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The Court: Yes, I would like to have that, and I will hear from Mr. Sacher and the other counsel for the respective defendants.

Mr. McCabe: If your Honor please, I might call your Honor's attention to page 73-A of that record.

The Court: Volume 1?

Mr. McCabe: Volume 1.

The Court: 73-A?

Mr. McCabe: 73-A. There is a reference there to the case of State vs. McGovern, and a quotation from that decision which is just interspersed in a great deal of testimony, and I thought your Honor might like to look at that case.

The Court: Yes, I will read that. It will only take me a second, so you may pause until I just look at it. (Reading.)

Yes, I have read that, Mr. McCabe.

Is there anyone else who desires to be heard on this subject?

Mr. McCabe: If your Honor please, there was another point. Your Honor handed me back this Hawaiian case and suggested that I point out the portion of the (1737) decision which related to the calling of individual jurors.

The Court: Yes.

* * *

Mr. McCabe: * * * I would like to read what was said there. Judge Biggs said at page 91 in criticism of the proceedings of the lower court:

"The court"—and that is the court below—"allowed but a limited review of the methods employed to select the grand jury and of the individual qualifications of the members thereof. Judge Cristy would not permit what he referred to as a 'free for all' examination of the members of the panel upon voir dire. He permitted examination of individual grand jurors on voir dire only to the extent of allowing the defendants' counsel to bring out their respective business con-

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nections and general position in the community. The Court was apparently of the view that a wider scope of examination of the qualifications of individual members of the panel would be irrelevant."

Of course, even the court below said that that (1738) portion which he permitted was relevant.

"Judge Cristy also excluded evidence which, from the nature of the offers made, would have tended to show more clearly that certain important elements of the community were precluded from serving on the grand juries of Maui County. The Court, however, permitted enough evidence to come into the record to demonstrate the erroneous method employed in selecting the 1947 Maui County grand jury."

Then the Court adverts to the result of that proof:

"There was evidence which we believe to be credible and from which we find that 84 per cent of the persons who were selected and listed for grand jury service in 1947 came from the ranks of the employer—entrepreneur group and their salaried (non-labor) employees. The record demonstrates also that all other groups in the community, including labor, had approximately but a 16 per cent representation on the 1947 grand jury list."

And then there is an aversion to the definition of the word "haole" which means the so-called upper classes.

"Employing that definition we find that though the haole group comprised but about 3.6 per cent of the population of Maui County, the 1947 Maui County (1739) grand jury list nonetheless contained the names of 21 haoles or 42 per cent of the list. On the other hand there were only six laboring men named on the grand jury list, or a total of 12 per cent."

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I think that answers your Honor's question as to what was done there. In other words, Judge Biggs criticized the court below for not allowing a fuller examination but conceded that the court below had allowed the examination to proceed until the pattern was established.

* * *

(1740) The Court: Mr. Crockett, do you desire to be heard?

Mr. Crockett: I have only one or two closing observations, your Honor: There have been quite a few references here to delay, and I just happened to look at my watch and realized how much time has been taken in this discussion which might very well have been consumed in completing the examination of what witnesses we have outside.

The Court: Well, you might just as well excuse those witnesses. I am not going to listen—

Mr. Sacher: Not all of them. We have got some grand jurors there.

The Court: Oh, some grand jurors?

Mr. Sacher: There are still some grand jurors to be examined.

The Court: Oh.

Mr. Crockett: So I understand we will be permitted to examine them.

Now, the next point I would like to call to your Honor's attention is the one that I raised a while ago. We have here some defendants who are not represented by counsel. The record of yesterday's proceeding will show that they waived their right to be represented by counsel yesterday with this proviso which the Court will find on page 1528 of the record—

(1741) The Court: Just a second until I get that. 1528?

Mr. Crockett: 1528.

The Court: Just wait a moment until I find it. Yes?

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Mr. Crockett: The Court will notice that there was colloquy between the Court and Mr. McCabe, and near the middle of the page Mr. McCabe says, referring to Mr. Isserman:

“His client down in Washington insisted that he should not be abandoned there, and Mr. Isserman then went with that feeling. So that the clients now say”—

And there he was referring to the defendants in this case—

“now say that that is agreeable to them. That is, if no momentous decisions are to be taken, then they feel that they would be content to waive their right to have counsel here. But if, however, some decision were to be taken by your Honor which would alter the predicted course of the trial, then they felt that their interests would be prejudiced by the absence of counsel.”

Later on, over on the next page, at the bottom of 1529, your Honor observed as follows:

“Now, the last thing I desire to do is to make (1742) any ruling which would prejudice in the slightest degree any one of the defendants. But, on the other hand, you must make some progress.”

I mention that in order to point up the fact that there is no indication in the record today that there has been any waiver on the part of these defendants to their right to be represented by counsel. I think that is a matter to which the Court should give some consideration.

The Court: Am I to understand that they object to any further proceedings now in the absence of Mr. Gladstein?

Mr. Crockett: They told me, your Honor, that they object to any further proceedings that constitute a departure from what we all understood would be the course of proof yesterday.

The Court: Well, you see, I did not, as I thought, acquiesce in any such formula as Mr. McCabe did.

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I thought it was a little bit absurd. He said in effect that they would waive as long as nothing happened of any moment, but if anything important happened then they did not waive. Now, how are you going to tell when you go on with the trial what is coming up? Now, if they take the position now that they protest any proceedings to be had now in Mr. Gladstein's absence—and I think I should (1743) find out whether they do or not because I am not going to recognize any statement that they will agree only if nothing happens of any moment. That is no kind of a way to do. You never know what is coming up. Let us see what they say.

Defendant Hall: In view of the fact of what your Honor just said in explanation of yesterday's ruling, I now protest any proceeding.

The Court: And there is another man that similarly protests?

Defendant Thompson: Yesterday in order to facilitate the proceedings we agreed, as Mr. Crockett said, for a continuance of the proceedings as they were being—along the lines they were being conducted yesterday. Certainly, however, if this court is in the process of making a decision that will materially affect the ability of myself and the other members of the National Committee of the Communist Party to develop their defense, then most decidedly I do protest the absence of Mr. Gladstein, our counsel.

The Court: Do you and each of you protest going ahead this afternoon with the examination of such grand jurors as may be waiting in the jury room or in the witness room, rather, in the absence of Mr. Gladstein?

(1744) Defendant Thompson: No, certainly not.

The Court: Do you say the same, Mr. Hall?

Defendant Hall: If we proceed like we have this morning and yesterday—

The Court: Well, I did not mean to put it that way, but I meant to be more specific, namely, as far

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as the examination of persons who were grand jurors and who have been subpoenaed by some counsel for the defense and are present in the witness room—are you two defendants agreeable to having them testify in the absence of Mr. Gladstein this afternoon?

Defendant Thompson: If that is not accompanied by a restrictive ruling that would hamper the further development of the case, I certainly have no objections whatsoever.

The Court: And what do you say?

Defendant Hall: I agree with that.

The Court: But if anything further is done you protest? Very well.

* * *

(Recess to 2.30 p.m.)

(1745)

AFTERNOON SESSION

Mr. Isserman: May it please the Court, I have heard that Mr. Gladstein has finally got off his plane and is in town. He told me that he has been 48 hours without a change of clothing and would be present here as soon as he could make himself presentable. But he has reached New York City.

The Court: Thank you.

Now Mr. McGahey, I think I would like to hear from you as to what you desire to press upon my attention, and if counsel for the defendants desire to add anything I shall hear them.

Mr. Sacher: I should simply like to point this out, your Honor—

The Court: Mr. Sacher, I desire to hear from Mr. McGahey.

Mr. Sacher: Oh, I beg your pardon. I thought you had said you—

The Court: No. I think I want to hear from him now, and then I will give the rest of counsel for the defendants an opportunity to add anything they wish to say.

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Mr. McGohey: I shall first address myself, if your Honor please, to the subject matter of the memorandum which I filed this morning. In that memorandum (1746) I make two points. The first point is that the evidence already adduced by the 22 or 23 jurors who have already been called in my opinion is irrelevant to the issue which is now before the Court. We are considering now the challenge to the jury which was filed by the defendants. I take it that there is no dispute between counsel for either side that having made that challenge the burden of sustaining it rests upon the defendants. The burden which they assume by making that challenge is the burden of proving, as they allege, that there is a systematic, intentional and deliberate exclusion of certain named classes of people from jury service in this court.

Now I say that taking the 22 or 23 jurors who have testified up to now, they haven't advanced to the Court any evidence whatever in support of any systematic exclusion. I may further say that if they continue to call every member on the panel they will still not have met that burden, because at the very most they will have shown nothing more than a disproportion between classes of people who appear upon jury lists and the classifications of people as they are made in this census, which is the basis, one of the bases of their challenge.

Now there has been a great deal of reliance (1747) placed by the defendants on the Fay case, and if I understand the argument it runs something like this: That Justice Jackson in the Fay case criticized the tables and the conclusions that were drawn from those tables, and that he indicated in his criticism a lack of proof by those who were challenging the jury system. Now I submit that when you read the Fay case you find that Justice Jackson did of course and in truth point out that those tables did not prove what they were offered to prove, but that the decision of the Court does not rest on that at all. What Justice Jackson did in the Fay

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case, if I read the case right, was merely to point out that statistical data and statistical tables and the standards of the statisticians used in drawing conclusions are not necessarily conclusive on the point. But the case itself does not turn on that criticism at all. The case turns and is founded upon the Court's finding that there was a total absence of evidence to prove systematic, intentional and deliberate exclusion. And in the other cases where the question has arisen the same is true.

In the Thiel case the finding there was, and the evidence demonstrated it—in fact there was a concession in the Thiel case by the officials who had charge of impaneling jurors that as a matter of (1748) practice and policy they never did call persons who were paid by the hour or by the week. And in the Ballard case there was a concession that certain types of people were not called. And in the Glasser case, although the Court didn't pass on it because it claimed that it wasn't proved, there was some evidence admitted that the only women who were ever called by the jury commissioners were those who had been recommended by the League for Women Voters in the City of Chicago.

The Court: The only ones.

Mr. McGohey: The only ones.

Now in those cases that arose or have arisen in the South and where the convictions were stricken by the Supreme Court, there again, in every case, there was either proof by the officials themselves that they systematically and as a matter of policy never called Negroes to serve on the jury, or there was the proof that over long periods of time, from 20 to 30 years or some years, although conceded there were many, many Negro citizens of fine reputation, character and intelligence in the community they had never been called—that no Negro had ever been called.

In one case, I think it is either *Patton vs. Mississippi*, or *Smith vs. Texas*, one of those cases, where it showed, Justice Black said, although the

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(1749) statute was all right it was clear that the way the statute was operated that you could never get a fair showing of Negroes on the jury. And of course in that case, as your Honor recalls, what the statute provided was that at the beginning of each term of court three commissioners of jurors would be appointed. The statute required that they take themselves into some room alone with the tax lists and that they select 16 names at the beginning of each court term. The evidence showed that consistently over a long period of years in the majority of the cases the first 12 names that appeared on each list of 16 each month would be uniformly chosen for grand jury service. It was further shown that except I think in three or four instances the name of no Negro had ever been placed higher than 13 on the list of 16, and that in most of the cases the name of one Negro would be placed No. 16. And as Justice Black pointed out, it was perfectly obvious you couldn't draw any other conclusion from it but that the commissioner—and the commissioners admitted that; and in one of the cases the commissioner said that he never selected anybody for jury service unless he knew him, and then he added that he didn't know any Negro.

Now, that is the kind of cases that have been (1750) coming up, and in all of those cases the proof was so obvious and so clear that there was nothing else to do except what the Court did, properly—to strike down any kind of such system as that. There wasn't any question there of disproportion. There was the clearest kind of proof of unconstitutional and indecent exclusion of people from jury service.

But what we would have here, your Honor, at the very most, if we went through the entire list named, we would show no more, we would find no more than a disproportion.

Now, the disproportion in and of itself has been repeatedly held in the Thiel case and in the Fay case and in other cases, to prove nothing more than disproportion.

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Now, I say under those circumstances this line of proof is producing only irrelevant testimony; and if that be so I think it is clear under the case that it is not only the function, the right of the Court, but I take it to be the duty of the Court to so regulate the order of proof that time be not consumed with the acceptance of irrelevant testimony.

Now, it may very well be that at some time in this proceeding this kind of evidence would be relevant in the light of other testimony, and that frequently happens, and there are many cases in which the courts have (1751) exercised their discretion to regulate the order of proof. It is common enough in conspiracy cases where it is objected that a certain type of evidence is not relevant at that time, and the Court excludes it until some other evidence comes in which makes the rejected evidence relevant at the time it is later offered.

On the basis of those two propositions of law, your Honor, that the testimony now being introduced is irrelevant, and that the Court has the power to regulate the order of proof, I urge upon your Honor that that be done.

Mr. Sacher: May it please the Court, if ever I heard a confession of guilt I have just heard it from Mr. McGohey, and I will tell your Honor why: In the first place, he misconstrues the decisions, and having misconstrued them—

The Court: What is this confession of guilt? Guilty of what? He is not being charged with anything here. I don't know what you mean by that.

Mr. Sacher: We are charging the whole set-up of the jury system here as being an illegal act, and to the extent that Mr. McGohey participates or defends it or fights for the continuance of this evil, that to that extent he is a participant; and to the extent that he has made the statements that he has, I will demonstrate (1752) to you in a moment that he has made a confession of guilt, that this system is illegal under the law.

Now let us get—

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The Court: You have a curious way of expressing yourself, to say the least.

Mr. Sacher: Perhaps that may be so, your Honor, but unfortunately I can express myself in no other way. And I would like, if your Honor would be kind enough to indulge me to refrain from personalities so that I may develop what I regard as a most important argument on this question,—

The Court: You ask me to refrain from personalities?

Mr. Sacher: I think so. You have just accused me—

The Court: For what purpose? I indulged in no personalities.

Mr. Sacher: You said I have a curious way of expressing myself.

The Court: Yes. You said the United States Attorney had confessed his guilt. I considered that—

Mr. Sacher: I did not use those words. I said he made a confession of guilt and I stand by that statement.

The Court: Well, that is no personality. (1753) That is a comment on a sort of argument that I think is out of place and not helpful.

Mr. Sacher: All right.

Now, let us have one thing clear, namely, that the Supreme Court of the United States has not only held total exclusion from jury service to be illegal; it has also said that limitation of representation on the jury panels, both grand and trial, are illegal—and I read you from the Thiel case the following: The Court there said—

The Court: What is that citation? 328, is it?

Mr. Crockett: 328 U. S. 217.

The Court: 328. That is what I thought. I have it.

Mr. Sacher: And the Supreme Court there said—I can't give you again the page because I am reading from those advance sheets:

“Wage earners, including those who are paid by the day, constitute a very substantial portion

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of the community, a portion that cannot be intentionally and systematically excluded in whole or in part without doing violence to the democratic nature of the jury system."

Now, if it were the law that only total exclusion does violence to the democratic jury system, there would (1754) have been no occasion for the Supreme Court to have spoken of exclusion in whole or in part. And holding that an exclusion, even though partial, violates the requirements of the law means that Mr. McGohey is wrong when he insists that exclusion must be total in order to be illegal.

And why did I say that his statement was a confession of guilt? Because he has acknowledged already, if I understand him aright, that the Negroes and the Jews and the manual workers and the poor are not proportionately represented on these juries. Otherwise there is no occasion for him to talk about disproportion. You don't talk about disproportions when there are proportions.

Now, there is one observation I would like to make on this business of total and partial exclusion:

I regard partial or token representation either on juries or in employment or in social relations or anywhere else as being more vicious and more insidious than total exclusion, because total exclusion you can recognize, but token representation is a concealment of the exclusion which is practiced. And what we are going to demonstrate in this case is, yes, there have been Negroes, one, two or three maybe in the last decade (1755) who have sat on a grand jury now and then, and we are going to argue and we are going to prove that that casual, that incidental, that occasional appearance on a grand jury or a petit jury was token representation for the purpose of concealing the systematic and deliberate exclusion of the Negro people in this area from representation on the grand and petit juries.

And I tell your Honor that I have every confidence that if the law remains what it is today, that

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there is no question that this court either will have to agree with us on it, or if this court does not, then some higher authority, as Judge Knox will have it, will recognize it. For the fact of the matter is that if there is one thing that must be said about the decisions of the Supreme Court, it is that it has recognized that systematic exclusion from jury service is a specific method of exclusion. Rarely do we find in the North that avowed discrimination against Negroes that we find in the South. Rarely do we find clerks in the North who will as candidly acknowledge their discrimination against their Negro fellow citizens as they do in the South.

And therefore I say to your Honor that you are really confronted with a very serious problem in what you have thus far indicated your disposition is (1756) in the matter of order of proof. For one thing seems clear, and this Mr. McGohey proved through his questioning of these jurors—and what was it? There is no statistical evidence of the limited extent to which Negroes had representation on these grand and petit jurors. And if Mr. McGohey has a regard for facts rather than for words, he must recognize that what we have thus far proved with the 23 men and women whom we have selected here is that there was not a single Negro among them. Under oath they swore that they were not Negroes. And I say to your Honor that there is only one way to prove, only one way to prove to the extent required by the law that Negroes have not had lawful representation. That is what we are doing. We are not talking about proportions or disproportions. We are talking about the lawful representation that they are entitled to under the Constitution that the Negro people in this area have not had. And I say to your Honor that when you ponder it—and I urge that you do—you will have to—

The Court: Well, I ponder all your arguments.

Mr. Sacher: Very good.

