

*Doxey A. Wilkerson—for Defendants on Challenge—
Recalled—Direct*

Mr. McGohey: Are these being offered in evidence.

Mr. Gladstein: Yes. I am offering them.

Mr. McGohey: I object to these, your Honor. I do not see the materiality or relevance of these lists.

The Court: Well, I think they are probably (2969) offered for the purpose solely of showing the data from which this table was prepared.

Mr. McGohey: Well, that is just the point. I don't think they show that. They show a lot of names but they do not show any totals of the number of names.

The Court: Let me just take a look at that.

Q. Mr. Wilkerson, how did you arrive at the totals that are shown on the exhibit? A. By counting the names.

Q. Counting from the two exhibits I have just offered in evidence? A. That is correct.

The Court: I think it will suffice if they be merely marked for identification. If there is something that develops later you may reopen it, but at the moment I will sustain the objection and permit them, as has already been done, to be marked for identification as indicating the documents containing the names that Mr. Wilkerson counted to get the figures that he put in this exhibit—what is the number of that one you hold?

Mr. Gladstein: 131 for identification.

The Court: Yes. (Continuing) 131 for identification.

Q. Now, as I understand your testimony all of the data and tabulations shown on 131 for identification were made by you or under your supervision and are true and correct? A. That is right.

(2970) Q. You have indicated all the sources from which you took that information? A. I have.

Q. The tabulation of the percentages you did; is that correct? A. That is correct.

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Mr. Gladstein: I offer it in evidence, your Honor.

Mr. McGohey: If your Honor please—now, if you will take your copy Mr. Gladstein, I will use mine at my table. May I ask the witness a couple of questions, your Honor?

The Court: You may.

Preliminary cross examination by Mr. McGohey:

Q. Mr. Wilkerson, with respect to the two exhibits of registered voters which were just marked for identification Challenge Exhibits 134 and 135, do I understand your testimony now to be that you personally counted each of the names in Challenge Exhibit 134? A. No. They were done under my direction—that was my testimony.

Q. You did not count the names in Challenge Exhibit 134, did you? A. Personally? I had them counted and supervised the process.

Mr. McGohey: Your Honor, will you please direct the witness to answer my question?

Mr. Sacher: That is an answer. I submit that is an answer.

(2971) The Court: I interpret his answer to be No, that he didn't count them.

Q. Did you personally count the names in Challenge Exhibit 135? A. I did not. They were counted under my direction.

Q. When you say they were counted under your direction, do you mean that you stood there while somebody counted them and you checked as he counted them? A. No. What I mean is that we had competent people working with us on this whom we instructed to make the tabulations called for by that exhibit and to prepare them.

Q. And did those people indicate anywhere on Challenge Exhibit 134 or Challenge Exhibit 135 any totals by pages or columns of names (handing)? A. There are apparently some sub-totals.

Q. And do they appear on the Challenge Exhibit? A. They do.

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Q. Would you indicate to me where that is, Mr. Wilkerson? A. (Witness indicates.)

Q. You are showing me now what appears to be the third page but which is not numbered—rather, the sixth page, although it does not seem to bear any page number, which shows pencil notations consisting of numerals at the end of each column of names on page 6 and again on page 7. (2972) Is that correct? A. That is correct.

Q. And the same thing for page 8 and page 9? A. Let me see 8. All right.

Q. And for page 10 and page 11? A. And 12.

Q. And 12.

Mr. Sacher: Are those numbers the sides of pages or the number of pages?

The Court: No. They are at the bottom generally of the columns.

Mr. McGohey: No. In counting the page numbers I have taken what appears here on the very first page to be page 1.

The Witness: The page numbers are there.

Mr. McGohey: Yes. I am in error. They are.

Mr. Sacher: You are not very observant, Mr. McGohey.

Mr. McGohey: They are numbered. The print was quite small and I did not see it. All right.

Q. Now, are there any totals for any of the columns of names after page 12 on Challenge Exhibit 135?

Mr. Gladstein: Now, your Honor, this is just a question of somebody who knows how to count from 1 up to 10 or 20 or 30, and counting up the number of names by columns. And if Mr. McGohey wants to take these and have somebody in his office check to see whether the (2973) stenographers and the other people who just did the job of counting the number of names in a column made any grave or serious mistake, he may have them.

The Court: Well, probably it seems to you unimportant to determine whether the exhibit is accurate or not. Mr. McGohey is quite within his

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right in determining that matter, and I take it that is the purpose of these questions. You know, yesterday we found one of the charts was not accurate.

Mr. McGohey: Now, if your Honor please, may I have the last question to the witness read?

The Court: You may.

(Last question read.)

A. I would expect there to be none, but if you want me to look at each page I will be glad to and see.

Mr. Sacher: May we write any delay that flows from this to Mr. McGohey, please?

The Court: Well, Mr. Sacher, I consider that an impertinent comment and hope you will not repeat it.

Mr. McGohey: May it be stricken, your Honor.

The Court: It may be stricken.

A. (Continuing) There are no further pencil notations after page 12.

The Court: This court is no place for sarcasm.

Mr. Sacher: I was not being sarcastic.

(2974) The Court: We will just have that eliminated.

By Mr. McGohey:

Q. Now I show you Defendants' Challenge Exhibit 134 for identification, and ask you to indicate the first page on that exhibit on which there appear to be any pencil notations of the totals of names. A. Page 38 is where they begin.

Q. And where do they end? A. Page 48.

Q. I beg your pardon? A. Page 48.

Q. And is that the last page of the exhibit? A. That is the last page of the exhibit.

Mr. Sacher: If you are not going to use them may I count them for you, Mr. McGohey?

Mr. McGohey: Now, if your Honor please, I move that that be stricken out.

Mr. Sacher: I wasn't speaking for the record.

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The Court: Well, I don't think he was; I didn't hear it.

Mr. Sacher: I did not speak for the record.

The Court: And I think it was some little aside.

Mr. McGohey: If your Honor please, I object to the admission of the exhibit on the ground that the data on which it is testified it is based is hearsay. There is nothing in either of those exhibits to indicate what the total of names in there is. There is nothing to indicate (2975) what the total number of registered voters either for the Bronx or for Parkchester is. As a matter of fact, those two—let me ask the witness one more question, if your Honor please.

By Mr. McGohey:

Q. Do those two exhibits, Challenge Exhibits 134 and 135, purport to have the names of all of the voters of Bronx County that registered? A. No. The information—

The Court: I will sustain the objection.

Mr. Gladstein: Just a moment. Your Honor is misconstruing the answer, I think. These two don't purport to represent all the Assembly Districts in the Bronx, and I think your Honor misunderstands the purport of the answer.

The Court: It is possible.

Mr. Gladstein: Yes, I think your Honor does.

Mr. Wilkerson,—would you mind, Mr. McGohey?

Mr. McGohey: I would like to ask one more question or point up one more thing because I am now trying to substantiate the basis of my objection.

I would like to call the Court's attention to the fact that one of the figures that appears on this exhibit is a figure which purports to indicate the number of registered voters in the Borough of the Bronx, and (2976) the figure is given as 650,926. Alongside that figure is a numeral 1, indicating a note, a footnote, and the footnote says, "Board of Elections of the City of New York, 1948."

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Now, I understood the testimony of the witness to be that that figure was secured by the counting of the names upon Exhibits 134 and 135.

The Court: That is right.

Mr. McGohey: That was my understanding. Now it appears that Challenge Exhibits 134 and 135 do not contain the names of all of the registered voters of the Bronx.

Mr. Gladstein: That is not what he said.

The Court: That is where the little misunderstanding is. I think I will permit Mr. Gladstein to make such explanation as he wishes about that.

Direct examination continued by Mr. Gladstein:

Q. Mr. Wilkerson, would you be good enough to state to the Court the source from which you obtained the figure 650,926—

The Witness: May I have a copy of that?

Mr. Gladstein: Yes.

Q. —which appears on Exhibit 131 for identification?

A. The figure 650,926 representing the number of registered voters in the Borough of the Bronx is a figure (2977) obtained from the Board of Elections, New York City, which at my last check had not published this 1948 report—it may be out now—but which makes accessible this information in its office.

Q. They give you this figure, is that correct? A. That is correct.

Q. And you received that figure from them? A. From them. This is for the Bronx as a whole.

Q. Now where did you get the figure nineteen thousand and some odd which appears elsewhere on that exhibit?

A. The 19,595 registered voters indicated for Parkchester were obtained from counting the numbers in the Parkchester Election districts as indicated on the exhibits you have before you.

Q. In other words, Assembly districts No. 9 and No. 10 which are referred to in Challenge Exhibits 134 and

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135 for identification include an area over and beyond Parkchester, is that correct? A. Yes.

Q. And what did you do to ascertain what portion of those two exhibits you would count the names in to relate them to Parkchester? A. The Assembly district maps now before the Judge include the Election district boundaries also, and there is a special map which indicates precisely which Election districts are within the Parkchester project.

Q. So you took those Election districts, the names (2978) appearing after them that are contained within Challenge Exhibits 134 and 135 for identification and had those names counted? A. Right.

Q. And you are satisfied that the tabulation is correct with no serious error, is that right? A. I am.

Q. Now is it true that it was simply arrived at by counting up the number of names in each column and adding the sub-total until you got the final total of nineteen thousand and some odd? A. That is correct.

Mr. Gladstein: I renew the offer, your Honor.

Mr. McGohey: I renew the objection, your Honor, on the grounds already stated; and on the further ground that the table as a whole—the information contained in the table as a whole is immaterial to the issue before the Court.

Mr. Gladstein: Well, let me speak on materiality for a moment. That exhibit shows—

The Court: I do not think I desire argument on this. Let me look at the paper. I want the one that is being offered in evidence, if you please, Mr. Borman.

The Witness: Here is a copy of it (handing).

Mr. McGohey: What you are looking for is Exhibit 131 for identification.

The Court: Yes, I have it.

Now, the part of this that shows the number of (2979) jurors from the Bronx in the 14 selected panels and the number from Parkchester is already partially in the record, isn't it?

Mr. Gladstein: For those six panels I think no such—

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The Court: For these 14 panels.

Mr. Gladstein: 14, rather—

The Court: I say, as to some of those there is already evidence as to that, and it is my disposition to permit so much of this exhibit as relates to other panels that were not covered by the other evidence because this set of 14 panels seems to be different in some respects from any of the panels that were referred to earlier.

Now, I confess I do not follow the relevancy of this part about the registered voters.

Mr. Gladstein: I will be very happy to answer the question in your Honor's mind, and that is simply this: It is our contention that the most valid pool from which potential jurors should be chosen consists of eligible voters because in the main there are substantially no distinctions between those who vote, who are qualified to vote, and those who are eligible under law to serve as jurors. And it is our contention that that is the kind of thing that ought to be done, that the clerk of this (2980) court and the other attaches ought to go to the voting lists and choose—

The Court: You have been saying that all the time.

Mr. Gladstein. And we continue to say it.

(Continuing)—without distinction or discrimination against anybody on the voting lists for reasons of class or race or color or religion or anything else; and that the only reason for disqualifying a voter would be some reason that is set forth in the statute; for example, that the voter is over the age of 70 and therefore would not be eligible as a juror.

The Court: I will receive only so much of the exhibit as in the top part of the page which shows the 14 federal petit jury panels, the number of jurors from Bronx and Parkchester, the percent of the Bronx, and the totals appearing below. I will reject that part having to do with the registered voters and so on toward the bottom.

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Mr. Gladstein: That is the last two tabulations or the last two sets of figures?

The Court: Yes. Under the words “average per panel” with percentages, the balance may be stricken.

Mr. Sacher: May I be heard for just a moment on that, your Honor?

(2981) The Court: No.

Mr. Gladstein: Do you have a copy of this exhibit, Mr. Wilkerson?

The Witness: I do.

By Mr. Gladstein:

Q. Now address yourself to that portion of Exhibit 131 which the Court has received in evidence. Will you tell us what that exhibit shows?

Mr. McGohey: If your Honor please, I suggest that the exhibit speaks for itself.

The Court: Well, I have generally permitted a brief description of the matter for the typewritten transcript, and as long as the witness makes it short, as he was inclined to do yesterday afternoon, I will permit it.

A. The exhibit shows that in the Bronx for these 14 panels from the Bronx as a whole there were drawn 1,060 jurors, 371 of whom came from the Parkchester area of the Bronx. In other words, 35 per cent of all the Bronx jurors on these 14 panels are residents of Parkchester.

Q. And the averages? A. The averages per panel for the Bronx as a whole, 75.7 jurors per panel; for Parkchester, 26.5 jurors per panel; or, in other words, this merely reflects the same percentage figure that over one-third of the jurors on the panels as a whole and a (2982) much larger proportion on certain panels from all of the Bronx came from the Parkchester project.

Q. Now, on this exhibit do the figures appearing in the column under the heading “Bronx” represent all of the jurors taken from the Bronx on those panels including those who came from Parkchester? A. That is correct.

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Q. So that the figures appearing in the column under the heading "Parkchester" represent those who come from that area and are included within the larger figure on the lefthand side? A. That is correct.

Q. Would it be correct then, that an average was found in these panels who came from the Bronx of 75.7 jurors out of which over a third or 26.5 jurors lived in Parkchester? A. That is correct.

Q. Now yesterday afternoon I asked you about whether you had made a study to ascertain the extent to which you found the same people appearing over and over again on jury panels. Do you recall that? A. I do.

Q. And I asked you if you had made such a study and embodied the results in exhibit form? A. Yes.

Q. You did that, did you? A. Yes.

Q. So that it would accommodate the Court and also make things clear in the record, did you prepare an exhibit which lists in chronological order all of the petit jury panels that have been put to analysis in connection (2983) with any part of your study?

The Court: That is to say, the 28.

A. I did, and it is a larger number than 28.

The Court: Then you have changed it since yesterday.

The Witness: No, your Honor.

Mr. Gladstein: No, because there were 28 subjected to occupational analysis, and as your Honor will recall there have been others since that date.

The Court: Well, my notes here read "Names of jurors that kept repeating themselves. 28 panels selected."

The Witness: That is correct.

The Court: And then I kept putting them down and putting them down, and you kept looking for more until finally it got so confused that we dropped it, but I was left with the impression that there were 28 panels.

Mr. Gladstein: Oh, that is true—

The Court: Now you say—

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Mr. Gladstein: Oh, I misunderstood the Court's inquiry, or perhaps I did not make my statement clear. I may now suggest—

The Court: It is all right. There are 28, and now he has got them all in order and we can see just (2984) exactly which ones they are.

Mr. Gladstein: No, but we have done more than that with that exhibit, and I will ask the witness to testify about that.

Do you have a copy of this compilation showing all the panels that have been used?

The Witness: Yes.

Mr. Gladstein: Do you have an extra copy for the Court?

The Witness: Yes.

Mr. Gladstein: Will you mark that, please, for identification.

(Marked Defendants' Challenge Exhibit 136 for identification.)

The Court: There are 33 on here. So it is not the same 28.

Mr. Gladstein: 28 of those 33 are designated as being used in the repeat analysis which we will come to.

By Mr. Gladstein:

Q. Now I will show you Challenge Exhibit 136 for identification. Was this got up under your supervision?

A. It was.

Q. Now, what does it show? A. This lists 33 petit jury panels in the Southern District.

Mr. McGohey: If your Honor please, we started (2985) yesterday afternoon to ascertain precisely what 28 panels. Before there is any testimony about this exhibit I should like to be informed and to see the panels from which the witness says he took some data.

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The Court: You have a right to that, and that is what was started yesterday, and for some reason or other counsel—

Mr. Gladstein: I am merely asking the witness to identify this at this time, your Honor.

The Court: I think as this has been repeated a number of times, it would be well for you, now that you are thoroughly informed of Mr. McGohey's position in the matter, to produce the panels that are referred to so that they may be marked in evidence and the basis for any checking or other calculations be clearly in the record.

Mr. Gladstein: Very well.

The Court: He has a right to that, and he has indicated he wants that each time; and it does seem curious that every time a new one of these charts comes in, instead of having the panels that we have used before, it always has some different panels. But maybe there is some reason for it.

Mr. Gladstein: The only reason is that it is better, as a matter of fact, in an effort to get the (2986) facts to cover 33 panels than 28. It is better to cover as many panels as possible because you establish a pattern very consistently over an even longer period of time.

The Court: I would have thought that you would use the same number of panels, whether they were 10, 20, 30, 50, a hundred or 500, and use them throughout the whole matter so that we would have this pattern in some orderly way instead of one time using six panels, then 16 panels, then 14 panels, then 33 panels, then 25 panels, until it at least appears to me to introduce an element of confusion and disorder. But, however, go ahead with this and lay your foundation. You have, I think, a right to select whichever ones you choose.

Mr. Gladstein: We will have the witness testify regarding that matter, your Honor.

The Court: Yes.

Now, what you are going to do now is to get those panels out that are down here and get them

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in evidence so that we won't have all the confusion that we had yesterday.

Mr. Gladstein: This is 27 for identification, Mr. McGohey (indicating). That was one of the panels that is—

Mr. McGohey: Now Mr. Gladstein, may I ask you, (2987) please, if you are going to hand me a paper, hand it to me. I can read it.

