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The Witness: This particular list is a list submitted by some individual and they said: here is a colored list, will you send for these people. Which we done.

Q. Now do you have any recollection as to where this last came from originally? A. No, I haven't.

Q. Now you had other lists in which you separately set forth the names and addresses of Negro people for prospective jury service, isn't that a fact?

Mr. Gordon: That is objected to, your Honor. Again there is a double question, "in which you separately set forth". I think he should be asked whether he did the setting forth.

The Court: Yes. Let us first find out if there was such a list, then you can ask what he did about it or what somebody else did.

Mr. Gladstein: I will reframe it.

Q. Mr. McKenzie, in your office there are lists in addition to No. 159 in which there are separately set forth the names of Negro people to whom notices are (3535) to be sent for jury service, isn't that so?

The Court: You are asking him whether there are such lists.

Mr. Gladstein: I am.

A. Whether there are such lists similar to this in the office?

Q. Yes. A. They are in that—on that table there, yes.

Q. Your answer is yes.

The Court: Who submitted that list dated March 7, 1941, Exhibit 159 for identification?

The Witness: There isn't anything to indicate who submitted it to the office.

The Court: You have no recollection on the subject?

The Witness: No recollection or no record of it.

Q. Now going back for a moment to 159 for identification, is it true that your check mark or what goes for your

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own personal marking on it appears on both of those pages?

A. Yes.

Q. And they indicate that you completed the work of using, to whatever extent you did, the names of those persons appearing on that exhibit as potential jurors; is that right? A. It indicated it to be filed.

Q. To be filed. A. To be filed, that is right.

Q. At what point did you indicate it to be filed? (3536) After sending notices out to these people? A. Yes.

Q. Yes. All right.

Mr. Gladstein: I will now offer this in evidence.

The Court: That is 159 for identification?

Mr. Gladstein: 159, yes. I will offer it.

(Defendants' Challenge Exhibit 159 for identification received in evidence.)

Mr. Gladstein: Would you mark this.

(Marked Defendants' Challenge Exhibit 160 for identification.)

Q. I show you 160 for identification. This is a record which came from your office, is it not? A. That is correct.

Q. It contains the names of persons submitted for potential jury service, does it not? A. Yes.

Q. Does it indicate the source from which the names came? A. Yes, it does.

Q. What is that source? A. It says: Submitted to the Federal Grand Jury Association for services on the Federal Grand Jury or Trial Jury Panels for Southern District of New York.

Q. Is it correct then that someone prepared that list and submitted it to the Federal Grand Jury Association and thereafter that Association submitted it to you; is that correct?

(3537) Mr. Gordon: Objected to, your Honor.
The Court: Sustained.

Q. Well, did you receive that list, the exhibit you now hold in your hand, from the Association? A. I would say yes.

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Q. You would say yes. Now does that exhibit indicate on its face that someone had prepared and submitted it to the Grand Jury Association?

Mr. Gordon: I assume the paper speaks for itself, your Honor.

The Court: Yes. Sustained.

Q. Is there any indication on that list, that exhibit, as to the race of the persons named therein? A. It says on this list "Colored women."

Mr. Sacher: What was that? I didn't hear it.

The Witness: "Colored women" is typed on the top of this sheet.

Q. Is there any indication on this exhibit as to whether any of these names appearing thereon were given a list designation? A. It says "6 list."

Q. 6 list. What does the 6 list refer to? A. 6 list would mean the list that these notices were sent out on.

Q. That is to say, notices to the persons whose names appear on this exhibit were sent and at that time a list (3538) designated No. 6 was created of these names?

Mr. Gordon: Your Honor—

Mr. Gladstein: I will withdraw the question. Please don't object.

The Court: I thought he said just the opposite.

Mr. Gladstein: He said—

The Court: I thought he said just the opposite.

Mr. Gladstein: Well, we will ask him what he said, your Honor.

Q. Did you place the designation "6 list" on there? A. No, I did not.

Q. Do you know who did? A. No, I do not.

Q. Is this list dated in any way? A. It is dated June 2, 1941.

Q. Was that at a time—

The Court: Wait a second. Let me get that. June 2nd?

The Witness: June 2, 1941.

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Q. Was this at a time when you were in charge of the jury clerk's office? A. That is correct.

Q. All right. Now do you have a list in the office that is designated "6 list"? A. I believe in that pile there.

Q. Could you get it for me?

Mr. Gordon: There seems to be an aura of (3539) mystery which has been created around these quote designations close quote. I wonder, your Honor, if we couldn't have the witness tell what use was made of it or what it means.

Mr. Gladstein: Just a second, please.

The Court: I am afraid on cross-examination there is a certain amount of legitimate holding things back. I am alert to see what is going to pop out, and so far it hasn't been much. But I want to give counsel an opportunity here to develop his line.

Mr. Gladstein: Mr. Clerk, will you mark this exhibit for identification.

(Marked Defendants' Challenge Exhibit 161 for identification.)

The Court: Mr. Gladstein, do you claim that there is anything wrong about the Grand Jurors Association or any other association submitting names to the jury clerk?

Mr. Gladstein: Your Honor, if I may formulate the question I will be very happy to answer it. I think it is a plain violation of law for this private organization to have virtually captured the jury system here.

The Court: You see, that is it. You got into that extravagant way of talking right away, and I don't quite see what you gain by it, except perhaps with the audience.

(3540) Mr. Gladstein: All right.

Q. Now I show you No. 161 for identification, and it appears on there that the designation "6 list" is present, is that right, sir? A. Yes.

Q. Now that is also a record which came from your office? A. Yes.

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Q. Now is it your testimony that the names on Challenge Exhibit 160 for identification, that is to say, the ones designated "Colored Women", that those names were transferred to or contained in another list called "6 list"?

Mr. Gordon: That is not his testimony.
Mr. Gladstein: I am asking if it is.

A. No.

The Court: Well, you always seem to put it just as though that was obviously so.

Mr. Gladstein: I will withdraw it.

The Court: And I was making a little note here and it certainly gave me that impression, as I listened to it.

Mr. Gladstein: I withdraw it.

The Court: Put it to him over again. When you are asking if such a thing is so please don't always state it as a fact, as though there wasn't anything to it at all, when it is not so.

(3541) Mr. Gladstein: We will see.

Q. Into what list were the four names appearing on Exhibit 160 for identification designated as "Colored Women" placed, if any? A. That was the list that they were used—

Q. What is that? A. That list (indicating).

Q. No. 160? A. This one here (indicating). In other words, the 6 list.

Q. The 6 list? A. Yes.

Mr. Gordon: The one with "6 list" on it.

Mr. Gladstein: There are several with "6 list." I want to know—

Mr. Gordon: The witness referred to Exhibit 160 for identification.

Mr. Gladstein: Yes.

Q. Is this the only "6 list"? A. No, there are other "6 lists."

Q. All right. Now I am asking you whether the four names appearing on Exhibit 160 for identification are to

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be found, if you know, in any other list designated "6 list" or anything else? A. I don't know.

Q. You don't know. A. I would say not; they were sent from that list.

Mr. Gordon: Referring to Exhibit 160 for identification.

(3542) Q. What was sent from— A. The notices were sent right from that list.

Q. That is 160? A. 160.

Q. What notices were sent? A. The notices to come in to qualify for jury service.

Q. Thereafter, upon qualification, history cards for such people were made, is that right? A. If they came in.

Q. Yes. And your history cards would show whether they came in and whether they became jurors, is that right? A. If they came in and qualified it would show that they qualified.

Q. By the way, once a person qualified and the history card was made out for that person, that card remained in the active jury files, isn't that right? A. That is true.

Q. And never was removed unless the juror died or moved out of the jurisdiction, or something of that sort; isn't that right? A. Or it was taken off the list.

Q. Or it was taken off the list. So that names that were procured in this manner from such lists as 160 for identification back in 1941 are still in your active files, isn't that right?

The Court: Were they procured by your office? You see, the question includes the word "procured."

(3543) The Witness: No, those names weren't procured by—

Q. Were they received by your office? A. They were received.

Q. All right. If we substitute the word "received," is it correct or not that the names that appear on a list such as Challenge Exhibit 160 for identification, upon qualification would go into history cards, those cards would go into your active files and many still are there, isn't

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that right? A. If they filled out an application and they were accepted a history card would be made up, and they qualified, they would go into the active file.

Q. Hundreds upon hundreds of names obtained from these lists are still in your active files, isn't that right?

Mr. Gordon: Does he know that?

The Court: What do you mean by "these lists"?

Various lists in question?

Mr. Gladstein: Yes, various lists, such as 160 for identification.

The Court: With names of colored persons on them, is that what you mean?

Mr. Gladstein: No. I will withdraw that question.

(3544) The Court: I should say it might be taken to mean that.

Mr. Gladstein: I will withdraw that.

I offer 160 in evidence.

Mr. Gordon: No objection.

(Defendants' Challenge Exhibit 160 for identification received in evidence.)

Mr. Gladstein: Would you mark this, Mr. Clerk.

(Marked Defendants' Challenge Exhibit 162 for identification.)

Mr. Gordon: May I have it for just a moment?

(Clerk hands to Mr. Gordon.)

Q. Is No. 162 for identification also a "6 list" taken from your records?

Mr. Gordon: Your Honor, I object to the question until this "6 list" business is cleared up.

The Court: Yes. What is the "6 list," do you know, Mr. McKenzie?

The Witness: Your Honor, when they were sending out notices, to identify them they put on the qualification notice going out "6 list" so that they could be checked as they came in or when a final

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notice or follow-up notice was sent out in the event they didn't come in.

Q. In other words this list was kept in your office and preserved, is that right?

(3545) Mr. Gordon: No, he didn't testify to that, your Honor.

The Court: He is asking him—

Mr. Crockett: May I suggest that Mr. Gordon let the witness testify.

The Court: What is that, Mr. Crockett?

Mr. Crockett: I would like to suggest that Mr. Gordon let the witness testify. I confess that to me it gives the appearance that there is something that Mr. Gordon is afraid the witness might accidentally bring out.

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

The Court: Will you please refrain from things of that kind, Mr. Crockett.

The Witness: Will you repeat the question?

Mr. Gordon: The difficulty is that Mr. Gordon is making his objections because obviously Mr. Gladstein is trying to testify in the form of a question, and that is the whole purpose of the objection.

The Court: Yes.

Mr. Gladstein: This is I think cross-examination if I am not mistaken.

The Court: It is cross-examination, and I rule you may ask the question.

(3546) Mr. Gladstein: Thank you, your Honor.

Q. Now, did you want to hear the question? A. If you don't mind.

Q. I don't mind at all.

Q. (Read.) A. It was kept the same as the other lists.

Q. And one of the purposes of keeping it was to enable you to check to see whether persons to whom notices were sent out came in, is that right? A. Yes.

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Q. Yes. And after they came in and if they qualified, why, the history cards were made for them, is that right?
A. That is correct.

Q. Now as to No. 162 for identification, does it show from whom it came? A. Yes.

Q. Who? A. "Nominations for the Panel of Federal Grand Jurors for the Southern District of New York."

Q. By whom? A. What do you mean, by whom?

Q. Well, who made the nominations? A. The Federal Grand Jury Association, 101 Park Avenue, is stamped on there.

Q. Does it indicate the race or color of the persons whose names appear on that exhibit? A. It says "Colored Persons."

Q. Is there a mark made indicating what list that was designated? A. Sixth list.

(3547) Q. Are there checks made to indicate what if anything was done about the names that appear there? A. There are checks on here, but as to what they indicate I don't know.

Q. You don't know? A. No.

Q. You don't know whether those checks indicate that notices had been sent out to those people or whether they were being investigated or whatever was being done you don't know? A. There is no investigation—

Q. What is that?

Mr. Gordon: What was the answer?

A. There is no investigation of any juror.

Q. Now based on your experience in the office as jury clerk and your knowledge of the practice that was followed state, if you will, whether any of those persons were sent notices to qualify? These are the persons on 162 for identification. A. In other words, with my knowledge of the practice of the office I say yes, that some names were sent for on that list.

Q. Which ones? A. It has an "attorney." I mean, I don't say you would send for an attorney.

Q. Well, did you or someone in your office send for him?

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Mr. Gordon: He just said he would not, your Honor.

(3548) Mr. Gladstein: But I am asking him—
The Court: He speaks a little low. I thought he said—did you say you would not?

The Witness: I would not, that is right, your Honor. I would not send for an attorney. I would not send—

The Court: You know, Mr. Gladstein, I think it is a little better if you step back and maybe he will speak a little louder and we will all hear better. You don't have to get back that far, but you have been right up alongside of him here, and I think it is a little better if you stand back.

The Witness: I said I would not send for an attorney, I would not send for an MD, a doctor, I wouldn't send for an undertaker, knowing they all have legal exemptions.

Q. And the others on the list? A. The others on the list I can't account for.

Q. You could check your records and ascertain whether they became jurors, could you not? A. The records could be checked.

Mr. Gladstein: I offer that.

Mr. Gordon: No objection.

(Defendants' Challenge Exhibit 162 for identification received in evidence.)

(3549) Q. Now did you type up or have typed up in your office a list of names taken from Poor's Directory of Directors? A. Did I have typed up a list?

Q. One or more lists. A. Yes, I sent someone to the Library to get the names from the Directory of Directors.

Q. And this was over a period of time, was it? A. Starting in February 1947.

Q. Well, as a matter of fact you also had lists, did you not, of names of people taken from Poor's Directory of Directors back in 1940, 1941, as well, isn't that right? A. I sent someone up at that time, yes, I did.

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(3550) Q. Now, who is it that you sent? A. Some assistant in the office at that time, some clerk who may have been assigned to the office.

Q. Can you name any of the assistants or clerks assigned to your office who were sent to get names from Poor's Directory of Directors? A. There was Mr. Tanner, George Tanner.

The Court: When was this you are testifying about now?

The Witness: This was back in 1940.

Q. It covers the whole period from 1940, and since 1947, doesn't it, except when you were absent? A. No, it does not.

Q. Let us start with the period from 1947 on. Whom did you send to the Library to get the names of people in Poor's Directory of Directors? A. I sent two young ladies who were working in the office at that time.

Q. Were they employees— A. Clerical assistants assigned to the clerk's office. They were clerical assistants in the clerk's office.

Q. By whom were they assigned? A. They were assigned to what, to the duties in the clerk's office?

Q. By whom were they assigned to you? A. By the clerk of the court, Mr. Follmer.

Q. Were they Government employees? A. Yes.

(3551) Q. Now, did you ever send anybody supplied by the Federal Grand Jury Association to do that kind of work?

Mr. Gordon: That assumes something which could not possibly happen, your Honor.

The Court: Well, but he asks him whether he ever did.

Mr. Gordon: But he assumes they supplied somebody to do it. That is what I am talking about, your Honor.

Mr. Sacher: May it please the court, I have an objection to interpose to Mr. Gordon's interventions. Your Honor will recall that at the rare intervals when we rose to object to a question—

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The Court: Now, don't make me laugh, Mr. Sacher.

Mr. Sacher: Maybe it is good for you, but at the rare intervals when we did rise in the course of Mr. Wilkerson's examination, we were admonished that we were hinting to the witness as to what his answer should be. Mr. Gordon in the last two hours or so has bobbed up more times than we did over a period of several weeks to indicate to this witness his answers. And I would welcome an admonition or a suggestion from the Court—

The Court: There should be no suggestions by either side.

(3552) Mr. Sacher: No, I am asking that your Honor be kind enough to extend the same suggestion in the identical words to Mr. Gordon that you extended to counsel for the defense during the examination of Mr. Wilkerson.

The Court: I see no occasion for rebuking or admonishing Mr. Gordon.

Mr. Gordon: The objection, your Honor, was that the question assumed at the beginning of it a state of facts not in evidence, to wit, that the Federal Grand Jury Association submitted clerical help to the clerk.

The Court: Well, I did not get the impression that it did that. I thought the question was merely whether the witness had sent someone from the Federal Grand Jury Association up to check and get names from Poor's Directory of Directors.

Wasn't that the question?

Mr. Gladstein: That was, your Honor.

The Court: Did you ever do that?

The Witness: No, I did not.

By Mr. Gladstein:

Q. Now Mr. McKenzie, did the Federal Grand Jury Association ever supply stenographic help to assist you in your work in your office? A. No, they did not.

Q. Never? A. No.

Q. At any time? A. At any time.

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(3553) Q. Now, can you think of the name of any other person besides Mr. Tanner—

The Court: You might just step back a little.

Q. —that you ever sent on the mission of getting names out of Poor's Directory of Directors? A. I don't remember.

Q. All right. Now, when those names came back to you, were they in written form? Mr. Tanner or whoever it was, wrote them out, is that right? A. Yes, he wrote them out on cards, I believe, at the time.

Q. Did you compile a list from those cards? A. Yes.

Q. What is that? A. Yes.

Q. Typed list? A. I would say it was a typed list; it could have been a handwritten list.

Q. Now, can you pick out for me the list or lists containing the names of persons obtained in the manner you have described from Poor's Directory of Directors? A. I don't know if I could identify the list there and say that particular one.

Q. Do you have the lists? A. It may be there, I wouldn't know. If that list was compiled, it is there; but as to picking out a list and saying this is from Poor's Directory of Directors, I would have no means of knowing that.

