

Colloquy of Court and Counsel

The Court: Do those numbers on the page to which you have directed my attention, which numbers are generally in little rectangular spaces, although the spaces sometimes are different—are they numbers which indicate separate health areas?

Mr. Gladstein: Yes, your Honor. There are about 95 of them in the Borough of Manhattan.

The Witness: 94.

(2348) Mr. Gladstein: 94?

The Witness: Yes.

Mr. Gladstein: They only go up to No. 80 or 80-something, but you will notice that a number of them seem to have decimal points after them; you might have 1, 1.2, or something of that sort. Does your Honor observe that in the table?

The Court: No, I don't.

Mr. Gladstein: You may be looking at census tracts, your Honor.

The Court: What is that?

Mr. Gladstein: You may be looking at another thing called a census tract.

The Court: Well, you see the page which you showed me is the one I am looking at.

Mr. Gladstein: Does it say health area or census tract at the top of the column?

The Court: Well, it says census tract number, and that points to a very small number, and then in the middle of the rectangular space there is a large number, and outside of the rectangle is the word "Number" with an arrow. I thought you told me that each of those little rectangular spaces with the large numbers in the middle were health areas.

Mr. Gladstein: May I see it?

(2349) The Court: Yes, certainly. Perhaps you have given me the wrong one, or perhaps I should look at the page number right. Maybe that is where the trouble is.

Mr. Gladstein: Were you looking at the page on the left?

The Court: Yes.

Mr. Gladstein: That is the reason. You see, on the page on the right, your Honor, you will see a list—and this is what I was referring to—

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The Court: Well, I was looking at the wrong page, then.

Mr. Gladstein: Yes, it says health areas right in front of you.

The Court: Yes. It is like that thing this morning, it turned out to be just a little stupidity on my part that I did not catch on to that column quicker than I did, but that is not my fault; I can't help doing that once in a while. Now let me look. (Examining.)

Now, Mr. Reporter, will you read me Mr. McGohey's objection?

Mr. McGohey: If your Honor please, maybe it would help to make that objection a little clearer now in view of the argument that was made in opposition to the objection.

(2350) When this line of testimony now about these health areas was introduced by the questioning of the witness, it seemed to me that we were going into a new field the relevance of which was not clear to me. Now that I hear the explanation of the relevance, it appears to me that it is about health areas, and that it is data with respect to health areas that has some effect on the two exhibits which are already in evidence, namely, this New York City Market Analysis, Defendants' Challenge Exhibit 20, and then the—I think that is 87.

The Court: 87.

Mr. McGohey: 87, yes.

Now, if we have the data which has already been testified to by the witness from the New York Times with respect to Challenge Exhibit 20, and by the witness from the Edison Company with respect to Challenge 87, that the health areas in the census data was used as a basis for the data in both of those exhibits, namely, 20 and 87—now, if we have that in one form, it seems to me that it is unnecessary and cumulative for us to go in and put it into the record in another form from some other document.

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Mr. Gladstein: I wasn't going to do that. I was going to tie up—I am sorry I made myself unclear— (2351) tie up the health areas as the exhibits in evidence already demonstrate with evidence concerning the jurors, and, of course, the Consolidated Edison and the New York Times Company did not do that.

So if I may, I would like to ask the witness if something was done with the health areas as a background, and I think we could move along quickly, your Honor.

The Court: Well, let me get the question to which the objection was made so I can follow this. No document is being offered now?

Mr. Gladstein: No.

The Court: This was a question?

Mr. Gladstein: Let me withdraw that question so that I can proceed. Would that be satisfactory?

The Court: Very well. And before you proceed let me indicate to you what is troubling me a little bit: as I look at this definition, which Mr. Wilkerson read from page 1, it goes on about altogether a half a column or so, and taking it all in all, and particularly the part that he read—because I don't think he pretended to read part and leave out part; I think he intended to read the part that he thought was most apposite to what we were considering—but taking all that, it seems to me that the type of material that has gone into that is of (2352) such a character as to render it almost obviously of no moment in connection with jury selection.

You see, they in effect say here that "We have just done the best we could for certain purposes here. It has been to some extent arbitrary because we think that for the purpose we got it up it will suffice in this form." And I wonder if taking that very definition it isn't reasonably clear that it would be of little value to us in this question of jury selection. That is what is troubling me more than the point that has been raised about mere repetition, although mere repetition would in and of itself be enough for me to exclude it if I felt it was going

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to lead to a lot of additional charts which were merely a duplication of something we already had.

Mr. Gladstein: No, I have nothing that is a duplication. I have, as a matter of fact, one map rather than a lot of charts on the question of health areas, and I want to say that the question of health areas, of course, is one that, as you find, the United States Census relies on; so do people like Consolidated Edison; so does the New York Times, and, indeed, as Mr. Wilkerson has indicated, it is generally in use and it is supported, as your Honor will see, by statistical data.

(2353) The Court: Well, they say here—

Mr. Sacher: May I interrupt?

The Court: —that the subdivision into health areas has been more or less arbitrary, and that each health area consists of one or more adjacent census tracts, and I am a little afraid it is just going to confuse the whole matter here.

Mr. Sacher: I think I can help your Honor by indicating what these health area data provided. The area itself, the physical dimensions of the area are, as it is stated, arbitrary in character. You will find that many of them run about 12 blocks north and south and about six blocks east and west. Now, that is the whole of the arbitrariness of the selection. However, what this data reveals is the following: For each area there is revealed the racial composition of the area; there is revealed the occupational distribution of the population in that area to show how many are in the so-called executive grouping—that is, proprietors, managers and officials, et cetera. It shows you what the average rental in the area is.

Now, what we propose to submit to your Honor today is a sampling of a number of these health areas with particular reference to those sections of the city in Manhattan and Bronx from which jurors were both (2354) selected and not selected, so as to show your Honor the composition, the occupational composition of the community, the racial composition, the average rent, et cetera.

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Now, in that respect it is precise—

The Court: Now, how are the officials who get up the jury lists and the jury panels to put in so many Italians and so many Germans, and so many Swedes—

Mr. Sacher: That is not the point.

The Court: —and so many of all the population that go to make up America?

Mr. Sacher: They solved that problem very simply—

The Court: It seems to me on its face it is the very sort of thing that ought not to be done.

Mr. Sacher: May I tell your Honor how they do it? They just look at some of these maps—if you will look at the Con. Edison map, for instance, you will find that each of these health areas is colored on the basis of the average rent in the block; and what we are saying here is when this material comes in we will show you that the selection is so made that it is the rich, the high rent paying people who are selected, and the others are excluded.

We will show you that there are whole blighted areas in which rents are low from which not a single (2355) juror is called; and, on the other hand, we will also demonstrate that even within those districts like the 17th you will find that where the selection is great and concentrated it comes from those areas of the 17th in which the rents are high and in which the occupational group known as executives is concentrated.

Now, we are asking to have this health area material placed before your Honor in relation to the specific selection of jurors for the purpose of concretely demonstrating that the jurors come from the high rent paying areas; from the areas in which executives are concentrated; where rents are high; where incomes are high, and where manual workers do not appear, or, where they do, they get no representation in those areas.

The Court: Well, I will think it over over-night. We will now adjourn until tomorrow morning at 10.30.

(Adjourned to February 3, 1949, at 10.30 a. m.)

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(2356)

New York, February 3, 1949;
10.30 o'clock a. m.

Mr. McGohey: If the Court please, may the record show that I have delivered to counsel for the defense photographs of the various maps which I asked leave to photograph the other day and which I was granted. And I have a copy here of the—this is this map of Westchester.

The Court: Yes, that is 91.

Mr. McGohey: "Exhibit 91," yes, your Honor. I couldn't see it.

The Court: Now I remember some little discussion that we had at the close of the session yesterday over these health areas and I think it is best for all of us if we just take a fresh start on it. I am not clear that there was any objection before me and it may not turn out to be a matter of any consequence at all, so I suggest, without further discussion on it, that we go right ahead with the proof.

Mr. Gladstein: Very well.

* * *

(2358) Mr. McCabe: I think the record should show that Mr. Isserman is detained and away from court on (2359) matters pertaining to this case, and his clients and other defendants waive any right, if that is agreeable to the Court.

The Court: And that is agreeable to Mr. McGohey?

Mr. McGohey: Indeed it is, your Honor.

The Court: And it certainly is agreeable to me. And I may say, during the day of court if one of the lawyers for the defense desires to absent himself for a few minutes it is not necessary to get any leave from me—you may do that of course without saying about it.

This is a little different, I take it; he is going to be away all day in all likelihood, but whether he is or not it is all right.

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(2360) Doxey A. WILKERSON, resumed the stand.

The Court: You may proceed.

Mr. Gladstein: Now, before taking up the subject of health areas your Honor, I would like to take up for a moment something that deals with the Westchester map which was received in evidence and which deals with the panels that have been analyzed with respect to the locations of the Westchester jurors.

Direct examination continued by Mr. Gladstein:

Q. Now Mr. Wilkerson, has an effort been made to ascertain the locations within Scarsdale, Bronxville, Larchmont and Yonkers of the jurors whose names appear on the panels for this court that have been selected for and used for analysis during the period 1940 to date for panels other than those covered in the map which has been received in evidence as Challenge Exhibit 91? A. Yes, we have such information.

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

(Marked Defendants' Challenge Exhibit 92 for identification.)

Mr. Gladstein: Do you have an extra copy for the Judge?

The Witness: Yes (handing).

Q. Now I show you Challenge Exhibit 92 for identification, (2361) and ask you to state what this document is? A. This is a table, or labeled Table W-2, which lists for four communities in Westchester County and for the county as a whole the number of jurors chosen on panels from January 17, 1940, including all of those used in the basic analyses of this inquiry, through February 14, 1949. I think there should be here a total of about 30 panels.

The Court. 31.

The Witness: 31, is it?

The Court: Yes.

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The Witness: And it indicates for Scarsdale, for Bronxville, for Larchmont, for Yonkers—you remember from yesterday that the first three are small residential communities, Yonkers is a large, more or less metropolitan city. It indicates for each panel and for each of these communities the number of jurors chosen on federal petit jury panels for the Southern District. It shows, for example, that the small community of Scarsdale had on these 31 panels 19.6 per cent of all the jurors.

Mr. Gladstein: Do you have an extra copy for the United States Attorney?

The Witness: Yes (handing).

(Continuing) That the still smaller community of Bronxville had on all of these panels 12.4 per cent (2362) of the jurors; that the small village of Larchmont had 9.6 per cent of the jurors, but that the much larger city of Yonkers with many times the population of all three of these other communities together, as indicated in yesterday's testimony, had only 7.1 per cent of the jurors represented on these 31 panels.

Q. Now, according to Challenge Exhibit 89 in evidence, the population of Yonkers, which was nearly 100,000 compares to a total population of Scarsdale, Bronxville, and Larchmont of about 17,000—in other words, a ratio of about 6 to 1, six times as many people in Yonkers as there were altogether in the other three communities. Now, what is the total percentage of jurors on these panels from Scarsdale, Bronxville and Larchmont put together as contrasted with Yonkers? A. If you will hold it just a moment I will calculate that. 29 per cent—29.1 per cent. Did I understand your question correctly?

Q. I don't think you did. I want you to give me the percentage among Westchester jurors of those who come from Yonkers on the one hand and those who come from the combined population of Scarsdale, Bronxville and Larchmont on the other. A. From Scarsdale, Bronxville and Larchmont there come among the 1316 jurors here listed for Westchester (2363) as a whole, 29 per cent of

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the total whereas from the larger community of Yonkers with five or six times the population of these three communities combined, there come only 7.1 per cent of the total.

Q. In reaching the figure 29, what did you do? Did you add the percentage figures at the bottom of the three columns of this table? A. Yes, the 29 means that 29.1 per cent of all of the Westchester jurors were in Scarsdale, Bronxville and Larchmont—

Q. How did you arrive at 29?

The Court: Which exhibit do you have before you, Mr. Gladstein?

Mr. Gladstein: The one that I have just shown the witness, which is Challenge Exhibit 92 for identification—and I gave a copy to you, your Honor; it is called Table W-2—

The Court: What is the other one?

Mr. Gladstein: The other one is No. 89, and that is the one that gave the population figures. It was received in evidence yesterday.

The Court: Then I am right along with you.

The Witness: I get your question, Mr. Gladstein, I am sorry.

Q. Now may I have the answer? A. Yes, just a moment, let me check it.

(2364) Now, out of all Westchester jurors on these 31 panels, 41.6 per cent lived in the small residential communities of Scarsdale, Bronxville and Larchmont; whereas only .7 per cent of the Westchester jurors live in the much larger community, five or six times as large, community of Yonkers.

Q. So that, in other words, while Yonkers has six times the population of Scarsdale, Bronxville and Larchmont combined, when it comes to the composition of jurors, the location of the jurors on these lists, it is exactly reversed, is that right? A. It has about one-sixth.

Q. In other words, six times as many jurors from Scarsdale, Bronxville and Larchmont as you do get from Yonkers, is that right? A. That is right.

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Q. By the way, are these the figures and tabulations which were taken from the original jury lists or the copies which were purchased from the clerk's office? Is that right? A. Yes.

Q. The same basic ones that you have referred to in your testimony? A. Yes.

Mr. Gladstein: I offer it.

(Defendants' Challenge Exhibit 92 for identification received in evidence.)

(2365) *By Mr. Gladstein:*

Q. Now, do you have a copy of Challenge Exhibit 89 in evidence with you? That is Table P-4, which gives facts and figures concerning six of the petit jury panels. A. Yes.

Q. Now, state, if you will, what an examination of simply six panels, those six that are indicated in that exhibit, shows as to the relationship between the number of jurors obtained from Yonkers on the one hand and the number obtained from the other three communities of Scarsdale, Bronxville and Larchmont on the other hand?

The Court: I think he did that the other day, and it appears right from the face of the exhibit anyway, doesn't it?

Mr. Gladstein: All right. I think we can see by a glance—

The Witness: You want to relate these two?

Mr. Gladstein: Yes.

The Court: I think it is very clear.

Mr. Gladstein: It is simply this, and I call your Honor's attention to it, that the study made for all the panels is shown to be very closely and substantially the same as that shown by a study of six particular panels, because we find that more than five times as many jurors come from Scarsdale, Larchmont and Bronxville than (2366) come from Yonkers in a study of six specified panels.

The Court: That is a matter of argument. The figures are all there.

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By Mr. Gladstein:

Q. Now, I think you testified yesterday as to the meaning of the term "health area." Now, that, of course, has no relationship to the question of health as such, that is right, isn't it, Mr. Wilkerson? A. For our purposes, yes.

Q. In other words, the health area itself, as such is not an area that refers to a question of the condition of health of the inhabitants but simply is a term defining a certain neighborhood, is that right? A. That is correct.

Q. All right. Now we have in evidence a certain exhibit called the New York City Market Analysis. This is Challenge Exhibit 20. Will you look through it—

Mr. Gladstein: I will withdraw that question.

Q. Did you make a study of any of the jury panels to ascertain in which health areas they were located? A. Yes. We made a sample study for certain health areas in Manhattan.

Q. And which were the health areas which you subjected to study? A. We sought to get health areas which were typical on the basis of data available in the census (2367) report.

Q. What census report data would indicate whether an area is typical, whether a health area is typical of a group of them? A. Information concerning rents, concerning the racial composition of the population, concerning the occupational distribution of the people in the population.

Q. Could you illustrate that by reference to the census tables? A. It would be a little difficult, for this reason—well, yes, I could do that. The materials are on many pages throughout a given volume. You want the census volume on health areas? It would be much easier to do it from the Con. Edison survey which summarizes those materials on one page.

The Court: And the whole affair appears in the most elaborate manner in these exhibits, does it not, the matter of these health areas and the elements that go into it?

The Witness: The information that I have to supply is not in those exhibits at all.

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Mr. Gladstein: No, I was asking the witness—

The Court: Something you went out and inquired around going from house to house?

The Witness: No, analysis based on such information.

(2368) Mr. Gladstein: The witness means, your Honor, that the analysis that he is about to testify concerning data with respect to jurors, that, of course, are not contained in the exhibits, but that the use of the health areas is related to the actual health areas and their descriptions as contained in the exhibit.

The Court: Yes. All I am trying to do is to get him right down to the point. You have got your table; have him identify it, state it is accurate, put it in evidence and get along.

Mr. Gladstein: Well, may I see that for a second, your Honor?

The Court: Certainly.

By Mr. Gladstein:

Q. For example, Mr. Wilkerson, I will call your attention to page 21 of Exhibit 87 in evidence, which sets forth in pictorial tabular form certain data concerning health areas in Manhattan; is that right? A. That is right.

Q. Now, taking just one of the questions, one of the factors that go into determining whether or not a particular health area is typical of a group of them of like character, could you indicate, for example, some four or five, if there are such, located, let us say, in Harlem which indicate racial characteristics of the population who (2369) live in a number of adjacent health areas? A. Yes. Well, for example—well, you can't look but we will call your attention to the fact—

The Court: You mean take a theoretic look.

A. (Continuing) —that health area No. 8, which is in Harlem, has a non-white population that we know from other collateral information to be almost completely Negro.

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Mr. McGohey: May I ask at that point, your Honor, what the other collateral information is the witness is referring to?

The Witness: The census gives us such information. It mentions the breakdown of what non-white means, but on health areas they are reported here merely as non-white.