The Court: Some more than others.

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Mr. Sacher: All right. Then I submit you will be obliged as a logician to come to the conclusion (1757) that there is only one unanswerable method by which to prove that Negro men and women have been systematically excluded either in whole or in part from the grand and petit jurors of this court district, and that is to parade all of the grand jurors and petit jurors who have been on the panels to ascertain whether or not they are white or Negro.

For bear in mind, your Honor, that while it is quite true that we shall have abundant material to prove statistically that manual workers were excluded, that the poor were excluded, that various geographical groups were excluded—all that we can prove statistically. But the question as to whether or not Negro men and women were excluded, there is no paper and no book and no statistic that we have been able to unearth, and I challenge my—

The Court: And not even by looking at them.

Mr. Sacher: Not even looking at them, sir, absolutely. No more than you can tell whether I am a Jew or a Mohammedan by looking at me, can you tell that any human being is white or Negro. As a matter of fact, I have been taken for a Negro and been honored on being taken for a Negro on more than one occasion, so that looks don't mean a thing in this kind of thing.

So what I am getting down to, your Honor, is (1758) this, that on one of the most basic issues in this case—and let it be understood that it is; let the Court and the prosecution have in mind that it is not to be obscured—that the defense in this case charges as one of its main accusations against this undemocratic jury system that it has been rigged, it has been stacked, it has been systematically, deliberately, purposefully arranged whereby the Negro people would be virtually excluded in totality from representation on grand and petit juries, and that such slight and insignificant, infinitesimal and de minimis representation as they might have had was purely token representation designed to conceal

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the scheme, the plan, the plot, the conspiracy to keep these hundreds of thousands of our citizens off the jury.

The Court: Now, don't you think you could have perhaps stated that to me in a few less words?

Mr. Sacher: Maybe I could, your Honor—

The Court: You claim you need to call every one of the grand jurors and petit jurors because that is the only way you can prove whether they are white or Negro.

Mr. Sacher: I had more to say than that, and I thought I did say more than that.

The Court: Very well. You may go on.

(1759) Mr. Sacher: I don't have much more to say now, but I want to point out that the content of what I said was more than a question of whether you needed to call these people to prove whether they are white or Negro. The point I am making is that Mr. McGohey is in error on the law, and it is necessary right from the threshold of this case to understand that it does not require total, 100 per cent exclusion to establish the illegality of the jury system.

The Court: I don't think he said it.

Mr. Sacher: All right, if he does not, if he is ready to withdraw it, that is satisfactory, there is nothing more to be said.

The Court: There is nothing to withdraw. I heard what he said, but I am not going to back all over that again.

Now who else desires to be heard?

Mr. McCabe: I would like to address myself also as to the remarks of Mr. McGohey. In commenting on the cases in which the Supreme Court or other courts have held that the allegations against the selection of either petit jurors or grand jurors were sustained, Mr. McGohey said, "Why, in those cases the Commissioner came forward and truthfully admitted the discrimination. He admitted the facts."

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(1760) According to that theory we could prosecute cases only in cases where the defendant admitted the guilt, and I am sure Mr. McGohey has never, in previous years, nor will he in this case, confine his proof to the testimony of the defendants.

In this case the jury commissioner and the clerk have not been so frank as those accused in the other cases. They have not stated the discriminatory basis of their selection of jurors. They have denied it, and we are prepared to prove that they lied when they denied it.

They started that they—well, I am not going to quote their words; it is a matter of record what they stated, and we are prepared to prove a variation in that case.

Now Mr. McGohey is very much worried about a few days' loss of time. I said this morning that we are concerned here with ten or twenty years out of the lives of these defendants. I say now that we are concerned with exposing, uprooting, and if we have the assistance of your Honor, which I think we should have, the clearing out of a wicked, unlawful system—

The Court: Now you don't make it wicked and unlawful by repeatedly, day in and day out, asserting over again what you have been saying all the time. It is (1761) a question of proving it, and I hold that there is not going to be any more calling of jurors until you have proceeded with the other part of your proof, and I do not say that I will take it then or that I won't. But I have ruled as to this order of proof.

Now, it may be that you gentlemen will continue to say that you want to argue about it. I always thought that it was the privilege of the Court to indicate when it did and when it did not desire further argument. But you have made so many challenges of bias and prejudice and said that every time I ruled against you there is something about it that is abnormal, so I have been disposed to let you

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go on. But I think the record has indicated an amount of repetition that is utterly unprecedented.

Mr. McCabe: Your Honor, when the demonstration of the bias is repeated the objections to it must be necessity be repeated.

The Court: Well, you may, as I said before, you may challenge my bias and prejudice just as often as you think you should.

Mr. McCabe: We shall, your Honor.

The Court: I take no umbrage at that. But I should think that you had covered that ground pretty well.

(1762) Mr. McCabe: I have not covered this particular point, your Honor, that I was trying to make, and that is that there has been an objection that we have taken five, six or seven days in the advancement of our proof. We are trying to expose—and I will omit those words which seem to affect your Honor—

The Court: It is just the repetition, Mr. McCabe; and the fact that you seem to think, and your colleagues seem to think that if you call it a nefarious system often enough, that that proves that it is a nefarious system. And, of course, we all know that whether the system is illegal and discriminatory and so on depends upon whether you have proved that or not.

Mr. McCabe: And the resistance to our proof seems to increase as we get closer to it.

The Court: Well, I am only trying to limit—

Mr. McCabe: We are trying to expose here in a few days—

The Court: —the repetitious argument, but I will permit you to go on for a short time.

Mr. McCabe: Thank you, your Honor.

We are trying to expose here a system, however it may be characterized, either by its friends or its opponents, which has been 10, 12, 13 years in the building. Now, to ask us to prove that all at once in a few days is asking too much.

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(1763) We can't prove the exclusions by witnesses over in this box (indicating) and have witnesses over in this box (indicating) proving the nature of the exclusions or the design back of them. I say we have to be permitted to prove the exclusions first and then we shall show not only to your Honor but to the whole world, as apparently—

The Court: Well, start with me.

Mr. McCabe: What?

The Court: Start with me and let the whole world come afterwards, because I am the man you have to convince about this.

Mr. McCabe: Well, I don't know about that, your Honor. I don't know that your Honor is the only one with whom we have to contend or with whom this system is concerned—

The Court: I say, start with me. Perhaps you may think you are starting with someone else. You may have different views.

Mr. McCabe: I see that in the United States Senate already the situation has been a matter of comment.

As I say, we do not accept any criticism of the use of a few days in demonstrating our allegations regarding a system which has taken all these years to build up.

(1764) Mr. Isserman: If the Court please, I will be very brief.

Mr. McGohey has made what I consider an important concession. He says he concedes or he says there is disproportion in the jury—

Mr. McGohey: May I interrupt, please—just a minute—your Honor, to make it clear that I made no such concession.

The Court: You didn't say that. I remember what you said. Let us not worry every time something is said like that. The record will speak for itself.

Mr. Isserman: My recollection is that all we were establishing by this evidence was a disproportion. If we could get agreement that there is a

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disproportion, which obviously there is, we would be saving a lot of time. If we could get agreement, next, as to the extent of that disproportion which does exist we would be saving more time. If we could get agreement that it continues from year to year and repeats itself, we would be saving still more time, your Honor. If we could get a concession as to the geographic nature of the disproportion from the standpoint or areas in the community we would be saving considerable time.

And if we could show that that pattern both as to areas from—if we could get agreement as to (1765) the continuance of that pattern both as to the peculiar character and special character, repetitive character of the areas from which jurors are drawn and of the special and peculiar character of the disproportion as between classes in the community, we would be saving a considerable amount of time.

Now it is not correct to say that disproportion merely is not enough; because the disproportion continued to a point and in a pattern which could not be the result of a normal statutory selection is one which raises the inference of intent and design. And only an hour or so ago, in reading the Hawaiian case, your Honor, which Judge Biggs of the Third Circuit presided over in the statutory court—a very able jurist—he said that the disproportion that he found or that the record showed, notwithstanding the paucity of proof, of 84 per cent of the group of entrepreneurs and their proprietors and their salaried servants as against 16 per cent of the people was one that merited the decision, which was against the institution and continuance of the jury system there.

Now I say that we can save a lot of time, because whether or not what Mr. McGohey said was in the form of a concession as to what existed or as to what we were trying to show, it is important to have (1766) this on record, although to us it must be a discussion of the obvious—there is that disproport-

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tion; the evidence thus far shows it. Now, we are willing to cut the time down in any way that we can work it out, by stipulation as to some of these things which are obvious, by some method of referring part of this examination to some officer appointed by the Court or in some other way.

The Court: What you are going to do is, you are not going to call any more jurors and you are going to go ahead with the other part of your proof. Now, I will hear a little more argument if you want to.

Mr. Isserman: No.

The Court: I really have my mind made up on it.

Mr. Isserman: I have only to say—

The Court: And that is the way it is going to be.

Mr. Isserman: I have only to say that I understand by your Honor's remark the limitation your Honor has put on it previously, that your Honor was referring to (a) the January 17th panel and (b) calling them merely as a question of order of proof.

The Court: If you have some more grand jurors I will permit them to be called.

(1767) Mr. Isserman: And I did—

The Court: But I will not permit any of these petit jurors to be called.

Mr. Isserman: And I did say to your Honor that in the morning we would be ready to proceed from a different angle which would establish and highlight and put on this record the facts which we were beginning to establish with these jurors.

The Court: Well, if that different angle involves calling back the petit jurors you can save your time about it, because I tell you now that I will not hear them.

Mr. Isserman: I thought I had made it clear earlier, your Honor, that it would not involve at this time any calling back petit jurors.

The Court: Very good.

Helen R. Walsh—for Defendants on Challenge—Direct

Mr. Isserman: In other words, if your Honor adheres to his ruling we certainly—though we object to it—we of course abide by it.

The Court: Yes, that is what I would expect.

* * *

(1768) HELEN R. WALSH, called as a witness on behalf of the defendants on the challenge, being duly sworn, testified as follows:

Direct examination by Mr. Sacher:

Q. Mrs. Walsh, you were a member, were you not, of the grand jury which returned the indictments against William Z. Foster and 11 others? A. Yes, sir.

Q. Had you served on any prior grand jury? A. Yes.

Q. How many times have you served on the grand jury all told, including— A. Twice.

Q. Twice. When did you first qualify as a grand juror? A. About six years ago.

Mr. Sacher: May I have Mrs. Walsh's questionnaire, please?

(Mr. McGohey hands to Mr. Sacher.)

Mr. Sacher: Thank you.

Would the Court indulge us for a moment, please?

The Court: Yes.

Mr. Sacher: Mr. McGohey, is there a requalifying questionnaire for Mrs. Walsh?

Mr. McGohey: No; that is the only questionnaire we have on it.

Q. Mrs. Walsh, I show you this paper and ask you whether that is a photostatic copy of a paper that you (1769) signed back in 1938? A. Yes, that is right. I didn't know it was that long ago.

Q. Times flies. A. Yes.

Q. You volunteered for service as a grand juror, did you? A. Yes, sir.

Helen R. Walsh—for Defendants on Challenge—Direct

Mr. Sacher: I offer in evidence Mrs. Walsh's questionnaire.

Mr. McGohey: No objection.

(Marked Defendants' Challenge Exhibit 7.)

Q. Mrs. Walsh, what is your husband's occupation? A. He is in the police department.

Q. Police department of what governmental subdivision? A. The City of New York.

Q. What rank does he hold now? A. Sergeant.

Q. Are you white or Negro? A. White.

Mr. Sacher: That is all.

* * *

By Mr. Crockett:

Q. Mrs. Walsh, what is your address?

* * *

(1770) Q. What is your address, Mrs. Walsh? A. 101 Sherman Avenue.

Q. 101 Sherman Avenue. What is your occupation? A. I am a telephone operator in Room Service in the Lexington Hotel.

Q. At the Lexington Hotel? A. Yes.

* * *

By Mr. Isserman:

Q. Would you tell us, Mrs. Walsh, when you volunteered for grand jury service? A. When I what?

Q. Volunteered for grand jury service. A. I don't know. About four years ago I think. I don't remember.

Q. And in the four-year period you have served twice on the grand jury? A. Yes.

Q. Did you volunteer in the clerk's office of this (1771) court, Mrs. Walsh? A. Yes.

Q. And can you tell us how you happened to go there to volunteer? A. I think I was sent for.

Q. Did you receive any notice from the clerk to appear? A. I must have; I don't remember.

*Helen R. Walsh—for Defendants on Challenge—Cross,
Redirect*

Q. Well, have you any recollection as to how it happened that you volunteered for service on the grand jury?

A. No.

Q. Was it at anybody's suggestion, that you can recall?

A. That may have been.

Q. And could you tell us whose suggestion it was? A. No.

Q. Was it your husband's suggestion? A. Yes, I think it was.

* * *

Cross examination by Mr. McGohey:

Q. Mrs. Walsh, you said that you are employed as a telephone operator at the Lexington Hotel. Were you so employed in June 1947, when you were called for service on the grand jury? A. Yes.

Q. At the time you signed your name to the Defendants' Challenge Exhibit 7 or the original of it or at any time when you were in the clerk's office, were you asked by the clerk or any official of this court any question as to your race, your religion, your political affiliation? (1772) A. No.

Q. Your social connections or your financial worth? A. No.

* * *

Redirect examination by Mr. Sacher:

Q. Did the clerk ask you any question at all? A. Not that I recall.

* * *

(Witness excused.)

Mr. Gladstein: If your Honor please, I suppose the record ought to note my appearance at this time—

The Court: Well, we are glad to see you back, Mr. Gladstein.

Mr. Gladstein: —about 3.15 this afternoon.

* * *

Colloquy of Court and Counsel

(1774) The Court: Now that you are back in the arena again, Mr. Gladstein, what have you to suggest as to some possible proof that you could go on with this afternoon that would not need a lot of conferences and checking it and so on? Haven't you got an expert that you are going to put on?

Mr. Gladstein: Yes. But, your Honor, I want to say this—I appreciate Mr. Sacher's offer, but I want to assure the Court that nothing anybody could have done would have helped to prevent ice getting on the wings or anything of that sort.

The Court: No; nobody is suggesting any such thing.

Mr. Gladstein: I got in to LaGuardia some time between one and two. And I have had some rough trips over the Pacific particularly, but this is one of the (1775) most anxious that I have ever had. I am really not prepared and not in a position to offer anyone as a witness this afternoon but will be in the morning.

The Court: It may be that we can make a little progress in another direction. Now, one of the things that has caused me and, well, has made me do a lot of thinking during the last day or two has been the fact that in your absence, which I gave you leave to take and we adjourned court accordingly, and then you were away a little longer than you expected, and in Mr. Isserman's absence, to whom I had refused leave to go—we had the situation of some of the defendants protesting the progress in the matter because of the absence of counsel. And I would like to hear from you as to what you think could be done, if anything, to perhaps bring about a little more cohesion, so that if counsel or one or another defendant happens to be out of the room for a moment or away for a half a day or something of that kind, we won't have the proceedings entirely disrupted.

Mr. Gladstein: Well, your Honor, I do not think we have any tangible problem of that sort to address ourselves to at the moment, and you are asking me

Colloquy of Court and Counsel

to speculate about some possibility that does not present (1776) itself.

I want to say this: I represent two men. They have a right to have me here, and I of course insist on discharging my duties to them. In a similar manner, each of the other lawyers represents individuals. While it is true—

The Court: Yes. Mr. Isserman or somebody on his behalf said that some other client of his insisted that he be in Washington at the same time that I insisted that he be here. And feeling that his client evidently had a right to insist, he went.

Now, I am just putting that out now, not to attempt to dispose of it now, but it is a problem, and I think if you counsel for the defendants give some thought to it perhaps we can avoid that coming up again. As it happens, no harm was done; we were able to make arrangements so that we could go on in the interval. But there are so many little and great delays of one kind or another that it is exceedingly important for all concerned to avoid them if we can.

Now I take it your application is for an adjournment now until tomorrow morning because you are not prepared or able to go on now and, because of your absence, in coming back you feel it is not fair to thrust you on. And I rather feel that way myself. Will (1777) you be ready to go on tomorrow morning? All right.

Mr. Gladstein: I will, your Honor.

The Court: Would you care to indicate to me the course of the proof that you expect to make?

Mr. Gladstein: I would prefer not to state that as of record at the moment. But I am rather sure the evidence will be regarded by the Court as material and quite important.

The Court: I made an observation yesterday that I desire to repeat for your information. You may remember that back before the trial started when we had some motion being argued up in the admiralty term, I heard a number of lawyers for

Colloquy of Court and Counsel

the defendants excoriating an article in the World Telegram, I think, which had predicted some sort of antics for delay, and you were all very vociferous in protesting that that was a horrible accusation and that nothing of that kind would possibly happen. And I made a statement on the record that up to that time I had seen nothing done by any of the lawyers that I thought could warrant any such characterization.

Now, after a week and a half or so of this proceeding here, and during your absence I read over the record rather carefully and the thought did enter my mind that there was a deliberate, wilful and concerted effort (1778) being made by counsel for the defendants to delay the case by various expedients. I also said that I was extremely reluctant to think that any lawyer would do such a thing and that I would, and I did, put the thought out of my mind.

I mention it now so that you all may know that the thought has occurred to me. I should not want to later have some question come up and have any misunderstanding.

And so we will adjourn now until tomorrow morning at 10.30.

