

Colloquy of Court and Counsel

Q. And what types of persons did you exclude? A. We
tain numbers of persons? A. We do.
whose occupation was not known. And would you like to
know why?

Q. No. I am satisfied with the fact that you did it.

Mr. McGohey: Now, your Honor, I object to
the admission of the exhibit on the ground that it
does not contain a true cross-section of the jurors
as contained in those panels.

The Court: Mr. Gladstein, I am wondering—

(2090) Mr. Gladstein: May I be heard on that,
your Honor?

The Court: Oh, you may be heard, yes. I am
just wondering whether this adds very much. I
have already received proof as to the various fac-
tors from which computations may be made. It
would seem to me possible from that data that you
have now to arrive at any conclusions that you may
claim should be arrived at without unnecessarily
complicating it. But you may state the reasons that
you think it should be admitted here.

(2091) Mr. Gladstein: In the first place, your
Honor, the over all picture given by the chart al-
ready in evidence merely sets forth an average for
the whole period, and does not necessarily indicate
the persistence of a pattern from year to year.

Your Honor is familiar with the fact that Mr.
Justice Jackson called attention to the fact that in
cases of this kind where discrimination is charged
to exist, and where it has been proved, the evidence
addresses itself to a period of time going back a
number of years for the purpose of showing the
fact, if it is a fact, that the discrimination has been
more or less persistent in character. So far that
reason it is important for us, and it is material to
the issue to offer evidence to show that in each year,
at almost any point—

The Court: Haven't you got the evidence in?

Mr. Gladstein: No, that has not been shown yet,
your Honor, and that is why we want this kind of
chart in evidence.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Now, as to the objection that Mr. McGohey makes, if your Honor will observe—

The Court: Now wait a minute. I did not ask you whether this chart was in evidence. I know that is not in evidence because that is what we are talking about. But I ask you, is not the data from which this chart was (2092) prepared already in evidence? I thought we got it yesterday.

Mr. Gladstein: Well, we have a table but we don't have in tabulated form what is shown by these charts.

The Court: That is just what I thought. The evidence is all in, and all we are debating now is whether this particular pictorial representation of the matter is to be in the record or not.

Mr. Gladstein: Well, we don't have the actual tabulations in that are shown by these charts, your Honor.

The Court: You haven't got these charts in, and I am beginning to suspect you won't get them in.

Mr. Gladstein: I beg your pardon?

The Court: I say, I am beginning to suspect that you won't get them in. If you have the data in already you can make whatever calculations you desire and press them upon my attention without duplication.

Mr. Gladstein: I say to your Honor, I don't think we have in evidence any tabulations that are shown on this kind of chart, and therefore this chart provides tabular data that is not before you.

The Court: I will sustain the objection.

By Mr. Gladstein:

Q. Did you prepare a chart for any panels in the year (2093) 1941 showing the occupational breakdown of the jurors and similarly the occupational breakdown of the people? A. I did.

Mr. Gladstein: Mark this for identification, please.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

(Marked Defendants' Challenge Exhibit 70 for identification.)

The Court: Which ones are these for?

The Witness: These are for the panels of March 17th and April 14, 1941.

Q. Now I call your attention to Defendants' Challenge Exhibit 70 for identification, and I will ask you to identify it, indicate what it represents. A. This is a panel which is based upon the gainfully employed jurors in the panels of March 17th and April 14, 1941, and hence excludes unemployed or non-gainfully employed jurors, and compares—

Q. Housewives as well? A. That includes housewives and retired persons—

Mr. McGohey: You mean—

Mr. Gladstein: He means that those who are excluded, excluded from the chart, include unemployed, retired and housewives; is that right?

The Witness: That is right.

A. It compares the occupational distribution of (2094) those jurors with the occupational distribution one would find among the 308 jurors there represented if they were distributed among the four occupational categories in the same proportion that the gainfully employed population of the Southern District was distributed in 1940.

Q. Yes. And the letters E and A, and the figures appearing respectively after each such instance on that chart indicate the same thing you have testified to concerning the previous exhibit? A. That is correct.

Q. Is this chart an accurate representation of what it purports to show? A. It is.

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

Mr. McGohey: I object.

Mr. Sacher: May I be heard, your Honor?

The Court: No. Objection sustained.

We will take a recess.

(Short recess.)

Colloquy of Court and Counsel

Mr. Isserman: If your Honor please, may the record show my presence?

The Court: Yes.

Mr. Isserman: I was out on matters connected with the case.

The Court: Very well.

(2095) Mr. Gladstein: Do you want to mark this please, Mr. Clerk?

(Marked Defendants' Challenge Exhibit 71 for identification.)

The Clerk: This is Table IV-A.

The Court: Mr. Gladstein, what I am pausing about here is, when I turned to that table IV-A as part of your challenge, I had made a note that it was Exhibit 67-E, and it appears to me that you are now offering the same one as 71 for identification.

Mr. Gladstein: Has that been received in evidence? I didn't know it had.

The Clerk: 67-E.

Mr. McGohey: For identification.

The Clerk: Not, it is in evidence.

The Court: You see, in your challenge papers it was marked Table IV-A.

Mr. Gladstein: Well, that is what misled me, your Honor. I did not think we had this tabulation in when you were asking me about this.

The Court: Well, you see, that is just where a little misunderstanding came up, because I have been following this pretty carefully, and that is 67-E all right.

Mr. Gladstein: If it is—is it in evidence?
(2096) Does the record show?

The Clerk: 67-E is in evidence.

Mr. Gladstein: Then we can scratch that out.

The Court: So we haven't got any 71.

(Defendants' Challenge Exhibit 71 for identification withdrawn.)

Doxey A. Wilkerson—for Defendants on Challenge—Direct

By Mr. Gladstein:

Q. And do you have a copy of 67-E in evidence with you? A. I do.

Q. I think the record shows you have already said, Mr. Wilkerson, that that represents an occupational breakdown of each of the 28 panels that were so treated, is that correct? A. Yes.

Q. And it shows them by these categories, these classifications that you have indicated? A. Occupational classification, yes.

Q. And also indicates the numbers of housewives, retired, and so on, for whom no occupation was given on the jury lists, so they have been set aside in other columns, is that right? A. That is right.

Q. Now, is Exhibit 67-E the tabulation from which the data was taken that went into the two rejected exhibits, 68 and 70? A. Yes.

Q. Did you prepare other charts in the same manner referring to other panels and based upon the same tabulated (2097) data or tabulated data contained in the same Exhibit 67-E? A. I did.

Mr. Gladstein: Now, your Honor, in view of your Honor's ruling I should like to simply have these marked for identification.

The Court: You may do that. I will sustain the objection to each of them on the grounds already stated.

Mr. Gladstein: I think they are in order, Mr. Clerk.

(Marked Defendants' Challenge Exhibits 71, 72, 73, 74, 75, 76, 77, 78, 79, 80 and 81, for identification.)

Mr. Gladstein: May it be stipulated, in order to save time, that if I were permitted to ask the witness and he were permitted to answer he would say in substance and effect concerning each of the Challenge Exhibits from 71 to 81 for identification, inclusive, that they were prepared under his supervision; that they are based upon partly Census data contained within one of the exhibits already in evi-

Doxey A. Wilkerson—for Defendants on Challenge—Direct

dence, and partly upon the tabular data contained within Exhibit in evidence No. 67-E; that he vouches for the accuracy and correctness of the facts represented or purported to be represented by each of these exhibits for identification.

(2098) Mr. McGohey: I so stipulate.

The Court: And I shall rule similarly as to each of them.

Mr. McGohey: If the Court please, I understand the stipulation to be that if he had been asked those questions he would make those answers.

The Court: That is right. So the foundation as to these would be the same as the foundation laid for the others that I have rejected.

Mr. Gladstein: I understand Mr. McGohey does not object to the question of foundation but objects to their immateriality; is that right, Mr. McGohey?

Mr. McGohey: I stated my objection, your Honor.

The Court: Yes, that is right. Whatever you have got in the record you have got in there and it will stay. These exhibits will not be received.

Mr. Gladstein: It might be well to indicate for the record just the date to which each of these refers, because the tabular data in 67-E does not do so, your Honor.

The Court: You may do that. Why don't you just wait until he gets them all marked and then you can make a statement as to those dates so it will cover them all.

Am I right, Mr. Clerk, that it is 71 to 81, (2099) inclusive?

The Clerk: I think so, your Honor. I did not follow it precisely.

The Court: All right, if it is different, you can let me know.

* * *

Mr. Gladstein: For the record, No. 71 for identification refers to two panels in the months of May and June 1942.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

By Mr. Gladstein:

Q. Do you have the exact dates of those two months, two panels, Mr. Wilkerson? A. May 5th and June 17th.

Mr. Gladstein: No. 72 for identification refers to two panels in July and August of 1943.

Q. Do you have the dates for those? A. July 6th and August 9th.

Mr. Gladstein: No. 73 for identification refers to two panels in the months of September and October 1944.

Q. Which dates, Mr. Wilkerson? A. September 5th, October 16th.

Mr. Gladstein: No. 74 refers to two months or panels in two months, November and December 1945.

Q. Which are the dates? (2100) A. November 7th, December 17th.

Mr. Gladstein: No. 75 for identification is the chart dealing with jurors in panels of January and February 1946.

Q. What are the dates in that case? A. January 2nd; February 18th.

Mr. Gladstein: No. 76 for identification refers to jurors in panels for March and April 1947.

Q. The dates, please? A. March 4th; April 14th.

Mr. Gladstein: No. 77 for identification refers to occupations of 1,222 jurors, May through October 1948.

Q. Do you have exact dates with reference to the panels covered by that chart, 77? A. The 1948 dates are May 4th, June 14th, July 19th, August 3rd, September 7th, and October 15th.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Mr. Gladstein: No. 78 for identification refers to the occupations of 969 jurors, November and December 1948.

Q. Any dates? A. The specific dates there I cannot give you at this moment.

The Court: I can give them to you. They are November 3rd, November 15th, December 7th and December 20th.

Mr. Gladstein: All the four panels for these two months.

(2101) The Court: That is right.

Mr. Gladstein: No. 79 for identification refers to the occupations of jurors for the panel of December 20, 1948.

The Court: Well, then, we will leave December 20th out of that last. I thought that was included. We will stop at December 7th.

Mr. Gladstein: No. 80 for identification refers to 341 jurors, panel of January 4, 1949.

And No. 81 for identification refers to 257 persons on the jury panel, January 17, 1949.

Q. Is that the first or the second, do you know, Mr. Wilkerson? A. That is the first listing.

Q. Now, Mr. Wilkerson, was an effort made to ascertain from official government figures the extent to which variations exist between the population as a whole and jurors in terms of various factors that might disqualify or exempt certain parts of the population from serving as jurors? A. Yes.

Q. What factors were given attention? A. Attention was given to the factor of the date of the Census data, 1940, to the question of ineligibles for jury service who are included among the gainfully employed in the Census data of 1940, and to the question of persons exempt from jury service who likewise are included in the (2102) occupational data of the gainfully employed as reported by the Census.

Q. Now, underneath the factor of the ineligibles, what sub-factors were given attention? A. The question of in-

Doxey A. Wilkerson—for Defendants on Challenge—Direct

eligibles concerned itself with certain occupational groups—or rather, ineligibles concerned itself with the question of age—there is a circumstance in which—

Q. Citizenship? A. What is it?

Q. Citizenship. A. Yes, I was going on. (Continuing)
Question of age, aliens, illiterates—

The Court: Just a second; aliens? What is the next one?

The Witness: Illiterates.

The Court: Illiterates?

The Witness: And property qualification for jury service.

I think it should be called to the attention of the Court, Mr. Gladstein, that in that same connection consideration was given to the matter of unemployed who are eligible for jury service but certain categories of whom are not included in the Census data on occupations. This factor was also given consideration here.

