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The Court: You have spent two days trying to do it and you didn't get anywhere.

Mr. Crockett: Your Honor is mistaken. We did not try to get agreement on the facts with reference to the taking of the documents from Mr. Winter. We were trying to agree on whether or not I should be permitted to withdraw my oral motion and submit the written motion.

Mr. Gladstein: And that is the thing that bothers me, your Honor, because, really, the important thing is not whether Mr. Crockett was able to agree with Mr. Gordon or somebody else on Mr. McGohey's staff as to whether permission should be granted or had been granted to file the papers. That is not the important thing. (T-863) The important thing is that a citizen of the United States had his personal property seized illegally in his absence, absolutely in his absence, and taken not in the course of an arrest. He had been arrested and removed from the car and they went down and they took this property from his automobile when he wasn't even there. Now—

The Court: Well—

Mr. Gladstein: Now, the important thing—

The Court: —you know, Mr. Gladstein—

Mr. Gladstein: Yes, your Honor?

The Court: —I have found these statements of counsel in this case—usually they are so reliable, but there have been such fantastic statements.

Mr. Gladstein: It is in a sworn affidavit, your Honor.

The Court: Well, I know, but bear in mind that the oral statements of counsel are no proof.

Mr. Gladstein: No, I am relying—

The Court: There have been so many things stated here that proved to be not so that I am getting a little bit skeptical about it but, however that may be—

Mr. Gladstein: Your Honor, I am relying on an affidavit that we are seeking to file.

The Court: I know, you are seeking to put that in by every means that you can devise.

(T-864) Mr. Gladstein: By the legal means that the law provides, namely, to file a document with the Court that is administering the processes of justice.

The Court: Don't try to raise your voice. It is not going to make a bit of difference whether you speak in

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an ordinary tone or whether you don't. So just bear in mind I heard what you said and I am going to let the matter rest as it is now. So we will come back to it later.

Mr. Gladstein: Tomorrow morning, your Honor said?

The Court: I will not guarantee that it will be tomorrow morning. I am rather inclined to think that I am going to insist upon going on and getting our jury before I take any further action in this, but I will think about it.

Mr. Gladstein: But may I call your Honor's attention to the statement Mr. Crockett made that in the state of the law it is essential that we have this motion considered by the Court and legally before the Court prior to the swearing in of the jury and the taking of evidence? I have no desire to continue this presentation—

The Court: I understand.

Mr. Gladstein: —at this time, so long as we understand, your Honor, that before the jury is sworn in, (T-865) we will have an opportunity to fully present this for your Honor's considered judgment.

The Court: I find every time one of you lawyers for the defense addresses me on this subject, the facts seem to be different. I listened intently when Mr. Crockett made the motion in the first place. I have denied that motion. And no sooner is it denied than we begin to hear different versions and new things come in.

Mr. Gladstein: What is new or different, that I have said, your Honor?

The Court: I heard him say nothing to the effect of what you have just told me, about how this seizure took place.

Mr. Crockett: I told you, your Honor—

The Court: However that may be—

Mr. Crockett: —and I think the record will bear me out, that the papers were taken from Mr. Winter's automobile. I did not purport to describe whether or not he was physically present at the time the papers were taken—at least, that is my recollection, that I did not, and it was for that reason that I felt your Honor might want a little more to know the facts. That is why I offered the affidavit by Mr. Winter, who is present.

The Court: What do you consider it is necessary for me to do, Mr. Crockett, to get you gentlemen to stop (T-866) talking about this subject and drop it now?

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Mr. Crockett: I am ready to stop talking about it right now.

The Court: Then let us do it and let us have the jury back.

Mr. Sacher: Before the jury comes, I have some additional affidavits that I would like to offer in support—

The Court: Some more motions or the same one?

Mr. Sacher: In support of the motion that I made yesterday to enlarge the number of challenges and to persuade the Court to desist from its interrogation of the jurors and to permit counsel to ask the questions directly.

The Court: I will consider those affidavits now.

Mr. Sacher: Shall I, for the record, identify them?

The Court: Aren't those the ones I refused to receive yesterday?

Mr. Sacher: One of these you did. That was the affidavit of Dr. Sargent.

The Court: Oh!

Mr. Sacher: No, but I have additional ones.

The Court: If it is the one I refused to receive yesterday, I won't receive it now. If it is on the matter of additional challenges, my mind is closed on that and I don't want to look upon any additional affidavits. (T-867) I have ruled as to the number of challenges and I will not receive any papers on that, and you may object and take exception to my refusal, but the papers will not be received.

Mr. Sacher: May I, however, identify the additional affidavits?

The Court: You may.

Mr. Sacher: The affidavit offered yesterday in support of this motion was by S. Stansfeld Sargent, who is associate professor of psychology at Barnard College, Columbia University; sworn to March 15, 1949.

The additional affidavits which are being submitted at this time, your Honor, are made—

Mr. McGohey: May I ask you, Mr. Sacher, do I have a copy of the Sargent affidavit that you have referred to?

Mr. Sacher: I don't know whether you have or not but, in the circumstances attending other affidavits or copies submitted in support of the motion, that haven't been entertained, I must respectfully decline to give you any copies unless the Court sees fit to direct me to give you a copy of that which it does not itself entertain or read.

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The Court: I make no such direction.

Mr. McGohey: No, I just wanted the record to be clear as to whether or not I am getting it, your Honor.

(T-868) Mr. Sacher: I am ready, however, to submit it for the archives of the court so it may remain in its—

The Court: No, I will not receive it.

Mr. Sacher: The additional affidavits are as follows, one by Dr. Alexander Wolf, who is assistant clinical professor of psychiatry at the New York Medical College and assistant attending psychiatrist at the Flower and Fifth Avenue Hospitals, sworn to March 15, 1949;

An affidavit by Dr. Joseph Furst, who is a psychiatrist;

An affidavit by Alexander Thomas, who is a visiting staff member of Bellevue Psychiatric Hospital, sworn to March 15, 1949.

By the way, Dr. Furst's affidavit is also sworn to March 15, 1949.

An affidavit by Stella Chess, sworn to March 15, 1949, Miss Chess being an instructor and assistant psychiatrist at New York Medical College and Flower and Fifth Avenue Hospitals;

And Dr. Emanuel K. Schwartz, sworn to March 16, 1949, Dr. Schwartz being a clinical psychologist.

The Court: The jurors may be brought back.

(All prospective jurors returned to the courtroom.)

(T-869) The Court: Now, I desire to make a statement for the benefit of the prospective jurors in the jury box and all the others as well. As to these absences from the room, please bear in mind that those little inconveniences come up, and please don't let them disturb you at all. We may frequently have to do that, and you will bear in mind my injunction at all times not to discuss the case at all among yourselves or with anyone else, or to read any newspapers or listen to the radio; and when you are excused, as you have been this morning, just go to the rooms provided for you and relax and take it easy until you are called back here again. And don't let that disturb you at all, because that happens often in trials, and it is just one of those things that comes in the course of judicial procedure, and don't let it bother you or disturb you at all.

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I request the prospective jurors to whom I have already addressed questions to listen carefully to all questions put, from time to time, to new prospective jurors as they are called into the jury box.

It is your sworn duty and obligation to make known to the Court any fact, circumstance, relationship or incident called for by any of the questions, whether or not such information supplements or qualifies answers previously given. This should not be a matter of any (T-870) embarrassment whatsoever.

I hand the two new prospective jurors list No. 1.

(Papers handed to the jurors by the clerk.)

The Court: I address myself to the new prospective jurors, Mr. Reynolds and Mr. Sauer: Do you know or have you had any dealings with any of the persons named on that list or members of their families?

Prospective Juror No. 7: No.

Prospective Juror No. 10: No.

(Papers handed to the jurors by the Clerk.)

The Court: I have handed you list No. 2. Do you know or have you had any dealings with any of the persons named on that list or members of their families?

Prospective Juror No. 7: No.

Prospective Juror No. 10: No, your Honor.

The Court: Do you know anyone employed in or connected with the office or staff of the United States Attorney for this district?

Prospective Juror No. 7: No.

Prospective Juror No. 10: No, your Honor.

The Court: Have you or any member of your family or personal friend been a party to any legal action or dispute with the United States or any of its officers, agents, or employees, or had any interest in such legal action? (T-871)

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No.

The Court: Do you have any prejudice or bias for or against any defendant by reason of the race of any defendant which would prevent you from keeping your mind fully open until all the evidence and the instructions of the Court have been completed?

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Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: Have you or any relative or close friend of yours ever been the subject of any investigation or accusation by any committee of Congress?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: Have you ever been employed by the Federal Government?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: Are you now seeking Government employment?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, sir.

The Court: Are any of your close relatives now or were they formerly employed by the Federal Government?

Prospective Juror No. 7: No, your Honor.

(T-872) Prospective Juror No. 10: I had a son in the Post Office.

The Court: Is he now in the Post Office?

Prospective Juror No. 10: No, he is not.

The Court: How long ago was that, that he ceased to be employed in the Post Office?

Prospective Juror No. 10: About four months ago.

The Court: What was his title in the Post Office?

Prospective Juror No. 10: He was a clerk.

The Court: How long was he employed there?

Prospective Juror No. 10: Employed there about one year.

The Court: About a year?

Prospective Juror No. 10: Yes, sir.

The Court: Do you think that because of that employment or any other circumstance connected with it you would have any bias or prejudice in this case one way or another?

Prospective Juror No. 10: None whatsoever.

The Court: Do you think it would affect your judgment at all in deciding the issues?

Prospective Juror No. 10: No, sir.

The Court: Have you or any member of your immediate family ever been associated with any agency,

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(T-873) either public or private, which was or is engaged in the detection of law violations?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: I have a son at the present time in the Police Department.

The Court: Police Department of the City of New York?

Prospective Juror No. 10: Yes, sir, and I also have a brother-in-law.

The Court: A brother-in-law who is in the Police Department?

Prospective Juror No. 10: And I have a nephew also.

The Court: Don't you think that perhaps your association with those relatives engaged in law enforcement might perhaps give you some bias in the case and might affect your judgment?

Prospective Juror No. 10: No, sir, not in my opinion, sir.

The Court: Do you know any of the following-named persons who were members of the Grand Jury that indicted the defendants now on trial:

Edmund L. Cocks, Jerome S. Blumauer, Adelaide E. Lowe, (T-874) Benjamin C. Brush, Herbert C. Cantrell, Thomas Hill Clyde, Andrew J. Coakley, Walter A. Coleman, Mrs. Pauline J. Charal, Charles P. Fenlon, Henry J. Hauck, Arthur S. Heiman, George T. Hodell, James C. Johnson, Walter I. Metz, Joseph I. Morris, Frederick Q. Nehring, Huestis G. Sincerbeaux, Carl M. Spero, Russell W. Todd, Helen R. Walsh, Milton Watkins, Donald C. Webster?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: Is or was any member of your immediate family a grand juror in this court?

Prospective Juror No. 7: No, your Honor.

(T-875) Prospective Juror No. 10: No, your Honor.

The Court: Have you or any member of your immediate family ever been associated with any agency of law enforcement?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: Well, as I said before.

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The Court: You refer to your relatives who are connected with the Police Department?

Prospective Juror No. 10: Yes; and on that point, your Honor, regarding my nephew, why, he was killed in the performance of his duty as an officer in law enforcement.

The Court: I think I will excuse you. I think perhaps unconsciously—

Prospective Juror No. 10: Well, I wanted to bring out all the facts.

The Court: —that might influence you some in this matter. And I think I will excuse you.

(Prospective Juror No. 10 excused.)

The Clerk: James Frederick Smyth, No. 10.

(Mr. James Frederick Smyth takes seat No. 10 in the jury box.)

The Court: I think perhaps it will save a little time if I put a general question to Mr. Reynolds and Mr. Smyth first, and then I will go over these questions (T-876) later. But you both heard all these questions as I have been reading them out here, have you not, both of you?

Prospective Juror No. 7: Yes, sir.

Prospective Juror No. 10: Yes, sir.

The Court: So as to perhaps save time—I will read the questions over and go over them again—is there something that has come up in connection with any of those questions that in your judgment would give you some bias or partiality in this case one way or another, that you can think of?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, sir.

The Court: I am going back, Mr. Smyth, and give you that list No. 1 and I will give you list No. 2 at the same time, so that you can read them over, and then I will ask you a question applicable to both of the lists.

(Papers handed to the prospective juror by the clerk.)

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JAMES FREDERICK SMYTH, Prospective Juror No. 10, was examined as follows:

By the Court:

Q. Do you know or have you had any dealings with any of the persons named on those two lists or members of their families? A. No, sir, your Honor.

(T-877) Q. Do you know anyone employed in or connected with the office or staff of the United States Attorney for this district? A. No, your Honor.

Q. Do you know any of the judges or employees of this court or members of their families? A. No, your Honor.

Q. Have you or any member of your family or personal friend been party to any legal action or dispute with the United States or any of its officers, agents or employees, or had any interest in such legal action? A. No, your Honor.

Q. Do you have any prejudice or bias for or against any defendant by reason of the race of any defendant, which would prevent you from keeping your mind fully open until all the evidence and the instructions of the Court have been completed? A. No, your Honor.

Q. And have you or any of your relatives or close friends ever been the subject of any investigation or accusation by any committee of Congress? A. No, your Honor.

Q. Have you ever been employed by the Federal Government? A. Armed service.

Q. Is there anything connected with your service in the armed forces which would give rise in your mind or has given rise in your mind to any bias or prejudice in (T-878) this case one way or another? A. No, your Honor.

Q. What was the branch of the service you were connected with? A. Signal Corps, attached to the Army Air Force.

Q. Are you now seeking Government employment? A. No, sir.

Q. Are any of your close relatives now or were they formerly employed by the Federal Government? A. No, sir.

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Q. Have you or any member of your immediate family ever been associated with any agency, either public or private, which was or is engaged in the detection of law violations? A. No, your Honor.

Q. Did you hear me read the names of the members of the grand jury who indicted the defendants? A. Yes, sir.

Q. Do you know any of them? A. No, sir.

Q. Is or was any member of your immediate family a grand juror in this court? A. No, sir.

Q. Have you or any member of your immediate family ever been associated with any agency of law enforcement? A. No, your Honor.

The Court: I think that brings us down to the point where I can continue and address the questions to both of you gentlemen.

Are you related to or friendly with or associated (T-879) with any employe of the Department of Justice or the Federal Bureau of Investigation, generally known as the FBI?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: Do you know any Congressman who is now or who has been a member of the House Committee on Un-American Activities?

Prospective Juror No. 7: No.

Prospective Juror No. 10: No, your Honor.

The Court: Do you know any present or former employe, investigator or member of the staff of the House Committee on Un-American Activities?

Prospective Juror No. 7: No, sir.

Prospective Juror No. 10: No.

The Court: Have you ever testified before or given information to the House Committee on Un-American Activities or the FBI?

Prospective Juror No. 7: No, sir.

Prospective Juror No. 10: No, your Honor.

The Court: Do you know any person who has testified before or given information to the House Committee on Un-American Activities or the FBI?

Prospective Juror No. 7: No, your Honor.

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Prospective Juror No. 10: No, your Honor.
(T-880) The Court: Have you ever served as
a juror before?

Prospective Juror No. 7: Yes.

Prospective Juror No. 10: Yes.

The Court: Have you been summoned and did
you attend in any district court of the United States
within one year prior to the time you were sum-
moned to attend this term of court?

Prospective Juror No. 7: No.

Prospective Juror No. 10: No, your Honor.

The Court: You heard me read the indictment,
did you not? Do you think you remember the sub-
stance of what it said without my reading it again?

Prospective Juror No. 7: Yes.

Prospective Juror No. 10: Yes.

The Court: I take it that you also heard me
read several times the statute upon which the in-
dictment was based?

Prospective Juror No. 7: Yes.

Prospective Juror No. 10: Yes, sir.

The Court: So I will now ask you the ques-
tion based upon that statute:

Have you any prejudice against enforcement
of this law or against punishment of any person
for conspiracy to teach and advocate the duty and
necessity of the overthrow (T-881) of the United
States Government by force and violence, as set
forth in the portions of the statute which I have
read to you?

Prospective Juror No. 7: No, sir.

Prospective Juror No. 10: No, sir.

The Court: Now you recall I read a quotation
from some remarks that were made by another
judge, who was addressing prospective jurors, dur-
ing the questioning of those jurors?

Prospective Juror No. 7: Yes.

Prospective Juror No. 10: Yes.

The Court: And how I, in doing that, tried to
emphasize the importance that every juror must
have a completely free and open mind at the begin-

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ning of the case, and I used a blank sheet of paper as an illustration of that; you remember that?

Prospective Juror No. 7: Yes, sir.

Prospective Juror No. 10: Yes.

The Court: And how I said how important it was that there be nothing that might be any bias or partiality or prejudice, however slight, that might affect the judgment of a juror in the case; you heard that, did you?

Prospective Juror No. 7: Yes.

Prospective Juror No. 10: Yes.

(T-882) The Court: There are two parts of that that are so important that I am going to read them again. So many people misunderstand what an indictment is. It is merely a means by which a charge is brought against a person or persons and they are brought into court as these defendants have been.

And so here is the statement that judge made that I repeat, and, of course, I adopt as my own, it is an accurate statement:

“The grand jury has returned this indictment. That is no evidence of guilt and should be entirely disregarded by you as evidence. It is merely a method by which the government called into a court of justice individuals who they claim have violated the law. And you shall entirely disregard it as evidence.”

Now do you both understand that?

Prospective Juror No. 7: Yes, your Honor.

Prospective Juror No. 10: Yes, your Honor.

The Court: And do you have any doubt that you can understand my instruction as to that and give the indictment no weight whatsoever as evidence? Do you feel any doubt that you can do that?

Prospective Juror No. 7: Yes.

(T-883) Prospective Juror No. 10: Yes.

The Court: Now the second has to do with the presumption of innocence that we have in this country:

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"The defendants are presumed to be innocent until it is established beyond a reasonable doubt that they have offended against the law as charged in the indictment. The defendants stand before you as any individual in this court, and clothed with that presumption all through the trial."

Is that clear to you both?

Prospective Juror No. 7: Yes.

Prospective Juror No. 10: Yes, your Honor.

The Court: Do you have any doubt that you can bear that you can bear that in mind as I told you about it, as the trial goes on, if you should be selected as jurors? Do you have any doubt of your ability to follow my instruction on that?

Prospective Juror No. 10: No, your Honor.

Prospective Juror No. 7: No, your Honor.

