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The Court: I will do that, and I will put it this way:
Does any juror know or has he had any dealings with
any of the following persons or members of their families,
and I will read them again:

Lieutenant General Robert E. Eichelberger, Rev. Dr.
Samuel Shoemaker, Eric Warburg, (T-689) 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 Breckenridge?

Prospective Juror No. 5: No.

Prospective Juror No. 9: No.

Prospective Juror No. 11: No.

The Court: Do you all answer No?

Prospective Juror No. 5: No, your Honor.

* * *

(Adjourned to March 15, 1949, at 11.00 a. m.)

TRIAL RESUMED.

(T-690)

New York, March 15, 1949;
11.00 a. m.

The Court: There are two jurors, by reason of illness,
that I am going to excuse. One of them, a member of the
family suddenly died; the other one has become ill. So, unless
there is some objection or some desire that there be
some special interrogation, I shall excuse the two jurors,
whose cards I hand to Mr. Borman.

Mr. McGohey: No objection from the Government,
your Honor.

Mr. Sacher: No objection from the defendants.

The Court: Miss Alma Stern and Mrs. Bess S. Weiss
excused.

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Mr. Sacher: May it please the Court, I have a motion to address to the Court. I wish to move in renewal of the motion that I made in chambers yesterday that your Honor permit defense counsel to examine and make copies of those of the follow-up questions which they submitted to your Honor, and which they did not (T-691) have an opportunity to make copy of initially. We have made copies of the later questions but we did not of the earlier ones, and I renew the motion which your Honor denied yesterday.

The Court: I have them all in an envelope here; and if you desire to examine some of them in the recess today, you may do so.

Mr. Sacher: Thank you.

The Court: I have slightly altered the omnibus question so as to make it very clear, and I desire to repeat it now for the benefit of all the jurors in the jury box, not only the three new jurors who are now being interrogated specially, but all of the jurors.

In lieu of the omnibus questions, which I have previously read, and with the same purpose in mind, 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. So that you will please bear that in mind as the questions (T-692) proceed. That relates not only to those you have already heard but to any new ones that I now will put.

Now, to the three new prospective jurors, that is to say, Mr. Ward, Mr. Stewart and Mrs. Robinson, there is one additional question before I proceed with my list.

Are any of your close relatives now, or were they formerly, employed by the Federal Government.

Prospective Juror: No. 11: No.

Prospective Juror No. 9: Yes.

The Court: Yes; which one of your relatives, Mr. Stewart, was formerly employed by the Government?

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Prospective Juror No. 9: My father.

The Court: And in what capacity?

Prospective Juror No. 9: He is a retired Post Office employee.

The Court: During the time that he worked for the Post Office what was his capacity or title?

Prospective Juror No. 9: He was an examiner.

The Court: An examiner? Does that circumstance in any way give rise in your mind to any bent of mind or any bias or prejudice, either in favor of the Government or against the Government, or in favor of any of these defendants or against any of these defendants?

Prospective Juror No. 9: No, sir.

(T-693) The Court: Now, Mr. Ward? How about you? Do you answer that question in the negative? I will read it again.

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

Prospective Juror No. 5: No, they were not, your Honor.

The Court: Very well.

Now I shall proceed at the place where I had left off yesterday, and I am addressing especially the three prospective new jurors, but all others as well, as indicated in my omnibus question.

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, (T-694) Is Communism Compatible with Christianity by Clare Booth Luce?

Prospective Juror No. 5: No.

Prospective Juror No. 9: No.

Prospective Juror No. 11: No.

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The Court: Do you belong to any union?

Prospective Juror No. 5: No.

Prospective Juror No. 9: No.

Prospective Juror No. 11: No.

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

Prospective Juror No. 5: No.

Prospective Juror No. 9: No.

Prospective Juror No. 11: No.

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 Juror No. 5: No.

Prospective Juror No. 9: No.

Prospective Juror No. 11: No.

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 (T-695) 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?

Mr. Sacher: I wish to object to that question, your Honor, and I ask that your Honor divide the question in two to ascertain first whether the jurors entertain any opinion, any prejudice or any bias and then proceed to inquire as to whether that bias or—

The Court: That application is denied.

Mr. Sacher: Exception.

The Court: And I may say, as I have formerly stated to all the jurors here, it is not only the right but it is the duty of counsel, all counsel—counsel for the Government and counsel for the defendants as well—to make such objections, make such motions, make such arguments as they may think will help their clients, and you must entirely disregard such matters. Now the reason for that is this, and it is very simple; jurors sitting in a case must come to the case with a completely open mind, and then when

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they decide the questions submitted by the Court at the end, they must decide on the basis of the evidence that is received in the case, not gossip, not newspaper talk, nothing but the evidence received (T-696) in court. Now the arguments of counsel, the motions and objections and all those things, they do not constitute any evidence at all. Lawyers may say all kinds of things and make various objections. That is not evidence, and that is why I tell you you must not concern yourselves with such matters. You must not permit your minds to form any impression that would bear upon your determination of the issues by what counsel says, because it is the evidence and only the evidence that is to be the basis of your determination.

Now do you remember the question I read? Objection was made but I had better read it again so that you will have it clearly in mind.

Mr. Gladstein: Your Honor, may I interrupt before you do that, to add my objection to the form of the question and to state in a sentence my reason. I believe, your Honor—and I ask your Honor to reconsider the form of the question—I believe that fairness to us and to the jurors requires first a question that will ascertain whether a juror does have a prejudice or a bias or an opinion, whether there is a state of mind, whether a juror can then say "I, under the instructions of the Court will remove that opinion"—is another thing, but the form of your question, if the Court please, makes it impossible for us to know or for the juror (T-697) to state what may be the fact, namely, that the juror has formed an opinion.

The Court: Now Mr. Gladstein—

Mr. Gladstein: Yes, your Honor?

The Court: —you and your colleagues have made that argument to me a very considerable number of times in various ways and with various wording. I have indicated my ruling on it. I have also said, and I repeat, that any objection that is made on behalf of one or more of the defendants will inure to the benefit of all so that each counsel need not get up and repeat the substance or effect of

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what some other counsel has said because his own clients get the advantage of the objection and the exception.

Mr. Gladstein: I understand that, your Honor.

The Court: Now I do not desire to hear argument on these questions. If you wish to object to any question you may object, and I do not desire now to hear argument on these matters.

Mr. Gladstein: Very well, your Honor. I do note my objection for the reasons given.

The Court: Very well. Your objection is noted.

Now 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, (T-698) 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. 11: No.

Prospective Juror No. 9: No.

Prospective Juror No. 5: No.

The Court: And I take it if any of you jurors fail to understand the question you will say so, just as Mrs. Howell did yesterday. If you don't understand any question, speak right up.

So I will proceed to the next one. 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. 11: No.

Mr. Gladstein: May the record show my objection (T-699) to that partly because, your Honor, it makes it impossible to ascertain first whether there is the existence of an impression, and, secondly, if the juror were to state

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that he does have, has formed an opinion or has an impression, the question does not permit an inquiry as to the strength of that impression, so I object to that.

The Court: That I think you have formerly noted, and I should think it would suffice if you objected to the question, in view of what you have already stated previously, but, however, the objection is noted and overruled.

Now I will read the question again:

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. 11: No.

Prospective Juror No. 5: No.

Prospective Juror No. 9: No.

(T-700) 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 Juror No. 11: No.

Prospective Juror No. 9: No.

Prospective Juror No. 5: No.

The Court: In determining the truth or falsity of the

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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?

Prospective Juror No. 11: Yes.

(T-700-A) Prospective Juror No. 5: Yes.

Prospective Juror No. 9: Yes.

The Court: And I will ask the same question with reference to different persons.

(T-701) 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 a member of a labor union, a Congressman, an employee of the Department of Justice or of the FBI, or a Communist or member of the present or some former Communist Party, or a friend or associate of any of the defendants?

Prospective Juror No. 11: Yes.

Prospective Juror No. 5: Yes.

Prospective Juror No. 9: Yes.

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 Juror No. 11: No.

Prospective Juror No. 5: No.

Prospective Juror No. 9: No.

(T-702) Mr. Sacher: May I call your Honor's attention to the fact that, in the order of questions as I have them, I think you omitted the one which immediately precedes the one which you just gave.

The Court: No, the one that immediately precedes it is my question 28, about truth or falsity of the testimony, and the one I just read is my question 29.

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Mr. Sacher: May I hand this up to you.

The Court: You may.

(Mr. Sacher hands paper to the Court through the clerk.)

Mr. Sacher: Those letters refer to the page of the transcript, your Honor.

The Court: It must have been with reference to some special inquiry. I will look at the transcript.

I think that was because of the colloquy there, Mr. Sacher. I think the question that I put is sufficiently comprehensive.

Mr. Sacher: May I note an exception to your Honor's ruling?

The Court: What is that?

Mr. Sacher: May I note an exception to your Honor's ruling?

The Court: Yes.

(The Court hands papers back to Mr. Sacher (T-703) through the clerk.)

The Court: I now continue: Has any juror 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 may be, as would prevent him from reaching his verdict solely on the evidence presented in court and the law as contained in the instructions and rulings of the Court?

Mr. Gladstein: May the record show that my objection to the previous question, similarly worded, is also made to this question?

The Court: Yes. You may be deemed to have an objection to all the questions on behalf of your own clients and all the other defendants, so that you need—

Mr. Gladstein: I don't object to all the questions.

The Court: Very well.

Mr. Gladstein: I object—

The Court: Then you will have this objection and I will take back about the objection to them all. I thought that probably would save you time and merely keep the

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record straight. But if you desire it this way, this is the way it will be. You object simply to this question and such others as you object to.

(T-704) Mr. Gladstein: Yes, because there are many questions that are quite correct and there are others to be submitted that we want to have asked and some that we believe should be asked.

The Court: Yes, I understand that.

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. 11: No.

Prospective Juror No. 5: No.

Prospective Juror No. 9: No.

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 in this case?

Prospective Juror No. 11: No.

Prospective Juror No. 5: No.

Prospective Juror No. 9: No.

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

Prospective Juror No. 11: No.

Prospective Juror No. 5: No.

(T-705) Prospective Juror No. 9: No.

The Court: This last question before I come to your occupations: 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?

Prospective Juror No. 11: No.

Prospective Juror No. 5: No.

Prospective Juror No. 9: No.

The Court: Let me look at these questions that have been submitted.

Mr. McGohey: If the court please, I have just asked the reporter, and he seems to verify my own impression:

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Your Honor asked a question, the last question which was objected to by Mr. Gladstein, and I am not sure that the jurors answered that question, as it was objected to. My impression is that your Honor then asked a different question. Might we have the reporter check that?

* * *

(T-706) (Record read as follows:) "Has any juror such a bias or prejudice against the Administration"—

The Court: I will read that over again.

Has any juror 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 may be, as would prevent him from reaching his verdict solely on the evidence presented in court and the law as contained in the instructions and rulings of the Court?

Prospective Juror No. 11: No.

Prospective Juror No. 5: No.

Prospective Juror No. 9: No.

Mr. Sacher: If it please the Court, may the record show that the question which I asked your Honor to put to the jury is one which appears at the top of page 353 of the transcript of the trial?

(T-707) The Court: Yes. I think that question was elicited in the form there due to the colloquy that was then had about it and that the subject is sufficiently covered by the question which I have now put.

Is any member of the immediate family of any prospective juror in the jury box a grand juror of this court now or was such a member of the immediate family formerly a grand juror in this court?

Prospective Juror No. 11: No.

Prospective Juror No. 9: No.

Prospective Juror No. 5: No.

Prospective Juror No. 6: Well, not in this trial, but my husband has been a grand juror.

The Court: In this district court for the Southern District of New York?

Prospective Juror No. 6: Yes.

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The Court: How long ago was that?

Prospective Juror No. 6: Only a few weeks ago, and then he was excused because he had to go away on business.

The Court: Do you think that the fact that your husband was one of the grand jurors who sat here just recently would give you some bent of mind or bias favorable to the Government here and unfavorable to the (T-708) defendants?

Prospective Juror No. 6: No, it would not.

The Court: How long has your husband been a federal grand juror?

Prospective Juror No. 6: For many years off and on.

The Court: For some years?

Prospective Juror No. 6: Yes, on and off.

The Court: Have you ever discussed this case in any way with your husband?

Prospective Juror No. 6: Not at all.

The Court: Or the merits of this case or these defendants in any way?

Prospective Juror No. 6: Not at all.

The Court: Now I turn to the questions about occupations.

FRANCIS WILLIAM WARD, Prospective Juror No. 5, was examined as follows:

By the Court:

Q. Mr. Ward, what is your present occupation? A. I am an assistant district manager for the Prudential Insurance Company of America.

Q. Where is your place of business? A. 19 North Broadway, Tarrytown, New York.

Q. Just what sort of work do you do in that connection? (T-709) A. Well, I have a group of life insurance agents, who are under me, and I supervise their work. It is all field work.

Q. They solicit insurance, do they? A. Yes, and adjust death and disability claims, collect premiums; any service that can be rendered in the field.

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Q. How long have you been in that position? A. Since December—I mean, since February of 1946.

Q. Before that were you working in some other capacity for the Prudential? A. Yes, I was an agent. I started with the company—

Q. How long were you an agent for the Prudential before you got your present position, some years? A. Oh, yes. I was about—well, I started with the company in September 1934. I got a leave of absence in March 1944. I was away for 19 months in the service. I came back as an agent, in October 1944, and I was made a manager in February—I mean 1945, and I was made a manager in 1946.

Q. Very well. You have stated that you were not a member of any union? A. No, sir.

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

Q. Have you had anything to do with any union activities one way or another in connection with the Prudential? A. No—at one time I was a member of a union in Prudential. That is many years ago.

(T-710) Q. And what was that union? A. It was Industrial Insurance Agents' Union 305—I know that was the title under which it went. I was a member for perhaps a year and a half, and I dropped out of the union, that was way back before the war, and I never had anything more to do with it, and I am not a union—

Q. What I am asking about now is whether, in connection with any activities there might have been recently to unionize the employees of the Prudential, whether you had anything to do with that? A. Nothing whatever.

Q. Did anybody try to get you to join that union? A. No, sir.

Q. If there was such? A. No, your Honor, nobody.

Q. You have had nothing to do with that whatever? A. Nothing whatever.

Q. Very well. So that if any literature had been put out in connection with any union activities with that Prudential, you haven't seen any such literature? A. Oh, yes, I have, your Honor.

Q. You have seen that? A. Do you mind if I—

Q. Then I will ask you this question—

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Mr. Gladstein: May the juror be permitted to finish the answer to your Honor's question?

The Court: I did not realize there was anything (T-711) he desired to add.

Q. If there is something you wish to add, you may. A. Yes, I would like—I might explain that right at the moment there is union activity in our company due to the election that is going to take place on next Friday for agents of the company, and I am responsible for supervision of agents, so I thought I had better make that fact known. Therefore, there has been literature in reference to union activity in the last month or so.

Q. Have you seen any literature that asserted that the union that was trying to get members among the agents of the Prudential was Communist led or anything of that kind? A. I have, your Honor.

(T-712) Q. In connection with that literature that you read has any impression been made on your mind that would give you a bias or prejudice here unfavorable to the Government or unfavorable to any of the defendants? A. No, your Honor.

Q. By reason of these circumstances that you have related here would it be a source of any embarrassment whatever to you if after hearing the evidence and the instructions of the Court you became convinced that you should render a verdict of not guilty, would the rendering of such a verdict be a matter of any embarrassment to you— A. None whatever.

Q. —by reason of any of these things that you told me? A. No, your Honor.

Mr. Sacher: Would your Honor be kind enough to give me a moment more?

The Court: Some more follow-up questions?

Mr. Sacher: Yes, on the matter of this question.

The Court: Yes, I will wait.

(Mr. Sacher writes note and hands it to the Court through the bailiff.)

Q. Do you know whether this literature that you read was published and issued by the Prudential Company? A. Some of it was, your Honor.

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Q. Would that make any difference to you? A. No, (T-713) it would not.

Q. You would still answer my questions the same as you did previously? A. Yes, your Honor.

Mr. Sacher: May I—I don't have the time and I do not want to hold up the proceedings—

The Court: Oh, you have the time.

Mr. Sacher: May I have a moment?

The Court: Yes. There has been no haste about these proceedings.

(Mr. Sacher writes note and hands it to the Court through the bailiff.)

JOHN L. STEWART, Prospective Juror No. 9, was examined as follows:

By the Court:

Q. Now Mr. Stewart, what is your occupation? A. I am a claim approver.

Q. Have you been a claim approver for some years? A. Seven years.

Q. Seven years? A. Yes.

Q. And that is for the Metropolitan Life Insurance Company? A. That is correct.

Mr. Sacher: May I interrupt, your Honor, to ask whether you have read the question?

