

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

The Court: I do not know quite what that means.
There were five of those bundles?

(Marked Defendants' Challenge Exhibits 304, 305,
306, 307, and 308 for identification.)

By Mr. Isserman:

Q. Now, Mrs. St. Clair, in addition to the 8,000 and some odd represented by the exhibit which has just been marked into evidence you made some additional names available, did you not, to the clerk of this court? A. Yes.

Q. The jury clerk? A. Yes.

(4476) The Court: What do you mean by "making them available"? I don't quite understand.

The Witness: Obtain sources from which they were taken. Through the Association we obtained sources.

The Court: You mean you found there were sources from which names could be taken and you communicated with somebody and let them know what those sources were that they could go to for that if they chose?

The Witness: Yes, sir.

Q. What were those sources? A. In some instances they were alumni directories and business directories.

Q. Business directories and things of that kind? A. Yes.

Q. And the total number of names in all those various sources was about 9,000? A. 9,057, to be exact.

Q. When you give us the figure 9,057, that was not the total names in any particular directory or in all these directories? A. No, in various directories.

The Court: Is that the total of all of those directories together?

The Witness: Yes.

Mr. Isserman: If your Honor please, I don't believe that is her answer.

The Court: That is what she said.

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

(4477) Mr. Isserman: I would like to examine on that.

The Court: You may do so.

Q. Isn't it a fact those 9,057 names were selected from certain directories?

Mr. Gordon: I object to cross-examination of his own witness.

Mr. Isserman: It is not cross examination.

The Court: I will allow it.

Do you understand the question?

The Witness: Yes.

The Court: What you appeared to say was the total of all the names in those various sources was 9,057 and now Mr. Isserman is asking whether it was not rather certain names that you picked out of those directories and other sources. Was it the latter or was it the total?

You ask the question in your own way.

Mr. Isserman: Do you understand the question?

The Witness: No.

Mr. Isserman: I will withdraw it.

Q. You say there were 9,057 names made available to the clerk from these various sources. A. Yes, sir.

Q. Did making them available include copying names off on cards and giving them to the jury clerk? A. No.

(4478) Q. Just what did you do about making those sources available? A. Procured the different directories, alumni directories, and business directories, and turned them over to the clerk.

Q. And did you turn them over completely to the clerk? A. No, to his assistant.

Q. Who was his assistant, Mr. McKenzie? A. No.

Q. Who was it? Mr. Tanner? A. Yes.

Q. And will you tell us what the process was? Did you send for Mr. Tanner and say you had some lists for him? A. Yes. I did not have the lists. I said I had the sources and Mr. Tanner typed the sources, typed the names. As I understand it he did it at home.

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

Q. Didn't he sometimes type those sources in your office? A. He checked them in my office sometimes.

Q. He came in and checked them with the directories in your office? A. Yes.

Q. Now when you say 9,057, how did you arrive at your figures? Have you some record? A. I counted them.

Q. When did you count them? Just before you came here to testify? A. No. I counted them over the period of time. Each time he typed some lists I counted them.

Q. And those lists were typed from those different sources, is that right? A. That is correct.

Q. Did you keep any record of your count from time to (4479) time showing how many names were taken out of each source? A. I just counted the lists, the names on the lists.

Q. One of those lists was Poor's Directory of Directors, wasn't it? A. Yes.

Q. And you counted all the names in Poor's Directory of Directors?

Mr. Gordon: Your Honor, she has not said that.

The Court: It is proper cross examination—it really is not cross examination but I think it is proper.

Mr. Gordon: That was my objection. It seemed to me to be cross examination.

The Court: I don't think there is anything here that would indicate Mr. Isserman is attempting to impeach the witness but rather to elicit the facts.

Mr. Isserman: That is correct. That is precisely what I am doing.

Mr. Gordon: My suggestion was that he ask her and let her testify, because every time he says "You do this or that or the other," and he gets it wrong and it just keeps going on.

Mr. Isserman: I think the witness understands the question.

The Court: Ask a new question then.

Q. Your testimony about the 9,057 names, by that do (4480) you mean that the sources totaled up, that is, the directories of the alumni and other directories that were

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

used, if you added up all the names in those directories you would have 9,057? A. I did not say that, sir.

Q. Tell us what you mean. A. I said I counted the names after they were taken from the directory; that is the total of those names.

Q. Oh, I see. And did you count them on certain lists? A. I counted all the names on the lists after he finished typing.

Q. And they were typed up on lists? A. Naturally.

Q. And not on cards? A. On lists, on paper.

Q. Did you keep a carbon copy of those lists too? A. Yes, sir.

Q. Do you have those with you? A. Yes, sir. They are right there.

The Court: They are all in the papers that have been handed to the clerk?

The Witness: Yes, your Honor.

Q. So the papers that have been handed to the clerk contain altogether some 18,000 names, is that right? A. That is correct.

Q. Did you, in your office, keep a list of the sources that were used from which the names were taken, such as (4481) the college alumni directories and others? A. We have some. We borrowed some.

Q. Have you any record of what those sources were in your files? A. Yes.

Q. Have you that record with you? A. It is indicated on the list.

Q. Does the list itself indicate the source from which it came? A. Yes.

Q. Could you find some one such list which comes from one of those directories? Could you do that easily? A. Yes.

Q. Or would it take some time? A. Yes.

Q. And before you do that perhaps you can tell me whether the lists from those sources are kept separately from the other names you submitted? A. No. I have them all together chronologically.

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

Mr. Gordon: May I suggest that the exhibit number of the bundle be identified before she testifies?

The Court: Yes, she will do that.

Did you mark them all?

The Clerk: Yes, your Honor.

The Witness: They are all mixed up now.

The Court: When you select a paper please indicate for the record the exhibit number of the bundle from which you take the paper.

(4482) The Witness: 307? Is that the exhibit number?

Q. Yes, Exhibit 307. A. Well, there are several sources. They are covered already with this paper. This is a Dartmouth (indicating).

Q. The source is indicated and how can you tell it is Dartmouth? A. I have it written.

Q. Will you show me where it is written? A. I think it is written "Dartmouth Club."

Q. And there is a pencil notation in the left margin of the first page of the exhibit; that is correct, isn't it? A. Yes.

The Court: It says "Dartmouth Club."

Q. Whenever names were copied from such a source there was some notation put on by you which indicates the source, is that right? A. I don't understand that question.

Q. In each case where the names were copied from such a list you put on something which indicated where the list came from? A. Yes, I did.

Q. Can you tell us what business directories you used on those lists?

The Court: Just a second, Mr. Isserman. I desire to take a look at this one.

Mr. Isserman: All right, sir.

(Question read.)

(4483) A. Poor's and the Directory of Directors.

Q. Was Who's Who used as a source for names? A.

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

Who's Who in New York, and Who's Who in Engineering.

Q. And was the Social Register used as a source for names? A. Yes.

Q. Now the names which you compiled yourself and turned over to the clerk, where did you get those names from, Mrs. St. Clair? A. You want to know year by year?

Q. Yes. Do you mind telling it that way? A. Very well. In 1938 Who's Who in New York and Who's Who in Engineering, and a few volunteers. It amounted to about a thousand names; 770 from the Social Register.

Q. Have you any tabulation upon which these figures appear? A. Yes.

Q. In your offices? A. Yes, in my office. Yes, I have all this in my head.

Q. Will you give us the next year? A. 1939?

Q. Yes. A. About 2,058.

Q. And where did they come from? A. 2,016 came from the Social Register and the balance volunteers through members of our Association.

Q. And the next year? A. 1940. Around 2,000.

Q. And where did they come from? A. I will have to think back. I do not have a note here.

(4484) Q. By all means if you have anything which will help you refresh your recollection use it. A. Well, as I recall it, about 2,000. (After examining paper.) Where were we? 1940?

Q. I believe we were.

The Court: Yes.

A. 1,212 names during the summer of 1940 were compiled from alumni directories.

Q. And would you go on and give us the rest of it? A. For 1940?

Q. That is right. For 1940. A. Do you want the names of the directories?

Q. That is right. A. Princeton, Columbia, Poor's and a few volunteers.

Q. Were there more names for 1940? A. That is all.

Q. How about 1941? When you say "Princeton" was that the Princeton Club or the regular— A. No, Princeton alumni directory.

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

Mr. Gordon: That is what she said; the alumni directory.

A. (Continuing) 1941. 2,180 names which included 350 women who were wives of members, and some volunteers, and 48 Negro men and five Negro women; lists obtained from one of the members of the Association and a lady up in Harlem.

(4485) Q. What year was that, please? A. 1941. I have not finished 1941.

Q. Continue, please. A. During December 1941 working with the assistant to the jury clerk an additional 4,327 names were made available to the jury clerk for the grand and petit jury.

Q. From what sources? A. Harvard Directory, alumni directory.

Q. And how about 1942? A. Still working up to April 1942, the Association still working in conjunction with the assistant to the jury clerk, an additional list of 4,730 names were made available from the Yale and Directory of Directors.

Q. Who was the assistant to the jury clerk at that time? A. At that time Mr. George Tanner. And during the balance of the year 1942 and early part of 1943 the Association submitted to the new jury clerk an additional list of approximately 1500 men from the Dartmouth directory and Directory of Directors and a few miscellaneous letters, 100 women who were volunteers, 414 Negroes, 214 of which were men and 200 women, a total of 2,064 names.

The Court: What year is that?

The Witness: That is 1942 up until April 1943.

Q. Now in connection with the names of Negroes that were submitted, do you know the circumstances under which (4486) you submitted those names? A. Are you asking the source?

Q. Yes. A. Yes.

Q. What was the source? A. I obtained them through Mr. Hubert Delaney who is now Judge Delaney of the Domestic Relations Court.

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

Q. What were the circumstances under which you obtained those names? A. I asked the gentleman who used to be an assistant United States Attorney if he could procure such a list for me and he procured it through Judge Delaney.

Q. What was the name of the gentleman whom you asked? A. Mr. Thomas Todarelli.

Q. How did you come to ask for Negro names?

Mr. Gordon: I object to further questions along that line.

The Court: Sustained.

Mr. Isserman: If the Court please, there is testimony on this already in the record and I would like to get the balance of the facts concerning this issue on this record.

The Court: I think we are getting the facts. I do not desire any argument on it; whether she happened to go to that man or not. I cannot see what bearing it has.

Mr. Isserman: I will go on to something else.

(4487) Q. Did you receive any requests to get names of Negroes from anyone connected with the clerk of this court? A. Yes.

Q. From whom did you receive that request? A. From Mr. Borman.

Q. Did you get that list in response to his request? A. Yes.

Q. Did you get any other lists in response to Mr. Borman's request from other sources?

Mr. Gordon: Do you mean other colored lists?

Mr. Isserman: No. I mean other lists of names.

A. Well, as I just said, we submitted those names—

Mr. Gordon: I object to the question as assuming facts not in evidence.

The Court: He is just asking whether she got any further lists.

Mr. Gordon: As a result of Mr. Borman's request.

The Court: Oh, well, I will sustain that.

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

Q. Did Mr. Borman request you for other lists? A. He requested me to get lists of Negroes—I am wrong, I was mistaken. He requested other people but we had been sending these lists down there and so I handed them in to him.

Q. Didn't you on occasion get names from financial (4488) institutions in this city for submission to the jury clerk? A. During which time?

Q. Any time during the period of your services with the Association. A. Well, we made an effort in 1936, and through the chairman of our panel committee—

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

The Court: Yes. Strike it out. Did you get such a list?

The Witness: We got such a list, but it is not very long. It was a short list.

Q. Is that list contained in the exhibit which is before you?

Mr. Gordon: The objection goes back to 1936. It is a little too remote.

The Court: Yes, it is too remote.

Mr. Isserman: If the Court please, there are jurors serving on the panel that go back beyond 1936.

The Court: I thought when you began the theory was to go back ten years, which seemed to me certainly a period beyond which it would seem unreasonable to go. I thought it was your own suggestion, or your colleagues' that a ten-year period would be the one suggested.

Mr. Isserman: If the Court please, I indicated the Tolman report in 1941 dated back three or four years in describing the system.

(4489) The Court: I shall not allow anything back of 1936. That is too remote.

Q. Now since 1937 did you receive any letters from corporations or financial institutions submitting names

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

which you turned over to the clerk of this court? A. No.

Q. Now I asked you to, in the subpoena served, produce correspondence between your Association and the Administrative Office of the United States Courts relative to selection of grand jurors in this district. A. I have some here.

Mr. Gordon: Your Honor, I am going to object to any correspondence that has not to do with the selection.

The Court: Yes. I think that is part of the matter that was stated to be confidential and communications with the Administrative Office I shall not allow.

Mr. Gordon: I also object on the ground it is not relevant to the work of the clerk's office.

The Court: Yes.

Mr. Isserman: May I state my grounds for asking for this?

The Court: Very briefly.

Mr. Isserman: My grounds in asking for the correspondence is that that correspondence will indicate that the Grand Jury Association participated in the plan described in the Tolman report and cooperated with the (4490) clerk of this court and the jury clerk of this court in carrying out the provisions of that plan.

The Court: Yes. I will sustain the objection.

By Mr. Isserman:

Q. Now did you at any time submit names to the clerk, the jury clerk of this court, for grand or petit jurors which you received from the New York Telephone Company?

Mr. Gordon: Objection unless the time is fixed.

The Court: Did not the witness say that all the names were in the lists that have been marked in evidence?

Mr. Isserman: I do not know if all the sources are given.

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

The Court: All the names are there, are they not?

The Witness: Yes, your Honor.

Mr. Gordon: She listed the sources.

The Court: Yes, and they are all in there.

Mr. Isserman: I would like to ask if included in those sources is the New York Telephone Company.

The Witness: No.

Q. Or Consolidated Edison Company? A. No.

Q. Now have you, in response to the subpoena which was served on you, records of your association showing expenditures of moneys in connection with work done in the office of the clerk and the jury clerk of this court?

(4491) Mr. Gordon: That is a question which assumes a state of facts not in evidence; contrary to the facts, that is, that they did work in the office of the jury clerk, and I object on the further ground it is irrelevant.

Mr. Isserman: I am merely asking if the witness has responded to the subpoena.

The Court: Then you ought not to put so much in your question. All you want to know is whether she answered the subpoena.

Q. Do you have that subpoena before you with which you were served? A. Yes.

Q. I call your attention to item 16 in the subpoena relative to expenditures of funds by the association for services performed in the office of the clerk or Jury Commissioner of this court and ask you if you have brought those records with you?

Mr. Gordon: I object to it as before.

The Court: You object to the subject matter?

Mr. Gordon: Yes, sir.

The Court: I will sustain the objection.

Mr. Isserman: I would like to make an offer of proof.

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

The Court: Haven't you already made it? You asked questions relating to those expenditures and the objection is made and I sustain the objection.

(4492) Mr. Isserman: I would like to state to your Honor what we would prove by the proof of those expenditures?

The Court: I do not think I desire to hear any more of these so-called offers to prove. You claim that the expenditures of the Association are relevant and you have raised the question, objection has been made, and I have excluded it. If you want to get anything about the lists that were obtained or lists that were given here I have given you every latitude and you have every one of them in evidence. I should think that that would suffice. I cannot see that the expenditures of the association have anything to do with the case.

Mr. Isserman: No. These expenditures were for work done in the office of the clerk and to assist the clerk in his work, and it becomes relevant to this issue and we are prepared to prove it.

The Court: I understand but I sustain the objection to all that.

Mr. Isserman: May I ask one question on the subject, subject to the objection?

The Court: You know you have made these extravagant offers of proof and I rather have an idea if you go to make another one you would cover all kinds of extravagant things that will just complicate the (4493) situation, but if you desire to reframe another question you may do so. I have held so far that the expenditures of the Association are not admissible.

Mr. Gordon: This is the sort of thing, your Honor, that Mr. Isserman tried to get in indirectly when Mr. Borman was on the stand, and it finally appeared in work of this kind that he refers to, if it ever took place it took place back in 1930 or 1931.

The Court: I remember that.

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

Q. When you started working for the Association, Mrs. St. Clair, wasn't there a person employed by the Association who did work in the office of the clerk of this court in reference to keeping up the jury system?

Mr. Gordon: I object to that.

The Court: Sustained.

Q. Do you know how the duplicate set of history cards which is contained in your office files—how that was compiled? A. Yes.

Q. How was that compiled? A. It was compiled prior to my coming to the Association in 1929, by an employee—

Mr. Gordon: Just a moment.

The Court: You see, that is an instance. He asks if you know, and I think your very answer indicates you know nothing about it but you go blindly on and say "Yes, I know," and proceed to tell us something (4494) you could not possibly know because you were not there, isn't that true?

The Witness: That is true, your Honor.

The Court: I think you had better be careful and say what you know.

The Witness: I am sorry.

The Court: It is a common thing. Everybody does it, but try to avoid it if you can.

Q. Did not the Association have, in 1932 and 1933, when you were employed by the Association, a person whom they paid working in the office of the clerk of this court? A. No.