Mr. McGohey: In other words, the collateral information is the census information?

The Witness: That is right.

Mr. McGohey: Thank you.

The Witness: You are welcome.

A. (Continuing) In that particular health area, health area 8, 99.8 per cent of the population is Negro.

Q. What is the figure? A. 99.8 per cent, in 1940, was Negro.

Q. Or non-white? A. Or non-white. That is correct. Thank you.

(2370) To cite a contrast—

Q. Well, before you give me a contrast, indicate, if you will, three or four, if there are such other health areas in the immediate locality of the one that you have just referred to that is No. 8, which are of similar composition. A. Health area 15 is 94.1 Negro; health area 13, and this health area—

The Court: That is non-white, or is it Negro?

Mr. Gladstein: Non-white.

The Witness: Your correction is well taken. It is non-white.

The Court: Somebody said something here the other day about a large number of Porto Ricans.

The Witness: Yes, that is right.

The Court: They may or may not even speak English, and there are a variety of things that come up. But anyway the point is it is non-white.

A. (Continuing) And it should be said that it is further true that there are Negroes in these particular health areas. There are certain other health areas where the non-white would mean largely Porto Ricans. But in this

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health area non-white is overwhelmingly and almost exclusively Negro.

Q. Would you just indicate which numbers you are (2371) talking about as the health areas? A. I am referring now to health area 13, which is another one with a very large non—

Q. What is the percentage of non-white? A. 98.5 per cent of the population is non-white and in this case we know from collateral information Negro. There are several other—

Mr. McGohey: May I ask: Mr. Wilkerson, may I take it to be the fact that when you refer to collateral information at any time in connection with this testimony you are now giving me, you mean the census figures and not something other than the census figures?

The Witness: Well, I mean primarily census figures, yes; I could also refer to collateral information based upon my own experience. However, I had in mind census material.

Mr. McGohey: But when you are talking about census material is it a fact that you are talking about 1940 census material?

The Witness: That is correct.

Mr. McGohey: Thank you.

The Witness: You are welcome.

By Mr. Gladstein:

Q. Now I want to ask you this question. I notice that (2372) the health areas you have talked about so far in giving this illustration concerning non-white character of the population in certain health areas, I notice that you went from No. 8 to 13 and then there was another number that was given. Is there any significance to that enumeration? Do they appear, for example, that way on the map? A. Yes. The health area No. 8, for example, though street indexes are not on the map I am referring to here, we note runs up to the upper part of Harlem, to about 155th Street. Well, immediately below that is health area 10,

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directly south of it. Health area 8 is 99.8 per cent Negro; health area 10 immediately south is 99.6 per cent negro.

Q. You mean non-white? A. I mean non-white. All right, thank you. And health area 12 is immediately south of 10, which is 99.6 per cent non-white. And 13 is immediately to the east of 10 and 12, and it is 98.5 per cent.

Q. Now you started to say that you had taken certain health areas which were typical of a number of health areas in a particular district, is that correct? A. In several districts.

Q. When you say "district" what do you refer to? A. I am thinking of Congressional Districts in (2373) Manhattan.

Q. Which ones did you take? A. We chose from the 17th Congressional District two health areas.

Q. What were they? A. Health areas 41 and 50, and I can give you their exact boundaries if you should like for me to do so.

Q. Is there an exhibit prepared that shows that? A. Yes. There is a table, Table H-1.

Q. Well, will you indicate first, if you will, just what the health areas were again and Congressional districts in which they are to be found that you subjected to study, and then we can put the description in?

The Court: Did you say H-1 or 8-1?

Mr. Gladstein: H-1, your Honor, I heard him say, and I don't think it is in your group. I will have one prepared for you.

The Court: All right. You will come to that a little later.

Mr. Gladstein: I will, yes.

The Court: I was just trying to see if it was among these Challenge exhibits, but I see it is not.

The Witness: No, it is not.

Mr. Gladstein: My impression is that it is not.

The Court: That is all right.

(2374) *By Mr. Gladstein:*

Q. Will you continue, Mr. Wilkerson? A. All right. In the 21st Congressional district which, as you may remem-

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ber, is that part of Manhattan we think of as Washington Heights and Inwood, we chose two—the third and the 1.10 health areas.

Q. There is a health area that is designated by No. one decimal one ought; is that correct? A. That is correct.

Q. All right. A. In the 20th Congressional District, which embraces much of Riverside Drive and West End Avenue parallel to West Central Park, and also much of the Chelsea area—

The Court: Just a second. Which are the ones you pick up there in Washington Heights and Inwood?

The Witness: Three and one-tenth, or rather, one one ought.

The Court: Wait a minute. The health area No. 3—

The Witness: 1.10. In the extrement tip of Manhattan you will find health area 1.10. And below it a little bit—

The Court: Let me get that one first before you begin going to another one because I don't seem to see it here.

(2375) The Witness: I think you are looking at the wrong map. Would you like me to help you there?

The Court: It seems to me those numbers must appear in all these maps.

The Witness: These are not the health area maps you are looking at.

The Court: Oh, then I have the wrong page.

Mr. McGohey: Will your Honor look on page 21?

The Court: Oh, yes. Where it says "Home heating."

The Witness: No. Oh, yes.

The Court: Well, it does say it, Mr. Wilkerson. What is the use of saying "No"? Now, that 1.10 is the second, 1.10, and the other is 3.

Q. Those are both in the 21st Congressional District, is that right? A. That is right.

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Mr. Gladstein: Did your Honor get the health areas taken in Congressional District 17th?

The Court: No, I didn't.

Mr. Gladstein: Well, perhaps you should make a note of it.

The Court: I just want to follow 17. Have you covered that without my realizing it?

Mr. Gladstein: I think the witness did testify.

Q. Would you repeat that testimony briefly so that the
(2376) Court can—

Mr. McGohey: Pardon me, just a minute.

Your Honor, I am looking at a map here that gives health areas and figures which appear to correspond to what the witness is testifying, and that appears to be on page 21 of the volume that you have there. Maybe if we checked that with the witness we would be sure to be on the same basis on which he is testifying.

The Court: 21.

Mr. McGohey: Could we have the witness look at that to make sure we are all talking about the same thing?

The Court: Sure. There is 1.10.

The Witness: Yes, it is the same map that he was looking at but on a different page. And it might be well to remain on page 21.

Mr. McGohey: Pardon?

The Witness: Page 21 is exactly the same map.

Mr. McGohey: Are the corresponding figures the same also?

The Witness: Yes. You are looking at the population page, I believe. Is the heading at the top of the page "Population"?

Mr. McGohey: Yes.

The Witness: So now you and the Judge are both (2377) looking at the same page.

Mr. McGohey: And that is the page that you will be talking about, is it?

The Witness: No, I won't be talking about any of those pages.

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Mr. McGohey: That doesn't help.

The Witness: However, it will help you to refer to those pages so that you can see—

The Court: Let us all quiet down now and take it easy. What we have got before us is page 21, and we will let Mr. Gladstein get going again, because I notice Mr. Wilkerson and I are standing up and everybody is standing up, and now we are back on the rail and Mr. Gladstein is going to lead me back into the 17th Congressional District temporarily.

Mr. Gladstein: Just temporarily.

The Court: Yes.

By Mr. Gladstein:

Q. Now what health areas did you study that are located in the Congressional District that is numbered 17th? A. We studied health area 41 which is along Fifth Avenue, adjacent to Central Park, and 50 which is below Central Park—well, it is Third Avenue, to First Avenue.

The Court: No. 41 is where—

(2378) Mr. Gladstein: No. 50, your Honor.

The Court: 41, I say, is the one where I live, isn't it?

The Witness: I don't have a map before me.

The Court: But that is all right. This map I think makes it look that way. What is the next one after 41?

Mr. Gladstein: No. 50.

The Court: 51?

Mr. Gladstein: No. 50.

The Court: All right. I am sometimes puzzled as I listen here as to the way this sampling is done. I have always sort of assumed that when a statistician got working that these haphazard samples were perhaps got up with something more than casual selection.

Mr. Gladstein: Let me ask Mr. Wilkerson that question right now.

The Court: Yes.

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Q. What guided you, Mr. Wilkerson, in determining which of the health areas in these Congressional Districts you would subject to study? A. Through an examination of such indices as we mentioned earlier, as rent, population, characteristics. Primarily we sought to get health areas which were relatively comparable and which came from what we know to be generally the same types of neighborhoods (2379) in Manhattan.

The Court: You keep adding "that we know to be" every once in a while. And, of course, I must take it for granted that you do not know everything.

The Witness: No, but I do know some things, your Honor.

The Court: Yes. But it makes it a little bit confusing. And I thought for a time you were basing these things on the census figures, but every once in a while you keep putting in that phrase, "as we know," and it is a little bit puzzling to me. But that is all right.

The Witness: Mr. Gladstein, I should be glad, if the Court wishes, to prepare a memorandum indicating specifically the data which were used as the basis for the selection of these health areas. We did not prepare it because we did not think there would be an issue there. But I can very readily do that.

Mr. Gladstein: All right. We will have it done and we will submit it later on.

By Mr. Gladstein:

Q. Now, is it correct to say—

The Court: Now, is it really essential in connection with these tables to take not only official and some unofficial data such as you have put in evidence (2380) here and referred to, but also bring in a lot of elements about what individuals know or do not know? Is that really necessary?

Mr. Gladstein: No. The witness is testifying your Honor, as he has said, to studies made regard-

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ing health areas and in determining which health areas were to be subjected to study, because there are about 95 in Manhattan alone.

Q. And it would be a task of tremendous magnitude, wouldn't it, Mr. Wilkerson, to subject all 95 or so of health areas in Manhattan alone to this kind of a study?

A. It would.

Q. Going back over a number of years with respect to jury panels? A. Yes.

Q. All right. A. And if I may, I would like to indicate one of the main types of information that I know that are not census data that centered into the selection of these sample areas.

Q. Do so. A. We have made an analysis of the geographical distribution of jurors in the Southern District on the basis of which I know certain areas where jurors come from in rather large numbers and other areas where they come from in relatively small numbers. That was one of the types of information that we used, along with certain census data, in selecting what seemed to (2381) be health areas which are typical of different areas of the community.

Q. In other words, if I understand you correctly, and by way of illustration let us take five—

Mr. McGohey: If your Honor please, either the witness knows what he took into consideration, and he seems to have stated it—

The Court: Yes, he has already testified to it.

Mr. McGohey: He has already testified to it. I don't think it is either necessary or proper for counsel to supplement that by some testifying from out there.

Mr. Gladstein: Well, I am not testifying. I will just ask a question.

The Court: I think that is so. Why don't you get along with your case.

*Doxey A. Wilkerson—for Defendants on Challenge—
Recalled—Direct*

(2382) *By Mr. Gladstein:*

Q. Mr. Wilkerson, is it or not true that the health areas—which one, for example, did you take, which one or more did you take in the 22nd Congressional District? A. In the 22nd Congressional District we took the 8th and the 15th.

Q. Nos. 8 and 15? A. That is correct. Both are in Harlem.

Q. Are those fairly representative of the health areas contained within the 22nd District? A. They are.

Q. Are Nos. 41 and 50, the health areas numbered 41 and 50 fairly representative of the health areas contained within the 17th Congressional District? A. They are.

Q. Is the same true, that is, are Nos. 3 and 1.10 health areas, are they fairly representative of all the health areas contained within the 21st Congressional District? A. Yes. And when I say yes and answer affirmatively, as much as two particular health areas could be of a larger area. Now, within that framework the answer is yes.

Q. What did you do about the 20th Congressional District? Did you take health areas there? A. In the 20th District we took areas—I think I (2383) mentioned that—the 34th and 51st.

The Court: 34 and 51?

The Witness: That is correct.

Q. Are those two health areas fairly representative of the health areas contained within the 20th Congressional District? A. Yes, they represent two types of areas which are included in the 20th Congressional District.

Q. Will you indicate where those health areas are located, in a general way? A. Well, again I do not have a map before me, but 34 I recall is towards the Hudson at about the upper—parallel to the upper part of Central Park; and 51 is on the West Side, a little below a line that would be drawn at the end of Central Park, below 42nd Street, if I remember.

Q. What did you do about Congressional District 18? A. We took from 18 two health areas.

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Q. Which ones? A. One in what is known as East Harlem, the 21st health area, and another in what is generally known as Yorkville, the 33rd health area.

Q. What about the 19th Congressional District? A. In the 19th Lower East Side we took two.

Q. Which ones? A. 58, often referred to a Stuyvesant Square area.

The Court: 58?

(2384) The Witness: That is correct.

A. (Continuing) And 67, a predominantly Jewish community on the extreme southeast part, if I remember the map correctly, of the 19th District.

Q. That is true Lower East Side, isn't it? A. 67th. That is right.

Mr. McGohey: Pardon me.

If your Honor please, the witness has characterized this health area as a predominantly Jewish area. I should like to know what was the collateral data from which that information was obtained.

The Witness: That information is available in the census reports on health areas. No, wait a minute. Pardon me. That information is available in the New York Market Analysis.

The Court: It says how many Jews are in every one of these sections?

The Witness: No. The New York City Market Analysis indicates the proportion, or, rather, it indicates the major racial and religious groups which comprised the population of the areas used in that survey. That is one source of information. The other collateral information—

The Court: Let me take a look at that before we go any further. I have never realized there was any (2385) such thing as that.

The Witness: I think I should say also—

The Court: Let us stick to this and then you can ramble on a little later.

Mr. Gladstein: Now, your Honor, your Honor asked a question and the witness was about to answer it.

Colloquy of Court and Counsel

The Court: I asked for that book, and that is what I am going to get.

Mr. Gladstein: Indeed you are. But I want to object—

The Court: If you think he has not been rambling on, you get the minutes tonight or tomorrow and you will see plenty of rambling.

Now, where is this part that shows just how many Jews there are everywhere?

Mr. Sacher: On the upper righthand side of the page, your Honor.

Mr. Gladstein: Does your Honor wish me to read it?

The Court: No, I can read that myself. I would like to find out, though.

I don't believe I quite see that.

Mr. Gladstein: Can I help?

The Court: Yes, you may.

Mr. Gladstein: Your Honor will find on page 3 (2386) the designation "Manhattan, Lower East Side." Underneath that certain tabulation figures. The figure there given is 234,934, and a notation is made that that alone is larger than all of Omaha, Nebraska. Then there is given a notation that the white population is 124,234. The foreign born who are white 100,566, the Negro population which is 1800, and other races 8,334.

Then this statement, "Most of the foreign born are Russian and Central European Jews, Italians to the southeast; a tiny Chinatown on Pell and Mott Streets." Thereafter follow data concerning the families. There are 67,642 families in that area.

The Court: Yes. Well, I don't want to know about that.

Mr. Gladstein: And so forth and so on, giving the rent data and so on.

The Court: Apparently the emphasis there is on the Russian and Central European part and they are Jews. I take it that native-born Jews are not specifically enumerated in this book.

Colloquy of Court and Counsel

Mr. Gladstein: Not the actual number. The fact is stated that most of those people are Jews who come from Central Europe and Russia, I think it said.

The Court: Because I would be surprised to find any such statistical data made up as that.

(2387) Mr. Gladstein: You might, by way of illustration, your Honor, also look at another portion there to indicate—may I have that for a moment?

The Court: Yes.

Mr. McGohey: Your Honor, I now move, in view of the reference to the exhibit, to strike the characterization—predominantly Jewish neighborhood.

The Court: Does anybody want to oppose that motion before I decide it?

Mr. Sacher: Yes, I oppose it. I think the characterization is one that is very well known in New York and is statistically supported by Exhibit 20.

The Court: Motion granted.

Mr. Gladstein: I wanted to show you that portion that deals with Harlem, but I do not suppose it is essential at this point.

The Court: No. I am satisfied now from examining that book that there are no statistics that purported to show just where all the Jews are or how many Jews there are here or there and all over. I hadn't expected to find such statistics and I see now there are none.

Mr. Gladstein: Your Honor, I was paying attention to the fact that someone was bringing an exhibit in and I am sorry I didn't catch—I apologize to the Court for the fact that I didn't catch your Honor's (2388) statement. May I have it read?

(Record read.)

Mr. Gladstein: Your Honor, there are statistics as to where the people live and how many of them live in such areas, and there are facts set forth in the exhibits in evidence, and these are facts well

Colloquy of Court and Counsel

known to anybody as to the proposition that many, most of the people who live in a particular area are of one or another racial or religious character.

We know for a fact that the Negro people by reason of circumstances that I do not have to go into at the moment reside mainly in Manhattan in the Harlem area; and we know that the Lower East Side has been for many years and is now a place in which Jewish people live.

The Court: Well, we are supposed to have religious toleration in this country, and we have a democracy, and this idea of finding how many of this religion and that religion, and how many Jews there are on this block and another block, does not appeal to me at all.

Mr. Sacher: The church has published their figures.

The Court: Well, maybe so, maybe we have to (2389) do it.

Mr. Gladstein: It does not appeal to me either to make any distinctions on the basis of race or color or religion, and that is precisely the point here. If somebody did not start out with the intention to make such distinctions we would not have to be presenting here the fact that because of these concentrations being as they are, because certain races, certain religious groups, certain social groups live in certain portions of Manhattan and Bronx, that has made it easy for somebody to do a bit of selecting at the outset, and the proof of that selection is shown by what is pictorially presented in these charts and maps.

