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he said there made quite an unfavorable impression on me. I do not see how it could be a fact that as to none of the eleven could he identify further than by two or three or four years ago when he first knew them. So I am going to allow this question.

Mr. Sacher: Your Honor met me a good many years ago, and while you were always more prominent than I I would have difficulty in recalling the year in which I met your Honor.

The Court: Well, I have not always been prominent and I don't know that I like it very much.

Mr. Sacher: You don't seem to dislike it.

Mr. Isserman: If the Court please—

The Court: Well, I have tried to take a balanced view of these things and keep myself from getting excited, but I shall be very happy when I return to comparative obscurity.

Mr. Isserman: If the Court please, the Court on the previous question had ruled that going back a number of years was remote on this line of inquiry and this Court would not allow it. What we have now is the same going back into five years ago on a matter—

The Court: I am allowing this, Mr. Isserman, merely because there seems to be some mystery about it (3274) that I don't understand. I would have thought—

Mr. Isserman: It is not a question—

The Court: —that he would have said, “Certainly, I was a member of the Communist Party. What of it?” That is what I would have expected, instead of—

Mr. Isserman: If your Honor says that, your Honor takes an unrealistic view of what is happening in this country today, and your Honor knows that persons who are charged with or deemed being Communists are persecuted throughout the country. That is a fact that we can't—

The Court: I don't know any such thing.

Mr. Isserman: And the point I am making now, and I would like to stay within the framework of the legal situation at this moment, is this: that an

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inquiry on a collateral fact going back five years under the guise of testing credibility, under your Honor's own ruling a few minutes ago, is remote and it should not be allowed, particularly because it relates to matters of political belief and association and seems to suggest that we are adopting a principle here of guilt by association and that membership in a political—

The Court: Of what?

Mr. Isserman: Of guilt by association. (3275)
I think your Honor has heard that expression.

The Court: Well, there isn't going to be any guilt by association before me. I can tell you right now that these individuals that are charged here are going to be found guilty by me because of evidence directly connecting them with the charge in the indictment or the case is going to get thrown out against them. You can just remember that.

Mr. Isserman: Your Honor—

The Court: There will be none of that association business.

Mr. Isserman: If your Honor follows through on that then this man's connection with the Communist Party in 1943 has nothing to do with this case, has nothing to do with his credibility, has nothing to do with any of the facts and figures which he took from Census records which are here in evidence and which apparently have been checked and a number of minuscule errors were found, as will be demonstrated on redirect. I say whatever is said by this Court allowing this question is in fact bringing in this principle of guilt by association.

I ask the Court to reconsider its ruling on this point and to keep this inquiry within the bounds of cross-examination which do not transgress the fundamental constitutional rights that this witness has and (3276) that every person should have in a court of this land.

The Court: I have given the matter reconsideration and I adhere to my prior ruling.

Mr. Gladstein: Your Honor, may I ask the Court to advise the witness that on this question

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he has the right to invoke the privilege which your Honor mentioned earlier.

The Court: Of 1943? What is the statute of limitations?

Mr. Gladstein: I ask the Court to advise the witness of his rights under the First and Fifth Amendments, that he may, if he desires to do so, invoke any privileges that are guaranteed to him by the Constitution.

I do not want to add to what the others have said concerning your Honor's ruling, but may I say that the record clearly shows that the Court itself has already declared that the extent to which Mr. McGohey should be permitted to question on this subject, in the Court's opinion, is merely to establish, if it be the fact, that as of the time when the Witness began to prepare the data and the testimony which he has here given in connection with an inquiry that has nothing to do with politics, either in terms of association, belief affiliation or anything else, as of that time the Court felt that the question of interest might properly be extended to that period of time.

(3277) Now the questioning by an indirect method is seeking to go way beyond that on something that is clearly collateral to the witness's testimony, very remote from the time period that the Court indicates is by the furthest possible stretch of reasoning valid for purposes of examination.

And, your Honor, I submit that what you have a number of times said to me and I hope you will permit me to say, that in my judgment I felt it was unjust, although I realize that you looked at the testimony or heard it with different eyes and ears than I—your Honor has said a number of times that I have indirectly tried to get into the record things which you had already ruled I should not try to get into the record directly.

The Court: Yes, you did do that, Mr. Gladstein.

Mr. Gladstein: Well, as I say, I reserve the right to differ with you.

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The Court: You sure did.

Mr. Gladstein: But I do not think there can be any question that Mr. McGohey is very obviously trying now to do indirectly what your Honor said he may not do.

The Court: Let me ask Mr. McGohey a question.

Are you seeking to get an answer to this question merely as a foundation to prove that he testified to the (3278) contrary on some other occasion?

Mr. McGohey: Oh, no, your Honor. I understand that your Honor has said I may not do that.

The Court: That is right, I did say it.

Now I am going to allow the question.

Mr. McGohey: I direct the Court's attention to page 1809 of the transcript.

Mr. Gladstein: What is the page, Mr. McGohey?

Mr. McGohey: 1809.

The Court: Yes?

Mr. McGohey: About the middle of the page the witness testified that he resigned from the OPA in 1943, about the middle of 1943, that he then took employment with the Communist Party in Baltimore, Maryland, and that the employment he took was as educational director.

Now, as far as going back to 1943 I have a right to go back to 1943 because counsel for the defendants went back that far in qualifying the witness. As a matter of fact, they went back farther than that. They went back to the witness's educational career and his college days at Kansas State University.

The Court: I allow the question.

Mr. Gladstein: Your Honor will recall that throughout these things had to do with the kind of work, the preparation that the man had to do in connection with ((3279) the handling of statistical matters, data of that sort. That was the purpose of having the testimony from the witness on those facts. And now the inquiry seeks to go into the domain of political ideas and matters of that kind as to which the witness was not brought here as a witness either in fact or as an expert.

The Court: Well, I allow the question.

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Mr. McGohey: Will the stenographer read—

Mr. Crockett: May I ask your Honor—pardon the interruption.

Mr. McGohey: Yes.

Mr. Crockett: I think Mr. Gladstein requested that the witness be informed of his constitutional rights in regard to this question.

The Court: You know, constitutional rights on this depend whether the statute of limitations has run or not. That is 1943. I don't know what crime there might have been conceivably involved and how genuine a claim could be as to that, and I think he is informed sufficiently now that if his constitutional rights are going to be invaded he can refuse to answer on that ground, and then we can look into it if he does.

Now, you know the other time we had all this talk and after we got all through he did not plead any constitutional privilege at all, and I rather suspect (3280) that he is going to take the same position this time.

Mr. Crockett: Your Honor will recall that that was after the witness had had advice of counsel. In this particular instance he has not had.

The Court: Well, I am not going to let him go back and do some more telephoning now. We have had enough talk about this, and I think we had better get back to the question.

Mr. Crockett: I understand, then, that the Court is denying the witness the right to consult with counsel with reference to whatever answer he might desire to give in response to Mr. McGohey's question?

The Court: Well, I will pass on that when he does it. But I do say that I am disinclined to keep interrupting the proceedings while he runs out and telephones counsel, and all that. But we will pass on that when we have to. I will reserve the question.

Mr. McGohey: May I have the question read, please?

(Question read as follows:)

“Q. Had you been a member of the Party at that time?”

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

A. For purposes of the preceding question I did waive my constitutional rights, your Honor. In view of the asserted purpose of the District Attorney's questioning (3281) now and the circumstances under which it is undertaken, I find it necessary to invoke my right, first, of freedom of speech and assembly, as guaranteed by the First Amendment, and my rights against self-incrimination, as guaranteed by the Fifth Amendment, and decline to answer the question.

Q. Were you ever a member of the National Committee of the Communist Party?

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

The Court: Overruled.

Mr. Gladstein: May I add the further ground that this is not proper cross examination; collateral; would not tend to prove or disprove any issue of the challenge.

The Court: Well, he may be much deeper in the Councils of the Party than I thought. I got the impression from his direct examination here that he was interested in improving the conditions of the Negro people—

Mr. Gladstein: He is.

The Court: —and that he had this educational connection with the Communist Party of Maryland and over in this Jefferson School of Social Science; but I had no idea that he had been a member of the governing board of the Communist Party or in some more intimate way connected (3282) with their policy-forming body.

Mr. Gladstein: But may I point out, your Honor, that if the inquiry here is the interest of the witness, that is relevant only for the purpose of tending to overthrow any portion of the testimony that he has given. Now, it is not a matter of right for the United States Attorney or a matter of appropriate interest on the part of the Court or anybody to ask this type of question concerning the witness unless the argument is made that it bears directly upon proving or disproving something that he has testified to here.

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Now, what is his testimony? His testimony is to the taking of such—

Mr. McGohey: Now, if your Honor please, I object to this—

Mr. Gladstein: This is rather important, your Honor—

Mr. McGohey: I object to this line of argument. It is perfectly appropriate. This witness has testified as an expert. He has testified repeatedly that in making his calculations and in making the tables, or perhaps, more accurately, in looking over the tables that Joe and Thelma and those other people made—

The Court: Jackie.

Mr. McGohey: Beg pardon?

(3283) The Court: Jackie.

Mr. McGohey: Jackie.

(Continuing) That he had to make calculations, and that he made true inferences from certain data that had been collected by them. I am entitled, I am sure, to explore the extent of his association with the defendants for the purpose of arguing that that extensive interest, if there be an extensive interest, may have affected his judgment in drawing the conclusions that he is drawing.

The Court: I am inclined to agree with you, Mr. McGohey, but I think the discussion here is on a different basis from all these trivialities that we have heard so much of yesterday. I am disposed to listen to Mr. Gladstein on this and hear what he has to say.

Mr. Gladstein: Thank you, your Honor.

I have just pulled out a random—something that the clerk in this court does not do when he picks jurors—two—

Mr. McGohey: I move to strike that, your Honor.

The Court: I did not even hear that part. I hope it wasn't anything good.

Mr. Gladstein: I have been trying to make you hear that point ever since the case began.

The Court: Well, why don't you make your (3284) argument brief and to the point?

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Mr. Gladstein. Very well.

The Court: There is something very bad about this question, you say. Now, what is there that is so bad about it?

Mr. Gladstein: Well, let me take what Mr. McGohey says at its face value. He says the reason he is entitled to go into this question is because he wants to see to what extent, if any, Mr. Wilkerson's judgment may have been affected in connection with the work that he did here and the testimony he gave, and the exhibits that he prepared or supervised the preparing of—to what extent his judgment may have been affected by reason of the possibilities of certain types of—

The Court: You see, he was describing on his direct examination about this wonderful group of professionals that were collecting data and assembling it with such great accuracy, and all these charts being checked and double-checked and gone over, and all this and that, and it makes some difference to me, I think, how far he is connected with these people who are the defendants, particularly as the cross examination has already considerably shaken the testimony of the witness in respect to the accuracy of these charts—

Mr. Gladstein: Well, let me address myself (3285) precisely to that question. Here I have picked out two exhibits at random. One is No. 85. Now what is No. 85, and what did this witness do with Exhibit 85—

Mr. McGohey: Now, your Honor, I am going to object to this again. This has no relevance, this argument now, to the question before the Court as to whether or not the question which I asked the witness, if he has been a member of the National Board of the Communist Party or National Committee, rather—

The Court: It does not seem to me to have much relevance, but I think I had better listen to him and see what he has to say. He may be working up to something.

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Mr. Gladstein: In my own way I usually do that.

The Court: Now don't go and digress indefinitely, Mr. Gladstein, but keep your mind right on the point here and let us see what you want to present to me.

Mr. Gladstein: Well, I want to illustrate by the use of these the point that I want to make. The character of this witness's testimony is pretty well illustrated by what I am going to say. He took a Government publication and obtained from it information. He supplied—we supplied the actual Government publication here for the examination of the United States Attorney's staff. He then described how the information which (3286) he obtained from the Government publications or from other valid sources which are in evidence, such as the New York Market Survey, the Consolidated Edison Survey, things of that kind—he then described how he took data, figures, facts, whatever they may have been, from those original sources and tabulated them. He made tabulations. Those tabulations, therefore, can be checked simply by checking the original source and the end product. All that happened in between is that there was a matter of adding 2 and 2 or whatever the thing may have been that was involved.

The Court: No, I don't agree with you on that. There were a lot of estimates; there were a lot of telephone calls, collateral information, and I think the basic difficulty with the position of the defense has been, as indicated in the colloquy the other day, that they thought, and they evidently think that if they put in some charts, it is up to the Government to go ahead and prove the true figures; that the charts must be taken at face value until the Government shows what all the absolutely correct figures were.

Now, that just is not so. The burden is on the defendants here, and if they bring in charts that I find to be inaccurate and not based upon truthful and adequate testimony of a witness, they are just

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worth (3287) zero, and it is not up to the Government to produce the correct charts at all.

Now, I am going to allow the question. I don't want to hear any more argument.

Mr. Sacher: May I have just one moment, your Honor, and it is to say this: if the question were something which affected credibility which would permit your Honor to say whether the evidence or the testimony of the witness in its entirety should stand or be rejected, then I think that your Honor's position would be unassailable. But what you have here is a quantum of evidence which indisputably consists of and rests on Government figures.

Now, in those circumstances it seems to me that an affirmative or negative answer as to whether the witness was or was not a member of the National Committee of the Communist Party gives your Honor no guidance as to what portion of his testimony has been adversely affected by that membership.

Does your Honor have a single notion as to what the seven per cent figure that the witness gave to you in regard to the deductions that must be made for those who are aliens, illiterates, between 14 and 21 and over 70, will be, if you know that he was a member of the National Committee? You won't know that. Consequently I—

(3288) The Court: Mr. Sacher, it will make a good deal of difference to me what the aggregate of all the factors brought out on cross-examination may add up to.

Mr. Sacher: That may be.

The Court: I do not say now, nor can any judge say how much one particular fact brought out on cross-examination is going to affect his judgment when he comes in the end to decide whether he believes the witness. Now, I am going to allow this question, and please don't argue any more.

Mr. Sacher: I won't your Honor.

Mr. Gladstein: Our objection is noted, your Honor?

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The Court: Yes. The objection is overruled.

Mr. Isserman: If the Court please, I merely want to put on record my objection here of your Honor's characterization of counsel, of defense counsel yesterday as engaging in trivialities. I object to your Honor's remark to that effect.

The Court: Well, if that series of objections at the early part of the cross-examination of this witness did not relate to trivialities, the smallness, the minutiae that ordinarily come plainly within the Court's discretion on cross-examination, then I just don't know any law at all. (3289) That is why I permitted so much discussion on this matter of whether the man is a member of the Communist Party, because I thought there was some substance to this question. The others I could see no substance in at all, and I intend, as far as I am able, to cut down that sort of triviality, and one of the reasons is that I have been so persuaded that you lawyers are just attempting to make a mockery of justice here, and I won't have it.

Mr. Isserman: If the Court please, I object to that remark.

The Court: Well, that is right. Every time you get up to do some more of it you will get some more right back.

Mr. Isserman: Your Honor, I am sorry that your Honor is taking this position, but I certainly will object every time your Honor makes a statement on this record which I believe goes against the interests of my clients and affects my right to defend my clients.

The Court: You can keep objecting and adding your objection to the others, after I have so repeatedly said that the advantage of any adverse ruling will inure to every single defendant, you can keep getting up and keep saying that you join in the objection, and you do this and you do that, but the effect of it all is confirming (3290) my view that there has been this deliberate effort here to make a mockery of justice and to, in effect and in

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the aggregate, sabotage the administration of justice, and I just won't have it. That is all there is to it.

Mr. Isserman: I am sorry, I object to your Honor's remark again. It is wholly uncalled for.

The Court: You may do all the objecting you want, but I am running this court and we are not going to have this interminable delay.

Mr. McGohey: May I—

Mr. Sacher: Excuse me a moment. I respectfully suggest, your Honor, that those recent remarks ought to be reconsidered. I really think—

The Court: They won't be reconsidered, and there is only one way that you are going to have things run smoothly and easily here, and that is that you gentlemen quietly and calmly do what I tell you to do.

Mr. Sacher: But I am afraid your Honor lost his calmness for once at this time,—

The Court: No. My patience is still working on. I make these statements in utter calm—

Mr. Sacher: It did not appear so to me.

The Court: —and they are in my judgment factually correct.

(3291) Mr. Gladstein: If your Honor please, I can't sit quietly while you include me in the statement that you just made that there was any intention on the part of any of the lawyers to make of the proceedings in this court a mockery of justice. I deny that there was any such intention, and moreover—

The Court: Well,—

Mr. Gladstein: May I finish—

The Court: —Mr. Gladstein, you know this is the fourth week of this trial. We have gotten in here now, in my judgment, a quantum of proof that could with diligence and with the intelligence and experience that you gentlemen have, been placed in the record in three or four days at the outside. I have said that I was thinking about doing something about it, and at the close of the session this

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morning I shall do something about it.

Now, you may object now; you may object then, but you had better wait and see what it is that I am going to direct to be done when we adjourn this morning.