Q. In other words, neither you nor your assistants (3554) ever actually placed on the lists that were compiled or the cards that were made the fact that the source of those names was Poor's Directory of Directors; am I right? A. That is true.

Q. Now, did you ever have a list made up of names found in the Social Register?

Mr. Gordon: May I object to that question for this reason: I can't tell whether he means did he ever have a list which had been so made up, or did he ever have one made up himself.

Mr. Gladstein: Either way.

The Court: I think this is the kind of thing that Mr. Sacher is objecting to, Mr. Gordon, because it seems to him as though you are trying to tell the answer to the witness.

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Mr. Gordon: I have no intention of that at all.

The Court: I know, you say that, and I believe you. But I think that this question is perfectly proper. I would take it to mean whether he had any lists made up similar to the one about the names from Poor's Directory of Directors that was directed by him or one of his assistants to be made up from the Social Register.

I take it that is what you meant, Mr. Gladstein?

Mr. Gladstein: Do you want the question read, Mr. McKenzie?

(3555) The Court: He can take my reframing of it.

Was there any such list directed to be made up from the Social Register?

The Witness: Not from our office, your Honor.

Mr. Crockett: I wonder if the stenographer will read that answer that was just made. I didn't get it.

The Court: "Not from our office," he said.

Did you mean to indicate by that that it was not from your office but it was the Federal Grand Jury Association or somebody acting in connivance with them?

The Witness: If they did, I would not know, if it was a list they submitted, where it came from.

The Court: If there was any such list you never heard of it?

The Witness: That is true.

By Mr. Gladstein:

Q. You mean to say that you don't know whether the people, say, the people who put out the Social Register, sent you a list of names to be included in the jury system? A. The people who put out the Social Register never sent out a list.

Q. And you don't know whether anybody else sent you a list the names on which were obtained from the Social Register for use in the jury system, is that right? A. I really don't know.

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(3556) Q. You don't know that? A. No.

Q. And, as I understand it, then, you would be unable to look through your pile of lists of names and indicate which, if any, contained the names of persons found in any copy of the Social Register; am I right? A. That is true.

Q. Now, did you have a list or several lists made up from any Directory of Engineers? A. I sent Mr. Tanner up and he got—he made up a list from the Engineers' Directory.

Q. When was that? A. Back in 1940.

Q. How many times were such lists made up? A. How long did it take him to compile the list?

Q. No. Can you pick out the lists that were made up as a result of your sending Mr. Tanner to take names out? A. No, I could not.

Q. Do you know how many of such lists in your possession contained the names that were taken from the Engineers' Directory? A. No, I do not.

Q. Now, when those lists were made up from the Engineers' Directory, or I should say, when those names were obtained from the Engineers' Directory, then lists were made up of those names, am I right? A. Yes.

Q. And those lists were used by you or your office as a source of potential jurors; isn't that correct? A. Yes.

(3557) Q. Those are the people to whom notices were sent out, and if they qualified they became jurors, isn't that right? A. That is correct.

Mr. McGohey: Would you ask the witness to keep his voice up a little? I have difficulty hearing.

The Witness: That is correct.

The Court: Yes.

Q. Now, you have also resorted to university and college alumni lists for names of people to be brought into the jury system; isn't that right? A. Mr. Tanner went up and compiled some names from that source also.

Q. This was at your direction? A. At my direction.

Q. Can you identify how many and which ones of such lists in your possession contain the names of people ob-

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tained from college and university alumni lists? A. No, I cannot.

Q. Are they all in your possession or are any of them in your possession? A. I would say that lists are in that pile there.

Q. Well, all of the lists that you have are in the pile on the table; is that what you mean to say? A. That is correct.

Q. But I thought I understood you to say that you are not sure that all the lists you have ever had compiled (3558) and utilized are necessarily here. A. They should be there. I said all the lists that were mailed to me. They may have mailed a list to me that I never received.

Q. Who were "they"? A. The Association.

Q. The Federal Grand Jury Association? A. Yes, when you referred that they mailed those lists.

Q. What universities or colleges, if you know, were the ones as to which the alumni lists were used as sources of names? A. I would not know.

Q. You don't know any of them? A. I do not.

Q. Is there anything on any of the lists to indicate which universities or colleges were utilized? A. Not to my knowledge, not a list that I had occasion to use here in my time has got it on there.

Q. Well, do you recall what instruction, if any, you gave to Mr. Tanner as to which universities or colleges he should get the alumni lists from?

Mr. Gordon: This line of examination is objected to as irrelevant to the direct examination and is irrelevant to the charge. It is just going on and on, your Honor. I can't think of any other objection to stop it, but it seems to be endless and useless.

Mr. Gladstein: The witness testified on direct examination that he used certain university and college lists, and I am simply on cross examination seeking (3559) to identify them, your Honor.

The Court: Well, I am going to let you do it to some extent.

A. I don't know. I don't know what lists.

Mr. Sacher: That appears at page 3453 of the record, your Honor.

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Mr. Gordon: There is no question about that, your Honor. But he has been asked three or four times what colleges, and he says he doesn't know.

The Court: I know. Let me see that. What was the page you had reference to, Mr. Sacher?

Mr. Sacher: 3453 and -4.

The Court: 3453 and -4?

Mr. Sacher: That is right.

The Court: That is all right. I see no inconsistency there.

Q. Now if I recall your testimony correctly, you began to work in connection with the jury in about 1937, is that so? A. That is right.

Q. And it was about 1940 that you began to do the interviewing of jurors, prospective jurors? A. The early part of 1940, that is right.

Q. But between 1937 and 1940 you did work—your work involved work with the jury system and the selection of jurors, is that right? A. The jury clerk, that is right.

(3560) Q. When was it first decided to use Poor's Directory of Directors as a source of names of jurors? What year? A. I would say 1939, around that time.

Q. About 1939? A. Yes.

Q. And in what form was that decision communicated to you, in writing or orally? A. It was orally.

Q. And who communicated it to you? A. The former clerk of the court, George J. H. Follmer, and the former commissioner of jurors was also present.

Q. Who was that? A. Cornelius Smythe.

Q. And who else, if anyone, was present on that occasion? A. There was no one else present at the time.

Q. Now, as I understand it, on that occasion Mr. Follmer and Mr. Smythe instructed you to utilize Poor's Directory of Directors as a source of jurors' names, right? A. That is correct.

Q. Did they tell you at that time that this was with the approval or the instruction of Judge John Knox? A. They did not.

Q. Did you participate in any discussions with Judge Knox on this matter? A. I did not.

Q. You personally did not, is that right? A. I did not.

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Q. Now, when was it first decided to use the Engineers' Directory as a source from which to take names of people to become jurors? A. At the same time they decided on (3561) the Directory of Directors or Poor's Directory of Directors.

Q. Do you recall where this discussion occurred or where the decision was communicated to you? A. In the jury office.

Q. When was it first decided to use Who's Who in New York as a source of names of people to be brought into the jury system?

Mr. Gordon: There has been no testimony, your Honor, to that effect.

The Court: Sustained.

Mr. Gladstein: I will withdraw that.

Q. I will ask you this question: Is it or not the fact that Who's Who in New York was used as a source of names of persons to be brought into the jury system? A. Not to my knowledge. I don't know.

Q. You neither deny nor affirm it, is that it? A. We never compiled them.

Q. Do I understand that compilations may have been made and sent in from that source but you would not know, is that it?

Mr. Gordon: Objected to.

The Court: Sustained.

Mr. Gladstein: All right.

Q. Now, when was it first decided to use—

The Court: He says the same thing about Who's Who (3562) in New York that he said about the Social Register.

Q. When was it first decided, sir, to utilize various college and university alumni lists? A. At the same time the others were arrived at.

Q. Was that the occasion when, in other words, there was a decision to revise or revamp the jury system?

Joseph F. McKenzie—for Government on Challenge—Cross

Mr. Gordon: Objection.

Mr. Gladstein: I withdraw the question.

The Court: You see, Mr. Gladstein, if you ask a question—

Mr. Gladstein: I will withdraw the question.

The Court: —based on the assumption—

Mr. Gladstein: I will withdraw the question.

The Court: —that a thing is so, it is very misleading to a witness because he thinks perhaps he must have said it was so, or somebody else said it; and please do not do that.

Mr. Gladstein: I withdrew the question three times, Judge.

The Court: What is that?

Mr. Gladstein: I said I withdrew the question three times, although I think it is an appropriate question.

The Court: That is the world's record on withdrawing questions, then. Reframe it.

Q. When was it first decided to utilize the address (3563) Telephone book? Same time? A. At the same time.

Q. What other sources was it decided at that time to utilize in addition to the ones you have named, that you can remember? A. I don't remember at this time.

Q. Of course, the Federal Grand Jury Association recommendations, that was decided to continue, is that right, or was it brand new? A. The Federal Grand Jury Association with individual names that they sent?

Q. Lists? A. With lists?

Q. Had those been sent to your office to your knowledge, such lists, by the Federal Grand Jury Association prior to 1939? A. I don't know.

Q. Well, to your knowledge? A. To my knowledge? I couldn't say if they had been submitted prior.

Q. Well, to your knowledge what year is the first one in which you began to receive from the Federal Grand Jury Association lists of names of persons to be brought into the jury system? A. I would have to wade through those lists.

Q. Will you do that for just a second and give us the approximate date, and I won't hold you to it.

Joseph F. McKenzie—for Government on Challenge—Cross

The Witness: (Addressing Mr. Doyle) Give me some date like 1940, or whatever it might be.

The Court: Well, if there is all that batch (3564) of lists—

Q. Would it be about 1939, sir?

Mr. Gordon: Mr. Gladstein has looked through the lists at his leisure. Maybe he knows the date. I will accept what he says is the earliest date on one of those lists marked Federal Grand Jury Association.

The Court: That is a good proposition, Mr. Gladstein.

Mr. Gladstein: Very good proposition. The earliest I find—of course, I don't have them all—I would have to see—but it is around 1939 or 1940, as I recall it.

Q. Isn't that about right?

Mr. Gordon: What is the earliest date that you have, Mr. Gladstein, marked Federal Grand Jury Association?

Mr. Sacher: I object to the question as irrelevant, incompetent and immaterial.

The Court: You see, there was a proposal made which I thought Mr. Gladstein accepted, but I now see it is rejected.

Mr. Gladstein: No, I don't want your Honor to say that.

The Court: Then give us the date.

Mr. Gladstein: I will be pleased to, but I say (3565) I don't have them all.

The Court: Nobody is hurrying you. Take your time.

Mr. Gladstein: Here is an August 20, 1940, date, but I am sure there are earlier ones.

The Court: The date we are looking for is the earliest one. It won't help to just wander along mentioning dates helter-skelter. Take your time, look over them and give us the date of the earliest one.

Joseph F. McKenzie—for Government on Challenge—Cross

Mr. Gladstein: Well, now, here is a package that Mr. Doyle, an assistant of Mr. McKenzie, has just handed me. It contains a lot of lists, and I see on the outside the legend "Jury List 1939."

By Mr. Gladstein:

Q. Is that your handwriting, Mr. McKenzie? A. No, it is not.

Q. Anyway, would that indicate pretty well what the earliest date was? A. Any list—

Mr. Gordon: Your Honor, from the Federal Grand Jury Association. This bundle is not from the Federal Grand Jury Association.

The Court: Well, we are going to give Mr. Gladstein the time necessary to go through the lists and see what is the earliest one. It may be that he would like to say it was 1939, which would coincide with (3566) this other date here, but as the question has been raised let us take the trouble and find out really what is the actual date of the earliest one.

Q. Can you date the period in 1939 when these decisions were communicated to you? What month, or what season of the year?

Mr. Gordon: He didn't say it was in 1939.

The Court: He is asking him. He is asking him when it was.

A. What communications? These here?

Mr. Gordon: I thought he said 1939 or 1940, your Honor.

The Court: Let us see what I put down here. He says 1939 or thereabouts, is what I have. He did not fix it as to a specific time.

Q. Do you remember when? A. I would say around 1939.

Q. Some time in 1939 or 1940, is that right? A. Yes, about that.

Joseph F. McKenzie—for Government on Challenge—Cross

Mr. Gladstein: Now, the earliest one that I have seen is, I think, a May 1940 one from the Federal Grand Jury Association, but that is subject to check. We can check that.

The Court: All right, May 1940, subject to correction.

Q. Now, with whom, if anyone, of the Federal Grand (3567) Jury Association did you deal in connection with their compilation of lists that were sent to you?

The Court: If he dealt with anyone.

Mr. Gladstein: I said with whom, if anyone.

The Witness: Will you repeat that?

(Question read.)

A. Mrs. Ruth St. Clare.

Q. Mrs. Ruth St. Clare? A. That is right.

Q. Beginning as of what date, approximately? A. From the time I was jury clerk I had occasion to be in touch with her.

Q. That would be the early part of 1940? A. 1940.

Q. And that has more or less continued up to date, has it? A. In sending lists?

Q. Yes. A. No.

Q. Well, what is the date of the latest recommendation or list that you have from them? A. The last list—I received no lists from the time I came back from the armed forces.

Q. Well you received recommendations from them, have you not? A. Individual letters where the individual would come in with a letter introducing themselves.

Q. What is the latest date that you have?

The Court: He said he did not get any list after he got back from the armed forces.

(3568) Mr. Gladstein: I mean individual recommendations.

The Court: You want to know if he got an individual letter from somebody, what was the date of the last one?

Mr. Gladstein: He said he received individual recommendations.

Joseph F. McKenzie—for Government on Challenge—Cross

A. Individual letters. A prospective juror is sent down with a letter.

Q. A letter from whom? A. From the Federal Grand Jury Association.

Q. All right. Now what is the latest date on which that occurred? A. Possibly three or four weeks ago, a couple of weeks ago; within the past month.

Q. And that has been taking place more or less continuously, is that right? A. I received those letters and had received them since I have been jury clerk.

Q. Now, did you ever make a compilation or tabulation of the names of the persons who appear on these various lists that went into the active files? A. I never did.

Q. You never did? A. No.

Q. But that can, of course, be made by checking against the history cards, that is, comparing those lists with the history cards; isn't that right?

The Witness: Will you repeat that?

Mr. Gladstein: Will you please read it?

(Question read.)

A. That would be quite a job.

Q. No, but it could be done, couldn't it?

The Court: What would it show?

Mr. Gladstein: The tabulation of the number of names that went into the active jury files from these lists. I simply want to know if that is the method that could be pursued.

The Court: I don't follow that at all. It seems to me to be just some more of this confusion. There are so many reasons that are obvious why names would get off, I should not think it would be worth all that trouble.

Mr. Gladstein: Well, all right.

Mark this, please.

(Marked Defendants' Challenge Exhibit 163 for identification.)

Q. Now, concerning those exhibits on which appear names of, as it says, colored persons, such as Exhibit 160

Joseph F. McKenzie—for Government on Challenge—Cross

or 159, do you know whether those same names appear on any other more general and larger list? A. I don't know.

Q. I show you Defendants' Challenge Exhibit 163 for identification. This was taken from your official files, was it? A. Yes, it was.

(3570) Q. And it purports to be obtained from what source? A. Nominations for the panel of Federal grand jurors for the Southern District of New York.

Q. By whom? A. Federal Grand Jury Association, 101 Park Avenue.

Q. Does it bear a date? A. June 17, 1941.

Q. How many names and addresses are shown thereon? A. Four.

Q. Is there any indication as to the race or the color of the people referred to in that exhibit? A. It is typed here "Colored Persons."

Q. Does it indicate the sex? A. Men.

Q. I notice a check mark at the bottom or about the middle of that exhibit. What does that indicate? A. This particular one (indicating)?

Q. Yes. A. I don't know.

The Court: What is the date of that 163 for identification?

Mr. Gladstein: June 17, 1941.

The Court: What is that?

The Witness: June 17, 1941.

The Court: Thank you.

Q. Is there any indication as to which, if any, list that exhibit is referred to?

Mr. Gordon: Now—

(3571) Q. Does it have a designation of any kind? A. It has no symbol as you had referred to them before, "6 List" or "4 List." There is no symbol on this here.

Q. Is there anything on that exhibit to indicate what, if anything, was done to bring those persons named thereon into the jury system? A. There are checks on them.

Q. What do the checks indicate? A. I don't know.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. You don't know if those people became jurors? A. No, I do not.

Q. You don't know if those people were sent for? A. I don't know.

Q. But if a check were made against the jury panels or your history cards and one or more of these names were found, then that would mean that they had been sent for, had qualified, and became jurors, is that right?

Mr. Gordon: Objected to, your Honor.

Mr. Gladstein: I think that is a fair question.

Mr. Gordon: Well, I think that the history cards show the names of the people who were on the active lists.

The Court: Yes.

Mr. Gordon: They may have come from any source.

The Court: That is right.

The Witness: That is true.

(3572) Q. What is that? A. That is true. They could have come from any source on that list.

Q. Am I right, Mr. McKenzie, that when you received a list of the kind I am holding in my hand, 163 for identification, you first checked to see whether the person had a history card already; isn't that right? A. I turned it over to one of my assistants.

Q. Well, of course, for that purpose, isn't that right? A. To check the file.

Q. So that if you found that a person was named on a list that was given to you, which person you already had a history card for, indicating that person was a juror, then you would do something to eliminate that person's name from the list; is that right? A. We did not send out a qualification notice to such a person.

