

that I am not going to put up with any unnecessary delays.

Mr. Nelson: But at the same time——

[fol. 12] The Court: But you will be given a full opportunity to present your defense, as the Commonwealth will have to present their case against you, but I am not going to subject myself or this Court to any unnecessary horseplay or acting on the part of anybody concerned with this case. It is going to be tried as a lawsuit, a court case here in this courtroom, as any other lawsuit or court case is tried.

Mr. Nelson: This is not an ordinary case, Your Honor. I think that you have made that point at some stage of these proceedings—you have indicated that this is a different kind of a case.

The Court: I do not recall that I made much distinction. We have other serious cases here, serious homicides.

Mr. Nelson: This is not a homicide case and there is no crime involved; it is a matter of political opinions, Your Honor.

The Court: Well, that is one of the things that is subject to argument in the matter—I don't know, that is your position probably, and that is not the position of the Commonwealth. So it is one of the things that have to be decided during the course of the trial.

Mr. Nelson: What I want to say, Your Honor, these quotes have been introduced and if an attorney——

The Court: These what?

Mr. Nelson: These quotes in the indictment from these various books that have been submitted as evidence, some thirty-odd books. How is an attorney going to defend me if he doesn't know anything about those books, when the books are on trial? It is on point thirteen, Your Honor.

The Court: I am not going to afford any counsel that you may get an opportunity of reading a large number of books in preparation for this trial.

Mr. Nelson: Actually, my contention is that this is not a triable matter. In that respect I differ with Mr. Glick's [fol. 14] remark that this is a serious offense. I see no offense in it. I committed no crime.

The Court: If it isn't a crime you will be entitled to have a demurrer sustained to the evidence which is submitted, or the matter submitted to the jury. Now we cannot accept

your contention here as the basis for making decisions preliminarily. It is alleged that there is a crime committed. The matter of quashing the indictment has been considered in the past, I suppose. If the indictment is sustained by the evidence it probably constitutes a crime. You say that the evidence is not sufficient to sustain the indictment, that there is no crime committed. That is the matter that we have to try and the sooner we get to work trying it the sooner the matter will be disposed of.

Mr. Nelson: Well in that respect, Your Honor, I feel that I am being forced to go to trial without adequate preparation and it would be a violation of my constitutional rights, [fol. 15] and I would have to go to trial under protest. And Mr. Glick has let you know his opinion, that he couldn't go before he prepares—and I respect his opinions, and I don't think he asked for sufficient time to get acquainted because I found out that he hadn't read much of these books and he is not acquainted with them. And neither Mr. Doty, whom you suggested—

The Court: We have noted here as a matter of record your objections to proceeding with the trial at this time, and you will be granted exceptions to the ruling of the Court overruling your motion for further postponement, so that your record is in shape if we are wrong in that respect. I again tell you that I cannot extend this matter beyond next Monday for the actual commencing of taking of testimony and I am compelled to ask you to proceed with the selection of jurors without further delay. Once the jury is selected I will not ask you to proceed with the taking of testimony until next Monday, which will afford Mr. Glick or anyone else that you select at least four or five days to familiarize [fol. 16] themselves with the general outline of your case. Of course, it is not time enough for him to read all the books and all the records that have been made, but in view of all the opportunity you have had in the past to obtain counsel I think that it is not unreasonable to ask you to proceed. So that your motion for further delay, except as I have indicated, is overruled and an exception noted.

It is three-ten now, and if you wish me to summon a panel of jurors to commence with the selection of a jury for you now, I will do so; or I will delay that until tomorrow morning at nine-thirty. If there are any other preliminary

motions you wish me to hear and dispose of, you may present them now and I will be glad to dispose of them or hear your argument on them, or the argument of Mr. Glick, or anyone else.

COLLOQUY BETWEEN COURT AND DEFENDANT

Mr. Nelson: One more thing that I think ought to be on the record, Your Honor, it seems that you create the impression here in your statement now, and in previous statements, that I am stalling in this case.

[fol. 17] The Court: I have not intended to accuse you of deliberately stalling. The only thing I—

Mr. Nelson: The papers have made that into headlines.

The Court: Pardon?

Mr. Nelson: The papers have made that into headlines.

The Court: Whatever their interpretation may be, right or wrong, I am stating to you now that I am not accusing you of stalling or deliberately delaying this matter. I am saying that circumstances have caused it to be delayed too long now and you should proceed to trial without further delay, regardless of who is responsible for the delay to this point.

Mr. Nelson: Well, I want to finish my statement, Your Honor.

The Court: Very well.

Mr. Nelson: Let the record show that I was hurt in an accident; let the record show that as soon as I was released [fol. 18] from the hospital, two days later I was back in Pittsburgh, two days after I had been released by the doctor there.

The Court: I don't know that; that is subject to question. But I will grant you that I did receive the report of Doctor Wagner and Doctor Weinberg that you had been injured and that you were not able to proceed to trial the early part of October. That is the reason I granted you the extension to December the third.

Mr. Nelson: That is right.

The Court: Your return to Pittsburgh after the accident, I have no knowledge of that.

Mr. Nelson: That is right, I returned and reported here two or three days later after I returned. And let the record

show that during that time I have seen these attorneys, and because of the political character of this trial and the hysteria and atmosphere, that was the main reason why many good attorneys did not come into the case. And now, [fol. 19] Your Honor, you are urging that the trial go on with the few attorneys who are considering it now, without adequate preparation. I say that the burden cannot be put on me, that I have delayed the trial; that the reason the trial didn't take place was not because of the grace of this Court but because I was unable physically to go ahead.

The Court: That is true, you were unable to proceed.

Mr. Nelson: It is constantly thrown up to me by the prosecution——

The Court: That is the reason the delay was granted. I grant you that is a correct statement, but at the same time it is equally correct that my statement to you at that time, when I granted you permission to leave this jurisdiction, was that I would entertain no more applications on the basis of lack of counsel.

Mr. Nelson: Well is the Court then ordering me to go to trial without counsel?

[fol. 20] The Court: I am ordering you to proceed to trial with or without counsel. If you do not elect to accept one of the men that have been suggested to you, who have indicated their willingness to proceed with you, then select someone else. If you see fit not to select one of them, or anyone else, then I shall appoint counsel to sit by you and advise you of your rights, and you can conduct your own trial with them advising you as to where your legal rights lie if you are unfamiliar with what they may be.

Mr. Nelson: In that case I have to think this over, and the Court may do whatever you think—whatever you want to do, but I want to have my record protected.

The Court: You are having that done now.

Mr. Nelson: I object to this kind of procedure and the whole business about compelling me to meet with attorneys and in an hour or half an hour, in the corridor, and expect me to come back with an answer.

The Court: You had an opportunity——

[fol. 21] Mr. Nelson: I object to it.

The Court: You had an opportunity to talk to lawyers for two months, as far as I know, and Monday morning

when I knew you were still without counsel I did everything humanly possible in the last two days to find men at this bar who would be willing to defend you. I did that, I suggested names to you. That is as far as I can go with you, Mr. Nelson. We shall proceed tomorrow morning with the selection of a jury in this case, if there are no preliminary motions to be filed in connection with it.

Mr. Nelson: Well, Your Honor, naturally, I have no counsel at this minute, but there are motions that I intend to file. I will have to consider whether I will have the motions presented by an attorney that the Court will appoint, but at this stage I cannot ask a decent attorney to come into this kind of a shotgun wedding and try to protect my rights.

The Court: That last remark is a little bit contemptuous, [fol. 22] but I will overlook it at this stage of the proceedings, Mr. Nelson. I will grant you the additional courtesy, since you are not advised by counsel this afternoon, of affording you an opportunity tomorrow morning to file any additional motions that you may have; but you will file them at nine-thirty and not one minute later, when this Court resumes.

(Court adjourns at 3:15 P.M. until tomorrow morning at 9:30 o'clock A.M.)

(Wednesday, December 5, 1951 Court convenes pursuant to recess of yesterday afternoon and the preliminary proceedings continues.)

Morning Session

The Court: All right, Mr. Nelson, do you have some motions?

SUBMISSION OF AFFIDAVIT OF PHYSICAL CONDITION OF DEFENDANT

Mr. Nelson: Your Honor, I have an affidavit pertaining to this matter of counsel. If you want—I couldn't type it, I didn't have the time but I wrote it out, and it is notarized—but if you want me to, I will make some comments on it now. I want to repeat—

The Court: Wait until I read it and see what it is; maybe comments will not be necessary then. You say Horace Meldahl has agreed or offered to defend you and is ready to come in about January 1st, is that correct?

Mr. Nelson: That is about right, yes.

The Court: "About January 1st", that is rather indefinite. Is he here in town?

Mr. Nelson: No, he is not, Your Honor. I was trying to contact him yesterday and I couldn't reach him. He was out of town—that is, he wasn't in Charleston. His family thought he was in Fairmont, and I couldn't connect with him.

The Court: And you have Aubry Grossman of New York?

Mr. Nelson: Yes, Your Honor. I have a telegram that I received. I have been in contact with this man for quite a while, but he had other urgent business and couldn't [fol. 24] come in immediately. And that telegram says that he would come in immediately but he would need sixty days to prepare the material for the trial.

The Court: Mr. Cercone and Mr. Lewis, you better look at this. This telegram as well. Do you have any other motions, Mr. Nelson, outside of this one, that you want to present?

Mr. Nelson: Yes, I have an oral motion I would like to present. I had no chance to prepare it.

The Court: Just a moment then.

Mr. Cercone: Your Honor please, after looking over this affidavit and this telegram we have come to the conclusion that Mr. Nelson just doesn't want to go to trial—doesn't want to go to trial today or next month or any time, if he can help it. Now we had this case set in September and, certainly, I think with all the available opportunity given to Mr. Nelson to go to New York and Philadelphia and elsewhere to retain counsel, he certainly must have spoken to this Mr. Grossman.

[fol. 25] The Court: I am not concerned too much about his engagement of counsel; the only thing that concerns me in this matter, Mr. Cercone, is whether or not this man is physically able to conduct his own trial. I told him yesterday he would go to trial today with or without counsel. At that time there was no mention made that he was phys-

ically incapable of trying his own case. Now we have had him examined by physicians in the past. Sixty days ago there was a postponement on the basis of a certificate of Doctor Wagner and Doctor Weinberg that at that time he was physically unable to proceed with the trial even with counsel. Now he raises the same question.

Mr. Cercone: Well I think he could get counsel if he really wanted to. And in the first place, in the first case Mr. McTernan was only retained two days—he came in here and told the Court he only had been retained two days and yet he was ready to go to trial. And that case lasted eight months. There's an attorney that only had two days' time.

[fol. 26] The Court: Let us assume he refuses to retain counsel and elects to try his own case; we are placed in this position of having a question raised as to his physical capacity to try his own case. He says in his affidavit that he has not the physical strength and the full control of his mental faculties, due to his accident, to proceed to try this case himself at this time.

Mr. Cercone: Well that part of it, of course, we don't know. We have to have the doctors tell us that.

The Court: That is the point that troubles me. Aside from the engagement of counsel, he says now he is physically and mentally unfit to proceed to try his own case. If I compel him to do so, in view of that, without an examination, it may be prejudicial to him, undoubtedly, if his statement is correct.

Mr. Cercone: Certainly we don't know a thing about the medical status of his health, but we do know that at the last trial he acted as his own attorney.

[fol. 27] The Court: Do you have any supporting evidence this morning, Mr. Nelson, as to your present condition and as you allege in your petition?

Mr. Nelson: Your Honor, I don't have that, but if you will recall Monday morning I put a petition in front of you—

The Court: Yes, asking to go to Philadelphia on Wednesday of this week.

Mr. Nelson: The reason was that I have no doctors in Pittsburgh at the moment.

The Court: Did you see Doctor Weinberg or Doctor Wagner since they examined you?

Mr. Nelson: No, I did not. And I didn't understand that to be the case, that I had to go back to them or that they would be willing—

The Court: They were only selected for the purpose of an examination.

Mr. Nelson: I asked them, since they can't treat me, to recommend a doctor, and in the course of the discussion [fol. 28] Doctor Ferderber was mentioned, that he is the man who follows through on these kinds of cases. And the day before I went to see him, he suffered from a serious injury, if you recall, and I did not have a chance to see him. And I have no other doctor in town, although I don't want this—I take exception to the remarks here that infer that I am trying to hide behind my physical condition.

The Court: That is the District Attorney's opinion. I told you yesterday that I did not accuse you of deliberately delaying this thing. I am not going to venture an opinion on it, the matter before us, whether or not you are physically able at this time to go ahead and try your own case.

Mr. Nelson: What my petition states, Your Honor, and its emphasis is on the fact that I was unable to do everything in my power to actually go to places and see people because of physical reasons as well as other difficulties put in my way. I indicated that not only was it hard for me to go to places and get around—

[fol. 29] The Court: Well you did get around, you got to those places nevertheless, and also you have been in Court a dozen times since I granted you the postponement. So you had some freedom of motion at any rate.

Mr. Nelson: That is despite the fact that I am able to get around; when I do, it is hard on me.

The Court: It may be with great effort on your part.

Mr. Cercone: This case was set for December 3rd, Your Honor, and the defendant has not come in with a medical excuse until this morning. Up until this time he has been arguing about not having counsel all the time, and now he comes in, three days after the scheduled date of the trial, and tells us that his physical condition isn't—

The Court: Well, the reason for that is that he has been relying on his assertion that he could not get counsel, and [fol. 30] then when the Court procured three men and they volunteered to serve him, why, he declined them for the reason, he said, that they would not have a chance to prepare his case properly and, therefore, he would not engage them.

Mr. Cercone: My point is that he didn't mention his physical condition Monday morning.

Mr. Nelson: Your Honor, that is what these men said themselves, not I. Mr. Glick is here; he made his own motion here.

The Court: Yes, I recognize that.

Mr. Nelson: He said he couldn't go ahead; and it wasn't I who said I couldn't go on.

Mr. Cercone: My only point is that you didn't say a thing about your physical condition on Monday or Tuesday. He said nothing about it until this morning. Why didn't he come in Monday and tell us about these things?

The Court: I think that the point involved is this: Is [fol. 31] he or is he not able to try his own case at this time?

Mr. Cercone: We don't know that.

Mr. Nelson: Your Honor, may I get this point straight here, please: My petition was written in a—rather, this affidavit was written in a hurry this morning. I had no time to go over it and get it in proper shape. It may be that it conveys the idea that I am pleading principally because—that is, not to go ahead because I am ill. It is not that. I put in there that I was badly incapacitated and I was unable to get around and see men in the past, and I was physically handicapped, Your Honor, to get counsel. My question is that I have no attorney this morning; I want that to be understood; and that physically I am not in shape to defend myself at this time.

The Court: That is the only point I am concerned with, because I think you have had ample opportunity to get counsel. You have been around to see them and you had two months to do it under my previous order of postpone-[fol. 32] ment. Monday when I learned that you did not

have counsel I did the best I could to get men to volunteer to—not volunteer, but to agree to serve you.

Mr. Nelson: Well, you know you give me very little time to see them. I saw Mr. Glick for fifteen minutes in the room—can you discuss with a man anything about this case if he came in at twelve o'clock and twelve-fifteen he walked out? Wasn't that right, Mr. Glick? Yesterday it was.

The Court: Well, he said you walked out on him, that he was to meet you in the hall and you left the court and didn't come back in the fifteen or twenty minutes he was waiting for you.

Mr. Cercone: Beside that he had two months to talk to attorneys.

Mr. Nelson: I called his office to try to locate him.

Mr. Glick: I was here waiting for you and you were out [fol. 33] some place. The reason you didn't get me in my office is because I was here waiting for you.

Mr. Nelson: Well I didn't understand it that way. I was here and saw the other man after you got through. Mr. Doty was out there. You left me.

The Court: I think I understand the proposition. Let me have the petition. We will recess here for ten or fifteen minutes until I decide what to do with this.

Mr. Nelson: Will it be understood then, Your Honor, that I can make one or two motions such as I am able at this time because—

The Court: You better make any other motions that you have to make preliminarily at this time.

RESUBMISSION OF MOTION TO DISMISS, ETC.

Mr. Nelson: I will, Your Honor. I must make this motion. In view of the fact that I was unable to prepare and I am not trained in law, the necessary motions, pre-trial motions, I move the Court that the motions filed in the [fol. 34] past pertaining to various rights that I should have protected, that they be applied to this case pending such time as I am able to get attorneys who will be able to bring those up to date, or write new ones applicable for

now. I respectfully ask the Court to permit me or to give me the right and protection which I am entitled to under those motions filed.

The Court: The only motion I find on record among the many papers is a motion to dismiss.

Mr. Nelson: Well, as I understand it, Your Honor, there were other motions. There was a motion regarding, I think it was on the question of a bill of particulars; and I think there was motions dealing with counsel even at that time.

The Court: You name them and I will consider them as motions made at this time, but you cannot make them in a general way because I do not have any knowledge of the record in the trial of the other case in which you were a party.

[fol. 35] Mr. Nelson: Will you permit me to file any motions which are going to be proper as the trial goes ahead or the course of time that I get counsel?

The Court: Any preliminary motions must be made before the jury is sworn. I told you I would give you until this morning to decide what they were, that you wanted to file. Now is the time to file them, but I cannot accept in a general way a cover-all motion for me to consider every motion that was filed in the trial in the other case, I can't do that. If you want to file a particular motion or refer to particular motions with leave to prepare them in writing and file them later, you may do so.

Mr. Nelson: All right.

The Court: If you name them I will permit you to do it in that fashion.

Mr. Nelson: Yes. I believe—I don't know the proper order of these, Your Honor, and I, therefore, am hesitant about it.

The Court: Well one was for a change of venue. As I [fol. 36] recall, that was one. Do you want to make that motion?

Mr. Nelson: Yes, I want to renew that motion.

The Court: What else?

Mr. Nelson: The bill of particulars.

The Court: A motion for a bill of particulars?

Mr. Nelson: That is right. And just a minute, Your Honor, let me see through my papers.

The Court: All right, refer to your papers.

Mr. Nelson: We stated the one for the——

The Court: The change of venue, a bill of particulars, and a motion to postpone.

Mr. Nelson: A motion to dismiss the indictment. I have one final motion to make. I move the Court that I be permitted to consult with such counsel as I can obtain either here or elsewhere to help me write a motion—or, rather, write an affidavit indicating bias by the court and urge [fol. 37] the presiding judge of this trial to disqualify himself in this case on account of prejudice.

The Court: All right. You will set forth all bases for that allegation, of course, in your affidavit.

Mr. Nelson: Yes, Your Honor. I believe that I am entitled to that, and I believe there is sufficient reason to cause me to feel that you are acting, I mean, very biasedly towards me in this case and I couldn't possibly get a fair trial before you. However, I don't know how to formulate such a thing.

The Court: Well Mr. Glick who I presented to you yesterday is here. He is, I am sure, willing to aid you in your preparation of such a motion, if you want it done.

Mr. Nelson: So I move that you disqualify yourself in this case, and I be permitted to file the affidavit with all the particulars that the lawyer will help me draw up.

The Court: All right. Then you want permission to place [fol. 38] in writing, in addition, the motion to postpone, the motion for change of venue, the motion for a bill of particulars, to dismiss the indictment, and for the present presiding judge to withdraw on account of alleged bias or prejudice?

Mr. Nelson: That is right.

The Court: All right, you may prepare those in writing and submit them, but do so at once.

Mr. Nelson: Is there a time limit on that?

The Court: Yes. By Noontime today. Mr. Glick is here today to help you.