Mr. Gordon: Objection. I will withdraw the objection.

The Court: Yes. When you see an objection is to be made just refrain from answering until I rule.

The Witness: I am sorry. This is my first experience.

Mr. Gordon: In connection with this time question, that is, the period of time, on page 17 of the

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

affidavit of counsel which is attached to the motion papers, paragraph 11th starts: "Shortly before 1940." That seems to be a guide as to the time included in their motion.

Q. Have you a list of the 1948 officers of the Association? A. Yes, sir.

Q. And does that include the executive board? A. Yes, sir.

Q. Is that in compilation form? Do you have it here? A. (Witness produced paper.)

Mr. Isserman: I would like to have this marked for identification. I withdraw that.

Q. Have you a list for the 1948 officers? A. I am sorry. I will take that one back.

Mr. Isserman: No. I will mark both of them. May I have these marked as the next exhibit number in order?

(Marked Defendants' Challenge Exhibits 309 and 310 for identification.)

Mr. Isserman: If the Court please, I would like to offer Exhibits 309 and 310 for identification in evidence.

Mr. McGohey: May we see them, please.

(Handed.)

Mr. Gordon: I object on the ground they are irrelevant.

The Court: Sustained.

Mr. Isserman: I would like to be heard on that, if I may.

The Court: No. I desire no argument.

(4496) Mr. Isserman: Your Honor will not permit it?

The Court: That is right.

Mr. Isserman: And not allow me to state my grounds why I believe it is relevant?

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

The Court: I do not desire argument, and that is what I call argument. You know we offer a paper and it is evident enough what is on the paper and extended argument or any argument is not going to be had right now. I ruled the other day I was not going to hear any more argument because argument had been so abused.

Mr. Isserman: I must take objection to your Honor's statement.

Q. Now the Grand Jury Association from time to time engages in political activities, does it not? A. Definitely.

Mr. Gordon: Objection. I did not hear the answer but I object.

The Court: I did not either. If there was an answer I will strike it out. What has the political activity of the Association got to do with it?

Mr. Isserman: The political activities of the Association tend to show the character of the Association who in the past ten years has submitted 18,000 names to this court, and the character of the Association's political activity, and business connections of the (4497) officers tend to reflect the character of the lists submitted.

The Court: Were those lists prepared on some political basis?

The Witness: No, indeed. It is ridiculous.

The Court: I will sustain the objection to the political activities. I do not see what that has to do with it unless these names were selected on some political basis, which the witness says is not so.

Mr. Isserman: If the Court please, the officers of the Association, and the policy of the Association, is necessarily reflected in the manner and method and sources from which names are selected, and covered—

The Court: I think that has been the whole trouble with this proceeding. You try to reason backwards and say you find certain officers of the Association, because some of them, or all of them

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

may be Democrats or Republicans or what not, you think it is a fair inference that therefore the whole business of the names they submitted was political. I just don't agree with that and I sustain the objection.

Mr. Isserman: If the Court please, that is not the point, that the whole list which was submitted was political but the character of the list is determined by the business and financial connections of the officers (4498) and politics of the Association.

The Court: Yes. I rule against that.

Mr. Isserman: If the Court please, I will discontinue the examination of this witness, not because I have completed the examination but because of the time limit which your Honor has put and the balance of the time left to the defense to put in their case, so I terminate the examination at this time before having completed it.

Mr. Gladstein: I have a few questions to ask of the witness.

By Mr. Gladstein:

Q. Mrs. St. Clair, did you ever obtain information from the clerk of this court during the years you were submitting the lists of names as to the percentage of those names who were found qualified and who became jurors?

Mr. Gordon: Objection.

(Question read.)

The Court: Sustained.

Q. Did you ever check with the clerk to ascertain from one year to another the extent to which the names you were submitting of people actually went into the jury system?

Mr. Gordon: Objection.

(4499) The Court: Sustained.

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

Q. Do you have any indication from the clerk or anybody connected with the clerk to indicate the extent to which the names that your Association submitted on these lists that have been put in evidence here today, actually became people in the jury system, grand or petit?

Mr. Gordon: Same objection.

The Court: Sustained.

Q. Can you deny—

Mr. Gordon: I object to that.

The Court: You know this is direct examination and you have had a good deal of experience and know how to put questions.

Mr. Gladstein: I withdraw it.

Q. Is it a fact, Mrs. St. Clair, that a majority, to your knowledge, of the people who became grand and petit jurors in this court came from the lists that your Association submitted?

Mr. Gordon: Your Honor, I cannot characterize the conduct of counsel.

The Court: You object?

Mr. Gordon: I do object.

The Court: I sustain the objection.

Mr. Gordon: It is obviously for propaganda (4500) purposes.

Q. Mrs. St. Clair, did you ever get word from Mr. Tanner or Mr. McKenzie or Mr. Borman, Mr. Follmer or any of the officials of this court advising you that they were satisfied with the type of people whose names were on the lists that your Association submitted?

Mr. Gordon: Same objection.

The Court: Sustained.

Mr. Gordon: And I object to further questions along this line, on the ground they are leading in the direct examination of counsel's own witness.

Q. Whose idea was it, Mrs. St. Clair—

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

The Court: I will make no direction because of the limitation of time.

Q. Whose idea was it to have the Association, your Association, prepare and procure these names and prepare lists and submit them to the clerk of this court?

Mr. Gordon: I object.
The Court: Sustained.

Q. Do you know, Mrs. St. Clair, who proposed, during any period of time when you were connected with the Association and had the relations you have already described with the clerk's office of this court, do you know at whose suggestion the idea was developed of your Association preparing these lists such as have been (4501) introduced in evidence here today?

Mr. Gordon: I object as irrelevant.
The Court: Sustained.

Q. Whose idea was it, Mrs. St. Clair,—

The Court: You are proceeding as though you were cross-examining. This is your witness.

Mr. Gladstein: It is not my witness. I did not call this witness.

The Court: Oh, do you claim you are entitled to cross-examine as though a witness called by the prosecution?

Mr. Gladstein: It is not a witness called by me and it is a witness who has never accommodated me or discussed anything with me or indicated any willingness to discuss any of the testimony she was to give.

The Court: Well, I do not think the test of whether a witness is being examined on direct examination or cross-examination is whether counsel has had the privilege of conversation with the witness. In any event, I will rule on the questions as they arise.

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

Mr. Gordon: I will object to this line of examination, your Honor, accepting Mr. Gladstein's statement that he can cross-examine the witness, on the ground that his cross-examination is not germane to the direct examination and has no bearing on the (4502) issue of credibility.

The Court: Yes.

Q. Mrs. St. Clair, I call your attention to the lists that have been received in evidence. You will recall that you testified listing off a series of names such as Poor's Directory and the Directory of Directors and other sources from which the names came. That you recall, don't you?

A. Yes.

Q. Now do you know who determined that those sources, as indicated on the lists received in evidence here this morning, that were prepared by your Association, do you know who determined that those sources should be used.

Mr. Gordon: I object.

The Court: Sustained.

Mr. Gordon: Including he stated facts not in evidence.

The Court: Yes. I sustain the objection.

Q. Do you have any knowledge, Mrs. St. Clair, as to whether it was someone in your Association or someone connected with the clerk's office who decided that Poor's Directory, or Register of Directors should be used as a source from which the names of potential jurors should be taken?

Mr. Gordon: Same objection.

The Court: Sustained. Mr. Gladstein, in my (4503) view it makes no difference whatever.

Mr. Gladstein: Who decided?

The Court: Who decided they were to use these in the organization of the Federal Grand Jury Association. The testimony has been given and each and every name on every one of those lists is in evidence and I cannot see that it makes a particle of

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

difference whether the president of the Association suggested it or the vice-president or the panel committee.

Q. Now did you ever submit a list of names taken from the alumni directory of the City College of New York? A. No.

Q. Did you ever submit a list of names consisting of people who appear in the alumni directory of New York University?

Mr. Gordon: Just a moment. As I understand, they never submitted any lists of names of any alumni directory.

Mr. Gladstein: I said "taken from."

The Court: Mr. Gladstein, you have all the names in evidence, and yet—

Mr. Gladstein: I just wanted to see if the witness might have overlooked CCNY.

The Court: And I call your attention to the fact you may argue from that whatever you care, as to those names that do not appear there.

(4504) Q. Did you ever submit a list obtained from, or supply a copy of, the alumni directory of Tuskegee Institute? A. No.

Q. Or Howard University? A. Where is Howard University?

Q. You did not, I take it. A. Where is it?

Q. Did you do so or not?

Mr. Gordon: You understand, your Honor, this is pure propaganda. Tuskegee is not in New York City.

Mr. Crockett: Nor is Harvard.

Mr. Gladstein: I don't think Harvard, Dartmouth and Yale are either.

The Court: I think you had better pass to something. I have ruled the facts are already in evidence and you may argue that there is no directory from any college that is omitted which was not put in. That is all there. You have all the data from

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

which to make whatever argument you choose to make.

Mr. Gladstein: All right. Just a few questions more.

Q. Do you know a man named J. Donald Duncan? A. I have met him.

Q. Do you know him to be the Jury Commissioner? A. I know he is Jury Commissioner.

Q. When did you have occasion?

(4505) Mr. Gordon: This is not germane to the direct, nor by way of credibility.

Mr. Gladstein: If it is not germane to the direct then it is, beyond implication, proper—

The Court: You run from the mark like a racer without giving me a chance to rule. You remember how I said I did not want to hear argument. I will overrule the objection.

Q. You may answer.

The Court: When did you first meet Mr. Duncan, if you did meet him?

The Witness: I cannot just recall the year. I think when he was appointed.

(4506) Q. Was it shortly after his appointment as jury commissioner, to your recollection? A. I believe so.

Q. Now did you have occasion to work with him in any way in connection with the lists that your Association compiled and submitted to the jury clerk for use as a way of obtaining jurors? A. No.

Q. None at all? A. None.

Q. Did you have business relations with Mr. Duncan exclusively? A. No.

The Court: I don't know what you mean by "business relations."

Q. Well, did you have any business relations that involved— A. I had no relations of any kind.

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

Q. Did you have occasion to meet him regularly in connection with your work? A. I think I met him just once.

Q. Is he a member of your Association? A. Certainly not.

Q. Is he an honorary member? A. No.

Q. Is Judge Knox a member? A. No.

Q. He is an honorary member? A. No.

Q. Are you sure of that? A. Positive of it. We have no honorary members.

Q. Did you have honorary members? A. We have no—

Q. I say, did you?

Mr. Gordon: Well, that is objected to, your Honor.

(4507) Mr. Gladstein: Well, she says "We have no". I suppose that means now. I am asking whether there was a period of time when they had any.

A. Not to my knowledge.

Q. Did you attend the last annual meeting of your Association when the annual report of the president was given?

A. Yes.

Q. Was there in addition to your president of your Association another chief speaker or main speaker? A. The last annual meeting?

Q. In 1948. A. Yes.

Q. Was that chief or main speaker J. Parnell Thomas? A. No.

Q. Who was the chief speaker?

Mr. Gordon: Objection.

The Court: Sustained.

Q. Now was there a meeting of the Association at which J. Parnell Thomas was a speaker?

Mr. Gordon: Objection.

The Court: Sustained.

Mr. Gladstein: I offer to prove that if the witness were permitted to answer she would admit that this—

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

The Court: What is the use of doing that all the time, Mr. Gladstein? You ask a question which is an obvious offer to prove, and then when an objection is made you (4508) want to make a speech about it.

Mr. Isserman: I just have one other question, if the Court please.

The Court: Very well.

Mr. Isserman: Which I will ask now.

The Court: You may do that as part of your direct examination.

By Mr. Isserman:

Q. Mrs. St. Clair, on occasion the lists of members of your Association are published in The Federal Juror, are they not? A. The entire membership?

Q. No, certain members from time to time. A. New members.

Q. That is right, and you compile those lists? A. Yes.

Q. And you cause them to be inserted in the Federal Juror? A. Yes.

Q. How many members does your Association have today? A. About 600.

Q. Have you a list of those members with you? A. Yes.

Q. And are these members all members on the active list of the Federal grand jury in this district? A. We have some associate members.

Q. Are the associate members designated as associate members? A. Yes.

Q. And those who do not have that designation are (4509) members on the active grand jury list of this court, is that correct?

Mr. Gordon: She testified that she did not know whether they were on the active list.

Mr. Isserman: Just a minute. I think she said she did know.

A. Well, I wouldn't have—

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

The Court: What do you mean by "an active list"? You mean they paid dues?

Mr. Isserman: No. I mean that they are on the active list of grand jurors in this court, in the files of the clerk of this court. The clerk testifies he has, I believe, some 1800, approximately 1800 names on a grand jurors' list.

The Court: Your contention, and that of your colleague's, is that if a grand juror on the active list is a member of the Federal Grand Jury Association, that that disqualifies him as a grand juror?

Mr. Isserman: We haven't said that, your Honor.

The Court: Then I will sustain the objection.

Mr. Isserman: I would like to give you my contention in respect to my—

The Court: No; I will disallow it. If you want to prove which one of the grand jurors are members of this Association, I think it is not relevant.

(4510) Q. Do you have the membership list with you?
A. Yes, I have a membership list.

Mr. Isserman: May I have it marked for identification?

Mr. Gordon: Well, I object.

Mr. Isserman: Well, I would like to have it marked, your Honor, because—

The Court: In this case I think it is unnecessary.

Mr. Isserman: Well, I would like to say that we purport showing through the introduction in evidence of that list, that the members of this Association, some 600 in number, are members who are on the active list of grand jurors of this court; it would show their business connections and indicate that in substantial part, in overwhelming part, the members of this Association are persons of the class which we have claimed in our challenge have been included to the exclusion of the groups we

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

refer to, namely, the class being the wealthy, the propertied, the economically powerful and well-to-do.

The Court: Well I exclude the list. I hold that the proof of membership is not relevant to any of the issues here.

Mr. Crockett: If your Honor please, because of the time limitation I will not be able to examine this witness as fully as I would like to, but I do have one (4511) or two questions I should like to ask.

By Mr. Crockett:

Q. Mrs. St. Clair, how many Negro members do you have on the Federal Grand Jury Association?

Mr. Gordon: I object.

The Court: Sustained.

Q. Do you have any Negro officers of the Federal Grand Jury Association?

Mr. Gordon: Object.

The Court: Sustained.

Q. Among the list which you have produced here in court and which has been marked in evidence, have you indicated on each list that contains the names of Negroes the word "Colored" or some other designation indicating that they were Negroes?

Mr. Gordon: Well, there is no proof that she knows whether they are Negroes.

The Court: Sustained. Mr. Crockett, if there is such indication we can see it by looking at the papers.

Q. If there is no indication on a list submitted by you, Mrs. St. Clair, indicating the race of the particular person whom you are recommending for jury duty, does that mean that he is not a member of the Negro race?

*Ruth M. St. Clair—for Defendants on Challenge—
Rebuttal—Direct*

Mr. Gordon: I object to that.
The Court: Sustained.

(4512) Q. In submitting the list of names to the jury clerk, Mrs. St. Clair, did you indicate in any manner what race the particular person whose name is included belonged to?

Mr. Gordon: I object.
The Court: Sustained.
Mr. Gordon: She does not know what the race is.

The Court: Well, the papers are all in evidence, Mr. Crockett, every single name that came from this source or was in these directories and copied off by Mr. Tanner, every single one of them is in evidence here. Now you can examine those lists and see just what they show. You have it all in, so I cannot quite see what more you want here.

Mr. Crockett: Is the Court prepared to assume, and would I be justified in assuming that lists that are not denominated "Colored" or "Negro" do not contain the names of any Negroes?

The Court: I make no assumption.
Mr. Crockett: Well, that is what I am trying to find out from the witness.

The Court: This witness was not the jury commissioner or the jury clerk. She did what she has testified to. Now as to whether the jury clerk or the jury commissioner or the deputy clerks made some selection one way or another, that is the question before the Court.

(4513) Mr. Crockett: But there has been testimony here, your Honor, to the effect that—

The Court: Well, I sustain the objection.
Mr. Crockett: —lists were received with that designation on there. Now this witness has testified that she submitted lists, that she submitted lists that were denominated "Colored."

Colloquy of Court and Counsel

The Court: Well, her testimony is in the record, and I think our arguing about it doesn't accomplish anything.

Mr. Gladstein: That is all of this witness. I want the record to show, so far as I am concerned, that I limited my questioning for just a few minutes because of the time limitations imposed by the Court last Friday, directing us to end our case tomorrow evening, and therefore in view of other evidence that is necessary to be introduced here, I have refrained from examining Mrs. St. Clair on matter that I deem material to this case, and my inability to examine her on these other matters, and I am prepared to state what they are, I deem harmful and prejudicial to the interests of my clients.

The Court: Do your colleagues desire to speak on that subject?

Mr. Crockett: Not extensively, your Honor, (4514) except to say that I support each thing that Mr. Gladstein has said, and I would like for the record to indicate that my examination of this witness was limited to less than five minutes because of the time limitation imposed by the Court.

