

William J. Borman—for Government on Challenge—Cross

and added them up, and there were some division problems.

Q. Something like the figures that appear on other pages of Exhibit 180 where you have figures? A. Oh, no; no.

Mr. Gordon: I object. I withdraw the objection.

Mr. Gladstein: Are you happy?

Mr. Gordon: Is there some way of keeping Mr. Gladstein from addressing me?

The Court: It seems too bad, you see, Mr. Gordon, it just takes up time. Now he has not been doing anything but dropping a little bait around. Just disregard it.

Q. Mr. Borman, I gather from your testimony that you did make an effort to find out what those entries were for or were important or if they ought to be preserved, and you went to Mr. McKenzie and asked about it? A. I did, yes.

Q. You recall that very distinctly, do you?

(4320) Mr. Gordon: I object to that.

The Court: Sustained.

Q. Did you talk to Mr. Gordon or anybody else since you got off the witness stand yesterday regarding this or any other part of your testimony? A. No.

Q. Yesterday at page 4235 when you were being questioned about this book and the entries in that book you were asked this question:

"Q. Did you show the pages to Mr. McKenzie? A. I don't recall now whether I did or not. I don't believe I did. I don't believe I showed it to Mr. McKenzie at all."

Were you telling the truth? A. I still say I may not have shown him the book. I might have brought the book in and said, "Can I use this?" And he might have said, "Yes, go ahead. If it is empty go ahead and use it," and I might have said, "There are some entries on these pages. Are they important?" And he said, "No. That is an old book."

William J. Borman—for Government on Challenge—Cross

Q. Are you saying now what you might have said? A. What I might have.

Q. Let us hear what you did say or do, sir.

Mr. Gordon: I object to interrupting in a loud and penetrating voice to obliterate the answer.

Mr. Gladstein: I had better say for the record I deny the charge that my voice is loud, penetrating or (4321) otherwise.

The Court: You can argue about the smallest point. I will deny the motion.

(Question read.)

Q. Let us have what really was said or really was done. A. I would not attempt to tell you. I could not. It is six years ago, or have you forgotten?

Q. Then you just have no recollection? A. That is right. I have no recollection.

Q. Regarding any of those entries or anything about it? Correct? A. I did not say that. I have no recollection as to the conversation with Mr. McKenzie.

Q. Mr. Borman, are we to understand that when you first went to work in the jury clerk's office you discovered that no record of any kind was kept regarding where the jurors came from, how many you sent off, how many you got, and that sort of thing, as is contained in Exhibit 180?

Mr. Gordon: Objection.

The Court: Sustained.

Q. Did you ever see in the jury clerk's office or anywhere upstairs in the Jury Commissioner's office, or the office of the clerk of the court, a record containing information like that in Exhibit 180 dealing with years prior to July 1942? A. I never seen any such record.

Q. Did you ever ask whether such a record was kept?

(4322) Mr. Gordon: Objection.

The Court: Sustained—no. I will allow that. I will overrule that objection.

Mr. Gordon: May I state the basis for the objection?

William J. Borman—for Government on Challenge—Cross

The Court: No. I want to rule on these things without argument.

Q. Did you ever in those days when you were keeping those records ask anybody if there were other records prior to the time that you started? A. No, I never did; had no reason to.

Q. Did you keep a record after you started keeping records of the people that you got from the registered lists and the people you got from other sources? A. I don't understand the question.

Q. Is Exhibit 180, for example, the record that you kept that shows the people that you got as jurors from the registered lists and the people you got from the Grand Jury Association lists, and so forth?

Mr. Gordon: I suggest he show him the exhibit. I object to the question.

A. This exhibit shows the amount of qualifications mailed out, the district to which they went or the list from which they came. It shows the date they were mailed and it shows the returnable dates on them. It shows the (4323) total number of qualifications sent out in any one of the nine months. It shows the net total of qualified jurors gained or lost during the month on petit and grand.

Q. Does it not also show whether jurors were obtained from the registered lists or from other sources? A. I said that.

Q. It does? Correct?

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

The Court: Yes.

Mr. Gladstein: It is preliminary to something.

The Court: Yes, but what appears in there is plain enough on its face, and if you want to work up to something you do not need to take so long to do it.

We will take our recess now.

(Short recess.)

William J. Borman—for Government on Challenge—Cross

By Mr. Gladstein:

Q. Mr. Borman, during the time you were jury clerk was any record kept to show who came from a list such as the Grand Jury Association supplied and who came from the registered lists? A. No.

Q. Was there any way of knowing from examination of the records the source from which a juror's name came? A. I missed that question. May I have it?

(Question read.)

(4324) A. No.

Q. Any record at all? A. No.

Q. And am I correct that there are no records kept, while you were jury clerk, that would show what percentage of qualified jurors you got from the Grand Jury Association lists and what percentage you got from the registered lists; is that right? A. No. There was no record kept.

Q. Then it is correct you could not tell what percentage of qualified jurors you got from any particular source? Right? A. Right.

Q. You remember testifying yesterday that when you first started to work on a sort of a part time basis for Mr. McKenzie your method of choosing names from the registered list was to pick every tenth name? Right? A. That is right.

Q. From each Election District without omission of any? A. Well, I went through the entire Assembly District.

Q. All of them? When you had the entire Assembly District? A. That is right.

Q. Each Assembly District, as far as you got? A. I took every tenth name all the way through the Assembly District.

Q. Was there any reason why you did that? A. No. That was my own idea.

Q. Was there a reason for it? Your reason?

(4325) Mr. Gordon: I object.

The Court: Sustained.

Q. Did you have in mind taking a fair choice without picking and choosing based on how the name sounded or

William J. Borman—for Government on Challenge—Cross

where it was located? Was that what you had in mind? A. That is right.

Q. Now when you became jury clerk did you give instructions of the same character to any of the people working for you?

Mr. Gordon: I object to it as repetitious.

The Court: Sustained.

Mr. Gladstein: I ask the Court to permit me to ask this.

The Court: He has already testified to exactly what he did under your own examination.

Mr. Gladstein: Very well.

Q. Mr. Borman, in view of your testimony that you personally chose every tenth name from an Assembly District so as to get a fair method of selecting jurors, what, if any, reason was there for you to depart from that when you took over as jury clerk and had your associates under your supervision do the checking?

Mr. Gordon: I object; not stating facts that are in evidence and stating facts which counsel knows are not in evidence and flying in the teeth of your (4326) Honor's ruling.

The Court: Objection sustained.

Q. Mr. Borman, was there a reason, after you became jury clerk, for departing from the system that you yourself had used in checking every tenth name?

Mr. Gordon: Same objection.

The Court: Overruled.

Mr. Gordon: May I be heard on that, your Honor?

The Court: No, I do not think I desire to hear argument on it, Mr. Gordon.

Q. Answer, please. A. I don't recall that I departed from that system.

The Court: Well, you testified here, I think yesterday, under Mr. Gladstein's examination, that when you were giving instructions to those people

William J. Borman—for Government on Challenge—Cross

working under you you told them that they could follow any way they wanted; they could take ten names one after another or skip around, or do any way they chose.

The Witness: That is right. I would not call that a departure.

Q. What is that? A. I would not call that a departure.

Q. Is it or not true that after you became jury clerk the lists were not checked every tenth name, is that true? A. They could have been checked every fifth name.

Q. Were they, sir? A. Each individual clerk used (4327) his own ideas on it.

Q. Mr. Borman, you were jury clerk at that time? A. That is right.

Q. And it was your responsibility to get a fair cross-section of the people for a jury, wasn't it? A. That is right, and you could do it by taking the fifth or tenth or 15th or 20th.

Q. Did you give any instructions to make sure the selections were fair? A. Those instructions would make them fair.

Q. What is that?

The Court: He said those instructions would make it fair.

Q. Were your instructions such that any of the people working under you could pick one or ten names in a row and then skip a whole portion? A. My instructions for them, if they took the first ten from the Election District was to go to the next Election District and take ten from the next Election District.

(4328) Q. Did you ever check to see what happened to those registered lists when your associates or those working under you were making these marks on the lists? A. No, sir. I had something else to do.

Q. So you personally made no check to see whether any of the people working under your direction did use a fair method of selecting jurors from the registered list, is that correct?

William J. Borman—for Government on Challenge—Cross

Mr. Gordon: Objection; just asked and answered.

The Court: Sustained.

Mr. Gladstein: Well, am I to understand by the objection and the ruling, your Honor—

The Court: I will hear no argument, Mr. Gladstein.

Mr. Gladstein: Very well.

Q. Now when you became jury clerk you had all of the registered lists for Manhattan and the Bronx, is that right? A. That is right; 1941 election.

Q. What was your procedure in using or having those under your direction use the 20-some-odd lists for Manhattan and the 8 or 9, whatever it was, for Bronx? A. I kept them in a file drawer in my office. They ran in rotation, the Manhattan's from 1 to 23, the Bronx from 1 to 8, and I got out No. 1 from each list, gave it to a clerk. When he got through with it it went down on the bottom of the pile, and the second one (4329) came off.

Q. Then your procedure when you became jury clerk was, if I understand you correctly, to have names marked on the registered lists and qualification notices written up and sent to the people whose names were so marked in accordance with the system of rotation whereby you used the 1st Assembly District first, the 2nd Assembly District right after that, and so on, is that correct? A. That is right.

Q. Is that the procedure that was followed? A. It was. The system broke down after a while.

Q. When did it break down? A. Well, it broke down when some of these deputy clerks who were in court would say "Well, I will take mine into court and do an hour's work this morning."

Q. When was that? A. Oh, during various periods throughout that time.

Q. Well, when is the first time that it broke down? A. Not for some months. It didn't break down. I finally lost one of the Assembly Districts from Manhattan.

Q. When? A. I don't recall the exact time.

Q. Approximately when?

Mr. Gordon: Objection.

The Court: I will allow it.

William J. Borman—for Government on Challenge—Cross

A. I will have to give a guess.

(4330) Q. When was the first time or approximately the first time, some months after you became jury clerk, as you have said, that the system broke down, that is to say, the system of following this rotation method of sending notices out from—

The Court: He says one of the books got lost.

Mr. Gladstein: No. He said several months later it broke down.

Q. When is that period?

Mr. Gordon: Just a moment. I object to the question.

The Court: Sustained.

Q. Well, in any event, it is clear, isn't it—I withdraw it.

By the Court:

Q. Well, what happened to that book that got lost? A. Well—

Q. Did you find it again? A. I never found it again. The clerk left it in some drawer somewhere and brought back the qualification notices, delivered them to me and I assumed that he was going to continue to work on the district, and I later inquired and he said "All right, I will bring it back," but I never did see it. He evidently forgot where he left it.

Q. Well, did they go on with the rest of the districts? (4331) A. Yes, your Honor.

Q. So the "break down" which you are talking about is that one book which got lost? A. One book got lost, one Assembly District.

By Mr. Gladstein:

Q. Is that what you meant when you said "broke down"? A. That's all.

Q. Then apart from the loss of that particular book, the system that operated was that you sent to the As-

*William J. Borman—for Government on Challenge—Cross
sembly Districts in order or rotation commencing with 1,
is that right?*

Mr. Gordon: That is not his testimony.

Mr. Gladstein: Just a moment. I am asking him if that is his testimony.

The Court: Please, you must not shout that way, Mr. Gladstein.

Mr. Gladstein: I am sorry, but this is obviously an effort to coach the witness.

The Court: I see no evidence of that kind, and you are jumping up and doing that sort of thing which simply means I now have to have the question read.

Mr. Gladstein: Very well.

The Court: And you know I said in the beginning I do not want any argument on these things. If you will just let an objection be made I will rule on it. I do not (4332) need argument about every little minute point that comes up here. I am getting tired of it.

Now let us hear the question.

(Question read.)

The Court: I sustain the objection.

Mr. Gladstein: Your Honor, may I ask whether it is done because you think it has been answered?

The Court: No, I have no comment to make.

Mr. Gladstein: All right.

The Court: I am not going to go into any arguments about these things at all.

Mr. Gladstein: Very well.

The Court: We have passed that point.

Q. Was it, or was it in fact, Mr. Borman, the practice while you were the jury clerk, with the exception of this one book that may have made some difference because it was lost, to start with Assembly District 1 and then go on to 2 and so on, as the order in which you sent notices to people to come in for jury service? A. Oh no, Mr. Gladstein. The rotation was to write up the qualification notices in that order. That didn't necessarily mean that they would be mailed out in rotation.

William J. Borman—for Government on Challenge—Cross

Q. Oh. So you caught the hint from Mr. Gordon? A. I didn't—

The Court: What was that remark, Mr. Gladstein?

(4333) Mr. Gladstein: I said, your Honor, he caught the hint from Mr. Gordon.

The Court: I will strike that out and ask you not to repeat that sort of thing.

Mr. Gladstein: May I hear that? I see no justification for it.

The Court: And I do not want any argument on it.

Mr. Gladstein: May we have a question and answer read a little back—

The Court: No, you ask a new question.

Mr. Gladstein: Your Honor—I desire to have read a question that the witness has answered on the subject. That is—

The Court: I will hear no argument. Ask your next question.

Mr. Gladstein: Very well.

Q. What practice did you follow after the qualification notices were written up and given to you as to the order in which you sent them out? A. No particular order once they were written up. They were written up, put in a drawer and the clerk sent out 100 a day. He picked them out at random.

Q. Is that clerk you? A. No, I did not fold them and put them in envelopes and address them in envelopes.

(4334) Q. Oh, you mean the clerk is the one who determined which of the qualification notices should go out, or was it you? A. I didn't give him any orders as to what districts to mail out.

Q. Well, who sent out the notices, you or the clerk of the court? A. Some clerks and some of the deputies that were working.

Q. Did you give them any instructions about it? A. No, just send them out, and they would give me a list of what they sent out.

William J. Borman—for Government on Challenge—Cross

Q. Did you ever see to it that the qualification notices after being written up were sent out in any particular order? A. I did not.

Q. Did you ever see to it that the qualification notices after being written up were sent in such a manner that you were treating the Assembly Districts on a fair, equal and uniform basis?

Mr. Gordon: Objection.

A. I did.

Mr. Gordon: Well, I withdraw it.

Q. You did? A. I did.

Q. You did? A. The book proves that I sent out to 23 Election Districts in Manhattan and 8 in the Bronx.

Q. All treated uniformly and equally? A. I don't know what you call uniformly and equally.

(4335) Q. Well, did you make— A. If you mean—

Q. Did you make the tabulation that I asked you to make last night so that we won't spend too much time in court to show the totals of the qualification notices that you sent to the various districts in Manhattan and Bronx during the time you were jury clerk? A. I asked that it be gotten up. I myself did not do it.

Q. Do you have it? A. I don't know whether it is made up or not.

Q. Well, whom did you ask to have it done? A. I believe I asked—

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

Mr. Gladstein: Can't we have it so that we will save time?

Mr. Gordon: The question of saving time, they put this book in evidence ten whole days ago, your Honor, and they had photostats all the time.

Mr. Gladstein: Oh, I have the figure. I just want to have him testify from it.

The Court: If you desire to submit to me some memorandum or to make a statement on the record of what you calculate them to be, you may do that.

Mr. Gladstein: All right.

William J. Borman—for Government on Challenge—Cross

The Court: As it has been stated, it is just a (4336) question of adding up the figures and anyone can do that.

Mr. Gladstein: Of course.

The Court: You probably have it already done, so state the result and go on to something else.

Mr. Gladstein: I prefer to do it by questions; may I, your Honor?

The Court: No, you may not.

Mr. Isserman: If the Court please, the same procedure—

The Court: I have ruled on that.

Mr. Isserman: —was followed out—

The Court: I will not hear argument.

Mr. Isserman: I am making an objection—

The Court: Now pass to something else.

Q. Isn't it a fact, Mr. Borman, that during the entire time that you were jury clerk—

The Court: If you are going to put those summaries in questions, I have just told you not to do it. Please bear that in mind.

Mr. Gladstein: Your Honor—

The Court: I have ruled on it. You have got your exception.

Mr. Gladstein: Are you directing me not to question the witness as to the accuracy of the figures that I want to ask him about, as to whether he did or did not (4337) send notices to particular Assemblies Districts?

The Court: I have ruled that adding up the figures in the book there is a matter already in evidence, and the totals is a mere matter of mathematics, and that I will not have you ask a series of questions to this witness merely for the purpose of putting those totals in the record here.

Mr. Gladstein: But I have a right, I submit to the Court, to ask whether particular totals, be they from the book or any other source, such as the recollection of the witness, or any other record, are

William J. Borman—for Government on Challenge—Cross

accurate and correct, and I desire to put such questions to him.

The Court: Well, I think it is sufficiently evident that he claims that they were put down accurately from what he reported. If the totals are in some way different you are entitled to argue that. That is a matter of argument and not of cross-examination, and I will stick to my ruling.

Mr. Gladstein: I do not want to argue it—

The Court: But you are arguing it and you are going to stop.

Mr. Gladstein: Well, I can't ask you questions, but I desire to ask questions of the witness.

The Court: That is argument and I told you to go on to some other subject.

(4338) Q. Did you know, Mr. Borman, that during the entire time that you were jury clerk the 19th Assembly District to which your books show you sent 98 notices was represented in the State Legislature by a member of the Negro race? A. No, I did not.

Q. Did you know that during the entire time you were jury clerk the 21st Assembly District to which you sent 109 notices during that period, was represented in the State Legislature by a Negro? A. No, I did not.

Q. Do you know that the 15th Assembly District, to which your records showed you sent over 1000 notices was the Silk Stocking Republican District?

Mr. Gordon: Objection. I move to strike, and, your Honor—I will say nothing else.

The Court: I will overrule the objection.

A. No, I did not.

Q. Did you know that the 2nd, 4th, 6th and 8th Assembly Districts, to all four of which you sent a total of less than 500 notices during all the period you were jury clerk, were located within the East Side? A. That I knew.

