

Voir Dire

Mr. Sacher: If your Honor please, my objection was not to their searching of their souls. My objection is to the entire question.

The Court: What is wrong with it?

Mr. Sacher: I think the question is at this time not competent, nor proper foundation has been laid for it.

The Court: Well, I will overrule the objection. If you cannot ask questions like that, I don't know how you are going to find out whether bias or prejudice exists with somebody?

None of you indicate in the affirmative, so I gather that the answer by you all is No.

Let me pass to the next question, and every one of these questions that I have now is very, very vital and important. Have you at any time been a member of, made contributions to or been associated in any way with (T-347) business or religious organizations or organizations of any character in connection with the activities of which you have 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?

If there is any single thing that you have read or heard that has caused you to form some impression as to the guilt or innocence of these defendants, it is your duty and it is your sworn oath, to say so and then we can look into it and see whether it is of a character that might or might not—but I want you to come right out and say the fact, if there is any such thing there that may, as I have put it here, prevent you or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete.

Mr. Gladstein: Your Honor, I desire to object to the question because it seems to me not only unfair to the defendants but unfair to the jurors in putting to them an abstract question with no preparation in advance that enables them to put their minds upon their activities.

The Court: Mr. Gladstein—

Mr. Gladstein: Yes, your Honor?

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(T-348) The Court: If I took the welter of detailed statements that you have desired that I should put before each member of these prospective jurors, I cannot see how it is possible that I wouldn't do more harm than good to the defendants. I have felt that the question as I put it here, and which the jurors listened to and will give their reactions to, goes right to the heart of the question, and I don't think that I should take all those little things, or great and small things, or whatever you might call it, that you have submitted to me, and ask each person whether they heard that statement by so and so, or he read this statement by so and so else, and thus perhaps spread the very thing which you affect to desire to eliminate.

Mr. Gladstein: Your Honor, I had no reference to a series of questions that would ask the jurors what they had heard, hearsay or anything of that sort. I had in mind that it is impossible, not to say merely difficult for a person to be confronted suddenly with the question asking whether or not over the course of years, because of his business associations, because of his religious activities or anything else, there has been formed in his mind some feeling, some attitude, some bias, which would make him a person who ought not to sit on the jury and, perhaps, with appropriate examination on that score, a juror might very well recall that there has happened in his life that which, (T-349) or he has had connections with, or ties, those things which would make it unfair for him to sit, but to ask him suddenly—

The Court: Mr. Gladstein: I don't desire to have argument at this time. I have made that very clear—

Mr. Gladstein: Very well.

The Court: —to you and your colleagues. I have given great thought to these questions and I am not through with my questions yet. I intend to give all the jurors plenty of time to deliberate on their answers but I am not going to permit counsel for the defendants to interrogate the jurors, and I have already indicated to you that you may object, if the questions seem to you to be objectionable, but I don't want to hear argument. I think this is one time in the trial when argument must be eliminated.

Mr. Gladstein: Very well, sir.

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The Court: So, please bear that in mind.

Mr. Gladstein: I note an objection to your Honor's ruling.

The Court: Yes.

I am going to come back to that question a little later because there has been so much written and there are so many things that might affect a person's judgment. Let me go to some of the other questions and I will come back.

(T-350) Have you at any time been a member of, made contributions to, or been associated in any way with business or religious organizations, or organizations of any character, whose officers or representatives have made any expressions of advocacy of or friendliness toward Communists or Communism in general on the one hand, or of opposition or hostility to Communists or Communism in general on the other hand, which expressions you have heard or read in any manner, which have led you to form 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?

Let me ask the first part of that without the second part:

Have you at any time been a member of, made contributions to, or been associated in any way with business or religious organizations, or organizations of any character, whose officers or representatives have made any expressions of advocacy of or friendliness toward Communists or Communism in general, on the one hand, or of opposition or hostility to Communists or Communism in general on the other hand, which expressions you have heard or read in any manner, which have led you to form (T-351) any opinions or impressions as to the merits of the charge, here?

Let me go to my next question: In determining the truth or falsity of the testimony of any witness, would you, in accordance with the instructions of the Court, submit the testimony of such witness to the same scrutiny and test it by the same standards, mind you, in accordance with the instructions of the Court:

(a) whether the witness was called by the defense or by the prosecution;

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(b) whether the witness was a member of a labor union, a Congressman, an employee of the Department of Justice or of the FBI, or a Communist or member of the present or some former Communist Party, or a friend or associate of any of the defendants?

Would you use the same test, according to the instructions of the Court, whether it was one or the other of those alternatives?

I take it by your silence you indicate that you would.

Mr. Sacher: I wish to note an objection to the form of that question, your Honor.

The Court: What is the difficulty with the form of the question?

(T-352) Mr. Sacher: Well, your Honor has admonished us not to argue, so I am refraining.

The Court: No, but when I desire argument I think it is a little different.

Mr. Sacher: I think the question contains so many elements in it—

The Court: Do you think it should be split up?

Mr. Sacher: I believe so.

The Court: I will be very glad to do that.

In determining the truth or falsity of the testimony of any witness, would you, in accordance with the instructions of the Court, and, naturally, the Court will instruct you that you are to use the same tests as to every witness, but the question is whether on such instructions, in determining the truth or falsity of the testimony of any witness, you will submit the testimony of such witness to the same scrutiny and test it by the same standards, even if the defendant is a Communist or even if the witness is a Communist or a member of the present or some former Communist Party, or a friend or associate of any of the defendants?

Mr. Sacher: I must interpose an objection to your Honor's formulation, "even if the defendant or the witness is a Communist." No distinction is to be made.

The Court: I thought that is the way you wanted (T-353) me to put it.

Mr. Sacher: No, I don't want any "evens" in there.

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The Court: If the Court instructed you, as the Court will, if the case comes down to submission to the jury, that you are to apply the same tests of credibility as to all witnesses, would you have some prejudice or bent of mind that would cause you to hesitate to apply that same test to a witness who stated he was a Communist?

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 Court, would you be embarrassed in arriving at or rendering a verdict of not guilty in any way connected with your employment or by reason of your membership in or affiliation with any church, political party, club, society, or any other organization of any kind whatsoever, or in any other manner?

Has any juror such a bias or prejudice against the Administration or any agency of the United States, or against the defendants or Communists in general, or the Communist Party, whatever its aims and purposes may be, as would prevent him from reaching his verdict solely on the evidence presented in Court and the law as contained in the instructions and rulings of the Court?

Mr. Sacher: I wish to interpose an objection (T-354) to that question.

The Court: The objection is overruled.

Mr. McCabe: Your Honor, might I hand up a suggestion in writing—

The Court: Yes.

Mr. McCabe: —in regard to a former question.

The Court: I will refer back to one of my former questions by way of background:

Have you at any time been a member of, made contributions to, or been associated in any way with business or religious organizations, or organizations of any character, whose officers or representatives have made any expressions of advocacy of or friendliness toward the Communists or Communism in general on the one hand, or of opposition or hostility to Communists or Communism in general on the other hand, which expressions you have heard or read in any manner, which have led you to form any opinions or impressions as to the merits of the charge,

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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, at the suggestion of counsel for the defendants I ask you this question:

In connection with any business or religious (T-355) organizations or organizations of any character, of which you were at any time a member, or to which you at any time made contributions, did you hear at any time the officers or representatives of such organization make any expressions of opposition or hostility to Communists or Communism in general?

Does that satisfy what you had in mind?

Mr. McCabe: Yes, your Honor used the word "heard." I wrote it hurriedly: "heard, or read, or had it brought to their attention."

The Court: Yes, by the officers or representatives of any of those organizations.

Mr. McCabe: Yes.

The Court: Business or religious.

Mr. McCabe: Or by official action of the executive committee or leading committee.

The Court: I will put that question just as broadly as you want, to cover, not only what you heard somebody say, but what you read in some communications of the officers of such an organization or that you received as communicated from them in any way.

Did you, in connection with any such organizations of which you were members or to which you had made contributions, did you hear the officers or representatives, or read anything about the officers or representatives expressing hostility to Communists and Communism?

(T-356) The Court: Is that satisfactory, Mr. McCabe?

Mr. McCabe: I think that covers it. The impression or the question which your Honor was putting to them certainly must have been brought home clearly to the members of the jury, that is, as to whether we spelled out every possible way in which an expression of condemnation of Communism or the Communist Party or its doctrines may have been expressed.

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The Court: Yes, by the officers or representatives of the organization.

Mr. McCabe: Or by official action.

The Court: Or by official action, that is right.

Now I think I will ask these jurors a number of questions as to their occupations, unless there is some particular question that somebody desires to submit to me now.

Mr. Sacher: I have a considerable number, your Honor. It might be preferable—

The Court: To take a brief recess?

Mr. Sacher: No, but I think it might be preferable to have your Honor complete your questions and then in all probability submit them in legible order to you in the morning, if that is agreeable to the Court.

The Court: Well, I have completed my questions, all except one or two that I desire to ask at a later time.

(T-357) Mr. Sacher: Then may we have a recess?

The Court: To formulate such questions as you desire to submit? Yes.

We will take a ten-minute recess.

(Short recess.)

Mr. McCabe: Your Honor, might I ask a question? Your Honor made some directions regarding the reading of newspapers, the listening to radio programs, and so forth, during the course of the trial, and I am not sure whether that was a direction to jurors, prospective jurors, or jurors who will be chosen, to refrain entirely from reading the newspapers. Of course, it is going to be difficult for anyone to read a newspaper at all and to insulate his attention entirely from this case which will, of course, be a legitimate item of news, and my attention was called to that by the fact, frankly, that some members of the panel have been reading the newspaper during the recess and—

The Court: Well, I will attempt to eliminate any possibility of their reading about the case by indicating that they shouldn't read the newspapers at all and I will study that matter between now and the next time we meet. But I will give the direction from now, as you desire it to be, and I will study in the meantime as to (T-358) such instructions as have been given in cases in the past. My

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recollection is that those instructions have always been not to read anything about the case. But from now until we come back here tomorrow, I will give the direction which you desire, which—

Mr. McCabe: It was not a question of my desire, your Honor. It was a matter of inquiry. I happened to notice Mr. Allen, I mean, No. 8 juror, was reading the newspaper.

The Court: Well, you see, my direction—

Mr. McCabe: I am not drawing any inference from that.

The Court: —that was given yesterday was what I thought was the general direction, not to read anything that had anything to do with the case directly or indirectly.

Now, as far as I am concerned, I don't see why I should have any difficulty in doing that. I would only read the parts of the paper that had to do with something else. But I am endeavoring in every way that I can to be completely fair here and if there is any question about it, I am going to give the direction now that between now and the time that I give such further instruction to the prospective jurors here, until they are excused or until they receive some further instructions from me, they (T-359) shall refrain from reading the newspapers at all, and continue the same instructions as I gave before about reading magazines and other literature that had anything to do with the case or with Communism and so on, and to refrain from listening to the radio or talking about the case to anybody at all.

Mr. Gladstein: Your Honor, may I say something on that? I think the occasion for Mr. McCabe rising to call this to the Court's attention was not any desire on his part or on the part of any of us to suggest that the members of the jury be required by direction of the Court not to read a newspaper or not to listen to the radio or—I don't think that it is right or fair to suggest to the jurors that they should henceforth, on the possibility that they may serve, beginning as of now, try to insulate themselves from all of the life that goes on around us. I do not see any point in it. The only point is, it is perfectly obvious that any communication of views or opinion concerning the case, obviously, in accordance with the principles of law, the Court's direction—

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The Court: That is what I told them.

Mr. Gladstein: I think that your direction was so broad yesterday, your Honor, that that occasioned Mr. McCabe raising that question, and that was the impression (T-360) that I had.

The Court: Well now, you boys had better get together. You either want me to tell the jurors not to read any of the newspaper or you don't. Now, which is it?

Mr. Gladstein: I, certainly, speaking for myself, Judge, I would not like to have the Court direct that all the people who are on this jury panel not read their newspapers.

The Court: Why raise the point then? I gave the instruction yesterday, which was extremely explicit, that they should refrain from reading anything in the newspapers or anywhere else that had anything to do with the case remotely, directly or any other way, and also to refrain from listening over the radio to anything about the case, and also to refrain from discussing it among themselves or with their families or friends or with anybody else in any connection with case.

Mr. Gladstein: That is right, about the case.

The Court: If that is not what you want, now is the time to say so. And if one of you asks for one thing and if the other says just the opposite, I am left in doubt as to what is the desire that I should do.

Mr. McCabe: Well, your Honor—

The Court: Mr. McCabe, just what is it you want (T-361) me to do?

Mr. McCabe: If your Honor please, I raised a point of information. Among all the requests which we made of your Honor, none of them related to reading the newspapers, and I have no thought to express regarding reading the newspapers.

The Court: What is it you rose to tell me?

Mr. McCabe: I rose simply to say this, your Honor, that in view of the possible misinterpretation of your Honor's order yesterday, the very fact that Mr. Allen was reading a newspaper, and I drew no sinister inference from that, might be made a matter of comment among others in the courtroom.

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The Court: You mean it would be more discreet if jurors did not carry newspapers? I think that is silly.

Mr. McCabe: I was just asking whether your Honor's direction covered that. I made no request at all.

The Court: All right.

Mr. McCabe: And I now make no request.

The Court: Yes, Mr. McGohey?

Mr. McGohey: Your Honor, I think it may help to clarify this if I suggest to your Honor that you look at page 263, which contains the admonition you gave to the panel at the close of yesterday, afternoon session. (T-362) I cannot conceive how there could be any doubt in anybody's mind of what your Honor said because all you did was what has been traditional in criminal cases for as long as I have been at the bar, and that is, to admonish jurors or potential jurors that they not read anything about the case, and I certainly shouldn't like it to appear that I or any of my staff subscribed to any suggestion that the jurors be made to refrain from reading newspapers or being permitted to carry on the ordinary affairs of everyday life.

The Court: Now, Mr. Sacher, let us not start that old routine.

Mr. Sacher: No, sir.

The Court: So we will—

Mr. Sacher: I take an exception to that remark. I simply wanted to say—

The Court: I knew, but it is so easy to take time up with argument.

Mr. Sacher: I would like to have just a moment to make an observation, your Honor, that neither does the defense want any juror to be deprived of the opportunity to read a newspaper, magazine or hear the radio, and we are quite willing the matter rest there.

The Court: Let me go back to my questions. I have three more questions that I desire to address to (T-363) the jurors in the box.

Have any of you formed any opinion or impression concerning the guilt or innocence of any of the defendants of the crime charged which would require evidence to remove?

And my next one is, have you formed any opinion or impression concerning the guilt or innocence of any of the defendants of the crime charged which might prevent you

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from being completely impartial and free from bias in this case?

Now, my final one before we adjourn, do any of you know of any reason why you should not serve as a juror in this case, any fact or circumstance of such a nature as to prevent you from rendering a fair and impartial verdict based solely upon the evidence and the instructions and rulings of the Court?

Very well. We will adjourn now until tomorrow morning at 10.30. And before you leave I want to read from the record what I said yesterday about the newspapers, and I quote, because it was the second time I had given the admonition, and I give it again, and those of you who serve in the case will hear it many times, and it is very important.

Mr. Gladstein: Your Honor, may I interrupt? Did your Honor mean to say 10.30 or 11?

The Court: 11. I meant 11. I misspoke (T-364) myself. 11 is the time. Thank you, Mr. Gladstein.

“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 have to do, remotely or directly, or in any way with the trial, or to listen to anything over the radio about it, or to talk among yourselves or with your families or with your friends or anyone else about the case, 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.”

That is merely a repetition of what I said yesterday, and it is very important that each and every one of you observe that admonition to the letter.

And so, we will now adjourn until 11 o'clock tomorrow morning.

(Adjourned to March 10, 1949, at 11.00 a. m.)

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(T-366)

New York, March 10, 1949;
11.00 a. m.

 TRIAL RESUMED.

* * *

The Court: * * * I shall proceed to examine the jurors in the box as to their occupations.

MRS. THELMA DIAL, Prospective Juror No. 1, was examined as follows:

By the Court:

Q. Mrs. Dial, you are a housewife? A. Housewife and dressmaker.

Q. You need not arise. That is perfectly all right. A. I am a dressmaker on occasion.

Q. You do a little dressmaking too, do you? A. Yes, but—

Q. I suppose you do that so as to increase your income (T-367) a little bit? A. That is true.

Q. And make both ends meet? A. That is true.

Q. I see here from the card that your husband's occupation is that of a musician. A. That is true.

Q. Is he a musician who plays in some orchestra or gives lessons or something of the kind? A. No, he has his own combination, five-piece band.