Mr. Isserman: If the Court please, the only thing I would like to note for the record is when I asked for another question or two, that that did not complete my examination, but I terminated only because of the time limit which has been placed on the examination.

Mr. Gordon: Just a moment here. What is going on?

The Court: This young man has been taking great wads of these papers, and I think something should be done.

Mr. Gladstein: I will be happy to state for the record what it is. This young man is employed by me, and I have asked him to count the number of lists contained in each of the batches supplied by the Grand Jury Association to the clerk's office here, and which lists or batches have been received in evidence today.

Colloquy of Court and Counsel

The Court: Yes. All I am talking about, Mr. Gladstein, is not to get them apart and mixed up. You know they had, as was pointed out earlier, just strings or rubber bands around them, and I am just saying for him to be careful that he doesn't get them mixed up, that (4515) is all.

Mr. Gladstein: And I asked him to count them so as to insure that we wouldn't get mixed up, Judge.

The Court: You know, Mr. Gladstein, how simple it is for one thing to lead to another.

Mr. Isserman: If the Court please, with the permission of the Court what we would like to do is to put each batch in some appropriate envelope with an appropriate marking.

The Court: I think that is a very good suggestion.

Mr. Isserman: So that they will remain intact.

The Court: I think that is an excellent idea, and I think should be done by Mr. Borman here during the luncheon recess.

Mr. Isserman: Very well.

The Court: Now is there any cross-examination, Mr. Gordon?

Mr. Gordon: No, your Honor, but in connection with the list I will anticipate that Mrs. St. Clair may desire that some element of custody remain in the Association, since they are the records of this Federal Grand Jury Association, and I am going to suggest they be left in the custody of Mr. Borman.

The Court: Very well.

Mr. Isserman: If the Court please, these are—

(4516) The Court: Do you want to take them home with you?

Mr. Isserman: We would like to study them tonight, if your Honor please.

The Court: If you expect to take all those documents away from the court and home with you, I think you probably—we'll, I will give it consideration, that is what I will do. I will think about it.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

It is a little unusual and I wouldn't think it should be done but perhaps I will give it a little further consideration.

Mr. Isserman: If the Court please, what we are concerned with is not taking them home but we do want to work on them this evening.

The Court: I did not mean your place of residence; I meant wherever you chose to go to. Let us not consume time with such idle discussion as this. I will consider the matter as to whether at the close of the session today I will permit you to take those away with you.

Mr. Gordon: No questions.

The Court: All right. The next witness.

Mr. Isserman: If the Court please, may the witness be excused subject to further call after the examination of these records, should that examination reveal, notwithstanding the limitation of time, that we would want to ask her some further questions?

(4517) The Court: She will be subject to recall. I do not see what would be the legal effect of my making such a direction. Every witness may be recalled, and I haven't the slightest doubt that if you desire this young lady to come back, all you have to do is call her up and she will come over.

(Witness excused.)

Mr. Gladstein: Will you call Mr. J. Donald Duncan, please.

J. DONALD DUNCAN, called as a witness on behalf of the defendants on the challenge, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Gladstein:

Q. Mr. Duncan, are you the jury commissioner of this court? A. I am.

Q. And how long have you held that position? A. Since February 1911—I beg your pardon, 1941.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Q. You were appointed, were you not? A. Yes, sir.

Q. By whom, sir? A. Judge Knox.

Q. Now your occupation is that of an attorney at law, is that so? A. Yes, sir.

Q. And your office engages in the practice of law in New York City? A. Yes, sir.

Q. At what address? A. 50 Broadway.

Q. And for how long have you been associated with (4518) that office? A. In 50 Broadway? Since 1927.

Q. And prior to that time at some other address, is that it? A. That is correct.

Q. Now what is the name of that firm? A. At the present time?

Q. Yes. A. Hooker, Alley & Duncan.

Q. Would it be correct to say in general that the chief character or the chief type of law practice engaged in by that firm is corporate? A. I think that is fair.

Q. Yes. Now at the time that you were appointed by Judge Knox—is that correct? A. Yes, sir.

Q. —in February 1941, I suppose that appointment was preceded by some discussion between you and Judge Knox?

Mr. Gordon: Objection.

The Court: Sustained.

Q. Well, prior to your appointment by Judge Knox did you have occasion to discuss that appointment? A. No, sir.

Q. You mean it occurred without any prior knowledge on your part? A. It did, sir. I was very surprised.

Q. You received the appointment in writing? A. No, sir. She spoke to me and then I suppose he entered an order.

Q. Now where were you—where did the conversation occur or take place? A. I think he asked me to come to (4519) his chambers.

Q. Was anyone else present? A. Not to my recollection.

Q. And there he asked you to take the appointment, did he? A. Yes, sir.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Q. And you agreed, did you? A. I certainly did.

Q. And that was the same day that he made the appointment? A. Yes, sir.

Q. And then he did ask you and give you notice of the appointment before he made it, correct?

Mr. Gordon: I can think of no legal claim that Mr. Gladstein can make that this witness is not called by him, and I want to object to the leading question and the argument with the witness.

Mr. Gladstein: I am glad that Mr. Gordon reminded me. I should have announced at the outset, and I do now say that I called Mr. Duncan as an adverse witness who, as the jury commissioner of this court, is an adversary in this proceeding which involves the challenge against the validity of the—

The Court: I think there is something in that. You charge him with part of this conspiracy and I think I shall rule that he is an adverse witness and give you certain latitude in your examination by reason of that.

Mr. Gladstein: Very well.

Q. Now when you entered upon your duties as jury (4520) clerk I suppose—

Mr. Gordon: Objection.

Q. Excuse me, I did not mean "jury clerk"; I meant "jury commissioner". When you entered upon your duties as jury commissioner did you make a study of the system of selecting jurors both petit and grand in this court? A. I don't think I made any study, no, sir.

Q. Well, did you talk to any of the attaches of the court to ascertain in what manner jurors were selected? A. I did.

Q. Yes, and in the course, in due course you learned from your observations, your discussions and such investigation as you made, just how jurors were selected, isn't that right? A. That is correct.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Q. All right. Now did you learn in 1941, shortly after your appointment as jury commissioner, that the Federal Grand Jury Association was supplying lists of names to the clerk's office here for use as jury material? A. I don't know when I learned that.

Q. But you do recall that you did learn it? A. At some time or other, yes.

Q. Well— A. And I would say not that they were supplying it, I heard that they had supplied it.

Q. Well, isn't it a fact, sir, that you learned in 1941 that they were supplying names, not only that they (4521) had but they were supplying names? A. I am sorry, but I can't agree with you.

Q. You cannot agree? A. I cannot agree that I learned in 1941.

Q. Well, do you have a recollection, sir, of having made a written report on the subject of the manner of jury selection in this court, that report being dated in the year 1942? A. I do.

Q. And I asked you, indeed, by subpoena duces tecum, to produce your copy of that report, did I not? A. You did.

Q. Do you have it with you? A. I do not.

Q. Do you know where it is? A. It should be in the court house somewhere.

Mr. Gladstein: Will your Honor be good enough to dispatch a deputy?

The Court: What have you to say, Mr. Gordon?

Mr. Gordon: This is the same document that counsel has been trying to get for weeks.

The Court: Is this one of the ones that was in the file brought here by the Administrative Office?

Mr. Gladstein: Your Honor—

Mr. Gordon: Just a moment.

Mr. Gladstein: —are you asking this of Mr. Gordon or of me?

(4522) The Court: Well, I was asking Mr. Gordon.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Mr. Gladstein: Well, I will wait until Mr. Gordon has answered and then perhaps I have an answer to the question.

Mr. Gordon: May I put one question to the witness?

Mr. Gladstein: No; I object to that.

Mr. Gordon: Which is in connection with this.

Mr. Gladstein: I object to Mr. Gordon interrupting with even a part of a question while I am examining him.

The Court: I am going to allow it just the same.

What is the one question?

Mr. Gordon: Is the report that you and Mr. Gladstein are discussing a report which was sent to the office of the Administrator of the United States Courts?

The Witness: I believe so.

Mr. Gordon: I object to that.

Mr. Gladstein: May I be heard?

The Court: Objection sustained.

Mr. Gladstein: All right.

Q. Mr. Duncan, in the course of your official duties as jury commissioner you had occasion, did you not, to prepare a written report setting forth data and facts concerning the manner in which jurors were selected for petit and grand jury service in this court in the (4523) year 1942, isn't that so? A. I don't know as it was part of my duty as jury commissioner.

Q. Did you? A. I answered a request from Washington.

Q. Well, you do not regard—was that request addressed to you as jury commissioner or as a lawyer? A. It was addressed to me in care of the clerk as jury commissioner.

Q. And did you reply to that questionnaire as jury commissioner or just as a lawyer? A. As jury commissioner.

Q. All right. Then isn't it so, sir, that the report was prepared by you and sent in the course of your discharge of duties connected with the office of jury commissioner? A. I—

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Mr. Gordon: I object. The duties of the jury commissioner are in the statute.

The Court: Objection sustained.

Q. Did you—

The Court: I have already ruled on all those things.

Mr. Gladstein: On all what things?

The Court: When Mr. Chandler was here.

Mr. Gladstein: That may be true regarding Mr. Chandler—

The Court: Well, this is not an issue here, to pry into the confidential matters of the administration (4524) of justice. In any event, as long as I sit here and rule on it it will not become such. Now that is one of those confidential documents that was called for by the Administrative Office of the Federal Courts and rendered accordingly, and in the classification of documents which Mr. Chandler said he regarded as confidential.

Mr. Gladstein: Would your Honor give me five minutes to argue the law on that without taking it out of the time limitation you have imposed upon us, because I have some law on the subject.

The Court: Very well.

Mr. Gladstein: In other words, does the point that your Honor may regard as a rule of privilege or confidence that surrounds it with some protection—

The Court: You see, this is a criminal court we are sitting in now.

Mr. Gladstein: Yes.

The Court: And I cannot have everybody who desires to pry into the secrets and workings of the court. You have your facts here about the jury system. This particular report was rendered to the Administrative Office, that is a confidential document.

Mr. Gladstein: It is not a confidential document in so far as the files of this witness are concerned.

Colloquy of Court and Counsel

It was prepared in response to a request. A copy of the (4525) letter is in the files. It was a letter prepared, as the witness says, containing data dealing with the system of jury selection. Therefore it is immaterial to the issues we are concerned with here, and it is not confidential because I have seen it and had made notations of it. I have copies of it.

The Court: Well, you have seen a lot of things around here. One minute you say you saw this and that, then the next minute you did not see this and that. I have no way of telling exactly what anybody has been looking at, but whether you looked at it or not isn't the test of whether it is admissible here, and I am going to rule it out.

Mr. Gordon: I have a further objection, if there is further discussion on it, your Honor. I believe that the report is incompetent as a hearsay document. Here is a man who is part of the system. He is the one who can testify to what he does and what is done.

Mr. Gladstein: Exactly correct, and any document that he has created in writing as a past record, connected with the official discharge of the duty of his office is evidence I am entitled to get.

The Court: Well, Mr. Gladstein—

Mr. Gladstein: It is the best evidence.

The Court: —I may be wrong about this—

(4526) Mr. Gladstein: You are wrong, Judge.

The Court: You think I am wrong on a good many things, and kept telling me how I was going to be reversed, and maybe I am, but I can only do the best I can, and I feel that matters that Mr. Chandler as head of the Administrative Office of the Federal Courts has indicated were confidential, are matters that I should not have disclosed here.

Mr. Gladstein: Very well.

The Court: Now if I am wrong about that, why of course you have your remedy, but mere repetition and reiteration isn't going to change my ruling.

Mr. Gladstein: All right.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Q. Anyway, you entered upon the discharge of your duties as jury commissioner in February 1941; that is correct, isn't it, sir? A. Yes, sir.

Q. And isn't it true that two months later in April 1941 Judge Knox appointed you trustee of the Equitable Office Building Corporation?

Mr. Gordon: Objection.
The Court: Sustained.

Q. Are you a trustee or officer of the Equitable Office Building Corporation? A. I am.

Q. When did you first receive your appointment as trustee? A. In April 1941.

(4527) Q. And who appointed you?

Mr. Gordon: Objection.
The Court: Sustained.

Q. Was the appointment—it was an appointment, was it not, as trustee? A. Yes, sir.

Q. A judicial appointment, was it?

Mr. Gordon: Objection.
The Court: Sustained.

Q. Was it an appointment made in this court?

Mr. Gordon: Objection.
The Court: Sustained. I cannot see what that has to do with the case at all, Mr. Gladstein.

Q. You are also president now of the Equitable Office Building Corporation, are you not, sir? A. No, sir.

Q. Were you at all? A. For one year.

Q. And when was that? A. I think it was December 1947.

The Court: We will now adjourn for lunch until 2.30.

(Recess to 2.30 p.m.)

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

(4528)

AFTERNOON SESSION

J. DONALD DUNCAN, resumed the stand.

* * *

Mr. Crockett: If your Honor please, you will recall that this morning Mr. McGohey and I stipulated on the record with reference to a witness, Rose Katz, and also the witness Phillip Lewerth, who were subpoenaed to appear here today.

The Court: I do.

Mr. Crockett: During the recess, two other witnesses, Henry Peters and Russell Lakestream, were interviewed by Mr. McGohey and myself, and I understand that the same stipulation might prevail as to those two witnesses.

Mr. McGohey: That is agreeable to me.

The Court: Very well; that has the approval of the Court.

(4529) Mr. Crockett: I should like the record to indicate, however, that the addresses of these witnesses are: Rose Katz, 1113 Finley Avenue, Philip Lewerth, 1122 Finley Avenue, Henry Peters, 1112 Finley, Russell Lakestream, 1117 Finley.

The Court: Now I do not quite understand what you are telling me about those addresses.

Mr. Crockett: Well, those are the addresses given for them on the list of registered voters that was introduced in evidence, from which it was testified that their names had been copied for the purpose of sending notices, and I merely want to indicate that they still reside at that place. That is where they were served with subpoenas to come down today.

The Court: And that they would so testify if called?

Mr. Crockett: That is right.

The Court: Do you stipulate that, Mr. McGohey?

Mr. McGohey: I stipulate that if they had come on the stand they would testify that they had not received notices to come in and qualify.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

The Court: And that they reside at the addresses given in that list of registered voters?

Mr. McGohey: Oh, yes.

(4530) The Court: Very well.

Mr. Isserman: Your Honor, simply to identify it a bit more clearly for the record, the names appear on page 7 of the list of registered voters for the 2nd Assembly District of the Bronx for 1946.

Mr. McGohey: What is the exhibit number?

The Court: Well, that is Exhibit 183-B.

Mr. Isserman: Exhibit 183-B.

Mr. McGohey: Yes.

Mr. Gladstein: Shall I proceed, your Honor?

The Court: You may.

Direct examination continued by Mr. Gladstein:

Q. Now, Mr. Duncan, when you entered upon the discharge of your office as jury clerk— A. Jury commissioner.

Q. —jury commissioner—I am sorry if I keep demoting you. I should not do that. A. That is all right.

Q. You of course undertook to find out what authority you had over the jury clerk; that is so, isn't it? A. Yes, sir.

Q. And you ascertained that you had certain directory or supervisory authority over his office; isn't that so?

Mr. Gordon: That is objected to; the statute speaks for itself.

The Court: Yes, sustained.

Q. Now did you undertake to give any directions to the (4531) jury clerk? A. When I first started, no, I don't believe so, because I found that he was carrying out his duties as I understood them to be.

Q. Did you undertake to find out what the clerk was doing in order to obtain jurors for this court? A. Yes.

Q. Did you learn that the practice of the jury clerk's office was such that jurors were being qualified in large numbers whose names were taken from lists supplied by the Federal Grand Jury Association?

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Mr. Gordon: That is objected to as characterizing the testimony. Why not ask him—

The Court: Yes, sustained.

Mr. Gladstein: In what way is it characterizing it?

The Court: Ask him what he learned. You may direct his attention to any particular subject matter.

Mr. Gladstein: That is all I had in mind, to save time, and I am mindful of your Honor's ruling this morning which permits me to ask leading questions of this witness rather than simply ask general ones.

The Court: That is right.

Mr. Gladstein: Well, may he answer this question?

The Court: No. I think you have characterizations in there.

(4532) Mr. Gladstein: All right.

The Court: If you just ask him if it was told to him or if he ascertained such and such a fact—

Mr. Gladstein: All right.

The Court: —and don't put too much into one question. Those long questions, the assumptions of fact and conclusions are always puzzling to witnesses, and I think here it is better to have a single subject matter at a time, but I don't direct you necessarily to do that.

Mr. Gladstein: All right.

Q. Well, Mr. Duncan, did you learn that the jury clerk's office in 1941 was obtaining lists of names of potential jurors supplied by the Federal Grand Jury Association?

A. Not in 1941 as I remember it.

Q. When did you first learn that? A. I think some time in 1942.

Q. Can you date that a little for me; the early part of 1942? A. It might have been. I can't do better than that.

Q. Well, it was prior to the time that you rendered a written report to the Administrative Office of the United States Courts, isn't that so? A. I think so.