The Court: Now one further thing I may mention, and it is repetition but it will bear repetition. In a court of justice people are tried according to the evidence that is produced in court. The witnesses who come and testify, the documents and exhibits that are put in evidence, and no juror has any right in weighing the (T-884) innocence or guilt of defendants to pay any attention to anything other than the evidence that comes here in court, and so newspaper talk, gossip, what goes on over the radio, arguments of counsel, all sorts of things of that kind, they are not evidence, they have nothing to do with the case at all. You decide the case solely and exclusively on the basis of the evidence that you hear from witnesses sitting in that witness chair and from exhibits that are offered.

Now is that clear to you both?

Prospective Juror No. 7: Yes, your Honor.

Prospective Juror No. 10: Yes, your Honor.

The Court: Have you ever been employed by, made any contributions to, or had any dealings with any of the following publications:

The Daily Worker, The Worker, The Communist, Political Affairs, Morning Freiheit, New Masses,

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In Fact, People's World, The German American, Soviet Russia Today, Masses and Mainstream, (T-885) People's Voice, The Protestant—or the Protestant, Contact, The National Guardian, New Foundations, New Times, Union Voice?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: Have you or any member of your family had any dealings with or ever been employed by:

Cafe Society Uptown, Cafe Society Downtown, World Tourists, Inc., Amtorg-Tass News Agency, Earl Browder, Inc., The Soviet Embassy, any of the former Soviet Consulates, former Soviet Purchasing Commission, Freedom of the Press, Inc., International Publishers, New Century Publishers, Workers Bookshop, Jefferson Bookshop, Four Continent Book Corp.?

(T-886) Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: Now I hand you list No. 3.

(The clerk hands list to Jurors 7 and 10.)

Mr. Gladstein: If your Honor please, I think Juror No. 10 has not had a chance to see the first and second lists; am I right about that?

The Court: No, I think you are wrong about that.

Do you desire that I check back with the reporter, Mr. Gladstein?

Mr. Gladstein: Oh, no, no.

The Court: It is my recollection.

Mr. Gladstein: It was my error entirely.

(Prospective Jurors Nos. 7 and 10 examine list.)

The Court: Mr. Smyth, I did show you those first two lists, did I not?

Prospective Juror No. 10: Yes, sir.

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The Court: I think, Mr. Borman, you may show each of the jurors this copy of list No. 4.

(The clerk hands list to No. 7 and No. 10.)

(Prospective Jurors Nos. 7 and 10 examine list and return the same.)

The Court: Have you at any time been a member of, made contributions to, or been associated in any way with any of the organizations named on either of those (T-887) two lists?

Prospective Juror No. 7: Yes, long ago, the Holy Name Society.

The Court: Now I desire in that connection to put to you now one of the questions that I will repeat a little later.

Have you at any time been a member of, made contributions to, or been associated in any way with business or religious organizations or organizations of any character in connection with the activities of which you have formed any opinions or impressions as to the merits of the charge, unfavorable either to the Government or to the defendants, or any of them, which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete?

Prospective Juror No. 7: No, your Honor.

The Court: Now you realize that the Holy Name Society is an organization?

Prospective Juror No. 7: Yes.

The Court: And that your association with that organization and with its activities was included in that question that I just put to you?

Prospective Juror No. 7: Yes, your Honor.

The Court: I will ask certain other questions later on in connection with which I wish you would bear (T-888) in mind your association with the Holy Name Society and give careful thought to the answers but those I will come to later.

Now is that the only organization on this list?

Prospective Juror No. 10: (Raising hand.)

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The Court: Yes, Mr. Smyth?

Prospective Juror No. 10: I have been a member of the American Legion.

The Court: Now how long have you been a member of the American Legion?

Prospective Juror No. 10: Since 1945.

The Court: And are you one of the officers of the American Legion?

Prospective Juror No. 10: Oh, no.

The Court: Are you one of the committee men or one of those in charge of its activities in any way?

Prospective Juror No. 10: No, sir, just a member.

The Court: Do you have anything to do with directing its policies?

Prospective Juror No. 10: No, sir.

The Court: Now I want you to give careful thought to the question of whether or not your association with the Legion, any literature that you may have read that has been issued by the Legion, any friendships that you formed there (T-889) or conversations had or anything else, whether taking all those things into consideration you feel that you have formed any bias or prejudice or partiality here in one way or another in this case?

Prospective Juror No. 10: I did not, sir.

The Court: Now one of the names on the last list which I handed you, which was list No. 4, was Common Cause, Incorporated, and I have a special question about that.

Do you know or have you had any dealings with any of the following persons said to be the sponsors of Common Cause, Incorporated, one of the organizations listed in the list No. 4, namely:

Lieutenant General Robert E. Eichelberger, Rev. Dr. Samuel Shoemaker, Eric Warburg, Goodhue Livingston, Jr., Christopher Emmet, Sumner Wells, Dorothy Thompson, Arthur Bliss Lane, Rev. Robert I. Gannon, General Follett Bradley, Eugene Lyons, William H. Chamberlain, (T-890) Dr. George S.

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Counts, Mrs. Lois Mattox Miller, Major George Fielding Eliot, Dr. Harry J. Carman, Mrs. Aida de Acosta Breckenridge?

Prospective Juror No. 7: No.

Prospective Juror No. 10: No, your Honor.

The Court: Have you read any of the following publications:

This is My Story by Louis F. Budenz, I Confess by Ben Gitlow, The Whole of Their Lives by Ben Gitlow, I Chose Freedom by Victor Kravchenko, Out of the Night by Jan Valtin, The Trojan Horse in America by Martin Dies, The Red Decade by Eugene Lyons, The Road to Serfdom by Hayek, The Struggle Behind the Iron Curtain by Ferenc Nagy, The War We Lost: Yugoslavia's Tragedy & the Failure of the West by Constantin Fotitch, Is Communism Compatible with Christianity by Clare Boothe Luce?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

(T-891) The Court: Do you belong to any union?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: Yes.

The Court: And which union do you belong to?

Prospective Juror No. 10: C.W.A.—Communication Workers of America.

The Court: I am looking around to see if I have got some questions here on that.

Now I will reserve that question until I ask another one a little later on, Mr. Smyth, and then I will come back to that. For the present I will ask you this: Is there anything that you can think of in connection with your activities in the union or anything that you heard there that would tend to give you any bias or bent of mind one way or another in this case either favorable to one side or unfavorable to the other that you can think of?

Prospective Juror No. 10: No.

The Court: I will come back to it in a moment.

Are you now or have you ever been a member of the Federal Grand Jury Association?

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Prospective Juror No. 7: No.

Prospective Juror No. 10: No, your Honor.

The Court: Do you or any close relative now hold or have you or any close relative in the past held (T-892) any office or position in or been a member of any committee of any political party?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: From reading the newspapers or written matter of any kind, or from conversation had with friends or others, or by listening to the radio or in any other way have you formed any opinions or impressions as to the merits of the charge unfavorable either to the Government or to the defendants or any of them which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: Now Mr. Smyth, I want to have you consider that particularly in connection with the union. I want to give you a moment to reflect as to whatever your activities have been there and what you have heard in discussions in one way or another, and so I add a question that I have asked previously. Now in reflecting I gather you gave consideration, in answering my last question, to any statements that you might have heard in your union or connected with your union and all other statements, did you?

Prospective Juror No. 10: Yes, your Honor.

(T-893) The Court: Now having done that you still answer my question in the negative, namely, that from reading the newspapers and so on, that you had not formed any impression or opinion unfavorable either to the Government or to the defendants or any of them which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete?

Voir Dire

Prospective Juror No. 10: No, your Honor.

The Court: That is to say, you have formed no such opinion or impression?

Prospective Juror No. 10: That is right, your Honor.

The Court: Are you an officer of that union?

Prospective Juror No. 10: No, your Honor.

The Court: Are you active in any way in directing its policies?

Prospective Juror No. 10: No, your Honor.

The Court: Have you at any time—and I address myself to both of you gentlemen—have you at any time been a member of, made contributions to or been associated in any way with business or religious organizations or organizations of any character in connection with the activities of which you have formed any opinions or impressions as to the merits of the charge unfavorable (T-894) either to the Government or to the defendants or any of them, which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: Have you at any time been a member of, made contributions to, or been associated in any way, with business or religious organizations or organizations of any character whose officers or representatives have made any expressions of advocacy of or friendliness towards the Communists or communism in general on the one hand, or of opposition or hostility to Communists or Communism in general on the other hand, which expressions you have heard or read in any manner, which have led you to form any opinions or impressions as to the merits of the charge unfavorable either to the Government or to the defendants or any of them which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete?

Voir Dire

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: Now did you both understand that question as I read it?

Prospective Juror No. 7: Yes.

(T-895) Prospective Juror No. 10: Yes.

The Court: It was perfectly clear to you!

Prospective Juror No. 7: Yes.

Prospective Juror No. 10: Yes.

The Court: And both of you answer it in the negative?

Prospective Juror No. 7: Yes.

Prospective Juror No. 10: Yes.

The Court: Now this question has come up, and I think my wording of it as I have it here is a little obscure and so I am just going to word it differently.

Now witnesses are going to be called here. Some of them will be called by the prosecution and some of them will be called by the defendants. Now maybe sometimes by reason of various circumstances people have some feeling in favor of the prosecution, some other people have some feeling in favor of the defense, and I say when witnesses are called here I am going to instruct you that their credibility must be tested by the same tests, and they must be scrutinized in the same manner no matter who calls them.

Now do you feel that you can obey that instruction without any doubt or mental reservation?

Prospective Juror No. 7: Yes, your Honor.

Prospective Juror No. 10: Yes, your Honor

(T-896) The Court: To put it differently, will you feel that perhaps when the prosecution puts some witness on the stand that he is particularly to be believed or that he is to be tested by the same tests that anybody else is to be tested by?

(No response.)

The Court: In other words, let me put it differently. If a man is produced here by the prosecution are you going to say just because he is pro-

Voir Dire

duced by the prosecution he is probably telling the truth without listening to him?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

Mr. Sacher: Well, I object to the form of that.

The Court: All right, I will go back to my other form—perhaps it is better to be exact in these things—so that I will read the question that I put previously to the other witnesses. All I am trying to get at is all the witnesses are entitled to be tested by precisely the same test. That is what I am going to tell you in my charge if you stay in the case, and I want to be sure that you are going to do it: that is what I am talking about.

Now in determining the truth or the falsity of the testimony of any witness would you in accordance (T-897) with the instructions of the Court submit the testimony of such witness to the same scrutiny and test it by the same standards whether the witness was called by the defense or by the prosecution?

Prospective Juror No. 7: Yes, your Honor.

Prospective Juror No. 10: I would, yes.

The Court: Now the other half of it—it is the same question over again with another ending—in determining the truth or falsity of the testimony of any witness would you, in accordance with the instructions of the Court submit the testimony of such witness to the same scrutiny and test it by the same standards, whether the witness was a member of a labor union, a Congressman, an employee of the Department of Justice or of the FBI, or a Communist or a member of the present or some former Communist Party, or a friend or associate of any of the defendants?

Prospective Juror No. 7: Yes.

Prospective Juror No. 10: I would, your Honor.

The Court: If you were selected as a juror and came to the conclusion that a verdict of not guilty was required by the evidence in accordance with the instructions of the Court, would you be embar-

Voir Dire

rassed in arriving at or rendering a verdict of not guilty in any way connected with your employment, or by reason of your membership in or (T-898) affiliation with any church, political party, club, society, or any other organization of any kind whatsoever, or in any other manner?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: Have you such bias or prejudice against the Administration, or any agency of the United States or against any of the defendants or Communists in general or the Communist Party, whatever its aims and purposes may be, as would prevent you from reaching your verdict solely on the evidence presented in court and the law as contained in the instructions and rulings of the Court?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: Have you formed any opinion or impression concerning the guilt or innocence of any of the defendants of the crime charged which it would require evidence to remove?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: Have you formed any opinion or impression concerning the guilt or innocence of any of the defendants of the crime charged which might prevent you from being completely impartial and free from bias (T-899) in this case?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: Have you ever expressed any opinions or views as to the guilt or innocence of any of these defendants?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: Do you know of any reason why you should not serve as jurors in this case, any fact or circumstance of such a nature as would prevent you from rendering a fair and impartial verdict based solely on the evidence and the instructions and rulings of the Court?

Voir Dire

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: Now I will ask you some questions about your occupations—perhaps we had better adjourn now and I will do that at 2.15.

(Recess to 2.15 p. m.)

(T-900)

AFTERNOON SESSION

(Conference in chambers.)

(The following occurred in the courtroom:)

The Court: A request has been made by a representative from the office of defense counsel to see the original of the Court's Challenge Exhibit No. 1—that was that outline of proof to be offered by the defendants—and I had put that in my private safe up in my chambers immediately after it was produced here in court, and it is still there; and my secretary is home ill today, and she is the only one who knows how to get in. So when she gets back again, I will see that that is made available.

Now, Mr. Isserman, on behalf of your clients, do you join in the motion made by Mr. Gladstein this morning?

Mr. Isserman: Yes, your Honor. It was my understanding that, being excused the other day, Mr. Gladstein was to represent my clients for all purposes on the voir dire.

The Court: I felt that perhaps that might not be considered a matter on voir dire but, however that may be, you join in that motion, and I take it that you adopt on behalf of your clients whatever Mr. Gladstein has said or may say in support of that motion?

(T-901) Mr. Isserman: I do, your Honor.

The Court: Very well. Do you and Mr. Crockett have an application to make now?

Mr. Isserman: Yes, if your Honor please. We would like to be excused for the balance of the day because of some work in connection with the case that we have to do on the outside.

Voir Dire

The Court: Very well. I understand it has the consent of all the defendants and of the prosecution, and you may be excused until tomorrow morning.

JAMES FREDERICK SMYTH, Prospective Juror No. 10, was examined as follows:

By the Court:

Now Mr. Smyth, what is your present occupation? A. Wireman and assembler.

Q. Now that probably means a lot to you but I am one of those ignorant people that doesn't always understand, so I wish you would tell us a little more about what that means. What do you actually do? A. I wire and assemble equipment related to communications.

Q. Do you have people working under you? A. No, sir. I am in a non-supervisory capacity.

Q. When you are told to go and do one of these jobs, what would be a typical direction that you receive? (T-902) A. I might receive a wiring diagram or an assembly drawing and relays and resistors and such, and wire them up and assemble them.

Q. And what is the name of the company for whom you are working? A. Bell Telephone Laboratories, sir.

Q. How long have you been employed by them? A. Over 20 years, sir.

Q. Doing the same sort of work? A. More or less.

Q. I suppose gradually improving your knowledge and understanding of it and improving your position, too, I suppose? A. Yes, sir.

Mr. McCabe: If your Honor please, I should ask your Honor to put to Mr. Reynolds the series of questions which I propounded and handed up to your Honor, the type-written questions, with the request that they be put to Mr. Ward (handing to Court).

They are on two pages.

The Court: I think I can find them.

(After examining) I think if you will look at this list and see if they are not appropriate to be put to this prospective juror (handing to Mr. McCabe).

Voir Dire

(Mr. McCabe examines.)

The Court: Are they?

Mr. McCabe: Yes (handing to Court).

(T-903) The Court: Oh. I misunderstood; I thought you were talking about Mr. Smyth. I had the two names confused. That is my fault.

No, I will not ask those questions.

Mr. McCabe: Your Honor grants me an exception.

The Court: Yes.

Now I see there are some others here.

Have you ever voted for or subscribed to any resolution or petition of any kind which expressed any opposition to Communism or to the Communist Party of the United States?

Prospective Juror No. 7: No, your Honor.

Prospective Juror No. 10: No, your Honor.

The Court: And I put that necessarily to all the other jurors as well. Do you each answer in the negative?

(Prospective Jurors answer Yes.)

The Court: You may challenge.

(Jury card container handed to Mr. McGohey.)

The Court: There is some question about one of the answers to an earlier question. The reporter tells me that some of the answers were such that he is not clear and he doesn't think the record is clear on this point. You remember how I explained to you that the indictment is no evidence of the charge against these defendants. (T-904) Do you each remember that?

Prospective Juror No. 7: Yes.

Prospective Juror No. 10: Yes.

The Court: Now I followed that up by a question which is, in substance, whether you would have any difficulty or trouble in following my instructions or whether you doubted your ability to follow my instructions, and that was perhaps a little ambiguous, and I ask you now, when I tell you that the indictment is no evidence whatever in support of this charge, are each and every one of you going to follow that instruction throughout the case?

Voir Dire

(Prospective Jurors answer Yes.)

The Court: Very well. Does that clear that up, Mr. Reporter?

The Reporter: Yes, your Honor.

(Paper handed to the Court by the bailiff.)

The Court: Mrs. Schlesinger, are you related to the historian, Arthur M. Schlesinger?

Prospective Juror No. 9: No, sir.

The Court: Or Arthur M. Schlesinger, Jr.?

Prospective Juror No. 9: No, sir.

(Mr. McGohey hands jury card container to the clerk.)

The Clerk: Juror No. 5, Mrs. Molly Glasner, (T-905) excused by the Government.

(Mrs. Molly Glasner, Prospective Juror No. 5, excused by the Government.)

The Clerk: George L. Smith, No. 5.

(George L. Smith takes seat No. 5 in the jury box.)

The Court: Mr. Smith, have you been listening to these questions pretty well?

Prospective Juror No. 5: Your Honor, I have.

The Court: Now I will first hand you list No. 1 and list No. 2.

(Handed by the clerk to prospective juror No. 5.)

The Court: And while you are reading those I will repeat my omnibus question to the other jurors.

I request the prospective jurors to whom I have already addressed questions to listen carefully to all questions put from time to time to new prospective jurors as they are called into the jury box. It is your sworn duty and obligation to make known to the Court any fact, circumstance, relationship or incident called for by any of the questions whether or not such information supplements or qualifies answers previously given. This should not be a matter of any embarrassment whatsoever.

(Juror No. 5 examines list and returns to the clerk.)

Voir Dire

(T-906) GEORGE L. SMITH, Prospective Juror No. 5, was examined as follows:

By the Court:

Q. Have you read it over, Mr. Smith? A. I have.

Q. I will ask you some questions now. Do you know or have you had any dealings with any of the persons named on those lists, or members of their families? A. I have not, your Honor.

Q. Do you know anyone employed in or connected with the office or staff of the United States Attorney for this district? A. I do not.

Q. Do you know any of the judges or employees of this court or members of their families? A. I do not.

Q. Have you or any member of your family or personal friend been party to any legal action or dispute with the United States or any of its officers, agents or employees, or had any interest in such legal action? A. I have not, your Honor.

Q. Do you have any prejudice or bias for or against any defendant by reason of the race of any defendant which would prevent you from keeping your mind fully open until all the evidence and the instructions of the Court have been completed? A. I have not.

