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Rebuttal—Cross*

the First and Fifth Amendments, to say to Mr. Gordon, "I prefer to not answer that question"?

The Court: I will advise him as to his constitutional rights that if there is any question asked, the answer to which you think will tend to incriminate you, you may refuse to answer on the ground that the answer might tend to incriminate you.

I will overrule the objection, and please put the question to the witness.

Mr. Gordon: Have you got the question, Mr. Reporter?

(Question read.)

A. May I say in regards to this type of questioning something myself?

Q. Well, I would appreciate—

The Court: You may either answer it or refuse to answer it on the ground that I have specified.

A. Well, then I would like to answer the question (4780) on the grounds that I am here primarily because I am concerned about a democratic jury system in the State and because I feel that it is important for the American people and this court to know that non-Communists are just as interested as Communists in this question, therefore I shall answer that I have not been a member of the Young Communist League.

Q. Were you ever a member of the American Youth for Democracy? A. I was.

Mr. Isserman: I object to that question because it assumes—

The Court: Well, he has already answered. He said he was.

What is the name of this last one?

Mr. Gordon: American Youth for Democracy.

Mr. Isserman: I suppose that is improper, too.

Mr. Gladstein: The very word "Democracy", Mr. Gordon, I am sure will testify is improper.

Mr. Gordon: I will testify—

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The Court: Sometimes the word is used in strange contexts.

Mr. Isserman: If the Court please, I object to this whole line of questioning. What he is doing is drawing the tactics of the Un-American Committee into this courtroom, and I think the Court should not allow it. (4781) This is baiting the witness, and I object.

The Court: Well, you have made your position very clear, Mr. Isserman.

Q. How long have you been a member of the American Youth for Democracy?

Mr. Gladstein: I object to that as incompetent, irrelevant and immaterial. If—

The Court: Overruled.

Mr. Gladstein: May I finish? If the Court perchance should deem the answer material as to whether a person has been or is a member of the American Youth for Democracy, I assume that the answer to that being in the affirmative, establishes all that the Government is entitled to have for the purpose of having any possible adverse inferences drawn, and the question of how long a person has been such a member of such an organization is wholly immaterial and improper cross-examination. I ask your Honor to reverse the ruling.

Mr. Sacher: May I respectfully say to your Honor that membership in the American Youth for Democracy has no more bearing on the credibility of this witness than the fact that Judge Knox is director of two of the biggest corporations in this country.

Mr. Isserman: Or that your Honor is in the Social Register.

(4782) The Court: You see, you are beginning to get into that same old sort of thing that we drifted out of a week or two ago, and I think it is better to just make the objection and eliminate the arguments.

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Now I overrule the objection, and the witness will answer the question.

Mr. Gordon: Will you read the question?

The Court: Please bear in mind, Mr. Darr, that when you do what you did a moment ago, to make a little speech, it is not very relevant to the question. I think you would do better to avoid it.

Mr. Gladstein: Let the record show my objection to the Court's gratuitous and improper characterization of the witness's testimony, as an effort to make a speech—

The Court: You may—

Mr. Gladstein: Well, I would like to finish what I have to say, because having—

The Court: Mr. Gladstein, this is one time when you are not going to finish what you want to say.

Mr. Gladstein: I object to the Court's statement.

The Court: Very well.

Mr. Gladstein: And I except to the ruling.

Mr. Gordon: Do you have the question?

(Question read.)

(4783) A. I am no longer a member.

Q. How long—withdraw those two words.

Q. What was the period of your membership?

Mr. Isserman: I object for the reasons stated, your Honor.

The Court: Overruled.

A. I am not sure. I believe '42 to '44.

Q. From 1942 to 1944?

The Court: That is what he says.

Q. When was the American Youth for Democracy formed?

Mr. Crockett: I object to that, your Honor. This question has absolutely no relevance—

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The Court: Yes. I will permit no further cross-examination as to the American Youth for Democracy, unless there is some substantial thing that I can't imagine what it is.

Mr. Gordon: Well,—

The Court: I do not see what difference it makes whether he knows when it was formed, unless you claim that he was one who organized it, or something of that kind.

Mr. Gordon: Well, it wasn't in existence in 1942 when he said he was a member.

Mr. Isserman: If the Court please, his testimony—

The Court: Well, he might get the year wrong. I wouldn't think that was a matter of particular importance.

(4784) Mr. Gordon: I have one more question about that, about the Young Communist League, if I may ask it.

The Court: Very well.

Q. Is it not a fact, Mr. Darr, that the American Youth for Democracy was the successor organization to the Young Communist League?

Mr. Gladstein: Now I object to that.

Mr. Isserman: I object to that, if the Court please, as an improper question and not proper cross-examination, not based on any facts in evidence, and no foundation having been laid for it.

Mr. Gladstein: Moreover, contrary to the facts, that is to say, the basis already established by the witness's testimony, he having testified that he was never a member of the Young Communist League, it comes with impropriety to ask for his conclusion as to whether organization A was the successor of organization B.

The Court: You all seem to be so touchy about questions—

Mr. Isserman: We are touchy because the questions are improper.

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The Court: Well, I am going to allow it just the same.

Mr. Crockett: May I suggest, your Honor, that what the Court is doing is taking judicial notice of a (4785) situation that is now presently before the Supreme Court for determination. The Court is in effect condoning everything that the House Un-American Activities Committee has ever done or that stood for. I respectfully submit that in effect the Court is judicially noticing something that can't possibly be established, that there is something illegal about belonging to any of the organizations enumerated in the question put by Mr. Gordon.