Mr. Gladstein: I was stating for the record what I had shown Mr. McGohey, and will give him the entire list.

The Witness: May I have the date of that so I can check it as I go along?

Mr. McGohey: The paper I am looking at, Mr. Wilkerson, is marked Challenge Exhibit 27 for identification, and there is this legend "9.30 a. m., petit jury, Room No. 109, March 17, 1941."

The Witness: That is what I wanted. Thanks.

Mr. McGohey: Are you offering this, Mr. Gladstein, in evidence?

Mr. Gladstein: Yes.

Mr. McGohey: Your Honor, I reserve the right to move to strike it because it appears not to be an original from the clerk's office but a copy that somebody else made, but I don't want to hold it up now to have that checked.

The Court: Well, let me see. We have here this paper 136 for identification, which has 33 dates of jury panels.

Do I understand that Mr. Gladstein is starting with the one at the top, and that this paper now offered (2988) is the panel for January 4, 1938?

Mr. Gladstein: No, I started with the first panel offered for identification in the case. I think that is the earliest number, No. 27, or 26, rather—

The Clerk: 25.

Mr. McGohey: 25 appears to have been the first.

Mr. Gladstein: That is in evidence, I believe. This is the first for identification that has not yet been received.

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The Clerk: 25 is not in evidence.

The Court: It is the same thing that we had yesterday, and an hour or so was consumed just going around from one to another, and I do think an orderly, consistent way of presenting the thing is going to be a saving of time and be more helpful to the Court. Unless you have those in, as Mr. McGohey suggests, why, we would simply get a mass of evidence here later and nobody will be able to make head or tail of it.

Mr. McGohey: If your Honor please, several of these exhibits appear to be in the same category. Now here is a set of papers marked Challenge Exhibit 25 for identification, and it is obviously a copy that somebody else made, not from the clerk's office.

The Court: Well, I won't receive it that way.

Mr. Gladstein: I didn't hear the remark (2989) because Mr. Gordon—

Mr. McGohey: I say that this Challenge Exhibit 25 is obviously a copy that somebody made from the records in the clerk's office but it is not a record from the clerk's office.

Mr. Gladstein: It was testified earlier in the case that this is exactly what happened: that some copies were purchased; that some copies we were not able to purchase because the clerk did not have copies, said he did not have them, and we were permitted to have stenographers make copies in the office of Miss Mahoney, I believe it was, and that other copies were photostated. So that we had three different types of copies.

Now, each of these is subject to check against the file copy in the clerk's office, and each of these is vouched for and has been by the testimony—

The Court: If there is testimony by a witness that he has compared them and that the paper is an accurate representation of what is in the clerk's office I will receive the paper. Where there is no authentication I will not.

Mr. Gladstein: Well, to save time then, I will have to defer this portion of the offer in evidence

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so that we can have that comparison made with the file copy in the clerk's office, as I understand your Honor's (2990) ruling, because—

The Court: You told me you had the proof in the record already. I am not telling you that you need to have it over again, but I can't remember when a witness has authenticated this exhibit or that exhibit. I am not telling you to do it all over again if it has already been done.

Mr. Gladstein: It could be very simply handled. We could get the clerk to bring his copies, and then they will be marked for identification and we will have somebody make the comparison and give testimony that the two are the same, if that is the fact, and to any discrepancy, if there is any. That can be done very readily.

Mr. McGohey: If your Honor please, with respect to that I have this observation to make: The statement of Mr. Gladstein just made about the description of these various panels which appear in the record consist of this, that at the very beginning of the testimony of Mr. Wilkerson, I think the record will show—I don't recall the page—Mr. Gladstein stated that they had copies—that the defense had copies of certain panels of jurors that served in this court, and he explained then, as he did this morning, that some of these papers which they had were copies which clerks from the counsel's (2991) office had made of the original records in the clerk's office; that others were copies sold to them by the clerk; and that a third class were photostats of the original records. There was no testimony by any witness as to the authenticity of the copies and the accuracy of them. There is no testimony of that. You can take my word for that.

The Court: Yes.

Mr. McGohey: Now, with respect to the suggestion now made, when we are in the fourth week of this proceeding that now counsel ought to call the clerk to produce his record, and then have somebody check what has been used by the defendants and what is now being offered by them to the Court

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to now ascertain their accuracy, when they have been the subject of testimony and the subject of charts and maps and tables for three weeks—I suggest to your Honor that that time should not be allowed. I think that the orderly way to present a case is to authenticate the things that you use at the time you present them to the Court, and if they are not authenticated I object to their reception, and I object to any further time being granted now to authenticate them.

Mr. Gladstein: I didn't ask for further time to authenticate them. I am sorry Mr. McGohey misunderstood what I said and I hope the Court did not. I am not asking (2992) for any time whatsoever. But I am saying this: we will have the clerk. He has been under subpoena for several weeks. And among the things called for are those file copies of the jury panel listings that we have used here. When he produces those we will mark them and we will have people during the course of these proceedings with no delay whatsoever make the comparisons and take the stand and testify as to what the comparison shows. There will be no delay in the proceedings.

The Court: Don't you think it is a pretty good idea if we just leave this matter without any more argument? I think I understand just what is presented to me here and I would like to get some rather clear notion of what you have got left to do with Mr. Wilkerson. Now, as to this paper 136 for identification, if we let the paper go in he is going to give some evidence as to people whose names appear several times over the years, isn't he?

Mr. Gladstein: That is right.

The Court: What else is he going to do besides that?

Mr. Gladstein: With regard to what, your Honor?

The Court: With regard to what you have left for him to do.

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(2993) Mr. Gladstein: Now, your Honor, I would prefer—

The Court: Perhaps we can shorten this thing up and help you out a little bit about it. At the moment I am a little bit inclined to let him go ahead as to these names that he says are repeated, subject to connection later. Now, if you have two or three other things of the same character, maybe we can dispose of them. If you would rather not tell me what they are, which is the course you gentlemen have pursued pretty persistently in this trial, why, I shall simply let the matter drop.

Now, what my inquiry is, what are the other things that you will attempt to bring out from Mr. Wilkerson besides the repetition of names?

Mr. Gladstein: Now, your Honor, I am not a small child. I am perfectly willing to state to the Court very candidly, as I always am, the character of the proof at any stage that I have to give.

The Court: Perhaps you will do it then.

Mr. Gladstein: I said yesterday that I had hoped, as a matter of fact, to complete Mr. Wilkerson's testimony before the day was over. But because of antics similar to the ones we have seen this morning on the part of the United States Attorney—

Mr. McGohey: I move to strike that out, (2994) your Honor.

The Court: Strike it out.

Mr. Gladstein: (Continuing)—who says he can—

The Court: I don't know what on earth you can mean by that word "antics." There has been nothing here that could remotely be properly characterized in such a way.

Mr. Gladstein: I suppose that is a matter of judgment. And I was using the remark—

The Court: I think so. And, of course, I am the one who is supposed to be exercising the judgment.

Mr. Gladstein: Nonetheless, my point is this: that unless this question is withdrawn by Mr. McGohey with respect to whether or not a stenographer

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simply copies the name or the address in the office of the clerk from a jury panel, then obviously we are going to have to make that kind of comparison.

The Court: Now you remember what we are talking about. I asked you and I now ask you again, in addition to this matter of repetition of names what are the other matters that you expect to bring out from Mr. Wilkerson this morning?

Mr. Gladstein: I have brief testimony to bring out with respect to the 22nd Congressional district. I have (2995) a few questions to ask him concerning testimony he has already given but which I think is not sufficiently precise and ought to be covered. And then I have brief testimony from him with respect to those factors that we once started to talk about that ought to be taken into account to determine the extent to which, if any, there is impact upon the occupational classifications that we have had testimony about, by reason of such factors as alienage, illiteracy, and taking into account the exclusion of those over 14 years old but under 21 who are gainfully employed.

The Court: All right. With that statement I will permit you to interrogate the witness in a general way as to what he did about this repetition of names, subject to connection.

Mr. Gladstein: First let me ask the witness to identify Challenge Exhibit 136 for identification.

By Mr. Gladstein:

Q. Will you do that, sir? Tell us what it is. A. What are you referring to? Is this 136?

Q. Yes.

The Court: Did you take those 33 panels, Mr. Wilkerson, and then take the A's and B's as a sampling to check to see whether any names had been repeated?

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The Witness: Apparently the attorney is (2996) asking me a question about a different exhibit.

Mr. Gladstein: That is right. 136 for identification, if the Court please, is simply an enumeration of the panels that have been examined for one or another portions of the studies. And I am asking the witness now to state for the record what that exhibit shows.

The Court: Well, that is just the sort of thing that I don't want you to do. Now you indicated yesterday that Mr. Wilkerson had taken 28 panels. Now it is 33.

The Witness: No.

The Court: Well, that is all right, if he took 33 panels. And then he took the A's and B's and he went through them by taking the A's and B's as a sampling and he found a certain number of names repeated. Now, that can be done without a long rigmarole, and I am going to ask him now whether that is what he did.

Did you do that with these 33 panels, Mr. Wilkerson?

The Witness: I did not, your Honor.

The Court: Did you do it with 28 panels?

The Witness: I did.

The Court: And going through the A's and B's of those 28 panels did you find that some names were repeated?

The Witness: We found that 146—

The Court: The answer is either yes or no.

(2997) The Witness: Yes.

The Court: Did you find that some names were repeated?

The Witness: I did.

The Court: How many?

The Witness: 146.

The Court: What was the total number of those names in the A's and B's that you went over?

The Witness: 1,084. And if you wish—

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The Court: No. That is just what I want, is the answer to that question.

Now, that can be taken subject to connection as to these particular panels.

By Mr. Gladstein:

Q. Now, are the 28 panels that you examined to determine how many names were shown to repeat themselves, shown and identified on Challenge Exhibit 136 for identification? A. If this is 136—

Q. That is 136. A. They are.

The Court: Now if you take 28 and you take 33 and deduct one from the other, that indicates that there are five panels on here that are not part of the 28, doesn't it? Which are those five, so that I may cross them off?

The Witness: It is already indicated for your (2998) Honor. Dash line—the list of 33 panels are panels which have been used for various purposes in the course of my testimony, and because the Court seemed to want such information we prepared last night this tabulation which would indicate precisely which panels were used in the various parts of the testimony.

The Court: Now for my information and without too much circumlocution, would you read to me the five that are not included in the 28 so that I may put a red mark on my copy of the exhibit.

The Witness: The panel of September 16, 1944, is not included.

Mr. Gladstein: That is October.

The Witness: October. Pardon me. October 16, 1944.

The Court: Yes.

The Witness: December 17, 1945.

The Court: Yes.

The Witness: January 2, 1946.

The Court: Yes.

The Witness: February 1, 1949.

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The Court: February 1, 1949.

The Witness: And February 14, 1949.

The Court: Thank you.

The Witness: You are welcome.

(2999) The Court: Now will you kindly pass on to a new subject.

Mr. Gladstein: I would like to offer 136 in evidence.

The Court: Well, I think it is better to do that after you have made your connecting proof. It is already marked for identification.

By Mr. Gladstein:

Q. Do you have an exhibit that shows which are the names and which the panels on which those names appear that were found to be repeats? A. I do have.

The Court: These are the 146?

The Witness: Yes.

The Court: Yes.

(Defendants' Challenge Exhibit 137 marked for identification.)

Q. I show you 137 for identification. Does that correctly set forth the names, addresses and occupations of jurors whose names appeared more than once and whose names begin with either A or B on the 28 panels concerning which you have just testified? A. That is correct.

Q. Giving the dates of the panels on which their names appear? A. And other information; and also (3000) the addresses of jurors and their occupations.

Mr. Gladstein: I will offer that in evidence.

The Court: That is over a period of twelve years, isn't it?

The Witness: Really, more than that. We included in this analysis certain early panels going back as far as 1938 and 1939.

The Court: Well, that is what I say. From 1938 to 1949 would be twelve years.

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The Witness: That is right.

The Court: You can't make it any more than that. It is probably a little less because this is just the early part of 1949.

Mr. McGohey: Your Honor, subject to any correction that a check might show, I have no objection to it.

The Court: Very well. It may be marked.

(Defendants' Challenge Exhibit 137 for identification received in evidence.)

Q. Now, Mr. Wilkerson, we have mentioned in the testimony here that area of Manhattan which is known as Harlem; we have also had evidence concerning the boundaries of the 22nd Congressional district.

Are you familiar with the general character of the 22nd Congressional district? A. I am.

(3001) Q. Do you know the nature and the general character of the racial composition of that district? A. I do.

Q. What is it? A. It is overwhelmingly Negro in population, in composition.

Q. Do you know the character of the housing in that area? A. I do.

Q. What is the nature of the housing? A. It varies as any community does. Predominantly low cost housing—or rather, low rent housing, some slums. There are a few blocks with medium income housing; no really high cost housing in terms of the type of thing we find on Fifth Avenue. Overwhelmingly, though, it is low rent housing and much of it in very bad condition.

Q. Are there some exceptionally small areas? A. There are.

Q. Where there is an unusual kind of housing for Harlem? A. I remember a few blocks, for example, west—immediately west of Seventh Avenue, beginning around 139th Street and above where rentals are—that is, the running blocks which are on a north and south parallel, but running west from Seventh Avenue, where

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rentals are a little bit higher than they are in other parts of the community. There are here and there other isolated blocks and apartments where rents are a little bit above the general average for the community.

(3002) Q. What is in general, if you know, the occupational classifications to which the Negro population in Harlem is placed? A. Overwhelmingly manual workers.

Q. Now, did you make a study to ascertain how many jurors come from the 22nd Congressional district? A. I did.

Mr. Gladstein: Mark this, please.

The Court: Isn't that in already?

Mr. Gladstein: No, it is not.

The Witness: If I may, your Honor—

The Court: No. I was asking Mr. Gladstein. Isn't that proof in already?

Mr. Gladstein: No.

The Court: I saw a large number of these maps which have the pins indicating every single juror. I thought you had covered that ground pretty well as to the 22nd.

Mr. Gladstein: Well, this covers the 30 panels.

The Court: Different panels.

Mr. Gladstein: Giving the dates beginning January 17, 1940, right up to and including February 1, 1949.

The Court: Does it in general, or does that additional proof that you have in general simply confirm what is indicated on the maps you have already put in (3003) evidence?

Mr. Gladstein: Well, the exhibit speaks for itself. It adds some and something that is new. It covers a longer period and it brings the matter up to date.

The Court: I think I shall reject that chart.

Mr. Gladstein: May I have it identified in the—

The Court: It is merely cumulative.

Mr. Gladstein: I desire to have it identified in the record.

The Court: Yes, certainly.

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(Defendants' Challenge Exhibit 138 marked for identification.)

Q. Mr. Wilkerson, was 138 for identification prepared under your supervision? A. It was.

Q. State how it was prepared.

The Court: You need not pursue the subject, Mr. Gladstein, as to that part.

Mr. Gladstein: Well, I desire the record to show at least that the foundation for its reception has been laid.

The Court: I was just going to say, you may take my ruling to have been made on the basis of avoiding further and unnecessary delay here, and other reasons, and (3004) it is not necessary for you to lay the foundation. You may proceed upon the assumption that the witness would have testified as he has with reference to those other exhibits, that the data in the paper was accurately prepared by him.

Now we will take our usual recess at this time.

(Short recess.)

Mr. Gladstein: May I say a word to the Court regarding the last exhibit that I offered?

The Court: Let me just look at it for a moment.

Mr. Gladstein: That is 138 for identification.

The Court: Yes. That is just what I supposed.

(Returning exhibit to clerk.)

Mr. Gladstein: Now with respect to that exhibit, your Honor, I want to call attention to the fact that the only evidence that we have in the record concerning the extent to which jurors are obtained by the clerk from the 22nd Congressional district is shown in 13 maps, as I recall it. I think that that is correct. This tabulation covers 30 jury panels and therefore is much more detailed and covers a longer period and a more full period with respect

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to that question—that is to say, how often you find a juror on one of the panels here who lives in the 22nd Congressional district.

It is a much more adequate analysis than the (3005) maps are, and since we haven't had anything from Mr. McGohey to indicate his position as to the adequacy or inadequacy of the sampling that has been taken, and nothing from the Court either, I submit that this exhibit, which shows an analysis of 30 panels and over 8,000 jurors, over 8,000 jurors examined for the question of where they are located, with 56 coming from the 22nd Congressional district, is evidence that should be received. And I renew my offer, your Honor.

The Court: Well, it is a matter of degree. Had there been a lack of this long series of dilatory tactics I might have taken a different view, but I can't persuade myself that it is a matter of real significance.

By Mr. Gladstein:

Q. Now I believe you testified, Mr. Wilkerson, concerning the extent to which, if any, the elimination from your occupational analyses of those who are aged 14 to 21 and those who are over 70 would affect the validity of your computations. I want you to consider the question of alienage— A. No, we did not, Mr. Gladstein.

Q. Oh, you did not go into that? A. I testified with respect to the effect or to the comparability of 1940 data.

Q. That is right. Now will you continue with that (3006) testimony?

The Court: Just a moment, Mr. Gladstein. I want to refer back.

