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IN THE
Supreme Court of Virginia
AT RICHMOND

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JAN 31 1984

CARROLL EUGENE TURNER, JR.

Appellant,

v.

COMMONWEALTH OF VIRGINIA

Appellee.

JOINT APPENDIX

J. Murrell Daniel, Esquire
1112 First and Merchants
National Bank Building
Lynchburg, Virginia 24504

Counsel for Appellant

William G. Petty, Esquire
Commonwealth Attorney for
City of Lynchburg
1001 F & M National Bank
Building
Lynchburg, Virginia 24504

Counsel for Appellee

Hon. Gerald L. Baliles
Attorney General of
Virginia
Supreme Court Building
Richmond, Virginia 23219

Counsel for Appellee

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Commonwealth of Virginia— In the Circuit Court of the City of Lynchburg.

December 7, 1981

The Grand Jury charges that:

From March 27, 1981 thru Sept. 4, 1981 in the City of Lynchburg, Virginia CARROLL E. TURNER unlawfully and feloniously did conduct, finance, manage, supervise, direct or own all or part of an illegal gambling enterprise, activity or operation, in violation of Virginia Code §§18.2-325 and 18.2-328, against the peace and dignity of the Commonwealth.

A True Bill.


Foreman

THIS INDICTMENT found at theDecember.....Term, 1981., of the
Circuit Court of Lynchburg, on the evidence ofW. H. Reynolds.....
.....
.....
witnesses sworn and sent to the Jury by the Court.

COMMONWEALTH

v. } INDICTMENT FOR OPERATE
AN ILLEGAL GAMBLING
ENTERPRISE

CARROLL E. TURNER

110621

WITNESSES:

- 2
- ✓ 1. W. H. Reynolds ✓
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- 4.
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- 9.
- 10.
- 11.
- 12.

The foregoing witnesses sworn in Court to
give evidence before the grand jury.

TESTE:

Juanita E. Shields
Clk.

We the jury find the Defendant

INSTRUCTION E

The Court instructs the jury that illegal gambling is described by law as the making, placing or receipt of any bet or wager in this state of money or other thing of value, made in exchange for a chance to win a prize, stake or other consideration or thing of value, depending upon the result of any game, contest or any other event, the outcome of which is uncertain or a matter of chance, whether such game, contest or event occurs or is to occur inside or outside of the limits of this state.

The laws of Virginia further provide that any person who illegally gambles shall be guilty of a Class 3 Misdemeanor and that if an association or pool of persons illegally gamble, each person therein shall be guilty of illegal gambling.

The punishment for a Class 3 Misdemeanor is the Commonwealth of Virginia is by a fine not to exceed \$500.00.

Refused
J. S. J. Jr.
Judge

INSTRUCTION 'I'

The Court instructs the jury that even if you believe from the evidence, beyond a reasonable doubt, that the defendant, Carroll Turner, made, placed or received any bet or wager in the state of money or other thing of value, in exchange for a chance to win a prize, stake, or other consideration or thing of value, depending upon the result of any game, contest or any other event, the outcome of which is uncertain or a matter of chance, but you have a reasonable doubt as to whether such act consisted of the operation or conduct of an illegal gambling enterprise, activity or operation, then you will find the defendant not guilty of the felony as charged in the indictment, but only guilty of a misdemeanor, the punishment for which shall be by a fine of not more than \$500.00.

Refused
F.S.D.
Judge

INSTRUCTION H

The Court instructs the jury that before you may find the accused guilty of operating a gambling interprise, you must believe, from the evidence, beyond a reasonable doubt, that the defendant was not only guilty of illegal gambling as defined in another instruction of the Court but further that such violation consisted in the conduct, financing, management, direction or ownership, in whole or in part, of an illegal gambling interprise, activity or operation.

Refused
D. S. P. P.
Judge

INSTRUCTION. G

The Court instructs the jury that if from the evidence, or lack of evidence, you have a reasonable doubt as to whether the accused is guilty of illegal gambling or operating an illegal gambling enterprise, but do believe, from the evidence, beyond a reasonable doubt that he is guilty of one of said offenses, then it is your duty to adopt an interpretation of the evidence most valuable to the accused and acquit him of the lesser included charge of the illegal gambling only.

Refused
J. S. A. J.
Judge

INSTRUCTION F

The Court instructs the jury that if you believe from the evidence beyond a reasonable doubt that the defendant was guilty of illegal gambling, but you have a reasonable doubt as to whether such act consisted in the conduct, financing, management, direction or ownership, in whole or in part or an illegal gambling enterprise, activity or operation, then you shall find the defendant not guilty of the felony as charged in the indictment, but only guilty of a misdemeanor and fix his punishment by a fine of not more than \$500.00.

~~Heard~~
Refused
J. S. P. N.
Ferry

Commonwealth

vs.

Carroll E. Turner

We the jury, find the defendant guilty of conducting an illegal
gambling operation

as charged in the indictment and fix his punishment at _____

Foreman.

We the Jury, find the defendant guilty of conducting an illegal
gambling operation which had a gross income of at least \$2,000.00 in a single day
as charged in the indictment and fix his punishment at CONFINEMENT IN THE
PENITENTIARY FOR ONE YEAR AND A FINE OF \$15,000.

Elaine P. Kozl

Foreman.

We the jury, find the defendant not guilty as charged in the
indictment.

Foreman.

Virginia: At Lynchburg Circuit Court, March 23, 1982

Present, the Honorable ~~Norman K. Moon, Judge~~
Commonwealth

J. Samuel Johnston, Jr., Judge

vs. Felony. operate an illegal gambling enterprise
Carroll E. Turner, defendant

The Commonwealth's attorney, with the consent of the court, says
that he will not further prosecute the accused upon the charge of
operate an illegal gambling
enterprise . It is therefore considered by the
court that the accused be discharged from custody on the charge of
operate an illegal gambling enterprise

A Copy Teste:

_____, Clerk.

Cr. O. B.14 Page 137

Virginia: At Lynchburg Circuit Court, March 23, 1982

Present, the Honorable J. Samuel Johnston, Jr., Judge.

Commonwealth

vs. Felony. conducting an illegal gambling operation

Carroll E. Turner, defendant Born 12/8/41

This day came the Commonwealth's Attorney and Carroll E. Turner, who stands indicted for a felony, to-wit: conducting an illegal gambling operation as charged in the indictment, appeared according to the condition of his recognizance and came also J. Murrell Daniel, his attorney heretofore employed.

Whereupon the accused was arraigned and after private consultation with his said attorney, pleaded not guilty to the Indictment, which plea was tendered by the accused in person, who requested trial by jury.

The Court then impanelled twenty qualified jurors, free from exception for the trial of the defendant, in the manner provided by law. Whereupon the Commonwealth's Attorney and the attorney for the defendant each alternately exercised their rights to strike the names of four veniremen from the panel, as provided by law, and the remaining twelve jurors, constituting the jury for the trial of the defendant, were duly sworn.

Thereupon the defendant by counsel made a motion for exculpatory evidence for reasons stated to the record, which motion was overruled and exception was noted.

The defendant by counsel then withdrew his motion to suppress which was previously filed.

After opening statements, the court and jury heard the evidence presented by the Commonwealth. At the conclusion of the Commonwealth's evidence, the attorney for the defendant moved the Court to strike the

Commonwealth's evidence on grounds stated to the record, which motion was overruled and exception was noted.

Thereupon the defendant presented no evidence.

The Court and jury having heard the evidence and the instructions of the court preceded to hear the closing arguments. Whereupon during the Commonwealth's closing argument, the defendant by counsel made a motion for a mistrial, which motion was overruled and exception was noted.

After hearing the closing arguments, the jurors were sent to the jury room to consider their verdict. They subsequently returned their verdict in open court, in the following words: "We the Jury, find the defendant guilty of conducting an illegal gambling operation which had a gross income of at least \$2,000.00 in a single day as charged in the indictment and fix his punishment at confinement in the penitentiary for one year and a fine of \$15,000. Elaine P. North, Foreman."

The attorney for the defendant then moved the Court to set aside the verdict, for reasons stated to the record, which motion the Court overruled.

On motion of the defendant by counsel, the Court before imposing sentence, doth direct the Probation Officer of this Court to thoroughly investigate and report to the Court as provided by law, to which time this case is continued.

And the defendant is allowed to remain on bond.

A Copy, Teste:

_____, Clerk.

87

Virginia: At Lynchburg Circuit Court, October 5, 1982

Present, the Honorable ~~Norman K. McCombs, Judge~~ J. Samuel Johnston, Jr., Judge.
Commonwealth

vs. Felony. Conducting an illegal gambling operation which had a gross income of at least \$2,000.00 in a single day
Carroll E. Turner, defendant. (Born 5/9/41)
This day came again the Commonwealth's attorney, and Carroll E. Turner, who stands convicted for a felony, to-wit: conducting an illegal gambling operation which had a gross income of at least \$2,000.00 in a single day again appeared in his own proper person, according to his bond and came also J. Murrell Daniel his attorney previously employed.

The defendant by counsel, having previously filed two motions to set aside the verdict came on this day to be heard and the Court, having heard the evidence and argument of counsel doth overrule the motions to set aside the verdict.

And the Probation Officer of this Court, to whom this case has been previously referred for investigation, appeared in open court with a written report, which report he presented to the Court in open Court in the presence of the defendant who was fully advised of the contents of the report and a copy of said report was also delivered to counsel for accused.

Thereupon the defendant and his counsel were given the right to cross-examine the Probation Officer as to any matter contained in the said report and to present any additional facts bearing upon the matter as they desired to present. The report of the Probation Officer is hereby filed as a part of the record in this case.

Whereupon the Court taking into consideration all of the evidence in the case, the report of the Probation Officer, the matters brought out on cross-examination of the Probation Officer and such additional facts as were presented by the defendant, and it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this Court that the defendant is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of one years, and pay a fine of \$15,000.00 and that he pay the costs of this prosecution.

And it is further ordered that as soon as possible after the entry of this order the defendant be removed and safely conveyed according to law from the jail of this Court to the said penitentiary, therein to be kept, confined and treated in the manner provided by law.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant.

The Court orders that the prisoner be allowed ~~xxxxxxxxxxxx~~ days credit for the time spent in jail awaiting trial.

After pronouncing sentence, the Court advised the defendant of his right to petition for an appeal to the Supreme Court of Virginia.

Counsel for the defendant advised the Court that the defendant desires to appeal the judgment rendered, and accordingly the Court suspends execution of the sentence for a period of sixty days and such additional time, as may be necessary, until the said appeal is acted upon.

The Court doth further order that a transcript of this case be prepared and made a part of the record.

And the defendant is allowed to remain on bond pending an appeal.

A Copy, Teste:

_____, Clerk.

Crim.O.B. 15, page 92

1 co. SCH
Pen

ASSIGNMENTS OF ERROR

1. The court erred by refusing to compel the Commonwealth to disclose the names of unidentified informants who had provided probable cause to search, in that both informants could provide exculpatory information and at least one of them had actively participated in the same criminal transaction for which the appellant had been indicted.
2. The court erred by holding that the appellant could be convicted of "operating" an illegal gambling enterprise by merely participating in the offense.
3. The court erred by refusing the appellant's instruction that would have permitted the jury to find the appellant guilty of the lesser charge of illegal gambling.
4. The court erred by refusing to instruct the jury regarding the appellant's theory of the case.
5. The court erred in admitting evidence seized due to a break in the chain of custody.

SEARCH WARRANT

☒ To any policeman of a county, city or town:

☐ To

You are hereby commanded in the name of the Commonwealth to forthwith search either in day or night

Carroll Eugene Turner, Jr., black male, 45, 9' 11", 170 lbs., DOB 05-09-41

DESCRIPTION OF PRISONER, OR THING TO BE SEARCHED

..... for the following property and/or objects:

Numbers lottery tickets, adding machines and tapes, tally sheets, books and records

LIST PROPERTY AND/OR OBJECTS SOUGHT IN SEARCH

used in a numbers operation, rice paper, flash paper, telephone bills, money and

other paraphernalia made, provided or procured for the drawing of a lottery.

You are further commanded to seize said property and/or objects if they be found and to produce before the circuit Court all property and/or objects seized together with the person in whose possession the same are found.

This search warrant is issued in relation to an offense substantially described as follows:

18.2-328, Code of Virginia - Conducting an Illegal Gambling Operation

I, the undersigned, have found probable cause to believe that the property constitutes evidence of the crime identified therein or tends to show that the person(s) named or described herein has committed or is committing a crime, and further that the search should be made, based on the statements in the attached affidavit sworn to by

..... *Inv. C. E. Jones*
NAME OF AFFIDANT Inv. C. E. Jones

September 4, 1981 4:35 PM
DATE AND TIME

SEARCH WARRANT

COMMONWEALTH OF VIRGINIA

In re/V

Carroll Eugene Turner, Jr.

2262 Lakeside Dr., Lynchburg, Va.

The undersigned Applicant stated under oath:

1. A search was requested in relation to an offense substantially described as follows:

Conducting an illegal gambling operation in violation of section 18.2-328,
Code of Virginia

IF CONTINUED ON
ATTACHED SHEET

2. The ~~place~~ person, or thing to be searched was described as follows:

Carroll Eugene Turner, Jr., black male, 5'9", 170 lbs., DOB 05-09-41.

16

IF CONTINUED ON
ATTACHED SHEET

3. The items to be searched for were described as follows:

Numbers lottery tickets, adding machines and tapes, tally sheets, books and records
used in a numbers operation, rice paper, flash paper, telephone bills, money and
other paraphernalia made, provided or procured for the drawing of a lottery.

AFFIDAVIT FOR SEARCH WARRANT

APPLICANT:

C. E. Jones
Investigator

NAME

C/O Lynchburg Police Department

TITLE (IF ANY)

ADDRESS

Certified to Clerk of

Circuit Court on

TITLE

SIGNATURE

AFFIDAVIT FOR SEARCH WARRANT

TREVIE EDWARDS OPERATION

Informant number one is a convicted gambler who has admitted being involved in the writing of bets in numbers operations in and around the Lynchburg area. The information he has given has been obtained through his association with the various numbers operations. Informant number one has told police investigators that a gambling operation exists which has its major place of operation located at 910 5th Street, a two-story building known as Trevies Pool Hall. This operation is being run by Trevie Edwards. The informant has told police that this is a numbers betting scheme utilizing the winning number of the Maryland State Lottery. Bets are taken on a three digit number until approximately 7 o'clock p.m.. The bets are placed with persons who are referred to as writers. After the bets are made a person known as the "bagman" then goes around to each writer and picks up number slips and money representing the days proceeds. The writers keep a copy of the bets written on or about their person for later reference. These records will correspond to the number slips that are turned over to the bagman.

Informant number one states that Trevie Edwards is in charge of the operation, Carroll Turner Jr. and Kevin Edwards are the "bagmen" and the writers include Boyd Megginson, Richard Banks, James Anderson, William Rankins, Booker Calloway, Robert Gunn, Fred Smith, ~~Antonio Tweedy~~, Oscar Booker, Richard Reeves, Robert Banks, Freddie Mays, Robert Deane, Clemont Stevens, James Burnett, Robert Dean, and Joseph Rucker Jr.

Informant number one has told police that bets are taken by the above named writers in the parking lot at 5th and Polk Streets, Lynchburg, Virginia, 900 5th Street, Virginia the residence of Booker Calloway 513 Polk Street, Lynchburg, Virginia and various other areas throughout the City. Between 4:30 and 6:30 p.m. Carroll Turner Jr., or Kevin Edwards comes by and picks up the number slips and money from each writer. Turner then goes to the residence of Booker Calloway, 513 Polk Street, Lynchburg, Virginia which serves as a sub-counting house, where money and bets are originally counted. He also picks up bets written by Calloway. Either Turner or Edwards then goes to a room rented by Freddie Mays where he meets Mays and picks up his bets. They will then go to 900 5th Street, Lynchburg, Virginia and pick up bets which are written from that location. The money and bets are then taken to 910 5th Street, Lynchburg, Virginia, being Trevie's Pool Hall. The items are generally taken upstairs where Edwards counts the money and compares it with the betting slips. Occasionally, this counting will be done in the pool hall itself on the first floor or in the basement in order to avoid detection. Edwards takes the money and betting slips when he leaves the building at approximately 8:15 p.m. each evening.

Informant number one states that this operation runs six days a week, closing down only on Sunday. Informant number one is unaware of the existence of other informants and the information provided him was given without the knowledge that it has been confirmed by other informants.

Informant number two is an actual writer in the operation run by Trevie Edwards. He has actual knowledge in this operation and of it's daily procedures. He is also unaware of the existence of other informants and his information is provided without knowledge that it has been confirmed by other informants.