Q. And that report you made in 1942, did you not? A. If that is the date, the answer is yes.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Q. Is that your recollection? A. I would have to (4533) look at it to know for sure.

Q. All right. Now—

The Court: When you say "obtaining"—

Mr. Gladstein: I beg your pardon?

The Court: —I suppose you merely mean receiving. We had some other testimony about where there was discussion over the question of "procuring" and "obtaining," and I take it you merely intend to ask him whether he at the dates mentioned ever received lists from this Federal Grand Jury Association.

The Witness: That is my understanding, Judge.

Q. Now did you also learn either in 1941 or early in 1942 that the lists of names that were being obtained by the jury clerk's office from the Federal Grand Jury Association were made up from particular sources? A. No, sir.

Q. When did you first, if at all, learn that any of these lists of names supplied by the Grand Jury Association came from Poor's Directory of Corporation Directors? A. I don't know that I have ever heard that yet, Mr. Gladstein.

Q. Isn't it a fact sir, that in your report to the Administrative Office of the United States Courts you expressly referred to Poor's Register of Directors as a source from which the names of potential jurors came?

(4534) Mr. Gordon: Your Honor, that is objected to. It flies in the face of your Honor's ruling, and it is not contradictory of what the witness just said.

The Court: I know.

Mr. Gladstein: I don't know how—

The Court: You see, you were asking him before whether he knew that these names from the Federal Grand Jury Association came from such and such a source?

Mr. Gladstein: Oh, I see.

The Court: And now you are asking him—

Mr. Gladstein: Very well.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

The Court: —superficially what might seem like the same thing, but it isn't.

Mr. Gladstein: I see; then I will put the question this way:

Q. Mr. Duncan, then without reference to the lists supplied by the Grand Jury Association I will ask you when you first learned, if you ever did, that Poor's Register of Directors was used as a source of names of persons to be sent notices to come in and qualify as jurors? A. About that same time.

Q. That is, prior to May 1942? A. Yes.

Q. And did you at the same time learn that the Engineers Directory was being used as a similar source? A. I think I had heard that.

(4535) Q. And did you learn that the Social Register was being used as such a source?

Mr. Gordon: Your Honor, isn't this in the field of hearsay as to what somebody told him or what he learned?

The Court: Well, these are clerks that operated under his supervision or at least to some extent, so I understood the question, although it did not specifically say so, to mean in substance whether he was told by some of the men working under his supervision that the Social Register was being used.

That is what you meant.

Mr. Gladstein: And thus learned it to be a fact in the course of Mr. Duncan's ascertainment of what the situation was in the clerk's office, naturally he being jury commissioner.

The Court: Whether any of these men working under you told you that the Social Register was being used.

The Witness: My best recollection on that, Judge, is that I learned about the Social Register part of it from Miss—what is her name?

Q. Ruth St. Clair? A. Miss St. Clair—only recently.

Q. All right. Now did you at about the same time, that is, prior to May 1942, learn in the course of your observa-

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

tions or study of the activities of the jury clerk's office, that a source of names put to the same use was (4536) various college and university alumni directories? A. Put to the same use?

Q. That is to say, names were obtained from such sources and the persons whose names they were were sent notices to come in and qualify, and if they qualified— A. I have no direct recollection on that.

Q. You don't recall that? A. If it is in the report it is there.

Q. Did you learn that the address telephone book was being used in the jury clerk's office as a method of obtaining the names of potential jurors? A. Yes.

Q. And did you learn that the chief source of your jurors as of prior to May 1942 was that address telephone book? A. I think that question was asked but nobody was too certain about it.

Q. Isn't it so— A. I think that I may have been told that at one time, around 1941, that they were using the telephone address book to a great extent but they had no record, as far as I knew, to be able to tell me which was the real source.

Q. But what you learned in any case from your subordinates there, or the clerks in the office, was that in their judgment the chief source of names of the jurors was that address book?

Mr. Gordon: That is not his testimony.
(4537) The Court: Yes.

Q. Did you ever, Mr. Duncan, report in writing to anyone a statement that the New York Telephone Directory address edition book was the chief source of jurors?

Mr. Gordon: Your Honor, that question is not only improper but counsel knows it is not.

The Court: You object to it, do you?

Mr. Gordon: Yes, sir.

The Court: Sustained.

Q. Now after learning of these various sources, Poor's Register, the Engineers Directory and so on, did you de-

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

cide whether the practice of resorting to such directories for names to be used to call people in to qualify as jurors should continue? A. Why not? I don't think I ever answered the question, Mr. Gladstein. It was not raised.

Q. My point is did you continue, learning the facts, decide to permit that to continue? A. It would be all right with me, yes, sir.

Q. Was it in fact continuing? A. I could not answer that without looking at the records.

Q. But you gave no instructions to discontinue such practices, did you? A. No.

Q. At the time that you learned that Poor's Directory (4538) of Directors was being used as a source of potential jurors were you listed in that book? A. I never looked at it, Mr. Gladstein.

Q. You were a director of a number of corporations then, were you not? A. I was and am.

Q. Isn't it a fact that you were then listed in Poor's Corporation Directory as the director of— A. You have to show me the book.

The Court: Just a second. I sustained an objection to that question and you answered before he had an opportunity to object again.

Q. Now at the time,—this is part of May, 1942—were you a director in the Solvay American Corporation?

Mr. Gordon: Objection.

The Court: Sustained.

Q. Were you a director then of the Mexican Light & Power Company?

Mr. Gordon: Objection.

The Court: Sustained.

Q. Were you not a director of the Barcelona Light & Traction Company?

Mr. Gordon: Objection.

The Court: Sustained.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Q. Were you a director of Securities, Limited?

Mr. Gordon: Is there any way in which we can
(4539) stop this line?

Mr. Gladstein: No, there is not.

The Court: Mr. Gladstein, you may pursue that inquiry as far as you choose but I shall continue to rule the same way. It does not seem to me to be material here as to how many directorships this witness held, and as far as the book is concerned if you desire to note the fact it will be the fact that his name was in that directory. I will permit you to do that.

Mr. Gladstein: I have a late edition, and not the one that was current then.

The Court: The question is how they administered the jury system—

Mr. Gladstein: And who administered, and with what biases, prejudices and interests.

The Court: I don't think it is material to ask each one of the men who administered the system where he lives and who he married and how much money he has or how many directorships he has or how poor he was; all those circumstances seem to me to have no bearing.

Mr. Gladstein: However, your Honor will permit me to ask the question?

The Court: I certainly will. I don't see any reason why you should not except for the passage of time.

(4540) Q. Were you also, as of May 1942, a director of Amitas, which was a corporation?

Mr. Gordon: Objection.

The Court: Sustained.

Q. Were you then a director of Compagnie Hispana Americana, Spain?

Mr. Gordon: Same objection.

The Court: Sustained.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Q. Were you a director of the Missouri, Kansas Pipe-line Company?

Mr. Gordon: Objection.

The Court: Sustained.

What purpose can be served, Mr. Gladstein, by you reading them off? You might go on with a thousand I would always rule the same.

Mr. Gladstein: Not a thousand, because he was not a director of a few corporations.

The Court: If it is to give the impression that the facts are as stated in your questions, despite my rulings that the questions are not relevant, then I think you are doing something that it is not proper for an attorney to do.

Mr. Gladstein: I am sorry, your Honor. I am prompted to disagree with your Honor's view.

The Court: Well, you may proceed, but I am (4541) beginning to suspect that if it is another instance of what we have had earlier in this trial, and you ought to know better than to try to convey the impression as to what the answers might be by the iteration of questions to which I have sustained objections,—

Mr. Gladstein: Then in that event I will have to refer for the record to Mr. J. Donald Duncan, who—

Mr. Gordon: I am going to object to Mr. Gladstein, under all the circumstances, reading from a book which was offered in evidence and was rejected.

The Court: I have told Mr. Gladstein if he desires to have it appear that Mr. Duncan's name is in the book I will permit that, but I will not permit him to go on to say the number of different corporations he claims he is a director of except those that I have ruled out.

Mr. Gordon: If Mr. Gladstein will show me the page in the book, I will agree his name is in there if it is.

Mr. Gladstein: On page 1912 of Poor's Register: Mr. J. Donald Duncan—

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Q. Were you born in 1894? A. Yes, sir.

Q. At East Orange? A. Yes, sir.

Q. A graduate of Columbia University—

The Court: Now that it seems to me is open to the same objection I voiced a minute or two ago.

(4542) Mr. Gladstein: I just want to identify the gentleman as being the one who is here.

The Court: I understand that you say it, but it sounds a little devious to me.

Mr. Gladstein: Nothing devious. It indicates this is the Mr. J. Donald Duncan.

The Court: It has been conceded by Mr. Gordon that his name appears in the book.

Mr. Gladstein: In that column about six lines above the bottom commences the name of Mr. Duncan.

The Court: I did not permit you to read it.

Mr. Gladstein: I just want the record to show what I am talking about. I am not going to read—

The Court: Then I will change my ruling and the reference to the book is out. If you choose to abuse the matter that way I will dispose of it.

Q. Were you a director of Sofina which is an international cartel?

Mr. Gordon: Same objection.

The Court: Sustained.

Mr. Gladstein: And I also want to say for the record that Mr. Duncan's name appeared as a director—

The Court: I have withdrawn my permission to state his name was in the book. I found after I did that you did what seemed to me to be abusing the privilege, so (4543) you may not make reference to his name appearing in other books. I consider it entirely irrelevant.

Mr. Gladstein: I offer to prove that if the witness were permitted to answer the questions I have put to him, and other questions of the same nature, he would testify in answer to those questions—

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Mr. Gordon: I object to this.

Mr. Gladstein: I am making an offer of proof.

The Court: Mr. Gladstein, I consider the questions which you asked, and as to which I sustained objections, as clearly showing what you offered to prove and I direct you to desist in making any further statement of an offer of proof, or alleged offer of proof, in connection therewith.

Q. Now, Mr. Duncan, of course you knew, as a lawyer, at the time you embarked on your duties as jury commissioner that corporations have litigation in the Federal courts? You knew that, didn't you? A. Yes, sir.

Q. And occasionally that such litigation comes up before juries? That is so, isn't it? A. Yes, sir.

Q. And that on various occasions in this Southern District a grand jury has occasion to consider whether or not it shall return indictments against the officers of corporations? You knew that? A. Yes, sir.

Q. Such matters as tax evasion and matters of that (4544) kind? A. Yes, sir.

Q. Antitrust violations and things of that kind? A. Yes, sir.

Q. Did you take any precautions to insure that there would be no manipulations or maneuvering within the jury clerk's office with respect to the mechanical, honest rotation of your active juror cards? A. I did not have to as far as I know.

Q. You were satisfied with Mr. McKenzie, is that it? A. Certainly.

Q. What is that? A. Certainly.

Q. Certainly. Now you mentioned, did you not, that the practice followed was one of rotation so as to, if possible, all things being normal, have jurors serve roughly every two years? Correct? A. Not necessarily.

Q. But generally that was so, wasn't it? A. It may have happened that way.

Q. Wasn't that the practice and general purpose? A. I would say it was so that they did not serve within the time forbidden by the statute.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Q. And that was what? A. At the present time two years, but at one time it was one year.

Q. Then it is fair to say, isn't it, that the general practice in the office was such as to have jurors serve not oftener than— A. Not oftener than—

(4545) Q. —every two years? A. No, not necessarily. Not oftener than.

Q. And, if possible, to have them serve roughly every two years? A. Not as far as I was concerned.

Q. You gave no instructions one way or other? A. I watched the cards to see they did not serve oftener than the time forbidden.

Q. Did you watch to see the cards so that certain ones were on to serve every two years, while others were skipped by for a period of four or five years? A. No, sir.

Q. Did you ever find that to be a fact? A. I never ascertained it.

Q. Did you ever undertake to find out if that was so? A. No, sir.

Mr. Gordon: I object to that.

The Court: He says no.

Mr. Gladstein: May I have the blue card of Mrs. Helen Rosen, Challenge Exhibit 175?

(Exhibit handed.)

Q. Now there has been testimony by Mr. McKenzie on the question of how often jurors, grand and petit, are called on to serve and there are cards in evidence on that subject. There has also been testimony that from time to time when a person is called he gets excused because (4546) he may be ill or it may interfere with a business matter at that moment. You learned, as jury commissioner, that problem would come up? A. Yes, sir.

Q. And the practice, you learned, was to give a temporary excuse for that period and have the juror called at some future date, is that right? A. Yes, sir.

Q. I ask you to look at this card, Exhibit 175, which shows Mrs. Helen D. Rosen became a grand juror, qualified as one, on the 3rd of October, 1941. She was called and

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

excused on April 6, 1943, and has never been called since. Do you know whether it is the practice of your jury clerk here to skip over certain cards for particular reasons while calling other jurors? A. Is that your testimony; that she has never been called since? I don't know.

The Court: The question is whether, to your knowledge, they did that sort of thing, so that some people they would not call at all and other people they would call. Did you have knowledge of any such practice?

The Witness: No, Judge.

Q. Did you know what the practice was on that subject? A. I would not know of any practice to do that.

Q. To do what? A. What you are characterizing.

Q. You mean to skip certain ones and use others?
(4547) A. That is right.

Mr. Gordon: This card, your Honor—

Mr. Gladstein: He is looking at another card, Judge, he is about to tell you about another card and I have a time limitation.

Mr. Gordon: Mr. Gladstein is using up his time making up misstatements.

The Court: Is there some misstatement about Mrs. Rosen's card?

Mr. Gordon: There certainly is.

The Court: You may point it out.

Mr. Gordon: He gave a date when she was qualified on the grand jury. He said it was 1941. She was transferred from the petit jury to the grand jury in May of 1942.

Mr. Gladstein: The card I read I think I read correctly.

The Court: The period 1941 is what you indicated.

Mr. Gladstein: Does it say that?

The Court: That is right.

Mr. Gordon: That is what he said but the card does not show that.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

The Court: The card says she was qualified then, whereas, as I understood from your statement, she was called as a grand juror then?

Mr. Gladstein: I do not think so.

(4548) The Court: That is just a misunderstanding.

Mr. Gordon: Maybe Mr. Gladstein does not know what the fact is. I am not charging him with anything deliberate. She was, I think, qualified as a petit juror in October, 1941, and subsequently transferred to the grand jury and the date shows on the card May 12, 1942.

The Court: I think that is so.

Mr. Gladstein: I think that is what I said.

The Court: Then go ahead with the next question.

Mr. Gordon: And there is no testimony where she worked or what her occupation is and whether she is now eligible.

The Court: The only question is, as I understand it, whether the witness knew she had been deliberately avoided and other people taken and he says "No."

Q. Did you learn, Mr. Duncan, that registered lists of voters were being used from time to time as a source of jurors? A. Yes, sir.

Q. It has been testified here that in the year 1947 and the year 1948, while various numbers of notices to come in and qualify went to people whose names were found in certain of the Assembly Districts in Manhattan, no notices as to the 11th, 12th, 13th and 14th Assembly Districts. Was that in accordance with any instructions? A. No, sir.

(4549) Q. Was it contrary to any instructions you gave? A. Not that I know of.

Q. Did you give no instructions on that subject? A. I gave no instructions for specific—

Q. Did you give any instructions with respect to the general use of Assembly Districts? A. Only to use the registered voting lists as far as possible.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Q. In what manner did you instruct they be used? A. I gave no instructions. They continued the use they had been doing.

Q. When did you give such instructions; the ones you refer to? A. To use the registered voting lists?

Q. Yes, when? A. About the time of 1942. But that was not the first time I learned they had been using them.

Q. When you were giving those instructions did you tell them whether or not they were to use all of the Assembly Districts? A. No, Mr. Gladstein, because I understood from the chief clerk, Mr. Follmer, that they were using the means available to get as good a cross-section of the public as they could within the statute and within the usage of the funds of the court.

Q. Did you ever undertake to find out whether that was being done in practice? A. I had no criticism of it brought to my attention, except once—

(4550) Q. Would you please listen to the question I asked and direct your answer.

Mr. Gladstein: Will you repeat, Mr. Reporter.

Q. (Read.) A. I did not have to. I had no complaints. Q. Did you do it, sir? A. Well, the answer would be, No.

Q. All right. It should have been "No" the first time rather than the third.

Mr. Gordon: I move to strike out the comment.
The Court: Strike it out.

Q. Did you ever undertake to find out what the jury composition was like in terms of how many workers you had among the jurors and how many executives and corporation directors you had? A. Not particularly, no.

Q. You say "not particularly." Did you or not? A. I saw some of the panel lists from time to time.

Q. And you took no action after seeing those panel lists of any kind? A. No, sir.

Q. You regarded as a fair cross-section of the community, did you, for a jury panel to have 50 per cent or

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

more of the jurors on that panel being corporation directors?

Mr. Gordon: I object to that.

The Court: Sustained.