The Court: Well, wherever the statistics bear you out, I will permit you to put in the charts taken from the statistics.

Mr. Gladstein: Very well, your Honor.

The Court: In the particular instance in question I find the statistics do not bear you out, and I have stricken out the answer.

Mr. Gladstein: Well, you have stricken out the characterization, is that correct?

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The Court: That is right, of predominantly Jewish.

(2390) *By Mr. Gladstein:*

Q. Now Mr. Wilkerson, what was the nature of the study that you made with respect to the health areas and Congressional Districts that you have just been referring to? A. We made an analysis of the occupational distribution of male, female, total gainfully employed workers in these different health areas; we gave attention to the rental average in 1940 in these areas, to important national groups, or groups with varying national origins in these particular areas; we considered the number of jurors on six panels—

Q. Which were the six? A. I don't have that reference here but I think it is on a map. I will give it to you a little bit later.

The Court: Are they the same six that were taken in connection with the Westchester statistics?

The Witness: I think they were not. I would rather not answer the question until I have the specific information before me.

Q. I believe you have it. I will ask you this: Was a map made that shows graphically the tabular results of that study with respect to jurors? A. There was.

Q. And on this map were pins placed to indicate the location of the jurors? A. Yes.

(2391) Q. And the jurors' residences were taken from the jury lists, I take it, that were obtained from the clerk? A. That is correct.

Q. And I will ask you if you have tabulations which are related to the map that you have been talking about? A. Yes.

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

The Witness: May I answer the question now about the panels from which the jurors were taken?

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Q. If you have that information, please do. A. There were not six panels but five including the two listings of the January 17th panel.

Q. Well, we called those separate, so actually we better say there were six. There were two panels for the 17th; there was a first one and a second. A. Those two, and then December 7, 1948; November 15, 1948; May 4, 1948, and March 4, 1947.

Q. All right. Now I will ask you to look at—

The Court: Just a second. That makes four. I suppose in view of the colloquy he meant to include the two of January 17th, 1949?

Mr. Gladstein: He started out to.

The Court: Yes.

(Marked Defendants' Challenge Exhibit 93 for identification.)

(2392) *By Mr. Gladstein:*

Q. Now I show you Defendants' Exhibit—Challenge Exhibit 93 for identification, and ask you if this is the map to which you have just had reference? A. That is the map.

Q. And it was prepared under your supervision, is that correct? A. That is correct.

Q. Does it accurately present and portray what it purports to? A. It does.

Mr. Gladstein: I offer it in evidence, your Honor.

Mr. McGohey: Your Honor, it is not clear to me what this map purports to represent.

Mr. Gladstein: I will withdraw the offer.

Q. Let me call your attention to the map and ask you to indicate where the health areas are located on it.

Mr. Gladstein: Do you want to take a pointer?

The Witness: I would like to.

Mr. Gladstein: Here is one right here.

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The Witness: And I will bring with me certain tabular data that you might call for in the course of the discussion.

(Witness approaches easel.)

A. First, the health areas themselves: This is health area No. 110, or rather, 1.10 in the Inwood area and the (2393) Washington Heights area, health area 3. In the general Harlem area we chose health 8 and health area 15.

The Court: Well, it shows all the ones that you enumerated?

Q. Is that right, Mr. Wilkerson? A. That is correct.

Q. In other words, the 12 health areas in the six Congressional Districts that you have testified to as being subject to study are here reflected on and drawn upon the map that is Challenge Exhibit 93 for identification; is that right? A. That is correct.

Q. Except that the Congressional District lines have not actually been drawn in? A. That is correct.

Q. All right. Now what is meant by the drawing that appears alongside of each of the indicated health areas on that exhibit? A. We have here legends which indicate the occupational distribution of males, male gainfully employed workers—

The Court: Over 14.

The Witness: That is correct.

A. (Continued) In these several health areas contrasting two groups. One is a combination of what we heretofore have characterized as executives and professionals, designated by the red symbols, and the other are manual workers in accord with the definition previously given (2394) to the Court designated by the blue symbols; and if you are able to read the legend here—

Q. Well, before you go to the legend let me ask you this: what does each of those symbols represent inasmuch as the map shows, for example, with respect to the red symbol, that in connection with one health area you have one red symbol; in connection with another you will have

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several of them? A. The fact that there is one red symbol here for health area 15 means, as the legend indicates, that ten per cent of the gainfully employed workers in that health area—of the male gainfully employed—are professionals or executives.

Q. Or both? A. Well, that means that.

Q. Yes, all right. A. They are included in the professional-executive combination.

Q. All right. A. And 1, 2, 3, 4, 5, 6, 7, 8 blue symbols to the right of health area 15 indicate that 80 per cent of the gainfully employed workers in that health area are classified as manual workers. This is male gainfully employed.

Q. That is, they fall within one or another of the census classifications which in combination have been designated here in your testimony and on our exhibits as manual workers? A. That is correct.

(2395) Q. Now, I notice that in the one that you have just pointed to you had one red symbol and eight blue ones, totaling as to the two, 90 per cent. How do you account for the other 10 per cent? A. We pointed out that this refers first to male gainfully employed, and there is one other factor that should be entered. It includes male gainfully employed other than in domestic service.

Q. What about the clerical and sales? A. The clerical and sales are not represented here, which is part of the explanation of the lack of a hundred per cent representation.

Q. All right. A. Our purpose here was primarily to get a comparison between these two groups, the professional-executive group on the one hand and the other extreme of the occupational level, as some people define it, the manual workers.

The Court: How does that figure out? Now, if that takes in all the people who with certain allowances and calculations would be eligible for jury which you speak of and are the males, it just is not service, and 90 per cent of them are in the classes possible that there are only 10 per cent including

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all the females and all the people who were not in the classifications. I don't follow that.

Mr. Gladstein: No. The witness said that the (2396) ten per cent, or whatever it was—for example, there it was 10, but here, take this one, for example—

The Court: Let us stick to it.

Mr. McGohey: If your Honor please, I suggest that the witness explain this exhibit rather than counsel.

Mr. Gladstein: All right.

The Court: Counsel probably had a good deal to do with getting it up.

Mr. Gladstein: No. The witness prepared this and it merely reflects the fact—

The Court: There is nothing wrong about that at all. Now it is perfectly proper for counsel to work with an expert witness in getting up charts, and let us not get excited about that.

Now, Mr. Wilkerson, you go ahead and explain.

The Witness: All right. Our interest here, your Honor, is not to get some measure of people eligible for jury service. We give attention to that in other analyses that we will get to in time, I think. But our interest here is in characterizing different health areas with reference to two indices particularly: First, the relative distribution of male gainfully employed workers among the professional and executive categories on the one hand, and the manual worker categories exclusive of domestic service on the other.

(2397) The other index is that of rents. We have not—

The Court: Yes, but the whole question we were talking about is, you get 10 per cent plus 80 per cent, makes 90 per cent, and somebody said Where is the other 10 per cent, and I understood you to say they are the females and the other people that we have not taken into account, like the domestics, which does not make any sense. That is why I am asking you to explain.

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The Witness: I think the record will show that I did not say females. I did say that clericals are not included.

The Court: Oh, all right.

Now, why weren't they included?

The Witness: Because we were interested here in two things: One, in not cluttering up the map with so many symbols as to make it hard to distinguish, but more fundamentally in drawing the sharp contrast between what are popularly thought of as the upper end of the occupational distribution and the lower end.

The Court: All right, we will take our recess now.

(Short recess.)

(2398) Mr. Gladstein: Shall I resume?

The Court: Yes.

By Mr. Gladstein:

Q. Now, with respect to No. 93 for identification, what was the source from which was obtained the information shown on that map, on that exhibit, with respect to rents?

A. If you will hold it just a minute, sir, I will tell you. Oh, the source, by the way, of all of this information, the census materials, is the census volume on statistics for health areas.

Q. This has been introduced in evidence, has it, Mr. Wilkerson? A. Our copy had been and it had been marked. I ended up yesterday with another copy, and you mentioned you had taken a copy, so I suspect you have the one that is marked in evidence.

Mr. Gladstein: It is the one called Population and Housing, Statistics for Health Areas, New York City.

Mr. McGohey: No, we don't have a copy marked in evidence.

The Court: Well, I have got it right in my records here. It is Exhibit 10, and it is in evidence.

Mr. Gladstein: All right.

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Q. Now, the material that appears with respect to rents and other matters on this No. 93 came from Exhibit 10, is that right? A. That is right.

(2399) Q. Will you explain what is indicated by the green rectangular forms on this exhibit? A. That is an indication of the average contract or estimated rent as reported by the census report on health areas for 1940, and each symbol, complete symbol, indicates an average rental of \$20 per month. Hence, an area such as this, which seems to have two symbols—

Q. When you say "this" you mean No. 15? A. No. 15, is an area in which the average rent in 1940 was about \$40.

The Court: \$40?

The Witness: Yes.

Q. Each green symbol, in other words, represents a \$20 bill, is that right, Mr. Wilkerson? A. Each green symbol is a \$20 bill for rent, yes.

Q. All right. A. Take No. 41, which has 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and the tip of another symbol, indicating that the average rental in health area 41 is a little over \$200 a month.

Q. As of 1940? A. As of 1940.

Q. And based on official census data? A. That is correct.

The Court: A little over \$100 a month or \$200 a month?

The Witness: \$200, your Honor.

Q. Now, what are the pins that appear on the map, some (2400) of which are colored red and some colored blue?

The Court: Where are the blue ones?

The Witness: There are not many there, but there are a few.

The Court: Let me come down and take a look at that.

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Q. What are they, Mr. Wilkerson? A. The red pins represent executives and professionals who were called for service or who were listed on the federal petit jury panels represented by this map.

Q. In other words, every red pin represents the name of a juror whose name appears on one or another of the six jury panels covered by this Exhibit No. 93 who are either in the executive or professional group and live in one of those health areas? A. That is correct.

Q. And the blue pins? A. The blue pins represent manual workers who served on jury panels, the ones that are being analyzed here, and who live in the health area concerned.

Q. All right. Now starting with the uppermost health area, will you testify as to what that map shows with respect to jurors, the data concerning executive, professional or other occupational breakdown, and the rental figures? A. Well, health area 110 up in the Inwood district—

(2401) Q. You mean 1.10? A. 1.10.

Q. All right. A.—has among—or rather, in that area where something less than 10, 20—a little less than 30 per cent, approximately 27 or 28 per cent of the gainfully employed workers—

Q. Males? A. Males or executives or professionals, and where approximately 40 per cent of the male gainfully employed in 1940 were manual workers, had two jurors on these six panels who were executives or professionals, no jurors who were manual workers—

Q. And the average rent— A. It should be made clear, however—the average rent there is approximately \$50.

Q. All right. A. It should be made clear that the two pins do not represent the total number of jurors, because you will bear in mind that we cut out the category of clerical-sales in order to make sharper the contrast between manual workers on the one hand and executives and professionals on the other.

The Court: It may make it sharper but it reduces the thing to hopeless confusion.

Colloquy of Court and Counsel

Mr. Gladstein: We will supply tabular data to show the extent to which in those locations, in those health areas, and in that grouping of clerical and sales, there are to be found jurors on those six panels.

(2402) Q. Will you continue? Did you find any manual workers in that health area? A. There were no manual workers in that health area at all.

Q. Among those jurors on the six panels? A. That is right.

Mr. McGohey: Pardon me for just a moment. If the Court please, I desire at this time to object to the introduction of this map, and therefore I would object to any further testimony from what the map shows. I should like, if I may, to state the reasons for my objection to the introduction of the map.

The Court: You may do so.

Mr. McGohey: I believe that the map is irrelevant to the issue on trial before the Court as to exclusion of certain types of jurors.

I point out to your Honor that the map on its face is limited to six panels of jurors, although we have been talking at various times of 30 panels, 28 panels, 12 panels, and so on.

I point out that it is limited to merely 12 health areas, and that it is also limited only to one county within the Southern District of New York; and chiefly I desire to point out that there has been left out one whole category of the types of population which the witness himself has selected, namely, the clerical (2403) and sales type.

So that by reason of the combination of these exclusions this map cannot give a true picture of anything; and the last item of testimony that the witness gave was that it was designed to bring out sharp contrasts. I am interested in finding out what the facts are and not the sharp contrasts where certain items are excluded.

I also believe that the data here excludes the category of women altogether.

Colloquy of Court and Counsel

I object to the introduction of the map.

The Court: Do you desire to be heard, Mr. Sacher?

Mr. Sacher: May it please the Court, I think the objection overlooks the basic facts which are involved in this proposed exhibit: In the first place, it is to be borne in mind that what we are trying to do here is to shorten the proceedings, and therefore we are in the first instance trying to provide the Court with samples of typical areas so as to avoid the necessity of giving your Honor these facts in regard to all the health areas.

Now, if Mr. McGohey desires a breakdown of each and every health area in the Southern District of New York we shall be happy to provide him with it, if you will only give us time within which to do it.

(2404) Therefore, it seems to me, he either fishes or cuts bait; either he is going to agree that we may submit samples to your Honor so that you may base such conclusions on them as samples which are typically provided, or else he must take the other alternative and say that he is ready to give us the time to submit to the Court an analysis of each health area and a distribution of all the jurors not only on these six panels and not only on the 31 panels, but on maybe the 250 or 300 which have served in the past ten years.

Now, to proceed to the basic soundness and correctness of the exhibit—

The Court: That I think is more important—

Mr. Sacher: All right, I will do that immediately.

The Court: —because you bring up what he desires and what he does not desire, and I am not ruling on anybody's desire. I am merely ruling on whether this proof is relevant and competent or not, and any ruling I make is not to be taken as an indication that you are to go out and prepare a lot of other charts. Nothing of that sort is involved, as I see it. The question is whether this exhibit is admissible.

Colloquy of Court and Counsel

Mr. Sacher: Now I would like to address myself first to the objection made that this is a selection from among health areas in Manhattan alone, and I suppose Mr. (2405) McGohey's point is that there are largely three counties from which the jurors are selected; and in that connection I wish to observe that approximately 50 per cent or more of all the jurors named on the various panels came from Manhattan; and I can only repeat, if he thinks that Manhattan or New York County is not enough, then just give us the time and we will give you all the counties.

No. 3—

The Court: Now, I suspect if you think that you are going to get all the counties, and then you are going to call every member of the population, as Mr. Crockett a little while ago said, "We might have to call every Negro from Harlem," I can tell you right now that you are not going to be permitted to do that.

Mr. Sacher: Your Honor—

The Court: So don't let your mind dwell on that subject for even a brief moment, because nothing like that is going to happen in this court.

Mr. Sacher: Your Honor, I am assuming only one thing in what I am saying, and that is that we will be given an opportunity to present as expeditiously as possible such evidence as will have probative value one way or the other.

We are interested in giving your Honor probative value to prove that Negroes are excluded, that Jews are (2406) excluded, that the poor are excluded, that the rich are included.

The Court: Yes. Now why don't you show me?

Mr. Sacher: That is what I am going to do.

The Court: But you get off every once in a while.

Mr. Sacher: Because I am dealing with each objection named.

Colloquy of Court and Counsel

Now, query, does this exhibit reveal anything tending to establish what we are talking about? I maintain the following: If you take the 12 health areas, you find in each area, No. 1, a distribution of the gainfully employed on the basis of those who fall into the so-called executive-professional categories on the one hand, and manual workers on the other.

Now, we have not thus far contended that the so-called clerical or sales force is disproportionate-over-represented or under-represented. The basic contention we are making here is that manual workers are excluded in such substantial part because of the discriminatory and systematic practice as to constitute an unconstitutional and an illegal administration of justice.

Now, we say when you tie up the evidence in (2407) regard to the total population in each health area, with the manual worker population on the one hand and the executive-professional population on the other, it immediately becomes evident as follows: One, that in areas in which there are large worker populations, where, let us say, the manual workers constitute 80 to 90 per cent of the male gainfully employed, you don't find a single juror on any of these six panels, and my recollection is there are three or four such health areas where there is not a single juror on a panel.

On the other hand—

The Court: Now, if you took one juror from every health area in the Southern District of New York, you would not have enough jurors to go around, would you?

Mr. Sacher: That is not the point we are making.

The Court: I say—

Mr. Sacher: We are not saying if you take just one. That is not the point we are making.

The Court: No, but you are picking out as the witness says at random certain ones; and what is becoming increasingly plain to me is, first, that you

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have got all this statistical data in the record already to lay a foundation for such argument as you care to make; and, secondly, that this chart, this exhibit, is misleading, and I am inclined to think that I am going to rule it out.

(2408) Mr. Sacher: May I step up here because I would like to point to a couple of figures on the chart?

The Court: Yes, you may.

(Mr. Sacher approaches the easel.)

Mr. Sacher: Now, for instance, you take health area 41, which is in the 17th Congressional District, and you find that in that area executives and professionals constitute approximately 60 per cent of the gainfully employed males in that health area.

The Court: Over 14?

Mr. Sacher: Over 14. The discounts—your Honor keeps on saying "over 14."

The Court: Because we have got to discount this, discount that, exclude that—

Mr. Sacher: May I recall to your Honor that Mr. Wilkerson has already testified that when you deduct those in the male gainfully employed population between the ages of 14 and 21, and those over 70, that figure comes to seven per cent of the total male gainfully employed workers.

Is that correct, Dr. Wilkerson?