Mr. Nelson: I am talking about the other motions.

The Court: Well you want to file a motion for change of venue. You entered it orally and you can prepare it by Noontime and file it by Noon. That will give you two hours. You certainly can prepare those motions by that time.

Mr. Nelson: I don't believe that I could write those in [fol. 39] that brief space of time.

The Court: With the assistance of counsel?

Mr. Nelson: He don't know anything about the case.

Mr. Cercone: He knows how to make formal motions.

Mr. Nelson: Except for the legal aspect of it.

The Court: These preliminary motions must be passed upon immediately, Mr. Nelson. You must file them, put them in writing by Noontime if you want them a matter of record here. Do it in that fashion or don't do it at all.

Mr. Nelson: In that case, Your Honor, you are pressing me unfairly, and I believe that is an added indication that—

The Court: That I am prejudiced.

Mr. Nelson: You are prejudiced and I can't get a fair trial before Your Honor.

The Court: All right, we understand you. File the motions [fol. 40] in writing by Noontime. You will have the assistance of Mr. Glick to do so. I will rule on the motions by that time.

Mr. Nelson: Where am I to appear and what time, Your Honor?

The Court: We will take a recess.

Recess

(After Recess.)

COLLOQUY BETWEEN COURT AND DEFENDANT

The Court: Do you have the other motions ready now, Mr. Nelson?

Mr. Nelson: They are not ready, Your Honor. What I have got is several motions that I found from the old trial, which you indicated to me may not be there.

The Court: They are not in the record as kept by the Clerk of Courts. Probably they were in the testimony.

Mr. Nelson: I had no chance to change them, nor did I feel qualified that I could improve them. I had very [fol. 41] little chance to discuss them with Mr. Glick; he only advised me on one of these. So that I have here—here's a motion to quash the indictment. I suppose I ought to sign that—as introduced in the trial last year. Here

was the request for continuance, by Mr. McTernan when he came into the case, which raised certain questions that the defense faced then. And I feel that there are some points raised here that I need to have introduced here to give me added protection. I haven't signed that yet; I think I should. I had no chance to certify them.

The Court: They are signed; that is all we are looking for.

Mr. Nelson: Then I have one brief motion which I wrote up now asking for a change of venue, indicating the reasons why, and to which I attach the similar motion—or, a similar motion that was introduced in the last year's trial.

The Court: Very well.

Mr. Nelson: Yes, this is signed. Then I have here [fol. 42] a motion dealing with the matter raised this morning regarding what I believe to be prejudice and bias on the part of the Court, and the reasons that I have been able to cite briefly here. I had no time to attach clippings, which I couldn't get in time.

The Court: Well, it is not necessary to attach supporting evidence. If the reasons are sufficiently definite, why, we will consider them.

Mr. Nelson: Well do you want me to make my points or argue on them now, or do you want to read them first?

The Court: No. We will consider them, and after lunch you may have an opportunity of adding to them if you wish orally.

Now as to your general motions for postponement which have been submitted, which I have been studying, I think we have been through most of it before—your inability to get counsel. I have rejected that as a reason for the reasons I have already stated on the record here. You [fol. 43] have undoubtedly been in contact with many lawyers in New York City, Cleveland, Detroit, Philadelphia, West Virginia, California, Portland, and Pittsburgh lawyers; so that you have had some ability to make contact with them, if not personally, by letter or other means of communication. As to the presently suggested lawyers (Mr. Martin, Mr. Doty, Mr. Blanchfield, and Mr. Glick) we understand that they were suggested to you only re-

cently, and we have overruled their requests for postponement in order to prepare for your trial. I think that needs no further discussion.

Mr. Nelson: Mr. Blanchfield did not ask for more time.

The Court: Mr. Glick, specifically, asked for more time, but I think Mr. Blanchfield said he would proceed immediately, yes, that is true. In addition, you say that you have been restricted in travel. Well, that is true, we did restrict you to going out of the State, I think for a period [fol. 44] of one week on one occasion. And you were granted other privileges to travel within the State, were you not?

Mr. Nelson: No, Your Honor. I understood that I had to be—I had to stay within the County. In fact, that matter came up last year, not knowing that I had to be in the County I took a trip to Philadelphia and that was made a big point here by the prosecution.

The Court: Possibly I was mistaken, but I thought you had been granted additional privileges. The only thing that impresses me on this, Mr. Nelson, there is an allegation of present disability, or what disability you had, a remnant of it at this time that precludes you from conducting your own defense here. I refuse to consider that disability as having anything to do with the procurement of lawyers; but I will consider it as a reason for further postponement if you are not physically able to defend yourself in this matter. Now you haven't any supporting evidence other than the examination and report that I have from Doctor [fol. 45] J. Huber Wagner and Doctor Max H. Weinberg, who indicated two months ago that you were still convalescing. Now if you wish me to, in fairness to you, I will be very happy to delay starting this thing until Doctor Wagner and Doctor Weinberg make a present examination of you. And if they will certify that you are at this time unable to proceed with the trial acting in the capacity as your own lawyer as well as defendant, I think there is merit in your request for further postponement. If they are of the opinion that you have progressed sufficiently to engage in the matter before us as both defendant and acting as your own lawyer, we will have to ask you to proceed, unless different action is taken on the other motions

for change of venue, a bill of particulars, and prejudice, and so forth, which we will discuss with you this afternoon.

Now I present the question to you at this time: Do you want to submit yourself to further examination by Doctor Wagner and Doctor Weinberg at this time for the determination of that point?

[fol. 46] Mr. Nelson: Yes, Your Honor, I am willing to submit to those gentlemen for examination, but bear in mind that I don't think that ought to raise the question of the kind of a financial matter that becomes to me. These men are highly qualified doctors and every time you see them it costs a good deal of money.

The Court: Yes, I realize that.

Mr. Nelson: And I still owe them for the last examination, because I am strapped with it, from finances. So there is that matter. However, I would be willing to submit to their examination if the Court so orders, without any financial hardship on me. That hardship was brought on the last time by the prosecutor, who claimed that I was faking. He got up and said—I think it was Van der Voort—got up in this Court before Judge Kennedy and said, "This is some more of that Commie stalling tactics." And that caused me a good deal of expense, cost me a good bit of money, as well as an insult, which was carried in the newspapers.

[fol. 47] The Court: Well the only reason that I think the burden is on you in this matter is that in this affidavit which you filed with me you say that you are still under medical care and suffering from concussion, pain in the right leg, and because of a nerve injury you have no control of the leg, your head concussion is causing you severe pain. Now at this time all I have on that is your own word, an affidavit. Therefore, I think the burden is on you to submit to me medical testimony on the point, on which you are relying, as I understand you, for further postponement of this matter.

Mr. Nelson: Well, I will ask Your Honor to give me a chance to see the doctor with whom I had an appointment that was arranged for me by Mr. Moore, my doctor in Philadelphia, at Temple University Hospital. I under-

stand he made the appointment for me with a specialist—I think the name was “Doctor Scott”—and I was to see him this afternoon. I had to send him a wire that I couldn’t come because I saw no chance of getting any [fol. 48] reasonable cooperation on your part, so I had to send him a telegram that I couldn’t come. And I believe that those doctors there who had helped me tremendously would have been of aid to me; and I am sure that Doctor Wagner would agree, as well as Doctor Weinberg, that they are the most qualified men in the field and they would have given their indication what my shape is in, what my physical shape is.

The Court: I know that Doctor Scott and Doctor Moore did take X-rays at Temple University Hospital, a rather large number of them, indicating that you had been closely observed and examined. I do not know the reputation of those men, and unless the District Attorney would have some objection, I would give consideration to a report from Doctor Scott and Doctor Moore, subject to confirmation by Doctor Wagner, that he would look at the report and tell me that the conclusion drawn is based on sufficient facts and the reputation of the man is such as to justify my reliance upon his credibility, I would be glad to consider such a report.

[fol. 49] Mr. Nelson: Well, may the court please, I don’t know the man either, I never heard of his name, I don’t know what he looks like.

The Court: That is more reason why we should rely on him.

Mr. Nelson: This was to be the first time for special examination. The orthopedic aspect of cases are taken care of by Doctor Moore, and the last time I saw him he told me that I would have to come back to see him once more at least, and set the date for January the 18th or—I had the card for that but I don’t know what this other man would say about what he finds.

The Court: Well are you willing to rely on what he would say as to your ability to proceed with the trial of this case acting as your own counsel? I cannot force you to take counsel if you don’t want to take counsel. You claim you have been unable to get counsel, and the only

thing I can do is afford you the opportunity of having counsel. You are given that opportunity. If you decline [fol. 50] it, then I am placed in a position of having to compel you to proceed with the trial unless you are physically unable to proceed.

Mr. Nelson: I indicated to you that I could not go to trial here without counsel. It was a different matter in the first trial—and I don't think that Mr. Cercone, who made these particular objections several times, needs to be facetious about it, he knows that, and I know and Your Honor knows that I had at my hand there a capable attorney who was able to defend my legal rights which I did not understand. In this trial the situation is different, I would have to take care of my political rights, political views which are on trial, as well as my legal rights, in which I am not trained. So I need counsel now whether I am well or not—I need counsel. I contend that I am not well enough to go to trial at all. I would much prefer if the Court would appoint local doctors to examine me, not compel me to run around still further and make an imposition on these new doctors to write affidavits and whatnot. You know they are complicated and they don't like to do that. [fol. 51] Since the matter is in the hands of these doctors, I don't know them, I never met them before the Court has appointed them, so let them find their answer to the question. I think the Court is obligated to that extent to do that.

Mr. Cercone: I think that this——

Mr. Nelson: I have one more word, Mr. Cercone, if you please. I want to raise objections too—that is, take exceptions to the rulings that you have made regarding those questions that were before you this morning.

The Court: Well, we have not ruled on them yet. I am asking you whether or not you will submit yourself to doctors for a determination of that matter. So we are at the point of deciding whether or not you will pay for such an examination. I have indicated to you that since you wish that asserted as a reason for further delay, that it should be your obligation. If you are willing to submit yourself to Doctor Weinberg and Doctor Wagner again, possibly they would merely charge you a nominal

[fol. 52] amount since it is a re-examination and calls for only the reaffirmance of their previous conclusion. However, I don't know, I don't know what the charges of the men were in the first instance, and I don't know what they would charge you now. But I have no way of defraying your expense from this position.

Mr. Nelson: From my point of view it would be better all around, even though it is going to be harder for me to make the trip, to go to Philadelphia, because I could, in addition to obtaining this affidavit, which I don't know what it will be, I will at least get such treatment as I need, you might say in the same package.

The Court: We will appoint him for treatment as a specialist if there is a good reason.

Mr. Nelson: Well, that is going to be a hardship but I think it may work out better for me, and probably less expensive.

Mr. Lewis: I would like to state the Commonwealth's position. There is only one question here, as we see it, [fol. 53] and that is whether or not Mr. Nelson is physically able to go to trial today. Now I say that he should be examined by a reputable physician in this County where he can be examined just as soon as possible, so that we won't have any more delay. We know nothing about those doctors down in Philadelphia. Perhaps they are reputable doctors, but after all they are going to be Mr. Nelson's doctors, who he is going to for treatment. And I believe we should have doctors that are absolutely neutral in this matter, and I think it should be done right away. If he is allowed to go to Philadelphia for this examination it is just going to be more delay and it is going to be an examination by his own doctors. The Commonwealth objects to that.

The Court: Well, Doctor Wagner and Doctor Weinberg were his own doctors. They were suggested by the Court and he, at that suggestion, engaged them. We, the Court, the County, did not pay those doctors, as indicated here.

Mr. Nelson: Your Honor, the County is raising [fol. 54] these objections—the prosecution is—and if they insist, then let them pay for it.

Mr. Lewis; We are not raising it; you are raising it.

The Court: Yes, you are raising the question.

Mr. Nelson: You are raising the doubt about it. I am telling you the facts.

Mr. Cercone: You would be spending more money for transportation going to Philadelphia than to have a doctor here. He has been going to Philadelphia every weekend, and New York.

The Court: He has a right to bring in any doctor he wishes.

Mr. Nelson: I object to that, Your Honor, because I have not. The record will show that I made two trips East with the knowledge of the Court, in the last two months.

Mr. Cercone: That's right, with the knowledge of the Court, yes.

[fol. 55] Mr. Nelson: Well, I take exception to that, Your Honor, because that isn't true.

The Court: If we had known that you had taken trips without our knowledge it would be, of course, a violation of your bond, and probably we could assume that you did not.

Mr. Nelson: How could I with them hanging around my place and my house all the time?

Mr. Cercone: If Your Honor please, Mr. Nelson will talk here for the next month if the Court lets him. I think he is physically fit for trial and ought to be tried.

The Court: Well I am not going to be put in the position of forcing him to try his case himself if he is not physically able. I want some information concerning that, and we are giving him an opportunity to present that information to me, either from Doctor Wagner and Doctor Weinberg, or from the Doctor in Philadelphia, Now if you don't agree with the doctor from Philadelphia, then I will afford you the opportunity of having him examined, too.

[fol. 56] Mr. Cercone: Well, I say that ostensibly there is nothing wrong with the man now. He is up here arguing with the Court.

The Court: Well he says that there is.

Mr. Cercone: He is filing petitions and making all kinds of suggestions to the Court here. He is in perfect physical condition as far as we can see it.

The Court: And the Court is here to adjust the matter equitably between the Commonwealth and the defendant, and we shall do so as long as we are sitting in court and so long as there is an issue involved we are going to settle the issue. We might as well have an understanding on that now among all of us.

Now as I said to you both, the issue involved here is whether or not I am right in forcing him to stand trial and be his own lawyer in his physical condition before I do know his condition. Before I do so I must have information to that effect, that he is sufficiently convalesced. There [fol. 57] is no denying that he was injured and injured seriously. I think that is admitted by all. The question is whether he has overcome the effects of that injury so that he can proceed here and start this case and complete it, rather than forcing him to start it and then he will break down or something like that and we will have to continue it indefinitely and never get it finished.

Mr. Lewis: Well the Commonwealth agrees with that, Your Honor, but we feel that the examination ought to be done here in Pittsburgh. We have competent doctors here and it can be done with due dispatch so that we will know exactly where we stand. I don't believe it is necessary for Mr. Nelson to run down to Philadelphia.

The Court: All right, you may be justified in that position. Can you suggest some way or some doctor that you want to examine him?

Mr. Cercone: It ought to be done by the same doctors as the last time.

Mr. Lewis: Doctor Wagner.

[fol. 58] Mr. Cercone: He can do it right away.

The Court: We have confidence in Doctor Wagner and Doctor Weinberg, so I see no reason why you should not submit to them again, except for the matter of expense.

Mr. Nelson: That is the only problem.

The Court: It is not our problem. You want us to consider that, Mr. Nelson, as a reason for postponing this case further and it seems to me that you are the one that must provide that information to us. You are asserting your inability; you should establish it.

Mr. Nelson: Your Honor, the reason I am reluctant to accept everything that the prosecution throws in front of

me is because of financial reasons, and all these things are terribly expensive to me.

The Court: Yes, it is.

Mr. Nelson: And as I thought about the matter here, [fol. 59] after I do get examined by them I still get no assistance from them. That's my point.

The Court: It will merely be an examination. You will get no treatment.

Mr. Nelson: So that I have reasons to ask—good reasons, valid reasons, to ask to be examined by those who will also recommend treatment. And, therefore, I think that the Court is weighing the question, and I believe that probably the best thing will be if I see those men **where** I am already committed financially. And, incidentally, I hope the insurance company will pay for it—so that is a consideration.

The Court: Well that may be, I think you are perfectly right, but I think it would be cheaper and I don't think Doctor Weinberg or Doctor Wagner would charge you an exorbitant fee for this additional certification confirming what their findings were. They have your history and all. If you will submit yourself to them and have them send me a report as they did the last time (at your expense, of course) why, I will delay this thing until I get that report. [fol. 60] I will make the necessary arrangements with them for their examination of you.

Mr. Nelson: It seems that I have no choice, Your Honor. I think I will accept this proposition. Does it mean that the Court will call him up and tell him to make such arrangements with me?

The Court: I will go that far with you, I will call Doctor Wagner and Doctor Weinberg and ask them if they will give you a current, up to date report on your present condition.

Mr. Nelson: All right.

The Court: With the idea of answering the question of whether or not you can undertake and endure this trial and act as your own counsel.

Mr. Nelson: Yes, sir.

The Court: Now I will try to communicate with Doctor Wagner and Doctor Weinberg this afternoon. If you will [fol. 61] remain in the courtroom—not in the courtroom,

but in the vicinity of the courtroom, until we have made the contact. We will advise you when and where that examination can be made.

Mr. Nelson: I see. Will I be required to be in this afternoon at any particular time regarding these other motions?

The Court: Well, I should say we will recess until two o'clock.

Mr. Nelson: I see. All right.

The Court: That will give you some definite information as to what time to return.

(Noon Recess)

Afternoon Session

The Court: The delay here has been due to my efforts to communicate with these doctors. Insofar as Doctor Wagner is concerned, he will see you now, Mr. Nelson, as soon as you can get over to his office. Insofar as Doctor Wein- [fol. 62] berg is concerned, I have not been able to locate him yet; but as soon as I do I will make arrangements for you to visit him. So that until you have been so examined, I see no reason to proceed with the arguments on these other motions. If you are examined and found not physically able to proceed, you will have to renew those motions when the matter is re-listed. So that the first thing to be attended to is your examination. I would suggest that you go to Doctor Wagner's office on William Penn Place—Doctor J. Huber Wagner—just the other side of the street, below Grant Street here, and subject yourself to his examination. I asked him to give me a report on the basis of your ability to proceed with the trial and act as your own counsel, and to report to me this afternoon or the first thing in the morning.

Mr. Nelson: Your Honor, would you grant me the right to have the two doctors meet together, if I could so make the arrangement?

The Court: If you can make the arrangement, I have no objection. I am having a hard enough time to get them [fol. 63] to examine you separately, but if you can have them examine you together, that is quite agreeable with me.

Mr. Nelson: I felt that since one man is a specialist in one field and the other one in another——

The Court: Well they can examine you separately and then collaborate and decide what their opinion is. They may do as they did before and file a joint report, and examine you individually. That is agreeable with me as long as I get a report in here by tomorrow morning.

Doctor Wagner is waiting for you now. If you will come back, or have him call as soon as he is through with you, I will give you word about Doctor Weinberg at that time, I hope.

Mr. Nelson: All right.

The Court: So that these other matters will wait until we find out what disposition will be made of your motion to postpone this trial on the basis of your physical condition.

We will recess until tomorrow morning at 9:30.
[fol. 64] (Court adjourns at 2:30 o'clock P.M. until tomorrow morning at 9:30 o'clock A.M.)

(Thursday, December 6, 1951 Court convenes pursuant to recess of yesterday afternoon.)

Morning Session

The Court: The Court has received word from Doctor J. Huber Wagner that you are physically able to proceed with the trial, Mr. Nelson. The Court has also received word from Doctor Max H. Weinberg that he cannot certify to that fact unless you are subjected to a test which he recommends. If that test is negative, he says it is his opinion that you are capable of proceeding with your trial, Mr. Nelson. If it is positive, a delay should be granted to you. I suppose Doctor Weinberg explained that to you, did he?

Mr. Nelson: No, he didn't.

The Court: You were examined by him last evening——
[fol. 65] Mr. Nelson: That is right.