I have in my notes that he has already testified on the subject of age. With a reference to Exhibit 8 he testified that seven per cent were under 21 and over 70, and that he reached the general conclusion from the matters that he explained, the difference, that is to say, of over 14, was in his judgment a very trivial factor.

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Mr. Gladstein: Yes.

The Court: I do not understand your statement, or his, whichever it was, that he had not testified on the subject before.

Mr. Gladstein: Well, he has not completed his testimony on that subject.

The Witness: That is what I intended. The testimony was interrupted until we could get—we were asked to bring in certain further data on it.

The Court: Will you show me Exhibit 8, please?

Mr. Gladstein: Which number?

The Court: 8.

(Mr. Gladstein hands to the Court.)

The Court: Very well.

Q. How did you arrive at that figure that you testified (3007) to?

Mr. McGohey: What figure?

A. What figure are you referring to?

Q. The figure as to the extent to which the elimination of those between 14 and 21 and those over 70 would, if at all, affect your occupational analysis. You gave a figure of about 7 per cent of gainfully employed, as I recall it, who were in those groups to be eliminated from the calculations.

Mr. McGohey: May I ask if that is referred to in some table and, if so, what table?

The Court: I think the reference is to his testimony, Mr. McGohey, and according to my notes he testified to that effect. But I have no reference to any table or exhibit.

The Witness: If I may—

The Court: Am I not right about that, Mr. Gladstein?

Mr. Gladstein: That is right.

Q. Would you state how you arrived at that figure, what the calculation was involved and what the source of your information was, Mr. Wilkerson? A. Yes. The

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Census provides, as we indicated, occupational information for people in certain categories but not for precisely the categories for which jurors, (3008) or rather, from which age categories from which jurors are chosen. It provides information concerning the number in the labor force for those ages but not always the specific occupations of the people by all ages.

For New York City, however, the Census provides rather specific information for most all of the age groups—well, for the age groups and occupations. And on the basis of the New York City analyses one can get a precise measure of the effect of eliminating those under 20 and those over 70 from the occupational data reflected by the charts which were before the Court.

Q. Did you mean to say under 20 or 20 and under? A. 20 and under, and over 70. Now, the sources for all of these data are the 16th Census of the United States, third series, the labor force, Table 13.

The Court: Now that is evidently not exhibit 8 which is the 16th Census, 1940, Population, 4th series, Characteristics by age, marital status, relationship, education and citizenship. So evidently you have reference to another exhibit.

The Witness: Yes. If I may explain, your Honor—

The Court: No. Just let us get the exhibit. You see, I am trying to put down this long drawn out explanatory data and I think it would be so simple to get at these things quickly.

(3009) The Witness: I can tell my story in just a few minutes.

The Court: Well, go ahead and tell your story now. Let us hear it.

Mr. Gladstein: This is Challenge No. 9. The document—

The Court: Yes. I have given him a chance to tell his story about it. Now, let us hear what he can do in making it short and to the point.

The Witness: It may help the Court if he has before him—

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The Court: That is the kind of thing—"It may help the Court"; this, that, the other, off here, all over and all around. Please don't do that.

The Witness: If you want to refer to something it will help you follow me.

The Court: No. I want to listen to the story. You said you wanted to tell the story. Let us see how brief and to the point you can make it.

The Witness: By eliminating executives, professionals, clericals and manual workers in age groups which are without the jury service age groups of 21 to 70, one can find by a process of estimations which is commonly used by the Census itself, can find the number of executives, professionals, clericals and manual workers in the age 21 (3010) to 70 range which corresponds with the jury range. This we did.

The details of how it was done, the arithmetic, I have on two sheets here if it is to be recorded by the Court, but I will just tell you what the result was.

As is shown by the charts that we had before us for the Southern District as a whole, I think it is '46—may I look at that chart? No, I am talking about the big occupation charts. I mean by that, the base we used, which is Bronx, Manhattan and Westchester.

(Mr. Gladstein puts chart on board.)

Mr. Gladstein: You are asking for Challenge 67.

The Witness: (Continuing) We found that in the Southern District counties subjected to analysis, Bronx, Manhattan and Westchester, 54.6 per cent of the gainfully employed work persons were manual workers. We do not have for that particular area enough information precisely to calculate the percentage within the age groups 21 to 70 but we do have such information for New York City which may be assumed to be comparable, with no substantial difference, in such distribution.

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We find that for New York City as a whole the occupations of 14 and over workers are distributed as follows, or the workers are distributed under the occupations as follows: Ten per cent are executives— (3011) 10.3 per cent; 9.2 per cent are professional workers; 27.4 are clerical-sales workers; 53.1 per cent are manual workers.

When one excludes from that those age 14 to 20 and 71 and over and distributes the remainder among occupations he finds that for executives the percentage is 10.8 per cent, for professionals 9.5 per cent—the 10 and 8 by the way is just .5 of a percentage point above the 14 and 8 figure—professionals 9.5, or it is increased by .3 of one per cent.

The Court: Yes. I can make the calculations. Just go ahead.

The Witness: The clerical and sales, 26.4, and the manual workers 53.3 per cent.

Such an analysis reveals therefore that the occupational distribution of gainful workers 14 years of age and over as reported by the Census and used in our occupational analysis is almost exactly, certainly substantially you can say, the same as that of persons age 21 to 70 who are available for jury service. The difference here is only .2 of one per cent for New York, and one can be certain that there would be no substantial difference. I think we estimated last week about one per cent, if any.

The Court: I do not follow that .2 of one per (3012) cent. As to the executives it is a difference of .5, as to the next classification .3, as to the next one one whole point.

The Witness: It is reduced by one.

The Court: And as to the last, namely, the manual workers, .2. That is the one you were referring to alone.

The Witness: Yes. What I was saying was—

The Court: Well, that is all right.

The Witness: I did not finish my statement, your Honor. Maybe I can't.

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The Court: Well, I think this is one statement that you are not going to finish.

I think I understand precisely what you have done and what conclusions you have arrived at. And we will now pass to the subject of alienage.

Mr. Gladstein: May I do this, your Honor? May I ask the witness:

By Mr. Gladstein:

Q. Did you set forth in tabular form, in written form, so as to be available for exhibits the data utilized in the calculations you have just described, showing those calculations and the results? A. Yes. There are two sheets of such data.

Mr. Gladstein: They can be marked together, I (3013) take it.

The Court: Yes. Show them to Mr. McGohey.

Mr. Gladstein: I will have copies for him.

(Defendants' Challenge Exhibit 139 marked for identification.)

The Court: Do you offer those in evidence?

Mr. Gladstein: I would like to.

Mr. McGohey: Your Honor, I object to this on two grounds; one, I think it is repetitious and cumulative, and two, the second page—I take it that this is all being offered as one exhibit, the two pages.

The Court: Yes, I think so.

Mr. McGohey: (Continuing) From the note at the foot of page 2 it appears to be too highly speculative.

Mr. Gladstein: This is offered in explanation.

The Court: Just let me think, Mr. Gladstein. You know, if you could just cut down on the argument. I was just thinking about it for a moment here.

Well, its probative force may be little, but I have commented several times on this question of the statistics being drawn from those gainfully employed

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14 years of age and over, and perhaps I may get some benefit from it.

I think I will overrule the objection and receive this.

(3014) (Defendants' Challenge Exhibit 139 for identification received in evidence.)

The Court: Let me have that back when you finish marking it, Mr. Clerk.

You may proceed, Mr. Gladstein.

By Mr. Gladstein:

Q. Now Mr. Wilkerson, did you give consideration to the possible effect on the validity of your occupational analysis and the testimony you have given concerning that subject, of the extent to which among those gainfully occupied in Manhattan, Bronx and Westchester there are to be found aliens among the population? A. I did.

The Court: "There are to be found"—what?

Mr. Gladstein: Aliens.

The Court: Oh, yes.

Q. Tell us what the character was of the study that you made in that regard.

Mr. McGohey: Pardon me. Just a minute.

Does that refer to some table that we talked about, that the witness talked about once before?

Mr. Gladstein: In part it refers to the letter you and I talked about yesterday, a copy of which you have.

Mr. McGohey: Yes, that is the Hazard letter. But wasn't that a source in one of the tables? My recollection (3015) was that the table which depended in part upon the Hazard letter was offered but not received because of the absence of the Hazard letter. And if we are going to talk back about the data reflected in that table I should like to know if that is so so I can look at the table.

The Court: Yes, I remember suggesting that that letter be put in evidence but it was not done.

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That is that letter of December 3, 1948?

Mr. McGohey: That is right, your Honor. And that is the one that was in court yesterday.

The Court: Yes.

Mr. Gladstein: We will have that marked, that is, a copy of it. We have copies of it only.

Mr. McGohey: Yes; I agreed yesterday—

The Court: I know you did.

Mr. McGohey: —that the copy would not be challenged.

The Court: I thought we would save time if we just put it in, but evidently Mr. Gladstein thinks it better—

Mr. Gladstein: I have it now. I did not understand the Court's remark. It can be marked now and put in.

(Defendants' Challenge Exhibit 140 marked for identification.)

Mr. Gladstein (To witness): Do you have a copy of this?

The Witness: I have.

(3016) Mr. Gladstein: That letter is received in evidence, is it, your Honor?

The Court: Yes, it is.

Mr. McGohey: May I have the exhibit number, please?

The Clerk: 140 received in evidence.

By Mr. Gladstein:

Q. Will you tell us how you calculated the extent to which alienage would affect the occupational distribution in your analyses in this case, and particularly referring to No. 67 in evidence? A. Again we made the calculations on the basis of available data for New York City. Information concerning the occupational distribution of persons gainfully employed, 14 years of age and older, which we had presented previously and which are represented by the chart, and information for the Department of Immigration on the occupational distributions of aliens resident in the City of New York in 1940.

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The Court: That latter part is Exhibit 140, that letter?

The Witness: It is the letter. I don't know whether that is the exhibit number.

The Court: Yes, that is the exhibit number. I say that because referring to my notes of your prior (3017) testimony on the subject of alienage I notice a reference to population characteristics, Exhibit 85, but I now see that you are referring to the letter, Exhibit 140.

You may proceed.

A. (Continuing) The general procedure was to subtract from the gainfully employed 14 years of age and over those who are aliens, as indicated by the letter from Mr. Henry B. Hazard, and to ascertain what difference that makes in the percentage of gainfully employed workers to be found in each of the four main occupational groupings. The results of the analysis are reported in Table II-A. They indicate that the proportion of executives would be reduced by 0.1 of 1 per cent, from 9.1 to 9.0. For—

Mr. McGohey: Pardon me, Mr. Wilkerson. I think you said Table II-A. Did you mean Table X-A?

The Witness: I meant X-A.

Mr. McGohey: Thank you.

A. (Continuing) For professionals for the whole population, including aliens, the percentage is 8.8; excluding aliens it is 9.4—an increase of 6/10ths of 1 percentage point.

For clerical-sales workers the percentage including aliens is 26.8; excluding aliens it is 29.1—an increase of 3.7 per cent.

For manual workers, the group with which we (3018) are primarily concerned in this analysis, the percentage including aliens is 55.3; excluding aliens it is 52.5—a decrease of 8/10ths of 1 per cent.

The Court: What is that? From 55.3 to 52.5 is more than that.

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The Witness: Oh, pardon me, yes. It is about 2.5.

The Court: Yes.

The Witness: In other words, the fact that aliens who are not eligible for jury service are included in the occupational data presented earlier in this court has no significant effect—significant, I mean, in terms of statistical significance—no substantial effect in changing the pattern of occupational distribution of those persons who are eligible for jury service.

For New York City as a whole, which we are here using as a criterion, as a measure, it would reduce the percentage manual workers are by only about 3 per cent, and that would still mean more than 50 per cent of the workers, 50 per cent of the gainfully employed persons in our occupational data or analysis, are manual workers.

Q. Who would be eligible for jury duty in so far as citizenship is concerned? A. There is one other thing that is important in this (3019) connection: this is a determination of the effect on occupations in 1940 of eliminating aliens from the occupational distribution. There have been important changes in the numbers of aliens and in the occupational distribution of aliens since 1940. Table X-B is relevant in this regard: I will cite the sources and give you my conclusions without the details.

In the first place, there has been a large decline in the number of aliens, as you can find from statistical abstracts, United States, 1947, Table 117, page 136, a decline of at least one-fourth since 1940 of the number of aliens in New York City.

The Court: How much? What is that percentage?

The Witness: About 25 per cent.

The Court: 25 per cent? Where did they all go to?

The Witness: Many were naturalized; fewer have been coming in.

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The Court: So there was a normal increase in the population but not a similar increase in the number of aliens, and that is the principal reason, I take it, for that decline in percentage figure?

The Witness: Yes. You will find further confirmation in the U. S. Department of Justice, Immigration and Naturalization Service, annual report (3020) for the fiscal year ending June 30, 1940, Table XII.

Further, the characteristic—

Mr. McGohey: Pardon me just a minute, your Honor. I should like to inquire if that table of the Department of Justice, which has just been referred to, has been marked.

The Court: Well, he gave it the number 12. I think it was probably Exhibit 12.

The Witness: No. The publication. I do not think it has been introduced in evidence.

Mr. McGohey: Wasn't that included in the letter of Dr. Hazard?

The Witness: No. This is an annual report. It is a volume back there with blue covers on it, if you want to find it.

Mr. McGohey: If your Honor please, reading from Challenge Exhibit 140 in evidence, the last sentence of the first paragraph of that letter, which is Dr. Hazard's letter dated December 3, 1948, says this, and I quote:

"The report for 1947 is enclosed since that for 1948 is not ready for distribution at this time."

The Court: So that was the one referred to.

The Witness: Perhaps I did not understand his question originally.

The Court: That is all right.

(3021) *By Mr. Gladstein:*

Q. Will you continue? A. It should be further pointed out that the occupations of recent immigrants who constitute the larger part of the aliens, overwhelmingly, has been different in its pattern from that of earlier aliens.

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Table X-A—which may or may not be an exhibit; I think we should find out, Mr. Gladstein, whether it has been—no, X-B—

The Court: Well, go ahead and tell us. They used to be manual workers, not what are they? Doctors?

The Witness: It indicates that there is a sharp decrease since 1940 in the number of manual workers, a slight proportion of manual workers; a slight decrease in the clerical-sales force; considerable increase in the proportion of professionals and considerable increase on the proportion of executives.

The sources of that information was indicated on the table, and the implications of these facts, the reduction in the number of aliens in the population and the higher occupational status of such aliens, using “Executive” as higher in quotation marks, and “manual workers” as lower in quotation marks, would mean that (3022) the small difference which we pointed out—that the elimination of aliens from 1940, occupational data for the census, small would be even smaller if data were available at the present time, because of the fact that the number of aliens are smaller and that their occupational status is higher. It is almost certain that if complete data were available in the light of what we know from collateral evidence, that in 1948 the eliminations of aliens would hardly change the occupational distribution in the Southern District of manual workers one percentage point. But we can demonstrate, and have demonstrated that on the basis of 1940 data it changes it just 2.5, approximately.

Q. You say there was a table prepared that tabulates this data? Is that the one which also deals with illiteracy?

A. No, Tables X-A and B were present in court earlier; I know they were offered for exhibits. Whether they were accepted, I don’t know.

Q. Now, did you take into account the impact, if any—

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Mr. McGohey: If your Honor please, might we ascertain whether or not these tables are going in?

Mr. Gladstein: I am having them checked, and I thought I would just go ahead and we would come back to that, as soon as they were found.

(3023) The Court: Well, you are not trying to offer over again the ones I rejected the other day, are you?

Mr. Gladstein: I was going to go ahead to another subject, but I was having these looked for since the witness asked about them. I don't know whether you rejected them or not. I do not know that you did.

The Court: Well, we can see that when you find that, and perhaps it won't take but a minute or two. We can pause. It is confusing to go from subject to subject and then come back again. For instance, I find the subject of alienage referred to in my notes for the third time with this single witness.

What is the new subject you are going to, so I can see what else I have got in my notes about it before you go into it.

Mr. Gladstein: I beg your pardon?

The Court: I say, what is the new subject you are going into so that while you are looking for those exhibits I can find what else I have got in my notes on the subject?

Mr. Gladstein: The question of tabulated effect of the fact that certain classes in the labor pool are unemployed. Perhaps we could have these marked. I do not find any record indicating that we have ever offered these, your Honor.

(3024) The Clerk: X-A and X-B were never even marked, your Honor.

* * *

Mr. Gladstein: Mark these, please.

(Marked Defendants' Challenge Exhibits 141 and 142 for identification.)

* * *

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The Clerk: 141 is Table X-A; 142 is Table X-B.

(3025) Mr. McGohey: If your Honor please, with respect to Exhibit 141 for identification, which is designated as Table X-A, I object to the introduction of that because it appears from the testimony of the witness that he has been comparing this matter of aliens against the total gainfully employed population shown in the census. It has been previously testified that that includes a group between the ages of 14 and 21, and that the inclusion of that age group here seems to me clearly would distort the picture. I object to the introduction of Challenge Exhibit 141 for identification on the ground that it is misleading.

