

Colloquy of Court and Counsel

Is that substantially correct, Mr. Wilkerson?

The Witness: Yes. It also has a relationship to Table P-7.

Mr. Gladstein: Does your Honor have that P-7?

The Court: I don't think so.

Mr. Gladstein: I don't think that has been marked.

Will you mark that for identification.

(Marked Defendants' Challenge Exhibit 110 for identification.)

(Copy handed to the Court.)

The Court: Has Mr. McGohey seen this?

Mr. Gladstein: No, I don't have a copy for him, but he and I can examine at the same time the copy the clerk is marking for identification.

May I ask some preliminary questions concerning this, your Honor, so the witness can explain the nature of the document?

The Court: You mean this P-7?

(2815) Mr. Gladstein: Yes.

The Court: That is Exhibit 110?

The Clerk: Yes.

Mr. Gladstein: No. 110—

The Court: Now before you do that, as we have been going along here, I have had occasion to re-mark, and I do it merely for the guidance of counsel, that it has been more and more brought home to me that what these tables and what this proof of yours show is merely that the proportion of jurors is not kept in accordance with the different political subdivisions or other subdivisions, which I never thought the law required to be done, and which the Supreme Court has on many occasions said need not to be done. Now the more you subdivide the more you follow along the same lines but with less probative force, it seems to me, and I excluded the document about the Assembly districts, among other reasons, because I felt it merely added an element of confusion and had no real probative value.

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

Now I felt a little doubt about it over night because I noticed in this proceeding before Judge Rifkind, Challenge Exhibit T for identification, that something was said by a witness there about Assembly districts, and I will accordingly permit you to ask such questions of the witness here as you think will lay a foundation, and (2816) then when you offer the documents, that is to say, 109 and 110 for identification, I will hear what Mr. McGohey has to say before I rule.

Mr. Gladstein: Very well.

Direct examination continued by Mr. Gladstein:

Q. I will call your attention to No. 110 for identification, Mr. Wilkerson. Was this document prepared by you or under your supervision? A. It was.

Q. Are the sources there shown on the exhibit all of the sources from which data was taken that was used in connection with the exhibit? A. They are.

Q. Was the data correctly and accurately abstracted from the sources so indicated for use in the table? A. Yes.

Q. What does this table show? A. This table shows the percentage of the population age 21 and over which registered to vote in 1940 for the various Assembly districts of Manhattan and Bronx, and for the sexes. It has a character that none of the data heretofore presented do in that the date for the registrations is identical, so far as the year is concerned, with the date of the Census population data.

It indicates that in Manhattan 58 per cent of the people—

The Court: Well, you see, he is now putting in (2817) evidence what I thought we were going to—

Mr. Gladstein: I have asked him what the exhibit shows, if the Court please.

The Court: Then we will stop here to hear what Mr. McGohey has to say.

Mr. Gladstein: May the witness first answer one or two further questions?

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The Court: You see, he is not just stating what the table is and the sources from which he compiled it, but he is now putting it in evidence orally, and I had intended by my statement to indicate that I would permit you to show the general character of the paper, and I now know your contention about it, and before it is offered, you may remember, I said I would like to hear what Mr. McGohey had to say by way of objection or otherwise.

Mr. Isserman: Your Honor, at some point I would like to say something on this exhibit.

The Court: Well, this is probably as good a time as any because I think if we are going to hear discussion on one side we better hear all there is to be said on one side before we hear the other.

Mr. Isserman: The reason why, in respect to some of the charts and tables which are here offered and which will be offered, it is necessary to go into smaller identifiable subdivisions of Congressional districts which (2818) were used originally for reference, is that in a number of the Congressional districts, if not in all, there are sharp variances within the district on two aspects of our proof—and what I say is in addition to what Mr. Gladstein said, and not in contradiction of it or in substitution of it.

One characteristic is the character of the neighborhood in these Assembly districts from the standpoint of their general housing characteristics and the characteristics of whether the persons who reside in those districts belong to a manual working class or do not; and the other is—for instance, I might give one example, the example of the 20th Congressional district, which, above 72nd Street, contains the Riverside Drive section, and below 72nd down to the 26th Street line contains the section known partly as Chelsea and partly as Hell's Kitchen, and between those two districts there are very sharp variations in characteristics which go to occupation and from the standpoint of the people living in those districts.

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In that case the dividing line is simple, but in other cases it can only be identified readily for any kind of later reference by reference to smaller political subdivisions.

The other point deals with the question of evidence (2819) in support of our claim of Negro exclusion. There are certain Congressional districts in which many Negroes reside, and our contention is that those portions of the districts in which Negroes reside are shunned as far as jurors are concerned, and sometimes that might be an area of ten square blocks, and another time it might be an area of smaller or larger dimensions; and only by reference to smaller political subdivisions could we get an identification of blocks of residents in those Congressional districts which are wholly, if not exclusively or totally, substantially occupied by Negroes or Porto Ricans, or other Spanish speaking peoples.

So on occasion in order to fix the area rather than giving it by street boundaries, which would be meaningless, for easy reference and especially in connection with the number of voters in the area it is necessary to give the Assembly districts in a larger area which are, and a portion of those districts, which are of the class we claim is excluded, and by giving the political subdivisions we can correlate the excluded areas with the number of registered voters in those areas.

Now, in some cases it is not necessary; in some cases it is; and I say where it is the reference as to Assembly districts is not merely an enlargement (2820) or duplication of the evidence on Congressional districts, but focuses attention and defines the areas of special characteristics which bear on our claim of exclusion.

The Court: I suppose it is a question of degree. I will hear from Mr. McGohey.

What do you say about those two exhibits, Mr. McGohey.

Mr. McGohey: Will your Honor excuse me for just a moment, please?

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The Court: Certainly I will.

Mr. McGohey: If your Honor please, I should like to address myself first to Defendants' Challenge Exhibit 109 for identification which was offered, objected to and not received yesterday.

That purports to be a table showing the number of persons on the petit jury panels of February 6, 1940, and April 14, 1941, by the 1940 Assembly districts.

Now, it seemed to me, your Honor, that we had, prior to the time that this exhibit was offered in evidence, a great deal of testimony by the witness buttressed by a large number of exhibits dealing with population, with voters, with characteristics of the neighborhood; and I do not see how this document tends to prove anything which the defendants are required to prove in order to support their challenge.

(2821) It seems to me that the information on here—for instance, the information with respect to the number of jurors called in 1940 and the number of jurors called in 1941 at the most is very, very remote from what is happening in 1948. I doubt that it has any materiality to the issue whatever.

Now, a second reason that I have for objecting to the exhibit going in is that—oh, before I finish that. In addition to the lack of materiality I think that at best it is only cumulative of what has gone in before.

Now, a second reason that I object to it was a note which appears on the exhibit, the last paragraph of the exhibit, which undertakes to designate typically excluded areas. Now, that is an assumption. Typical jury excluded areas—typical jury concentration areas—that conclusion has no justification in the facts of record in the case at this time.

Now, with respect to Challenge Exhibit 110 for identification offered this morning, as I understand it, that purports to show the percent which the registered voters constitute of the population which is 21 years and over listed by Assembly districts in the Borough of Manhattan.

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

Now before I go into that at all, your Honor, I should like to ask the witness one or two questions.

The Court: You may do so.

(2822) *Preliminary cross examination by Mr. McGohey:*

Q. Mr. Wilkerson, I see on this table 110 for identification, a list of sources, and the first is Registration—Annual Report of the Board of Elections of the City of New York. It does not say what year, but I assume, since the table refers to 1940, that that would be the annual report of the Board of Elections for the year 1940. A. That is correct.

Q. May I ask if that report has been marked for identification, if it is not in evidence? A. It is not marked. It is not in the court.

Q. I would like to have that. I just want to ascertain that fact. And the Population 21 years and over, the second source, is that in evidence, Mr. Wilkerson, or has that been marked, that second source—Population 21 years and over, 16th Census of the United States, volume 2, part 5? A. I am pretty sure it must have been.

Q. It has been marked for identification. A. This is an assumption that I wish you would check on, but it is Characteristics of the Population, New York, of the 16th Census. I think it has been entered in evidence.

The Court: That can be checked.

(2823) Q. Mr. Wilkerson, did I understand you to say that that report of the Board of Elections was not marked? A. That is my impression. That can be checked too.

Mr. Gladstein: If it has not been we will obtain it. That is an official document.

The Court: That is all right. You can't do everything at one time.

I am just looking to see if I can find this particular census document. The footnote in Exhibit 110 for identification does not state the year. I suppose it is the 1940 census.

The Witness: The 16th Census is the 1940 Census, yes.

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The Court: A hasty glance here at the ones marked does not seem to indicate that that particular one has been. But that is something that can be remedied later.

Now, Mr. McGohey, do you object to those two exhibits?

Mr. McGohey: Well, which two exhibits are you talking about, sir?

The Court: 109 and 110 for identification.

Mr. McGohey: I do. I object. I object to 109 and I object to 110.

Mr. Gladstein: May I be heard briefly in (2824) reply?

The Court: Yes.

Mr. Gladstein: Now with respect to Exhibit 109, as I understand Mr. McGohey, his first argument is that it does not prove anything. If it does not prove anything that is damaging to his contention in the case I suppose there is no basic reason for his objecting. But the fact is that we offer it here because it does purport to prove something. Contrary to what Mr. McGohey says, there is nothing cumulative about this particular exhibit. Had Mr. McGohey been listening to my reply to the Court and to Mr. Isserman it would have been made abundantly clear that this exhibit, as Mr. Wilkerson also pointed out, gives data and facts taken from official sources that are not found tabulated or in any other form in this case so far.

Mr. McGohey's third point is, well, in any case this table is too remote because it deals with the year 1940 and the year 1941. Apparently Mr. McGohey has forgotten that the charge made in this challenge is that for a period commencing approximately 1940, or about ten years ago, there has been a system in operation here which discriminates against potential jurors on the basis of class, on the basis of race, on the basis of geographical location, on the basis of politics. I submit that (2825) if we therefore offer evidence concerning the year 1940 not only is it far from being remote but actually essential for the proof of our charge.

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Finally, Mr. McGohey objects to the designation or the characterization on the exhibit used by the witness, to wit, excluded or typically excluded areas and typical areas of concentration. I will agree to have the witness testify to the facts concerning this, but I thought it was made clear by this time that when we use those terms we use them in reference to the areas shown on maps that are already in evidence. Those maps reveal that year after year in particular Congressional districts and in particular portions of those Congressional districts large numbers of jurors are selected. There are abundant clusters that stand out, a group of pins that stand out like a fist indicating that that is the place from which the jurors come. Those are the typical concentration areas, as we call them; and I think the fact that we so characterized those areas is not going to be prejudicial to the Government's case here.

Conversely, the areas which we call typical excluded areas or blighted areas, or as Mr. Isserman says, shunned areas, are those areas where you just don't see pins representing the location of jurors.

Now it seems to me that that kind of characterization (2826) we are entitled to make; and with that understanding in the record Mr. McGohey isn't bound, simply because the exhibit is received in evidence, by any legal conclusion.

Now as to 110, what Mr. McGohey has not addressed himself to is the basic importance of that exhibit. Indeed, I did not hear any argument from Mr. McGohey against 110. He did question the witness concerning the year for the Election Board figures, and he also wanted to know which of the census tables was used. That information was given and we will supply those exhibits. Although I may say it is simply a matter of checking the arithmetic because the figures, as the witness has said, come from the tabulations that the Government has made—the Board of Elections or the Census Bureau.

My point as to 110 is this: It must be clear to everyone that we contend, we believe and we know

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that the most logical pool for potential jurors are the qualified voters of this community. If the people who vote are good enough to send people to Congress, to the Senate, to vote for the President, to participate in that portion of their government, then by the same token those same people ought to be the most immediate and available pool from which jurors (2827) should be taken to serve and participate in this branch of government administration.

Now the voting lists therefore most closely correspond, as the testimony already shows, to the available potential and qualified jurors on whom, we contend, this Court should constantly be calling so that they would have their right to share in the administration of justice.

I therefore submit that both exhibits should be received.

The Court: I will sustain the objection to both exhibits.

Mr. Gladstein: May the record show that if I ask the witness concerning the tabulations in those exhibits, that he would say, as he has testified concerning other exhibits, that the data and the figures and tabulations shown on both exhibits are true and correct?

The Court: Yes.

Mr. Gladstein: That is understood. And that if he were permitted to answer questions concerning those exhibits he would testify to the facts and conclusions that appears on the face of those exhibits.

The Court: That is right.

Mr. McGohey: If your Honor please, before we (2828) go on to something else, as I understood it, Mr. Gladstein this morning was substituting a copy, a different copy of Table XI-C for the one that was introduced yesterday. The copy that Mr. Gladstein handed me this morning seems to be identical with the copy that was delivered to me yesterday.

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

Mr. Gladstein: Is it? I thought there was—
(To the witness) What about that, Mr. Wilkerson? Is there anything added to this? We can check this in a moment. If nothing is added the substitution is meaningless.

The Witness: There is a table which has a footnote mimeographed on it. This is it. Does your table—

Mr. McGohey: My table has that, yes.

Mr. Gladstein: How about the one in evidence? Does that have it?

The Clerk: I haven't got it.

The Witness: I thought the one in evidence—

Mr. McGohey: That is the note, Mr. Wilkerson, that reads "Basic date from the 16th Census of the United States Population, second series, New York, Tables D-39"—and so on.

The Witness: I think the table that was submitted yesterday left this off.

Mr. McGohey: You mean the one that actually (2829) went into evidence.

The Witness: I think that is so.

Mr. McGohey: That may be. I do not recall seeing that.

Mr. Gladstein: Will you mark this for identification, Mr. Clerk?

(Marked Defendants' Challenge Exhibit 111 for identification.)

Direct examination continued by Mr. Gladstein:

Q. Mr. Wilkerson, I show you Challenge Exhibit 111 for identification. Do you have another copy of it? A. I have it.

Q. Did you prepare it or have it prepared under your supervision? A. I did.

Q. Are the figures and data shown on it true and correct? A. They are.

Q. From what source was the information taken? It does not appear on the exhibit. A. The information is

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

taken from the 16th Census of the United States for 1940, volume 2, and the annual report of the Board of Elections of New York City for 1940.

Q. What does the exhibit show, please? What subject does the content of the exhibit deal with? A. The exhibit shows certain typical areas, assembly (2830) district areas, from which jurors are drawn in large proportions, relatively large proportions, and certain other Assembly district areas from which jurors are relatively seldom drawn. And it shows, further that these two groups of Assembly districts do not differ in the extent to which people of voting age actually register to vote as of 1940.

Q. Now when you refer to excluded areas, you are referring to those areas you have heretofore told us about, such as Lower East Side and Harlem?

Mr. McGohey: I object to any characterization of the exhibit unless it is going to be in evidence.

The Court: That is right. I sustain that.

Q. Does that Exhibit 111 for identification truly, fairly and accurately represent and contain what it purports to represent? A. It does.

Mr. Gladstein: I offer it.

Mr. McGohey: Has your Honor seen it?

The Court: No.

Mr. McGohey: I object to it (handing), on the same ground that I gave in objecting to the reception of Defendants' Challenge Exhibit 109 for identification.

Mr. Gladstein: May I be heard in reply, briefly, on that?

The Court: Yes. It seems to me to present (2831) precisely the same problem.

Mr. Gladstein: Well, this exhibit serves to demonstrate factually that regardless—that is, that upon analysis, upon taking actual official figures it is found that the percentage of those 21 years and over, male voters, who are entitled to vote, do not differ from each other, Congressional district to

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Congressional district, in so far as the extent to which they exercise their right of franchise. Indeed, to the contrary, those in the so-called shunned areas, or as we have called them, the excluded areas on jury service, are found to exercise their franchise and perform their civic function of voting to a higher degree than those in the so-called Silk Stocking areas. Consequently, this tends to emphasize even more the great distortion and disproportion found when you examine the maps that we have introduced in evidence which show that in the excluded areas few, if any, of the voters are asked to serve as jurors, whereas in a Congressional district such as the 17th, large, large numbers come to the jury.

The Court: I am going to sustain the objection. But, incidentally, I notice that little phrase you used—asked to serve. The statistical data, or rather, the panel that you have put in, have nowhere, as far as I recall, indicated those who came in and, for one reason (2832) or another, were excused. All the panel show were those who were set down on the panels; non constat, there might have been many, many others who were called who came in and who for one reason or another said they did not wish to serve and were excused.

Mr. Gladstein: I do not understand that that is the practice. My understanding, and this is subject to testimony that we will elicit from someone who is involved in the administration of the system, your Honor, my understanding of the practice is that the names are selected and set forth on the panel, such as those we have introduced in evidence, first. And notices are sent to those potential jurors advising them to appear on a certain day. Then if any of those on the lists have appropriate excuses and appear they may present them either at once or on the morning when they are supposed to be called. And it is true sometimes jurors are excused for one reason or another and do not actually serve in the trial of a case.

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

But I think that what I have said, namely, when I talk about those who are asked to serve, I am referring to those people whose names are drawn and placed upon the jury panels, such as the 20 odd or so.

The Court: That is what I thought you meant. (2833) I think it would have been much better if some three weeks or so ago we could have started with testimony that you now say you are going to bring in of how the system actually works. I have been waiting for that, but I suppose you will get around to that in due time.

Mr. Gladstein: Yes, your Honor.