Mr. Gladstein: Before your Honor adjourns may I say just one thing, your Honor? I haven't read the transcript, but I don't have to read the transcript to be able to say to your Honor in all sincerity and honestly that, speaking for myself and for those of the attorneys in the case, whom I have come to know and with whom I have talked, never at any time has there been any suggestion express or implied on the part of any of us to use any tactic or maneuver whatsoever for delay. To the contrary, your Honor, the challenge to the jury system here was filed not for the purpose of delaying the holding of a trial but in the fullest faith and confidence that an impartial consideration (1779) of what we had to offer would definitely result in the outlawing of the jury system here and in the quash-

Colloquy of Court and Counsel

ing of the indictments. Because we feel satisfied, confident, that that kind of appreciation of our evidence can result in no other thing than the quashing of those indictments. Lawyers who present that serious a case do not do so, your Honor, for the purpose of delay but because they believe the evidence shows that they are right. And in so far as it may have seemed to the Court at the time—

(1780) The Court: Well, so many things have happened that seem, as I read back over that record, hardly consistent with anything other than a concerted and deliberate and wilful effort to delay. But I have told you that the thought merely occurred to me and I have put it out of my mind for the present. I wouldn't want to have something come along later and have anyone fail to understand that there is this interpretation of what has been going on. I do not say it is the right interpretation; it may well not be. And all I do say is that the thought for the first time came into my mind and I put it out.

So we adjourn now until tomorrow morning at 10.30.

Mr. Sacher: I want to state on the record, however, that I deny what your Honor said.

The Court: You don't need to shout, Mr. Sacher.

Mr. Sacher: No. I resent—

The Court: It is possible to address the Court occasionally without shouting.

Mr. Sacher: Yes. Your Honor in a quiet manner is picking out a point which will result in certain headlines tomorrow morning. For the record I want to make it clear that I have done nothing and will never do anything to delay or hinder the progress (1781) of this case. And whatever I or any other counsel in this case have done or has done has been directed solely to the achievement of the end of proving that this jury system is bad.

And I think, your Honor, that there is no justification for closing every day's session with the observation as to what thought was entering your Honor's mind concerning our state of mind.

Colloquy of Court and Counsel

Mr. Crockett: If the Court please, may I be heard?

The Court: Yes.

Mr. Crockett: It so happens that I also read the record during the brief holiday period that we had, and with all due respect to your Honor I notice that there was more comment on the part of the Court than there was for example on the part of the United States Attorney, and more comment than there was on my part.

I have given quite a bit of thought to all of these continued references to delay, delay, delay, and I must repeat what I said this morning: that we have spent the better part of this day arguing about something that might very well have been taken care of by letting those jurors take the stand and complete their examination. By that time Mr. Gladstein would have been back and we could have gone right on with the (1782) other character of proof that your Honor seems to desire that we start with in the morning. That is all I have to say, except we deny—

The Court: What did you say about what I desired?

Mr. Crockett: I understand that your Honor desires a different type of proof tomorrow morning.

The Court: Not only desire—

Mr. Crockett: You say you don't want any more jurors—

The Court (Continuing): I have ruled that I will not hear any more of the petit jurors. And so, whether you desire or not, you will proceed with the other phases of your proof or you will rest and take the consequences.

Mr. Crockett: I can assure your Honor, speaking for myself, that I have no intention whatever to rest at this point. And I do not intend to rest until I have sufficiently established the systematic exclusion of Negroes, even if I have to call every qualified Negro in Harlem down here and make an offer of proof on his part.

Colloquy of Court and Counsel

The Court: Well, that will take some little time.
Mr. Crockett: I agree, your Honor.

(1783) The Court: Do you propose to do that?
Mr. Crockett: I said, if necessary to prove my case I would do that.

The Court: You know, on numerous occasions I have asked counsel for some indication of the proof they expect to offer, which is a common question in litigation, and one of the things that has impressed me has been the persistent refusal of counsel to inform the Court as to what they expected to offer or to show. It was a small thing in its way, but it hasn't made a favorable impression upon me. However, you may come to that in due course.

Mr. Isserman: If the Court please, I think I noted before that in this case and on the trial of this challenge there is before your Honor extensive factual material which will be embodied in our brief. That material indicates to a considerable degree the course and direction of that proof. So we are not, either persistently or deliberately or in any other way, keeping from your Honor the essential facts which we intend to adduce. And I think a re-reading of that challenge would indicate how copiously we furnished the Court and Government with the elements of proof which we intend to offer.

(1784) The Court: Well, then, perhaps you had better put on some of them this afternoon. If you have them all available and they are all ready, go ahead with them.

Mr. Isserman: Well, I think it was said that they would be available tomorrow morning, your Honor.

The Court: Well, all right.

Mr. Isserman: But they will be here tomorrow morning.

The Court: All right. We will adjourn until tomorrow morning at 10.30.

(Adjourned to January 28, 1949, at 10.30 a. m.)

Doxey A. Wilkerson—for Defendants on Challenge—Direct

(1785)

New York, January 28, 1949;
10.30 a. m.

* * *

DOXEY A. WILKERSON, called as a witness on behalf of the defendants on the challenge, being duly sworn, testified as follows:

* * *

(1787) *Direct examination by Mr. Gladstein:*

Q. Mr. Wilkerson, will you state your full name, please?
A. Doxey A. Wilkerson.

Q. And where do you reside, sir? A. My address?
Q. Yes. A. 913 St. Marks Avenue, Brooklyn.

Q. What is your present occupation or profession? A. I am Director of Faculty and Curriculum at the Jefferson School of Social Science.

* * *

Q. Where is that school located, Mr. Wilkerson? A. That is in Manhattan at 16th and Avenue of the Americas.

Q. And in general what is the nature of that school?
A. The Jefferson School is an adult educational school which is concerned with the Marxist education primarily of the workers in our community. Several thousand students attend there, mostly evening work, taking quite a wide variety of courses, involving political economy, (1788) history, philosophy, and arts and sciences, and what have you. It is a Marxist educational institution.

Q. For how long have you been associated with the school? A. For about a year. Well, I have been associated with the school really for about four years, but in an all-time capacity for about one year.

Q. Now, the position that you have testified to occupying at that school, briefly and generally, what is the nature of the position that you occupy? A. In a college or university the position I hold would be called that of a dean. That is, my responsibilities involve the planning of program, the scheduling of courses, the obtaining of teachers

Doxey A. Wilkerson—for Defendants on Challenge—Direct

for courses, certain administrative factors concerning the student personnel.

Q. Yes? A. It is largely a question of taking charge of and organizing the faculty and the curricula program.

Q. Now, to qualify for that position, Mr. Wilkerson, I take it that you have had to have and have had college training, is that right? A. Yes.

Q. By the way, where did you receive your public school training? A. In the public schools of Kansas City, Kansas, and Kansas City, Missouri.

Q. Is that the city of your birth? A. No.

(1789) Q. Where were you born? A. I was born in Excelsior Springs, Missouri, not far from Kansas City.

Q. So you received your grammar school education and your high school education in the two Kansas Cities that you have mentioned? A. That is right.

Q. Now after graduating from high school to what college were you admitted? A. To the University of Kansas.

Q. How long did you attend that university? A. About five years.

Q. What was your major? A. My undergraduate major was English. My graduate major was education.

Q. What degrees did you receive at that university? A. The Bachelor of Arts and the Master of Arts.

Q. Did you have to write a thesis for your Master of Arts degree? A. Yes, I did.

Q. What was that thesis? A. The exact title I may not be able to quote, but approximately it was an inquiry into the relative effect of variations of mental age and of chronological age on the social adjustment of boys.

Q. Is that a rather technical piece of research and work? A. Yes.

Q. Would you indicate briefly and generally the character of data or materials you were required to work (1790) with in order to develop and project that thesis? A. Maybe I had better first give you generally the nature of the problem we are concerned with.

Q. Would you do that, please? A. It has been observed that many children who are unusually bright and have a mental age considerably above their chronological age advance more rapidly in school training days, sometimes skipping a grade or two or three; and the question is posed:

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Does such acceleration tend to bring about any maladjustment socially? And the thing I was concerned with was trying to test the hypothesis that it does. And it called for our getting groups of boys, I think we used 11 or 12 year old boys, and finding out whether or not the association of youngsters of the same mental age, though their chronological ages may vary, the association of youngsters of the same chronological age, though their mental ages may vary, tended to make the boys more socially adjusted than the other.

Q. Now Mr. Wilkerson, in connection with that thesis were you required to and did you have recourse to statistical or other types of data, technical material? A. Oh, yes. It was necessary.

Q. Now after graduation from the university did you have occasion to take any postgraduate work? A. Yes. Not immediately, but several years later I (1791) attended the University of Michigan.

Q. What was the nature of the postgraduate work that you took at the University of Michigan? A. It was in the School of Education at the University of Michigan, with correlative work in the field of sociology, so that it was primarily graduate work in education and sociology.

Q. What year or years did you take that work at the University of Michigan? A. That was 1933, 1934, I think.

Q. Have you had other postgraduate work besides that which you have just indicated? A. I did some further graduate work in sociological research at Howard University while I was there as a member of the faculty.

Q. When was that, sir?

The Court: Did you get your Ph.D. at Michigan?

The Witness: No, sir, I do not have the Ph.D.

A. I would judge that was around 1935, 1936, 1937.

The Court: This is when you say you were teaching at Harvard?

The Witness: Not Harvard.

Mr. Gladstein: Howard, your Honor.

The Court: What is that?

Mr. Gladstein: Howard. H-o-w-a-r-d.

The Court: Yes.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. Now Mr. Wilkerson, when did you first take on professional employment in the field which you have described? (1792) A. In 1927.

Q. At what university, if any? A. At the Virginia State College, Petersburg, Virginia.

Q. Where is that located? A. Petersburg, Virginia.

Q. In what capacity were you first retained professionally at the university? A. I was principal of the laboratory high school that is, the teacher training high school at the college; chairman of the Department of Secondary Education.

Q. During the entire period you were there? A. I don't remember that. The chairmanship of the department I am sure was not at the beginning. I think that came after I had been there about two years.

Q. Have you indicated already how long you were affiliated with that organization? A. No, I left there in 1935.

The Court: This is Virginia State College?

The Witness: That is right. 1935 I left there.

Q. So you were engaged with that college from 1927 to approximately 1935? A. That is right.

Mr. McGohey: I didn't get that last date.

Mr. Gladstein: Until approximately 1935.

Q. While you were with Virginia State College you said you were chairman of the department there, is that (1793) correct? A. Yes.

Q. Did you have any professional association with any high school or other institution of learning in or about that vicinity? A. Well, on the Campus is a teacher-training high school which I administered as principal. In addition to that, I was for the whole State director of the high school debating league. That is an association of high schools, negro high schools in the State of Virginia organized a debating society.

Q. Did you hold any other positions professionally or officially, or administrative positions, while you were connected with the Virginia State College? A. Oh, yes. For several years I was director of the bureau of appointments.

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Q. What was that, sir? A. That was an agency which undertook to find jobs, chiefly teaching jobs for the graduates of the institution. I was also alumni records secretary, which was involved in keeping tab on what is happening to all of the alumni of the institution, what they are doing, and what have you.

The Court: This is still at Virginia State College?

Mr. Gladstein: Yes.

Q. During all that time you were also engaged in the teaching of classes and in the performance of research (1794) work in your field, is that right? A. That is right.

Q. Now after leaving the Virginia State College in about 1935 did you transfer your professional work to some other college or institution of learning? A. Yes. It was then that I went to Howard University.

Q. Where is Howard University located? A. That is in Washington, D. C.

Q. Generally what is the nature of that school? A. Well, that is a first class university, with a full complement of schools—liberal arts, medical, engineering and what have you, about nine or ten. It is an institution that is largely subsidized by the federal government, though it has a private independent board of control that administers the institution.

Q. How long were you professionally connected with the Howard University? A. About eight years. 1935 to 1943.

Q. In what capacity? A. Well, I left there first as an assistant professor. Later I received the rank of associate professor. For a period I was director of the summer school at Howard University. And, well, while there also I was associated with the Journal of Negro Education, a quarterly professional publication that is put out there—

* * *

(1795) The Court: You were the editor of that?

The Witness: No, I was on the editorial staff.

* * *

Doxey A. Wilkerson—for Defendants on Challenge—Direct

(1796) Q. Now, Mr. Wilkerson, would you tell us a little bit more about that journal that you have just mentioned? Was that an official publication at Howard University? A. Yes. I say "Yes" hesitantly, in the sense that it is published by the Education Department of the University and is administered by the staff of that department. In that sense it is a publication of the university, though it has advisors and members on the board who are not associated with Howard University.

Q. Now, in connection with that journal what was your position; what were you a member of? A. Of the editorial staff.

Q. For how long a period, sir? A. Oh, I should think for three or four years, maybe longer.

Q. While you were at Howard University did you engage in any special studies or research of any kind dealing with vocations, occupations, matters of that kind? A. Yes.

Q. What kind of project or projects were you engaged in professionally at that college? A. Well, one of my key professional interests during that period was the whole field of vocational guidance, and in teaching and in research we gave considerable attention to it. In connection with the journal, for example, the Journal of Negro Education, for several years I edited a section (1797) of the journal which had to do with the vocational guidance of youth. Also during that period, I believe it was along about 1937 when the President appointed a committee on vocational, advisory committee on vocational education, I was associated with it and did considerable investigation in the fields of occupations—

Q. I will come back to that in a moment, Mr. Wilkerson. I just want to ask you about that journal and about these vocational studies. Would you indicate in a general way the type of technical material, statistical data, whatever it may have been, that you were required to use and did use in connection with these vocational or occupational studies? A. Basically, census materials on population, on occupational distribution of the population, and related—

Q. And that is encompassed, I understand, in the profession within the phrase "sociological data," is that correct? A. Yes.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

The Court: I don't believe I quite understand, "sociological data." I need a little education myself in this. It is very interesting, and I like to follow it quite carefully. But you haven't explained what he means by sociological data.

Mr. Gladstein: I would like to develop that in connection with the witness.

(1798) The Court: That is perfectly all right.

Mr. Gladstein: The qualifying training and experience, your Honor.

The Court: Yes.

Q. Now, Mr. Wilkerson, did you leave Howard University to take professional employment elsewhere? A. No. No and yes. I was on leave from Howard University without—while I was still a member of the faculty, to work with the Carnegie study of the Negro.

Q. When did that occur? A. This was about 1939-1940.

* * *

The Witness: That is a study of the Negro of America sponsored by the Carnegie Foundation of New York. I was also on leave at another time.

Q. Before you go on to that I would like to hear about the Carnegie Foundation employment that you had. Did you say when that was? A. 1939-1940.

Q. 1939-1940. What was the locus of your work? A. New York.

Q. New York City? A. Well, I was stationed in New York. My work involved the nation.

Q. What was the nature of your work? A. This was (1798-A) a study of the relations of the Negro to all areas of American society.

Q. To what, sir? A. To all areas of American society; politics, economics, and what have you. My particular job—

(1799) The Court: Just a second. Politics—what were the others? Economics?

The Witness: Economics, and I said what-have-you.

The Court: Oh, what-have-you.

The Witness: Do you want me to give you the rest of them?

Doxey A. Wilkerson--for Defendants on Challenge—Direct

By Mr. Gladstein:

Q. I will ask you, Mr. Wilkerson, to elaborate a little, if you will. What are the criteria or the factors included in this catch-all phrase "what-have-you"? A. Well, the study of race in such areas as these; the job opportunities, the position of Negroes in the economic position and structure of America; their whole relations to federal, local and state governments in the political realm; the whole question of education throughout the country for Negroes; the problem of participation of Negroes in a whole series of federally-sponsored programs during the period of the depression and immediately thereafter.

It went into many of the theoretical aspects of the oppression of the Negro people in our country; the whole question of special social disabilities which Negroes face, and why.

Maybe this is enough to give you some general (1800) picture of what this inquiry was about. My particular concern on the staff was that of Negro education. I was in charge of that part of the study.

Q. And you had occasion, therefore, to work with others and supervise that portion of the project, is that right? A. Yes.

Q. Mr. Wilkerson, in developing that project for the Carnegie Foundation, what source materials generally were you required to resort to and use material from? A. Well, of course, basically, again, the census materials of various sorts; the reports of state and local school systems throughout the country; many primary data which we gathered as a result of our own staff's activities, together with secondary sources of all related kinds.

Q. So, in other words, you were required to obtain in the course of your research statistical and technical data, subject them to analysis, and bring out the significance of the data, is that right? A. That is right.

Q. That is, to carry on primary research and obtain information, facts that had not been developed by or put out in any official form by the Government or any other source; is that right, sir? A. That is right.

(1801) Q. Now indicate, if you will, Mr. Wilkerson, the manner in which the census materials, for example, were used in connection with the research project that you

Doxey A. Wilkerson—for Defendants on Challenge—Direct

were in charge of for the Carnegie Foundation. A. Primarily in determining the number of Negro children and of white children in areas where there are segregated schools, about 18 States, including the District of Columbia; the numbers within the bracket that we call of school age. That is one source for which we used census. We also had to use census figures on the educational status of the white and Negro population in different parts of the country. Basically these were for that study the purposes for which we used census materials.

The Court: I wish you would explain that last answer a little bit, Mr. Wilkerson. I don't quite understand it.

Do you want the reporter to read it to you?

The Witness: Yes.

Mr. Gladstein: Was there a question in your Honor's mind?

The Court: Well, there was a part I want a little elaboration on, and it won't take but a minute for the reporter to read it.