The Witness: That is correct.

The Court: Seven per cent is quite a figure.

(2409) Mr. Sacher: Well, when we consider it in context—

The Court: You go ahead.

Mr. Sacher: All right.

Now, you have just one manual worker in that area where the manual population constitutes 15 per cent.

Now take health area 33, for instance, where there are 80 per cent of the manual workers.

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Now look at all the red pins there are in 41, where only 60 per cent are executives—that is, 60 per cent of the male population, male gainfully employed population as executives, you have here, I guess, about 50 pins or thereabouts—40 or 50 jurors it looks like.

On the other hand, take health area 33 where you have 80 per cent of the male gainfully employed population where the rent is about \$25 a month, the average rent, and where there is only 10 per cent of executives, there is not a single juror from that district.

Now, how come that in health area 41 where 60 per cent of the male gainfully employed are executives and professionals you have 40 to 50 jurors represented on these six panels, and that health area 33 where 80 per cent of the male gainfully employed are manual workers, you don't have a single manual worker?

The Court: A great variety of factors.

(2410) Mr. Sacher: Well, we will get those modifying factors later, but the point is that initially unless you allow this to go in we cannot make the calculations necessary to show that when you have made deduction in these health areas for those under 21 and over 70, and those who are non-citizens, and those who are illiterate, and those who are aliens—well, that is covered by non-citizens, et cetera—if you don't allow us to put in this base, we cannot arrive at that figure which constitutes the irreducible minimum against which our argument must either stand or fall in regard to the mathematical discrimination which we want to demonstrate here.

The Court: But you have all those data in evidence already.

Mr. Sacher: No. This data is not in evidence at all yet, because, your Honor, what we are doing here, and we think—I prefer now, I think, if your Honor desires, to get back here.

The Court: Yes.

Colloquy of Court and Counsel

(Mr. Sacher leaves easel and approaches counsel table.)

Mr. Sacher: I wish to make one point here: We have introduced evidence thus far which indicates population distribution on the basis of Congressional (2411) or political unit subdivisions.

Now, that in itself does not indicate the complete picture that has to be demonstrated. It is the testimony in regard to the health areas which is an absolute necessity because this is statistically geared by Government figures to demonstrate the occupational composition of each and every area. I submit, for instance, your Honor, that the evidence in regard to health area 41 is worth whole volumes as to what comes out of the 17th Congressional District, because what our evidence is going to show now is not merely that these large clusters, these huge percentages of 40 to 50 per cent of all Manhattan jurors coming out of the 17th, we are now going to demonstrate through health area statistics that the 40 to 50 per cent of the Manhattan jurors which come out of the 17th Congressional District come out of a certain part of the 17th, namely, out of that part of the 17th where the rents are, as they appear to be in area 41, over \$200 a month.

The Court: Now let me ask you a question: Does one of the exhibits here indicate the data as to rentals? Now, don't go into a long argument. Just tell me.

Mr. Sacher: No. I am trying to answer you (2412) yes or no. Maybe Mr. Gladstein could tell.

Mr. Gladstein: There is no exhibit, your Honor, that correlates or gives the facts that are shown on this map.

The Court: I should think once in a while you gentlemen could give me a frank and straightforward answer. You know perfectly well that there is an exhibit here that does have the rentals in, don't you?

Mr. Gladstein: That correlates the rentals?

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The Court: I am not talking about correlation. I am asking if the data gives that.

Mr. Gladstein: The census data gives that.

The Court: Sure. So that is in.

Mr. Gladstein: That is right.

The Court: Now, you have other exhibits and you have other data that shows where every single one of these jurors in every one of these panels that you put in evidence resides, haven't you?

Mr. Gladstein: Yes.

The Court: Then you can argue from them without producing a chart that seems to me to be misleading, and I sustain the objection. All I am doing is excluding the chart.

Mr. Gladstein: Your Honor, I want to discuss a moment what the chart shows that is not in evidence (2413) and also to address myself to the suggestion that it is misleading. It is not.

What does this chart show? It shows 12 health areas and the numbers of jurors who come in respect of six particular panels from those health areas. We have nothing in the record to designate the health areas from which jurors come.

The Court: Haven't we?

Mr. Gladstein: We have them in—

The Court: Just a second and I will show you something: You just look at these photographs here in these other exhibits, and you put that together with your other exhibits, with the health areas, and you have got the answer, haven't you?

Mr. Gladstein: Well, this exhibit shows where they live according to the—

The Court: Where each one lives—

Mr. Gladstein: Wait a minute, your Honor.—according to congressional districts—

The Court: Well, this data on those photographs when broken down and briefed or argued show exactly what you want, and all I am doing is excluding this chart which I think is misleading and not helpful.

Mr. Gladstein: Now, let me address myself to it—

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The Court: Now, I understand the law to be that (2414) when you come to tabulations, charts and all that sort of thing the Court has a discretion as to whether to permit you to go to one length or another length in doing that; and in the exercise of that discretion I exclude this repetitious and, as it seems to me, misleading chart.

Mr. Gladstein: May I finish my statement for the record, your Honor?

The Court: I really don't want to hear any more argument about it, Mr. Gladstein. You know, we have reached a point here in this trial where this incessant argument at length goes on and on, and I have a little understanding of these points, and it seems to me that the question we are now determining is a relatively simple one. So that I don't want to hear any more argument on it. I have ruled. You may pass on to something else.

Mr. Gladstein: Well, I want to make an offer to prove, then.

The Court: Well, what you have already said—

Mr. Gladstein: No.

The Court: —is about eight or ten offers of proof already. But go ahead, make some more.

Mr. Gladstein: I make this offer of proof, that if this witness were permitted to answer questions which I would put to him he would testify in substance and (2415) effect as follows: That Exhibit 93 for identification is a map of Manhattan on which Congressional Districts are not shown but on which 12 health areas have been drawn, identified by his testimony in such manner as to show that two health areas for each of the six named Congressional Districts appear on this map.

He would further testify that he has subjected to analysis for the purpose of establishing occupational distribution, geographical location and the average or contract rent for each particular area based on census tables the six jury panels which are identified and referred to on Exhibit 93.

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He would further in response to questions testify in substance and effect that with respect to health area 1.10, 30 per cent of the male gainfully occupied are in the executive class and about 40 per cent are manual workers; that on the six panels referred to by the map, two jurors were chosen only, and both of those two were either executives or professionals.

He would testify with respect to health area No. 3 that 30 per cent of the male gainfully occupied in that health area are in the executive or professional class, and 35—

The Court: Now, Mr. Gladstein, you know, it is (2416) apparent to me that you are doing the testifying here in substance, and I have held that the proof is all in the record; that the chart is merely a matter of argument from the facts already in the record, and I think you may desist from further what you call offer of proof.

Mr. Gladstein: Well, may I have the witness testify to these facts?

The Court: I am not going to allow you to go on any longer to do the very thing that I have in substance ruled out.

Mr. Gladstein: May I have the witness testify? You have said just now, your Honor, that the witness may testify concerning the facts; that what you are doing, however, is excluding the pictorial representation of those facts.

The Court: That is what I have been saying all the time, and that is what the objection was.

Mr. Gladstein: Then I will ask the witness to testify concerning the facts.

By Mr. Gladstein:

Q. With respect to the six panels, Mr. Wilkerson, referred to in Exhibit 93 for identification—

Mr. McGohey: Pardon me, if your Honor please. If the witness is going to testify—if the chart is out (2417) of evidence, I suggest that it be removed. Let us have the witness's testimony but not from the chart.

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The Court: I think perhaps what the witness is now being led to do is to get the chart in evidence by indirection.

Mr. Gladstein: I am going to ask him for the facts and to testify concerning facts, but in order to indicate the field in which I desire to have him testify I have used the expression Exhibit 93 for identification; if that is what Mr. McGohey objects to I will use some other expression to indicate the six panels and the twelve health areas in the six Congressional Districts that I want to talk about for the purpose of testifying. If that is his objection.

Now, I want to say this too, your Honor, on the question of misleading. All one has to do in order to see where the clerical and sales employees are—

Mr. McGohey: I suggest, your Honor, that that has been ruled on.

The Court: Yes.

Mr. Gladstein: But nothing has been mentioned on that subject.

The Court: Well, Mr. Gladstein, my recollection is that you mentioned it three times; perhaps you mentioned it more times than that. But I desire you (2418) not to mention it any more.

Mr. Gladstein: You mean, clerical and sales employees?

The Court: Yes. I have been listening to all this for some time here and I just consider this whole matter that you have got there as not proving anything that is of any probative force.

Mr. Gladstein: May I do this, to assist me in questioning the witness? I should like to be able to look at the map even if I do not refer to it by name. Is that permissible, your Honor.

The Court: No. I am a little bit inclined to think that what is going on now is just trying to get around my ruling and get it in by indirection, and I am not going to let you do that.

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Recalled—Direct*

By Mr. Gladstein:

Q. I will ask you, Mr. Wilkerson, if you have tabulated data—

Mr. McGohey: If your Honor please, I should like the map removed before we go—

The Court: Well, I think Mr. Gladstein is going to forego that exhibit.

Mr. McGohey: Yes, but he has the map up there.

Mr. Sacher: So what?

Mr. McGohey: It is irrelevant evidence.

(2419) The Court: I have been looking at the map myself, but if he is going on to something else I am going to let it remain there. If he is going to keep plugging away at this same proposition we will have the map taken away.

Now, which is it going to be, Mr. Gladstein?

Mr. Gladstein: I just do not understand that, your Honor. Does your Honor mean that I can't examine the witness with respect to testimony that is material and that if I do attempt to have him testify to facts then the Court is going to penalize me in some fashion by ordering the removal of a map? Is that the suggestion?

The Court: Well, I would not want to penalize you. And perhaps it is better to have you put specific questions, and I will rule on them. But I am getting a distinct impression that what you are going to try to do is to get around my ruling by doing the same thing in another way.

Mr. Crockett: I take it there would be no objection to the witness testifying from his notes and merely himself visually looking at the map to refresh his recollection?

The Court: Well that sounds to me about the same thing.

Mr. Crockett: In any event—

(2420) The Court: So I will take the bull by the horns, and I will sustain the objection to this entire

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line of proof. There will be no questions, no chart, nothing about it whatsoever. Then we will definitely pass to something else.

Mr. Crockett: I should like to have the record note an exception on behalf of my client.

The Court: I have already indicated several times that whenever I make a ruling adverse to any of the defendants or their counsel each of the defendants is deemed to have excepted thereto, and to get the benefit of the exception, unless some counsel desires to rise and say that he does not desire the benefit of the exception.

By Mr. Gladstein:

Q. Mr. Wilkerson, did you make a study of six particular panels in reference to the location of jurors, those six panels being—

The Court: Are they the same ones we had before?

Mr. Gladstein: I want to name them, your Honor.

The Court: Because I have a list of them here.

Mr. Gladstein: I have a list here.

Q. Those six panels being for March 4, 1947, May 4, 1948, November 15, 1948, December 7, 1948, the first list or panel of jurors for January 17, 1949, and the second panel for jurors of that same date.

(2421) The Court: Those are not the same dates, so I will have to have it read to me by the reporter. You keep shifting and take six panels from this point, 16 panels for some other point, another six panels for something else, and I must say it is very confusing. But let me have it read by the reporter.

Mr. Sacher: That is statistical practice, your Honor.

Mr. Gladstein: If your Honor finds that the six I have just named are the same six that you have

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listed down before and which were read into the record by the witness, will your Honor then withdraw from the record the remark that I keep shifting?

The Court: Well, I do not see in my notes any September item at all on those six panels.

Mr. Gladstein: I do not recall saying September.

The Court: Well, then, maybe that is where the trouble comes. Let me have the reporter read that.

(Record read.)

The Court: It is evident that I was in error, and I am glad to say so.

By Mr. Gladstein:

Q. Now the question is, did you make a study with respect to geographical locations of jurors on those six panels, Mr. Wilkerson? A. I did.

(2422) Q. Now your study consisted of trying to locate them by virtue of the address given by the jury clerk, is that right? A. That is correct.

Q. You located them in the place where they reside, of course? A. Yes.

Q. Now, in what portions or areas or subdivisions of the city did you find such jurors to be residing? A. With reference to those six panels we found that in the 41 health area, which is in the 17th district, there were 58 jurors, all of the jurors; by "all" I mean all categories of jurors.

Q. All right. A. In the 50 health area, also in the 17th Congressional District, there were 31 jurors. In the third health area, which is up in Washington Heights section, there were 62 jurors. In health area point, or rather, 1.10, the northern tip of Manhattan, the Inwood section, there were 12 jurors.

Moving down to the 20th Congressional District, in the Riverside Drive, Central Park West area, part of that, the 34th health area more specifically, there were 44 jurors. However, a little lower in the 20th Congressional District,

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in the general Hell's Kitchen, Chelsea area, there were no jurors on these six panels.

The Court: You mean 51 now.

The Witness: This is 51. Thank you, your Honor.

(2423) A. (Continuing) Moving to the 18th Congressional District, where we analyzed two health areas, No.—

The Court: 21 and 33.

The Witness: Thank you, your Honor. But I was checking here on something else.

A. (Continuing) One, No. 21, in what is generally known as East Harlem, and 33 in Yorkville, we found that in neither of those health areas was there any juror whatever on the six panels that we are here analyzing.

Q. Any of the six panels? A. On any of the six panels.

Q. All right. A. In the 19th Congressional district, which is in the Lower East Side, the health area 58, in the upper part of that district, had four jurors on these six panels. But health area 67, at the extremity almost of that district, southern extremity, had no jurors whatever.

And in the 22nd Congressional District we analyzed two health areas, the 8th and the 15th, and found that in each of those there was one juror to be found among the jurors on these six panels.

Q. One in No. 8 and one in No. 15, both located within the 22nd Congressional district? A. That is correct.

Q. All right. Now, did you make an occupational study or a study for purposes of occupational breakdown of the jurors whom you found in these health areas (2424) respectively?

The Court: Just a second. I have mislaid those charts that I had in my hand a minute ago.

Mr. Gladstein: Did you want maps or charts, Judge?

The Court: Maybe they got down there (indicating counsel table).

(Mr. Gladstein hands to the Court.)

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Q. Will you answer the question as to whether you made a study? A. We did make a study. We represented the basic information we wanted in an exhibit which is now not in evidence and I did not bring with me my notes which would indicate, without the map, the information that you are asking for. I have such information and would be very glad to bring it if I have the opportunity.

Q. You will be given an opportunity.

Mr. McGohey: Pardon me. May I have the witness's last answer read, your Honor? I did not hear it.

(Record read.)

Mr. Gladstein: Now what has been done during the time the Court called for the reading of the question or Mr. McGohey did, was that a tabulated form of that information was found on the desk and has been supplied to the witness.

Q. Is that correct, Mr. Wilkerson? A. That is correct. (2425) This is what I was looking for.

Q. So your answer is that you did make a study? A. We did make an analysis of the occupational distribution of the jurors chosen on these six panels who live in the twelve health areas we have called attention to, their distribution among the categories of executives-professionals on the one hand, and of manual workers on the other, restricting our analysis to male gainfully employed persons as reported by the census.

Q. What did your study reveal.

Mr. McGohey: Now, if your Honor please, I object to that. I think the answer that the witness gave just before this question indicates that the table that he is talking about reflects precisely what is on the chart. That kind of information would be as misleading as the chart would be. And I think it would be just as irrelevant to the issue before the Court. I object to it.

The Court: Sustained.

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Recalled—Direct*

Q. Mr. Wilkerson, drawing your attention to health area 41, located in Congressional District No. 17, in reference to which you have testified without objection that you found 58 jurors on the six panels—

Mr. Gladstein: Need I identify the six? It is understood that there were six that were mentioned (2426) in the last few minutes.

The Court: Yes, I have them all tabulated in my notes and I am following it perfectly.

Mr. Gladstein: All right.

The Court: I know just which 58 you are talking about.

Mr. Gladstein: All right.

Q. Now, with respect to these 58 jurors, did you make any effort to find out how many of them, based on the occupational description contained on the clerk's panels in this court, were gainfully employed in one or another of the occupations which comprise the general grouping—manual workers?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Did you make a study with respect to the 58 jurors, the same 58, to find out how many of them were in one or another of any occupational grouping?

Mr. McGohey: Objection.

The Court: Sustained. You know, you have got tables in on that already.

Mr. Gladstein: Regarding these?

The Court: Covering not six but many panels.

Mr. Gladstein: No, we do not have data concerning (2427) the 58 jurors in health area 41.

The Court: No. And I don't think you are going to get it in.

Mr. Gladstein: But it is very clear now that when your Honor says "No" that that is inconsistent with what you said before.

The Court: I mean "No." It is beginning to percolate.

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Mr. Gladstein: What you said before was that we had such data in. Now I take it it is clear we do not have the data for these 58 jurors.

The Court: Well, that is where we get into a katy-did-katy-didn't business. And I am just sustaining the objection.

Mr. Gladstein: All right.

Mr. Sacher: Your Honor, if I understand it, your point is that there is health area data in the record, there is also an occupational enumeration in regard to jurors; and your Honor says, as I understand it, that if we wish to use this material it is susceptible of use in briefs and charts which we may submit later, rather than in the course of the trial. Is that the thought?

The Court: That shows extraordinary perception, Mr. Sacher. That is what I have been saying all along.

Mr. Sacher: I just wanted to make certain.

