, four minutes he was in the booth.

Q. I show you Government's Exhibit No. 2.

Now, did you get a tape recording of the conversation in the telephone booth on the 20th also? A. Yes, I did.

Q. And from that tape recording did you make a transcript? A. I caused one to be made, yes.

Q. Is Government's Exhibit No. 2 the transcript of that tape recording? A. Yes, it is.

Mr. Farber: Is there a stipulation?

Mr. Marks: Yes.

Mr. Farber: Pertaining to Government's Exhibit No. 1, pertaining to Government's Exhibit No. 2? Same  
183 stipulation?

Mr. Marks: The stipulation, if the court please, will apply to Government's Exhibit 1 through 6.

Mr. Farber: Thank you.

Mr. Marks: As well as the objection.

The Court: The objection also. Very well.

Mr. Farber: I move Government's Exhibit No. 2 be received in evidence, your Honor.

The Court: It may be admitted with the same reservation heretofore stated with regard to Exhibit 1.

Mr. Farber: All right.

(Document marked Plaintiff's Exhibit 2 was received in evidence.)

By Mr. Farber:

Q. Now, with respect to February 22nd did you see the defendant on that date? A. Yes, I did.

Q. Where? A. In the same location as previously described, 8210 Sunset Boulevard.

Q. Approximately what time? A. At approximately 8:30 in the morning.

Q. And for how long was he in the phone booth on that occasion? A. I believe a very short time. I think 184 three to four minutes.

Q. Now, on that occasion were you able to obtain a tape recording? A. No, we were not.

Q. Why? A. We had a malfunction of our equipment.

Q. Now, directing your attention to February 23, 1965, did you see the defendant on that occasion? A. Yes, I did.

Q. Where? A. 8210 Sunset Boulevard where the three booths are located.

Q. Approximately what time? A. At approximately 20 minutes to 9:00.

Q. Did you see the defendant take any action—strike that question.

Did you see the defendant perform any activity with respect to those booths? A. Yes. He entered the easternmost booth which bears telephone OL 4-9276. He stayed in this booth for approximately 10 to 15 minutes.

Then left this booth and walked into the booth in the middle where OL 4-9275 is and appeared to make a second phone call.

I should state that the first time he picked up 185 the receiver and dialed, indicating he was making a phone call in the first booth also.

Q. And on the 23rd were you able to obtain a tape recording? A. Yes, we were.

Q. I show you Government's Exhibit No. 4. Is Government's Exhibit No. 4 an accurate transcript of the tape recording that you obtained on that date? A. Yes, it is.

Q. Now, I believe that when we were talking about the 21st I asked you if you had obtained a tape recording, but I did not ask you if you had made a transcript of that tape recording.

Let me ask you again, did you obtain a tape recording of the telephone conversation on February 21st? A. I was

not there at the time the recording was obtained on that date, though.

Q. On the 21st. Thank you.

Now, with respect to February 24, 1965, did you see the defendant on that date? A. Yes, sir, I did.

Q. Where? A. At 8210 Sunset Boulevard at the three telephone booths previously described.

186 Q. Approximately what time? A. I think this was just a little later than normal. I think approximately 10 minutes to 9:00 in the morning.

Q. What activity did the defendant participate in, if any? A. During the time we had him under observation, which was approximately until a little after 9:00 o'clock in the morning, he entered two phone booths, the first one being on the eastern location, and appeared to make a phone call. That has the telephone number OL 4-9276.

He, if I am not mistaken, on this date left the phone booth area and took a walk prior to re-entering the middle phone booth. Then he appeared to make another phone call from OL 4-9275.

Q. Thank you.

Exhibit 5, please.

Now, did you obtain a tape recording of the defendant's half of the conversation on February 24, 1965? A. Yes, I did.

Q. Would you take a look at Government's Exhibit No. 5, please?

Is Government's Exhibit No. 5 an accurate transcript of that tape recording? A. Yes, it is.

187 Mr. Farber: Your Honor, I don't think I moved for the reception of Government's Exhibit No. 4. I do now for Government's Exhibits No. 4 and No. 5.

The Court: 4 and 5 may be admitted subject to the same ruling heretofore made.

(Documents were marked Plaintiff's Exhibits 4 and 5 were received in evidence.)

The Court: We will adjourn until 1:30 this afternoon.

Mr. Farber: Thank you, your Honor.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 1:30 o'clock p.m. of the same day.)

188 Los Angeles, California, Wednesday, May 19, 1965.  
1:30 P.M.

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(Other matters heard.)

The Court: You may proceed.

Mr. Farber: Thank you, your Honor.

JOHN ROBERT BARRON,

called as a witness on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. Farber:

Q. Mr. Barron, during lunch did you have a chance to refresh your recollection from your notes? A. Yes, I did.

Q. Now, with respect to February 24th would you tell us what activity took place on February 24th with respect to Defendant Katz? A. Yes. I believe I had prior testified to my recollection, the fact that Mr. Katz had entered a phone booth at 8210 Sunset Boulevard, OL 4-9276, and had taken a walk prior to entering the middle phone booth, OL 4-9275.

This is inaccurate on this date. On the 24th he went from the one phone booth, the first phone booth, directly to the middle booth. It was the 23rd in which  
189 he had taken a walk prior to making a call from the other phone booth.

Q. In other words, on the 23rd he took a walk and then came back and made a phone call? A. That is correct.

Mr. Farber: I have nothing further of this witness.

Cross Examination

By Mr. Marks:

Q. Mr. Barron, do I understand that over the noon hour you refreshed your recollection from some notes? A. Yes, sir.

Q. Now, are you testifying from the notes that you refreshed your recollection or from your own recollection?

A. I am testifying from my past recollection refreshed from my notes.

Q. But you do remember the events pretty well? A. Yes, I do.

Q. Now, you started investigating this on February 4, 1965; is that correct? A. That's right.

Q. And you put Mr. Katz under surveillance? A. 190 We had a surveillance of Mr. Katz, that is correct.

Q. Commencing on or about the 19th of February is when you put in a bug into the telephone booth?

Mr. Farber: Excuse me, your Honor.

I object to the term "bug." It has certain connotations which are prejudicial and are not an accurate description of this activity.

The Court: Well, I suppose that is true, although I am acquainted with what a bug is, that this was not. So perhaps we had better use some other terminology for the purposes of this questioning.

By Mr. Marks:

Q. A tapping device.

Mr. Farber: That, your Honor, I certainly would object to. I realize that the court is now familiar with the device. I make this objection because I want the record to be clear in case any other—

The Court: Very well. The record will show that the device which counsel is referring to is the device to which testimony has already been given here by this officer, by whatever name it may be called.

So you may proceed.

Mr. Farber: Thank you, your Honor.

By Mr. Marks:

191 Q. You understand what a bug is? A. In this case the microphone that was used?

Q. Yes. In a general sense. When I use the word "bug"— A. You are referring to the microphone that I used?

Q. That's correct. A. All right.

Q. Now, the first time you used a microphone or this type of device was on or about the 19th; is that correct? A. Specifically it was the 19th.

Q. All right. Now, between the 4th and the 19th you had Mr. Katz under surveillance? A. Not every day of that period; some days between those dates.

Q. On those dates that you did have him under surveillance he used a telephone booth? A. Yes, sir.

Q. Did he use other telephone booths than the ones that you said were located at 8210 Sunset? A. We didn't see him at booths other than those, no.

Q. In other words, the ones that are involved are the only booth that you ever saw Mr. Katz at during the period of surveillance? A. During the period we saw him, yes.

192 Q. Now, on the dates that you were making the recordings how many people were on your team? A. It varied from day to day, but it approximated every day five.

Q. Five.

Now, these phone booths are on the street on Sunset Boulevard; is that correct? A. That's correct.

Q. They are not within any other building or enclosure? A. There is no building adjacent to it.

Q. Right. There are three phone booths; is that correct? A. That is correct.

Q. One of the phone booths is out of order, or marked out of order? A. We placed one phone booth out of order.

Q. That was with the cooperation of the Telephone Company? A. That is correct.

Q. So that you could utilize the two booths to have two microphones, two booths much more convenient; is that correct? A. That is right.

Q. Mr. Katz lived at 8400 Sunset; is that correct? 193 A. That is right.

Q. And the phone booths are 8200 Sunset? A. That is right.

Q. Now, as he left 8400 approximately how many blocks in this in distance? A. It approximates five; four to five blocks.

Q. All right.



Now, as I understand, what would happen is that as Mr. Katz would leave his residence at 8400 Sunset and proceed easterly on Sunset Boulevard somebody there would announce the fact to you. A. That is right.

Q. Now, you were the one that was next to the phone booths? A. That is right.

Q. You would then go to the phone booth and switch the recording on? A. As he neared it, yes.

Q. What does "neared it" mean? A. I testified he was a block away, he was at The Body Shop which was a block away.

Q. Now, what precaution did you use in the event that somebody not Mr. Katz would walk into the booth and use the phone while the recording was going? A. I don't understand your question.

194 Q. Mr. Katz had a block to go before he would reach the phone booth? A. Yes.

Q. The recorder was going? A. Yes.

Q. If a third person whom you were not interested in hearing their conversation would walk into the phone booth what was your precaution to see that their conversation was not recorded? A. It did not occur. Had it occurred I would have turned it off.

Q. Just got over to the phone booth and switched it off? A. And secondarily it is a—I am not a technician, but as I had it explained to me, and I had to have it explained to me for purposes of use, it works on a stereo type basis in which A or B can be removed and if Mr. Katz was in the phone booth at the same time as another individual we would only be interested in Mr. Katz' conversations and we could control that.

Q. Anybody else go into the phone booths while Mr. Katz was on the phone? A. Yes, sir.

Q. Made phone calls at the same time? A. On one day a man dialed a number.

195 Q. What date was that? A. That was the 23rd.

Q. Did you make a recording of that? A. We did not listen to that recording.

Q. But it was recorded? A. It would be recorded, I would take it, yes.

Q. Mr. Katz used one or the other phone booth at random? A. He used one of the two on either date and on some dates both.

Q. Do you remember from your own memory now what booths he used? A. Yes.

Q. As I understand, the center booth was 4— A. 9275.

Q. —9275. And the eastern booth was 4-9276? A. 6.

Q. Now, on the 19th which one did he use? A. 75.

Q. 20th? A. 75.

Q. 21st? A. I don't know.

Q. You weren't there on the 21st? A. That's right.

196 Q. Or was there a malfunction? Or is that the 22nd? A. The 22nd.

Q. Who was present, do you know? A. Yes, sir. Special Agent Emmett Doherty.

Q. Is he present? A. Yes, he is.

Q. The 22nd? A. I believe 75.

Q. The 23rd? A. The 23rd he used 76 first and 75 second.

Q. On the 24th? A. The same, 76 first and 75 second.

Q. Did you testify about February 25th? A. I was not there.

Q. So you don't know if anybody else was in the phone booth while Mr. Katz was making a phone call on the 21st or the 25th? A. No. I was not there.

Q. Now, would you each day after Mr. Katz had made the phone call remove the bug? A. Yes, sir. Removed the microphone.

Q. The microphone. Excuse me.

197 What length of time would it take to put your microphone on? A. A minute, two minutes.

Q. Now, it was the 23rd he arrived about 8:40 in the morning, made what you thought might have been a phone call? A. Yes.

Q. Then left; is that correct? A. Yes.

Q. Now, at that point you would have removed the microphone, wouldn't you? A. Yes.

Q. Did you? A. Yes.

Q. Then he returned? A. We received radio transmission that he was returning.

Q. So you put it back on? A. Yes.

Q. Did you have any reason to believe that he was going to be returning, or what? A. No.

Q. You just happened to be by the phone booth? A. Might I explain that?

Q. Please. A. On the 23rd he made his phone call and in the normal fashion of previous days returned 198 toward his apartment house. He had walked some half block or so away which was our normal procedure to remove the equipment, and we did so. Only on this date we received a radio transmission that he had reversed his direction and was returning to the area of the booths.

With the receipt of that, I was already at the booths, I was still standing there removing the equipment, so I just merely again secured it and left the area.

Mr. Marks: Thank you.

I have no further questions.

#### Redirect Examination

By Mr. Farber:

Q. I have just one question I would like to ask you about.

Directing your attention to the date February 12, 1965, did you see Mr. Katz place a telephone call on that date? A. Yes, I did.

Mr. Marks: I am sorry. I didn't hear the question or the answer.

(Question and answer read.)

Mr. Marks: Objection, your Honor; improper redirect.

The Court: I think you opened it up.

199 Mr. Marks: On February 12th.

The Court: You asked him if he had on any other occasion, as I recall, during the surveillance seen him put any other telephone calls.

Mr. Farber: Yes, your Honor.

The Court: Overruled.

By Mr. Farber:

Q. On that occasion what telephone booth was utilized by Mr. Katz? A. He used the first booth, the western booth

of the three, the one that we had previously blocked—I mean subsequently blocked OL 4-9116.

Q. Thank you. So that was still one of the three on Sunset? A. Yes, it was.

Mr. Farber: Nothing further.

Mr. Marks: I have nothing further.

The Court: You may step down.

Mr. Farber: The Government calls as its next witness Mr. Doherty.

200                    EMMETT DOHERTY,

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name for the record.

The Witness: Emmett Doherty.

Mr. Farber: Your Honor, it has been stipulated between defendant and the Government that Mr. Doherty was the special agent who was present at the two telephone booths in question, those that have been previously testified to by Mr. Barron; that on the date of February 21st and February 25th he was special agent who activated the microphones; that on both of those dates he obtained tape recordings of telephone conversations—or he obtained one-half of telephone conversations from Defendant Katz, and that Exhibit 3 and Exhibit 6 are accurate typewritten transcriptions of the tape recordings; is that correct?

Mr. Marks: I will stipulate to that, your Honor.

The Court: Very well.

**Offers in Evidence**

Mr. Farber: Then, your Honor, I would move that Government's Exhibits 3 and 6 be received in evidence.

201                    The Court: They may be admitted subject to the objection and the ruling heretofore made.

(Documents marked Plaintiff's Exhibits 3 and 6 were received in evidence.)

Mr. Marks: Your Honor, at some future time with respect to these exhibits and the tape and the conversations there I may ask the Government to express to the court—because I don't know what they are for—to make an offer

of proof as to these conversations. In other words, are they to prove that a bet was made or a wager was made or that gambling information was to have been transmitted, or some other information? Because there is a lot of conversation on these tapes that would have absolutely no relevance as far as I can see to the case. Of course, the Government might have a different idea.

Mr. Farber: Your Honor, at this time I am going to ask Mr. Doherty to read one of the exhibits to the court in order to save time rather than have him read all of them. I am going to ask him to read Exhibit 5 as representative of these exhibits.

The Court: I will, of course, read them all.

Mr. Farber: I, of course, assume you would your Honor.

May we have Mr. Doherty read Exhibit 5?

202 The Court: Yes.

Mr. Marks: For the record, that's a tape of February 24, 1965.

The Witness: Yes.

#### Direct Examination

#### The Witness: (Reading)

"The following is a transcription of a tape dated February 24, 1965 and marked 165-1496 which transcription was made in the office of the Federal Bureau of Investigation, 1340 West Sixth Street, Los Angeles, California:

"Good morning! Boston, Massachusetts, number 8 8 4 1 7 3 3—Station call—Area Code is 6 1 7.

"Right.

"Right—You want the two dollars? You want to get the number? Okay—Okay.

"6 5 4 9 3 7 6.

"Okay? (Sounds of coins in pay phone)

"Okey doke!

"Hi ya—Number is—70—right!

"Yes, sir!

"Pass

"Pass

203 "How—how much—let me call you back in a few minutes—Yea, Yea—give it to me—Yea—Correct—Right—Right—Right—Yes—

“What—the two pro games—What were— Los Angeles and Saint Louis—right.

“Thank you—I’ll call you back.

“(23 seconds elapse until next call)

“Let me have Miami Beach J E 4 0 9 7 6, a station call—J E—Yes!—J E 4 0 9 7 6—Yea.

“Right—thanks—Right, I—6 5 4 9 3 7 6 is the number—Excuse me—(Coins being place in pay phone)

“Yea? —Jaffey—Yea—Jaffey? On the head.

“Give me Temple minus ten and a half for a dime.

“Pass

“Pass

“Pass

“Pass

“Pass

“Pass

204 “Give me Duquesne minus 7 for a nickel. That will give me—

“Yea.

“So, I miss calls—I will settle up—so you have a nickel on Temple? Oh—fine—I knew I could do these things to you. So I—did you see Willie? —Oh—Yea—You know Benny that works for—Yea? So tell him hello too? —Yes—I am in L.A. Yea, the son of a b—— has been since he got a red check (strictly phonetic on red check)—Oh—Does he? —What goes on with them two? —Well, I’ll—you, Jack—knows that he louses him up all the time—and how the hell this guy doesn’t know nothing—and gets away with everything, so he took him in—What do you think? The outfit and the money and to keep him quiet—Yea—If you buy a big pizza you get a big winner and if you buy a small pizza—so the winner is not a pizza—Ah, I’ll get out—Right—Righto—(Hangs up)

“Hu—

“Boston, Massachusetts, the number is 8 8 4 1 7 3 3, station call.

