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of family reasons or financial hardship, and what not? Is there any objection to my doing that in the mass as I (T-172) was starting to do today?

Mr. Isserman: If the Court please, when I first heard that statement of your Honor you remember that I rose to object, and I would like to consider that matter until morning, not for purposes of delay but there is a problem involved in connection with that type of questioning in this case which might not exist in any other case because of the nature of it, and I would like to reserve until morning the question whether I would oppose that direction or not, because frankly at this moment I am not certain. I would like to have overnight to think it over.

The Court: All right. I expect to have these jurors right in the room in the morning. Do you see any impropriety in discussing such a matter as that if any discussion is required?

Mr. Isserman: We could have it in chambers.

The Court: We could have it in chambers.

Mr. Isserman: There is one other point and I would be brief and technically I would make it in the form of a motion to consider, and in substance I will tell you what I have to say and perhaps your Honor would like to consider, in the light of the affidavits filed as to the temper of the community and the light of the other affidavits what your Honor thinks: Whereas the motion made by Mr. Sacher that all questions be addressed by counsel (T-173) to the jurors and that your Honor allow counsel to address the so-called follow-up questions, the rule does make a distinction between the questions initially put and those follow-up questions. If they have to be put in writing and passed up and if they are not asked directly it will create a hiatus between the questioner and the person questioned, which is—

The Court: No, I won't take the chance of the confusion and disorder attendant upon that.

Mr. Isserman: I was going to conclude by saying it would in all likelihood be that counsel would agree that one counsel do it.

The Court: I know it, but I just do not feel I could take the chance on that in view of all the circumstances here, and I won't do it.

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Mr. McGohey: If your Honor please, as I understand it, the way we are now your Honor is going to give consideration during the night and before we convene to this problem whether you will have the jurors here or whether you will have them out of the courtroom.

The Court: No, I have that already decided. The beginning tomorrow, however, will be on this matter of excuses, and so in that connection they all will be here, unless, due to what Mr. Isserman and other counsel think of overnight, we have a little discussion in my chambers (T-174) and it is decided not to do that, but if they come in in the morning and say they see no inconvenience or objection we will go ahead and eliminate those who just cannot serve without undue hardship, which will greatly simplify the work of the others later on the various questions going to bias and favor and so on.

Mr. McGohey: It was that I was addressing myself to. As I understood your Honor was thinking of the possibility that what is left of the panel be in the juryroom across the hall?

The Court: That is right.

Mr. McGohey: And then call twelve at a time and put them in the box?

The Court: That is right.

Mr. McGohey: That might be, and I rather think would be a cumbersome procedure and you would draw twelve names, and as each name was called they would have to be relayed across the hall.

The Court: Do you think we might call a few and have them sit in the chambers?

Mr. McGohey: I don't think you can do that because you have to draw the names from the wheel and you cannot anticipate whose name is coming out, so you really have to have the whole panel available.

The Court: Let us have a little conference in the (T-175) chambers back here at the opening of court tomorrow morning and I think we probably can make better progress by all sitting down together than we could in open court.

Mr. McGohey: I am agreeable.

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Mr. Gladstein: Before we adjourn, may I suggest the United States Attorney's office exchange with us copies of the questions which have been propounded to the Court and which the Court is considering?

The Court: I do not think that is going to do much good because I have made considerable changes in the various questions and made up a lot of questions of my own, and I have been trying my level best over this week end to get a series of questions which, in my judgment, taken as a whole, cover the ground and would bring out any bias that might exist.

Mr. Gladstein: I appreciate that, but some of the questions—

The Court: I do not believe the exchange of questions is going to be of any value and I think inevitably stir up controversy.

Mr. Sacher: May we have a copy of yours. It might help.

The Court: I have not mine in such shape I could give you copies. You can see I have them all written (T-176) out here and I and my staff—well, we are pretty tired and it is not easy to keep her working half of the night and do that day after day.

Mr. Gladstein: It is customary in some of the federal courts I have been in for the two sides to exchange the proposed questions and thereby obtain opportunity to present their objections to the questions the Court is happy to receive or when certain questions ought not to be asked or ought to be reframed, and although your Honor has changed, as you said, some of the proposals for questioning I think it would be not only helpful to the Court but in the interests of the parties that there be such an exchange and I offer to supply Mr. McGohey now with a copy of our proposals.

The Court: I have in my own mind that it would just be a source of more controversy and argument and be an undesirable thing to do.

Mr. Isserman: May I respectfully request before the Court puts the questions to the prospective jurors we have copies of the questions which the Court will put and also that we are advised in what respect our questions are being changed and which will be and will not be asked?

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The Court: No, I won't do that. I am not going to have another day of argument such as we have had today.

Mr. Isserman: Not a matter of argument. I think (T-177) we are entitled to that.

The Court: That is where you and I differ.

Mr. Isserman: And I would like to submit some authorities tomorrow to indicate we are entitled to know what questions are being put.

The Court: I don't see how you can offer me authorities that I can keep my good stenographer down here all night when she is tired typewriting all kinds of other things.

Mr. McGohey: Not only that, but how could the Court anticipate the questions if the Court were to allow counsel to examine on the voir dire? How could he know until the questions were asked? As far as my questions were concerned I waited in your Honor's chambers when I submitted my list of questions and if counsel had been there, as your Honor directed them to be with their questions, we probably would have exchanged them and I would have no objection to have given them, but now since your Honor says you have stricken or reframed many questions I see nothing to be gained.

The Court: I say I have made changes and taken some out and done various things. I have made a number of my own and I do not see how it is practical to furnish the counsel with those questions. What is more I see nothing out of the way if I ask a question and somebody (T-178) objects to it. I suppose they are going to object and I don't see anything so horrible about that.

Mr. Isserman: Will your Honor make rulings on the questions we have submitted so we will know for the record which are changed and which will or will not be given?

The Court: It is my duty in my discretion to formulate my questions which I feel will give a fair and impartial jury. I do not understand that counsel have a right to submit a particular question and insist that it be asked or claim error for its refusal. That is my understanding of the law and I am pretty sure that is right, so that you may present your exceptions when I make my questions but I am not going to hear, during this trial, argument on

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questions of evidence unless I desire it. If somebody objects there is going to be no long argument about why he objects. We are all experienced people here and I think we can pass on questions of evidence without taking time for a lengthy argument in which others will want to participate and then we will get into confusion. So if you want to object to questions I will entertain your objections and rule on them but I will not hear argument on questions of evidence unless I indicate that I desire to hear it.

* * *

(Adjourned to March 8, 1949, at 10.30 a. m.)

(T-179)

New York, March 8, 1949;
10.30 o'clock a. m.

Trial resumed.

The Court: Now gentlemen, I do not think it is going to be necessary for us to have our conference that we proposed. I have done a good deal of reflecting and study overnight on some of these problems and have the following to announce: As to the application on behalf of one of the defendants that there be some adjournment so that he might attend some meetings of the City Council, I have decided to deny that application. Had it been a question of allowing him to do it today only I think I would have been disposed to take an adjournment for the afternoon session today, but as it is apparent from his statement to me yesterday that it is to be a long drawn-out affair and numerous meetings that he may have to attend, I find that the inconvenience on the whole is such that I feel required in my discretion to deny the application.

Now as to—

Mr. Sacher: May I, your Honor, just suggest the following on that phase before you pass on to something (T-180) else?

The Court: Yes, you may.

Mr. Sacher: May I ask that without prejudice to

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our right to discuss it further with your Honor, that he be accorded the opportunity today to go to the Council, and also without using it as a precedent?

The Court: While it is determined so far as today is concerned, I shall not foreclose application later when some critical situation may arise—

Mr. Sacher: You mean later today?

The Court: —in connection with this matter, for him to be at the Council for one or possibly two meetings, I will hold my mind open on that and hear any applications that may later be made in that connection, but I will not depart one iota from my direction and decision, and there will be no moment of this trial when any proceedings take place without the presence of each and every one of the defendants. We may take adjournments if I am persuaded that on some occasion it arises to make it desirable and proper to do so.

Mr. McGohey: If the Court please, would your Honor permit me to make a statement with respect to the matter of the defendant Davis?

The Court: Yes.

Mr. McGohey: At the time that was raised yesterday (T-181) afternoon I suggested to your Honor that perhaps by inquiry of the officials of the City Council I might get some light on the subject. Now I did last night confer with Mr. Joseph Sharkey, leader of the majority in the City Council, and he informed me that some time ago a resolution had been introduced in the City Council by Councilman McGahan, the purpose of which resolution was to temporarily excuse Councilman Benjamin J. Davis from attending meetings of the Council. The resolution is numbered 900 and is dated January 25, 1949. Mr. Sharkey informed me that that resolution upon its introduction had been referred to one of the committees—I don't recall which committee, but it is the committee of which Councilman Walter Hart is the chairman; that it is in that committee now and has not yet been reported out for action, but speaking on behalf of the majority in the Council, Mr. Sharkey authorized me to advise the Court that no action looking to the excusing or to any disciplinary action or to any expulsion, if that were con-

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templated, of the defendant Davis as a member of the Council would be considered by the Council, except that at such time and under such circumstances and with sufficient advance notice to enable Councilman Davis to have full and adequate opportunity to be heard, and to participate in any consideration of such (T-182) action. Furthermore, Mr. Sharkey authorized me to represent to this Court that if it were necessary he would arrange that the meetings of the Council would be held after the time of the conclusion of the sessions of the court on such days as the Council would meet, so that there would be no conflict between the legislative duty of the defendant Davis and the necessity for his presence here during the trial; that furthermore, with respect to any committees of which the defendant Davis may be a member in the City Council, he would also arrange with the chairmen of those committees that their meetings and their discussions and their work would be held at such hours as would not interfere with the defendant Davis's presence here.

This morning before coming to court, Mr. Walter Hart communicated with my chief assistant, Mr. Saypol, and confirmed what Mr. Sharkey had told me last night, and Mr. Hart further said that he was going to introduce today a resolution in the Council calling for the convening of their meetings at 5 or 5.30 on Tuesdays, which would be well after the ending of the court sessions each day.

(T-183) The Court: There is one other thing I may announce now. As a result of almost continuous work here from early morning until late at night over many weeks, I have become grievously fatigued, and I think, for the period that we are going to be examining talesmen here, which will certainly be this week and perhaps longer, we will start in at 11 o'clock in the morning and adjourn at 4, with a recess from 1 until 2.15. As soon as I feel able to do it, I will go back to the usual routine that we have in this court.

Now, the other question of the manner of examining the talesmen, which was the subject of some discussion yesterday afternoon: I have discussed that matter with some of my colleagues, that is, with some of the other judges of the court, and with some of the court officials, and I find that various suggestions that were made yester-

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day afternoon are utterly impracticable, and that there is only one safe course to follow, and that is to follow the procedure that is commonly followed in all other cases in this district, and that means that what I shall do is to have the entire group of jurors present in court sworn before any questioning on the voir dire begins. We will then, by the usual process of selecting names out of the wheel, put 12 jurors in the jury box, but the questions will be not (T-184) only to them but to the others who may be sitting in the courtroom. Otherwise the repetition of the questions will be such as to utterly wear me out, or anyone else under the circumstances, and be utterly unnecessary.

Now, that leaves a preliminary question on which I expect to get the views of counsel. I would suppose that it might be a reasonable and in every way proper way to proceed as I started to do yesterday, by having those jurors who, because of the length of the trial, the likelihood of a prolonged trial, feel that they cannot serve, come up and present their excuses, as they started to do yesterday, without having them sworn and without any great formality. However, if counsel for the defendants insist upon it, I have no other recourse than to swear the entire group, put 12 of them in the box, after their cards are taken from the wheel in the customary way, asking that group the excuses and, after determining the merits of the excuses of such group as is in the box, then continue with another group until we have covered them all.

So I say, if agreeable to counsel for both sides, that I may continue as I started yesterday in the matter of excuses so that all the excuses may be put out of the way first before we begin making inquiry as to matters of bias or favor or other things affecting (T-185) the selection of a fair and impartial jury.

Mr. McGohey: That procedure, that your Honor started yesterday, is entirely agreeable to me, your Honor.

Mr. Sacher: If your Honor pleases, your Honor's statement raises a number of questions which we feel are best discussed out of the hearing of the jury.

The Court: The only thing I desire discussion about is the question of whether we should proceed with the

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excuses just as with the other matters of examining the jury, and you either say that you consent to that or you don't. If you don't consent to it, then we will call them all and have them examined under oath. It won't take so very long.

Mr. Sacher: Your Honor, all that I suggest is that we have one or two questions to take up with the Court in addition to that one, and I respectfully request either an opportunity to approach the bench or, if your Honor prefers, to discuss it in chambers.

The Court: All right, I will hear you all in my chambers right now.

(Discussion in chambers off the record.)

(T-186) (The following occurred in chambers:)

Mr. Isserman: We herewith state our objection to putting questions en masse to jurors sitting behind the railing where defendants and counsel cannot look upon the jurors and jurors cannot look upon the defendants while the questions are being put.

We object further to having jurors called to the jury box, answer questions which were previously put to them while not in the jury box, and answering those questions without repetition of the questions and answering in general manner at intervals after the questions were originally and individually put.

I think that covers it.

The Court: All right, now back we go.

(The following occurred in the courtroom:)

The Court: Now, the arrangement that we started yesterday in the matter of excuses has been consented to by all, and we will proceed with that except that I will first have all of the jurors in the room sworn.

There are one or two things that I want to say before we proceed with the questioning of jurors relative to matters of excuses because of the length of the trial. I think all of you must realize that one of the duties of citizenship is the duty to sit upon juries. Every time a juror acts as a juror and sits in a case, there is (T-187) al-

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most of necessity some hardship, and so naturally I will have to inquire as to the circumstances of each case, but I want you to bear in mind that everyone necessarily suffers some hardship when he or she sits on a jury. Now I realize that this is to be a long case, a little different, but I want you to remember what I just told you.

There is one other thing that applies not only in the examination of talesmen, that is, of prospective jurors, but is going to apply throughout the trial, and such of you who may sit as jurors here should remember it, and all of you who are now to be examined should remember it. It is not only the right but it is the duty of counsel, counsel for the Government on the one hand and counsel for the defendants on the other, to make objections and to make argument in support of their objections when the Court permits it, and to do other things of a similar character in protection of the rights of their clients.

You must never consider any such objections or arguments as in any way influencing you against the Government on the one hand or the clients whom counsel for the defense represent on the other. Sometimes those things seem a little tedious. There are many things in court procedure that require patience and calm consideration. One of the things you must do is (T-188) to never, under any circumstances, hold anything that is done by counsel against the client, whether it be the Government or whether it be one of the defendants.

Now, if the clerk will administer the oath to all those prospective jurors who are here, we will proceed as we started yesterday to examine into the excuses.

(Clerk administers oath.)

The Court: If those who desire to present their excuses will come up and get in the jury box, we will proceed.

(Jury box filled by prospective jurors.)

The Court: I really think that, as to those of you who remain, it is probably just as easy for you to return to your seats unless you prefer remaining standing there. It will do no harm, so you may follow whatever your own wishes may be.

Yes?

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Mr. Irving Mandel: The nature of my business is such—

The Court: Try and keep your voice up because all those lawyers have to hear what you say, and so do I.

Mr. Mandel: The nature of my business is such that an absence of that length of time would seriously affect my business.

(T-189) The Court: What is the nature of your business?

Mr. Mandel: We have a sales organization.

The Court: And in that sales organization what is your own part?

Mr. Mandel: I am the manager. I operate it completely. We have payrolls to get out every Friday, that I must personally view and sign, make out checks for, etc. Over a normal period of time, it would not be serious; but over an extended period of time—

The Court: You may be excused.

Mr. Isserman: May we have the juror's name, your Honor?

The Court: Just a moment. We have to get your name.

The Clerk: Irving Mandel.

Mr. Isserman: If the Court please, could we get the jurors' names?

The Court: I think so. Mr. Borman, will you announce the names?

Mrs. Simonton: My name is Cornelia Simonton, Mrs.

The Court: You need not rise. You may be seated.

Mrs. Simonton: Your Honor, I am secretary—

The Court: Wait a second. You see, this name business, they all have to get everything straight before (T-190) we begin hearing what you have to say.

Mrs. Simonton: Cornelia Simonton.

The Clerk: Cornelia K. Simonton.

Mrs. Simonton: Your Honor, I am a secretary as well as a housewife, and if I would have to get back to the office after we left here and also Saturdays, if I had to stay that length of time, it would be very hard for me.

The Court: Have you served on juries before?

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Mrs. Simonton: Yes, sir, I have, but not for that length of time.

The Court: I suppose what you are telling me, in substance, is that you might very well be away for a week or two—

Mrs. Simonton: That is right.

The Court: —without any serious inconvenience or other thing to your own position but, if you were away so long, that that would prejudice you in your employment?

Mrs. Simonton: It would.

The Court: You may be excused.

Mrs. Simonton: Thank you, sir.

Mr. Finney: Edson Morris Finney.

The Clerk: Edson Morris Finney.

The Court: Yes?

Mr. Finney: Your Honor, I regret to say that I (T-191) cannot afford to stay away from the office that length of time.

The Court: Tell me just why it is. What is the nature of your work?

Mr. Finney: My duties are various and sundry. It is a small organization and I have a tremendous amount of detail work to take care of.

The Court: What is the nature of your business?

Mr. Finney: It is the Robinson Clay Products Company, and I am assistant sales manager of the Eastern Division.

The Court: All right, you may be excused.

Mr. Finney: Thank you.

The Court: Before you do that, you have served on juries before, have you?

Mr. Finney: Oh, yes, yes, I have.

The Court: And I suppose it is the length of time here that makes the difference?

Mr. Finney: That is exactly it.

The Court: Very well.

Mr. Finney: Thank you.

Mr. McGevna: James E. McGevna.

The Clerk: James E. McGevna.

Mr. McGevna: I am the only clerk-stenographer in the office, your Honor, and most of the work that is (T-192)

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being done in my absence is by somebody that would have to come from Boston, and I will have to go back after I am adjourned here all the time to keep things up to date. And, although the company don't mind me being here for two weeks, I feel, if I am being kept longer, it might just throw things all off for me.

The Court: I did not get what you said your occupation was. A court stenographer?

Mr. McGevna: No, clerk-stenographer. I do all the clerical and stenographic work in the office.

The Court: What is the business?

Mr. McGevna: New Haven Railroad, in the industrial department. Part of a real estate—it is like the industrial real estate division of the New Haven Railroad.

The Court: Haven't you served on other juries too?

Mr. McGevna: Yes, I have, but not for any—two weeks length of time is all I ever served.

The Court: Do you think it would prejudice your position if you were away so long as I mentioned?

Mr. McGevna: I don't know whether it would or not.

The Court: I think I will reserve decision on you for the moment and we will hear from some of the others.

Mr. McGevna: O.K.

Mr. McKim: Robert J. McKim.

(T-193) The Clerk: Robert J. McKim.

The Court: Yes. Somebody keep track of those that I reserve decision on.

Oh, you haven't got the name?

The Clerk: Robert J. McKim.

