

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

(4628) The Court (Continuing): And it seems to me unnecessary to have her testimony and the exhibit, which may or may not be the same. It may have characterizations.

(Defendants' Challenge Exhibit 314 for identification received in evidence.)

Q. In using the terms "executive, professional, clerical and sales and manual workers" in the last exhibit and in the exhibits that you have so far referred to and will refer to today, did you use those terms in the same sense in which you used and applied them in the exhibits that you prepared that have heretofore been received in evidence or offered in evidence? A. Yes, they are all based on the Census definitions of those categories.

Mr. McGohey: I move to strike that out, your Honor. The record is full of testimony that there is no such thing in the Census classification as the classification "executive," and the defendant Wilkerson testified that that was an arbitrary classification which he took to include professional and a lot of other people.

The Court: Well, I take it that Mrs. Rodman is in effect testifying that this table that was just received was prepared by the use of the same techniques and the same method of proceeding as was used in connection with the tables that were put in evidence earlier during (4629) the testimony of Mr. Wilkerson—is that not so?

Mr. Gladstein: That is right.

The Court: Is that not so, Mrs. Rodman?

The Witness: That is right.

Mr. McGohey: That I have no objection to but I think the witness said something a little different.

The Court: It was a little different but I gather that what she meant was what I just said.

Mr. McGohey: I accept that, your Honor.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

Q. Now, Mrs. Rodman, did you prepare, while you had the photostats of the grand jury panels a breakdown by occupation of the jurors whose names appear on those panels? A. Yes, I did for all of the 70 panels from 1944 to 1949—1948.

Q. Did you prepare the result of that occupational analysis in tabular form? A. Yes, I did.

Q. And is the tabulation true and correct and does it truly state what it purports to state? A. Yes.

The Court: And it was prepared just as the others were that Mr. Wilkerson testified about?

The Witness: Yes.

The Court: Yes.

The Clerk: Defendants' Challenge Exhibit 315 for identification.

Mr. Gladstein: You do not have to number (4630) them separately. You can give them a series, 315, 315-A, if you will, or put them all in one batch and clip them so that we can save time.

The Court: 315 contains how many?

Q. Can you answer that, Mrs. Rodman?

The Court: Did you say 18? I have forgotten the number of grand jurors that are represented in Exhibit 315.

The Witness: 70 panels.

The Court: 70?

The Witness: Yes.

The Court: So are there 70 different sheets?

The Witness: No, there are ten tables. Five of them are occupational classifications, one for each of the five years, and five of them are in geographical classifications, one for each of the five years, and I believe there is an eleventh which is a summary of the whole thing.

The Clerk: Eleven total, your Honor.

(Marked Defendants' Challenge Exhibit 315 for identification.)

Colloquy of Court and Counsel

Q. Then these documents include a geographical as well as an occupational analysis? A. That is right. Five of them were a geographical analysis.

Mr. Gladstein: Do you have those, Mr. Clerk?

(4631) (The clerk hands to Mr. Gladstein.)

Q. And is the tabulation that you have just testified about concerning the occupational and geographical analysis of the grand jurors whose names appear on the panels commencing January 1944 and going through 1948, contained within the documents stapled and marked as Exhibit 315 for identification? A. I believe so.

Q. Will you look through it? A. Yes. (After examining) Yes, they are all there.

Mr. Gladstein: I offer these in evidence (handing).

The Court: Mr. Gladstein, while Mr. McGohey is looking at them, what is the compensation provided for grand jurors? Is it the same as petit jurors?

Mr. Gladstein: My understanding is that it is.

The Court: Of course, one of your points has been all along that the provision or the statute providing for the per diem compensation to jurors is unconstitutional.

Mr. Gladstein: I think that is not quite the way it is stated in the challenge, your Honor. We assert that that statute as applied in practice here, in the light of the methods of selection of jurors, both petit and grand, has an effect which is plainly in violation of the Constitution.

The Court: In substance, your claim is that they (4632) ought to provide a sufficient amount of per diem compensation to jurors that may be possible for workmen earning eighteen or twenty or twenty-two dollars a day to serve without loss.

Mr. Gladstein: Our basic point is that the Jury Commissioner and the clerk ought to conduct a system of jurors in such a way that workers can serve

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

here regardless of what the amount is that they are paid. You might notice from this last series of exhibits, Judge, that throughout the five-year period that the grand jury panels were studied, in all of them you find less than one per cent of workers on any of those panels. In other words, you do not even get one man in a hundred on the grand jury in this court in the last five years who is a working man.

Mr. Gordon: As you define them.

That statement of counsel, your Honor, is not supported by the exhibits he just put in.

The Court: You see, I am not going to take as evidence in this case, no more than in any other case, the statements of counsel, but I feel with the limitation of time it is not wise to get into a discussion about it.

Mr. McGohey: If your Honor please, with respect to Challenge Exhibit 315 just offered—that is the table consisting of the—of what is said to be an analysis of (4633) the various panels of the grand jurors, on the first page of this exhibit there appears this legend:

“Source: Compiled from Official Panel Listings, Federal Grand Juries, Southern District of New York,”—

and I direct your Honor’s attention to this language following:

“according to definitions in Alphabetical Index of Occupations and the Classified Index of Occupations, U.S. Census, 1940.”

Now the table itself says, “Occupation of Jurors,” and there are the four classifications: executive, professional, clerical and sales, and manual. I call your Honor’s attention to the fact that there is nothing in the Alphabetical Index of Occupations or in the Classified Index of Occupations of the U. S. Census, that there is no such occupational

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

classification as "executive," and the manual laborers as defined by Mr. Wilkerson included craftsmen as well as manual workers, as defined in the Census.

(4634) The Court: I think we may take it, as the witness has just testified, that she prepared that using the same identical methods, and in the same way that Mr. Wilkerson said he prepared these other charts, and that that must be taken as being all, together with what is stated in that exhibit.

Mr. McGohey: In that state of the record, your Honor, I will accept it, but I suggest that the word marked "Source" be stricken because it is inaccurate on the exhibit, unless it is stipulated to be understood in the sense your Honor just stated.

The Court: It will be stricken. It is misleading, but with that exception the paper is now received.

(Marked Defendants' Challenge Exhibit 315 in evidence.)

Q. Mrs. Rodman, did you prepare certain panels of petit jurors of which copies have been made, against photostats from the office of the jury clerk to ascertain what errors and discrepancies might have come into such copies? A. Yes, I did. There were 14 such panels, copies of panels which I carefully checked against photostatic copies.

Q. And what did you do with the results of your check? A. I tabulated them and I listed such errors as I found, and discrepancies between the typed copies and the photostatic copies.

(4635) Q. Does the tabulation show the particular petit jury panels you subjected to this check? A. Yes, it does.

Q. Does it give the identification number of the exhibit in court? A. Yes.

Q. And does it show what errors, if any, were found with respect to each of those panels respectively? A. Yes, it does.

Q. Does the table also show what the errors consisted of? A. Yes.

Q. Is the table true and correct? A. Yes.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

Q. Does it accurately represent what it purports to represent? A. Yes.

The Court: That is, you checked your type-written panels against the photostats?

The Witness: Yes, and they showed these errors and discrepancies.

(Marked Defendants' Challenge Exhibit 315-A for identification.)

Mr. Gladstein: This should take a different number.

The Court: He has not had a chance to mark the grand jury panels and he does not want his number wrong. This can be 315-A and give those another number.

Q. All right. Is Exhibit 315-A for identification tabulation just referred to in your testimony (handing)? (4636)
A. Yes, it is.

Mr. Gladstein: I offer it.

Mr. McGohey: May I ask what photostats are being described? Is it represented those photostats are photostats made in the office of the clerk?

Mr. Gladstein: They are. We obtained them from Mr. McKenzie's office.

Mr. McGohey: May I ask the witness one question?

The Court: Yes.

Mr. McGohey: Mrs. Rodman, did you personally check each one of those errors yourself?

The Witness: Yes, I did.

Mr. McGohey: Each one?

The Witness: Yes.

Mr. McGohey: There is no objection.

(Defendants' Challenge Exhibit 315-A for identification received in evidence.)

Q. Did you prepare at my request a tabulation showing from figures obtained in the annual reports of the Board

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

of Elections for New York City the numbers of registered voters in Manhattan and the Bronx in the years 1941, 1942 and 1946? A. Yes, I did.

Q. In that you simply transfer the figures from the Board of Elections' report to an exhibit, is that right? A. That is right.

(4637) The Clerk: May I put these grand jury panel numbers in the record now?

(Defendants' Challenge Exhibits 316 to 373 inclusive marked in evidence.)

(Defendants' Challenge Exhibit 374 marked for identification.)

The Court: 374 for identification is a tabulation of the number of persons in the registered voting lists?

Mr. Gladstein: That is correct, your Honor.

The Court: Arranged by Assembly Districts?

Mr. Gladstein: It is.

The Court: Then we are through with the checking now, aren't we?

Q. Is Exhibit 374 for identification the tabulation regarding the registered lists as you have indicated in your testimony? A. Yes.

Mr. Gladstein: I offer it.

The Court: What years are those?

Mr. Gladstein: 1941, 1942 and 1946, your Honor. The testimony shows registered lists for those years—

Mr. McGohey: No objection, your Honor.

(Defendants' Challenge Exhibit 374 for identification received in evidence.)

The Court: What were you stating about what the evidence shows?

(4638) Mr. Gladstein: The registered lists for those years that were marked.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

The Court: Those were the ones on the table?

Mr. Gladstein: No. I don't think the 1941 and 1942, but Mr. Borman said 1941 and 1942 lists were used and Mr. Wilkerson talked about the use of the 1946 lists, some of which are in evidence.

Q. Now are you familiar with a publication known as the Federal Grand Juror? A. Yes.

Q. You have seen copies of it and photostats of it? A. Yes, I have.

Q. And these are copies that are exhibits for identification in this case. A. That is right.

Q. At my request did you go through these publications to prepare a list of the names of persons for the purpose of checking them against certain directories? A. Yes.

Mr. Isserman: If the Court please, the name is Federal Jurors. "Grand" does not appear in the title.

The Court: I got it wrong myself most of the time so we can excuse Mr. Gladstein.

Q. Did you check such names against "Who's Who"? A. Yes, I did.

Mr. Gordon: That is objected to. The Federal Juror was offered and excluded.

(4639) The Court: I am not quite clear as to the names we are now having a discussion about. Will you make a brief statement about it?

Mr. Gladstein: Yes, your Honor. I want Mrs. Rodman to identify—

Will you mark this for identification.

The Court: Let me get the drift of it.

Mr. Gladstein: Yes, I want her to identify an exhibit which has been prepared which consists of a partial list of the members of the Federal Grand Jurors Association and gives information as to whether on examination of the following, Poor's Directory, Directory of Directors, Social Register and Who's Who, such persons are found listed in

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

those directories and the compilations of such information are set forth in this exhibit.

Mr. Isserman: If the Court please, Mrs. St. Clair—

The Court: Just a second. She went over membership lists, did she, of the Federal Grand Jury Association.

Mr. Gladstein: The Federal Juror from time to time publishes the names of members of the Association. It does not publish a full list at any one time, but the partial list, which one can compile from reading the issues of The Federal Juror is here shown in this (4640) tabulation.

The Court: What do you say, Mr. Gordon?

Mr. Gordon: That is objected to as irrelevant, and in one case it seems to be a tabulation based upon two sets of exhibits which have been offered and excluded; on the one hand The Federal Juror and on the other hand Poor's Directory.

The Court: But you fundamentally object to the line of proof as irrelevant and incompetent?

Mr. Gordon: Yes, sir.

The Court: I sustain the objection.

Mr. Gladstein: I would like to have it marked for identification, and let the record show—may it be stipulated that Mrs. Rodman is prepared to identify—

Mr. Gordon: That is objected to.

The Court: He may ask whether you will stipulate, and you either will or you won't.

(Defendants' Challenge Exhibit 375 marked for identification.)

Q. Is No. 375 for identification an exhibit prepared by you showing from data obtained from copies of the Federal Juror, based on a partial list of membership of the Association, the Federal Grand Jury Association, as shown in those issues of The Federal Juror whether and to what extent members of the Association are to be (4641)

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

found listed in the Social Register, the Directory of Directors, Poor's Directory and Who's Who in America? A. Yes.

Q. Did you make a tabulation of certain panels to ascertain the extent to which people were found on the petit jury panels who resided in such places as Knickerbocker Village, in the 19th Congressional District? A. Yes, I did.

Q. And in other areas in that district? A. And, as a matter of fact, in the 19th Congressional District, I believe it was, all of the jurors, that they were classified by specific trades.

Q. By specific trades? A. Yes.

Q. And those were the jurors who, according to the data shown in the jury clerk's panels, resided below 14th Street, is that so? A. No, that is the 16th below 14th Street. The 19th does not have—

(Defendants' Challenge Exhibit 376 marked for identification.)

The Court: Isn't that a mere matter of computation, Mr. Gladstein, of the documents in evidence?

Mr. Gladstein: Yes, that is all it is. There will be other testimony concerning this, but I merely want the witness to identify the document.

Mr. McGohey: Have you a copy I could look at?

(4642) Mr. Gladstein: Yes, you certainly may (handing).

Q. In 376 for identification to what do the names and residences and dates shown on it refer?

Mr. McGohey: Wait a minute. Are we talking about this exhibit?

Mr. Gladstein: Yes. I am not going to offer it through this witness. I want her to identify it.

Mr. McGohey: I don't want the testimony about it until I look at it.

The Court: You appear to be asking for the contents of the document. Perhaps I misunderstood the question.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

Q. Let me ask this question, Mrs. Rodman: the names that appear on this exhibit for identification, are they names taken from certain panels? A. Yes, they are names taken from 29 panels.

Q. Are the dates of the panels indicated in correspondence to the names? A. Yes, they are.

Q. And is the address of the person given? A. Yes, sir.

Q. And the names and addresses and occupations appearing on this exhibit for identification, are they also the same as appear on the jury panels? A. Yes, they are.

Mr. McGohey: Did you mean 29 panels or 26, as the exhibit states?

(4643) Mr. Gladstein: It says 29.

The Witness: I meant 29.

Mr. McGohey: The paper says "Data on all jurors appearing in 26 panels."

The Court: Well, that is a mistake. It has 29.

Mr. McGohey: Let's find out.

The Court: The paper is offered, is it not, Mr. Gladstein?

Mr. Gladstein: No. The 26 on that one and the 29 on the next one I am about to show her.

Mr. McGohey: Wait. That just cannot be. I am handed a paper,—

Mr. Gladstein: Which one do you have?

Mr. McGohey: I am looking at the one you handed me.

The Court: 376 for identification is the only one. Does that say 26?

Mr. McGohey: Yes, that says 26.

Mr. Gladstein: Is that the correct statement?

The Witness: It says 26.

The Court: You say 29.

Mr. Gladstein: No. 29 on another one. I think I misled, inadvertently, the witness.

The Witness: I did not like to say I checked (4644) through 29 panels in compiling both of these, and it is possible it says 26, because there were a couple panels which had no residents in that Con-

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

gressional District so there would be a total of 26 listed here. That is here there are 26. I checked through 29 panels.

The Court: You are now clear three were omitted because they had no names that were applicable to this district?

The Witness: Yes.

The Court: Do you say "Yes"? You shake your head.

The Witness: I would like to check that before I answer.

Mr. McGohey: If there is any inaccuracy, and if the witness does not know whether 26 or 29 I object to it going in.

The Court: I will sustain the objection but on a different ground. Matters that are mere computations and repetitions from papers already in evidence I have, from a certain date in this trial, excluded, and I exclude this one.

Q. Did you prepare a tabulation for the 16th Congressional District in the same manner you testified concerning the 19th? A. Yes.

Mr. Gladstein: Would you show Mrs. Rodman (4645) that last exhibit?

The Court: If this is the same sort that I think, you can have it marked for identification, and I will exclude it on the same grounds I excluded the previous one.

(Grand jury panels marked Defendants' Challenge Exhibits 377 to 388 inclusive for identification.)

(Defendants' Challenge Exhibit 389 marked for identification.)

Q. Is 389 for identification the one you prepared concerning the 16th District? A. Yes.

Q. Did you make a tabulation for the occupations and industries of executives, as we used that expression in this case, on a group of panels of petit jurors? A. Yes, I did.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

Q. Did you prepare a tabulation showing the result? A.
Yes.

Mr. Gladstein: Mark this, please.

(Marked Defendants' Challenge Exhibit 390 for identification.)

The Court: You worked that out by the same system that Mr. Wilkerson testified and used the same method as he used?

The Witness: The exceptional classifications are done on the same basis.

(4646) The Court: That is what I mean. In finding out what the occupational classification was you proceeded as he did?

The Witness: I have not read the testimony.

Mr. McGohey: I have been laboring under the impression this morning the witness said she did all of this on the same basis as Mr. Wilkerson.

The Witness: Yes. I worked with him. I know we used the same techniques and used the same basis for our classification, but I don't know what the testimony is.

The Court: Is it conceded it was the same method?

Mr. Gladstein: The use of the term "professional", "executive" and "manual workers" and the manner of using the census classification and so on with respect to the witness's testimony is the same as that of Mr. Wilkerson but she was not present when he testified to prove these.

The Court: You know he testified repeatedly not only to using these various books that were in evidence but to the fact that they made supplementary and collateral investigations now and then by calling people up and going around and seeing this and that, and that is the way they found out all these occupational classifications.

Did you know about that, Mrs. Rodman?