The Court: I read the question but I do not desire to ask it.

(T-714) Mr. Sacher: May I respectfully note an exception to your refusal to ask the question about the literature.

The Court: You see, all the questions that are in the envelope, I have tried to put—I first began putting in only the ones I rejected in accordance with my statement on the record, but then I thought it better to put them all in there and so they are all there in the envelope, and I haven't had a chance to

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put this last question in yet, but it will get there in just a moment or two.

Q. Now Mr. Stewart, you have stated that you were not a member of any union. Are you familiar with any efforts by any union to—I do not know exactly what word you used as I am not very familiar with such matters, but I will say, to organize the employes of the Metropolitan Life Insurance Company? A. Approximately a month ago handbills were handed out in front of the building.

Q. So that you are familiar that some such efforts are now being made, is that right? A. Yes, sir.

(Mr. Sacher hands paper to the Court through the bailiff.)

Q. Now are you active in that matter in any way, either in favor or opposed to the union? A. No.

Q. One of the defendants here, Benjamin J. Davis, is (T-715) a member of the City Council. I am told by the defendants that some sort of controversy has arisen with reference to Stuyvesant Town, one of the buildings or group of buildings owned by the Metropolitan Life Insurance Company, relative to permitting everyone, including Negroes, to obtain apartments in those buildings. Do you know anything about that? A. Just what has been stated in the papers.

Q. Now I ask you if it is put in evidence that Mr. Davis, one of the defendants, in 1947 introduced into the City Council a resolution demanding that the Board of Estimate call upon the Metropolitan Life Insurance Company as the owner of Stuyvesant Town to insert an anti-discrimination clause in its agreement with the City and thus permit all persons, including Negroes, to obtain apartments therein, would that cause you any embarrassment upon your return to your employ after the case was over, or lead you to put Mr. Davis in a less favorable position— A. No.

Q. —than others in the case? A. No.

Q. Would it affect your judgment in any manner whatsoever in the case that such a resolution had been offered? A. No, your Honor.

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Q. I am told that—and of course these facts are unknown to me; I put them as they are submitted to me—that Colonel Frederick Ecker, the president of the (T-716) Metropolitan Life Insurance Company, has publicly stated that he was opposed to having Negroes and whites occupy apartments in the same project.

If any evidence of that kind should come in, or if that were so, would that affect your judgment in any way in connection with any of the issues in this case as they have been described to you? A. No, your Honor.

Q. And if it appeared that Mr. Davis, as City Councilman, took a position vigorously in opposition to that stated by Mr. Ecker, would that lead you to put him in any worse position because of that, in connection with the case? A. No, your Honor.

Mr. Sacher: Would your Honor hold it—

Q. To put it comprehensively, would any kind of antagonism that developed in the evidence between Mr. Davis as City Councilman on the one hand and any of the officers of the Metropolitan Life Insurance Company on the other, on any matters of policy whatsoever, play any weight with you in determining the issues if you should be selected as a juror? A. No, your Honor.

Q. You wouldn't feel that rendering a verdict of not guilty, should the evidence seem to you to require it in accordance with the instructions of the Court, would (T-717) cause you any embarrassment in going back to work with the Metropolitan or any project? A. No, your Honor.

Mr. Sacher: Will your Honor give me a moment or two to have another question on that phase of it?

Mr. McCabe: Might I state to your Honor, while Mr. Sacher is writing out that question, that so far as the questions propounded relate to matters which might appear in evidence, I should now offer to prove those assertions and those postulates, to prove them aliter in order to form the basis—

The Court: They seem quite remote from the issues here to me, but your objection may be noted.

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Mr. McCabe: And that was for the purpose of laying a foundation for a challenge for cause despite the answer of the juror to whom it was addressed.

The Court: I do not think it would be appropriate to stop these proceedings now and have the defendants call witnesses to prove what Mr. Davis did in the City Council and what Mr. Ecker or somebody else did in connection with some of these housing projects, but your offer of proof may be noted.

Now there are some more questions being prepared?

Mr. Sacher: Just one more question, your Honor, on this phase.

(Mr. Sacher hands paper to the Court through the (T-718) bailiff.)

CARRIE L. ROBINSON, Prospective Juror No. 11, was examined as follows:

By the Court:

Q. Now Mrs. Robinson, you are a housewife? A. I have had a part time position for the last year, clerical work.

Q. And what is the nature of it? A. Clerical work.

Q. Clerical work? A. Yes, sir.

Q. Now that is a little vague to me. What sort of work is it? A. Office work.

Q. Office work? A. Yes.

Q. And what is the name of the firm for whom you do that work? A. Morris Strauss, manufacturer of eyeglass cases.

Q. I notice from your card here that in former years you had some other occupation. What was that? A. Before I was married?

Q. Well— A. Silk buyer.

Q. It says "Silk Buyer." A. Yes.

Q. That was before you were married, was it? A. That is right.

Q. And for whom were you employed then? A. For a neckwear concern, manufacturer of men's neckwear.

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Q. Now, it has been customary for me to ask the (T-719) ladies of the jury the occupation of their husbands but I notice on the card that you are a widow, Mrs. Robinson. A. That is right.

The Court: Very well, Mr. McGohey.

Mr. McGohey: Did I hand up some questions to your Honor?

The Court: I have no further questions. I think I have covered everything with the three—

Mr. McGohey: No, I handed up a list of additional names and publications, I think.

The Court: Oh yes, excuse me. I will ask these.

Now the jurors will recall that I asked them a variety of questions as to whether they knew certain persons or members of their families or had any such dealings with certain persons, and I ask that question now as to whether any of you know these persons or members of their families or have had any dealings with them: Arthur Osman, David Livingston, Burl Michelson, William Michelson, Mrs. Marcella Loring Michelson and Samuel—

(Prospective Juror No. 4 raises her hand.)

Mr. McGohey: One of the jurors has raised her hand, your Honor.

MARY CONANT, Prospective Juror No. 4, was examined as follows:

(T-720) *By the Court:*

Q. Oh, Mrs. Conant, did you say that you knew Mrs. Michelson? A. I don't know her; I know of her. She was at one time—

Q. Well, if you do not know her at all, is it something that you have been told about her that you think would have some bearing on your ability to serve as a fair and impartial juror here? A. No.

Voir Dire

Q. Because if you have any acquaintance with her or have had any dealings with her or with any member of her family that is what I wanted to be sure. A. No, I have never spoken to her.

Q. Now the last name is Samuel Kovenetsky—K-o-v-e-n-e-t-s-k-y. A. I know of him also but I have never spoken to him.

Q. I do not hear you.

(Last answer read.)

Q. You never met him or had any dealings with him or any member of his family? A. No.

The Court: Now I think I had better get an answer from each member of the jury.

The question was whether you knew any of those persons or members of their families or had any dealings with them.

Now what do you say, Mrs. Dial?

(T-721) Prospective Juror No. 1: No, your Honor.

The Court: And Mrs. Mendelsohn?

Prospective Juror No. 2: No, your Honor.

The Court: Mrs. Howell?

Prospective Juror No. 3: No, your Honor.

The Court: Mrs. Conant?

Prospective Juror No. 4: Only the two, just the two that I spoke of.

The Court: But as to the two that you spoke of you told me that you never met them?

Prospective Juror No. 4: That's right.

The Court: And you never had any dealings with them?

Prospective Juror No. 4: That's right.

The Court: And you never had any dealings with any members of their families?

Prospective Juror No. 4: No.

The Court: So the answer is "No," isn't it?

Prospective Juror No. 4: That is right.

The Court: Now Mr. Ward?

Prospective Juror No. 5: No, your Honor.

The Court: Mr. Stern?

Prospective Juror No. 6: No, your Honor.

Voir Dire

The Court: Mr. Crossan?
Prospective Juror No. 7: No, your Honor.

(T-722) The Court: Mr. Allen?

Prospective Juror No. 8: No.

The Court: Mr. Stewart?

Prospective Juror No. 9: No, your Honor.

The Court: Mrs. Oberwager?

Prospective Juror No. 10: No, your Honor.

The Court: Mrs. Robinson?

Prospective Juror No. 11: No, your Honor.

The Court: Mrs. Corwin?

Prospective Juror No. 12: No, your Honor.

The Court: Now I am asked to add to the list of publications—and you will remember that my questions relate to the publications—

Mr. Sacher: May I ask your Honor whether these questions, the question that you have just put and which you are about to put, are questions submitted by the Government?

The Court: Yes, they are.

Mr. Sacher: Then may I interpose an objection to your asking those questions on the ground that the question just read and the one I suspect which you are going to read are not follow-up questions but are supplemental questions. Your Honor has ruled that you will not put to this jury any supplemental question that was submitted by the defendants, and in the desire to have equality of (T-723) treatment I respectfully request that your Honor decline now to submit to this jury any supplemental questions submitted by the prosecution.

Mr. McGohey: If the Court please—

The Court: Now Mr. Sacher, do you remember that with reference to my question 3 you requested me to add the names of certain persons, namely, Eddy Chayfetz, Ken Eckert or Egert, Farrell Dobbs, George Schuyler and A. A. Berle, and that I did so?

Mr. Sacher: I did.

The Court: Do you remember that?

Mr. Sacher: I do.

The Court: Do you remember that in certain other instances names were added at the request of counsel?

Voir Dire

Mr. Sacher: Where they were appropriate follow-ups to what had been put.

The Court: They were follow-ups, were they?

Mr. Sacher: I think so, yes.

The Court: Follow-ups to what?

Mr. Sacher: To the question.

The Court: For instance, these names that I just read are Eddy Chayfetz, Ken Eckert or Egert, Farrell Dobbs, George Schuyler and A. A. Berle, are follow-ups to what, Mr. Sacher?

(T-724) Mr. Sacher: Some of those people were right in this courtroom, your Honor.

The Court: I see. Were they all here?

Mr. Sacher: Not all, but some were, your Honor.

The Court: I see.

Mr. McGahey: Was the magazine—I beg your pardon. I should like to inquire whether the publication, Common Cause, also came into the courtroom.

The Court: Why, yes, there were a number of them.

Mr. Sacher: That appeared in the newspapers only yesterday morning, and that is the reason we requested that be added.

The Court: You see, Mr. Sacher, it would be a strange thing—

Mr. Sacher: It is not a publication.

The Court: —if counsel for the defendants could dictate to the Court—

Mr. Sacher: To do what?

The Court: Could dictate to the Court.

Mr. Sacher: We are not doing that; I am appealing. I haven't dictated. I have asked very respectfully.

The Court: I thought you were objecting.

(T-725) Mr. Sacher: What is that, your Honor?

The Court: I thought you were objecting to me asking these questions.

Mr. Sacher: And an objection I take it you will tell the jury is not dictation; it is—

The Court: I see no cause to get into a controversy with you about it.

Voir Dire

Mr. Sacher: I do not want to get into a controversy.

The Court: And I will overrule the objection.

Mr. McGohey: And furthermore I now represent as a member of the bar to your Honor that the questions which I had handed up to your Honor and asked that they be asked of the jury are follow-ups because of answers to questions coming from the jurors, in answer to the questions which the Court asked.

Mr. Sacher: May I then respectfully object to your Honor having asked each of the jurors a question in regard to the names which you just did, because it was only one of the 12 jurors, namely, Mrs. Conant who gave an answer in respect to whom those names might constitute a follow-up.

Mr. McGohey: Pardon me, if the Court please, I do not know on what basis Mr. Sacher reads the operations of my mind. I represent to the Court that it is because of the answers which jurors—plural—have given to your (T-726) Honor.

The Court: Yes. It is my endeavor at all times here to make sure that I get the right answers from each of the jurors as to all the questions, and sometimes they speak right up and sometimes they don't, but that is perfectly all right.

Now let me return to my question about the publications. (Examining.)

Yes. Has any juror ever been employed by, made any contributions to or had any dealings with any of the following publications—and I add this one—Union Voice?

What do you say as to that?

Jurors: No.

The Court: Do you each say No?

Jurors: No.

The Court: If so, please speak up.

Jurors: No.

(Prospective Juror raises her hand.)

Voir Dire

MARY CONANT, Prospective Juror No. 4, was examined as follows:

By the Court:

Q. Yes, Mrs. Conant? A. I am not sure about that, your Honor.

Q. Now you know the question? A. Yes.

(T-727) Q. Were you ever employed by Union Voice? A. Oh, no.

Q. Were you—did you ever make any contributions to Union Voice? A. I couldn't answer that honestly.

Q. You are not sure whether you did or not? A. I am not sure.

Q. And did you ever have any dealings with Union Voice? A. No.

Q. Now as to the contribution, I ask you whatever that relationship might have been, the making of the contribution or whatever you did, searching your mind as to it, do you think that it has given rise to any feeling of bias or prejudice one way or another in this case that would perhaps affect your judgment in passing on the evidence? A. No, your Honor.

The Court: Very well, Mr. McGohey.

(Clerk hands jury panel cards to Mr. McGohey.)

The Clerk: Juror No. 4, Mrs. Mary Conant, excused by the Government.

(Prospective Juror No. 4 excused.)

The Clerk: Thomas Murtha, No. 4.

(Mr. Thomas Murtha takes seat No. 4 in the jury box.)

(T-728) The Court: Where is that envelope, Mr. Borman?

Mr. Sacher: Does your Honor plan any recess for this morning?

The Court: Well, see how we get along with Mr. Murtha. I am beginning to come back to life now and not feel quite so tired as I did.

Voir Dire

All of the rest of the jurors will recall that omnibus question that I asked. I don't think I need repeat it because you are to pay attention to all the questions as they are asked of everybody as they come along.

Now, let's see.

THOMAS MURTHA, Prospective Juror No. 4, was examined as follows:

By the Court:

Q. Mr. Murtha, I hand you list 1 and ask you to read over the names on that list. A. Your Honor, maybe I can help you out. There are two names listed there that I belong to, Catholic War Veterans and the American Legion. I joined the Catholic War Veterans in 1939, and I have been an active Legionnaire for the last 30 years.

Q. Do you suppose that your connection with those organizations and your participation in their activities have given you some bent of mind here that would be (T-729) unfavorable to either the Government or any of the defendants? A. No.

Q. You do think it would? A. I do think it would not, but, as long as they are listed there, I understand I would not be eligible to serve.

Q. You made a big mistake, when you understand that, because people are eligible here in this court whatever organization or church they may belong to as long as they are free from bias and prejudice in the case. If you have any impression that a member of any society or organization is automatically excluded, you have made a grave error.

Now, I want to ask you a little bit further about these two that you have mentioned because the fact that you mentioned them indicates that you think there is some connection there.

Let us take the American Legion first. Are you an officer of the American Legion? A. Past Commander.

Q. And you served on some of its committees, have you? A. I have, yes, sir.

Q. So that you have not been just a member, you have been rather active? A. That is right.

Voir Dire

Q. In connection with those activities, I suppose you have heard a lot of talk about Communists and Communism, (T-730) haven't you? A. I have, your Honor.

Q. Now, taking the two and putting them together, all your activities, your official position and what you have heard, I want you to search your mind and see whether or not that has not left you, perhaps, with some prejudice against these defendants here or some of them. Has it? Because, if it has, you ought not to serve. A. I am afraid it might.

The Court: Then you may be excused.

(Prospective Juror No. 4, Thomas Murtha, excused.)

The Court: Well, I guess we had better take our recess.

(Short recess.)

The Clerk: Miss Katharyn E. Dunn, No. 4.

(Miss Katharyn E. Dunn takes seat No. 4 in the jury box.)

KATHARYN E. DUNN, Prospective Juror No. 4, was examined as follows:

By the Court:

Q. Mrs. Dunn, have you got your glasses? A. Yes, your Honor.

Q. You will have a chance to use them right away on this list that I hand you.

(T-731) (List handed to Prospective Juror No. 4 by the bailiff.)

Q. (Continuing) The question is going to be whether you have had any dealings with any of those persons or members of their families or whether you know them.

The Court: That is list No. 1.

A. No, your Honor.

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Voir Dire

The Court: You may get that copy back, Mr. Borman. Give Miss Dunn this other list, Mr. Borman, which is list No. 2.

Q. Do you know or have you had any dealings with any of those persons or members of their families? A. No, your Honor.

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

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? (T-732) 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 even been the subject of investigation or accusation by any committee of Congress? A. No, your Honor.

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

Q. Are you now seeking governmental employment? A. No, your Honor.

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

Q. Have you or any member of your immediate family even 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 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.

Voir Dire

Blumauer, (T-733) Adelaide E. Lowe, 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, Jos. I. Morris, Frederick Q. Nehring, Huestis G. Sincerbeaux, Carl M. Spero, Russell W. Todd, Helen R. Walsh, Milton Watkins, Donald C. Webster? A. No, your Honor.

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

(T-734) 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 Activities? A. No.

