

Q. Did you know, or don't you know, that that organization has, as one of its programs, one of its planks of the program, to arrest and try me on sedition?

A. No, I was not aware of that.

Q. You did not know that?

A. No. I acted independently of any organization of that character.

Q. You never heard any of their speeches on the radio, or read their publicity in the press?

A. I had seen some reference to it in the press, but I have not had any association with any organization of that [fol. 918] kind.

Q. So, you don't know, of your own knowledge, whether this organization was the one that originally began to start a campaign to get me arrested and tried on sedition?

A. I don't know whether that happened or not.

Q. One more question regarding your time in Italy. Is it true, or is it not true, that the policy of the Italian government was that children who were born to Italian parents, no matter where they were, they were Italian subjects?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

Mr. Nelson: I think it is admissible. I think it is an important point, Your Honor. I have another question to ask on that. Otherwise you shut me off.

The Court: I will have to shut you off on that question. The objection is sustained.

Mr. Nelson:

Q. Well, is it true, or it is not true, that the Italian fascist government followed the policy of what is known as "Dual Citizenship," do you know anything about that?

Mr. Lewis: That is objected to.

[fol. 919] The Court: Objection sustained.

Mr. Nelson:

Q. Is it true, or is it not true, Mr. Musmanno——

The Court: Ask him whether he subscribed to any other government, if you want to, if that is what you question is.

Mr. Nelson: No, that is not my question.

The Court: I am sorry. I thought I was interpreting your question.

Mr. Nelson: No, Your Honor, that is not my question. My question, if it was clarified, and it could be clarified in a few sentences—I don't intend to dwell on this matter. I want to show, Your Honor—I want to make an offer of proof against your ruling. I think that I have a right to do that.

The Court: Very well. Come up to side bar and we will see what your offer is.

(At side bar.)

Mr. Nelson: I want to show at this point, this "dual citizenship policy" of the Italian government, and I believe also the fascist government of Germany, and the Japanese government too; the general policy of the Italian, Japanese and German governments, that the parents were subjected to the particular rule in the "mother country," let us say, and I want to show as such that Mr. Musmanno was bound by this rule, and practically would have been a subject to military training, and other such things as the Italian government at that time wanted, and I believe it is an important question. I would like to have this question asked and answered.

Mr. Lewis: That is objected to as incompetent, immaterial and irrelevant. It has nothing to do with the issue in this case at all.

The Court: You may, if you can ask the question directly to this witness whether he is influenced by any policy of the Italian government. I am not going to get into what is or what is not the policy of the Italian, German or Japanese government. It may go to show any motive, interest, bias or prejudice on the part of a man who is offered here as Commonwealth witness.

[fol. 921] Mr. Cercone: The issue here is whether this man advocated the overthrow of the government by force and violence. He cannot go into these other matters.

The Court: If you want to ask if he knows of any dual

citizenship policy of the Italian government, you may do so.

Mr. Nelson: Very well, Your Honor.

(End side bar.)

Mr. Nelson:

Q. Do you know, Mr. Musmanno, whether or not the Italian government, at that time, followed a policy that was known as "dual citizenship policy," which was binding on children of Italian ancestry, to be subject to the Italian crown, or dictator of the Italians? Do you know of any such rule, or any such policy at that time?

A. It was true of most European countries, not only Italy—

Q. I am asking about Italy; that is all I want to know. I think the Judge cautioned me and I don't want to go into Germany or Japan.

The Court:

Q. Do you know of any policy in Italy to that effect?

[fol. 922] A. I'm not aware of their policy.

Mr. Nelson:

Q. You didn't know? Is it your answer that you didn't know, even though you were a lawyer and studied law, that you didn't know that there was in existence at that time, a policy which made children of Italian descent, or parentage, subject to Italian government?

A. Well, you were asking me about the policy.

Q. I mean the law. Let us go to the law.

A. I do know, as a fact, that the Italian government, as was true with most European governments, assumed that they had the right to call into military service the children of ex patriates of that particular country.

Q. The answer is that you did know?

A. I knew that it had happened, but I don't know how that applies to me, or what it has to do with the case.

Q. But had the Italian government, or Mussolini, which later declared war on the United States, had you been there at that time, you would have been bound to go into the military service, wouldn't you?

A. I was there over a year and I wasn't molested. I was an American citizen. I had served in an American uniform before I went over, and I had served in an American uniform after that time.

Q. I am asking you a question. Let us say, not you, but other people.

The Court: I said that you would have to limit it to this [fol. 923] witness, whether he was affected by any such policy.

Mr. Nelson: All right.

Mr. Nelson:

Q. Is it true, or is it not true that you would have been subjected——

The Court: Not would have been. "Were you in any way affected by it?"

Mr. Nelson: I do not understand, if the Court please.

The Court: I said make it direct to the witness: Was he affected in any way by the policy as it existed?

Mr. Nelson: That is not my question; it is your question, Your Honor.

The Court: I am limiting your question, and when you get into the conjectural, I am sustaining the objection to it.

Mr. Nelson: All right, Your Honor.

Mr. Nelson:

Q. Let us say that if you had been there in 1935 when the Italian government declared war on Ethiopia, wouldn't [fol. 924] you have been bound to be drafted into the Italian Army?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

The Court:

Q. When were you there? You were there in 1924 and '25? Were you in any way affected by any such a policy or law at that time?

A. In no way whatsoever. I traveled freely, attended every institution.

Q. Were you affected on any of your other visits to Europe by any such policy or law?

A. No, never. I have been to Europe four or five times. Never once was I in any way molested or affected about what you are talking about, which seems to me to be quite ungermane and irrelevant.

Mr. Nelson:

Q. The time you went over to the Communist Party headquarters, on the 31st of August, I believe you testified that you were accompanied by Mr. Cvetic?

A. That is right.

Q. It was after your trip to the headquarters of the Communist Party, on the 31st, that you filed a petition in this Court asking that the offices of the Communist Party be padlocked?

A. Yes, and I did it for a purpose.

[fol. 925] Q. I am not asking you that question.

A. If you don't want to know why I did——

Q. I am asking if you did or did not?

The Court: He said that he did. Proceed.

Mr. Nelson: That is all I asked.

Mr. Nelson:

Q. You knew that such action on your part, of closing the offices of a minor political party, was illegal?

A. In the first place, the Communist Party is not a minor political party; it is not a political party at all. I can't answer your question when you include something in it that is not factual at all.

Q. All right. I will reframe the question. You knew that you were acting illegally; that there was no law under which you acted when you asked and secured in this Court, an order to padlock the offices of the Communist Party?

A. The fact that the order was secured in Court shows that I did not know it was illegal, nor was it illegal as I viewed the situation at the time.

Q. It wasn't because you were quite well acquainted in the surroundings around here, that you were able to get what other people could not get, was it?

A. I don't quite get the drift of your question. If you

are endeavoring to infer it was done through some kind [fol. 926] of association with a jurist, I want to condemn that categorically and criticize you for making such an unjust, unfair and improper inference.

Q. You are asked to answer questions here and not make speeches here.

A. Well, you threw a speech in here.

The Court: All right. The answer is——

Mr. Lewis: If you want to make a speech, you should hire a hall; that is what you are doing yourself.

The Court: Your answer is no, is it Judge Musmanno?

Mr. Nelson: Mr. Lewis, I am defending myself against your frame-up, that is what I am doing.

The Court: Gentlemen, gentlemen, address your remarks to the Court as I have instructed you before.

Mr. Nelson: I am sorry, your Honor, but this man addresses remarks to me and he is not stopped when he makes remarks to me.

[fol. 927] The Court: Yes. We have been endeavoring to stop the witness, as well as you and the District Attorney.

The Court:

Q. We understand the answer to be no, that the petition was filed and the order was secured without any influence on your part as a jurist in this Court?

A. That is right.

Mr. Nelson:

Q. Do you know, or don't you know——

The Court:

Q. Incidentally, who did issue the order?

A. Judge Thomas Marshall.

Mr. Nelson:

Q. Do you know, or don't you know that an appeal was taken against your action to a higher court?

A. Yes, I do know.

Q. And you know, do you not, that the higher court, which is the State Supreme Court, again stated, or re-

buffed you and stated in fact—since I can't quote the letter, or the statement of the Supreme Court—that you acted wrong in the matter?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

[fol. 928] The Court:

Q. Was the action of Judge Marshall sustained or reversed?

A. The action of Judge Marshall in that instance, was reversed. I had no opportunity to explain my position at that time.

Mr. Nelson:

Q. That is all. It does not call for a speech.

The Court: The District Attorney may develop any of those angles on re-direct examination, if he deems it necessary.

Mr. Nelson:

Q. Well, as a Judge of this Court, wouldn't you know the same set of facts are precedence in higher courts, pertaining to such matters, that the Supreme Court based its opinion, or against you—I mean, weren't you familiar with those?

A. I was familiar with situations where crimes were being committed, and in order to halt the continuation of that crime I filed that motion to have the premises padlocked. In addition——

Q. That is all. You have answered the question..

A. In addition I wanted to have the premises padlocked in order that the eventual jury would have an opportunity to see just what was there in the headquarters, and it was as much of a protection for the defendant as it was for the Commonwealth.

Q. Didn't you testify here, Mr. Musmanno, that you could have gotten any piece of literature you wanted in [fol. 929] there; bought it and brought it here? You know that no one there felt they were committing a crime? You know you could have gotten all the copies of that literature

you wanted and brought it before the jury, if that was your purpose?

A. You are asking me if I knew what they knew. My impression was that they knew they were overthrowing this government by force and violence, and that is reason I took the action I did.

Q. That is why they sold you pamphlets free, without any question?

A. Not free, they charged me for it.

Q. All right. What were you going to do, take them out free?

A. Well, Dolsen did give me one very beautiful book free of charge, in which Stalin was glorified as has no American president ever been, and he caressed the picture and told me how beautiful it was, whereas there was nothing in there——

Q. I am sure that is one mistake Dolsen made.

A. —that there was nothing in America like that.

Q. Will get up and enact it now as you did at the first trial?

The Court: All right now, gentlemen. All we want are questions and answers. We want no acts and no speeches.

Mr. Nelson:

Q. At the time you took those documents from the Communist Party headquarters, on the 31st of August, what did you do with them?

A. They were carried by Mr. Marshall, City detective, [fol. 930] to my chambers and then the package, not being loosened, was brought back here to the District Attorney's office.

Q. Is it not customary for police officials, when they pick up evidence, to take it over to the judge, or the judge who is acting as private prosecutor, or isn't it the practice that it should be taken over to the District Attorney's office, or the Sheriff's office?

A. Well, Mr. Marshall wasn't entirely familiar with what was going to take place there, and as soon as I informed him to take it to the District Attorney's office it was then taken to the District Attorney's office.

Q. In this case you not only acted as private prosecutor,

did you not, but you also acted as police official and keeper of these records?

A. I did not act as a police official, nor as keeper of the records, as you call it.

Q. Well, how many times in your experience as a judge, when people had to be apprehended for anything, did you do the same thing as you did in this case?

Mr. Lewis: That is objected to as repetitious.

The Court: The objection is sustained.

Mr. Nelson:

Q. I think you testified, Mr. Musmanno,—I am not sure whether this time or before—if you did testify before you [fol. 931] need not answer this question—that you saw me for the first time, that is in Court room No. 2, I think it was—let us say in this Court house—on August 31st when we had the preliminary hearing before Judge Marshall Thompson.

A. I don't recollect having testified to that effect. As a matter of fact I had seen you before. I said the first time I had any conversation with you——

Q. Well, all right. At the time we had the preliminary hearing, it was held before Judge Marshall Thompson?

A. That is right.

Q. That was just a few days before your election campaign was scheduled on September 5th?

A. My campaign began many months before. It had nothing to do whatsoever with the prosecution of this case. It had nothing whatsoever to do with it. Just as far removed from it as Asia and the moon.

The Court: What day was that, September 3rd or August 31st?

A. The hearing was September 1st, the day after.

Mr. Nelson:

Q. At the time of the hearing was held, Judge Marshall Thompson's room—the room was packed with people, wasn't it?

A. There were people in the Court room; I don't know

whether it was packed, there were people there just as there are today.

[fol. 932] Q. If I show you a newspaper clipping which would show——

Mr. Nelson: I don't know how to introduce this, your Honor.

Mr. Nelson:

Q. If I show you a newspaper clipping, to show where references were made to the crowded court room; that it was packed and there was "whooping" in the Court room, there was "whooping" in the Court room by the spectators would you deny that?

A. I think you did a great deal of whooping yourself throughout the entire proceeding.

Q. You don't want to stick a dagger into me and expect me to lay down and let you?

A. Did I have a dagger?

Q. Yes, you had a dagger. Your election campaign was the dagger.

The Court: All right gentlemen, don't tax my patience, please.

Mr. Nelson: I am sorry, your Honor, but the man here takes advantage and makes side remarks that he has no right to make.

Mr. Lewis: It is a question who made the "whooping" and Judge Musmanno said that Nelson did.

A. Now, you spoke of a dagger, and you know there [fol. 933] was no dagger. The people do the electing, not daggers, as the country that you seem to care for.

Mr. Nelson: I move to strike this last remark.

The Court: The motion is granted.

Mr. Nelson:

Q. It is a fact, is it not Mr. Musmanno, that the bail question in my case was being decided by Judge Marshall Thompson?

A. Well, he in the first instance handled that, but, of course, other judges came into the discussion later on.

Q. And he, after the hearing on September 1st, took it under advisement over night, and the next day made his ruling, stating that my bail would be \$10,000.00; right?

A. I think that was the chronology of events.

Q. Now, from the time Judge Marshall Thompson made his decision that my bail shall be \$10,000.00, or did you know this—that from the time he made the ruling on that, and the time my friends went over to the County clerk—

The Court: Clerk of Courts or the bond clerk in the District Attorney's office.

Mr. Nelson: Thank you, your Honor.

Q. —you sent a messenger over to the man and told him [fol. 934] not to accept bail at \$10,000.00 because you were seeking a higher bond for me; right?

A. No, it was not. What I did was to file a petition calling attention to the Judge—

Q. You did that later, Mr. Musmanno.

A. No, no, that very day, and the records will sustain me, and in that record I pointed out that you were too dangerous a character to be released on \$10,000.00 bond, and when that petition was filed a copy was immediately served on the Clerk of Courts and that withheld—

Q. Mr. Musmanno, is it true, or is it not true that before you had to file those papers legally, which you had a right to do, if you wanted to, you used your influence in this Court room to tell the woman in charge over there—the clerk—not to accept my bail, to hold it up for awhile, until you got your petition filed to increase my bail?

A. That is untrue. I prepared the petition, a copy was served on the clerks involved, and what followed, followed.

Q. That happened the next day, Mr. Musmanno?

A. As a matter of fact, you were to go—

Q. But I was to go to jail just because you saw to it that my legal right, which was to place \$10,000.00 on the basis of Judge Marshall Thompson's ruling, I could have been released but you insisted that you are going to do something else and they in this regard—when I say they, I mean the [fol. 935] clerks and the staff—listened to you and not to Judge Marshall Thompson?

A. Mr. Nelson, I would have to amend your memory in this respect: you were to be in Court here at 3:30 in the

afternoon, so that if bail was refused you, it was only a matter of an hour or two. So, it wasn't the next day, it was that very same day.

Q. That is right. You prevented me from going out that day, and the next day you were able to file your petition?

A. No, it was filed the same day.

Q. All right, that is your story.

A. It is a fact.

Q. You remember, don't you, when you testified here before Judge Marshall Thompson, you were sitting over there where Mr. Lewis sits—that is after you got through testifying—Mr. Sanes sat behind him, and I and my attorneys were sitting on this side; right?

A. Well, I don't recall which chair I was sitting in. I was not sitting at the counsel table.

Q. And you recall, that is on the 2nd of September, when we came here to hear the decision of the judge, Judge Thompson, that you got up there and made a speech that I was a dangerous character, and that the bail had to be raised to \$100,000.00, and you stated that while I was sitting over here, the day before, I attempted to assault you in this Court room; didn't you say that?

A. It is a fact you did attempt to assault me.

Q. You mean I came over here, jumped across the table? [fol. 936] A. No, I was standing right there, approximately behind you, considering where you are now standing, addressing the Court, and you leaped up from the chair from where the lady is now sitting, and attempted to strike me in the back, and the only reason you weren't able to complete your assault upon me, is because a County detective, and Jos Becker immediately came to my assistance and restrained you, and that is the only thing that saved me from being struck in the back by you, Steve Nelson.

Q. When you got through making that statement, is it true, or is it not true that I asked Judge Marshall Thompson, who sat there and could see everything, "Judge I will leave it to you to say did you see me attempting to assault that man?" And he said, "Gentlemen, gentlemen, let us get along."

A. He didn't want to tell you that——

Q. He didn't want to call you a liar in this Court room, that is the trouble. Now, he did call you that.

The Court: Now gentlemen, wait a minute.

A. Judge Marshall Thompson did not call me a liar.

Mr. Nelson:

Q. He didn't want to call you a liar, of course not.

The Court: You don't know whether he wanted to or not.

A. You attempted to strike me in the back while I was [fol. 937] addressing the Court. That is the respect you had for the Court.

Mr. Nelson:

Q. That is as much truth as you told here all morning, which is nothing.

Mr. Lewis: I ask that that remark be stricken.

The Court: Your motion will be granted and we admonish the defendant to limit his remarks to the Court, and ask questions of the witness.

Mr. Nelson: Your Honor, I want to refresh something that occurred in connection with this——

The Court: Well, you may. You may ask all the questions you see fit that are material, but don't make speeches; don't make statements concerning them. When it comes your turn to testify you may then testify about them, but, when asking questions you are not privileged to testify yourself. This is your opportunity to cross-examine the witness on what he has testified to.

Mr. Nelson: All right, your Honor.

[fol. 938] Mr. Nelson:

Q. When you got through that day making that statement, and Judge Thompson refused to come to your aid, I said in that Court room, did I not, that you were a plain liar, didn't I?