Q. He has his own? A. Small combination.

Q. Five-piece group? A. Yes. Sometimes six.

Q. Sometimes six. Had you in former years done dressmaking as a full-time occupation? A. Never full time—oh, well, a few years ago, I would say about 15 years, in Chicago I did it for a company there.

Q. And since your marriage you have just done it on the side, as it were? A. I was married then, your Honor.

Q. So— A. All my married life I have done it on occasions.

Q. How long ago was it that you began just doing it part time, maybe two or three years ago? A. It has always been part time except the time I lived in Chicago, which was a period of about four years.

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(T-368) MARTHA E. WALKER, Prospective Juror No. 2, was examined as follows:

By the Court:

Q. Mrs. Walker, you also are a housewife? A. And on occasion, your Honor, I work part time.

Q. I see by the card here that formerly you were a clerk, and that is a sort of general expression. What was the work that you were doing? A. Sorting.

Q. What is that? A. It is sorting. It is a pattern place and you have to sort the envelopes, getting ready for the runner to be picked up.

Q. What was the name of the company? A. Reder Mail, Incorporated.

Q. You worked for them for some time? A. On occasion, off and on, yes, for about five years. Part time only.

Q. That was part time work? A. Yes.

Q. As soon as you were married, did you cease doing that work as a clerk? A. No, sir. I am married 30 years.

Q. Married 30 years? A. Yes, this year.

Q. That is almost as long as I am married. I am married almost 40 years. It is a long time but it is quite nice just the same.

Now, I notice your husband's occupation is that of a chauffeur. A. With the Socony Vacuum Company.

(T-369) Q. Does he drive one of their trucks? A. That is right, one of their trucks.

Q. Has he been engaged in that occupation for some time? A. 25 years.

Q. How long? A. 25 years.

Q. 25 years? A. Yes.

The Court: Now I think I will turn to Mr.— is that Mr. von Goeben?

Prospective Juror No. 3: Yes, sir.

The Court: It is so hard to pronounce names properly.

Prospective Juror No. 3: Well. G-o is Go— most anyone calls it Goeben.

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ROBERT VON GOEBEN, Prospective Juror No. 3, was examined as follows:

By the Court:

Q. Well, I notice here that you are an accountant. Have you been an accountant for many years? A. Well, I have, yes. When you do office work after you get so that you can handle figures and add 2 and 2 and come out with the same answer—when you do that, oh, for some 35 years they finally call you an accountant.

Q. Yes. A. Although your education may not—

Q. Yes, I can't seem to do that. I always seem to add them wrong but you found after a year or two you added (T-370) them up right. A. No, I say after 35 years.

Q. Oh, well. A. After 35 years I feel I can add 2 and 2 and get the same answer each time.

Q. And I suppose that is your nice way of saying that you are not a CPA? A. No, I am not a CPA.

Q. Are you an accountant in business for yourself? A. No, I am with a large firm; they have about 600 employees.

Q. And what is the name of the firm? A. The firm is C-a-r-e. They send food parcels overseas, handle relief. I think you have heard of it, sir.

Q. Yes, I have. A. Yes. I have been there about—

Q. The business address is 50 Broad Street. Has that been their address as long as you have been working for them? A. It has, sir. I have been there about two and a half years.

Q. About two and a half years. Now before you went with Care by whom were you employed? A. Well, during the war I had a job with Eastern Aircraft which was a part of General Motors, and I worked in a plant over on the Hudson River, over at Tarrytown.

Q. You did work as an accountant there? A. No, sir. I had a year and a half in the machine shop working as a machinist. Might I say one or two words on that score, sir?

Q. Yes, you may. I am always a little bit hesitant (T-371) when a juror wants to volunteer something because sometimes you get into a long drawn out affair, but

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you go ahead and tell me. A. Well, I will see whether I can make it short. I have had a number of periods of unemployment in my life, and I had one at the early part of the war, and I went around to the war plants to see whether I could get a job doing some office work and everybody says there is two or three hundred thousand men like you, they aren't any good in a war plant, and finally someone suggested "Why don't you take a course in some sort of machine shop operation, learn how to read blueprints? Then when you apply for a job as a cost accountant, then you have some value," so I took a 400-hour machine shop course learning how to read blueprints, how to handle machines, how to operate a lathe, and so forth. Then I found that no firm could hire me as anything else but an operator in a machine shop.

Q. So that is what you did? A. So that's how I got in, and while, very frankly, I went in with the idea of being transferred to the office end, it took a year and a half to get a transfer.

Q. Well, that's all right. I do not think you— A. And that is why I wound up as an operator in a machine shop.

Q. Well, there is nothing wrong with working in a machine (T-372) shop. A. No, I found it very interesting.

EDWARD R. HALLQUIST, Prospective Juror No. 4, was examined as follows:

By the Court:

Q. Now, Edward R. Hallquist? A. Yes, sir.

Q. I see here that you are a salesman. I wonder just what kind of a salesman. I do not mean whether you are a good salesman or not, but I mean what sort of work do you do as a salesman? A. Well, I am district sales manager for our company for New York City and its metropolitan area.

Q. And as district sales manager I suppose that leads me into the question of what the name of the firm is and

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what the character of the business is? A. Bigelow, Sanford Carpet Company.

Q. Is that a large concern? A. Large, yes, sir.

Q. And how many men do you have working under you as district sales manager? A. I have the 12 salesmen and the jurisdiction of our warehouse comes under it. I have jurisdiction of that.

Q. Do you in doing that work remain in the office most of the time or are you required to do quite a little running around? A. I am required to do considerable running around and I am in the office a good deal of the time.

Q. Have you been employed by that Bigelow, Sanford Carpet Company for some time? A. 28 years.

(T-373) Q. 28 years.

MRS. MYRTLE FENSTERHEIM, Prospective Juror No. 5, was examined as follows:

By the Court:

Q. Now Mrs. Myrtle Fensterheim? A. Yes.

Q. Do I pronounce you right? A. That is right.

Q. I notice that your occupation is given as a housewife, is that right? A. That is right.

Q. And at the present time you are not employed at all? A. Yes, your Honor. I do personal shopping for ladies' dresses.

Q. You do personal shopping for ladies' dresses? A. Yes.

Q. Now that seems very clear to you but strangely enough it doesn't mean a thing to me, and I wish you would tell me. This is a part time occupation, I gather? A. Yes, for myself.

Q. For yourself? A. Yes.

Q. Now just what does that mean? A. Well, for instance, a party would like some dresses. She will call me and ask me to please buy her two or three dresses. I don't do it steady.

Q. Oh, then you help individuals— A. That is right.

Q. —in buying their own drseses? A. That is right; (T-374) just occasionally, not steadily.

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Q. I see. And down here it says that your husband's occupation is that of a Post Office clerk. A. That is right.

Q. Where does he work? A. General Post Office.

Q. In the General Post Office? A. Yes, your Honor.

Q. Has he been there for a long time? A. 35 years.

Q. 35 years. And what is his title there in the Post Office? A. An examiner.

Q. An examiner? A. Yes, your Honor.

Q. And I notice that the card indicates that before you were a housewife you did some office work? A. Well, the Mosholu Jewish Center, up on Mosholu Parkway.

Q. What was the nature of that—clerical work? A. Just clerical work, sending out the bulletins and booking weddings and parties.

Q. I see. And did you do that for some time? A. Just part time, your Honor.

Q. Just part time? A. Just part time, three hours a day for about two years.

Q. Have you been married long? A. 32 years.

Q. Perhaps I oughtn't to ask personal questions? A. No, that is all right; 32 years.

Q. Because I find it so easy to pry into people's personal (T-375) affairs that really have nothing to do with the case, so I don't think I am going to ask you questions like that any more because I can't see that it really has any bearing on the matters at issue here.

ROBERT WRIGHT, Prospective Juror No. 6, was examined as follows:

By the Court:

Q. Now Mr. Robert Wright? A. Yes, sir.

Q. You are down here as a service man? A. Yes, sir. I am connected with the emergency division of the Consolidated Edison Company.

Q. Now that sounds as though you were running around when there was trouble somewhere, helping to fix it up?

A. That is right, your Honor.

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Q. What kind of troubles? A. Well, all kinds of emergencies—anything that may be termed an emergency on the vast network system of the city.

Q. You mean with the electrical wiring or— A. That takes in electric wiring, gas mains; we may be called by the Fire Department to take toxic readings in buildings and all sorts of things like that.

Q. Well, do you act in some managerial capacity or do you do that work yourself? A. I do that work myself.

Q. You go around with the truck? A. With a crew of (T-376) men.

Q. And fix it up? A. Yes.

Q. And with a crew of men? A. Yes.

Q. Is that crew of men under your supervision— A. No, sir.

Q. —or are you just one of the crew? A. One of the crew.

Q. Have you been employed for some time doing that work? A. 20 years.

CHARLES ZULANCH, Prospective Juror No. 7, was examined as follows:

By the Court:

Q. Now Mr. Charles Zulanch? A. I went to business school under the GI Bill. I worked in the Post Office, I was in the Service for a while.

Q. Well, I think possibly the best way for us to go at it is to go back a few years and then trace it down. Before you—

(The clerk hands paper to the Court.)

The Court: Excuse me just a second, Mr. Zulanch. It is suggested that I ask Mr. Wright: Are you a member of a Union?

Prospective Juror No. 6: Yes, sir.

Q. Now Mr. Zulanch—

(T-377) Mr. Sacher: May I—I take it that your Honor declines to ask the first question?

Voir Dire

The Court: Yes. You know, Mr. Sacher, as I have indicated numerous times to counsel, it is my view of the law that such questions as counsel may suggest are not submitted as a matter of right. I am supposed, as I view the law, to attempt in all reasonable manner to ascertain those facts that would tend to indicate whether any of the jurors have any bias or prejudice that might interfere with their proper service as jurors. It is not my understanding that questions submitted by counsel are like questions submitted to witnesses on the stand, and so many times questions may be submitted which I think are perfectly proper but which I think are sufficiently covered by what I have already determined to ask, so that as I view the law I need not bother with these questions at all but I like to do it because they may suggest something that I feel is proper, but I do not regard it as a matter of right.

Mr. Sacher: I wish to observe, your Honor, that while it may not be a matter of right, the Rules, the Federal Rules of Practice do provide that the defendants and their counsel have the right to send up questions to your Honor—

The Court: Well, Mr. Sacher, did you understand that I have refused to receive any of your questions?

(T-378) Mr. Sacher: Well, then I rise to ask that your Honor be good enough to permit the question that I have submitted and that you have declined to put to the juror, to be marked for identification, and I wish to note an exception to your Honor's refusal to put the question.

The Court: Well, I have a miscellaneous batch of handwritten memoranda here that were handed up yesterday and this new one today. I really think it is—well, a little euphemistic to say the least to call some of them questions, but I will permit each and every one of them to be marked. I am preserving them here on my desk, and some time later they may all be marked.

Voir Dire

Mr. Sacher: In view of your Honor's ruling, I should respectfully ask that your Honor be good enough to excuse the jury at this time so that we may lay before you the objections we have to the manner in which the questions are being presented to the jury.

The Court: No, I will not do that.

Mr. Sacher: I respectfully except.

The Court: Very well.

Mr. Sacher: Will your Honor permit us to discuss the matter at all?

The Court: Well, we have already had considerable discussion, you know, in the chambers here. I am not disposed (T-379) to entertain any further discussion on the subject. I think I understand very well how to ascertain whether there is bias or partiality. I think also that there are so many different ways of doing that and so many ways that might lead to confusion and difficulty and so many other elements that I have taken them all into consideration, and I do not feel that any argument would help me about it, so that I shall not hear any further argument at this time.

Mr. Sacher: I wish, therefore, your Honor, to note an objection and an exception to your Honor's ruling.

The Court: Very well.

Now I have received some questions here and we will just go back to Mr. Wright for a moment, with your permission, Mr. Zulanch.

ROBERT WRIGHT, Prospective Juror No. 6, was examined further as follows:

By the Court:

Q. Does any member of your family work also? A. No, sir.

Q. What is the union that you belong to? A. The International Brotherhood of Electrical Workers, and they are affiliated with the CIO.

Voir Dire

The Court: Now, Mr. Sacher, do you consent where I ask the questions that are handed up, that I may merely set them aside or do you want those marked or only the ones that I fail to ask?

Mr. Sacher: Only the ones that your Honor fails to ask.

(T-380) *By the Court:*

Q. Now, Mr. Zulanch, we will get back to the time just before you entered the service in this last war. What was the nature of your employment then? A. Well, with an insurance company. I was with an insurance company.

Q. And were you an insurance salesman? A. That is right.

Q. Or clerk? A. Insurance salesman.

Q. And then you went into the service, as you have just told us? A. That is right.

Q. When you came out of the service, as I understand your previous answers, you took some kind of a course? A. No. I beg your pardon, I went to the Post Office after the service.

Q. Oh, I see. A. After the Post Office I went into—took a business course under the GI.

Q. Were you taking that business course while you were still working in the Post Office? A. Oh, no.

Q. What was the nature of your work in the Post Office? A. Clerk.

Q. Clerk, was that the official grade? A. That is right.

Q. And then you took this business course and at the present time do I understand that you are unemployed? (T-381) A. That is right.

The Court: I gather, Mr. Sacher, that it is not desired that I ask every juror whether some or any member of their family work, or do you desire me to ask that question?

Mr. Sacher: I think we ought to know that, your Honor.

The Court: Well, you know, I said I would not receive any supplemental list but—

Mr. Sacher: These are follow-ups.

Voir Dire

The Court: —these are made up in connection with the questions put.

Mr. Sacher: These are follow-up questions.

The Court: And I see this last batch is a rather formidable one.

Mr. Sacher: There is nothing formidable about it, your Honor. There are about five or eight questions.

The Court: Let us just see.

Mr. Sacher: Addressed to one juror.

The Court: Let us see, Mr. Sacher. 15. However, I will consider them.

Mr. Sacher: I simply wish to make this observation, that these questions are a follow-up of the answers that your Honor procured from an individual juror. How are we to ascertain what the juror thinks unless we follow up (T-382) with questions?

The Court: You know, you always like to have it appear as though I am denying you something.

Mr. Sacher: Aren't you?

The Court: I am doing just the opposite. I am not denying these questions, and I am merely saying that where they are matters that are brought up by the interrogation of the jurors, I will consider them.

Mr. Sacher: That is all that those questions are.

The Court: Very well. Then I will look at them but in the meantime let me just try to keep a certain amount of continuity here by keeping my mind on what I was asking Mr. Zulanch and see if I have finished.

By the Court:

Q. Oh, yes, does any member of your family work? A. Well, I live with my parents. My father works.

The Court: Is it desired, Mr. Sacher, that I ask the jurors severally whether they are married?

Mr. Sacher: No.

The Court: Very well.

Voir Dire

Mr. Sacher: Your Honor, I would like to—

The Court: I thought—

Mr. Sacher: No, no. I would like to object to your Honor's inquiries to me because, up to this time, (T-383) your Honor has placed such questions as you have seen fit to place and you have objected to my even submitting follow-up questions. I therefore suggest that the purpose of your Honor's most recent inquiry of me is to put me in something of a spot with the jury.

The Court: Let us see—

Mr. Sacher: And I, therefore, wish to object to that inquiry and take exception.

The Court: Let us see, Mr. Sacher. The question you last submitted to me reads: "Does Mr. Wright work?" Out of consideration, I changed that and asked him whether any member of his family worked.

So that there might be no misunderstanding, after you desired that the questions be marked, that I didn't ask in the form submitted by you, I thought it quite reasonable and proper to seek information as to whether you desired me to ask of each juror whether they were married. The question that you submitted for me to ask Mr. Wright obviously involved the question of whether he was married. Now—

Mr. Gladstein: Your Honor, I submit—

The Court: I don't wish to argue it. I take it that it is the view of counsel for the defendants now that I need not interrogate the jurors on the subject of whether or not they are married. That is the end of (T-384) that.

Mr. Gladstein: May I answer your Honor? Because the question that you have just raised is one that I wrote out and submitted and—

The Court: I can't tell which one of counsel they come from.

Mr. Gladstein: I understand, but I want to explain that I have no interest in the marital state of any prospective juror, but I have the same in-

Voir Dire

terest that the Court should have, and the jurors would all understand that we have a right to have as to where every juror or any member of the juror's immediate family is employed and in what capacity. Those are usual questions.

The Court: You see, that is just what I thought, and that is just the way I put the question. And then, when I sought information on it, why, to my utter surprise, I was charged with being unfair and doing something prejudicial to the defendants.

Now, let us drop the subject there and I will not interrogate any of the jurors further as to the question of marital status. I think myself, as I indicated a little while ago, that prying into people's personal affairs has nothing to do with the case, and we all think the same. So let us drop it.