Informant number two has confirmed that Edwards operation is ran just as described above. He confirmed that Trevie Edwards was the operator, that Carroll Turner Jr., and Kevin Edwards were the

Bagmen and that the writers named above all were participating in writing bets-for the operation. Informant number two stated that he has personally taken in about four hundred dollars a day in bets. He indicated that the overall operation takes in an excess of \$1,000.00 a day. Informant number two states that all writers in the operation keep a notebook on or about their person recording the bets that they have written for the day. These records correspond to the slips given to the bagmen and ultimately to Trevie Edwards.

Informant number two states that the records kept by the writer would correspond to the slips that where turned over to Trevie Edwards. Informant number two advised police investigators that the money and bets are received by Trevie Edwards daily at 910 5th Street by 6:30 or 7o'clock p.m. and remain there until about 8:15 p.m. when Trevie leaves. Informant number two has personal knowledge of all the information that he has provided police investigators. Informant number three is a reliable informant of the Lynchburg Police Department who has previously given information that has led to arrest and convictions for various offenses.

Informant number three is also an admitted writer of number bets and has personal knowledge through his connection of the information he has given to the police.

He has told police investigators that he has personally observed Trevie Edwards counting money and number slips in the room above the pool hall at 910 5th Street, Lynchburg, Virginia.. The actual address of this room is 910 1/2 5th Street, Lynchburg, Virginia. He also has told police investigators that a stairway has been installed in the main floor which leads to the basement of the pool hall. He told police that both the pool hall, the basement as well as the upstairs room are also used in order to avoid detection. Informant number three confirms that the operation is a daily one and that the routine described by informant number one is in fact the procedure that is followed daily in this operation.

The information provided above by the three informants has been confirmed by surveillance conducted by the Lynchburg Police Department. This surveillance, which has taken place from March, 1981 up through September 2, 1981 on a periodic basis has shown that the routine described by the informants is in fact followed by the persons involved in the operation. On at least twenty-three different dates during the period described above police investigators have observed the above named persons writing what appears to be number bets. - Investigators have also observed *(no writing)* Turner making the daily rounds described by informants one and two. Police investigators have also placed telephone calls to Trevie's Pool Hall on at least six different occasions asking for the winning number. On each occasion they were given a three digit number identified as "the number".

My experience in gambling investigations which includes a course taught by the Federal Bureau of Investigation on Gambling as well as three prior number operation investigations, indicates that the number slip and money turned over to the counting house will provide evidence of the offense of gambling and can be compared to records kept on the person of writers to varify the scope and existence of the operation. The operation described by informants as verified by surveillance is a daily rountine operation consistant with activities conducted by persons involved in numbers gambling operations.

INVESTIGATOR C. E. Jones
9/4/81

MUNICIPAL COURT
CITY OF LYNCHBURG, VIRGINIA

Date 9/9/81

~~HAROLD~~ CARROLL E.
TURNER

LIST OF PROPERTY SEIZED
(19.1-87.1, Code of Virginia, as amended)

ITEM #	DESCRIPTION OF PROPERTY
1	① SOLID WHITE NOTE PAPER WITH SEVERAL NUMBERS
2	⑤ HOUSEHOLD EXPENDITURES CHECKS (WHITE COLORED)
3	① HEMINGWAY NOTE PAPER WITH NUMBERS ON BACK
4	① 1/2 SHEET EXPENDITURE CHECK - NUMBERS ON IT
5	① 1/2 SHEET NOTEBOOK PAPER - NUMBERS ON IT
6	① 1/4 SHEET OF PAPER - NUMBERS ON BACK
8	(48) \$1.00 BILLS (3) \$10.00 BILLS (4) \$5.00 BILLS TAKEN FROM SUBJECTS (SOCK - LEFT LEG)
9	(2) \$1.00 BILLS (2) \$5.00 BILLS (1) \$10.00 BILLS - TAKEN FROM SUBJECTS LEFT FRONT POCKET
10	(3) \$1.00 BILLS (1) \$5.00 BILL (2) \$10.00 BILLS (3) \$20.00 BILLS TAKEN FROM SUBJECTS RIGHT FRONT POCKET
11	(3) QUARTERS (7) DIMES (1) NICKEL (1) PENNY
12	(2) \$20.00 BILLS (3) \$1.00 BILLS (WALLET)
13	(1) HOUSEHOLD EXPENDITURE CHECK WITH NUMBERS ON IT

I, Michael B. Spencer, certify that the above property was seized after execution of a search warrant at (ON) CARROLL E. TURNER in Lynchburg, Virginia on 09/9/81 Date

M. B. Spencer
Officer

I hereby certify that the affiant appeared before me and made oath that the above list of items constitute all that was seized pursuant to the executed search warrant.

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WITNESSES:COLMORE, Inves. S. L.

Direct -----	14
Cross -----	19
Direct -----	50
Cross -----	53

JONES, Inves. C. E.

Direct -----	28
Cross -----	32
Redirect -----	33
Recross -----	34

SPENCER, Officer M. B.

Direct -----	35
Cross -----	40

LARIVIERE, Officer D.E.

Direct -----	41
Cross -----	46
The Court -----	62
Mr. Daniel -----	65
Mr. Petty -----	69

JERGINs, Debbie

Direct -----	78
Cross -----	80

REYNOLDS, Commander W. H.

Direct -----	81
Cross -----	83

JOHNSON, Officer M. L.

Direct -----	88
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GRESSENS, Special Agent Kenneth C.

Direct -----	90
Cross -----	96

GRESSENS, (continued)

Redirect ----- 97

STIRLING, Roy M.

Direct ----- 99
Cross ----- 136
Redirect ----- 144

EXHIBITS:

Commonwealth's Exhibits Nos. 1, 2, 3, -- envelopes -- Pg. 53.

1 THE COURT: We have today the case of Common-
2 wealth -vs- Carroll E. Turner.

3 Mr. Petty, are you ready in the case
4 of Carroll E. Turner?

5 MR. PETTY: Yes, sir.

6 THE COURT: Mr. Daniel, are you ready?

7 MR. DANIEL: Yes, sir.

8 THE COURT: Arraign the defendant.

9
10 (Whereupon, the indictment was read by the Clerk and a plea
11 of not guilty was entered by the defendant, in person. A
12 jury of twelve was examined and selected, and excluded
13 from the Courtroom and the following proceedings were had:)

14
15 THE COURT: Gentlemen, any preliminary motions
16 before the jury is actually sworn.

17 MR. DANIEL: Yes, Your Honor.

18 If Your Honor pleases, the defendant, by
19 counsel, moves the Court to require the Commonwealth
20 to furnish him either copies of statements of
21 witnesses or evidence faithful to the accused that
22 may tend to be exculpatory and any other evidence
23 that the Commonwealth Attorney or the Police Depart-
24 ment for the City of Lynchburg, Virginia or any other

1 Agency or Agencies that may be involved in this case
2 be furnished to us now.

3 Now there was a motion made for that
4 evidence and an order was entered by this Court
5 granting it. Yesterday I called Mr. Petty and asked
6 specifically the names and addresses of people named
7 as informants, Informant No. 1 and Informant No. 2
8 in the affidavit filed with the search warrant, and
9 my reason for doing that is this man is charged with
10 being an operator and the affidavit by Police Officer
11 C. E. Jones states that Carroll Turner was the
12 "bagman", and it said Informant No. 1 states that
13 Trevey Edwards is in charge of the operation. On
14 another page it says Informant No. 2 has confirmed
15 that Edwards operated and ran just as described
16 above. He confirmed that Trevey Edwards was the
17 operator of this and that Carroll Turner, Jr. and
18 Kevin Edwards were the "bagmen". The Investigator
19 himself, C. E. Jones, who made the affidavit said
20 that he verifies what they said. Now if that is
21 true, that to me is exculpatory evidence. That is
22 evidence that they have direct knowledge of that
23 operator as being someone other than Carroll Turner,
24 and I think we should be entitled to have that. The

1 Courts have said that if it tends to be exculpatory,
2 we should have it. I think the affidavit shows that
3 tends to be exculpatory. If we need to call Police
4 Officer Jones to question him about that affidavit;
5 that he has made that affidavit; that he used
6 exactly those words, and I think that is vital. It
7 excludes the theory that he is in the operation of
8 a lottery, which is a felony rather than a misde-
9 meanor.

10 THE COURT: Let me ask you this. Can there
11 be only one operator of a gambling enterprise?

12 MR. DANIEL: I believe there can be more, but
13 I don't know whether the evidence would warrant
14 that in this case, and there they only refer to
15 one person, a named individual, as being the
16 operator.

17 THE COURT: Mr. Petty, do you have any
18 witnesses who would testify if called for the Common-
19 wealth that this man was nothing more than gambling
20 illegally and in no way, shape, form or fashion
21 was conducting, supervising, operating, or managing
22 the gambling operation?

23 MR. PETTY: Judge, it's our position that if
24 he were charged, and if it were the theory of the

1 Commonwealth that we intended to present evidence
2 that he was the owner, and I use that term, if he
3 were the owner of the illegal gambling enterprise,
4 then I think Mr. Daniel would probably have a point,
5 but it's not our position. We do not intend to
6 produce evidence, and in fact we don't believe that
7 this man is the owner of the operation. He is
8 rather a person employed in the operation. Now,
9 it's our contention that this makes him a statutory
10 operator in that he conducts a part of an illegal
11 gambling enterprise. So in that context we are
12 not trying to show that he is the owner. I can't
13 conceive of how evidence to prove that he is not
14 the owner would be exculpatory.

15 MR. DANIEL: That is really not my point. My
16 point is if he is not going to produce this evidence,
17 apparently, and this evidence -- I don't know,
18 except on the face of the affidavit they don't say
19 anywhere that he is the owner. I didn't say he said
20 that, but the Statute says direct, finance, manages,
21 or conducts. All they have said is that he picked
22 up things. That doesn't make him under the
23 statutory definition any more a part of the operation
24 than somebody who delivers bread for a bakery or

1 works for General Motors. If he is employed, I don't
2 believe that the Statute contemplates that he is the
3 operator of a gambling enterprise.

4 THE COURT: Of course we have very little case
5 law, but if that is Mr. Petty's proof that this man
6 is some kind of a low echelon assistant, then he is
7 going to fail to meet the felony charge, but I think
8 that's a matter of proof.

9 MR. PETTY: It's our contention that the person
10 in the position that we think we can show Mr. Turner
11 is in is a statutory operator. That is supported by
12 Federal Decisions and we say the Federal Statute is
13 in line, although not totally consistent with the
14 Virginia Statute. We think we can prove it, but be
15 that as it may, what he is requesting is exculpatory
16 evidence. That is evidence that tends to show his
17 client is not a statutory operator by showing some-
18 body else is the owner, and we are not contending
19 that, Judge.

20 THE COURT: I see Mr. Daniel's point, because
21 the word operator is used in the affidavit. You
22 are saying even though they are lower level of the
23 operation he is engaged in the operation of a
24 gambling enterprise.

1 MR. PETTY: That affidavit is not written with
2 the legal definition in mind. The operator has a
3 legal meaning as well as an everyday meaning. It's
4 obvious from the context of the affidavit that the
5 owner or the person who is ultimately in control is
6 referred to as the operator, but again that is not
7 a legal term as it is before the Court.

8 MR. DANIEL: I think what I am asking is the
9 informant said they worked in this operation, they
10 know how it works. They have been writers and they
11 have done this and they have told in detail and have
12 described in detail the operation, and how it works.
13 Now if they say what the affidavit says, I think it
14 is certainly exculpatory. I say at least I should
15 have the right to interview those witnesses because
16 it may very well be favorable. The affidavit makes
17 it sound favorable. If we could submit this case
18 before the jury based on the affidavit, I don't
19 believe you could find more than illegal gambling
20 to save your neck.

21 THE COURT: Should Mr. Daniel be afforded an
22 opportunity to --

23 MR. PETTY: Judge, the information filed by the
24 informant in the affidavit is that this man is a

1 participant at some level, call him "bagman", if you
2 will, for want of a better term right now in the
3 operation. Now, that is not exculpatory. That is
4 going to be our offer of proof and that is going to
5 be our testimony and it's a legal question as to
6 whether or not that constitutes an operator, but if
7 these witnesses were to come into Court and testify
8 based upon what is in the affidavit, they would
9 testify to the exact same thing that we intend to
10 prove. Now I don't know how that can be exculpatory.
11 If they had told us he was not involved in any way
12 in the operation then I could concede that that is
13 a valid point, but there has -- The Supreme Court
14 has held that there has to be a showing that the
15 evidence will be favorable to the accused, that is
16 it would show something inconsistent with what the
17 Commonwealth has to prove, and we don't think that's
18 the case.

19 THE COURT: I am going to deny your request,
20 Mr. Daniel.

21 MR. DANIEL: All right, sir, I want to except
22 for the reasons stated, and when Officer Jones
23 testifies I will renew the motion.

24 THE COURT: Right now that is my ruling. I

1 might change my mind at a later point.

2 MR. PETTY: Judge, I would also like for the
3 record to show there was a motion to suppress the
4 search filed in this case. My understanding that
5 motion has been withdrawn.

6 THE COURT: Mr. Daniel, isn't that correct,
7 you said in chambers you do not wish to pursue
8 that motion any further?

9 MR. DANIEL: No, sir, I do not.

10 THE COURT: Then we will strike that from the
11 record as far as consideration in this matter.

12 Gentlemen, any more preliminary matters
13 before we bring the jury back and swear them?

14
15 (Whereupon, the jury returned to the Courtroom. A jury
16 of twelve was impaneled and sworn to try the case, and the
17 following proceedings were had:)

18
19 THE COURT: All right, ladies and gentlemen,
20 how many of you have sat on a criminal case before.
21 Most of you have not. Let me give you an overview
22 of what should happen in criminal trials. Of course,
23 all trials are different.

24 Here is what should happen in the course

1 of this trial. At the outset, Mr. Petty will be
2 allowed an opportunity to give you an opening
3 statement, and overview of this case, what he thinks
4 the case is about. When he is through Mr. Daniel
5 will have a like opportunity to give you his side
6 of the case. What those opening statements are are
7 merely estimations by the two sides of what they
8 think they will prove, what the case is about, what
9 you will believe and what you will do down the road.
10 Now opening statements are not to be perceived by
11 you as evidence. It's merely one persons estimation
12 of what the case is about, each side's. It's a
13 road map to help you understand what is going on.
14 After the opening statements we will have what is
15 called the evidentiary portion of the trial. Witnesses
16 will be called. Each side will have an opportunity
17 to call witnesses. Now they have all been sworn.
18 Now during the course of most trials there are
19 always objections. I can't say that is going to
20 happen here. We had one the other day we didn't
21 have an objection. It might be necessary to send
22 you from the room while we discuss the relative
23 merits of the objections. Each side has a right to
24 object to what they think is inadmissible testimony

1 prejudicial evidence or something like that. My
2 job is to assure that both sides are afforded a
3 full and fair opportunity to present their cases
4 fairly under the Rules of Evidence in Virginia and
5 dictates by our Supreme Court. Now I am not going
6 to know in every case who is right and who is wrong,
7 and I have to reflect upon it and I might have to
8 do some research. But you are not to hold it against
9 either side if they object. That's to be expected.
10 That's their job and that's their duty. Now there
11 might be exhibits proffered from time to time.

12 After the evidentiary portion of the
13 trial, then each side will be afforded an opportunity
14 to close their case or sum up, whatever you want to
15 call it. I will instruct you on the law. First of
16 all I will read you a written set of instructions
17 that is extremely boring, but I have to do that.
18 After these instructions are read to you, of course,
19 you will have them with you in the jury room. You
20 are not to just take in everything I say to you when
21 I read them. After the instructions are read to
22 you, Mr. Petty will have an opportunity to sum up
23 or argue. Mr. Daniel will have a like opportunity,
24 and Mr. Petty will have another opportunity if he

1 so desires because he has the burden of proof.

2 After the closing arguments you will have exhibits,
3 if there are any, and you will have the instructions
4 of the Court, and there will be a verdict form and
5 I will go over it with you from time to time, who
6 should be selected as Foreman and how you do that.

7 If any of you cannot hear during the course
8 of the trial, raise your hand and we will have the
9 witness speak up. If any of you are uncomfortable
10 we will take a break. We will take breaks from time
11 to time anyway so as not to inflict cruel and unusual
12 punishment on you.

13 All right, Mr. Petty, are you ready?

14
15 (Whereupon, all witnesses were called and sworn and excluded
16 from the Courtroom.

17 Opening statements were offered by Mr. Petty and Mr.
18 Daniel, and the following proceedings were had:)

19
20
21
22 INVEST. S. L. COLMORE, the witness, testifies as
23 follows:
24

DIRECT EXAMINATION

BY MR. PETTY:

Q. I believe you are Inves. S. L. Colmore of the Lynchburg Police Department?

A. That's correct.

Q. Inves. Colmore, were you involved in an investigation of an alleged numbers operation or gambling operation being conducted in the area of 910 1/2 Fifth Street here in the City of Lynchburg?