The Court: And I have his written report before me. That test is what is known as a pneumoen-cephalogram. He recommends that it be done, Mr. Cercone.

Are you willing to submit yourself to such a test, Mr. Nelson?

Mr. Nelson: Well, Your Honor, I think that this puts the burden, financial as well as other burdens on me. At least that has been the position of the Court until now and I don't think that is fair.

The Court: You want the postponement based on your physical condition, so it is up to you to establish it. We have gone over that before.

Mr. Nelson: Your Honor, I want the record to show—and I would like to look over the petition that I gave you because it was given in handwriting and I kept no record, that is, I had no duplicate of it—I want to see how that [fol. 66] point was phrased, because my intention was, in raising the physical situation, that I was under—to indicate that I was not able to run around, as the implication was from the prosecution and from the Court as well, to go out freely and get counsel. That was one element in the situation, although the main reason I didn't get counsel, and it is for that reason I can't go to trial, because of the political climate and because of the prejudice here where lawyers fear to take on my case. I wanted that to be strictly understood, Your Honor. I can't put it in legal words, but my intention is now to make that absolutely clear.

The Court: I think that is clear.

Mr. Nelson: Two months ago when I went to see those two doctors that were appointed by either yourself or Judge Kennedy—

The Court: It was Judge Kennedy.

Mr. Nelson: I told them: I didn't come here to cry to you gentlemen regarding my physical situation. I think [fol. 67] that any competent doctor that would examine me would have known that I was not in shape to go ahead. Well, if they give you an answer then that I was not in physical shape to undergo a trial then, it should be assumed, it seems to me, that I wasn't free to run around, that I had to convalesce and recover—and there was that element that I raised in my petition.

The Court: We have overruled that objection, Mr. Nelson, and I granted you an exception. If we are wrong in that, of course, if the verdict would be against you, you would have a right to argue that before an Appellate Court. The

only other thing in your petition which I interpreted—possibly erroneously—that after having your motion overruled for a continuance on the basis of lack of counsel, you say you are physically unable to carry on yourself. Now if I am wrong in that, we will proceed immediately.

Mr. Nelson: I indicated, Your Honor, that I am not competent to defend myself legally, properly.

The Court: Not by reason of your health?

[fol. 68] Mr. Nelson: Not by that alone, but I am also under physical strain and if I am compelled to go to trial without counsel it would be doubly difficult; it will be to my disadvantage, and I think the Court should consider that and give me a chance to get prepared for the trial with adequate counsel, and recover as well as I might within a reasonable time to be able to undergo that strain.

The Court: Well, I answered you on that many times, and I will answer you again that I feel you have had ample opportunity to get counsel and, therefore, as I told you two months ago, I cannot entertain that as a reason for further postponement. So if that is the reason you are relying on, we will proceed to summon the panel of jurors after disposing of these other motions, and proceed. If you are not relying on your physical condition at this time, there is no need for us to bother the doctors any longer or any more.

Mr. Nelson: One moment, Your Honor. Shouldn't I be [fol. 69] allowed to read their reports, the first one and the second one as well?

The Court: Well, they are personal reports to me; I decline to let you see the first one. I told you you could go and see the doctors and they could tell you everything about your condition that was important for your information. And likewise with this one, you can see Doctor Weinberg and you can see Doctor Wagner. These reports are in my possession. You know they are available here and I see no reason in submitting them to you at this time. You still have the opportunity of consulting the doctors about their opinions. I have indicated what Doctor Weinberg has concluded.

Mr. Nelson: Let me ask you a question, Your Honor.

The Court: Yes.

Mr. Nelson: If I had an attorney in this case would he be entitled to read that report?

The Court: He wouldn't any more than you are.

[fol. 70] Mr. Nelson: He wouldn't?

The Court: No, sir.

Mr. Nelson: Well, I take exception to that, Your Honor. I believe anything connected with me is my rights, particularly when the Court ordered me to pay for that record.

The Court: That is right——

Mr. Nelson: I think that indicates unfairness on your part, and prejudice. And I believe that is putting me at a disadvantage to go ahead with this trial under these circumstances. Now I want to ask another question: Is it the order of this Court that I find these doctors or are you going to pick them again and have me pay for their services?

The Court: You will have to pay for their services if you want their evidence. I am not going to pick them. Doctor Weinberg suggested two doctors. He suggested Doctor Rowe or Doctor Bragdon. I am not personally acquainted with either one of them. Doctor Rowe is associated with [fol. 71] the West Penn Hospital, and Doctor Bragdon with the Mercy Hospital. You can make your selection and talk to Doctor Weinberg about it again if you wish. I haven't any objection to that.

Mr. Nelson: Doctor Weinberg was very uncommunicative as to what his opinions were, and I presumed that to be because he wanted to consult with the other doctor in the matter—I don't know.

The Court: Well, they sent in separate reports.

Mr. Nelson: I didn't know what the case was. I want it—well, I won't go into the matter of doctors until that matter is completely concluded as to what I think about how this matter was handled.

The Court: Do you want to submit to this suggested test at the hands of either Doctor Rowe or Doctor Bragdon, or any neuro-surgeon you may select? I have no suggestion; you can name your own neuro-surgeon.

[fol. 72] Mr. Nelson: In view of the fact that I don't know any, I will submit to this examination under protest, Your Honor.

The Court: Well, you can either submit to it or not submit to it; I am not compelling you.

Mr. Nelson: I want the record to show that I have been put through a grill here on the part of prosecution; they have been unreasonable with me all along; they made state-

ments here in court which are played up in the Press that I am just trying to hide behind this question of the accident and illness—and I think this is a continuation of the same thing, Your Honor.

The Court: The District Attorney has not said a word this morning.

Mr. Cercone: I would like to say something, though, Your Honor. I think this court is interested only in the highest ideals of justice and in giving equal protection to all who come before it; but in return for its kind considerations it is receiving nothing but defiant ridicule from this defend- [fol. 73] ant, who is interested in nothing but making this court an instrument for his propaganda. He is following the blueprint of the Communist Party tactics on how to tie up a court and making a mockery of the court processes. Now he came in here yesterday and said that he was not physically capable of going through a trial in this court; and you have taken out time and patience in making arrangements for an examination by two eminent doctors of this City, and has now reported what that examination is and he refuses to submit to an examination by the doctor who examined him yesterday—he did it under protest.

Mr. Nelson: I object to that. I said I will submit to the examination. And I think that Mr. Cercone ought to consider that he knows the meaning of the words and he knows that I didn't say that.

Mr. Cercone: I think this defendant is pretending a hoax——

[fol. 74] The Court: Now both of you will remain silent, or I will take some action concerning both of you. I have listened to both of you and now I will do some talking here for a change.

Do you want this examination or do you not want it, Mr. Nelson?

Mr. Nelson: I said, Your Honor, I would submit to this examination if that is the wish of the Court.

The Court: I do not have any wish on it. You have a motion before me to postpone this case. As I interpret your motion, it says you are physically and mentally incapacitated and cannot proceed with the trial. Now if you want to pursue that motion I will give you an opportunity of supporting it by this additional evidence. If you don't

want to pursue it, why, we will proceed with the trial. So tell me what you want to do, without further argument about it.

Mr. Nelson: Your Honor, can I read that affidavit I gave you just to refresh my memory on how that was put?

[fol. 75] The Court: Yes. It starts out with this:

“I am still under medical care, suffering from concussion, pain in right leg, and because of nerve injury no control of my leg. Head concussion causes severe pain, and the leg injury makes it difficult to get around. The nerve in my left arm was injured and my fingers are numb, and I suffer discomfort from cold particularly. Also have what is called ‘frozen right shoulder’. My physical incapacity was such that two doctors appointed by this court on or about October 5th — that I am unable to undergo trial. Despite my physical condition I have made the following efforts to obtain counsel for this trial:”—and then you name a lot of them.

Now that indicates to me that you are still persisting in the idea that you are physically unable to proceed with the trial at this time. If I am wrong, point it out to me or tell me I am wrong.

Mr. Nelson: Your Honor, I believe that the petition will [fol. 76] substantiate to what I was trying to say, that that is my offer.

The Court: I recognize that. I recognize the fact that you are relying on the fact that you could not get around to get counsel, but——

Mr. Nelson: Right.

The Court: I say that your petition indicates that you did get around; you communicated with a lot of lawyers; you went to New York and Reading. Therefore, I overrule it on that particular point. If you don’t want me to consider your present physical condition, just say so and we will proceed. If you want me to consider that, then subject yourself to the further examination or test that Doctor Weinberg wants you to submit to—tell me one way or the other.

Mr. Nelson: I will submit to it.

The Court: All right.

Mr. Nelson: Let it be known—let it be noted, Your Honor, that this has been done at a tremendous difficulty to me—I mean all these——

[fol. 77] The Court: Financially—I agree with you, yes. But you asked for the postponement on the basis of physical incapacity and it is up to you to give the supporting evidence to this court on it—and not at the expense of the taxpayers to have you examined to determine whether or not your motion is justified. You have to support that motion with your evidence. I am giving you ample opportunity. I postponed this case day-by-day and I will postpone it now if you want to submit yourself to further examination today again. I will not force you to go to trial, with or without counsel, until I get a report from the both doctors that we referred you to at the beginning.

Mr. Nelson: Well, just let me ask you one more question bearing on another point then. Then do you propose to dispose of these motions later on after you get the report?

The Court: If you are not subject to trial there is no use disposing of the motions at this time, if you are incapable [fol. 78] of proceeding to trial. If Doctor Weinberg says you are well, I will overrule the motion.

Mr. Nelson: Who takes care of this arrangement?

The Court: I will call Doctor Weinberg, as I did yesterday. Which doctor do you want? Doctor Rowe or Doctor Bragdon?

Mr. Nelson: I don't know either one of them.

The Court: Neither do I.

Mr. Nelson: Will you consult with Doctor Weinberg on the matter?

The Court: Suppose I send you back to Doctor Weinberg yourself and you consult with him as to which one would perform this today, or without delay, and let him make the arrangements for you. I will call Doctor Weinberg and tell him you will meet him at the West Penn Hospital, where I think he is now, and possibly Doctor Rowe who is at the West Penn Hospital. He would be the most likely one.

Mr. Nelson: All right, I will wait out here.

[fol. 79] The Court: You wait here and I will make the

arrangements for you and send you wherever Doctor Weinberg wants you to go.

Mr. Nelson: Yes, sir.

The Court: All right, recess this court until ten-thirty.

Short Recess

(After recess)

The Court: Make this a matter of record: I just talked with Doctor Weinberg, Mr. Nelson, and he can have Doctor Rowe perform that test today. The results of the test, however, cannot be determined for five days, Mr. Cercone; therefore, Doctor Weinberg cannot give us his opinion until Tuesday of next week. I have no alternative then except to recess this case, or postpone it until next Tuesday until I get that report.

Now, Mr. Nelson, on the matter of counsel, it seems to me I would recommend—

Mr. Nelson: You say that, Your Honor, I can—can I ask [fol. 80] a question with regard to the medical aspect?

The Court: Yes, sir.

Mr. Nelson: I hope I understand your ruling right, that I can consult with Doctor Weinberg and still determine whether I want to undergo that test, because I don't know what it means. I don't understand this medical phrase.

The Court: I don't know what it is either. The doctor tried to explain it to me over the telephone—they take fluid from your spine.

Mr. Nelson: I gathered that much.

The Court: And that gives them an objective result. In other words, all Doctor Weinberg has now are your complaints. He cannot confirm them or deny them, but this test will give him something objective, something definite to either say that you are justified in your complaints or they are not justified.

[fol. 81] Mr. Nelson: Yes, but do I understand that I have the right under this ruling to consult with him and if I think it is a dangerous kind of a thing, as some of these things are, I have a right to refuse it and come to report to you; is that right?

The Court: Yes, but you will have to do that today, be-

cause I think that rather than adjourn this case until Tuesday then, on that basis I will adjourn it until tomorrow morning. If you elect to subject yourself to it, then we will give Doctor Weinberg the additional time to get his report in, which will be until next Tuesday. If you don't, then we will have to proceed tomorrow morning.

Mr. Nelson: Yes, sir.

The Court: Now as to the matter of counsel, I imagine you have seen Mr. Glick in attendance; he volunteered to attend you at my request, so that you could be informed as to procedural matters, not that he is going to advise you on how to handle your case or outline your defense for you. [fol. 82] But he was here to advise you on procedural matters and help you prepare motions and anything of that nature. He reports to me now that you do not desire his assistance and you do not desire his presence. I just wanted you to know why I had asked him to be here in attendance. If you do not want him, that is a matter for you to decide. He was doing it as a matter of being helpful to you. I could have done it myself from the bench here as we went along, but I thought that probably he could aid you more readily than I. So that is the reason why he was here. If you don't want him, of course, I will not continue my request that he be present.

Mr. Nelson: Well, Your Honor, I never understood that he was my attorney.

The Court: He wasn't; he was an arm of the court; he was here to advise you as I would have advised you myself.

Mr. Nelson: And I asked specifically—I asked the court specifically that I needed an attorney to help me on one [fol. 83] motion; and it was on that motion alone that Mr. Glick was consulted by myself. I took his words in this court to mean something, and I respect the man for stating the thing that he did in this court, that he couldn't have conscientiously undertaken my case without some time to prepare. Consequently I was going to put him at a disadvantage and put myself in jeopardy, denying my rights here. And for that reason I thought it would be unfair for the court to insist that he work with me.

The Court: I did not insist; I just told him to be here

in case you needed assistance—as we do for many defendants—although we never do it for defendants who are other than indigent, who do not have the money to pay. We appoint counsel for them, or request counsel to volunteer their services. But in this case I did it because you were electing to proceed without counsel, and I asked him to be here. So if his presence is not desired, if you do not want to use his services, that is quite agreeable, Mr. Nelson.

[fol. 84] Mr. Nelson: I just wanted the record to be clear that I had consulted with him on one motion. He had no chance to see any of my material—or, rather, to read the case. There is no question about that. And, therefore, I actually had no counsel to present the preliminary proceedings.

The Court: That is perfectly all right. It is not a matter of embarrassing you or placing you in an embarrassing position. It was done by the court just as a matter of convenience if you wanted to use him, why, you could. All right, we will recess this case until tomorrow morning at nine-thirty. If you report back to me that you have submitted yourself to this test we will postpone it then until Tuesday the 11th, in order to get Doctor Weinberg's final report. If you do not submit to the test we will proceed with the matter tomorrow morning.

(Court adjourns at 10:37 o'clock A.M. until tomorrow morning at 9:30 o'clock A. M.)

[fol. 85] (Friday, December 7, 1951 Court convenes pursuant to recess of yesterday morning.)

The Court: All right, Mr. Lewis, I thought you should be present to hear the present situation. Mr. Nelson, according to information received from his wife, went out to the West Penn Hospital yesterday at 12:30 as I directed him to do. Doctor Rowe and Doctor Weinberg were unable to make the necessary arrangements to subject him to the test yesterday afternoon and instructed him to return at four o'clock, at which time he did return and was admitted to the hospital as a patient. It will be necessary that he be confined there for at least three days. I confirmed all

this by telephone call to the hospital this morning, and he is there as a patient under the charge of Doctor Rowe and Doctor Weinberg. It is, therefore, necessary that I again postpone this case until I receive the final report from Doctor Weinberg after the tests are made. So, not knowing when the results of the test will reach me, I will post- [fol. 86] pone this until Tuesday the 11th, as I stated yesterday. It may be that it will have to be continued until Wednesday the 12th, but nevertheless it is tentatively the 11th, and I hope that we have received the report from Doctor Weinberg by that time. As you heard me state yesterday, it was Doctor Weinberg's preliminary report, submitted in writing to me, that stated that if the results of the test are negative there is no reason why he should not proceed to trial at once (that was the opinion of Doctor Wagner as to his physical condition), but if it would be positive, these tests, indicating some remaining mental disturbance as a result of this accident, then it will be necessary to postpone it, according to the word of Doctor Weinberg, another month or so. What the "so" means, we will have to learn from the Doctor. Of course, if the test discloses something they will know what it is and what treatment will be required. So it may be helpful in reducing the period of convalescence, as it were, or remaining [fols. 87-87a] disability, once they know what the trouble is. So, that is all we can do at this time. The case will be continued until Tuesday.

(Court adjourns at 10:05 o'clock A.M. until Tuesday, December 11, 1951 at 9:30 A. M.)

Judge's Certificate to foregoing transcript omitted in printing.

**Transcript of Official Notes of Proceedings—December 11,
1951**

CONTINUANCES

[fol. 88] (Tuesday, December 11, 1951, Court convenes pursuant to recess of Friday, December 7, 1951.)

Mr. Dolsen: Your Honor, Mr. Nelson—

The Court: What is your name?

Mr. Dolsen: James H. Dolsen. Mr. Nelson asked me to come down here to inform you that he is very sick in bed, he had chills last night and this morning—that is what he stated and his wife has stated. He has a subnormal temperature. He reported to Doctor Weinberg yesterday and I think Doctor Weinberg informed you at that time—I am not sure—

The Court: I have a message from Doctor Weinberg.

Mr. Dolsen: And Doctor Weinberg then had stated, after Mr. Nelson called, that he would see him this morning about eight o'clock. Then afterwards he telephoned to him and said it was impossible but that he would see him sometime during the day. Now his wife said that he had a very bad [fol. 89] night of it. This is what Doctor Weinberg said, he would see him sometime today and check on his condition.

The Court: Well that is, in substance, what Doctor Weinberg told me by telephone last evening, that there were some temporary after-effects to these tests and he could not certify him as ready for trial until after he examined him again today; that he would examine him sometime after Noon and report to me. So his message is, aside from the physical ailments that he complains of now, the same as Doctor Weinberg informed me. So we cannot proceed until we get the final report from Doctor Weinberg.

Mr. Dolsen: Does that mean then that he will be informed then after you get this report?

The Court: Well, Doctor Weinberg will inform me today, so the only thing I can do is to carry this over from day to day until Doctor Weinberg certifies him ready. So, it is tomorrow morning for trial, conditioned on Doctor Weinberg's [fol. 90] report that he is in satisfactory condition to go to trial.

Mr. Dolsen: That will be nine-thirty tomorrow morning?

The Court: Nine-thirty tomorrow morning.

Mr. Dolsen: I will inform him of that.

The Court: Very well, sir.

Make this a matter of record: These men have asked me about the results of the test. Insofar as the tests were concerned, Doctor Weinberg has given me a report that they are negative as to any remnants of concussion or other mental or nervous disturbance goes from the accident. The reason Doctor Weinberg is not certifying him for trial is because there are some temporary after-effects of the tests themselves—the taking of fluid from the spine under anesthetic, and also an additional test made of an electroencephalogram. It is only these temporary after-effects that are concerning Doctor Weinberg at this time.

[fol. 91] (Court adjourns at 9:40 o'clock A. M. until tomorrow, Wednesday, December 12, 1951, at 9:30 o'clock A. M.)

(Wednesday, December 12, 1951, Court convenes pursuant to recess of yesterday morning.)

The Court: All right, Mr. Dolsen, you have a report from Mr. Nelson again this morning, do you?

Mr. Dolsen: Yes. He was ordered by Doctor Weinberg to remain in bed pending his orders. And I understood that he communicated to you—

The Court: Yes, Doctor Weinberg calls me each evening and advises me after his examination. His report last night was as you indicate, that Mr. Nelson still has some resulting complaints from the tests that were made, and cannot appear this morning. So we will continue this case again until tomorrow morning, until I get another report from Doctor Weinberg this evening. Doctor Weinberg, incidentally, gentlemen, is leaving town for a medical convention, I think, tomorrow, and is going to ask Doctor Rowe to observe the patient during his absence. So I expect to get future reports from Doctor Rowe or one of the assistants during Doctor Weinberg's absence. But until I get clearance from him we will have to continue to postpone this case from day to day.