Q. Have you or any relative or close friend of yours ever been the subject of any investigation or accusation by any committee of Congress? A. I have not.

(T-907) Q. Have you ever been employed by the Federal Government? A. No.

Q. Are you now seeking Government employment? A. I am not.

Q. Are any of your close relatives now or were they formerly employed by the Federal Government? A. No.

Q. Have you or any member of your immediate family ever been associated with any agency, either public or private, which was or is engaged in the detection of law violations? A. No.

Q. Do you remember my reading off the names of the members of the grand jury that indicted the defendants? A. I do.

Q. Do you know any of them? A. No.

Voir Dire

Q. Perhaps I had better read the names just to make sure:

Edmund L. Cocks, Jerome S. Blumauer, Adelaide E. Lowe, Benjamin C. Brush, Herbert C. Cantrell, Thomas Hill Clyde, Andrew J. Coakley, Walter A. Coleman, Mrs. Pauline J. Charal, (T-908) Charles P. Fenlon, Henry J. Hauck, Arthur S. Heiman, George T. Hodell, James C. Johnson, Walter I. Metz, Jos. I. Morris, Frederick Q. Nehring, Huestis G. Sincerbeaux, Carl M. Spero, Russell W. Todd, Helen R. Walsh, Milton Watkins, Donald C. Webster?

Do you know any of them? A. No.

Q. Is or was any member of your immediate family a grand juror in this court? A. No.

Q. Have you or any member of your immediate family ever been associated with any agency of law enforcement? A. No.

Q. Are you related to or friendly with or associated with any employe of the Department of Justice or the Federal Bureau of Investigation, generally known as the FBI? A. I am not.

Q. Do you know any Congressman who is now or who has (T-909) been a member of the House Committee on Un-American Activities? A. No.

Q. Do you know any present or former employe, investigator or member of the staff of the House Committee on Un-American Activities? A. No.

Q. Have you ever testified before or given information to the House Committee on Un-American Activities or the FBI? A. I have not.

Q. Do you know any person who has testified before or given information to the House Committee on Un-American Activities or the FBI? A. No.

Q. Have you ever served as a juror before? A. I have.

Q. Have you been summoned and did you attend in any district court of the United States within one year prior to the time you were summoned to attend this term of court? A. Four years ago.

Q. Four years ago. So you were not summoned within a year? A. No.

Voir Dire

Q. Do you remember my reading the indictment several times? Do you think you remember that pretty well so that I need not read it again? A. I do remember it.

Q. And do you also remember my reading the statute that covers the case? A. I do.

Q. So I need not read it. Now, having that statutory (T-910) wording in mind I ask you this question: Have you any prejudice against the enforcement of this law or against punishment of any person for conspiracy to teach and advocate the duty and necessity of the overthrow of the United States Government by force and violence, as set forth in the portions of the statute which I have read? A. I have an open mind in this case.

Q. I also read many times the words of one of the judges who was addressing prospective jurors under similar circumstances, and I ask you whether you remember my emphasizing, as I read that, the importance of a juror having a free and open mind when he started in to consider the case, and my holding up a blank sheet of paper to illustrate what I meant by that? A. I do recall it.

Q. And do you remember my saying how important it was for jurors to decide solely on the basis of the evidence in the case and wholly to disregard gossip and newspaper talk or what they heard over the radio or things of that kind? A. I do.

Q. You remember that? A. Yes.

Q. Then I will not read those parts but there are two of such importance that I do want to read them again:

“The grand jury has returned this indictment. That is no evidence of guilt and should be entirely disregarded by you as evidence. It is merely (T-911) a method by which the government calls into a court of justice individuals who they claim have violated the law. And you shall entirely disregard it as evidence.”

Do you understand that? A. I understand it clearly.

Q. When I say there, “and you shall entirely disregard it as evidence,” that is an instruction of the Court, isn’t it? A. Right.

Q. Do you have any doubt that you will follow that instruction? A. I will.

Voir Dire

Q. The next one is the presumption of innocence, which is also very important in our traditional American system of jurisprudence.

"The defendants are presumed to be innocent until it is established beyond a reasonable doubt that they have offended against the law as charged in the indictment. The defendants stand before you as any individual in this court, and clothed with that presumption all through the trial."

Do you understand that? A. I do.

Q. And when I give such an instruction do you have any doubt of your ability to follow that instruction as I give it? A. I will.

Q. You will follow it? A. Yes.

Q. Now, I have two more lists here but they are—not (T-912) quite yet. Have you ever been employed by, made any contributions to or had any dealings with any of the following publications:

The Daily Worker, The Worker, The Communist, Political Affairs, Morning Freiheit, New Masses, In Fact, People's World, The German American, Soviet Russia Today, Masses and Mainstream, People's Voice.

The Protestant or The Pro-testant. I don't know just which way to pronounce it.

Contact, The National Guardian, New Foundations, New Times, Union Voice?

A. I have not.

Q. Have you or any member of your family had any dealings with or ever been employed by:

(T-913) Cafe Society Uptown, Cafe Society Downtown, World Tourists, Inc., Amtorg-Tass News Agency, Earl Browder, Inc., The Soviet Embassy, any of the former Soviet Consulates, former Soviet Purchasing Commission, Freedom of the Press, Inc., International Publishers, New Century Publishers, Workers Bookshop, Jefferson Bookshop, Four Continent Book Corporation?

A. No.

The Court: Now we have the two lists, Mr. Borman.

(Clerk hands papers to the juror.)

Voir Dire

Q. Have you at any time been a member of, made contributions to, or been associated in any way with any of those organizations? A. I have not.

The Court: You may get that back, Mr. Borman.

Q. Now, one of those organizations was Common Cause, Inc., as to which I have a special question: Do you know or have you had any dealings with any of the following (T-914) persons, said to be the sponsors of Common Cause, Inc., namely:

Lieutenant General Robert E. Eichelberger, Rev. Dr. Samuel Shoemaker, Eric Warburg, Goodhue Livingston Jr., Christopher Emmet, Sumner Wells, Dorothy Thompson, Arthur Bliss Lane, Rev. Robert I. Gannon, General Follett Bradley, Eugene Lyons, William H. Chamberlain, Dr. George S. Counts, Mrs. Lois Mattox Miller, Major George Fielding Eliot, Dr. Harry J. Carman, Mrs. Aida de Acosta Breckinridge?

A. I have not.

(A paper handed to the Court by the clerk.)

The Court: I am coming to the question about political party later on. I have that for all the jurors.

That remark of mine, Mr. Reporter, was addressed to Mr. Gladstein in reference to a question that has just (T-915) been handed up.

Q. Have you read any of the following publications:

This is My Story by Louis F. Budenz, I Confess by Ben Gitlow, The Whole of Their Lives by Ben Gitlow, I Chose Freedom by Victor Kravchenko, Out of the Night by Jan Valtin, The Trojan Horse in America by Martin Dies, The Red Decade by Eugene Lyons, The Road to Serfdom by Hayek, The Struggle Behind the Iron Curtain by Ferenc Nagy.

The War We Lost: Yugoslavia's Tragedy and the Failure of the West by Constantin Fotitch.

Is Communism Compatible with Christianity by Clare Boothe Luce?

Voir Dire

Have you read any of those? A. I have not.

Q. Do you belong to any union? A. I do not.

Q. Are you now or have you ever been a member of the Federal Grand Jury Association? A. I have not.

Q. Do you or any close relative now hold or have you or any close relative in the past held any office or position in or been a member of any committee of any political party? A. Well, I am connected with a political party.

Q. What is the connection that you have with a (T-916) political party? A. Just a member.

Q. You are just a member of the party? A. A member of the party.

Q. My question was rather whether you held any office or position, such as committeeman or a district captain or something of that kind? A. Yes, I am a district captain.

Q. You are a district captain? A. Yes.

Q. How long have you been a district captain in your party? A. I guess around about 10 years.

Q. About 10 years. Now, I want you to search your mind and think carefully whether anything connected with that office that you have held of district captain in any way, in your judgment, would leave in your mind any prejudice or bias here either in favor of or against the Government on the one hand, or in favor of or against any of the defendants on the other hand, or in favor of or against Communists in general or Communism, and tell me whether you have any such bias, prejudice or partiality? A. Your Honor, I have had an open mind in this case from the day I started up to the present.

Q. And you feel that nothing connected with your being a district captain has left any such feeling in your mind as would be prejudicial in this case? A. I do, your Honor.

Q. From reading the newspapers or written matter of (T-916-A) any kind or from conversation had with friends or others or by listening to the radio or in any other way, have you formed any opinion or impressions as to the merits of the charge, unfavorable either to the Government or to the defendants or any of them, which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete? A. Your Honor, I have not.

Voir Dire

(T-917) Q. Have you at any time been a member of, made contributions to, or been associated in any way with business or religious organizations, or organizations of any character in connection with the activities of which you have formed any opinions or impressions as to the merits of the charge unfavorable either to the Government or to the defendants or any of them which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete? A. Your Honor, I have not.

The Court: Will you read me that answer?

(Answer read.)

Q. Have you at any time been a member of, made contributions to, or been associated in any way with business or religious organizations, or organizations of any character whose officers or representatives have made any expressions of advocacy of or friendliness toward the Communists or Communism in general on the one hand, or of opposition or hostility to Communists or Communism in general on the other hand, which expressions you have heard or read in any manner which have led you to form any opinions or impressions as to the merits of the charge unfavorable either to the Government or to the defendants or any of them, which would prevent or hinder (T-918) you from holding your mind fully open until all the evidence and the instructions of the Court are complete?

A. I have not, your Honor.

Q. In determining the truth or falsity of the testimony of any witness would you, in accordance with the instructions of the Court, submit the testimony of such witness to the same scrutiny and test it by the same standards whether the witness was called by the defense or by the prosecution? A. Yes, your Honor.

Q. In determining the truth or falsity of the testimony of any witness would you, in accordance with the instructions of the Court, submit the testimony of such witness to the same scrutiny and test it by the same standards whether the witness was a member of a labor union, a Congressman, an employee of the Department of Justice, or of the FBI, or a Communist or a member of the present

Voir Dire

or some former Communist Party, or a friend or associate of any of the defendants? A. Yes.

Is the answer that you would do so? A. No.

Q. Now that question I think you do not—it seems to puzzle several people, and I am going to read it over again. The point of the question is that witnesses come here and they testify, and I am going to tell the jury that in determining the credibility of these witnesses, they have got to use the same tests as to all of them (T-919) whether they are called by the prosecution, whether they are called by the defendants, whether the man is a Communist, whether he is president of a bank or a ditch digger or anybody else, I am going to tell the jury that they use the same tests in accordance with my instructions, and all I am asking you is, would you use the same tests as to all of these people in determining their credibility in accordance with my instructions? A. I will use my own judgment with an open mind, your Honor.

Q. And if, for instance, I told you that in appraising whether a witness was telling the truth or not telling the truth, that you were to watch his demeanor and consider the probability of what he said and all the circumstances that surrounded the case and that you were to apply that same test to all of the witnesses, would you do that? A. I would.

Q. If you were selected as a juror and came to the conclusion that a verdict of not guilty was required by the evidence in accordance with the instructions of the Court, would you be embarrassed in arriving at or rendering a verdict of not guilty in any way connected with your employment or by reason of your membership in or affiliation with any church, political party, club, society, or any other organization of any kind whatsoever, or in any (T-920) manner? A. I would not.

Q. Have you such a bias or prejudice against the Administration, or any Agency of the United States, or against any of the Defendants or the Communists in general, or the Communist Party, whatever its aims and purposes may be, as would prevent you from reaching your verdict solely on the evidence presented in court and the law as contained in the instructions and rulings of the Court? A. I do not.

Voir Dire

Q. Have you formed any opinion or impression concerning the guilt or innocence of any of the defendants of the crime charged which it would require evidence to remove? A. I will judge the case, your Honor, with an open mind.

Q. I say—and I have got to put the question in a slightly different way, if you had an opinion now about the guilt or innocence of the defendants, you wouldn't have an open mind, would you? A. Oh, I would not.

Q. And so I say if you had an opinion now it would require evidence to remove that opinion, wouldn't it? A. It would, yes.

Q. And you have told me that you didn't have any opinion as to the guilt or innocence of the defendants, have you not? A. I have not, Judge.

Q. Now, I say,—and it is merely the result of these (T-921) questions—have you formed any opinion or impression concerning the guilt or innocence of the defendants of the crime charged which it would require evidence to remove from your mind? A. I have not.

Q. Have you formed any opinion or impression concerning the guilt or innocence of any of the defendants of the crime charged which might prevent you from being completely impartial and free from bias in this case? A. I have not, your Honor.

Q. Have you ever expressed any opinions or views as to the guilt or innocence of any of these defendants? A. I have.

Q. Do you know of any reason why you should not serve as a juror in this case, any fact or circumstance of such a nature as to prevent you from rendering a fair and impartial verdict, based solely on the evidence and the instructions and rulings of the court? A. I do not, your Honor.

Q. Now I will ask you a few questions about your occupation.

What is your present occupation? A. My present occupation is selling fur coats and real estate.

Q. Selling fur coats and?

(Answer read.)

Voir Dire

(T-922) Q. Do you sell those fur coats for your own account? Is it a little business of your own? A. On a commission basis.

Q. What is that? A. On a commission basis.

Q. And I take it that there is something further, that you go out— A. Yes.

Q. —as a representative of a company in doing that? A. I do.

Q. And you earn commissions by the selling of fur coats belonging to that company? A. Yes.

Q. What is the name of that company? A. Selbert Wilson, Incorporated.

Q. And what is the address of that company? A. 15 West 36th Street.

Q. Now this real estate business, do you devote more of your time to the real estate business or more of your time to selling the fur coats? A. Just as business warrants my attention.

Q. Yes, I see. So that it depends entirely on circumstances which of the two you are spending most of your time on? A. That's it.

Q. Now do you have an office where you do this real estate business? A. At home.

Q. At your home? A. And at 612—no, 412 East 106—105th Street.

(T-923) Q. That is the address I have here—412 East 165th Street. A. 165th.

Q. Now I have down on the card here, it says, "real estate Snead"—S-n-e-a-d. A. That's it, Snead Real Estate.

Q. Have you been trying to tell me that you are working for Snead? A. I am working for her as a salesman.

Q. I see. I got the impression, without any justification, that you were running this business on your own account there at your home, but you really are representing Mrs. Snead? A. That's it.

Q. And as her representative you get commissions for real estate? A. Yes.

Q. Before you got into the business of selling furs and in the real estate business, as you have described, what were you doing before that? A. I was a receptionist for the Delaware & Hudson Railroad.

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Q. And where did you work as such receptionist? A. 230 Park Avenue, New York Central building.

Q. What sort of a place was it that you were receptionist in? Was it the office of the railroad? A. The office of the president.

Q. Office of the president of the railroad? A. Yes.

Q. And that is where you were the receptionist? A. Yes.

(T-924) Q. Were you there for some years? A. Oh, around about—oh, 19 years, I guess, in that neighborhood.

The Court: All right, you may challenge.

(Clerk hands jury card container to defense counsel.)

Mr. Gladstein: Your Honor, there is a question I submitted which you asked of Juror No. 5. I think that question was not put to the other jurors. Would you be good enough to ask the other jurors that question?

The Court: Yes.

I address this to you, sir: Have you ever voted for or subscribed to any resolution—

Mr. Gladstein: No, that is not the one, your Honor, although I have no objection to that being put. It is the one concerning activities as election district captains.

The Court: Well, I feel that I have sufficiently covered that.

Mr. Gladstein: Well, you asked that specifically of Juror No. 5, but I don't think the other jurors had that specifically drawn to their attention. I wonder if you would ask that.

The Court: Well, I have asked them to listen to all the questions and I think it is adequately covered.

(T-925) Mr. Gladstein: I understand that as the record stands none of the other jurors except Juror No. 5 has answered to such activity.

The Court: That is right. Now I don't remember whether I put to the last juror this question about the petition but it would do no harm to repeat it.

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Have you ever voted for or subscribed to any resolution or petition of any kind which expressed any opposition to Communism or to the Communist Party of the United States?

Prospective Juror No. 5: I have not.

Mr. Gladstein: Your Honor, might I suggest that you take your afternoon recess now, during which I may have an opportunity to confer satisfactorily with the remaining defendants? This, I understand, is the last challenge we have.

The Court: Yes, I will do that. I will take a recess now.

(Short recess.)

(T-926) The Clerk: Juror No. 2, Mrs. Eva Mendelsohn, excused by the defendants.

(Prospective juror No. 2 excused.)

The Clerk: Russell Janney, No. 2.

(Mr. Russell Janney takes seat No. 2 in the jury box.)

RUSSELL JANNEY, Prospective Juror No. 2, was examined as follows:

By the Court:

Q. You haven't been reading anything about the case in those papers you have, Mr. Janney, have you? A. No; I am reading the sporting page.

Q. The sporting page? A. Yes.

Q. I want to ask you a preliminary question, and you have been listening pretty well to all these questions? A. Yes, sir.

Q. And before I get into the details I want to ask you whether there is anything that has occurred to you, as you have been sitting back there listening, that you think you ought to tell me, that might indicate some bias or prejudice on your part either in favor of or against the Government or in favor of or against any of the defendants? A. I don't think so, your Honor.

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The Court: Now, Mr. Borman, will you hand him the first two lists.

(T-927) (Bailiff hands paper to the juror.)

The Court: I think the rest of the jurors will remember my omnibus question, so I need not repeat it.

Prospective Juror No. 2: I have heard these read sometimes. I don't know one on these lists.

Q. I think it better if you would glance over the list, Mr. Janney, because sometimes, even though you have heard him again and again, you might miss one, and it is pretty important. Those are lists No. 1 and No. 2. And I ask you, do you know or have you had any dealings with any of the persons whose names appear on those lists or any members of their families? A. I have not.

Q. Do you know anyone employed in or connected with the office or staff of the United States Attorney for this district? A. No, sir.

Q. Do you know any of the judges or employes of this court or members of their families? A. I do not.

Q. Have you or any member of your family or personal friend been party to any legal action or dispute with the United States or any of its officers, agents or employes, or had any interest in such legal action? A. No, sir.

Q. Do you have any prejudice or bias for or against (T-928) any defendant by reason of the race of any defendant which would prevent you from keeping your mind fully open until all the evidence and the instructions of the Court have been completed? A. No, sir.

Q. Have you or any relative or close friend of yours ever been the subject of any investigation or accusation by any committee of Congress? A. No, sir.

Q. Have you ever been employed by the Federal Government? A. No.

Q. Are you now seeking Government employment? A. No, sir.

Q. Are any of your close relatives now or were they formerly employed by the Federal Government? A. No.

Q. Have you or any member of your immediate family ever been associated with any agency, either public or

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private, which was or is engaged in the detection of law violations? A. No.