Mr. Gladstein: May I say a word on behalf of both of these exhibits?

Mr. McGohey: If are going to talk about both of them, maybe I ought to state my objections to 142.

The Court: I think you had better take one at a time. I have heard what your objection is to 141.

What have you to say about that?

Mr. Gladstein: 141 is simply a comparison giving the figures and calculations, a comparison of those people who are gainfully occupied who on the one hand are citizens and who on the other hand are aliens, showing the occupational distribution into which they fall and comparing the same two age groups, that is to say, all those (3026) who are reported by the United States Census as being gainfully occupied. So what in effect you are doing is taking the labor force, the figures for the labor force as given to us by the Government figures, and showing on a table what proportion of the labor force consists of citizens and what proportion consists of aliens, and also showing the occupational breakdown made here in connection with the four groupings into which they fall.

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The Court: I will sustain the objection.

Now, what is the objection to 142?

Mr. Gladstein: Have I stated everything?

The Witness: Yes—you left out one point that is very important.

Mr. Gladstein: Would the Court permit the witness to state what I failed to state? May I have the witness state that so the record will have the statement?

The Court: I don't understand what you mean.

Mr. Gladstein: In describing the exhibit I did not mention a point which the witness desires to call to the Court's attention. I desire to have him do so for the record, if the Court will permit it.

The Court: Well, you may come up to the witness chair and ask him what it is, and then put it in a question. I don't like the idea of asking him general (3027) questions about whether he has something on his mind or something he wants to say and all that. You find out what it is and then ask him a question.

(Mr. Gladstein approached the witness and confers briefly.)

Mr. Gladstein: Your Honor, will recall the witness has already given testimony showing that the exclusion from our calculations of the people between 14 and 21, and, on the other hand, those above 70, produces no effect on the validity of the comparisons and analyses made. Consequently this is a valid base on which to make a comparison between citizens and aliens. We have already made—

The Court: I think I understand all that perfectly, and I understand also the objection, and I sustain the objection.

Mr. Gladstein: Very well.

The Court: Now how about 142?

Mr. McGohey: Now with respect to 142, your Honor, I urge the same point, that there is included in 142 aliens between the ages of 14 and 21, and

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that in addition I want to call the Court's attention to the fact that this table concerns itself with the distribution of immigrant aliens and of all gainfully occupied workers in the whole United States and not for the City of New (3028) York, and I object to that on the ground that on those two grounds it is misleading.

The Court: Yes. We could go on and having literally thousands of charts. We have had so many of them. I think what you desire to place upon the record here is sufficiently clear to me now. I will sustain the objection.

By Mr. Gladstein:

Q. Will you turn to the question of certain groups of unemployed who are tabulated by the Census and state whether you made a study to ascertain what, if any, effect the factor of unemployment had upon the validity of your analysis and conclusions as to the occupational distribution among the gainfully employed and among those eligible for jury service? A. Our analysis of the occupational distribution was based upon what the census reports as gainfully employed, 14 years of age and over, but it excludes certain categories which are eligible for jury service and present in the population. It excludes emergency workers in the three counties, Bronx, Manhattan and Westchester, and the data also excludes experienced persons seeking employment in the County of Westchester. The question—

The Court: Just Westchester?

(3029) The Witness: Just Westchester.

The Court: Just a moment now. All right.

A. (Continuing) The question is, then, does the fact that these two categories of unemployed persons—in terms of the census definition of unemployed—are not included—

The Court: You dropped your voice there and I didn't hear it.

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The Witness: The question to which I am addressing myself is this: does the fact that the census occupational data which we analyzed and on the basis of which we prepared these charts don't include these two categories of unemployed who are eligible for jury service, according to law—does that fact—

Mr. McGohey: Pardon me, Mr. Wilkerson. When you say these charts do you mean the charts that are before you here?

The Witness: I am referring to Challenge Exhibit 67—

Mr. McGohey: 67 and 67-A?

The Witness: And 67-A.

Mr. Gladstein: There are also some other charts which are rejected exhibits but show the occupational distribution of the jurors, your Honor will recall, over a series of panels.

(3030) The Court: I really have not tried to charge my mind with the evidence that has been rejected, and I really don't remember them. But let us keep our mind on this. He starts out with the unemployed and the effect of the factor of unemployment on the occupational distribution.

The Witness: That is right.

The Court: Then he went on and said that the census figures excluded emergency workers and also experienced persons seeking employment in Westchester. And then is when I went off the track. But what I am thinking there is, does he really mean that? Because I thought the unemployed was a very much more inclusive group than just the emergency workers. I suppose those are WPA workers; is that what you mean?

Mr. Gladstein: Will you answer that?

The Witness: Mostly, not entirely, and we are using the terms as the Census Bureau uses the terms. What they call emergency workers and what they call experienced workers seeking employment are what we are now including in their occupational

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distribution, though they were not included in the basic analyses that were made.

Mr. McGohey: If your Honor please—

Q. When you say “the basic analyses”—

(3031) The Court: Just a second. What do you say, Mr. McGohey?

Mr. McGohey: If your Honor please, in view of Mr. Gladstein’s observation concerning the charts which were offered and rejected by the Court, I object now to any testimony from the witness at this time concerning any data reflected in those charts. And, furthermore, I call the Court’s attention to the fact that this line of testimony appears to be repetitious because it seems to me, at least, that we are now going over the same field that was gone over in the examination of Mr. Wilkerson, I think back on February 1st, as appears on page 2127 of the transcript.

The Court: 2127? Let me find that. It certainly is piling up. (Examining.)

Oh, yes, we went all over that.

Mr. Gladstein: Was this covered before?

The Court: Oh, yes. I have a lot in my notes about that under this date of February 1st.

Mr. Gladstein: Your Honor, during that testimony—

The Court: Here is what he concluded. The witness says the effect is very slight. If anything the effect would be to raise the manual workers slightly, a very trivial factor.

Mr. Gladstein: That is just what I wanted to (3032) come to.

The Court: What is the use in going over it again then?

Mr. Gladstein: I wanted to get a precise definition from the witness of what he meant by “slight” or “trivial.” I want that clear in the records so there won’t be any argument about it.

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The Court: I do not think we need to worry about that. He has been using the same sort of phraseology about these other ones, and I am not going to have him start with this one and then go over all those again. So will you please drop that subject.

Mr. Gladstein: May I ask the witness to state if he is able to in terms of percentage or decimal point what his answer should be regarded as meaning when he says "slight" in that context?

The Court: No, I do not think I need it sliced that thin.

Mr. Gladstein: Well, I will ask the witness whether he has made a calculation and is capable of giving that for the record.

The Court: Well, I think you had just better drop that subject.

Mr. Gladstein: Your Honor won't permit me to ask the witness that question?

(3033) The Court: No. I think you have brought out all that you need to about that.

By Mr. Gladstein:

Q. Now, Mr. Wilkerson, did you give attention to the impact of illiteracy? I believe you have testified to some extent on that subject and you made some charts, is that right? A. Yes, that is right.

Mr. McGohey: Now, if your Honor please, I make the same objection to this line of questioning. I haven't quite yet got the page in the record where we went over this, but my recollection is that we did.

The Court: I think I can find it in my notes in a moment, so if you will just pause for a brief interval, Mr. Gladstein, while I can see what I can find.

Mr. McGohey: I think your Honor will recall we had some exhibits put in consisting of the forms of examination that the State Board of Regents requires voters to take.

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The Court: Yes.

Mr. Gladstein: That had to do with politics.

The Court: Here, I think I have it.

Mr. McGohey: Mr. Clerk, can you tell what date Exhibit 106 went in?

The Clerk: February 7th.

The Court: Yes. In the afternoon of February 7 (3034) this subject was covered. For instance, I have in here, estimated illiteracy in 1940 by race, Exhibit 106, native white, 1.1; foreign born white, 12.6; Negro, 3.9; others, 24.3; and a great deal of other data on the subject. Now what is the use of going over it all over again?

Mr. Gladstein: I seem to recall the question was raised, and the witness was asked to have precise reference to sources, and there were some questions raised concerning a table that was marked for identification, and if I recall the colloquy we agreed to return to that subject later and supply the source reference. That is my recollection.

The Court: Then go ahead and show us the source reference and then be done with it. That is a perfectly proper thing to do.

Q. Did you prepare a memorandum on the question of the impact of illiteracy on your—

The Court: You know—

Mr. Gladstein: I am about to bring out—

The Court: You know, Mr. Gladstein, it is wonderful, it really is. You hear me; you appear to acquiesce; and then you go right ahead and do just the opposite.

Now if there is a reference to some source (3035) material, just get out the source material and we will have it identified and there it will be.

Mr. Gladstein: Well, I think it is referred to in an exhibit, and I was going to ask if an exhibit has been prepared.

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The Court: Well, just get the part of the exhibit that refers to the source material, and then with your natural intelligence you will only read the part that has to do with the source material and eliminate the rest, because you may assume that I shall regard it as repetitious.

The Witness: If it may help Mr. Gladstein, it is Table XI-A and XI-B, with a page of notes—I think they have been entered as exhibits—

The Court: Mr. Wilkerson, do you know what those source materials are that Mr. Gladstein is speaking of?

The Witness: I do.

The Court: Will you just enumerate them for the record, please?

The Witness: Without telling you what they relate to, your Honor?

The Court: If they relate to a certain exhibit you may identify the exhibit, yes.

The Witness: Very well. Table No. XI-A—perhaps you had better find out the exhibit number and (3036) whether it is entered as an exhibit—there were certain questions, your Honor—

The Court: Now, now. If, as Mr. Gladstein has told me, there was a time when certain source material was not adequately identified, and I said bring it up later and identify it, which I am now doing—and so you will kindly merely read what is the title of the books or such other source material as you have with an additional reference to the exhibit to which it relates.

The Witness: Table XI-B gives the procedure and arithmetic for calculating estimated maximum illiteracy—

The Court: Strike it out.

The Witness: I am going to refer to those—

The Court: Well, you are not going to do it. You are going to do, Mr. Wilkerson, just exactly what I direct you to do, nothing more and nothing less, and I am now directing you to enumerate the

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books or other source material. Now that means without all this circumlocution and explanatory matter and so on, to say Census, 1940, dated so and so—bang. Then you get to the next—such and such a title, such and such a book—there it is. Now that is what I am telling you to do.

The Witness: Did I understand that you permitted me to relate these sources to the exhibits?

The Court: To a paper, and you have done that.

(3037) The Witness: That is what I was about to do.

The Court: You said P-12—I don't remember the number of it.

The Witness: It is XI-B.

The Court: XI-B.

The Witness: And I was going to give its title. You don't want that?

The Court: We can all read, you know, and find it easily enough. Now go ahead and tell us what is the source material that relates to that paper.

The Witness: The calculations reported in XI-B are with data obtained from these sources: 16th Census of the United States, Population, Second Series, New York, Table XXI, which gives the information for Westchester; B-39, which gives information for Bronx; and F-39, which gives information for Manhattan. Also U. S. Bureau of Census, Current Population Reports, Series P-20, No. 20, illiteracy in the United States, which is Exhibit 85.

Do you want this, Mr. Gladstein?

Mr. Gladstein: Exhibit 85 in evidence?

The Witness: Yes. October 1947.

The Court: Is that all?

The Witness: That is all for XI-B.

Mr. McGohey: If your Honor please, may I ask for a copy of XI-B with respect to which the witness is (3038) talking? It does not appear to have been marked.

Mr. Gladstein: That is right. It has not been. I am going to have it marked.

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Mr. McGohey: I should like to have a copy so I can understand.

The Court: If it has not been marked it is rather curious that that should have been the one that you say the question came up the other day about indicating the source material.

The Witness: It was prepared in answer to that question, your Honor.

The Court: Well, anyway, you say it was.

The Witness: It was.

The Court: And perhaps it is so. I don't doubt it. I don't want to raise a question about it.

Mr. Gladstein: It is so, your Honor.

The Court: Very well.

By Mr. Gladstein:

Q. Now, you started to enumerate some other sources—

A. Yes, which relate to the question of—

Q. Illiteracy?

The Court: The other sources relate to another paper.

Mr. Gladstein: Illiteracy: The same subject matter of illiteracy.

(3039) The Court: I know.

The Witness: Those are all the sources on illiteracy.

* * *

(Recess to 2.30 p. m.)

(3040)

AFTERNOON SESSION

DOXEY A. WILKERSON, resumed the stand.

Mr. McGohey: Just before the luncheon recess your Honor asked that you be referred to the place in the transcript of the testimony where the subject of literacy was testified to.

Colloquy of Court and Counsel

I call your Honor's attention to page 2764 and running on to somewhere around 2792, I think, I think it ends about 2792.

The Court: Yes.

Mr. McGohey: During the testimony which is recorded in those pages the subject was literacy and a table which appears as Defendants' Challenge Exhibit 106 was introduced giving some figures with respect to literacy.

The Court: Now what was the document that Mr. Gladstein said I had ruled that he could later supply the sources? Was there such a document?

Mr. McGohey: I don't recall any such document, your Honor. I can't say categorically that there was not, but I don't have any recollection of it and I don't find any reference to it in here.

The Court: Can you refer me to such colloquy or reference in the minutes, Mr. Gladstein?

(3041) Mr. Gladstein: There are a number of references that I can direct the Court's attention to.

The Court: Well, one good one will be enough.

Mr. Gladstein: Well, on page 2181.

The Court: 2181. Just a second, until I find it. 2181? You are still on literacy now?

Mr. Gladstein: That was the question of the impact of aliens and illiteracy on the occupational classifications. Your Honor will see—

The Court: Just a second. 2181. Yes, that has reference to the letter that has already been marked in evidence.

Mr. Gladstein: And to the fact that we were considering the effect of alienage and illiteracy together.

The Court: Yes; but you said this morning that there was some paper that had been marked for identification and that I had stated that you might later supply the statement of sources and that you were addressing yourself to that subject with Mr. Wilkerson this morning. And I say, what is that paper and where is the reference in the minutes to my statement that you might later supply the proof?

Colloquy of Court and Counsel

Mr. Gladstein: I don't recall that I made that statement; I may have been in error in making that statement. But I do know that during the course of Mr. Wilkerson's (3042) testimony on a number of occasions he was asked as to the source of the information that he was testifying to and on several occasions he stated that he would be ready to supply that in documented form. I have a couple of references to various portions of his testimony of that kind.

The Court: Well, all I would like is one; the first one you referred me to turns out not to be one. The first reference to page 2181 has to do with the letter. The letter has already been received in evidence so that it will be quite unnecessary to lay a further foundation for that.

Mr. Gladstein: Your Honor will notice that I said "in view of the fact that the witness has been considering both the question of aliens and the question of illiteracy to some extent together, I would suggest that we move to the next subject, the next one of those factors, and that is the question of exemptions."

Then your Honor made some remarks as to whether or not the letter dealt with anything other than aliens, as to whether or not it would deal with illiteracy, and then you said "I suppose I may assume that there is, as you say, and that the two go together, the alienage and the illiteracy."

Then I said, "I think the evidence will show (3043) to some extent there is a relationship."

The Court: Yes, but what we were talking about was your statement that there was some document with respect to which I had stated that you could supply proof later and that you were addressing yourself to that proof. And if that is so, I desire to permit you to do what you say I promised to allow you to do. If on the contrary it does not so appear, my disposition is to direct you to address yourself to some other subject with the witness. I think perhaps the best thing for you to do is to turn to something else.

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Mr. Gladstein: I will ask the clerk to mark for identification three exhibits, one designated Table XI-A.

(Defendants' Challenge Exhibit 143 marked for identification.)

Mr. Gladstein: Another document (handing to clerk).

(Marked Defendants' Challenge Exhibit 144 for identification.)

The Court: How did you designate the second one? The first one was Table XI-A.

Mr. Gladstein: The second is errata dealing with Table XI-A. They could be connected physically but the clerk has already marked them the way he has.

(3044) The Court: That is all right.

What are they? 145 and 146 for identification?

The Clerk: 143 and 144.

The Court: Thank you.

Mr. Gladstein: The next is two pages designated as Table XI-B and notes to that table.

(Marked Defendants' Challenge Exhibit 145 for identification.)

Mr. Gladstein: And Table XI-E.

(Marked Defendants' Challenge Exhibit 146 for identification.)

Direct examination continued by Mr. Gladstein:

Q. Now, Mr. Wilkerson, was Table 143 for identification and the companion exhibit, Challenge Exhibit 144 for identification, prepared by you or under your supervision?

A. They were.

Q. Are the sources from which the data were taken correctly and fully shown on those exhibits? A. They are.

Q. Calculations were made by you? A. They were.

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Recalled—Direct*

Q. Are all the figures and data appearing thereon true and correct? A. Yes.

Q. What is the subject matter of this exhibit and the companion exhibit containing the errata? A. The maximum effect of both occupational distribution— (3045) or rather, the maximum effect upon the occupational distribution of gainful workers of eliminating both aliens and illiterates from those considered in the analysis of occupations heretofore made, together.

Q. Now I show you Table XI-B. Was that similarly prepared under your direction? A. It was.

Q. And does it correctly show the sources from which the information shown thereon was taken? A. It does.

Q. Are the tabulations and the data set forth therein true and correct? A. Correct.

Q. What does this table show? A. That table shows data and procedures and sources for calculating illiteracy among gainful workers in Manhattan, Bronx and Westchester, 1940.