“I know the whole thing, honey.

“Yea—O L 4 9 6 7 5

205 “Yes it is.

“Yes, sir! Back again. Hello. It’s okay—no harm done—righto. Righto.”

By Mr. Farber:

Q. Now, just so that the record is clear, your equipment—

Mr. Marks: Excuse me, counsel. I didn't speak up fast enough. But may the reading of the tape, this particular Exhibit 5, be subject to the same motion to strike?

The Court: Yes.

By Mr. Farber:

Q. Now, just so the record is clear, Mr. Doherty, your equipment was capable only of picking up Mr. Katz' part of the conversation, is that correct? A. It was capable of picking up both booths.

Q. Yes. A. On side of the conversation, yes.

Q. But Mr. Katz' side of the conversation is what I am getting at. A. Yes; not the other end of the call.

Q. Not the other end of the call.

Now, one more thing. On February 21st what time was it you saw Mr. Katz enter the phone booth? A. 9:30.

206 Q. And approximately when did he leave it? A. 9:37.

Q. What about on the 25th, what time? A. He entered the booth at 8:47, he left it at 8:49 and walked east on Sunset, reversed his direction, came back to the booth at about 8:51, completed his call about 8:57, and walked west.

Mr. Farber: Thank you.

I have no further questions of Mr. Doherty.

Excuse me. Yes, I do have.

Q. Now, Mr. Doherty, were you present at the arrest of Mr. Katz? A. Yes, I was.

Q. Who else was present at that time, sir? A. Agents Donovan and LaRue.

Q. When did that arrest take place? A. It took place immediately after Mr. Katz had left the booth and walked about a block west.

Q. On what date was this, sir? A. On the 25th.

Q. Now I should like you to see Government's Exhibit No. 8 for identification.

(At this point the exhibit was handed to the witness by the clerk.)

207 By Mr. Farber:

Q. Do you recognize Government's Exhibit No. 8? A. Yes, I do.

Q. Where did you first see it, sir? A. I first saw this being removed from the pocket of Mr. Katz.

Q. Incidentally, sir, at the time that Mr. Katz was arrested was he warned of his constitutional rights? A. Yes, he was warned that he did not have to make a statement, any statement that he made could be used against him in a court of law, and that he had the right to consult an attorney.

Q. Then subsequently this document was taken from his person? A. Yes.

Mr. Farber: I move that Government's Exhibit No. 8 be received in evidence, your Honor.

The Court: It may be received and admitted.

Mr. Farber: Thank you.

(Document marked Plaintiff's Exhibit 8 was received in evidence.)

Mr. Farber: I have nothing further of this witness.

208 Cross Examination

By Mr. Marks:

Q. Agent Doherty, on the 21st what phone booth did Mr. Katz use? A. I believe it was the center booth, 75, I believe.

Q. 75? A. I believe it was.

Q. How about the 25th? A. On the 25th I believe it was the eastern booth, 76.

Q. Now, it seems to be almost to the split second you have Mr. Katz entered and left the booth. A. Yes.

Q. Now, did you make a recordation at the time? A. Yes. At the time I made a record of when he was entering the booth and when he left the booth.

Q. How did you record it? A. I recorded it on a piece of paper.

Q. Do you have that piece of paper here? A. No, I don't.

Q. Does it still exist? A. The original piece of paper, no.

209 Q. So what you are testifying to is some memory of the time as related—when the notation was made it was translated to your official report which you reviewed before you came to court? A. Yes.



Q. So to your knowledge the slips of paper that you made the notation on have been destroyed? A. The original slips, yes. I would have made the same day another recordation of the information.

Q. Do you have a distinct memory independent of the time? A. Do I have?

Q. The time that you saw Mr. Katz? A. On the 21st I have a distinct memory of it.

On the 25th I couldn't get down to the minute, no, if that is what you are driving at.

Q. What time did Mr. Katz leave his apartment on the 21st?

Mr. Farber: Your Honor, it assumes a fact not in evidence. It assumes the fact that this witness would know that.

By Mr. Marks:

Q. What time on the 21st exactly to the minute did you first see Mr. Katz? A. I would have seen him maybe five seconds before 9:30. The physical setup there is such that when he would have come into my view he would have been practically to the telephone booths.

Q. Weren't you stationed so that you could see him a block away? A. No. I would receive a radio communication as to when he was approaching. But I could not personally see him.

Q. What time did you receive the first radio communication— A. I didn't—

Q. —to the minute? A. I didn't make a log on the time that I received the call, but it was, I think, running between eight and ten minutes between when he would leave his apartment and when he would arrive at the phone booth.

Q. Can you give me the exact time that you received the radio communication?

Mr. Farber: Irrelevant and immaterial, your Honor.

The Court: Overruled.

Mr. Marks: Just testing—

Mr. Farber: Thank you.

By Mr. Marks:

Q. Can you— A. No.

211 Mr. Marks: That's all.

The Court: Anything further?

Mr. Farber: I have nothing further.

The Government calls as its next witness Mrs. Cunningham.

212 JUDITH CUNNINGHAM,

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name for the record.

The Witness: Judith Cunningham.

Direct Examination

By Mr. Farber:

Q. Mrs. Cunningham, what is your occupation? A. I am a business office supervisor with the Telephone Company.

Q. I should like you to take a look at the documents which comprise Government's Exhibit 7.

Mr. Farber: Counsel, Government's Exhibit 7 are photo-stats—Xerox copies which you have seen, may it be stipulated?

Mr. Marks: Defendant is willing to stipulate, your Honor, that the photocopies are true copies of the records of the Telephone Company kept in the ordinary course of business, and that the copies may be put in instead of the originals.

Mr. Farber: I wish to call defense counsel's attention to one document, though.

Mr. Marks: Did I miss one?

213 Mr. Farber: No, you didn't.

On one document there is an ink notation that it is February 22nd. It is my understanding that that was put in by some person unknown at a time subsequent to the making of the original document and should not be part of the record.

Mr. Marks: All right. Why don't we just scratch it out?

Mr. Farber: Fine, if that is agreeable to the court and counsel.

The Court: The stipulation, then, may be accepted.

By Mr. Farber:

Q. Now, Mrs. Cunningham, the documents which comprise Government's Exhibit 7, are they records that are kept in the ordinary course of business by the Telephone Company? A. Yes.

Q. And is it the ordinary course of business for the Telephone Company to keep such records? A. Yes.

Q. And are you the custodian of those records? A. Yes.

Mr. Farber: Now, may I approach and stand by the witness so I may direct her attention to certain documents?  
214

The Court: Yes.

By Mr. Farber:

Q. Mrs. Cunningham, I would like you to take a look at the first document which is marked—A. February 19th?

Q. And Operator 586. A. Yes.

Mr. Marks: Can we, your Honor, for convenience's sake have these noted as subparts of Exhibit 7?

Mr. Farber: Certainly, your Honor.

Mr. Marks: So that they would be 7-A, -B?

The Court: Very well. Of course, I suppose they are dated, which gives them an identity.

Mr. Marks: That will be all right.

The Court: So he is referring to one of a certain date, the 19th. There is only one for the 19th, isn't there?

Mr. Farber: There are two. They have different operators, your Honor. It may be easier to go by sub-markings, if it please the court.

The Court: Very well.

By Mr. Farber:

Q. Would you take a look at Government's 7-A? A. All right.

215 Q. Now, what is the date that that record pertains to? A. February 19th.

Q. Now, can you determine from that record what phone number was called? A. Yes. It was Area Code 617, telephone number 884-1733.

Q. Incidentally, do you know what area code that pertains to? A. Boston, Massachusetts, I believe.

Q. And according to this record, from where was the call placed? A. According to the record, it was placed from 654-9275.

Q. Now, how does the operator get the information from which the record is marked with respect to the place that the call is emanating from? A. She asks the person calling, "From what number are you calling?"

Q. So there is no automatic marking? A. No.

Q. Now, if the person making the call were to give the operator false information would she know that that was false information?

Mr. Marks: Objected to as calling for a conclusion of this witness as to what some other operator might or might not know.

Mr. Farber: Shall I qualify—

The Court: Well, I think he is talking about the custom of business and what the procedures are.

Mr. Farber: That is correct, your Honor.

The Court: Overruled.

The Witness: If the person calling gave the number as the same prefix and number, that could be a coin box telephone number, meaning it would have to be in the 9000 bank, she would take his word for it and would not know.

By Mr. Farber:

Q. So she could be given erroneous information and she would not know? A. Yes.

Q. Now, can you tell us at what time that call emanated? A. Approximately 8:34.

Q. And you are looking to determine that at the back of Government's Exhibit 7-A? A. Yes, the clock on the left.

Q. There are three clocks, are there not? A. Yes.

Q. You are looking at the clock on the left? A. Yes.

Q. And the clock on the left tells you the time that the call was placed? A. Yes.

Q. Now, I notice there are two other clocks, one marked Minutes and one marked Seconds. Will you tell us what they tell us or tell you? A. The conversation—it tells how long the conversation lasted. Approximately three minutes and thirty-one seconds.

Q. Now, would you take a look at Government's Exhibit 7-B, please? A. February 19th.

Q. And to where was that call placed? A. The same telephone number, 617 884-1733.

Q. From what number did it emanate? A. 654-9275.

Q. And at what time was it placed? A. 9:54.

Q. Now, I show you Government's Exhibit 7-C. What

date does Government's Exhibit 7-C pertain to? A. February 21st.

Mr. Marks: Pardon me?

The Witness: February 21st.

218 By Mr. Farber:

Q. What phone number was called, if you can tell? A. Area Code 617 884-1733.

Q. From what number was the call purportedly placed? A. 65—

Mr. Marks: Object to the designation where it was purportedly placed.

Mr. Farber: Your Honor, this witness can't determine that.

The Court: Overruled.

The Witness: 654-9475.

By Mr. Farber:

Q. And at what time? A. 9:31.

Q. How long did the call last? A. Two minutes thirty-three seconds.

Q. Now, I show you Government's Exhibit 7-D. What date does Government's Exhibit 7-D pertain to? A. February 23rd.

Q. What number was called? A. Area Code 305 534-0976.

Q. Where is that area code, if you know? A. That is Southern Florida.

Q. And from what number was the call purportedly placed? 219

Mr. Marks: May I object, your Honor, to the continued use of the word "purportedly"? On the first conversation counsel for the Government asked what number the call was placed from. Now when it doesn't jibe with what he wants to compare it with he uses the word "purportedly."

Mr. Farber: Again, your Honor, my saying—

The Court: I don't think it makes any particular difference whether he says purportedly or otherwise.

The objection will be noted, but it will be overruled.

By Mr. Farber:

Q. Would you answer? A. The number comes from 654-9276 according to the record.

Q. At what time was it placed? A. 8:44.

Q. And for how long did it last? A. Two minutes and twenty-one seconds.

Q. Now, I would like you to take a look at Government's Exhibit 7-E. Now, to what date does that record pertain?

A. February 23rd.

220 Q. And what number was called? A. Area Code 617 884-1733.

Q. And from where? A. 654-9276.

Q. What time? A. 8:40.

Q. How long did the call last? A. Two minutes twenty-four seconds.

Q. Now, would you take a look at Government's Exhibit 7-F, please? What date does that record pertain to? A. February 23rd.

Q. Now, what number was called? A. Area Code 305 534-0976.

Q. I notice there are certain notations in the middle of this particular card.

On the third line down what is the notation? A. It says Miami.

Q. And what does that mean? A. The operator asks, the customer mentions where. She will often put it down, just write it down. They do it or don't. It depends.

Q. I see. So that would indicate the place called?

A. Yes.

221 Q. Now, would you tell us what was the number from which the call was purportedly placed? A. 654-9275.

Q. And at what time? A. 9:05.

Q. How long did it last? A. Three minutes and seven seconds.

Q. Now, Government's Exhibit 7-G, to what date does 7-G pertain? A. February 24th.

Q. And what number was called? A. Area Code 617 884-1733.

Q. And that is Boston, am I correct? A. Yes.

Q. From what phone booth did this call purportedly emanate? A. 654-9375.

Q. And at what time? A. About 9:00 o'clock on the nose.

Q. And how long did it last? A. About a minute or less.

Q. I show you Government's Exhibit 7-H, what date does 7-H pertain to? A. February 24th.

222 Q. What number was called? A. Area Code 617 884-1733.

Q. What was the number placing the call according to the record? A. 654-9376.

Q. And what time? A. 8:53 or -4.

Q. Now, I show you Government's Exhibit 7-I. A. Dated on February 24th. Area Code 305 534-0976.

Q. And where did it purportedly emanate from? A. 654-9376.

Q. And at what time? A. It looks like—it would be 8:56.

Q. How long did the call last? A. Almost three minutes.

Q. I show you Government's Exhibit 7-J. To what date does 7-J pertain? A. February 25th.

Q. And to where was the call placed? A. Area Code 305 534-0976.

Q. From where was the call placed according to the record? A. 654-9376.

Q. And when was the call placed, what time? A. 8:55.

223 Q. And for how long did it last? A. Three minutes.

Q. And finally Government's Exhibit 7-K, to what date does Government's Exhibit 7-K pertain? A. February 25th.

Q. And what number was called? A. Area Code 617 884-1733.

Q. From where did the call purportedly emanate? A. 654-9376.

Q. And at what time was it placed? A. 8:47.

Q. And for how long did the call last? A. One minute.

Mr. Farber: Thank you.

I have no further questions of this witness, your Honor.

There were three documents which were originally included in the envelope that was marked for identification as 7. I don't intend to use them for evidentiary purposes at this point. If defense counsel does not, may we withdraw them so there is no confusion in the record?

Mr. Marks: I don't want it to be said I caused confusion in the record, your Honor. I will stipulate that can be withdrawn.

## 224 Cross Examination

By Mr. Marks:

Q. Mrs. Cunningham, these records are photostats of IBM cards which the operator utilizes when a long-distance call is being placed; is that correct? A. Yes.

Q. And the operator marks down in the appropriate spaces the number which she purportedly is calling? A. Yes.

Q. And the number which she purportedly is receiving the call from? A. Yes.

Q. Now, is there any way that the Telephone Company has of verifying whether or not that call was placed by the operator other than that card? A. Are you saying could a call be placed to an operator without this card?

Q. No. I am saying— A. No. I am sorry.

Q. —aside from this card which is the operator's statement that she made the call is there any other independent evidence from the Telephone Company electronically or otherwise that shows that that call was in fact made? A. No.

Q. Is there any other record in the Telephone  
225 Company that would indicate in any way from where the call originated other than the operator's notation? A. No.

Q. Now, I assume it is not operated by the operator, the time clock, it is just there and she slips a card in and it is a stamp; is that correct? A. Yes.

Q. She would then place a card in again for a second stamp after the call is completed? Or does that happen automatically when the receiver is hung? A. She must touch, push, whatever you want to say, the timer to let the timer know that the call is finished. She is the one who works that device.

Q. In other words, if she might be on another call for maybe two or three seconds or more, that the call might be longer than would—

The call itself might be shorter than that as indicated by the operator's punch? A. Yes.

Q. Now, how are these cards classified in the records? That is, if I wanted to check up on a call from a phone booth, for instance, 654-9275, assuming that I were able to get the records, would I get to the phone company and



say, "This is the phone booth I want to check up on,"  
and that is how you would have the card  
226 list? A. Yes.

Q. Is there an existing phone booth with the  
number 654-9475? A. No, there is not.

Q. Is there any way you could tell me why you know  
that? A. I have in my possession—it is not part of the  
exhibits—a record that that is a residence telephone  
number.

Q. But it is in the 9000 bank? A. That's right.

Q. Now, how does the operator determine if that phone  
is in the 9000 bank whether it is a residence or a home  
phone? A. Or a home phone?

Q. A residence of a pay phone? A. Pay phone?

Q. Excuse me. A. A pay telephone will, when a call  
is coming from a pay telephone booth, come in on a special  
spot on the board that sits in front of her. The light will  
come on. It says "Coin" right above it. You see, if  
someone is placing a call from a coin box the minute the  
person drops the dime in and it rings the operator,  
227 well, she sees on her board that this is a coin-box  
call coming in, but she doesn't know what number  
belongs to that coin box.

Q. Now, will the operator fill out these same cards  
assuming that she has called to make a long-distance call—  
will she use the same cards regardless of whether it is  
from a residence phone or a telephone booth? A. Yes.

Mr. Marks: Thank you.

I have nothing further.

Mr. Farber: Just one.

#### Redirect Examination

By Mr. Farber:

Q. I am a little confused by your last answer.

In this particular case when records are checked may  
they be checked either for the phone that is placing the  
call or the place that is called? A. I don't follow you.

Q. In other words, let us assume that there is a Boston  
number and you have reason to believe that that phone  
number has been called from Los Angeles. May I ask the  
Telephone Company to search the records to determine if  
that phone number in Boston was called by a telephone in

Los Angeles giving you only the Boston telephone number and the approximate date? A. No. The records are kept where the call starts from.

Q. I see. So then you must be given the information as to what number was placed or purportedly placed from; is that correct? A. Yes. There would be no record of this call in Boston; in other words, it is here in Los Angeles.