(4647) The Witness: Yes, but I would like to explain that.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

Q. Would you do that and the extent to which it was so.

Mr. McGohey: May I call your Honor's attention to one thing, that the witness, Mr. Wilkerson, also testified under cross-examination that while he personally was not able to supervise each item that he relied in great part upon what he called the "expert professional ability" of this very witness.

The Court: That is right.

Mr. McGohey: For a great many of the charts and tables and conclusions as to which he testified.

Mr. Gladstein: And she has that expert professional ability.

Mr. McGohey: I don't question it. I do not concede it, but I am not questioning it at the moment. I want to find out who was doing what.

The Witness: I testified before, I think, that I did all of the occupational classifications with the exception of a few panels which Mr. Wilkerson did himself, but the most part we did them together and he checked on all of those I did.

On this collateral evidence you asked about, for the first few panels I did occupational classifications for, because I wanted to make sure that the classification (4648) I was using was the same as those I found in the alphabetical index and the classified index, and because you have to know the industry in which a person operates and works. In order to do that—this is just information for yourself—it does not affect whether a man is a proprietor, manager or official or a manual worker. It was collateral just for my own personal satisfaction in determining whether I was correct in classifying a man as say 156AB, which is banking and finance and where a firm's man was listed as a broker and the firm was Jones & Jones, and I did not know what Jones & Jones was, and he is a broker nevertheless, and where I did not know what the industry was on the first few panels I classified I did make a few phone calls. There were not many of them; maybe two or

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

three on each panel in order to clarify for myself what industry the ambiguous firm name represented. After I satisfied myself that these classifications were the same as those of the census it was no longer necessary to do an industry breakdown. The alphabetical index supplied definitions for the actual position that the man held as he defined it on the jury list.

Q. And when you say alphabetical index you are referring to the census tables? A. That is right. Our collateral evidence was not very much used.

The Court: Well, that is as clear as mud.

(4649) Q. Now, 390 for identification, was this prepared by you? A. Yes, it was.

Q. What, in general, does it refer to? A. In general it is a breakdown of the specific occupations the industries of all the executives on 14 petit jury panels.

Q. Are the 14 petit jury panels indicated on the exhibit? A. Yes, sir.

The Court: We have gone past our recess time.
Ten minutes recess.

(Short recess.)

(4650) Q. Now, on 390 for identification, where did you get the names that appear under the column "Illustrative firms represented"? A. From the petit jury panels.

Q. And where did you get the "Specific occupations" by "Industry"? A. From the same source.

Q. And the figures shown in the column designated "Number" is simply your tabulation? A. That is correct.

Q. Is it true and correct? A. Yes.

Q. And accurately represents what it purports to represent? A. Yes.

Mr. Gladstein: I offer it in evidence.

Mr. McGohey: I am going to object to this, your Honor, on the same grounds that your Honor

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

excluded the others; that is a tabulation of material from the various exhibits already in evidence; cumulative.

The Court: Objection sustained.

Mr. Gladstein: Will you mark this, please?

Mr. McGohey: What is the number of that?

The Clerk: 390 for identification.

(Marked Defendants' Challenge Exhibit 390 for identification.)

Q. Mrs. Rodman, did you make a study of 31 panels showing geographical location of jurors who live in Westchester? A. Yes.

Q. And did you set forth the results of that study (4651) in tabular form? A. Yes, I did.

(Marked Defendants' Challenge Exhibit 391 for identification.)

Q. And I show you Exhibit 391 for identification, and I ask you to state whether this is the tabular result of that analysis (handing)? A. Yes.

Q. The dates of the panels are there shown? A. Yes, they are.

Q. And these are the panels obtained from the clerk's office, is that right? A. Right.

Q. Is this exhibit true and correct, and does it accurately reflect and represent what it purports to set forth? A. Yes.

Mr. Gladstein: I offer that in evidence.

Mr. McGohey: The same objection, your Honor.

The Court: Sustained.

Q. Did you make a tabulation to show the occupational classification of the jurors who come from Westchester, as they appear on 31 petit jury panels? A. Yes, I did.

(Marked Defendants' Challenge Exhibit 392 for identification.)

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

Q. What sources did your information come from and what methods did you use? A. The sources were the petit jury panels themselves, and the occupational classifications were based on the definitions in the Classified (4652) Index of Occupations and the Alphabetical Index of Occupations of the U. S. Census.

Q. And the occupational description as given on the jury clerk's panels? A. Yes. I said they were from the official panels.

Q. And did you set forth the results of that analysis in tabular form? A. Yes.

Q. And is that table true and correct and does it accurately set forth what it purports to represent? A. Yes, it does.

Q. And I show you Exhibit 392 for identification and ask you if this is the tabulation result showing the occupational breakdown of Westchester jurors for those panels (handing)? A. Yes, sir.

Mr. Gladstein: I offer that in evidence.

Mr. McGohey: The same objection.

The Court: The same ruling.

Mr. McGohey: What is the last, 392?

The Clerk: 392 for identification.

Q. Mr. Wilkerson testified concerning an exhibit having to do with the number of repeats that were found in petit jury panels. Did you work on such an exhibit? A. Yes, I worked on that.

Mr. McGohey: May we have the exhibit number and let us look at it?

(4653) Mr. Gladstein: 137.

Q. I show it to you; is this it, Mrs. Rodman (handing)?
A. Yes.

Q. All right. Now Mr. Wilkerson testified that there were something over 1,000 such repeats, and this exhibit shows some 300-odd. A. That is right.

Q. Will you give it?

Q. Do you have an explanation for that? A. Yes.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

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

Mr. Gladstein: She worked on it. She has a right to state what the explanation is.

Mr. McGohey: I don't know that she worked on it.

The Court: Well, it was Mr. Wilkerson who gave the testimony, as I remember it, that he checked it all carefully and there were something like 1,000 or 1100, and it turned out there were only 300. How can she explain?

Mr. Gladstein: Well, let us hear her answer and then if you want you can strike it out.

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

The Court: I do not quite see how any explanation by this witness would help the matter. Mr. Wilkerson had said how carefully he checked and double-checked and went over everything with the utmost care personally, and that he knew there were so many names and so many repeats, and (4654) it turned out that he exaggerated it by about two or three hundred per cent. I do not see what this witness could add to it. She isn't supposed to have given testimony on it. I will sustain the objection.

Q. Mrs. Rodman, did you study or make any study to ascertain the extent to which there were repetitions of the names of jurors on some of these panels? A. Yes, I did.

Q. And did you prepare exhibits showing the results of your study? A. Yes, I prepared an exhibit on it.

Q. And do you recall the number of such repeats that you found? A. Yes, there were 320 repeats.

Q. On a particular exhibit? A. That is right, on Exhibit 137.

Q. Did you make any study as to any other repeats? A. On—

Q. Not on this one but was your study broader than this particular one? A. (No response.)

Q. Is this the only one that you made a study of? A. That is right.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

Q. Did you make a study of the new petit juries, that is to say, since January 17, 1949? A. Occupational analyses, geographical analyses.

Mr. McGohey: Will you please keep your voice up, Mrs. Rodman? I just can't hear you.
(4655) (Answer read.)

Q. The January 17th panel is one of those? A. Yes.
Q. The February 1st panel is another? A. Yes, it is.
Q. And the February 14th panel is another? A. Yes, it is.

Mr. Gladstein: Will you please mark these in order?

Q. Did you use the same methods that you had heretofore described as having used on other panels in respect of these last three named? A. Yes.

Q. Did you prepare in tabular form the results of your analyses? A. Yes.

(Marked Defendants' Challenge Exhibits 393, 394 and 395 for identification.)

Q. And I show you those three exhibits and ask you if they are the ones that you prepared (handing?)

Mr. McGohey: May I ask if the panels that these tables purport to relate to are in evidence?

Mr. Gladstein: One of them is, the January 17th. I am not sure about the February one but I am having her identify these.

Q. Are these the three (handing)? A. Yes, they are.
Q. And do they truly and accurately set forth what they purport to set forth? A. Yes.

Mr. Gladstein: I will offer them.
(4656) Mr. McGohey: With respect to the—
The Court: What is it you are laughing about?
The Witness: I am not laughing. Mr. Gladstein looked pleasant.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

The Court: It seems as though there must have been some joke here.

The Witness: There wasn't any joke.

Mr. Gladstein: I made an offer of exhibit, your Honor.

Mr. McGohey: Now, if your Honor please, with respect to January 17th, the panel for January 17th, the second list, my recollection is that there is some testimony and that there is a map in with respect to that. May I ask if that is correct, if there isn't a map?

The Court: January 17th?

Mr. McGohey: January 17th.

Mr. Gladstein: There is a map that shows both the first and second panels.

Mr. McGohey: May I ask then if it isn't a fact that January 17th—

The Court: Yes.

Mr. McGohey: —is a tabulation of something that is already in evidence, this exhibit—what is it, Mr. Clerk?

The Court: The map is Challenge Exhibit 65 which (4657) has to do with the panel of January 17, 1949.

Mr. Gladstein: These are three separate analyses and tabulations of the last three juries. I offer them.

Mr. McGohey: There isn't any doubt that they have been offered, your Honor, but I am trying to ascertain whether or not these are not the subject of something that is already in evidence, and it is not merely tabulation of something in evidence.

The Court: Let me see the first one, the January 17th.

(Handed to the Court.)

Mr. McGohey: May I have the exhibit numbers a little more specifically?

The Clerk: 393 is January 17th; 394 is February 1st; 395 is the February 14th panel.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Cross*

The Court: Mr. Gladstein, is it not the fact that there has been already put in evidence a table applicable to this January 17th panel?

Mr. Gladstein: As a part, I think, of a larger one, your Honor.

The Court: What is that?

Mr. Gladstein: As a part of a larger one, I believe. No table, as I recall, that shows both the geographical and occupational breakdown for that particular (4658) panel alone. That is my recollection.

The Court: Well, I will receive this Challenge Exhibit 393 as I am in doubt as to whether it is already substantially in evidence or not.

Mr. McGohey: Now with respect to Challenge Exhibits 394 and 395, I object to them on the ground that the panels that they purport to relate to are not in evidence.

The Court: Objection sustained.

Mr. Gladstein: I have no further questions of this witness, not because I have no testimony to elicit from her that would be material and important, but because time limitations imposed by the Court make it impossible for me to pursue further examination with this witness.

(Defendants' Challenge Exhibit 393 for identification received in evidence.)

Cross examination by Mr. Gordon:

Q. Mrs. Rodman, I think you said that in making these analyses you used the occupation which was listed on the panel and took no additional information except that in the beginning you called up to find out about the industry, is that right? A. No. I always looked at the industry that was listed where I was in doubt.

Q. Yes. A. (Continuing) From time to time, and there (4659) were very few instances I didn't make checks.

Q. Well, if there was no doubt about the industry and the occupation of the person was given, then there was no trouble in classifying them? A. No.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Cross*

Mr. Gordon: May I have Exhibit 51?

(Handed to Mr. Gordon.)

Mr. Gordon: And Exhibit 16.

(Handed to Mr. Gordon.)

Q. Now Exhibit 51, which is in evidence, is a panel for January 4, 1949, and underneath the names or underneath the occupations given on here for the jurors, there is some pencil writing. Is that in your handwriting (handing)?

A. Yes, it is.

Q. Now refer to John D. Adams, if you will.

The Court: What is the number of this exhibit?

Mr. Gordon: 51, your Honor.

Q. What is Mr. Adams' occupation given as? A. A soap maker.

Q. And for whom does Mr. Adams work? A. The Colgate Palm Olive Peet Company.

Q. Mr. Adams is a soap maker with Colgate Palm Olive Peet? A. Yes.

Q. You will have to keep your voice up. A. Yes, he is.

Q. And in what category of the four arbitrary (4660) classifications which Mr. Wilkerson testified about did you put Mr. Adams, the soap maker?

Mr. Sacher: I object to the question in so far as it speaks of "four arbitrary classifications."

The Court: Overruled.

Mr. Sacher: Exception.

The Court: She testified to that herself this morning.

Mr. Sacher: That they were arbitrary, your Honor? That is the objection. "Arbitrary" is the word.

Mr. Gordon: Well, I will withdraw the word "arbitrary" to save argument, your Honor.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Cross*

Q. In which of the four categories which appear upon the exhibits that you have testified about this morning did you put Mr. Adams? A. In the first category.

Q. The first category? A. That's right.

Q. Your classification of "executive"? A. That's right.

Q. And what Census classifications are included in the term "executive"? A. Proprietors, managers and officials.

Q. Now I hand you Exhibit 16 which is the "Alphabetical Index of Occupations and Industries." Please find in that book "soap maker" (handing). A. (Examining.)

(4661) Q. Have you found it? A. Yes, I have.

Q. What page? A. On page 447.

Q. 447. "Soap maker"—by the way, was there any doubt in your mind as to Colgate Palm Olive Peet Company? A. No, I had heard of the company.

Q. You knew that that was a company in the business of making soap? A. Yes, I did.

Q. Now will you tell the Judge how Exhibit 16 indicates the classification of a soap maker for a soap factory should be indicated? A. It indicates it as 496-17.

Q. Now refer to the front of the book and tell us where 496-17 falls. A. (Examining.)

Q. Perhaps I can help you. You will find it on page 29. A. Uh, huh.

Q. And what does that come under? A. "Miscellaneous chemical industries."

Q. Under what main heading? A. "Operatives and kindred workers."

The Court: "Operatives and kindred workers"?
The Witness: Yes.

Q. And "Operatives and kindred workers" fall within your classification of manual workers? A. Yes, sir.

Q. Is Mr. Adams illustrative of all your work in classifying? A. No, I don't think he is.

Q. Oh, you think he is an exception? A. I think an (4662) error has been made there.

Q. You think that there was an error made? A. In that particular instance.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Cross*

Q. Now Mr. Wilkerson said that in making a choice he always leaned over backwards to give the benefit of the doubt to the Government. Now will you take the name of Nathan Staller on the same exhibit? A. (Examining.)

Q. What business is Mr. Staller in? A. He is in the fur business.

Q. Fur business? A. Yes.

Q. And how did you classify Mr. Staller in the fur business? A. Classified him under 156-65, which is a furrier or dealer in furs, retail or not specified.

Q. And executive? A. That is right.

Q. Now turn to page 207 of Exhibit 16. A. (Examining).

Q. Do you find six furriers listed there? A. Yes.

Q. And how many of them are listed in the executive category, your executive category? A. One of them, "fur dealer, retailer, not specified."

Q. Yes. Now the other five fall under what? A. They fall under the category of workers, manual workers.

Q. Yes. Now "furrier except dealer," that is a manual worker? A. "Furrier except dealer" is a manual (4663) worker.

Q. And "Furrier, any factory or shop" is a manual worker? A. A furrier who works in any factory or shop is a manual worker.

Q. Well, what does it say in the book? A. It says that.

Q. Where does it say "who works"?

Mr. Gladstein: Are you saying—

A. Furrier is a manual worker except as a dealer.

Mr. Gordon: Your Honor—

The Court: Yes, I do not understand why you do not do what counsel asks you to do.

Mr. Gladstein: Which is what, read the book that is in evidence?

The Court: To read the title as it appears in the book.

Mr. Gladstein: Does your Honor want the witness to read what is in evidence?

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Cross*

The Court: That is precisely what I told her to do.

Mr. Gladstein: All right, I am sure the witness will be glad to accommodate the Court.

The Court: Yes.

Mr. Gordon: I take it that these interruptions don't come off the cross-examination?

(4664) The Court: Well, that is part of Mr. Gladstein's studied insolence. I understand it perfectly.

Q. The first item is "Furrier (except dealer)"? A. That is right.

Q. The next one is simply "Furrier, any factory or shop"? A. Right.

Q. "Manual worker." A. Right.

Q. The next one is "Furrier, except dealer, any store"? A. That is right.

Q. "Manual worker." A. Right.

Q. Now tell me, what was there on Exhibit 51 which told you that Mr. Staller was a furrier, dealer? A. Mr. Staller lists his business address as Staller & Son.

Q. Yes? A. At 247 West 30th Street.

Q. Yes. That means that he is not in any factory or shop? A. That indicates that he is a dealer in furs. He buys them or sells them and he is not a man who would be a worker, who would sew on furs or work on furs, and have nothing to do with the proprietary interest in the fur firm. The fact that his name is the same name as the one which is the name of a firm would indicate that he is at least the proprietor in that firm, and that he is a fur dealer. The 156-65 under which I classified (4665) him was taken from the Classified Index of Occupations where fur dealers were listed.

Q. That is an explanation but how about answering the question as to what information on Exhibit 51 shows now that he is a dealer in the retail business? A. Retail or not specified—

Q. I see. A. —is the answer.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Cross*

Q. Now in connection with this work did you use the supplement to this Index? A. No, I did not have the supplement.

Q. You did not have the supplement? A. No.

Q. Now Exhibit V, which is the supplement, shows that a furrier who has his own home or shop falls in what category (handing)? A. In the worker category.

Q. In the worker category.

Mr. Gladstein: May I see this last exhibit that you just showed this witness?

(Mr. Gordon hands to Mr. Gladstein.)

Q. Now in connection with the grand jury which handed up the indictment in this case did you classify the grand jury occupationally? A. Yes.

Q. The panel of 100? A. The panel of 100?

Q. Yes. A. I classified all of those.

Q. Now I am talking about the grand jury that filed the indictment that we are trying to try in this case. (4666) A. Yes, I did those classifications.

Q. You did those, too? A. Yes.

Mr. Gordon: I wonder where, if I may have those grand jury exhibits—

The Clerk: Grand jury panels?

Mr. Gordon: Yes.

The Clerk: They are all in these envelopes, Mr. Gordon (indicating).