Mr. McGohey says that he will photostat this. I was going to offer to get a copy from the office. You know as a taxpayer I don't like to see you spending money for photostating needlessly.

Mr. McGohey: If you would bring a copy here for me I wouldn't have to do it.

The Court: I wish there were some way to get thing moving a little faster. It seems extraordinary thit this witness should have been on so long. And if you have many more of these chart perhaps there is some way that the matter could be pressed forward.

Mr. Gladstein: I will do what I can to expedite the matter.

(Marked Defendants' Challenge Exhibit 112 for identification.)

Q. Do you have a copy for the Court with you, Mr. Wilkerson? This is a table that is called H-8.

(The witness hands to Court.)

Mr. McGohey: Have you another copy of that? (2834) Mr. Gladstein: I will look for a copy.

Q. I show you Challenge Exhibit 112 for identification. Was this prepared under your supervision? A. It was.

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Q. Are the figures, tables and tabulations and data shown on it correctly stated? A. They are.

Q. Are the sources from which the basic data was taken correctly set forth? A. They are.

Q. Are the tabulations true and correct? A. They are.

Q. What is the subject matter of this table? A. This table indicates the relationship between average money income and total expenditures and housing expenditures of city families in 1944.

Q. What does it show? A. It shows that as the income of families increases—

Mr. McGohey: I object, your Honor, to any testimony from the exhibit unless it is going in evidence.

The Court: Yes. Do you offer the paper? I think that is the best way to do it instead of going into the thing orally with the witness and then offering it later.

Mr. Gladstein: I merely wanted a general statement without a reference to percentages or anything else. May he do that?

The Court: Well, I think—

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

(2835) The Court: —just looking at the paper, it shows very clearly what it is.

Mr. Gladstein: Very well.

Mr. McGohey: If it is being offered now, I object to it, your Honor.

The Court: I sustain the objection.

Mr. Gladstein: May I be heard?

The Court: It may be marked for identification.

Mr. Gladstein: I beg your pardon?

The Court: I will sustain the objection. I don't want to hear argument as to this one.

Mr. Gladstein: May the record show that if I were permitted to ask questions of the witness and if he were permitted to answer them he would testify to the truthful and accurate character of the contents of 112 for identification, and would testify to the facts set forth therein, and would state certain conclusions to be drawn from that exhibit.

The Court: Yes.

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

Mr. Gladstein: As indicated on the exhibit.

Mr. McGohey: May I see it for just a moment, please.

The Court: What is that going to be? 111 for identification?

The Clerk: 112, that is, your Honor. Table (2836) H-8.

(Mr. Gladstein hands paper to the clerk.)

(Marked Defendants' Challenge Exhibit 113 for identification.)

By Mr. Gladstein:

Q. Do you have for the Court a copy of the next exhibit? A. May I see which one it is?

The Clerk: R-1.

The Witness: R-1 (referring to papers.)

Q. I show you 113 for identification. Was this prepared under your supervision? A. It was.

Q. Is it true and correct? A. It is.

Q. What is the subject matter of the exhibit? A. It shows the distribution of dwelling units, 1940, among monthly rent categories from low to high in relationship to the distribution of federal petit jurors on the January 17th panel within those same rental categories.

Q. Are the sources from which the data shown on the exhibit were taken accurately set forth on the exhibit? A. They are.

Q. What in a general way does this show? A. This shows that whereas relatively few—

Mr. McGohey: Now I object to any testimony about what is contained in the exhibit unless it is in evidence.

(2837) The Court: I am afraid it is the same old story, Mr. Gladstein.

Mr. Gladstein: What old story, your Honor?

The Court: He appears to be putting in evidence not what you asked him, but the contents of the paper.

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Mr. Gladstein: The contents are set forth, as your Honor can see, in terms of numbers and in terms—

The Court: That is right.

Mr. Gladstein: —of a breakdown.

The Court: I can't see what any oral statement by the witness can add. The paper is plain on its face.

Mr. Gladstein: I offer it for the purpose of showing that the manner in which jurors have been selected operates in direct ratio to the value in terms of rent of the dwellings in which those jurors live, and that the jurors come from the high rent places and do not come from the places where the rent is low, as fortified by the exhibit.

The Court: You have already got such evidence on that exhibit as I deem relevant. And I am going to exclude this just as I excluded those various questions where you sought to find out from the jurors, when they were questioned, just what their income was and how much they earned and how much rent they paid, and all that sort of thing.

(2838) Mr. Gladstein: May it be understood with reference to Exhibit 113 that a full and complete legal foundation for its reception in evidence has been established without my repeating the questions?

Mr. McGohey: Your Honor,—

The Court: I think so. That is, he would vouch for the accuracy of it.

Mr. McGohey: Oh. That he would testify to the facts shown on the exhibit if he were asked the questions.

The Court: Yes, that is right. That he would say it was accurate.

Mr. McGohey: Your Honor, I would like to read the terms of the understanding that Mr. Gladstein asks.

The Court: As I understand it, it is what he said before, namely, that the witness if asked whether he had prepared this from the data indicated in

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the footnotes and did so accurately, that the witness would have answered yes.

Mr. McGohey: That I will stipulate, your Honor, but I understood Mr. Gladstein to ask a stipulation that there was a full legal foundation for it. That might include a great many other things.

The Court: Yes. Well, the extent is the (2839) extent I have indicated in my statement.

The exhibit will be rejected.

Mr. Gladstein: As I understand it, upon the ground that the exhibit is immaterial; is that correct, your Honor?

The Court: No, it is just that I sustained the objection. I have indicated before that I felt no occasion to explain in detail the many reasons for my ruling.

Mr. Gladstein: I understand. Neither does—

The Court: I think what I have said already is sufficient. I do not care to add to it.

Mr. Gladstein: It just leaves us in the dark when neither the Court or Mr. McGohey—

The Court: I may state that one of the reasons that you may assume exists as to all excluded evidence from now on is that I feel that there has been a wilful, deliberate and concerted effort here to delay the proceedings. And I am going to see what I can do to prevent any further delay. I have been working up to that now. At first I couldn't think it possible, and then it began to dawn on me that maybe that is what was going on. And I mentioned it two or three times but it did not seem to have any effect. And finally it has come to my mind that such is the fact, and I so find. (2840) And you may, among other things, as reasons for my sustaining the objections from this time on, add that one.

Mr. Gladstein: I want to take an exception to the Court's remark and the implication of the remarks of the Court and to state in substantiation of the purpose of the offer that we are here seeking to introduce evidence, the facts concerning which will not be disputed, the tabulations on which are ac-

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curate and are being vouchsafed for by the witness and agreed to by everybody concerned—to show the nature of the system, how it operates, how it was intended to operate to select jurors here. And each of these pieces of evidence is directly, immediately connected with the issues that we present in our challenge. We say in the challenge, your Honor—

The Court: Well—

Mr. Gladstein: May I complete the statement?

The Court: Well, it has seemed to me that the record plainly demonstrates that if I permit you to do so you and your colleagues will go on and on and on, and we will still be trying this challenge when the snow flies again next winter, and I am not going to permit that. I think such evidence as you put in indicates very plainly what you desire, and it just keeps going on and on (2841) and on, and I gather that all this photostating that you are having done may well be a foundation for a prolonged system of week after week of going into every paper that was up there in the jury commissioner's office. And if you have any notion that you are going to do that, you might just as well know now that you will not.

Mr. Gladstein: Can I finish my statement?

The Court: Yes.

Mr. Gladstein: I want to say with respect to the two types of exhibits that have been offered this morning, first that dealing with the political character of the areas from which jurors have been taken in contrast with the areas from which jurors have been excluded, or on the way the voting population have been excluded systematically over a period of years from the juries of this court, that that evidence directly bears upon the charge that we make in the challenge, spelled out in so many words, that the system here has been operated in a way that discriminates according to a political basis.

With respect to the exhibit that has just now apparently occasioned the Court's remarks, I desire to point out—

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The Court: What occasioned my remarks was your asking me what the reasons for my rulings were, (2842) and I thought, as there were many reasons for the last few rulings, I might just as well let you know that this dragging on, slowing down process that I have observed and have now found to be a deliberate and concerted effort, is one of the reasons for my rulings, and will be from now on.

Mr. Gladstein: I take exception to the Court's remarks.

The Court: That is all right. I can't expect you to agree that you have been doing that.

Mr. Gladstein: Not only should your Honor not expect me to agree, but I deny that it is true, and I deny that anything in the record or outside the record warrants that statement.

Mr. Isserman: If the Court please, on behalf of myself and the counsel not here at the counsel table this morning, I object to your Honor's remarks and to your Honor's finding to the effect that the defense efforts to introduce evidence here has been a wilful and concerted effort to delay this proceeding.

I object also to your Honor's remark to the effect that if permitted to put in the evidence which is relevant and material to the issues here, and which we deem so, that we will be engaged in an endless proceeding which your Honor suggests might take the balance (2843) of the year or more.

I object also to your Honor's remark to the effect that by the token that we are photostating certain papers in the clerk's office, that these papers will either be used for purposes of endless delay or that it means that every paper in the clerk's office, as your Honor indicates, will be offered in evidence.

At the same time we have to assert, and I do assert on behalf of the other counsel, our right and our duty to present that evidence on this challenge which we deem necessary and relevant, and that the

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evidence which is being offered is that type of evidence. We have been limited in many ways by the Court's rulings. We are faced with a difficult problem because of the size of the area with which we have to deal, and we are doing our best to present the facts as they appear from the result of our investigations.

There has been no intention, there has been no effort, there has been no action taken by myself as one of the counsel or by the others, to my knowledge, to create any situation in which there is wilful or deliberate or concerted effort to delay. What there has been, has been a deliberate and persistent effort and a concerted effort to place on this record those facts which bear on the (2844) challenge we have made; and in a presentation of those facts we will have to continue our efforts, notwithstanding the Court's evident disapproval and notwithstanding the Court's ruling in that respect as just made or the Court's finding as made.

And lastly we want to say that the Court's ruling in that respect and the Court's finding of a wilful or concerted effort of delay as a basis for the exclusion of evidence denies us due process of law in the presentation of the facts concerning this challenge.

The Court: It was a conclusion I came to most reluctantly and with regret.

Mr. Gladstein: Have you concluded your statement, your Honor?

The Court: Yes.

Mr. Gladstein: Will you mark this, please, for identification.

(Marked Defendants' Challenge Exhibit 114 for identification.)

Mr. Gladstein: Do you have a copy for the Court, Mr. Wilkerson?

The Witness: What is the number?

Mr. Gladstein: This I think is R-2.

The Court: It is time for our recess.

(Short recess.)

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(2845) Mr. Gladstein: Your Honor, we had a subpoena served upon the United States Attorney General asking him or a representative designated by him to bring to court certain data concerning aliens and their occupational distribution.

You will recall about a week or so ago reference was made to the fact that we had received a letter from the Immigration and Naturalization Service office containing that data. We had lost it. We have since secured from them a copy of the letter which they originally wrote to us, and we have that in court, but it is only a copy of a letter. And in anticipation of a possible objection from Mr. McGohey, we desire to have the original and official information brought here by a representative.

This morning before court began I looked into the witness room to see whether there had been a response to the subpoena, and I found no one there from this office. I am wondering whether such a representative may be in the courtroom awaiting the call. This subpoena called for appearance this morning, and it identifies the material that I have just referred to. Is there a way of asking?

Is there anybody in the courtroom from the Attorney General's office?

Mr. McGohey: I think perhaps, your Honor, I might be able to cast some light on that. There was a (2846) table presented for admission one day last week, and on that table it appeared that one of the sources of information upon which the table was based was data which was contained in a letter—I think it was described as a letter by Dr. Hazard—

Mr. Gladstein: Henry B. Hazard.

Mr. McGohey (Continuing): Henry B. Hazard, dated December 3rd. I think the record will show that I asked if that letter was in court, and the explanation offered, as I recall, was that it was not in court but that it would be produced.

Now, I understand from Mr. Gladstein that it had been lost. I understand him now to say that he

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has a copy of that letter. I also have a copy of the letter, and I shall not object to the use of the copy of the letter as a basis for the table which he intends to offer. I do not, however, by that mean to indicate that I waive any other objection that I may have to the table coming into evidence.

Mr. Gladstein: Very well.

Mr. McGohey: But as far as the data is concerned, I will accept the copy of the letter.

The Court: I will assume that Mr. Gladstein has offered the letter, there is no objection; it may be marked.

(2847) Mr. Gladstein: Thank you. I will do that when Mr. Wilkerson takes the stand.

While he is still off the stand I would like to raise this question also: We have also served upon the United States Attorney General for appearance here either by himself or some representative that he designates a subpoena calling for the production of maps, of certain maps that were made showing each section of New York City by blocks, and showing on the maps the blocks on which Negroes and Spanish speaking persons reside. These maps are referred to by the United States Government in paragraph 16-I of a complaint filed by the United States vs. The Mortgage Conference of New York in the case of United States vs. Mortgage Conference of New York, Civil case No. 37-247, in which a consent judgment was entered on June 16, 1948.

We have asked for production of those maps together with such other and further information in the Attorney General's office connected with them—that is, the maps—showing the persons who or the organizations or corporations which prepared those maps and the place and period covered by those maps.

The Court: Haven't you got a good deal of evidence in the record about what portions of the city Negroes live in and Porto Ricans live in without getting it (2848) down to just which blocks they live in, which then may lead to just which houses in each block, and all that? Why is that necessary?

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Mr. Isserman: That is necessary, your Honor—It is not a question of what house or what blocks, but the map which shows blocks shows the area. Now, there is in the record some evidence about Harlem, some evidence about the 18th Congressional district, testified to by Congressman Marcan-tonio. There is no evidence in the record except a Market Survey which shows the location of substantial groups of Negroes in the Bronx of which there are such groups in the 21st Congressional district, in the 20th Congressional district, and to a lesser degree, I believe, in the 16th. That evidence is indicated on these maps, a copy of which I only saw this morning, but which were not in my possession. It would facilitate matters if we could agree that a copy of these maps which are contained in one place for the Bronx and another for Manhat-tan might be put in evidence, but they are the most current compilation that we know of of the areas in which Negroes and Porto Ricans reside.

Now, it happens that they are block by block, but in most cases the blocks are not isolated or individual but are parts of areas. Now, those areas (2849) have not been put in this record to the degree that we believe necessary.

The Court: Well, it seems to me that it is largely a question of degree. I remember a good deal of the proof on the map, and I really fail to see the necessity for making it so specific as you now seem to desire.

Mr. Isserman: If your Honor please—

The Court: Well, let us hear from Mr. Mc-Gohey.

Mr. Isserman: I just would like to supplement one point: There is no proof, no evidence which is current on the Bronx; there is none on the 21st Con-gressional district, which adjoins Harlem. People have been talking about Harlem in general terms, but in terms of Congressional district from which specific areas which we believe it necessary to de-fine—

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The Court: Didn't Mr. Wilkerson testify that the census figures, the census tables, showed just that very thing?

Mr. Isserman: I think he did—he said the health areas did, but I am not sure that his evidence on the health areas was included, but that showed it as of 1940. This map shows it as of 1944 or later, perhaps up to 1946; and we will have testimony which makes it (2850) current.

Now, there has been no suggestion by the Government that the 1940 figures be accepted as valid for the purposes of this challenge.

Mr. Gladstein: I may say also, your Honor, one of the reasons that we deem it absolutely necessary in order to make the record clear, so that there could be no question of ambiguity or uncertainty, for the production of these maps, is the ruling that your Honor made in respect of certain maps that we have, particularly one which designated certain health areas, and you will recall, I think it was some time last week I sought to offer—I think it was just one exhibit, as a matter of fact—on that subject—

The Court: No. You had several of those charts which I excluded, and one of the reasons I excluded them was that the evidence was in the record, and that you could make such argument as you desired without taking day after day in putting in more and more and more charts.

Mr. Gladstein: This was a map, your Honor, the one I had reference to.

The Court: Well, you called them maps. I don't know just which of these things were called charts and which maps. Maybe maps is a better expression. (2851) But, anyway, let me hear Mr. McGohey's view.

Mr. McGohey: If your Honor please, there is already in evidence Exhibit No. 10, Defendants' Challenge Exhibit No. 10, which consists of census data from which information may be obtained about the Negro population and the area in which he lives.

Exhibit 20 is this book that was introduced, New York City Market Analysis, with its maps showing

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the various areas in the city and the kind and character of population, and indicating whites and non-whites, and Negroes, and foreign born, and so on.

And then there is also Exhibit No. 87, which is that large map which was prepared by the Consolidated Edison, and which was testified to or testified about last week.

Now, anything that could come from these maps which are referred to in the subpoena would certainly be cumulative in view of the amount of exhibits—the number of exhibits which are already in evidence.

Now, one of the things that this subpoena asks for is such further information showing the persons who, or the organizations or corporations which prepared such maps. Now, the relevance of that here escapes me completely.

I would oppose the introduction of any of these (2852) maps on the ground that they are cumulative in view of the amount of evidence already in the record, and I now move that your Honor quash the subpoena.

Mr. Isserman: Will your Honor hear me on that motion of Mr. McGohey's?

The Court: Yes.

Mr. Isserman: First, as to the specific nature of the subpoena—I do not know if your Honor has seen it—it identifies the particular map by description and by reference to the particular litigation in which it was referred to.