Q. You remember I read off the names of the members of the grand jury which indicted these defendants. Do you know any of them? A. I do not.

Q. Is or was any member of your immediate family a grand juror in this court? A. No.

Q. Have you or any member of your immediate family ever been associated with any agency of law enforcement? (T-929) A. No.

Q. Are you related or friendly to or associated with any employee of the Department of Justice or the Federal Bureau of Investigation, generally known as the FBI? A. No.

Q. Do you know any Congressman who is now or who has been a member of the House Committee on Un-American Activities? A. I do not.

Q. Do you know any present or former employee, investigator or member of the staff of the House Committee on Un-American Activities? A. I do not.

Q. Have you ever testified before or given information to the House Committee on Un-American Activities or the FBI? A. I have not.

Q. Do you know any person who has testified before or given information to the House Committee on Un-American Activities or the FBI? A. No, sir.

Q. Have you ever served as a juror before? A. Yes.

Q. Have you been summoned and did you attend in any district court of the United States within one year prior to the time you were summoned to attend this term of court? A. Two years ago.

Q. Do you remember my reading the indictment several times? A. Yes, I do.

(T-930) Q. Do you think you are sufficiently familiar with the nature of the charge against these defendants for me not to read it again? A. Yes, sir.

Q. You will remember also that I read from the statute pursuant to which the indictment was framed, and do you think you remember that pretty well? A. Yes, sir.

Q. I will ask you this question about it: Have you any prejudice against the enforcement of this law or against

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punishment of any person for conspiracy to teach and advocate the duty and necessity of the overthrow of the United States Government by force and violence, as set forth in the portions of the statute which I have read. Have you any such prejudice? A. No, I have not, sir.

Q. You remember my reading from the statement by one of the judges here and how I explained the importance — A. Yes, sir.

Q. —of every juror having an open and free mind? And I will turn to the two parts about the indictment and the presumption of innocence.

“The grand jury has returned this indictment. That is no evidence of guilt and should be entirely disregarded by you as evidence. It is merely a method by which the government called into a court of justice individuals who they claim have violated the law. And you shall entirely disregard it as (T-931) evidence.”

When I say “you shall entirely disregard it as evidence,” that is an instruction by me, isn’t it? A. Yes, sir.

Q. Do you doubt your ability to follow that instruction?
A. No, sir.

Q. As to the presumption of innocence:

“The defendants are presumed to be innocent until it is established beyond a reasonable doubt that they have offended against the law as charged in the indictment. The defendants stand before you as any individual in this court, and clothed with that presumption all through the trial.”

That also is in the nature of an instruction. Do you understand it? A. I do.

Q. Do you have any doubt of your ability to follow that instruction? A. No, sir.

Q. Have you been employed by, made any contributions to, or had any dealings with, any of the following publications:

The Daily Worker, The Worker, The Communist, Political Affairs, Morning Freiheit, New Masses, (T-932) In

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Fact, People's World, The German American, Soviet Russia Today, Masses and Mainstream, People's Voice, The Protestant or Pro-testant, Contact, The National Guardian, New Foundations, New Times and Union Voice?

A. No, sir.

Q. Have you or any member of your family had any dealings with or ever been employed by:

Cafe Society Uptown, Cafe Society Downton, World Tourists, Inc., Amtorg-Tass News Agency, Earl Browder, Inc., The Soviet Embassy, any of the former Soviet Consulates, former Soviet Purchasing Commission, Freedom of the Press, Inc., International Publishers, (T-933) New Century Publishers, Workers Bookshop, Jefferson Bookshop and Four Continent Book Corporation?

A. No, sir.

The Court: Now, Mr. Borman, if you will give the juror lists 3 and 4.

(Clerk hands papers to Prospective Juror No. 2.)

Q. Have you at any time been a member of, made contributions to or been associated in any way with any of the organizations named on those lists? A. No, sir.

Q. Do you know or have you had any dealings with any of the following persons, said to be sponsors of Common Cause, Inc., one of the organizations listed on one of those lists, namely:

Lieutenant General Robert E. Eichelberger, Rev. Dr. Samuel Shoemaker, Eric Warburg, Goodhue Livingston, Jr., Christopher Emmet, Sumner Wells, Dorothy Thompson, Arthur Bliss Lane, Rev. Robert I. Gannon, (T-934) General Follett Bradley, Eugene Lyons, William H. Chamberlain, Dr. George S. Counts, Mrs. Lois Mattox Miller, Major George Fielding Eliot, Dr. Harry J. Carman, Mrs. Aida de Acosta Breckinridge?

A. No.

Q. Have you read any of the following publications:

This is My Story by Louis F. Budenz, I Confess by Ben Gitlow, The Whole of Their Lives by Ben Gitlow, I Chose

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Freedom by Victor Kravchenko, Out of the Night by Jan Valtin, The Trojan Horse in America by Martin Dies, The Red Decade by Eugene Lyons, The Road to Serfdom by Hayek.

The Struggle Behind the Iron Curtain by Ferenc Nagy.
The War We Lost: Yugoslavia's Tragedy and the Failure of the West by Constantin Fotitch.

Is Communism Compatible with Christianity by Clare Boothe Luce?

A. I have not.

(T-935) Q. Do you belong to any union? A. No, sir.

Q. Are you now or have you ever been a member of the Federal Grand Jury Association? A. No, sir.

Q. Do you or any close relative now hold or have you or any close relative in the past held any office or position in or been a member of any committee of any political party? A. No, sir.

Q. That would include being a district captain, and I take it you have not been? A. No.

Q. From reading the newspapers or written matter of any kind, or from conversation had with friends or others, or by listening to the radio or in any other way, have you formed any opinions or impressions as to the merits of the charge, unfavorable either to the Government or to the defendants or any of them, which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete? A. I have not.

Q. Have you at any time been a member of, made contributions to, or been associated in any way with business or religious organizations, or organizations of any character, in connection with the activities of which you have formed any opinions or impressions as to the merits of the charge, unfavorable either to the Government or to the defendants or any of them, which (T-936) would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete? A. No.

Q. Have you at any time been a member of, made contributions to, or been associated in any way with business or religious organizations, or organizations of any char-

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acter, whose officers or representatives have made any expressions of advocacy of or friendliness towards Communists or Communism in general on the one hand, or of opposition or hostility to Communists or Communism in general on the other hand, which expressions you have heard or read in any manner, which have led you to form any opinions or impressions as to the merits of the charge, unfavorable either to the Government or to the defendants or any of them, which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete? A. No, sir.

Q. In determining the truth or falsity of the testimony of any witness, would you, in accordance with the instructions of the Court submit the testimony of such witness to the same scrutiny and test it by the same standards, whether the witness was called by the defense or by the prosecution? A. I would.

Q. In determining the truth or falsity of the testimony (T-937) of any witness, would you, in accordance with the instructions of the Court submit the testimony of such witness to the same scrutiny and test it by the same standards, whether the witness was a member of a labor union, a Congressman, an employe of the Department of Justice or of the FBI, or a Communist or a member of the present or some former Communist Party, or a friend or associate of any of the defendants? A. I would.

Q. If you were selected as a juror and came to the conclusion that a verdict of not guilty was required by the evidence, in accordance with the instructions of the Court, would you be embarrassed in arriving at or rendering a verdict of not guilty in any way connected with your employment or by reason of your membership in or affiliation with any church, political party, club, society, or any other organizations of any kind whatsoever, or in any other manner? A. I would not.

Q. Have you such bias or prejudice against the Administration or any agency of the United States, or against any of the defendants or Communists in general or the Communist Party, whatever its aims and purpose may be, as would prevent you from reaching your verdict solely on the evidence presented in court and the law as contained in the instructions and rulings of the Court? A. No.

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(T-938) Q. Have you formed any opinion or impression concerning the guilt or innocence of any of the defendants of the crime charged which it would require evidence to remove? A. No, sir.

Q. Have you formed any opinion or impression concerning the guilt or innocence of any of the defendants of the crime charged which might prevent you from being completely impartial and free from bias in this case? A. No, sir.

Q. Have you ever expressed any opinions or views as to the guilt or innocence of any of these defendants? A. No.

Q. Have you ever voted for or subscribed to any resolution or petition of any kind which expressed any opposition to Communists or Communism or to the Communist Party of the United States? A. No, sir.

Q. Do you know of any reason why you should not serve as a juror in this case, any fact or circumstance of such a nature as to prevent you from rendering a fair and impartial verdict base solely on the evidence and the instructions and rulings of the Court? A. I do not.

Q. Now I will ask you a question or two about your occupation. What is your present occupation? A. Well, I am a writer and theatrical producer, ((T-939)) your Honor.

Q. And have you an office in connection with that work? A. I have.

Q. Where is that office? A. 56 West 45th Street.

Q. Are you in business for yourself or do you work for somebody? A. For myself.

Q. In business for yourself. How long have you been engaged in that business? A. 40 years.

The Court: You may challenge.

(Jury card container handed to Mr. McGohey.)

Mr. McGohey: I hope your Honor won't mind if we take just a few minutes more?

The Court: No, that is perfectly all right.

(Mr. McGohey confers with associates, off the record.)

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Mr. McGohey: The jury as presently constituted is satisfactory to the Government.

The Court: The jury may be sworn.

Mr. McCabe: If the Court please, before the jury is sworn I have several motions which I should like to make in the absence of the jury.

The Court: I will excuse the jurors other than those in the jury box until tomorrow morning at 11 o'clock, and jurors in the box will retire to the jury room and wait a few minutes, if you will.

(T-940) (Prospective jurors left the courtroom.)

The Court: Have all the jurors left the room?

The Bailiff: Yes, your Honor.

The Clerk: Yes.

Mr. McCabe: If the Court please, the 15 peremptory challenges allowed to the 11 defendants, with the order by the Court that they must be used jointly, if any, and not severally, are now exhausted; because that number is inadequate I move that the Court now grant at least three additional peremptory challenges.

The Court: Motion denied.

Mr. McCabe: Your Honor grants me an exception.

Now for the reason that the Court has refused to put to the prospective jurors questions, follow-up questions as suggested by counsel for the defense, and has refused to embody the subject matter of those questions in the formulation of the Court's own, and for the further reason that the Court's method of propounding questions and the questions put to prospective jurors did not and were not calculated to reveal disqualifying bias or prejudice or indications thereof, the defendants have been deprived of information required by the essential demands of fairness. They have thus been deprived of the benefits of challenge for favor or bias and have been put to the necessity of employing (T-941) peremptory challenges against prospective jurors in instances where the previous examination of such

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prospective jurors had indicated that because of political, economic, social or religious considerations surrounding associations or because of other factors prospective jurors might or possibly would be influenced unfavorably against the defendants, one or any of them.

For these reasons defendants move that at least three additional challenges be granted to them at this time.

The Court: Motion denied.

Mr. McCabe: Now if your Honor refuses three additional challenges for either of those reasons may I ask that your Honor grant two additional challenges?

The Court: I will grant no additional challenges.

(T-942) Mr. McCabe: Your Honor refuses to grant even one additional challenge?

The Court: I do.

Mr. McCabe: As the Court has declined to grant an additional challenge, I state to the Court that the jury as at present constituted, as about to be sworn to try this case, is unsatisfactory to the defendants, and that to compel the defendants to proceed to trial before this jury constitutes a denial of due process, a denial of the rights of the defendants to trial by an impartial jury. In support of the foregoing motions and objections I should like to incorporate the affidavits heretofore filed and filed today of Stanfeld Sargent, Benjamin J. Davis, Jr., and all the other affidavits heretofore filed, setting forth the difficulty or impossibility of procuring an unbiased jury.

The Court: Now if you are seeking to have me now accept affidavits which I have previously refused to accept, I will deny so much of the application as relates to such affidavits. As to the rest of the motion, I am not sure that I caught on to the point where you stopped making a motion and when you went on talking about the affidavits. I think you had better read me the third part of that motion again.

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Mr. McCabe: The third part constituted an (T-943) objection to proceeding to the trial of the case before the jury as it stands now, ready to be sworn.

The Court: Very well; the objection is overruled.

Mr. McCabe: Your Honor grants me an exception.

The Court: Yes.

Mr. Gladstein: I wish to add, your Honor, speaking for my clients, and I assume that the ruling will be equally applicable to me on my request for additional challenges. I wish merely to add this: I ask the Court, pursuant to the right that the Court has, to exercise its discretion under Rule 24 of the Rules of Criminal Procedure for the District Courts of the United States, subdivision (b)—

The Court: Now wait until I get it—24(b)?

Mr. Gladstein: 24(b), dealing with peremptory challenges.

The Court: Yes.

Mr. Gladstein: The last sentence of that provision is to the effect that "if there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly."

I now ask the Court, pursuant to the authority contained within the section of the rule that I have just referred to grant to each of the two clients whom I represent three additional challenges or challenges for (T-944) them to be exercised separately, and I say in support of that—

The Court: You do not need to say anything in support of that; I deny that.

Mr. Gladstein: Then I ask for two.

The Court: I deny that and I will state that I will grant no additional challenges.

Mr. Gladstein: I also want to let the record show, and I want to advise the Court that if the Court were to grant an additional challenge with respect to the defendant Thompson or an additional challenge with respect to the defendant Hall, I am

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prepared to exercise such challenge or challenges inasmuch as I am ready, if the Court granted me such challenges, to do so with respect to one or two of those persons who are now members of the jury.

The Court: Very well; I will grant no additional challenges.

Mr. Sacher: May it please the Court, I should like on behalf of the clients I represent and on behalf Mr. Crockett's clients, for whom I appear for just at this time, to support the applications made by Messrs. McCabe and Gladstein in behalf of additional challenges. In that connection I should like to point out to the Court that I think that the least that the Court owes to the (T-945) situation in light of the problems which confront us in the matter of obtaining an impartial jury, in the light of all the facts that have been laid before the Court, is to examine the affidavits of these various psychologists and psychiatrists whom we had prepare affidavits on the matters which were covered by the motion. I think that in the circumstances disclosed by the examination of the jurors there has been an absence of that directness of approach. There has been an inadequacy of coverage by the Court's questions of the matters embraced by voir dire, and in that connection I should like to point out to the Court that, for instance, in the case of inquiring of the jurors as to whether they ascertained—whether they entertained any prejudice against the statute, I observed that your Honor's question was a very simple and direct question as to whether or not the jurors entertained any prejudice against the enforcement of that statute or against the meting out of punishment to persons who entertained any conspiracies or engaged in any conspiracies to teach and advocate, et cetera. Your Honor did not ask in regard to that matter whether the jurors entertained such a prejudice as would prevent them from arriving at a fair and impartial verdict. I think I made the point clear. On the other hand, when your Honor

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got to inquiring into so-called prejudice (T-946) against the defendants or against Communists in general or against the Communist Party, notwithstanding the fact that requests were made of your Honor more than once to split the question up into two parts, to ascertain first whether there was any bias or prejudice at all, then to be followed up by a second question as to whether such bias or prejudice might affect the verdict at which a juror might arrive, your Honor declined that request. I point to that because I think that notwithstanding the Court's search for the ascertainment of bias and prejudice, I think that the techniques that were employed by the Court fell short of that which was necessary in the context of things that we are speaking, which would adequately probe and discover such bias and prejudice. Under these circumstances I think it ought to make a strong appeal to the discretion of the Court to grant at least three additional challenges at this time to the defense, when you bear in mind that you have a variety of defendants among the defendants here, that you have differences of race, differences of religion, and when you bear in mind that these things are factors which count with jurors and require intensive exploration, I respectfully submit, your Honor, that the techniques for such exploration were not employed.

(T-947) The Court: Mr. Sacher, I have made a most serious and conscientious endeavor to ascertain any bias or prejudice that might exist, to make sure, in so far as I could, that no juror sat in this case who had any bias, partiality or favor whatsoever. Whether I have succeeded or not, of course, is something that no one ever knows. I have done my best in the most conscientious manner that I could, and I do not believe that a single member of this jury is laboring under any bias or partiality or favor whatever. Now I can do no more, and your respective applications, or if it be deemed a single application, they are severally denied, or it is denied if it be a single application.

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Mr. Sacher: I respectfully except.

Mr. Gladstein: To save time, your Honor, may the record be deemed as follows: that in the absence of Mr. Isserman I would make for him and for his clients the same motions for his clients—

The Court: Yes.

Mr. Gladstein: —that I made concerning my own, based upon the dissatisfaction of his clients with the jury as presently constituted, and requesting either severally or jointly one or more additional challenges.

The Court: Very well, and I will make the (T-948) same ruling and the application is denied.

The jurors may be called back into the room and sworn.

Mr. Gladstein: Your Honor, in swearing the jury at this time, I trust we will not be precluded in the matter we spoke of this morning.

The Court: No, we have the alternate jurors still to select.

Mr. Gladstein: Very well. The record perhaps is not clear. You and I understood each other, but I had reference to the affidavit on behalf of Mr. Winter to suppress certain evidence—you understood that.

The Court: Well, that is being held in abeyance.

Mr. Gladstein: I understand that, but is that correct, I referred to—

The Court: I understood that, yes.

(Whereupon prospective jurors returned to the courtroom at 4:05 p. m.)

The Clerk: Will the jury rise, please.

(The jury rise as requested.)

The Clerk: Raise your right hands.

(The jurors raise right hand.)

(The jury was duly sworn.)

(T-949) The Court: Now gentlemen, I have determined to have the maximum number of alter-

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nate jurors permitted by law, which is four, and I have given directions that an additional seat be built alongside of the jury box so as to eliminate the necessity that would otherwise exist of the fourth alternate juror sitting down here alongside of the jury box. The carpenters will probably be at work on that seat tonight. However that may be, we will proceed tomorrow morning with the selection of the alternate jurors, and the challenges are prescribed by law, according to my understanding; they must be exercised solely as to the persons called to qualify as alternate jurors, and each side will have two peremptory challenges, due to the fact that there will be four alternate jurors.

Now what is your pleasure as to the time I should permit these jurors who have been sworn in and who constitute the jury to return here again?

You probably will take most of the morning.

Would you think tomorrow afternoon?

Mr. Gladstein: Well, there are certain additional motions. I am wondering, your Honor, perhaps whether your Honor shouldn't ask them to return Friday morning.

The Court: Friday morning?

Mr. Gladstein: Your Honor mentioned also that (T-950) there will be some discussion some time tomorrow about the opening statements.

The Court: Yes. Is that agreeable to you, Mr. McGohey?

Mr. McGohey: It is, your Honor, and I should think it would be a desirable arrangement. I rather anticipate that with the motions and the discussions that most of tomorrow would be taken up in matters that would not be heard in the presence of the jury.