Q. And if you found upon your check that a person whose name was on one of these lists like 163 for identification did not have a history card, then you did send out a qualification notice; isn't that right? A. Yes, that is true.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. And thereafter if the person qualified you made a history card for him; is that right? A. That is correct.

Q. And then his name went into the active jury files, isn't that right? A. That is true.

(3573) Q. And his name would still be there and is there today unless it has been removed by reason of his death or moving out of the jurisdiction or getting into the so-called "off" list; is that right? A. That is true.

Mr. Gladstein: I offer this in evidence.

(Defendants' Challenge Exhibit 163 for identification received in evidence.)

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

(Marked Challenge Exhibit 164 for identification.)

Q. I show you No. 164 for identification. Is it a list taken from your official files? A. It is.

Q. Containing names and addresses of persons to whom notices were sent to appear and qualify as jurors? A. I would not say were sent.

Q. What was the list used for? A. This list was submitted to the office to be used if we cared to send notices to them for qualification.

Q. Does the list indicate that you did? A. I don't know.

Q. Is there anything written on it indicating the date when it was received? A. February 17, 1943.

Q. Is there anything to indicate the number of names? A. It says 332 names.

(3574) Q. Is there anything written on it to indicate the manner in which the list should be used?

Mr. Gordon: Objected to, your Honor.

The Court: The paper is not yet in evidence.

Mr. Gladstein: I am just asking him whether there is anything to indicate.

The Court: If you keep asking him what is in there the paper gets in. Now if you desire to offer it I will pass upon it.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. Well, by checking against your history cards it can be ascertained which ones and how many of the persons whose names appear on No. 164 became, if any of them did, jurors; is that right?

Mr. Gordon: Objected to, your Honor.

The Court: Sustained.

Q. Well, what method is there, Mr. McKenzie, of checking to determine if any person whose name appears on 164 for identification did become a juror?

Mr. Gordon: Objection.

Mr. Gladstein: I think that is a fair question.

The Court: Overruled.

A. Well, this is the list when I was in the Army, Mr. Gladstein.

Q. No, answer the question. A. Oh, pardon me?

Mr. Gordon: Well, I object to any further
(3575) testimony about it in view of his answer.

The Court: Now Mr. Gladstein, if you will step back—

Mr. Gordon: Did your Honor hear what the witness said?

The Court: Well, he and Mr. Gladstein were whispering together there and I could not hear a thing, to tell you the truth. That is one of the reasons why I asked Mr. Gladstein to just move back a little bit.

Mr. Gordon: May we have the answer read?

The Witness: I said I was in the Army, your Honor, when this list—

The Court: You say you don't know the answer then?

The Witness: I don't know the answer.

The Court: All right.

Mr. Gladstein: Would your Honor permit the question to be re-read so the witness can answer it, if he may?

The Court: Well, I will tell him what the question was:

Joseph F. McKenzie—for Government on Challenge—Cross

The question was whether you know any way of telling whether any of the persons whose names were on that list, or whether all of them or some part of them actually qualified and became jurors?

(3576) Is there some way of figuring that out?

The Witness: It could be checked with the history cards of the active files, yes.

The Court: Just as you have said three or four times already?

The Witness: That is true.

Mr. Gladstein: All right. Now I offer this.

Mr. Gordon: Objected to on the ground that it is incompetent; there has been no foundation laid for it. The witness has testified that at the date appearing on the list he was in the Army.

The Court: Let me look at it.

Mr. Gladstein: This was in his records. He brought it here in response to a subpoena, and the direction of the Court to supply the lists of the names of persons that became jurors.

(3577) The Court: I sustain the objection.

Q. Who was in charge of the office and the matter of dealing with such lists as 164 for identification, if you know, during February 1943? A. I would say Mr. Borman took my position when I went.

Q. Mr. Borman, the clerk of Judge Medina here? A. That is correct.

Q. Do you recognize certain handwriting that appears on 164 for identification?

Mr. Gordon: Objection.

The Court: Overruled.

A. No, I can't say that I do know whose handwriting it is.

Q. It is not yours? A. It is not mine, no.

Q. Do you have anywhere handy a list of all of the types of designations used for these lists?

The Court: Well, that word designation is going to make a lot of trouble in this record.

Mr. Gladstein: Let me say symbol. Is that better, your Honor?

Joseph F. McKenzie—for Government on Challenge—Cross

The Court: Well, frankly I don't know what you mean by it. Sometimes you seem to mean one thing and sometimes you mean something else. Now if all you mean is that certain papers have certain symbols on, I think it is better to (3578) have the papers identified that you are talking about or else we will have a lot of confusion.

Mr. Gladstein: Very well, your Honor.

The Court: And later on some people will think "designations" mean one thing and others will think it means something else.

Q. To your knowledge do you have any other lists here on which the designation "Colored" or "Negro" appears?

A. All the lists in my office are in these two envelopes here, or this one envelope.

Q. No. I want to know if in addition to those that have been received in evidence—

Mr. McGahey: If your Honor please, I can't hear Mr. Gladstein.

The Court: I think he is trying to ask the witness whether he has checked over all these papers to see whether any of them has the word "Colored" on in addition to the ones he has already produced and identified, isn't that it, Mr. Gladstein?

Mr. Gladstein: That is right.

A. No, I have not.

Q. You have not.

Mr. Gordon: You haven't checked?

The Witness: I haven't checked the list to determine what is on there.

(3579) Q. Do you know the latest date that appears on any of these lists that you have brought containing the names of persons submitted to you for jury service? A. No, I do not.

Q. It would appear on the documents themselves, is that right? A. I don't know.

The Court: Well, Mr. McKenzie, is there any way—

Joseph F. McKenzie—for Government on Challenge—Cross

Q. Did you keep a record—

The Court: —that somebody can go through these records and tell just exactly how many Negro jurors there are and how many there aren't?

The Witness: No, they cannot, your Honor.

Q. Except by going to the lists that are in evidence, is that what you mean?

Mr. Gordon: No. I object to that, your Honor.

The Court: Sustained.

Q. Now when it was decided to use the address telephone book, did you have a copy of that in your office at the time?

A. No, we did not.

Q. What did you do to get one? A. We communicated or got in touch with the commissioner of jurors of the County Clerk of New York.

Q. And got hold of one that way? A. And borrowed the one that he had used the year before.

Q. And how long did you have it? A. We may have had (3580) it for a year or two years.

Q. You used it as a source of obtaining names, is that right? A. Yes, we used that as a source for sending out qualification notices.

Q. Did you ever have any written instructions as to the manner in which to use the book? A. No, I did not.

Q. Did you personally use it or did you have others in your office use it? A. I had others in the office use it.

Q. Who were the others? A. Mr. Tanner when he was my assistant, and Mrs. Fitton has occasionally used it since 1947.

Mr. Sacher: What is that name?

The Witness: Fitton, Miss Fitton, or Mrs. Fitton.

Q. Spell that, will you, please? A. F-i-t-t-o-n.

Q. And the first name? A. I don't know the first name. Florence. I can correct myself on that. It is Florence, Florence Fitton.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. Now was a record kept of the names of the persons obtained from the address phone book to whom notices were sent to appear and qualify? A. From 1947 down to date no, no record was kept.

Q. How about before 1947? A. Prior, back in 1940 or (3581) in that time, it may have been; I am not sure.

Q. In what form was the record kept, if it was? A. Either lists were made up like the ones you have here in your possession—

Q. When you say the ones I have in my possession, you are referring to the group that is in an envelope designated "July List 1939"? A. That is correct.

Mr. Gordon: In your possession.

Mr. Gladstein: Well, I am holding them now, so I suppose that is technically true.

Perhaps we ought to have, for the sake of the record, the envelope marked for identification.

The Court: You had better get a new one. That envelope is beginning to—

Mr. Gladstein: Can we mark this one temporarily and substitute another one later?

The Court: Yes.

(Marked Defendants' Challenge Exhibit 165 for identification.)

The Court: I predict that that envelope is not going to survive much longer.

Mr. Gladstein: Judge, that contains the jury system.

Mr. Gordon: I move to strike it out, your Honor. If that is the substance of proof attacking the jury (3582) system—

The Court: I will strike it out with reluctance.

Mr. Gladstein: Do you mind, Mr. Clerk, putting a few that were loose in the same envelope so that that will cover the balance.

Mr. Gordon: Just a moment. Did they come from that envelope?

Q. How many envelopes, Mr. McKenzie, did all these lists come from? A. There was one envelope; then there

Joseph F. McKenzie—for Government on Challenge—Cross

was a separate package that Mr. Gladstein had had photostats of and they were laid on top and he was to come back and have the rest photostated.

Q. And didn't; is that right? A. And didn't. They all belong in the one envelope. As long as there isn't going to be any more photostating.

Mr. Gladstein: We will do that then if it is permissible.

The Court: Well, I think we had better adjourn now until 2.30.

(Recess to 2.30 p. m.)

(3583)

AFTERNOON SESSION

JOSEPH F. MCKENZIE, resumed the stand.

Cross examination continued by Mr. Gladstein:

Q. Now, Mr. McKenzie, I show you the envelope that has been marked Challenge Exhibit 165 for identification. It contains, does it not, a number of lists that come from your office; that is right, isn't it, sir? A. That is correct.

Q. Those lists contain the names and addresses of persons on lists either submitted to you or compiled in your office; correct? A. That is true.

Q. And from those lists notices were sent to some of the persons on the list to come in to become jurors; correct? A. That is right.

Q. Now, in going through this group of lists a few moments ago that are contained in Challenge Exhibit 165 for identification, I notice that various designations are given. I will illustrate what I mean. Some lists are designated No. 12, some No. 14, some A, some C, some E, some H, and others have a combination such as 13-P, and I believe I saw 13-K earlier today, and the figure 13 followed by other letters. You are familiar with that, aren't you? A. I am.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. Now, did you place those markings on the lists? A. No, I did not.

(3584) Q. Well, do you know who did? A. I will have to see each list in order to tell.

Mr. Gladstein: Very well. Let me give you a list which I will have the clerk mark for identification—or perhaps we can do it this way: perhaps we can simply have the group received in evidence and then give these a separate designation by date.

The Court: You offer them in evidence?

Mr. Gladstein: I think so, your Honor.

Mr. Gordon: Objected to as irrelevant, your Honor.

The Court: I don't think I want to let any such bulk of papers as that go in indiscriminately.

Mr. Gladstein: I will do it separately then.

The Court: I will sustain the objection.

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

(Marked Defendants' Challenge Exhibit 166 for identification.)

Q. Now I show you 166 for identification. It came from your office, did it not? A. Yes, it did.

Mr. Gladstein: Let the record show that I just took it out of the envelope containing the group of lists, which envelope has been marked 165 for identification.

Q. Mr. McKenzie, on the document you are holding (3585) in your hand there is written "6-List," isn't it? A. This is "5."

Q. "5-List," I beg your pardon. Is that the "5-List"? A. Yes.

Q. Did you write that? A. No, I did not.

Q. Do you know who did? A. No, I do not.

Q. Do you know what it means? A. It means that a list was compiled, "5-List"—this number corresponded on the qualification notice that was sent out.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. Well, is it correct then that the purpose of putting "5-List" on the exhibit you are holding in your hands was to identify the persons to whom you sent notices, which persons had their names on that exhibit, with that list; is that correct? A. It was to identify the qualification notice so it could be checked off the list when the qualification notice was returned to the office.

Q. All right. So am I correct in saying that every person on the exhibit you are holding in your hand, every person to whom you sent the qualification notice to come in and become a juror if he was qualified, would have on that qualification notice the figure "5" written on it? A. "5"—"5-List." It would be "5-L" in all probability, would be on the qualification notice.

Q. And therefore when the juror would come in (3586) with his qualification notice and the number "5" and the letter "L" on it, you and your associates in the office would know that that person had his name on a list which was marked No. 5, and which list is in your hand, is that right? A. Some lists were handled that way and some lists were different.

Q. Well, is that the way it was handled with the list—
A. On this particular list I cannot say.

Q. Did you ever try to find out what that No. 5 meant?
A. That meant 5 list. That was the group that went out at that particular time. Just like you identify a registered voting book by Assembly District 1, Manhattan, and the number, by the same token these lists were identified.

Q. So that every person whose name appears on a list such as the one you have in your hands on which there is marked the designation "5-List", every such person would be identified as being one of the persons whose names appear on that list; correct? A. That is correct.

Q. And that same identification would be written on the qualification notice sent to the persons whose names appear on that No. 5 list, correct? A. That is correct.

Q. And therefore when the person came in with his (3587) qualification notice all you had to do was look at it, and if it said No. "5-List" or "5-L",—indicating the same thing—then you would know that that person's name was on a list which had been marked "5-List"; correct? A. That is true.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. All right. Now when that person did that and came in in response to the qualification notice, what record was made on the No. 5 list to show that the person had come in? A check mark such as appears on this list? A. It wouldn't appear that this list—it wouldn't appear on this list that there was any marks was put on there.

Q. I see some checks on it, don't you? A. Yes, I do.

Q. All right. Now what was the practice in your office—I will put it this way: suppose you sent me a notice and on that list there was let us say X-3, and I come in with my notice which says X-3 on it and I am ready to qualify. Now is it true that my name would be found on some list in your office which had the symbol X-3 on it? A. An X-3, that is right.

The Court: Let me see that list for just a second.

(Witness hands to Court.)

Q. Now if I come in and you checked against the X-3 list and found my name on it and I qualified, what record (3588) if any would you make on the X-3 list to show that I had responded to your notice and I had either qualified or failed to? A. There are occasions where a line was stricken through the name indicating you had come in; there are indications—on some occasions I should say where eligible is written on the list.

Q. Yes. A. I believe that is about—

Q. Suppose a check mark was made against the name? A. That could be that the man came in. A check mark or—

Q. All right, so it might be any one of those. Thereafter if I did qualify you would make out a history card for me, is that correct? A. That is true.

Q. So that if I then became a qualified juror and my name went into the active jury files you could follow through from the X-3 list to the history card and ascertain that I became a juror; correct? A. Why would that follow through from the original list? Once the history card was made up you were lost as far as the list was concerned.

Q. Once my name got on the history card I was a juror, is that correct? A. That is true.

Joseph F. McKenzie—for Government on Challenge—Cross

Mr. Gladstein: Will you mark this, sir.

Q. Before passing the last exhibit, I noticed check marks on there. I take it that by checking against the (3589) history cards in your active jury files it is a simple matter to find out which if any of the persons on that list, exhibit, became jurors; correct? A. That is provided that list had been used.

Q. Yes, I understand.

(Defendants' Challenge Exhibit 167 marked for identification.)

Q. I show 167 for identification; it also comes from the group of lists contained within the envelope marked 165 for identification; correct? A. That is correct.

Q. And taken from your office files? A. Yes.

Q. And one of the official documents in your office, correct; one of the documents? A. One of the documents in the office.

Q. All right.

The Court: One thing I haven't got quite clear. Suppose you took one of these lists like this particular one, 166 for identification, and just picked a name at random and found there was a history card. Would that history card or the existence of that history card necessarily indicate that it had been taken from this list?

The Witness: No, it would not, your Honor.

The Court: Why not?

(3590) The Witness: Well, inasmuch as that the juror may have been a juror before that list was submitted to the office or he may have become a juror long after that list had been used or there were—

The Court: He may have been on another different list?

The Witness: That is right. But not only that, but on the registered voting book or any other source we had occasion to use, he could have been there but not necessarily on the list.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. The first check you would make when you were about to use any of these lists that you obtained from outside sources was against your actual history cards; right? A. That is correct.

Q. Of course if you found that one of the names on a list that, say, the Grand Jury Association had submitted to you was already in your cards, naturally you would cross that out or eliminate that name? A. That is true.

Q. If you found you didn't have a history card for that person then you would send a notice out to him; correct? A. We also checked the off file to indicate that the man hadn't been on and taken off as a non-resident. Two files were checked before—

Q. How many files? A. Two. The active file and (3591) the off file.

Q. After checking those two files if you found that the person or a person on the list was neither in the active file nor in the off list or file then you would send the notice? A. You would; unless like one list you show there, the man was a doctor or a lawyer, and with that thought in mind on the list of that sort you would not send for them if there was a legal exemption stated on the—like the list I had occasion to see before.

Q. Any other reason you wouldn't send a notice? A. No, no other reason whatsoever.

Q. Now let me call your attention again to 158 for identification. On the first page there is written after a number of names the word "Eligible," correct? A. Yes, that is so.

Q. And that indicates what, sir? A. That indicates—

Mr. Gordon: Objected to, your Honor. The exhibit is not in evidence.

The Court: I think I will allow that question.

Mr. Gladstein: Very well.

A. That "Eligible" on there would indicate that the juror was put on the list, or put on the active jury rolls from this list.

Mr. Gladstein: Yes. I offer it in evidence.

Mr. Gordon: Did he identify that as a list (3592) which he kept?

Joseph F. McKenzie—for Government on Challenge—Cross

The Court: Yes, he has already testified as to that.

The Witness: I don't know if that particular one, your Honor—

The Court: Well, it was just described as another list of the same general character as Exhibit 156 which they started with, and then 157 was described as another list, and this one as still another one.

Mr. Gordon: There were some that he did not use himself. Could we have that one—may I ask that preliminary question, your Honor?

Mr. Gladstein: Didn't what, use himself? What do you mean?

Mr. Gordon: He said he did not identify them, he didn't know anything about them.

