WALDO GIVES RECORD OF 13 SAM PAUL RAIDS

Accuses Courts of Leniency Toward East Side Gambling House Owner.

NO EVIDENCE, SAY JUDGES

Police Charged With Failure to Produce Proof of Law Violations.

Police Commissioner Waldo, supplementing his defence of the department and his attack on the courts with the police record of the thirteen raids on Sam Paul's gambling house and what the courts did with the evidence, had a little to say to THE SUN about the inspectors who had been grafting and "the old time, corrupt policemen" who have been backing up gamblers in trying to discredit the police.

"Some of these inspectors are still in the department," said the Commissioner, "because it had been impossible to get enough real evidence to justify firing them.

"Commissioners before me knew that certain inspectors were grafting," said Capt. Waldo, "but they couldn't land these greedy gentlemen. About the first thing that I did when I took office was to fix matters so that the inspectors, commonly known to be collectors of protection money couldn't be very active.

"Shortly after I became Commissioner I devised the plan of separate raiding squads, each squad checking the other's activities, and all keeping tab on inspectors. More than that, I saw to it that the grafters were removed from districts where they had been operating. Since that time these inspectors have had nothing to sell."

Not to Resign.

The Commissioner said that stories that he was to resign were really too foolish to discuss. His relations with Mayor Gaynor were never more friendly, and the Mayor was giving him splendid and earnest support.

The Commissioner names the Judges and Magistrates before whom the Sam Paul cases came, and concludes his statement with a shot at the Grand Jury. Nine of the raids mentioned by Commissioner Waldo were made on the house at 134 and 136 East Thirteenth street. Three of the thirteen raids are credited to the men under Lieut. Becker. Commissioner Waldo also says that the only reason given by the various Judges and Magistrates for discharging certaain of the men arraigned was that there was not enough evidence to hold them.

This statement by the Police Commissioner brought explanations from some of the Judges and Magistrates whose names were mentioned. Their position is said to be that not only is there frequently insufficient evidence to hold the prisoners, but also that there is sometimes no evidence at all. Instances are given where those making the raids failed to remember what it was they saw that made them think gambling was going on. In other cases the stool pigeons, who usually got the evidence on which the raids were made, failed to appear as witnesses when the cases were called. Judges and Magistrates declare that it is their business to administer the law and that it is not their fault if policemen fail to meet the requirements which the law demands.

The List of Raids.

The list of raids furnished by Commissioner Waldo covers the period from June 2, 1911, up to and including April 11, 1912. He verified it from the police records. It follows:

Arrests made at places controlled by Sam Paul at the following locations, giving dates and dispositions: 29 Cooper square; 134-136 East Thirteenth street; 103 Fourth avenue; 218 East Fourteenth street.

June 2, 1911—134-136 East Thirteenth street entered by members of the Detective Bureau in charge of Lieut. Jones; seven prisoners; two discharged on Nov. 13, 1911, S. S. Judge Moss; five discharged on Feb. 27, 1912, G. S. Judge Foster.

Aug. 12, 1911—134-136 East Thirteenth street entered by members of the Central Office squad assigned to First Inspection District Office; five prisoners, violation of section 986 of the penal law; discharged; Magistrate Kernochan.

Sept. 23, 1911—29 Cooper square entered by members of the Central Office squad assigned to First District Office; three arrests for violation of section 970 of the penal law; discharged; Magistrate O'Connor, Third Court.

Dec. 2, 1911—134-136 East Thirteenth street entered by members of the Central Office squad assigned to First District Office; three arrests for violation of section 970 of the penal law and one for violation of section 986 of the penal law; discharged; Magistrate Krotel, Third Court.

March 2, 1912—134-136 East Thirteenth street entered by members of the Central Office squad in charge of Lieut. Costigan; seventeen prisoners; three discharged Magistrates' Court; eight discharged Grand Jury, and six convicted General Sessions and fined $50 each.

April 2, 1912—103 Fourth avenue entered by members of the Central Office squad assigned to First District Office; three arrests for violation of section 986 of the penal law; discharged; Magistrate McQuade, Third Court.

April 11, 1912—134-136 East Thirteenth street entered by members of the Central Office squad in charge of Lieut. Becker; three prisoners charged with violation of section 986 of the penal law; one discharged and two fined $50 each; Magistrate Russell, S. S.

