

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. Will you examine Defendants' Challenge Exhibit No. 63 for identification, and state whether it is the map referring to the jury panel of November 15, 1948, concerning which you have testified? A. This is the map.

Q. And was it prepared in the same manner as your testimony indicates as to the others already received (1921) in evidence? A. Yes.

Q. To the questions I have asked you concerning the maps previously received in evidence would your answers if I were to repeat those questions be the same? A. Yes.

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

Mr. McGohey: With the same reservation, no objection.

(Defendants' Challenge Exhibit 63 for identification received in evidence.)

Q. Was a map made for any other panel dated during the year 1948? A. Yes, there is a map for December 7, 1948.

Q. That is to say, a map made in respect of a jury panel list, petit jury panel list, drawn to serve in this court commencing December 7, 1948; is that right? A. That is correct.

* * *

Q. Will you examine No. 64 for identification and state whether it is the map referring to a jury panel list drawn to serve in this court as of December 7, 1948, to which your testimony just given refers? A. This is the map (1922) that was made.

Q. Was this map prepared in the same manner as you have indicated the others were prepared? A. Yes.

Q. And to the questions that I have asked you concerning the other maps, if I were to put those same questions to you concerning this map, would your answers be the same? A. They would.

Mr. Gladstein: I offer it in evidence.

Mr. McGohey: With the same reservation, no objection.

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(Defendants' Challenge Exhibit 64 for identification received in evidence.)

Q. Now Mr. Wilkerson, the trial of this case was scheduled to commence as of the 17th of January 1949. Was a map prepared to represent pictorially the location of the residences of the petit jurors in Manhattan and Bronx designated to serve on the panel for that day? A. There was such a map prepared.

* * *

Q. In all of the questions I have asked you concerning the residence and addresses of the jurors, am I correct in understanding that these maps show such addresses as (1923) taken from the lists of the jury clerk? A. That is right.

Q. In other words, whatever is shown on the clerk's own lists as to the address of the juror was accepted and used on the map, is that right? A. Yes.

Q. Now, would you examine No. 65 for identification and state whether it is the map, referring to a panel drawn to serve January 17, 1949, in this court, concerning which you have testified? A. This is the map.

Q. Was it prepared in the same manner as you have indicated the others were? A. Yes.

Q. And to the questions I have asked concerning those other maps, if I were to repeat them, would your answers be the same? A. Yes.

Mr. Gladstein: I offer it, your Honor.

Mr. McGohey: With the same reservation, no objection.

(Defendants' Challenge Exhibit 65 for identification received in evidence.)

Q. Mr. Wilkerson, on this map I notice that there are two types of pins, those with a red colored head and those that are black in color, and in this respect this is the first map brought into court that uses two colors of pins. Will you explain the reason for that? A. This map was initial-

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ly made on the basis of the first list of jurors drawn for the January 17th panel, (1924) 1949.

Q. And which pins represent the addresses as shown on the jury clerk's lists of the jurors in Manhattan and the Bronx for that panel? A. The red pins indicate where the jurors live as indicated on the jury lists in the first listing for January 17, 1949.

Q. All right. What do the black pins represent? A. When we learned that there was a second listing for this panel, January 17, 1949, we obtained that list—you did for me—and we likewise plotted the residences of the jurors in that second listing, indicating the difference by using this time black pins.

Q. So that, in other words, as I understand your testimony, the red pins indicating locations of the residences of jurors in Manhattan and Bronx, as shown on the clerk's list first selected and announced to serve for January 17, 1949? A. That is right.

Q. And the black pins represent the location of the addresses of jurors in Manhattan and Bronx as shown by a second drawing or panel which was obtained later in time and which was announced as supplementing the regular or first listing? A. That is correct.

Q. Now, to the questions I have asked you concerning the manner in which previous maps already received in (1925) evidence were prepared, your answers, if I were to repeat those questions, would be the same, I take it? A. That is correct.

Q. If I were to ask you concerning the accuracy of the map, concerning the manner of preparation, and all of the other questions I have asked you concerning maps admitted in evidence, your answers would be the same if I were to repeat those with respect to this map, is that right? A. Yes.

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

The Witness: Prior to the presentation of the first map you asked a question that I said I would illustrate when we had the map before us. Would you like me to illustrate that now?

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Mr. Gladstein: First I want to have it received in evidence, Mr. Wilkerson, and then I will ask you something about that.

Mr. McGohey: With the same reservation, no objection.

(Defendants' Challenge Exhibit 65 for identification received in evidence.)

Q. Is there something particular you desire to point out about this map? A. No.

Q. Now, Mr. Wilkerson, when there was made available (1926) a list from the clerk's office of the panel of petit jurors called to serve, commencing February 1, 1949, was a map prepared in respect of that panel? A. A map was prepared.

* * *

Q. Will you examine No. 66 for identification and state if that is the map to which your last answer referred? A. This is the map.

Q. Was it prepared in the same manner as you have testified concerning the maps previously received in evidence? A. It was.

Q. And with respect to its accuracy, the source of the information shown on the map—that is to say, the addresses taken from the jury clerk's official list, and with respect to the other aspects of the maps, if I were to ask you the same questions I have asked concerning the maps previously admitted in evidence, would your answers concerning this particular exhibit for identification be the same? A. They would.

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

(1927) Mr. McGohey: With the same reservation, no objection.

(Defendants' Challenge Exhibit 66 for identification received in evidence.)

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(Short recess.)

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(1928) The Court: * * * Now, Mr. Isserman, the other day we had two motions that were made in your absence—one was to disqualify me and the other was to disqualify all the judges in this district in connection with the matter now pending—and I am anxious to dispose of those. And unless you feel that you desire to add something to what your colleagues said I will proceed to determine those motions now.

Mr. Isserman: I would say, your Honor, that I have examined the record and I stand on the record in its present shape.

The Court: Very well. I deny both of those motions.

By Mr. Gladstein:

Q. Now Mr. Wilkerson, I want you, if you will, to turn your attention to these maps and point out for the (1929) record the areas in which there exist concentrations of pins and the areas in which there are either no pins whatsoever or a very sparse presence of them. Would you start with the February 6, 1940 panel? And I have asked you some questions about that in the record on Friday but on examining the record I find that there are lots of references to "this" or the word "here" is used and the record simply is not intelligible. So will you be good enough when you do that to refer to the particular area by name?

By the way, do you have with you any information that indicates the boundaries of the Congressional Districts that are shown on these maps? A. No, other than what is in the Legislative Manual.

Q. Do you have anything to indicate the boundaries of certain areas within those districts? A. Yes. For convenience, since in describing the concentration areas and relatively barren areas we will be using the names which designate little localities, sub-areas of the Congressional Districts, we did rather specifically define what we mean by, for example, Harlem. When we use the term—

Q. What is the source of that information? A. This is simply the definition of what the term means as we use it

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in relation to these maps; and of course (1930) it coincides with general usage so far as the definition of these neighborhoods or communities of the Bronx.

Q. For example, start with any one of these neighborhoods that you desire to point the Court's attention to on the February 6, 1940 map and indicate what the boundaries are of the neighborhood area that you refer to. A. All right. Just for illustrative purposes at this point?

Q. Yes. Would you do that? A. Well, you will note here (indicating) which happens to be—

* * *

Q. Mr. Wilkerson, when pointing don't say "here" but refer to a portion of the map in a manner that will identify it in the record. A. I was going to add that. At this point (indicating) is the area that we will refer to frequently here as Washington Square Park.

Q. When you say "this point" what point on the map is that? A. This point, I am about to tell you, in the lower extremity of the 17th Congressional District south of 14th Street and west of Broadway to the borders of the 14th—of the 17th Congressional District—

The Court: To the what?

The Witness: South of 14th Street and west (1931) of Broadway to the borders of the 17th Congressional District.

* * *

Mr. McGohey: Would the witness be good enough to state what that border of the 17th District is with respect to the place he is now describing?

The Witness: I don't have the details of that before me. It is available in the Manual.

* * *

Q. When you refer to the border you mean the border drawn on the map? A. The border drawn on the map for the 17th District. Is this the question the gentleman is asking?

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Q. I think Mr. McGohey wants to have the word "borders" defined. We can refer to the actual language of the Legislative Manual and read it into the record at this time.

The Court: Well, it is that north and south street; it is on the easterly border of the 17th District. That is the one that Mr. McGohey is asking for.