Q. And did you know and realize that all of the four, those four Assembly Districts in the East Side to which you sent less than 500 notices, that what you sent was less than half of what you sent to the 15th Assembly District?

William J. Borman—for Government on Challenge—Cross

(4339) Mr. Gordon: Objection.
The Court: Sustained.

Q Did you know, sir, that the notices that you sent to the 2nd, 4th, 6th and 8th, being the Lower East Side, and the 19th and 21st, Harlem, altogether constituted less than 50 per cent of what you sent to the 15th Assembly District alone?

Mr. Gordon: Objection.
The Court: Sustained.

Mr. Gladstein: I desire to ask the Court to take judicial notice of the fact that during the time Mr. Borman was jury clerk the 21st Assembly District was represented by William T. Andrews.

The Court: Well, I have already taken judicial notice of those facts during the trial, have I not?

Mr. Gladstein: This was a different period, Judge, and they are different legislators.

The Court: You may take it as a fact that I take judicial notice of the political subdivisions, and also of who was elected for certain terms in various places, and if you care to put a statement in the form of an exhibit, you may offer it in evidence.

Mr. Gladstein: Very good.

The Court: And I will receive it—

Mr. Gladstein: Well, it is just two people.

(4340) The Court: —that being the method of taking notice.

Mr. Gladstein: Two people—may I say it for the record?

The Court: Yes, you may.

Mr. Gladstein: That which I ask your Honor to take judicial notice of is that during the period when Mr. Borman was jury clerk, William T. Andrews, a Negro, was legislator in the State Legislature of New York from the 21st Assembly District of Manhattan, and Daniel Burrows, also a Negro, was Assemblyman from the 19th Assembly District.

The Court: I do that as usual, subject to correction.

William J. Borman—for Government on Challenge—Cross

Q. Now yesterday in answer to Mr. Gordon's questions you—

Mr. Gladstein: Excuse me, your Honor (examining).

Your Honor, may we later supply the figures from the Board of Elections so that it will be official, but meantime ask your Honor to take judicial notice of the figures as reported by the Board of Elections of the votes cast in each of those Assembly Districts during the period that is spanned—

The Court: Is that the subject of judicial notice?

(4341) Mr. Gladstein: I believe it is, yes. One of the contentions—well, one of the methods by which Mr. Borman claims to have chosen jurors was to go to the voters' lists and—

The Court: Was to do what?

Mr. Gladstein: To go to the voters' lists, to the registered lists, and we desire the Court to take notice of a material fact, namely, the number of other voters who cast votes or the number—and in fact the number who appeared on those registered lists. That is merely a matter of either getting the figures from the Board of Elections on the vote, and as to the question of how many registered voters there were, that is just a matter of tabulating the official lists.

The Court: Well, I think as to both figures if you come in with a little statement of what they are, I will receive it in evidence.

Mr. Gladstein: Very well.

The Court: Let the Government have it before you offer it so that they may do whatever checking they desire.

Mr. Gladstein: Yes.

The Court: I have some doubt as to whether there is a proper subject of judicial notice but it isn't worth arguing about because in one form or another it is (4342) admissible. You get it up and submit it to the other side.

Mr. Gladstein: We will do that.

William J. Borman—for Government on Challenge—Cross

Mr. McGohey: Those figures are available in the Board of Elections, in their annual reports which are published from year to year.

The Court: Yes.

Mr. Gladstein: That is what I understand.

By Mr. Gladstein:

Q. Mr. Borman, one or two questions about the lost book. Do you recall whether it was a Bronx or a Manhattan Assembly District list? A. I believe it was Manhattan.

Q. Do you recall which? A. No, I do not.

Q. You have no recollection whatever of that? A. No.

Q. Is there any way by checking the record that you kept, Exhibit 180, by which you could tell us? A. No, Mr. Gladstein.

Q. Now while you were keeping this record, which is Exhibit 180 in evidence, did you keep any tally from month to month or from any period of time to another to show how many jurors you had over-all from time to time in your active lists? A. Yes, I believe I did.

Q. Where did you keep that record? A. I believe one of them is in evidence.

Q. You kept those in what form? A. Just a sheet of (4343) paper.

Q. Was there a reason why you kept them on a sheet of paper rather than in the book? A. Yes.

Q. What was the reason? A. I gave a copy of it to—well not a copy but I gave the original to the clerk of the court at the end of each month to see what progress had been made or what losses had been made and he would look it over and return it to me and I would put it in the file.

Q. How many copies of this record did you make from month to month? A. Just one, an original, that's all. It wasn't typed. It was written in ink.

Q. Was there a reason why you did not keep that record in the same ledger book, 180, or some other book?

Mr. Gordon: Objection; the same question.

The Court: Sustained.

William J. Borman—for Government on Challenge—Cross

Q. When you kept this extra sheet or sheets showing the running count of jurors from month to month, did you yourself count the cards in order to enable you to determine the accuracy of the figures you put on those sheets?

A. No, I did not.

Q. Did you at any time count the cards? A. Are you talking about the entire?

Q. Yes. A. No.

Q. Well, did you count them at the beginning so that (4344) you would know what there were? A. No.

Q. From whom did you get any figures with which to start? A. I took the last report that was in the file that Mr. McKenzie took which was, I believe—well, I don't know.

Q. Well, what form was it in, that report? A. A sort of a resume and the total number of jurors, men, women, petit and grand.

Q. On what kind of a document were those facts recorded? A. On a regular sheet of paper, typewritten.

Q. What did you do with that typewritten paper?

Mr. Gordon: Objection, your Honor.

A. It is in evidence.

Mr. Gordon: The witness says it is in evidence. The defendants offered it in evidence.

Q. A typewritten paper? I ask you whether you are referring to 178 for identification (handing)? Is that it?

A. No, that's mine. That is the record I kept.

Q. Oh, all right. Then let me see—

Mr. Gladstein: Which is the one that was kept by Mr. McKenzie?

Q. Is that in evidence? You say that is in evidence?

A. It is in evidence.

Q. Do you have notes—since you have been taking notes of the exhibits in the early part of the trial, (4345) do you know which one it is?

Mr. Gordon: It seems to be 176.

William J. Borman—for Government on Challenge—Cross

Q. I will ask you if that is correct. Is it 176, Mr. Borman? A. That is right.

Q. All right. A. Just a moment. I want to see the date on this. (Examining.) That is right, June 1942. I took these totals and continued it from there, if my recollection serves me right.

Mr. Gordon: May the record show that that is a typewritten document?

The Court: Yes.

Mr. Gladstein: May it show that it is a copy of a typewritten document?

Mr. Gordon: It is a carbon duplicate of a typewritten document. We agree.

Mr. Gladstein: Now we are in agreement.

Mr. Gordon: That is the first time today.

Q. Now from what book was 176 taken, if you know? A. I do not know.

Q. Was this handed to you just like this without any book of any kind, this Exhibit 176? A. It wasn't handed to me. I found it in the files.

Q. What files? A. Some of the correspondence files upstairs.

Q. Well, which correspondence files? A. I don't (4346) recall. I just went through and I found it and I took the figures off and continued on from there.

Q. Now this exhibit shows that—

The Court: How long do you think you are going to be on this cross-examination?

Mr. Gladstein: I am almost through with my cross-examination.

The Court: Almost through?

Mr. Gladstein: Yes.

The Court: Do your colleagues desire to cross-examine?

Mr. Isserman: I have some questions.

Mr. Gladstein: Mr. Isserman, I think, is the one who desires to ask some questions.

The Court: Then the cross-examination must be concluded by one o'clock, which will be amply within the time that you set for yourself.

William J. Borman—for Government on Challenge—Cross

Mr. Gladstein: Well of course—

The Court: If you are almost through and Mr. Isserman has only a few questions—

Mr. Gladstein: He did not say "a few."

Mr. Isserman: If your Honor please, I did not say I had a few questions. I said I have some cross-examination.

The Court: All right.

(4347) Mr. Isserman: And I object to the limitation, if it includes my examination.

The Court: All right, I will say three o'clock then.

Mr. Gladstein: Very well.

The Court: Let us see if you can keep going that long.

Mr. Gladstein: Now, your Honor, I object to that statement.

The Court: Well, it is perfectly evident to me that when I asked that question you both indicated to me you were only going to take a few minutes, then the minute I fixed one o'clock, which I supposed was amply within the time you desired, then you start objecting to it, you want longer—

Mr. Isserman: If the Court please, there is nothing in the record to show that I have a few questions.

The Court: You are going to have until three o'clock.

Mr. Isserman: I just stated I have some cross-examination.

The Court: All right, and that includes everybody. At three o'clock the cross-examination is going to be over.

Q. Now, Mr. Borman, according to No. 176 in evidence, the office of the jury clerk had a tabulation of its totals (4348) of jurors, men and women, grand and petit, going back as far as June 1941; correct (handing)? A. That's right.

Q. Did Mr. McKenzie ask you as part of your duties when you took over the job of jury clerk to continue to make such tabulations? A. Monthly tabulations?

Q. Well, monthly or periodic of some character? A. No, he did not.

William J. Borman—for Government on Challenge—Cross

Q. You did that, however, as a part of what you regarded your proper duties? A. After Mr. McKenzie went into the Army the clerk requested me to give him a report at the end of each month.

Q. Oh, and did he tell you that that would be part of your job before you actually assumed the job of jury clerk? A. No; sometime subsequent.

Q. All right. Now, with what did you start— A. He did not order me to. He said, "could you," and I did.

Q. What happened to the original of 176, if you know? A. I do not know.

Q. Did you go through all of the correspondence and other files in the office dealing with the selection of juries here or jurors when you took over the job of jury clerk? A. I tried to find such papers as were necessary for me to continue on.

Q. Now when you began your tabulation did you start (4349) with the last figure that you had for Mr. McKenzie or did you make an independent count of the cards? A. I took the count that Mr. McKenzie had. I didn't take any individual count of the cards.

Q. Did you ever, while you were jury clerk, personally or have someone under your supervision, count the cards?

Mr. Gordon: Objection.

The Court: Sustained.

Q. Now 178 is the record that you kept of the tabulation of jurors, is that right? A. That is right.

Q. Is it all in your handwriting? A. May I see it?

Q. You may (handing). A. (After examining.) No, there are some entries made by other clerks. There are some notations here made by Mr. McKenzie.

Q. Where are the notations made by Mr. McKenzie? A. Oh, they are scattered around here, Mr. Gladstein.

Q. Will you indicate one or more? A. He evidently tried to get the picture when he came back.

Q. Well, which are the notations made by Mr. McKenzie? A. This is his handwriting (indicating); whether these figures are his I don't know.

Q. You are pointing to the bottom of the second page, the word "men" and under it the figure "1362," and the word "women" and the figure "405"? A. That is right.

William J. Borman—for Government on Challenge—Cross

(4350) Q. All right; what else? A. And some of these numbers in here (indicating) seem to be Mr. McKenzie's writing. Of course he evidently continued on in May, continued the sheet as I had drawn it up.

Q. May 1943, after he got back, you mean? A. That is right.

Q. Is there any notation—withdraw that.

Q. Are all the notations on here from January nineteen—wait a minute. As to what year does the month "January" on the first page refer? A. (After examining) I assume this is 1942, Mr. Gladstein, because my entries start in July, the month of July, and the stock was taken as of June 30, 1942, which was the last yearly report.

Q. Well, whose writing appears on the first page of 178 for identification at any point above the line on which the month "July" is written? Is any of it in your hand? A. Yes, there are some entries here in my hand.

Q. Well, tell me the ones that are in your hand that appear before July 1942? A. There is some here in March —oh, I get it. I started this in July, Mr. Gladstein, and continued through to December and then picked it up in January, 1943, at the top of the sheet.

Q. Is that it? A. Yes.

Q. And that accounts for all of it being in your writing? (4351) A. Yes. Instead of drawing up a new sheet I just continued.

Q. Then explain to me why on the second page you start with the legend "Brought forward December 31, 1942 to December 1943," and then under the word "Month" you start with "January" and go through December? A. Well, you see these entries on this sheet here—

Q. The first page. A.—are just pickups from the second sheet of January, February and March, these figures corresponding—January, February and March on the second sheet correspond with January, February and March on the first sheet. Why I don't know.

Q. You can't remember why? A. No.

Q. You have no recollection of that? A. No, I have no particular reason why it was there.

Q. Whose writing is this for March 1943 along the side which says "Including duration deferments, men, 9274; women, 1063"? Is that your writing? A. That is my writing.

William J. Borman—for Government on Challenge—Cross

Q. Now how did you arrive at that figure—by a count?
 A. No. The totals for March at the end of the month were 8,647 men and 1,050 women. That figure were all jurors who were available for service. There was another drawer that I called "Defense" or "War Work" drawer, and those jurors were not available. They were (4352) excused for the duration of the war.

Q. How many such did you have? A. The difference between 8647 and 9274, whatever the figure may be, and the difference between 1050 on the women and 1063. In other words, there were only 13 women on war work. I did not include the "Defense" drawer in my grand totals. I considered them as unavailable jurors until such time as they got out of defense work or the war was over.

Q. As I understand it, it is Mr. McKenzie's handwriting which you recognize on the second page, beginning at some point on the April or May line? Where the ink changes from blue to green? A. I am color blind, Mr. Gladstein. Don't ask that question.

Q. Well, all right, take my word for it. On the April line a portion of the notices are in blue and a portion are in green.

The Court: Well, is there some mystery about the color of the ink?

Mr. Gladstein: No, no; no question. I just want to know whose writing that is, Judge.

A. I believe all the entries beginning April are Mr. McKenzie's—beginning right from the very beginning, they are all Mr. McKenzie's, beginning with April.

Q. Very good. Now you said a moment ago that you took stock at a certain time or that stock was taken. (4353) Is that the figure at the top which says "As of June 30, 1942"? A. I never said I took stock.

Q. Well, you gave some testimony that stock was taken at a certain time. A. I don't recall my ever saying that, Mr. Gladstein. I said that I took the figures from this sheet.

Q. From 176.

The Court: Yes, he did say that.

Mr. Gladstein: He said that, and he also testified that stock was taken, I thought he said.

William J. Borman—for Government on Challenge—Cross

The Court: Well, sometimes these trick words get in.

Mr. Gladstein: I didn't use the word.

The Court: And leaves a misleading impression. I understood him to say very distinctly that he took the figures from that sheet that you hold in your hand.

Mr. Gladstein: I also understood him to say that he took stock—

The Court: And he also said that he did not count the cards. You asked him that two or three ways and he said he did not count them, and now you slip in this business about his taking stock, as though he testified just the opposite.

Q. Now I have just a few more questions. What kind of work were you engaged in just before you came to work (4354) for the Government, in the clerk's office? A. I was in the silk business.

Q. On your own? A. No, sir.

Q. What was the name of the company you worked for? A. Lace Net Importing Company.

Q. Located in New York? A. 244 Madison Avenue.

Q. For how long were you employed by them? A. From '38 until the time I came into court.

Q. Are you a New Yorker by birth? A. I am.

Q. Lived here all your life? A. All my life.

Q. Where did you live at the time you first came into the clerk's office as a deputy? A. At the address at which I reside at the present time.

Q. The same one; and that is what? A. 300 Reservoir Place, Bronx, New York.

Q. Did you apply for the job as deputy clerk on your own initiative? A. I was informed by—at the time I was with Lace Net Importing Company I handled the French line of silks and imported line of woolens. I also took care of domesticating certain of the foreign merchandise in this country. When the Germans went into France the business collapsed and I looked around for a job. We had a man in our office who asked me if I was interested in securing a job in court.

William J. Borman—for Government on Challenge—Cross

Q. Who was the man? A. Why, he was one of the salesmen. (4355) His name was John Censier, C-e-n-s-i-e-r, and I said "Yes." I asked him how much money was attached to it. He told me, and I said, "Forget about it." He said, "Well, why don't you go down and see? After all, this business isn't any good any more." So I finally consented to come down and evidently Mr. Follmer talked me into it.

Q. You got your job through Mr. Follmer? A. I had never met Mr. Follmer before in my life.

Q. But you got it through or from him? A. That is right.

Q. Were you active in political circles in the city? A. No.

Q. You belong to no political club? A. Never.

Mr. Gladstein: I have no further questions.

The Court: Just what I thought, that you were about through.

Mr. Gladstein: What is that, your Honor?

The Court: All right, Mr. Isserman, get going.

Mr. Isserman: If the Court please, I don't like the expression.

The Court: Oh, I know you don't.

Mr. Isserman: I object to it.

The Court: But I have had no experience, you know, and I had a pretty good idea Mr. Gladstein was just about through and the minute I fixed one o'clock, oh, no, we (4356) have to go on and on and on. Now let us see what you have got.

Mr. Gladstein: Now, your Honor—

Mr. Isserman: If the Court please, I object to your Honor's remark.

The Court: I know. You all object on constitutional grounds and abuse of discretion and illegal and all the other grounds known to man or beast. Now that is the end of that. Now get ahead with your cross-examination.

Mr. Isserman: And I object to your Honor's attitude and comment.

The Court: That is fine.

Mr. Gladstein: And I desire to record my objection to the intemperate and improper words of

William J. Borman—for Government on Challenge—Cross

the Court, and to assert that my reason for objecting to the Court's arbitrary limitation of a particular hour at which cross-examination must end is not because I have any desire to prolong cross-examination but because I resent being prevented from thoroughly examining a witness and being told that you must jump in accordance with a timetable, regardless—

The Court: I know. People of your kind resent that sort of thing because they want to keep talking all day.

(4357) Mr. Gladstein: People of my kind are officers of the court and they, I think, would uniformly record an objection to the Court's remark and the manner and tone in which those remarks were made.

The Court: Well, you see, I have been sitting here for six weeks and my attitude of mind is just a little bit different now, and I have been watching you operate here for six weeks, and I am determined I am going to bring this challenge to a close just as fast as I can, within reason, and that is what I am going to do.

Now Mr. Isserman, you may proceed.