The Court: You know, Mr. Crockett, it is a question of the interest of the witness. The nature of the indictment here is such that if this man has some Communist affiliations it would go to show his interest.

Mr. Crockett: Is your Honor suggesting that mere membership in the Communist Party means that the witness is disqualified to testify?

The Court: No. I think it bears on his interest, just as a man who is a partner of someone else or—

Mr. Crockett: But I am sure—

The Court: —related to it in some way; I don't know.

Mr. Crockett: If the Court please, let me ask one further question. I am confused. I would like to know whether or not membership in the Democratic Party or the Republican Party would also reflect upon my (4786) credibility or the credibility of the witness on the witness stand.

The Court: Well, I can imagine cases where the issues were such that it might be a relevant inquiry. Here I determine that this question is a proper question.

Now do you know—

Mr. Gladstein: Your Honor—

The Court: —Mr. Darr, whether this American Youth for Democracy was the successor to the Young Communist League?

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The Witness: Well, it all depends on what you mean by “successor.”

The Court: I see; there was some connection?

The Witness: The Young Communist League was a broad youth organization. It was not a narrow partisan political group.

The Court: All right.

By Mr. Gordon:

Q. Where were you born, Mr. Darr? A. New York City.

Mr. Gordon: No further questions.

Mr. Gladstein: No questions.

Call the next witness; Mr. Follmer.

Mr. Isserman: Just a minute.

Redirect examination by Mr. Isserman:

Q. Rev. Darr, what are the objects of the National (4787) Council for American Soviet Friendship? A. The objects of the National Council for American Soviet Friendship are world peace through friendship between the two largest nations in the world.

Q. And from your knowledge of that organization is that to which it has been devoted? A. Yes.

Q. And have you engaged in that direction? A. I have.

Q. And do you consider that un-American and subversive? A. I do not.

Mr. Isserman: That is all.

Mr. Gordon: Perhaps your Honor would like to have a copy of the Executive Order which lists that as a Communist organization (handing).

The Court: Call your next witness.

(Witness excused.)

Mr. Isserman: I object to the production, to the handing to the Court of any exhibit by the District Attorney, by the United States District Attorney, not in evidence.

Colloquy of Court and Counsel

The Court: But I must take judicial notice of "Executive Orders." What is wrong about showing the Executive Order which is relevant to the case?

Mr. Isserman: If the Court please, there is nothing in an Executive Order which relates to the National (4788) Council for American Soviet Friendship.

Mr. Crockett: May I add to that, that while the Court might take judicial notice of an Executive Order, my understanding is that what Mr. Gordon has handed up is what purports to be a copy, and there is nothing in the record to indicate whether or not it is a true and correct copy.

Mr. Isserman: If your Honor please—

The Court: I am going to take judicial notice of the contents of this.

Mr. Isserman: Before your Honor does, I would like to state this, that I happen to be involved in litigation in which the National Council for American Soviet Friendship is contesting the ruling of the Attorney General, which was made without notice or hearing, and which we charge was made unconstitutionally, and that matter is now before the Circuit Court of Appeals in Washington, D. C.

The Court: Well, frankly I am puzzled about the fuss that is being made over this particular matter. I was at a loss to understand it when it first came up, but I am beginning to see that there may be more to it than I thought.

Mr. Isserman: I would like to have the exhibit, the document which Mr. Gordon handed to your Honor marked (4789) as an exhibit in the case, for identification.

The Court: You haven't any objection, Mr. Gordon?

Mr. Gordon: No, sir.

The Clerk: Defendants' Challenge Exhibit—

Mr. Gordon: Well, we will mark it as a Government's Challenge Exhibit, if we may, since I handed it to the Court.

(Marked Government's Challenge Exhibit FF.)

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Mr. Gladstein: Have you sworn the witness?

The Clerk: Not yet; I haven't had an opportunity.

The Court: He has been pretty busy.

Mr. Gladstein: He has been busy?

How much time do I have, Judge?

The Court: Well, just a second until I add it up here. (After examining) You have 32 minutes, 32 extra minutes.

GEORGE J. H. FOLLMER, called as a witness on behalf of the defendants on the challenge in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Gladstein:

Mr. Gladstein: Now before I begin the examination of Mr. Follmer, and for the purpose of not forgetting it, I want to offer in evidence the panels, the jury panels, the petit jury panels which were compared with the photostats obtained from the clerk's office and which were (4790) listed on an exhibit, the number of which I have forgotten, that was introduced through Mrs. Rodman today. Those exhibits are 25, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 50 for identification.

I offer those in evidence.

The Court: You had better pause until—

Mr. Gladstein: Can't we do that afterwards? I just want the record to show that I am making the offer.

The Court: All he need do is get them out and hand them to Mr. Borman so that we will know what they are and not get them mixed up.

Mr. Gladstein: We can do that at the end, if we will. I just do not want to forget, and I want to ask Mr. Follmer my questions, if I may.

Q. Mr. Follmer, you are the former clerk of this court, are you not? A. Yes.

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Q. When did you first begin to hold that office? A. I think it was in 1939.

Q. And for how long a period did you hold the office?

A. Six years, I believe.

Q. Until 1945 some time? A. About that time.

Q. And you retired in 1945? A. Yes.

Q. You retired? A. Yes.

Q. Were you connected with the clerk's office before (4791) 1939, the time when you became the clerk of the court? A. Oh, yes.