May 24, 1912—134-136 East Thirteenth street entered by members of the Central Office squad assigned to First District Office; four arrests for violation of section 970 of the penal law, three for violation of section 986 of the penal law. Pending.

July 6, 1912—134-136 East Thirteenth street entered by members of the Central Office squad in charge of Lieut. Becker; six arrests for violation of section 986 of the penal law; one discharged, Magistrate House, Third Court; five pending.

July 15, 1912—134-136 East Thirteenth street entered by members of the Central Office squad assigned to the First District Office; two arrests for violation of section 970 of the penal law; discharged, Magistrate Krotel, Third Court.

March 6, 1912—218 East Fourteenth street entered by members of the Central Office squad in charge of Lieut. Costigan; one arrest, discharged, Grand Jury.

[illegible] 1912—218 East Fourteenth street entered by members of the Inspectors' squad; two arrests for violation of section 970 of the penal law; discharged, Magistrate McQuade, Third Court.

[illegible] 1912—134-136 East Thirteenth street entered by members of the Central Office squad in charge of Lieut. Becker, seven arrests, five discharged, Grand Jury; two fined $50 each, S. S.

On March 2, 1912, at 3:40 P. M., gambling house kept by Sam Paul, at 136 East 13th street, was raided on warrants issued by Chief Magistrate McAdoo on evidence obtained by Detectives Henry C. Jessup and Lawrence J. Beine, of Special Squad No. 2. Seventeen prisoners were arrested and arraigned before Magistrate Corrigan, in the 3d District Magistrates' Court, on March 3d. They were held for examination March 6th. On that date, three of the prisoners who were charged with acting as doormen were discharged on recommendation of the Assistant District Attorney, and fourteen held for trial, eight being charged with felony, and six with misdemeanor.

On April 16, 1912, Officers Jessup and Beine appeared before the Grand Jury, of which Joseph P. Day was the foreman, and testified against the eight prisoners charged with felony, but no indictment was found. In May, 1912, the same officers testified in the Court of Special Sessions against the six prisoners charged with misdemeanor, who were convicted and fined $50 each. Chief Justice Russell presiding.

The evidence in this case was obtained by the two officers mentioned on February 26th, 27th, 28th, 29th and March 1st of this year, and was given before the Grand Jury in the same manner as it was in the Court of Special Sessions.

"When I gave out the statement in which I said that Sam Paul had been arrested eleven times within a year, it appears that I underestimated the facts," commented Police Commissioner Waldo after he had gathered specific data on the subject. "Remarkable figures, aren't they?" he added.

Grand Juror's Opinion.

"What reasons did the various judges and magistrates give in disposing of the cases" was asked.

"None at all," answered the Commissioner. "They just said we had not submitted enough evidence. Why, last January I went before the Grand Jury and one of the members told me that the Grand Jury could not find indictments against certain gamblers unless we proved that the roulette wheel confiscated in a resort had been the one actually used by the men arrested. What had that to do with it?"

At the Criminal Courts Building, where the Courts of General and Special Sessions are and where District Attorney Whitman has his offices, there was considerable comment in the afternoon on Commissioner Waldo's statement. The opinion of Judges who were questioned might be epitomized in District Attorney Whitman's remark: "When the police present proper evidence against gamblers they get convictions."

Judge Edward Swann of General Sessions Court had his clerk make a search of the records of that court for Sam Paul's name. From 1905 to date Judge Swann found there is no record of his having been indicted for gambling. A search of the index of the Court of Special Sessions for 1910, 1911 and the present year failed to show Sam Paul's name in the list of defendants.

Judge Swann was in charge of the Grand Jury during March of this year. In that month, Commissioner Waldo said, eight prisoners arrested in a place controlled by Sam Paul were discharged by the Grand Jury. Judge Swann pointed out that the Grand Jury of that month was a particularly well selected body of men. The position of foreman Judge Swann offered to R. Fulton Cutting, but Mr. Cutting, although serving on the jury, declined it because of death in his family.

Influence Inconceivable.