Cross examination by Mr. Isserman:

Q. Now, Mr. Borman, I believe it was your testimony that just before Mr. McKenzie left that you sat opposite a desk while he qualified a number of prospective jurors, is that correct? A. Three or four I said, on the opposite side of his desk.

Q. And about how long did that observation of yours take? A. I believe it was from about 11 until 12 o'clock.

Q. In that period were you able to hear the conversation between Mr. McKenzie and the persons to whom—the persons who had come in in response to notices? A. I believe I did, yes.

Q. And what did you hear in respect to the first one or any of them, if you can recall? (4258) A. Well, he came in with a qualification notice, presented it to Mr. McKenzie. Mr. McKenzie said, "Have you ever served on a jury in this court?" The man said, "No." He said, "Do you

William J. Borman—for Government on Challenge—Cross

know any reason why you cannot serve?" He said, "No."

Mr. McKenzie handed him a questionnaire, and he went over to the table, filled it out, came back; Mr. McKenzie asked him if there was any particular time of the year which was most convenient to him, and as I recall he said "No." And Mr. McKenzie swore him to the truth of the application and the gentleman left.

Q. And in the course of the three or four conversations that you observed and heard, was there any person who having filled out a questionnaire proved to be a person who was exempt? A. I don't believe it was so in the ones that I watched.

Q. In other words, did you see the process of how a person who was exempt after his questionnaire was in, how that process took place? A. No, I did not, not that morning.

Q. And did you see it at any other time before you started to question prospective jurors? A. No, I did not.

Q. And when after this demonstration by Mr. McKenzie did you start questioning jurors yourself? A. The following morning.

(4359) Q. Now was any step taken by Mr. McKenzie while you observed him to check the qualification notice against some list or other record in the office? A. No.

Q. After you started to question prospective jurors who came in with qualification notices, did you check those qualification notices as against any list or record in your office? A. Are you speaking now of the lists, from the special lists or are you speaking of the Assembly District lists? There is a difference.

Q. Well, will you tell us first what procedure you went through—well now just a minute. I withdraw that question, and ask you how did you know when a person came in with a qualification notice whether his name was on a special list or on an Assembly list? A. Because of the number. On the qualification notice it would be marked, if it was 8th Bronx Assembly District, it would be marked "8B"—"8B" and a number.

(4360) Q. And on the notices which were taken from special lists, what would be the notation? A. The number of the list, like, for instance, we have had some here, 13-E, 13-G, 13-P, and the number that was given alongside the man's name.

William J. Borman—for Government on Challenge—Cross

Q. So that whenever you have a special list which has numbers along the side that is an indication of qualification notices that were sent, is that correct? A. Not necessarily, because the numbers were put on—it was the first operation to put on the numbers alongside the names. It was then ready for checking, whether I eventually gave the list to somebody to check or not I don't know. There may have been lists I left behind me on which numbers were put and yet the list was not checked. In fact, I believe there is such a list in evidence.

Q. Were not there some cases in which you had neither a special to check from or a case in which the name came off a registration list? A. Yes.

Q. How were the qualification notices in those cases marked? A. They might be marked "Volunteers." They might have been marked, as some of them were, "Special." I marked anything. I might have written "bluefish or flounder" or—

Q. In some cases you did not write bluefish or flounder, (4361) but you wrote "Special" or "Volunteer"? A. That is right.

Q. When a person came in with a qualification notice "Special" what did that indicate to you as to the record in the office concerning that person? A. It indicated to me at that time the source from which the name came.

Q. And did you have a list or record of that source? A. If there was a recommendation I would have a record. If it was a record that some individual just handed me a name and address I would not have a record.

Q. Well, then, when a person came in with a qualification marked "Special" you could not check that against any list? A. That is right.

Q. Did you have any record at all against which you could check it and which bore a number or symbol common with the qualification notice? A. Not on this type.

Q. So when those persons came in you would not know, when they handed you the qualification notice, how you happened to send them the notice? A. Yes, I would. At that time I would. There was never too many of them.

Q. Did you have some record which would tell you that or did you keep it all in your head? A. I knew if I sent out seven or ten notices and they were marked (4362)

William J. Borman—for Government on Challenge—Cross

“Special,” I knew at that time that those ten—and they would be in within the period of a week—I would know when they came in those were seven names I procured over a period of time from various people—recommendations.

The Court: When you say “procured” all you mean is received?

The Witness: That is right.

Q. Did you ever, in connection with checking qualification notices against records in your office, have occasion to use a small white card, about 2 x 4 in size? A. No, sir.

Q. You never on any occasion used a 2 x 4 white card? A. No, sir.

Q. Did you see such cards in the files in your office from time to time?

Mr. Gordon: Objection.

A. I did in the old file.

Q. Did you have occasion to examine any of those 2 x 4 cards?

Mr. Gordon: Objection.

The Court: Sustained.

Mr. Isserman: Did your Honor rule?

The Court: I sustained the objection.

Q. Those 2 x 4 cards which you saw in your file were part of the records in your office, were they not? (4363)

A. They were.

Q. And in checking names on lists against your files didn’t you make a check of the Off file as well as the active file to determine the status of the juror? A. I have testified that I did.

Q. And were not there some cases in which against a juror’s name you found nothing in the active file and in the Off file you found these 2 x 4 cards and nothing else? A. I did.

Q. And upon making such a check and finding only a 2 x 4 card in the file, and no history card, what did that 2 x 4 card of that person indicate to you? A. It indicated to me that some time or other that potential juror had received a qualification notice.

William J. Borman—for Government on Challenge—Cross

Q. And that would then be an indication to you not to send him another notice; is that correct? A. That is right.

Q. But in the period while you were in the clerk's office you used those cards to check but made none out yourself, is that correct? A. That is right.

Q. What was your method of checking a qualification notice when the person came in who had received a notice from a registered voting list? A. Well, we accumulated those and waited until such time as we could get enough clerks together to check back and find out whether they (4364) had answered the summons and very many times they were never checked because we did not have the labor—did not have sufficient help.

Q. Did you have a procedure with registered voters, that is, in checking registered voters, similar to the procedure you had in checking names on lists which resulted in putting check marks against the names or drawing lines through the names? A. Yes, if I checked it back. Each name on the Assembly District had a number, A-1, A-2, A-3, A-4, and so forth.

Q. You say if you checked it back. Was there any time when you did check back? A. I believe we did.

Q. Would you say that was your general practice, to check back? A. I tried very hard to do it.

Q. Well, did you? A. I did at times.

Q. Was it your general practice to do it? A. I don't know what you mean by "general practice," Mr. Isserman. When I had the help I did. When I did not have the help I could not.

Q. In most cases you did not have the help, isn't that true? A. That is true.

Q. Let me ask you another question: No. 2 x 4 card was made out for names on registered voting lists? A. No.

Q. So all you had was a registered voting list with the number of the person selected alongside the name? (4365) A. That is right.

Q. And then notices were drawn for some of those numbers, is that true? A. Not some of those numbers; all of those numbers.

William J. Borman—for Government on Challenge—Cross

Q. And they were put in a drawer? A. That is right.

Q. When those notices were mailed out, actually mailed out, was any notation made on the registered voting list, or on any other record, showing the mailing of the notice to the persons on the registered voting list? A. No.

Q. Now after the deputy clerk, or other clerk in your office, under your instructions, had prepared a number of notices to be sent out, what was the very next step that that person took with those notices? Were they brought to you? A. They were brought to me. I turned them over to one of the deputies who put them in the file drawer in the rear office until such time as we were ready to mail them out.

Q. And then when the time came to mail some out what happened? A. He would come in and say, "How many can you handle?" And I would say, "Send out 200," or "Send out 150."

Q. Between the time these qualification notices that you had from the registered voters lists and the time that you mailed them out, was anything done with those qualification notices, or did they remain in the drawer? (4366) A. They remained in the drawer.

Q. They were not used for any purpose? A. No.

Q. Was anything done with the registered voters list after the number had been put alongside the name indicating that a qualification notice had been made out? A. It was put back in the drawer in my office on the bottom of the file.

Q. Now before sending out qualification notices to persons on list of registered voters, it is a fact, isn't it, that no check was made to see if the persons for whom notices had been made out were either on the active list or were in the inactive file of the clerk's office; is that correct? A. You are confining yourself to Assembly District?

Q. To registered voters lists? A. They were never checked.

Q. Now in the two or three persons or four persons whom you observed being processed for qualification was anyone processed for the grand jury? A. I don't recall, Mr. Isserman. I did not look at the markings he put on. I just watched the method by which he qualified them.

William J. Borman—for Government on Challenge—Cross

Q. You started questioning the jurors the day after Mr. McKenzie left, did you not? A. I started qualifying the jurors the next morning.

Q. Were you the only person in your office doing that? (4367) A. At that time, yes, sir.

Q. For how long were you the only person doing it? A. Until such time as I—well, just a minute, Mr. Isserman. I did have Miss Keenan that took over at lunch hour periods right from the very beginning as soon as Mr. McKenzie left. Miss Keenan took over during the lunch hour period.

Q. Did you receive instructions on how to question prospective jurors from any persons other than Mr. McKenzie? A. No, sir.

Q. None from the clerk of the court? A. I received no instructions from Mr. McKenzie either.

The Court: Talking about grand jurors now?

Mr. Isserman: Talking about grand jurors now.

The Witness: I received no instructions from anyone.

Q. And that covers not only Mr. McKenzie but the clerk of the court and Mr. Duncan, the Jury Commissioner? A. That is right.

Q. And did you receive any instructions as to the questioning of petit jurors from any person at all? A. No, sir.

Q. Now in questioning prospective jurors, I believe it was your testimony, and I am referring to page 4245 of the transcript, that if persons told you that "they were (4368) busy or they would lose part of their income, or whatever reason they might have for not wanting to serve; some of them good and some of them bad," and here I finish my quotation, when they told you those things you then did not qualify them; is that correct? A. Well, when I say some of them good and some of them bad, I mean by that some of the excuses were not plausible. If the excuse was not plausible he went on the jury whether he liked it or not.

Q. If a person told you they were busy did you consider that a plausible excuse? A. If he was engaged in war work

William J. Borman—for Government on Challenge—Cross

at the time, as many were, I would put him over for the duration.

Q. And if they were not engaged in war work that is not a sufficient excuse? A. Well, in a hardship case he would be left off.

Q. And I think the hardship case was a case in which you said if a person would lose part of their income, is that right? A. That is right, like a man coming in, even a plumber and bricklayers and they would come in and say, "Gee, Johnny, I have a wife and three kids, and four dollars a day and I am working steady. I don't mind if you call me when I am out of work, but not right now," of course you could never tell whether they were out of work to put them on.

(4369) Q. And you always asked if it would be any hardship if they would serve? A. That is right. I did not ask them. They would be very ready to tell you without being asked. They did not hesitate.

Q. And the answer would be given when you asked if there was any reason why they should not serve? A. May I have that again?

Q. Their answer would be given when you asked if there was any reason why they should not serve? A. Usually. There were some cases in which they did not raise the issue and if they did not they were put on.

The Court: Which was it? You asked the question of the person or they asked, or how was it?

The Witness: I let them raise the issue. I never raised the issue.

Q. You do not mean to say you did not ask them the question if there was any reason why they did not want to serve? A. I asked that question all the time.

Q. And wasn't it true that when you asked that question they told you something about hardship? A. That is right.

Q. Now if they said nothing about being busy or about hardship would you then ask them to fill out a questionnaire? A. I would.

Q. And then would you do anything with the questionnaire (4370) to check the answers? A. I did.

William J. Borman—for Government on Challenge—Cross

Q. And on some occasions would you find that the answers indicated an exemption, is that right? A. In a few cases, yes.

Q. For instance, what type of exemption would those answers indicate? A. Oh, we used to have non-residents would come in and fill out an application and you find out he was a non-resident. I have had them where they turned out to be a volunteer fireman up in some town somewhere. There were various reasons, Mr. Isserman. I cannot remember them all.

Q. Some were professionals, lawyers, and so on? A. Yes, in the case of a lawyer you ascertain it before he fills out the questionnaire. Lawyers usually had enough sense to know that.

Q. Now of the persons who came in with notices, isn't it true that a very small percentage were non-residents? A. Very, very small.

Q. And isn't it also true that a very small percentage were in the exempt classification, like professionals and lawyers and things of that kind? A. Yes, sir.

Q. You tried to leave those out before you even sent the notices, didn't you? A. Well, I could not. There was no way of knowing.

Q. But in some cases you did? A. I would have no (4371) way of knowing.

Q. In any event, when they came in you left them out?

The Court: How could he tell by looking at a registered voters list whether a man was a plumber or not?

Mr. Isserman: That is true, but he said in some cases they did not ask for it.

The Witness: I did not say that.

Mr. Isserman: Well, it is not so important. We will go on.

Mr. Gladstein: If you look at some of those lists you can tell.

The Witness: On no list I ever used.

The Court: Maybe Mr. Isserman will produce one and show it to you.

Mr. Isserman: No, I am not complaining. Does your Honor ask me to search through the lists?

William J. Borman—for Government on Challenge—Cross

The Court: No. If there is no such list I would not naturally ask you to look.

Mr. Gordon: If I can help I can show you a list that has two or three lawyers.

Mr. Isserman: No, I don't want to take up the time for cross-examination by colloquy.

Q. Now other than the excuses or the reasons given that people were busy or would lose part of their income, was there any reason for not giving persons questionnaires (4372) which affected a large number of people? A. No.

Q. Other than having the questionnaire filled out and asking the question or two which you have already indicated, did you have any further conversation with those prospective jurors on any matters? A. In some cases yes, and in some cases no.

Q. On what type of matter would you have further conversation? A. Anything from the war to the weather.

Q. You mean just casual conversation? A. Casual conversation about their business.

Q. What did you ask them about their business? What they did and how they did? A. No; tried to find out their busy periods. Some men were busy at certain periods. As I recall, accountants were very busy during the tax period and we did not want to burden them with jury duty during those times unless necessary, and I would ask "Is there a time of the year when you are not busy and this would not affect your business?"

Q. After noting that a person was qualified you put down whether they would serve on the grand or petit jury, did you not? A. That is right.

Q. And you would not know until the questioning was complete before you would put this person on the grand jury or petit jury, is that correct? A. That is right.

Q. And you would make up your mind right then and (4373) there and mark the sheet accordingly, is that right? A. That is right.

The Court: Does he say he did it then and there or waited?

The Witness: No, I usually did it while the juror was present and usually indicated to him he was going on the grand jury.

William J. Borman—for Government on Challenge—Cross

Q. Didn't you on occasion know in advance the person who was being qualified was going to be qualified by you, if he did qualify at all, as a grand juror? A. Never.

Q. Didn't you, on occasion, send out notices to persons from special lists designated as grand jury lists as distinguished from petit jury lists? A. I did.

Q. And wasn't that for the purpose of putting those persons on the grand jury if they qualified? A. No, sir.

Q. Why did you have a special grand jury list? A. It was just for identification.

Q. Identification put on by you? A. Right.

Q. For what purpose? A. So I would know where I got the list from.

Q. Well, did it mean when you had a grand jury list the Federal Grand Jury gave you that list, or did it mean the persons were intended to serve on the grand jury? A. It might mean the list was given and Mrs. St. Clare may have called me up and said, "I have a few names of (4374) volunteers for grand jury service. Would you like me to send them?" And I would take down the names and addresses on a piece of paper, write out the qualification notices and mark it "G.J." as I have done in several cases and send out the notices, which did not necessarily mean they would go on the grand jury. It was just to identify the fact I received them from that source.

Q. Wasn't the list used for two purposes; one to identify the source and the other to identify persons who were recommended as grand jurors? A. Yes, it was. It did not affect my decision any.

Q. And when those persons came in you knew they had been recommended by Mrs. St. Clare for grand jury service? A. That is right.

Q. Did Mrs. St. Clare call you up occasionally? A. About the only time I ever heard from Mrs. St. Clare was when the grand jury was drawn and she would say, "Mr. Borman, have you got the cards or got the list," and I would say "Yes," and she would say, "All right. I will come down and get it," and she would come.

Q. And you would give her the grand jury list, would you not? A. That is right, and then I believe she got duplicate cards of everyone I put on the grand jury. Yes, she did.

William J. Borman—for Government on Challenge—Cross

(4375) Q. And by "duplicate cards" you mean duplicate history cards, isn't that right? A. Yes, sir.

Q. Did not Mr. McKenzie tell you that was what you should do when Mrs. St. Clare came around? A. No, I think Mrs. St. Clare, and I ran into the clerk to find out if it was O.K.

Q. What did he say? A. He said, "Yes. That is the way that is done. Did not Mr. McKenzie tell you?" And I said, "He did not have time."

Q. And that was the regular monthly procedure? A. Once a month; sometimes we would have two grand juries a month—special drawing.

Q. But the processing of drawing grand jurors is separate and apart from the process of qualifying grand jurors, is it not? A. It is.

Q. And you would qualify persons for the grand jury whether or not a jury was then being drawn or not, isn't that so? A. That is right.

Q. So that your giving her the history of persons qualified for grand juries had nothing to do with grand jury lists?

The Court: He did not say that. He said he gave her duplicate cards of the grand jurors that had just been impaneled to sit as a grand jury.

Mr. Isserman: I am sorry. I do not believe that (4376) is his testimony.

The Court: Is not that right? Or did I misunderstand?

The Witness: She got a duplicate history card of any person, your Honor, that I put on the grand jury.

The Court: That is, that you qualified?

The Witness: That I qualified.

The Court: Then I misunderstood.

Q. When you made up a history card for the grand juror did you make it up in duplicate? A. I believe so. I never typed them out myself.

Q. Did you give any instructions to anybody about that? A. Yes.

William J. Borman—for Government on Challenge—Cross

Q. Or did you make them up in triplicate? A. Duplicate only.

Q. And you kept one and Mrs. St. Clare got the other? A. She got the duplicate.

Q. Was that limited to duplicate history cards for grand jurors alone? A. Grand jurors only.

Q. She never got any duplicate history cards for petit jurors, did she? A. No, sir.

The Court: You mean Mrs. St. Clare did not get them.