Q. Did you regard it as a cross-section of the people for jurors to be obtained from registered lists of voters (4551) in particular areas to the exclusion of other areas?

Mr. Gordon: I object to that. That is not the evidence.

The Court: Well, did you know that to be the fact?

The Witness: No, sir.

Q. You mean you did not know and do not know yet that during the period of your being jury commissioner there have been years when certain Assembly Districts have never received notices, that is people living in there, while in other districts the converse was true? A. I have no personal knowledge except what you are telling me and what I learned.

Q. And you never took the trouble during your supervision of the office to find out? A. That is correct.

Q. Did you in the course of your study in 1941 or 1942 of what the jury system was like, discover that with respect to Negro jurors a designation was placed on their cards to distinguish them from others? A. You are making long statements again, Mr. Gladstein. I do not like the idea of "study." I never made any study of the subject as I understand the word "study." If you will restrict your question to the latter part I will answer it.

Q. All right. Did you find that? A. That what?

(4552) Q. That a "C" was placed on the cards of Negro jurors? A. I saw some Cs on cards, yes, sir.

Q. When did you first see those? A. I think around early 1942.

Q. Did you give any instructions with respect to the continuance or discontinuance of that practice? A. No, sir.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Q. Did you ever examine the questionnaires that people are required to fill out when they come into qualify for jury service to see whether any question is contained in that questionnaire concerning race or color? A. I examined the application.

Q. And you know the application does not contain any such question, isn't that so? A. That is right.

Q. And you are, of course, aware of the section of the law which provides that there shall be no exclusion of any person from jury service by reason of his race, creed or color? You knew that? A. Absolutely.

Q. And you always knew it throughout the time you were jury commissioner? A. Yes, sir.

(4553) Q. Did you learn, Mr. Duncan, that a process of complete revision of the jury system had been taking place and was being completed at about the time that you became jury commissioner?

Mr. Gordon: Objection; not the evidence. The questions are asked, your Honor, as though these are established facts.

The Court: Yes, that is right; I will sustain the objection.

Q. At the time that you became jury commissioner was a revision of the jury system taking place? A. Not to my knowledge.

Q. Did you not report in a letter, in May 1942, that such a revision had occurred?

Mr. Gordon: Your Honor, I object to it.
The Court: Sustained.

Q. Isn't it a fact that you said in writing in May 1942 that you had made a study of the methods adopted in the United States District Court for the Southern District of New York with respect to the selection of jurors?

Mr. Gordon: Objection.
The Court: Sustained.

Q. Well, isn't it a fact that you did make such a study?

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

The Court: He has already said that he did (4554) not make a study.

Mr. Gladstein: I am asking him again, though.

A. I don't know what kind of a study you are talking about. I made no study, as I understand the word "study."

Q. How do you understand it, sir? A. Just as you would if you went to school.

Q. Did you make an examination and from your observation come to certain conclusions about the system?

A. I don't know of any system, Mr. Gladstein. I know what is being done in this court with respect to the—

Q. I mean the method. A. —selection of jurors; I know that, yes.

Q. All right. Now that is what I am asking about, and I am asking about the observations and whatever questions you put and answers you got from which you obtained information in this period, 1941-1942. A. If you are asking for my observations, the best answer I can give you is that it is satisfactory.

Q. And you said so at that time, didn't you? A. Yes.

Q. You also said that you—

Mr. Gordon: Now your Honor, I object to these statements made at another time; there is no basis for it.

The Court: Yes.

Q. Did you decide that jurors who, although qualified (4555) and eligible to act by law, were undesirable for other reasons, should be removed from the active files?

A. No.

Q. Did you learn that that was taking place? A. No.

Q. Did you ever report in writing that the cards of active jurors were removed for undesirability as well as ineligibility? A. I have no such recollection.

Q. But, of course, if the document that you wrote were presented to you you could refresh your recollection from what you wrote, isn't that so? A. If you could show me any such document over my signature I would, of course, admit it.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Q. The copy thereof is in the office upstairs, and you referred to it this morning. A. You are making a statement I do not know anything about.

Q. When is the last time you saw it?

The Court: Now Mr. Gladstein, that communication with the Administrative Office is not going to come in here. Those confidential matters in accordance with the statement made earlier are going to stay confidential.

Q. Now isn't it a fact that the sources from which the names of jurors came, Poor's Registry and the others that you mentioned, were sources as to which you directed (4556) the jury clerk to obtain names from?

Mr. Gordon: There has been no testimony here as to all the sources yet from this witness. Mr. Gladstein has carefully restricted it.

The Court: Yes.

Mr. Gordon: I object to the question.

The Court: I will sustain the objection.

Mr. Gladstein: I withdraw the question.

Q. Is it or is it not a fact that the New York Telephone Directory, Poor's Register of Directors, the Engineers Directory, College and University alumni directories, names submitted by the Federal Grand Jury Association, recommendations of Judges of the court, and lists of registered voters were used as sources from which to obtain names in 1941 and 1942 upon your direction as Commissioner, that the jury clerk secure names from such sources?

A. Mine and the clerk of the court.

Q. Then your answer is "Yes," partly—partly yourself and partly the clerk? A. Yes, sir.

Q. Of course, when I asked about that Telephone Directory, you understood I was referring to the address telephone book? A. Yes, sir.

Q. Did you ever undertake to find out whether the social and economic groups of this community, of this

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

district, were properly represented in the jury system (4557) panel? A. No, sir.

Q. Did you ever express an opinion on that? A. No, sir.

Q. Did you ever investigate in any way at all to find out what the social and economic composition of the juries and the active jury files were? A. No, sir.

Q. Nevertheless, didn't you report in writing—

The Court: Now, Mr. Gladstein, if you are going to appear to read from that confidential document, I tell you not to do it. You have a lot of papers in your hand which may or may not be a copy that you purported to have made of that paper. I have ruled that those confidential documents are not to come out here, and I am not going to permit you to give the appearance of reading from one of those papers by doing what you have been doing, so please don't do that.

Mr. Gladstein: I can't look at notes, my own notes?

The Court: No, but you see I have seen that done in court before, and it seems as though you were giving the impression to me, and perhaps to others, that you have there a copy that you made of this paper that I have persistently ruled out and that you are reading from that. I don't know whether you mean to do it or not but I ask you not to.

(4558) Mr. Gladstein: Well, in answer to your Honor's question I did see the letter—

The Court: You said so already today.

Mr. Gladstein: Yes, and I am reading from a copy that was made of the letter.

The Court: Well, it makes it worse. I thought it was the one that you made but now it is one that someone else made, and that paper is out.

Q. Since the time that you have been jury commissioner have you had business or professional matters involving yourself come up before Judge Knox? A. Only the Equitable Office Building case.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Q. Only that case. You are still a director of that corporation, are you? A. No, sir.

Q. Are you connected with it in any way? A. No, sir. I have not yet been discharged as trustee.

Q. And you are still a trustee? A. That is right.
Q. You receive fees, of course? A. I hope to—

Mr. Gordon: Objection.
The Court: Sustained.

Q. Isn't it a fact that that corporation is indebted in a large sum to the Equitable Life Assurance Society? A. No, sir.

Q. Is it indebted—was it—

The Court: I do not see any relation between (4559) that matter and the duties of the Commissioner in connection with the jury system.

Q. Was it at any time within the last five years?

Mr. Gordon: Objection.
The Court: Sustained.

Q. Isn't it a fact that Judge Knox is a director of the Equitable Life Assurance Society?

Mr. Gordon: Objection.
The Court: Sustained.

Q. Now I will ask you this: Was it during the period that you were jury commissioner your considered and deliberate intention to have a system of selecting jurors, operate as it has been operating and with the results that are shown in the composition of the files? A. Yes, sir.

Mr. Gladstein: I have no further questions, with this exception: I now ask the Court to reconsider and reverse its previous ruling with respect to the document, and I want to argue some law. This is a document, which is a letter written by this witness—

Colloquy of Court and Counsel

The Court: I am afraid, Mr. Gladstein, that you are not going to have the opportunity to do it. I have ruled that I will hear no argument on matters, at the time that I announced it, and I have given that careful thought and consideration. It came up before, and I do not desire to hear further argument.

(4560) Mr. Gladstein: But, your Honor, upon the pretext that this is a confidential document, the one that I am asking about, the one that was written by this witness, you are preventing me from showing without any question the final proof of the corruption of the system here in so far as they placed in charge of it a man who was the director of a dozen corporations, who—

The Court: Mr. Gladstein—

Mr. Gladstein: May I finish, Judge?

The Court: I consider your language offensive and not fitting for an officer of this court to use when you speak of a ruling by the Court as done under a pretext, and use such other language as you used there. You must know that you are doing something that you should not do, and I direct you to desist.

Mr. Gladstein: Your Honor, I ask that you consider the law that applies to this question because—

The Court: I heard what you said.

Mr. Gladstein: Do you refuse to have a memorandum of law submitted to you?

The Court: And I consider the language offensive.

Mr. Gladstein: Do you—

The Court: And you know, you know that it is, but of course it may be pleasing to some of the people.

(4561) Mr. Gladstein: Well, that is not—I have never said anything—

The Court: But that is an additional reason why you should not do it.

Mr. Gladstein: I have never said anything for the purposes of pleasing anyone here but for the

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

purpose of trying to put in evidence and to persuade your Honor to do what I think the law requires.

The Court: Well, you are not going to provoke me, so you might as well stop doing that.

Mr. Gladstein: I want to make an offer of proof concerning this letter which, according to the witness's statement, is in this building and readily available and which, by the way, Mr. Duncan, it was called for in the subpoena that was served on you—isn't that so?

The Court: I direct you not to make this one. It is already sufficiently evident in the case what the paper is and what your claims about it are, and mere repetition of it will only serve to use up your time that you can employ to better advantage.

Mr. Gladstein: All right. Let the record show that it is a letter written in May 1942 by Mr. Duncan, the present witness, and let the record further show that I called for that letter, and for the letter or questionnaire in which it was a response, to which it was a response—

(4562) The Court: Now Mr. Gladstein, you have again done what I have told you not to do.

Mr. Gladstein: I want the record to show that I had the subpoena served on this witness. Can it not show that?

The Court: I understand what you want, but the accumulation of these acts of disobedience to my rulings is something that concerns you, and I hope that you won't keep at it any more.

By Mr. Gladstein:

Q. Do you have the subpoena, so that I can mark it as an exhibit, sir?"

(The witness hands to Mr. Gladstein.)

Mr. Gladstein: Let the record show that the witness has handed me, in response to my request, a subpoena which I now ask the clerk to mark for identification.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

(Marked Defendants' Challenge Exhibit 311 for identification.)

Mr. Gladstein: No further questions.

The Court: Any further direct examination?

Mr. Crockett: Was the last Exhibit No. 312?

The Clerk: 311.

Mr. Crockett: I should like to offer it in evidence, your Honor.

(4563) The Court: It may be received.

(Defendants' Challenge Exhibit 311 for identification received in evidence.)

Mr. McGohey: If your Honor please—

The Court: I think perhaps Mr. Isserman wants to ask a question.

Mr. McGohey: I just want to let the record show that some of the defendants are not present, and to ask counsel if that is not under the same arrangement whereby each agrees to it.

The Court: I take it that is under the same arrangement.

Mr. Isserman: That is so, your Honor.

Are the lists here?

Mr. Borman, do you have the lists from the Association?

The Clerk: Right in front of you, Mr. Isserman.

Mr. Isserman: Oh, in these envelopes?

Mr. Gladstein: Will you state for the record,

Mr. Borman, what that last exhibit was?

The Clerk: 311.

The Court: A subpoena.

The Clerk: Subpoena duces tecum.

By Mr. Isserman:

Q. Mr. Duncan, as jury commissioner, did you issue (4564) instructions at any time to the jury clerk in respect to obtaining lists from the Federal Grand Jury Association of names to be processed for service on grand and petit juries in this court? A. No, sir.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Q. Did you know that such lists were being received by the jury clerk from the Federal Grand Jury Association? A. I heard so, yes.

Q. Did you have any report as to the quantity and number and frequency of those lists? A. I don't believe so, no, sir.

Q. Did you know also that certain sources of names, such as college alumni and college club directories, Who's Who in New York, Who's Who, and the Social Register, were made available in the offices of the Association, of the Grand Jury Association for use by the jury clerk and his assistants for the purpose of taking names therefrom? A. I don't know what the Federal Grand Jury Association did, no, sir.

Q. Do you know what the jury clerk and his associates did in respect to obtaining names from the Federal Grand Jury Association? A. I have heard that they did obtain such lists.

Q. And did you also know that they went to that office to copy certain names out of the sources I have mentioned? A. No, sir.

(4565) The Court: Who is the "they"?

Mr. Isserman: Referring to the assistants of the jury clerk.

A. I did not know, no, sir.

Q. Did you at any time have any conferences with any officer or member of the executive committee of the Grand Jury Association? A. Not until this year.

Q. Did you know Mr. George Adams? A. No, sir, I do not know him.

Q. Do you know Mr. Eugene Cantin? A. Yes.

Q. Did you have any conferences or conversations with Mr. Cantin prior to this year? A. I met him at a dinner one night but I never discussed jury matters.

Q. And at no time did you discuss any jury matters with Mr. Cantin? A. Not with Mr. Cantin, no.

Q. Did you discuss them with any other officer or member of the executive board of the Grand Jury Association? A. Not discussed jury matters. I met Mr. Shaw at the

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Federal Grand Jury Association's meeting in Brooklyn about a month ago, and I saw him today in the witness room.

Q. Did you know that duplicate history cards prepared in the office of the jury clerk were regularly delivered to the Federal Grand Jury Association? A. No, sir.

Mr. Gordon: That is not the evidence, your Honor; objection.

(4566) *By Mr. Crockett:*

Q. Mr. Duncan, I believe you testified that you have observed a letter C marked on some of the history cards in the office of the clerk; is that right? A. I did see it.

The Court: History cards?

The Witness: Not history cards, but I saw them on the jurors' cards.

Q. What do you mean by "jurors' cards"? A. The card that is used in drawing the panel.

Q. You mean the wheel cards? A. Yes, sir.

Q. Have you any idea how many wheel cards there are in the clerk's office that contained the letter C? A. No, sir.

Q. Do you have any approximate idea? A. No, sir.

Q. Would you say there were a great many? A. I really don't know, sir.

Q. Would you say there were very few?

Mr. Gordon: There is no evidence that there are any, your Honor.

The Court: I know. There has been testimony here, Mr. Duncan, that C's were put on some of the questionnaires after a certain time, and there is also certain evidence here as to C's on some of the history cards. I wonder if you are not confusing the wheel cards with (4567) some of those others. Search your recollection a little bit and tell me where it was, if you can remember, that you saw the C or these C's which you testified to.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

The Witness: I may explain that, Judge, it was along about 1942 that Mr. Follmer and I were discussing the question—

Mr. Isserman: We cannot hear you.

The Witness: I am sorry.

It was along about 1942 that Mr. Follmer and I were discussing the question as to whether we had any records of the number of colored jurors that might be serving, and we were of the opinion that we did not, and Mr. Follmer began to take a record to get some idea of what were coming through; it was a basis of that that he came to his conclusions, for a short period of time and I think in order to do that the cards or paper were marked with a blue C.

The Court: You see, what I am asking you is whatever C's you saw, whether you saw them on the questionnaire or on the history cards or on the wheel cards?

The Witness: Well, I think, Judge, that I saw them on the papers, and I would have said from recollection that I saw them once on the back of a card that I handled, which I thought was a jury card. It was only for a short period of time and—

(4568) The Court: Well, anyway, I am not talking about the period, but whether what you saw was a wheel card or some other paper, and I gather from the way you speak that you are not clear in your mind about it.

The Witness: I wouldn't want to swear to it but that is my best recollection.

Mr. Crockett: Your Honor—

The Court: Well, you did say it was on the wheel cards?

The Witness: Yes.

Mr. Gladstein: May I ask some questions based on the testimony elicited by your Honor's questions?

The Court: Yes.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

By Mr. Gladstein:

Q. Mr. Duncan, as jury commissioner, what—

The Court: Wait; I guess we had better have our recess here.

(Short recess.)

Q. You said Mr. Duncan, that in 1941 you and Mr. Follmer decided to have a record made of the number of Negroes who were on the juries; is that right? A. Not 1941.

Q. 1942? A. I think it was about that time.

Q. All right; what time in 1942? A. Early 1942.

Q. Was a tabulation made? A. Not that I know of.

(4569) Q. Was a record made? A. Not what I would call a record, not.

Q. Was a record kept? A. I don't know of any record kept. I think there was some marking, as I say, of the records, to see for a month or so how they were running.

Q. Well, did you ever learn whether or not those who were doing the marking came back with the result of their work and gave you a tabulation? A. Yes.

Q. All right, and when did the tabulation get reported to you? A. Early 1942.

Q. And what was the number that the tabulation showed? A. It wasn't a number; it was a percentage as I remember.

Q. It was a what? A. (Read.)

Q. And was that in writing? A. To me?

Q. Was it given to you in writing? A. No.

Q. Did you see it in writing? A. I think I was told it by Mr. Follmer.

Q. And what was the percentage figure? A. It was over two per cent.

Q. Was it in writing anywhere?

The Court: Over what percent?