Q. In other words, consideration was given to the fact that there are in existence people who are unemployed (2103) and who therefore do not appear in the Census data, is that right, as gainfully employed? A. Certain categories.

The Court: Certain categories?

Mr. Gladstein: Certain categories.

Q. But who might otherwise be wholly eligible for jury duty, is that what you mean? A. That is correct.

Q. Now, under the question of exemptions, what sub-factors, if any, were treated? A. On the question of exemptions we took into consideration two general factors, the persons who are in occupations which are legally exempt from jury service and the question of women, who were also exempt.

Q. Who may claim exemption? A. That is right.

Q. All right. Now turning your attention then to the first that you named, the question of the population data, what sources were resorted to in order to ascertain changes

Doxey A. Wilkerson—for Defendants on Challenge—Direct

in the population data? A. Well, there were various sources. You want me to list them all?

Q. Will you indicate that, and indicate as you go along what was done and what the figures were, or what the results were that were obtained from resort to such sources?

A. If you will, may I proceed by indicating the sources incident to the analysis as we go ahead?

Q. Yes. A. The problem concerned here, of course, (2104) is the problem involved in the fact that 1940 Census data are eight years old, but at the present time jury lists, the current jury lists, for example, is defining a situation considerably later than the 1940 Census data, and a question might be raised whether or not such comparisons as were made by those rejected exhibits are statistically accurate in view of the discrepancy in date.

Now, I think it should be pointed out—

The Court: That is, the method of getting up these statistics is sound; that is what you mean?

Mr. Gladstein: He means that a question might be raised about that.

The Witness: I think it should be pointed out that in certain exhibits before the Court, particularly Exhibit 67-E, such comparisons are made possible—also the exhibit percentages which accompany it; it is marked Table IV-B in my material—

Mr. Gladstein: Is that introduced in evidence, IV-B?

Mr. Sacher: It is 67-D.

The Court: 67-D.

Mr. Gladstein: Thank you.

The Witness: Comparisons are made, or rather, data are presented on the basis of which comparisons were (2105) here made of the occupational distribution of the population in the Southern District that were gainfully employed in 1940, and of persons called to serve on federal petit juries in the Southern District in January 1940, February 1940, March 1940, April—March 1941, rather; April 1941, May 1942—I think the next date is June 1942—at least two panels in June—

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. You mean in 1942? A. In 1942, yes—no, not two panels in June.

Q. Two in 1942, one May and one June? A. That is right, two in 1942. I would call attention to the fact that in the first place, these jury panels were approximately current with the Census data.

Q. At that time? A. At that time.

Q. In other words, the Census data is 1940 data? A. Yes.

Q. When was it published, by the way? A. I think the Census report was published in 1942, I believe.

Q. So the actual official Census data at that time, first made publicly available in 1942, was current for the period 1940, 1941, and 1942, and perhaps some time thereafter? A. I would say also 1943.

Q. Yes. A. For which there were two panels. That fact is one.

Now, there still is the problem as to whether (2106) there have been population shifts among the several occupational categories. I am thinking now of the gainfully employed occupations of the Southern District.

The Court: Each time you mean gainfully employed over 14?

The Witness: That is correct.

The problem arises, have there been since 1940 shifts among the gainfully employed which would alter significantly the distribution shown in 1940—may I remove these things? It will help in the process (approaching easel)—by this part of what is here called Exhibit 67 (indicating).

Q. That is the lefthand side of that exhibit, isn't it? A. That is right.

Q. That is No. 67. All right. A. The data represented there are based on the 1940 Census figures.

Q. That is the occupational distribution of the people now? A. That is right.

Now, on the right side of that chart, which is, I think Exhibit 67-A—

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. 67-A. A. (Continuing) We have executives during the whole nine-year period an average—or rather, we have the occupational distribution of jurors during that whole period. The question raised is, is it likely that (2107) the distribution—or it it a fact that there has been any substantial change in the occupational distribution of the workers, employed persons in the Southern District among these basic categories since 1940? It is to that question that we want to address ourselves now.

The evidence that we have indicates definitely no, that there has been no substantial change in the occupational distribution of the population in the Southern District since 1940, none important enough to make inapplicable such comparisons as we are making on the basis of the 1940 data.

Q. Will you indicate what that evidence is? A. Yes. I believe you have, Mr. Gladstein, a table which we call Table VIII-A. It bears the title “Occupational distribution of all non-farm workers in the United States, 1930 and 1940.”

The Court: Now, VIII-A does not seem to be in this batch I have which skips from V-B to VIII-B.

Mr. Gladstein: I will supply your Honor with a copy.

The Court: Good. I would like to have that because I like to follow these things just as closely as I can.

(Marked Defendants’ Challenge Exhibit 82 for identification.)

(2108) Q. Now, will you look, Mr. Wilkerson, at Exhibit 82 for identification and state what it purports to be?

A. This is what I have before me as Table VIII-A?

Q. Yes. A. It is—

Q. You may as well look at the one that has been marked so there will be no question about what you are looking at. A. Exhibit 82 indicates the percentage distribution of non-farm workers in the United States, among the four occupational categories we are here using in 1930 and in 1940.

Q. In other words, this shows what the picture was like in 1930 and what it was like in 1940, based on what, sir? A. On the reports of the Census for 1930 and 1940.

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

Q. And what does it purport to show? A. You mean you want me—

Q. What does the comparison show? A. The comparison shows several things: First—

Mr. McGohey: If your Honor please, I object to the witness testifying from the exhibit unless it is going to be put in evidence.

The Court: I think he is just trying to lay a foundation for putting it in evidence.

Mr. McGohey: Oh, no, he has asked him what it shows.

(2109) The Court: Well, the objection is sound. I think what you probably mean to have him say is that he got it up. But if he has already said that, you better offer it because it is not proper to inquire as to what the exhibit shows, because that speaks for itself.

Mr. McGohey: Might I ask a question before I determine whether to make an objection here or not?

The Court: Yes.

Preliminary cross examination by Mr. McGohey:

Q. Mr. Wilkerson, do I understand that this table purports to show that between the Census date of 1930 and the Census date of 1940 it appears that there was no substantial change in the four categories or the percentages in the four categories? A. I have not said yet, Mr. McGohey—

Q. No, I am asking you that question. Is that what it purports to show? A. Yes.

Mr. McGohey: And I take it that the point, your Honor, is that because there was no substantial change between 1930 and 1940, it is then to be argued that there would be no change between 1940 and 1948. On that basis I object to the introduction of the table.

Mr. Gladstein: May I be heard, your Honor?

The Court: Yes, you may be heard.

(2110) Mr. Gladstein: We are not going to rest on that, but I think it is wholly appropriate to

Doxey A. Wilkerson—for Defendants on Challenge—Direct

offer evidence to show that there was no substantial disruption of the percentage relationship between these various groupings between 1930 and 1940, and then to go on with such evidence that we have to show that a similar situation exists as of between 1940 and the present date, or the latest date to which we can address ourselves.

The Court: I will take it, Mr. McGohey, subject to a motion to strike. At the moment it does not seem to me to prove anything of significance, because so many factors enter into the matter, with the result that you might come out with a percentage, an over-all percentage, that might superficially look as though there were a similarity; but that might be a mere agglomeration of a great variety of changes that did have some significance. It seems speculative, but I will take it and wait until I see what the total of this proof amounts to, subject to a motion by the Government to strike.

Mr. McGohey: Very well, your Honor.

Mr. Gladstein: It is received with that understanding?

The Court: Yes.

(Defendants' Challenge Exhibit 82 for identification received in evidence.)

(2111) Q. Does No. 82 require any explanation for a clear understanding, or does it speak for itself? A. I think it might be explained.

Q. Would you do so? A. We have examined in this case what change there was in the occupational distribution of the population between 1930 and 1940. We have also made such examination for previous decennial census reports but do not present them here because we felt that it was unnecessary. It is important to point out that successive decennial census reports indicate that there is very little change from decade to decade, there has been in the past up to 1940, very little change from decade to decade in the occupation pattern, that is the distribution proportionately among occupation categories of the gainfully employed occupations. In no group for example for the two

Doxey A. Wilkerson—for Defendants on Challenge—Direct

decades here reported is there a change of more than 3/10ths of one per cent; there is a 3/10ths of one per cent drop in the proportion of executives between 1930 and 1940, and two-tenths of one per cent increase in the proportion of professionals, 2/10ths of one per cent increase in proportion of clericals, and 1/10th of one per cent drop in the proportion of manual workers.

This is the first point, Mr. Gladstein, that I (2112) wanted to emphasize on this point.

Q. By the way, I want to interrupt to ask you if there is material along that line dealing with the 30, 20 and 21 per cent distribution among occupational groupings in the Census data contained in the document called "Statistical Abstract of the United States" and which is here as Challenge Exhibit 11 for identification? A. Right. You will find such comparison for their decennial report.

Mr. Gladstein: Your Honor, I think this should be offered in evidence at this time then. And I do so.

The Court: What page did you refer to?

Mr. Gladstein: I did not refer to a page, your Honor.

The Court: All right.

Mr. Gladstein: I might, however—has your Honor ruled on that yet?

The Court: No. I was just waiting to get the page. There is no objection to it as yet.

Mr. Gladstein: There is a page, for example, 190, which gives data concerning the labor force and shows the percentages from column to column over these decennial periods. But that is not the only one. There are other tables in that book.

(2113) (Defendants' Challenge Exhibit 11 for identification received in evidence.)

Q. Will you continue? A. Yes. If the pattern of shift in successive decennial census obtained during the period between 1940 and 1948 one would expect that possibly there had been some conceivable shifts, maybe a shift of from 8 or—that proportion of executives from 9 and 9 down to 8 or up to 12; of the proportion of manual work-

Doxey A. Wilkerson—for Defendants on Challenge—Direct

ers from 54.6 may be down to 52 or up to 57; but these are outside limits on the assumption that the pattern of change, if any, between 1940 and the present time has been in accord with that of preceding decennial census reports.

I would point out, before going on to the testing of that assumption, that on that basis, though there might be some lowering or some raising of the blue column or some slight raising or lowering of the red column, it would distort not at all the general relationships shown between the four columns.

Q. Was there any evidence obtainable for a date later than 1946? A. There was.

Q. What evidence is that? Later than 1940 I meant to say. What evidence was that? A. You have, Mr. Gladstein, another table that is (2114) relevant in this regard. It is called Table VIII-B.

Mr. Gladstein: I will have that marked now, please.

(Marked Defendants' Challenge Exhibit 83 for identification.)

Q. I will show you No. 83 for identification and ask you to state what it is and how it was gotten up and what it purports to represent? A. Challenge Exhibit 83 for identification shows the number, in rounded thousands, of persons in 1940 and in 1946 in New York City who were gainfully employed and who were in the several major occupational classifications—executives, professionals, clericals and manual workers.

Q. From what were the figures obtained, the data obtained that appears here? A. This was obtained from a special report of the Bureau of Census, which I have here incidentally.

Q. You have it with you? A. It is a report on the labor force of New York, New York, November 1946, Series P-LF No. 14.

The Court: PLF14?

The Witness: With a dash between the P and the L.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. May I have that, sir? A. I may want to refer to that (indicating).

(2115) Q. That is all right.

Mr. Gladstein: I would like to have that marked for identification if I may.

(Marked Defendants' Challenge Exhibit 84 for identification.)

Q. I will ask you, Mr. Wilkerson: Concerning No. 84 for identification, that is something obtained from the Government and is an official publication of the Bureau of Census, is that right? A. It is, yes.

Q. And was used in connection with the previous exhibit? A. The Exhibit 83—yes.

Mr. Gladstein: All right. Now I will offer 84 in evidence, your Honor.

I am sorry I don't have an extra copy.

Mr. McGohey: Just let me see it for a second.