A. Yes, I was.

Q. Do you recall approximately when it was that that investigation first developed?

A. It started in March of 1981.

Q. During the months of March, April, May and up until August of 1981 was any surveillance conducted in this area to determine whether or not such an operation existed?

A. Yes, sir, there were surveillances conducted.

Q. And how were these surveillances done?

A. They were done through mobile surveillance, which is moving around with cars, following different vehicles, watching people; stationary surveillance with an undercover vehicle.

Q. Were you involved in that surveillance?

1 A. That's correct.

2 Q. First of all, do you recall approximately how
3 many days were involved, individual days?

4 A. If I could use my notes to refresh my recollec-
5 tion.

6
7 MR. DANIEL: If Your Honor pleases, may I see
8 the notes he is refreshing his recollection from?

9 Thank you, sir.

10
11 WITNESS:

12 A. 25 days.

13
14 BY MR. PETTY:

15 Q. Okay, and what was the first date and last date
16 so we can get the perimeter?

17 A. The first date was April 15, 1981. The last
18 date was August 21, 1981.

19 Q. Was there any particular location that you
20 observed as being a place where bets were being received or
21 possibly being received?

22 A. That's correct.

23 Q. Where was that?

24 A. In the City parking lot at Fifth and Polk Street,

1 at 513 Polk Street and 910 and 910 1/2 Fifth Street and 900
2 Fifth Street.

3 Q. Is that all here in the City of Lynchburg?

4 A. That's correct.

5 Q. That parking lot you mentioned on Polk Street,
6 what type of activity did you observe going on there?

7 A. Well, approximately 3:00 p.m. on there were a
8 number of people in the parking lot that were suspected of
9 being numbers writers. We observed them from the period
10 of 3:00 o'clock on to approximately 7:00 o'clock. It was
11 the exchange of money and papers being written, different
12 people coming and going at all times.

13 Q. Was this daily or was this limited to any one
14 date?

15
16 MR. DANIEL: If Your Honor pleases, I don't
17 know where this is going, but I think somehow it
18 should show that Carroll Turner -- I would like
19 to know about his position in this surveillance,
20 when they saw him and what he was doing. He said
21 he saw money being exchanged and papers being
22 written.

23 THE COURT: Isn't that for you to bring out
24 on cross-examination?

1 MR. DANIEL: Well, maybe it is, Judge.

2
3 BY MR. PETTY:

4 Q. Officer Colmore, was this on one particular day
5 of the week or was that spread out throughout the week?

6 A. It was spread out throughout the week.

7 Q. What did you observe at Fifth and Polk Street?

8 A. I observed that approximately -- Shortly after
9 5:00 p.m. during the day that certain individuals inside the
10 parking lot and those coming in would go directly to 513
11 Polk Street, which is Mr. Booker Calloway's address, and
12 they would remain there approximately 10 minutes and then
13 they would come out and go about their business.

14 Q. Now during the course of your surveillance, did
15 you observe this particular individual, Mr. Turner, as being
16 in this area doing any particular thing?

17 A. Yes, I did, sir.

18 Q. What was he doing during the course of your
19 surveillance?

20 A. During the surveillance time there were logs.
21 Mr. Turner would enter the parking lot either driving a
22 Cadillac or driving his pick up truck.

23
24 MR. DANIEL: I am sorry, I didn't understand.

1 You said he would enter the parking lot doing what
2 about the Cadillac.

3
4 WITNESS:

5 A. He would enter the parking lot either driving
6 his pick up truck or a Cadillac that he owns. He would
7 routinely walk through the parking lot, talk to several
8 individuals, and then go into Booker Calloway's residence
9 and he would stay in there approximately 5 or 10 minutes and
10 leave there and go to 501 Polk Street and from there to the
11 900 block of Fifth Street.

12 Q. When you observed him leaving the Calloway
13 residence, was he carrying anything that you could observe?

14 A. No, sir. I didn't see anything in his hand.
15 I can't recall anything in his hands.

16 Q. You say he went from there to the 910 Fifth
17 Street area?

18 A. That's correct.

19
20 MR. PETTY: Your Honor, that would be all of
21 the questions I have at this time. In the interest
22 of clarity, I would like to bring Officer Colmore
23 back to testify to some other matters.

24 THE COURT: Okay, Mr. Daniel.

CROSS-EXAMINATION

BY MR. DANIEL:

Q. Mr. Colmore, do you know what dates you saw Carroll Turner up there?

A. Yes, sir, I do.

Q. What dates did you see him up there?

A. I would have to look at my notes to refresh my recollection.

Q. Would you mind doing that? Could you do that all right? Now we are talking about Fifth and Polk Street parking lot?

A. That's correct. Do ^{you} want the dates he was seen in the 900 block too? I have all of this.

Q. Well, let's see. Can you separate them very well?

A. Yes, sir.

Q. All right, give me the Fifth Street parking lot?

A. This would be on May 22, 1981 at 1350 hours which is 1:15, Carroll Turner was observed in the City parking lot driving his blue pick up truck, which was a blue '65 pick up truck. He was observed in the parking lot.

Q. You say that was 1:15?

A. Yes, sir, 1:15.

1 Q. What were you telling us first about 7:00 o'clock?

2 A. I was explaining that is the time when the most
3 heavy traffic is in the parking lot.

4 Q. You don't happen to know what the day of the
5 week was on the 22nd?

6 A. No, I don't have a calendar with me.

7 Q. Did you ever set it up on Sunday?

8 A. The City operation doesn't run on Sunday.

9 Q. So that couldn't have been a Sunday, is what I
10 really wanted to know, is that right?

11 What did you see him do on that date, the
12 22nd at 1:15?

13 A. He was just driving through the parking lot and
14 he would stop and have conversations with a few people inside
15 of the parking lot. From the distance I was observing him
16 from I couldn't tell exactly what he was saying. Then he
17 would walk around the parking lot, through the parking lot
18 and go into Booker Calloway's and come out.

19 Q. Did he go into Booker Calloway's that day?

20 A. My log doesn't state that he went in that day.

21 Q. Would you have stated it if he did?

22 A. Yes, sir.

23 Q. So he didn't go in that day?

24 A. No.

1 Q. Well, you didn't see him by any chance have any
2 paper or writing anything on that day?

3 A. No, sir.

4 Q. That wasn't really the time of day you would
5 expect anything anyhow, was it?

6 A. Sir?

7 Q. That wasn't really the time of day you would
8 expect anything anyhow, would it?

9 A. No, sir.

10 Q. Okay, when did you next see him?

11 A. May 26, 1981 at approximately 6:08 p.m.

12 Q. 6:08. All right, sir, what did you observe at
13 that time?

14 A. This was a day Mr. Turner entered the parking
15 lot driving a white top, blue bottom Cadillac, at 6:08 p.m.;
16 and at 6:10 p.m. he entered the residence of Booker Calloway.
17 He was followed by Emmett Stevens. At 1814, which is 6:14,
18 Carroll Turner left Booker Calloway's.

19 Q. He was there about 4 minutes?

20 A. Yes, sir.

21 Q. And I believe you already told us at no time did
22 you see anything in his hands coming or going?

23 A. No, sir.

24 Q. And he was in Booker Calloway's for 4 minutes

1 that day?

2 A. Yes.

3 Q. Okay, the next day?

4 A. That was on June 27th at approximately 6:36 p.m.
5 Mr. Turner entered the parking lot driving his blue pick up
6 truck. It was just routine in the parking lot. I didn't
7 see him go in Booker Calloway's.

8 Q. You didn't see him go in Booker Calloway's?

9 A. He didn't go in.

10 Q. All right, how about the other times? Do you
11 have any other times? Let me ask you, I know I am asking
12 specific about Carroll Turner, were you up there on other
13 occasions except May 22nd, were you up there on May 19th or
14 May 23rd or 24th? You told us about the 22nd and 26th and
15 June 27th, was this place kept under surveillance on a more
16 regular basis than that?

17 A. Yes, this was by other Officers. This is just
18 what I observed.

19 Q. Okay, are they the only dates you were up there?
20 You said he didn't go in on the 27th, what is the next date
21 you have?

22 A. June 29th, 1981, at approximately 6:40 p.m. Mr.
23 Turner --- I observed Mr. Turner driving a blue pick up truck.
24 He contacted a person by the name of Eugene Tweedy.

1 Q. What do you mean he contacted?

2 A. I observed the two subjects talking and
3 exchanging money and he --

4 Q. You say you saw him exchange money?

5 A. This was directly in the parking lot.

6 Q. Who was the man you saw him exchange money with?

7 A. Eugene Tweedy.

8 Q. You saw money go out of his hands?

9 A. Yes, exchanging money.

10 Q. What were you telling us when you said you had
11 never seen -- What was it you said you had never seen in
12 his hands before, was it a package, did you say?

13 A. I didn't say anything about a package.

14 Q. Did you tell us something about you never did
15 see in his hands earlier? I may be mistaken.

16 A. On those dates I explained to you I didn't see
17 anything in his hands at that time.

18 Q. This is a different date we are talking about?

19 A. Yes, sir, June 29th.

20 Q. How far were you from him when you saw the money?

21 A. The surveillance van was inside the parking
22 lot. I would say maybe 50 to 75 feet, I would say.

23 Q. Do you know anything about how much money it was?

24 A. No, sir.

1 Q. Eugene Tweedy -- Okay, what other days were you
2 up there?

3 A. That was the 29th. On July 2, 1981 at
4 approximately 1958 hours.

5 Q. 1958?

6 A. That's 7:58.

7 Q. That's after 7:00 o'clock. Where did you see
8 him that night?

9 A. I saw Mr. Turner circle through the parking lot
10 and leave, just drove through.

11 Q. Didn't go in anybody's house?

12 A. On July 5 at 5:40 p.m., this is 900 Fifth Street,
13 where I observed. I am sorry, this isn't one -- On July 9th
14 at approximately 6:50 p.m. Mr. Turner was observed in the
15 City parking lot. He entered the rear door of Booker
16 Calloway's residence at that time.

17 Q. How long did he stay there?

18 A. My log doesn't indicate.

19 Q. Sir?

20 A. I don't have it on this log. On July 16, 1982
21 at 6:23 p.m. Mr. Turner and Mr. Antonio Tweedy were observed
22 in the parking lot and Antonio Tweedy was observed checking
23 papers and counting money and turned it over to Carroll
24 Turner.

1 Q. All right?

2 A. On August 7, 1981 at 6:30 p.m. Mr. Turner was
3 observed in the City parking lot, and he went into the rear
4 door of Booker Calloway's residence.

5 Q. Okay?

6 A. On August 21 Mr. Turner was also observed at
7 6:15 p.m. and he entered the rear door of Booker Calloway's
8 residence.

9 Q. Okay?

10 A. That's all of my log sheets.

11 Q. Were you by any chance present when Carroll
12 Turner was searched on September 4?

13 A. No, sir. I was in the area.

14 Q. Where were you? Were you at the pool hall or
15 where were you?

16 A. I was at 910 1/2 Fifth Street.

17 Q. Is that different from the pool hall, is that
18 a different building?

19 A. The pool hall is 910 Fifth Street and the up-
20 stairs is 910 1/2.

21 Q. So it's the same building, one is upstairs and
22 one is down?

23 A. Yes.

24 Q. Did you see him walk through the pool hall to the

1 Police car?

2 A. I carried him.

3 Q. You took him from where?

4 A. When I turned the corner in my vehicle, Officer
5 Jones was standing talking to Mr. Turner.

6
7 MR. PETTY: Excuse me, Your Honor, I would note
8 an objection to the questioning. It's a little
9 beyond the scope of direct. This is what I intended
10 to put him on for later on and I would simply ask
11 that the Court rule this is beyond the scope of
12 direct. Of course, Mr. Daniel will have an opportunity
13 to question him about it later on. We are going to
14 get out of context if we question him about it now.

15 THE COURT: Well, do it now or do it later.

16 MR. DANIEL: I would just as soon do it later.
17 I didn't know he was coming back on.

18 THE COURT: Okay. Any other questions now,
19 Mr. Daniel?

20

21 BY MR. DANIEL:

22 Q. What other places did you observe him besides
23 the Fifth Street parking lot?

24 A. Did I observe Carroll Turner?

1 Q. Ah, huh. Didn't you say you had other
2 surveillance somewhere else?

3 A. 900 Fifth Street, 910 1/2 and 910 Fifth Street.

4 Q. Was there somewhere else? Did you have surveill-
5 ance at some other place on Polk Street?

6 A. At 513 Polk Street.

7 Q. That's Calloway's?

8 A. Yes.

9 Q. And the only other place was the pool hall?

10 A. And the 501 Polk Street, which is the corner.

11 Q. Now, 501, you haven't told us about that, have
12 you?

13 A. No, sir.

14 Q. Whose place is that?

15 A. The building is owned by Carl Hutcheson.

16 Q. Did you see Carroll Turner go in there too?

17 A. No, sir.

18 Q. You did not?

19 A. No, sir.

20
21 MR. DANIEL: Okay, that's all I want to ask
22 him.

23 THE COURT: Mr. Petty, anything further at
24 this point?

1 MR. PETTY: No, sir.

2
3 THE WITNESS STANDS ASIDE.

4
5
6
7
8 INVES. C. E. JONES, the witness, testifies
9 as follows:

10
11 DIRECT EXAMINATION

12
13 BY MR. PETTY:

14 Q. I believe you are Inves. C. E. Jones of the
15 Lynchburg Police Department?

16 A. That's correct.

17 Q. Inves. Jones, were you also involved in the
18 investigation of a numbers betting operation in the 910
19 Fifth Street area in the City of Lynchburg?

20 A. Yes, I was.

21 Q. Investigator, in conjunction with that did you
22 make any telephone calls to the number listed to Trevey's
23 Billiard Room at 910 Fifth Street and inquire as to what
24 might be the winning number for this operation?

1 MR. DANIEL: If your Honor pleases, I object
2 to that. There is no evidence this man had any-
3 thing to do with Trevey's place, and what was said
4 over the telephone I don't think would be any
5 evidence against this man.

6 MR. PETTY: Your Honor, it's incumbent upon
7 the Commonwealth to prove that an operation existed
8 and that it was in substantially continuous operation,
9 and I think this evidence is highly relevant that
10 it was in fact in operation. The evidence that he
11 is going to relate as to the telephone call is not
12 being offered for the truth of what was said, but
13 simply for auditory perception. He heard something
14 over the telephone and will relate what he heard.
15 It is not offered for the truth of what was said.
16 I don't know what the winning number was.

17 THE COURT: I think, Mr. Daniel, the Common-
18 wealth must show it was a gambling operation, even
19 if he was not there participating.

20 MR. DANIEL: I object and except to the ruling
21 because he didn't have anything to do with the
22 phone or what was said.
23
24

1 BY MR. PETTY:

2 Q. Did you make such a phone call?

3 A. Yes, I did.

4 Q. What were the dates the calls were made?

5 A. I made a call on August 6th, August 11th, August
6 12, September 3, 1981.

7 Q. And when you called the number, what did you say?

8 A. I asked for the number for yesterday, which was,
9 like on August 6th. At that time I called at 11:09 and I
10 didn't get an answer that time. On August 11th I called
11 again and asked for the number for yesterday, yesterday's
12 number, and I was given a number.

13 Q. What was that number?

14 A. 867.

15 Q. A three digit number?

16 A. Yes, sir, it was.

17 Q. What about August 12th, what was the number
18 you received?

19 A. On August 12th I made a phone call and no one
20 was in. Commander Reynolds called on the same day.

21 Q. All right, we will have him testify?

22 A. On September 3rd at 11:30 a.m. I called 910
23 Fifth Street, which is Trevey's Billiards. The number is
24 528-9392, and I asked for the number, I believe it was

1 for September 2nd, and was given the number of 792.

2 Q. Now, were you also present when a search warrant,
3 or were you present when Mr. Turner was detained pursuant
4 to a search warrant on September 4, 1981?

5 A. Yes, I was.

6 Q. Where did you first see Mr. Turner in connection
7 with that search?

8 A. On September 4th at approximately 1915 we had
9 started out --

10 Q. Wait a second, 1915 is 5:15 p.m.?

11 A. No, it's 7:15.

12 Q. 7:15, I'm sorry.

13 A. We were in the Fifth Street area to execute
14 some search warrants and some warrants for people to be
15 searched at that time. I observed the defendant there in
16 the 500 block of Polk Street standing beside a car that
17 was headed East on Polk Street, which a black female was
18 sitting in it at the time and he was talking to the female
19 at the driver's door. At the time when I arrived to go into
20 the parking lot at Fifth Street, at Polk Street there I
21 observed the defendant there and at that time I knew that we
22 did have a warrant, and search warrant for him. I got out
23 of the car and went over to Mr. Turner, the defendant, and I
24 advised him that we did have a search warrant for him. At that

1 time I noticed him dropping papers to the ground at the rear
2 of the car. At that time he did have some green money in his
3 hand. I then notified Inves. Colmore by walkie-talkie, he
4 was a Team Leader, he was going to 910 Fifth Street. I
5 called him around. I turned over the defendant to Inves.
6 Colmore and the piece of paper that I had picked up off the
7 ground.