Q. Now, Table XI-E, which has been marked Challenge Exhibit 146 for identification—I show you this and ask you if that was similarly prepared under your supervision? A. It was.

Q. Does it correctly show the sources from which it was taken? A. It does.

Q. That is, the information shown thereon was taken? A. Yes.

Q. Is it true and correct? A. It is.

Q. What does it deal with? A. It shows percentage of people in different occupational categories with less than (3046) five years education in Northeastern States, 1940.

Q. Now, on the basis of your study—

The Court: Just a second, Mr. Gladstein.
Will you read that.

(Answer read.)

Mr. McGohey: Pardon me, may I ask, your Honor, if that is five years education or five years of schooling.

Colloquy of Court and Counsel

The Court: Five years of schooling, I take it, you meant?

The Witness: That is correct.

Q. Now, on the basis of your studies and the information contained in these exhibits, state, if you will, the maximum possible modification to which the evidence that you have given would be subject in so far as it deals with the occupational breakdown of gainfully occupied population in this district—

Mr. McGohey: I object to any testimony of the witness from these tables referred to unless they are in evidence.

The Court: Yes. Let Mr. Gladstein finish the question.

Mr. McGohey: Oh, I beg your pardon, Mr. Gladstein. I thought he had finished.

The Court: I don't think so.

Mr. McGohey: I withdraw the objection until (3047) the question is completed.

Mr. Gladstein: I will reframe it: I direct your attention to Exhibit 67 in evidence showing the occupational distribution of the gainfully occupied portion of the people of this district. What, on the basis of your study and the data that you have testified to would be the maximum possible modification of Exhibit 67 that could be produced by the facts concerning illiteracy and alienage as factors among the people in this district who are eligible otherwise for jury duty?

Mr. McGohey: Now, I object, your Honor, to any testimony by the witness until these exhibits are offered.

The Court: Well, I will sustain the objection.

Mr. Gladstein: I will offer in evidence Challenge Exhibits 145, 146, 143 and 144.

Mr. McGohey: For identification.

Mr. Gladstein: They have been marked for identification. I will offer them in evidence.

Mr. McGohey: If your Honor please, we have some preliminary questions to ask the witness with

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Preliminary—Cross*

respect to Challenge Exhibit 145 for identification, and may we ask those—may Mr. Gordon proceed asking those questions while I look at the other exhibits being offered?

The Court: Yes.

(3048) *Preliminary cross examination by Mr. Gordon:*

Q. Mr. Wilkerson, do you have Exhibit 145 for identification before you, Table XI-B? A. XI-B?

Q. Yes. A. I do not—oh, yes, I do have.

Mr. Gordon: Perhaps I had better hand you the exhibit.

Have you a copy, your Honor?

The Court: I would like to have it, but if you need it—

Mr. Gordon: I have another one (handing).

The Court: Thank you.

Q. The first item which refers to total population for Manhattan, Bronx and Westchester comes from the Census for 1940? A. It does, second series, Population.

Q. And the figures below that for percents come from 1947 Statistics? A. Are you referring to the 80.1 per cent and 20.2 per cent?

Q. That is right. A. No.

Q. Where do they come from? A. I testified earlier that one of the exhibits—

Q. I wonder if you could just answer—

The Court: That is the part that always confuses me. Why don't you just answer the question?

Mr. Gladstein: The witness was starting to.

(3049) The Court: He goes off into a lot of explanation that nobody is asking him for.

Mr. Gladstein: The witness was beginning to answer the question when your Honor interrupted.

The Court: I know he was beginning but I will strike out what he said and ask that the question be repeated to him.

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The Witness: Current Population report, illiteracy in the United States, October 1947, Table IV.

Q. Then the answer to my question is Yes?

The Court: That is right.

Q. Now let us take this item here of illiterates 2 and 3. Those are based upon the U. S. relationship, then, aren't they? A. They are.

Q. For the entire country? A. They are—no, wait a minute—part of 3 is. The 80 per cent is based on a U. S. relationship.

Q. Yes? A. Now, if I get your question, you want to know whether we used U. S. relationship ratio as a basis for estimating the illiteracy in New York City? Is that your question?

Q. Yes. A. That is correct.

Q. Then this total, item 2, that would be a percent for people 14 and over? A. No.

Q. Are you sure? Are you sure you were not applying (3050) a figure of 14 and over to the number of people 25 and over? A. May I refer to an exhibit that is in evidence in answer to this question?

Mr. Gladstein: Which one do you want?

The Witness: It is an exhibit entitled Illiteracy in the United States, October 1947. I think it is 85. It was in the court this morning.

(Exhibit handed to witness.)

The Witness: Now, your question again, Mr. Gordon?

Q. The question was, weren't you dealing under item 2, 3, 4 and 5 with statistics for people 14 and over? A. That is correct.

Q. And applying them to item 1 which pertains to census statistics for a population 25 and over? A. That is correct.

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Q. Now, when you come down to item 12 you are taking the relationship between the United States and this area of three counties which you referred to this morning, New York, Bronx and Westchester for persons 25 and over, and saying that the same relationships holds for persons 14 and over? A. That is correct.

Mr. Gordon: The basis for the objection, your Honor, is that it is misleading to compare census (3051) statistics for different years.

The Court: Do you object?

Mr. Gladstein: May I ask a question of the witness to clear that up?

The Court: Yes.

Direct examination continued by Mr. Gladstein:

Q. Mr. Wilkerson, did you have a reason for applying the data in the manner that you have just described? A. I did.

Q. Will you state what that reason was? A. The procedure used is the one used by the Census in analyzing or, rather, estimating illiteracy. The data provided by the Census for the United States are 14 over data. The data available to us are 25 and over for the three counties—yes—no, this is not the answer to the question. The answer to your question is this: In the first place, we have established by an earlier exhibit that there is an extremely small percentage of illiteracy in New York as compared with the nation. We don't have data available for exactly the age groups that the Census applies its ratios to. We do have data, however, which are relatively close thereto and the effect of which would be, since they are an older age group; to increase unduly the estimate of illiteracy in the smaller age group. I wonder if you follow me there.

(3052) Q. Will you develop that?

The Court: It is not so important that Mr. Gladstein follow you. I follow you all right, and I gather that that is what is important.

The Witness: The effect—

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The Court: I see what you mean.

Is there something further you desire to bring out before I rule?

Mr. Gladstein: Yes.

By Mr. Gladstein:

Q. Will you explain, Mr. Wilkerson, what effect it would have, whether favorable to or unfavorable to the result that you have testified to, as to the effect of illiteracy upon the question of the occupational distribution of the population or in terms of jury eligibility favorable to or unfavorable to this chart, 67? A. The effect of the method we used would be to exaggerate the percentage of illiteracy among manual workers—yes, among workers, age 14 and above, who we planned to take out of that category, and hence it would be unfavorable to the premise which we are seeking to establish.

Q. So that, in other words, the net result of that calculation would be to give the worst of it, so to speak, to the case of the defense on this challenge? (3053) A. That is correct.

The Court: I sustain the objection.

Mr. Gordon: And, your Honor, with respect to the testimony just given, will you strike it out, since it seems to be based upon the exhibit which you have now ruled out, the effect of that exhibit on these figures.

The Court: In so far as they may be supposed to have evidentiary value. I find it has none, and I will strike it out.

Mr. Gordon: Now, with respect to Exhibit 143, your Honor—do you have that before you?

The Court: 143? No, I have not. That disposes of 145 for identification?

Mr. Gordon: 143 and 144 are attached together.

The Court: Yes.

The Witness: May I ask what 143 is?

Mr. Gordon: I don't have it now any longer.

The Court: 143 is table XI-A, and the attached sheet, 144 for identification, is the list of errata.

Colloquy of Court and Counsel

Mr. Gordon: Exhibit 143 for identification is objected to on the ground that it is obviously not accurate inasmuch as it has Exhibit 144 attached to it proving its inaccuracy; and on the further ground that in the notes it appears that it is based upon Exhibit 145 which your Honor has sustained an objection to.

(3054) The Court: Objection sustained.

Mr. Gladstein: May I reply to the objection, your Honor?

The Court: Yes.

Mr. Gladstein: May I see the exhibit for a moment to reply?

The Court: You may.

Mr. Gladstein: Now, if your Honor please, in support of our offer as to this exhibit, I point out first that the fact that No. 144 represents an effort at careful rechecking to ascertain the possibility of any error in 143, is certainly no argument for not receiving an exhibit that has been subjected to not only double check but triple check.

Moreover, proving on the face of the document that when the error that was ascertained is set forth and found, it does not change the percentage ratios at all and completely substantiates the conclusions that Mr. Wilkerson has placed in this exhibit in the first instance. In other words, even after ascertaining that there was an error, the error had no effect whatsoever upon the calculations that he has.

Now, as to the relationship with 145, that is no basis upon which to strike it or to refuse to receive 143 and 144, which speak for themselves, and stand on (3055) their own feet, and they are entitled to be received.

I offer it.

The Court: The objection is sustained.

Mr. Gordon: As to the Exhibit 146, your Honor, the last one—would you pass this to the Judge, Mr. Clerk.

(Exhibit handed to Court.)

Colloquy of Court and Counsel

Mr. Gordon (Continuing): That exhibit appears to be immaterial as far as the challenge is concerned. And I ask your Honor to note that it pertains to statistics relating to the Northeastern States, and inasmuch as the Southern District of New York is contained within only one State, it is objected to as being incompetent.

Mr. Gladstein: May I say a word on behalf of the exhibit?

The Court: Yes.

Mr. Gladstein: This is merely to prove that the facts support and would support here an assumption that not all illiterates in the City of New York in the Bronx and Manhattan would be found among the manual workers. To the contrary, such data as is available from the census shows—

Mr. McGohey: I object to any testimony as to what this exhibit shows.

The Court: Yes.

(3056) Mr. Gladstein: I have not said anything about what is in this exhibit yet.

The Court: No, you were just going to.

Mr. Gladstein: I was going to say nothing about the figures contained in it, but I was going to state a fact, your Honor, which, as a matter of fact, you could take judicial notice of, what is in the census tables, and the census tables contain evidence for the proposition that there are those in the executive class and in the clerical and sales class, and even some in the professional or semi-professional class, who are illiterate. But for the purpose of our testimony here we have made the absolutely incorrect and unjustified, to us, assumption, assuming for the purpose of this case, and taking the full brunt of that exaggeration and distortion, we have assumed for the sake of our testimony here that the gainful workers are the ones that you would find among the illiterate group, simply for the purpose of giving the benefit of any possible doubt to the prosecution's side on the question of this challenge. And even so, the effect of giving them the benefit of that doubt is of no

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significance whatsoever on the facts in this case. We do, however, desire the record to show that the census would provide proof of the fact that there are illiterates to be found among professional, clerical and (3057) executive groups.

The Court: I will sustain the objection.

By Mr. Gladstein:

Q. Now on the basis of all of your study and the testimony that you have given, what is the maximum possible effect—I withdraw it.

Q. Have you made a study of the possible effect on the chart 67 of the items of exemption that are found in the law dealing with jury duty? A. I have.

Q. And what did you find as a result of that?

The Court: He has been over the exemption. Let me just find it in my notes here, if you will wait a moment.

Mr. Gladstein: I was about to conclude with him, and I thought I would simply have him mention that fact briefly and sum up.

The Court: Well, I would like to have before me my notes of the particular subject matter. Let me just look for it.

Mr. Gladstein: I think your Honor will find it is in Table XII-A and Table XII-B.

The Court: Well, you have got a great deal of material in on that. What is it that you desire to prove now?

Mr. Gladstein: I desire merely to have the (3058) witness sum up as to the maximum impact, upon the testimony he has given here, as to the people who are eligible for jury duty of these factors that he has been discussing, giving testimony about.

The Court: Well, he has already done that as to the persons exempt.

Mr. Gladstein: As to the what, your Honor?

The Court: As to the persons exempt, which is the subject matter that you are now addressing your-

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self to. I do not desire it to be repeated or summarized.

By Mr. Gladstein:

Q. Have there been changes in occupational distribution among the potential jurors in this district during the course of the last nine years? A. There have been some changes.

Q. Have you made a study to ascertain the character of those changes? A. I have.

Q. What has been that study and the result? A. The results of the study are reflected on the right part of Exhibit 67, under the chart right there (indicating).

Q. This portion now? A. That is right.

Q. What does that represent? A. This represents trend lines 1940 to 1949 by panels, among the panels used in our basic 28 for the occupational analysis, indicating percentage that each category of occupations constitutes of the total among the jurors for those several (3059) panels.

Q. How many panels were covered? A. 28.

The Court: Now you are off exemptions.

Mr. Gladstein: Yes. I am now asking him about the question of the trends in occupational distributions among the jury panels that he has examined.

Q. Now your information for that portion of No. 67, which is the righthand portion, was taken from where?

A. That was taken from our tables analyzing the percentages of occupations represented in the several jury panels.

The Court: Based on the same panels that were used for Exhibit 67?

The Witness: That is right.

Q. And does the right side of the chart accurately reflect the views as you found them upon analysis of the jury panels? A. It does.

Mr. Gladstein: I offer that portion of the chart in evidence.

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Mr. McGohey: May I have a minute or two, if your Honor please?

Mr. Isserman: May I ask one question, your Honor, before Mr. McGohey does, if I may?

The Court: Yes.

By Mr. Isserman:

(3060) Q. I notice, Mr. Wilkerson, that there are four heavy seemingly straight lines through the other lines on the exhibit. What are those lines? A. Those lines—

Q. Horizontal straight lines I am referring to. A. You are referring, I take it, not to the vertical but to the horizontal line.

Q. The horizontal line within the graph around which the lines which you have just described are drawn. A. Those lines indicate in each case the average percentage which jurors in that occupational category, that is, executive or clerical, or professional or manual, constitute of all jurors gainfully employed throughout the period covered by the map—that chart.

The Court: Doesn't that chart tend very distinctly to disprove the defense contention that there was a static figure for all these different occupational classifications? From looking at it from here it seems to vary very considerably from year to year. I thought it had been contended here that it was always the same.

Mr. Gladstein: I take it from your Honor's remarks that Mr. McGohey will have no objection to the receipt in evidence of that chart, and I am willing to stand on that.

The Court: Well, I don't think that sort (3061) of remark is very helpful.

I say, doesn't it tend to indicate that there has been a change from year to year in each of these percentages? Whereas you have been arguing to me that they had just the same number all the time and it was just part of a scheme that they predetermined in advance just what they were going to do and went ahead and did it. I say, doesn't this chart tend to disprove that?

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Mr. Gladstein: May I answer that question—

The Court: Certainly you may.

Mr. Gladstein: After your Honor has ruled on the motion that I have now made to have this received in evidence: I suppose we are waiting for Mr. McGohey—

The Court: Maybe I had better have your answer read to me.

(Record read.)

The Court: Why do you want to wait until afterwards.

Mr. Gladstein: The question that your Honor is asking me is whether this chart tends to disprove our thesis. Is that right?

The Court: Well, it seems so to me.

Mr. Gladstein: I would prefer, as I say, to give my answer to that question after Mr. McGohey states whether he objects to the chart or not.

(3062) The Court: Well, you need not bother answering it at all.

Mr. Gladstein: Well, if your Honor says that, then I prefer to answer now.

The Court: No, just let it go. I have every desire to avoid controversy here and I will just let the matter drop.

Preliminary cross examination by Mr. McGohey:

Q. Mr. Wilkerson, may I ask you—this has not been marked for identification—does this table here relate to the figures and percentages which appear in the table marked Exhibit 67-D and which appear as table IV-B in your data? A. The percentages in IV-B are the basis for this chart.

Q. And will you tell me what you mean by the word “jurors” at the top of that chart? A. By that I mean gainfully employed, that is, we are dealing with the occupations of jurors; we mean gainfully employed jurors who served or were called, listed, were listed on the 28 panels we analyzed in our occupational study.

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Q. Year by year? A. Year by year.

Q. In other words, the lines within this space, from the heavy gray line to the first horizontal line, would be the jurors that appear on the panels in 1940, is that (3063) so? A. No. If I remember, there were for a number of years two panels we took per year.

Q. Yes. A. Some years there were more. And the height of the line within the period—during 1940, reflects the point at which we took the jury panel. Do you follow me? What I am saying is this, that there are variations even within the year 1943, you will observe.

Q. You misunderstood my question, Mr. Wilkerson. The line contained within the outer heavy perpendicular line and the first line, perpendicular line to the right of the heavy perpendicular line relates to jurors that were called for service in the year 1940, is that right? A. On the panels which we analyzed.

Q. On the panels which you analyzed. Yes. A. That is right.

Mr. McGohey: Yes. That is all.

The Court: Those panels which they analyzed, as shown in Table IV-B, Exhibit 67-D, are 28, going from January 17, 1940, to January 17th first drawing, I think, 1949. I mention that because I thought, Mr. McGohey, that you indicated you thought that was based upon 1940 panels. Perhaps I did not—

Mr. McGohey: I was only talking about the (3064) area in this first section.