(T-385) Mr. Sacher: Will your Honor be kind enough to accept this additional question from me?

The Court: You know, I have these 15 other questions.

Mr. Sacher: But, your Honor did say in chambers the other day that you would give us time to write out questions.

The Court: Oh, yes, I will take it.

ROBERT WRIGHT, Prospective Juror No. 6, was further examined as follows:

By the Court:

Q. Now, Mr. Wright, I have been requested to ask another question of you and I am going to change it slightly, and I am going back to one of my previous questions, which I had understood each of the jurors answered in the negative: from reading the newspapers or written matter of any kind, or from conversation had with friends or others, or from listening to the radio or in any other way, have you formed any opinions or impressions as to the merits of the charge against these defendants, unfavorable either to the Government or the defendants, or any of

Voir Dire

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? You answered that in the negative, did you not? (T-386) A. That is right, your Honor.

Q. Now, in reflecting, after I asked that question, I gather you gave consideration to any statements that you might have heard in your union or connected with the union and all other statements, and you still answer it in the negative? A. That is right, your Honor.

The Court: Very well.

Let us see. We come to Mr. Henry Eisler Allen.

HENRY EISLER ALLEN, Prospective Juror No. 8, was examined as follows:

By the Court:

Q. Now, Mr. Allen, before I ask you questions having to do with your employment, I am going back to a series of questions submitted because of what you said yesterday about that ADA.

The Court: I can't remember what that ADA was. Will somebody tell me?

Mr. Sacher: Americans for Democratic Action.

The Court: What is that?

Mr. Sacher: Americans for Democratic Action.

Q. That ADA and the Liberal Party have suggested these questions: the first is, what is the nature of your association with the ADA and the Liberal Party? A. I have no active association with either group. The ADA, I believe, I contributed a dollar at some point (T-387) and I received their periodical, and I glanced through that when I received it; and the Liberal Party, the sole positive connection I would know of is, to the best of my knowledge, in the last election I registered in the Liberty Party column.

Voir Dire

Q. You have no other connection with them than that?

A. No.

Q. Have you ever attended any meetings or conventions of the ADA or the Liberal Party or any of their subordinate bodies, clubs or affiliates? A. I have not.

Q. Have you ever held any office or position or been a member of any committee in the ADA or the Liberal Party or any of their subordinate bodies, clubs or affiliates? A. No.

Q. Have you ever read or heard of any statements made by any officer or representative of the ADA or the Liberal Party expressing opposition or hostility to Communism or Communists or these individual defendants? A. It is possible, your Honor, in conjunction with any ordinary reading, so forth. I don't feel I could deny that.

Q. But suppose that you had heard those, assuming that, you still answer that question, such as I read a moment ago, in the negative? A. Yes.

Q. I think probably you have already answered (T-388) sufficiently to cover some of these others. As I understand it, you never did associate yourself with the Liberal Party except that you registered with that party last fall in the election? A. That is right.

Q. Now, as I understand it, at the present time you are unemployed. What was your last employment? A. I was with Roger Kent, Inc. That is a retail clothing establishment.

Q. What sort of position did you have there? A. I held an administrative position in the main office, executive office.

Q. That means doing clerical work? A. No, it wasn't clerical work. It was administrative work and involved certain responsibilities along the lines of personnel supervision.

Q. Did you have a number of men working under you?
A. Well—

Q. Or subject to your orders? A. I had authority, yes. I didn't have people directly under me. The store management would have someone doing that. I had no assistants.

Q. I notice that on your card here—oh, manufacturing of telephone equipment. That is this Kent Company? A.

Voir Dire

No, that is prior to that. Those records still show the previous position to the Roger Kent.

Q. What was that? A. That was with the Western (T-389) Electric Company in Kearney, New Jersey.

Q. What was the nature of your work there? A. Well, that was straight industrial engineering work in the wage incentive division of the company.

EDWARD P. NELSON, Prospective Juror No. 9, was examined as follows:

By the Court:

Q. Now, Mr. Nelson, you are down as an engineer. To the ordinary layman that can mean almost anything. Tell us just what kind of engineer you are. A. I am a telephone equipment engineer with the Western Electric Company, and before—when orders come in from the various telephone companies of the Bell System and the American Telephone & Telegraph Company for additions to their central offices, it is my job to determine what equipment they need, what circuits are required, and detailed information as to manufacturing and installing specifications.

Q. Well now, it is—I hate to admit I am so ignorant, but I listened to all that and still I don't know. You tell me one of the things you would do. Suppose that you were back in the office today, what is one of the things that you would be called upon to do? A. One would be marking up existing blueprints to (T-390) show additions that we planned to make.

Q. All right. How long have you been connected with that company? A. Three years, your Honor.

Q. Before that what were you doing? A. I was in the Signal Corps from 1943.

Q. Oh, we covered that yesterday, didn't we? A. That is right.

Q. Before you were in the Signal Corps, what was your employment then? A. I was a laboratory assistant with the Central Laboratories of the General Foods Corporation, Hoboken.

Voir Dire

Q. What sort of work was that? A. We were doing research work on bakery products.

Q. Chemical work? A. That is right.

Q. Was your education such as to prepare you particularly for work as a chemical engineer? A. No. I am presently studying for my electrical engineering degree, and I was at that time also.

Q. So you are one of those persons who feels your education keeps going on right through your life? A. That is right.

The Court: Let's see. Did somebody hand me something?

(The clerk indicates a paper on the bench.)

The Court: No: I am watching what I am doing (T-391) here, and it is like when I am home, sometimes my wife will put something down, that I don't see, and I get myself in trouble.

MYRTLE FENSTERHEIM, Prospective Juror No. 5, was examined as follows:

By the Court:

Q. I am coming back to you, Mrs. Fensterheim, for just a second. I am going to try to get these questions exactly uniform. So I want to refer back to one I put to one of the other jurors yesterday. I cannot find the one that I put but I have another one sufficiently similar. You remember you told us, Mrs. Fensterheim, that your husband's occupation was that of a Post Office clerk? A. That is right.

Q. And I ask you this question: 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 Court, would you be embarrassed in arriving at or rendering a verdict of not guilty in any way connected with your husband's employment by the Post Office? A. Definitely not.

Voir Dire

Q. It is desired that I ask you to state in a little greater detail just what is the work that your husband does in the Post Office Department. Does it have anything to do with this so-called loyalty program? A. No.

(T-392) Q. Investigating people or anything of that kind? A. No, your Honor.

Q. You had better tell us a little bit more about it anyway. A. Every year, I think it is periodically, we never discuss these matters at home, but to my knowledge—

The Court: That is a pretty good way to do.

The Witness: I think that every year the boys have to be examined for either a higher rating or whether they are eligible to keep their position, and my husband gives those examinations.

Q. All right. The rest of his work is routine work in the Post Office? A. That is right.

Q. As an examiner? A. That is right.

Q. The examiner part is what you have just told us about? A. That is right, your Honor.

MOLLIE SINGER, Prospective Juror No. 10, was examined as follows:

By the Court:

Q. Let us see. That brings us to Mrs. Mollie Singer. Oh, yes, now, Mrs. Singer, you are a housewife, are you?

A. That is right.

Q. You don't work at all? A. I haven't worked since during the war. I put in time in the Post Office as a war-time substitute.

(T-393) Q. But since the war you have been just a housewife? A. That is right.

Q. It is stated here that your former occupation was a Post Office clerk. Is that the work you have just been telling us about? A. No, at the end of the other war I worked in the Post Office for a couple of years and then I got married and—that was about 25 years ago.

Voir Dire

Q. Now, you worked for the Post Office just a couple of years. That is the time you have reference to? A. Well, are you asking me about the last time I worked or the previous?

Q. Well, I think one of the troubles is that I don't know that I hear you very distinctly, and I am sort of groping to get your meaning. I thought you said that after the first war you worked in the Post Office for a couple of years. Maybe I didn't get that right. A. That is correct.

Q. And then, during the last war, you also did some work in the Post Office? A. That is right. During the last war I only worked as a temporary, substitute clerk. After the first World War I was regular, for a while.

Q. At the present time you have no connection with the Post Office at all? A. No.

Q. And haven't had for some time? A. That is right.

Q. Your husband's occupation, as stated in the card, (T-394) is that of a chauffeur. A. Yes.

Q. Is he a chauffeur for some company or for some private person? A. He works for a taxicab company.

Q. Drives a cab, does he? A. That is right.

Q. Has he been doing that for some time? A. Oh, yes, six or seven years.

The Court: Very well.

HAMILTON K. KERR, Prospective Juror No. 11, was examined as follows:

By the Court:

Q. Now, Mr. Kerr, you are down as a retired stock broker. A. Yes, sir.

Q. Were you a stock broker for a long time? A. About nine years.

Q. How long have you been retired? A. Before the last war. I have been retired 15 years.

Q. Retired 15 years? A. 15 years.

Voir Dire

Q. Now you are just retired; there is no work that you do now? A. Not particularly, no, sir. My mother is still alive. She is elderly. She is not too well.

Q. Before you were a stock broker what was the character of your employment? A. I was in the Navy in the first war. I was on sea duty for about a year and a half. Then I was in Naval Intelligence. They put me in Naval Intelligence.

(T-395) Q. You remember the question I put to all the jurors yesterday as to whether their connection with any of the armed forces has in any way left them with any bias or prejudice against these defendants or anything connected with the case. But it hasn't, in your case? A. No.

GERTRUDE CORWIN, Prospective Juror No. 12, was examined as follows:

By the Court:

Q. Mrs. Corwin, you also are a housewife? A. That is right.

Q. And do you do any work at all, part time work, such as some of the other jurors have testified about? A. Well, before I was married I was a private secretary and since I have been married I haven't worked.

Q. For whom did you work when you were a private secretary, some company? A. Yes.

Q. What was the name of the company? A. K. & E. Neumond. It was importing and exporting. That is many, many years ago.

Q. Your husband is a salesman, is he? A. Yes.

Q. What company is he connected with? A. A firm called Koret of California.

Q. Does he have a number of men working under him?

(T-396) A. No, no. He is a salesman and travels some.

Q. What is the nature of the business of that company?

A. Sells women's sports apparel. Clothing women wear.

Q. Very well.

The Court: I will now announce my determination as to the challenges.

Voir Dire

Prospective Juror No. 1: Your Honor, may I say a word? I just wondered; I am studying for an audition in a little business to be conducted from my home. I didn't—

The Court: You don't need to get up.

Prospective Juror No. 1: I haven't taken the first examination for it yet, so it isn't listed on my card, because I am preparing myself for it.

The Court: What is the nature of that business?

Prospective Juror No. 1: Well, it is surgical supports for women, and maternity garments and clothes—

The Court: You are preparing yourself to start that little business—

Prospective Juror No. 1: Yes.

The Court: Right in your home?

Prospective Juror No. 1: I have worked at it for three or four months, but I haven't had any examination yet.

(T-397) The Court: I see; very well.

Now I have given—

Yes?

Prospective Juror No. 10: Your Honor, is it necessary to say that I worked in other places.

The Court: Well, I did not go down through all the list, but if there is something there that you think perhaps you should tell me, I think it better that you should now tell me what those other employments were that you had.

Prospective Juror No. 10: I worked for Sachs Furniture as an IBM operator part-time. I worked in a department store as a saleslady, Bloomingdales.

The Court: Do you do that work as a saleslady in department stores occasionally now, in seasonal times?

Prospective Juror No. 10: No, I haven't worked since the last position in the Post Office.

The Court: Yes. Well, I think that will be sufficient.

Mr. McCabe: Your Honor,—

The Court: Now Mr. McCabe, if you are going to speak to me about these questions you had better let me look them over first.

Voir Dire

Mr. McCabe: But I do not know—

The Court: Somebody just handed to me, from almost (T-398) nowhere but I gather it came from counsel for the defendants, but I will look at them.

Mr. Sacher: If your Honor please, I wish to note an objection to the facetious manner in which the Court referred to requests made by defendants' counsel for inquiries to be addressed to the jurors.

The Court: Well, I do not see how you can interpret what I said as a facetious remark, Mr. Sacher. I surely did not intend it as such. However, we will let it rest there.

* * *

The Court: Well, I think I had better glance at these questions, this list of ten new ones and let me see what I am going to do about them first.

(Court examines.)

The Court: How many jurors stated that they had been members or were members of the American Legion?

Prospective Juror No. 2: My husband.

(Prospective Juror No. 3 raises his hand.)

The Court: Let me ask each of you one or two questions:

Had either of you held any office or position or been a member of any committee with the American Legion or the Ladies' Auxiliary of the American Legion or in any subordinate body or post thereof?

(No response.)

The Court: And I think I asked you yesterday, in substance, whether anything connected with anything that was said or that came to your attention in any way has left you with any feeling of bias or prejudice that would interfere with your deciding this case solely on the evidence and on the instructions of the court, and I understood you both to answer in the negative.

Voir Dire

Prospective Juror No. 3: Yes, sir, that is right.

The Court: Now as to the challenges, I have given further and careful consideration to permitting additional peremptory challenges to the defendants rather than restricting them to the ten challenges jointly to be used, according to my previous statement. I now announce my determination to allow five additional challenges to be used jointly. That will make 15 challenges, 15 peremptory challenges to be used by the defendants jointly on the one hand, and six peremptory challenges to be (T-400) used by the Government.

In accordance with the practice of alternate exercise of challenges here, those challenges must be exercised as follows: Three by the defendants, one by the Government.

Three by the defense, one by the Government.

Three by the defense, one by the Government.

Three by the defense, one by the Government.

Two by the defense, one by the Government.

One by the defense, one by the Government.

In the event that the defendants refuse to exercise the challenges in accordance with my direction just given, they will be deemed to have waived such other challenges as may be in the alternate groups just described.

We will now take a recess for ten minutes.

(Short recess.)

The Court: This batch of questions that was handed to me during the recess appear to be the same that were prepared the other day and that I considered to be a supplemental list that I will not receive. I have given consideration to all those which were prepared in accordance with my instructions.

Mr. Gladstein: Is your Honor referring to the group of questions that I asked?

(T-401) The Court: Yes.

Mr. Gladstein: They were not prepared the other day and are not the same.

The Court: They are the ones that you came in and showed me one day, are they?

Voir Dire

Mr. Gladstein: No, they are not. I had a group of questions that I asked your Honor on Monday to accept for presentation to the jury.

The Court: Yes. I thought they were the same ones.

Mr. Gladstein: Now your Honor will notice, and your Honor advised me then that you would not accept those questions to inquire as to the state of mind of the jurors.

The Court: That is right, because I considered them to be the supplemental list which I had previously stated I would not receive because I had given directions that the list of questions to be submitted to me must be in by a certain time. They were not in at that time. I gave an extension; they were not in at that time. I gave a further extension and I finally got them Saturday afternoon, and therefore I said that I would not receive the supplemental.

Mr. Gladstein: Now so that the record is straight, your Honor, the direction of the Court was that the questions be in your Honor's hands on Friday, and the (T-402) questions that I submitted I asked your Honor about in the morning. Now I desire to object for the record to the Court's ruling that prevented me from having the Court ask those questions of the jurors because those questions are intended, and properly so, merely to obtain from the prospective jurors facts concerning their state of mind, to ascertain whether or no they should sit as jurors in this case. They are in the usual form and the content is customary.

The Court: I will not receive them nor will I have them marked. They are handed back to counsel (handing to clerk).

Mr. Gladstein: May I complete the record, to say that the ones you have just now handed to Mr. Borman are not the questions that I asked your Honor to accept on Monday at all.

The Court: Well, they look very much like them.

Mr. Gladstein: No, they are not, and I want to

Voir Dire

state that these were prepared by me last night after reading the transcript of yesterday's proceedings, and each of these questions—

The Court: All right, let me have them back and I will examine them.

Mr. Gladstein: Each of these questions, your Honor, contains a reference to a page of the record.

(T-403) The Court: I say, let me look at them again.

Mr. Gladstein: Yes.

(The clerk hands to the Court.)

The Court: (After examining) I will place them in the envelope with the other questions which have been submitted, which have been considered by me.

Mr. Gladstein: I beg your pardon, your Honor, I did not hear you. I did not hear the Court.

The Court: I say, I will accept them and place them in the envelope where I shall put all the other questions submitted which I refuse to ask. Instead of having them marked I am going to put them all in an envelope and then the envelope may be marked. You see, they are all before me here, a lot of miscellaneous pieces of paper, and I see nothing to be gained in stopping and marking each one. But I will keep them all together, including these questions that you just submitted, put them all in an envelope, and the envelope will be marked and it will thus appear which questions you have submitted and which I have refused to ask.