(2428) The Court: If you want to argue about that—

Mr. Sacher: No, I just wanted to know what your Honor—

The Court: No, I don't mean argue now, but I mean in whatever way the matter may be presented later. But I am not going to let this chart go in, I am not going to let in any additional table about it, and I am not going to let him testify on the subject. And one of my reasons is that I think that the entire matter is misleading and not helpful.

Mr. Sacher: Misleading because it is partial, would you say?

The Court: Well,—

Mr. Sacher: That is what we would like to know, you see.

The Court: You know, you have acquired a sort of habit of asking me to explain all the things—

Mr. Sacher: No, we want a little guidance. If it is an inadequate sample we want to give all of it to you.

The Court: I am not disposed to discuss the matter any further now.

Mr. Sacher: All right.

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Recalled—Direct*

By Mr. Gladstein:

Q. Now Mr. Wilkerson, did you count up or tabulate the (2429) number of manual workers, as you have used that expression whom you found on any one—well, on all of those six panels that we are talking about who live in that part of the 17th Congressional District which is known as health area 41?

Mr. McGohey: Objection.

The Court: Had you finished the question?

Mr. Gladstein: Yes, I think I had.

The Court: Sustained.

Q. Did you make a count of the number of manual workers, as you have used that expression here, contained on the six jury panels that we are talking about who lived in that part of the 17th Congressional District known as health area 50?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Did you make a count of the number of manual workers shown on the clerk's jury panels who lived in that part of the 21st Congressional District known as Health area 3?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Did you make such a study to ascertain how many manual workers there were among the jurors on the six panels you were talking about who lived in the 21st (2430) Congressional District or any part thereof?

Mr. McGohey: Objection.

The Court: Sustained.

Q. And particularly in that part which is known as health area 1.10?

Mr. McGohey: Objection.

The Court: Sustained.

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Q. Did you make a study to see where the jurors on these six panels that we are discussing lived in the 20th Congressional District who according to the occupational description contained in the clerk's lists are manual workers?

Mr. McGohey: Objection.

The Court: Sustained.

Mr. Gladstein: Now may I make an offer of proof on this, your Honor, so that the record will be clear? I desire to prove—

The Court: Well, you can repeat a little bit if you wish.

Mr. Gladstein: I desire to prove that if the witness were permitted to answer the questions to which objection has been made and which objections have been sustained, and if he were permitted to answer further questions logically and naturally flowing from his (2431) answer to the questions that he has not been able to answer, he would testify that he found as a result of his study—

The Court: Oh, I see what you are getting at. No, I am not going to allow that. That is just what you did before.

Mr. Gladstein: I desire to make an offer of proof for the record. I think I have a right to do that.

(2432) The Court: I consider that there has been a sufficient indication of your purpose, and what you are offering to prove by this line of proof I have excluded.

Mr. Gladstein: Then I will prepare a written offer of proof and present that.

The Court: You may do that, and it should be marked.

Q. Now, Mr. Wilkerson, I want to ask you something about one of the exhibits that has been marked for identification—here it is, it is Exhibit No. 21—and is known as "Address Telephone Directory" (handing). Do you have an extra copy of that? I don't have it. A. I think so.

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Mr. Gladstein: I will withdraw that last question.

Q. Regarding the six panels that we have discussed, did you make a check to find out what the statistical data were concerning the voting population in the areas as to which you subjected the six panels to study? A. I did.

Q. What was the nature of that investigation? A. With each of 12 sample health areas we analyzed the number of jurors, including the entire group of jurors for the health area, for the six panels in relationship to the voting population and also in relationship (2433) to average monthly rent in the health area concerned.

The Court: Those are the 12 health areas that you testified about before?

The Witness: Yes, but these data—

The Court: The 17th District, 41 and 50; 21st, 3 and 11 and so on.

The Witness: That is correct.

Q. What did your study show? A. My study showed that in health area 41, which is along Fifth Avenue in the 17th Congressional District and where the average monthly rent in 1940 is \$202 per month, there were 52 jurors chosen per thousand voters in the Congressional elections for—I will tell you the year in just a moment.

Mr. McGahey: If your Honor please, I object to this and move to strike out that answer on the ground that it is clearly, now, irrelevant and—

The Court: Objection sustained.

Mr. Gladstein: This is something quite different.

The Court: And the motion is granted.

Mr. Gladstein: It has not been finished, the answer has not been finished.

The Court: No, but he got far enough to cover some of the ground that was in that chart that you questioned him about before, and enough to indicate to me that if (2434) the answer is allowed to stand and the question were improper it would be a subversion of my prior ruling.

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Q. Mr. Wilkerson, where did you get the voting data that you used in connection with the study you are testifying about now? A. The New York City Board of Elections.

Q. Now by using that data did you determine in your study of the six panels that you are discussing, did you determine what the ratios were with respect to these Congressional Districts and health areas in terms of the relationship to the actual vote? A. I did.

Q. What did you find?

Mr. McGohey: I object.

The Court: This is the ratio between voting population and—what is the other?

Mr. Gladstein: Jurors—

The Court: Yes, Mr. McGohey?

Mr. McGohey: I have objected to it, your Honor.

Mr. Gladstein: We are not talking about rents now.

The Court: I do not quite understand the ground of your objection, Mr. McGohey.

Mr. McGohey: It is irrelevant, your Honor. The health areas—

The Court: Well, there isn't anything about health area in this question now.

(2435) Mr. McGohey: I assume there is. I so understood it.

The Court: I thought he left that out after I had sustained your objection, and he is now asking merely for the ratio between the voting population and the jurors.

Mr. Gladstein: In terms of—

Mr. McGohey: Of a given area.

Mr. Gladstein: In terms of where they live in particular Congressional Districts, that is true in terms of a health area—

The Court: Ah. Well, you slipped in that little part at the end, "in terms of a health area." That makes all the difference. Then I guess Mr. McGohey heard better than I did.

I will sustain the objection.

Mr. Gladstein: Well now, I am not asking the witness, if your Honor understands, anything about

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the character of the health area, the rent or the occupational distribution. I am not asking that now at all.

The Court: Well, you are not going to get anything in about the health area either.

Mr. Sacher: Your Honor is treating it as if it was called an unhealthy area instead of a health area.

The Court: No, I don't think there is anything unhealthy about it. But it seems to me that an element (2436) of confusion is being put in here that I have ruled out, and I am going to continue to rule it out. So if you want to take a telephone book, which I thought is what you were starting to do, that is all right. If you want to go to the voting lists that is all right. But as to the health areas, that is not all right.

Mr. Gladstein: I will prepare an offer of proof in writing concerning this as well and we will have it marked as an exhibit.

The Court: Yes, and give it an exhibit number so that the record will show what you contend—

Mr. Gladstein: And before passing on, I just want to—

The Court: But as to what I have ruled out, the record taken today is going to decide what I ruled out, not what you put in some time later.

Mr. Gladstein: Well, I do not understand that, your Honor.

The Court: You see, when you say you will put an offer of proof in later I do not know what is going to be in that offer of proof. You may put a whole lot of things that I never intended to rule on at all. I have ruled. The ruling is, in my judgment, on the record now perfectly clear.

Mr. Gladstein: Well, I will prepare the (2437) offer so that your Honor sees it and can pass on it, of course.

The Court: All right.

*Doxey A. Wilkerson—for Defendants on Challenge—
Recalled—Direct*

Q. Do you want this phone book before you in connection with your testimony on it, Mr. Wilkerson? A. No.

Q. All right. Now, what is the nature of that address telephone book?

(Court hands book to witness.)

The Witness: I thank you.

A. Well, briefly, it lists by streets and street addresses the residences and places of business and otherwise where there are phones in New York. This is a Manhattan Directory and indicates the name in which the phone is registered and the phone number. Unlike—

The Court: Now, you have told us all about that two or three days ago. I know just what the exhibit is. So go ahead now and bring out what you want to prove, Mr. Gladstein.

Q. Now, did you make a study of any panels—

Mr. Gladstein: Oh, I offer that book in evidence.
The Court: It is in evidence.

Mr. Gladstein: I think it is just marked for identification.

(2438) The Witness: For identification.

The Court: Let us see. 21. Yes, that is right.
Very well.

(Defendants' Challenge Exhibit 21 for identification received in evidence.)

Q. Now, did you make a study of any of the jury panels in relation to data contained in that directory? A. Yes.

Q. What was the nature of that study? A. We made an analysis of the relationship between the number of jurors on six panels and the telephone listings in 12 sample health areas of Manhattan. The procedures we followed and the data produced by the analysis we have prepared in certain tables that you may have before you—Table H-3, and two pages of technical notes appended to that table—indicating with precision the methods, the sampling and what-have-

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you. I don't think the Court should be burdened with the reading of that, but it is available.

Q. Now do those tabulations and notes accurately represent and present the facts concerning this study and the manner in which it was made? A. They do.

Q. Are the figures shown on it accurate and correctly portray what they purport to? A. They do.

Mr. Gladstein: I would like to have this (2439) marked for identification.

(Marked Defendants' Challenge Exhibit 94 for identification.)

The Witness: Was that Table H-3, Mr. Gladstein?

Mr. Gladstein: With two pages of notes.

The Witness: That is right.

Mr. McGohey: May I look at it?

Mr. Gladstein: Yes (handing Exhibit 94 for identification).

Q. Now I show you 94 for identification. Will you explain to the Court what that is? A. This table—

Mr. McGohey: Well, pardon me. Your Honor, if the explanation is—

Q. Well, is it self-explanatory, Mr. Wilkerson, or does it require any additional explanation? A. Well, it depends on who is reading it.

Q. You had better explain to the Court.

The Court: I think you go to the head of the class for that one.

Mr. McGohey: Your Honor, if the explanation requires detailing all the information and giving all the testimony that is in the record, I object to that being done until I—

The Court: I gather, having heard that it (2440) relates to the 12 health areas, that you desire to indicate to me that you are going to object?

*Doxey A. Wilkerson—for Defendants on Challenge—
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Mr. McGohey: That is exactly the point I am coming to, your Honor. As far as I can see from that exhibit, it is more detailed material which I deem to be irrelevant relating to those 12 health areas as to which I understand the ruling is there is to be no more evidence.

The Court: I sustain the objection.

Q. Is that Exhibit 94? A. 94 for identification.

Q. All right. Now, does 94 for identification fairly, honestly and accurately present the facts and figures contained within it? A. It does.

Q. Is that exhibit a true reflection of the facts which that exhibit purports to reflect? A. It is.

Mr. Gladstein: I offer it in evidence.

Mr. McGohey: Objection.

The Court: Sustained.

Mr. Gladstein: May I ask the witness a question?

The Court: Yes.

(Mr. Gladstein approaches witness stand and confers with witness.)

Mr. Gladstein: Before passing to another subject I would like to put in something supplementary to one of the maps in evidence:

Q. Mr. Wilkerson, you will recall that the January 17, (2441) 1949 map contains black pins and red pins, is that right? A. That is right.

Q. And as your testimony has already shown, one type of pin refers to one of the January 17 lists and the other refers to a panel subsequently called, but called to serve for the same day? A. That is correct.

Q. Now, did you make a tabulation counting the pins that appear on that map and separating—making a separation between the jurors found on the first listing and those found on the second? A. I did make—

Mr. McGohey: Your Honor, could we have that map identified by an exhibit number?

*Doxey A. Wilkerson—for Defendants on Challenge—
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The Court: Well, I have before me a copy of Exhibit 65, and it does not appear on that whether it is the first listing of January 17, 1949 or the second, or both.

The Witness: If the date is correct it is both.

The Court: Do you recall, Mr. Wilkerson?

The Witness: If you are talking about the same map that I have in mind it is both.

The Court: Isn't that the one you are now talking about?

The Witness: This is the one, and in the original (2442) exhibit, as is not clear, of course, in the photostat, there were red pins and black pins.

The Court: That is right. So I think it is all clear now, Mr. McGohey. This Exhibit 65 includes both drawings for January 17, 1949, and, of course, on the photostat the color of the pins is not apparent, and that is why the testimony is being elicited relative to that point, which I think is perfectly proper.

Mr. Gladstein: That is No. 65 in evidence, for the record.

The Court: That is right.

Q. Now, did you make a tabulation so as to show the separation between black and red pins? A. I did.

Q. Do you have a copy of it with you? A. I have.

Q. All right, will you state for the record what that tabulation demonstrates? A. The thing that we were concerned with ascertaining here was whether or not there was any significant difference in the geographical distribution of jurors drawn on the second January 17th panel from that which characterized the geographical distribution of jurors on the first January 17th panel. And the tabulation I have before me indicates in general that even though there was at least one, possibly two or more, jury panel drawings between the drawings of (2443) the the January 17th first list and the January 17th second list, that the geographical distribution of the jurors on the second January 17th listing followed the pattern of concentration precisely observed with reference to the first listing

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quite some time previously. I have considerable information here, Mr. Gladstein, if you want me to read it, on the several Congressional Districts and the sub-areas of those districts, comparing these two listings for one day but drawn at different times.

The Court: Have you got the dates of the two listings?

The Witness: They are both January 17.

The Court: Yes, but you said a little while ago that there was quite an interval between the time one was drawn and the other, and that in the meantime there had been a lot of other drawings—

Mr. Sacher: As to January 17, your Honor, the second drawing was on January 7. I think the first was in November.

Mr. Gladstein: The exhibit itself for identification will show, Judge, because each of the panels indicates when it was drawn. So if the clerk will let me have—

Mr. Gordon: It is November 17 and January 7.

Mr. Gladstein: Is it? All right, November 17, (2444) January 7.

The Court: All right, I have got it down, that is fine.

By Mr. Gladstein:

Q. Will you continue, Mr. Wilkerson? A. Yes. The analysis reveals the following, that in the 26th Congressional District of the Bronx—

Mr. McGohey: I beg your pardon, your Honor. Apparently the witness is reading from an exhibit or some kind of a paper. I would like to see what it is.

Mr. Gladstein: Well, I am asking him to give data. He said he has tabulated it, and we can use it in connection with his testimony, surely. It is statistical data.

The Court: The request is merely that Mr. McGohey take a look at it, and I see no objection to it.

*Doxey A. Wilkerson—for Defendants on Challenge—
Recalled—Direct*

Mr. McGohey: So I can understand it.

Mr. Gladstein: I will never refuse to let Mr. McGohey look at any document. Go ahead.

Mr. McGohey: I would just like to have an opportunity to look at it as the case goes along.

The Court: Yes, you may look at it and study it a moment or two, and Mr. Gladstein will pause until you have had a chance to look at it.

Mr. McGohey: All right. (Examining.)

(2445) Q. All right, will you continue, Mr. Wilkerson?

A. Did you ask me to continue?

Q. Please. A. In the 26th Congressional District in the Bronx there were 36 jurors on list 1 for January 17, 1949, and 42 jurors on list 2. Within the 26th District 21 of the 36 in that entire large district, if you recall the map, the Congressional District area there, 21 of the 36 in the 26th Congressional District came from Parkchester area of that Congressional District. And in the second listing 27 of the 42 in the 26th Congressional District came from Parkchester; or, in other words, the Parkchester area accounted for 58 per cent of all the 26th Congressional District jurors found on the first listing for January 17 and 64 per cent of all those found on the second listing for January 17.

Q. And what percentage of all of the jurors on each of these respective panels was represented by jurors who lived in the 26th District? A. The jurors on the first listing from the 26th District represented 15.2 per cent of all the jurors on the panel.

By the way, when I refer to all jurors on the panel, bear in mind that we are here making an analysis of Bronx and Manhattan jurors, and "all" refers to jurors in Bronx and Manhattan.

(2446) Q. At this point? A. Yes. These are the Congressional Districts in these two boroughs.

Q. Will you continue? A. For the second listing the 26th CD jurors comprised 20.1 per cent of the total for Bronx and Manhattan. To pick out—would you have me read these for each Congressional District?

Q. I wish you would do so so the record will be clear.
A. All right.

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Mr. McGohey: If your Honor please, I suggest if the exhibit is going to be offered probably there is not going to be no objection to it, and we could save the time of reading it.

Mr. Gladstein: We could do that.

Will you let me have that? We will mark it for identification and offer it at this point,—with this question, Mr. Wilkerson:

Q. Are the figures and the data shown on this tabulation accurate? A. They are.

Q. And they truly portray what they are intended to portray, namely, a breakdown of the geographical location of jurors on those two listings that I mentioned? A. That is correct.

(Marked Defendants' Challenge Exhibit 95 for identification.)

(2447) Mr. Gladstein: I will offer 95 for identification in evidence, your Honor.

Mr. McGohey: No objection.

(Defendants' Challenge Exhibit 95 for identification received in evidence.)

Mr. Gladstein: There are a number of things about this exhibit that the witness ought to call attention to and for the record should be testified to, but I observe it is a moment or two before quitting time, so perhaps it would be well to recess now?

The Court: We will go on with that at 2.30.

(Recess to 2.30 p. m.)

(2448)

AFTERNOON SESSION

The Court: Now something was said this morning, rather parenthetically it is true, about briefs. Now, it has been my custom since I have been on this court, to try my best to keep current; it has been one of my most serious problems because I feel if I ever get behind in my work I would never

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catch up. And so in many, if not most of my cases, I have indicated to counsel that if they have briefs or memoranda or authorities the time to give them to me is during the trial, because in most of my cases I have decided them immediately upon the close of the taking of testimony. I know that that is not always done by everybody, and sometimes I can't do it myself, but I try very hard to do that in all of my cases in order to keep up to date and current with my work.