Q. Do you know any present 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.

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. 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. No, your Honor.

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

Q. Do you think you remember the substance of the charge as stated therein? A. Yes.

(T-735) Q. Then I will not read that again. And I also read, as you recall, from the statement by another judge, who was interrogating jurors in similar fashion, and you remember how I read his words to the effect that the jurors must enter the trial with the completely open mind, and I showed the sheet of blank paper as an illustration; do you remember that part? A. Yes, your Honor.

Voir Dire

Q. And how I explained that these questions were all for the purpose of getting jurors whose minds were completely open and free from bias or prejudice one way or another in the case; you remember that, do you? A. Yes, your Honor.

Q. Now, after that I read two points that I think you will probably remember. So many people misunderstand what an indictment is, that I thought I should explain that the indictment is merely a means of charging people with some offense against the law and bringing them into court; and that it is not any evidence of any wrongdoing by the defendants at all. Do you understand that? A. Yes, your Honor.

Q. Do you feel that there is any doubt in your mind that you could treat that in accordance with my instructions? A. No.

Q. That indictment. The other was the presumption (T-736) of innocence, a very important thing in our American tradition, and I explained that the defendants here and each and every one of them are clothed with and get the advantage of the presumption of innocence, which carries through the entire trial. Now, do you understand that? A. Yes, your Honor.

Q. And do you feel that there is any reason to doubt your ability to follow my instructions in that respect? A. No, your Honor.

Q. Now, I then read from the statute and I am sure I read it so many times that you will remember that, and I ask you this question: Do you have any prejudice against the enforcement of this law or against the 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 read? A. No.

Q. 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, (T-737) 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

Voir Dire

which way to pronounce it, Contact, The National Guardian, New Foundations, New Times? A. No.

Q. Did you or have you or any member of your family had any dealings with or ever been employed by the following: 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, (T-738) former Soviet Purchasing Commission, Freedom of the Press, Inc., International Publishers, New Century Publishers, Workers Bookshop, Jefferson Bookshop, Four Continent Book Corp.? A. No.

Q. I will now hand you list No. 3, and I am going to ask you: 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 that list?

(Paper handed to Prospective Juror No. 4.)

Q. Have you? A. No, your Honor.

Q. The answer is No to my question? A. No.

Q. I now hand you list 4. I am going to ask the same question with reference to those names that appear on that list.

(Paper handed to Prospective Juror No. 4.)

Q. Have you at any time been a member of, made contributions to, or been associated in any way with those organizations? A. No, your Honor.

Q. There is one additional one. Have you at any time been a member of, made contributions to, or been (T-739) associated in any way with the organization called Common Cause, Incorporated? A. No.

Q. 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 that I have just referred to, named: 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 Breckenridge? A. No.

Voir Dire

Q. Have you read any of the following publications: (T-740) This is My Story by Louis F. Budenz, I Confess by Ben Gitlow, The Whole of Their Lives by Gen 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? A. No.

Q. Do you belong to any union? A. No.

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

Q. Do you or any close relative now hold, or have you or any close relative ever held any office or position in or been a member of any committee of any political party? 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, (T-741) 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. No, your Honor.

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, favorable 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, your Honor.

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 towards the Communists or

Voir Dire

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 (T-742) 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, 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. You say you would. Now I ask the same question about certain specified persons or groups:

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

(T-743) 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 other manner? A. No.

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 Communism 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? A. No.

Voir Dire

Q. Have you formed any opinions or impressions concerning the guilt or innocence of any of the defendants of the crime charged which it would require evidence to remove? A. No.

Q. Have you formed any opinions or impressions concerning the guilt or innocence of any of the defendants of the (T-744) crime charged which might prevent you from being completely impartial and free from bias in this case? A. No.

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

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. No, your Honor.

Q. I will now ask you a few questions—now, perhaps I should have added those names that were suggested by Mr. McGohey Let me add these names and see whether you know any of these people or have ever had any dealings with them or with any members of their families: Arthur Osman, David Livingston, Burl Michelson, William Michelson, Mrs. Marcella Loring Michelson, Samuel Kovenetsky? A. No.

Q. And I want to add to that list of publications, in connection with which I asked whether—I had better (T-745) get the exact language so I will have it right here.

Have you ever been employed by, made any contributions to or had any dealings with Union Voice? A. No, your Honor.

Q. Now I will turn to the questions about occupation.

(Mr. McCabe hands a paper to the Court through the bailiff.)

Q. Miss Dunn, you are now unemployed? A. Yes.

Q. According to the card here you have had some employment a time ago. What was that? A. Stock brokerage business.

Q. You were what? A. In the stock brokerage business.

Voir Dire

Q. And what was your occupation then? A. General clerk.

Q. A general clerk? A. Yes.

Q. You did administrative work there, keeping records, something of that kind? A. More or less, yes.

Q. What was the name of that brokerage house? A. The last one was Bendix Luitweiler.

Q. How long were you employed by that firm? A. Four and a half years.

Q. Before that what employment did you have? A. In the same line, for sixteen—

Q. Same line of work? A. Another one.

(T-746) Q. I am not sure I understand the character of the clerical work that you did. I think you had better tell us a little more about it. A. It was different. Order clerk; stock brokerage order clerk.

Q. That is, when the orders came in they were handed to you? A. Yes, sir.

Q. And you made certain records of them? A. Yes.

Q. Was the work that you did over this period of years, that you have described, all of a clerical character similar to that? A. Yes.

(Jury card holder handed to defense counsel.)

* * *

(T-747) Mr. Sacher: May it please the Court, I desire at this time to challenge juror No. 9 for cause which I should like an opportunity to state upon the record.

The Court: Well, go ahead and state it.

Mr. Sacher: May it please the Court, it appears from the voir dire of Juror No. 9 that he is employed by the Metropolitan Life Insurance Company in the capacity of a claim approver. From his wheel card it further appears that he works out of the home office of the Metropolitan Life Insurance Company at 1 Madison Avenue. (T-748) As we had occasion to show in the course of the challenge which was tried in this court, the Metropolitan Life Insurance Company is one of those large corporations which—

The Court: Well, I do not think you need to go into any detail. I think you had better state what appeared

Voir Dire

in this record here. I do not consider any evidence in that preliminary proceeding of challenging the entire panel of jurors as any bearing on this. We go here on the basis of the answers to the questions, don't we?

Mr. Sacher: Well, so far as the record in the challenge is concerned it is all part of the record of the trial of this case.

The Court: I see. Well, I will take it.

Mr. Sacher: If your Honor however rules I shall not refer to it, I will desist and respectfully except.

The Court: No, you may if you think it has relevancy.

Mr. Sacher: And so far as—

The Court: I thought possibly there might be some dispute as to what the evidence shows, which I can see no conceivable advantage to you or to anyone else to go into at this time. I think I know what you have reference to, and I think it is a little better if you (T-749) just advert to it in a general way.

Mr. Sacher: I should like, your Honor, to make observation concerning the number of Metropolitan Life Insurance employes who have appeared right through this jury box—

The Court: Yes.

Mr. Sacher: —since the trial began. Your Honor appreciates there were quite a number. Two of them I think were excused—

The Court: That all depends on what you mean by "quite a number." I do not see how you could think that the jurors that have appeared here and have been questioned tend in any manner to sustain the arguments that you made as to the constitution of the panel. However—

Mr. Sacher: I should like to recall to your Honor, for instance, that Mr. Schieck and Miss White were at least two retired employes of the Metropolitan Life Insurance Company who were in the jury box as recently as yesterday morning, I believe, and there may be one or two others of whom I do not recall right now. However, when you bear in mind—

Mr. McGohey: If the Court please, I am constrained to rise and to object to this kind of argument.

The Court: Yes.

Voir Dire

Mr. McGohey: I understand if you challenge a juror (T-750) for cause you state the cause?

Mr. Sacher: Well, this is—

The Court: Yes.

Mr. McGohey: And I object to any argument before this jury about matters that were argued for seven weeks and disposed of by your Honor.

Mr. Sacher: But I object to Mr. McGohey's reference to seven weeks because he rises to object to something I have just mentioned—

The Court: Maybe it is better, Mr. Sacher, to let you go your own way, but I think possibly it may not be beneficial to you or to your clients; but I think you may argue as you see fit. I will listen.

Mr. Sacher: I wish to note an objection to your Honor's remark. I wish also to object to Mr. McGohey's interruption and his remarks because the things that I was most recently addressing myself to and which apparently prompted him to rise were my reference to the number of employees and former employees of the Metropolitan Life Insurance Company who have paraded through the jury box.

The Court: How long do you think you will take with this argument, Mr. Sacher?

Mr. Sacher: It may take me some 15 minutes, your Honor.

The Court: Very well, we will listen. 15 minutes (T-751) I shall allow you.

Mr. Sacher: And if it will serve the convenience of the Court or the jury I shall make every effort to shorten it as much as possible.

I should like to observe in addition that, apart from the fact that the number of Metropolitan Life Insurance Company employees and former or retired employees who have been among the jurors called for service in this box, is altogether disproportionate to the total number that have appeared in the box; secondly, I should like to observe that the position which Juror No. 9 holds with the Metropolitan Life Insurance Company is of such a character as that I respectfully submit he would properly have to be classified as being among the salaried servants of the Metropolitan Life Insurance Company. His point of view—

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The Court: By the way, do you object to the disproportion of women—

Mr. Sacher: What is that, your Honor?

The Court: Do you object to the disproportion of women?

Mr. Sacher: I wish to object to that question. The ladies, God bless them, I love them and I have no objection to their being there. I welcome them.

The Court: I thought you might think there were (T-752) too many.

Mr. Sacher: What is that, your Honor?

The Court: That is all right.

Mr. Sacher: I should like to observe, your Honor, that your question had no relevancy whatever to what I said, and it throws me off the track.

The Court: Well, you contend there were too many of one sort or another.

Mr. Sacher: Well, what has being an employe of a large life insurance company got to do with the sex of a juror? I do not see the relationship.

The Court: Well, possibly in view of the nature of your challenge that there was some question in your mind about it—

Mr. Sacher: No. The Supreme Court of the United States has said that there is no fundamental difference between the thinking of American men and American women, but there may be a difference between the thinking of the salaried servants of large corporations who are necessarily identified with the point of view of those large corporations, which requires us to make a differentiation between their point of view and the point of view of the rest of us who are not so employed and so identified.

Now when all these facts are borne in mind and (T-753) when the Court bears them in mind the great efforts which my client, Mr. Benjamin J. Davis, has made on behalf of the Negro people, specifically against the Metropolitan Life Insurance Company and more specifically against its Jim Crow policy in Stuyvesant Town, and has fought for, insisted and introduced in the New York—

The Court: Now I am beginning to get your drift. I do not want to hear any more argument on it, Mr. Sacher. You will please desist. I will overrule your objection.

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Mr. Sacher: Now, your Honor, I just—

The Court: I thought at first differently, but I see now the drift of your remarks, and I tell you that I do not desire any further argument on this. I will overrule the objection and you may proceed with your peremptory challenges.

Mr. Sacher: If the Court please, I wish to note an objection—

The Court: That is all right.

Mr. Sacher: —to the Court's ruling. You have cut off my argument at the very moment when the most telling basis—

The Court: Yes, when I saw it was designed for some persons out of the courtroom rather than in the courtroom.

(T-754) Mr. Sacher: Your Honor, I wish to object to that characterization. There are only 13 people in this courtroom to whom I wish to address my remarks; that is to your Honor as the Court and to the 12 men and women who constitute the jury.

The Court: Well, I am the only one to whom discussion should be addressed on this question.

Mr. Sacher: And I am doing that.

The Court: And I overrule your objection.

Mr. Sacher: I respectfully except and I except to the manner in which and the time at which your Honor cut off my argument in support of the challenge.

The Court: Very well.

Mr. Gladstein: Your Honor, I desire to—

The Court: Now we are going to have those challenges before we go out to lunch, so bear that in mind.

Mr. Gladstein: I was about to make a challenge for cause, your Honor. May I do so?

The Court: Yes.

Mr. Gladstein: I desire to file a challenge for cause against a juror who, I submit, should be excused by the Court on the basis of cause, legal cause. That juror is Juror No. 5.

Now it is, as your Honor well knows, especially important in criminal trials that great care be exercised (T-755) to preserve to an accused the full benefit of his constitutional right to a fair trial at the hands of an

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impartial jury, and the injunction has been laid upon the Federal courts by decision after decision of the United States Supreme Court that the trial judge should resolve all doubts as to the competency of the juror in favor of the defendant and must, therefore, in the exercise of sound discretion, be entirely satisfied from the evidence that a juror can, under all circumstances try an issue impartially, without the slightest real possibility of prejudice to the defendants, otherwise a challenge for cause should be granted.

Now Juror No. 5 is an employe of the Prudential Life Insurance Company, an indemnity company—

The Court: You know, Mr. Gladstein—

Mr. Gladstein: Yes, your Honor?

The Court: —according to the practice that I have observed for some 35 years at the bar, when a challenge for cause was made the lawyer simply said “I challenge so and so for cause,” and the court has listened to the interrogation to what was said, and then passed upon it. I think it is unusual to have all this discussion.

Mr. Gladstein: Well, your Honor it is customary in the courts where I practice not to require an attorney (T-756) to express his challenge for cause before and in the presence of the juror who is being challenged—

The Court: You see, your coming up to the bench here and expressing challenges for cause for everyone, I thought at first you were just trying—

Mr. Gladstein: Now I object to the remarks of the Court because the basis of the challenge, as the record will show, were in the main the inadequacy of the Court's questions of the jurors and the inadequacy of the scope of inquiry. Now here I want to submit something quite specific—

The Court: Well, go ahead.

Mr. Gladstein: —and I am doing so in open court only because yesterday your Honor enjoined me not to seek to approach the bench to make this type of challenge.

The Court: I thought your approaching the bench and reiterating the same thing over and over again in this whispered fashion would be more harmful than what you were doing. I can't see this business of having the lawyers constantly coming up to the bench and putting in whispered

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objections down. It seems to me more appropriate that that be done briefly in open court. I have already told the jurors that they must not under any circumstances feel any prejudice because of any arguments or motions or objections of counsel and I feel sure they will follow (T-757) my admonition. Now go ahead and complete it.

Mr. Gladstein: Now the point is that we are all sensitive to some extent. I am sure I can understand, and I am sure the Court does, that a juror would naturally be sensitive to being accused of—

The Court: Now in all my professional life I have seen it done day in and day out in the courts in this way, so go ahead and tell me the basis for your challenge, if you insist upon doing it.

Mr. Gladstein: Yes. I make this challenge only because I feel it is correct and ought to be granted. I do not make it simply to make a challenge or simply to speak.

Now, your Honor, to get back for a moment to what I submit is the correct approach to a determination of a challenge for cause, Juror No. 5, as he has told the Court, occupies a position with a large insurance company. It is a supervisory position. It is a responsible position, and he has under his charge a number of employes. There is at the present time, and there has been for some little while, taking place an organizational campaign on the part of a trade union. The union is being attacked by the corporation, by the life insurance company, and one of the methods or techniques being used by the corporation is to call the union Communist or (T-758) Communist-dominated. And in the course of the corporation's activities there has been put out some literature which is anti-union and anti-Communist, and this is literature which Juror No. 5 has seen. I have submitted to your Honor some follow-up questions to inquire as to the extent to which the juror himself may have had something to do with the distribution or the formulation of any of the things in the literature, but your Honor has seen fit not even to put those questions. However that may be, it seems to me that the juror is placed in a position where necessarily there is not just personal embarrassment but embarrassment by reason of a conflict of interests for that juror to be required to sit as a juror in this case, and if

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that stood alone, that, I submit, would be more than enough to raise a question of doubt of the appropriateness of having Juror No. 5 in this case, and that doubt should be resolved in favor of the defendants—

The Court: The challenge is overruled.

Mr. Gladstein: But wait, your Honor, I haven't completed.

The Court: Well, it seems to me—

Mr. Gladstein: May I—

The Court: It seems to me—

(T-759) Mr. Gladstein: But I haven't completed the grounds of my objection and I desire to continue.

The Court: Now perhaps you had better go on.

Mr. Gladstein: I think your Honor's determination is a little bit hasty because there are two other facts—

The Court: I see no merit in the challenge, none whatever.

Mr. Gladstein: Well, add to what I have said the juror's own statement that he has pending at the present time an application for employment with the Veterans Administration,—I think I have stated the record correctly. Now it is no secret to any of us that before a person can now obtain employment with any branch of the United States Government, certain procedures take place, certain processes. They are called, your Honor, loyalty; but what happens is that a person must make—

The Court: Now that I will not permit you to go on with, Mr. Gladstein.

Mr. Gladstein: But, your Honor—

The Court: That is not the basis of objections. You are going into a lot of this talk about what you say you know—

Mr. Gladstein: No.