Subject to the reservation that I have been making, your Honor, I have no objection.

The Court: Very well.

(Defendants' Challenge Exhibit 84 for identification received in evidence.)

Q. Do you want to look at that as you testify, Mr. Wilkerson, No. 84? A. I think I should like to have it.

Q. All right. One moment, as soon as the clerk finishes with it.

(Clerk hands exhibit to witness.)

(2116) Q. Now as I understand your testimony, No. 84 now received supplied information that went into 83 for identification? A. That is correct.

Q. And that appears in the second column on 83 under the designation the year 1946? A. And in the fourth column.

Q. And in the fourth column, as the percentages? A. Yes.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. Whereas the first and third columns from left to right contain data obtained from the 1940 Official Census, is that right? A. No. All of these data were obtained from this special report for New York City.

Q. And includes 1940? A. Includes 1940.

Q. That is in there, too.

Mr. Sacher: Referring to Exhibit 84.

Q. When you said "this" you meant 84? A. 84, yes.

Q. So, in other words, 83 is a handy tabulation of data taken from 84, is that right? A. That is correct.

The Court: And reduced to percentages.

Mr. Gladstein: Yes.

Q. Is it correct, sir? A. That is correct.

Mr. Gladstein: I offer it in evidence.

Mr. McGohey: Subject to the same reservation, your Honor.

The Court: That is right.

(2117) (Defendants' Challenge Exhibit 83 for identification received in evidence.)

Q. Does this report require an explanation, No. 83, or does it speak for itself? A. It requires an explanation.

Q. Will you give a brief explanation of it? A. I have a copy of it. You may keep that.

Q. Oh, do you? All right.

Q. The November 1946 report on the labor force in New York City provides, fortunately, evidence which confirms that the trend in the shifts from occupational groups to occupational groups from decade to decade, as shown by successive census reports, is a trend which also has obtained during the period since the 1940 Census, and this special report for the labor force in New York in 1946.

It shows for example that there has been—that there was very little shift between 1940 and 1946 in the percentage distribution of the gainfully employed population in New York City from that reported by the 1940 Census itself. In no place, for example, was there a shift of more than 2 percentage points.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. In any particular major grouping? A. For no particular occupational grouping. And I think we should point out precisely—

(2118) Q. When I say major, I mean occupational grouping. A. Yes. In the group we designate as executives, for example, the 1940 figure is 10.3 per cent and the 1946 figure is 12 per cent, an increase of 1.7 per cent. The group we designate as professionals—

The Court: That is just what I have tried to get you not to do. You just go over everything that is in the paper and we do it twice. Now it seems to me that you really don't need to do that. I can read this, and I am fairly intelligent, and I catch on to these points quickly.

Mr. Gladstein: Very well, your Honor.

Q. Now, Mr. Wilkerson, was there any other data used in connection with the question of possible changes in the occupational distribution of the people in this area between 1940 and the present date?

The Court: Still on point 1?

Mr. Gladstein: Yes. Point 1.

A. There are data, Mr. Gladstein, which I think should be brought before the Court which we have not mentioned and they are not here but which has come from the same Challenge Exhibit 84 that we have before us.

Q. 84? A. And deferring to the Court's wish that we not read this table, if I may I should like to interpret the situation which this table reflects.

(2119) Q. Can you refer to the portions of the exhibit that are involved? A. Yes.

Q. Would you do that so that the Court may have that guide? A. Well, first, over-all the table indicates that there has been no significant shift in the percentage of the gainful workers in 1946 to be found in the four major occupational groups. It should be pointed out, though, that there have been shifts which are reported in this Census Volume for November 1946.

Q. That is No. 84. A. This is 84, yes.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. What are the shifts reported in there? A. We should point out this fact that we have here a report immediately after the war, shortly after the war, and the Census Volume is before the war. So that the two gives a measure of the effect, if any, of the war on the occupational distribution in New York City. What we find is that there are significant shifts within the occupational groups, particularly the occupational group we call manual workers. There is a decline of about 50 per cent in the number of domestics, domestic workers in 1946 as compared with 1940. There is an increase of about 40 per cent in the number of operatives, indicating that a large proportion of domestic workers went into factories and got jobs. But it is important to point out that, despite such significant shifts, for other (2120) reasons there were no such significant shifts between the major occupational categories here we are using. Further, it is important to point out also—

Q. Let me interrupt you to ask you if this is correct, from what you are saying. In other words, although there might have been a marked shift from domestic service into the classification of operatives or manual laborers or something of that sort, that is simply a shift within one occupational grouping that we have called manual workers, is that right? A. That is correct.

Q. So that it does not change the relationship between the four major occupational groupings that are set forth, is that right? A. That is right. I think it is also important, too, as a means of interpretation here to point out that the special census report on the labor force in New York in November 1946 is a sampling survey. They did not, as they do as the decennial census, actually count every person in the labor force. But by methods which the Census Bureau has determined to have an acceptable degree of reliability they took a sampling by population. And they have calculated their own probable limits of accuracy of their sampling.

(2121) Q. They have done it in there? A. They have done it in the report itself.

Q. And they show it. A. I won't read it, but may call attention to the fact that who reads it will find that the

Doxey A. Wilkerson—for Defendants on Challenge—Direct

margin of error which the Census itself recognizes as statistically possible for this sample are as great as the shifts reported from 1940 to 1946 in the occupational distribution, which even if accepted on their face would in no way alter the basic pattern of the fact that over 50 per cent of the workers, of the employed people, are manual workers, approximately 10 or 11 or 12 per cent are gainful workers, that between—

Q. You mean of gainfully employed or executives? A. Or executives. And that between 1940 and 1946 then there was no substantial shift in the proportion of distribution of gainful workers among these major categories. You may want this. Do you?

Mr. Gladstein: Has your Honor ever seen this particular exhibit before?

The Court: No, I have not.

Mr. Gladstein: Would you care to see it?

Q. Now, Mr. Wilkerson, I call your attention to Point 2. I think we are calling it now—

The Court: That is the ineligibles.

Mr. Gladstein: Yes, the ineligibles.

(2122) Q. Let us take the question of illiteracy.

The Court: Well, that is Point 3.

Mr. Gladstein: What?

The Court: Oh no. That is No. 2. That is right. That is the third subdivision of Point 2.

The Witness: We began with unemployed, then age, then aliens, illiteracy.

The Court: Yes. You had first unemployed, then age and then illiterates. But we will skip down to illiterates and take that up as the first one if you desire.

Q. Did you pay any attention to the question of the possible effect of illiteracy among the people, in treatment of the impact of such fact upon jury eligibility? A. We did.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. What sources did you go to in order to ascertain what the evidence and the facts on that subject was? A. Official Government sources of various kinds that I should like to call attention to in the course of the analysis, if I may.

Q. Do that, please. Indicate to what source you went and what that source revealed. A. The problem that we are concerned with here of course is the fact that gainfully employed, the census— (2123) the census reports on gainfully employed as represented on the left hand of this Exhibit 67, includes gainfully employed illiterates 14 years of age and older who are ineligible for jury duty. And the question then is, does this fact tend to distort the distribution as it would affect eligible persons employed, gainfully employed in this district so far as jury duty was concerned.

Q. As shown by 67-A? A. That is right.

Q. The question is, whether 67-A would be distorted by that fact, is that right? A. That is right.

Q. All right. Well, what did you do about that? A. It should be pointed out that there are in existence no census data—

The Court: Now, are we taking age and illiteracy together now, or just illiteracy?

Mr. Gladstein: Illiteracy.

The Witness: You asked for illiteracy.

Mr. Gladstein: Yes.

The Court: That is all right.

Q. Do those require separate treatment? A. Yes. I think it would certainly facilitate my work, though it is not essential, if we took the manual—

Q. Let us take one at a time.

(2124) The Court: One at a time, that is much better.

The Witness: Do you object to our treating them in the order in which we listed them earlier?

Mr. Gladstein: No.

The Court: This order is perfectly all right.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. Which order are you taking? A. Let us take the question of the unemployed and then age, then aliens and then illiterates.

Q. Let us take the question of the unemployed.

The Court: We are talking about the illiteracy for the moment.

Mr. Gladstein: He suggests we take them out of order.

The Court: That is all right.

The Witness: The reason for that is that some of the analyses developed here are irrelevant to the later categories we deal with.

Mr. Gladstein: All right.

The Witness: On the question of unemployed—

The Court: I don't catch the point on that.

The Witness: I am about to explain it, your Honor.

The Court: As I understood it first the explanation had to do with the fact that there were certain categories of unemployed people that were not classified (2125) in the census at all. And then a little later I heard something to the effect that you were going to discuss how these people might be eligible.

Now, the general explanation that is being made now, as I understand it, is to rather anticipate such objections to your tables and general data that the Government may make by explaining those. And the explanation as to these unemployed is just what I don't understand.

Now, what is it the witness is explaining?

Mr. Gladstein: Your Honor will recall that he stated that among the factors taken into account and given attention to to determine what if any impact upon the validity, so to speak, of 67-A these factors might have were such factors as unemployed, illiteracy and so forth.

The Court: Yes. Stick to unemployed.

Mr. Gladstein: Now on the question of unemployed the question is what impact one way or the other might result from the fact that there are un-

Doxey A. Wilkerson—for Defendants on Challenge—Direct

employed people not counted in the census figures who, however, are among the population and who would be eligible in all respects for jury duty. That fact, if there is evidence regarding it, would tend to indicate some impact upon the available pool of eligible jurors.

(2126) The Court: Yes. So the explanation has to do by way of anticipation we will say of the argument that may be made that, well, your tables aren't any good because there are certain unemployed people that are not in the census at all.

Mr. Gladstein: Just as the argument we anticipate will be made that, well, there are some people who are illiterate among the population, and we want to address our attention to each of these.

The Court: Yes. So the point I am fixing on is that the census does not purport to include in these tables everybody, but there are certain unemployed persons that are not included, and the witness is going to explain how, by reason of other factors and other data, that doesn't make any difference, that the tables are substantially accurate.

Mr. Gladstein: Oh, if it does make a difference, what that difference is.

The Court: That is right.

Mr. McGohey: If your Honor please, I should like to be informed as to whether there is any proof that the unemployed aren't counted in the census. I do not know that there is any proof of that or any testimony to that effect.

Mr. Sacher: The designation of gainfully (2127) employed means those gainfully employed and necessarily excludes the unemployed. The census, though, does provide figures for both gainfully employed as well as the total available working population.

The Court: I think you had better let the witness tell us about that.

Mr. Gladstein: I was just about to suggest that, in view of Mr. McGohey's question.

The Court: Yes, you may do so.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. Will you direct yourself to that question, Mr. Wilkerson, and indicate to the Court for the record what sort of information on the question of employed persons and unemployed is obtainable within the census data? A. The census report on the labor force which is already in evidence gives information on workers or, rather, employed persons who are actually on the job and also persons seeking employment who have normally and regularly been employed. What it neglects to give however is the occupational designation for unemployed workers, that is, in private employment, who at the time of the census were working on Federal emergency projects. They are excluded from the census report on the gainfully employed. Other unemployed are included.

The Court: Working on what?

The Witness: Emergency projects, such as the (2128) WPA.

The Court: Let me just think for a second. Suppose you had some persons who was a retired fireman and who was just not—he didn't want to do any work, he was not employed and he wasn't going to be employed, and he was getting a pension. And while it was not such an awful lot of money it was enough for him to go down to Florida in the winter and take it easy under circumstances not very affluent indeed but satisfactory to him. How would he be in there?

The Witness: If I understand the Court's question, a worker who does not have a job at the moment but normally is employed, is that right?

The Court: Well, he is a fellow who used to be employed but now he has got a pension. Maybe he was a manual worker.

The Witness: He wouldn't be—

The Court: As a janitor for some owner, or he was working as a porter for some corporation. Where does he come in?