The Witness: Over two per cent.

Q. Was it in writing anywhere? A. I think it might have been written by the clerk but not to me.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Direct*

Q. To whom was it written? A. I suppose he made
(4570) his reports.

Q. To whom? A. I suppose he made his reports to Washington. I don't know that for certain but I suppose so.

Q. Was this on the occasion when you made a report? A. It was.

Q. So that would be before May 1942? A. Yes.

Q. Now did you assist Mr. Tolman by giving him information at the time he came down to make an investigation? A. I didn't see Mr. Tolman, no.

Q. You did not meet him? A. No.

Q. You have seen his report, have you? A. I have read it, yes, sir.

Q. When did you first read it? A. That I don't recollect.

Q. Approximately? A. I really couldn't fix a time. It was after it was made. If you could tell me that, that is the best I can do for you.

Q. Well, it is shown here that it was in December 1941 that it was made, and I think that is correct, and in January 1942 it was circulated elsewhere. A. It must have been then around that time that I saw it.

Q. Who showed it to you? A. The clerks.

Q. Do you recall who? A. No.

(4571) Q. Was a copy given to you? A. Yes; I read it.

Q. I say, was a copy given to you? A. No, no, I haven't a copy.

Q. And was that the jury clerk's office that one of the clerks gave it to you? A. I read it there, yes.

Q. Did you ever write anything to the Administrative Office of the United States in reference to the Tolman report? A. I don't know whether I used the words "Tolman report." If you are referring to what you had in that subpoena, which I believe you had in that subpoena, I made a report to the Administrative Office in Washington, yes.

Q. That is the same letter I have been asking for, dated May 1942? A. I believe so.

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Cross*

Mr. Gladstein: I renew my request in view of the witness's testimony, for production of the witness's letter and report.

The Court: Application denied.

Mr. Gladstein: Now your Honor, I have to cease my examination of Mr. Duncan without having finished what I wanted to inquire about because of the fact that we had other witnesses who must be put on during the period that remains before the time limitation expires that your Honor has placed upon us, so I have no further questions for that reason.

(4572) The Court: You appeared to be all through some little time ago, until some new thing brought you back again, but, however, I have heard your statement, so it is all right.

Is there any cross-examination?

Cross examination by Mr. Gordon:

Q. Mr. Duncan, regardless of your recollection as to where the C may have been on what particular card, in any event, did you ever discriminate against any potential juror by virtue of his race or color? A. Never.

Mr. Crockett: Your Honor, I want to object to that question.

The Court: Objection overruled.

Mr. Crockett: And I move that the answer be stricken. It calls for a conclusion.

The Court: It is the very thing you charge this witness with doing.

Mr. Crockett: That might be—

The Court: My understanding of the law is that whatever a person is charged with, whether it be a fraud or commission of some crime, at least he has the privilege of denying it.

Mr. Crockett: That may be true. I have no desire to tell Mr. Gordon how he shall question his (4573) witness but there are a lot of things that you can allege in pleadings in one way, and another

*J. Donald Duncan—for Defendants on Challenge—
Rebuttal—Cross*

thing in putting a question in the form of calling for a conclusion.

The Court: I will allow the question.

Mr. Gordon: Thank you. I presume I may cross-examine or lead the witness.

The Court: What did Mr. Crockett say there, Mr. Reporter? Did Mr. Crockett say anything at the end?

Well, go ahead, we won't take the time now.

Mr. Crockett: I can tell you.

The Court: Well, go ahead.

Q. Did you ever discriminate against any potential juror by virtue of the juror's sex, social position, economic status, or geographical location in the community? A. Never.

Mr. Isserman: I object to the question on the ground that it is compound and calls for a conclusion.

The Court: Objection overruled.

Mr. Gordon: He said "Never," your Honor.

The Court: Yes.

Mr. Gordon: I have just one other point.

In connection with this card of Mrs. Helen V. Rosen, Exhibit 175—will you pass that exhibit to the Court (handing).

(4574) (The clerk hands to the Court.)

Mr. Gordon: And may I have Exhibit 229, which is that telephone book?

(Handed by the clerk.)

Mr. Gordon: Your Honor will notice that the business address given for Mrs. Rosen is 139 Center Street.

The Court: Yes.

Mr. Gordon: Looking at Defendants' Challenge Exhibit 229, which is the address telephone book, under that address for Center Street we find "Fed-

Colloquy of Court and Counsel

eral Works Agency, Public Buildings," and "U.S. Government, Office of Price Administration," and so forth.

Your Honor will recall that section 598 of the Judiciary Law of New York provides, under section 6: "No public officer or employee of the United States Government, or of any State, City or Municipality, or of any political subdivision," and so forth, "or of any official board, authority, council, commission, corporation, or other agency of any of them, shall serve on any grand jury."

The Court: What is that section?

Mr. Gordon: 598, your Honor.

Will you pass that up (handing to clerk)?

(4575) The Court: Of the New York Judiciary Law?

Mr. Gordon: Yes.

The Court: Do you contend that Mrs. Rosen was not eligible by reason of that for grand jury service?

Mr. Gordon: Yes, sir.

The Court: Very well.

Mr. Gladstein: Is that a form of testimony that she was or was not a Government employee?

Mr. Gordon: I was calling the Court's attention to what is shown by the defendants' exhibit.

The Court: Yes. Is there any further cross-examination?

Mr. Gordon: No, your Honor.

The Court: Next witness.

(Witness excused.)

The Court: That took just five minutes, and I will take that into consideration in connection with additional time for the defense.

(A man enters the court room.)

Mr. Isserman: I asked for Mr. Gove.

A Voice: I am sorry.

(The man leaves the court room.)

*George Gove—for Defendants on Challenge—Rebuttal—
Direct*

(4576) GEORGE GOVE, called as a witness on behalf of the defendants on the challenge, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Isserman:

Q. Mr. Gove, with what company are you connected?
A. Metropolitan Life Insurance Company.

Q. And what position do you hold with that company?
A. I am third vice-president in charge of housing.

Q. And do your duties in connection with that position embrace supervision over the housing developments of the company in the metropolitan area of New York City?

A. Yes.

Q. Does it include a development known as Parkchester?
A. Yes.

Q. Can you give us the location of Parkchester, if you please? A. Well, it occupies the site of the old Catholic Protectory in the Bronx, and roughly extends from White Plains to—well, I brought a map to outline it (producing)—from White Plains Avenue here (indicating) to Odell. It is irregular—Tremont Avenue on the north and the Drive on the south.

Q. And does this map show the area which is Parkchester? A. Yes (handing).

Mr. Isserman: I would like to offer this in evidence.

(4577) Mr. Gordon: No objection.

The Court: It may be marked.

(Marked Defendants' Challenge Exhibit 312 in evidence.)

Q. I now show you Challenge Exhibits 132 and 133 and ask you if together they embrace the area known as Parkchester, which is the development of the Metropolitan Life Insurance Company (handing). A. Yes, and a little more.

Q. Can you indicate—I show you first Challenge Exhibit No. 133 and ask you if any portion of that exhibit is not Parkchester (handing)? A. Well, only this—well,

*George Gove—for Defendants on Challenge—Rebuttal—
Direct*

on this inspection I would say that our property extends down only half way to White Plains on this block.

Q. But there is no— A. There is a row of buildings here that we do not own.

Q. There is a row of buildings fronting on White Plains Road in the 17th Election District? A. Between Archer and Wood.

Q. Which is not part of Parkchester, is that correct? A. Yes.

Q. Now I show you Challenge Exhibit 132 and ask you if any portion of that exhibit is not the Parkchester Development (handing)? A. This might also relate to the other exhibit on the question of whether we own all of this (4578) property in here (indicating). I think there is a school in here, between Metropolitan Avenue and East Tremont Avenue; the frontage on Castle Hill Avenue, I think does not belong to us.

Q. And that is in the 61 Election Districts as shown on that map? A. Yes, and it would also apply to the other. I overlooked it when it was before me.

Q. And your testimony is there is a school in that area? A. My best recollection is there is a Catholic school here.

Q. In the row of stores you mentioned on the previous exhibit are there apartments above those stores, or are they stores merely? A. I did not mention stores, but that map does include areas in which we have stores and in all cases there are apartments above the stores.

Q. But I am talking about the section on the previous exhibit, that is Exhibit 133, which you said was not owned by your company, and I believe you said there was a row of stores there. A. No. A row of houses. Those are private homes, largely.

Q. About how many private homes would you say? A. I could not estimate.

Q. One block? A. They are very close to each other, yes.

Q. When was the development of Parkchester completed? (4579) A. In December 1941.

Q. And is it fully occupied now? A. Yes.

*George Gove—for Defendants on Challenge—Rebuttal—
Direct*

Q. And when was that full occupation first achieved?
A. At that time, in December 1941.

Q. And it has been fully occupied ever since? A. Yes.

Q. How many families reside in Parkchester? A. Slightly more than 12,000; about 12,242.

The Court: Families?

The Witness: Families.

Q. About how many people does that embrace, if you know? A. We estimate between, somewhere between 35 to 40 thousand persons.

Q. In connection with the renting of apartments to persons in that Parkchester Development your company causes application blanks to be filled out by such persons? A. Yes, sir.

Q. And you gather other data about the occupations of persons who were given place in Parkchester? A. That data is usually given on the application form.

Q. From those applications you have gathered statistical data which indicates the type of persons who live in Parkchester by occupations? A. Yes.

Q. Could you give us a brief summary of that?

Mr. Gordon: That is objected to as not relative (4580) to the challenge. The census of the Metropolitan Life Insurance Company's estimate of occupations would hardly fit into the two categories we have; that is the census on the one hand and Wilkerson's classifications on the other.

The Court: I will take it for what it may be worth. You may proceed.

A. With reference to the principal wage earners in those 12,242 families—

Q. By that term you mean the heads of families? A. Heads of families,—we have a breakdown here representing the major industrial groups and other types of employment. We have arbitrarily broken them down into white collar, manual, executive—

The Court: What is that second?

The Witness: Manual.

*George Gove—for Defendants on Challenge—Rebuttal—
Direct*

The Court: White collar first?

The Witness: And manual workers next.

The Court: What next?

The Witness: Professional workers, service workers, executive people, and retired and pensioners.

The Court: Executives and employes are put together?

The Witness: No. Executive is one classification and then those who are retired or live on pension is another. (4581) Those are arbitrary classifications. For instance—

Q. Would you give the classification and the number of people—

The Court: He said they are arbitrary classifications. I want to understand what that means.

The Witness: I mean by that that we include among white collar workers those who are office clerks, salesmen, collectors, merchandising clerks in stores, cashiers and telephone and telegraph operators.

Q. You do not include manual workers or laborers?
A. No. Manual workers are held to include craftsmen or apprentices, everything from boilermaker to watchmakers and skilled operators and all those engaged in production.

Q. What do you include in the executive category? A. Those are heads of relatively small companies, storekeepers and operators of their own properties.

Q. Do you have any classification of Government employes? A. In this classification we cover those among service workers and that would include policemen, firemen, postal carriers, guards, attendants, elevator operators, porters, barbers, cooks, butchers, grocers, counter clerks and people of that character in the service employments.

Q. In the category of white collar workers, as you have it, how many persons do you have?

(4582) The Court: Just read them all so we will get them without taking too much time.

*George Gove—for Defendants on Challenge—Rebuttal—
Direct*

A. These are not recent figures but I think they would still hold because we have not had a great turnover in the development after the last time we worked this out:

White collar workers, 4245; Manual workers, 2775; Service workers, 2914; Self-employed, 717; Professional workers, 624; People retired and living on pension, 415; Executives, 330.

The Court: Wait a minute. That self-employed is what I was groping for.

The Witness: Yes. I failed on that.

The Court: 717 self-employed and 330 executives; that is, the heads of relatively small companies?

The Witness: Yes. That altogether represents 12,020 and there were some 200 we did not get.

Q. Mr. Gove, how do you use the expression "self-employed"? Does that cover the heads of small businesses?

A. Yes, and partners of small retail stores, manufacturers, accounting firms and gasoline service stations and small enterprises.

(4583) Q. What about your term "executives" as you used it? A. Well, those are, as I read it, the heads of relatively small companies and junior executives with larger companies.

Q. Now have you some figures to indicate the number of Government workers that are included in the service group? A. Those have not been separately listed. They are among the service workers.

Q. They are not indexed as to the number of Government employes? A. No.

Q. Have you any information as to the number of police employes? A. No, I have not.

Q. Now do any Negroes reside in the Parkchester Development? A. No.

Q. Isn't it a matter of policy no Negroes are accepted for residence in that development?

Mr. Gordon: Objection.

The Court: Do you exclude Negroes there?

The Witness: It has been our policy not to accept Negroes in that development.

*George Gove—for Defendants on Challenge—Rebuttal—
Direct*

Q. Mr. Gove, there are other developments in Manhattan and in the Bronx projected by your company in which Negroes do reside, are there not? A. None projected, but we have actually in operation—

Q. I mean not projection, but in operation? A. Oh yes.

Q. Where are those which are in operation? (4584) A. Riverton Development; known as Riverton Development.

Q. In what area is Riverton located? A. That is in the northern part of the Borough of Manhattan; in the Harlem area.

Q. Is it along Madison Avenue? A. Yes, between Madison Avenue and the river and from 135th Street to 138th Street.

Q. Do you know how many families live in that development? A. 1250.

Q. You do not know how many persons live in that development? A. I would estimate about three times that; today about 3750.

Q. And when was that development completed? A. Last year.

Q. About what time? A. Well, I should say about August.

Q. August 1948? A. 1948, yes.

Q. When did families commence to live there? A. Well, they had begun living in there before that; in other words as the building was completed it was fully occupied and the last building was completed in about August.

Q. Is there any other development in Manhattan or the Bronx in operation by your company in which Negroes reside? A. No.

(4585) Q. No Negroes reside in the Stuyvesant Town area? A. No.

Q. And it is a matter of policy they are not accepted in there? A. Yes.

Q. Is the same thing true of Peter Cooper Village? A. The same is true of Peter Cooper Village.

Mr. Isserman: You may cross examine.

Mr. Gordon: No questions.

(Witness excused.)

*Eugene Connolly—for Defendants on Challenge—
Rebuttal—Direct*

EUGENE CONNOLY, called as a witness on behalf of the defendants on the challenge, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Isserman:

Q. Mr. Connolly, where are you employed? A. Standard and Poor's Corporation.

Q. What do you do for that corporation? A. I am the editor of Poor's Register of Directors.

Q. I show you Challenge Exhibit 22 for identification, and ask you if that is the 1949 edition of the Directory of which you are the editor? A. It is.

Q. And has the compilation which you have in front of you been put out in a number of years in substantially this form? A. Well, in the last several years it has been in this form. Primarily it was somewhat different—20 years ago.

(4586) Q. But the last ten years has it been put out in this form? A. About that way.

Q. Is it brought up to date from year to year? A. This, yes.

Q. Some additions are made each year? A. Yes.

Q. And many of the entries of previous years are retained in the current edition? A. That is correct.

Q. Now that directory is entitled "Register of Directors and Executives." Just what do you mean by that? A. Well, the companies that are in there have officers and directors, and the people, in the majority, who are in the book are the officers and directors of the companies that are listed in the book.

Q. How do you obtain the information for listing in the directory? A. Well, actually we check state and city directories and pick off companies employed in the main in industrial activities with 75 or thereabouts employees and send questionnaires to them. When those questionnaires are returned they are processed and the companies included in the book. The following year we check the names of the officers and directors of those corporations to see if they are now in the book and if they are not individual questionnaires are sent to them. If those questionnaires are returned—

*Eugene Connolly—for Defendants on Challenge—
Rebuttal—Direct*

Q. Do you have any regard to the financial capitalization (4587) of the company when you put it in the directory? A. No, we do not check it in any way. It could be a company of fifty or a thousand or a million for all we know. We make no effort to determine it.

Q. Is it the fact a company that has 75 employes is the standard which you use? A. That is the present standard.

Q. And those less than that number are not included? A. There are a few in that with fewer than 75.

Q. Is that the exception or the rule? A. We never made a rule. I don't know. I would say probably an exception.

Q. And your general standard is 75 employes? A. That is right. It changes from year to year. Sometimes we send to companies with 100 or more and sometimes 75.

Q. What determines the changes you make? A. Well, the size of the book. We cannot get much more in and we try to get representative companies of the various industrials, and if we do not have four or five hundred of the representative companies in a particular industry we send to those companies.

Mr. Isserman: I would like to offer the book in evidence at this time.

Mr. Gordon: The same objection as originally stated. There was no showing it was used by the clerk.

(4588) The Court: Yes, I will sustain the objection.

Mr. Isserman: I take it the Court is not hearing any grounds or argument?

The Court: That is right.

Mr. Isserman: No further questions.