The Court: Yes. Very well.

Now you may depart and return here on Friday morning at 10.30—not at eleven but at 10.30 on Friday, and I wish to repeat the admonition that I have given you several times before, which is really most important, you simply must not read

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anything in the newspapers, magazines or pamphlets, or anything else having any relation whatsoever to this case, remotely or directly or any other way. You must not listen to any discussion about it over the radio. You must not talk about it among yourselves or with your families or with your friends or with anyone.

Now you see I have explained it before but it is so important to our American system of justice. We administer justice by the proof that comes in, by witnesses and documents that are put in evidence, and you simply have to keep your (T-951) minds open throughout the whole case, away to the end, after you have heard the arguments of counsel and their summations, after you have heard the instructions of the Court and then you retire to your final deliberations. Now if in that interval you talk among yourselves or to somebody else or you read things, it just starts your mind working in a way that isn't fair, it isn't American. It isn't in accordance with our traditions. So you have been so carefully selected here, because your minds are free and open, because you are fair and impartial. Now I want you to stay that way right through the whole trial down to the end.

Now let me say another little thing—I may speak of it again—you know, I have been through a lot of these long trials and there are so many tiresome things that happen, so many things that—well, they make one a little bit impatient, and they are a little bit irritating, and sometimes they bother you. For instance, you may have to go out to the jury room while we are talking about some matters of law. Now those are no matters of your concern; you have nothing to do with them. There is no reason why you should be disturbed going out there, or if there is a little delay and we have conferences back in the chambers. Just make up your minds now (T-952) that you are doing the highest duty of citizenship, and do it with patience, with calm and

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serenity of mind, and when you do that you administer justice in its purest form, something that we are so proud of here in this country.

* * *

(Adjourned to March 17, 1949, at 11.00 a. m.)

(T-953)

New York, March 17, 1949;
11.00 a. m.

TRIAL RESUMED.

The Court: I am informed that one of the prospective jurors has been injured in a slight accident, not of any consequence, I am told, but sufficient to make it impossible for her to be here today and, unless there is some objection, I will excuse her. She is not here now. She is unable, I am informed, to come. That is Mrs. Laura H. Kleinman.

Mr. McGohey: The Government has no objection, your Honor.

Mr. Sacher: The defense has no objection.

The Court: Mr. Sacher, just a little while ago, Mrs. Gladstein spoke to me over the telephone and said that Mr. Gladstein was ill, nothing serious but mostly fatigue brought on this little attack of flu, and he will probably be all right in a day or so. And she said she thought that the other counsel would be willing to go on today and that everybody would consent to do that in the selection of the alternates that we were to select this morning.

(T-954) It is my suggestion that if that were to be done and you indicate by nodding, Mr. Sacher, that that is satisfactory—

Mr. Sacher: Yes, sir.

The Court: (Continuing) I feel it would be fairer to everybody concerned if we put off the opening statements until Monday. That would give Mr. Gladstein a chance to recover from this little attack, and rest up, and would probably be better for all concerned.

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So that, I think, as to Mr. Gladstein's two clients, Mr. Thompson and Mr. Hall—will you rise, please, and indicate your acquiescence in that arrangement?

Is that satisfactory to you both?

Defendant Hall: Yes.

Defendant Thompson: Yes.

The Court: And would you like to have Mr. Sacher or Mr. Isserman represent you in the absence of Mr. Gladstein today? It doesn't matter to me whichever one you would like to have.

Defendant Hall: Maybe we will divide them up.

The Court: All right, Mr. Thompson may have Mr. Sacher and Mr. Hall may have Mr. Isserman. Is that satisfactory?

Defendant Thompson: Satisfactory:

Mr. Sacher: That is, to all defendants.

(T-955) The Court: I take it the arrangement I have just suggested is agreeable to everyone, so we may proceed.

Mr. Isserman: If the Court please, I note Mr. Crockett's absence. I believe that the only thing that could have happened is that he has been delayed for a few minutes. I will check with the office to see if we can locate him but, in the meantime, I am sure his clients would agree that we proceed until he gets here.

The Court: That is agreeable to me. There is nothing more distressing to me than to unnecessarily inconvenience counsel as long as we go along without these protests and without the trouble that we have had in the past, which is not a matter of any grave concern anyway, that will be satisfactory.

Now, let me see. Mr. Stachel and Mr. Winter are the clients of Mr. Crockett.

Is it agreeable to both of you gentlemen?

Defendant Stachel: Yes, sir.

Defendant Winter: Yes, sir.

The Court: That we proceed in Mr. Crockett's absence?

Defendant Winter: It is.

The Court: And to the others as well.

So it may be understood that in the interval, Mr. Isserman represents you two gentlemen.

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(T-955-A) Defendant Stachel: Yes, sir.

Defendant Winter: Yes, sir.

The Court: You say Yes, each of you?

Then I think we may go right ahead.

Mr. McCabe: May I hand up an order to the Court, your Honor, or to the clerk?

(Paper handed to the Court.)

(T-956) The Court: (After examining.) I would like to submit this to Mr. McGohey so that he may have occasion to make any observation that he desires (handing).

(Mr. McGohey and associates confer off the record.)

Mr. McGohey: May it please the Court, this is a rather unusual thing that has occurred now. This order which is —proposed order, rather, which is handed to your Honor—oh, I see it is not a proposed order. I assume that it is suggested that it be endorsed by you, but, as your Honor—

May I have your Honor look at a copy while we are discussing it?

The Court: Yes, you may.

(Mr. McGohey hands to the Court.)

Mr. McGohey: As your Honor will see it is headed and entitled in the case, and marked "Withdrawal of appearance," and then it purports to be a notice addressed to you as the District Judge, saying that "At the request and direction of Eugene Dennis, a defendant in the above case, for whom the undersigned have heretofore appeared as attorneys and counsel, and who has decided henceforth to represent himself in the trial of this case, we hereby withdraw our appearances as attorneys and counsel for Eugene Dennis."

(T-957) And then appear, what purport to be the signatures of Unger, Freedman & Fleischer, David M. Freedman, Abraham Unger and Louis F. McCabe.

And then the statement, "The above is entered at my direction and with my consent", and then appears what appears to be the signature of Eugene Dennis.

Now, your Honor, that is a most unusual situation. This defendant Dennis has been represented since last July first by Unger, Freedman & Fleischer, and then some time in October, I think it was, Mr. McCabe first filed his notice of appearance on behalf of the Defendant Dennis, and we

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have gone through now nine weeks of proceedings since January 17, in connection with the challenge and the selection of the jury that was sworn last evening. Now of course there is a constitutional right for a defendant, if he wants to, to represent himself, but I suggest before any order be entered on this that there be a very careful inquiry by the Court of the defendant to ascertain whether or not he proposes to continue throughout the trial to represent himself, because it seems to me that while he is entitled to appear by himself or by counsel, that at the same time if we are going to have an orderly proceeding, the defendant must make an election whether he is going to appear by himself or by his counsel, and he cannot switch from one position (T-958) to the other. After having appeared by counsel during all of the proceedings up to now, if he elects now to discharge his counsel and hereafter proceed as his own representative, certainly he cannot hereafter be heard to come in and say that now he wants counsel. This question of a layman appearing for himself in a criminal trial is one of great importance.

We have, I suppose, still pending in this court some proceedings arising out of a case entitled U. S. against Gene McCann, a case that was tried—I am not sure whether it was 1941 or 1943—and where there have been several appeals to the Supreme Court of the United States by the defendant in that case, who was convicted at the conclusion of the trial in which he insisted upon representing himself and not by counsel. One of the questions that was considered by the Supreme Court on the question of whether or not he had had constitutional opportunity to be represented by counsel was whether or not at the time he elected to proceed as his own representative the Court had fully and adequately informed him as to his rights, to be advised by counsel on the question of whether he should make the election and how he should make that election. You see, the point that I am making, your Honor, it wasn't merely whether or not he had been properly advised by the Court as to his (T-959) rights to represent himself or to have counsel, but whether he had adequate advice by counsel in order to enable him intelligently to make the determination as to whether or not he would proceed by himself or have the advice of counsel. So that

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before any further proceeding is taken with respect to this, it seems to me that the Court should make the most careful inquiry of the defendant Dennis to ascertain what counsel—what consultation he has had, the extent to which he is aware of his rights and the limitation of those rights, as I have suggested them, namely, that he can represent himself or he can be represented by counsel, but the language of the law is in the disjunctive and it seems clear to me that he cannot have it both ways, one time by himself and one time by counsel.

The Court: You think it is essential now to have me rule on a question which may or may not arise later as to the desire on his part later to retire as representing himself and have someone else, some lawyer represent him at some future time?

Mr. McGohey: The point I make, your Honor, is that I think before the election is allowed to be exercised at all, right now, that there should be that inquiry and that advice from the Court as to just what his rights are in connection with advice by counsel (T-960) before making this decision.

The Court: I am not so clear, Mr. McGohey, that if he elects, as he has indicated here, to represent himself now, I am not entirely clear that later on he is wholly without the right to ask my leave to retire as representing himself and have some lawyer then represent him. I have found that it is always better for a judge—at least I think so for myself—to decide questions when you have to decide them and not to anticipate things that may not arise. Now I am entirely in accord with you that I should interrogate Mr. Dennis now to make sure that what he is doing he is doing with a full understanding of his rights, and the only thing that I hesitate to do now, and I hesitate to do it because I don't feel clear on this subject, is that the election be one of finality, and I think that I should prefer to let that matter rest in the lap of the future. It may never arise.

Mr. McGohey: No, it may not, your Honor, I recognize that, but I felt impelled to call it to the attention of the Court, and in this way also to the defendant and to his associates because a situation somewhat similar has occurred already in this district and was passed upon by

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the Court of Appeals in this circuit, in the case of United States against Mitchell. (T-961) Judge Clark wrote the opinion, and what happened—

The Court: Do you have the volume there?

Mr. McGohey: I beg your pardon? No, I have sent for that.

The Court: I would like to read it.

Mr. McGohey: Yes.

The Court: Because I have a grave distrust of rulings that are made on the spur of the moment and without careful thought and consideration.

Mr. McGohey: Oh, I was not suggesting, if the Court please, that that question that may arise in the future ought to be decided now; oh, no.

The Court: Then I misunderstood.

Mr. McGohey: Obviously, your Honor—and I would also prefer to await the facts as they are at that time, if that kind of decision be made, but because of the possibility of that kind of situation arising in the future and because of the possibility of there being a necessity to rule upon it, I thought I ought to suggest it to the Court's attention as well as to the defendant.

The Court: Now you see, there are two possibilities, two alternatives here, one of which I am quite clear about, namely, that I should indulge in a brief colloquy with Mr. Dennis to make sure that he (T-962) understands about this step that he now proposes to take. The other one is my advising him now that the step, if taken, is final and irrevocable. That I do not desire to do because I am not clear that it would be. My present understanding of the law is that if later on he should desire to stop representing himself and have some lawyer of his selection represent him, that that would then be addressed to the discretion of the Court under all the circumstances, and I don't desire to rule on it now, but I take it from what you have said that you are in entire accord that I should not rule on that now?

Mr. McGohey: That is right, and I only suggested it because, as I view the decision of the Court of Appeals in this circuit in the Mitchell case—and it is referred to in the first full paragraph of the memorandum, on the second page of that memorandum (handing to Court), it seems

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to me that the law in this circuit is that when the election is made either to proceed by counsel or to proceed in person, that the selection or the election of one method is a waiver of the right to the other. That is my understanding of the law, and I desire to bring it to the Court's attention because I think that is something that Mr. Dennis and his counsel might wish to consider before he makes irrevocably, (T-963) if it be irrevocable, this decision; at least he ought to have it in mind. But, in any event, even if that were not the law, my suggestion is that first there be a careful inquiry to ascertain the extent to which Mr. Dennis knows his rights and the extent to which he has had the advice of counsel in coming to this decision, which is reflected in this proposed withdrawal.

The Court: Yes.

Mr. Dennis, will you please rise.

(Defendant Dennis stood up.)

The Court: This step that you suggest taking is of course one of grave consequence to you, and I want to make sure that you do it with full understanding.

My first question is, is it your deliberate and carefully considered judgment that you desire to represent yourself in this trial rather than be represented by counsel?

Defendant Dennis: It is, your Honor.

The Court: And in that connection I take it you have naturally consulted with the lawyers who have represented you up to this time and been advised by them about the various elements involved in it and after such advice you have come to the conclusion that you desire to represent yourself. Am I right about that?

Defendant Dennis: That is right, your Honor.

(T-964) Defendant Dennis: That is right, your Honor.

The Court: Now, there are certain things in our system of jurisprudence that are given very careful and weighty consideration. One of those is that, under our Constitution and our laws, everyone is entitled to counsel. You know, sometimes, in some places, people are not entitled to counsel; and under our system of jurisprudence we think it is only fair and right that everyone who comes into a court charged with crime should have the opportunity to be represented by counsel learned in the law.

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The reason for that is that there are so many things in the law that some people call technicalities, but which are rules of law that have grown up over the years and that lawyers know about or have means of ascertaining and that an ordinary layman would not know about, and he might possibly sacrifice some of his rights by not knowing those things.

Now, have you taken that into consideration.

Defendant Dennis: I certainly have, your Honor, and I arrived at this decision not lightly. I appreciate the fact that I am not an attorney, but more important than that, I realize that I am called upon to defend the principles and practice of the Communist Party, to defend my honor, my convictions, the whole meaning (T-965) of my life. And therefore, sir, I believe that I can best defend my interests and the interests of my Party by acting as my own attorney.

The Court: Well, now, I think that the interest of the Party and the interests of other things are all right, but you are here as an individual, and the defense of yourself of the crime that is charged here, I think is the one thing that should be your primary concern. But, however, there is just one other thing that I want to call to your attention.

This right to counsel, that we are so careful about in our system of jurisprudence, is a right that may be waived, and when someone waives that right, the question often arises as to whether he does it understandingly and deliberately, or perhaps by some accident or lack of understanding.

I want you to realize that the step that you are taking may be considered as a waiver of your right to counsel, and I want to make sure that when you take this step you realize its full import. Now, with that in mind, do you still desire to represent yourself?

Defendant Dennis: To that, your Honor, I would say that I do not waive any constitutional rights which I have, under which I may elect to act as my own attorney or to have assistance of counsel, but I would (T-966) say to the Court that, if I were compelled at this moment to make a decision as it affects my rights during the course of the trial, I would very consciously and deliberately take the action which I have so indicated to the Court.

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The Court: You see, I am not telling you that you will thereby waive your right to counsel in the future or that you will not. I am not advised as to that. I don't feel sure. What I do tell you is that the step you are taking may be construed as a waiver. It may amount to a waiver, and that is something which you must give consideration to. Now, have you given that possibility consideration?

Defendant Dennis: I do not concede it, but if that is the possibility or the effect of this action, I am—I wish to, as of now and henceforth, to act as my own attorney.

The Court: Well, you see, when I ask you the question of whether you have considered the possibility of waiver, it seems to me, after what I have told you, you must of necessity have given it consideration. You stand there, you listened to me, you heard what I have said, and I think it would be clear to you, after my statement, that you have considered the possibility that this step may constitute a waiver of your right to counsel. Now, isn't that so, that you have considered it?

(T-967) Defendant Dennis: If it involves that, I repeat that I wish to take the action which I have done.

The Court: Well, you don't give me a direct answer to my question, but I think it must be, after I have stated the matter, that you have thought and considered what I have told you; and taking everything into consideration, do you still desire to represent yourself?

Defendant Dennis: I do.

The Court: Yes, Mr. McGohey?

Mr. McGohey: If the Court please, I think that in fairness to the defendant I should state that if he makes his election now to proceed by himself and to discharge his counsel, and at some time in the future in the trial he seeks to then be represented by counsel, that the Government will contend that his action taken this morning is a waiver by him of his right to counsel. That, of course does not preclude the Court from making its ruling, but that is what I shall contend, and that is what I shall argue under the law, as I understand it to be in this Circuit.

Incidentally, I have here now the volume with the decision in the Mitchell case, which I would like to present to your Honor.

Mr. Sacher: May we have copies?

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(T-968) Mr. McGohey: I beg your pardon?

Mr. Sacher: May we have a copy of the memorandum which you handed to the Court?

Mr. McGohey: I don't think that is necessary. All it gives is a summary of the decision.

The Court: I haven't had a chance to look at it.

Mr. McGohey: I haven't got it here, but the decision is in 137 Fed. (2d)—may I have the page?

The Court: Page 1006. 137 Fed. (2d) 1006. Let me just take and read this, Mr. Dennis, and then I will address a question.

Mr. Sacher: I would like to interpose an objection to a procedure which—

Mr. McGohey: Now, if your Honor please, I don't understand this. Here is a defendant—

Mr. Sacher: I am addressing the Court.

Mr. McGohey: —who arises to discharge not Mr. Sacher but some other lawyer.

Mr. Sacher: Am I allowed to speak to the Court? I have been interrupted.

The Court: Mr. Sacher, you are going to have a chance to speak. Now, please don't think that I am going to prevent you saying what you want to say here.

What do you say, Mr. McGohey?

(T-969) Mr. McGohey: Your Honor, I wish to object to what was happening. Here is a defendant who has not, as far as I know and as far as the notices of appearances show, at any time been represented by Mr. Sacher, and this morning he arises to support a withdrawal of appearance by attorneys listed on that withdrawal, who do not include Mr. Sacher, and I don't believe that Mr. Sacher has any right to object to what is going on, or that he has any right to be heard on this question unless he is appearing for Mr. Dennis, and that is something new.

The Court: That is strictly so, Mr. McGohey, but it seems to me that perhaps what Mr. Sacher has to say will only take a brief moment, and I think I would prefer to hear him.

Mr. McGohey: Very well.

Mr. Sacher: All I wish to do is request a copy of a memorandum which is handed to the Court for the purpose of influencing its judgment in the matter, be handed to us

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generally. I have no right to intervene in the matter concerning which Messrs. McCabe and Dennis have addressed the Court. I have made simply a general request.

The Court: It has been my experience as a lawyer that sometimes it is profitable to exchange memoranda, (T-970) sometimes helpful, and sometimes it is not; and I think, particularly in criminal cases, inconvenience results from that, and I have felt it wise in this matter not to require counsel to exchange memoranda. If something comes up, in something that is submitted to me by either side, that I think the other side should see, in all fairness I shall give a direction accordingly.

In this particular matter I haven't even had that chance to look at the memorandum, but I am inclined a little bit to think, while I am reading this case, I will not get around to it.

Mr. McGohey: If your Honor please, the paragraph in that paper that I handed referred to the case that you now have, and also to the case which is referred to in the Mitchell case, namely, State vs. Townley, 182 Northwest 773.