Mr. Gladstein: May I point something out? I have been reading the record of these proceedings. Your Honor has mentioned delay on the part of the defendants' lawyers. I find that your Honor began to make that statement on the first day that evidence was produced by us. (3292) That was Friday of the first week. The first four days were taken up with preliminary motions and with arguments on those, and those matters were fundamental; they went to the very right of this Court to take jurisdiction over this case. The actual evidence-taking process began on Friday of the first week. The following week there were only three trial days—

The Court: Well, quite a little occurred before we got to Friday.

Mr. Gladstein: Yes, but on Friday, with the very commencement of the beginning of testimony your Honor began to say at that time that there was delay in connection with the presentation of the evidence, and your Honor has been saying that virtually every day during the period when we have been putting in evidence.

The Court: That is such an extravagant statement, Mr. Gladstein.

Mr. Gladstein: I will undertake to go through the record again. I have been reading it, your Honor, and I have—

The Court: Don't you think it speaks for itself? Now we will take our usual ten-minute recess.

(Brief recess.)

(3293) Mr. Crockett: Your Honor, I should like to have the record note my objection on behalf of my clients to your Honor's recent remarks with reference to conduct of all defense counsel.

The Court: Very well.

Now let us hear the question and the answer.

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

(Question read:)

“Q. Were you ever a member of the National Committee of the Communist Party?”

A. In view of the asserted purpose of this question and of the circumstances under which it is asked, I must again invoke my rights under the First and Fifth Amendments and decline to answer.

By Mr. McGohey:

Q. Were you a delegate to the Convention of the Communist Party which dissolved the Communist Party and formed the Communist Political Association in 1944?

Mr. Isserman: If the Court please, I object to that on the grounds previously urged; and on the further ground that this question leads directly into the allegations in the indictment before your Honor and is contrary to what I believe is your Honor's ruling that any matter connected with the issues of that indictment will not be inquired into in this pretrial proceeding. I call your Honor's attention to the allegations of the indictment relating (3294) specifically to this matter.

The Court: Objection overruled.

A. I consider this question a violation of my right to freedom of speech and assembly under the First Amendment, and a violation of my constitutional right against self-incrimination under the Fifth Amendment, and in view of the circumstances under which it is asked, having answered a previous question in which I waived those rights, I now again invoke my constitutional rights and decline to answer.

The Court: Now before you go on, let me get these last two questions.

(Last question read.)

The Court: And what was that other one?

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

Mr. McGohey: Whether he was ever a member of the National Committee of the Communist Party.
The Court: All right.

By Mr. McGohey:

Q. Were you elected to the National Committee of the Communist Political Association at the Convention in 1944?

Mr. Gladstein: Same objection.

Mr. Isserman: I object to that question on the ground—

The Court: I will sustain this objection on the (3295) ground that it may be assumed that if further questions of this kind were asked they will just have a cumulative effect.

Mr. McGohey: May I ask the questions, your Honor, or do you desire me to withdraw the question?

The Court: I think it better not to pursue that general line of questions in view of the position stated by the witness.

Mr. McGohey: Then I have no further questions to ask the witness.

Mr. Gladstein: May I have just a moment, your Honor?

The Court : Yes.

Redirect examination by Mr. Gladstein:

Q. Mr. Wilkerson, during the cross-examination and in response to some questions of Mr. McGohey concerning whether you had given testimony, you mentioned that you had testified at committee hearings before Congressional committees on matters dealing with statistical data.

Will you tell us what those occasions were? A. I don't remember the exact dates, but I know on several occasions during the period, 1937 to 1939, I would say, I testified before the Senate Committee on Education and Labor presenting data and analyses relevant to proposed legislation for federal aid to education.

*Doxy A. Wilkerson—for Defendants on Challenge—
Recalled—Redirect*

(3296) Q. And did that testimony in any manner involve the preparation by you or the preparation by others under your supervision of statistical, mathematical and factual data concerning the subject on which you were testifying? A. It was based almost entirely upon statistical analyses of educational conditions in the country.

Q. Do you recall how many such occasions there were?

A. At least two; more likely three or four.

Q. Now, you will recall that during Mr. McGohey's examination you were asked to check the Census tables for the purpose of demonstrating in which of the four major groupings of the occupations of the people, as we have used those groupings in this case, you would properly classify a tailor. Do you recall that? A. I recall.

Q. Now, I want to ask you some questions about that. What exhibits would you require for the purpose of giving the explanation which you wanted to give at that time and which the Court stated you could give during your redirect? A. The alphabetical index—I believe it is 16 and 17.

Q. Do you need any other exhibits for this purpose?

A. No further exhibits, but I have some notes for precisely that question I would like to use for illustration in answering this point.

(3297) Q. Very well—

The Court: I wish you would point up just a little more just what it is he is explaining, so I can understand it.

Mr. Gladstein: I will do that, yes.

Q. I direct your attention, Mr. Wilkerson, to page 393—I think that is the correct page; that is the one Mr. McGohey used—

The Court: That is about the proprietor of a tailor shop?

Mr. Gladstein: Yes.

A. 393, did you say?

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

Mr. Gladstein: That is the page I noted, and I may be mistaken.

The Court: That is the page I noted too, and the symbol was 360.

Mr. Gladstein: Exhibit 16.

Q. Do you find occupational classifications there that would refer to or embrace the classification of a tailor?

A. That is the one that Mr. McGohey called attention to?

Q. Yes. A. But,—well, go right ahead.

Q. First of all, for the purpose of getting a point of departure, what does it say on that page with respect to tailor? What symbol, and what does the symbol mean?

A. Under the general category "Proprietor" it lists as (3298) industry, tailor shop, proprietor of a tailor shop; and the classification symbol is 360, which would be that of a craftsman according to Census terminology; craftsman, foreman or kindred worker.

Q. All right. A. And in our categories such a worker would be classified as a manual worker.

Q. Now, the question that was asked by Mr. McGohey, as I recall it, was whether or not the fact that the word "tailor"—that is, the proprietor of a shop—appears on that page, would indicate that such a person if found on the jury panels would be classified by you as an executive. Is that right?

Mr. McGohey: Oh, no, your Honor. That was not the question.

The Court: I am just trying to get the page. Just a second and I will find it.

The Witness: You can refer to my—

The Court: I have a reference to Stenographer's minutes, page 2071, which apparently is not the one where he brought in about the tailor.

Mr. McGohey: The place in the record where I cross-examined the witness on that your Honor will find is page 3099.

The Court: Yes, but where is the place where he made the statement to begin with?

*Doxy A. Wilkerson—for Defendants on Challenge—
Recalled—Redirect*

(3299) Mr. McGohey: Originally on page 2071.
The Court: 2071? I see. I had the right page
in my notes but I had the wrong book here.

Mr. Gladstein: That portion—

The Court: 2071. I have it.

Mr. Gladstein: Mr. Wilkerson there testified concerning a tailor. He said “that a tailor who is a proprietor and owns his 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.”

Then Mr. McGohey questioned him at the page he indicated concerning that testimony.

By Mr. Gladstein:

Q. Now, what did you mean by that testimony when you gave it on direct? A. I was illustrating at that time the fact that in making our occupational classifications, wherever there was possible ground for debate or disagreement on whether this or that classification should be assigned, we always chose the lower classification.

Q. Lower in the economic sense? A. In the economic structure, that is right.

Q. And for the purpose of this discussion we are using high and low, as I understand it—and you have (3300) throughout and I have throughout your examination—we have used the classification of manual workers as the lowest in the economic scale; clerical, higher than that; the professionals, higher than the clerical, and the executives as the upper or top economic group? A. That is right.

Q. All right, now go ahead. A. And when I made that statement on direct I had in mind a specific case that I recall from the process of classification which I have subsequently looked up, and I would like to illustrate the validity of that classification.

Q. Give us the case.

The Court: Would you mind pausing just a second while I read part of his direct examination?

Mr. Gladstein: Yes.

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

The Court: Very well, Mr. Gladstein.

Mr. Gladstein: Was there a question?

(Question read.)

Q. Can you give us the case? A. Yes. The January 17th panel—

Q. 1949? A. 1949, I think it is the first list, lists the name of a person called for jury service—

Mr. McGohey: May we have the panel, please?

A. —David Copelan.

Mr. Gladstein: I will look it up in just a (3301) second.

Q. What is the name? David who? A. Copelan. I think I have that here, Mr. Gladstein.

The Court: That is 52 for identification. Apparently the number was reserved, and there was no exhibit actually marked for identification, according to my notes.

Mr. Gladstein: How is that name spelled, with a K or a C?

The Witness: C.

Mr. Gladstein: This is the document. I will ask that the clerk mark it for identification.

The Court: That will be given a reserved number. That is the first drawing of January 17?

Mr. Gladstein: I am not sure, your Honor, I will have to check it.

The Court: Because the number 53 has been reserved for the second drawing.

Mr. McGohey: Will you check to see if it is the first or second drawing, Mr. Clerk?

The Court: Yes, that is the idea.

Mr. Gordon: When was it drawn?

The Clerk: Drawn the 17th day of November.

Mr. McGohey: That would be the first drawing, your Honor.

(3302) The Court: Yes. The other was January 4th, was it?

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

Mr. Gladstein: I believe that is right.

The Court: Then this will be marked in evidence.

Mr. Gladstein: Yes, I am offering it now.

(Marked Defendants' Challenge Exhibit 52 in evidence.)

By Mr. Gladstein:

Q. Now I will hand you Defendants' Challenge Exhibit 52—

Mr. McGohey: May I look at that for a minute?

Mr. Gladstein: Yes (handing).

Mr. McGohey: What was that name, Mr. Wilkerson, please?

The Witness: Copelan, David.

Mr. McGohey: Thank you.

Q. Now I hand you Defendants' Challenge Exhibit 52, and will you continue with your testimony concerning that juror? A. The jury list says behind the name of David Copelan, in the column headed "Occupation," "Tailor." And it gives as his residence 134 West 93rd Street, New York City. It lists under that "Modern Cleaner"—

The Court: I didn't hear that.

The Witness: "Modern Cleaner."

(3303) The Court: How do you mean it lists under there?

The Witness: Under his residence address.

Q. That would refer to the name of the business? A. That is right, "Modern Cleaner," and what is presumed the business address immediately after that, 544 Second Avenue, New York City.

Now, this can illustrate several things. I think I might tie them together to save time.

Q. Do so. A. Here is a juror who gives his occupation as tailor. We asserted in the record that such a person might under certain circumstances be classified as an executive, which the District Attorney apparently seemed not to think was correct. We find that though he calls himself a

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tailor his business is that of a cleaning and pressing shop. Now how do we know? Well, first there is the name of the business itself. Second, the address of the business we checked against his name in the telephone directory—here is one of the few instances in which we had occasion to use the telephone directory—and we found that the name David Copelan is listed at the business address indicated for Modern Cleaners on Second Avenue. Though we did not do it, we might very well have made the assumption of proprietary rights—

Q. When you say “proprietary rights” you mean by that collateral evidence— A. That he was a proprietor.

(3304) Q. (Continuing) You might have assumed that Mr. Copelan, whose business address was given as the same as the Modern Cleaners was therefore the proprietor; is that what you mean? A. One might have made that assumption—or rather, we would not have made the assumption; if we wanted to classify him as an executive we would have checked on that by calling him up and asking him. But we did not. However, if Mr. McGohey will look at his exhibit at a page that we did not get a chance to call his attention to the other day—

Mr. McGohey: I move to strike it out, your Honor.

The Court: Strike it out.

Q. All right, just refer to the page. A. Pardon me. On page 390, under the general category “Proprietor” there is the statement “Cleaning and pressing shop, 156.” That is the symbol for an executive. In other words, here is a juror who says he is a tailor. His business is that of a cleaning and pressing shop of which he is the proprietor. He could and should, according to the index, the alphabetical index of occupations, be classified as an executive. However—and this is the important point—knowing about other possible classifications of tailors and that in such a case somebody might want (3305) to raise some question, Mr. Copelan was classified as a manual worker. In fact, he does not belong in the manual worker category, but that is where he is on these charts, and it just happens that

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the exhibit you hand me indicates his classification right on, the classification we gave it, class 4.

Q. So the benefit of the doubt in that case was as in other cases given to the Government and the disadvantage was given to the proponents; that is to say, we who are presenting the challenge? A. This was the premise on which we worked; indeed, it is the instructions that the attorneys gave me when we went into making the analyses.

The Court: What was that classification number? One thousand and something?

The Witness: You mean the one I called attention to?

The Court: He said on page 390 of that book it had—

The Witness: 156.

The Court: What is that?

The Witness: The occupation symbol is 156.

The Court: 156. Thank you.

I still don't understand why if after all that elaborate investigation you found that he ought to be (3306) classified as a proprietor or official, you put him in as a manual worker.

The Witness: It is because throughout here, your Honor, there are instances where some slight argument could be raised—

The Court: But you say there could be no argument here, this was clear, he should be a proprietor, and yet you put him in as a manual worker.

The Witness: We would have had every justification for listing him as a proprietor. However, Mr. McGohey himself called attention to the proprietor of a tailor shop, and might claim "This man says he is a tailor, and what right have you to call him something else?" although his business is listed as a cleaning shop. It would be a petty argument; but if any argument could be raised we classified him in the so-called lower occupational categories.

The Court: You see, when you get up these tables based upon what you thought might be petty arguments raised, or other arguments raised, you

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introduce, it seems to me, an element of confusion so no one could ever tell if you based them on such extraneous considerations as these.

The Witness: If there is any variation from the Census classifications, it is always towards utilizing a lower category than might otherwise be utilized.

The Court: That is your conclusion.

(3307) The Witness: This is a fact.

Q. Well let me ask you to direct yourself to 67-A in evidence. Now the fourth column to the right which is here shown in blue and which reaches the level of 5 per cent represents manual workers; is that right? A. That is right.

Q. And that is the column which represents the extent to which manual workers appear on the jury lists that you subjected to analysis? A. Right. And Mr. Copelan is one of them.

Q. That is the point I am about to ask you. You put Mr. Copelan because of this possible question in that column of manual workers, is that right? A. That is right.

Q. Now if you had decided in favor of putting him in the executive class then he would not have been in that manual worker column but he would have gone over here to the extreme left column, which is here in red and appears to be over 46 per cent of the entire jury panel composition; is that right? A. That is right.

The Court: Now let me see Exhibit 52, if that was the one—you actually used that paper in making your calculations, Mr. Wilkerson?

The Witness: We did, your Honor.

The Court: I noticed the others you put one, two, three, four, meaning different classifications.

(3308) The Witness: They are on there too.

The Court: I just wanted to look here. It is K-o-p-e-l-a-n, isn't it?

The Witness: C.

Q. Now is it your testimony, Mr. Wilkerson, that in every case where you had the possibility that a juror based on the occupational description shown on the jury panels

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and after checking that description against the occupational classification shown in the Government Census publications, wherever there was a question as to whether that juror should be placed in one or another of the four categories occupationally speaking, you decided the question of doubt in favor of putting that juror in the lower or lowest occupation group, using the term lowest or lower as we have?

Mr. McGohey: I object to that because the witness has testified that he personally did not make every one of these checks, and the question assumes that he did.

The Court: That is right. It may be reframed.

Mr. Gladstein: Yes, may I reframe it? Will it be permissible for me to have the witness understand that when I asked that question I did not mean him personally but he and those who were working with him under his supervision?

(3309) Mr. McGohey: I submit that he is not competent to testify what the others did, because he says he only made spot checks.

Mr. Gladstein: Well, I will withdraw that question.

The Court: I will let him say that he gave instructions.

The Witness: Oh, it is more than that, and I would like to say it.

Q. First of all, was that the rule, was that the instruction? A. That was the instruction.

Q. By the way when Mr. Isserman first discussed this with you and later on when you discussed it with me, what if any views did we express on how to settle this question of doubt?

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

Mr. Gladstein: It is preliminary.

The Court: Well, if he needs his recollection refreshed as to what he did, I will permit it. But I think he knows just what he wants to say, and the

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best way for you to do is to let him say it and then we will get it over with.

Mr. Gladstein: Yes.

The Court: Go ahead, Mr. Wilkerson.

The Witness: Am I directing myself to the question (3310) you asked?

Q. Yes.

The Court: You go ahead and make your statement.

A. Well, when we discussed this project of occupational classifications with defense attorneys it was—

The Court: You see, that is the part I just ruled out.

The Witness: Oh.

Mr. Gladstein: Then he misunderstood you. He misunderstood you because of my—

The Court: When I said you go ahead and make your statement, that was to state what you did and that is what I thought you were going to do.

The Witness: I see. I did not understand.

The instructions we gave to the professional worker who was primarily responsible, indeed was responsible directly for this particular aspect of the project, was whenever there was a possibility of doubt utilize the lower two categories, lower used in the sense that we are defining here.

Q. That would be No. 4, the manual workers, for example, as the lowest, and so on up. A. More than that. As has been mentioned here, I did considerable spot checking of the occupational (3311) classifications myself, but more than that that this worker made checks as he went along on—

Mr. McGohey: I object to the testimony of what the worker did unless the witness is going to be able to say that he stood there and saw her do it.