A. No, you did not say that. You said I was a damned liar.

Q. All right. I will take your correction.

A. And Judge Thompson couldn't come to my aid because he is 80 years of age, but Joe Becker, who is younger, and a County detective and the sheriff's assistants, on duty here, restrained you and threw you down, and that is all contained in the petition filed the next day and to which you did not make any objection.

Q. When people call you a liar, what do you do about it?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

A. I wouldn't contaminate myself by touching you.

Mr. Nelson:

Q. Of course not. You knew you told a lie then and you wanted to get away with it, and you got the headlines in the newspapers.

Mr. Lewis: That is objected to.

The Court: Objection sustained, and we will not pursue that any further, Mr. Nelson.

Mr. Nelson: All right.

[fol. 939] The Court: If you want to talk about the increase of the bond to \$100,000.00, you may do so.

Mr. Nelson: All right.

Mr. Nelson:

Q. Then after that you saw to it that the Courts here placed a bail on me of \$100,000.00, didn't you?

A. I didn't see to it. I advocated it and the Court——

Q. All right.

A. I would like to have an opportunity to finish.

The Court: All right, Mr. Nelson. Give the witness an opportunity to finish his answer.

A. And the Court, in the administration of justice, after hearing long argument in your behalf, by counsel defending you, and by many speeches made by you, then finally decided \$100,000.00 was the amount which should be set. Incidentally, your counsel filed long briefs attempting to hold that bail down to the original sum of \$10,000.00

Q. All right.

A. It was not because of what I did, but what the Court did.

Mr. Nelson:

Q. Just the point in my question, Mr. Musmanno. The legal and legitimate bail in the case, you knew, should [fol. 940] have been around \$10,000.00, because that was on the papers served on me—on the warrant served on me—which stated my bail to be \$10,000.00.

A. It very often happens that the original bail is a low one until the preliminary hearing takes place, and then when the evidence reveals that the menace to society of the defendant involved, is of such a character that the original bail is not adequate, then the Court raises the bail which it did in this instance.

Q. I see. And then you know, don't you Mr. Musmanno, that after you succeeded in getting the bail raised in this Court, two other judges sat on the matter, Judge Thomas Marshall and Judge Ellenbogen, and they finally set bail at \$50,000.00?

A. That is correct.

Q. They thought that was reasonable; right?

A. They evidently did or they would not have set it in that amount.

Q. They didn't quite agree with you to set it at \$100,000.00, but set it at \$50,000.00?

A. Yes, some judges disagree with my——

Q. Yes. Then you know, don't you, that I had to appeal to against your arbitrary and unreasonable demands, to place me under such high bail——

A. Now, you throw into your question "arbitrary and unreasonable demands" without giving me an opportunity to answer those adjectives.

Q. Wait a minute.

A. And then you go on to an interrogation without an [fol. 941] opportunity to explain that you are absolutely wrong in using adjectives of that character.

Q. All right. I will reframe the question. I appealed against your decision to a higher court?

A. But, it was not my decision, Mr. Nelson. It was the decision of Judges Marshall and Ellenbogen.

Q. But you requested it; right?

A. Yes, I requested it.

Q. You know that I appealed this thing, this action of yours, to a higher court?

A. That is right.

Q. And you know, don't you, that the higher court stated that your demand for such bail was unreasonable, and should be reduced to \$10,000.00?

A. No, I don't think they referred to my demand as being unreasonable at all.

The Court:

Q. Was the bail reduced by the appellate court?

A. Yes.

Mr. Nelson: You see the judge understands the question without any difficulty.

The Court: No, I just understand one phase of it. I am trying to simplify it as much as I can.

[fol. 942] The Court:

Q. Was the bail reduced?

A. Yes, it was reduced to \$10,000.00.

Mr. Nelson:

Q. All right.

A. That does not make my demand unreasonable.

Q. This again was in the midst of your election campaign, wasn't it, Mr. Musmanno?

A. Well—

Q. It was within two or three days.

A. Yes, it happened to be about that time, but there was no association between the two whatsoever.

Q. All right.

A. As a matter of fact, this case delayed me considerably in my election campaign, because I couldn't get out through-out the case.

Q. All right.

A. It hindered me considerably.

Q. All right. Now, I show you here an editorial from the Pittsburgh Press, September of that year, 1950, in which—

Mr. Lewis: That is objected to.

The Court: Show Mr. Lewis the editorial.

Mr. Nelson:

Q. Did you read this, Mr. Musmanno?

A. Yes, but if you are going to read the editorial I must [fol. 943] have an opportunity to comment on it myself.

The Court: It is not offered in evidence.

Mr. Nelson:

Q. It is true, is it not Mr. Musmanno, in this editorial, the first paragraph of it is very brief——

A. Well let me read it, the other paragraphs too, Mr. Nelson.

Mr. Lewis: I object to him reading any editorial whatsoever, as incompetent, immaterial and irrelevant and has nothing to do with this case.

The Court: You may not read any of the editorial. If you want to ask him a question about it, you may.

Mr. Nelson:

Q. It is true, is it not Mr. Musmanno, that the Pittsburgh Press commented "that Judge Michael A. Musmanno——"

A. Are you going to read it now? You have your eyes glued on it?

Q. "That Judge Michael A. Musmanno's sudden interest in this case coincided with the opening of his campaign for Lieutenant Governor——"

A. Yes, and it also commented on me throwing you into the hoosegow; it said it was a very fine thing to throw Communists like you into the hoosegow.

[fol. 944] Q. Yes, I can understand the press agreeing with you on that.

A. Well, you are reading it.

Q. Even the press, I want to show you Mr. Musmanno, stated that you used this case to advance yourself politically.

A. No, it didn't.

Q. All right.

A. Just a minute now.

Q. All right.

A. The editorial said, "It coincided", and I said before it was a coincidence because I started fighting Communism 25 years ago.

Q. That is right.

A. And not during any election campaign.

Q. We heard that about 50 times now, but you have nothing to show, Mr. Musmanno, that you ever introduced a bill, ever prosecuted Communism until it became convenient for you to use the "Red scare" now, the war hysteria, and get yourself elected to a higher office.

A. In 1929 I presented a bill in the Legislature to outlaw the Communist Party, and send all the Communists back to Russia if they were convicted and remained in prison until their term expired. In 1928 I fought the Communists when they came in here to Western Pennsylvania and attempted to subvert the purpose of the United Mine Workers and formed a Communist miners union and preyed upon the misery of the miners who were on strike. In 1928, I did that, and then when I was in Europe——

[fol. 945] Mr. Nelson:

Q. All right, Mr. Musmanno.

A. When I was in Europe I did that——

Q. All right.

The Court: All right, gentlemen, one at a time.

Mr. Nelson: I asked him this morning, and I asked him before if he, has he got a bill to show.

A. Do you want to see the bill?

Q. Yes.

A. Let me have that briefcase there. I will show you a Resolution I introduced.

Q. Now Mr. Musmanno, you know the difference between a resolution and a bill in the Legislature. I said a bill in the Legislature. Now, you know the difference between a resolution and a legal bill that is to be acted upon by the Legislature.

Mr. Lewis: Mr. Nelson is going on technicalities, if the Court please. Whether it is passed or not makes no difference.

The Court: The witness is busily engaged looking for data here, and the question, or statements made by the [fol. 946] defendant here, at this time, are improper so they will be stricken from the record.

Mr. Nelson: I say, your Honor, I will let him introduce it if they are a bill.

The Court: You don't know what they are yet. You have asked him whether he had anything.

A. In 1929 I introduced at a convention of the American Legion in Scranton——

Mr. Nelson: That is objected to, if your Honor please. I want to see that first.

The Court: What is your question? Do you want to know whether he introduced any bills into the Legislature?

Mr. Nelson: That is right, your Honor.

A. I am only using this as an introduction to what I did in the Legislature.

Mr. Nelson: Well, your Honor, that is not the question. If Mr. Lewis wants to do that when he has him as his witness, he may do so.

A. All right now, I will read the bill which I introduced in the Legislature March 12, 1929.

[fol. 947] Mr. Nelson:

Q. Let me have the bill before you read it.

A. "An Act declaring the Communist Party illegal and penalizing all members thereof, depriving them of citizenship and provided for deportation in certain——"

Mr. Nelson: Just a moment. Before you read it I want to see it.

The Court: Just a minute. If you want to offer this in evidence, have it marked, submit it to the defense, let him see it; that is an exhibit, have it marked as an exhibit, submit to the defendant, and if there is no objection then it may be read.

Mr. Nelson:

Q. Is there any record of that in any of the Pennsylvania Legislature?

A. You, who have been going through my record, can find that out. I have here my record.

Q. Well, I am asking you a question. I think you ought to answer that.

The Court: He may not know.

Mr. Nelson: Well, I am asking him: "Would it be in the record of the Legislature after it is introduced, whether [fol. 948] it is approved or disapproved; would it be on record anywhere in the records of Legislature.

A. Let me have my records. I have here copies of other bills, which I introduced in the Legislature against the Communist Party. I have here communications with the Department of Justice about the Communist Party, down through the years from 1925 and 1926. Do you want to look at them?

Q. No. Don't wave your hands and act Mr. Musmanno, and get red under the collar. Answer my question.

A. You are red all the way through, Mr. Communist.

Q. I think you ought to know better how to behave on that stand, Mr. Musmanno.

A. You are the one that is making the accusations.

The Court: All right, recess the Court.

(Recess.)

After Recess

MR. MUSMANNORESUMES the stand and testifies as follows:

Mr. Nelson:

Q. You state, Mr. Musmanno, that this copy of your Bill was introduced by you in the Legislature in 1929. Do you remember what session that was, whether it was a special [fol. 949] session.

A. No, 1929 session.

Q. Did the Bill come up for vote?

A. No, it got nowhere.

Q. It was not voted on?

A. No.

Q. Okay, that is what I wanted to know.

A. No, it was not debated, or anything.

The Court:

Q. What happened? Was it referred to a committee?

A. It was referred to the judiciary general committee. It lay in committee and the chairman would not take it out of committee and it died.

The Court: Is that marked Exhibit No. 161?

Mr. Nelson: Yes, Your Honor.

Mr. Nelson:

Q. This Bill you introduced, died for the want of a second, you may say, or as said in union meetings?

A. That is right.

Q. And you re-introduced that Bill 22 years later when you ran for Legislature?

A. No, in the 1931 session I brought it up and got the same kind of a reception.

[fol. 950] Q. In that period, known as the 1932, or known as the "Roosevelt period," you never thought of introducing it again?

A. I was not in the Legislature after that.

Q. You didn't ask your friends?

A. I certainly did. I asked friends in the Legislature. I asked friends right down through the years.

Q. You said yes, that is all. But when it was introduced again it was again defeated, right; or was it ever voted on?

A. Well, it finally passed this year.

Q. I am talking about before this time.

A. It was never voted on.

Q. Mr. Musmanno, one more question. So far as the average citizen is concerned, he would read the Legislative Journal, and he would not have any way of finding out that you introduced this kind of a Bill unless you personally showed it to the person, right? There was no record of it in the Legislature, in the library of the Assembly?

A. I don't know whether there is or not. I know it was presented and died in committee as you said, using your phrase, for the want of a second.

Q. And then you had to wait for this "Red scare" and "war hysteria" when you ran for Lieutenant Governor, to get it finally pushed through the Legislature; right?

A. No.

Q. It didn't pass before?

[fol. 951] A. Mr. Nelson, you are constantly endeavoring to suggest that I became interested in fighting Communism recently. It has been a long campaign for me. And for you to make that kind of a statement, I want an opportunity to tell you what I did since 1926. If you are going to insist upon that line of examination, then I want to have an opportunity of showing just what I did down through those years. I have records here.

Mr. Nelson: Just a minute. I want to appeal to the Court. I asked a question, and the question was whether or not he introduced a Bill in the Legislature. He answered that he didn't.

The Court: What you want to do is object to any further answer?

Mr. Nelson: Yes, Your Honor. I don't want any stump speeches in any election here.

A. In the last 25 years, not only in 1950—

Mr. Nelson:

Q. What I am saying now is, did you introduce the Bill and you said no.

A. Yes, in 1929 and 1931.

Q. And it was voted on?

A. It did not come to a vote, Mr. Nelson.

[fol. 952] Q. It did not come up to a vote, and that answers that question?

A. And then you said I did nothing more until I became a candidate for Lieutenant Governor and that is absolutely incorrect.

Q. I believe my phrase was that you did not ask any of the legislators to re-introduce that Bill, while you were not in the Legislature?

A. I did answer that, that I did.

Q. During 1950, we had the State elections in the State, at the time when you ran for Lieutenant Governor; right?

A. That is right.

Q. And at that time you were a Judge of this Court?

A. That is correct.

Q. You didn't resign your post as a Judge, did you, while you ran for another office other than a judicial office?

A. No, but I gave up my salary.

Q. I am not asking you about your salary. You made plenty of dough while you were judge.

The Court: Wait a minute.

A. I didn't make plenty of dough. I am a poor man right now.

The Court: The remarks of the defendant and the witness will be stricken from the record.

Mr. Nelson:

Q. The question is that you did not resign and your answer was no; right?

[fol. 953] A. But I did refrain from acting as a judge.

The Court: The original question is objectionable. Strike the question and the answer out. Whether he did or did not resign has nothing to do with this issue.

Mr. Nelson: I believe it does, Your Honor.

The Court: The ruling is that it does not. The objection has been sustained and we will grant you an exception.

Mr. Nelson: I will take an exception, but I believe this line of questioning was permitted in the first trial.

The Court: We will not permit it in this trial.

Mr. Nelson: That is taking advantage of me because I have no attorneys here.

Mr. Cercone: You have taken time to confer with a lot of lawyers.

Mr. Nelson: I have a right to confer with anybody I want. Will the Court rule on the motion to strike Mr. Cercone's remark.

The Court: Yes, Mr. Cercone's remarks will be stricken from the record.

Mr. Nelson:

Q. Then Mr. Musmanno, is it a fact or is it not a fact that at the time you ran for Lieutenant Governor there were bodies known—one body known as the American Bar Association, which condemned your lack of judicial ethics?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

Mr. Nelson: Well, Your Honor, I have quotations here to show.

The Court: I don't care whether you have or not. This line of questioning is not proper cross-examination. The objection is sustained and an exception noted.

Mr. Nelson: It was done during part of this case.

The Court: I don't care. I have sustained the objection and we will hear no further questions concerning the matter.

[fol. 955] Mr. Nelson: You mean I can't ask him any further questions? I want to show his lack of judicial ethics, Your Honor.

The Court: I have ruled that it is not a matter of ethics in this case.

Mr. Nelson: I take exception to your ruling.

The Court: You have an exception to all my rulings without asking for them.

Mr. Nelson:

Q. Do you know an individual by the name of Hymen Schlesinger?

A. I know who he is.

Q. He is a lawyer; right? A lawyer in this City?

A. Yes.

Q. And he is the lawyer who represented me on these previous occasions that we were discussing this morning, on several of those occasions?

A. You had several attorneys. Mr. Schlesinger and Mr. Davis from Cleveland represented you, and occasionally you represented yourself; you got up and made speeches and cross-examined me. I really don't know who represented you.

Q. The question is you know Mr. Schlesinger, and he was attorney of record of that trial, you know that?

A. That is right.

Q. He represented Miss Alice Roth in her case?

[fol. 956] A. Never before me.

Q. That is in these hearings before the Supreme Court?

A. I know that as a matter of general knowledge.

Q. He represented several people you know, who were fired from their jobs because they were fingered by your friend Matthew Cvetic, is that right?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

Mr. Nelson:

Q. Well, you know, don't you that he represented me on the bail question?

Mr. Lewis: That is objected to.

The Court: Objection overruled.

A. I think he did.

Mr. Nelson:

Q. You know the Supreme Court upheld the appeal on my behalf through Mr. Schlesinger, don't you?

A. On what?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

Mr. Nelson: I have a number of questions to bring up. [fol. 957] I don't know how to do it as a lawyer.

The Court: We will sustain the objection if you are doing it wrong.

Mr. Nelson:

Q. The Supreme Court condemned you?

A. They did not condemn me.

Q. It criticized the lower court which acted on your request?

A. It didn't criticize the lower court, it reversed the decision.

Mr. Nelson: I don't know how to put these things, Your Honor. When I say "higher court reverses," I mean slapped him down. That is the way I use the phrase.

Mr. Nelson:

Q. Likewise, you know don't you, that he represented me on the Communist Party padlock case?

A. Yes, I think he did.

Q. And also on the search and seizure?

A. On the search and seizure you had two or three lawyers, and then you jumped into the melee yourself, so I don't know who was your attorney.

Q. In both instances the Supreme Court, in the padlock and search and seizure cases, again reversed your request and upheld my Constitutional rights?

[fol. 958] A. They did not reverse the search and seizure. I don't know why you say that.

The Court: We have been through the padlock proceedings. What was done with the search and seizure case?

Mr. Lewis: Nothing.

The Court: Was there any appeal taken to the Supreme Court?

Mr. Nelson: Yes, the Court did not rule on the question.

Mr. Nelson:

Q. Then Mr. Musmanno, you know don't you, or you knew that I was hurt in an automobile accident in the course of this trial, in which I suffered a severe injury?

Mr. Lewis: That is objected to. What has that to do with this case?

The Court: Just a matter of explanation why this matter is being tried.

A. That came to my attention and it was in the newspapers.

Mr. Nelson:

Q. It was Mr. Lewis upon your insistence, was it not, who [fol. 959] demanded that I be brought back to trial in a wheel chair, or on a stretcher, was it not?

A. I never made such a request.

Q. But you Mr. Musmanno, didn't you appeal to the Supreme Court of this State, asking that I be brought back from Philadelphia, from the hospital?

A. No, I petitioned the Supreme Court to have either your bail increased to \$100,000.00, or to grant you no bail at all because the Communists in New York had escaped, having a bond such as you had.

Mr. Nelson: Now, your Honor, I move for a mistrial on the basis of these remarks. This man brought in matters prejudicial to my case, which he had no business to bring in.