The Witness: He would not be in there. He is not a gainfully employed worker.

The Court: So those that are not in are the ones working on Federal emergency projects and others?

Doxey A. Wilkerson—for Defendants on Challenge—Direct

The Witness: And all other persons who are (2129) not in the labor force as defined by the census. And their definitions are very precise in that regard.

Q. Are those definitions set forth? A. They are in the labor force volume, which has been exhibit—

Q. Do you happen to have a copy of it? A. I don't know. I may have it here.

Mr. Gladstein: I want to call the Court's attention—

The Court: All I am bringing out, all that occurred to me was that I thought it could not be quite so easy that the only ones not in there were the ones on WPA. I think there must be lots of others, and it appears that there are. So, if there is some definition about who they all are, I can get that. But so far all I wanted to clear up in my mind was that it was not just the WPA workers that were excluded, but there were other people too.

Mr. Sacher: No, your Honor; the thing that has to be understood is that Mr. Wilkerson is speaking about a labor force consisting of two groups, those actually employed and those seeking employment. And the man you are talking about is no longer in the labor force. He is down in Miami on the beach.

(2130) The Court: And the WPA worker is not in the labor forces.

Mr. Sacher: Oh, yes, he was. The point is, he was in the labor force, seeking employment—temporarily employed by the Government, but not classified with regard to his occupation, because he was not at the time engaged in private employment.

The Court: All right.

Q. Is that correct, Mr. Wilkerson? A. That is correct.

Mr. McGohey: May I ask just one question for my elucidation?

The Court: Certainly. We might as well all take a chance.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Preliminary cross examination by Mr. McGohey:

Q. I just want to get one thing clear, Mr. Wilkerson. When you talk of unemployed, as I understand from your explanation, that includes two groups—those unemployed and seeking employment and then those who are unemployed and not seeking employment; some other classification.

Mr. Gladstein: I did not so understand the witness to say that.

The Court: I think if we just let him go along maybe it will clear up by itself.

Mr. McGohey: I was confused; I just wanted (2131) to find out.

The Court: I am too. And I think perhaps if we wait and see what he says, then if it is not clear I will permit you to put such questions as you wish.

Mr. McGohey: Thank you.

The Witness: I think the best answer to Mr. McGohey's question is to read the census definition of what the labor force includes.

Direct examination continued by Mr. Gladstein:

Q. Would you do that? A. And I am reading from Challenge Exhibit 9, the census report, 16th Census, population, third series, page 3, which indicates that the schedules given enumerators in making up the census permitted the classification of the population into two large groups. A, persons in the labor force including those at work, those with a job but temporarily absent from work, those on public emergency work and those seeking work.

And B, persons not in the labor force. The latter group includes persons reported as engaged in their own home, household, housework, those in school, those unable to work; but inmates of penal and mental institutions, homes for the aged, infirm, the needy, regardless of their activities during the census week—the week in which the census enumerators were given— (2132) others not at work and not having a job, not on public emergency work and not seeking work, and persons having no employed status are not reported.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Mr. Sacher: That is the firemen, in the last group.

The Court: I don't know just where he fitted in. I thought he fitted in a little higher up there. But maybe not. But I guess that is clear enough now.

The Witness: It is necessary also here, in the light of what we just read, to point out that the census reports on those at work but excludes those on public emergency work whom it considers as within the labor force; that is, it excludes those on federal emergency employment projects though they are in the labor force.

The Court: It looks a little bit complicated.

The Witness: It is very simple.

Mr. McGohey: A little bit, your Honor?

The Court: Well, it is pretty complicated.

Mr. Gladstein: It is time consuming in the sense that we have to get this information from various pages of the census tables.

The Court: That is all right. I think his reading of the part was just exactly the right thing. That is just what we were all seeking.

Q. Now Mr. Wilkerson, proceed and tell us what was done (2133) with this material, this data obtained, concerning unemployed. A. The point that we are discussing is a relatively minor part which really does not warrant the attention we are giving it, but let me try to wind it up quickly. In the Southern District in 1940 there were only about 87,000 persons who are not included in the occupational data based upon gainfully employed as reported by the census.

Q. Where do you get that figure? A. That comes from the 1940 census.

Q. What is the actual figure that comes from the census? You said about 87,000? A. No, 87,272. There is collateral census evidence which I don't have at the moment. If it is important we can readily supply it, which indicates that those workers are those unemployed persons not included in the census tabulations are about 80 per cent manual workers and about three per cent or less execu-

Doxey A. Wilkerson—for Defendants on Challenge—Direct

tives. Thus, if they were included in the general census data, indeed if one—if they were included in the general census classifications, considering the small numbers involved, 87,000, there would be a tendency for a fraction of a percentage point maybe to lower or raise certain of those categories; actually what would happen would be a slight increase in the proportion of manual workers, but it would be unimportant; (2134) we are dealing in trivialities here. And the thing that I want to point out is that the fact of these various very small proportion of persons who are eligible for jury duty but unemployed, or rather, whose—yes, if otherwise eligible—are not included in the census data here reflected, that if they were—

Q. When you say “here” you are talking about Exhibit what? A. Let me begin that sentence again.

Q. All right. A. The fact that there are approximately 87,000 persons who may properly be thought of as persons eligible for duty service, assuming other things—

Q. You mean for jury service. A. Pardon me, for jury service, assuming that other qualifications are met, but who are not included in the census tabulations for the Southern district of the gainfully employed, is a trivial matter and would not in the slightest affect any major—would not affect any substantial change in the proportions if those unemployed workers were actually included in the census data.

Q. Let me put it to you this way: as I understand you, the evidence that you have referred to supplied by the Government is that those 87,000 or so unemployed—that about 80 per cent of them are manual workers and about three per cent or fewer were in the executive (2135) class, is that right? A. That is correct.

Mr. McGohey: If your Honor please, I would like to find out where that comes from.

Mr. Gladstein: He said he would bring it if you want it.

The Court: Is he going to explain that?

Q. Does that come from the census data? A. It is a census report other than the ones which are here. The

Doxey A. Wilkerson—for Defendants on Challenge—Direct

exact citation I do not have here, and if I may I would like to have the privilege of bringing the precise citation.

Mr. Gladstein: All right, so with that understanding can I ask this question:

Q. Your point is, as I understand it, Mr. Wilkerson, that if those 87,000 or so employed were in all other respects eligible for jury duty, were in all respects eligible, but simply do not appear in our chart 67 the lefthand side particularly, because of the fact that they were not included in the census data for the gainfully occupied, that might have some slight effect, if they were included, upon the ratio between those four major occupational groupings, but a slight one, is that right? A. Precisely the effect it would have would be to raise the percentage of manual workers about one percentage point, which is a trivial matter and of no consequence.

(2136) Q. In other words, let me point to the blue bar on Exhibit 67, the effect of including the unemployed manual workers in the available—in this portion of the map or the chart, would be to raise slightly the percentage of manual workers to the whole, is that right? A. Yes.

The Court: If they were all manual workers.

Mr. Gladstein: About 80 per cent of them are.

Q. What is the next item to which you turn your attention for the purpose of ascertaining, if possible, the extent to which there might be any distortion or change in the relationship between these major occupational groupings by virtue of such fact? A. It is the question of age.

Q. Age? All right. A. As the Court has pointed out several times, census data on occupations refer to gainfully employed persons 14 years of age and older; whereas jury eligibility is restricted to persons 21 years and less than 70.

Q. 21 to 70? A. That is right.

Q. All right. To what sources did you go to ascertain what the data available is that would enable us to treat with that problem? A. The census reports on age. I don't have the specific citation here, and I don't believe you have it there.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

(2137) Q. Is this the one, “Characteristics by age” (indicating book)? A. Yes.

Mr. Gladstein: That is Challenge Exhibit 8 for identification.

Q. Is this the one you obtained the information from? A. Yes.

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

(Defendants’ Challenge Exhibit 8 for identification received in evidence.)

Q. All right, will you continue, sir? A. One will find that the gainfully employed workers in New York City in 1940 under 21 years of age or over 70 years of age represent about seven per cent of all gainfully employed workers as reported in the 1940 census. You will find further that the proportion that executives and professionals comprise of that total is a little less than seven per cent, and the proportion which clerical and manual workers comprise is a little more than seven per cent.

Q. Do you know what the actual figures are? A. I don’t have it here, but again if we want that, we can get it. Again we are dealing with a very trivial factor, and we did not subject it to the minute analysis that more substantial factors have been dealt with.

(2138) Q. All right, will you continue? A. The effect of eliminating these persons who are ineligible because of age from the census data on the labor force would be very slightly to increase the percentage of executives and professionals, very slightly to reduce the percentage of manual workers; the effect of such an operation would just about cancel out the effect of including in the census data the unemployed workers whom we have analyzed just previously; both are trivial matters and will about balance each other; and if I may conclude with reference to both, that if census data on the distribution of the unemployed were to include unemployed workers in the labor force not now included, and were to exclude workers below 21, and 70 and above, who are now included in the census data—

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. When you say workers, you mean gainfully employed? A. Gainfully employed persons. The effect would be to alter not more than .5 of one per cent the relationships shown here between executives, professionals, clericals, and manual workers.

Q. On Exhibit 67? A. On Exhibit 67, yes.

Q. Now, did you turn your attention to the question of illiteracy? A. We did. Again, if I may offer a suggestion, Mr. Gladstein, I think we could deal with the question of illiteracy better if we deal first with the (2139) question of aliens.

Q. All right, do it as you think would be more expeditious.

* * *

AFTERNOON SESSION

* * *

(2140) Mr. Gladstein: If your Honor please, I observe that today is the 1st of February 1949. The challenge and the moving papers in support thereof comprehend not only, as your Honor knows, the particular petit jury panel for January 17, 1949—or the two of them, I should say—but as well the entire system of selection of jurors thereunder, both petit and grand, and therefore embrace the February 1, 1949, petit jury called to serve in this court; and as your Honor knows, an exhibit in connection with that jury has already been received in evidence.

I desire simply to have the record note, if it is necessary to do so, a supplementation of the moving papers to include the February 1, 1949, petit jury panel, and if it be necessary, we will submit in more formal form supplementary moving papers to include the February 1st panel.

I take it there won't be any objection to that?

The Court: Well, let us see what Mr. McGohey says.

Mr. McGohey: I have no objection to it, your Honor.

The Court: Very well.

Mr. Gladstein: So we will do that as a matter of record in formal form thereafter.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

(2141) Now, your Honor, I am advised by an attache of the court that four witnesses who have been subpoenaed, grand jurors who served as members of the body which returned the indictments in these cases, are presently in the courthouse; and in order to accommodate them and let them go on about their business, I would suggest that we simply question them and let them go ahead.

The Court: Thank you very much.

Mr. Gladstein: We will call Mr. Nehring.

The Clerk: They have not returned from lunch.

Mr. Gladstein: Well, we can proceed with Mr. Wilkerson until any of the four—is any one of the four present?

The Marshal: No, no one is in the room.

Mr. Gladstein: All right, we will continue with Mr. Wilkerson until any one of them appears, because there is no importance as to the order in which they are put on the stand.

Will you resume the stand, Mr. Wilkerson?

The Court: According to my records you have called 17.

Mr. Gladstein: There are six remaining.

The Court: Am I right about the 17?

Mr. Gladstein: I think that is correct, your Honor.

(2142) DOXEY A. WILKERSON, resumed the stand.

Direct examination continued by Mr. Gladstein:

Q. Mr. Wilkerson, at the noon recess you were about to start to point out the sources to which we went for the purpose of ascertaining the facts upon which the Court could determine what impact, if any, the extent of alienage among the population might have upon the exhibits that were introduced in evidence and the tabulations received in evidence. Now will you indicate the sources to which you went? A. One source is the Assistant Commissioner of the Immigration and Naturalization Service; the others, the 16th Census of the United States, third series, the labor force; the Statistical Abstract, 1947—

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. Now, that is an exhibit in evidence, is it not? A. That is already an exhibit.