Since your Honor now has both of the cases before you, I shall withdraw the memorandum because it is only a memorandum that calls your attention to the citations.

The Court: Very well.

Mr. McCabe: Would your Honor care to have another citation, if you are marking it down for future reference? It deals obliquely with this matter, but it might save somebody a little work looking it up.

The Court: Yes, hand it up to me, I will be (T-971) glad to take it.

Mr. McCabe: I just want to give you the citation. It is Farnsworth vs. Sanford in 11 Fed. (2d) 375.

The Court: Thank you. Let me glance at this, but I can tell you all that I am not going to dash off any determination on some question of law by glancing at a case or two on the spur of the moment. I don't like to see judges do that and I don't do it myself. I have tried here to give every question that comes up careful consideration, and that has been one of the things that has been wearing me out here because I have been getting propositions of law in rather close proximity to one another.

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I am now addressing myself to this case, and if you will wait just a moment and let me read it.

Mr. McGohey, would you mind just indicating by a very light pencil mark the part of this case—

Mr. McGohey: Oh, I thought I had done that.

The Court: The print is so small I can hardly read it. Just indicate the place where I began.

Mr. McGohey: I had put it there but it was too light. I had to look for that myself. Beginning right here, and to the end.

The Court: The light here is not very good (T-972) for reading.

I see no occasion to dismiss the jurors during this discussion,—do you—

Mr. Sacher: No, we don't, your Honor.

The Court: —gentlemen representing the defendants? It seems to me quite unnecessary.

Mr. McGohey: If the Court please, with respect to the ruling that the Court just made about the prospective jurors or, the prospective alternate jurors remaining in the room, in connection with this very question that we are now considering, I shall feel obliged to address myself to matters which, I think, in all fairness, would be better discussed if the prospective jurors were not present.

The Court: You mean there is something further to it that is coming up this morning?

Mr. McGohey: Well, in connection with this very matter, your Honor, I have some things to suggest to the Court and some facts to bring to the Court's attention.

The Court: Then the jurors may be excused.

The Clerk: The jurors may return to Room 109.

(All prospective jurors leave the courtroom.)

The Court: Yes; well, Mr. Dennis, after hearing Mr. McGohey's statement as to what the Government claims and may assert at a later time in this trial, do you still elect to represent yourself?

Defendant Dennis: I do, sir.

(T-973) Mr. McGohey: If the Court please, before your Honor rules on that—and I say this with all respect—I think there should perhaps be some further inquiry of Mr. Dennis. I think it should be ascertained whether or

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not he has arrived at this decision after consultation and with whom he has consulted. I don't mean that he must give names but I think it ought to be clear upon the record whether or not he has discussed this with counsel, competent counsel, and counsel of his own choice, and whether or not he arrives at this because of some hostility between himself and counsel, as occurred in the Mitchell case. The circumstances, sir—

The Court: You can go right on, but I don't want to forget the trend of my thought here. I understood Mr. Dennis to say that he had discussed this matter with the men who have been his counsel—

Isn't that right, Mr. Dennis?

Defendant Dennis: That is correct, your Honor, and I wish to—

The Court: And after you did discuss it with the very gentlemen who have been your counsel here, you decided to take this step, is that right?

Defendant Dennis: That is correct.

The Court: That wasn't because of any hostility between you and these lawyers, was it?

(T-974) Defendant Dennis: I wish to disabuse the District Attorney of any idea that there is any hostility between Mr. McCabe and myself.

The Court: Or the other lawyers.

Defendant Dennis: Or the other lawyers—quite the contrary, and I want to say that Mr. McCabe has served me in a distinguished and an able way.

The Court: And you feel the same way about the other lawyers that represented you?

Defendant Dennis: That is right.

The Court: That is what I thought.

Yes, Mr. McGohey?

Mr. McGohey: Well, the reason I press those questions, your Honor, is that it is important to ascertain whether or not a move of this kind is a move made bona fides or whether it is a device to enable a defendant to argue to a jury either at opening or at closing or in the form of making objections in a manner which in effect permits his testimony to the jury without taking the stand.

The Court: Well, it seems to me—

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Mr. McGohey: And the concern that I have, your Honor, is that this defendant in a previous case in which Mr. McCabe represented him, after the conviction and at the time of sentence, had Mr. McCabe step aside and (T-975) made his own appeal on the question of sentence.

Mr. McCabe: If the Court please, that is directly provided by the rules of court.

The Court: What is that?

Mr. McCabe: I do not like to interrupt but that participation is directly provided for by the rules of court.

The Court: Well, did you hear what I said a moment ago? I don't see anything so bad about his desiring to address the Court at the time of imposition of sentence. That does not—but, however, Mr. McGohey—

Mr. McGohey: I did not suppose that anybody thought that I said there was something wrong about it, your Honor. Of course it is done frequently, but it seems to me that perhaps what we are getting at now is that that decision to have counsel step aside is being made earlier in the case now, with the purpose of getting the opportunity to address not merely the Court but the jury.

The Court: Well, that is something I will have to pass on in due course. I am very familiar with the background of law applicable to defendants in criminal cases making unsworn statements to the jury in what we would call in our system of jurisprudence summation, and I know how there was a time when parties were not (T-976) allowed to testify, when that element had something to do with it, and there is a great body of law on that subject, and it will be perhaps something for me to determine at a later date whether, should Mr. Dennis desire to do so, it would be proper or in my decision I would allow him to make an unsworn statement to the jury. That, however, we are not passing on now. That I regard as a separate question, but I am aware of that. It is a problem because now a defendant may take the stand and testify in his own defense and say what he has to say on the witness stand. And I may say now, although I don't mean to decide the matter now, as it is not now before me, but if it came to a point, let us say, that Mr. Dennis testified in his own defense, and gave sworn evidence to support his plea of not guilty, and had through the whole trial comported him-

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self in a perfectly proper and reasonable way, and then at the end of the case wanted to address the jury in his own behalf, I believe I would be inclined to let him do it; and if, on the other hand, the circumstances are different, I might not, but that, as I take it, is not one of the matters that I have to decide now.

Mr. McGohey: No, your Honor, and I am not asking that it be decided now. I just bring that up in connection with the point that I raised earlier, (T-977) that some time later if the defendant Dennis attempts to make another election, and thereafter be represented by counsel, that by reason of these considerations which I have just brought to your Honor's attention and by reason of the law of the Mitchell case, as I understand it, I shall urge and argue and contend that he has now made an irrevocable election, and that he—

The Court: He understands that.

Mr. McGohey: Sir?

The Court: He understands that.

Mr. McGohey: I just want to make that clear.

Now one thing more, your Honor. I think that Mr. Dennis ought to be questioned as to whether or not he understands the obligation which he assumes as his own counsel, to protect himself in the matter of the admission of evidence, the propriety and the kind of objections that may be made so that there can be no question raised later on about his inability, because of his status as a layman, to conduct his defense which he now elects to do.

The Court: Well, I do not think he pretends to be a lawyer.

You are not a lawyer, are you, Mr. Dennis?

Defendant Dennis: No.

The Court: Now you know you are taking a chance (T-978) here. You are not well equipped to make objections along legal lines or to urge matters that a lawyer would understand. There is a certain amount of risk in that, and I do hope that you have thought that over and given it consideration, because no matter how eager you are to represent yourself and put your best foot forward, as so often a layman thinks that he can do better than any lawyer, there are inevitably legal questions that you do not know anything about, and I don't see how you can

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press those matters with the same force and effect that a lawyer could; but you understand that, don't you?

Defendant Dennis: Yes, I do.

The Court: I do not think there is anything to add to that.

Mr. McGohey: I just want to make sure, your Honor, that it was understood by the defendant Dennis.

The Court: I think he understands that.

Mr. McGohey: Now, your Honor, Mr. McCabe offered a citation of Farnsworth v. Sanford, 11 Fed. (2d).

The Court: That is right.

Mr. McGohey: At page 375. I have the volume and I don't find the case.

The Court: Now, Mr. McCabe—

Mr. McCabe: Your Honor, I have a memo here which (T-979) said it was referring—it was not my memo; I didn't look this up. It said a related case which deals obliquely with this matter is Farnsworth v. Sanford, 11 F. 2d, 375, affirming 33 Fed. Supp. 400, Cert. Denied 313 U. S. 586, Rehearing denied 314 U. S. 708, where in the recital of the facts it was indicated that the defendant argued a motion—there was more coming and going, and the note says "Nothing in the body of the decision referred to this particular circumstance, and the Court decided that the defendant had not been denied any of his constitutional rights as to assistance of counsel."

The Court: Well, that all sounds foggy. I think even Mr. Dennis, now about to represent himself, will get little comfort out of that.

Mr. McCabe: Well, I just offered it and perhaps that 33 F. Supp. citation is correct. It was one of those hurried matters.

The Court: That is all right. Do you think it is necessary for us to get the book?

Mr. McCabe: No.

The Court: And try to find out what the right citation is?

Mr. McCabe: No. It was offered for future consideration, your Honor.

(T-980) The Court: All right.

Mr. McGohey: Well, we are agreed it is not in 11 Fed. (2d) because that appears to be about the third page of

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the opinion in the case of In re Lastex Drilling Company—not Farnsworth.

The Court: Well, the person that got up that little memorandum is guilty of error and Mr. McCabe is absolved.

So that we will now permit Mr. Dennis to represent himself, and I will affix my approval to this paper.

Mr. Borman, you can place today's date on it and I will sign it later, but it is deemed to have effect now, and Mr. Dennis is now seated at the counsel table and we are all ready to proceed.

Mr. Isserman: If the Court please, there is the matter of a motion which is collateral to any issue today but it goes to my appearance in the United States Supreme Court on the 28th of this month. I would merely like to submit it to your Honor for consideration.

The Court: What day of the week is the 28th?

Mr. Isserman: It is on a Monday, and according to the papers the case is first on the list so that it will be disposed of on Monday, right after the opinions are delivered.

(T-981) The Court: Well, I will give it consideration but I have had so much difficulty due to people going to the Supreme Court in Washington, the first thing you know it goes over two or three days, and when you have a jury here, I am rather inclined to think that I am going to deny that motion, but I will give it consideration.

Mr. Isserman: There is a copy here for the prosecution, if the Court please.

The Court: Yes. Now before we go any further, there were two motions made yesterday that I will now deny.

As I remember it, Mr. Gladstein and Mr. Isserman moved on behalf of their clients under Rule 41(e) with reference to the documents concerning which Mr. Crockett made his motion. I find, on consulting the authorities, that such motions may not be made on behalf of defendants other than the defendant from whom the alleged illegal seizure was made, and so I deny the motions made by Mr. Gladstein and Mr. Isserman.

There is still open for further discussion today the matter relating to Mr. Crockett's application which he is seeking either to renew or to make in some form that I

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have not yet recognized, and I will hear discussion on that after we select the four alternate jurors but before they are sworn.

Mr. Sacher: Your Honor, I am sure it will come (T-982) with a good deal of disappointment to Mr. Gladstein who admonished me to be sure to record with your Honor the argument that he intended to make in behalf of his motion, if it should appear to him that your Honor had denied it without hearing those—

The Court: Mr. Sacher, to me it is absolutely not open to argument; the authorities are conclusive on it.

Mr. Sacher: Well, there happens—I just want to make this brief observation, I do not want to make any extended argument on it. So far as we have been able to find out, the decisions under Rule 41(e) are not yet decisions rendered by the Supreme Court affecting a situation such as is involved in this case, for if it be claimed that the justification for the seizure of these books and papers without warrant was reasonable, on the theory that they represent some evidence or some material in connection with the substantive charges contained in the indictment, then I respectfully submit that since this is a case of conspiracy and since the use of that material in connection with the case would have validity, materiality and relevance only if it were claimed that the material, assuming the validity of the seizure of books and papers of this kind is at all justifiable—it could only be on the theory that they were seized (T-983) in the course of the specific defendant's use of them or possession of them in fulfillment of the objects of the alleged conspiracy. Therefore to that extent the so-called alleged co-conspirators would have an interest not in the possession but in the suppression of the use of such materials so unreasonably and so unlawfully seized.

The Court: Well, if you desire, you and Mr. Gladstein —well the time, according to your own theory, this must be done before the alternate jurors are sworn in.

Mr. Sacher: Well, we have done that.

The Court: And I am not going to go and put this matter over until Mr. Gladstein gets back, but I will do what I said I would do a few moments ago, after we select

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the four alternate jurors and before they are sworn, I will hear a brief discussion on this subject, and if something comes up that makes me think I should reconsider my denial of these two motions just a moment ago, why I will do so.

So let us call the jurors back now and proceed to select the alternates.

Mr. Isserman: If the Court please, we would like to note for the record our objection to the selection of alternate jurors at this time on the ground that the (T-984) jury having been sworn the defendants are now in jeopardy, and it is our position that the Court has lost jurisdiction in that respect.

The Court: Has lost jurisdiction to select the alternates?

Mr. Isserman: That is our contention.

The Court: Well, I will overrule that objection.

(The prospective jurors returned to the courtroom.)

The Clerk: Frederick P. Ayers, Alternate No. 1.

(Mr. Frederick P. Ayers takes seat 1 as Prospective Alternate Juror No. 1 in the jury box.)

The Clerk: Mrs. Lillian Wolfe, Alternate No. 2.

(Mrs. Lillian Wolfe takes seat 2 as Prospective Alternate Juror No. 2 in the jury box.)

The Clerk: Charles F. Davis, Alternate No. 3.

(Mr. Charles F. Davis takes seat 3 as Prospective Alternate Juror No. 3 in the jury box.)

The Clerk: Mrs. Mathilda A. Dunn, Alternate No. 4.

(Mrs. Mathilda A. Dunn takes seat 4 as Prospective Alternate Juror No. 4 in the jury box.)

The Court: I suppose you ladies and gentlemen (T-985) have heard me reading off these questions in the past week or two. Have you understood them as I have read them and have they seemed clear to you?

Prospective Alternate Juror No. 1: Yes.

Prospective Alternate Juror No. 2: Yes.

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Prospective Alternate Juror No. 3: Yes.

Prospective Alternate Juror No. 4: Yes.

The Court: Now I think I will start as I did with the last prospective jurors by asking each of you separately—and I now address myself to you, Mr. Ayers, has something come into your mind as you listened to these various questions, that you think has caused some bias or prejudice that you might have in this case one way or another?

Prospective Alternate Juror No. 1: No, your Honor.

The Court: How about you, Mrs. Wolfe?

Prospective Alternate Juror No. 2: No.

The Court: Mr. Davis?

Prospective Alternate Juror No. 3: No, sir.

The Court: And Mrs. Dunn?

Prospective Alternate Juror No. 4: No, your Honor.

The Court: I ask that question first because it will save us a lot of time if there was something or (T-986) other that came to your mind as you heard these questions that might influence you and make it hard for you to serve impartially, why, I thought I would find out right in the beginning, but you all say that no such thing has come to your minds as you have been sitting there listening. Very well.

I will ask the clerk to hand you lists 1 and 2. This first list we added on some names, and we only have three copies, so the clerk is going to add the names to a fourth copy and that will take just a moment.

While he is doing that I will proceed to some of these other questions just so that we will get along as speedily as we may.

Do you know anyone employed in or connected with the office or staff of the United States Attorney for this district?

Prospective Alternate Juror No. 1: No.

Prospective Alternate Juror No. 2: No.

Prospective Alternate Juror No. 3: No.

Prospective Alternate Juror No. 4: No.

The Court: Do you know any of the judges or employees of this court or members of their families?

Prospective Alternate Juror No. 1: No.

Prospective Alternate Juror No. 2: No.

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Prospective Alternate Juror No. 3: No.

(T-987) Prospective Alternate Juror No. 4: No.

The Court: Have you or any member of your family or personal friend been party to any legal action or dispute with the United States or any of its officers, agents, or employees, or had any interest in such legal action?

Prospective Alternate Juror No. 1: No.

Prospective Alternate Juror No. 2: No.

Prospective Alternate Juror No. 3: No.

Prospective Alternate Juror No. 4: No.

The Court: Do you or any of you have any prejudice or bias for or against any defendant by reason of the race of any defendant which would prevent you from keeping your mind fully open until all the evidence and the instructions of the Court have been completed?

Prospective Alternate Juror No. 1: No.

Prospective Alternate Juror No. 2: No.

Prospective Alternate Juror No. 3: No.

Prospective Alternate Juror No. 4: No.

The Court: Have you or any relative or close friend of yours ever been the subject of any investigation or accusation by any committee of Congress?

Prospective Alternate Juror No. 1: No.

Prospective Alternate Juror No. 2: No.

Prospective Alternate Juror No. 3: No.

(T-988) Prospective Alternate Juror No. 4: No.

The Court: Have you ever been employed by the Federal Government?

Prospective Alternate Juror No. 1: No.

Prospective Alternate Juror No. 2: No.

Prospective Alternate Juror No. 3: No.

Prospective Alternate Juror No. 4: No.

The Court: Are you now seeking Government employment?

Prospective Alternate Juror No. 1: No.

Prospective Alternate Juror No. 2: No.

Prospective Alternate Juror No. 3: No.

Prospective Alternate Juror No. 4: No.

The Court: Are any of your close relatives now or were they formerly employed by the Federal Government?

Prospective Alternate Juror No. 1: My father was. He is deceased now. He was employed in the Post Office.

Voir Dire

Prospective Alternate Juror No. 1, F'REDERICK P. AYERS,
was examined as follows:

By the Court:

Q. What was his title in the Post Office? A. He was a letter carrier.

Q. Letter carrier? A. That is right.

(T-989) Q. Do you think by reason of your father's connection with the Post Office that you would have any bent of mind or partiality here one way or another? A. No, your Honor.

Q. Do you think it would affect your judgment at all? A. No. There is also a brother of mine, deceased, who was also in the Post Office. He was a supervisor.

Q. And what relation was he? A. A brother.

Q. Your brother? A. That is right. He is deceased.

Q. Is he also deceased? A. That is right.

Q. Would you give the same answer to my question as to whether that would affect your judgment at all or make any bias or prejudice here? A. No prejudice whatsoever.

Q. You don't think it would? A. No, and I have a brother-in-law employed in the Post Office at present.

Q. I am afraid I do not very well hear you. I do not know whether counsel can hear you. A. I say, I have a brother-in-law now employed in the Post Office at present.

Q. And in what capacity? A. He is on the window, I think, stamps or selling—

Q. Or selling money orders? A. That is right.

Q. How long has he been in the Post Office? A. Oh, I imagine about 15 years.

Q. Well now, your father and your brother and your (T-990) brother-in-law—and some of them were, and your brother-in-law is employed by the Government now. Now the Government makes this charge against these defendants here; don't you think that perhaps that would affect your judgment some? A. No.