By Mr. Gladstein:

Q. Are you familiar with the fact there is a foreword or introduction in this 1949 edition? A. Yes.

Q. Have you during the last 10 years printed a similar introduction or foreword of similar content? A. It is there each year.

Q. The same one? A. It is changed each year; changes of figures.

*Eugene Connolly—for Defendants on Challenge—
Rebuttal—Direct*

Q. Any other changes? A. If there is an addition or change we correct the change; a paragraph, for example, we included a couple of years ago this pink section and we had to explain it and subsequently we included the green so we include a paragraph to say what it is.

Q. Other than that you have printed this same introduction year after year for the last ten years? A. I cannot say the last ten years. I have not been the editor for the last 10 years.

Q. For how long have you been? A. Four years. I took over in April, 1945.

Q. All right. We have had the testimony about the (4589) use of the Poor's in 1947. I will ask you, therefore, if your testimony concerning the introduction, that paragraph in Challenge Exhibit 22, would be applicable to that portion for the years 1947 or 1946?

The Court: What testimony did he give about that foreword? I don't remember hearing that. Maybe it got past me.

Mr. Gladstein: I understood the witness to say except for correction of numbers that appear in the introduction it was the same.

The Court: It was the same, yes.

The Witness: That is correct. If we make—

The Court: That is all right.

Mr. Gladstein: Now I make an offer on my own behalf that this be received. You will recall—

The Court: Do you consider what Mr. Connolly testified to as verifying each statement of fact in the book?

Mr. Gladstein: I am offering it as admissible because the introduction, which he says was substantially the same in the 1946, 1947 and 1948 issues covers the issue or the copy which Mr. McKenzie used in 1947.

Mr. Gordon: I don't think the book is relevant to the challenge, your Honor. Mr. McKenzie said he sent somebody up to the library—and now I have got confused (4590) about this once before because I did not know how many directories of direc-

Colloquy of Court and Counsel

tors there were and I don't want to make a mis-statement—

The Court: I will hear you, Mr. Gladstein, and I am hopeful. I did not understand just what the book purports to prove that is relevant here so if you have a brief argument I will listen to you.

Mr. Gladstein: Yes, sir. I will make it as brief as possible. Mr. McKenzie testified that in 1947 Poor's Register of Directors was used as a source from which to obtain the names of jurors. Mr. Connolly has testified that the introduction contained in Challenge Exhibit 22 for identification is substantially the same, except for changes in figures as that introduction which appears in the 1946, 1947 and 1948 editions of Poor's Register of Directors, because the introduction in Challenge Exhibit 22 states, in part, that Poor's Register of Directors and Executives covering the entire United States is the only national directory of important people published in this country. It goes on to state additional facts—

The Court: Oh well, then I will sustain the objection.

Mr. Gladstein: I thought when you heard the facts you would, Judge.

(4591) Mr. Gordon: I move to strike that out.

The Court: Yes. That is another one of those remarks, Mr. Gladstein, that is exceedingly impertinent and sarcastic and I don't think you should do it. You just keep it up. Evidently you have some purpose in mind, but I direct you not to do it again.

Mr. Gladstein: I have no further questions.

The Court: Thank you, Mr. Connolly.

(Witness excused.)

*Eugene J. Cantin—for Defendants on Challenge—
Rebuttal—Direct*

EUGENE J. CANTIN, called as a witness on behalf of the defendants on the challenge, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Isserman:

Q. Mr. Cantin, are you connected with the Federal Grand Jury Association? A. Yes.

Q. In what capacity, Mr. Cantin? A. I am honorary president and also a member of the executive committee.

Q. And how long have you been a member of the executive committee? A. Ever since they started. I was one of the organizers.

Q. Did you hold any other office in the Association? A. I was secretary; the first secretary, for eight years.

Q. Can you tell us was that the first eight years of the organization's existence? A. Yes.

Q. And when did it start, Mr. Cantin? A. About, (4592) I think, something like 21 or 22 years ago.

Q. That was 1929, wasn't it? A. Somewhere in there. I don't remember the exact date.

Q. Now were you the secretary of the Association when Mrs. St. Clair became the assistant to the secretary? A. Yes.

Q. Did you hire Mrs. St. Clair? A. Yes.

Q. Did she work full time for the Association when you first hired her? A. I think she was my secretary—when we started the Association, in order to keep the expenses down, they used—I gave them the use of my office and Mrs. St. Clair became my secretary and she did the work for the Association too. I don't think at first she was paid anything by the Association. I think I just gave her services.

Q. What business were you in at that time? A. I was in—I was distributor for the Denby motor trucks.

Q. Was it in that capacity that Mrs. St. Clair worked for you? A. Yes.

Q. At what time did she start working for the Association full time? A. When we organized there was clerical work to be done and I had her do it.

*Eugene J. Cantin—for Defendants on Challenge—
Rebuttal—Direct*

Q. And was that shortly after she started to work for you? A. Yes. I think it was within a year or something (4593) like that. That is 21 years ago and I can't remember exactly.

Q. And what was the nature of the clerical work which you had Mrs. St. Clair do, Mr. Cantin? A. I was distributor for motor trucks and she wrote letters for me and did the regular clerical work.

Q. Yes, but I am sorry, I did not make my question clear. I wanted to know what clerical work she did for you as secretary of the Grand Jury Association. A. Oh, well, she kept the minutes and records and things for the Association.

Q. And what did those records include? A. Minutes of any records of meetings we had and any letters that we sent out.

Q. Did they include records of grand jurors in this court? A. I don't think so; I don't think so. No.

Q. Well, at the time she started to work for the Grand Jury Association didn't you have in the office of the Association a duplicate list of all the persons eligible for grand jury service in the Southern District of New York? A. When the Association was started we got that list. That is how we called the first meeting, the first mass meeting. We sent notices to all the people that were on the grand jury panel.

Q. By "panel" do you mean all the persons— (4594-5)
A. All those that were listed for grand jury service.

Q. Not those on the particular panel for the month? A. No. I should say listed for service.

Q. And you got the history cards of those persons listed for grand jury service? A. No.

Q. When did you get those? A. The history cards?

Q. Yes. A. I don't think—oh, I don't think we ever had those.

Q. Wasn't there a time when you got a complete set from the jury clerk or the clerk of this court? A. Of the history?

Q. Of the history cards of each grand juror. A. I don't recall anything of that sort. Got the history cards? What do you mean by "history cards"?

*Eugene J. Cantin—for Defendants on Challenge—
Rebuttal—Direct*

Mr. Isserman: May I have Exhibit 175, please?
(Handed to Mr. Isserman.)

(4596) Q. I show you a card which is Exhibit 175 and ask you if your office did not have in it a file of these cards, similar to those, listing the names of grand jurors in the Southern District? A. Yes. We got those at some time. I don't know exactly when.

Q. And where did you get them from? A. We got them from the jury clerk.

Q. And during the time that you were secretary was there a time when the association had at its expense sent a clerk to work in the office of the clerk of this court in connection with the selection of grand jurors?

Mr. Gordon: Objection, and Mr. Isserman knows that—

The Court: The time?

Mr. Gordon: Yes, he knows.

Mr. Isserman: There is no evidence when that practice continued and I would like to put on the record the expense of the practice, how long it continued and its effect upon the present system.

The Court: Subsequent to 1940 did you, or your Association, subsequent to 1940, have some employee or assistant working down in the clerk's office?

The Witness: No.

Q. Did you have any such assistant working in the
(4597) clerk's office prior to 1940?

The Court: Do you object, Mr. Gordon? I am not going to take proof of what happened back in 1931. I remember only a few days ago, Mr. Isserman, you had a paper here that was supposed, as I listened to it, to refer to a much later date, and it was suddenly discovered that what was in there referred to 1931, which I thought was not a very candid way of presenting the matter.

Mr. Isserman: If the Court please, I must object to your Honor's remark. It was not suddenly

*Eugene J. Cantin—for Defendants on Challenge—
Rebuttal—Direct*

discovered. It was in a publication dated 1937 and it referred to 1931. There are later publications of the Association stating the practice has continued and I am entitled to find out when it ceased.

Mr. Gordon: I move to strike it out as not being based on evidence and there is no competent publication that was proved.

Mr. Isserman: I state that as an offer of proof.

The Court: This new business of offer of proof is being developed beyond bounds that I ever understood, but however that may be I am going to sustain the objection or make objection myself. I am not going to have you go into the time prior to 1940. As I understand it, your challenge stated it was based on 1940 and subsequent years and so I consider irrelevant what this association (4598) did back in 1931 or other years prior to 1940.

Mr. Isserman: If the Court please, there is considerable evidence in the record on a system put into effect some time before 1940, three or four years before. The evidence has been admitted in respect to it.

The Court: All right. Prior to 1937, or rather, at any time in 1937 or subsequent years did you have an employee or assistant of the Association working down in the clerk's office?

The Witness: Since 1937?

The Court: That is right.

The Witness: No.

Mr. Isserman: Now, if the Court please, I would like to ask whether between 1931 and 1937 did you have an assistant working in the clerk's office?

Mr. Gordon: Objection.

The Court: Sustained.

Q. Now did Mrs. St. Clair work under your instructions? A. Yes.

Q. And did you give her any instructions about getting up lists of names to be submitted to the jury clerk of this court? A. Yes.

*Eugene J. Cantin—for Defendants on Challenge—
Rebuttal—Direct*

Mr. Gordon: Objection. The basis of the objection is that the interior arrangements of the Federal Grand Jury Association did not affect the workings (4599) of the court.

The Court: I will sustain the objection.

Mr. Isserman: If the Court please, I want to show that the actual work done by Mrs. St. Clair under the auspices of the Association was the work referred to in the Tolman report and was done in cooperation with the clerk of this court and the jury clerk.

The Court: She has testified to what she did. You have every name that was put on any of these lists now in evidence and I hold it to be immaterial whether this witness or some other witness told her to do it or did not tell her to do it. She has testified to what she did and the question before me is what the clerk and the other persons entrusted with the responsibility of administering this jury service did with those lists, and I sustain the objection.

Mr. Isserman: If the Court please, we desire to show at whose direction or under what instructions those lists were gotten up.

The Court: Ask the next question.

Q. Now, Mr. Cantin, on occasion you submitted names to Mrs. St. Clair to submit to the jury clerk, did you not? A. Will you repeat that question, please. I did not quite get it.

(4600) The Court: He is asking whether there were times when you gave names to Mrs. St. Clair to submit to the jury clerk—you yourself gave names.

The Witness: No.

Q. Did you serve on the executive committee of the Association? A. Yes.

Q. For how many years? A. For how many years?

Q. Yes. A. From the beginning to the present date; 21 or 22 years.

*Eugene J. Cantin—for Defendants on Challenge—
Rebuttal—Direct*

Q. And you have been on the executive committee continuously? A. Yes.

Q. And didn't you at meetings of the executive committee of your Association discuss the submission of names to the jury clerk of this court and to the clerk of this court for consideration as grand jurors and petit jurors?

Mr. Gordon: Objection.
The Court: Sustained.

Q. Haven't you on occasion, Mr. Cantin, stated that the work of your Association was to improve the caliber of the grand and petit jurors of this court?

Mr. Gordon: Your Honor, not only is what he said somebody else's hearsay, but Mr. Isserman is now cross-examining another one of his witnesses.

The Court: Do you object?

Mr. Gordon: I do.

(4601) The Court: I sustain the objection.

Q. Isn't it a fact, Mr. Cantin, that you, as secretary of the grand jury association have from time to time taken steps with the clerk of this court, and the jury clerk, to change the type of persons serving on the grand juries of this court?

The Court: Why don't you ask a specific question: Did he do this or that? "Taking steps" might mean anything.

Mr. Isserman: I want the general question first if I may ask it.

Mr. Gordon: I object to it.

The Court: Sustained. There is something you claim he did personally that had to do with the jury system. Ask him the question; not what he told somebody or wrote to somebody or what he thought.

Mr. Isserman: I did not ask what he thought. I asked what he, as a member of the committee—I will stop the argument.

*Eugene J. Cantin—for Defendants on Challenge—
Rebuttal—Direct*

Q. Mr. Cantin, as a member of the executive committee have you taken any steps, that is as a member of the executive committee of the Grand Jury Association, in the time you were a member of that Association, taken any steps in connection with the jury clerk and the clerk of this court with reference to the selection of grand (4602) and petit jurors in this court?

Mr. Gordon: I object to that.

The Court: Sustained.

Q. Have you taken any steps in connection—

The Court: No, Mr. Isserman. When you say "taken any steps" you know, I think, quite well that he might consider some conversation, some communication between him and the other directors, or something of that kind as taking a step. I have ruled that out. But anything he may have done directly with any of the clerks or others in charge of the jury system here I will allow, but I won't allow what he said to somebody, what he wrote to somebody, what he thought, or what resolutions the executive committee passed, or anything of that kind. Now that ought to be very explicit.

Mr. Isserman: I object to your Honor not allowing me to ask the general question as preliminary to further questions.

The Court: Don't put characterizations in like that; "taking steps." That might mean anything, and if I were a witness I might think it had reference to a letter I wrote to somebody not connected with the jury system.

Mr. Isserman: My question was limited to the jury system.

Q. Now, as secretary of the association in all the (4603) years that you were secretary, and as a member of the executive committee did you do anything, Mr. Cantin, yourself, with respect to submitting names to the jury clerk of this court for inclusion on the grand jury panel?

A. Yes.

*Eugene J. Cantin—for Defendants on Challenge—
Rebuttal—Direct*

Q. And what did you do? A. I went to the headquarters of the Federation of Labor and spoke to, I think it was to Matthew Woll, or one of the people in authority there, and said that we would like to have them furnish us with some names of their people in order to submit to the clerk, or the jury clerk here, for service on the petit juries.

Mr. Isserman: May I have the question repeated, so I can get a responsive answer?

Mr. Gordon: I think that is responsive.

Mr. Isserman: It was what he did with the jury clerk or clerk of this court.

The Court: It seemed to me it was just the kind of thing you were asking for.

Mr. Isserman: I would like to have the question repeated.

The Court: You may have it repeated.

(Question read.)

The Witness: I answered that.

The Court: It says "grand jury." Did you go to (4604) Mr. Woll to get anybody for the grand jury?

The Witness: The understanding was that these men would be first put on the petit jury and then after they had had a little jury experience would be advanced to the grand jury.

The Court: You mean that was your expectation if they qualified?

The Witness: Yes. Indirectly they would go on to the grand jury if they were examined and had the proper age and so forth. That is our expectation.

Q. And didn't you have the understanding with the clerk, and the jury clerk of this court they would first serve on the petit jury panel and then be advanced?

The Court: Did he talk any further about it? Is that what you mean?

*Eugene J. Cantin—for Defendants on Challenge—
Rebuttal—Direct*

Mr. Isserman: I think the witness understands.
The Court: All right, he may know.

A. No. We had no internal understanding. I understood that was the practice and that is what they preferred to do, and it was not fair to people who had been on the grand jury panel for a long time without serving to have new people put in there and perhaps serve long before they were called.

Q. When did you have this conversation with Matthew Woll? A. I am not sure whether it was Matthew Woll (4605) or the president, but it was one of the two. That was, I should say, 12 or 13 years ago.

Q. Did you have any conversation with any Labor official since that time or suggest they submit names to you for submission to the jury clerk of this court? A. No. The answer I got was that their people wanted nothing to do with juries.

Q. And after that conversation you did not try to get any more laboring people, did you? A. No.

Q. Or did you? A. No. I never tried more, no.

Q. Do you know approximately how many thousand names were submitted by your Association to the jury clerk and clerk of this court in the period in which you were on the executive committee of the Association? A. Would you please read that?

(Question read.)

A. Not exactly, but there were several thousand at least.

Q. Would you say there were as many as 16,000? A. I would not. I don't think there were that many.

Q. And that was a matter that Mrs. St. Clair knew more about, wasn't it A. Yes.

Q. In the several thousand that you recall do you know if at any time you submitted the names of any manual workers to the jury clerk of this court? A. You mean me personally?

Q. Your Association. A. Why, I don't know whether (4606) they were manual workers or not. We asked some companies to submit names of their employees and they may have been truck drivers or stenographers but I do not know about that.

*Eugene J. Cantin—for Defendants on Challenge—
Rebuttal—Direct*

Q. Well, you also asked companies to submit the names of their executives, did you not? A. No.

Q. You never asked any company to submit the names of executive or department heads for submission to the grand jury? A. No. We asked them to submit employees.

Q. You made no reference to department heads or executives? A. No.

Q. Do you know how many such lists received from companies were sent in to the Grand Jury Association with lists of employees? A. Would you read that?

The Court: He asked whether he knows.

Do you know anything about that?

A. How many?

Mr. Gordon: He said do you know how many lists from companies were sent in to the Grand Jury Association.

Mr. Isserman: If I said that I withdraw it.

Mr. Gordon: That is what you said.

The Court: Reframe the question.

Q. Do you know how many lists of employees of corporations received by the Grand Jury Association were sent in to the clerk of this court or the jury clerk (4607) of this court? A. There were some. I don't know how many.