That portion of the subpoena, which is separable from the rest of it, of course, relating to the preparation of the map, is only for the purpose of getting the information as to by whom it was prepared. I have that information now, and it would, in any event, be indicated on the map itself, and therefore that portion of the subpoena relating to the information concerning the preparation we withdraw.

Now, as to the fact that the data is cumulative, I wish to call to the Court's attention that it is within my knowledge that those maps were current as

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late as 1944, and I have information on which I base a belief that they were kept current up to 1946. As a matter of fact, I think the Government so alleged in a suit which is referred to in the subpoena before your Honor.

(2853) On the question of the cumulative nature of the material, my study of the record indicates that at this point there is no evidence of the present location of Negro areas in New York City with the specificity necessary to establish our proof; that the market analysis that we have put in evidence has not been stipulated by the Government as being a true reflection of present conditions, and that is based upon the 1940 census; that the other figures we have adduced are figures bearing—the other maps and figures we have introduced are based on the 1940 census; that in relation to Negro population there has been some substantial shift since 1940; that this map will support other evidence which we will introduce on the actual location of the Negro areas in the various Congressional districts which have been used here as a framework of reference, and will indicate that in those precise areas where Negroes and Porto Ricans reside, that the drawing of a juror from those areas in the 28 panels that we have examined is a rarity.

Now, we think it absolutely essential for this case to establish the location of these areas in this city. This map when produced and properly authenticated, as we will do, is probative evidence on that point.

Therefore, we ask at this time that the subpoena (2854) not be quashed and that the map be produced.

Now, I might say, as is not unusual in situations of this kind, that we are ready to accept a copy of the map and stipulate its origin or its authenticity in respect to it without the necessity of subpoenaing any person or going through the formal procedure; and, moreover, we are ready to stipulate with Mr. McGohey on the present Negro areas in New York

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City provided he is willing to so stipulate, and if we will present a map showing the present Negro areas and Porto Rican areas in New York City as they would be testified to by persons who directly know those areas and have precisely checked those areas. We are ready to present such a map to save time, if we can get a stipulation that it will be accepted. But at the present point in the proof our contention as to the exclusion of Negroes based in part upon the failure to draw jurors out of the areas where they principally reside in every Congressional district is not sufficiently before your Honor.

The Court: I will grant the motion. The subpoena is quashed.

Mr. McGohey: If your Honor please, with respect to the subpoena calling for the production of the data reflected in the letter of Mr. Hazard, I assume that in view of the stipulation with respect to the Hazard letter, (2855) that that subpoena is deemed either complied with or that it will be withdrawn, or if neither of those things is done, then I ask that be quashed also.

The Court: I think that is not necessary, Mr. McGohey. The matter is for all purposes necessary to this proceeding here settled, and it is about to be marked in evidence, so I think I need not take any action on the subpoena.

Mr. Gladstein: I would like to accommodate the Immigration and Naturalization Service, and if Mr. McGohey has direct communication with them, as he apparently has, having received a copy of Mr. Hazard's letter, I have no objection to immediately notifying that office that they need not send anybody down.

Mr. McGohey: Fine. Thank you.

The Court: Yes, that will be done some way or other and, naturally, I am not going to take any proceedings against them for not complying with the subpoena, nor would anyone have me do so. So that that issue is now all over with and we are

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going to have the letter put in evidence as soon as Mr. Wilkerson resumes the stand.

Mr. Isserman: If the Court please, in respect to the subpoena which was quashed, referring to the map showing the location of Negroes, I would merely like to (2856) note and state our contention that the quashing of that subpoena denies us due process and denies us compulsory process on our behalf to get evidence which is relevant and material and necessary for the presentation of issues in this case.

Mr. McGohey: Your Honor, might that copy of the subpoena be marked for identification, please?

The Court: Yes.

(Marked Government's Challenge Exhibit U for identification.)

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

DOXEY A. WILKERSON, resumed the stand.

Direct examination continued by Mr. Goldstein:

Q. Now Mr. Wilkerson, did you make a study to ascertain the rents paid in the areas from which jurors were drawn who were called or put on the panels for service as of the January 17th date, 1949? A. I did make such a study.

Q. And in what form did you embody the results of your study? A. In tables and charts.

Mr. Gladstein: We can probably save time by having these marked at the same time.

(Marked Defendants' Challenge Exhibit 115 for (2857) identification.)

Mr. Isserman: If the Court please, may the subpoena which has been quashed and which bears

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the marshal's return be marked as a defendants' exhibit to complete the record?

The Court: I thought it just was marked, the one that had been sent.

Mr. McGohey: That was a typewritten copy. I have no objection to substituting this original, your Honor.

The Court: Yes, perhaps that is better.

Mr. Isserman: Because it has the marshal's return on the back of it.

The Court: Yes, perhaps that is better. So that the exhibit marked on the other copy will be stricken and the exhibit number put on the one produced by Mr. Isserman.

(Original subpoena substituted and marked Government's Challenge Exhibit U for identification.)

Mr. Isserman: I understand it is actually offered now and part of the record; is that correct?

Mr. McGohey: Offered? No, it is marked for identification.

The Court: The subpoena has simply been identified so that when someone comes to read the record (2858) they will have the paper there so it will appear what we are talking about.

Mr. Isserman: I think that is adequate. Thank you.

Mr. McGohey: Wait a minute. I think that there has been an error here. Mr. Isserman in error has handed up the subpoena which relates to the information which is in the Dr. Hazard letter.

The Court: Well you may straighten that out after.

Mr. McGohey: We can have that straightened out afterwards.

The Court: Yes.

Mr. McGohey: It is deemed that the original of the subpoena calling for the maps—

The Court: The one addressed to the Attorney General is the one that will be marked.

Mr. McGohey: They were both addressed to the Attorney General. One asking for the maps and one as to the Immigration data.

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The Court: Yes, the one as to the maps is the one which will be marked.

Mr. Gladstein: Now, since there are two which deal pretty much with the same subject, one Manhattan and one Bronx, I may as well have the witness refer to (2859) both at the same time.

Will you mark this, please, Mr. Clerk.

(Marked Defendants' Challenge Exhibit 116 for identification.)

By Mr. Gladstein:

Q. Now Mr. Wilkerson, I want you to look at Challenge Exhibits 115 and 116 for identification. Were both of these prepared under your supervision? A. They were.

Q. With what subject generally did they deal? A. They dealt with the relationship between the incidence of jurors in the several rent categories from under 20 to over 100.

Q. What, dollars per year? A. Dollars per year, yes.

Q. All right. From which panel or panels? A. From the first listing of the January 17th panel, 1949.

Q. And with respect to what counties? A. With respect to the Bronx and Manhattan.

Q. That is to say, Manhattan is dealt with in Exhibit 116 and Bronx is dealt with in Exhibit 115; is that right? A. Yes.

Q. Now, what were the sources that you used to obtain the data from which those charts were made? A. The jurors for those panels and their residences were obtained from the official lists of the jurors for (2860) that panel.

Q. That is, from the clerk's office here? A. That is right.

The rental data pertained to average monthly rent on the block on which the juror—average monthly rent in 1940 on the block in which the juror now resides; and that was obtained from the 16th Census of the United States; 1940, housing, New York City, supplement to the

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first series for the Manhattan Borough and for the Bronx Borough.

Q. Now, is that source, the census source, the latest available from the census on that subject? A. It is.

The Court: What is that one that is the latest?

Mr. Gladstein: 1940, he said.

The Court: 1940?

Mr. Gladstein: Yes.

Q. Now, do you have figures as to the extent to which any increase or change in rents in those areas referred to in the testimony you have just given have, if at all, tended to distort the rent relationship structure between all those areas? A. Yes, I do have.

Q. Will you state what your information is and the source from which you obtained it? A. Well, in the first place since November 1, 1943, (2861) rents have been frozen in this area, certainly in Manhattan and Bronx, and changes from earlier categories could be—

Mr. McGohey: If your Honor please, I object to any testimony along this line because it is testimony with respect to these charts or maps, whichever they are designated, Challenge Exhibit 115 for identification and Challenge Exhibit 116 for identification, and I object to any testimony with respect to them until they are offered in evidence, and I have an opportunity to object to their reception in evidence, which I intend to make.

The Court: I thought he was just saying as to where he got the data from that is in there. Perhaps I wasn't listening intently. I was making some notes of the totals of these charts.

Read the answer to me.

Mr. Gladstein: And read the question.

(Question read.)

The Court: Well, I will sustain the objection. Just state the source of the charts—

Mr. Gladstein: Not on the charts. I have not asked for information on the charts.

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The Court: But the question asks him what the information is.

(2862) Mr. Gladstein: Your Honor will have to hear the previous question, because I have not asked him about the chart, but what information he has and the source from which it came to indicate what has happened to rents as they were reported in 1940 by the Census, that is all. It has no particular reference to these charts.

The Court: I think that is a pretty broad question and I am not going to rule out proof of where he got the factual data there that is reflected in the chart. I think that is a proper thing to bring out. But these general questions about what he knows and what he found and what his information is, I consider improper; because a man could answer that in any way under the sun and put all the data right in in answer to that question without anybody having an opportunity to object.

By Mr. Gladstein:

Q. Will you answer the question as limited by the Court's ruling? A. One source of information concerning the stability of rents in this area, that is, in Manhattan and Bronx, since 1940 is the U. S. Bureau of Census Current Population Reports, Housing, Series P-71, No. 25, New York, Table 2.

Another source—

(2863) Mr. McGohey: May I ask if that has been marked for identification?

Mr. Gladstein: Your Honor, he has just identified it by number and by title and everything else.

The Court: Well, I do not see any harm in seeing if it has already been marked as an exhibit.

Mr. McGohey: That is all I asked.

The Court: Because sometimes he goes on about things that have been marked and sometimes he goes on about things that have not been marked.

Mr. Gladstein: Aren't all those questions which Mr. McGohey could ask on cross examination?

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The Court: I think when somebody produces a chart or documentary exhibit it is common practice to have the opponent, the adversary counsel given an opportunity for what they call a preliminary examination before the paper is offered.

Mr. Gladstein: Very well, your Honor.

The Court: But if you find it disturbing—

Mr. Gladstein: If we have it we will be glad to put it in.

The Court (Continuing): If you find it disturbing to have that brought up before he completes his answer, why, we could let him complete the answer and then we will check back after the answer is in and (2864) see which ones have been marked and which ones not. I can see that it might be disturbing to you and to the witness—

Mr. Gladstein: Yes, it is right in the middle.

The Court (Continuing): So I will permit him to finish his answer and then we will go back.

Mr. Gladstein: Do you want the question read, Mr. Wilkerson?

The Witness: No. I know the question.

By Mr. Gladstein:

Q. Will you continue your answer? A. (Continued) And the second source of evidence on the relative stability of rents in Manhattan and Bronx since 1940 is a report by the Housing Expediter of this area, New York City area, comparing by rent categories rentals in 1943 and in 1947.

Q. So there are two sources, one which brings the 1940 data up to date as of 1943 and the next which takes that same data and brings it up to 1947, is that it? A. Yes.

Q. Is there anything official, any official data available as of a date later than 1947 that could possibly be obtained from an official Government source on this matter? A. To the best of my knowledge, no.

The Court: Now let us get those. Let us see whether that Census report and that Housing Expediter's (2865) report have been given exhibit numbers.

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Q. Can you answer that, Mr. Wilkerson? Have either of those been produced? A. I know the Housing Expediter's report has not.

Q. Has not been? A. No.

Mr. Gladstein: We can check as to the other.

The Witness: I don't know whether the other was entered the first day I was here or not. I think it probably was.

Mr. McGohey: If the Court please, this does not bear any official seal or anything indicating whether it is or is not an official document, but it is a series of tables to which is appended what appears to be—is an unsigned letter which purports to come from the office of Tighe E. Woods, Housing Expediter, from the Office of the Housing Expediter, Washington 25, D. C., addressed to Mr. Joseph D. McGoldrick, Chairman of the New York City Rent Advisory Board on July 21, 1948.

If this is the data which the witness says he used to compile it, I have no objection to it being marked, of course.

The Court: I think that is the only purpose that it is being produced for, so that it can be identified.

(Marked Defendants' Challenge Exhibit 117 for identification.)

(2866) *By Mr. Gladstein:*

Q. Mr. Wilkerson, did you have occasion to use data contained in Exhibit No. 117 for identification in connection with the preparation of the tabulations that are pictorially presented in Exhibits Nos. 115 and 116? A. Yes. Not as a source of information but in interpreting the meaning of such information.

Mr. Gladstein: I see. I will offer—

The Court: Those figures are for the family, I take it, of each person.

The Witness: You are thinking of which figures, your Honor?

The Court: Of those figures.

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The Witness: They differ.

The Court: You put what a person is paying as rent. I suppose it means it is the place where he and his family live.

The Witness: The figures are average rentals in the block of residence.

The Court: Well, if it is the average rental in the block I would suppose it must refer to what a head of a family pays as rent for the place where he and his family reside.

The Witness: It is suggestive in that regard.

The Court: You say it suggests that, but maybe (2867) so, maybe not?

The Witness: For this reason—

The Court: Well, I don't want the reason. I can see what you are going to say is in effect that you had to take the data as you found it, and it did not say in there what the man paid for himself or the woman paid for herself, or what they paid for the family, but that is all right.

Mr. Gladstein: I think this should be in evidence, your Honor. I will offer it. That is the data from the Housing Expediter's office.

(2868) Q. This was obtained from your office, was it, Mr. Wilkerson? A. Yes.

Mr. McGohey: May I ask, was it obtained from the Housing Expediter's office or was it obtained from the office of the New York City Rent Advisory Board, to which the letter appears to have been addressed?

The Witness: I must confess, Mr. McGohey, that this document was obtained for me by one of the attorneys assisting the defense staff, and it may be that it came directly from the Washington office or it may be that it came from the New York office.

Mr. McGohey: You don't know where it came from, except as far as you are concerned it came from one of the attorneys of the defense; isn't that so?

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Mr. Gladstein: I will withdraw the offer. And we will have somebody who actually got it, identify the office from which it came, your Honor.

Mr. McGohey: It appears on its face that this letter was addressed to Joseph D. McGoldrick, Chairman of the New York City Rent Advisory Board on July 21, 1948.

Mr. Gladstein: Yes, I think that is correct.

The Court: It occurs to me, Mr. Gladstein, that there is a distinction between such official data as the census and such a paper as this, that it may or (2869) may not be prepared with similar safeguards.

Mr. Gladstein: Very well. We will have—

Mr. Isserman: If the Court please, we have this problem and we are perfectly willing to meet it. We know that if we subpoenaed the records of the Housing Administrator or Expediter we would get this compilation and we would also get the person who prepared them; that instead of taking two or three minutes to put this exhibit in it may take an hour or an hour and a half. And we are not interested in delay for the sake of delay. We are interested in expediting the proceedings.

It would seem to me that subject to any check that Mr. McGohey cares to make this document could be accepted. But if not, then we will call the Housing Administrator and the person who prepared this report and put him on the stand.

The Court: Well, what I was interested in at the moment was whether the document, taking it as what it appears to be on its face, is competent proof of the data contained in it. Why should I take it as competent proof?

Mr. Isserman: It is an official compilation, your Honor; it is sent from a Federal agency to a New York City agency. The competency of it can be established by calling in the Housing Expediter and the person on (2870) his staff who prepared the data. Now, if we have to secure this way of doing it we don't object to it, but we think it would be unnecessarily taking time which we would otherwise

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use in presenting our proof. Therefore, subject to any check that Mr. McGohey wants to make, we suggest that the exhibit be received.

The Court: Well, that does not quite answer my question. You know, these things are regulated generally by statute; sections of the Judicial Code provide as to what sort of things are admissible or not admissible, and I have never heard that there was any general statutory provision that gave authenticity and admissibility to every compilation that emanated from every Federal agency. And I was wondering if there was some section of the law that you rely on, assuming it to be what it appears on its face to be. But you evidently do not know about that. And, therefore, we just pass on.

Mr. Isserman: The point I make, your Honor, is—

The Court: No, no. Either you know the section number or you don't. Now, isn't it evident that you don't know it?

Mr. Isserman: I don't say there is a section number, but I do say that the exhibit could be accepted without—in the absence of a section number—calling (2871) the persons who prepared the compilation. If Mr. McGohey finds that necessary, or the Court, we will call that person. Then probably we will be charged with delay again by calling somebody who has actually compiled the figures. But we will do it.

The Court: There has been a finding that you and your colleagues, each and every one of you, have participated in a wilful, deliberate and concerted effort to delay this proceeding. And nothing that you may now say or do can alter what has happened in the past. I hope there will be no more of it.

Mr. Isserman: Well, I take exception to your Honor's statement.

The Court: Yes, I expect you to.

Mr. Gladstein: In repeating your previous finding may the record show my exception, without argument?

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The Court: Yes.

Mr. Gladstein: Shall I continue with the witness,
your Honor?

Q. Mr. Wilkerson, would you please state, addressing yourself to Exhibits 115 and 116 for identification, the meaning of such terms as are shown there, without testifying to the contents? A. "Number of jurors"—means the number of persons—"Number of jurors, Manhattan" means the number of persons (2872) in Manhattan on the panel, the first listing of January 17th. The same is true for the chart for the Bronx.

"Expected"—well, first, the rent categories on the left margin of Exhibit—what is that?—116 and 115 for identification indicate the average rental on blocks in terms of dollars.