(Answer read as follows: "A. Primarily in (1802) determining the number of Negro children and of white children in areas where there are segregated schools, about 18 States, including the District of Columbia; the numbers within the bracket that we call of school age. That is one source for which we used census. We also had to use census figures on the educational status of the white and Negro population in different parts of the country"—)

The Court: That is what I did not quite understand, the educational status. What do you mean by that?

The Witness: Well, the current census, the 1940 Census which at that time was not available, gives information about the number of people, white, Negro and other groups who had no years schooling, one year schooling—

The Court: I see. That is all right.

* * *

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By Mr. Gladstein:

(1804) Q. What was the culmination of this project? Did the work terminate with the putting out in some form of a formal or an official report of some kind? A. Yes. The staff of this study involved, I guess, more than a hundred professional workers of one sort or another, research people, who were really involved in preparing memoranda on their fields for the director of the study, who, on the basis of those memoranda wrote the final report. The report—

Q. I see. Now let me ask you a question about the hundred or so associates that you had who were occupied with various different aspects of this over-all study. Were they like you people who had professional training and were from universities or colleges? A. Yes, with varying degrees. There were those who were in charge of different phases of the study, and they all, of course, had university training, graduate work and what-have-you; and they had associated with them, working for them, other people who also were professionally trained people in their particular fields of research.

(1805) Q. Now, when you say "research" would you give it in a little more detail, Mr. Wilkerson, what sort of research training these people had and how they were using it in connection with this project? A. Well, it varied. You mean for the project as a whole?

Q. For example, were these people performing statistical work and statistical analysis, the gathering of figures and data? A. Most of them were, yes.

Q. And this work was taking place in association with yourself and a portion of it under your supervision, is that right? A. That is right.

Q. Now, by the way, is that final report of study available in some form? A. Yes. The director's report is a two-volume work known as "An American Dilemma." Gunnar Myrdal is the author.

Q. Do you want to spell that, please, so the reporter can have it? A. G-u-n-n-a-r M-y-r-d-a-l, "An American Dilemma."

* * *

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Q. Now, Mr. Wilkerson, upon the completion of that study did you return to your post at Howard University? A. Yes.

(1806) Q. And for how long did you remain professionally there? A. For just about another year. I went on leave again for another—

Q. What year did you go on leave a second time? A. 1942 I think it was, yes.

The Court: What was the nature of the change that occurred then?

The Witness: At that time I accepted employment as an education specialist in the National Office of Price Administration.

Q. You mean the Office of Price Administration? A. Yes, the National Office in Washington.

Q. Now, how did you come to receive that appointment, if it was an appointment? A. Well, during the summer of 1942 the OPA I think at that time—yes—had an educational division and sought people to staff it, and I was invited by the organization to be a member of the staff.

The Court: This is 1942?

The Witness: Yes. This at first was just a summertime proposition, and I worked with the staff during that summer; and then in the fall I was asked to remain on full time during the year, and I did, and got leave from Howard University to do so.

(1807) The Court: That leave you got was in 1942?

The Witness: 1942 to 1943, yes.

Q. Altogether how long were you professionally connected with the Office of Price Administration? A. Just about a year, maybe a little more.

Q. And where did you perform your work for the OPA? A. Well, my office was in Washington, though I was traveling around the country quite a bit.

Q. Now, what was the title of your position? A. Educational specialist.

Q. And what in a general way was the character of your activities in that position? A. Well, the education

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division of OPA had as its purpose the utilization or the mobilizing of secondary schools and colleges to teach the American people the importance of the war-time economic control measures, price control, rent control, rationing, and how the public must cooperate for the purpose of maintaining the war-time controls in the whole war effort.

Well, my work involved primarily, not exclusively, work in the South in relation to the high schools and colleges for Negroes in that area, and with the OPA State Departments in the various southern States. What we were concerned with was seeing to it that there were developed through those institutions and through (1808) the OPA offices themselves in the South programs which fully brought the Negro population to the extent that we could into the Government's war-time economic program.

Q. I see. A. Consumer education, chiefly.

Q. Now, you say that that position required you to do some traveling, is that so? A. Yes.

Q. What kind of traveling? Would you state what kind of traveling you had to do? A. Oh, in the course of the year I visited, I guess, thousands of Negro colleges in different parts of the South; the OPA offices in most of the southern States; the secondary schools in many of those areas. I went to educational conferences in various parts of the country, speaking on behalf of the OPA educational program.

Q. Now, Mr. Wilkerson, in order to supervise what in part at least was a popularization or ready understanding of the need to integrate into the war economy various sections of the people, is it true that you had yourself to utilize, to understand and to present in popular form economic data of any character? A. Yes.

Q. Will you indicate a little bit the character of that data? (1809) A. Well, it was necessary to be familiar with what was happening to prices in the country; the effect that the OPA price controls were having on prices; what the effects of not maintaining those controls intact would mean to the prices, and the implications that would be for the war effort, for the consumer benefit, the comfort of the people, and that kind of material.

Q. And, of course, you had to be prepared, I take it, to be sufficiently equipped with an understanding and grasp

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of technical, economic data so as to be able to transmit in the course of your position for understanding by others the project of the Government, is that so? A. To some extent, yes.

Q. Now, when was your work completed for the OPA? A. I resigned in 1943, about the middle of 1943.

Q. And to what employment did you then go? A. I then undertook employment with the Communist Party in Baltimore, Maryland.

The Court: What did you say?

The Witness: The Communist Party.

The Court: Of Maryland?

The Witness: That is right.

Q. What was the nature of your employment there, sir? A. As educational director.

(1810) Q. Of what? A. Of the Maryland and Washington, D. C. Communist Party.

Q. And for how long were you employed in that capacity? A. Just one year.

Q. Now, was that full time employment? A. It was.

Q. All right. Now, what was, generally speaking, the nature of that employment? Was it educational work? A. It was. It was working primarily with the workers who comprise the Communist organization in Maryland and D. C. and interpreting to them Marxist-Leninist theory and its implications for the problems of our day.

Q. You had been a student, had you, of economic and social theory? A. Yes.

Q. You say that was full time employment? A. Yes.

Q. Now, after the lapse of that year or activity, to what did you then turn your attention? A. I moved into the editorship of a weekly newspaper.

Q. You became an editor? A. That is right.

Q. What was the newspaper? A. It was The People's Voice.

Q. And where was it published? A. In New York City, in Harlem.

Q. How often? A. It was published weekly.

Q. What was the nature of the newspaper, in a general (1811) way? A. It was a newspaper concerned primarily

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with news and comments of interest to the Negro people. It was not restricted to the events of Negro life. It was a progressive newspaper in that it crusaded for the better kind of a society that many of us are interested in building.

Q. That you believed in? A. Yes.

* * *

Q. I think you said that you were the editor of that newspaper, is that right, sir? A. Yes.

Q. For how long a period of time? A. I think I was there about three years, maybe four.

Q. So, in other words, that would span a period roughly from 1944 until 1947 or thereabouts? A. Yes.

Q. Of course, I take it you wrote for the newspaper, is that right? A. Surely.

Q. You will have to answer, Mr. Wilkerson—

The Court: He was the editor.

The Witness: Yes. For a period I was also the general manager of the paper.

* * *

(1812) The Court: You actually wrote a good deal of the material that was published in *The People's Voice*?

The Witness: I wrote all of the editorials, not much of the other material. Most of the other material was written under my supervision, and I edited it.

The Court: Yes.

Q. Where in New York was the paper published? A. It was on 125th Street just west of Seventh Avenue.

Q. And in what portion, if any, did the paper have its main circulation? A. In New York City. It had considerable national circulation, but chiefly in New York City.

Q. Then, I take it, after you left the editorship of that newspaper you became associated with the Jefferson School, is that right? A. I had previously been teaching off and on since about 1944, I think, classes at the Jefferson School now and then, but it was a little over a year ago or about a year ago that I accepted full time work there.

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Q. And you have remained there since that time, and you are at present in full time employment in the manner in which you have indicated, is that right, in that school? A. That is right.

Q. Mr. Wilkerson, are you a member or have you been, in connection with your professional work, professional (1813) employment, a member of any professional or technical organizations or associations? A. Yes.

Q. Will you indicate what the first one was and where it occurred, and when? A. There have been very, very many. One of the earliest was the Virginia Society for Research during the period when I was at the State College in Virginia.

Q. Will you say that again? I didn't hear it. A. The Virginia Society for Research. I was secretary-treasurer of that organization.

Q. What is that Virginia Society for Research? A. It is an association for the most part of college teachers in Virginia with some others involved who were concerned with research projects. We came together to read and criticize one another's papers; we undertook group research projects of a sociological nature and educational nature.

Q. And you were a member of that association and an officer? A. That is right.

Q. For how long were you associated with the Society? A. I don't remember. I would think three or four years.

Q. All right. What other— A. This was—

Q. Excuse me. A. This was back in the early '30s.

Q. Now, what other association or organization or (1814) perhaps official government committee or commission have you been a member of? A. I was research associate for the President's Advisory Committee on Education.

Q. When was that? A. About 1937, 1938, 1939, I think it was.

Q. What was this commission?

The Court: Just a second. What did you say your position was? Research assistant?

The Witness: Associate.

The Court: Research associate?

The Witness: That is right.

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Q. Would you indicate, Mr. Wilkerson, in general the nature of that committee? A. This was an inquiry which President Roosevelt authorized into the status of American education, and charged with the responsibilities of making proposals which, in turn, would go to Congress for the improvement of American education in the States.

Q. Who was in charge of that committee? A. Dr. Reeves. Floyd Reeves was the chairman.

Q. Do you recall the university or college with which he was associated? A. I don't know, I am sorry.

Q. And you were one of the research associates connected with and a member of that committee, is that right? A. Not a member of the committee, but a research (1815) associate. That is, I was there in the capacity of a research worker. The committee was a membership of people representing broad civic and other groups, and it engaged a professional staff to undertake this research work.

Q. I see. So that you were one of the members of the professional staff that actually did the work under the supervision of that committee? A. That is right.

Q. Now, what was the nature of the research work that you performed when you were connected with that committee? A. Well, my concern was to define as comprehensively as could be done on the basis of available data the status of education for Negroes in those States which have separate Negro schools. And that was with reference to many, many aspects of Negro education. Do you want fuller—

Q. Yes, would you indicate a little more fully what you had to do, to whom you reported, and the form in which your material was utilized by the committee? A. Well, we went into such questions as to the extent of segregation in education in public secondary and elementary and colleges in the country, where it was, and the conditions under which it obtained; we inquired into the extent to which Negro children who ought to be in school actually were in school; the kinds of schools provided for them; (1816) the amount of money that was spent for them; the qualifications and salaries of teachers. We went into certain aspects of higher education for Negroes, availability, opportunities, lack of opportunities, professional education—the whole question of public support of Negro schools from

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the state and local point of view and from the point of view of the Federal Government.

There are vast sums which the Federal Government spends annually in one way or other helping education in the States, and we traced all of those sums, that is, all of those different funds, to find out to what extent Negro schools in the South participated in such Federal expenditures. We—

Q. Now—excuse me. A. Well, that is enough I think to give you the general nature of the inquiry.

Q. To what extent did you have occasion to use, to resort to and use economic or social data in connection with your work as a research associate for the President's Advisory Committee? A. Considerable—

The Court: I think you had better define for me what you mean by social and economic data. You remember that phrase came up a little earlier and you told me you were going to explain it later, and if we are going to come to it two or three times I would like to understand just what he means by that.

(1817) Mr. Gladstein: Well, the witness has—

The Court: But if you prefer to wait, all right. It is just that in most cases lawyers feel that it helps them when the Judge indicates a thought that is continually holding back as he listens to the rest of the proof. Now, I don't want to urge you to pursue any different course than you desire, but I find that it is always the case with me if I have something that troubles me as I am listening, it just prevents my following the rest of the proof as intelligently as I could if it were explained. But you must have some reason for wanting to bring it up later, so I am perfectly agreeable to have you do so.

Mr. Gladstein: Very well, your Honor.

Q. Have you completed your answer to my question concerning this research work, Mr. Wilkerson? A. I believe your question asked not only the nature of the problem but also what it eventuated in in terms of the report?

Q. Yes, that is right. Will you be good enough to tell us? A. Yes. Well, the work that I did was published by

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the Government Printing Office as one of a series of monographs which the Advisory Committee on Education published appraising the status of education in the American States.

(1817-A) Q. Do you happen to know what the title of the monograph or the number of the monograph was? A. I don't remember the number. I think it was No. 12, but that might be an error. The title was "Special Problems of Negro Education."

(1818) Q. Now, Mr. Wilkerson, besides the work that you have just described as a research associate for the President's advisory committee, have you ever served in any other capacity for the Government in connection with research activities? A. The Government?

Q. Yes. A. I think not.

Q. Well, I will ask you, have you ever had any official connection with any advisory committee dealing with OPA education? A. Yes. I used to be a member of the National Advisory Committee on WPA educational program.

Q. Was that a Government appointment? A. Yes, but it did not involve research. It was rather policy making.

Q. When did you hold that position, by the way? A. I can't give you the exact dates. It was during the late '30s, I would say.

Q. By whom were you appointed? A. I don't remember. I know whoever was in charge of the program invited me to serve on that advisory committee, but I don't recall his name now.

Q. I see. Now, have you been active on any committees or associations connected with colleges or secondary schools? A. Oh, yes. I was a member of the Association (1819) of Colleges and Secondary Schools for Negroes and during one period this Association undertook a rather comprehensive curricular development program in—we called it—well, it was a curricular development program in Negro secondary schools in selected areas of the South, and I was a part of the committee in charge of that program.

Q. Were you ever connected with an organization called The Institute of Labor Studies? A. Yes.

Q. When was your connection with that Association? A. This was about 1939, 1940, 1941.

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Q. What was that institute? A. It was an agency concerned primarily with research work of the value particularly to the labor movement.

Q. What was the nature of the research work that the institute was interested in and which it performed or engaged in? A. Well, it covered quite a range.

Q. Will you indicate? A. The status, for example, of union organization; the question of collective bargaining and its status; matters affecting the trade union movement; it also went into such things as the living standards and trends with reference to the working class. In general this was the nature. This, by the way, was not a major agency. I do not even know whether it exists now, but for a couple of years or so there was some work (1820) in this particular field.

The Court: You mean a government agency?

The Witness: Oh, no. This was an independent, private agency.

The Court: I don't think I quite understand what that word "agency" means. Does it mean no more than that this was an organization or place where these activities were carried on?

The Witness: It means no more than the association of some people together to create what they call the Institute of Labor Studies to prosecute certain investigations.

The Court: That is what I thought.

By Mr. Gladstein:

Q. Now, in the course of the research, the work, the activities performed by the Institute of Labor Studies, do I understand correctly, Mr. Wilkerson, that a portion of what was done dealt with statistical data concerning prices, wages, trends and economic matters of that kind? A. That is right.

Q. What was your connection with the institute? A. Chiefly in an advisory capacity.

Q. Did you have a title? A. I was, I think, a member of the board of directors or a director of—or something of that sort.

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(1821) Q. Now, Mr. Wilkerson, are you the author of any books or portions of books or articles that have appeared in periodicals? A. I am.

Q. Will, will you tell us what book you have written any portion of which was published and available? A. Well, I have already called attention to "Special Problems of Negro Education," which was published by the Government Printing Office.

Q. Yes? A. Also along about 1940, I think, there was a volume published called "Sociological Foundations of Education." It was published by the Crowell Company.

Q. How is that spelled? A. C-r-o-w-e-l-l, I believe.

Q. Yes? A. I was one of the co-authors of that volume and wrote the portion of the book which deals with education and its relation to social problems.

Q. What else have you participated in the publication of or the writing of that has been published? A. There was a volume put out three or four years ago by the University of North Carolina Press with the title "What the Negro Wants," and I was also one of the co-authors of this and wrote one of the sections of the book.

Q. What, in general, is the nature of that book? A. This is an expression of varying points of view by Negro leaders in the society as to what they think (1822) the Negro people in this country want and how to get it. There was another—

* * *

(Short recess.)

* * *

Q. What were you about to say, Mr. Wilkerson? A. I believe you had asked me the books that I had either published or had been associated with the publication of.

Q. That is right. A. And I was about to list the study that I had—I think the title was Agricultural Extension Services for Negroes in the South. It was a study that I was invited to make by the Land Grant College Presidents' Association inquiring into the extent to which federally subsidized agricultural extension work was shared by the Negro people in the agricultural South in relationship to the extent it was shared by the white population of the

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South. That was published by the Association itself, the Land Grant College Presidents' Association.

Q. When? A. I think about—

The Court: The Land Grant—

The Witness: College Presidents' Association.
(1823) I think the exact title is this, your Honor: Conference of Presidents of Negro Land Grant Colleges.

* * *

The Court: What is a Negro Land Grant College anyway? A. I don't understand that phrase.

The Witness: Well, many years ago the federal government made grants of land to all of the States for the support of education of an agricultural and technical character.

The Court: Oh, yes.

The Witness: And on the basis of those grants institutions were established primarily for that purpose. In practically every State of the country there is at least one such institution. In the Southern States, where educational segregation is complete, there were two; one white and one Negro.

The Court: Yes.

Q. Now in order to make that study, Mr. Wilkerson, was your work—by the way, was your work research work? A. It was.

Q. Now, was it confined in any way or did it necessarily entail your dealing with statistical data that covered colleges generally? A. Yes, it did.