8 Q. Those papers and Mr. Turner were turned over to
9 Mr. Colmore?

10 A. That's correct.

11 Q. Did Mr. Turner say anything at that time about
12 the papers?

13 A. He didn't make any statement to me.

14
15 MR. PETTY: Thank you very much. Mr. Daniel
16 might have some questions.

17
18 CROSS-EXAMINATION

19
20 BY MR. DANIEL:

21 Q. Now, Mr. Colmore didn't search him there in
22 your presence, did he?

23 A. No, he didn't search him any.

24 Q. Did you search him any at all?

1 A. No, sir.

2 Q. You just picked up, did you say, a paper on the
3 ground?

4 A. He had several papers that was at the rear of
5 the car. I picked them up off the ground and I held them
6 in my hand. He had some paper money in his hand. I don't
7 know whether it was dollars or five dollars or ten dollars.

8 Q. Did you have the search warrant with you?

9 A. No, I did not.

10 Q. Do you know who had it?

11 A. Someone in Inves. Colmore's team. Colmore was
12 the Team Leader. I didn't know at that time who had the
13 search warrant, but one was on file for him.

14
15 MR. DANIEL: That's all of the questions I
16 have.

17
18 REDIRECT EXAMINATION

19
20 BY MR. PETTY:

21 Q. One further question: The papers that you turned
22 over to Inves. Colmore, were those the same papers you saw
23 this individual drop?

24 A. Yes, it was.

1 Q. Did you add or subtract anything to those papers
2 before you turned them over to him?

3 A. No, I did notice there was numbers written on
4 the papers. I did not at that time jot down what the numbers
5 was.

6
7 MR. PETTY: That's all.

8
9 RECROSS-EXAMINATION

10
11 BY MR. DANIEL:

12 Q. You didn't identify those papers in any way, by
13 marking or anything of that kind?

14 A. No, I did not.

15 Q. Do you know how many it was?

16 A. It was several; five, six, maybe ten, I don't
17 know.

18 Q. Did he just drop them right in front of you?

19 A. He was at the driver's side of the door and he
20 just walked back to the rear of the bumper and just dropped
21 the papers on the ground.

22 Q. You could see him with your own eyes, you could
23 see that?

24 A. Yes, I did.

1 MR. DANIEL: All right, that's all.

2
3 THE WITNESS STANDS ASIDE.

4
5
6
7 OFFICER M. B. SPENCER, the witness, testifies as
8 follows:

9
10 DIRECT EXAMINATION

11
12 BY MR. PETTY:

13 Q. I believe you are Officer M. B. Spencer of the
14 Lynchburg Police Department?

15 A. Yes, sir.

16 Q. Officer Spencer, were you present during the
17 execution of a search warrant or search warrants on September
18 14, 1981 at 910 1/2 Fifth Street and also one for the person
19 of this defendant, Carroll Turner, Jr.?

20 A. Yes, sir, I was.

21 Q. Were they executed here in the City of Lynchburg?

22 A. Yes, sir.

23 Q. Do you recall approximately what time it was
24 that that occurred?

1 A. It was approximately 7:30 p.m., I believe.

2 Q. Now as far as this defendant here, how did you
3 happen to have him come into your presence?

4 A. At the time I was inside of Edward's Pool Room
5 at 910 Fifth Street with Mr. Kevin Edwards, whom we had a
6 search warrant for. Shortly after we got inside Inves.
7 Colmore brought Mr. Turner inside to me and advised me that
8 he was located outside the building.

9 Q. What did you do?

10 A. At that time Officer Colmore handed me some
11 slips of paper that he said belonged to Mr. Turner and at
12 that time the search warrant was executed on him, and I
13 filled out an inventory list of all of the property seized
14 on Mr. Turner.

15 Q. Were other items found on his person at the
16 time you conducted the search on him?

17 A. Yes, sir, it was.

18 Q. What did you do with the items that you received
19 from Inves. Colmore as well as the items that you found on
20 Mr. Turner personally?

21 A. They were turned over to Inves. Colmore later
22 that night.

23 Q. Is this the bag that they were placed in?

24 A. Yes, sir.

1 Q. Did that bag contain as far as you are aware
2 only the items that were found from his person as well as
3 those items Inves. Colmore had given you?

4 A. Yes, sir.

5 Q. And you say you turned that over to Inves.
6 Colmore?

7 A. Yes, sir.

8 Q. Now, did you also participate in the search of
9 an individual by the name of Kevin Edwards?

10 A. Yes, sir, I did.

11 Q. And was that about the same time?

12 A. Yes, sir.

13 Q. What did you find in that search?

14 A. A large quantity of money along with some house-
15 hold expenditure sheets which had numbers written on them.

16 Q. Were these loose or were they contained in
17 something?

18 A. Most of them were in a brown paper bag; and you
19 speaking of Edwards, is that correct?

20 Q. Yes.

21 A. Yes, sir, most of those items were contained in
22 a brown paper bag, and he also had some money on his person.

23 Q. Do you recall approximately how much money
24 was there?

1 A. Approximately \$1999.00. - *DNICVIN*

2 Q. What type was that, one bill or two bills or --

3 A. Several different denominations, twenties, fives,
4 tens.

5
6 BY MR. DANIEL:

7 Q. We are still talking about this person, Kevin
8 Edwards now?

9 A. Yes, sir.

10
11 BY MR. PETTY:

12 Q. Let me show you a brown envelope --

13
14 MR. PETTY: Judge, for the record, I am
15 referring to these as the numbers the Police gave
16 Q-1 and Q-2, if I might.

17
18 BY MR. PETTY:

19 Q. For the record, the previous envelope I showed
20 you was Q-2, is that correct?

21 A. Yes, sir.

22 Q. Let me show you another envelope, Q-1. Is that
23 the envelope in which you placed papers and such that were
24 found on the person of Kevin Edwards?

1 MR. DANIEL: Wait a minute, Q-1 is who?

2 MR. PETTY: Q-1 is the property that was found
3 on Mr. Turner.

4 I am sorry, am I correct?

5
6 WITNESS:

7 A. Q-2 is Mr. Turner and Q-1 is Mr. Edwards.

8
9 BY MR. PETTY:

10 Q. Now, during the time that this property, these
11 slips of evidence and such, were in your possession, were
12 they mixed with the items, mixed with items from one person
13 or another or any way changed at all?

14 A. No, sir.

15 Q. The items that you put in the bag are the only
16 and exact items you found on the individuals you indicated?

17 A. Yes, sir.

18 Q. And what did you do with that bag?

19 A. That was also turned over to Inves. Colmore.

20
21 MR. PETTY: Thank you very much. Mr. Daniel
22 might have some questions for you.
23
24

CROSS-EXAMINATION

BY MR. DANIEL:

Q. You didn't do the search yourself, is that right?

A. On who?

Q. On Turner?

A. Yes, sir, I did.

Q. What did you find on his person?

A. There was some household expenditure receipts which had numbers on them, some note paper which had numbers on it.

Q. Where did you find this on him? Did you search him in the building on Fifth Street?

A. Yes, sir.

Q. In the pool room?

A. Yes, sir.

Q. He was brought there by Mr. Colmore?

A. Yes, sir.

Q. In the car?

A. Officer Colmore walked him inside.

Q. Okay. And you found these in what, his pocket?

A. The papers with the numbers on it were handed to me by Officer Colmore. On his person I found money in different various pockets.

1 Q. How much money did you find altogether?

2 A. \$252.00 and \$76.00.

3
4 MR. DANIEL: That's all. Thank you.

5
6 THE WITNESS STANDS ASIDE.

7
8
9
10 OFFICER D. E. LARIVIERE, the witness, testifies as
11 follows:

12
13 DIRECT EXAMINATION

14
15 BY MR. PETTY:

16 Q. I believe you are Officer D. E. Lariviere of
17 the Lynchburg Police Department?

18 A. Yes, sir.

19 Q. Officer Lariviere, were you present during the
20 execution of a search warrant for the premises of 910 1/2
21 Fifth Street here in the City of Lynchburg on September 4,
22 1981?

23 A. Yes, sir, I was.

24 Q. What time was it that search was conducted?

1 A. I am not exactly certain. It was early evening.

2 Q. Were you with the other Officers who testified
3 here today?

4 A. Yes, sir.

5 Q. When you went in that premises could you describe
6 for the jury what you found?

7 A. Well, it's an upstairs room --

8
9 MR. DANIEL: If Your Honor pleases, this is
10 the question that I object to. I can state my
11 reason in the presence of the jury or out either
12 way.

13 I object on the ground what they found
14 at 910 or 910 1/2 Fifth Street, unless there is
15 some evidence that this man had something to do
16 with the 910 ownership and control or management
17 or something of 910 1/2 or 910 Fifth Street it
18 wouldn't be evidence against him. It might be
19 evidence against the owner or occupier.

20 THE COURT: Mr. Petty?

21 MR. PETTY: Your Honor, the evidence will be
22 that these records are part of the same operation,
23 and the evidence will also be this defendant's
24 fingerprint was found on those records.

1 THE COURT: You have got to tie that to this
2 defendant.

3 MR. PETTY: Yes, sir.

4 THE COURT: If he doesn't do it, it's going
5 to fail, Mr. Daniel. You know that. I am not going
6 to let him go into it. He is making a statement he
7 can tie it to this defendant.

8 MR. DANIEL: He said he was going to identify
9 one as having the fingerprint of this defendant on
10 it. I wouldn't object to that, but I object to
11 the other because I think there is going to be a
12 lot of other fingerprints that I don't know whose
13 they are.

14 THE COURT: I am going to let him go into it,
15 and at the conclusion of the evidence we will
16 determine if the evidence is sufficient to go
17 forward.

18 Go ahead. |
19

20 BY MR. PETTY:

21 Q. Tell the jury what you located when you conducted
22 the search of the premises?

23 A. Okay, going upstairs there are two rooms on the
24 right hand side as you go up the stairwell. In the second

1 room, which would be the far end, was an empty room with a
2 long table inside and some shelves on a wall, and on those
3 shelves was a stack of papers like writing papers, lined
4 paper as well as numerous small envelopes, bank envelopes,
5 which customarily in cashing your check you get from the
6 bank. There were pencils, pens, those items. I put those
7 items in an envelope labeled as such.

8 Q. I show you an envelope and ask you whether or
9 not this is an envelope in which you placed the items that
10 you picked up from that location?

11 A. Yes, sir.

12 Q. And during the time that you were putting them
13 in that envelope did you limit it to the evidence found
14 at that location?

15 A. Yes.

16 Q. You didn't mix it up with anything else?

17 A. No, sir, that was all from that room that was
18 taken and placed in that one envelope.

19 Q. And subsequent to the search warrant those
20 other premises as well as other rooms were searched?

21 A. In the second room was a bar type assembly.
22 There were some other items that were taken into custody
23 also, other bits of paper, again writing information, pencils,
24 pens, and also some cash. There was a gentleman there that

1 was searched also.

2 Q. The items you said you placed in that paper bag,
3 what did you do with those items after you picked them up?

4 A. I was instructed prior to serving the search
5 warrant that any papers or items that were confiscated would
6 be handled as little as possible for processing purposes.
7 As delicately as I could by not going through the items
8 individually, but grabbing a lot of them at one time and
9 touching them as little as possible, I placed them into a
10 bag.

11 Q. Who did you give that bag to?

12 A. That was brought to the Police Station and
13 turned over to the Evidence Technician.

14 Q. Who did you give the bag to?

15 A. I am not really certain as to who I picked for
16 that evidence. Everything was sealed and placed in the
17 envelope. I am not sure if the Evidence Technician was
18 there or coming in later, but we either placed everything
19 after sealing it in the container or handed it to her.

20 Q. But as long as you had this you didn't do
21 anything with it?

22 A. No, sir.

23
24 MR. PETTY: Thank you very much. Mr. Daniel

1 might have some questions for you.

2
3 CROSS-EXAMINATION

4
5 BY MR. DANIEL:

6 Q. Did you mark the bag? You didn't put everything
7 you found in one bag, did you?

8 A. I believe so. From one room everything went
9 into that bag.

10 Q. Did you label that bag for identification
11 purposes somehow?

12 A. I labeled one of the envelopes for identification.
13 It's not this outside, but I believe one of the envelopes
14 we had.

15 Q. Is this your handwriting along here?

16 A. No, sir. None of my label is on this particular
17 envelope.

18 Q. You don't know who you turned the items over
19 to, do you?

20 A. I turned the items over, I am not certain if the
21 Evidence Technician was there on the scene this evening. It's
22 a little foggy as to whether she was or not. I put every-
23 thing in an envelope and placed it in the area where the
24 evidence was turned over.

1 Q. Is the envelope that you used not here?

2 A. I don't see it.

3 Q. Do you know how you marked it?

4 A. Well, customarily it's sealed and our initials
5 would be placed there.

6 Q. Do you have any independent recollection these
7 items that are in here, where they came from in this particular
8 envelope?

9 A. I am sorry, would you ask that again?

10 Q. Do you have any independent recollection that
11 you can tell us where those items that you noted bear your
12 mark came from?

13 A. Only that the items in this envelope and
14 identified as those coming from that location look like the
15 items that I recovered from that room. Primarily I remember
16 the envelopes and I did not mark the envelopes individually.

17 Q. You did not mark the envelopes individually?

18 A. No, sir.

19 Q. Shouldn't the envelopes that you marked, would
20 they still have been left in that envelope?

21 A. Customarily I would believe so.

22 Q. And the only way you could come into Court and
23 say these were the items you got was with that mark of yours,
24 that many items, isn't it?

1 A. Right.

2 Q. You didn't take any part in the actual search of
3 the person of Carroll Turner?

4 A. No, sir.

5 Q. Do you know if he was even at 910 Fifth Street?

6 A. I was at 910 1/2.

7 Q. That's upstairs?

8 A. Yes, sir.

9 Q. Was he up there?

10 A. No, sir, not at the time I was there.

11 Q. Did you search some other places that night?

12 A. I, personally?

13 Q. Ah, huh.

14 A. No, sir.

15 Q. Did the other members of your team search some
16 other places on Polk Street or Twelfth Street?

17 A. Yes, I did check Polk Street, another residence
18 there, assisted in that search. As far as the other members
19 of the party, I am not quite certain. Once we served the
20 search warrants that we were initially assigned to serve I
21 came back to the Station and wrote the evidence up. Now
22 where the other members of the party were at that time I am
23 not certain that I recall after writing everything up and
24 counting everything I had to count and going out on the second

1 search warrant.

2 Q. Did you find some items on the second search
3 warrant?

4 A. I believe a couple, nothing significant.

5 Q. All of the items similar at one place or another?

6 A. No, not similar.

7 Q. Were the papers different with different numbers?

8 A. I believe on the second search warrant the only
9 thing I took in custody was any items regarding the search
10 warrant was one sheet of paper and that had phone numbers.

11 Q. But the items that you were responsible for you
12 put in an envelope and you put your own mark on it and you
13 are not sure whether you turned them over to the Technician,
14 you don't have any independent recollection as to whether you
15 turned them over to the Technician or not, is that right?

16 A. That's correct.

17
18 MR. DANIEL: Thank you. That's all.

19 THE COURT: Anything further?

20 MR. PETTY: No, sir.

21
22 THE WITNESS STANDS ASIDE.

23

24

1 A. None that I recognize. He didn't say he marked
2 any.

3 Q. How was he holding them, Mr. Colmore? How was
4 he holding these things? There is quite a few, do you have
5 any recollection? Was he just holding them in his hands?

6 A. I don't recall, sir, how he had them, but they
7 were all instructed not to contaminate the evidence.

8 Q. Did anybody else give you any evidence that
9 night?

10 A. Yes, sir. Some other people gave me evidence.

11 Q. Different locations?

12 A. Yes, sir.

13 Q. Did Officer Lariviere, however you pronounce his
14 name, did he stay there with you while you put those in the
15 envelope?

16 A. He was there making a return on a search warrant
17 and everything. I was checking all of his papers and he
18 turned in everything.

19 Q. Do you know where those items came from?

20 A. Yes, sir, 910 1/2 Fifth Street.

21 Q. Now, did you label the packet on there that is
22 labeled Q-2?

23 A. Yes, sir.

24 Q. And where does that show those items came from?

1 A. 910.

2 Q. It just shows a location, not a person?

3 A. It says it came from Carroll E. Turner, Jr.

4 Q. And what were you telling me about 910, does
5 that appear on there? In other words, can you look at those
6 and tell whether they are supposed to have come from a person
7 or from a building?