"It is not conceivable," said Judge Swann, "that the Grand Jury of the county of New York, a selected body of men, could be influenced improperly so as not to find an indictment where the evidence justifies it. If a member of the Grand Jury told Commissioner Waldo that the Grand Jury could not indict unless it was proved that the roulette wheel confiscated had been used by the men arrested that juror was certainly in error. I never heard of such a rule of evidence.

"It would be so easy for a public official to take advice from a regularly constituted authority instead of a layman. The Judges of General Sessions and the District Attorney are the legal advisers of the Grand Jury, and any official can have the Grand Jury or any juror instructed on a point of law. The Judge can have the Grand Jury reconsider a case if they have made a mistake, and the Judge would surely do it if the Police Commissioner asked it and submitted facts.

"The City Magistrates are sifters of cases and if a Magistrate did not hold a gambler when the police thought he should have done so the Police Commissioner could go to a Judge of General Sessions or to the District Attorney and take the case to the Grand Jury direct. It is out of the question that any political influence could be brought to bear, for the Magistrates to a considerable number and the Judges are Democrats, while I am creditably informed that Sam Paul belongs to the regular Republican organization.

"Gamblers go free because sufficient evidence is not supplied. The Assistant District Attorneys come to us before the trial and tell us that the usual thing has happened. The case seemed strong when it was before the Grand Jury, but when it comes to actual trial the police have 'forgotten' the facts. They find that they can't convict if the police refuse to give evidence, and if they go to trial the indictment will be dismissed. So an arrangement is made whereby the prisoner pleads guilty and is fined. That course is taken because it gives a record against the men, and when they come before the courts again they come as second offenders.

Only Hirelings Arrested.

"Another thing about these cases is that every time it is some doorman or other hireling who comes up and not the proprietor. I have not found Sam Paul's name in the records since 1905, and I have talked to four Judges and nine clerks and they have not seen him in court as a defendant. Mock Duck was convicted for the first time before me in May, and as the evidence was sufficient he got the limit of the law.

"I don't want what I have said to be construed as an attack on Commissioner Waldo or anybody else. All branches of the public service should work in harmony and all should strive together for the common good. But I surely think Mr. Waldo makes a great mistake if he lays the blame for the failure to convict gamblers on the courts."

District Attorney Whitman said that it was a great mistake to conclude that the courts were at fault because arrests were more numerous than convictions. There is not a single Magistrate or Judge in New York, Mr. Whitman went on, who will not convict a gambler when proper evidence is produced by the police.

"Since I have been District Attorney," said Mr. Whitman, "the police have not asked for a single case to be resubmitted to the Grand Jury. Two cases have been carried to the Grand Jury from the Magistrates' courts, one by a policeman and one by an Assistant District Attorney. In one case there was an indictment, and in the other it appeared that the Magistrate was right in discharging the prisoner.

An Old Story.

"It is an old story, much older than Waldo. The police prepare a case for the Magistrates' court, but when it is presented to the Grand Jury their testimony is much weaker. It has been said that we could have the policemen whose testimony fail indicted for perjury, but a contradiction is not legally perjury. If two statements contradict, the Prosecutor for perjury must prove that one of the statements was true and that is not always easy."

Magistrate Krotel, before whom came two of the cases mentioned by Commissioner Waldo, took both of them as instances of failure on the part of the police to produce sufficient evidence. In the case of the raid made on December 2, 1911, when four men were taken at the East Thirteenth street house Magistrate Krotel said that the evidence was procured by a stool pigeon. When the prisoners were arraigned the stool pigeon had a remarkable case of forgetfulness. He couldn't remember anything that substantiated a charge of gambling, according to Magistrate Krotel, and an Assistant District Attorney who happened to be in the Essex Market court yesterday agreed with him.

The evidence against the East Thirteenth street house on which was based the raid of July 15, 1912, said the Magistrate, was obtained by two detectives. They had gone to the roof of the place and one had let the other down through a skylight by a rope. The man who was observing was forty feet away from what he supposed was a crap game. He testified that he saw men standing around a long table covered with a green cloth. He thought they were throwing dice, but said he could not state that positively. Magistrate Krotel said he held that kind of evidence to be insufficient, and discharged the two men who were arrested.