Mr. Isserman: Yes. That was the import of my question.

The Court: We will take our recess now until 2.30.

(Recess to 2.30 p.m.)

(4377)

AFTERNOON SESSION

WILLIAM J. BORMAN, resumed the stand.

Cross examination continued by Mr. Isserman:

* * *

Mr. Isserman: Do you happen to have the last question and answer? You do not have it here?

The Reporter: No.

Q. Now when was the first time, Mr. Borman, that you met Mrs. St. Clare—Mrs. Ruth St. Clare, I believe it is? A. I believe Mr. McKenzie introduced me to her on one of the occasions that she was down there.

Q. That was in the month that you were working there, approximately, before Mr. McKenzie left, is that correct? A. That is right.

Q. In 1942? A. Yes.

Q. And she was then in the office, in your office, was she not? A. She was down on a visit, I suppose.

William J. Borman—for Government on Challenge—Cross

Q. And did Mr. McKenzie tell you who she was? (4378) A. Well, I happened to walk in for some reason or other and he said, "Mrs. St. Clare, I want you to meet Mr. Borman who has been working with me for a short while."

Q. And did he tell you who Mrs. St. Clare was? A. Well, I believe he did. He came in and he said, "Mrs. St. Clare is connected with the Federal Grand Jury Association."

Q. Did he tell you that she was the executive secretary of the Grand Jury Association? A. He may not have said "executive secretary." He might have said "secretary."

Q. But you knew her to be an official of the Federal Grand Jury Association, did you not? A. That is right.

Q. Now she came in once a month to pick up duplicate cards, is that correct—duplicate history cards? A. Yes.

Q. And then she came in to pick up the grand jury lists when they were drawn, several times a month, isn't that correct? A. If she didn't there may have been an occasion when she called me that she couldn't get down and I might have mailed it to her.

Q. And you recollect such conversations with her about mailing lists of grand jury panels as they were drawn, is that it? A. I don't recollect any; I say there may have been.

(4379) Q. Well, so far as you know—do you recollect that there were some or there weren't any? A. I say there may have been. I do not recall any. There may have been.

Q. And you have talked to her on the phone on quite a few occasions during the course of your work as jury clerk, have you not? A. I only recollect one occasion in which I called Mrs. St. Clare, and that was the list with respect to the potential Negro jurors. I told her I was very anxious to procure a list of potential Negro jurors and asked her if she could assist me in any way.

Q. And what did she tell you? A. She said, "I'll try," and I recall possibly a day or so later she called me up and she said she had procured such a list.

The Court: That is the one you told us about?

The Witness: That is right, your Honor.

William J. Borman—for Government on Challenge—Cross

Q. And you were very anxious to get that list, were you not? A. I was. I was always anxious to get lists of Negro jurors.

Q. Did you tell her why you were anxious at that particular time to get a list of Negro jurors? A. I believe I told her I had had some come in on qualifications notices from Harlem and that most of them (4380) were either working a few nights as laborers, as I remember, engaged in garages, washing cars or there were quite a few that claimed hardship and the results were very unsatisfactory.

Q. And that is why you told her you wanted a list of Negro jurors, is that right? A. That was one of the reasons I was making the request, yes.

Q. Did you make a request from any other organizations for lists of Negro jurors? A. Yes, I did.

Q. What organization? A. After a conference with the clerk of the court we made up a letter we mailed out to various denominations in Harlem, churches, pastors of the various churches asking them if they would furnish us with some names.

Q. When did you make that letter up? A. On or about the time that I procured the other list, if I recall.

Q. And that was about what time, if you remember? A. I recall it was in around October 1942.

Q. And have you got a copy of that letter which you sent? A. It is in the file, I believe.

Q. And have you received any answers to that letter? A. Yes, we got one answer; one pastor recommended the other pastor.

Q. You say you wrote to various denominations. You mean you wrote to ministers? A. That is right.

(4381) Q. Did you ever write to any organization which has Negroes in its membership for lists of Negro prospective jurors? A. I do not believe so. It was confined to the churches.

Q. You never wrote to the N.A.A.C.P.

The Court: What was that?

Mr. Isserman: National Association for the Advancement of Colored People.

A. I would not know. I would want to see the list of people to whom the letter went. There were about seven or eight.

William J. Borman—for Government on Challenge—Cross

Q. They were all sent to ministers, were they not? A. I would want to see the list. Maybe the people you mention were among them. I know we picked out the various ones we thought ought to get such a letter as that.

Q. Is it your testimony the mailing was not confined to ministers? A. I recall it was confined to ministers, but possibly the name you mention was on there. I don't know.

Q. Can you check and see if the National Association for the Advancement of the Colored People is on the list? A. I believe the letter is in the file, if your Honor wants to do it?

Mr. Isserman: May the letter be produced?
(4382) The Court: Yes.

Mr. Gordon: Perhaps Mr. Doyle could get it, your Honor.

The Court: You may proceed with something else.

Mr. Isserman: Yes, I can proceed.

Mr. Gladstein: Does Mr. Doyle understand that all letters of that kind are to be brought in?

The Court: No. He is going to get the letter which the witness spoke about and which Mr. Isserman asked for. If you are going to ask for a lot of documents I will have to consider it a little different.

Mr. Gladstein: I am only suggesting bringing back one letter won't indicate whether all the letters were sent.

The Court: Let me see what he brings down.

Q. You knew of the National Association for the Advancement of the Colored People, did you not? A. I may have.

Q. Well, when you saw Mr. White's questionnaire, you knew there was such an association, didn't you?

Mr. Gordon: Now, your Honor, there is no testimony that he saw it. I object.

The Court: I think, was it Mr. Sinsabaugh who took that? But whoever it was if you want him to refresh his recollection, show it to him.

(4383) The Witness: If it is Mr. McKenzie—

William J. Borman—for Government on Challenge—Cross

Q. But you just said, didn't you, you testified earlier this morning that you marked a C on the history card of Mr. Walter White? A. If I did I should not have, because it was Mr. McKenzie's application.

Q. Didn't you say anybody could tell Mr. White was a Negro because it was the National Association for the Advancement of the Colored People? A. That is right.

Q. And you did not know the president of that association for many years has been a white man? A. No, I did not.

Q. And it takes both white and Negroes into membership? A. No, I did not.

Q. Did you ever hear of an organization known as the National Urban League? A. No.

Q. Did you ever inquire as to the community organizations in the City of New York which had in their membership large numbers of Negroes?

Mr. Gordon: I object.

(Question read.)

The Court: I will allow the question. Did you hear there were community organizations with large numbers of Negroes or know about that?

The Witness: No, your Honor.

Q. Did you ever inquire whether there was such an (4384) organization? A. No, I did not.

Q. After that letter was sent in 1942 to a number of ministers, did you ever send any other letter to any other persons asking for lists of Negro jurors? A. No.

Q. Now isn't it true that Mrs. St. Clare would come into your office to inquire as to which members of the grand jury panel from time to time were excused from service? A. No, I believe not.

Q. Didn't you give that information to her from time to time? A. No.

Q. Did you from time to time give her information as to the active history cards of grand jurors which were transferred to the inactive grand jurors file? A. For the reason of residence, and so forth?

William J. Borman—for Government on Challenge—Cross

Q. Residence, or death, or matters of that kind? A. I may have, Mr. Isserman. I don't recall, though.

Q. And from your recollection of that period it was quite possible you did that, isn't that so? A. It might be possible I did.

Q. And didn't you, on occasion, receive information from Mrs. St. Clare about the status of grand jurors on the active file?

Mr. Gordon: Objection.

The Court: Sustained.

(4385) Q. Didn't Mrs. St. Clare on occasion tell you of a change of residence of a grand juror who was on the active file so that you could correct your records? A. I don't recall any.

Q. Do you recall her advising you from time to time that some members on the grand jury panel had died, and their names should be taken off? A. If she did I would not have done it unless I had further information.

Q. But you do not have recollection now that she did it? A. I have no recollection of her ever saying anything of that sort?

Q. Do you have any positive recollection that she did not? A. No, I have not.

Q. Now you said that you came to call Mrs. St. Clare for the list of Negro jurors, possible Negro jurors?

Mr. Gordon: Objection.

The Court: Well, it is repetition, but I will allow it.

Mr. Isserman: He has not answered that question.

Q. You may answer it. A. Well, frankly I did not know where else to turn. I thought she may be able to assist me.

Q. And did you know Mrs. St. Clare would be able to assist you? A. I did not know.

Q. And she was the only person in New York you could (4386) turn to to get a list of Negro prospective jurors, is that right?

William J. Borman—for Government on Challenge—Cross

Mr. Gordon: Objection.
The Court: Sustained.

Q. You had been working as jury clerk for some time before you asked Mrs. St. Clare for that particular list, had you not? A. I had.

Q. And you had contact with Mrs. St. Clare before you realized she was the person to turn to for such a list, isn't that so? A. Yes.

Q. And didn't that contact with her deal with the supplying of lists of persons for federal grand jury service in this court? A. My previous contacts with her?

Q. Yes. A. No, they had not.

The Court: Here are the letters (handing to Mr. Isserman).

Q. Didn't your contacts with her deal with recommendations for persons to serve on federal grand jury panels in this court? A. No, sir.

Q. Did your contacts with her deal with the question of getting names or recommendations for petit jurors in this court? A. Not while I was there.

Q. What were your contacts with Mrs. St. Clare before you asked for the list of possible Negro jurors? (4387) A. I told you once before, to give her the list of the grand jurors and give the history cards.

Q. And nothing else? A. And invariably she called me. I did not call her. I did not care whether she got the cards or not.

Q. When she called you, did she tell you about a list she was going to send you with names of persons to be processed for jury service in this court? A. I don't recall her ever saying that.

Q. Did you have any contact with any other persons of the Federal Grand Jurors Association concerning lists of grand jurors? A. No, sir.

Q. And lists of prospective petit jurors? A. No, sir.

Q. Well, isn't it true, that you yourself received lists from Mrs. St. Clare containing names of persons which you processed for federal petit and grand jury service in this court? A. My testimony is that I may have. I am not

William J. Borman—for Government on Challenge—Cross

clear whether I did. I had sufficient sources of potential jurors; no reason to ask for additional lists.

Q. So your testimony now is that you may have asked her for lists but you are not sure if you did or not? A. That is right.

Q. All right. Now I ask you to look at Exhibit 157 for identification and ask you if you received this list from the Federal Grand Jury Association in the period (4388) when you were jury clerk?

Mr. Gordon: 157, is that?

The Witness: 157 for identification. My testimony—

Mr. Gordon: Just a moment. I object to this. That is a photostat. He has not been handed the original, and it was gone over by Mr. Gladstein this morning and it was offered in evidence and received.

The Court: I will allow it in view of the limitation I put on the time. I will allow repetition.

Mr. Isserman: This is not repetition, your Honor.

The Court: Well, I have allowed it so you don't need to worry.

Q. Now you received this list, did you not, from the Federal Grand Jury Association? A. I don't recall whether I did or not. It bears no date. Without a date it means nothing. It may have been one of the lists in the drawer when Mr. McKenzie went away.

Q. Do you know how many lists you received from Mrs. St. Clare while jury clerk? A. No, I don't.

Q. Was it one or two or a dozen, maybe? A. My testimony is I don't know whether I got any or not.

Mr. Gordon: Objection.

(4389) The Court: Overruled.

Q. I show you Exhibit 250 which is a list from the Federal Grand Jury Association dated August 21, 1943, and ask you if you received that list?

Mr. Gordon: I am going to ask that the originals be used.

The Court: Yes. The originals should be used.

William J. Borman—for Government on Challenge—Cross

A. My testimony would be the same on this. The only date on this list is August 21, 1942. That date is put on there in blue pencil. It is in my handwriting and therefore I cannot say whether I got it from the Federal Grand Jury Association or whether I got it out of the file drawer.

The Court: Just a second. Let me see that.
(Handed.)

By the Court:

Q. Well, it has on the top "From the Federal Grand Jury Association." A. That is right, your Honor.

Q. But despite that you could not say whether you saw it at some particular time, is that the point? A. Mr. Isserman wants to know whether I received it during the period in which I was jury clerk. (4390) I say I do not know.

Q. And even though it is August 21, 1942, in your handwriting, that does not refresh your recollection on that? A. No, your Honor. That may have just been the date I put on when I started checking those.

By Mr. Isserman:

Q. Now I call your attention to the fact that Challenge Exhibit 250 bears a notation in blue pencil, "13-J" and ask you if that is your notation? A. That is.

Q. Now I believe it was your testimony that you personally marked these lists which you processed, isn't that so? A. In what respect did I mark them? Did I put the "13-J" on it?

Q. That is right. A. I did.

(4391) Q. Now in Exhibit 180 there is—

Mr. Isserman: May we have 180, please?

The Court: That is the book, isn't it?

The Clerk: Yes (handing).

Q. In the period covered by your records there appear a number of various 13 Lists, do there not? A. Yes, sir.

Q. And these lists bear—there is a 13-E List, isn't there?

William J. Borman—for Government on Challenge—Cross

The Court: 13-E?
 Mr. Isserman: Yes.

A. Yes.

Q. There is a 13-F List, is there not? A. Yes.

Q. There is a 13-G List? A. Yes.

Q. And a 13-H List? A. Yes.

Q. 13-J? A. Yes.

Q. 13-K? A. Yes.

Q. And 13-P? A. Yes.

Q. Now can you tell us why those lists were marked F, G, H and so on? A. Yes.

Q. Yes. A. The three lists that Mr. Gladstein showed me yesterday bore a typewritten inscription "13-E," "F" and "G". When I started on the next list, as a means of identification, I followed through on it and called the next one 13-H.

(4392) Q. And then you called the next one 13-J and so on? A. That is right.

Q. And then when you got to 13-K you called the next one 13-P, is that correct? A. It seems so. I evidently had no 13-L.

Q. And you had no 13-M? A. Well, I wouldn't use "M" because "M" would interfere with Manhattan.

Q. And you had no 13-N? A. Evidently not.

Q. Now do you know if there was a 13-A to D inclusive—if there were four such lists? A. I do not know.

Q. I call your attention to list 13-E, which is Exhibit No. 248—

Mr. Isserman: May we have 248, please?

(Handed by clerk to Mr. Isserman.)

The Court: You did not ask him about "O".

Is "O" in there?

The Witness: No.

The Court: So that there are missing L, M, N, and O.

Mr. Isserman: That is correct, your Honor.

The Witness: Well, the N list—the answer for "N" would be that the Negro special list was marked N.

William J. Borman—for Government on Challenge—Cross

Q. Oh, your testimony now is because—

The Court: Do you really remember that or are you thinking out loud?

(4393) The Witness: I am thinking out loud.

The Court: Well, better not do that.

Q. In other words, you have no recollection that the reason why there is no "N" list because you now notice one list is called "NS" or "Negro Special," have you?

A. May I have that again?

Q. (Read.) A. No, I have no recollection.

Q. What does "Special" mean, by the way? A. Well, it was a special list.

Q. And do you call all these lists special lists, all the lists received from the Federal Grand Jury Association?

A. Anything—anything that wouldn't be from the voters' lists in my opinion was something special. It was aside from the main source of supply.

Q. But the only— A. Anything aside from the main source of supply would have a special significance, so far as I know.

Q. And the only list you designated a special list is the Negro list nevertheless, isn't that so? A. I used the word "Special" there on recommendation.

Q. Yes, on a number of individual recommendations, but did you ever use the word "Special" on any other list which you now call special, other than the Negro list? A. No large list, no.

Q. Now I call your attention to the fact that Exhibit (4394) 248 seems to be in alphabetical order and starts with the letter G; that is true, isn't it (handing)? A. That is right.

Q. Now I show you 13-F List, 239—

Mr. Isserman: Exhibit 239, please.

The Court: 239 is the next one?

Mr. Isserman: Yes, sir.

(Handed by the clerk to Mr. Isserman.)

Q. Before showing you 239 I show you that— A. This one here (indicating)?

William J. Borman—for Government on Challenge—Cross

Q. This 13-J runs through from the letter F to the letter H, is that correct? A. That is right.

Mr. Gordon: Which exhibit is it, please? I am trying to keep track.

The Court: 239, isn't it?

Mr. Isserman: On 250.

The Witness: 250, your Honor.

Q. Now I show you 239, which is the letter F, and that runs through from the letter N to the letter S. That is true, isn't it? A. It is.

Q. Now I ask you if it isn't true that there were lists 13-A to D inclusive which started with the letter A and went through to the letter G, which appears on list 13-J? A. There may have been; I don't know.

Q. Are those lists in your possession now? (4395) A. I have no list in my possession. All lists are over there (indicating).

Q. And you say those lists may have been in existence but you do not know where they are now, is that right?

Mr. Gordon: It is objected to as argumentative.

The Court: He says he doesn't know anything about them.

Q. Well, is it your testimony that there were no such lists? A. I don't testify whether there were or there weren't. I don't know.

Q. And from your experience in handling these lists, the two exhibits I have shown you, Challenge 248 and Challenge 239, do not indicate the existence of other lists?

Mr. Gordon: Well, I object to that, your Honor, what they indicate.

The Court: Overruled.

Mr. Isserman: I am asking him to draw on his experience as jury clerk.

The Court: Well, from your experience would that indicate any such thing to you?

The Witness: It wouldn't indicate it to me, your Honor.

William J. Borman—for Government on Challenge—Cross

Q. Did you ever have any conversation with Mrs. St. Clare about the names that appear on these grand jury (4396) lists which you received from her? A. No, sir.

Q. Did you ever have any conversation with anyone in the Grand Jury Association as to the type of names that appear on those lists? A. No, sir.

Q. Did you ever make any inquiry as to the classifications of persons who appear on the lists which were given to you by the Grand Jury Association? A. Well, what do you mean by "classification"?

Q. I mean the occupations of the people or their geographic place of residence, or anything else. A. No. To me they were just a list of names.