(1824) Q. The latter. What kind of data were you required to obtain and utilize in connection with that publication? A. In general, and I don't remember at this point all the details of the inquiry, but it was necessary to find out for various years how much federal money was appropriated to the several Southern States for agricultural extension work; to find out what types of agricultural extension work that money went for; to find out how much of it was spent in sponsoring extension work among Negro farmers as compared with that that went for agricultural extension work among white farmers.

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Q. In order to make that comparison you had to go then to the facts concerning both the white farmers and the Negro farmers; is that right? A. That is right. Chiefly using federal records, but also using many state records.

Q. Now have you published periodicals, published in periodicals? A. Oh, yes.

Q. Would you indicate some of the articles of which you are the author and which have appeared in published form? A. Well, take one or two or three that appeared in the Journal of Negro Education as a sample of a whole lot that appeared there. I remember one in a year book number, I think it was about 1936, I am not sure, the year book of the Journal of Negro Education which was (1825) devoted to the whole question of the relative mental—or the comparative mental and physical abilities of white and Negro populations of America. I had a part of that volume to write dealing with the special question of the alleged racial differences in scholastic ability. That was one—

Q. Before you leave that, Mr. Wilkerson, what was the nature of the professional activity that you were required to engage in and the type of data or material that you had to handle or subject to analysis in order to develop this report? A. Well, this had to do chiefly with psychological data; the whole realm of intelligence testing and comparative white and Negro intelligence testing. There is a vast body of material that has been developed in this. It had to do with school scholastic scholarship records and particularly with achievement records as measured by standard achievement tests for white and Negro children in different fields, and the like. Chiefly these.

Q. Technical material? A. Yes.

Q. All right. Would you continue, please? A. I remember an article also in the Journal of Negro Education on the Participation of Negroes in the Federally Subsidized Vocational Rehabilitation Program. This was a study very much like the one I did for the (1826) Conference of Land Grant College Presidents, only it dealt with the vocational rehabilitation field.

There was, I remember, when in Virginia, quite a lengthy article that had to do with the relative efficiency of educational systems for white and Negro children. I

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think we called it a Racial Index Number of Educational Efficiency for the 120 Counties in the 23 Cities of Virginia.

There have been others. Do you want me to—

Q. Regarding the one that you were just talking about, Mr. Wilkerson, do I correctly understand that in order to prepare the material required for that project that you were not confined to a study of data that affected only the Negro students or the Negro population, but that in order to indicate your comparative survey you had to go to all of the material, all of the data that applied generally; is that true? A. Oh, yes.

The Court: Let me just understand. Are you still talking about this article on the participation of Negroes in the rehabilitation program?

The Witness: No.

The Court: What is that?

The Witness: No.

The Court: You are back on that year book?

(1827) The Witness: No.

The Court: Well, then, there has been a little transition here that I did not notice.

Mr. Gladstein: The witness said, your Honor, that there was one publication which he characterized as involving the Index Number of Relative Efficiency, as I understood him to say, and that involved the examination of data concerning some 100 or more systems of schooling in various counties.

The Court: Is this an article published in some magazine? I thought that was the subject that you were now on.

Q. Is that true? It is? A. I think it was published in the Virginia Teachers' Bulletin.

The Court: Virginia Teachers' Bulletin. And what was the title of that?

The Witness: As close as I can remember, a Racial Index Number of Relative Educational Efficiency for the County and City School Systems of Virginia.

The Court: Just a second. What was the word before "County"? City and County?

The Witness: Yes, sir.

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Q. Have you completed—

The Court: You say you examined all available (1828) data for that study. I don't think I quite understand that.

The Witness: I did not say that. But I think you are perhaps—

The Court: Just a moment. We will find out the phrase you did use. It was something like that. It was some comprehensive expression that seemed to me perhaps to be more inclusive than the witness intended. I think it was in the question formulated by Mr. Gladstein.

Mr. Gladstein: Undoubtedly, your Honor. If the mistake was made, I made it.

(The question referred to, beginning with the words "Regarding the one that you were just talking about, Mr. Wilkerson," was then read.)

The Court: "All of the material, all of the data." I do not quite understand how anybody could do that. So I would like to have you explain what you mean by "all of the data" and "all of the material."

The Witness: Yes. This was not my phrase but counsel's phrase.

The Court: I know.

The Witness: Specifically what that involved was this. We were concerned with whether or not in the various counties and cities of Virginia the public school provisions for Negro children were comparable (1829) to those for white children. The general approach was to get certain basic indexes of the educational efficiency. I think there were five or six different things that were used.

The Court: How much they pay the teachers, for example?

The Witness: That is right. We got such information from official records, usually State Department Education records and federal records for the Negro schools and for the white schools.

The Court: Yes, I understand.

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The Witness: And compared them.
 The Court: Very well.

Q. Have you completed, generally, illustrating the articles that you have authored which appeared in periodicals or which have been published in one form or another?
 A. Well, there have been many others. I might state another one, if you like.

The Court: Why don't you let it go at that?
 If there is some special one you want to get in—
 Mr. Gladstein: All right.

Q. I will ask you to come back for a moment to the period when you were editing the People's Voice. Would you indicate, if you will, Mr. Wilkerson, one or two of the persons who likewise wrote for that newspaper? (1830) A. There was a columnist, Dr. W. E. DuBois.

Q. Who is he? A. He is an eminent American historian. Congressman Powell was one of the owners of the paper and used to write for the paper. There were—shall we go on?

Q. Was that Congressman Adam Clayton Powell, New York? A. Congressman Adam Clayton Powell, New York, of the 22nd District.

Q. In connection with the work that you have already indicated that you have been involved in, these studies that were made, and the things that you have published, the activity you had to engage in before you could prepare for publication, is it correct that it was necessary for you to develop a familiarity with census data, government publications of a technical character involving the accumulation and classes of statistics, matters of that kind? A. That is correct.

Q. Well, now, will you indicate in a little more detail the character of the statistical data that you have worked with and become familiar with? A. Well, that calls for quite an answer, but maybe you don't want it in too much detail. But census publications on the population, distribution of population geographically, on the educational status of the population, (1831) on the occupations of the population—

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Q. Well, now, let me interrupt you to ask you a question about the occupations of the population. What kind of material or technical data, either from the census sources or other sources, have you had to work with? A. The census publishes a special report on the labor force which defines for different political units the occupational—the number of persons in different occupational categories. Is this what you are at?

Q. Yes.

* * *

The Court: I think counsel means, besides the census publications what were the others that constituted the statistical data with which you became familiar?

* * *

A. There are many kinds of data. Take the Federal Office of Education. It publishes a whole series of reports, notably its Biennial Survey of Education in the United States which deals with various types, like the (1832) state school system, colleges, universities and what have you. I have had to use these pretty constantly over many, many years; various kinds of statistics about the education system of America.

Q. What about statistic records on wages, prices, economic factors of that kind? A. I have had occasion to use materials put out by the Bureau—Department of Labor—what is it?

Q. BLS. A. BLS.

Q. Bureau of Labor Statistics, is that right? A. Correct.

Q. Dealing with subjects such as— A. Wage levels, trends, and income levels and expenditures of workers' families, for different types of living expenses.

Q. Have you had occasion to familiarize yourself with publications of the Federal Reserve Board? A. To some extent, yes; particularly its recent 1948 survey of consumer income.

The Court: This is the Federal Reserve Bank?
The Witness: Federal Reserve Board.

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Mr. Gladstein: Board.

The Court: Federal Reserve Board.

Q. I am not sure that that is the official title but it emanates from the Federal Reserve Board, is that (1833) right, Mr. Wilkerson? A. Yes.

Q. Have you had occasion to—

The Court: Just a second. What kind of statistics are those?

Mr. Gladstein: He said income, your Honor.

The Court: Income statistics. All right.

The Witness: Yes.

Q. Have you had occasion to do any work involving the study and handling of statistical data in connection with voting, poll tax, matters of that kind? A. Yes, I have.

Q. You were asked by the attorneys for the defense in this case to make a study; that is correct, is it not? A. Yes.

Q. Will you indicate in a general way what the nature of that study was that you were asked to make? A. Well, specifically, members of the defense staff asked me to give guidance in certain types of inquiries that they were interested in, which I did for a while in an offhand manner, that is, occasionally, and more recently more intensively.

The Court: You mean the defense staff here?

The Witness: Yes, that is right.

Mr. Gladstein: In this case.

The Court: Not the poll tax. You are past the poll tax.

(1834) Mr. Gladstein: That is right.

The Witness: You want to know what it was that we were studying, is that it?

Q. Yes. I want you to indicate, rather than my saying what it was, the nature of the study or project that you were asked to give us your guidance on, and develop for the Court here. A. Well, basically I was asked to deter-

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mine certain characteristics about the population in the Southern District of New York, embracing primarily Manhattan, Bronx and Westchester, not exclusively. Such things, for example, as its distribution geographically among political units, such as its occupational characteristics. I was asked also to inquire into certain facts about certain characteristics of people who had been called to serve on petit juries in the Southern District.

Q. In other words, you were asked in effect, if I can reword this, to take materials to be supplied and subject them to analysis and breakdown, those materials being lists of jurors as put out by the clerk's office in order, simply, to bring out the facts as to what their occupational distribution, geographical distribution and so on was; is that right? A. That is right.

(1835) The Court: What is "and so on"?

Mr. Gladstein: Well, we will come to that in a moment.

The Court: All right.

Mr. Gladstein: All right. I will—

The Court: I do wish sometimes you would give me a little help on these things. Every time I ask a question you either refuse to answer, you and your colleagues, or you say you will come to it sometime. I really don't think that is entirely fair to the Court.

Mr. Gladstein: I will ask the witness to indicate in detail, then, your Honor. I don't want you to feel that I am keeping you in the dark. To the contrary, we are trying to enlighten the Court.

The Court: I think it is obviously to your interest to enlighten me as we go along. And I am trying to follow this with the utmost care.

Mr. Gladstein: Yes. Very well.

The Court: So perhaps you can tell me what that "and so on" is.

Q. Would you be good enough, Mr. Wilkerson, to list in more detail what I have subsumed in the expression "and so on"?

The Court: You see, we have got the geographic part, the occupational part.

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(1836) Mr. Gladstein: That is right, your Honor.

The Court: And the rest is the "and so on."

A. The distribution of the population and of jurors according to categories of rent paid. This was one of the aspects of the inquiry that we went into. The whole question of the characteristics of certain small administrative units known as health areas in the City of New York and the incidence of different characteristics of the population in those areas and the incidence of juror selection in such areas. This we went into. We went in—

Q. In other words— Excuse me. Go ahead. A. We gave some attention to the extent to which jurors were chosen from Harlem and certain other areas of the community where predominantly Negro people live.

The Court: That is the geographical part.

The Witness: That is related thereto, yes. Does that suffice, your Honor?

The Court: Yes, I think so.

The Witness: There probably was certain—

The Court: I think so. There are a number of categories that come into a miscellaneous group—

The Witness: That is right.

The Court (Continuing): Such as the ones that you just described to me and that you meant to cover by (1837) those words "and so on." That is entirely satisfactory and clear.

The Witness: Thank you.

Q. Now this analysis of facts, do I understand correctly that the information obtained regarding jurors was subjected to that analysis from these various points of view and that the same thing happened with respect to the population of the Southern District; is that true? A. That is true.

Q. Now did you have occasion—were you asked to lend supervision and guidance in connection with that study to reveal what the facts were concerning, for example, voting records and the numbers of those who were gainfully occupied? A. You are thinking of the general population area?

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Q. Yes. A. Yes.

Q. Now, in order to make such a study, Mr. Wilkerson, what sort of materials were necessary? A. A great many.

Q. Would you indicate the kind of material? A. Just the general kind of material?

Q. Yes. A. Well, it was necessary first to get information about who are the people who have served on jury panels in the Southern District.

Q. Yes. So you asked us to supply— A. To supply jury lists for a sample of the panels (1838) during, oh, the past decade. It was necessary also to utilize many census publications.

The Court: Many what?

The Witness: Census publications.

A. (Continuing): Census reports on population, characteristics on characteristics by age, on the labor force, on health areas, on rents, housing; a series of publications of the Census Bureau. It was essential to use certain data concerning the distribution of the voting population in the area, chiefly as reported by the—what do we call it? Board of Elections in New York City and in Westchester County. We had to use certain materials, maps, charts, that sort of thing.

The Court: You mean, supplied by the Board of Elections?

The Witness: No. I mean—

The Court: The ones that you made up?

The Witness: Yes.

The Court: That is right.

Q. In part is it true, Mr. Wilkerson, that part of the project was to ascertain the extent, just in a few samples, to which it could be found and determined that persons who were on the jury lists belonged to or were listed in particular so-called select directories or sources such as the Social Register and things of that kind? (1839) A. Yes, that is right. A directory of executives. We inquired into the effects of the utilization of Telephone Directories, for example, the relationship of jury selection thereto.

Q. Now ultimately—

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Mr. McGohey: I beg your pardon. May I have that answer read, please, just the last answer.

(Answer read.)

Mr. McGohey: Thank you.

The Court: In other words, as I get the picture you tried to take lists of jurors and then worked back to show how they were selected?

The Witness: No. The specific task I was asked to perform was to tell us certain things about the people who have been chosen as jurors, certain characteristics in terms of their geographic distribution, and many other indices. This is basically what I sought to do.

Q. And, simply, things concerning the population as a whole? A. That is right.

Q. And the voting population particularly? A. Right.

Q. That study, of course, was ultimately completed and takes various forms, is that right? A. Yes, it does.

Q. Mainly maps, charts, tables and material of that kind, isn't that so? A. That is right.

(1840) Q. Now, in the testimony that we are going to ask you to give on that subject, would it be helpful to you to refer to—from time to time refer to some of the original source materials that were used? A. It would.

* * *

(1842) Q. Now this challenge exhibit 8 for identification, Mr. Wilkerson, am I correct that this was one of the original source materials to which resort was had for the purpose of obtaining official government figures in connection with the study that you supervised and prepared for us? A. Yes.

Q. Is there any special portion of this that you want to call attention to at this time? A. No.

Q. All right.

Mr. Sacher: Mr. Gladstein, will you read that? It was not read very loudly and we all didn't hear it.

Mr. Gladstein: It is a publication of the United States Government Printing Office, Washington,

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1943. It is entitled "Population, Fourth Series, Characteristics by Age, Marital Status, relationship, education, and citizenship, New York." And it is put out under the imprimatur of the U. S. Department of Commerce, Bureau of Census, and is a portion of the (1843) 16th Census of the United States, 1940.

* * *

Q. Now, Challenge Exhibit 9 for identification, Mr. Wilkerson, is entitled "Population, Third Series, the labor force, occupation, industry, employment and income, New York," also a publication of the United States Government Printing Office, also from the Bureau of the Census, and referring to the 16th Census of the United States, 1940.

That, too, was one of the official documents, official sources to which resort was had for official data and statistical and other economic material in connection with this survey or study that you made? A. Yes.

* * *

Q. Challenge Exhibit 10 for identification is entitled "Population and housing, statistics for health areas, New York City. Prepared by the Bureau of Census, published by the U. S. Government Printing Office," referring again to the 16th Census of the United States, 1940.

(1844) Is it true that this Exhibit No. 10 was likewise utilized in connection with the study that was made? A. Yes.

* * *

Q. Now Challenge Exhibit 11 for identification is a book entitled "Statistical abstract of the United States, 1947." It purports to have been published by the U. S. Department of Commerce, Bureau of the Census, U. S. Government Printing Office published it, it is the 68th edition of such abstract, and is a book of some more than 1,000 pages.

Was this, too, utilized and the material contained in it utilized in connection with the study that was made in this case? A. Yes.

* * *

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(1845) Q. Mr. Wilkerson, the Bureau of the Census has put out, has published what it calls "Supplements" to its various series on the various types of breakdown of the population. Isn't that so? A. Yes.

Q. Now, Challenge Exhibit 12 for identification is entitled "Housing, supplement to the first series, housing bulletin for New York, Bronx Borough, New York City, Block statistics," also put out under the aegis of the Department of Commerce and published by the United States Government Printing Office in 1942.

Was this publication likewise utilized in connection with the facts, figures and data prepared in connection with your study? A. It was.

* * *

Q. Challenge Exhibit 13 for identification is entitled "Housing, supplement to the first series, housing (1846) bulletin for New York, Manhattan Borough, New York City, block statistics"; again a publication of the Bureau of the Census, published in 1942 by the United States Government Printing Office.

Is it true that this publication likewise was used for the purpose of extracting therefrom certain statistical and other types of data which were utilized in the survey which you supervised? A. Yes.

* * *

Q. Mr. Wilkerson, Challenge Exhibit 14 for identification, likewise a publication of the United States Government Printing Office, by the United States Department of Commerce, Bureau of the Census, referring to the 16th census of the United States, is entitled, "Population and housing statistics for census tracts, Yonkers, New York."

Did you have occasion to utilize information contained in this exhibit in connection with any portion of the project or survey that you supervised? A. Yes.

* * *

(1847) Q. Now Defendants' Challenge Exhibit No. 15 for identification, also a publication of the Bureau of the Census, referring to the 16th Census, is entitled, "Population, second series, characteristics of the population, New

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York," and published in 1942 by the United States Government Printing Office.

Is this Challenge Exhibit one from which statistical data was obtained, and other data, for the purpose of being and actually being embodied or incorporated within tables or charts or maps or documents that were prepared under your supervision in connection with the study for the defense here? A. Yes.

* * *

(1848) Q. Now Mr. Wilkerson, the next exhibit for identification is No. 16, and it is a book of some 600 pages or thereabouts. It is entitled "Alphabetical index of occupations and industries. Occupation and industrial classifications based on the respective standard classifications, 16th Census of the United States, published by the Bureau of the Census through the Government Printing Office at Washington in the year 1940."