Mr. Gordon: No, the analysis—here it is.

Q. I hand you Exhibit 315. Will you find in there the occupational analysis for the panel of June 17th, 1947, or June 16th, 1947 (handing)? A. I have that.

Q. Do you have that? A. Yes.

The Court: You say "Yes"?

The Witness: Yes, I have.

Q. How many manual workers did you list? A. One.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Cross*

Q. Just one. Now here is the panel, 366 in evidence (handing). Tell me who the one manual worker is that you listed? A. Howard Cooper, decorator.

Q. Decorator? A. Yes.

Q. He is the only one.

The Court: He must be the only one.

The Witness: I will look and see.

Mr. Gladstein: She is looking at the exhibit, your Honor.

(4667) The Court: Oh, I thought the tabulation showed one manual worker.

The Witness: It does show one.

Mr. Gordon: Yes. And I would be happy to have her find more than one, your Honor.

Mr. Gladstein: You won't find even one out of a hundred.

The Court: Strike that remark out.

Mr. Gladstein: I take exception to striking the remark out. It was in answer to a remark made by Mr. Gordon, and I also take exception to the statement of the Court a few moments ago concerning alleged insolence on my part.

The Court: I do not desire to hear argument, Mr. Gladstein.

(To witness) Did you find any more?

The Witness: That is the only one I found.

Q. That is the only one? A. The only one I seem to have listed as a worker.

Q. All right. Now turn to Mr. B. Russell Herts, H-e-r-t-s. A. Yes.

Q. Have you got it? A. Yes, I have.

Q. And what is Mr. Herts's occupation? A. Mr. Herts is an interior decorator with the firm of B. Russell Herts, Incorporated.

(4668) Q. Now I want you to take Exhibit 16, the Alphabetical Index of Occupations in Industries and find "interior decorator" (handing). A. (Examining.)

Q. Perhaps I can help you— A. I have it.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Cross*

Q. Or do you have the page? A. Yes, 247.

Q. 247? A. Yes.

Q. How many interior decorators are listed there?

The Court: How many different kinds of interior decorators?

Mr. Gordon: Yes, sir.

A. Five.

Q. Five. Now what category did you put Mr. Herts, the interior decorator, in? A. I put him in the executive category.

Q. In the executive category? A. Yes.

Q. Now tell me how many of the five interior decorators listed in Exhibit 16 are executives? A. None of them there.

Q. None? A. But in the Classified Index you will find the proprietor of an interior decorating firm listed as an executive.

Q. In—

Mr. Gladstein: Show that to Mr. Gordon, will you please?

The Witness: Yes. I would like to, if I could (4669) have the Classified Index.

Mr. Gladstein: Yes. Let us give that to Mr. Gordon (handing to witness).

The Court: Go right ahead, Mr. Gordon.

Mr. Gordon: Thank you, your Honor.

The Court: None of the ones listed on page 247 is executives, I take it?

The Witness: That is correct.

Q. In fact, all of them are manual workers as you classified them? A. On page 247 of the Alphabetical Index, they are listed as manual workers.

Q. And did you—

Mr. Sacher: The witness desires to qualify her answer.

Mr. Gladstein: Not "qualify" but she hasn't finished it. Do you have more?

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Cross*

The Court: Well, you handed her a book and she wants to make an explanation and I will hear the explanation. She was leaning over backward to try to give the Government all the breaks, and she looked up "interior decorators" and found all the ones on page 247 were listed as manual workers. What was it that got you to look up somewhere else to see if you could find another place?

The Witness: Because for the most part I used (4670) the Classified Index; I was more familiar with it and I prefer to work from it.

Mr. Gladstein: What exhibit number is that, Mrs. Rodman?

The Witness: This is Challenge 17.

Q. Oh, you used that Index. Now I can find something perhaps in Exhibit 16 that will help.

Mr. Gladstein: Wait a moment. She hasn't finished.

Mr. Gordon: May I question the witness, your Honor?

The Court: Mr. Gordon, I have stated that I will allow Mrs. Rodman to make the explanation—

Mr. Gordon: Oh, I am sorry.

The Court: —that she desires to make and perhaps she has concluded it. I understood her to say that she used the classified list which is in another part of that book or in a separate book. What is the number of the exhibit, Mrs. Rodman?

The Witness: That is Challenge 17.

The Court: Exhibit 17. Now show me where it appears in Exhibit 17 among what you call the class—the executive class.

The Witness: It is underlined (indicating.)

(4671) Mr. Gladstein: Will you state it out loud for the record?

The Witness: The last item on the page is underlined. It says "Proprietor, interior decorator."

Mr. Gladstein: And what page is that?

The Court: That is on page 43.

Mr. Gladstein: Very good.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Cross*

Q. Now turn back to Exhibit 16—let me see that page 43 while you are doing it. A. (Witness hands to Mr. Gordon.)

Q. This is page 43, "Proprietor"— A. The last item.

Q. —“interior decorating company.” A. Yes.

Q. “Company.” Now I take it that that does not appear in Exhibit 16, is that your testimony? A. I didn’t look for it in Exhibit 16 when I classified Mr. Herts, who is the proprietor of the B. Russell Herts, Incorporated, the company.

Q. Yes. A. I had been referring to the Classified Index of Occupations and classified him in accordance with that.

Q. Your thought then was that he was a proprietor of the company and not an interior decorator as he listed himself, is that right? A. Yes. I believed that he was the proprietor of the B. Russell Herts.

The Court: Why do you continually smirk this way. I do not understand what you are laughing about.

The Witness: I am not laughing.

The Court: Well, it gives me that impression.

(4672) Mr. Gladstein: I do not understand this, your Honor. The witness—

The Court: Well, I have been watching this witness and every once in a while she seems to find something funny. I do not know what it is, but I observed it.

Mr. Isserman: Maybe you get a different effect from the side.

The Court: Oh yes, I know.

Mr. Gordon: Counsel’s denials do not alter the fact, your Honor.

Q. Now Mr. Herts you classified as a proprietor of an interior decorating company. Is that what your testimony is? A. That is what I classified him as.

Q. Instead of as an interior decorator as he listed himself?

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Cross*

Mr. Gladstein: I object to that question because it assumes something contrary to the facts. The material that the witness worked with—

The Court: I do not desire to hear argument.

Mr. Gladstein: No, but I would like to state why it is misleading.

The Court: You will please desist.

Mr. Gladstein: I cannot object to a question like "When did you stop beating your wife"?

(4673) The Court: You can object but I have overruled your objection.

A. Did you want me to answer your question? I didn't classify him despite what he said about himself, but because of what he said about himself.

Q. Well, what did he say about himself? A. That he is an interior decorator.

Q. And where— A. And that his firm bears his name.

Q. And where is his place of business? A. At 360 East 55th Street.

Q. And where does he live? A. At 360 East 55th Street.

Q. His place of business then is at his residence? A. It would appear so.

Q. Yes—or as Mr. Gladstein suggests, his residence is at his place of business. It would appear that way also? A. Yes.

Q. But you did not take him as an interior decorator but as a proprietor of a company? A. That is what it says on the panel.

Q. It says in the panel that he is an interior decorator, doesn't it? Do you deny that? A. There are two parts to that. I don't deny that he has "interior decorator" on it.

(4674) Q. Up at the top of the page what does it say?

Mr. Sacher: I object to that. The witness has not finished.

Q. That makes a possibility that there might have been two manual workers on the panel instead of one? A. I do not consider it that way.

Q. Let us try one more. Let us take John Dunn Harrison. Do you find Mr. Harrison? A. Yes.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Cross*

Q. And what is Mr. Harrison's occupation? A. It says inspection.

The Court: Inspection?

The Witness: Inspection.

Q. Did that indicate he was an inspector? A. Yes.

Q. And he is an inspector for the New York Life Insurance Company? A. Yes.

Q. How did you classify Mr. Harrison? A. As a clerical worker.

Q. Now take this alphabetical index of occupations, Exhibit 16: inspectors are listed from page 240 through 245 where inspectresses begins. Tell me along the lines of leaning over backwards what the principal classification of all those inspectors are in.

Mr. Sacher: I object to the form of the question "along the lines of leaning over backwards" which makes the question objectionable.

(4675) Mr. Gordon: All right. I will withdraw it.

The Court: It is cross-examination, but he is going to withdraw it.

The Witness: I did not look at the five pages of inspectors. I looked only at "Inspector" of in each thing.

The Court: I thought you used the other book.

The Witness: I have it here too.

The Court: But this time you looked in the other.

The Witness: He asked me to.

Mr. Gladstein: Your Honor misunderstood. She said she used mostly the alphabetical index but she is saying she used it not exclusively.

The Witness: I did not use either exclusively. I preferred to work from the classified side, and on page 63 of the classified which I have just looked in, "Insurance 274", inspectors are again clerical.

The Court: In this instance you used the Exhibit 16, the big one?

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

The Witness: In this instance I used the classified, 17.

The Court: In this case you used which book? Did you say 17 or 16?

The Witness: 17, but I would like to say that on (4676) all of this I used them interchangeably. When I found it easier to find something in one of them I referred to it. If not, I used the other. All I can say I had a personal preference for the classified because I found it easier to work with, because I was familiar with it, but I used both.

Mr. Gordon: No further questions.

Mr. Gladstein: Perhaps Mr. Gordon can state to the Court if that is all of the so-called errors he has found in the analysis that covers 7500 people on petit jury panels and about 5000 or so on the grand jury panels?

Mr. Gordon: The answer to that, your Honor, is, in view of counsel's question, no, it is not all the errors we have found.

Mr. Gladstein: I suppose then we will have proof from the Government, including those people of the Census Bureau that have been here ever since Mr. Wilkerson got on the stand, and—

The Court: Mr. Gladstein, there is no use starting arguing again and making these statements.

(Witness excused.)

Mr. Gladstein: Judge Knox, please.

(4677) JOHN CLARK KNOX, called as a witness on behalf of the defendants on the challenge, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. Sacher:

Q. Judge Knox, you are the Chief Judge of the Southern District of New York? A. I am.

Q. And prior to your designation as Chief Judge by the New Judicial Code you were Senior Judge of the Southern District? A. Correct.

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

Q. For how many years have you been Senior and Chief Judge of this court? A. It was 30 the 29th of last September.

Q. There came a time, did there not, Judge Knox, when you decided that the method of selection of jurors in this district required revamping? A. To a greater or less extent.

Q. And can you tell us in what year that was? A. I cannot definitely. It was many years ago when Cornelius Smythe had resigned as an assistant United States attorney and gone into practice, and I felt I needed a more careful selection of jurors.

Q. Would you say that Mr. Smythe was appointed as jury commissioner in this court some time in 1937 or 1938? A. It is quite likely. Even before that, perhaps.

Q. And did you also arrange for the appointment of (4678) Mr. Joseph McKenzie as the deputy jury clerk of this court? A. I think I talked it over with Mr. Follmer and he was finally selected.

Q. And did you suggest the appointment of Mr. McKenzie? A. I do not recall I did. It may be it eventuated at the time of a talk I had with Mr. Follmer who was then the clerk of the court.

Q. Do you recall an inquiry made in this court, Judge Knox, by Mr. Tolman of the Administrative Office of the United States Courts? A. I do.

Q. And did you receive a copy of that report at any time? A. I saw it.

Q. Now I show you Exhibit 102 in this case and ask you whether this is the memorandum you refer to? A. I have no doubt it is.

Q. Now solely to refresh your recollection, Judge Knox—I realize these events we are speaking of occurred some years ago—but in the Exhibit 102 on the first page at the bottom it says:

“The reform undertaken by Judge Knox developed along two lines: he proposed to see that the jurors examined were a better quality generally and he proposed to reduce the volume of excuses. He appointed as jury commissioner Cornelius J. Smythe, an attorney of excellent standing at the bar,

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

who (4679) has good business and social connections and who is willing, as a public service, to give a large amount of time to the jury problem.

"He also arranged for the appointment of a deputy jury clerk, an energetic young man of pleasing manner, who is a good judge of character and has a thorough practical knowledge of the social, racial and economic groups of New York City and their geographic distribution, and Judge Knox emphasizes particularly the importance of those two men in the successful operation of the system.

I ask you, Judge Knox, does that state the situation?

A. I think that is substantially correct.

Q. You appeared, did you not, on behalf of the Judicial Council before a committee of the Judiciary of the House of Representatives of the 79th Congress on June 12 and 13, 1945? A. I won't say specifically that was the date. I was there. I remember Chairman Sommers was the chairman at that time of the Judiciary Committee of the House.

Q. And you appeared there in support, did you, of three bills which the Judicial Conference had drafted— A. Well, they did not draft them. Mr. Tolman and Mr. Shafroth and a number of other gentlemen participated (4680) in the drafting of those bills. They were then submitted to the Judicial Conference for their approval.

Q. And subsequently after they were approved by the Judicial Conference they were introduced as bills in both the House and Senate? A. That is correct.

The Court: What was the nature of those bills, Judge Knox?

The Witness: Well, they had to do with the appointment of the jury commissioners; also on the matter of selection.

The Court: It had to do with the jury system?

The Witness: That is correct, yes.

Q. I read you, Judge Knox, from page 12 of the published minutes of the hearing conducted on June 12 and 13, 1945, before the House Judiciary Committee, and I will

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

ask you whether these statements were made by Mr. Springer, the Congressman from Indiana, and by yourself in response to his statement, namely, as follows, Mr. Springer saying:

“In your court you select the commissioner and the clerk.

“Judge Knox: That is correct. I have a very able man who is commissioner. The jury lists were very bad a number of years ago, and they were made up of persons to whom I would not want to submit any (4681) litigation of my own. I thought they ought to be better. Things had run along for quite a number of years, and finally I appointed a man whom Congressman Celler undoubtedly knows very well, Cornelius Smythe, who used to be a United States attorney, who was deeply interested in jury work, and I appointed him commissioner and asked him to see if he could not improve our juries.”

That also states the situation? A. To the best of my recollection.

Q. The following statement appears at page 11 of the same minutes of the hearing before the House Judiciary Committee on June 12, 1945, as having been made by you, and I ask you, Judge Knox, whether you, in fact, made it, namely:

“Notwithstanding these difficulties that face the courts in their efforts to secure competent and suitable jurors, I am told from time to time, that the selection of jurors should be a democratic process and that persons who serve in the United States District Court for the Southern District of New York are hand-picked. In answer to that indictment, I cannot do otherwise than admit my guilt. Nevertheless, unless restrained by an authority to which I must yield, jurors in my district will continue (4682) to be hand-picked, and it will be done with care.”

I ask you whether you made that statement? A. I have not any doubt I did.

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

Q. And then Mr. Springer said to you: "What do you mean 'hand-picked'?"

And did you reply: "We select them. We interview them to find out whether we feel they are qualified for intelligent, worthwhile jury service"?

Do you recall that, Judge Knox? A. I have no reason to doubt I said it.

Q. And do you recall Congressman Celler saying to you:

"Do you not think that that phrase is rather impudent?"

And that you replied: "I do not know. That is what they say about it. That is what they choose to call it."

"Mr. Celler: I do not think it is as harsh as you really say."

And then your reply is as follows:

"Let me tell you why.

"If, in making up our jury lists, my court were to follow suggestions that have been made to me, our panels would be filled not only with the halt, the lame, and the blind, but also with the venal and corrupt. For example, men whom (4683) I respect have said that jurors should not be selected but should, willy-nilly, be taken from the voting registers. That suggestion was given a trial, and with this result: In some sections of the city more than 20 per cent of the persons so summoned were found to be nonresidents of the buildings from which they were registered. A further large percentage was found to be made up of persons who only with difficulty could speak and understand the English language. Still others, while honest and intelligent, were proprietors of one-man business enterprises, to whom jury service would mean ruination. It turned out, consequently, that this method of replenishing our jury lists was anything but successful, and it was abandoned. I had the thought that in the district court the public was entitled to jurors

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

who were something more than election-day floaters, the habitues of district clubhouses, and the illiterate and ignorant."

Do you remember making that statement? A. Yes.
Q. Did Congressman Springer immediately thereafter say:

(4684) "Before you go on, I would like to think a little more about this. The Federal courts get the list. Now, in the State courts they have jury commissioners."

And you replied:

"We have a jury commission in our court, made up of a jury commissioner so designated and of the clerk of the court."

A. That is right.
Q. Then did Mr. Springer say to you:

"How do they make their selection?"

And did you reply as follows:

"What they do is to interview people, get lists of names from business houses, consult directories of various kinds, telephone books, club directories, and trade journals that have the names of their members in them. They send out for these persons and ask them to come down to be interviewed, and they come in and we then find out something about their background, where they live, their age, their business experience, and form an estimate as they are examined as to whether or not they appear to be fair-minded persons."

Was that your statement at that time? A. That is right.
(4685) Q. And I take it that statement correctly expresses the practice at the time, is that right? A. As far as I can recall.

Q. Now this last statement of yours, Judge Knox, that I have read you, stated, did it not, the system which you

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

substituted for that which you had said previously been abandoned? A. Substantially so.

Q. Now can you give us some idea of the character of the business houses who submitted lists of names to you for jury service? A. Well, that is a long time ago. I cannot do it with any fair degree of accuracy, but I think one of them was the Consolidated Edison Company.

Q. How about the New York Telephone Company? A. Possibly.

Q. And the Metropolitan Life Insurance Company? A. I cannot say that.

Q. Were there any other banks, perhaps? A. It may have been. I recall speaking to Mr. Smythe about it and he said he thought he would get some of those people to allow them to come down and allow them to receive their wages or pay or salary during the time they served.