Q. In what capacity? A. As—well, first as assistant to the chief deputy, and later as chief deputy clerk.

Q. To whom were you assistant just prior to 1939? A. Charles Weiser was clerk, I believe, then, and I was first chief deputy.

Q. Now just about when in 1939 did you become the clerk? A. I am afraid I can't tell you that.

Q. All right.

The Court: By the way, when I said 32 minutes, I did not realize we had already gone past the time. You have 32 minutes from 4.30.

Mr. Gladstein: Well, you are saying two minutes past five, is that right, Judge?

The Court: Yes.

Q. Now did you, Mr. Follmer, in the discharge of your duties as clerk of the court have general direction and supervision over the jury clerk? A. Yes.

Q. Now that jury clerk in 1939 was a Mr. McKenzie, was it not?

Mr. Gordon: No, that is not the testimony. I object to it.

Q. Well, who was the jury clerk at that time? (4792)

A. In 1939?

Q. Yes.

The Court: Say, Mr. Follmer, how old are you?

The Witness: I am 69—79.

The Court: 79?

The Witness: 79, your Honor.

A. I think Kellogg was jury clerk then.

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Q. And did subsequently a Mr. McKenzie become jury clerk? A. Yes.

Q. Do you recall when? A. No, I do not recall when. I did not keep track of dates.

Q. But it was during the period when you were the clerk, is that correct? A. To the best of my recollection, yes.

Q. Now at the time that you became clerk in 1939 there was going on a revision or revamping of the system of jury selection; that is so, isn't it?

Mr. Gordon: I object to the leading questions of counsel's own witness.

The Court: Sustained.

Mr. Gladstein: I want to say with respect to this witness as with respect to Mr. Duncan, that I call this witness as an adverse witness.

The Court: Well, I am not going to treat this gentleman as an adverse witness.

Mr. Gladstein: In contemplation of law, he is.

(4793) The Court: For many years he had nothing to do with this system here, and he is a man of advanced years, and I see nothing to indicate any hostility on his part at all.

Mr. Gladstein: In contemplation of law, inasmuch as the matter I am inquiring about is the discharge of—

The Court: Well, I have an additional reason, the question of his age; some of these leading questions have all kinds of assumptions of facts in them, and I do not think it is fair.

Q. Now in 1939 when you became the clerk of the court, was there a revision going on of the system of jury selection? A. Why, so far as I recall, a revision was going on all the time before that.

Q. When did it begin? A. I couldn't tell you that. It may have begun four or five years before that.

Q. Well about four or five years, you say? A. Yes, even before that. Further back we were constantly—I wouldn't say "revision." I would rather say adding to the list.

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Q. Well, wasn't there a revamping of the system taking place at that time?

Mr. Gordon: Objection.

The Court: Sustained.

Q. All right. Now let me ask you this, Mr. Follmer: (4794) Did you have occasion to talk to Judge Knox at or about the time that you became jury clerk—I mean clerk of the court, concerning the manner of selecting jurors in this court? A. I don't think the Judge spoke to me about that at all. I knew that it—I had no occasion to discuss it with him. We talked about the juries all the time.

Q. Go ahead. A. I say, we talked about juries all the time, about making up, keeping up the jury list.

Q. Did you have— A. You see, there was a time there when we were losing so many jurors—

Q. I mean in 1939; that was before the war began and when you first became jury clerk. Around that time did you have occasion to talk to Judge Knox about the places where you ought to be getting your jurors from? A. I don't think so; I don't think I had occasion. I didn't ask the Judge how I should conduct my office or work of the office.

Q. Did you learn when you became clerk of the court of the sources to which the jury clerk was going to get the jurors for this court? A. Yes. In fact, I—

Q. Did you learn— A. —I instructed him to get them from every possible source.

Q. Did you give instructions in writing? A. No.

Q. You just gave oral instructions? A. Yes, sure.

(4795) Q. All right. That was in about 1939, is that correct? A. It was going on all the time, yes.

Q. Now did you at that time instruct the jury clerk to use Poor's Directory of Directors as a source of names of jurors? A. Why, I told him to get every possible source—

Q. No. Did you tell him to use that—

Mr. Gordon: Now why should counsel interrupt his own witness, your Honor?

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Mr. Gladstein: Because the answer is not responsive.

The Court: I think the answer was not responsive, and I think counsel was just rephrasing it so as to ask him whether he specifically told him, whether he spoke about, to use that particular book.

(To the witness) Do you remember doing that, Mr. Follmer?

The Witness: As I recall it—

The Court: Did you tell him to use that particular book?

The Witness: As I recall it the jury clerk endeavored to get lists from every possible source, and I believe that was one of the lists that he used.

Q. Well, did you instruct him to use it? A. Why, I think he probably used it of his own accord, (4796) when I told him to go ahead and tap every possible source.

Q. Who was the one you told this to—Mr. Kellogg, is that it? A. Well, that is hard to say.

Q. All right. A. At this time I don't know who was the clerk at that particular time.

Q. Did you keep records at all of the places, the type of directory or other type of source from which you—from which to get the names of people whom you asked to come in and be jurors? A. I kept no records.

Q. Did you ask the jury clerk to keep any such records? A. I don't recall it whether the jury clerk would keep—I imagine just as a business matter, a list of what he was using so he wouldn't just use the same thing over again, so that he could diversify it.

Q. Did you ever see any records that contained a list or enumeration of the diversified sources that might have been used? A. No, I think that was all oral.

Q. You yourself kept no records of the sources of jurors, is that it? A. No, I kept none.

Q. Can you state whether or not the jury clerk did during those years from 1941 and continued thereafter? A. No, I can't state whether he did or not.