Q. These are the figures that run up and down on the left hand side? A. That is right. \$100 and over average rent, down to less than \$20 a month average rent.

At the bottom of the chart appear the terms Expected in quotation marks and "Actual." "Expected" means the number of jurors that would be found in each of these rent categories if the jurors on this panel were distributed among rent levels as are the dwelling units in the Bronx. And the same is true with reference to Manhattan.

Q. What does the word "Actual" refer to? A. The word "Actual" means what is actually true about the distribution of jurors on the January 17th panel in relationship to the average rental of blocks on which they live.

Q. And I notice that there are some vertical lines within the general square or rectangle shown there and figures. What do they represent? A. Those are merely guides for ready reference in (2873) determining the number of jurors.

Q. So that, in other words, the top part on Exhibit 116 for identification would refer to a figure of, oh, maybe 37, 38 jurors, is that it? A. That is approximately right.

Q. Who are actually on the panel? A. Yes.

Q. Now, are the facts and tabulations as shown on those two exhibits true and correct? A. They are.

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Mr. Gladstein: I offer them in evidence.

Mr. McGohey: I object.

The Court: Are the two exhibits offered?

Mr. Gladstein: I just offered them.

The Court: Objection sustained.

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

(Marked Defendants' Challenge 118 for identification.)

Q. Now I show you No. 118 for identification. Was it prepared under your supervision? A. It was.

Q. What sources were used for the information you obtained in order to prepare such chart? A. Information concerning the rental levels or, rather, average rent on blocks was obtained from the 16th Census of the United States, 1940, Housing, New York City, Supplement to the First Series, Manhattan and Bronx Boroughs.

(2874) Q. These are the same sources used for the preparation of 115 and 116? A. That is right. This source plus the official jury list.

Q. I see. And dealing again with the January 17, 1949 panel? A. The first listing.

Q. All right. Now, without stating what the contents of 118 are, state the subject—

The Court: Is this the second drawing?

The Witness: First listing.

Mr. Gladstein: The first listing.

The Court: This is the first listing, and the other exhibit underneath, which I think is 116 for identification also relates to the first drawing?

Mr. Gladstein: Yes.

The Court: I am a little puzzled as to the difference between the charts that have just been excluded and this one.

Q. Will you explain that, Mr. Wilkerson? What is the difference? A. This chart deals not with seven rent categories as did the earlier ones that were rejected, Exhibits 115 and 116 for identification I believe, but rather with the distribution of jurors among three rent categories that

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we are characterizing as "Upper", that is \$50 and over, "Middle", \$30 to \$49, and "Lower", that is, under \$30.
(2875) Q. As of 1940? A. As of 1940.

The Court: It is just a condensation of the other one.

The Witness: Were you asking me, your Honor?

The Court: Yes.

The Witness: That is right.

The Court: Yes.

The Witness: Into one chart.

Q. It is based on the same data? A. It is.

Q. Is it true and correct? A. It is.

Mr. Gladstein: I offer it.

Mr. McGohey: Objection.

The Court: Sustained.

Q. Did you make a study to find out rents paid in areas from which jurors were summoned to serve on the panel for November 15, 1948, a date on which this case was scheduled to go to trial? A. I did.

Q. In what form did you prepare the results of that study? A. In the form of four charts, two for Manhattan and two for Bronx.

Mr. Gladstein: May I have these marked at the same time?

(Marked Defendants' Challenge Exhibits 119, 120, 121 and 122 for identification.)

(2876) Mr. Gladstein: Your Honor, I think there is one possible ambiguity concerning 118 for identification that I would like to clear up.

The Court: You may do that.

Q. Mr. Wilkerson, take for example this red bar under "Bronx" on that exhibit. Will you explain what significance attaches to the fact that a portion of the bar is in solid color and a portion of it is lines of the same color

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which have spaces between? A. The lined portion of the bar indicates the number of jurors that you would expect in the rent categories we are concerned with, that is, the Upper, Middle or Lower, if jurors were distributed among those rent categories in the same proportions that dwelling units were in Manhattan or Bronx in 1940.

The solid bar of the column indicates—the top—well, it indicates what is actually the distribution of jurors among those rent categories.

To illustrate, take the red bar for the Bronx. It shows that if jurors were distributed in the upper rent category of \$50 and over as are the dwelling units in the Bronx you would expect about 15 per cent—

The Court: Well—

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

The Court: Strike it out. I was afraid that (2877) was coming.

You could easily have done that, Mr. Wilkerson, without putting the figure in.

The Witness: I am sorry. Well—

Mr. Gladstein: Your Honor—

The Court: Each time it comes up again. This is an intelligent witness. He knows perfectly well that I have ruled repeatedly that he must not do that, and yet every time you give him an opening he marches right in and tries to get on the record what is in the paper that I have excluded. Now, please don't do that any more.

Q. Now, Mr. Wilkerson, in a case of the red bar, since the lower portion is lined and the upper portion is solid, is it to be understood that the group that is called "Expected" is to be computed simply by the size of the lined portion? A. That is correct.

Q. Now with respect to the group that one actually finds in that category, using that red bar as an illustration, is the size of that supposed to be merely the size of the solid portion of the whole bar or the entire bar including the portion that is lined? A. Your question is with reference to the upper or (2878) red bar?

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Q. No. My question— A. The answer—because the answer is different for certain other bars. The principle is the same.

Q. I am now talking about the red bar in the case of the Bronx. A. The actual is measured by the entire height of the bar including the lined portion and the solid portion.

The Court: That is what Mr. Gladstein wanted to bring out.

Q. That is where the solid portion is at the top of the bar, is that right? A. That is right.

Q. Now is it true that the opposite—or I shouldn't say “the opposite”; but take the case of the green bar in the Bronx. There you have a reversal of position and the solid portion is at the lower end of the bar and the lined portion is at the top.

Now, what is one to understand that bar to mean in terms of the size of the actual jurors and the size of the expected number of jurors, as you have described that term? A. The height of the solid portion of the bar indicates the actual number of jurors in the middle rent category.

Q. In the green one? A. In the green one, yes. (2879) The top portion—rather, the entire bar, the solid and the lined portions indicate the expected number of jurors in that category if jurors were distributed as are the dwelling units of the population.

Q. In that last answer, when you talk about “Expected” do you include for the number of expected in that group a number which includes the entire length of the bar in that case, that is the green one in the Bronx, and composed of both the solid portion at the base and the lined portion at the top? A. That is correct.

The Court: If he did that I don't see why you didn't have them all with the solid part at the bottom and the lined part at the top, or vice versa. But I take it it was just a matter of pictorial description that you chose to put them in an alternate way.

The Witness: No, your Honor. May I explain?

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The Court: Yes.

The Witness: It is necessary to reverse the position of the lined portion of the bar in the red column and in the green column for the reason that the actual number of jurors in the first rent category—

Mr. Gladstein: The red one.

The Witness: —the red one, is considerably greater than what would be expected. On the other (2880) hand, with the middle category, the green bar, the expected number is greater than the actual number for that category.

Mr. Gladstein: Or the actual is less than the expected, to put it in a different way.

The Witness: Yes. And it is essential then that the top of the bar be designated by symbols which indicate what the top of the column represents.

Mr. Gladstein: Is that clear to your Honor? All right.

Q. Now I think you can address yourself to each of these as a group. Well, 119 and 120. Were those prepared under your supervision? A. They were.

Q. And on what is the information contained in those two exhibits for identification based? A. The same sources cited with reference to Challenge Exhibit 115, that is the 16th Census Report on Housing, New York, Supplement of the First Series, and the official listings of jurors.

Q. In this case it would be the November 15, 1948 list of jurors from the clerk's office; is that right? A. That is correct.

Q. In preparing these charts, that is 119 and 120, did you follow the same procedure that you have already described in respect to 115 for identification? A. Yes.

(2881) Q. And do 119 and 120 purport to show data of a similar character to that shown in No. 115, save and except for the difference in the date of the panel? A. That is correct.

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Q. Do 119 and 120 accurately, fairly and truthfully set forth the facts and the data which they purport to show?

A. They do.

Q. And they are correct, are they? A. They are.

Q. I will ask you this: would your explanation of the terms used on it, the figures and the use of lines, figures on the side giving the dollar amounts—would your testimony concerning those aspects of those two exhibits be the same as the testimony given with respect to 115? A. It would.

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

Mr. McGohey: I object.

The Court: Objection sustained.

Q. Now 121 and 122, did you prepare these? A. They were prepared under my direction, checked by me.

Q. What do they purport to show? A. They show for Manhattan and for Bronx, separately, the distribution among three rental categories—Upper, that is \$50 and over, Middle, that is \$30 to \$49, and Lower, that is under \$30—the actual distribution of (2882) jurors on the panel of November 15, 1948, in comparison with what would be expected to be their distribution were they distributed among rental categories as are dwelling units in the two boroughs, 1940.

Q. Now are the terms “Upper”, “Middle”, and “Lower Rental Groups” defined in terms of a money figure?

Mr. McGohey: He has just indicated that it is, your Honor.

Q. (Continuing) On the chart. A. That is correct.

Q. These money figures were as of what year? A. As of 1940.

Q. Now these two exhibits differ from the one that you have testified about heretofore with respect to the interpretation of the size of the column. And without giving the figures, will you indicate for example the difference between the red column and the green column shown on

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No. 121 for identification, those being the left column and the middle one?

Mr. McGohey: Now if your Honor please, I object to any description by the witness of an exhibit that may not be received in evidence.

The Court: Well, I think it has already been indicated pretty clearly that it is not going to be received; so that I will sustain the objection. Otherwise if I didn't feel that it was merely along the same lines already (2883) indicated with the other, prior, exhibits I would have permitted the explanation. But as it is, I will sustain the objection.

Mr. Gladstein: I offer the exhibits in evidence.

Mr. McGohey: I object to them.

The Court: Objection sustained.

Q. Is there any official data put out by the United States Government with respect to the relationship between rent and income? A. There is.

Q. Identify it, if you will, by title. A. Information in that respect can be obtained from the monthly labor review of the U. S. Department of Labor, January 1946, which reports expenditures and savings of city families in 1944, page 4, Table 2.

Q. Are there any other Federal publications on the subject that you know of? A. Yes. Not so clearly evident as this, but there is collateral information in this respect in the 1948 Consumer Survey of the Federal Reserve Board.

Q. Will you refer to it— A. I don't have the specific reference before me now, but I remember there is such information. It is the 1948 Survey of Consumer Finances. That is in several parts. And I do recall seeing in one of those parts similar information, but not so clearly evident as in the (2884) Department of Labor monthly review that I have called attention to.

Q. These are Government figures? A. That is right.

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Q. Now, Mr. Wilkerson, did you have occasion to prepare a map showing the portions of Manhattan or Bronx or both, if that was true, in which the January 1949 jurors were found to live and showing the rental area or type of rental area in which they were located? A. I did prepare such a map.

Mr. McGohey: I object, your Honor.

The Court: I am not sure that I understand quite what it is. I think I had better get it clear in my mind before I make a ruling on the objection.

Mr. Gladstein: I want to say in this connection that the map I am referring to is an enlargement of one that is in evidence in one of the surveys which shows the rental character of certain areas. And what we simply did was put pins into this enlarged map to show your Honor and to have in the record, something that there isn't now without computation and tabulation and location, just where those are.

The Court: Let me take a look at it. Perhaps I shall permit it.

Mr. Gladstein: I shouldn't have even said "enlargement." It is actually the portions of the map taken (2885) from such survey and pasted together just as they appear or would appear in the book.

The Court: This is taking the various parts of the city from one of those exhibits, putting them together and then putting the pins in for the two January 17, 1949 drawings.

Mr. Gladstein: I think it says all panels of January 1949. But the rest of it is correct, what you have said.

The Court: When I say the two of January 17th, that is all there are for January, isn't that right?

Mr. Gladstein: I think there is another.

The Witness: Including the two listings for January 17th, yes.

Q. Was there a third for that month? A. Yes.

Q. Which is it? A. There was the January 4th.

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The Court: Oh, yes.

Mr. Gladstein: January 4th and the two January 17ths.

The Court: I see. Do you have any objection to that, Mr. McGohey?

Mr. McGohey: Oh I do, your Honor. It seems to me that it is cumulative of all of the exhibits from about 115 to 122 that have just been excluded.

The Court: Oh, it is those figures up at the (2886) top, isn't it?

Mr. McGohey: Yes. On this rental business.

Mr. Gladstein: No, these are not our rental figures. Those were taken in the survey. Will you let me see the New York—here it is. Your Honor, those figures explain the meaning of the colors and they are in an exhibit that is in evidence.

Mr. McGohey: That is correct, your Honor. But I urge the point that this is merely cumulative—

The Court: Yes.

Mr. McGohey: —if I may use the pointer—because here (indicating) we have the same characterizations of rental under \$30 and so on, all of which was described by the witness as being in these various charts from I think 115 to 121 which your Honor has just excluded.

The Court: Yes.

Mr. Isserman: May I call an important difference to your Honor's attention. The exhibit being offered—first, as far as the map and coloration is concerned and the rental variations are taken from the exhibit in evidence. The pins show the actual location of where the jurors live. The prior exhibits made some estimates and presented in graphic form the expected number of jurors from a certain rent category and the actual. This exhibit merely places the very jurors whose names (2887) and addresses appear on the three January panels on the map which indicates the rental area from an exhibit in evidence. So that there is no—

The Court: As I see it, it includes everything that is in all those exhibits that I have just excluded.

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Mr. Gladstein: No.

The Court: So that if this one goes in you might just as well have them all in.

Mr. Isserman: No, that is not true. For instance, the excluded panel which is on view next to the presently offered exhibit deals with expected amount of jurors and actual amount. Here there is no speculation, or there is no expectation in the exhibit being offered but the actuality of where the jurors live. It is on another exhibit in evidence.

The Court: Are these called maps or charts, Mr. Gladstein?

Mr. Gladstein: They are maps because they are pictorial representations of geographical features and boundaries of Manhattan and Bronx.

The Court: Good. Then we will call these maps. And I am looking for the two that have to do with January 17th, and let me see how far they do the same thing.

Now, that January 4th one I don't seem to find (2888) here. I have got here Challenge Exhibit 65.

Mr. Gladstein: I don't think we had a map of January 4, 1949, your Honor.

Mr. Isserman: The figures are in evidence, your Honor, by tabulation. They were just a selected number of maps.

Mr. McGohey: There appears to be no map of January 4th.

The Court: Yes.

The Witness: That is right.

Mr. Gladstein: Judge, you may be interested to see this. This is in evidence.

(Mr. Gladstein conversed with the Court at the bench out of the hearing of the reporter.)

The Court: Well, it seems to me that it will not be helpful to have that. The data I see in this book here, Challenge Exhibit 20, the Market Analysis, plus these maps that are already in evidence, seem to me to suffice. I will sustain the objection.

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Mr. Gladstein: Your Honor is aware that the January 4th panel is not shown by any map. When I say January 4th I mean January 4, 1949. And also, that as to the two listings for January 17, 1949, that are shown on one map—you will recall, with two different colors of pins—that it is impossible to tell, simply from (2889) looking at that map, what the character of the rental area is in which the pins are to be found located.

The Court: I recall certain testimony by witnesses and I have examined this book. It seems to me that you shuffle these pins around all the time anyway. Sometimes there are 16 panels in an exhibit, then there are three, sometimes one, sometimes six. And I cannot see that this particular one has any special significance in the inclusion of the drawing of January 4th. As I look at the map of January 17th, Exhibit 65, it seems to show the same general characteristics that you have got on the exhibit there.

Mr. Gladstein: If what your Honor means is that the jurors keep coming from the same place all the time and never get called from other places, that is right. That has been happening for ten years.

The Court: Well, you have got your figures in evidence. And I sustain the objection.

Mr. Gladstein: May the record show a stipulation Mr. McGohey, that the witness would, if permitted to answer questions, sufficiently lay the foundation as to the fact that this map was prepared under his supervision, that the pins represent the jurors, that the places where the pins appear on the map represent the residences of the jurors respectively.

(2890) Mr. McGohey: I will stipulate that he would so testify but I will not stipulate with respect to that portion put in there about adequately laying the foundation.

Mr. Gladstein: All right.

And that he would also testify that the actual background, with the different colors and the monthly

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rental figures referring to those colors, are exactly as or accurately as set forth in various portions of Exhibit 20 in evidence. Will that be all right, Mr. McGohey?

Mr. McGohey: May I have that read?

(Record read.)

Mr. McGohey: He would so testify to that? Yes, I stipulate that he would if he were asked those questions.

Mr. Gladstein: In other words that the meaning of the colors in terms of those rents are not something that he created but that they are to be found, the parallel of that is to be found in that Exhibit 20.

Mr. McGohey: I don't stipulate that that will be found. I will stipulate that he will so testify they would be found if he were so asked.

The Court: I guess we had better take our luncheon recess now.

(Recess to 2.30 p.m.)

(2891)

AFTERNOON SESSION

DOXEY A. WILKERSON, resumed the stand.

Mr. Gladstein: For the record, your Honor, Mr. Potash, by virtue of a discussion that we had at lunch asked and obtained permission to leave for this afternoon's proceedings.

The Court: Very well.

Mr. McGohey: I think there may be some other defendants.

Mr. Gladstein: Mr. Winter and Mr. Davis I spoke about this morning. Who else?

Oh, Mr. Williamson.

Mr. McGohey: Mr. Williamson was mentioned at the luncheon recess, too.