Q. And without further checking except with your own files, you would take these lists, numbering hundreds of names and send qualifying notices to them without knowing the types of persons listed? A. That is right.

Q. Is that true? A. That is right.

Q. And you never had any discussion with anybody in the Federal Grand Jury Association as to the type of lists they were supplying? A. What do you mean "type"? The sources?

Q. The type of persons that they put on the lists which they supplied to you. A. No, I never made any inquiry.

What other—

The Court: The cross-examination is over.

(4397) Is there any redirect?

Mr. Isserman: I want to state my objection, if the Court please, to the termination of cross-examination.

The Court: You state your objection but not with the long statements such as you made the other day about all the things you were going to prove if you had an unlimited time to go on with cross-examination. You may object to the limitation upon the cross-examination. It will be assumed that all the proper grounds are stated and that you insist that if you had a longer time you would bring out a lot of material facts, and I am going to overrule the objection, and you have an exception.

Mr. Isserman: And I want to state one objection which your Honor hasn't suggested.

Colloquy of Court and Counsel

The Court: All right.

Mr. Isserman: And that is an unwarranted interference with cross-examination and with the right of my clients to cross-examine this witness who has been hostile and evasive from the first moment he got on the stand.

The Court: Well, it is for me to decide whether he has been hostile and evasive.

Mr. Isserman: And I would like to add that the action of the Court in curtailing cross-examination at this time is a violation of due process and a violation of the (4398) constitutional rights of our clients and prevents us from putting on this record the facts which this witness has and has been concealing in his examination.

The Court: Let me have the letters—the ones that you asked for and did nothing with him.

Mr. Isserman: I did nothing because your Honor curtailed the examination.

The Court: I want them. Give them to me.

(Handed to the Court.)

Mr. Gladstein: I desire the record to show the tone of voice in which the Court demanded them—

The Court: Yes, you can put all the tone of voice you want in.

Mr. Gladstein: May I finish?

The Court: Because we are pretty near the end of this challenge.

Mr. Gladstein: Your Honor, I would like to finish my statement for the record. I wish the record to show my objection to the tone and the manner in which the Court delivered that command as unbecoming a Court, and I object to it. I also—

The Court: There is nothing unbecoming about it. I am through being fooled with in this case.

Mr. Gladstein: Now, if your Honor please—

The Court: If you don't like it you can lump it. (4399) Put that down.

Mr. Isserman: I object to your Honor's remark and characterization of the conduct of counsel, and I ask that your Honor strike that remark.

Colloquy of Court and Counsel

The Court: Oh yes, yes, I have heard all that. Now I am sick of it.

Mr. Gladstein: Now I wish to add to my objection the unseemly remark of the Court saying that if we do not like it we could lump it. I object to it and ask the Court to withdraw and strike that statement from the record.

The Court: Yes, I refuse—I deny the motion.

Mr. Gladstein: Now I wish to take one moment to add my objection to the record, which is this, with respect to curtailing and terminating the cross-examination of Mr. Borman, that I was compelled to end my cross-examination because of the order of the Court without having completed several fields of inquiry into which I was prepared to go—

The Court: Now I don't desire further argument, Mr. Gladstein.

Mr. Gladstein: I wish to state this for the record—

The Court: I will tell you now to desist.

Mr. Sacher: May I, however, just interpose (4400) my objection to having—to my cross-examination having died aborning, your Honor?

The Court: It was indicated to me this morning that the only additional counsel who desired to cross-examine was Mr. Isserman. I stated then that whoever was to cross-examine among you all would have to finish by three o'clock. Now that is my ruling and you each severally have an exception to it. Now I do not want any more.

Mr. Crockett: May I state my objection, because of the nature of the Court's ruling this morning I feel—

The Court: Do you feel it is necessary for you to add something?

Mr. Crockett: I do.

The Court: Please desist. I tell you not to.

Mr. Crockett: Well, may I take an exception to the Court's remark this morning?

The Court: You may.

Mr. Crockett: That "people of your kind," which was addressed to my colleague here, Mr.

Colloquy of Court and Counsel

Gladstein, to me it infers something in the nature of either racial or religious bias. I would like—

The Court: Racial or religious bias?

Mr. Crockett: I mean exactly that. The Court's remark to Mr. Gladstein, "people of your kind," such (4401) and such a thing. That is a general—

The Court: I observed the conduct that you gentlemen have put on here, the sort of delaying tactics and other things that I have noted in the record before. I had no reference to any religious or other matter of that kind, and you must know it perfectly well.

Mr. Crockett: I do not know it—

The Court: Now please sit down.

Mr. Crockett: And for that reason—

The Court: I am not going to have this jumping up.

Mr. Crockett: I would like to put my objection on the record.

The Court: Well, you have your objection on the record; you have the race discrimination in, you have everything else in. Now please sit down because I desire to put a question or two to this witness.

Now, Mr. Borman, is this the correspondence with the pastors of the various churches that you referred to in your testimony?

Mr. Isserman: I object to your Honor's question on the ground that the Court has taken over cross-examination and has not allowed me to cross-examine this witness on the letters which the Court has now handed to him.

The Court: Your objection is noted.

(4402) The Witness: Yes, your Honor.

Mr. Gladstein: May we have a ruling instead of just a notation, your Honor? An objection should be sustained or overruled.

The Court: Yes. It is nice of you to tell me what to do. The record will stand just as it is.

Mr. Gladstein: I ask the Court to rule whether the objection is sustained.

The Court: Yes, I know, I heard you.

Now what is the answer?

Colloquy of Court and Counsel

The Witness: Yes, sir.

Mr. Gladstein: I object to your Honor's failure to make the ruling.

The Court: Your objection is noted.

The Witness: Yes, your Honor. Those were the six letters.

The Court: And what is that other letter there?

The Witness: This was the one answer that we received.

Mr. Isserman: I have the same objection to every question which the Court is putting in connection with the letters.

The Court: Yes. It is a new doctrine that the Court isn't supposed to have the power to ask any questions of the witness.

(4403) Mr. Isserman: Not on matters on which the Court has cut off the cross-examination, which came up during the cross.

The Court: This will undoubtedly help you.

Mr. Crockett: May I ask that the documents be marked at least for identification?

The Court: I am going to put them in evidence right now as Court's Exhibits.

Mr. Isserman: I object to that.

The Court: Why certainly, you object to everything.

Mr. Isserman: I object to your Honor's remark in that respect.

The Court: Well, that is fine. Go ahead.

Mr. Isserman: Now I ask for the right to cross-examine on the exhibits which this Court has put into evidence.

The Court: Motion denied.

Mr. Gladstein: Now I ask for the right to question on the documents which the Court has put into evidence—

The Court: Motion denied.

Mr. Gladstein: May I finish?—for the reason that the documents contain statements and those are statements which show the involvement of Judge Knox in this matter, and also the letters happen to be signed (4404) not by this witness but by the

William J. Borman—for Government on Challenge—Cross

clerk, and I desire to examine as to this witness's knowledge of and connection with the letters, the manner in which it was determined and the circumstances under which it was determined to send such letters.

The Court: All right, I will give you ten minutes to do it.

Hand him the letters.

The Clerk: Shall I mark these alphabetically?

The Court: You can mark them afterwards.

Mr. Gladstein: Let me have them, please.

(Handed by the clerk to Mr. Gladstein.)

By Mr. Gladstein:

Q. Mr. Borman—

Mr. Gordon: Just a moment, please.

Mr. Gladstein: Do I get—

The Court: This is ten minutes of additional cross.

Mr. Gordon: I do not want to take out of his ten minutes, your Honor.

The Court: All right, then don't do it.

Mr. Gordon: All right, sir.

Q. Mr. Borman, whose idea was it to send letters to the six ministers whose names appear on this Court Exhibit—yours or somebody else's? A. It was—

(4405) Q. Yours or somebody else's? A. It was a decision between the clerk and myself.

Q. Oh, you discussed it with the clerk? A. Oh, definitely.

Q. You mean Mr. Follmer? A. Definitely.

Q. Who raised the subject first? A. It came up in one of our conversations.

Q. How did it come up? What was the reason for it coming up? A. Well, as always, we were desirous of securing the—

Q. Not "as always"; on that particular occasion.

The Court: Let him finish his answer.

William J. Borman—for Government on Challenge—Cross

A.—as always, we were desirous of securing Negro jurors, and we had been unsuccessful with the election district returns that we got, so we devised this method of securing additional Negro jurors.

Q. Whose idea was it? A. It was an agreement between the clerk of the court and myself.

Q. Did you raise it or did he raise it? A. I don't recall that.

Q. Did you discuss it with Judge Knox? A. Definitely not.

Q. Did Mr. Follmer tell you that he had discussed it with Judge Knox? A. No.

Q. Was it Judge Knox's idea? A. No.

(4406) Q. It was the idea of yourself and Mr. Follmer and Judge Knox had nothing to do with it, is that right?

A. That is right.

Q. Now you did write these letters yourself, did you? A. No, sir.

Q. Mr. Follmer did, didn't he? A. Mr. Follmer.

Q. Did you see the letters before they went out or at the time they went out? A. I mailed them.

Q. You mailed them? A. He signed them. I brought them in to Mr. Follmer and he signed them.

Q. Did you draw up the contents of the letter or did Mr. Follmer? A. Oh, I recall we worked on it together. I don't recall whether I drew up the first letter and I submitted it to him for corrections.

Q. But you are satisfied when you sent the letter it was a truthful statement; yes or no, please? A. I believe so.

Q. Is there any doubt about whether the letter you and Mr. Follmer got up was truthful? A. I haven't read the letter in six years.

Q. Whether you have or not, what about it, sir? Did you write an honest letter or didn't you? A. We wrote an honest letter.

Q. All right. Now isn't it a fact in the second paragraph of this letter it says:

(4407) "So, at the suggestion of the Honorable John C. Knox, Senior Judge of this Court, I am writing to you to ask if you would be good enough to send me a list of those of your parishioners or

William J. Borman—for Government on Challenge—Cross

acquaintances whom you believe are good jury material."

That is in there, isn't it? A. Yes.

Q. Now as a matter of fact, Mr. McKenzie— A. The name is Borman.

Q. Borman; it is difficult to maintain the distinction.

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

The Court: Well, better not use up part of the ten minutes. I think you had better let him go ahead now.

Q. As a matter of fact, Mr. Borman, you were concerned not about having—not about sending notices to Harlem where you knew Negro people lived; you were concerned about obtaining what was regarded as a kind of a proper balance of Negroes in the system, isn't that so? A. No, it is not.

Q. Isn't it a fact that what you wanted was what you and Mr. Follmer regarded as a proper balance of Negroes in the jury system? A. No.

Q. That is not so? A. That is not so.

Q. Now I call your attention to the first paragraph (4408) of that letter and I will ask you if it does not say:

"In an effort to keep our jury list in balance we are anxious to acquire additional Negro jurors."

Do you see that.

The Court: That is something different from what you put to him before.

Q. I will ask you, does that appear? A. It does.

Q. Now let me ask you this question, did you at the time these letters went out know how many Negro people you had in the jury lists? A. No, I did not.

Q. You had no record of it? A. No record of it.

Q. Then how did you know, sir, that you needed additional Negroes in order to keep your jury list in balance?

William J. Borman—for Government on Challenge—Cross

A. I knew that we hadn't secured a sufficient quantity of them over the period of time that I was there.

Q. But how did you know that you did not have enough Negroes in the jury system to keep it in balance? A. Actually I didn't know.

Q. You didn't know. Now did Mr. Follmer discuss that item with you? A. What item?

Q. That item, of the fact that you did not have enough Negroes. A. I don't recall.

Q. You don't recall it. Did you discuss it with the jury commissioner? A. I didn't.

Q. Do you know whether from discussions with Mr. (4409) Follmer that question was discussed with the jury commissioner?

Mr. Gordon: Objection.

The Court: Sustained.

Q. Who was the jury commissioner at that time? A. Mr. Donald Duncan.

Q. The same one you have now? A. Yes, sir.

Q. All right. Now—

The Court: Time's up.

Now is there any redirect examination?

Mr. Isserman: If the Court please, I would like to cross-examine on the exhibits which you offered in evidence.

The Court: Motion denied.

Mr. Isserman: I am referring specifically to the exhibits offered in evidence by the Court.

The Court: Motion denied.

Mr. Gladstein: Your Honor, so that the record will be complete, the Court's Challenge Exhibit that has just been introduced as a recapitulation of it, it shows that this form letter was sent by Mr. Follmer to six ministers.

The Court: Yes. That is all part of the exhibit.

Mr. Gladstein: Yes.

(4410) The Court: Any redirect examination, Mr. Gordon?

Mr. Gordon: It was going to consist of offering this letter, your Honor, and I would like to read it for the record, if I may.

Joseph M. Kreinik—for Government on Challenge—Direct

The Court: You may do so.

Mr. Gladstein: That isn't redirect examination. I haven't any objection to it being done, but it isn't redirect, unless you call that—

The Court: Why is it necessary to read it, Mr. Gordon? It is part of the record and it is before me.

Mr. Gordon: I will accept that suggestion from the Court, your Honor.

The Court: Yes. Now any redirect?

Mr. Gordon: No, your Honor.

The Court: Now, Mr. Borman, we are all through.

(Witness excused.)

(Marked Court's Challenge Exhibit 2.)

The Court: Now what is the next witness?

Mr. Gordon: He is right outside, your Honor.

The record might show in connection with this—I won't characterize it—this discussion concerning Challenge Exhibit 2 of the Court, that the exhibit was brought to the courtroom by Mr. Doyle at 2.43 p.m., which was half-way between—

The Court: Yes, that may be noted.

(4411) Mr. Gordon: —2.30 and the 3 o'clock period.

JOSEPH M. KREINIK, called as a witness on behalf of the Government on the challenge, being duly sworn, testified as follows:

Direct examination by Mr. Gordon:

Q. Mr. Kreinik, what is your occupation? A. I am a deputy clerk of this court.

Q. And do you work in any particular part of the court? A. I do; the calendar commissioner's office.

Q. How long have you been with the clerk's office of this court? A. Since February 16, 1945.

Q. And how long have you been with the calendar commissioner? A. Since December of 1931.

Joseph M. Kreinik—for Government on Challenge—Direct

Q. Who gave you your first appointment in the clerk's office back in 1925? A. Alexander Gilchrist, the clerk of the court.

Q. And were you ever reappointed after that? A. I was.

Q. Who appointed you or assigned you to work for the calendar commissioner? A. I think it was the chief deputy clerk, Captain Weiser.

Q. That was in 1931? A. In 1931.

Q. And have you received any appointments from any of the successors of Mr. Gilchrist, Mr. Weiser, Mr. Follmer or Mr. Connell? A. I received them in that order, from (4412) Mr. Gilchrist, Captain Weiser, Mr. Follmer and Mr. Connell, I have been reappointed.

Q. As deputy clerk? A. As deputy clerk.

Q. Now will you tell us what your duties are in the calendar commissioner's office with respect to the service of jurors or potential jurors in the United States District Court for the Southern District of New York? A. On each return day of a petit jury I am in the courtroom to take the summonses from the jurors to determine whether they are going to serve, to present excuses and then hear the excuses with the judge who is at that time hearing the excuses.

Q. Where is that particular courtroom located? A. 109, directly opposite this room.

Q. Opposite this room? A. That is correct.

Q. And that is the room that these jurors come to with their summonses, you say? A. That is right.

Q. Now what do you do when they come into the room with a summons? A. I determine first that the summons is filled in and then ask them whether they are ready to serve or wish to present an excuse. If they say they are ready to serve I put an S on the summons and direct them to go into the jurors' assembly room.

Q. Where is that located? A. In the rear of room 109.

(4413) Q. And those that do not say they are ready to serve what do you do with those? A. I put an X on it and ask them to remain in Room 109 to present their excuses to the judge.

Q. Do you remain there when they present such excuses? A. I do.

Joseph M. Kreinik—for Government on Challenge—Direct

Q. Have you heard them present excuses? A. I have, all those years.

Q. Can you tell us roughly what percentage are excused?

Mr. Gladstein: Just a moment. I object to that as calling for not the best evidence. I take it—I am assuming now that a record is kept of those who are excused. I have seen such records here, and there has been testimony about it, and I assume those records are the best evidence, rather than calling for the recollection of this witness, so I object to that question.

The Court: Objection overruled.

A. Oh, I'd say about one-third of the jurors summoned as a rule are—present excuses; one-third serve; the remaining there are cleared up by letters or—mostly by letters during the next week or ten days after the return day.

Q. Are there any jurors who do not show up at all? A. Oh yes. That is the remaining third I talked of. In other words, one-third that come in will serve, one-third (4414) will present excuses and one-third don't show up in the courtroom, but we have letters or other doctors' certificates or something of that kind, they are not found, the notices are returned.

Q. Who passes on the excuses which the jurors have for not serving on the particular panel? A. A judge of this court.

Q. In Room 109? A. In Room 109.

Q. Now what are the excuses which you have heard presented to such a judge? A. Most of them are business excuses, either the people are too busy or they are not busy enough and they are looking for business; some are medical excuses; people are not feeling well or members of their family are not feeling well, and of course every variety and type of excuse that you can possibly imagine has been presented.

Q. And those are passed on by the judge? A. That is correct.

Q. Now what does the judge do when he passes on an excuse? What record is made of that? A. He marks on the notice "Excused." Sometimes he will put a month—

Q. Let me interrupt for a moment. What do you mean by "the notice"? A. On the summons.

Joseph M. Kreinik—for Government on Challenge—Direct

Q. On the summons? A. That is correct.

Q. He marks "Excused"? A. "Excused." Occasionally (4415) he will put a month beside that, the month to which he has excused them or deferred them.

Q. Now how many go up to the bench at a time to present their excuses? A. Oh, I usually call four or five.

Q. And then one after another presents his excuses? A. That is right.

Q. What is done with that record which appears on the summons? A. The record of excuses?

Q. Yes. A. That is noted on our jury panel list and—on two copies of the jury panel list. One we keep and one is sent up to the jury clerk's office.