Q. Have you any idea at this time, Judge Knox, of the directories which were consulted for the names of jurors? A. Only what I have been told.

(4686) Q. Told by persons connected with the selection of jurors? A. Yes.

Q. Whose duty it was to select and to inform you of their number, is that right? A. That is correct.

Q. Will you therefore be good enough to tell us what directories you were told were used for this purpose?

Mr. Gordon: It is objected to.

The Court: Sustained.

Mr. Sacher: May I just ask a question, your Honor?

The Court: You have asked a number of questions about things that were said and so on, but I would suppose it would be better to inquire as to the facts that were within the knowledge of the witness, but, however, I think it better to let you go along.

Mr. Sacher: Judge Knox has said his information as to the character of the directories comes from people charged with the effectuation of the selection of the jurors and whose duties also include reporting to him as to their performance of their duties.

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

The Court: I think it better to inquire as to what he had knowledge of and what he did, if you care to.

Q. Do you know whether the Social Register was one of the directories which was consulted? A. I have heard it, but I never saw it myself that I recall.

(4687) Q. Do you know whether Who's Who in New York was one of the sources? A. I should imagine so.

Q. And college alumni directories? A. I have been told that.

Mr. Gordon: Your Honor, this line of examination pertains to information that somebody else told to the Judge. Now it appears that the people who were concerned with sending the notices out have been here as witnesses and examined at length, and the objection is to asking Judge Knox to search his recollection.

The Court: I think Mr. Sacher will get around in a minute or two to asking Judge Knox what he actually did and what he has personal knowledge of. I will allow a limited amount of this.

Q. Now you mentioned also, Judge Knox, in your testimony which I read a moment ago, club directories. Will you be kind enough to tell us what kind of club directories those were? A. I understood they were social clubs around New York, or business clubs. I never inquired into what they were in detail. I was anxious to get a cross-section of people.

Q. Now you also referred to trade journals that have the names of their members in them, is that right? A. I mentioned that and that is only on information and belief.

(4688) Q. Those trade journals—

The Court: What did you mean, Judge Knox, when you said you wanted to get a cross-section?

The Witness: Because there were a great many people in New York who did no jury service at all and I was anxious to see to it that you had a cross-section of representation of the population of New York on those jury lists.

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

Q. Is it true to say, Judge Knox, that in neither the directories which you have mentioned nor the trade journals would be likely to get manual workers or Negro citizens among those who were to be found in those sources?

Mr. McGohey: I object to the question, your Honor; first as to the form of it.

Mr. Sacher: I asked for the witness's knowledge.

Mr. McGohey: The witness has not testified he examined the list.

The Court: That is right. I will allow it nevertheless.

A. In some, I suppose, you would get persons who were, let us say, in the lower economic groups, depending upon what the trade records were.

Q. Which would those be, Judge Knox? A. Oh, I don't know. I cannot name any of them specifically as far as that is concerned, but I have the impression that a great (4689) many industries have clubs that have their members listed.

Q. Now you would not expect to find manual workers and Negroes in the social and business club directories that you referred to a moment ago, would you?

Mr. McGohey: I object to the question, your Honor. It is argumentative and again the witness has testified he did not use any of those documents.

The Court: Yes.

Mr. Sacher: I want to renounce any implication Judge Knox used any of those sources himself. The evidence shows who used them, but the point is I just want to ask—

The Court: I think it is important to get from Judge Knox testimony about matters that he personally did and had personal knowledge of. I felt it was all right to let you go along for a while and have these statements and things of that kind but I would suggest you get down now to what Judge Knox actually did, but I do not insist upon it. Perhaps you will come to it in time.

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

Mr. Sacher: I just wish to make the observation, your Honor, that intent is one of the decisive elements of this case and I am trying by this means of inquiry to establish the intent of the system which Judge Knox says he initiated with the appointment of Mr. Smythe.

The Court: Well, I think it might be a good (4690) idea sometime to ask him what he did about initiating it, but perhaps you would not want to ask him that.

Q. Well, Judge Knox, is it not a fact, that you appeared in April, 1947, approximately two years after your appearance before the House Judiciary Committee, before a Senate Subcommittee on the Judiciary and gave testimony once again in support of the same bills on behalf of which you had spoken before the House Committee, is that right?

A. That is true.

Q. And is it also true that at the 1947 hearing, in April of that year, you said, in words identical with those that you had used two years before before the House Judiciary Committee the following:

“Notwithstanding these difficulties that face the courts in their efforts to secure competent and suitable jurors, I am told from time to time that the selection of jurors should be a democratic process and that persons who serve in the United States District Court for the Southern District of New York are hand-picked.

“In answer to this indictment, I cannot do otherwise than admit my guilt. Nevertheless, unless restrained by an authority to which I must yield, jurors in my district will continue to be hand-picked, and it will be done with care.”

(4691) Is that correct? A. I made that statement undoubtedly.

Q. Now I understand, Judge Knox, that for a third time, if not more, that same statement was made before some members of the bar in Uniontown, Pennsylvania, in January of this year? A. That is true.

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

Q. In fact it was made while the trial of this challenge was in progress, is that right? A. Through a fortuitous circumstance.

Q. May I ask you to be kind enough, if you have it with you, the text of the Uniontown speech— A. Part of it. A few pages were lost in my bag being crowded with my clothes, but I have endeavored to find a copy to supply the portion that was missing. This is it (handing). This is the text from which I read at Uniontown. A few of these front pages are missing.

Q. May I hold this to read during the lunch hour so I need not take the time of the Court at this moment? A. Surely.

Mr. Sacher: Is it agreeable to the Court?

The Court: I think if you would not pay so much attention to earlier statements and ask the witness what he did we would get some facts which would be a little better, but I suppose you have to follow the way you have (4692) done all along and travel around the periphery first.

Q. Now, Judge Knox, in the course of the hearing before the Subcommittee on the Judiciary in the Senate the following took place, did it not, at page 87, of the Senate document which reports the hearings?

Mr. McGohey: This is in 1947?

Mr. Sacher: 1947, right.

Q. (Continuing) A Mr. Burdick who appeared at the hearing said, did he not:

"My argument ceases just as soon as you can contrive a method by which you can get a cross section of the country into that box. Then I am all through. I think that is all we need."

And did you not, Judge Knox, in response to that statement, say the following:

"We have in New York great portions of the population—Negro, immigrant, and what not. Now,

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

among those Negroes and among these others are many people who are competent, and we have them upon our juries. But if you went down there with a dragnet and attempted to bring them into a court-room, you would have a result that no one would wish.”

Did you say that? A. I did.

Q. Who are the “what nots” that are referred to (4693) in that statement “Negro, immigrant and what not”? A. That is just a matter of expression.

Q. What did that express? A. Nothing, only that there are people in those groups around New York.

Q. Did you mean to draw a distinction between Negroes, immigrants and what nots and other sections. A. Not at all if they were qualified jurors.

Q. Would you not think if you went with a dragnet through any group of people in New York that you might come up, as you said, with a result that no one would wish? A. That is correct.

Q. Why did you single out Negroes, immigrants and what nots for mention? A. Just a matter of illustration.

The Court: By the way, Judge Knox, is there a large criminal population here in the City of New York?

The Witness: In considerable number, I should think.

Q. Judge Knox, you are the author of this book “A Judge Comes of Age”? A. I am.

Q. And do you recall having written—

Mr. Sacher: I would like to offer this book in evidence, but it comes from the Public Library. I would just want to read—

The Court: You know if objection were made I would sustain it to all these statements. I cannot (4694) see what statements made have to do with this. This is not a case where you have some charge as to which the statements of parties are involved. Here is a witness who has some personal knowledge.

Colloquy of Court and Counsel

It seems to me that the interrogation should follow the lines of what he saw and what he did. And I have just sat by because there was no objection, and I supposed all these matters are matters of public knowledge anyway, but all I am interested in is the facts, and I hope I get them before too many more readings from books and speeches and things of that kind, but I will let you go on.

Mr. Sacher: May I briefly state to the Court the following: that if the so-called objective or physical facts were alone decisive of the issue under trial then I think your Honor's observations would be utterly unexceptional, but the Supreme Court requires, as you know, whatever discrimination be claimed, or whatever exclusions of groups or classes are claimed, must be shown to be deliberate, systematic and intentional, and this phase of the inquiry is addressed to the establishment of the second, the mental aspect.

The Court: I think I will insist upon knowing now what it was that Judge Knox really had to do with this system. I have tried not to interrupt you here or regulate this proof, but it seems to me that we must (4695) come to a time when evasive facts must be brought out. Why don't you ask what he did have to do with it?

Mr. Sacher: Well, your Honor, I am going to say only one thing: at page 250 of Judge Knox's book—

Mr. McGohey: Now, if your Honor please, I object to counsel reading anything that is being quoted or described in the book which Judge Knox wrote. I have not, although I realize there was legal basis on which objection could be made to the examination, or what, in fact, has been a cross-examination of Judge Knox upon testimony that he gave before a Senate Committee or a Congressional Committee, or even something that was as widely reported in the press as the speech he made at Uniontown, because those were matters of general public interest, but I am now going to object to cross-examination of Judge Knox, or any other witness,

Colloquy of Court and Counsel

about some book he wrote some years ago because it is utterly irrelevant and immaterial to the issue on trial.

If the question of intent has to be gone into, your Honor, I submit in the seventh week of this challenge what has been proven by the defendants themselves is that there is not any, that they have not sustained their charge, but they proven even the converse. They have proved by their witnesses and they have proved by their exhibits and by their own cross-examination of (4696) the officials of this court that there are women and that there are Jews and that there are Negroes and that there are workers serving on these juries and they have utterly failed, even with long cross-examination, to show that there is any systematic exclusion.

All talk about intent upon the part of Judge Knox in order to show that a systematical exclusion has been made seems to me to be silly when the state of the proof is that there is no exclusion and I object to any examination upon any books written by Judge Knox or anybody else.

The Court: I will sustain the part about the book.

Mr. Gladstein: I object to the Court permitting Mr. McGohey—

The Court: I do not desire to hear argument. You know, Mr. Gladstein, when a lawyer on one side of the case objects to something that his own colleague does, if you are objecting to Mr. Sacher's question I don't quite see what can be gained by pressing such an objection. There is something else you object to?

Mr. Gladstein: I want to object to the Court permitting Mr. McGohey, contrary to the ruling the Court announced applicable to us, to go ahead and make a speech in purported support of an objection after your Honor (4697) has said you are not hearing any argument on objections and you have prevented us from stating the basis of our proof and offer of proof and even to offer your Honor the decisions of higher courts that support our position.

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

The Court: Please let us just drop the matter of argument there. Put your next question.

Q. Now, Judge Knox, did you have any conversations with Judge Smythe at the time you designated him as jury commissioner? A. Oh, I have no doubt I did.

Q. And do you have a recollection of your discussions with him concerning— A. Oh, we talked over the general jury situation.

Q. I have not put a question yet, Judge. You will forgive me. It is that we are under a time limitation and I am trying to speed it along as much as I can. Do you have any idea, Judge Knox, as to the economic, social or racial composition of the grand jury list in the Southern District of New York? A. Not specifically. I have seen a good many grand jurors' lists and found upon them a number of people from various sections of the city.

Q. Can you say how many of them on any of those lists were manual workers? A. I cannot.

Q. Now you yourself have had a constant concern, have you not, with the composition, not only of the petit (4698) jury panels, but with those of grand jurors, isn't that so, Judge Knox? A. To a greater or less extent.

Q. Is it not a fact, Judge Knox, that the overwhelming majority members of the grand jury panels, or grand jury lists, rather, consist of men who are business men? A. I should guess that to be correct.

Q. Do you know of a single instance in the last ten years in which a manual worker, working for wages, other than a manual worker employed by the New York Telephone Company, Consolidated Edison Company or Metropolitan Life Insurance Company, was selected to be a grand juror in this court?

Mr. Gordon: Objected to, your Honor. The witness has testified he was not able to tell how many manual workers were on the jury.

The Court: Yes. How is a judge who sees a grand jury before him to know, Mr. Sacher, whether the man works for a daily wage or whether he works for this or that? I don't see how I could tell. As to a matter whether there were Negroes there I suppose I could tell that.

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

Mr. Sacher: I have not addressed myself to that yet, Judge.

The Court: I know you have not, and I am frank to say that I do not know how to judge, by looking (4699) at a grand jury panel, or a grand jury, I could tell those things. I will sustain the objection.

Mr. Sacher: I wish you would just permit me a moment, and that is this: Judge Knox, it seems to me, would have equal difficulty in knowing whether the man is a business man and as he testified a moment ago that the majority were business men, how did he know that?

Mr. McGohey: I submit that is not the testimony of Judge Knox. He said he would not be surprised.

The Court: The form of the question, of course, speaks for itself.

Mr. McGohey: If your Honor please, the records of this court will show—

Mr. Sacher: I object to what the records will show. I am being awfully nice to him today and I don't think he ought to provoke me.

The Court: You are a different man today I will say. You deserve a good deal of credit for your quiet and respectful demeanor this morning.

Now we will take a recess until 2.15, not the usual 2.30 recess. I am keeping very careful track of the time.

(Recess to 2.15 p. m.)

(4700)

AFTERNOON SESSION

JOHN CLARK KNOX, resumed the stand.

Direct examination continued by Mr. Sacher:

Q. Judge Knox, at the close of the morning session some question arose as to whether you did or did not know that the preponderance of members of the grand jury list

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

are business men, and in that connection I ask you whether you made a speech or an address at the annual meeting of the Federal Grand Jury Association for the year ending October 31, 1943, of which I show you a photostatic copy in the Federal Juror of February 1944 (handing)? A. I think so; I have no doubt of it. (Handing to Mr. Sacher.)

Q. It is true to say, is it not, that the statements you made in that speech were statements based on your knowledge? A. Yes.

Q. Do you recall making this statement in addressing the Association: "Each of you occupies a prominent place in this community"—

Mr. McGohey: If your Honor please, I object to reading anything from this document. If it is going to be offered in evidence let us find out if it is going to be admissible.

Mr. Sacher: All right, I offer it in evidence.

Mr. McGohey: I object to it.

(4701) The Court: Objection sustained.

Mr. Sacher: Will your Honor hear me at all on this?

The Court: No, Mr. Sacher. I told you this morning that statements, whether they are in speeches or books or wherever they may be, are not, in my view, competent evidence. I think it is better now to address yourself to the facts, to ask the witness on matters of which he has personal knowledge.

Mr. Sacher: But the Judge—

The Court: Not the matter of the speeches and the books and things of that kind. Now you have done quite a little of that, and I think it is better for you now to address yourself to things that the witness actually did and what he saw and observed. You know, that word "know" we have had that come up two or three times already, and it is very easy for a person to say that he knows this or that when all he means by it is that he has been informed by somebody that that is a fact.

Mr. Sacher: Your Honor—

The Court: I suggest—

Colloquy of Court and Counsel

Mr. Sacher: Your Honor, I wasn't present at the discovery of America but I believe with all the faith I have that Christopher Columbus discovered it in 1492.

(4702) The Court: Well, I will strike that remark out.

Mr. Sacher: But I would like to make one brief observation—

The Court: I will rule now, Mr. Sacher, that you should address yourself to questions within the witness's knowledge of what he observed, and that you leave for the moment the matter of speeches and addresses and things of that kind which I feel are entirely incompetent and inadmissible.

Mr. Sacher: May I just say one sentence in response to that, your Honor?

The Court: No, Mr. Sacher. I think you had better—

Mr. Sacher: All right.

The Court: —accommodate yourself to my directions.

Mr. Sacher: May I ask that Judge Knox's speech be marked for identification?

The Court: You may.

The Clerk: Is that February 1944?

Mr. Sacher: Yes.

The Clerk: I believe it is 300 for identification. February 1944?

Mr. Sacher: Yes.

(4703) The Clerk: It is Exhibit 300 for identification.

Mr. Sacher: All right, then I withdraw the request to mark it for identification.

May I just invite your Honor's attention, without mentioning the words, to the columns in which the language that I have referred to are involved?

The Court: You may do that, yes.

Mr. Sacher: It refers to page 5 of that issue of the Federal Juror and covers the next to the last sentence in the first column to the left on page 5, and also the entire second column—well, I needn't specify it. I suggest that the whole speech be read by the Court.

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

Mr. Gordon: Which covers practically all of page 5, your Honor.

Mr. Sacher: That is right.

By Mr. Sacher:

Q. Is it true to say, Judge Knox, that you invited Judge Smythe to assume the position of jury commissioner in this court? A. I don't recall the exact conversation but I should think that that is a fair inference.

Q. And did you communicate then to Mr. Smythe your objections to the method of jury selection which was in vogue and that you desired a new method of selection of jurors? A. I won't say exactly a new method of selection; I wanted the juries improved.

(4704) Q. Now is it true to say that one of the objections you had to the jury panels which were called in this court prior to Mr. Smythe's advent was that some of them consisted of unemployed workers? A. That is one reason.

Q. And was it not another reason that these jurors showed a tendency to decide against employers when employers were parties to the suits? A. I drew that conclusion.

Q. You did believe that, is that right? A. That is right.

Q. As a matter of fact, you said so at page 241 of your book entitled "A Judge Comes of Age," is that right? A. I wouldn't remember.

Mr. McGohey: If your Honor please, I object to any reference to the book. First of all, it is not in evidence.

The Court: I will sustain the objection.

Q. Is it not equally true that if you have a preponderance of business men on grand and petit juries that they will decide against workers when workers are parties to suits that come before them?