Q. And your records from Los Angeles would not indicate the Boston number; in other words, it wouldn't be catalogued by the number that was called? A. No, there would be no cross reference, no, sir.

Q. Well, then, with respect to the number that was called—and there was a non-existent pay phone, to your knowledge do you know how the Telephone Company got the information to search for that number?

Mr. Marks: Objected to as irrelevant and immaterial, your Honor.

The Court: May I have that question again?

Mr. Farber: Yes.

Q. In other words, for a non-existent pay phone.

The Court: You had better start over again, counsel.

Mr. Farber: All right, your Honor. Let me try it again.

229 Q. With respect to the number that belongs to a non-existent pay phone, do you know how the Telephone Company received information to check for that number?

Mr. Marks: To which I object as irrelevant and immaterial, calling for hearsay.

The Court: I still don't get it.

Mr. Farber: In other words, your Honor—

The Court: Do you mean somebody has asked the Telephone Company to check on a number which later is revealed is not connected with any pay telephone?

Mr. Farber: That's right.

Q. Who gave you the information to start the check? Let me see if I can ask it another way, your Honor.

A search of the records was conducted by the Telephone Company, was it not? A. Do you mean for these specific records (indicating)?

Q. Yes. A. All right.

Q. Was there such a search? A. Yes.

Q. Who requested the search? A. We received a subpoena to look for the records.

Q. And on the subpoena were certain phone numbers specified? A. Yes.

Mr. Farber: Fine. I have nothing further, your Honor.

Mr. Marks: May I ask just a couple of questions?

The Court: Yes.

#### Recross Examination

By Mr. Marks:

Q. These records are, as I understand it, for the sole purpose of the Telephone Company determining what charges were made or which would be due and owing on the phone calls, is that correct? A. That would be true on a residence phone, but on a coin box we would have already collected the money most of the time. Should have. So we could not keep the record for future billing. We would keep it only for reference.

Q. Now, it is assumed by the Telephone Company that the telephone operator who marks down on that card that she has counted the box, as it were, that they have been paid; is that correct? A. Yes. And she has another spot

on the card where it says Coin Pay that she marks.

231 Q. Right. So if she marks it there the Telephone Company assumes that it has been paid for, that call, and thus goes no further in checking; is that correct? A. Right.

Q. So if you have an operator that marks paid when in fact it was not paid the Telephone Company would have no way of checking unless they were directing their attention to this specific operator to see if she was doing that? A. That's correct.

Mr. Marks: Thank you.

The Court: Before we call another witness, the Grand Jury, I see, is here. We will suspend operations in the Katz case for just a moment.

Mr. Marks: May we stay?

The Court: We will take a recess in the Katz case for about 15 minutes.

Mr. Farber: Before I forget, your Honor, may I move Government's Exhibit No. 7 be received in evidence?

The Court: Yes. Exhibit 7 may be—

Mr. Marks: Could we perhaps wait until the return from the recess to hear a little discussion on that?

The Court: Very well. The offer has been made and there is no ruling as yet.

232 (Other matter heard.)

The Court: Do you have any further questions of this witness?

Mr. Farber: We have a stipulation, your Honor, and then I have a few short questions.

Counsel, is it stipulated between us that phone numbers 654-9475, 654-9375, and 654-9376 were residence phone numbers?

Mr. Marks: Yes, it is so stipulated.

Mr. Farber: Likewise, on the dates in question there were no charges to those residence telephones for either calls to Boston or Miami.

Mr. Marks: So stipulated.

By Mr. Farber:

Q. Mrs. Cunningham, I asked you one question before and I would like to reframe it.

If the phone company immediately after a call is placed is informed that a call is placed to a distant city, is there some way that the phone company can check for a record pertaining to that phone call receiving only the information of the phone number that is called plus the general area in which the telephoning phone is located? A. If we have the general location of where the call is being made from,

yes, then we can locate the ticket that the operator makes out, if it is done immediately.

Mr. Farber: I see. Thank you.

I have no further questions.

Mr. Marks: Nothing further, your Honor.

The Court: You may step down.

Mr. Farber: May this witness be excused, your Honor?

The Court: Any objection?

Mr. Marks: No objection.

The Court: Very well.

You may be excused.

Mr. Farber: The Government calls as its next witness Mr. Frei.

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ALLEN F. FREI,

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name for the record.

The Witness: Allen F. Frei.

Direct Examination

By Mr. Farber:

Q. Mr. Frei, what is your occupation, sir? A. I am a special agent with the FBI.

Q. How long have you been so employed? A. Approximately 24 years.

Q. Are you assigned to the Los Angeles office? A. That is correct.

Q. I want to direct your attention to February 23, 1965. During that day from approximately 11:00 o'clock in the morning to 8:00 o'clock in the evening where were you located? A. I occupied Room 122 in the Sunset Towers West Hotel or Apartment Hotel.

Q. Was that located close to a room occupied by the defendant, if you know? A. That was immediately next door.

Q. Now, during the time between, oh, 11:00 o'clock  
235 in the morning to 8:00 o'clock in the evening did you overhear any conversation that the defendant carried on with any other individuals? A. Yes. He had several—

Mr. Marks: Well, now—

Mr. Farber: Just yes or no.

The Witness: Yes.

By Mr. Farber:

Q. And did you overhear any conversations that the defendant might have had by telephone call, restricting the overhearing only to his half of the conversation? A. Yes.

Q. Now, did you overhear these conversations through the aid of an electronic device or by the naked ear? A. By the naked ear.

Q. Now, did any of these conversations pertain to wagering?

Mr. Marks: Objected to as calling for a conclusion of the witness.

The Court: Overruled.

I take it that this is only preliminary and we will get the actual conversation at which time we can determine whether it has to do with wagering or not.

Mr. Farber: Yes, your Honor. Let me reframe  
236 it, then, your Honor. I think it would be probably best.

Q. Did any of these conversations pertain to sporting events or obtaining the line? A. At approximately—

Mr. Marks: Your Honor—

Mr. Farber: Yes or no.

The Witness: Yes.

Mr. Marks: Same objection; calling for a conclusion of the witness.

The Court: Overruled.

By Mr. Farber:

Q. Now, what was the conversation?

Mr. Marks: Excuse me.

May I object now, your Honor? I would like the Government to make an offer of proof.

As I understand, what the charges here are are that the defendant made either bets or wagers or transmitted betting or wagering information over the interstate telephones. Now, there is no foundation that I know of for these conversations.

Furthermore, at the present time there is no corpus delicti for these conversations.

The Court: Well, I take it this is an attempt to prove the corpus delicti, so to the extent it shows, if it does show, that he was engaged in the business of  
237 wagering—

Mr. Marks: Well, again here, then, I would state that you can't prove the corpus delicti by the statements of the defendant. They are hearsay and they are extrajudicial statements.

The Court: These are events, I take it—

Mr. Farber: Sure they are, your Honor.

The Court: These are events that constitute in themselves—this is not an admission, this is an event. I am only anticipating what the evidence may be. But if it does show events, even though these events are actual state-

ments made by the defendant which constitute doing business, the business of wagering or are evidence of that activity, then it is admissible. How convincing it is, of course, depends upon what it is.

Mr. Farber: Thank you, your Honor.

The Court: The objection will be overruled.

Mr. Marks: Thank you.

By Mr. Farber:

Q. Now, what was the conversation that you overheard?

A. In one of the conversations Mr. Katz received a phone call. I overheard parts of his part of the conversation.

I heard him refer to what I assumed to be—

238 Q. I don't want to know what you assumed, sir.

Tell us what you heard. A. As nearly as I could hear it he made statements to the effect that, "I have Northwestern and 4."

Mr. Marks: Well, I will object to it and move to strike that portion that he made statements to the effect—

By Mr. Farber:

Q. Is this what he said or not? A. It is what he said. I cannot recall specifically that he would have Northwestern and 4. It could have been 2 or plus or minus, but—

Q. In substance? A. But that terminology in substance was utilized.

Mr. Marks: I will move to strike the answer of the witness, your Honor, as non-responsive. He was asked for the conversations and these are assumptions of the witness, conclusions as to the contents of the conversations, not the conversations themselves.

The Court: I understand that you are attempting to give us as near as you can recall the substance of the conversation.

The Witness: That is correct, your Honor.

The Court: Very well.

The Witness: I cannot recall—

239 The Court: Overruled.

Mr. Farber: Thank you.

The Court: The motion to strike will be denied.

Mr. Marks: Thank you.

By Mr. Farber :

Q. Would you continue, sir? A. Again it was "Oregon minus 4," "Northwestern plus 5," or "minus"; various colleges or athletic teams minus and/or plus. That was at approximately noon.

From approximately 5:30 to 8:00 o'clock that evening Mr. Katz made or received some 15 calls. Parts of the conversations I was able to overhear. I remember a distinct, "Sammy is the most honorable person in the world. Don't worry about the money. Also don't worry about the line. I called Boston three times today."

Q. Thank you. Was that the end of that conversation?

A. That was the extent of the conversation.

Mr. Farber: Thank you.

I have nothing further.

The Witness: I don't mean to say, if I may, that this all occurred in one conversation. This is in several, the total sum of conversations that he had.

240 By Mr. Farber :

Q. Now, the discussion about Sammy and also, "Don't worry about the line," was that all one conversation? A. That was in one given conversation, I believe.

Mr. Farber: Thank you. That's what I wanted to clarify.

Cross Examination

By Mr. Marks:

Q. Agent, did you make notes of these conversations that you heard? A. As best I could under the circumstances.

Q. Do you still have those notes? A. I do not have them with me.

Q. Well, are they still in existence? A. I would assume so.

Q. Have you seen them? A. I refreshed my memory from them yesterday.

Q. Well, are they here on your person? A. No, sir.

Q. Do you know where they are? A. I don't know that they are there, sir, or not.

Mr. Marks: May I request that the Government—

Mr. Farber: Certainly. I was just determining where they are.



241 By Mr. Marks:

Q. Now, let me get this straight.

You listened in. You were in one room and Mr. Katz was in another room? A. That is right, sir.

Q. And you overheard how many conversations? A. Are you—

Q. By Mr. Katz with others? A. You are referring to telephone conversations?

Q. Well, were there other people in the room with Mr. Katz? A. At times. From time to time.

Q. All right. A. He had numerous visitors, people that I assumed lived in the apartment.

Q. How many conversations were those? A. Oh, I would say that he talked to at least three, possibly four different individuals.

Q. Did you make notes of these conversations? A. Not particularly, no, sir.

Q. Well, did you or did you not? A. Only to the effect that there was a visitor and perhaps a brief description in case we wanted to identify the visitor.

Q. Do you remember any of the conversations with  
242 the visitor? A. Parts of the conversations.

Q. Do you remember the entire conversation? A. I could not at any time overhear the entire conversation, depending on whether he would be out on the patio or if he were in his room, whether he was facing directly to me where I could hear.

Q. Now, at noontime apparently there was a phone call received in. And part of the conversation Mr. Katz said something like, "I have Northwestern," "I have Oregon"; is that right? A. It was "have" or "had", I couldn't quite understand.

Q. What was the first word that Mr. Katz said after he said "Hello" on the phone in that conversation? A. I can't recall, sir.

Q. Can you recall any other portion of that conversation except those two specific bits? A. I can recall that the visitor that he had at the time spoke with the same person who had originally called Mr. Katz, and that when the visitor apparently knew who the caller was he asked if he could speak too, and when Mr. Katz finished the

other gentleman, the visitor, carried on a line—a conversation along the same general line.

243 When he finished he mentioned to Mr. Katz that he, the caller, was in 131.

Mr. Marks: May I move to strike the answer as non-responsive?

Mr. Farber: Your Honor, I believe it is responsive. The only purpose of these questions can be to determine if Mr. Frei is recollecting correctly, and Mr. Frei responded.

The Court: What was the question?

(Question read.)

The Court: Well, it may go out other than the conversation.

By Mr. Marks:

Q. About how long was Mr. Katz on the phone on this conversation that we are talking about? A. I would estimate three to four minutes, both gentlemen.

Q. Well, how long was Mr. Katz on? A. Perhaps two minutes.

Q. The only recollection you have of that two-minute conversation is, "I have Northwestern" and "I have Oregon," or words to that effect? A. Yes, sir.

Q. Now, with respect to the 15 calls made or received between 5:30 and 8:00 o'clock, when was the first  
244 call made or received? A. I do not recall, sir. Because of a radio or television which was playing. I could not hear the bulk of Mr. Katz' conversation.

Q. Or any of them? A. Or any of them.

Q. So what you are repeating now is bits and pieces of various conversations that you heard? A. That is right, sir.

Q. Of course, you don't know who was on the other end of the phone? A. No, sir.

Mr. Marks: Your Honor, I will move to strike all the testimony of the witness as to conversations or the bits and pieces related of the conversations on the ground that if the witness cannot relate an entire conversation he then can't relate a portion of that conversation. It is the same as, I would say, a tape recording which is defective and there are only bits and pieces which can be received. Unless

the entire recording is admissible the bits aren't admissible either.

Mr. Farber: Your Honor, I would request that counsel cite a case to that effect. Entire conversations never have to be admissible as long as the particular point in issue is covered. I think possibly the amount  
245 of weight that should be given to it would be something for the court to consider. But certainly—

The Court: I think it only goes to the weight if he can't remember it all.

Mr. Marks: The motion is denied?

The Court: It will be denied. The motion to strike will be denied.

Mr. Farber: Excuse me, your Honor.

I am handing you the written document that you desired to see.

Mr. Marks: May I be excused for a moment? May I request, your Honor, that the witness—may I approach the witness, your Honor?

Mr. Farber: Pardon me, your Honor.

May we have these two documents marked for identification, then, as Government's Exhibit 19 if they are going to be used?

Mr. Marks: I have no objection.

The Court: Very well. They may be marked.

Mr. Farber: Mr. Clerk, do you have a stapler so we can staple them together?

The Clerk: Government's 19 marked for identification.

(Documents were marked Plaintiff's Exhibit 19 for identification.)

246 By Mr. Marks:

Q. Mr. Frei, was this the only day that you staked out that apartment? A. No, sir. I was there the following day as well.

Q. Listening through the—

Mr. Farber: Pardon me. Go ahead, counsel. I didn't mean to interrupt you in your questioning.

Mr. Marks: I will withdraw it.

Q. I believe that most of the conversation you overheard was through the electric plug in the wall, if I am correct.

A. Yes, sir.

Q. You put your ear to the plug? A. Yes.

Q. You heard some of these conversations? A. That is right.

Q. Others were outside? A. Yes, sir. When he was on the patio and my window open he was just a few feet removed there, and I could hear clearly.

Q. All right. A. If he was in the room it was not clear, it was difficult.

Q. Now, did you make any notes of the following  
247 day's conversation.

Mr. Farber: Pardon me.

Your Honor, we will object to this question. It goes beyond the scope of direct examination. We were very careful to limit it between the hours of 11:00 and 8:00 in the evening.

Also, of course, in the motion to suppress the Government stipulated it would not go into any conversations that were obtained after 8:00 o'clock, or the following day.

Mr. Marks: Well, your Honor, as I understand the purport of covering this witness' testimony it is to prove—I use the word advisedly—that he is in the business of betting or wagering.

Now, I would assume that the Government has evidence of the following day's observation which would prove otherwise, or to balance off the testimony that he was in the business of betting or wagering. I don't think that the Government can hide behind their placing of certain questions and conversations and not be compelled to produce the additional testimony which exists.

The Court: I think this is proper. You will be permitted to inquire into it.

Mr. Marks: Thank you.

The Court: The objection will be overruled.  
248 Of course, you are opening the door.

Mr. Marks: I have done it before.

Q. You overheard conversations. On what date was it, the 23rd and also the 24th? A. That is correct, sir.

Q. What you have in your hand, Government's Exhibit 19, is your notes of the events that occurred on the 23rd?  
A. That is correct, sir.

Q. Could you kindly read these notes? A. In their entirety?

Mr. Farber: I move that the exhibit be admitted into evidence, your Honor. Then we certainly have no objection to it being read.

Mr. Marks: No objection.

The Court: Well, just the same, whether it is being read or admitted, he wants it read, to have it read.

The Witness: Would you like me to start reading?

Mr. Marks: Yes.

The Witness: (Reading)

“Stakeout of room 123, Sunset Towers Hotel, Feb. 23, 1965.

“2:02 p.m.”—excuse me. That was a continuation page.

But the top line is the same as the first page.

249 “11:00 a.m.—Stakeout establish—Chas. Katz, in short, sunning self at poolside outside room 123.

“11:29 a.m.—Male #1 approaches—‘Hello Charley’—45 to 50—5’ 11”—170—slender—dark brown hair—male talks of sending his ex-wife ‘the contract.’ Misc. chatter—

“11:42 a.m.—Male departs—stating hasn’t had breakfast yet.

“11:50 a.m.—Male #2 arrives—5’8”—50ish—brown hair graying & thin at top—155—misc. chatter. Katz’s phone rings—both he & male enter #123—Katz, on phone, comments re: Oregon State, Northwestern, Philadelphia, makes comments to effect ‘I have (had?) NWest and four, etc.’ Male #2 takes phone, speaks to individual Katz spoke with—along same lines as Katz—when finished tells Katz ‘he’s in 131.’