Q. You said that the juror comes in with a summons and you check it to see whether it has been filled out? A. That is correct.

Q. I show you Exhibit C-2 in evidence, to which is attached what appears to be such a summons. Will you look at that? That is for a person named Anthony Anable that was called as a witness by the defendants (handing). A. Yes, that is a photostatic copy of our summonses.

Q. And you look at that to see whether all the information on there is filled out? A. That is correct.

(4416) Q. Now in addition to excuses, is there ever any notation of marking a person off? A. Occasionally, yes.

Q. And who does that? A. The Judge.

Q. Have you had occasion to notice, in general, the type of person who appears for jury service? A. I have.

Q. Have you noticed whether or not there are any women included?

Mr. Gladstein: I just want to make an objection that this is calling for the conclusion of the witness and is not a proper examination and is evidence of no probative value and I object to the question.

The Court: Overruled.

A. I can definitely and positively state there are women on the jury. I married a girl who served on this jury and she is the mother of my two children.

The Court: Well, don't bring in your children. The question is, Did you see women in that room to serve as jurors?

Irving Shipenberg—for Government on Challenge—Direct

The Witness: Yes, sir, I have.

The Court: Did you see them in substantial numbers?

The Witness: I never counted them, your Honor. They are there. I never had occasion to know how many or how few.

Q. Have you ever seen any Negroes in that room? (4417) A. I have.

Q. Have you ever seen any people on whose summonses there appeared to be Jewish names? A. Yes, I have.

Q. Have you ever had occasion to hear anybody give an excuse to the Judge in which he claims that he is a worker and that serving on the jury will be a hardship? A. Quite often, yes.

Mr. Gordon: No further questions.

Mr. Gladstein: No questions of this witness.

The Court: Very well. Call the next witness.

(Witness excused.)

IRVING SHIPENBERG, called as a witness on behalf of the Government on the Challenge, being duly sworn, testified as follows:

Direct examination by Mr. Gordon:

Q. You appear to be out of breath, Mr. Shipenberg. Did you run? A. I was told to come over here right away, so I did not want to waste any time.

Q. You came from where? A. My office.

Q. That is across the hall? A. Room 113, yes, sir.

Q. How long have you been working in the Calendar Commissioner's office? A. Since June 1, 1931.

Q. What is your position over there? A. Well, we—

Q. I mean, your title. A. Deputy clerk.

(4418) Q. And who appointed you as deputy clerk? A. The clerk of the court.

Q. Who was that? A. Mr. Charles Weiser.

Q. Have you been appointed by any other clerk since

Irving Shipenberg—for Government on Challenge—Direct

then? A. Well, by Mr. Follmer when he took over, and the late William V. Connell.

Q. And the last by William V. Connell? A. That is right.

Q. I think you started to tell us what your duties were. Will you tell the Judge your duties in the Calendar Commissioner's office with respect to jurors or potential jurors of this court? A. Yes.

Q. Go ahead. A. Well, after the jurors come in those who wish to be excused are excused by the Judge, and all the other jurors that volunteer their service to serve as a juror they all take seats in the jury room and they await the orders that we get from the different court rooms.

Q. Just a moment. Who takes care of the jurors that wish to be excused? A. Mr. Kreinik.

Q. That is the witness who preceded you? A. That is right.

Q. And you take care of the jurors who said they are willing to serve? A. Yes, sir. That is right.

Q. They continue in that room? A. That is right.

(4419) Q. From whom do you get a notice they want a jury? A. From the various court rooms, civil and criminal cases.

Q. In this court house? A. Yes.

Q. Is there any distinction between the jurors you send to a civil case and send to a criminal case? A. No. They are all in that central jury room.

Q. Let us assume that you get word from a court room upstairs that some jurors are needed, tell the Judge what your practice is. What do you do? A. Well, the tickets are in a drum.

Q. What is a ticket? A. The jury tickets; the names of the different jurors. They are all in a drum, and as we get notice to send the jury up to the different court rooms we draw a panel of 30 jurors and we send them up with a bailiff to the court room that wants the jury with a duplicate sheet of the names as they come out of the drum. They are all listed on a sheet and they go up to that court room.

Q. There has been some testimony about history cards and wheel cards. What is a ticket? A. A ticket is a jury

Irving Shipenberg—for Government on Challenge—Direct

card which has the name of the juror, the address, and what his occupation is, his place of business or the firm he works for.

Mr. Gordon: May I have Exhibit 102? That (4420) memorandum prepared by Mr. Tolman.

(Handed.)

Q. I show you Exhibit 102 to which is attached a series of exhibits within, and here is one marked Exhibit 9, which has been identified by Mr. McKenzie, the jury clerk, as a "wheel card." Do you recognize that? A. Yes, that is right.

Q. This Exhibit 9, what is that? A. That is the name of the juror.

Q. No. What does it represent? A. It is the name of a juror.

Q. Well, there is no name of a juror on there, Mr. Shipenberg. What does that exhibit represent?

The Court: Is it a wheel card?

The Witness: Yes, it is the wheel card of the juror.

Q. Is that what you mean by a "ticket"? A. That is right.

Q. Those are in a wheel? A. That is right.

Q. What do you do with the wheel? A. Well, we keep it in that room where all the tickets of the jurors that are serving are in that wheel and as we get a panel of 30 we draw the tickets out of the wheel.

The Court: That is, you first give it a whirl?

The Witness: That is right. We spin the wheel.

(4421) Q. Do you look for particular names? A. No; no. We take them at random whatever they may be.

Q. And these 30 then are sent to a court room? A. That is right.

Q. In connection with the jurors that you have seen in Room 109 and that have been selected this way to serve in court rooms, have you ever seen among them any women? A. Lots of them.

Colloquy of Court and Counsel

Q. Have you ever seen among them any people who appeared to be Negroes? A. Yes.

Q. Have you seen any people who appeared to have names which might be described as Jewish names? A. Lots of them.

Q. Have you any way of knowing whether the jurors are workers or what their economic position in life may be? A. All different fields of work.

Q. Are represented there? A. Yes, sir.

Mr. Gordon: No further questions.

The Court: We will take our recess.

(Short recess.)

Mr. Gladstein: I have no questions from this witness.

Before calling the next witness perhaps I might have a moment to file a document.

(4422) The Court: What do you desire to do?

Mr. Gladstein: I desire to file an affidavit. I have no further questions.

The Court: Perhaps I may have.

Mr. Gladstein: I am sorry. I can wait.

The Court: No, I will listen to you.

Mr. Gladstein: This is an affidavit in opposition to the motion relating to the grand jury panel. It is an affidavit signed by the witness Doxey A. Wilkerson to which are attached analyses, both occupational and geographical of the grand jury panels commencing with the first one in the year 1945, the panel of January 2nd, and ending with the panel for December 16, 1948, and thus covering all of the years 1945, 1946, 1947 and 1948.

I may say briefly about it, your Honor, that it shows that in the year 1945 an analysis of all of the grand jury panels chosen—

The Court: You do not need to describe its contents. You just offer it.

Mr. Gladstein: It is submitted, your Honor, in opposition to Mr. McGohey's motion and in support of our own motion and I ask that it be received and filed.

*Irving Shipenberg—for Government on Challenge—By
the Court*

The Court: You mean in support of your challenge?

Mr. Gladstein: In support of the challenge (4423) and in support of the motion—

The Court: I won't take affidavits in support of the challenge, if it is supposed to be proof.

Mr. Gladstein: It is, in addition, an affidavit in opposition to Mr. McGohey's motion.

The Court: So far as it relates to Mr. McGohey's motion, I will receive it.

Mr. Isserman: And to the extent that the Court is considering, as to the challenge, or reconsidering, it is filed in connection with the motion to reconsider.

The Court: To reconsider what?

Mr. Isserman: To reconsider the former ruling.

The Court: I will receive it in support of that motion as well; that is on it.

Mr. Gladstein: May it be admitted, and I will hand a copy to Mr. McGohey.

The Court: That may be handed to the Court and serve a copy on Mr. McGohey.

Mr. Gladstein: Let the record show I am serving Mr. McGohey with a correct copy.

By the Court:

Q. Mr. Shipenberg, do you see these groups of jurors every day? A. Yes, sir.

Q. Do you commonly see Negroes there? A. Oh, yes.

Q. Every day? A. Whoever is on the panel. Some days (4424) we have some of the panels excused from time to time and not all are there.

Q. From day to day it is a common experience that you see Negroes there? A. Yes, sir.

Mr. Crockett: I wonder if the witness can speak a little louder.

The Court: The reporter will read the question and answer.

(Question and answer read.)

Irving Shipenberg—for Government on Challenge—Cross

The Court: That is all.

(Witness excused.)

Mr. Gladstein: Will you recall the witness back in view of the Court's questions?

The Court: Yes. Ask him to come back just a second.

IRVING SHIPENBERG, resumed the stand.

Cross examination by Mr. Gladstein:

Q. Have you ever paid any particular attention to what the racial position was of the people in those rooms? A. No. I never did. I had no reason to.

Q. You never made any particular note of how many of one racial creed or another? A. That is right, no, sir.

Q. And you are unable to say how many Negroes you have seen or how often, isn't that so? A. That is right.

(4425) Mr. Gladstein: That is all.

The Court: Thank you, Mr. Shipenberg.

(Witness excused.)

Mr. Gordon: The Government has no further witnesses at this time, your Honor.

The Court: Well, I am convinced from what I have heard that this challenge is based largely upon speculation, surmise and perhaps suspicion, and with a deliberate endeavor to in some way or other get the 90 days' extension of time that was sought at the beginning of the hearing of this challenge.

I thought from time to time that perhaps the defendants had something. The proof that I have heard the last few days, particularly the cross-examination which has very largely emphasized the facts to be just the opposite to what was claimed by the defendants throughout, has convinced me that it is my duty to put a termination to this preliminary proceeding, and so I now direct that the defendants

Colloquy of Court and Counsel

next Tuesday. I shall not count in there any time that is taken by the Government in cross-examination and I shall keep track of that time and add to the period whatever the aggregate of that time may be.

I shall hear no oral arguments at the termination (4426) of the proceeding. Anyone who cares to submit a memorandum or briefs must have them in my hands by the close of the session Tuesday afternoon next. It is then my purpose to adjourn for the balance of the week, whether that be Tuesday afternoon or some time Wednesday, or whenever it may be, unless for some reason I see occasion to extend that time, and to use the interval by giving consideration to the matter so as to prepare a short opinion.

The trial itself will commence a week from next Monday. It will be assumed that each of the defendants, their counsel, takes exception to this ruling on all possible grounds. I will hear no extended argument on it. I will assume that each protests and takes an exception, and they will now proceed with their evidence.

When this thing started I could not have believed it possible that reputable members of the bar would make such a serious charge as was made here without something to substantiate it. It seems utterly incredible to me that such a charge should have been made in view of the proof we have listened to here for these six weeks.

Mr. Isserman: If the Court please, first I would like to take an exception to your Honor's last statement.

(4427) Mr. Crockett: If the Court please, I merely wanted to get clearly in mind what it is the Court has decided.

The Court: You better just read the minutes which will be written up later and you may have them over the week end.

Mr. Crockett: But I recall the Court's statement that the trial would begin the next Monday.

Colloquy of Court and Counsel

Mr. McGohey: A week from Monday.

The Court: Unless something comes up, and I cannot imagine what it would be in view of the proof which has demonstrated in a most conclusive manner there is nothing in the challenge. If something should come out in the next couple of days to change my mind about that or alter this preliminary conclusion, then the trial will not go on, but it looks to me now as though the trial was going to start a week from Monday.

Mr. Crockett: I only wondered if the Court was making a ruling now that the challenge had not been proven or had not been established.

The Court: Up to this time it has definitely been disproven.

Mr. Crockett: I only wondered if the Court was making a ruling now to the effect that even after we put in what evidence we can put in in the limited time (4428) allotted the Court will nevertheless be of the opinion the challenge will not be established and therefore we will have to be tried on this indictment Monday a week.

The Court: We will see what else comes in. I will decide when the evidence is closed.

Mr. Gladstein: I do not desire to argue at length, but since we have not but a few minutes before the closing hour of today's session, and since the Government has rested as of this time, I don't want the record, by any silence on my part, to indicate the slightest possibility of acquiescence in the statements your Honor has made, and I submit on the record that they are unwarranted and they are not in accordance with judicial process and they represent a poor judgment on the Court's part that is inconsistent with judicial and judicious appraisal of the record.

The Court: There must be some terminal facilities.

Will you proceed with the rest of your proof right now.

Colloquy of Court and Counsel

Mr. Isserman: That is a direction, I take it, and I cannot state any objection to it at this time.

The Court: You know the rule that when a ruling is made you are deemed to have accepted it, but we have had so much protesting here, at such length that I finally had to put a stop to it.

(4429) Mr. Isserman: If the Court please, as to proceeding we have a number of witnesses which were subject to an hour's call, and we tried to find out yesterday as to just when, or get some idea when, the Government's case would terminate and we could not find out.

The Court: It is just like any other case; when the other side rests it is your turn to go ahead.

Mr. Isserman: At this point I would ask that we recess in view of the fact that witnesses we have on call would take about a half to three-quarters of an hour to get here.

The Court: Isn't it so, Mr. Isserman, that you have a variety of subpoenas that have been served all around the building on various people? Why don't you try to get some of them here?

Mr. Isserman: I don't know of any subpoenas served on people in this building except the clerk.

Mr. Gladstein: We have Mr. Connell subpoenaed. Call Mr. Connell.

The Court: You may suit yourselves. I have placed the limitation here, and I am not going to go and take an adjournment now until half past four. I desire to continue this afternoon, but if you cannot do that I shall not preclude you from going on on Monday with (4430) such witnesses as you choose to produce.

Mr. Isserman: I do not understand.

The Court: You apparently are telling me you have no one here to put on the stand now. Am I right?

Mr. Isserman: I am telling your Honor the reason for it, because when the Court changed the order of proof we had a number of witnesses sitting in the witness room and have had them sitting in the

Colloquy of Court and Counsel

witness room from time to time, but as a result of that we had them subject to an hour's call in order not to take them too long and too continuously away from their business.

The Court: I think you could very readily have had one or two handy. You were going to call all the Judges of this court. Perhaps you can have one of them now.

Mr. Isserman: I have not said anything about calling any Judges and there are no Judges under subpoena as far as I know.

The Court: Maybe I am wrong in my recollection that not so very long ago you were all telling me that all the Judges were going to be witnesses, including myself.

Mr. Isserman: I have no such recollection, your Honor. I remember my statement was that it would depend on the development of the evidence, and I call your Honor's attention to the state of the record on that point.

(4430-A) The Court: All right. As long as you are not ready to go on now we will adjourn until Monday morning at 10.30.

(Thereupon, at 3.55 p.m. court adjourned until Monday, February 28, 1949, at 10.30 a.m.)

(4431)

New York, February 28, 1949;
10.30 o'clock a. m.

The Court: I have a situation as to a witness here named Lewerth, or how is that spelled, Mr. Gladstein, do you know? It is L-e-w-i-r-t-h I think.

Mr. Crockett: L-e-w-e-r-t-h.

The Court: He is here in a very serious condition, according to his physician's certificate and with a nurse, and has been requesting me to let him depart immediately, but I felt I ought to take no action except in open court with everybody hearing just what went on.

Colloquy of Court and Counsel

Now perhaps it is better to have the nurse brought in and have her say whatever is to be said about his condition, unless you suggest some other course.

Mr. Crockett: I wonder if I might be excused to go out and talk to the witness?

The Court: Yes, you may do that.

There is another man named George W. Adams of Gilbert, Connecticut, who is evidently a very elderly gentleman and also under the doctor's care for a serious (4432) heart ailment, and some telephone information has been received from him to the effect that he cannot come. I suppose that presents not a very serious problem, but whatever it may be I desire to advise counsel for both sides of these communications. What is your pleasure, Mr. Isserman, about Mr. Adams?

Mr. Isserman: I believe Mr. Adams to be a necessary witness. His condition, of course, is something that merits consideration, and the question would be whether if he could not appear, we could take some depositions in respect to his testimony. He is not here now, as I understand it?

The Court: No, he is not.

Mr. Isserman: I suggest that the matter be—

The Court: It was represented to me he would not be here and he could not come.

Mr. Isserman: I would suggest the matter be carried until perhaps later in the day when we might be able to make some statement in connection with it.

The Court: Is it possible in the interval you might consult with Mr. McGohey or some of his assistants and see whether what you desire to prove by Mr. Adams might possibly be conceded or it might be stipulated if he were here he would testify to this or say something to that effect. See what you can (4433) do about that in the recess period today.

Mr. McGohey, is it all right with you if Mr. Isserman goes on with another witness?

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

Mr. McGohey: Oh yes; I will go on with Mr. Crockett, by all means. (Leaving the courtroom.)

The Court: All right.

Mr. Isserman: I would like to call Mrs. Ruth St. Clair.

RUTH M. ST. CLAIR, called as a witness on behalf of the defendants on the challenge, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Isserman:

Q. Mrs. St. Clair, by whom are you employed? A. The Federal Grand Jury Association.

Q. And in what capacity are you employed? A. Executive secretary.

Q. How long have you been executive secretary of that Association? A. Well, I have been employed by the Association, it will be 17 years in June, but I have been executive secretary for the last seven years.

Q. So that your date of employment commences at about what time? A. On June 4, 1932.

Q. Now prior to your employment as executive secretary what position did you hold? A. I was married.

The Court: I did not hear that.
(4434) (Answer read.)

Q. Did you say you were married? A. Yes, I am married.

Q. But my question was, prior to your appointment as executive secretary of the Association. A. I was a housewife.

Q. Oh, that is in 1931 you are talking about? A. Yes.

Q. Well, I am talking about the period when you became executive secretary of the Association, and referring to a period prior to that time, before that time, before you became executive secretary.