The Court: I sustain the objection.

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The Witness: This worker presented me with tabulation sheets and with records on which there were checks indicating—

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

Mr. Gladstein: Well, this is new testimony about what he saw.

The Witness: This is work done for me at my instructions.

The Court: I think I will allow that.

Mr. McGohey: He is testifying that he saw a sheet that somebody else prepared.

The Court: Yes, I think that is just what he is saying, that somebody came in and showed him sheets of paper with check marks and that from that he drew the inference that the checking had been done; is that it?

The Witness: That is not it. In the first place, it was not just somebody. It was a professional worker who was engaged to do this job and, second, she was bringing to me what I had instructed her to bring to me, (3312) indications of any classifications that she made in which possible alternative categories might have been utilized.

The Court: That was Mrs. Rodman?

The Witness: That was Mrs. Rodman. And in all such instances, in addition to other checks, I went over the classification and in most of those instances made revisions classifying them downward.

Q. Now, if therefore—

The Court: If you had them bring them out and you went over them and classified them down they evidently had not followed your instructions.

The Witness: On the contrary, your Honor, they were classified correctly and justifiably according to the Census, just as Mr. Copeland who was on that record as a 156 item. And this could be justified; the census report that I just read justifies it.

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However, we classified it downward because there may be in somebody else's mind some possible doubt on the question. There weren't many such instances; there were some.

The Court: I don't quite see the point; after you have them checked and they were all right and then say—

The Witness: The point was to lean over backwards.

The Court: —well, even though this person (3313) claimed a place in the proprietors and executives classifications I will put him down in manual workers. I don't understand that.

The Witness: In 95 per cent of the cases, your Honor, nobody who intelligently utilized this manual could have any disagreement.

The Court: No, but you have been testifying to the ones where there was disagreement.

The Witness: All right. In a very small percentage of cases it is possible for one person maybe to question whether it should be this or whether it should be that or it may be that we do not have collateral evidence which provides a clear basis for asserting that Mr. Copelan is the owner of this cleaning and pressing shop, which is the truth. We could have got it but we did not in this case. We just classified him as a tailor proprietor with the classification of craftsman. This was for the purpose of making sure that these occupational classifications if biased in any way at all were biased against the contention the defense is here presenting. And I would—well—

Q. You started to say that you just leaned over backwards not to make a tabulation or a chart that would improperly seem to favor the contention of the defense. A. What I started to say may not be appropriate; (3314) I started to say that if I were a betting man I would wager that nobody would find 4 per cent error, I would almost make it 2 per cent, in these 7500 classifications. They have been checked and rechecked and rechecked.

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The Court: I don't think what you might bet or might not bet has much to do with—

Mr. Gladstein: Maybe Mr. McGohey wants to take the bet up, your Honor.

The Court: I don't think there is going to be any bets placed, certainly not here in the court.

Mr. Gladstein: No, that can't be done here.

Mr. Sacher: May I add to that by saying Mr. McGohey knows better.

Mr. McGohey: And Mr. McGohey is saying in his own behalf that he has been taught all his life that it is immoral to bet on sure things.

The Court: Not only immoral but illegal.

Mr. McGohey: I prefer to rest it on the moral basis.

Mr. Sacher: And unprofitable.

Q. Now let me ask you this question, Mr. Wilkerson. You went through these classifications and these panels—as a matter of fact so did the attorneys; isn't that right?

A. That is right.

Q. Can you tell us your best recollection, your (3315) best judgment, how many instances you had out of the 7500-and-some people whose names—I should not say “people” but 7500-and-some names on those panels, how many you had of cases of a tailor? A. We counted them. There were between 140 and 150.

Q. Of tailors? A. Oh, of tailors.

Q. Yes. A. I missed your question. No, I don't remember. I am sure that there weren't four or five. But rarely did we come across a category “tailor.” I don't remember.

Mr. McGohey: May I ask when they were counted?

Mr. Gladstein: Yes, you may ask, although it seems to me that it ought to be asked in recross.

The Court: I think that is right.

Mr. McGohey: I apologize, your Honor, and I withdraw it.

The Court: Yes.

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Q. Now, Mr. Wilkerson, you gave a figure of 140 to 150. To what did you intend that figure to refer? A. That is the approximate number of reclassifications that were made on the basis of checking and rechecking the original 7500 classifications.

Q. As to the others they represent I suppose the 95 per cent or so that you said there was no question about. A. It is really 98 per cent in cases where (3316) nobody using these manuals could dispute the classification.

Q. Now, Mr. McGohey called your attention yesterday—

Mr. Gladstein: May I have Challenge Exhibit V?

The Court: Yes. That is that supplement.

Mr. Gladstein: Yes. It purports to be a June 9, 1941 publication of the Bureau of the Census entitled "Supplement to the Alphabetical Index of Occupations in Industries."

The Court: 1941.

Mr. Gladstein: Yes, 1941. I said that.

Q. After yesterday's court session did you make an effort to secure, locate, a copy of this? A. We did.

Q. What did you do? A. Even before the court session was over we had asked that our office seek to obtain it by calls to Washington, the Bureau of Census, the Government Printing Office, and to a person there who went to both places. We had Mrs. Rodman check several libraries in the City of New York, and strangely enough we couldn't even find in the Census Bureau any evidence of such a document, or Government Printing Office. We were told by the Census Bureau that there has been—

Mr. McGohey: I object to this, your Honor.

The Court: Sustained.

Mr. Gladstein: Well, he is reporting—

(3317) The Court: How can he testify to what somebody told somebody else?

Mr. Gladstein: All right. Well, let me ask you this: do you know whether a request was made of the Census Bureau for a copy of this?

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The Witness: I do know.

Mr. McGohey: I object, unless the witness made it himself.

Mr. Gladstein: I asked him if he knew.

Mr. McGohey: I object.

The Court: You see, it is a funny thing. You can ask a witness if he knows or if she knows, and they almost always say yes, and when you go to find out you find out that they don't know at all. So the question does not get you very far. I think it is very evident that he did not do this himself, and let us ask him.

Mr. Gladstein: A man can know whether a request that he has made has been carried out in part by the response that—

The Court: Now perhaps that is a matter of semantics. But I don't think he knows at all.

Mr. Gladstein: I was just about to say, suppose you ask our clerk to get you that missing Frazier opinion—

(3318) The Court: Well, I got it.

Mr. Gladstein: Well, you have it now, but it probably was obtained in the way I am about to illustrate. Suppose you asked him to find it for you and he went outside and the next thing you know it appears here. Your law clerk may have got it for you. Still, don't you know that you only made the request or had the request conveyed and what the response was to it?

The Court: Yes, when I get it I know. But this is a case where he didn't get it.

Mr. Gladstein: That is the point I am trying to bring out.

The Court: All he knows is that he told somebody to get it and they didn't get it, and you represent to me, which I think is entirely reasonable and proper, that a search was made and they were unable to get it.

Mr. Gladstein: Well, all right.

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Q. Now in connection with—

The Court: His testimony on that point is really not competent.

Mr. Gladstein: All right.

Q. Mr. Wilkerson, your attention was called to the fact that according to Government's Challenge Exhibit V it would seem to be true that the classification of butcher in a meat market is shown there with an asterisk immediately (3319) in front of it, indicating that some variation of that occupational classification had been made between the time of the publication of the main alphabetical index, that is Challenge Exhibit 16 here, which was a 1940 publication, and the time of publication or putting together of Challenge Exhibit V. Do you remember that? A. I do.

Q. All right. Now I want to ask you, in the first place, how many butchers, if any, you found described among the jury panels as being called to serve as jurors over the period of time that you studied the jury panels?

Mr. McGohey: I object unless the witness is able to testify that he examined each and every name on each and every panel that he is talking about.

The Court: That is right. Did you do that?

The Witness: Last evening I checked these panels, your Honor.

The Court: That is the whole 28?

The Witness: That is right.

Mr. Gladstein: All you have to do is read right down the page.

The Court: That is right. But he did it, now. Now you can go ahead and ask him how many butchers he found on the 28.

A. I found no butchers at all among the jurors on (3320) those 28 panels. I did find a manager of a butcher shop. That is as close as we could get to it.

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Q. In other words, the revision in Challenge Exhibit V refers to a butcher in a meat market, is that it? A. I don't know. Let me see it.

The Court: That is right. Page 88.

Mr. Gladstein: The main one, your Honor, 88?

The Court: No, I have got my notes right before me. You know, it is a funny thing, you lawyers don't seem to realize that when a judge keeps careful notes that it means anything. I have it all right down in front of me.

A. (Continuing) That is right, butcher, meat market.

Mr. McGohey: Is the witness talking about Challenge Exhibit 16 or he is talking about Challenge Exhibit V?

Mr. Gladstein: That is what I thought, your Honor.

Mr. McGohey: It appears that Mr. Gladstein is looking at Challenge Exhibit 16 and the witness appears to be looking at Challenge Exhibit V.

The Witness: But only Mr. Gladstein is talking.

The Court: It seems all right to me. Now, you go right ahead.

Mr. Gladstein: Page 88 refers to Challenge Exhibit 16 where we have a lot of butchers.

(3321) The Court: It certainly does. That is where the Butcher in parenthesis Dealer close parenthesis Meat Market appears, isn't it?

Mr. Gladstein: All right.

Q. Now take a look at Challenge Exhibit 16, which is the one that you used to determine into which occupational classification a juror should properly be placed and state whether you find there a variety in that trade so as to indicate that some people who are in the butcher business would be executive and some are proprietors and some would be something else.

The Court: This is Exhibit 16?

Mr. Gladstein: Yes, your Honor.

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A. Actually—no; your question is was there a variety of butchers that could go into different things?

Q. Yes. Were there some in the butcher business that would be proprietors, some would be workers? A. Yes. A butcher on a boat or a ship would be a manual worker; a butcher in a hotel, butcher in a retail meat market or butcher not otherwise specified who is a dealer—and I believe this is the case that Mr. McGohey called attention to yesterday—such a butcher who is a dealer would be an executive.

Q. Now your saying “would be,” you are referring to the occupational classifications put out by the Census?

(3322) The Court: I can’t agree with that.

The Witness: What is it you don’t agree with, your Honor?

The Court: Well, that it was just the dealer. I remember some discussion about that word Dealer in parenthesis here.

The Witness: Well, that is all right.

The Court: It is sufficient to indicate to me that those classifications by the Census are very technical, very complicated, based on a host of considerations entirely different from those which motivate jurors in indicating their ideas of what their occupations are, and it is extremely difficult for me to see any real correlation.

Mr. Gladstein: I suppose we can reserve that for discussion later on.

The Court: Yes. But you see, the more he explains how many different kinds of butchers there are in there and how some of them would go into one classification and one into another, the more I think if I were a butcher, whether I were a dealer or whether I was the manager of the meat market, whether I was cutting sausages or cutting something else, I would be likely to put myself down as plain “Butcher” or I might put it down in some different way.

(3323) The men who come as jurors and state their occupations, which are the basis for some part

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of these statistics, seems to me utterly different from the basis on which these census statistics are made up which are highly technical, and as the witness has often said are absolutely arbitrary in many respects.

Mr. Gladstein: It is perfectly plain that the jurors give their classifications in terms of their relationship to the industry, that is to say, whether they are a vice-president of a corporation or whether they are clerks of the corporation, or whatever the situation is. You will find that in running through the exhibits in evidence.

The Court: That would depend on a man's attitude at the moment or his whim or his fancy. He goes in there and he fills out a questionnaire and he puts down his occupation. There may be a dozen different things he can put down. He says to himself, it doesn't make any particular difference, and he picks one by chance or perhaps by accident that is relatively accurate, but not picked at all in the same way that these occupational classifications are made by the Census.

Mr. Gladstein: I don't think the janitor in a bank, your Honor, would have any doubt rejecting the idea that he was filling out a questionnaire regarding (3324) occupation as to whether he ought to put down vice-president of the corporation or the bank there. Of course we don't have that problem because they never call janitors or stevedores or taxi drivers.

Mr. McGohey: I move to strike that. There is no evidence of that.

The Court: Well, no; no, there isn't any evidence of that. That is taken as a hypothetical comment of a possibility.

Mr. Gladstein: It is more than that, Judge.

The Witness: The main point, Mr. Gladstein, is not on the page you refer to, though, but on page 307 in this particular case where under the category "Manager" one sees butcher shop, retail or not, specified, and the manager of a butcher shop would

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be classified as an executive. Now, that is quite different from a butcher as indicated in exhibit—what is this number that Mr. McGohey brought up yesterday?

Mr. Sacher: V.

The Witness: Oh, Exhibit V.

Q. Now, in any case, let us take the case of a man who is a butcher, who is the manager under the Census classification; he is the manager, say, of a shop so described that the Census would place him in the category of proprietor, official, and so on. Is that right? (3325) A. Yes.

Q. Let us take that case. Now, because of what the Census did there, then turning to the lefthand side of Challenge Exhibit 67 in which you have the occupational breakdown of people, you because the Census did that would place that man in the executive class if he was a proprietor or seemed to be, is that right? A. That is right.

Q. Or manager of a butcher shop? A. Yes.

Q. That would tend to increase among the population the number of executives, is that right? A. That is correct.

Q. And any distortion from the truth would be, again, in favor of the Government, isn't that correct? A. That is correct.

Q. Because if for example you took a butcher who was a manager of a meat shop and you said to yourself, well, that fellow is really a worker, then he would not have been included in this portion on the lefthand side?

Mr. McGohey: I object to the form of the question. It is clearly leading, your Honor.

The Court: Yes.

Mr. Gladstein: It is trying to save time. But I will reframe it.

The Court: I think the point that you are making (3326) you had made so many times that it is quite clear to me, that the theory or the testimony of this witness is that whenever there was any doubt he always gave the benefit of the doubt to the Government.

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The Witness: That is not the point.

Mr. Gladstein: That is not the point at all, your Honor.

The Court: Well maybe it is not. Maybe I misunderstood it.

Mr. Gladstein: That is a statement of fact; but that is not the point I was directing the witness's attention to.

The Court: All right. You may reframe the question.

Mr. Gladstein: Very well, your Honor.

Q. In every case you used the Census classifications for the purpose of determining the occupational breakdown in these four groupings of the people, is that right? A. That is right.

Q. Did I ask you whether you found—oh yes, you found one person who may have been described as a butcher, is that right? A. No; the one who could be described—who was described as a manager of a butcher shop, but none described as butcher. The question of bakers came up yesterday. There is one baker among the 7500 (3327) listings on these 28 panels. We classified him as a manual worker.

Q. Even though on page 390 of Exhibit 16 the proprietor of a bakery might properly be regarded as being an executive you classified him as a worker, that is, you classified him as a worker in the group of jurors? A. I do not know whether your question is relevant there because I do not recall precisely how it was listed and whether it was listed just as baker or proprietor or baker or—

Mr. McGohey: If even the witness has doubt about the relevance I move the question and the answer should be stricken.

The Court: I will deny the motion and give him the benefit of the doubt.

Q. You were asked about the manager of a shoe repair shop. Did you check to see whether or not among the jury panels you found any such listing? A. There are no persons classified as manager of shoe repair shops in all of the 7800 listings, 7500 or more.

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Mr. Gladstein: Now, Mr. McGohey, in connection with the three classifications that you called attention to yesterday as to which there were revisions, your point in the record is that some of these revisions were downward in the scale, so to speak, from proprietor to a manual (3328) worker. I wonder, since I have not had a chance to examine that exhibit, whether it is true that some of those revisions were in the other direction. Can you state?

Mr. McGohey: If your Honor please, I do not suppose I am subject to this kind of questioning and I do not even understand it.

The Court: I do not remember any statement being made about that. My notes show that it was brought out that there were 500 occupational titles in addition to those appearing in the alphabetical index, Exhibit 16, and that in that supplement there were 50 occupations containing the asterisk.

Mr. Gladstein: Yes. Well, now—

The Court: I don't remember anything indicating how many revisions would put somebody who had previously been in what you call the manual worker class to the executive class or vice versa. I don't think there was anything brought out about that.

The whole point of the thing as I see it, is not how many were affected one way or the other but the general accuracy of the charts.

Q. I will ask you this, Mr. Wilkerson. How many occupational titles or classifications do you find in Challenge Exhibit 16? That is the main Census publication. (3329)
A. May I read that from Challenge Exhibit 17 which refers to it?

The Court: I suppose there are 10 or 12 thousand of them.

The Witness: There are 25,000 altogether.

Q. 25,000. A. However, we used, incidentally, Mr. Gladstein, this must be emphasized, both Exhibits 17 and 16. Now I am reading from Exhibit 17 which gives the information on both of these volumes.

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Mr. McGohey: Would you keep your voice up, Mr. Wilkerson.

A. "In the Classified"—I am reading from page 5—"In the Classified Index, presented herewith, the 25,000 or more occupational designations of which the index is composed are arranged in classified form, with each designation under its proper occupation or occupation group," the code number and so on. "In the alphabetical index the occupational designations are arranged alphabetically, and each designation is followed by a symbol indicating to which of the 451 occupations and occupation groups of classifications it belongs."