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The Court: Very well. So that the absentees are noted and, as I understand it, everybody has acquiesced.

Mr. Gladstein: That is correct.

I want to say that Mr. Isserman is consulting with several witnesses who have come pursuant to subpoena, and they will be rather brief in their testimony, and perhaps to accommodate them whenever they are ready—

The Court: No, there is going to be no more accommodation. We are going on with Mr. Wilkerson.

Mr. Gladstein: All right, your Honor. These gentlemen were subpoenaed from the Metropolitan Company—

(2892) The Court: I can't help it. You are going on with Mr. Wilkerson until finally his testimony will be concluded.

Mr. Gladstein: Will you mark this for identification.

The Clerk: It has been marked for identification. It is 114 for identification.

Mr. Gladstein: This is the Court's extract copy. Will you put the same exhibit number on it, please.

(Number inscribed on copy.)

Mr. Gladstein: Now, just prior to the recess, if your Honor please, we were discussing the map which is now located against the blackboard but no identification number was given it; so I ask the clerk to now mark for identification, and I ask the record to show that all of the testimony given by Mr. Wilkerson and the questions that I asked, and the colloquy between counsel, and the objections of Mr. McGohey, and the rulings of the Court that take place in the transcript subsequent to the reception in evidence of Exhibit 122, or, I should say, the offer in evidence of 122 be regarded as dealing with—and I think this is the correct number—123.

(Marked Defendants' Challenge Exhibit 123 for identification.)

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Preliminary—Cross*

Mr. Gladstein: Would that be satisfactory?

(2893) The Court: I think so. I shall ask him if that is an accurate statement.

Mr. McGohey: If your Honor please, before we pass from that map might I ask a question about it?

The Court: Yes.

Preliminary cross examination by Mr. McGohey:

Q. Mr. Wilkerson, I show you this photostatic copy of the Defendants' Challenge Exhibit 65 in evidence and I direct your attention to the lower portion of what appears to be the 20th Congressional District. Does that show in the area just about even with the southerly end of Central Park South and looking to the left—does that show that there is a pin in the part of that district? A. It appears to be so.

Q. Will you look at this Defendants' Challenge Exhibit 123 for identification and see if you can tell me whether or not that pin is reflected on this map? A. I think it is.

Q. Will you show it to me, please? A. Again without reference to the street numbers, because we can't read them in this small material—

Mr. McGohey: Might we have the glass, if the Court has it?

The Court: Yes. I can see from here that the pin is not there.

(2894) Mr. McGohey: Is the original of Exhibit 65 here?

Mr. Gladstein: I beg your pardon?

Mr. McGohey: Is the original map of Exhibit 65 here?

Mr. Gladstein: It is on its way, I am told.

The Court: Now, I gave directions the other day that the original exhibits be here in court all the time—

Mr. Gladstein: And we have attempted to—

The Court: —and I don't want any more withholding of them and saying they are down in the office or somewhere else. They belong here in the courtroom.

The Witness: This is not here (indicating).

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Q. Will you speak up a little louder, please? A. There does not seem to be at the exact point a pin corresponding to the one you show me on this panel.

Q. Well, does there appear to be a pin in any point near there that corresponds to the pin on Exhibit 65? A. Two pins.

Q. Two pins where? Are they different from the pins that appear on Challenge Exhibit 65? Don't those two pins show right here (indicating)? A. They do not. That is directly below Central Park. This is west (indicating).

(2895) Q. No, we are talking about the two pins now, Mr. Wilkerson. A. We are talking about the two pins that I am pointing to here?

Q. Yes. A. Those two pins are not these two pins (indicating). These two pins are directly below Central Park (indicating).

Q. Yes. A. These pins are further to the west (indicating).

Q. Now, as I understand it, you are indicating two pins, one on 57th Street and one on 56th Street on Challenge Exhibit 123 for identification. A. Approximately.

Q. Is that so? A. Yes.

Q. And they appear to be Eighth and Ninth Avenues, is that correct? A. Yes.

Q. And are those two pins shown on Challenge Exhibit 65? A. I indicated earlier that the pin to which you refer on Challenge Exhibit 65 is this (indicating).

Q. Yes. A. Which is in a position which is not exactly where—there is no corresponding pin precisely at that same point on this challenge exhibit, but there are two very close to it, within half a block of it.

Q. In other words—

The Court: Well, I am watching here and I do not see it anywhere near there.

(2896) Mr. Gladstein: Don't see what?

The Court: Don't see the missing pin.

Mr. Gladstein: Well, I will ask Mr. McGohey—it looks like there are a couple of hundred pins on that map—is he claiming that he found one or two pins out of a couple of hundred, mistaken? I would

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like to have him state the result of whatever scientific test he made to establish the accuracy of the pins.

The Court: That would seem to me to be already established.

Mr. McGohey: If the Court please, I move that that be stricken, your Honor. I am trying to ascertain from the witness whether or not a pin which appears on Exhibit 65 was left out of or included in Challenge Exhibit 123 for identification.

The Court: Yes, and the testimony is that it is not there.

Mr. Gladstein: Of course, the two maps do not purport to show the same panels. Your Honor remembers that, doesn't he? One covers three panels and the other covers exactly one.

Mr. McGohey: But one of those would be included in the three.

The Court: Mr. Gladstein, I can read, and your Exhibit 123 for identification has at the top "All Panels (2897) of January 1949." That necessarily includes the first drawing of January 17, 1949, or both drawings, whichever of the two appear in Challenge Exhibit 65.

Mr. Gladstein: It does not necessarily mean that. It may. At the time of the making of that map it may well be—and I will ascertain the fact and report it to the Court as the fact is without speculation—I will ascertain whether it is true that this map was made at a time when only the first of the January 17 panels had been drawn, and, also, of course, the preceding one, namely, the January 4th panel. That is possible. I do not assert it to be the fact, but I will ascertain what it is.

The Court: Curious that it should have the title "All Panels of January 1949."

Mr. Gladstein: Well, if it were made at that time it would have it. If it were made prior to the sudden announcement of the selection of a new panel. But I do not say that this panel, this Exhibit 123

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for identification, confines itself to two panels rather than three; I don't know; but I will ascertain what it is, and I just suggest that the Court and the United States Attorney not jump to conclusions about it until we ascertain what the fact is.

(2897-A) I might also point out that your Honor has ruled on 123 and ruled it out of evidence.

The Court: That is right.

(2898) Mr. Gladstein: Do you have any further questions, Mr. McGohey?

Mr. McGohey: No, I have no further question.

Mr. Gladstein: Have you marked that exhibit, Mr. Clerk?

The Clerk: I have no exhibit to mark.

Mr. Gladstein: Oh, I thought I gave you one.

The Court: Yes, you marked it 114 for identification. That is Table R-2, isn't it?

Mr. Gladstein: That was the previous one.

The Court: Or is it some other paper?

The Clerk: It is a new one, your Honor.

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

(Marked Defendants' Challenge Exhibit 124 for identification.)

Mr. Gladstein: Does the Court have the exhibit?

The Witness: Here is an extra copy if you don't have one, Mr. Gladstein.

Mr. Gladstein: Thank you.

The Court: How many more of these charts have you got, Mr. Gladstein?

Mr. Gladstein: Are you referring to exhibits, your Honor? These tabulations?

The Court: I am looking at 124 for identification. (2899) I am wondering how many more you have.

Mr. Gladstein: Of this character, or any character?

The Court: Any character.

Mr. Gladstein: Well, I was rather hoping I could complete with Mr. Wilkerson prior to the afternoon recess. I haven't counted the number; I am guessing now. There may be a dozen.

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Would that be about right, Mr. Wilkerson?

The Witness: I think that is, approximately.

Mr. Gladstein: Something like that.

The Court: How many?

Mr. Gladstein: About a dozen, I think.

Would you hand the exhibit to the witness, please?

The Court: I have it before me.

Mr. Gladstein: What is the number of it, your Honor?

The Court: 124 for identification.

Direct examination resumed by Mr. Gladstein:

Q. Would you address yourself to that Exhibit 124 for identification. Was it prepared under your supervision?

A. It was.

Q. From what sources did the information come that are contained on it? A. The number of jurors from the official listings of the federal court of the Southern (2900) District; three January lists, January 1st, two lists for January 17th, 1949.

Q. And January 4th? A. January 4th. Thank you. The information concerning apartments, average rents, came from the following sources: For London Terrace and Knickerbocker Village, from the 16th Census of the United States 1940, Housing supplement to the first series, Housing Bulletin for New York City, Manhattan Borough, block statistics, table 3.

For Parkchester—

Mr. McGohey: May I ask if that source has been marked? If this could be referred to by exhibit number, your Honor, I wouldn't have to make that request all the time.

Mr. Gladstein: Well, there is a—

The Court: I don't think that Metropolitan Life Insurance Company booklet has been marked. I remember some reference to it before.

Mr. Gladstein: We have a witness, the one that I had reference to—I did not name him at the outset of this afternoon's session—from the Metropolitan

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who has the material directly on that. Perhaps it would be advisable to wait until he gives his testimony.

The Court: Well, I desire to conclude with this witness if possible before other witnesses are called.

(2901) Mr. Gladstein: I understood your Honor to say that. But I say, with respect to the source material that Mr. McGohey has just now inquired of, that witness I understand has such material with him.

Mr. McGohey: If your Honor please, I was asking about the—I understood it was a census report that Mr. Wilkerson just referred to. Was it not, Mr. Wilkerson?

The Witness: The first one I referred to is a census report.

Mr. McGohey: Yes. Now, that is the one I want to know: Is that in evidence or has it been marked for identification?

Mr. Gladstein: Do you know?

The Witness: I think it is in evidence but I am not sure. I don't have a tally sheet before me.

By Mr. Gladstein:

Q. Well, did you take the material from that official census data and simply incorporate it in this table? A. That is correct.

Q. And you checked it for accuracy of the transposition—or the transfer of figures from the census tables to this, is that right? A. Yes.

Q. Now, is that census table available to Mr. McGohey or anybody else? A. It is.

(2902) Q. It is a public document?

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

The Court: Yes. What is the purpose of that sort of remark, Mr. Gladstein?

Mr. Gladstein: I just want to establish by the witness's testimony for the record that these are available publicly and anybody—

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The Court: But you know what papers are in evidence and what papers are not in evidence. That is the important thing. The witness is not to say—

What is this? Another great big batch of charts and maps coming in?

Mr. Gladstein: These are the maps your Honor inquired about.

The Court: Oh.

Mr. Gladstein: And I said—

The Court: These are the ones that were not here before.

Mr. Gladstein: That are in evidence; and they are here in response to the Court's requirement that the exhibits be in court.

The Court: Very well.

Now Mr. McGohey very properly indicating that you have some compilations that have been put into this chart or table, there should be some indication here (2903) of the exhibit numbers which apparently has not been done. And perhaps some of them have no exhibit numbers.

Mr. Gladstein: You mean the sources?

The Court: Yes.

Mr. Gladstein: That is possible. I do not recall this one being offered.

By Mr. Gladstein:

Q. What other sources were used by you, Mr. Wilkerson to make the tabulation shown on this exhibit? A. A letter from the official in charge of Housing Projects of the Metropolitan Life Insurance Company, along with a company—Metropolitan Life Insurance Company brochure entitled "A description of Parkchester."

Q. Who was the official— A. Also—

Q. Excuse me. Who was the official from the company? A. Gustave Zismer.

Q. And the position that he occupies? A. He merely lists after his name "Housing Projects" for the Metropolitan.

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Q. What other sources? A. The New York City Housing Authority report on project statistics for September 1948.

Mr. McGohey: Is that in evidence, may I ask?

The Witness: Again I do not know. I remember the first day many things were put in evidence. Whether this particular one was or not, I do not know.

(2904) Mr. McGohey: Your Honor, I suggest that the orderly and ordinary way to put in compilations is to put them in from exhibits and to indicate what the exhibits are.

The Court: That is right.

Mr. McGohey: Now, if they are in evidence I need not ask for them; if they are not in evidence or if they have not been marked for identification I certainly submit that I have a right to know what they are and have a look at them and have them marked.

The Court: That is right.

Mr. Gladstein: I would like to continue with the examination subject to connecting it by introducing such public and available documents as the witness has used and which may not have been offered yet. They will be brought into court and offered in the record.

The Witness: They are probably there now, Mr. Gladstein.

Mr. Gladstein: Well, it is just that I don't want to take the time now to check through them. Does the Court desire me to look for those documents?

The Court: Well, I desire whichever way is going to consume the least time.

Mr. Gladstein: Well, I merely make the suggestion that it may be that some of these are already (2905) identified or received in evidence. If not, then we will produce those government statistics, and we will introduce them, offer to introduce them as exhibits. If on the other hand one or more of

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these have already been received, it is obviously needless to check for the number.

The Court: Well, it seems to me there are so few of them here that you could check rather quickly right now.

Mr. Gladstein: I will do that.

I do not see in the list of exhibits that the reporter has provided us with a reference to this same title. So I will offer to produce the government publications that Mr. Wilkerson has referred to in his last couple of answers and do that in the morning.

By Mr. Gladstein:

Q. Do you happen to have any of those with you, Mr. Wilkerson? A. Of the census publications?

Q. The ones that are referred to in connection with this last exhibit. A. The Parkchester Metropolitan material I have.

Mr. Gladstein: This is from the Metropolitan Life Insurance Company. Well, we can have that marked for identification.

(Marked Defendants' Challenge Exhibit 125 (2906) for identification.)

Q. I show you Challenge Exhibit 125 for identification. Will you state what it is and how you got it? A. The first is a letter sent upon request by Gustave Zismer indicating for the Parkchester development of the Metropolitan Life Insurance Company the number of apartments of varying size, the approximate numbers of tenants in various occupational—in occupational categories, and rent increases in the Parkchester development during the past year. And attached to it is a memorandum entitled "A description of Parkchester" which gives much information about the nature, extent, rents, occupants of the Parkchester housing development.

Q. And that comes with the letter and is put out by the Metropolitan Company? A. Yes.

Q. Now you used—

Colloquy of Court and Counsel

The Court: Are these housing developments places where you claim rich people live?

Mr. Gladstein: No. These are places where, for example, Parkchester, as we will prove, no Negroes are allowed to live and no Negroes live there; and the clerk, as you will recall from some of the maps, draws huge clusters of jurors from there. We will show that.

The Court: What has that to do with this? Challenge Exhibit 124 for identification has a series of (2907) columns and average rent, 1948, and so on, and they all seem to me, from one of these developments, to be very modest rentals; and if those represent apartments with a certain number of rooms in each apartment, I don't see how it could be reasonably contended that it proved anything to justify or to support a finding that there was this discrimination between the rich and the poor.

Mr. Isserman: If the Court please, may I be heard on that point?

I was just conferring with a vice-president of the Metropolitan Insurance Company in charge of Parkchester on some aspects of this matter. And the purpose of this exhibit has two aspects. One aspect, as far as your Honor's question is concerned on rentals, is to show merely this: that there are other housing developments of more or less comparable rent from which no jurors have been drawn, and in some of those housing developments the racial composition is mixed—both Negroes and whites live there. Parkchester is distinguished, or, I would rather say, is not distinguished by the fact that no Negroes live in Parkchester.

From a rental standpoint there is no claim that these developments are occupied by the rich. When we talk about that we are talking about the apartments (2908) along Fifth Avenue and in the areas indicated by the yellow on the map.

But this is true, that Parkchester rents compared with the rents in the section of the Bronx, in which is found the 23rd and 24th Congressional districts,

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particularly in the 23rd east of the Harlem Railroad and east of Webster Avenue, that section known as the East Bronx, which in this case has been distinguished by the absence of jurors or relative rarity of jurors, that there the rents are very much lower than Parkchester rents. In other words, there you get rents ranging from \$20 to \$35 per apartment in the kind of building that Congressman Marcantonio described the other day.

Mr. McGohey: I object to that. There is nothing in the evidence to justify this characterization.

Mr. Isserman: I am saying that this—

The Court: I will take it merely as a statement by counsel of a claim—

Mr. Isserman: That is correct.

The Court: —and not as a thing evidentiary.

Mr. Isserman: I might say that—all I am saying is that we will have evidence which will show that. And this table has therefore the dual purpose of showing the difference in rents between Parkchester and the other areas of the Bronx in which jurors are not drawn. (2909) I might say those drawn from Parkchester amount close to 37 per cent of all the jurors drawn in the Bronx. We will have figures to show that, if they are not already in evidence in my absence, and for showing that in other housing developments in this city where Negroes and whites live, with comparable rentals, no jurors are drawn.

And we think the rental aspect for that purpose is relevant and material to our challenge.

Mr. Gladstein: Now we have another exhibit which I will call attention to later.

The Court: The result of all this is, there is going to be utter confusion, utter confusion.

Mr. Gladstein: It doesn't seem very confusing to me. You have certain housing developments—

The Court: That, in the average rentals, you find buildings here or there that have Negroes and whites and some that do not; but you seek to draw inferences from that where the factors involved are of such multiplicity that it seems to me there is nothing but utter confusion.

Colloquy of Court and Counsel

Mr. Gladstein: It is very plain to me, your Honor, that if I wanted to do a good job of discrimination, not a bad one, not one that could be easily shown against me, not a foolish and stupid job such as to exclude all Negroes—but if I wanted to do a good job and just have a little token representation, just pick one or two or maybe a dozen, (2910) maybe 20, but pick the kind that I thought could be controlled, I wouldn't go to the voting lists and use a random selection; I wouldn't allow the factor of chance and extent and fair play to have any room. Oh, no. I would take advantage of the existing facts that are cognizable to anybody. Nothing confusing about that. I would, for example, if I wanted to show—

Mr. McGohey: If your Honor please, I move to strike out all this.