"We would be glad to hold these men who are charged with gambling," said the Magistrate, "but we are governed by the law and unless the police get the evidence required by the law we can do nothing except discharge the men. We may feel that gambling has been going on in the place raided, but unless the police prove it as the law requires we can't hold the men. If the police think that they have the evidence, why don't they take it to the District Attorney if they are not satisfied with the way Magistrates handle the cases. They can always go before the Grand Jury and ask for an indictment. They have gone to the Grand Jury and the Grand Jury has failed to find indictments. The reason is simply that the Grand Jury is bound by the same rules as to evidence that we are.

"As for the confiscation of apparatus taken from gambling places there is a diversity of opinion. Some think that the property should be confiscated when it is proved that that property has been made for gambling purposes. I have never given an order for the return of gambling apparatus when the man charged has been found guilty. In cases where the prisoner is discharged his apparatus can be recovered, if not by the order of the court, then by a replevin suit."

House Back at Waldo.

Magistrate House, whose name appears in the statement of Commissioner Waldo in connection with one of the raids made on the East Thirteenth street house, went back at Mr. Waldo hard last night when the statement was shown to him. He declared that the Police Commissioner had not presented the case fairly, and he put squarely up to him the question why the police in making all these raids had not once arrested the proprietor of the gambling place.

"In the case that was before me," said Magistrate House, "the Commissioner does not present the facts fairly. There were six arrests and one of the men was discharged. He was discharged because the Assistant District Attorney who had the case marked on the returns that there was not sufficient evidence to hold him. The other five men were held, and when the Commissioner says their cases are pending he means that they have been held for the Court of Special Sessions.

"When Becker first began to make these raids Assistant District Attorney Buckner was assigned to look after the cases. Very often when the police would bring in several men he would mark on the record that there appeared to be no evidence against one or more of them. Of course I had to let them go.

"Now in any of the cases where the prisoners have been released by the Magistrate, Commissioner Waldo or his men have the unquestioned right to take such evidence as they have to the District Attorney and to have him present it to the Grand Jury. If this evidence is so good why is it we don't hear of more cases being taken to the Grand Jury?

"A frequent experience of Magistrates is that when the cases against these alleged gamblers are called there is no appearance of the man who got the evidence against them. On one occasion I adjourned the case again and again because the police were not ready with their witness. I let the man go only because his lawyer was beginning to complain that an injustice was being done in not having the evidence against his client presented.

Wants Proprietors Arrested.

"A gambling house can't exist in this town for a week without the police knowing about it. The police know where the place is and they know who is the proprietor of it, and yet when they ask for warrants who do they name? It's John Doorman, John Dealer, John Wheelman, John Klondike or John somebody else. You never heard of them asking for a warrant for John Proprietor, and yet John Proprietor is just as well known as any other John.

"The police knew that Sam Paul was the proprietor of these gambling houses. Why wasn't he arrested? No one heard of Rosenthal getting into the hands of the police. Why did the police not arrest the proprietors instead of the employees? Let Mr. Waldo answer that if he can? These proprietors are common gamblers even if they don't take part in the games. They provide the playing place and if the evidence is there they can be convicted of a felony. Mr. Waldo must have known that Sam Paul was a common gambler. Why wasn't he brought before a Magistrate?

"The reason why Magistrates do not hold these gamblers for the Grand Jury or Special Sessions is because the police don't make out such a case against them as will justify a Magistrate in holding them."

LEVY STARTS AN INQUIRY.

Attorney Puts Detectives on Trail of a Red Automobile.

Aaron J. Levy, counsel for Shapiro and Libbey, arrived at the Grand Central Station from Worcester last night. He brought with him an account of how he has set detectives to work in and around that city to ferret out the mystery of a red touring car that has been seen there in the last two weeks. He is of the opinion that the men who have been seen in the car are men wanted in connection with the shooting of Rosenthal, and he declares that at least one of them has not yet been mentioned in the accounts of the shooting.

Mr. Levy said he went to Boston without telling District Attorney Whitman of his plans, although his purpose in going was to run down a clue to men who if caught will be able to show that Shapiro and Libby have told all they know about the case. He said he planned to surprise the District Attorney.

When in Boston he engaged the Wood & Morgan Detective Agency to watch for the men he was looking for and who he understood were hanging around the beaches near Boston. Having arranged these matters he went to Worcester to visit. While there a friend told him about an automobile that had been seen about town for several days. There were three men in it besides the chauffeur. He has nothing but his suspicions to make him think that the three men are wanted in connection with the case.