In other words the 25,000 occupational designations are included also in Exhibit 16 but grouped according to some 451 occupation groups.

Q. Now you were asked some questions about the (3330) possible effect of shifts within the population from one type of occupation to another as a product of the war year period. Did you make an effort to ascertain whether or not there is official data available to indicate the extent to which, if any, the validity of your—what did you say, Mr. Wilkerson? A. Go right ahead.

Q. (Continuing) —the validity of your occupation group as shown in Exhibit 67 would be affected one way or the other by any such shifts? A. We inquired into that originally before coming to court.

Q. What were you able to find? A. If you let me have the report we referred to at that time, this 1946 report, I believe it is on occupations in New York—I think it is Exhibit 84.

The Court: Isn't this just a repetition of what he said on his direct examination?

The Witness: No.

Mr. Gladstein: I don't think so, your Honor.

The Witness: It is a report on the labor force, New York City, 1946, October.

Q. (Hands to witness.) This was inquired into during cross examination.

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Mr. Gladstein: I have just handed Exhibit 84 to the witness.

(3331) The Court: Just a moment. I am looking at something here.

Q. Did you find such data? A. Yes.

The Court: He was just waiting at my request. I am looking for something here. It is hard to find that in a moment, there is such a mass of material here; but I have the recollection that on his direct examination he gave some explanation about why even though hundreds of thousands of people went off to war that it didn't make any difference—the occupational classifications all washed one another out in some way or other so that they all came out the same. I am a little puzzled about that. Maybe it is better to have him repeat it. I thought it was repetitious, to which you object, so you go ahead and make the statement.

Q. Is this something that you haven't testified to? A. The general premise we testified to in direct examination. It was raised again yesterday in cross examination and I was not allowed to give the information that I should like now to give in answer to the question raised on cross examination.

Q. Is it new information? A. It is.

Q. All right. Would you give it? A. Yes. Exhibit 84 reports the occupational distribution of gainfully employed persons 14 years and over in New York, 1946 (3332) November, compared to March 1940, the time of this 14th Census. This information is in Table III, on page 6 of the Census Report.

The Court: Page 3?

The Witness: Page 6, Table III.

The Court: Table III. All right.

The Witness: Yes.

A. (Continuing) Without reading all of the data I will read the totals, 1940 and 1946, reported here for the several

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census classifications as the Census uses them. And by comparing the two one can get a measure of whether or not there has been a major shift in the proportions different occupational groups constitute of gainful workers.

In 1940 9 per cent of the workers were professional and semi-professionals; in 1946, November, the percentage is 9.

In 1940 10 per cent were proprietors, managers and officials; in 1946, November, it was increased to 12 per cent.

Mr. Gladstein: Does your Honor wish him to go a little more slowly so you can make the notes?

The Court: No, I think I am getting it all right. I have my column headings fixed here all right.

A. (Continuing) In 1940, 27 per cent were clerical (3333) sales and kindred workers; in November 1946, it is 25 per cent. In 1940 craftsmen, foremen, kindred workers constituted 12 per cent and in 1946, November, they constituted 12 per cent. This is one of our categories of manual workers.

Q. That is one of which the manual workers comprise?

A. That is right. So is the next, indeed all the rest of them that I will read. Operatives and kindred workers were 20 per cent of the total in 1940, to 25 per cent in 1946. The domestic service workers were 4 per cent in 1940 but 2 per cent in 1946. Obviously there was a shift of domestic workers and operatives but still within the category of manual workers.

Service workers other than domestic were 12 per cent in 1940, 11 per cent in 1946. Laborers were 4 per cent in 1940, 4 per cent in 1946.

In other words, during the period of the war or, rather, from a measure of the 1940 to the 1946 which embraces that period—

Mr. McGohey: What is that last statement?

(Record read.)

Mr. McGohey: Well, that is what I object to, your Honor. The exhibit shows that this is not a measure through those years. This is one measure taken in (3334) 1940 and another taken in 1946

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and very much was happening in between—

The Court: That is right.

The Witness: May I reframe my statement?

The Court: Yes, you may.

A. This evidence was presented or, rather, this discussion was presented earlier in relation to further evidence concerning very slow shifts within the occupational categories, the terms of the numbers and proportions of people there. We don't know and have no evidence as to what was true in 1945, what was true in 1943. What we do know however is that—

Mr. McGohey: May I ask about 1943 and 1944?

The Court: He says he doesn't know anything about that.

A. (Continuing) There are no census data available. There are census data however at the beginning of a period 1940, and at the end of a period 1946, November, which indicates that the proportions which different categories of gainfully employed persons constitute of the total were almost identical at the beginning and at the end of that period. This is the information that is available.

Q. Now you were asked concerning your calculations (3334-A) on illiteracy as a factor of potential disqualification from jury service. And during the course of the examination you were asked to explain your testimony on that and a reservation to do so was made to do it during redirect. Do you have in mind the explanation that you desire to make? A. Yes.

(3335) Q. Will you make it? A. Do you have the special census report on illiteracy? I think that was the next one. No. 85 or 86.

The Court: It would help me, Mr. Gladstein, if I knew what it was he was explaining.

Mr. Gladstein: Very well.

The Court: Let me see if I can find something.

Mr. Sacher: I think at page 3144 your Honor will find a reference.

The Court: Just a second. I think I have it in my notes here. It was brought out that the Census

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method relative to literacy was not based on English alone but upon any language. In other words, it would be inferred from what Mr. McGohey brought out that by using Census material the witness would necessarily include as literates any persons who would not be literate for voting or jury purposes. That is what he is now going to explain?

The Witness: That was part of it, your Honor. There is more to the cross-examination also.

The Court: Well, perhaps it is better to get one point at a time so I can understand what you are explaining. Now, what is the explanation about this apparent discrepancy as to the people who were literates in any language, whereas for voting or jury purposes (3336) being able to write or speak French or German, of course, would not qualify the person, he would have to write or speak English? Now, what is the explanation about that?

The Witness: Well, that calls for another exhibit. Do you have—

The Court: Well, maybe you had better explain what you started to explain. I always think it is a good idea if you let the judge know what the man is explaining, then maybe the judge can understand it a little better.

Q. Would you go ahead? A. If the Judge wants me to proceed on the particular question he raised I would like to have what were labeled Tables P-6 and P-7. I don't recall their exhibit numbers.

The Court: All right. But you follow my point on this, Mr. Gladstein. You see, what I said before was, instead of waiting until the proceeding is over and then getting briefs and having six or eight months go by before I decide, I like to decide it right away. The only way I can do that is by listening intently every second and understanding everything as it goes along. It is not easy to do, but it makes for prompt disposition of the matter.

Mr. Gladstein: While that is being looked for—

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The Witness: I have copies of them here if I (3337) may refer to them.

Mr. Gladstein: No, I would rather get the exhibit. I will pass to something else.

The Witness: Well, I can deal with this; let me go ahead.

One of the questions raised in cross-examination was that of utilizing illiteracy rates 25 and over in calculating rates of illiteracy of the population less than 25.

I want to point out from Exhibit 85 the effect of such a procedure. The first sentence in this report on illiteracy in the United States is that illiteracy in the United States has declined to a new low by October 1947, at which time only 2.7 per cent of the population 14 years old were illiterate. It also points out in table 3 on page 4 that as you move up the age scale, from 15 on up to 65 and over, the percentage of illiteracy increases. Hence, rates of illiteracy worked out on the basis of a population 25 years of age and over would be higher than the true rates of illiteracy if worked out for our younger population.

Do you follow me?

Q. Yes. A. Moreover—

The Court: Well, I don't follow you.

Q. You had better explain it because it is important (3338) that the Judge follow you rather than I.

Mr. McGohey: May I ask, your Honor: The literacy that is being talked about there is literacy consisting of the ability to read and write English?

The Court: Yes, it must be.

Isn't that right, Mr. Wilkerson?

The Witness: That is right. And we are going to deal with the question applied there.

The Court: I know. This is literacy in any language which is the basis of the Census statistics.

The Witness: That is correct.

Do you want me to explain that to you Judge?

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The Court: You go right ahead with what you were explaining about how as you move up the age scale the percentage of illiteracy increases.

The Witness: That is right.

The Court: That is what I didn't quite understand.

The Witness: Well, the reason I think is clear, that young children go to school more than the older people did; the tendency of school attendance has been to increase in our country. More than that, many illiterates are aliens, and the alien population is generally older than is the population as a whole.

So one finds when he analyses illiteracy statistics (3339) by age that there is a gradual increase in the percentage in each succeeding age group which is illiterate. If then one utilizes an older age group for computing a rate of illiteracy to be applied to a younger age group, he is exaggerating the number of illiterates in the younger group to which the rate is applied.

The Court: But why not take the right one to begin with instead of having to go through all that explanation?

The Witness: Unfortunately the Census does not give us precisely the data.

By Mr. Gladstein:

Q. That is to say, they don't give you the figures from 21 years up to 70, is what you mean? A. Yes.

Q. So there is a group between 21 and 25 for whom it is necessary to calculate the rate of illiteracy, is that what you mean?

The Court: Estimate.

The Witness: Estimate.

The Court: That is one of the estimates they had to make, is that right, Mr. Wilkerson?

The Witness: That is right. But moreover, may I point out—

Mr. Sacher: An estimate, your Honor—

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The Court: I didn't say it was a wrong estimate, (3340) but it is apparent to me here that certain of his figures are claimed to be just mathematical computations; others are claimed to be estimates; others came from telephone calls and what he calls collateral information, and—

Mr. Sacher: That category does not apply to any of the witness's figures.

The Court: Does not apply to this matter of literacy, I suppose, but when you came to this question of occupation he did say that there was collateral information such as calling people up and otherwise ascertaining facts, and he mentioned in connection with this man David Copelan that the checking they did as to him was in the phone book, and that they did not call him up. So that we have those various kinds of data and information. But I gather, as to this literacy, it is merely the Census figures that you are talking about now?

The Witness: Yes.

I should point out further that when dealing with the question of literacy we made the violent assumption that all illiterates are manual workers. Violent, I say, because we had offered here tables indicating that there is a substantial amount of illiteracy among other occupational categories, but again leaning over backward in correcting our occupational (3341) data for illiteracy we made this assumption we knew was contrary to fact by deducting from the number of manual workers in our adjusted analysis—

Mr. Gladstein: Of the people.

The Witness: Yes, that is right.

(Continuing) The number of illiterates, all of them.

There was a further factor which still more counterbalances the whole business. Our inquiry into the effect of illiteracy on our occupational analysis proceeded on the assumption that the incidence of illiteracy among aliens is the same as that in the population generally. This is an as-

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sumption we know to be contrary to fact because the percentage of illiteracy among aliens is much greater, and I think we submitted evidence in the course of the testimony on that fact. But aliens are not eligible for jury service. So in considering the effect of alienage and illiteracy together on the occupational distribution we did here, what we did was to take all illiterates out of the manual worker category, thereby unduly favoring the other categories in terms of size, and to take out a percentage of aliens which corresponds to the percentage—now wait a minute—we deducted—yes. We deducted a considerable proportion of aliens—no, here we deducted all the aliens—this is it—because they are not (3342) eligible for jury service, and in the process we were really deducting two groups, or rather, one group of people twice, in large measure—

Q. From the manual worker category? A. From the manual worker category alone. In other words, even by such violent assumptions we pointed out the other day, even doing that, you would not alter more than one or two or three percentage points the proportion manual workers constitute of the total gainfully employed among the people.

Q. And it was only after making all of those assumptions and calculations that you arrived at the potential jurors from amongst the people who were manual workers, being almost 55 per cent of the people? A. No, that is not correct. We took the occupations listed as manual workers in the general population, including aliens and illiterates, and then we had 54.6 per cent. But then we checked to find out if by so doing we distorted the proportion manual workers are of the total, and found that by deducting aliens and by deducting illiterates, and taking all of the illiterates from the manual worker category, still you would not reduce the proportion manual workers are of the generally gainfully employed occupations more than two or three percentage points. In other words, that no matter how violent (3343) the assumptions in this regard, still over

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half of the workers available for jury service as regards literacy and alienage are manual workers.

Now, on the other question—

Mr. McCabe: You said half of the workers available. Half of the persons you meant?

The Witness: Half of the gainfully employed persons, thank you.

Mr. McGohey: We are still talking about illiteracy on the basis of reading any language?

The Court: Yes, that is what he is turning to now.

The Witness: That is right. We presented evidence here to show that persons who vote must pass—must demonstrate their literacy in the overwhelming number of cases. We gave samples of the literacy tests which your Honor thought were very simple. Actually about 85,000 people failed to pass that test last fall.

The Court: Well, I wanted to find out what the passing mark was. I noticed that those papers indicated that they were marked either “Passed” or “Failed” and it occurred to me that there was very likely a difference between literacy for voting purposes and literacy for the purpose of jurors. I should think it is highly reasonable.

(3344) Mr. Sacher: May I make the observation that the literacy you need under the statute is either passing one of those tests or what is regarded as equivalent, namely, a graduation certificate from a public school with eight years of education.

The Court: I know. But it does not follow that the jury commissioner is to determine literacy by a similar procedure.

Mr. Sacher: No. The Regents—those examinations are gotten up by the State Regents, and I have no doubt that the questions are so framed as to elicit from the voter a qualification equal to a graduation certificate from an elementary school. Otherwise there is no point to having different

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standards for the same voter. I assume they are equivalent.

The Court: That may well be.

Now we are going to stop now, and we will have no session this afternoon.

I have indicated from time to time that I was going to try to think of some way of preventing this challenge from being an interminable procedure; and so I hereby direct that counsel for the defendants have ready for me the first thing Monday morning a statement which shall show what they propose to (3345) prove in the remainder of their case and how they propose to prove it, with considerable detail. I shall not require the names of witnesses. I shall require a perfectly plain, explicit and detailed statement of precisely what they propose to prove and how they propose to go about proving it.

When I get that statement on Monday morning we will continue with the testimony of Mr. Wilkerson, and I will examine the paper, pass on its sufficiency, and take such other steps as I deem advisable.

We will now adjourn until Monday morning at 10.30.

(Adjourned to February 14, 1949, at 10.30 a. m.)

(3346) New York, February 14, 1949;
10.30 a. m.

The Court: Now, Mr. Sacher, have you got that statement ready for me?

Mr. Isserman: If the Court please, we have, and in handing it to your Honor on behalf of the defense counsel we would like to state our objections to your Honor's order as made on Friday which was made without any opportunity to object to or discuss the same, or without opportunity for inquiry as to its precise scope, because the ruling was made, if the Court will remember, as the Court adjourned.

The ruling of the Court we say is unreasonable in that it required defense counsel to prepare over

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the week end, which included a legal holiday and a Sunday, a detailed statement of the balance of the evidence on the jury challenge covering many and complicated issues and in a period when counsel had to do other necessary work in connection with the preparation of evidence and the presentation of same on behalf of the defendants.

In so far as it has been possible, counsel (3347) have set forth what they intend to prove and how they intend to prove it within the—I mean, possible within the time limits that were given to us. We present this memorandum as a presentation of what is believed to be the barest requirements for the complete presentation of the evidence in the light of all the evidence which might properly be adduced and in the light of the evidence already in the case.

On a number of occasions the Court will recall counsel have requested stipulations to obviate the necessity of oral testimony, particularly where it involved a series of questions addressed to many witnesses. This suggestion was made in the interest of expedition and in the presentation of proof. But such stipulations were not forthcoming.

Similarly counsel—

The Court: I think you are talking a little too fast for the reporter to get it.

Mr. Isserman: I am sorry. Have you got that so far, Mr. Reporter?

The Reporter: Yes.

Mr. Isserman: Similarly, counsel has requested on occasion permission of the Court on one occasion, as I recall, to make an examination of the jury records of the clerk, which records had previously been subpoenaed, and (3348) such examination was requested to be had prior to the taking of the testimony of the clerk. This request was denied. Such stipulations and examinations of the clerk's records would have expedited the proceedings and made possible a more detailed statement of the remaining facts to be established at this time.

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Several of the witnesses, as has been indicated, whom the defense will call, are obviously adverse, if not, hostile witnesses, including the Government officials and officers and certain members of the Federal Grand Jury Association. It is impossible for defense counsel to anticipate all the issues which will arise out of their testimony and to present the evidence now in detail based on those issues which may arise in the course of their examination.

There has been no opportunity for the kind of previous consultations which are generally had with witnesses, and the evidence we will present, which we know will be presented through these witnesses, is based—is substantially based on information and belief.

The submission to the Court of this statement at this time is without waiving the objection stated, and in view of the impossibility of anticipating all matters which may arise during the course of the presentation (3349) of the testimony, said submission is made by the defendants reserving the right to present competent, relevant and material proof of all facts bearing upon the issues which may arise and which, in the course of the presentation of the evidence outlined will be found necessary.

(Statement submitted to the Court.)