Mr. Gladstein: Of course, your Honor understands that my concern is not whether they are placed in an envelope or how they are marked, but rather with my desire to have the Court permit me to persuade you that these are proper questions by reason of the fact that the (T-404) Court asked questions touching on the subject matter of the ones I had submitted.

The Court: You see, Mr. Gladstein, in the beginning here with an instruction that I thought was quite plain and precise, I indicated that I wanted no argument but that counsel were to hand up in

Voir Dire

written form the questions that they desired me to ask, and I find that we are having a good deal of argument. Now I don't desire to be unpleasant about it nor do I intend to start any giving of directions and telling you to desist and all that, but I think it would be better if in the future you would try to obey such instructions.

Mr. Gladstein: May the record show, I desire the record to show an objection and exception to the Court's ruling.

The Court: Very well.

Mr. McCabe: If the Court please, I have certain objections which I should like to place on the record going to the proceedings thus far, and I think it would be more in keeping with the procedure of the Court if those objections were noted of record during the absence of the jury. I therefore move that the jury be excused in order to permit me to make such objections.

The Court: Well, I take it that maybe some of your colleagues desire to note some objections, too, do they?

(T-405) Mr. Gladstein: I have some objections of a legal character that I think should be argued during the absence of the jury, as is customary.

The Court: Well, "argued"—

Mr. Gladstein: Presented.

The Court: I do not desire to hear argument unless I request it, Mr. Gladstein. When you wish to note exceptions and objections I will allow that, so that all the jurors will accordingly depart from the room for a moment and we will hear the objections.

(12 prospective jurors left the courtroom at 12.10 p. m.)

The Clerk: The jury panel will return to Room 109.

(Other prospective jury panel members left the courtroom.)

Voir Dire

The Court: Have all the jurors left the room?

The Clerk: No jurors remaining.

The Court: Now you may state your objection briefly and without argument.

Mr. McCabe: Yes. By reason of your Honor's rulings I find myself at this time deprived of my rights to have the prospective jurors' state of mind made clear to the extent necessary to propound—formulate and propound challenges with regard to favor or bias, or to (T-406) exercise judiciously the peremptory challenges which your Honor has allotted to us. I am put in a position of exercising those challenges blindly or by hunch, in derogation and in diminution of the statutory and constitutional rights of my clients.

I would like to add to that that I object because the prospective juror is not put in a position to expose his state of mind. The Court itself doesn't get sufficient information to insure an unbiased and impartial jury. I would like to be specific about some of those objections and then without argument I would like to call your attention—

The Court: Perhaps the argument will be included as you specify. Do you think it necessary to do so?

Mr. McCabe: I think I have—in order to avoid repetition I made some notes here and I think I can get them briefly on the record. I think some of them have already been made but I think they should be repeated at this time, your Honor, after the examination.

The Court: They are not sufficiently manifest in the numerous questions that have been submitted to me and which I have rejected?

Mr. McCabe: I think not, your Honor.

The Court: Will your colleagues get up and repeat the same objections that you are making?

(T-407) Mr. Gladstein: I think that kind of question, to which I want to object, is obviously improper. We have minds of our own and we will use them.

Voir Dire

The Court: You see, repetition, Mr. Gladstein, I tried to avoid it. Do you mean to assure me that you will not repeat what Mr. McCabe is just saying? Is that what you rise to say?

Mr. Gladstein: No. I rose simply to say this, that neither Mr. McCabe nor anyone else should be asked by the Court to speak for me, and I certainly will make no effort to speak for any other attorney who represents his clients.

The Court: Very well.

Mr. Gladstein: I represent mine.

The Court: Very well, I will hear the repetition, if there be any.

Mr. McCabe: Well, specifically, I would like to object to the fact that questions were put to the entire panel while all the members of the panel except the 12 in the jury box were seated in the body of the courtroom, in back of the defendants and their counsel, making it impossible for defendants and their counsel to have in sight all of the panel at the same time.

The Court: Don't forget, Mr. McCabe, the questions were all addressed only to the 12 in the jury box. The (T-408) others were asked to listen, and I noticed each time that one of you touches on this you say the questions were put to all the panel in the back of the room, despite my statement to the contrary. I shall not take the trouble to repeat it again, but I thought you might bear that in mind.

Mr. McCabe: I do, your Honor, and I was about to point out that the direction to express an affirmative answer to any of the questions was restricted to the 12 in the box.

The Court: But the questions were addressed solely to the 12 in the box; the others were merely asked to listen so that when they took their place in the box I might question them.

Mr. McCabe: Well, the further objection to this procedure is that the jurors in the body of the courtroom may well have understood or heard imperfectly one or more of the questions, especially—

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The Court: You claim that my voice is not sufficiently clear to be heard throughout the courtroom?

Mr. McCabe: I am—

The Court: No, but if you do you may say so.

Mr. McCabe: Oh, your Honor, I thought your Honor's diction and enunciation and projection of your Honor's voice was excellent.

(T-409) The Court: Very well.

Mr. McCabe: I was addressing myself perhaps to some faulty hearing or faulty understanding on the part of a juror who might think he understood perfectly.

The Court: Very well. Well, I didn't want to have it appear later to someone else who might read this record that perhaps I had garbled my words or spoke indistinctly or in a perfunctory way, but what you have said explains it.

Mr. McCabe: I am very glad if there was any misunderstanding to have it corrected as of record.

The Court: Very well.

Mr. Gladstein: Let me interrupt to say this, Judge: I have been sitting here at this table, at the desk for counsel, which is a matter of some 20 feet, I guess, from you, and at times I didn't—I wasn't sure that I had heard everything that you said, and I think the record will bear that out. Moreover, your Honor, if you examine the record you will find that some of the jurors in this box asked a couple of questions—

The Court: Well, you know—

Mr. Gladstein: May I finish, Judge, because you have asked this question, and I think the record should show the fact as it is, as I know.

The Court: No. Did you get up to say my voice (T-410) was not clear?

Mr. Gladstein: No, it is not a question of how loud your voice is.

The Court: I suppose somebody some day will have to decide whether my voice is sufficiently clear and my enunciation of such a character that those present in such a large room can hear.

Voir Dire

Mr. Gladstein: Yes, and I think you are just asking us to guess as to whether people who are 60 or 70 or 80 feet away from you heard every question.

The Court: Yes. It may be that those sitting in Appellate Courts that may some time hear this case, as you have often said they might, will know my voice better than you do and be capable of deciding whether it can be heard, or, as you assert, cannot.

Mr. Gladstein: Don't you see, Judge, I haven't said that, but I am pointing out that you are asking us and everybody to speculate as to whether 70 or 80 people seated in this room heard all the questions that you put during the course of yesterday.

The Court: It would make a difference whether the Judge spoke in a clear voice, able to be heard in the back of the room or whether he was one of those whisperers—

Mr. Gladstein: Isn't that a relative thing? How do you know and how do I know that each and every one (T-411) of the 70 people in this room have the same capacity for hearing your voice, no matter what your voice is like; but what I am saying is this: the people to whom the questions ought to be addressed are the ones in front of us in the jury box and we can't rely upon any assumption that people scattered in the court room have heard every question, because then you are making an assumption that is unwarranted, there is no right to make it, and it may be prejudicial to the defendants because later on—

The Court: Do you remember when the first new jurors were called to the box that I asked them whether they had heard, and I put it to them in various ways to try to make sure? Do you remember that?

Mr. Gladstein: Oh, I know that your Honor precedes his questioning by asking whether they heard it.

The Court: You think perhaps the jurors had some reason for telling me an untruth about it?

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Mr. Gladstein: No, I don't say that but people who haven't heard each and all of the questions of the Court may not be in a position to say anything except the giving of the usual nod of the head, which is about all one gets in the kind of an examination that has been conducted here in this manner. I have practiced in other courts, and I know your Honor did when you were a practicing (T-412) lawyer—

The Court: Yes, and my voice was always pretty good.

Mr. Gladstein: Regardless of voice you found the practice and the custom in most courts, I am sure, as I have found it to be, one whereby the lawyers on both sides and the Court have an opportunity to see the jurors that are being questioned.

The Court: I say the contrary. As I indicated here when we started this, after I discussed the matter with my colleagues and with several of the other judges, I found and confirmed the view that what we are doing here is the customary way to do in this court.

Mr. Gladstein: In this court; that is what you say.

The Court: And I do not see why we need have so many various and sundry protests against the same identical thing. I have ruled on it.

Mr. Gladstein: I know, but—

The Court: You have been protesting vigorously from the beginning. How do you suppose it avails to continue to protest and have the jury sent out of the room, with the inconvenience that occurs to everybody while you say over again what you said before?

Mr. Gladstein: I would like to read to you, Judge, (T-413) the things that you said, that you yourself said from the bench as to the merit in our proposal that the people on the jury not be questioned at a time when they were seated behind us. You have made a statement that I would like to call your attention to. You were dealing—

The Court: Oh, I remember what I said. I was giving the matter the most thoughtful consideration,

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desirous of doing what could be done. I found it was utterly impracticable and that it was contrary to the custom and procedure here. Now please let us stop that subject and hear the rest of these protests. I tried so hard to give you every opportunity to put legitimate objections on the record here, but at every interval it is just saying over again what we heard before.

Now go ahead, Mr. McCabe.

Mr. McCabe: I simply wish to repeat an objection to your Honor's refusal to question the prospective jurors individually, and I call your Honor's attention and I would like to incorporate in this objection the affidavits of Stanfeld Sargent and the supporting affidavits filed in this Court on Monday, March 7, 1949, as well as common experience support the conclusion that mass or joint questioning fails to elicit answers or admissions which would be adduced through individual questioning.

I except to your Honor's refusal to permit counsel (T-414) for the respective defendants to question the prospective jurors, either individually or collectively, or to permit counsel, or one of counsel, to put certain follow-up questions to the prospective jurors, either individually or collectively.

I would like to except also specifically to your Honor's formulation of questions directed towards prejudgment. The question, I think, is approximately as follows:

“As a result of your membership in that organization (or of having read that book or that employment) have you formed any opinions or impressions as to the merits of the charges contained in the bill of indictment, unfavorable either to the defendants or to the government, which would prevent you from holding your mind open until you have heard all of the evidence, the arguments of counsel, and the instructions of the Court?”

That was formulated in about that way on several occasions, and I fear that this formulation is im-

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proper, confusing and liable to invite even an honest hearer to give a negative answer—and I underline the word “even”—even an honest hearer to give a negative answer although precise questioning would have revealed the existence of a state of mind requiring an affirmative reply.

(T-415) I urge that a proper formulation would divide the inquiry into several questions, first, as to whether he was a member of the society, whether he had heard the books or had heard the radio speech, whether he knew of any official expression by the society of an attitude unfavorable toward Communist doctrine, the Communist Party or Communists, and then, “Do you adhere to that expression, and by reason of that do you have an attitude of mind which would place a Communist in a less favorable position in your consideration than a non-Communist?”

I think something along that line—and I will point out in a moment one incident that happened that points that up.

I would like to except—

The Court: You know I do not desire argument. You say you are going to give an incident to point that out.

Mr. McCabe: Just one incident.

The Court: I suppose that is intended as an objection, is it?

(T-416) Mr. McCabe: Well, I will ask your Honor’s leave before I go into it.

I except to your Honor’s restricting the inquiry into prejudice to the state of mind of the prospective juror with respect to the specific charges contained in the indictments.

I say this formulation invites a negative answer—

The Court: Mr. Borman, the jurors may be excused until 2.15.

Mr. McCabe: And I would like to note an objection to your Honor’s failure to put to the jurors the questions submitted to your Honor in our original exhibit, which was marked as our partial list of questions—

Voir Dire

The Court: You object to me what?

Mr. McCabe: I object to your failure to put to the jurors those questions which you did not put, which were contained in the list which was submitted to you on last Saturday.

The Court: Well, you object to my not putting all of the questions that you submitted, don't you?

Mr. McCabe: Yes.

The Court: Well why single out some particular one? That is confusing.

Mr. McCabe: Well, those put subsequently.

I say under all the circumstances of this case, (T-417) including the facts set forth in the affidavits filed herein, and the nature of the indictment, I think those questions constitute a minimum required to bring forth the objective facts upon which the opinion and state of mind of the jurors might have been elicited, and that that would then have furnished the basis for further inquiry into the discovery of bias or prejudice—

The Court: Just a second. We will wait for a moment while the jurors come and get their things, so if you will just resume your seat for a moment, Mr. McCabe.

(Prospective Jurors entered the courtroom to get their things, and then left the courtroom.)

Mr. McCabe: The failure to put those specific questions, the reliance upon the general questions have an effect of making the jurors the judges of whether they have or have not bias or prejudice, upon facts, relationships and opinions not disclosed, and in conclusion I except to the procedure this far followed on the ground that in its totality it does not effectively and cannot disclose this prejudice or interest in this case under all the circumstances thereof. The procedure thus deprives the defendants of the right to trial before an impartial jury, in violation of the Sixth Amendment of the United States Constitution, and denies them due (T-418) process of law under the Fifth Amendment.

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Now, your Honor, I would beg your indulgence to allow me to call your Honor's attention one instance which I think points that up entirely, and that is the incident of the juror Johnston who occupied No. 9 position—an obviously honest man who was trying to answer all questions, and yet I just looked through the record and I find that on 12 occasions your Honor expressed—well, at page 271 your Honor said it was your intention to “obtain jurors who are truly fair and impartial in this case.”

And at page 285, the same juror, Mr. Johnston, requested leave to ask a question, and he stated that he knew a court or jury attache, whose name was Mr. Kreinik—I don't know whether it was spelled out—and you said then to Mr. Johnston, “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?”

And Mr. Johnston said, “No, your Honor.”

Incidentally, it is not noted in the record—that is one case in which the stenographer, as I recall it, did not note the number of the juror. I have it in my (T-419) notes and I am sure I can establish that it was Mr. Johnston. That was a question addressed directly to him and he said “No.”

At page 298 Mr. Johnston also remarked that he had worked for the Post Office two or three years ago and he gave a negative answer to the question whether that would “give you any bias for or against the Government.”

At page 303 your Honor said, during a colloquy with Mr. von Goeben, as to the name Mr. Brush, and you said, “Now you realize that our every effort here is to get people with fully unbiased, open minds.”

At page 306 it was brought out that Mr. Reese—

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The Court: You seem to be attributing to my questions the very opposite meaning to that which any reasonable person would give them.

Mr. McCabe: No, your Honor.

The Court: My every effort to get a fair and impartial jury, do you interpret that. I tried to do just the opposite?

Mr. McCabe: No.

The Court: I do not understand it.

Mr. McCabe: I think you will understand, your Honor, and I just about conclude it—

Mr. McGohey: Your Honor, I beg leave to be bold enough to interrupt and I ask your Honor's permission (T-420) to do it and call your Honor's attention to an observation that you made at page 303, the last question there.

The Court: Let me see it.

(Mr. McGohey hands record to the Court.)

(The Court examines.)

Mr. McGohey: It is in connection with something that Mr. McCabe is talking about.

The Court: Yes. The part that Mr. McGohey calls my attention to is not just a statement by the Court but a question and an answer.

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

Mr. McCabe: “Unbiased.”

Mr. McGohey: “Fully unbiased.”

The Court: “Prospective Juror No. 3: Yes, sir, I do.”

Now I gather, Mr. McCabe, that you say that my statement “that our every effort here is to get people with fully unbiased, open minds” is in some way prejudicial to the defendants?

Mr. McCabe: Just the opposite, your Honor. What I am trying to point out is that—

Mr. McGohey: Read the next question, your Honor.

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The Court: Just a second.

(T-421) (After examining.) Well, it seems so clear to me—just listen to the following, immediately after what I read:

“The Court: And I wouldn’t want to have any 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” and so on.

Mr. McCabe: Your Honor went even further with Mr. Reese—

The Court: Well, it is the old story. We have argument when I ask counsel again and again not to do it, but there seems to be no way whatever to get you lawyers not to argue. I suppose the only thing for me to do is to tell you again not to do it and then let the record speak for itself.

Mr. McCabe: Well, without citing the other instances—

The Court: I do tell you again now not to do it.

(T-422) Mr. McCabe: My point was that Mr. Johnston, despite your Honor’s 12 or 13 different injunctions and admonitions that you wanted a revelation of any bias—in fact, with Mr. Reese, you yourself suggested, “Don’t you think the fact that you knew Mr. Coakley, that that would have an influence on you?” You suggested that and excused him. Despite all that, Mr. Johnston, who is an honest man, sat there and did not reveal the bias which was in his mind all the time, which was brought out through a chance remark concerning the Holy Name Society, and that bias was not generated in the jury box.