Mr. Gladstein: He is describing the practice in his office; if he is absent on a Saturday, for example, and somebody under his charge does some of this in accordance with usual office practice, surely the head of this office would know, as Mr. McKenzie indeed testified, that when the word "Eligible" is written on that list after some names it means that the person has been found eligible and is put in the active jury list.

(3593) The Court: I see no objection about identifying the date and asking the witness if he is personally familiar with this paper. I will permit that.

Mr. Gordon: If he is, your Honor, I won't object to it.

The Court: I say, you may ask him that.

Mr. Gordon: With respect to Exhibit 158 for identification (handing) are you personally familiar with that list?

The Witness: This list is not in my writing. I haven't put these notations on here, "Eligible"; but I do recognize the handwriting as my assistant's, Mr. Tanner.

Q. And you recognize the word "Eligible" as meaning, in accordance with the office practice of which you had

Joseph F. McKenzie—for Government on Challenge—Cross

knowledge and over which you had charge, that that meant that the persons whose names are marked "Eligible" went into the active jury files; correct? A. Yes.

Mr. Gladstein: All right. I offer it in evidence.

Mr. Gordon: You see, some of these exhibits, your Honor, were handled when he was not in the office. That is my point.

The Court: Yes, I realize that.

Mr. Gordon: When he was in the Army, not on a (3594) Saturday.

The Court: Yes. This is evidently not one of those.

(Defendants' Challenge Exhibit 158 for identification received in evidence.)

Q. Now No. 158 in evidence, do you find on the third page opposite the—by the way, what letter, if any, identifies that list? A. W.

Q. Did you put that—did you give it that designation? A. No, I did not.

Q. Do you know who did? A. No, I do not.

Q. Do you know what it means? A. It means that that number appeared on the qualification notice that was sent out.

Q. But do you know if any significance attaches to the letter W? Is it an abbreviation for something? A. No, by no means.

Q. Did you give instructions with reference to the use of letters or numbers to identify these lists? A. Yes, I did.

Q. Well, what was it? A. In other words you start with No. 1, after you had gone through No. 1 you start A-1, B-1, C-1, and continue on to a thousand I believe; after a thousand, instead of saying 2001 you would start off with the alphabet.

(3595) Q. So that each list that you either compiled in your office or received from some outside sources receive a designation of that kind, is that right? A. When you say received from outside sources—

Q. Well, such as— A. —no symbols were put on them when they were sent—before they were sent to this office. That was compiled in our office.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. Yes. When you say it was compiled in your office you mean the symbol was placed? A. The symbol was placed on it I should say.

Q. So that what you got from outside sources didn't come with the symbol when you received it, is that what you mean? A. That is true.

Q. But your office placed some symbol upon that list? A. Not on all.

Q. Not on all? A. No.

Q. But on some? A. On some.

Q. Is it your testimony that all symbols that appear on any of these lists were placed on the lists by you or somebody in your office? A. I would say yes.

Q. Are you sure about it? A. Yes.

The Court: That W does not indicate white as distinct from colored?

The Witness: Oh, by no means, your Honor. We had completed the alphabet and we were down to W.

(3596) Q. In the third page of Exhibit 158 I see after the name Sherman L. Anderson the word "Defer"—d-e-f-e-r. Do you see that, sir?

Mr. Gordon: What was the name you said?

Mr. Gladstein: I think I said Sherman Anderson.

Mr. Gordon: Over here (indicating on exhibit)?

Mr. Gladstein: Yes. Do you see it, Mr. Gordon?

Mr. Gordon: Yes. I also see it next to Charles Anderson. That is why I asked.

Q. Do you see that, Mr. McKenzie?

The Court: I missed that, but I guess it is just as well.

Mr. Gordon: No, he asked me, your Honor, whether I too saw the word "Defer" after Sherman Anderson. And the reason I had asked him what name was because it appears next to somebody else named Anderson. And I wasn't sure which one he was talking about.

The Court: Oh yes.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. Now, what does the word "Defer" mean? A. Rejected, disqualified.

Q. Does it mean disqualified? A. It has been, as far as our records are concerned.

Q. What does the word disqualified mean on your records? A. Off.

Q. Off for what reason? A. It is disqualified; (3597) in other words the juror was disqualified either by some exempt disqualification by statute or he had asked not to be put on the jury list because it would work a hardship on him.

Q. Go ahead. A. Or possibly he was even a non-resident after he filled out the application; we only learned of it when the application was completely filled out.

Q. Now, Mr. McKenzie, if a man came in and he wasn't a resident of this district then he was disqualified by law, isn't that right? A. Yes, but he may have filled out his application and it wasn't until the application was all filled out that it was ascertained and noticed on there that the man had no idea by living in Brooklyn he couldn't serve here.

Q. But after—

The Court: After what was filled out?

The Witness: After the application was filled out.

The Court: After he filled out the questionnaire?

The Witness: The questionnaire, that is true.

Q. At that point you discovered whether he was qualified or disqualified in accordance with the statute; is that what you mean? A. That is correct.

Q. Now, when a man showed that he was disqualified (3598) by reason of not being a resident of the Southern District of New York, wasn't it your practice to put the word "Disqualified" on? A. No, it was not.

Q. What was your practice? A. We had used several different words. We had used "Rejected," "Disqualified" and "Deferred." "Deferred" was just a mild way of putting on there that a man was disqualified or rejected.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. Did you use the word "Deferred" to mean anything other than the failure of a man to have residence qualifications? A. "Deferred" was used for any juror that was put off the jury file or put in the off file.

Q. For any reason whatever? A. For any reason whatever.

Q. So that jurors or potential jurors were put into the Off file as "Deferred" though they retained and had the qualifications of the statute; that is so, isn't it?

Mr. Gordon: That is not his testimony, your Honor.

Mr. Gladstein: I am asking.

The Court: You are asking him whether they did that?

Mr. Gladstein: Yes.

A. By that do you mean that a person who had all the legal qualifications and asked not to be put on the jury on the ground that it would work a hardship—

(3599) Q. Now you listen to me, Mr. McKenzie—

The Court: I thought that is what you meant.

Q. Suppose I came into your office and at the end of the filling out of my questionnaire you put the word "Deferred" opposite my name—

Mr. Gordon: Obviously Mr. Gladstein is not qualified for jury service—

Mr. Gladstein: Not a resident, but I will be soon.

Mr. Gordon: And also you purport to be a practicing attorney.

Mr. Gladstein: I withdraw that. I didn't think that Mr. Gordon would get so technical.

The Court: Well, it is a good point, isn't it?

Mr. Gladstein: Do you think so, Judge?

The Court: Well, it doesn't seem to me that it is a bad one. The witness might naturally misunderstand. It is easy to put a hypothetical case without making it personal.

Mr. Gladstein: Well, even if I am a lawyer, not a resident, they could have done a lot better with

Joseph F. McKenzie—for Government on Challenge—Cross

people like me in the jury system than what they did. However—

Mr. McGohey: I move to strike it out, and I am not sure that it is so.

(3600) The Court: Mr. Gladstein, I noticed a tendency on the part of a number of counsel to make those comments, obviously for the benefit of those present in the courtroom, and, frankly, I don't like them. I hope you will try to desist.

Mr. Gladstein: I will restrain myself.

By Mr. Gladstein:

Q. Mr. McKenzie, isn't it a fact that there were people who were put into the Off list, that is to say, their cards were taken out of the active list of jurors, and that a notation was made on their cards, namely "Defer" or "Deferred" and that those people had at that time the qualifications required by the statute? A. There must have been a requalification on the juror. No name was just taken out of the active file and put in the Off file "Deferred" unless the juror had occasion to—

Q. Come in? A. Not necessarily. Fill out a requalification through the mail and discover that he was a non-resident or that there was some changes in his age, whatever it could be; it could be any number of things.

Q. Do you mean to say that the only persons you ever took out of the active files and put into the Off list were those who were no longer residents or for some other reason set forth in the statute were (3601) disqualified? A. That is correct, unless there was some reason set forth in the statute that they were legally exempt or disqualified.

Q. Now, isn't it a fact that you did during the requalification procedure actually take cards out of the active lists of people who were in strict accordance with the statute qualified, but who for some other reason were deferred; isn't that true? A. No, that is not so.

Q. Do you have those cards with the mark "Deferred" on them in your Off list? A. Yes.

Q. I have seen some of them, isn't that so? A. I believe you did when you toured through the office on the first occasion.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. Now, isn't it true that on those cards in the Off list, on some of those that were taken out of the active list the word "Nonresident" appears? A. That is correct.

Q. Isn't that a fact? A. Yes.

Q. And isn't it a fact that on some of those cards that were taken out of the active list and put into the Off list the word "Death" appears? A. That is true.

Q. And isn't it true that on some of the cards that were taken out of the active list and put in the Off list, the word "Exemption" appears? A. Exemption?

(3602) Q. Yes. A. I don't recall seeing "Exemption."

Q. You don't recall that? A. No, I do not.

The Court: Is this the requalification period you are now on?

Q. There was such a period, wasn't there, Mr. McKenzie? A. Not to my knowledge, any period that was just devoted to that. We are constantly requalifying jurors through the mail.

Q. Wasn't there a period from about 1937 to 1941 and 1942 when you went through a complete requalification procedure of all your jurors? A. That was done through the mail. A questionnaire was sent out, a requalification of every juror, with a self-addressed return envelope, and they filled out the form and mailed it back; and if a man was over age or non-resident, then he was taken off and put in the Off file.

Q. Was that between 1937 and 1941? A. I would say it was 1938, more or less close to 1938 and 1939 when that was done.

Q. When did it cease? A. It still goes on. We still requalify jurors through the mail.

Q. But you had a very comprehensive requalification process during those two, three or four years; isn't that so? A. No, we did not. It is the same form today (3603) as it was back in those days.

Q. Well, you mean that you still send out notices to people who are in your active files to come in and re-qualify? A. We do.

Q. How often do you do that? A. It all depends on the clerical help.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. Now let me ask you this question: your files contain—do you know how many cards you have in your Off files altogether? A. No, I do not.

Q. Do you know how many cards in those files are marked "Deferred"? A. No, I do not.

Q. Is it true that many of the cards on which the word "Deferred" appears were cards of people who had previously qualified as and had acted as jurors? A. No, that is not so.

Q. Do you understand the question? A. Yes.

Q. Isn't it a fact that in your Off list there are cards of persons who prior to the time their cards were removed from the active files had qualified as jurors and had actually served as jurors? A. No, that is not so.

Q. That is not so? A. No.

Q. Do you have any of the cards marked "Deferred" with you here? A. The cards that I brought, Mr. Gladstein, were the ones that you asked me in the subpoena, all cards in the Off file; you asked to take samples of jurors (3604) that had served or had been put on the list from around 1939 or thereafter that had since been taken off. So I brought all of the alphabet A of that type of cards.

Q. Do you have any of those with the word "Deferred" marked on them?

The Witness: (Addressing Mr. Doyle) Will you take a look through that?

Mr. Gladstein: I can continue with another line of examination while—

The Court: Well, I like to have my mind on—

Mr. Gladstein: On one thing at a time?

The Court: Yes.

Mr. Gladstein: All right, Judge.

The Court: And I confess I feel a little confused at this moment as to what it is you are getting at, but possibly it is better for me to just sit and listen.

Now, he is looking for cards with "Deferred" on them, isn't he?

The Witness: That is correct.

No, there are no cards with "Deferred" on them.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. There are such cards, however, in the Off list? A. There are such cards in the Off list, yes.

Q. And there are cards in the Off list that have the word "Disqualified" on them? A. I believe there are.

The Court: Let me make a little note of what (3605) we have had. Are those all of the A's in the Off list?

The Witness: These are all of the A's that had been qualified for jury service from 1939 down to 1948 and have since been taken off. In other words—

The Court: From 1940 to 1949.

The Witness: From 1940 to 1949, had been on at some time or other and taken off for some reason or another.

Q. Among the cards you have just looked through, Mr. McKenzie, do you have one that gives—well, give me a sample of one that gives a reason why it was taken out of the active list, will you? A. In other words, this juror (indicating) qualified on December 3, 1941. He served on December 17, 1941. A summons was sent to him on January 1944; it was returned to the office "Undeliverable." Then a notice was sent out, a requalification notice sent out to the man as of January 30, and it came back "Not Found."—

Mr. Sacher: What year is that, please?

The Witness: Pardon me?

Mr. Sacher: What year is that, January 30?

The Witness: He qualified in 1941 and he was taken off on January 30, 1946 as returned "Not Found" on a requalification.

Q. What is the reason given on the card for being (3606) taken off? A. It says "Off, not found, requalification."

Mr. Gladstein: All right. May we have that marked in evidence as a sample?

(Marked Defendants' Challenge Exhibit 168 for identification.)

Joseph F. McKenzie—for Government on Challenge—Cross

Mr. Gladstein: May it be received? I offer it.

(Defendants' Challenge Exhibit 168 for identification received in evidence.)

Q. Now will you look through this batch of cards and find me a card which gives a different type of reason for a juror having his card taken out of the active files and placed in the Off list or files? A. Here is a juror (indicating) put on October 24, 1940; he was summoned and excused on June 3, 1941. He served on August 18, 1941, and was taken off in December 1943 as a non-resident.

The Court: As a what? As a non-resident?
The Witness: As a non-resident.

Q. And does the word "Non-resident" appear on there? A. It does.

Mr. Gladstein: All right. Then I offer this one in evidence.

Mr. Gordon: No objection.

(Marked Defendants' Challenge Exhibit 169 in evidence.)

(3607) Q. Now will you pick out another card that gives a still different and further reason for having the card pulled out of the active files? A. Here is a juror who was qualified in August of 1939. He served on January 7, 1941; he served on January 5, 1943; he served on January 22, 1945; he was excused in February of 1947, and alongside of it is "Not Deliverable." In other words, the Post Office returned it not deliverable, and underneath it is "Deceased." It does not say what date he died or when he was taken off.

Q. Well, that card, then, is typical of the kind in which you have recorded the fact that a juror's card was removed from the active list because he had died? A. That is true.

Mr. Gladstein: I offer it in evidence.

Mr. Gordon: No objection.

(Marked Defendants' Challenge Exhibit 170 in evidence.)

Joseph F. McKenzie—for Government on Challenge—Cross

The Court: How many of these, Mr. Gladstein, do you expect to offer in evidence?

Mr. Gladstein: Just a sample of each type.

Q. Now will you select, if you will, another card that shows on its face a different and further reason for taking an active card or a card out of the active files and putting it in the Off list. (3608) A. Here is a juror qualified on October 7, 1940. He was excused November 1940; served March 1941; excused November 1943; excused February 1944; excused September 1944; served in February 1945 and was taken off in November 1948 as "Not Found."

Mr. Gladstein: I offer it.

(Marked Defendants' Challenge Exhibit 171 in evidence.)

Q. Do you have a card that has on it the reason "Disqualified" for it being removed from the active files? Do you have any— A. Any card here with "Disqualified" on it?

Q. Yes. A. I have not seen any going through them.

Q. Do you have any card that has a further and different reason given on it as the reason for the card being taken out of the active files? A. I have one here (indicating). This juror qualified in October 1940. He served in February 1941; he was requalified in January 1943; he was excused in August 1943 with a notation "War Work." He was taken off in February 1946 marked "Knox."

Q. Marked what? A. Judge Knox.

Q. That means by instructions of Judge Knox, does it? A. No, that means that when the juror appeared with summons, as they do, in 109 on the return date, he (3609) presented to the Judge his summons and may have told the Judge anything from being a non-resident, or sick, or anything, and the Judge just puts on "Off, JCK"—his initial—and so all we put on it is "Off, Knox."

Q. So isn't it so that with respect to this last juror all that you can say is that you received a note or an instruc-

Joseph F. McKenzie—for Government on Challenge—Cross

tion from Judge Knox, whatever may have been the reason prompting it, to take this man's name off the list, is that right?

Mr. Gordon: That is objected to, your Honor.
That is exactly what he said was not done.

The Court: Sustained.

Q. What is it that you actually get from Judge Knox before you take a man's card out of the active lists and put on it "Knox"?

Mr. Gordon: That is objected to as repetitious.
He just gave the answer.

The Court: Yes, he did.

Q. I want to know whether you get something in writing or whether Judge Knox speaks to you? A. We get that from the summons that is returned from the calendar commissioner's office where Judge Knox had occasion to interview the jurors on the return date of these summonses, and he marks right on the summons either "Excused"; or if the man selects a later date (3610) he puts down the month; or if the man presents to him some reason for wanting to be taken off the list, the Judge puts "Off JCK" and that information is put on the history right from the summons that the juror presents to the Court.

Q. So when you get a summons accompanied by the juror on which there is written in effect "Take this man off the list," signed by Judge Knox, then you take the card, mark it "Off Knox" and put it in the Off list; right?
A. That is correct.

(Marked Defendants' Challenge Exhibit 172 in evidence.)

Q. Now, do you have a card there in which the reason is shown on the face of the card for its being removed from the active lists as exemption? A. No, I don't see any here that states an exemption—will you give me that question again.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. Do you know whether Mr. Doyle has another group of cards that might contain one of those? I would like just as a sample—

The Court: He does not know what you are asking him.

Q. I am asking you now for a card that was taken out of the active lists and put in the Off list on which card there is written either the word "Exemption" or something (3611) concerning exemption? A. No. Mr. Doyle has all of the active cards there, and on any of the active cards there is no such word as "Exemption" or "Deferred" or any other notation.