All right, tomorrow morning it will be—we will expect another report on it, Mr. Dolsen.

(Court adjourns at 9:45 o'clock A.M. until tomorrow, Thursday, December 13, 1951, at 9:30 o'clock A.M.)

(Thursday, December 13, 1951, Court convenes pursuant to recess of yesterday morning.)

The Court: Mr. Dolsen.

Mr. Dolsen: Your Honor, the doctor reported that—he has stated that he was to remain in bed and he was not to move or stir around.

[fol. 93] The Court: Well, that is not all of the Doctor's report, Mr. Dolsen. As I received it, Doctor Weinberg informed me that although he is to remain in bed this morning, that he is greatly improved and that there is no reason why he cannot come in here and proceed with this trial within a day or so.

Now on the basis of that, I am not going to force him to come in tomorrow—I will give him the weekend to fully recuperate, if any additional time is necessary, and postpone this case until Monday morning. Tell Mr. Nelson that based on the reports of Doctor Wagner and Doctor Weinberg, as I have them, there is no reason why he should not appear here Monday morning and proceed with the trial of this case.

Mr. Dolsen: I will report that to him.

The Court: So that is the information that I received from Doctor Weinberg, who I understand has left the City and left the matter in the hands of Doctor Rowe. And his final report after his examination of Mr. Nelson yesterday [fol. 94] was as I have given it to you. On the basis of that report, this case will proceed to trial on Monday morning.

Mr. Dolsen: I will report that to him.

(Court adjourns at 10:15 o'clock A.M. until Monday, December 17, 1951, at 9:30 o'clock A.M.)

(Monday, December 17, 1951, Court convenes pursuant to recess of Thursday, December 13, 1951 and the preliminary proceedings continues.)

DENIAL OF MOTION TO DISQUALIFY JUDGE

The Court: We have some preliminary motions to dispose of here, so I will dispose of them. The motion for the disqualification of the Trial Judge on the basis of prejudice against the defendant is overruled. Prepare an order on that case ordering the motion filed and the order made refusing the motion.

The motion for change of venue—

Mr. Nelson: Your Honor, while you are acting on that [fol. 95] may I raise a question you can answer with that motion, because it has to do with it, I assume it is a preparatory motion to this. I want to give it to you, but I couldn't get the Clerk this morning—his office is closed.

The Court: You may hand it up if you have it prepared.

Mr. Nelson: It hasn't been signed. This motion bears on the same question, Your Honor, and I believe I should be entitled to have this motion argued by competent counsel on my behalf. And as you see, I haven't got an attorney this morning as yet. I think the matter is of great importance and you ought to consider my request there that it be argued before another Judge—because I believe that you, yourself, cannot fairly sit in judgment of that motion.

The Court: No other Judge would pass upon my feelings as to you, Mr. Nelson, and they would submit it to me regardless. I have thought about the matter and considered [fol. 96] your former petition—and this petition that you are filing, you may sign and affix your affidavit, but it does not really assert anything else other than what was included in your former petition—so I cannot afford you any opportunity further for argument.

Mr. Nelson: You mean you are going to order me to stand trial here without assistance of counsel?

The Court: Yes, sir. You have been afforded—

Mr. Nelson: Then I make a request that the Court appoint a counsel to assist me in that respect so that I could get such assistance as I may.

The Court: Yes, I offered you that.

Mr. Nelson: The Court knows I have two attorneys available, but not at this time. It seems to me that the two-weeks' time that it would take this attorney to come into the case would be a legitimate request. If the prosecution wasn't [fol. 97] so hasty to push this thing—for some reasons that I think are pretty well known—I think I could get the attorneys who could argue the questions properly and put up the kind of a defense that I am entitled to in the prosecution's frame-up here. And, therefore, I ask you, in the first place, to permit me to have those attorneys come into the case when they are able to—and I say it is a reasonable time—two weeks' time. That is my first request, Your Honor.

The Court: All right. See if you can get Mr. Glick, or Mr. Blanchfield, or Mr. Doty. They have volunteered their services before to this defendant. See if you can reach them and have them come here immediately, please—the three of them.

Have the defendant sign that, and swear him to that, please.

(Mr. Nelson sworn by the Clerk and affixes his signature to his petition.)

The Court: You may attach that to this previous petition [fol. 98] that has the order affixed, Mr. Hedley.

Mr. Blanchfield, Mr. Nelson has asked the Court to suggest someone to him that is willing now, that he is willing now to be represented here by counsel. I have asked that you be sent for to see whether or not you would render your services to him at this time, as you were willing to do so before.

Mr. Blanchfield: I have talked with Mr. Nelson on only one occasion—that was the last time the case was up—I haven't talked to him since. So, I would be willing to represent Mr. Nelson if Mr. Nelson can pay a fee.

The Court: I have no authority under the law to ask you to do so gratuitously, except in homicide cases. We have no authority to pay you. I am asking you to submit your services to him at a reasonable price, a reasonable fee, and I will make him available to you, if you are willing, so you may take a few minutes to discuss it with him.

Mr. Blanchfield: All right.

[fol. 99] Mr. Nelson: Your Honor, I think this ought to be made clear: I discussed this with Mr. Blanchfield at the time and I felt that he wasn't prepared to give me the adequate attention that I need in this case; and, consequently I wasn't able to discuss matters further with him. I made this request to you now as distinct from that argument that we had at that time, that at that time I wanted to discuss with attorneys who I'd want to hire to represent me, and as they and I saw fit to represent me in this case.

The Court: We understand that.

Mr. Nelson: You are appointing Mr. Blanchfield here now as an appointed man from the Court; that is a different story. I still want to discuss with him what motions I would like to have filed and how I would like to have them argued. But if I am going to be told that I have to take this particular man, by the Court and told that I have to pay for it even though I feel that the man is not adequate [fol. 100] to represent me because neither the time that he had to prepare the case nor does he know much about the issues involved. I think it is unfair to me, Your Honor. And I feel that if the Court is going to take the responsibility to appoint him, that is a different matter altogether.

The Court: I am not appointing him for you. I have given you ample opportunity to get counsel; and you haven't counsel this morning—here is counsel available if you want to hire him. If you don't want to hire him, say so. That will be the end of this discussion. If there is anyone else you want to call here, or you want me to call, I will call them in.

Mr. Nelson: I told you Mr. Meldahl is prepared.

The Court: I told you, too, I would grant you no further extensions by reason of lack of counsel. Now you are going to trial this morning or you are not, with or without counsel.

Mr. Nelson: That is up to the Court; if you order me to go [fol. 101] to trial here without counsel, I cannot help it, Your Honor, but submit to it with objections to the rulings that you made here this morning. And I say that all the proper motions cannot be made on my behalf by him or any other man that comes in this minute. I have to have time to discuss with him. I want to see whether he agrees

with some of the things I formulated, and other things that I may have not been able to touch because of my lack of understanding.

REFUSAL OF MOTION FOR CONTINUANCE BECAUSE OF LACK OF COUNSEL

The Court: The motion for further continuance because of lack of counsel is refused. It has been refused before and is refused again. Let us proceed with the other matters, if you don't want to hire Mr. Blanchfield. Thank you for coming in.

REFUSAL OF MOTION FOR CHANGE OF VENUE

The motion for change of venue is refused; exception noted. Order the petition filed, and put an order on it refusing it.

MOTION TO APPOINT ATTORNEY AND DENIAL THEREOF

Mr. Nelson: Your Honor just went a little too fast for me here; I want to make this final request: I want the [fol. 102] Court to appoint an attorney to assist me. Irrespective of my responsibility for the financial matter, I want the man to be appointed to assist me in this trial because I cannot adequately defend myself without an attorney.

The Court: It is only in case of indigence (without money) that we appoint any counsel; and in those cases we ask the lawyers here to represent you voluntarily without compensation.

Mr. Nelson: I am not objecting to him because of financial reasons; I am willing to discuss that question. The main thing, is the man able to give me the kind of representation I want? And I still want to discuss on that basis with any man that the Court appoints.

The Court: I am not appointing counsel for you. If you have the means for engaging counsel yourself, you have had ample opportunity to engage them.

Mr. Nelson: Your Honor, you know why I was unable to [fol. 103] to hire an attorney here. Seven hundred attorneys have been contacted in this City, and they don't want to

do it, for the following reasons, Your Honor: Look at this headline here. Take a look at that headline. Isn't that a strange coincidence that the first trial, when it began, the papers in this city started out with stories like this—and this again the day before the trial.

I hold before me—let it be known for the record here—the Monday, December 10th issue of the Sun-Tele, in which there is a story about extensive espionage and so forth, which is fed around this area in all the newspapers. The lawyers know about it; the jurymen, or prospective jurymen know about it; they know there is no chance to have a fair trial. Furthermore, they know what happens to attorneys that come into the case—they know what happened to Mr. Schlesinger, Your Honor; they know the way he has been kicked around. Look what happened to Mrs. Matson, the way she had to complain about—she was handled—the way she was handled by Mr. Margiotti and [fol. 104] others because of ostensible connections with progressive movements and so forth.

Consequently, I am compelled to go to trial in the face of this mass hysteria, where attorneys are afraid even though the Pittsburgh Press has an editorial pleading that there should be attorneys big enough to come forward and defend me in the case. Not one has turned up, Your Honor. And I have written a letter to the National Bar Association; I requested them to assign some one able to defend me. I have written a letter to the Allegheny County Bar Association. And the result is that out of town, as far as the attorneys are concerned, I could get two of them by the first of January—from out of town—who are not subject to this pressure here. But locally I could get no one. Consequently, I am being compelled by the prosecution, and being railroaded by them to this speedy trial that they call "speedy", just because they have the whole thing rigged; it is a lead pipe cinch for them. That's why they want this trial this way. And Your [fol. 105] Honor is not even willing to consider a reasonable request from me to have an attorney argue the preliminary motions that are before you. I think it is unfair, and I hope that Your Honor will reconsider these things and permit me to have an attorney to argue these matters

before an impartial Judge. Otherwise, Your Honor, this is not a trial in the sense of the word that trials are understood, but—well, any one can make up his mind what it is.

The Court: Your motion is refused. Now passing on to the next—Change of Venue—that likewise is refused. Your motion will be filed as a matter of record; and I granted an exception to the Court's ruling.

The motion to appoint counsel for you—you asked that, in this petition, I appoint a panel of lawyers from whom you shall make a selection. That is refused; exception noted. The petition may be filed.

MOTION TO QUASH AND DISMISS INDICTMENT AND DENIAL
THEREOF

The motion to quash and dismiss the indictment is likewise refused and an exception noted. You may order [fol. 106] that petition filed as well. Now this petition for continuance of the trial date which you filed and your various affidavits attached to it, it is not in connection with this trial at all; it is in connection with the trial that was held a year ago. We ruled on that orally already here. The present affidavit is presented in written form and we will file that in order to show what the reasons are that you have alleged for asking for further continuance. This long paper which you filed here has no relation to this trial, Mr. Nelson, so I can't order that filed. However, the——

Mr. Nelson: Your Honor, may I request it be filed in my behalf because it is the best I could do without counsel. Those are motions that were filed in connection with the trial last year, and I believe they do bear a certain bearing on my case.

The Court: You prepare it——

Mr. Nelson: Pardon?

[fol. 107] The Court: You prepare it and include those things which are relevant here and you may file it later in the day or tomorrow, or at such later date you can, but the action of the Court is the same on it—that further continuance is refused.

Mr. Nelson: Your Honor, I object to your ruling.

The Court: Your objection is entered in the record and your exceptions are noted. That is all on the record.

Mr. Nelson: I want to add the following two clippings to the motion that I had——

The Court: For continuance?

Mr. Nelson: Yes. Because you rushed through so fast I had no chance to read the record even.

The Court: All right, you have the opportunity now.

Mr. Nelson: These two clippings which bear on the question [fol. 108] of prejudice on the part of the Trial Judge.

The Court: All right.

Mr. Nelson: One is——

The Court: They are to be attached to the petition, but you may read them if you like.

Mr. Nelson: Yes, Your Honor. I would like to just call your attention to some excerpts.

The Court: All right.

Mr. Nelson: You are compelling me to do this without an attorney; I can only do it the best I can—and I want at least a layman's way to present my argument why I think the present Judge ought to disqualify himself.

On Sunday—that is, in the Sun-Tele of March 10, 1950 appeared a report about the activities of the “Americans Battling Communism”. The story goes: “Americans Battling Communism today asked the District Attorney and the United States Attorney to bring criminal proceedings [fol. 109] against leaders of the Communist Party here for conspiracy and sedition. Acting United States Attorney Edward C. Boyle said he will institute the action at once if the ABC can give him evidence to substantiate the charges.” If the ABC, mind you, can give him evidence.

“District Attorney William S. Rahauser was undecided on what action he will take. Heads of the ABC, an organization fighting communism, said they have ample evidence to prove their case under both State and Federal statutes. County Court Judge Blair F. Gunther, a director of ABC, said at least twenty leaders of the Communist Party here will be accused next week of conspiracy and sedition. Any court action is expected to result in one of the biggest trials of its kind in the history of the country. Eleven top leaders of the Communist Party were found guilty in New

York last October as teaching and advocating the overthrow of the government by force and violence. The trial lasted nine months. Judge Gunther said, in announcing [fol. 110] the action at a meeting in Hotel William Penn: 'Our purpose is to stop talking and take action. The Communists here are always hiding behind the Constitution. I don't think the Constitution protects traitors and spies'—and so forth.'

Then in an issue of the Sun-Tele, February 4, the following is found—I won't read the whole long statement here, except to state: "Newly elected officers of Americans Battling Communism include Attorney Harry Alan Sherman, chairman; John Ladesic, vice chairman; Julie Coax, executive secretary; and Paul Kazimer, treasurer. Hugh McKenna, Judges Harry M. Montgomery and Blair F. Gunther, Stanley Bakanas and Theodore L. Moritz make up the executive committee."

Now, Your Honor, I—

The Court: Do you want to attach those to the petition?

Mr. Nelson: Yes, I want these two attached, as well as this thing I have already submitted.

[fol. 111] The Court: All right, sir, you have the petition here.

Mr. Nelson: I would like to know, Your Honor, how an organization—if an organization was set up to, let's say, destroy the Trade Unions, and a Judge was a member of that organization to destroy the Trade Unions, and then a Trade Union matter came up before this judge for an impartial judgment or adjudication discussion, how could that judge possibly be impartial in that case where he is a member of an organization that states he is out to indict so and so, and he sees that the indictment is brought about; and after the indictment is brought about he sits as a judge in the court where the issue is to be tried? How can that jury possibly not be affected by the presence of such a judge who made speeches over the radio and so forth—how can that jury possibly be not affected by these stories on the radio and in the newspapers? How can that man possibly get a fair trial? I say, Your Honor, if there is any [fol. 112] expectations on anybody's part to have a fair trial here, what has happened so far makes a fair trial impos-

sible. And you are compelling me to go to trial even without the rudimentary experience on trials, on legal questions, makes it doubly worse. And I protest against these procedures, Your Honor. I consider it very unfair; and it is not only an attack upon me but an attack upon other people who in the future may want to disagree or disassociate themselves, or not agree with the majority of you, whatever that "you" may be. Yes, I oppose the Korean War. That is one of the crimes——

The Court: We are not going into our action in Korea. Your motion is refused.

Are there any other motions? An exception is noted, and your remarks are noted on the record; and the action of the Court in refusing is noted. You have an exception.

If there are no other motions we will call Panel Number One——

Mr. Nelson: Just one moment, Your Honor. On the [fol. 113] matter of a jury, I don't know what you intend to do on this question; I believe that I am entitled to make a motion on that question, too. I don't know what the proper motion should be.

The Court: I don't know what you have in mind, so I can't tell you.

Mr. Nelson: All right, a jury panel that has been gone over by Mr. Lewis and Mr. Cercone, and they know exactly who is in that list, Your Honor, is being shoved up here this morning by the prosecution—that's why they are hurrying, Your Honor. These people have been in this courtroom several times; they have a pretty good idea who it was that they were called in for several times.

The Court: They have never been called in for our case here at all, sir.

Mr. Nelson: Your Honor, my impression——

The Court: No jury was ever called in this room to try your case.

[fol. 114] Mr. Nelson: It has been done, Your Honor. I may be mistaken but there was a jury panel in this room when the trial was set to start.

The Court: Well it wasn't here in my presence. There was no jury panel in here.

Mr. Nelson: You were here, Your Honor, when I came

into the room and there was some argument that we made in your chambers, when that panel was here and you made a statement in the court here that the jury is here and the jury panel is here and you are not going to dismiss them because I have no attorney, and so forth. Your Honor, I believe that is on the record.

The Court: All right, if it is on the record I have no recollection of any jury panel.

MOTION TO DISMISS JURY PANEL AND DENIAL THEREOF

Mr. Nelson: This particular jury panel should be dismissed and a chance given me for a fair and impartial panel to be drawn at the proper time, when I have been able to prepare properly for the trial.

The Court: That motion is refused. You have two [fol. 115] panels of jurors out there (Panel Number One and Panel Number Two) and if you think there is any favor being shown to the Commonwealth on the part of either of those Panels, then you make your own selection. I will call either Panel you want. Which one do you want called in; One or Two?

Mr. Nelson: Your Honor, I can't proceed without at least some understanding, without some one telling me what my legal rights are. I don't know the first elementary thing about selecting a jury. And if the trial proceeds from now on it will be against my own protests here that I cannot participate in the selection of a jury. It is being done by the prosecution and shoved down my throat by them. I protest, Your Honor. And you be the judge, you go ahead and select the jury that you want.

The Court: I haven't any choice in the matter. You may question the jury; you are entitled to eight challenges without cause, and you are entitled to as many challenges [fol. 116] as you may be able to show cause for.

Mr. Cercione: May we say something for the record, Your Honor? We reiterate again that this defendant just doesn't want to go to trial. I just want to say one thing—

The Court: We don't want any further argument.

Mr. Cercione: When Harry Glick was appointed as a volunteer—

The Court: We have ruled on the motion and there is no

need for further arguing on this, Mr. Cercone. We have acted upon the motion for a continuance, change of venue, and the withdrawal of the Trial Judge; and further argument on the part of Mr. Nelson or yourself is unnecessary.

Mr. Cercone: All right.

The Court: Summon Jury Panel Number One. I must limit you, however, to a reasonable number of questions to these jurors. I will grant you a voir dire examination [fol. 117] of each juror, but I must limit you to a reasonable number of questions. How many questions is reasonable in the judgment of each side here?

Mr. Nelson: Your Honor——

The Court: Yes, sir.

Mr. Nelson: This is the first morning I have been up in the last ten days and I don't feel up to it physically. I didn't want to make that a point—actually I don't know what is going on at the present time, as far as being able effectively to even do the elementary things that I could ordinarily do. You are compelling me to go ahead now even when I am not in the physical shape to move.

The Court: Very well, we will note that on the record too.

No more than ten questions will be asked of each witness. If you have a list of questions which you could agree on, that would facilitate matters. If not, the Court will have to rule on the questions as being reasonable or unreasonable [fol. 118] as they are asked.

Mr. Nelson: Your Honor, may I make one more request?

The Court: All right, sir.