Mr. McGohey: I object, your Honor, and I object to the—

*John Clark Knox—for Defendants on Challenge--
Rebuttal—Direct*

The Court: Sustained.

Mr. McGohey: —form of the question, and I (4705) object to the cross-examination of Mr. Sacher's witness.

The Court: Objection sustained.

Q. Did you also, Judge Knox, have a discussion with Mr. Follmer, the then clerk of the court, in respect to the modification of the methods of selection of jurors in this court? A. I have no doubt I did; I don't recall it specifically.

Q. May I ask you this, Judge Knox, which of the jury lists was it in respect to which you were concerned in respect to the method of selection? Was it the grand jury list or the petit jury list or both? A. I should say both.

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

(Mr. Sacher examines papers.)

Q. Judge Knox, I should like to show you the text of what purports to be a speech made by you in March 1931 to the Federal Grand Jurors Association and ask you to look at page 13 of the—I beg your pardon, the speech, I think, appears to have been made in January 1931 and is published in March 1931. Do you recall that, Judge?

A. No, not offhand.

Q. Will you be kind enough to look at it and then direct your attention to the third column on page 3 and tell me whether that refreshes your recollection as (4706) to whether you had any problems concerning the selection of jurors for the grand jury as far back as 1931 (handing)?

A. (After examining) I have no doubt I said that.

The Court: Well, the question is whether you had problems at that time with reference to the grand jurors.

The Witness: Not specifically that I recall. What I had in mind was that grand jury service was much easier than petit jury service and I sought to have the grand jury, if they could help find some people who would serve on petit juries as petit jurors.

Colloquy of Court and Counsel

Q. Isn't it a fact, Judge Knox, that you acknowledged in that speech to the Federal Grand Jury Association that—

Mr. Sacher: Mr. McGohey, that pencil looks awfully menacing. Will you just let me finish?

The Court: Well, he means that he is going to object, and the question is objectionable all right, no matter what you finish it up with.

Mr. Sacher: Well, may I offer Judge Knox's speech in evidence?

Mr. McGohey: I object.

The Court: Objection sustained.

Mr. Sacher: Doesn't your Honor wish to see it (4707) at all?

The Court: I have ruled, Mr. Sacher,—

Mr. Sacher: I know.

The Court: —that statements that are made by a witness here are not admissible or competent. You seem to be of the impression that this is a case in which the witness here is a party to the proceedings, just as though some statement by one of the defendants who were indicted here was brought in, and I am telling you that what the witness may say out of court, whether it is in a speech or in a book or what not, is not competent proof.

Mr. Sacher: I take it that your Honor won't listen to a sentence or two from me in justification of the question, just by way of explanation, to say this—

The Court: Well, all right.

Mr. Sacher: It is not in the sense that Judge Knox is an adversary party. That is not the thesis at all. The point is that by law that he, as senior judge formerly and chief judge now, is charged with the responsibility and has exercised the responsibility in discharging it, of administering or supervising it or overseeing the selection of jurors in this district and—

The Court: But you see—

(4708) Mr. Sacher: —and if he had said at an earlier time that he had no problem with the

Colloquy of Court and Counsel

grand jury, that they were made of substance, et cetera, and that he was asking their assistance in the selection of petit jurors, then I think it is proper to point it out to Judge Knox, not for the purpose of impeaching him, of course not, but for the purpose of refreshing his recollection.

The Court: Now you go on so long that I lose the trend. I remember only a few weeks ago, as time goes in this trial, that it was argued by you, or one of your colleagues, that there was a series of errors, first, that Judge Knox had no right to do anything with the system under the law, and that if he did that was wrong; and then also that with reference to all of the judges they had a duty, and if they did not do it, that was wrong; and also certain claims that you made with reference to what the clerks did. Now it seems to me that it is about time to get down to just what Judge Knox did do instead of having what speeches he made and what he said and what the talk was. I am very much interested to hear what the facts are, and I hope you will get around to that.

Mr. McGohey: Just one thing more, your Honor. May I call your Honor's attention to the fact that Mr. Sacher is talking about something that was published (4709) in March of 1931.

Mr. Sacher: That is right.

Mr. McGohey: Almost ten years beyond the period which is covered in the challenge.

The Court: I know. It is the old story of getting all around the periphery of the subject instead of getting right at the basic facts. Now I am very much interested, as I have said, to know just what it was that Judge Knox did and just what it was that he observed, if he saw the juries and saw them assembled and made certain observations, all right; if he gave certain directions, let us have what the directions were that he gave. Let us get at that instead of all the talk about what he said here and there which, as I have repeatedly said, is not competent and is not any substantial evidence in the case.

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

Mr. Sacher: May I have the March 1931 issue of the Federal Juror marked for identification?

(Marked Defendants' Challenge Exhibit 396 for identification.)

By Mr. Sacher:

Q. There came a time, did there not, Judge Knox, in September 1941 when the Judicial Conference directed that a survey be made of the operation of the jury system in the various federal courts throughout the country; (4710) is that right? A. That is right.

Q. You were the chairman of a committee of five judges appointed by the Judicial Conference to make that survey? A. I still am.

Q. And did the committee, in the discharge of its duties, adopt certain methods for obtaining the facts concerning the methods of selection of jurors in the federal courts? A. We did.

Q. By the way, the Judicial Conference is an institution established by the Judiciary Law of the United States, is it not? A. Well, by some one statute—I have forgotten whether it is the Judiciary Law or not.

Q. Did your committee prepare questionnaires which were sent out to the various clerks of the court and the jury commissioners in the various district courts throughout the country? A. It did.

Q. And were replies received by your committee from the various clerks and jury commissioners? A. A large number of them.

Q. And is it true to say that the return of these answers to your questionnaire was made in response to a duty on the part of the jury commissioners and the court clerks to provide your committee with the information that you sought? A. We sought information from them as to what their practices were in their respective (4711) districts.

Q. There was nothing secret or confidential about those practices, was there?

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

Mr. McGohey: Objection.

The Court: Sustained. Isn't that a matter on which we have heard from the head of the Administrative Office, Mr. Sacher?

Mr. Sacher: Oh, I think the chief judge of this district, the chairman of that committee, has a much weightier opinion to give on that subject than Mr. Chandler.

Mr. Gladstein: Let the record show that the witness started to answer the question by shaking his hand—

Mr. Sacher: His head.

Mr. Gladstein: —his head, to reply in the negative.

The Court: Well, I noticed no such thing.

Mr. McGohey: Nor did I, your Honor.

Mr. Gladstein: Well, I was looking at the witness, and perhaps the reason neither of you did not see him is because—

Mr. Sacher: Well, I was looking at the witness, too, and saw the same thing, and the witness is here, by the way, to testify whether he did or not.

(4712) The Court: Well, I have sustained the objection. It is my understanding that that matter was placed before me by Mr. Chandler, and I have ruled that certain matters were confidential in connection with the administration of justice, and I have followed what I thought was a proper statement by Mr. Chandler on the subject. Now you gentlemen took your exception to that, and if I am wrong, why, there it is. I decided it as I thought I should.

Q. Did you suggest to Mr. Follmer or Mr. Smythe the use of any selecting sources for the purpose of obtaining the names of potential jurors? A. I don't recall that I did, but it is quite possible.

Q. It is quite possible that you did? A. Yes.

Q. Are you familiar with the fact that the address telephone book has been used for a good many years in this court house? A. I have been told so.

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

Q. And is it not a fact that the use of that address telephone book was initiated at your suggestion beginning with some time after 1937? A. I don't recall it but I am—but it is not impossible.

Q. And was it not the purpose of using the address telephone book so as to select the names of people in the so-called better neighborhoods?

(4713) Mr. McGohey: I object to that characterization, your Honor.

The Court: I will sustain that. The witness has not stated that he did suggest that, so I suppose you are asking for his purpose about something that he didn't do.

Mr. Sacher: Well, he doesn't say that he did not do it. He said it is possible that he did.

Mr. McGohey: Not for that purpose.

The Court: And when he has no recollection as to whether a thing is done, I consider it improper to ask what the purpose was.

Q. Do you know what the purpose of the address telephone book was used in this court for, in the matter of obtaining the names of potential jurors?

Mr. McGohey: I object, your Honor.

The Court: Sustained.

Q. Do you know whether the Social Register was used for the purpose of obtaining the names of potential jurors?

A. I answered this morning that I had heard so.

Q. From whom did you hear so?

Mr. McGohey: I object.

A. I think—

The Court: I will allow it.

A. I think I read it in the Tolman report back in (4714) 1941 or thereabouts.

Q. And you attached enough credence to that report to believe it, is that right? A. Oh,—

*Dorothy H. Rodman—for Defendants on Challenge—
Rebuttal—Direct*

Mr. McGohey: Objection.
The Court: Sustained.

Q. Who sent you a copy of the Tolman report?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Did you ever take any issue with anything contained in the Tolman report?

Mr. McGohey: Objection.
The Court: Sustained.

Mr. Sacher: Your Honor, in view of your rulings you make it impossible for me to continue to examine this witness, and in that situation I have no alternative but to cease my examination, with an appropriate exception to all of your rulings.

The Court: Very well.

Mr. Gladstein: I desire to say that I also have examination of Judge Knox that I would like to present, to pursue here, particularly with respect to the connections between Judge Knox and the Federal Grand Jury Association, and a number of other vital matters, including such things as the placing of the letter C on the history cards and other cards of colored people—

(4715) The Court: You had better ask him the questions then.

Mr. Gladstein: I am unable to do so for the reason that we have other witnesses, including one that we brought here from Florida, and it will be impossible for us to put on all of the testimony that we want to put on before the closing hour, in accordance with your Honor's order, so I therefore refrain from examining Judge Knox for those reasons.

The Court: Very well.

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Cross*

Cross examination by Mr. McGohey:

Q. Judge Knox, there was reference today in the examination by Mr. Sacher to some answers that you made to certain questions in your testimony before the committee on the Judiciary of the House of Representatives of the 79th Congress, July 12th and 13th, 1945, and I should like to call your Honor's attention to this question by Mr. Springer, and to an answer, which appears here as yours:

“Mr. Springer: To what extent do you get working people and farmers on your juries?

“Judge Knox: We try to get them as best we can, and we have a great many of them; many people, for example, who are superintendents of apartment houses, the man who looks after the locks, and things (4716) of that sort. He is an intelligent person. It has been very difficult in recent years to get working men from the war industries for two reasons. One, that it would impose a financial sacrifice upon them; and the second was that it would interfere with war production, and the number of persons of that class serving in recent years since the war began would not be as great as it was or ordinarily would be.”

Do you recall in substance making that answer? A. I do.

Q. And then this question by Mr. Springer:

“Mr. Springer: You talk about permanent legislation. We hope this war will be over one of these days, and we have to think in terms of peace and normal conditions.”

To which you replied:

“Judge Knox: What we have in mind is that every economic and social group in the community shall be represented upon the jury list.”

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Direct*

Did you make substantially that answer, Judge Knox?

A. Yes.

Q. And is that not so today? A. That is my intention and purpose, to the best of my ability.

Q. Now there was an answer read by Mr. Sacher from (4717) your testimony before a sub-committee of the Committee on the Judiciary of the United States Senate, 80th Congress, First Session, on either April 23rd or 24th in 1947. Mr. Sacher read part of it. What Mr. Sacher read was this:

“We have in New York great portions of the population—Negro, immigrant, and what not. Now, among those Negroes and among these others are many people who are competent, and we have them upon our juries. But if you went down there with a dragnet and attempted to bring them into a courtroom, you would have a result that no one would wish.”

This remaining part of the answer was not read:

“What we have in mind here is that the jury commissioner will see these men who are summoned for juries and talk to them and find out if they are responsible persons. Their names will go into the box.

“Now we have some 12,000 persons on our jury list now.”

Mr. Sacher: You read that wrong. “Now we have over 12,000.”

Mr. McGohey: “Now we have over 12,000 persons on our jury list now.”

Q. (Continued):

“We are trying to increase that (4718) to double that number, so that we will have a great mass of people who are eligible for jury service whose qualifications have been examined, and who

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Cross*

may be looked upon as fair and decent citizens, comprising every section of the social and political structure of the country. Now, that is what we are trying to do. We are not trying to fill a jury box or to throw a case any particular way. It would be almost impossible, because out of this great mass of names that are taken, and all these cards that are put into the box, you have a situation in which, as a practical proposition, no jury can be fixed under that procedure that is followed.

“Senator Langer: Thank you very much, indeed, Mr. Wood.

“Mr. Wood: Thank you, sir.”

Mr. Sacher: He said that to Mr. Wood.

Mr. McGohey: That is right, but the answer appears to be Judge Knox’s.

Q. And I ask you, Judge Knox, if that isn’t in substance what you testified, and isn’t that in substance today what is sought to be accomplished? A. Yes.

Mr. Sacher: I object to the last half of the question.

(4719) The Court: Overruled.

A. That is right.

Q. Now Judge Knox, I note in the volume of the United States Reports, Volume 328, page 224, which is part of the opinion of Mr. Justice Murphy in the case of Theil vs. Southern Pacific Company, that Mr. Justice Murphy in a footnote quotes the following from your testimony before Congress:

“when jurors’ compensation is limited to four dollars per day, and when their periods of service are often protracted, thousands upon thousands of persons simply cannot afford to serve. To require them to do so is nothing less than the imposition upon them of extreme hardship.”

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Cross*

I ask you, Judge Knox, was that statement which is quoted by Mr. Justice Murphy based upon your experience as a judge for many years in this court? A. Yes.

Q. Now, Judge Knox, as part of your duties as the chief judge, you undertake to preside at the examination of the panel of jurors each time a panel comes in at the beginning of the month? A. I did for many years but owing to illness in my family I have been unable to do it in the past year.

Q. But up until this year you have been doing it almost (4720) exclusively? A. Yes.

The Court: Up until the past year.

Mr. McGohey: That is what I say, up until the past year.

Q. Now in performing that part of your duty, it consists in large part of examining the excuses that are offered by persons who desire to be excused from service? A. Correct.

Q. And from the excuses which have been offered can you tell whether the persons who appear on the panels are working men? A. Some of them are.

Q. And can you tell whether or not there are women in those panels? A. Yes.

Q. That is, since women have been— A. Yes.

Q. —authorized by law to serve on juries in New York? A. That is correct. Frequently—

Q. And have there been Negroes in those panels? A. Yes.

Q. Did I interrupt you, Judge Knox, when you were answering about women? A. I was going to say, in speaking about the Negro, I recall the last time I sat, I took the excuse of a juror who was a very intelligent Negro, who was connected with the Union of Pullman Railway Porters.

(4721) Q. Well, you have seen Negroes on panels— A. Yes.

Q. —from time to time? A. Yes.

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Cross*

Q. And have there been persons who appeared to be members of the Jewish faith? A. Many of them.

Q. Have there been times, for instance, when persons asking to be excused, asked to be excused on the basis that they needed time to observe the Jewish holidays? A. I think so, yes.

Q. Now, Judge, you have sat as a trial judge in this court for over thirty years? A. That is right.

Q. Have you on the trial juries that have appeared before you observed Negroes? A. I have.

Q. And women? A. Yes.

Q. And Jews? A. Yes.

Q. And people who appeared to be working men from their occupations? A. Yes.

Mr. Sacher: How did he know they were Jews?

Q. Mr. Sacher wants to know how you knew that people were Jews? Let me reframe my question and let me ask you, were there people serving on the juries before you whose names appeared to be Jewish names? A. That is right.

Q. And were there occasions in panels, in cases where juries were sitting before you, where maybe even during the trial somebody would ask to be excused in order to observe the Jewish holidays? A. Oh, yes. As a matter (4722) of fact, we recognize them regularly down here in this court.

Q. Now Judge Knox, in all the time that you have been in charge, that you have been the senior judge and the chief judge of this court, have you ever ordered anybody off the jury list because of his race? A. I certainly did not.

Q. Or because of his religion? A. No.

Q. Or because of his color? A. No.

Q. Or because of any political affiliation that he had? A. No.

Q. Or any religious affiliation? A. No.

Q. Or any economic status? A. No.

Q. Have you ever directed any clerk under your jurisdiction to do anything like that? A. No.

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Redirect*

Mr. McGohey: Thank you. I have no further questions.

Mr. Gladstein: I have one question.

The Court: Just a moment.

When the question came up a moment ago about the Jewish holidays, did you say that the Jewish holidays were observed in this court?

The Witness: They certainly are.

Mr. Gladstein: I have a couple of questions.

(4723) *Redirect examination by Mr. Gladstein:*

Q. Of course, Judge Knox, you do not know whether any of the attaches of this court did strike from the lists of juries any of the many thousands of Negroes and poor Jews who lived on the Lower East Side, who have never been on those lists, isn't that so ? A. No.

Mr. McGohey: I object to that, your Honor. How can you strike the name of a person who was never on the list?

Mr. Gladstein: Ah. I think you got the point, Mr. McGohey.

Mr. McGohey: Because the question you asked,—the question he asked was, did the Judge strike the name of any person who was never on a list?

The Court: That is a rhetorical question.

Mr. McGohey: Well, it is a dishonest question, your Honor, and that is the basis of the objection to it.

The Court: It is in Mr. Gladstein's best style.

Mr. Gladstein: Well, yesterday it was Mr. Gordon who responded, and today I have the honor of Mr. McGohey doing it.

The Court: Well, that must be a great satisfaction to you, Mr. Gladstein.

Mr. Gladstein: I do have one question.

(4724) The Court: Your adherents in the courtroom responded bravely.

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Redirect*

Mr. Gladstein: I do—now the record should show that 50 per cent of the people in the courtroom are representatives of the press.