Mr. McKim: I am the active head of a corporation owning properties and operating properties in many cities of the United States. During the next 30 to 60 days I have the responsibility of preparing the annual report, holding their annual meeting, stockholder, election of directors, and such dealings as we may have with the Securities and Exchange Commission. It would be quite difficult for me to be away such a long time at this time of year.

The Court: It is particularly this time of year?

Mr. McKim: Yes, sir.

The Court: That coupled with the extent of time involved, that would make it very inconvenient?

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Mr. McKim: Yes, sir.

The Court: I will excuse you.

Mr. Gelbart: Nathan G. Gelbart.

The Clerk: Nathan G. Gelbart.

Mr. Gelbart: Your Honor, I am an export salesman. We have people coming in from various countries.

(T-194) The Court: Keep your voice up.

Mr. Gelbart: My job is to handle their business. They come in from foreign countries, and I am connected with the export department. In fact, last Saturday I was able to be excused for the day; we had a customer. Last Sunday I had a customer from Panama and spent all day—

The Court: Is there somebody to take your place when you are not there with this work?

Mr. Gelbart: No, sir.

The Court: You may be excused.

Mr. Stevens: Kenneth H. Stevens.

The Clerk: Kenneth H. Stevens.

Mr. Stevens: Your Honor, I am in the bag manufacturing business. I am the secretary of the company and director of purchases. The nature of our business is such that the value of the raw material represents about 85 to 90 per cent of the value of the finished product. The raw materials that we purchase are speculative in nature, they fluctuate from day to day, and I would really be afraid to be away for any substantial length of time.

The Court: I suppose that the time that you might have at your disposal out of court hours would not suffice because of the time the markets are open?

(T-195) Mr. Stevens: I am afraid not, sir.

The Court: Yes, you may be excused.

Mr. Hecker: Arthur E. Hecker.

The Clerk: Arthur E. Hecker.

Mr. Hecker: Your Honor, my business is chief engineer of one of the large chemical companies. I have approximately 200 technical people under my direction. We have a number of very urgent projects going on at this time and a prolonged absence of this kind, I think, would—

The Court: All right, you may be—

Mr. Hecker: —handicap the business very much.

The Court: You may be excused.

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Mr. Hecker: Do I report for service in any other court?

The Court: Well, that is one of the things I don't have to worry about. I can't tell you.

The Clerk: Report back to the central jury room.

Mr. Culin: Nembard Culin.

The Clerk: Nembard Nottingham Culin.

The Court: Yes, Mr. Culin?

Mr. Culin: I am a member of a firm of architects and we are extremely busy at the present time. I think it would be unfair to our employes as well as our clients to be away for any extended period of time.

(T-196) The Court: Is there some particular work that you are now engaged on that has some urgency about it?

Mr. Culin: Yes, we are in the middle of a large New York City housing project.

The Court: All right, you may be excused.

Mr. Jaffe: Sanford S. Jaffe.

The Clerk: Sanford S. Jaffe.

Mr. Jaffe: Your Honor, I am in the retail women's apparel business, and of course the season right now before Easter is very important, and it represents—and it is very important that I be there.

The Court: Just what is your position?

Mr. Jaffe: Well, I am a member of the firm and I do the buying of the women's apparel. It is important that I be there.

The Court: This is the season of the year when you are most active?

Mr. Jaffe: Right up to Easter.

The Court: Yes, you may be excused.

Mr. Young: Joseph Young.

The Clerk: Joseph Young.

Mr. Sacher: May I note an objection to the excuse of this juror?

The Court: Yes.

Mr. Young: Your Honor, life insurance is my (T-197) business, and I have served here several times in this court, and with me, I would like to be excused on a two-fold purpose: No. 1, would be the time element, and No. 2,

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would be my absolute contempt of the individuals here who are charged.

The Court: Well, you may be excused.

There is one thing, ladies and gentlemen, I want to say here. Now it is not proper for jurors to make such statements which I consider outbursts by anybody when they are being examined as a juror. It is not fair to the defendants and if somebody should make some similar statement having to do with the Government, it is not fair to the Government. If you have some bias or prejudice, which you will have plenty of time to indicate to me in due course that you have, you may merely answer in the affirmative or negative to the questions I ask you and I will have plenty of opportunity without any such statements as you just heard coming out. Now that is not proper, and I don't think it should be done, and I want you all to bear that in mind.

Mr. McGohey: Pardon me, may I ask your Honor that you direct all the other jurors to put out of their minds anything that they heard from that prospective juror?

The Court: I do. I do, I direct you to put from your minds this statement that you just heard that (T-198) prospective juror make. Now we have our American traditions to maintain here. Getting a fair and impartial jury is a matter of grave consequence to the administration of justice, and we must do everything, each and every one of us, to follow out that concept, so put that from your minds and forget it.

Mr. Powell: John William Powell.

The Clerk: John William Gordon Powell.

Mr. Gladstein: What is that name?

(Record read by reporter.)

Mr. Powell: Your Honor—

The Court: Yes?

Mr. Powell: —I am a salesman and I don't earn anything unless I work. I work on a commission basis, I sell securities, stocks and bonds. My previous job terminated the 1st of February and I spent most of the month of February making a new connection.

The Court: All right, you may be excused.

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Mr. Powell: I am just about ready to get started.

The Court: You are excused.

Mr. Cardasis: John C. Cardasis.

The Clerk: John C. Cardasis.

Mr. Cardasis: Your Honor, I am the owner of a flower shop, and next month being Easter is our busiest (T-199) season.

The Court: Do you have other persons with equal authority as yourself or do you manage the place?

Mr. Cardasis: No, there are three there but I manage the place.

The Court: And you do the buying of the flowers?

Mr. Cardasis: I do the buying.

The Court: And the management of the store?

Mr. Cardasis: Yes.

The Court: You may go.

Mr. Woodhouse: Ernest I. Woodhouse.

The Clerk: Ernest I. Woodhouse.

Mr. Woodhouse: Your Honor, I am a custodian of the Stuyvesant Town Housing Project owned by the Metropolitan Life Insurance Company. I have been there about four months and not knowing that I would be compensated equal to my salary in my absence, that would be—that would create, let us say, financial hardship in my particular case.

The Court: All right, you may be excused.

Mr. Gladstein: Exception.

Mr. Gill: Leslie Gill.

The Clerk: Leslie Gill.

Mr. Gill: I am a free lance photographer, your Honor.

The Court: A free lance photographer?

Mr. Gill: Yes. I employ two people who can do (T-200) nothing when I am here. I am planning to give up two or three weeks, but two or three months would be impossible.

The Court: All right, you may be excused.

Mrs. Lenon: Emily M. Lenon.

The Court: Yes, Mrs. Lenon?

Mrs. Lenon: Your Honor, my daughter is ailing.

The Court: You will have to speak louder. Come over here where I can hear you.

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Mrs. Lenon: My daughter is ailing for the last two months. I received a phone call this morning that she was worse.

The Court: Does your daughter live with you?

Mrs. Lenon: No, she lives in Long Island, but she wants to come to my home and I could take care of her.

The Court: Well, I suppose you want to do that?

Mrs. Lenon: Yes, sir.

The Court: Now did you gentlemen hear the situation? Her daughter is ill. She is in Ohio, and wants to come and stay with her mother, who wants to be able to take care of her, so I think you may be excused, Mrs. Lenon.

Mrs. Lenon: Thank you.

Mr. Lustig: Albert A. Lustig.

The Clerk: Albert Allen Lustig.

The Court: Yes, Mr. Lustig?

(T-201) Mr. Lustig: I intend getting married the end of April.

The Court: You don't need to spare a moment on that.

(Laughter.)

Mr. McKinley: Donald B. McKinley.

The Clerk: Donald B. McKinley.

Mr. McKinley: Your Honor, I am general superintendent for a construction firm responsible for the outside organization. In my absence there is no particular person in charge.

The Court: All right, you may be excused.

Mr. Gladstein: Your Honor, may I have the name of the last juror? I missed it.

The Clerk: Donald B. McKinley.

Mr. Schmidt: Mott B. Schmidt.

The Clerk: Mott B. Schmidt.

The Court: Yes, Mr. Schmidt?

Mr. Schmidt: Your Honor, I am an architect with a one-man office, and I am the only draftsman, and after having no work for some months I finally have a contract where we have to start excavating in a couple of weeks, and I am the only one.

The Court: All right, you may be excused.

Mr. Sanford: Lloyd M. Sanford.

Voir Dire

The Clerk: Lloyd M. Sanford.

(T-202) Mr. Sanford: Your Honor, I manage a sales office for my company. There are a great many important matters that require my personal attention. It is the length of time that bothers me. I would like to serve if it were to be a short suit.

The Court: Well, just what is the nature of the work?

Mr. Sanford: I am managing a group life insurance sales office for the Metropolitan Life. We have a small office staff, a large group of salesmen and we do not have—

The Court: All right, you may be excused.

Mr. Rabin: Jack Rabin.

The Clerk: Jack Rabin.

The Court: Yes, Mr. Rabin?

Mr. Rabin: There are only three of us in our organization, and it would be rather difficult for anyone that has to be away for any length of time.

The Court: Well, you know it is almost always so. Tell me more about the nature of the work.

Mr. Rabin: Well, we are stock brokers, and I am responsible for a good percentage of the business of the firm, and as a matter of fact except when I have served on a jury I have never taken a vacation longer than a week in the last six or seven years.

The Court: Not more than a week in six or (T-203) seven years?

Mr. Rabin: At a time, that is right. I have never been away from the office more than a week at a time.

The Court: Well, you had better go and take a week right now.

Mr. Rabin: Thank you.

Mr. O'Neil: Clement L. O'Neil.

The Clerk: Clement L. O'Neil.

Mr. O'Neil: I am in the real estate business, your Honor, maintenance and collection of rents, and there is only two of us in the department. During January and February I lost about a month's time when I was out with pneumonia and it put me far behind.

The Court: All right, that is enough, you may go.

Mr. O'Neil: Thank you.

Mr. Williams: Williams, Richard E.

The Clerk: Richard E. Williams.

Voir Dire

The Court: Yes, Mr. Williams?

Mr. Williams: Your Honor, I am treasurer of a national advertising agency, and one of our vice-presidents is seriously ill and the president is out for a two months' trip on a visit to the Coast, and that means a lot of additional duties are thrown on me in addition to my regular duties of handling tax reports and company meetings and a great deal of detail, and while I would be glad (T-204) to serve for two weeks—

The Court: All right, you may go.

Mr. Creighton: Hugh Creighton.

The Clerk: Hugh H. Creighton.

The Court: Yes, Mr. Creighton?

Mr. Creighton: I am an architect employed by a large firm in hospitals—I am what is known as a hospital consultant, and the firm has asked me to request excuse because of the duties and the urgency of some of these jobs we are now doing.

The Court: Some of the jobs that you are now on are on an emergency basis, are they?

Mr. Creighton: They are cancer hospitals for the City.

The Court: You may go.

Mr. Gladstein: May I ask the spelling of the juror's name?

The Clerk: C-r-e-i-g-h-t-o-n.

Mr. Price: Price, Howard.

The Clerk: Howard M. Price.

Mr. Price: Your Honor, I am a sales manager of the Ludlow Studios of 23rd Street. Springtime is the busiest time of the year. We do contract work for the Treasury Department on veterans' hospitals and these contracts come in from the Treasury Department and they (T-205) specify a certain delivery for a certain hospital, and it must go into the hospital at that time, otherwise it voids the contract. I am the sales manager there in charge of that work, and there is a time element purely.

The Court: There is no one there who could do that?

Mr. Price: No.

The Court: All right, you may go.

Mr. Worden: Worden, Clarence.

The Clerk: Clarence Worden.

Voir Dire

Mr. Worden: Your Honor, I am special events director and director of public service of WCBS, the Columbia Broadcasting System. As such it is my duty to plan and supervise all non-commercial programs in the public interest, educational and others. At the moment I am deeply engaged in campaigns, fund-raising campaigns over the radio for the Red Cross, the National Cancer Society, the Heart Association and many others. This is a seasonal activity, and these are the 1949 campaigns.

The Court: All right, you may go.

Mr. Worden: Thank you, sir.

The Court: Now there is one thing that has just occurred to me that I may say to all of you prospective jurors together, and I think you had (T-206) better start with it right now, and that is that there is to be no reading of the newspapers or anything else that have anything to do with this case, and as long as you are here and haven't been excused and you have my direction that you are not to read newspaper accounts about the case or any other kind of accounts about the case, or to talk to anybody about it, even among yourselves who are the prospective jurors here, so please bear that in mind. We might as well start from scratch on this because as jurors, as I will tell you all a little later in more detail, you are supposed to enter the jury box at the beginning of the trial with a free and open mind, and I want this admonition about reading newspapers, listening to the radio, talking to people and reading pamphlets and things of that kind—that is all out for the duration of the trial.

Mr. Addison: Addison, John Edward.

The Clerk: John Edward Addison.

The Court: Yes, Mr. Addison?

Mr. Addison: Your Honor, I am a clothing presser by trade, and the main season is just about to begin.

The Court: I do not quite hear that. You what?

Mr. Addison: I say the main season for the clothing business is about to begin. I have had a very (T-207) slow business and some bills piled up, and if I were sitting on this case two weeks or more it would be a hardship on me financially.

The Court: Do you own the business yourself?

Mr. Addison: No, sir.

Voir Dire

The Court: You are an employe there?

Mr. Addison: That's right.

The Court: Do you feel that a lengthy absence might prejudice your position there?

Mr. Addison: It is a matter that I have a family to support and it would be a burden.

The Court: What?

Mr. Addison: I said if I haven't got a steady income it aggravates the situation more because I already owe other bills that I am unable to meet at this time.

The Court: All right, you may be excused.

Mr. Brock: Brock, Robert Allen.

The Court: Just a second—please go back there for a second. I want to ask you one or two more questions.

(Mr. Addison resumes seat in jury box.)

The Court: You have referred to the financial hardship that you would suffer if you were here instead of at your occupation. You also mentioned something about some bills that had piled up that you felt that you ought to pay and you may not be able to do that if you weren't (T-208) right on the job in your business; am I right about that?

Mr. Addison: Yes, sir.

The Court: Is there a substantial amount of those bills so that they would really worry you and give you concern?

Mr. Addison: Yes, it is.

The Court: Now you realize that everybody has a certain amount of hardship in sitting on juries. Do you feel that the hardship to you is greater than it would be to other people because of what you have told me?

Mr. Addison: Well, I know what it would be to me.

The Court: It would make it pretty hard for you to serve?

Mr. Addison: Yes, sir.

The Court: All right.

Mr. Addison: I just finished a case here.

The Court: What is that?

(Record read by reporter.)

The Court: As a juror?

Mr. Addison: Yes, sir.

The Court: In this court?

Mr. Addison: Yes, sir.

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The Court: Well then you are not qualified to sit, so that you may be excused.

(T-209) Mr. McGohey: Oh, yes, he is qualified.

The Court: I thought the rule was—

Mr. McGohey: No. I think what the juror means is that he sat on one trial since the time that he was called. He was probably called for the 1st of the month.

The Court: Oh, I see what you mean.

Well just go back to the box a second there because I thought—I misunderstood it.

(Mr. Addison resumes seat in jury box.)

The Court: You were called recently as a juror, weren't you?

Mr. Addison: As of March the 1st.

The Court: Now, had you been called previously within a year?

Mr. Addison: No.

The Court: No, I misunderstood you. So that after you were called as of March 1st you already sat on one case?

Mr. Addison: Yes.

The Court: Then you may be excused.

Mr. Gladstein: Exception.

Mr. Brock: Brock.

The Clerk: R. Allen Brock.

Mr. Brock: Your Honor, I have a very heavy schedule coming up the next three weeks to a month. I am in the insurance business, the vice-president of the (T-210) Central Manufacturers Insurance Company, and I also serve as president and director of the Associated Company. I have coming up within the next three weeks two directors' meetings and a very heavy schedule, and we are running a very light staff at the present time.

The Court: All right, you may go.

Mr. Brock: Thank you.

Mr. Lovinger: Mr. Lovinger.

The Clerk: Ralph Lovinger.

Mr. Lovinger: Your Honor, I am in the retail shoe business, in a selling capacity. I have two duties to perform. I have to take care of my wife before leaving for

Voir Dire

work in the morning. She has been ill, and I have to do all the shopping for her, so it is three duties in one.

The Court: Are you the only man in this retail—

Mr. Lovinger: In this establishment?

The Court: Yes.

Mr. Lovinger: No, it is a chain organization.

The Court: And what is your position there?

Mr. Lovinger: Salesman.

The Court: Do you feel that this long absence, should the trial take as long as I have mentioned, would be prejudicial?

Mr. Lovinger: Well, that would affect my wife mostly. She is an ill woman. She has been operated on, (T-211) and she has had a tumor operation and it is very difficult for her to get around.

The Court: All right, you may go.

Mr. Lovinger: Thank you.

The Court: Now I think I am going to take a little recess now of ten minutes.

(Short recess.)

Mr. McCabe: If your Honor please, Mr. Crockett was called away. He had a little unfinished business—

The Court: Mr. Who?

Mr. McCabe: Mr. Crockett.

The Court: Oh, yes.

Mr. McCabe: —in connection with the filing of an affidavit, and I wondered whether your Honor would care to have me interrupt now to ask leave to file that in connection with the motion which he made yesterday.

The Court: Why, I am willing to hear you now. You merely want to file the affidavit? You may do that.

Mr. McGohey: If your Honor please, is that the matter on which we submitted briefs to your Honor this morning?

The Court: I don't think so.

Mr. McCabe: Yes, concerning certain documents.

Mr. McGohey: Yes.

Mr. McCabe: Yes.

(T-212) Mr. McGohey: We submitted briefs on that this morning. It is a little odd to be putting an affidavit in after we have stated our positions in briefs.

Voir Dire

The Court: Let me look at it.

Mr. McCabe: It may be the affidavit was not prepared. There is attached to that copies of original documents which Mr. Crockett asked leave to submit.

Mr. McGohey: Have you a copy that I may see, please?

Mr. McCabe: Yes.

Mr. McGohey: Is this complete or—

Mr. McCabe: That is the copy.

Mr. McGohey: It seemed to me that the copy that you handed to his Honor was a little more bulky than this.

Mr. McCabe: Yes, it has two extra papers there which represent copies, and in your document the copies are attached, of course. We wish to substitute the copy.

The Court: Did I grant leave yesterday to put in an affidavit today? I don't recall that but—

Mr. McGohey: I am quite sure your Honor did not, and I am quite sure also that counsel did not ask for any— for leave to file any affidavit.

Mr. McCabe: I am frank to say—

The Court: I think I would prefer to have the record checked and also to discuss the matter when Mr. (T-213) Crockett is here.

Mr. McCabe: All right.

The Court: So I will not receive the affidavit as yet. I will return it to you, Mr. McCabe, and the matter may be drawn to my attention later, after someone has checked the record and I can see just what happened.

Mr. McGohey: I am quite certain that a search of the record will disclose no request to file such an affidavit nor any statement by counsel as to any fact which now appears in this affidavit, and that there was no permission granted by your Honor to file an affidavit.