8 A. The defendant, it says the defendant, they came
9 from the person.

10 Q. Now Q-3 says 910 or 910 1/2, doesn't it, but not
11 from any particular person?

12 A. Yes, sir, it does.

13 Q. What person does it say it came from?

14 A. Trevey Nathaniel Edwards.

15 Q. And you know Trevey Edwards, don't you?

16 A. Yes, sir, I do.

17 Q. Does he own and operate or rent the pool room
18 at 910 or 910 1/2 Fifth Street?

19 A. I believe the pool hall is leased, according to
20 the City Hall records, as belonging to Kevin Edwards.

21 Q. Kevin Edwards, is he related to Trevey Edwards?

22 A. It's his son.

23 Q. And is there living space there, anywhere where
24 anybody lives?

1 A. Not actual living.

2 Q. Who operates the pool room? You have got a
3 record on that, haven't you?

4 A. Kevin Edwards.

5 Q. Okay, what is Trevey -- What is 910 1/2, what
6 is that used for according to any records that you have or
7 your own knowledge?

8 A. I believe on the records it's listed as an
9 apartment.

10 Q. Does it have a name as to who lives there or
11 who owns it or anything of that kind?

12 A. Trevey Edwards.

13 Q. Trevey Edwards. Do you happen to know where
14 Carroll Turner lives?

15 A. Yes, sir.

16 Q. Where is that?

17 A. 2200 block of Lakeside Drive.

18 Q. Do you know he operates the car wash at the
19 corner of Memorial and Oakley Avenue?

20 A. Yes, sir, I do.

21 Q. Do you know about how long he has been doing
22 that?

23 A. I imagine it has been over 6 or 7 months, ever
24 since the Summer of 1981.

1 documents that may or may not be gambling related.

2 Q. In connection with your work as a specialist
3 with the F.B.I. have you appeared in Court in criminal and
4 civil cases to testify concerning gambling operations?

5 A. Yes, I have.

6 Q. Is that both State and Federal?

7 A. State and Federal, yes.

8 Q. And I believe you have previously appeared here,
9 have you not?

10 A. Yes, that's correct.

11
12 MR. PETTY: Your Honor, I ask Mr. Stirling
13 be qualified as an expert in the field of gambling
14 related documents and activities.

15 I ask he be accepted.

16 MR. DANIEL: I will concede his qualifications.

17 THE COURT: Okay.

18
19 BY MR. PETTY:

20 Q. Mr. Stirling, I wonder if we could limit our-
21 selves to one particular area.

22 Are you familiar with the particular type
23 of gambling operation known as the numbers operation?

24 A. Yes, I am.

1 Q. I wonder if you might step down here and just
2 explain to us a little bit about the numbers operation?

3 A. Yes. A numbers operation is a business enter-
4 prise accepting wagers for profit on numbers. Now each
5 enterprise or numbers operation will vary according to the
6 area you are in. There are a volume of books on the wagers
7 that may be made, terminology, and things of that nature,
8 but again, every operation has -- As an examiner there are
9 certain things that I look for in those records that I examine
10 which are fairly common to records of a numbers operation.
11 To give you an idea of the basic structure of the hierarchy
12 of the operation, if you will picture in your mind a triangle.
13 This would represent the hierarchy of the numbers operation.
14 At the base of the triangle, outside of the operation, of
15 course, are your betters, the betting public.

16 Q. Those people are outside of the operation?

17 A. Outside of the operation, betting into the
18 operation. The individual betters will have a contact within
19 the operation who work for the operation. This person may
20 be referred to as a writer, an agent. Again the terminology
21 may be different from area to area, but a writer's sole
22 responsibility is to collect the bets from the betters. One
23 writer may have a hundred betters betting into him. The
24 writer is very visible on the street. Normally, for example,

1 in a bar, barber shop, or someone who can move freely about
2 town without raising suspicion of his character or what he
3 is doing. Then depending on the size of the operation you
4 may have anywhere from five up to a thousand writers in
5 any one organization. Again, the writer is just responsible
6 for collecting wagers from the individual betters. From the
7 writer level you can go to what is referred to as a pick up
8 man or bagman. This individual again within the operation
9 employed by the operation is responsible for going to the
10 writers and picking up that wagering slip or the wagering
11 paraphernalia that that writer has collected that day. Now,
12 one pick up man may be responsible for three writers, five
13 writers, ten writers. Again, it may be no pick up man or
14 no bagman. Each operator will carry it for himself. From
15 the pick up man or the bagman you go to another level, which
16 is the level which is sometimes referred to as the controller.
17 The controller -- Each step is broken down into smaller
18 groups. The controller will collect from the pick up man
19 or the bagman. Again, the bagman collecting from several
20 different writers. The controller in turn will then turn it
21 over to the heart of the operation. The heart of the operation
22 is referred to as the office or bank, the clearing house.
23 Here is where all of the wagers are funneled into that one
24 office and here is where the wagering slips will be processed

1 that day waiting for the winning number. Within the office
2 they may do what is referred to as charting. After all of
3 the wagering slips or during the process of the slips coming
4 in they are interested to see, well, what number is being
5 played heavily that day. Is 222 a heavy number today? Do
6 we have maybe \$50.00 bet on 222? At that point in time they
7 may decide, well, a lot of money is bet on 222, so let's lay
8 some of it off. Lay off is basically rebetting it with
9 another organization, getting rid of some of the money. So
10 the office is the heart of the operation. Other than the
11 office, then you may have your actual financial backing who
12 actually finances and backs the operation up. He will do
13 such things as pay off the big hits. When some of his people
14 get in trouble, he may set up a bond for them, but he will
15 isolate himself from the operation if possible. Again,
16 depending on the size of the operation. If it's just a one
17 or two man operation he may do away with several steps in
18 here and the operator may well be right there, but he will
19 normally try to isolate himself.

20 Q. How do you bet a number? What do you do when
21 you bet a number?

22 A. The operation gets its winning number from --
23 Depending again on the particular operation and the wagers
24 placed. Some of the methods used currently, for example,

1 would be to take a number from the Stock Exchange on the
2 decline, unchanged issues. Another popular method might
3 be from the paramutual at the racing track. A very popular
4 method within the last two to three years has been to take
5 the number from the legal State Lottery where the number
6 comes out late in the evening. Now in many cases with the
7 lottery coming out now they not only have gone to that number,
8 but now they still use the race number from the early part
9 of the day. So they will have two numbers, an early number
10 and a late number.

11 Q. How do you place a bet on the numbers?

12 A. Let's say for example, I want to bet digit 1,2,3.
13 That is a three digit number. If I want to bet \$1.00 on
14 that three digit number, I will indicate it someway. It will
15 be indicated on the record in some fashion. Here I have a
16 straight 123, three digit number for \$1.00. What is my
17 expectation if this does win. Let's say the State Lottery
18 number that day, the winning number is 123. I am the better
19 and will expect to receive a payoff, again depending on the
20 operation, but commonly 400 or 500 or 600 to 1. See, those
21 variations. So for my \$1.00 wager as a better I would win
22 \$500.00, but I put up one of those dollars. So now it's
23 \$499.00. Now the writer level of the operation, the way
24 the writer gets paid by the operation in many cases is he

1 collects 10% of the overall wagers, three digit wagers that
2 he writes that day. He will collect 10%. For example,
3 today he has collected \$100.00 in wagers. That is referred
4 to as the high number. That's a hundred dollars. He will
5 in turn subtract 30% from that hundred dollars, which will
6 leave 70 bucks. So his turn in figure is the low figure of
7 \$70.00 to the operation. His pay from the operation is
8 30% that is taken out. That is how the writer is paid. The
9 pick up man may be on salary, commission, depending on the
10 operation.

11 Going back to the pay off on the three digit
12 number. In addition to the 30%, the writer gets on the
13 overall account, he normally gets a 10% tip, so to speak,
14 on any hits that he wrote that day. So he takes 10% out
15 of the \$500.00. That is, if he gets a winner. He gets 10%
16 on that plus the 30% of the operation. That would be a
17 three digit number.

18 Other than the three digit number, you may
19 have 1,2,3 and someday indicate you want to bet a \$1.00
20 combo. What you are saying is that you want to bet \$1.00
21 on six of the permutations that can be formed from the three
22 digit number. So you have actually bet \$6.00. One dollar
23 on each one of the six combinations. Yet, on the combination
24 of ways it would be 1,2,3; 3,2,1; 2,3,1; and so forth. You

1 can only have six of them. If you got 113 and you want a
2 \$1.00 combo it would cost you \$3.00. You can only get three
3 combinations, since you have two like digits out of that.
4 Now the payoff on that would be \$1.00. If you have six
5 digits you would get \$1.00 on each of the numbers. The pay-
6 off on that would be \$1.00 times whatever the operation was
7 paying, 500 or 600 or 400. This one here would be likewise,
8 and then you could bet the two digit number, say 1,2 and no
9 third digit. The payoff would be reduced on that level 60,
10 70, 80 to 1, and then you can bet the single digit which is
11 called the lead, the lead number. You may bet 1 as a lead
12 number. And the payoff is greatly reduced on that number
13 because of the -- How the _____ may come up on that
14 single digit right there.

15 Q. Let me stop you at that point. You mentioned
16 that the payoff was in the area of 500 to 1. What are the
17 odds, the betting odds of winning in this particular operation?

18 A. Okay, you are the better, you bet 0000 to 999.
19 So you look at 1000 numbers. So you got one in 1,000 or
20 999 against your winning on any one of those numbers.

21 Q. Now you have indicated a number of individuals
22 in this operation. Is it required that each group of
23 individuals, the writer, the bagmen, as you call them, and
24 so on up, is it required that each of those groups be distinct

1 or do you find often times overlapping responsibilities?

2 A. Many times the writer may well just go straight
3 to the office. He may perform several functions. He may
4 not be just the writer. They try to stay away from that
5 mainly because, as I said earlier, the writer is the street
6 man. He is the most noticeable to the public, and the
7 operation doesn't want to have too many writers coming into
8 the main office with the bulk of the work that is being
9 handled. So the writers try to stay away from the office
10 in most operations.

11 Q. Is each of those positions either run by, whether
12 done by separate individuals or by one individual, is each
13 job duty required for the operation of the entire entity?

14 A. Not necessarily, not each job. The operation
15 may have just 5 writers that go straight to the office. You
16 may have your pick up man and your bagman. You have to
17 have your betters. You have to have your betters and from
18 thereon, it just depends upon the operation. Each one of
19 the persons within this triangle is facilitating that
20 business, facilitating the ongoing operation of that business.
21 If they have writers, if they have pick up men, if they have
22 controllers, these people are contributing, or facilitating
23 that ongoing business.

24 Q. Now in writing down the figures you use, are

1 these notations that are commonly found in the records of
2 this operation and if so where would you look to find this
3 kind of record?

4 A. Most of the notations appearing in the wagering
5 slips or on the wagering slips of any operation, of course,
6 have to be analyzed through looking at the entire documents
7 and records that you are looking at to prove what you are
8 looking at. Many times a code is used. They use a code
9 right often. They use shorthand methods. In other words,
10 a writer, for example, won't be know as John J. Johnson.
11 He will be known as J.J. or 13, a code of that nature. In
12 recording wagers, again you are doing a huge volume of
13 business, so things have to be done rapidly. Much shorthand
14 is used. For example, a wager in the records that I have
15 examined, the wager will be 100 and a check. Well, I had
16 to prove through the records what that check indicated.
17 Through my experience I proved it had to indicate something,
18 particularly after I went through and added everything up and
19 it didn't come out. So I had to go back and start proving
20 what the check indicated. The check indicated that it was
21 a combo wager. The check indicated the combo. Some of them
22 they actually had 100. It appeared to be a little 'c' combo.
23 Then you had to prove that. You had to show that is what
24 that indicated. The majority of the records were in a column

1 format. We would have the amount at the top, like 5 cents,
2 10 cents, 50 cents, a dollar; and then these would be in
3 columns. And under those amounts would be the actual 3 digit
4 number. 231 I believe was the amount of lines you could get
5 there, the numbers you could get on each column.

6 Q. First, where would one divine these types of
7 records within the organization?

8 A. Examining the records of the organization,
9 gambling ongoing organization, the bulk of the records would
10 be found in the office, because that is where it is being
11 filtered into. Again, that would depend on what time of day
12 the raid takes place. If the raid takes place early in the
13 morning, you are certainly not going to find the bulk of
14 those records in the office, because the writers have just
15 gone out and started collecting. This particular record
16 you expect to find on the writer. Elements within those
17 records themselves would indicate to me from experience that
18 that is the writer and not just the mere better. There are
19 records on a pick up man. If he got stopped at a certain
20 location, certain elements. Again those records he is
21 carrying would be indicative of that being possessed by a
22 pick up man, and not a mere better or a writer, but each
23 level there are certain elements within the records you can
24 look for and identify and through experience determine that

1 is what level of the operation they are in.

2 Q. When these records reach the countdown, if
3 you will, do you expect them to remain there and together
4 for any significant length of time?

5 A. Each operation differs on that. A huge operation
6 they cannot move the bulk around. It's too heavy, too much
7 paper. Some operations are very small. They go down and
8 make a collection and pick it up and take it someplace else.
9 The actual clearing house or the bank, they will post the
10 records for that day's work and no more than two or three
11 days prior. The reason is because sometimes in doing the
12 records people overlook a hit. They overlook something. So
13 a better on the street calls up the writer and says, hey, I
14 have a hit. He says, hey, I had a hit, and the writer says,
15 well, I don't have any indication. He in turn goes and calls
16 the office. Then they go back and check two days before and
17 see if in fact there was a hit on that writer's computation.
18 Prior to that time, there is no need to keep the records.

19 Q. Is it significant to you that a group of records
20 are all contained in the same kit or whatever, they are all
21 together?

22 A. No, sir. Through experience, again, when the
23 wagering slips are gathered, not here at a particular place
24 but at all separate places, but in fairly close proximity of

1 each other, you will find some of the records actually have
2 the dates on them. Some of the records will have the account
3 designations, the writer designations on them. Some of those
4 records, the wagering slips, won't have any date on them.
5 They won't have any account designation on them. The point
6 is that right there that is current work. That is work that
7 is being worked. They are not going to co-mingle work that
8 is done two days earlier with today's work.

9 Q. All right, if you will have your seat back on
10 the stand.

11 I would like to refer you first to a bag
12 that has been identified to us previously as Q-1 containing
13 several items that have been presented, and ask you whether
14 or not you have seen that particular bag and when you got
15 it into your custody?

16 A. Yes, I have identified this bag and I have seen
17 it.

18 Q. Where did you first see it?

19 A. Is this referred to as Government Exhibit --

20 Q. It's Commonwealth's Exhibit Q-1?

21 A. Q-1 was received in our Lab Division September
22 10, 1981.

23 Q. At the time you saw it had it been opened or
24 was there any evidence it had ever been opened?

1 A. No, sir, it was sealed.

2 Q. When you opened it did you make a notation on
3 all of the slips that it contained to relate it back to that
4 particular envelope?

5 A. Yes, sir, upon receipt of the evidence I will
6 immediately take each packet. Upon opening it I will identify
7 each piece in the packet as coming from that packet and no
8 other packet.

9 Q. There has been some reference to a number of
10 V.S. Is that your name?

11 A. That's my lab number identifying me, yes.

12 Q. What does that represent?

13 A. V.S. is myself as an examiner as assigned to
14 that lab. The reason it's V.S. is we have so many examiners,
15 including serologists and all other examiners of the lab that
16 they can't use like F.P. because there are others. So it
17 kind of goes on a chronological basis. As you come into the
18 lab you are assigned the next initial, such as V.S. and then
19 the next would be V.T. and on up to that.

20 Q. And this one represents what?

21 A. This represents questioned records received from
22 packet Q-1.

23 Q. I want to separate those a little bit so we
24 don't get them mixed up.

1 Let me show you the envelope that is identified
2 as Commonwealth's Exhibit Q-2 and ask you certain questions
3 about that.

4 Did you receive it?

5 A. Yes, sir, I received this September 10 along with
6 the Government Exhibit 1.

7 Q. Was it sealed at the time?

8 A. Yes, sir, it was sealed.

9 Q. And the same question, did you go through it
10 and also put your mark on each and every slip of paper in
11 that envelope?

12 A. Yes, sir, I did. These I indicated V.S.-2 as
13 representing from the packet Q-2.

14 Q. And this is a bag containing papers marked Q-3.
15 I wonder if you could look at that and answer the same
16 question for us, please?

17 A. Government's Exhibit Q-3 was received at our
18 laboratory September 10 along with Government's Exhibit Q-1
19 and Q-2. The evidence was unopened at the time of receipt.
20 At that time upon opening the evidence I put my lab symbols
21 and V.S.-3 on each piece of paper coming from Government's
22 Exhibit 3.