The Court: Read the question and answer.

(Question and answer read.)

The Court: Motion refused.

The Court:

Q. Answer yes or no.

A. No.

Mr. Nelson:

Q. You did not appeal to the Supreme Court?

[fol. 960] A. You keep making assertions and statements that are not true.

Q. The Judge told you to shut up and I don't see why you should not answer the question.

A. I didn't hear his Honor so state.

The Court: I told you both to regard my rulings. I said it could be answered yes or no. Please proceed and ask the next question.

Mr. Nelson:

Q. Let me reframe the question. You did, did you not Mr. Musmanno, make an application to the State Supreme Court asking that the Court order me brought back to Pittsburgh? That is the question. The answer should be yes or no.

A. Well——

Mr. Lewis: If you can answer yes or no.

A. I can't answer it yes or no.

Mr. Nelson:

Q. I would like to know whether anybody else could answer that question. It seems to me that the average witness should be able to answer it.

A. You keep implying certain things on which a negative or an affirmative answer would not be sufficient.

The Court: He said he could not answer yes or no.

[fol. 961] Mr. Nelson: That is what I am asking.

The Court: He said he couldn't answer it yes or no.

Mr. Nelson:

Q. That is as to the fact whether or not you presented a petition to the Supreme Court, which is in substance asking that I be brought back to trial?

A. That is your interpretation. You are putting an interpretation on something that is proper. Let us get the petition I presented to the Supreme Court and read it.

Q. Did you ask the Supreme Court that I be ordered back to Pittsburgh, yes or no?

A. I can only answer that with an explanation.

Mr. Lewis: I would say that the petition should be brought in.

The Court: I will permit you to answer the question with your explanation of what you did ask, but not your reasons for the petition.

Mr. Nelson: That is my question. My question is simple. It could have been answered and we could have gotten along. [fol. 962] The Court: He said he could not answer yes or no without some explanation. I will permit him to explain his answer, but without giving his reasons he may have had for his petition, and that was the specific part as I understood you before.

Mr. Nelson: We will do this another way. This man refuses to answer and the Court protects him and I can't help it. I can only go along and ask these questions.

Mr. Nelson:

Q. The Supreme Court of Pennsylvania did refuse a petition, requested by you that I be brought back to Pittsburgh for trial?

A. Your questions cannot be answered without an explanation. I cannot answer that question yes or no.

Q. If you want the petition any time, that is up to you. That is not my question. I believe you would have no right to go into it. If you don't want to answer the question, all right. Did you, or did you not make an appeal to the Supreme Court, which was turned down, that I be brought back? You can answer that yes or no. Was there any such petition? Did the Supreme Court turn that down?

A. I will answer that with an explanation.

The Court: Answer the question.

[fol. 963] A. I did not petition in the manner in which you say. I petitioned the Supreme Court to increase your bail to \$100,000.00, or such sum as the Court, upon investigation and inquiry would ascertain to be just.

Q. And that was in 1951 when you ran for the Supreme Court of this State; right?

A. Yes, it was.

Q. When you were campaigning, right in the middle of your campaign?

A. I can't help it if you do these things while I am a candidate. If you kill somebody while I am a candidate I cannot wait——

The Court: Wait a minute.

The Witness: I am sorry for having made that last remark.

The Court: Let us try to limit ourselves to facts here.

Mr. Nelson: I believe you should tell this witness not to make these prejudicial remarks. I move for a mistrial.

The Court: Your motion is refused. We are endeavoring to give you a fair trial here and will continue to do so. We will ask both parties, the witness and the defendant, to limit [fol. 964] themselves to questions that are proper and material.

Mr. Nelson:

Q. After the Supreme Court denied your request, Mr. Witness, is it true, or is it not true that you went to the Un-American Activities Committee of the Congress and you made a similar request, Congress of the United States?

A. In the first place the question is rather ambiguous. The Un-American Activities Committee had no jurisdiction.

Q. You didn't discuss that with Congressman *Walker*?

A. Discuss what?

Q. This matter of my being brought to Pittsburgh?

A. I had a conversation with Congressman *Walter*.

Q. You mean this man that is now head of the House Un-American Activities Committee?

A. Yes. I talked with him and with the chairman, Mr. *Wood*, who knew you very well.

Q. I know that Ku-Klux Klanner knows me very well. I know him and he knows me.

A. I would like to defend Mr. *Wood* against that unfair remark.

The Court: We will defend no one here but Mr. *Nelson*. Proceed.

Mr. *Nelson*:

Q. Mr. *Musmanno*, it is evident that a judge and a lawyer should have known that he had no legal right to [fol. 965] drag a sick person from a hospital into a trial, just in order to satisfy his ego and to be able to blow it up into an election campaign.

Mr. *Lewis*: That is objected to.

The Court: Objection sustained.

A. These remarks are unfair and atrocious. I don't see why I should have to sit and suffer any such remarks. That certainly is not a question. It was certainly venting your spleen to its utmost. It was not a question at all.

Mr. *Nelson*: I move that these things be stricken.

The Court: We will not strike the remarks at all. The witness has a right to explain his feelings. We consider the answer as he has expressed it and have sustained the objection.

Mr. *Nelson*:

Q. When in the course of your campaign during 1951—I don't know the dates—I was not here, but I believe you will

admit that Mr. Schlesinger had a client that he wanted to represent in your Court, and you held him for contempt of Court?

Mr. Lewis: That is objected to as incompetent, immate-
[fol. 966] rial and irrelevant, and raising collateral issues.

The Court: Objection sustained.

Mr. Nelson:

Q. It is true, is it not Mr. Musmanno, that the arbitrary action on your part against Mr. Schlesinger was condemned by three judges of this Court, in open court?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

Mr. Nelson: Let me finish my question.

The Court: Objection sustained.

Mr. Nelson: This witness acted in an arbitrary manner and took the law in his own hands.

The Court: It has no bearing on the matter in issue here.

Mr. Nelson: It has a bearing on the attorney I had in the case, as the man who was attorney of record in my case.

The Court: Mr. Musmanno is a witness here, and Mr. Schlesinger would not be subjected to my jurisdiction.

[fol. 967] Mr. Nelson: But it was Mr. Musmanno, who threatened him, threatened to take away his rights as an attorney.

The Court: It has nothing to do with the conduct here. You may testify to that on your own behalf when you take the stand, but don't submit testimony here in the form of a statement, which you are not giving under oath.

Mr. Nelson: If you didn't rule as you did I could bring out things.

The Court: I have ruled that they are not relevant here.

Mr. Nelson:

Q. I will proceed to the next question. During 1951, during the months of June and July you were campaigning for the Supreme Court; right?

A. That is correct.

Q. During that time you made trips to various cities outside of Pittsburgh, including Philadelphia?

A. That is right.

Q. I am not asking you to be precise about this, but you were in Philadelphia during the month of July, were you not, 1951?

A. I was.

[fol. 968] Q. You were there for the purpose of your election campaign?

A. Yes, that was the primary purpose. I could have done some other things while I was there.

Q. I didn't ask you that.

A. I am telling you that. That question implied that I was.

Q. At the time you came to Philadelphia during July, could you fix the date by chance?

A. I was in Philadelphia a number of times in July.

Q. Maybe that will help you. When you were in Philadelphia, you inquired and apparently found out where I was staying, and you and two men walked into the apartment of my friend, where I was laying with a cast on my leg, a steel cast; is that right or not?

A. Well now, since you opened it up I must tell you, and I want to tell you what happened.

Q. I will reframe the question. Did you come into my house, or my friend's house where I was staying, at the time when you came to Philadelphia for your election campaign? Did you come into my house, yes or no?

A. Yes, I did.

Q. Did I invite you to come in?

A. You invited the officers with whom I came, to come in after we rang the doorbell.

Q. Before you came to Philadelphia did I write to you to come to my house?

A. We have never had that kind of correspondence, Mr. Nelson.

[fol. 969] Q. You did come into my house?

A. I went there with two City detectives. I had reason to believe you were lying about your physical condition and I wanted to find out with my own eyes.

Mr. Nelson: I tried to say that this man takes the law into his own hands and now he proves it.

The Court: Just a minute, Mr. Nelson.

Mr. Nelson: I am sorry.

A. I went to the Superintendent of Police.

Mr. Nelson: It makes my blood boil when a man invades another man's privileges irrespective of the law.

The Court: Don't explain to me. Explain to the jury.

A. I went to the Superintendent of Police in Philadelphia and told him that Steve Nelson, of whom he knew a great deal already—there was a great deal of discussion in the newspapers about whether you were physically able to return to Pittsburgh or not. I asked the Superintendent of Police to ascertain himself. He said he would be glad to do so and called in two City detectives. The [fol. 970] two City detectives asked me to go along with them and I did. We got to the house, they rang the doorbell, and you said, "Come in." I specifically instructed the City detectives under no circumstances should they discuss this episode with anyone, and the Superintendent gave orders that no newspapers were to be notified under any circumstances. You came to the door, you opened the door. You were able to walk and move. I saw you and we talked a few words, and nothing was said about this. It was your own doings. You telephoned the newspapers and told them about it.

Q. Didn't the District Attorney, Mr. Lewis, have access to the full facts from the hospital regarding my physical condition, and weren't they reported to Judge O'Brien at the other trial at the time of the accident?

A. At the time of the accident? This was a long time after the accident, months after the accident.

Q. That was exactly six weeks after my second operation.

A. I don't know. You had been seen going in and out of that apartment house and that fact did not conform to the story that you were unable to move.

Q. When you came to my house you found me in bed.

A. You came to the door and opened the door and then went back to bed.

Q. The door was open. My wife went out to the store. I was expecting her and also the doctor to come in, and naturally I could not even see the door—the door was [fol. 971] around the corner of the room—and who comes

in but Michael A. Musmanno, candidate for the Supreme Court.

Mr. Lewis: That is objected to and I ask that it be stricken.

The Court: Don't make statements, Mr. Nelson. Ask your question.

Mr. Nelson: This man was permitted to make a five minute speech.

The Court: He is under oath and you are not. When you are on the stand you will be permitted to make any statement you wish.

Mr. Nelson: He disregarded my rights and the rights of a citizen. He barged in my home, uninvited, in order to see whether he could not get something out of me for his campaign.

The Court: That is the inference you want the jury to try to draw.

A. I made it very clear that no reference was to be made to this visit of mine. I said nothing, the police said nothing. You were the one who got on the long distance telephone and called the Pittsburgh Post Gazette and told them all about it.

[fol. 972] Mr. Nelson:

Q. I was indignant because a man was undertaking upon himself to take out my body to help him get into the Supreme Court.

A. You were so indignant that you told lies.

Q. That is hard to compete with you.

The Court: Mr. Lewis, do you want to object?

Mr. Lewis: I object to that remark and ask that it be stricken.

The Court: The last remarks by the witness and by the defendant will be stricken from the record.

Mr. Nelson:

Q. It is a fact, is it not Mr. Musmanno, that Judge O'Brien after hearing a report of my accident, ruled against Mr. Lewis that the case be severed?

A. That was months before, Mr. Nelson. I went there after you had been there a long time, and after you had been seen going in and out of that apartment and conferring with other Communists, which I thought was a further menace to my Country, and I went in there and I never said anything about this until this day.

Q. You had no legal right to come into my house, did you?

A. I certainly did. The Superintendent of Police, he came in and you greeted him rather affably, I thought. You [fol. 973] exchanged some words with him.

Q. He said that he don't know what this is all about. He was as embarrassed as anyone could be.

A. I don't see why he should be embarrassed.

Q. He saw me lying on the bed. You wanted to run out and I told you to look at the leg.

A. I asked you how you were feeling, "Steve," and when you were coming to Pittsburgh, and then you uttered profanity, and you certainly did not treat us as guests.

Q. I don't consider you, a fascist, a guest.

A. If you are going to call me a fascist, I will have to indicate that you are a traitor to your Country.

Mr. Nelson: I ask that a juror be withdrawn and this case continued.

The Court: I can't do that, Mr. Nelson. You are just as objectionable in your remarks, and in the manner in which you are conducting yourself as is the witness. I can't help you out on it. Your motion is refused.

Mr. Nelson:

Q. You say Mr. Witness, this was away after the time the accident occurred? Well, how long does it take for a compound fracture to heal?

A. I am not a doctor.

[fol. 974] Q. You knew that was it.

A. All I know is——

Q. If you don't know all you have to say is you don't know.

A. I don't know.

Q. But you did know that I had a compound fracture, where the bones came out, both of them; there were many

cracks in my kneecap, and my kneecap was taken out, and when you came into my home I had four steel pins, two inches thick in my leg, and I was laying on my bed.

A. You came to the door of your own locomotion, and opened the door. You were disabled, I knew that, but you were not disabled sufficiently not to move, and as a matter of fact you moved around very well.

Q. I moved in bed.

A. Yes, you tried to hit me with a crutch.

Q. It is a good thing you were not close enough.

A. That shows your whole attitude of life.

Q. When a rat invades my home I have a right to strike him.

A. When a skunk talks to me that way I should not have to stand for it.

Q. You are a fine example of a Supreme Court judge. You think you are Mussolini.

A. You fought for Communism in Spain, but you didn't fight for the United States. That is what you are, a traitor. If you would be as loyal to your country as I am [fol. 975] you would not get into the difficulties you are now in. You should have risked your life for this great Country.

Mr. Nelson: How long is this guy going to talk, your Honor?

The Court: As long as you engage him in conversation. I am going to sit back and let you argue it. I have tried to limit you both, but if you will not address your remarks to the Court there is nothing I can do.

Mr. Nelson:

Q. Mr. Musmanno, how many judges are there in the State of Pennsylvania?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

Mr. Nelson:

Q. Well, are there 200?

The Court: I have sustained an objection to that question.

Mr. Nelson:

Q. Do you know a single judge that would walk into another man's home when he was sick, down in bed, and try to drag him down in jail, as you did?

[fol. 976] Mr. Lewis: That is objected to.

The Court: Objection overruled.

A. Did I try to drag you out of bed? Did I try to drag you out of your house?

Q. You came there thinking you were going to be able to make real capital——

The Court: We will have no more debates on this question. Ask your questions and they will be answered.

Mr. Nelson:

Q. You couldn't name one judge who would do that.

The Court: That has been ruled out, Mr. Nelson. I will have no more questions about it.

Mr. Nelson:

Q. I believe you testified, Mr. Musmanno, that you were the author of about seven books?

A. That is correct.

Q. One of those books is called "After 12 Years"?

A. That is correct.

Q. Did you, or did you not, write in your book, on the case of Sacco and Vanzetti, on page 32, the following——

[fol. 977] Mr. Lewis: That is objected to for the reason the book is not in evidence.

The Court: If you want to have it marked as an exhibit, do so.

Mr. Lewis: May we have an offer on this?

The Court: Very well, come up gentlemen.

(At side bar.)

Mr. Nelson: Your Honor, I want to show by quotations in this book that this witness condemned, in fact, at one time certain procedures that are being followed now in regard to Red hysteria and the attitude of minority political

parties, and where he condemned the use of this type of burning of literature, or denying people the right to read the literature. That this witness—there were lapses in his life when he acted as a Progressive and when he had different views, and at this time when it is very handy for him to criticize it as Red hysteria, he is using it. I think it shows a certain unstable quality in my judgment, and his testimony can't possibly criticize these matters as he testified, but shows political bias now, and I want to [fol. 978] show that to the jury.

Mr. Lewis: That is objected to as immaterial.

Mr. Nelson: I don't intend to go into the whole thing, just certain excerpts.

The Court: How many excerpts do you wish to read.

Mr. Nelson: About four.

Mr. Lewis: This is objected to as incompetent, immaterial and irrelevant and has nothing to do with the issue in this case.

The Court: This witness here has testified as to many things, and his credibility is before this jury, and this man has the right to show these things, which he previously questioned as to affecting his credibility. That is the only reason we are permitting this. We will overrule the objection. You may read the excerpts.

Mr. Nelson: One more thing, your Honor. I am getting tired and I wonder if we might have a short recess.

The Court: Very well.

[fol. 979] (Recess.)

(After recess.)

Mr. Lewis: Before anything is read from the book I wish the defendant would have it marked as an exhibit and identified.

The Court: Very well, Mr. Nelson, have the book marked as an exhibit and identified by the witness.

(Book entitled "After 12 Years" marked as Defense Exhibit A.)

Mr. Nelson: Defense Exhibit A, page 32, going on over to part of page 33, the bottom of page 34, and the top of page 35.

The Court: Ask the witness if he can identify the book.

Mr. Nelson:

Q. Do you know this book, Mr. Musmanno?

A. I do, yes.

Mr. Nelson: For the purpose of identification, this is Defense Exhibit A. On page 32 there is a title in quotations, "A Mob Is a Mob," and it is for the purpose of— [fol. 980] Mr. Lewis: Just a minute. Is this a question being asked of the witness.

The Court: What you want to read, I assume, are certain excerpts from that book.

Mr. Nelson: Yes, Your Honor.

The Court: The witness has not admitted yet that he knows what it is.

A. Yes, I am the author of that book which was published in 1939 by Alfred A. Knopf, Inc., New York.

The Court: You may offer the book in evidence. The witness has already been asked the question whether or not he knows what the book is.

Mr. Nelson: My purpose is this. This man made certain statements here. Now, I have a book he wrote, from which I believe I can quote certain things, I believe he stated something quite different than he stated here on the stand.

The Court: We have ruled that you may read those excerpts to the jury.

Mr. Nelson: All right.

[fol. 981] The Court: When was the book published?

Mr. Nelson: 1939 by Alfred A. Knopf, Inc., New York and London.

The Court: Very well, you will read it without certain voice inflections and without repetition.

Mr. Nelson:

Q. Reading from page 32, starting on this new chapter called "A Mob Is a Mob." "The years 1919 and 1920 fall within a period which has become known as the Age of the 'Red scare.' America has just emerged from the World War; it had been frightened with stories about world revolution; it has been fed with stories of radical activities among certain sections of the working classes.