The Court: That is my recollection.

Mr. McGohey: The direction was that, if we desired, we could file briefs with your Honor this morning.

The Court: Yes.

Mr. McGohey: And when we were in conference, Mr. Crockett filed his memorandum and I filed mine, and we exchanged them.

The Court: The facts, as I recall them, were, very simply stated, that the documents in question were in some receptacle in the automobile of the individual defendant in question, period.

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Mr. McGohey: That is correct.

The Court: That is all that I was told and (T-214) I don't remember it, but I prefer to check and make sure and then Mr. Crockett can apply to me later and, if I find that he is right and that I did give such permission, I will receive the affidavit; and if, on the other hand, I gave no such permission, I will not receive it.

Mr. McGohey: May I offer to your Honor this bit of help? I think you will find the motion by Mr. Crockett, and the colloquy that followed it, on pages 123 to 130 of the record of yesterday's proceedings.

The Court: In any event, I don't want to determine the matter in Mr. Crockett's absence.

Mr. McCabe: Yes.

Mr. McGohey: Oh, no, I don't urge that you do. I just call that to your attention.

The Clerk: Charles Goodman.

The Court: Yes, Mr. Goodman?

Mr. Goodman: I am a salesman, your Honor, and my income is derived wholly from commissions. I cannot afford to stay here more than two weeks.

The Court: What kind of business is that that you are a salesman of?

Mr. Goodman: Janitors' supplies.

The Court: General?

Mr. Goodman: Janitors'.

The Court: Janitors' supplies?

(T-215) Mr. Goodman: Yes.

The Court: Is this the time of year that would make it burdensome?

Mr. Goodman: This is one of my busiest times of the year.

The Court: That is what I mean.

Mr. Goodman: Yes.

The Court: All right, you may go.

The Clerk: Charles G. Worthington.

The Court: Yes, Mr. Worthington?

Mr. Worthington: I am secretary-treasurer of an industrial management association. We have a small staff, two girls and myself. An extended absence from the office would impose a definite handicap on the conduct of our work, particularly at this time when we are making prep-

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arations for our annual meeting. I am quite able to serve for two weeks' time but two months' time would very definitely handicap us, being such a small group.

The Court: All right, you may go.

The Clerk: George W. Biddulph.

Mr. Biddulph: Your Honor, I am the supervisor of our accounting division and it would be impossible for me to stay away more than one or two weeks. It would necessitate my going in every day after the regular court (T-216) session to make up the work.

The Court: Is that what you always do, when you serve on juries?

Mr. Biddulph: Oh, yes.

The Court: And you feel that that would not be practicable for an extended period?

Mr. Biddulph: No, sir.

The Court: You just couldn't keep it up?

Mr. Biddulph: No, sir.

The Court: All right, I will excuse you.

The Clerk: Storer Boardman Lunt.

Mr. Lunt: Your Honor, I am president of a small book publishing organization and we are now in the process of shaping up our autumn list. It is a personal business. I should be very happy to serve for two weeks, but for an extended period it would be detrimental to the business and extremely difficult on my colleagues and in these circumstances—

The Court: I suppose it just would not be practicable for you to be away that long without really hurting your business?

Mr. Lunt: It would be extremely hurtful.

The Court: All right, you may go.

The Clerk: Frederick Peter Beffe.

(T-217) Mr. Beffe: Your Honor, I have been on jury duty since March 1st.

The Court: I did not quite hear you.

Mr. Beffe: I have been on jury duty since March 1st and I feel that if I will be on much longer it will cause me considerable worry about my position. I am a clerk and there are four people dependent on my salary; and any additional money that I might be able to earn, through overtime and things like that, will be very hurtful to my family.

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The Court: I don't think that I get the picture very well. Let me have that again. It is probably because I did not hear you very well. I did not understand the kind of business or just exactly where the hardship comes in, that's all.

Mr. Baffe: I am just the type that worries about my job, being away from the job, and that—

The Court: I get the point. You say that because of your own personal characteristics, if you are away from the job that long, you would be afraid that it would prejudice your position?

Mr. Baffe: That is right.

The Court: Get you worrying about it and you just don't feel you ought to do that. Well, you may be excused.

(T-218) The Clerk: Carl Gayer Schneider.

Mr. Schneider: I have served on the current panel since March 1st and my firm has every reason to believe that I will be free of jury duty not later than about March 15th. It certainly seems as if this case would go beyond that time. So I respectfully—

The Court: I think the case will go beyond March 15th.

Mr. Schneider: —ask to be excused, sir, because I could not be away more than three or four weeks without prejudicing my position either.

The Court: Just how would it do that? Because you have spoken more in generalities. Let me have the details a little more.

Mr. Schneider: I am general freight agent which, in other firms, means just a plain salesman, and I have a territory from 59th Street north into Westchester County and down on Long Island, and if I don't keep my contacts up with my customers, I know very well I would have to be replaced.

The Court: All right.

Mr. Schneider: Thank you, sir.

The Clerk: Henry W. Matalene, Jr.

Mr. Matalene: I am in the surgical instruments business. We manufacture instruments for eye surgeons and (T-219) we make many, many special instruments for particular operations and, unfortunately, there isn't anybody else there that is able to carry on when I am not on deck.

Voir Dire

The Court: You mean you make the instruments yourself?

Mr. Matalene: No, sir, not I personally. We have workmen, but they are incompetent to talk to a doctor to find out how it should be made and so on, and I have to do that work myself because I am familiar with the techniques of the operations.

The Court: Yes, and I suppose those orders from the doctors are of a rather emergency character?

Mr. Matalene: Well, yes, they are. We get telegrams from all over the world for the particular things, and telephone calls and everything you can imagine, to get different things done quickly because they have patients waiting for operations.

The Court: All right, you may be excused.

The Clerk: John Harvey Zimmerman.

Mr. Zimmerman: I would like to be excused on a personal basis. I have been out of my job for a month owing to the death of my wife in January.

The Court: You don't need to say anything more.

Mr. Root: Waldo Root.

The Clerk: Waldo Root.

(T-220) The Court: I can hear your voice, Mr. Root. I wish everybody spoke the way you do. You have a penetrating voice, which is a great gift.

Mr. Root: I am a sole employe, being a private secretary. And the man I work for I worked for four years. He is of foreign descent—a Swiss—so his English is not very good. He has become used to my services and I take care of his correspondence. I suppose that I could attend the trial during the time but I would have to work until 11 o'clock every night. The procedure of the trial tired your Honor, I believe I heard you say—

The Court: Yes, you did. You can double it.

Mr. Root: And I am afraid the proceedings—

The Court: You just don't see how you could carry that burden?

Mr. Root: Do both the trial and the—

The Court: For such a time. If you neglected that work, I suppose it would prejudice your position?

Voir Dire

Mr. Root: Being a sole employe, yes.

The Court: All right, you may be excused.

The Clerk: Jack Kraft.

Mr. Kraft: Your Honor, I am general manager of a small metal factory and, as such, I handle most of the supervisory work, buying, head of the sales department, head of production, head of the office, credit manager and, (T-221) naturally, do most of the jobs around the place.

The Court: If you do all those things, I suppose the place cannot get along without you?

Mr. Kraft: Not for too long a period.

The Court: You may be excused.

The Clerk: Your Honor, we still have James E. McGevna on which there was a question.

The Court: Yes, the man with the New Haven?

The Clerk: That is right.

The Court: What is his name, McGevna? Mr. McGevna, well, I guess I will let you go.

Mr. Gladstein: Exception.

The Court: I think the thing to do now is to bring in— wait a minute, Mr. McGevna. You had better come up here and answer some more questions.

Just tell me exactly what the hardship is in your case. As I understood it, you did not feel that this long absence would prejudice your employment, or would it?

Mr. McGevna: Well, as I said, I don't think it would, but I think that the burden of work here, and the other trial and also trying to do some work up in the office, it would really have me all worked out.

The Court: Why would you have to do the work up in the office? Couldn't a big company like that (T-222) get somebody else to do it?

Mr. McGevna: They have been laying off quite a bit of help, cutting down on a lot of help, and those that they are keeping are just a skeleton force.

The Court: I don't quite see how that is a matter that would really be prejudicial to you. Every company must have employes that have to serve as jurors. Don't you think they would understand that?

Mr. McGevna: I imagine they would.

Voir Dire

The Court: Well, you come back here this afternoon, and I may not excuse you. I don't want to make any rulings that are not wisely considered and I, frankly, have a doubt in your case whether the hardship is such that I should excuse you. Is there anything else that you think you ought to tell me that would support your excuse?

Mr. McGevna: I feel as though the case, and all that about it, I think it really would affect me, my health, because I am very nervous and highstrung, and I really think it would have some effect on me.

The Court : And you don't really want to serve?

Mr. McGevna: That is right.

The Court: Well, you are excused.

Now, we have a number of other jurors on the panel, so these jurors that remain may return to—what (T-223) is it, Room 109?

The Clerk: That is right.

The Court: And then the other jurors in 109 will come in and we will take their excuses up, such as there may be, and then we will have the entire panel ready to question.

Oh, I am told that the people in the other panel have gone to lunch and so we will adjourn now until two o'clock, and those of the jurors who were here need not come back to Room 109 exactly at two o'clock because what we will do then is, we will take the other jurors that are the remainder of the panel and have them come in here and take the excuses as to those who feel they would have some special hardship. So that I think you may safely return to Room 109 some time around quarter past two or, perhaps, even a little bit later.

We will adjourn now until two o'clock.

(Recess to 2.00 p.m.)

Voir Dire

(T-224)

AFTERNOON SESSION

* * *

(Short recess.)

The Court: Now I have a brief announcement for the benefit of counsel to the motion made by Mr. McCabe yesterday for taking the deposition of Mr. Foster. That motion is denied.

I am also giving further consideration to one of the matters that was discussed yesterday. Counsel will recall that I indicated that I would allow the defendants only ten peremptory challenges. I am giving that matter further and serious consideration and may alter my determination in that respect, and I would welcome any memoranda that counsel for either side may care to submit to me at the opening of court tomorrow. In that same connection there is a matter which I think counsel for both sides might consider and on which I shall be glad to receive their views in a memorandum in writing submitted to me at the opening of court tomorrow, and that is the rule in this district of alternate challenge so that in each case the Government always has the last challenge. Anything either side (T-225) may desire to call to my attention in connection with either of these propositions should be submitted tomorrow morning at the opening of court.

* * *

Mr. McCabe: With regard to your Honor's denial of my motion regarding depositions, I should like to ask your Honor to reserve that decision until I have had a chance to discuss it with your Honor or to file a memorandum, as certainly the bare denial gives me no idea of the reason for the denial, and I think it has been thought, since the beginning of the case, that the introduction of that testimony in some form or other would be vital to the defense, to the defendants, and I think it requires very careful consideration.

The Court: I think I am pretty familiar with the situation there. It has been the subject of considerable discussion. I referred to it in the opinion I wrote last November, and I feel that the various elements that should

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go into the exercise of a proper discretion are known to me and have been given proper consideration, so that I don't think I desire to leave that matter open any further.

Mr. McCabe: Except that leaves counsel in very grave doubt as to whether they have been remiss or negligent in any manner.

(T-226) The Court: I see nothing remiss or negligent unless it be that, despite the plain intimation contained in my opinion last November that the taking of such a deposition was to be done promptly and in the very considerable period of continuance which I then allowed, may be deemed attributable in some way to counsel. I think not. I think probably it is fairer to assume that counsel for the defendants, taking everything into consideration, desired to present the matter yesterday when it was presented.

Mr. McCabe: If your Honor recalls, until January 17th William Z. Foster was a defendant in this case, had not been severed, and that there was a slight difference of consideration on my part as counsel for Foster as to the matter of taking depositions. Of course, of extreme importance was the fact that had we desired to take depositions we would have been at a loss in the formulation of questions to be put to the witness in the absence of any information as to the prosecution's case. I think that ought to be given consideration, your Honor.

The Court: Well, you see, Mr. McCabe, it seems so often to counsel that the Court does not give consideration to various subjects when the truth is that the Court has given matters the consideration that they ought to have. It isn't always possible to get counsel in agreement.

(T-227) There are two sides to every case and whenever a motion comes up, there are two sides and somebody must lose, and it isn't at all unusual for the person who does lose to feel that perhaps the Court hasn't given the matter the consideration it deserves. But all I can say is that in this discretionary matter I feel that I have given it full and adequate consideration. You will remember yesterday when a variety of other motions were made, which I felt that I knew enough about to decide immediately, on this particu-

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lar motion I reserved decision and studied the matter overnight and gave it further consideration. In any event, I do not desire to have any further argument on it now.

Now, as to the jurors, I want to make a few preliminary comments before I hear such excuses as some of you may desire to present to me with reference to your serving as jurors on this case. As all of you know, one of the important duties of citizenship is the duty to serve as a juror. I do not suppose that it is ever possible that jury service can be entered upon without some sacrifice, without some hardship, or some inconvenience or difficulty to those who serve. Now, the hardship and the inconvenience varies in degree, and when I hear such of you as desire to be excused, I want you to understand that you should only present as excuses matters that are really matters of substantial (T-228) consequence.

Bear in mind that it is your duty as citizens to undergo some hardship, some very considerable hardship in connection with such service.

The second thing I want to refer to generally is that in every trial, according to our system of jurisprudence in the United States, it is not only the right but it is the duty of counsel, counsel for the Government and counsel for the defendants, to make objections, to make motions, to make arguments, in so far as the Court desires argument and finds it proper, to present matters which will prevent prejudice to their clients, whether the client be the Government on the one hand or the defendants on the other.

You must bear that in mind and be careful right from this moment not to permit, under any circumstances, the fact that counsel objects, that counsel argues, that counsel presses points upon the Court, not to permit any of those things to take lodgement in your minds in any way to the prejudice of either the Government or the defendants. It would not be fair for you to do that.

Bear in mind that however irksome sometimes those objections may seem, particularly to those laymen such as yourselves who do not understand the questions of law that may be involved, no matter how irksome they (T-229) may seem, how troublesome they may seem, it is your duty and you must set them aside and not permit them to in-

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fluence you in any way to the detriment or prejudice of the Government or of any of the defendants.

Now, one last general observation, that those of you who come to serve in the case will hear me make again, which is that it is of the utmost consequence that jurors in our system of justice shall enter the jury box at the beginning of the trial with an open mind and to keep that mind open until all the evidence is in and the instructions of the Court have been given. Now you cannot do that if you keep reading newspapers, reading magazines, reading pamphlets, listening over the radio, talking among yourselves or talking with friends on subjects related in even the most remote way to the trial, and so I tell you now from this moment on until you may be excused from service in this case, do not read any newspaper accounts of the trial, do not read any pamphlets or magazines, or written matter of any kind connected with the trial, do not listen to any radio news commentators or anything else over the radio that has anything to do with the case, and do not discuss the case either among yourselves or with your families or with your friends or with anyone else.

Now those things that I have spoken of here are (T-230) fundamental; they are very important, and I do not wish to have any juror serve in this case who has any doubt that he or she can follow those directions.

To my first question, which is as follows:

This trial may last several weeks, perhaps as much as two months or more. Is there any reason why you should not serve because of some family or business hardship which might be caused by your attendance as a juror for so long a period?

Now those of you who would answer that question in the affirmative and desire to be excused, may proceed to the jury box where I will question you after you are first sworn by the clerk.

The Clerk: The jury panel will rise, please.

(The jury panel rises.)

The Clerk: The entire panel raise your right hand. You and each of you do solemnly swear that you will true answers make to such questions as shall be put to you

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touching upon your qualifications as petit jurors in this cause, so help you God.

Prospective Jurors: Yes.

The Clerk: Those who wish to be excused come forward, please.

(Prospective jurors step forward.)

The Clerk: The first gentlemen, give me your name, (T-231) please.

Mr. Simon: Louis A. Simon.

The Clerk: Louis A. Simon.

The Court: Yes, Mr. Simon—you need not rise. You may remain seated, only try to keep your voice up, if you will.

Mr. Simon: Yes, sir.

The Court: Now what is the reason you desire to be excused?

Mr. Simon: Wel, firstly, your Honor, I'm interested, very keenly interested in the settlement of an estate which is now in process in the Surrogate's Court and my presence will be required there in that matter, plus the fact—

The Court: Are you one of the executors?

Mr. Simon: Yes, sir.

The Court: And is there some pressing matter connected with that estate that requires your presence now?

Mr. Simon: Well, it will probably in a week's time or in two week's time, plus the fact that I will—

The Court: Well, that is all right, that is sufficient; you may be excused.

Mr. Simon: Thank you, sir.

The Clerk: Your name, sir?

Mr. Dolgon: Louis Dolgon.

(T-232) The Clerk: Louis Dolgon.

The Court: Yes, Mr. Dolgon?

Mr. Dolgon: Your Honor, I'm a grocery salesman, and if I have to serve more than two weeks I have the chance of both losing my job and my customers, if I don't attend to work.

The Court: All right, if you have any chance of losing your job you are going to be excused.

Mr. Dolgon: Thank you.

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The Clerk: Yes, sir?

Mr. Wilkinson: Wilkinson.

The Clerk: Roger I. Wilkinson.

The Court: Yes, Mr. Wilkinson?

Mr. Wilkinson: I am in charge of a business of research for the Bell Telephone Laboratories which is being pressed very hard at the moment and would seriously hurt the job, I think, if I have to take very much time.

The Court: Are you an engineer?

Mr. Wilkinson: Yes.

The Court: Is that something which is of an emergency character in your judgment? You speak of it as though it was something that had to be done promptly.

Mr. Wilkinson: Well, we have been working nights on it the last two months.

The Court: You feel it would be prejudicial if (T-233) you did not continue with that work at this time?

Mr. Wilkinson: I think it would be very difficult.

The Court: Very well, you may be excused.

Mr. Wilkinson: Thank you.

Mr. Boyle: Thomas W. Boyle.

The Clerk: Thomas W. Boyle.

The Court: Yes, Mr. Boyle?

Mr. Boyle: I am a key man in my organization, and by me being away more than two weeks there is possibilities of losing contracts which—

The Court: Your organization is the Market Research Company, is it?

Mr. Boyle: That is right.

The Court: What is the nature of this work?

Mr. Boyle: We deal in research amongst customers, et cetera, for advertising agencies and manufacturers.

The Court: Have you some projects or some particular work on now—

Mr. Boyle: Yes, sir.

The Court: —that needs to be done promptly?

Mr. Boyle: That is right, your Honor.

The Court: You may be excused.

Mrs. Cohn: Bessie Cohn.

The Clerk: Mrs. Bessie Cohn.

(T-234) The Court: Yes, Mrs. Cohn?

Mrs. Cohn: I have a very sick husband and I would not be able to sit.

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The Court: Very well, you may go.

Mr. McKnight: McKnight.

The Clerk: Ernest D. McKnight.

The Court: Yes, Mr. McKnight?

Mr. McKnight: Well, I have been at my place of business from 7.15 to 7.30 in the morning, and after I have been excused I have gone back to work from 7.30 to eight o'clock.