Q. And so is the previous one that you mentioned, the census data? A. Yes.

Q. And the first is a reference to an officer of the Immigration and Naturalization Service of the Department of Justice of the United States? A. Yes.

Q. Now, would you indicate what was done in that connection? A. There were also utilized here—maybe I should call attention to them as we move along—a special census report on illiteracy in the United (2143) States, October 1947—

The Court: You know, you are dropping into that whispering again.

The Witness: All right, your Honor.

Mr. Gladstein: Would you repeat the last, please, Mr. Wilkerson?

A. (Continuing) Also used in the analysis is a special census report on illiteracy in the United States.

Q. How is that designated? A. Specifically the title is “Illiteracy in the United States, October 1947”; it is a current population report, population characteristics, of the Department of Commerce, Bureau of Census, series P-20 No. 20.

The Court: Are you on illiteracy now or alienage?

Mr. Gladstein: Alienage, your Honor.

The Court: That is what I thought.

Mr. Gladstein: But he is mentioning that this is one of the sources.

The Court: All right.

Mr. McGohey: Could we have the sources marked, if your Honor please?

The Court: Yes.

Mr. Gladstein: Yes.

Q. Which one of those that you have mentioned, Mr. (2144) Wilkerson, are already in evidence? A. The Statistical abstracts is in evidence.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Mr. Gladstein: That is in evidence. I forget the designation.

Mr. Crockett: Is it No. 11?

Mr. Gladstein: Was No. 11 used as the Statistical Abstract?

The Clerk: It was received in evidence this morning.

Q. And what is the other one? A. I call attention to population report on illiteracy, series P-20, No. 20.

Q. Do you have a copy with you? A. I have. I should like to have it back, however. We will need it in the course of the discussion.

Mr. Gladstein: That is all right. We will mark it for identification and then later on receive it, and the witness can refer to it in connection with his testimony, your Honor.

(Marked Defendants' Challenge Exhibit 85 for identification.)

By Mr. Gladstein:

Q. Now Mr. Wilkerson, I will show you a document consisting of four multigraphed pages purporting to be put out by the Department of Commerce, Bureau of the Census, under date of—it has been covered up by the clerk's (2145) mark, I am sorry—it is 1948, dated September 22nd, I believe, Washington, D. C., series P-20, No. 20, and I will ask you if this is the document to which you had reference? A. It is.

Q. And this was obtained from the Department of Commerce, Bureau of Census? A. Yes.

Q. And it is designated Current Population Reports, population characteristics; is that right? A. That is right.

Q. And this is the document, 85 for identification, which you used for the purpose, in part, of ascertaining facts concerning the possible effect of the degree of alienage among the population upon the study that we are presenting here? A. Technically the document deals with illiteracy, but I think as we develop it here, you will see the

Doxey A. Wilkerson—for Defendants on Challenge—Direct

question of illiteracy and alienage we deal with somewhat together, which will come out in the discussion.

Mr. Gladstein: I offer it, your Honor.

Mr. McGohey: No objection, with the same reservation.

(Defendants' Challenge Exhibit 85 for identification received in evidence.)

Q. Now will you indicate what other sources you went to in connection with this portion of your testimony? (2146) A. I mentioned, I think, the Immigration Service, which was in the form of certain data transmitted through letter.

Q. By letter? A. Yes.

Mr. Gladstein: Now in that connection, your Honor, we are going to serve a representative of the Immigration and Naturalization Service to produce here the original and official form in which this data utilized by the witness was put out, and from whom, from whose office, we obtained this data. This will be done, and the subpoena is on the way to being served, and I expect the witness will be here the first thing in the morning.

Q. Anything, Mr. Wilkerson, used in connection with this part of your testimony? A. I think that is all. If there is something else I will call attention to it as we move along.

Q. Now will you indicate—

Mr. McGohey: I understand that the witness is going to testify from some document, a letter I think the witness said, from somebody in the Department of Immigration. If that is what he is going to testify to, if that is what he is going to refer to in his testimony I would like to have that document marked.

The Court: I understand that what he is about (2147) to do is to state certain conclusions that he arrived at from the data that he has described and

Colloquy of Court and Counsel

among that data is this letter, and counsel has asked me for leave to connect that up later by the production of that letter. And I don't know yet whether they have a copy here available to mark in the interval or not. But that is what you would like to have done, Mr. McGohey.

Mr. McGohey: That is exactly what I would like to have done.

The Court: Is there such a copy here?

Mr. Gladstein: I don't have it, your Honor. And my suggestion was that we have the official from the Government Service appear and rather than use a letter which might be challenged as hearsay, have him testify as to the contents of the official data.

The Court: Well, if you have a letter of a copy that you assure the Court you will connect up later by proving the original and indicate that it is an official document that is entitled to be received in evidence as factual data, I think probably it will suffice and it will help Mr. McGohey to have before him now that copy that you have.

Mr. Gladstein: I would be very happy to give it to him but I don't have that letter with me and neither does the witness, your Honor.

(2148) The Court: But it is a copy that I am talking about.

Mr. Gladstein: Or even the copy. What happened was that the data was contained in such a letter, was taken from the letter. We don't have the letter—

The Court: Oh, yes.

Mr. Gladstein: But the data will be substantiated by testimony coming from the official in charge.

The Court: Are you willing to take it subject to connection that way, Mr. McGohey?

Mr. McGohey: Well, your Honor, I am looking at a table marked Table X-A which appeared in the exhibits.

The Court: I have it.

Mr. McGohey: And I notice that under the "Sources" there is a legend saying "Aliens" com-

Colloquy of Court and Counsel

puted from data contained in a letter from Henry B. Hazard, assistant commissioner of immigration, December 3, 1948. And if that is what the witness is going to testify about, or from, I ask to have that letter.

The Court: You are entitled to it.

Mr. McGohey: Because if the witness is talking about data that was in the letter, not data that was in some other document, I want to see what that letter is that the data was in.

The Court: I will sustain your objection to (2149) this line of proof until that is produced.

Mr. Gladstein: May I say, your Honor, that if I had the letter I would be very happy to produce it.

The Court: I know. But you see Mr. McGohey is in the position where the law having allowed him the opportunity of a preliminary cross-examination as the basis of an objection to proof, and as the proof is to be based in part upon something that he cannot now bring out because it is not here, I have no alternative than to sustain the objection to this proof until the letter is produced or a copy subject to connection. So that you will pass on to something else.

Mr. Gladstein: Yes. Your Honor means, as I understand it, that portion of the proof to which this letter refers.

The Court: Yes, that is right.

Mr. Gladstein: Yes, I understand that.

Now I gather from the nod of the court attache who has just come in court that a juror is here. With your Honor's permission we will withdraw Mr. Wilkerson.

The Court: You may do that.

(Witness temporarily withdrawn.)

*Frederick W. Nehring—for Defendants on Challenge—
Direct*

(2150) FREDERICK W. NEHRING, called as a witness on behalf of the defendants on the challenge, being duly sworn, testified as follows:

Direct examination by Mr. Sacher:

Q. Mr. Nehring, where do you reside, please? A. 947 Kimball Avenue, Yonkers.

Q. Is that in that part of Yonkers known as Bronxville, Mr. Nehring? A. Post Office Bronxville.

Q. What is your business or occupation, please? A. Real estate broker.

Q. Are you an officer of any corporation? A. I am.

Q. What corporation are you an officer of and what office do you hold? A. Nehring Brothers, Incorporated. President.

Q. How long have you held that office, Mr. Nehring? A. Since about 1918.

Q. Were you a member of the grand jury which returned an indictment against William Z. Foster and eleven others? A. I am sworn to secrecy. I would ask the Judge whether I may—

The Court: You may answer.

A. I am.

Q. Did you ever serve on the grand jury in the Southern District of New York prior to the time that you served on the jury which returned this indictment? (2151) A. I did.

Q. How many times have you served on the grand jury prior to this occasion? A. As I recall, I was at least on two other panels.

Q. Can you give us the years in which you served? A. It was before the war I can't just recall the years.

Q. Are you a member of the Federal Grand Jurors Association? A. I think I used to be, but not any more.

Q. When did you first join that Association? A. Well now, that I can't recall, whether I was or not; but if I did, it was some time before the war.

Q. Did you ever hold any office in the Federal Grand Jurors Association? A. Never.

*Frederick W. Nehring—for Defendants on Challenge—
Cross*

Q. Are you Negro or are you white? A. I am an American.

Q. No. I asked you, are you Negro or are you white?

A. I belong to the American race.

Q. Are you a Negro? Yes or no. A. I belong to the American race.

Mr. Sacher: May I ask the Court to please instruct the witness to answer the question yes or no?

The Court: In this trial it has been inquired as to whether various persons were white or not. I would (2152) have thought it better just to note on the record that a person was white or that he was Negro, but it has been felt here that for some reason they desire to ask the question. So I take it that you would say that you were white?

The Witness: That is true.

Mr. Sacher: That is all.

Mr. McGohey: May I have this marked, please.

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

Cross examination by Mr. McGohey:

Q. Mr. Nehring, I show you a photostatic copy of a paper, the photostat is marked Government's Challenge Exhibit R for identification, and ask you if that is a photostat of a paper that you signed at or about the date that appears on that? A. Yes, it is.

Q. Would you keep your voice up a little bit, please? A. Yes, it is.

Mr. McGohey: I offer it in evidence.

Any objection?

Mr. Sacher: No objection.

(Government's Challenge Exhibit R for identification received in evidence.)

Mr. McGohey: May I proceed, your Honor, while (2153) it is being marked?

The Court: Yes.

*Frederick W. Nehring—for Defendants on Challenge—
Redirect*

Q. Mr. Nehring, at the time you signed that paper, did you sign that in the office of the clerk here in the courthouse? A. I believe so.

Q. And you were interviewed by the clerk at that time, were you not? A. I believe so.

Q. Now, did he at that time, or any official of the court at that time or at any other time in connection with your qualification or service as a juror ask you any question concerning your race, your religion, your political affiliations, your social affiliations or your financial worth? A. Never.

Mr. McGohey: I have no further questions.

Mr. Gladstein: May I ask the witness a few questions, your Honor?

The Court: You may.

Mr. Gladstein: I will wait until your Honor lets me have the exhibit.

Redirect examination by Mr. Gladstein:

Q. Mr. Nehring, did you ever serve as a petit juror in this court? A. Never.

Q. The only service that you have had in this court has been as a grand juror; is that so? A. That is true.

Q. Now, did you become a grand juror by virtue of (2154) volunteering on your part or by being summoned? A. I was summoned.

Q. When did that occur, the date of this? A. I believe about that time.

Q. Well, in other words, approximately the 23rd day of May 1938, is that right, sir? A. I believe so.

Q. Did you accurately answer the questions here? A. I believe so.

Q. Including that which described the ownership of your property as consisting of two homes and an interest in an office building; is that right, sir? A. That is correct.

Q. You had served as a trial juror in the Municipal Courts, is that right? A. That is true.

Q. How long after you became a grand juror did you become a member of the Grand Jurors Association, if you know?

*Frederick W. Nehring—for Defendants on Challenge—
Redirect*

Mr. McGohey: Objection.

A. Well, I can't recall—

The Court: Just a second.

Will you read the question, Mr. Reporter?

(Question read.)

The Court: Overruled.

Mr. Crockett: I don't think the witness completed his answer, your Honor.

(2155) Mr. Gladstein: He hasn't answered it.

The Witness: What is the question?

Q. Would you like to hear it read, then? A. Yes.

Mr. Gladstein: Would you read that question, Mr. Reporter?

(Question read.)