The Court: All right.

Voir Dire

CHARLES F. DAVIS, Prospective Alternate Juror No. 3, was examined as follows:

By the Court:

Q. Now how about you, Mr. Davis? A. I have a brother in the service—a brother and sister in the service.

Q. And what branches of the service were they in? A. My brother was in the Air Force, and my sister an officer in the Waves.

Q. Would that circumstance affect your judgment in any way or give you any bias or prejudice here? A. No, sir.

Q. Now I want you to be sure about that. A. No, no bias.

The Court: All right.

(To clerk) Have you got those lists?

The Clerk: Yes, your Honor (handing to the four prospective alternate jurors).

The Court: Have you all read those lists?

(T-991) Prospective Alternate Juror No. 1: Yes.

Prospective Alternate Juror No. 2: Yes.

Prospective Alternate Juror No. 3: Yes.

Prospective Alternate Juror No. 4: Yes.

The Court: Do you know or have you had any dealings with any of the persons whose names appear on those lists or members of their families?

Prospective Alternate Juror No. 1: No, sir.

Prospective Alternate Juror No. 2: No.

Prospective Alternate Juror No. 3: No.

Prospective Alternate Juror No. 4: No.

The Court: Have you or any member of your immediate family ever been associated with any agency, either public or private, which was or is engaged in the detection of law violations?

Prospective Alternate Juror No. 1: Formerly employed in the Police Department.

Voir Dire

FREDERICK P. AYERS, Prospective Alternate Juror No. 1, was examined as follows:

By the Court:

Q. You are a former employe of the Police Department? A. That is right.

Q. Well, don't you think—well, I had better ask you first, how long were you employed by the Police Department? (T-992) A. A little over 20 years.

Q. Don't you think that your employment in the Police Department would sort of give you a feeling that anybody that was charged with crime was probably guilty of something like that? A. No.

Q. What were you doing in the Police Department? A. Well, I was on patrol, traffic and mounted.

Q. Didn't you have to appear in courts every once in a while and testify against people that were charged with violations of the law? A. That is correct.

Q. Well, don't you think that that would give you a sort of prejudice in favor of Government officials that might come and testify here? A. No.

The Court: Well, I think I will excuse this juror.

(Prospective Alternate Juror No. 1 was excused.)

(Prospective Alternate Juror No. 3 raised his hand.)

CHARLES F. DAVIS, Prospective Alternate Juror No. 3, was examined as follows:

By the Court:

Q. Yes. A. I have a brother-in-law on the New York City Police force.

Q. Well, that is a little different from being on the police force yourself. A. Well, I thought I should mention (T-993) it.

Q. I know, and it is right that you should. And I asked you, the fact that your brother-in-law—is he now on the police force? A. Yes, sir.

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Q. Do you think that that would tend to give you some bias or prejudice here? A. No, I don't think so.

Q. You see, this other man who was on the police force and always testifying against other people, I felt that unconsciously he might be a little biased, or if an FBI man or somebody came here formerly connected with the Government. Now you wouldn't feel such prejudice, would you? A. No, sir.

(T-994) The Clerk: Mrs. Libbie Appelbaum, Alternate Juror No. 1.

(Mrs. Libbie Appelbaum, takes seat 1 as Prospective Alternate Juror No. 1, in the jury box.)

LIBBIE APPELBAUM, Prospective Alternate Juror No. 1, was examined as follows:

By the Court:

Q. Have you listened to these questions? A. Yes.

Q. Can you think of anything that would indicate to you that you might have a little bias or prejudice in this case? A. Yes, I have had a feeling—

Q. How does that arise? I don't want you to give me a long story about it, but just in what connection? A. I have a husband that is working for the United States Government. He is an investigator in the Post Office.

Q. You feel that because of that you have a little feeling of prejudice? A. Yes.

Q. That would be hard to get out of your mind? A. That is right.

The Court: You may be excused.

(Prospective Alternate Juror No. 1, Libbie Appelbaum, excused.)

The Clerk: Pearl A. Simon, No. 1.

(Mrs. Pearl A. Simon takes seat 1 as Prospective (T-995) Alternate Juror No. 1, in the jury box.)

Voir Dire

PEARL A. SIMON, Prospective Alternate Juror No. 1, was examined as follows:

By the Court:

Q. Mrs. Simon, you have heard these questions as I have been asking them? A. Yes.

Q. Again and again, haven't you? A. Yes, I heard.

Q. Do you think of something that might make it difficult for you to be absolutely impartial in this case? A. No, your Honor.

Q. I think the best thing to do, first, is to submit those lists to you, but Mr. Borman will bring them to you in just a moment, and then I will repeat the questions that I put to these other jurors.

The Court: Mr. McGohey, I wish you and Mr. Isserman, or some representative of yours, would see if you could not arrange so that this case of Mr. Isserman's on this motion could be disposed of on that Monday.

Mr. McGohey: I will be glad to try that, your Honor.

The Court: If it can be fixed so that you can do it on that Monday, it will be disposed of so that you will positively be back here the next day, or consent that we may proceed in your absence, I will let you do it.

(T-996) Mr. Isserman: The last communication from the clerk was that it was the first case on the list after reading the opinions.

The Court: That is fine. Then I will grant your application.

Mr. McGohey: Yes, that should insure that it would be completed that day.

By the Court:

Q. Do you know, or have you had any dealings with, any of the persons whose names appear on those lists, or members of their families? A. No, your Honor.

Q. Do you know anybody employed in or connected with the office or staff of the United States Attorney for this district? A. No, your Honor.

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Q. You won't mind if I read these rather fast? A. No.

Q. Because you have heard them so many times.

Do you know any of the judges or employees of this court or members of their families? A. No.

Q. Have you or any member of your family or personal friend been party to any legal action or dispute with the United States or any of its officers, agents, or employees, or had any interest in such legal action? A. No.

Q. Do you have any prejudice or bias for or against any defendant by reason of the race of any defendant which would prevent you from keeping your mind fully (T-997) open until all the evidence and the instructions of the Court have been completed? A. No.

Q. Have you or any relative or close friend of yours been the subject of any investigation or accusation by any committee of Congress? A. No.

Q. Have you ever been employed by the Federal Government? A. No.

Q. Are you now seeking Government employment? A. No.

Q. Are any of your close relatives now, or were they formerly, employed by the Federal Government? A. I have a son in the Army. I have a son in the Air Force.

Q. Does anything connected with your son's service in the Air Force give rise to any feeling on your part of bias or prejudice here one way or another? A. No, your Honor.

Q. You don't think that would affect your determination of the case at all? A. No.

Q. Have you or any member of your immediate family ever been associated with any agency, either public or private, which was or is engaged in the detection of law violations? A. No.

The Court: And I think, but I am not sure. I addressed that to each of the others, but you each answer No, do you?

(T-998) Prospective Alternate Jurors: No.

The Court: Do you remember the names of the persons that I read who were on the grand jury which indicted these defendants? Did you know any of them?

Prospective Alternate Juror No. 1: No.

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The Court: Do you know any of them?

Prospective Alternate Jurors: No, sir.

The Court: Is or was any member of your immediate family a grand juror in this court?

Prospective Alternate Jurors: No, sir.

The Court: Have you or any member of your immediate family ever been associated with any agency of law enforcement?

Prospective Alternate Jurors: No, sir.

The Court: Are you related or friend to or associated with any employee of the Department of Justice or the Federal Bureau of Investigation, generally known as the FBI?

Prospective Alternate Jurors: No, sir.

The Court: Do you know any Congressman who is now or who has been a member of the House Committee on Un-American Activities?

Prospective Alternate Jurors: No, sir.

The Court: Do you know any person or former employee investigator or member of the staff of the (T-999) House Committee on Un-American Activities?

Prospective Alternate Jurors: No, sir.

The Court: Have you ever testified before or given information to the House Committee on Un-American Activities or the FBI?

Prospective Alternate Jurors: No, sir.

The Court: Do you know any person who has testified before or given information to the House Committee on Un-American Activities or the FBI?

Prospective Alternate Jurors: No, sir.

The Court: Have you ever served as a juror before?

Prospective Alternate Jurors: Yes, sir.

The Court: Each of you have. Have you been summoned and did you attend in any district court of the United States within one year prior to the time you were summoned to attend at this term of court?

Prospective Alternate Jurors: No, sir.

The Court: You remember my reading the indictment several times? Do you think you have the substance of it sufficiently in mind to be the basis for the later questions?

Prospective Alternate Jurors: Yes, sir.

The Court: Then I won't read that again.

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And I also read from the statute which established (T-1000) the law which is alleged to have been violated by these defendants. Do you think you remember that pretty well?

Prospective Alternate Jurors: Yes, sir.

The Court: So I need not read it again.

Then I will ask you the question based on that. Have you any prejudice against enforcement of this law or against punishment of any person for conspiracy to teach and advocate the duty and necessity of the overthrow of the United States Government by force and violence as set forth in the portions of the statute which I have read?

Prospective Alternate Jurors: No, sir.

The Court: I went over so many times the quotation from the remarks of one of the judges who was questioning jurors similarly, and I think perhaps I need not do that again except to comment briefly on three things. You remember my holding up the blank sheet of paper and indicating that a juror must go into the jury box at the beginning of the case with his mind completely open, without any prejudices, without any thoughts that might interfere with the hearing of the evidence and deciding the case solely on the evidence and on the instructions of the Court.

Now, you understand about that, don't you?

Prospective Alternate Jurors: Yes, sir.

The Court: And I also said that the indictment is no evidence at all; that it isn't proof, doesn't prove (T-1001) a thing, that it is merely a way in which people are brought into court when the Government charges them with crime. So you must not think that just because a person is indicted that the indictment is some evidence of their guilt because it is not any evidence at all.

You understand that?

Prospective Alternate Jurors: Yes, sir.

The Court: And then I also referred to the presumption of innocence. Every defendant in a criminal case, in our system of jurisprudence, comes into court clothed with that presumption of innocence and that sticks by him right throughout the trial, and the Government has the burden of proving him guilty beyond a reasonable doubt. Now, do you think you could remember that instruction right through the case?

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Prospective Alternate Jurors: Yes, sir.

The Court: Have you ever been employed by, made any contributions to, or had any dealings with, any of the following publications: The Daily Worker, The Worker, The Communist, Political Affairs, Morning Freiheit, New Masses, (T-1002) In Fact, People's World, The German American, Soviet Russia Today, Masses and Mainstream, People's Voice, The Protestant or the Pro-testant, Contact, The National Guardian, New Foundations, New Times, Union Voice?

Prospective Alternate Jurors: No, sir.

The Court: Have you or any member of your family had any dealings with or ever been employed by Cafe Society Uptown, Cafe Society Downtown, World Tourists, Inc., Amtorg-Tass News Agency, Earl Browder, Inc., The Soviet Embassy, any of the former Soviet Consulates, former Soviet Purchasing Commission, Freedom of the Press, Inc., International Publishers, (T-1003) New Century Publishers, Workers Bookshop, Jefferson Bookshop, Four Continent Book Corp.?

Prospective Alternate Jurors: No, sir.

The Court: We need the next two lists, Mr. Borman.

(Lists handed to the prospective alternate jurors.)

The Court: Have you all finished reading those lists?
Prospective Alternate Juror No. 3: No, sir.

The Court: Have any of you at any time been a member of, made contributions to or been associated in any way with any of the organizations named on those lists?

Prospective Alternate Juror No. 2: Yes, American Legion.

The Court: How long have you been a member of the American Legion?

Prospective Alternate Juror No. 2: I am not a member but I contributed to it.

The Court: You contributed to it?

Prospective Alternate Juror No. 2: Yes.

The Court: I take it, as you are not a member, you have never served as one of the officers?

(T-1004) Prospective Alternate Juror No. 2: No.

The Court: Or the American Legion?

Prospective Alternate Juror No. 2: No.

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The Court: Or served on any of its committees?

Prospective Alternate Juror No. 2: No.

The Court: Or had anything to do with forming its policies?

Prospective Alternate Juror No. 2: No, sir.

The Court: Do you suppose that anything arising out of this contribution that you made, or your reading of any literature of the American Legion, or anything that occurred in connection with it, has given rise to a feeling of bias or prejudice one way or another in this case?

Prospective Alternate Juror No. 2: No, your Honor.

The Court: You think that contact you have had with the American Legion has left no residue of impression in your mind that has anything to do with this case?

Prospective Alternate Juror No. 2: No, your Honor. None whatever.

The Court: I will repeat the question: Have you at any time been a member of, made contributions to, or been associated in any way with any of the organizations named on those lists?

Prospective Alternate Juror No. 1: No, sir.

(T-1005) Prospective Alternate Juror No. 3: No, sir.

Prospective Alternate Juror No. 4: No, sir.

The Court: And as for you, Mrs. Wolfe, except for the American Legion, your answer is No?

Prospective Alternate Juror No. 2: That is right.

The Court: I have a special question as to one of the names on that: Do you know or have you had any dealings with any of the following persons said to be the sponsors of Common Cause, Incorporated, one of the organizations listed on one of those lists, namely, Lieutenant General Robert E. Eichelberger, Rev. Dr. Samuel Shoemaker, Eric Warburg, Goodhue Livingston, Jr., Christopher Emmet, Sumner Wells, Dorothy Thompson, Arthur Bliss Lane, Rev. Robert I. Gannon, General Follett Bradley, Eugene Lyons, William H. Chamberlain, Dr. George S. Counts, Mrs. Lois Mattox Miller, (T-1006) Major George Fielding Eliot, Dr. Harry J. Carman, Mrs. Aida de Acosta Breckenridge?

Prospective Alternate Jurors: No, sir.

The Court: Have you read any of the following publications: This is My Story by Louis F. Budenz, I Confess

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by Ben Gitlow, The Whole of Their Lives by Ben Gitlow, I Chose Freedom by Victor Kravchenko, Out of the Night by Jan Valtin, The Trojan Horse in America by Martin Dies, The Red Decade by Eugene Lyons, The Road to Serfdom by Hayek, The Struggle Behind the Iron Curtain by Ferenc Nagy, The War We Lost: Yugoslavia's Tragedy & the Failure of the West by Contantin Fotitch, Is Communism Compatible with Christianity by Clare Boothe Luce? Have you read any of them?

Prospective Alternate Jurors: No, sir.

The Court: Do you belong to any union?

Prospective Alternate Jurors: No, sir.

The Court: Are you now or have you ever been a (T-1007) member of the Federal Grand Jury Association?

Prospective Alternate Jurors: No, sir.

The Court: Do you or any close relative now hold or have you or any close relative in the past held any office or position in or been a member of any committee of any political party?

Prospective Alternate Jurors: No, sir.

The Court: From reading the newspapers or written matter of any kind or from conversation had with friends or others, or by listening to the radio or in any other way, have you formed any opinions or impressions as to the merits of the charge, unfavorable either to the Government or to the defendants or any of them, which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete?

Prospective Alternate Jurors: No, sir.

The Court: Have you at any time been a member of, made contributions to, or been associated in any way with business or religious organizations or organizations of any character in connection with the activities of which you have formed any opinions or impressions as to the merits of the charge unfavorable either to the Government or to the defendants or any of them, which would prevent or hinder you from holding your mind fully open (T-1008) until all the evidence and the instructions of the Court are complete?

Prospective Alternate Jurors: No, sir.

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The Court: Have you at any time been a member of, made contributions to, or been associated in any way with business or religious organizations, or organizations of any character, whose officers or representatives have made any expressions of advocacy of or friendliness toward the Communists or Communism in general on the one hand, or of opposition or hostility to Communists or Communism in general on the other hand, which expressions you have heard or read in any manner which have led you to form any opinions or impressions as to the merits of the charge, unfavorable either to the Government or to the defendants or any of them, which would prevent or hinder you from holding your mind fully open until all the evidence and the instructions of the Court are complete?

Prospective Alternate Jurors: No, sir.

The Court: In determining the truth or falsity of the testimony of any witness, would you, in accordance with the instructions of the Court, submit the testimony of such witness to the same scrutiny and test it by the same standards, whether the witness was called by the defense or by the prosecution?

(T-1009) Prospective Alternate Jurors: Yes.

The Court: Would you do the same thing whether the witness was a member of a labor union, a Congressman, an employee of the Department of Justice or the FBI, or a Communist or a member of the present or some former Communist Party, or a friend or associate of any of the defendants?

Prospective Alternate Jurors: Yes, sir.

The Court: If you were selected as a juror and came to the conclusion that a verdict of not guilty was required by the evidence, in accordance with the instructions of the Court, would you be embarrassed in arriving at or rendering a verdict of not guilty in any way connected with your employment or by reason of your membership in or affiliation with any church, political party, club, society or any other organization of any kind whatsoever, or in any other manner?

Prospective Alternate Jurors: No, sir.

The Court: Have you such a bias or prejudice against the Administration, or any agency of the United States, or against any of the defendants or Communists in general or the Communist Party, whatever its aims and purposes

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may be, as would prevent you from reaching your verdict solely on the evidence presented in court and the law as contained in the instructions and rulings (T-1010) of the Court?

Prospective Alternate Jurors: No, sir.

The Court: Have you formed any opinion or impression concerning the guilt or innocence of any of the defendants of the crime charged which it would require evidence to remove?

Prospective Alternate Jurors: No, sir.

The Court: Have you formed any opinion or expression concerning the guilt or innocence of any of the defendants of the crime charged which might prevent you from being completely impartial and free from bias in this case?

Prospective Alternate Jurors: No, sir.

The Court: Have you ever expressed any opinions or views as to the guilt or innocence of any of these defendants?

Prospective Alternate Jurors: No, sir.

The Court: Have you ever voted for or subscribed to any resolution or petition of any kind which expressed opposition to Communism or to the Communist Party of the United States?

Prospective Alternate Jurors: No, sir.

The Court: Do you know of any reason why you should not serve as a juror in this case, any fact or circumstance of such a nature as to prevent you from rendering (T-1011) a fair and impartial verdict based solely on the evidence and the instructions and rulings of the Court?

Prospective Alternate Jurors: No, sir.

The Court: Now I will ask a few questions about your occupations.

MRS. PEARL A. SIMON, Prospective Alternate Juror No. 1, was examined as follows:

By the Court:

Q. Mrs. Simon, you are down here as a housewife? A. Yes, sir.

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Q. Do you have any occupation outside of your duties as housewife? A. Not paid occupations. Volunteer work.

Q. What is the nature of that volunteer work? A. I was an occupational therapist at the Veterans Hospital during the war.