“12:14 p.m.—Male #2 departs.

250 “1:41 p.m.—Male #3 & female approach—with coffee cups—came from room across the pool—asked Katz for milk—which he furnished—idle conversation.

“2:02 p.m.—Male & female return to their room.

“2:06 p.m.—Katz gets phone call—idle chatter—‘Why didn’t you tell me about that?’—‘I laughed in my sleep all last night’—‘No, I wouldn’t advise that’—

“2:11 p.m.—Katz at pool—still in shorts.

“2:36 p.m.—Katz enters his room—closes sliding door.

“2:38 p.m.—Sounds of shower running.

“3:14 p.m.—Katz calls out—asks for ‘131 please’—will call back later.

“3:31 p.m.—Door slams—no activity in room.

“5:35 p.m.—TV playing.

“5:44 p.m. to 8:00 p.m.—TV continues—Katz makes and/or receives some 15 calls over private & house phones—Overheard, over TV program, are following comments made by Katz ‘Don’t worry about money—  
 251 “Sammy is the most honorable man in the whole country’—‘Don’t worry about the line—I called Boston 3 times today.’

“8:00 p.m.—TV off—door slams—all quiet.

“10:02 p.m.—Katz returns with 2 males—only one of whom has discussion with Katz. Discussion involves male’s gambling indebtedness.”

Q. Is that it? A. That is it.

Q. This discussion about the male’s gambling indebtedness was not his indebtedness to Mr. Katz, was it?

Mr. Farber: Pardon me.

Your Honor, that is asking for a conclusion of the witness.

The Court: Overruled. If he knows he can answer.

The Witness: I do not know, your Honor.

The Court: What he means is, of course, the conversation didn’t indicate that it was.

By Mr. Marks:

Q. Is that correct? A. Would you like me to relate the conversation?

Q. Do you have it? Do you remember it? A. There were two visitors only one of whom spoke to any  
 252 extent with Mr. Katz. The other one remained silent.

Q. I am talking about the 10:02 conversation.

Mr. Farber: Your Honor, we have another document that goes to 10:02 in my hand, but I wish to object to this conversation unless Mr. Marks is taking Mr. Frei as his own witness. Then, of course, I have no objection whatsoever because then I will be able to go into the door that is opened.

By Mr. Marks:

Q. Mr. Frei, I am asking a very simple question.

From what you overheard of the conversation at 10:02 was there any indication to you that the male was discussing his gambling debts which he owed to Mr. Katz? A. The question was asked, "How much does it make today?"

Q. Who asked that question? A. The male visitor.

Q. I am asking you, did you receive the impression from the conversation that the male was discussing his gambling, that he owed money to Mr. Katz, his gambling debts? A. That there was an indebtedness. I do not know—I could not say owed by whom or to whom.

253 Q. Thank you. Room 131, is that the room across the pool? A. I do not know, sir.

Q. You didn't check out any of the other locations or persons that you investigated? A. No.

Q. You don't know whether there is a good-looking woman living in Room 131 or not? A. No, sir.

Mr. Marks: Thank you.

The Court: Any further questions?

Mr. Farber: Yes.

Your Honor, I would like a ruling of the court with respect to whether or not the door was open concerning that last conversation pertaining to the indebtedness.

The Court: It certainly was.

#### Redirect Examination

By Mr. Farber:

Q. I should like to ask, Mr. Frei, would you give us that full conversation, please, on the indebtedness? A. The male visitor inquired, "How much does it make today?"

Mr. Katz replied, "1440."

There was a discussion involving 1100.

The male inquires, "What is the total?"

254 Mr. Katz—there was agreement between Katz and the visitor, the total arrived at was 2320—

Mr. Marks: I will object to that latter portion and move to strike it as a conclusion of the witness.

The Court: Yes. You have used the word "agreement" which is a legal conclusion. I take it there was a conversation. Tell us what the conversation was.

Mr. Farber: That led you to use the word "agreement."

The Witness: The visitor asked, "How does it make today?"

The answer was "1440."

A discussion took place concerning 1100.

Then the visitor asked, "How much does it make, then?"

And I do not recall whether it was Mr. Katz or the visitor who stated, "2320 plus or minus the difference on the one game."

Mr. Farber: Thank you.

I have nothing further.

#### Recross Examination

By Mr. Marks:

Q. Did this conversation also take place while the television was going? A. No, sir.

Q. What time did the television go off? A. Mr. Katz left at around 8:00 o'clock. So did I. He returned around 10:02.

Q. He left his room? A. Yes, sir.

Q. Didn't turn the TV back on? A. No, sir.

Q. By the way, do you remember what programs were playing that night?

Mr. Farber: Irrelevant and immaterial, I think, your Honor.

The Witness: I do recall on the radio that KMPC—

The Court: Overruled.

Mr. Farber: Thank you.

By Mr. Marks:

Q. KMPC? A. On the radio, yes, sir.

Q. And the TV? A. I could not hear.

Q. This was on the 23rd of February; is that correct? A. That is correct, sir.

Q. And at 10:02 two persons came into the room and one had this conversation which you have interpreted for us?

A. (Witness nods head.)

Q. Is that right? A. That is correct, sir.



Q. Do you know the identity of those persons? A. No, sir.

257 Q. Did you ever see them earlier in the day? A. I have never seen them to my knowledge. I don't know who they were.

Q. So, the only persons who you could identify were the persons you saw out in the pool area? A. That is correct.

Mr. Farber: I have nothing further, your Honor.

The Court: You may step down.

Mr. Marks: Excuse me.

By Mr. Marks:

Q. If there were two people enter the room and only one entered into the discussion how were you able to determine there were two people? A. While Mr. Katz was discussing with the one individual I was quite sure that a toilet had flushed. Also, when the conversation was concluding there was a discussion about sheets. Mr. Katz gave the visitor a sheet when a second voice came up and said he would like one, too.

Q. Is that a male or a female voice? A. Male, I believe.

Mr. Marks: I see.

258 Redirect Examination

By Mr. Farber:

Q. You say sheets. Do you mean like linen or— A. I—

Q. A bed sheet, or do you have any idea at all? A. I would have no idea. The term was sheets. That's all I know.

Mr. Farber: Thank you. Nothing further.

The Court: Do you have anything further to inquire of this witness?

Mr. Marks: No, your Honor.

The Court: You may step down.

Mr. Farber: The Government calls—

#### Offer in Evidence

The Clerk: Do you want that in evidence?

Mr. Farber: Yes.

The Court: It may be admitted.

Mr. Marks: What is this?

The Court: That's the statement you have read.

Mr. Marks: Oh. 19. Of course.

(The exhibit marked Plaintiff's Exhibit 19 was received in evidence.)

Mr. Farber: The Government calls as its next witness Mr. LaRue.

259 LEO LA RUE,

called as a witness by the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Please state your name for the record.

The Witness: Leo LaRue.

Direct Examination

By Mr. Farber:

Q. Mr. LaRue, what is your occupation? A. I am a special agent with the FBI.

Q. And for how long have you been so employed? A. Approximately 12 years.

Q. Are you presently assigned to the Los Angeles office? A. Yes.

Q. Did you partake in the investigation of defendant Katz? A. Yes, I did.

Q. Now, directing your attention to February 25, 1965, were you present at the arrest of Katz? A. Yes, I was.

Q. Were you present when Mr. Katz was advised of his rights? A. Yes.

260 Q. And what was said at that time? A. Mr. Doherty advised him that he did not have to make any statement, any statement that he did make could be used against him in a court of law, and that he was entitled to an attorney.

Q. Now, sir, subsequent to that time, did you participate in a search of defendant Katz' living quarters? A. Yes, I did.

Q. Was that pursuant to a search warrant? A. Yes, it was.

Q. Approximately when was it that you commenced the search? A. We began at 11:00, 11:00 a.m.

Q. When did you finish, sir? A. At 1:35.

Q. Now, sir, I would like you to take a look at Government's Exhibit No. 9 for identification. Have you seen Government's Exhibit 9 prior to today? A. Yes, I have.

Q. Or I should say, have you seen the sheets that are contained within Government's Exhibit 9 prior to today? A. Yes.

Q. Where did you see them, sir? A. I obtained these in Mr. Katz' apartment.

Mr. Marks: Your Honor, I know I expressed the objection before, but may there be the same running  
261 objection to the evidence procured pursuant to search warrant on the grounds of the original motion to suppress which has already been denied by the court? But I am renewing the motion.

The Court: Well, you haven't spelled out your grounds, but I assume you mean that by virtue of the alleged illegal obtaining of the telephone conversations which led to the arrest.

Mr. Marks: Well, not only that, but there was a further objection at the time the motion to suppress was made on the ground that the search warrants themselves were too general.

The Court: Oh, yes.

Mr. Marks: And exploratory. I'd like the record to show that I am again—

The Court: Very well. The objection may be deemed to have been made to this line of inquiry, and the same ruling. It may be overruled.

Mr. Marks: Thank you.

Mr. Farber: And to speed up the procedure, your Honor, I am sure there will be other exhibits along this line which—

The Court: Yes. You may have a running objection to all these exhibits.

Mr. Marks: Thank you, your Honor.

#### Offer in Evidence

Mr. Farber: I move the Government's exhibit be  
262 received in evidence.

The Court: It may be admitted.

(The exhibit marked Plaintiff's Exhibit 9 was received in evidence.)

By Mr. Farber:

Q. I would like to show you Government's Exhibit No. 10, Mr. La Rue, for identification. Now I ask you, have you ever seen Government's Exhibit 10 prior to today?

A. Yes, sir; I have.

Q. Where did you see Government's Exhibit 10, sir?

A. I obtained this from Mr. Katz' apartment.

Q. Again, during the search? A. Yes; during the search.

Mr. Farber: I move that Government's Exhibit 10 be received in evidence, your Honor.

The Court: It may be admitted.

(The exhibit marked Plaintiff's Exhibit 10 was received in evidence.)

By Mr. Farber:

Q. Now, I'd like to show you Government's Exhibit 11 for identification, Government's Exhibit 12 for identification, Government's Exhibit 13 for identification, 14 for identification, 15 for identification, 16 for identification, and 17 for identification. Would you take a look at those

exhibits in order, sir? I believe that Government's 263 —one of the exhibits is contained in an envelope.

When I refer to the exhibit, I am talking about the contents of the envelope.

Now, will you look at them in order, please? A. Yes. I obtained all of these during the search, too.

Mr. Farber: Thank you. Your Honor, I move that all those exhibits, that is, Government's Exhibits 11 through 17, be received in evidence.

The Court: They may be received.

(The exhibits marked Plaintiff's Exhibits 11 through 17 were received in evidence.)

Mr. Farber: Thank you.

Q. Now, Mr. LaRue, during the course of your search did you see Mr. Katz? A. Yes; I did. He returned to the apartment.

Q. Approximately what time was this, sir? A. Ten minutes to 1:00 exactly.

Q. During that time did you have a conversation with him? A. Yes, I did.

Q. Now, who initiated the conversation, you or he? A. He did.

Q. Now, would you tell us who else was present? A. Special Agent Robert Rockwell.

264 Q. Now, would you tell us what was said? A. He asked about—

Mr. Marks: Excuse me, sir.

The Witness: Yes.

Mr. Marks: Objection on the same grounds, your Honor; there has been no corpus delicti established.

The Court: Overruled.

The Witness: With respect to the first item he showed me the large number of yellow sheets.

By Mr. Farber:

Q. Was that Government's Exhibit 9, sir? I think we should be— A. Yes, Exhibit 9.

Q. The contents of the envelope? A. He asked me if I was taking these records and I said, "Yes," that we were. And he asked when could he get them back. I told him I did not know.

And he says, "Without these records I am out of business."

And I said, "What do you mean?"

He says, "Well, that's all I have done for thirty years. I know no other trade. I can't make \$60 a week doing anything else."

And he went on to say that, about the FBI being involved in gambling. And I said, "If you had not bet 265 interstate we wouldn't be involved in this matter."

And he says, "Well, I cannot bet locally because the local bookmakers will not pay off."

Mr. Farber: Thank you. May I have just a moment, your Honor?

That's all I have of this witness.

Cross Examination

By Mr. Marks:

Q. Did you make any notes or recordations of this conversation? A. Not at the time, no, not while I was making—

Q. Did you make any subsequent notes or recordations?

A. Yes, I did.

Q. And where are those?

Mr. Farber: I believe we have them, counsel.

The Witness: He has an interview report form.

Mr. Marks: May I approach the witness?

The Court: You may.

Mr. Farber: Your Honor, again, this—if this document is going to be used may we have it marked for identification as Government's Exhibit 20?

The Court: It may be so marked.

(The exhibit referred to was marked Plaintiff's Exhibit 20 for identification.)

266 By Mr. Marks:

Q. Showing you Government's Exhibit 20, is that the report that you made? A. Yes, it is.

Q. Is that the original? A. Yes.

Q. May I have it back? A. It is initialed by me.

Q. Now, the conversation you related is your summary of the conversation and not the actual conversation; is that correct? A. That—well, at best—it was a ver— what you have there is a summary. What I just gave was more of a verbatim of the conversation.

Q. Now, did Mr. Katz state to you on February 25, 1965, that he had been a handicapper for 30 years and knows no other trade or profession? A. That's in effect what I just testified to, yes, sir.

Q. Well, there is a difference between a bettor and a handicapper. A. He didn't say bettor, he said that was his business.

Q. All right. A. That these sheets are his business and that's what it's been for 30 years, and he knows no other trade.

267 Q. The business he mentioned was handicapping—

A. I concluded—

Mr. Farber: Pardon me, your Honor. That's a conclusion of the witness.

The Court: I think he is trying to get what the defendant actually said, and to that extent we are all interested, not what the witness concluded.

By Mr. Marks:

Q. Did he use the word "handicapper"? A. I can't specifically say that he did use the word "handicapper," no.

Q. Is it possible that he might have? A. Possibly.

Q. At least that word is in your report. A. Yes. I—

Q. Did he state that he developed his own system which is contained in the records you seized during the search? A. Yes.

Q. And those records are the yellow foolscap sheets? A. Yes.

Q. Did he state that these records are in a code known only to him? A. Yes.

Q. Did he state without his records he was out of 268 business? A. Yes.

Q. Did that have to do with the handicapping business?

Mr. Farber: Pardon me. It's a conclusion of the witness, your Honor.

The Court: Well, he can testify if he knows.

The Witness: My impression was that he was out of the business of betting based on his handicapping.

Mr. Marks: All right.

The Witness: I had the understanding from the way he was talking that he not only was a handicapper but also used this knowledge to bet with.

Mr. Marks: All right.

Q. Now, he was also questioned—he specifically said that they're handicap records, didn't he?

Mr. Farber: Asked and answered, your Honor.

Mr. Marks: Yes.

The Witness: No. He said these are his records. He didn't say what kind of records they were.

By Mr. Marks:

Q. Well, didn't he say, "You will probably think they are bookmaking records"? A. Yes.

Q. So he was indicating that they weren't bookmaking records, wasn't he? A. I don't know.

269 Q. You don't know? A. I don't know what he was indicating.

Q. All right. He indicated you cannot bet in Los Angeles as the bookmakers will not pay off; is that correct? A. Yes.

Q. He said that it was known throughout the nation? A. Yes.

Q. Did you ask him how accurate he was at football? A. Yes, I did.

Q. By that you meant accurate in his handicapping? A. No; in betting.

Q. Did you ask him "How accurate are you in betting"? A. Yes; "How many do you win in football?" Words to that effect.

Q. Did he say that he never kept percentage but he hit 10 for 10 frequently? A. Yes, sir.

Q. And often 10 for 15? A. Right.

Q. As far as accuracy was concerned? A. That's what he told me, yes.

Mr. Marks: Thank you. I have nothing further.

Mr. Farber: I have nothing further of this witness, your Honor.

The Court: You may step down.

270 Mr. Farber: The Government calls as its next witness Mr. Donovan.

TIMOTHY L. DONOVAN,

called as a witness by the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Please state your name for the record.

The Witness: Timothy L. Donovan.

Direct Examination

By Mr. Farber:

Q. Mr. Donovan, what is your occupation, sir? A. I am a special agent with the FBI.

Q. And for how long have you been so employed? A. Approximately 18 years.

Q. And you are also assigned to the Los Angeles field office? A. That is correct.

Q. Now, directing your attention to February 26, 1965, on that date did you see the defendant? A. Yes, I did.

Q. And where? A. At the **Sunset Towers**.



Mr. Marks: Just a minute, your Honor. I object to this line of questioning as being outside the scope of the indictment. I'd like the Government to make an offer of proof as to the relevancy.

271 Mr. Farber: Your Honor, I think by the time we get the offer of proof—

The Court: It goes to the corpus delicti. He is still working at that, I suppose.

Mr. Marks: This is after the period of the indictment, the last date of the indictment is February 25th.