A. Well, I really can't recall. I think I joined for a while, but I am not sure. I guess you would have to look up the records of the Association. I couldn't really recall.

Q. There are records of the Association to your knowledge that record the time when you became a member, is that right, sir? A. If I did, I imagine.

The Court: No, he is asking you if you know that there are records.

The Witness: That I wouldn't know.

Q. Well, did you sign something to become a member of the Association?

Mr. McGohey: Objection.

A. I cannot recollect—

The Court: Sustained.

Q. During the time that you filled out this questionnaire and while you were in the office, were you asked any questions at all on any subject at all orally, (2156) other than what is in this written document here on any

*Frederick W. Nehring—for Defendants on Challenge—
Recross*

subject by the clerk or anybody connected with the court?

A. Not to my knowledge.

Mr. Gladstein: That is all.

The Court: Do you want to ask—

Mr. McGohey: Yes. I do. I just want to ask one more question.

Recross examination by Mr. McGohey:

Q. You just stated that to the best of your knowledge you were not asked any questions at all by the clerk? A. That is right.

Q. Do you mean by that that you don't recall whether you were or not? A. I can't recall any questions I was asked by the clerk.

The Court: You see, the question is—you went in there; the impression might have been given by what you said that nobody said a word and that you just stood there and filled out this questionnaire. I take it there must have been some conversation but you just don't remember what it was.

Mr. Sacher: I object to the form of the question on the ground that it assumes a set of facts not in evidence, your Honor.

The Court: Overruled.

Mr. Sacher: Exception.

(2157) The Court: And I said, I may get the impression from what you said that you remembered that nothing was said at all. I ask you whether there might have been some conversation, but you just don't remember it?

The Witness: That is true, I can't recall what the conversation was.

Mr. Sacher: I move to strike out the answer on the ground that the answer was suggested to the witness by the Court.

The Court: Do you desire to add to your statement and argue the matter at all?

Mr. Sacher: No. That is all I wish to say.

Mr. Gladstein: I wish to add another ground, and that is that the Court's question call for nothing

Colloquy of Court and Counsel

but speculation and conjecture, not on any evidence or testimony. I move to strike out the answer on that ground.

The Court: Do any of the other counsel desire to make any motions?

Mr. Crockett: I join in the motions and the objections that have been voiced, your Honor.

The Court: How about you, Mr. McCabe?

Mr. McCabe: I have nothing to add to those objections.

(2158) The Court: Very well. The motion is denied, and each of the motions are denied.

Mr. McGohey: I have no further questions.

Mr. Sacher: I move to strike from the record, if it is recorded, Mr. Gordon's characterization of my remarks.

The Court: I didn't hear anything about it, and I would imagine that it is not part of the record. You know, in the trial of these cases sometimes counsel have little asides to one another that perhaps relieve the tension a little bit and do no particular harm. And I heard nothing. And, Mr. Gordon, we will let it go.

Mr. McGohey: Your Honor, may I at least inquire whether the witness answered the last question or not?

The Court: I know he answered the question, and then there were a lot of motions to strike out and I denied the motions. And I understand exactly what the situation is as far as he recalls it. So you just go along. You have another witness coming up.

(Witness excused.)

Walter I. Metz—for Defendants on Challenge—Direct

(2159) WALTER I. METZ, called as a witness on behalf of the defendants on the challenge, being duly sworn, testified as follows:

The Court: Mr. Metz, I want to congratulate you. You are the first witness that has been on there for some time that I have heard perfectly.

Direct examination by Mr. McCabe:

Q. Mr. Metz, where do you live? A. I live in Larchmont, Westchester County, New York.

Q. And you have lived there for how long? A. 17 years.

Q. Is there a precise home address or just— A. No. 8 Villa Lane, Larchmont.

Q. Do you own your home? A. What is that?

Q. Do you own your home? A. My wife does.

Q. Mr. Metz, were you a member of the grand jury which brought in the indictment against William Z. Foster and others? A. I was.

Q. For how long a period have you been qualified as a member of the grand jury of the Southern District of New York? A. I think it was around 1934.

Q. Have you served on a previous grand jury? A. I have.

Q. How many, do you recall? A. Well, let me think now. Maybe four.

(2160) Q. Could you give us the approximate dates, not pinning you down to exact dates? A. No. That is going to be pretty difficult.

Q. They space pretty evenly over the 14 years? A. I wouldn't say so. No, I wouldn't say so.

Q. Were they closer in time to the present than to the early time of your qualification? A. Repeat that question, will you?

Q. Was your service during those four periods, approximately four periods, closer in time to the present? A. Oh, you mean the interval between the previous and the present case we are referring to and the others?

Q. What is your business, Mr. Metz? A. Well, I am unemployed. My former business was insurance adviser.

Q. Yes. A. No, I would say about the same.

Walter I. Metz—for Defendants on Challenge—Direct

Q. You had been an insurance adviser for how long?
 A. Oh, I have been in the insurance business since 1919, and then I went out specializing in advising on trusts for a period of about 15 years, ten years, around that. And since then for the last four or five years I have been doing nothing to speak of. Yes, a little insurance once in a while, understand?

Q. Just to keep your hand in? A. I would not say that.

Q. What was your position when you retired, Mr. Metz?

A. Well, I wish I could say I was retired, but (2161) answering your question, I was a broker, an insurance—just a general agent or a broker in the insurance business.

Q. Is your wife employed? A. Oh, no, she is not.

Q. You say oh, no? A. I said No.

Q. And you are not receiving any relief of any kind?

A. I am not on relief—

Mr. McGohey: Objection, your Honor.

The Court: Sustained.

Q. No unemployment compensation?

Mr. McGohey: Objection.

The Court: Sustained.

Q. And how long is it since you have made any effort to procure a position in the insurance business?

Mr. McGohey: Objection.

The Court: Sustained.

Mr. McCabe: That is all.

By Mr. Sacher:

Q. Have you made any effort to obtain any employment in the last five years?

Mr. McGohey: Objection.

The Court: Sustained.

Mr. Sacher: Your Honor, the man has testified that he is an unemployed person, and we have a right to explore the question as to his economic status. That is all I am directing it to.

Walter I. Metz—for Defendants on Challenge—Direct

(2162) The Court: You say you have that right. I have sustained the objection.

Q. Do you own any property, Mr. Metz?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Do you own any stock, Mr. Metz?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Are you the officer of any corporation? A. I am not.

Q. Were you ever a member of any corporation? A. Never.

Q. Do you have any money in the bank, Mr. Metz?

Mr. McGohey: Objection.

The Court: Sustained.

Mr. Sacher: Exception.

Mr. Gladstein: May I ask a question or two, your Honor?

The Court: Yes.

By Mr. Gladstein:

Q. Mr. Metz, during the time when you were engaged as an insurance broker—insurance broker, is that what you said? A. Yes.

Q. (Continuing) Were you associated or connected with any particular companies? A. No.

(2163) Q. That is to say, you wrote the insurance that involved a number of different companies, is that right, sir?

The Court: He didn't say he wrote insurance. He said he was an agent or a broker.

Q. Well, did you—from which company or companies were you an agent or a broker?

Mr. McGohey: Objection.

The Court: Sustained.

Walter I. Metz—for Defendants on Challenge—Direct

Q. Well, were you an agent or broker for any particular company or companies, sir?

Mr. McGohey: Objection.

The Court: Objection sustained.

Mr. Gladstein: I am trying to find out what the jurors occupation was, your Honor.

Mr. McGohey: I think he has testified to that.

The Court: I think he has too.

Q. Would you indicate, please, what you mean when you said that you were formerly an insurance broker? Would you tell me what that meant, what that consisted of? A. What is the pertinence in that question at all? You know what a broker is, an insurance broker means.

Q. I would like to have you define it, sir. Will you do that? A. Is it necessary for me to make an explanation comparing an agent—a general agent and broker's (2164) activities?

Mr. McGohey: I will object to that line of testimony. It is irrelevant.

The Court: I will sustain the objection.

Mr. Gladstein: Is your Honor saying—may I ask a question about that ruling, your Honor?

The Court: Yes.

Mr. Gladstein: Is your Honor's ruling based upon the proposition that the term "insurance broker" is so clear that no further explanation need be required?

The Court: I do not think I care to make any explanation of my ruling.

By Mr. Gladstein:

Q. Well, now, I will ask this, Mr. Metz: When you became qualified as a juror for the first time in this court were you asked in written or oral form to indicate what your occupation then was? A. Yes, I was.

Q. And do you recall what you said? A. I said insurance business.

Q. Insurance business? A. Yes.

Walter I. Metz—for Defendants on Challenge—Direct

Q. And at that time were you a broker in the insurance business? A. I had a broker's license at that time, yes.

Q. Can you indicate the period of time during which you held a broker's license?

Mr. McGohey: Objection.

(2165) The Court: Sustained.

Q. What portion of the insurance business did you hold a license in?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Was your license general so that you engaged in the brokerage business for insurance generally, or to the contrary, did you specialize in particular aspects of insurance?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Did you hold a salaried position or an executive position with any insurance company?

Mr. McGohey: Objection.

The Court: Sustained.

Mr. Gladstein: May I say something about that last, your Honor?

The Court: Yes?

Mr. Gladstein: Your Honor will recall that our challenge goes directly to one of those things, and by your Honor's ruling you are preventing us from establishing the fact, whatever, it may be, as to this witness's relationship to the various occupational groupings that we are concerned with in this case.

I am now seeking the fact and not merely what (2166) happens to be on the witness's questionnaire, and if by your Honor's ruling I am prevented from having from the witness himself, who presents the best available source of primary evidence, what his relationship was to the employing class or to the working class, then your Honor is preventing me from introducing that evidence.

*Walter I. Metz—for Defendants on Challenge—Cross,
Redirect*

The Court: It may seem so to you, Mr. Gladstein. You know, I have an administrative problem here together with my other problems, and taking everything into consideration I have sustained the objection.

Q. During the period when you were actively engaged in the insurance business was a portion of the income that you received and upon which you lived obtained from private sources, separate, apart and distinct from your gainful occupations?

Mr. McGohey: Objection.

The Court: Sustained.

Cross examination by Mr. McGohey:

Q. Mr. Metz, at the time you came down and qualified as a juror did you do that in the office of the clerk of this court? A. I did.

Q. You were interviewed by the clerk at that time, were you? A. I was.

Q. Were you asked at that time by the clerk or by any official of the court, or have you ever been asked by the (2167) clerk or any official of this court, in connection with your jury service, any question about your race, your religion, your political affiliations, your social affiliations, or your financial worth? A. Never.

Mr. McGohey: I have no questions. Thank you.

Redirect examination by Mr. Sacher:

Q. Were you asked any question at all by the clerk? A. No, except if I was a citizen of the United States. I recall that very vividly.

Q. That is all he asked you? A. As far as I can recall, that was all he asked me.

Mr. Sacher: That is all.

I would like to have the juror's questionnaire, please, and I would like to offer it in evidence.

Herbert J. Cantrell—for Defendants on Challenge—Direct

Mr. McGohey: I don't have it, Mr. Sacher.

Mr. Sacher: May I ask you to be kind enough, Mr. McGohey, to get it.

Mr. McGohey: I have sent for it. There is apparently no qualification sheet on file, I am informed by the clerk.

Mr. Sacher: Just one more question:

By Mr. Sacher:

Q. Are you white or Negro, Mr. Metz? A. Am I what?

Q. Are you white or are you Negro? A. I am white.

(2168) Mr. Sacher: That is all.

Mr. McGohey: I have no further questions.

The Court: Thank you, Mr. Metz.

(Witness excused.)