The Court: Well, I think the effect of her testimony is that prior to June 4, 1932, she was a house-

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

wife, and beginning then and thereafter she worked for the Federal Grand Jury Association.

Mr. Isserman: That is true.

The Court: Is that right?

The Witness: That is right.

Q. And you have also said you have been executive secretary of the Association since when—1946? A. For seven years.

Q. For seven years you have been executive secretary? A. Yes.

Q. That is, since 1941? A. Yes.

The Court: What you mean to ask her is before (4435) she became executive secretary what were her duties with the Association.

Mr. Isserman: Yes.

The Witness: Assistant to the secretary.

Q. And as assistant to the secretary—well, when you started working with the Association in 1932, was that as assistant to the secretary? A. No; it was just clerical work, stenographic work.

Q. And how long did you continue to do stenographic work before you became an assistant to the secretary? A. About 1937.

Q. And who was the secretary at that time? A. Well, Mr. Eugene J. Cantin was secretary up until 1936.

The Court: You better spell that name for the reporter.

The Witness: Eugene J. C-a-n-t-i-n.

Q. Did you work with Mr. Cantin while he was secretary even though you did not have the title of assistant to the secretary? A. That is correct.

Q. And you took letters from Mr. Cantin? A. Yes.

Q. These letters were letters in connection with the Federal Grand Jury Association? A. Yes.

Q. And did you perform other duties in connection with the Federal Grand Jury Association in the period before you became officially assistant to the secretary of the

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

(4436) Association? A. Duties outside of the Association?

Q. No, in the Association; what did you do in the early period before you became assistant to the secretary? A. Clerical work, stenographic work.

Q. What kind of clerical work, when you say "clerical"? A. Clerical work, keeping records, writing letters, keeping the minutes of the executive committee meetings and other committee meetings.

Q. Did you attend executive committee meetings? A. Yes.

Q. These records which you kept, were they concerned with lists of names to be submitted for grand jury service and petit jury service? A. You mean at the beginning of my period with the Association?

Q. Yes. A. No, they did not submit long, large lists at that time.

Q. Well, my question was whether the records you worked on concerned themselves with submitting the names of jurors for grand and petit juries to the clerk of this court? A. Not at that time. We submitted only a few names.

Q. Well, what were the records that you worked on in that period? A. The history cards of the grand jurors.

Q. And when you started working for the Association in 1931 were there such history cards? A. I said 1932.

(4437) Q. In 1932 were there such history cards in the file? A. Yes, there was a complete duplicate file in the Association.

Q. Of what? A. Of the history cards of the grand jurors.

Q. And what was your work in connection with the complete history cards of the grand jurors? A. Keeping the cards up to date as to address, and those that were taken off and those that were added to.

Q. And did you from time to time get information as to those who were taken off the list of grand jurors? A. At that time I did.

Q. And did you get notice from time to time of those whose addresses had changed? A. No. I got those through our Federal Juror—mailing of our Federal Juror. We

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

have return postage, paid return postage on that and in that way I corrected the addresses.

Q. And from whom did you receive the information as to the names which were taken off the list? A. From the jury clerk.

Q. Of this court? A. Yes.

Q. And who was that, if you recall? A. Well, when we came with the Association it was Mr. Tallman, and later on after Mr. Tallman died, Mr. Kellogg, and then in 1940 Mr. McKenzie, but Mr. McKenzie did not give me any change of addresses. All he gave me was history cards.

(4438) Q. He gave you the history cards? A. History cards with new additions to the grand jury panel.

Q. And did he also give you the names of those who were marked off? A. No.

Q. Well, how do you—

The Court: The answer was "No"?

The Witness: No.

Q. How do you keep your history cards up to date at this time? A. Through my mailing lists.

Q. Now isn't it true that membership in your Association is limited to those on the active grand jury list of this court? Isn't it true? A. Well, former grand jurors can become members.

Q. But isn't it true that—

Mr. Gordon: Objection, your Honor.

The Court: Do you want the answer stricken?

Mr. Gordon: Well, further questions arguing with his own witness.

The Court: We will wait until there is another question. This particular one appears to be disposed of.

Mr. Gordon: I am sorry.

The Court: Well, I thought so. I do not want to curtail you but it seemed to me that was—

Mr. Gordon: I anticipated.

The Court: —more of a motion to strike what she (4439) had said when she concluded her answer, but now I see that is not your motion and I will let the matter stand as it is.

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

Q. When you say "former grand jurors" do you not mean members who were still on the active grand jury list of this court?

Mr. Gordon: Objection.

The Court: Sustained.

Mr. Isserman: If the Court please, I would like to note for the record that this witness, as an official of the Grand Jury Association which has been charged with assisting the clerk in—

The Court: I do not desire to hear argument, Mr. Isserman.

Mr. Isserman: I would like to state for this record that this witness is a hostile witness.

The Court: You may ask a proper question if you desire to formulate it.

Mr. Isserman: I would like to state for the record that the witness is a hostile witness and I ask to be given the latitude in such cases, and if the Court permits I will state the basis for my statement.

Mr. Gordon: I move to strike that out, your Honor. There is no indication that this witness is hostile.

(4440) The Court: There is no indication that this witness is a hostile witness, and besides, I don't desire argument on all these trivial points of evidence. You asked a question that I deemed improper and I sustained the objection to it. If you reframe the question you will doubtless be able to get the information desired.

Q. The Grand Jury Association has a constitution and by-laws, does it not? A. Yes.

Q. Do you have a copy of the constitution and by-laws with you? A. Yes.

Q. May I have it, please?

Mr. Gordon: That is objected to your Honor, as having nothing to do with the challenge.

The Court: What is the bearing of the constitution and by-laws, Mr. Isserman?

Mr. Isserman: The information we have as to the constitution and by-laws—

The Court: It is a question of what they did, I take it. I will sustain the objection to that.

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

Mr. Isserman: Well, your Honor asked me a question. Your Honor asked me for the basis for my question.

The Court: Yes.

Mr. Isserman: I haven't given it to you.

The Court: Well, go ahead and give it to me.

Mr. Isserman: The by-laws indicate that the (4440-A) objects of the Association concerned themselves with the grand jury system of this court and indicate that membership in the Association was limited to the grand jurors who had served in this court and who remained on the active list of qualified jurors, subject to call for service in this court.

(4441) Q. And who remained on the active list of qualified grand jurors subject to call for service in this court?

Mr. Gordon: I object.

The Court: I will sustain the objection.

The Witness: I would be very glad to answer.

The Court: I know, but you just answer the questions.

Q. Do you know the object of the Federal Grand Jury Association? A. Yes.

Mr. Gordon: Objection.

The Court: Sustained.

Q. Does the Constitution and by-laws of the Federal Grand Jury Association contain the objects of the Association? A. Yes.

Q. Do those objects deal with the Grand Jury system of this court? A. Yes.

Q. Have you a copy of the Constitution and by-laws with you? A. Yes.

Q. May I see it? A. (Handed.)

Mr. Gordon: Your Honor, that is the objection I had before.

The Court: Yes, Mrs. St. Clair, you do what I

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

tell you now. I cannot see that the constitution and by-laws have anything to do with it. What they did I will take it.

(4442) Mr. Gladstein: Has your Honor forgotten the evidence has established abundantly the Association supplied the jurors in large numbers who became members of the jury system of this court?

Mr. Gordon: I move to strike it out. It is not sustained by the evidence.

The Court: I think there is evidence that various lists were submitted to the clerk by the Federal Grand Jury Association. It is my ruling that what the constitution and by-laws provide is not material. It is material to show what was done in connection with the furnishing of names or whatever else was done but I will not allow further proof as to the constitution and by-laws. I sustain the Government's objection.

Mr. Isserman: If the Court please, I would like to have the constitution and by-laws marked for identification as I desire to offer them in evidence.

The Court: You may do that.

(Marked Defendants' Challenge Exhibit 294 for identification.)

Q. Is it the practice of your association to send a handbook to federal grand jurors, to every person called for grand jury service in this court? A. Yes.

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

(4443) (Marked Defendants' Challenge Exhibit 295 for identification.)

Q. Will you tell me how long this practice of sending such a handbook has continued? A. Since the inception of the association.

Q. I show you Challenge Exhibit 295 for identification and ask if you know that is the handbook? A. Yes.

Colloquy of Court and Counsel

The Court: By the way, Mr. Crockett, was that witness excused?

Mr. Crockett: He was, your Honor.

Mr. Isserman: If the Court please, I would like to offer that handbook, Challenge Exhibit 295, in evidence as containing evidence of the actions and activities and objectives of this association in connection with the selection of grand jurors for this court.

Mr. Gordon: If it is offered for that purpose I object to it. The Federal Grand Jury Association has absolutely nothing whatever to do with the selection of grand jurors. The testimony is they have furnished names of prospective jurors, some marked "grand" and some "petit" and other markings, but the selection they do not take care of and the book has nothing to do with that. If it is offered as something which they furnished to grand jurors, which the grand jurors had, then I have no objection.

(4444) Mr. Isserman: I will accept that.

Mr. Gordon: I don't think it is relevant to the challenge but—

The Court: He has accepted your suggestion, and with that understanding the document may be marked in evidence.

Mr. Isserman: Of course, that includes recognition of the contents thereof.

The Court: I conceive the general purpose of offering a document is because of the contents and not just the cover, so I am going to look inside and see what I find, if you will pause just a moment.

Well, this has those same by-laws that I excluded.

Mr. Gordon: I did not know that, your Honor.

The Court: I think I will change my ruling and exclude this document.

Mr. McGohey: If the Court please, may I make a statement and not an argument?

The Court: Yes.

Mr. McGohey: But in view of the limitation your Honor put on the remainder of the proof it is

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

my purpose not to object to anything unless it is so clearly irrelevant that it is just cluttering up the record. I do not know that this thing tends to prove anything in connection with this charge and that is the only reason (4445) we said we had no objection. I don't think it helps and it serves only to make the appearance of not keeping anything out.

The Court: I am not favorably impressed here after I had just ruled out a document and now it is put in again under the guise of calling it something different, and I will reject the paper.

Mr. Isserman: If the Court please, the document contains some other matters other than the constitution and by-laws.

The Court: It evidently was a booklet given to persons after their selection as grand jurors for the purpose of guiding them in the performance of their duties and I cannot see it has any bearing on their selection. If it contains, as it appears to do, occasional references to the method of selection, such proof is incompetent and not admissible anyway and I will reject the document.

Q. Now, Mrs. St. Clair, by what method do you now keep accurate your file of history cards of jurors qualified to serve in this court? A. You mean how I keep them up to date?

Q. Yes. A. As I said, the removal of names is effected by our mailing list of our publications and I receive additions for it from Mr. McKenzie's office, the jury (4446) clerk's office.

Q. Do you keep on those cards a record of the service of each juror? A. Yes.

Q. Where do you get that from? A. From the list of the grand juror panel the first Tuesday of each month.

Q. Do you keep on those cards the time the jurors are excused from service? A. No.

Q. If a juror ceases to be qualified, referring now to a grand juror, his card no longer appears in the active list of grand jurors in this court. How do you determine that fact from your mailing list? A. I do not know that.

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

Q. Isn't it a fact that you check, to determine whether or not jurors are removed for one cause or another, check with somebody in the clerk's office of this court? A. I have not checked for ten years now.

Q. Prior to that time you did check? A. No.

Q. What did you do prior to the ten years?

Mr. Gordon: Objection.

The Court: Sustained.

Q. In connection with your work did you have any duties to perform in connection with the Federal Jurors? A. Yes.

Q. And what is the Federal Jurors? A. It is the official organ of the Association.

(4447) Q. How often is that published? A. Well, they published it prior to my coming. I believe it started in 1929, according to the record. The first issue came out in that year.

Q. How often is it published? A. As often as we have the appropriation.

Q. Published about once a year or so? A. Yes. It has recently been once a year.

Q. Did you assist in the publication of the Federal Jurors? A. Yes, I collect the material.

Q. Do you assist in the preparation of the annual reports of the president of the Association which appear in it? A. I produce the material from which he writes the reports.

Q. Where do you produce that material from? A. I get it from the past activities of the year and pick out the more or less important and give him a resume of those activities and the president writes his report from that.

Q. And you have personal knowledge of those activities, do you not? A. Yes, indeed.

Q. After the report is in finally approved form do you make sure that conforms to the activities of the Association the past year? A. Yes.

(4448) Q. And you attend the various minutes of the Governing Board of the Association? A. Yes, I write the minutes.

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

Q. What is the governing body of the Association? A. The Executive Committee.

Q. Is there a committee called a Panel Committee? A. Yes, sir.

Q. What is the function of the panel committee?

Mr. Gordon: Objection.

The Court: Sustained.

Q. Does the panel committee concern itself with the grand jurors or nominations for grand jurors for service in this court?

Mr. Gordon: Same objection.

The Court: Sustained. Does that panel committee get up a list to be submitted to the clerk?

The Witness: No.

Q. Does the panel committee have any activities in connection with the grand jury panels of this court?

Mr. Gordon: Objection.

The Court: Sustained.

Q. Did you attend meetings of the panel committee? A. Yes, some.

Q. What is discussed at those meetings?

Mr. Gordon: Objection.

(4449) The Court: Sustained.

Q. Will you give me the names of the members of the current panel committee of your Association? A. There is only one member on that committee. The committee is not formed for 1949 yet.

Q. Who was the one member on the committee now? A. Mr. Ashton Dunn.

Q. How do you spell his last name? A. D-u-n-n.

Q. Who was on the 1948 committee? A. I think that committee was open. It was not functioning in 1948.

Q. It was not? A. It was not functioning in 1948.

Q. Was there a committee in 1947? A. Yes.

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

Q. Who was on that committee? A. Mr. Adams.

Q. Who was on that with Mr. Adams— A. Mr. George W. Adams.

Q. And who else? A. Well, may I look at my list? I cannot remember.

Q. Yes, please. A. For 1947?

Q. Yes, please. A. That was open, and 1948 was open.

Q. By "open" you mean just one member? A. They were not functioning. We had no panel committee in those years.

Q. Did you have one in 1946? A. Yes. Mr. George W. Adams was chairman.

Q. Who were the members of that committee? (4450)
A. No other—

Q. He was the sole chairman and sole member of that committee? A. Yes.

Q. When did you start working on the Federal Juror in the manner you have described? A. Not until later. I had very little to do with it up until 1945.

Q. Did you before 1945—you were then assistant to the secretary in 1945? A. No, I was executive secretary in 1945.

Q. Prior to that time as assistant to the secretary did you work on the annual reports of the presidents of the Association? A. Yes. I presented material to him.

Q. When did that start? A. The work on the annual report?

Q. Yes. A. Well, I always presented a resume of the activities of the Association to the president from which he wrote his reports. I always did that.

Q. That was from the first time you started? A. As assistant to the secretary and as executive secretary.

Q. Did you at my request bring in copies of the Federal Juror as published by the Association? A. Yes, I brought some.

Q. And do you have a copy with you of the Federal (4451) Juror for February 1939? A. Yes.

Q. Would you turn to that, please? A. Yes.

Q. Does the annual report of the president, William S. Langford of the Association appear in the Federal Juror for that time? A. Yes.

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

Q. Is that a report for which you prepared the summary? A. I prepared the summary, yes.

Q. From your own knowledge of the activities of the Association? A. That is correct.

Mr. Isserman: I would like to have that Federal Juror marked for identification.

(Marked Defendants' Challenge Exhibit 296 for identification.)

Q. That report contains a summary of the work of the executive committee of your association, does it not, calling your attention to the— A. The executive committee and other committees.

Q. Calling your attention specifically to the lower portion of the second column and running into the third.

The Court: Have you read that?

The Witness: Yes.

(4452) Q. Now that section to which I called your attention deals with the clerk of this court, does it not, and the work of your executive committee with the work of this court? A. Yes.

Mr. Isserman: I would like to offer it in evidence.

Mr. Gordon: That is objected to, your Honor.

The Court: Sustained.

Mr. Gordon: Irrelevant and hearsay.

The Court: It has been marked for identification, has it?

The Clerk: It has, your Honor.

The Court: Let me see it.

(Handed by the clerk to the Court.)

Q. Now have you The Federal Juror for 1940? A. (Handing.)

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

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

(Marked Defendants' Challenge Exhibit 297 for identification.)

The Court: What is the date of this?

The Clerk: January 1940.

The Court: And it is marked 297?

The Clerk: 297.

The Court: For identification; go ahead.

(4453-4) Q. And does that contain on page 2 the report of the president, William S. Langford of the Association given at the United States Court House, at a meeting of the Association on January 18, 1940 (handing)?

A. (Examining.)

Q. Which one are you looking at? A. The January 1940.

Q. Well, July 1940 is the one I asked. Have you got the one for July 1940? A. Yes.

The Court: What happened to the January 1940 one?

Mr. Isserman: I will take a look at that.

The Court: That is the one that was marked 297 for identification.

Mr. Isserman: I would like to withdraw that one and substitute the next, your Honor. That was marked in error.

Mr. Gordon: Well, let us just continue on with the numbers.

The Court: Yes, I think it is easier to continue.

Q. Have you the one for July 1940? A. Yes (handing).

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

(Marked Defendants' Challenge Exhibit 298 for identification.)

Q. And does that Federal Juror, Challenge Exhibit 298, (4455) contain on page 2 the report of William S. Langford, the president? A. Yes.

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

Q. Given at the January 18, 1940 meeting at the U. S. Court House? A. Yes.

Q. And does that report contain a summary of the work of the panel committee for that year—the second column? A. Yes.

Q. Does that deal with the selection of grand jurors for this court? A. No.

Q. Does it deal with cooperation with the clerk of this court? A. Yes.

Q. And that report was drawn from a summary prepared by you of the activities of the Association, is that correct? A. Yes.

Q. And of matters within your knowledge? A. Yes.

The Court: What do you mean "matters within your knowledge"? People say very often that they know this and that they know that, when it is things that other people told them.

You did not do all these things personally, did you?