The Court: I shall study that somewhat further later in the day.

You may proceed with the testimony of Mr. Wilkerson.

Mr. Gladstein: Very well, your Honor.

Mr. Isserman: Before we do, may I direct an inquiry to the Court? We had last Friday a number of witnesses subpoenaed on some of the matters set forth in the memorandum. With one exception we have not asked them to come here this morning, but they are subject to call at various times. Does the Court have any—

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The Court: I have no direction to make as to that until I have passed upon the sufficiency of this paper that you have handed me. You will now proceed to conclude the testimony of Mr. Wilkerson.

Mr. Gladstein: Will you resume the stand, Mr. Wilkerson.

(3350) DOXEY A. WILKERSON, resumed the stand.

Redirect examination continued by Mr. Gladstein:

Q. Now before taking up the few remaining which can be briefly covered in redirect examination, may I ask you, Mr. Wilkerson, this: Mr. Wilkerson, was an affidavit prepared and signed by you to which are attached certain exhibits? A. There was, yes.

Q. Dealing with a breakdown or analysis of the occupations and the locations or residences of those persons who were called to serve or to possibly serve as grand jurors during all of the months of the year 1948? A. That is correct.

Q. Now I show you—

Mr. Gladstein: Will you mark this, Mr. Clerk, please.

(Marked Defendants' Challenge Exhibit 151 for identification.)

Mr. Gladstein: Your Honor, I have an extra copy for the convenience of the Court.

The Court: Has this affidavit already been filed?

Mr. Gladstein: It has not, your Honor. I will file it as an exhibit if your Honor will permit it.

By Mr. Gladstein:

Q. Now Mr. Wilkerson, I show you Challenge Exhibit 151 (3351) for identification, and I will ask you to state whether that is the affidavit to which your testimony refers? A. This is the affidavit.

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Q. Attached to the affidavit are there the exhibits to which you referred? A. There are.

Q. Were those exhibits prepared under your supervision? A. They were.

Q. Are you satisfied they are true and correct? A. I am.

Q. In a general way and without going into the details of the exhibits, to what subject do they refer? A. They refer to the occupational classification and to the geographical distribution of grand jurors on a series of panels during 1948.

Mr. McGohey: Do I understand you to mean persons called for service on grand juries?

Mr. Gladstein: Yes, that is correct, persons whose names appeared on panels.

The Witness: That is correct.

Q. Now, from what source were the panels obtained? A. From the same source as all of the others we received, the jury clerk.

Q. All right. And these exhibits simply constitute a tabulation based upon the information contained in those panels obtained from the jury clerk's office dealing with and relating to the occupations of the persons whose (3352) names appear on those panels and where they live? A. That is correct.

Q. And you have used, have you, in those tables, the executive, professional, clerical and manual worker groupings in the same sense and manner in which your testimony has defined those expressions? A. Yes.

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

Mr. McGohey: If your Honor please, I point out first of all that I am unable to understand under what theory this becomes redirect examination. This appears to me to be something entirely different from anything that was put in before, and the grand jury which returned the indictment of the defendants now on trial was drawn in June of 1947, and therefore it seems to me that the data here covering

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panels from December 1948 back to January 1948 would have no relevance in this case whatever; and I object to the admission of the exhibit on both of those grounds.

Mr. Gladstein: May I be heard, your Honor?

The Court: Yes.

Mr. Gladstein: I may say that there is in the course of analysis at the present time work being done upon the panels for the year 1947. We experienced difficulty in getting photostatic copies of all such panels (3353) from the clerk. This work began some time back last week. And in the interest of obtaining evidence that would be as nearly current as possible we asked the clerk to begin with the end of the year 1948 and work backwards; and during the course of today there will have been completed the work on the 1947 grand jury panels, and that will include, of course, the particular panel from which was drawn the 23 people who returned the indictments in these cases.

Mr. McGohey: Now, if your Honor please, may I be heard?

The Court: Yes.

Mr. McGohey: Mr. Gladstein just informs the Court that there has been difficulty in getting certain grand jury panels from the clerk and he says that the work began last week—I understood him to say—

Mr. Gladstein: The work of photostating.

Mr. McGohey: The work of photostating.

Now, the indictment in this case was found in July 1948. A total of 67 days were granted by the Court for the making of motions. In October motions were made including a motion challenging the composition of the grand jury which returned the indictments. That motion was decided adversely to the defendants, and then came this challenge, which included a challenge to the grand jury; (3354) and one of the reasons assigned for making a motion now and for urging why it should be considered was that it was based to some extent, at

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least, upon newly discovered evidence said to be the Tolman report, although there is evidence now in the record that the Tolman report was a matter available to the public for many years prior to the bringing of this motion. But it has certainly never been asserted that the panels of grand jurors for the year 1947, or, certainly, that the panel of the grand jury from which the grand jurors were drawn who voted the indictments in this case was a matter that could not have been discovered; and for somebody to come in now and at this stage on re-direct attempt to offer proof which should have been put in upon the direct case when there was clearly a period of two months or two and a half months from the time the last adjournment was given in this case, is a circumstance which in my opinion should properly move the Court in the exercise of its discretion to refuse to receive this kind of testimony and this kind of exhibits at this time.

Mr. Gladstein: Now your Honor—

The Court: I will sustain the objection.

Mr. Gladstein: Your Honor, may I be heard on that to reply to Mr. McGohey?

The Court: Well, if you desire to add a word or (3355) two, you may.

Mr. Gladstein: As your Honor well knows, we are establishing in this case the truth of the charges contained in the challenge and the moving papers by establishing that a pattern has existed in connection with the choice of jurors, both grand and petit. To do that requires one to cover a period of years. We are doing this pursuant to the direction contained in the decisions of the United States Supreme Court that deal with this subject. And as your Honor has had occasion to say at earlier stages in the proceeding, and quite correctly, whether it be Mr. McGohey examining a witness or someone for the defense, the entire case cannot be put in at one time. This is in no way delaying any proceedings. We are here offering a tabulation which is just as valid today for the purposes of this case as it would have been the day before

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yesterday or three days ago, and just as valid today as it will be tomorrow or at any time up to the conclusion of these proceedings. And what your Honor's ruling therefore amounts to is the creation of a barrier that prevents us from putting in proof; and I think that one reason that prompts Mr. McGohey, though he does not refer to it in his argument—one reason that undoubtedly prompts Mr. McGohey to make this objection, and perhaps the chief reason, is because our evidence shows that in the case of (3356) grand juries you get less than one per cent of any panel who is a manual worker.

The Court: I sustain the objection.

By Mr. Gladstein:

Q. Now Mr. Wilkerson, I want to give you Challenge Exhibit 137 which deals with—do you have it, Mr. Wilkerson? A. What is it?

Q. Do you have Exhibit 137? This is the one dealing with repeats. It is not essential that you have the exhibit in front of you. A. I don't have it before me.

Q. But that is the one that deals with the names, the last names, that begin with either A or B that you found to be repeated on several of the panels, two or more, as shown in the exhibit. Do you recall that? A. I do.

Q. Now, Mr. McGohey brought to your attention in cross-examination the fact that your tabulation showed in one instance, for example, that you had a juror purportedly having his name appear on a panel on a particular date, and there was an error in that respect. Now have you made a tabulation at my request of the total number of errors to which Mr. McGohey called your attention? A. There were four or five.

Q. Now, at my request have you made a tabulation to determine how big, how great was the margin of error in (3357) that table? A. Yes.

Q. What is it? A. Well, in terms of Exhibit 137 itself there are there approximately 1100 repeat listings. Four or five errors out of that group would mean approximately one-half of one per cent.

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It should be pointed out, however, that those 1100 listings are based upon the checking of around 7500 names, and in terms of that base the four or five errors, which attention has been pointed to, would constitute about one-tenth of one per cent, which I would—

Q. Now, does a margin of error of one-tenth of one per cent, Mr. Wilkerson, in any manner affect the substantial validity of your evidence?

Mr. McGohey: I object, your Honor.

The Court: Sustained.

Q. Do you know whether or not the United States Government has ever acknowledged that occasionally it may make a mistake of this kind in calculations?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Is it a fact that the Census Bureau publishes errata calling attention to the fact that occasionally it has made a mistake in its published documents?

Mr. McGohey: Objection.

The Court: Sustained.

(3358) Q. We have in evidence a table, a census table. Do you remember that exhibit? A. You are probably thinking of the labor force census report. That is Exhibit 9.

Q. Now I am thinking of Exhibit 16, the alphabetical index of occupations and industries. A. I see.

Q. Will you look in that and see if you can find anything that you can call to the Court's attention? A. Yes, there is a page of errata, which is quite a customary thing with publications of this sort, and, in fact, no major statistical enterprise of the kind that we have been reporting here can go forward without some minor clerical errors. The effort, of course, is to reduce them to a minimum, and that we certainly have done here.

Q. Now Mr. Wilkerson, you were asked whether or not the jury chart of Exhibit 67—it is not here in the courtroom

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at the present moment, but, you recall, this is the one that shows on the lefthand side—

Mr. McGohey: If your Honor please, I am going to object to any testimony about an exhibit not before us.

Mr. Gladstein: Well, I will simply ask that it be brought into the room. Will your Honor permit us to do that?

The Court: You may do that.

Mr. Gladstein: All right, it will take just a (3359) moment.

Q. While that is being done and while we are waiting for it I will ask you to do this, Mr. Wilkerson: You recall that you were asked concerning five men whose names appear on various panels as to whom you had tabulations to indicate how often they were repeats. Do you recall that?
A. Yes.

Q. And you were asked by Mr. McGohey as he questioned you to keep a tabulation. Did you do so? A. I did.

Q. Now Mr. McGohey did not offer that tabulation, but I want to ask you some questions concerning the people that he asked you about.

Mr. Gladstein: Do you have those exhibits, Mr. Clerk? They are Government's Exhibits W through AA.

Mr. McGohey: We will have them for you in a minute.

Mr. Gladstein: Very good.

The Court: How many did you say?

Mr. Gladstein: There are five.

The Court: That is, Raymond J. Braun, Louis Alpren, Harvey Avedon, Arthur M. Bachrach and John H. Alexander?

Mr. Gladstein: Albert Berenger is the one I have.

The Court: Oh, and Albert Berenger. That is six, isn't it?

Mr. Gladstein: I only have five.

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(3360) The Court: I see the difference. John H. Alexander is not represented by an exhibit because as to him the error disclosed was that he should have been on the list but he was not.

Mr. Gladstein: He was one of the repeats that didn't appear on the list, Mr. McGohey discovered.

Mr. McGohey: The witness didn't.

The Court: I suppose when one is disclosing errors it is a question of looking to find where they might be and—

Q. I will ask you to look at Government's Exhibit W in evidence which is a photostatic copy of a history card—

Mr. Gladstein: Is that correct, "history card", Mr. McGohey?

Mr. McGohey: That is correct. These are all copies of history cards.

Q. —history card of Louis Alpren. Will you use that together with the tabulation you were making for Mr. McGohey in the questioning I am about to direct to you.

How many times does your tabulation show, based on the questions Mr. McGohey asked you, that this man was a repeat? A. Four times.

Q. Look at the photostatic copy of the juror's history card—

(3361) The Court: That is, he was on four times.

Mr. Gladstein: Yes.

The Witness: That is right.

The Court: So, putting it on once, one might say three, but it is four times that he was on.

The Witness: Listed four times.

The Court: Yes.

Mr. McGohey: If your Honor please, the record should be clear, that when a name appeared four times on this list that the defendants call repeats, those are the four times I was talking about, because I was examining with respect to Exhibit 137.

The Court: Yes.

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Q. Of course you didn't examine every panel for every month for every year from 1940 to 1949? A. No. Examined only 28 panels in that sample.

Q. Look at the history card of the juror and state how many times altogether his name appears as having been called to serve. A. Ten times.

Q. Over what period of time? Just the earliest and last date. A. The earliest is May, 1942, and the last is December 20, 1948.

Q. Ten times? A. Yes.

Q. What is his occupation as shown there? A. President in textiles industry.

(3362) Q. Now I direct your attention to the history card—

The Court: Well, on how many of these was he excused?

Q. Will you give the information the Court desires? A. Nine times.

Q. Will you give the same information concerning Harvey Avedon, referring first to the tabulation made by you at the request of Mr. McGohey and secondly to the actual history card, that is, Government's Exhibit X? A. Mr. McGohey asked about three of the appearances for Harvey Avedon, and he is listed according to the card as having been listed eight times.

Q. And the dates, earliest and latest? A. The earliest is 7/6/43 and the latest 11/3/48.

Q. How many times is the letter E shown and how many times is the letter S? A. The letter E is beside each of these listings.

The Court: He was excused every time.

Q. What is this man's occupation? A. President of the Avedon Manufacturing Corporation.

Q. I direct your attention to Mr. Louis Alpren, Government's Exhibit W. Will you give us the same information? A. Louis Alpren—

Mr. McGohey: Wasn't it Alpren we had first?

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Mr. Gladstein: Oh, I beg your pardon. I am sorry.

(3363) The Court: Yes.

Q. Arthur Bachrach is the next. That is Exhibit Y. A. Mr. McGohey asked me about three of the listings on the card for Arthur Bachrach. There are six listings for him. The symbol E is to the left on four of them, S to the left on one and O-f-f to the left of the other.

Q. What are the dates, earliest and latest? A. The earliest is July 6, 1943, and the latest is August 3, 1948. Manufacturer, his own company.

The Court: He was excused how many times you say? Four, five?

Q. You state it to the Court (handing). The E appears four times.

The Court: And then the "off"; so that makes six. He served once, was excused four times, and marked "off".

Mr. Gladstein: No, I count them differently.

Q. There is some interlineation, Mr. Wilkerson. Look at that. A. Oh, I see. There is one in between the line that I included. Pardon me.

Q. How many times? A. There are seven times then altogether. And five times symbolized by E, one time by S, and one by o-f-f.

Q. Now that exhibit has a blank space on it, doesn't it?

Mr. McGohey: Your Honor, while we are talking (3364) about that, may it appear that when he gets off it is because of a physical illness, if your Honor cares to look at it.

The Court: I think I remember some reference to that.

Mr. Gladstein: Yes.

Q. There is a blank space on that photostat, is there not? A. There is.

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Mr. Gladstein: Do you have the original with you, Mr. McGohey?

Mr. McGohey: No, I do not.

Mr. Gladstein: I saw this the other day.

Mr. McGohey: If you wish it we will send for it.

Mr. Gladstein: Would you? I will pass on to something else.

Mr. McGohey: I don't think that means anything. It was exhibited the other day, and we had the Court's permission, after counsel examined it, to substitute a photostat for the original. But I will be glad to ask the clerk to send for it.

The Court: You referred to the erasure?

Mr. Gladstein: It is not an erasure. As I recall the—

The Court: It appears at the bottom of the card.

Mr. Gladstein: Yes.

(3365) The Court: I noted that at the time. I have it very much in mind.

Mr. Gladstein: Does your Honor's recollection concur with mine? Mine is that there was at the bottom of the card an S plus a date and then that an ink blot or erasure had been placed upon that, although one could still tell that there was a date and that the letter S was alongside that date. However, in the photostat that does not appear. Is that your Honor's recollection?

The Court: Here is what I have in my notes, "Looks like S in 1948." Does that—

Mr. Gladstein: And then erased.

The Court: Does that meet your point?

Mr. McGohey: If your Honor please, we will send for the original, because my recollection is that it is S8-3-48 or 8-2-48 which conforms to the date on which the man was excused. And if there is going to be an issue about it let us have no doubt, let us get the original card. We can do that while Mr. Gladstein is proceeding with his examination.

The Court: Yes. But I have a very definite recollection that it looks as though there were an S underneath that same date in 1948 that I didn't note, but if it is the same date that he was marked off I can add that to my notes.

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(3366) Q. Finally, what does that card show as to the occupation of Mr. Bachrach? A. He is a manufacturer who owns his own company.

Q. I direct your attention to Challenge Exhibit AA of the Government referring to Raymond J. Braun, B-r-a-u-n. Look at the notes that you made while you were tabulating at Mr. McGohey's request and give the same type of information for that juror. A. Mr. McGohey asked me about two of the listings for Mr. Braun.

Mr. McGohey: May it appear that those were the two listings which the witness had listed on Exhibit 137.

The Witness: That is right.

A. (Continuing) There are four indicated on the card, the earliest being July 1943, the latest being October 1946. There are two E's and two S's to the left of these listings.

Q. And the juror's occupation? A. President of Specific Pharmaceutical, Incorporated.

Q. Now you were asked by Mr. McGohey whether this column, which is the red column on Exhibit 67-A, the column to the left as one looks at it and representing executives, whether that column is overloaded by reason of the inclusion therein of the total number of appearances (3367) that you found for those five jurors that I just asked you about in your examination of those panels. Do you recall that? A. I do.

Q. Is there any overloading on that? A. Not for the reason that you mention. There is overloading.

Q. In what respect is there overloading?

The Court: You mentioned that before on your cross examination. I don't think he needs to repeat that.