Mr. Farber: Your Honor, why don't we get the evidence in and after all the evidence is in, if it is inadmissible—

Mr. Marks: That's the way to run a lawsuit, throw all the evidence in and what doesn't apply—

The Court: What is the materiality? Perhaps you had better make an offer of proof.

Mr. Farber: Yes, your Honor. There was a discussion on the next day between Mr. Katz and the special agent pertaining to the exhibits that are now before this court.

The Court: Oh. Very well. The object will be overruled.

Mr. Farber: Thank you.

Q. Approximately what time was it, sir, that you saw defendant Katz? A. Approximately 10:30 in the morning.

Q. And was anybody else present with you, sir? A. Special Agent Emmett Doherty was with me.

272 Q. Where did the discussion take place? A. In the lobby of the Sunset Towers West, 8400 Sunset Boulevard.

Q. Now, were you there for any special purpose? A. Yes.

Q. And what was the purpose of being there? A. I intentionally had gone there to return two personal items to Mr. Katz which I had removed from his person the previous day and which were to be returned to him.

Q. Then a conversation ensued? A. That is correct.

Q. Would you tell us that conversation? A. Yes. What I had returned—

Mr. Marks: May I inquire on voir dire?

The Court: Yes.

## Voir Dire Examination

By Mr. Marks:

Q. Did you advise Mr. Katz at that time that any statements he might make would be—might be used in evidence against him, that he had a right to an attorney, that he had a right to remain silent and not answer any of your questions? A. At that time he was not so—

Mr. Marks: I will object to any further statements.

Mr. Farber: May I ask a few questions, then, your Honor?

## 273 Direct Examination (Continued)

By Mr. Farber:

Q. Did you know whether or not Mr. Katz had previously been advised of his rights with respect to conversing with federal agents of the FBI? A. Yes, I did.

Q. Did you know that he had or had not been so advised? A. I was with Mr. Doherty on the previous day when he was so advised.

Q. Now, with respect to the exhibits that pertain to this case, who initiated the conversation pertaining to those exhibits? Was it you or Mr. Katz? A. Mr. Katz.

Q. Now, would you tell us what that conversation was?

Mr. Marks: Same objection.

The Witness: I returned to Mr. Katz a nail file and a key chain. Upon his taking them he said, "I can replace these for 35 cents. Why can't I have my records? Without my records I am out of business. I have been a handicapper and a bettor most of my life, and it has taken hours and hours and hours of compilation to prepare these records."

Mr. Katz continued as to the time factor in the records, and then suggested that if he could have his records  
274 back he would continue betting. And he facetiously made the comment, "Then I can lead you to the big ones."

Mr. Farber: Thank you. I have nothing further of this witness, your Honor.

Mr. Marks: I don't know whether I offered the objection but I will, and make a motion to strike that again there is no corpus delicti established or basis or foundation for the admission of these statements.

The Court: Overruled. I think the—well, there is no point in arguing that. I think there is evidence here that the corpus delicti has been established.

Cross Examination

By Mr. Marks:

Q. Mr. Donovan, this was 10:30 in the morning on the 26th? A. Approximately 10:30 in the morning of the 26th, yes.

Q. Mr. Katz had been arrested the day before? A. The previous day.

Q. And can you estimate how far 8400 Sunset Boulevard is from the FBI office or this court house? A. I'd have to conjecture. I'd say six miles, probably.

Q. Perhaps ten? A. Perhaps ten.

Q. So you traveled ten miles to return to Mr. Katz 275 a key chain and a nail file? A. That is correct.

Q. Didn't you also have some intention of engaging in this conversation? A. I did not, and Mr. Katz was so advised.

Q. You did advise him you didn't want to have any conversation? A. Mr. Katz questioned as to why we came all the way out there at that time of the morning to return those two personal items. He said, "You must have some other alternative and some purpose."

We advised him strongly we did, we merely wanted to return those items to him.

Q. Did you make a notation of your conversations with Mr. Katz on the 26th? A. At that time I did not.

Q. Did you make a subsequent notation? A. I did.

Q. When was that notation made? A. On the afternoon of the 26th—

Q. You make out these reports when you are investigating something, don't you? A. This was dictated on my return to the office in the afternoon.

Q. Because it was pursuant to an investigation? A.

Well, it was not an investigation, sir, no. At 276 that phase it was pursuant to a conversation Mr. Katz had with us.

Mr. Marks: May I see the report?

Mr. Farber: Certainly, counsel. Do you intend to use this in any manner? I would like to have it marked for identification if so.

Mr. Marks: May this be marked?

The Court: Marked as Government's exhibit next in order.

The Clerk: Yes. Government's Exhibit 21 marked.

(The exhibit referred to was marked Plaintiff's Exhibit 21 for identification.)

By Mr. Marks:

Q. You have seen this form before, haven't you? A. I have seen it previous, yes, sir.

Q. That's the one you dictated? A. I would presume so.

Q. Is there any particular name for this type of form in your Bureau? A. It has a form number, sir, and that is all.

Q. Well, FC 302 seems to be the form number. A. That is correct.

Q. You don't know what that stands for? A. It's just a federal form number.

277 Q. 302 form? A. It is referred to as that, yes.

Q. Is this the type of form that you ordinarily use when you make a report of an investigation of a subject in the FBI?

Mr Farber: Irrelevant and immaterial. Counsel is playing on the word "investigation" and substantially arguing with the witness.

The Court: Overruled.

By Mr. Marks:

Q. Do you understand the question? A. Yes. Under some conditions it is, sir, yes.

Q. Did Mr. Katz advise you that he had arranged to have an attorney? A. Mr. Katz commented that a friend was obtaining an attorney for him, that he hadn't met the attorney, that he believed he had an appointment to meet him on that following Sunday.

Q. February 28, 1965? A. I wouldn't know that, counsel.

Q. Now, you have heard Katz state he was out of business as a handicapper and bettor without his records taken from him by the FBI agents. He stated if he could have

those back he would continue to bet. Katz stated his records entailed hours and hours of work and could not  
278 be replaced. Is that what he said? A. As I recall it is, yes, sir.

Q. What was the exact conversation? What did Mr. Katz say exactly? A. Reference to what specifically now, sir?

Q. Let's start from the beginning. What is the first word he said? A. Mr. Katz commented that he could— this will not be in quotes. That he could purchase the items returned to him for 25 cents in any drug store.

Q. Well, let's start from the beginning. Mr. Katz came down from his room or you went up to his room? A. Mr. Katz came up from his room pursuant to a phone call made to his room from the lobby phone.

Q. Did you make the first statement to him? A. Yes, I did.

Q. And you were now standing in the lobby? A. That is correct.

Q. What did you say to him? A. I shook hands with Mr. Katz and said, "Good morning, Charlie."

Q. What did he say? A. He said, "Good morning."

Q. He didn't say "Good morning, Tim"? A. He did not.

279 Q. Then what? A. I explained the purpose of our being there.

Q. No. What did you say? A. I said, "How are you, Charlie?"

Q. No. After you said, "How are you, Charlie?" what did you say? A. I said, "I am here to return two items that were taken from you yesterday."

Q. In fact, that was your only purpose for being there? A. That is correct.

Q. Then what did Mr. Katz say? A. Mr. Katz suggested we go over towards the settee in the lounge.

Q. What did he say? A. He motioned, "Let's sit down."

Q. All right. Did you go sit down? A. We went and sat down.

Q. That was you and Mr. Doherty? A. And Mr. Katz.

Q. Mr. Katz was in the middle between Doherty and Donovan? A. I don't recall, sir.

Q. What was the next thing that happened? A. Mr. Katz questioned, he said, "Well, this isn't why you came to return these things to me. What do you want from me?"

280 Q. What did you say? A. We said, "Nothing. We don't want anything from you, Charlie."

Q. Then— A. "We are not here to interrogate you."

Q. You are not here to— A. "We are not here to ask you any questions."

Q. Then what did he say? A. Then he went into a discussion of his records.

Q. What did he say? A. He said, "Why didn't you bring my records? Because without them I am out of business. I have been a bettor and a handicapper"—or "handicapper and bettor most of my life."

Q. What did you say? A. I told him that we had no control over the records, that we couldn't return them to him, and suggested he might contact the United States Attorney's office.

Q. All right. And what did he say? A. He made no comment to that.

Q. Then what did you say? A. It was at that time I inquired if he had an attorney.

Q. And he said— A. And he made the statement  
281 that a friend of his had arranged an attorney for him and he had an appointment to see him on the following Sunday, the date of which I don't have.

Q. Then what did you say? A. He spoke then continuing. He went into the record aspect, how many hours he had worked preparing the records.

Q. What did he say? A. "You men have no idea of the time and hours that are expended in preparing these records and compilations. Spent hours and hours and hours." And he said, "They are irreplaceable."

Q. What did you say? A. I—

Q. "Sorry, Charlie"? A. I just agreed with him with the nod of my head.

Q. Then— A. Then he said, "Get those records back for me." Or "If I can have those records back I would continue to bet."

Q. He said those exact words? A. Yes.

Q. "If you give me those records back I would continue to bet"? A. "If I have those records back I would continue to bet." And then with a smile said, "And I can lead you to the big ones" or "You can get the big ones."

Q. What did you say? A. I smiled.

Q. Was Mr. Doherty smiling, too? A. Yes, I believe he was.

Q. Then what was said? A. Mr. Katz terminated the conversation and said, "Well, I have no more to discuss." We shook hands.

Q. "That's all I want to tell you. Good-bye," he said? A. We shook hands and parted.

#### Offers in Evidence

Mr. Marks: I have nothing further. May this be 21 received, your Honor?

The Court: Any objection?

Mr. Farber: I have no objection.

The Court: It may be admitted.

(The exhibit marked Plaintiff's Exhibit 21 was received in evidence.)

Mr. Farber: Excuse me.

The Court: Just a moment.

#### Redirect Examination

By Mr. Farber:

Q. Mr. Donovan, just a couple of questions. Is it the policy of the Federal Bureau of Investigation for you to write up a 302 with respect to any pertinent conversation you have with a subject or a defendant even if you did not seek to start that conversation? A. That is correct. That is the policy.

Q. Now, likewise, even if an item is a small item that is taken from a defendant and is of such nature that it should be returned, do you have a custodial problem if you do not return it? A. That is correct.

Mr. Farber: Thank you. I have nothing further.

## Recross Examination

By Mr. Marks:

Q. Mr. Donovan, when you first called on Mr. Katz you invited him to come to breakfast, didn't you? A. I do not recall having done so, no, sir.

Q. Do you remember Mr. Katz saying, "Who wants to be seen with you"? A. Not specifically, no, sir, I do not.

Q. Words to that effect? A. Possibly. Possibly. I don't have a definite recollection of that, sir, no.

Q. Now, what time was that Exhibit 21 prepared? A. What time of the day you are referring to, sir?

Q. Yes. A. I have no record of that. But I would say it was the latter part of the afternoon.

283 Q. You saw Mr. Katz in the early morning; is that correct? A. In the mid-morning, sir.

Q. Mid-morning. Did you and Mr. Doherty discuss this Exhibit 21 as you were dictating refreshing one another's recollection of the conversation? A. Well, we discussed it before I dictated it. Whether Mr. Doherty was present when I was dictating it or not I don't know. Mr. Doherty did subsequently read it, however.

Q. You don't have any training like New York reporters to write with your hands in your pocket to make notes, do you? A. I have never been assigned to New York, sir.

Q. You weren't making notes while you were talking to Mr. Katz?

Mr. Farber: Asked and answered, your Honor.

Mr. Marks: I don't believe that it was.

The Court: Well, answer it again.

The Witness: I was not making notes while I was talking to Mr. Katz.

Mr. Marks: Thank you. That's all.

Mr. Farber: I have nothing further of this witness, your Honor.

The Court: You may step down.

284 Mr. Farber: May I inquire of the court, your Honor, how long the court would intend to go this afternoon?

The Court: How long will it take?



Mr. Farber: Well, we still have our expert witness. I might take at least, I'd say, a half hour to 45 minutes, your Honor.

The Court: Well, I have another matter tomorrow morning. We can't take this tomorrow morning. I was in hopes we could finish it tonight.

Mr. Farber: I was likewise in hopes of that.

The Court: Well, let's go for another half hour anyway and see how far we get.

Mr. Farber: Thank you, your Honor.

The Government calls as its next witness Mr. Gunn.

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JOSEPH A. GUNN,

called as a witness by the plaintiff, having been first duly sworn, testified as follows:

The Clerk: Please state your full name.

The Witness: Joseph A. Gunn.

Direct Examination

By Mr. Farber:

Q. Mr. Gunn, you sound like you have a cold. Do you have some problem with your voice? A. Yes, I do.

Q. Do you want some water? A. No. That's okay. thank you.

Q. Now, Mr. Gunn, what is your occupation? A. Police officer for the City of Los Angeles assigned to the Administrative Vice Division.

Q. Do you hold any particular rank in the Administrative Vice Division? A. Policeman.

Q. For how long have you been a police officer with the Los Angeles Police Department? A. Five and a half years.

Q. For how long have you been in the Administrative Vice Division? A. Since August of 1963.

Q. And, sir, have you ever testified in court prior  
286 to today as an expert witness? A. Yes.

Q. When I say as an expert witness I am talking about in the field of gambling and wagering. A. In the field of bookmaking.

Q. Now, has it been on more than one occasion that you have testified? A. Yes, sir.

Q. About approximately how many times have you testified in court? A. In excess of a hundred times in Municipal Court and in excess of twenty times in Superior Court.

Q. When you use the term bookmaking, does that include all phases of wagering? A. Yes, sir.

Q. Now, have you ever written any material pertaining to wagering or bookmaking? A. Yes, sir.

Q. What material is that? A. It's the material that is used at the Los Angeles Police Department Vice School at the Police Academy pertaining to bookmaking as it is conducted in Los Angeles County, specifically sports bookmaking.

Q. And also have you ever taught any courses pertaining to the investigation of sports bookmaking?

287 A. I teach officers at the Los Angeles Police Department Vice School.

I also teach at Los Angeles State College at the Vice Institute, and I also give a class to Deputy District Attorneys for the County of Los Angeles.

Mr. Farber: Your Honor, I would respectfully submit that Officer Gunn has been qualified as an expert in the field of wagering and bookmaking.

Mr. Marks: An expert in what, counsel?

Mr. Farber: Wagering and bookmaking.

The Court: Well, he has, I believe, established a certain degree of expertise in the matter.

Mr. Marks: Well, perhaps in the area of bookmaking. And I assume for general purposes that you can't make a book without having somebody wagering on it.

The Court: There is sufficient proof here for you to proceed.

Mr. Marks: All right.

By Mr. Farber:

Q. Now, Officer Gunn, have you had the opportunity prior to coming into court to examine Government's Exhibits 1 through 6? A. Yes, I have.

288 Q. Are you familiar with the conversations that are contained therein? A. Yes, sir.

Q. Likewise, have you had an opportunity, sir to examine Government's Exhibits 8 through 17, that is, all exhibits other than the Telephone Company records? A. Yes, sir.

Q. Now, would you take a look at Government's Exhibit No. 1?

(At this point an exhibit was handed to the witness by the clerk.)

By Mr. Farber:

Q. Now, sir, in your expert opinion—before we get to that, sir, with respect to Government's Exhibit 1, what date does it pertain to, sir? A. It pertains to February 19, 1965.

Q. Now, in your expert opinion was any information pertaining to wagering contained in the conversation that is represented by Government's Exhibit No. 1? A. Yes, sir.

Q. What information is that, would you tell us, please, sir? A. Information on the betting line for a sporting event.

Q. And would you please us the parts of the transcript which would pertain to the betting line? A. This  
289 would be on page No. 5 which Mr. Katz has placed a call to Boston, Massachusetts.

Mr. Marks: Well, I will object to that and move to strike it.

Mr. Farber: You mean the phrase "Boston, Massachusetts"?

Mr. Marks: That he placed a call to Boston.

Mr. Farber: Fine.

Q. Don't go into where he placed the call, just the substance of the call. The other evidence will— A. Starting in the middle of the page there is a statement:

"Pass

"Pass

"Pass

"Pass

"Minus 5

"That's the early line, right?

"So, we will go through this, damn it!

"Seven—minus seven.

"Pass

"Pass

"Pass

"Minus seven—minus seven change

"Six

"Pass

“Minus eighteen

“Seven

“Minus ten

“Six with a seven—You are going to try? You going to put me on that one? —Just what I need.

“Pass

“What you need?”

Q. Now, other than information pertaining to the line was there any other information contained in the transcript? A. Yes, throughout the transcript.

Q. Pertaining to wagering? Go ahead. A. Throughout the transcript there is a discussion on a claim of disagreement between Mr. Katz and the party he is talking to as to whether Mr. Katz has won his wager or he has lost. Specifically that Mr. Katz is playing this wager for somebody else with somebody else's money and that he only has a piece of it.

Mr. Marks: I will object to that as calling for a conclusion of the witness, outside the scope of his expertise.

The Court: Overruled.

By Mr. Farber:

Q. Would you continue, sir? Would you please  
290 read us the language which gives you that information to the extent that he is betting for somebody else? A. It starts on page No. 1 approximately at the middle of the page. First he says, “want to pay the money and get it over with”. On down he says:

“... my guy—How can they do a thing like that to him—at least, they could have done was to have called the bet off—and found out and then I could have saved the eight dollars”.