23 Q. Let's start with the last one first, the Exhibit
24 Q-3. Could you tell us what you found in that exhibit that

1 you were able to relate to the existence of a gambling
2 operation?

3
4 MR. DANIEL: If Your Honor pleases, Q-3, as
5 I recall, is evidence that was seized, and I don't
6 see where that is material.

7 MR. PETTY: Your Honor, as I indicated
8 previously, this is evidence in our possession to
9 show the existence of the operation, and also the
10 testimony has been that the defendant's fingerprints
11 were found in the records contained in this exhibit,
12 and it is therefore linking him to the operation as
13 a whole.

14 MR. DANIEL: It was only on one piece of paper.

15 THE COURT: I think it goes to the weight. I
16 think he can testify as to whether or not this does
17 indicate a gambling operation. So I am going to
18 let it in for that reason.

19 MR. DANIEL: All right.

20 THE COURT: Let the record show you object
21 and except to my ruling.

22
23 BY MR. PETTY:

24 Q. What is in that package that is pertinent to you

1 in your investigation?

2 A. I found them to be records of a gambling operation
3 accepting wagers on numbers.

4 Q. When you say records of a gambling operation,
5 could you be a little more specific exactly what did you
6 find in there and how were you able to reach that conclusion?

7 A. Okay, I found wagering slips of which I was
8 able to identify as writers for the operation, for example, --

9 Q. Let me put this up and maybe you can -- When
10 you say wagering slips, is that the type of slip that you
11 were speaking about?

12 A. That's correct, sir. In the top left column
13 you see the notation 100. Under that is the notation 9.

14 Q. Right there?

15 A. Yes, 910. The top column 100, 50, 25, 20, 10,
16 10 would indicate dollar amounts, \$1.00, 50 cents, 25 cents,
17 10 cents, 10 cents. The numbers appearing in each column
18 are three digit numbers wagered by the betters.

19 Q. That would be these numbers down here?

20 A. That's correct, sir. The 910 would be a straight
21 three digit number for a \$1.00 wager. The 071, which is the
22 third column over under 25 would be a three digit straight
23 number for 25 cents, and in turn each of those would be --
24 The bottom figure of the sheet is circled 830, which would

1 be the cumulative total of the wagering.

2 Q. Now I think some of these slips are blurred and
3 it has been some testimony a fingerprint expert testified
4 that was caused by chemicals. Were they in that condition
5 when you saw them?

6 A. No, sir, they were not.

7 Q. That blur was caused after you examined them?

8 A. That's correct, sir.

9 Q. Now I believe this particular slip came out of
10 the packet 2, did it not?

11 A. That's correct, sir. It's indicated V.S.-2.

12 Q. Is that consistent with the format that you
13 found on the wagering slips contained in the package numbered
14 3 that came from 910 1/2 Fifth Street?

15 A. Yes.

16 Q. Now I wonder if you would look at one particular
17 item in here that is marked Plaintiff's Exhibit 4-Q-3 and
18 I would like to ask you to describe that particular item and
19 then describe how it fits into this total group of items?

20 A. Yes, this is again a wagering slip with three
21 digit numbers on it. At the top column of this sheet are
22 the notations, "Fri., Sat., and Sun." which are indicative
23 of Friday, Saturday, and Sunday. This particular sheet, I
24 was unable to date or did I accumulate the totals for reasons

1 which I think we will probably go into. Again, there are no
2 totals on this sheet on the bottom. Friday, Saturday, and
3 Sunday, I couldn't through my experience say that was any
4 particular wager. So I had to go ahead and undate this one
5 and you are not accumulating it in the total.

6 Q. You say where the amounts are shown on this
7 particular slip, you found on that slip what appeared --

8 A. The days of the week, Friday, Saturday, and
9 Sunday.

10 Q. Did you find those days of the week designations
11 in any of this other material?

12 A. Yes, I did.

13 Q. Once you looked at it and found it, did you
14 try to fit that into the total as found on these slips?

15 A. Yes, I did.

16 Q. What did you find when you did that?

17 A. On numerous slips I found, in addition to that,
18 say, for example Mon. at the top, they would have 5 above that.
19 On others they would have above Sunday 100, and above other
20 dates other numerical notations. Through the examination of
21 the records in their entirety I was able to show that the
22 possibility exists -- Again, I gave them the benefit of the
23 doubt and I did not date or total them unless they had
24 totaled them themselves. Monday would represent 5 cents,

1 Tuesday would represent 10 cents, Wednesday, 15 cents, and so
2 forth up to Sunday representing a dollar. I was unable on
3 many of the sheets to come up -- I am sorry, not many, on
4 a couple of sheets to come up with by substituting those
5 amounts in those day columns as compared to any specific
6 amount, but by substituting 5 cents for Monday, a dollar
7 for Sunday, they come up exactly what was the bottom figure
8 that totaled the amount. If I could have come up with 5 or
9 6 sheets like that, I would have gone ahead and dated them
10 for this particular date and say those days represent dollars
11 and cents amounts and not the days.

12 Q. Is there anything unusual about having -- If
13 you did assume they were representing days of the week, is
14 there anything unusual about having that particular wagering
15 list in with a group of other wagers dated earlier?

16 A. Yes, the first thing, of course, the stamp that
17 has Sunday -- To have a numbers operation working on Sunday
18 is very unusual. To have a winning number on a Sunday is
19 unusual. Your lottery does not work on Sunday, and most of
20 your tracks do not. So you would not have a winning number
21 on the day of Sunday. But, again, benefit of the doubt,
22 New York State they do have the Brooklyn number and Manhattan
23 number that comes out on Sunday rather than on Tuesday. So,
24 again, giving the benefit of the doubt, I could not count

1 them as I suspected what they might be.

2 Q. Of course, you know nothing more than what you
3 have examined and, of course, the information you received
4 from the Police Officers as to where these items were found,
5 is that correct?

6 A. That's correct.

7 Q. If I were to propose this hypothetical, or if
8 I propose these items were found on a shelf all together in
9 close proximity, everything was found here together in Q-1,
10 do you have any opinion as to what those documents represent?

11 A. In Q-1?

12 Q. I am sorry, Q-3?

13 A. You talking about the entire group of documents?

14 Q. Yes.

15 A. What it would represent to me?

16 Q. Yes.

17 A. Through my experience it would represent records
18 of an ongoing gambling operation accepting wagers on numbers.
19 I would suspect that they are of the same date, but, again,
20 giving them the benefit of the doubt, I can't step beyond
21 unless I had more of the records.

22 Q. Well, you set those back down here with the
23 exception of that one. I wonder if you would turn for a
24 moment, please, to the package that is identified as Q-1?

1 A. Yes, sir.

2 Q. What of significance did you find in the
3 documents contained in Q-1?

4 A. The majority of the records in Q-1 are wagering
5 slips containing numbers, wagers of an ongoing operation.

6 Q. Are they similar in their appearance and
7 designations as the records you found in Q-3?

8 A. Yes, they are.

9 Q. And, again, if I were to propose to you a given
10 hypothetical and ask you to accept this as being correct that
11 those items were found in a paper bag together on a person
12 of an individual, not this defendant, but another individual
13 along with a sum of \$1900.00 in currency, is that significant
14 to you?

15 A. Yes, it is. I would identify that as current
16 work. As a matter of fact, much of the work in here doesn't
17 actually have 9/4/81 on it.

18 Q. That would be the date that it was received?

19 A. That's correct, sir.

20 Q. Now, when you examined that information were you
21 able to determine how many separate writers we are talking
22 about in this one operation?

23 A. Overall between specimens Q-1 and Q-3 I determined
24 there were at least 14 writers within the operation.

1 Q. And how were these writers characterized in the
2 records?

3 A. An example would be, I am holding a slip. At the
4 top left it has the word lottery. The basic format as I said
5 before with the cents amount in the top column and the
6 numbers following. On this sheet here on the bottom left
7 appears XXX. That would be the account designation of this
8 writer. These numbers here are numbers accepted by the
9 writer from the betters. In addition to that you see a high
10 figure, as I said before. The total amount of the wagers
11 accepted of \$133.25. Under that appears the digit 7. That
12 is multiplied and come out with a figure of 92.51, which,
13 what he has done, of course, is take 30%. By multiplying by
14 70 he has taken 30% out. So he has a high figure of 132.25
15 and a turn in or low figure to the operation would be the
16 92.51 here.

17 Q. That is \$132.55?

18 A. That's correct.

19 Q. Does that represent the gross income that one
20 writer received on that particular day?

21 A. On this sheet, yes, on this particular sheet.

22 Q. On this one sheet?

23 A. Yes.

24 Q. Now going through all of those records and, of

1 course, excluding the records that you indicated certain
2 days of the week designations and you gave them the benefit
3 of the doubt by going through just the records that you were
4 able to date, were you able to come up with a figure that
5 represented the gross income, the gross amount of bets with
6 this operation for September 4, 1981?

7 A. Yes, I did.

8 Q. What was that amount?

9 A. At least \$2,157.00.

10 Q. Now I wonder if you would set this down and we
11 will turn our attention to Q-2.

12 When you examined the contents of the package
13 labeled Q-2, did you find anything relating to the operation
14 that you have just described?

15 A. Yes, sir, again I found wagering slips with some
16 of the same account designations as writers that appeared in
17 Q-1 and Q-3.

18 Q. What does this mean, the fact that you found
19 wagering slips with the same account designations? What does
20 the account designation mean in these records?

21 A. The account designation I am referring to is a
22 writer in this one.

23 Q. What is the significance in that?

24 A. Okay, for example if Q-2 has the same account

1 designation "Disco" which appeared in the Q-3 specimen. The
2 account designation identified the writer as also appears in
3 Q-1 specimen as a wagering account or a writer who has
4 identified as a writer on that material. So what this indicates
5 is that the work coming from here, particularly the account,
6 also appears at the 910 1/2 address.

7 Q. How many separate writers do you have in the
8 context of that Q-2, Mr. Stirling?

9 A. I have 4 writers who are identified by some type
10 of account designation. Some of the other sheets I will
11 identify as the writers wagering slips also, however there
12 was no account designation. So they may well be duplicates
13 of these same accounts here.

14 Q. Now that yellow slip that you had, what is the
15 separate number on the bottom? That yellow slip there is a
16 V.S.-2 on it. Did you find anything identical to that in
17 your examination of the contents of, I believe, Q-1?

18 A. Yes, I did. May I refer to my notes just for
19 a moment. I am trying to figure if I found the exact
20 duplicate of this in Q-1 or was that in Q-3. There are
21 three slips for "Disco" and one of them is the exact duplicate
22 of the wagers in item Q-1 or Q-3.

23
24 MR. DANIEL: Q-1, is that what was found at

1 the address, and Q-2 on Turner and Q-3 is what was
2 picked up at the house at 910 1/2 Fifth Street.

3 MR. PETTY: Q-1 was the package found on the
4 other person; Q-2 was found on the defendant, and
5 Q-3 is information that was collected that night at
6 910 1/2 Fifth Street.

7
8 BY MR. PETTY:

9 Q. Do you have that there?

10 A. Yes, I do.

11 Q. Go ahead and tell the jury if you found a
12 duplicate of that particular item?

13 A. The yellow carbon I identified as V.S.-2 from
14 the Q-2 specimen is also located over in Q-1, the original
15 of that. It's an exact duplicate of the yellow slip.

16
17 BY MR. DANIEL:

18 Q. Where was the yellow one found?

19 A. The yellow one was in Q-2, sir.

20
21 BY MR. PETTY:

22 Q. Let me put this up. Is this a slide of the
23 document that was found in your Q-1, the duplicate we are
24 speaking of?

1 A. That is the original, sir.

2 Q. That's the original. You said the package from
3 the person of this defendant contained an exact carbon
4 duplicate of that?

5 A. Yes, that's correct.

6 Q. And the writers or the account designation of
7 "Disco"?

8 A. That's correct, sir.

9 Q. When would you find an individual in possession
10 of a duplicate copy of a sheet that is turned in with that
11 day's work?

12 A. That's hard to say. Each one may be different.
13 In many cases the writers will turn in a -- Maybe turn in
14 the duplicate and keep their original or they may turn in
15 the original and keep the duplicate. The difference, there
16 is no way you can really determine, all you can say it was
17 a duplicate wager because it appears in both locations.

18 Q. Now I noticed this particular sheet carries the
19 number 639 written at the top as does the previous slide I
20 showed you that was contained in V.S.-2, I am sorry, Q-2.
21 It also contained the number 639. Could you tell us the
22 significance of that number, please?

23 A. The number 639 is the winning number of the
24 Maryland State Lottery for September 3, 1981.

1 Q. That would be the date prior to this evidence
2 you received?

3 A. Yes.

4 Q. Do you have an opinion as to where this particular
5 operation was obtaining the winning number for this operation?

6 A. Yes, the numbers were coming from the Maryland
7 State Lottery.

8 Q. Now, do you know when that Maryland State
9 Lottery number becomes public?

10 A. It comes out at 7:30 in the evening out of
11 Baltimore. It's televised out of Baltimore.

12 Q. If this particular raid was conducted about that
13 time, at about 7:00 or 7:30 in the evening, where would you
14 normally expect to find the bulk of work for that particular
15 day?

16 A. At that time of the day the bulk of the work
17 should be within the office or within the control for
18 processing. Writers need to have their books in by a
19 certain time. The operators will establish a time to have
20 them in and it has to be in by that time.

21 Q. Now I would like to pose to you a hypothetical
22 question based upon certain testimony in this case and ask
23 you if you can give us an opinion based on that. I would
24 like to give you a hypothetical question that the Lynchburg

1 Police Department conducted a surveillance in the City
2 of Lynchburg for a period from April of 1981 up to August
3 of 1981; that the surveillance was conducted approximately
4 25 days during the course of that period; that during the
5 course of this surveillance the defendant was observed
6 approaching a number of individuals at a particular location
7 at a parking lot, then proceeding to another person's house,
8 staying there a short time and then going to a location at
9 910 1/2 Fifth Street in the City of Lynchburg where the items
10 that we have been talking about in Q-1 and Q-3 were later
11 discovered. I would also like to include in that question
12 the theory that during the conducting of a raid the items
13 that you have designated Q-1 and Q-3 received from that
14 location, that Q-1 received in a paper bag along with
15 approximately \$1900.00 in U.S. currency was on the person
16 of an individual and that Q-3 was found again at the location
17 on a shelf in the premises and the document you have before
18 you as Q-2 was found on the person of this defendant who
19 was arrested, not arrested, or who was detained for search
20 a couple blocks from that location. Based upon that
21 hypothetical question, can you draw a conclusion as to whether
22 or not this person is a participant in the operation that you
23 have described?
24

1 MR. DANIEL: If Your Honor pleases, I have a
2 couple of questions I would like to cover. I object
3 to this because it calls for an opinion as to
4 participation, which is a legal question.

5 THE COURT: I agree with that, Mr. Daniel. I
6 think that's calling for a conclusion. Sustained.

7
8 BY MR. PETTY:

9 Q. Can you draw a conclusion as to what indication
10 you received as to what a person who might be possessing
11 that information ---
12

13 MR. DANIEL: If Your Honor pleases, I have
14 to say I don't know exactly what his question is,
15 but I think I know what he is getting at I think
16 it's calling for a conclusion that no expert should
17 give in a jury trial or Court trial, because he is
18 asking for a conclusion and anything that calls
19 for a conclusion in a jury trial is a matter for
20 the jury or the Court. I think he is asking for
21 a conclusion that he is not allowed to give.

22 MR. PETTY: My position is the ultimate fact
23 in issue is this defendant, what was his duty or
24 what was he -- I am simply asking a hypothetical

1 question about a person in this position and who
2 had possession of these documents, can you give us
3 an opinion as to what that person's position in the
4 organization would be. The law is quite clear that
5 an expert witness can give his opinion as to anything
6 that is beyond the scope of ordinary knowledge of
7 jurors and myself. This is evidence that he is
8 uniquely qualified to give and it is up to the jury
9 to determine whether or not this person was actually
10 involved to that extent.

11 MR. DANIEL: If Your Honor pleases, this is a
12 matter that the jury will have to decide.

13 THE COURT: Well, I tend to agree with you,
14 Mr. Daniel. Mr. Petty, I can see what you are getting
15 at. I think the jury is going to have to finally
16 decide, and I don't think someone can testify and
17 make a conclusion and say this is my conclusion and
18 ask the jury to reach the same conclusion. I think
19 it's an unfair question. So I am not going to let
20 him answer it.

21 MR. PETTY: Judge, if I might --

22 THE COURT: No, sir, I am not going to let you
23 ask it.

24 MR. PETTY: The cases state ---

1 THE COURT: Mr. Petty, I am not going to let
2 you ask it.

3 MR. PETTY: Could we take up one matter? There
4 is something I need to proceed on along this line
5 for another question.
6

7 (Jury Out)
8

9 MR. PETTY: Your Honor, I would like to rephrase
10 the question. The reason I want to do it is to get
11 the right question before the expert.