The Court: Mr. McCabe, you have committed in my immediate view and presence here in the

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last few moments a deliberate and wilful contempt. I just want you to realize it. I don't know how many times you are going to do it. I am not going to start any contempt proceedings now, but what I may do hereafter, I don't know. But I want to have it plain that what you have done just here a few moments ago is a wilful and deliberate disobedience of my command.

Mr. McCabe: You mean with respect to argument?

The Court: If you desire to go further, after what I have told you, why, that is up to you, but I don't really see how any self-respecting member of the bar can (T-423) do it.

Mr. McCabe: Well, then, I will refrain from anything else. I certainly intended no contempt, your Honor.

The Court: Well, you see—

Mr. McCabe: I was bringing out your Honor's efforts to draw from the jury any bias, repeated efforts, which had not, in view of the generality of the questions, that's all. Finally the bias was acknowledged by the juror, and he obviously wanted to be perfectly honest on it, and then your Honor excused him, and then it was pointed out, at the direction of the—

The Court: You don't think you are going to provoke me into any hasty action? You are not going to do it. You should know it by this time, and there is no use continuing those efforts.

Mr. Gladstein: May I state my objections for the record?

The Court: Yes.

Mr. Gladstein: I object, first, on behalf of my clients to the manner in which the Court has conducted the questioning, for the reason, first, that it has placed me, as the representative of two defendants here, in a position such that when a seat in the jury box is vacated and a person from the back of the room is called to that (T-424) place, in so far as everything that has occurred prior to

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that time in the questioning by the Court, that person who takes that seat is, to me, a masked person, a person about whom I know nothing, a person whom I have been unable to observe, a person—

The Court: Do you realize, Mr. Gladstein, that the noting of your objection could be very briefly stated without argument?

Mr. Gladstein: That is the first aspect of my objection, to the manner in which the Court conducted the examination. The second aspect is that the Court committed prejudicial error in so far as the rights of my clients are concerned when the Court said to the jurors, and to us in effect, that the Court did not desire to pry into the personal affairs of the jurors and placed, by necessary effect, placed me in a position where, merely by asking that the Court request information in the usual manner on usual matters concerning the employment and activities and the location of not only the juror but those in the immediate family of the juror, it placed me in the position where, by pressing for the asking by this Court of those usual questions, I was placed in a light whereby the jurors might think I was seeking to pry into their personal affairs improperly.

I next want to object to the content of the (T-425) Court's questioning, and particularly of the formulation to which Mr. McCabe has adverted, and I desire particularly to say that, so far as that type of question is concerned, my objection goes to the proposition that it does nothing to ascertain the state of mind, in fact, of the juror; and I will disagree with Mr. McCabe to this extent, I don't even think the juror is permitted to be an honest and fair judge of the existence or non-existence of bias, prejudice, interest or any other state or frame of mind that would make it improper for the juror to sit.

I object to the Court's formulation of that type of question because it does not tell, it does not advise the juror as to those things that the juror

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must ask himself in order, if he gives an honest answer, to enable him to know whether he could be fair.

The Court: You realize, Mr. Gladstein, that instead of noting an objection, you are making an argument.

Mr. Gladstein: I intend only to note an objection.

My third point of objection—

The Court: Don't think you are fooling me.

Mr. Gladstein: I did not intend to fool your Honor or anybody else. I intend simply to state—

The Court: I know the difference between noting (T-426) an objection and making an argument; but if you desire, contrary to my express command, to go on arguing, you may do so.

Mr. Gladstein: Your Honor, I am stating the grounds—

The Court: I am not going to use any physical means to stop you.

Mr. Gladstein: I am stating the grounds of my objection.

The Court: Go ahead.

Mr. Gladstein: My third objection is to the direction of the Court with respect to the number of peremptory challenges to be exercised, the manner in which they are to be exercised and the order in which they are to be exercised. But this direction—

The Court: Now, period. That is the end of the point.

Mr. Gladstein: Can I not—

The Court: The rest is argument.

Mr. Gladstein: Can I not say the grounds of my objection?

The Court: I think you have stated a sufficient objection. I don't see that there is anything that need be added. If you are right, you are right. That is all there is to it. I am not going to change that ruling.

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(T-427) Mr. Gladstein: Very well. I now object to the Court's statement which forces me, by virtue of what the Court has already said, particularly, to Mr. McCabe and also to me, forces me to sit down, unable to—

The Court: Forces you to sit down, Mr. Gladstein, after you submitted briefs on this same point to me yesterday? Both sides submitted briefs. Now you stand there and assert that I am in some way prejudicing you by not letting you argue more, is that the point?

Mr. Gladstein: Your Honor, the briefs are not a matter of record and what I say here I trust is a matter of record. It is intended to be a matter of record, and I intended to state my objection and the grounds for it.

The Court: I don't desire to hear any argument.

Does other counsel desire to be heard?

Mr. Sacher: I object to your Honor's failure and refusal to put to the jurors questions as to whether they entertain any bias against Negroes, in view of the fact that two of the defendants are Negroes, and the questions submitted to your Honor included questions, that is, questions submitted by the defendants, included questions designed to elicit the existence of any such prejudice.

I also wish to note an objection and exception to the statement your Honor made in the presence of the (T-428) jury that on two occasions we failed to submit our proposed questions to the jurors in time. Your Honor fixed only one date, namely, last Friday, two o'clock. I called your Honor on the phone at or about that time and received your permission to have those questions in your chambers by 10.30 last Saturday morning, all of which was done.

I further wish to note an objection to your Honor's reference throughout your interrogation of the jurors to the Government as the Government and respectfully request that in referring to

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the prosecution here that the Government's side of the case be referred to as the prosecution. And if your Honor would permit me to state why, I would be glad to do so. I refrain doing it, absent permission.

The Court: Mr. McGohey, is that the customary way, to refer to the prosecution?

Mr. McGohey: I have been a member of the bar of this State for over 25 years. For 20 years of that time I have been in public office. During all that time, even when I was a law clerk, just fresh out of law school, the firm with which I was connected had a great deal of practice in this court, I have never, in 25 years ever heard anybody object to the fact that the Government was referred to as the Government in a prosecution, nor have I ever had any connection with a prosecution in all of those (T-429) years in the Federal court in which the Government was referred to in any other way than as the Government.

The Court: That is the way it seems to me.

Mr. McGohey: Nothing has happened here any different than has happened in any other case. That was true, if your Honor please, in the case in which your Honor appeared, at least in the Supreme Court, and that was the Cramer case, a treason case during the war. The Government was referred to as the Government. It was true in the prosecution of the members of the German-American Bund. The Government was referred to there as the Government. I have never heard the Government referred to in any other way.

The Court: Your objection is noted.

Mr. Sacher: In view of Mr. McGohey's expostulation, won't you allow me a sentence or two to explain why I made the request?

The Court: Yes, I will.

Mr. Sacher: I made the request because, in view of the nature of the charges made here, a question put to jurors as to whether they will stand impartial and indifferent between the Government and these

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defendants seems to make the whole situation look as if right here in this city the defendants are adversaries of the Government in a sense other than the fact that (T-430) the Government and the defendants are two different parties. And the only reason I make the request is so that, in view of the meagerness with which jurors are being interrogated, there be no such overtones as to mislead the jurors.

The Court: All right. I am anxious to leave almost immediately. Is there something important you wish to add to your objections?

Mr. Sacher: I have one or two objections, which will be very brief.

The Court: State them as quickly as you can because I have an engagement.

Mr. Sacher: I will, your Honor. I wish to object to the manner in which you have put questions, that is, manner refers rather to content and what you haven't put to the jurors, on the ground that in the case of *U. S. v. Kertess*, 139 Fed (2d) 923, the CCA of this circuit authorized and held proper questions of the nature of which most of our questions submitted to you consist.

My next objection is to your Honor's refusal to ask the jurors, who are employed by some of the biggest corporations in the country, as to whether or not they will receive their usual and regular compensation from their employers while they are serving as jurors.

And, finally, I wish to object to the procedure (T-431) whereby answers to questions put by the court are deemed to have been made by silence. A large number of the questions which your Honor has put would obviously require an explicit, individual answer by jurors to permit both the Court and counsel to pursue intelligently follow-up questions.

* * *

(Recess to 2.15 p. m.)

Voir Dire

AFTERNOON SESSION

The Court: I have two or three additional questions, or more, that I desire to put to you, and I am going to ask each one of you individually as to these questions and then we will go along that way.

Mrs. Dial, do you have any prejudice or bias for or against any defendant by reason of the race of any defendant which would prevent you from keeping your mind fully open until all the evidence and the instructions of the Court have been completed?

Prospective Juror No. 1: No, your Honor.

The Court: Mrs. Walker, have you any prejudice or bias for or against any defendant by reason of the race of any defendant which would prevent you from keeping your mind fully open until all the evidence and the (T-432) instructions of the Court have been completed?

Prospective Juror No. 2: No.

The Court: Do you think, Mr. von Goeben, that you can remember that question or shall—

Prospective Juror No. 3: I do—

The Court: Have you any such bias—

Prospective Juror No. 3: —I believe I remember the import of it.

The Court: What is that?

Prospective Juror No. 3: I believe I remember the import of it.

The Court: Yes. Is your answer affirmative or negative, that you have or have not any such bias or prejudice?

Prospective Juror No. 3: My answer is that I haven't any such bias or prejudice.

The Court: How about you, Mr. Hallquist?

Prospective Juror No. 4: No.

The Court: And Mrs. Fensterheim?

Prospective Juror No. 5: No, your Honor.

The Court: Mr. Wright?

Prospective Juror No. 6: No, your Honor.

The Court: Mr. Zulanch?

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Prospective Juror No. 7: I have no bias or prejudice.

(T-433) The Court: Mr. Allen?

Prospective Juror No. 8: No, sir.

The Court: Mr. Nelson?

Prospective Juror No. 9: None, your Honor.

The Court: Mrs. Singer?

Prospective Juror No. 10: No.

The Court: Mr. Kerr?

Prospective Juror No. 11: No.

The Court: Mrs. Corwin?

Prospective Juror No. 12: None, your Honor.

The Court: No, there were certain of the jurors who had previously been in some sort of Government employment. I have forgotten which ones they were. I wonder if you would raise your hands.

There are three.

I ask you, Mr. von Goeban, are you eligible for the same or similar employment with the Government in the future?

Prospective Juror No. 3: I served in the Army, sir. If they have another war and they call me, I suppose I will have to go, but that is the only—

The Court: Perhaps you are.

Prospective Juror No. 3: That is the only employment that I have ever had.

The Court: I think that these questions were (T-434) intended, not to be addressed to those who had previously had military or naval service of some kind, but rather to those who had been employed in the Post Office or possibly some similar employment.

How many of you were? I know that one or two—how many were there?

Two. Yes.

Prospective Juror No. 7: I was, sir.

The Court: I will address you. That is Mr. Zulanch, is the first. I will ask you, are you eligible for the same or similar employment with the Government in the future?

Voir Dire

Prospective Juror No. 7: I can answer that by saying my position was a temporary position. It was nothing permanent.

The Court: As to whether you are eligible for that same or similar employment with the Government in the future, I take it you cannot say, or what is the answer?

Prospective Juror No. 7: That is right, I cannot say.

The Court: Are you seeking Government employment?

Prospective Juror No. 7: Not at the present time.

The Court: Do you expect Government employment in the future?

Prospective Juror No. 7: I don't know about the future. I am not considering it at the present time.

(T-435) The Court: Very well. Now let me see; it was Mrs. Singer. I want to address these three questions to you:

Are you eligible for that same or similar employment with the Government in the future?

Prospective Juror No. 10: No, your Honor.

The Court: Is there some reason why you are not eligible?

Prospective Juror No. 10: No grade and my stay was too short.

The Court: Are you seeking Government employment?

Prospective Juror No. 10: No, sir.

The Court: And I suppose from your other answers that you do not expect Government employment in the future?

Prospective Juror No. 10: No.

The Court: Very well. Now I wish to address to each of you severally the question that I addressed to you as a group before, and before I do that, do any of you feel that you failed to understand any part of any of the questions that I read to you earlier?

Voir Dire

(No response.)

The Court: I gather not by your silence.

Now I want to read this one question to each of you individually:

Mrs. Dial, do you know of any reason why you should (T-436) not serve as a juror in this case, any fact or circumstance of such a nature as to prevent you from rendering a fair and impartial verdict based solely on the evidence and the instructions and ruling of the Court?

Prospective Juror No. 1: No, I don't your Honor.

The Court: Did you hear that question, Mrs. Walker?

Prospective Juror No. 2: Yes.

The Court: What is your answer?

Prospective Juror No. 2: No, your Honor.

The Court: "No," you say?

Prospective Juror No. 2: No.

The Court: Mr. von Goeben?

Prospective Juror No. 3: I heard it and my answer is No, your Honor.

The Court: Mr. Hallquist?

Prospective Juror No. 4: No.

The Court: Mrs. Fensterheim?

Prospective Juror No. 5: No.

The Court: Mr. Wright?

Prospective Juror No. 6: No, your Honor.

The Court: Mr. Zulanch?

Prospective Juror No. 7: No, your Honor.

The Court: Mr. Allen?

(T-437) Prospective Juror No. 8: No, sir.

The Court: Mr. Nelson?

Prospective Juror No. 9: No, your Honor.

The Court: Mrs. Singer?

Prospective Juror No. 10: No, your Honor.

The Court: Mr. Kerr?

Prospective Juror No. 11: No, your Honor.

The Court: Mrs. Corwin?

Prospective Juror No. 12: No, your Honor.

Voir Dire

The Court: You may exercise your challenges, gentlemen.

(The clerk hands jury panel container to Mr. Gladstein.)

Mr. Gladstein: Your Honor, I desire to exercise a challenge on behalf of the defendant Robert Thompson that—

The Court: You know, Mr. Gladstein, the challenges must be exercised by the defendants jointly.

Mr. Gladstein: Then by virtue of the directions of the Court, and recording my objection to that requirement I will exercise a challenge jointly.

The Court: Jointly?

Mr. Gladstein: Your Honor said that that is the requirement.

The Court: Yes, I did say it.

Mr. Gladstein: I say because of your Honor's (T-438) direction I am required to do that.

The Court: Yes, and I take it that you speak for your colleagues as well as yourself.

Mr. Sacher: With due regard to the objection also, your Honor.

The Court: That is what I meant, and as to the exercise of the challenge, when counsel for the defense remain silent there, I take it that they acquiesce, pursuant to my direction, in exercising the challenge jointly.

Mr. Gladstein: That is correct. All of the attorneys representing all of the defendants desire to have recorded their objection to the requirement that prevents the defendants from exercising their challenges individually and singly, but by virtue of the direction of the Court, the challenges are exercised generally.

The Court: Now before you proceed, you will remember that some of the counsel are not here. The understanding that I have is very definite, and that was about saying anything counsel might absent themselves temporarily and that I would let

Voir Dire

the matter pass and make no objection to it, but that when that happened without first gaining some permission from me, it was denied to be consented to by all the other counsel and by all of the defendants, and I want to have that thoroughly clear now so that if later some objection might be raised it would be clear what the (T-439) understanding had been.

Mr. Gladstein: The absence of Mr. Isserman and of Mr. Crockett play no role in the objection that I have made nor in the challenge that will be exercised.

Mr. McGohey: Your Honor, I don't know what that means.

Mr. Gladstein: I am simply saying that the challenge, by virtue of the direction of the Court, will be exercised jointly in the presence of all of the defendants without regard to the presence or absence of Mr. Isserman and Mr. Crockett; isn't that clear?

Mr. McGohey: No, your Honor, it is not clear to me.

Mr. Gladstein: We have no objection; we are raising no point about the absence of the two attorneys.

The Court: No; you see, it isn't a question of your raising a point. You will not be in a position to raise the point.

Mr. McGohey: Precisely.

The Court: But if Mr. Crockett and Mr. Isserman came back and perhaps either of their clients chose to raise the question later, I desire to have it clear that the understanding we all had, including Mr. Crockett and Mr. Isserman, was what I have described, and I desire to have some indication now from other counsel and from the defendants (T-440) of their acquiescence in and understanding of that arrangement.

Mr. Gladstein: If you desire that, you may have it.

Voir Dire

The Court: Yes.

Mr. Gladstein: The understanding is, as I have said, and there is no question of raising any question about the absence—

The Court: But is the understanding that as I have said?

Mr. Gladstein: It is as your Honor said.

The Court: Very well.

Mr. Gladstein: In other words, the absence of the two—

The Court: No, you do not need to put it in different language. If you say that is as I said, that will suffice.

Mr. Gladstein: Very well.

The Court: And I will take the silence of the defendants, if they remain silent, to be an acquiescence.

One of them rises to address me.