Mr. McGohey: If your Honor please, I would (1932) like to find out what the witness understands by it because he is undertaking to describe a neighborhood called Washington Square.

The Court: Yes.

Mr. McGohey: And if I may say to the Court, I can read the Manual and find out what the streets of the 17th District are, but I would like to know what the witness's boundaries of the area which he designates Washington Square are.

The Court: I think that is a fair question.

The Witness: May I refer to the—

Mr. McGohey: Yes, certainly.

The Witness: Mr. McGohey, I think we indicated Friday that these Congressional District boundaries were made by tracing on a map the specifications for such Congressional District boundaries in the Legislative Manual. Now at each point, I do not recall precisely where the boundary—I don't remember from memory, but we did check the boundaries carefully. Now, the specific question you ask is, what is the western boundary at this point of the 17th Congressional District?

The Court: No, his question is, what do you say it is in making your calculations.

Mr. McGohey: As to what constitutes the Washington Square District.

(1933) The Court: That is right.

Mr. Sacher: That has nothing to do with boundaries. He simply wants to know what area the witness describes as Washington Square, is that it?

The Court: What he has in mind as constituting the Washington Square District.

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Mr. Gladstein: I think he had already read that.
 The Witness: I will do it again.

Q. Do you want to elaborate on that? A. We mean by Washington Square area the area centering around Washington Square Park south of 14th Street, along Fifth Avenue particularly, extending at this point (indicating) on the map to the upper part of what we are calling the Washington Square area, over to Seventh Avenue and a little bit farther down as the boundaries of the Congressional District are irregular, over to approximately Eighth Avenue.

I should like to say this at this point. When we are describing sub-areas such as Washington Square Park as we are using it here, we are describing areas that have no legal status whatever, they are not political entities. It is generally understood by people that by Washington Square you mean the area around Washington Square. If you mean on this side of the street or that (1934) side of the street, such precision we do not attempt to undertake with reference to these sub-areas. But we are using them as a general aid to the Court in locating and designating what are commonly understood and accepted designations for these sub-areas.

The Court: You still haven't answered the question.

The Witness: Will the Court state the question?

The Court: What do you consider to be the boundaries of this so-called Washington Square area? You said Fifth Avenue, Seventh Avenue and Eighth Avenue, and that left the back door open, as I understand it.

The Witness: I think originally we said south of 14th Street. That closes the north border.

The Court: Yes. South to where?

The Witness: To the south end of Washington Square. I think they call it Washington Square South; I am not sure. That closes the south border.

The Court: That is right.

The Witness: We said west of Broadway. That closes the eastern border. Right?

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The Court: The westerly side of Broadway according to you is the easterly border of the Washington Square area and the westerly border is Eighth Avenue?

The Witness: At one point. And at another (1935) point Seventh Avenue. That is why we use the general reference westward to the Congressional District line which is not regular but rather is on several streets. It is this area which again we assert has no legal status but is a generally recognized neighborhood in New York, in Manhattan, that we have in mind when we refer to the Washington Square Park area.

The Court: Frankly, I have lived here in New York all my life, and was born here, and I don't know just what it is. I would have to go to a real estate man I think to find out what the Washington Park area was. But anyway, you have given me what you understand it to be for the purpose of your chart. So that is all right.

Mr. Sacher: Your Honor was born in Brooklyn I suspect.

The Court: Well, that is New York City. Perhaps I should be more specific. You know, people born in Brooklyn are quite provincial in some ways.

Mr. Sacher: That is what I thought.

The Witness: I live in Brooklyn, your Honor.

The Court: (To witness) That is just a little aside.

Mr. McGohey: May I ask one more question, your (1936) Honor please? May I?

The Court: Yes indeed you may.

Mr. McGohey: I take it from your answer, Mr. Wilkerson, then that the area of any neighborhood that you are describing is of necessity fluid, not fixed; is that correct?

The Witness: If by that you mean—this is true, yes. And I want to impress that when we are talking about these sub-areas of a Congressional District we aren't now talking about precise boundaries which are to the inch the same in each map.

Mr. McGohey: Or even to the block, I would say.

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The Witness: Or to the block. That is true. There is an occasional variance, for example. But I am giving you these definitions of the general locale so that you can place it within the 17th District which we are using as a precise area which accords with the Legislative Manual.

Mr. McGohey: Oh, I understand the precision of it—

Mr. Sacher: Your Honor, I object to this. What is this? Cross-examination or intervention or what?

The Court: Objection overruled.

Mr. Sacher: I respectfully except.

The Witness: Does that answer your question? (1937) Mr. McGohey: Yes, I understand about the precision of the Congressional Districts. I just wanted to get it clear in my mind, if I can, what is in your mind when you are talking about neighborhoods.

The Witness: Let me illustrate a little further, maybe it will help. There is an area, to indicate the general term, getting some of the least general—we will speak occasionally of Gracie Square. By that we mean Carl Schurz Park, west to York Avenue, which is about here (indicating) on the map. Now, on any particular map the juror may live at this one block or he may live in the next block or he may live the block below; but we are designating that general area or neighborhood as the neighborhood of Gracie Square. We are not posing a specific boundary for Gracie Square but are using rather this useful designation so that we can refer to points within the Congressional District which in general parlance around New York are pretty well known. These terms by the way we did not think of but they have been utilized in a number of publications describing the area of New York and are a part of the language of the community.

By Mr. Gladstein:

Q. The people of New York use those terms, don't they? A. Yes.

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(1938) Q. Is that right, Mr. Wilkerson? A. This is correct.

Q. In other words, you might ask a person where he lives in New York and he may say he lives in the Washington Square Park area, is that right? A. And you will expect that he lives in this southern extremity of the 17th Congressional District.

Q. Now regardless of any fluidity that Mr. McGohey is referring to, it is a fact, is it not, that the houses in the immediate vicinity of Washington Square Park don't move from year to year but they remain there, isn't that so? A. I think that is generally—

Q. In other words you have a more or less permanent nucleus within each of these neighborhood areas, isn't that true?

Mr. McGohey: If your Honor please, I object to the leading of the witness.

The Court: Sustained.

Q. Well, I will ask you what the fact is in that respect.

The Court: Don't you think he has already made that clear, Mr. Gladstein?

A. The fact is—

Mr. Gladstein: May he answer, your Honor?

(1939) A. (Continuing) —that we have in all of these areas that we will call attention to, our sub-areas, relatively stable—indeed they are highly stable communities—the houses of which remain, the residents sometimes move out, but for the most part the residents during the period we are talking about remain. There are a few exceptions to that that we will call attention to in the course of our discussion. But we are talking about relatively stable sub-neighborhoods. Does that answer the question?

Q. I think so. You have mentioned two of these neighborhood areas. You call attention to Washington Square Park and its location on the map of Manhattan. And you have also called attention to Gracie Square. By the way, you did not indicate in what Congressional District Gracie Square is to be found. A. Gracie Square is on the eastern

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border of the 18th Congressional District, along about 88th Street, I think it is.

Q. Will you indicate, if you will, the other areas, just enumerate them if you will, and refer to them as you go along that you want to call attention to? A. Well, in some of the maps farther down the line we will have occasion to call attention to what we call the Parkchester area which happens to be in the heart (1940) of the 26th Congressional District of the Bronx. Now, we haven't defined—well, we can—from East Tremont Street south—maybe the record should show this: by Parkchester we are speaking about from East Tremont Street south to McGraw from White Plains Avenue and east to Castle Hill. But such precision is hardly essential however for our purposes because everyone I believe with some little knowledge of the Bronx is familiar with this large housing development of the Metropolitan Life Insurance Company that is known as Parkchester.

But to go on: we refer occasionally to Riverdale, which is in the 25th Congressional District of the Bronx, Riverdale is for our purposes here this northwest corner of the 25th Congressional District, west of Broadway. We refer to a less clearly defined area—we will from time to time in the course of our discussion of these maps—that we will call rather loosely the New York University-Fordham area. Now, really that is one of the loosest characterizations but it is about as adequate as one we could give, and it serves for our purposes. We are referring to the area around New York University, which is in the lower—southwesterly corner, southwesterly corner of the 25th District, running northeast up to and somewhat (1941) above Fordham University, which is on the eastern border of the 25th Congressional District. We will refer—

Q. Before you leave that can you indicate a little bit more precisely the general boundaries within which the New York University-Fordham area or neighborhood area is embraced? A. Northwest of New York University, which is a pretty definite locale, to East 211th Street, which is about up here (indicating), bordered by Webster, Jerome and Kingsbridge Avenue in the Bronx.