The Court: —and so on, and I will not have it.

Mr. Gladstein: I am simply—

(T-760) The Court: That is all there is to it. This is a certain procedure that you are going to hold on and hold forth, and I will not hear it.

Mr. Gladstein: I am not going to do that; I am going to refer to the kind of procedure that is going—

The Court: Well, you have referred to it enough.

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Mr. Gladstein: My point is that if a man has pending an application for employment with the Veterans Administration, and if, as is true, certain qualifying procedures have to take place; if, as it is true, he hopes to obtain that position, can it be doubted that a person is placed in an untenable position if he is at the same time required to sit in a case of this kind where the issues are as they are, and at the same time ask that person not to feel the pressures that naturally exist in the light of his ambition to achieve a position with the Veterans Administration, a branch of the Government? That creates certain conflict of interests and gives rise to certain motivations and biases, which are perfectly natural, but the very fact that they exist requires that such a person not, in all fairness to himself as well as to the defendants—

The Court: Can you state the matter with less (T-761) argument, Mr. Gladstein? Usually a statement of an objection can be made without so much argument.

Mr. Gladstein: Well, your Honor—

The Court: Is there some further point that you desire to make?

Mr. Gladstein: There is. Now there is a third aspect of the juror's testimony that I desire to call your Honor's attention to. Here again I am not intending to be personal at all but I ask your Honor to weigh the import of the fact, along with the other two things that I have said, the juror is a member of a religious society—and there is no question of his right to belong to it, but—

The Court: If you think that disqualifies anybody in this court you are making a big mistake.

Mr. Gladstein: Your Honor's interruptions have made it impossible for me to say what I intend to say, that I do not question the right of a person to belong to any organization, be it religious or otherwise, and I do not say that that constitutes a basis for challenge, but if your Honor will permit me to finish. Now what I want to say is that a person who belongs to such an organization presumably supports its activities, and the organization that the juror belongs to happens to be engaged in activities that—

(T-762) The Court: Now I will not hear that, Mr. Gladstein. I have had enough here of these statements—

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Mr. Gladstein: These are not religious activities I am talking about.

The Court: I am not going to have any more of it. The challenge is overruled.

Mr. Gladstein: I do make an offer of proof—

The Court: And you will desist from further argument.

Go ahead with your peremptory challenges.

Mr. Gladstein: Will the record show that I desire to make an offer of proof?

The Court: These fulminations here about statements of fact of one kind or another—

Mr. Gladstein: Your Honor—

The Court: —we are not going to have any more of this in this trial. You might just as well make up your mind as to this.

Mr. Gladstein: This is not a question of religious activity, your Honor, but a question of political activity.

The Court: Well, whatever it is, we are not going to do it on your say so.

Mr. Gladstein: I got it out of that box.

The Court: We are going to take it from the (T-763) jury box.

Mr. Gladstein: I ask your Honor to follow up that question.

The Court: I have asked all the questions that I intend to ask of these jurors on the voir dire, and you will now proceed with your peremptory challenge.

Mr. Gladstein: Very well. I take exception to your ruling.

Mr. McCabe: If your Honor please, I should like to challenge for cause Juror No. 6, Mrs. Marie Stern. The basis of the challenge is that Mrs. Stern's husband has for a number of years been a member of the grand jury panel, and that for that reason she, as the wife of a person in that position, must have received such an attitude toward the action of the grand jury as to nullify your Honor's admonition that an indictment found by a grand jury is not in any sense evidence.

The Court: The challenge is overruled.

Mr. McCabe: I should like to put just one point, in reference to your Honor's statement that your Honor will be guided entirely by the evidence coming out of the jury box and will refuse to consider testimony aliter—

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The Court: I will not permit you lawyers to talk about what is or is not a fact of one kind or another, (T-764) about what this religious organization is doing or what that religious organization is doing, and what this and the other thing is going on—I won't have that. Now that is an end of it.

Mr. McCabe: I should like to read one sentence of what the Court said in Cain v. The United States in 19 Fed. (2d) 472, and the sentence is from page 475. In discussing the discretion of the Court in determining the competency of a juror—

Mr. McGohey: I suggest, your Honor, that legal argument of this kind ought to be made by submitting the case to your Honor and letting your Honor read the case.

The Court: Yes, hand it up to me, Mr. McCabe; I will read it.

(Mr. McCabe hands to the Court.)

(The Court examines.)

The Court: All right.

Mr. McCabe: May the stenographer copy that, your Honor?

The Court: What is that?

Mr. McCabe: May the stenographer copy that?

The Court: Yes, the stenographer may copy it.

(The above referred to is as follows: "In the determination of that question, the Court should consider the statements made under oath by the juror himself in (T-765) reference to his impartiality and his freedom from prejudice. But the juror's opinion upon these questions are not binding upon the Court.")

The Court: The challenge is overruled.

Mr. Gladstein: In view of your Honor's rulings—of course we take exception to all of these ruling, in view of your Honor's rulings on the challenges for cause, in view of the circumstances under which we were compelled by your Honor's direction to make these challenges in front of and in the presence of the jurors, we are compelled under protest, to excuse Jurors Nos. 5, 6 and 9.

(Prospective Jurors Nos. 5, 6 and 9 excused.)

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The Court: Now you may fill the jury box, Mr. Borman, and then we will go to lunch.

The Clerk: Mrs. Molly Glasner, No. 5.

Mrs. Lillian Berliner, No. 6.

Mrs. Lillian Schlesinger, No. 9.

(Mrs. Molly Glasner takes seat No. 5 in the jury box; Mrs. Lillian Berliner takes seat No. 6 in the jury box; Mrs. Lillian Schlesinger takes seat No. 9 in the jury box.)

The Court: All right, we will now take a recess until—will half-past two give the jurors time to get their lunch? 2.30.

(Recess to 2.30 p.m.)

(T-766)

AFTERNOON SESSION

Mr. Sacher: May it please the Court, I have several motions which I would like to present to your Honor without any argument in support of them. If you wish—

The Court: Are they in writing?

Mr. Sacher: Yes—well, yes, they are. The moving affidavits are.

The Court: Is one of them with reference to those papers that were referred to in Mr. Crockett's motion the other day?

Mr. Sacher: One of them is that, yes, your Honor.

The Court: Well, I have given consideration to that, and there was, as you remember, a claim that I had given leave to file some papers on that. I have consulted the minutes and I find I gave no such leave. I have considered that motion on the basis of the statement made by Mr. Crockett. I will receive no further papers in that matter and I deny the motion.

You may hand the other motions up to me.

Mr. Sacher: But before we do that, your Honor, may I submit—I should like to state that Mr. Crockett has asked me, during the period that I am representing Mr. Winter in his absence, to withdraw, on (T-767) his behalf, the motion to which your Honor refers and which, I think, is to be found in the vicinity of page 129-30 of the record.

The Court: It is too late now.

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Mr. Sacher: What is that?

The Court: It is too late now. I have determined the motion.

Mr. Sacher: May I then submit this motion for suppression and ask your Honor to consider it? If your Honor refuses to consider it, I shall ask—I am handing Mr. McGohey a copy—I shall ask to have it marked for identification, if you please.

The Court: You may do so. I will not consider it.

Mr. McGohey: If your Honor please, I object to this practice, which is completely unfamiliar to me, of marking motions for identification.

The Court: Well, of course, the motions should be filed.

Mr. McGohey: Well, I have always understood, your Honor, that when one made a motion it became part of the case, and the ruling on it was appealable or not, as the law provides, but the business of marking motion papers as exhibits is something new to me.

The Court: Well, has that been done here?

(T-768) Mr. McGohey: No, but that is what is being asked now.

The Court: Oh, yes, that is what is being asked.

Mr. McGohey: And I think there might be a misconstruction because your Honor said, "You may do that," and I do not know whether your Honor was ruling they could be marked.

The Court: Well, as I understand the law, a motion that has been made and denied may only be renewed by leave of the Court.

Mr. McGohey: That is my understanding.

The Court: And, of course, there has been no leave of the Court given with reference to this, and I think, perhaps, the only thing to do is to leave it as it rests. I shall not receive these papers, Mr. Sacher.

Mr. Sacher: May I appeal to your Honor's discretion to consider the papers in support of an application for either a reargument or for leave to renew the motion?

The Court: No.

Mr. Sacher: I think the motion raises important questions, important constitutional questions.

The Court: The motion could have been made at (T-769) any time from the time when the bench warrant

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was executed, which I gather was some time last July, and any time in the period of months which followed, and it may not be renewed now, and I will not consider a motion for reargument or reconsideration.

Mr. Sacher: May I ask your Honor to read this portion of the book (indicating)?

The Court: Is that Rule 41, subdivision (e)?

Mr. Sacher: No, no, no. It is a quotation from a Supreme Court decision in regard to the time when motions of this kind may be made.

The Court: If you will look at Rule 41(e), which covers this specific subject matter, you will find details there which apply to that particular motion.

Mr. Sacher: This decision that I refer your Honor to—

The Court: I will look at it. Hand it up.

(Book handed to the Court through the clerk.)

The Court: Yes; there is nothing there that changes my determination of the matter.

Mr. Sacher: Will the papers be marked with some kind of identification or shall I—

The Court: No, I see no occasion to mark papers for any identification. We will follow the usual procedure in the court.

(T-770) Mr. McGohey: If your Honor please, with respect to the latest motion—I assume this is the latest motion—entitled "A motion to suppress documents and other property," and so on—I desire to make an argument with respect to that which, I think, in fairness to the defendants, ought to be made out of the presence of the jury.

The Court: Very well, the jurors will retire.

(All prospective jurors retire from the courtroom.)

The Court: Have all the jurors left the room?

The Clerk: Yes, your Honor.

Mr. McGohey: Your Honor, may I proceed now?

The Court: Yes, you may.

Mr. McGohey: If the Court please, your Honor will recall that some time ago, I have forgotten how many days ago, but your Honor has just referred to it, there was an oral motion made by Mr. Crockett—

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Mr. Wallace: Mr. McCabe.

Mr. McGohey: Mr. Crockett.

The Court: Mr. Crockett, that is right.

Mr. McGohey: Then, later in the day, I think it was in the afternoon, when Mr. Crockett wasn't here, Mr. McCabe offered an affidavit by the defendant Winter which he handed up to the Court and gave a copy of to me. Your Honor, as I recall, handed the affidavit back and (T-771) declined to accept it until such time as you would have an opportunity to examine the record to ascertain whether or not your Honor had given permission to file an affidavit in support of the oral motion and argument made in the morning by Mr. Crockett.

In any event, the question remained open, and the affidavit, a copy of which had been given to me remained in my possession. Then your Honor will recall, at one of the conferences which we had in chambers, Mr. Crockett brought up this question of whether or not he might file an affidavit and your Honor said that you had not yet examined the record and could not pass on it until you had examined the record; and you suggested that perhaps Mr. Gordon and Mr. Crockett might be able to get together and examine the record to ascertain what the status of it was.

That examination by Mr. Crockett and Mr. Gordon occurred on Friday afternoon here in the courtroom after the recess, and there was a question as to what Mr. Crockett had said in support of his motion, and to what extent, if any, the offered affidavit changed that statement or differed from it in any way. And at the conclusion of the conference, Mr. Crockett picked up from the table the copy of the affidavit which Mr. McCabe had previously handed to us, and Mr. Crockett said that it wasn't proper (T-772) that it should remain in the possession of the United States Attorney since the motion made orally had been denied and since the Court had not ruled as to whether or not an affidavit might be submitted. There were some personalities indulged in between Mr. Crockett and Mr. Gordon.

And on Monday morning, before coming down to Court, Mr. Gordon received a telephone call from Mr. Crockett. I was not present in his office at the time the phone call came but I have been informed by Mr. Gordon that it did

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come, and I have been informed by my associates who were present that there was a conversation, obviously, between Mr. Gordon and Mr. Crockett.

Mr. Gordon informed me and, by the way, he is on his way down if there is any question about this, Mr. Gordon informed me that Mr. Crockett apologized for what had occurred on Friday and said to Mr. Gordon that when court opened he would give him the affidavit on Monday morning. Well, we haven't yet received it.

I now ask that that copy of the affidavit which Mr. Crockett took from us then be returned to us because I desire to compare that affidavit with the affidavits submitted in support of this motion now proposed to your Honor.

Mr. Sacher: I am looking for it. If I have (T-773) it, I will be glad to give it to Mr. McGohey. If it isn't here, I will ask one of our assistants to call the office and see that he gets it.

Mr. Shapiro: It has my initials on the back of it.

Mr. Sacher: It has your initials on it? Then we will have an avenue of identification.

Mr. McGohey: Do I understand your Honor has denied this motion offered this afternoon?

Mr. Sacher: In the light—

Mr. McGohey: Or has your Honor declined to receive the motion?

The Court: I have declined to receive it. My position in the matter, Mr. McGohey, is that the motion was made by Mr. Crockett. Then later it was asserted by one or another of counsel for the defendants that I had given leave to file some affidavit or papers in connection with it. I did not recall that I had but felt that I had better look up the record to make sure, and that in the meantime I held the matter in abeyance. I have looked up the record, I have studied it over, I have convinced myself that I gave no such leave, and, accordingly, today, here this afternoon, I have denied the motion, that is, the motion made by Mr. Crockett orally on the record.

(T-774) And, consequently, I have refused to receive the papers which would be in effect a renewal of that motion which could only be done after the withdrawal of the motion or leave to renew or some leave of the Court given, which I haven't given.

So that is the present status of the matter.

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Mr. Sacher: But, if it please the Court, I announced that I wanted to withdraw that earlier motion; that I had been authorized by Mr. Crockett to do that.

The Court: But you did that after I had decided the motion.

Mr. Sacher: We did not know that you had decided it. That is just the point. You don't think we are trying—

The Court: Well, you heard me decide it this afternoon.

Mr. Sacher: You mean the moment I rose in regard to that matter?

The Court: I had no idea you had risen in reference to that.

Mr. Sacher: Yes, your Honor did not decide it until you first asked me whether one of the motions I wanted to make was the Crockett motion.

The Court: Yes.

(T-775) Mr. Sacher: Which indicates that you did it before I had the chance to tell you what I wanted.

The Court: However that may be—

Mr. Sacher: Well, in view of that—

The Court: —it is denied.

Mr. Sacher: In view of that, then, that your Honor ascertained this so that you might deny it first, I respectfully ask your Honor to reconsider that because what is involved here is an important constitutional question. I appeal to your Honor's—

The Court: Well, you say that all questions are important constitutional questions.

Mr. Sacher: Of course they are.

The Court: I have considered that and I have denied it.

Mr. Sacher: I would like to make this observation: These motion papers that we now have contain, in addition to what was laid before your Honor orally by Mr. Crockett and subsequently in the form of the affidavit which Mr. McCabe submitted to your Honor at page 211, I believe, of the transcript, there is annexed to these motion papers an affidavit by Mr. Winter himself, an affidavit by his wife, and an affidavit of the attorney who represented him in Detroit, together with a certified copy of the proceedings in the federal court in Detroit in regard to

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(T-776) this matter in which the United States Attorney in Detroit certified to the court that this—that the subject of this motion, these books and papers had been forwarded to the U. S. Attorney for the Southern District, and therefore the judge over there said: "Make your application to the federal court in the Southern District."

Now I respectfully submit that in view of the fact that the motion is being made prior to the swearing in of the jury and the taking of any testimony, that under the matter which I referred your Honor to, namely, the quotation from the case of Segurola vs. U. S. in 275 U. S., that this motion is made in due time and that your Honor ought to reconsider it on the merits. Now that is all I am asking.

The Court: And all I say is that I won't do it.

Mr. Sacher: Then I respectfully except.

Now I have other motions, your Honor, which I would like to submit to the Court. This is a motion requesting that the Court excuse for cause all jurors in any manner associated with Consolidated Edison Company of New York, New York Telephone Company, Metropolitan Life Insurance Company, the Prudential Insurance Company of America and other insurance and banking companies, and in such cases where defendants have exercised their peremptory challenges with respect to such jurors, that (T-777) the Court treat the ruling herein as retroactive and reinstate for the benefit of the defendants the peremptory challenges heretofore exercised by them for this purpose in respect to the jurors employed by these corporations.

* * *

The Court (After examining): The motion is denied.

Mr. Sacher: Will your Honor indulge me just a moment?

The Court: Yes.

Mr. Sacher: May I ask to have that motion either marked or placed in the file?

The Court: It will be placed in the file. I have just given a direction to the clerk that an endorsement be placed upon it in the customary form, up in my chambers, from which chambers it will go to the files in the clerk's office.

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Mr. Sacher: May I respectfully request that your Honor give the same treatment to this motion to suppress so that we have it in the record?