Under orders from A. Mitchell Palmer, Attorney General in President Wilson's cabinet, dramatic raids were made on headquarters, meeting-places, and homes of assumed 'Reds' throughout the nation. In the conduct of these raids, however, it often happened that not only were innocent persons victimized but the letter and spirit of the Constitution of the United States were frequently violated. Wholesale arrests of aliens and citizens were made without warrant or process of law; men and women were jailed and held without access to friends or counsel; homes were entered without search warrants and property seized and [fol. 982] removed; other property was destroyed; working men and working women suspected of radical views were abused and maltreated." There is more that I could read in this chapter but I don't want to burden the jury.

On page 33, in the third paragraph, it continued on as follows: "500 Department of Justice agents and local police manned the raiding parties. Their general mode of operation was suddenly to descend upon meeting-places of assumed radicals, break in without warrants or warning, arrest those inside, convey them to police stations, line them up against a wall, and search them for incriminating literature. In many instances the invading units brandished guns, simulating more the action of barnstorming outlaws than agents of law and justice. About 1,000 persons, aliens and citizens, men and women were arrested and thrown into jail in these raids."

The whole paragraph is pertinent to the point. I will continue on the bottom of page 34. "The overt act which would subject the prisoners to detention and possible deportation was the possession of papers, magazines, or books of a radical nature, or assumed to be such. Many of the prisoners were arrested in boarding-houses or halls in which were found large quantities of literature and pamphlets, the origin and ownership of which were necessarily matters of guess work. In cases of doubt, aliens, already frightened by terroristic methods of their arrest and detention, were, in the absence of counsel, led easily [fol. 983] into some kind of admission as to their ownership or knowledge of the so-called seditious literature."

This is again quoting from the paragraph at the top of

page 35. "Louis F. Post, who, as Assistant Secretary of Labor, knew of the Palmer raids officially, spoke on the participants in the January 1920 raids as having been 'numerously recruited for the occasion,' rough-neck groups of the 'strike-breaking' variety and actively supported by local police authorities."

A. I presume you are going to question me generally on this?

Q. Yes. "The whole 'red' crusade seems to have been saturated with 'labor spy' interests—the interests, that is, of private detective agencies which, in the secret service of masterful corporations, were engaged in generating and intensifying industrial suspicions and hatreds. It was under these influences, apparently, that the appropriations authorized by Congress 'for the detection and prosecution of crimes' exclusively, were in part diverted to the 'rounding-up' of aliens, not as criminals but as the possible subjects of administrative deportation."

And then on page 36, the second paragraph, "Pile of Chains"; and continuing on, Mr. Post exclaimed in amazement. 'Yes, indeed,' replied both investigators in one voice. They explained further that the prisoners had been marched through the streets of Boston to the immigration station in chains."

[fol. 984] You wrote this, didn't you, Mr. Musmanno?

A. I did.

Q. And when you speak of the "Red scare," using it in quotations, you mean by that that it was not the right thing to do? I don't know your meaning. How did you mean that? "The Red scare." How do you mean that? How did you use that phrase in that book?

A. I used that phrase in the the light of the entire treatment of the subject, which was a story of two working men in Massachusetts, Nicola Sacco and Bartolomeo Vanzetti; one was a shoemaker and the other was a fisherman. They became the subject of what I regarded a gross miscarriage of justice. They were accused of having committed a payroll robbery, and they were tried and they were convicted, and in the latter part of that trial I volunteered to go to Boston to help in the defense of these two men, without compensation—I did it entirely voluntarily—and later on

I wrote this book. It was called "After 12 Years," because it was written 12 years after the trial and the final adjudication. I used the phrase "Red Hysteria" in the sense that it was being used at that time. There was not analogy between the Red scare that you, Mr. Nelson, point to and your seditious actions in this case. Mr. Nelson, I said they assumed Reds had been arrested, they assumed they were Reds, they assumed they were radicals, but there is nothing assumed in this case. I swore to the information against Steve Nelson and his two co-defendants at that time because I had reason to believe they were Reds as we un-[fol. 985] derstand Reds, Communists intending to overthrow our government by force and violence. I pointed out in this book that much literature had been confiscated by authorities without complaints and under a system of guess work. There was no guess work about this literature seized in this case because this literature was under the control of the defendant, Steve Nelson, and it was sold by a man in his organization; I got it in his organization. So there is no comparison there whatsoever. In this Sacco and Vanzetti case people were arrested, if you read the book Mr. Nelson, without warrants. There was a warrant in this case. There was a search warrant in this case—we had a search and seizure warrant. So that there is no comparison whatever between these two cases, one which happened in 1919 and 1920, and the one now in the year of Our Lord 1950. Some of the individuals arrested were deprived of their counsel—1951, incidentally, or rather 1952—these men were arrested and were without benefit of counsel. Mr. Nelson, as I indicated, had various attorneys when he was apprehended. He had various attorneys when he had his preliminary hearing, I believe he had three lawyers there at that time.

Mr. Nelson: Is he allowed to make these grandstand speeches?

The Court: You asked a question about the Red scare. I can only limit him to answering that.

[fol. 986] Q. He can't take away my time.

The Court: What significance does the Red scare have in the book?

Mr. Nelson: In what sense did he use the phrase, "Red scare," that is the question I asked him and he proceeded to make a speech.

The Court: Let us limit it to the "Red scare."

A. That period was referred to as "The Red scare period."

Mr. Nelson:

Q. This is not a speech about Mr. Musmanno, but about Sacco and Vanzetti. Didn't you in the same book also say the following?

Mr. Lewis: Where, on what page?

Mr. Nelson: Page 38.

Mr. Lewis: He didn't see it.

Mr. Nelson: He saw it.

A. You didn't mark page 28.

The Court: Page 32 to 36.

Mr. Nelson: I am sorry.

[fol. 987] (Witness handed the book.)

A. Yes.

Q. I will have to read this whole section, Mr. Musmanno, in order to make—not to take it out of the context, I will have to read it all. On the top of page 38, the first paragraph, "on the morning of May 3, 1920, the body of Andrea Salsedo, crushed to a pulp, was found on the sidewalk. The news of Salsedo's — filled Vanzetti with horror. He knew that the subjects of Palmer's raids were being arrested and many of them deported, but now came the realization that through some mishap they might even suffer death while in the custody of the Federal agents." You read that?

A. Yes, I read that.

Q. Who were the Federal agents you referred to?

A. I didn't have any particular kind in mind.

Q. I don't mean the individual.

A. Agents of the Federal Government.

Q. Were they under J. Edgar Hoover?

A. No, under Palmer.

Q. You wouldn't say that Mr. J. Edgar Hoover was in charge of that Department, or don't you know?

A. I know that he was, at that time, interested in that particular subject. I don't know whether he had any such agents.

Q. You are speaking of the forerunner of the F.B.I.

A. I said Federal agents.

[fol. 988] Q. "He also learned that the Department of Justice, through its local agents,—" that is Mr. Palmer—"was planning more raids and that Plymouth and surrounding towns were to be included in the terroristic itinerary of the raiders. The telltale evidence which would subject one to arrest and possible deportation was the possession of 'radical literature,' or what the agents regarded as such.

"There was no standard for the agents to follow in deciding what was radical and what was not. Sometimes the most innocuous document was branded as subversive. Vanzetti and his friends, in contemplating the situation, concluded that their safety best lay in the concealment of all literature. They were reluctant to destroy their newspapers, magazines and books, because they hoped that this wave of intolerance would break on the rocks of the Plymouth coast and that they would soon again be able to entertain their political and economic beliefs undisturbed, as the Pilgrims had enjoyed their religious freedom in that same place 300 years before.

"They thus decided to gather up all literature in the homes of fellow workers and hide it until the 'Red scare' had passed." Did you read that, Mr. Musmanno?

A. That is right.

Q. And Sacco and Vanzetti were, when they were brought to trial, although they were charged with murder, they were referred to as radicals, were they not?

A. That is true.

[fol. 989] Q. They were in fact Anarchists?

A. They called themselves Libertarians.

Q. They were Anarchists, they maintained certain ideas?

A. Are you going to ask me about that page? And if you want to discuss it generally, and the Court permits, I will go into it.

Q. The Government at that time, and its agents, the

agents of the F. B. I., did go into places and find literature and they concluded that it was seditious?

A. No, see, you are wrong there.

Q. Wait a minute. You answered the question no.

A. I believe I have a right to offer an explanation there.

Q. Nobody can stop you, Mr. Musmanno. You always have to have something to say. It is a fact that Vanzetti, and his friends, feared that the Government at that time, because of the Red scare, would throw them in jail if they found literature on them; is that a fact? I am not saying what kind of literature, now.

A. That is what I said in the book but there is no comparison between that literature and this literature, which I know to be seditious and urges the overthrow of the Government by force and violence.

Mr. Nelson: I ask that the Court restrain this witness and strike that answer from the record.

[fol. 990] The Court: We will ask the jury to disregard the last part of the explanation. We will strike that from the record as not responsive and improper.

Mr. Nelson:

Q. But it is true, is it not Mr. Musmanno, that the agents of the Government at that time, as you said that it had been frightened with stories about world revolution—I will quote the exact words as you wrote them, rather than my interpretation. “America had just emerged from the World War; it had been frightened with stories about world revolution; it had been fed with stories of radical activities among certain sections of the working classes.” Is your meaning to be taken that the Government at that time, because of this Red scare, proceeded to arrest people who had certain radical literature; is that true?

A. What I said there, and which you read, was that the world was frightened by the thought of world revolution, and this due to the fact that Lenin had stated that he was for world revolution, and that is what caused me to use that phrase.

Q. But you used this expression in your book here, disparagingly, don't you Mr. Musmanno?

A. With regard to these two men, yes.

Q. You speak generally?

A. Yes. What those men were doing, and what I thought you were doing—there is a vast difference between that [fol. 991] Red scare and this Red literature.

Q. So you draw the line? At that time there was a foundation for a Red scare, is that it?

A. I do know that some innocent people were charged with having literature, but which, upon investigation, was found not to be of radical character. So that there is no comparison of that case—between 1920 and what happened in 1950 when I, with the proper authority of the law, went into the headquarters and obtained this literature.

Q. You do state, do you not, that this literature that Sacco and Vanzetti wanted to put away, was generally classed as radical literature?

A. I saw some that was not radical literature. You recall what I said in my book—

Q. Wait a minute. You said some of it was not, but was it the type of literature that could have been safely kept in most homes at that time?

A. I know that Sacco and Vanzetti did not have any literature of a seditious manner, which I have stated.

Q. Didn't you state in this book that Mr. Vanzetti, feeling he might be prosecuted if this literature was found in his home—didn't you state that he was framed on this murder charge, but that his intention of going to that town was to find a place, because he didn't want that literature found on him?

A. That is right. Here was an agency that was claiming [fol. 992] that it was literature of a seditious character, but it was not, and the book says that, if you will read.

The Court: We will recess at this time until tomorrow afternoon at 1:15 P. M.

[fol. 993] Thursday, January 3, 1952. Afternoon Session.

Met pursuant to adjournment and the taking of testimony continues:

(At Side Bar):

The Court: Mr. Nelson, I have permitted you to cross examine considerably on collateral issues for the express purpose of affecting the credibility of the witness. You

have gone into many matters but I am afraid from now on I will have to limit you on those things because we have spent too much time affecting his credibility. You will have to limit yourself now to the matters of direct examination. You are probably through with those collateral matters, aren't you?

Mr. Nelson: I haven't finished quite a bit of what you call—I don't know whether they are called collateral——

The Court: For affecting the witness' credibility, they are not what he testified to.

[fol. 994] Mr. Nelson: Oh, I have just a few to get into the windup and then——

The Court: How much time would you take on it?

Mr. Nelson: Well, if he answers my questions "Yes" or "No" it won't take very long, and I wish the Court would help me in that respect.

The Court: Well, I am not going to cut you off just like that, but I think we are about at the end of the line as far as attacking his credibility.

Mr. Nelson: I might finish in an hour or so, but it shouldn't take so long as far as I am concerned. I think the important thing is for me to get a just trial and to raise the questions——

The Court: That's the reason I have given you two days on collateral matters——

Mr. Nelson: I didn't have two days. I had one day on [fol. 995] that, and then I couldn't get into the things he testified to because only last night, or rather this morning, I got a transcript as far as his fourth exhibit is concerned and there are over 110, so I haven't even had a chance to——

The Court: Well, abbreviate any more collateral issues as far as bias, prejudice and motive are concerned and get into the other just as soon as you can.

Mr. Nelson: Well, what would you do then on the matter of cross examination on these things he testified to, what can I do? How can I properly cross examine him? I haven't the transcript as yet. I know the reporters are working hard, but you are pressing awful hard in this case.

The Court: Isn't there a substantial amount in the transcript you have?

Mr. Nelson: I had no chance to prepare on it.

The Court: Of course, most of them are exhibits and the books are here.

[fol. 996] Mr. Nelson: But I don't recall exactly what he said in each case, and that's too much to prepare notes and so forth.

The Court: Well, the books are marked——

Mr. Nelson: It would be awfully cumbersome to handle it that way. I would like to see what he said and then I want to find the pages from him wherein he stated, then it's all through and nothing that isn't warranted.

The Court: Well, I can't limit you, of course, on your cross examination on the testimony in the case. The only thing I want to limit you on now is on these collateral matters, I will have to place some limit on that.

Mr. Nelson: Well, I am coming to two or three of these collateral matters that are important.

The Court: Well, what are they? We may be able to rule on them now.

Mr. Nelson: Well, they have to do with his political bias and motive.

[fol. 997] The Court: Well, you have gone into that already, I believe——

Mr. Nelson: I haven't exhausted it. I haven't had a chance to finish it.

The Court: Well, I'll give you a little more time on it but conclude the collateral matters just as quickly as you can.

Mr. Nelson: Now, then, I would like to raise a question with you regarding this ceremony. Here you have a Supreme Court Judge that brings the austerity of the Supreme Court to this court room, and no matter what anyone will say all those jurors know about the ceremony and it has been played up for weeks now, and his behavior on the stand, taking advantage of his high position, makes it very difficult to conduct a cross examination, and it's even harder to get the truth out in such a way, objective way, the jurors may weigh it without bias. And this man is biased, he has all this publicity. On the basis of this, your Honor, I believe a motion is in order to withdraw a juror and call a mistrial.

[fol. 998] The Court: If that's your motion I will refuse the motion and grant you an exception.

Mr. Nelson: I don't know whether or not this is correct, but I noticed here that in the paper last night that there is going to be four witnesses to follow Mr. Musmanno. Whether that's true, I don't know——

Mr. Lewis: I don't know myself.

The Court: I don't know either. The newspapers write a lot of things——

Mr. Nelson: If such witnesses are to be brought forward here by the Prosecution—because I am not a lawyer and I can't just prepare these things in the proper way—I am at a disadvantage as it is—but I think it would be proper if the Prosecution would tell me who they are going to be, who the witnesses are going to be.

Mr. Lewis: I have never heard of that before in the time I have been in this Court House.

[fol. 999] Mr. Nelson: I'm not a lawyer but my impression is that would be only fair——

The Court: Well, your indictment shows witnesses. You are entitled to that information.

Mr. Nelson: The ones that were before the Grand Jury you mean?

The Court: The ones before the Grand Jury. If they have any additional witnesses there is no reason to withhold the information. Of course you are conducting your case, Mr. Lewis. If there is no particular reason I would suggest that any additional witnesses, that the defendant be notified of them.

Mr. Lewis: We will have additional witnesses but I certainly don't think the Prosecution should be called upon to reveal any additional witnesses here outside of the ones that are on the indictment.

The Court: Well, at this time we are not compelling you to do so. I will study the matter and either at the end of [fol. 1000] this session or at the beginning of the next session I will rule on the matter.

Mr. Nelson: Just a question. Did you inquire into the matter? You said you were going to go into the question of the price of the transcript. Do you have any information on that, your Honor? It's very hard on me financially.

The Court: Well, I asked the reporter at the last discussion if possible to negotiate with you on the matter, inasmuch as the transcripts were expensive and you had been

granted some reduction at the last trial, so I will make the same request again and have the reporters work it out with you after the session. It isn't for me to set the price because that is set by the Legislature, so I think the only thing I can do is request them to do so.

Mr. Nelson: Thank you.

(End of side bar.)

[fol.1001] MICHAEL A. MUSMANNO, recalled to the stand and resumed his testimony as follows:

Cross-examination (Continued:)

Mr. Nelson:

Q. Mr. Musmanno, I believe that you testified that you first ran for State Legislature in 1928.

A. I was a candidate in '26 but not elected. Then I was a candidate in '28 and was elected.

Q. I see. Was it in the campaign of 1926 in which you were a candidate that you ran on what was known as the Mellon Ticket?

A. I was never a candidate on a Mellon Ticket.

Q. You were never a candidate on a Mellon Ticket?

A. Never in all my years; never.

Q. Never?

A. Never.

Q. You are absolutely sure about that?

A. I am positive.

Q. Were you a candidate at that time on the Republican Ticket?

A. Yes, I was.

Q. And at that time the Republicans had sway in this County?

Mr. Lewis: I object to that.

Objection sustained. Exception noted.

[fol.1002] Q. Well, it is a fact, is it not, that it was in those days that Andrew Mellon played a key role in the politics of this County and State and Nation?

Mr. Lewis: This is objected to.

Objection sustained. Exception noted.

The Court: We can't go too far afield. We have granted many concessions insofar as testing the witness' credibility, motive, bias, and prejudice, but we can't go into the trial of a political power here or elsewhere, for that purpose.

Mr. Nelson: Well, your Honor, I want to show that this witness——

The Court: He has testified he was a candidate on the Republican Ticket. It's a matter of general knowledge I think——

Mr. Nelson: I'm not no lawyer, I don't know how to frame this, but I want to bring out the fact that this man has [fol. 1003] claimed on various questions——

Mr. Cercone: I object to this as speech making.

The Court: He isn't making a speech. If you want to make an offer here come forward to Side Bar and we will hear the offer which you wish to make.