Q. All right, will you proceed? A. We refer to Bronx Park which is in the 25th District—

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Q. Congressional District? A. Congressional District
in the Bronx.

* * *

A. (Continuing) What we call the Bronx Park area of the Bronx is in the southeast corner of the 25th Congressional District, east of Webster Avenue, which (1942) on the map runs approximately where you are seeing me drawing the line. It is south of Fordham and to the east border—the southwest corner, roughly, I mean the southeast corner roughly of the 25th Congressional District of the Bronx.

We will refer to the 24th Congressional District in which there is an area we will call Highbridge. Now, here again—

The Court: What do you call that?

The Witness: Highbridge.

The Court: Yes.

A. (Continuing) This area is west of Webster, extending from about 161st Street to 176th Street.

In the 21st Congressional District, which is in Manhattan, we will refer to a sub-area known as Washington Heights. And for our purposes here we are thinking of Washington Heights as that part of the 21st Congressional District, the boundaries of which are here drawn, which extend from about 158th Street north to Fort George and Hillside Avenues. We will refer to an Inwood area which is that part of the 21st District of Manhattan immediately north of what we are calling Washington Heights. And this extreme upper part of the 21st we are referring to as the Inwood area.

And the area towards the middle of the 21st (1943) north of 158th Street as Washington Heights.

I will refer from time to time to what we call the City College area which is also in the 21st Congressional District of Manhattan. And by that we mean that part of the 21st District which extends from about 135th Street to 158th Street, which we are using as the border line between this sub-district and Washington Heights.

Q. It is south of Washington Heights? A. It is south of Washington Heights.

In the 20th Congressional District we will refer to an area roughly designated here as Riverside-West End. We

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are thinking of an area which is roughly parallel to Central Park, farther to the east, which covers Riverside Drive and West End Avenue west of Amsterdam Avenue.

In the same general area I will refer to south or 42nd Street or I will refer to the Chelsea area or the Hells Kitchen area. We are really thinking of all of the 20th District south of 42nd Street to its lower extremity, which is about 24th Street, 26th Street.

(1944) Q. 24th or 26th. A. About 26th Street.

Q. All right. A. In the 18th Congressional District—

Q. You have already referred to Gracie Square in that district. A. That is the only sub-area we referred to there.

Q. All right. A. Now in the 17th Congressional District there will be a number of sub-areas which are loosely defined but which gives a frame of reference.

Q. And which are generally—

Mr. McGohey: I object to the leading question, your Honor.

The Court: Sustained.

The Witness: I should like to call attention to why it is necessary in the 17th District to call attention to quite a series of sub-districts, sub-areas, that we will designate. If you will note the borders of the district from Central Park, upper extremity of Central Park, it moves down around Eighth Avenue, and what is known as West Central includes a block there along West Central Park and moves on down. Then on the eastern side it includes two or three blocks. Here is Fifth Avenue, Park Avenue, that part of Park Avenue which is above the New York Central tracks, at the point where the tracks come out from under Park Avenue from 96th to 97th Street, we have quite an entirely different kind of area. (1945) But the 17th includes Fifth Avenue, Park Avenue; it goes over to about Third, I think it is, to Second. At one point here, just below the Queensboro Bridge, its borders go out to the East River, and then they come back again, moving down what is about Second Avenue to the southern line, which is on a parallel with South Washington Square Park.

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Now, in that area which embraces a number of pretty distinct neighborhoods, we will call attention here to what we call Central Park West. By that we really mean this area west of Central Park to the boundary line, to the western boundary line of the 17th District. We will refer to Fifth Avenue here, at times we might say east of the park or east of Central Park. By that we mean this area bordering on the east along Central Park and further eastward to the boundaries of the 17th Congressional District.

We will refer to Central Park South. By that we mean an area that is west of Third Avenue, north of Fifth Avenue, but immediately south of Central Park.

We will refer to Sutton, Beekman, Tudor, which is really several areas—

Mr. Sacher: Just a moment, Mr. Wilkerson. You said north of Fifth Avenue. Did you mean east of Fifth Avenue?

(1946) The Witness: With reference to Central Park South, I said north of 50th Street,—did I say Fifth Avenue?

Mr. Sacher: Yes.

The Witness: I meant to say 50th Street. Thank you for the correction. And west of Third Avenue.

A. (Continued) By Sutton, Beekman, Tudor—these are names that I think most people are acquainted with. Tudor City, for example, is at the eastern extremity of 42nd Street; somewhat above there is what is known as Sutton Place and Beekman. Well, when I use that designation, we are thinking of this little outshoot that was provided here for the 17th District to go out to East River, designated on the map by these two points of the 17th—

Mr. Sacher: What points are they, please, for the record:

The Witness: Immediately below the Queensboro Bridge, and above about 40th Street—from about 40th Street to Queensboro Bridge, and about Third Avenue east to the river.

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By Mr. Gladstein:

Q. East to the river? A. East to the river.

Q. Now, the Queensboro Bridge, you say that that is the northernmost extremity of that particular sub-area. What street approximately is that? A. It is about 59th.

(1947) Q. All right. A. I have already referred to the Washington Square Park area.

We will speak of an East Chelsea area, by which we mean west of Sixth Avenue in what is below 42nd Street, west of Sixth Avenue to the boundary, to the east boundary of 20th District and south of 42nd Street.

In the 16th Congressional District, which is the lower—well, we will say the southwest end of Manhattan Island—we will refer to London Terrace, which is a block between 23rd Street and 24th Street between Ninth Avenue and Tenth Avenue, and we will also have occasion to refer to Greenwich Village, which, roughly, we are thinking of it as the area south of 14th Street to Houston Street, which is the upper part of the 16th Congressional District.

I don't know whether it is essential, Mr. Gladstein, but I should like to indicate once more that we have gone through this tedious process for the purpose of indicating approximate neighborhoods which are a part of the general language of the community which are pretty clearly defined natural areas, as sociologists—well, let us not use the term—pretty defined, clearly defined neighborhood areas in Manhattan and Bronx, and which we used here merely as a basis for a ready reference and designation of clusters of pins that we will find on these (1948) maps or bare spots that we will find on these maps.

Q. All right. Now will you indicate, Mr. Wilkerson, paying attention to the map of February 6, 1940, what neighborhood areas found there show large concentrations of pins, and which ones are either barren or blighted or have only one or two or very few pins? A. Well, let us begin by calling attention to concentrations. By the way, in this connection, so that our information could be a little bit more precise than otherwise would be true, I examined each of these maps and made a separate sheet with certain facts about the district, population, and what have you; counted the exact number of pins in the areas and

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sub-areas we are talking about, and I have that summarized, and I will refer to it as a help in analyzing these maps.

Does that reference that you have just made include an actual count of the number of pins in a particular area or within a particular district? A. That was the purpose of it.

Q. And you have those noted down, is that right? A. So that we would not need to say—you will notice there is a cluster of pins in a certain area, but we went to that cluster and counted them, and we have here a record of that, which I will refer to from time to time.

Q. Very good. A. Now, you want the general facts (1949) shown by this map:

In the 26th and 25th—well, in the 26th there is a scattering of pins, hardly any substantial cluster. I think it should be mentioned this is the 26th Congressional District of the Bronx; that in that area there are 21 jurors representing 9.1 per cent of the jurors—

Q. Of the whole panel for that date? A. Of the Bronx and Manhattan jurors of the panel for that date.

It might be worth while to indicate something about relative population using as a rough index the voting population in these different areas, and we could give that information if you wish in relation to these various Congressional Districts.

Q. I wish you would, Mr. Wilkerson, and it is clear in the record that you are now discussing, your attention is now directed, to the map of February 6, 1940; is that right? A. Yes.

The Court: Exhibit 54.

Mr. Gladstein: Yes, thank you, your Honor.

The Witness: It is also clear, I trust, that we are utilizing voting population here, at this point merely as a rough indication of the extent to which the Congressional District has people living in it.

Q. Who vote? A. Who vote, yes. That is, people (1950) of such an age.

Mr. McGohey: I didn't get that last, Mr. Wilkerson.

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The Witness: People of such an age.

* * *

The Court: I didn't get that either. People of such an age?