The Court: Yes.

Mr. Gladstein: May I finish my statement?

Mr. McGohey: No, I am moving to strike it out because there is nothing in the evidence to support it, and it is assuming facts as to which there is no evidence.

The Court: Yes. It is the same old thing of giving us some more argument which will delay the proceedings further. I know your contentions in general about that, and it seems to me that perhaps some day we will get around to having the men who operate the system here on the witness stand and then you will have a chance to ask all those questions of somebody who knows. And I know that you are contending that they are all corrupt and that they will perjure themselves, and that it is to be anticipated that everything they state will be the direct opposite of the fact. But that is not for you to decide but (2911) rather for me.

Mr. Gladstein: But I was only addressing myself to your Honor's statement that this was confusing, and I wanted to show simply how, rather than confusing, it was perfectly clear and plain. But I do not want to argue it simply to take up time. I

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simply want to say about this exhibit that it gives the data concerning eight large projects, housing projects, two in the Bronx and six in Manhattan. One of these, or two of them in Manhattan are regarded as in the middle or better rental bracket. That is London Terrace and Knickerbocker Village.

Mr. McGohey: I object to any characterization on the exhibit before it is in evidence.

Mr. Gladstein: Very well.

The Court: I will sustain the objection.

Mr. Gladstein: Very well.

By Mr. Gladstein:

Q. I will ask concerning this exhibit, Mr. Wilkerson, was it prepared under your supervision? A. It was.

Q. And are the facts and data and figures shown on the exhibit accurate? A. They are.

Q. Were they taken from the sources that you have mentioned and accurately put into this exhibit? A. They were.

(2912) Q. And the exhibit accurately, fairly and truthfully and honestly presents what it purports to represent? A. Yes.

Q. Now what is the general topic, without giving the contents of the exhibit, to which it refers? A. The general topic is housing developments in Bronx and Manhattan, major housing developments, incident to which we compare average rentals, maximum income limits, if any—

Q. That is, for admission into the— A. For admission into the project. Type of operation, that is, private or public housing; we indicate its general location. And in relation to these comparative factors we also indicate the number of jurors on the three January 1949 panels who live in these several projects.

Q. Now just name for the record the projects without giving any facts about them.

Mr. McGohey: Now I object to that, your Honor, unless the exhibit is going in.

Mr. Gladstein: I wanted to identify the project.

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Mr. McGohey: I submit, your Honor, that there has been enough identification of what this table is about. And if it is going to be offered, let's offer it, and if it is received then we can talk about it.

(2913) The Court: That is right. I will sustain that view.

Mr. Gladstein: I beg pardon?

The Court: I sustain that view.

Q. Now what is the number of that exhibit? A. This is 124.

Mr. Gladstein: I offer Exhibit 124 for identification in evidence.

Mr. McGohey: May I have a look at it?

Mr. Gladstein: Yes.

Mr. McGohey: Thank you.

I object to it, your Honor.

The Court: Sustained.

Mr. Gladstein: Now I offer to prove that if the witness were permitted to testify in response to questions which I am ready, able and willing and prepared to put to him, he would testify to the truth, the validity, the authenticity of the contents of that exhibit.

Mr. McGohey: I think he has already done that, if the Court please.

Mr. Gladstein: I nevertheless make the offer to prove.

The Court: Very well.

Mr. Gladstein: I understand your Honor denies my offer to prove.

(2914) The Court: Well, if you have made it already I don't see how you can say I have denied it. But your statement is on the record.

(Marked Defendants' Challenge Exhibit 126 for identification.)

Q. I show you No. 126 for identification. Do you have an extra copy for the Court with you?

(The witness hands to the Court.)

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Q. Will you state whether this was prepared under your supervision? A. It was.

Q. From what sources was taken the information contained in it? A. The 16th Census of the United States.

Q. Is that in evidence? A. Wait a minute.

Q. I had better ask you before Mr. McGohey does. A. I am not through. That was the original source as arranged by, and the direct source is the New York City Market Analysis, which is in evidence, 16th Census 1940, Housing, Manhattan, block statistics.

Q. Any other source? A. The jurors as listed, jurors for the January panels, the three January panels as listed by official listings.

Q. That is January 1949? A. I should point out that my reference to the census sources in this case is the indirect source, the direct source being the New York City Market Analysis which (2915) supplied supplementary data to the basic census information.

Q. So that, in other words, that analysis, which is in evidence as Exhibit 20, is the one from which you took the figures and the data that you transferred to this exhibit? A. Much, yes.

Q. Now, what is the subject matter of that exhibit? A. This exhibit deals with the rents paid by all Manhattan families as compared with the rents paid by Manhattan jurors. The rents for families—

The Court: When you say rents paid by Manhattan jurors, you mean taking the average rent of some district or block or section and assuming that the Manhattan juror is paying that average rent?

The Witness: I was about to explain that when you did it for me, your Honor. For jurors for the three panel listings in January 1949—and the rents are here indicated as in certain previous exhibits as representing the average rental for the block or for part of the block on which the juror lives.

Q. Now, is that exhibit accurate in its tabulations? A. It is.

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Q. And the data and facts and figures stated therein are true and correct? A. They are.

Q. What does the exhibit show? A. The exhibit shows that 69 per cent—

(2916) Mr. McGohey: Oh, I object, your Honor. The exhibit is not in evidence.

The Court: Sustained.

Mr. Gladstein: I offer the exhibit in evidence.

Mr. McGohey: May I see it, please?

(Document handed to Mr. McGohey.)

Mr. McGohey: I object to it, your Honor. It is substantially the same kind of data and the same kind of calculations as appeared on charts which were offered and excluded this morning.

The Court: Objection sustained.

Mr. Gladstein: I offer to prove that if the witness were permitted to answer questions that I would put to him, he would testify as fact to the things set forth in and the contents of the last rejected exhibit.

By Mr. Gladstein:

Q. Now did you make a study, Mr. Wilkerson, of London Terrace, particularly in relation to the surrounding territory on the question of the voting, political character of the voters in those neighborhoods? A. I did.

Q. Did you prepare an exhibit on that subject? A. I did.

Mr. Gladstein: Will you mark this for identification.

(2917) (Marked Defendants' Challenge Exhibit 127 for identification.)

Q. Referring to Defendants' Challenge Exhibit 127 for identification, are the sources from which you obtained data shown on it? A. Yes.

Q. Are they correctly shown, and does the exhibit show all of the sources? A. Yes.

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Q. That is the official records of the Board of Elections, is that right? A. Right.

Q. Now, computations are made percentagewise on the exhibit. Are those computations you made yourself? A. They were made by me or under my direction, I don't remember this particular one.

Q. Have you checked them for accuracy? A. I have checked them.

Q. Is the exhibit true and correct? A. It is.

Q. And accurately sets forth the things which it purports to set forth? A. Yes.

Mr. Gladstein: I offer it in evidence.

Mr. McGohey: I object to it.

The Court: Where is this London terrace?

The Witness: It is between 23rd and 24th Street and between Ninth and Tenth Avenues in Manhattan.

The Court: Is that the place where those pins form a cluster?

(2918) The Witness: It is. Regularly.

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

The Court: Yes, I will strike it.

I have just been glancing through to see whether it is so or not. And it is not.

Mr. Gladstein: Which map did your Honor look at which does not show a concentration of pins in London Terrace? And, of course, I suppose we ought to define our terms as to what a "concentration" means.

The Court: Well, here is one for the panel of February 26, 1940, Exhibit 54, which has no pins there whatever, so that it could hardly be said that they form a cluster.

Mr. Gladstein: In 1940?

The Court: Yes.

Mr. Gladstein: Any since that date, your Honor?

The Court: That is Exhibit 54.

I find one pin which I am not clear is at that precise location, but it surely does not form a cluster, Exhibit 57. There are several with two or three pins.

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Mr. Gladstein: It took a little time for the clerk to develop that. Don't they appear pretty regularly after that, your Honor?

The Court: It did not take me long to see whether (2919) or not they formed uniformly and regularly a cluster, and they do not.

I will sustain objection to the exhibit.

Mr. Gladstein: I offer to prove that if the witness were allowed to answer questions he would testify that the matters and things contained in the exhibit your Honor has just referred to are facts.

By Mr. Gladstein:

Q. Now Mr. Wilkerson, in studying the occupational description of the jurors on the panels that formed the basic study here, did you find that a considerable number were said on the jury panels to be connected with particularly three companies? A. I did.

Q. What were the companies? A. The Metropolitan Life Insurance Company, Consolidated Edison, New York Telephone Company.

Q. Did you then make a study to ascertain the extent to which there appeared on petit jury panels the names of the people connected with those companies? A. I did.

Q. Did you embody the results of that study in a table? A. I did.

Q. How many panels and which ones did you take for the purpose of this study? A. We used a sample of six panels.

(2920) Q. Will you identify them? A. January 17, 1949; January 4, 1949; December 20, 1948; December 7, 1948; October 15, 1948—

The Court: You mean November.

The Witness: Thank you, November 15, 1948, and November 3, 1948.

The Court: Now wait a minute. I have a list of those six panels that you used several times before, and I think these are the same six, and I will read them off as I have them, and you check and see if I am not right: March 4, 1947; May 4, 1948; No-

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vember 15, 1948; December 7, 1948; first drawing January 17, 1949; second drawing January 17, 1949.

Aren't they the six?

The Witness: They are not.

The Court: This is a different six?

The Witness: That is right. I think you will find that this six corresponds to the six used—I would need to check this—on tables P-1 and P-2.

The Court: Now just a second.

The Witness: I had better check that myself.

The Court: I don't quite see why you keep shifting the panels this way, but there may be some reason for it.

Mr. Gladstein: There is no shifting, but it is (2921) an effort wherever we can, your Honor, to go to different months and different years to see if we could possibly find something different from the regular pattern, and we haven't been able to find it yet.

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

The Court: I will strike it.

The Witness: If I may, in this case—

The Court: Now just a second, Mr. Wilkerson. I am looking for this P-1 and P-2. Has somebody got P-1 and P-2 so I can glance at them?

Mr. Gladstein: Your Honor, I might point out that the six that this last exhibit deals with are the last six consecutively prior to the second listing for January 17th. In other words, the trial, as you will recall, was scheduled to commence on the 17th of January 1949, and at one point prior to the drawing of a second panel for January 17th, these six that are analyzed on the exhibit in your Honor's hands represented at that time the last six successive panels.

The Witness: And they are the last—

The Court: That seems a reasonable way of selecting them. That is all right. I understand that.

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(Marked Defendants' Challenge Exhibit 128 for identification.)

Mr. McGohey: If your Honor please, I object to (2922) this table on the ground that it is irrelevant, but more particularly because it is, I think, misleading. We have a line here giving the total number of jurors on the panel excluding housewives and retired persons without any indication of what proportion of the panels that might be. That is the next line to the last.

The Court: Next line to the last?

Mr. McGohey: Over to the left, your Honor.

The Court: Oh, yes, excluding housewives.

Mr. McGohey: Without giving any accounting of what number of housewives or retired persons appeared on that panel.

Mr. Gladstein: Well, these panels are in evidence, every one of them, and they themselves have had a breakdown—there is another exhibit that shows that—

The Witness: Table IV-A, I think it is.

The Court: What good is a percentage when you eliminate some of the jurors that apparently constitute a substantial percentage? The figures then become misleading.

Mr. Gladstein: Oh, no. Let me make that very clear: In the first place, housewives and retired persons do not constitute a substantial percentage of any panel. As a matter of fact, about 90 per cent of all the panels are composed of so-called gainfully occupied.

(2923) Secondly, our analyses, the ones that have been received in evidence, deal with occupational analysis of those who are gainfully occupied. Now, housewives and retired are not regarded as being gainfully occupied. That is a fact. Therefore, the occupational distribution when it is expressed in terms of ratios or percentages must be as between one group of gainfully occupied and another.

Colloquy of Court and Counsel

Now, we do have, however, the figures in evidence showing how many there are on each panel who are so occupied, and we have the actual panels in evidence to show how many including the housewives and retired there are on each panel.

Now, the final thing I want to point out is this: the percentage figures given on Exhibits 1 to 8 for identification are the percentage figures of the jurors from the three companies. We are here making a comparison to show how many people on six juries who are gainfully occupied come from either the Consolidated Edison Company or the New York Telephone Company, or the Metropolitan Life Insurance Company. And we also show the tabulations and numbers.

The reason the percentage is given is this: For example, you may have, say, 20 people on one jury who come from those three companies, but it would not necessarily (2924) mean anything unless you knew that that panel consisted of 200 or 250 people, whichever the fact is. On another jury panel you might have 40 people from those companies.

The Court: I don't quite see why in taking the percentage you eliminate part of the jurors before you make the calculation. That is what Mr. McGohey is objecting to. It reduces those figures, those percentages, by about ten per cent, according to your own statement.

Mr. Isserman: If the Court please, the percentage here is of those gainfully occupied, and the housewives and retired persons are not gainfully occupied, making a comparison—

Mr. McGohey: No, I submit, your Honor, they are jurors; whether they are gainfully occupied or not, they are jurors.

The Court: Yes, but that can probably be corrected by some recomputation.

Have you any other objection?

Mr. McGohey: I object to it apart from that on the ground of relevance, your Honor.

The Court: Isn't there some part of the challenge that relates to this subject? I do not want to

Colloquy of Court and Counsel

precipitate another long argument, but I wish you would find the (2925) part of the challenge which contains the allegation and just direct my attention to it here by page and paragraph, because I think in some paragraph there is something in there about it.

Mr. Gladstein: There are several general references—I do not have the exact one—but one of the moving papers—

The Court: I would rather have the exact one.

Mr. Gladstein: The exact one? I will look for it.

May I suggest this: It is 3.30. If we could take our usual short recess at this time I could look for it during the recess.

The Court: Very well.

Mr. Isserman: If the Court please, before we do, there is one witness who is a busy official of the Metropolitan Life Insurance Company. I simply would like to know whether I could excuse him for the day or hold him. I don't like to hold him if he won't be able to testify.

The Court: I am now going to insist more closely than I have in the past upon continuity here, because I find that I must resort to every means at my disposal to bring this preliminary phase of the trial to a conclusion. One of the things that I have decided to do in order to accomplish that is to insist upon your (2926) continuing with Mr. Wilkerson until he has concluded his testimony.

Mr. Isserman: Then I will simply have to keep the witness in the witness room. I am sorry to do it, but I have to.

The Court: Well, perhaps so. Perhaps Mr. Wilkerson's testimony will go on for the balance of the day. I hope not.

(Short recess.)

The Court: Now, for the convenience of counsel, tomorrow I am going to take the luncheon recess from 12.45 to 2.30 because I have some matter to attend to that will take part of that time.

Colloquy of Court and Counsel

Now, have you found that place in the challenge,
Mr. Gladstein?

Mr. Gladstein: Yes, I found it, your Honor.

In the affidavit filed in support of the challenge and motion to quash there are several references. I call the Court's attention—

The Court: It is not in the notice, is it?

Mr. Gladstein: It is in the supporting affidavit.

The Court: Yes.

Mr. Gladstein: The notice has this. The notice has particularly at page 2 a series of defined groups concerning whom the allegation is that they are discriminated against in the selection of jurors in this (2927) court.

The Court: And that is subdivision D that you have reference to there, is it not?

Mr. Gladstein: That is one of them, and H is another; C is another.

Now, in the affidavit—

The Court: Now let me get to that affidavit. I thought perhaps you included or were going to argue that paragraph 7 of the notice should be included, but I take it not.

Mr. Gladstein: I will have to look at that.

The Court: That is the one in which you charge that by having a four dollar per diem jury fee as provided by law, that that is unconstitutional, and similarly that the \$250 property qualification is illegal and unconstitutional.

Mr. Gladstein: They are related, and I am glad your Honor reminded me of that because of the fact that the evidence which we have to introduce will show that with respect to these particular companies—

The Court: I know just what you are up to. I get it all right.

Mr. Gladstein: All right. Now at page 19 of the supporting affidavit the Court will find—

The Court: That is the affidavit—

(2928) Mr. Gladstein: Of the attorneys in support of the challenge.

The Court: What page?

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Mr. Gladstein: 19.

The Court: Page 19?

Mr. Gladstein: Yes.

The lower portion of that page, the text of it asserts—I am paraphrasing—arrangement between the clerk's office here and the personnel directors of large corporations to make employees of such large corporations available for jury service.

The Court: Yes, I see it.

Mr. Gladstein: And in the footnote there is the following reference: that even such representation of manual workers as is to be found, as well as of white collar workers, is limited in the main and systematically to those employed by giant corporations such as the Consolidated Edison Company, Metropolitan Life Insurance Company, New York Telephone Company, and banks whose employees when they are drawn are paid their salaries by their employers during their jury service.

The Court: Yes.

You may proceed.

Mr. Gladstein: Very well.

Now do you have the exhibit, Mr. Wilkerson?

(2929) The Witness: This is 128.