The Court: Well, I thought I heard the noise from over here (indicating), where the seats are reserved for the defendants' families and friends.

Mr. Gladstein: May I ask the question that I wanted to ask?

The Court: Yes, you may.

Q. Judge Knox, you were asked in examination by Mr. McGohey about some testimony that you gave at a time when Senator Langer was present. A. That is right.

Q. Is that the same Senator Langer who a few weeks ago on the floor of the United States Senate delivered a speech analyzing the jury system in the Southern District of New York, making references to you and characterizing this jury system, in substance and effect, as an outrageous violation of the Constitution of the United States? A. I saw the Congressional Record to that effect, that Senator Langer made an address along those lines.

Mr. Gladstein: I have no further questions.

(4725) Mr. McGohey: Now if the Court please, I am reading from the report of the hearings before a sub-committee of the Committee on the Judiciary, United States Senate, 80th Congress, April 23rd and 24th, beginning at the top of page 50, which is a carry-over from page 49—

Mr. Gladstein: My question had to do with a few weeks ago; 1947 was not the time.

The Court: Well, you know, one thing leads to another.

Mr. McGohey: I am quoting this:

“Senator Langer: But even Judge Knox says here that he hand-picks the jury. It says so in this statement.

“Now, I am not going to vote for any measure, myself—I do not know about the other gentlemen—unless there is some provision in there where a Fed-

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Redirect*

eral Judge cannot hand-pick the jury. He says here:

“‘In answer to this indictment, I cannot do otherwise than admit my guilt.’”

Mr. Gladstein: Read it so that I can hear it, Mr. McGohey.

Mr. Gordon: Oh, Mr. Gladstein.

Mr. McGohey: “Judge Knox said—“unless restrained by an authority to which I must (4726) yield, jurors in my district will continue to be hand-picked, and it will be done with care.””

Senator Langer says: “He does it with care because he is an honest judge; but why should the American people tolerate a dishonest judge hand-picking a jury?”

By Mr. Gladstein:

Q. Judge Knox, the statement concerning you was in 1947 that Mr. McGohey just read, isn’t that so? A. I assume so because—

Q. Yes, and you understood that my question to you, dealing with the statements of Senator Langer, referring to you and the jury system here, had to do with a speech that you delivered in the Senate within a few weeks ago, this year, isn’t that right? A. Yes, the 24th day of January, to be exact, I think.

Mr. Gladstein: Thank you, that is all.

By the Court:

Q. Judge Knox, there is just one question that I have: in this Tolman report there is reference to a time prior to 1941, a statement: “One of the greatest difficulties with juries has been due to general economic conditions in New York City. The panel was overcrowded with relief workers and housewives.”

Had such a condition come to your attention? (4727)
A. The people in charge of relief during the depression

*John Clark Knox—for Defendants on Challenge—
Rebuttal—Redirect*

came to me and asked if I couldn't put a number of these poor people upon the jury rolls so that they might have some income, and I put them on. And then I had two or three experiences in cases that were tried before me where I felt that their feelings towards the Government as a whole and towards wealth as a whole and towards society as a whole was not good, and so I then asked that a number of them be eliminated.

Q. You then observed the fact that in that time there was an overcrowding of the jury system with relief workers and housewives? A. That was my opinion.

Q. Now it also says something in here about something being done along two lines; one was that you proposed to see that jurors summoned were of a better quality, and you proposed to reduce the body of excuses. What is meant by that? A. Well, a great many people would come in and want to be excused time after time, and at one time, to go back a long distance, I did not have enough jurors to do business because some of the politicians had taken them into the club houses, and a lot of people did not show up to man the jury boxes, and I tried to put an end to that.

The Court: All right, thank you.

Mr. Sacher: I have just one question.

(4728) *By Mr. Sacher:*

Q. Have you made any observation as to the number of business men in the juries that appeared before you? A. I have seen a good many, yes.

Q. Wouldn't you say that the overwhelming majority of them are? A. I cannot say without an examination of the roll.

Q. Will you be kind enough to make that examination, Judge Knox? A. I am in court with some 12,000—

The Court: I will give no such direction.
Thank you, Judge.

(Witness excused.)

Colloquy of Court and Counsel

The Court: Next witness.

Mr. McGohey: By the way, a copy of Judge Knox's speech at Uniontown was called for; it wasn't used.

Mr. Gladstein: Well, while we are waiting for the next witness, your Honor, I want to file the amendments and supplement to the challenge which your Honor gave me permission to do so some time ago, in order to conform the original challenge to the proofs and include the petit jury panels, you know, of February 1st and February 2nd—you recall that?

The Court: I remember a motion to amend the challenge that I denied.

Mr. Gladstein: Not that.

(4729) The Court: I do not recall what it is that you are referring to now.

Mr. Gladstein: Oh, I will get the record reference.

The Court: Don't worry about the record reference, as long as I know what you are talking about.

Mr. Gladstein: All I am doing is making applicable to the February panels the challenge that we filed (handing).

The Court: Well, do you understand that I have to rule on this or may you submit it as a matter of right?

Mr. Gladstein: I think it is as a matter of right, but I did ask your Honor for permission and I can dig up the record reference in which your Honor said that that would be all right, and that I could file a document subsequently.

Mr. McGohey: Your Honor, my recollection is that at some point there was an objection made to the introduction of any testimony about panels after the second January drawing because the witness lenge as drawn did not include it. However, your Honor accepted some panels or some testimony about February, and then said (4730) that they could enlarge the challenge. I do not understand that it is an amendment.

Colloquy of Court and Counsel

The Court: Very well.

Mr. McGahey: But to include February, I have no objection to it.

The Court: Very well, I will receive it.

Now those papers that you got from Judge Knox, will you hand those back, please.

(Papers handed to the clerk.)

The Court: There was another one as I remember it. He had the pages that he used in making his speech, and he took those with him, did he?

Mr. Sacher: Yes.

The Court: That may be sent up to Judge Knox in due course.

(4731) EUGENE J. CANTIN, resumed the stand.

Mr. Isserman: If the Court please, may I inquire before proceeding with this witness if George W. Adams, who was under subpoena as of yesterday, is in court now? Your Honor will recall the Court received some message about Mr. Adams who lives in Connecticut, some inability of his to appear, which your Honor called to my attention. I would like to know if Mr. Adams is here.

The Court: You mean in the witness room?

Mr. Isserman: Yes, please.

The Court: Will you see, Mr. Borman, is George W. Adams here?

The Clerk: Yes, your Honor.

The Court: The clerk informs me that there was something stated yesterday as to Mr. Adams, or some reply by him, to the effect that he was awaiting a call from defense counsel to come from Gilbert, Connecticut. Did you give him such word to come?

Mr. Gladstein: The clerk did not speak to me about it.

The Bailiff: The gentleman said he is sick today and he did not show up.

Mr. Isserman: Is there somebody to speak for him as to that?

*Eugene J. Cantin—for Defendants on Challenge—Recalled
in Rebuttal—Direct*

The Bailiff: I don't know. He stated he was
(4732) sick.

Mr. Isserman: I note my objection on the record to completing my examination under the time limit imposed by your Honor and also note the fact that although we spent several hours this morning in examining the contents of Exhibits 303 to 308, inclusive, that examination is not complete, and without completing it I cannot complete the examination of this witness.

Direct examination continued by Mr. Isserman:

Q. Now, Mr. Cantin—

Mr. Gordon: Just a moment. The examination of those exhibits was limited in time by, in part, the choice of counsel. The exhibits were offered in the morning, I think, and received, and we were asked to have them available in the court house, and I suggested they begin working right away,—I will make this brief,—and they did not show up until 8.30 although they said they would be there at 8, and they were permitted to work until 10.15, and told they would be available at 9, and they did not show up at 9 this morning, and they came in later, so the time question is a concern for them.

Mr. Isserman: It is not a matter of 15 minutes. The exhibits 308 to 315 include some 15,000 names and correspondence in connection with those names.

(4733) The Court: Is this witness supposed to know about these?

Mr. Isserman: He knows a lot.

The Court: Perhaps you might examine him a little on some of the more important ones.

The Witness: Your Honor, I apologize for being late.

The Court: That is perfectly all right. Don't trouble yourself about it at all.

*Eugene J. Cantin—for Defendants on Challenge—Recalled
in Rebuttal—Direct*

Q. You testified you were connected with the Denby Motor Truck Company back in about 1937? A. No, earlier than that.

Q. Weren't you connected with the Universal Fingerprinting Company? A. No.

Q. You never were connected with that organization? A. No; no. Never heard of it.

Q. Now I call your attention to a letter addressed to you taken from Exhibit 308, which is in evidence, which is the files of the Grand Jury Association, and ask you if that letter was in fact a letter received by you (handing)? A. I don't remember that letter.

Q. Did you know Mr. George W. Adams who signed this letter? A. Oh, yes.

Q. And do you recall receiving similar letters from him from time to time?

(4734) The Court: Did he say he remembered the first one?

Mr. Isserman: No. He said he did not recall this one.

The Witness: No, I do not recall such a letter from him or any others like that.

Q. Now I call your attention to a series of handwritten names on the back of the letter which bears your name and addressed by you to Mr. Adams, and ask you if those names are in your handwriting? A. Yes. That reminds me I must have received that letter because that is my handwriting.

Mr. Isserman: And this letter I would like to have marked as Exhibit 308-A.

The Court: Is that one of the ones that came out of the lists in evidence?

Mr. Isserman: That is correct.

The Court: It is in evidence already but you wish to distinguish by an additional number?

Mr. Isserman: That is correct.

The Court: You may do that.

(Marked Defendants' Challenge Exhibit 308-A.)

*Eugene J. Cantin—for Defendants on Challenge—Recalled
in Rebuttal—Direct*

Q. Now, this letter, Mr. Cantin, reads as follows:

“Executive Committee, Federal Grand Jury Association, addressed to Mr. Eugene J. Cantin:
(4735) “Dear Mr. Cantin:

“The Panel Committee would appreciate it greatly if you would send to Mrs. St. Clair names of about 20 women eligible for duty. It is not necessary, and in fact unwise, to discuss the matter with these women in advance. We are anxious that Mrs. St. Clair should have the names as promptly as possible.

“When we say 20 we mean more or less names as is convenient for you to supply her. The Committee would greatly appreciate this for it seems to them to be one of the best ways to provide a proper cross-section. This is all we expect to call upon you to do.”

And I ask you whether or not in response to this inquiry you wrote the names on the back of the letter and sent them in to Mr. Adams or to Mrs. St. Clair? A. Yes, I did.

Mr. Gordon: Is the answer to all three things in the question or just one?

The Court: I think it is just in response to the letter. He wrote the names on it and sent them to Mrs. St. Clair.

Mr. Isserman: That is all I am asking for. I did not ask for anything more.

(4736) Q. It was your notion the names you put on the back of this letter would provide a proper cross-section, is that correct? A. Let me just look over those names, please.

Q. I call your attention to the fact that the blue sheet annexed, the typewritten copy is of the same names.

Mr. Gordon: I object to the question on the ground that the letter was not written by the witness and what his opinion was—

*Eugene J. Cantin—for Defendants on Challenge—Recalled
in Rebuttal—Direct*

The Court: Let us see if he knows who the people were and what he has to say about them. What is the date of that letter anyway?

Mr. Isserman: That letter is April 28, 1941.

A. Would you have that question read to me, please, the last question?

Q. My question is, Mr. Cantin, when you put these names on the back of the letter and sent the names back to Mrs. St. Clair you were using those names to be a proper cross-section? A. I think it is a very good one.

Q. And those names include the president and general of the D.A.R., Mrs. William H. Pouch, is that right? A. Right.

Q. Mrs. Helen B. Merchant, investment banker? A. Yes.

Q. And Mrs. Beatty, public relations? A. Right.

Q. And a number of interior decorators? A. Yes.

(4737) Mr. Gordon: Who were classified as manual workers.

Mr. Isserman: I think Mr. Gordon is irrepressible.

Mr. Gordon: I am sorry, your Honor. It is contagious. I apologize.

The Court: Now this fact about the interior decorators? I did not quite get the last few.

(Record read.)

The Court: Don't go through them all. I can read it myself quickly.

Q. By "cross-section" you understood cross-section to mean cross-section of the Federal grand jury, did you not, when you sent these names in. A. No. You mean a cross-section for the grand jury? Yes.

The Court: Maybe it was a cross-section of the community as a whole?

Mr. Isserman: I will ask him about that.

*Eugene J. Cantin—for Defendants on Challenge—Recalled
in Rebuttal—Direct*

Q. Did you mean by that that this was a cross-section of the community you were supplying? A. Of a community as a whole, no, because not enough names on there to be a full cross-section. I think it is a good cross-section of people. I have served on the grand jury for a good many years or good many times, rather, and in my experience that is a first class cross-section. If there were 23 of those women on a Federal grand jury I should say it was a very fine (4738) fair-minded jury.

Q. And didn't you as a member of the executive committee of the Association, and its honorary secretary and honorary president, from time to time submit additional names for that kind of cross-section? A. I did not. I may have.

Mr. Gordon: I am going to object.

The Witness: I don't remember submitting any other names.

The Court: What is that?

The Witness: I may have, but I don't remember submitting any other women's names. I may have submitted some men.

Q. But you don't recall? A. I don't recall particularly.

Mr. Gordon: I object to cross-examination of this witness by Mr. Isserman.

Mr. Isserman: If the Court please, the Court has allowed that latitude before.

The Court: I don't think it is in the nature of cross-examination, Mr. Gordon. I think it is perfectly proper.

Q. I call your attention to an exhibit taken from the files of the Association included in Exhibit 303, which bears on it, on top, Nominations for a panel of (4739) Federal Grand Jurors for the Southern District of New York, and in ink in the upper righthand corner "Submitted to Mr. McKenzie" and in the lefthand corner "Mr. Cantin" and I ask you to look at that list and tell me whether or not your name on it indicates that you supplied those names as a cross-section for a Federal grand jury panel?

Colloquy of Court and Counsel

Mr. Gordon: What number was this from?

Mr. Isserman: 303.

Mr. Gordon: 303 has never been offered in evidence, your Honor.

Mr. Isserman: If the Court please, the files which are offered are marked—

The Court: Let me see it with the exhibit number.

Mr. Isserman: Then it should be in evidence as part of the files produced by Mrs. St. Clair.

The Court: Well, it is not in evidence.

Mr. Isserman: I would like to offer the file as part of the complete file. I think she started to identify one portion and then the remaining portions were put in and my belief was the entire lot was put in evidence.

The Court: Is there any objection?

Mr. Gordon: To it being received?

The Court: Yes.

(4740) Mr. Gordon: Your Honor, yesterday when all these lists came in, as I understood it, the offer was of the lists of names which had been submitted to the Government—

The Court: These are way back in 1938.

Mr. Isserman: Yes, your Honor, but it is part of the entire exhibit which your Honor ruled into evidence yesterday.

Mr. Gordon: No. We have here, as I understand it, in this exhibit a lot of correspondence between the Federal Grand Jury Association and outsiders, and it has already been demonstrated that in the effort to save time and be liberal we now have a lot of material which is really extraneous to the issue and I object to the extraneous matters.

Mr. Isserman: The whole exhibit was offered as the files of the Association containing the lists of names which were submitted to the clerk of this court and the individual communications in which individual names and recommendations were made, and the Court's ruling embraced the entire file. It happened this particular portion does not seem to

*Eugene J. Cantin—for Defendants on Challenge—Recalled
in Rebuttal—Direct*

have been marked in evidence because it was in a separate folder.

The Court: Mr. Isserman, what I thought I was doing was putting in evidence all the lists of (4741) names that Mrs. St. Clair was testifying about that had been made available for use in sending out notices for qualification over the period of time we have been talking of here. I did not realize that there was a lot of miscellaneous correspondence in there. Now it seems that this particular page, 303 for identification, is earlier than the period in question, the period in question being substantially from 1940 on through to the time of the beginning of this proceeding.

Mr. Isserman: If the Court please, we discussed this matter yesterday with the Court and the Court with this very witness fixed 1937 as the date prior to which the Court would not allow me to go and that was based on the Tolman Report which is dated 1941 and says three or four years ago a new system was put in operation, and that is the system we have been talking about.

The Court: I have permitted certain questions to go back to that time, that is true, and I think perhaps the best thing to do now is allow this to be marked in evidence. I think it is encumbering the record, and I think, too, the significance of these lists lies in that question that we do not have before us as to their use. They were made available, it is true. Now the question is as to what I am to infer from being (4742) made available and it does not seem to help an awful lot. However I am going to allow them so you have it marked in evidence and you may go ahead with the questions.

(Defendants' Challenge Exhibit 303 for identification received in evidence.)

Q. Could you answer the question now? A. Those names may have been supplied by me. I recognize one name here from whose concern I knew a man that worked

*Eugene J. Cantin—for Defendants on Challenge—Recalled
in Rebuttal—Direct*

for this concern and two of those concerns I knew people that worked for them and that may have been—

Q. Isn't it a fact, Mr. Cantin, from your knowledge of the records of the Association that Mrs. St. Clair was in the habit of writing on the list the source of the list; that is, the book out of which it was taken or the man who submitted the names, isn't that true?

The Court: Did you know Mrs. St. Clair wrote certain things on there or didn't you?

The Witness: I knew some of the things she wrote. I don't know whether she ever sent this down there or not.

The Court: Another thing in the question originally asked, Mr. Isserman asked if you sent that little list of five or six names as a cross-section.

The Witness: Oh, yes.

(4743) The Court: Yes?

The Witness: No, I did not.

The Court: Of course you cannot have a list of four or five names as a cross-section.