So I would not want anything said by counsel and not commented upon by me to leave them with the impression when this challenge proceeding is terminated that there is going to be some period of time fixed for briefs, because there is not. I have been following the proofs, as I think must have been evident to every one, with the utmost care, and that is the way I do with all my cases.

So that if anybody has some argumentative material (2449) or briefs or authorities, I welcome it and I am very glad to receive it at any time during the taking of the testimony, and I shall study it with care. But I would not want anyone to think that there was going to be some period left after the taking of testimony was concluded for putting in briefs and making argument and things of that kind.

Mr. Sacher: May I address you briefly on that, your Honor?

The Court: Yes.

Mr. Sacher: I think I made that reference this morning to the question of briefs. And I should like to say that the exclusion of samples which we have referred to and the reflection upon samples as being misleading—and I can conjure up no reason for the characterization of them as being misleading, except perhaps that they are not being regarded by either your Honor or the Government as constituting a representative sampling—in view of that situation it certainly is necessary for the assistance of the Court for us to make an analysis of that portion,

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if not all, of the relevant data which will enable us to arrive at a conclusion or present material for your Honor to arrive at a conclusion on the basis of the evidence in its entirety.

(2450) Now we regard the situation in regard to the health areas as being so significant, whether taken in adequate sample part or in its entirety, that we will need the time to prepare that data for your Honor.

Now I lay that before the Court at the present time because I think your Honor is certainly familiar enough with the arithmetical and statistical aspects of this to appreciate that time will be necessary. And I made reference to briefs this morning only because I think that that material that I referred to will have to be analyzed and presented to your Honor in some form, whether it be in the form of a brief or whether it be in tabular form or some form which will enable your Honor to grasp, to isolate, the material on which we rely.

The Court: Well, you know, I remember when I tried my first patent case I suffered a good deal during the trial and I guess the lawyers suffered even more. But I told them, just as I have been telling you, that they had better get busy giving me the authorities and the argument as we went along because when the last of the two lawyers sat down I was going to decide the case. And they said, "Oh, no, Judge, you won't do that, no one ever does that. We always get three or four months to put briefs in and to get the minutes written out, and so on."

(2451) "Well," I said, "maybe you did that in other cases, but in this case I am going to decide it when the last of you two lawyers sits down at the close of the case, if I possibly can, and I just want to let you know that." And that is precisely what I did.

And that I think is precisely what I am going to do in this case, if I feel that I understand it, and I think as I go along I have understood it pretty

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well so far. And all I am saying is, whatever you want to give me, give me as we go along and don't get the impression that any amount of discussion or argument is going to prevail upon me to put off until some later day the making of the decision when you get the briefs.

I have a very definite thought that one of the bad things about the law is this continual putting of things off and waiting for the minutes to be written out and waiting for the briefs to be put in, and extensions of time, and the thing goes on and on and on.

Now, the way to avoid that is to pay the closest attention as the evidence is going in, and that I do. It is very trying sometimes, it is very fatiguing for me to sit up nights reading cases and memoranda and all that, but I would rather do that than get behind in my work and then just play around with the cases and never get them decided.

(2452) So you will please be guided by what I have said.

Mr. Sacher: There is only one question that I would like to see if your Honor will be good enough to help me on, and it is this: The material I am talking about is material which does not lie within the power or the province of the lawyers to expedite. I have in mind not material which is in its basic sense brief material, as it is material which will spell out the contents of the various census reports that have been presented in evidence in relation to the composition of the various juries.

Now, what we will need will be the time to lay that before your Honor. It is not a question of holding up your decision; it is a question, rather, of preparing the material and laying it before the Court.

If we could be assisted in knowing, for instance, what would be regarded as an adequate sampling, we might be able to handle the matter. In other words, specifically, what I have in mind is, we selected these various jury panels, these 28 or 30

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or 31 that have now been submitted in evidence, on the basis, I think it was made clear, and we started out in January—

The Court: 31.

Mr. Sacher: There were 31. I think your Honor is right. We took two monthly periods in each successive (2453) year and successively monthly periods, figuring that that, as Mr. Wilkerson explained, would give the Court and all parties a view of the distribution of jurors over all seasons of the year, so that we thought we were establishing an adequate sampling.

Now, if we could have agreement on the proposition that that constitutes an adequate sampling for all the panels in the last ten years, then our work would be, so to speak, cut out for us, and we could limit the stuff—that is, the analysis and the compilation—to those 31 panels and lay it before the Court.

On the other hand, if the question remains open as to whether that sampling is either adequate, representative or typical, and we have to resort to analysis of larger numbers of these panels, then I think we will be under the necessity of appealing to your Honor for time within which to submit such analyses to you.

The Court: This statistical data has gone on and on and on here, and I have been gradually wondering what I was ultimately going to do about it if it keeps on much longer. The pattern of it was apparent to me the first day or so, and the way you were proceeding has seemed to me to be an endeavor to bypass the authorities who administer the jury system and who in all other cases have been the source of the testimony produced (2454) by those who challenged the system.

Now, I am beginning to feel if this statistical matter is to go on and on and on indefinitely without end, I suppose the time will come when I have to do something about it. But I am not disposed to try to advise counsel as to what they should do, and I think we had better let the matter rest as it is.

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Mr. Sacher: I would just like to make one observation, if I may, your Honor. I think what is being overlooked with regard to this challenge is that we are charging the existence of a conspiracy in this case in the matter and manner of selection of jurors, and I know that I offer nothing more than a legal platitude when I say that conspiracies are not usually proved by calling the conspirators to the stand to testify. And so what we have done is something that is everyday practice for prosecutors to do. We are trying, in the first instance, to establish by circumstantial evidence the existence of the conspiracy and the nature of the conspirators. And it may be that when that foundation has been adequately laid and the conspirators are hemmed in by a wall of unanswerable evidence, maybe then it may be good practice to call some of them to the stand to face the music in the light of that evidence.

(2455) The Court: Yes, and it may be I will sit around and listen to that kind of talk indefinitely and it may be I won't.

Mr. Sacher: Well, your Honor, all I can say is that we have—well, I was going to say “deferred,” and I am sure your Honor would use a stronger word with regard to it—but we have deferred to the Court's request to direct ourselves to various types of proof, and we have tried as well as we could to comply with those directions of the Court.

The Court: That is all right.

Mr. Sacher: But what I am trying to point out is that in the last analysis we are confronted with a problem which I think your Honor faced in the course of his practice of dealing with the order of proof in such manner as not to endanger the establishment of the proposition to which we are dedicating ourselves. And so here all I am saying is that we want the time, not to be consumed in the court-room, just the time to deal with the material that your Honor will regard as adequate.

Now, if the Court or the prosecution should say that the 31 panels constitute an adequate sampling

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on which to proceed with the consideration of the case, then I think that will be very helpful and might save a considerable amount of time and discussion.

(2456) The Court: Well, you know, it sounds as though you were in effect saying to me, "Now, Judge, we charge Judge Knox and all the other Judges of the Southern District with conspiracy and corruption, and we wish your Honor would tell us just what is the best way for us to go about proving that. We would appreciate it."

Mr. Sacher: I don't think, your Honor—

The Court: It seems as though that is what you were asking me.

Mr. Sacher: I don't think the vanity of any lawyer at this defense table would permit him to put the inquiry just that way, your Honor, and we have, if not too high, at least not too low, an opinion of ourselves. All we are saying is if you will only be good enough to let us alone we will prove it.

The Court: Well, if I were to leave you alone goodness knows what you might do.

Mr. Sacher: We are not asking for help; all we are asking is don't obstruct us. We will make progress if we are not obstructed.

But, in any event, seriously, your Honor, I think what we are speaking about now, is not the question of how to prove this; all I am addressing myself to is a very simple question, and that is, does the Court regard (2457) 31 panels selected in the circumstances and for the purposes indicated, an adequate sampling of all of the panels over the 10-year period covered by the earliest, the intermediate, and the most recent of the 31 panels that we have selected?

If your Honor says No, if you say 40 or 50 would be, or 70 or 80 selected from such months and such months, we will try to accommodate ourselves to it. But, after all, this is more than a mere game. We have got really important questions, important to the prosecution, important to the defense, important to all the people in our city and in our country under consideration in this case, and I think, therefore,

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that it is something which deserves serious consideration from the point of view of what is an adequate sampling. I am not talking about what constitutes proof; I am just addressing myself to what will the Court and the Government consider an adequate sample on which to argue out the case one way or the other, decide it one way or the other? In other words, will it be said that we are going to be submitting cumulative evidence if we were to submit further panels to the Court? That is the question, really, I think, which is raised by the inquiry I am making.

The Court: Now, you had better go ahead with the rest of your proof.

(2458) Mr. Gladstein: Your Honor, could I make an observation based on what your Honor has just said?

Mr. McGohey: Pardon me just a moment.

May we have the record clear that two of the defendants, I think the defendant Dennis and the defendant Potash, are absent this afternoon, but by agreement with counsel made before the recess?

The Court: And it is agreeable to all of the defendants that they be absent?

Mr. Crockett: Yes, and Mr. McCabe, your Honor, is also absent, and he asked me to make a notation of that fact in the record, and it is perfectly agreeable to his clients and all the other defendants.

The Court: Very well.

Mr. Gladstein: Your Honor has said that you have been watching very closely the evidence as it has been introduced, and it is quite true that as each exhibit was offered either for identification or for introduction in evidence, your Honor did look at a number of these and satisfied yourself—

The Court: Well, I did more than just look at the numbers on the pages.

Mr. Gladstein: —as to materiality.

Now, I want to suggest respectfully that the numbers of the exhibits already in evidence, those that (2459) have been identified and not yet received, and others which will be brought before you in terms

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of their total content are such that your Honor could not possibly absorb the evidentiary nature of all these exhibits and their impact on the question of your ultimate findings of fact, without a good deal of study.

Now, one of the things—

The Court: Well, you know, you may be like a good many members of the public who think a Judge has a wonderful time. He comes in at 10:30, sits on the bench and goes off at 4:30, and everybody thinks that is all he does. Well, now, I get down here to the court house about half past eight most mornings and it is very seldom that I am out of here before half past six, and there is many an evening that I am working too, and I am not the only Judge who does that. So if you think the only attention I pay to these things is what little indication there is in the record of my comments based on exhibits, and so on, I think you are making a mistake.

But we get into these arguments about everything. You want to prove that when I say I followed the evidence, that I did not follow the evidence; that I just look at the numbers of the exhibits and that I really don't know anything about it. Well, I suppose we can go on and argue those things, but I think it is really futile (2460) to do so.

Mr. Gladstein: I was merely indicating—I am not suggesting that you work short hours or long hours, your Honor—

The Court: You were just telling me that when I said I knew about the things that I really did not, and that you as a lawyer can tell there are so many pages and so many statistics, and that I could not possibly have understood it in these three weeks that we have been on trial. Well, that is your opinion, and I suppose it is entitled to some weight.

Mr. Gladstein: All your Honor has said is that you work long hours, and I suggest that establishes the need for a trade union of Judges, perhaps, to get better working hours.

The Court: I might think of joining one.

Mr. Gladstein: But my point is that nevertheless, your Honor, there is material already in the

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record which is so voluminous and which must be read and understood by anyone who prepares to make findings of fact, that I just want to suggest the necessity of having this kind of matter abstracted, briefed, and the highlights thereof called to the attention of the Court.

And, as a matter of fact, it was with that very thought in mind, if the Court please, that we did such (2461) things as present what, according to scientists, statisticians, are regarded as very adequate and scientific methods of sampling.

When these 28 panels originally, now 31, were obtained and subjected to study, that was done without knowing beforehand what might be shown, and it did not make any difference to us whether there was a variation of some portion of one per cent between one panel or another. That wasn't the question. The question was whether or not there existed over a period of nearly ten years a pattern, a system, something that the human brain and the naked eye could see and recognize immediately.

Now, although everybody, one would think, who did not prejudge the matter here—

The Court: Well I deny the motion to disqualify me.

Mr. Gladstein: Well, you were anticipating. I wasn't going to make one.

The Court: I am very quick to catch on, and I thought when you said "anybody who does not pre-judge," it was just another way of telling me again what you have told me so many times, and your colleagues have told me so many times: that I have prejudged it all; that I am biased and prejudiced and unfit to sit here. Now, I am (2462) familiar with that, and if you think you are going to get me excited saying that over again, you are making a big mistake.

Mr. Gladstein: I wasn't going to say it over again, and if I were it would not be for the purpose of getting you excited. It is true I have a definite mind on the question of whether legally you are disqualified, whether you are biased, but I wasn't going to express it.

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The Court: They went all the way up to the United States Supreme Court with it, and I suppose if there was any further you could go, you would do that.

Mr. Gladstein: They didn't pass on your Honor's bias. They did not say you were unbiased—

The Court: They denied the application for certiorari.

Mr. Gladstein: Yes, they refused to hear the question of whether or not you were biased, that is true, but that does not mean, your Honor, that they passed favorably on the contention of the Court. It does not mean, of course, that they held that you were biased, but neither does it mean that they held you were unbiased.

The Court: Well, you don't really need to keep rubbing it in and telling me every day that I am (2463) prejudiced, biased, corrupt, and all that sort of thing, because after a man has been called names a certain number of times they have no effect on him any more.

Mr. Gladstein: Now, before the Court's interruption I was about to point out that what is important here is the question of your Honor's determinations upon the objections Mr. McGohey has raised, and sometimes even without him suggesting it—

The Court: Yes, maybe I have a right to make a comment from the bench once in a while. It seems probably wrong to you and your colleagues, but it is commonly done, and I have no intention whatever of refraining.

Mr. Gladstein: I wasn't referring to your Honor's comments, because they are always welcome. I was referring to the rulings that you make adverse to the defendants even before the United States Attorney opens his mouth to make an objection. That has happened.

The Court: That is sometimes done too.

Mr. Gladstein: Well, it has been done, and pretty consistently in this case, I will say that.

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Now, my point is this: Take, for example, the exhibit that your Honor rejected today, would not permit me to put into evidence. That exhibit, for all your Honor knows, for all Mr. McGohey knows, for all that (2464) I know, would be accepted by statisticians or economists, or scientists who deal with these matters as an absolutely true representation of what the rest of the community looks like in terms of the issues that that presents, in terms of the arguments that are voiced by that exhibit without any embellishment or oratory from anybody. But what has your Honor done?

The Court: Ruled it out. I have ruled it out.

Mr. Gladstein: You have ruled it out exactly.

Now, the only real basis on which objection could be made to it is not that it is inadmissible as a matter of law but would go to the question of the weight to attach to the exhibit. If, in other words, an adequate sampling required more than twelve health areas or more than six jury panels, or more than is presented there, it is just a question of covering enough of the field so that in terms of human possibilities the Court can have what is probative evidence. And yet your ruling has been such as to indicate that even if we had taken Manhattan and Bronx and Westchester and all of the 31 jury panels, and had shown all this data, the character of your ruling has been such as to indicate that you would not even allow that.

Now, does that mean that the Court presents us with the impossible problem which we can't possibly overcome (2465) of providing evidence as to every single jury panel in the last ten years? Because the Supreme Court has indicated that we have not only a right but a duty in establishing the persistence of a pattern to go back a number of years and show it, and show what has been taking place.

Now, your Honor's ruling indicates that the evidence we are offering simply is not going to be received upon the theory that this is merely a sample, and your Honor has said misleading, although nothing warrants that kind of characterization. So for

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that reason it is going to be necessary for us in some manner to call your Honor's attention to the significance, to the legal effect and the inferences that strongly impel themselves to be derived from that kind of exhibit.

There is another thing your Honor said that I want to answer.

The Court: Maybe over next week end you can get up a little brief on that containing the argumentative matter and give it to me Monday morning. Not that I say you must do that. You may do it or not to do it as you choose. I have only indicated that if someone thinks that at the close of the evidence I am going to give a period of time for briefs, to that I say no, (2466) I am not going to do that; and if you have anything to say by way of argument give it to me, as I ask lawyers in my other cases to give it to me, during the case.

And I may say I have been doing that now for a year and a half or so, it is not so long, but I never got into such arguments with lawyers as I am having here about complying with my request.

Mr. Gladstein: Well, I will be very happy to try to present the Court with a brief. I have been a little bit occupied these last few days.

The Court: Yes.

Mr. Gladstein: And it is not an easy task to research the authorities and present them to you on the question of admissibility of this kind of data which is obtained by sampling methods. But if your Honor, if there is any possibility of having the effect of those authorities respected and obtaining a reconsideration of the ruling that your Honor has taken, I will certainly do whatever I can to get that memorandum of law to the Court.

The Court: I try to respect all authorities, those that are controlling and those that are persuasive. I try to do my duty as a Judge. I do not think it is very nice of you to put in that little insinuation, but I take it in good part. And so we will pass it.

(2467) Mr. Gladstein: Very well. It isn't half of what I felt like saying, your Honor, as a result of what you said.

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The Court: Well, I can well believe that.

Mr. Gladstein: Does the Court want a copy of this exhibit? You don't have one, I know.

The Court: Yes. That is the one you had photostated during the lunch period.

DOXEY A. WILKERSON, resumed the stand.

Mr. Gladstein (To the witness): Do you want to give it to the Court, or the original?