Q. Well, the only off cards that are in the room at the moment are the ones in your hand? A. The ones that you subpoenaed.

Q. Now, isn't it a fact that there are cards in your Off files or Off lists in which the word "Exemption" is noted as the reason for taking the man out of the active list, man or woman; right? A. Maybe, I don't know.

Q. Now I will ask you to have one of your assistants produce, if you will, from your Off lists the cards for three people whose names I am about to give you—do you want to write them down? A. All right.

Q. Patrick Conlan; Rose Sachs; Helen Rosen.

Mr. Gordon: I am going to object to any further questioning along this line, your Honor, not because we are trying to conceal something but because it seems to be endless and for no purpose.

Now, Mr. McKenzie has come in here as a Government witness, but as Mr. Gladstein said yesterday he had been twice served with a subpoena, and now here we are going through this process—"Run up to your office and bring down some more records," and so forth, and (3612) I don't think it is relevant to the direct examination and it is not relevant to the charge contained in the moving papers.

The Court: Has the man to go upstairs to find those cards?

Joseph F. McKenzie—for Government on Challenge—Cross

The Witness: Yes, your Honor, and we have to go through so many of our files.

Mr. Gordon: He brought everything that was subpoenaed.

The Witness: I have everything that was in the subpoena.

Q. As a matter of fact, the subpoena calls for cards or matters dealing with the deferred group, does it not, Mr. McKenzie? Is this the supplemental subpoena? A. This is the supplemental subpoena.

Q. What about the original subpoena? Have you got that? A. You told me long ago you gave that up—

Q. Beg pardon?

The Court: You told him yesterday afternoon to bring down the papers this morning that were called for by the supplemental subpoena.

Mr. Gladstein: That is quite true, but there is also another subpoena that calls for the deferred list.

Well, can those three cards be obtained, your Honor?

(3613) The Court: Has the man already started after it?

The Witness: No, he has not.

Mr. Gladstein: It can be done during recess.

The Court: I am inclined to let him get those. I want to give you a fair opportunity here to develop what you have, but, really, we have been going quite some time, and I have not noticed anything yet that seemed to have any significance, but I am assuming that you are working up to something; and I am going to give you a reasonable time, what I consider to be a reasonable time, to do that, so we will have those cards down. And in order to get them I will take our recess now because I want to follow the continuity here instead of jumping from one thing to another.

(Short recess.)

Joseph F. McKenzie—for Government on Challenge—Cross

(3614) Mr. Sacher: May I interrupt just a moment, your Honor?

The Court: You may.

Mr. Sacher: To state that Mr. Potash is absent this afternoon with the consent of all defendants and we waive his presence.

The Court: Very well.

Mr. Sacher: Counsel for both sides should like to have a moment of your Honor's time right after we adjourn today in chambers, if we may.

The Court: Very well.

JOSEPH F. MCKENZIE, resumed the stand.

Cross examination continued by Mr. Gladstein:

Q. Now, Mr. McKenzie, did you bring those cards? A. Did you ask for a Pat Conlan?

Q. Patrick Conlan. A. Is it Patrick J. Conlan?

Q. It may be. Is that what you have? A. You asked for a Rose Sachs and you asked for a Helen Rosen.

Q. That is right. A. Would that be Helen V. Rosen?

Q. Do you have that? A. I have that.

Q. May I see it? A. You want to have the cards.

Q. Is there a fourth card? A. No, there's only three cards there. There is no card, I believe, for Rose Sachs.

(3615) Mr. Gordon: Do you mind if I look at that?

Mr. Gladstein: Not a bit.

The Court: May I see the cards for just a moment.

Mr. Gladstein: Yes, indeed.

Q. You say you are unable to find a card for Rose Sachs? A. That is right.

Q. In the "off" list? A. In the "off" list or in the active list.

Q. What spelling did you look for? A. S-a-c-h-s.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. You found no card for Rose Sachs, S-a-c-h-s? A. That is correct.

Q. Did you look for S-a-c-k-s?

Mr. Gordon: Didn't Mr. Gladstein spell the name?

The Court: Yes. Rose S-a-c-h-s.

Mr. Gladstein: That is right. That is the spelling. I just wondered whether—

Q. You found none at all? A. Under this, under Rose S-a-c-h-s.

Q. Do you know whether that card has been removed recently?

Mr. Gordon: If there is an implication in that that it has ever been there or even been removed, (3616) I object to it.

The Court: Well, he is asking the witness whether it was removed to his knowledge. I will allow that.

Do you know anything about anybody removing such a card as that?

The Witness: No, I do not, your Honor.

Q. During the past three or four weeks have any cards been removed from the off list on which the word "deferred" appeared? A. Any cards removed from the off list—

Q. Yes. A. —with the word "deferred"? No, it has not.

Q. Any cards been removed from the off list? A. No, it has not, only these cards that I have brought into the courtroom here.

Q. These are cards in the off list on which the word "deferred" has been written; is that right? A. That is correct.

Mr. Gladstein: May I mark these for identification, since the witness has brought them? The card for Patrick J. Conlan (handing to clerk).

Joseph F. McKenzie—for Government on Challenge—Cross

(Marked Defendants' Challenge Exhibit 173 for identification.)

Mr. Gordon: I have no objection to their going in evidence.

(3617) Mr. Gladstein: All right. I offer it.

(Defendants' Challenge Exhibit 173 for identification received in evidence.)

Mr. Gladstein: I guess we should mark for identification the other two cards that the witness referred to.

(Defendants' Challenge Exhibit 174 for identification—history card of Mrs. Helen V. Rosen.)

(Defendants' Challenge Exhibit 175 for identification—history card of Mrs. Helen V. Rosen.)

Mr. Gladstein: May I have the card that is on the Judge's bench, Mr. Borman?

(Clerk hands to Mr. Gladstein.)

Q. Now looking at 173 in evidence, the history card of Patrick J. Conlan, does it appear when he first qualified as a juror? A. June 7, 1937.

Q. Does it appear when his card was taken out of the active list? A. It was taken off in December 2, 1940.

Q. And what is the reason given on the card? A. "See requalification."

Q. Is that all it says? A. It says "Deferred, December 2, 1940, see requalification."

Q. Now, what does the reference "See requalification" mean? A. That was a requalification that he filled out through the mail.

(3618) Q. Do you have that? A. No, I don't believe 1940 requalification would be on hand.

Q. You mean you didn't keep those records? A. For a couple of years; I mean, it all depended on the office, involved in the office, inasmuch as we had the original qualification of the notice—of the application of the juror, his qualification forms were never kept indefinitely. They might have been in the office for a year at the most.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. Was the juror asked to come in to the office on requalification? A. On that I would say no. He was sent a requalification through the mail. He could have appeared in the office, come in on his own volition.

Q. Did some who were sent these requalification notices come into the office? A. No, possibly—yes.

Q. Some of them did? A. Possibly they dropped in in person. But it was all handled through the mail.

Q. The requalification notice, did it show on its face any reason for deferment of the juror? A. As to whether or not he was over-age or non-resident, is that what you mean?

Q. Any reason whatsoever.

The Court: You mean the blank requalification when it was sent out?

Mr. Gladstein: When it was brought back or (3619) sent back.

A. When it was returned to the office, as to how—

Q. Yes. What was your practice when you received the requalification notice back from jurors, what was your practice as to whether or not you took the active card out of the file and put it in the off list? A. If the juror was over 70, if he was a non-resident or he had possibly even failed to fill out a requalification, probably he only filled out half of it. It was marked on there "deferred" and put in the off file.

Q. Now if he was over 70 years he was disqualified by law, isn't that right? A. That is correct.

Q. And if he was a non-resident he was disqualified by law, isn't that right? A. That is correct.

Q. Now, isn't the fact that when the word "deferred" was placed on a card such as this, it meant some reason other than the disqualification reason set forth in the statute? A. That is not so.

Q. That is not so. Did you ever have occasion, your office, to make a count some time in 1942 of the actual number of petit jurors you had? A. To actually count the history cards in 1942 to determine how many jurors were on the rolls?

Joseph F. McKenzie—for Government on Challenge—Cross

Q. Yes, sir. A. I don't know as we did.

(3620) Q. Did you have occasion to count the number of grand jurors that you had in your active file? A. At that date, no, I did not.

Q. Were you in the office in March, April and May 1942? A. I was.

Q. Now isn't it a fact that you did make such a count and did make a record of it and set it down in writing?

Mr. Gordon: He just said he didn't your Honor.

A. No, not to my knowledge.

Mr. Gladstein: I am trying to refresh his recollection.

A. No, I did not.

The Court: Well he said no. He said no again.

Q. Mr. McKenzie, did you make such a count for Mr. Follmer or for the jury commissioner in or about March 1942?

The Court: Isn't that what you just asked him a couple of times already?

Mr. Gladstein: Yes, but now I am asking him if he made it for Mr. Follmer.

A. Actually count the cards. No, I did not.

Q. Did you have a count at that time? A. We had a book showing, or a sheet showing the number of jurors that were on the rolls at that time?

(3621) Q. Did you have occasion in the early part of 1942 to give that figure to Mr. Follmer? A. I may have, yes.

Q. Now, that count was then put into a letter by Mr. Follmer, isn't that right? A. I don't know. I am only assuming now that I did give him such a count.

Q. Do you have the book in which that count appears in the early part of 1942?

Mr. Gordon: Your Honor, he has testified he did not make such a count, and the fact is that he has testified that they had some sort of a running record.

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Joseph F. McKenzie—for Government on Challenge—Cross

Mr. Gladstein: All right.

Mr. Gordon: Now Mr. Gladstein asked the question as though there was something mysterious about it and the witness was hiding something.

The Court: Yes. That last question almost made it seem as though he was changing his testimony.

Q. You referred to a record that kept a running count, is that correct? A. That is correct.

Q. Which is the record?

The Witness: Have you got the sheets there, Mr. Doyle, or the book that would show the number of jurors in the early part of 1942?

(Paper handed to the witness.)

A. This is on the jury from July 1941 to June of 1942, (3622) the number of jurors.

The Court: What are those dates?

The Witness: July 1941 to June 1942.

The Court: Yes.

Q. May I see the document from which you were testifying, Mr. McKenzie? A. Yes, I just want to check the—that is the one (handing).

Mr. Gladstein: I think we had better mark that for identification.

(Defendants' Challenge Exhibit 176 marked for identification.)

Q. Now, as to this exhibit are the figures shown thereon figures that were prepared under your supervision? A. Yes, that is correct.

Q. And what do those figures purport to show? A. They purport to show the number of grand jurors and petit jurors during these periods.

Q. During the periods referred to in the exhibit? A. That is correct.

Mr. Gladstein: I offer it.

Mr. Gordon: Do you mind if I see it?

Joseph F. McKenzie—for Government on Challenge—Cross

Mr. Gladstein: No. Excuse me.

Mr. Gordon: No objection to this, your Honor.

May I go back for a moment to straighten something out. Exhibits 174 and 175, the cards of Mrs. Rosen (3623) that were produced pursuant to Mr. Gladstein's request, are both of these cards from the off file?

The Witness: No, one is from the active file. Let me see them.

Mr. Gordon: Since they were supposed to be from the off file I think perhaps we ought to have them identified on the record.

The Witness: No, this one is from the active file.

Mr. Gordon: Which one?

The Witness: This blue one.

The Court: The blue one is the active file.

The Witness: Showing the—

Mr. Gordon: What is the exhibit number?

The Witness: Oh. The exhibit number is 175.

Mr. Gordon: That is from the active file?

The Witness: That is from the active file, showing this party is on the grand jury.

Mr. Gordon: 174?

The Witness: And 174 is the off file where the card had been transferred to the grand jury; this juror had at one time been a trial juror and transferred to the grand jury.

(Defendants' Challenge Exhibit 176 for identification received in evidence.)

(3624) Mr. Gladstein: May I have those exhibits for identification that Mr. Gordon had just referred to? Are they in evidence, 174 and 175?

The Clerk: They are in evidence.

The Court: Not yet.

Mr. Gordon: Well, I think Mr. Gladstein said "Mark them for identification," your Honor, and I said I had no objection, and he said, "Well, then I will offer them in evidence." But I guess the clerk never announced it.

Joseph F. McKenzie—for Government on Challenge—Cross

The Court: I think that was as to the card of Patrick J. Conlan which is Exhibit 173. And you now offer 174 and 175?

Mr. Gladstein: I do. They were actually marked as received, but I offer them in evidence if the record requires it.

Mr. Gordon: Then I have no objection.

The Court: They are received.

(Defendants' Challenge Exhibits 174 and 175 for identification received in evidence.)

Mr. Gladstein: May I see Exhibit 176?

Q. That gives a count as of June 1941 of your grand and petit jurors; correct? A. That is right.

Q. They total: Grand jurors, 1960, at that time; petit jurors, 7,971; correct? A. As of June 1941.

(3625) Q. That is right, isn't it? A. Yes.

The Court: Wait a minute. Is the grand jurors?

The Witness: The trial referred—this was the trial, was it not?

Mr. Gladstein: Grand jurors, 1960 as of June 1941; the petit jurors, 7,971.

The Court: Is that paper already in evidence?

Mr. Gladstein: It is; yes, your Honor.

Mr. Gordon: 176, isn't it?

The Court: Yes.

Mr. Gladstein: 176.

Q. Do you have a recapitulation for a date later than June 1941 showing what the number of grand and petit jurors, respectively, was, in your office, that is to say, cards for them?

Mr. McGohey: For what date?

Mr. Gladstein: Later than June 1941.

A. Similar sheet?

Q. Any record whatsoever at any date later than June 1941. A. This runs down to June 1942. It runs from July 1941 to June of 1942.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. What are the totals shown as of June 1942? A. I will give you these here now for 1942.

Q. You had better let us mark it then. You wave something, refer to it as "this here." We had better (3626) have it marked for identification.

The Court: I did not hear whether you changed those dates, Mr. McKenzie.

The Witness: Not as yet, your Honor. We are getting into this other exhibit.

The Court: But as to 176 that showed jurors as of June 1941, in the number you gave them.

The Witness: That is correct, your Honor.

(Defendants' Challenge Exhibit 177 marked for identification.)

Mr. Gladstein: Is 176 in evidence?

The Clerk: Yes.

Mr. Gladstein: It is, yes.

Q. What does 177 for identification refer to? A. It refers to fiscal year of July 1941 to June 1942.

Q. What does it show on that? A. It shows new jurors, jurors taken off, gain and loss, and total on list.

Q. Was it prepared under your supervision? A. Yes.

Q. In your office? A. Yes. In fact, those are my figures.

Mr. McGohey: Keep your voice up, Mr. McKenzie. I can't hear you sometimes.

(3627) The Witness: In fact, those are my figures.

Q. You wrote them? A. Yes. In part, they are. Let me see if it is all mine.

Q. (Handing to witness.) A. No. Part is mine and part is in somebody else's.

Q. And the figures are supposed to represent the actual number of active cards, respectively, for men and women, respectively, also for petit and grand jurors; is that it? A. That is true.

Mr. Gladstein: I offer it.

Mr. Gordon: No objection.

Joseph F. McKenzie—for Government on Challenge—Cross

(Defendants' Challenge Exhibit 177 for identification received in evidence.)

The Court: This is just the petit jury?

The Witness: It is petit and grand.

The Court: Oh, they are both lumped together again?

The Witness: No, it is not. They are all kept in separate columns there. If you notice the top, it says, "Grand" on one, and the other says "Petit."

The Court: I must be getting blind.

The Witness: No. You are right, your Honor. It is all the petit jury.

The Court: I knew I was right. I can read, all right.

(3628) Q. To what does it refer?

Mr. Gordon: I think 176, your Honor, shows the—

The Witness: 176 shows the—

The Court: I know; the one that you gave me last does not differentiate.

The Witness: No, that is all petit or trial jurors.

Q. Then 177 just refers to the petit jurors? A. That is correct.

Q. Do you have a record as of the same date for the grand jurors?

Mr. Gordon: You have already introduced it. It is 176.

Mr. Gladstein: Let me see that.

Mr. Gordon: In fact, you even read it off, Mr. Gladstein.

The Court: Yes. What is the total of that 177 of the petit jurors as of June 1942?

Q. Suppose you tell his Honor the answer to that question based on the exhibit.

The Court: It is 8,000 and something.

The Witness: Now on what exhibit is that, your Honor?

Joseph F. McKenzie—for Government on Challenge—Cross

The Court: 177.

The Witness: 177, the total jurors on the list as (3629) of July 1941 is 7,971.

The Court: That is just the petit jurors.

The Witness: That is just the petit jurors.

The Court: All right.

Mr. Gordon: Now, June of 1942, the Judge asked you.

The Witness: Now, June of 1942, it is 8,271.

The Court: That is the number I wanted. All right.

Q. Now, as of what date is the next record you have for your count of the total number of jurors, petit and grand? Did you keep these annually at a fiscal point in the year, that is, in mid-year? A. There is no particular fiscal year arrived at. Some run from January to December, others are in fiscal years.

Q. How often did you make a count?

Mr. Gordon: He said he did not make a count, your Honor.

Q. How often did you make a record as to the number, the total number? Did it keep running from month to month? A. Some time at some periods—just a second; let me get your question. I am lost.