Q. Did you ever instruct him to keep records of the places where he was getting jurors from? A. No, except

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this, I instructed him to use all available means and, (4797) for instance, election lists; why, he would keep memorandum so he wouldn't stick to one district, so he would diversify it and reach all the districts eventually.

Q. Did you ever ask him to make a record so that you could inspect, so that you could see that he was following the instructions to diversify? A. No. I knew that he could be depended upon. He was a reliable clerk, I thought, and I left it to his judgment. I left it to him to use his best judgment.

Q. And you never kept, nor did you order him to keep a record during all those years of where the jurors came from, is that right? A. I expected him to keep memorandum so that he would know what district he reached, so that he could turn over and follow one district after another.

Q. You say you expected; is it correct that your expectation was based upon the instruction that you gave him? A. Why, no, it was based upon the intelligence of the jury clerk.

Q. You expected, then, that he would be intelligent enough to keep a record of where he got the jurors from, is that correct? A. Well, intelligent enough to remember at least. I don't say to keep a record—at least intelligent enough to remember what sources he (4798) took the jurors from.

Q. Now Mr. Follmer, while you were jury clerk a study was made of the system of jury selection here by a representative of the Administrative Office of the United States Courts; do you recall that?

Mr. Gordon: Objection to the word "study."
I presume he is talking about Mr. Tolman's memorandum after his visit here.

Mr. Gladstein: All right, I will put it differently.

Q. Did you have occasion to meet Mr. Tolman, a representative of the Administrative Office of the United States Courts? A. Yes.

Q. And you had occasion to do that because he wanted to know about the manner in which jurors were selected here, isn't that right, sir?

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Mr. Gordon: I object to that, what Mr. Tolman wanted to know.

The Court: Sustained.

Q. Did you give Mr. Tolman information for the purpose of having a report made as to the manner in which jurors were selected in this court? Did you, sir? A. Did I give him—why, I answered any questions that he asked as to how we carried on our work, not only as to jurors but the court work in general.

(4799) Q. Yes. Did you know when you were giving him that information that it was to be embodied in a report? A. No, I did not.

Q. Did he tell you about that? A. No.

Q. Did you ever see a copy of the Tolman report? A. I did, yes.

Q. When did you see it first? A. When—soon after it was published—or issued, rather.

Q. Was it sent to you? A. That I don't recall.

Q. Did you have one in your office while you were clerk? A. There may have been; one may have been there.

Q. You read it, I suppose? A. Yes, I read it.

Q. Did you ever have occasion to write anything concerning that report, either to the Administrative Office of the United States or anywhere else in connection with the contents of the report?

Mr. Gordon: Objection.

The Court: Sustained.

Q. Now Mr. Follmer, did you ever give instructions to any jury clerk or deputy to distinguish between Negro people and others by putting some kind of a mark on a card? A. I don't recall having given any such instructions. I remember seeing it.

Q. Saying what, sir? A. I say, seeing the mark you refer to, and I permitted it to continue. I never gave (4800) any instructions because—

Q. Did you—go ahead, I do not want to interrupt. A. That is all.

Q. What is your best recollection as to when you first saw such an identifying mark on a history card? A. I

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don't recall, but I think that mark was on the cards for a long time. I don't know why it was—when it was done, but I think before my time as clerk.

Q. Before 1939? A. Yes.

Q. But you do not know how far back of that, do you?

A. No, I don't recall it.

The Court: Mr. Follmer, there has been some testimony here about various times, and about a C being put on questionnaires and about a C being put on history cards, and so on, and I wonder—you know the difference between a card and a questionnaire, of course, don't you?

The Witness: Yes, I do.

The Court: Do you have an recollection of what led to putting any of these C's on?

The Witness: No, I don't have any recollection of what led to it.

The Court: There is some testimony here—

Mr. Gladstein: Now your Honor, I think that I must object to the Court's questions.

The Court: All right. I won't go any further (4801) with them until you conclude.

Q. Now Mr. Follmer, I understand that you say that you permitted this practice to continue. What was the mark that you saw on these cards that made the distinction between Negro people and others? A. I saw a little light lead pencil mark of a C in an obscure part of the card somewhere—I don't remember just where.

Q. Now on what types of cards did you see that mark?

A. On the card that went into the general jury wheel—on the cards, rather, that were prepared to be put in there. You see, we were building up a long list.

Q. That would be the wheel card? A. Yes.

Q. And the wheel card is the card that is prepared for the clerk of the court and the jury commissioner by the jury clerk, to be put into the wheel, isn't that so? A. That is it.

Q. Was that practice still being followed at the time that you left this court as clerk? A. I couldn't tell you

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that; I don't know whether it had been stopped or not. I think so.

Q. You think what? A. I say I think it was still going on.

Q. Now did you learn in 1939 and thereafter—I withdraw that.

(4802) Q. There is evidence here that in 1940, 1941, 1942, and I think even in 1943 your office was getting a considerable number of lists of names from the Federal Grand Jury Association. Are you familiar with that fact? A. I remember we were getting some lists, yes.

Q. Was it your idea to get lists from that Association? A. No, I did not ask it, I did not ask it.

Q. Do you remember when it first began? A. No, I couldn't tell you; I do not recall that.

Q. When did you first learn that that was taking place?

Mr. Gordon: Objection. I do not think it is material.

The Court: Overruled. I will allow it. I cannot see that it makes much difference. Perhaps he doesn't know.