May I refer to my copy, sir, where I already have it marked?

Mr. Farber: Would that be agreeable to the court?

The Court: Surely.

Mr. Farber: And counsel?

Mr. Marks: No objection.

Mr. Farber: Fine.

Should we have those marked for identification, your Honor?

The Court: I don't think you need to. If the defendant wants to look at them and examine them, if he wants to put them in he may. But these are, as I take it, notes which this witness has made after reviewing the evidence which is in for the purpose of aiding him in testifying.

291 Mr. Marks: As I understand he has taken copies of Exhibits 1 through 6 and made his own markings on copies of the exhibits for his own purpose. They are not notes—well, maybe they are notes.

The Court: Well, they are in the manner of notes or some indication to refresh his memory and to help him. They are aids in helping him testify here.

Mr. Marks: We may use them later, your Honor.

The Witness: On page No. 2 the last paragraph Mr. Katz is stating:

“ . . . this isn't my business—you know my play—I take a piece at a dollar or two—now, I—like this fellow is losing to—the fellow I am playing he is behind—”

On page 3 Mr. Katz states:

“ . . . that is why I have been doing good here—because sometimes—you know that I get different prices—two, three and four—for playing the—although, it is only a dollar—it adds up—”

And he goes on to say—

By Mr. Farber:

Q. Excuse me. Let me interrupt at that point, Mr. Gunn.

292 What is the significance of that conversation that you just read? A. Mr. Katz is playing for somebody else and getting a percentage out of it. When he says he is only getting a dollar, this would mean that on a thousand-dollar bet he would be getting a hundred dollars in this instance.

Q. Is he using what is called the nickel system? A. Yes, sir.

Q. In referring to his bets? A. Yes.

Q. What is the nickel system? A. The nickel system is terminology in which a \$500 bet would be called a nickel,

a \$1,000 bet would be called a dime. The \$100 bets are usually referred to as a dollar or two dollars.

Also when you record on the nickel system you omit to the right of the decimal point so that \$2,500 would be written 25 and two small zeros rather than writing four decimal point zero zero.

Q. Fine. Would you continue where I interrupted you?

A. Mr. Katz then states:

“ . . . to take twenty one dollars, and I told him, eight is the other fellow’s, and two—and give the other fellow eight dollars which he knows I am winning—I am not putting no claim—I am giving the other guy eight dollars— and I’ll go the eight dollars and you go the twenty-one and you’ll bust me up—”

Later on he states:

“ . . . so, last night he flies into me and says to get it straightened out—He loves to play, now he is out with some fellow here—He is always killing the guy—”

And then beyond that:

“ . . . otherwise I would have been through but he needs me for this—”

Q. Now, with respect to this same conversation on February 19, 1965, was there any credit information exchanged? A. Yes, sir.

Q. What was that, sir? A. Well, on the next to the last page, page 5, Mr. Katz states:

“Hello? Listen—I just spoke to Elliott—He gave me, an extension oh good he will give me credit for eleven and I can owe twenty—”

Q. Now, is credit a common practice in bookmaking? A. Yes, especially in sports bookmaking.

Q. Now, sir, would you go to February 20, 1965, which would be Exhibit 2.

Now, with respect to Exhibit 2 was there any information transmitted pertaining to wagering? A. Yes.

Q. What was that?

Mr. Marks: Do you mean the witness is testifying to his opinion?

Mr. Farber: Oh, yes, of course.

The Witness: Mr. Katz is asking for the betting line.

By Mr. Farber:

Q. And does he get it? A. apparently receives it because he is repeating. Do you want me to repeat the whole line?

Q. Just start it anyway. A. Oh. He makes statements like "Pass, Pass," "Maryland minus 4," "25 Duke," "Western Kentucky," "Saint Joe—minus 5½."

Q. All right. A. Mr. Katz then states, "You want me to call them back to you?" And then he proceeds to read out collegiate teams, giving the line such as "Maryland minus 4," "Alabama plus 7," and some of them correspond with the ones that he had received in the earlier part of the conversation.

295 That is the total content of that day.

Q. Now, I would like you to take a look at Government's Exhibit 3 which pertains to February 21, 1965. A. Yes, sir.

Q. Now, in connection with Government's Exhibit 3, in your opinion was there any information transmitted with respect to wagering? A. Yes, sir.

Q. What was that information? A. Mr. Katz had placed a wager on this date.

Q. Oh. He actually placed a wager? A. Yes, sir.

Q. Would you please read us the portion of the transcript which pertains to the placing of the wager? A. Mr. Katz states, "Give me Duquesne—for a dime."

Q. Now, under the nickel system, then, that wouldn't really be a dime, that would be a thousand dollars; is that right? A. Actually it would be \$1100. He is placing an \$1100 bet to win a thousand dollars, but he would say, "Give me a dime," a thousand dollars.

Q. Is that the common way of expressing a bet? A. Yes, sir. The vigorish on the bet is automatically added  
296 to it and it is understood by both the bookmaker and the bet maker.

Q. Is it your opinion that he is placing these bets with a bookmaker? A. Yes, sir.

Mr. Marks: Objection to the last, calling for a conclusion of the witness, outside the scope of his expertise.

The Court: I think this is all part of the procedure of the bookmaker. And if he can testify—

Mr. Marks: Well, I don't think that any expert, I don't care who he is, can testify in his opinion whether or not a bet is placed with a bookmaker or with another bettor.

Mr. Farber: May I ask him to back up his opinion?

The Court: Very well, you can inquire further.

Mr. Farber: All right.

Q. Can you tell us why it is a bookmaker as opposed to another bettor? A. Yes. I have also reviewed the records that you have referred to and I find this particular bet where he says, "Give me Duquesne—for a dime." Now, that is a thousand-dollar bet. If he was playing with another player it would be a thousand dollars against  
297 a thousand dollars.

But he lost this particular bet and on the side he put "Minus 1100" which indicates that he had to be playing with a bookmaker, because a bookmaker will take the vig-  
orish on the bet.

Q. Now, is there any other reason why you are of the opinion that it is being placed with a bookmaker as opposed to another bettor? A. I have very seldom seen—I have never seen players who are playing head-to-head gambling action give each other a rundown on the line on all the teams that are about to be played.

Q. That is something that is peculiar to a bookmaker? A. It is peculiar to a bookmaker only, yes.

Mr. Marks: Could I inquire on voir dire?

The Court: Very well.

#### Voir Dire Examination

By Mr. Marks:

Q. How many conversations in your lifetime have you heard between bettors and bookmakers? A. Between bettors and bookmakers?

Q. That's right. Excluding police officers. A. Excluding the ones that I have personally made?



297a Q. Yes. A. I would say probably in excess of 500 conversations in which I was the feigned bookmaker and in which a bettor called me after I had entered a bookmaking location.

Q. How many conversations have you overheard between bettors and bookmakers or bettors and bettors? A. Well, I have posed as a bookmaker, sir.

Q. Well, I am asking about actual conversations in which there was betting going on. A. An actual one?

Q. Yes. A. Oh, I would say perhaps five or ten in which I was not playing either part, bettor or bookmaker.

Q. I see. And it is out of those five or ten conversations that you state that you have never heard a line being passed between the two bettors; is that correct?

Mr. Farber: I object to that question, your Honor; it assumes a fact not in evidence. Certainly the same information could have been obtained from the times that Mr. Gunn was pretending to be a bettor, because then he would certainly know what a real bookmaker would state.

The Court: I think we have reached the end of 298 your voir dire examination. You may inquire further on cross examination.

Mr. Marks: Well, I would object—

The Court: The objection will be overruled.

Mr. Marks: I forget where we are at this point.

#### Direct Examination (Continued)

By Mr. Farber:

Q. We were talking about what exhibit, Officer Gunn? What exhibit did you have in front of you? A. We had just finished with February 21st, Exhibit 3.

Q. Exhibit 3. Thank you.

Now, let's go to Exhibit 4. In connection with Exhibit 4 is there any wagering information—any information that was transmitted pertaining to wagering, in your opinion? A. Yes, sir.

Q. What was that information? A. The first part of Exhibit 4 Mr. Katz is apparently getting the line again in his first call.

Mr. Marks: Apparently getting what? I am sorry.

The Witness: Apparently getting the line in his  
299 first call.

By Mr. Farber:

Q. Does he ask to receive the line? A. No, he did not. The only thing I can say is that the terminology "Pass, Pass, Pass" is similar to the other calls when he has received the line.

Q. All right. A. The second call that he makes here in which he asks for a Mr. Blabs and identifies himself as Jaffey, there is a discussion as to the payment of money in which Mr. Katz is stating that it is not his money and that the person wanted to know how and where the payment should be made.

The person remarked and said he will mail it air mail special delivery with return receipt requested.

Q. Did I understand you, Officer Gunn, to say that Mr. Katz did not refer to himself as Mr. Katz but by another name? A. He referred to himself as Jaffey.

Q. Is it a common occurrence in wagering with bookmakers for a party that is wagering with bookmakers to have a code name? A. Yes.

Q. Would you continue, please, sir? A. A little later on in the same conversation, the second conversation, Mr. Katz states that, "I got a guy playing  
300 more money Criff—he takes a nickel in the morning and at 12 o'clock he takes a dime," indicating that it is someone else playing with him who is betting, according to this, five hundred in the morning and a thousand at 12:00 o'clock.

And he closes up on page 3 by saying, "I'll give you a line," but that's about it as far as this date is concerned.

Q. Now, would you take a look at Government's Exhibit No. 5, please, sir, which pertains, I believe, to the date February 24, does it not? A. Yes, sir.

Q. Now, on February 24th were there any bets placed according to the transcript and in your opinion? A. Yes, sir.

Q. And also was there any wagering information transmitted? A. Yes, sir.

Q. Now, would you please tell us what the—let's go first to the bets that were placed. What bets were placed on February 24th? A. The bets are in the second conversation.

Q. What number is called, Miami? A. This is the conversation where the number is called to Miami in  
301 which Mr. Katz has again identified himself as Jaffey. He states:

“Give me Temple minus ten and a half for a dime.”

He states:

“Pass

“Pass

“Pass

“Pass

“Pass

“Pass

“Give me Duquesne minus 7 for a nickel.”

Q. So that would be \$1500 so far? A. So far.  
Then he states:

“So, I miss calls—I will settle up—so you have a nickel on Temple?”

Which indicates that there was already \$500 bet on Temple, which would then make that a \$1500 bet that he has on Temple. That is the actual bets that are placed on this day.

Q. Now, was there any wagering information? A. Yes.  
In the first call to Boston Mr. Katz states—

Mr. Marks: I will object and move to strike that  
302 portion.

The Court: On what ground?

Mr. Marks: “The first call to Boston.”

By Mr. Farber:

Q. Well, doesn't the transcript refer to Boston? A. Yes, it does.

The Court: The use of the words “call to Boston” is for the purposes of identifying that exhibit and that transaction.

Mr. Marks: I am only objecting to his assuming a fact not in evidence.

The Court: Well, he doesn't know whether it went to Boston or where it went. The only thing is it indicates it went to Boston, and he is using that for identification purposes. I am not fooled by it. If you are not, why, nobody is in trouble.

By Mr. Farber:

Q. Would you continue, Officer Gunn? A. Mr. Katz states:

"Hi ya—Number is—70—right!"

He then states:

"Pass

"Pass

". . . let me call you back in a few minutes."

And he says:

303 "What—the two pro games—What were—Los Angeles and Saint Louis—right.

"Thank you—I'll call you back."

Q. Now, would you take a look at Government's Exhibit No. 6, please, sir?

Now, with respect to Government's Exhibit No. 6, were any bets placed on that date? A. Yes, sir.

Q. And where according to the transcript? A. According to the transcript, the first call was placed to Boston.

Q. All right. Is there a bet placed to Boston? A. There were two bets placed to Boston.

Q. Would you please read us that part of the conversation? A. Mr. Katz states:

"George Washington plus four for a nickel.

"Pass

"Pass

"Citadel—that's six.

"Bet a nickel.

"The schedule will be smaller.

"Okey doke

"Two plays."

304 Q. Is that the total bets for that day? A. No, sir, that's the total bets on the call to Boston.

Q. Fine. Were there further bets? A. Accord-

ing to the transcript, on the call to Miami Mr. Katz again identified himself as Jaffey. He said:

‘I’ll buy. I have to take two? Give me Tulsa minus seven—for a dime.

“Pass

“Pass

“Give me Western Virginia.

“Pass

“Pass

“Give me William and Mary—No! Give me Citadel for a dime.

“Listen, I’ll tell ya—do you want to give me that Tulsa for another nickel? —Right.

“That’s—Tulsa?”

That’s the end of the bets on that day.

Q. What is the total amount of the bets for that day including Boston and Miami? A. \$1,000 bet on two games in Boston.

Q. Yes.

Mr. Marks: Well, I will move to strike that last portion.

305 The Court: The motion to strike will be denied.

The Witness: On the call to Miami Mr. Katz has \$1500 bet on the Tulsa game. He has a \$1,000 bet on the Citadel game and an unknown bet on Western Virginia.

By Mr. Farber:

Q. So it would be thirty-five hundred plus? A. Yes.

Q. Now, that is all of the transcript that you had the opportunity to study; is that correct, sir? A. Yes, sir.

Q. Now, you took a look at Government’s Exhibit No. 9, did you not, sir? A. Yes, sir.

Q. What is Government’s Exhibit No. 9? Let’s say Government’s Exhibits No. 9, No. 10, No. 11, and let’s leave it at those three exhibits for the moment, 9, 10, and 11. A. They appear to be handicap sheets. Most of them are on collegiate basketball teams. I believe there are some on football in here too.

Q. Can you yourself determine what is the code or what is the procedure that was used by Mr. Katz, or is that something that he— A. I don’t know what technique Mr. Katz has to figure these out.

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Q. From the volume of the records themselves, though, can you determine whether or not it took much time to compile those statistics and figures, Exhibits 9, 10, and 11? That is, if you can tell. A. It would take time to write them. I don't know how much time Mr. Katz would spend to figure these out.

Q. Now, then, I would also like you to take a look, sir, at Government's Exhibit No. 8. Now, sir, could you tell us what is Government's Exhibit No. 8? A. It is a combination line sheet and owe sheet.

Q. What is an owe sheet? A. An owe sheet is a recordation of moneys owed either between a bookmaker and a bettor—and it is one way or the other, owed or to be paid.

Q. Now, would you also take a—what is a line sheet? A. A line sheet is a publication giving the games to be played with boxes to the right in which the betting line can be written in.

Q. Now, would you also take a look, please, sir, at Government's Exhibits 15, 16, and 17? What is Government's Exhibit 15?

307 The witness is looking at Government's Exhibit 15. A. Well, I see "Southern California minus 11" and a "5" after that. This, in my opinion, is a recordation of a wager.

Q. Now, would you take a look at Government's Exhibits 16 and 17? What is Government's Exhibit 16? A. 16 is numerous line sheets with the line written on it. There is also an owe sheet on one of them.

17 contains betting markers and owe sheets.

Q. Now, have you seen Government's 18 prior to this courtroom proceeding? A. Yes, sir, I have.

Q. And are Government's Exhibit 18 for identification merely blowups of Government's Exhibits 16 and 17? A. Yes, they are.

#### **Offer in Evidence**

Mr. Farber: Your Honor, for courtroom purposes I move Government's 18 be admitted into evidence so that the expert can then work from them.

Mr. Marks: For what purpose?

Mr. Farber: For court purposes.

Mr. Marks: Not for prosecution purposes?

The Court: For prosecution purposes to aid the prosecutor.

308 They may be admitted.  
Mr. Farber: Thank you.

(Documents marked Plaintiff's Exhibit 18 were received in evidence.)

The Court: Mr. Farber, is this your last witness?

Mr. Farber: Yes, your Honor, it will be.

The Court: Well, will the defendant have witnesses?

Mr. Marks: Very few, if any.

The Court: We are not going to finish. We can't very well finish this before 5:00 tonight anyway, can we?

Mr. Marks: I wouldn't put myself on the spot and say I could finish his examination.

The Court: I think we might just as well adjourn then until tomorrow afternoon at 1:30.

Mr. Marks: Afternoon, your Honor?

The Court: Yes. All morning is taken up with the argument on these civil rights cases which we have put over until tomorrow.

They claim it will take all morning. I hope they won't.

Mr. Marks: The afternoon is satisfactory to me.

309 The Court: I have other matters that I would rather devote myself to tomorrow afternoon than this or any extension of it, but I guess we had better finish it.

The matter will be continued, then, until 1:30 tomorrow afternoon.

Mr. Farber: Thank you, your Honor.

(Whereupon, at 4:30 o'clock p.m., Wednesday, May 19, 1965, an adjournment was taken until 1:30 o'clock p.m., Thursday, May 20, 1965.)

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**Transcript of Court Trial**

Los Angeles, California, Thursday, May 20, 1965. 1:45 P. M.

The Clerk: U.S.A. v. Katz, further court trial.