By Mr. Gladstein:

Q. Now, this was prepared under your supervision, was it not? A. It was.

Q. Are all the sources for the information contained in this exhibit indicated correctly on the exhibit? A. They are.

Q. Are the data, percentages, figures and calculations and facts shown on the exhibit, true and correct? A. Yes.

Q. What does this exhibit show?

Mr. McGohey: I object to it, your Honor. It is not in evidence.

The Court: That is right.

Mr. Gladstein: Well, I will offer the exhibit in evidence.

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The Court: Now Mr. McGohey, if I rule that it may be received upon condition that there be a re-computation by including the housewives and retired persons, and that the percentages be changed, will that still be objected to, or, if the ruling on that condition is made, will you withdraw further objection?

Mr. McGohey: No, your Honor, I would press my objection on the ground that it is still irrelevant and immaterial to the charge. I take it that these matters which have just been called to the Court's attention (2930) by counsel as appearing in the affidavit do not make the charge any different merely because they are stated in the affidavit. The charge here made is that there is an intentional and systematic and deliberate exclusion of all those except the rich and the propertied, and that it results in the exclusion of the poor and the Jews and women and Negroes; and I say that the data on this table is neither relevant nor material to that charge.

The Court: Mr. Wilkerson, did you make any endeavor to find out with reference to the employers of all jurors on these various panels whether they paid the salary or compensation of the jurors during their performance of jury duty?

The Witness: I did not inquire into that subject.

The Court: So that if this table should show which of the jurors or percentage of jurors who were employees of the Edison Company and the Telephone Company and the Consolidated Gas Company—

Mr. Gladstein: No, the Consolidated Edison Company, the Telephone Company and the Metropolitan Life.

The Court: —and Metropolitan Life were such and such a number, and there were evidence later on that those companies paid their employees their regular compensation even when they were serving on juries, I (2931) would not be able to draw any conclusion because the other end of the matter would be left open.

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The Witness: My task is merely to establish this fact. I presume that the attorneys plan to establish the other end of it.

Mr. McGohey: Your Honor, I suggest that in the Frazier case the situation came up in the District of Columbia; there was no question there but what the jurors who were being complained about and who were federal employees, were being paid their salary by the federal government.

The Court: Yes, that is true.

Mr. McGohey: The Court held that that was no ground.

The Court: However, I think I will overrule this objection and take this evidence, and later determine its probative value provided that the computations are changed so as to include housewives and retired persons so as to be complete, and the percentages at the foot of the tabulation be changed accordingly.

Mr. Gladstein: I will ask Mr. Wilkerson to undertake that this evening.

Can you make a recomputation and submit that recomputation to me so I can present it in the morning to the Court as a supplement to the exhibit?

(2932) The Witness: Yes.

Mr. Gladstein: Would that be all right, your Honor?

The Court: Yes.

(Defendants' Challenge Exhibit 128 for identification received in evidence.)

By Mr. Gladstein:

Q. Now, what does this show, Mr. Wilkerson? A. This exhibit shows that on these six panels, the panels of November 3—I do not need to repeat them again—the six panels referred to earlier, there are 111 jurors gainfully employed and hence classifiable according to occupations—

The Court: Well, I think you had better wait before reading those figures into the record until you have made that change.

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Mr. Gladstein: I will do that, if you want, although we can omit the percentage. The figures would not change.

The Court: No, but I perceive that he is coming to the others. But if he can state it briefly and leave out the part that he is going to do tonight, that that would be satisfactory to the Court.

Mr. Gladstein: Very well. Will you do that, Mr. Wilkerson?

(2933) The Witness: May I ask a question to make sure that I know what the Court wants?

The Court: Yes, you may.

The Witness: As you know, your Honor, the United States Census lists occupations of gainfully employed persons and groups them according to categories. It does not include in its groupings and its percentages people who are not gainfully employed as housewives and retired persons. It will be impossible to compute here percentages of employed persons in different occupational categories if you insist that we include therein people who are not employed.

The Court: But it will be possible to show the percentage of jurors which is what you have down here. You see, you have the column at the bottom that says "Percent jurors from three companies are of total jurors."

The Witness: I think I see. Would this serve your purpose: This is the percentage of gainfully employed jurors. Now, if we had another column of percentages, percentage of total jurors, would that serve your purpose?

The Court: Well, I don't want that column that is in there now at all. I think it is of little value to me. If you desire to add a column in the upper part of the exhibit showing the number of housewives and (2934) retired persons so that your figures will balance, that may be all right. But it is these percentages at the bottom that I have in mind particularly. Those are the ones that contain the conclusions, and it seemed to me that the conclusions

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were of little value unless they were based upon a percentage of all the jurors in the given panels.

The Witness: We could make that correction.

The Court: I should think it could be easily done.

By Mr. Gladstein:

Q. Now will you state what the exhibit shows without reference to the percentages? A. Yes. It shows that among the gainfully employed jurors on these six panels there are 111 employed by the three companies mentioned, Consolidated Edison, New York Telephone and Metropolitan Life Insurance Company. The occupational distribution of those jurors, these gainfully employed jurors for all three companies combined, is 13.5 per cent executives, 21.5 per cent professionals, 41.5 per cent clerical, sales, and 23.5 per cent manual workers.

I would point out in connection with data previously submitted in table P-1 and P-2 for those same six panels—

Mr. McGohey: If your Honor please, I think those (2935) two tables that the witness has just referred to were offered but excluded.

The Court: Those were the two we were looking for before the recess, and I haven't got them before me.

Isn't that so, Mr. Gladstein?

Mr. Gladstein: P-1 and P-2?

The Court: P-1 and P-2. Mr. McGohey says they were two of the exhibits that were offered and rejected by the Court and, of course, if that is so, the witness should not refer to them.

Mr. McGohey: I think you will find they are Exhibits 96 and 97.

Mr. Gladstein: These are they (handing to Court)?

The Court: Were those rejected?

The Court: Yes. They are both merely marked for identification, so he better not refer to the contents of those exhibits.

The Witness: All right. Thank you.

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Q. Now, is there an exhibit in evidence that you desire to call the Court's attention to in connection with the one you were discussing? A. I don't need those exhibits. This was merely as a matter of convenience and reference, but I can state the facts without reference to the exhibits.

(2936) The 111 jurors from these three companies on these six panels compare with 75 jurors from the whole of the 16th Congressional district on the same six panels; with 59 jurors from the whole of the 18th Congressional district; 26 jurors from the whole of the 19th Congressional District—

Mr. McGohey: May I ask where that appears, your Honor?

The Court: Yes, I am puzzled about that, too.

Mr. McGohey: It seems to me what the witness is doing is saying, "I do not need to use the tables," but he is quoting the figures that appear in the tables.

The Court: It did seem that way, but maybe not.

Mr. McGohey: Maybe not, but I should like to know from what data this is coming.

The Court: Mr. Gladstein, as I understood your question, it was calling upon the witness to give a brief summary in the transcript of what this exhibit shows, and then he did what he has done so many times before, gone off into another realm and brought in a good deal of data that did not seem to be called for by the question.

Now, I have ruled in what I thought was a reasonable way in getting into the transcript a brief (2937) description of what the exhibit shows. But there have been so many times when in an apparent desire to do that the witness goes off and does something different. Now, why don't you content yourself here with having him describe this exhibit briefly, and then if you want to get in something else, have a question addressed to that other subject. In the meantime I will strike out the last part of the answer.

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By Mr. Gladstein:

Q. Just state what it shows in terms of the numbers successively for the six panels for the percentage in occupational breakdown, which you have done, and refer the Court, if you will, to what the percentage figure is for similar occupational groups on Exhibits already in evidence.

The Court: Which exhibits do you mean?

Mr. Gladstein: Well, for example, there is one which I recall, your Honor, which shows that the group of manual workers generally who appear on the panels are something like five per cent, 5.-something.

The Court: I think I had better have those exhibits before me as he does that.

The Witness: I am sure that Exhibit 98 was received in evidence, was it not, your Honor?

The Court: Let me just get 98.

(2938) The Witness: That is P-3. And there is also an exhibit labeled table IV-A. I do not know the exhibit number, but it is relevant there too.

The Court: P-3 is 98. And what is the other one besides 98?

The Witness: A table labeled—

Mr. Gladstein: No. 67-E.

The Witness: —IV-A. I don't have it before me, but I know it has that information.

The Court: IV-A?

The Clerk: 67-E, your Honor.

Mr. Gladstein: But there is one—

The Court: I have this challenge and I can find IV-A very readily, I think.

Mr. Gladstein: Does Table IV-A give the percentages?

The Witness: Table IV-B gives the percentages.

The Court: I have IV-A. It is 67-E. So I now have before me Exhibits 98 and 67-E, and I can follow the witness.

(2939) Q. Now will you give your answer, Mr. Wilkerson. A. Yes. I don't have those other—well, I can do it

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without those. Let us first compare the total number of jurors from these three big companies on these six panels with the number reported on Exhibit 98 for certain groups of Congressional Districts.

The Court: To wit, the 18th, 19th, 22nd, 23rd and 24th.

The Witness: That is right. Those five Congressional Districts had 173 jurors on these six panels. These three companies have 111 jurors on these six panels. The five—

The Court: Now just a second. That is the whole 111 in Exhibit 128?

The Witness: That is right. Exhibit 98 shows that the five Congressional Districts together, with 582,836 Congressional votes in November, 1948, had only 173 jurors as compared with the three companies here which had 111.

The Court: Well, it seems to me—

The Witness: Or, in other words—

The Court: Wait, before you go on. It seems to me that that Exhibit 128 shows that these three companies, namely, the Metropolitan, Consolidated Edison, New York Telephone Company, had 111 out of (2940) all the districts in Manhattan and the Bronx that were in the Southern District.

The Witness: That is correct.

The Court: But your 173 comes from only the 18th, 19th, 22nd, 23rd and 24th.

The Witness: And some of those in the three companies may have come from—

The Court: Yes.

Mr. McGohey: I suggest that all the 111 may have come from that 173.

The Court: Yes. That is just what has occurred to me.

The Witness: On the basis of other evidence we have—

Mr. McGohey: On what we have before us there is no evidence that anybody in the 111 came from any place other than those five districts.

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The Court: That is right. So, to say that of those 173, 111 were employes of the Metropolitan Life, the Consolidated Edison and the New York Telephone Company—

The Witness: That is all we are saying.

The Court: —is plainly erroneous.

The Witness: No, it is not.

Mr. Gladstein: It is not erroneous to say that (2941) 111 came from the companies.

The Court: All you are saying then is that these two tables show first the figure of 173 in Exhibit 98 and the figure of 111 in Exhibit 128 which is all right. Now, taking that as the starting point, go on to the next one you were going to address yourself to.

A. To the occupational distribution: Table IV-A provides—

The Court: That is Exhibit 67-E.

The Witness: Is that 67-E? I don't have it before me.

The Court: It is 67-E.

The Witness: No, I am not questioning that. But I mean, I have certain data before me that came from that table.

Q. Do you want IV-A, IV-B? A. No; I don't need it. I have a copy of the data here that I need.

(Continuing) —indicates that there were 845 executives on those six panels, 346 professional workers, 335 clerical sales workers, and 101 manual workers, a total of 1627 workers, gainfully employed persons, on these six panels.

Now this table indicates that for the three companies shown there are 15 executives, 24 professionals, (2942) 46 clerical sales and 26 manual workers. By computing the percentage for each occupational category which the jurors from these three companies comprise of the total in those categories for the six panels we get the following result: that the executives from these three companies represent only 1.8 per cent of all the executives on the six panels. The professionals from these three companies represent only 7 per cent of the professionals on all three panels.

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The clerical sales workers from these three companies however represent 13.8 per cent of all.

The Court: 13.8?

The Witness: That is right.

A. (Continuing) —of the clerical sales workers on all six panels. And the manual workers represent 26 per cent of the manual workers on all six panels.

To group the latter two together one arrives at the conclusion that 39.8 per cent of all the clerical sales and manual workers on these six panels, clerical sales workers and manual workers on these six panels, came from these three companies. And that more than one-fourth of all the manual workers, 26 per cent on these panels, were employes of these three companies.

Q. Now in giving your answer at one point you said "these three panels." You mean six panels throughout your answer? A. Did I say three panels?

(2943) Q. In one instance I think you did. A. I mean six panels throughout.

The Court: That January 17th is the first drawing, I take it?

The Witness: That is correct.

The Court: Yes.

Q. Now, Mr. Wilkerson, did you make an analysis to ascertain the extent to which you found repeats among the jurors, that is to say jurors whose names kept appearing over and over again among the panels, the 28 panels you studied? A. I did.

Q. And did you tabulate the names, addresses, and the other information concerning such jurors as that information appeared on the panels? A. We made a sample tabulation of all repeats among all the A's and B's.

Q. Just on the 28 panels? A. Yes, 28 panels. In this case, however, a different 28, for reasons which I should like to explain to the Court.

Q. Will you give them? A. Yes.

Mr. McGohey: 28 panels different than those that are already in evidence?

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The Witness: That is right.

The Court: Is that right? Not the same 28
(2944) we had before?

The Witness: That is right.

Mr. McGohey: Well, I am going to object to any
testimony about any panels that are not in evidence,
your Honor.

Mr. Gladstein: Suppose he gives the 28 he is
talking about. By this time that is now up to 31,
you recall, as time goes on. He has given the—

The Court: Maybe he is going to say that the
28 are part of that 31.

Mr. Gladstein: I don't know.

The Court: If not, we will have to have them
in evidence so we know what we are talking about.

The Witness: I have here the three panels that
are not in evidence.

Q. The three panels that are not? And 25 others that
are? A. The others have already been submitted in evi-
dence.

Q. Do you have a list of the panels? A. I find that my
notes don't indicate the three that we took out. I have a
list of the added panels which were included here for the
original period for the original samples involved.

Q. Which are those? A. January 3, 1939—

The Court: Just a second. I am going to see
(2945) if I have these 28 panels.

Mr. McGohey: Are these new panels that the
witness is giving us now?

The Witness: They are.

Mr. Gladstein: He said three of them are.

The Witness: Two of them are. One has al-
ready been entered in another connection.

The Court: Every time I go to check these
panels you have different ones. It is very confus-
ing. But, however, I will take this lot down if he
will just read them off.

Now, what is the first one?

The Witness: The panels not included in the—

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Mr. McGohey: If the Court please, I suggest so that we can find out what we are talking about, that the witness be required to list the date of each panel that he is talking about.

The Court: That is just what I asked.

Mr. McGohey: We can then compare that against the panels already in evidence and find out which are the new panels.

The Court: That is just what I asked him to do.

Mr. Gladstein: That can be done by reading from the exhibits which give the dates of the panels, but it would take time to do them in order. And if the (2946) Court will permit me I will just read some of the dates.

The Court: I think if you will read the 28 and read them chronologically that will suffice.

The Witness: It happens that I don't have with me notations as to the ones—

Mr. Gladstein: That does not matter. The exhibit shows the dates.

Chronologically, your Honor, I am—

The Court: Would you rather wait for just a second and mark them in the order on this list before you read them to me? I think that would be very sensible and then you have to rearrange them.

Mr. Isserman: If the Court please, while we are waiting, may I have leave to excuse the witness that I have waiting until tomorrow morning?

The Court: Yes, you may.

Mr. Gladstein: I believe the earliest—

The Court: How many more days do you think Mr. Wilkerson will take?

Mr. Gladstein: I had hoped to finish this afternoon, your Honor, and if I don't it will be very brief in the morning.

The Court: All right. Good.

Mr. Gladstein: Now the first of these is dated January 4, 1938. So I will ask that that be marked (2947) for identification.

(Marked Defendants' Challenge Exhibit 129 for identification.)

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Mr. Gladstein: The next I think in order is January 3, 1939, a copy of which panel in a photostat form I now hand the clerk for identification marking.

(Marked Defendants' Challenge Exhibit 130 for identification.)

* * *

(2948) Mr. Gladstein: Now I think the next one is the 1939 one, but I am not sure that it is in order. That is March 3, 1939. I believe that is in evidence.

The Court: March 3rd?

Mr. Gladstein: 1939. It is not?

The Clerk: I don't think it is.

Mr. Gladstein: No. I guess it wouldn't be.

The Clerk: You started with 1940.

Mr. Gladstein: That is right, we started with 1940.

Do you have a copy of it?

The Witness: No, I do not.

The Court: March 3, 1940.

Mr. Gladstein: We will have to supply that, your Honor. Well, now, I suppose as to the others—I am looking at simply the exhibits which give us the dates of the panels on which various people appeared; in each case the juror has appeared at least twice and sometimes more than twice. And I will simply ask the clerk to check off, if he will, the various dates and we can tabulate them as we go along. March 4, 1947, is that in evidence, or identified?

The Clerk: Yes. 39 for identification.

(2949) Mr. Gladstein: Now, is that received? I would like to move that they be received in evidence.

The Clerk: They are all for identification. We still haven't got the panel sheet.

Mr. Gladstein: All right. I will bring it in.

Now, that accounts for three, does it?

The Court: Well, that is four.

Colloquy of Court and Counsel

Mr. Gladstein: Four. All right. I have May 4, 1948.

The Clerk: Yes. 41.

Mr. Gladstein: That makes five.

Mr. Gordon: In evidence or for identification?

The Clerk: 41 for identification.

Mr. Gladstein: I have June 14, 1948.

The Clerk: That is 42.

The Court: June 14, 1948.

Mr. Gladstein: Yes, your Honor.

The Clerk: 42 for identification.

Mr. Gladstein: I have a January 4, 1949.