The Witness: Not this particular point.

The Court: Yes, you gave that explanation then. I don't think he needs to repeat it.

Mr. Gladstein: I will ask one question if I may simply to conclude this.

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Q. The columns in 67-A represent the number of appearances of the jurors, is that right? A. The percentage is based on such numbers, yes.

Mr. McGohey: May we have—the number of appearances is misleading, it seems to me. At least it is confusing to me.

The Court: He means the number of times the names are on the list of the 28 panels.

Mr. McGohey: Very well.

Mr. Gladstein: We all so understand it.

Q. So that whether a Mr. Braun, who was the president (3368) of a corporation, appeared five times on these 28 panels or whether he appeared once and four persons occupying similar positions with other corporations appeared once you get the same ultimate tabulation?

Mr. McGohey: I object to that. There is no evidence in the record to justify these four persons in the same category coming in here.

The Court: Sustained. It is another way of bringing out what he said on his cross-examination, which I think has covered the point.

Q. Your attention was called by Mr. McGohey to some census data regarding salaries of a certain portion of the census classification group known as proprietors, managers and officials. Do you recall that? A. I do.

Q. Now what table was that in reference to? A. That was with reference to the census report on the labor force. I think it is Exhibit 9. And I should like also to have the Statistical Abstract for the United States 1947, which is—I don't know the exhibit number.

Q. No. 11 (handing). I want you to turn to that portion of those exhibits that you were questioned about. A. No. Exhibit 9.

Q. Now you remember being asked to calculate in terms of percentage figures how many executives make less than (3369) \$1400 a year. Do you recall that? A. No.

Mr. McGohey: I don't think that that is what I asked, your Honor.

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The Witness: The question was how many are listed here in Table XVI.

Q. Yes. A. With wages and salary income of less than \$1400 per year.

Mr. McGohey: Now, if the Court please, the record will show that I was asking him about the number of those who earned about \$30 a week or less.

Mr. Gladstein: All right. \$30 a week, which would be fifteen hundred.

Mr. McGohey: \$1560.

Mr. Gladstein: \$1560 a year or less.

Q. Do you recall that? A. I remember it.

Q. Your tabulation resulted in the figure I think of about 26.5 per cent, is that right? A. For the 1400 and less, that is the categories in which these are reported, yes.

The Court: Will you pause just a second? I want to find that part of the testimony in my notes. I have it. You may proceed.

Q. Now those census data that you were asked about, to what type of income do they refer? A. They refer to wages or salary income in 1939.

(3370) Q. Are those figures exclusive of profits and stock dividends, other sources of income, bonuses and so on? A. They are.

Q. Is it or not true that executives, as we have defined that term, are shown in the census table to some extent as receiving no wages or salaries? A. For New York City and in the table to which Mr. McGohey called attention, Table XVI, page 107, there are 77,141 executives, as we are defining the term, who report from no income to \$99 income as regards wages and salaries. The implication of that I guess is quite clear.

Q. Is there any data to which you can refer us that will establish what percentage of income from all sources the salary of executives is?

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Mr. McGohey: May I have that question repeated?

Q. (Read.)

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

Mr. Gladstein: It is unclear, Mr. McGohey? I can reframe it.

May I state the purpose of the question, your Honor?

The Court: You can say there may be census statistics that would show for all the executives how much they earned by way of salary and wages and how much income (3371) they have from stocks and bonds and so on.

Mr. Gladstein: That is what I am asking him.

A. There are, yes.

Q. There are such.

Mr. Gladstein: In other words, I am seeking to bring out that no weight can attach to the fact that according to the census, some executives report that they have little or no salary earnings because the fact is that salary represents a very small percentage of the true income of executives and corporation directors. They get it in the form of bonuses, division of profits.

The Court: How could he tell from the charts that you have done as executives at least a third who earn less than \$30, according to the witness's statement?

Mr. Gladstein: No.

The Court: And how could we tell which was which?

Mr. Gladstein: I will have testimony as to who the jurors are, your Honor, in just a moment. But I would like to have the question answered.

Q. You say there are such data? A. There are data which relate to income levels and indicate the proportion which salary and wage income constitutes of the total.

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Q. Where do you find that data? A. In Statistical Abstracts of the United States, 1947. It is Exhibit 11.

(3372) Q. Will you indicate the page or pages? A. Page 329, Table V, or, rather, 353.

Q. What does that show? A. It shows that salaries and wages constitute 80 per cent, 80.46 per cent of total income, 1943, for people whose income is less than \$5000. For the category of income five to ten thousand dollars, however, wages and salary constitute 51 per cent, not 80. Ten to fifteen thousand dollars wages and income constitute, or wages and salary constitute 36 per cent of income. Twenty to twenty-five thousand dollars income wages and salary constitute 32 per cent. Fifty to a hundred thousand dollars income wages and salary constitute only 23 per cent. And you go on to five hundred thousand to a million dollars, wages and salary constitute 4 per cent of the total. And a million dollars and over wages and salary constitute only one per cent of total income.

The implication of that in relation to the data Mr. McGohey asked me about the other day is simply this: large numbers of executives obtain income from profits, not wages and salary, from stocks and bonds, which are by no means reflected by this table, and any inference from the table to which attention is called that the income of a substantial proportion of manual workers exceed those of the median executive would be wholly misleading. (3373) There is further evidence in this respect incidentally, if one wants to go to it, in the—

The Court: I think you have got into this rambling business again, so please don't do that.

Q. Now, Mr. Wilkerson, is it true that for census purposes the category known as owners, managers and officials includes such as occupational titles as, say, a conductor on a street railway? A. I think a conductor on a steam railway.

Q. Steam railway. A. I think not the street railway.

Q. Steam railway. A. I believe that is true. I could check it if you want me to.

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Q. There are a number of such classifications, are there?

A. That is right.

Q. They are included in the census of what we call executives, is that right? A. Yes.

Q. What effect would that have on No. 67, that portion which we call executives? A. Well, it would tend to increase the size or the proportion which, what we call executives, constitute the labor force.

Q. At my request did you look through the jury panels to see the extent to which you found such classifications as conductor on a steam railroad or similar classification that are included by the census in executives?

Mr. McGohey: Objection, your Honor.

(3374) The Court: Sustained. How can he tell what those similar ones are?

Q. Let us start with conductors. Will you give an answer to that one. A. I did not check the number of conductors. I know from having worked with the materials that there are extremely few if any.

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

The Court: Strike it out.

Mr. Gladstein: The witness says there are extremely few, if any. I think he—

Mr. McGohey: The witness said he did not check it.

The Court: Yes.

Mr. Gladstein: But he says he has worked with the material.

The Court: Well, I am not going to take guesses like that.

Q. Now by virtue of a ruling of the Court Nos. 96 and 97 are now in evidence. I want to ask you some questions about those exhibits. I hand you No. 97. What does that exhibit show? A. This exhibit shows by Congressional Districts for Manhattan and Bronx the total vote in 1948, the total number of jurors on six panels, and the number

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of jurors per 10,000 voters all by Congressional Districts. (3375) The panels involved here I can give you. They are not listed on the exhibit.

Q. Then do so. They are the panels of October—no; of November 3, 1948, November 15, 1948, December 7, 1948, December 20, 1948, January 4, 1949, and the first listing for January 17, 1949.

Q. Now may I see that table. A. I have a copy of it.

Q. All right. This is done by Congressional Districts for both Manhattan and Bronx, is that correct? A. Yes. It also provides a total for Westchester.

Q. Now will you point out in brief summary the significant data contained here? A. In the first place here listed are a—

Mr. McGohey: Pardon me. May I have the question read.

Q. (Read.)

Mr. McGohey: The exhibit speaks for itself. I object.

The Court: That is right. Sustained.

Mr. Gladstein: I want to ask the witness and I do ask the witness to direct the Court's attention to those outstanding highlights shown in the exhibit.

Mr. McGohey: I object, your Honor.

The Court: Sustained.

Q. Is it true on this exhibit, Mr. Wilkerson, that more (3375-A) than half of all Manhattan jurors come from the 17th District?

Mr. McGohey: I object.

The Court: Let me see it.

A. It is true.

The Court: Just a second. Strike that answer out.

Read me the question, please.

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Q. (Read.)

The Court: Sustained.

(3376) Q. I will ask you if it is a fact that more than half of all Manhattan jurors do come from the 17th Congressional district?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Is it a fact that more than half of all Bronx jurors came from that Congressional district in which you find Parkchester? A. It is.

Mr. McGohey: Objection.

The Court: Sustained.

Mr. McGohey: And I move to strike out the answer, and I ask that the witness be directed to withhold his answer until counsel has an opportunity to make an objection.

The Court: Yes; please do that.

Mr. Gladstein: I would like to have it understood that the questions I have just asked refer to the six panels that the witness has referred to.

May I reask the question based on those six panels, or does your Honor's ruling assume that the witness was asked to direct himself to those six panels?

The Court: I think what you are inquiring about is already sufficiently manifest from the evidence now in the record.

Mr. Gladstein: I think, to make the record (3377) perfectly plain, I will put this further question:

By Mr. Gladstein:

Q. Referring simply to the six panels you have identified is it not a fact that as those panels over 50 per cent of all Manhattan jurors whose names appear on the

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jury clerk's panels come from the 17th Congressional District?

Mr. McGohey: I object, your Honor, on the ground that the exhibit speaks for itself.

The Court: Sustained.

Q. And isn't it true that over half of all jurors who come from the Bronx in relation to those same six panels come from the Congressional district, namely, the 26th, in which Parkchester is found?

Mr. McGohey: Same objection.

The Court: Same ruling.

Q. Is it or not true based on the six panels that you have referred to and identified that the 17th Congressional district gets more than 20 times as many jurors as the 22nd Congressional district?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Is it or not true that the 26th Congressional district in which Parkchester is located—

The Court: Haven't you got in evidence, Mr. (3378) Gladstein, these maps showing pins for everyone of the jurors in certain panels?

Mr. Gladstein: The maps refer, as I recall them, with one exception, respectively, each to one panel. This is—I am now asking the witness concerning six particular panels.

The Court: I know, but you see, you can multiply this thing indefinitely, and there is never any end, and I desire you not to pursue this line of questioning as to this exhibit.

By Mr. Gladstein:

Q. Now will you look at table P-2, or 96 in evidence. What does it refer to? A. This table indicates by Congressional districts Manhattan and Bronx, first, the num-

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ber of jurors, per 10,000 voters, on the six panels referred to before: second, the per cent the Republican vote was of the total Congressional vote in 1948; and third, the per cent the American Labor Party vote was of the total Congressional vote in 1948. These three items of information are supplied for each of the Congressional districts in Manhattan and Bronx.

Q. Now, in what Congressional districts did the American Labor Party—that is, in what Congressional districts both from Manhattan and Bronx did the American Labor Party receive votes higher than the vote cast for the (3379) Republican Party?

Mr. McGohey: I object, your Honor.

The Court: Sustained. Doesn't the paper speak for itself, Mr. Gladstein?

Q. Is it or not true that in those Congressional districts where the American Labor Party received a substantially higher vote, even as much as three times higher—

Mr. McGohey: I object to counsel testifying from the exhibit.

Mr. Gladstein: I have not finished.

The Court: Yes, please desist from that type of examination, Mr. Gladstein. All the figures are right on the paper there and I cannot fail to get the impression that when you continually repeat them the way you have done, some reason other than persuading the Court as to the evidence exists.

Mr. Gladstein: Your Honor has many tables and many tabulations that you will have to look at, and it seems to me that this examination not only is appropriate but would be helpful to the Court to bring out, to call attention particularly to the main two or three highlights of each exhibit.

The Court: Do you recall, Mr. Gladstein, that after having excluded those two documents, Exhibits 96 and 97, I said one day that I had been reading the minutes (3380) and studying the papers the evening before and that I had determined that I

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would change my ruling and admit them? Do you remember that?

Mr. Gladstein: Yes, and I remember that you did reverse your ruling.

The Court: I think from that you might infer that I have some familiarity with the details that appear on those documents.

Now we will take our recess for ten minutes.

(Short recess.)

Mr. Gladstein: Mr. Clerk, will you be good enough to mark these exhibits for identification. There are three of them.

I may say they deal with Nos. 96 and 97, your Honor.

(Marked Defendants' Challenge Exhibits 152, 153, and 154, for identification.)

By Mr. Gladstein:

Q. Mr. Wilkerson, I show you Defendants' Challenge Exhibit No. 152 for identification. Are you familiar with this? A. I am.

Q. Was it prepared under your supervision? A. It was.

Q. With what general subject does it deal? A. It deals with the incidence of voters in relation (3381) to—or, rather, the incidence of jurors in relation to voters by Congressional districts in relation to the size of the Republican Congressional vote in 1948.

Q. In what area? A. In the Bronx.

Q. From what sources did you obtain the information contained in that exhibit? A. The information concerning the vote, from the Board of Elections of the City of New York. The information concerning jurors, from the official lists of jury panels.

Q. And the tabulations were made under your supervision? A. They were.

Q. Based on the information obtained from those sources? A. Yes.

Q. Now, does that exhibit accurately set forth the matters and things which it purports to represent? A. It does.

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I should mention that the panels represented there are the six panels called attention to in relation to Exhibits—what is it, 96 and 97?

Q. The same exhibits, 96 and 97, is that right? A. That is right.

Mr. Gladstein: Now I offer this in evidence, your Honor.

Mr. McGohey: Objection. At least for the reason that it is cumulative, your Honor.

The Court: Yes, objection sustained.

(3382) Q. Now I will show you Defendants' Challenge Exhibit 153 for identification. Are you familiar with this? A. I am.

Q. Was it prepared under your direction? A. It was.

Q. With what subject does it deal? A. It deals with the incidence of jurors per 5,000 voters in the several Congressional districts of the Bronx in relation to the size of the American Labor Party vote in the several Bronx Congressional districts.

Q. And the source of information? A. The same as for the previous exhibit, 152 for identification.

Mr. McGohey: Would you keep your voice up a little, please, Mr. Wilkerson?

The Witness: Yes.

Q. And between the two, 152 and 153, there is shown the contrast between the Republican Party—

Mr. McGohey: Oh, I object to anything that the exhibit purports to show unless it is in evidence.

The Court: Yes. You have got the evidence in already, Mr. Gladstein. It is just a question of this pictorial representation of it.

Q. Now as to 153 for identification, are the tabulations and the information and data shown on that exhibit true and correct? A. They are.

(3383) Mr. Gladstein: I offer it in evidence.

Mr. McGohey: Objection.

The Court: Sustained.

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Q. Now, did you have made for you any similar chart for Manhattan? A. We did.

Q. I call your attention to No. 154 for identification. Are you familiar with it? A. I am.

Q. Was it prepared under your supervision? A. Yes.

Q. And the sources from which you obtained the information contained thereon were what? A. The New York City Board of Elections for information concerning the Congressional vote 1948 by Congressional districts, and the official lists of jury panels for the six panels mentioned before.

Q. Now on this exhibit the reference, where it says "17 C.D.," is a reference to the 17th Congressional district? A. That is right.

Q. And the same is true with respect to each of the numerals in front of the letters "C.D."? A. Yes.

Q. What is the significance of each figure shown on that exhibit?

Mr. McGohey: I object to that, your Honor. The exhibit, if it is going to be offered—

The Court: Well, they signify units, I take it?

Mr. Gladstein: Units, that is right, and I wanted (3384) to have the witness testify as to the significance of the units.

The Court: Well, if there is objection, I am going to rule just as I did as to the others. It is cumulative and I won't permit it.

Q. Is the information shown on this exhibit true and correct? A. It is.

Q. Does it accurately reflect and state what it purports to represent? A. It does.

Mr. Gladstein: I offer it in evidence.

Mr. McGohey: Objection.

The Court: Sustained.

Mr. Gladstein: Now, Exhibit Y, which is the photostatic copy of the history card of Mr. Bachrach, Mr. McGohey has provided me with the original card contained in the clerk's office. Now, your Honor, my eyes are not as sharp as they used to be

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but I see at the bottom what appears to be “S-3-2 off.”

The Court: Let me look at it. I have got pretty good eyes. I thought when I looked at it before—

Mr. Gladstein: Am I wrong about the date?

Mr. McGohey: It looked to me like an “8.”

Mr. Gordon: Not “off” but “48.”

Mr. Gladstein: Oh, excuse me. Not “off” but “48.”

(3385) Mr. McGohey: If the Court please, if whatever appears on that entry that has been rubbed over with blue pencil is visible, I have no objection to that date being put in the record; whatever the card shows should be in.

The Court: It seems to me it is as Mr. Gladstein states, “S-3-2-48.”

Will you look at it, Mr. McGohey?

Mr. McGohey: I have looked at it, your Honor, and what you and Mr. Gladstein say is a “3” appears to me to be an “8,” but since both of you said it is a “3” I will concede that that is what it is, and I have no objection to that going into the record.

I call the Court’s attention to the fact that whatever the entry is it appears to have been crossed out, which would at least be some indication that it was an erroneous entry which the clerk was correcting.