12 THE COURT: Let me state first why I sustained
13 the objection. I think clearly you stated for the
14 record what the expert is going to testify to. The
15 jury must determine and say this man participated
16 in an illegal gambling enterprise, and you are
17 asking him to make that decision for them. That is
18 what you are doing. I don't know of any case where
19 you can say I think this man fired the gun that
20 killed somebody, is it your opinion he committed
21 murder. They are not allowed to say that.

22 MR. PETTY: No, sir, the ultimate fact in the
23 issue is whether or not this man was an operator
24 of the gambling enterprise. Now the witness, I think,

1 is qualified as an expert to give his opinion in
2 certain matters. The question I want to propound
3 to him is can he determine from the possession of
4 these records, does that indicate to him any
5 particular position in the pyramid he has described.
6 What is that position?

7 THE COURT: You are not going to ask what
8 operators are?

9 MR. PETTY: No, sir, that's a legal and factual
10 question.

11 THE COURT: What you are going to ask is he
12 a writer, bagman, that sort of thing.
13

14 BY MR. PETTY:

15 Q. Mr. Stirling, after reviewing all of the
16 information and with the hypothetical facts that I have
17 asked you to also base your opinion on, can you come to
18 a conclusion as to what the possessor of the items in Q-2
19 would be, what his position would be in the perimeters of
20 this operation, the organization you have described?

21 A. Yes, he would be at least a pick up man or
22 bagman.
23

24 MR. PETTY: That is it.

1 THE COURT: What do you say about that, Mr.
2 Daniel? Do you find that objectionable?

3 MR. DANIEL: How do you determine that? Is
4 that because he had certain sources? How did you
5 determine that?
6

7 WITNESS:

8 A. That's one of the elements. He has got several
9 writer slips here. He was out on the street. The surveill-
10 ance has spotted him going through the different areas and
11 picking up the items. The items he had were located within
12 the operation also, not only the "Disco", you find over
13 in the operation. He could be higher than a pick up man.
14 With these records in his possession he is at least a pick
15 up man.
16

17 BY MR. DANIEL:

18 Q. Would those records indicate he is anything
19 higher than a pick up man?

20 A. No, sir, I would not say -- I would say he was
21 at least a pick up man.

22 Q. Almost certainly a pick up man, wouldn't you
23 say?

24 A. Well, I don't know any of the coded abbreviations

1 or anything of that nature. One of these codes may be his
2 designation.

3 Q. You don't know that?

4 A. I don't know that. From the records, I would
5 say he is a pick up man.

6
7 MR. DANIEL: I don't believe I would object
8 to that, Judge. I believe that's proper if that is
9 going to be it, but I don't want any -----

10 THE COURT: I agree with Mr. Daniel that were
11 you going to ask him is that man operating a
12 gambling enterprise --

13 MR. PETTY: No, sir, I didn't mean to do
14 that.

15 THE COURT: I think Mr. Petty has explained
16 it for the record.

17 MR. DANIEL: In that way, I think it's
18 different.

19 THE COURT: I am going to let you ask that
20 question in the form you have put it.

21 Okay, let's bring the jury back.

22
23 (Jury In)
24

1 THE COURT: Mr. Petty, I think you have a
2 question.

3
4 BY MR. PETTY:

5 Q. Let me rephrase my last question: From the
6 basic hypothetical proposed to you and I asked you concerning
7 the surveillance and such, I won't go into that, from the
8 facts I asked you, assume the facts that a fingerprint of
9 the defendant was found on the slip marked Plaintiff's
10 Exhibit 4, documents that were found on the shelf at 910 1/2
11 Fifth Street, from the fact that the defendant was found in
12 possession of the slips that you have before you that have
13 been identified as Commonwealth's Exhibit Q-2 --

14
15 MR. DANIEL: I thought that the question was
16 going to be about Q-2.

17 THE COURT: What is the question? I think he
18 has explained the question once and I think the
19 question involved all of this.

20
21 BY MR. PETTY:

22 Q. And further that the fact that a duplicate slip
23 carrying the winning number from the previous day was found
24 in his possession and also found on the other items, can you

1 draw a conclusion as to what the possessor of the items in
2 Q-2, what position he would hold in the organization you
3 have described?

4
5 MR. DANIEL: If Your Honor pleases, I think
6 that is not the question we ruled on. I thought
7 we determined exactly what the question was.

8 THE COURT: I ruled you can ask what his position
9 in the hierarchy was or what he had described.

10
11 BY MR. PETTY:

12 Q. What was his role?

13 A. At least a pick up man or a bagman.

14
15 CROSS-EXAMINATION

16
17 BY MR. DANIEL:

18 Q. Mr. Stirling, I want you to get this thing for
19 me, I want you to get me straight on Q-2. That has been
20 identified earlier as what was found on Carroll Turner's
21 person when he was found a block or two from 910 1/2 Fifth
22 Street?

23 A. Yes, sir.

24 Q. Now from that, you assume the role of a pick up

1 man or bagman. Did you say normally he picked up the money
2 and these records?

3 A. I didn't say that, no, sir. Again that would
4 depend on how the operation runs. Most cases they would try
5 to separate the money from the wagering slips in most cases.
6 Several people will take -- It will just be picked up at
7 different times.

8 Q. You don't want normally --

9 A. This again is speaking in general in the
10 operation, you don't want the money located with the
11 slips, then the cops think we will get the money and the
12 slips.

13 Q. Well, I guess what you are saying that over
14 the Country there are thousands of variations of ways the
15 numbers operation may be handled, not regarding the basic
16 odds and what you are betting on, but the method as to how
17 the thing is run, is that right?

18 A. Yes.

19 Q. And in this particular case can you tell us on
20 Q-2 what the total amount, if it shows the total amount,
21 where are those figures?

22 A. I didn't figure these separately from the overall
23 evidence. The total on this slip would be \$26.30.

24 Q. I believe the Officers said they found \$252.00

1 in his pocket. You, as I understand, have not totaled the
2 slips in Q-2 to see what they are?

3 A. I have each slip totaled in my notes if you
4 want to go back and I will read each slip for you.

5 Q. No, sir.

6 A. I couldn't give you a figure on it right now
7 because it's cumulatively totaled, but I could give you each
8 slip.

9 Q. Could you look at Q-2 right now and tell me how
10 many writers were involved in Q-2?

11 A. I think I stated earlier at least 4.

12 Q. In Q-2?

13 A. Yes, for the whole of the specimens in Q-1 and
14 Q-2 and Q-3. There were at least 14 in the entire operation.

15 Q. Would you expect that the money found on Carroll
16 Turner would equal the amount shown on the slips? Would
17 there be anything unusual for that being the amount shown
18 on the slips?

19 A. I would have no opinion on that. He may have
20 500. It makes no difference to me how much money he has
21 on these slips. These slips are individual bets and, as I
22 stated earlier, you normally try to separate the two, the
23 wagering slips and the money.

24 Q. But who would take the money?

1 A. The money would eventually filter into the
2 operation, the upper part of the operation.

3 Q. Well, what is that person called?

4 A. Up in the office area, up into the financial
5 backing of the operation. A good example -- I lost my
6 line of thought.

7 Q. Maybe I can help you, but I understand what you
8 call a pick up or bagman may not carry the money and the
9 slips. He may just carry one, is that right?

10 A. That's correct, he may just carry -- Pick up
11 the wagering slips from the writer.

12 Q. Do you have a name for the person who picks up
13 the money?

14 A. No, I can't tell from the records.

15 Q. I mean how do these things work in other places,
16 if you have someone that picks up from the writer the money
17 and someone that picks up from the writer the slips. Do you
18 have a different name for them or are they both called the
19 bagman?

20 A. The money would be picked up by the same man
21 later. The writer himself may give it to them. The records
22 don't indicate how that operation handled that.

23 Q. What is the difference, Mr. Stirling, you say
24 the way the legalized lotteries are run, do they run about the

1 same way, have writers and pick up people?

2 A. They have got chains set throughout an area to
3 sell the tickets. They have got an administrative level and
4 I am sure they have got Executive Officers. They have got
5 a commission. They have a structure.

6 Q. You mentioned a huge operation, what do you call
7 or consider a huge operation?

8 A. By terms of money or volume.

9 Q. I don't know, you were using that term a couple
10 of times when you described the ways these things work, and
11 several times you said something about a huge operation?

12 A. Again, that's a relative term, depending on
13 the way you are comparing one thing to another. In New
14 York City the numbers operations are normally very large.

15 Q. How many writers in a very large organization?

16 A. You may have as many as four or five hundred
17 writers in one operation in New York. Chicago is another
18 area where you might find large operations.

19 Q. As I understand, you said you can't operate
20 without your betters?

21 A. Pardon?

22 Q. You said you couldn't operate without your
23 betters. You got a triangle up here and you can't operate
24 without the betters?

- 1 A. What, the writers?
- 2 Q. No, the betters?
- 3 A. No, you couldn't operate without your betters.
- 4 Q. Could you operate without the writers?
- 5 A. Sure, you can.
- 6 Q. How would that be done?
- 7 A. One man operation. A guy owns the operation and
- 8 collects the bets.
- 9 Q. Can you operate without the bagman?
- 10 A. Certainly.
- 11 Q. Well, you told us that, I believe, normally
- 12 the writer gets a commission?
- 13 A. That's correct.
- 14 Q. Could a bagman very well get a commission if
- 15 he didn't handle the money?
- 16 A. The bagman may get a commission, but normally
- 17 he is paid a salary. He picks up and delivers and gets paid
- 18 usually. The pick up man or the bagman will be paid in some
- 19 fashion by the operation simply because he is working for the
- 20 operation. The most distinctive part of the records, of
- 21 course, is your writers. They show the actual commission
- 22 taking place. Within the records, it doesn't indicate what
- 23 the pick up man or the bagman receives.
- 24 Q. Did you find any evidence of any financier or

1 what you call financial backer?

2 A. No, sir, not in these records.

3 Q. Did you find any evidence of a counter?

4 A. You mean someone in the office actually counting,
5 no. That would be hard to identify, a counter.

6 Q. Then the way I understand the way this thing is
7 run nobody sets the winning number except what happens to
8 come up in the lottery?

9 A. There is indication in the records they may use
10 another number. I can't -- I did say they used the Maryland
11 number because of the evidence that I have seen from the
12 records. There is also some indication of possibly using
13 another number. I didn't have enough -- Within the records,
14 I actually did not have a winning number indicated.

15 Q. You did not?

16 A. No, sir, because on many of the records when a
17 hit takes place, so to speak, on a number the number in some
18 way will be circled or checked. They have to indicate that
19 number on, say a slip, like this to pick it up.

20 Q. Does your search of these records reveal anybody
21 actually betting, anybody actually betting money?

22 A. In my experience, this is all the transaction,
23 the wagering, the money being transferred.

24 Q. You said that these records didn't reveal a

1 winning number?

2 A. No, there is no indication of any one better
3 hitting on a number, that's correct, at least not from what
4 I determined.

5 Q. Do you expect to find one?

6 A. Not in the day's current work. The raid took
7 place before the number came out.

8 Q. Do you know whether any of those guys gave
9 anybody any money, that anybody won any money? I mean from
10 your knowledge in looking at these records, could you tell
11 us that?

12 A. No, sir, just from these records, based on
13 these records I couldn't tell that any better won anything.

14 Q. And you couldn't from these records tell that
15 anybody paid any actual money, could you?

16 A. The possibility exists, but again, based on
17 experience and the records, I don't examine money. Money
18 is never forwarded to me.

19
20 MR. DANIEL: I don't have any further questions.
21
22
23
24

REDIRECT EXAMINATION

BY MR. PETTY:

Q. Just one other question: From your examination, particularly of those items that were taken from the person of the defendant, can you tell us whether or not that would be consistent or inconsistent with that individual being a better?

A. Will you repeat the question?

Q. My question was, the papers that were seized solely from the person of the defendant, would they be consistent or inconsistent with that person being a mere better?

MR. DANIEL: If Your Honor pleases, I don't see that he is qualified to give that. It's not a question that I went over. It's not really proper redirect.

THE COURT: I agree. He is not going to answer that. Next question.

MR. PETTY: No other questions.

THE COURT: May he be excused?

MR. PETTY: Yes.

THE WITNESS STANDS ASIDE.

1 MR. PETTY: That's the Commonwealth's evidence.

2 THE COURT: Do you have any other witnesses?

3 MR. PETTY: No.

4 MR. DANIEL: I have a motion.

5
6 (Jury Out)
7

8 MR. DANIEL: If Your Honor pleases, on behalf
9 of the defendant, I move the evidence of the Common-
10 wealth be stricken both as to the charge of gambling
11 and to the charge of operating a lottery for the
12 reason that the law defines exactly what illegal
13 gambling is and that is making, placing, or receiving
14 any bet or wager in this State of money or anything
15 of value in exchange for the chance to win a prize.
16 And we have got the only person who purports to
17 touch on ~~evidence needed~~ to sustain that charge,
18 Mr. Stirling, who could not say that any money was
19 bet, that any bet was made and that any prize was
20 awarded. In fact, there is no evidence that any
21 prize was awarded or that any winning number was
22 ever entered to show that that was in fact a gambling
23 operation.

24 And secondly, with regards to the operation,

1 there is no evidence to show that this man did any-
2 thing more, even from the expert testimony, than
3 pick up and deliver what was proper delivery on ⁷
4 a salary business. There is no showing of conducting
5 of the operation, ownership, or direction, or that
6 he had anything to do with the control or where the
7 money ended up or where it went or who bet or who
8 didn't bet or the time or the setting of the numbers.
9 There is nothing to show that he did anything except
10 I think one Officer said one time that he saw him
11 take some money and papers, which proves absolutely
12 nothing. It's insignificant, and I just think that
13 the Commonwealth has wholly failed to prove his
14 part either as to the felony or as to the illegal
15 gambling.

16 THE COURT: Mr. Petty?

17 MR. PETTY: Your Honor, the evidence at this
18 point is overwhelming that a gambling enterprise
19 existed. The evidence from Mr. Stirling is without
20 even question that a money making operation existed.
21 That is what he called it, a money making enterprise
22 accepting wagers and bets on a three digit number,
23 which was a randomly selected number out of the
24 Maryland State Lottery. That is his testimony. He

1 testified from these records he was able to determine
2 that this existed on at least two separate occasions.
3 The previous day when he was able to show what the
4 winning number was as well as the day in question,
5 the day that the raid was conducted. He testified
6 from examining the records in his expert opinion
7 that enterprise accepted in excess of \$2,000.00 in
8 gross receipts, gross wagers for the date of September
9 4, 1981. He said he doesn't need to examine the
10 money and count the money. These are the records.
11 Certainly if you look at a bank statement and we
12 see that a deposit of \$10,000.00 showed up on an
13 individual bank statement, certainly a qualified
14 expert could testify, a qualified person could
15 testify the bank accepted \$10,000.00 from that
16 person on that given day.

17 As to the person, the defendant's
18 involvement in the offense, the Commonwealth is
19 predicated --

20 THE COURT: I agree with you thus far. There
21 is no question there is an illegal gambling operation.

22 MR. PETTY: The Commonwealth predicates its
23 case in this particular prosecution on an allegation
24 that the defendant did conduct part of the gambling

1 enterprise or activity. Void and delete all the
2 remainder of that because that is the guts of the
3 case. I think that is what we have proven. Mr.
4 Stirling testified that the bagman and that is the
5 way he connected this defendant and this is what
6 he has shown him to be, the bagman is a member of
7 the operations and he said each person facilitates
8 the ongoing operation and it's our position that if
9 a person is a part of the operation and is paid
10 by the operation and that he facilitates the ongoing
11 operation itself he does conduct a portion of that
12 operation.

13 THE COURT: That's no problem. How about
14 better?

15 MR. PETTY: Now, Judge, a better -- Mr. Stirling
16 has testified a better is outside the gambling
17 operation.

18 THE COURT: How about the writer?

19 MR. PETTY: A writer is inside the gambling
20 operation.

21 THE COURT: You would say a writer is an
22 operator?

23 MR. PETTY: Yes, sir, in that he conducts, and
24 the most obvious example, a writer gives somebody

1 a slip with a written number on it and takes money
2 in exchange. We have got a man that runs a train
3 and does the same thing. He doesn't own the train,
4 he doesn't finance the train, he doesn't tell the
5 train where to go. We call that man a conductor.
6 And he does that, he takes the ticket and gives them
7 the slip. This man, the writer, facilitates the
8 operation. The difference, we would suggest, between
9 the better and the writer is that the better receives
10 money only if he wins. Every other person in this
11 operation that is a part of the operation receives
12 money win or lose for doing a job, and we would
13 suggest that it's the doing of that job within the
14 perimeter of the organization that makes him a person
15 who conducts a part of the operation.