14 GO INTO DITCH WITH CAR.

Eleven Injured When Train Jumps Track at Bangor, N. Y.

OGDENSBURG, Aug. 5.—Eleven out of fourteen passengers were injured in a railroad accident on the Rutland Railroad at Bangor last evening. A milk train jumped the rails.

The train was on its way to Ogdensburg and carried one coach. The tender and four cars left the rails but remained upright. The coach containing the passengers rolled over on its side into a ditch.

The injured were placed aboard a special train and brought here to the City Hospital. All the injured left the hospital to-day for their homes.

CITY GRANTS $25,000 FOR POLICE INQUIRY

Tammany Aldermen Vote With Fusionists for a Full Investigation.

MAY BE MONTH'S DELAY

Committee to Have Special Attorney as Well as Corporation Counsel.

The Board of Aldermen voted unanimously yesterday for a committee to investigate the Police Department. A resolution appropriating $25,000 to pay the expenses of the inquiry was adopted without dissent.

The Tammany members, nearly all of whom were present, voted for both resolutions. Alderman Dowling, the Tammany floor leader, intimated last week that while he would vote for the committee he and the members on his side of the house would oppose an appropriation for special counsel because he agreed with Mayor Gaynor that the legal adviser of the committee should be Corporation Counsel Watson.

It was known, however, before the meeting that the Tammany members would change their attitude. They did so under instructions from Mr. Dowling, and they made it no secret that they understood that Mr Dowling was obeying directions from Charles F. Murphy.

Their understanding further was that Mr. Murphy in giving his orders had explained that he did not want Tammany to be put in the light of appearing to put any obstacle in the way of the inquiry.

Another incident of interest came when Corporation Counsel Watson, who last week said he would insist on his legal right to act as counsel in the investigation, made a speech in which he said that except that he would insist that either he or some one from his office should attend the inquiry and be empowered to examine and call witnesses he did not want to assume the responsibility of the legal work of the investigation. Alderman Currran, who brought about yesterday's special meeting, said several times last week that the committee would not consent to have Mr. Watson appear as counsel because Mr. Gaynor had shown antagonism to the proposed inquiry and Mr. Watson, being the Mayor's appointee, could not be expected to be otherwise than partisan in the examination of witnesses.

In the expectation that there would be some lively happenings at the meeting the big assembly hall was filled including standing room when the meeting was called to order. But it turned out to be a very tame affair.

Mr. Curran introduced the resolution for the committee. "It is clear," he said, after reading the resolution, "that the laws against gambling are not rigorously enforced; the law is on the statute books but it is common knolwedge that it is not being enforced. Whose fault it is that the law is not enforced is not yet known, but a recent crime indicates a disposition somewhere to serve notice that the business of gambling in this city is not to be interfered with and that interference would be resisted and punished."

Mr. Curran went on to say that it was intended to have a thorough investigation and that it would be non-partisan.

Mr. Dowling answered that if the inquiry was not to be partisan the Democrats should have equal membership on the committee.

Without further discussion the resolution was referred to the Rules Committee and a recess of ten minutes was taken to allow that body to name the inquisitors. The ten minutes stretched into half an hour through the insistence of Alderman Dowling that four of the nine members should be Democrats. The fusionists finally gave him three members. This is the committee: Curran, chairman; Folk, Dowling, Esterbrook, Shipley, Kenney, Hamilton, Smith and Downey.

When the board reconvened the report of the committee was adopted and Mr. Curran brought forward his $25,000 appropriation resolution which it was expected would lead to trouble. But Leader Dowling quickly set at rest the possibility of opposition when he rose and said:

"We on this side of the house heartily accord with the resolution which has just been offered. We stand here ready not only to vote for this appropriation, but for as much more money as the committee needs to clean up the city, if it should be found that there is need for cleaning, and to trace to the bottom the truth of the reports that there is a league in a general way between the police and the violators of the law. We on this side of the house are just as anxious as those on the other side to drive out the violators of the law and if necessary we are willing to vote as much as a million dollars if the committee can accomplish that."