Defendant Winter: If the Court please, my attorney, Mr. Crockett, is absent on other work in preparation of the defense.

(T-441) I feel that if he were present he would make protest for me on the ruling of the Court that would deprive me of the right to challenge prospective jurors.

However, his absence I believe in view of the Court's ruling would make no difference in the outcome and therefore I will accept the statement by Mr. Gladstein.

The Court: Well, as you put it, I construe that as unclear, and I will adjourn court now until tomorrow morning, and I hereby direct that no counsel under any circumstances is to absent himself from these proceedings without my leave.

* * *

(Adjourned to March 11, 1949, at 11.00 a. m.)

Voir Dire

(T-442)

New York, March 11, 1949;
11.00 a. m.

 TRIAL RESUMED

* * *

Defendant Winter: Your Honor, may I be heard on a petition on behalf of the defendants addressed to the Court?

The Court: Well, I suppose we will have to excuse all the jurors, then I will hear the petition.

The jurors may absent themselves temporarily.

The Clerk: Jurors in the panel, return to Room 109, please.

(12 jurors in the jury box and the remaining jury panel left the court room.)

Mr. McGohey: If your Honor please, after the jury is out of the room and before your Honor hears the petition I ask leave to make a statement and a request to the Court.

The Court: Yes, you may do that.

(T-443) You may be seated, Mr. Winter. I will hear you in a moment.

Are the jurors all absent?

The Clerk: Yes, your Honor.

The Court: Yes, Mr. McGohey?

Mr. McGohey: If I understand the application which has just been made to your Honor by the defendant Winter, it is that he, a defendant, make a statement in the nature of a petition on behalf of defendants. Now the record shows that each defendant in this case present here today is represented by an attorney who is also present, and each of the attorneys here is either a regular member of the bar of this court in this district or he has been specially admitted for the purposes of this case. It seems to me that while a defendant or any litigant in this court appears here by his attorney, any statement or petition to the Court should be made by the attorney. The Court has a control

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over attorneys which the Court does not have over laymen, even though they be defendants in the court, and I suggest to your Honor that any petition should be filed by the attorneys as long as they are attorneys in the case.

The Court: Mr. Crockett, why is that not so? You represent Mr. Winter.

Mr. Crockett: I represent Mr. Winter, your Honor. (T-444) As I understand the law, a defendant in a criminal case is entitled to the assistance of counsel. He need not necessarily speak through counsel. There may very well be occasions during this trial, because of the nature of the proceedings and so forth, when my client might want to present a point of view that can be best presented by him and not by me. Under those circumstances, I submit that he has the right to speak in his own behalf.

The Court: I am going to rule—

Defendant Winter: Just a word, just on the circumstances—

The Court: Let me think of this a moment. I feel some doubt as to how far this is a matter of right or a matter of discretion. So, without indicating that this may or may not be any precedent for other occasions here, I will hear what Mr. Winter has to say and give it consideration.

Mr. Winter: This is a petition of the defendants to the Honorable Harold R. Medina, dated New York on March 11, 1949, and signed by each of the defendants in this case.

The Court: If you will hand it up, I will consider it.

Defendant Winter: I may not read it?

The Court: No, I see no occasion to read it. You have it there in writing. I will read it myself.

(T-445) (Paper handed up to the Court.)

Mr. McGohey: Your Honor, I desire to call your Honor's attention to the fact that a man has just left the table of defense counsel and asked some of the newspaper men to go with him, and he had papers in his hand which may or may not be a copy of the petition which has just been handed to your Honor, which your Honor did not

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allow to be read, and of which I have received no copy. And the man who left the table was Mr. Simon Gerson, who has been assisting the defense throughout this case.

The Court: Are those papers in the room here?

Mr. McGohey: No, he seems to have gone out, and he had the papers in his hands when he left. That is Mr. Gerson, just coming in the door now.

The Court: Mr. Gerson, will you step up to the bench, please?

Have you just handed copies of this so-called petition that was handed to me by the defendant Winter prior to my consideration of it, or any copy being delivered to the United States Attorney, have you delivered copies of that to any other person?

Mr. Gerson: I have not, sir, and my witness to that was the gentleman of the press who was with me. The moment I understood there was objection, I immediately (T-446) informed him that I would not do that until this matter—

The Court: So you did not give him copies?

Mr. Gerson: I did not.

The Court: Because, I am going to be as careful as I can here to see to it that with all these jurors present in and about the court room here, that no papers be circulated around in a manner that may well reach the attention of some of the jurors, and I consider it should not be done.

Before I make any ruling on this, Mr. McGohey, you may look at the paper.

(Paper handed to Mr. McGohey through the clerk.)

* * *

(T-447) Mr. McGohey: Does your Honor desire to hear me—

The Court: Yes.

Mr. McGohey: —in connection with this?

Your Honor, I have read this petition which has just been handed to your Honor by the defendant Winter, and it seems to me to be a repetition—

The Court: Without describing its contents, have you some comment to make as to my right or discretion in the matter?

Mr. McGohey: You mean to receive it?

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The Court: Yes. I am in doubt because I have no recollection of hearing of such a thing being done before. I am in doubt to to whether, in the first place, a defendant has a right to present such a petition to the Court and have it considered, despite the presence of his counsel. And, secondly, whether it be a matter of discretion. I have some recollection of instances where, with the Court's leave, a defendant has been permitted, in the exercise of the Court's discretion, either to address the Court or sometimes to address the jury, either as provided in the rules or generally. I have a recollection of one case in which a defendant, with the leave of the Court, was permitted to sum up to the jury himself. And my present view is that this is a matter of discretion; and were it a matter of discretion, I would not receive (T-448) the petition. I don't desire to rule on the matter ill-advisedly, however. Perhaps the best thing for me to do is to take it under advisement. I thought perhaps you might have something to submit to me in connection with the preliminary question of my receiving and considering the petition.

Mr. McGohey: Your Honor, what I was about to say was that it seemed to me to be a repetition of something that had occurred before through the argument of counsel and in view of that—

The Court: Well, Mr. McGohey—

Mr. McGohey: If your Honor will permit me, in view of that, on the present posture of this case, I was about to ask your Honor if we could hold this in abeyance and let your Honor take it under advisement.

The Court: Yes.

Mr. McGohey: And give me an opportunity to think about it also. I am not prepared now to argue to your Honor whether or not it should be accepted and considered or whether it should not.

The Court: Very well.

Mr. McGohey: So—

The Court: I will take it under advisement, and the jurors may return.

Defendant Winter: Your Honor, the circumstances (T-449) of this petition affect a matter of time. The petition would be meaningless if it were not acted on before the jury return.

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The Court: If that is so, then—

Defendant Winter: May I also say that the attorneys were not consulted in this matter, and I am acting as a defendant without being an attorney and, therefore, without the ability to reply directly in the matters of law raised by Mr. McGohey; but I might state, as a citizen I do rely on the right given me under the First Amendment under the Constitution to petition the Government for redress of grievances.

The Court: Very well.

Defendant Winter: And I so understood this petition.

The Court: Then I will take the petition under advisement, I have it for consideration, and it is denied.

Mr. Crockett: May I request it be marked for identification?

The Court: Yes.

Mr. McGohey: With respect to that marking, this is a device to argue and publicize as argument something which your Honor has repeatedly said since Monday of this week that you would not hear argument on.

The Court: Well, that may well be so, Mr. McGohey—

Mr. McGohey: The very thing, the very type of questions which your Honor was asked to inquire of the jury (T-450) about are included in that petition.

The Court: Well—

Mr. McGohey: And which your Honor declined to ask.

The Court: I realize that, and I have stated repeatedly on the record here that I conceive my duty to be that of interrogating the jurors in the best fashion that the questions taken as a whole shall fully explore, adequately explore the question of any bias or prejudice that might exist, and I have taken into consideration in that connection all of the questions that have been submitted. They find their way into my questions in one way or another, and some of them I have flatly rejected. Now I think perhaps it would be the wisest and best course for me to pursue until I can advise myself more clearly as to the law in the matter, is to do what I have just done. I have received this petition, I have considered it and I have denied it. I consider that it is just a repetition of the points raised by counsel in one form or another. It may

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be that the defendants think they know more law than their lawyers. That sometimes happens, and I can't do anything about that. After I have considered the law more fully I will take a position on such future petitions as I may be advised, but this time I have considered it, I have rejected it, and it may be marked.

(T-451) Mr. McGohey: Very well, your Honor.

(Marked Defendants' Exhibit B for identification.)

* * *

(T-452) Mr. Gladstein: I have one more thing to say, your Honor, and that is this: I would like, before the jury is brought back, to make this very brief statement of objection, which takes one or two sentences, prior to the exercise of any peremptories. I understand I am required to do this because of the case law on the subject, and I do it for that reason.

The Court: Now before you do that I have a statement to make, and as you may desire to object to that, too, I think it may save a little time. As I read over the minutes yesterday, and particularly my statement at page 400 of the minutes relative to the alternate exercise of challenges in accordance with the customary practice in this district, I thought possibly it would be better if I amplified that a little bit so that there could be no possible misunderstanding, and in that connection I have consulted the Chief Judge (T-453) to make sure, due to the fact that I have only been on this court for a couple of years or less—to make sure that I do it exactly right in accordance with the practice commonly observed in this district for many years.

The defendants may have 15 peremptory challenges to be exercised jointly, as stated yesterday; the Government six. They will be exercised as follows:

There will be six rounds of peremptory challenges. In the first one the defendants will jointly exercise three. After they have exercised their challenges, three talesmen will be drawn and seated in the places of the challenged jurors and questioned for bias and prejudice, occupations, and so on; that is, new talesmen will not be drawn, seated and questioned one by one after each peremptory challenge. When the three talesmen are pronounced satisfactory

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against challenges for cause, the Government will exercise one peremptory challenge, and one talesman will be drawn and seated in the place of the challenged juror and will be questioned for bias and prejudice, occupation, and so on.

When he is found satisfactory as against the challenges for cause, the second round of challenges will begin. If the defense should not timely exercise all the challenges to which they are entitled, they will be held to have waived those challenges which they did (T-454) not exercise. If the Government should not timely exercise the challenge to which it is entitled, it will be held to have waived that challenge. Neither side will be permitted to reserve the exercise of any challenge.

This procedure will obtain in succeeding rounds. In the second round, the defense will exercise three challenges, the Government one.

In the third round, the defense will exercise three challenges, the Government one.

In the fourth round, the defense will exercise three challenges, the Government one.

In the fifth round, the defense will exercise two challenges, the Government one.

In the sixth round, the defense will exercise one challenge, the Government one.

Now Mr. Gladstein, I will hear your statement of objections.

Mr. Gladstein: Well, I want first to address myself to the requirement that we be required at this time to begin the exercise of peremptory challenges. I want the record to show that I am not satisfied at all in respect of any of the 12 jurors in the jury box as regards my right to challenge for cause. My ground for that objection is that I submit there has been inadequate effort to obtain expressions from each and all of the (T-455) jurors so as to establish what the frame or state of mind of the jurors may be. Hence I am in a position where I am required to exercise peremptory challenges blindly. Moreover, I am in a position where I cannot appropriately ask for the completion of the examination for the purpose of establishing the existence of facts which would establish the basis for a challenge for cause against one or more of the jurors. Therefore, for the record, I challenge for cause each and all of the jurors.

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The Court: The challenge is overruled.

Mr. Gladstein: Now I want to say that without further examination of the jurors, I object to the requirement that compels me to exercise peremptory challenges against jurors concerning whom I have inadequate information as a result of the only, and I submit, inadequate and improper examination of the jurors by the Court, and hence I am placed in the position of choosing between strangers, choosing whether to challenge persons concerning whom I have inadequate information—inadequate in the sense that the questions have not brought out that which normally and usually and traditionally is brought out in the case so that an intelligent and an informed exercise of a peremptory challenge may be had. Consequently I am placed in a position, and for that reason I object—I am placed (T-456) in a position of exercising peremptory challenges against persons in the jury box whose acceptability as jurors has not been established in one way or another and as to which I am unable to do anything.

Now I further want to record my objection to the statement just made by the Court which requires the exercise of three challenges at a time. I object to that. I submit that the appropriate thing to do is to permit the challenging of one juror; when that seat is vacant, another be called and questioned, and that the challenges be exercised in an orderly manner one by one; that at no time should there be, as a result of the exercise of a peremptory challenge, more than one seat vacant to be filled by another prospective juror.

The Court: Perhaps you, coming from outside of the State, are not familiar with the practice here.

Mr. Gladstein: That is possible, your Honor, but I want to say that coming from outside of the State I come with experience in the Federal courts in Hawaii, Washington, Oregon, California and Arizona. In none of those States is any practice followed which conforms to this. To the contrary, in all of these States the practice is, as a matter of fact, first of all, to require the Government to exercise the first challenge and the defense has the right to exercise the last (T-457) challenge. And, moreover, the alternation between prosecution and defense is somewhat different than is here laid down. Also only one seat at a time is vacated by the jurors.

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The Court: Well that is not done here.

Mr. Crockett: May it please the Court, on behalf of my clients I should like to adopt the objections just made to the Court by Mr. Gladstein, and I predicate them upon my contention that they amount to a denial of due process of law to my clients, and that they amount to a denial of their right to a fair and impartial trial, both of which rights are guaranteed by the United States Constitution.

Mr. Isserman: If the Court please, I am obliged to object on the grounds urged by Mr. Gladstein and Mr. Crockett, and also wish to repeat here, without doing it at length, the objections made to the procedure made yesterday by counsel to the procedure which was followed by the Court, and adding my last ground that the total sum or the total effect of that procedure has been to deny my clients the right to a fair trial before an impartial jury in violation of the Constitution.

Mr. Sacher: I wish to interpose an objection on behalf of my clients, your Honor, on the ground that the nature of the examination of the jurors thus far, (T-458) as well as the order in which the challenges are to be exercised and the number to be simultaneously exercised, deprives us of the ability to make an intelligent judgment as to which, if any, jurors are to be challenged peremptorily; secondly, that the requirement that three be exercised simultaneously, no matter how hallowed it may be by time, is an inherent injustice because it operates in form to give us more than the ten challenges which are secured to us by Rule 25—24, rather, but in actuality may operate to give us no more than six challenges.

The Court: The authorities seem to be against you on that, Mr. Sacher.

Mr. McCabe: I would simply like to add to the objections made by other counsel, your Honor, that your Honor's formulation of insisting that we exercise three challenges before we see and have a chance to hear answers to questions for the replacement of the first challenge, compels us to exercise our peremptory challenges without proper information and may very well lead not only to the wasting of a peremptory challenge in rejecting a juror who, in comparison with his replacement or with the replacement of the second juror challenged, may have been under the circumstances preferable to us.

Voir Dire

The Court: Now there is one thing that I am (T-459) very much puzzled about here in this trial. I don't know how many times, but it must have been—well, I think five or six anyway, I have stated that when one counsel or counsel for certain defendants makes an objection or notes an exception, that that inures to the benefit of all of the defendants, in the same manner and effect as though the counsel for each of the other defendants have stood up and repeated them, except in such instances where one of them desires to express his disassociation with the objection or exception. That being so, I cannot see why it does the slightest good to anyone to have one man state an objection and then each of the other counsel get up one after the other and repeat the same thing. I merely suggest that that consumes time and energy and is quite unnecessary.

Now the jurors will be brought back.

Mr. Crockett: May I be heard briefly on your Honor's recent statement?

The Court: No. You may object to it and note an exception if you desire.

Mr. Sacher: We so desire.

The Court: But I do not wish any argument on it.

(The prospective jurors returned to the courtroom.)

Mr. Sacher: May it please the Court, as (T-459-A) I understand it, you have ruled that all challenges must be made jointly?

The Court: That is right.

(T-460) Mr. Sacher: May we just, for once and for all, simply state that we object to the joint exercise of challenge.

The Court: Yes.

Mr. Sacher: Now I would like to observe to the Court that we have a challenge for cause addressed to at least one of the jurors, and I was wondering whether your Honor would want to hear that challenge in the presence of the jury or not.

Well, I don't know now—

The Court: Do you desire me to excuse the jury while I listen to it?

Voir Dire

Mr. Sacher: Well, we have no objection to discussing it at the bench if that is agreeable to the Court. I have no desire—

The Court: All right, you may come to the bench.

(The following discussion was had at the bench among Court and counsel, out of the hearing of the jury.)

Mr. Sacher: We challenge Juror No. 5, Mrs. Fensterheim, whose husband is employed in a supervisory capacity in the Post Office. He is an examiner, you will recall from her testimony yesterday, and gives examinations to other employees in regard to promotions, I believe—I am not certain as to qualification. (T-461) Her testimony was that her husband has been employed there for 35 years, and I think that the man therefore is no longer a youngster. His concern for his job must operate very keenly not only for himself but must also have some repercussions on his wife, and I therefore believe that under the circumstances she might have such cause operating against her ability to be able to render a fair and impartial verdict.