(At Side Bar):

Mr. Nelson: Your Honor, I have a clipping, a photostat, —I don't have it with me; it is with the record of the other case; I know that I saw it myself—but that record isn't in the court room and I can't produce it right here at this time. I would make a plea that the Court permit me to bring that clipping and read it and it will show that what I was asking was true and what I want to——

The Court: It may be true but it isn't relevant in this case. I have ruled that out as irrelevant.

Mr. Nelson: I see. Your Honor, I want to show that he was tied with the Mellon Machine until the Roosevelt [fol. 1004] came along and then he became a Liberal and Progressive and he was a Progressive at a time when the country was Progressive, and now that things are going against that stream he jumps on the other bandwagon. I think that is important to show instability, and shows that the man can be unprincipled.

Mr. Lewis: This is objected to.

The Court: The objection is sustained. It is too far removed from this matter.

Exception noted.

(End of Side Bar.)

Mr. Nelson:

Q. All right. Since the Court ruled I can't go into this question, let me ask you this: Are you active in politics now in this county?

Mr. Lewis: This is objected to.

Objection overruled.

A. I am an American citizen. I value my right of suffrage. I am tremendously interested in the welfare of my country, in my community, and in my state, and certainly in my county.

Q. And I take it that you are also active in your home township, Stowe Township, in the political affairs of that area?

Mr. Lewis: This is objected to.

A. None whatsoever.

Mr. Nelson:

Q. But you have had your political start there, haven't you? Let's put it that way.

A. I was born there, have lived there, and am proud of Stowe Township, my home community.

Q. You did have your political start there? I mean to say you began—you ran as a candidate while you were in Stowe Township, I mean—

A. I not only had my start there, that's where I lived all the time, I still live there.

Mr. Nelson: That's a simple question for a simple answer, your Honor—

The Court: You want to know whether he represented Stowe Township when he was in the Legislature; is that what you—

Mr. Nelson: Just whether or not that was the place [fol. 1006] where he ran from when he ran for the Legislature.

The Court:

Q. Is that included within your Legislative District?

A. That's in the 12th Legislative District which I represented in the Legislature.

The Court: All right.

Mr. Nelson:

Q. O. K. But you still live in Stowe Township, don't you?

A. I do live in Stowe Township.

Q. As such, naturally you would know and you would be quite closely acquainted with political matters that go on in Stowe Township and the surrounding area?

A. No, I am not familiar with the political activities in Stowe Township. I purposely abstain from participation in local politics in the sense that you mean it.

Q. I see. Well, are people—are the following political figures known to you, people who I believe are in that area——

Mr. Lewis: I object to that.

The Court: Oh, yes, we will sustain the objection. I don't [fol. 1007] see that there is any relevancy in this.

Mr. Nelson: Well, your Honor, you don't know what I am going to try to bring out, and I think the jurors are entitled to know——

The Court: If you want to make an offer, come forward and we will rule on it as we did on the other one.

(At Side Bar):

Mr. Nelson: I want to show that this man's claim of being so impartial, I want to show by the type of people that are in that area, in the political circles in that area, I mean some people——

Mr. Cercone: Who are you talking about?

Mr. Lewis: Wait a minute now——

Mr. Nelson: I mean certain officials in that area. First of all, members of his family are in this case——

Mr. Cercone: Now you are crazy.

[fol. 1008] Mr. Nelson: Is that a proper remark, your Honor?

The Court: We will strike it from the record, although the jury did not hear it.

Mr. Nelson: There are individuals in the surrounding

area like McKees Rocks, which is part of that area—there are individuals like the Burgess of this town who has worked for this man; there's the Chief of Police in that Township, Antonelli——

The Court: Do you want to bring out his associates?

Mr. Nelson: That's right, the associates in that area. I'm not going to go beyond that. I believe that's an important point and the jurors should know. I want to show this man's credibility—rather, this man's integrity on that question should be up to the jury to decide and not anyone else.

Mr. Lewis: This is all objected to.

[fol. 1009] The Court: The objection is sustained to the offer.

Exception noted.

(End of Side Bar.)

Mr. Nelson:

Q. Mr. Musmanno, are any members of your family on the payroll of the State, or County, or Township that you come from?

Mr. Lewis: This is objected to.

Objection sustained.

Exception noted.

Mr. Nelson:

Q. Well, it is a fact, isn't it, Mr. Musmanno, you have a number of people——

Mr. Lewis: This is objected to.

The Court: Just a minute. Wait until he——

Mr. Lewis: He is just putting it in another way.

Mr. Nelson: You don't know what I'm going to ask.

[fol. 1010] The Court: Well, if it's the same question expressed in a different way, it has been ruled on. If it's a different question, why, proceed.

Mr. Nelson: Well, your Honor, you are making it impossible for me to proceed in an important examination of this witness. I want to show this man has——

The Court: No. Come up here if you want to offer any-

thing else. We have ruled on your previous two offers and we will rule on this one.

(At Side Bar) :

Mr. Nelson : First of all, your Honor, it is a simple proposition. I want to show that this man has a number of members of his family in the political tie-up with him and that they together are a little clique who exercise a good deal of influence and have been playing a role in this prosecution directly against me, and I think that the jurors are entitled [fol. 1011] to know that he is not an unbiased person, he has a personal axe to grind.

The Court : I will permit you to ask it to a limited extent, if you know about any witness involved in this, I will let you ask him that question, but don't just generalize——

Mr. Nelson : Your Honor, in order to question him properly——

The Court : Well, I have sustained the objection on that except to the extent I have indicated.

(End of Side Bar.)

Mr. Nelson :

Q. It is true, is it not, Mr. Musmanno, that you have a number of members of your family who are tied together with you in politics——

Mr. Lewis : I object to that——

Mr. Nelson :

Q. —who are pushing this, or they are cogs in the wheels of this machine or means of prosecution against me?

[fol. 1012] Mr. Lewis : That's exactly what the Court ruled out, and I object to the tactics which Mr. Nelson uses.

The Court : Oh, no, it isn't. I told him he might ask the witness whether or not there are any relatives of the witness who are involved in this proceeding.

Mr. Lewis : But that isn't what he is asking him.

The Court : That's the interpretation the Court puts on it.

The Court:

Q. Are there any members of your family involved in this prosecution, Mr. Musmanno, in any way?

A. I will first reply to the defendant's question and resent his referring to any members of my family as cogs——

Mr. Nelson: Well, your Honor, I think he ought to be asked to answer the question——

A. Well, I am answering your question, Mr. Nelson. You are the one who put the question. I am answering it——

[fol. 1013] Mr. Nelson:

Q. You are making a speech. You aren't answering the question.

The Court: He is answering your question. He has a right to resent the use of terms and he says that his people are not cogs in a machine. Now he is telling you that and now he will answer the question.

Mr. Nelson: Well, as a layman, that's the way I put it——

The Court: Well, all right, that's understood probably.

A. (continued) There is only one individual in my family, if you want to term it as such,—being unmarried I do not have an immediate family—but as you yourself brought out only yesterday, one of the assistant district attorneys is a nephew of mine, who, incidentally, was an assistant district attorney three or four years before you were arrested, and his participation in the case was due entirely to the activities of the District Attorney's Office over which I have absolutely no control. No other member of my family is interested in this prosecution except what sympathetic interest they may have in my own activities and also in the [fol. 1014] defense of our country.

Mr. Nelson: Well, your Honor, is that as far as I can go on this question?

The Court: If you know of any other relative involved in this proceeding that has not been mentioned by the witness, you may ask specifically if a certain person is involved in any way. However, you can't go fishing and just ask gen-

erally. The witness has answered the question. If you can put a specific question to him of a relative that's involved in any way in this proceeding, you may do so.

Mr. Nelson:

Q. Don't you have—do you or don't you have a brother that has worked in this Court House for a long time?

A. He has nothing to do with this case whatsoever. And, as I indicated to you before, the only relative is the one whom you yourself mentioned and is an assistant district attorney. That answer stands categorically and without exception.

Mr. Nelson: Your Honor, I can't go into the question of whether—

[fol. 1015] The Court: I have ruled on it, Mr. Nelson, and you have an exception. If I am wrong your exception will protect you.

Mr. Nelson: I think it would be interesting for the jury to find out—

Mr. Lewis: I object to these speeches.

The Court: If there is no evidence of any other connections you are limited in what you may ask the witness in accordance with the previous ruling.

Mr. Nelson: All right.

Mr. Nelson:

Q. To go back to one question that I don't think was brought out clearly yesterday—and I believe I have a right to go back to a question that we went into yesterday—that is this—

The Court: Unless it is repetitious. If it is to clarify something, yes, you may go back—

Mr. Nelson: Well, it is repetitious but it would have to be [fol. 1016] clarified, your Honor.

Mr. Nelson:

Q. You stated that you were the Presiding Judge of this County at the beginning of this month?

A. I was not the Presiding Judge of this County at the beginning of this month or any month.

Q. I mean last month.

A. Or last month; I was never the Presiding Judge of this County.

Q. The Court, the Judges of this——

A. No, I was not the Presiding Judge of—I was the presiding Judge in accordance with the rotation system.

Q. Well, I don't think that—I'm not interested in quibbling over details, I'm interested in knowing whether or not you were what is commonly called, I believe, the Presiding Judge?

The Court: Was he assigned as Presiding Judge in Criminal Court?

Mr. Nelson: That's right.

The Court: Which month? This month or last month?

Mr. Nelson: Last month.

[fol. 1017] The Court: December 1951.

A. In December 1951, in accordance with the rotation system which periodically brings every Judge to the Presidency of the Criminal Courts and not of all the Courts——

Mr. Nelson:

Q. I understand——

A. —I was presiding, but in a very limited capacity last month, because of the fact that this case was coming up. In order to abstain from any most remote participation in what might transpire in this case, I limited my activities as Presiding Judge of the Criminal Courts in the month of December.

Q. But from what you said it is true, is not, Mr. Musmanno, that an average person would not know or could not possibly draw a clear conclusion how the Judge for this particular trial was selected?

Mr. Lewis: This is objected to as being speculative.

Objection overruled.

A. I think that that proposition was clarified completely when the subject was brought up. If you wish to have me answer it again, and the Court permits, I will gladly go into it again.

[fol. 1018] Mr. Nelson:

Q. Let me ask you, isn't this what you testified: You stated that the signs are put up at various rooms and then the Judges see the signs and they go into those rooms, and then they find whatever cases there are before them and they try them; is that your testimony?

A. My testimony was——

Q. I mean, that's the way I understood it.

A. Well, I don't think you stated it rather correctly and certainly not clearly. What I stated was this, that cases are listed for trial each day and that trial list is called in the Assignment Room. A clerk or an assistant district attorney is in charge of the list in order to regularize it and to see that the business of the Court keeps moving. As a court room becomes vacant the next case which is ready for trial goes to that empty court room, and so on, until the list is completed for the entire day. If the list is not completed then whatever is left over is taken up with the list on the following day.

Q. All right. Is it your testimony now that any other Judge in this Court might have gotten this case that morning; that there was no previous discussion; that there was no previous arrangement of any sort that the case go to a particular Judge? Is that your testimony?

A. The testimony was very clear and the statement of the Court was very clear several days ago as to how this case came to this court room. In order that I would have no contact whatsoever with the prospective jurors I did not [fol. 1019] go into Court Room No. 1 but Judge Montgomery went into Court Room No. 1 and handled all the work of the Presiding Judge, and then he took one of the panels, because there are two panels of jurors, and that panel happened to be the panel from which the jurors trying your case was to be drawn. When, in the selection of a jury for any particular case, one panel is exhausted, then you have recourse to the other panel.

Mr. Nelson: Well, your Honor, I don't wish to prolong this, but let it be stated for the record that I don't believe that the answer——

Mr. Lewis: I object to that, any opinion he has——

The Court: Was responsive? Is that what you mean?

Mr. Nelson: That the answer was responsive to my question.

The Court: Oh, I think it is.

Mr. Nelson: I don't believe it clarified the question.

[fol. 1020] The Court: We will rule it as responsive, and grant you an exception.

Mr. Nelson:

Q. Now, another matter that we—that I wish to go back to for a minute: You testified yesterday that you entered my home in the City of Philadelphia while I was sick, and I believe it was your testimony that you had no warrant neither for a warrant of arrest nor a warrant for a search of the premises; is that correct?

A. I testified as follows, in brief: I went to the Superintendent of Police in Philadelphia and asked him what knowledge he possessed as to your physical condition, because it had been reported that you had said you were unable to come to Pittsburgh. I had information to the effect that you had left your apartment many times; you were seen to be conferring with well known Communists in Philadelphia outside of your home. I was naturally tremendously interested in knowing when you were coming back to Pittsburgh in order that this case might be tried. I asked the Superintendent of Police to make inquiries. He assigned two city detectives to make this inquiry and they asked that I go along, and I went along with them, and, of course, you know what happened.

[fol. 1021] Q. I see——

The Court:

Q. So, in other words, you went without warrant of entry or seizure? The question was whether——

Mr. Nelson: I'll follow that up.

The Court: All right.

Mr. Nelson:

Q. I want to get a plain answer to the question. Did you have a warrant of arrest? Answer "Yes" or "No".

A. You were not arrested; there was no purpose of arresting you and there was no warrant of——

Q. Answer the question, please——

A. I am answering it. There was no occasion for a warrant of arrest——

Mr. Nelson: Now, your Honor.

A. (continued) No, there was no warrant of arrest and you were not arrested——

Mr. Nelson: Now, your Honor——

The Court: He said there was no warrant.

[fol. 1022] A. You were already arrested——

Mr. Nelson:

Q. In other words, you had no warrant for arresting me?

A. We didn't need a warrant to arrest you, you were arrested and you were then under Bond and I wanted to make sure that you didn't skip that Bond as other Communists skipped their Bond; that was the purpose of my going there.

Q. You had no warrant to search the house, did you—or did you not?

A. There was no search made; there was no intent to search your home. These police went there merely to see whether you were immobilized or not. And they walked in as you yourself stated and not as you very incorrectly stated to the newspapers, and you were the only one who gave that information to the newspapers——

Mr. Nelson: Well, your Honor——

A. (continued) They walked in and showed their official authority——

Mr. Nelson: I am asking a simple question, your Honor, and you are permitting him to go all over the lot here.

The Court: You have been permitting him. I have been sitting here waiting for you to object. You haven't objected, so if you want me to strike his remarks out as [fol. 1023] unresponsive, I'll do so. You asked him whether he had any warrant of search or warrant of seizure——

Mr. Nelson: And he was unresponsive.

The Court: His answer was "No." He went on and elaborated which, of course, was beyond——

Mr. Nelson: The second question was, did he have a search warrant and the answer could have been "Yes" or "No", and he proceeded to make another speech.

The Court: Well, we will strike the unresponsive remarks from the record, if you so desire.

Mr. Nelson: All right. I move that they be stricken.

Mr. Nelson:

Q. So you knew at the time you entered my home, Mr. Musmanno, that you had no legal right whatever to walk into my home—did you or did you not know?

A. I did have the legal right. I went with officers of the law——

Q. Well, all right, you answered——

[fol. 1024] The Court: Let's not ask about legal rights; let's elicit facts. The facts have already been elicited and this trial is proceeding to such an extent now that I certainly want to avoid any repetition. If there is anything to be clarified, that's one thing, but if it's something that has been testified to without purpose, that's something else.

Mr. Nelson: I think the Court ought to note that I have been patiently trying to get this simple answer——

The Court: He has answered he entered without warrant of any kind. Now, whether that was legal or illegal has no place here.

Mr. Nelson: Well, my point, your Honor, is that this man is in the habit of building up these illegal acts——

Mr. Lewis: Now, I object to that and make a motion that it be stricken from the record.

The Court: You may argue that to the jury. I am ruling on the evidence here and the evidence alone. I say you [fol. 1025] have been over this field of the evidence and I will not permit it to be gone over again.

Mr. Nelson:

Q. Then the answer is, is it not, Mr. Musmanno, that you entered my home without a warrant, either for arrest or for a search?

A. I had an oral warrant, no written warrant, to enter your home.

Q. I see; that's something new, isn't it?

A. No, I was warranted in my entrance into your home after you opened the door and allowed them to come in.

The Court: Let's not debate something now——

Mr. Nelson:

Q. You mean the Police Department couldn't have done all of the things that were necessary without you?

Mr. Lewis: This is objected to.

The Court: Objection sustained.

A. I didn't say that.

Mr. Nelson:

Q. Well, that's the inference. You came along with the police.

A. They asked me to accompany them.

[fol. 1026] Q. I see. The fact is, Mr. Musmanno, that one of the detectives stood in the house and he was so embarrassed——

A. Are you testifying or asking a question——

Q. I'm asking you, is it not a fact, Mr. Musmanno, that one of the detectives said, "I'm sorry that I had to come here under these circumstances." He saw me lying on the bed there, and you came in there obviously for the purpose of tormenting me, and he apologized for it as you walked out of the door——

The Court: Now wait a minute——

A. He did not apologize. That is a fabrication of your own mind. That's an absolute falsehood, Mr. Nelson, and sneering doesn't change the fact.

The Court: The proper question, Mr. Nelson, would be to ask if the officer made such and such a remark. Now, if you want to ask him that, that's proper.

Mr. Nelson: Well, this man wouldn't admit anything that would hurt his case——

The Court: You have a right——

Mr. Nelson: —even though he is under oath, and what [fol. 1027] can I do about it?

Mr. Lewis: Now I object to all this——

A. And which you are not.

The Court: You have the right to testify in your direct examination as to anything that occurred there, in rebuttal of his statement.

Mr. Nelson:

Q. Now, Mr. Musmanno, I show you a copy——

The Court: Have it marked as an exhibit number.

Mr. Nelson:

Q. Yes, of the Pittsburgh Sun-Telegraph of May 1937——

Mr. Lewis: Have it marked——

Mr. Nelson:

Q. Are you familiar with this article in this newspaper?

Mr. Lewis: Now, I object to it until we at least see this.