The Court: Well, it is as bad as this court. Is there any reason why you shouldn't take a little vacation from that work and come here to hear—

Mr. McKnight: It is no vacation for me.

The Court: —and cut down those hours?

Mr. McKnight: It is no vacation for me at all.

The Court: That is, you have to do that work just the same?

Mr. McKnight: It has to be done.

The Court: Now why does it have to be done?

Mr. McKnight: Because all the accounts that we handle down at the bank have to be taken care of.

The Court: Nobody else to do that work?

Mr. McKnight: That is in the department but the (T-235) other people have to stay, too, to offset that.

The Court: Do you feel that for such a long period it isn't reasonable?

Mr. McKnight: Yes.

The Court: All right, you may be excused.

Mr. Fisher: Charles Fisher.

The Clerk: Charles Fisher.

The Court: Yes, Mr. Fisher?

Mr. Fisher: I do not think the firm—oh, I couldn't stay away from the firm for that length of time.

The Court: Well, I notice here from your card that you were excused on November 15, 1948, and stated that March of this year would be the time that you could expect to serve.

Mr. Fisher: That was for two weeks.

The Court: Just what is the difficulty about your serving now in this case?

Mr. Fisher: Well, there is no difficulty—the only thing is if the firm—I would be willing, I mean if I could stay away that length of time, there is nothing there to keep me there. I mean somebody else could do my work but it is

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up—it would be up to the firm, if they would excuse me for that time.

The Court: You see, the way you leave it I do not see what basis there is for me to excuse you. Now perhaps (T-236) the best thing for you to do is to make some inquiry and be back here tomorrow.

What is the view of counsel about this? Any views that anybody chooses to express?

Mr. McGohey: I think your Honor's suggestion is a good one.

The Court: That he comes back tomorrow?

Mr. McGohey: Yes.

The Court: All right.

Mr. McGohey: Apparently the juror is willing to serve. It is only a question of his relation with his employer or with his associates.

Mr. Fisher: Employer.

The Court: Well, you be back tomorrow then, Mr. Fisher.

Mr. Fisher: Yes.

The Court: He is to report here, right to this room, when you come, Mr. Fisher.

Mr. Fisher: Yes.

The Court: Thank you.

Mr. Milbank: Robert W. Milbank.

The Clerk: Robert W. Milbank, Jr.

The Court: Yes, Mr. Milbank?

Mr. Milbank: Your Honor, since my brother's death last spring there are only two executives in the firm, one (T-237) of them, my partner, is sailing for England on a buying trip—

The Court: All right, you may be excused.

Mrs. Cohn: Florence Cohn.

The Clerk: Mrs. Florence S. Cohn.

The Court: Yes, Mrs. Cohn?

Mrs. Cohn: My obligations to my family, I have an ailing mother whom I can leave for a short period but not for any lengthy period, and then I have a young daughter at home. I do not feel I could leave—

The Court: You do not feel for family reasons you could be away from home for such a long time?

Mrs. Cohn: Not for such a long time.

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The Court: All right, you may be excused.

Mrs. Cohn: Thank you.

Mr. Turney: Theodore L. Turney.

The Clerk: Theodore L. Turney.

The Court: Yes, Mr. Turney?

Mr. Turney: Your Honor, I am the sole proprietor of a business which I do not think would suffer my absence for that long time.

The Court: What is the nature of the business?

Mr. Turney: We do reorganization work for large corporations.

The Court: Is there something that requires (T-238) your presence there at this particular time?

Mr. Turney: Well, it is partly routine at present but there is one coming up in the near future during the pendency of the trial.

The Court: All right, you may be excused.

Mr. Turney: Thank you.

Mr. Grace: John Grace.

The Clerk: John Grace.

The Court: Yes, Mr. Grace?

Mr. Grace: Your Honor, I am a supervisor of my department. Just at present my department head is suffering from rectal trouble and—

The Court: Just at present the department what?

Mr. Grace: Is suffering from rectal trouble.

The Court: I do not hear—what kind of trouble is it?

Mr. Grace: Rectal.

The Court: Wrecking?

Mr. Grace: Rectal trouble.

The Court: Don't pay any attention to Mr. Borman; he is busy on something else.

Is there some reason why you cannot serve now?

Mr. Grace: Well, I feel I am next qualified to take over that job just in case anything does happen to him.

The Court: All right, you may be excused.

(T-239) The Clerk: Yes?

Mr. Ganly: My name is Ganly, Raymond H.

The Clerk: Raymond H. Ganly.

The Court: Well, Mr. Ganly, I see you are an editor. What is the trouble with your serving?

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Mr. Ganly: Well, we have a weekly publication, your Honor, Printers Ink is an advertising weekly. We have a large staff and still we are all very busy because we are a weekly. The deadline comes around so fast and there is always a lot of work.

The Court: What do you do?

Mr. Ganly: I go out and get stories from business companies, how they solve this, that and the other problem, get news, go to the meetings.

The Court: You are not running the concern?

Mr. Ganly: No, your Honor, but the point is because the trial could last for six weeks, well that is a period that presents a problem.

The Court: It would prejudice you in your position, would it?

Mr. Ganly: Well, it would to a certain extent, and I did check with my superiors this morning. I said, I told them I read in the Times that the trial could last six weeks. Well, he said, "If that is the case we could provide you with a letter to yourself," which would authenticate (T-240) what I am saying, that it would be an embarrassing period of time to be tied up. I don't mind being tied up for two weeks, your Honor.

The Court: All right, you may be excused.

Mr. Ganly: Thank you.

Mr. Wheelwright: Roger Wheelwright.

The Clerk: Roger Wheelwright.

The Court: Yes, Mr. Wheelwright?

Mr. Wheelwright: Your Honor, our department at the office has been shorthanded for some time since wartime conditions. We have never been able to bring it up to what we require. As a result we have been taking work home at nights and working over week-ends. It has to do with just the ordinary daily work, trying to keep that up to date. In addition I conduct a class of 25 students two mornings a week and we are midway through the course, and if it should have to be discontinued—and we are also in the midst of bringing our rate panel up to date, which is almost two years behind.

The Court: All right, you may go.

Mrs. Carrol: Madelene Carrol.

The Clerk: Madilene Carrol.

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(T-241) The Court: Yes, Mrs. Carrol?

Mrs. Carrol: Your Honor, I have a young daughter I could not leave her that length of time, and also, at present, I have a part time job. It would affect the job.

The Court: How old is your daughter?

Mrs. Carrol: She is 11.

The Court: Does this part time job you have make it possible for you to serve on juries generally?

Mrs. Carrol: Yes—well, no. I just received this job and, I mean, I told them it was just going to be a two-week period. Other than that they would have to take me off the list.

The Court: All right, you may go.

Mrs. Carrol: Thank you.

The Clerk: Timothy Vincent Sullivan.

The Court: Yes, Mr. Sullivan?

Mr. Sullivan: Your Honor, I am a salesman and on a commission basis. As long as this trial may possibly last, I will lose my income.

The Court: Is your compensation dependent upon the commissions that you earn in making your sales?

Mr. Sullivan: Mainly.

The Court: Would it be a grave hardship to you if you were away from your work for the period that this trial is apt to take?

(T-242) Mr. Sullivan: Well, my salary is my sole income.

The Court: Then it would be a grave hardship to you. You may be excused.

The Clerk: Wilbur W. H. Pyn.

Mr. McCabe: May we have that name repeated?

The Court: That is Wilbur W. H. Pyn, P-y-n is the last name.

Yes, Mr. Pyn?

Mr. Pyn: Your Honor, may I be heard to state for the last 25 years I have been an interpreter for the Government, in this court, and also I do work for the FBI, and I am still doing some investigation translation and at present I am director of the information and translation bureau, which advises people who come to me about affairs in the nature of foreign affairs, particularly the Far East, and I feel that—I myself feel that I am not qualified to sit as a juror in this case.

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The Court: You have a very good record of jury service in the past, and I think I will let you go.

Mr. Pyn: Thank you.

The Clerk: Elmer J. Grinnett.

The Court: Yes, Mr. Grinnett?

Mr. Grinnett: Your Honor, I am directing work of considerable importance to my corporation and to be away from that for a number of weeks would seriously handicap (T-243) that work.

The Court: What is the character of the work that you are doing?

Mr. Grinnett: Well, I am directing a lot of construction work and engineering work. As a matter of fact, I am scheduled to go to California week after next to start a big construction project out there.

The Court: Do you feel that you are indispensable to the conduct of that work for your firm?

Mr. Grinnett: I think that there is no one qualified to handle it as I could due to my past background and close connection with it.

The Court: All right, you may be excused.

The Clerk: Diedrich F. Lenhert.

The Court: Yes, Mr. Lenhert?

Mr. Lenhert: Your Honor, I am head of the operating department of our firm and the upkeep of a large number of apartment houses is under my supervision. I could spend a short time here and still carry on my job at night.

The Court: Just what do you do in connection with the supervision of those apartment houses?

Mr. Lenhert: I am the operating head of the firm. We run the buildings, hire—employ the help and train them and carry on any repair or engineering work (T-244) that has to be done.

The Court: So you feel there would be so much to do that, while you could take care of it if it were a week or two, over such a long period it would just get all balled up?

Mr. Lenhert: Yes. I have been on a week, and this is the second week.

The Court: Have you already served?

Mr. Lenhert: Last week.

The Court: In this past week?

Mr. Lenhert: Yes.

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The Court: You may be excused.

The Clerk: Victor L. Rendina.

The Court: Yes, Mr. Rendina.

Mr. Rendina: Your Honor, I want to be excused because I am expecting a new assignment in my profession as a construction engineer. Recently I have been employed with the Western Electric, up until last Friday, and I don't think that I would be able to stay six to eight weeks on jury duty.

The Court: All right, you may go.

The Clerk: Richard J. Dowling, Jr.

The Court: Yes, Mr. Dowling?

Mr. Dowling: Your Honor, there has been a recent reorganization of my company and I am the only one who (T-245) does the particular work at this time, and I have served last week, and I think if I were to stay here for four to six weeks, it would be too long a time to serve.

The Court: What is the nature of this business you are in?

Mr. Dowling: It is preparation of reports for the Government, your Honor, by my company, to the Government.

The Court: Is the work that you do such that others could not very well do it for so long a period?

Mr. Dowling: With reorganization they let out the other person who could do it.

The Court: All right, you may go.

The Clerk: Ralph B. Magraw.

The Court: Yes, Mr. Magraw?

Mr. Magraw: I would like to be excused because I am afraid that to serve for such a long time would definitely prejudice my job.

The Court: You know, it is a funny thing, but I cannot understand a word you say. I see your lips moving but no sound comes out. I don't know whether it is possible for you, but you just try to push it out a little bit.

Mr. Magraw: Yes, I am sorry. I said that if I were to serve six weeks or two months on a jury, I am afraid it would prejudice my position.

The Court: What is your position, accountant?

(T-246) Mr. Magraw: Yes, sir.

The Court: Is it something because of this period of the year that has to do with that?

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Mr. Magraw: Yes, sir, that is part of it.

The Court: All right, you may go.

The Clerk: Joe Gratz.

The Court: Yes, Mr. Gratz?

Mr. Gratz: Your Honor, I am a free lance radio and television producer and I am presently trying to sell some programs which I have recently packaged. And if I am tied up in this jury for six or eight weeks it will prejudice the programs I have already put together. In other words, somebody will take what I have got.

The Court: Won't that be so whenever you serve?

Mr. Gratz: Well, your Honor, I have just served one week. I am in my second week also.

The Court: I suppose it is the length of time—

Mr. Gratz: Yes, sir.

The Court: —and with the work that you do all by yourself there?

Mr. Gratz: Yes, sir.

The Court: If you are kept here for this period, it will be a serious financial loss to you?

Mr. Gratz: That is right, sir.

The Court: All right, you may go.

(T-247) The Clerk: Mrs. Clara M. Freudenthal.

Mrs. Freudenthal: Your Honor, I have responsibilities at home. I take care of my daughter, who has just had a baby, and I had to leave the trial last week. I am on the second week. I had to have somebody else take care of the child. Six weeks would be too long.

The Court: All right.

The Clerk: William R. Blume.

The Court: Yes, Mr. Blume?

Mr. Blume: I prefer not to serve in any case that would be a lengthy one because I am frequently ill and have to take time out from my job for that reason.

The Court: All right. If it is a question of illness, you may go.

The Clerk: Francis W. Ward.

Mr. Ward: Your Honor, I live in the upper end of Westchester County. I have to do a considerable amount of my work when I leave court in the afternoon. And I am wondering if I can continue doing it over an indefinite

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period. However, I would like to find out from my company if they could arrange to take some of the extra work from me and I will be glad to report back in court.

The Court: All right, you report back tomorrow morning.

(T-248) Mr. Ward: Thank you very much.

The Clerk: Everett E. Evans.

The Court: Mr. Evans?

Mr. Evans: The company I work for is a small company. There are only four of us. The time required for this case will be too long. As it is, my work is behind. I handle the exports and we have two completed exports now on the floor that I haven't been able to get to.

The Court: Are you or do you feel that if you were here for some time that would seriously prejudice your business?

Mr. Evans: Yes, it might mean the canceling of those orders due to the missing of boats.

The Court: All right, you may go.

The Clerk: Joseph Waterman.

The Court: Yes, Mr. Waterman?

Mr. Waterman: I am sole proprietor of my own business. If I were to serve for a period of so much time I wouldn't have very much business left.

The Court: There is not much use asking you what business it is because you know what will happen to it if you stay here so long.

Mr. Waterman: Yes.

The Court: I guess I had better ask just the same. What is the nature of the business?

(T-249) Mr. Waterman: Electrical contracting and boiler room equipment.

The Court: How many people have you got working there?

Mr. Waterman: One person.

The Court: One person, and that is yourself?

Mr. Waterman: One person besides myself.

The Court: All right, you may go.

The Clerk: Herman L. Kollmar.

The Court: Yes, Mr. Kollmar?

Mr. Kollmar: I am the manager and owner of a machine shop and eight weeks would be too much time, or six weeks

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would be too much time to stay away. I have to direct the men on a lot of work and I couldn't do it in the morning or in the evening. There isn't enough time.

The Court: What kind of work do they do in the machine shop?

Mr. Kollmar: We make tools and special machines for a number of big concerns.

The Court: And you would lose a lot of business if you were here so long?

Mr. Kollmar: Yes.

The Court: All right.

The Clerk: Melvin Herman.

(T-250) The Court: Yes, Mr. Herman?

Mr. Herman: I have a retail toy and book shop. It is really a one-man shop. The only one who helps me at present is my mother, who is 67 years of age. It is very near here and I have been able to do it by working there in the morning, lunch hour and after court, and I cannot very well keep that up.

The Court: All right, you may be excused.

The Clerk: Mrs. Edith Lewy.

Mrs. Lewy: I have a very old mother-in-law, 95 years old. She is very ill at present and I have to help her and be with her, and I engaged somebody just for these two weeks because they told me—

The Court: You take care of your mother-in-law?

Mrs. Lewy: Not all solely but we have inquired from the doctor and she is getting very low, and we don't expect her—

The Court: All right, you may go.

Mrs. Lewy: Thank you.

The Court: I think I am going to take a short recess now and then we will resume in ten minutes.

(Short recess.)

(T-251) Mr. Sacher: May it please the Court, I would like to note an exception to the excusing of the juror Louis Dolgon.

The Court: Which juror?

Mr. Sacher: Louis Dolgon.

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The Court: Well, I think you should have done that while he was still here. I do not think it is fair to do that after he has gone.

Mr. Sacher: Well, he moved out so fast I did not have a chance to do it.

Mr. Gordon: He was the second one that your Honor questioned this afternoon.

The Court: Very well.

Mr. Gordon: Quite some time ago.

The Court: Yes.

The Clerk: Shall I proceed?

The Court: Yes.

The Clerk: Nathan Linder.

Mr. Linder: Your Honor, I am in business myself—

The Court: Just a second while I get the card.

Mr. Linder: Yes.

(Card handed to the Court by the clerk.)

The Court: Yes, Mr. Linder?

Mr. Linder: I am in business for myself and my earnings depend upon commissions solely, and if I was (T-252) to sit on this jury a long period of time I wouldn't have any earnings at all.

The Court: What is the kind of business?

Mr. Linder: Advertising.

The Court: Very well, you may go.

The Clerk: Mrs. Jennie L. McKenna.

The Court: Yes, Mrs. McKenna?

Mrs. McKenna: Your Honor, I happen to be the co-leader of a political club and I know one of the defendants, so therefore I don't think I would care to serve.

The Court: All right, you may be excused.

The Clerk: John Francis Murray.

The Court: Yes, Mr. Murray?

Mr. Murray: Your Honor, I am an accountant entirely on my own. I have no staff and this happens to be a very bad season of the year for my sort of work, income tax work.

The Court: All right, you may go.

The Clerk: Kasson Howe.

The Court: Yes, Mr. Howe?

Mr. Howe: Your Honor, I am an electrical engineer. I have been with the company about 27 years. I am in the

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sales department and being away this long would work a hardship. I have served—

(T-253) The Court: In just what way would it serve a hardship, Mr. Howe?

Mr. Howe: Having been the length of time I have been, I am quite familiar with old jobs. There are a lot of men that are newer than I that probably could eventually locate loose ends but they usually come around to me to find them.

The Court: How large a concern is it that you are connected with?

Mr. Howe: During the war we were about 3300. We are contractors for the Government, defense equipment, and now it is around six or seven hundred.

The Court: Between sixty and seventy?

Mr. Howe: Between 600 and 700.

The Court: You may go.

Mr. Howe: Thank you, sir.

The Clerk: Harry Leopold, Jr.

Mr. Leopold: Your Honor—

The Court: Just a moment, Mr. Leopold.

(Court examines card.)

The Court: Yes, sir?

Mr. Leopold: I am a one-man department of my concern. If I were not there, why the entire work would stop.

The Court: What is the nature of the department?

(T-254) Mr. Leopold: I do marketing research for the Flintkote Company.

The Court: All right, you may go.

The Clerk: Walter H. Lowy.

The Court: Yes, Mr. Lowy?

Mr. Lowy: Your Honor, I am a traveling man. My income depends entirely on being on the road and calling on my trade.

The Court: Is this the time of year when you would be expected to go?

Mr. Lowy: Right in the midst of our season, yes.

The Court: You may go.

Mr. Lowy: Thank you.

The Clerk: Jack Wallach.

The Court: Yes, Mr. Wallach?

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Mr. Wallach: May I ask a question? I have a question. I am an industrial agent employed by the Prudential Insurance Company. Does the Court have any supervision over requesting the Prudential to assign another agent to do my work for me in the event that this case—

The Court: No, I am afraid not, but what we have done with two other jurors, as I recall it—I know with one—we permitted him to go and consult his employer and to return tomorrow. Now would it be possible for you (T-255) to say whether they could spare you or have someone take your place and then report back tomorrow, or would that be difficult?

Mr. Wallach: If I requested that myself, your Honor, I think it would be hardly possible. I am not seeking an excuse to get out from service but if the Court could possibly send a letter to the manager of my office I believe it could be arranged.