A. I don't recall.

Q. You don't recall. Were these lists sent in to you or to the jury clerk direct? A. I did not receive them.

Q. But you knew that he was getting such lists, is that right, sir?

The Court: That who was getting them?

Mr. Gladstein: That the jury clerk.

A. Yes, I knew that he was receiving the lists.

Q. Did you ever undertake to find out what kind of (4803) lists these were? A. No, I did not.

Q. Now did you ever try to find out who was compiling these names? A. Why, I understood they were compiled or prepared—I don't know who compiled them, no, I couldn't tell you that.

Q. Did you at any time know? You say you do not now know or do not now remember. Did you at any time know that? A. No, I did not know that.

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Q. Did you know that thousands and thousands of names on lists were being sent in to the jury clerk's office to be used for the purpose of bringing jurors into the jury system here?

Mr. Gordon: That is objected to.

Mr. Gladstein: That is the testimony.

Mr. Gordon: The testimony is—

The Court: Well, it is over a period of years.

Mr. Gladstein: Yes, of course, a period of three or four years.

The Court: You see, that period of years was a period of years that goes beyond the time that this witness was there.

Mr. Gladstein: He was there from 1939 until 1945.

The Court: 1945, was it?

(4803-A) Mr. Gladstein: Yes, and I am asking him about the period that starts with 1939 to 1943.

The Court: Without leading him, you ask him what knowledge he has as to the amount of names, whether he knew they were large amounts or small amounts, or any amounts.

(4804) Mr. Gordon: The objection also goes to another portion of the question about the use of them, and so forth.

The Court: Oh, I did not catch that part.

Mr. Gordon: But if he is going to reframe it I will not make any further argument.

Mr. Gladstein: Let me hear the question, Mr. Reporter.

(Question read.)

The Court: Yes, that "for the purpose" business. Please do not lead him.

Q. Now it has been testified here, and there is evidence here, Mr. Follmer, showing that there were lists containing several thousands of names which, over a period of three or four years roughly, during the time that you were jury clerk, were received by the jury clerk.

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Mr. Gordon: Mr. Gladstein, three or four years is from 1938 to 1943 inclusive. Change it to 1938—

The Court: Why don't you let the witness do the testifying instead of yourself.

Mr. Gladstein: I have not asked the question about it.

The Court: But when you put all that palaver in he sort of adopts the preliminaries you put in. Just ask what he knows about it.

Q. Now, Mr. Follmer, did the fact that no records were (4805) kept before April or July, 1942, of where you were getting your jurors from, have anything to do with the fact that you had been getting lists of names from the Federal Grand Jury Association?

Mr. Gordon: Objection. I object to the form and the characterization of the testimony. It is contrary to the evidence. It is beyond me.

The Court: Objection sustained.

Q. Was there a reason, Mr. Follmer, why the office of the jury clerk did not keep records up to July 1942, of where they got their jurors from?

Mr. Gordon: I object.

The Court: I will permit the question to the extent: did you give any directions about the starting of those records that they kept at a certain time?

The Witness: What records, your Honor?

The Court: You evidently don't even know what records he is talking about.

Mr. Gordon: That is the basis for the objection.

Q. Did you ever undertake to look at the correspondence that was being exchanged between the Federal Grand Jury Association and the jury clerk?

Mr. Gordon: Now, your Honor, I object to that. There is no such correspondence in evidence.

Mr. Gladstein: There are letters back and (4806) forth; names being submitted and recommendations.

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The Court: I do not recall correspondence back and forth. They submitted lists from time to time. They could be used or not, and it seems to me pretty evident that this witness does not know anything about that correspondence.

Mr. Gladstein: I will take a ruling on that question.

The Court: All right.

Mr. Gladstein: What is the ruling, Judge?

The Court: I will overrule the objection.

Mr. Gladstein: Now would you read the question?

Q. (Read.) A. No.

Q. Now, Mr. Follmer, what steps did you take? What did you do, if anything, to make sure that the people you got into the jury system through the jury clerk's office would be a fair cross-section of the community of New York? A. What is the first part of that question?

Q. Did you do anything during the years you were jury clerk, did you yourself do anything by way of instructions or anything that you did to make certain that people who were brought into the jury system in this court were not discriminated against on any geographical or other basis?

(4807) The Court: Mr. Gladstein, you make these questions so long that this man does not understand what you are asking by the time you get to the end of the question. I can see it.

Mr. Gordon: And furthermore he was never the jury clerk.

Mr. Gladstein: I say the clerk of the court.

Mr. Gordon: You said the jury clerk.

Q. Did you understand the question? A. Put that again, will you? It is so long.

Q. All right. Let me change it. This is a copy—

The Court: Now the time is up.

Mr. Gladstein: Now, your Honor, I protest against being cut off while I am examining Mr. Follmer whom I have brought here from Florida—

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The Court: That is right.

Mr. Gladstein: —to examine concerning the jury system that he administered. I am about to ask him about the results, as shown on Exhibit 56, which is only illustrative of many others which shows you did not get the jurors in Harlem; you did not get them on the Lower East Side; you got them all concentrated in the Silk Stocking District.

The Court: Mr. Gladstein, some of these days you and your colleagues are going to become impressed (4808) with the fact when I say a certain thing is going to be it is going to be. When I told you you were going to finish at the end of the session today with allowance then made for the time taken by the United States Attorney I meant that, and I mean it now when I say that is the end.

Mr. Gladstein: But I object to the Court's ruling, in protest against a ruling that has the effect of protecting a system of so-called justice. That is not justice, and which ought to be investigated, in my humble judgment, by another branch or arm of the Government of the United States.

