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**United States Court of Appeals
FOR THE SECOND CIRCUIT**

UNITED STATES OF AMERICA,

Appellee,

v.

EUGENE DENNIS, JOHN B. WILLIAMSON, JACOB STACHEL,
ROBERT G. THOMPSON, BENJAMIN J. DAVIS, JR., HENRY
WINSTON, JOHN GATES, IRVING POTASH, GILBERT GREEN,
CARL WINTER and GUS HALL,
Defendants-Appellants.

Amended Statement Under Rule 15(b)

This is a criminal cause begun in the United States District Court for the Southern District of New York by the filing of an indictment on July 20, 1948, against the eleven defendants and William Z. Foster. On the same day bench warants were ordered as to each defendant.

The defendants, except for John Gates, Gilbert Green, Irving Potash, Robert G. Thompson and Gus Hall were arrested on July 20, 1948. All of these defendants, with the exception of Carl Winter, pleaded not guilty on July 20, 1948, and were paroled in the custody of their attorneys to give bail. The defendant Carl Winter pleaded not guilty on August 3, 1948.

The defendant John Gates, surrendered to the court on July 21, 1948, pleaded not guilty and was paroled in the custody of his attorney to give bail. The remaining defendants Irving Potash, Robert G. Thompson, Gilbert Green and Gus Hall were arraigned on warrants and pleaded not guilty on July 22, 1948, July 29, 1948, August 5, 1948, and August 9, 1948, respectively. Each defendant was released on bail and allowed until August 23, 1949, for motions.

Amended Statement Under Rule 15(b)

On September 20, 1948, the time to make motions was extended as to all defendants to October 4, 1948.

On October 22, 1948, defendants' motions to dismiss the indictment and for a bill of particulars and the Government's motion to consolidate indictments for trial were denied.

On November 6, 1948, an affidavit of bias and prejudice filed by defendants was denied.

On January 12, 1949, the defendants filed notice of challenge to the array, and of motion to quash and dismiss the entire panel, venire and jury lists, and of motion to dismiss the indictments.

On January 17, 1949, the Government moved the case for trial before Hon. Harold R. Medina, U.S.D.J. against all defendants except William Z. Foster.

On January 18, 1949, the Government's motion for a severance as to defendant William Z. Foster was granted.

On January 20, 1949, defendants' motion for a hearing on the manner in which prospective jurors are obtained and selected in the Southern District of New York was granted. Hearings on the issues raised by defendants' challenge to the array and motions to quash and dismiss were held before the Honorable Harold R. Medina, January 21, 26, 27, 28 and 31; February 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 24, 25 and 28 and March 1.

On March 4, 1949, the court overruled the defendants' challenge to the array and denied the motions to quash and dismiss the entire panel, venire and jury lists and to dismiss the indictment.

The issues were tried on the merits before Honorable Harold R. Medina from March 21, 1949, through September 23, 1949. Government testimony was presented on March 21, 22, 23, 24, 25, 29, 30, and 31; April 1, 4, 5, 6, 7, 8, 11, 12, 13, 18, 19, 22, 25, 26, 27, 28 and 29; May 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18 and 19. On May 19, 1949, the Government rested. On that date the court entered an

Amended Statement Under Rule 15(b)

order permitting the taking by written interrogatories of the deposition of William Z. Foster and appointing as commissioner for the taking of said deposition, Mason H. Bigelow, Esquire.

Defense testimony was presented on May 23, 24, 25, 26 and 31; June 1, 2, 3, 6, 7, 8, 9, 13, 14, 15, 16, 20, 21, 22, 23, 24, 27, 28, 29 and 30; July 1, 5, 6, 7, 8, 11, 12, 13, 14, 19, 20, 21, 22, 26, 27, 28 and 29; August 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 25, 26, 29, 30 and 31; September 1, 8, 9, 12, 13, 14, 15, 16, 19, 20, 21, 22 and 23.

On August 5, 1949, the deposition of William Z. Foster was filed and ordered sealed. On October 5, 1949, motions for judgment of acquittal, for mistrial, to dismiss and to strike certain testimony and exhibits were denied.

On October 14, 1949, each of the defendants was found guilty.

On October 21, 1949, motions of the defendants for a new trial and in arrest of judgment were denied. All of the defendants were sentenced on this day, judgments were filed and commitments issued. Findings of fact and conclusions of law were filed in challenge to the system of jury selection and related motions. On this day also notices of appeal were filed in behalf of all the convicted defendants and motions for bail, pending appeal, were argued and denied.

Sentences of five years in prison and \$10,000.00 fine were imposed upon all the defendants except Robert G. Thompson who was sentenced to three years in prison and fined \$10,000.00.

On November 3, 1949, bail was fixed for the defendants pending appeal.

Indictment

IN THE
 DISTRICT COURT OF THE UNITED STATES
 FOR THE SOUTHERN DISTRICT OF NEW YORK
 No. C 128-87

UNITED STATES OF AMERICA,

v.

WILLIAM Z. FOSTER, EUGENE DENNIS, also known as Francis X. Waldron, Jr., JOHN B. WILLIAMSON, JACOB STACHEL, ROBERT G. THOMPSON, BENJAMIN J. DAVIS, JR., HENRY WINSTON, JOHN GATES, also known as Israel Regenstreif, IRVING POTASH, GILBERT GREEN, CARL WINTER, and GUS HALL, also known as Arno Gust Halberg.

The Grand Jury charges:

1. That from on or about April 1, 1945, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, and elsewhere, WILLIAM Z. FOSTER, EUGENE DENNIS, also known as Francis X. Waldron, Jr., JOHN B. WILLIAMSON, JACOB STACHEL, ROBERT G. THOMPSON, BENJAMIN J. DAVIS, JR., HENRY WINSTON, JOHN GATES, also known as Israel Regenstreif, IRVING POTASH, GILBERT GREEN, CARL WINTER, and GUS HALL, also known as Arno Gust Halberg, the defendants herein, unlawfully, wilfully, and knowingly, did conspire with each other, and with divers other persons to the Grand Jurors unknown, to organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, and knowingly and wilfully to advocate and teach the duty and necessity of overthrowing and destroying the Government of the United States

Indictment

by force and violence, which said acts are prohibited by Section 2 of the Act of June 28, 1940 (Section 10, Title 18, United States Code), commonly known as the Smith Act.

2. It was part of said conspiracy that said defendants would convene, in the Southern District of New York, a meeting of the National Board of the Communist Political Association on or about June 2, 1945, to adopt a draft resolution for the purpose of bringing about the dissolution of the Communist Political Association, and for the purpose of organizing as the Communist Party of the United States of America a society, group, and assembly of persons dedicated to the Marxist-Leninist principles of the overthrow and destruction of the Government of the United States by force and violence.

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

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

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

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

Indictment

7. It was further a part of said conspiracy that said defendants would bring about the election of officers and the election of a National Committee of said Party, and would become members of said Party, and be elected as officers and as members of said National Committee and the National Board of said Committee, and in such capacities said defendants would assume leadership of said Party and responsibility for its policies and activities, and would meet from time to time to formulate, supervise, and carry out the policies and activities of said Party.

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

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

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

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

A TRUE BILL

JOHN F. X. McGOHEY
United States Attorney

JEROME S. BLUMAUER
Acting Foreman

Docket Entries

CRIMINAL DOCKET

JS2 JS3 as to all except #1.



THE UNITED STATES,

vs.

WILLIAM Z. FOSTER, EUGENE DENNIS also known as FRANCIS X. WALDRON, JR., JOHN B. WILLIAMSON, JACOB STACHEL, ROBERT G. THOMPSON, BENJAMIN J. DAVIS, JR., HENRY WINSTON, JOHN GATES also known as ISRAEL REGENSTREIF, IRVING POTASH, GILBERT GREEN, CARL WINTER and Gus HALL also known as ARNO GUST HALBERG.

◆

Violation of Title 18 Secs. 11 and 13 U. S. C. (Smith Act) conspiracy to organize as the Communist Party of the U. S. A. a society etc. who advocate & teach the overthrow of the U. S. Govt. by force and violence.

Proceedings (Files on Page 502)

Jul 20 1948—Bench Warrant Ordered for each deft.

Jul 20 1948—7:35 P.M. Sealed indictment ordered opened.

William Z. Foster arraigned on warrant pleads not guilty Bail \$5000. to cover this indictment and C128/88. Remanded

Eugene Davis Arraigned on warrant pleads not guilty Bail \$5000. to cover this indictment and C128/89. Remanded.

John B. Williamson—Arraigned on warrant pleads not guilty Bail \$5000. to cover this indictment and C128/90. Remanded.

Docket Entries

Jacob Stachel—Arraigned on warrant pleads not guilty Bail \$5000 to cover this indictment and C128/91. Remanded.

Benjamin J. Davis, Jr.—Arraigned on warrant pleads not guilty Bail \$5000. to cover this indictment C128/93. Remanded.

Henry Winston—Arraigned on warrant pleads not guilty Bail \$5000. to cover this indictment and C128/94.

Defendants arraigned this day are allowed until 8/23/48 for motions 9:50 P.M. Defts. Foster, Dennis, Williamson, Stachel, Davis and Winston are released in custody of their counsel Abraham Unger until 7/21/48 at 10:30 A.M. to give bail heretofore fixed. Vincent L. Leibell, J.

Jul 21 1948—John Gates—surrenders to Court pleads not guilty Bail \$5000. to cover this indictment and C128/95. Paroled in custody of counsel to give bail. Deft. ordered photographed and fingerprinted Bench warrant vacated. Deft. allowed until 8/23/48 for motions.

Jul 21 1948—Filed bail bond dated 7/21/48 for William Z. Foster, principal, \$5000.00 to cover this Indictment and C128/88. Robert W. Dunn, surety (Treasury Bonds).

Jul 21 1948—Filed bail bond dated 7/21/48 for Eugene Dennis, \$5000.00 to cover this Indictment and C128/89. Robert W. Dunn, surety (Treasury Bonds).

Jul 21 1948—Filed bail bond dated 7/21/48 for Jacob Stachel, \$5000.00 to cover this Indictment and C128/91. Robert W. Dunn, surety (Treasury Bonds).

Jul 21 1948—Filed bail bond dated 7/21/48 for John B. Williamson \$5000.00 to cover this Indict-

Docket Entries

- ment and C128/90. Robert W. Dunn, surety (Treasury Bonds).
- Jul 21 1948—Filed bail bond dated 7/21/48 for Benjamin J. Davis, Jr. \$5000.00 to cover this Indictment and C128/93. Robert W. Dunn, surety (Treasury Bonds).
- Jul 21 1948—Filed bail bond dated 7/21/48 for Henry Winston, \$5000.00 to cover this Indictment and C128/94. Robert W. Dunn, surety (Treasury Bonds).
- Jul 22 1948—Irving Potash—Arraigned on Warrant pleads not guilty Bail \$5000.00 to cover this Indictment and C128/96. Paroled in custody of Counsel to give bail. Defendant allowed until 8/23/48 for motions.
- Jul 22 1948—Filed notice of appearance by Unger, Freedman & Fleischer Attorneys for the defendants William Z. Foster, Eugene Dennis, John Williamson, Jacob Stachel, Benjamin J. Davis, Henry Winston, Irving Potash and John Gates. Leibell, J.
- Jul 22 1948—Filed bail bond for Irving Potash 7/22/48 for \$5000. to cover this indictment & C128/96—Robert W. Dunn. Surety—(Treasury Bonds).
- Jul 21 1948—Filed bench warrant with marshal's return. Defendant Carl Winter arrested at Detroit, Mich. 7/20/48. Bond for \$5000.00 given 7/21/48.
- Jul 28 1948—Filed bench warrants with marshal's return for Benjamin J. Davis Jr., Jacob Stachel, Wm. Z. Foster, John Williamson, Eugene Davis, Henry Winston—Defts arrested 7/20/48.
- Jul 29 1948—Robert G. Thompson pleads not guilty—Bail \$5000. to cover C128/87 and 128/92 Remanded. Allowed until 8/23/48 to make motions. Ryan, J.

Docket Entries

- Jul 29 1948—Filed bail bond for Robert G. Thompson dated 7/29/48 for \$5000. to cover this indictment & C128/92 William Lawrence, Surety—(Treasury bonds).
- Aug 3 1948—Carl Winter—Surrenders to Court—Pleads not guilty. Defendant paroled in custody of his attorney, Abraham Unger for 48 hours so it can be determined whether or not bail of \$5000. furnished in Detroit is a continuing bond. Defendant allowed until 8-23-48 for motions.
Ryan, J.
- Aug 4 1948—Gilbert Green—Bench Warrant Ordered —to be executed in So. Dist. of N. Y. only.
Ryan, J.
- Aug 4 1948—Filed bond dated 7-30-48 for Carl Winter—\$5000. cash.
- Aug 4 1948—Filed certified copy of waiver of removal and consent of Carl Winter to return to Southern District of New York.
- Aug 5 1948—Upon consent of U. S. Attorney, bail bond of Carl Winter received from the Clerk U. S. District Court, Eastern District of Michigan in the amount of \$5,000. is continued. Ryan, J.
- Aug 5 1948—Gilbert Green—Arraigned on bench warrant pleads not guilty—Bail fixed at \$5000. to cover this indictment and C128-97. Paroled in custody of his counsel for 24 hrs. to give bail—Defendant allowed until 8-23-48 for motions. Ryan, J.
- Aug 6 1948—Filed bond for Gilbert Green—\$5000. (Treasury Bonds) Robert W. Dunn, surety to cover this indictment and C128-97.
- Aug 6 1948—Filed order granting leave to Gilbert Green and Carl Winter to depart the jurisdiction

Docket Entries

of this Court as long as they shall not leave the continental limits of U. S., etc.
Ryan, J.

- Aug 9 1948—Gus Hall Pleads Not Guilty bail fixed at \$5000 to cover this indictment and C128/99 Remanded. Deft. allowed until 8/23/48 for motions. Kaufman, J.
- Aug 9 1948—Filed bond of Gus Hall given in No. Dist. of Ohio for appearance in S. D. of N. Y. dated 8/6/48 \$5000. Maryland Cas. Co., surety.
- Aug 10 1948—Filed bond for Carl Winter dated 8/10/48 \$5000 (Treasury Bond) to cover this indictment and C128/98—Robert W. Dunn, surety.
- Aug 11 1948—Filed Order granting leave to Deft Gus Hall to depart the Jurisdiction of this Court, so as to return to his home in Cleveland, Ohio, etc. Samuel H. Kaufman, DJ.
- Aug 16 1948—Filed affidavit & notice of motion for an order extending time of defts. to make motions—memo endorsed—Time to make motions extended to Sept 27, 1948 Medina J.
- Aug 16 1948—Filed bench warrant with marshal's return Defendant Robert G. Thompson arrested on 7/29/48
- Aug 16 1948—Filed bench warrant with marshal's return Defendant Irving Potash arrested on 7/22/48
- Aug 16 1948—Filed remand dated date 8/9/48. for Gust Hall also known as Arno Gust Halberg
- Aug 16 1948—Filed discharge dated 7/20/48 for defendants William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Benjamin J. Davis, Henry Winston Leibell, J.

Docket Entries

- Aug 16 1948—Filed remand dated 7/20/48 as to Francis X. Waldron Jr. Leibell, J.
- Aug 16 1948—Filed remand dated 7/20/48 as to Henry Winston Leibell, J.
- Aug 16 1948—Filed remand dated 7/20/48 as to Benjamin J. Davis Jr. Leibell, J.
- Aug 16 1948—Filed remand dated 7/20/48 as to William Z. Foster Leibell, J.
- Aug 16 1948—Filed remand dated 7/20/48 as to Jacob Stachel Leibell, J.
- Aug 16 1948—Filed remand dated 7/20/48 as to John B. Williamson Leibell, J.
- Aug 16 1948—Filed remand dated 7/29/48 as to Robert G. Thompson Ryan, J.
- Aug 25 1948—Filed Court appearance bond for Gilbert Green for \$5000. dated 8/23/48—Western Surety Co.
- Aug 30 1948—Filed Record of Removal Proceedings of Gus Hall from No. Dist. of Ohio., Bench Warrant with Marshal's return "arrested 8/4/48 at Cleveland, Ohio, and Preliminary appearance Bond dated 8/4/48 for \$5000. Maryland Cas. Co. Surety.
- Sep 1 1948—Filed affidavits & Notice of Motion for an Order permitting defts. Wm Z. Foster, Eugene Dennis & Henry Winston to leave the jurisdiction of this Court—memo endorsed—Denied 9/1/48 Clancy, J.
- Sep 9 1948—Filed affidavits & Notice of Motion for an order permitting defts. to leave the jurisdiction of this Court
- Sep 9 1948—Filed affidavit in opposition
- Sep 9 1948—Filed Opinion #17661 by Rifkind, J—application by defts to leave jurisdiction granted

Docket Entries

- Sep 10 1948—Filed Order permitting defts. to leave jurisdiction of this Court Rifkind, J.
- Sep 3 1948—Filed Order to Clerk U. S. Dist. Court S. D. of N. Y. to return to Robert W. Dunn Treasury Bonds for \$5000 put up as bail for deft Gilbert Green Clancy, J.
- Sep 17 1948—Filed affidavit & Order to show cause for an order (Jacob Stachel) staying & enjoining a hearing on a deportation warrant Memo Endorsed Motion Argued Motion Denied Kaufman, J.
- Sep 17 1948—Filed affidavit of Govt in opposition
- Sep 20 1948—Filed Notice of Appearance—Harry Sacher—342 Mad. Ave. N. Y. C. Atty for John Gates
- Sep 20 1948—Filed Notice of Appearance Louis F. McCabe, Ohio, Pa. N. Y. Address 100—5th Ave. Room 803, Atty for Eugene Dennis
- Sep 20 1948—Filed Affidavit & Notice of Motion for an order extending time to make motions as to Deft. Dennis. Memo Endorsed—“Time extended to Oct 4—1948” Conger J.
- Sep 20 1948—Filed Affidavit & Notice of Motion for an order extending time to make motions as to all Defts except Dennis & Gates—Memo Endorsed—“Time extended to Oct 4—1948 Conger J.
- Sep 20 1948—Filed Affidavit & Notice of Motion for an order extending time to make motions as to Deft. Gates Memo Endorsed—“Time extended to 10/4/48 Conger J.
- Sep 20 1948—Filed Affidavit of Govt in opposition to motion to extend time to make motions
- Sep 22 1948—Filed order denying motion of Jacob Stachel to stay hearing upon warrant of deportation Kaufman, J.