The Court: Well, that I do not entertain, (T-778) Mr. Sacher. You see, this motion that you just made, I entertained the motion, I gave it consideration and I denied it and I shall have it endorsed accordingly. The other motion I do not entertain, I do not accept. I do not think you have a right to make it.

Mr. Sacher: There is equally cold comfort in both dispositions, your Honor.

The Court: Well, that may be.

Mr. Sacher: May I, however, for the record, identify this motion to suppress so that we may have reference to it if the occasion should arise in the record? I think Mr. McGohey has a copy of this motion that I am speaking of. It is—

The Court: Have you a copy of those papers, Mr. McGohey?

Mr. McGohey: Of the motion to suppress? Yes, I have, your Honor.

Mr. Sacher: It is entitled "Motion to suppress documents and other properties seized from Carl Winter and for the return of same."

It is a motion signed by George W. Crockett, Jr., as counsel for Carl Winter, dated March 15, 1949, and is supported by an affidavit of Carl Winter, sworn to March 8, 1949, and exhibit A attached to said affidavit being a copy of a receipt issued to Mr. Winter (T-779) by Special Agent Charles E. Ghent—G-h-e-n-t—to which receipt is annexed an inventory of the articles seized from Mr. Winter; an affidavit—

Mr. McGohey: Is there a date on the receipt, Mr. Sacher?

Mr. Sacher: Yes. The date on the receipt is July 20, 1948, and on the annexed inventory it is also July 20, 1948.

Annexed to these papers is also an affidavit by Helen Winter, wife of Carl Winter, sworn to March 14, 1948, before Etta—

A Voice: 1949.

Mr. Sacher: 1949—I beg your pardon—Etta G. Kushner, notary public, and there is a certificate of the clerk of the County of Wayne, and a notarial certificate is at-

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tached; an affidavit by Benjamin J. Safir who represented Mr. Winter as attorney in the United States Court for the Eastern District of Michigan, sworn to March 14, 1949, and also sworn to before Etta G. Kushner; and a copy of the transcript of proceedings in the United States District Court for the Eastern District of Michigan, Southern Division, before Honorable Frank A. Picard, on July 30, 1948, which transcript of proceedings is certified as being a correct—true and correct transcript of the proceedings had on said (T-780) 30th day of July 1948, said certificate being signed by Harold F. Barnard, official court reporter, the certificate being dated March 14, 1949.

Now I also have a motion, your Honor, for a rehearing and reconsideration of the motions for the dismissal of the indictments, and in the event of the denial of the motion for reconsideration and rehearing, for an order granting a continuance for at least 90 days on the grounds set forth in support of the motions which I have referred to, said motion being contained in an affidavit of Mr. Benjamin J. Davis, Jr., sworn to March 15, 1949, and supported by—

Mr. McGohey: May I have a copy?

Mr. Sacher: Yes (handing). —and supported by newspaper clippings culled from all the newspapers published and circulated in the Southern District of New York for the period January 19, 1949, to March 11, 1949, all of which are contained in this book which I hand up to your Honor in support of the motion, marked Exhibit A.

Mr. Gordon: Do you have a copy?

Mr. Sacher: Copies? Too expensive; you can look at this (indicating).

Mr. Gordon (To reporter): Put that down.

Mr. Sacher: I ask the Court to inform the (T-781) stenographer to ignore Mr. Gordon's instructions. He is only a lawyer here and I think he is usurping the Court to enter things on the record.

The Court: I heard no comments.

Mr. Sacher: Did you put it on the record, Mr. Reporter?

The Reporter: I did, yes, sir.

Mr. Sacher: May I ask then what your Honor did not hear but which the reporter put on the record be stricken from the record?

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Mr. McGohey: Well, if that is going to be done, your Honor, I am going to ask that everything that was said both by Mr. Sacher and Mr. Gordon—now what occurred was that Mr. Gordon, I think with propriety, asked for copies of exhibits which I would have asked for if he did not ask, and Mr. Sacher's reply was that it was too expensive to prepare them, we could look at them if we wanted to, and Mr. Gordon asked that it be put on the record. Now that is what all the shouting is about.

The Court: All right.

Mr. McGohey: I think we are entitled to have complete copies of papers.

The Court: Of course, you are entitled to have complete copies. I will not receive them until I have proof that the papers have been served upon Mr. McGohey (T-782) and that all copies of exhibits have been served upon him, so take those away.

Mr. Sacher: I wish to except to your Honor's ruling in the matter and I except to your Honor's refusal to entertain all these motions which we have to make.

The Court: I am not refusing to entertain it. I think it is only reasonable and proper and in accordance with the practice of the court that a written set of motion papers be served upon the United States Attorney.

Mr. Sacher: May I respectfully submit that I know of no rule or law which requires either side to provide the other with copies of exhibits which are submitted in support of motions made in the course of a trial, and I think that your Honor's declination to entertain the motion on that ground is improper.

The Court: Well, you may have your own views about that but I apprehend that my powers as to written papers that are submitted to the Court, that it be required that copies be served on the United States Attorney so that when the time comes to give consideration to the matter he may express his views in such manner as he may think fit.

Mr. Sacher: Does your Honor direct—

The Court: That is what I direct.

Mr. Sacher: Does your Honor direct that a copy (T-783) be served on Mr. McGohey before you consider the motion?

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The Court: Yes, I think so.

Mr. Sacher: All right. In view of your Honor's statement may I state that I promise to have those exhibits for him at the earliest possible opportunity and I ask your Honor in the meantime to receive the papers.

The Court: Just as soon as you have served them on Mr. McGohey, you may submit the papers and I will give consideration to the matter.

Mr. McGohey: Any other motion?

(No response.)

Mr. McGohey: If your Honor please, just before we recessed for the lunch, a motion was made by Mr. McCabe in which he cited the case of Cain vs. United States in 19 Fed. (2d), and I have—and he cited to the stenographer some language which he said appeared on page 475. I have examined the report and I find no such language of any kind. I think the record ought to be corrected with respect to that.

The Court: Well, perhaps your statement will be a sufficient correction.

Mr. McCabe: I have here a two-paragraph quotation which is marked 472, 475. With your Honor's permission, if Mr. McGohey is willing, I would like to look at the book.

(T-784) Mr. McGohey: By all means.

Mr. McCabe: And make any necessary corrections.

(Mr. McGohey hands book to Mr. McCabe.)

The Court: Certainly, you may do that, and if you find your quotation in there you may indicate it to me.

Mr. McCabe (After examining): I see now where the mistake may be. I thought that the quotation came at the end of a paragraph—it ran to the end of the paragraph. There is the finish of a quotation up here which may indicate that this point here is comment or interpretation of what the court said.

The Court: Oh!

Mr. McGohey: Well, wait a minute, I don't know what that means, your Honor. Now we either have a quotation from the case or we haven't.

The Court: I understand what he said.

Mr. McCabe: I would like to look at it.

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The Court: That it really wasn't a quotation, it was his interpretation or comment on what the case meant. Isn't that what you said, Mr. McCabe?

Mr. McCabe: I said it may be, and I said I should like to look at it.

The Court: Go ahead and look at it.

Mr. McGohey: By all means look at it.

The Court: Do all your talking after you have (T-785) looked at it.

Mr. Sacher: In the meantime, your Honor—

The Court: Do you have more motions, Mr. Sacher?

Mr. Sacher: Is that sarcasm or an inquiry?

The Court: No, an inquiry.

Mr. Sacher: Just an inquiry.

The Court: I asked you if you have some more motions and you take offense at that question.

Mr. Sacher: I don't take offense. I have an affidavit here by S. Stanfeld Sargent, of which I hand Mr. McGohey a copy (handing), sworn to March 15, 1949, which is submitted in support of the motion of the defendants for additional challenges for direct interrogation of the jurors by one of the defendants or one of their counsel, and in support of our objections to the questions put by the Court to the jurors, and in support of our objections and exceptions taken to the refusal of the Court to put questions to the jurors requested by the defendants, and we respectfully request that your Honor reconsider your rulings on these various matters in the light of this affidavit that is submitted.

The Court: I have given careful thought to each and every one of those rulings and I don't think that any argument or statement in an affidavit is going to affect that any. I shall not receive that.

(T-786) Mr. Sacher: May the record show that your Honor has not read the affidavit?

The Court: Yes, certainly. I can't see how, after you have the objections and I have ruled on them repeatedly—I cannot see how you have any right to continue pressing the matter over and over again except perhaps to address yourself to my discretion, and I, in the exercise of my discretion, refuse to give it further consideration.

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Mr. Sacher: Your Honor is not really giving your discretion an opportunity to operate when you do not even read the things that are designed to appeal to it.

The Court: I know, but it seems to me that the affidavit, as you say, must be a matter of argument.

Mr. Sacher: No, I do not wish to argue it. I wish only for your Honor to read the affidavit. I have no argument to submit in support of it. I think the affidavit is sufficient.

The Court: Well, it is denied.

Mr. Sacher: May I respectfully request that the affidavit be marked or filed?

The Court: No. You may, if you choose, dictate some identification of it but I will not receive it nor will it be marked.

(T-787) Mr. Sacher: All right. I except to your Honor's ruling but will identify the affidavit as an affidavit being made by S. Stanfeld Sargent, sworn to March 15, 1949, before Mary Bane, notary public in the State of New York, to which affidavit are annexed a true and correct copy of the partial list of defendants' questions to jurors on voir dire submitted to and filed with the Honorable Harold R. Medina on Saturday—a week ago, I think it was, your Honor—and a copy of the Court's questions to jurors on the voir dire as they appeared in the stenographic minutes of March 9, 10 and 11, 1949.

Will your Honor indulge me just one moment?

The Court: Yes.

Mr. Sacher (After examining): May I state in addition that the S. Stanfeld Sargent, whose affidavit has been identified in the manner just stated, is the same man whose affidavit was submitted in support of earlier motions for dismissal and continuance.

Mr. McCabe: If the Court please, I have examined this case and Mr. McGohey is undoubtedly correct in saying that the two sentences which I marked under the impression that they were a quotation from Cain vs. United States, are not contained therein. I read that from a sheet of paper which is headed "Cain vs. the United States," and which does contain a quotation from Cain. At the conclusion of that quotation there is the citation Remus v. U. S., 291 F. 501, and that following matter. In order that the record may be complete I should like to check—I

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ask your Honor's leave to check and hand up to you tomorrow a reference, if it proves that this is a quotation from Remus vs. United States, which I assume it is, because the final paragraph refers to a liquor violation.

The Court: Well, it isn't in the case that you said it was in.

Mr. McCabe: Well, I apologize for having said it.

The Court: You think it may be taken from some other case and you are going to check it.

Mr. McCabe: Yes.

The Court: And you may do that.

Mr. McCabe: I am glad that Mr. McGohey caught it.

The Court: Are you through with the motions, Mr. Sacher?

Mr. Sacher: I am, your Honor.

The Court: The jurors may be called in.

Mr. McGohey: Your Honor, before the jury comes in may I inquire whether the Winter affidavit that I discussed before has been received in the courtroom yet?

(T-789) Mr. Sacher: No, it has not. There seems to be some confusion. Mr. Crockett has informed me through a messenger that the affidavit is supposed to be here. I have looked through the papers and do not find it here, so we will have to wait until I get back this afternoon and check on it.

The Court: Do you desire some direction of the Court as to that, Mr. McGohey?

Mr. McGohey: Yes, I do indeed, your Honor.

Mr. Sacher: There is no need for a direction.

Mr. Gladstein: Does your Honor understand that the reference Mr. McGohey is making is to some document that you haven't permitted to be filed?

(T-790) The Court: Well, as I understand, it is a document, according to Mr. McGohey, which was taken away from him the other day by Mr. Crockett and he wants it back.

Mr. McGohey: That is right, after first having been given to me by Mr. McCabe.

Mr. Gladstein: No; as I understand it, and this is subject to check with Mr. Crockett who isn't here at the moment, but, as I recall, what Mr. McGohey said is, this is a copy of the document that Mr. Crockett was going to

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ask leave of the Court to file and which the Court has refused to accept.

The Court: Whatever it was, if it was a paper in the possession of Mr. McGohey, that some counsel for the defendant took away from him. I am going to see to it that he gets it back.

Mr. Sacher: May I ask whether that affidavit that is being spoken of was sworn to March 8, 1949?

Mr. McGohey: I don't know.

Mr. Sacher: Let us see—

Mr. McGohey: I am referring to page 212 of the record, and 211.

Mr. Sacher: I understand, your Honor, that the affidavit which is being referred to has been annexed to the papers which I sought to submit to your Honor.

(T-791) Mr. McGohey: Your Honor, I am not interested in that.

The Court: I know, you want the—

Mr. McGohey: I am interested in a document which Mr. McCabe handed to me in court, and as to which he said, when I inquired whether it was a complete affidavit, the following statement—I am reading from page 212:

"Mr. McCabe: Yes."

I asked the question: "It seemed to me that the copy that you handed to his Honor was a little more bulky than this", meaning the copy he handed to me.

"Mr. McCabe: Yes, it has two extra papers there which represent copies, and in your document"—referring to the one I had, the one which was given to me by Mr. McCabe, Mr. McCabe says "the copies are attached, of course. We wish to substitute the copy," and there isn't any doubt and there cannot be any doubt about the fact that I was handed a copy of an affidavit by Mr. McCabe and there cannot be any doubt either that Mr. Crockett took it from the table in this courtroom on Friday afternoon.

The Court: I suggest, Mr. McGohey—

Mr. Sacher: May I have the copy I gave you this afternoon, so I may check all the papers and find out what it is all about?

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(T-792) The Court: I suggest, Mr. McGohey, that you make up a written motion for a written order and tomorrow morning, on such notice as you desire, if you wish to have an order to show cause, I will sign it. Serve it on the other side. The matter will come on for hearing as a motion. I will make a written order in the matter. So that can be done tomorrow. If you have that done in time, submit the order to show cause to me this afternoon and I will sign it. Otherwise, you may submit it to me tomorrow and I will make it returnable the following day.

Mr. Sacher: May I suggest—

The Court: I prefer to deal with it in a formal manner by a written order.

Mr. McGohey: Thank you.

Mr. Sacher: May I request that your Honor direct that the prosecution return the copy of a paper which your Honor refused to entertain because—

The Court: I make no such direction.

Mr. Sacher: Just a moment. I gave them a copy on the assumption that they are entitled to get a copy of something that your Honor is going to entertain. Your Honor has refused to entertain it and, therefore, I ask that the paper, which was conditionally given, be returned in view of the fact that the condition has not been fulfilled.

The Court: I don't think I heard any condition (T-793) expressed.

Mr. Sacher: Does your Honor claim that I made them an unconditional gift in perpetuity of this affidavit?

The Court: No, but I understand that you make a motion for a direction that it be returned, and I deny the motion.

Mr. Sacher: Now I ask for it, in an exercise of discretion, because that may contain the very paper which is being sought by the prosecution.

The Court: There is evidently something going on here—

Mr. Sacher: There is nothing going on.

The Court: —which I don't understand, and Mr. McGohey evidently wants that paper that was taken away from him for some purpose, and I am going to see that he gets it back, and then we will see what the purpose, if any, was.

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So that we will now proceed to call the jurors back.

Mr. Sacher: I wish to take an exception to your Honor's statement in regard to purpose and as being something which evidences a prejudicial view of the defendants and their counsel.

The Court: Well, you know, counsel for the defendants have made a very considerable number of (T-794) misstatements to me already in this case.

Mr. Sacher: I wish to deny that, and I think that the record will not bear that out, your Honor, and I wish to object to that statement as being unfounded.

The Court: Well, the record will bear me out.

(All prospective jurors return to the courtroom.)

The Court: Mr. Borman, what are the seats of the new jurors?

The Clerk: 5, 6 and 9.

The Court: As I have done before, prior to the time that I address my questions to the three new prospective jurors, I want to read my general question in lieu of the omnibus question which I have previously read, and with the same purpose in mind. 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. Accordingly, those of you jurors who have been in the box before these three new prospective jurors came in will listen to all these (T-795) questions and bear in mind what I have just stated.

I will hand the three new prospective jurors list No. 1. And the question is going to be, do you know or have you had any dealings with any of the persons—

Mr. McGohey: Pardon me. May I interrupt? I wonder if the jury has received the list with those additional names on? I found those here on my desk. I thought I had handed them up to you. Do you remember the added names?

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The Court: Oh, yes, these should be substituted because these three lists bear the new names of Arthur Osman, David Livingston, Burl Michelson, William Michelson, Mrs. Marcella Loring Michelson and Samuel Kovenetsky, so that the list No. 1 in the custody of counsel for the defendants may be changed so as to add those names.

So, if Mr. Borman will get those three back from the ladies who are reading them and give them these amended lists, which we will use in the future, we will proceed.

And the question is going to be, do any of you know, or have you had any dealings with, any of the persons whose names appear on the list or with any members of their families?