Mr. McGohey: Just so we have a clear copy.

Mr. Gladstein: Can I look at yours, Mr. McGohey?

The Witness: I think I have another one.

Mr. Gladstein: Do you have another copy?

The Witness: Yes.

Direct examination continued by Mr. Gladstein:

Q. Now at the recess you were pointing out certain facts contained in this exhibit which is now—

Mr. Gladstein: Numbered what, sir? You have that?

The Clerk: 95.

Mr. McGohey: 95.

Mr. Gladstein: 95. Was it received in evidence? (2468) Mr. McGohey: Yes.

Mr. Gladstein: Thank you.

The Witness: You didn't finish your question, did you, Mr. Gladstein?

Mr. Gladstein: The witness is making a calculation or a computation of some kind.

The Court: That is all right.

The Witness: No. Did you finish your question?

Mr. Gladstein: No. I thought you were making a calculation.

The Court: He thought you were making a mathematical calculation there.

*Doxey A. Wilkerson—for Defendants on Challenge—
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Mr. Gladstein: I was going to wait, Mr. Wilkerson.

The Witness: Go right ahead.

Q. Now would you be good enough to point out, using this Exhibit 99 as a point of reference, the data that you compiled, dealing particularly with those neighborhoods or areas that are shown on the maps that are in evidence and which you have called by certain names established in the record? A. Yes. It should be pointed out that there are 233 jurors represented here on the first listing of January 17th and 209 for the second listing of January 17th. The initial thing that should be observed concerning this (2469) distribution of these jurors is that in certaains areas—let me illustrate: In the 24th Congressional District in the Bronx, for example, that is—well, we have been discussing that area—

Mr. McGohey: Mr. Wilkerson, will you please keep your voice up a little?

The Court: I can't hear him and I am sitting right alongside of him, he whispers so much.

Mr. Gladstein: I heard him, Judge, and I am a good deal further away from Mr. Wilkerson than you are and my hearing isn't as sharp as it used to be.

The Court: Maybe I didn't speak truthfully when I said I did not hear him.

Mr. Gladstein: I did not suggest that.

The Court: I meant to—

Mr. McGohey: Well, your Honor, I assure everybody that I was speaking truthfully. I am having difficulty, and as I explained before that may be my fault, and not Mr. Wilkerson's. And I would appreciate it if he would speak a little louder.

Mr. Gladstein: Do that, will you, Mr. Wilkerson?

The Witness: Surely.

Mr. McGohey: Thank you.

The Witness: I get absorbed in what I am interested and sometimes forget that—

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Recalled—Direct*

(2470) Mr. McGohey: I realize that.

The Witness: And I appreciate these remarks, and I will be very glad to try to keep my voice up.

Mr. McGohey: Thank you.

A. (Continuing) In the 24th Congressional District of the Bronx out of 78 jurors in the first listing two were chosen. Out of 92 on the second listing none were chosen.

The Court: I don't quite follow that. I see Congressional District 24 in the lefthand column and I see that 2 and 0. But where do you get the 78 from?

The Witness: At the bottom.

The Court: That is the total number of jurors?

The Witness: On the first listing, at the bottom of the second column.

The Court: That is out of a total number of jurors?

The Witness: Oh, pardon me. Did I say 78?

The Court: You did say 78.

The Witness: I am sorry. Yes, it is much worse than that. Of 233—

The Court: Well, strike that out. Just give us the figures without these comments, if you will.

Q. When you say "chosen" you mean these are the people who were chosen by the clerk and put on the jury list? (2471) A. Yes. And my error, I was in error when I referred to 78. I was looking at the wrong column. The fact is that out of 233 jurors in the first listing two came from the 24th Congressional District in the Bronx, and out of 209 in the second listing in Manhattan and Bronx none came from the 24th Congressional district.

To curtail the time involved, let me deal in percentages hereafter with several other C.D.'s. In Manhattan two—

Mr. McGohey: Could I interrupt for just a minute? I am a bit confused by a remark that Mr. Wilkerson made. He talked about those who served.

*Doxey A. Wilkerson—for Defendants on Challenge—
Recalled—Direct*

Do I understand it that in this table, Defendants' Challenge Exhibit 95, you are talking about persons who appear on the panels?

The Witness: This is what I am talking about here and in all cases.

Mr. McGohey: Yes. Well, you say "served." You don't mean that they actually served as jurors in the box, do you?

The Witness: I have no information on that. In that respect—

Mr. McGohey: That answers my question.

The Court: When you said "served" you did not mean served, because you don't know whether they served (2472) or not?

The Witness: The technical meaning of "served" I don't know. What I do mean is jurors listed for that panel.

The Court: That is right. It is better to say so.

Mr. Gladstein: I want to point out for the record, your Honor, that I don't think you are correct in what you said to Mr. Wilkerson.

In lawyer's parlance a juror serves perhaps only when he sits in the jury box, but in legal contemplation a citizen serves when he is called by the clerk as a juror on a panel and he comes down here and waits in the juryroom to see whether or not he gets selected. And each of those jurors who are called are called to serve as potential jurors for a period of approximately two weeks.

The Court: They are called to serve, and I suppose in one sense we can say they served, but if we use the word in one sense at one time in the proceedings and in another sense at another time we only have more confusion. And I take it all the witness desires to say as a fact is that these statistics come from lists of persons called to serve, that is, lists of persons put down on the panel.

Mr. Gladstein: Exactly. And that is all he has ever said.

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(2473) The Court: Why not leave it there and have him go on?

Mr. Gladstein: All right.

A. (Continuing) Among 233 persons called to serve on juries in the first listing of January 17th, less than one per cent resided in Harlem's 22nd Congressional District. And out of 209 on the second listing for this panel, none resided in Harlem's 22nd District.

Mr. McGohey: May I interrupt with another question at this point, please, your Honor.

Is it contended that the total number of jurors on the panel for January 17th was 233? Is that what that figure purports to represent?

Mr. Gladstein: That is Bronx and Manhattan.

The Witness: I made that clear, I think, that it is Bronx and Manhattan jurors.

Mr. McGohey: Oh, just the Bronx and Manhattan jurors on that panel. Thank you. I am sorry.

Mr. Gladstein: It says so right at the top, Mr. McGohey.

The Court: Yes, it does.

A. (Continuing) The 19th Congressional District which we have been referring to as Lower East Side, had four of the 233 jurors in the first listing, and five of the 209 in the second listing. The respective percentages (2474) for the 19th Congressional District for those two listings are 1.7 per cent and 2.4 cent.

The 18th Congressional District, Mr. Marcantonio's district, had five jurors out of the 233 on the first listing, and eight out of the 209 on the second listing. The percentage of the first listing of jurors who came from the 18th C.D. then was 2.1 per cent, and in the second listing 3.8 per cent.

I have read here just a few samples. I want now to read one more which I think would enable us to wind up this particular discussion. The 17th Congressional District—

Q. We have called it the Silk Stockinged District, Mr. Wilkerson.

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

Mr. Gladstein: I say we have called it that. It has been called that.

The Court: That is a parenthetical remark by Mr. Gladstein.

Mr. Gladstein: That is all.

The Court: Well, then, I think we can disregard it.

Mr. Gladstein: It is your district, Judge. I just wanted to have you await the evidence with that (2475) understanding.

The Court: I think I know what you are talking about without your bringing those things in. But go ahead.

A. (Continuing) Out of the 233 persons called to serve on the first listing for January 17th, 78 of them or 33.5 per cent, one-third of them, came from this one Congressional District, the 17th. And of the 209 chosen to serve, as represented by the second listing, 92 came from the 17th Congressional District, or 44 per cent.

In the course of our discussion of maps earlier we called attention to certain sub neighborhoods of Congressional Districts, which have already been defined in the record and so I won't define now other than to use their names; but there are several things shown here that are relevant to this comparison. The Parkchester area in the 26th Congressional District of the Bronx, for example, accounts for 58 and three-tenths per cent of all the 26 district jurors on the first list, and 64 per cent of all on the second list, from the 26th C.D.

The Court: Doesn't this all appear right on the face of the chart?

Mr. Gladstein: It is a matter of explanation, as I understood it.

(2476) Q. Is it clear on the chart, Mr. Wilkerson? A. It has been my experience, Mr. Gladstein, that most people are not accustomed to reading charts and tables,

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and that most people find it profitable if someone who is so accustomed interprets tabular materials.

The Court: Well, I think, and I now rule that there has been enough explanation on this one. I can see it, and I am the one that is to be enlightened in it, and I think it is quite clear for the benefit of any Appellate Court that may pass upon it.

Q. Now Mr. Wilkerson, you will recall that on the maps that have been received in evidence and which span a period of time commencing some time in 1940 and being brought even beyond the date to today, some time into February of this year, there was drawn or there were drawn boundary lines indicative of or representing the present Congressional district boundaries in Manhattan and Bronx. You recall that, do you not? A. I do.

Q. Now, those boundary lines, I believe you said, were based upon the data set forth in the Legislative Manual and which is in evidence as—I forget the number—

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

The Clerk: Election Law?

Mr. Gladstein: It is called the Manual for (2477) the use of the legislative.

Oh, here it is.

The Court: It is Exhibit 18.

Mr. Gladstein: Challenge Exhibit 18 for identification.

Q. Now, as drawn, those maps correctly set forth the Congressional boundaries as they now exist; that is correct, isn't it? A. That is correct.

Q. And they were based upon Exhibit 18, is that right?
A. Yes.

Mr. Gladstein: I offer Exhibit 18 in evidence, your Honor.

Mr. McGohey: Are you offering it all—the whole book?

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Mr. Gladstein: Well, all portions that are relevant, although only a small portion is relevant. I think it has been marked with a paper clip. I suppose the thing to do is to introduce the book, isn't it, your Honor? You can't very well introduce certain pages of the book.

The Court: Oh, I think it is sufficient to have the book marked. Those parts that have nothing to do with the case will naturally be disregarded.

(Defendants' Challenge Exhibit 18 for identification (2478) received in evidence.)

Q. Now did you know at the time the maps were prepared if the boundary lines of the Congressional Districts within Manhattan and Bronx had been changed at any time between the period 1940 and 1949? A. Yes, I knew that they had.

Q. And you were aware of the fact that there had been such a change; is that right? A. There was a reapportionment I believe in 1942 which defined new boundaries that became effective, I am pretty sure it was the 1944 Congressional elections.

Q. Now did the changes in boundary lines resulting from the reapportionment that you have referred to, effect in any way the frame of reference that those boundary lines, as presently exist, set forth on those maps? A. No, if I understand your question. There were some very real changes made in boundary lines. The number in Manhattan was reduced, I remember, and the Bronx was reorganized completely. The present boundaries of the 17th are considerably different from that area prior to that time. There were real changes in Harlem. There were changes of boundary lines. But I take it this is not your question.

The question is, does the fact of such changes at all affect the use we have made of Congressional (2479) boundary lines in maps since and before that period? Is that—

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Q. Exactly. That is the question. A. I believe we explained initially—I may be in error here—that we are utilizing Congressional boundary lines here not because they are political boundary lines and definite political entries, with which we are not concerned, but rather because they are convenient and established boundary lines designating constant geographical areas with which we are concerned. And it is the constant geographical area to which we are making reference, rather than the fact that it happens also to coincide with the political area. If, for example, we had used Congressional district boundary lines as they were in 1940 or 1941—

Q. For a map for that period? A. For a map during that period—We would have no basis whatever for an adequate comparison of whether or not the concentration areas, as we have used that term, for jurors during that early period of the decade correspond to those areas now. Our purpose could be served only by having a constant geographic form of reference throughout this whole period, and the Congressional district boundary lines serve as the convenient definition of such areas.

Q. Illustrate, if you will—take for example the case of Harlem—what the effect would have been upon (2480) your study if instead of having the Congressional District lines on all maps exactly as they are, you had changed them for the period covering the—referring to the maps prior to 1944.

Mr. McGohey: Your Honor, I object to this as irrelevant. It is certainly speculative.

The Court: Well, I will sustain the objection. And I suggest that you indicate what was the change in the boundary of that one district that became effective in 1944, and the inferences to be drawn can be drawn.

Mr. Gladstein: Very well. I would like to ask the witness this question:

Q. You mentioned that what you were concerned with in your study was to find out what had taken place in re-

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spect of residence of jurors in certain constant geographic areas. I think you used that expression. A. Yes.

Q. Now, what were you referring to when you used that expression—constant geographic areas? A. Well, that meant a particular stretch of territory that remains the same as a basis for comparison throughout the period that we are talking about. Also associated with that, though, is the subsidiary meaning that, by and large, certain areas of the city have characteristics which differentiate them from other areas of the city.

(2481) Now, the Congressional District boundaries are a rather crude measure for defining areas of the city with common characteristics, but they do to an extent that it was—that we agree to have reflected in our analysis of the geographical distribution of jurors. And it was necessary therefore to take a frame of reference which was constant throughout.

Q. Your main concern was the particular character of the particular geographical subdivision; is that so? A. Yes.

Q. Such as Harlem, Lower East Side, places of that kind? A. Yes.

Q. Now, was any effort made to study the jury lists in reference to available material as to voting figures and voting registration, political registration? A. Yes.

Q. What was done in that connection, just in general? A. An analysis was made of the relationship between jurors in these Congressional District areas we have been discussing, and the number of voters in those areas, and also in relationship to the number of registered voters for various political parties in those areas, and the vote cast for various political parties in these several Congressional districts.

Q. Now, what was the purpose of that study? (2482) A. The geographical data, particularly the maps we presented, indicate merely the place the general geographical area from which jurors are drawn and places from which jurors are seldom drawn. It contributes towards understanding the composition of our jury list if we can know something further about those places. And one of the

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things that helps to characterize these areas is the political composition of these areas as regards the registration of its voters and the vote cast. Also, the number of voters, which our analysis show has a pretty close relationship to the number of persons otherwise eligible for jury service.

Q. Well, now, what available official data was there to which you could go as sources for the materials needed to make this kind of a study? A. The official jury lists were supplied by you, and I suspect you got them from the clerk. The number of voters for different years and for different congressional districts can be obtained and was obtained from the official records of the Board of Elections in New York City and Westchester County.

Mr. McGohey: Pardon me for just a minute. Now, it is sufficiently clear I think, to me as to what this line of testimony is going to be, that it is now proposed (2483) to introduce through the witness some testimony as to the number of persons called for jury service who registered for one party or another and the number of jurors that were called for service who apparently did not register—I mean enroll; I should not have used the word “registered”—in one or the other of the parties and those who have not enrolled in one or the other parties. The evidence in the proceeding up to now is, from all the jurors that were called, that they were never asked by the clerk any questions as to their political affiliation. I object to any testimony along this line on the ground that it is irrelevant.

Mr. Gladstein: Well, now, if your Honor please, the mere fact that the clerk does not ask a person who has been called into the office by the clerk what that person's political party registration is, is wholly immaterial because—

The Court: Some districts you say they are practically all Democrats and other districts where they are practically all Republicans, so that you claim that from these districts you will indicate that by calling nobody from the Democratic districts they were excluding Democrats?

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Mr. Gladstein: Well, I say this: If New York (2484) City were a city where, say, three times as many of the voters were Democrats as Republicans—let us just take that by way of example; let us say three-fourths, let us take a two-party system by way of supposition; that three-fourths of all the voters were Democrats and one-fourth only were Republicans. And if on the other hand you showed in your jury composition that the jurors called were just exactly the opposite, then I would say that the clerk who calls people in the first place is arranging something rather suspicious in and of itself.

And if, in addition, you find not only that he has turned topsy-turvy the ordinary normal general ratios or proportions, or representative groupings that you would get if you just took a random selection when there are so many jurors; if in addition to political discrimination you also found that whereas three-fourths of the people—this is, now, hypothetical again, but by way of illustration—

The Court: It makes a good deal of difference, it seems to me.

Mr. Gladstein: Well, I want to illustrate my point.

The Court: If you are in a place where everybody in one district of the city is a Democrat, or practically everybody, it may be one thing; whereas if you get a (2485) percentage of 25 to 75 or 20 to 80 it begins to get in that same era or element of confusion that I have noticed before.

Now what I am asking you is, are you going to contend here that there are districts where there are practically all Democrats, and that from that district nobody was taken?

Mr. Gladstein: My contention—I can't answer that, yes or no.

The Court: Then I will sustain the objection.

Mr. Gladstein: Now wait a minute, your Honor. I want to answer the question but I want to point

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out that you have asked the kind of question to which neither a yes nor a no answer can be given.

The Court: I did not say you had to say yes or no. That is a new one you have just thought up.

Mr. Gladstein: Well, I wanted to answer—

The Court: I had no idea of holding you down to that. Answer it any way you want.

Mr. Gladstein: Well, no; but I started to say, I can't answer that yes or no and then you immediately said, as I think you said, that you were going to sustain Mr. McGohey.

The Court: Yes. I thought you meant that you couldn't answer it or wouldn't. You know, there have (2486) been so many times here that you lawyers have refused to answer when I asked for enlightenment as to your contention or have given answers that are tantamount to refusals. And I thought you were doing it again.

Mr. Gladstein: Well, without allowing silence with respect to a portion of your Honor's statement to indicate acquiescence as to whether at any time previously I have refused or anybody of the defense counsel has refused to answer properly a question that the Court properly asked, I want to say that I had no intention of avoiding the question, and I want to answer it.