Docket Entries

- Sep 30 1948—Filed Transcript of record of proceedings, dated 7/20, 7/21, 7/22, 7/29, 8/3, 8/5, 8/6, 8/9, 8/11, 8/16, 8/23, 9/1, 9/8, 9/15, 9/17, 9/20, 9/27
- Oct 15 1948—Filed Notice of Appearance Abraham J. Isserman substituted as Atty for John Williamson, 133 W 44st., NYC “substitution so ordered 10/6/48
- Oct 22 1948—Filed Notice of motion by all defendants for an Order directing the U. S. A. to furnish a bill of particulars—Memo endorsed—Motion disposed of in accordance with opinion of this date—10/ /48—Hulbert J.
- Oct 22 1948—Filed affidavit and Notice of Motion by U. S. Attorney for an order consolidating all indictments C128/87 thru C128/99 for trial—Memo endorsed—“Motion disposed of in accordance with opinion of this date—10/22/48” Hulbert J.
- Nov 8 1948—Richard Gladstone Esq of San Francisco, California, admitted to this court for the purpose of appearing for deft. Robert G. Thompson in this case Medina J.
- Nov 12 1948—Filed Challenge to the Array, and motion to quash and dismiss the entire panel, venire and jury list and affidavit.
- Nov 10 1948—Filed bail bond dated 7/21/48—John Gates —\$5000 Manufacturers Cas. Ins. Co.
- Nov 10 1948—Filed bail bond dated 8/9/48—Gus Hall \$5000. Cash—Arno Gust Halberg, surety.
- Nov 16 1948—Filed Notice with drawing challenge to array without prejudice
- Nov 17 1948—Filed notice of appearance by Geo. W. Crockett Jr. 401 Bway NYC. as Atty for deft Carl Winter.

Docket Entries

- Nov 17 1948—George W. Crockett Jr. an Attorney from Detroit Michigan admitted to this Court for the purpose of appearing as co-counsel for deft Carl Winter. Medina J.
- Nov 30 1948—Filed Order of Defts Attys for continuance (Not signed)
- Nov 30 1948—Filed Transcript of record of proceedings, dated 10/6/48, 10/7/48 & 10/8/48 10/15/48, 11/1/48, 11/8/48, 11/12/48, 11/15/48 & 11/17/48.
- Jan 3 1949—Filed affidavit & Order to Show Cause why deft Wm. Z. Foster should not be re-examined to determine whether he should stand trial 1/17/49. Clancy, J. (Memo endorsed—Motion granted. Submit order on notice—1/3/49 Ryan J.
- Jan 3 1949—Filed notice of appearance by Louis F. McCabe Atty, 401 Bway NYC as associate counsel for Wm Z Foster & Henry Winston.
- Jan 4 1949—Filed Order directing deft. Wm. Z. Foster be re-examined as to his physical condition. Ryan J.
- Jan 17 1949—Filed substitution of Harry Sacher, Atty, 401 Bway NYC as Atty for Benjamin J. Davis, Jr. and Irving Potash. So-ordered. W. V. Connell, Clerk.
- Jan 17 1949—Filed substitution of Mary M. Kaufman, co-counsel 401 Bway NYC as Atty for Gus Hall and Robert G. Thompson. So ordered. W. V. Connell, Clerk.
- Jan 17 1949—Filed substitution of George W. Crockett Jr. Atty 401 Bway NYC as Atty for Jacob Stachel—so ordered. W. V. Connell, Clerk.
- Jan 17 1949—Filed substitution of Richard Gladstein, Atty 401 Bway NYC as Atty for Gus Hall —so ordered. W. V. Connell, Clerk.

Docket Entries

- Jan 17 1949—Filed substitution of Abraham J. Isserman, Atty 401 Bway NYC as Atty for Gilbert Green. So ordered. W. V. Connell, Clerk.
- Jan 17 1949—Filed Notice of mailing address—401 Broadway, Room 1602, New York 13, New York.
- Jan 17 1949—Trial begun—Governments motion to move Indictment C128/87 to trial—Decision Reserved for further arguments. Governments motion for a severance as to the defendant William Z. Foster—Decision Reserved for further arguments. Defendants motion for a 90 day continuance—Motion argued. Motion denied. Medina J.
- Jan 18 1949—Trial continued—Arguments continued on Governments motion for a severance as to the defendant William Z. Foster and to move Indictment C128/87 to trial—Motion Granted. Defendants motion for a hearing to be conducted before a Judge other than a Judge of the Southern District of New York in reference to the manner in which prospective Jurors are obtained and selected in the Southern District of New York. Decision Reserved.
- Jan 19 1949—Trial continued—Argument continued on defendants motion. Medina J. for a hearing to be conducted before a Judge other than a Judge of the Southern District of New York in reference to the manner in which prospective Jurors are obtained and selected in the Southern District of New York—Motion denied insofar as conducting the hearing before a Judge other than a Judge from this District.—Decision reserved in all other respects. Medina J.
- Jan 20 1949—Trial continued—Arguments continued on defendants motion for a hearing bearing on

Docket Entries

the manner in which prospective jurors are obtained and selected in the Southern District of New York—Motion Granted Medina, J.

- Jan 21 1949—Trial continued—The Court begins hearing testimony on the challenge to the manner in which jurors are obtained and selected in the Southern District of New York Medina J.
- Jan 26 1949—Trial continued—Hearing on challenge to Jury panel continued Medina J.
- Jan 27 1949—Trial continued—Hearing on challenge to Jury panel continued Medina J.
- Jan 28 1949—Trial continued—Hearing on challenge to Jury panel continued Medina J.
- Jan 31 1949—Trial continued—Hearing on challenge to Jury panel continued Medina J.
- Feb 1 1949—Trial continued—Hearing on challenge to Jury panel continued Medina J.
- Feb 2 1949—Trial continued—Hearing on challenge to Jury panel continued Medina J. Mr. Harold I. Cammer seeks leave to argue a motion Amicus Curiae—Hearing adjourned to Feb. 7, 1949 Medina, J.
- Feb 3 1949—Trial continued—Hearing on challenge to Jury panel continued Medina J.
- Feb 4 1949—Trial continued—Hearing on challenge to Jury panel continued Medina J.
- Feb 7 1949—Trial continued—Hearing on challenge to Jury panel continued—Medina J. Mr. Harold I. Cammer argued a motion in Amicus Curiae—Motion Granted insofar as allowing briefs to be filed—Motion denied insofar as oral argument is concerned—Decision Reserved Medina, J.

Docket Entries

- Feb 8 1949—Trial continued—Hearing on challenge to Jury panel continued Medina J.
- Feb 9 1949—Trial continued—Hearing on challenge to Jury panel continued Medina J.
- Feb 10 1949—Trial continued—Hearing on challenge to Jury panel continued Medina J.
- Feb 11 1949—Trial continued—Hearing on challenge to Jury panel continued Medina J.
- Feb 14 1949—Trial continued—Hearing on challenge to Jury panel continued—Medina J. The Court rules that defendants memorandum outlining further proof of defendants challenge is insufficient and that the Government shall offer proof at this time—Government's Rebuttal to defendants challenge to Jury panel Medina J.
- Feb 15 1949—Trial continued—Hearing on challenge to Jury panel continued Motion for leave to appear Amicus Curiae on behalf of the American Labor Party—adjourned to Feb. 16, 1949 Medina J.
- Feb 16 1949—Trial continued—Hearing on challenge to Jury panel continued Motion for leave to appear Amicus Curiae on behalf of the American Labor Party—Leave to file briefs Granted Oral argument denied—Decision Reserved Medina, J.
- Feb 17 1949—Trial continued—Hearing on challenge to Jury panel continued Motion for leave to appear Amicus Curiae on behalf of the New York City Chapter National Lawyers Guild—Leave to file briefs granted—Oral arguments denied—Decision Reserved
- Feb 18 1949—Trial continued—Hearing on challenge to Jury panel continued Medina J.
- Feb 24 1949—Trial continued—Hearing on challenge to Jury panel continued Medina J.

Docket Entries

- Feb 25 1949—Trial continued—Hearing on challenge to Jury panel continued Medina J.
- Feb 28 1949—Trial continued—Hearing on challenge to Jury panel continued Medina J.
- Mar 1 1949—Trial continued—Hearing on challenge to Jury panel continued—Medina J. Hearing concluded Decision Reserved Briefs to be submitted by March 2, 1949
- Mar 7 1949—Trial continued—Defendants motion to dismiss the Indictment—Denied Defendants motion for a 90 day continuance—Denied Defendants motion for a severance as to each and every defendant—Denied Defendants motion for additional challenges in excess of those granted under Rule 24(B)—Motion Denied Medina J.
- Mar 8 1949—Trial continued—Empaneling of trial Jury begun Two (2) panels of 170 Jurors are sifted by the Court regarding excuses etc. Medina J.
- Mar 9 1949—Trial continued—Empaneling of trial Jury continued A Jury of 12 is drawn subject to challenge by the Court and Counsel Medina J.
- Mar 10 1949—Trial continued—Empaneling of trial Jury continued. The Court after reconsideration extends an additional 5 challenges in addition to the 10 peremptory challenges allowed under the Rules of Criminal Procedure Rule 24(B) The Court Rules that the peremptory challenges shall be taken in the following order.
Defendants 4 sets of challenges of 3 each—
Total 12
Government 4 sets of challenges of 1 each—
Total 4

Docket Entries

Defendants 1 set of challenges of 2 Government 1

Defendants 1 Government 1 Defendants total peremptory challenges 15

Government 6 The Court rules that challenges shall be taken as indicated, and if passed, challenges will be considered as waived.

Mar 11 1949—Trial continued—Empaneling of trial Jury continued Defendants exercise the first 3 peremptory challenges. Government exercises its first peremptory challenge.

Mar 14 1949—Trial continued—Empaneling of trial Jury continued—Defendants exercise the second set of 3 peremptory challenges making a total of 6 peremptory challenges used by defendants. Government exercises its second peremptory challenge. Defendants exercise the third set of 3 peremptory challenges making a total of 9 peremptory challenges used by defendants.

Mar 15 1949—Trial continued.—Empaneling of trial Jury continued. Government exercises its third peremptory challenge. Defendants exercise the 4th set of 3 peremptory challenges making a total of 12 peremptory challenges used by defendants. Government waives its 4th peremptory challenge. Defendants exercise the 5th set of 2 peremptory challenges, making a total of 14 peremptory challenges used by defendants.

Mar 16 1949—Trial Continued—Empaneling of trial Jury continued. Government exercises its 5th peremptory challenge.

Defendants exercise the 6th and final 1 peremptory challenge, making a total of 15 peremptory challenges.

Docket Entries

Government waives its 6th peremptory challenge.

Jury of 12 trial Jurors sworn.

- Mar 17 1949—Filed Notice of withdrawal of Appearance of Unger, Freedman and Fleisher Attys and Louis F. McCabe, Atty for defendant Eugene Dennis, who will represent himself. So ordered. Medina J.
- Mar 17 1949—Trial continued—Empaneling of 4 alternate Jurors begun and Completed Medina, J.
- Mar 18 1949—Trial continued—The Court instructs the Jury. Medina, J.
- Mar 21 1949—Trial continued—Opening statements by opposing Counsel. Medina, J.
- Mar 22 1949—Trial continued—Opening statements by opposing Counsel. Medina, J.
- Mar 23 1949—Trial Continued—Governments testimony. Medina, J.
- Mar 24 1949—Trial Continued—Governments testimony. Medina, J.
- Mar 25 1949—Trial Continued—Governments testimony. Medina, J.
- Mar 29 1949—Trial continued—Governments testimony. Medina, J.
- Mar 30 1949—Trial Continued—Governments testimony. Medina, J.
- Mar 31 1949—Trial Continued—Governments testimony. Medina, J.
- Mar 31 1949—Filed petition and Notice of Motion by American Labor Party for leave to appear Amicus Curiae—Memo endorsed—Motion granted to the extent that leave is given to submit a brief; in all other respects the motion is denied—2/16/49—Medina, J.

Docket Entries

- Mar 31 1949—Filed motion for leave to appear Amicus Curiae—Pressman, Wise & Cammer. Memo endorsed—“Motion granted to the extent leave is given to submit a brief; in all other respects the motion is denied—2/8/49. Medina, J.
- Mar 31 1949—Filed petition and Notice of Motion by Nat'l Lawyer Guild N. Y. for leave to appear Amicus Curiae—Memo endorsed—Motion granted to the extent that leave is given to submit a brief; in all other respects the motion is denied—2/17/49—Medina, J.
- Mar 31 1949—Filed application for leave to file brief Amicus Curiae on behalf of Nat'l Lawyers Guild—San Francisco, Chapter.
- Mar 31 1949—Filed motion to take testimony of Wm. Z. Foster—Memo endorsed—“Motion denied 3/8/49” Medina, J.
- Apr 1 1949—Trial continued—Governments testimony. Medina, J.
- Apr 4 1949—Trial continued—Governments testimony. Medina, J.
- Apr 5 1949—Trial continued—Governments testimony. Medina, J.
- Apr 5 1949—Filed affidavit and motion for adjournment or recess—Memo endorsed. Motion granted—3/17/49. Medina, J.
- Apr 6 1949—Trial continued—Governments testimony. Medina, J.
- Apr 7 1949—Trial continued—Governments testimony. Medina, J.
- Apr 8 1949—Trial continued—Governments testimony. Medina, J.

Docket Entries

- Apr 8 1949—Filed stipulation that Abraham J. Isserman atty for G. Green and J. B. Williamson be absent from trial 4/8/49.
- Apr 11 1949—Trial continued—Governments testimony.
Medina, J.
- Apr 12 1949—Trial continued—Governments testimony.
Medina, J.
- Apr 13 1949—Trial continued—Governments testimony.
Medina, J.
- Apr 18 1949—Trial continued—Governments testimony
—trial adjd to 4/18/49. Medina, J.
- Apr 19 1949—Trial continued—Governments testimony
—Trial adjd to 4/22/49. Medina, J.
- Apr 22 1949—Trial continued—Governments testimony.
Medina, J.
- Apr 25 1949—Trial continued—Governments testimony.
Medina, J.
- Apr 26 1949—Trial continued—Governments testimony.
Medina, J.
- Apr 27 1949—Trial continued—Governments testimony.
Medina, J.
- Apr 27 1949—Filed Order that a per diem of \$10.00 be
paid to petit jurors on this case to begin
on 4/27/49. Medina, J.
- Apr 28 1949—Trial continued—Governments testimony.
Medina, J.
- Apr 28 1949—Filed three stipulations consenting to the
absence of Abraham J. Isserman, Atty
for defts Gilbert Green and John B. Wil-
liamson, on Apr 22, Apr 26 and Apr 27,
1949. So ordered. H. Medina, J.
- Apr 28 1949—Filed letter dated 4/12/49 from Wm. Z.
Foster to Hon. Harold R. Medina J.

Docket Entries

- Apr 29 1949—Trial continued—Governments testimony.
Medina, J.
- May 2 1949—Trial continued—Governments testimony.
Medina, J.
- May 2 1949—Filed stipulation consenting to absence of
Abraham J. Isserman, Atty for defts Gilbert Green and John B. Williamson on
Apr. 28 & 29, 1949. So ordered.
Medina, J.
- May 2 1949—Filed stipulation consenting to absence of
Abraham J. Isserman and George W.
Crockett on Apr 29, 1949. So ordered.
Medina, J.
- May 3 1949—Trial continued. Governments testimony.
- May 4 1949—Filed stipulation permitting Abraham J.
Isserman & Louis McCabe to be absent
from trial 5/3/49—So ordered. Medina,
J.
- May 4 1949—Filed stipulation permitting Abraham J.
Isserman & Harry Sacher to be absent
from trial 5/2/49. So ordered. Medina,
J.
- May 4 1949—Trial continued—Governments testimony.
- May 5 1949—Filed stipulation permitting Abraham J.
Isserman, Louis F. McCabe & Richard
Gladstein to be absent from trial 5/4/49.
So ordered. Medina, J.
- May 5 1949—Trial continued—Governments testimony.
- May 6 1949—Filed stipulation permitting Abraham J.
Isserman, Richard Gladstein & Louis F.
McCabe to be absent from trial 5/5/49.
So ordered. Medina, J.
- May 6 1949—Trial continued—Governments testimony.
- May 9 1949—Trial continued—Governments testimony.
- May 10 1949—Trial continued—Governments testimony.

Docket Entries

- May 10 1949—Filed stipulation permitting Abraham J. Isserman, Louis McCabe and Richard Gladstein to be absent from trial 5/6/49. So ordered. Medina, J.
- May 10 1949—Filed stipulation permitting Richard Gladstein, Louis F. McCabe and Harry Sacher to be absent from trial 5/9/49. So ordered. Medina, J.
- May 11 1949—Filed stipulation permitting Harry Sacher, Abraham J. Isserman and Louis F. McCabe to be absent from trial 5/10/49. So ordered. Medina, J.
- May 11 1949—Trial continued—Governments testimony.
- May 12 1949—Trial continued—Governments testimony.
- May 13 1949—Filed stipulation permitting Abraham J. Isserman Harry Sacher and Louis F. McCabe to be absent from trial 5/12/49. So ordered. Medina, J.
- May 13 1949—Filed stipulation permitting Harry Sacher, Abraham J. Isserman and Louis F. McCabe to be absent from trial 5/11/49. So ordered. Medina, J.
- May 13 1949—Filed stipulation permitting Abraham J. Isserman, Louis F. McCabe, to be absent from Trial 5/13/49. So ordered. Medina, J.
- May 13 1949—Trial continued—Governments testimony. Medina, J.
- May 16 1949—Trial continued—Governments testimony. Medina, J.
- May 17 1949—Trial continued—Governments testimony. Medina, J.
- May 18 1949—Trial continued—Governments testimony. Medina, J.