Mr. Farber: The Government is ready to proceed, your Honor.

The Court: Very well.

Mr. Marks: May I sit at this table while this witness is on?

The Court: All right.

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JOSEPH A. GUNN,

called as a witness on behalf of the plaintiff, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued)

By Mr. Farber:

Q. Mr. Gunn, have you had an opportunity to correlate the line sheets which are in exhibit with the markers which are in exhibit and then correlate both of those types of documents with the transcripts that are in exhibit? A. Yes, sir; I have.

Q. And from your study of the exhibits, have you come to a conclusion with respect to what activity the defendant, Mr. Katz, was engaged in? A. Yes, sir.

Q. And what was that activity? A. Mr. Katz was placing wagers with a bookmaker for another person for a consideration.

Q. Now, on the board in back of you we have Government's Exhibit 18. If you will note in the left-hand corner there is a little number "Pages 1, 2," et cetera, just so that we can delineate on the record which document we are talking about.

Now, will you take a look at pages 1 and 2 and tell us, page 1 is a reproduction of what? A. It's a reproduction of a betting marker and an owe sheet.

314 Q. Now, is there a correlation between page 1 and page 2? A. Yes, sir; there is.

Q. What is that correlation? Would you point it out, please? A. On the top of page 1 where there is a \$1500 bet on Temple minus  $10\frac{1}{2}$  points. On the top of page 2 the No. 2 team is Temple, the line spread is  $10\frac{1}{2}$  points. To the right of that is circled the numeral 15.

Below Temple is Duquesne and there is a thousand dollar bet on Duquesne minus 7 points.

No. 14 on page 2 is Duquesne. The line is 7 points, and a 10 is circled.



Notre Dame is a thousand dollar bet on Notre Dame minus 1 point.

No. 5 on page 2, Notre Dame, the point spread is 1 point, and there is a 10 to the right of that.

Q. Now, without going into all the detail, would you take a look at the two bottom documents which are now marked as page 3, page 4 and page 5? Again, is there a correlation between page 3 and pages 4 and 5? A. Yes, sir; there is.

Q. And is it the same type of correlation as you 315 have just gone through with respect to pages 1 and 2? A. Yes, sir.

Q. Now, would you tell us how you determined from these documents that Mr. Katz was actually betting for consideration for another? A. Using the documents and also parts of the transcript where Mr. Katz states that he only has one or two dollars of the action, on Temple minus  $10\frac{1}{2}$ , to the left of that is the figure 15 which stands for \$1500 which correlates with the transcript, a \$1500 bet on Temple.

To the left of that is the numeral 10. In my opinion the 10 stands for the player that Mr. Katz is betting for as part of this \$1500 bet.

Mr. Katz would have five hundred, the player would have ten hundred.

Duquesne to the left of that is a thousand dollar bet. The numeral 10. To the left of that is the numeral 8. This would be the player's portion of the bet, \$800. Mr. Katz would have \$200.

Likewise for Notre Dame.

Now, I compared the marker with the line sheet, the final scores. Temple did win. They collected \$1500, which is shown to the right.

Duquesne did win. They collected a thousand dollars, which is shown to the right.

316 Notre Dame lost. To the right of that is minus \$1100 which is what they would have to put up, the vigorish, to win a thousand dollars.

This gives a total of \$2500 won minus \$1100 lost, leaving a total of \$1400 net.

The players' share of the winnings would be \$1400, Mr. Katz' share would be—correction. \$1400 net. The play-

ers' share would be \$920, and Mr. Katz' share would be \$480.

Q. Now, would you look at page 8, please. That is the final page. It is up there in the left-hand corner of the easel.

Have you compared page 8 with transcript of conversation? A. Yes, sir; I have.

Q. And do you find the bets that are recorded on page 8 mentioned in the transcript? A. Yes. Most of it is similar.

Q. Could you be specific, please, sir? A. In the transcript Mr. Katz has bet \$500 on George Washington and he has plus 4 points. No. 6 of the—of the exhibit shows George Washington. The point spread is plus 4.

To the right of that is written a 5 for the \$500. Now there is also a plus 4½ and a 10 circled which would indicate a thousand dollar bet, however, we do not show that in the transcript.

Mr. Katz on the first telephone call under this date also has bet \$500 on the Citadel, that is circled. There is a 5 to the right of that.

On the second telephone call on this date Mr. Katz has bet \$1500 on Tulsa with a minus 7-point spread.

No. 4 on the exhibit is Tulsa. The point spread on that shows 17, which indicates that there is an error in the transcript. There is a 15 circled for the \$1500 bet. In the transcript he is also placing a wager on Western Virginia, however, there is no mention in the transcript of the amount of the wager.

Q. But do we see this West Virginia— A. There is West Virginia on the board, No. 5. It is the team playing George Washington.

That is the correlation between the transcript and the exhibit.

Mr. Farber: Thank you. I have nothing further of this witness, your Honor.

#### Cross Examination

By. Mr. Marks:

Q. Mr. Gunn—Officer Gunn, refreshing my recollection, how long have you been on the Vice Squad? A. I worked

Los Angeles Vice for 20 months and I have been  
318 in Administrative Vice since August of 1963.

Q. Does that deal primarily—your work, has it dealt primarily with bookmaking? A. Yes, sir.

Q. And the experience that you have accumulated, has that come out of the reading of any books or being actually in the field and arresting bookmakers? A. It comes out of receiving formal training at the Vice School; also receiving training from more experienced officers when I first started Vice; also from conversations that I have had with bookmakers, bettors, agents, service operators.

Q. Now, let's talk about this nickel system. What is your definition? A. A nickel system?

Q. Yes. A. It's a method where to bet a nickel would mean \$500, to bet a dime means a thousand dollars.

Also, in a recording on the nickel system the two figures to the right of the decimal point are omitted.

Q. Now, is there any reason why—strike that.

Isn't it a fact that the nickel system of betting is merely a multiple of whatever the bettor chooses to use as a multiple? In other words, a nickel may be \$50, \$500  
319 or 5,000? A. The only term I have ever heard for a nickel is \$500. That's the only expression that I have ever heard of.

Q. If there is another system whereby a nickel would be \$50, you wouldn't know about it? A. I don't know about it, no.

Q. And if a nickel were \$50, then there would be a different analysis as far as you are concerned as to the amounts bet and the amounts earned—or won; is that correct? A. If it were earned, yes.

Q. Or if it were \$5,000 it would be five times more than what you expressed here? A. If it were earned, yes.

Q. Now, what in these figures give you—upon what do you base your expert opinion that the figure 15—let's take page No. 1. I assume that's the upper right-hand corner. The 10 on the left is a thousand? A. Using the same series of numbers I know on this date Mr. Katz has bet \$1500—

Q. How do you know that? A. —on Temple.  
From the transcript.

Q. What portion of the transcript states a bet of  
320 \$1500 on— A. It says a nickel and a dime.

Q. In other words, you are extrapolating that  
when he says a nickel it means \$500? A. That's correct.

Q. And when he says a dime he means a thousand, so,  
therefore, fifteen? A. Yes, sir.

Q. Now, if you did not have the transcript in front of  
you would you be able to make the same interpretation?  
A. Without the transcript I could not say how much is  
wagered, and I also could not say what part of that bet  
is the player's and what part is Mr. Katz'.

Q. Now, what in the transcript or any of the documents  
lead you to believe or form the conclusion that the figures  
10, 8 and 8 are Mr. Katz' or anybody else's portion of  
the wager? A. In the transcript Mr. Katz states that he  
is betting the money for someone else, that he only has a  
small piece of it, so—

Q. Well, in the transcript are you talking about the  
transcript that relates to this bet? A. No. One of the  
other transcripts in which he is referring to a claim, I  
believe.

Q. In other words, you are hypothesizing that because  
in one instance he made a bet for somebody else that  
321 these papers represent his participation in these  
bets? A. That and also from the testimony of one  
of the other agents.

Q. What testimony was that? A. I believe Mr. Dono-  
van—Mr. Frei testified that he overheard through the  
apartment house one of the gentlemen in the room with  
Mr. Katz—I believe the statement was 1440 is what the  
total amount was then. I believe the guy says, "Well, how  
do I stand?" And Mr. Katz said, "1440."

I then came to the one sheet here and I found the figure  
1440, and I also find the figure 320, which I added up here  
(indicating), the total of that day's action, and I found  
the 320 to be the player's share and also the 1440 to be  
the player's share.

Q. You mean that's your handwriting on the right side  
of that sheet? A. No, sir. I added the action up that was  
bet on this day.

Q. I see. A. And they both appear in the same column  
which would indicate that that is the player's column.

Q. Now, in all of these—you testified that in your opinion Mr. Katz was placing wagers for another person  
322 for a consideration. A. Yes, sir.

Q. And in addition to that he was placing wagers for himself; is that correct? A. Well, in the sense of the word, if he has a piece of the bet, the bet is for himself and another person.

Q. Well, what is the consideration that Mr. Katz receives for betting for another person? A. On a thousand dollar bet he is getting \$200 of it.

Q. Unless he is betting \$200 himself? A. That's correct.

Q. Then he is doing it without consideration? A. No. He is getting the consideration because probably without this player Mr. Katz would not be able to call this bookmaker to bet a thousand dollars.

Q. Well, this is—again you are assuming something? A. Well, I am assuming it, yes.

Q. Yes. A. The consideration is that Mr. Katz is able to bet higher amounts of money.

Q. All right. Now, you also stated that it was your opinion that Mr. Katz was betting with a bookmaker because of this vigorish or percentage that the bookmaker takes. A. That and the line.

Q. And what? A. And the extent of the line that he has received.

323 Q. Well, you don't know what the line is that he has received, do you? A. I know in the transcript he has received numerous lines for numerous games on one day.

Q. Well, that's your assumption. You didn't hear the other side of the conversation, did you? A. No. But I can hear Mr. Katz reading the line back and making the statement, "Give me the line. I will read it to you back."

Q. In one transcript? A. Yes.

Q. In one day's conversation? A. Yes.

Q. When Mr. Katz says, "Pass" on a transcript, what does that mean? A. Again it is an assumption because I don't hear the other side, but I would imagine that the person on the other side is reading the line down and Mr. Katz is saying, "Pass, pass." He is not interested in that game or he is not going to bet that game.

Q. Now, by the way, have you ever testified in federal courts under an indictment brought under Section 1084 of Title 18? A. This is my first appearance in federal court, sir.

Q. Now, from the reading of the transcript, my  
324 understanding is that it is your opinion that somebody on the other end of the line was telling Mr. Katz about the betting line. A. That's correct.

Q. And on occasion Mr. Katz would place a bet on a particular game? A. Yes, sir.

Q. Now, that's the majority of the transcripts; is that correct? A. I wouldn't say it is the majority of the transcripts. There is quite a bit of conversation on the transcripts.

Q. Well, look at the February 23rd transcript. I am sorry. The February 19th transcript.

Mr. Farber: That would be Exhibit 1, counsel.

Mr. Marks: Exhibit 1.

Q. That's six pages? A. Yes, sir.

Q. And would you agree that the majority of that transcript discusses a bet or a wager which had already been made? A. Yes, sir.

Q. It was not placed on the 19th? A. No, sir.

Q. Can you tell from that transcript or reading at  
325 what time that bet or wager had been placed? A. Only that it was in the past.

Q. All right. And was there any information contained in this transcript about that bet or wager other than the fact that there had been a bet or wager and some disagreement on the bet? A. No. As to what type of bet or what was bet I can't tell.

Q. Now, aside from his placing a bet could you find anything in any of the transcripts in which Mr. Katz told the other person at the end of the line, gave him any betting information other than the placing of the bet? A. Well, there are occasions when he says, "I will read the line back to you," and repeats it. And there is also—

Q. Well, that's a clarification? A. Yes. There is also on February 19th after several phone calls he again calls Boston and tells the person on the other line the credit arrangements that have been made between him and someone named Elliott.

Q. Well, that is a statement, if I am reading correct from page 5— A. Yes.

Q. —“Hello? Listen—I just spoke to Elliott— He gave me, an extension oh good he will give me credit for 326 eleven and I can owe twenty—” A. Yes.

Q. This is also information in your expert opinion regarding a past wager? A. Past wager.

Q. Something that’s already been done? A. Well, also—it will also be information as to the credit arrangements for the future.

Q. Well, what credit arrangements does that give for the future? A. Well, not hearing the other end of the transcript I’d have to be making an assumption.

Q. Well, when he said, “He gave me”—

Mr. Farber: Excuse me, counsel. Your Honor, may the witness be permitted to finish his answer?

The Court: I assumed he finished.

Mr. Farber: Oh.

The Court: Did you finish your answer?

The Witness: Well—

Mr. Farber: I am sorry.

By Mr. Marks:

Q. When there is a statement, “He gave me, an extension,” does that indicate to you in your expert opinion that there was some money owed and an extension of 327 that money owed was given? A. That part of it, yes.

Q. All right. And you don’t tie that into the rest of the statement, “oh good he will give me credit for eleven and I can owe twenty”? A. The part “and I can owe twenty” to me means that this is the credit arrangement for the future now starting with this moment.

Q. Does it have anything to do with information about a game or a particular game? A. It has to do with information about wagering.

Q. It has to do with information about his personal credit line? A. That’s right; which is a necessary part of the relationship with a bookmaker.

Q. If it is a bookmaker? A. I feel confident it is.

Q. Now, you, I believe, stated that the reason that it was a bookmaker was because the Duquesne game they

lost and they had to pay \$1100? A. That was an error on my part yesterday, counselor. I meant the Notre Dame game.

Q. Because in fact Duquesne won? A. Duquesne won, yes.

Q. Now, what does a dollar mean? A. A dollar?

328 Q. Yes. A. One hundred dollars.

Q. In your opinion? A. In my opinion.

Q. It could mean also a dollar?

Mr. Farber: Your Honor, that's quarreling with the witness.

Mr. Marks: Let me ask you this—

The Court: Overruled.

The Witness: I would say then in this particular case, no, it does not mean a dollar.

By Mr. Marks:

Q. Well, the only reason you would say that is because you have reached the conclusion that Mr. Katz was playing the nickel system? A. That's correct.

Q. The nickel system where a nickel is \$500? A. Yes, sir.

Q. Therefore, in that system of shorthand as you know it a nickel means \$500 but a dollar is \$100? A. That's right.

Q. So there would be five dollars to a nickel? A. I have never heard it put that way, counselor.

329 Q. Well, that's the way you would calculated it, wouldn't you? A. No. I am only calculating on the particular conversation that Mr. Katz had in which he states that he only have one or two dollars of the action. In that particular sentence it is my opinion that he means one hundred or two hundred dollars worth of the action.

Q. Now, these particular—I don't know how to describe—what do you call the blown-up page 2? A. Part of the line sheet.

Q. Where do these line sheets appear? A. Where do they appear?

Q. Yes. A. You mean locally?

Q. Yes. A. I understand this particular line sheet is made by Jerry Kilgore, Santa Monica Boulevard in West Los Angeles.



Q. It is something that's printed up? A. Yes; it's a publication.

Q. That's what I am talking about. Is it a magazine or a daily sheet? A. It's an information publication on sporting events.

Q. And you can buy it any place? A. Not every place, no.

Q. Well, it's for sale openly on newsstands if they  
330 care to sell it? A. Yes, sir.

Q. Does that go for every—I am sorry. 1, 2, 3—3, 5 and 6, if I have got to counting right— A. 3 is this, sir (indicating). It goes for the four sheets to the left of the blackboard.

Q. All right.

Mr. Farber: Which, for the record, are pages 4, 5 and 8, counsel?

Mr. Marks: Well, I don't understand the page reference, your Honor.

Mr. Farber: On the bottom left-hand corner there is a page reference just so that in Exhibit 18 we'll know which page we are talking about when the record is read.

Mr. Marks: Oh.

Q. And the written notations there are, as you interpret, some sort of handwritten notations—I mean, shorthand notations? A. Shorthand? I wouldn't say they are shorthand.

Q. Well, the 10 means a thousand. That's sort of a shorthand notation, isn't it? A. Not in the system that Mr. Katz uses. It is a common way of writing it.

Q. Well, it's a shorthand notation in the ordinary— A. It's abbreviated.

Q. Abbreviated shorthand using a colloquial ex-  
331 pression. And the other writings are—contain what, the games that are—the results of the games? A. To the right of the 15, you mean?

Q. Yes. A. I am not quite sure I know—

Q. Well, in general, the writing on there—on the sheet— A. In general, it's an owe sheet.

Q. Which sheet are we talking about now? A. Are you talking about these two (indicating)?

Q. Well, let's talk about those two, then. A. All right.

Q. Those are what you call owe sheets? A. No. One of

them is a recordation of a bet and an owe sheet, and the other is a betting marker and an owe sheet.

Q. Which is the recordation of the bet and the owe sheet?

A. This is the recordation of a bet and an owe sheet, page 3.

Q. What bet is that? A. There are four bets: Maryland, Oklahoma City, Oklahoma State and Villanova.

332 Q. And do those bets—do you know who made those bets? A. I only know that the paper was found in the possession of Mr. Katz. I don't know who actually placed the bets.