Mr. Nelson: That you give me time until Monday to have any counsel I may be able to get—until Monday so that I——

The Court: I will grant you no further extension, Mr. Nelson.

Mr. Nelson: Then, Your Honor, I insist that the Court is duty-bound to me to appoint an attorney who can help me in this matter. I know nothing about this question.

The Court: I will help you in the selection of a jury and send for Mr. Blanchfield to come in and aid you in the selection of jurors.

Mr. Nelson: I prefer that Mr. Blanchfield didn't—wasn't just shoved in on me like that.

The Court: All right. Mr. O'Connor, will you come [fol. 119] forward and aid Mr. Nelson in the selection of the jury? Mr. O'Connor is another lawyer in the courtroom.

Mr. O'Connor: Your Honor, can I speak to you?

The Court: Yes.

Mr. O'Connor: I have a matter pending, a plea—I mean another case that may require me to go to trial; and an argument in front of Judge Soffel possibly this morning—so that my services can be utilized by this court here, I suppose those other matters over there probably will be delayed.

The Court: To serve your convenience on this, we will ask Judge Soffel—this is a plea, is it?

Mr. O'Connor: It is a plea.

The Court: We will recess in time to have you take care of the plea before noontime. If you will aid Mr. Nelson in the selection of the jurors we will not ask you [fol. 120] to aid him further. He asked for assistance in the selection of jurors due to his inexperience in the procedure on the matter. I would appreciate it if you would aid him to that extent.

Mr. O'Connor: Very well, Your Honor.

The Court: We will send word to Judge Soffel, or the other presiding judge, of your being detained here for this purpose.

Mr. O'Connor: If the court please, that is in the Special Grand Jury on the Fifth Floor; I was supposed to appear as counsel for two witnesses there. The matter came up Friday, and I was told to report back today in front of the Special Grand Jury. And the other two cases which I have listed, one is listed for a plea. I suppose it will be in Number Two Courtroom. And the other case—

The Court: Well, if you will assist him temporarily, at any rate, until we can find some one else that can take over in that respect, possibly we can excuse you shortly. [fols. 121-435] We have a call in for one or two other lawyers and as soon as they arrive we can excuse you.

If you will start the matter with Mr. Nelson we will send word to Judge Soffel that you are being detained.

Mr. O'Connor: Would the Court notify Judge Soffel and the lawyer who is conducting the Grand Jury—

The Court: We will send word up to him.

Mr. O'Connor: I would appreciate it.

The Court: Notify Judge Soffel that Mr. O'Connor has been asked to temporarily aid in the selection of this jury and not to have his two witnesses whom he represents presented to the Grand Jury until he is available.

All right, Mr. O'Connor. This is Mr. Pearse O'Connor, Mr. Nelson, and he will undertake to aid you in the selection of a jury.

All right, proceed.

[fol. 436] IN THE COURT OF QUARTER SESSIONS OF ALLEGHENY
COUNTY, PENNSYLVANIA, OCTOBER SESSIONS, 1950

No. 764

COMMONWEALTH OF PENNSYLVANIA

vs.

STEVE NELSON, ALIAS LOUIS EVANS, ALIAS JOSEPH FLEISCH-
INGER, alias "Hugo," alias Steve Mesarosh

(Sedition)

Pittsburgh, Pennsylvania, Wednesday, December 19, 1951.

CORAM: Hon. Harry M. Montgomery, J., and a Jury.

Transcript of Official Notes of Testimony—December 19,
and 20, 1951

Counsel Present

For the Commonwealth: William F. Cercone, Esq., Loran
L. Lewis, Esq., Assistant District Attorneys.

For the Defendant: Steve Nelson, in his own behalf.

Frank Shonsky, Official Reporter.

[fol. 437] (Wednesday, December 19, 1951, Court con-
venes pursuant to adjournment of yesterday.)

The Court: Are you ready to proceed?

Mr. Nelson: May we come close to the bench, Your Honor?

The Court: Yes, come forward.

(At side bar.)

Mr. Nelson: Your Honor, I am not sure that these ques-
tions that we had yesterday, that they were agreed upon
by you.

The Court: You mean the last two questions?

Mr. Nelson: Yes.

The Court: You may read them into the record if you
want; and I will indicate that I overruled your request.

Mr. Nelson: All right, Your Honor. I will turn that over
to the man and let him read out—

[fol. 438] The Court: Nine and ten.

Mr. Nelson: At his leisure.

The Court: Just nine and ten you are referring to now?

Mr. Nelson: I would like to have the whole thing in the record as to what the questions actually were, the questions already repeated.

The Court: Just nine and ten. You indicate that questions nine and ten were requested to be asked of the jurors—questions nine and ten on this list. Copy them into the record and indicate that the Court refused to permit the questions to be asked.

Mr. Nelson: Of course, I guess the objection is already on record—if it isn't I would like to repeat it, or request it again—that these questions limited my possibility of inquiring into the bias of the jurors.

The Court: Well, the questions speak for themselves in that respect. That is a matter of argument.

[fol. 439] Mr. Nelson: The fact that my attorney had to draw them up in fifteen minutes—not my attorney but an attorney appointed by the Court—had to draw them up on fifteen-minutes notice. It didn't give me a chance to think them over properly—present them properly.

The Court: All right.

Mr. Nelson: Additionally, I was not in good physical shape because of the attack on me in the hospital; and my temperature has been a hundred-some ever since I have been here these three days. But since the doctors are of the same mood as many prospective jurors and fear even to look into my physical condition, I was unable to get any redress from the Court because, apparently, the Court is of the opinion that I am making up this story, and I have been compelled to go ahead through the examination of jurors without being fully physically able to do the job the way it should be done.

The Court: All right. Is that all?

[fol. 440] Mr. Nelson: And here, Your Honor, I have presented this Writ of Prohibition to the Supreme Court, and I understand the formality is that you have to acknowledge receipt of it. I have to send that back to—I'm not sure that I made this up very well, but I will appreciate—

The Court: This is a copy of it and you want me to accept service of the copy of this Petition for Writ of Prohibition to the Supreme Court?

Mr. Nelson: Right.

The Court: I will do that.

Mr. Nelson: I am not sure whether that is made up right.

The Court: Well, I will fill it in the way it should be.

Mr. Nelson: That is the case, Your Honor.

The Court: All right.

[fol. 441] Mr. Nelson: Does that have to be sent out right away?

The Court: I don't think so; just any time today you can file it over there.

Mr. Lewis: I think Your Honor ought to have a copy of this.

The Court: This is merely a service, and I accept service of it. I will mark it on this copy; he is leaving it with me.

All right, sir.

MOTION FOR CONTINUANCE AND DENIAL THEREOF

Mr. Nelson: Then I want to make one more motion, Your Honor, that you grant me a continuance until next Tuesday, which is the first time Mr. Meldahl can come into the case. Otherwise I am going to be compelled to go to trial this morning without counsel.

The Court: Well, I have already ruled on further postponements by reason of lack of counsel; and I will refuse your motion on that. If it will avail you, I will be glad to call Mr. Glick again to aid you until such time as counsel [fol. 442] can appear for you. But that is a matter for you.

Mr. Nelson: Your Honor, Mr. Glick was not very satisfactory to me, principally because he had no chance to discuss with me; he didn't know anything about the case; he was shoved in; he couldn't do the adequate job that I need and am entitled to. And I believe it is putting him at an unfair advantage. He told me yesterday in the course of questioning the jury; "I wish I had more time to discuss with you what the questions should have been." And, therefore, he couldn't put the proper questions. Consequently, under the circumstances, to put him in the position of putting up a pretense that I have counsel—and I don't—I think is meaningless, Your Honor.

The Court: All right, it is a matter for you. I won't summon him unless you desire it.

Mr. Nelson: I will do what I can until we get whoever I can, at any time I can, Your Honor. I am trying to do that. [fol. 443] The Court: Well, as you heard me indicate to the jury, we will proceed until Friday and then the case will be postponed until the day after New Years.

Mr. Nelson: What could we do in these two days, Your Honor, that couldn't be satisfactorily handled after that. I am not proposing to quit and get away, or do something like that; all I am asking is a minimum number of days for a man to be able to come in here and handle the job. You deny my rights by rushing me this way to trial.

The Court: We don't feel that we have denied you the right. Since it has been ruled on, I won't alter the ruling. We will proceed with or without counsel.

Mr. Cercone: Your Honor, the Commonwealth has a motion to amend the indictment, to change the date from "July 19" to "October 31, 1950". That is the date of the arrest of this defendant. It was the same procedure followed the last time, Your Honor.

[fol. 444] The Court: Any objection to the amendment?

Mr. Nelson: My objection is that the indictment as a whole ought to be struck.

The Court: Well then the amendment will be allowed. Exception noted for the Defendant.

Mr. Nelson: I am not sure on my rights on the particular motion that was made here, and the only—

The Court: I granted you an exception.

(Questions 9 and 10 on list copied into the record as follows:

"Q 9. Have you or any member of your family ever belonged to or contributed in any manner to any organization whose program is anti-Communist?

"Q 10. If it appeared from the evidence that this defendant opposed the entry by the United States in the war against Communist China, would that fact create a prejudice or bias against this defendant so as to prevent you from rendering a fair verdict?")

(End side bar.)

[fol. 445] The Court: You may proceed to open to the Jury, Mr. Cercone—outline your case.

OPENING STATEMENT OF MR. CERCONE

Mr. Cercone: With the permission of the Court. Members of the Jury: You have been sworn to try the case of the Commonwealth of Pennsylvania against Steve Nelson, the defendant, who is charged with the crime of—the felonious crime of Sedition. In the examination of the prospective jurors for the selection of this jury you have heard, in one way or another, in part, the definition for the crime of Sedition. Since we are at the beginning of this case, and in all probability will extend beyond the time required for the trial of an ordinary case, it would be well for me to define for you more completely the definition of the crime of Sedition.

As it applies under the laws of the State of Pennsylvania, Sedition under our laws is committed when a person, either individually or in combination with others, brings, publishes, writes, or by cartoon, utterance or conduct, intends [fol. 446] to make or causes to be made any outbreak or demonstration of violence against the State of Pennsylvania or of the United States; or which encourages any person to do such acts with the view of overthrowing the Government of the State of Pennsylvania or of the United States by force and violence; or which encourages any person to commit an overt act with the view of holding the Government of the State of Pennsylvania or of the United States in hatred and contempt; or which incites any person to do harm to the person of a public official, or damage to the property of the Government or to the property of a public official. And the very word “Sedition” itself includes any writing, publication, printing or other literature which advocates or teaches the necessity of crime, violence, or any form of terrorism in order to bring about political reform or change in government; or the sale or gift or distribution of any literature, publication, printing or writing which advocates Sedition; namely, the overthrow of the Government of the State of Pennsylvania or of the [fol. 447] United States by force and violence, contrary to the laws of this Commonwealth; or organizing or helping to organize, or becoming a member of any organization, group, party or association which advocates the teaching of Sedition; which is, namely, the overthrow of

the Government of the State of Pennsylvania or of these United States by force and violence.

Now the very nature of the crime, of course, you can readily deduce, makes for an important and serious case—important for this defendant and important for the Commonwealth of Pennsylvania. The purpose of the enforcement of the law is to protect the peace of the community. And the sole purpose of individual prosecution, the prosecution of an individual, is not alone to punish that individual for any crime that he has committed against the State but more to act as a deterrent for other persons who might contemplate a crime against the State. And, hence, in this case I urge you to consider the strict necessity in enforcing the law, the maintenance of the peace and dignity [fol. 448] and order and protection and safety of human lives and property.

Now as co-prosecutor in this case, with my associate Loran Lewis, we represent all the people of the Commonwealth; and as such we have no personal interest in the case other than to see that justice is done in the case. We will attempt to present to you the evidence in the case as orderly as possible and as speedily as possible, but let me say that in fairness to all the witnesses who must testify from the witness stand, and in fairness to you as the Jury, which must listen carefully to the evidence, it will be impossible to present the evidence precipitantly or hurriedly. There is so much evidence here that it will have to be presented in an orderly and as speedy a manner as possible but not too hurriedly so that you will fail to grasp the significance of all the evidence presented.

Now the evidence will be presented to you from the lips [fol. 449] of witnesses and from the pages of books, the contents of documents and other exhibits. And altogether, ladies and gentlemen, when it is all in, the Commonwealth will have proved to you beyond a reasonable doubt that Steve Nelson is guilty of the felonious crime of Sedition. That is, he is guilty of the crime of Sedition and, in combination with the widespread national movement, helped plan the overthrow of the Government of the State of Pennsylvania and of the United States by force and violence. When all the evidence is in, members of the jury,

from the witness stand, the Commonwealth will have proved to you that Steve Nelson, this defendant, is the leader of the Fifth-Column movement in the United States, under the control of the foreign organization and the government and the Communist Party of the Soviet Union of Russia, to bring about the overthrow of this Government of the State of Pennsylvania and of the United States by force and violence.

Mr. Nelson: Your Honor, I move that these prejudicial [fol. 450] remarks be struck; they are nothing but propaganda based on newspaper articles; they are lies. And I move that they be struck. And I ask for a withdrawal of a juror, and that the Judge declare a mistrial in this case.

The Court: I shall act on your motion. I will not permit or grant the motion to withdraw a juror. I would ask the District Attorney, however, to outline the case rather than argue the case at this time.

Mr. Cercone: I am just saying what the witnesses are going to prove, Your Honor.

Mr. Nelson: Will you ask him to cease and desist from using inflam-atory language, inflam-atory material and lies?

Mr. Cercone: Your Honor, I am going to object——

Mr. Nelson: Not open the case in this manner, prejudice this jury from the very start.

The Court: I am asking him to do that, Mr. Nelson. I will ask him again to refrain from arguing the case at this time. Outline your case.

[fol. 451] Mr. Cercone: All right. Now, Your Honor, I am going to object to——

The Court: Outline your case, Mr. Cercone——

Mr. Cercone: I want to put this on the record.

The Court: In such a fashion that the jury will fully comprehend what you expect to prove by the evidence. It is for the jury to say whether or not you have established a case beyond a reasonable doubt. You may state to them your expectancy concerning it, but to say that you will do it, or as a matter of fact, that is for them to say whether they are so convinced.

Mr. Cercone: I agree with the Court, but I want to put

on the record that this defendant's argument at the time that the Commonwealth is trying to open is just another phase of their tricks in the courtroom.

The Court: I will ask Mr. Nelson to refrain from interrupting your opening, to make notes of anything that he considers prejudicial to his side of it; and I will rule on it at [fol. 452] the conclusion of your remarks. If you will make a note, Mr. Nelson—

Mr. Nelson: I have one more request, Your Honor. Will the Court grant me the right to answer him as soon as he gets through?

The Court: No. We will do this in an orderly way.

Mr. Nelson: I object to it.

Mr. Cercone: This is a repetition of what always occurs.

Mr. Nelson: I want to answer him as soon as he is through, without writing down one note, and I want the jury to know what my defense is going to be.

The Court: That is not our practice here. At the conclusion of the Commonwealth's case you may take as much time as he takes, or more, to outline to the jury and make a denial of anything that the evidence produces or indicates; and also any defense that you have to any of the evidence [fol. 453] that is submitted. Now we are going to do this in an orderly way. We might as well have a complete understanding on it from the beginning, both the Commonwealth and the defendant.

Mr. Nelson: I object to Your Honor's rulings.

The Court: Very well, every objection that you make, you will have an exception noted, so your record is complete on that, and if there is anything that indicates to the Court where your rights are being prejudiced I will direct your attention to it inasmuch as you do not have counsel present with you.

Mr. Cercone: (Continuing to the Jury.) Members of the jury: The period of this indictment dates from October 31st, 1950 and for two years prior thereto; which the Commonwealth will prove to you is the period in which this man stands charged for this crime. We will place a witness on the stand to show you that before that period, prior to the period of the indictment, show you the conduct of Steve Nelson—not as proof that he was guilty of the crime during

[fol. 454] the period of the indictment, but to show you that he had the guilty knowledge and the intent with which to commit the crime during the period of the indictment. We will put a witness on the stand to tell you about his membership in the Communist Party——

Mr. Nelson: Your Honor——

Mr. Cercone (Continuing): —not because——

Mr. Nelson: I object to this. You remember, yourself, yesterday you told the jurors that the Communist Party is not on trial—I knew different, I knew they were going to smuggle it in one way or another. And the Communist Party is on trial here, Your Honor.

The Court: Mr. Nelson, if you will——

Mr. Nelson: He is backing down on his own promise to the jurors.

Mr. Cercone: No, we didn't, Your Honor.

Mr. Nelson: I would like to ask that question.

[fol. 455] The Court: Mr. Nelson, I told you that you may make any objection you want to make at the conclusion of the remarks. And if you don't obey the order of this Court I will have to take other action concerning it. Now be seated.

Mr. Nelson: Your Honor, I will obey the order of the Court.

The Court: Then be seated, and make your objections at the conclusion of his remarks.

Mr. Nelson: Not knowing how to handle this question, Your Honor——

The Court: I am telling you how to handle it. If you will be seated I will rule on anything you want to object to at the conclusion of his remarks.

Mr. Nelson: All right, I move that these remarks be struck, regarding the Communist Party, and it not be brought in any more in this trial.

The Court: Are you refusing to obey my order in the matter? I told you to be seated and to make any objections [fol. 456] to his remarks at the conclusion of them, and I will rule on every objection at that time, that you make.

Mr. Nelson: Your Honor, do I understand——

The Court: Do not interrupt him any more. And I will

not permit him to interrupt your opening remarks or your closing argument.

Mr. Nelson: Do I understand, Your Honor, that I cannot make a motion at this time?

The Court: You may not make a motion at this time. You may make your motion at the conclusion of his remarks, if you think there is anything to justify the withdrawal of a juror and for a continuance in this matter. I will rule on it at that time. This must be conducted in an orderly manner and have no interruption in the action by either side—either your side or his side.

Mr. Nelson: Well, if the Court will please, I will cooperate to the best of my ability.

The Court: That is all I ask, Mr. Nelson.

[fol. 457] Mr. Nelson: However, I should think that these prejudicial remarks and things are out of order.

The Court: Make your motion concerning that at the conclusion of his remarks.

Mr. Nelson: May the Court order him not to make any inflammatory remarks?

Mr. Cercone: Your Honor, we are making the proper opening in this case.

The Court: I will not rule on it at this time. I told him to not argue his case, to outline his case. If there is anything in the outline of the case that is prejudicial, it should be stricken; or if it should justify the withdrawal of a juror, I will rule on it at the termination of his remarks.

Mr. Nelson: Thank you.

The Court: If you will cooperate in that respect, we will get along here very nicely.

Mr. Nelson: I will do the best I can.

The Court: Make notes as we go along of what you [fol. 458] consider prejudicial or inflammatory or otherwise contrary to what is proper, and I will rule on them at the completion of the remarks now engaged in by the District Attorney. Proceed.

Mr. Cercone (Continuing to the Jury): We will show you, members of the jury, the membership of this defendant in the Communist Party—not because membership is a crime (which is not in the State of Pennsylvania) but to show you that the Communist organization itself is a

sedition organization—for which this defendant operated, through and for the purpose of overthrowing the Government of the State of Pennsylvania and of the United States. And so that you will perhaps get a better background of the history of the Communist Party, we will put a witness on the stand who will tell you that ever since 1919 the Communist Party was in existence in the United States, controlled by the government and the Communist Party of the Soviet Union of Russia, and the Communists—the foreign organization which controls the communist [fol. 459] movement internationally, known as the “Communist International”—and ever since its existence in the United States it has operated here with the home base in Russia. We will put a witness on the stand who will show you that in 1928 the Communist Party adopted a program for the overthrow of this Government, not by the ballot vote but by a theory of force and violence and bloodshed.