Q. And did your executive committee discuss the inclusion of such names to be sent to the jury clerk?

Mr. Gordon: Objection.

The Court: Sustained.

Q. Did your association have panel committees? A. Yes.

Q. Who was the last chairman of your panel committee? A. I just could tell you. I have been laid up for a year and I don't know just what or who is on the panel committee now.

Q. Do you remember who was on the panel committee in 1946? A. No. I could not say exactly.

*Eugene J. C'antin—for Defendants on Challenge—
Rebuttal—Direct*

Q. Do you know Mr. George W. Adams? A. Yes. I think he was about that time.

Q. He was chairman of the panel committee about 1946? A. He was chairman at one time. I think that is the approximate time; somewhere in there.

Q. And what is the function of the panel committee?

Mr. Gordon: I object.

The Court: Sustained.

Q. Does the panel committee have any function in connection with the submission of names for grand and (4608) petit jurors to this court?

Mr. Gordon: I object.

The Court: Sustained.

When you had that conversation with Mr. Woll about workers he said his people did not want to have anything to do with juries, did he, explain why?

The Witness: No.

Q. Did you know Mr. Chandler of the Office of the United States Courts, of the Administrative Office of the United States Courts? A. I think I met him once or twice.

Q. Were you in correspondence with Mr. Chandler about the work of your Association in connection with the grand jury system of this court? A. I don't think I had any correspondence.

Q. But there was such correspondence, wasn't there?
A. There was some correspondence, I believe.

Q. And in the period that you were secretary did you have any conferences with the clerk of this court in reference to the submission of names for grand jury service?

Mr. Gordon: That must have been 1937 or earlier. He said he was secretary the first eight years.

The Court: Yes. Kindly restrict yourself.

I have permitted the session to go an additional (4609) 15 minutes to make up for that five minutes of cross-examination and the few minutes that were

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

taken up with your conference with me and Mr. McGohey before court opened and I gave you a little extra for such, and we will now adjourn.

Mr. Gladstein: Before you announce that I was going to ask your Honor to run a little longer session because we have a large number of witnesses we would like to put on, and because of the ruling that the Court has made I think the least that can be done is extend the ordinary hours and even have night sessions, which we will be willing to do for the accommodation of the witnesses as well as in defense of the rights of my clients. I therefore ask the Court to make such an extension of time from now until 5.30 or six o'clock and then after dinner to have a further session.

The Court: The application is denied.

(At 4.45 p. m. an adjournment was taken until March 1, 1949, at 10.30 a. m.)

(4610)

New York, March 1, 1949;
10.30 a. m.

* * *

(4612) DOROTHY H. RODMAN, called as a witness on behalf of the defendants on the challenge in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Gladstein:

Q. Where do you reside, Mrs. Rodman? A. At 72-36 112th Street, Forest Hills.

Q. You have participated in the preparation of certain exhibits that were introduced in this case; that is so, is it not? A. Yes, that is right.

(4613) Q. Have you had academic training in the field of statistical matters? A. Yes, I have. I have a B.A. degree from Brooklyn College where I majored in Economics and had several statistics courses and undergraduate work, and I have a Master's degree from Columbia

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

University where I majored in Economics again and did graduate studies.

Mr. McGahey: I beg your pardon, Mrs. Rodman, would you be kind enough to keep your voice higher? I have difficulty in hearing you.

The Witness: Yes, I will try to.

Mr. McGahey. Thank you. May we have the part read about the Master's degree?

(Record read.)

The Court: Was that Fordham?

The Witness: No, Columbia University.

Q. And have you had occasion, Mrs. Rodman, to be employed in the field of analysis of economic materials, data and statistics? A. Yes, I have.

(4614) Q. Will you state briefly and generally what your experience has been in the handling of statistical matters? A. Well, one of the first jobs I held certainly after graduation there I was with the War Department when I was a statistical clerk, and there in the course of that job, it was more or less routine, but it was a basic use of statistical material and technical operations with statistics. I think that the next important job that I held was after I got my master's degree when I worked with the Department of Commerce in the National Economic Unit.

Q. Did you have occasion in connection with that employment to deal with census tables and census statistical data? A. Yes, very frequently. As a matter of fact the unit which consisted of four people was engaged in surveys of various types, all of which dealt with the problem of the national economy and of course census data and Department of Commerce publications, that were published right in the next office, we always used all of those materials in preparing our reports, in addition to data from other Government agencies and private sources.

Q. In the course of your experience how long have you had occasion to work with the academic field of the employment of statistical matters and data, particularly census tables and data? A. I would say it is about eight (4615) years, if you go back to academic training days.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

The Court: Does that mean that eight years ago you were a freshman at Brooklyn College?

The Witness: No, ten years—eleven years.

Q. Now you were engaged, were you, shortly after the middle of November, 1948, to participate in the preparation of certain exhibits consisting of maps, tabulations, charts, diagrams and other exhibits that have been used in this case? A. That is correct.

Q. And with whom did you work in the preparation of those exhibits? A. Well, I worked with Mr. Wilkerson in preparation of all those exhibits that he has supervised.

Q. Under his supervision? A. That is right.

Q. Did you personally prepare those exhibits? A. I personally prepared just about—well, very close to all of the exhibits that have been submitted. Mr. Wilkerson himself did a few personally, maybe five or six that I did not see at all, but all the rest I did under his supervision.

Q. And you are familiar with the maps received? A. Yes, I prepared those personally.

Q. Did you prepare the tabulations that have been received? A. Yes, I did.

Q. And those marked for identification and not (4616) received? A. That is right.

Q. You are familiar with the charts and tables? A. That is correct.

Q. And of course you worked with the attorneys in connection with those exhibits? A. Yes, I did, right through the whole job.

The Court: This is the Mrs. Rodman that was referred to by Mr. Wilkerson?

Mr. Gladstein: It is, your Honor, yes.

Q. Now a certain sample study was made of the panels of petit jurors in this court and 28 were used as a basic sample? That is correct? A. Yes, right through 1940 to 1949.

Q. Was there a reason for picking the 28 in the manner that was done? A. Well, I think that there was a reason in taking them that way.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

Q. What was the reason? A. They were picked not in any arbitrary fashion without any special selection involved—

Mr. McGohey: May I ask if this witness picked the panels or somebody else?

The Witness: I picked those in consultation with Mr. Wilkerson and the defense attorneys.

Q. Now will you continue your answer?

The Court: You say they were not picked arbitrarily?

(4617) The Witness: There was a scheme.

The Court: What was the scheme?

The Witness: The scheme was to pick them by consecutive months as they ran down through the years so as to give proportionate representation to all the seasonal factors which might enter into the panel and also to overweight the more recent panels so that there were two each, running consecutively monthly whether from 1940 through 1947 I guess is the date and then in 1948 there was each month up until November.

Q. The limitation of time had something to do with the determination as to the number of panels, is that true? A. To a certain extent, although we felt this was a completely panel sample in every way and was representative of the total population, and we had reason to believe so.

Q. In the field of studies of economic materials and data would that be regarded as a proper method of sampling.

Mr. Gordon: That is objected to.

The Court: Sustained.

Q. Have you made a check to ascertain the extent to which these samples are representative of all the panels?

A. Yes, I have made several checks to determine that.

Q. What is the first one?

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

Mr. McGohey: May I ask what is meant by the construction "all the panels" and what is included in (4618) "representative panels"?

A. All of the panels, as I understand it and I have been answering with reference to the basic 28 panels in the sample that was used for the occupational and geographic analyses running from February 1940 through January 17, 1949.

The Court: So when you say you checked all the panels, you do not mean all the panels in the ten year panels but you mean all those 28?

The Witness: That is right. There were others checked which were not included.

The Court: When you are talking about the checking, you say you checked all of the 28 panels?

The Witness: That is right.

Q. What was the check? You may describe it briefly.
A. If I understand your question you asked whether I checked to see whether this was a valid sample?

Q. Yes.

Mr. McGohey: Just what I am concerned with; what is a valid sample to begin with?

Mr. Gladstein: We under such a time limitation—

The Court: Yes, but the testimony must be intelligible and I thought when she said she made these checks of all the panels she meant checked all the panels over the whole period and now she says only the (4619) 28.

Mr. Gladstein: She says she has made a check to ascertain the extent to which the 28 would be representative. By now she has not had a chance to say she has made a comparison between the 28 and others.

Q. Is that correct? A. That is right.

The Court: And she will describe what these certain others are. I think that is Mr. McGohey's point.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

Mr. McGohey: It is, yes, your Honor.
The Witness: May I go on?

Q. Yes, briefly state what that check consisted of. A. One of the checks—let me state first that the 28 revealed to all of us, Mr. Wilkerson and defense counsel, an internal consistency; that is, there was a definite pattern; in order to establish whether this pattern would hold good for others of the 218 panels which were drawn between 1940 and 1949—

Mr. Gordon: That is objected to.

Mr. Gladstein: Let the witness finish.

The Court: Yes, I can evaluate the matter as I listen.

Mr. Gordon: She has testified to conclusions, the conclusion that there were 218.

The Court: She says she and counsel were all satisfied. Of course that means nothing to me. (4619-A) Whether they were satisfied is not material and I can simply take that into consideration as I decide the matter, so I think we may not worry about continual interjection by this witness as by Mr. Wilkerson as to how perfect the matter was and how they were satisfied and all that, because their satisfaction I don't think is the point, but however that may be let her go ahead and describe what the checking was that she did.

(4620) Q. Will you continue? A. May I?

Q. Yes. A. I would like to continue but I would like also to say that it wasn't a subjective satisfaction that I took in it.

Q. Well, let us not get into that, Mrs. Rodman. A. I have figures which show the internal consistency that I was talking about, and there is a range which is so narrow—

The Court: Well, I think if you will just answer questions you will do better than being so eager to explain. All right, now go ahead, Mr. Gladstein, and have her describe the checking that she did.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

Q. Will you do that please, and as briefly as possible, Mrs. Rodman, because the Court has placed a serious time limitation upon us and we cannot finish with an adequate presentation. A. The first check that I did on it was to compare the average percentages in the occupational distribution of three additional panels.

Q. Which three, please? A. The most recent three: the second one of January 17th, the February 1st panel and the February 14th panel.

Q. Of this year? A. Of this year.

Q. And you made an occupational breakdown of those three and made comparison of that breakdown with the (4621) basic 28? A. Yes.

Q. Did you put that in tabular form? A. Yes, I did.

Q. Is the tabular form true, correct and properly represent the results of the breakdown which you made? A. Yes, it does.

Q. I show you Exhibit 313 for identification. Is that the tabulation (handing)? A. Yes.

Mr. Gladstein: I will offer it in evidence.

Mr. McGohey: May I see it?

Mr. Gladstein: I have a copy (handing).

May I proceed with the understanding that if counsel wishes he can make an objection after study, and he can do so while we go ahead with the examination.

Mr. McGohey: I do not know how we can examine a witness about an exhibit that hasn't been put in evidence.

The Court: No. You must have a reasonable time to look at the paper when it is offered. If there is any delay of consequence I shall keep note of it.

Mr. McGohey: If your Honor please, this table that has been offered as an exhibit purports to contain data with respect to a panel for the second listing of January 17, 1949 and the panel drawn for February 1, 1949, and February 14, 1949. It doesn't appear on the table whether or not those panels are in evidence. (4622) Furthermore, the

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

footnotes to the table contain this item, "Compiled from tables IV-C, IV-D and IV-E." It does not appear from this exhibit whether those tables are in evidence or not, and I don't know. I will certainly object to the introduction of this exhibit containing data with respect to panels drawn on February 1, 1949, and February 14, 1949, unless those panels be in evidence.

The Court: Are they in evidence?

Q. Do you have them with you? A. The panels themselves?

Q. Yes, the panel list, the two February ones and the second January one. You have the second January one? A. I have the second January one but I don't have the panels here.

Q. Did you work from copies obtained from the clerk's office? A. Yes, I did.

Mr. Gladstein: Now I am prepared to take a ruling, your Honor, and proceed.

The Court: Is it conceded that the panels of February 1st and February 14, 1949, are not in evidence?

Mr. Sacher: Well, February 1st, your Honor, is 101 for identification.

The Court: 101 for identification.
Mr. Gladstein: And if the second February one (4623) is not in evidence we will produce it during the day and offer it. It is either a photostat or a true copy obtained from the clerks.

The Court: How about those tables, IV-C, IV-D and IV-E?

Mr. Gladstein: They have been offered. I will offer at this time 101 for identification. That is the February 1, 1949, panel.

Mr. Gordon: May we see it?

(Mr. Gladstein hands.)

The Court: Any objection?

Colloquy of Court and Counsel

Mr. McGohey: If the Court please, I remember the other day when this came in we had it in our hands. I don't recall whether it was offered and kept out, but I am unable to tell whether this is a copy obtained from the clerk or whether it is a transcription that somebody else made from the clerk's records. The clerk's records are usually on legal cap paper. This appears to be on letter-size paper. There is nothing here to indicate its accuracy or correctness or anything about it except it appears to be a copy of something that is in the clerk's office. Now there is no representation as to who made it as to its accuracy.

The Court: How about that, Mr. Gladstein?

Mr. McGohey: I should certainly think there (4624) ought to be no difficulty in getting from the clerk's office a copy of the panel drawn as recently as February 1st of this year.

Mr. Gladstein: My understanding is that that was done. I may also say that during the course of this witness's examination I am going to have her give testimony regarding a comparison made between all the copies we have of jury panels and photostats or true copies obtained from the clerk, and she can testify to a tabulation that shows the extent to which there is any deviation.

The Court: Well, show her that.

Mr. McGohey: Well, your Honor, we have this difficulty: We have been talking at various times here about a collection, of various collections of panels of jurors. My examination of the record shows that at this minute there is a large number of panels that have never been offered or at least never been received in evidence. Now I just do not know how we get around this business of putting in a table which purports to relate and to show the composition of jury panels if the jury panels haven't been offered, and I press the objection to the reception of this exhibit just offered. Furthermore, we have had no explanation up to now about these tables, IV-C, IV-D and IV-E, about which I know nothing.

*Dorothy H. Rodman--for Defendants on Challenge—
Rebuttal—Direct*

The Court: Objection sustained.

(4625) Mr. Gladstein: All right.

Mr. McGohey: What is the number of this?

The Clerk: The last one, 313 for identification.

Q. Did you make any further check along the lines that you have just been testifying to? A. Yes.

Q. What was it? A. I wanted to determine whether our sampling technique, the method by which we selected the 28 panels was a valid technique, and in order to do this I had the grand jury panels, all of them, running from 1944 through 1948.

Q. What did you do with them? A. Five years.

Q. And what did you do with those? A. And that was not a sample, that was a totality of panels. I then selected from the total number of grand jury panels a sample in the same way that I selected a sample originally for the petit jury panels.

Q. From what material did you work that gave you the information about the grand jury panels between January 1944 and December 1948? A. Those were photostatic copies of grand juror lists.

(Marked Defendants' Challenge Exhibit 314 for identification.)

Q. Were the results of your analysis put in tabular form? A. Yes, they were.

Q. Is Exhibit 314 for identification that table (handing)? (4626) A. That is right.

Q. Is it true and correct and does it correctly represent what it purports to state? A. Yes, it does.

Mr. Gladstein: I offer it, and we will offer in evidence in a batch the photostats of all of the grand jury panels referred to in that document (handing to Mr. McGohey).

So as not to consume time I will ask that I be permitted to proceed. We have these panels arranged in chronological order, commencing January 4, 1944, and we have each year's panels, photo-

Colloquy of Court and Counsel

stats, of the clerk's copies put in separate folders, five folders for the five years.

The Court: Is there any objection to those photo-stats of the grand jury panels?

Mr. McGohey: There may not be, your Honor, if I may look at them.

The Court: It is asserted that they are photo-stats of the clerk's own records.

Mr. McGohey: May I ask if they were photo-stated in the clerk's office? Is that represented?

Mr. Gladstein: Yes.

Mr. McGohey: No objection.

The Court: They may be marked while you are looking at that Exhibit 314 for identification.

(4627) Mr. Gladstein: Here is a copy for you, if you want (handing to Mr. McGohey).

Mr. Gordon: Will you pass this to the Judge, please (handing to clerk).

Mr. Gladstein: May I ask the witness a couple of questions while this is going on?

The Court: I think it is better to wait until Mr. McGohey has examined Exhibit 314 for identification.

Mr. McGohey: If your Honor please, the notes, what appear here on this Challenge Exhibit 314 for identification, these five items listed under "Notes" contain conclusions.

The Court: The notes will be excluded.

Mr. McGohey: All right, your Honor; with the exclusion of that I have no objection.

The Court: The paper will be received and the clerk will cross out the notes at the bottom.

Mr. Gladstein: Does your Honor know what the notes are?

The Court: I have read them.

Mr. Gladstein: For example, one of them says the occupations are taken from the official listing of the grand jurors.

The Court: Well, this lady has testified—

Mr. Gladstein: Very well.