The Witness: Well, I cooperated with the panel committee.

The Court: You did some of the things and others you didn't.

(4456) The Witness: I did some of the things that I was instructed to.

Q. And you sat in at the meetings, did you not? A. Executive committee or the panel?

Q. Meetings of all committees. A. Not meetings of all committees; executive committee.

Q. And at that meeting, the panel committee reported? A. The panel committee had met outside of the office at luncheon at which I was not present, and they made reports.

Q. And for whom did the panel committee make reports, do you know?

Mr. Gordon: Objection.

The Court: Sustained. That question "do you know" is one of the mysteries of the law. You ask

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

a witness, does he know or does she know, and 99 times out of 100 they say "Yes" when all they mean is that they heard somebody else say that or heard somebody else make a report to that effect, or they do not know it at all.

Q. Didn't you arrange meetings of the panel committee at the request of the chairman? A. No.

Mr. Crockett: If the Court please, Mr. McGohey and I have been outside on one occasion, in connection with one witness whose name, your Honor may recall, is Mr. Philip Lewerth, and we ascertained that he had never (4457) received any notice to come and qualify for jury duty. Now he is one of the nine persons as to whom I believe one of the clerks—either Mr. McKenzie or Mr. Borman—testified that there were nine persons whose names were checked off an Assembly District up in the Bronx—I think your Honor will remember that. In order to establish that no notices were sent to any of those nine persons, we have subpoenaed them to come down. Mr. Lewerth is a very elderly man, accompanied by a nurse, and since he was willing to state to both Mr. McGohey and myself that he never received any notice, we are willing that he should be excused and we will make such a notation of record.

The Court: Is that right, Mr. McGohey?

Mr. McGohey: Yes. I am agreeable to stipulating that that gentleman, if called, would, if questioned, say that he had never received a notice, but in connection with that I call to your Honor's attention that there was no claim made by the Government, nor by the clerk nor by anybody else at the time those nine names were read off the list by Mr. Gordon, that they had been called; that the proof at the time was that here was a list of registered voters where nine names were checked off in the Assembly District. It was not claimed by the Government that those people had been brought in but

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

(4458) that they were persons whose names had been selected for qualification notices to be prepared for them.

The Court: Very good.

Mr. McGohey: But, in any event, so far as the witness is concerned, the stipulation is that if called he would say that he did not get a notice.

The Court: Very well, Mr. Crockett.

Mr. McGohey: I understand that Mr. Crockett has another witness.

Mr. Crockett: Yes. There is one other witness whose name is Rose Katz, 1113 Finley, who I understand is approximately 74 years of age, and if called to the stand would also testify that she did not receive any notice.

The Court: Will you so stipulate?

Mr. McGohey: Yes. I do not think it is necessary to go out and see the witness. I will take Mr. Crockett's word for that, that she would so testify.

Mr. Crockett: In that case I will excuse Mrs. Katz.

Mr. McGohey: That is agreeable.

The Court: Is Mr. Lewerth also around 74 or thereabouts?

Mr. McGohey: I don't know his age. He appears quite elderly, your Honor. He is suffering from some (4459) condition which requires constant care of a nurse, and he also told me that he was almost totally blind.

The Court: All right.

By Mr. Isserman:

Q. Now, Mrs. St. Clair, referring to the report of the panel committee as contained in the exhibit before you, didn't you, in the course of the year for which the report is covered, the period which the report covers, have occasion to meet with the clerk of this court and his assistants?

A. The clerk of the court?

Q. Yes, the clerk of this court. A. Well, I have seen him on occasions when I came down to the United States

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

Court House, but I had no conference with him, if that is what you mean.

Q. And didn't you submit on behalf of the Association lists to the clerk of this court in 1940? A. Yes.

Q. And some of those lists were marked "Grand Jury Recommendations for Grand Jury"? A. They were lists submitted for consideration, yes, lists of names.

Q. And they contained recommendations for grand jury in some cases and petit jury in other cases? A. No, there were no recommendations made. The lists were simply names of people we submitted for consideration by those—

Q. Some were submitted for consideration for grand (4460) jury and some were submitted for consideration for petit jury, is that correct? A. We had specified grand jury, and if they used them for petit jury, that was quite all right.

Q. And weren't there some lists which you did not specify as to whether they were grand or petit? A. Yes.

Mr. Gladstein: Will your Honor permit an interruption at this moment, for me to observe on the record with respect to the statement made by Mr. McGohey, agreed to by Mr. Crockett, regarding the nine people, one or more of whom has been excused, and it being stipulated that they would testify that they had never been called in to qualify as jurors, those—

The Court: That they never received any notices to appear to qualify.

Mr. Gladstein: Yes. Those names refer to Challenge Exhibit 183-B; the nine names appear on page 7 of that exhibit, and that is the exhibit concerning which Mr. Gordon called your Honor's attention to the fact that the names checked there were Jewish-sounding, such as Katz, Markowitz, Lewerth, and so forth.

The Court: Let me see that.

(Handed by Mr. Gladstein to the Court.)

Mr. Gordon: Your Honor, Mr. Gladstein does not (4461) exactly represent what is contained

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

in the record, but the reference to the record, which is more accurate, is found at page 3944.

Mr. Gladstein: What is the page?

Mr. Gordon: 3944.

The Court: Well, I think you had better pass on with the examination so that there may be no delay, and I will in the meantime glance at this list.

Mr. Gordon: Mr. Isserman had said that they had picked out those names, and I read the names, and that is all there was to that incident, your Honor. Nobody ever testified that they were sent for. The indication was merely that the notices had been prepared.

By Mr. Isserman:

Q. Now do you have—

Mr. Isserman: I withdraw that. I offer the exhibit in evidence.

Mr. Gordon: May I see it?

The Court: This is 298 for identification?

Mr. Isserman: That is right (handing to Mr. Gordon).

The Court: Is it 298 for identification?

Mr. Isserman: That is correct, your Honor.

Mr. Gordon: The same objection, your Honor.

The Court: Will you indicate to me what (4462) portion you have in mind here? Is it on the second page?

Mr. Isserman: It is on the second page.

The Court: About the panel committee, the middle line?

Mr. Isserman: The middle column referring to the panel committee.

Mr. Gordon: I haven't read that carefully, but the objection is on the ground that it is hearsay.

The Court: Yes; objection sustained.

Q. Would you now take out The Federal Jurors for February 1943, February 1944 and March 1945; also the

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

one for May 1941. Do you have that there? A. (Examining.)

Q. May I have those four, please? A. (Handing.)

Mr. Isserman: May they be marked as exhibits next in order, in this order?

The Court: Put them in this order if you will,
Mr. Borman: February 1943, February 1944, March
1945 and May 1941.

(Marked Defendants' Challenge Exhibits 299,
300, 301 and 302 for identification.)

Q. I call your attention to Challenge Exhibit 302 for identification and ask you if that contains the annual report of the president of the Association (handing)? A. Yes, it does.

Q. Who was the president at that time? A. Mr. Gardiner (4463) was president—Mr. William Howard Gardiner.

Q. I will call your attention to that portion of the president's report contained on page 5, in the second column, starting: "It is not merely by chance", and going through to the sub-title "Membership" on page 5, and ask you whether you prepared the resume of activities upon which this report is based? A. I prepared the resume of activities, yes.

Q. And you were present at the executive committee—at the meetings of the executive committee during that year, were you not? A. Yes.

Q. And you took minutes of those meetings? A. Yes.

Q. And from those minutes you drew material upon which this report is based, is that correct? A. Yes.

Q. And the report relates to the selection of persons for the grand jury panel, does it not? A. No.

Q. It relates to the cooperation of the committee in the selection of grand jury panels? A. No.

Q. Well, what does it relate to?

Mr. Gordon: Objection.

The Court: Sustained.

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

Q. Does the report relate to the cooperation between the executive committee and Mr. Follmer, the clerk of this court, and Mr. McKenzie, his assistant?

(4464) Mr. Gordon: I object, your Honor. That is not proper. Counsel knows that.

Mr. Isserman: I am trying to identify the matter in the report.

The Court: It is so simple. If all you desire is to do that, mark the part that you desire to have drawn to the Court's attention.

Mr. Isserman: Well, I have drawn attention to the two paragraphs which cover it, and in order to lay a basis for its introduction, I asked the witness to give me something of the substance of the report.

The Court: It is already sufficiently evident what you refer to, the description.

Mr. Isserman: All right.

Q. Now I call your attention to the report dated February 1943—I mean to The Federal Grand Jurors of that date. A. The Federal Juror is the title.

Q. Federal Juror of that date.

The Court: Which was the one you just referred to—May 1941?

Mr. Isserman: The first one, your Honor, was May 1941.

The Court: That is 302.

Mr. Isserman: Exhibit 302.

The Court: May I see it so that I may read the (4465) part that you have reference to?

The Witness: Here it is (handing).

Q. I call your attention to the one for February 1943—do you have that in front of you—which is Challenge Exhibit 299.

The Court: What was the part of Exhibit 302 that you had reference to, Mr. Isserman? Do you have your photostat there so that you can tell me what was the page?

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

Mr. Isserman: 302.

The Court: Was it the president's report?

Mr. Gordon: Can I help, your Honor?

Mr. Isserman: Yes, that was the president's report.

Mr. Gordon: I think he said page 5, column 2.

The Court: On page 5.

Mr. Isserman: Page 5, under the heading "President's Report."

The Court: Now let me just read it to myself.
(After examining.) Oh yes; all right.

Q. Now on Challenge Exhibit 299, on page 9, under the heading "Well Qualified," there is a reference to Mr. McKenzie leaving for the Army? A. Yes.

Q. Hadn't you in the course of that year met Mr. McKenzie a number of times? A. Well, that was prior to (4466) his leaving, February 1943.

Q. Yes, and before his leaving you had been in touch with Mr. McKenzie, had you not? A. Yes.

Q. You had submitted lists to Mr. McKenzie, had you not? A. Yes.

Q. And you had received duplicate history cards from Mr. McKenzie? A. That is correct.

Q. And you had met him in his office, had you not, on occasions? A. I came down about once a month, yes, at that time.

Q. And you knew Mr. McKenzie pretty well then, did you not?

Mr. Gordon: Objection.

The Court: Sustained.

Q. Now I call your attention to Exhibit 300, Challenge Exhibit 300 for identification, February 1944 (handing), and on page 2 of that report, that contains a report of the president for the preceding year, does it not? A. Yes.

Q. And who was the president in that year? A. Mr. Landers—Charles Scott Landers.

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

Q. And in that report in the third column the reference to the panel committee was based on material prepared by you, is that correct? A. (Examining.)

Q. That is on page 2 in the third column under the heading "Panel Committee." A. Yes, I see it.

(4467) Q. And that was prepared from material prepared by you from your knowledge of the Association's activities, is that correct?

A. No.

Mr. Gordon: Objection.

The Court: Sustained.

Q. What was the answer? A. No.

Mr. Gordon: Now just a moment, Mr. Isserman. When an objection is sustained I suggest that counsel not ask the witness to repeat the answer, your Honor.

The Court: Well, he did, and the answer was "No," so it doesn't make any difference. If you want it stricken out, however, I will strike it.

Q. Didn't you in the year 1943 have communication with Mr. Follmer, the clerk of this court, in respect to lists which you submitted to him? A. I don't recall any such conference.

Q. Did you have any communication with Mr. McKenzie when he returned from Army service? A. What part of 1943?

Q. After he returned in 1943 from service in the Army.
A. From April 1943?

Q. From April 1943 and thereafter? A. What was the question?

Q. Did you have communication with Mr. McKenzie? (4468) A. I came to the court once, about once a month.

Q. To get the cards? A. To get the cards.

Q. And didn't you come there also to leave lists of names for grand jury service? A. No.

Q. And petit jury service? A. No.

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

Q. Did you leave a list of names there?

The Court: We will take our recess now.

Q. Did you leave lists of names there? A. After April 1943?

The Court: Now Mr. Isserman—

A. No.

The Court: Well, all right.

(Short recess.)

By Mr. Isserman:

Q. May I call your attention to Challenge Exhibit 301 for identification, and ask you if it contains the president's report on page 2, given for the year ending October 31, 1944 (handing)? A. (Witness examines.)

Q. And to the section entitled "panel committee," on page 3, and I ask you if you prepared the material on which that report is based? A. You mean the entire president's report?

Q. Yes. A. Yes.

Mr. Isserman: If the Court please, I offer—

(4469) Q. Do you have the other three, please, the ones that were just marked?

(Witness hands to Mr. Isserman.)

The Court: Are those 299, 300 and 301?

Mr. Isserman: Yes, if the Court please. I would like to offer them in evidence at this time.

The Court: Have you sufficiently indicated the parts to which you wish to call attention?

Mr. Isserman: I have, your Honor.

Mr. Gordon: What happened to 302? Was that offered?

The Court: Well, 302 I think was already ruled out.

Mr. Isserman: I think that is correct.

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

Mr. Gordon: The same objection as to 299, 300 and 301, your Honor.

The Court: Objection sustained.

Q. Now, Mrs. St. Clair, was it your function as part of your duties to transmit lists of names of grand and petit jurors from the Association to the clerk of this court, to the jury clerk of this court? A. What particular years are you referring to?

Q. In the period of your employment there was a time when you did that, was there not? A. Yes.

(4470) Q. And when did that time commence? A. You mean large lists?

Q. I am talking about lists of names which were prepared by you on behalf of the Association.

The Court: Every list, even if it had two or three names on it.

A. In 1933 we submitted a list of about 200; between 200 and 300 names.

Q. Did you submit them in 1937, 1938 and 1939? A. Yes.

Q. And in the years after that did you submit lists of names? A. Up until the early part of 1943.

Q. Do you have duplicate lists in your office? A. Yes.

Q. Have you those with you? A. Yes.

Q. May I have them, please?

The Court: Is there an interval there between 1939 and the early part of 1943 when you did not submit lists?

The Witness: We submitted lists up until the spring of 1943, your Honor. After that we did not submit large lists.

The Court: What do you call a large list?

The Witness: Several hundred names.

(Witness produced a package.)

(4471) Q. While that package is being unwrapped, Mrs. St. Clair, may I ask you if, when those lists were de-

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

livered to the clerk, there were covering letters? A. As a rule there were no covering letters. I delivered them in person, but on some occasions I mailed them with a cover.

Q. And on some occasions— A. Well, there are a couple covering letters there.

Q. Are the letters together with the lists in the bundle before you? A. Yes.

Q. Where there are no such letters they do not appear in the bundle? A. All letters appear.

Mr. Gordon: I will stipulate that, your Honor, any—

The Court: What?

Mr. Gordon: Where there are no such letters they do not appear with the bundle or list.

Q. In other words, the fact that no letter appears with the list is an indication no letter was sent? A. That is correct.

Q. And you know of your own personal knowledge those lists were turned over to the jury clerk of this court by the Grand Jury Association? A. Yes.

The Court: I did not hear what you said, Mrs. St. Clair.

(4472) The Witness: I was just directing attention to the dates up to the present time.

The Court: They are arranged in chronological order according to dates?

The Witness: Yes, chronologically arranged, your Honor.

Q. Will you take the earliest bundle in point of time? A. (Handed.)

Q. I hand you now a bundle of lists, dated June 7, 1938, and ask you for what period this bundle covers the lists which were turned over by you to the jury clerk of this court? A. The summer of 1938.

Q. Now will you take the bundle next in time and tell us what period that covers?

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

Mr. Isserman: I would like to have this bundle marked for identification, please.

(Marked Defendants' Challenge Exhibit 303 for identification.)

A. 1939? (Handing.) 1940. They are all arranged chronologically.

Q. They are all arranged chronologically? A. Yes, up to the present time.

Q. And in the years 1948 and 1949 there are a series of carbon copies of letters? A. Yes, sir.

Q. Do they contain names of persons submitted for (4473) jury service as well? A. Yes, they are individual letters.

Q. Do those records in their totality comprise the lists of names submitted by the Grand Jury Association to the clerk of this court? A. Yes, I can give you—

Q. Do you want to finish? A. If you wanted that total number?

Q. What is the total of names? A. Submitted directly from the Association?

Q. Yes. A. 8,765.

Q. And that figure is taken from the records in your office, is that correct? A. Yes.

Mr. Isserman: I would like to offer these in evidence, your Honor.

Mr. Gordon: I object to them, your Honor. They are not relevant to the challenge. There is no showing that the clerk ever took any action with respect to them. As to the sources of names there were four days of cross-examination of one clerk and a day of the other clerk as to where they got their names from. In the absence of proof as to who these people are of the names that were actually used and that it has any effect on the method of selecting jurors I do not think it is relevant to the challenge and it is just going to clutter up the record with another mass of documents.

(4474) Mr. Isserman: May I reply?

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

Mr. Gordon: Just a moment.

Mr. Isserman: I thought you had finished.

Mr. Gordon: And many of them are repetitious or duplicates of lists which are already in.

The Court: I think I will allow them. They are names that were submitted for consideration and for whatever they may be worth I will take them.

Mr. Gladstein: I suggest the clerk simply, in view of the limitation placed on our time, go ahead and mark those at an appropriate moment.

The Court: If he counts the number of batches and gives each one a different number, and saves the numbers, that will suffice.

Mr. Gladstein: And I suggest that since they are tied together in batches that he use the letter in stamping each of the separate documents contained in each batch.

The Court: I don't think it is necessary to do that.

Mr. Gladstein: The string may break, Judge.

The Court: A lot of things may happen, but it seems to me it is not necessary to do that.

How many different bundles are there? The first bundle is for 1938 and then for 1939 and the third (4475) for 1940?

The Clerk: There are five bundles here, your Honor.

The Court: All right.

The Witness: May I say something?

The Court: Yes.

The Witness: I did not give the total number in that. There are about 9,000 the sources of which were available without checking them.

Q. But the names in those lists that you have there were 8,765? A. Submitted direct from the Association?

Q. Yes. A. And there were 9,000 that were placed before them and the names were not checked but made available so it is about 18,000—