HERBERT J. CANTRELL, called as a witness on behalf of the defendants on the challenge, being duly sworn, testified as follows:

Direct examination by Mr. Sacher:

Q. Where do you live, Mr. Cantrell? A. South Nyack, New York.

Q. Are you engaged in any business or occupation at the present time? A. No, sir.

Q. Are you retired? A. Yes, sir.

Q. When did you retire? A. I think in 1928.

Q. And in the last 20 years you have engaged in no business or occupation, is that right? A. Except my own—except taking care of my own stuff.

Q. What is the stuff that you take care of, Mr. Cantrell?

A. Well, whatever I happened to have.

Q. And what is it that you have, Mr. Cantrell?

Mr. McGohey: I object, your Honor.

The Court: Sustained.

Herbert J. Cantrell—for Defendants on Challenge—Direct

Q. What business or what activity have you been engaged in in the last 20 years? A. Well, I have been executor.

Q. Executor of what, of estates? A. Of an estate.

(2169) Is that a family estate? A. That is a family estate, yes, sir.

Q. For how long have you been engaged in that activity? A. That took about a year.

Q. Is there any other business or activity you have been engaged in in the last 20 years? A. No, sir.

Q. Did you have any source of income of any kind in the last 20 years? A. Naturally.

Q. And what business were you engaged in before you retired? A. I was a cottonseed oil broker on the New York Produce Exchange.

Q. And do you still retain your seat on the Exchange? A. No, sir.

Q. When did you sell your seat? A. I let it lapse in 1943.

Q. Up to that time you owned it, is that correct? A. Well, can I explain why I owned it?

Q. Did you own it? A. Yes.

Q. All right, that is enough for my purposes. You were a member, Mr. Cantrell, were you not, of the grand jury which indicted William Z. Foster and eleven others? A. Yes.

Q. How long have you served as a member of grand juries in the Southern District? A. I think I was first called in 1918.

(2170) Q. So you have been on grand juries for some 30 years, is that right? A. Yes.

Q. How many times did you serve on the grand jury? A. That I couldn't tell you without looking it up. I was pretty regularly called most every two years up to 1939, at least.

Q. Are you white or are you Negro, Mr. Cantrell? A. White.

Mr. Sacher: May I ask, Mr. McGohey, whether you have Mr. Cantrell's questionnaire?

(Paper handed to Mr. Sacher.)

Herbert J. Cantrell—for Defendants on Challenge—Cross

Q. Are you a member of the Federal Grand Jurors Association? A. No, sir.

Q. Have you ever been a member of the Association? A. No, sir.

Q. Now, Mr. Cantrell, what education, if any, have you had? A. Ordinary grammar school.

Q. That is the only education you have had; you have had no high school or college education, is that correct?

A. That is correct.

Q. Did you volunteer to be a member of the grand jury here? A. I certainly did not.

Q. How did you happen to become a member of the grand jury, do you know? A. Originally?

Q. Yes. A. I simply got a notice, that is all I know (2171) about it, sir.

Q. Were you a member of, or did you hold a seat on the Produce Exchange at the time that you first became a member of the grand jury? That is, in 1918? A. 1918? Yes, sir.

Mr. Sacher: That is all.

I offer the questionnaire in evidence.

Mr. McGohey: No objection.

(Marked Defendants' Challenge Exhibit 86 in evidence.)

Cross examination by Mr. McGohey:

Q. Mr. Cantrell, do you want to tell us about how you came to own that seat? A. The reason I held on to that seat was what they call a gratuity fund, it is an insurance; every time a member dies you pay in three dollars; so I paid in quite a sum over the years, so I was keeping the seat just for the insurance.

Q. You knew at the time you qualified—by the way, Nyack is in Rockland County, is it not? A. That is right, yes, sir.

Q. And you lived there all the time that you have served as a juror? A. Not in 1918. I went there in 1927.

Q. At the time you qualified to be a juror did you come down to the office of the clerk and fill out some (2172)

Herbert J. Cantrell—for Defendants on Challenge—Cross

kind of paper? A. It is so far back, Mr. McGohey, I don't really remember.

Q. Well, do you remember at any time whether you came in and filled out a paper? A. All I remember was they turned that little thing and your name was called out and you went and sat down and they asked you if you are worth \$250, or something like that, and that is the only question I remember.

Q. Let me show you this paper that is marked Defendants' Challenge Exhibit 86. It is a photostat of a paper. I ask you to look at it and ask you if that is not a photostat of your signature? A. Yes, sir, that is.

Q. And did you sign it at or about the date that appears thereon? A. I certainly must have.

Q. Now, does that refresh your recollection as to whether you came in and signed any paper in the office of the clerk at any time? A. That was 1941?

Q. Yes. A. I think the last time—

The Court: Well, that does refresh your recollection so that you can say now that you did go to the clerk's office?

The Witness: Oh, I must have.

The Court: And you did sign that paper?

The Witness: Yes, I certainly did sign that.
(2173) That is my signature.

By Mr. McGohey:

Q. Now, at that time or at any other time were you asked by the clerk or by any official of this court in connection with your service as a juror any question about your race, your religion, your political affiliations, your social affiliations, or your financial worth? A. No, sir.

Mr. McGohey: I have no further questions.

Mr. Sacher: That is all.

(Witness excused.)

Joseph L. Morris—for Defendants on Challenge—Direct

JOSEPH L. MORRIS, called as a witness on behalf of the defendants on the challenge, being duly sworn, testified as follows:

Direct examination by Mr. Crockett:

Q. Mr. Morris, where do you reside? A. 474 West 238th Street.

Q. Is that an apartment or a private dwelling? A. It is an apartment house.

Q. Do you own any interest in the apartment house? A. No.

Q. You were a member, Mr. Morris, of the grand jury that returned the indictment against William Z. Foster, were you not? A. Yes.

Q. How long have you been a member of the grand jury (2174) panel for the Southern District of New York? A. About 30 years.

Q. How many times have you served as a juror within the past ten years? A. Well, I should say approximately every two years.

Q. What is your occupation, Mr. Morris? A. I am unemployed at the moment.

Q. What was your occupation at the time— A. I was a business counsel, business consultant.

Q. Suppose I repeat the question. What was your occupation at the time you first became a grand juror in the federal court of the City of New York? A. And I answered your question.

Q. Now will you give your answer? A. Business consultant.

Q. What type of business, Mr. Morris? A. Exactly what the words imply, all business.

Q. Have you even been engaged in the banking business? A. Yes.

Q. When? A. Oh, about 12 or 13 years ago.

Q. What was the last business in which you were engaged as a business consultant? A. Manufacturers Trust Company, last.

Q. When was that? A. Well, about 13 years ago, 12 years ago.

Joseph L. Morris—for Defendants on Challenge—Direct

(2175) Q. Are you a director of the Flushing National Bank? A. No.

Q. Were you ever a director of the Flushing National Bank? A. No.

Q. Are you a director of any corporation? A. No.

Q. Do you own any shares of stock?

Mr. McGohey: Objection.

The Court: Sustained.

Q. What real estate do you own, Mr. Morris?

Mr. McGohey: Objection.

The Court: Sustained.

The Witness: I would like to answer that. May

I? I own one piece of real estate—

The Court: Just a minute. I think it is better if you—

The Witness: All right, I won't answer. I just wanted to tell him that I own a grave on Mount Carmel Cemetery.

Q. Mr. Morris, I take it you mean just one grave and not the entire grave yard, is that right? A. I answered your question.

Q. I just wanted to get it straight for the record. Tell me, are you a member of the Federal Grand Jurors Association? A. No, sir.

Q. Are you a member of the white race or the Negro (2176) race? A. White, and a little sunburned.

Mr. Crockett: That is all.

Mr. Sacher: I have a question or two.

By Mr. Sacher:

Q. When were you last employed? A. I don't think that is pertinent.

Mr. Sacher: I ask the Court to instruct the witness to answer.

The Court: What is the question?

Mr. Sacher: When was he last employed?

Joseph L. Morris—for Defendants on Challenge—Direct

The Court: Yes, he will answer that.

The Witness: My last regular employment, as you would regard it, was with the Manufacturers Trust Company.

Q. And in what capacity were you employed by that company? A. I was vice-president of the Manufacturers Trust Company.

Q. Of what branch, if any, were you vice-president, or were you vice-president of the entire company?

Mr. McGohey: I object to it.

A. I was in various branches—

The Court: Sustained. Sustained.

The Witness: Oh, I beg your pardon.

Q. How long were you vice-president of the Manufacturers Trust Company?

(2177) Mr. McGohey: Objection.

The Court: Sustained.

Q. When did your position or your office as vice-president with the Manufacturers Trust Company terminate?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Have you received any unemployment compensation at any time?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Have you been on home relief at any time?

Mr. McGohey: Objection.

The Court: Sustained.

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

Mr. McGohey: I am looking for it. I am not sure we have it here.

Joseph L. Morris—for Defendants on Challenge—Cross

The Witness: I never made one. I have been serving for 30 years.

Mr. Sacher: I will take that as an answer.

By Mr. McCabe:

Q. Mr. Morris, when were you served with a subpoena to appear here? A. Last night at six o'clock—

Mr. McGohey: Objection.

Q. Had you been served with a subpoena before that?

(2178) Mr. McGohey: Objection.

The Court: Sustained.

Mr. McCabe: That is all.

Mr. Sacher: No more questions.

Cross examination by Mr. McGohey:

Q. Mr. Morris, at the time you first qualified to serve as a juror in this court were you interviewed by the clerk of the court?

Mr. Sacher: I object to the question on the ground that it assumes a state of facts not in evidence. The question reads "at the time you were qualified," and there is no evidence that this witness ever qualified as a grand juror.

Mr. McGohey: I will withdraw the question, your Honor, and reframe it.

Q. Prior to the time that you first served as a juror were you interviewed by the clerk or any other official of this court concerning your prospective service as a juror? A. My recollection some 30 years back is quite clear. I was merely summoned to serve.

Q. Well, when you were summoned did you come down to the courthouse? A. I came down to the courthouse.

Q. And were you interviewed by any clerk? A. No, I appeared in a courtroom ready to serve 30 years ago.

Q. And since that time have you served regularly? (2179) A. Regularly about every two years.

Joseph L. Morris—for Defendants on Challenge—Redirect

Q. In connection with your jury service have you ever been into the clerk's office to be interviewed? A. Never.

Q. In connection with your jury service either prior to its commencement or during the time that you have served as a juror, has any clerk or official of this court in connection with your service as a juror asked you any question about your race, or your religion, or your political affiliations, or your social affiliations, or your financial worth? A. Never.

Mr. McGohey: I have no further questions.

Mr. Sacher: How could he when he never spoke to the man?

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

The Court: Well, I will let it stand. I do not think it is very important.

Mr. McGohey: That is the reason I don't think it ought to be in the record.

The Witness: Could I say one thing?

The Court: Now, now, just one second.

Redirect examination by Mr. Crockett:

Q. Mr. Morris, has the clerk of this court or any other official of this court ever examined you with (2180) respect to any of your qualifications as a juror? A. I have never been examined by anybody.

Mr. Crockett: Thank you.

The Witness: I do want to say that I am a Jew.

Mr. Crockett: The witness is excused, your Honor.

The Court: What is that?

Mr. Crockett: I say I excuse the witness.

The Witness: Nevertheless I would like the record to show that I am a Jew.

The Court: All right, I think it sufficiently appears.

The Witness: Do I get a witness fee, your Honor?

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

The Court: You should.

The Witness: I have not had one. I have had traveling expense but no witness fee.

The Court: Well, I think if you will address yourself to one of the counsel at the recess that is going to come in just a minute or two—we always take a recess at half past three—

Mr. Crockett: Your Honor, I will be glad to meet Mr. Morris out in the corridor and give him his witness fee.

(2180-A) The Witness: Can't you give it to me now?

The Court: Well, you will straighten that out.

Mr. Gladstein: Shall we take the recess now?

The Court: Well, all right, we will take the recess now and dispose of that.