16 THE COURT: Do we have a case law in Virginia
17 that shows in a given fact situation when a person
18 may be deemed an operator such as a bagman or
19 other --

20 MR. PETTY: There is no case law in Virginia.
21 There was a recent conviction in this Court where
22 a writer was convicted as conducting a part of the
23 gambling enterprise.

24 THE COURT: I mean I never had a case like this

1 before, to be very frank with you. I have never seen
2 a case that I am aware of that gives any perimeters
3 or definitions to the word conduct. It's clear
4 conducts is the word. You don't have any evidence
5 of financing or managing or supervising or directing
6 or otherwise -- I mean, that's the problem we have.
7 You might be right, but I want to make sure you are
8 before I instruct the jury on the enhanced punish-
9 ment and also the Federal clauses --

10 Mr. Daniel, what is your position?

11 MR. DANIEL: Well, Judge, I can't find a case
12 specifically indicating that the bagman is or isn't.
13 I did find a case that says about a hit and it says
14 that the Statute wasn't aimed for that, it was aimed
15 for the big guy.

16 THE COURT: It seems to me you want to get the
17 guy that operates, the man that runs the show. I
18 mean there has got to be --

19 MR. DANIEL: That's what it says. There has
20 got to be a purpose behind this legislation, which
21 I do know and I know the Court knows that the criminal
22 Statute is construed strictly. Now I don't think it's
23 a proper analogy to say that a man who works on a
24 train for the railroad is called a conductor. You

1 surely couldn't say he conducted the business of the
2 railroad. He works for the people and carries out
3 functions, but in that case you can't work without
4 passengers, which is another thing in this case.
5 The conductor of the Board of Directors and the
6 Chief Executive Officers that ran the operation
7 would seem to be a closer parallel of what we are
8 talking about. But the evidence from what I gather
9 here is that somebody could stop me on the street
10 and hire me to go up and pick up a bag and bring it
11 to any place, and that's an extremely innocent
12 situation. But guilty knowledge, as I understand,
13 has got nothing to do with it, because it's running --
14 Within the usual meaning and the combination of the
15 terms conducting. I think this evidence falls far
16 short of showing he was more than a little cog in
17 a wheel and I don't think the Commonwealth has got
18 a case. I understood Mr. Petty to say that the
19 writer was outside of the operation.

20 THE COURT: Well, we have got the evidence the
21 writers and bagmen and operators are all in the
22 operation.

23 MR. DANIEL: We have got their role of what
24 they do, but that doesn't mean they are operators.

1 THE COURT: Of course I wish we did have
2 precedent in Virginia that would somewhat define
3 what conducting a gambling operation enterprise
4 means, but we don't have that and I have got to
5 make a decision now so as to instruct the jury.

6 Any other help, Mr. Petty?

7 MR. PETTY: Judge, I can --- Again, I can
8 only cite Federal cases and Federal Statutes.

9 THE COURT: Let me see some of the Federal
10 cases.

11 MR. PETTY: The cite I have got is a case
12 entitled United States against McHale, a Seventh
13 Circuit case supporting approvingly a Fourth Circuit
14 case of United States vs. Becker. It says thus
15 Congress intent was to include all of those
16 participating in the operation of the gambling
17 business regardless of how minor their roles and
18 whether or not they are labeled agents, runners,
19 independent contractors or the like and to exclude
20 only customers in business.

21 THE COURT: That's what it says.

22 Does it say participation?

23 MR. PETTY: No, it uses the term conducts.
24 That's the language of the Court, but the words of

1 Federal Statute says conducting, financing, managing,
2 supervising, directing, all are part of an illegal
3 gambling business.

4 THE COURT: The same as ours.

5 MR. PETTY: The same Statute.

6 THE COURT: You argue that the same would be
7 applicable here as in the Federal Statute and the
8 intent of the General Assembly is to make anybody
9 who participates in an illegal gambling enterprise
10 an operator.

11 MR. PETTY: I think that's clear because they
12 use the word part. If they intended merely to go
13 to the head honcho who was in charge of the whole
14 show there would be no purpose in including the
15 word part. So if we assume the word part has a
16 meaning, then it must include somebody lesser down
17 the line, and I suggest it would be ludicrous to
18 say we will only go halfway down the organization,
19 we will take everybody from the counter on up, but
20 not those down below; and again, I think the better
21 is shown in our interpretation of the Statute.

22 THE COURT: I am going to instruct the jury
23 on the felony basis and also the enhanced punish-
24 ment, without saying that I am right, Mr. Petty.

1 I am also going to instruct them on the misdemeanor
2 of accessory. I think the jury is going to have
3 to give it the way they see here as to whether they
4 see him as an active conductor or whether he was
5 merely an accessory to a gambling activity. So I
6 will instruct on the felony basis and also the
7 enhanced punishment since we do have some Federal
8 cases, and the Statute being identical to ours and
9 the Federal Citation says participation. The
10 participation goes clearly to the felony basis and
11 I will let the jury then decide. If it means some-
12 thing more than mere participation, actually the
13 controller or what we have heard described here,
14 then it should not go to the jury on the felony
15 basis. I am going to rule it should go today on
16 the felony basis. I am going to instruct on the
17 misdemeanor too.

18 MR. PETTY: Judge, the law is quite clear that
19 an accessory is someone who is not a participant
20 in the actual commission of the crime, that he is
21 aiding and abetting. The evidence here is this man
22 is actually participating in the crime in that he
23 is facilitating by moving it up the stream from the
24 writers to the betters.

1 THE COURT: Don't we have a specific section
2 on accessories?

3 MR. PETTY: We don't have it here under this.
4 I suggest we have got to apply the same language
5 as the Court has used in defining what is an
6 accessory. An accessory is someone who participates
7 in the planning but is absent during the commission
8 of the offense.

9 In other words, the term accessory would
10 be inclusive in the term operator. You could not
11 distinguish between the two. Obviously everybody
12 that directs or engages or participates in any type
13 of or conducts any type of operation is facilitating
14 and that is not like aiding and abetting and
15 assisting in the operation. I suggest that goes
16 to the people that run the house, that own the
17 house where the money is counted or do something
18 outside of the operation itself to lend assistance.
19 You notice it didn't say assist in the participation.
20 It says assist in the operation or in the operation--

21 MR. DANIEL: May I say just one thing. If
22 participation is the key word, which is certainly
23 not in the language of the Statute, then I don't see
24 how you could say my client is covered, because he

1 didn't actually participate or take any money. We
2 don't have any evidence of it. And I know he said
3 that the betters are not covered.

4 MR. PETTY: Judge, there has got to be some
5 distinction between a person who is a conductor,
6 a statutory operator, and a person who is an
7 accessory. And to submit both of these to the jury
8 is just to say, okay, here they are, you can pick
9 whichever one because they both fit. They have got
10 to have a separate meaning, and we have got to instruct
11 the jury that they have separate meanings.

12 THE COURT: We instruct the jury many times
13 on lesser included offenses and say now what do you
14 think the facts, what do they fit?

15 MR. PETTY: What we do when we instruct on
16 lesser included offenses, we tell the jury what is
17 the difference between the major offense and the
18 minor offense. What do we tell the jury here? If
19 you find that he conducts, he is a felon and if you
20 find that he knowingly aids and assists in the
21 operation he is a misdemeanor. My question is what
22 is the difference? You have got to tell them what
23 the difference is.

24 THE COURT: How could I tell them? I can't

1 tell them what conduct means, other than I am saying
2 to you now that it means participation.

3 MR. PETTY: That is what I am saying. If the
4 Court is ruling that conducts means participation,
5 then I don't think we could find it means aiding
6 and abetting. I think it's got to be --- Unless
7 these are one and the same offenses there has got
8 to be a mutually distinguishing feature in each.
9 Each one has to have an element, the lesser, the
10 greater offense and each has to have an element
11 that does not exist in the lesser offense.

12 THE COURT: Well, I am making a legal ruling
13 that I am going to let it go to the jury because
14 participation I don't find today. As to what the
15 touch tone term conduct means, it's part of the term
16 conducts. Therefore, it should go to the jury on
17 the felony basis, but couldn't the jury infer since
18 he was not actually participating in the level of
19 conducting, but he was merely an accessory to the
20 aiding and abetting. Couldn't they imply that?

21 MR. PETTY: I think it has got to be a
22 distinction. That's all I can say. The jury has
23 got to be told what the difference is and if we
24 can come up with what's the difference, then I might

1 not have any objection to it, but otherwise we are
2 virtually telling them pick or choose, there is no
3 distinction that we can tell you.

4 THE COURT: I don't want to do that, but I
5 want to give him the benefit of the doubt too.

6 MR. DANIEL: Is the argument that they
7 shouldn't be instructed on illegal gambling involved
8 in this, because that is defined as receiving a bet.
9 There is as much evidence of that as anything else.

10 THE COURT: What is that, a Class 3 misdemeanor?

11 MR. DANIEL: Yes, sir. That's the first part
12 of the paragraph.

13 MR. PETTY: I think illegal gambling says any
14 person who illegally gambles, indicating that is
15 definitely aimed at the better.

16 MR. DANIEL: It defines illegal gambling right
17 there in the Code. It says receipt of the bet.

18 THE COURT: Well, let's take a break and chat
19 about it. I am not convinced either way. I can't
20 say I am.

21 Mr. Daniel, do you have any witnesses at
22 all?

23 MR. DANIEL: No, sir.

24 THE COURT: Let's go back and talk about

1 instructions briefly and we will come back on the
2 record in here.

3
4 *****

5
6 THE COURT: We are ready to discuss the jury
7 instructions. Mr. Turner is present in the Court-
8 room. Let the record show that.

9 Let me state what I intend to give. If
10 there are objections, I will ask to hear from either
11 side.

12 I intend to give Instruction A, and there
13 is no objection from the Commonwealth as I under-
14 stand it. Instruction B, there is no objection from
15 the Commonwealth. Instruction C, is there any
16 objection from the Commonwealth?

17 MR. PETTY: That was one you indicated you
18 were going to give.

19 THE COURT: I think it's necessary. C, there
20 is no objection.

21 Instruction J?

22 MR. PETTY: No objection.

23 THE COURT: Now the other instructions which
24 were proffered to the Court by the defendant are

1 Instructions D, E, F, G, H, and I, and I think
2 Instruction C. I did give Instruction C, didn't I?

3 MR. PETTY: D was withdrawn.

4 THE COURT: D was withdrawn, is that correct?
5 I have refused Instruction E. Mr. Daniel, do you
6 object to my refusal of Instruction E?

7 MR. DANIEL: Yes, sir, I do.

8 THE COURT: What are your reasons for
9 objecting?

10 MR. DANIEL: If Your Honor pleases, the theory
11 of the defendant's case is that at the most this
12 would show illegal gambling, and it's --- By
13 definition in the Statute the crime of illegal
14 gambling is covered by the evidence here if it
15 covers anything.

16 I have a general objection to any
17 instructions on the ground that the evidence, as I
18 stated in my motion to strike, does not support or
19 warrant giving any instructions on any illegal
20 activity because the expert, who is really the guts
21 of the case, never said that he could say any
22 gambling, any bets were received or money was taken
23 or prize was awarded or was there a winning number
24 established from his record. Now I believe that

1 the crime of illegal gambling has almost got to be
2 included in the operation of the gambling enter-
3 prise, because first you have got to have the
4 gambling. That's a misdemeanor. I think the jury
5 might very well from the evidence, since it's all
6 circumstantial, might very well decide that is all,
7 that for some reason maybe the evidence doesn't
8 rise high enough to find that he operated, because
9 I have serious question about that myself, or that
10 he maybe received a bet. They might infer that from
11 these circumstances in which case it would be
12 gambling if they inferred that way and there are
13 facts from which they could make that reasonable
14 inference.

15 MR. PETTY: Your Honor, it's our position that
16 the gambling refers to the action which occurs when
17 a better, in this situation, places a bet, he
18 gambles. Clearly I think the Statute by being
19 predicated or leading off with the term, except as
20 otherwise set out in this chapter, whatever the
21 wording goes to that interpretation. It's our
22 position that with the evidence were there to be
23 evidence that he was a mere gambler, then that would
24 be probably a lesser included offense, but in this

1 case the evidence is devoid of any indication that
2 he is anything other than what we term bagman and
3 that man is part of a gambling operation, and
4 therefore it's no evidence to support that instruction.

5 MR. DANIEL: There was one piece of evidence
6 that they saw money exchanging hands. The jury
7 might believe that part only of the evidence. They
8 would be warranted in doing that. I think that
9 alone would be enough to give that.

10 THE COURT: I am going to refuse the instruction
11 for the reason that I think the purposes of that was
12 for illegal betters. I don't think this is competent
13 evidence from which the jury could infer that he was
14 an illegal better. The Statute says a person who
15 makes a wager or places or receives a bet. Now what
16 Mr. Daniel said, there was some testimony of exchange
17 of money, but I don't think that evidence alone is
18 sufficient to instruct the jury on possibility. I
19 think it's too little and not sufficient to instruct
20 the jury on the misdemeanor, and I refuse to.

21 Mr. Daniel, do you object to me refusing
22 Instruction F? I think it's in line with your
23 same objection.

24 MR. DANIEL: I object to that for essentially

1 the same grounds. I think the illegal gambling is
2 a lesser included offense.

3 THE COURT: Mr. Petty, do you stand on the
4 same reasons?

5 MR. PETTY: Yes, sir.

6 THE COURT: Well, I am refusing F for the same
7 reasons. And G, of course, would be the same thing.
8 I am not instructing there is any lesser included
9 offense. He will be found guilty of the felony or
10 nothing at all.

11 MR. DANIEL: I object to the refusal of the
12 Court to give Instruction G, which I have stated.

13 THE COURT: Instruction H which I am going to
14 refuse.

15 MR. DANIEL: I object and except to the action
16 of the Court in refusing to give Instruction H. That
17 includes my theory of the case and is taken from
18 the language of Doubles Jury Instructions in Para-
19 graph 116.011.

20 THE COURT: The Court will refuse I?

21 MR. DANIEL: I object and except to the action
22 of the Court in refusing I in that it comprises the
23 defendant's theory of the case.

24 THE COURT: Mr. Petty, you have withdrawn

1 Instruction 1?

2 MR. PETTY: Yes, sir.

3 THE COURT: Then, I will give Instruction A,
4 B, C, J and also 2, 3, and 4.

5 Now, gentlemen, the verdict has been
6 prepared and reads, "We, the jury, find the defendant
7 guilty of conducting an illegal gambling operation
8 as charged in the indictment and fix his punishment
9 at ____."

10 The next one says, "We, the jury, find
11 the defendant guilty of conducting an illegal gambling
12 operation which had a gross income of at least
13 \$2,000.00 on the same given day as charged in the
14 indictment and fix his punishment at ____."

15 "We, the jury, find the defendant not
16 guilty", and a ____.

17 MR. PETTY: Sir, I am sorry, what was that
18 second one?

19 THE COURT: "We, the jury, find the defendant
20 guilty of conducting an illegal gambling operation
21 which had a gross income of at least \$2,000.00 on
22 a single day as charged in the indictment and fix
23 punishment at ____."

24 MR. PETTY: Judge, I think there is some

1 jurors?

2 MR. DANIEL: No, sir.

3
4 (Jury excused)

5
6 THE COURT: Mr. Daniel, any motion to set
7 aside the verdict?

8 MR. DANIEL: Your Honor, I move to set aside
9 the jury verdict on the following grounds: That
10 there was not sufficient evidence to support the
11 charge of operation; for the action of the Court
12 in refusing to instruct on the lesser included
13 offense of gambling, and for the failure of the
14 Court to strike the evidence for the reasons I
15 stated in the motion to strike the evidence. And
16 I move the Court to give us an opportunity maybe
17 to submit to the Court some authority on what
18 constitutes this type operation, and also at this
19 time I will make a motion for a pre-sentence.

20 THE COURT: Any response?

21 MR. PETTY: No, Your Honor.

22 THE COURT: The Court is going to order a
23 pre-sentence investigation be made and a report be
24 made before I impose sentence on the jury verdict.

HOUSEHOLD - BUDGET AND EXPENDITURES CHECK

529
142

ITEMS							PR	SAT	SUN
DATE	\$	\$	\$	\$	\$	\$	\$	\$	\$
1							187	067	898 ②
2							813	358	493 ④
3								387	891 ②
4								970	473 ②
5								319	336 ②
6								590	263 ②
7								194	607 ③
8								215	706 ③
9								157	528 ②
10								931	783 ②
11								168	138 ①①
12									198 ②
13									981 ②
14									319 ④
15									067 ④
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27								319	
28								970	
29								079	482
30								381	881
31								318	891

51600

NAME _____ MONTH _____ VS YEAR 3-5 01 80

Plaintiff's
Exhibit
4