Docket Entries

- May 19 1949—Trial continued—Governments testimony.
Government Rests.
Defendants motions for a mistrial—Motions Denied.
Defendants motions for a judgment of acquittal as to each defendant—Motions Argued—Decision Reserved. Medina, J.
- May 19 1949—Filed affidavit and motion as to method in which deposition of William Z. Foster is to be taken—Memo enclosed—Motion Denied. Medina, J.
- May 19 1949—Filed Order permitting the taking, by written interrogatories, of the deposition of William Z. Foster and ordering that Mason H. Bigelow Esq of 1 Wall St be appointed as Commissioner to take the deposition of said William Z. Foster. So ordered. Medina, J.
- May 19 1949—Filed stipulation permitting Abraham J. Isserman, George W. Crockett, Jr., Richard Gladstein and Harry Sacher to be absent from trial 5/18/49. So ordered. Medina, J.
- May 19 1949—Filed stipulation permitting George W. Crockett Jr., Louis F. McCabe and Abraham J. Isserman to be absent from trial 5/17/49. So ordered. Medina, J.
- May 19 1949—Filed stipulation permitting George W. Crockett Jr., Louis F. McCabe and Abraham J. Isserman to be absent from trial 5/16/49. So ordered. Medina, J.
- May 20 1949—Filed stipulation permitting George W. Crockett Jr., Richard Gladstein, and Abraham J. Isserman to be absent from trial 5/19/49. So ordered. Medina, J.
- May 20 1949—Trial continued. Defendants motions for a judgment of acquittal etc as to each defendant—Decision Reserved. Medina, J.

Docket Entries

- May 23 1949—Trial continued—Defendants motions for a judgment of acquittal and all other motions as to each defendant—Motion Denied. Defendants testimony. Medina, J.
- May 24 1949—Trial continued. Defendants testimony. Medina J.
- May 25 1949—Trial continued. Defendants testimony. Medina J.
- May 25 1949—Filed stipulation permitting Louis F. McCabe & A. J. Isserman to be absent from trial 5/24/49—so ordered. Medina J.
- May 26 1949—Trial continued — Defendants testimony. Medina J.
- May 27 1949—Filed stipulation permitting Geo. W. Crockett and A. J. Isserman to be absent from trial 5/25/49—so ordered. Medina J.
- May 31 1949—Trial continued — Defendants testimony. Medina J.
- Jun 1 1949—Trial continued — Defendants testimony. Medina J.
- Jun 1 1949—Filed stipulation permitting Louis F. McCabe, Geo. W. Crockett Jr & A. J. Isserman to be absent from trial 5/26/49—so ordered. Medina J.
- Jun 2 1949—Trial continued—Defendants testimony— so ordered. Medina J.
- Jun 2 1949—Filed stipulation permitting A. J. Isserman, & Richard Gladstein to be absent from trial May 31, 1949—So ordered. Medina J.
- Jun 2 1949—Filed stipulation permitting Richard Gladstein & A. J. Isserman to be absent from trial June 1, 1949. So ordered. Medina J.

Docket Entries

- Jun 3 1949—Trial continued—Defendants testimony—
 The Court adjudges the defendant John Gates guilty of a wilful contempt and is remanded until such time as he purges himself of his contempt or for a period not to exceed thirty (30) days. Remanded. The defendant Henry Winston is remanded for the balance of the trial.
 The defendant Gus Hall is remanded for the balance of the trial. Medina J.
- Jun 3 1949—Filed Judgment—John Gates—Committed to custody of Attorney General or his authorized representative for imprisonment until such time as he may purge himself of his contempt, or for a period not to exceed thirty days. Medina, J.
- Jun 3 1949—Issued commitment & copies for John Gates.
- Jun 3 1949—Bail for Gates pending appeal from judgment of contempt—Denied. Kaufman J.
- Jun 3 1949—Application for bail by Gus Hall & Henry Winston—Denied. Kaufman J.
- Jun 3 1949—Filed petition for writ of habeas corpus (and prosequendur). Issued writ for John Gates. Returnable. 6/6/49.
- Jun 3 1949—Filed Notice of Appeal by John Gates from Judgment of District Court dated 6/3/49—Notices mailed to Warden, Fed. Det. Hdqtrs NYC & US Marshal SD of N.Y. 6/7/49. (HG) 5.00
- Jun 6 1949—Filed stipulation permitting A. J. Isserman to be absent from trial 6/2/49. So ordered. Medina, J.
- Jun 6 1949—Filed petition for writ of habeas corpus Issued writ for Gus Hall. Returnable 6/7/49. (AJI-RG) 5.00

Docket Entries

- Jun 6 1949—Filed petition for writ of habeas corpus.
Issued writ for Henry Winston. Returnable 6/7/49. (AJI-McC) 5.00
- Jun 6 1949—Trial continued—Defendants testimony.
Medina, J.
- Jun 7 1949—Trial continued—Defendants testimony.
Medina, J.
- Jun 8 1949—Filed Judgment for Henry Winston and certificate of Judge Medina—Henry Winston committed to custody of the Atty. Gen'l or his authorized representative for imprisonment for the remainder of the trial in U. S. vs. Wm Z. Foster et al. C128/87. Medina.
- Jun 8 1949—Filed Judgment for Gus Hall and certificate of Judge Medina—Gus Hall committed to custody of the Atty Gen'l or his authorized representative for imprisonment for the remainder of the trial in U. S. vs. Wm Z. Foster et al. C128/87 Medina, J.
- Jun 8 1949—Issued commitments as to Henry Winston & Gus Hall.
- Jun 8 1949—Trial continued—Defendants' testimony—Medina J.
- Jun 9 1949—Trial continued—Defendants' testimony—Medina J.
- Jun 9 1949—Memo endorsed on petitions for Writs of habeas corpus for Gus Hall and Henry Winston filed 6/6/49—“The Writ of habeas corpus issued June 6, 1949 is dismissed—6/9/49. V. L. Leibell, U. S. D. J.
- Jun 9 1949—Filed return to Writ of habeas corpus for Gus Hall.
- Jun 9 1949—Filed return to Writ of habeas corpus for Henry Winston.

Docket Entries

- Jun 9 1949—Filed Opinion #18165 by Hon. Vincent L. Leibell—dated 6/9/49—Writs of habeas corpus as to Gus Hall and Henry Winston dismissed.
- Jun 9 1949—Filed Transcript of record of proceedings dated 6/7/49, 6/8/49 & 6/9/49.
- Jun 9 1949—Filed seven envelopes containing photostatic copies of stenographic minutes of proceedings of 6/3/49, 4/22/49, 5/18/49, 5/19/49, 5/26/49 & 6/2/49.
- Jun 9 1949—Filed stipulation permitting attys Richard Gladstein, and A. J. Isserman to be absent from trial 6/7/49. So ordered. Medina J.
- Jun 9 1949—Filed stipulation permitting Attys. A. J. Isserman, Richard Gladstein & Louis F. McCabe to be absent from trial 6/8/49. So ordered. Medina J.
- Jun 9 1949—Filed stipulations (2) permitting Attys Richard Gladstein, A. J. Isserman, & Louis F. McCabe to be absent from trial 6/9/49. So ordered. Medina J.
- Jun 10 1949—Filed Notice of Appeal by Gus Hall from Order dismissing Writ of Habeas Corpus and denial of motion to Reconsider and Grant Re-hearing. Mailed copy to U. S. Atty. (AJI-RG) 5.00
- Jun 10 1949—Filed Notice of Appeal by Henry Winston from Order dismissing Writ of Habeas Corpus and denial of motion to re-consider & grant re-hearing—Mailed copy to U. S. Atty. (AJI-L.F.Mc) 5.00
- Jun 10 1949—Filed Affdt & Motion to reconsider and vacate judgment dismissing Writ of Habeas Corpus as to Gus Hall Memo endorsed—Motion to reconsider is denied, after argument—6/10/49. Leibell, J.

Docket Entries

- Jun 10 1949—Filed Affdt & Motion to reconsider and vacate judgment dismissing Writ of Habeas Corpus as to Henry Winston Memo endorsed—Motion to reconsider is denied, after argument. 6/10/49. Leibell J.
- Jun 10 1949—Filed Notice of Appeal by Henry Winston from Judgment of Contempt of Court—Notices mailed to U S Marshal S D of N Y & Warden Fed. Det. Hdqtrs 6/16/49. (AJI-LMc) 5.00
- Jun 10 1949—Filed Notice of Appeal by Gus Hall from Judgment of Contempt of Court—Notices mailed to U S Marshall S D of N Y & Warden Fed. Det. Hdqtrs 6/16/49. (AJI-RG) 5.00
- Jun 13 1949—Filed transcript of Record on Appeal by John Gates—Certified record on appeal to U. S. C. A.
- Jun 13 1949—Trial continued—Defendants' testimony.
- Jun 14 1949—Trial continued—Defendants' testimony.
- Jun 14 1949—Filed stipulation permitting Attys. Louis F. McCabe & Richard Gladstein to be absent from trial 6/13/49. So ordered. Medina J.
- Jun 15 1949—Trial continued—Defendants' testimony.
- Jun 16 1949—Trial continued—Defendants' testimony.
- Jun 16 1949—Filed stipulation permitting Attys. Louis F. McCabe, Harry Sacher & Richard Gladstein to be absent from trial 6/15/49—So ordered. Medina J.
- Jun 16 1949—Filed transcript of Record on Appeal (Writ of Habeas Corpus) by Henry Winston—Certified Record on Appeal to C. C. A.
- Jun 16 1949—Filed transcript of Record on Appeal (Writ of Habeas Corpus) by Gus Hall—Certified Record on Appeal to C C A.

Docket Entries

- Jun 16 1949—Certified Record on Appeal (contempt of court) by Gus Hall & Henry Winston to Court of Appeals.
- Jun 17 1949—Filed remand dated 6/3/49 for Gus Hall—Medina J.
- Jun 17 1949—Filed Writ of Habeas Corpus by Henry Winston—Medina J.
- Jun 17 1949—Filed Commitment & entered return, Deft. John Gates Delivered to the Detention Hdqtrs NYC 6/3/49.
- Jun 17 1949—Filed remand dated 6/3/49 for Henry Winston—6/7/49—Writ argued—Decision reserved. Vincent L. Leibell J.
- Jun 17 1949—Filed Writ of Habeas Corpus by Gus Hall — 6/7/49 — Writ argued — Decision re-served. Vincent L. Leibell J.
- Jun 17 1949—Filed Commitment & entered return. Deft. Henry Winston Delivered to the Detention Hdqtrs NYC 6/3/49.
- Jun 17 1949—Filed Commitment & entered return, Deft. Gus Hall Delivered to the Detention Hdqtrs NYC 6/3/49.
- Jun 20 1949—Trial continued. Defendants' testimony. The defendant Gilbert Green is remanded for the balance of the trial. Medina, J.
- Jun 21 1949—Trial continued. Defendants' testimony. Medina J.
- Jun 21 1949—Filed stipulation permitting Attys. Louis F. McCabe, Harry Sacher & Richard Gladstein to be absent from trial 6/16/49. So ordered—Medina J.
- Jun 21 1949—Filed Order on Contempt—Gilbert Green found guilty of contempt of Court & committed to custody of Atty Gen'l or his authorized representative for imprisonment for the remainder of trial of U S v Foster et al C128/87. Medina, J.

Docket Entries

- Jun 22 1949—Issued certified copies of Contempt Order for Gilbert Green to U. S. Marshal.
- Jun 22 1949—Trial continued—Defendants' testimony—Medina J.
- Jun 22 1949—Filed stipulation permitting Attys. G. W. Crockett Jr., L. F. McCabe, & R. Gladstein to be absent from trial 6/20/49—So ordered Medina J.
- Jun 23 1949—Filed stipulation permitting Attys G. W. Crockett Jr., L. F. McCabe & R. Gladstein to be absent from trial 6/21/49. So ordered—Medina J.
- Jun 23 1949—Filed remand dated 6/20/49—Medina J.
- Jun 23 1949—Trial continued—Defendants' testimony—Medina J.
- Jun 23 1949—Filed Notice of Appeal by Gilbert Green from Order on Contempt Notices mailed to U S Marshall S D N Y & Warden, Fed Det Hdqtrs NYC. (AJI) 5.00
- Jun 24 1949—Filed stipulation permitting Attys G. W. Crockett Jr., H. Sacher, & L. McCabe to be absent from trial 6/22/49—So ordered Medina J.
- Jun 24 1949—Filed stipulation permitting Attys L F. McCabe, & Harry Sacher to be absent from trial 6/23/49. So ordered Medina J.
- Jun 24 1949—Filed stipulation permitting Atty R. Gladstein to be absent from trial 6/24/49—So ordered Medina J.
- Jun 27 1949—Trial continued — Defts testimony Medina J.
- Jun 27 1949—Filed designation by Deft Gilbert Green.
- Jun 28 1949—Trial continued — Defts testimony Medina J.

Docket Entries

- Jun 28 1949—C'tf'd Record on Appeal to U. S. C. A. as designated by appellant Gilbert Green re—contempt. Docketed 6/29/49 as per memo from Miss Mahoney.
- Jun 29 1949—C'tf'd Record on Appeal to U. S. C. A. as designated by Appellee U. S. D. A. re—contempt—Gilbert Green Docket 6/29/49 as per memo from Miss Mahoney.
- Jun 29 1949—Trial continued — Defts testimony Medina J.
- Jun 29 1949—Filed Transcript of record of proceedings, dated 6/3/49, 6/7/49, 6/8/49 & 6/10/49.
- Jun 29 1949—Filed Counter-designation of Record — (appeal by G. Green re: contempt)
- Jun 29 1949—Filed 2 stipulations permitting Attys F. Gladstein & H Sacher to be absent from trial 6/27/49 & 6/28/49—So ordered. Medina J.
- July 15, 1949 Pd US Treasury 40—
- Jun 30 1949—Filed stipulation permitting Geo W. Crockett Jr & R. Gladstein, Attys to be absent from trial 6/29/49—So ordered. Medina J.
- Jun 30 1949—Trial continued — Defts testimony. Medina J.
- Jul 1 1949—Filed notice of appearance by Yetta Land, 401 Bway NYC. co-counsel for all defts.
- Jul 5 1949—Trial continued — Defts testimony. Medina J.
- Jul 6 1949—Trial continued — Defts testimony. Medina J.
- Jul 6 1949—Filed stipulation permitting Geo. W. Crockett, L. F. McCabe & R. Gladstein, Attys to be absent from trial 6/30/49—So ordered. Medina J.

Docket Entries

- Jul 6 1949—Filed stipulation permitting L. F. McCabe, & Geo W Crockett Jr. Attys to be absent from trial 7/5/49—So ordered. Medina J.
- Jul 6 1949—Filed stipulation permitting L. F. McCabe & H. Sacher Attys to be absent from trial 7/5/49. So ordered. Medina J.
- Jul 7 1949—Trial continued — Defendants' testimony. Medina J.
- Jul 8 1949—Trial Continued — Defendants testimony. Medina J.
- Jul 11 1949—Trial Continued — Defendants testimony. Medina J.
- Jul 12 1949—Trial Continued — Defendants testimony. Medina J.
- Jul 12 1949—Filed Copy of Writ of Habeas Corpus as to John Gates Memo Endorsed “Writ dismissed 7/2/49”. Medina J.
- Jul 8 1949—Filed stipulation permitting R. Gladstein & L. F. McCabe, Attys to be absent from trial 7/7/49—So ordered. Medina J.
- Jul 8 1949—Filed stipulation permitting R. Gladstein A. J. Isserman, Attys to be absent from trial 7/8/49. So ordered. Medina J.
- Jul 13 1949—Filed stipulation permitting L. F. McCabe & Harry Sacher, Attys to be absent from trial 7/6/49. So ordered. Medina J.
- Jul 13 1949—Filed stipulation permitting A. J. Isserman, Geo A Crockett Jr & R. Gladstein Attys to be absent from trial 7/11/49. So ordered. Medina J.
- Jul 13 1949—Trial continued — Defendants testimony. Medina J.
- Jul 14 1949—Trial continued — Defendants testimony. Medina J.

Docket Entries

- Jul 14 1949—Filed stipulation permitting R. Gladstein, G. W. Crockett Jr, A. J. Isserman & L. F. McCabe to be absent from trial 7/12/49. So ordered. Medina J.
- Jul 14 1949—Filed stipulation permitting Gladstein, McCabe & Isserman, Attys to be absent from trial 7/13/49 So ordered. Medina J.
- Jul 15 1949—Filed stipulation permitting Gladstein, Isserman & McCabe, Attys to be absent from trial 7/14/49. So ordered. Medina J.
- Jul 15 1949—Trial continued. Court adjd. No testimony due to illness of juror #5. Medina J.
- Jul 18 1949—Trial continued. Court adjd. No testimony due to illness of juror #5. Medina J.
- Jul 18 1949—Filed mandate of Court of Appeals—Judgment of District Court as to John Gates affirmed.
- Jul 19 1949—Trial continued. Defendants testimony. Medina J.
- Jul 20 1949—Trial continued. Defendants testimony. Medina J.
- Jul 21 1949—Trial continued. Defendants testimony. Medina J.
- Jul 21 1949—Filed two stipulations permitting Sacher, McCabe and Isserman, Attys to be absent from trial July 19 & 20. So ordered. Medina J.
- Jul 22 1949—Filed stipulation permitting Crockett, Sacher, McCabe and Isserman, Attys. to be absent from trial July 21, So ordered. Medina J.
- Jul 22 1949—Trial continued Defendants' testimony. Medina J.
- Jul 25 1949—Trial continued. Court adjourned No testimony taken due to illness of Juror #5. Medina J.

Docket Entries

- Jul 26 1949—Trial continued. Juror #5. George L Smith is hereby excused from further service with the thanks of the Court, due to his continuing illness, and is replaced by alternate Juror #1 Mrs. Jane Schultz. Defts testimony. Medina J.
- Jul 26 1949—Filed stipulation permitting Crockett & Isserman, Attys to be absent from trial 7/22/49. So ordered. Medina J.
- Jul 26 1949—Filed stipulation permitting Gladstein, Isserman & Crockett to be absent from trial 7/25/49. So ordered. Medina J.
- Jul 27 1949—Trial continued—Defts testimony. Medina J.
- Jul 28 1949—Trial continued—Defts testimony. Medina J.
- Jul 28 1949—Filed Order on Mandate with Notice of Settlement—Mandate of Court of Appeals as to John Gates made Judgment of District Court. Ryan J.
- Jul 29 1949—Filed stipulation permitting McCabe, Isserman, Atty to be absent from Trial 7/26/49—So Ordered. Medina J.
- July 29 1949—Filed stipulation permitting Gladstein, McCabe & Isserman, Attys to be absent from trial on 7/27/49—So ordered. Medina, J.
- July 29 1949—Trial Continued — Defts testimony. Medina J.
- Aug 1 1949—Trial Continued — Defts testimony. Medina J.
- Aug 1 1949—Filed Mandate—U. S. C. C. A. that the Order of said District Court as to U. S. & to Gus Hall be and it hereby is affirmed.
- Aug 1 1949—Filed Mandate—U. S. C. C. A. that the Order of said District Court as to U. S & Henry Winston be and it hereby is affirmed.