Was this Exhibit 16 for identification likewise used in connection with the study that you have referred to? A. It was.

(1849) Q. In general, what is this document? A. That is a manual published by and used by the Census Bureau in classifying specific occupations into occupational categories which they have set up.

Q. In other words, by way of illustration, if a man is a barber or an architect— A. You would look under the B's for the barber and you would find a code number which would refer to certain categories of occupations and indicate his classification.

Q. Or to put it differently, the occupational characteristics of our society in terms of what people do are set forth in literally hundreds of different described occupations, isn't that so? A. Thousands of listed occupations.

The Court: Suppose he is a salesman, you would look up salesmen?

The Witness: You would look up salesmen.

The Court: Let's do it.

(Book handed to Court.)

Mr. Gladstein: Your Honor will probably find dozens—

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The Court: It gets a little complicated, doesn't it?

Mr. Gladstein: There are lots of kinds of salesmen.

(1850) The Court: It certainly is complicated. It looks like my work was cut out for me here.

Mr. Gladstein: You, your Honor, were a pioneer in the field in the Fay case, but just by a hair you missed proving the entire case. We have profited from that experience.

The Court: I am glad to see you are really sawing wood at last.

Mr. Gladstein: You know, where I come from, your Honor, sawing wood means that a man is sleeping and snoring. I don't think you meant that, did you?

The Court: Well, this is a different kind of wood sawing.

By Mr. Gladstein:

Q. Now, Mr. Wilkerson, this last exhibit, No. 16, if I understood you correctly, gives you a key, it is an index of all of the various types or titles of work that the population in our country does, is engaged in, and by referring to this document you can determine in what class or group or stratum of our society, speaking occupationally, a particular type of job falls, is that right? A. That is right.

* * *

(1851) Q. Challenge Exhibit 17 for identification is entitled "Classified Index of Occupations, 16th Census of the United States, 1940," and is a booklet of some 200 pages or thereabouts, published by the United States Government Printing Office, Bureau of the Census.

Did you have occasion to use that in connection with this study? A. Yes.

Q. What is this document? A. That gives the same information the alphabetical index you just referred to gives, only here occupations are classified by industries rather than by alphabetically, and gives the code numbers by which the census determines the classification of a particular occupation.

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Q. So that, in other words, in this one, Exhibit 17, you get the classification and the breakdown underneath it? A. That is right.

Q. Whereas in the other you have an alphabetical listing of the particular occupations with reference to the (1852) classification? A. That is right.

The Court: Are the industries arranged alphabetically?

The Witness: No.

The Court: Where will I find "Telephone"?

The Witness: Under "Transportation and Communication."

The Court: "Transportation and Communication"?

The Witness: Yes.

* * *

The Court: Well, I guess I better relax and get to that in due time. On the reference to 55, there were three or four 55s in there, and none of which refer to what I was looking for so I think I better relax and wait until we get around to it.

* * *

(1853) *By Mr. Gladstein:*

Q. Challenge Exhibit 18 for identification is a book of some 1500 pages entitled "Legislative Manual, New York, 1947," published by the Albany Williams Press, Incorporated, Printers, 1947, and being entitled fully "Manual for the use of the Legislature of the State of New York 1947 Prepared to the provisions of Chapter 23, Laws of 1909 by Thomas J. Curran, Secretary of State."

Was that exhibit for identification used in connection with the study? A. It was.

Q. In what way? A. This is the manual? Yes, primarily for official definition of congressional district boundaries.

Q. Which would then be indicated by certain maps in Manhattan and the Bronx, is that right? A. Yes.

* * *

(Short recess.)

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(1854) *By Mr. Gladstein:*

Q. Challenge Exhibit 19 for identification, Mr. Wilkerson, is entitled "1946 Annual Report of Board of Elections in the City of New York, including the registration by Counties and Assembly Districts, the enrollment by parties, counties and assembly districts, the 1946 City and County canvass, the roster of Congressmen, State Senators, Assemblymen, Councilmen and Elected State, County, Borough and City Officers" prepared under the direction of the Commissioners of Elections pursuant to Section 34 of the Election Law and appearing under the imprimatur of the Board of Elections, City of New York

I will ask you whether this exhibit was used—that is, information contained within it was used in connection with the study you are testifying about? A. It was.

* * *

(1856) *By Mr. Gladstein:*

Q. Now the next exhibit number is Challenge Exhibit 20 for identification. It is a book which is entitled "New York City Market Analysis," compiled and copyrighted 1943 by News Syndicate Company, Inc., the New York Times Company, Daily Mirror, Inc., Hearst Consolidated Publications, Inc. It does not indicate the publisher except in that general manner. I assume it was by the newspaper.

The Court: That is ample.

Q. (Continuing): Now, I will ask you whether Exhibit No. 20 for identification was used in any manner for the material it contains in connection with the study that was prepared? A. It was.

* * *

Q. Mr. Wilkerson, Defendants' Challenge Exhibit 21 for identification is entitled "Manhattan Address Telephone Directory, November 12, 1948," published by the New York Telephone Company, copyrighted 1948 by that company. I will ask you whether this exhibit was utilized in any manner in connection with the study you have been (1857) describing here? A. It was.

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Q. What is there about this particular telephone book that differentiates it from the one in my hotel room which lists people alphabetically by their names? A. In that this lists them by their addresses. That is, it is organized by streets, and street numbers, and you would return to this book to find out who lives at such and such an address on such and such a street, and what his telephone number is.

Q. Does this illustrate what you mean: I notice that on page M470 there is a section which commences Sutton Place, and another which commences Sutton Place South, and underneath Sutton Place they then say East 57th, and then they give numbers on the left to indicate the address number on that street? A. That is right.

Q. And then the name of the person who occupies the premises there, is that right? A. Yes.

Q. And then thereafter the telephone number? A. Correct.

* * *

(1858) Q. Mr. Wilkerson, Challenge Exhibit 22 for the defense is entitled "Poor's Register of Directors and Executives, United States and Canada," and this one is 1949, published by Standard & Poor's Corporation, 345 Hudson Street, New York 14, N. Y. I will ask you if this exhibit was utilized in any manner in connection with the study which you prepared and will testify about here? A. It was.

Q. What in general is this voluminous and very heavy book of some 3000 pages? A. It is a sort of a Who's Who of Directors and Executives.

Q. Of corporations? A. Yes.

* * *

(Recess to 2:30 p. m)

Colloquy of Court and Counsel

(1859)

AFTERNOON SESSION

DOXEY A. WILKERSON, resumed the stand.

The Court: Now a little incident occurred this morning about which I will have no mystery. Due to the numerous communications of one kind or another that have been arriving up at my home my wife came down here this morning. I suppose I should have told her not to, and it is my fault, but she did. And, then, there was a little disturbance here due to a woman who saw the empty seats over on the side where the press have their location and she felt she was entitled to go there and made a little, slight disturbance with the bailiffs. And so my wife sent this note to the police which reads, "Tell Detective Mitchell to guard the Judge at lunch hour." And as the messenger proceeded with the note one of the alert reporters was able to get a hold of the note, and so the rumors started around the building, and goodness knows where else they have gone.

As to the woman who desired to sit on the other side where the empty seats are, I noticed the matter and I sent a little communication of my own to the bailiffs to tell them to leave her alone. I thought she was right. I saw her during the recess hour in (1860) my chambers, and I told her that I thought she was right, and that while those members of the press were not occupying the empty seats perhaps it was only reasonable to have the last row at least made available to those who were waiting to get in.

Now, that is all there is to it. There is no mystery. There is no danger. I haven't felt the slightest concern about the communications I have been receiving. And there it is.

I have no notion that any of those communications have been inspired by the defendants or by any of their counsel. I do not feel that I am in any personal danger at all. But if I am wrong, I shall face the risk calmly and I shall do my duty.

Colloquy of Court and Counsel

Now I think perhaps it is apparent to everyone that the character of the accusations that have been made against me here from day to day and the extravagant charges that have not only been made once or twice but repeatedly and emotionally and loudly may well cause some misguided and poor people or others to get a wrong impression of the administration of justice and of what I am doing. I have no great opinion of myself as an individual. I do have great respect for the office which I hold. I represent here not the rich, not the poor, but all the people and the majesty (1861) of the Government of the United States. And I am cognizant of that and I am trying to do the best I can, to be just and to be fair according to my lights. I may make mistakes, I suppose I often do, but I can only do my best.

You may proceed with the trial.

Mr. Sacher: If the Court please, I think we too, both the defendants and defendants' counsel, have received a series of letters with threats of violence against ourselves, our wives and our children. Indeed, when I returned to my home at one o'clock this morning my wife greeted me, not with a note to a detective, but with several letters.

I might in passing say that your Honor may have received crank notes. I am sure that they were not inspired by anything we said or did. And in that connection I may say that so far as the defendants are concerned they have received much more than crank notes. You will recall that in one of the arguments I pointed out—

The Court: I am glad you can tell the difference—

Mr. Sacher: Will your Honor—

The Court: I am glad you can tell the difference between a crank note and others. But I am not disposed to have argument about everything.

(1862) Mr. Sacher: I know, your Honor.

The Court: May we not even pass this incident without extended discussion?

Colloquy of Court and Counsel

Mr. Sacher: Your Honor, you made an extended reference to it, and yesterday you said you were not a fearful man.

The Court: I am not.

Mr. Sacher: All right. Then I should say there was no occasion to express this concern because you may have gotten a few cards. I would like to point out however that the defendant Thompson actually felt the incision of the knife of a felon and that his little daughter felt, too, the cruelties of those who had been inspired actually to perpetrate violence on the defendants. And in those circumstances I respectfully submit, your Honor, that it is not only appropriate that you should say that you have no notion that nobody connected with the defense has inspired them, but perhaps it might be well for your Honor to give recognition to the fact that some of our defendants have already felt the lash of persecution and of personal attack; and that in the circumstances it is equally important, in view of the fact that under our system of government all men are equal, that the right of the defendant Thompson (1863) and his children should be equal to the right of your Honor and his wife and his children.

The Court: I think so.

Mr. Sacher: And that violence to Mr. Thompson or any other defendant is as much a concern to your Honor, who professes to be a Judge of the rich as well as the poor or of all of the people—I forget at the moment what your Honor's precise formulation was, but be that as it may, I think it is as of much concern that violence has already been perpetrated against us as that you have received some of these notes.

And with that, your Honor, I shall be quite happy if the incident is closed and forgotten.

The Court: Perhaps we are all drawn into the vortex together.

Mr. Sacher: That may be.

The Court: However that may be, I shall do my duty as well as I can.

Let us go ahead with the rest of the trial.

* * *

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Direct examination continued by Mr. Gladstein:

Q. Mr. Wilkerson, Defendants' Challenge Exhibit for (1864) identification No. 23 is entitled "The Election Law being Chapter 17 of the Consolidated Laws as Amended"—I will skip the rest of the title—1948 for the State of New York, and prepared under the direction of the Secretary of State, published at Albany in 1948. Was this exhibit used in any connection, or in any manner in connection with the—

Mr. Sacher: Mr. Gladstein, now we can't hear you.

The Court: Now (that is a strange accusation, Mr. Gladstein, because your voice is very penetrating and pleasant.

Mr. Sacher: Why, your Honor, I must say, however, that I did not hear Mr. Gladstein. He was speaking so softly.

The Court: I don't doubt it. That is all right.

Mr. Gladstein: Perhaps the newspapers should take note. They have been saying that I am very loud and brash, and so forth, but it does not really matter to me personally, your Honor.

The Court: No, we must not worry about what the newspapers say about it.

Mr. Gladstein: There would be very little to entertain us if we took too seriously what some of them say.

The Court: You know, I have often felt, as I (1865) have often expressed myself here, that it is better not to be stuffy. I try not to be.

Mr. Gladstein: All right.

By Mr. Gladstein:

Q. Now I will ask you, Mr. Wilkerson, whether this document, the Election Laws of the State of New York as of 1948 was used in any manner in connection with the study that you supervised and guided and will testify about here? A. It was.

Q. Now, in what connection, generally? A. Primarily to ascertain the legal requirements for voters.

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Q. And with respect to exemptions or otherwise? A. From voting?

Q. Yes—oh no, excuse me, that is not correct. That was the question of the qualifications to vote, that is, age and other qualifications, is that right? A. Yes.

* * *

Q. The next exhibit number is No. 24. Mr. Wilkerson, it is entitled "The Social Register, New York, 1949," (1866) but as of November 1948, a book of about 1000 pages, more or less, published by the Social Register Association, 381 Fourth Avenue, New York 16, N. Y. I will ask you if in any manner in connection with the projection and survey and study that we are talking about occasion was had to reference to the contents of this or like issues of previous years of the Social Register? A. Yes, we did.

Q. In general, what is the nature of the contents? A. It lists persons who, judging from what I understand to be the purposes of the document itself, who rate socially in the community.

Q. That is, they have been named as included within the high or highest social levels in the Social Register? A. Yes.

Mr. Gladstein: Your Honor will be interested to note that at page 509 of this edition, your Honor is listed as a member of the Social Register.

The Court: Yes, I knew that was coming.

Mr. McGohey: Would you be good enough to look and see if the District Attorney is or is not?

Mr. Gladstein: Do you know the answer, Mr. McGohey?

Mr. McGohey: No. I never looked in the Social Register.

(1867) Mr. Sacher: If he has not looked, he is not in it.

By Mr. Gladstein:

Q. Now, on the question of the actual geographical distribution of the population on the one hand in New York, Bronx, and Westchester, and of the geographical location

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or distribution of persons on jury lists of the Southern District of New York, Federal Court, state, Mr. Wilkerson, if you asked that we obtain from the clerk of the court here copies of panels or lists which represented the names of jurors who had served or had been called on to serve in this court? A. We did.

Mr. Gladstein: And I will state for the Court—Mr. Wilkerson was not personally present in the clerk's office when this occurred—I will state that these requests were made of the Office of the Clerk; that we were referred to Mrs. Mahoney—Mrs. or Miss Mahoney, I don't want to do her an injustice either way, your Honor; it is Mrs. or Miss Mahoney—and it was from her I obtained from time to time three different types of copies of lists. First, where the office had available to us for purchase a copy typed up by the clerk's office of a list of the names and addresses and (1868) occupations of jurors, those were supplied for a varying period of time. Where no such copies were available, for example—that is to say, where they simply had one copy that they wanted to retain, in some instances we asked for and obtained permission to have photostat copies made of the lists in the possession of Miss Mahoney, the photostating being done by somebody in this building, I take it someone that is used by the clerk's office or by the United States Attorney's office, after which we were supplied with those and paid for them.

And the third type occurred as a result of our seeking and obtaining permission to have some stenographers set up some typewriters and simply copy off lists that were available, as the result of which there was obtained a series of lists that I will have the witness identify, and subject to any check that is desired to be made, these represent what we got from the clerk's office.

The Court: What do they purport to be? Would you care to state as to that, or would you rather wait?

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(1869) Mr. Gladstein: No, I will be very happy at this time. I can take an example, for example. I have just pulled out one which reads this way, and all of them read substantially this way: This one says "9:30 a. m., Petit jury, Room 109, August 16, 1948, Honorable John C. Knox, D. J. Southern District of New York, ss., Panel of petit jurors for a district court of the United States for the Southern District of New York to be held at the United States District Court in Room 109, United States Courthouse, Foley Square, in the Borough of Manhattan, in the City of New York, on the 16th day of August, 1948, at 9:30 o'clock in the forenoon. Drawn by the Clerk on the 6th day of July, 1948, in conformity with the statute in such case made and provided and the order of said Court."

Thereafter, your Honor, appears in three columns on that page, the balance of that page, and a succession of pages thereafter, the following things:

The first column to the left under the designation "Name" appear in alphabetical order the list of names of persons.

The second column is entitled "Occupation" and in that column, opposite each of the names of the jurors is given an occupational description. By way of (1870) illustration this one reads as follows—the first few: "Housewife; telephone engineer; geologist; assistant to president; manufacturer; merchant," and so on.

The third column is designated "Address" and here is given the address for the particular juror and, in some instances, in most instances, two addresses are given. One is the residence of the juror and the other is the business address of the juror in some indicating the name of the firm with which the juror is associated.

By way of illustration from the one that I am reading, the sixth name down the list is "Bauer, Bernard." He is designated as a merchant. In the

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column that is designated "Address" there is to be found the following: "336 Central Park West, New York, N. Y.; 374 Broadway, New York, N. Y., Winer & Bauer."

Now, I might at this point ask that the one that I have been reading from, your Honor, be marked for identification, or perhaps I should have them in chronological order. Perhaps it would be better if I did that as to the jury lists.

The Court: You can do it whichever way you like.

(1871) Mr. Gladstein: All right, let us do it that way. I just happened to pick this one, and I see that it is a 1948 one, so it would be out of order. Your Honor will bear with me a moment so I can get a list which shows the order in which they were obtained?

The Court: Yes.

The Witness: It may be that this will help counsel. May I give it to him?

The Court: Yes. The witness suggests he has something which he thinks will help you.

(Witness hands paper to Mr. Gladstein.)

Mr. Gladstein: Thank you, Mr. Wilkerson. Will you mark this, please.

(Marked Defendants' Challenge Exhibit 25 for identification.)

Mr. Gladstein: Perhaps I should have them marked in order, your Honor, and if your Honor desires—I regret that it is going to take a couple of minutes to do this, but we can arrange them in order, if you like, and take a five-minute recess.