The Court: Well, he has asked the question. It need not be answered until it is marked and the exhibit shown to the witness.

[fol. 1028] (Defendant's Exhibit "B" marked for the purpose of identification.)

Mr. Lewis: I would like to have an offer at Side Bar in connection with this.

(At Side Bar):

Mr. Nelson: Well, just as I wanted to show and I am attempting to show that this man is arbitrary and eccentric in many ways, and acts—takes the law in his own hands and resorts to those kind of things; that he has done it as proven by this letter which is written, and by himself, and I will ask him whether he wrote it or not, and if he denies it that's where the matter will go, but I believe it has an important bearing on the character of this man.

The Court: The character of the man is not in issue, Mr. Nelson; it is his credibility. He may be eccentric, he may do a lot of funny things, but does that reflect on his credibility, or bias, or motive?

[fol. 1029] Mr. Nelson: I think that shows that.

Mr. Cercone: It has nothing to do with this case.

Mr. Lewis: It's objected to as being incompetent, irrelevant and immaterial.

Mr. Nelson: It's simply making it impossible for me to cross examine him. If it was any other witness wouldn't it be possible to ask that question?

The Court: I have allowed you to go farther with this witness than I would with the ordinary witness. The objection to the offer concerning Exhibit "B", referring to an article "Keep Your Eggs" is sustained.

Exception noted.

(End of Side Bar)

Mr. Nelson:

Q. Mr. Musmanno, were you confined to a hospital in 1937 in this County?

Mr. Lewis: This is being objected to as being incompetent, irrelevant and immaterial—

A. I was confined to the hospital many times in my life; once when I was injured in service overseas, then when I came back—

Mr. Nelson: I object to this. I think he ought to answer responsively.

The Court: Well, he has started to answer it—

Mr. Nelson: That's all I want.

The Court: We will permit—

Mr. Nelson:

Q. Well, what were you committed for at the time you were in the hospital in 1937?

A. I had trouble with my throat.

Q. With my throat?

A. I had been making speeches against Communists and Bolsheviks about overthrowing this Government by force and violence and strained my vocal chords.

Q. I see.

A. And the doctor ordered me—

Q. It is true, isn't it, Mr. Musmanno, that you suffered from a nervous breakdown that time?

A. No, it was strictly a matter of my vocal chords because of the speeches I made against Bolsheviks and Communists

[fol. 1031] and all those attempting to overthrow our Government by force and violence, and particularly the Communists in this part of the country.

Q. I see——

A. It was shortly before you arrived, before I knew you, so you were not included in those speeches I made against you, but it included the scope of what I later found out——

Mr. Nelson: Now, I object to this. If you permit him to——

The Court: The objection is sustained and we will strike it from the record insofar as they are unresponsive.

Mr. Lewis: I object to this line of questioning, if I can get an objection in here——

The Court: You are the District Attorney and if you object we will sustain your objection——

Mr. Nelson: Well, what is the question? Read the question.

Mr. Lewis: I object to this whole line of questions about [fol. 1032] when he was in the hospital and what he had.

The Court: The objection is sustained as to any further questions along that line.

Exception noted.

Mr. Nelson:

Q. Well, did you at that time write a letter to the Judges of this Court, thirteen of them, I believe it was——

Mr. Lewis: I object to that line——

Q. (Continued:) —whom you condemned, and you called them in your own terms “that Julius and his Brutus” and you had you were “thirteen”, didn’t you?

Mr. Lewis: I object to that.

Objection sustained.

Exception noted.

Mr. Nelson: Now, your Honor——

The Court: His differences with the Judges here doesn’t affect his credibility.

[fol. 1033] Mr. Nelson: I can understand why the Prosecution doesn’t want to have this thing brought out; I can understand that fully——

Mr. Lewis: Now, Mr. Nelson knows better—he ought to, even though he is a layman—to make a statement like this. He made these things at Side Bar, he was overruled, and now he stands up here——

The Court: He wasn't overruled on that. We——

Mr. Nelson: I understand the matters at Side Bar had to do with the reading of this letter, which I would very much like to read.

The Court: We are sustaining the objection at this time on this point. Exception noted to the defendant.

Mr. Nelson:

Q. Do you know, Mr. Musmanno, that the Communist Manifesto, an exhibit introduced by the Prosecution, could be obtained in the Carnegie Library in Oakland, and its number there is 335M43A2?

A. Yes, and you can obtain books on murder in the Carnegie Library too, but those books of murder do not recommend you to commit murder as these books recommend that revolution be committed.

Q. I see. These books recommend that—your contention is that—strike that. Do you know that the book called Dictatorship of the Proletariat which you have introduced here is listed in the Library 3354D56?

A. Well, if you say it is so listed, I assume that it can be located there, but that has nothing to do with the fact that these books are sold for the purpose of urging the readers on to revolution——

Q. Now, Mr.——

A. (Continued:) —whereas at the Library they are there merely for consultation and reference——

The Court: Please be responsive. These are matters of argument, and we will ask the witness to limit his response to the question, please.

Mr. Nelson:

Q. Do you know that the History of the Communist Party Soviet Union is obtainable in the Library under the number 947C73?

A. I don't know of my own personal knowledge, but I

don't exclude the possibility that the book can be seen there for reference purposes.

[fol. 1035] Q. I see——

Mr. Nelson: I have a whole list of these books that I could show the witness, to see whether he recognizes these, but I will let it go at that.

The Court: Well, I would suggest that you review them and if there are any of these exhibits that are publicly displayed at the Library, go through the list and if the witness knows that they are there, maybe he will say so, and if not then you can prove it in your testimony.

Mr. Nelson: All right.

Mr. Nelson:

Q. Do you know whether the Foundations of Leninism, several copies of 1947S18, are in the same Library?

A. My answer to any question of that character would be the same, namely, that I do not know of my own personal knowledge whether those books are there or not.

Q. Do you know, Mr. Witness, whether the Manifesto of Karl Marx and Frederick Engels from the same edition, National Publishers, is available in the Duquesne University library?

[fol. 1036] A. I don't know. I am not a graduate of the Duquesne University, unfortunately.

Q. Now, Mr. Musmanno, I show you a copy of a publisher's description of books and pamphlets put out in 1950 by International Publishers, and I ask you whether you have seen these——

(Defendant's Exhibit "C" marked for the purpose of identification.)

A. I don't know whether I have seen this particular pamphlet, but I do know that the International Publishers, which is a Communist publishing house, does publish books, and if this is its prospectus and indicates that it publishes these books, there is no reason for me to refute what appears there between the covers of that purple pamphlet.

Q. Now, as you glanced through you no doubt saw that

many of the exhibits that are here introduced by the Prosecution are listed here?

A. Well, I didn't go through it with that purpose. I just generally indicated, but the International Publishers publish a large percentage of those books which I did introduce in evidence, because they are a Communist publishing house, and so it would be inevitable that many of the exhibits came from this Communist publishing house. I don't see too many of the items though which I introduced in this particular catalogue. I see "Joseph Stalin", we [fol. 1037] have that. "Communist Manifesto," "Collected Works of V. I. Lenin", we have two volumes of the Collected Works in evidence; "Twilight of World Capitalism," which someone has checked with a red mark very appropriately; "Socialism Utopian and Scientific," we introduced that in evidence; "Selected Writings of Joseph Stalin," some of those are in evidence; "October Revolution," that's in evidence; "History of the Communist Party of the Soviet Union," that's in evidence. Well, and so on.

Q. To the best of your knowledge, the publishing house you called a Communist publishing house, International Publishers, has been in existence for at least twenty years?

A. Yes, and is on the proscribed list of the Attorney General's office as a Communist Front Organization.

Q. And the publications that this publishing house put out have been circulated openly through the mail and through the libraries, through the universities, and anyone who wanted to could have bought them—right?

A. Yes, and the president of that publishing house is now under indictment in the Southern District Court of the United States for publishing those books—

Mr. Nelson: I object to those remarks, your Honor. This was not the question I was asking. He brought in this remark and I move it be stricken, and furthermore I move [fol. 1038] for a mistrial on the basis of this motion.

The Court: The motion to strike will be granted and the jury instructed to disregard the unresponsive part of the answer. Your motion for the withdrawal of a juror is refused.

Exception noted.

Mr. Nelson:

Q. It is true, is it not, Mr. Musmanno, that these type of books, these Marxist books that are on trial here, that you brought on trial here and you propose to burn them——

A. No, I don't propose to burn them——

Q. —like you burned books in Nazi Germany, are available in all Democratic countries where we have a Democratic system of government?

The Witness: If the Court please, he says that I propose to burn them. Now, is that a statement of his or is it a question? How am I going to respond to an utterly irresponsible declaration of that character?

The Court: Don't respond. Let the District Attorney [fol. 1039] object to the question and I'll rule on it.

Mr. Nelson: I'll reframe the question.

Mr. Nelson:

Q. It is true, is it not, that these type of books were illegal and were burnt under the Mussolini-Fascist regime?

Mr. Lewis: I object to that——

A. I am not familiar with that.

Mr. Nelson:

Q. You are not familiar?

A. No.

Q. Would you say to the best of your recollection they were not burnt under the Mussolini regime?

Mr. Lewis: I object to that.

The Court: The objection is sustained. He has answered the question. He doesn't know.

Exception noted.

Recess.

[fol. 1040] Thursday, January 3, 1952.

Afternoon session.

(After recess.)

Michael A. Musmanno, resumed the stand, and testified as follows:

Mr. Nelson: Because I haven't got the transcript, your Honor, of Mr. Musmanno's testimony, I can only go into a limited examination of the questions that he testified to here. So, in the meantime I want to round out some of these questions not yet brought out clearly enough.

Mr. Nelson:

Q. I still don't have the answer to the question, and I want you to answer yes or no without a speech.

Mr. Lewis: I object to that.

The Court: We will sustain the objection to the form of the question.

Mr. Nelson: Will the Court hold him to the answer, if I put the question.

The Court: You put a short question and we will hold [fol. 1041] the witness to an answer.

Mr. Nelson:

Q. Do you know who assigned a judge to this case? Answer yes or no.

Mr. Lewis: That is objected to as repetitious.

The Court: Objection overruled.

Q. When I say "who" I mean an individual. I don't know what individual—I believe I am entitled to know. So, who was the individual who assigned a judge to this case?

A. I have told you the manner in which cases are assigned, and I stand on that answer; that has been explained fully and completely.

Q. Is it your reason for your refusal to make this thing clear, at least clear enough to me, and I think I am entitled to an answer and the jury is entitled to an answer—is your refusal to answer this question the fact that you had something to do with it?

Mr. Lewis: That is objected to.

A. I do not refuse to answer your question. I have told you that Judge Montgomery, who presiding in this case, was in Court room No. 1 and he took over the panel from which your jury was to be chosen, and he then became the judge in this case by reason of the fact that he was presiding in Court room No. 1; that is how this case was as-[fol.1042] signed to Judge Montgomery, which we have explained to you several times.

Q. Otherwise, you would have had to be the trial judge in this case?

A. How could I be the trial judge and a witness? Even with all of your very obtuseness, you certainly——

Q. You manage to do both pretty well, Mr. Musmanno.

Mr. Lewis: That is objected to.

A. You manage to make yourself more and more ridiculous by questions of that character.

Q. That is all right, I am not a Supreme Court judge.

A. Thank the heavens that the only place you will be a Supreme Court Justice will be in Soviet Russia——

Q. I hate to think what is going to happen to the Supreme Court when you go on it.

The Witness: Now, if the Court please, I am here as an American citizen, and under subpoena, and I ask for protection——

Mr. Nelson: Your Honor——

The Witness: I ask that the statement——

Mr. Nelson: This witness is taking advantage of the Court——

[fol.1043] The Witness: I ask to make a statement, if the Court please.

The Court: I will ask you both to be silent for a second.

Mr. Nelson: I beg your pardon, I am sorry.

The Witness: The defendant——

The Court: I can't at times inject myself into these discussions between the defendant and the witness to afford protection to either. If you will give me the opportunity to do so, I will do my best to protect you both in your feelings, in your rights, as I have expressed to you before. I have told you that, from the inception here, the important

thing, insofar as I am concerned here, is first, to preserve decorum in this Court room. Secondly, to see that we proceed according to legal procedure. Now, if you will cooperate with me—direct your remarks to me, remarks that are not questions and answers—I will do the best I can. I would ask the cooperation of both. Now, you want protection, Judge Musmanno on, I know what you consider [fol. 1044] unfair questions being put to you, and remarks that are addressed to you that are not in the form of cross-examination for questions, and I will be very happy to do what I can to protect you in your rights as a citizen, and your rights as a witness. And likewise the defendant is looking to me for protection too, and your answers are sometime what we might consider argumentative and not responsive. Now, if you will just give me the slightest chance, I will be glad to accommodate both. Now, you are asking for the privilege at this time of making a statement to me, and asking for protection from something, and I will be glad to hear from you, Judge Musmanno, at this time.

The Witness: The defendant——

Mr. Nelson: May I make an objection, your Honor, to this? There is no question pending. He has gotten into an argument with me. He should have been stopped when he went off on an attack upon me.

The Court: Likewise you——

Mr. Nelson: The only thing I could do, since you couldn't [fol. 1045] stop him, I had to rebut him the best I could under the circumstances.

The Court: Well, I'll accept your reason for engaging in a discussion with Judge Musmanno here. I don't agree with you that I had any opportunity of stopping either one of you. At times I just sit back here and let you argue it out among yourselves. The attorney here for the Commonwealth tries to offer an objection and he can't be heard, and I can't be heard. So, there is nothing much I can do except adjourn Court and recess here until the situation subsides. Now, you just make it impossible to carry on here at times the way we should carry on. I think you are both intelligent here and you should realize the problem that confronts us.

Mr. Nelson: Well, your Honor——

The Court: Now Judge Musmanno, I am affording you the opportunity at this time, and I would ask you Mr. Nelson not to interrupt further until I hear from Judge Musmanno.

Mr. Nelson: All right.

[fol. 1046] The Witness: The defendant made a very derogatory remark about my position, which has nothing to do with my being here as an American citizen and as a witness in this case. The statement which he made, and the disparaging manner in which he uttered it, cannot be excused on the ground that he is his own counsel. On the day that he was arrested, August 31, 1950—

Mr. Nelson: Now, I object.

The Witness: He appeared in Court with two attorneys—

The Court: Judge Musmanno, please. Remarks concerning any of the facts of the case here, or concerning his presence or absence of counsel, I do not think have any bearing here. If you are asking me for protection from disparaging remarks, I'll admonish the defendant to desist from any further conduct of that nature.

The Witness: Well, I would ask that he apologize for the derogatory comment he made about my position, which had nothing to do with this case.

[fol. 1047] Mr. Nelson: Apologize to you?

The Court: No, just a moment. Any apology necessary, I think, should be directed to the Court.

Mr. Nelson: I think you are the one that should apologize to me for causing me all these difficulties.

The Court: Gentlemen, I have been very patient Mr. Nelson, and I have hesitated to exercise the prerogatives of the Court, but persistent interruptions, causes my patience to end. The interruption to such an extent—

Mr. Nelson: May I speak to you?

The Court: No, not at this time.

Mr. Nelson: May I ask you a question?

The Court: No, not at this time. When I am through discussing the matter with the witness, I will engage in conversation with you.

Mr. Nelson: All right.

[fol. 1048] The Court: Now, I can't, and I won't, ask

anyone to apologize, Judge Musmanno, under the circumstances present here. I will ask the defendant to desist from engaging in conversation, arguments, and debates with you, or any other witness, and I would ask you at the same time to cooperate with me, to be responsive and desist from engaging in any arguments or debates with him.

The Witness: I am aready to answer all questions allowed by the Court, but I do ask not to be characterized by the defendant.

The Court: You are right in that respect, and I shall demand of the interrogator, the respect that is due of any witness, and the respect that is due the Court, and not to engage in such things which are entirely out of place. Now, do you want to say something, Mr. Nelson?

Mr. Nelson: Your Honor, what can I do here? I am confronted with three judges here, that know the law; and your Honor knows perfectly well what you could do when the witness, who ought to know better, runs off——

[fol. 1049] The Court: I know what I can do with the witness and I know what I can do to the defendant, too.

Mr. Nelson: That is all right; that is what you said here. You threatened me several times but you have not threatened him. I believe he knows more about the law and, therefore, should be held to—if there is anything such as justice here—he should be held to.

The Court: I think you both are well acquainted with the fundamentals of our jury system, and the respect our Court is entitled to. So, I can't distinguish in that manner that you are asking me to distinguish. Let us not discuss it further.

Mr. Nelson: Well, will the Court hold him from attacking me?

The Court: I have admonished both of you to refrain from attack on one another; to refrain from arguments between one another; to refrain from any insinuations or disparaging questions or answers directed at one another, [fol. 1050] and if you will cooperate in that respect, we shouldn't have any further trouble, and we should proceed in an orderly fashion and terminate this case without any unnecessary delay, affording you all opportunity to cross-examine, and affording the District Attorney ample oppor-

tunity to submit evidence here in support of the indictment.

Mr. Nelson:

Q. I handed you this pamphlet a little while ago, which is marked as Exhibit C. You made a statement, did you not, that these books, or rather the International Publishers is on the Attorney General's list. I just don't now know how you characterized that list?

A. The prescribed list, the list of the Committee——

Q. Is that what you testified to?

A. That is right.

Q. It is true, is it not Mr. Musmanno, that the Attorney General—the courts have ruled that the Attorney General had no right, in our democratic system, to make any such prescribed list, or lists of books or organizations, as he has done; isn't that a fact?

A. It is not a fact. You are attempting to interpret a Supreme Court decision and you are interpreting it incorrectly.

Q. Is it your contention then, that the courts have not ruled—is it your answer that the courts have not ruled on [fol. 1051] this question against the Attorney General?

A. The Supreme Court ruled in one particular case, which had nothing to do with the International Publishers, which is a Communist organization.

Q. Well it had to do with a list, did it not, that was on the so-called prescribed list?

A. The International Publishers is not a member of that list. It is a bona fide organization taking orders directly from Moscow.