The Witness: But this information is not of the people of voting age but actually the number of voters as reported by the New York City Board of Elections. In the Congressional districts—

Mr. McGohey: May I ask for what year?

The Witness: 1944, I was about to tell you that. In the case of this particular map it is the year 1944. Maybe I should explain why.

By Mr. Gladstein:

Q. Will you explain as you are doing that whether you are talking about enrollees, or whether you are talking about the figures put out by the Board of Elections of those who actually voted? A. This refers to actual voters.

Q. Where did you get the figures? A. Board of Elections.

Q. And all you did was simply—I—

Mr. McGohey: I object to the leading.

(1951) Mr. Gladstein: I started to withdraw it.

The Witness: Now with reference—

Mr. Gladstein: Excuse me.

A leading question, your Honor, is objectionable only when it is directed to the most material aspect of testimony. But when you are asking a witness about the fact that he got some figures from the Government's source—

The Court: Now, Mr. Gladstein, I know all about leading questions, and when the Court in his discretion will allow them, and when he won't. Now you go ahead and lead him as little as necessary.

Mr. Gladstein: I don't have to lead him at all, and I won't, your Honor.

The Court: That is all right. It is just not to get into an unnecessary argument about it. Because I know plenty about leading questions. I have probably tried a few of them myself in my day.

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Mr. Gladstein: Asked a few of them too.

The Witness: I started to explain why we used for this 1940 map the 1944 voting population. We might have got the 1940 voting population, but the Congressional District boundaries had changed, and if we used voting figures for 1940 they would refer to geographical areas different from the ones we have drawn on the map here. (1952) And the most recent voting data which referred to these precise Congressional Districts was 1944. That is the nearest to the date of this particular panel.

Q. That is the 1940 map and maps in that period? A. That is right.

Q. But now when you come to— A. Now, subsequently we will call attention to voting population data which are current or much closer to the date of the actual date of the panel.

Q. That is to say, maps for the later part of 1948 and 1949— A. Even 1946.

Q. —and 1946, when you discuss those you will refer to voting figures that are later in date than the 1944 ones, and which came from the Board of Elections, is that right? A. That is right.

Q. All right, will you proceed, Mr. Wilkerson? A. I think it will be well just systematically to proceed by Congressional districts.

Q. Do so. A. And then to call attention to certain outstanding features of the map as a whole:

In the Congressional District, the 26th Congressional District of the Bronx, this large V here (indicating) there were 182,926 votes cast in 1944 in the Congressional Elections. This area has 12 per cent of the voters in all of the Congressional districts (1953) shown on this map—that is, Manhattan and Bronx.

Q. It had, you mean, in 1944? A. It had in 1944, yes.

On the jury panel of February 6, 1940, there were 21 jurors from that Congressional District, the 26th representing approximately nine—in fact, 9.1 per cent of all the jurors in Manhattan and Bronx, as shown by this map.

In the 25th Congressional District where there were in 1944 194,805 votes cast in Congressional elections, a dis-

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trict which includes 13.3 per cent of the votes in the 1944 election, Congressional election, for the area shown on this map, there were 10 jurors on the February 6, 1940, panel, representing about 4 per cent—4.3 per cent.

Mr. McGohey: Pardon me, your Honor. If your Honor please, I move to strike out the testimony as to the percentage because it affirmatively appears from the witness's testimony that he is comparing jurors called in 1940 with a voting population of 1944.

The Witness: On the contrary. Your Honor, may I make a comment, because Mr. McGohey is in error?

The Court: No. Usually the witnesses in most cases wait until somebody asks them a question, and if there is something that they desire to clear up, why, (1954) they leave it to their counsel to do that.

The Witness: Pardon me.

The Court: It is a little disturbing to the proceedings to have the witnesses ask questions.

I grant the motion.

Mr. Gladstein: Will your Honor please—

The Court: I will listen to what you have to say.

Mr. Gladstein: —suspend the ruling until I have had a chance to address myself to the motion?

The Court: Yes. I thought the witness had already testified as to why he used the 1944 voting statistics, and that sufficiently demonstrated that the basis for the conclusions here was not a proper one.

Mr. Gladstein: No conclusions are being offered, your Honor, and that is precisely the point I want to draw your attention to: I take it that we could sit here and make the computations ourselves, and if your Honor desires that be done, why, that is all right; but Mr. Wilkerson has been good enough to make a computation showing that the ten jurors on the panel of February 6, 1940, who came from the 25th Congressional District happen

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to represent 4.3 per cent of all the jurors in Manhattan and Bronx called on that panel.

Now, we certainly have a right to have that appear in the record; and if Mr. McGohey objects to the fact that (1955) this mathematical calculation has been made, which can be made by any of us, and which I insist be made and be put into the record—if he objects to having the witness testify to that fact, not as a conclusion but as something that anyone who knows arithmetic can simply calculate, and which we have accommodated the Court with—that is the thing that he started to object to, the fact that the ten jurors from the 25th Congressional District represent 4.3 per cent of all the Manhattan and Bronx jurors on that particular panel. That is not something that can be arguable.

The Court: If you are talking about the 4.3 per cent of the number of jurors—

Mr. Gladstein: That is the first thing I am talking about.

The Court: —that is not what I was ruling on. I see no reason why a mathematical conclusion may not be made that there were so many jurors on the panel shown in Exhibit 54, and that of those jurors such and such a percentage were in the 25th Congressional District, provided that Congressional District was not altered, and you are referring to the time of the panel. I think Mr. McGohey's motion was addressed to something different. Let me hear from him.

Mr. Gladstein: Let me address myself to that. (1956) Your Honor certainly—

The Court: Let us find out first precisely what Mr. McGohey is claiming, so there will be no misunderstanding of it.

Mr. McGohey: I do not object to the witness's testimony as to the percentage that the jurors whose pins appear on the map bear to the total number of jurors called in that panel on February 6, 1940. Of course, I don't object to that. My objection goes to the witness's testimony that that number of jurors

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which appear, I think he said, in the 25th District—that that number of jurors bears a percentage relation to the number of voters in that district in 1944.

Mr. Gladstein: He did not testify to that.

The Court: That is just what I thought you meant.

Mr. Gladstein: Your Honor, I desire the record to be read back to you, because he didn't say that.

The Court: Well, if he didn't say that, I will take Mr. McGohey as saying it now, and—

Mr. Gladstein: I mean the witness did not.

The Court: —and consider the motion addressed to the testimony of the witness that 13.3 per cent is the percentage which the number of jurors bore to the voting population.

(1957) Mr. Gladstein: Now, your Honor, I invite you to have the record read back to you, for this reason, because you will find the witness to have said merely this, that according to the official figures from the Board of Elections, 1944 election returns, the number of votes cast in a particular Congressional District, to wit, the 25th, represented 13.3 per cent of all the votes cast in Manhattan and Bronx, that is all.

The Court: I guess he is right about that, Mr. McGohey.

Mr. Gladstein: It is not used as a basis of comparison.

The Court: We don't need to get excited, Mr. Gladstein. I have got these figures down, and as I recollect on it I think you are right.

Mr. McGohey: If that is the correct testimony, your Honor, I do not object to that, except that I do point out to your Honor that it is probably irrelevant because it is not proving anything, comparing something in 1940 with 1944. But at least I withdraw the specific objection I made.

The Court: Yes. I think what we have so far is preliminary data which I will permit to stand.

* * *

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(1958) *By Mr. Gladstein:*

Q. Now, what about the 24th District, Mr. Wilkerson? A. If I recall, I was not through with the 25th.

Q. All right, finish it. A. There was one point I wanted to make there, that the ten jurors on the panel of February 6, 1940, in the 25th Congressional District, represent 4.3 per cent of the jurors in Manhattan and Bronx for that panel. But nine of those ten jurors are in this area which I earlier designated as New York University-Fordham, extending from NYU a little bit north of Fordham University, a general sweep that you will get to know as we move through these panels, that 90 per cent of them, of the jurors in the 25th Congressional District, are in that particular area.

Now moving to the 24th—shall I?

Q. Please. A. Merely as a part description of the 24th, but we make no comparison here whatsoever, it happens that in 1944 this is an area where 129,000 people or more,—129,423, in fact, voted.

The Court: 129,423?

The Witness: 129,423.

Q. This is the figure taken from the Board of Elections returns? A. Yes, Congressional elections in 1944.

(1959) Q. Mr. Wilkerson, when referring to these figures, since you have the exact figure as published, use the exact ones, will you, please? A. Yes. Very well.