Corporation Counsel Watson, who had been present from the opening of the meeting, then asked to be heard and permission was granted although some Republican members before the meeting sought to have Mr. Watson ruled off the floor. They were overruled, however, by their leaders Mr Watson said in part:

I earnestly hope that the coming inquiry will be full and thorough, conducted without fear or favor. The consequences, whether personal or official, must not be considered; graft and corruption must be traced to its source, and you who undertake this important service may not spare any one against whom facts are obtainable and at whom the finger of suspicion may point.

The burden that you assume is a heavy one. Nor do I desire to assume the full burden and responsibility of the legal work in connection with this inquiry. What I do wish, and what I shall if necessary insist upon, is that I shall be present in person or by representative at all times when witnesses are examined, so that I may ask any witness such questions as may seem to me proper and necessary to bring out the facts; and further that this committee will hear any witnesses whose testimony may seem to me necessary fully to bring out all facts.

With this understanding I will gladly confer with the representatives of this board with reference to the designation as special counsel of any competent lawyer whose name this board may present.

You know, of course, that the charter seems to hold, and a number of cases have affirmed, that it is necessary that the law department, or counsel designated by the head of that department, shall represent the city or any board or officer thereof in all legal matters, in or out of court.

Let me assure you that I do not wish to shirk any duty imposed upon me by law, though I am willing, if it be the wish of the Aldermen, to designate special counsel in the way already described.

After the resolution had been adopted Alderman Pendry (Fusion, Brooklyn) offered another resolution calling for the appropriation of $25,000 for the assistance of District Attorney Whitman, but President Mitchel ruled that as the meeting had been called for a special purpose the resolution could not be received. The meeting was then adjourned.

Later Mr. Watson said that the investigation should be started immediately so as to clarify the situation, but both Mr. Curran and Mr. Dowling doubt if this can be done, because District Attorney Whitman has intimated that he will not let the committee have access to his witnesses until he is through with his own investigation. The outlook therefore is that it will be a month or more before the Aldermen's inquiry begins.

There was much speculation as to the special counsel, but Mr. Curran said that the matter had been under consideration. There was a report that President Mitchel of the board would be asked to become the committee's counsel, but Mr. Curran said that Mr. Mitchel's name had not been suggested to him.

LITTLETON ASKED TO DEFEND BECKER

Continued from First Page.

of Lieut. Becker yesterday in the Court of General Sessions. Lieut. Becker, calm and self-possessed as usual, was brought from the Tombs at 10:30 A. M. and taken before Judge T. C. T. Crain in Part I. of General Sessions.

On the night of Becker's indictment Judge Mulqueen gave him a week to change his plea of not guilty. Mr. Hart notified Judge Crain that he desired to change the plea for the purpose of making two motions.

District Attorney Whitman suggested that the case ought to be sent back to Judge Mulqueen, who had heard the first proceedings. Meanwhile Mr. Elder stood by and made no comment. Mr. Hart agreed, and Becker was then taken before Judge Mulqueen.

With Hart were George W. Whiteside and Lloyd Stryker, formerly Assistant District Attorneys under Mr. Jerome, and who have been assisting Hart in preparing papers in Becker's case. Mr. Elder went before Judge Mulqueen also and stood at Becker's side, occasionally whispering to the lieutenant. He didn't raise his voice in court. Mr. Hart seemed to be puzzled as to why Elder was there at all.

Motion to Dismiss.

Mr. Hart made a motion to dismiss the indictment against Lieut. Becker for murder in the first degree and based his motion on the ground:

That the indictment was not found with the concurrence of at least twelve of the Grand Jurors;

That the indictment was not indorsed "a true bill" by a duly appointed foreman of the Grand Jury;

That the indictment was not found by a duly constituted Grand Jury;

That the indictment was not presented in court by a duly appointed foreman in the presence of a duly constituted Grand Jury to a court in lawful session;

That all of the Grand Jurors were not properly panelled;

That all available data do not show that the twelve men who voted the indictment were present and heard all the testimony presented to the Grand Jurors;

That Part I. of the Court of General Sessions was not lawfully in session.