Mr. Nelson: Well, your Honor, I move to strike this. It is an opinion of the witness. Again he is running off with his accusations when he knows he is wrong.

The Court: Well, you asked the question Mr. Nelson, and you received the answer, so I am not going to strike it.

Mr. Nelson: Well, I wish your Honor would have the question read. See what the question was. He was unresponsive.

The Court: Read the question.

Mr. Nelson: Pardon?

The Court: Read the question.

(Question read.)

[fol. 1052] The Court: Well, you are getting into the field of law and that is not what you are cross-examining on. Cross-examine on the facts and the Court will rule.

Mr. Nelson: The man made a prejudicial remark, your Honor.

The Court: You asked him about the Supreme Court decision, whether it was legal or illegal for the Attorney General to have compiled such a list, and it was answered. So, you will have to be bound by the answer that you elicited, even though it was probably an illegal question, objectionable, and the answer is not within the scope of our inquiry here, but it has been asked and answered, so we will do nothing about it. Proceed.

Mr. Nelson:

Q. Did you, Mr. Musmanno, write a book called "Listen to the River"?

A. I did.

Q. And that is quite a recent book, I mean within the last four years?

A. No.

Q. Five years?

[fol. 1053] A. Yes, that is more like it.

Q. That is a novel, is it not?

A. It is.

Q. And the main protagonist in the novel is yourself, right?

A. No, my father.

Mr. Lewis: That is objected to.

The Court: Objection overruled.

Mr. Nelson:

Q. One of the characters in the book is yourself?

Mr. Lewis: That is objected to.

A. It is a story of my father, and his family, and I naturally am a member of his family, so I am in the book.

Mr. Lewis: Let us have an offer.

Mr. Nelson: I will finish this briefly.

The Court: An offer is called for to ask what you seek to develop by this questioning.

(At side bar.)

Mr. Nelson: I want to show, your Honor, just one more bit of evidence that will prove my contention that this man is politically so serious as to have himself advanced [fol. 1054] as a candidate for the Presidency of the United States. He can deny it if it is not so.

Mr. Cercone: What has that to do with this case?

The Court: He is trying to show motive for bringing this prosecution, and he is attempting to affect his interest and credibility.

Mr. Nelson: He wants to use the Communist issue in his campaign, and I believe it has a bearing on this case against me, your Honor.

The Court: Do you have excerpts from a book that you want to direct his attention to?

Mr. Nelson: I will ask if he knows.

Mr. Cercone: What is the quotation?

The Court: Do you have the book with you?

Mr. Nelson: I don't have it with me.

Mr. Lewis: I think the Court should see the book before there is any attempt made to offer it.

Mr. Nelson: I just have one or two questions on it, your [fol. 1055] Honor, if you will permit me to ask them.

Mr. Cercone: We say that this question would prejudice the witness in the eyes of the jury.

Mr. Nelson: I am asking whether it is a fact or not.

The Court: What is the question you want to put?

Mr. Nelson: I want to put the question to him, "Is it true or is it not that in that book you have advanced the idea that you are to be a candidate for the President of the United States."

Mr. Cercone: That is unfair and it is objected to. The book ought to be here.

Mr. Nelson: I can produce the book.

The Court: You better produce the book and we can

see the exact statement and we will then rule. At this time we sustain the objection.

(End side bar.)

[fol. 1056] Mr. Nelson:

Q. Mr. Musmanno, I believe you testified here yesterday that you introduced a Bill, to outlaw the Communist Party, in the Legislature in 1929?

Mr. Lewis: That is objected to.

A. Right.

The Court: Objection sustained. We have been over that, Mr. Nelson.

Mr. Nelson: Well, this is a different question, your Honor. The only way I can lead up to it is ask some preliminary questions. All right, I will try it differently. I am hampered, your Honor, by these narrow bound rulings.

The Court: We have granted you all the leeway we can. We are not going to review matters we have discussed here yesterday or the day before.

Mr. Nelson: This matter has not been discussed, your Honor.

The Court: The matter of presenting the Bill to the Legislature has been viewed, reviewed and we are not going [fol. 1057] to review it the third time.

Mr. Nelson:

Q. Do you know Mr. Musmanno, or don't you know that the—let us put it this way. When was the present Sedition Act passed under which I am being tried here?

A. It was first passed in 1919.

Q. Do you know, or don't you know that the Bill was opposed by the American Federation of Labor at that time?

Mr. Lewis: That is objected to as immaterial.

The Court: Objection sustained.

Mr. Nelson: Well, your Honor, can I ask him under what circumstances the Bill was passed, to show how this witness takes advantage of times like those and introduces bills?

The Court: The objection is sustained. The Bill is on

the Statute books and the Act is here. The reason the Legislature has, or the motive it has, or the objections to it will not be discussed in this trial.

Mr. Nelson: All right, your Honor.

The Court: It is the law of the State and we will observe it.

[fol. 1058] Mr. Nelson:

Q. It is true, is it not Mr. Musmanno, that the United Mine Workers opposed that Bill?

Mr. Lewis: That is objected to.

The Court: Objection sustained. That is the same question. We will not permit you to ask questions concerning the passage of the Act.

Mr. Nelson: Well, your Honor, I would have to show under what circumstances these kind of Bills are passed and how they are used against Labor.

Mr. Lewis: That has nothing to do with it.

Mr. Nelson: That is what Sam Gompers said about the Bill.

The Court: The objection is sustained. We will have no further discussion about it.

Mr. Nelson:

Q. Now, Mr. Musmanno, in your testimony you made constant references to the literature that you introduced here, and to the fact that in this literature there's always references to Wall Street, in various ways.

[fol. 1059] A. I didn't state that, but it is true. I did read it. That statement does appear in many of the books. I would not know that extemporaneously——

Q. I want to telescope these things, make it brief, and see whether we can agree that your contention is that there are many references to Wall Street in this literature?

A. There are. You say my contention, it isn't a contention——

Q. Your testimony, let us put it that way?

A. In many of these publications the phrase, "Wall Street" appears.

Q. And it is true, isn't it Mr. Musmanno, that that is

quite a common term used by people, newspaper men, and economists and professors in colleges and so forth, they speak of Wall Street and it has already become an accepted and traditional word in our vocabulary.

Mr. Lewis: That is objected to.

The Court: Objection overruled.

A. In the current literature Wall Street is frequently used as a synonym of a financial center of a certain part of our Country. In the Communist literature Wall Street is used as a synonym for the United States in a very improper manner. The Communist literature attacks the United States Government violently, sardonically, and in caricature and in an attempt to avoid the seditious conclusion which might come from such an attack, uses the words Wall [fol. 1060] Street. So, that very often in the literature, Wall Street is meant to be the United States of America.

Mr. Nelson: That is not responsive.

Mr. Lewis: That is very responsive.

The Court: You asked the question what it meant, in that literature, and you received an answer, Mr. Nelson.

Mr. Nelson: All right.

The Court: I was going to suggest if you want to point out to the witness any of the segments of the books, what it meant, you are privileged to do so.

Mr. Nelson: I will do that, your Honor, when I get the transcript, which I do not have yet, and I will compare the notes.

The Court: Very well. I just wanted to advise you of your rights to do that.

Mr. Nelson: All right, thank you, your Honor.

Mr. Nelson:

Q. Are you familiar, Mr. Musmanno, with the expression "economic royalists"?

A. Yes indeed.

[fol. 1061] Q. And you recall, or do you not, that it was President Roosevelt, I believe, who used that in one of his addresses to the United States Congress.

Mr. Lewis: That is objected to as not proper cross-examination.

The Court: Objection overruled.

A. I do not know that he used it in an address to Congress, but I do know that he made use of the phrase.

Q. What did he mean by that in your opinion?

Mr. Lewis: That is objected to as calling for an opinion.

The Court: If you want an opinion, you are liable not to get the one you are seeking, Mr. Nelson.

Mr. Nelson: I know what I am up against here, I have a Supreme Court Justice here.

The Court: We are not trying the case on opinions, but on facts.

Mr. Nelson:

Q. What did he mean by that?

A. The President referred to the monopolists who had [fol. 1062] undue control over the economies of the nation.

Q. And you wouldn't say, would you, that he also referred to the Republican administration that he swept out of office, as being essentially and mostly dominated by the economic royalists?

Mr. Lewis: That is objected to.

The Court: Objection overruled.

A. I don't know if you could characterize an entire Party with the phrase "economic royalists," because the word "royalist" personifies some thing. Therefore, it must be an individual, and you couldn't personify a Party with a word, or phrase of that kind.

Q. But the phrase was used, was it not, by Mr. Roosevelt and those who used that, after they coined that phrase, after him, to describe a monopoly in this Country that owns the wealth of this nation, the basic wealth?

A. No, I don't think he did.

Q. You don't think so?

A. No.

Q. So, who did he mean?

A. As I said before, he referred to certain monopolists—

Q. All right.

A. —he referred to certain monopolists who had undue

control of certain interests in the nation, which is far from universalizing as you are attempting to do.

[fol. 1063] Q. Didn't he use that expression at that time, to show the people of the Country that it was necessary to sweep the money changers out of the temples; didn't he say that?

A. I don't know whether he used that phrase or not. I am very familiar with his speeches, but I don't know whether he used that particular phrase or not. He may have. He also spoke about sweeping the Communists out of the United States, also.

Mr. Nelson: I move to strike that.

The Court: Motion granted.

Mr. Nelson:

Q. It is true, is it not Mr. Musmanno, that when Roosevelt became President of the United States, that Hoover had around him in his Cabinet, people like Andy Mellon, and other economic royalists; isn't that true?

Mr. Lewis: I object to this. The Court room is not to be used as a public forum now.

The Court: Objection is sustained. I have permitted questions concerning terms asked here on the basis that probably they will be pursued from excerpts from these books; is that the purpose?

Mr. Nelson: I want to lay a basis for that.

[fol. 1064] The Court: That is what I thought, but as far as bringing individuals into this, associated with Government officers in the past, I can't see that that is relevant, Mr. Nelson. I will sustain the objection when it comes down to a point of personalities.

Mr. Nelson:

Q. It is true, is it not Mr. Musmanno, that when Roosevelt used the term "economic royalists" he meant the people that owned the basic industries of the nation; the large newspapers; the means of spreading propaganda, that sometimes goes off, or is passed off as information; radios, and so forth, that he contended that they had too much power and that they should be swept out of office?

Mr. Lewis: That is objected to.

The Court: Objection overruled.

A. I gave you my definition of "economic royalists" as I conceived it to be in the manner in which our late lamented President used it. He did not universalize it as you are attempting to universalize it.

Mr. Nelson: I did not hear the last part of the answer.

(Answer read.)

[fol. 1065] The Court: Was it applied to any particular industry or enterprise?

Mr. Nelson: We will get to that in a minute.

The Court: All right, I will withdraw my question.

Mr. Nelson:

Q. It is a fact, is it not—or let me put it this way, Mr. Musmanno. You are an educated man and you claimed you made tremendous study of economic political subjects, such as history, and so forth, you certainly ought to be familiar with this phrase. Do you know, or don't you recall, that Woodrow Wilson stated that the combined monopolists and bankers of this nation are the masters of our government?

Mr. Lewis: That is objected to, what Woodrow Wilson stated.

Mr. Nelson: Wait a minute now.

The Court: We have overuled the objection. You asked the witness whether he was acquainted with a statement made by Woodrow Wilson.

Mr. Nelson: That is right.

The Witness: Will you read the question again?

[fol. 1066] (Question read.)

A. I do not exclude the possibility. I have no independent recollection of that particular sentence.

Q. So then there are men in our nation who, and non-Communists may I add, who referred to the situation at times that these monopolists that are referred to here in this literature as bankers of Wall Street, have entirely too much sway in the execution of our Government.

A. Yes, that is true. Statements have been made of that character, but they have not been followed up with urging people to overthrow the Government by force and violence, which Communists do and which this literature proclaims.

Mr. Nelson: I object to that as a conclusion. It is up to the jury to find out if that is true or not. I move to strike this.

The Court: All right. The last part of the answer will be stricken.

Mr. Nelson: Well, your Honor, why does he do it? You made an appeal to him. I'm trying to adhere to your ruling as best I can, and why shouldn't he do it?

The Court: He should, and I'll ask him again to try to [fol. 1067] refrain from elaboration and be direct in his response.

Mr. Lewis: Some of these questions, it seems to me, if the Court please, have to be elaborated on; they are not just yes or no questions.

The Court: Well, some of them need to be, but on the other hand, some of them are argumentative. It is your duty, as District Attorney, rather than the witness to pursue them by way or argument.

Mr. Lewis: The questions themselves are arguments.

The Court: No, the questions themselves are forming a foundation for an explanation for other excerpts from the books, as I understand it.

Mr. Nelson: That is right, your Honor. May we have another break, your Honor?

The Court: Could we not continue for ten minutes longer?

Mr. Nelson: I wish you would recess now. My leg is sore and I am getting tired.

[fol. 1068] The Court: You may sit.

Mr. Nelson: I can't do it that way.

The Court: Well, we will consent to your request and adjourn for ten minutes.

(Recess.)

After Recess

MICHAEL A. MUSMANNO, resumed the stand and testified as follows:

Mr. Nelson:

Q. So then Mr. Musmanno, your answer would be that you are familiar, and it is your belief that Woodrow Wilson would have made such a statement as we quoted awhile ago?

A. Yes. I said that I am not familiar with that statement but I do not exclude the possibility that he may have made it.

Q. And there were other historians and economists of great reputation who have made the same findings in their study of the economic picture of the United States?

A. I don't say findings, but I think the phrases of the same import have been used.

Q. Well let me put it this way. Would you agree that the phrase "economic royalists" is a proper expression, that there are tremendous monopolies in the United States?

A. I know that President Roosevelt used that phrase, and [fol. 1069] he used it in referring to certain monopolists who had an undue control of certain interests in the nation.

Q. So that there are other people besides Communists, who have written different literature, who have come to the conclusion that we have tremendous monopolies here who own a tremendous amount of the wealth of this nation, and they are generally now referred to as "Wall Street" isn't that right?

A. The question is very complicated and rather obscure.

Q. I am sorry. Will you read the question?

(Question read.)

A. Well, the statement——

Q. I will reframe the question. It is agreed, is it not, that the monopolists that this literature refers to, are also referred to as Wall Street, is it not?

A. But not in the same sense.

Q. Is it your testimony, Mr. Musmanno, that these references to the monopolies that exist in the United States, in this literature is correct or incorrect?

A. It is incorrect, because when they refer to Wall Street, they refer to the United States Government, and they use

language of violence against the United States Government in an attempt to camouflage that attack upon our very Government by using that term monopoly.

Mr. Nelson: That is objected to.

The Court: The objection is overruled.

[fol. 1070] Mr. Nelson:

Q. Under the heading of monopolies, will you——

The Court: Maybe I misunderstood the question. Are you asking the witness whether the use of the words Wall Street and monopoly are synonymous?

Mr. Nelson: That is right.

The Court: By whom. By the writers in this literature, or by the people whom you have mentioned?

Mr. Nelson: It is commonly believed, that is one and the same thing.

Mr. Nelson:

Q. Isn't that a commonly accepted idea by the people who use the term?

A. The answer is no, a big no.

The Court: May we have a clarification of the previous question.

Mr. Nelson:

Q. Do you know Mr. Musmanno, or don't you know, that there are 500,000 corporations in the United States engaged in the manufacturing business, but 200 of those corporations [fol. 1071] own 55% of the wealth.

Mr. Lewis: That is objected to.

The Court: Well, I think we better have an understanding here, gentlemen, how far it is relevant.

Mr. Lewis: May we have an offer at side bar?

The Court: Very well.

(At side bar.)

Mr. Nelson: Because Mr. Musmanno testified that in this Communist literature, when one speaks of monopolies and speaks of Wall Street they give the name of ipso facto, by

that, the American Nation, the Country, its people. Now, my condition is this, and I want to show through facts that there were other people who referred to the Country, that is, to the Government, at times as being controlled by monopolists and that it will require revolution to change it. It required a struggle on the part of the people through years to take it.

Mr. Lewis: What has that got to do with this?

[fol. 1072] The Court: Is there anything in the books on that?

Mr. Nelson: Yes, plenty.

Mr. Lewis: Then refer to it in the book.

Mr. Nelson: I told you that I am not well. I can't prepare that, or do it in any other way.

The Court: I told you that I was agreeable that you secure from the witness his understanding of certain terms, but when you get into detailed facts, such as this, we cannot permit it.

Mr. Nelson: This would only take about 15 minutes.

The Court: Well then specifically refer to the books.

Mr. Nelson: Because I have not been well I have not had sufficient time to mark the pages and go through it.

The Court: I would ask you to refrain from asking these questions until you are properly prepared to ask certain [fol. 1073] meanings by portions marked in specific paragraphs in the book.

Mr. Nelson: I object to your ruling, if the Court please. You are imposing a hardship on me.

The Court: I am not limiting you except to this extent, that any particular part of the book not read by the witness, you certainly have a right to inquire into now, but you cannot do so without showing the specific part to the witness.

Mr. Nelson: It has to do with monopolists and economists. I contend that I have a right to disagree with the opinion of this witness on monopolists and economists.

The Court: Certainly, you have a right to disagree with his opinion.

Mr. Nelson: Of course, a lawyer might do it differently.

The Court: What I am asking you to do is point out in books, which are alleged to be seditious, these points you raise. Now, if we open up the door to you to just talk gen-

erally about the entire economy, or political matter, social [fol. 1074] matter, education, or other matters, there would be no end to it. If you will proceed on that basis and use those books then we will permit you to do so. If you are referring to exhibits which have already been offered in evidence, you have a right to point out the specific passages. I will allow you to do that.

Mr. Nelson: I will go into some other questions right now.

(End side bar.)

Mr. Nelson:

Q. It is true then, is it not Mr. Musmanno, that people like Roosevelt and others spoke of the undue amount of power that the monopolists in this Country have at various times on the Legislative bodies, and on the economic lives of the Country as a whole?