The Court: Do you speak as the spokesman for all the defendants' attorneys?

Mr. Sacher: I do, subject, of course, always to some objection to making a joint challenge.

The Court: Yes.

Mr. McGohey, have you any observations to make?

Mr. McGohey: Only this, your Honor, that I don't believe that anything has been stated by Mr. Sacher which would justify the challenge for cause.

The Court: All right, objection overruled—challenge overruled.

Mr. Sacher: I would like to appeal to the discretion of the Court to excuse her, on the basis of the facts that I mentioned.

The Court: I listened intently to her answers to my questions and I saw no reason to doubt her complete sincerity about it. I see no basis for exercising (T-462) discretion.

Mr. Sacher: May I point out briefly, your Honor—

The Court: The nature of sustaining of the challenge—I overrule it.

Mr. Sacher: I would just like to point out briefly this, that in the questions which we submitted for direction to

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the jury, we raised a question concerning the loyalty order, et cetera, and your Honor did not put that question to the juror concerning the loyalty order.

The Court: If you will just wait a second, I thought perhaps I might take that position.

Mr. Sacher: Yes.

The Court: Let me just look for a second.

(After examining) I find that I did ask that question, and I asked it of this particular witness.

Mr. Sacher: What page is that?

The Court: I think you gentlemen might be a little more accurate.

Mr. Sacher: What page is it?

The Court: It is on page 391.

Mr. Sacher: I respectfully except.

The Court: Now that disposes of that point.

Mr. Sacher: I respectfully except to your (T-463) Honor's ruling.

(The following proceedings were now had in the hearing of the jurors:)

Mr. Gladstein: Your Honor, the following jurors, in accordance with the instructions of the Court as to the manner in which we must proceed and the number which must be excused simultaneously, are excused:

Mr. Edward Hallquist, Juror No. 4; Mr. Robert Wright, Juror No. 6, and Mrs. Martha Walker, No. 2.

(Prospective Jurors Nos. 4, 6 and 2 excused.)

The Clerk: Lester A. Schieck, S-c-h-i-e-c-k, No. 2—

Mr. Isserman: May I get that spelling again?

The Clerk: S-c-h-i-e-c-k.

Mr. Gladstein: And the first name?

The Clerk: Lester A.—No. 2, Lloyd Stanislaus H. Waterson, No. 4, Mrs. Marie Stern, No. 6.

(Mr. Schieck, Mr. Waterson and Mrs. Stern take respective seats 2, 4 and 6 in the jury box.)

The Court: Now I think due to the lapse of time it is better if I repeat these questions. It may take a little time but I do not desire to merely rest on your

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(T-464) recollection of them as I read them the other day. I may say, however, offhand, as to each of you three new prospective jurors, do you feel that you heard the questions pretty well as I read them the other day?

Prospective Juror No. 4: Yes.

The Court: And the names, too?

Prospective Juror No. 4: I did, yes.

The Court: You felt that you understood the questions?

Prospective Juror No. 4: Yes.

The Court: They were not unintelligible to you at all, they were clear, you felt they were clear and intelligible?

Juror No. 4: Yes, sir.

The Court: Now the first of these questions has to do with a number of people connected with the case, and if any of you—well, when I say “connected with the case,” I don’t know whether they are connected with the case or not. Some of them plainly are, and I will just read off all these names, and if any of you know any of them as I go along, just raise your hand and then when I am finished with this rather long list in this question, I am going to address to each of you the question itself.

Now it reads: Does any juror know, or has he had any dealings with—and when I say “he” I always (T-465) mean he or she—any of the following persons or members of their families:

Counsel for the prosecution:

John F. X. McGohey—

Mr. McGohey: Do you desire that I rise?

The Court: I don’t think it is necessary for them to rise each time.

Did you, each of you three, notice the gentlemen as they arose when I called the names before?

Three Prospective Jurors: Yes.

The Court: I don’t think, unless someone suggests it, that it is necessary for each of them to get up again.

(Continuing) John F. X. McGohey, Frank H. Gordon, Irving Shapiro, Edward C. Wallace, Lawrence K. Bailey.

Then the list of the defendants named in the indictment:

William Z. Foster, Eugene Dennis, also known as Francis X. Waldron, Jr., John B. Williamson, Jacob Stachel—

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you know, I feel worried every time I pronounce that. Is it Stachel?

(T-466) Mr. Sacher: You pronounced it correctly.

The Court: Stachel, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry—

Mr. McGohey: A juror raised his hand.

Juror No. 4: I am acquainted with Benjamin J. Davis.

The Court: Have you known him for some time?

Prospective Juror No. 4: Well, during the years of 1938 and 1939 we played quite a bit of tennis together.

The Court: I think I will excuse you.

Prospective Juror No. 4: Thank you, sir.

Mr. Gladstein: Your Honor, I repeat the objection to the excuse of the juror without any effort to ascertain whether the playing of tennis ten years or more ago would in the slightest way influence the juror.

The Court: I have tried here, and I shall continue to try, as to both sides, to exercise my judgment liberally; that is, if there is anything that I think could remotely affect the judgment, or bias, or partiality, to excuse the juror. I do not understand the law to be that a defendant is entitled to any particular juror. What each defendant and the prosecution, the Government, is entitled to, is 12 impartial, unbiased jurors with open minds. I never (T-467) understood it was a ground of objection that a juror be excused. Is it?

Mr. Gladstein: But my point is that in excusing a juror without attempting to ascertain whether he does have an open, impartial mind, merely because ten years ago he played tennis with the defendant—

The Court: I felt that the gentleman yesterday, who knew Mr. Coakley, the baseball coach up at Columbia, I felt that the very fact that he had known him, and he was one of the grand jury, I thought I would excuse him, and I did, and I intend to continue to excuse people—

Mr. Gladstein: Yes.

The Court: —that I think may have some bias here, and I expect to be liberal in that respect.

Mr. Gladstein: Exactly, your Honor, but the point is you first ascertained from Mr. Reese whether his acquaintance with him, he having been on the grand jury, might weigh somewhat in his mind in the reception of the

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evidence, and he said he thought there might some slight effect. My point is that the very least the Court should do is ascertain from Mr. Waterson what, if any, effect—

The Court: I do not intend to be catechized by you, Mr. Gladstein, and I think it is sufficient that you note your objection. In this case I think it is clear (T-468) that there is no basis for objection.

Mr. Gladstein: Very well.

The Court: I might excuse the entire group in the jury box and be quite within my rights. I cannot understand that, but, furthermore, I don't want to have you keep telling me just what I am to do or not. You may object as you have objected, and the objection is noted.

Mr. Gladstein: Very well.

The Clerk: Mrs. Mary Conant, No. 4.

(Mrs. Mary Conant takes seat No. 4 in the jury box.)

The Court: Did you hear the questions as far as I went, Mrs. Conant, and the names as I read them?

And I will skip the names of counsel for the prosecution, that I have already read twice, and that you say you have heard. And you don't know any of them, I take it, or have had any dealings with them or their families?

Prospective Juror No. 4: No.

The Court: The question is, Does any juror know, or has he had any dealings with, any of the following persons or members of their families?

I will start in again with the defendants named in the indictment:

(T-469) William Z. Foster, Eugene Dennis, also known as Francis X. Waldron, Jr., John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Wins'on, John Gates, also known as Israel Regenstreif, Irving Potash, Gilbert Green, Carl Winter, Gus Hall, also known as Arno Gust Halberg.

And, incidentally, Mrs. Conant, did you notice the various persons of counsel who got up when I asked the names before, so you had a chance to look at them and see if you knew them?

Prospective Juror No. 4: Yes.

The Court: Then I will not ask them to rise.

Counsel for the defendants:

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Harry Sacher, Abraham J. Isserman, Richard Gladstein, Louis F. McCabe, George W. Crockett, Jr., Mary M. Kaufman, (T-470) Abraham J. Unger, David M. Freedman, Louis Fleischer, Maurice Sugar, Yetta Land.

Some of those were not here the other day and are not here now, but I, in view of the fact that nobody made any special request for it, I haven't thought it necessary to ask them to be here.

Other attorneys:

Lee Pressman—

Mr. Sacher: Your Honor, excuse me. Those aren't attorneys for the defendants, the names—

The Court: I say, "Other attorneys." I first read I first read counsel for the prosecution, then counsel for defendants, and I don't say these other attorneys are attorneys for anyone here. They are other lawyers, that I am asking the jurors if they know or have had any dealings with, or members of their families. I don't say any of these other attorneys are attorneys for any of these defendants at all.

Now, these other attorneys are as follows:

Lee Pressman, O. John Rogge, Carol Weiss King, (T-471) Leon Josephson, Nathan Witt, John Abt, Emanuel Block, Arthur G. Silverman, Harold Cammer—C-a-m-m-e-r, George W. Fish, Marian Wynn Perry.

Or any of the following 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—the same man as is known as Whittaker Chambers.

George Blake Charney, Morris Childs, Rev. John W. Darr, Jr., (T-472) Louis Diskin, Gerhart Eisler, Howard Fast, Frederick V. Field, Dr. Louis Finger, Elizabeth Gurley Flynn, Betty Gannett, Rose Gaulden, Simon W. Gerson, Ben Gold, David Goldway, Alger Hiss, V. J. Jerome, Arnold Johnson, Claudia Jones, Barney Josephson, Jack Kling, Albert Lannon, Charles Loman, Vito Marcantonio, George Marshall, of the Civil Rights Congress; Rev. Wil-

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liam Howard Melish, Sampson Milgrom, Jacob "Pop" Mindel, Robert Minor, (T-473) Albert Moreau, Steve Nelson, William Norman, William L. Patterson, Jacob Perrilla, J. V. Peters, also known as Alexander Stevens; Paul Robeson, Dorothy Rodman, Nathan Ross, Dr. Annette T. Rubenstein, Murray Savage, Howard Selsam, Harold Simon, George Siskind, Jessica Smith, that is, Mrs. John Abt; Joseph Starobin, Alexander Trachtenberg, Carl Vedro, William Weiner, William Weinstone, Max Weiss, Rev. Eliot White, Doxey Wilkerson.

Now a list submitted by the defendants. Does any juror know or has he had any dealings with any of (T-474) 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 Dalin, Max Eastman, Max Yergan, Hedda Gompertz, also known as Massing and Billinger; Nat Honig, George N. Dimitroff, Ferenc Nagy—N-a-g-y, William Nowell, Ken Goff, Howard Rushmore, Michael Quill, Joseph Curran, Benjamin Stolberg, Sidney Hook, Harry Gideonse—G-i-d-e-o-n-s-e, John Pace.

(T-475) Now, I ask each of you three new jurors, Mr. Schieck—is that the way to pronounce your name?

Prospective Juror No. 2: Correct.

The Court: —and Mrs. Conant and Mrs. Stern, would your answers to those questions be in the negative, that is, you don't know any of those persons or their families or have had any dealings with them, is that right? You each of you say No?

Three Prospective Jurors: No.

Mr. Sacher: May I interrupt the Court? As you may recall, we added some three or four names, which appear at pages 284 and 285 of the record the other day. Would you be good enough to put those?

The Court: I thought I added those to my list but maybe it was only of the organizations. Thank you for reminding me of that. What page was that?

Mr. Sacher: Bottom of 284 and top of 285.

The Court: I will do that. Yes, that was an oversight on my part. I will write them in now.

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I will add to the list the following, and ask you the same question as heretofore :

Eddy Chayfetz, Ken Eckert or Egert, Farrell Dobbs, George Schuyler, and (T-476) A. A. Berle.

I take it the answers of each of you are again in the negative.

And when I ask you, instead of nodding your heads, if you would just say, in a firm and distinct tone of voice, that the reporter can hear, No, then he will get it down.

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

You each say No?

You see, I cannot hear a sound here. You might have been trying to say No in a very loud and vigorous manner—

Mr. Gladstein: May I suggest to the Court, that, after each question, your Honors says, Do you each say No, and the jurors may think an affirmative is precluded.

The Court: I pause a second to give them each an opportunity to indicate.

I will put it differently. I say, do you answer yes or no?

(Three jurors say No.)

The Court: The next question: Do you know any of the Judges or employees of this Court or members of their (T-477) families? Yes or no?

(Three jurors say No.)

The Court: The next question: 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?

Is the answer yes or is the answer no?

(Three Jurors say No.)

The Court: Mrs. Conant?

Prospective Juror No. 4: No.

The Court: All right.

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Now, does any juror have any prejudice or bias for or against any defendant by reason of the race of any defendant which would prevent him from keeping his mind fully open until all the evidence and the instructions of the Court have been completed? Yes or no?

(Three jurors say No.)

The Court: 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? Yes or no.

(Three jurors say No.)

The Court: Have you ever been employed by the Federal Government? Yes or no.

(T-478) (Two jurors say No.)

Mr. Gladstein: One juror—

The Court: Yes, I know, but I like to address people by their names.

The Clerk: No. 6.

Mr. McGohey: Mrs. Stern.

The Court: There are so many people, I don't always remember them and I look at my little cards.

Mrs. Stern, what was the nature of your employment by the Government?

Prospective Juror No. 6: During the war I was employed with the Office of Censorship for two years.

The Court: Do you think that by reason of anything in connection with that work or otherwise that you would feel any bias or prejudice in favor of or against the Government, or in favor of or against any of the defendants by reason of that connection with the Government?

Prospective Juror No. 6: No, I don't.

The Court: How long were you working on that Censorship?

Prospective Juror No. 6: Two years.

The Court: Two years?

Prospective Juror No. 6: Yes.

The Court: When did that work cease?

Prospective Juror No. 6: I stayed until it (T-479) ceased in 1946.

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The Court: So that you have had no connection whatever with the Government since 1946?

Prospective Juror No. 6: No. It was only a wartime position.

The Court: 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 Court, would you be embarrassed in arriving at or rendering a verdict of not guilty in any way connected with this work that you did for the Government or your connection with the Government?

Prospective Juror No. 6: No, I would not.

The Court: That question about being employed by the Federal Government, I think, would reasonably be considered to cover any service in the armed forces, and so it has been considered by the other jurors when they were previously questioned. And I merely add that so that if any of you have been connected with any of the services at any time, you should answer the question Yes and then let me get the facts. I take it that—well, I had better not put it that way. Do each of you say No, that you have not been connected with the services of the Government, other than has already been indicated by Mrs. Stern? You each say No to that, or is it Yes?

(T-480) (Two jurors say No.)

Mr. Gladstein: Would your Honor be good enough, in line with the questions you put to the jurors who had stated that they had worked in one or another capacity for the Government, to ascertain from Mrs. Stern the capacity in which she worked for the Office of Censorship during the war?

The Court: I will do that.

Mrs. Stern, what was your official designation in that work?

Prospective Juror No. 6: I was a translator and censor.

The Court: Translator and censor?

Prospective Juror No. 6: That is right.

The Court: That is actually the work that you did, is it?

Prospective Juror No. 6: That is right.

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The Court: Where were you located when you did that work?

Prospective Juror No. 6: In the building on Seventh Avenue between 23rd and 24th Streets.

The Court: Here in New York City?

Prospective Juror No. 6: That is right.

The Court: Have you or any members of your immediate family ever been associated with any agency, (T-481) either public or private, which was or is engaged in the detection of law violations? Is the answer yes or is the answer no?

(Three jurors say No.)

The Court: Do you know any of the following named persons who were members of the grand jury that indicted the defendants now on trial?

One—well, I won't give the numbers. I will just read the names.

Edmunds L. Cocks—C-o-c-k-s, Jerome S. Blumauer, Adelaide E. Lowe, Benjamin C. Brush, Herbert C. Cantrell, Thomas Hill Clyde, Andrew J. Coakley, Walter A. Coleman, Mrs. Pauline J. Charal, Charles P. Fenlon, Harry J. Hauck—H-a-u-c-k, Arthur S. Heiman—H-e-i-m-a-n, George T. Hodell, James C. Johnson, Walter I. Metz, Jos. I. Morris, (T-482) Frederick Q. Nehring, Huestis G. Sincereaux, Carl M. Spero, Russell W. Todd, Helen R. Walsh, Milton Watkins, Donald C. Webster.

Is the answer yes or no?

(Three jurors say No.)

The Court: Have you or any member of your immediate family ever been associated with any agency of law enforcement? Is the answer yes or no?

(Three jurors say No.)

The Court: 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 FBI? Is the answer yes or no?

(Three jurors say No.)