Mr. Nelson: Your Honor, may I ask a question? I am not sure about your ruling and I don't want to argue with the Court, but is it your ruling that I can't object to these kind of slanderous remarks?

The Court: At the conclusion of them you may direct my attention to them. At the conclusion of them if it will justify the withdrawal of a juror, why, that all will be done. If it don't justify it at that time, we will not withdraw a juror.

Mr. Nelson: Can't Your Honor order him to handle the [fol. 460] case the way you indicated?

The Court: I told him to outline his case, not argue it. I can say to him at this time that these matters which you are referring to are not proper evidence.

Mr. Nelson: Aren't they going to have an effect on human beings now when they are being stated without my being able to contradict him?

The Court: If they are that effective, then a juror will be withdrawn.

Mr. Cercone: Your Honor, I want to place on the record at this time that this is again just some more of the Communist Party tactics.

The Court: The reporter is taking everything that is

said here, so you needn't emphasize it by asking for any further record.

Mr. Cercone: We will put a witness on the stand to show you that in 1939 a book was prepared called "The History of the Communist Party of The Soviet Union" [fol. 461] which was distributed among the members and workers of the Communist Party of the United States, and of other countries; which was prepared in part by Joseph Stalin, the dictator of Russia; which advocated the overthrow of all democratic forms of government. And that book was to be used by these members and workers here, not as a book of history but as a guide to action, members of the jury, in carrying out this plan of Sedition.

We will show you that in 1940 this communist organization showed the character of sedition when the United States Congress passed a law which required all organizations under the control of foreign organizations to register with the Attorney General—and to just get away from that Act the Communist Party voted to disaffiliate itself from the "Communist International" so that it would do away with the requirement of registering with the Attorney General of the United States. And we will show you, by a witness, that there was no disaffiliation at all; they voted to do so and still took the policies and directions from [fol. 462] the foreign government and the Communist Party of the Soviet Union of Russia. And then, members of the jury, we will call a witness on the stand—namely one Matt Cvetic—who is assigned by the Federal Bureau of Investigation of the United States Government to investigate the activities of this seditious organization, and he will tell you about Steve Nelson—he will tell you how, according to the plans of the Communist Party, Steve Nelson infiltrated the City of Pittsburgh with the Communist Party planned program of propaganda and sabotage.

And, members of the jury, we will put on the stand one Judge Michael A. Musmanno, who, as a private citizen initiated this prosecution. Judge Musmanno was a life-long resident of the County of Allegheny, and he will take the stand and tell you how on July 18th and 19th he walked into the Communist Headquarters here across the

street from the Courthouse and secured literature which will prove to you were seditious in nature. Judge Michael A. Musmanno will tell you why he, a private citizen, initiated this prosecution. We will introduce in evidence a challenging letter written by the defendant to Judge Michael A. Musmanno, admitting that he (Steve Nelson) was the chairman of the Communist Party of Western Pennsylvania.

And we will put a witness on the stand to show you some of the things that this seditious organization did; such as planning to infiltrate the Army and Navy and National Guards and R.O.T.C., and Civilian Military Training Camps, by sending selected communist members into the Armed Forces with instructions to secure as much military information as possible and to obtain promotions in the services so that they could work better in the higher echelons and do their work according to the precepts of the party of this seditious organization—and how they distributed publications and literature to the Armed Forces. They published what was known as the—a publication known as “Rapid Fire,” which is one of the first communist publications to be distributed among the Armed Forces. They distributed a pamphlet known as “The Red Guardman” among the National Guards of the State of Pennsylvania. They distributed a pamphlet called the “Red Cadet” among the R.O.T.C. members at Washington, D. C.—

Mr. Nelson: Your Honor, may I ask another question? Will Mr. Cercone refer to the dates of these pamphlets to see if they come under the period of the indictment or not? As far as I can recall, some of those pamphlets that he is referring to were printed thirty years ago. Am I going to be tried for pamphlets that were put out by someone before I was ever around, or anywhere like that.

The Court: If they are not within this statute, of course, your actions concerning them were not within the statute.

Mr. Nelson: Why does he bring it up?

The Court: That is a matter of proof, Mr. Nelson. And [fol. 465] if it is not within the period covered here by the indictment, of course, the Court will rule on it in your favor, that it is not admissible evidence. But that will

have to be done when the matter is submitted in evidence, after the closing of the opening remarks.

Mr. Nelson: I object to these things being brought in now, Your Honor.

The Court: You make your objections, as I told you, at the conclusion of the remarks.

Mr. Nelson: Okay.

Mr. Cercone: Then, members of the jury, we will put witnesses on the stand to tell you all about Steve Nelson, how he worked in the Communist Party since 1928, was a member of the National Committee of the Communist Party of America, at least twice on the National Committee—

Mr. Nelson: Your Honor, there again he goes to the question of the Communist Party.

The Court: We understand it. We will rule on it at [fol. 466] the termination of his remarks, Mr. Nelson. Now please cooperate.

Mr. Cercone: The seditious organization of which he was a member, of the National Committee at least twice, which sets up the policies and directives of the national organization in this country. We will show you that in 1931 he worked in the Wilkes-Barre and Scranton area organizing his work for these seditious organizations. We will show you that in 1932 he was sent as a delegate of the Communist Party of Philadelphia to Moscow, to the Lenin Institute there, to learn the theory and practices of the Communist Party work in America. And he just didn't go there as a student, members of the jury, but he learned things on what to do when he came here to America. He learned how to learn all about the rifles and machine guns and weapons of the United States Government; he learned how to take apart the machine guns and rifles and weapons of the United States Government—

[fol. 467] Mr. Nelson: Your Honor, is the Court going to permit these prejudicial remarks to be made at this time? I must ask; I don't know what to do, Your Honor.

The Court: Sit there and make a note of anything you consider prejudicial, and object to it at the termination of his remarks.

Mr. Nelson: Can't the Court order him not to do it? He

is a lawyer, he should know how to handle this question if he is a lawyer.

Mr. Cercone: It is perfectly in order, Your Honor.

Mr. Nelson: He has a political stake in this trial, Your Honor; that's why he is doing it this way. He wants to be another judge here, that's what he wants to be.

The Court: Now, Mr. Nelson——

Mr. Nelson: He knows what happened to Loran Lewis, now he wants to be one.

[fol. 468] Mr. Cercone: I object to his remarks, Your Honor.

The Court: We will sustain the objection. Proceed.

Mr. Cercone: We will show you that after this class was over, which lasted almost a year, he stayed over in Russia to learn how to be a spy. We will put a witness on the stand to tell you what——

Mr. Nelson: Am I charged with being a spy, Your Honor?

The Court: Be seated, Mr. Nelson.

Mr. Nelson: I think I should know that.

The Court: If you think this is prejudicial we will rule on it after——

Mr. Nelson: I think you owe it to me.

The Court: We will give you ample opportunity to argue at the termination of the remarks. I told you that before; now please cooperate.

[fol. 469] Mr. Nelson: The Court ought to tell him to talk the way a man ought to talk.

Mr. Cercone: These are the things we are going to prove by the evidence in the case, Your Honor, and I object to the remarks by this defendant, who is trying to set aside the processes of the Court.

Mr. Nelson: Why didn't you say the Government arrested me for that? Why does he bring it in here now?

The Court: There is a certain amount of background that is necessary, Mr. Nelson.

Now limit yourself to the background on the facts——

Mr. Cercone: That is what I am doing, Your Honor.

The Court: Alleged in the indictment as closely as possible, Mr. Cercone.

Mr. Cercone: We will show you, members of the jury, his activities in California where, as a member of the District [fol. 470] Board, he set up classes there, underground

classes in the work of sedition. We will call a man from California who was there at the time he set up a school out at Alameda, an underground school, and the kind of school that we will prove he setup here in the City of Pittsburgh, members of the jury, during this period of the indictment. We will show you that by this witness who will come in here from California that the only reason that Steve Nelson succeeded him at the time was that he was the only person that was trusted with the spy work of the Soviet Union.

Mr. Nelson: Your Honor, I cannot take this any longer—I don't care, Your Honor, what the Court will do, but I must ask you to protect me in this case—you are not doing it. You are permitting this man to get away with murder. This is nothing but a butcher job being done by this nephew of Michael Musmanno.

Mr. Cercone: That is purely propaganda.

The Court: Please be seated, both of you. Limit yourself, [fol. 471] Mr. Cercone, to the matter at issue here, the activities of this man during the period of the indictment. Refer only briefly to the background, which I understand is permissible—and I will so rule on it as permissible in a general way.

Mr. Cercone: That is right, Your Honor.

The Court: Because intention is involved here, background to establish that intention probably to a certain extent is admissible in evidence. But I would ask you to rely on the evidence rather than to emphasize it to the jury at this time point-by-point. The emphasis here should be on what his activities were during the period of the indictment. Refer to it briefly without the details attached to it, and rely on your evidence in order to show that at the proper time.

Mr. Cercone: We will show then, members of the jury, by volumes of evidence, books and pamphlets, this plan of sedition on the part of this defendant. We ask you to listen to all the evidence carefully, to all of the witnesses, [fol. 472] and to listen to the evidence as spoken by the pages of the books and the contents of the documents. We will say to you now that after having heard all the evidence we ask you to come back with a verdict which is just under all the circumstances.

The Court: I didn't mean to preclude you from outlining the matter completely——

Mr. Cercone: That's all right.

The Court: Under the present indictment, Mr. Cercone. You may elaborate on that, your expectation of proof. I was intending to limit you on the particularity with which you were going into the background.

Mr. Cercone: Well, I thought it was not necessary, Your Honor, because we are going to prove it.

The Court: Well, just so you don't misunderstand my ruling. You may, if you wish, outline further the matter under the indictment within the period of the statute of limitations.

[fol. 473] Mr. Cercone: I think that I have done that.

The Court: Now, Mr. Nelson——

Mr. Nelson: I move to strike the remarks by Mr. Cercone and call for the withdrawal of the jury and declare a mistrial.

The Court: Your motion is refused.

I will say this to the jury, however, that the matters for which you are being tried is the matter which is included in the indictment. A certain amount of the present matter under the indictment determines your intentions concerning your actions, and for the purpose of showing your intentions that limited amount of your background is permissible to be shown in evidence. But I will tell the jury that you are not being tried with anything that you have done beyond the period of the statute of limitations; you are being tried for what has been done within the period preceding this indictment which is within the statute.

Mr. Nelson: Then, Your Honor, let the record show that [fol. 474] the prosecutor did not cite one thing that I have done since I came to Pittsburgh—not one thing. He is relying solely on the so-called background material, which gives him a chance to slander me and smear me, which is going into the Press.

Mr. Cercone: I object to this, Your Honor.

Mr. Nelson: Which is going to go into the Press and create the impression, as Your Honor has seen already when picking the jury how some people have made up their minds by reading this gullible Press that is dishing out

this stuff—and they have me convicted before the trial opens.

The Court: Not with this jury. These ladies and gentlemen have stated that they have no opinion concerning you, and they have no prejudice against you. And I am telling you now that background only indicates what your intentions were and what may be established you did during the period that is covered by this indictment.

[fol. 475] Mr. Nelson: Then, Your Honor, when can I get a copy of the transcript? Because I am not able to keep in mind all the points that he referred to—I want to make specific motions on every point.

The Court: Well, you want to be specific on everything, including the background that he emphasized.

Mr. Nelson: I can only relate to the fact now that he mentioned the Communist Party on several occasions. And I make a motion that his points be struck.

The Court: And that you were a spy.

Mr. Nelson: That I was a spy—that that be struck. And that references to the so-called underground school be struck—because there was no such a thing. That it be noted for the record that one of the witnesses he is going to bring in here (Michael Musmanno) never saw me—never saw me—therefore, he could not see me commit any crime.

[fol. 476] The Court: The jury understands that he was only telling them what he expects to prove—what you say is not evidence.

Mr. Nelson: He is not a competent witness and, therefore, could not testify against me. And the reference to the so-called R.O.T.C., and work in the Armed Forces. Why wasn't something done about it, Mr. Cercone, if that was so?

The Court: Just a moment, address your remarks to the Court, Mr. Nelson, or we will—

Mr. Nelson: If there was any crime committed, why wasn't something done about it? He is going back to 1928.

The Court: Make your motions here, based on what you think inflammatory or prejudicial in the remarks he made.

Mr. Nelson: I move to strike these remarks, as I indicated, and to give me a chance to look at the record and point those up that are specifically out of order. And I

[fol. 477] hope the Court will grant me the right to have them struck.

The Court: Do you want them struck, or do you consider them such that you want a juror withdrawn?

Mr. Nelson: That is correct—both.

The Court: Well, I have told the jury that on the matter of background, you are not being tried on the basis of that. I think the jury will listen to the instructions of the Court now and as we go through this trial, as well as in the final charge. So I am not going to withdraw a juror and continue the case, but I will tell the jury that as we go along in this case, if there are things which have been referred to in the opening remarks of counsel which are not properly proved, or not the evidence to sustain them, is not admissible in evidence, that they are to be ignored. We will rule on those as we go along, and you may at any time enter an objection to any offer of evidence, [fol. 478] Mr. Nelson, that the District Attorney attempts to submit. We will rule on each at the proper time.

Proceed, Mr. Cercone.

Commonwealth's Case

JOSEPH BECKER, called as a witness on behalf of the Commonwealth, being first duly sworn, testified as follows:

Direct examination.

By Mr. Lewis:

Q. What is your name?

A. Joseph Becker.

Q. And where do you live, Mr. Becker?

A. 1645 Reamer Street, Pittsburgh, Pennsylvania.

Q. And what is your occupation?

A. Detective, City of Pittsburgh.

Q. And how long have you been a detective of the City of Pittsburgh?

A. Over sixteen years.

Q. Do you have any special assignment in the Detective Bureau?

A. Assigned to the Hotel Squad.
 [fol. 479] Mr. Nelson: The which?
 The Witness: Hotel Squad.
 The Court: Hotel Squad.

By Mr. Lewis:

Q. Do you know where the Bakewell Building is located?
 A. I do.
 Q. Where is the Bakewell Building located?
 A. Across the street from the City-County Building, on Grant Street, Pittsburgh.
 Q. Have you ever been in the Bakewell Building?
 A. I have.
 Q. When was the first time that you were in the Bakewell Building?
 A. The first time I was in the Bakewell Building was on August the 18th, 1950.
 Q. And what occasion did you have to go there?
 A. I accompanied Judge Michael A. Musmanno over to the Communist Headquarters on the Fourth Floor of the Bakewell Building.
 Q. And why did you go there?
 A. He went there to look at some literature and see if he could contact Mr. Nelson.
 Q. What date did you say that was?
 A. On the 18th of August.
 [fol. 480] Q. You sure it was August?
 A. Yes.
 Q. Wasn't it July?
 A. Could have been July—could have been July.
 Q. That was in the year 1950?
 A. That is right.
 Q. How long did you remain there when you went there?
 A. Oh, approximately five minutes.
 Q. And did you go in the headquarters?
 A. No, I stood outside the door while Judge Musmanno went in.
 Q. How long was he in there?
 A. Approximately five minutes.
 Q. Five minutes?
 A. That is right.

Q. Now did you ever visit the headquarters any time after that?

A. The next day—the 19th.

Q. And was anybody with you at that time?

A. Judge Musmanno.

By the Court:

Q. The 19th of what; July?

A. July.

Q. July?

A. Yes.

[fol. 481] By Mr. Lewis:

Q. Was anybody else with you besides Judge Musmanno?

A. My partner, George Marshall, City Detective.

Q. And did you go into the offices at that time?

A. I stayed out in the hall while Judge Musmanno and Marshall went in the office and purchased books.

Q. And how do you know that books were purchased?

A. Well, they come out and we carried the books over to Judge Musmanno's Chambers—the books that he had purchased.

Q. Who is Mr. Marshall?

A. A City Detective, my partner.

Q. Now were you in the headquarters any time after that?

A. The next time we were in was to raid the place, on August the 31st, 1950.

Q. You say, "raid the place"; did you have any authority to raid the place?

A. We had a search warrant.

Q. And where did you get that search warrant?

A. It was signed by Marshall Thompson, one of the Judges of this Court.

By the Court:

Q. One of the Judges of this Court?

A. That is right.

[fol. 482] By Mr. Lewis:

Q. He is one of the Judges of——

A. Criminal Court.

Q. Of the Criminal Court?

A. Yes.

(Commonwealth Exhibit No. 1, marked for identification.)

By Mr. Lewis:

Q. Mr. Becker, I show you Commonwealth Exhibit No. 1, and ask you what that is, if you know?

A. This is a search warrant I served on Bernard Salis of 115 South Twenty-fourth Street, South Side Pittsburgh, who was in the office of the Communist Headquarters on the Fourth Floor of the Bakewell Building.

Mr. Lewis: We offer in evidence Commonwealth Exhibit No. 1.

The Court: Have you shown it to the defendant?

(Defendant examines Commonwealth Exhibit No. 1.)

The Court: Do you have any objection to it, Mr. Nelson?
[fol. 483] Mr. Nelson: I certainly do object, Your Honor. It is a raid on a perfectly legal party.

The Court: I don't mean that—do you have any objection to the offer of this as a search warrant?

Mr. Nelson: I object to anything that is going to—that the prosecution is bringing in here to frame me.

The Court: Objection overruled. There will be an exception noted on the record to all of the Court's rulings; so it is not necessary to enter an exception, for you will be given the benefit of all exceptions to adverse rulings. The offer will be received.

Exception noted.

By Mr. Lewis:

Q. Mr. Marshall, did you tell us who—I mean Mr. Becker—accompanied you at that time?

A. Detective Marshall and myself.

Q. And who was at the headquarters when you arrived there?

A. Bernard Salis.

[fol. 484] Q. And did anybody come into the headquarters while you were in there?

A. No.

Q. And how long did you remain there at that time?

A. After we got into the office I instructed my partner to go out and call Judge Musmanno and tell him that we had seized the Communist Headquarters—

The Court: We want no conversations that went on there in the absence of the defendant.

By Mr. Lewis:

Q. Did you see Judge Musmanno on that date?

A. I did.

Q. Where did you see him?

A. He came over to the Communist Headquarters.

Q. What time did he arrive there?

A. About after noon, as he had just come back from Harrisburg and we were just able to contact him and ask him to come over—just come in from Harrisburg probably an hour or half an hour before.

Q. And were you still there when he arrived?

A. I was.

Q. How long had you been there at that time?

A. I was in the office about a half hour to an hour until [fol. 485] Judge Musmanno come over—from the time I went in until Judge Musmanno got there.

Q. Was there anybody with Judge Musmanno when he came in?

A. He walked in with Detective Marshall.

Q. Now after Judge Musmanno came there, how long did you remain?

A. Approximately two or two-and-a-half hours.

Q. What did you do there during that time?

A. Looked over communist literature and pamphlets and maps on the wall, and the general outlook of the office and the things that were in the office.

Q. Were there any books or pamphlets taken out at that time?

A. There were.

Q. Can you give us an idea how many?

A. There were—when we would come across something that we thought was evidence we would place it in a pile, and then put a rope around two bundles, and removed two bundles at that time when we left.