Now, in this 24th Congressional District of the Bronx, which you see designated here, there were three jurors on this particular panel, the panel of February 6, 1940, representing 1.3 per cent of the jurors in Manhattan and Bronx.

Q. On that panel? A. On that panel.

* * *

Q. Had you completed about the 24th? A. I was about to comment in a further description of the 24th District, which we indicated at 129,423 voters in the Congressional elections of 1944, that it includes 8.8 per cent of the voters in the Congressional Districts of Manhattan and Bronx.

Moving to the 23rd, in the southwest part of the Bronx, in this Congressional District there were cast in the Con-

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gressional elections of 1944 168,312 votes, representing 11.5 per cent of all the votes cast in Manhattan and Bronx Congressional districts combined. The jurors chosen—or rather, 16 of the jurors included on the (1960) February 6, 1940, panel lived in this 23rd Congressional District.

Q. At that time? A. At that time. They represent 6.9 per cent of the jurors chosen on that panel who were residents of Manhattan and Bronx.

You will note, however,—and this is why these general sub-areas are so important—that here again these jurors are restricted, or rather, live for the most part in a fairly well defined area. In this part of the 23d district, for example (indicating) there are no juror pins whatever.

Mr. Sacher: What part is that?

The Witness: This part where the jurors are is the part which we defined a little bit earlier as Highbridge; and if you examine the map you will find there are 14 pins in that Highbridge area which represent 87 per cent—87.5 per cent of all the pins for the 23rd Congressional district on this panel.

Moving to the 22nd Congressional district—

The Court: Just a second. What did you say that percentage was on the 14?

The Witness: 87.5 per cent.

The Court: 87.5 per cent?

The Witness: Yes, a ratio of 14 to 16.

Shall I proceed, your Honor?

(1961) Mr. Gladstein: Just a second, Mr. Wilkerson, if you will. I have just made that computation, and it is 87.5 per cent, your Honor. That is, dividing 16 into 14.

The Court: I have got it.

By Mr. Gladstein:

Q. Would you proceed, Mr. Wilkerson? A. Since we are moving down the map I might move now into the 22nd Congressional District, which is the heart of the area generally referred to as Harlem, which popularly we know of as the New York City of Negroes within the City of New York.

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Within the 22nd Congressional District in the 1944 Congressional elections there were cast 97,124 votes, representing 6.7 per cent of all the votes cast in the Bronx and Manhattan Congressional districts. There is in the Harlem area, in the 22nd one pin so far as the panel of February 6, 1940, is concerned, representing .4 of one per cent of the jurors on that panel who live in Manhattan and Bronx.

In the adjacent 21st Congressional District there were 142,335 votes cast in the 1944 elections for Congressman, representing 9.8 per cent of the votes cast in those elections in all of these Congressional Districts in 1944. In that Congressional District there are some (1962) 20—not some—there are 22 pins representing 22 jurors' residences as of the panel of February 6, 1940. These represent 9.5 per cent of all the jurors who lived in Manhattan and Bronx who were chosen for that February 6th panel.

Now, within that area I think it should be pointed out that in what we defined a little bit earlier as the Washington Heights area, there are twelve jurors living representing 54.5 per cent of the jurors in the—

* * *

A. (Continuing) Of the jurors in the 21st Congressional District.

* * *

Mr. Gladstein: "Living"? I did not understand him to say "living."

The Court: He means residing.

The Witness: Yes.

I should call attention also to what we defined earlier as the City College area, that is, the 21st District between 135th and 158th Streets. In that area there are seven jurors, seven of the 22 from the 21st District—that is, they lived there at the time of the date of the February 6th jury panel.

(1963) *By Mr. Gladstein:*

Q. Supposing I put these questions to you, Mr. Wilkerson, and perhaps we can hurry this a little. Have you completed with the 21st District? A. I was about to say that those seven in the City College area represent 31.8 per cent of the jurors in the district.

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Q. Now, what about the 20th Congressional District? Do you have figures on the vote cast in 1944 in that district? A. 141,270.

Q. What percentage,—

The Court: Just a second. What was that figure?

The Witness: 141,270.

Q. What percentage of the voters in Manhattan and Bronx for that year was that figure? A. 9.7 per cent of the vote.

Q. How many jurors on the February 6, 1940, panel are found to have been residing as of that date in that 20th District? A. 23.

Q. What percentage does that figure of 23 bear to all of the jurors in Manhattan and Bronx on that panel? A. Ten per cent of the jurors in the 20th C.D.

Q. Is there any particular concentration to be observed within any sub-area or neighborhood in the 20th? A. Yes.

(1964) Q. Where? A. Particularly in the area we designated as Riverside, West End—

Q. How many pins there? A. There are 16 of the 23 pins, representing 69.5 per cent of the jurors in the 20th Congressional District.

The Court: 15, you say?

The Witness: 16.

Q. Is there any particular barren area within the 20th Congressional District? A. South of 42nd Street, yes. We referred to such an area in our earlier description, south of 42nd, the southern extremity of the 20th C.D. boundary, or the southern boundary of the 20th C.D., is the area we call Chelsea, and further to the west, Hell's Kitchen.

Q. Do you find any there? A. No jurors.

The Court: Chelsea and Hell's Kitchen?

The Witness: That is right. There are no jurors—or rather, at the time of this jury panel none of the jurors who served on that panel lived in that area.

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Q. Now, the 19th Congressional District—

Mr. Gordon: Served or called?

The Witness: Maybe I should say called instead of served.

The Court: I didn't hear that.

Mr. Gladstein: The witness stated that he should (1965) have said "called" instead of "served."

* * *

Q. We understand that this refers to those who were called and whose names appear on the jury list. A. That is right.

Q. Now, let us go to the 19th Congressional District. What was the voting figure? A. 108,188.

Q. What percentage does that figure bear to the total Manhattan, Bronx vote in that election? A. 7.4 per cent.

Q. How many jurors do you find living in the 19th Congressional District who were called to serve on the February 6, 1940, panel? A. One.

Q. What percentage does that figure of one bear to all the Manhattan and Bronx resident jurors in that panel? A. .4 of one per cent. I might call attention, if I may, that the one juror in the 19th lives right near the borderline, the western border of the 19th, and for the most part this district is entirely barren of jurors during this period.

Q. When you say "this district," what are you talking about? A. The 19th district.

* * *

(1966) *By Mr. Gladstein:*

Q. Now Mr. Wilkerson, let us go to the 18th Congressional District. What is the figure supplied by the Board of Elections as to the vote cast in that district in the 1944 Congressional elections? A. 98,242.

Q. What percentage does that figure bear to the total Manhattan and Bronx vote cast that year? A. 6.7 per cent.

Q. How many jurors are found living in the 18th District who were called to serve on the February 6, 1940, panel? A. Eleven.

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Q. And what percentage does that bear to the total number of Manhattan and Bronx resident jurors on that panel? A. 4.8 per cent.

Q. Now, is there any particular area or neighborhood within the 18th Congressional District that you want to call attention to? A. Yes.

Q. What is it? A. I mentioned a little bit earlier (1967) that the 18th Congressional District includes quite a stretch of territory which is quite different in character in different parts. I mentioned, for example, that above 96th Street where the railroad tracks come out from under Park Avenue, it comes to be an area of, for the most part, low income working class homes, predominantly Porto Ricans in population.

The Court: Predominantly what?

Mr. Gladstein: Porto Rican, your Honor.

The Witness: Porto Rican.

A. (Continuing) Whereas, south of 96th Street along Park Avenue, Fifth and others, we get, if you will pardon the expression, very swanky apartment houses, a much higher income residential area; and I want to call attention to the fact that north of 96th Street in the 18th Congressional District, where there were eleven jurors on the panel of February 6, 1940, there was only one juror in the upper part of the 18th District.

Q. You mean that of the eleven on that panel who lived in the 18th District, one only of those eleven lived north of 96th Street; is that correct? A. That is correct.

Q. Now what about the 17th Congressional District? Do you have the voting figures for that district in 1944? A. Yes. 164,106 votes.

(1968) The Court: Just a second. You say in the 18th there was one north of 96th Street where it was predominantly Porto Rican, and do you say the other ten came from the swanky places?

The Witness: No, I say they came from below 96th Street where the much better residential apartments and homes exist.

The Court: That is, the other ten maybe came from swanky places and maybe not.