The Court: Well you know, it seems so easy for the Court to send a letter. My pre-occupations now are such that I simply could not do it. It is hard for people to realize the burden that I have been carrying here and the many details of one kind or another that I have to take care of, and I don't think it would be proper for me to do it anyway, but the main question is whether there would be some special hardship to you. Now if you think your presence here would prejudice your position or if you would prefer to discuss it at the office and return tomorrow, whichever you decide for yourself to do will be quite acceptable to me.

Now what do you think?

Mr. Wallach: Well, I'll take it upon myself, if it is possible.

The Court: And if no progress is made—

Mr. Wallach: In other words, it will simply (T-256) work out as a hardship in my particular case and I desire to be excused.

The Court: You see, as I told everybody in the beginning, it is always a hardship with jury duty. What I am interrogating you and the other jurors about now is to see whether there would be some special or unusual hardship which might conceivably exist in a case to take a long time to try. Now bearing all that in mind, what do you

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think about your own case, that you would have such a hardship?

Mr. Wallach: Can I have your permission to hold it in abeyance until the morning?

The Court: Yes, you may.

Mr. Wallach: And I will return tomorrow after I talk to my manager.

The Court: Yes.

Mr. Wallach: Thank you.

The Clerk: Charles Jones.

The Court: Yes, Mr. Jones?

Mr. Jones: I have a one-man office, just myself, insurance, on a commission basis. A week or two weeks is not too bad, but two months or one-sixth of the year would work a serious hardship on me.

The Court: All right, you may go.

The Clerk: James K. Russell.

(T-257) The Court: Yes, Mr. Russell?

Mr. Russell: Your Honor, I am an accountant with the Alcoa Steamship Company and I have various accounts. I have to go on the books each month and I think time like this that the trial would last—

The Court: Would prejudice your position?

Mr. Russell: Yes, sir.

The Court: You think so?

Mr. Russell: I am not too sure about it, but—

The Court: Well, you feel it would be something that would cause a real hardship to you or to the company?

Mr. Russell: Yes, your Honor.

The Court: All right, you may go.

Mr. Russell: Thank you.

The Clerk: Thomas Murtha.

The Court: Yes, Mr. Murtha?

Mr. Murtha: Your Honor, I am willing to serve but I would rather not if the jury is going to be locked up. I mean if I am going to be locked up for two months in a hotel every night, I would rather not serve; otherwise I would be willing to serve six or eight weeks, whatever the case takes.

The Court: Well, has there been any indication that there will be a desire to have the jury prevented from (T-257-A) returning to their homes?

Voir Dire

Mr. McGohey: None on my part, your Honor.

The Court: I have not even given consideration to doing that and do not expect to do that unless some most unusual situation might later occur, so that with that eliminated do you think that you may return with the other jurors?

Mr. Murtha: That is right.

The Court: All right, Mr. Murtha, you may do that.

(T-258) The Clerk: Miss Mildred D. Spencer.

The Court: Yes, Miss Spencer?

Miss Spencer: Your Honor, I am in the retail business, ready to wear, and by serving a month or six weeks brings us right up to our Easter season, and we are very busy at that time.

The Court: You feel that that would involve a very unusual hardship?

Miss Spencer: Well, I feel I would have to be there at that time.

The Court: Very well, you may go.

Miss Spencer: Thank you.

The Clerk: Francis S. Kent.

The Court: Yes, Mr. Kent?

Mr. Kent: My income depends upon sales and if I don't produce sales my income decreases to such an extent that it would work a very definite hardship on me.

The Court: Is this a period of the year when you would be normally active?

Mr. Kent: Very busy.

The Court: All right, you may go.

The Clerk: Your name, Madame?

Mrs. Edelman: Mrs. Edelman, Sarah Edelman.

The Clerk: Mrs. Sarah Edelman.

The Court: Yes, Mrs. Edelman?

(T-259) Mrs. Edelman: Your Honor, my health isn't too good and I think six weeks would be a strain on my health.

The Court: All right, you may go.

The Clerk: Your name, sir?

Mr. Spence: S-p-e-n-c-e.

The Clerk: Payton Westbrook Spence.

The Court: Yes, Mr. Spence.

Voir Dire

Mr. Spence: Your Honor, I am one of a team of five engineers which was assembled about four months ago to complete preparation for making specifications on an urgent basis. I am one specialist and the others are. What I do will be definitely stopped.

The Court: All right, you are excused.

Mr. Watson: Mr. Watson.

The Clerk: Clement Hayes Watson.

The Court: Yes, Mr. Watson?

Mr. Watson: I have been away from my work for about ten weeks or the last two months. About six or seven of those weeks were spent in public service doing some specialized consultant work with Mr. Sullivan of the Navy Department in connection with the defense program, during January, and the Secretary of the Navy has asked me to continue the special assignment as soon as I could get away from my duties, and I told him I would be down there as soon as I have completed my jury service. I believe, (T-260) sir, because of certain specialized nature of experience—

The Court: All right, you may go.

The Clerk: Are there any other jurors who wish to be excused?

(Prospective jurors step into the jury box.)

The Clerk: Your name, sir?

Mr. Wye gand: Edmund Wye gand.

The Court: Is this the last group of jurors who desire to be excused? I take it that it is.

Very well.

The Clerk: Edmund A. Wye gand.

The Court: Yes, Mr. Wye gand?

Mr. Wye gand: Your Honor, I am in the retail business and we will be getting into our Easter business in about three weeks, and furthermore it would necessitate my working overtime which for physical reasons I am not able to do.

The Court: Well, I notice on your card here you were excused in November because you said you could serve in March.

Voir Dire

Mr. Wyegand: That is true, sir, but for the length of time that this would last I would have to work each evening to complete my work.

The Court: Well, what is the nature of the work that you would have to do?

Mr. Wyegand: Well, I supervise about eight departments (T-261) in the store and there is a great deal of clerical work connected with it.

The Court: All right, you may be excused.

The Clerk: Your name, sir?

Mr. Wolff: Wolff.

The Clerk: James W.?

Mr. Wolff: Yes.

The Clerk: James W. Wolff.

The Court: Yes, Mr. Wolff?

Mr. Wolff: Your Honor, I am a stock broker. My income is dependent upon my daily production. My daily production is dependent upon my keeping in contact with my customers every day, in fact practically hourly. For two weeks I would be glad to sacrifice but a greater period would lessen my income very greatly.

The Court: All right, you may go.

The Clerk: Your name, sir?

Mr. Ellis: William Ellis.

The Clerk: G. William Ellis.

The Court: Yes, Mr. Ellis?

Mr. Ellis: Your Honor, I am directing my work in our organization that frequently takes me out of town, and I have already scheduled for April the 11th a trip across the country with over 40 appointments. It is important at this time that we make that trip because of the (T-262) uncertainty in the market and the talk of a recession.

The Court: All right, you may go.

The Clerk: Your name, sir?

Mr. Hart: Harry S. Hart.

The Clerk: Harry S. Hart.

The Court: Yes, Mr. Hart?

Mr. Hart: Your Honor, I am a salesman and this is the height of our season, and my income depends solely on what I produce, and it might jeopardize my position.

The Court: What do you sell?

Voir Dire

Mr. Hart: I travel for an underwear manufacturer and I cover three States.

The Court: This is just the time of the year when you would make your trips, is it?

Mr. Hart: Yes, sir.

The Court: Very well, you may go.

The Clerk: Your name, sir?

Mr. Kaiser: Kaiser.

The Clerk: Hugo Kaiser.

The Court: Yes, Mr. Kaiser?

Mr. Kaiser: Your Honor, I am a textile salesman and I work on a commission basis, and if I was to be tied up for any length of time—

The Court: Your situation is about the same as the last juror's?

(T-263) Mr. Kaiser: Yes, sir, that is right.

The Court: You may be excused.

The Clerk: Thomas F. Hall.

The Court: Yes, Mr. Hall?

Mr. Hall: I am a salesman on commission and that is my only means, is what I make there, and I am afraid that after two months, why, there wouldn't be much trade left.

The Court: This period of the year is a time that would make it a serious loss to you—

Mr. Hall: Yes.

The Court: —not to be on the job?

Mr. Hall: Yes; and on account of declining prices there is considerably more competition than there has been in a long while and you have to be out there to meet it.

The Court: All right, you may go.

Now, we commence in the morning at eleven o'clock in the interrogation of the jurors to select a fair and impartial jury.

And I want to renew the admonition that I made at the beginning of the session this afternoon: I want you ladies and gentlemen to be sure to refrain from reading anything in newspapers or magazines or pamphlets or written matter of any kind having to do, remotely or indirectly, (T-264) with the trial, or to listen to anything over the radio about it, or to talk among yourselves or with your

Voir Dire

families or with your friends or anyone else, so that you cannot have any such matters play any weight with you at all. That you start to do right now and continue up until you are either excused or until you proceed to serve, in which event you will continue to do the same thing as I have now directed.

The sessions that we are going to have for the next few days will begin at eleven and last until four, during the selection of the jury.

And one thing, in addition, that I beg of you, and I think I may have mentioned it to the other jurors who were here this morning: it is so easy to think of one's own convenience and one's own work and things to do, but I beg of you to be patient and to try to think of the convenience of everybody in connection with the trial as a whole and not get yourselves excited or worried over some little inconvenience or hardship that you may be suffering because that is one of the things that necessarily goes with the administration of justice; and if you all relax and take it easy and be patient about it and make up your mind that it takes a little time, and that the lapse of that little time is not going to do you any real harm, I think you will get (T-264-A) yourself in the right frame of mind, and it will make it easier for everybody concerned.

So that we will proceed again tomorrow morning at eleven o'clock.

(Adjourned to March 9, 1949, at 11.00 a. m.)

(T-265)

New York, March 9, 1949;
11 o'clock a. m.

Trial resumed.

* * *

The Court: Now did you desire to note some exception to the fact that I had not permitted counsel, and shall not, to question the jurors individually?

Mr. Gladstein: I do, your Honor. On behalf of the clients that I represent I desire to take exception to the ruling of the Court that prevents me from questioning the prospective jurors in the course of the drawing of the (T-266) panel.

Voir Dire

The Court: Yes, and in accordance with our understanding that I have noted on the record previously, any such objection or exception will inure to the benefit of all of the defendants unless counsel for some of them should indicate their desire not to participate in the objection or exception.

Now we have a few men here who were going to report to us this morning on this matter of some consideration overnight as to their being excused.

Mr. Borman, have you got the names of those persons?

The Clerk: Yes, I have, your Honor: Francis William Ward, Jack Wallach, Charles Fisher.

The Court: As to Mr. Ward, as I understand it, he has indicated that he feels the circumstances are such that he need not ask to be excused, is that right, Mr. Ward?

Mr. Ward: That is right.

The Court: So the other two may step up, if they will.

The Clerk: Mr. Wallach.

The Court: Well, sir, on reflection and overnight, what have you to report to the Court?

Mr. Gordon: Fisher is the first one.

Mr. Fisher: Well, sir, I was down to the (T-267) firm and they told me they really need me there because there is quite a few out sick.

The Court: So that you feel the hardship would be such that you would rather be excused?

Mr. Fisher: Yes, sir.

The Court: Very well, you may be excused.

How about you?

Mr. Wallach: I ask the Court to be excused because of personal financial hardship.

The Court: Yes, you may.

Mr. Gladstein: What is this juror's name, your Honor?

The Clerk: Jack Wallach.

Mr. Gladstein: I thought that was the first one.

The Clerk: Charles Fisher.

The Court: Very well. Now you may proceed, Mr. Borman, with—I am informed that one of the prospective jurors, Mrs. Molly Glasner, has communicated with the clerk and stated that her husband was suddenly taken ill and for that reason she wanted to be excused as it was

Voir Dire

necessary for her to remain home. Her occupation is stated on the card as housewife. Unless there is objection, I will excuse her.

Mr. Gladstein: How is the name spelled?

(T-268) The Court: G-l-a-s-n-e-r.

Is there any other, Mr. Borman?

The Clerk: Mr. Retallack.

The Court: This is John B. Retallack.

You may be seated, Mr. Retallack. I understand that overnight you have given further consideration to your situation and you wish to tell me something that possibly would lead to your being excused.

Mr. Retallack: I called up my office and they asked me to request that I be excused.

The Court: What is the situation that has made it different from what it was yesterday?

Mr. Retallack: Well, I thought yesterday that I would be able to serve but, after I left the courtroom yesterday, I called the office and told them that you had stated that the case might run several months.

The Court: Well, what I really said was that it may last several weeks, perhaps as much as two months or more. No one can tell with certainty, I certainly hope it won't last several months, but it certainly will last several weeks; but, in any event, you feel that your being here for such a long period would prejudice your position?

Mr. Retallack: No, no, it would not. It is not (T-269) from that angle. They say they need me to carry on some work that has come up.

The Court: Is that work of which you were familiar yesterday?

Mr. Retallack: Yes, but I didn't know that I was to be given that job yesterday until I called up.

The Court: All right, you may be excused.

If Mrs. Glasner is here, as I am now informed, I think you had better step up and tell us here, confirm the statement that was made over the telephone.

Mrs. Glasner: I don't wish to be excused. I thought perhaps I could be excused just for the day because my husband took ill this morning but he is much better.

The Court: You may remain and you will not be excused. You wished to be excused for the day?

Voir Dire

Mrs. Glasner: I did want to.

The Court: Now things are better?

Mrs. Glasner: Yes.

The Court: All right, you may remain. Then Mrs. Glasner's name is not removed from the panel.

The Clerk: The jurors will kindly take their places in the jury box as their names are called.

Mrs. Thelma Dial, No. 1; Mrs. Martha E. Walker, No. 2; Robert von Goeben, No. 3; (T-270) Edward R. Hallquist, No. 4; Mrs. Myrtle Fensterheim, No. 5; Robert Wright, No. 6; Charles Zulanch, No. 7; Henry Eisler Allen, No. 8; Thomas Johnston, No. 9; Raymond P. Reese, Jr., No. 10; Hamilton K. Kerr, No. 11; Mrs. Gertrude Corwin, No. 12.

Will the balance of the jurors pay close attention to the questions being addressed to the jurors in the box.

The Court: This is apt to be a long drawn-out affair. There are many questions and they are all important and essential. So that just as I did yesterday, I bespeak the patience of everyone here. I ask you all to listen carefully. At various parts of these questions there will be names of one kind or another and I shall try to pronounce them as well as I can and as clearly as I can, and in a voice sufficiently loud to be heard at the back of the courtroom.

(T-271) If I seem to be going slowly, it will be done deliberately so that the questions may sink in and you may all have an opportunity to hear them. Now some of these questions have been submitted by the Government, and some have been submitted by the defendants. Many of them have been formulated by myself; some changes made in those submitted by the Government and those submitted by the defendants, but in the aggregate I have tried to make them sufficiently comprehensive so that we may obtain jurors who are truly fair and impartial in this case.

Now the first group of questions relates to knowing or having dealings with various persons, and the first one is, Does any juror know, or has he had any dealings with, any of the following persons or members of their families—and when I say “he”, as a juror of course I mean to include also the ladies who are sitting in the jury box or in the room here:

A. Counsel for the prosecution.

Voir Dire

Now there is John F. X. McGohey.

(Mr. McGohey stands.)

The Court: Do any of you answer the question in the affirmative?

(No response.)

The Court: Next, Frank H. Gordon.

(T-272) (Mr. Gordon stands.)

(No response.)

The Court: Next, Irving S. Shapiro.

(Mr. Shapiro stands.)

(No response.)

The Court: Edward C. Wallace.

(Mr. Wallace stands.)

(No response.)

The Court: And when you gentlement rise I think it might be well as you resume your seat to turn around toward the back of the room so that those who are there may get a look at you. All right.

(Mr. McGohey, Mr. Gordon, Mr. Shapiro and Mr. Wallace stand and face the rear of the courtroom.)

The Court: Lawrence K. Bailey.

Mr. Gordon: He is not here, your Honor.

The Court: Mr. Bailey is not here but I ask whether any of you know Lawrence K. Bailey who is one of the counsel for the prosecution. And when I say "Do you know him?" I mean to include the other elements of the question which I put which also had to do with having any dealings with him or any member of his family.

Mr. McGohey: I beg your Honor's pardon, I will be very glad to have Mr. Bailey come down to the courtroom if it is necessary. I just asked Mr. Sacher about (T-273) it and I think he indicated that probably it would be desirable if Mr. Bailey were brought down.

The Court: Well I think perhaps it would, too.

Voir Dire

Mr. McGohey: Well, I shall have him brought down.

(Mr. McGohey leaves the courtroom.)

The Court: I think this matter of knowing people, sometimes, unless you see them you don't realize that there was some acquaintanceship that perhaps you had forgotten, and so we will pause for a moment until Mr. Bailey comes down.

Mr. McCabe: I was going to suggest, your Honor, that it might be pointed out to the members of the panel the manner in which they should indicate an affirmative answer to any of these questions. They might have in mind to wait until the questions were completed.

The Court: No. I think what I meant—and I am glad that you made the suggestion, Mr. McCabe—I meant that the jurors should indicate at once, and that may be done by raising one's hand or in any other way that you think is a proper indication that you would answer one of the questions affirmatively. And when you do that, why I will pursue the question further, but the answers are to be given only by the 12 in the (T-274) box to whom I am now addressing these questions. The others I think had better just make note of the fact that they know someone so that when they get in the box later I will ask them if they have heard the questions as I have read them and whether there were any of them that they would answer in the affirmative, because the practice here is to have all of the jurors in the back of the room hear the questions, but the questions themselves are directly addressed only to those who have been placed in the jury box by the method of turning the wheel and selecting their names by chance; so that is the way we will proceed.

We will now have a brief pause while we are waiting for Mr. Bailey.

(Short pause.)

(Mr. McGohey returns to the courtroom.)

Mr. McGohey: There is Mr. Bailey now.

The Court: Now this is Mr. Bailey coming in, and so the question is whether any of you know or have had any dealings with him or any member of his family.

Voir Dire

(No response.)

The Court: Now the next one has to do with the defendants named in the indictment. The same question whether you know or have had any dealings with any of the defendants or members of their families, and they will rise (T-275) as I call their names.

Of course Mr. Foster is not here but the question nevertheless relates to him, whether you know or have had any dealings with William Z. Foster or any member of his family.

Then as to the other defendants, the first is Eugene Dennis, also known as Francis X. Waldron, Jr.

Will you stand, please, Mr. Dennis.

(Mr. Dennis stands.)

The Court: John B. Williamson.

(Mr. Williamson stands.)

The Court: That is right; just turn around as you sit down. Thank you, Mr. Williamson.

Jacob Stachel.

(Mr. Stachel stands.)

The Court: And if I pronounce any name erroneously I am only too glad to be corrected as to that.

Robert G. Thompson.

(Mr. Thompson stands.)

The Court: Benjamin J. Davis, Jr.

(Mr. Davis stands.)

The Court: Henry Winston.

(Mr. Winston stands.)

The Court: John Gates, also known as Israel Regenstein.