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The Court: Do you know any Congressman who is now or who has been a member of the House Committee on Un-American Activities? Is it yes or no?

(Three jurors say No.)

The Court: Do you know any present or former employee investigator or member of the staff of the House Committee on Un-American Activities? Is it yes or no?

(T-483) (Three jurors say No.)

The Court: Have you ever testified before or given information to the House Committee on Un-American Activities or the FBI? Yes or no.

(Three jurors say No.)

The Court: Do you know any person who has testified before or given information to the House Committee on Un-American Activities or the FBI?

(Three jurors say No.)

The Court: Have you ever served as a juror before?

(Three jurors say Yes.)

The Court: You each say Yes, do you?

(Three jurors say Yes.)

The Court: And the next question, having served, 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 this term of court?

(Three jurors say No.)

The Court: One year must elapse in between or a juror is disqualified, and I take it that more than a year has elapsed in each case as to you?

(Three jurors say Yes.)

The Court: Yes.

Now, I think I am going on.

(T-484) Mr. Reporter, will it burden you too much if we go on without recess until one o'clock?

The Reporter: No.

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The Court: Then I think what I shall do today is, we will go on without any recess until one o'clock. Then we will take only one hour, that is, from twelve to one for lunch, and have a short session this afternoon, finishing up at three o'clock, and then we will get back again on Monday, and I am going to continue, during the interrogation of jurors, the hours we have had of eleven to four, during this preliminary part of the trial.

Mr. McGohey: I think your Honor intended to say we should have lunch from one to two. Your Honor said—I think you said—twelve to one, but we have passed twelve, so it will have to be one.

The Court: I meant one to two. And I find, when I get over-fatigued, I find I misspeak myself; and I think, after the week-end is over and we come back here Monday, I will stop doing that.

Now I desire to read to you the indictment:

The grand jury charges:

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, (T-485) also known as Francis X. Waldron, Jr., John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, also known as Israel Regenstein, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, also known as Arno Gust Halberg, the defendants herein, unlawfully, 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.

It has been part of said conspiracy that said defendants would convene, in the Southern District of New York,

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a meeting of the National Board of the Communist Political Association on or about 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 (T-486) 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.

It was further a part of said conspiracy that said defendants would thereafter convene, in the Southern 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.

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.

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.

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, (T-487) and would cause said Convention to adopt a Constitution basing said Party upon the principles of Marxism-Leninism.

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 of said Party, and would become members of said Party, and be elected 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.

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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.

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.

It was further a part of said conspiracy that said defendants would conduct, and cause to be (T-488) 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 over throwing 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.

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 in the manner and form set forth in the indictment I have just read to you and not otherwise. 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 you some comments made by another Federal Judge at the time of selecting jurors (T-489) 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, and now I quote:

“The Court: In view of the last questions, I might state to all of the panel that 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.

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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 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 (T-490) 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 gossip, 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 jury has returned this indictment that I have read. That is no evidence of guilt and should be 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, should any of you be accepted and sworn as jurors in this case you will be instructed by the Court—and this you have heard me say a number of times and it (T-491) will be repeated again and again because it is very important—should any of you be accepted and sworn as

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jurors in this case you will be instructed, and you are now and have been instructed, 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 until the evidence is closed and you have retired for deliberation upon your verdict after hearing the closing arguments of counsel and the final instructions of the court.

Before I ask you the next question, I desire to read the pertinent portions of the statute referred to in the indictment. They are as follows:

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 and violence; to organize any society, group or assembly of persons who teach or advocate the overthrow or destruction of any government in the United States by force and violence.

“For the purposes of this section the term ‘government in the United States’ means the Government of the United States, the Government of any State, (T-492) Territory or possession of the United States, the Government of the District of Columbia or the Government 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 provisions of this Title.”

Now my question: You remember that there have been laws against which some individuals have some prejudice, prejudice against the law or prejudice against the enforcement of the law, and what the reasons may be doesn't matter. Sometimes individuals do have such prejudices, and, of course, it is not proper for them to sit in a case where they are prejudiced against the law or against the enforcement of the law.

So I ask you, 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 of the United States Government by force and violence, or against the punishment of

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any person for conspiracy to organize the Communist Party to teach and advocate the violent overthrow and destruction of the United States Government, as set forth in the portions of the statute which I have read to you?

Now, if any of you have any such prejudice, you must—

(T-493) Mr. Gladstein: If your Honor please, did I understand the Court to refer to the Communist Party in connection with reading the statute and then asking jurors if they had objection to that statute? The Communist Party is not mentioned in the statute.

The Court: No, I don't think anyone would understand the question that way, Mr. Gladstein.

Mr. Gladstein: I got that impression, and I am just wondering—

The Court: If you did, then I will reframe the question so that there may be no ambiguity about it, and I will eliminate all reference to the Communist Party or to the indictment, but you, ladies and gentlemen, will recall that I have read the indictment to you verbatim, from beginning to end, so there cannot be any mistake by way of characterization. You have the indictment itself in mind. I have read it to you exactly word for word as it is.

I shall not now read over again the statute because you doubtless remember it. I read it only a moment ago. But I will change my question.

Has any juror any prejudice against the enforcement of this law or the punishment of any person, after conviction, for violating that law as set forth in (T-494) the portions of the statute which I have read to you?

I gather, as you remain silent, that you all say—or, I won't put it that way. If you have no such prejudice you may say No. Do you say Yes or No?

(Three jurors say No.)

The Court: Is that statement made by each of you new jurors?

(Three jurors say Yes.)

The Court: Each of the three. I take it the answer is that you did make the answer No.

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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-495) The Protestant—or perhaps it should be pronounced The Protestant, Contact, The National Guardian, New Foundations, New Times.

Is the answer yes or no?

Prospective Juror No. 2: No.

Prospective Juror No. 4: No.

Prospective Juror No. 6: No.

The Court: The answer is No?

(Three jurors say No.)

(T-496) The Court: Has any juror, or any member of his family, had any dealing with, or ever been employed by:

Cafe Society Uptown, Cafe Society Downtown, World Tourists, Inc., 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, New Century Publishers, Workers Bookshop, Jefferson Bookshop, Four Continent Book Shop or Book Corporation.

Is the answer yes or no?

Prospective Juror No. 2: No.

Prospective Juror No. 4: No.

Prospective Juror No. 6: No.

The Court: 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 list that I read before and I will read again—

(T-497) 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 Com-

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mittee for Yugoslav Relief, Inc., American Council for a Democratic Greece, American Council on Soviet Relations, American Croation 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 Mark 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), (T-498) Citizens Protective League, 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 of American Writers, (T-499) Macedonian-American People's League, 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—referring to the time 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 Foundations, Inc., Philadelphia School of Social Sciences and Art, Photo League, New York City, Proletarian Party

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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, (T-500) Silver Shirt Legion of America, Slovenian-American National Council, Socialist Workers Party, including American Committee 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 Sciences, 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.

Has any member of the jury—and have any of you three new prospective jurors—ever been a member of, (T-501) made contributions to or been associated in any way with any of those organizations, yes or no?

Prospective Juror No. 2: No.

Prospective Juror No. 4: No.

Prospective Juror No. 6: No.

The Court: 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, American Legion, American Patriots, Inc., Americans for Democratic Action, Association of Catholic Trade Unionists, The Christian Front, The Coalition of Patriotic Societies, Columbians, The Constitutional Education League, Knights of Columbus, Liberal Party, National Association of Manufacturers, The National Committee to Keep Out of Foreign Wars, National Economic Council, Proletarian League of America, (T-502) Protestant War Veterans of

Voir Dire

the U.S.A. Inc., The Small Business Men's Association, Steuben Society, The Tool Owners' 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, (T-503) Fellowship for Reconciliation, Catholic War Veterans, Veterans of Foreign Wars, Socialist Party, League for Industrial Democracy.

Have you at any time been a member of, made contributions to or been associated in any way with any of those organizations?

(Prospective Juror No. 2 raises his hand.)

The Court: Which one?

Prospective Juror No. 2: The Tool Makers Union, I believe, Massachusetts. I contributed one dollar one year.

The Court: Let me find that.

The Tool Owners' Union?

Mr. Gladstein: Will your Honor repeat the title—

The Court: What was the question?

Mr. Gladstein: No, repeat the title to the juror. I think he said he was a member of The Tool Makers rather than the Tool Owners' Union. They may be two different organizations.

The Court: Oh!

Prospective Juror No. 2: Well, this is some organization in Massachusetts I contributed one dollar to— (T-504) Tool Owners' Association, I believe it was.

Voir Dire

LESTER A. SCHIECK, Prospective Juror No. 2, was examined as follows:

By the Court:

Q. Wel, it seems likely that it is this one. Were you ever a toolmaker? A. No.

Q. It was nothing in connection with your professional work. Now, let me get these other questions out here.

Now did you read literature that you received as a member of that organization? A. Oh, I glanced over it only.

Mr. Gladstein: I don't hear him.

Q. Well, whatever it was, your recollection is that you read it? A. Oh, yes, parts of it.

Q. I will put specifically to you this question, what is the nature of your association with this Tool Owners' Union? A. Well, I contributed a dollar entitling me to a membership. That was a year or two ago.

Q. A year or two ago? A. Yes.

Q. Was that your only connection? A. The idea of that organization, from my standpoint, was of reducing the prices and bringing prices down.

Q. I do not know anything about that particular organization so I will have to make up questions that I think will go into it adequately. Did you ever hold any (T-505) office or position or act as a member of any committee of that Tool Owners' Union? A. No, sir.

Q. Did you ever attend any meetings or functions or whatever the Tool Owners' Union might have held? A. No, your Honor.

Q. Did you in connection with your reading the literature that you received or in connection with any statement made by anyone in any way connected with that hear anything that gave rise to any prejudice or impression in your mind, favorable or unfavorable to Communists and Communism? A. No, sir. I don't think it ever refers to any of those things.

Voir Dire

Q. And I take it it had no reference to these defendants who are on trial or the charge that has been made against them? A. No, sir, it did not.

The Court: Now I am not sure whether I put the question directly and so I now do even if I did it before, I address each of you three, with the exception of course that Mr. Schieck has indicated his connection, such as it was, with the Tool Owners' Union. With that exception, have any of you at any time been a member of, made contributions to or been associated in any way with any of those organizations? Is it yes or no?

Prospective Juror No. 2: No.

Prospective Juror No. 4: No.

(T-506) Prospective Juror No. 6: No.

The Court: Have you read any of the following publications—I think they are books but I am not sure—the question as submitted describes them merely 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—H-a-y-e-k, The Struggle Behind the Iron Curtain by Ferenc Nagy, The War We Lost: Yugoslavia's Tragedy & the Failure of the West by Constantin Fotitch, Is Communism Compatible with Christianity by Clare Booth Luce.

Did any of you read any of those publications?

Prospective Juror No. 2: No.

Prospective Juror No. 4: No.

Prospective Juror No. 6: No.

The Court: Now I think as we are right on the brink of several questions that I do not wish to have (T-507) interrupted by this luncheon recess, we will now take our recess until two o'clock, and we will then go on from two until three at which time we will adjourn until Monday.

(Recess to 2.00 p. m.)

Voir Dire

AFTERNOON SESSION

* * *

The Court: Now these questions that remain that I am addressing to the three prospective jurors are very important, and I want you to listen to them very carefully.

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 (T-508) all the evidence and the instructions of the Court are complete?

Now I want you to reflect on that and after you have taken a moment or two to think, I am going to repeat the question.

(Slight pause.)

The Court: Now I will read it again:

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?

Now I address that question to you, Mr. Schieck.

Prospective Juror No. 2: No, sir.

The Court: Have you formed any such opinion?

Prospective Juror No. 2: I have not.

The Court: And Mrs. Conant, have you?

Prospective Juror No. 4: No, I have not.

The Court: And Mrs. Stern?

Prospective Juror No. 6: No, your Honor.

Voir Dire

(T-509) The Court: Now have each of you deeply pondered the full import of that question, listened to it carefully and thought the matter over?

Now I proceed to the next one.

Have you at any time been a member of, made contributions to, or been associated in any way with business or religious organizations, or organizations of any character, in connection with the activities of which you have 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?

Now don't answer; I want you to think, and I am going to read it again, so you be sure to get every word of it.

Have you at any time been a member of, made contributions to, or been associated in any way with business or religious organizations, or organizations of any character, in connection with the activities of which you have 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 (T-510) all the evidence and the instructions of the Court are complete?

Now, Mr. Schieck, what do you answer to that question?

Prospective Juror No. 2: I have not.

The Court: Mrs. Conant?

Prospective Juror No. 4: I haven't.

The Court: Mrs. Stern?

Prospective Juror No. 6: No, your Honor.

The Court: This question is equally important, and so are all of these questions. I am going to do just as I did with the others, I am going to read it, I am going to give you a chance to think a little bit, and then I am going to read it again.

Voir Dire

Have you at any time been a member of, made contributions to, or been associated in any way with business or religious organizations, or organizations of any character, whose officers or representatives have made any expressions of advocacy of or friendliness toward the Communists or Communism in general on the one hand, or of opposition or hostility to Communists or Communism in general on the other hand, which expressions you have heard or read in any manner, which have led you to form any opinions or impressions as to the merits of the charge, against these defendants, unfavorable (T-511) 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?

Just think a little bit. I am going to read this again.

I repeat it:

Have you at any time been a member of, made contributions to, or been associated in any way with business or religious organizations, or organizations of any character, whose officers or representatives have made any expressions of advocacy of or friendliness towards Communists or Communism in general on the one hand, or of opposition or hostility to Communists or Communism in general on the other hand, which expressions you have heard or read in any manner, which have led you to form 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?

Now, Mr. Schieck, what do you say?

Prospective Juror No. 2: There is nothing in my mind.

(T-512) The Court: Mrs. Conant?

Prospective Juror No. 4: No.

The Court: Mrs. Stern?

Voir Dire

Prospective Juror No. 6: No, your Honor.

Mr. Gladstein: Your Honor, that question is so lengthy and encompasses so many matters that the answers of the jurors don't tell us what, if any, organizations they belong to.

The Court: Mr. Gladstein, you have objected to that question. Your colleagues have objected to it. You have asserted that view several times. I cannot agree with you. I think the question is clear. I have read it slowly with emphasis upon every part of it. The jurors have indicated to me that they understand it, and I think the matter must rest there. I don't desire you to keep repeating the same objection.

Mr. Sacher: May we have a bailiff, your Honor, hand up an addition to that question?

The Court: Yes, you may.

(Paper handed to the Court.)

The Court: Is there anything about those questions that I have just read that you failed to understand, any of you three?

I have another question later which I believe covers the subject of the question just submitted. I (T-513) think perhaps I shall turn to the question I just referred to and read it now rather than waiting. There are two other intervening questions in my list here, but I will turn to this other one.

Has any juror—incidentally, I am going to do the same as to this question as I did with those others. I am going to read it, give you a chance to think, and then I am going to read it again; and if there is anything about it any of you don't understand, please say so.

Has any juror such a bias or prejudice against the Administration or any agency of the United States, or against the defendants or Communists in general or the Communist Party whatever its aims and purposes may be, as would prevent him from reaching his verdict solely on the evidence presented in court and the law as contained in the instructions and rulings of the Court?

Voir Dire

Think a little bit, and I am going to read it because no two of these questions are the same.

Has any juror such a bias or prejudice against the Administration or against any agency of the United States, or against the defendants or Communists in general or the Communist Party whatever its aims and purposes may be, as would prevent him from reaching his (T-514) verdict solely on the evidence presented in court and the law as contained in the instructions and rulings of the Court?

Mr. Schieck?

Prospective Juror No. 2: Nothing.

The Court: Mrs. Conant?

Prospective Juror No. 4: No.

The Court: Mrs. Stern?

Prospective Juror No. 6: No, your Honor.

Now I shall proceed to certain other questions.

In determining the truth or falsity of the testimony of any witness, would you, in accordance with the instructions of the Court, and I shall, when the time comes, give such instructions, submit the testimony of such witness to the same scrutiny and test it by the same standards, whether the witness was called by the defense or by the prosecution?

Would you test the credibility of any witness, in accordance with the instructions of the Court, by the same standards and subject it to the same scrutiny whether the witness were a witness for the prosecution or a witness for the defendants?

What do you say, Mr. Schieck?

Prospective Juror No. 2: I would.

The Court: Mrs. Conant?

(T-515) Prospective Juror No. 4: Yes.

The Court: Mrs. Stern?

Prospective Juror No. 6: Yes.

The Court: I am going to ask the same question but with a different ending: In determining the truth or falsity of the testimony of any witness, would you, in accordance with the instructions of the Court, submit the testimony of such witness to the same scrutiny and test it by the same stand-