(T-796) Now, I repeat the question, do any of you know, or have you had any dealings with, any of the persons whose names appear on the list or with any members of their families?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: Did you hear the answers, Mr. Reporter?

The Reporter: Three Noes.

The Court: It seem to me that each of the ladies in question answered No.

(New list handed to Prospective Jurors 5, 6 and 9 by the clerk.)

The Court: Have you read the list?

Now, do you know, or have you had any dealings with, any of the persons whose names appear upon the list or with members of their families?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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. 5: No.

Prospective Juror No. 6: No.

(T-797) Prospective Juror No. 9: No.

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

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Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: 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 Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: Does any juror have any prejudice or bias for or against any defendant by reason of the race of any defendant which would prevent him from keeping his mind —or prevent her from keeping her mind fully open until all the evidence and the instructions of the Court has been completed?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: Has any juror, or any relative or close friend of any juror, ever been the subject of any (T-798) investigation or accusation by any committee of Congress?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: Are you now seeking Government employment?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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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 Juror No. 5: No.

Prospective Juror No. 6: No.

(T-799) Prospective Juror No. 9: No.

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, 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, Jos. I. Morris, Frederick Q. Nehring, Huestis G. Sincerbeaux, Carl M. Spero, Russell W. Todd, Helen R. Walsh, (T-800) Milton Watkins, Donald C. Webster?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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The Court: Do you know any Congressman who is now or who has been a member of the House Committee on Un-American (T-801) Activities?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: 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. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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

Prospective Juror No. 6: Yes.

(T-802) Prospective Juror No. 9: Yes.

Prospective Juror No. 5: No.

The Court: As to the two ladies, namely, Mrs. Berliner and Mrs. Schlesinger, who have served before, I ask you this question: 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?

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: Did each of you three ladies hear me read the indictment? You know, I read it several times. And did you hear me as I read it?

Prospective Juror No. 5: Yes.

Prospective Juror No. 6: Yes.

Prospective Juror No. 9: Yes.

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The Court: Did you understand it as I read it to you?

Prospective Juror No. 5: Yes.

Prospective Juror No. 6: Yes.

Prospective Juror No. 9: Yes.

The Court: Then I think I shall not read that again, and I shall refer now to the statute, the law upon which it was based. Did you hear me read that too?

Prospective Juror No. 5: Yes.

(T-803) Prospective Juror No. 6: Yes.

Prospective Juror No. 9: Yes.

The Court: So that you remember what that was about. I want to ask you a question concerning that. Have any of 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?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: Now, you remember I read several times from the statement made by another judge, and you remember how I read how he explained, when he was questioning jurors just as I have been doing here, that they must have open minds, and I used a sheet of paper, a blank sheet of paper, to illustrate how your minds must be entirely open and that you may and must receive the evidence in the case here, and solely that, to base your verdict upon it, together with the instructions of the Court.

You remember all that?

Prospective Juror No. 5: Yes.

Prospective Juror No. 6: Yes.

(T-804) Prospective Juror No. 9: Yes.

The Court: Then I think I shall refer only to two things which that same judge commented upon because of their importance. Now, the first is this indictment. The indictment is just a way in which the Government brings persons into court who are charged with wrongdoing, and so that judge said, and it is very true, and I want to emphasize it by repeating his statement, "That," meaning the indictment, "is no evidence of guilt and should be entirely disregarded by you as evidence. It is merely a

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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 any of you doubt your ability to follow that instruction of mine?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: The last one of the statements of that judge has to do with the presumption of innocence, and it reads:

"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. (T-805) The defendants stand before you as any individual in this court, and clothed with that presumption all through the trial."

Do you understand that?

Prospective Juror No. 5: Yes.

Prospective Juror No. 6: Yes.

Prospective Juror No. 9: Yes.

The Court: And do you have any doubt of your ability to follow my instructions as to that presumption of innocence?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: Now I come—oh, yes. Have any of you ever been employed by, made 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, (T-806) Soviet Russia Today, Masses and Mainstream, People's Voice.

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

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

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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The Court: Has any juror, or any member of the family of a juror, 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., (T-807) International Publishers, New Century Publishers, Workers Bookshop, Jefferson Bookshop, Four Continent Book Corporation?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

(Clerk hands papers to Prospective Jurors Nos. 5, 6 and 9.)

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 that list?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

(Clerk hands papers to Prospective Jurors Nos. 5, 6 and 9.)

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 that list?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: Have you read any of the following (T-808) 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.

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Is Communism Compatible with Christianity by Clare Boothe Luce?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: One of the organizations on that list that I handed to you a moment ago was Common Cause, Inc., and I ask you this question: Do you know or have you had any dealings with any of the following persons said to be the sponsors of Common Cause, Inc., one of the organizations listed in the preceding question:

Lieutenant General Robert E. Eichelberger, (T-809)
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?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: Do you belong to any union?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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

(T-810) Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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 Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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

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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. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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 (T-810-A) 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. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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?

(T-811) Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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?

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Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: Now, I suspect that you perhaps did not understand that question because you answered No, as I heard you, and I want to explain it a little bit.

Now, Witnesses may be called here, some by the defense and some by the prosecution, and if you should sit on this jury, I will instruct you when the time comes that you are to use precisely the same tests and standards in determining the credibility of any witness, whether the witness is called by one side or another. You have got to submit each of them to precisely the same tests, in accordance with my instructions. Now I am asking you whether you will follow those instructions and do that, whether the witness is called by the prosecution (T-812) or whether the witness is called by the defense?

Prospective Juror No. 5: Yes.

Prospective Juror No. 6: Yes.

Prospective Juror No. 9: Yes.

The Court: You say yes?

Prospective Juror No. 5: Yes.

Prospective Juror No. 6: Yes.

Prospective Juror No. 9: Yes.

The Court: Let me put it in another way, to make sure that you understand it.

When witnesses are called, you have never seen them before, you don't know anything about them, they testify, you observe them, and at the end of the case I am going to tell you the way you test credibility and give you some instructions to help you.

When a witness is called by the prosecution or by the defense, are you going to have some bias or prejudice against those witnesses or in favor of those witnesses?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: Because it would not be right if, just because a witness was called by the prosecution, you thought they were fine fellows and believed them, (T-813) or started thinking you were going to believe them and, similarly, if there was somebody called by the defense,

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without knowing anything about them, you thought, maybe they will lie and maybe they won't. That would not be fair. So, I say, you must test them all by precisely the same standards of tests, according to my instructions.

And I understand you now to say that you will do that?

Prospective Juror No. 5: Yes.

Prospective Juror No. 6: Yes.

Prospective Juror No. 9: Yes.

(T-814) The Court: The next question is one of similar import. In passing on the credibility of any witness, will you follow my instructions in determining that question of credibility, whether the witness is a member of a labor union, or a Congressman, or 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? Will you use the same test as to them all?

Prospective Juror No. 5: Yes.

Prospective Juror No. 6: Yes.

Prospective Juror No. 9: Yes.

Mr. Sacher: May I respectfully suggest, your Honor, that in view of the necessity which you found to explain the next to the last question that you put—

The Court: Yes, I will explain.

Mr. Sacher: —that you put the question on page 353, I believe it is, of the transcript, that we have discussed earlier?

The Court: 353?

Mr. Sacher: Right at the head of the page.

The Court: Very well.

If the Court instructed you, as the Court will, if the case comes down to submission to the jury, that you are to apply the same tests of credibility as to (T-815) all witnesses, would you have some prejudice or bent of mind that would cause you to hesitate to apply that same test to a witness who stated that he was a Communist?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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

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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 Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: Have any of 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 (T-816) in court and the law as contained in the instructions and rulings of the Court?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

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 in this case?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: You each say No?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: Have you ever expressed any opinions (T-817) or views as to the guilt or innocence of any of these defendants?

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Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: Do you know of any reason why you should not sit 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?

Prospective Juror No. 5: No.

Prospective Juror No. 6: No.

Prospective Juror No. 9: No.

The Court: Now I will ask you some questions about your occupations.

(MRS. MOLLY GLASNER, Prospective Juror No. 5, was examined as follows:)

By the Court:

Q. Mrs. Glasner, you are a housewife? A. Yes.

Q. Mrs. Glasner, you are a housewife? A. Yes.

Q. Have you any occupation at the present time other than being a housewife? A. Not at the present time, but I have done some practical nursing.

Q. You do some practical nursing? A. Yes.

(T-818) Q. Occasionally? A. Yes.

Q. Did you formerly have some occupation? A. No, sir.

Q. It states here on your card, "Former occupation: School." That meant that you were attending school? A. Yes, sir, I had attended nursing school.

Q. What is that? A. I had attended nursing school until I married and then I took it up again after the war.

Q. This reference on the card to the school was to the nursing school? A. Yes, sir.

Q. What is your husband's occupation? A. He is a woolen salesman.

Q. What is the firm that he works for? A. Alt & Company.

Q. And what is their address? A. Well, I am not sure. He just went into this new firm the first of the year and I have forgotten, but it is on Fourth Avenue.

Q. On Fourth Avenue. What was his occupation before he joined that firm? A. Also a woolen salesman with

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Krumbein, Aaron Krumbein, 254 Fourth Avenue. He had been with them 20 years.

Q. Has he been in that line of business for some years? A. 20 years.

Q. Do you know whether he has a number of men working under him? A. No.

Q. He hasn't? A. No.

(T-819) (MRS. LILLIAN BERLINER, Prospective Juror No. 6, was examined as follows:)

By the Court:

Q. Now, Mrs. Berliner, you are also down as a housewife. A. Yes, sir.

Q. Do you do any other work? A. No.

Q. Besides doing housework? A. That is all I do.

Q. What was your former occupation? A. I was a stenographer and typist.

Q. What firm did you work for? A. Hanover Fire Insurance Company. That was many years ago.

Q. Had you been working for that firm as a stenographer for some time? A. Well, no. We did some adding machine work.

Q. So, besides stenographic work, you did some work on the adding machine? A. Yes.

Q. And clerical work of a similar character, I take it? A. Yes.

Q. Was that the only sort of work that you did? A. That is all.

Q. Before you were married? A. That is all I did.

Q. What is your husband's occupation? A. He is a woolen salesman.

Q. A woolen salesman? A. Yes, sir.

Q. What is the name of the firm that he worked for? (T-820) A. The Lorraine Manufacturing Company,

261 Fifth Avenue.

Q. Has he been employed by that firm for some time? A. Yes, I believe about 18 years.

Q. Has he got a number of men working under him? A. No, he does his own.

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MRS. LILLIAN SCHLESINGER, Prospective Juror No. 9, was examined as follows:

By the Court:

Q. Mrs. Schlesinger, what is your occupation? A. I am with Franklin Simon as a check writer.

Q. Franklin Simon as a check writer? A. Just at present. As a rule, any ads, I write up the checks for the ads.

Q. You write up the checks for the ads? A. That is right.

Q. Are you down there at Franklin Simon most of the time? A. Yes, sir, 35th and Fifth.

Q. You are employed there daily? A. Daily, and I also have a broker's license since 1929.

Q. You mean a real estate broker's license? A. No, everything, general—general insurance.

Q. A general insurance license? A. That is right, since in and around 1929, since my husband died, but I don't follow that up so much since I got older.

(T-821) Q. Was your husband in the insurance business? A. He worked for the Aetna Life Insurance Company.

Q. That is some years ago? A. Well, he is dead since 1926.

Q. It has it down here on the card that you are in the mail department of Franklin Simon, is that right? A. That is right. That is, in the mail.

Q. That is what you are trying to tell me? A. Yes, I write up—in other words, it is called check writing. You write the mail on advertised goods.

Q. And I suppose that is a sort of clerical position? A. That is right, in the blouse department.

Q. Do you have a lot of people or any people working under your direction? A. No, I am the only one in the blouse department.

Q. As to this insurance business, as I understand you, there isn't a great deal of that but you do have the license and occasionally you do place some insurance? A. That is right.

Q. And you get paid by commissions on the insurance that you place? A. That is right.

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The Court: Very well, Mr. McGohey?

Mr. McGohey: Will your Honor excuse me for just a moment?

The Court: Certainly.

(T-822) (Mr. McGohey hands a paper to the Court through the clerk.)

MRS. MOLLY GLASNER, Prospective Juror No. 5, was further examined as follows:

By the Court:

Q. Mrs. Glasner, do you know whether the Aaron Krumbein, for whom your husband worked, was any relation to Charles Krumbein? A. No, I wouldn't.

Q. You never heard the names Charles Krumbein?
A. No.

Mr. McGohey: If your Honor please, I shall waive my challenge in this round.

The Court: Very well, the Government waives its challenge.

By the way, Mr. Gladstein—

Mr. Gladstein: Yes, your Honor?

The Court: You know, we are up to the fifth round where there are two challenges for the defense and one for the prosecution.

Mr. Gladstein: I have that in mind, your Honor.
The Court: Yes.

(Mr. Gladstein hands jury panel container to the clerk.)

Mr. Gladstein: I want to reserve challenge for (T-823) cause as to all the jurors on the grounds heretofore stated.

Mr. McGohey: Reserved?

The Court: I do not understand what "reserve challenge" is.

Mr. McGohey: I do not understand it.

Mr. Gladstein: Well, I make it as of record on the grounds heretofore noted.

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The Court: Overruled.

The Clerk: Juror No. 7, George Herbert Crossan, excused by the defendants.

Juror No. 10, Mrs. Eugenie Oberwager, excused by the defendants.

(Prospective Jurors Nos. 7 and 10 excused.)

The Clerk: Patrick S. Reynolds, No. 7. Frank G. Sauer, No. 10.

(Patrick S. Reynolds took seat No. 7 in the jury box.)

(Frank G. Sauer took seat No. 10 in the jury box.)

* * *

(Adjourned to March 16, 1949, at 11.00 a. m.)

TRIAL RESUMED

(T-824)

New York, March 16, 1949;
11.00 a. m.

(Mr. McCabe rises.)

The Court: Now the new prospective jurors are Mr. Reynolds and Mr. Sauer.

Mr. McCabe: If your Honor please, might I interrupt before that? Yesterday there was a question of a citation, and your Honor gave me leave to check up on it.

The Court: Yes.

Mr. McCabe: And I have a memorandum. This is a correct quotation from the case of Remus which was in that memorandum, and I think this covers the situation. If your Honor will glance at it to see whether it should be made part of the record (handing).

Mr. Crockett: If the Court please, I have—

The Court: Would you mind waiting until I consider this, please, Mr. Crockett?

Mr. Crockett: Yes.

The Court: (After examining) Well, I have this
(T-825) observation to make, Mr. McCabe. The full quota-

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tion which you cite to me from the case of Remus vs. U. S., 291 Fed. 501, reads:

“The trial court is vested with the discretion to determine the competency of a juror, and his judgment in that respect will not be reversed, except for an abuse of that discretion.”

Citing cases.

“In the determination of that question the court should consider the statements made under oath by the juror himself in reference to his impartiality and his freedom from prejudice, but the juror’s opinion upon these questions is not binding upon the court.”

Now my rulings yesterday were made in strict accordance with that doctrine. I did not feel that answers given by jurors were conclusive upon me but where I heard those statements and saw no reason to doubt them I felt it was competent for me to give them credit, and that is what I meant by the comment that I made.

Now Mr. Crockett, what have you to say?

Mr. McCabe: May my comment be made part of the record in order that yesterday’s passage may not remain uncorrected?

The Court: You would like the statement in (T-826) writing here made part of the record?

Mr. McCabe: Yes.

The Court: Yes. I will read it into the record myself—if you will pardon me just a moment, Mr. Crockett.

Preliminary to the quotation which I just read, the comments by Mr. McCabe which I now read into the record are as follows, and I read from the paper which he handed me:

“Your Honor, yesterday, in support of a challenge for cause, I referred your Honor to what I stated to be a quotation from Cain vs. U. S., 19 F. 2d 472, 475. Mr. McGohey very kindly called attention to the fact that the citation was erroneous. An examination of the memorandum from which I was reading indicates that a typographical error, con-

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sisting of omitted quotation marks, led me into the error. The matter quoted appears in the case of Remus v. U. S., 291 F. 501, 506 (C. C. A. 6, 1923)."

Yes, Mr. Crockett?

(T-827) Mr. Crockett: In reading the record of yesterday's proceeding I came across a colloquy between the Court and, I believe, Mr. McGohey, and members of the defense counsel.

Before addressing myself to that, I would suggest in fairness to the Government that the jury be excused. I think it is a matter on which I am entitled to express myself, and I don't want to prejudice the Government.

The Court: Will you refer me to the pages so I may look and see what the matter is?

Mr. Crockett: It has to do with the motion—

The Court: My looking at the pages surely will not indicate anything to the jurors that might prejudice anyone.

Mr. Crockett: It begins, if the Court please, at page 766.