The Court: Oh, yes. The bench here has obscured from my view the dates down at the bottom of the chart. So I understand. That is quite all right.

By Mr. McGohey:

Q. May I ask, Mr. Wilkerson, if in plotting out those lines housewives were considered? A. Those lines refer to gainfully employed jurors, which necessarily means they exclude housewives and retired persons. They are percentages based upon the total gainfully employed jurors.

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Mr. McGohey: I can't ascertain, your Honor, what probative value this may have, but I certainly haven't any objection to it going in, if we can move on.

The Court: All right.

Mr. Gladstein: Is it received in evidence, your Honor?

The Court: It seems to me to reflect what is in the other exhibits.

(Defendants' Challenge Exhibit 147 for identification received in evidence.)

Direct examination continued by Mr. Gladstein:

Q. Now, Mr. Wilkerson, looking at Challenge Exhibit 147 in evidence, will you summarize what that exhibit shows? A. It shows first that there has been considerable fluctuation in the percentage which executives (3065) comprise of jurors on panels from time to time, extending from the low point of about 37 to the high point of about 63.

Q. Per cent? A. Percent of the total gainfully occupied jurors on different panels. There is a considerable fluctuation with reference to clerical workers, the fluctuation extending from about 26—24 per cent in one of the recent panels to about 37 per cent. This is the range of the fluctuation.

Q. Over the course of the nine-year period? A. Over the course of the nine-year period. The percentage of professional workers or employed persons constitutes—of employed jurors on these panels has fluctuated from about 9½ per cent to about 26 per cent during the course of the nine-year period.

The percentage of manual workers has fluctuated, but by reference to the chart you can see the fluctuation is not so great, and the limits of such fluctuation have been from one per cent to about 9½ per cent. At no time during the course of the nine-year period for all of the 28 panels analyzed were there as many, or rather, did manual workers constitute as much as 10 per cent of the gainfully occupied jurors on the panel.

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The Court: The fluctuations appear to me to be even more marked in the case of the manual workers.

(3066) The Witness: The range, your Honor, is from 1 to 9.

The Court: Yes, I know about the range.

The Witness: Quite a smaller range than you will find with any of these others.

The Court: Well, it seems to me that as far as fluctuation goes, there is more of it there than in the others. But that appears on the face of the chart, so that—

Mr. Gladstein: On the fact of the chart, if your Honor will notice, the line for manual workers is the five per cent line, sometimes above, sometimes below. The line where you see the professionals and semi-professionals is the 15 per cent line or better, although sometimes below that. The line for the clerical and sales employees is around the 30 per cent line.

The Court: Yes, I know.

Mr. Gladstein: And the line for the executives is the 45 per cent line or better.

Mr. Isserman: If the Court please, as a matter of keeping the record straight, we now have the one exhibit with two exhibit numbers.

The Witness: Three.

Mr. Isserman: The lefthand side of that exhibit I believe was previously marked. And the record should (3067) note that the two exhibits are one, because otherwise in the future somebody will be looking for them without finding them.

The Court: Yes.

Mr. Isserman: I can't see from here the number of the previous exhibit.

The Witness: 67.

The Court: The other one is 67.

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By Mr. Gladstein:

Q. Now on the basis of all the testimony that you have given that has been received, what is the maximum possible impact in terms of percentage upon that portion of the chart No. 67, as appears on the lefthand side, that is to say, the data as to the people, all of the factors of possible jury disqualification?

Mr. McGohey: If your Honor please, may I have the question read again? I didn't quite hear it.

The Court: You may.

(Question read.)

Mr. McGohey: Your Honor, I object to that.

The Court: Sustained.

Mr. Gladstein: Well, I will try to reframe it.

Q. I want you to state, on the basis of your studies and the testimony that you have given that has been received, what is the maximum possible effect in terms (3068) of reducing or increasing the percentage figure shown for the respective groupings on chart 67 of each and all in combination of the factors of jury disqualification, such as being under age or over age, and so on?

Mr. McGohey: Objection.

The Court: Sustained. I don't think he need any further summarization. You have got the chart in, you have got a great number of other charts in. If there is any summarizing to be done, why, you can put it in such memorandum as you desire to submit to me.

Mr. Gladstein: If the Court thinks that that is adequate, all right.

You may cross-examine.

The Court: Do you desire a short recess?

Mr. McGohey: Might we take the recess, the mid-afternoon recess now?

The Court: Yes.

(Short recess.)

Colloquy of Court and Counsel

Mr. Isserman: If the Court please, there is in the witness room two officials, one from the Metropolitan Life Insurance Company and one from a banking institution, who would be very short witnesses. One would be disposed of in about three to five minutes and the other one about ten to twelve.

The Court: What do you desire to prove by (3069) the man from the Metropolitan?

Mr. Isserman: Mr. Gove, vice-president of the Metropolitan, would testify to certain facts concerning the Parkchester development.

The Court: What are those facts?

Mr. Isserman: Those facts include—

The Court: Well, I don't want a partial statement. Tell me what you are going to prove.

Mr. Isserman: Well, I am trying to say it as succinctly as I can. Five or six facts.

The Court: All right.

Mr. Isserman: One fact is the location of Parkchester, number of tenants it has, the number of people it has, the work classification, the classifications of the people within Parkchester from the standpoint of manual workers and others, the income levels of the people of Parkchester, the racial character, composition of Parkchester, showing that no Negroes whatsoever live there. And a few facts which are in the nature of the development on which he has a brochure.

The Court: Do you have any objection to that, Mr. McGohey?

Mr. McGohey: I do, your Honor.

The Court: Very well. We will go on with the cross-examination of this witness.

(3070) Mr. McGohey: May the record show that the defendant Potash is not here this afternoon?

Mr. Sacher: He is attending to union business, your Honor, and he waives his presence here, and I understand the others do, too.

Colloquy of Court and Counsel

Mr. Isserman: If I may have another moment. The other witness would merely identify two maps and indicate the name of the person who was actually in charge of the preparation of same. It is purely preliminary matter and could be disposed of in three minutes.

The Court: Well, I am not disposed to change things around here now, and we will go ahead with this cross-examination.

Mr. McGohey: If your Honor please, with respect to the maps that Mr. Isserman just talks about, I believe that they are probably the same maps that were the subject of a subpoena addressed to the Attorney General, which was quashed yesterday, and the basis for the motion to quash was that even if the maps were produced they would be objected to, and I think the Court indicated that an objection would be sustained as to those maps.

The Court: Are those the maps, Mr. Isserman?

Mr. Isserman: Yes, they are the maps.

The Court: Well, if they are, I think you (3071) may excuse the witness because—

Mr. Isserman: If the Court please, I would like to have the maps in question marked for identification.

The Court: You may do so. I will make the same ruling that I made yesterday and exclude it.

Mr. McGohey: May I proceed, your Honor?

The Court: Well,—

Mr. Isserman: I mean, have the maps marked and make an offer with respect to them, or state my objection, at least, to the excusing of the witness.

(Marked Defendants' Challenge Exhibits 148 and 149 for identification.)

The Court: How can you have any objection to my excusing the witness when I have excused him upon the basis of the assumption that he would testify to what you said he would testify to?

Mr. Isserman: Well, that was not my understanding of your Honor's ruling. I understand your Honor's ruling is that the maps will not be admitted.

Colloquy of Court and Counsel

The Court: Yes. And so I say there is no use in having the man stay here to identify the maps, because I am not going to allow the maps to go in evidence.

Mr. Isserman: My objection is to the refusal (3072) to allow the maps in evidence, and I would like to be heard on it, your Honor. If not, I would like to state my objections for the record to your Honor's ruling after the maps have been identified.

The Court: Well, we went all over that yesterday.

Mr. Isserman: The maps were not in the courtroom yesterday, your Honor, and they were not described.

The Court: Well, if you were not in the courtroom—

Mr. Isserman: I was in the courtroom but the maps were not.

The Court: You described them yesterday didn't you?

Mr. Isserman: I did not. They were described merely from the standpoint of reference to certain litigation, and I now have the maps—

The Court: Well, I heard a description of them, perhaps it was by Mr. Gladstein. But however that may be, I am taking that description as accurate and I am adhering to the ruling I made yesterday, and I desire no further argument.

Mr. Isserman: Then your Honor refuses to allow me to state my objection to the exclusion of the maps which are now marked Challenge Exhibit 148 for identification (3073) and Exhibit 149 for identification?

The Court: I do. You can tell the witness he may go.

Mr. Isserman: I will excuse the witness.

Mr. McGohey: Mr. Wilkerson, will you please put away your notes? If you have occasion to require any of the papers that are marked for iden-

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tification or in evidence, if you will call for them we will try to supply them for you.

Cross examination by Mr. McGohey:

Q. Prior to your testimony in this case, Mr. Wilkerson, have you ever testified in any other case in court? A. In an assault case.

Q. I beg your pardon? A. I testified once in an assault case.

Q. Well, did you ever testify to statistical data and statistical compilations, as you have here? A. Not in a court. I have before Congressional Committees.

Q. What I am trying to ask you, have you ever testified as a witness for one side or another in an adversary proceeding in a court? A. I have not.

Q. Are you being paid as a witness to testify in this case? A. I am not.

Q. Now, as I understand you to have testified that the (3074) exhibits presented through you here—that is, all of the exhibits, the tables and the maps and the charts—were either prepared by you or were prepared under your direction; is that correct? A. That is correct.

Q. I also understand your testimony to be that you personally checked each one of these exhibits for accuracy, is that correct? A. If by that you mean did I personally check every figure on all of these exhibits, no. But if you interpret it—what I do mean by having checked is this: we made sample checks of all of the materials that have been prepared here, and we also had competent people making checks under my direction and reporting to me the results of such checks. But I personally have not checked every figure, every percentage, every line among the tens of thousands involved in these exhibits.

The Court: Haven't you been testifying here repeatedly that you checked this exhibit, checked that exhibit for accuracy, and that it was in all respects true and accurate?

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The Witness: And I am now interpreting what that means. That does not mean I took a pencil personally—though I did on the majority of them personally—but it does mean if I did not, we had it checked and the results reported to me.

Q. Now, will you tell me, how many assistants did (3075) you have who were working under your direction?

A. That number, I should guess, if we took all of the people involved, would run into several dozen people from time to time.

Q. Could you— A. We have not had a set staff of people who operated these throughout the period that I have been associated with this inquiry, but there have been from time to time different groups of people, and I am sure that if I could summarize the numbers—which I would find it impossible to do—it would run up into several dozen.

Q. Well, would you say it was five dozen? A. I doubt that it is that much. It is more likely between three and four dozen.

Q. Somewhere between 36 and 48 people worked in the preparation of these charts and tables and maps? A. Yes.

Q. Can you tell us who any of them were? A. The clerical staff in the office of the defense attorneys. I don't know their names. I know the popular names by which they are mentioned.

Q. Can you tell us how many of the clerical staff worked on this? A. That is a difficult question to answer precisely too, for this reason: I have been in that office almost incessantly for quite a while, (3076) and at one time I find four or five people working in the clerical staff, and at another time I find six or seven, and they are not always the same people. It is not a situation in which we have had a professional staff which was employed to do precisely this thing alone, but a situation in which we have utilized such people as were made available and volunteered their services, and some were employed by the defense counsel to do the clerical tabulations necessary for the charts and the tables we have presented.

The Court: Do you mean to say you don't remember the name of a single one of those people?

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The Witness: Sure I do. I remember a name of a lady named Thelma. I don't know what her last name is. I remember the name of a person named Jackie, I don't know her last name.

Q. Now, you have described those who worked as the clerical force, I think you described it, in the office of the defense attorney, and I understand your testimony to be that they constituted some of this three dozen or four dozen who had worked in the preparation of the charts and maps. Now will you tell us who else besides those in the clerical force worked under your direction? A. There have been volunteer workers who have been brought in from time to time, some—

(3077) Q. When you say "brought in," will you tell me what you mean by "brought in"? Brought in where? A. Brought into the office of the defense counsel. The procedure, if you want to understand, is, I would say, "I need a number of people to make certain calculations. Will you get them?"

They got people to work with me, and generally under my direction in making certain calculations. Many of their names I never knew and don't now know.

Q. Did you ever meet any of them prior to the time you met them in the performance of the duties which you assigned to them? A. Some of them I have seen before; some of them I have not.

Q. How many of those working had you seen before? A. That I would not attempt to answer, Mr. McGohey.

Q. Well, would it be five? A. I am sure I have seen more than five of them before.

Q. Well, would you say it was ten? A. I don't know.

Q. Now, when you say you saw them before, do you mean you just saw them or did you meet them and talk to them before this time? A. Some I met and talked to before; some I had seen before, and have not, so far as I remember, had any face to face conversations. There are some that I had seen in classes of mine before, some I had met at meetings, and some I had never seen (3078) before.

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Q. What meetings? A. I have no recollection of precisely what meetings I meet a person who happens now to come into an office where I am doing some work.

Q. Did you meet them at any meetings of the Communist Party? A. My answer was I don't recall where I met—indeed I am thinking of no particular person—where I recall—where I had met some of the people who came in to do volunteer work in the preparation of these materials.

Q. Well, is there any one person of all those who assisted in the preparation of these documents whom you can say you knew before that person began to work on these documents? A. Surely. Of course.

Q. And would you tell me who that person is? A. Do you want the name—

Mr. Sacher: I object to that as irrelevant, incompetent and immaterial.

The Court: Overruled.

Mr. Sacher: Exception.

A. (Continued) You want the name of one person I knew prior to working with me on this material? Is that right?

Q. Yes, please. A. The name of one such person (3079) is Mrs. Dorothy Rodman.

Q. Is that the same lady to whom Mr. Hazard of the Immigration and Naturalization Service wrote the letter that was used by you as a base for one of the tables? A. That is the same lady.

Q. Now, was there anybody else besides Mrs. Rodman whom you knew before that person began to work with you on these charts and exhibits? A. A lady named Sarah—I don't know what her last name is. I can find out if the Court finds it important to do so.

Q. You say you don't now know her last name? A. I don't.

Q. Will you tell us how long you knew her? A. I think I have known her for maybe a year or more; I believe I met her at the Jefferson School, I am not sure.

Q. Was she a student of yours at the Jefferson School? A. I don't believe she has been in my class at the Jefferson School but I am pretty sure that I have met her at the Jefferson School.

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Q. Do you know what courses she was taking at the Jefferson School? A. I do not. I could find that out if it is necessary.

Q. Do you know anything at all about her educational background? A. No. All I know is that she is a competent clerical worker.

(3080) Q. Do you know whether she has ever worked in preparing tables and charts of the kind that she worked on for you? A. She did not prepare tables and charts. What she did was a clerical job, as was true with most of these people, clerical jobs under supervision, of counting and tallying and totaling up figures which later were checked by somebody else.

Q. Well, now, can you tell me this: Was the staff divided into some who were supervisors and then others who worked under the supervisors? A. Not on a permanent basis. That is, for example, let me illustrate: I mentioned Mrs. Rodman who, if you are interested in knowing, is a graduate of Columbia University in economic analysis, has held many federal posts, and other than in this respect—

The Court: Now, nobody asked you about that. Will you please stop that?

A. (Continued) She has been—

The Court: Strike that out.

A. (Continued) She has been the one constant person who operated as a supervisor. From time to time, however, we have had sub-supervisors who were not a constant part of the staff. I can illustrate—

Q. Now, just hold the illustration for a second, please. Will you give me the names of those who acted (3081) from time to time as sub-supervisors? A. I am not in a position to do that, Mr. McGohey.

Q. Did you know any of those persons who acted as sub-supervisors prior to the time that they worked with you on the compilation of these charts? A. Some I did; some I did not.

Q. Had you any knowledge of their educational background or their qualifications to do this work? A. In some cases, yes; in other cases, before any of them worked

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on the chart, we tested them out. There were some people who came to do jobs whom we said after having tested them on the particular kind of job, "We are sorry, maybe there is something else that the defense counsel can have you do." But the people who volunteered and whom we employed were people whom, after we had discovered their work and tested them out, we concluded were competent to carry through the simple routine operations required of them.

Q. Did you personally give these tests? A. I did with some; I did not with others. Some of them were given by Mrs. Rodman who assisted me quite a bit here.

Q. Is it your testimony now that the only person you are able to name is Mrs. Rodman and then this person whom you designated as Sarah? A. That is not my testimony. You asked me those (3082) two—

Q. I ask you now, will you give me the name of any other person? A. There is a gentleman named Alex.

Q. Alex what? A. Alex Munsell who helped me, I remember.

The Court: He is one of the ones you knew before you undertook this work and who helped you?

The Witness: I have known him at the Jefferson School.

Q. Do you know what courses he takes at the Jefferson School? A. I do not.

Q. Do you know anything about his educational background? A. I did not.

Q. Do you know anything about his experience in doing work of this kind? A. I know only that he is competent to do the routine tasks we required of him.

Q. Well, now, let us go back to these supervisors: Have you named anybody other than Mrs. Rodman who acted as a supervisor? A. Mrs. Rodman is the only one who acted in a professional capacity as a supervisor. On specific jobs—I started to illustrate and you stopped me. Do you want me to explain?