Q. So in bookmaking parlance it's called an owe sheet when it records what somebody owes is owed; is that correct? A. That's correct. That is not what I have just related there.

Q. No. I am talking about below that. A. Below that, yes.

Q. In other words, it's like a business ledger? A. That's correct.

Q. Now, have you ever seen a business ledger? A. Yes.

Q. Would you refer to a credit and debit account or accountability and accounts receivable—accounts receivable and accounts payable as owe sheets? A. No.

Mr. Farber: Irrelevant. Pardon me. Irrelevant and immaterial, your Honor.

The Court: Overruled.

Mr. Farber: Thank you.

The Witness: No, sir.

By Mr. Marks:

333 Q. So it is only when you are dealing in the area of betting and wagering and bookmaking that you call these an owe sheet? A. Well, let me put it this way, counselor. Whenever I have figures like this on the same piece of paper as the betting marker, I call it an owe sheet.

Q. What is a betting marker? A. A betting marker is a recordation of the wager.

Q. Regardless of who made the wager? A. That is correct. Now, this piece of paper here—

Q. A notation that a bet was made somewhere at some time? A. Well, this particular piece of paper I don't call a betting marker, I call it a recordation of a wager.

Q. How about the one on top? A. The one on top I call a betting marker.

Q. Why? What is the difference? A. Well, the difference is that I have a transcript which verifies those bets, therefore, the identification of the bets need not appear on the piece of paper.

On the bottom piece of paper I don't have any transcript which would verify that these bets were made, there was no identification on them, so I would say it is merely a recordation of a wager.

Q. Then the difference between a betting marker and a recordation of a wager is that you know who placed  
334 the bet? A. Well, it's not that you know but there is some indication of an identification of a bettor.

Q. And the identification here is the fact that it was found with Mr. Katz and you heard the transcript? A. Not that it was found with Mr. Katz but that I read the transcript and the transcript correlates with the bets.

Q. All right.

Excuse me. May I withdraw that, your Honor?

The Court: Withdraw what?

Mr. Marks: The "All right."

The Court: I didn't even hear it. It may be expunged from the record.

By Mr. Marks:

Q. Now, Mr. Katz—you have reviewed all of the transcripts and you have been sitting here during the course of this trial; is that correct? A. Yes, sir.

Q. And you have—

The Court: I think the record should show that his name is not Mr. Katz.

Mr. Marks: No. I meant now comma Mr.— I am speaking of Mr. Katz.

The Witness: Yes.

335 By Mr. Marks:

Q. You heard the testimony? A. Yes, sir.

Q. Relating to Mr. Katz? A. Yes, sir.

Q. And you heard the testimony that Mr. Katz made that he was a handicapper? A. Yes, sir.

Q. Well, now, is there a distinction in your mind between a handicapper and a bettor? A. Well, most handicappers are bettors.

Q. Is there a distinction in your mind between a handicapper and a bettor? A. One could be both at the same time. I don't know what you mean by a distinction between.

Q. A bettor, unless he just flips a coin as to what person is—I want to see the yellow sheets.

The Clerk: Oh. I am sorry.

Mr. Farber: Counsel, if it will assist you or aid you at all we will be glad to stipulate that Mr. Katz was a handicapper.

By Mr. Marks:

Q. You will agree with me that a person could be a handicapper and not a bettor? A. Yes, sir.

336 Q. At the same time a person who bets, unless he bets by just flipping a coin or sticking a pin into the game he that wants, is always a handicapper in some sense? A. Yes, sir.

Q. Now, have you ever had a chance in your experience as an expert to review sheets of paper made up by a professional handicapper? A. Yes, sir.

Q. I will ask you to look at Exhibits 10 and 11—9, 10 and 11 and tell me in your professional opinion what those exhibits are? A. They are handicap sheets.

Q. What is a handicap sheet? A. Mr. Katz is rating teams as to their performance by some kind of code.

Q. Now, you can't read the code? A. No, sir.

Q. Can you estimate how many sheets of paper there are in those three exhibits? A. Several hundred, I imagine.

Q. On any of those several hundred sheets of paper do you find any evidence of a recordation of a bet or a wager?

A. The ones that I went through I found none.

Q. Now, you are familiar with horse racing? A. Yes, sir.

337 Q. You are familiar with these (indicating)? A. Line—

Q. What do you call these, line sheets? A. Yes, sir.

Q. Now, the line is the opening odds or the odds on a particular team or teams; is that correct? A. It's the betting odds.

Q. The chance that is given by professionals as to whether or not a team will win or lose? A. That's correct.

Q. Is that about it? A. It's a fair statement.

Q. And would the same thing apply to horse racing, there is an opening line on horses, newspapers print them?

A. It is slightly different, counselor.

Q. Well, if I open up tonight's paper—today's paper I will see a handicapper's—somebody handicapping the horses for the next day's race? A. True. But this horse racing—horses are handicapped by weight. The odds are determined by the betting at the track.

Q. Well, there are odds which change after the betting commences? A. That's right.

Q. But there is an opening line, isn't there?

338 A. In someone's opinion, yes.

Q. As a matter of fact, the newspapers hire somebody to handicap these horses and make the opening line for them? A. Yes, sir.

Q. It is not standard, is it? One newspaper's handicapper may rate a horse differently? A. Yes, sir.

Q. Is that correct? A. That's correct.

Q. And the same thing applies for lines and handicapping on the other sporting events, there is a professional handicapper? A. Not locally.

Q. Well, are there such things as professional handicappers who get paid because of their special skill in being able to select teams that are going to win— A. Yes, sir.

Q. —football games? A. Football and basketball, yes. But locally baseball, no, as far as—I take it we are still on the discussion as appearing in the newspapers?

Q. General sporting events. A. Yes.

Q. All right. So from these papers alone, the yellow sheets, Exhibits 9, 10 and 11, can you tell anything  
339 more than that Mr. Katz is a professional handicapper? A. From these papers alone (indicating),  
no.

Q. Would you in your professional opinion if you saw only those Exhibits 9, 10 and 11 be able to state in your professional opinion that Mr. Katz was a professional handicapper?

Mr. Farber: Object to the question in that it assumes a fact not in evidence that this witness has seen other papers.

The Court: Overruled.

Mr. Farber: Thank you, your Honor.

The Witness: What was I—I didn't hear the last word.

By Mr. Marks:

Q. That he was a professional handicapper. A. That would be the only thing that I could reach a decision on just from reviewing these papers (indicating).

Q. From reviewing those three papers? A. Yes.

Q. And the other evidence you have shows that although he may be also a bettor, as far as you can determine, he is also a professional handicapper? A. From those sheets (indicating)?

Q. Yes. From the sheets and from the transcripts.

A. I can tell he is a handicapper from this  
340 (indicating).

Q. All right. A. Now, I don't know if I can tell if he is a professional handicapper from those (indicating) alone.

Q. Now, being a professional handicapper, nevertheless you have not found any information on any of the exhibits or the transcripts that Mr. Katz gave any professional handicapper advice to any person on the phone; in other words, the line, the odds or anything except place a bet; is that correct? A. I don't believe I understand the question. I am sorry.

Q. Well, assume that Mr. Katz was working for a bookmaker. A. Yes.

Q. Bookmakers have to make their own lines, don't they? A. No, sir.

Q. Well, they have to get their line from somebody in order to give or take the odds, don't they? A. They buy a line and make adjustments.

Q. Now, there is nothing on the transcripts that you have that indicate that Mr. Katz was hired by any bookmakers—they weren't buying any line from Mr. Katz? A. None that I could see.

341 Q. All right. To get it perfectly clear, Mr. Katz in these transcripts in your opinion discussed a past wager; is that correct? A. On one occasion, yes.

Q. On the other occasions he was listening to the line being given to him and made some bets? A. Yes.

Q. Is that correct? A. Yes.

Q. And in one other occasion he read the line back as a verification of what he had already received? A. Yes, sir.

Q. That is about the extent of these conversations, have I fairly put them? A. Outside of the mention that the bet is not here, he is betting somebody else's money.

Q. Well, that was a past bet again, wasn't it? A. No. He is referring to his betting as it is now.

Q. Would you show me that portion? A. Yes, sir. Bottom of page 2 on the first conversation on February 19th he states, "This isn't my business—you know my play—I take a piece at a dollar or two—" To me this does not refer only to the past, it refers to the present and the future.

Q. But he was talking about that past debt?  
342 A. No. I believe in this phrase of the conversation he is talking about his current business.

Q. All right. We won't argue about interpretation.

But you will agree that he was, in the course of his conversation at page 2, talking about setting right—what would you call it? adjustment of a bet which had been made? A. That was the general trend of the conversation, yes.

Q. Right. And somewhere along the line he offered this explanation apparently that "You know my business is to take a dollar"; is that correct? A. That's correct.

Q. So would you agree that this was an explanation of why he was even interfering with this bet even— A. I'd say it's an explanation of why he was concerned about this bet.

Q. All right. Excuse me, your Honor. May I have a moment?

Which exhibit is this from, counsel?

Mr. Farber: What is that?

The Court: 19.

The Clerk: 18.

Mr. Marks: May I see 18?

Mr. Farber: Excuse me. Are you asking him  
343 what exhibit was used to reproduce Exhibit 18?

Mr. Marks: Yes. I just want the exhibit pages from the reproduction.

Mr. Farber: That would be 17 and 16, I believe.

Mr. Marks: I am getting fouled up with the exhibits. I guess all of this is mine.

Q. Now, I will show you Exhibits 16 and 17. Let's take for identification this blown-up document that says week ending Sunday, February— A. Yes.

Q. —it's from Exhibit 17. On Exhibit 17, which doesn't show on the blow-up, some of the notations are in red and some of the notations are in pencil. What is your explanation for that? A. Almost all the notations in red are the scores of the games.

Q. On Exhibit 16 there are notations in red. Now, does Exhibit 16 compare with anything else? A. Well, Exhibit 16 are these two right here (indicating). I don't know.

Q. In your professional opinion can you place any significance on something being written in red pencil or in plain pencil? A. No, sir.

344 Q. You don't know what it means? A. I don't know what it means. I don't know what the significance of using red ink is.

Q. That's what I mean, you don't know why— A. No, I don't know why he uses red ink.

Q. In your professional opinion or experience have you ever been acquainted with the fact that a handicapper might use red ink or red pencil rather than black ink or black pencil? A. No, sir. I don't know.

Q. You never heard of it? A. No, sir.

Mr. Marks: Excuse me. I believe that's all on cross.

#### Redirect Examination

By Mr. Farber:

Q. Now, Mr. Gunn, just a few questions. You were asked by defense counsel to direct your attention solely to Exhibits 9, 10 and 11 which were handicap sheets. But, now, considering all of the exhibits in front of you, is Mr. Katz' business merely that of a handicapper in your opinion?

Mr. Marks: Your Honor, I will object to that question as being beyond the scope of this man's expertise.

The Court: Well, he has already testified to it. I think he may testify to it. But he has also done so on  
345 direct examination.

Mr. Farber: Fine, your Honor. If it's been—if the court feels it's been covered, then I don't wish to ask the question again.



Q. Now, directing your attention to Exhibit 4 which is a transcript of conversation on February 23rd, would you look through page 2 of that exhibit?

Now, using page 2, do you find again any number of references to the fact that Mr. Katz is betting for another person? A. Yes, sir.

Q. Now, would you read those references? A. In the first paragraph on page 2 Mr. Katz states:

“Well, Mac it is not my money, you know that?”

Q. And then would you read the next sentence, too? A. In the second paragraph—

Mr. Marks: I am sorry. What page is that on?

Mr. Farber: Page 2 of Exhibit 4.

The Witness: Page 2.

Mr. Marks: Page 2.

By Mr. Farber:

Q. The next sentence, if you would, please. A. In the second paragraph Mr. Katz states:

“I got a guy playing more money Criff—he takes a nickel in the morning and at 12 o'clock he takes a dime—”

Q. Now, would you go back to the first paragraph you were reading, sir? A. Yes, sir.

Q. And after the sentence that you previously read in the first paragraph, that is, “Well, Mac it is not my money, you know that?” Would you read the next sentence?

A. “So, I want to tell you—that he said he will mail it Air Mail Special Delivery with return receipt requested.”

Q. Thank you. So, then, besides the 21st there are additional comments pertaining to betting for others? A. Yes, sir.

Mr. Farber: I have nothing further. May this witness be excused, your Honor?

Is there further recross?

The Court: We don't know yet. May this witness be excused?

Mr. Marks: I have no objection.

The Court: You may step down.

Mr. Farber: Your Honor, I want to be sure I have my exhibits in evidence. Do we have Exhibits 1 through—

The Clerk: 1 through 18 are in evidence.

Mr. Farber: 19 and 21, I think it is.

The Clerk: 19—that is right. 20 is omitted.

346a Mr. Farber: Your Honor, at this time the Government rests.

The Court: We will take our afternoon recess at this time.

Mr. Marks: I just think the clerk better check his records because there is one exhibit that he missed which is not in evidence. I hate to put the Government at a disadvantage.

The Court: Yes. I am glad you are looking out for the Government's interests.

Mr. Marks: That would be Exhibit 7.

The Clerk: Exhibit 7 is in evidence. 7-A through 7-K.

Mr. Marks: These were the business records of the telephone company.

The Clerk: Witness Cunningham.

Mr. Marks: The Government asked to have them introduced and the Grand Jury came in. I wanted to make an objection, and when we returned from the Grand Jury—

Mr. Farber: If they are not in—

The Clerk: They are in and I show them in my minutes of yesterday.

The Court: Well, they will have to—do you wish to make an objection?

Mr. Marks: Yes, your Honor.

347 The Court: Very well. You may make your objection now.

Mr. Marks: The objection to the records being introduced in evidence is it is apparent from the testimony of Mrs. Cunningham that the facts of the calls themselves, they are not the best evidence of the facts of the calls themselves because the telephone operations are the ones who make the calls and place notations on the business records of the telephone company. Therefore, the statement that the calls were made by Mrs. Cunningham or by the telephone records are in fact hearsay.

The Court: Well, the records are introduced as business records. It is your contention that there are business records which are better evidence, or that the testimony of the operators who placed the calls would be the best evidence.

Mr. Marks: That's my contention, your Honor.

The Court: Well, the objection will be overruled. These have been introduced as business records and they, as such, I think, are proper.

(The exhibits marked Plaintiff's Exhibits 7-A through 7-K were received in evidence.)

Mr. Marks: Does the Government rest?

The Court: They do.

**Government Rests**

Mr. Farber: The Government rests.

348 The Court: Do you wish to have a recess at this time?

Mr. Marks: Fine.

The Court: We will take our afternoon recess at this time.

(Recess taken.)

**Defendant's Motion To Strike Exhibits 1 Through 6  
and Denial Thereof**

Mr. Marks: Your Honor, may I make a motion?

The Court: Yes.

Mr. Marks: The motion is to strike from the record Exhibits 1 through 7—I am sorry—1 through 6 being the transcripts and all testimony relating to conversations had between Mr. Katz and any agent of the FBI on the ground that prior to the admission of these statements or the transcriptions there was no corpus delicti of the offense established.

The Court: That prior to the statements—you mean to the evidence—prior to the introduction of the evidence there wasn't any proof—

Mr. Marks: Looking at it now.

The Court: There has been no establishment of the corpus delicti?

Mr. Marks: And as of the time these statements were made or introduced in evidence, even assuming that the future evidence related in some way to them, there was still and still is no corpus delicti sufficient to admit  
349 these statements in evidence.

The Court: Well, I take it if the evidence at this time establishes that there is a corpus delicti by proof other

than the mere admissions, if they be such, of the defendant, that nevertheless that is sufficient. The difficulty here is that some of the statements made by the defendant himself are the very acts—or, at least acts themselves which are evidence of the corpus delicti.

Mr. Marks: May I be heard on that, your Honor?

The Court: Yes.

Mr. Marks: My understanding of the corpus delicti of this statute as I read it and as set forth in the Government's trial memorandum is that you have to have the following three elements:

1. A person engaged in the business of betting or wagering;
2. A transmission of wagering or betting information;
3. Over interstate lines.

No. 4 which may or may not be an element of the corpus delicti, and I am not certain about that, is whether or not the person transmitting the call was calling from a state in which that betting was legal to another state where that betting was legal, or assuming the opposite, that it wasn't legal in the state from which he was calling.

350 I don't know whether that's a question of the corpus delicti or a question of evidence. But it is something for the moment that is not a part of the corpus delicti.

The first three elements, I submit, are not satisfied; that the first element, that is the person is in the business of betting or wagering is not satisfied by evidence of the fact that he placed a wager or a series of wagers, and that he placed them over interstate channels of communications. And no where do I find in any of the testimony here any evidence that this person, the defendant, was in the business of betting or wagering.

There is no such evidence that that was his business. On that basis—

The Court: Of course, that's a conclusion, a legal conclusion which the court is required to make, I take it, from the evidence if there be evidence upon which such a conclusion could be based. We have a lot of documentary evidence, irrespective of who prepared it or where it came from, which seems to me to appear to be, at least for the purposes of a prima facie case, documents and paraphernalia of one so engaged.