Docket Entries

- Aug 1 1949—Filed Mandate—U. S. C. C. A. that the Order of said District Court as to U. S. ex Rel Gus Hall and James Mulcahy, U. S. Marshal be and it hereby is affirmed.
- Aug 1 1949—Filed Mandate—U. S. C. C. A. that the Order of said District Court as to U. S. ex rel Henry Winston & James Mulcahy, U. S. Marshal be and it hereby is affirmed.
- Aug 1 1949—Filed Mandate—U. S. C. C. A. that the Order of said District Court as to U. S. & Gilbert Green be and it hereby is affirmed.
- Aug 2 1949—Filed stipulation permitting Gladstein & McCabe, Attys, to be absent from trial on 7/28/49. So Ordered. Medina J.
- Aug 2 1949—Filed stipulation permitting Crockett & McCabe Atty to be absent from trial on 7/29/49. So Ordered. Medina J.
- Aug 2 1949—Trial Continued — Defts' testimony. Medina J.
- Aug 3 1949—Trial Continued — Defts' testimony. Medina J.
- Aug 3 1949—Filed stipulation permitting Gladstein & Crockett Atty to be absent from trial on 8/1/49. So Ordered. Medina J.
- Aug 3 1949—Filed stipulation permitting Sacher, Isserman, Crockett, & McCabe Attys to be absent from trial on 8/2/49—So Ordered. Medina J.
- Aug 4 1949—Trial Continued — Defts' testimony. Medina J.
- Aug 5 1949—Trial Continued — Defts' testimony. Medina J.
- Aug 5 1949—Filed application to reduce sentence to the time served as to Henry Winston, Gus Hall & Gilbert Green. Memo Endorsed—Application Denied. Medina J.

Docket Entries

- Aug 5 1949—Filed stipulation permitting Sacher, Crockett & McCabe Attys to be absent from trial on 8/3/49. So Ordered. Medina J.
- Aug 5 1949—Filed stipulation permitting Gladstein, Sacher & McCabe, Attys to be absent from trial on 8/3/49—P.M. So ordered. Medina, J.
- Aug 5 1949—Filed stipulation permitting Sacher, Gladstein & McCabe, Attys to be absent from trial on 8/4/49. So Ordered. Medina J.
- Aug 5 1949—Filed stipulation permitting Isserman, McCabe & Gladstein, Attys to be absent from trial on 8/5/49—So Ordered. Medina J.
- Aug 5 1949—Filed Deposition of Wm. Z. Foster, ordered sealed by Judge Medina. (In Vault R. 602).
- Aug 8 1949—Trial Continued — Defts' testimony. Medina J.
- Aug 9 1949—Trial Continued — Defts' testimony. Medina J.
- Aug 9 1949—Filed stipulation permitting Isserman, Gladstein & Crockett attys to be absent from trial on 8/8/49—So Ordered. Medina J.
- Aug 9 1949—Filed Notice of Appearance—Harry Sacher Atty for Deft Winston in place of Louis F. McCabe “consented to”.
- Aug 10 1949—Trial Continued — Defts' testimony. Medina J.
- Aug 11 1949—Trial Continued — Defts' testimony. Medina J.
- Aug 11 1949—Filed Order on Mandate, as to U S ex rel Henry Winston vs: James Mulcahy, US Marshal—that the Mandate of the U. S. C. C. A. be and hereby is made the Judgment of this Court (Notice of Settlement). Holtzoff J.

Docket Entries

- Aug 11 1949**—Filed Order on Mandate & Notice of Settlement U S ex rel Gilbert Green vs James Mulcahy, U S Marshal, that the mandate of U. S. C. C. A. be and hereby is made the order of this Court. Holtzoff J.
- Aug 11 1949**—Filed Order on Mandate U S vs Henry Winston that the mandate by C. C. A. be & hereby is made the order of this Court. Holtzoff J.
- Aug 11 1949**—Filed Order on Mandate U S vs. Gus Hall that the mandate of C. C. A. be & hereby is made the order of this Court. Holtzoff J.
- Aug 11 1949**—Filed Order on Mandate U S vs Gilbert Green that the mandate of C. C. A. be & hereby is made the order of this Court. Holtzoff J.
- Aug 12 1949**—Trial Continued — Defts' testimony. Medina J.
- Aug 12 1949**—Filed stipulation permitting Crockett, Isserman & McCabe, Attys, to be absent from trial Aug 9, 1949. So Ordered. Medina J.
- Aug 12 1949**—Filed stipulation permitting Isserman, Crockett & McCabe, Attys to be absent from trial Aug 10, 1949. So ordered. Medina, J.
- Aug 12 1949**—Filed stipulation permitting Crockett, Isserman & McCabe, Attys to be absent from trial Aug 11, 1949. So ordered. Medina, J.
- Aug 15 1949**—Trial Cont'd—Defts testimony Medina J.
- Aug 16 1949**—Trial Cont'd. Defts testimony Medina, J.
- Aug 16 1949**—Filed stipulation permitting Isserman, Sacher, McCabe and Crockett, Attys to be absent from trial Aug 12, 1949. So ordered. Medina, J.

Docket Entries

- Aug 17 1949—Trial Cont'd. Defts testimony Medina J.
- Aug 17 1949—Trial Cont'd. Defts testimony Medina J.
- Aug 18 1949—Filed stipulation permitting Sacher, Isserman & Gladstein, Attys to be absent from Trial on Aug 13, 1949. So ordered. Medina, J.
- Aug 18 1949—Filed stipulation permitting Sacher, Isserman & McCabe, Attys to be absent from trial on Aug 16, 1949. So Ordered. Medina, J.
- Aug 19 1949—Trial Cont'd. Defts Testimony—Medina, J.
- Aug 22 1949—Trial Cont'd. Defts Testimony—Medina, J.
- Aug 22 1949—Filed stipulation permitting Sacher, Crockett, Isserman & McCabe, Attys to be absent from trial on Aug 17, 1949. So Ordered. Medina, J.
- Aug 22 1949—Filed stipulation permitting Sacher, Gladstone, McCabe & Crockett, Attys to be absent from trial on Aug 18, 1949. So Ordered. Medina, J.
- Aug 23 1949—Trial Cont'd. Defts testimony—Medina, J.
- Aug 23 1949—Filed Stipulation permitting Gladstein, McCabe, Crockett, J. Attys to be absent from trial on Aug 19, 1949. So Ordered. Medina, J.
- Aug 24 1949—Trial Cont'd—Motion for various relief etc. Argued—Medina, J.
- Aug 24 1949—Filed stipulation permitting McCabe, Gladstein & Isserman, Attys to be absent from trial on 8/22/49. So ordered. Medina, J.
- Aug 25 1949—Filed stipulation permitting McCabe, Isserman & Gladstein, Attys to be absent from trial on Aug 23, 1949. So Ordered. Medina, J.

Docket Entries

- Aug 26 1949—Trial Cont'd Defts testimony—Medina, J.
- Aug 29 1949—Trial Cont'd Defts testimony—Medina, J.
- Aug 29 1949—Filed stipulation permitting McCabe, Isserman, Crockett & Sacher, Attys be absent from trial on Aug 24, 1949. So Ordered. Medina, J.
- Aug 29 1949—Filed stipulation permitting Isserman, McCabe & Crockett, Attys be absent from trial on Aug 1949. So Ordered. Medina, J.
- Aug 30 1949—Trial Cont'd Defts' testimony—Medina, J.
- Aug 30 1949—Filed stipulation permitting McCabe, Crockett & Gladstein, Attys be absent from trial on Aug 26, 1949. So Ordered—Medina, J.
- Aug 30 1949—Filed stipulation permitting Crockett, Gladstein & McCabe, Attys to be absent from trial on Aug 29, 1949. So Ordered—Medina, J.
- Aug 31 1949—Filed stipulation permitting Crockett, Gladstein & McCabe, Attys to be absent from trial on Aug 30, 1949. So Ordered—Medina, J.
- Aug 31 1949—Trial cont'd Defts' testimony—Medina, J.
- Sept 1 1949—Trial cont'd Defts' testimony—Medina, J.
- Sept 6 1949—Trial cont'd. The deft Irving Potash absent at the opening of Court. The Court adjourned until 2:30 P.M. to ascertain the physical condition of the deft. Irving Potash. 2:30 P.M. Court & trial adjd to Thursday Sept 8, 1949, at 10:30 A.M. No testimony taken.
- Sept 6 1949—Filed stipulations permitting Isserman, Gladstein, McCabe, Attys to be absent from trial on Aug 31, 1949 & Sept. 1, 1949. So Ordered—Medina, J.

Docket Entries

- Sept 8 1949—Trial continued—Defts. testimony Medina, J.
- Sept 9 1949—Filed stipulation permitting Isserman, McCabe & Gladstein, Attys to be absent from trial on Sept 8, 1949. So Ordered—Medina, J.
- Sept 9 1949—Trial Cont'd—Defts testimony—Medina, J.
- Sept 12 1949—Trial Cont'd. Defts Testimony. The Court adjudges the defendant Carl Winter in wilful contempt of Court, for failure to answer a question and is remanded until such time as he purges himself of his contempt for a period not to exceed 30 days.
- Sept 13 1949—Trial Cont'd Defts testimony—Medina, J.
- Sept 13 1949—Filed stipulation permitting Isserman, Gladstein & McCabe, Attys to be absent from trial on Sept 9, 1949. So Ordered—Medina, J.
- Sept 13 1949—Filed stipulation permitting Gladstein, McCabe, Isserman & Sacher, Attys to be absent from trial on Sept 12, 1949. So Ordered—Medina, J.
- Sept 13 1949—Filed affidavit for Writ of Habeas Corpus ad Prosequendum as to Carl Winter—Issued Writ Ret. 9/13/49
- Sept 14 1949—Filed Order on Contempt—Deft Carl Winter committed to the custody of the Attorney General etc until he shall have purged himself of the Contempt, for a period not to exceed Thirty (30) Days—Medina, J.
- Sept 14 1949—Trial cont'd defts testimony—Medina, J.
- Sept 15 1949—Trial cont'd defts testimony—Medina, J.
- Sept 15 1949—Filed stipulation permitting Isserman & McCabe, Attys to be absent from trial on 9/13/49. So Ordered—Medina, J.

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- Sept 15 1949—Filed stipulation permitting Gladstein, Isserman, McCabe, Attys to be absent from trial on 9/14/49. So Ordered—Medina, J.
- Sept 16 1949—Trial continued — Defts testimony—Medina, J.
- Sept 19 1949—Trial continued — Defts testimony—Medina, J.
- Sept 20 1949—Trial continued — Defts testimony—Medina, J.
- Sept 20 1949—Filed stipulation permitting Gladstein, Isserman & McCabe to be absent from trial on Sept 16, 1949. So Ordered—Medina, J.
- Sept 21 1949—Filed stipulation permitting Crockett, Gladstein & Isserman to be absent from trial on Sept 19, 1949. So Ordered—Medina, J.
- Sept 21 1949—Trial continued—Defts testimony. Medina, J.
- Sept 22 1949—Filed application of Mason H. Bigelow, Commissioner, for compensation.
- Sept 22 1949—Filed Order approving application of Mason H. Bigelow, Comms. and directing him to be paid. Medina, J.
- Sept 22 1949—Filed stipulation permitting Isserman, Gladstein and McCabe, Attys to be absent from trial 9/20/49. So ordered—Medina, J.
- Sept 22 1949—Trial cont'd—Defts testimony—Medina, J.
- Sept 23 1949—Filed stipulation permitting Isserman, Gladstein, McCabe & Crockett, Attys to be absent from trial 9/21/49. So Ordered—Medina, J.
- Sept 23 1949—Filed stipulation permitting Isserman, Gladstein, Crockett & McCabe, Attys to

Docket Entries

be absent from trial 9/22/49. So ordered—
Medina, J.

- Sept 23 1949—Trial cont'd—Defts testimony—Medina, J.
Defense rests—Govt rests. Both sides rest.
Jury excused to 10/4/49. Court & trial
adjd to 9/28/49—Medina, J.
- Sept 29 1949—Trial continued—Arguments on defendants motions for dismissal, mistrial and judgment of acquittal continued and concluded—Decision Reserved—Medina, J.
- Sept 30 1949—Filed stipulation permitting Isserman, Crockett & McCabe, Attys to be absent from trial 9/23/49. So ordered—Medina, J.
- Sept 30 1949—Filed stipulation permitting McCabe, Crockett & Gladstein, Attys to be absent from trial 9/29/49. So ordered—Medina, J.
- Oct 4 1949—Trial continued. Defts motions for a judgment of acquittal as to each and all of the defts. Motion denied—Medina, J. Defts motions for dismissal on grounds of insufficiency of evidence—Motion denied. Jury excused until 10/6/49—10:30 A.M.—Medina, J.
- Oct 7 1949—Trial continued—Summations on behalf of the defendants by Mr. Abraham J. Isserman of counsel. Summations on behalf of the defendants by Mr. Louis F. McCabe of counsel.
- Oct 10 1949—Trial continued—Summations on behalf of the defendants by Mr. Richard Gladstein of counsel and Mr. Harry Sacher of counsel.
- Oct 11 1949—Trial continued—Summations on behalf of the defendants by Mr. Harry Sacher of counsel continued and concluded. Summations on behalf of defendants by Mr. George W. Crockett of counsel and by Mr. Eugene Dennis.

Docket Entries

- Oct 12 1949—Trial continued—Summations on behalf of the defendants by Mr. Eugene Dennis continued and concluded. Summation on behalf of the govt. by Mr. John F. X. McGohey.
- Oct 13 1949—Trial continued—Summations on behalf of the govt. by U. S. Atty. John F. X. McGohey continued and concluded.
 Charge by the Court—Six officers sworn. Jury retires at 3:55 P. M. The 3 alternate jurors are excused with the sincere thanks of the Court. The Jury is taken to dinner at 5:41 P. M. and returns to the Courthouse at 7:00 P. M. to continue deliberations. At 10:21 P. M. the jury, at their request, was taken to a hotel for the night and the Court was adjourned until 9:30 A. M. on Oct. 14, 1949. Medina, J.
- Oct 13 1949—Filed certified copy of Writ of Habeas Corpus ad pros. for Carl Winter. Writ satisfied 10/11/49. Medina, J.
- Oct 14 1949—Trial continued—The jury returns to the Courthouse at 9:29 A. M. to continue their deliberations. The jury returns to the Courtroom at 11:28 A. M. with the following verdict: “We find each of the defendants “Guilty.” The Court orders the following polling of the jury individually and as to each defendant. The jury polled as directed. Verdict of “Guilty” unanimous. Jury discharged with the sincere thanks of the Court. Sentences adjourned to Oct. 21, 1949 at 10:30 A. M. Room 110. Defendants remanded. See C131/36 for contempt certificate and proceedings against attys. Richard Gladstein, Louis F. McCabe, Abraham J. Isserman, Harry Sacher, George W. Crockett, Jr. and defendant Eugene Dennis, counsel pro se. Medina, J.

Docket Entries

- Oct 14 1949—Filed stipulation permitting atty. R. Gladstein to be absent from trial 10/7/49. So ordered. Medina, J.
- Oct 14 1949—Filed stipulations (2) permitting atty. Louis F. McCabe to be absent from trial 10/11/49 & 10/12/49. So ordered. Medina, J.
- Oct 14 1949—Filed remand for all eleven defendants dated 10/14/49. Medina, J.
- Oct 21 1949—Defendants called sentence. Motions for arrest of Judgment and motions for Judgment of acquittal made. Motions denied. Medina, J.
- Oct 21 1949—Filed Judgment #50874. Eugene Dennis sentenced to Five Years at a place of confinement to be designated by the Attorney General of the United States and fined \$10,000. and to stand committed until fine is paid or he is otherwise discharged according to law. Remanded. Medina, J.
- Oct 21 1949—Filed Judgment #50881. John B. Williamson sentenced to Five Years at a place of confinement to be designated by the Attorney General of the United States and fined \$10,000. and to stand committed until fine is paid or he is otherwise discharged according to law Remanded. Medina, J.
- Oct 21 1949—Filed Judgment #50879. Jacob Stachel sentenced to Five Years at a place of confinement to be designated by the Attorney General of the United States and fined \$10,000. and to stand committed until fine is paid or he is otherwise discharged according to law Remanded. Medina, J.
- Oct 21 1949—Filed Judgment #50880. Robert G. Thompson sentenced to Three Years at a place of confinement to be designated by the Attorney General of the United States and fined \$10,000. and to stand committed until fine is paid or he is otherwise dis-

Docket Entries

charged according to law Remanded.
Medina, J.

- Oct 21 1949—Filed Judgment #50873. Benjamin J. Davis, Jr. sentenced to Five Years at a place of confinement to be designated by the Attorney General of the United States and fined \$10,000, and to stand committed until fine is paid or he is otherwise discharged according to law Remanded. Medina, J.
- Oct 21 1949—Filed Judgment #50882. Henry Winston sentenced to Five Years at a place of confinement to be designated by the Attorney General of the United States and fined \$10,000. and to stand committed until fine is paid or he is otherwise discharged according to law Remanded. Medina, J.
- Oct 21 1949—Filed Judgment #50875. John Gates sentenced to Five Years at a place of confinement to be designated by the Attorney General of the United States and fined \$10,000. and to stand committed until fine is paid or he is otherwise discharged according to law Remanded. Medina, J.
- Oct 21 1949—Filed Judgment #50878. Irving Potash sentenced to Five Years at a place of confinement to be designated by the Attorney General of the United States and fined \$10,000. and to stand committed until fine is paid or he is otherwise discharged according to law Remanded. Medina, J.
- Oct 21 1949—Filed Judgment #50876 Gilbert Green sentenced to Five years at a place of confinement to be designated by the Attorney General of the United States and fined \$10,000. and to stand committed until fine is paid or he is otherwise discharged according to law Remanded Medina J.
- Oct 21 1949—Filed Judgment #50883 Carl Winter sentenced to Five years at a place of confinement to be designated by the Attorney

Docket Entries

General of the United States and fined \$10,000. and to stand committed until fine is paid or he is otherwise discharged according to law Remanded Medina J.