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The Witness: They came from this better residential part of the 18th District which is below 96th Street.

The Court : Now you are turning to the 17th?
The Witness: That is right.

Mr. Gladstein: That is your district, your Honor.

Q. Will you give us the figures on the 1944 vote, Mr. Wilkerson? A. There were 164,106 votes.

Q. Now, what percentage did that figure bear to the total 1944 vote in Manhattan and Bronx 1944 Congressional elections? A. 11.2 per cent of the vote.

Q. Now, at that point, I will ask you, Mr. Wilkerson, to look at the figures. Is it true that the 11.2 per cent of the total vote—that is, Bronx-Manhattan—cast in 1944 by the voters in the 17th Congressional District (1969) was a smaller percentage and a smaller number indeed than votes cast in the 23rd and 25th and the 26th, is that right? A. That is correct.

Q. Now, what is the number of jurors that you find in that panel who came from the 17th Congressional District? A. There were 115 jurors from the 17th Congressional District on the panel of February 6, 1940.

Q. And what percentage does that figure, 115, bear to the total number of jurors found on that panel in Manhattan and Bronx? A. They represented 49.8 per cent of all the jurors on that panel of February 6th who resided in the Bronx and Manhattan.

Q. Now, can you break that figure down a little for us to indicate the areas that you have already referred to, the sub-areas or neighborhood areas, and give us the figures shown by count of the pins? A. I will do this without going through all of the redefinitions of sub-area boundaries.

Q. No, don't redefine it, because we have that already. A. In the Central Park West portion to which I am pointing here on the map of the 17th Congressional District there were 20 pins representing 20 jurors living in Central Park West, or 17 per cent—17.4 per cent of all the jurors in the 17th Congressional District.

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Q. Fifth Avenue? A. In what we call Fifth (1970) Avenue on the east side of the park there were 38 jurors, approximately—well, exactly 33 per cent of the total.

Q. For the 17th? A. For the 17th.

Q. Well, suppose we don't worry about the percentages within the 17th and just give us the figures for the neighborhood areas. A. Very well. In the South Central Park area there were 13 jurors, in what we were roughly calling Sutton, Beekman, Tudor neighborhood, there were nine jurors. In the Washington Square Park area of the 17th there were ten jurors, and in—

Q. Well, that is all you have? A. Yes, that is right.

Q. All right. Now you have another congressional district that you have not mentioned yet. That is the 16th, isn't that right? A. Right.

Q. What was the vote cast there in 1944? A. In the 16th Congressional District there were—that is, in the Manhattan portion—35,206 votes cast.

Q. Now, what percentage does that bear to the total vote? A. Representing 2.4 per cent of the total vote.

Q. How many jurors on the panel of February 6, 1940, were found to reside in the 16th? A. Eight jurors.

(1971) Q. The percentage is what? A. 3.5 per cent.

Q. That is to say, the percentage is—the figure 8 bears a ratio of 3.5 of the total number of jurors, is that right? A. In Manhattan and Bronx.

Q. Out of those 8, where did you find them concentrated on the map? A. 6 of them were concentrated in what we earlier defined here as the Greenwich Village area, representing around 75 per cent of the jurors in that area in that Congressional—

The Court: Is that one of these rich areas, the Greenwich Village area?

The Witness: The Greenwich Village area varies. For the most part it is not a wealthy area, but it does have here and there some high rent and pretty nice apartment houses. I am making no comments at this point about where the jurors come from, but the area does include some pretty wealthy residential property.

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Q. Now, I would like to call attention to the map of April 14, 1941, which is Defendants' Exhibit No. 55 in evidence, and now that we have the definitions of the terms that we are using clear in the record, and also the fact that we are using the 1944 voting figures—that is correct about this map, is it? A. That is correct.

Q. All right. Now suppose we proceed to examine (1972) that one in terms of the type of information you have given us as shown on the face of the map that you have already talked about. Now, the 26th Congressional District—

The Court: Couldn't you tabulate this, Mr. Gladstein?

Mr. Gladstein: Tabulate?

The Court: I say, couldn't you tabulate this and perhaps save quite a little time? If he is going to follow that same formula—

Mr. Sacher: May I suggest, your Honor, that the witness perhaps be permitted in court as to each map to name the number of the Congressional Districts, state the total votes cast, total number of jurors drawn, ratio between vote cast and total vote cast, and ratio between jurors and total number of jurors from Manhattan and Bronx, without any question, so that you will have it for each map.

The Court: I think that is just what Mr. Gladstein proposed to have him do.

Mr. Gladstein: Yes.

The Court: I was wondering if you could put it on a piece of paper and offer it in evidence.

Mr. Sacher: I think it would be better in the record.

(1973) Mr. Gladstein: I would like it read in at this point.

The Court: I take it you gentlemen would prefer to have it read into the record?

Mr. Gladstein: Yes, but I think I can short-cut it, your Honor, if we could have an understanding that that is what in effect is being done, and the reporter can simply create in the record columns that

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have certain designations, and then the witness can simply read down the figures that fall into those columns opposite the proper designations.

Does that seem sensible to you, Mr. McGohey?

Mr. McGohey: It just seemed to me, your Honor, that the witness has this all tabulated himself, because he appears to be reading, and I wonder if we could not help by marking it and putting that in evidence.

The Court: That is just what I was thinking. I don't see why not, Mr. Gladstein. There is no use in just prolonging the matter by having him go on and orally state it when he has got papers right there and we can just mark that in evidence.

Mr. Gladstein: May I have a second, your Honor?

The Court: Certainly.

I have a suggestion to make: why don't you have him go to something else, and then over the luncheon (1974) recess you can get those papers in shape, and when you come back after luncheon you can indicate whether or not you desire to accept my suggestion to offer them in evidence.

Mr. Gladstein: I was just about to announce that I am going to accept that suggestion with this understanding, your Honor: At a certain point I would like of course to have him point out certain things regarding these tabulations, but at a certain point the voting list changes—that is to say, you recall the witness said he was using 1944 figures for some?

The Court: Yes.

Mr. Gladstein: Well, when I come to the point that they use different figures, I want to elicit that from the witness specifically.

The Court: You may do that.

Mr. Gladstein: Then I will revert to the method I have been pursuing at that point, your Honor. But as to the first five, I believe—and that is 1940, 1941, 1942, 1943 and 1944 maps—we do not have these

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tabulations, and they do, in the first two columns, of course, have exactly the same figures—that is, the voting figures and the percentage that the district vote bears to the whole vote.

The Court: Why don't you just hand them to Mr. McGohey and let him examine them, and I will deem that (1975) you have offered them in evidence to be marked as separate exhibits.

Do you make objection to those, Mr. McGohey, except on the reservation that you have already made?

Mr. McGohey: Your Honor, in the discussion with Mr. Gladstein he expressed some doubt as to whether the listings which he has were clear enough to bring out the points that he desires to make without some testimony from the witness.

Mr. Gladstein: The reason being that they were not prepared with the thought in mind of being exhibits but merely notes, you see.

The Court: That is what made me think, as I said a few moments ago, that if you go on to something else, in the luncheon recess you can get those straightened out. There are a very few of them, and the figures are really quite simple, and then you can get them in shape to put them in evidence.

Mr. Gladstein: This, however, is a good—I didn't want to destroy the continuity of the testimony—

The Court: Let me just indicate something to you: I try to follow the testimony in every one of my cases with the utmost care, and I have been keeping my notes here of all this data that you have been putting in this morning. I find that if I have papers before (1976) me which show those figures for all these other dates that the charts relate to, it is going to save me quite a little burden, and at the same time be very helpful to me. So I think you probably will help yourself and me at the same time if you were to adopt my suggestion, and over the luncheon recess, or, perhaps, if you care to, overnight, you can have them typewritten up just

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the way you want them and then let me have them. I get the idea that you are working on right now, and I can see from the charts the general way in which this proof is going to work out, so that I think it would be well if you could proceed to something else; you have got other things you want to bring out by this witness; and then I will fit these exhibits in when I get them to the pattern that I have already in my notes.

Mr. Gladstein: Well, I will be very happy to supply your Honor—and I think it would not be possible to do so until tomorrow—with what you want, just something visual that you can—

The Court: I was trying to save time too. I know that does not always meet with favor, but I really think that is something—I don't like to insist on it; I never like to try a case that way, but I do believe that the suggestion is one that you can at least ponder over during the luncheon recess, and now go on (1977) to something else.