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Recalled—Cross*

Q. I will ask you what I want to find out, Mr. Wilkerson. You say Mrs. Rodman is the only one who acted on a professional basis? A. That is right.

(3083) Now, were there others who acted on a non-professional basis? A. From time to time.

Q. Well, when did you start this? When did you start the preparation of the charts and tables and maps that have been introduced through you in evidence?

Mr. Sacher: I object to that as irrelevant, incompetent and immaterial.

The Court: Overruled.

Mr. Sacher: Exception.

A. I think it was some time during November when defense counsel first approached me on this subject.

Q. Was it in the early part of November? A. I would judge along about the middle of November, but I don't remember exactly, Mr. McGohey.

Q. But you have been working with those people from, we will say, the 15th of November up to the present time, is that correct?

Mr. Sacher: I object on the ground that it assumes a state of facts not in evidence. The witness did not say the 15th of November.

The Court: Overruled.

Mr. Sacher: Exception.

Q. Would you fix a different date than the 15th of November, Mr. Wilkerson? A. I would fix no date at all. I would say about the middle of November.

(3084) Q. About the middle of November would be about the 15th of November, would it not? A. About the 15th, not the 15th.

Q. Beg pardon? A. About the 15th.

Q. About the 15th? A. Yes.

Q. So you have been working with these people from about the 15th of November up until the 9th of February, about which there is no question is today?

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Mr. Isserman: I would like to object to the form of this question on the ground that the witness has testified he worked with various groups of people from time to time. This question assumes working with one group right through. The witness has not so testified.

The Court: Overruled.

Please try to avoid making objections in such form that they might be interpreted as suggestive of the answer to the witness.

The Witness: May I ask for an interpretation of your question? I am about to answer a specific question. I don't want to answer—

Mr. McGohey: I shall withdraw the question and reframe it.

Q. Is it a fact that you have been working with this group of assistants whom you have described generally from about the 15th of November up until today, February (3085) 9, 1949? A. The answer is yes—

Q. Can you answer that question yes or no, Mr. Wilkerson?

Mr. Sacher: He just said Yes.

A. I can answer it yes, but I don't mean by that "Yes" in a full time capacity. You probably didn't mean that. But I have been working with this material from about the middle of November on up to the present time, sometimes more intensively than others. Does this suffice?

Q. You are talking about materials and I was asking you about persons. What I am trying to ascertain, Mr. Wilkerson, is this: Is it not a fact that you have been working with these people whom you have described generally as assistants from about November 15, 1948, up until February 9, 1949? A. Not with all of them; with some at one point and some others at another point.

Q. Now, besides Mrs. Rodman and—what was the other man you named, Alex somebody?

The Court: Alex Munsell.

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Q. (Continuing) Alex Munsell, can you give us the name of any other person in that group of assistants?

A. Who have worked with me at any time in this business?

Q. Yes. A. There is a lady named Thelma—or rather, Sarah—I mentioned her, I believe, did I not?

Q. Yes, I believe she is the lady you said you had seen (3086) at some meeting. A. I said probably, or perhaps the Jefferson School, I am not specific on that because I just don't know.

Q. Do you know her last name? A. I don't.

Q. Did you mention somebody named Selma or Thelma?

A. I mentioned someone named Thelma.

Q. Do you know the last name of that person? A. I don't. She is one of the clerical workers in the office.

Q. I think you mentioned somebody named Jackie? A. I did.

Q. You don't know the last name of Jackie either, do you? A. I don't. She also is a clerical worker in the office.

Q. Had you ever met Thelma prior to the time that she became one of your assistants in this work? A. I have met her at some time because when I went into the office for the first time I recognized her. Where, I don't know.

Q. Have you any idea how long ago that was? A. No.

Q. Now, did you know Jackie at any time before he came to work with you?

The Court: Is that a "he"?

Mr. Sacher: No, that is a very pretty "she," your Honor.

(3087) The Court: I thought Jackie was a she.

Mr. McGohey: I will apologize to the lady and accept the amendment.

The Court: I think so.

Isn't it a young lady?

The Witness: It is a young lady, your Honor.

By Mr. McGohey:

Q. Did you know that young lady prior to the time that she came to assist you in the preparation of these exhibits?

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A. I don't recall having known her prior to her working—prior to my working there with her in the office of defense counsel.

Q. I assume that you did not give Mrs. Rodman any tests to ascertain her capabilities? A. We found out in advance what her professional experience over many years in this kind of work has been.

Q. And on the basis of that you realized that she needed no testing? A. More than that. We checked some of the work that she did—we checked it throughout the period that she has been operating here, and have reassured ourselves many times of her competence—

Q. Who was it—

The Court: Now, Mr. Wilkerson, you probably don't understand what cross-examination is. You have been wandering around explaining and saying this and that in (3088) your direct examination. Now on your cross-examination you will please listen carefully to the questions and give a direct and succinct answer and not add all these little explanatory details which have a tendency to get one's mind off the question.

Mr. Sacher: Will your Honor be good enough to advise the witness also that he does not have to answer yes or no but may briefly explain his answer if it needs an explanation?

The Court: I think he understands enough to know whether a question can be answered yes or no, but if he seems to require instruction on that subject I should be glad to give it to him.

Mr. Gladstein: Will your Honor also instruct the witness at this time that when he is answering a question by Mr. McGohey, he has the right to give a full and complete answer directed to that question?

The Court: No. That is one thing I certainly will not do because I have a pretty good idea of what he thinks is a full and complete answer; and when he got through I would not know where he started.

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Mr. McGohey: Now may I have the last question read?

(Last question and answer read.)

Q. Will you tell us who you included in the word (3089) “we” when you said “we checked her work”?
A. That is an editorial “we” that I got into the habit of using in many years as a professor—

The Court: Why don’t you say “‘We’ means ‘I’ ”?

Q. You mean yourself? A. That is correct.

Q. Now, can you give us the names of any other person in this group of assistants? A. You mean anybody else who has helped at any time?

Q. I mean anybody whom you say assisted you in preparation of these charts and exhibits and maps. A. There is a man named Joe who is in the court here, or has been very often, whose last name I don’t know, but who has worked with me from time to time in such tabulations.

Q. Very well. Now will you tell us when you first met Joe? A. When I came to work with defense counsel on this project, I think. I don’t remember having met him before.

Q. Now, did you have any knowledge of his educational background? A. I learned when I met him and when I spoke—indeed—the answer is yes. He volunteered to help by calling attention to the fact that he was a graduate of New York University in mathematics, and we utilized his services, which he volunteered. Either New York U. or C. C. N. Y.—I think it is New York U., yes.

Q. Now, he told you about his educational background and his study of mathematics at New York University? (3090) A. Yes.

Q. Did he tell you his last name? A. No.

Q. Did you ask him for his last name? A. I did not.

Mr. Sacher: He is right here, Mr. McGohey.

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Q. Were you interested in who he was? A. I was certain if he were helping defense counsel—

The Court: Just a second, Mr. Sacher is having a wonderful time back there. What is going on, Mr. Sacher?

Mr. Sacher: I just informed Mr. McGohey that this young man Joe is in the courtroom, and I can find his name for him if he wishes.

The Court: Well, I would not make it the subject of such excessive mirth.

Mr. Sacher: No, I am just feeling well, that is all.

The Court: I can't see anything so hilarious about it myself, but perhaps I am wrong.

Mr. McGohey: I am not so interested in his name but I would like to find out if the expert knew his name.

The Court: I know.

The Witness: I was not interested in his last name either, Mr. McGohey.

Q. Beg pardon? A. I was not interested in his last name either.

(3091) Mr. Sacher: I want to object to this line of testimony unless Mr. McGohey says that he believes that Mr. Wilkerson's failure to know Joe's second name impugns the value of his analysis or the successive data that is introduced here.

The Court: Well, it does not make a very favorable impression on me that all this data that was supposed to be so carefully and accurately assembled, was done by a miscellaneous group of people who came in and out. If he does not even know what their names were, I must say it seems to have some bearing on this question.

Mr. Sacher: The important question is, is the information true or false, regardless of who made it?

The Court: Yes?

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Mr. Sacher: And if Mr. McGohey can't prove it is false, then I say all this pursuit of anonymity won't help his case one little iota.

The Court: You see, unfortunately the shoe is on the other foot. You are the one who has to prove that the information is accurate, and that depends on how far I believe the testimony of Mr. Wilkerson. The burden is not on Mr. McGohey at all.

Mr. Isserman: If the Court please, the supervisor of the Census does not know the names of the census takers, but it does not make it anytheless accurate.

(3092) *By Mr. McGohey:*

Q. Now Mr. Wilkerson, you have given us the names of about a half dozen people who worked with you two of whose last names you knew. Can you give us the names of any of the others? A. I remember at one time a lady whose name is Mildred McDoree—I think it is McDoree—M-c-D-o-r-e-e—at least that is a phonetic spelling of the name—whom I first knew as a clerical worker at the Jefferson School and who helped us in some of the clerical tasks involved in these analyses.

The Court: How did you say that name was spelled?

The Witness: I assume that it is spelled M-c-D-o-r-e-e, though I couldn't guarantee that.

The Court: A-d?

The Witness: No A.

By Mr. McGohey:

Q. I understood you to say that she assisted in some clerical capacity? A. That is right.

Q. Would that be by typing? A. No. That is tabulating data under supervision.

Q. Can you tell us under whose supervision she worked? A. Either under mine or under Mrs. Rodman's, or both.

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Q. Is it possible that she worked under some of these (3093) part time supervisors also? A. It is possible, but I don't recall.

Q. By the way, who else were some of the part time supervisors besides Mrs. Rodman? A. I could best answer that if you will let me explain what I mean by part time supervisors, Mr. McGohey.

Q. By all means, explain it. A. All right. There is a special task to be done such as tabulating certain data by health areas. We asked the people in charge of defense counsel's office to get us some additional help to do the job.

Q. May I interrupt for just a moment. I understand when you use "we" in this answer you are using it editorially? A. That is right.

Q. Meaning yourself? A. When I say "we" I am meaning I.

The Court: Well, please say "I" hereafter and it will be a little clearer.

Q. Will you proceed, Mr. Wilkerson? A. Shall I proceed?

Q. Yes. A. The office management there then produces five or six or ten or sometimes more people to do the job. We get them together—I get them together, or Mrs. Rodman does, and sometimes we do—in the plural sense—

Mr. Sacher: He is an editor, your Honor,
(3094) you see.

A. (Continued) And explain the job to be done, outline procedures, provide tabulation sheets, start them to operating; and we find—I find or Mrs. Rodman does or we do—that some of them catch on quickly. Some of them are not so quick. Some are obviously more skilled at this sort of thing than others. And very often what we do—what I do—is to say to a lady whose name might be Susie in such a group, "Look, will you take charge of this group of two or three who are making this particular part of the calculation?" and to a man whose name might be John who I never saw before, "Look, you demonstrate ability here, won't you take charge of this group of three or four";

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and we may have four or five or six different groups operating simultaneously in certain tabulations later to be checked. But what I am calling sub-supervisors are such people who in a volunteer capacity came to help with the work and who demonstrated a facility in doing the work which warranted our putting them in charge of the gangs of clerical workers on the tabulations.

Now, most of those people I never saw before, and right now I can't think of the names of any of them. Most of their names I never learned. These were not people employed continuously on a staff.

(3095) Q. Well, now, were they assigned to this type of work which you have just described in your last answer after they had been given a test, or was that assignment part of the test? A. The assignment to sub-supervision?

Q. The assignment that you just described in your last answer. A. I am not sure that I understand your question. I had previously testified that some people who volunteered to work we did not use because they proved to be incompetent.

The Court: No—

Q. No, but you did testify before that you tested them in some way where you got people whom you did not know— A. And the process of testing as having them to do some sample tabulations—

The Court: That is what the test was. You would give them something to do, and they would start doing it, and then if they seemed proficient, that was the test.

The Witness: Yes, you have it exactly.

The Court: And then after you picked them out, you made them supervisors, and you did not know the names of most of them, and the others that you did know the name you have forgotten?

(3096) The Witness: You are very correct.

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By Mr. McGohey:

Q. Did I understand you to testify then, Mr. Wilkerson, that you personally checked every calculation made by each of the persons who worked under you from time to time? A. You do not.

Q. That is not correct? A. That is not correct.

Q. Did you check any of them? A. I did.

Q. Who checked those which you did not? A. Mrs. Rodman and I, I think I am correct in saying, did all of the checking that was done.

Q. Now, did you personally classify the occupations of the jurors according to the census system or the census classifications? A. All 7500 included in the panels?

Q. Yes. A. No.

(3097) Q. Well, now, who helped you on that? A. Most of that work was done by Mrs. Rodman, I did some of it, and Mrs. Rodman had a few people who were particularly skilled, had demonstrated that fact, to help in some of the others. I might explain here—

Q. I beg your pardon. A. I started to explain that this is one aspect of the inquiry which involved greater skill than most of the others; it was not simply a routine matter. And here many people were not used who were available to do simple tabulations. Mrs. Rodman personally did most of the classifications of occupations. I did, oh, at least four or five lists. There were a few people who had demonstrated, volunteer workers, real insight and ability, and upon check had demonstrated accuracy who Mrs. Rodman had help her in the classifications.

Q. How many people would you say were in that group that helped Mrs. Rodman in the classifications? A. I would say not more than two or three.

Q. Can you give us the names of any of those two or three? A. I cannot.

Q. Now after Mrs. Rodman had done this classification did you thereafter check it? A. I spot checked it. By that I mean, we would pick up sample panels and determine the classification (3098) myself for a few of the jurors listed on that panel and on a few other panels, and get some measure of the accuracy with which it had been

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done. If we saw errors or if we saw places where there was doubt, as I think I explained earlier, we changed the classification to a lower category. I looked over all of the sheets and actually checked the calculations with samples which I am sure on individuals would run up into the hundreds. We did not check every classification.

Q. Do you know what guide was used in making the classification? A. I have testified on that subject before.

Q. Would you tell us again, please? A. The alphabetical index of occupations which is published by the Census Bureau primarily.

Q. I think that is Exhibit 16.

Mr. McGohey: May I have it, please?

Mr. Sacher: We are getting it for you, Mr. McGohey.

Mr. Isserman: If your Honor please, might I excuse the witnesses who are waiting for the balance of the day?

The Court: Yes.

A. There was another classification of occupations which is a companion volume to this.

(3099) Q. Would you describe that, please? A. I think the title is Classification of Occupations and Industries.

Q. Is it in evidence or has it been marked for identification? A. I know it has been marked for identification. That is it.

Mr. Gladstein: It is No. 17 (handing).

Mr. McGohey: If your Honor please, I propose to read something from the transcript of testimony, and so that counsel may follow me I should like to direct their attention to page 2071 of the transcript.

Q. Mr. Wilkerson, I think it was on February 1st, in any event the answer of yours to which I am about to direct your attention appears on page 2071 of the transcript and it is this, I am quoting the last paragraph:

“However, take another illustration that I recall from some of these—a tailor. You will find if you

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analyze the classification, alphabetical index of occupations in industries, that a tailor who is a proprietor and owns his own business would be classified as a proprietor, manager and official, our category of executives.”

Do you recall that? A. I think I recall that.

Q. Now will you take Exhibit 16, please, the (3100) alphabetical index?

Mr. Gladstein: You might finish the answer.

Mr. McGohey: Your Honor, if I may be permitted to ask my questions—

The Court: Yes.

Q. Will you please take that alphabetical index, Exhibit 16, and tell me how the census classifies a tailor who is a proprietor and owns his own business?

Mr. Gladstein: Now it seems to me that Mr. McGohey—

The Court: Now, don't tell him the answer.

Mr. Gladstein: I am not telling it to him.

Mr. McGohey: If the Court please, I submit that the witness ought to be allowed—

The Court: Yes.

Mr. McGohey: —to look at—

The Court: He is going to be allowed.

Mr. McGohey: —the thing that he has there.

Mr. Gladstein: I don't mind the quotation from the record, but I am going to suggest, in fairness to the witness, when Mr. McGohey asks if he testified to something that he read the whole answer or the whole context. Now what Mr. McGohey has done has been to stop at the end of a sentence that is in the middle of a paragraph.

(3101) Mr. McGohey: If the Court please—

The Court: I have read it, Mr. McGohey. I will overrule the objection.

Now, you get your mind on the question, Mr. Witness, and let us have the answer.

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Mr. Gladstein: I think Mr. McGohey should recognize that, in fairness, the witness ought to be allowed to see the answer he is about to be questioned about.

The Court: You will please desist from further argument at this point, Mr. Gladstein.

Mr. Gladstein: I take exception to the Court's refusal to allow the witness to see the testimony that he gave, the full answer concerning which he is about to be questioned.

The Court: You may do so; your exception is noted.

A. You haven't finished your question, have you, Mr. McGohey? Are you waiting for me?

Q. I am waiting for you.

The Court: Yes, you are looking it up there.