The Clerk: That is 51 for identification.

Mr. Gladstein: June 17, 1942.

The Clerk: 30 for identification.

Mr. Gladstein: November 7, 1945.

The Clerk: 35 for identification.

(2950) Mr. Gladstein: May 5, 1942.

The Court: 1942?

Mr. Gladstein: Yes, your Honor.

The Clerk: 29 for identification.

Mr. Gladstein: April 14, 1947.

The Clerk: 40 for identification.

Mr. Gladstein: April 14, 1941.

The Court: 1941?

Mr. Gladstein: Yes, your Honor.

The Clerk: 28 for identification.

Mr. Gordon: Are any of these reserved numbers?

The Clerk: The last one was a reserved number.

Mr. Gordon: That is 28?

The Clerk: Yes.

Mr. Gladstein: October 15, 1948, is the next I see.

The Clerk: 46 for identification.

These last two exhibits, your Honor, are what we call reserved numbers. The panels never did appear and we reserved numbers for them, but never got the panels.

Mr. Gladstein: We will supply those.

The Court: They are not actual panels at all.

Colloquy of Court and Counsel

The Clerk: No; the numbers were reserved for them but we never did get the panel sheets to mark them.

Mr. Gladstein: What was the date of this?

(2951) The Court: Oh, I see.

The Clerk: That is 28.

Mr. Gladstein: Give me those dates again, will you, please.

The Clerk: 28, which is April 14, 1941. And this last exhibit that you called off—what date was that? October 15, 1948?

Mr. Gladstein: Yes.

The Clerk: No. 46, that is also reserved.

The Court: I am afraid you lawyers have been too busy getting us new charts to get the evidence straight about the ones you have been using.

Mr. Gladstein: Now you have January 17, 1949.

The Court: Is that another one?

Mr. Gladstein: There are two such lists.

The Clerk: 52.

The Court: January 17, 1949. January 17, 1949.
Yes.

The Clerk: 52 and 53 for identification, both reserved numbers also.

The Court: Reserved numbers again?

The Clerk: Yes, your Honor.

Mr. Gordon: Which one are you referring to?

Mr. Gladstein: I will cover them both.

The Clerk: 53 is the special, the second.

(2952) Mr. McGohey: The second drawing.

Mr. Gladstein: Do you have a February 18, 1946?

The Clerk: No. 38 for identification.

Mr. Gladstein: Did I name December 20, 1948? I think not.

The Clerk: No. That is No. 50 for identification.

Mr. Gladstein: There is a November 7, 1945—Oh, I have already mentioned that one.

The Court: Yes, you got that in.

Mr. Gladstein: July 6, 1943.

Colloquy of Court and Counsel

The Clerk: No. 31.

The Court: July 16th is Exhibit 31 for identification.

Mr. McGohey: I think it is July 6th, your Honor.

The Court: July 6, 1943.

The Clerk: That is right.

The Court: Exhibit 31.

Mr. Gladstein: September 5, 1944.

The Clerk: That is not marked. Oh, here it is,
33 for identification.

Mr. Gladstein: Has February 6, 1940, been mentioned, Mr. Clerk?

The Clerk: No, it has not. That is No. 26.
(2953) That is the only one that is in evidence.

The Court: 2-6-19—what?

Mr. Gladstein: 2-6-40.

The Clerk: February 6, 1940, is No. 26. It is
the only panel that is in evidence.

The Court: No. 26. Well, you told me that 39
was in evidence.

Mr. Gladstein: I would like to offer these in
evidence as we have them, your Honor. May the
record show that I am now offering in evidence No.
49 for identification, being the panel for December
7, 1948.

(Defendants' Challenge Exhibit 49 for identification received in evidence.)

Mr. Gladstein: I make the same offer concerning
Challenge Exhibit 55—

The Court: Wait a second. I am trying to keep
track of those, but you have them so mixed up now
that my notes are worth nothing.

What was that? Exhibit 49?

The Clerk: 49, your Honor.

The Court: Now let me just look back. That is
the first time that has been mentioned in these 28,
isn't it—December 7, 1948? That is the first time?

Mr. Gladstein: You mean, just in the last few
moments. I believe so.

Colloquy of Court and Counsel

(2954) The Court: Yes. I have taken down those 28 panels out of which he has done a sampling with the A's and B's, and instead of getting them chronological they are all mixed up now. But go ahead and get them the way you are giving them to me.

Now we have got Exhibit 49 received in evidence.

Mr. Gladstein: No. 50 for identification I offer in evidence. That is December 20, 1948.

Mr. McGohey: May I have a look at that?

If your Honor please, with respect to Challenge Exhibit 50 I find no certificate attached to it by anybody. It appears to be a copy that somebody made. It may be accurate and it may not be. But I object to it.

The Court: Objection sustained.

Mr. Gladstein: Well, I will withhold the offer then and ask permission to substitute for the copy the one that we received from the clerk. That is Exhibit 50.

The Court: Just have it marked for identification.

Mr. Gladstein: It has already been marked.

The Court: It has been marked. All right.

Mr. Gladstein: No. 51 for identification I offer in evidence. That is January 4, 1949.

(Defendants' Challenge Exhibit 51 for identification (2955) received in evidence.)

Mr. Gladstein: Now, the next exhibit—these (indicating) are all I have here.

Your Honor, we will mark these and produce them in the morning in that form. I would like to pass on to the last subject I want to cover with the witness.

The Court: That is, we will come back to the names of jurors that kept repeating themselves tomorrow morning.

Mr. Gladstein: So that we can have the exhibit introduced.

The Court: All right.

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Recalled—Direct*

Mr. Gladstein: I have one more exhibit I would like to have marked now and have the witness testify about which deals with Parkchester and the Bronx.

Do you have a copy of that? It is PK No. 2.
The Witness: May I see the paper?

(Marked Defendants' Challenge Exhibit 131 for identification.)

Q. Now I show you this exhibit—you have a copy of it—

Mr. Gladstein: Let the Court have this one, will you, Mr. Clerk? It is 131 for identification.

Q. Was this prepared under your supervision? (2956)
A. It was.

Q. What were the sources used for the information contained on it? A. Reports of the Board of Elections, City of New York, 1948, and a list of the registered voters for the year 1948, Borough of the Bronx, Tenth Assembly District, Ninth Assembly District, October 7, 1948. Those are the sources.

The Court: Now I do not understand that. Where is the part about the Assembly Districts?

The Witness: Item No. 2, under "Sources."
The Court: Column No. 2?

The Witness: No. Item No. 2 at the bottom, also the official lists of jurors for the panels indicated here.

Q. 14 specified panels, the dates of which are given on the exhibit? A. That is right.

Q. Running from—

The Court: Just a second. I want to look at this for a moment.

Are those two Assembly Districts, namely, the Ninth and Tenth, the only two in which the Parkchester place is?

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Mr. Isserman: That is correct, your Honor. I am familiar with that fact.

The Court: And that is the purpose of taking (2957) those two Assembly Districts, because that is the only way you could get Parkchester separated; is that the idea?

The Witness: That is right.

Mr. Gladstein: From the rest of the Borough.

The Witness: There is a special Assembly District map put out by the Board of Elections which indicates for those Assembly Districts, the Ninth and Tenth, also the Election Districts within the Assembly Districts which comprise the Parkchester development. There is a special Parkchester map.

Mr. McGohey: May I ask if that map is here?

Mr. Isserman: Here are the maps.

Mr. McGohey: Or if it has been marked?

Mr. Isserman: One the Ninth Assembly District, one the Tenth, each map containing all of Parkchester within that particular district; and the two maps together comprising all the election districts which are Parkchester. They are separate maps and they are prepared by the Board of Elections of the City of New York, 1948.

The Court: Just show them to Mr. McGohey, if you will.

(Mr. Gladstein hands to Mr. McGohey.)

Mr. Gladstein: Have you seen these, Mr. McGohey? I suppose they can be marked together as (2958) exhibits.

Mr. McGohey: Now, while that is being done, your Honor, I should like to inquire what is meant by this footnote 1 here, which keys into a figure of number of registered voters. The footnote says, "Board of Elections, City of New York."

The Witness: And 1948 was left off, and I supplied it in answer to a question. It should be there.

Mr. McGohey: You mean a report of the Board of Elections for the year 1948?

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

The Witness: Records of the Board of Elections. I might explain, Mr. McGohey—

Mr. McGohey: Well, may I ask what the record—I am trying to ascertain—

The Court: Yes, you don't have to go into an explanation.

Mr. McGohey: —what the record is, and do we have it here marked for identification or in evidence?

The Court: That is right. What is the answer, Mr. Wilkerson?

The Witness: It is the report of the Board of Elections, City of New York, for 1948. Whether it is here and has been marked in evidence I cannot tell you.

(2959) The Court: All right. I think Mr. Gladstein—

The Witness: I think you will find it there.

The Court: —has it in his hands now.

Mr. Gladstein: No, I have the 1946 with me only, and that has been identified as No. 19.

(To the witness) You don't have the 1948 book with you, Mr. Wilkerson?

The Witness: Let me—

Mr. Gladstein: It has not been heretofore mentioned.

The Witness: I started to explain that we did not actually purchase all of the Board of Elections records that we used but utilized them in the office of the Board or in the library. They are available for general use and they can be supplied for the Court. I did not understand that was essential.

The Court: Well, you see, when you produce computations, the sources from which the data is taken are always likely to be inquired into. And Mr. McGohey has requested that he have that. So, I take it, that can be produced tomorrow.

Mr. Isserman: If the Court please, the footnote in the last sentence of footnote 2 on the exhibit, figures derived from a count of Parkchester Elec-

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tion Districts, that count is the actual roster of names as (2960) furnished by the Board of Elections. That roster of names which consists of papers—bound pamphlet volumes is not in the court at this moment, but it can be here the first thing tomorrow morning.

What was done there, there was an actual count made because we did not have summaries of the Parkchester Election District voters district by district from that tabulation which we can bring here in the morning.

The Court: It is just the Parkchester registered voters in 1948.

Mr. Isserman: That is correct.

The Court: Yes.

Mr. Isserman: And we can bring those in in the morning. I was present last evening when the count was made.

Mr. Gladstein: Now, with that understanding may the witness testify?

The Clerk: Defendants' Challenge Exhibits 132 and 133 for identification.

(Marked Defendants' Challenge Exhibits 132 and 133 for identification.)

- Q. What is the number of this one? A. What is 133?
Q. That is 133? A. I don't know. I am asking.

The Court: Wait a minute. I have 131 for (2961) identification here in my hand. I thought it was the one we were talking about.

Mr. Gladstein: Yes. The clerk is announcing that the maps—

The Court: Oh, yes, those are the maps.

The Clerk: 132 is the Ninth Assembly District and 133 is the Tenth Assembly District.

- Q. Those are the ones you referred to, Mr. Wilkerson?
A. That is right.

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Q. Mr. Wilkerson, going back to 131 was this exhibit prepared under your supervision? A. It was.

Q. Is the data contained on it accurate? A. They are.

Q. The sources are as you have indicated in your testimony? A. Correct.

Q. What does this show? A. It shows the number of jurors for the Borough of the Bronx and for the housing development Parkchester on each of 14 panels, and also for each of those 14 panels the percentage which the jurors who live in Parkchester were of the total jurors in the Borough of the Bronx.

Q. Those 14 panels commence, the earliest in date, with May 4, 1948, and run through February 1, 1949; is that right? A. That is right.

Q. All right. A. The table also shows the average (2962) number of jurors per panel for the Bronx and for Parkchester. It shows the number of registered voters in the Bronx as a whole and in Parkchester; and the number of jurors per 10,000 registered voters for all panels together for the Bronx and for Parkchester.

Q. What are these figures? A. The latter figures—

Mr. McGohey: I object to any recitation of the figures until the exhibit is offered.

Mr. Gladstein: Well, I will offer it.

The Court: Yes.

Mr. McGohey: I object to it.

Mr. Gladstein: May I say something? May I just hear for once a ground of objection suggested by the United States Attorney? It seems to me so perfectly clear that this is material and relevant to the issues.

The Court: Well, let me hear what Mr. McGohey has to say about that. I am inclined to think myself as to the figures of the number of Bronx jurors in the Parkchester area that the evidence is relevant. Just where this registered voter part comes in I am not so clear. But let me hear what Mr. McGohey has to say.

Colloquy of Court and Counsel

Mr. McGohey: If your Honor please, I believe that this has no materiality to the issue. There probably is some relevance since we are talking about jurors coming from Parkchester who served as jurors in (2963) this court. But this kind of comparison of the number of jurors in a given panel compared to the number of jurors living in the Bronx it seems to me is wholly immaterial to the issue as to whether or not there has been an exclusion of workers and poor people, and women, and Negroes and Jews. And a substantial part of this exhibit is this compilation of registered voters.

Now the explanation offered by counsel is that somebody last night took long lists of registered voters and undertook to count them. I say that that kind of evidence certainly is, in addition to being immaterial, incompetent. And I take it that the same is true for the percentages based upon per 10,000 registered voters, because the 10,000 was computed from those numbers that were counted by somebody other than the officials in the Board of Elections.

The Court: Well, we will pursue this subject tomorrow morning at 10.30.

(Adjourned to February 9, 1949, at 10.30 a. m.)

(2964)

New, York, February 9, 1949;
10.30 a. m.

Mr. Crockett: If your Honor please, I have been absent since Friday on matters associated with the case. My absence was with the consent of my clients and also with the consent of the remainder of the defendants.

The Court: Very well.

I think no statement is necessary by counsel who have absented themselves in this way. I made a little statement yesterday about that, that when counsel is temporarily absent I am going to assume that their absence is connected with the case in some

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way or other, and that none of the defendants are going to make any objection; and I think we can just let those things go on without comment on the record or without anything to indicate when this lawyer comes in or when he goes out. I will assume that you are all busy on the case, and if you are away for a time, why, it will be a matter of no consequence. If, on the other hand, it should happen that in the absence of some lawyer there should be (2965) some protest by his client about his absence, I should not like that, because I am assuming that your absences, such as have just been mentioned, are with the full consent and approval of everybody on the defense side, and I think that is the best way for us to go ahead.

Now Mr. Gladstein, have you got your witness here?

Mr. Gladstein: Yes.

DOXEY A. WILKERSON, resumed the stand.

Mr. Gladstein: Your Honor will recall that yesterday an exhibit was received conditionally upon the making of a recomputation.

The Court: Yes.

Mr. Gladstein: That exhibit is 128 for identification. It is a table showing the results of a study of six enumerated and identified jury panels to indicate the extent to which employees of Consolidated Edison, New York Telephone and Metropolitan Life Insurance Company appeared on those panels.

I have a corrected copy that I would like to substitute for that, and I will ask the clerk to mark this for identification in place of the other, if that is satisfactory.

The Court: That may be done.

(2966) The Clerk: In evidence.

Mr. Gladstein: Is it in evidence?

The Clerk: Yes.

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Mr. Gladstein: May it be received as a substitute for the other, your Honor?

The Court: Yes.

(Corrected copy referred to substituted for Defendants' Challenge Exhibit 128 in evidence, and so marked.)

Direct examination continued by Mr. Gladstein:

Q. Those computations appearing on that exhibit, Mr. Wilkerson, were made by you, were they? A. They were made by me.

Mr. McGohey: Pardon me, may I have a look at the substituted exhibit?

The Court: Certainly.

Q. And are the calculations—

Mr. McGohey: Might I have a look at it, please, before you go on?

Mr. Gladstein: Yes (handing).

Q. Are the calculations shown on this exhibit which is designated table M-1 correct? A. They are.

Mr. Gladstein: Do you have any questions concerning this exhibit, your Honor?

The Court: No, I think it is quite clear.

(2967) Mr. Gladstein: Now, when we adjourned yesterday the witness was testifying concerning an exhibit for identification, 131 for identification—

The Court: 131, you say?

Mr. Gladstein: Yes, a table designated PK-2.

The Court: That is the one about the Parkchester?

Mr. Gladstein: Yes, that is a comparison of jurors residing in Parkchester with all of the jurors residing in Bronx County.

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Q. Mr. Wilkerson, I think you have said that you prepared this; is that right? A. That is right. I do not have one before me but I know the exhibit to which you refer.

(Mr. Gladstein indicates exhibit.)
The Witness: Yes.

Q. Now, what is the theme or subject to which that exhibit refers? A. The exhibit tabulates for 14 specified panels the number of petit jurors drawn from the Bronx as a whole and from Parkchester and the percent the Parkchester jurors are of the Bronx jurors.

It also provides information concerning the number of registered voters in the Bronx and the number in Parkchester, the ratios between numbers of registered voters and jurors for the Bronx and for Parkchester.

The Court: Those voting records are '48?
(2968) The Witness: '48.

Q. Now, where did you get the tabulations from, that appear on that exhibit with respect to the voters? A. From the lists of registered voters for the Ninth and Tenth Assembly districts as prepared by the Board of Elections of the City of New York.

The Court: May I see those two maps that were marked for identification yesterday?

Mr. Gladstein: Yes (handing).

(Defendants' Challenge Exhibits 134 and 135 marked for identification.)

Q. Now I will show you 134 and 135 for identification. Will you state whether these are the lists of registered voters for the Ninth and Tenth Assembly Districts which you used as your source of information for the voting material and data that appears on the exhibit designated PK-2? A. They are.

Mr. Gladstein: I will offer these in evidence, your Honor.