(Short recess.)

(2181) The Court: I guess we are back to Mr. Wilkerson now.

Mr. Gladstein: Yes, that is correct.

DOXEY A. WILKERSON, resumed the stand.

Mr. Gladstein: Now in view of the fact that we are awaiting some time early tomorrow information concerning aliens, and in view of the fact that the witness has been considering both the question of aliens and the question of illiteracy to some extent together, I would suggest that we move to the next subject, the next one of those factors, and that is the question of exemptions.

The Court: Well, there can't be—when I say there can't be, perhaps there is something in that letter that has to do with the illiteracy. I suppose I may assume that there is, as you say, and that the two go together, the alienage and the illiteracy.

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

Mr. Gladstein: I think the evidence will show to some extent there is a relationship.

The Court: If it is your desire to take those up together tomorrow you may do so. That is perfectly satisfactory to the Court.

Mr. Gladstein: Very well.

Direct examination continued by Mr. Gladstein:

Q. Now, Mr. Wilkerson, address yourself if you will (2182) to the question of the factor of exemptions. What if anything was done to ascertain the possible or potential impact of that factor upon the validity of 67 in evidence?

The Court: You skipped the property qualifications.

Mr. Gladstein: Well, all right.

The Court: One of the elements under your Point 2 was the property qualifications.

Mr. Gladstein: Well, we can address ourselves to that now.

Q. Did you give that any consideration at all, Mr. Wilkerson? A. I did.

Q. Will you indicate what the nature of that consideration was? A. Certainly. I must delay the Court until I get my notes arranged to handle that particular topic.

The Court (To witness): You are the greatest whisperer we have had in here.

The Witness: Maybe you over-awe me, your Honor.

The Court: Well, if I over-awe you you are the first man I ever did it to.

A. (Continuing) On the question of property requirement we will find, to give you the general impact of the analysis and then to give you as much detail as you want, that virtually all gainful workers, regardless (2183) of occupation, are owners of \$250 in personal property at least and hence meet the property requirement set up for eligibility for jurors.

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

Q. Are there figures to indicate that, Mr. Wilkerson?

A. There are. In as much detail as one might want them.

Q. Where are they to be found? A. One source is the Bureau of Labor Statistics Bulletin 927.

Q. Has that been offered in evidence? A. I don't believe it has.

Q. Has it been identified here? A. It may have been one of the bulletins you identified the first day I was on the stand.

Q. You have identified it now and I will check the record. If it has been received for identification perhaps I will offer it in evidence, and if not we will produce it.

Will you indicate—

Mr. McGohey: Pardon me. Your Honor, I find myself now in the same situation I was before with respect to the letter. I think I am entitled to have any document on which the witness is relying.

The Court: That is right.

Mr. McGohey: And I should like to have it cleared up now as to whether this document which Mr. Wilkerson just mentioned has been identified.

Q. Do you happen to have it, sir? A. I don't have (2184) it in my notes. I think it was among the exhibits you submitted for identification the first day.

Q. Let me look.

The Court: That is Department of Labor Statistics No. 927.

The Witness: That is right. It is a 1947 report.

Q. We will pass that temporarily. Indicate, if you will, if there are any other sources to which one might go to ascertain what official data are available on that subject. A. We also used the Federal Reserve Board 1948 survey of consumer finance, No. 3, which is the Federal Reserve Bulletin of July 1948, which also I think was presented and identified the first day. But whether it is in court now I do not know.

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

Mr. Gladstein: I think that, if your Honor please, was marked for identification.

The Court: I have some recollection of it too.

Q. Do you happen to have that with you, Mr. Wilkerson? A. I do not.

Mr. Gladstein: All right. We don't find it on the table, your Honor, and perhaps it was not brought into court today.

The Court: Just pause a second, if you will.

Yes, I have a reference to it in my notes. It deals with income statistics. Is that the one?

(2185) The Witness: That is right.

The Court: I don't think it was actually marked for identification or put in evidence.

Mr. Gladstein: Well then, we will have to bring it your Honor, and we will pass to something else. I regret the fact that it is not physically here so that we can introduce it at this time. We will have it. It was in court and it was referred to.

The Court: Well then, we will leave that, together with the matter of alienage and illiteracy, for you to resume in the morning.

Mr. Gladstein: Very well.

The Court: And you may now pass to what I have here as your Point 3 in your anticipatory evidence here relating to persons exempt.

Mr. Gladstein: Very well.

Q. Let us commence with the question of exemptions, Mr. Wilkerson. Now, will you indicate to us what information there is available of an official character that would give data, official data on that subject? A. Well, first is the question of the occupations for which exemptions may be claimed.

Q. Where do you find those? A. Judiciary Law 596 of McKinney's Consolidated Laws of New York.

The Court: That is the Judiciary Law? What (2186) section?

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

The Witness: 596 I have here. This is a document supplied me by the attorneys in the case for the defense.

The Court: Now, let me see. I think I have a copy of those statutes here somewhere.

The Witness: I believe my further notation here indicates that this is a citation from the Fay case decision in the Supreme Court, which in turn quoted Judiciary Law 596.

The Court: I remember something about that in the Fay case.

Mr. Gladstein: That is true, your Honor.

The Witness: That is where the citation comes from.

Mr. Gladstein: But we also offered here for identification, I am told it is No. 19, a copy of the law itself which sets forth the occupational exemptions under the New York law. Is that right, Mr. McGohey?

Mr. McGohey: That is my recollection, your Honor. And I have the statute here. I raise no question with respect to that. I am glad to let your Honor have the statute.

The Court: That is fine. That is much better than that summary that was contained in that opinion of Mr. Justice Jackson.

(2187) These are all brought in by that last sub-division of the Federal statute that covers the subject of the Federal jurors.

Mr. Gladstein: May that portion of the Judiciary Law applicable to exemptions from jury service be deemed read into the record at this point?

The Court: Oh, yes; it may be deemed to be before the Court for all purposes.

Mr. Gladstein: Very well, your Honor.

Q. Now what other official source supplies the information or data from which one can determine the impact, if any, of the question of exemptions upon the study here made? A. The 16th Census Reports, particularly the re-

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

ports on the labor force and on characteristics of the population.

Q. What kind of data do you find there? A. You will find the numbers of persons gainfully employed in various occupations, among which are exempt occupations. You will find a number of women gainfully employed, and women of course are among the categories of exempt persons so far as jury duty is concerned.

Q. That is to say, in New York State they may claim and have an exemption if they claim it, is that right? A. That is right.

The Court: Does that show the housewives?

(2188) The Witness: You are thinking of the census document?

The Court: Yes.

The Witness: The census information I am talking about shows all women, and this serves our purpose here. You are concerned—as you will find, if we may proceed with the analysis, we assume, we seek to find the effect of eliminating exemptions if we assume that 100 per cent of the women took their exemptions, which is an exaggerated assumption and hence favorable to the case of anyone who challenges these analyses.

The Court: I am afraid you are speaking so softly that counsel down there can't hear you. But perhaps you may go on. I heard that all right.

Mr. Gladstein: Is your Honor's question answered?

The Court: Yes.

Q. Now, Mr. Wilkerson, will you proceed from there.
A. On the basis of such sources as we have called attention to, there was prepared a table which has been entered here as an exhibit I believe yesterday—it is my Table XII-A—

Mr. Gladstein: I believe that will be found to be 67-F, your Honor.

The Court: Just a second. XII-A, that is 67-F. That is right.

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

(2189) The Witness: And another table, XII-B.
Mr. Gladstein: And that I think will be found
to be 67-C.

The Court: XII-B is 67-C.

Mr. Gladstein: Yes.

A. (Continuing) The sources of the information are more specifically recorded on those exhibits.

Q. What do those exhibits show? A. The first exhibit indicates—

Q. When you say “the first” you mean 67-F? A. 67-F.

Q. All right. A. (Continuing)—shows the distribution of gainfully employed workers in 1940 in the Southern District among the four occupational categories we are dealing with here; first for all classes of gainful workers, next for those in exempt occupations.

Q. Where do the figures for the second column come from, that is, in exempt occupations? A. They come from the census data we have called your attention to, and which is more specifically given in the page of notes appended to the table.

Q. Very well. A. From those two columns one can subtract or, rather, with those two, and find out the number of gainful workers in each occupational group in other than exempt occupations. And we have those (2190) figures. The total is 1,645,282. I think it is unnecessary to read the other totals.

Q. To what does that figure apply, the 1,645,282? A. That in the Southern District counties here involved there were that many gainfully employed persons who are in occupations which are not exempt from jury service.

Q. All right. A. One of the exemptions that we mentioned earlier is the question of women. I am inclined, if you like, Mr. Gladstein, to deal with the women exemptions separately and not read throughout this table at this point.

Q. Whichever you prefer. A. But to show the effect of exempting persons on the basis of exempt occupations. You will find on the Exhibit 67-F, towards the right—it is the next, it is the third column from the right—a column which gives the percentage distribution of gainfully em-

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

ployed workers in non-exempt occupations. And in the last column of the table or, rather, in the first column of the table to the left you will find the distribution—

The Court: You mean to the right.

The Witness: No. I am talking about the first percentage column to the left now.

The Court: Oh yes.

(2191) A. (Continuing) You will find the percentage distribution of all gainful workers including those who may take occupational exemption from jury service. By comparing those two tables or those two columns of percentages one can get a measure of what effect there would be on this picture, the picture which shows the percentage distribution of gainful workers among four occupational categories.

Q. You mean in Exhibit 67? A. In Exhibit 67, yes.

Q. All right. A. If one were to take from the census data there represented for each of the occupations, those gainfully employed persons who are in exempt occupations so far as jury duty is concerned—

Q. What would the result of that be? A. The result of that would be this, that the percentage of executives would be increased from 9.9 per cent to 10 per cent, or in other words 1/10th of one per cent increase.

The Court: Show me where you figure that out there. I have before me Exhibit 67-F.

The Witness: You have 67-F. If you will turn, look to the fourth column from the right, your Honor, you will see a column which says "All gainful workers" with a series of percentages.

The Court: Yes.

(2192) The Witness: And next to that you will see a column which says "Per cent total in all other than exempt occupations." Do you follow me?

The Court: Yes.

The Witness: And the percentage of executives among all gainful workers is 9.9 per cent, and the percentage of executives among all non-exempt occupations is 10 per cent. Or, in other words, if

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

you were to eliminate non-exempt occupations from the 1940 census data, used as the basis for the left-hand part of Exhibit 67, it would affect the percentage of executives by increasing it one-tenth of one per cent.

Q. Could I interrupt you to ask you this question: That column of percentages under the title "All gainful workers" and appearing as the fourth column from the right on 67-F shows the percentages that are taken from a correlation of actual population figures in the extreme lefthand column called "All gainful workers"; isn't that right? A. That is right. And it is also true that these percentages are those on the basis of which the lefthand part of Exhibit 67 was drawn.

Q. All right. Now the second column starting at the left, the second column on Exhibit 67-F gives you the numbers of people in the exempt occupations, is that right? (2193) A. That is correct.

Q. Then you subtract the figures in the second column from the first, arriving at figures in the third column which gives you the total figures, minus those in the exempt occupations, is that so? A. That is right.

Q. Is it correct therefore that the third column from the right on 67-F which gives you percentage figures is actually a percentage relationship based upon the third column from the left, the first of which is 165,052 for executives? A. That is correct. Or in other words, the column headed "Number in other than exempt occupations."

Q. So in other words the extent to which the relationship between the four occupational categories is changed by reason of the numbers of persons found in exempt occupations is shown percentagewise by a comparison between the figures in column 4 from the right and column 3 from the right of Exhibit 67-F; correct? A. Yes.

Mr. Gladstein: Is that clear, your Honor?

The Court: I follow the method of computation that he is testifying to, yes.

Mr. Gladstein: All right.