The Court: I notice that little qualification "properly." That is like saying you did refuse plenty of times but you thought you were justified in refusing. Well, that may be so. But you refused, all right, plenty of times.

Mr. Gladstein: I suppose the record will—

The Court: You and your colleagues.

Now, here is another time.

Which is it now? Do you refuse, or are you going to answer it?

Mr. Gladstein: I am going to answer it.

The Court: All right, then, let us hear it.

(2487) Mr. Gladstein: I want to contend and I want to have the witness testify to facts that will show that just one of the byproducts of the method

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of jury selection in operation in this court for nine or ten years has been to produce on the jury panels an exaggerated over representation of a gross character of people whose political party registration happens to be the Republican Party and a distorted under-representation of those whose political party registration or enrollment, as it is called here, is that of the American Labor Party.

And I want to say in that connection that when your Honor mentioned a moment ago that—well, you said if they were all Democrats or almost all Democrats in the community and the jury composition was, well—it showed that there were just a few Democrats and most of them were Republicans, that would look pretty suspicious. And it certainly would.

The Court: If I said that, I have no recollection of it.

Mr. Gladstein: Well, I thought you implied that, at least.

The Court: I said it might be one thing if you had practically 100 per cent of one political party and it might be something different if the percentages were as 75 to 25 or 80 to 20. And the question that (2488) I asked you was, what was it you were contending here? But you did not seem to answer that question.

Mr. Gladstein: Well, I thought I did by saying we want to show that the composition of jurors as revealed by a study of the lists shows that there are mainly members of the Republican Party, and that those voters, those who are registered to vote and do vote and are perfectly eligible for jury duty, who happen to be members of the American Labor Party just don't get chosen. Now, that is one of the facts to be taken into account with the other elements of exclusion and discrimination here.

I want to submit, and I believe the courts will sustain this, that when you have a city like New York, with the example that I was giving—you say 75 per cent Democrats and 25 per cent Republicans,

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and you turn up in your jury lists with something the reverse, that is pretty strong evidence of the fact that somebody has been picking and choosing in advance in a manner calculated to obtain that result, and he has succeeded in obtaining that result. And that kind of thing which your Honor simply says, "Well, that may show disproportion," that thing (2489) is not just disproportion, that means the jury is loaded.

In the same way—

The Court: All right, now. I sustain the objection.

Mr. Gladstein: To the question I asked?

The Court: Yes.

By Mr. Gladstein:

Q. Now, Mr. Wilkerson, did you have any figures—

Mr. Gladstein: Would your Honor pardon me for just a second?

The Court: Certainly.

Mr. Sacher: Do you want to take a recess, to save time?

The Court: Yes. I will take a recess now.

(Short recess.)

(2490) Mr. Crockett: If your Honor please, I should like to be heard on the question of evidence that tends to establish exclusion from jury service because of political affiliations. I would like expressly to direct the Court's attention to that portion of the Judicial Code which provides that the jury clerk and the jury commissioner shall each place a name in the box "without reference to political affiliation" until such time as 300 or more names are in the box.

Now, the thesis of my argument is that that places a question of discrimination because of political affiliation on a somewhat different ground from the ordinary question of discrimination because of geographical location or discrimination because of

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economic status. In the latter instance, especially, economic status, we rely almost wholly upon decisions of the Supreme Court. Here, however, the question presents a more serious problem because in addition to its condemnation by Supreme Court opinion we have an express condemnation by Congress itself. It follows, I think logically, from that that it is probably a question to which the Court should be particularly invited to give its consideration where you are speaking about political discrimination. Under such circumstances it is highly probable that proportional discrimination might be (2491) held to satisfy, or, rather, to come within the condemnation of that section of the statute.

Now, the evidence that we wanted to present to the Court tended to show that in specified areas in Manhattan and the Bronx where the voting statistics indicate predominantly that the vote has been in favor of the American Labor Party, for some strange reason there is a paucity of jurors selected from those particular areas.

Now, I understand Mr. McGohey's objection to the testimony is on the ground that it was irrelevant. I could hardly conceive of any testimony that would be any more relevant if we could show that this distinction between areas that were predominantly American Labor Party in expression of their vote and areas that were predominantly Republican or Democratic in the expression of their vote had been purposefully discriminated against in the selection of jurors.

Now, it is not submitted at this time that the testimony will tend to show the deliberate character of the discrimination or the purposeful nature of the discrimination—

The Court: That is just what I am ruling.

Mr. Crockett: And we shall come to that later. (2492) But certainly we have a right to show that there has been this discrimination. Then it is up to us to present to the Court's satisfaction evidence to indicate that it was intentional and deliberate.

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I therefore request that the Court reconsider its ruling and at least accept this testimony subject to it being connected up with the requirements showing it to be deliberate and intentional.

The Court: Mr. Sacher, did you wish to say something?

Mr. Sacher: Yes. Rather briefly, your Honor, I would like to adopt Mr. Crockett's argument, because I think that from the legal point of view it is quite clear that any kind of selection based on party affiliation violates Section 1864 of the Judicial Code.

The Court: You see, Mr. Sacher, the statute provides in Section 1864 of the Judicial Code:

“The jury commissioner and the clerk or his deputy shall alternately place one name in the jury box without reference to party affiliations,”

and so on. Now, I do not consider that what you have tendered will prove that the clerk did not put the names in the box without reference to party affiliations.

Mr. Sacher: May I say this—

The Court: And I am increasingly impressed as the (2493) proceeding goes on week after week with the indirect approach that you have here. I have listened to proof for several weeks here, and I am beginning to be disposed to curtail it along the same lines because I doubt its probative force.

Mr. Sacher: I would like to call the following to your Honor's attention: in the challenge which we filed, if your Honor will be good enough to look at Table P-2 of the challenge—

The Court: Yes, I have it.

Mr. Sacher: It is the table called “Jurors in Politics.” And your Honor will find a very remarkable coincidence between the size of the Republican vote and the number of jurors per 10,000 voters in each district. For instance, let us take the 17th Congressional District—

The Court: I have it before me, Mr. Sacher—

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Mr. Sacher: All right, just by way of illustration—

The Court: —it is just that we are not in agreement about it, that is all.

Mr. Sacher: I know we are not. That is why I am addressing your Honor. There would be no occasion to if we were in agreement.

The Court: Yes, but I sometimes find a disposition on the part of you and your colleagues when I have (2494) ruled something out to get it in in some other way.

Mr. Sacher: No, because you rule before we have a chance to address you.

The Court: You may address me.

Mr. Sacher: I repeat, this is an Alice in Wonderland procedure. We always get the sentence first and then the trial. Now, if we would just get back to ordinary procedure with trial first and sentence afterwards, this might be a little bit more real—

The Court: I scarcely think that that sort of language comports with the dignity of a lawyer addressing the Court—

Mr. Sacher: I did not mean any disrespect, your Honor.

The Court: —except perhaps in jest.

Mr. Sacher: You hear one of us, you rule, and then it becomes necessary to apply to your Honor constantly for reconsideration, and for once we would like to ask for consideration instead of reconsideration, and I am trying to argue something now—

The Court: You will completely refrain from further argument along this line.

Mr. Sacher: Then may I address myself to the merits of the argument on this question? What I wish to (2495) say is the following: that the table which we presented as part of our challenge indicates that there is a correspondence between the size of the Republican vote in each Congressional District and the number of jurors called from that district for service. And I have illustrated,

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for instance, in the case of the 17th where the Republican vote is 53.2 per cent—

The Court: If you are determined to do what I have just told you not to do—

Mr. Sacher: I didn't understand you. Is that what you asked me to refrain from?

The Court: I asked you to refrain from, under the guise of argument, putting in the very figures I have ruled out in questions to the witness—

Mr. Sacher: After all, there is no jury here, your Honor.

The Court: Now, if you insist, you must, of course, take whatever the consequences are.

Mr. Sacher: Your Honor, may I say this: I have no objection to taking consequences if the occasion is one which justifies the taking of consequences. Now, if all your Honor says is you don't want me to read from a certain document, I hardly think that that is important enough to justify the consequences. I don't think the liberty of my clients is involved in this specific thing.

(2496) The Court: When I have a paper before me, Mr. Sacher, a very short paper with two or three columns of figures, about 20 figures in each column, I can read.

Mr. Sacher: Very well.

The Court: I do not need to have you read them out to me.

Mr. Sacher: But can't I illustrate an argument by a reference to one or two figures?

The Court: Not on this occasion.

Mr. Sacher: All right. Then let me simply observe the following: that what we wish to do here is to offer by way of proof, without reference now to what is in the table, we wish to offer proof which will show a correlation between the size of the vote of a certain unnamed political party and the number of jurors drawn from various Congressional Districts on the basis of the vote of that unnamed political party—I won't even whisper it.

Colloquy of Court and Counsel

The Court: Well—

Mr. Sacher: Now, that is the purpose of our proof here, and we say the following, your Honor: Mr. McGohey says that in view of the fact that a handful of jurors who appeared here testified that they were not asked any questions about their political affiliations, that therefore—therefore, mind you—there could not (2497) have been a deliberate choice by the jury commissioner of prospective jurors on the basis of party affiliation, whether with the unnamed political party or any other political party.

The Court: I suggest that you—

Mr. Sacher: Now, Mr. McGohey has been too many years in politics—

The Court: Just a second. I suggest that you mark that table P-2 for identification—

Mr. Sacher: I will be glad to.

The Court: —so that its bearing on your argument may appear clearly in the record.

Mr. Sacher: All right. May I interrupt the argument to do that now?

The Court: Yes, you may.

Mr. McGohey: Do you have an extra copy?

Mr. Sacher: I don't have an extra copy.

The Witness: Here is one.

The Court: I think you will find that the witness has one right here that he can hand you.

(Marked Defendants' Challenge Exhibit 98 for identification.)

Mr. Sacher: Now I was about to say, your Honor, at the time—I was about to address myself to Defendants' Challenge Exhibit 96 for identification that (2498) Mr. McGohey and the clerk of this court have been in politics too long not to know that there are places in this city where one can officially ascertain the party affiliation of a lot of people in this city without asking them a single question about it. And what we are trying to establish here is that the correlation between the size

Colloquy of Court and Counsel

of the vote of the unnamed political party, which I think without mentioning on the record both your Honor and I understand to be a certain political party—

The Court: I do not think you need whisper that. I think you may be allowed to say American Labor Party.

Mr. Sacher: No. I meant the Republican Party.

You see, the Labor Party does not figure very much in the clerk's calculations. It is the Republican Party with which he is concerned. And therefore what we are trying to prove here is that on the basis of what he learned from public records, the jury commissioner and the jury clerk so selected names from voting lists or from telephone books or from address books, et cetera, in such deliberate, intentional and systematic manner as to yield constantly and undeviatingly a correspondence between the number of votes selected from a Congressional District and the size of the vote of the Republican Party (2499) in that Congressional District. So that—I mean the number of jurors selected on the basis of the number of votes cast for that party. So when the number of Republican votes was large there was an outpouring, a sort of exfoliation of jurors—I don't know yet whether they were Republicans—but of jurors, and when the Republican Party vote was insignificant the number of jurors from the Congressional District in which that vote was insignificant, was insignificant.

Now, are we to say, your Honor, that the wheels of fate and chance spin in such fashion only in the office of the clerk on the 6th floor of this building as to always to come out with a number of jurors that corresponds precisely to the size of the vote in the Congressional District from which these jurors come? Or may we not rather say that providence is not always looking out over Republican jurors but that a lesser deity, a jury commissioner, or the jury clerk intervenes in these human affairs and sees to it that the needle points to a certain number in a certain district on the—

Colloquy of Court and Counsel

The Court: There are too many factors for me to feel that there is cogency in that proof.

Mr. Sacher: Well, why not receive it? We have (2500) no jury. All we are asking for right now is this: we have no jury, and rather than err on the side of too little evidence, if anything, this case is important to warrant a little bit more rather than a little bit less in the matter of evidence.

The Court: That is what I have thought up to this time, and we have been having a little bit more, and now we are going to have a little bit less.

Mr. Sacher: Is it because the evidence is becoming too devastating for the Government that we must now be circumscribed? This is the telling stuff. Why are we stopped at this point when we proceed definitely to show that the Republican Party vote is the guide to the determination of how many jurors come from a district, and not that impartial selection which the Constitution and the statute require? That is what is at stake in this instance, your Honor, and I submit I don't want to take any more of your time if we are doing nothing to influence you; I don't want to be like the Yankee in King Arthur's Court—

The Court: I always have that situation where the lawyer I disagree with, he feels he is right, and maybe he is. I can't tell any more—

Mr. Sacher: I would not argue with you if I were wrong, your Honor.

(2501) The Court: What is that?

Mr. Sacher: I would not argue with you if I were wrong, your Honor.

The Court: Well, I would not decide the way I do if I were not right.

Mr. Sacher: It is one of those insoluble contradictions, I am afraid.

The Court: We get back into that katy-did-kayt-didn't, and that is what I am trying to avoid as much as I can.

Mr. Gladstein: Now, your Honor, I want to make an offer of proof, if I may.

*Doxey A. Wilkerson—for Defendants on Challenge—
Recalled—Direct*

The Court: Yes, you may.

Mr. Gladstein: I want to prove I offer here now to prove that if the witness were permitted to answer appropriate questions which I am prepared to put to him he would testify in substance and effect as follows—

The Court: Now, if you are going to read the table—

Mr. Gladstein: I am not going to read the table, but I certainly can look at documents in my notes, Judge—

The Court: You can state any conclusion, that you want to prove thus and so, without getting into the record what I ruled out.

Mr. Gladstein: All right.

(2502) The Court: That is the reason I suggested marking that for identification, so that then you can offer it, and if there is objection and I rule it out, you have your record.

Mr. Gladstein: Well, first I will ask the witness, your Honor, so that the proper foundation is laid:

By Mr. Gladstein:

Q. Mr. Wilkerson, I want you to look at Challenge Exhibit 96 for identification and state whether you prepared it or supervised its preparations? A. I did.

Q. Are the tabulations and data shown on there correct, and do they fairly and accurately represent or portray the things which they purport to represent? A. They do. Attention should be called, however, to the fact that the sources refer to another table which I think has not been entered, and if this be true it should be indicated on this exhibit.

Mr. Gladstein: That is quite correct. There is a reference at the bottom of that to Table P-1, and I now hand a copy of that to the clerk and ask to have it marked for identification.

(Marked Defendants' Challenge Exhibit 97 for identification.)

*Doxey A. Wilkerson—for Defendants on Challenge—
Recalled—Direct*

(2503) Q. Mr. Wilkerson, I show you now a document marked Challenge Exhibit 97 for identification at the top of which Table P-1 is mimeographed, and ask you if that is the table referred to by the preceding exhibit? A. This is the table.

Q. And is No. 97 likewise a tabulation prepared by you or under your supervision? A. It is.

Q. Have you checked it for accuracy? A. I have.

Q. Is it correct? A. It is.

Q. Is it a fair and truthful representation of the facts and data which it purports to state? A. It is.

Mr. Gladstein: Now I offer both of those exhibits in evidence.

Mr. McGohey: Objection.

The Court: Sustained.

Mr. Gladstein: Now I desire the record to show that if the witness were permitted to answer questions which I am prepared to put to him at this time he would testify in substance and effect—

Mr. McGohey: If your Honor please, I am going to object to this because it is apparent now that counsel is referring to the tables which have been offered and objected to and the objection sustained.

The Court: Well, perhaps he may discover some way of putting it without having the detailed facts in (2504) the offer. I should think that the two papers which have been marked for identification should sufficiently disclose your offer, Mr. Gladstein.

Mr. Gladstein: Well, I was about to say that he would testify in substance and effect to the facts, figures and data contained in Exhibits 96 and 97 for identification, and substantiate their validity and their accuracy.

Mr. McGohey: I assumed that is what he did when he identified the record. I have no objection to that.

The Court: Yes.

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

*Doxey A. Wilkerson—for Defendants on Challenge—
Recalled—Direct*

(Marked Defendants' Challenge Exhibit 98 for identification.)

The Court: Is this P-3?

Mr. Gladstein: That is right.

By Mr. Gladstein:

Q. Mr. Wilkerson, I show you a document marked No. 98 for identification. Will you state what it is? A. This is a table entitled "Jurors and Voters" which indicates the total vote in 1948 Congressional Elections in each—or, rather, in a group of what are termed major excluded areas so far as jury service is (2505) concerned, and in another group of areas called all other areas, and also the number of jurors on each—or, rather, on six panels which came from these excluded areas and from the all other areas here indicated.

Q. Was it prepared by you? A. It was.

Q. What was the basis for the figures and data appearing on 98 for identification? A. The total vote, 1948, is based upon the reports of the New York City Board of Elections for Congressional Elections of 1948. The number of jurors by—

The Court: Elections of 1948?

The Witness: That is right.

A. (Continuing) The number of jurors who reside in the two groups of Congressional Districts is determined by the residences of jurors and their official lists and by other official information about Congressional boundary lines.

Q. What particular jury lists were subjected to the analysis referred to in No. 98? A. Again the source or reference to the same source on Table P-1. If you haven't it before you I can give you that.

Mr. Sacher: A little louder, Mr. Wilkerson.

(2506) The Court: Those are the same six panels you had identified a little while ago?

The Witness: I don't think they had been named. I should like to name them now, if I may.

The Court: Just pause a second.