The Court: Yes, but whatever may be the inferences to be drawn, I think it sufficiently appears there that the part underneath is “S-3-2-48” and then a blue pencil was rubbed over it to indicate that it should not be part of the card. For what reason I know not.

Mr. Gladstein: Will you mark this, Mr. Clerk.

(Marked Defendants’ Challenge Exhibit 155 for identification.)

(3386) *By Mr. Gladstein:*

Q. I show you No. 155 for identification. Are you familiar with this exhibit? A. I am.

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Q. It was prepared under your supervision? A. Yes.

Q. With what subject does it deal? A. This is an analysis of the petit jury panel for February 1, 1949, showing the occupational categories under which the jurors fall; the numbers and percentages and the Congressional districts and other areas in which they live, along with duplications.

Q. What do you mean by duplications? A. Address duplications. That is, jurors who live—

Mr. McGohey: I object to what the exhibit shows unless it is in, your Honor. I think it has been sufficiently described.

The Court: I think he is merely describing what he intended to mean by the expression "address duplications."

Mr. Gladstein: That is correct.

Mr. McGohey: Oh, I am sorry.

The Witness: That refers to the names of jurors who live at the same street address.

Q. That is, jurors on the same panel whose residence was the same; that is, the same apartment house building, is that what you mean, or the same building; is that (3387) right, Mr. Wilkerson? A. Yes, it also lists the jurors who are from the 22nd Congressional District.

Q. Yes? A. And it lists—

Mr. McGohey: I object to any description of what it lists, your Honor.

The Court: Yes. These other things I think are sufficiently obvious.

Mr. Gladstein: Which other things, your Honor?

The Court: The rest of the exhibit. "Address duplications" might mean something different. I think I understood what he meant. But as to the rest of these matters appearing on the paper, don't you think they are sufficient?

Mr. Gladstein: You mean your Honor is referring to the last part, for example, which is a list of those people—

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Mr. McGohey: I object to any description coming from that unless it is in evidence—

The Court: Yes.

Mr. McGohey: —whether it be by counsel or by the witness.

Q. Has this been checked against the jury panel obtained from the clerk's office?

Mr. McGohey: Now, if your Honor please, I have a further objection to the pursuit of this line because (3388) it is clearly not redirect. It is something that we never heard of in the direct examination.

Mr. Gladstein: Well, I ask leave then, if that is necessary, your Honor, that the Court exercise its discretion for the purpose of permitting me to put this Exhibit in evidence, which actually is taking about 30 seconds—

The Court: In view of all the circumstances that are disclosed in the record and the finding that I have already made I shall not exercise my discretion favorably.

Mr. Gladstein: Is that a ruling?

The Court: That is a ruling, yes.

Mr. Gladstein: All right.

The Court: It is not proper redirect, and in the exercise of my discretion I shall reject it.

Mr. Gladstein: Now, may I at least lay the basis for the reception of these?

The Court: Yes.

By Mr. Gladstein:

Q. Now Mr. Wilkerson, concerning Exhibit 155 for identification, what sources were used from which to obtain the information thereon contained? A. The official jury lists for the occupations of the jurors and their addresses.

(3389) Q. And their names? A. And their names.

Q. What sources were used for the purpose of obtaining that information dealing with the relationship of cer-

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tain jurors to what is called giant corporations? A. The official jury list.

Q. Does this exhibit accurately set forth that which it purports to represent? A. It does.

Q. And the figures, tabulations and data are true and correct? A. They are.

Mr. Gladstein: I offer it in evidence.

Mr. McGohey: Objection.

The Court: Sustained.

Q. Now during your direct examination a question arose concerning editors, writers, some of whom were exempt from jury duty, and to some testimony you gave concerning embalmers; do you recall that?

Mr. McGohey: If the Court please, I submit that that subject was not gone into on cross-examination. It was a subject of some testimony upon direct examination, but I have no recollection, in fact, I am quite sure that I did not touch on it in cross-examination.

The Court: What was the last one, embalmers?

Mr. Gladstein: Yes. May I remind the Court that Mr. Wilkerson agreed, I think, at the request of the Court, to submit data on this? I do not have the (3390) exact portion of the transcript, but your Honor may recall.

The Court: I have no recollection on that, and in view of my uncertainty I will allow you to proceed with the evidence.

Mr. Gladstein: Very well.

Q. Now, did you obtain some information to demonstrate the extent to which, if any, there was any impact on your testimony by reason of the calculation you made in respect of writers and embalmers? A. Yes.

Q. All right. Now what is that information?

Mr. McGohey: If the Court please, I have no recollection and I should like a moment or two to

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check the transcript to see if there is anything in the nature of a commitment by the witness to explain anything that went in.

The Court: You may do that. I will glance at my notes. We will pause a minute.

Mr. McGohey: Your Honor, I seem not to have the volume. I do not have the volume containing page 2046. That appears to be the page at which the exhibit was marked for identification.

The Court: 2046? I have it (handing).

Mr. McGohey: Thank you very much.

(3391) If your Honor please, it appears at page 2046, and I hand you back your copy, that there was some colloquy there among the Court and the witness and counsel, and I think it hardly justifies the line of testimony we appear to be getting into now.

The Court: I don't find anything on those pages, Mr. McGohey.

Mr. McGohey: No, nor I either, your Honor. And that is the only place where there was any discussion,—

The Court: I have some recollection of a reference to editors and writers and perhaps embalmers; I am not sure.

Did you take that up when you were dealing with the subject of exemptions, Mr. Gladstein?

Mr. Gladstein: Exactly, your Honor.

The Court: Let me get my copy of Exhibit 67-F. I have some notations on that.

Mr. McGohey: That is the table called XII-A, your Honor.

The Court: Yes. Well, I have a memorandum that the second column there is taken from census figures plus certain estimates of a minor character.

The Witness: That is right.

The Court: And I believe it was in that estimate of a minor character that the witness gave his (3392) testimony about the editors and writers; was it not?

The Witness: That is correct.

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Mr. Gladstein: I believe that is correct, your Honor. It will only take a moment; I have only two or three questions on this subject.

The Court: Well, I think I will allow it. I am in doubt, and I will allow it.

By Mr. Gladstein:

Q. Now the question is, what is the information you obtained on that matter, Mr. Wilkerson? A. In explaining the minor estimates which entered into certain exempt occupations in Table XII-A—that is Exhibit No. what?

Q. 67-F, I believe.

The Court: That is right.

A. We call attention that there were certain places where census data were not fully adequate but where we made no estimates because they were minor and probably cancel each other out, and mention in that connection the fact that authors are listed in the census in the category Authors and Editors and Reporters, and Editors and Reporters are exempt from jury service but Authors are not.

But the figure in Table XII-A for exempt occupations includes authors also because they are included in that census category. We mentioned that optometrists and embalmers are exempt but are not listed as such for (3393) the Southern District in census data. And that collateral evidence indicated that the number of optometrists and embalmers who should be deducted are included among those listed as exempt, just about balances the number of authors who are included but should not be.

Mr. McGohey: Pardon me.

A. (Continuing) And the question—

Mr. McGohey: Are you reading now from the footnote of Table XII-A which was attached to the exhibit?

The Witness: I am referring to it, I am not reading from it.

Mr. McGohey: You are referring to it.

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A. (Continuing) The question was raised, what is the evidence—

The Court: There isn't any footnote on my copy.

The Witness: There is a page of notes attached.

The Court: 67-F.

Mr. McGohey: There is to the exhibit, I am sure.

The Court: Let me check the original exhibit because I have found in a number of instances that exhibits attached to the Challenge are different from the ones that were put in evidence later. Wasn't that embalmers and optometrists?

(3394) The Witness: That is right.

The Court: He is just saying over again what is right in this exhibit.

Q. Do you have the actual figures? A. That is what I was about to give; yes.

Mr. Gladstein: I desire to have Mr. Wilkerson simply state the figures that he has ascertained these things to be.

The Court: Are they obtained from collateral evidence?

The Witness: Census data.

Q. Will you state what the figures are?

Mr. McGohey: Now, pardon me. I desire to find out what census data they are obtained from, and if it is in evidence I would like to look at it and if it is not I would like to have it here.

The Court: Yes.

Mr. Gladstein: Very well.

The Witness: Volume 3 of the 16th Census, the labor force, Table II, lists for New York City certain information which is not available for the Southern District as such. In that sense it is collateral.

The Court: Yes, it is collateral. It is the estimating that was required, is that not right?

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Mr. Gladstein: That is No. 9.

(3395) The Witness: Not an estimating but counting and making an assumption, that there is an assumption.

Mr. McGohey: I can't hear the witness.

The Court: He says not estimating but making an assumption. What he is trying to say I think is that the data does not appear directly in that exhibit that he has in his hand but some assumptions had to be made in order to arrive at the figures that he is about to testify to.

Am I not right about that?

The Witness: No. The data appear in the exhibit. Their implications rest upon certain premises which are statistical—

The Court: I thought you said that the data as to the emblamers and optometrists are not segregated so as to indicate the Southern District of New York but had to do with the entire City of New York.

The Witness: That is right.

The Court: You did have to make certain estimates in order to correlate it. But you go ahead and describe it in your own way.

The Witness: Well, this is the volume (indicating).

Mr. McGohey: I have it here. Thank you.

A. (Continuing) You will find that it indicates that in New York City there are 2765 authors; they list them (3396) for male and female. And that in New York City for the category funeral directors and embalmers—we don't have embalmers alone—there are 2500, 2501 in fact. There are 702 optometrists. No, I am sorry. There are 1,799 funeral directors and embalmers.

The Court: Wait a minute. I have to put down that different figure. What is the figure for the funeral directors and embalmers?

The Witness: 1799.

The Court: 702 optometrists.

The Witness: That is right.

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A. (Continuing) Optometrists, funeral directors then represent around 2500 workers which is 90 per cent of the author figure which is included in our category of exempt occupations because we can't take it out for the Southern District and should not be. We have no information concerning optometrists, but the whole operation we are dealing with represents one-half of one per cent of the exempt occupations, and the information here provided is in support of the question, or rather, the point challenged the other day, that approximately the embalmers and optometrists offset the inclusion of authors as we indicated they did. In no case could any of them alter the basic percentages anyway.

(3397) *By Mr. Gladstein:*

Q. In the challenge there are set forth the trades of the defendants, and I would like to have you state to what occupational group each of these belongs.

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

Mr. Gladstein: This is proper redirect.

Mr. McGohey: If your Honor will hear the question,—

Q. My first question is, to which of the four groupings, executive, professional, clerical and sales or manual worker, does a furrier or fur worker belong? A. If he is not a dealer, a fur dealer but an operative in the fur industry he is a manual worker.

Q. And to which of the four groups does a machinist, machine worker belong? A. Again, if he works in a capacity which involves no higher supervisory capacity than foreman or if he be a machinist, that is, an operative, is a craftsman, his classification is that of manual worker.

The Court: That is, you put craftsmen in as manual workers with laborers and so on, as you described before?

The Witness: That is correct.

The Court: Yes.

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The Witness: And a machinist belongs to that category.

(3398) The Court: Yes.

Q. Now the defendant Hall, his trade is stated here as lumberjack and steel worker. To which of the four categories does a lumberjack properly belong?

Mr. McGohey: I object to that, your Honor. There is no proof in the record as to what his occupation is.

The Court: Sustained.

Mr. Gladstein: I did not ask that. No. 1, the challenge sets forth in the moving papers what the trade is for each of these men.

The Court: That is no evidence, is it?

Mr. Gladstein: And I am asking—one moment, your Honor. Speaking of evidence, the United States Attorney referred to one of the documents in the case when he questioned on this general subject, and I am asking this witness to indicate which of the four major groupings a particular type of work belongs.

The Court: You may do that hypothetically. You may say “assuming.”

Mr. Gladstein: All right.

May I have the question read?

(Record read.)

A. On the premise that he had no supervisory functions above that of foreman he would belong to category 4, our

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(3399) manual worker category, either as a lumberjack or steel worker.

Q. The defendant Foster, concerning him the challenge states—

Mr. McGohey: I object to any statement as to what the challenge contains.

The Court: You see, Mr. Gladstein, it is like all these other things; I indicate to you what to do and you look at me blandly and seem to acquiesce and then you proceed to do just the opposite. Now I told you you might put questions to the witness in hypothetical form.

Mr. Gladstein: Very well.

The Court: Assuming that you had a person who was described as thus and so, where would you classify him? That is what I indicated to you.

Mr. Isserman: If the Court please, when Mr. McGohey was asking the questions about some defendants in relation to their alleged executive capacity and when the witness did not know the capacity he said, "Assuming the defendant so-and-so has this capacity or position, is he an executive?" And the assumption was made in respect to the specific defendant and not generally. That is my recollection of the record.

The Court: I can't see the difference. It seems to me evident enough what Mr. Gladstein is doing and if (3400) he does what I permit him to do I should think it will clearly suffice. I do not see where there can be the slightest ambiguity.

Mr. Gladstein: All right.

By Mr. Gladstein:

Q. I want to go to the defendant Foster, if I may. I want you to assume the man to be a sailor. In which of the four groupings would he belong?

Mr. McGohey: I call attention to the fact that on cross-examination I asked no question whatever

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about the defendant Foster, as to whom this case has been severed.

The Court: Sustained.

Q. I will proceed to the defendant Dennis. Assuming the man to be a teamster, in which of the four categories would he be? A. With the reservation I stated earlier, he would be a manual worker.

Q. And if he were also put down as an electrical worker in which of the four would he be? A. The same is true.

Q. And if he were a lumberjack? A. A manual worker.

Q. We will pass to the defendant Gates. Assuming that he were a construction laborer, in which of the four groupings would he be? A. He would be a manual worker.

Q. I will pass to the defendant Williamson. If he were a pattern maker, in which of the four groups would (3401) he be properly classified? A. A manual worker, craftsman.

Q. I will pass to the defendant Green. Assuming that he were a metal worker, in which of the four groups would he be? A. A manual worker. All of this is on the assumption of no supervisory functions above that of foreman.

Q. I pass to the defendant Winter. If he were a draftsman in which of the four categories would he be? A. He would be in category 2, professional worker.

Q. I pass to the defendant Stachel.

The Court: What would that second be?

The Witness: Draftsman is classified as a professional.

The Court: As a professional, yes.

Q. The defendant Stachel, assuming he were a cap maker, in which of the four categories would he be? A. Assuming that he is an operative or certainly in no supervisory capacity above foreman, he would be a manual worker.

Q. I will pass to the defendant Winston, assuming him to be a carpenter, in which of the four categories would he be? A. The same is true; if he were not in business,

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or business as a contractor, he would be classified as a manual worker.

(3402) Q. As to the defendant Davis, assume that he were a member of the bar and a lawyer, in which of the four categories would he be? A. Professional worker.

Mr. Gladstein: Your Honor, I have concluded with my redirect examination. I wish to offer in evidence certain exhibits that thus far have only been received for identification. Perhaps we should permit Mr. Wilkerson to remain on the stand in case any question is raised with respect to them.

The Court: Yes, you may do that.

Mr. Gladstein: No. 12 for identification is the United States Government Census report entitled "Housing" and deals with the Bronx.

I offer that in evidence.

Mr. McGohey: No objection.

(Defendants' Challenge Exhibit 12 for identification received in evidence.)

Mr. Gladstein: No. 13 deals with Housing in Manhattan and is a similar publication from the United States Census Bureau.

I offer it.

(Defendants' Challenge Exhibit 13 for identification received in evidence.)

Mr. Gladstein: No. 14 for identification is entitled "Population and Housing" dealing with Yonkers, (3403) New York, and is also a publication—16th Census of the United States.

Mr. McGohey: I don't recall that there is any testimony based on that, your Honor, but I have no objection to it except as it enlarges the record.

The Court: Then it had better be marked.

Mr. McGohey: So for the purpose of saving time may it be deemed that I have no objection to any exhibit going in unless I state I have an objection? That will save time I think.

The Court: Yes.

Colloquy of Court and Counsel

(Defendants' Challenge Exhibit 14 for identification received in evidence.)

Mr. Gladstein: No. 15 for identification is entitled "Population" and deals with the City of New York.

I offer it.

(Defendants' Challenge Exhibit 15 for identification received in evidence.)

Mr. Gladstein: No. 22 is Poor's Register of Directors and Executives for the year 1949.

I offer it.

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

Mr. Gladstein: I may say that—

Mr. McGohey: May I state the reason for my objection, your Honor?

(3404) The Court: Yes.

Mr. McGohey: We have been considering 28 panels that go back as far as—at one time we had a total of 31 that go back as far as 1939. Now, if there is any probative force of a document dated 1949 with respect to the occupational category of a juror at the time he qualified or first began to serve in 1939, it completely escapes me.

I object to this as irrelevant.

Mr. Gladstein: We had some testimony this morning from Mr. Wilkerson and there is an exhibit in evidence setting forth the names of certain corporation executives on the 1949 panel. Of course, their names would be in Poor's Register.