The Court: Well, if you and your colleagues had your way we would never be through with this challenge. I became convinced of that some weeks ago and did everything I could to give you all the opportunity I deemed reasonable to bring out such facts as you might have. Now we have gone on and on for additional days and we have not got anything more of significance, as I see it. Now let us see if the Government has any proof to offer and then we will hear such protests or such discussion as is to be later as to briefs .

Mr. Gladstein: May I interrupt to ask, while Mr. Follmer is on the stand, to ask the Court to direct an attache of the court to go to the jury clerk's office (4809) and bring the office file copy of Mr. Follmer's letter in the year 1942 constituting answers to various questions addressed to the Administrative Office of the United States Courts, in

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which Mr. Follmer describes, as of that date in 1942, how the system was operating and in which he says that they removed the names of jurors who were perfectly eligible by law but they regarded them as undesirable.

Mr. Gordon: That statement, your Honor, is not founded on fact; grossly misinterpreting—

The Court: Mr. Gordon, I took, in the beginning certain statements by counsel just as I would have taken them from counsel in other cases. I have had a bitter experience here and I have found the most extravagant offers of proof and statements of what they are going to do and I go ahead with them and then nothing happens, so we are now at the end, and that motion by Mr. Gldastein is denied.

Is there any further proof by the Government?

Mr. Gordon: Nothing further and no questions of Mr. Follmer.

The Court: The case is closed.

Mr. Crockett: Before the case is closed I would like to call the Court's attention to the fact at the time I originally made the request I be permitted to examine (4810) questionnaires and other records in the clerk's office, the testimony at that point merely pointed out the questionnaires of Negroes and other colored people was confined to questionnaires and since that time witnesses called by the Government, as well as witnesses called by the defendants have testified to the practice including the placing of "C" on history cards as well as the wheel cards and I should like to renew the request that we be permitted to examine those questionnaires and history cards for the purpose of determining the extent, if any, to which Negroes have been called to serve as jurors in this court.

The Court: The motion is denied.

Mr. Isserman: If the Court please, there are a number of witnesses under subpoena in the witness room and we ask for leave to complete the day, at least, by calling those witnesses which are present,

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which include witnesses who would testify on the concentration of Negroes in various areas of the Bronx, witnesses who would testify as to the character of the Lower East Side, and as to the character of the Fifth Avenue-Sutton Place area, Fifth Avenue and Sutton Place and the 17th Congressional District generally, of the character of the buildings, on the racial distribution of the population in the light of the election registry lists, (4811) which have been put in evidence in this case beginning, I think, with Challenge Exhibit 183 and which indicate the names which would check at least, if those checks do not indicate, notices have been sent, they indicate notices were prepared, according to the testimony, for the sending to such persons, and the testimony will show that the selection as made was made in such a manner as to exclude the Negro areas and the areas in which manual workers reside.

We also have under subopena witnesses—

The Court: Is that the end of motion No. 1?

Mr. Isserman: It all deals with the witnesses, your Honor; with witnesses under subpoena in the witness room.

The Court: You have a way of going on and I cannot keep my mind on all of it. Let us take it piecemeal. I deny that part you just applied for. If you go on with another one I cannot remember—

Mr. Isserman: It is one motion to be allowed to complete today, still objecting to your Honor's cutting off of the witness, but to be allowed to complete today the testimony of those witnesses who are now in the witness room. A number of witnesses are officers of the Federal Grand Jury Association and we would establish with those witnesses the matter contained in the offer to stipulate (4812) which has been marked as Challenge Exhibit here and to identify further, through questioning, the documents contained in Exhibits 303 to 308 inclusive, that there was in fact, and notwithstanding the denial of witnesses here, an established procedure

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between the Grand Jury Association and the clerk or jury clerk of this court by means of which the Association supplied sources of names to the clerk of this court which were checked and tabulated and screened by the Association; that individual solicitation of names in substantial numbers were had by the Association from executives and directors of large corporations, including banks, Stock Exchange houses and, your Honor, I have examined these in these files last night, insurance companies, real estate and insurance brokerage concerns—

The Court: As I listen to you I think of that document that you and your colleagues submitted some time ago when I asked you to itemize what you proposed to prove and how you proposed to prove it, and I cannot help feeling that the same extravagant way you are talking now is the same extravagant way you were talking then, and in general terms.

Mr. Isserman: It is right here, which your Honor has not even looked at.

The Court: It may be you have your views on it, (4813) but I never heard lawyers make such extravagant offers of proof in my life as you have made.

Mr. Isserman: Your Honor, only 15 minutes and I have the documents—

The Court: Go ahead and tell me some more that you are going to prove if you have a chance, which you are not going to have.

Mr. Isserman: The documents to which I refer and upon which these witnesses would be questioned are in Challenge Exhibits 303 to 308 inclusive, which we have only partially examined, and I believe your Honor has examined slightly or not at all, but those documents indicate that the individual solicitation which I have described came from the executives and directors of large corporations, and there is stationery in here which indicates it, including banking and Stock Exchange houses, the vice-president of a bank recommending another vice-president as

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eligible and willing to serve on grand juries, and in great number by the way; real estate and insurance brokerage concerns and manufacturing corporations, the said names being names of directors and executives of said institutions, and I might say in examining several hundred persons I found one person who happened to live in the Bronx, and persons having business associations with and relations with (4814) such executives, and further that such persons who were invited to serve on the grand jury by this Association filled out application blanks which were returned to the Association, which, in turn, were transmitted by the Association to the clerk of this court.