The Court: Well, we will take a five-minute recess while you arrange them. That is entirely satisfactory.

(Short recess.)

(During the recess Defendants' Challenge exhibits were marked for identification as appears hereinafter.)

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(1872) Mr. Gladstein: Now, if your Honor please, with the permission of the Court, upon discovering that the last numbered exhibit for identification No. 25 was one which was partially in the handwriting of someone who had started to copy from the lists, the official lists in the clerk's office, I ask permission to withdraw that and substitute in its place the panel for January 17th, 1940.

The Court: You may do that.

Mr. Gladstein: Thank you, your Honor.

(Substituted copy marked Defendants' Challenge Exhibit 25.)

Mr. Gladstein: And there has been marked, and if I may I will summarize it and that will save time—there has been marked in evidence therefore as Exhibit 25 for identification the panel of petit jurors called to serve as of January 17, 1940, and consisting of 175 names thereon.

Exhibit 26 for identification is the panel called to serve for February 6, 1940, and consists of 272 names.

Exhibit 27 for identification is the March 17, 1941, list consisting of 174 jurors.

With your Honor's permission, and I have asked Mr. McGohey and he has no objection to this, I would like to reserve No. 28 for identification for a panel, a copy (1873) of which I do not have in my possession in court but which is in the office and we overlooked bringing.

The Court: You may do that.

Mr. Gladstein: Thank you.

(Marking of Defendants' Challenge Exhibit 28 for identification reserved.)

Mr. Gladstein: That panel is for April 14, 1941, and consists of 148 jurors.

Exhibit 29 for identification is the panel for May 5, 1942, and consists of 349 jurors.

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Exhibit 30 for identification is the panel for June 17, 1942, and consists of 302 jurors.

Exhibit 31 is the panel—all of these are petit jury panels—is the panel for July 6, 1943, and consists of 174 names.

Exhibit 32 is the panel for August 9, 1943, and consists of 100 names.

Exhibit 33 is drawn for September 5, 1944, and consists of 200 names.

Exhibit 34, is the panel for October 16, 1944, and consists of 225 names.

Exhibit 35 for identification is the panel for November 7, 1945, and consists of 399 jurors.

No. 36 is the panel for December 17, 1945, and (1874) consists of 275 names.

No. 37 refers to the panel for January 2, 1946, and consists of 398 names.

Exhibit 38 refers to the panel for February 18, 1946, and consists of 275 names.

Exhibit 39 refers to the panel for March 4, 1947, and consists of 398 names.

Exhibit 40 contains the names of the jurors called to serve on April 14, 1947, and it consists of 275 names.

Exhibit 41 is the panel called to serve on May 4, 1948, and consists of 400 names.

Exhibit 42 is the panel for June 14, 1948, and consists of 275 names.

Exhibit 43 is the panel for July 19, 1948, and it consists of 100 names.

Exhibit 44 refers to the panel called to serve August 3, 1948, and it consists of 150 names.

Exhibit 45 is the panel called to serve beginning September 7, 1948, and also consists of 150 names.

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Exhibit 46, with your Honor's permission, and the same would be true for 47 and 48, we would like to reserve those numbers for those lists to be brought in and supplied.

Will that be permissible, your Honor?

(1875) The Court: That is entirely satisfactory, too, to the Court.

Mr. Gladstein: Now for the record then, the reserved number for 1946 refers to the panel for October 15, 1948, and it consists of 275 names.

The reserved number 47 will be for the exhibit giving the names of the jurors called to serve commencing November 3, 1948. That panel consists of 399 names.

The reserved No. 48 refers to the panel for November 15, 1948, and it contains 274 names.

(Marking of Defendants' Challenge Exhibits 46, 47 and 48, reserved.)

Mr. Gladstein: There has been supplied to the clerk and he has marked as exhibit for identification No. 49 referring to the panel called to serve December 7, 1948, and it consists of 400 names.

No. 50 as marked here refers to the panel of jurors called to serve December 20, 1948, and it consists of 275 names.

No. 51 is the panel called to serve January 4, 1949, consisting of 375 names.

With the Court's permission we would like to reserve No. 52, for the panel of January 17, 1949, of which we will supply a copy, and it consists of 275 names.

(1876) The Court: You may do that.

(Marking of Defendants' Challenge Exhibit 52, reserved.)

Mr. Gladstein: That panel, Exhibit No. 52, is the first or so-called regular panel of petit jurors.

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In addition, with the Court's permission, we will supply as Exhibit 53, a second listing of jurors called to serve on January 17, 1949, consisting of 250 names.

(Marking of Defendants' Challenge Exhibit 53 reserved.)

(1877) *By Mr. Gladstein:*

Q. Now, do you have a list of all of those listings, those panels? A. I do.

Q. Mr. Wilkerson, were those the panels that were used for the purpose, among other things, of showing the geographical location of the jurors in accordance with the information contained on the lists obtained from the clerk? A. Certain of these panels were. All of them were used for some purposes, but with reference to the geographical location we made particular analysis of certain ones of these panels, not all of them.

Q. I see. Now before you get to that, did you use for one purpose or another in connection with this study all of the lists that I have referred to? A. Yes.

* * *

(1878) *By Mr. Gladstein:*

Q. Now, not counting for the moment, Mr. Wilkerson, the second listing for January 17th, how many names in total of jurors were subjected to examination and analysis with respect to one or another of the parts of the study made in connection with this case? A. On this basic list of panels—there are 28 that you have called here—there were 7,487 names.

Q. 7,487 names of jurors on these 28 panels, (1879) is that correct? A. Now, you would really add to that the 250 in the second listing for January 17, which would give you 7,737.

Q. Over 7500 names altogether? A. Yes.

The Court: What is the period of time that that covers, 1940 to 1949?

Mr. Gladstein: Yes.

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The Court: That is, from 1940 to date?
 Mr. Gladstein: Yes.

* * *

Q. Now, Mr. Wilkerson, was there any particular reason for the choice of the panels, as I have read them and as they have been marked, or markings reserved, showing two in January and February 1940, and so on? Would you take a look at your list and indicate if there was such a reason? A. Yes.

Q. What was it?

The Court: You mean the witness's reason for selecting them?

Mr. Gladstein: Yes.

The Court: Yes.

A. The effort here was to get a representative sample (1880) of jury panels during a period of some nine years, and to choose them in such a way as to represent the various seasons of the year appropriately, in a mechanical way, that would avoid picking this or that panel, but rather would rather systematically in a random way, as statisticians use the term, get a representative list of panels; and the basic approach used was this: for the first few years, 1940 to 1947, we chose two panels per year in this way: beginning in January, one panel in January 1940, one panel in February 1940; then March 1941, April 1941; then May 1942, April 1942; July 1943—

Q. Did you mean to say April 1942? A. Did I say April? May 1942, May 5, 1942, and June, and in that way right on through 1945, 1946 and 1947.

When it came to 1948, the more recent period, we took a closer sampling of the panels, beginning in May, and getting one panel in May, one in June, one in July, one in August, one in September, one in October, two in November, two in December, and the last two in January.

The effort here then was to get in the first place a sampling of jury panels, petit jury panels in the Southern District, which could be considered representative for the period and at the same time to involve particularly

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(1881) emphasis upon panels during the recent period which are, of course, most germane to the proceedings before the Court.

Q. All right. Did you make in any graphic form anything to show the geographical distribution of the jurors on any of those lists? A. Yes.

Q. What did you do in that connection? A. We prepared a number of spot maps indicating the locations of jurors for a series of these panels.

Q. Would you care to indicate the period of time that that covers and the dates that refer to the panels? A. We have for Manhattan and Bronx, from which the bulk of the jurors in the Southern District are drawn, approximately 85 per cent of them in most panels, we have maps which will indicate the place of residence of jurors in these two Boroughs for February 6, 1940, April 14, 1941, June 17, 1942, August 9, 1943, August 16, 1944, December 17, 1945, January 2, 1946, March 4, 1947, May 4, 1948, November 15, 1948, December 7, 1948 and January 17, 1949. Those are maps indicating the residences of Bronx and Manhattan jurors on those panels.

In addition to that we have another map for the southern part of Westchester County from which, as I say, approximately 15 per cent of the jurors in the (1882) Southern District are called, and that is for the panels of—for the January panels, the panel of January 4 and January 17, 1949.

Q. Now, where did you get the information as to where the jurors lived, what their residences were? A. That information is recorded on the jury lists supplied me.

Q. In other words, that was taken from what the jury clerk puts out? A. Yes.

Q. As shown upon the lists that were either photostated or copied from or purchased from the office, is that right, sir? A. That is right.

Q. Now will you describe what happened, what took place in the construction of the map to indicate where the jurors were located as of that time—that is, as of the time of the date of the panel that was used, and based upon the information contained in the official listing from the clerk's office? A. Well, first it was essential to get maps which we

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asked defense counsel to supply, blank maps of Manhattan and Bronx and Westchester. Then from the list of the jury panel under analysis we ascertained the location of each juror's address. Using also as a guide a sort of intermediary step, official assembly district maps which (1883) were supplied which in pretty large type indicates street names and the addresses by blocks, we located the precise point in the precise block where each juror lives, doing that on the assembly district maps which were pretty large and easily read.

Having located it there we then turned to the large map of Bronx and Manhattan, which also indicates street numbers and avenues and the like, and found the precise spot on that map where the individual juror lives.

At that—shall I continue?

Q. Yes, will you please do so. A. Having located then where the juror lives on the map of Manhattan or Bronx, as the case may be, or Westchester, we stuck a pin at that point on the block to designate that here, on this panel, lives a juror. We did that for all of the panels that we have just called attention to.

Q. So that, in other words, the pin inserted in the map corresponded with the residence of the juror as of the date of the panel that you were addressing yourself to in accordance with the information given by the clerk's office? A. That is right. There is a slight qualification that I can better make, I think, when we get the maps before us.

Q. All right. A. But in so far as it was physically (1884) possible to do that—and it was in most cases—it was at the precise point where the juror lives.

Q. Was anything else done besides the insertion of pins in the map? A. Yes. To provide a general frame of reference in terms of parts of the City, there were drawn on these maps Congressional District boundary lines for the Bronx and for Manhattan, and also in Westchester; and on the Westchester map we drew the boundaries of certain communities in lower Westchester at this point chiefly for the purpose of giving us a general frame of reference in locating geographical position of jurors.

Q. And, as a matter of fact, Mr. Wilkerson, that was first traced in connection with efforts of the attorneys and

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the use of the Legislative Manual that has been marked as an exhibit for identification, No. 18, isn't that right? A. That is right, which has the precise Congressional District boundaries.

Q. Was that sketched on the one and then copies made? A. What we did—and I say "we" in terms of the attorneys and I, because a group of us did that first—was to draw on one map of Manhattan and Bronx following the Legislative Manual the precise boundaries of the several Congressional Districts. Then a draftsman was given that to draw the more solid lines and to make (1885) duplicates of them.

Q. And that was done and such maps were provided for your further study in connection with the designation upon these blank maps of the locations of jurors' residences, is that right? A. That is right.

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

(Marked Defendants' Challenge Exhibit 54 for identification.)

(Exhibit placed on easel.)

* * *

Mr. Gladstein: Now would you let me have No. 25 for identification?

The Court: That is the jury panel represented by this chart?

(1886) Mr. Gladstein: That is right, your Honor.

* * *

The Witness: It would be 26.

* * *

Mr. Gladstein: Oh, you are quite right. It is No. 26, if you please.

* * *

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By Mr. Gladstein:

Q. Now, Mr. Wilkerson, is it true that Exhibit for identification No. 54 refers to the list of jurors, petit jury panel, for February 6, 1940, in this court? A. Yes, for those who reside in the Bronx and in Manhattan.

(1887) Q. I see. And Exhibit 54 for identification was constructed, then, from information contained upon Exhibit 26 for identification? A. That is right.

Mr. Gladstein: Now, your Honor, I will offer in evidence No. 26 for identification.

The Court: Does that show all of New York and Bronx Counties?

The Witness: You mean Manhattan?

The Court: Yes.

The Witness: Yes, and the Bronx.

Mr. McGohey: If your Honor please, with respect to Defendants' Challenge Exhibit 26 for identification, I see that it appears to be a copy made by somebody other than an employe of the clerk's office of an original record in the clerk's office. I have no objection now, if I may reserve my motion to strike it on the ground if I later discover that it is not an accurate copy.

Mr. Gladstein: Or to make whatever corrections necessary.

The Court: You may do so.

Mr. Gladstein: Beg pardon?

The Court: You may do so.

Mr. McGohey: With that, your Honor, I have no objection.

(Defendants' Challenge Exhibit 26 for identification (1888) received in evidence.)

Q. Now Mr. Wilkerson, as I understand you, No. 54 for identification represents what? A. This represents the residences of those jurors on the panel drawn from February 6, 1940, who resided in the Boroughs of Bronx and Manhattan at that time.

Q. Now, would you be good enough to indicate just what the method was that you used to create that map?

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The Court: Didn't he just tell us that?

Mr. Gladstein: Well, I would like to know in general—

The Court: He said he put a pin as nearly in the place of the exact residence of each juror as could be done. Isn't that right?

The Witness: That is right, sir.

Q. Now will you examine that map and state whether it is an accurate representation of what it purports to represent, as you have indicated? A. I have checked the map more than once, and I know that it is, unless—well, it is.

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

Mr. McGohey: No objection, your Honor.

(Defendants' Challenge Exhibit 54 for identification received in evidence.)

* * *

(1890) *By Mr. Gladstein:*

Q. Now Mr. Wilkerson, would you be good enough to indicate with respect to Exhibit 54, where I notice that there had been several arrows placed there, and some legend, as to what those arrows refer to? Do you want to step down and point to them and explain them to the Court and for the record?

The Court: I think I can see them from here, and so can the witness. They refer to East Bronx and Harlem.

The Witness: And also to Lower East Side.

The Court: Oh, yes.

(1891) The Witness. The Harlem area involving the general vicinity of the 22nd Congressional District.

Mr. Sacher: I can't hear Mr. Wilkerson.

The Witness: The arrow pointing to Harlem embraces what is generally known as the center of Harlem, the 22nd Congressional District, where Representative Powell is the Congressional Representative; and the upper part of the 18th, frequently

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spoken of as East Harlem where Representative Marcantonio is; the arrows here going to what are often spoken of as East Bronx and South Bronx, the lower part of the 23rd and the 24th. And this arrow (indicating) to what is often referred to as the Lower East Side, the lower part of the 19th—well, almost in its entirety the 19th Congressional District.

Q. Now, those heavy boundaries—well, all of the boundary lines on that map, are they the ones you spoke of as representing the boundaries that separate the different Congressional Districts in Manhattan and Bronx from each other? A. Yes, that is right.

Q. Now, tell us, if you will, examining that map, how many jurors on the panel for February 6, 1940, you found that were called from the section known as Harlem? A. One, possibly two. I say possibly two because there is one pin that exactly straddles the Congressional (1892) District line, and in view of that fact, just examining the map, we can't tell whether it is on this side or that side; but a maximum of two from the 22nd District, plus one from what I am referring to as East Harlem, the upper part of the 18th.

The Court: But in the 18th District there are several others?

The Witness: That is right, lower down. We don't speak of this as Harlem (indicating).

The Court: I am not exactly familiar with those lines of demarcation, but I gather that you have indicated sufficiently for my present information the places you desire to emphasize there?

The Witness: He questioned me about Harlem.

The Court: Yes, I know. But as I do not happen to know offhand just where Harlem begins and ends, I thought I might get a little further enlightenment.

(1893) Mr. Gladstein: Now, your Honor, when you said you saw some pins further down, are you referring to this group here (indicating)?

The Court: No. I am referring to the ones in the 18th District.

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Mr. Gladstein: Right here (indicating)?

The Court: That is right. And along the edges there. Those are the ones I referred to.

By Mr. Gladstein:

Q. Well, now, this portion here where I am holding my hand, which would be about on a horizontal with that portion of the map, the right side of it, which separates—that line which separates the blank space between the word “Residences” and the block sectioning off, if you drew a straight line to the left so as to cover the four or five or more that you find within District 18 at that point on the map, would you tell us, Mr. Wilkerson, whether those are to be found in a section that is known as Harlem, or what that section is known as? A. Are you thinking of these pins right here (indicating)?

Q. That is right. A. No. Well, let us see. That is about at the bridge, I think, isn't it?

The Court: You mean the 59th Street Bridge?

The Witness: No. I see that is here (indicating). That apparently is up in the area that (1894) is generally referred to as Gracie Mansion.

Q. Gracie Mansion. A. Gracie Square.

Mr. McGohey: If your Honor please, might I ask that the witness try to fix it by street number?

The Court: I was just asking that. About what street number?

The Witness: It is a little bit difficult—

Mr. Sacher: That is about 88th. That is where the Mayor lives, I believe, about 88th Street.

The Witness: It is a little difficult to read the numbers without a magnifying glass. But if you like, I will try to fix very precisely—

The Court: I don't want it too precisely, but some general indication of about what street.

The Witness: About 83rd to 88th Street spans the area on these two—over towards the East River.

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Q. Will a magnifying glass assist you? A. It will help.

Q. All right, you take that (handing). Now—

The Court: You had better get one for the Court too. I was looking at these statistics of one kind or another, and I think I am going to need a very powerful glass before we get through.

Mr. Gladstein: Your Honor, in order to bring home the facts, the truth, the evidence and the conviction (1895) that we are right, I will be very happy to provide you tomorrow morning—not tomorrow morning—Monday morning with a large powerful magnifying glass which I guarantee upon application to the exhibits that we introduce will show you the truth of the assertions we have been making in this case.