- Oct 21 1949—Filed Judgment #50877 Gus Hall sentenced to Five years at a place of confinement to be designated by the Attorney General of the United States and fined \$10,000. and to stand committed until fine is paid or he is otherwise discharged according to law Remanded Medina J.
- Oct 21 1949—Issued commitment & copies as to each defendant.
- Oct 21 1949—Motions on behalf of each defendant for bail pending appeal Motions argued and denied Medina J.
- Oct 28 1949—Filed elections by Robert Thompson, John Gates, Gus Hall, Carl Winter, John Williamson, Gilbert Green, Irving Potash, Henry Winston, Eugene Dennis, Jacob Stachel, and Benjamin J. Davis not to continue service of sentence 10/27/49
- Nov 1 1949—Filed remands dated 10/14/49 for each deft. found guilty Medina J.
- Nov 9 1949—Filed bonds on appeal for John Gates, Gilbert Green, Carl Winter, Benj. J. Davis, Jr., Robert G. Thompson, Gus Hall and Henry Winston dated 11/3/49 in sum of \$20,000. each Robert W. Dunn, Surety (U. S. Govt bearer bonds)
- Nov 9 1949—Filed bonds on Appeal for Eugene Dennis, Irving Potash, John B. Williamson and Jacob Stachel dated 11/3/49 in sum of \$30,000 each. Robert W. Dunn, Surety (U. S. Govt. bearer bonds).
- Nov 9 1949—Filed affdt by Daniel B. Greenberg and Order directing Clerk to issue a subpoena for examination of E. Dennis, B. Davis,

Docket Entries

G. Hall, J. B. Williamson, H. Winston,
 C. Winter, J. Gates, J. Stachel, R. G.
 Thompson, I. Potash and G. Green, with
 restraining order Sugarman, D. J.

- Nov 10 1949**—Filed affdt & Order permitting Gus Hall,
 Carl Winter, Gilbert Green, Robert G.
 Thompson and John Gates to depart the
 jurisdiction of this court and go to Federal
 District in which their homes are located
 Bondy J.
- Nov 15 1949**—Filed certified copy of Writ of Habeas
 Corpus ad pros. for Carl Winter “Writ
 satisfied 10/11/49” Medina J.
- Nov 15 1949**—Filed remand dated 9/12/49 for Carl Win-
 ter Medina J.
- Nov 15 1949**—Filed certified copy of Order of contempt
 (commitment papers for Gilbert Green)
 “Delivered to Detention Hdqtrs NYC
 6/20/49”
- Nov 11 1949**—Filed Transcript of record of proceedings,
 dated 11/5/49 & 11/7/49
- Nov 18 1949**—Filed 72 individual sheets of questions sub-
 mitted by counsel for defts. on examina-
 tion of talesmen.
- Nov 21 1949**—Filed Transcript of record of proceedings,
 dated 11/5/49 & 11/7/49.
- Nov 25 1949**—Filed copy of letter dated 11/25/49 stating
 that \$300. has been paid on acct of fine
 against Jacob Stachel to be held in escrow
 pending appeal and to cover following as-
 set & property. 10% of 12 months salary
 at \$60—per week—from Communist Party
 —11/10/49 to 11/9/50—\$300.
- Nov 25 1949**—Filed copy of letter dated 11/25/49 stating
 that \$2300.07 has been paid on acct of fine
 against Benjamin J Davis Jr. to be held
 in escrow pending appeal and to cover fol-
 lowing assets & property.

Docket Entries

Special Checking acct—Amalgamated Bank of N. Y.	719.12
Checking acct. same bank.....	2.95
1948 Dodge Sedan.....	1495.00
10% of Salary due from NYC.	
10/15 to 12/31/49.....	83.00

Nov 25 1949—Filed copy of letter dated 11/25/49 stating that \$571.15 has been paid on acct of fine against John Gates to be held in escrow pending appeal and to cover following assets & property:

10% of 12 months salary at \$60— per week. from Communist Party	
—11/10/49 to 11/9/50.....	\$300.—
10 shares of stock—Freedom of the Press Inc.	100.—
National City Bank Acct #229927	11.15
US War Savings Bond.....	160.00

Nov 25 1949—Filed copy of letter dated 11/25/49 stating that \$1061.00 has been paid on acct of fine against Robert G. Thompson to be held in escrow pending appeal and to cover the following assets & property:

10% of 12 months salary at \$60— per week from Communist Party—	
11/10/49 to 11/9/50.....	\$300.—
1941 Chrysler Sedan.....	645.—
Check Acct—Irving Trust Co. ...	116.—

Nov 26 1949—Filed affdt by Eugene Dennis and unsigned Order to Show Cause—Memo endorsed—11/26/49—Hearing held on this application for an order to show cause. Application refused for the reason indicated upon the argument, among them being the fact that no reason has been shown for proceeding by Order to Show Cause instead of notice of motion. I. R. Kaufman J.

Nov 26 1949—Filed statement under Rule 15(b).

Docket Entries

- Nov 29 1949—Filed amended statement under Rule 15-(b).
- Nov 29 1949—Filed stipulation in re: Docketing of documents, etc—So ordered—11/29/49. Noonan J.
- Nov 30 1949—Filed Exhibit A submitted in support of motion for re-hearing of motion made 3/7/49 to dismiss indictment & attached to affdt of B. J. Davis Jr. and Exhibit A1, and B to K attached to affdt dated 5/24/49.
- Nov 30 1949—Filed Transcript of record of proceedings, dated 1/3/49 to 9/14/49 and consisting of 29 volumes including index.
- Nov 30 1949—Filed letter dated 11/30/49 stating that \$1318.30 has been paid on acct. of fine against John B. Williamson to be held in escrow pending appeal and to cover following assets & property—
- | | |
|---|----------|
| 1. 10% of 12 months salary at
\$60. per week from Communist
Party—11/10/49 to 11/9/50.. | \$300.00 |
| 2. 1941 Plymouth automobile... | 400.00 |
| 3. Balance of Savings Acct—
Amalgamated Bank..... | 112.71 |
| 4. Balance Checking Acct—Amal-
gamated Bank..... | 5.59 |
| 5. U. S. Series E. War Savings
Bonds..... | 25.00 |
| 6. U. S. Series E War Savings
Bonds..... | 475.00 |
- Nov 30 1949—Filed letter dated 11/30/49 stating that \$378.75 has been paid on acct. of fine against Eugene Dennis to be held in escrow pending appeal and to cover following assets & property—

Docket Entries

1. 10% of 12 months salary at \$60— per week from Communist Party — 11/10/49 to 11/9/50..... \$300.—
2. 2 US War Savings bonds.... 45.—
3. 2 US War Savings bonds.... 33.75

Nov 30 1949—Filed letter dated 11/30/49 stating that \$1442.54 has been paid on acct. of fine against Carl Winter to be held in escrow pending appeal and to cover following assets & property—

1. 10% of 12 months salary at \$40— per week from Communist Party — 11/10/49 to 11/9/50..... \$ 200.—
2. 1948 Ford Sedan..... 1100.—
3. Balance of joint checking Acct. Commonwealth Bank Detroit Mich. 52.54
4. Balance joint savings acct. Commonwealth Bank Detroit Mich. 25.00
5. US Series E War Savings Bonds..... 65.00

Nov 30 1949—Filed letter dated 11/30/49 stating that \$747.50 has been paid on acct. of fine against Henry Winston to be held in escrow pending appeal and to cover following assets & property—

1. 10% of 12 months salary at \$60.00 per week from Communist Party — 11/10/49 to 11/9/50..... \$300.—
2. Bank Acct. Union Sq. Savings Bank..... 360.—
3. U. S. Savings bonds—
1-\$50 bond jointly owned.... 22.50
1-\$25 bond..... 22.50
1-\$50 bond..... 42.50

Excerpts From Challenge Testimony

UNITED STATES DISTRICT COURT

(793)* SOUTHERN DISTRICT OF NEW YORK
Cr. 128-87 etc.

◆
UNITED STATES OF AMERICA,

v.

WILLIAM Z. FOSTER; EUGENE DENNIS also known as Francis X. Waldron, Jr.; JOHN B. WILLIAMSON, JACOB STACHEL, ROBERT G. THOMPSON, BENJAMIN J. DAVIS, JR., HENRY WINSTON; JOHN GATES, also known as Israel Regenstreif; IRVING POTASH, GILBERT GREEN, CARL WINTER, and Gus HALL, also known as Arno Gust Halberg.

◆
Before:

HON. HAROLD R. MEDINA, *D.J.*,
(and a jury).

New York, January 17, 1949;
10:30 a. m.

Appearances:

JOHN F. X. McGOHEY, Esq., United States Attorney, For the Government; By JOHN F. X. McGOHEY, Esq., U. S. Attorney, FRANK H. GORDON, Esq., IRVING S. SHAPIRO, Esq., Special Assistants to the United States Attorney, EDWARD C. WALLACE, Esq., Special Assistant to the Attorney General, LAWRENCE K. BAILEY, Esq., Attorney, Department of Justice.

(794) UNGER, FREEDMAN & FLEISCHER, Esqs., Co-counsel for Jacob Stachel, Carl Winter, William Z. Foster, Eugene Dennis and Harry Winston; ABRAHAM UNGER, Esq., and DAVID M. FREEDMAN, Esq., of Counsel.

HARRY SACHER, Esq., Attorney for Irving Potash, Benjamin J. Davis, Jr. and John Gates.

ABRAHAM J. ISSELMAN, Esq., Attorney for Gilbert Green and John B. Williamson.

* Figures in parentheses indicate pages of stenographic minutes.

Counsels' Statements and Preliminary Motions

LOUIS F. McCABE, Esq., Attorney for William Z. Foster,
Eugene Dennis and Henry Winston.

RICHARD GLADSTEIN, Esq. (of the California Bar), Co-counsel for Gus Hall and Robert G. Thompson.

GEORGE W. CROCKETT, JR., Esq. (of the Michigan Bar), Co-counsel for Jacob Stachel and Carl Winter.

MARY M. KAUFMAN, Esq., Attorney for Gus Hall and Robert G. Thompson.

* * *

(797) Mr. McGohey: Now, if the Court please, I move for trial indictment No. 128-87, being the conspiracy charge, and I move it against each of the defendants named in that indictment with the exception of the defendant William Z. Foster, as to whom I move to sever.

Mr. Sacher: May we be heard, your Honor.

The Court: Yes, you may.

Mr. Sacher: Before your Honor proceeds to consider any proceeding in this trial we wish to call to the Court's attention a matter of the gravest importance.

(798) The newspapers of this City this morning were filled with stories to the effect that the largest aggregation of police in the history of this City has been concentrated in and about this courtroom. The New York Times of this morning reports on the front page, "400 police on duty as 12 Communists go on trial today. Detail"—that is the detail of police—"to balk outbreaks is largest ever assigned to a court case here."

The New York Star this morning announces on the front page the following: "Trial of top Reds opens here today. 400 police guard Foley Square against demonstrations. Foley Square will become an armed camp this morning as the largest police detail ever assigned to a trial in New York area guards the Federal Court House, when 12 Communist leaders go on trial at 10 o'clock on charges of conspiring to advocate the forcible overthrow of the U. S. Government. Chief Inspector August Flath has assigned 362 uniformed and plainclothes officers from all boroughs"—that is, that takes in Brooklyn too, I suppose, which does not lie in the Southern District of New

Counsels' Statements and Preliminary Motions

York—"equivalent to nearly 2½ companies of military police to duty at the Federal Building for the duration of the trial."

And the Daily News, which boasts, say, a daily circulation of a couple of million, says: "400 (799) police to watch crowd at Reds' trial. The biggest police detail ever assigned to a trial in New York—400 cops and two patrol wagons—will take up duty in and around the Federal Building in Foley Square today for the opening of the opening of the trial of the American Communist leaders on charges of conspiring against the U. S."

Your Honor, the Sixth Amendment to the Constitution of the United States guarantees to every person accused of crime in this country a public trial and not a police trial. And these defendants say at this time that this kind of surrounding of this court with an armed camp makes this a police trial and not a public trial. It will vitiate the proceedings. And we therefore ask that the Court direct the removal of all police from within and in the vicinity of the court house, on the ground that this detail, this 2½ companies of military police have been thrown around the court house and into the court house solely for the purpose of creating a Hitler lie that there is some danger in the conduct of this trial which has to be suppressed or met by police.

Your Honor himself has had occasion to say at the last hearing when we appeared here that there was nothing in the conduct of the counsel for the (800) defendants at any time, and Mr. McGohey added to your Honor's by saying that there was nothing in the conduct of the defendants at any time, which required or deserved any criticism from either Court or prosecution. And in light of those two testimonials we think that in order that this atmosphere, this armed camp atmosphere may be dissipated, we urge that your Honor direct forthwith, inasmuch as the control of the courtroom and the precincts of the court house and the approaches thereto are under the control of this Court, that it ought to immediately order the dispersal of the police and conduct this case in accordance with the requirements of the Constitution.

And we further say to your Honor at this time that in light of the vicious impact of the undertaking of this armed

Counsels' Statements and Preliminary Motions

camp atmosphere, that this case be adjourned for at least 90 days until such time as we can, under a civil administration of law, proceed with a consideration of the matters involved herein.

The Court: Well, I am not accustomed to take the statements in the newspapers as determining matters before me. I have seen no evidence of any armed camp around here when I got here this morning or in the courtroom here.

I have some recollection however of rather substantial picket lines on various previous occasions. (801) It rendered it a little difficult for me to get in and out of the court house myself. But however that may be, I can't see anything to justify the comments that you have made. And the motion is denied.

Mr. Sacher: If your Honor will be good enough to walk with me around the corner in this building I will show you a couple of hundred policemen whom I saw with my own eyes in a room right next to the press room, right on this floor. So that you need not take, your Honor, the statements contained in the press. You can have visual evidence of the truth of what I say.

Mr. McCabe: I should like to add—

The Court: I thought you were talking about them surrounding the court house.

Mr. Sacher: And worse, they are in the court house, they are in the court house.

Mr. Gladstein: Your Honor, may I say something in behalf of the clients I represent?

The Court: Yes.

Mr. Gladstein: I take it there will be no disagreement, your Honor, that the purpose of a public trial is for the benefit of the accused, not for the benefit of the police, not even for the benefit of the newspapers, though no one denies them the privilege, that they have the privilege to occupy many seats in (802) the courtroom to cover trials; but the primary purpose of a public trial is that the accused shall receive in every aspect of the case, including the atmosphere in which it is conducted and the courtroom in which it is conducted, fair play. Now—

The Court: Well, I agree with that.

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Mr. Gladstein: Yes. One of the leading authorities on that subject, your Honor, as your Honor will know, is Judge Cooley who in his book on "Constitutional Limitations" at page 647 of the Eighth Edition, says this:

"The requirement of a public hearing is for the benefit of the accused, that the public may see that he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions."

Now, your Honor, I am a member of the California Bar and I am a member of the Bar of the Supreme Court of the United States. I have practiced law for nearly 20 years. In my practice I have represented people in a variety of cases about which at the time there was considerable public interest and excitement, cases in which hundreds of people came to the courtroom; (803) cases about which the press of the nation was interested. These cases have taken me from California to Oregon, to Washington, to Hawaii, and now to New York. I have never in all my experience seen anything begin to compare with what I have seen here this morning. And I want to speak about this not only for my clients but for myself and my ability to defend and properly represent my clients.

For me to know that I must defend my clients while some 400 uniformed officers, minions of the law—I do not know how many non-uniformed, plainclothesmen, are about, inside the courtroom, in the corridors and all around, is for me to receive the effect that was intended that I and everybody here should receive, and that is this: I am aware of the fact that trigger-happy men are included among those who wear the uniforms of the police. I am aware of the fear, the sense of terror that is imbued at the sight of a tremendous cordon of police. And I am aware that today hundreds of prospective jurors came to this building and saw something they have never seen before and which immediately they rationalized as justified by some menace or threat emanating—from whom, please? But of course they would not assume that it emanates

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from the Government, from the prosecutor, or from (804) anybody else, except exactly as was intended—from the defendants.

So that there are hundreds of jurors there whose minds already have been to some extent poisoned, poisoned as far as their ability to play fair in any case is concerned, by the fact that they have been admitted here to witness a spectacle that is conducted only when martial law exists.

I take it we are all agreed that martial law has not been declared in Foley Square and that this is still a civilian demonstration dedicated supposedly to the administration of justice and the meting of fair play and not a verbal recognition, but a real recognition of what Judge Cooley said. It is of dubious benefit, to put it mildly, to have this kind of atmosphere created on the morning that their trial is scheduled to commence. And it is of no benefit to me in my desire to do my utmost to discharge my functions as an officer of this court and an attorney at law in the representation of my clients to their best interest, to the best effect. It does no good for them for me to know that every day I am going to have to come through this kind of an armed camp.

Now, your Honor, it may be said, as it was in the newspaper articles that Mr. Sacher read, it may (805) be said that the justification for all these police is that there may be some demonstrations on the part of people who are interested in this case and who desire to protest against it. I ask this question: Since when has the Constitution of the United States been repealed by the Police Department of the City of New York as applicable to this Federal courtroom? Is it not the right of the people of the United States to gather peaceably in groups upon the public streets and to express in lawful, orderly and peaceful manner their indignation at something they wish to protest against?

The Court: It didn't seem so peaceful to me. There was such a racket here the last two or three times they picketed the court house it seemed to me to border upon disorderly conduct. But however that may be—

Mr. Gladstein: Will your Honor advise me whether anybody was arrested and convicted for any offense committed on any demonstration picket line at any stage of

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this case? Would you be kind enough to tell me?

The Court: I don't know.

Mr. Gladstein: I beg your pardon?

The Court: I don't know.

Mr. Gladstein: All right. The presumption must be—

(806) The Court: But you were speaking about repealing the Constitution and all that. I would suppose that if these large numbers of people gathered together in the way that I saw them myself that it might well get to such a point that you could not get in and out of the court house.

Mr. Gladstein: Now your Honor, if we are to adhere to that which we profess to adhere to, if we are going to apply those high ethical standards, those democratic principles embodied in the Constitution which we so glibly give lip service to, if we really mean it, your Honor will order the dispersal of these police, knowing full well that if, as and when, your Honor, any occurrence takes place, any incident occurs that warrants a calling in of police, surely the United States Attorney and the Police Department and the Court, and all of the other enforcement agencies of the law, can immediately take those steps that will cure any condition which requires curing.

As of today, this was a deliberate, purposeful effort to intimidate and to create an atmosphere, as I said, to poison the minds of those prospective jurors. If what is said in the press is true, that it is intended to keep police and plainclothesmen outside the court, in the court, in the corridors and surrounding the (807) building, every day of this proposed trial, if that should happen, your Honor, then I say to you that to call this a fair trial, a public trial, is to be grotesque, is to give not even lip service to that which we claim to believe in.