A. Yes, there have been references of that character, but not in the same way Communists use those references.

Q. I am not asking you that. All you have to do is answer yes or no. It is true, is it not, that it was Roosevelt, who during the great depression felt that the big monopolists of this Country had brought the nation to a position where there were 15 million jobless, while a handful of monopolists [fol. 1075] wallowed in wealth?

Mr. Lewis: That is objected to.

The Court: The objection is sustained. We will rule out any reference to statistics unless there is a particular reference.

Mr. Nelson: I didn't say that, your Honor

The Court: Well, you did say 15 million jobless.

Mr. Nelson: I understood that you stated I couldn't go into monopolies.

The Court: I told you you could inquire of the witness anything concerning terms which may be pursued later in reference to these books, but not to get into any specific discussion as to number of corporations, purposes, just as you have done here, the number of unemployed, or anything of that general nature without reference to the books which are in evidence.

[fol. 1076] Mr. Nelson: Well, your Honor, you are blocking

my line of examination, even on the point which I thought you permitted me at side bar.

The Court: I will let you talk about economic royalists, Wall Street, or what those terms mean, or any other terms which may be referred to in those books.

Mr. Nelson: All right, your Honor.

Mr. Nelson:

Q. In these books, it is true is it not Mr. Musmanno, that references to the economic royalists, when there are such references made, are applying to the large corporations, like the Morgan bank, the Mellon bank and the Rockefeller bank, and so forth?

A. There are references in these books to phrases such as you have in mind, and I can't at this moment individualize the particular phrase "economic royalists," in the books, but there are many references to Wall Street, and these phrases are used as a camouflage for an attack on the Government, the governmental policy——

Mr. Nelson: I move to strike this witness' statements.

The Court: It is an opinion you asked for, and that is the [fol. 1077] point I am making. If you want to point out certain phrases in these books to the witness, which would counteract the part which he has read, you have the full privilege to do so, but when you ask for his opinion you are bound by his answer.

Mr. Nelson: I told the Court that the reason I couldn't properly prepare to cross-examine on the books was that only this morning I got the transcript.

The Court: We understand that.

Mr. Nelson: When Mr. Musmanno testified, I had no chance to put down the references, I put down the exhibits, but I had no chance to put down the references. It is very difficult for me at this time to confront him with the quotations, or distortions, the way he misquoted the book.

The Witness: I object to the statement that I in any way misquoted anything in the book.

Mr. Nelson: I said distorted.

The Court: The only thing that was submitted to the [fol. 1078] jury was the reading of the excerpts from those books. Those exhibits are all marked from 1 to 100 and

some, and they were marked—the excerpts were marked to which you objected, asking that clean copies be presented. Now, those marked copies are here, and you, according to the testimony of the witness, had something to do with the books before they were procured by him, and you should have some acquaintance with them in order to enable you to proceed to cross-examine on the effect of his testimony. I have a list of exhibits here, made by my notes, which might be helpful to you.

Mr. Nelson: That is all right, I have a number of the exhibits here with me. I don't have all of them, and I will ask the witness whether he remembers Commonwealth's Exhibit No. 19, called "The Twilight of World Capitalism"?

A. Yes, I do remember that.

Q. Do you remember Chapter 3, on page 30?

Mr. Nelson: Do you have a copy there, Mr. Lewis so you can follow it?

[fol. 1079] Mr. Nelson:

Q. Mr. Musmanno, you quoted from this chapter—I don't have the exact place marked—but do you remember reading the following in Chapter 3, on page 30? "The capitalist United States has at this time reached a national income of 250 billion dollars yearly and it turns out at least two-thirds of the industrial production of the whole capitalist world. Never has any Country even remotely approached such an immense productive capacity and national income. And if capitalism is strong in the United States, the forces of socialism are correspondingly weak. The working class has not yet broken ideologically with capitalism, the workers have not even organized a mass la-or party, and the Communist Party still remains but a small organization. Small wonder, then, that the spokesmen of American capitalism fill the air with boastings and shouts that capitalism in this Country has found the secret of permanent growth and prosperity and that socialism can never come in the United States." Do you remember reading that?

A. I did not read it to the jury. I remember reading it.

Q. Do you remember reading the following on page 31? "Besides, in the construction of our social system, American

capitalism has been largely unhampered by the hang-overs from feudalism that have been such a drag on capitalism in other parts of the world. A dynamic factor, too, was that there was in this country for many decades a chronic [fol. 1080] shortage of labor power (because capitalism has literally had to build the continent from the ground up), which fact greatly stimulated American technology and inventive genius in their never-ending quest for labor-saving devices. In addition America has drawn freely on European capital and skilled labor during that time for the building of its industries."

"Few Americans realize to what a large extent, during the past generation, the capitalist economy in this country has fed upon the blood of war. When World War I broke out in the fall of 1914 the United States, then caught in an economic depression, as a result of the war overcame this depression and embarked upon a period of active production and industrial development." You read that, didn't you?

A. I have read it.

Q. You quoted that?

A. No, I did not quote that, but I did read it.

The Court: Just as a matter of suggestion, in the matter of procedure, may I ask this question of the District Attorney, and also of the defendant? All of these books are in evidence and would it not be better for you, in your testimony, to emphasize these points rather than to just get the affirmation from this witness of the existence of these passages in the books?

[fol. 1081] Mr. Nelson: Well, your Honor, I will prepare the right kind of quotations that have references that were made to these books, by this witness, when I get the transcript. I didn't have a chance to do it, and I didn't know I was going to get to it by this time. You ruled out a number of things that I intended to handle today.

The Court: Well, I understand that. The only point I am making now is to inquire what is to be accomplished by reading these passages to the present witness. He has identified the books and the District Attorney certainly is not going to deny that the passages you refer to are not in the books, and they could be submitted by you in presenting your case in defense, rather than having this witness

merely say that they are in the books. However, if you want to question this witness concerning the parts, the effect of the parts he has read, by reference to these, I can see some purpose of pursuing it by cross-examination.

Mr. Nelson: My intention was, your Honor, to show the [fol. 1082] jurors here and the Court, that the devil can quote the Scripture too, you know, and he can quote that section that pleases him. I want to show these books mean something in toto, that is, people can read them and they can take out of that what they wish.

The Court: I think we understand the matter of your defense on it. Your defense is that these books are not seditious.

Mr. Nelson: That is right, your Honor.

Mr. Lewis: Apparently Mr. Nelson is trying to put in his defense on cross-examination.

The Court: Well, that is what I am directing his attention to. It might be better for him to submit these passages to the jury on defense, rather than by cross-examination of the present witness. The books are all in evidence and the jury has a perfect right to see and read them all, if they see fit to take the time to do so, or to hear each side present those parts of books which they feel will sustain their position.

[fol. 1083] Mr. Nelson: Well, your Honor, I don't know whether the jurors will have time to look through 150 odd exhibits, or not, and some of them run into two or three hundred pages, and they have been presented in a slanted way by the prosecution.

The Court: Well, that is the reason I suggested you do it this way. It might be better for you to present them by way of defense, that is, those parts of the books which you want them to consider from your viewpoint, rather than have the jury rely on the opinion of the witness, or his interpretation of what your part would be.

Mr. Nelson: Well, your Honor, in that case,—

The Court: It is a matter for you to decide on. I merely make the suggestion to you on it that the Commonwealth has offered certain passages to demonstrate they are seditious, and possibly by way of defense you should offer certain portions that indicate they are not seditious. That would be more beneficial to you to do it that way.

[fol. 1084] Mr. Nelson: I would have to have the transcript, your Honor, and I don't have it.

The Court: Of course, your time to present evidence yourself is not here. It can be done in the defense testimony, or if you just wish to ask the witness to confirm that those passages are in the book, I will permit you to do that.

Mr. Nelson: Well, your Honor, I have very few copies of the exhibits here, actually only three or four. It is hard for me to carry them and I did not have the exhibits, and therefore I was not able to prepare the examination on this particular thing in such a way as to be able to confront his quotations, or interpretations with my interpretations.

The Court: Well, the only point I am making Mr. Nelson is this, you still have the right to submit any of those quotations, even without the presence of this witness.

Mr. Nelson: It is important to me, it seems that it be done while this witness is on the stand.

[fol. 1085] The Court: All right, if you think that is more beneficial to you, you are privileged to do so.

Mr. Nelson: All right, I hope I will be able to get the transcript by tonight, and if I do I will prepare it for tomorrow. In the meantime I will ask another question about another exhibit.

The Court: All right. You may proceed.

Mr. Nelson:

Q. All right, Mr. Musmanno. You introduced for the Commonwealth, did you not, a pamphlet known as the Manifesto of the Communist Party, or commonly referred to as the Communist Manifesto, written by Friederich Engels and Karl Marx?

A. I did.

Q. It is a fact, is it not Mr. Musmanno, that this pamphlet was prepared by Marx and Engels for the First International Association organized in London in 1847 and '48?

A. That is true.

Q. And Marx and Engels were commissioned by this International Association to write a program of a general character for those who began to see that there was something wrong with capitalism, as they saw it, and wanted to make a change?

A. Through revolution.

[fol. 1086] Q. Well, it is true, isn't it Mr. Musmanno, that there were countries at that time in which people had no right to vote and had no right to ballot, or they had monarchs ruling the countries, consequently, like the American people who had to resort to revolution to kick out a monarch from here, in this country, in those countries it might have been necessary to resort to force as they saw it, isn't that right?

A. But this was the bloody shirt of world revolution and not national revolution.

Q. Well, Mr. Musmanno, isn't it true that the Manifesto was now in existence for over 103 years, and that in various countries, various Communist Parties applied whatever they read from there in such a way as to apply to the conditions in their own country, and they did not apply universally all over, isn't that a fact?

A. This is an appeal to world revolution; that the workers should rise in revolution against their country—their governments—no matter what type of government might be in power in that particular country; that is what the Communist Manifesto is and that is what makes it so dangerous.

Q. Isn't it a fact that Communists at various stages, in various countries, did not raise the question at all of changing the system immediately to socialism, but have combined with other parties to fight for the immediate demands of the people that confronted them at that particular time?

A. There is no country in which Communism took over that did not result in bloodshed, hardship and misery for [fol. 1087] the people. The Communist Manifesto is an appeal to revolution—not peaceful revolution, but violent revolution—and violent revolution brings in its wake only bloodshed and untold misery and that has been the history of Communism in every country in which it took over, and I can give you the list of those countries.

Q. Isn't it true, Mr. Musmanno, that in the democratic countries, where there is a right to discuss things, and a right to have meetings, and a right to read books, and where there are rights to have elections, like in France and in England at the present time, that the Communists in those countries supported various actions that were bene-

ficial for the people, having nothing to do for the moment with the question of changing the system to socialism.

A. In no country did the Communist Party take over through an election. They never appealed to the electorate. They did it only through stratagem, through assassination, through violence, force, deceit and desperate measures of violence; that is the history of the Communist Party in every part of the world, without exception.

Q. All right. That is your prejudicial remark, Mr. Musmanno, and that does not correspond to the facts as we will show.

A. Well, that is a statement from you, not a question for me to answer. If it were a question I would deny your statement as being correct.

[fol. 1088] Q. Isn't it true, Mr. Musmanno, that this pamphlet dealt, not with one particular country, and therefore could not give a program for every country, but it spoke in general that capitalism eventually had to change?

A. Through revolution.

Q. Wait a minute now. Isn't it true that they contended that there would have to be a change from capitalism to a system where the people would own the industries, which is commonly or generally known as socialism or Peoples' Government where the industries are nationalized?

A. Through revolutions. This book urges the abolition of the family; it urges the abolition of religion; it calls upon the workers of the world to unite in world revolution. If you want me to read that paragraph I will read it to you.

Q. Again on the point that this is a general description of world events, of the world picture, and not a program for a particular country, on page 22, Chapter 2 of the Communist Manifesto, you will find, do you not, the following: "The Communists, therefore, are on the one hand, practically, the most advanced and resolute section of the working class parties of every country, that section which pushes forward all others; on the other hand, theoretically, they have over the great mass of the proletariat the advantage of clearly understanding the line of march, the conditions, and the ultimate general results of the proletarian movement.

[fol. 1089] "The immediate aim of the Communists is the same as that of all the other proletarian parties; Forma-

tion of the proletariat into a class, overthrow of bourgeois supremacy, conquest of political power by the proletariat."

A. Right.

Q. Now, Mr. Musmanno, the reference that we made awhile ago to the term "sweeping out the economic royalties from the temple," or "driving them out of the temple," does not that mean that other people, besides Communists had ideas that the low economic group should not be allowed to rule the country; that they should be swept out and that the common people should have more right to say what should be done with the economy of the country; isn't that true?

A. I will read to you, in answering your question, on page 44. "The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow—" and I emphasize the word "forcible"—"only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at a Communist revolution. The proletarians have nothing to lose but their chains. They have a world to win."

Q. That, Mr. Musmanno means, does it not, that the monopolists who now have everything in their hands, ought to tremble, yes, that the people may one of these days take over those monopolies and use it for themselves?

A. By revolution.

[fol. 1090] Q. That depends Mr. Musmanno, does it not, whether or not in the countries there is certain democratic rights or not, or whether or not you have a fascist dictatorship which sets itself in power, and you can't move them any other way than Mussolini was moved out and Hitler was moved out, isn't that right?

A. You state in your question that under certain conditions you would advocate revolution?

Q. I state that under those conditions, if the fascists and nazis were in power, I would advocate revolution, yes.

A. We have no fascists or nazis in power in the United States and you advocate revolution.

Q. We do not advocate revolution here, Mr. Musmanno. We say that what we want is a social change—

A. Through revolution.

Q. —that the people will take over industries and use them for themselves?

A. Through revolution.

Q. Well, that is your conclusion, Mr. Musmanno.

A. It is not my conclusion. It is in the books. You state it yourself.

Q. That is the way you interpret the books?

A. No, no. Just as the books are read and as you, yourself, stated many times, you are for the revolution.

Q. That is your inference, Mr. Musmanno, and my contention is, and that has been proven in history that the only time Communists resorted to force and violence against a [fol. 1091] group in power is when there was either a czar, a monarch, or a fascist dictator, where the rights of the people were taken away, and not in places where people had a right to vote and elect and discuss issues of election.

A. How about Albania? How about Poland? How about Czechoslovakia? How about Hungary?

Q. Wasn't Mussolini the one—your pal the one who took over Albania? Isn't that right?

A. Mussolini was not my pal. I wish to be saved from such derogatory remarks. I do know that you studied under Joseph Stalin.

The Court: We will ask that the last question, and all the subsequent remarks be stricken from the record and the jury is instructed to disregard them.

A. There is not one country, and I make that remark categorically——

Mr. Nelson:

Q. Are you answering the question?

A. Yes, I am answering the question.

The Court: We have stricken the question and all the remarks. You will put a new question to the witness.

Do you want him to answer, what about Albania, in the [fol. 1092] proper terms, Mr. Nelson?

The Witness: Incidentally, Mussolini was dead before the Communists took over Albania, if you want to get your history straight.

Q. Isn't it true that it was Italian troops that went to drive King Zog out of Rumania—I mean out of Albania—isn't that true, away before the World War?

A. But Communism did not come into power in Albania until the postwar——

Q. I raised the question——

A. I am speaking about when the Communists took over Albania and Mussolini was dead at that time.

Q. All right. I am talking about the fact that the Italian troops went into Albania, when it was a small kingdom there, a small republic of Albania, and I believe that was in 1934.

A. That is a matter of history, but we are speaking about when the Communists came into power, and I have stated that not in one instance did the Communists ever come into power in any given country, except through violence, assassination, stratagem, deceit and treachery.

Mr. Nelson: I have to strike that your Honor. That was not a question that I asked *to* him. He was making a speech. There was no question pending and he had no [fol. 1093] right to make those remarks.

A. I'll give you the countries if you want them.

The Court: I think that was in order with your discussion, Mr. Nelson, and you asked him to name a country where such did not exist. You mentioned Albania as a country where there was no violence, and there was a revolution without violence——

Mr. Nelson: Your Honor, I said that it was Mussolini and the fascists who invaded that country, without any provocation whatever, and that was the thing I threw in when he was characterizing my remarks.

The Court: I think the answer is responsive.

Mr. Nelson: All right. We will get back to the matter of books, when I get the transcript, your Honor—I can't do it this way—I have one more question.

The Court: All right. We will proceed until four o'clock.

Mr. Nelson:

[fol. 1094] Q. Would you say, Judge Masmanno, that these books are of such nature, and that a statement of this

kind would be the way you consider these books? "We must keep American whole, safe and unspoiled. We must keep the worker away from Red literature and Red ruses. Bolshevism is knocking at our door." Would you say that that would be your way of formulating a question?

A. I would like to know first from what you are reading.

Q. Well, does that sound like anything you would subscribe from?

Mr. Lewis: We object to that unless he states what he is reading from. He is obviously quoting from some printed material.

The Court: Well, I think to ask whether a witness subscribes to a certain theory himself, is not an appropriate question, Mr. Nelson. I will sustain the objection.

Mr. Nelson: It is a description of his opinion of these books that he introduced as evidence.

The Court: If you want to ask him for an opinion of the books, that is one thing. Do you mean his opinion of the books reflect your idea? Is that what you mean?

[fol. 1095] Mr. Nelson: We will put the question this way.

Mr. Nelson:

Q. "We must keep the worker away from Red literature and Red ruses." Leave it at that.

Mr. Lewis: That is the very thing I object to. The question does not mean anything; it is confusing; it is ambiguous.

The Court: No, I think it can be answered, Judge Musmanno. Do you subscribe to the theory that the working class of America should be kept away from Red literature?

A. I have asked where he got this quotation and he has not been courteous enough to show it to me. But, I certainly would not speak for the working people as to what they may, or may not read, but I do say that any literature which is circulated among the working class, which would stir up dissention and make a feeling for disrespect for the government to the point where they would rise up in bloody revolution against the government, is literature that should not be circulated.