Judge Mulqueen turned to District Attorney Whitman and asked Mr. Whitman if he had anything to say. The District Attorney replied that the court was acquainted with all of the facts surrounding the return of the indictment and that it would seem needless for the District Attorney to say anything in support of the legality of the indictment. Judge Mulqueen considered briefly and then said:

"I will tell you right now, Mr. Hart, that I will refuse to grant your first motion. The Grand Jury was brought together in a lawful manner under my own direction and supervision. There were sixteen members present and the indictment was perfectly lawful."

Then Mr. Hart presented a motion for the right to inspect the minutes of the Grand Jury. The District Attorney was prepared to make a fight on that and he had the right of argument. Mr. Hart asked if Judge Mulqueen would set a time. Judge Mulqueen asked if Mr. Hart was ready to submit a brief. Becker's counsel said he simply wanted time to prepare an oral argument.

"Any motions you wish to make will be in writing and supported by affidavits in the proper way," said Judge Mulqueen.

"But, your Honor, it is a motion for testimony which I will want to use at the hearing of the argument on the motion to dismiss the indictment," said Hart.

"You know the proper method of making a motion," said Judge Mulqueen sharply.

Becker's lawyer then moved that the tally sheets showing the attendance of the Grand Jury for the month of July be produced. Judge Mulqueen shook his head. "There is nothing before this court," he said.

"Then I understand my motion is denied?" said Mr. Hart.

"You understand nothing," returned Judge Mulqueen. "There is nothing before this court."

The Judge then ordered that arguments on the two motions be made to-morrow. He remanded Becker back to the Tombs until that time.

Elder Withdraws.

Then Robert H. Elder, after a word or two with Lieut. Becker, paid a visit to the District Attorney. It came out later that he had withdrawn from Becker's case. Mr. Elder is a former Assistant District Attorney of Kings county. He conducted a Grand Jury investigation of lax enforcement of the Hart-Agnew anti-gambling law, and declared that the police could stop gambling at the racetracks in five minutes if they wanted to. Later he sharply criticised W. J. Gaynor's decision in the golf ball case. In the trial of former Senator Frank J. Gardner for bribery, Elder testified that Gardner said he went to Albany with Charles H. Hyde to distribute money.

District Attorney Whitman, commenting on Lawyer Hart's technical objections to the Becker indictment, said last night that he had no fears as to the validity of the indictment. Most of the points raised by Elder had been decided by the Court of Appeals, he said, among them the one that twelve Grand Jurors must have been cognizant of all the evidence. Mr. Whitman added that there may be imperfections here and there in the indictment, and if so they can be easily cured by a superseding indictment.

The District Attorney intends to take his time about bringing Lieut. Becker to trial. If he desires he can submit a request to the Court of General Sessions asking that in the interests of the public the case be put forward on the calendar. Such requests are almost invariably granted. But Mr. Whitman may decide to take plenty of time in rounding up his case against Becker and trial may not be had until fall.

More Policemen Accused.

One of the developments that interested Mr. Whitman yesterday was the complaint of John Tupper, who is employed in a law office downtown, that he saw Sam Schepps and Harry Horowitz (Gyp the Blood) on Sunday morning at Lenox avenue and 143d street and that two policemen refused to make an arrest. The District Attorney obtained affidavits from Tupper, from Policeman Michael J. Philbin and Policeman James A. McMahon. Tupper's story was as follows:

"I knew both men wanted for the murder. They were talking at the corner of Lenox avenue and 143d street when I saw them. I went to Philbin, the policeman on fixed post, and pointed out the two. Philbin said to me:

"'I don't give a damn who they are. I wouldn't leave my post to get them. The last time I left my post to arrest a man I was fined fifteen days pay.'

"We stood there for some time and Policeman McMahon came along. I pointed out Schepps and Horowitz, but McMahon said to me:

"'I am not going to mix up in this case.'"

The District Attorney said last night that both policemen had made affidavits corroborating Tupper's story, but that the policemen denied using foul or abusive language to Tupper.

Deputy Commissioner Dougherty called on the District Attorney yesterday, but had no news to give of the hunt for Louis Rosenzweig (Lefty Louie) and Harry Horowitz (Gyp the Blood). Dougherty called to shake hands and to reassure Mr. Whitman that he was doing all that was possible to do in the way of police work.

"I am glad to hear it," said the District Attorney, "because I want those men. The sooner they are arrested the better I will like it."