We join in the request, your Honor, and I ask you to reconsider what you have said. I join in the request of Mr. Sacher. I ask you to give real consideration to the motion, at least to inquire of the United States Attorney: What do you say that justifies this kind of show of force, of strength, of power? Is that the only answer that our great Government has to give to 12 men who are on trial for the spoken and the printed word? Is that what we

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have to do, when we claim that we are putting them on trial for what they think and say, that we have to surround the court house with that kind of show of force? Your Honor, I ask you to reconsider your ruling, to at least inquire of the police, of the United States Attorney, of the authorities, what justifies the condition that exists here today, and not to rule adversely to us unless you are satisfied that there are reasons. But I think any investigation will show that neither are their reasons nor justification, but to the contrary this deliberate (808) effort was intended to prejudice the chances, the rights of the defendants. And it goes beyond that, your Honor, it goes far beyond that, Judge, a question of the rights of 11 men or 12 men—it goes to the very essence of our whole administration of justice.

Mr. McCabe: If the Court please, on behalf of my clients, without repeating what has been said by my colleagues, I wish to adopt what they have said and join in the motion. I should like to add a thought just on two points.

Your Honor adverted to the presence of the picket line at previous hearings having to do with this case. I saw those lines and it seemed to me that they were unusually orderly, sincere, and the only vocal demonstration was a modulated chant which apparently did not cause any jeopardization or fear of needed action in the minds of the few policemen who were able to take care of the necessary traffic arrangements without difficulty.

I think it is quite significant that it was not until the jury summoned to try this case was scheduled to appear, that this mass demonstration of armed force took place. I do not know what arrangements were made for identification of jurors, but I can well believe that jurors attempting to gain admittance to the court (809) house were compelled to identify themselves to the armed forces of the law.

The Court: Where do you get that from?

Mr. McCabe: I say, I do not know. I really state that I do not know that. I know that other persons were compelled to identify themselves. I know that in the arrangements which were made for appearance and for the presence

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in the room of relatives of the defendants it was thought necessary to make arrangements to procure their admittance to the room.

The Court: Those arrangements were made with your cooperation. Those arrangements were made for people getting in the courtroom.

Mr. McCabe: I say the fact that we cooperated certainly did not put us in the position of agreeing to—

The Court: Oh no.

Mr. McCabe: —the inadequacies of the facilities provided at the trial of the case.

The Court: No. But you seem to be arguing that perhaps prospective jurors were stopped outside on the street by policemen and forced to identify themselves. I see no evidence of that at all, nor any reason to suppose that happened.

Mr. McCabe: Does your Honor know that it didn't happen?

(810) The Court: No.

Mr. McCabe: I say, it seems to me significant as to the purpose of all that; that never before was any such mass array of armed force necessary.

And I would like to advert also to something else that was said in the paper which I believe was mentioned by Mr. Sacher, to the effect that plainclothesmen and perhaps uniformed police would be in the courtroom. If that is so, I add another specific objection to that, because to the extent that that condition exists it means that the general public is excluded from the room. For that reason I ask your Honor's consideration again to the motion.

The Court: I can tell you right now the general public is not excluded from the room. I was the one that gave the instructions about letting people in here, and I can tell you right now the public is not excluded.

Mr. McCabe: I think your Honor will recall mentioning with regret the fact that the lack of facilities in the court house prevented any considerable number of the general public from coming in.

The Court: You can't let everybody in of course.

Mr. McCabe: I think that would be the ideal situation, in which everyone showed enough interest in (811) the proceedings of his legal representatives to come.

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The Court: You know, you gentlemen the other day wanted me to have the trial moved to some other place where everybody could be heard and there would be plenty of room, and I just couldn't see that. This is the place to try these defendants, here in the Federal Court House, with such facilities as we have here. And if we can't get everybody in I can't see that that makes any material difference. Certainly no prejudice to anyone.

Mr. McCabe: I think it might be a very great prejudice, your Honor. The fact that facilities in the courtroom in a trial such as this provides for I think it was 60 or 70 members of what we may call the general public getting in. I think that is entirely inadequate. I think it is a confession of weakness on our part, that a trial of this sort, where we chose to try a great political party—

The Court: Yes, but this is not a spectacle. This is a trial in a court of law.

Mr. McCabe: Not at all; I hope it won't degenerate into a spectacle and I am sure counsel for the defendants will prevent that.

The Court: You can be sure it won't.

Mr. McCabe: It won't if we have anything to do (812) with it, I can assure of that, your Honor.

But I say, nevertheless, where 12 defendants, 11 defendants are on trial on a matter of their political ideas, that that is of interest to a greater portion of the general public than 60 or 70.

The Court: Does anyone else desire to be heard?

Mr. Crockett: Your Honor, I would like to make some additions to the remarks that have been made by co-counsel.

At the outset I should like to adopt on behalf of my clients all of the preceding motions together with the arguments made in support of those motions. Your Honor will recall that on last Thursday I presented an argument in support of our motion that this Court direct an inquiry into whether or not certain newspaper stories which purportedly quoted the United States District Attorney represented in fact the statements of the United States District Attorney. It seems, however, that, notwithstanding the Court's denial of our motion at that time, perhaps because of the showing made by the District Attorney to the effect

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that he sorely regretted what had happened, nevertheless the District Attorney seemingly still has the same complexion for publicity. I am referring especially to a recent, more recent newspaper story to the effect that the District Attorney (813) has himself likened this trial to a military camp. He is quoted as having said that this trial is his first objective to take, presumably, in this war.

I feel that on the basis of that it is perfectly conceivable that we, representing the defendants, as well as the defendants themselves, certainly do not look upon this as a trial before a military tribunal.

I do not know if the Court is aware of the fact, but I have practiced for several years in the southern part of this country. I know exactly what happens when a trial is held under conditions resembling mob conditions. I am convinced, and I think this Court should be convinced, that a mob is no less a mob merely because it is clothed in uniform and has a pistol on the side.

I personally was in the pressroom just around the corner from this courtroom when a detachment of City policemen, fully armed, came in the back entrance and marched in and took quarters or became encamped in that room.

(814) Now, I am aware that this is a very large building. There are private elevators for the accommodation of the Judges, and it might very well be, your Honor, that you came in the back way and did not come in the front way.

The Court: No, I did not. I came right up the front steps. I walked up the front steps and walked right upstairs into the main part of the building.

Mr. Crockett: In that case I am sure, your Honor must have observed one highly significant fact: the newspapers have reported that this detachment of 400 uniformed policemen is necessary for the purpose of maintaining order outside the courtroom and in the court house. I am sure your Honor will agree with me that a rough count out there indicates that you have more uniformed policemen than you have actual people. What you actually have out there is an armed mob operating under the authority of law with only one primary objective, and that is to in-

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timidate those of us who are here representing the defendants, as well as the defendants themselves.

Under those circumstances I respectfully submit there is absolutely no difference between the atmosphere surrounding this trial and the atmosphere surrounding the infamous Scottsboro trial.

I join, therefore, in the motion of my co- (815) counsel that the Court reconsider and give us an adjournment in this case until such time as these conditions can be remedied.

Mr. Isserman: If the Court please, on behalf of the defendants Williamson and Green, whom I represent, I adopt the motion and arguments made thus far as to why this case should not be moved for trial today.

I have a number of grounds in addition to those urged in support of which I would like to offer to the Court an affidavit by one of the defendants, Benjamin J. Davis, Jr., and offer one copy to the district attorney.

The Court: Will you pause for a moment while I read this?

Mr. Isserman: Surely.

Might we have a recess of several minutes, if the Court please?

The Court: Yes, you may. How long do you want, about five minutes?

Mr. Isserman: Five minutes would be ample.

The Court: All right.

(Short recess.)

(816) The Court: Mr. Isserman, I have read the affidavit and the supporting exhibits.

Mr. Isserman: Now, if the Court please, on behalf of my clients I have a number of objections to moving the case for trial not related to the specific point which is now before your Honor which deals with the situation of the police around and in the building.

The Court: Don't you think I had better dispose of that first?

Mr. Isserman: That is the suggestion I was going to make.

The Court: Yes.

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Mr. Isserman: And I will reserve the discussion on the other points in connection with the reasons why this trial should not proceed today. Now, on this—

The Court: Well, I will dispose of that first motion now.

Mr. Isserman: Well, if your Honor please, I have not spoken yet on the points for my clients.

The Court: Oh, I thought you said that you desired that I dispose of that before I pass on this other matter.

Mr. Isserman: Yes, but I wish to be heard on this point, and I reserve my right to discuss this point after the other points are disposed of.

(817) The Court: You may do that.

Mr. Isserman: Now, your Honor has heard something about the newspapers and said that this Court is not concerned with the newspapers. But last night, late in the evening, walking along the street, on every newsstand I could not help but notice headlines in three or four inch type saying, "400 Police to Guard Trial"; and the one fact that was impressed upon my mind, and yet being familiar with the trial, was this fact of 400 police; and that is the fact that every newspaper in the city has driven home to every one of the million readers of the morning newspapers, and will again, I am sure, in the afternoon editions which are probably out now which I have not seen.

Now, it is not significant that your Honor walked into the courthouse building this morning. That does not tell the whole story by any means, because there is an impact from words which this Court cannot ignore.

In this respect I would like to quote from the affidavit of Mr. Davis bearing on this particular point. He says:

"Most significant evidence that the government has in fact stepped up its activities against the defendants to preclude any possibility of a fair trial by creating a prejudicial atmosphere surrounding (818) the federal building on Foley Square and which will of necessity permeate the courtroom, has been called to my attention. I have been informed and believe it to be true that the following dispatch was sent this evening over the leased wires of the

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United Press to its member newspapers, including newspapers in New York City, and that the contents of said dispatch accurate state the police action which has been ordered."

Now, what is that police action?

"The largest police detail ever ordered out for a trial in the Metropolitan area, 402 policemen and officers will go on guard at the Federal Building at 8:00 a. m. tomorrow and will remain on duty every day the trial is in session.

"In a confidential order, Chief Police Inspector August Flath ordered the huge detail out to prevent any 'demonstration.' It includes motorcycle cops, emergency squads, mounted policemen, policewomen, detective and patrol wagon squads."—

The Court: You know, I just read all that.

Mr. Isserman: Yes.

The Court: I took the recess so I could read all that.
(819) Mr. Isserman: I would like to have all that in the record.

The Court: You may have.

Mr. Isserman: (Continuing):

"In addition FBI and secret service agents presumably will be assigned to the Court area for the duration of the trial."

Now, Mr. Davis said this about it, and I endorse his words—reading from his affidavit—

"No member of the panel called to serve in a trial of the defendants nor members of their families or associates, can fail to be impressed by reading the report of these police measures with the fact that force and violence by or on behalf of the defendants is anticipated in connection with the trial and that the defendants must therefore be reasonably expected by responsible governmental authorities to engage in such force and violence. From this it is simple to conclude that the defendants **must be guilty as charged in the indictment.**"

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As a result of this dispatch which was widely broadcast throughout the city, there is again the association, the false association in the minds of the public of the defendants with force and violence and (820) with the advocacy of force and violence, which is the very issue which the government has brought into this courtroom. And I say if no policemen were outside, if no policemen were outside, that the spectacle which this Court says it is opposed to has already been initiated by the screaming headlines in the paper in reference to all the paraphernalia of the police force and the threat of police violence. And I say that the reason for this dispatch, for its release and for the actual aggregation of this show of force in this federal building by police officers who are not federal police officers is done for no other purpose but to create the atmosphere of force and violence which otherwise would not exist in any aspect of this case.

Now, there is some dispute as to the facts. Counsel have given the Court their own impression. Mr. Crockett talked about the police squad in the press room. I saw them there myself. Other people saw policemen on the outside. I think in order to determine the impact of this unusual police guard, unprecedented police guard on this trial, that this Court should investigate the facts. I am informed, and I believe it to be true—I was informed of that within the past five minutes—that there has been no occasion in connection with any trial in this building where arrangements have (821) been made to allow the New York Police to have a headquarters in this building in connection with a trial.

Now, it seems to me that this Court must be zealous about guarding its precincts from invasion by anyone, including the New York police, and we ask that, first, you call Inspector Flath, who is mentioned in the dispatch, to verify the orders he has given; that secondly you call the officers in charge of the police arrangements in this building, including Inspector Frystenski, I am informed, and Chief Detective Mitchell, to inquire from them who gave them orders for this detail of policemen; what were the arrangements that were made; how many policemen, in fact, are in this building now, how many plainclothesmen are in this building now, and find out why and how an

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atmosphere has been created which gives every indication to the public, and which must affect every member of a jury panel—they read and are reading papers today—with the idea that the foundations of society are trembling because the government has dragged into this court twelve men for doing nothing but exercise their right of speech and press. And I ask that this Court before it does anything else hold an inquiry and put the responsible persons on the stand so that we have on this record the actuality and the facts which (822) are amply indicated by the newspaper stories and by what counsel has advised the Court they have seen and heard in this building today.

The Court: I think the first thing I will do is to indicate that I won't do any such thing. There will be no inquiry as to that. I see no basis for it whatsoever.

Now, if there are some other motions and you want me to withhold decision on this first motion until you get through making your other motions, I will do that; but I will indicate now I am not going to have any inquiry. There have been other inquiries that you have been requesting from time to time, and I see absolutely no justification for doing that. We are here to try the main charge in this indictment, not a trial of the Police Department or somebody else.

Mr. Gladstein: Will your Honor hear an offer of proof as to something I have learned during the intermission?

The Court: I will.

Mr. Gladstein: I am informed, I believe it to be true, and I offer to prove it by placing Inspector Frank Frystenski—I am not sure of the spelling—it may be F-r-y-s-t-e-n-s-k-i or -y—I am informed that he has said that the presence of the police in this (823) courtroom and about this courtroom today was not occasioned by any expectation on the part of the police of any violence or acts of an unlawful, disorderly character on the part of any civilian person.

Now, your Honor, if that be true, then the presence of that considerable number of police, which I understand represents about five per cent of all the police in this Metropolis—the presence of that number of police here is nothing but a show of force that is an organized conspiracy

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of violence in and of itself. A violence on the part of the prosecution, a show of force and violence here, right here in this courtroom, and here—

The Court: That is the most absurd thing I ever heard. Here you say there is a show of force in the courtroom, and I can see absolutely nothing to justify that statement.

Mr. Gladstein: Your Honor has only to step outside and see the police officers. They are in the corridors; they are in a special room; they are around the building.

The Court: But there are always police on hand when you have a criminal case.

Mr. Gladstein: Not this way, your Honor. There may be police officers mingling with the crowd (824) but—

The Court: All this talk about intimidation here in the courtroom is absurd. Now, you gentlemen and your clients have not shown the slightest evidence to me of really being intimidated in the slightest degree, and I just don't put any stock in it.

Mr. Gladstein: Your Honor may not put any stock in it—

Mr. Sacher: Does the Court wish to wait until we are intimidated?

The Court: No, but I thought I heard someone say it—in fact, I am reasonably sure that I did, that you were all intimidated already.

Mr. Sacher: It has an intimidating influence, and we cannot try a case with that sense of security and freedom which befits an American lawyer when hundreds of police are around the courthouse. We have asked for this inquiry precisely because your Honor disputes the facts which we assert, and I say to your Honor the important thing at this moment is not the trial of the defendants but the trial of the conduct of the government in placing these armed forces around this trial. That is the trial we should have first.

The Court: Mr. Sacher, you have been saying that for some time.

(825) Mr. Sacher: Yes. I think I am right. That is why I keep on repeating it.

The Court: But I have ruled against that. I do not see the occasion for doing that; I do not see any basis for

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doing it; and I repeat what I said before, that you gentlemen don't really act as though you were very much intimidated.

Mr. Gladstein: Because we speak up, your Honor?

The Court: You have a right to speak up I expect you to do that.

Mr. Gladstein: Is your Honor judging by the fact that we protest against the show of force and violence by the police and the prosecution—is your Honor judging on that basis that we therefore are not intimidated? Must we reach the point where we are so paralyzed that we can't speak before your Honor will say "that is sufficient, that is adequate proof"?

The Court: I hope I shall never live to see that day.

Mr. Gladstein: And your Honor won't, because I intend to make my voice heard in protest against this kind of dastardly thing as long as I am able to speak and as long as it continues, and as long as the Court permits it to continue.

Now, in this very courtroom—your Honor said (826) this is a public trial—well, look, there are seats here that are not even occupied. People outside are standing, just civilians—

The Court: Now, those as you know, I think, Mr. Gladstein, have been reserved for the press, and the members of the press cannot always be in their seats.

Mr. Gladstein: Then the public ought to be allowed in, your Honor. And not only that, but why is a seat permitted to be occupied in a special section by some two-bit stool pigeon—will you stand up, please?

The Court: Now just a second, Mr. Gladstein. When you begin giving directions as to who is to stand up—

Mr. Gladstein: May we have this man stand up?

The Court: I will find out first what this is all about, but I will give the directions here.

Mr. Gladstein: There is a man sitting in this group of seats who has a muffler, an overcoat and a hat in his lap. He is or was connected with a private detective agency, either the Burke or the Owens or Shields agency. He was connected and involved in a matter that was called to your attention, your Honor, last week, and that is the

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prosecution against a man named Burke, himself and a private operative, who had come into the house of my client and committed an assault upon a child. This man evidently has—

(827) The Court: Would you mind letting me ask you something?

Mr. Gladstein: Yes?

The Court: What has that got to do with the question of the police around the building?

Mr. Gladstein: This is another point. I am talking with you now about the question of a public trial, and also this is a phase of it, that while pretending to grant admission to the public for the benefit of the accused, as Mr. Cooley says, a seat is permitted to be occupied by special arrangements—

The Court: I do not subscribe to the statement that the sole purpose of the public attending a trial is to help the defendants. I do not subscribe to that. It is my understanding that the public is to be admitted in all trials not just to help the defense, but if somebody wants to get in and see what is going on, they have a right to come in.

Mr. Gladstein: I will subscribe to that, your Honor. I think, however, the benefit of the accused comes first in our sense of fair play; and, secondly, for the benefit of the public, that they shall have a right to see what is going on. But I do not concede, your Honor, that a stool pigeon who has conducted himself and involved himself in a case adverse to him—in a (828) manner adverse to the interests of my client, should have any right to have a special seat inside these barriers, not even in a seat that is reserved for a member of the public.