Q. And you aren't doing that work now? A. No.

Q. And that was voluntary work? A. Yes.

Q. Without pay, was it? A. Yes.

Q. You are down on the card here as having a former occupation of clerk, is that right? A. That was long ago.

Q. Well, even taking it to be long ago, it is a fact that you were a clerk? A. Previous to my marriage, yes.

(T-1012) Q. Clerk can mean almost anything. I wonder just what sort of work you did? A. Ready-to-wear.

Q. What is that? A. In a ready-to-wear store.

Q. You worked in a ready-to-wear store? A. Ready-to-wear store.

Q. And help the customers there? A. Yes.

Q. And did the usual duties of a clerk in a store? A. That is right.

Q. What is your husband's occupation? A. He is an insurance broker.

Q. Is he working for some firm? A. No; for himself.

Q. For himself? A. Yes.

Q. Where is he located? A. Empire State Building.

Q. Has he been an insurance broker for some time? A. All his business life.

Mrs. LILLIAN WOLFE, Prospective Alternate Juror No. 2, was examined as follows:

By the Court:

Q. Mrs. Wolfe, you are a housewife, aren't you? A. Yes.

Q. And a widow. During your married life your husband, I am told by the card here, was a salesman, is that right? A. Yes, sir.

Q. What was the firm that he worked for? A. The H. & D. Folsom Arms Company.

Voir Dire

(T-1013) Q. Do you do any work besides your occupation as a housewife? A. Well, I go up to the country and look after a sister who is ill, quite often, up in Westchester. She is quite ill and I spend a great deal of time up there.

Q. You spend a great deal of time up there in Westchester, taking care of your sister? A. Yes, she has weak spells, and so forth.

CHARLES F. DAVIS, Prospective Alternate Juror No. 3, was examined as follows:

By the Court:

Q. Mr. Davis, I see from the card that you are in the business of investment banking? A. Yes, sir.

Q. What firm do you work for? A. The First Boston Corporation.

Q. Are you an officer of the First Boston Corporation? A. Assistant cashier.

Q. Assistant cashier? A. Yes, sir.

Q. How long have you been employed by the First Boston Corporation? A. 24 years.

MRS. MATHILDA A. DUNN, Prospective Alternate Juror No. 4, was examined as follows:

By the Court:

Q. Mrs. Dunn, are you a housewife? A. I am a housewife, yes, sir.

(T-1014) Q. Do you have any occupation other than your occupation as a housewife? A. No.

Q. That keeps you pretty busy? A. Yes, sir.

Q. I notice here in the card that you were formerly a typist. A. I was a typist in the Inspection Department of the New Amsterdam Casualty Company, 60 John Street.

Q. How many years— A. I was there five years.

Voir Dire

Q. —were you thus employed? Five years? A. Five years.

(Paper handed to the Court by the bailiff.)

Q. On the card here, after the statement "Former occupation," are the words, "Certified accountant." Did that relate to your husband or to yourself? A. Myself. I was, before I was married.

Q. Before you were married you were— A. A certified public accountant.

Q. —a certified public accountant? A. Yes, sir.

Q. And then after your marriage you gave that work up, did you? A. Yes, and I just did typing.

Q. Just did the typing. What is your husband's occupation? A. My husband was an elevator operator in an apartment house.

Q. An elevator operator in an apartment house? A. Apartment house.

(T-1015) Q. Is he now employed? A. He is now unemployed.

Q. I saw that on the card here. That is why I wanted to bring out all the information on each of these cards.

The Court: Let me just read these questions to myself.

MRS. PEARL A. SIMON, Prospective Alternate Juror No. 1, was further examined as follows:

By the Court:

Q. Mrs. Simon, did you ever register as a member of the Liberal Party? A. Not that I recall, but it could be possible because I wanted to get the literature of all parties, and I may.

Q. You may have, but— A. I may have.

Q. —you don't recall? A. I don't recall.

(Paper handed to the Court by the bailiff.)

Voir Dire

Q. Have you any association with the Liberal Party now? A. No, sir.

Q. Have you ever attended any meetings or conventions of the Liberal Party? A. No, sir.

Q. Or any of their subordinate bodies, clubs, or affiliates? A. No.

Q. Have you ever read or listened to any of the statements about the Liberal Party emanating from the Liberal (T-1016) Party, expressing opposition or hostility to Communism or Communists? A. No, sir.

Q. Then I gather that in so far as you may have once registered as a voter in the Liberal Party, there is nothing to that that has any bearing on this case at all? A. Absolutely nothing.

CHARLES F. DAVIS, Prospective Alternate Juror No. 3, was further examined as follows:

By the Court:

Q. Mr. Davis, what position does your brother-in-law have in the Police Department? A. Well, he was a patrolman and he put in 20 years; and he is now driving a Deputy Inspector around, I believe. I haven't seen him in about 15 months, but last time I had saw him, he was doing that.

MRS. MATHILDA A. DUNN, Prospective Alternate Juror No. 4, was further examined as follows:

By the Court:

Q. Mrs. Dunn, are you in any way related to the Miss Dunn, who is Juror No. 4 on the jury already sworn? A. I am not.

The Court: Very well. You may challenge. Now, the challenges—each side has two—they will be used in two groups, one by the defense or defendants jointly, one by the prosecution, then one by the defendants, then one by the prosecution.

Voir Dire

(T-1016-A) Mr. McCabe: If your Honor please, do the objections which I have presented at the time your Honor had finished questioning the original twelve jurors on the voir dire hold now? If they do, I would simply like to take an exception, if your Honor makes the same ruling as your Honor did before, or I could restate them briefly.

(T-1017) The Court: I don't think I know what you are talking about.

Mr. McCabe: When your Honor had—

The Court: You mean objections of all of you to the nature of my questions—

Mr. McCabe: That is right.

The Court: —and the fact that they were not sufficiently comprehensive, and that you did not have enough challenges, and all that; is that what you are talking about?

Mr. McCabe: And to your Honor's refusal to allow us to put the questions ourselves, allow counsel to put the questions.

The Court: Yes; I adhere to the same decision as to that.

Mr. McCabe: Your Honor grants me an exception?

The Court: Yes, I will grant you an exception, and I will grant a similar exception to each of the defendants.

Mr. McCabe: Your Honor declines to enlarge the number of challenges?

The Court: I decline to enlarge the number of challenges. Indeed, on this phase of the case I understand I have no power, but perhaps that is wrong; but, anyway, as I interpret the statute, I have no (T-1018) power to increase the challenges as to the alternate jurors. That is all regulated by law.

Mr. McGohey: That is correct.

Mr. Isserman: If your Honor please, I would like to add to the objection, the generality of the questioning as it was had on these four alternate jurors and to the failure of the Court to put the questions, the follow-up questions, which were submitted to the Court in connection with these four jurors.

The Court: Very well.

Mr. Sacher: May I ask the Court for clarification? Did your Honor indicate that the challenges were to be exercised one in regard to each two separately or the two—

Voir Dire

The Court: I have ruled that the defense must first exercise one challenge or refuse to exercise it, in which event they waive it, then the prosecution exercises one, and in the meantime the place being filled just as we have done in the past, and then the defense exercises one and the prosecution has the last challenge.

Mr. Sacher: May we note an exception to that procedure?

The Court: Yes.

Mr. Sacher: Will your Honor indulge us a moment while we confer?

(T-1019) The Court: Yes, I will indeed.

The Clerk: Alternate No. 1, Mrs. Pearl A. Simon, is excused by the defendants.

(Prospective Alternate Juror No. 1 excused.)

The Clerk: Mrs. Jane Schultz, Alternate No. 1.

The Court: We will now adjourn until twenty past two.

(Recess to 2.20 p. m.)

AFTERNOON SESSION

(Mrs. Jane Schultz takes seat 1 as Prospective Alternate No. 1 in the jury box.)

The Court: Are any of you ladies and gentlemen related to any member of the clergy of any church?

Prospective Alternate Juror No. 1: No.

Prospective Alternate Juror No. 2: No.

Prospective Alternate Juror No. 3: No.

The Court: I asked before the question—

Prospective Alternate Juror No. 4: I am.

The Court: —about any political position—

Mr. Sacher: Excuse me, your Honor, but I think Juror No. 4—

Prospective Alternate Juror No. 4: I have; my son is a priest, a Catholic priest.

The Court: Your son is a priest?

(T-1020) Prospective Alternate Juror No. 4: Yes.

Voir Dire

The Court: Do you think that perhaps something in connection with that relationship, something that you may have heard or something that has come to your attention by way of conversation or otherwise might possibly produce some bias in the case in one way or another?

Prospective Alternate Juror No. 4: I think not.

The Court: And you remember the various questions that I asked about that, that might have a bearing one way or another, and you have thought and pondered about that and you feel that you are free from bias?

Prospective Alternate Juror No. 4: Yes.

The Court: Now one of the questions that I asked had to do with connection with any political party—I think I had better try to get the exact question before me—(after examining) yes, and I put this to all of you jurors together. I asked, do you or any close relative now hold or have you or any close relative in the past held any office or position in or been a member of any committee of any political party?

(Prospective alternate juror No. 1 raises her hand.)

The Court: Now you have—and that, I would say, would include being a district captain or in any way connected with any political party.

(T-1021) I take it that none of the other three of you have been connected.

Prospective Alternate Juror No. 2: No.

Prospective Alternate Juror No. 3: No.

Prospective Alternate Juror No. 4: No.

JANE SCHULTZ, Prospective Alternate Juror No. 1, was examined as follows:

By the Court:

Q. Now, Mrs. Schultz, what is the position that you hold? A. Well, at present I don't hold any position, but I have been recording secretary of a political club.

Q. Now in connection with that position did you have anything to do with forming the policies of the party

Voir Dire

or hold any other position than the one you just mentioned? A. No, your Honor.

Q. Do you think that the performance of your duties in the position that you have held or anything connected with that would give rise to any feeling of bias or prejudice in this case one way or another, any bent of mind that may be favorable to one side or unfavorable to the other? A. It would not. Your Honor, would it be the right time to also tell you that I worked for the Honest Ballot Association?

Q. I see no reason not to tell me that. Do you think that in connection with that work there was anything (T-1022) that came up particularly, either favorable to or antagonistic to Communists or Communism, that would leave some bias in your mind that it would be difficult to put away? A. None whatsoever, your Honor.

Q. Before I ask you all these various questions, I suppose you have been listening to them just as the other prospective jurors have as I have read them here from day to day? A. I have.

Q. You have heard them. Let me ask you a preliminary question. You have noted how hard I have been trying to get people who are entirely free from bias or favor or partiality here, haven't you? A. Yes, sir.

Q. Do you think of anything in connection with any of those questions or anything you have thought of as you have been sitting here from day to day that would make you have a doubt as to whether you could serve without bias or prejudice? A. My mind is open, your Honor.

Q. I will take it your answer to my question is in the negative, that no such thing has come up? A. No such thing, no, sir.

Q. Because I would feel that it was your duty to tell me that right now and thus perhaps save me the trouble of going over these questions.

The Court: Mr. Borman, will you hand this (T-1023) lady the first two lists, if you please.

(Clerk hands papers to Prospective Alternate Juror No. 1.)

Voir Dire

Q. Do you know or have you had any dealings with any of the persons whose names appear upon those lists or members of their families? A. I did not have any direct contact but while I worked for the Honest Ballot Association I was sent down to the NMU Building at one time to work. I do know that Mr. Joseph Curran is there, but I never met the gentleman or spoke with him.

Q. Joseph Curran? Let me see. I must be getting a little dizzy here. I don't seem to see that name on the two lists. A. There is a Mr. Curran that I noticed on the paper.

Mr. Gordon: He is on list No. 2, your Honor, submitted by the defendants.

The Court: Oh, yes, yes.

Q. Well now, you say you scarcely know him at all? A. I don't know him at all.

Q. Can you think of anything in connection with Mr. Curran that might have any bearing at all on your state of mind in this case? A. No. The only thing that I recall is his name was on one of the ballots that I worked on. See, for the Honest Ballot Association, there are a selected group of men and women who might be unbiased (T-1024) and belong to any union, and that is how they work for the Honest Ballot Association.

Q. Now, is it a fact that as far as your having anything to do with Mr. Curran then, it has left your mind entirely free and open here? A. Just open, your Honor.

Q. Do you know anyone employed in or connected with the office or staff of the United States Attorney for this district? A. Not within my knowledge.

Q. You mean there may be someone that you know but, as you don't know who all the persons are, you put it that way? A. That is right.

Q. Do you know any of the judges or employes of this court or members of their families? A. I know Mr. Joseph Kreinik, I think his name is. He is one of the clerks, I believe, here.

Q. Do you know him at all intimately? A. No, no, only, by hazard, occasions I would ask him what case was on the calendar.

Voir Dire

Q. Do you think that your knowledge of him would influence you in any way here? A. None whatsoever, your Honor.

Q. Or prevent you from having a completely open mind in the case? A. Completely open.

Q. Have you or any member of your family or personal (T-1025) friend been party to any legal action or dispute with the United States or any of its officers, agents, or employes, or had any interest in such legal action? A. No, your Honor.

Q. Do you have any prejudice or bias for or against any defendant by reason of the race of any defendant which would prevent you from keeping your mind fully open until all the evidence and the instructions of the Court have been completed? A. No, your Honor.

Q. Have you or any relative or close friend of yours ever been the subject of any investigation or accusation by any committee of Congress? A. No, your Honor.

Q. Have you ever been employed by the Federal Government? A. I have.

Q. In what capacity? A. In 1943 I worked for the Post Office for—in the General Post Office—for eight months.

Q. In what capacity were you working there? A. As—sorting mail. I think the heading would be sorter.

Q. Are you now seeking Government employment? A. No, your Honor.

Q. Are any of your close relatives now or were they formerly employed by the Federal Government? A. Well, I wouldn't call it Federal. My father—(T-1026) my late father—was Alderman of New York City in 1906.

Q. But that is not the Federal Government. A. No.

Q. You see, the Federal Government here, the United States of America, is a party to this case. It is a case in which the United States is prosecuting these defendants and that is why I am asking these questions of employment with the Federal Government. Now, do you think that your own connection with the Post Office, as you have described it, would leave you with any bent of mind one way or another here in this case? A. No, your Honor.

Q. Would it influence you in any way in arriving at a verdict or would you have any feeling in favor of the

Voir Dire

Government or against the Government or in favor of the defendants or against them by reason of that? A. No, your Honor.

(The clerk hands a paper to the Court.)

Q. Have you or any member of your—going back to your answer about being secretary of a political club, do you recall whether or not at any time in connection with your performance of your duties as secretary of that political club it came to your notice that there was any literature or were activities of an anti-Communistic character that might tend to make it difficult for you to be absolutely impartial here and decide the case solely on the evidence and the instructions of the (T-1027) Court?

Mr. Sacher: May I respectfully object to the question as put and suggest to the Court that the question be split up to ask first as to whether there was any—

The Court: No, no, I will not do that.

A. My mind is open, your Honor, because we have all kinds of literature.

Q. Well, you see, I am interested here in finding whether there was in connection with your work there literature or statements or things of that kind that left such an impression upon your mind that it might be difficult for you to decide the case solely on the evidence and on the instructions of the Court. Now, if there is the slightest doubt about it, I want you to be perfectly frank with me and tell me. A. No, your Honor, there isn't the slightest doubt in my mind.

(T-1028) Q. Have you or any member of your immediate family ever been associated with any agency, public or private, which was or is engaged in the detection of law violations? A. No, your Honor.

Q. Do you remember my reading the names of the members of the grand jury that indicted these defendants?

A. I do.

Q. Do you know of them? A. None.

Q. Is or was any member of your immediate family a grand juror in this court? A. No, sir.

Voir Dire

Q. Have you or any member of your immediate family ever been associated with any agency of law enforcement?
A. No.

The Court: Mr. Reporter, do you recall the name of the clerk of this court that Mrs. Schultz said she was acquainted with?

Mr. McGohey: It was Mr. Kreinik, your Honor.
The Court: Kreinik?

Mr. McGohey: I am sure it was Mr. Kreinik.

The Court: How do you spell that?

Mr. Gordon: K-r-e-i-n-i-k.

The Court: I don't remember that he testified in this proceeding, did he?

Mr. McGohey: Yes, your Honor. He testified in the—

(T-1029) The Court: Jury challenge?

Mr. McGohey: —in the jury challenge proceeding, yes, sir.

Mr. Gordon: He was the next to the last witness.

The Court: Oh, yes.

Mr. McGohey: And he was one of the witnesses who had to do—

The Court: Oh, yes. He was here for just a brief moment.

Mr. McGohey: That is right.

Q. Did you know that Mr. Kreinik had testified in this case already in the preliminary proceeding? A. No, your Honor, I did not until this moment.

Q. So that anything he may have said there about it, you do not know anything about at all? A. No, sir.

Q. Assuming that he did testify, would that have any bearing on your state of mind in this case? A. No, your Honor.

Q. Are you related or friendly to or associated with any employee of the Department of Justice or the Federal Bureau of Investigation, generally known as the FBI? A. No, your Honor.

Q. Do you know any Congressman who is now or who has been a member of the House Committee on Un-American (T-1030) Activities? A. I do know an ex-Congressman, Honorable Joseph Clark Baldwin, but I don't know whether he was connected with any—

Voir Dire

Q. With that Un-American— A. Activities.

Q. With the Committee on Un-American Activities, you don't know whether he was on that committee or not? A. I do not.

Q. Well, because of your—or I will put it this way: Is he a family friend? A. No.

Q. Or just a casual acquaintance? A. No, I just know him from coming up to the club.

Q. If you ponder on that subject for a moment or two, you think that it would tend to give you any bent of mind or bias one way or another in this case — A. No, your Honor.

Q. —because you know him? A. No, your Honor.

Q. Do you know any person or former employee investigator or member of the staff of the House Committee on Un-American Activities? A. No, your Honor.

Q. Have you ever testified before or given information to the House Committee on Un-American Activities or the FBI? A. No, your Honor.

Q. Do you know any person who has testified before or given information to the House Committee on Un-American Activities or the FBI? A. No, your Honor.

(T-1031) Q. Have you ever served as a juror before? A. I have.

Q. Have you been summoned and did you attend in any district court of the United States within one year prior to the time that you were summoned to attend this term of court? A. No, your Honor.

Q. You remember my reading the indictment several times? A. I do.

Q. Do you think you recall the substance of it sufficiently for me not to read it again? A. I do.

Q. Now I also read a quotation from the pertinent provisions of the statute under which that indictment was framed. Do you remember my reading that several times? A. I do.

Q. I want to ask you a question about that. Have you any prejudices against the enforcement of this law or against the punishment of any person for conspiracy to teach or advocate the duty and necessity of the overthrow of the United States Government by force and violence as