Mr. Gladstein: I would like at this point, if your Honor will permit me, to have the witness go through these maps and indicate certain things that I want to bring out and which ought to be in the record at this point, and then the exact figures we can supply in the form that your Honor has suggested.

The Court: I will rule now that I will hear nothing further at this time on this subject but will permit you to go back to it after you have had those papers typewritten out, and then we will resume the testimony applicable to these charts. In my discretion as to the order of proof, I rule that now.

Mr. Gladstein: I don't understand your Honor's ruling. I am trying to show—and I thought I had a right to show—I believe I do have a right to show—what these panels give evidence of.

Now, your Honor has raised a question as to whether for the benefit of the Court—and I am perfectly willing to accommodate the Court—some of

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these figures may be prepared in tabular columns and supplied to the Court as exhibits. I am perfectly willing to undertake to do that. We don't have exhibits that have been prepared with that in mind, but we will undertake to have them in the morning. In the meantime, however, I desire to conduct the (1978) examination of this witness for the purpose of having testimony in the record with respect to things that are not dependent upon any particular figures. I think your Honor certainly did not have that in mind.

The Court: I understand, Mr. Gladstein. You see, in any other case when the Court indicates something that will help the Court and be a matter of the Court's convenience, counsel immediately acquiesces in it. There is never any wrangling or dispute. But here for some reason or other these disputes arise over the most trivial things. I am not precluding you from going ahead and proving all that you want to prove about these charts. I am merely suggesting that you drop that subject temporarily, get these exhibits in shape, turn now to something else, and then come back to the other point later; and I am not merely suggesting it—I tried to do that—and I see now that I have to direct it, which I do. That is all.

Mr. Gladstein: May I ask your Honor one further question concerning your ruling?

The Court: You may.

Mr. Gladstein: Is the basis of the ruling simply the fact that the exhibits that your Honor desired to put into the record at this point have not been prepared in that form.

The Court: No. The point is, as I said before, my own convenience in listening to this; I have got all these notes prepared here which I have been taking down with the utmost care. Now you have got other data that you are going to have in these sheets of paper and I want to hear what the witness is going to say about these little sub-districts and neighborhoods with these papers before me, that

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is all. It is going to be easier for me. And that is the way it is going to be.

Mr. Gladstein: Well, in view of what your Honor has said, I had wanted to get these up in a form more acceptable, but I am perfectly willing for the purpose of assisting the Court to let you have in front of you copies of exactly those tabulations that your Honor is talking about.

The Court: Those are what you said you don't have with you now.

Mr. Gladstein: No. I said I did not have (1980) them in a form which I felt was presentable. But you can have them as we have them, your Honor.

The Court: I have I think on this matter reached the point where I will require you to pass on to some other subject and we won't take any more time discussing this particular one. So you can proceed with something else.

Mr. Gladstein: I was about to offer, your Honor, some exhibits that show tabulations with respect to the maps.

The Court: If you are about to offer the papers that only a moment ago you said you could not offer because they were not in proper shape, I can't help feeling that perhaps you are trifling with me.

Mr. Gladstein: Now if your Honor please, what I said was that we hadn't prepared these with the thought in mind of having exhibits—

The Court: Why don't you say "yes" once in a while, Mr. Gladstein.

Mr. Gladstein: I am the most agreeable person in the world. I say "yes" to everybody, Judge.

The Court: You see, this is one time when you are going to have to say yes, and whether you like it or not there is going to be no more discussion about what you are going to bring out about these charts, (1981) but you are going on to something else. Now, please do so.

Mr. Gladstein: Your Honor desires me to start a new subject? I see it is seven minutes of one.

The Court: Yes, I will take a recess now until 2.30.

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Mr. Gladstein: May I understand this, your Honor—that is all right, I won't ask the question.

The Court: I think you know just what I want about this, and you can very easily do it and perhaps you can have it all done by the time you get back from lunch.

Mr. Gladstein: Very well.

(Recess to 2.30 p. m.)

(1982)

AFTERNOON SESSION

DOXEY A. WILKERSON, resumed the stand.

* * *

Direct examination continued by Mr. Gladstein:

Q. Mr. Wilkerson, with respect to the maps that have been received in evidence, have you made tabulations simply by counting the pins on the maps to indicate in what Congressional Districts the jurors fall? A. I have.

Q. And have you prepared those tabulations on separate sheets, each referring to a particular map? A. I have.

Mr. Gladstein: Now those are the sheets that I was referring to this morning, your Honor. And I have a set which gives these figures and it will make it easy for you to follow.

The Court: That is fine.

Mr. Gladstein: I am sorry they are merely carbon copies. And if they are not clear and legible perhaps your Honor would like the copy that—the original that Mr. Wilkerson has.

The Court: These are perfectly legible. Are you going to offer them in evidence now?

Mr. Gladstein: Yes.

The Court: That is all right.

(1983) *By Mr. Gladstein:*

Q. Let me ask you this, Mr. Wilkerson: Those documents that I have just given to the Court and the originals

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of which you have in your hand, are you satisfied that they are correctly tabulated, that is, the mathematical computation is correct; is that right? A. Yes.

The Court: You may have them subject to correction if you wish if something should develop. That can easily be done.

Mr. Gladstein: Very well. All right. I offer those in evidence. And I suppose that each of them ought to somehow refer to the particular map to which it relates.

The Court: Yes, do that. You see, at the top of each sheet is given the panel of a certain date.

Mr. Gladstein: What I mean, your Honor: For example, the one for 2-6-40, suppose we call that—

The Court: That is 54. And they will go serially right from 54 on.

Mr. Gladstein: That is right. Suppose we call the tabulation for Exhibit 54, suppose we call that 54-A.

The Court: I think that is an excellent idea.

* * *

(1984) Mr. McGohey: If your Honor please, I have no objection subject, however, to the same restriction that I made with respect to the maps themselves.

* * *

The Court: I notice that these are prepared (1985) just the way I thought they were, so that they show all of the data similar to the data already testified to, including the particular districts to which the witness desired to make reference.

Mr. McGohey: Yes. We will have those exhibits photostated.

The Court: Or the particular neighborhoods or whatever the phrase was that he used.

* * *

By Mr. Gladstein:

Q. Now Mr. Wilkerson, commencing with the map of 1945, that is the December 17, 1945, map, the exhibits, the tabulation that has been received in evidence that corresponds to that—

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(1986) Mr. Gladstein: What is the number of that, Mr. Clerk?

* * *

The Witness: That would be 59-A.

Mr. Gladstein: Yes, that would be 59-A.

Q. Now, commencing with 59-A your tabulation gives the voting figures obtained from the Board of Elections as of what date, sir? A. As of 1946 Congressional elections.

Q. Is that also true of the January 2, 1946, panel? A. It is.

Q. Any others? A. March 4, 1947.

Q. Now commence with the May 4, 1948, panel; what voting figures did you supply? A. The 1948 Congressional elections.

Q. As put out by the Board of Elections? A. That is correct.

Q. That is true of the November 15, 1948, panel? A. Yes.

Q. December 7, 1948, panel? A. Yes.

Q. January 17, 1949, panel? A. Yes.

Q. And the same is true of the February 1, 1949, panel, is that correct? A. Yes.

(1987) Q. Will you run through these—

The Court: That is to say, that Exhibits 59, 60 and 61 and 59-A, 60-A and 61-A were based, in so far as they relate to voting figures, upon the 1946 Congressional elections; and Exhibits 62, 62-A, 63, 63-A, 64, 64-A, 65, 65-A, and 66 and 66-A are based upon the 1948 Congressional elections?

Mr. Gladstein: Yes, with this understanding, your Honor, that the exhibit, that is the map, does not give any voting figures, but the supplement, that is the document that takes the A designation for it, supplies the voting figures that your Honor has indicated.

The Court: That is right.

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Q. Now, look at the exhibits that cover the maps beginning with February 1940, February 6, 1940, through October 16, 1944, as to which the 1944 election returns are used, what is the constant percentage of votes cast in the 17th District as that vote bears upon the total vote cast in all of the Manhattan and Bronx Congressional Districts? A. Beginning with the February 6, 1940, did you say?

Q. Yes. From 1940 to October 1944? A. In all of which you used the same election returns. A. Yes.

Q. What is the figure? A. For February 6, 1940, the 17th Congressional (1988) District, or in that district were cast 11.2 per cent of the vote.