The exhibits further indicate that there were arrangements for the transfer of persons from petit to grand jury service at the sole recommendation of the Grand Jury Association and without any intercession by the person involved and without that person going to the office of the clerk of the court.

It further indicates that the persons from whom these applications were received by the Grand Jury Association are applications that were sent to the clerk and appeared before the clerk not on notice from the clerk but on notice from the Grand Jury Association.

Now in connection with this evidence we renew our request for the examination of history cards, not only for the reasons given by Mr. Crockett, but for the reasons heretofore urged by us, but also because an examination of those cards is required to check the same against the names in Exhibits 303 to 308 inclusive, which are the names of some 16,000 in number transmitted by the Jury Association to the jury clerk of this court, (4815) to ascertain how many of such persons were actually qualified for service on grand and petit juries in this court, and how many of said persons are still on the active grand jury and petit jury lists.

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Moreover, from information and belief, based on the evidence introduced in this proceeding, and the analysis of the panels, and most recently supplemented by notices contained in Exhibits 303 to 308 indicating who was accepted for jury service, such examination would establish that a large and substantial number of persons, whose names appear in Exhibits 303 to 308, inclusive, are presently on said active grand jury and petit jury lists and lead to the type of grand jury and petit jury which has been indicated as exists by the analysis of the panels which we have introduced in evidence.

On those grounds I object generally to the termination of the proceeding at this time, as a denial of due process.

The Court: Your objection is noted, and in so far as it is a motion the motion is denied.

I also deny now the motions submitted in writing this afternoon by Mr. Crockett which is entitled "Motion to Dismiss Indictment Pursuant to Rule 6(b)(2) (4816) of the Federal Rules of Criminal Procedure" and subscribed by Mr. McCabe, Mr. Sacher, Mr. Gladstein, Mr. Crockett and Mr. Isserman and bearing date March 1st, 1949.

Mr. Gladstein: I offer in evidence each and every exhibit marked for identification and not yet received in evidence, that is, a defendants' challenge exhibit, and I ask the record to read so that it may be deemed that I have offered each and every one as shown in the official transcript, the reporter's official transcript as not yet having been received and it may be deemed I have offered all of them seriatim et singulatim.

The Court: That "et" in Latin is pronounced "et".

Mr. Gladstein: It is "et" by you and "at" by me, Judge.

Now the other request is I hereby ask leave of the Court to examine the wheel cards in the office of the jury clerk—

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The Court: Don't you want me to pass on that offer first of the exhibits? That offer is denied.

Mr. Gladstein: Don't give me a chance to even sit down.

(4817) Now I ask leave of the Court to be permitted to examine the wheel cards in the jury clerk's office to ascertain the number of such wheel cards on which, as Mr. Follmer has just testified, a mark in an obscure corner of that card has been placed for the purpose of segregating members of the Negro race who are jurors from those wheel cards, being the ones that, as Mr. Duncan yesterday said, he uses along with the jury clerk at the time that they spin the little wheel and select the jurors.

And I want to recall to your Honor the fact that by your Honor's own question to Mr. Duncan yesterday invited Mr. Duncan to deny that any such selecting mark appeared on a wheel card and, I do not recall, I think Mr. Duncan made an answer that was a little ambiguous, but in any case in view of the testimony of Mr. Follmer here today I think it a little appropriate, and indeed necessary to permit this examination which I now ask.

The Court: Motion denied.

Mr. Sacher: May it please the Court, I am impelled to rise because I believe that today's manner of the conduct of the trial constitutes something in the way of characterization of all that your Honor has done throughout the trial of this challenge.

The Court: Well, you know I said I did not (4818) desire to hear argument and I have been called so many things during this trial here that I suppose I can stand being called a few more. But it seems so unnecessary. Your record is complete here. If your objections are well taken why then you will get that reversal that you and your colleagues have so often proclaimed as the inevitable consequence of the result of my rulings. There it rests. I see no advantage to be gained by your

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further excoriating me and I direct you not to do it.

If you have some motion to make I will hear the motion, but I don't want to hear any more argument.

Mr. Sacher: I move, your Honor, then to extend the conduct of the trial of this challenge so as to enable the defendants to enjoy the benefits of constitutional due process of law.

The Court: That is a neatly phrased motion. As far as it has to do with extending the time I deny it.

Now I announced the other day I would hear no closing or oral arguments and that briefs must be ready this afternoon. I am now ready to receive those briefs if you have them here.

Mr. McCabe: If your Honor please, in response to your Honor's direction Friday we proceed to attempt to (4819) prepare an analysis of the facts we have succeeded in going through the voluminous record to a certain extent. The results which we have here are not satisfactory to counsel. They are not complete, and if we are required to hand them in this afternoon we shall be handing in a document which we think might be improved upon. For that reason I should ask an extension until tomorrow noon to complete these documents and make certain revisions in them including the bringing up to date of the matter in view of the testimony today.

The Court: That motion is granted.

Is the Government's brief ready?

Mr. McGohey: The Government's brief is ready, your Honor. We have prepared the brief which I am prepared to submit to you now. I do not intend, in view of the fact that the defendants have not offered their brief either to the Court or to me to serve a copy of this brief on the defendants. I suggest, in view of the fact that the Court has granted until tomorrow noon for the defendants

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to file their briefs the briefs can be filed at that time so there can be no charge the Court has had the Government's brief prior to receipt of the defendants' brief.

The Court: That is satisfactory to the Court.