(T-276) (Mr. Gates stands.)

The Court: Irving Potash.

(Mr. Potash stands.)

Voir Dire

The Court: Gilbert Green.

(Mr. Green stands.)

The Court: Carl Winter.

(Mr. Winter stands.)

The Court: Gus Hall, also known as Arno Gust Halberg.

(Mr. Hall stands.)

The Court: Now counsel for defendants:
Harry Sacher.

(Mr. Sacher stands.)

The Court: Abraham J. Isserman.

Mr. Sacher: Mr. Isserman and Mr. Crockett will be here very shortly; they are on the way.

The Court: You think I may go ahead or would you rather have me wait?

Mr. Sacher: No, I think you may proceed.

The Court: Well, they will be here in a moment, and when they come in I will make some indication so that you may have the question repeated.

Richard Gladstein.

(Mr. Gladstein stands.)

The Court: Louis F. McCabe.

(T-277) (Mr. McCabe stands.)

The Court: Mr. Crockett is absent and will be here in a minute.

Mary M. Kaufman—is Mrs. Kaufman here?

Mr. Gladstein: She is not of trial counsel, your Honor, and will not participate in the trial.

The Court: Then without her presence here I will merely ask the question whether any juror knows or has had dealings with Mary M. Kaufman or any member of her family.

Abraham J. Unger is another lawyer in a similar position.

David M. Freedman, in the same position.

Voir Dire

Louis Fleischer.

Maurice Sugar.

(Mr. Sugar stands.)

The Court: And Yetta Land.

(Mrs. Land stands.)

Now there are other attorneys about which the question is asked:

Lee Pressman, O. John Rogge, Carol Weiss King, Leon Josephson, John Abt—A-b-t, (T-278) Emanuel Bloch, Arthur G. Silverman, Harold Cammer—C-a-m-m-e-r, George W. Fish, Marian Wynn Perry.

Or any of the following persons submitted on the Government's list, that is, the list of persons that the Government desires me to ask the jurors whether they knew any of these persons or had dealings with them or any members of their families.

Incidentally, this is Mr. Crockett just coming in, who is one of the counsel for the defendants or for certain of the defendants, and you may see whether you recognize him or have known him or have had any dealings with him.

(T-279) Now as to this list of other persons:

Israel Amter, Marion Bachrach, Dr. Edward K. Barsky, Lyman R. Bradley, Isidore Begun, Elizabeth Bentley, Lionel Berman, Abner W. Berry, Alexander Bittelman, Earl Browder, William Browder, Jay David Whittaker Chambers,—I take it that is the same man otherwise described merely as Whittaker Chambers?

Mr. McGohey: That is correct, your Honor.

The Court (Continuing): George Blake Charney, Morris Childs, Rev. John W. Darr, Jr., Louis Diskin, Gerhart Eisler, Howard Fast, Frederick V. Field, Dr. Louis Finger,—

(T-280) Mr. Gordon: There is a man with his hand up.

The Court: Whom do you say you knew?

Prospective Juror: Fred Field. I used to know him, know his mother and father.

Voir Dire

The Court: Was your association in connection with him of an intimate character at all or just a casual acquaintance?

Prospective Juror: I knew the family.

The Court: Is there anything about your acquaintance with him that you think would have any bearing upon your acting as a juror here?

Prospective Juror: No.

The Court: There is no fact or circumstances that you recall that would seem to have any bearing on the case?

Prospective Juror: No.

The Court: Very well. (Continuing): Elizabeth Gurlley Flynn, Betty Gannett, Rose Gaulden, Simon W. Gerson, Ben Gold, David Goldway, Alger Hiss, V. J. Jerome, (T-281) Arnold Johnson, Claudia Jones, Barney Josephson, Jack Kling, Albert Lannon, Charles Loman, Vito Marcantonio, George Marshall, of the Civils Rights Congress; Rev. William Howard Melish, Sampson Milgrom, Jacob "Pop" Mindel, Robert Minor, Alberto Moreau, Steve Nelson, William Norman, William L. Patterson, Jacob Perilla, J. V. Peters, also known as Alexander Stevens; Paul Robeson, Dorothy Rodman, Nathan Ross, Dr. Annette T. Rubenstein, Murray Savage, Howard Selsam, Harold Simon, (T-282) George Siskind, Jessica Smith, that is, Mrs. John Abt, Joseph Starobin, Alexander Trachtenberg, Carl Vedro, William Weiner, William Weinstone, Max Weiss, Rev. Elliot White, Doxey Wilkerson.

Now comes a list submitted by the defendants, and I put the same question. Does any juror know, or has he had any dealings with, any of the following persons or members of their families: Louis Francis Budenz, George Hewitt, also known as Tim Holmes; Joseph Kornfeder, also known as Joseph Zack; J. B. Matthews, Benjamin Gitlow, Benjamin Mandell, also known as Bert Miller; Eugene Lyons, David Dallin, Max Eastman, Max Yergen, Hedda Gompertz, also known as Massing and Billinger; (T-283) Nat Honig, George N. Dimitroff, Ferenc Nagy, William Nowell, Ken Goff, Howard Rushmore, Michael Quill, Joseph Curran, Benjamin Stolberg, Sidney Hook, Harry Gideonse, John Pace.

Voir Dire

So much for those names.

Now, do you know anyone employed in or connected with the office or staff of the United States Attorney for this district?

Do you know any of the Judges or employees of this Court or members of their families?

Has any juror or any member of his family or personal friend been party to any legal action or dispute with the United States or any of its officers, agents, or employees, or had any interest in such legal action?

This next question requires me, first, to read the law because the question has reference to any prejudice that any of you might have against this law. I shall not (T-284) attempt to read all the various sections.

Yes, Mr. McCabe?

Mr. McCabe: Before passing to that next subject, your Honor—

The Court: Yes, you make a suggestion.

And I may say for the jurors that the practice here is for the Court to ask the questions and counsel may submit questions, and whether the submitted questions are adopted or not is to be no indication to any of you one way or another about it. I have my own ideas about how I am proceeding here and I give consideration to the questions, and if I desire to ask them I do so; and if not, I don't, and my reasons are of no concern to anybody. So don't draw any inferences against anybody by reason of the fact that I might or might not ask any of the questions that are submitted.

(Mr. McCabe sends a paper up to the bench.)

The Court: It is requested that I add to the defendants' list of persons that you or any of you may know or have had dealings with, or know members of their families, the following, which I include and put the same question as before: Eddy Chayfetz, Ken Eckert or Egert, Farrell Dobbs, (T-285) George Schuyler, and A. A. Berle.

Now I will proceed to read the part of the statute that I think is—Yes?

Prospective Juror: May I ask a question? One of the men that work in the jury, Mr. Kreinik, I know him.

Voir Dire

The Court: You know one of the men who is employed in the court house?

Prospective Juror: That is right, yes, sir.

The Court: His name is Kleinert?

Prospective Juror: Kreinik.

The Court: Kreinik? Are you intimate with him or is he just an acquaintance?

Prospective Juror: No, we are fairly well acquainted.

The Court: Do you think that your acquaintance with him, taken in connection with any other fact or circumstance that you may know or have heard about, would tend to make you have a bias one way or another in this case either against the Government or against the defendants, or any of them?

Prospective Juror: No, your Honor.

The Court: Very well.

Now, the statute here reads:

(T-286) It shall be unlawful for any person, one, to knowingly or wilfully advocate, abet, advise or teach the duty, necessity, desirability or propriety of overthrowing or destroying any government in the United States by force or violence or by the assassination of any officer of any such government; two, with the intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute or publicly display any written or printed matter advocating, advising or teaching the duty, necessity, desirability or propriety of overthrowing or destroying any government in the United States by force or violence; three, to organize or help to organize any society, group or assembly of persons who teach, advocate or encourage the overthrow or destruction of any government of the United States by force or violence or to be or become a member of or affiliate with any such society, group or assembly of persons, knowing the purposes thereof.

Mr. Sacher: May I, your Honor, interrupt to say that I object to the reading of these sections because several

Voir Dire

that you have already read are not the subject matter of the indictment in this case at all.

The Court: Well, you see, Mr. Sacher, I am (T-287) contemplating a question which will ask whether there is any prejudice against the enforcement of this statute as a whole.

Do you think it better for me to reserve that question until I read the indictment and the sections that have to do only with the indictment? If you think so, I will do that.

Mr. Sacher: I respectfully submit that the only sections that are pertinent on this phase of the case are those sections which deal with the charges contained in the indictment.

The Court: Let me check up then with the indictment, and I will read only the sections that are pertinent to the charge itself.

Later, ladies and gentlemen, I will read to you the entire indictment from one end to the other so that you may know precisely what the charge against these defendants is.

I refer to that and find that there is an alleged violation of Section 2, which is what I just read, Mr. Sacher.

Mr. Sacher: Not all of Section 2, your Honor.

The Court: You consider it as only applicable to subdivision 3?

Mr. Sacher: I don't have that section precisely (T-288) before me.

The Court: You may come and take the book and take a look at it. There is no occasion for haste about this.

(To the clerk) Show that. It is the top of this page.

And you may check with Mr. McGohey on that. I desire only to read the part and have the jurors consider the part that is strictly relevant.

* * *

(T-289) Mr. Sacher: May I address the Court?

The Court: Yes, you may address the Court and you may check with Mr. McGohey, if you desire. I notice that the first part of the indictment refers to section 2 of the statute that I handed down there, and then the later part of it has reference to sections 3 and 5, and I refer thereby to sections 2, 3 and 5 of the Act of June 28, 1940, and had

Voir Dire

intended to read those three sections in their entirety, but if you will just confer with Mr. McGohey briefly, perhaps I can read something less than that.

Mr. Sacher: Well, I would just like to point out to your Honor, your Honor has already read portions of section 2, concerning which there are no charges whatever in the indictment. Subdivision 1 of section 2 makes reference to abetting, advising, the desirability, propriety of overthrowing the government or destroying (T-290) the government by force or violence or by assassination of any officer of such government. There is no charge in the indictment to any of the effect that I have read.

The Court: I am not saying that there was.

Mr. Sacher: I know, but then it has no relevancy, your Honor.

Then subdivision 2 of section 2 makes it unlawful, with intent to cause the overthrow or destruction of the government, to print, publish, et cetera, and there is no charge in this indictment that anything has been printed or published with intent to cause the overthrow or destruction of the government.

The Court: Then what I said a moment ago could have been covered much more briefly. You desire me to read only subdivision 3; which, if you so desire, I will do, and I will tell the jurors to disregard the first two, if that is in accordance with Mr. McGohey's notion of the charge in the indictment.

Is that your view, Mr. McGohey, or do you think subdivisions 1 and 2 are involved?

Mr. McGohey: I think they are involved in connection with the question which the Court is asking the jury. I understand, of course, and I thought we all did, that the Court was not giving the jury a charge.

The Court: That is right.

(T-291) Mr. McGohey: The Court is asking the jury, the prospective jurors, whether or not they have a bias against a particular law of the United States under part of which this indictment is returned. I think it is a perfectly proper question in order to ascertain whether or not a juror has a bias against the statute. Indeed, I think the only intelligent way you can ascertain whether a juror has a bias against the statute is to read the whole statute.

Voir Dire

The Court: Yes, I will do that.

Mr. McGohey: With respect to what the charge is, clearly—

The Court: We will come to that later.

Mr. McGohey: —section 2 is involved.

The Court: Yes.

Mr. Sacher: I respectfully except to your Honor's ruling.

Mr. McGohey: Of course, I assume that your Honor will make no reference to whatever penalty is provided.

The Court: No, no. I am merely trying to get a clear picture of law before the jury. I will not repeat what I read but another section provides:

(T-292) "It shall be unlawful for any person—
"to attempt to commit, or to conspire to commit, any
of the acts prohibited by the provisions of this
Title."

Which are those that I have read before.

Now taking the substance of that statute, I come to my question, which is—

Mr. McGohey: Did your Honor read the subdivision 3? I thought not.

The Court: Well, perhaps when Mr. Sacher rose I was in the midst of that.

Mr. McGohey: I think that that is so.

The Court: And that surely is involved and if perchance I did not read it in full I shall read it now.

Subdivision 3 of Section 2 says:

"It shall be unlawful for any person—
"(3) to organize or help to organize any society,
group, or assembly of persons who teach, advocate,
or encourage the overthrow or destruction of any
government in the United States by force or vio-
lence; or to be or become a member of, or affiliate
with, any such society, group or assembly of per-
sons, knowing the purposes thereof."

Now bearing in mind that section and also the conspiracy section that I read a moment ago, the question

Voir Dire

(T-293) is this: Has any juror any prejudice against the enforcement of this law, or against punishment of any person for conspiracy to teach and advocate the duty and necessity of the overthrow and destruction of the United States Government by force and violence, or against punishment of any person for conspiracy to organize the Communist Party to teach and advocate the violent overthrow and destruction of the United States Government?

If any of you have any prejudice against that law you may so indicate.

Now the next question: Has any juror, or any relative or close friend of a juror—

Mr. Isserman: If the Court please, I do not like to interrupt but I would like to enter an objection to the question as put.

The Court: Your objection may be noted; it is overruled.

Mr. Gladstein: Your Honor, perhaps it was inadvertence on my part, and I am not sure. I think the reporter should read back the last question that you put to the jurors. If I am not mistaken, you asked the question as to whether the jurors had a prejudice against a law that forbade the Communist Party from doing certain things.

(T-294) The Court: I don't think so.

Mr. Gladstein: I may be mistaken.

The Court: And I think you will find that by my reading of the statute to which the question related and by my later reading of the indictment in toto and certain comments I shall make about it then, that it will be clear to all that this is not a charge against these defendants just because they are Communists in general or members of some Communist Party in general. However, your objection to the question just asked has been noted and overruled.

Now the next question is: Has any juror—

Mr. McGohey: A juror has a question—one of the jurors has a question.

Prospective Juror No. 3: May I say something, your Honor? I am just somewhat confused at this moment. Here, as I understand your explaining a certain law, where does the term, whether this applies to the—as you said—

Voir Dire

The Court: Well, let me answer—

Prospective Juror No. 3: As you said, the Communist Party, where does that fit in at this particular point?

The Court: Well, let me suggest perhaps an analogy. In criminal cases generally it may be found that somebody along the group of prospective jurors has a (T-295) prejudice against a particular law. Now all I meant by my last question was to find out now if there is some member of this group of prospective jurors who has a prejudice against the law that I read. Its application to these defendants is something I am coming to later and will consider separately, but if there is somebody here who believes that a statute such as this is a wrong thing, that he is prejudiced against it, he doesn't want to have it enforced for any reason whatsoever, then this is the time for us to know that. It would be the same thing in cases, for instance, where jurors are asked if they have any prejudice against capital punishment. Some jurors, despite the law, they say they don't like that law, they think it is wrong, they are prejudiced against it, and so here, when the statute prescribes, as I have read here, that it is unlawful for people to organize or help to organize any society, group or assembly of persons who teach, advocate or encourage the overthrow or destruction of any government in the United States by force and violence, there may be those who think that is a bad law, who would not desire to see that law enforced, and the purpose of my question is to find out those persons so that we may inquire further into the matter.

Do I make myself clear?

(T-296) Mr. Gladstein: Your Honor, I think the cause of the difficulty is precisely that in the preceding question, the one that I took exception to, your Honor in effect was asking the jurors if they had any feeling against a law which, as I understand your question, singled out the Communist Party and made these provisions regarding it, and I think—

The Court: But this law—

Mr. Gladstein: —and I think it would not be unusual for any person to feel in any case opposed to a law that

Voir Dire

singles out any political party, be it Communist, Republican, Democrat or Socialist.

The Court: You see, it is so easy to get into argument here, and I desire to avoid that in the interrogation of the jurors, and so that we may have no ambiguity I will reframe my question without any reference to the Communists or the Communist Party whatsoever, and have it solely relate to the statute which I read, and then later when we come down to this specific charge, when I read the indictment, then we will have plenty of time to go into the question of any feeling of bias having to do with the guilty or innocence of the defendants on that particular charge. Is that satisfactory?

Prospective Juror No. 3: Yes, that answers it (T-297) very fully, thank you.

The Court: Then you will regard that question as amended, and I shall merely ask you whether you have, or any of you have any prejudice against the enforcement of the law which I read, and ask you as far as Communists or the Communist Party are concerned to await questions that I later put to you based upon the indictment which I shall read in full.

Now I take it nobody has any prejudice against that statute that I have read?

Now the next question: Has any juror, or any relative or close friend of a juror, ever been the subject of any investigation or accusation by any committee of Congress?

Have you ever been employed by the Federal Government?

Have you or any member—

Mr. Gladstein: Just a moment; there are a few former employes of the Government.

Prospective Juror No. 7: I worked for the Post Office years ago.

The Court: Well, were you working for the Post Office for a long time?

Prospective Juror No. 7: No, just temporary.

The Court: How long?

(T-298) Prospective Juror No. 7: Well, it was about a year.

Voir Dire

The Court: About a year?

Prospective Juror No. 7: Yes.

The Court : How long ago was that?

Prospective Juror No. 7: That was about five years ago.

The Court: Do you think that your work for the Post Office would in any way give you a bias in favor of or against the Government in this case?

Prospective Juror No. 7: Not at all.

Prospective Juror No. 9: I also worked for the Post Office part time—

The Court: Let me hear this. You know it isn't always easy for me to hear.

Prospective Juror No. 9: At one time I worked for the Post Office part time. That was three or four years ago.

The Court: And would that give you any bias for or against the Government, do you think, with reference to this case?

Prospective Juror No. 9: No, your Honor.

Prospective Juror No. 10: I take it that service in the Army is not included in the question?

The Court: Well, I think that those who have (T-299) served in the Army should indicate that. I don't know strictly whether they were employes of the Government but you did serve in the Army?

Prospective Juror No. 10: Yes, sir.

The Court: And would that in any way affect your judgment as to the merits of this criminal charge here?

Prospective Juror No. 10: No.

The Court: Yes.

Prospective Juror No. 3: I served in the Army.

The Court: And would you, from that service, have any bias or prejudice that would influence your judgment in this case here, so far as you can tell?

Prospective Juror No. 3: No, I don't think so.

Prospective Juror No. 7: And I served in the Army. It wouldn't affect me.

The Court: You don't think it would affect your judgment?

Prospective Juror No. 7: No, not at all.

Voir Dire

Mr. Gladstein: Your Honor, may it merely be suggested that the capacities in which the jurors worked for the Post Office, just be indicated?

The Court: Yes, I will ask them that.

In what capacity did you work for the Government?

Prospective Juror No. 7: As a clerk.

(T-300) The Court: Let me see, this is juror number—

Mr. McGohey: 7.

The Court: —7, Charles Zulanch, isn't it?

Prospective Juror No. 7: That is right.

The Court: Mr. Johnston?

Prospective Juror No. 9: Yes.

The Court: What was the capacity that you worked?

Prospective Juror No. 9: Just mail sorter, part time, four hours a night.