The Witness: I misunderstood.

Q. I ask you whether or not it was not a practice of Mrs. St. Clair, who was your secretary and assistant, and who worked with you in the Association, to put down the name of the person who submitted the list, on the list? A. I think that she probably did. She was very systematic and would want to identify who supplied that. I think it is very probable she did that on all.

Q. And your name on this would indicate—

Mr. Gordon: I object to that.

The Court: Mr. Isserman, will you stand back, because when you, as you get together, as it was with Mr. Gladstein, it confuses me.

Mr. Gordon: I object to that question, your Honor. Mrs. St. Clair was here and asked about certain marks and she testified, and Mr. Cantin's name may have meant this was for him to look at.

The Court: He is asking if he knew of a certain custom on her part to always mark those things and he says maybe so, probably she did.

*Eugene J. Cantin—for Defendants on Challenge—Recalled
in Rebuttal—Direct*

(4744) Do you know whether she did or not as a positive fact?

The Witness: No. But I say the probability is that she did because she was very systematic.

The Court: Yes. That is what I thought.

Q. Now I ask you, Mr. Cantin, if you submitted the following names for consideration for service on the grand jury:

John L. Burke, president B. Altman & Company; Gerald F. Beal, president J. Henry Schroeder; Artemus L. Gates, president New York Trust Company; Malcolm Muir, president Newsweek; Neal Dow Becker, president Intertype Corporation?

A. Yes.

Q. Did you consider a grand jury composed of those persons would be an apparent cross-section grand jury?

Mr. Gordon: I object to that.

The Court: Sustained. You have five people present and you ask if that is a cross-section?

Mr. Isserman: I asked if he considered it a cross-section of the grand jury such as he is accustomed to see in Federal courts.

The Court: I sustain the objection.

Q. Mr. Cantin, isn't it a fact that from time to time there were other names that you submitted to Mrs. St. Clair (4745) for forwarding to the clerk of this court?

A. There may have been.

Q. Now did you ever write to the American Labor Party to get names for the Federal grand jury? A. No. I don't recall ever writing to them. I will change that. I don't recall.

Q. I call your attention to an exhibit from 307 which is part of the records of the Association and ask you whether or not the letter from—

Mr. Isserman: I would like to have this exhibit marked in its entirety as 307-A.

Mr. Gordon: May I see it?

*Eugene J. Cantin—for Defendants on Challenge—Recalled
in Rebuttal—Direct*

Mr. Isserman: Just one second until I ask a question.

Mr. Gordon: Before you read from it may I see it?

Mr. Isserman: Before I read from it you may see it.

Q. Now I ask you, Mr. Cantin, if you did not have the correspondence with Mrs. William Henry Hayes, president of the Women's National Republican Club, Inc., which appears in this exhibit and whether you did not reply to her as indicated by the carbon copies of the letters annexed to that correspondence (handing)? A. Yes. I recall that. Wait until I look at the date. (4746) Yes.

Q. And that was on February 27, 1943, wasn't it? A. Yes.

Q. What position did you hold with the Grand Jury Association at that time? A. I was honorary president and an active member of the executive committee.

Q. And you wrote to her as president of the Women's National Republican Club, Inc., and signed your name as honorary president of the Federal Grand Jury Association? A. I did.

Q. I call your attention on the bottom of the letter marked February 25, 1943, which you sent to Mrs. Hayes, which reads—

Mr. Gordon: Didn't you say you were going to let me see it before you read from it?

Mr. Isserman: I thought you abandoned your request. Do you want it now?

The Court: Yes, I heard him say that.

Mr. Gordon: But this is my third—

Mr. Isserman: It has been marked.

Mr. Gordon: I asked if I could see it before he read from it.

Mr. Isserman: I know it but I continued my examination and I thought he abandoned his request.

Mr. Gordon: Now you have for the first time (4747) started reading from it.

The Court: Do you want to let me see it?

Mr. Isserman: Certainly (handing).

*Eugene J. Cantin—for Defendants on Challenge—Recalled
in Rebuttal—Direct*

The Court: You know all this correspondence that is in there I regard as of absolutely no probative value to the issues here. I allowed the lists to go in but I did not want to take the time to go over each and every paper in these envelopes. However, I will let you proceed with that.

Mr. Gordon: You were going to read this "PS"?

Mr. Isserman: Yes.

Mr. Gordon: Would your Honor entertain a motion to strike this particular correspondence from this exhibit as not being a list? If you feel—

The Court: I think it is probably better to let it all go ahead and I can consider, in determining the issues, the probative force of such of the proof. The most that would happen is a little evidence will get in that has little or no probative force and I can give it such weight as it is entitled to when I make my decision.

Mr. Gordon: Then I will make no such motions on that ground.

Q. I call your attention to the postscript of the (4748) letter of February 25, 1943, which reads:

"Please caution any persons whom you propose for jury service not to mention clubs of which they are members nor their political affiliations. This is very important."

And I ask if that was on the letter when you sent it? A. Yes.

Q. I also call your attention to the letter of Mrs. Hayes which states that, dated February 27, 1943:

"I have cautioned everyone whose applications I have sent in to you that they must not mention any connection with this club, and I am sure they understand it, for I realize how important it is not to have any political affiliation,"

and ask you if the applications to which she was referring were not applications on the form of the Association entitled, "Application for selection as Federal grand juror"? A. Oh—what is there about this form?

*Eugene J. Cantin—for Defendants on Challenge—Recalled
in Rebuttal—Direct*

Q. As to whether or not the applications referred to by Mrs. Hayes were not on the form entitled "Application for selection as Federal grand juror" a copy of which appears in the back of your letter of February 25, 1943? A. Yes.

Q. Now these forms were obtained from a great many persons while you were connected with the Association, (4749) were they not? A. I think so, yes. I do not know exactly how many. I have seen some of them, yes.

Q. And can you tell me what happened to the original of the carbon which appears on the back of the letter of Mrs. Hayes? A. I cannot.

Q. Wasn't it the custom of your Association to send the originals to the clerk of this court?

Mr. Gordon: Objection.

A. I do not know. That was a detail that I had nothing to do with and paid no attention to. Mrs. St. Clair—

The Court: When you see the Assistant United States Attorney rise to object—it may be with your glasses off you do not see it—

The Witness: No, I do not.

The Court: But I will let the matter stand.

Mr. Isserman: I won't pursue the question because of the time limitation which has been put on me.

Mr. Gordon: I will withdraw any objection. Mr. Isserman may pursue it to his heart's content.

Mr. Isserman: I won't pursue it because I have not got time. The Court has not given me time.

Q. Now I show you this—

Mr. Isserman: I would like to have this marked for identification.

(4750) (Marked Defendants' Challenge Exhibit 397 for identification.)

Q. Now I show you a bulletin on the stationery of the Federal Grand Jury Association over the printed signature of the Association addressed to members of the Federal

*Eugene J. Cantin—for Defendants on Challenge—Recalled
in Rebuttal—Direct*

Grand Jury panel. The bulletin is undated but indicates that the president—

Mr. Gordon: I object.

The Court: That is right.

Q. Can you fix the time of this bulletin, the approximate time, if you can? A. Yes. Definitely that was within the last three years.

Q. And you get that from the fact that Mr. Shaw is listed as president? A. Mr. Shaw, yes.

Q. Your name appears on the stationery of this bulletin as honorary president and also as a member of the executive committee, does it not?

Mr. Gordon: I object to questions concerning the contents of the exhibit until it is offered in evidence.

The Court: Sustained.

Mr. Isserman: I am merely identifying it further and the witness's competence in respect of it. I merely asked if his name appears as president.

The Court: I don't think whether his name appears has anything to do with it. Go ahead.

(4751) Q. This bulletin was put out with the authority of the executive board of the Association, was it not? A. Yes.

Q. And you are a member of that board? A. I am.

Q. And you are familiar with the bulletin? A. Yes.

Q. And it is a correct statement of the activities of the Association, is it not? A. Yes.

Q. And it was sent to every member of the grand jury panel? A. Yes.

Mr. Isserman: I offer it in evidence. It is offered, your Honor, without the ink notations on it. There are a few interlinings and markings in the margin.

Mr. Gordon: Ink notations or no ink notations it is objected to as irrelevant to the challenge since it is something which apparently pertains to some

Colloquy of Court and Counsel

activity of the Federal Grand Jury Association with its members and not to this Court or what the people in this court house do.

The Court: This is sent to those who were already members of the grand jury panel. It says so there. I suppose it must be.

The Witness: Yes. Your Honor, we used to sometimes—

The Court: That is all right. This was not sent to anybody who was going to be selected but they had (4752) already been selected?

The Witness: Yes.

The Court: I will sustain the objection.

Mr. Isserman: If the Court please, I cannot complete my examination of this witness because of the time limitation which your Honor has put on the examination and I object to it.

The Court: Any cross?

Mr. Gordon: No, your Honor.

(Witness excused.)

The Court: We will take our recess for ten minutes.

(Short recess.)

Mr. Gladstein: Before we commence, Judge—

The Court: I have it done already.

Mr. Gladstein: What time is it going to end?

The Court: You have 18 extra minutes now, including the short time I came in late.

Mr. Gladstein: You are making it twelve minutes to five? Is that correct?

The Court: Yes, about.

(4753) JOHN WHITTIER DARR, JR., called as a witness on behalf of the defendants on the challenge, in rebuttal, being duly sworn, testified as follows:

Mr. Crockett: If the Court please, before we proceed with the examination of this witness we have a motion I should like to make at this time which is

Colloquy of Court and Counsel

a motion pursuant to Rule 6(b) (2) of the Federal Rules of Criminal Procedure.

The Court: Just a second until I get the rule before me. All right.

Mr. Crockett: It is a motion to dismiss the indictment against all of the defendants which was filed on behalf of all of the defendants and it is predicated upon the grounds that there are certain members of the grand jury panel which returned the indictment who were not qualified to serve as grand jurors in the Federal court, and I won't take time to read the motion, but I have it in written form and I will pass it up to the bench and hand a copy to Mr. McGohey.

The Court: Isn't that the motion, or substantially isn't that the motion based upon those objections which you moved for leave to amend and I denied that leave to amend?

Mr. Crockett: No.

The Court: That had to do with the Westchester (4754) jurors?

Mr. Crockett: No. That had to do with the amending of the challenge. This is to contend the whole system was permeated by the clerk's failure to inquire of grand jurors as to their qualifications. This motion is addressed to the Westchester grand jurors on the panel who returned the indictment in this case (handing).

Mr. Isserman: May I proceed?

The Court: No. I want to hear what Mr. McGohey has to say with reference to this before I proceed further. I am reading the rule now. Would you rather address yourself to that later?

Mr. McGohey: Mr. Gordon will make the argument, your Honor.

Mr. Gordon: Your Honor, aside from the fact that this is out of time—

The Court: Let me hear about that part first. Is it out of time?

Mr. Gordon: It is out of time because it appears to be a motion to dismiss the indictment for defects

Colloquy of Court and Counsel

in the composition of the grand jury which filed the indictment which was naturally included in the motion made before Judge Hulbert.

The Court: Yes.

Mr. Gordon: And I might say since the law (4755) requires that 16 grand jurors shall constitute a quorum and the paper attacks no more than 4 there were bound, under the circumstances, on their own paper, to have been 12 grand jurors who were qualified, and the rule they have just referred your Honor to says there shall be 12 jurors who are qualified, so on its face it does not even say anything, and on those grounds, plus the fact that 229(b), as I think Mr. McGohey pointed out to your Honor—if you have that section?

The Court: No, I haven't it before me.

Mr. Gordon: Here it is (handing). It talks about what the county people shall do in drawing a grand jury in a county. So it is not applicable.

The Court: That is 229(b)?

Mr. Gordon: Of the Code of Criminal Procedure of the State of New York.

The Court: You say 229(b) applies only to grand juries in Westchester?

Mr. Gordon: Or any other county outside of New York serving in that county. In any event the point about it, your Honor, is that it is a section which seems to describe the procedure which the State officials shall go through rather than to direct itself to the qualifications of the individual jurors.

The Court: I will take that under advisement.

(4756) Mr. Crockett: May I be heard?

The Court: Yes, you may be heard.

Mr. Crockett: Will that be deducted from the amount of time we have to put in testimony?

The Court: Well, it be time used. I have already deducted the time Mr. Gordon took, but any time you take will be time you might more profitably use in putting your witnesses on. That is for you to decide.

Colloquy of Court and Counsel

Mr. Crockett: Under those circumstances, and in accordance with the time limitation fixed by the Court I will be unable to make the argument.

The Court: I understood in the briefs you have in my hands you have this matter discussed heretofore.

Mr. Crockett: May I suggest we discuss that later; the question of the briefs, and so forth?

The Court: We will do that after we have closed the proceeding. We will talk about the briefs, but my direction the other day was that they be in for both sides this afternoon.

Mr. Gordon: May I have 60 more seconds? The paper appears to be upon the affidavit of an attorney who says that he has caused an examination of certain rolls to be made, so that the fourth objection to the motion would be that it is unsubstantiated by proof.

The Court: All right.

(4757) Mr. Gladstein: I would like to answer that by pointing out that the sworn affidavit of an attorney is proof of this matter, but I cannot do that because the time limitation makes me feel as though I am forced to run a 100 yard dash and I would not make a legal argument under those circumstances, but I do not want to take a moment to ask the clerk to file as our next exhibit an offer of proof which contains references, page references, to the transcript, where your Honor will find we were permitted—your Honor gave us permission—to make a written offer of proof concerning certain matters that Mr. Doxey Wilkerson would have testified about had he been permitted to do so and I ask that this be marked as an exhibit for identification.

(Marked Defendants' Challenge Exhibit 398 for identification.)

Mr. Gladstein: May it be understood that constitutes the written offer of proof that I was not permitted to make orally at that time but which

Colloquy of Court and Counsel

your Honor has the page references to in this last exhibit for identification which will show accorded me the right to make that?

The Court: No. I think that should have been made long ago.

(4758) Mr. Isserman: If the Court please, there is a name of a witness, Edward Conlon who had been subpoenaed, that belongs to the same group who, I think in Exhibit 183-B, in the 2nd Assembly District of the Bronx, 11th District, on page 7, was listed amongst nine other names, or at least we checked for that address and this witness who appears on that list has conferred with Mr. McGohey and myself and advised us that if he were called he would testify that he received no notice to appear at any time for service as a juror in this court.

Mr. McGohey: I so stipulate.

The Court: Very well.

Mr. Isserman: If the Court please, at this time I would like to mark for identification the subpoena served on Mr. George W. Adams who, except for the telephone call, has not appeared nor has anyone appeared for him to indicate the actual inability that he has. In connection with that subpoena we ask for its enforcement, and I am mindful of the Court's statement yesterday perhaps we could stipulate his testimony, and I submit an offer to stipulate what we can prove through Mr. Adams, and have that marked as an exhibit for identification, and also make a statement that the offer to stipulate is, if not accepted, an offer of proof to support the enforcement of the subpoena.

(4759) (Marked Defendants' Challenge Exhibit 399 for identification.)

The Court: It would do no good to issue any body attachment now for this afternoon when there is less than an hour left of the proceeding.

Mr. Isserman: We ask the Court to extend the time to allow proper inquiry to be made.

Colloquy of Court and Counsel

The Court: I have no evidence before me that his absence is a wilful disobedience of the subpoena. Indeed there was some discussion here about his being too ill to come.

Mr. Isserman: But no one appeared to make any such statement or submit any proof to the Court, and we ask the subpoena, properly served, as appears by the affidavit annexed thereto, be enforced.

(Offer of stipulation marked Defendants' Challenge Exhibit 400 for identification.)

Mr. Isserman: Now, if the Court please, in connection with Exhibits 303 to 308, which consists of thousands of documents, letters and lists containing some 16,000 names, the time afforded for examination has been wholly inadequate. Yet our examination has been sufficient to indicate that the contents of those exhibits are relevant and material to the issues before the Court and bring new evidence to support the contention (4760) of the defendants bearing on the relationship of the Grand Jury Association with the clerk of this court.

The examination thus far reveals the necessity for recalling Mr. McKenzie, the jury clerk, Mr. Borman, the former jury clerk of this court, Mrs. Ruth St. Clair, executive secretary of the Association, and other officers of the Association, not including Mr. Adams. Mr. McGovern who is under subpoena and Mr. Shaw—Mr. McGovern is the present secretary of the Association and Mr. Shaw is the present president of the Association. The limitation of time which the Court has put on our examination and our defense, and of course continuation of the examination of these exhibits is again a lack of due process and gives the defense no opportunity to present its evidence contained in the exhibits before the Court to the Court and to establish the facts as indicated by the documents contained in Exhibits 303 to 308.

Incidentally, the exhibits indicate clearly that the testimony given by the three witnesses I have

*John Whittier Darr, Jr.—for Defendants on Challenge—
Rebuttal—Direct*

mentioned, Mr. McKenzie, Mr. Borman and Mrs. St. Clair, is not in accord with the facts as revealed by correspondence between the parties on the subjects of their testimony.

Mr. Gordon: Excuse me one moment. In connection (4761) with this Mr. George W. Adams matter, does your Honor have Exhibit 400 for identification there?

The Court: Yes, I do.

Mr. Gordon: An offer to stipulate.

The Court: Yes, I have it.

Mr. Gordon: The Government rejects, if that is the term, the offer, and we will not stipulate the testimony set forth here because it appears that some of it is cumulative and is already in evidence, and as to the rest it is irrelevant, and as to some parts I do not think the witness would so testify, and it appears affirmatively from this document that no harm accrues to the defendants by virtue of the facts that Mr. Adams cannot testify to because it does not appear that anything he would be asked to testify to he would be a unique witness as to.