Extortion Indictments.

Mr. Whitman examined yesterday evidence which will be placed before the Grand Jury as a basis for indictments against Lieut. Becker for extortion. The pressing of this phase of the case depends somewhat upon the progress made in clearing up the murder case. The murder investigation is the District Attorney's first work. It is possible that the extortion indictments will be returned this week, but if there are new and important developments in the murder investigation the extortion indictments will be deferred for a time.

The District Attorney returned to his work yesterday very much pleased with reports he had received from the W. J. Burns Detective Agency. Superintendent C. J. Smith, in charge of the Boston Burns agency, believes that Rosenzweig (Lefty Louie) is in that city and that he will be able to lay hands on him. That was what Mr. Whitman and Superintendent Smith conferred about in Boston last Friday. Mr. Whitman did not see Assemblyman Levy in Boston or anywhere else while he was out of town. Mr. Levy's purpose in going to Boston was a mystery to Mr. Whitman.

Digging Into Graft.

The main activity of the Burns detectives in this city is an investigation to determine if Jack Rose's story that Lieut. Becker was collecting immense sums for the benefit of himself and other police officials is true. The story persisted that the Burns work is pointing in the direction of two police officials and a man outside of the Police Department.

From Deputy Commissioner Dougherty, who is in charge of the hunt for Rosenzweig and Horowitz, and whose men have been in the Catskills for several days, hoping to find the pair near where Whitey Lewis was arrested, nothing new was obtainable about the progress of the hunt. Mr. Dougherty said last night that Inspector Hughes was still directing the work of the Central Office men in the Catskills, but that Hughes had nothing new to report.

From Tannersville, around which town the New York detectives have been operating, came a report that Lefty Louie and Gyp the Blood had been seen there in a gambling house early yesterday morning. S. J. Spier, a State deputy working on the case, said that at 5 A. M. when he was in Stamford he was called to the telephone by a deputy sheriff, who said that Rosenzweig and Horowitz were at that time gambling in a house near the Grand Hotel in Tannersville. Spier immediately hired an automobile and started for the Grand Hotel. The deputy who had called Spier was at Fleischmanns. Stamford and Fleischmanns are each about thirty miles from the Grand Hotel. When Spier and the deputy sheriff from Fleischmanns got to the gambling house Horowitz and Rosenzweig had left. The deputy, who had recognized the two men, he insisted, said that he was afraid to tackle them alone and so had called for help.

The news of the sighting of the pair was sent to Police Headquarters here and detectives were ordered to take up the search more actively. The word from Tannersville was that there are now about fifty detectives and deputy sheriffs watching thirty small summer resort towns and villages and keeping an eye on all the trains. Two women detectives were in Tannersville last night. They were visiting laundries and looking for marks to identify clothing. While the search is centring at Fleischmanns, it is active also at Lanesville, Phoenicia, Hunter and Stamford. The detectives have been covering the ground in buggies and automobiles and have been visiting hotels, boarding houses and gambling houses. Deputy Commissioner Dougherty's main hope seems to be that the fugitives are out of money and will have to appeal to friends or relatives in New York.

There was a report yesterday that Sam Schepps had been seen in Boston. The District Attorney is particularly anxious to get hold of Schepps, who, Jack Rose says, paid over to Rosenthal's murderers the money that Bridgie Webber put up at Lieut. Becker's order. Mr. Whitman said last night that if Schepps is located anywhere within a reasonable distance he would go straight to him. He wants to get Schepps's story at first hand. Bernard Sandler, Schepps's lawyer, visited Mr. Whitman yesterday, but said he had no more news of Schepps. Sandler said he hoped that Schepps would surrender voluntarily within the next few days.

The District Attorney did not talk with Jack Rose, Bridgie Webber or Harry Vallon. The adjourned hearing in Rose's case was postponed for another two weeks. The new adjournment was not ordered because of Rose's fear that he would be shot if he appeared at the Criminal Courts Building.

"There is no doubt that Rose is thoroughly frightened," said the District Attorney last night, "and that he would be glad to leave the country if freed. He expects to go to New Zealand if he gets out of his trouble. But we put over his case yesterday not on account of Rose's fears, but by agreement between myself and Rose's lawyers."

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