The Court: Well, if you think I am going to conduct an inquiry as to the reasons why everybody is in each one of the seats here you are making a big mistake, because I am not going to do that. There are lots of people here who came for reasons that are sufficient for themselves.

Mr. Gladstein: I understand, but your Honor will certainly permit me to call your Honor's attention at least to the facts that I want to complain about, even though I am told that your Honor is not going to do any-

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thing about it. And you will permit me, will you not, your Honor—

The Court: You know, Mr. Gladstein, I don't like that crack. I don't know who told you that I am not going to do anything about this or that.

Mr. Gladstein: You just said that, Judge.

The Court: I am going to decide these motions as best I can with such light as God gives me to do what is right, and if you make any comments insinuating something else you are going to make a big mistake.

Mr. Gladstein: Then, your Honor, I ask you (829) to do what is right for the benefit of one of the men I represent, Robert Thompson, about whom I mentioned this man who is sitting here—to do what is right for a man who is here today brought to trial by a government for whom he fought so valiantly that he received the Distinguished Service Cross. Is that too much for a man to ask, a fair atmosphere and a fair trial?

The Court: Is this man that you refer to the man who is supposed to have assaulted your client's daughter?

Mr. Gladstein: No. He was connected with that case, and I am perfectly willing to have him put on the stand and to extract for the record his connection and who he is, and also to ascertain why he got into where he is.

The Court: That seems to me to be completely irrelevant to any issue before the Court.

Mr. Gladstein: I make that request.

The Court: All right, that is denied.

Mr. Sacher: I have one observation to make, your Honor, I think, on this subject, and that is on the matter of for whose benefit a public trial is to be had—

The Court: Well do we need to go into that, a long discussion on that?

Mr. Sacher: I think yes, because I think it (830) is important inasmuch as we charge that this case is being conducted in violation of the entire Constitution, that we should point out to your Honor that the Sixth Amendment does not say that the government shall have a public trial, but that it specifically says that in all criminal prosecutions the accused shall have a speedy and public trial.

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So Mr. Gladstein is quite right if he cites Judge Cooley to support his thesis that it is the defendants and the defendants alone who are given that constitutional right to a public trial, and I point that out, and I think it is important to be pointed out. Because if your Honor has in mind the constitutional guarantee to the accused of a public trial, perhaps your views of these matters that have been laid before you by all counsel for all defendants may be changed.

The Court: I would think that the test of a violation of that constitutional provision would be if the defendants were tried in camera, in some private way—

Mr. Sacher: That is not so, your Honor. There are cases—

The Court (Continuing): Surely no one having a right to be here has been excluded. The only limitation has been that they could not get any more people in (831) the courtroom.

Mr. Sacher: I would like to make these observations, if I may. I realize that this discussion is taking us away a little from the question of the police, a subject from which I would not like to get away. But inasmuch as your Honor has mentioned it, I should like to make this observation: A public trial is not denied only when a trial is held in camera. I will show your Honor decisions where the courts have held that the admission of newspaper men and a certain number of the public still falls short of the constitutional guarantee of a public trial. And I say to your Honor that when more than 50 per cent of the seating capacity of this courtroom has been given over to the press—and we have no objection, let me make it clear, to having the press have adequate provision, for if there is anything we would welcome it would be a press that for once would tell the truth and tell the truth as the defendants lay it before your Honor; but when you bear in mind that more than 50 per cent of the capacity of the courtroom has been turned over to the press, and that about a quarter of the remaining capacity must necessarily go to the wives and mothers of these defendants, that leaves a handful of maybe 20 or 30 seats for the 8,000,000 people in the City of New York in this court

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(832) trial. And I say to your Honor that if that is a public trial, then I just don't have any notion, and nobody who asserts it is a public trial can possibly have any notion of what a public trial is. I can't think but that the Nuremberg criminals were given more seating capacity for the people to be admitted, and here you have got among these defendants men with Distinguished Service medals for having fought the Nazis, and they can't get here what the Nazis got in Nuremberg; and I submit, your Honor, that in these circumstances let there not be too much zeal about getting a trial for the defendants. Let us first see whether or not the pre-conditions for a fair trial have first been established, and that the interferences with that kind of pre-condition have been dissipated.

The Court: May I understand you as moving that I exclude a substantial number of representatives of the press?

Mr. Sacher: I have not intended any such thing; I do not think there is anything in what I have said that purports that, and I want therefore to deny that I have any such intention.

The Court: That is all right. I merely wanted to clarify it.

Mr. Sacher: Well, your Honor, I don't think (833) that a question put that way—

The Court: Just listen till—

Mr. Sacher: I don't want to be put in an unfavorable light with the press. You understand that, your Honor. Because this case is going to be tried more there than here, apparently.

The Court: Let me get to my second question, which is,—it seems to me—and I ask you this—are you not merely repeating the application that you made to me the other day in my chambers, that we not have the trial here in the federal courthouse but have it some other place where some amphitheatre or other quarters may be available—

Mr. Sacher: I did not use the word "amphitheatre." Oh, no. I suggested, in the first place, that we go to another court with larger courtrooms. I mentioned to your

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Honor the Supreme Court building in this County, and I mentioned the Supreme Court building in Bronx County, both of which are within the territorial jurisdiction of the Southern District. This is the first time I have heard the word "amphitheatre" since I read Gibbons' *Decline and Fall of the Roman Empire*.

The Court: Well, you may hear it on other occasions. However, the point is that you are substantially (834) renewing that application—

Mr. Sacher: That is correct.

The Court: —which I denied before, and I now deny it again.

Now, it seems to me that we must have pretty nearly all that is to be said for this motion in its various aspects here—

Mr. Isserman: Your Honor—

The Court: Yes, Mr. Isserman, do you want to add something?

Mr. Isserman: Yes. I would like to complete the offer of proof, or, at least, on behalf of my clients I would like to offer to prove in connection with the police situation that if Chief of Police Inspector August Flath were called to the stand he would testify that he had been ordered and that he had ordered in preparation for this trial the gathering of 402 policemen and police officers, and that they were to be used in and around this building; that they would include motorcycle cops, emergency squads, mounted policemen, policewomen, detective and patrol wagon squads; and that also a headquarters has been set up in this building.

I would also offer to prove through the custodian of this building, the persons in charge of making the arrangements in this building, that for (835) the first time in the history of any trial in this court the police force—the New York Police have been given a headquarters in this building to use for the purpose of directing the police operations in and around this building; that they have been given space in this building where armed police officers can be gathered and held and can be seen emerging in and out of quarters and in and out

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of the building; and that Police Inspector Frystenski has stated that no cause arising out of any situation required this detail of police officers around the building.

I would also offer to prove that the defendants and the Communist Party, as contained in the affidavit of Mr. Davis, in an existence of almost 30 years in which he was engaged in peaceful activities of assembly, speech and press, and in the advocacy of policies and programs based on Marxism and Leninism, have never created any situation which requires this kind of police force and requires a trial to be held in the shadow of the guns of these police officers.

Mr. Gladstein: We join in that offer of proof on behalf of the clients I represent, your Honor.

Mr. McCabe: I similarly.

Mr. Crockett: I likewise join, your Honor.

Mr. McCabe: I would like to add something (836) to that, your Honor: Your Honor has said we did not look as though we were intimidated. I will say frankly that I am intimidated.

The Court: Now Mr. McCabe—

Mr. McCabe: I am intimidated, and I fear the presence in this room of persons, even armed persons who may and who do constitute a threat to the safety of myself and my clients.

I have tried cases for 26 years, all over the country; I have seen the signs of intimidation, and I have been the victim not only of intimidation but of violence. And I sense that atmosphere not only in this courthouse but in this courtroom. So that if it be thought that what was said here was just said for the sake of comment, I take a much more serious view of it; I take a much more serious view than your Honor appears to take of the alleged persons within the rail, a place ordinarily reserved for members of the bar or persons having to do with the court; that a person alleged to be a private detective, and who if he is anything like his alleged colleague, would probably be armed. And I would like that to go on the record, and I am perfectly willing to state that as my feeling.

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The Court: Now, have you gentlemen finished your arguments in support of this motion?

(837) (No response.)

The Court: Is there anything you desire to say, Mr. McGohey?

Mr. McGohey: I think, your Honor, I desire to call your Honor's attention to a copy of the Daily Worker for today, Monday, January 17, 1949. I call your attention to everything that appears on the first page thereof, but particularly a cartoon or drawing which is said to have been done by a man named Fred Ellis, and which bears the title "The 13th defendant." It purports to depict a statute,—a copy, rather, a picture of the Statue of Liberty with the hand being struck by a club; the club bears the legend "Indictment of 12" and the club appears to have stricken from the hand of the statue the torch which bears the legend "Liberty"—

Mr. Sacher: What is wrong with that?

Mr. Shapiro: Let him finish.

Mr. McGohey: Alongside of that is an editorial which says "America goes on trial."

On page 3 there is a heading which says—it is a five-column head or six, whatever is the width of the page, and it reads "Trial of 12 C. P. leaders starts today," and in the story which occupies the two columns to the right of the page there appear pictures of the defendant Dennis and the defendant Foster.

(838) And as part of that story, interpolated in part of that story, I call your Honor's attention to a box which says "Will picket trial of 12 today." That language is in heavy type.

The legend below it is "Civil rights Congress yesterday urged full support to the noon hour picket line in front of the federal building, Foley Square. The demonstration will take place as the trial of the indicted 12 Communist leaders opens."

I further call your Honor's attention to the fact—your Honor has adverted to it but I recall it to your Honor's attention—the fact that during the month of October and in the month of November when motions were argued, some before your Honor and some before Judge Hulbert, there were on many occasions picket lines which the press, includ-

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ing the Daily Worker, reported to contain people up to the number of 1500; that they carried banners in which they called upon the Attorney General of the United States, the President of the United States and the Judges of this court to dismiss the indictment of these twelve; in which they charged that they were being persecuted and that they were not going to get a fair trial.

In connection with the demonstrations which occurred in October and November it was necessary (839) to have police officers in and about the building.

I have nothing further to say to that, your Honor, except to deny that as far as the Government of the United States is concerned that there has been any action taken to prevent a fair trial; that there has been anything said with the intention of preventing a fair trial.

I am restricting myself now, your Honor, to that part of the motions which have been made in connection with the police in front of the building or about the building.

There were other points raised about newspaper expressions, and if your Honor is going to pass on that, on the Davis affidavit, I will address myself to that also.

The Court: I am going to pass on it all.

Mr. McGohey: Then, your Honor, with respect to that—

Mr. Isserman: Just a minute; if the Court please—

Mr. McGohey: May I be allowed to finish my argument?

The Court: Mr. Isserman, don't you think it is a little better to let me hear one counsel at a time? I will hear what you have to say.

(840) Mr. Isserman: But I would like to state an objection.

Mr. McGohey: If your Honor please, I feel I am in the middle of my argument.

The Court: I think that is right, Mr. Isserman.

Mr. McGohey: I call the Court's attention to the fact that I did not interrupt by so much as a cough—

The Court: You may raise your question later. Surely there can be no prejudice to you permitting your adversary—

Mr. Isserman: No, because I have not completed Mr. Davis's affidavit. I only read out of two paragraphs.

The Court: Would it be any help to you if I said on the record that it may be taken as a fact that the defendants

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and each of them have made an offer of proof of each and every of the matters set forth in the Davis affidavit, sworn to January 17, 1949, and the exhibits attached thereto?

Mr. Isserman: That would certainly—

The Court: That would help a little bit?

Mr. Isserman: That would help as to my clients, but am using that affidavit in connection with the other points I have reserved. That is the only point I stood up to make.

The Court: Now, it seems to me that this (841) trial ought to be like other trials. When one counsel is addressing the Court it is never helpful to interrupt him. You gentlemen would not like to be interrupted if you were making an argument. You may assume that I am going to hear what everyone has to say before I decide matters before me. I do that with other cases and, of course, I am going to do that with this case. So I suggest that it is a little better to let counsel who is addressing the Court conclude what he has to say, and then if there is something you desire to add or some offer of proof you desire to make, you may rest assured that you have an opportunity to do it.

Now Mr. McGohey, will you continue.

Mr. McGohey: I just want to add one thing with respect to the police, your Honor: I am informed by my chief assistant that there are no police stationed in this building; that they have no headquarters in the building; that there is made available to them a room for their human—to take care of their human comforts.

Now, with respect to the alleged hysteria, this is not the first time that this has come before your Honor, and if that argument comes to anything, your Honor, it comes to this, that these defendants who themselves complain that they have been denied freedom (842) of speech and press and thought under the Constitution, are now urging upon your Honor that the press of this country should be directed by your Honor to curtail the amount of its coverage. I hope the day will never come when a Judge of a United States court will ever have the power to order the press as to what it may or may not say.

Now, with respect to the article that appears in here from a newspaper, a newspaper called the New York Star, under date of January 10, 1949, in which there appears

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what purports to be a quotation made by me to the effect that I said "This is just one battle in a campaign. I am a company commander who has been given a single job of taking a single objective."

Your Honor had before you last Thursday the question of a quotation by me, or a quotation of me by a newspaper man named Murray Davis, who is a staff writer for the World-Telegram. I stated to your Honor both under oath and in affidavit and orally upon the argument that I did make the statement attributed to me by Mr. Davis. With equal seriousness I say to you I did not make the statement which appears in the New York Star. I made no statement in that article, as far as I can see of what I see purports to be a quotation of me—I deny that I made any of those statements.

(843) The Court: Now, Mr. Isserman, is there something you would like to add?

Mr. Isserman: If the Court please, the only point I wanted to make is that the matter contained in the Davis affidavit other than that which I have read relates to other points which I have to make. Now, I had completed my offer of proof with respect to the point relative to the police. I do not know if other counsel have completed that, except for one thing. I think it is fair when counsel refers to a newspaper or some article which they call to the Court's attention, the Court should have it all. We have done that uniformly in giving the Court the sources of our quotation wherever we were able to do it.

Now, Mr. McGohey has talked about the Daily Worker, a cartoon on its front page, and about an editorial, presumably, as if there was something criminal about it. He has also indicated that that has some bearing on the atmosphere in and around this courtroom which the police have created, and I can't see how that has anything to do with it. But I think in all fairness to the defendants the Court should have before it, and I ask that in connection with this motion the Daily Worker of this morning be marked as an exhibit, and in that connection, in reference to the cartoon, which (844) Mr. McGohey apparently disparages, I would say that after having worked on this case for the period that I have, that I am fully in accord with the sentiment indicated in that cartoon, and if I did not

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believe that to be so I would not be devoting all my energies to the defense of my clients.

I ask at this time that the issue of the Daily Worker of this morning be marked as an exhibit in this case.

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

* * *

The Court: He has a copy here.

(Marked Pretrial Exhibit 1.)

(Pretrial Exhibit 1 handed to the Court.)

The Court: Where is that part about the picketing, Mr. McGohey?

Mr. McGohey: On page 3, if the Court please. (845) The column to the extreme right right under the picture of the defendant Foster.

The Court: Oh, yes, I see.

Mr. McGohey: If I may be heard for a minute, your Honor, the argument and the conclusion that I draw is that there is in this paper this picture which is saying to those who read the Daily Worker that there is an attack upon the liberties, and that in order to prevent that attack from being successful there ought to be picketing in front of this courthouse. I would hope that the intelligent police officials of the City of New York under those circumstances would take adequate means to make sure that whatever demonstrations were made were made in accordance with the law, and that they did not interfere with the ordinary traffic of people in and out of this courthouse.

The Court: All right. The motion is denied.

Mr. Gladstein: Which motion, your Honor?

The Court: The motion in its various aspects.

Mr. Gladstein: There was no one motion on various aspects. I made a motion for my clients. I understand other counsel made other motions.

The Court: I think I can perhaps dispose of that.

Mr. Crockett, the motion and each of the motions (846) made by you are denied.

Mr. McCabe, the motion and each of the motions made by you are denied.

Now, that gentleman sitting next to you has not made any separate motions, as I understand it.

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Mr. Sacher?

Mr. Sacher: But I am going to ask your Honor to describe the motions that I have made that were denied.

The Court: I am a little afraid that if I attempted to enumerate them same inartificiality of expression might also lead to the claim that there was some part of them that I had not considered and had not denied; and my intention is to deny each and every one of the motions made by each and every of the counsel for the respective defendants.

Mr. Sacher: I know, your Honor, but there is a question as to what has been granted, what has been denied, and what will constitute res adjudicata in the trial, et cetera. We have to know.

The Court: Well, as nothing is being granted—and the record will show each of the motions that has been made—it would seem to me reasonably clear what had been denied.

(847) Mr. Sacher: I question that; but if your Honor thinks that you will be able at some future time to determine from the record what has been made and what has been denied—

The Court: How can that fail to be so when everything you gentlemen have said has been taken down? And each and every one of those motions I now deny.

So that while I had proceeded to refer to Mr. Crockett and Mr. McCabe, I think what I have added sufficiently indicates that each of these motions made on behalf of the various defendants and each of them, and all of them, have now been denied.

Mr. Sacher: May I have exception to your Honor's ruling?

The Court: You may have an exception and so may counsel for the others.

I may say now—and this will go for the entire trial—that where one counsel objects and an unfavorable ruling is made, an exception may be deemed to be noted not only in favor of and for the benefit of the client of the man objecting, but for each and every one of the other defendants, except in such case as someone representing one or more of the others may state in the record that he does not desire to (848) join in the objection. I think we may have that stipulated for the entire trial, and it will

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save quite a little trouble, and certainly make sure that no one will be prejudiced by not having the benefit of an exception to an adverse ruling.

Mr. Gladstein: Your Honor, I move for an order requiring that no person in this courtroom, be he spectator, civilian, police, plainclothesman, or anybody else, be permitted to carry weapons on his person, so that this courtroom at all times will not have anyone in it that has weapons on his person.

I want to join—

(849) The Court: I want to suppose that if I should make an order about that it will only be a short time before you or some of your colleagues will want me to have anybody else in the courtroom examined by someone to see whether or not they bear arms. And I will take that under advisement. I am not making a ruling on that now.

I certainly desire no show of force or arms in the courtroom, and I have no evidence before me that there is any such. But your specific motion I will reserve decision on and give the matter some consideration.

Mr. Gladstein: I also mention, your Honor, that the man that I referred to in the argument that I made be asked to leave the special quarters and take a seat, if there is one available for him, with the public.