The Court: Just a second; I will find that.

If you will just pardon me for a moment, I will read it.

It is in reference to that motion that you made orally the other day and with reference to which Mr. Sacher produced certain papers yesterday?

Mr. Crockett: That much is within the framework of what I would like to take up.

The Court: I say, that is the general subject (T-828) matter?

Mr. Crockett: That is the general subject, and more specifically it has to do with—

The Court: I will excuse the jury.

Mr. Crockett: Very good.

(All prospective jurors retired from the courtroom.)

The Court: Have all the jurors left the room?

The Clerk: Yes, your Honor.

The Court: You may proceed, Mr. Crockett?

Mr. Crockett: As your Honor will recall, I was excused from attendance upon the Court, and, as a result, I was not present on yesterday, at which time there was some

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discussion concerning a motion that had been addressed by me to the Court on Monday a week ago, March 7th, and what had transpired since that time with reference to that motion.

In reading over the record, I notice, or, rather, I got the impression that there were definite implications in some of the remarks by the prosecution to the effect that I had been guilty of some conduct unbecoming a lawyer.

It is the first time in my 15 years of practice that any such inference has been made. I have always tried to respect the Court, to treat opposing counsel with courtesy, and I expect similar treatment from opposing counsel. Therefore, whenever any such insinuation is (T-829) made, I reserve the right, not only to express my resentment, but to explain to the Court, as best I can, exactly what happened.

The Court: Well, your conduct in this trial has not been irreproachable.

Mr. Crockett: Well, I might take exception to your Honor's remark in that respect, and I do take exception.

Mr. Gladstein: And I do too, not simply because the remarks were directed against Mr. Crockett, but I, as an attorney who has been sitting here participating in this case from the outset, submit that the remarks of the Court, addressed to Mr. Crockett, concerning him are absolutely impermissible, unwarranted, unjustified, and I take strong exception to that kind of remark.

The Court: Your conduct has been even worse, Mr. Gladstein.

Mr. Gladstein: And I object to that remark and take exception to it, although I must confess that I am not surprised to hear your Honor say that.

The Court: Well, I think I understand what you mean. You know, I was required to find, in the early part of this case, certain things that I need not repeat and I don't suppose that anything can be done to change what has occurred, but there is no use in making out (T-830) that we forgot those things.

Mr. Gladstein: Your Honor, I don't want to say that I have forgotten. Far—

The Court: Mr. Crockett got up—

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Mr. Gladstein: May I say—

The Court: Mr. Crockett got up and said that never in his 15 years experience had he ever done anything that he has been criticized for.

Mr. Crockett: I didn't say that.

The Court: He has already been criticized here and the record shows it.

Mr. Gladstein: One moment—

The Court: So let us not fool ourselves about that.

Mr. Gladstein: I am sorry I had to interrupt, but the Court's remarks necessitated it.

Your Honor has referred to a finding that you made in the course of the challenge proceedings and I have not forgotten that finding, I don't forget it, I don't intend ever to forget that, but I intend to say this now: No halo surrounds that finding, and the mere reference by your Honor to a finding that you have made does not mean that that finding is correct or substantiated by the record.

The Court: Well, I don't like people to be (T-831) mealy-mouthed, and I thought Mr. Crockett was surrounding himself with a halo that scarcely comported with the proceeding that was had here, that is all.

Mr. Gladstein: I object to that remark on the part of the Court.

The Court: That is very well.

Mr. Crockett: Now, it appears from the record that at the suggestion of the Court the prosecuting attorney was instructed, shall I say, to prepare a formal motion to be served upon me with notice for return for consideration by your Honor. I emphasize the fact that that was done at your Honor's suggestion.

This morning there was served upon me a formal order to show cause why a certain paper should not be returned to the Government. I wish to address myself to that.

The Court: Is that motion returnable tomorrow?

Mr. Crockett: That motion is returnable tomorrow. I see no reason, unless your Honor has some reason, why we cannot dispose of it now.

The Court: I am not going to stop you from it, and I don't think—I don't feel there is any impropriety in your doing it either, but it might be better when the motion is returnable to argue it out; but if you have something to say about it now, I will hear you.

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(T-832) Mr. Crockett: The Court will recall that at the time I made the motion, asking the Court to make a ruling with respect to certain papers—that is, the papers in the possession of my client, Mr. Winter, and that appears at pages 129 to 130 of the record—there was some discussion as to whether or not I was proceeding under Rule 16. When I first addressed myself to the Court, I did refer to Rule 16. Subsequently I told your Honor that I was asking, first, that the papers be returned, period. But, that in the event that motion was denied, and I sincerely hoped that it would not be denied, then I would ask for permission to inspect those records under Rule 16. It was then that your Honor indicated that you would like to have memoranda on the subject and, as a result, you reserved your decision.

The following morning, as I recall, in chambers, I presented to the Court a copy of my memorandum of law, Mr. McGohey at the same time presented a copy of his memorandum, and a copy was served upon me. Meanwhile, however, before going into chambers I had taken up with the clerk of this court, Mr. Borman, the matter of having an affidavit, prepared by my client, Mr. Winter, notarized. Mr. Borman suggested that that affidavit be taken upstairs to the clerk's office and there we would find a notary. While I was in conference with (T-833) your Honor and with Mr. McGohey, my client went upstairs to the clerk's office, had the affidavit notarized by a Mr. O'Lear, who, I believe, is an employe of the Government up in the clerk's office. That notarized affidavit was given to me when I returned to the courtroom for my conference with your Honor. It had already been decided that I was to be absent from court that afternoon, so I gave that affidavit to Mr. McCabe and requested that he hand it up to you in support of the oral motion that I had made.

I understood, since I wasn't present, that at that time a copy of the affidavit was given to the prosecution, your Honor refused to entertain the affidavit because there seemingly was some question as to whether or not you granted permission to file an affidavit—

The Court: That is right.

Mr. Crockett: —and obviously you had not granted any such permission.

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The Court: It was contended at the time by counsel for the defendants that I had given such permission.

Mr. Crockett: I don't know; I wasn't in court at that time.

The Court: Well, you see, every time one of you (T-833-A) lawyers is absent we seem to get into some trouble, and I dislike very much insisting upon the presence of all counsel at all times; but every time one of you is away, there seems to be some difficulty as a result. Now, I should think it would be obvious to counsel that it is to their advantage not to have these situations arise because it will only result, in the end, in my being compelled to require the constant attendance of counsel, which I dislike to do.

(T-834) Mr. Crockett: Subsequently I reduced my oral motion to written form, attached to that motion was the affidavit made by my client, Mr. Winter, and I requested Mr. Sacher to present that oral motion and asked leave—written motion, rather, and asked leave to withdraw the oral motion.

I was not present in court. It is my understanding that that matter was taken up with your Honor and it was suggested that the whole thing go over until such time as I could be present in court. Upon the occasion of my next appearance in court I took it up with your Honor in chambers, at which time the prosecution was present.

The Court suggested that perhaps we could get together and find out exactly what the state of the record was, whether or not you had given leave to file the written motion or whether or not you have given leave to file an affidavit. At the conclusion of the court session that day I did take it up with Mr. Gordon. I had my papers over on his desk, the oral motion, which he had not seen and which I put there for him to see together with the original of the affidavit prepared by my client, Mr. Winter. Mr. Gordon took out the copy of the affidavit which had been given to him the day before, (T-835) I believe, by Mr. McCabe. In gathering up my papers at the conclusion of the conference, which was a very unsuccessful conference, and while in the process of putting my papers into my briefcase, Mr. Gordon said, "Give me back my copy of the affidavit."

I told him that it was my understanding that we had requested him to return that copy since your Honor would

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not permit it to be filed and therefore I was not going to give it back to him. At that time Mr. Gordon said, and I quote him, "Mr. Crockett, you are a liar." And, of course, I returned the compliment. As a result nothing was accomplished except both of us demonstrated our temper.

The Court: In the meantime you had taken from Mr. Gordon's possession the paper in question.

Mr. Crockett: That poses the question whether or not Mr. Gordon was entitled to it in the first place, since it was not filed, but I will not go into that now.

The Court: You know, Mr. Crockett, I am not going to tolerate in my immediate view and presence or in my constructive presence the forcible and violent seizure by counsel of papers from other counsel.

Mr. Crockett: I can assure your Honor that there was nothing forcible or violent.

The Court: Is is only going to start an (T-836) unseemly row and I have done everything conceivable here to maintain the dignity of this Court and I intend to continue it and I will not tolerate that sort of thing, to get to a point where counsel who desires a paper in the possession of his adversary seizes it and takes it away. I think that is something that is not to be had. Now if it is true, as you say—I say, if it is true, as you say, that you were entitled to have the paper returned you should have addressed yourself to me instead of forcibly taking the paper from Mr. Gordon's custody.

Mr. Crockett: I want, first of all, to object to the Court putting words in my mouth. It wasn't forcible or violent about me picking up the paper and putting it in my briefcase.

The Court: Well, you know "picking up"—the paper was there in Mr. Gordon's custody and you took it. Now just exactly how you took it, whether you snatched it, or whether you quietly got hold of it, or just exactly how you did it doesn't seem to me to be very material, but however that may be, what I am eager to do here and what I hope can be accomplished before tomorrow is some amicable adjustment of this that will not require any ruling by me. I do not like to go ahead and make orders directing counsel (T-837) to hand papers back that they have taken away

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from their adversaries. I would much rather have you drop the matter now. See if you cannot straighten it out in some way that I won't have to make any ruling on it. It is no pleasure for me to do those things.

Mr. Crockett: That is precisely what I am coming to, your Honor. After checking again with Mr. McCabe I found that he had not requested Mr. Gordon to return the papers. Then I realized that I was in error of telling Mr. Gordon that it was my understanding that such a request had been made. This, as your Honor will recall, was on Friday. On Monday morning, as soon as I reached my office, I telephoned Mr. Gordon and explained to him that I was mistaken, that there had been no request that he return the papers. I see by his affidavit that he credits me with having apologized to him. As a matter of fact I did not apologize. I feel perhaps maybe I should have said, "I apologize," but that is beside the point; but the fact is that I told him that I had the copy of the affidavit and that I would return it to him that morning. Mr. Gordon's remarks were, "Oh, forget about it," and I repeated, I said, "I will return it to you," and he said, "No, think nothing of it."

(T-838) The Court: Why don't you—

Mr. Crockett: Let me finish anyway, and I think your Honor will see what I am leading up to.

The Court: All I was going to say, Mr. Crockett, is, why don't you voluntarily and of your own volition give him back the affidavit?

Mr. Crockett: That is just the point, your Honor. He has the affidavit now. That is what I am leading up to.

The Court: You mean he has a copy?

Mr. Crockett: I mean he has the original that I got from him, all except the back. The only thing I can tell you about the back is that I told my secretary at the time she was preparing this motion and with all these exhibits, to attach that copy to it.

The Court: Well, that looks like a solution of this whole thing.

Now Mr. Gordon, you see, Mr. Crockett's statement when analyzed is this: that that paper when he took it from you, they then used the identical document, taking the cover off and put it in the new set of papers that were handed to you the next day—

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Isn't that right, Mr. Crockett?

Mr. Crockett: That is exactly what happened.

The Court: And I think perhaps on that (T-839) statement we might let the matter rest.

Now what do you think?

Mr. McGohey: I should like to look at the paper—

The Court: Yes, do that. I think it is better if you just glance at it before you make a statement.

Mr. Crockett: Suppose I hand you all the copies that I have. Here is another one, and I think this is—

The Court: Now this is almost disposed of, Mr. Crockett, and I suggest that as Mr. McGohey expressed himself a moment ago, you, Mr. McGohey and Mr. Gordon, look over the paper and then after you have looked it over, make such statement as you want, and it looks to me as though we had the matter practically disposed of.

Mr. Gordon: I don't know whether the affidavit of Carl Winter, which is attached to the motion papers that were served on us yesterday, is the same affidavit that was served on us last Tuesday, which was the subject of a controversy. However,—

The Court: Well, you can look and by examining it you can see whether it appears to be different, and I am eager to avoid unnecessary controversy that really isn't very helpful, so I suggest that you just glance at it and see what it appears to be.

Mr. Gordon: Well, it appears to cover the same (T-840) ground, your Honor. There is one thing—

Mr. Crockett: It is identical word for word.

The Court: I know, Mr. Crockett; just as soon as I begin to get somewhere with this it is so easy to start it over again. Now I am eager to dispose of this and get it out of the way because I do not think it is of any grave consequence.

Mr. Gordon: No, I don't say it is the same affidavit but there is no way in which we can tell because Mr. Crockett never returned the original of the copy on Monday that he told me over the phone he would return.

The Court: I think perhaps the best thing to do is to just drop the whole subject right where it is.

Now what do you say, Mr. McGohey?

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Mr. Gordon: There is just one thing, your Honor. I have submitted to the Court, and the Court has signed an order to show cause, and in my affidavit which is executed under oath, I stated that Mr. Crockett told me on the telephone that he was apologizing. Now Mr. Crockett has gotten up in court and has stated that that didn't take place. Now I reaffirm to your Honor that he did apologize and I said that under the circumstances we will make no more point of the incident.

The Court: All right.

Mr. Gordon: That included his statement that (T-841) he would return the paper, which he didn't do. I just wanted to be sure that there is no question that he has accused me again of being a liar and my not saying anything about it.

The Court: Well, you know, those things are really distressing to me and I think Mr. Crockett's statement indicates sufficiently that it was due to some error that he took the paper and that it is the kind of thing that he probably regrets that he did, and I don't see any point in putting a lawyer right in the corner and making him make some unequivocal statement about it.

Mr. Crockett: But your Honor is mistaken about putting me in the corner. Mr. Gordon is in the corner, not Mr. Crockett.

Mr. Gordon: Well, that is what I believe—

The Court: Well,—

Mr. McGohey: Now if your Honor please, I have not been personally involved in the controversy between Mr. Gordon of my staff and Mr. Crockett. Now if we are going to get into this as to who is in the corner, these observations by Mr. Crockett, then I shall have to insist on some kind of a hearing, but I agree with your Honor that it ought not to be done. As I view the case now, as I see the situation, it is this, that there was an affidavit given, that it was taken, that it (T-842) wasn't returned. So much is agreed by both of us now. Now we are informed, and for the first time, by Mr. Crockett, that the affidavit which he admits he took from us on Friday is the same affidavit or the same papers which appear in a motion which was submitted yesterday afternoon by Mr. Sacher. Since Mr. Crockett says that those are the same sheets of paper

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that he took from us on Friday and that this constitutes a return of them, I will accept that, your Honor.

Mr. Sacher: I should say that I told Mr. McGohey yesterday that what he had was the paper that he was talking about.

Mr. McGohey: Now if your Honor please—

Mr. Sacher: Your Honor saw something sinister about that.

Mr. McGohey: May I please be permitted to finish my statement?

The Court: Yes. Mr. Sacher, please do not interrupt.

Mr. Sacher: Does Mr. McGohey have these prerogatives of making long arguments? You will hear argument from nobody except Mr. McGohey on what appears to be a triviality.

The Court: Mr. Sacher, please don't be offensive. When one lawyer arises to interrupt another it is something (T-843) I do not like to see, and then when I suggest that you do not do it and you make another one of these comments, the plain import of which is that I give one treatment to the prosecution and a different treatment to the defense, I consider that offensive and not respectful to the Court, and so I ask you, please don't do that again. You may except to anything that I do. You may object to my conduct in any way, but these insinuations which attack my honor and my integrity are distasteful to me, are quite unnecessary and I wish you would please stop it.

Mr. Sacher: May I renounce any intention to attack the Court's honor or the Court's integrity.

The Court: Well your language is singularly ill-chosen, then.

Mr. Sacher: Well, I notice that your Honor has enumerated two things: you said I may object and I may except, and I simply request of the Court the information as to whether that same rule will apply to the prosecution attorneys or whether they, in addition to those two things, may have extended argument and we be denied argument?

The Court: Well, it has happened too often, not only by one or another but many of defense counsel, these sly insinuations that I am giving one kind of (T-844) treatment to the prosecution and a different kind of treatment to the defense, and that I am doing that in some sort of

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persistent fashion. I consider that a direct affront to my honor and integrity, and it is not to be tolerated that lawyers at the bar speak that way to the Court, particularly when there is absolutely no foundation for it.

Now I listen to argument when I think argument will help me, and when I feel that it will not then I ask lawyers to please not do it. I have done that on both sides. Naturally I have done it more often where the offense has been more frequent and where the occasion for the comment has been more frequent, but I can assure you that I have no idea at any time in this case of giving any different treatment or any different consideration to counsel for the defense than I do counsel for the Government.

Mr. Sacher: Well, I am happy to have that assurance from the Court.