The Court: Very well.

Mr. Isserman: I might say in that respect that Mr. George W. Adams, as indicated by the testimony before the Court, was the sole member of the panel committee of the Grand Jury Association in 1946, as a committee of one, and in 1947 and 1948 continued as chairman of that committee though the rest of the membership was not established, and his testimony on the functioning of the panel committee in connection (4762) with the supplying of grand and petit jurors in this court has not been established in this record.

Direct examination by Mr. Isserman:

Q. Now, Mr. Darr, will you tell me what your present occupation is? A. I am a Congregational clergyman.

Q. Where did you have your training? A. I had my training in Clair University in 1937 to 1941 and training

*John Whittier Darr, Jr.—for Defendants on Challenge—
Rebuttal—Direct*

at Union Theological Seminary from 1941 to 1944.

Q. Have you a congregation at this time? A. My present work is chairman of the West Side Legislative Conference.

Q. You do not have a church at this time? A. No, I do not.

Q. Have you ran for public office? A. I ran for Assemblyman in the 7th A. D. the last 1948 election.

Q. The 7th A. D. appears on Challenge Exhibit 288, does it not? A. Yes, sir, it does.

Q. Are you familiar with the—

Mr. Gladstein: May I ask to have the blackboard in so this witness, and succeeding ones who are asked concerning maps in evidence, will be able to see them?

The Court: Yes. That is the number of this exhibit?

Mr. Isserman: This exhibit is Challenge Exhibit 56.

(4763) Q. You can see that, Rev. Darr? A. Yes.

The Court: Which panel does it refer to?

Mr. Isserman: 6-17-42.

I am sorry, if the Court please, I have a later one and I suggest we use Challenge 66; 2-1-49.

The Court: That is not one of the ones I have.

Mr. Gordon (After examining): It was in the wrong place (handing to Court).

The Court: Mr. Gordon, have you that map of the Assembly Districts?

Mr. Gordon: Yes, sir (handing).

Q. Mr. Darr, are you familiar with the lines of the Congressional Districts on the west side of Manhattan? A. Yes, I am.

Q. Do you recognize them to be in the 16th, 20th, 21st and 22nd as they appear on this map? A. I do.

Q. Are you familiar with the physical composition of the areas embraced in those Congressional Districts? A. I am.

*John Whittier Darr, Jr.—for Defendants on Challenge—
Rebuttal—Direct*

Q. And are you familiar in general with the lines of the Assembly Districts as they appear on Challenge Exhibit 288 before you in conjunction with the lines of the Congressional Districts as they appear on Challenge Exhibit 66? A. I am.

(4764) Q. Will you show us, using the pointer in what area the 7th Assembly District in which you ran for office is located? A. The 7th Assembly District runs from 97th Street up to 110th Street and then along Morningside Drive to 125th Street and then from Tieman Place, and then over to Riverside Drive.

The Court: There is something wrong here. The 7th Assembly District according to Challenge Exhibit EE is very much further uptown.

Mr. Gladstein: You may have a map before reapportionment.

Mr. Isserman: I believe that is the case, your Honor.

Mr. Gladstein: May we look at one applicable before 1944, Judge?

The Court: I have them both here and the 7th is not near Morningside Drive; neither one of them. Let me see the paper you have there, Mr. Isserman.

(Handed to Court.)

The Court : I will take this to be an accurate one and listen to the testimony.

Q. You have campaigned all over that district? A. Yes, I have.

Q. You know it to be as you see it on the map before you? A. Yes.

(4765) Q. Now can you tell us in what Congressional District is the 7th Assembly District? A. The 7th Assembly District straddles the 20th and 21st Congressional Districts.

Q. Will you indicate that on the chart? A. North of 116th Street up to Tieman Place, as I said before, is the 21st Congressional. Of course the Congressional District

*John Whittier Darr, Jr.—for Defendants on Challenge—
Rebuttal—Direct*

extends up to the end of the Island. South of 116th is the 20th Congressional District.

Q. You are referring to the area in here (indicating on Map)? A. In here (indicating).

Q. Are you familiar with the 7th Assembly District which is north of the 7th in Manhattan? A. That is the 13th Assembly District, yes, sir.

Q. Can you describe that in relation to the 21st Congressional District? A. The 13th Assembly District composes the southern half, approximately, of the 21st Congressional District.

Q. And do you know what its northern boundary is, approximately? A. Its northern boundary is 160th Street, approximately.

Q. And what Assembly District embraces the northernmost portion of the 21st Congressional District? A. The 15th Assembly District runs from 160th Street—

(4766) Q. Would you indicate that on the map as closely as you can? A. 160th Street up to the end of the Island and from 160th Street up to 180th Street it lies west of Broadway and St. Nicholas, and then it cuts over to 180th Street and Harlem River.

Q. What Assembly District is south of the 7th in the 20th Congressional District? A. The 5th Assembly District runs approximately from 97th Street down to 70th between Central Park and the river. The 5th Assembly District of the 20th Congressional.

Q. Runs down to where? A. To 70th Street.

Q. What is below the 5th? A. Below the 5th is the 3rd A. D. down here (indicating) which goes beyond the southern border of the 20th Congressional District and the 20th Congressional District ending at 26th Street.

(4767) Q. And when you said "down here," were you referring to the southerly half, approximately the southerly half of the 20th? A. Yes. The Third A. D. comprises the southerly half of the 20th Congressional District.

Q. Now I ask you whether or not from your knowledge of the area embraced by the 21st Congressional District whether you can distinguish or describe the housing conditions in the area—the housing conditions in the several

*John Whittier Darr, Jr.—for Defendants on Challenge—
Rebuttal—Direct*

Assembly Districts embraced in the 21st District? A. Well, taking it by Assembly Districts, the 15th Assembly District, that district north of 160th Street west of Broadway and St. Nicholas—

Q. Is that the area which has a cluster of pins shown on the map, south of the George Washington Bridge? A. Yes. That includes this area (indicating). It runs up Broadway and St. Nicholas over to 180th. That is the 15th Assembly District. This area in housing is predominantly large apartment houses, elevator, 16-story apartment houses. In the northern region you will find many apartment houses with casement windows. I would characterize this Assembly District as having few tenement houses. On the eastern part of this district you will find small four to six-story apartment houses along the Riverside area; on the Heights there overlooking the Hudson River, you will find in some cases very beautiful (4768) apartment developments, such as Castle Village on Cabrini Boulevard, which overlooks the George Washington Bridge and the river itself.

In the 12th A. D., which again is north of Trinity Cemetery, if we want to take that as a dividing line—

Q. About what street is Trinity Cemetery? A. About 155th Street.

The Court: You mean the 13th.

The Witness: I mean the 12th. I am talking about north of Trinity Cemetery, the 12th, runs above 155th Street east, for the most part, of Broadway and St. Nicholas, up to 180th. It extends over to the Harlem River.

Q. Do you want to tell us about the 12th? A. In the 12th you will find—

Q. Indicate the 12th on the map if you will, the general area. A. The 12th starts here (indicating) and runs over to here (indicating), and then it runs up to 180th. It is in this section here (indicating).

Q. Indicated as running east on Broadway and around what street generally? A. East on Broadway and St. Nicholas, between 155th Street and 180th Street.

*John Whittier Darr, Jr.—for Defendants on Challenge—
Rebuttal—Direct*

The Court: It starts at 134th, doesn't it?

The Witness: Not in this region, your Honor,
(4769) I don't believe.

The Court: Well,—

The Witness: Not within the 21st Congressional
District.

The Court: I see. You are just limiting yourself at the moment to the 21st Congressional District.

The Witness: That is correct.

The Court: Very well. I follow you.

A. (Continuing) In the northern part of the 12th Assembly District you will find a continuation of these small apartment houses. As you go farther south within this Assembly District you will come upon more and more tenement houses.

Q. Will you indicate the area at the point at which you find these tenement houses? A. In this region here (indicating), up to about 168th or 170th Street.

Q. And that is the area which has no pins in it? A. I see no pins in this map in that area.

Q. Now will you go on? A. South of Trinity Cemetery, using Broadway as a dividing line, you will find on Amsterdam Avenue tenement houses. On the cross streets you will find some tenement houses, some wooden structure houses in rather poor repair, and many brownstone houses. East of Broadway along the river you will find the type of apartment houses that we all know extend up and down the Riverside (4770) Drive, that get the view of the river, and on the cross streets you will find brownstone houses.

Q. Can you tell me of your own knowledge, if you know, what the population is of the area that you have just described as being south of Trinity Church yard?

The Court: Well, I do not recognize that description very well; I lived for some years at 527 West 143rd Street, which is right where he is talking about, and I don't seem to recognize the place from the way he is talking about the old tenement houses, and so on. It did not look like one to me

*John Whittier Darr, Jr.—for Defendants on Challenge—
Rebuttal—Direct*

while I was living there. That is between Broadway and Amsterdam. How about that?

The Witness: No, I said the tenement houses as a whole were along Amsterdam Avenue and your cross streets, I said, mainly you found brownstone houses.

The Court: These weren't brownstone houses. They were regular apartment houses. I don't understand that.

The Witness: I am giving an over-all picture of the area. There may be specific apartment houses within the area like the—

The Court: Well, take a long row of them, street after street of them. I remember walking around there a good deal. They haven't changed any nowadays either—the same old houses there; but anyway, you say—

Mr. Isserman: Well, old houses do get older.
(4771) The Court: What is that?

Mr. Isserman: Old houses do get older.

The Court: Yes, but they weren't brownstone houses.

Mr. Isserman: Your Honor is talking about a specific street, and the witness is talking about the general character of the area.

The Court: All right.

Q. Now, will you proceed, Rev. Darr? A. In regards to the characteristics of the population?

Q. That is right. A. Do you want this in the terms of the racial characteristics?

Q. Yes. A. Judging from my experience in the 15th A. D., I would say that there were a few Negroes or Porto Ricans living within that Assembly District, within the 12th A. D.

The Court: The 13th.

The Witness: No. this is the 15th Assembly District.

Mr. Isserman: That is the upper portion.

The Court: All right.

*John Whittier Darr, Jr.—for Defendants on Challenge—
Rebuttal—Direct*

A. (Continuing) Within the 12th Assembly District below approximately 168th Street you find a growing increase in the number of Negroes and Porto Ricans living there.

Q. And that is in relation to what—north and south (4772) streets? A. It is east of Broadway and St. Nicholas.

Below Trinity Cemetery, east of Broadway, you will find this increase of Negro and Porto Rican population very evident.

Q. And that adjoins the Harlem area, does it? A. That adjoins the Harlem area.

Q. And what about the westerly portion of the area south of Trinity Church yard along Riverside Drive? A. Along the Riverside Drive I found no Negroes in my investigation. In the cross streets, in the area south of 140th Street, there were Negroes living in some of the houses there.

Q. I call your attention to the area you have been talking about below 137th Street, running down to the end of the 21st Congressional District in which on this map there are no pins. Can you tell us what the situation in respect to that area is? A. Well, below 135th Street east of Broadway, there are very few houses. They are mainly warehouses and auto garages and what not, down to 125th Street. Then farther down in this neighborhood you find education institutions, such as Union Theological Seminary, Columbia University, the Juilliard School, the International House,, down to 116th Street, although along Claremont Avenue you will find apartment houses.

(T-4773) Q. Now I call your attention to the area above Trinity Cemetery east of Broadway, specifically the area in which no pins are located. Can you tell me the racial characteristics of that area? A. That area, as I said before, up to about 168th Street is predominantly Negro and Porto Rican.

Q. Going to the 20th Congressional District, are you familiar with the physical and racial characteristics of that district? A. Yes, I am.

*John Whittier Darr, Jr.—for Defendants on Challenge—
Rebuttal—Direct*

Q. And will you describe those to us in terms of Assembly Districts, or, first, the over-all terms if you can, with respect to that point? A. Well, you can use, in the case of the 20th Congressional District, you can use 70th Street as the dividing line. That is the street that divides the Third Assembly District from the Fifth Assembly District. North of 70th Street, on your—on certain north and south avenues you will find large apartment houses, along Riverside Drive, along West End Avenue, along Brodaway, you will find apartment houses and hotel apartments, and along Central Park West on these avenues the dominant building characteristic are the large apartments.

Q. And is that the area starting about where? A. 70th Street.

Q. Where a cluster of pins is running north? (4774)
A. Yes. The pins start at 72nd Street.

Q. What about the area south of 72nd Street in which one pin appears? Two pins? A. In the area south of 70th Street you have Hell's Kitchen; you have an area of docks and warehouses; you have an area in housing of predominantly tenement houses.

On one or two cross streets, 57th Street and 34th Street, you may find apartment houses, but the predominant characteristic of the housing in this area right down to 26th Street is—are tenement houses.

Q. Is it a crowded area? A. It is a crowded area from the point of view of population, although on the western side of the area you have, as I say, docks and warehouses over to Eleventh Avenue.

Mr. Gladstein: Just a minute, Mr. Isserman.

Your Honor, I am obliged to interrupt the direct examination by Mr. Isserman of this witness, knowing as I do that the witness has a good deal of testimony to give that is material to the issues, because I have a witness to put on that we have brought from Florida, and because your Honor's imposition of time limitation makes it impossible for us to complete the testimony of Mr. Darr and at the same time put on Mr. Follmer, the former clerk of this court, as well as other witnesses who are under sub-

*John Whittier Darr, Jr.—for Defendants on Challenge—
Rebuttal—Direct*

poena and who are waiting in the witness room to be—

(4775) The Court: Would you like to withdraw this witness and put Mr. Follmer on?

Mr. Gladstein: I did not present this witness. I am going to ask, in view of what the Court has done—

Mr. Isserman: Well, I will ask the witness another question or two and curtail my examination because I, too, am interested in behalf of my clients in having Mr. Follmer testify.

Q. Mr. Darr, you are prepared to testify as to the characteristics in the 16th Assembly District? A. I am.

Q. Are you prepared to testify as to the Negro areas of New York, the concentration in the 21st, the 20th, and the 16th Congressional Districts? A. I am.

Q. Are you prepared to testify as to the type of buildings contained in London Terrace? A. I am.

The Court: He must have been around quite a little bit.

Mr. Isserman: He has been.

The Witness: I have been, your Honor.

The Court: From all the way uptown, you are down to the Battery now.

Q. Are you prepared to testify specifically on the characteristics of the streets in the Seventh Assembly District, West End Avenue, Central Park West and Riverside (4776) Drive, as contrasted with the rest of the streets? A. I am.

Mr. Isserman: If your Honor please, at this point I terminate the examination of this witness on the ground that your Honor's time limitation makes it impossible for me to continue.

The Court: Very well.

Mr. Isserman: And before Mr. Gladstein calls—I am sorry, there may be some cross.

Mr. Gordon: Yes, there may be a couple of questions.

*John Whittier Darr, Jr.—for Defendants on Challenge—
Rebuttal—Cross*

Cross examination by Mr. Gordon:

Q. Will you sit down, please?

Mr. Gladstein: May the record show that when Mr. Gordon asks the witness to sit down he doesn't ask him; he directs him in a manner, in a very offensive manner.

The Court: I did not see it.

Mr. Gladstein: I saw it, your Honor, and I have seen it a number of times.

The Court: We never seem to agree. You see many things that I never seem to notice at all, and I was standing alongside of him, and I saw nothing about the way Mr. Gordon asked him to take his seat there that indicated the slightest courtesy.

Q. Were you offended, Reverend? A. No, I wasn't
(4777) offended.

Q. Tell me, how long have you been associated with the National Council for American Soviet Friendship?

Mr. Isserman: I object to that. That is not proper cross-examination, your Honor.

The Court: Overruled.

The Witness: What is the question?

(Question read.)

Mr. Isserman: And I also object because it assumes a fact not in evidence.

The Court: Well, I would like to hear it. Please read it, Mr. Reporter.

(Question read.)

A. Since 1942.

Q. And that is an organization which has been listed by the Attorney General as a Communist front organization?

Mr. Isserman: I object to that, your Honor, as improper cross-examination.

The Court: Overruled.

A. Yes, it has been.

*John Whittier Darr, Jr.—for Defendants on Challenge—
Rebuttal—Cross*

Mr. Isserman: I would like to state for the record that that action of the Attorney General is now under suit in the federal courts of the District of Columbia.

The Court: How long did he say he had been (4778) a member of that organization—since 1942?

Mr. Gordon: 1942, your Honor.

Q. And were you ever a member of the Young Communist League?

Mr. Isserman: I object to that, if the Court please.

The Court: Overruled.

Mr. Isserman: Improper cross-examination.

Mr. Crockett: I should also like to object and state my reasons for the record. I think it is familiar law that on cross-examination you are limited to what has been brought out on direct examination. There has been nothing in the course of the direct examination here to indicate that this witness was, one, associated with the Council of American Soviet Friendship. Mr. Gordon simply assumed that, and he assumed a state of facts not in evidence.

Mr. Gordon: It was shortly in evidence.

Mr. Isserman: If the Court please, he assumes that there is a Young Communist League.

The Court: I will overrule the objection.

Mr. Gladstein: I desire to object on an entirely different ground. This line of examination seeks to inquire into matters of possible political affiliation which are none of the affairs or business of Mr. Gordon (4779) or anyone he represents, in the light of the issues here being tried, and the testimony given by this witness, and I ask the Court if it will not admonish Mr. Gordon to refrain from an improper pursuit of examination, to advise the witness that he has the right to refuse to answer any such prying question. Will your Honor please advise the witness of his constitutional rights under