The Court: That is the kind of thing that I am certainly not going to encourage here. I have seen disorder in courtrooms before by some counsel turning around and accusing someone of the spectators and wanting an investigation and wanting him thrown out or something or other done. And I will not do that. I don't see how it is at all necessary.

Mr. Gladstein: Your Honor, there are many, many people who have a real bona fide interest in this case who want to be here and whose presence here would be comforting to the defendants who are being excluded (850) because of the rulings that have been made and the conditions that have been created. Your Honor has said, for example, to Mr. Sacher that this is not a denial of public trial simply because the public is pretty effectually excluded because, after all, the courtroom isn't big enough.

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But your Honor should not by your own order have created—

The Court: Don't put those words in my mouth.

Mr. Gladstein: I beg your pardon?

The Court: I never said any such thing as that.

Mr. Gladstein: I think the record—

The Court: It is just your interpretation, I realize. My real ruling was that just because every member of the public could not get in here, it didn't follow that there was a denial of a public trial.

Mr. Gladstein: What I am trying to say is that in the absence of adequate quarters for the public certainly the very least that the Court can do is to accept in good grace and with seriousness my complaint that somebody who is not a member of the general public, somebody who is not here to comfort the defendants, somebody who is an enemy of and hostile to one of the clients I represent, not only has been accorded the privilege of being here but has been accorded special privileges (851) and sits there with counsel, with Mr. Donegan I see, and with others—

Mr. Sacher: In a more comfortable seat than the defendants have.

Mr. Gladstein: Yes. That is right, your Honor. So we have elevated, we have elevated to that level stool-pigeons who have participated actively against the interests of one of the defendants.

Your Honor, I move that you require this man, whatever his name may be, to remove himself from this portion of the courtroom, and if there is a seat vacant elsewhere—I suppose he is permitted to do that, provided he is not given special privileges, and that he has to stand and wait like other people who want to come in, and who have a more wholesome interest in the proceedings than sitting around as a stool-pigeon.

The Court: Motion denied.

Mr. Crockett: If the Court please, I would like to join in the motion made by Mr. Gladstein, not only on behalf of my clients but on behalf of myself as an officer of this court for the purpose of this proceeding. And I would like for the record to indicate the man to whom

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Mr. Gladstein refers is seated not more than five feet from the table for the counsel for the defense and that he is directly between counsel for the defense table and (852) the Court, the bench. Thank you.

The Court: Motion denied.

Mr. Isserman: If the Court please, the Court made some ruling—

Mr. McGohey: Mr. Isserman will you pardon me so that I could just ask one question before you get into your argument?

Mr. Isserman: Yes.

Mr. McGohey: So that I may be clear, I understand now that each and every of the motions made by any of the counsel this morning are and now has been denied?

The Court: That is right.

Mr. McGohey: Thank you.

The Court: But your motion—

Mr. McGohey: By defense counsel.

The Court: —made in the beginning—

Mr. McGohey: Sir?

The Court: Your motions made in the beginning to move the indictment for trial and so on, those are still being held in abeyance because it was requested that these other matters be handled first, in limen as it were, and that is what I am trying to do. And we will get back to those others in a little while.

Mr. McGohey: It was a slip of the tongue when I said all motions made by counsel. I meant to say (853) all the motions made by defense counsel.

The Court: I understood you.

Mr. Sacher: Heaven forbid that the two of us should be confused.

The Court: I don't think that the confusion amounts to very much.

Now, Mr. Isserman, what is it you desire to add?

Mr. Isserman: If the Court please, the Court has made some ruling or suggestion in connection with the way objections or exceptions will be handled as between the various counsel.

The Court: No, I did not say anything about the way they should be handled. I merely said that where

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one man objects all the others will have the benefit of an exception. I did not say that the others could not if they desired object also.

Mr. Isserman: The only point—

The Court: I will pass on that when I come to it. If we find that it gets to be a sort of routine that needs some sort of action, why, we can come to that. I haven't made any such direction yet. But I merely said, solely for the benefit of the defendants, that when one counsel makes an objection or makes a motion or takes any other action of a similar character and there is an adverse ruling, an exception may be deemed to be (854) noted not only for the advantage and benefit of the men making the motion but for all of the other defendants as well, except where they indicate their desire not to be included.

Mr. Isserman: The only point I rose to make was that I would like to study that and reserve any possible comment on it for a later time.

The Court: Well, if you desire me to withdraw that statement—

Mr. Isserman: No, I do not. I just—

The Court: —and make it later—

Mr. Isserman: I just ask that it be held in abeyance until we consider it somewhat further.

The Court: I am a little doubtful as to what is to be held in abeyance.

Mr. Isserman: I would like to confer with co-counsel to see if the ruling which the Court made is one that will convenience the defense or will not. And I merely say that I would like to have the opportunity to confer before by my silence I am to accept the Court's ruling in this respect.

The Court: How can it be harmful to you to say that everybody is deemed to have the benefit of an exception unless he indicates that he does not want it?

Mr. Isserman: I do not say that it is harmful (855) or not, your Honor. I just said I want to consider it.

The Court: Whether you consider it or not, that is what it is going to be. So you are going to have the benefit of the exception whether you like it or not. I think it is a perfectly absurd thing to want to consider whether

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you have the benefit of an exception to something that can't possibly prejudice the—

Mr. Isserman: Maybe it is an exception that I might not want the privilege of.

The Court: Then you can get up and say that you do not desire to have the benefit of the exception in the particular instance in favor of your client, which is the qualification that I am to begin with. What else have you got?

Mr. Sacher: We have another application. I don't mean just one. I mean another to be made if your Honor desires to rule first on these motions, although you have ruled I think—I do not know whether the denials have gone beyond mine or Mr. Gladstein's. Have they embraced everybody thus far?

The Court: I think so. Do you desire to make a new and additional motion?

Mr. Sacher: A new one. Would you prefer to have some surcease for a few minutes?

(856) The Court: No. I am going to take every motion that is made and consider it as best I can on the merits, and you can assume that without any qualification whatsoever.

Mr. Gladstein: I think Mr. Sacher was referring to the question of the hours that you want to sit today, the time. That is why he asked. I was getting a little hungry myself. And you look a little peaked I think.

The Court: If I felt any stronger than I do right now I would be sick. So don't worry about my looking peaked, I feel all right.

Mr. Gladstein: Could we have a ruling about the question of hours?

The Court: What is the question as to the hours?

Mr. Gladstein: The question is what hours do you plan to hold court today?

The Court: Oh, I expect to adjourn at one o'clock and have a recess from one until 2:15, and then to continue from 2:15 until 4:30. That is what we generally do here in all cases. Would you think it better to have a longer luncheon recess?

Mr. Gladstein: I think an hour and a half at least, your Honor. Isn't that rather a—

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The Court: I have no objection to that. I don't want to do that every day during the trial or during the proceedings, whatever they may be. But I am (857) perfectly willing to do that today. So that we will adjourn at one o'clock and resume at 2:30.

Mr. Gladstein: Your Honor, I hope is not assuming there will be a trial. We have some—

The Court: I say, whatever proceedings there are. I am not assuming anything.

Mr. Sacher: The next motion that we wish to present, your Honor, is the following:

Some time ago there was filed an affidavit of bias and prejudice against your Honor which your Honor dismissed and which dismissal was affirmed on appeal by the Circuit Court of Appeals. Thereafter the defendants applied to the Supreme Court of the United States for a writ of certiorari and that application was denied.

We have always felt that the grounds asserted in the affidavit of prejudice constituted adequate legal ground for the disqualification of your Honor. In the course of argument which took place on motions made on behalf of the defendants last Thursday, January 13th, observations were made by your Honor which once again indicate what defendants and their counsel believe to constitute evidence of a prejudgment or bias on your Honor's part in regard to the guilt of the defendants. We are therefore constrained at this time to call these matters to your Honor's attention before any matter (858) of substance is laid before the Court.

In that connection I should like to point out to the Court that in the course of the argument of the motions for a continuance on the day in question, that is, January 13th, I had occasion to make reference to an item published in the New York Times of December 4th in which it reported the following:

“An estimated 800 American Communists have been trained in the Lenin school and returned to the United States, have served as the high officers of a secret army now being drilled to overthrow our Government.”

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And I hope you will forgive me if I read a passage or two here from that argument because it is necessary to provide the context in which your Honor's observation occurs. And in the course of that argument, at page 744 of the record, I had occasion to say the following:

"on December 4th, as you will find from page 9,"—
that had reference to the motions papers—

"the New York Times printed a report of the publication of that document in which its headline reads, 'House group finds secret army here.' Bear that in mind, 'House group finds secret army here.' It says 800 American Reds are high officers of forces planning to overthrow.

(859) "What does your Honor think"—

I am continuing the quotation from the argument—

"What does your Honor think that does to the community right here in the Southern District of New York? And this is not merely an irresponsible newspaper publishing documents. This is the New York Times, this is the New York Times. And what is it publishing? It is publishing something that emerges and emanates from the Government of the United States, from the Printing Office by an official Committee of the Congress of the United States. In other words these officials are certifying that the Communists in this country are now engaged in a conspiracy actually to overthrow the Government and have organized forces to do so.

"Is it in the context of this kind of lying that this trial is to take place? Mr. McGohey seems to think that a denial by the United States Attorney is a sort of talisman whereby you just rub everything off. He says on the last page of his opposing affidavit, 'I deny that the Department of Justice, or any other governmental agency to my knowledge, has taken any measures or engaged in any course of conduct for any such (860) purpose, or which

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might reasonably be considered, as alleged by defendant Davis, to constitute: slander, criminal libel; the widespread dissemination of its own verdict of guilt on the precise issues in this case.'

"Well, I ask Mr. McGohey tell your Honor what it is when you charge Communists with having an army now engaged in training to overthrow the Government of the United States; or what he has to say about the previous answer"—

that is, the answer of the Un-American Activities Committee—

"that Communists are engaged now in spying, sabotage, passport fraud, perjury, etc."

And when I got to that point your Honor said:

"Are they?"

And I was apparently staggered and said, "What is that?"

And your Honor said: "Are they?"

And I said: "Why—" I was breathless.

The Court: Yes, about that army. They said about the army and so on.

Mr. Sacher: Yes. And you said—

The Court: And I said: What is the fact? I don't know anything about whether it is so or not.

Mr. Sacher: And I want now to point something up to your Honor. Long before we had reached that (861) point I had made extended reference to the fact that the grand jury, which sat for a total period of 18 months from the time it was born in June 1940, and was belatedly expired in December 1948, the grand jury came up with just one type of indictment, an indictment in which it accused the defendants of doing nothing more than exercising their Constitutional rights guaranteed under the First Amendment—the freedom to speak, the freedom to write, and the freedom to assemble peaceably for the redress of the people's grievances. And I said, after 18 months of intensive investigation, in which the newspapers were full of both direct and indirect charges that the grand jury was engaged in an investigation of Communist espionage and

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spying, all that that grand jury came up with was an indictment which charged nothing more than the fact that these defendants were exercising the Constitutional rights in the respects indicated. And I asked your Honor whether you would not as a practical matter, not as a matter of law, mind you, but as a practical matter agree with me in the proposition which I advanced, namely, that when all that the grand jury did was to indict these defendants and their party for doing nothing more than exercising their Constitutional rights in regard to the teaching and advocacy of ideas and principles, that we could then say that that indictment (862) was tantamount to a complete acquittal of every other kind of wrongful act and wrongdoing. But your Honor said no.

The Court: And I say no now.

Mr. Sacher: And I say—

The Court: That proves nothing. That is no acquittal.

Mr. Sacher: And I say to your Honor that your continued refusal to see as a practical matter—and I hope the Court will bear with me; I did not say as matter of law—

The Court: Listen just a second.

Mr. Sacher: Yes, sir.

The Court: You say: We are not talking law now, are we?

Mr. Sacher: Oh yes, we are.

The Court: I say we are. Your argument is that because the grand jury found no indictment except the one on trial—

Mr. Sacher: That is right.

The Court: —or that is about to be on trial if I decide to grant the Government's motion, that that amounts to an acquittal of all the miscellaneous charges that ever could have been made against them, none of which are specified because, of course, it is a pure negation. I say, as a matter of law, without intending (863) in the slightest degree to say these defendants are guilty or are not guilty, that that statement just isn't so. The fact that the grand jury did not indict is no acquittal at all. It does not acquit them of anything. I do not see how there can be any reasonable difference of opinion on that.

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Mr. Sacher: I would like to make this observation to your Honor. I take it you have observed that I did not say that as a matter of law the failure to indict, despite all the circumstances referred to, constituted an acquittal. But I said that as a practical matter, as a practical matter, because the reason I urge "practical matter" is for the following reason:

I pointed out to the Court that most of these pamphlets that have emanated from the Un-American Committee came after the grand jury in this district came down with but one indictment and some of the pamphlets were published and disseminated after the life of the grand jury had expired.

Now the point I am making specifically is this: Here is a grand jury charged by law with the duty of investigating, reporting, presenting and indicting persons against whom a *prima facie* case of crime is presented. In other words, the failure of the grand jury to return an indictment under any one of these 27 laws which (864) Governor Dewey referred to in his debate with Stassen last year, establishes conclusively one thing, namely, that there was no legal evidence before that grand jury of the commission of a single act of conduct on the part of these defendants in the 30 years of the existence of their party. That is the thesis which I am laying before the Court and the minor premise so to speak.

The Court: Yes; and if I disagree you say I am prejudiced.

Mr. Sacher: No, that is not the point.

The Court: That is what your motion is.

Mr. Sacher: No. Here is what I am getting at. I would like to let the whole context into the record and then see if we disagree on this.

The Court: You see, you said in the beginning of this particular phase of the proceedings that you wanted to again raise the question of my disqualification because of bias and prejudice and that that was because of certain remarks that were made, and one of these remarks is what you are just talking about. Now, how can you say a person is prejudiced because he disagrees on a proposition of law? I really don't understand that.

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Mr. Sacher: I want to show that we disagree not on a principle of law but on a proposition of fact.

The Court: I am listening intently.

(865) Mr. Sacher: Here is how we disagree on a proposition of fact. I assert that the failure, as a matter of law now, that the failure of the grand jury—you have to give me a continuity of more than one sentence—

The Court: If it seems to you that I am interrupting you—

Mr. Sacher: I don't mind at all. I welcome them. But I don't want—

The Court: —I do so to clarify my thinking.

Mr. Sacher: Fine.

The Court: But if it distresses you I will try to just listen. But you do go from one thing to another, so that it is a little hard to remember all the ramifications when you get through.

Mr. Sacher: I will tie them up. If you keep on applying the scissors to my argument I will have to make knots and I don't want to do that. I promise to tie them up if you will bear with me for just a few minutes.

The Court: I will listen.

Mr. Sacher: I maintain that, bearing in mind the setting in which the grand jury investigation was carried on—and you can't forget that, that is the fact—bearing in mind that there was pressure from Government, from presidential candidates, from newspapers, etc., on this grand jury to return an indictment, I maintained (866) last Thursday, and I maintain again, that this grand jury, if there were the slightest scintilla of evidence of illegal conduct, would have returned an indictment against these defendants. I say that the failure to return an indictment on anything other than the matters charged in this indictment constitutes an indication at least that, notwithstanding the concentration of effort made by the FBI, by the Department of Justice, by the Attorney General of the United States, and the most able United States Attorney in the Southern District of New York, none of them was able to turn up for this purpose—I am willing to give them a compliment—none of them was able to turn up a single shred of evidence of illegal conduct.

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Now when, after that grand jury expires and virtually certifies to the Court that the only illegality which it found was the charge contained in this indictment, namely, that the defendants conspired to teach and advocate, and that is all that they found against these defendants, then, when a congressional committee issues a pamphlet or a report and it certifies as fact 1 that the Communist Party of the United States has actually conspired to overthrow the Government of the United States, 2 that it is the agent of a foreign power, 3 that it is a subversive organization, etc., right down (867) the line—then I say that when in addition they charge that the Communists have organized armed forces to bring about the forceful overthrow of the Government of the United States, that they are slandering, criminally libeling the Communist Party and its leaders and to that extent are liars, foul liars; and that when the Court, after being advised by the indictment that there is only one charge of which this jury thought it had found any sufficient legal evidence, namely, the charge contained in this indictment of teaching, advocating, or, rather, of conspiring to teach and advocate, then I say the Court cannot accept, on the basis that it has accepted, the pamphlets and reports of the Un-American Committee as fact. Ask a question: Are they? Are they practicing spying, sabotage, passport fraud, perjury, etc.?

The Court: Let me mention something, Mr. Sacher. I was referring to that part about the army. Now, let us suppose, just hypothetically, as though two lawyers were talking together, and we suppose hypothetically that there was an army of so many hundred people being trained. Now, a newspaper comes along and says that to be the fact. You come in and argue that that is prejudicial. What I meant by my comment was that if it was true they have a perfect right to say it. And I am not here to try out every (868) newspaper story as to whether it is true or whether it is not.

That is what I meant when I said, "Is it true?", about these 800 persons or whatever they were in the army. And I wasn't going to go and take inquiries about every sort of thing that came out in the newspapers. And you are asking me to do it again here today, and I won't do it.

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Mr. Sacher: Your Honor, I want to make one thing clear. Just hold it for a minute, Mr. McGohey.

Mr. McGohey: Would your Honor like to look at the record?

The Court: Let me take a look at it.

Mr. McGohey: The pages that I have opened and the one just before that are those from which Mr. Sacher has been reading. And you will find your Honor's comments right there.

Mr. Sacher: Did your Honor want time to read that?

The Court: Yes.

Yes, here is what I said right at the time there, at page 746.

Mr. Sacher: But you have got to start at the bottom of 745, I think.

The Court: Wait a minute. I think perhaps you (869) want to do what you tried to do before, just to take a few words out of their context.

Mr. Sacher: On the contrary, I am pleading for context. You are cutting it down, your Honor. I want you to start—

The Court: Now you are going to get it as follows. But wait. "The Court"—on page 746, after the same sort of talk that you have been giving me now:

"The Court: I think perhaps you misunderstood me. You are referring to certain reports and certain newspaper articles, and all I am trying to say is perhaps those facts may be true."

Mr. Sacher: That is what I say evidences the bias.

The Court: Wait a minute.

(Continuing reading) "We are not having this trial to determine about other people or what others may be doing or may not be doing. And surely, if there were subversive activities the Government could not possibly be required to stand by idly because there happens to be a criminal charge against certain individuals that was coming on for trial."

Mr. Sacher: But you see, your Honor, you are, if I may say, and I say this—