Mr. McGohey: If the Court please, so that the record may be complete, I quote from the bottom of page 788 of the transcript of yesterday, just before the jurors were called in at your Honor's direction; I rose and said, "Your Honor, before the jury comes in may I inquire whether the Winter affidavit that I (T-845) discussed before has been received in the courtroom yet?

"Mr. Sacher: No, it has not. There seems to be some confusion. Mr. Crockett has informed me through a messenger that the affidavit is supposed to be here. I have looked through the papers and do not find it here, so we will have to wait until I get back this afternoon and check on it."

Now to come back to what I said initially, I now accept Mr. Crockett's representation that these pages, that this affidavit consisting of two pages which are attached to the set of motion papers served upon me are the identical pages which were taken from us over our protest on Friday, and I am perfectly willing now to accept that, and to withdraw the application for the order to show cause and let the matter rest where it is.

The Court: Very well.

Mr. McGohey: Now we know where it is.

Mr. Sacher: But, your Honor, I must in view of the fact that—

The Court: Mr. Sacher, if you do that—

Mr. Sacher: May I do that?

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The Court: You may, but before you do that, I am going to give my approval to the withdrawal of the (T-846) motion, and the motion is now withdrawn and out.

Now I take it what you want to do is to refer to some place where you used some language which you claim indicated that the papers were the same ones.

Mr. Sacher: Well, I want to refer right to the record and to the page because it follows immediately after Mr. McGohey.

The Court: You may do that.

Mr. Sacher: And I asked of Mr. McGohey as follows, at page 790: "May I ask whether that affidavit that is being spoken of was sworn to March 8, 1949?"

"Mr. McGohey: I don't know.

"Mr. Sacher: Let us see—

"Mr. McGohey: I am referring to page 212 of the record, and 211.

"Mr. Sacher: I understand, your Honor, that the affidavit which is being referred to has been annexed to the papers which I sought to submit to your Honor.

"Mr. McGohey: Your Honor, I am not interested in that."

The Court: Now let us drop the thing right there and have the jurors back.

Mr. Crockett: If the Court please, I should like at this time to file and ask the Court to consider a motion to suppress documents and other property seized (T-847) from Carl Winter and for the return of them. Now I know that an oral motion was made on Monday before we began the voir dire. That was a motion on which your Honor ruled yesterday. I am repeating this, to submit the motion for a technical reason.

As I read the cases, such a motion is in order at any time before the jury is sworn, and certainly before the Court begins to take evidence. It is on that basis that I request your Honor to receive and consider this written motion, a copy of which I believe was served on the United States Attorney.

The Court: Now let me ask you, Mr. Crockett, that is the same set of papers that was offered by Mr. Sacher yesterday?

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Mr. Crockett: That is right.

The Court: As I understand the law, and the situation here is that you made your motion, I denied that motion.

Mr. Crockett: That was the oral motion.

The Court: Yes, but it is the same motion.

Mr. Crockett: Well, the time element is important, your Honor. That is what I am pointing out.

The Court: I know, but what you are doing in effect is renewing the motion and I have ruled (T-848) yesterday, and I rule again now, that that may be done only by leave of court, and as at present advised, I am not going to give any such leave because in the exercise of my discretion here I feel that there has been too much delay.

You never made that motion away back there at the time that the particular defendant in question was arrested under that bench warrant and the articles taken, but instead, months were allowed to elapse and now in the midst of many other things, and at a time when I consider it much too late under all the circumstances, you desire to renew it. Now that is a matter addressed to my discretion, so I will not receive the papers.

Mr. Crockett: The point that I make, your Honor, is that you did not even consider it and had you done so you would find that before I entered this case, the attorney who was representing Mr. Winter in Detroit made such a motion before the District Court out there, and the United States Attorney there represented to the Court that the papers were all here in New York, the Court then said, "I have no jurisdiction to act. I can't return something that is not within the Southern District of Michigan. Therefore you renew your motion or make your motion before the Judge of the Southern District of (T-849) New York." And this is the motion that I am offering now, supported by a certified copy of the transcript of the proceedings out in Detroit.

The Court: When was the motion made and denied in Detroit?

Mr. Crockett: On July 30, 1948.

The Court: Now there you are. Just what I say. All those months elapsed and you allowed them to go by doing nothing about it. It seems to me, as I read the rule here, the rule is very explicit, and in view of the circumstances I will not entertain the application.

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Mr. Crockett: The rule says that it shall be made before trial. I think that is what your Honor is referring to; that is 41(e).

The Court: It is 41(e)—

Mr. Crockett: The point I make is that the interpretation which the Supreme Court has placed on the word "trial" as used there means it must be made before the Court begins to take evidence, otherwise the Court would have to disrupt the taking of evidence in order to hear about this extraneous matter that took place some time before the case ever came to trial. Now that is the only point that I wanted to make, except to except to your Honor's refusal to even receive and permit the filing of the written motion.

(T-849-A) The Court: I notice in Rule 41, subdivision (e), which relates to this specific subject matter, the last sentence reads:

"The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing."

Now,—

(T-850) Mr. Crockett: If your Honor will continue reading you will find that the revised notes say this rule is a restatement of the present law, no new law is intended.

Now if your Honor will refer to the cases, which I believe Mr. Sacher called to your Honor's attention on yesterday—and if not I will refer to them now—Amos v. U. S., 255 U. S., at page 331, you will find the interpretation which the Supreme Court has placed upon that requirement, that this issue be raised before trial, and under that interpretation it can be raised at any time before the jury is sworn, and certainly before evidence is taken. The point being that the Court should not be disrupted while it is taking evidence in order to decide the legality or the illegality of the seizure of papers which are then being offered in evidence.

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The Court: I would like to hear anything you may wish to say on the subject, Mr. McGohey.

Mr. McGohey: I would like to have Mr. Shapiro argue it, if your Honor please.

Mr. Shapiro: If your Honor please, solely on the question of whether the motion is in time or out of time, the language of the rule is plain. So far as what the courts have held, I draw your Honor's (T-851) attention to the opinion of the Court cited in our brief in *Nardone v. United States*, 308 U. S. 338, at pages 341 and 342—

The Court: Just a second while I get that; what page of your memorandum is that?

Mr. Shapiro: That is on page 3, your Honor, of our memorandum.

The Court: Yes. The quotation does not appear there.

Mr. Shapiro: Yes.

The Court: But you are just about to read it to me.

Mr. Shapiro: I don't have the language before me but I have a pretty clear recollection of the opinion, which was by Mr. Justice Frankfurter speaking for the Court. The Court said there that matters of this kind are for the wise and sound discretion of the trial judge who should, on the one hand, bear in mind the interests of the defendant in making the motion, and on the other hand, the interests of the court and the due administration of justice in seeing that untimely motions are not made for the purpose of delaying litigation and for the purpose of disrupting judicial proceedings. That case was not one in which a search and seizure was involved but rather was one involving wire tapping, but the principle (T-852) was the same, and the Court was dealing with this whole problem of motions which should be made before trial.

Now coming more closely to home, pages 2 and 3 of our memorandum contain citations of cases from this circuit in which the very problem we have here was considered at length. My recollection is—

The Court: Now before you go on, Mr. Crockett has suggested that this motion is made before trial because he says the trial doesn't commence until a jury is sworn or perhaps even until testimony has been taken, and that this

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rule that you are urging upon me is not applicable because the trial hasn't yet commenced.

Isn't that your point, Mr. Crockett?

Mr. Crockett: Trial, as used in Rule 41(e), means precisely what your Honor has said.

The Court: That is exactly right, isn't it?

Mr. Crockett: That is right.

The Court: What do you say to that, Mr. Shapiro?

Mr. Shapiro: If your Honor please, this case was called for trial on January 17th. We have been in the proceeding ever since. In every reasonable sense of the word this case has been on trial since that time.

The Court: But he says there is a case that holds, in so many words, that the trial does not begin until the jury is sworn, in connection with this search (T-853) and seizure matter.

Mr. Shapiro: Your Honor, I think I have a pretty fair working knowledge of search and seizure cases and, without having examined the case he has in mind, I can say that I do not know of any such case. I don't know that the Supreme Court has ever said anything like that. The language has always been the other way on motions of this kind, that is, that they are to be made well in advance of trial so that—

The Court: That would seem to be reasonable. I will tell you what I am going to do, Mr. Shapiro: I would like you to give that matter further consideration and we will take it up, possibly, tomorrow the first thing in the morning.

Mr. Shapiro: Very well, your Honor.

The Court: But, in any event, just as soon as you have had an opportunity to give it some further thought and study, you may indicate to me when you are prepared to add whatever you wish to say on it.

Mr. Shapiro: Thank you.

The Court: So we will now call the jurors back.

Mr. Gladstein: Your Honor—

The Court: Something else?

Mr. Gladstein: I want to address myself to the motion. I am perfectly content to do it tomorrow (T-854) morning, if your Honor wants to hear the balance of Mr.

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Shapiro's statement to the Court, and we have an opportunity to reply to that tomorrow rather than now, but I would like to have an opportunity before you dispose of it.

The Court: Let me make plain to you, Mr. Gladstein: the only thing that is giving me any pause about it at all, my view yesterday, after considerable study of it on my own account, and I do not pretend to be any great expert on search and seizure cases at all, but I did study what was submitted to me, and my impression was that this motion was made at a time that was entirely inappropriate, that months had gone by, you remember I said so on the record, and all I want enlightenment on now is that very phase of it.

It seems to me, that if you want to argue some other phase of it, you just consume time and demonstrate, I would suppose, the unwisdom of permitting such motions to be made at such a late date.

Mr. Gladstein: Well, I had two purposes in mind, your Honor, in wanting to address the Court. As I say, if we are going to have the matter reserved until tomorrow morning, I am content to entirely—

The Court: No, but I didn't want to reserve it for lengthy argument by everybody.

Mr. Gladstein: I don't intend—

(T-855) The Court: All I was doing was asking Mr. Shapiro, who said, or who indicated to me that perhaps some search by him on this particular phase might be productive of something that would guide me and help me, to submit the result of his search. I did not intend to tell all counsel to come in tomorrow morning and then take—interrupt the selection of the jury by an argument that may take a half or three-quarters of an hour.

It seems to me the very purposes of this rule, as I have thus far interpreted it, is manifested here by our stopping, sending all these jurors out of the room, which we have done again and again here on the selection of the jury, and if that sort of thing goes on, it seems to me to demonstrate that this motion ought not to be made at this time but should, as I had first considered, been made some time ago.

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Mr. Gladstein: In view of what your Honor has said, it seems to me that perhaps I ought to say what I have to say. It won't take long.

The Court: That is probably a good idea.

Mr. Gladstein: It won't take a half hour.

The Court: All right.

Mr. Gladstein: I am concerned with two aspects of the motion before your Honor. One is the question of the timeliness of the filing of the affidavit and the (T-856) moving papers on behalf of Mr. Winter, which is addressed to the discretion of the Court, but which discretion must be exercised soundly, without abuse, within the confines of the rule.

I am also concerned with a second aspect of this motion, your Honor, which has nothing whatsoever to do with Mr. Winter alone as a defendant in this case but which, rather, may affect the rights, the liberties of my clients in this case and, hence, I desire the record now to show, if that be necessary, that I now move on behalf of the defendants Thompson and Hall that these documents referred to in the affidavit of Mr. Winter be suppressed; that I join in the request contained in those moving papers; and that I adopt as the grounds for my motion, which I now make, everything contained within and set forth in the supporting papers attached to that motion.

And let me state very briefly why I say this. Today your Honor said that you—that this Court will not countenance the forcible, violent seizure of documents by one attorney from another.

The Court: That is right. One attorney grabs a paper from his opponent and takes it. I am going to put a stop to it.

Mr. Gladstein: I desire to take no issue on that, (T-857) but I ask your Honor to consider an even more important question and, that is, whether or not this Court will similarly, but with even greater severity, frown upon the forcible, violent and illegal seizure from a citizen of documents and books which are his property, when that seizure is made unreasonably, illegally, lawlessly by officers who are clothed with the authority of law, who purport to act under the forms of law, but who, in acting as

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they do, not only act violently and forcibly but in plain violation of a mandate of our constitutional provision, a provision which ensures that the people of the United States shall be safe, shall be secure from any unreasonable search or seizure.

The Court: How long will it take to get Mr. Isserman back here?

Mr. Gladstein: Does your Honor wish to have Mr. Isserman?

The Court: I find that every time there is an attorney out of the room for a day there is a rumpus, as the result of a lot of motions, and trouble.

Mr. Gladstein: This has nothing to do with Mr. Isserman, however.

The Court: And I intend now to have all the attorneys here all the time.

Mr. Gladstein: But, your Honor, this has (T-858) nothing—

The Court: How long will it take to get him back?

Mr. Gladstein: We can put in a telephone call.

The Court: Go ahead and put it in.

Mr. Gladstein: But, of course, your Honor realizes that what I have said has nothing whatsoever to do with the absence or presence of Mr. Isserman.

The Court: I find out I have started out, Mr. Gladstein, with every intention to give every lawyer all the convenience he could possibly be given. Time after time I arranged matters so that that would be done, and then there was one protest, there was another protest, and now we have trouble because Mr. Crockett was away, when Mr. Sacher, who represented him and represented his client, made that application yesterday. I am going to be forced to put a stop to all that by now requiring that Mr. Isserman get back here, and that we don't do anything more until he gets back.

Mr. Gladstein: But, your Honor, you have said—

The Court: Why, he will come in tomorrow and make the same motion over again that you are making now.

Mr. Gladstein: That has never happened.

The Court: I will adjourn the case for ten minutes and we will see if we can get him back.

(Short recess.)

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(T-859) Mr. Gladstein: Does your Honor want a report?

The Court: Yes.

Mr. Sacher: He can be here in about three-quarters of an hour.

The Court: So that means he can be here at the afternoon session without any serious inconvenience?

Mr. Sacher: That is right.

The Court: Very well.

Mr. Sacher: But I would like to address the Court, if I may. If you are making this a rule from here on out, I would like to impress upon your Honor the fact that it will seriously handicap the trial of the case on the part of the defense, if all the counsel are required to be in court all the time, but you gave Mr.—

The Court: I will entertain such applications as may be addressed to me from time to time and take each one of them on the merits as the situation then stands.

Mr. Sacher: But the only point is that you have granted both Mr. Isserman and Mr. Crockett leave during the period of the voir dire.

The Court: Do you claim that I lack power to require Mr. Isserman's presence?

Mr. Sacher: No. I am again, your Honor, I am again appealing to your discretion, and I hope it is not a (T-860) futility. I am asking, in appealing to your Honor's discretion, particularly at this stage of the trial, just as Government counsel absent themselves—I observe that Mr. Bailey isn't here and Mr. Gordon isn't here—

The Court: The situation is quite different.

Mr. Sacher: The situation, so far as the preparation of our case is concerned, is not different, and just as the Government needs its lawyers for—

The Court: Mr. Isserman will be here for the afternoon?

Mr. Sacher: He will be. He will be, your Honor.

The Court: I will consider further applications by counsel for leaves of absence as they are presented to me. I don't desire any further discussion of the subject now.

Mr. Sacher: I have some—do you desire to speak?

Mr. Gladstein: May I conclude my statement to the Court with respect to the motion that I am making in

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behalf of the defendants Thompson and Hall in respect of the matters contained in the moving papers and supporting affidavits and other papers, designated in the record now as the Carl Winter motion, to suppress certain documents and other property which was seized from him. Now, your Honor will note, upon examination of those papers, that what happened in essence was this: at the time that Mr. (T-861) Winter was taken into custody and placed under arrest in connection with this case, he was taken from his automobile and taken—

The Court: Now, Mr. Gladstein, let me tell you something.

Mr. Gladstein: Yes, your Honor.

The Court: I desire, if possible, to avoid having any hearing on this matter that you are now bringing up because that will disrupt the trial and I don't desire to do it. And at the moment I think it is better to leave the matter as it is until I can consider such authorities as there may be involved in this question of delay. So I think you had better just let further argument rest at this point.

Mr. Gladstein: Then can I have the right to reply to Mr. Shapiro?

The Court: Because I have tried my best, you know, to see if the facts could be agreed upon.

Mr. Gladstein: That is perhaps true.

The Court: And I suggested that counsel for the defense and counsel for the Government get together and see if they could not agree upon some statement on it. My purpose then was to avoid the possibility of any hearing because, in this matter, I have observed that one thing leads to another and delays come, and I don't want to have (T-862) that happen.

Now, it is clear to me that for some reason or other there appears to be some dispute on the facts because counsel have not been able to agree; and so I leave the matter as it is now. I will resume it later, as I have stated this morning.

Mr. Gladstein: All right; then I will have an opportunity tomorrow to complete this, your Honor? Because I understand no effort has been made to obtain a stipulation on the facts, but I would assume that we wouldn't have difficulty because the plain fact is that the papers—