The Court: Now is it desired by counsel that when we find that somebody, as we are apt to find a good many who served in the armed forces at one time or another, to go into all the details about their rank and where they were and did they go abroad, and did they stay here, and all that? It would seem to me quite unnecessary, but do you desire that I do that?

Mr. McGohey: I don't believe it is necessary, your Honor.

Mr. McCabe: And the rank.

Mr. Gladstein: I was going to suggest this, your Honor, that perhaps merely the branch of the service would be of possible involvement. For example—

The Court: I think that is reasonable, but all that other detail—

(T-301) Mr. Gladstein: And as Mr. McCabe suggests, the rank in the service.

The Court: I will ask about the rank in the service as you suggested it.

Prospective Juror No. 11: I was in the Navy.

The Court: And how about the others who served?

Voir Dire

Prospective Juror No. 7: I was in the Army Air Force
—I mean a pilot.

The Court: Yes.

Prospective Juror No. 3: I served as a private in the
Army.

The Court: And you, sir?

Prospective Juror No. 10: First lieutenant in the in-
fantry.

The Court: Very well. Now as I recall it, you all indi-
cated that you did not think that your services in the armed
forces would give you any bias or prejudices that would
have any effect in this case at all, so I will proceed to the
next question.

Mr. Sacher: May I, your Honor, before you proceed,
in view of your having read the sections of the statute, ask
you to be good enough to read the First Amendment to the
Constitution to find out whether there is any prejudice
against it?

(T-302) The Court: Well, Mr. Sacher, you are doing
just precisely what I desired not to be done. Now when I
am questioning the jurors, you recall I gave a direction
that if some supplemental question was desired it should
be submitted to me in writing.

Mr. Sacher: I am very sorry.

The Court: I did that to avoid argument—

Mr. Sacher: I will put it in writing.

The Court: —and it seems to me that very easily such
questions as you have now orally put could lead to argu-
ment which I desire not to be had.

Mr. Sacher: I will be glad to reduce it to writing, your
Honor.

The Court: Now the next question: Have you or any
member of your immediate family ever been associated with
any agency, either public or private, which was or is en-
gaged in the detection of law violations?

Here is a question submitted by the defendants:

Do you know any of the following-named persons who
were members of the Grand Jury that indicted the defend-
ants now on trial:—the members of the Grand Jury are as
follows:

Edmund L. Cocks—C-o-c-k-s, Jerome S. Blumauer, Ade-
laide E. Lowe, (T-303) Benjamin C. Brush, Herbert—

Voir Dire

Prospective Juror No. 3: I do, your Honor.

The Court: You know Mr. Brush?

Prospective Juror No. 3: Yes, I do.

The Court: Do you know him well?

Prospective Juror No. 3: Well, I haven't seen very much of him since around, oh, I would say—let me see, 1929.

The Court: Well, do you think that your acquaintance with him might possibly make you feel some bias in this case?

Prospective Juror No. 3: No, I don't think so. You see, he and I were employed in the same plant for about four or five years.

The Court: Did you have social relations with him—

Prospective Juror No. 3: No.

The Court: —that were intimate at all?

Prospective Juror No. 3: No, not outside of the plant.

The Court: Now you realize that our every effort here is to get people with fully unbiased, open minds.

Prospective Juror No. 3: Yes, sir, I do.

The Court: And I wouldn't want to have any (T-304) juror here who because of some connection with or knowledge of one of these grand jurors had the slightest feeling that perhaps the charge was true and started in with strikes against the defendants.

Now do you feel that you would have a free and open mind?

Prospective Juror No. 3: I feel I would. That is why I bring it out that—that I had—

The Court: All right.

Prospective Juror No. 3: —that I have had some—

The Court: Some dealings with him?

Prospective Juror No. 3: Yes, sir.

The Court: And were in the same company with him?

Prospective Juror No. 3: Yes, some association with him.

The Court: Now there is another juror here—

Prospective Juror No. 10: I know a Benjamin Brush but I don't know whether he is the grand juror or not.

The Court: Well, it is not an uncommon name. I wonder in what connection you knew him.

Prospective Juror No. 10: Well, he lives in the place where I lived.

Voir Dire

The Court: Now let me look—I had eliminated as unnecessary here the addresses that were contained in the questions submitted, and it will not take me long. (T-305) (Examining.)

He lives in New Rochelle, at 40 Maywood Road, New Rochelle. Do you think—

Prospective Juror No. 10: I think that may be the man.

The Court: You think it may be the same person?

Prospective Juror No. 10: But I am still not too sure.

The Court: Well, did you have any intimate social relations with him at all?

Prospective Juror No. 10: Why, I have met him a few times socially.

The Court: Do you feel that that would affect your judgment in this case at all?

Prospective Juror No. 10: No, sir.

The Court: Herbert C. Cantrell, Thomas Hill Clyde, Andrew J. Coakley, Walter A.—

Mr. McGohey: Juror No. 10.

Prospective Juror No. 10: Andrew Coakley, is that the Columbia coach?

The Court: That is the Columbia coach, there is no doubt about it at all.

Prospective Juror No. 10: Well, I knew him (T-306) when I went to college.

The Court: You were a baseball—

Prospective Juror No. 10: That is right, I played on the team.

The Court: Well, don't you think that in view of your having the feeling that you must have for Mr. Coakley that possibly that would give you a little bent of mind here that might not be right?

Prospective Juror No. 10: Well, knowing possibly two of those jurors it might have an influence.

The Court: I didn't quite hear that.

Prospective Juror No. 10: I know two of the grand jurors; it might weigh slightly.

The Court: Well, if it weighs at all I think it is better for you to be excused.

(Prospective juror No. 10 excused.)

The Clerk: Mrs. Mollie Singer.

Voir Dire

(Mrs. Mollie Singer takes seat No. 10 in the jury box.)

The Court: Now, Mrs. Singer, do you think that you followed those questions pretty well back there?

Prospective Juror No. 10: Yes.

The Court: Did you get the names as I read them off?

Prospective Juror No. 10: Yes, your Honor.

(T-307) The Court: Did you recognize any of the names as persons whom you knew?

Prospective Juror No. 10: I don't know any of those people, but I did work for the Post Office.

The Court: You did work in the Post Office?

Prospective Juror No. 10: Yes.

The Court: And in what capacity did you work there?

Prospective Juror No. 10: I worked during the war as wartime sub.

The Court: Do you feel that the time you worked in the Post Office would give you any bias or bent of mind in this case in one way or another?

Prospective Juror No. 10: No, sir.

The Court: You know, I read that statute and asked if you had, or any of the jurors had any prejudice against the enforcement of that statute. Do you have any such prejudice as that?

Prospective Juror No. 10: No, sir.

The Court: The other questions, perhaps I had better, without running over all the names—

Did you pay close attention to the names as I read them?

Prospective Juror No. 10: Yes, sir, every word.

The Court: None of them seemed familiar at all?

Prospective Juror No. 10: Not a one.

(T-308) The Court: And as to these gentlemen who sit up here, you recognize none?

Prospective Juror No. 10: I know none of them and I know I recognized none.

The Court: All right, then I will just read over these other questions, which will not take more than a moment or two.

Mr. Gladstein: Your Honor, is it possible to ascertain the business of the husband of the woman juror?

The Court: I am going to come to the question of occupations at the end.

Voir Dire

Mr. Gladstein: Very well.

The Court: I felt that it would just unnecessarily use up time to do that when there might be other elements coming up, so that I am going to save all that until we have eliminated all questions of possible bias and then I will go into the question of occupations, and then as to each of the ladies I will inquire as to the occupations of their husbands.

Now I will not read all these but just a few:

Has any juror, or any member of his family or personal friend been party to any legal action or dispute with the United States or any of its officers, agents or employes or had any interest in such legal action?

(T-309) Has any juror or any relative or close friend of a juror ever been the subject of any investigation or accusation by any committee of Congress?

Have you ever been employed by the Federal Government—

And you said “Yes” as to the Post Office?

Prospective Juror No. 10: Yes.

The Court: Have you or any member of your immediate family ever been associated with any agency, either public or private, which was or is engaged in the detection of law violations?

I think that brings us down to these members of the grand jury, and the question was whether any of the jurors know any of the members of the grand jury who indicted these defendants, and I will read the names all over again, as I had only gotten down to Mr. Coakley.

Prospective Juror No. 10: I heard all the names so far.

The Court: All right, then I will continue where I finished.

The last name I read was Andrew J. Coakley. Walter A. Coleman, Mrs. Pauline J. Charal, Charles P. Fenlon, Henry J. Hauch—I think it is H-a-u-c, (T-310) Arthur S. Heiman—H-e-i-m-a-n, George T. Hodell, James C. Johnson, Walter I. Metz, Joseph I. Morris, Frederick Q. Nehring—N-e-h-r-i-n-g, Huestis G. Sincerbeaux, Carl M. Spero, Russell W. Todd, Helen R. Walsh, Milton Watkins, Donald C. Webster.

Have you or any member of your immediate family ever been associated with any agency of law enforcement?

Voir Dire

Are you related or friendly to or associated with any employee of the Department of Justice or the Federal Bureau of Investigation, generally known as the F.B.I.?

Do you know—

Mr. McGohey: Juror No. 1.

Prospective Juror No. 1: Your Honor, that doesn't include a policeman? My neighbor is a policeman.

The Court: No.

Prospective Juror No. 1: Oh, you said Government. That is the City.

(T-311) The Court: This has only to do with the United States Department of Justice and the F.B.I.

Prospective Juror No. 1: That is true—I am sorry.

The Court: Do you know any present or former employee investigator or member of the staff of the House Committee on Un-American Activities?

I think I was in the middle of the previous question which I will go back to.

Do you know any Congressman—

Mr. Gladstein: Just a moment, your Honor, a juror.

Prospective Juror No. 12: I do know that a nephew of mine is employed with the Immigration. In what capacity I do not know.

The Court: Well, the Immigration, I do not think is connected with the Department of Justice—

Mr. McGohey: Yes.

The Court: —or the F.B.I.

Mr. McGohey: No, it is, your Honor.

The Court: It is?

Mr. McGohey: It is a division of the Department of Justice. At one time it was under the jurisdiction of the Secretary—of the Department of Labor, but since—

The Court: Well, taking that to be the fact, do you think that makes any difference to you, that fact?

(T-312) Prospective Juror No. 12: No, I just wanted to state it.

The Court: You just wanted to be careful, knowing that was in the back of your head, you brought it out?

Prospective Juror No. 12: Yes.

The Court: And that is quite right.

Now this question that I went back to is:

Voir Dire

Do you know any Congressman who is now or who has been a member of the House Committee on Un-American Activities?

Have you ever testified before or given information to the House Committee on Un-American Activities?

Do you know any person who has testified before or given information to the House Committee on un-American Activities or the F.B.I.?

Have you ever served as a juror before?

(Jurors raise hands.)

The Court: Now the next question is the one that I think will dispose of all this because there is a statute here that disqualifies a juror from acting again within a year, so listen to this next question:

If the answer to the preceding question is yes, (T-313) have you been summoned and did you attend in any District Court of the United States within one year prior to the time you were summoned for the March Term 1949?

So I gather none—yes?

Mr. McGohey: A juror.

Prospective Juror No. 3: I would say only half of that. I was summoned around the early part of that, but I said that I would like very much to be excused—

The Court: Well, you were excused?

Prospective Juror No. 3: Yes, sir.

The Court: So I gather that we are all agreed that the disqualification does not apply unless the juror serves.

Mr. McGohey: I think that is so.

The Court: So that is all right.

Now what were you going to say, Mr. Gladstein?

Mr. Gladstein: Does your Honor intend to ask now or later concerning the jury service?

The Court: I don't intend to ask that at all.

Mr. Gladstein: Either here or in the State courts?

The Court: No.

Mr. Gladstein: Well, could I submit some questions on that, your Honor?

(T-314) The Court: Well, you have submitted questions on that. I thought that we had so many things to go over here and that seemed so remote to me that I couldn't see that it was sufficiently relevant for me to pursue the

Voir Dire

subject, but I don't desire to argue the matter as to these questions because I have been over them and I have decided precisely what I am going to do, and any of those questions that you have submitted and that I have refused to ask that may present any error, which I do not think can be the case, but if they do, why you have submitted them and I have made my ruling.

* * *

(T-315) (Mr. Gordon hands a paper to the Court.)

(Mr. Sacher approaches the bench and converses with the Court.)

(Mr. Gordon approaches the bench and converses with the Court and Mr. Sacher.)

Mr. Isserman: If the Court please—

The Court: Just a second. I know, you have come in, and I am going to ask. I anticipated just what you have in mind.

A little earlier in the day, when I was asking whether any of the jurors knew any of the counsel for the defendants, Mr. Isserman had not come in, and he is now there, and will rise, to see whether anyone here knows him; and if you will just turn around as you go back to your seat, Mr. Isserman, so that those in the back of the room may see you.

(Mr. Isserman rises.)

Mr. McCabe: Will your Honor do the same for Mr. Crockett?

The Court: I tried to do it for Mr. Crockett as he came in, but perhaps it is better to do it again.

Mr. Crockett, would you mind rising so that all the members of the prospective jurors may see you? And the question is whether anyone knows Mr. Crockett, or any of the others?

(T-316) Now, let me see. Mrs. Singer, you came in afterwards, didn't you? Do you know any of the lawyers for the defendants? You see them all there.

Mrs. Singer: No.

Voir Dire

The Court: I desire to read to the prospective jurors the indictment in full. I have been requested by both counsel to do that, and then I will make certain comments relative to questions that I will ask, and I want you to pay particular attention to this because it is important to know just what these defendants are charged with:

The grand jury charges, one, that from on or about April 1, 1945, and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York and elsewhere William Z. Foster, Eugene Dennis, also known as Francis X. Waldron, Jr., John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin I. Davis, Jr.,—

Mr. Sacher: Benjamin J. Davis, your Honor.

The Court: Did I mispronounce that? I meant to say Benjamin J. Davis, Jr.

(Continuing)—Henry Winston, John Gates, also known as Israel Regenstreif, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, also known as Arno Gust Halberg, the defendants herein, unlawfully, (T-317) wilfully, and knowingly, did conspire with each other, and with divers other persons to the grand jurors unknown, to organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, and knowingly and wilfully to advocate and teach the duty and necessity of overthrowing and destroying the Government of the United States by force and violence, which said acts are prohibited by Section 2 of the Act of June 28, 1940 (Section 10, Title 18, United States Code), commonly known as the Smith Act.

2. It was part of said conspiracy that said defendants would convene, in the Southern District of New York, a meeting of the National Board of the Communist Political Association on or about

Voir Dire

June 2, 1945, to adopt a draft resolution for the purpose of bringing about the dissolution of the Communist Political Association, and for the purpose of organizing as the Communist Party of the United States of America a society, group, and assembly of persons dedicated to the Marxist-Leninist principles of the overthrow and destruction of the Government of the United States by force and violence.

3. It was further a part of said conspiracy that said defendants would thereafter convene, in the Southern (T-318) District of New York, a meeting of the National Committee of the Communist Political Association on or about June 18, 1945, to amend and adopt said draft resolution.

4. It was further a part of said conspiracy that said defendants would thereafter cause to be convened, in the Southern District of New York, a special National Convention of the Communist Political Association on or about July 26, 1945, for the purpose of considering and acting upon said resolution as amended.

5. It was further a part of said conspiracy that said defendants would induce the delegates to said National Convention to dissolve the Communist Political Association.

6. It was further a part of said conspiracy that said defendants would bring about the organization of the Communist Party of the United States of America as a society, group, and assembly of persons to teach and advocate the overthrow and destruction of the Government of the United States by force and violence, and would cause said Convention to adopt a Constitution basing said Party upon the principles of Marxism-Leninism.

7. It was further a part of said conspiracy that said defendants would bring about the election of officers and the election of a National Committee

Voir Dire

of said Party, and would become members of said Party, and be elected (T-319) as officers and as members of said National Committee and the National Board of said Committee, and in such capacities said defendants would assume leadership of said Party and responsibility for its policies and activities, and would meet from time to time to formulate, supervise, and carry out the policies and activities of said party.

8. It was further a part of said conspiracy that said defendants would cause to be organized Clubs, and District and State units of said Party, and would recruit and encourage the recruitment of members of said party.

9. It was further a part of said conspiracy that said defendants would publish and circulate, and cause to be published and circulated, books, articles, magazines, and newspapers advocating the principles of Marxism-Leninism.

10. It was further a part of said conspiracy that said defendants would conduct, and cause to be conducted, schools and classes for the study of the principles of Marxism-Leninism, in which would be taught and advocated the duty and necessity of overthrowing and destroying the Government of the United States by force and violence.

In violation of Sections 3 and 5 of the Act of June 28, 1940 (Sections 11 and 13, Title 18, United States Code), commonly known as the Smith Act.

(T-320) That is the indictment in full. You will note that the defendants are not charged with being Communists generally. Nor are they charged with being members of the Communist Party in general. The charge is specific and refers to a conspiracy to organize an assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence.

Voir Dire

The case does not involve a question of guilt by association but a charge of specific guilt against each defendant as an individual. Bear these things in mind in connection with the questions which follow.

I shall now read to you some comments made by another federal judge at the time of selecting jurors for the trial of another case, which had attracted a great deal of public notice and comment in the newspapers and otherwise, as I think what he said is very pertinent here :

“The Court: * * * it is the purpose and object of these questions to secure a jury that has no feeling, no bias, no prejudice as to either side in this controversy. To put it another way, the minds of the jurors should be the same as this white sheet of paper (indicating). There is nothing on it, as you start in your deliberations. And you should only take the testimony as it comes from the witnesses in the case, and (T-321) from no other source.

“It is the object of the Court to select jurors who will keep their minds open during the entire trial, and at no time during the proceedings to say ‘Now I know what I am going to do.’ If a juror takes that position he might just as well go home and come back when the matter is submitted. That is important. A piece of evidence might come in later that will change that opinion one way or another. And not even when the evidence is all in should you say, ‘Well, I know what I am going to do now,’ without listening to the arguments of counsel. Because counsel on either side might place a different construction on the evidence than would be acceptable to you. But if you have made up your mind pride of opinion may cause you to adhere to a position that you would not adhere to had you kept your mind open.

“This is a court of justice. Why I emphasize that you should only make your determination on the evidence as it comes from the witnesses is because that is distinguished from what we call gos-

Voir Dire

sip, newspaper talk and so on. That belongs on the street, not in a court of justice, and that is where we propose to leave it.

“The grand jury has returned this indictment that I have read. That is no evidence of guilt and should be (T-322) entirely disregarded by you as evidence. It is merely a method by which the Government called into a court of justice individuals who they claim have violated the law. And you shall entirely disregard it as evidence.

“The defendants are presumed to be innocent until it is established beyond a reasonable doubt that they have offended against the law as charged in the indictment. The defendants stand before you as any individual in this court, and clothed with that presumption all through the trial.”

Now I proceed to my questions—

Mr. Isserman: If the Court please, before the Court commences to read the questions, I would like to respectfully object to the characterization by the Court of the indictment, which immediately followed the reading of it.

The Court: Very well.

Now I proceed to my questions.