By the Court:

Q. You took two bundles of what?

A. Literature.

Q. Literature?

A. Which we thought was evidence at that time.

[fol. 486] By Mr. Lewis:

Q. Now did you visit the headquarters any time after that?

A. The next time was on September the 5th when the padlock order was put on by the courts.

Q. How long were you there at that time?

A. Well, we just went over and accompanied Sheriff Sipe, who put the padlock on the Communist Headquarters in the Bakewell Building.

By the Court:

Q. You didn't execute that padlock order; you just accompanied the deputy sheriff?

A. That is right.

Mr. Lewis: Cross examine.

The Court: Do you have any questions, Mr. Nelson?

Cross-examination.

By Mr. Nelson:

Q. Mr. Becker, the time you say you went over to the Communist Headquarters—

Mr. Nelson: I wonder if the Court won't mind if I lean on here—my leg is still sore.

[fol. 487] The Court: Yes, we realize that.

Mr. Nelson: I don't do it out of disrespect for the Court.

The Court: It is all right.

By Mr. Nelson:

Q. At the time you went over to the Communist Headquarters did you find me in the place?

A. No. But we were told by Bernie——

Q. Answer the question—no, no, just answer the question.

By the Court:

Q. What is your answer to the question?

A. No.

By Mr. Nelson:

Q. Did you ever see me in the headquarters of the Communist Party?

A. No.

Q. Did you ever meet me before that?

A. Never knew you before that—only reading about you.

Q. “Only reading about you?”

A. Yes.

Q. Consequently, you went over to pick up some literature for somebody else, but you had no connection with [fol. 488] me whatever, did you, at that time

A. No.

Mr. Nelson: Your Honor, in that case I move that the man’s testimony be struck as having no bearing at all on me; and what he has said so far was hearsay testimony. I believe it is entirely improper and has no bearing on me.

The Court: It is not hearsay. You may develop that it has or has not any bearing, I can’t say at this time. We will overrule your motion to strike his testimony.

Exception noted.

Any further cross examination?

Mr. Nelson: May we have a recess just for a few minutes for me to organize some questions on this? I didn’t——

The Court: We can’t grant a recess——

Mr. Nelson: I have trouble with my eye glasses.

The Court: I can’t grant a recess after each witness, [fol. 489] but we are in order for a recess within about ten minutes; so, if you would request a recess now, why, I will grant it now.

Mr. Nelson: Thank you, Your Honor.

The Court: Give the jury a ten-minute recess at this time.

Short recess.

(After recess.)

The Court: All right, Mr. Becker, take the stand, please.

Can you proceed without Mr. Lewis?

Mr. Cercone: All right.

The Court: All right, cross examine further.

By Mr. Nelson:

Q. Mr. Becker, I believe you testified that you picked up some books when you were there, or cartons, and you took away these books for Judge Musmanno; is that right?

A. For Judge Musmanno to look at, further go through them.

Q. That's all right. You referred to these books as seditious?

[fol. 490] A. That is right.

Q. Did you have a chance to read all those books in the time you had been there?

A. No, I didn't have a chance to read them all.

Q. So how do you know they were seditious?

A. Well, different paragraphs and phrases in them.

Q. You had a chance to read two cartons of books inside of an hour?

A. It would take two years to read the three-rooms of literature that were there.

Q. But do you, on the basis of that scant information—or, rather, observation, you feel that you are qualified to state that those books were subversive?

A. Right.

The Court: He used the word "communistic".

The Witness: Communistic—subversive.

Mr. Nelson: He said "subversive", I think, Your Honor.

The Court: I may be mistaken.

The Witness: I said, "Communist literature."

By Mr. Nelson:

Q. I believe you made reference to “subversive literature” [fol. 491], and it should be struck because it is obviously impossible for you to have picked them up, particularly since you said you were standing outside the door and didn’t see what happened.

A. No, I executed the search warrant; I was in charge of seizing those books.

Mr. Nelson: But I believe the testimony will show, Your Honor, that Mr. Becker stated that he was waiting outside while Mr. Marshall—

The Court: That was the first two visits; the third visit is when he executed the search warrant and he said he went inside—and I noted it here.

By the Court:

Q. Judge Musmanno came in after you had been there a half hour or an hour?

A. That is right.

Q. On the third visit?

A. That is right.

Mr. Nelson: In that case, I don’t see how this man is competent to pass judgment on the contents of the books.

[fol. 492] The Court: We will direct the jury to disregard the opinion expressed by the witness as to what class of literature it was.

Mr. Nelson: Thank you.

The Court: That is part of the issue here for them to determine.

Mr. Nelson: Thank you.

By Mr. Nelson:

Q. Then I just have one more question: I believe you testified that you executed the padlock order?

A. I did not issue the padlock order; I did not execute it; I accompanied Sipe, who is the Sheriff of Allegheny County—he executed it.

Q. Okay, I stand corrected on that; I believe you did say that, that is right. Was that the same padlock you refer to that the Supreme Court threw out as illegal?

Mr. Cercone: This is objected to, Your Honor.

The Court: Well, it is not proper cross examination. Objection sustained.

Exception noted.

[fol. 493] Mr. Nelson: Well, I think, Your Honor, I am entitled to know—the jury ought to know. I think it is a perfectly legitimate thing, Your Honor—the Supreme Court overruled it.

The Court: I don't know anything about that. You might ask him if he knows anything about it, rather than to testify to it yourself. You can testify to it later yourself, but now ask the witness whether he knows anything about it being taken off when he was present, or whether he was present then. He does not have to indicate anything more than that he was present when it was put on.

Mr. Nelson: In that case I am not able to pursue this point.

The Court: That is the rule.

Mr. Nelson: I don't know how to handle this—I object to your ruling.

The Court: You may ask him whether he was present when it was removed and if he knows how it was removed. I will not limit you on that.

[fol. 494] By Mr. Nelson:

Q. Well, are you acquainted with that, Mr. Becker? Do you know when the padlock was removed?

A. I was there when the padlock was removed. I was also there when the padlock order that was—the padlock was removed and a seizure warrant was issued at the same time, and the sheriff seized the whole office and moved the whole office out.

Q. Then just one more question, Mr. Becker: As far as I am concerned, the only time you ever saw me is when you—as far as the first time you saw me is when you came to my house at midnight on August the 20th—

A. August 30th.

Q. August the 30th at midnight when my wife and I were returning home—that is the first time you met me, when you stuck the what-you-call-it, warrant in front of

me out in the dark and told me that I am under arrest; is that right?

A. Well, it was under a streetlight. I told you we had a warrant for your arrest—and we locked you up. That's the first time I saw you.

Q. At that time I asked you, "What am I being held for?" And you said, "Well, you'll find out." Is that right?

A. I did not. You had the warrant; you read it and your wife read it.

Q. And when I—when you read the word "sedition" I [fol. 495] asked you, "What does that mean? What crime have I committed?" What did you say to that?

A. I don't remember.

Mr. Nelson: That is all, Your Honor.

The Court: All right, Mr. Becker.

The Court: Gentlemen, members of the jury: I have this suggestion to make—I am partly responsible for it—through some commitment that cannot be altered very much it will be necessary to recess early this afternoon, and I am wondering whether it is agreeable to counsel and to the jury if we control our appetites and go through the noonhour until about one o'clock, and then let you have the rest of the afternoon off, until tomorrow morning. Would that be satisfactory to the jury?

(Jurors indicate they agree.)

The Court: How about the lawyers? Is that agreeable to [fol. 496] you, Mr. Nelson?

Mr. Nelson: You mean to go on until one o'clock?

The Court: Until one o'clock and then recess at one until tomorrow morning.

Mr. Nelson: Well, Your Honor, I am not in good shape to—

The Court: We will grant a recess before one.

Mr. Nelson: I wish there were breaks.

The Court: We will give you a break at twelve o'clock.

Mr. Nelson: Because you know I am sick and I am barely able to stand up now.

The Court: We will give you a break at twelve o'clock.

Mr. Nelson: But I will do the best I can.

The Court: All right. Mr. Lewis and Mr. Cercone, is that agreeable?

Mr. Lewis: Yes.

[fol. 497] Mr. Cercone: Yes.

The Court: Proceed.

MICHAEL A. MUSMANNO, a witness called on behalf of the Commonwealth, being first duly sworn, testified as follows:

Direct examination.

By Mr. Lewis:

Q. What is your name?

A. Michael A. Musmanno.

Q. And where do you live?

A. 1321 Island Avenue, Stowe Township, Post Office McKees Rocks.

Q. What is your occupation?

A. I am a Judge, but in this proceeding I am acting as a private citizen. And I would prefer to be referred to as "Mr. Musmanno" and not "Judge Musmanno."

Q. I believe that you are the prosecutor in this Sedition Case, are you not?

A. I don't know if that — the proper terminology—I initiated the prosecution by swearing to an information against the defendant in this case.

Q. Do you know the defendant in this case?

[fol. 498] A. I do know him. Steve Nelson.

Q. And who is the defendant?

A. He is the chairman of the Communist Party of Western Pennsylvania District.

Mr. Nelson: Your Honor, I move that that be struck. If your ruling is going to mean anything at all on the matter of the Communist Party, I believe you ought to hold the witness to keeping himself away from matters pertaining to the Communist Party. I move that you order him to do that, Your Honor.

The Court: Well I cannot limit him to that extent because, as I told you before, intention is involved here, and that may be derived from membership in or activities or association with the Communist Party.

However, I will insist that this question be supported by the information that the witness has, how he knows you are chairman of the Communist Party, rather than to just make that as a declaration.

[fol. 499] Mr. Nelson: Your Honor, I take exception to your ruling. I think this is a roundabout way to bring in the things that you told the jurors would not be tried in this case.

The Court: I told the jurors that membership in the party alone is not sufficient. The activities may be demonstrated on your part to bring you within the Sedition Act. And I will tell them again in the presence of the witness.

By Mr. Lewis:

Q. How do you know that Mr. Nelson was chairman of the Communist Party of Western Pennsylvania?

A. I know he is the chairman of the Communist Party, Western Pennsylvania District, through many sources. He has issued many communications over his signature in that capacity. He wrote me a letter in which he signed himself as, "Steve Nelson, Chairman of the Communist Party, Western Pennsylvania District." I heard him, himself, state that he was the chairman of the Communist Party, Western Pennsylvania District. I have seen his name in the newspapers any number of times so designated. He has never denied that he was the chairman of the Communist Party, Western Pennsylvania District, publicly, so far as [fol. 500] I know. I have seen mimeographed releases sent out in connection with various activities of the Communist Party in which he signed himself as chairman of the Communist Party, Western Pennsylvania District. I asked for him in the Communist Headquarters in Pittsburgh, for the chairman—I asked for "Steve Nelson, Chairman of the Communist Party, Western Pennsylvania District," and I was informed——

The Court: Just a moment, Judge—no hearsay, what you were informed. We have limited Mr. Becker on questions

that were relating to hearsay, and we will have to limit you in the same fashion.

Mr. Nelson: Let him produce those things, that is the proper evidence. And I thank you for admonishing him not to bring in hearsay testimony.

A. (Continuing:) And I heard Mr. Nelson, in this very courthouse, admit himself to be the chairman of the Communist Party, Western Pennsylvania District. That is how I know that he is the chairman of the Communist Party, Western Pennsylvania District.

Q. Now do you know where the Communist Headquarters in Pittsburgh was located in July, 1950?

[fol. 501] A. I do.

Mr. Nelson: Your Honor, is the Communist Party going to be tried here?

The Court: No, sir. We emphasized that several times, Mr. Nelson.

Mr. Nelson: Why doesn't the prosecutor ask the questions that would lead in the direction of my activities?

The Court: This is the groundwork for it. If he can establish your connection with it, of course, that is proper evidence to submit. If he cannot, then it is not proper.

Mr. Nelson: I object to Your Honor's ruling on this.

The Court: You have an exception to the ruling.

Exception noted.

Mr. Lewis: Read the last question, please.

(Record read as follows: "Q. Now do you know where the Communist Headquarters in Pittsburgh was located in July, 1950? A. I do.")

[fol. 502] By Mr. Lewis:

Q. Where was it located in July, 1950?

A. In the Bakewell Building, Suite 426.

Q. Now have you ever been in the headquarters?

A. I have.

Q. When was the first time that you visited the headquarters of the Communist Party in Western Pennsylvania?

A. I had been there several times looking in, but I never

made a visit to talk with any one with regard to the defendant until July 18, 1950, when I went there and asked for Steve Nelson and was informed that he was not in that day.

Q. And who did you see there on July the 18th, 1950?

A. I saw Benjamin Carruthers.

Q. Did you see anybody else?

A. On that day, only Carruthers.

Q. And how long did you remain there?

A. Just a few minutes.

Q. Now did you return to the headquarters at any other time after July 18th?

A. Yes. I went back the following day, on July 19th. I was accompanied by City Detectives Joseph Becker and George Marshall.

Q. Now did you see anybody there on July 19th, in the headquarters?

A. Yes, I did.

[fol. 503] Q. Who did you see?

A. I saw Carruthers again, and asked for Steve Nelson, chairman of the Communist Party, Western Pennsylvania District. He took me into an office and said, "This is his office, but he is not here." He introduced me to Andrew Onda—who also stated that this was the office of Steve Nelson but he was not in. And then Onda took me through the offices, to what has been termed as the "Literature Room" of the Communist Headquarters—where I met James H. Dolsen.

Q. Now what is the literature room?

A. It was a room which contained literature.

Q. What do you mean by "literature"?

A. Books and pamphlets, newspapers, magazines.

Q. How long did you remain in the headquarters on July the 19th?

A. I would say a little over a half hour.

Q. Now will you describe the headquarters as they were on July 19th when you were there?

A. The headquarters consisted of four rooms; made up of Steve Nelson's office, the district secretary's office—I am giving them in the order in which they run through the suite—the receptionist's office (also used by the stenographer), and the so-called literature room.

Q. And was there anything on the walls when you were in there?

[fol. 504] A. Yes.

Q. Were there pictures on the wall?

A. Yes.

Mr. Nelson: Your Honor, I object to this manner of putting questions. It seems to me that is leading the witness.

The Court: Do not lead the witness.

Mr. Nelson: This witness is a Judge, he ought to know how to answer without being led by another Judge.

The Court: You are objecting to the way they are being asked, not the way they are answered. However, asking the witness whether or not there was anything on the walls, is not leading. Answer the question, Judge Musmanno.

A. You are asking me if there was anything on the walls?

Q. Yes. Did you see anything on the walls?

A. There were some pictures on the walls. There was a picture of William Z. Foster, who was the national chairman of the Communist Party—a picture of him on the wall advertising his book “Twilight of World Capitalism” for [fol. 505] thirty-five cents. There was a picture of Eugene Dennis, general secretary of the Communist Party of the United States. There was a picture of Elizabeth Gurley Flynn, member of the National Board of the Communist Party of the United States, with an inscription, “To my favorite district with love and affection.” Then there were—do you want me to go beyond the walls?

Q. Yes, tell us—give us a description of the rest of the headquarters as you saw it there on that day.

A. Yes. There was no picture of an American on any of the walls, of the sixteen walls of those headquarters—

Mr. Nelson: I object to that answer, Your Honor, because these three people are all Americans. And this kind of a remark is—

The Court: We will sustain your objection. We will sustain the objection unless it is disclosed that they were not Americans.

By Mr. Lewis :

Q. Go ahead.

A. The picture of Joseph Stalin, with his ambushing mustache, stared at you from a score of places in the headquarters. And the picture of Lenin, with his shaving brush beard, also glared at you from various places in the head-[fol. 506] quarters. The entire headquarters abounded with books, pamphlets, newspapers, all either glorifying Russia or criticizing or degrading the United States.

Mr. Nelson: Your Honor, I object to this. This is a matter of opinion and not evidence. The man is classifying books that he obviously had a chance to just see on a shelf and make a reference to them as to what they are. I think the proper evidence would be to state: There were books. Period.

The Court: You may offer the books to establish those facts. We will sustain the objection to what they said or did not say.

Mr. Nelson: Thank you.

The Court: I presume these books were confiscated?

Mr. Lewis: The books are all here.

A. (Continuing:) There were handbills and leaflets carpeting the desks and chairs and spilling over on the floor, caricaturing or ridiculing the United States, its courts— [fol. 507] Mr. Nelson: Your Honor, I believe these leaflets should be introduced as evidence; no opinion should be given, and let the jury pass on what the contents of these leaflets are.

The Court: Will these leaflets be presented?

Mr. Nelson: They should be produced in this case, Your Honor, and they have no business capitalizing on them.

The Court: Will these leaflets be presented?

Mr. Lewis: We have leaflets here, but I don't know whether we have them all or not at this time.

Mr. Nelson: In that case, I move to strike the answer.

The Court: We will eliminate the opinion of the witness as to what they demonstrated.

Mr. Nelson: Thank you.

A. (Continuing:) There were magazines, large magazines, throughout the headquarters, opened and revealing

[fol. 508] pictures of mass Russian flags. There were no such pictures of the American Flag, nor was there any American Flag in this entire establishment.

Mr. Nelson: Your Honor, again I think the maps ought to be introduced in evidence. What is this? Is this going to be opinions just because he is a Judge? Do I have to take this stuff from him?

The Court: You are not taking any stuff from anybody; and if you have an objection, present it in the proper way without any disparaging remarks.

Mr. Nelson: Your Honor, I move that he be ordered to introduce the evidence and let the evidence speak for itself.

The Court: Do you have it, Mr. Lewis?

Mr. Lewis: We have the books, and they will be introduced—if you give us a chance.

The Court: The District Attorney says he will support the testimony of the witness by producing these books.

[fol. 509] Mr. Nelson: In that case, shouldn't he make another opening statement to the jury, Your Honor—that's what he is doing.

The Court: He needn't cover everything in the opening. Proceed, Mr. Lewis.

By Mr. Lewis:

Q. Go ahead.

A. On one of the walls there was a large map of Russia. And then not far from this map which was displayed on the wall there was a roll of maps of Russia. There was no such comparable map of the United States in the entire headquarters.

(Commonwealth Exhibit No. 2, marked for identification.)

Q. I show you Commonwealth Exhibit No. 2, and ask you if you know what that is?

A. That is a map of the nation known as Union of Soviet Socialist Republics, which is called Russia.

Q. Did you ever see that map before?

A. I did.

Q. Where did you see it?

[fol. 510] A. I saw this map on the wall in the so-called

literature room of the Communist headquarters, 426 Bakewell Building, 417 Grant Street.

Mr. Lewis: The Commonwealth offers in evidence Exhibit No. 2, and ask permission to show it to the jury after Mr. Nelson looks at it.

Mr. Nelson: Now I'd like to know what is going to be proven by possession of a map, or a map on the wall? What is this going to do with the jury? Are there no maps allowed to be on the place?

The Court: Let's not argue. You asked for an offer, didn't you. What do you offer to prove by the exhibit?

Mr. Nelson: What do you offer to prove?

Mr. Lewis: We are proving what this headquarters looked like, what was in it. And we are going to prove, to follow that up, by showing that this organization was seditious.

The Court: I think the offer—

[fol. 511] Mr. Nelson: Why, because this map was on the wall?

Mr. Lewis: That is only a part of the entire picture.

The Court: The objection is overruled. The offer will be received for the purpose—

Mr. Nelson: I object, Your Honor.

The Court: For the purpose of showing the contents of this room in the Bakewell Building.

Mr. Nelson: I object to it, Your Honor.

The Court: Your objection is noted.

Mr. Nelson: Thank you.

(The map, Exhibit No. 2, shown to the jury.)

(Commonwealth Exhibit No. 3, marked for identification.)