Q. Well, let me put it this way: We have exhibits here that run up to June 1942 giving the numbers of (3630) petit and grand jurors?

The Court: Well, they are the two lists.

Mr. Gladstein: Yes, that is right. But on both of them the latest date is June 1942.

Q. All right. Now let me have the date later in time, the next date later in time after June 1942 when you have a count of petit and grand jurors. A. Now I have a work sheet dated December 31, 1942, to December 1943.

Q. That is the second page of a document that you hold in your hand? A. That is correct.

Mr. Gladstein: We had better have that marked for identification.

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Mr. Gordon: Your Honor, I object to any further questioning along this line. They seem to be not relevant to the challenge.

The Court: I don't follow this at all, Mr. Gladstein.

Mr. Gordon: It is just time-consuming, your Honor.

Mr. Gladstein: The witness has referred to documents that ought to be identified.

The Court: If it be the question of women because these exhibits do show differentiation between men and women, they demonstrate plainly that far from discriminating against women they are included in large (3631) numbers. Nothing appears on these papers as to the other things that you charge as to the discrimination against Negroes or Jews or poor people.

I don't follow what it is that you claim these papers show.

Mr. Gladstein: I desire to have the record accurate as to the members of jurors as preliminary to testimony that I want to elicit from this witness concerning what happened in February 1947 when he began to send out new notices.

The Court: I shall not allow you to follow that through year by year merely to show the numbers by way of preliminary.

Mr. Gladstein: Well, can I ask the witness if he has a record as of the first of 1947, as to what the total numbers were?

The Court: You may.

Mr. Sacher: May I interrupt a moment, your Honor? I would like to make an observation concerning the materiality and relevancy of these annual or more frequent periodic reports.

According to the testimony of this witness selections of persons for both petit and grand jurors were made in certain ways during certain periods of time between 1940 and 1948, and the number of people in (3632) each pool of jurors at the beginning of each period and at the end of each period with specifications as to the number of additional

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new ones who came in and some of the old that were sloughed off becomes material to see how much of, or how many, rather, of those selected in the manner testified to in previous years still remain to taint the grand jury and petit juries, and I am not using—

The Court: I will stand by the ruling.

Mr. Sacher: I respectfully except.

(Defendants' Challenge Exhibit 178 marked for identification.)

Q. Do you have a figure as of about the first of 1947 showing how many grand and how many petit jurors you had? A. I have.

Q. What is the figure? A. May I have the book?

Q. Yes, certainly. It appears in a book, does it, that has just been handed you, Mr. McKenzie? A. Yes, it does.

Mr. Gladstein: May we have that marked for identification.

The Court: This is just prior to 1947, isn't it?

Mr. Gladstein: It is, your Honor.

Will you mark the book, sir (handing to clerk)?
(3633) It may be just prior to the early part of 1947.

The Court: Well, he said that in the latter part of January 1947 or the beginning of February 1947 he changed the method of selecting the jurors and I take it that you are now—do you remember that, Mr. McKenzie?

The Witness: What do you mean by "changed"?

The Court: Well, I have in my notes that you used certain ways up to that time and there was a certain change that took place in the latter part of January or beginning of February. Did I misunderstand you?

The Witness: No. That is right.

The Court: I am right. That is what I thought.

So that I take it what you are now addressing yourself to is the period immediately antecedent to whatever change there was.

Joseph F. McKenzie—for Government on Challenge—Cross

Mr. Gladstein: Exactly, your Honor. And to find out how many names of petit and grand jurors were in the active files.

The Court: Yes, I will allow that.

(Defendants' Challenge Exhibit 179 marked for identification.)

Q. What is No. 179 for identification which I now hand (3634) you? A. This is a record of the number of jurors on the list, or on the rolls, I should say, at a certain time, and also the number of notices sent out to an Assembly district or to whatever district it may have been sent or whatever—telephone directory or Directory of Directors, whatever the source that may have been used, it is listed here, along with the date that they were mailed, and the date that they were mailed and the date that they were returned, along with the number sent out.

Q. Now, that record, is that the first time that you started keeping a record of that kind about the first part of 1947? A. That is the first time I started it.

Q. Well, how did anybody else in your office under your supervision—did anybody else keep such a record at any time prior to January or February 1947?

Mr. Gordon: In your office, under your supervision.

A. No, they did not, under my supervision.

Q. All right. Now, what is the earliest date—is it January or February 1947—for which you have a count of the grand and petit jurors? A. This is brought forward December 1946 on the petit jurors, 9,162 men, and 1,658 women.

Q. And the grand jury? A. The grand jury as of the same date, 1,946 men and 237 women.

(3635) Q. Now, those are the numbers representing the—

Mr. Sacher: What was the date of that? Excuse me.

The Witness: That was December 1946.

Q. And those numbers refer to the number of cards in the active files for grand and petit jurors as of that time;

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correct? Is that right, Mr. McKenzie? A. No, there is a question on that.

Q. What is the question, sir? A. In other words, the cards were then counted on this by—when this drive started the cards in the active files were counted and it showed that there was 2,353 less cards in the file than there were when this record was entered on there.

Q. I don't understand your answer. What is the two thousand odd figure? What does that refer to? A. That means that Mr. Doyle and Mr. Murphy counted all the history cards when he started this book to be assured of the number that was actually on the rolls.

Q. And what figure did they arrive at? A. And they arrived at 2,353 less. In other words, the figure they give here as at the end of January is 6,813 men and 1,664 women.

Q. Well, then, in other words, as far as the record is concerned, between December 1946 and January 1947, a difference of over 2,000 cards occurred, is that right? (3636) A. I would not say it happened at that—

Mr. Gordon: That is not what he said, your Honor.

Q. When did it happen? A. It could have happened down through all the years.

Q. Now, where did the figure as of December 1946 come from?

The Court: When did what happen? I am not following this at all.

Mr. Gordon: It is like an inventory, your Honor. They close a store and count the number of cans on the shelf of the grocery store, and they don't come out to the same number of cans in the store that the records show that they have kept from time to time. That is what I understand his testimony to be.

The Court: Is that it, Mr. McKenzie?

The Witness: That is correct, your Honor. I can show the figures from the last, 1946, that were carried over from—

Q. Let us have those. Do you have another book you are looking at? Is this another book that—

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The Court: One moment: I wish you would not come up there, Mr. Gladstein. The effect of it is that I can't hear what goes on.

(3637) Mr. Gladstein: When I get closer, you can't hear?

The Court: Yes. When you get close to the witness it is a great whispering campaign and you and he seem to understand one another and I can't hear a word. And that is why I missed all this business about these cards that make whatever is the difference that he is trying to describe. If you will just stand back a little bit we will all have a chance to hear.

Mr. Gladstein: Is this all right, Judge, here (indicating)?

The Court: It is not that I want you in any particular spot, but it happens so often. It is not just with this witness. It is for all.

By Mr. Gladstein:

Q. Now Mr. McKenzie, you were about to refer to another book for some further figures on the subject, is that right? A. Yes.

Q. And you have one in front of you, have you? A. Yes, sir.

Q. Now, that book has not yet been marked for identification, has it? A. No.

Mr. Gladstein: Well, perhaps we had better have it marked before you start referring to it, if you will. I will just note that that is page 31 when you want (3638) to reopen it.

(Marked Defendants' Challenge Exhibit 180 for identification.)

The Court: Does that book show so many Negroes, so many Porto Ricans, so many Jews, and so on?

The Witness: It does not, your Honor.

The Court: Let me have that book. I want to look at it.

(Book handed to the Court.)

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The Court: With all this data it seems to me a most roundabout way you are going at it. That book shows just where they got them all from, what notices were out, what jurors they got; the whole story is in there. I don't see why you go about it in this circumferential way, around the periphery of it. Why don't you get right down to work to what you want to find out?

Q. Now I will ask you to look at 180 for identification and state what it is? A. This is all Mr. Borman's work in this book here, these qualification notices—

Q. Between what periods of time? A. From June 29, 1942, to April 9, 1943. That is Mr. Borman's record. And then my record shows in here from the 16th of April to the 30th of April of 1943.

Q. Is that the latest date, 1943, shown in there? A. On qualifications mailed out.

(3639) Q. And what else is shown? When you say qualifications, you mean notices to come in and qualify? A. Qualification notices mailed, that is right.

Q. All right. A. Now we have the jurors on the trial, petit jury kept in the same book.

Q. Starting as of what date and ending as of what date? A. This starts as of December 1943 to December 1946.

Q. Now, what are the figures shown in that book as of December 1946 for the petit and grand jurors? A. For the men, 9,162; for women, 1,358 on the petit.

Mr. Gordon: Is it 1358 or 1658?

The Witness: Pardon me?

Mr. Gordon: Is it one three or one six?

The Witness: 1,358 women.

On the grand, it is 1,946 men and 237 women.

Q. Now, those figures were kept in the regular and ordinary course of the business of your office, is that right, sir? A. That is correct.

Q. And the ones you have just read off as of December 1946—are they entered there in your hand?

Mr. Gordon: I have no objection to the book.

Mr. Gladstein: All right, I offer it in evidence.

Joseph F. McKenzie—for Government on Challenge—Cross

(Defendants' Challenge Exhibit 180 for identification (3640) received in evidence.)

Q. Now, thereafter, and, commencing in 1947, as I understand it, the computations and entries concerning the number of jurors, petit and grand, were made in 179 for identification; is that right? A. That is true.

Q. And are those entries made in your hand? A. No, they are not.

Q. Well, are they made—

Mr. Gordon: No objection.

Mr. Gladstein: No objection? I will offer the book in evidence.

The Court: It is already in evidence, isn't it?

Mr. Gladstein: No, this is another one.

The Court: This is another book?

Mr. Gordon: This is the one that follows.

The Court: This is 180?

The Witness: 179.

Mr. Gordon: They are reversed, your Honor. 180 is the early one; 179 is the later one.

The Court: All right.

(Defendants' Challenge Exhibit 179 for identification received in evidence.)

Q. Now, looking at 179 in evidence, tell us what the number of petit and grand jurors was as of January (3641) 1947, January or February, whatever it shows. A. As at the close of January 1947—

Q. Does it give the date? A. It says January—

Q. Does it say the close of January, here, or not? A. Well, the figure over here would indicate the close of January.

Q. All right. A. At the close of January 1947 there was 6,813 men; and 1,664 women, petit jurors.

On the grand there were 1,844 men, and 240 women.

The Court: 240?

The Witness: 240 women.

(3642) Q. How many petit jurors do you have as of the present date? A. You will find it in the book.

Joseph F. McKenzie—for Government on Challenge—Cross

Q. Is it also in the book? A. Yes.

Mr. Gladstein: All right.

Mr. Sacher: The book seems to run to December 1948.

The Witness: It is compiled—

The Court: Well, what difference does it make? If we get it up until today then you would want it until tomorrow and then the next week or the week after. If you get it down to the end of 1948 it seems to me that ought to be enough.

Mr. Gladstein: I didn't know that he had stopped in December 1948.

Mr. Gordon: I doubt that with all those subpoenas that have been served on Mr. McKenzie that he has had much chance to send out qualification notices in recent months, your Honor.

Mr. Gladstein: This is not qualification notices. This is the number of jurors.

Q. Is that right, Mr. McKenzie?

The Court: Well, everybody in the jury clerk's office has been pretty busy here now for a couple of months or more.

Mr. Gladstein: Well, if I kept them busy in (3643) digging up the evidence, Judge, it is perhaps better than what they were busy at for a long time.

Mr. McGohey: I move to strike it out, your Honor. There is no basis for it at all.

The Court: There is no basis for that statement, and I have already said two or three times that comments of that kind should be omitted. Now, it may be that you and your colleagues have determined to do everything you can to make these proceedings disorderly. If you have made no such determination you will please pay some attention to my directions. If you expect me to suddenly begin shouting at you and whacking that gavel and all that, you are never going to see me do it.

Mr. Crockett: If the Court please, I should like to object to what I assume is the inclusion of my-

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self in the Court's characterization of "you and your colleagues" in reference to the previous comment.

The Court: Well, your conduct has not been impeccable.

Mr. Crockett: I object to that also, your Honor.

The Court: Your objection is noted.

By Mr. Gladstein:

Q. Now, Mr. McKenzie, look at the record which is (3644) in evidence as 179 and state, if you will, what it shows as to the number of jurors, petit and grand respectively, that you had as of the latest date shown in that record. A. As at the close of December 1948, there were 8,868 men and 1,874 women, petit jurors.

The Court: Let me get that, Mr. Reporter.

(Last answer read.)

A. (Continuing) On the grand jury as of the close of December 1948 there were 1,852 men and 273 women.

Q. All right, sir. Now I notice in looking through this book 179, and also the other one, 180, that with respect to qualification notices there are designations of one kind or another, things such as "3-D" and "1-M" and things of that sort. You notice that, do you not? A. Yes.

Q. Each of those has a meaning, I take it? A. It has.

Q. Now, without taking the time now, do you have any master list on which is indicated what the significance is of these symbols, so I don't have to ask you to go through the whole thing?

Mr. Gordon: Why doesn't he ask him what they mean, your Honor?

Mr. Gladstein: Well, I will be glad to do that except we will have to go through page after page.

(3645) The Court: I think I know what they mean from what I have been listening to here today, but if there is something you want to find out about him, ask him.

Q. Is there a list? A. No, there is no such list.

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Q. Do you know the meanings of the designations in each of those books? A. Yes.

Mr. Gladstein: I will come to that in a moment.

Mr. Gordon: He testified what they meant a minute ago. "1-M" was 1 Manhattan Assembly District, and so forth.

Mr. Gladstein: Well, let us see.

Q. Well, let us see: what does "MTD" mean?

The Court: What is the part you think is so confusing that you think it needs to be explained?

Q. What does MTD mean? A. Manhattan Telephone Director.

Q. What does "Misc" mean? A. That is the odd lots, where you send out a hundred and there was 110 or 111 from a district, you gather together all the odd lots and called them miscellaneous from various districts all in one.

Q. And when you said the Manhattan Telephone Directory, are you referring to the address phone book? A. The address telephone directory.

Q. What does Putnam refer to? A. That is Putnam (3646) County.

Mr. Gordon: That is part of the Southern District of New York.

The Witness: It is.

Q. What does "Dir" refer to? A. Directors' list.

Q. Which directors' list? A. Directory of Directors.

Mr. Sacher: Is that Poor's?

Mr. Gladstein: There are several directories. There is Moody's; there is Poor's.

Q. Which of these is referred to, do you know? A. I sent them to the Directory of Directors in the Library.

Mr. Sacher: He didn't care as long as he got directors.

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

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The Court: Yes.

Mr. McGohey: That is part of the same piece.

The Court: But it seems to me this time it is pretty mild.

Mr. McGohey: That I will concede.

Q. What does "3-D" mean? A. That is the third batch of directors. They went out in batches, directors—

The Court: You boys are all doing the same thing. You all get up there and I can't hear a thing. (3647) It is just like getting into a huddle on the football field and the spectators hear nothing. I like to hear what the testimony is.

Q. "3-D" means the third what? A. The third batch of notices that were sent out or the third—

Q. What does "3-D" mean? A. The third batch of notices that were sent out.

Q. To whom? A. To the prospective jurors.

Q. But the source, the source is indicated, is it not? What does "3-D" mean as to the source? A. They all come from the same directory.

Q. Which directory? A. The Directory of Directors.

Q. All right. So that, in other words, "Dir" refers to the Directory of Directors, is that right? A. That is correct.

Q. And "3-D" refers to the third group of directors? A. That is right. When they mailed out the first batch of them they put "Directors." When they mailed out the others they put "3-D" which meant third batch going out of directors.

Mr. Gordon: Mr. Gladstein is having trouble finding the directors in there, your Honor.

The Court: Is the Social Register in there?

The Witness: No, it is not, your Honor.

Mr. Sacher: But the clerk didn't have any (3648) trouble.

Mr. Gladstein: The Social Register is prominent by its absence at this time—that is, in mention.

The Court: What is that you say? It is not mentioned? But you say it is there just the same?

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Mr. Gladstein: It may well be.

The Court: Well, I will strike that out. I see no evidence of it.

Q. In October 1947 it appears that you sent out a number of notices to people whose names came from a source indicated as "Dir"; is that right? A. That is right.

Q. And that means the Directory of Directors, correct? A. That is correct.

Mr. Gordon: Now if Mr. Gladstein is purporting to read from the book—

Mr. Gladstein: No, I am not.

Q. Now I will ask you, will you look through October 1947 and read into the record the dates when and the number of persons to whom you sent notices to come in and qualify, which names were obtained from the Directory of Directors?

Mr. Gordon: That is objected to because the book is in evidence.

The Court: Sustained.

Let me look at it.

(3649) (Book handed to Court.)

The Court: Is "Who's Who in New York" in here?

The Witness: No, your Honor.

Mr. Gladstein: I have not looked through it yet fully.

The Court: Didn't you see this before today, Mr. Gladstein?

Mr. Gladstein: I have seen it, yes.

The Court: I thought so.

Well, we will adjourn now until tomorrow morning.

Do counsel want to see me?

Mr. Gordon: On the question of these original records of the court which they have marked in evidence, I ask that your Honor direct that they be placed in the custody of the clerk overnight. They are original records.

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The Court: That is right.

Now, do counsel want to see me? I will see counsel in the little room downstairs here.

Mr. Gordon: Yes, your Honor.