A. That is right. You will find that on page 478 a tailor in a shirt factory is a 496 classification, a tailor in any store is 360, a tailor except in a shirt—

Q. Just a minute, please. Are you talking about (3102) 478? A. I am.

Q. And you first mentioned a tailor in a shirt factory?

A. Shirts or shirt factory.

Q. Now a tailor in a shirt factory is not a tailor who is a proprietor and owns his own business, is he? A. That is right. I may answer your question if you will.

The Court: Well, don't be so roundabout at it.

The Witness: Shall I proceed?

Q. Please.

The Court: Now remember what your finding is, that a tailor who is a proprietor and owns his own business would be classified as a proprietor, manager and official.

The Witness: That is right.

The Court: You are looking in the book to find that. Don't get us off the point by talking about men who are employed in shirt factories or other factories, but keep your mind right on the question.

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The Witness: It is on the question, your Honor. I know the misconception Mr. McGohey is under, and I am trying to clear it up.

The Court: Well, you are being cross examined.

Mr. McGohey: I move to strike out the characterization—

Mr. Sacher: I object.

(3103) Mr. McGohey: —that I am under a misconception.

Mr. Sacher: I object. The cross examiner is not entitled constitutionally to entertain misconceptions, and if the witness wishes to clear up the misconception we should all welcome it. We are concerned with the administration of justice.

The Court: So we are.

Mr. Sacher: So let us clear up the United States Attorney's misconception.

Mr. McGohey: I move to strike it out, your Honor.

The Court: Strike it out.

This witness is being cross examined, among other things, as to his veracity.

Mr. Sacher: That is right.

The Court: And so we will be—

Mr. Sacher: And he will stand up, that is right, he will stand up under—

The Court: That is what you say.

Mr. Sacher: —under the worst cross examination of Mr. McGohey's.

The Court: That is fine, Mr. Sacher.

Now let us see what the answer is. He has had plenty of time to think.

The Witness: The question was, how would you (3104) classify a tailor who is an owner and who would go—

The Court: The question is—

Q. Oh no.

The Court: —point in that book to the place where they have that.

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The Witness: All right. The fact that the tailor you are asking me about is a tailor is not so significant in his classification as the fact that he is an owner. And if you will look—

Mr. McGohey: If the Court please, I move to strike out the answer.

The Court: Strike it out.

The Witness: Let me answer that question. Will you turn to page 360, Mr. McGohey.

Q. Yes. A. You will find there—

Q. 360? A. That is right. (Continuing) —many categories of owners all of whom are classified as managers, officials and proprietors. That means—

Q. Yes. A. And the tailor who is an owner to whom I referred earlier would be classified as an owner in group 1 or, rather, what we have called one of the executives.

Q. Will you show me on 360 where a tailor is listed under the category of owner? A. 360 does not. Indeed, there are many categories of owners who are not specified in this volume, but any owner is classified by the Census, (3105) and you will find that, I am sure, if you study these volumes enough, as a manager, professional—or executive and official.

Q. Now, Mr. Wilkerson, I ask you to turn to page 393 of Exhibit 16. Have you found that page? A. I have.

Q. Now that lists proprietors of various classes, does it not? A. It does.

Q. About half way down the page do you not find the words “Tailor Shop”? A. I do.

Q. Indicating that that is a classification for a proprietor of a tailor shop? A. That is correct.

Q. And will you tell us how that proprietor of a tailor shop is classified on that page 393? A. With the 360 symbol.

Mr. Sacher: I object to it unless it appears—

The Court: Please let him answer.

Mr. Sacher: What are you worrying about, Judge? Do you think this case hinges on the little tailor on Amsterdam Avenue?

The Court: No.

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Mr. Sacher: Is that the basis—

The Court: I am quite accustomed to instances where counsel who called a witness—

Mr. Sacher: May I ask for—

(3106) The Court: —constantly adopt stalling tactics and things of that kind, and I don't intend to have that here.

Mr. Sacher: May I then ask for permission to make the observation after he answers that I was going to make before?

The Court: Well, you have already served that purpose.

Mr. Sacher: What is the difference? I couldn't—

Mr. McGohey: If your Honor please, may I ask that the witness be directed to answer the question I have just asked?

Mr. Sacher: I object again on the ground that it doesn't indicate whether the tailor Mr. McGohey is speaking about is an employer of labor or not. And Mr. McGohey can't tell me or anybody else that anyone that employs ten employes in a tailor shop isn't a proprietor, owner and manager.

The Court: You have done just precisely what I told you not to do, and you have done that so many times that I will merely have it indicated on the record here that I am observing and noting. I ask all of counsel to desist from comments in the guise of objections to questions which in effect suggest the answers to the witness under cross examination.

(3107) I will overrule the objection.

The Witness: May I continue the answer to your question, Mr. McGohey?

Mr. McGohey: May I hear the last part of the witness's answer that came before the interruption?

(Record read.)

Mr. McGohey: That is correct.

Q. Now, will you proceed from there, Mr. Wilkerson.

A. The remark you read out of the record—

The Court: How is he classified?

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Q. Now, will you answer the question, please? Will you tell me how this Census volume classifies the proprietor of a tailor shop? A. As a 360 which is craftsmen and would fall into category 4.

Q. You mean, when you say category 4, the category 4 that you used in dividing the occupations of jurors? A. Yes.

Q. That is, a manual worker? A. Yes. But I should like to explain my testimony, if I may.

Mr. Sacher: I ask that the witness be permitted—

The Court: Your application is denied.

Mr. Sacher: I thank you.

The Court: You have redirect examination, as I think perhaps you will recall, and anything you desire to bring out by way of explanation you will do so then.

(3108) Mr. Sacher: Don't you think it will assist your Honor and any higher court that will read the record to have it all in plain—

The Court: I don't desire anything that will make for confusion and disturbance.

Mr. Sacher: Confusion? To have this answer right and understood by what he has just said?

The Court: Nothing will serve to shut you up, Mr. Sacher. And I merely indicate to you my desire that you desist.

Q. Now, Mr. Wilkerson, I am reading from page 2072 of the transcript in which your answer appears to continue.

“If the designation on the jury list for this particular juror (who) was a tailor (and) was not sufficiently explicit to make clear with certainty which of the two categories he should go into, we chose the manual worker (category) rather than the executive.”

That is your testimony, is it not?

A. I think so.

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Mr. Gladstein: You don't even read it correctly, Mr. McGohey. I think the least that the witness can have the benefit of is to take the actual text.

The Court: Well, that will not be done.

Mr. Gladstein: Then at least Mr. McGohey ought (3109) to have read the answer as it appears in the record.

The Court: He should.

Mr. Gladstein: Then I object to the last quotation as being inaccurate and I ask that it be re-read.

The Court: There was a very slight inaccuracy.

Mr. Gladstein: There were several.

The Court: I think it will be re-read to him, and that will be done.

Mr. Gladstein: We will have to watch carefully what Mr. McGohey reads.

The Court: Well, we will all watch carefully.

Mr. McGohey: If your Honor can spare the time I will read everything that has been read both before and right now.

Q. Reading on page 2071:

"However, take another illustration that I recall from some of these—a tailor. You will find if you analyze the classification, alphabetical index of occupations in industries, that a tailor who is a proprietor and owns his own business would be classified as a proprietor, manager and official, our category of executives. There are, however, certain other categories of tailors who would be classified as manual workers.

"If the designation on the jury list for this (3110) particular juror who was a tailor was not sufficiently explicit to make clear with certainty which of the two categories he should go into, we chose the manual worker category rather than the executive. In that sense we always—wherever there was any possibility of doubt we chose that alternative which would have the effect of tending to in-

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crease the proportion of manual workers, clericals, what-have-you, or, rather, those below executives on the jury lists.”

But it is a fact, is it not, Mr. Wilkerson, from the Exhibit 16 which you have just read that a tailor who owns his own shop is classified by the Census not as an executive, as you said, but as a craftsman which you put in the manual worker category? Is that not a fact? A. That is a fact.

The Court: Now, here is where we are going to stop for the day, and we will go on at 10.30 tomorrow morning.

(Adjourned to February 10, 1949, at 10.30 a.m.)

(3111)

New York, February 10, 1949;
10.30 a. m.

The Court: Now, I have been studying these minutes last night, and there are two exhibits that I should like to reconsider.

Will you, Mr. Gladstein, please get for me Exhibits 96 and 97 for identification? They constitute the tables described as P-1 and P-2.

Mr. Gladstein: I have them here.

Will you hand them to the Judge, Mr. Clerk?

(Exhibits handed to Court.)

The Court: Oh, yes. These are just the ones I thought they were.

I shall change my ruling as to those two exhibits and admit them.

(Defendants’ Challenge Exhibits 96 and 97 for identification received in evidence.)

Mr. McGohey: Mr. Wilkerson, will you resume the stand, please.

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(3112) DOXEY A. WILKERSON, resumed the stand.

Mr. McGohey: May we have the original of Defendants' Challenge Exhibit 106? I think that is Table XI-C.

(Exhibit handed to Mr. McGohey.)

Cross examination continued by Mr. McGohey:

Q. Mr. Wilkerson, I hand you Defendants' Challenge Exhibit in evidence numbered 106. I see from the note at the foot of that table that the basic data from which that table was compiled was from the 16th Census of the United States, Population, Second Series, New York. Tables D-39 and F-39, and the percentage of illiteracy from the Census report, Series P-20, No. 20, Table 4. And that appears to be Challenge Exhibit 85. A. There is no such note on this exhibit.

Q. Well, it is on the copy that was handed to me, and I remember at the time we had some discussion about the fact that some copies had this basic data and some did not. Would you take a look at this copy and tell me whether or not in compiling that table, which is denominated Challenge Exhibit 106 for identification, you did or did not use the data which appears in the note which I have just read? A. We did.

Mr. McGohey: May I have Challenge Exhibit 85?

(3113) (Exhibit handed to Mr. McGohey.)

Mr. McGohey: Will you excuse me for just a minute, please?

The Court: Yes.

By Mr. McGohey:

Q. Do I understand by that, Mr. Wilkerson, that you used Challenge Exhibit 85, which I show you, for data from which you determined— A. Pardon me, may I see

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the one on which you have the notation you are referring to?

Q. Oh, yes. It reads "Basic data from the 16th Census, United States Population." I have some additional notes of my own on that, Mr. Wilkerson, which I do not deem it appropriate to show you at this time. A. May I take my own copy?

Q. You may take your own copy, yes, by all means. Now will you just take that copy and not any other notes that you may have there? A. Now your question?

Q. Now, would you put away your other notes except the table, please. Now did you rely on Challenge Exhibit 85, which is called "Current population reports, population characteristics," for determining the percentage of illiteracy, as you have shown it, on Challenge Exhibit 106? A. We relied upon a procedure that is illustrated (3114) by Challenge Exhibit 85 in doing this.

Q. Would you tell us what the procedure was? A. The procedure of taking a certain percentage, here 75.7 per cent of those with no years schooling, and here 15.6 per cent, those who had four years schooling, and estimating illiteracy on the basis of that.

Q. Well, in so far as you used Challenge Exhibit 85, you used a procedure with respect to illiteracy as illiteracy is there defined, I assume? A. (Witness nods.)

The Court: Did he say "Yes"?

Mr. McGohey: I think the answer is "Yes."

The witness nodded his head in the affirmative.

The Witness: Yes.

Mr. McGohey: The answer is "Yes."

Q. Now, will you look at Challenge Exhibit 85. That is the current population reports. A. All right.

Q. "Of the 106,000,000 persons"—I am reading from the paragraph, the bottom of the first paragraph of the first page, Mr. Wilkerson, "Age and Sex"—"Of the 106,000,000 persons in the United States who were 14 years old and over in October 1947"—A. Pardon me just a minute. I don't find it. You are reading on the first page?

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Q. On the very first page, the last paragraph under (3115) the heading "Age and Sex." A. Go right ahead.

Q. "Of the 106,000,000 persons in the United States who were 14 years old and over in October 1947 about 2.8 millions or 2.7 per cent were unable to read and write either in English or any other language and were therefore classed as illiterate."

That is correct, is it not? A. That is correct.

Q. Did you determine the literacy or illiteracy of either jurors or population on the basis of whether they could write some other language other than English? A. We used the procedures here outlined, but—

Mr. McGohey: Now, if your Honor please, I don't think that answers my question.

The Court: Strike it out.

Mr. McGohey: And I should like the witness to answer it; and I move to strike out what he is saying.

The Court: It is stricken out.

A. (Continued) Mr. McGohey, if I give you a direct answer it is not a full answer to your question. I should like to explain the truth of the situation.

Q. I would like to have first a direct answer, and if it requires explanation I shall ask it. A. Very well.

Mr. Sacher: I object to that. If the witness wants—

(3116) The Court: If he cannot give a direct answer he may say so.

Mr. Sacher: That is what he has just said, I think, your Honor.

Mr. McGohey: I move to strike out counsel's comment and suggestion.

The Court: Well, I thought it was proper.

Mr. McGohey: I am sorry. I withdraw it, your Honor.

The Court: I interpreted the answer of the witness in effect to mean that he could not answer the question either yes or no.

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Mr. McGohey: I will defer to your Honor's suggestion.

Will you read the question?

(Question read.)

A. My response is, I can answer that question adequately only with several sentences, not with a yes or no.

Q. Very well. Will you answer it your own way? A. Well, the direct answer is Yes. We used the basis which is utilized by the Census Bureau here in calculating the percentage of people in given age groups who are illiterate on the basis of the number of years of schooling that they had, and hence our concept of illiteracy there is the Census concept of illiteracy.

(3117) However, as was brought out in Mr. Gordon's questioning of me yesterday, we did this on the basis of the population 25 years of age and over which has the effect of exaggerating greatly a percentage of literacy because the percentage increases as you go up the scale; and when we applied that ratio to people 14 years of age and over it gave us an exaggerated expression of the amount of literacy.

Further, we proceeded to use—

The Court: I think, Mr. Wilkerson—

The Witness: I haven't answered the question, your Honor.

The Court: Yes, I understand; but when you said you could not answer it yes or no, it is evident to me now that you could but that you wanted to go into a long explanation of the reasons. Now, that is the sort of thing that is generally reserved for the redirect examination of a witness, and I think such explanation as you have already given will suffice.

You see, we would never get through with cross-examination if every time a witness felt that a direct answer might be misleading he were permitted to go on and make all the explanation he desired to do. Cross-examination would be interminable and

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wind up in confusion because nobody would be able to keep their mind on the (3118) original question.

The answer is Yes.

By Mr. McGohey:

Q. Now, Mr. Wilkerson, it is a fact, is it not, that the Census determines literacy on the basis of the ability of a person to read or write any language; correct, is it not?

A. May I check the Census definition to answer your question?

Q. Will you look at the part that I just read to you?

A. There are some more parts here, too, that you didn't read. On page 3 of Exhibit 85 there is a statement that is relative to the question you are raising: "Persons completing fewer than five years of elementary"—

Q. Will you indicate where you are reading from? A. Page 3, the first column, third paragraph.

Q. Entitled "Functional illiteracy"? A. That is correct. "Persons completing fewer than five years of elementary school have sometimes been called 'functional illiterates,' for example,"—and they give several examples. " * * * Data from the October 1947 survey indicate that the conventional definition of illiteracy, inability to read and write, is a much less rigorous criterion. There have been 8.2 million persons in the United States 14 years old (3119) and over who have completed less than five years of school, whereas there were only 2.8 million who were unable to read and write. Even among those"—I think it is not necessary to read the rest of it.

But the definition that the Census has in mind and which, hence, applies to the data we used is the fuller definition that you must read here.

Q. Yes, but the last sentence in that paragraph that you have been reading, "Functional illiteracy," will you read, please, the very last sentence in that paragraph? A. "The classification of 'functional illiterates' as those completing less than five years of school was merely a grouping to serve a particular purpose."

Q. Now does that paragraph, including that last sentence that you have just read, in any way change the text

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on the first page where it says that 2.8 million or 2.7 per cent were unable to read and write either in English or in any other language and was therefore classed as illiterate? A. It doesn't change it. It is supplementary to it.

Q. So that my question which I asked before has not yet been answered by you. Isn't it a fact that literacy, that is, the ability to read and write any language would be considered literacy for Census purposes? A. That is correct.

(3120) Q. Now, isn't it a fact that literacy for voting purposes in the State of New York would require ability to read and write English? A. That is correct.

Q. And to understand English? A. That is correct.

Q. And greater ability to read, write and understand all the other languages would not be sufficient if you could not read and write and understand English? A. That is correct. There is more to this question, however, if you let me explain it.

Mr. McGohey: If your Honor please—
The Court: Strike it out.

Q. Now, don't you know from your studies that one of the qualifications for a juror in this court is the ability to read and write and understand English? A. I do.

Mr. McGohey: May I have Defendants' Challenge Exhibits 16 and 17, please?

The Witness: They are here, Mr. McGohey.

Mr. McGohey: The exhibits themselves?

Q. Will you please put the rest of your notes away, Professor? A. Do you want to take these (handing)?

Q. Mr. Wilkerson, I understood your testimony at the beginning of it and again yesterday to be that in classifying the names of persons appearing on the jury panels (3121) according to their occupations, you used the two exhibits which are now before you, Defendants' Challenge Exhibit 16 and Defendants' Challenge Exhibit 17; is that correct? A. That is correct.