By Mr. Lewis:

Q. I show you Commonwealth Exhibit No. 3, and ask you if you know what that is?

A. I do know what it is.

[fol. 512] Q. What does Commonwealth Exhibit No. 3 consist of, sir?

A. It consists of ten maps of Russia similar—and in fact identical with the map of Russia which I saw on the wall

in the Communist headquarters in the Bakewell Building. These maps were in the same room—not on the wall.

Mr. Lewis: The Commonwealth offers in evidence Exhibit No. 3.

Mr. Nelson: Your Honor, let the record show that these maps, as well as the map that was introduced by Mr. Lewis and Mr. Musmanno—

The Court: You mean Exhibit No. 2.

Mr. Nelson: Were printed in the Russian-American Institute during the Second World War when Russia was our ally and when everybody was proud to have one of these maps.

The Court: It will show on its face what it is, if it is offered in evidence.

Mr. Nelson: The interpretation given to it by Mr. Musmanno and Mr. Lewis is only propaganda.

The Court: Do you object to it, or do you just want to [fol. 513] explain something?

Mr. Nelson: I object to it.

The Court: Objection overruled. The offer will be received.

Exception noted.

The jury, of course, has had the benefit of your observation concerning it on that matter.

The Witness: Do you want me to go on with the description?

By Mr. Lewis:

Q. Please continue with the description.

A. There were numerous bookshelves in the headquarters, and some of the shelves sagged with histories on various phases of Russia—

Mr. Nelson: Your Honor, what does this mean—“sagged”? I think that is an opinion and an interpretation by this witness. He is not giving evidence; he is making a speech.

Mr. Lewis: That is a description.

Mr. Nelson: Your Honor, I suggest that he confine himself to the books and the covers of what was in them, and the general nature—which is admissible as

evidence. This man is a Judge and should know better than that.

The Court: We will ask the Judge to refrain from words of description. He can submit the number of volumes that were there. We will ask him to do that rather than tell their effect on the bookshelves or anything of that nature.

Mr. Lewis: He is entitled to give a description and if he uses certain words to describe it, it gives us a clear picture. He is entitled to do that.

The Court: It does not have any evidential value. Let's eliminate those things and limit ourselves to the actual contents there, rather than on how they were setup in the office or anything of that nature.

Mr. Lewis: I think it is important to get a clear picture, [fol. 515] and that is what we are trying to do.

The Court: We can get a truer picture if you give the number of volumes that were there on the history of Russia, rather than how they affected a bookshelf, Mr. Lewis.

By Mr. Lewis:

Q. Continue.

A. There were scores of books on various phases of Russian history, but there is not one book on American history in the entire establishment.

Mr. Nelson: Your Honor, that's again an opinion. The facts will show, in the first trial, that there were books on American history, and he is not telling the truth, Your Honor.

The Court: We will let the jury decide that. You may answer him in your cross examination—ask him about it, ask him on the point of the testimony in the prior trial, if you wish. That is proper cross examination.

Mr. Nelson: Thank you.

Mr. Lewis: I think Mr. Nelson should be warned to make [fol. 516] his objection, to merely make an objection and not make a speech every time to this jury.

The Court: Well, we understand he is not represented by counsel.

Mr. Nelson: They compelled me to go to trial without a lawyer.

Mr. Lewis: You had time to get a lawyer for four months. I object to that statement.

The Court: Gentlemen, I am going to admonish both of you. If there are any remarks to be passed here, address them to me. I will not put up with this argument between counsel at the counsel table.

Mr. Nelson: Your Honor, you know—

The Court: Be seated, both of you.

Mr. Nelson: I am no lawyer, Your Honor.

The Court: I will hear nothing further from either of you. Be seated, please.

[fol. 517] By Mr. Lewis:

Q. Continue, Judge.

A. There were hundreds of pamphlets on the constitution of the Communist Party of the United States, and many copies of the constitution of Soviet Russia—but not one copy of the Constitution of the United States of America.

Mr. Nelson: I object.

The Court: Objection overruled. You may cross examine him on it at the proper time, Mr. Nelson.

A. (Continuing:) On another wall in the literature room there was appended a map of Korea (this not as large as the one of Russia which we have just seen), and this map was made up to show the battlelines in Korea. The Communist forces were depicted by arrowheads, sweeping arrowheads; the American forces were shown to be, with appropriate symbols, either stationary or collapsing.

By the Court:

Q. Do we have the map, Mr. Witness?

A. No.

Q. Is it available here?

A. No. I saw that on July 19th. When I returned on [fol. 518] August 31st, when I got the Russia map, the map of Korea had disappeared in the meantime.

Mr. Nelson: I move that this remark, therefore, be struck, Your Honor, about the so-called map of Korea.

The Court: We will sustain the objection.

Mr. Lewis: I think he is entitled to describe it. The mere fact that it was gone—the mere fact that it was gone the second time he went to the headquarters doesn't necessarily say we can't describe what was there when he went in the first time.

The Court: We will stand by our ruling, Mr. Lewis.

A. (Continuing:) Surrounding the map there were newspaper clippings taken from communist newspapers, they were pinned and, in some instances, lightly pasted to the walls. These newspaper clippings which I had a opportunity to glance at while Mr. Dolsen was getting the literature for me, always referred to the communist forces in heroic language—

Mr. Nelson: Your Honor, I object again, on the ground [fol. 519] that this man is giving opinions, not introducing evidence.

The Court: Yes, it is too general, Mr. Lewis, now to describe the contents of the office until you have it here.

Mr. Nelson: Thank you, Your Honor.

Mr. Lewis: If the Court please, you can go into a room and see a chair there; you don't have to bring that chair in.

The Court: I am not going to permit him to give details of written documents in a room unless you have them here.

Mr. Lewis: Well, perhaps written documents are objectionable, but certainly not what is on the walls or on a table.

The Court: That is right, but I am not going to have the contents of any written document or any maps demonstrated here without the production of them.

Mr. Lewis: I think there would be an objection to [fol. 520] written documents, but—

The Court: All right then we are agreed.

Mr. Lewis: But as to a description of a map, I think we are entitled to show that.

The Court: Well possibly you are right in that, but we have ruled on it and I will not change the ruling. But as to giving the contents of written instruments, books, literature, newspapers, without producing them here, I will sustain an objection to that each time.

Mr. Lewis: I will agree with that.

The Court: All right, proceed.

A. (Continuing:) There were mimeographed sheets attached to the wall, referring to American intervention in Korea—

Mr. Nelson: Let's have the sheets, Your Honor. Let's have these sheets. You order him to do it and he doesn't listen to you.

The Court: He is not going to give any further details, [fol. 521] just a general description of what they were, without giving the contents of it. That will be satisfactory, but we will not permit him to go beyond that—they were mimeographed sheets referring to a certain matter.

Mr. Lewis: That's all we want.

The Court: All right, proceed.

By Mr. Lewis:

Q. Continue, Judge.

A. Well, just referring to it—in what way it referred to it is what I saw there. General Walker's name was prominently displayed in a notice, and he was referred to as "hangman"—

Mr. Nelson: Your Honor, I insist that it be brought in as evidence—not an opinion of Musmanno's.

The Court: The objection is sustained.

Mr. Lewis: I still say it is not an opinion.

Mr. Nelson: Bring it in.

The Court: It is the contents of the document and ob-[fol. 522] jectible. I will sustain the objection.

Mr. Nelson: Thank you, Your Honor.

The Court: There was a reference to General Walker on the mimeographed sheets—proceed.

A. (Continuing:) There was a reference to American soldiers as savages. On the wall, close to this map of Korea—

Mr. Nelson: Your Honor, again I repeat the same request—or move for to strike the answer.

The Court: Well, that is mere reference—

Mr. Nelson: That is an opinion, Your Honor; it is not evidence.

Mr. Lewis: It is not an opinion.

The Court: All right, I overrule the objection. Proceed.

Mr. Nelson: What am I to do, Your Honor? One Judge is prosecuting; another Judge is a witness—what am I, as a layman, going to get?

[fol. 523] Mr. Lewis: I object to that statement, and I make a motion that it be stricken from the record.

The Court: Your motion will be granted. Your objection is overruled in this instance.

Proceed, Mr. Lewis.

By Mr. Lewis:

Q. All right.

A. There was another mimeographed sheet there with the legend: "Do not send one rifle or gun for American mass murder." I saw also—

Mr. Nelson: I move to strike that, Your Honor.

The Court: Motion refused.

A. (Continuing:) I saw also some brassards with the red initials "CPA" (Communist Party of America). There were mimeograph machines in the office, typewriters, telephones, the usual office equipment.

Mr. Nelson: Your Honor, is that a crime to have a typewriter in the office?

The Court: He is describing the contents of the of-
[fol. 524] fice.

Mr. Nelson: Or a mimeograph machine?

The Court: He is describing everything that was there. Objection overruled.

A. (Continuing:) Filing cabinets—I say the usual office equipment—large signs advertising the "Daily Worker", calling on the people to purchase the "Daily Worker" to meet a certain subscription date.

Mr. Nelson: What is wrong with that, Your Honor?

The Court: You can argue that to the jury, don't ask questions concerning it now. If you have an objection, why, let me have it. You will have ample opportunity to cross examine and to argue any one of these points you wish to the jury, sir.

By Mr. Lewis :

Q. Are you through with your description?

A. The general description, yes.

(Commonwealth Exhibit No. 4, marked for identification.)

[fol. 525] The Court: Pardon me just a moment. You may inform Mr. Nelson of the inquiry for him.

By Mr. Lewis :

Q. I show you Commonwealth Exhibit No. 4, and ask you if you ever saw that before?

A. Yes, I have.

Q. And where did you see it?

A. In the Communist headquarters in the Bakewell Building.

Q. On what date?

A. On July 19th.

Q. And where was it when you saw it?

A. It was on a filing cabinet, and was handed to me by James H. Dolsen.

Mr. Lewis: We offer in evidence Commonwealth Exhibit No. 4, and ask permission to show it to the jury.

Mr. Nelson: I object.

The Court: You say you do object?

Mr. Nelson: Yes.

The Court: Objection overruled.

[fol. 526] (Commonwealth Exhibit No. 4, shown to jury.)

Mr. Nelson: Your Honor, let the record show that the magazine that is now being shown to the jury is a monthly magazine that's been published for about twenty-five years; you can buy it in at least half a dozen places——

The Court: Do not testify at this time.

Mr. Nelson: And in libraries.

The Court: You may describe it when your turn comes to testify.

Mr. Nelson: I would like to know what the intent is of showing this magazine to the jury. What's criminal about that?

The Court: That is another descriptive item concerning

the contents of the headquarters in the Bakewell Building. I assume that these matters which you are indicating are shown on the editorial page of the publication.

Mr. Nelson: That is right.

The Court: All right, you may argue to the jury from [fol. 527] that, if it is demonstrated there. If it is not demonstrated there, you may testify when you take the stand, if you do take the stand, in connection with your defense.

Mr. Nelson: Your Honor, may I just ask the Court to permit me to talk to an attorney that I have been discussing to come into this case? I don't know whether he has agreed to my terms completely, but I'd appreciate it if the Court will let me talk to him.

The Court: We will certainly afford you the opportunity of engaging counsel as soon as possible. If there is a man here that you want to talk with, we will recess to give you the opportunity of engaging him if he is available.

Mr. Nelson: Well, would the Court be kind enough to grant me until tomorrow morning to give me a chance to arrange that? The man has just come in now and obviously he doesn't know anything about it, even at the stage that we are at.

The Court: Well, we are going to discontinue here at [fol. 528] one o'clock anyway, Mr. Nelson. So that you will have the afternoon, but I will give you an opportunity of discussing his hire with him now for a few minutes—but we will continue until one o'clock.

Mr. Nelson: Well I object to your ruling that I must continue under the circumstances.

The Court: Your exception will be noted.

Exception noted.

Mr. Nelson: That you are compelling me to go on without such a discussion.

The Court: I will give you ten minutes to discuss the matter with him at this time. Then we will resume and continue until one o'clock.

Mr. Nelson: Certainly I can't settle the matter in ten minutes.

The Court: I don't know, possibly you couldn't. I am interrupting this trial for your convenience and benefit,

since you mentioned the fact that a man has entered the [fol. 529] room within the last few minutes.

Mr. Nelson: I think you are in charge of this matter, Your Honor, and you are not only responsible for what is going to happen to me, it seems to me, but you have a greater duty than that, and it seems to me that the haste of not allowing me this hour—that's all it would be, an hour and a half or an hour and twenty minutes—so I can discuss with him, so I can get some assistance in this case, it seems to me it is not unreasonable a request.

The Court: We are granting you ten minutes at this time, Mr. Nelson. Recess for ten minutes.

Short recess.

(After recess.)

Mr. Nelson: May it please the Court, I have here Mr. Louis Fleischer from New York City and, if the Court please, he will explain his position, or, rather, his association with this matter.

[fol. 530] The Court: All right, Mr. Fleischer, we will be glad to hear you.

Mr. Fleischer: Thank you, Judge.

For the record, my name is Louis Fleischer. I am an attorney duly admitted to practice in the Courts of the State of New York, and I maintain my offices at 154 Nassau Street, Borough of Manhattan, City and State of New York.

Now I have——

The Court: Are you engaging now to represent the defendant in this matter.

Mr. Fleischer: I would like to make an application to the Court so that the Court would understand just precisely what my position is, and I think from there we can have an understanding as to whether or not I am his counsel at this juncture. If the Court will indulge me a moment I will make my application so that we can clarify as to just exactly how I stand in this case.

The Court: All right, we will hear you, Mr. Fleischer.

[fol. 531] Mr. Fleischer: Thank you. I have had a series of discussions and conferences with Mr. Nelson, the defendant in this case——

The Court: Do you think, Mr. Cercone, Mr. Lewis, that this matter should be discussed at side bar?

Mr. Lewis: Yes, I think it should.

The Court: Come forward. Since you are not in the case yet we will not make this a matter of record.

(Discussion at side bar off the record.)

The Court: All right, proceed.

(Commonwealth Exhibits Nos. 5, 6 and 7, marked for identification.)

By Mr. Lewis:

Q. I show you Commonwealth Exhibit No. 5, and ask you if you know what that is?

A. Yes, I do.

Q. What is it?

A. It is a magazine.

[fol. 532] Q. And did you ever see it before?

A. I did.

Q. And where did you see it?

A. I saw it at the Communist Headquarters in the Bake-well Building.

Q. When did you see it?

A. I saw the exteriors generally on July 19th, and then I saw them more completely on August 31st.

Q. I show you Commonwealth Exhibit No. 6, and ask you if you ever saw that before?

A. Yes, the same answer as given to the preceding—as given on the preceding exhibit.

Q. That is a magazine, too, is it?

A. Yes.

Q. I show you Commonwealth Exhibit No. 7, and ask you if you ever saw that before?

A. Yes, the same answers as on the two previous exhibits.

Q. You saw Commonwealth Exhibits 5, 6 and 7 in the Communist Headquarters?

A. That is right.

Mr. Lewis: We offer in evidence Commonwealth Exhibits 5, 6 and 7.

Mr. Nelson: I object.

[fol. 533] The Court: Objection overruled. Exception noted.

Exception noted.

Mr. Lewis: I would just like to show the cover to the jury.

(Exhibits 5, 6 and 7 shown to the jury.)

(Commonwealth Exhibit No. 8, marked for identification.)

By Mr. Lewis:

Q. I show you Commonwealth Exhibit No. 8, and ask you to look at the contents, and ask you if you ever saw that before?

A. I did.

Q. Where did you see it?

A. I saw them in the Communist Headquarters on July 19th, and then again on August 31st. There was a larger number on the 19th when I saw this item.

Mr. Nelson: Let the record show that there are these three bands that indicate "Communist Party of the United States", that are worn at mass meetings and other places, [fol. 534] as committee people do. And I object to the introduction and the intent being put on the meaning of those brassards.

The Court: Objection overruled.

Exception noted.

Mr. Lewis: I now offer in evidence Commonwealth Exhibit No. 8 and ask permission to show them to the jury.

(Exhibit No. 8 shown to the jury.)

(Commonwealth Exhibit No. 9, marked for identification.)

By Mr. Lewis:

Q. I show you Commonwealth Exhibit No. 9, and ask you if you ever saw that before?

A. I did.

Q. And where did you see it?

A. I saw it in the Communist Headquarters on July 19th, and saw it again on August 31st.

Q. What is that, this exhibit that you see?

A. It is a framed large photograph of Elizabeth Gurley [fol. 535] Flynn, with the inscription, "To my favorite district, Western Pennsylvania, with love and good wishes, Elizabeth Gurley Flynn, February, 1948."

Q. Now do you know who Elizabeth Gurley Flynn is?

A. Yes. She is a Communist of many years standing, and at that time was a member of the National Board of the Communist Party of the United States.

Mr. Lewis: We offer in evidence Commonwealth Exhibit No. 9, and ask permission to show it to the jury.

The Court: Any objection, Mr. Nelson?

Mr. Nelson: Certainly I object. I don't know what the purpose of putting a picture of a woman in is—I don't know what they intend to prove by that.

The Court: Well, along with the——

Mr. Nelson: I think it is ridiculous.

The Court: It is descriptive of what was found in the headquarters.

Mr. Nelson: It is positively ridiculous for the prosecutor [fol. 536] to bring stuff in like that.

The Court: Objection overruled.

Exception noted.

(Exhibit No. 9 shown to the jury.)

Mr. Nelson: For the record, if that is necessary, I know the person of Mrs. Flynn, and I think Judge Musmanno knows her——

Mr. Cercone: I object to that.

The Court: Don't testify to that at this time, Mr. Nelson. You may testify to that when the proper time comes.

Mr. Nelson: Mr. Musmanno met her in the Sacco and Vanzetti campaign when he fought for the freedom of Sacco and Vanzetti.

Mr. Lewis: I object to that and make a motion that it be stricken.

The Court: It will be stricken from the record and the jury instructed to disregard the remark.

Mr. Lewis: I want to point out the inscription here: "To [fol. 537] my favorite district, Western Pennsylvania, with love and good wishes, Elizabeth Gurley Flynn, February, 1948."

(Commonwealth Exhibit No. 10, marked for identification.)

By Mr. Lewis :

Q. I show you Commonwealth Exhibit No. 10, and ask you what that is, if you know?

A. I do know.

Q. What is it?

A. It is a biography of Joseph Stalin, the present ruler of Soviet Russia.

Q. Did you ever see that book before?

A. I did.

Q. Where did you see it?

A. I saw it in the Communist Headquarters.

Q. And when did you see it?

A. I saw it on July 19th, and saw it again on August 31st.

Mr. Nelson: Objection.

The Court: Objection overruled.

Mr. Lewis: We offer in evidence Commonwealth Exhibit [fol. 538] No. 10, and ask permission to show it to the jury.

(Exhibit No. 10 shown to the jury.)

(Commonwealth Exhibit No. 11, marked for identification.)

By Mr. Lewis :

Q. I show you Commonwealth Exhibit No. 11, and ask you if you ever saw that before?

A. I did.

Q. Where did you see it?

A. In the Communist Headquarters.

Q. When did you see it?

A. On July 19th I saw them on shelves.

Q. What is Commonwealth Exhibit No. 11?

A. This is a box full of biographies of Joseph Stalin similar to the exhibit I just identified.

Mr. Nelson: I have just a question, Your Honor: What happened to 9 and 10—or is there a mistake?

The Court: Nine was the framed photograph of Elizabeth Gurley Flynn, and ten was the original or first copy of