Mr. McGohey: I move to strike that, that, of course, their names would be in Poor's. And, furthermore, the exhibit that counsel is talking about is not received.

The Court: No, I don't recall this witness testifying today that he got any data from this exhibit.

Mr. Sacher: I understand the objection to be, your Honor, that the exhibit is too recent, in other words, that it does not cover panels within the period 1940 to 1948?

Colloquy of Court and Counsel

Mr. McGohey: The exhibit is objected to (3405) because of the lack of relevance and materiality.

Mr. Sacher: Well, may I make this observation? Exhibit 102, which is the Tolman report, specifically says that among the select sources used for the selection of jurors Poor's Directory of Directors was one of them; and what we are doing is putting in this volume not because it represents the specific volume used but because it is Poor's Directory of Directors.

Now if Mr. McGohey says that his objection is not to the relevancy of it, but to the year in which it is issued, then I am sure we can easily procure copies for each of the years in question. And we will be glad to do it. But I do not see there is much point in cumbering the record—

The Court: Well, it is a pretty heavy volume and it does not seem to have very much bearing on the case. I will sustain the objection.

Mr. Gladstein: It can go in now or when the clerk is on the stand. It does not matter, your Honor.

The next one is of similar character—no, it is not; the next one, 23, is the Election Law. I will offer that.

(Defendants' Challenge Exhibit 23 for identification received in evidence.)

(3406) Mr. Gladstein: 24 is the Social Register referred to in the testimony.

I will offer it now.

Mr. McGohey: Objection on the same grounds that Poor's Manual was objected to. It is neither material nor relevant.

Mr. Sacher: May I in that connection also invite your Honor's attention to Exhibit 102, the Tolman Report, which describes the Social Register as one of the select sources from which names of prospective jurors were chosen.

The Court: Well, I think I am going to allow this because it was pointed out that I was in there, and that that was supposed to disqualify me, as I remember it.

Colloquy of Court and Counsel

Mr. Gladstein: There are lots of reasons why we have urged your Honor to disqualify yourself.

The Court: Yes. You have urged a good many grounds. That was one of them, as I remember it.

(Defendants' Challenge Exhibit 24 for identification received in evidence.)

Mr. Isserman: If your Honor please, I know of no time at which defense counsel urged that you be disqualified because your name appeared in the Social Register.

(3407) The Court: What was the relevancy of pointing out that I was in there?

Mr. Isserman: I don't know who pointed it out, but it just may have been done in passing.

Mr. Gladstein: I did.

The Court: You think in your opinion it is not a relevant fact in the case?

Mr. Isserman: It wasn't testified to as a fact, your Honor. It was stated by one of the counsel, I suppose.

The Court: Well, either you gentlemen claim that there is some relevancy to the fact that my name appears in the Social Register or you do not. Now which is it?

Mr. Isserman: I am talking for myself. I have not conferred with counsel. But I do not hold that your appearance in the Social Register is a relevant fact which we urge in any connection in this case.

The Court: Do the other counsel agree with your position?

Mr. Gladstein: Speaking for myself I believe this to be a factor to be taken into consideration with other evidence, that your Honor is listed in a book with others, which book has been used as a source from which large numbers of jurors have been brought into the (3408) jury panels.

The Court: Well then, at least one of you counsel think that that is, together with other facts, a disqualifying circumstance.

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Mr. Crockett: I should like to state to the Court—

The Court: Well, let me first get Mr. Gladstein's point about this.

Mr. Gladstein: I believe it is material. I don't say this—

The Court: It can be material to no other issue than to my disqualification, can it?

Mr. Gladstein: Than to the proposition that I urged that your Honor should not sit in judgment on this matter.

The Court: That is what I call disqualification.

Mr. Gladstein: Yes.

The Court: So I was right all the time. And it is just what I understood was argued before; so, as at least one of the counsel for defendants claims that that is a disqualifying circumstance, taken either by itself or in combination with others, I will admit the Social Register in evidence.

Mr. Isserman: If the Court please, we offered it for other purposes.

(3409) The Court: Well, it is going in, and I don't think you need worry about it any more.

Mr. Gladstein: Now, there are a series of panel sheets that I will skip over for the moment.

I think while I am checking the remainder of the exhibits to be offered, Mr. McGohey can conduct recross if he desires.

The Court: Very well.

Recross examination by Mr. McGohey:

Q. Mr. Wilkerson, this morning in going over the history cards of the five jurors concerning which I examined you last week, Mr. Gladstein did not question you about the juror Albert F. Berenger. I show you his history card, which is marked Government's Challenge Exhibit Z, and ask you if you will tell us how many times it appears from that card he has been called for jury duty?
A. Nine times.

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Q. Will you tell us how many times the letter E appears? A. Eight times.

Q. And what letter appears for the other time? A. S.

Mr. McGohey: Thank you.

The Witness: You are welcome.

The Court: What were the years? Is that from 1942 to 1948 or 1943 to 1948, or what?

(3410) The Witness: The earliest is May 17, 1943.

The Court: And the latest is in 1948?

The Witness: July, 1948.

The Court: Very well.

Mr. McGohey: In order to correct the spelling of the name on the record, the card shows B-e-r-i-n-g-e-r. There was some question as to whether it was misspelled.

The Court: Just one "r"?

Mr. McGohey: Yes, B-e-r-in-g-e-r, first name Albert F.

The Court: Yes.

Mr. McGohey: May I have Exhibit 137, please?

(Exhibit handed to Mr. McGohey.)

By Mr. McGohey:

Q. Now I show you Challenge Exhibit 137, Mr. Wilkerson. I understand your testimony this morning to be that this exhibit shows about 1100 repeat listings? A. Approximately.

Q. Is that what you testified to? A. I think so.

Q. Would you count them, please? A. (Witness counts.)

Q. Have you counted them, Mr. Wilkerson? A. I have.

Q. Will you tell me how many appear on there? A. May I refer to my notes—well, first—

(3411) The Court: No—

Mr. McGohey: I should like to have an answer to the question.

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The Witness: Let me check it again.
320.

The Court: 320?

The Witness: Yes.

I should like, if I may, to check my notes to see where that 1100 figure came from. I was not referring to that table at that time.

Mr. McGohey: At the moment, Mr. Wilkerson, I am not interested in where it came from. I wanted to find out what came from the exhibit in evidence.

May I have it, please?

The Witness: Yes (handing).

Q. Now, in your testimony this morning I understood you to say that this data about the salaries and wages of executives concerning which you made an estimate the other day indicating that about 26 per cent earned less than \$30 a week—you said that that table reported only wages and salaries, and that it did not include dividends and bonuses and things of that kind; is that correct? A. That is right.

Mr. McGohey: May I have Exhibit 9, please?

Mr. Gladstein: I think it is right up there (3412) (handing).

Q. Now I call your attention to page 6 of Defendants' Challenge Exhibit 9 in evidence and I ask you to read, if you will, please, the paragraph beginning five lines from the bottom of the column to the right on page 6. A. "Money wage or salary income as defined for the purposes of the 1940 Census includes all money received by"—

Q. Will you read it slowly, please. "Includes all money"— A. —"all money received by persons as compensation for work or services performed as employes, including commissions, tips, piece rate payments, bonuses, etc," for services performed as employes, which is quite a different thing—

Q. "As well as"—will you continue, please. A. "As well as receipts commonly referred to as wages or salaries."

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Mr. McGohey: Thank you.

A. (Continuing) This is quite a different thing, your Honor—

Mr. McGohey: I move to strike out any further answer, your Honor.

The Court: So it did include bonuses?

The Witness: For employes, but not the bonuses that the president of a corporation receives which exceed (3413) his salary—

Mr. McGohey: I move to strike that, your Honor. There is no testimony in support of that.

The Court: It seems quite clear to me that it includes bonuses, and you said before that it did not.

Mr. McGohey: Not only that, your Honor, but I submit that an executive of a corporation is an employe of the corporation.

The Court: That is right.

By Mr. McGohey:

Q. Now, Mr. Wilkerson, I hand you and call your attention to Government's Challenge Exhibit V in evidence.

A. Yes?

Q. It appears from there, does it not, that there are 500 additional occupations beyond those which you find in the alphabetical index, which I think is Exhibit 16 in evidence. That is correct, is it not? A. Where do you get your figure 500?

The Court: Well, that is what you said before, and that there were 500 occupational titles there in addition to the alphabetical index, Exhibit 16.

The Witness: I said that, your Honor?

Mr. McGohey: I think, if the Court please, I made that statement. I stated to the Court that I made that representation to the Court after having them counted, (3414) that there were 500 additional titles, and that there are 50 occupations listed there with the asterisks alongside—

The Court: That is right.

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

Mr. McGohey: —yes, there were 50 with the asterisks which indicated a change.

The Court: Now, what is it you are asking Mr. Wilkerson now?

Mr. McGohey: I want to find out from Mr. Wilkerson how many of the occupations listed on Challenge Exhibit V appear in the 28 panels about which he has been talking.

The Witness: I could not answer that question without checking it. I might say that we received one of these this morning, and such a check is in process, and before I left the office it is apparent that very, very few of them, but I cannot tell you exactly how many.

Q. At the time you gave your testimony concerning the occupational classification of the 28 panels or 31, whichever it is, concerning which you did testify, you did not use it, Challenge Exhibit V? A. And we also pointed out that—

Mr. McGohey: If the Court please.

The Court: That is right.

Mr. McGohey: I have no further questions.

The Court: Any further questions, Mr. Gladstein?

(3415) Mr. Gladstein: No.

(Witness excused.)

The Court: Now that the recross of this witness is concluded I find this memorandum dated February 14, 1949, that was delivered to the Court this morning in response to my order of last Friday, is wholly insufficient; and therefore in the exercise of my discretion as to the order of proof, and without precluding counsel for the defendants as to what they may later do, I direct that at the close of the luncheon recess the Government proceed with its proof.

We will now take a recess until 2.30.

(Recess to 2.30 p.m.)

Colloquy of Court and Counsel

AFTERNOON SESSION

Mr. Sacher: Your Honor, the defendants Gilbert Green and John Williamson are absent. I told Mr. McGohey about it. And they and the other defendants waive—

The Court: Very well.

I think this statement that was handed me this morning should be marked as an exhibit.

Mr. Isserman: I was just going to ask that it be marked. May we have it marked?

The Court: It will be marked as Court's Challenge Exhibit 1.

(3416) (Marked Court's Challenge Exhibit 1.)

Mr. Isserman: If the Court please, I would like to ask that the exhibit which is marked as the Court's exhibit be not made available to the U. S. Attorney.

The Court: Why not?

Mr. Isserman: As it contains the statement of our evidence and disclosing it to him at this time prior to the presentation of the evidence may prejudice the case of the defendants and would deny them due process of law.

The Court: I don't see how there can be any prejudice from it. It is an exhibit now and he is entitled to see it.

Mr. Gladstein: May I be heard on that, your Honor? It is an exhibit indeed because your Honor required and directed that we prepare it for you, but I would remind the Court that you asked us to present to the Court a statement of what we were going to prove and how we were going to prove it, in other words, to reveal the evidentiary nature of the rest of our case. This is—just a moment, your Honor.

The Court: Well, if you urge the point, and it does not seem to me a matter of great importance, I will direct the clerk to return the paper to me. I see nothing vital about the United States Attorney seeing it (3417) or not seeing it. So that I will withhold it.

Colloquy of Court and Counsel

Mr. Gladstein: Yes; I was going to suggest that since this is an adversary proceeding I would be glad to have Mr. McGohey see that exhibit when the Court directs that Mr. McGohey make equally available to us what he intends to prove and by whom.

The Court: Well, there may be something in it. I will withhold it. It seems to me, as I read it, that there was little likelihood of prejudice, but I am unwilling to direct that he see it if you really feel there is any danger of that. So that I have it back now in my custody, where it will remain.

Mr. McGohey: May the record show, your Honor, that the United States Attorney has not seen it?

The Court: Yes. It may so appear on the record.

Mr. Isserman: If the Court please, the direction or ruling of the Court made at recess time to the effect that the defendants be at this time precluded from proceeding with their case and that the Government be allowed to proceed with its case at the commencement of this afternoon's session, we had then no opportunity to object because the same, as your Honor will recall, was made at the time of adjournment.

I herewith on behalf of my clients object to the Court's ruling on the ground that the ruling interferes (3418) with the rights of the defendants to a complete and full presentation of the evidence on their behalf. While the ruling states that it is merely a ruling on the offer—order of proof it is for that reason in the Court's discretion. The defendants contend that this is an abuse of the Court's discretion in respect to order of proof and amounts to a lack of due process of law as guaranteed to the defendants by the Fifth Amendment to the United States Constitution.

Furthermore counsel were not apprised in what respect the memorandum which the Court has marked as its own exhibit just referred to was, and

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I believe I am quoting, wholly insufficient—unquote—and for what purpose it was used and in what respect it was insufficient for that purpose. And no opportunity was given to the defendants to present to the Court the reasons why the memorandum was sufficient and why they should be allowed to continue in the presentation of their proof.

Mr. Sacher: May it please the Court, I should like for the clients I represent to state our objections to this remarkable ruling of your Honor's. I say "remarkable" because we have just examined our first witness, and we had indicated to the Court in a detailed statement which we submitted this morning what we were going to prove in regard to the official misconduct (3419) of those in this court who engineered, planned and administered this diabolical jury system whose characteristics—

The Court: Now, let us not have any more of this propaganda, Mr. Sacher.

Mr. Sacher: Well, all right, if your Honor think it is, I shall refrain.

The Court: You made extravagant charges; you iterated them and reiterated them, and I am not going to have any more of it. Now we have had four weeks of the sort of thing that I have had occasion to speak of. I have made a finding here which is in my judgment amply sustained by the record, and I am just not going to have any more of it.

Mr. Sacher: If your Honor please, there would have been no occasion for me to speak at all on this subject if, as we desire to do, we had been permitted to proceed expeditiously with the presentation of our proof. That was the course we were bent on. We were engaging in nothing which any impartial court would regard as improper conduct. We were submitting our evidence. We submitted this long statement to you which you required us to work on over the weekend, and, as Mr. Isserman pointed out, one of these days was the Sabbath; the other was a holiday; but we had (3420) to

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work right through so as to submit this memorandum to you.

Now, I must in all candor say, your Honor, that it is very difficult for us among the defense counsel to believe that the United States Attorney was caught unawares in the request or the direction which the Court made to him to proceed with his proof on an hour and a half's notice—

The Court: Mr. Sacher, you are becoming positively insolent.

Mr. Sacher: Well, I am not. I am stating—

The Court: Now I won't have it.

Mr. Sacher: I am stating what your Honor seems—

The Court: You have charged me with about everything that a lawyer can charge a court—

Mr. Sacher: I am making no charge—

The Court: You are charging me by this innuendo of some sort of connivance with the United States Attorney, and I just will not have any more of that.

Mr. Sacher: Your Honor, I wish to renounce any such intention. I have no such intent. All I am saying to your Honor is that in the midst of the presentation of our proof, and without any prior notice from your Honor to either side—

(3421) The Court: You had plenty of warning.

Mr. Sacher: Your Honor, all I can say is that whatever warnings you have given certainly were not justified indicating the course which you have dictated to us at this juncture. We were calling, as we indicated in our memorandum to you today—we were going to call witnesses to establish on the basis of firsthand and personal knowledge the facts in regard to the character of the various areas from which jurors were selected as well as from those from which they were excluded; and among the items which we enumerated in the memorandum presented to your Honor was that which indicated that we would show through a clerk of this court, through judges and others that the jury system was of a character that we have complained of here.

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Now, I respectfully submit, your Honor, that at such a pass in the adducement of evidence the interruption of our presentation of evidence and the direction to the Government to put its case in before we had rested and before your Honor has made any declaration as to his opinion as to the sufficiency or insufficiency of the evidence to establish a case, I respectfully submit that this is rather unprecedented procedure.

Now, the point we are making is fundamentally (3422) this: we have prepared our order of proof. We were prepared, in deference to your Honor's request and ruling, to proceed with the utmost expedition, because there is one basic purpose that the defense has in this case, and that purpose is to establish its charges concerning the selection and administration of the jury system in this district. It does not serve the purpose of the defense to delay, obfuscate or obscure the quality, the weight and the significance of that testimony; and I therefore submit, your Honor, that in these circumstances and in the light of our undertaking to move speedily and directly in the presentation of proof, there is no real occasion for the direction your Honor has made. And in that connection let me observe, if your Honor had said on the basis of what we had laid before the Court that you would direct us to call certain witnesses first, then, whether we would like the ruling or not, we would be disposed to regard that ruling as falling more or less within the discretion which the Court has expressed itself as exercising in directing the order of proof. But I respectfully submit that what your Honor has directed deals not with the order. You have destroyed, if I may say so, all order of proof on our part. You have truncated it. You have, for the nonce, taken (3423) from us the right to present evidence in support of the serious charges that are contained in this challenge; and in those circumstances I respectfully submit, your Honor, that in the proper exercise of discretion your Honor ought to permit the adduce-