(Adjourned to February 16, 1949, at 10.30 a. m.)

(3650)

New York, February 16, 1949;
10.30 a. m.

* * *

(3657) JOSEPH F. MCKENZIE, resumed the stand.

Mr. Gladstein: I want to make this suggestion, your Honor. There are a number of documents—excuse me, your Honor.

Mr. Sacher: I just want to state for the record that the defendants Thompson and Green are absent this morning and waive their presence, as do the other defendants.

The Court: Very well.

The Witness: Your Honor, may I have—yesterday before the noonday recess Mr. Gladstein presented me with this list of names and addresses and he asked me to produce in court the original applications, original questionnaires (3658) that these jurors had filled out.

The Court: Yes, he did.

The Witness: Also with the history card. Now I have them here, your Honor, but they are the important records and the original records of the office, and I would like to get them back there just as soon as—

The Court: Well, you keep them right in front of you. They will get back where they belong at the earliest possible moment.

Mr. Gladstein: I suggest that we mark the contents of the envelope as an exhibit for identification and permit one of my colleagues to examine them, and then it can be returned to Mr. McKenzie when he leaves the stand. Will that be satisfactory, your Honor?

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The Court: I see no reason to object to it; whether Mr. McGohey has none and you have none Mr. McKenzie—

The Witness: I have none, your Honor.

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

The Court: Then that may be done. If you put in the envelope and mark it for identification and turn it over to counsel—

The Witness: There are four names marked on here, your Honor, that says "No record"; in other words, there is no record in the office of a card, either in the active file or the Off file.

(3659) The Court: You had better read into the record the names of the four.

Mr. McGohey: I suggest, your Honor, that it might be a good idea to mark that list as an exhibit so that we could tell what he is talking about.

The Court: That is right.

Mr. Gladstein (To witness): Do you want to do as the Court directed, read the four names into the record?

The Court: Mark them both for identification first and then—

Mr. McGohey: The list and the envelope.

The Court: Yes.

Mr. McGohey: And let the record show what the envelope contains with respect to the list.

(Marked Defendants' Challenge Exhibit 181 for identification.)

Mr. Gordon: What is 181? The envelope?

The Clerk: The envelope.

Mr. Gordon: Mark the list 181-A.

(Marked Defendants' Challenge Exhibit 181-A for identification.)

Mr. Gladstein: So that the record may be perfectly clear, I desire to state that the contents of the envelope marked Challenge Exhibit 181 for identification consists of the questionnaires and (3660) the history cards of all of the persons whose names

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are set forth on Challenge Exhibit 181-A for identification with the exception of four names which I will ask you, Mr. McKenzie to now read into the record, your statement being that as to those four names you have no such records.

The Witness: Mrs. Bertha Kirkland, 301 St. Nicholas. Mrs. Ruth Walker Marshal; Miss Idella Moore. Joseph A.—2340 Seventh Avenue.

The Court: Joseph A. I didn't get the last name.

The Witness: I didn't give the address on Moore's name, your Honor, and it was 2340 Seventh Avenue.

Mr. McGohey: Would you keep your voice up, please, Mr. McKenzie. I can't hear you, and I think Mr. Crockett is having difficulty also.

The Witness: Now Joseph A. V-r-e-l-l, 401 East 140th Street.

Mr. Gladstein: Those are the four?

The Witness: Those are the four.

Mr. Crockett: May I suggest as to the name Joseph A. Vrell that it may be U-r-e-l-l? Did you have such a check made for that name?

Mr. Gordon: Now I suggest, your Honor, that if defense counsel want something and they submit a list of names that they not thereafter come into court and (3661) start saying that that is a misspelling or that is misspelled. We will never get finished with this. I object to that.

The Court: Well, I think there is something in that. But as far as looking at the list, of course they have that now and can examine it together with the questionnaires and cards.

Mr. Crockett, was it your suggestion that maybe the names on the list furnished by Mr. Gladstein were not right and they ought to be some other names?

Mr. Crockett: It was my suggestion, your Honor, that the name Joseph A. Vrell, V-r-e-l-l, might be U-r-e-l-l.

The Court: Well then you are suggesting that the list which Mr. Gladstein presented and had a

Colloquy of Court and Counsel

man's name spelled B-r-e-l-l, that you think maybe somebody ought to have looked under U, for Urell.

Now, that is to my way of thinking just absurd.

Mr. Crocket: Your Honor—

The Court: If you get up a list naturally he is going to look at the names you have on that list.

Mr. Crockett: I realize that, your Honor. I merely make a simple suggestion. As to Joseph A. V-r-e-l-l, since he did not find such a name perhaps if he looked under U-r-e-l-l there might be such a card which when checked can be found; that it would (3662) come under U-r-e-l-l.

The Court: Any such proceeding as that will simply add to the confusion here—if every time he looks for something under one spelling he is supposed to imagine that maybe it might be some other spelling and we would never get through.

Mr. Crockett: I don't ask him to imagine. I am just suggesting it now for the first time. If he doesn't care to do it it is all right. I am simply requesting that it be done.

Mr. Gordon: It is not a question—

The Court: Mr. Gordon is perfectly right. If you start this kind of thing it just makes for a lot of confusion and difficulty that could have been avoided in the first place by getting the names right. You called, or Mr. Gladstein called for three or four cards yesterday. They are brought in, they are all looked at, and then the subject is dropped. And I don't know whether that sort of thing is going to go on indefinitely, but I am hoping that we won't just have one thing lead to another and another and another without end.

Now, Mr. Gladstein, do you desire that another name be added to that list?

Mr. Gladstein: I think under the circumstances, if it will not inconvenience the clerk too greatly, your (3663) Honor, he might look at the cards to see if he has a card for a Joseph Urell. It is apparent that there was a stenographic error.

The Court: Then I will take your list and write another name on it, it is Exhibit 181-A, and you,

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Mr. Gladstein, may in your own handwriting write on the bottom of the list another name such as you desire it to be and we will look into that later.

Mr. Gladstein: Very well. I just want to say that I had the impression that what must have happened is that the stenographer in copying off the name from a list made the typographical error perhaps.

The Court: I do not consider that just a typographical error. I don't see how anybody could be expected to think that when the list read Joseph A. Brell that maybe it was Joseph A. Urell. That seems to be the height of absurdity.

Mr. Crockett: Your Honor, there was no such suggestion. He merely stated that he found no name of Vrell, V-r-e-l-l. Then I asked him if he would on a subsequent check look for U-r-e-l-l. This is the first time I made the request, your Honor. I am mindful that he should have done it of his own volition.

The Court: All right.

(3664) Mr. Crockett: I may also add that your Honor received a note the other day from a witness outside, if you remember, and the witness's name as I recall was Joseph A.—either Urell or Vurell. I went out and spoke to the witness, so I have reason to believe that there is such a name in the file cards, though it may not be V-r-e-l-l, it may be U-r-e-l-l.

The Court: Well, I suppose this, like so many other things, ends up in the air. And I think the best way to do is to have Mr. Gladstein take his list and if he wants to write another name on it, write it on, and then we will see about looking up that other name later. I won't say now whether we will do it or whether we won't.

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

The Court: Yes, Mr. McGohey.

(3665) Mr. McGohey: If the Court please, I wish to object and have the record show the sarcasm in Mr. Gladstein's voice when he asked if it was

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not too much trouble to have the clerk ask his deputy look up one name.

I desire to call to the Court's attention that a challenge was made to this whole venire and panel and this whole jury system back in the first part of November. I will assume that at the time that was made, and I think it was offered by Mr. Gladstein, that it was made in good faith and that counsel was at that time prepared to prove the charges. For reasons of their own, counsel for the defendants withdrew that challenge in November. They have had from then until now to be prepared. And for somebody to come in in the fourth week of a challenge and hand the clerk a list of names and ask him to get out all of these cards and then complain that he has not done the job properly or that he ought now to do something different, I think is an indication of unfairness which should be stopped.

Furthermore I call the Court's attention that there is evidence in the record that the defendants' counsel, some of them, at least, Mr. Gladstein is one of them, have been in the clerk's office on (3666) several occasions before and that they have served subpoenas and that they have called the clerk—served a subpoena on the clerk although they did not call him. And any implication that is to be made now from the fact that the clerk is reluctant to get anything for them I think should not be permitted to remain in the record. I think the clerk has done an extraordinary job, in view of the disturbance to which he has been put in the last three or four weeks.

The Court: Yes. He has been spending practically his whole time dancing attendance upon counsel. I am not sure whether there was such sarcasm in Mr. Gladstein's voice or not; it did sound as though he was intimating that possibly there would be reluctance. But there has been none that I have observed on the part of the witness or any of the other people in the court house here to do whatever was required of them. And so we will

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simply let the incident drop by adding a new name to the list.

Has that been done, Mr. Gladstein?

Mr. Gladstein: I did not put it on but I shall.

May I say for the record, your Honor, that this list as I understand it that we are talking about contains the names of the persons who are listed upon some exhibits that were received in evidence yesterday, (3667) just yesterday, and those are the people whose names appeared on the segregated lists that were identified by their race and color as Negro people.

May I have that to write on, Mr. Crockett?

The Court: I don't know what you mean by segregated lists, I really don't.

Mr. Gladstein: Well, I will be very happy to explain that, Judge. When you draw a color line—

The Court: I suppose you are just trying to make trouble. You know well enough what the evidence showed. The evidence showed that there were these lists and that they were marked in certain ways and they were on the files.

Cross examination continued by Mr. Gladstein:

Q. Now, Mr. McKenzie, if I understand your testimony correctly some time in the early part of 1947 you obtained lists of registered voters for Manhattan and Bronx; correct? A. That is true.

Q. As of what year were those lists? A. Those lists were as of 1946.

Q. The latest? A. The latest, yes.

Q. And where did you get those from? A. From the Board of Elections.

Q. They cost you nothing? A. They did not.

Q. You got full sets of lists for all the districts, (3668) I suppose? A. We did.

Q. That means all the Assembly districts, is that right? A. All of the Assembly districts.

Q. Then from January, February 1947 until roughly the end of 1948 you began to send notices to people whose names appeared on such registered lists; is that right? A. That is true.

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Q. And you kept the record of the dates when and the number of persons to whom you sent such notices, is that correct? A. That is correct.

Q. Those notices were for the purpose of having the people come in and qualify as jurors, is that right? A. Come in and have their qualifications checked into, that is correct.

Q. Qualification checked, you mean to come in to qualify, don't you? A. Qualify.

Q. And if they qualified, they became jurors, is that so? A. That is right.

Q. And you kept records of the districts to which you sent such notices, isn't that right? A. Yes, that is correct.

Q. Also you kept records of the sources from which came the names of persons to whom you sent notices to qualify that didn't come from the registered lists; correct? A. Yes, that is correct.

(3669) Q. In other words, where, for example, your record showed that you were using Poor's Directory of Directors as the source of names, that is so indicated? A. The Directory of Directors I think it was. I don't say it was Poor's. They would indicate, yes.

Q. And the Telephone Directory, the address phone book would be indicated by the initials MTD? A. MTD is the address Telephone Directory.

Q. This thing went on from about January and February of 1947 until what date, sir, roughly? A. Well, now, there are dates in which we compiled the names from the Directory of Directors and which was complete. There is another date in which we used the Manhattan Telephone Directory and completed it. The list of registered voters was constantly in use from the time that the books were brought into the office and used in 1947 down to December 1948.

Q. Your records show which sources were used and in what numbers, is that right? A. That is correct.

Q. Now, when a juror's card gets in the active file, as I understand it, you have a process of rotation there, is that right? A. Once a juror's history card—

Q. Yes. A. No, that stays alphabetical.

Q. He has a wheel card that corresponds to his history card, is that right? A. That is right.

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(3670) Q. Is it the wheel card that operates in rotation? A. That is correct.

Q. Generally speaking, on the average, how often do you get around to a juror's card? A. Well, if a juror served, take, for instance, this month, his card would not come around until two years later.

Q. So on the average the people whose names get into the active jury lists are called on to serve as jurors about every two years, is that right, sir? A. That is, if they had served, they are put back in the wheel after two years.

Q. In other words, if they are called on and get excused temporarily they may be called on to serve a month or two later, is that right? A. The Judge marks it down for the following month; it is put in the wheel for the following month.

Q. But the practice is to try to obtain actual service by a juror on the average of once every two years; is that right?

(3671) Mr. Gordon: Now, he didn't say that.

Mr. Gladstein: I am asking.

The Witness: I don't understand.

Mr. Gordon: I don't see how he can testify about that. He just says that he keeps these records and somebody else puts the wheel cards in the wheel, and then the wheel is spinned.

By Mr. Gladstein:

Q. Don't you keep the records, Mr. McKenzie, the wheel cards, in chronological order? A. The cards are kept in the files.

Q. Those are wheel cards? A. Those are wheel cards.

Q. They are under your direction, aren't they? A. That is true.

Q. And you keep them in a manner, in a rotation or chronological manner that, generally speaking, provides that you will reach a juror's card on the average of once every two years; correct? A. That is, if you are talking about a served juror.

Q. I mean a served juror. A. A served juror, yes. After two years his card goes back and ready for the wheel draw.

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Q. Now I want you to look at your record. There are two books I think—no, perhaps only one. Which is the record which contains the record of your sending out the (3672) notices beginning January or February 1947, through December 1948? A. Do you have the book, Mr. Sacher? Mr. Sacher, do you have the book there?

Mr. Gladstein, you asked me yesterday if I had compiled or computed any list, and I did not, but I made one up showing the number of districts, how many were sent to each district, and the total amount.

Q. Oh, fine. What was this made from? A. That was made right from this book (indicating).

Q. It is a sort of a recapitulation, is that it? A. That is true.

Mr. Gladstein: All right, can we mark this for identification, your Honor?

The Court: Yes.

Mr. Gladstein: The witness has prepared this.

(Marked Defendants' Challenge Exhibit 182 for identification.)

The Court: Let me see it after you mark it, Mr. Borman.

The Clerk: Yes, your Honor (handing).

The Court: These are Assembly districts?

The Witness: They are Assembly districts, your Honor.

The Court: Can I see that Legislative Manual? I think that shows the Assembly districts, doesn't it? (3673) If there is some other exhibit that indicates the Assembly districts, why,—

Mr. Gladstein: I have a map, your Honor, or two maps. Would that be of assistance?

The Court: Anything that will show the Assembly districts. I just wanted to take a glance at them.

Mr. Gladstein: This is—

The Court: Those maps will do if they show it.

Mr. Gladstein: Yes, they do, your Honor; I will bring them right up.

Mr. McGohey: There are no maps in the Legislative Manual, your Honor.

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The Court: No, they just have the descriptions in there by streets and so on.

Mr. McGohey: Yes.

Mr. Gladstein: One is of the Bronx and one is of Manhattan, and they are set forth by Assembly districts (handing maps to Court).

The Court: All right.

By Mr. Gladstein:

Q. Now I understand from you, Mr. McKenzie, that Challenge Exhibit 182 for identification is a recapitulation based upon information contained in Challenge Exhibit 179 in evidence showing by Assembly districts and by other sources the numbers, the over-all or total numbers of (3674) notices sent out to people in Manhattan and Bronx to come in and qualify as jurors during the period February 1947 through 1948; is that right, sir? A. Well, that is Manhattan and Bronx here (indicating), and the Assembly districts—what are you taking in on this?

Q. All the other sources? A. Well, no. The other sources would be Westchester County and the outlying counties—

Q. I said from Manhattan and Bronx, does this show all the sources? A. The Manhattan districts and the Bronx Assembly districts. Then when you come to the Directory of Directors you go into Westchester and Putnam—

Q. Is it a fact that No. 182 for identification was—

Mr. Gordon: Wouldn't it save time if he asked the witness what is shown on the exhibit?

Mr. Gladstein: Just a second. That is all right with me, except every time I ask the witness to testify as to what is shown on the exhibit before it is in evidence, then there is an objection. Then when it is introduced in evidence and I ask the witness to testify about that, then there is an objection.

Mr. Gordon: I withdraw the suggestion. Go ahead.

(3675) The Court: Mr. Gladstein, I hope I am misunderstanding the purpose of that comment. It

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does not seem to me that you needed to do it. It seemed to have just one of those little fishhooks in that you so often sprinkle in your conversation, and I suggest that you omit them, if possible.

Now, you have been allowed every reasonable latitude here, and it is my intention to give you every reasonable latitude to bring out whatever you want to bring out—

Mr. Gladstein: Very well.

The Court: (Continuing) But I cannot continue to do it indefinitely, and if I get the impression that sarcastic comments and criticisms of the Court by innuendoes are being dropped in here and there, it is perhaps going to affect my discretion somewhat in the rulings I make on the extent of your cross-examination.

So let us find out now whether that paper, as it seemed to me, indicates only the mailings from the registered voters lists or whether it purports to include other sources as well.

Now which is it?

The Witness: It takes other sources as well.

The Court: Other sources as well?

The Witness: Yes.

(3676) The Court: Very well.

By Mr. Gladstein:

Q. What is the source of the information that you used to compile the data shown on No. 182 for identification?

A. What is the source of—will you repeat that?

Q. It is the book right in front of you, isn't it, 181?

A. Yes, this is the book.

Q. You just made a mathematical tabulation and you noted the thing down, didn't you? A. That is true.

Q. So 182 purports to show the total number of notices you sent out to people to come in and qualify as jurors over the period shown on that No. 182, and indicating the source from which you obtained the names; isn't that right?