Should any of you be accepted and sworn as jurors in this case, you will be instructed by the Court strictly to refrain from reading the newspapers or any written matter in any way pertaining to the trial, or listening to the radio about the trial, and from discussing the case in any manner whatsoever, either among yourselves or others, (T-323) until the evidence is closed and you have retired for deliberation upon your verdict after hearing the closing arguments of counsel and receiving the final instructions of the Court.

That is really part of my preliminary statement, and I think as the next question has to do with the list of names, we had better adjourn now until 2.15, when we will continue.

(Recess to 2.15 p. m.)

Voir Dire

AFTERNOON SESSION

The Court: Now there was one of the jurors—I guess it must be Mrs. Corwin—who had a nephew that was in some way in the Post Office.

Prospective Juror No. 12: No. It is the building on 65th Street and—

The Court: Well, he was in some way employed by the Government.

Prospective Juror No. 12: Yes.

The Court: Now I have a question that I want to put to you. If you were selected as a juror and came to the conclusion that a verdict of not guilty was required by the evidence in accordance with the instructions of the (T-324) Court, would you be embarrassed in arriving at your rendering a verdict of not guilty because of the fact that your nephew was connected with or employed by the Government in any way?

Prospective Juror No. 12: Not at all.

The Court: Very well.

Now we are going to have some more names, so I hope that everybody will pay strict attention. I have certain questions submitted by the Government and certain ones submitted by the defendants.

Has any juror ever been employed by, made any contributions to, or had any dealings with, any of the following publications:

The Daily Worker, The Worker, The Communist, Political Affairs, Morning Freiheit, New Masses, In Fact, People's World, The German American, Soviet Russia Today, Masses and Mainstream, People's Voice, (T-325) The Protestant, Contact, The National Guardian, New Foundations, New Times.

Has any juror, or any member of his family, had any dealings with, or ever been employed by:

Cafe Society Uptown, Cafe Society Downtown, World Tourists, Inc. — for incorporated, — Amtorg-Tass News Agency, Earl Browder, Inc., The Soviet Embassy, any of the former Soviet Consulates, former Soviet Purchasing Commission, Freedom of the Press, Inc., International Publishers—

Voir Dire

these are all names—

New Century Publishers, Workers Bookshop, Jefferson Bookshop, Four Continent Book Corp.

Has any member of the jury ever been a member of, made contributions to, or associated in any way with any of the following organizations:—this is a long (T-326) list and I ask that you all listen carefully—

Abraham Lincoln School, Chicago, Illinois, American League Against War and Fascism, American Association for Reconstruction in Yugoslavia, Inc., American Committee for European Workers' Relief, American Committee for Protection of Foreign Born, American Committee for Yugoslav Relief, Inc., American Council for a Democratic Greece, American Council on Soviet Relations, American Croatian Congress, American League for Peace and Democracy, American Peace Mobilization, American Polish Labor Council, American Russian Institute (of San Francisco), American Slav Congress, American Youth Congress, American Youth for Democracy, Armenian Progressive League of America, California Labor School, Inc., 216 Market Street, San Francisco, California, Central Council of American Women of Croatian Descent, also known as Central Council of American Croatian Women, National Council of Croatian Women, Citizens Committee of the Upper West Side (New York City), Citizens Protective League, (T-327) Civil Rights Congress and its State affiliates, Committee to Aid the Fighting South, Communist Party, U. S. A., Communist Political Association, Connecticut State Youth Conference, Congress of American Revolutionary Writers, Congress of American Women, Council on African Affairs, Council for Pan-American Democracy, Dennis Defense Committee, Friends of the Soviet Union, George Washington Carver School, New York City, German-American Bund, Hollywood Writers Mobilization for Defense, Hungarian-American Council for Democracy, International Labor Defense, International Workers Order, including People's Radio Foundation, Inc., Jefferson School of Social Science, New York City, Jewish Peoples Committee, Joint Anti-Fascist Refugee Committee, Ku Klux Klan, Labor Research Association, Inc., League

Voir Dire

of American Writers, Macedonian-American People's League, (T-328) Michigan Civil Rights Federation, National Committee for the Defense of Political Prisoners, National Committee to Win the Peace, National Council of Americans of Croatian Descent, National Council of American-Soviet Friendship, National Federation for Constitutional Liberties, National Negro Congress, Nature Friends of America (since 1935), Negro Labor Victory Committee, New Committee for Publications, Ohio School of Social Sciences, People's Educational Association, People's Institute of Applied Religion, People's Radio Foundation, Inc., Philadelphia School of Social Science and Art, Photo League (New York City), Proletarian Party of America, Revolutionary Workers League, Samuel Adams School Boston, Massachusetts, School of Jewish Studies, New York City, Seattle Labor School, Seattle, Washington, Serbian Vidovdan Council, Silver Shirt Legion of America, Slovenian-American National Council, Socialist Workers Party, including American Committee (T-329) for European Workers' Relief, Socialist Youth League, Southern Negro Youth Congress, Tom Paine School of Social Science, Philadelphia, Pennsylvania, Tom Paine School of Westchester, New York, United Committee for Democratic Rights, United Committee of South Slavic Americans, United Harlem Tenants and Consumers Organization, United May Day Committee, United Negro and Allied Veterans of America, Veterans of the Abraham Lincoln Brigade, Walt Whitman School of Social Science, Newark, New Jersey, Washington Bookshop Association, Washington Committee for Democratic Action, Wisconsin Conference on Social Legislation, Workers Alliance, Workers Party, including Socialist Youth League, Young Communist League.

Now, a question submitted by the defendants: Have you at any time been a member of, made contributions to or been associated in any way with any of the following organizations:

American Action, The America First Committee, (T-330) American Legion?

Prospective Juror No. 3: I am.

Voir Dire

The Court: As to those of you who are members of the American Legion, is there anything that has come to your attention in connection with your activities with the American Legion or anything that you have read or heard in connection with the American Legion that would give you any impression or thought concerning the guilt or innocence of these defendants or any of them of the crime charged, as I read it to you?

Prospective Juror No. 3: No, sir.

The Court: Or anything that would give rise to any existing bias or prejudice either against the government or against the defendants or any of them?

Prospective Juror No. 3: No, sir.

Prospective Juror No. 2: No, sir.

Mr. Gladstein: Before your Honor proceeds, will you be kind enough to ask—

The Court: Pause while you prepare a question?

Mr. Gladstein: No, I would just like to ask your Honor to inquire which members are members of or paid contributions to the American Legion.

The Court: The two that have answered are the two that have some connection with the American Legion. And I might say that in every case of any answer by a (T-331) juror, I have had devised a system here by which the reporter indicates who the juror is on every occasion so that the record may at all times be completely accurate and may be referred to in case of any answer or for reference or otherwise.

—American Patriots, Inc., Americans for Democratic Action, Association of Catholic Trade Unionists, The Christian Front—

Prospective Juror No. 8: Your Honor—

The Court: The Coalition of Patriotic Societies—

Prospective Juror No. 8: Going back to the Americans for Democratic Action, is that A. D. A., I think it is known as?

The Court: Well, you know, this alphabetical business has gotten past me some time ago and I have a little difficulty in recognizing things by this more modern way of speaking of them, and I don't really know.

Can I have any guidance? Is that ADA?

Voir Dire

Mr. Gladstein: Generally known.

The Court: Generally known as the ADA. And you are a member of or been associated with that?

Juror No. 8: I received their bulletin. I made a nominal contribution.

The Court: You have made a nominal contribution (T-332) and have received their bulletin. From anything that you have read in those bulletins or from any of their literature, or from your contact with that association in any manner, shape or form, have you formed any opinion or impression as to the guilt or innocence of the defendants or any of them, or any impression unfavorable to the government, which would prevent or hinder you from holding your mind fully open until the evidence and the instructions of the Court are completed?

Prospective Juror No. 8: I wouldn't say so. I would say no, your Honor.

The Court: I want you to search your mind carefully about that and think about it a little bit, because, if you have any bias or prejudice there that would affect your judgment here and make it hard for you to start in with a completely open mind and render a verdict solely on the basis of the evidence and the instructions of the Court, why, now is the time to make it clear to me.

Prospective Juror No. 8: No, that wouldn't have any effect. Just like a newspaper.

(T-333) The Court: All right. Now I think the last I read was The Coalition of Patriotic Societies—

Mr. Sacher: You omitted one, your Honor.

The Court: Did I omit The Christian Front?

Mr. Sacher: Yes.

The Court: I have a recollection of mentioning it.

Mr. Sacher: I am sorry.

The Court: But possibly I read so many that I am wrong. But I will go back. The Christian Front; the Coalition of Patriotic Societies; Columbians; The Constitutional Educational League; Knights of Columbus.

Any of you members of the Knights of Columbus? Liberal Party; National Association of Manufacturers—

Mr. Gordon: A juror.

Voir Dire

Prospective Juror No. 8: I think I might have registered with the Liberal Party.

The Court: Registered as a voter in the Liberal Party?

Prospective Juror No. 8: Yes.

The Court: Now I am not very much up on my (T-334) politics. I have been pretty busy here since I got up in this court, but I have some impression that possibly there was something connected with the Liberal Party and the American Labor Party that might possibly have placed some impressions on your mind that might prejudice you to the defendants. I want you to search your mind closely about that. You don't think so?

Prospective Juror No. 8: Not in the Liberal Party, your Honor.

The Court: Well, maybe I am mixing it up. I have assumed that because it was on the list here that the defendants submitted, that there was something about the Liberal Party that possibly was antagonistic to some of the defendants or their aims, but you can think of nothing that arose out of your registering in the Liberal Party that would give rise to any prejudice or bias here?

Prospective Juror No. 8: No.

The Court: Now I read the National Association of Manufacturers.

The National Committee to Keep Out of Foreign Wars; National Economic Council; Proletarian League of America; Protestant War Veterans of the U.S.A. Inc.; The Small Business Men's Association; (T-335) Steuben Society; The Tool Owner's Union; United States Chamber of Commerce; We, The Mothers; Workers Party; The Holy Name Society; Society for the Propagation of the Faith; The Central Association of the Miraculous Medal; American Defense Society, Inc.; American Destiny Party; American Fellowship Forum; American Nationalist Party; Committee for Constitutional Government; Citizens Protective League; German-American Republican League; American Rock Party; America's Future; Christian Front Sports Club; Christian Mobilizers; German-American Voters Alliance; International Catholic Truth Society; League for Constitutional Government; Women United.

The next question, also submitted by the defendants, is—

Voir Dire

(T-336) The Clerk: Juror No. 9.

Prospective Juror No. 9: I belong to a Catholic society although you did not mention it. It is a Catholic organization.

The Court: Now I have some questions later on, and perhaps it is as good a time—

(Clerk hands paper to Court.)

The Court: Mr. Sacher has submitted an additional name—Fellowship for Reconciliation. That is not the one you are a member of?

Prospective Juror No. 9: No.

The Court: Well, I suggest possibly for the sake of clarity here that you wait until I get a little further along with some of the other questions, because as to those names of organizations that I have read, I take it that your answer to my question, namely, whether you have been at any time a member of, made contributions to or been associated in any way with any of those organizations that I named, your answer would be no?

Prospective Juror No. 9: Well, on the Holy Name Society, years ago I have been a member.

The Court: Well, now, from your membership in the Holy Name Society and from your contact, whatever it may have been, with any other similar organizations, I want to ask you this question and I want to make it just as (T-337) comprehensive as I can, relating to anything that you may have read or anything that you may have heard or said by anyone and the whole contact that you had with those organizations—I ask you whether in that connection you formed any opinions or impressions as to the merits of the charge which I read here, unfavorable either to the Government or to the defendants or any of them which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete.

Now if you did have such an opinion or impression you should say so.

Prospective Juror No. 9: Yes, I believe I would.

The Court: Now if you have, I take it that you feel that that is something that it would be very difficult to efface from your mind so that you could approach this trial with a completely open mind?

Voir Dire

Prospective Juror No. 9: Yes, your Honor.

The Court: Well, you may be excused.

(Prospective Juror No. 9 excused)

The Clerk: Edward P. Nelson.

(Mr. Edward P. Nelson takes seat No. 9 in the jury box.)

The Court: I am just writing down a few more names of organizations that were handed up to me by (T-338) counsel for defendants.

Now let me see. Where did the new juror go into— seat No.—

The Clerk: 9, your Honor.

The Court: —9. That is Mr. Nelson, isn't it?

Prospective Juror No. 9: Yes.

The Court: Now Mr. Nelson, have you been paying pretty good attention back there?

Prospective Juror No. 9: Yes, I have.

The Court: Do you think you have been listening to all these names?

Prospective Juror No. 9: Yes, sir.

The Court: Do you recall any of the questions that I have asked that you would answer in the affirmative?

Prospective Juror No. 9: No, I did not.

The Court: Do you know any of the lawyers or any of the persons in these long lists that I have read off, or been connected or associated with any of those organizations?

Prospective Juror No. 9: No, I haven't.

The Court: Your answer would in each case be in the negative, would it?

Prospective Juror No. 9: That is right.

The Court: And did you also hear the reading (T-339) of the indictment?

Prospective Juror No. 9: I did.

The Court: And my reading from the instructions of that other judge when he was selecting jurors in another case as to the effect of the indictments and the presumption of innocence, you heard all that?

Prospective Juror No. 9: Yes, I did.

Voir Dire

The Court: Now as to any possible prejudice against the enforcement of this law, in view of the discussion this morning before I put that question to you, as there may be a little ambiguity due to the discussion, I want to hand this copy that I have here in which I think I have deleted any parts of the law that were not applicable to this case, and I would like to have counsel for the defense glance at this copy and see if it is still unacceptable to you (handing).

(Defense counsel examine.)

The Court: Is not that all right, Mr. Gladstein?

Mr. Gladstein: Well, it seems to set forth the sections under which the charge is made.

The Court: Yes. I tried to eliminate anything that was not strictly pertinent to the charge here.

Mr. Sacher: Except I would like to make one observation in regard to the first section. There is no charge here that these defendants did advocate anything.

(T-340) Mr. Gordon: That is not so; that is specifically charged.

The Court: Well, I think the indictment clearly comes within each of these sections that I have here, and I can see no conceivable prejudice from my reading these parts. I have taken out entirely what I thought were the parts that you objected to. Of course this has nothing to do with assassinating anybody, and that is entirely out of the case, and I tried to take out everything else that might seem to have no bearing, so I think I shall take this as it is and read it as I have it here.

Mr. Sacher: May I respectfully note an exception?

The Court: Yes, you may.

Now the indictment, as you may have noticed when I read it, refers to certain sections of the statute, and I am now going to read those sections and ask you whether you have any prejudice against the enforcement of this law or against the punishment of any person for the type of conspiracy that is referred to in this law, because naturally if there is somebody here that has a prejudice against the law, they have no right to sit as a juror here any more than they would in the enforcement of any other law that a juror didn't believe in and was opposed to.

Voir Dire

Now I read it to you:

(T-341) "It shall be unlawful for any person—
 "to knowingly or wilfully advocate or teach the
 duty or necessity of overthrowing or destroying any
 government in the United States by force or vio-
 lence;

"to organize any society, group or assembly of
 persons who teach, advocate the overthrow or de-
 struction of any government in the United States
 by force or violence."

"For the purposes of this section, the term 'gov-
 ernment in the United States' means the Government
 of the United States, the government of any State,
 Territory, or Possession of the United States, the
 government of the District of Columbia, or the gov-
 ernment of any political subdivision of any of them.

"It shall be unlawful for any person to conspire
 to commit any of the acts prohibited by the provi-
 sions of this Title."

Now do you have any prejudice against the enforce-
 ment of that law or the punishment of any persons guilty
 of such conspiracy as is there described?

Prospective Juror No. 9: No, I have not.

The Court: I think it is unnecessary to read (T-342)
 the other questions. You remember that I asked about being
 employed by the Federal Government, and having anything
 to do with the House Committee on Un-American Affairs
 and a number of other matters, and you believe that you
 heard and understood the questions, do you?

Prospective Juror No. 9: Yes.

The Court: And that your answers in all cases would
 be in the negative?

Prospective Juror No. 9: That's right.

The Court: Now one of those questions was whether
 you had served as a juror previously; have you?

Prospective Juror No. 9: No, I have not. I had service
 with the Signal Corps. That is the only item that might
 be affected.

The Court: Well, the question was whether you served
 as a juror. You say in what court?

Voir Dire

Prospective Juror No. 9: No, the question about the armed service.

The Court: Oh, you were in the armed services?

Prospective Juror No. 9: That is right.

The Court: And what branch of the armed services?

Prospective Juror No. 9: The Signal Corps.

The Court: Is there anything connected with your service that would give you any impression or opinion as to the guilt or innocence of the defendants here of (T-343) the charge that I have read?

Prospective Juror No. 9: No, there isn't.

The Court: Or that would give rise in your mind to any bias or bent of mind, hostile or antagonistic either to the Government or to the defendants?

Prospective Juror No. 9: No.

The Court: Now the next question—there are a few new names to be added to my last question so that I will repeat it and give it to all of the jurors, but only reading the new names, the additional names that have been submitted to me.

Have you at any time been a member of or made contributions to or been associated in any way with any of the following organizations: (T-344) Fellowship for Reconciliation; Catholic War Veterans; Veterans of Foreign Wars; Socialist Party; The League for Industrial Democracy.

Now, another question also submitted by the defendants is as follows:

Have you read any of the following publications—sounds as though there were books but I am not sure; they are designated as publications:

This is My Story, by Louis F. Budenz

I Confess, by Ben Gitlow

The Whole of Their Lives, by Ben Gitlow

I Chose Freedom, by Victor Kravchenko

Out of the Night, by Jan Valtin

The Trojan Horse in America, by Martin Dies

The Red Decade, by Eugene Lyons

The Road to Serfdom, by Hayek

The Struggle Behind the Iron Curtain, by Ferenc Nagy

Voir Dire

The War We Lost: Yugoslavia's Tragedy & the Failure of the West. by Constantin Fotitch
 Is Communism Compatible with Christianity, by Clare Boothe Luce.

I want you to pay particular care and listen to the following question:

(T-345) From reading the newspapers or written matter of any kind or from conversation had with friends or others or by listening to the radio or in any other way, have you formed any opinions or impressions as to the merits of the charge, unfavorable either to the Government or to the defendants or any of them, which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete?

I want you to think about that, and I am going to repeat it so that every word of it may sink in. From reading the newspapers or written matter of any kind, or from conversation had with friends or others, or by listening to the radio, or in any other way, have you formed any opinions or impressions as to the merits of the charge unfavorable either to the Government or to the defendants or any of them which would prevent or hinder you from holding your minds fully open until all the evidence and the instructions of the Court are complete?

Now, search your souls when you answer that question or remain silent.

Mr. Sacher: I wish to note an objection to that question, your Honor.

The Court: I will take part of it back, about searching your souls. Think about it any way you desire.

(T-346) I simply meant to emphasize by that the importance of the question in determining whether there was something, from any of these readings or listenings, or conversations, that had started some impression or opinion which, as I put it here, would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete. Forget that little expression about searching your souls.