The Court: It will have to be a very special glass to show only the parts that are good for the defense. But I want one where I can see the whole business.

Mr. Gladstein: Oh, certainly.

The Court: That is all right. That is just a little quip.

Q. Referring again to the map, February 6, 1940, Mr. Wilkerson, indicate, if you will, how many pins you have in that map representing jurors called from the district known as the Lower East Side? A. Well, the 19th Congressional District roughly corresponds to what is called the Lower East Side. That is here (indicating). And there is one juror there, in the entire district for this panel.

Mr. Sacher: I can't hear it. I am sorry.

The Witness: There is only one juror on the panel, or there was only one juror on the panel of February 6, 1940, who lives in the area generally designated as the Lower East Side in which—more precisely here in (1896) the Congressional District.

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Q. Who lived there at the time? A. That is right.

Q. Where on that map do you find the major concentrations; within what area or district do you find the major concentrations of jurors? A. Well, a glance indicates that right in here are our biggest clusters of pins, and for the most part they center in Mr. Coudert's 17th District, often referred to as the Silk Stockinged District in New York.

I might point out what embraces that district. Moving from about—I don't know whether this helps or hurts. Yes. About 110th Street. Here is the upper boundary of Central Park. It embraces both sides of the park here. This (indicating) is West Central Park, just about a block of West Central Park and on down below (indicating).

Q. You mean Central Park West, Mr. Wilkerson? A. Central Park West, yes. Roughly, it moves on down here to the Washington Square Park area and comes on up. You will note that the boundaries of the 17th District right at this point break open to the east, I mean, launch out to the East River. This (indicating) is an area that is generally designated as Sutton Place, which is also included in the 17th District. The boundary comes here (1897) (indicating) and moves on up, roughly, including the Fifth Avenue, Park Avenue area; and it is in this general Congressional District that is the 17th District that you will find the biggest cluster. And, of course, within that big area there are sub-clusters which I think an examination of the map makes evident.

Shall I point—does this answer your question or do you want me to continue?

Q. Do you want to indicate what particular sub-clusters—I take it by "sub-clusters" you mean the group within—well, I will let you define it, if you will, Mr. Wilkerson. A. Well, I have been discussing the tendency of these pins which means jurors concentrated in what—in what is designated as the 17th Congressional District. Now, within that district you will note certain things from this map. Note, if you will, the string of pins that runs along Central Park West. It is quite a noticeable cluster. You will note right here (indicating)—that is the Fifth Avenue, Park Avenue upper part of the district, just east of Central

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Park—a tendency right on down for a clustering of such pins. That partially defines what I am talking about.

You will note here (indicating) also, after a fairly sparse area so far as jurors are concerned, another (1898) cluster around here (indicating), which is the general vicinity of lower Fifth Avenue, Washington Square Park, and the like.

I think attention might be called to a little cluster of pins over here to the West, Riverside Drive, West End Avenue, that general area. Those are the main clusters. Sutton Place has a fair representation, one would say.

Q. A very substantial one, is that right? A. In relation to certain other area, quite. There are certain other features—pardon me.

Q. Would you be good enough to point them out? I was going to ask another question, but go ahead? A. I think attention might be called to several things. We mentioned the tendency for juror residences to concentrate in the different parts of the 17th that we called attention to. We mentioned also the Riverside Drive area over here (indicating) near the Hudson. There is a slight tendency up in here (indicating)—this is generally the Washington Heights area—for a sprinkling, a pretty good sprinkling in relation to certain other areas of jurors to be. But we have already called attention to the relative barren Lower East Side area from which only one juror was on this panel. That is also true of the lower part of the 16th Congressional (1899) District. This area (indicating) is rather significant, I think. It has relatively few jurors, roughly.

Mr. Sacher: What is the name of that area?

The Witness: It is generally—well, over here (indicating) near the river, is what we call Hell's Kitchen. And to the right of Hell's Kitchen is the Chelsea area, generally designated in the Manhattan geography. This happens to be a relatively barren area after you leave this, after you leave—what street are we at here? About 56th, 55th Street; with one exception here, no more jurors until you get down in the vicinity of the Washington Square area. Just looking at this as a form of reference, it is clear

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that the upper part of the 18th and the whole Harlem area is relatively barren.

We move up into the Bronx. There is a scattering of pins through in here. I might indicate roughly where that is. This (indicating) is the general area between Fordham University, New York University, a little below; but in the 24th you will note a much less pronounced sprinkling of jurors; and, of course, the same is true in the lower part of the 23rd.

I do not know what particular significance to attach to some of the scatterings here, but one thing—

(1900) Q. You said "here," so we have it, that was the Bronx, wasn't it? A. This is the 26th District of the Bronx, where you note quite a sampling, proportionately, considerably more than you find in these sections of the Bronx. And jurors are more frequently chosen on this panel from this general area than is true here in the Bronx.

Q. I call your attention to one thing. Whenever you say "these" or "those" or "this" it is perfectly clear to us who are watching you but it won't be clear to anybody who reads the transcript. A. Very good.

Q. Because there will be no visual evidence there as to what you were pointing to. So I would like to suggest that whenever you want to point to some portion of the map that you identify it by some description, some reference to what it is generally known by or by some reference to the street boundaries, something that will indicate what it is that you happen to be talking about. A. The point is well taken.

Q. Fine. I want to ask you this: It is correct that on that map that you have been referring to the clusters of jurors are to be found in those areas and in those parts of areas which are generally known as (1901) and regarded as the high rent or the desirable or the Silk Stockinged portion of the community.

Mr. McGohey: Objection.

The Court: Sustained.

Q. Will you do this, because I think the record does not show, in view of the fact that you pointed to certain

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portions, does not show precisely the spaces where you find this clustering and this concentration of jurors—will you just list them?

The Court: It is a little hard to do because they are distributed so widely. Don't you think it is going to be fairly easy, from what he has said and from the photograph, to see just where those places are?

Mr. Gladstein: Well, the distribution as it looks to me is embraced within certain particular areas, and then it appears that certain other areas have little or no representation at all.

The Court: Well, I say, you just covered that, and it seems to me, although I do not insist upon it at all, that from what he has already said, plus the exhibit itself, it is relatively easy to see just what he means.

Mr. Sacher: We will give you the percentages, your Honor, the percentage of the panel in the 17th, et cetera.

(1902) The Court: Yes; I felt that that was all coming, and I merely make the suggestion because I thought it was already pretty clear. But if Mr. Gladstein thinks not, I have no objection to his having it further stated.

Mr. Gladstein: Well, let me make this suggestion, then. Perhaps upon examination of the transcript of the testimony with respect to this February 6, 1940, panel it will become clear as to what portions are not in the record clear, and with the Court's permission on the resumption Monday—

The Court: Yes, you may come back to it. That is perfectly satisfactory.

Mr. Gladstein: Yes.

* * *

(Adjourned to January 31, 1949, at 10.30 a. m.)

Doxey A. Wilkerson—for Defendants on Challenge—Direct

(1903) New York, January 31, 1949,
10.30 a.m.

* * *

DOXEY A. WILKERSON, resumed the stand.

Mr. Gladstein: I have some other maps that are being brought in, your Honor.

Direct examination continued by Mr. Gladstein:

Q. Now, Mr. Wilkerson, I understand that you read a list last Friday of the jury panels concerning which maps were made; is that correct, sir? A. That is right.

Q. And you have already read that list into the record, is that true? A. That is correct.

Q. Now was the manner of preparation of each of the additional maps substantially the same as that concerning (1904) which you have already testified and which is in evidence? A. The procedure in each case was the same.

Q. And each of the additional maps then purports to show as of the date to which it refers, by virtue of the pins appearing on each of these maps respectively, the locations of the jurors as taken from the jury panel lists put out by the clerk's office of this court, is that right? A. That is correct.

Q. Did you check each of these for accuracy? A. I did.

Q. And how did you find them? A. I found them accurate with perhaps one or two irregularities which I should call attention to, and can't be avoided.

For example, on one or two of the panels the juror gave as his address Wall Street, which is obviously his office address, but not his residence, and we were plotting residences, and in such cases such a juror was left off the map.

There were one or two instances in the whole series of maps, maybe two or three, where it was just impossible, despite all efforts to locate the residence of the juror, and in such instances the juror is not on the map. But we have accounted for all of those new legends which go with the table—I mean with the maps—and they represent the only exceptions to the assertion (1905) that every juror on the panel is represented by a pin placed at the point of his residence.

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Q. Now, did you find in any instance that the concentration of jurors in any particular area was so great that it was impossible to find room for all the pins? A. That was very true in certain areas. I would be glad to demonstrate that when we get a map before us.

Q. That happened in several instances? A. Yes.

Q. What did you do in such cases? A. In such cases we put the pin as close as was physically possible; that is, immediately next to pins which were already over the point.

Q. Now, on Friday we were discussing the February 6, 1940 map. What is the date of the next map in order that you made? A. It is April 14, 1941.

* * *

Q. Now, I will ask you to examine the map which has been marked Defendants' Exhibit for identification 55, Challenge Exhibit 55, and state whether that is the map accurately representing what it purports to represent, namely, the locations of the addresses of the jurors for the panel of April 14, 1941, as ascertained from (1906) the official panel lists put out by the clerk. A. Who lived in the Boroughs of the Bronx and Manhattan.

Q. Your answer is yes, with that qualification? A. Yes.

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

Mr. McGohey: Your Honor, I don't desire at this time to object to the introduction of this map. That is, I will not offer any objection at this time, but I do desire to reserve my right to move to strike the maps at the end of the testimony if the record at that time would justify such a motion.

The Court: You may do so.

(Defendants' Challenge Exhibit 55 for identification received in evidence.)

The Court: That reservation may apply to all these charts.

Mr. McGohey: Yes, your Honor.

(1907) Q. Now Mr. Wilkerson, what is the date of the next map, chronologically speaking, that was prepared in

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connection with ascertainment of the residences of jurors?
A. June 17, 1942.

* * *

Q. Mr. Wilkerson, I want you to look at Defendants' Challenge Exhibit 56 for identification and state whether that is the map that was prepared to graphically or pictorially present the locations of the residences of the jurors in Manhattan and Bronx who were called to serve for the panel of June 17, 1942, in this court? A. It is.

Q. If I were to ask you the same questions that I have asked concerning the previous map exhibits with respect to the manner of preparation, the accuracy and so forth, would your answers be substantially the same? A. They would?

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

(1908) Mr. McGohey: No objection, with the same reservation, your Honor.

The Court: Very well.

(Defendants' Challenge Exhibit 56 for identification received in evidence.)

Mr. McGohey: May I have the date?

Mr. Gladstein: 6/17/42.

Your Honor, I think perhaps while the witness is on the stand on this time we ought to hear from Mr. McGohey what he has in mind as to the reservation of possible motions to strike.

The Court: Well, I think it is obvious enough. As you know in such matters as this counsel on the other side has an alternative; he may proceed to ask for the preliminary cross-examination of the witness or he may reserve whatever he may wish to ask until his general cross-examination.

Mr. Gladstein: I see. I did not understand what his—

The Court: And I take it Mr. McGohey is indicating to me that he will reserve his questions until his cross-examination later and then such motions as he may be advised then to make he will make. And I have granted him leave to do that.

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Mr. Gladstein: I did not understand what he (1909) had in mind.

* * *

(1911) *By Mr. Gladstein:*

Q. What is the date of the next map in order of date that was prepared in connection with the same project, Mr. Wilkerson? A. August 9, 1943.

* * *

(1912) Q. I show you Defendants' Challenge Exhibit 57 for identification and ask you if this is the map to which your last answer referred? A. This is.

Q. If I were to ask you concerning this map the same questions I have asked you concerning previous maps with respect to manner of preparation, purpose of preparation, accuracy and so on, your answers would be substantially the same? A. Yes.

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

Mr. McGohey: No objection, subject to the same reservations, your Honor.

(Defendants' Challenge Exhibit 57 for identification received in evidence.)

Q. Now what is the date of the next map? A. October 16, 1944.

* * *

(1913) Q. Mr. Wilkerson, in the last question that I directed to you and in the answer that you gave to it, when you mentioned the date you referred I take it to the date of the panel of petit jurors concerning which the map was made; is that right? A. That is correct.

Q. I want you to look at Defendants' Challenge Exhibit 58 for identification and state whether that is the map to which you have just made reference? A. It is.

Q. And if I were to ask you the same questions as I have previously asked concerning all the other maps that have gone into evidence, would your answers be substantially the same in respect of the preparation, purpose of preparation, accuracy, what the map purports to show? A. Yes.

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

Mr. McGohey: With the same reservation, no objection.

(Defendants' Challenge Exhibit 58 for identification received in evidence.)

Mr. Gladstein: Has that been received in evidence?

The Court: Yes.

Q. The last map, Mr. Wilkerson, referred to a date in the year 1944. Was a map made for some time in the (1914) year referring to a panel drawn to serve at some time in the year 1945 in this court? A. The next one was.

Q. What was the date of that? A. The date is December 17, 1945.

(Defendants' Challenge Exhibit 59 marked for identification.)

Q. Will you examine, Mr. Wilkerson—

The Court: It just occurred to me that I have a couple of those motions to disqualify me and all the judges here that I may not have determined. I remember reserving decision on one and holding it up at the time Mr. Isserman was away on the ground that he might possibly desire to be heard on that. Aren't those motions still open?

Mr. Sacher: May I respectfully suggest that your Honor continue to reserve decision on them until we have laid this evidence before you?

The Court: Well, I don't like to have anything get lost in the shuffle. I was disposed to deny those motions then, but Mr. Isserman has so often said that he did not want me to decide things until he got an opportunity to argue and I reserved decision. And as he is still not here this morning I wish someone would check on them. My recollection is that I have those two motions still (1915) undetermined.

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Mr. McGohey: That is my understanding, your Honor.

Mr. Sacher: That is correct.

The Court: That is correct.

You get loose ends in a case like this and I don't like to have that.

By Mr. Gladstein:

Q. Mr. Wilkerson, will you please examine Defendants' Challenge Exhibit 59 for identification and state whether it is the map that was prepared for the purpose of and actually serving the purpose of showing the locations of the residences of the petit jurors in Manhattan and Bronx for the panel of December 17, 1945, called to serve in this court? A. It is.

Q. All the questions I have previously put to you concerning the manner of preparation of other maps and all of the other questions dealing with the maps, if I were to ask you those same questions concerning this latest exhibit would your answers be the same? A. Yes.

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

Mr. McGohey: With the same reservation, no objection.

(1916) (Defendants' Challenge Exhibit 59 for identification received in evidence.)

Q. Mr. Wilkerson, was a map made for the purpose of pictorially demonstrating the location of the addresses of jurors in Manhattan and Bronx who were called to serve on any panel during the year 1946 in this court? A. There was.

Q. What was the date of the panel referred to? A. January 2, 1946.

Q. And these addresses were the residence addresses of course of those jurors? A. That is right.

Q. And that answer that you have just given to the question concerning January 2nd—is that what you said, January 2nd? A. January 2nd, yes.

Q. (Continuing)—the 1946 map, is the answer equally applicable to all of the maps; is that true? That is, the residences of— A. Residence, yes.

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(Defendants' Challenge Exhibit 60 marked for identification.)

(1917) Q. I will ask you to examine No. 60 for identification and state whether that is the map to which your last two or three answers have had reference? A. It is.

Q. And was the manner in which it was prepared the same as you have indicated in all respects with respect to prior maps? A. Yes.

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

Mr. McGohey: With the same reservation, no objection.

(Defendants' Challenge Exhibit 60 for identification received in evidence.)

Q. Was a map made, Mr. Wilkerson, to reflect the location of the residential addresses of petit jurors called to serve in this court for any period in the year 1947? A. There was.

Q. What was the date of the panel to which such a map referred? A. March 4th.

Q. 1947? A. (Witness nods.)

* * *

Q. Now will you please examine No. 61 for identification (1918) and state whether that is the map to which you have referred in the last two or three answers that you have given? A. This is the map.

Q. Prepared in the same manner as the others? A. Yes.

Q. And if I were to ask you the same questions concerning this map as I have concerning the other maps, your answers would be substantially the same, is that right? A. Yes.

Q. The only distinction being that this map, of course, referred to a particular panel of that date as distinguished from each of the other maps, referring respectively to a different date; is that so? A. Right.

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

* * *

(1919) Mr. McGohey: Same reservation. No objection.

(Defendants' Challenge Exhibit 61 for identification received in evidence.)

Q. Mr. Wilkerson, was a map prepared to show the locations, the residential addresses of jurors in Manhattan and Bronx referring to any panel called to serve in this court in the year 1948? A. Yes, there were several such maps.

Q. All right, what was the first in date—that is to say, what was the earliest date in the year 1948 of any petit jury panel of this court with respect to which such a map was made? A. The panel of May 4, 1948.

* * *

Q. Will you examine No. 62 for identification, please, and state for the record whether it is the map to which your last two or three answers have referred? A. This is the map.

(1920) Q. And was it prepared in the same manner as you have indicated with respect to the other maps already received in evidence? A. Yes.

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

Mr. McGohey: With the same reservation, no objection.

(Defendants' Challenge Exhibit 62 for identification received in evidence.)

Q. Your last answers have indicated that more than one map was prepared in reference to jury panel lists for the year 1948; is that right? A. Yes.

Q. Now, what was the next date in 1948, date of a jury panel, to which a map that was made referred? A. We have a map for the panel of November 15, 1948.

* * *