A. That is correct.

Q. And you are satisfied it is a true and correct recapitulation of the information contained in No. 181? A. Yes, sir, I am.

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Mr. Gladstein: All right, I offer it in evidence.

Mr. Gordon: May I ask a preliminary question, your Honor?

The Court: Yes.

Mr. Gordon: Incidentally, I think that Mr. Gladstein means 179 in evidence when he is referring to (3677) the book upon which this appears to be based. He kept say 181. I think he means 179.

The Witness: This is 179.

Mr. Gladstein: All right, may it be understood that the record is corrected to that extent, your Honor?

The Court: Very well.

Mr. Gordon: The last two or three references.

The Court: Yes.

Mr. Gordon: I am confused about one thing on here, your Honor, looking at it. It apparently lists the Assembly Districts to which notices were sent, and then there is some information about other sources.

By Mr. Gordon:

Q. On these other sources at the bottom, Mr. McKenzie, you have included both the source of the name and the place to which the name was sent, is that right? A. On the bottom there?

Q. Yes. It appears to have the names of three counties. A. Various counties, that is correct.

Q. That is the place to which the notice was sent? A. That is true, and the other shows where they were secured from.

Q. Where they came from? A. Came from, I should say.

Q. Now I recall your testimony that you had gotten these Assembly District listings from the Board of Elections (3678) for all the Assembly Districts in Manhattan and the Bronx? A. That is correct.

Q. Now—

Mr. Gladstein: Just a moment, this is still my cross-examination. I don't understand now what Mr. Gordon has in mind.

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The Court: You want to be the one to ask him why some of the Assembly Districts don't appear? You are going to have that opportunity. That is perfectly all right.

Mr. Gladstein: Now, Judge, it seems to me that I should be permitted to cross-examine the witness without this kind of interruption of Mr. Gordon, the purpose of which is so obvious—

The Court: What is the purpose of the interruption that is so revealing? What is it that has been revealed here that might tip off the witness? I don't get you at all. I really don't.

Mr. Gladstein: Then may I ask what the purpose is of Mr. Gordon's interruption—

Mr. Gordon: Now, Mr. Gladstein said first the purpose was obvious and now he says, "May I ask what the purpose is?"

Mr. Gladstein: I should like Mr. Gordon to state for the record what his purpose is in trying to interrupt (3679) the examination at this time. I object to it in any case. I would like to be permitted to proceed.

The Court: It seems to me some element of confusion and disorder can get spread around here at the drop of a hat. All Mr. Gordon is doing is asking one or two preliminary questions to see whether he is going to object to the paper. That is what he said. Now what is wrong with that? I am going to permit him to do it. This idea that he is in some way disturbing your cross-examination or preventing you from making some inquiry, has no basis at all.

By Mr. Gordon:

Q. It is because of this confusion on here, Mr. McKenzie. Up on the top the listing shows the places to which notices were sent? A. That is correct.

Q. It does not purport to show notices which were prepared but which have not yet been sent? A. That is correct.

Q. And down at the bottom it shows both sources and places to which notices were sent? A. That is correct.

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Mr. Gordon: All right. Now I have no objection.

The Court: Let me see that paper for just a second.

(Paper handed to the Court.)

The Court: I confess I don't understand this paper at all.

(3680) Mr. Gladstein: May I ask the witness about it, then, your Honor?

The Court: It seems to me it is something that he says he got up over night, and it is better to leave it aside and you pursue your cross-examination the way you intended to do, and then we will go back into that paper later. I don't understand it. It is something that he volunteered himself, and I think it is better for you to pursue your cross-examination you intended.

The Witness: Well, your Honor, Mr. Gladstein—

The Court: We will get back to it, Mr. McKenzie, and whatever there is about it that is to be shown will be shown.

By Mr. Gladstein:

Q. Mr. McKenzie, do you have with you a sample copy of the type of registered list of voters which you used as a source of names and addresses of people to whom during the period 1947 and 1948 you sent notices to come in and qualify as jurors? A. Yes.

Q. Will you please hand me one of them? A. (Handing) Here.

Q. Do you have one in your hand now? A. Yes.

Mr. Gladstein: May I have it marked, Mr. Clerk?

The Court: Is this one of the ones that was actually used?

(3681) The Witness: That is correct, your Honor.

(Marked Defendants' Challenge Exhibit 183 for identification.)

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Q. Now I show you 183 for identification. Is this a sample copy of the lists of registered voters as set forth by Assembly District in either the Bronx or Manhattan that you obtained from the Board of Elections? A. Yes.

Q. And it is one of those that you used as a source of names, is that right? A. Yes, sir.

Q. And your records show—that is, No. 179 in evidence,—shows the extent to which you made use of No. 183, is that right? A. That is true.

Q. All right. And you had, as you said, obtained from the Board of Elections a set of such lists of registered voters by Assembly District for Manhattan and the Bronx; correct? A. That is true.

Q. Now will you look at—

Mr. Gladstein: Oh, I will offer this in evidence, your Honor, 183.

Mr. Gordon: No objection.

The Court: And while I have that I would like to have those maps. I am not at all familiar with these political subdivisions, and they don't mean a thing to me unless I have some map to which I can refer to.

(3682) (Defendants' Challenge Exhibit 183 for identification received in evidence.)

Mr. McGohey: If the Court please, there have been changes in the Assembly Districts in recent years, and the map may be confusing unless it outlines the Assembly Districts as of the time that those voting lists were prepared.

Mr. Gladstein: I understand that this map is as of 1944, and since, and therefore would be current and would be applicable to the 1946 period.

Mr. McGohey: That would be correct, your Honor, if they are 1944 maps.

Mr. Gladstein: Your Honor, we have a large mounted map in which the Assembly Districts are placed against the Congressional Districts. It might assist your Honor.

The Court: That is all right. I will tell you what I am looking for, and you may save me time.

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I have some recollection that what you and your colleagues have been contending is that the selections of jurors should be made from the lists of registered voters—

Mr. Gladstein: Without discrimination.

The Court: (Continuing) And that that was the way that you say that it ought to be done—

(3683) Mr. Gladstein: Without discrimination, that is right.

The Court: (Continuing) And I am looking now at a paper which seems on its face to indicate that they took the list of registered voters and selected every tenth name—

Mr. Gladstein: We shall see.

The Court: (Continuing) Which would seem to me to indicate comparatively little that could be supposed to be discrimination. But I was looking to see the place in your challenge where you claim that, and you say now that you did claim that it should be by the use of lists of registered voters?

Mr. Gladstein: I didn't say that in the challenge and I don't say that constitutes the basis of the challenge.

The Court: All right.

Mr. Gladstein: But I would say that if the voting lists for the entire area were used without discrimination in a fair method I would not raise any contention. And let us see whether that was done.

The Court: Let us see whether it was done, that is right. I only wanted to get your contention in mind, and I am left with a little more doubt now than when we started the colloquy.

(3684) *By Mr. Gladstein:*

Q. McKenzie, will you look through your record, which is 179 in evidence, and tell the Court how many people whose names you got from the 11th Assembly District in Manhattan you sent notices to at any time beginning January 1947 right on through to 1948 in the end? A. There is no indication here of the 11th Assembly District of Manhattan of any notices having been sent; but they may have

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been written up at the time and could be in a drawer upstairs, written up notices.

Q. Well, according to your records, in the two-year period we are talking about you never actually sent out notice to any person whose name you got from the registered list of voters for the 11th Assembly District of Manhattan; correct? A. This book does not indicate—

Q. Is that correct, sir?

The Court: He says as far as the book shows. There might have been some that were prepared and put in the drawer and not sent yet, but as far as the book shows none were sent during the period covered by the book to the 11th Assembly District.

Is that it?

The Witness: That is correct.

Q. Does the book 179 in evidence show a record of all the notices during the period it covers, 1947 and 1948, (3685) that you ever sent out for people to come in and qualify?

The Court: You don't mean ever?

Mr. Gladstein: During that period.

A. During that period this would indicate the notices that were mailed out.

Q. All of them? A. All of them.

Q. And as I understand it, that book shows no record of any notice having been sent out to anybody to come in and qualify whose name you got as a person on the registered list for the 11th District; right?

The Court: I don't know why you repeat it. This is the third line, and you change the language a little bit each time, and I honestly can't tell whether you mean something different than before or not.

Mr. Gladstein: Very well, your Honor.

Q. Now, I will ask you to look through that same exhibit and state how many people you sent notices to whose names you obtained from the registered list of voters for the 12th Assembly District in Manhattan. A. 12th Manhattan?

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The Court: Mr. Gladstein, have you already had someone check through the book to see and to ascertain that in the 11th, 12th, 13th and 14th Assembly Districts none were sent? I notice there are cross-marks on this map you have given me. Have you checked (3686) that?

Mr. Gladstein: I made some notes to look for those and I have this recapitulation—

The Court: If you have checked through and ascertained that I am willing to have that stated on the record subject to correction that these two books that he used in 1947 and 1948 indicate that no notices were sent to persons in the 11th, 12th, 13th and 14th Assembly Districts. Subject to correction.

Mr. Gladstein: In Manhattan. I believe that to be a fact.

Mr. Gordon: Your Honor—

The Court: Yes, Mr. Gordon?

Mr. Gordon: One book, your Honor. The other book shows that notices were sent to that area, although the Assembly Districts have a different number.

The Court: Oh, this is just one of the books that these questions relate to?

The Witness: Yes.

Mr. Gordon: For this one particular period.

The Court: Then we will change that so that it applies to—179, is it?

The Witness: Yes, that is correct, your Honor.

Q. This book 179 covers the year 1947 and the year 1948, isn't that right, sir? A. That is correct.

(3687) The Court: So my comment will be deemed applicable only to the book Exhibit 179.

Mr. Gladstein: Very well, your Honor.

The Court: And subject to correction it may appear without his taking the time to go all through the book with each and every one of these districts, that no notices were sent to persons in the 11th, 12th, 13th and 14th Manhattan Assembly Districts.

Mr. Gordon: Unless they were included and mixed in miscellaneous.

1822

Joseph F. McKenzie—for Government on Challenge—Cross

Mr. Gladstein: Well, we have already heard from the witness that the miscellaneous are those left over from batches—isn't that right, Mr. McKenzie?

The Court: That is right, he did say that. But it seems—

Mr. Gladstein: We will clear that up.

The Court: (Continuing) It is a possibility.

Mr. Gordon: That is all. There are not very many in the miscellaneous.

Mr. Gladstein: Now I will ask your Honor to take judicial notice of the fact that the 11th, 12th, 13th and 14th Assembly Districts constitute the Harlem area and are represented in the Legislature of the State of New York by the only four persons of the Negro race who were elected to that Legislature from Manhattan (3688) or from the Southern District, and that those four persons are, for the 11th Assembly District, Assemblyman William Prince; for the 12th District, Assemblyman Elijah Crump; for the 13th District, Mr. Harold Stephens; and for the 14th District, Mr. Hulan, Jack.

The Court: As to the physical location, geographical location of the districts and the names of those who are the Assemblymen, and their color, as indicated by you, I will take judicial notice. I do not think I am warranted in going further than that, and that probably will suffice for your purposes.

Mr. Gladstein: All right.

By Mr. Gladstein:

Q. Now, Mr. McKenzie, will you look through the Exhibit No. 179, and I want to ask you about two districts that are comprised within the Lower East Side. These are the Fourth Assembly District and the Sixth Assembly District. State, if you will, how many, if any, notices during 1947 and 1948 you sent to any persons whose names you got from the registered list of voters for either of those two districts. A. For the Fourth?

Q. The 4th and the 6th.

1823

Joseph F. McKenzie—for Government on Challenge—Cross

Mr. Gordon: Does your Honor have that map.
The Court: Yes, I do.

Mr. Gordon: May I look at it for just a moment?
(3689) The Court: Yes.

Mr. Gladstein: May I correct, your Honor, one statement of which I asked you to take judicial notice, and you did? I stated that the Assemblyman for the 11th District was Mr. William Prince. That was true. The present Assemblyman, also a member of the Negro race, is William Dickens.

The Court: Very well. I take it on such matters as this with respect to which the Court takes judicial notice that if any inadvertent error creeps in, why, that may readily be corrected.

Mr. Gladstein: Very well.

The Court: But I do not go so far as to take judicial notice of the character of all the neighborhoods and that sort of thing, but I do as far as the political subdivisions and who are the Assemblymen, and I think it quite sufficient for me to take your statement that those persons are colored who hold the position of Assemblyman in those four districts, which I have done.

Mr. Isserman: May I just see the map for a moment? Does your Honor have the map?

The Court: Yes.

Mr. Isserman: I just would like to take one glance at it, if I may.

The Court: Yes (handing).

(3690) The Witness: I don't see the Fourth or the Sixth in this book.

Q. So that no notices were sent to people in either of those districts, according to the record? A. There is nothing in the book that would indicate that.

Q. Is that right, Mr. McKenzie? A. There is no record indicated in the book.

Mr. McGohey: Will you please keep your voice up, Mr. McKenzie? I didn't hear your last answer at all.

The Witness: There is no record that would be indicated from the book here.

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Q. Now, there has been testimony here to the general effect—and I merely use this identification and not by way of testimony—that the Ninth Assembly District in Manhattan is generally known as the Silk Stocking District—

Mr. Gordon: There has been no proof to that effect, your Honor.

Mr. Gladstein: I said there has been a reference to it, and I merely identified it.

Mr. Gordon: Only by counsel.

The Court: Just call it the Ninth Assembly District.

Mr. Gladstein: It is your District, isn't it, your Honor?

(3691) Mr. Gordon: Now, your Honor, that is the sort of comment that I object to.

Mr. Gladstein: I withdraw it.

Mr. Gordon: I don't see—

The Court: He has withdrawn it. Now it is really beginning to get going.

Mr. Gordon: As to the Silk Stocking District, your Honor, there has been no testimony about it. Mr. Gladstein may have a pair of silk stockings on himself.

The Court: I know, but he has withdrawn the comment, and I think we had better just let that drop.

Mr. Gordon: We are just talking about the Ninth Assembly District?

The Court: The Ninth Assembly District, and I am looking right at the map here, and I know something about it, perhaps not very much; but, however, we will go right on from there. The Ninth Assembly District.

By Mr. Gladstein:

Q. How many notices, Mr. McKenzie, did you send to people whose names you took from the registered list of voters from the Ninth Assembly District covering the period 1947 and 1948 to come in and qualify for jury service? A. The record would indicate 900.

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Q. And what is the figure for the Washington Heights area, the 15th Assembly District? A. The 15th Assembly (3692) District, the record would indicate 4,075.

Q. And that portion of lower Fifth Avenue, which is the First Assembly District, how many did you send during that period to people living in that area?

Mr. Gordon: Your Honor, I object to the characterization of the First Assembly District as being lower Fifth Avenue. I think it includes more than that.

Mr. Gladstein: Well, it includes—

The Court: It seems to me from the map here to start up at 56th Street.

Mr. Gladstein: It includes lower Fifth Avenue.

The Court: Well,—

Mr. Gladstein: All right, the First Assembly District.

The Court: You see, it just results in controversy and dispute and really adds nothing whatever to the record for you to put the characterization in. Now just ask him about the First Assembly District, which I have right before me here.

By the Court:

Q. Now, how many for that First Assembly District? A. 2,850.

Q. 2,850? A. That is correct, your Honor.

Q. Now, by the way, taking the 900 that were sent out to the Ninth Assembly District, of the 900 notices that (3693) you sent out how many jurors qualified? A. I have no means of knowing that, your Honor.

Q. Have you any means of knowing how many of the 4,075 in the 15th Assembly District qualified as jurors? A. No, I have not.

Q. But your statement to me the other day was that taking the total of those notices sent out, from 85 to 90 per cent, or from 80 to 85 per cent failed to qualify, as I remember it? A. I don't remember that.

Mr. Gordon: Well, I think he said it the other way, your Honor. He said—

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Mr. Sacher: Just a moment. I object to this and I think—just a moment.

The Court: All right, objection sustained.

Mr. Sacher: Now, may I make a suggestion—

Mr. Gordon: I object to that, your Honor. I object to that. I didn't get anywhere and I don't think he should.

The Court: He is objecting to a question by the Court—

Mr. Sacher: No, I am not objecting to a question.

The Court: (Continuing) And I am sustaining the objection.

Mr. Sacher: No, no, I have not objected to your question. Your question was an excellent one.

(3694) Mr. Gordon: I object to any observation by Mr. Sacher.

Mr. Sacher: I suggest Mr. Gordon be called to order. I am addressing the Court and he is interrupting me.

Mr. Gordon: He interrupted me.

The Court: I think there is nothing much happening at the moment, and you made an objection, and I have sustained the objection. I think it is usually better to refrain during cross-examination from questions by the Court—

Mr. Sacher: But that was an excellent one. I rose to ask for an opportunity to the witness to answer your Honor's question.

The Court: Then you would like me to pursue the subject with him?

Mr. Sacher: I would.

The Court: Then I will do that.

Mr. Gladstein: I have an excellent suggestion, and that is, your Honor take the usual morning recess.

The Court: Well, as long as we are all so agreeable I will grant that motion.

Mr. McGohey: I was going to suggest you continue the questioning before the recess, but I will defer to your Honor's wish.

(3695) The Court: All right.

(Short recess.)