Now the only thing that remains for me to dispose of, other than the merits of the challenge—

(4820) Mr. McGohey: May I interrupt your Honor, and beg your pardon for doing so, because it has to do with this matter of briefs, I think one of the things your Honor will have to have are the exhibits.

The Court: Oh, yes. I want those right upstairs at once.

Mr. McGohey: Now I have here available all of the exhibits, the original exhibits that were introduced by the Government. I have those available, which I can turn over to your Honor right now.

There are voluminous exhibits on behalf of all that were introduced by the defendants and I am particularly concerned that those exhibits 303 to 308 that went in in such great batches yesterday, they being all of the records of the Federal Grand Jury Association and correspondence of all kinds—

The Court: I want all the exhibits immediately in my chambers.

Mr. McGohey: I want to point out that was made available for examination by defense counsel last evening and Mr. Borman was here until some hour, I don't know how late he was here, and I do not know whether the examination did not begin to take place until some time after eight o'clock at night, although Mr. Borman was here or somebody from the clerk's office from the time (4821) the court adjourned up until eight o'clock. I was not here myself but I think each and every one of the exhibits ought to be made available and at once.

The Court: They must be in my chambers by six o'clock this afternoon.

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Mr. Crockett: May I make one correction for the record: There seems to be some implication that even though all exhibits were here last evening and there was someone here that it had been agreed the parties would come at an earlier hour and examine them. Mr. Gordon and I made this arrangement at the close of yesterday afternoon's session, at which time it was agreed the exhibits would be available and we would have someone at eight o'clock here to call him at six-thirty. He was called by Mr. Sacher by 6.30 and according to the arrangement someone did come over here somewhere in the vicinity of eight o'clock.

The Court: This morning?

Mr. Crockett: No, in the evening.

Mr. Isserman: I came over and it was about 8.20 or 8.25, the record will show, it may have been 8.27. I was delayed by the storm and I was to stay until eleven, but at eight o'clock he said I was to quit at ten and he finally courteously gave me another 15 minutes, but the point is this: any person could not study these exhibits (4822) within five or six hours or twelve hours and give them the study and attention they deserve, and we will have to do considerable more work on the exhibits. I have no objection, of course, to giving them to your Honor.

The Court: I don't care whether you do or not. I am going to get them.

Mr. Isserman: I say you will have them.

The Court: I am going to get them by six o'clock this afternoon. If I have to have somebody from the marshal's office here to get busy and get them I will get them.

Mr. Isserman: I object to your Honor's remark. I did not make the slightest suggestion you would not have them. Of course, your Honor will have them. There is no need for any reference to a marshal. But I do say the matter of 15 minutes or 20 minutes or three hours on these exhibits did not suffice for the defendants and could not have sufficed

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with 16,000 names and thousands of pages and letters.

The Court: You said that before. You have been protesting about that all afternoon.

Mr. Gladstein: May I make one request about Exhibits 303 to 308. They are envelopes containing numerous letters, copies of letters and lists of names; no enumeration of those letters, copies of letters or (4823) lists is in the record. I desire the right, and I request the Court to grant it, for us to have an inventory made of the contents of those envelopes before they are taken from us permanently. We will also ask leave at times, suitable to the Court, to make copies of those—

The Court: Do you realize, Mr. Gladstein, you are insinuating that I have possession of those exhibits and will destroy some of them?

Mr. Gladstein: I make no such insinuation.

The Court: I am the one that is going to have them.

Mr. Gladstein: What is going to happen after you get through with them? Do we get them back?

The Court: I will have them in my custody until I get the matter disposed of.

Mr. Gladstein: What happens then, Judge? Do we get them back?

The Court: I do not see any reason to suppose papers in the custody of the Court are going to be disposed of or destroyed or thrown away. I don't see how you dare make such insinuation.

Mr. Gladstein: Will we get them back so we can make copies or photostats?

The Court: Everything that is in evidence is, (4824) of course, available to counsel to make such copies as they desire and that has been so here.

Mr. McGohey: It has been so all through the case.

The Court: Yes, I know it has and these papers are going to get up to my chambers right away with all the other exhibits and papers and everything else.

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Mr. Crockett: I move to strike out that portion of your Honor's remark in which you referred to the need for a marshal to get three paper envelopes right out here on counsel table when the room has already, as I can see, eight or nine marshals, and there has been no indication—

The Court: I got the impression Mr. Isserman was trying to tell me I was not going to get them.

Mr. Isserman: I made it very clear you were to get them.

The Court: Then I was mistaken and I am glad I was.

Now does that dispose of everything we have here except this matter of Mr. Adams, which we have here, and it has now become academic, so I deny the motion to issue a body attachment or take other proceedings against Mr. Adams as a witness.

That leaves the matter of Mr. McGohey's motion to strike out the part of the challenge that has to do with (4825) the grand jury by reason of the proceedings previously had before Judge Hulbert, and also the merits of the challenge. I shall reserve decision on those.

I anticipate, however, that the trial will commence next Monday and I will try to have my opinion ready as quickly as I can. I expect that will probably be some time around noon on Friday.

I desire that counsel for both sides have in my hands on Friday by two o'clock the list of questions that they desire me to put to the jurors at the opening of the trial so that I may have an opportunity to study those questions and think them over before Monday morning. I will not permit any questions to the jurors by counsel for either side but will conduct that examination myself as provided in the rules.

We will now take an adjournment until next Monday morning at 10.30. The witnesses are all excused.

(Adjourned to Monday, March 7, 1949, at 10.30 a. m.)

This concludes the Challenge Testimony.

**The Transcript of the Trial starts in the next volume
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