Mr. McGohey: The 17th Election District did you say?

The Court: No. Congressional District.

Q. So this 11.2 per cent is the figure you have; is that right? A. Yes.

Q. Now in 1946—

Mr. McGohey: If your Honor please, I am sorry; it isn't quite clear. Is that a percentage of what figure?

The Court: I will tell you just exactly what that is. That is the percentage in that district of the votes cast in all the Congressional districts on the map, that is to say, in Manhattan and the Bronx.

Mr. Gladstein: That is right, your Honor. In other words, the voters in the 17th Congressional District who cast votes in the 1944 Congressional elections cast a total representing 11.2 per cent of all votes cast in that election by the Bronx and Manhattan.

The Court: That is right.

Mr. McGohey: Well, how can that have any reference to 1940?

The Court: Well, that is the hiatus that you have been referring to, but we will come to that after they develop the proof. But I realize that you got (1989) that point and I have it very

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definitely in mind and so has Mr. Gladstein. But they must build these things up step by step, and whether or not that hiatus is material and significant is something we will decide later.

Mr. Gladstein: Very well, your Honor. I may say that we will supply 1940 voting figures.

Q. Now, the 1946 election based on the official report of the Board of Election returns, what percentage did you find cast of all the Manhattan and Bronx votes by the 17th Congressional District?

Mr. McGohey: In what year?

The Court: 1946.

Mr. McGohey: If your Honor please, I am confused. Are we referring now to this panel of February 6, 1940?

Mr. Gladstein: No. At the moment I am referring only to the Congressional vote.

The Court: I think I can explain that, Mr. McGohey. They have proceeded here by what the witness claims is a proper statistical method of sampling. And part of the way in which they are seeking to build it up is to show, as they are now trying to, that this percentage remains the same and from that I am to draw certain inferences later on. I think that is what they are going to claim.

(1990) Mr. McGohey: I understand what the point is. But what I am confused about now is, as to what year Mr. Gladstein is asking the witness about.

Mr. Gladstein: I think that was clear, but I will ask the question again.

The Court: I think it is the 1946 Congressional elections.

Mr. Gladstein: That was all, your Honor.

Mr. McGohey: All right, then.

The Court: He is asking him what is the percentage which the number of votes cast in the 17th Congressional District bears to the votes cast in all the Congressional Districts in Manhattan and Bronx in 1946.

Mr. Gladstein: Exactly, your Honor.

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Q. Now what is that figure, Mr. Wilkerson? A. The percentage is 11.2 per cent.

Q. Exactly the same figure as it was in the 1944 election, is that right, sir? A. Yes.

Q. What was the figure for the 1948 elections? A. It is 10.7 per cent.

Q. Now starting with the year 1940 and identifying each map as you go ahead, will you please tell us what percentage of the total number of jurors residing in Manhattan and Bronx whose names appeared on the panels that have been mapped here resided in the 17th Congressional (1991) District? A. On the panel February 6, 1940, 49.8 per cent of the jurors residing in Bronx and Manhattan lived in the 17th Congressional District, and the comparable percentage—need I repeat that?

Q. No. A. The comparable percentage for the panel of April 14, 1941, is 62.2 per cent.

For the panel of June 17, 1942, the percentage of the jurors living in the 17th Congressional District is 57 per cent.

For the panel of August 9, 1943, the percentage is 45.2 per cent.

For the panel of October 16, 1944, 47.7 per cent of the jurors lived in the 17th Congressional District.

For the panel of December 17, 1945, 48.6 per cent of the Manhattan and Bronx jurors lived in the 17th Congressional District.

For the panel of January 2, 1946, 43.5 per cent of the jurors lived in the 17th Congressional District.

The Court: 43.5?

The Witness: 43.5 lived in the 17th Congressional District.

A. (Continuing) For the panel of March 4, 1947, 48.2 per cent of the jurors lived in the 17th Congressional District.

(1992) For the panel of May 4, 1948, 39.7 per cent of the jurors lived in the 17th Congressional District.

In each case I am referring to the jurors living at that time in Manhattan and Bronx.

Q. Yes. A. For the panel of November 15, 1948, 38.6 per cent.

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Q. 30 or 38? A. 38.6 per cent of the Manhattan and Bronx jurors lived in the 17th Congressional District.

For the panel of December 7, 1948, 40.5 per cent of the Manhattan and Bronx jurors lived in the 17th Congressional District.

For the panel of January 17, 1949, 38.5 per cent of the Manhattan and Bronx jurors lived in the 17th Congressional District.

And for the panel of February 1, 1949, the percentage is 39.9 per cent.

* * *

Q. I want to ask you a question, Mr. Wilkerson, about the map of January 17, 1949, and the tabulation which you have, which would be No.— A. 66.

(1992-A) The Court: No. 66 is the February 1, 1949.

Mr. Gladstein: 65-A.

Q. Therefore, I am asking you about 65-A. Does that tabulation refer to the first list or panel of jurors, or to the second, or to both? A. That refers to both listings for the panel.

(1993) Q. Do you have that breakdown as between the first and the second? A. I do not have it here, no.

Q. It could be done very easily, could it not? A. Yes.

Q. Merely a matter of counting up the pins, totaling up the black pins in one and the red pins in another, is that right? A. That is right.

Q. Am I correct that Harlem is located in the 22nd Congressional District? A. It might be a little bit more exact to say that the 22nd is in the heart of what is generally referred to as Harlem.

Q. Is that the area which generally speaking the Negro people of this city are largely concentrated? A. Yes.

Q. Now, will you go through this series of tabulations and first of all I want you to indicate what the percentage of votes cast in 1944, 1946 and 1948 from the 22nd Congressional District—how it relates to the entire vote? A. For each of the panels?

Q. Well, actually for three votes. A. Oh I see.

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Q. Because each of those votes covers a series of maps which you have already indicated in the record, isn't that correct? A. Yes.

Q. All right. A. The 1944—

The Court: He is comparing the 22nd with other (1994) districts?

Mr. Gladstein: Yes, it is the same kind of comparison, your Honor, that has been made for the 17th.

The Court: I see. All right.

A. (Continuing) 1944, the Congressional vote in the 22nd Congressional District was 6.7 per cent of the vote in all of the Manhattan, Bronx Congressional Districts.

Q. What was it in 1946? A. In 1946, it was 5.4 per cent.

Q. What was it in 1948? A. In 1948 it was 6.5 per cent.

Q. All right. Now will you proceed to tell us what the percentage was of jurors on the panels that have been mapped, and the maps for which have been received in evidence, percentage of jurors coming from the 22nd Congressional District in terms of the entire Manhattan, Bronx resident jurors on those panels? A. For each of the map of panels?

Q. Yes, if you will, just the same as you did as to the 17th. A. The percentage for the February 6th map of jurors who lived—

Q. February 6, 1940? A. 1940.

The Court: That is Exhibit 54.

A. (Continuing) Of jurors who lived in the 22nd (1995) District is 4/10ths of one per cent. For the panel of April 14, 1941, the comparable percentage is 8/10ths of one per cent. For the panel of June 17, 1942, the comparable percentage is 2 per cent.

Q. 2 per cent? A. Yes, 2.0.

Q. Which date is that, sir? A. This is June 17, 1942.

Q. All right. A. For the panel of August 9, 1943, 1.2 per cent of the Manhattan-Bronx jurors lived in the 22nd Congressional District.

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For the panel of October 16, 1944, the comparable proportion is 1.1 per cent.

For the panel of December 17, 1945, the proportion is 9/10ths of one per cent.

For the panel of January 2, 1946, the comparable proportion is 3/10ths of one per cent.

For the panel of March 4, 1947, 6/10ths of one per cent of the Manhattan-Bronx jurors lived in the 22nd Congressional District.

For May 4, 1948, the comparable proportion is 6/10ths of one per cent.

For November 15, 1948, the comparable proportion is 4/10ths of one per cent.

For December 7, 1948, the proportion is 6/10ths of (1996) one per cent.

For January 17, 1949, the comparable proportion is 4/10ths of one per cent.

And on the February 1st, 1949 panel, one per cent of the Manhattan-Bronx jurors lived in the 22nd Congressional District.

Q. Now, the area which is generally known as the Lower East Side—is that comparable to the 19th Congressional District, Mr. Wilkerson? A. Yes.

Q. Will you state what the election figures were percentagewise in 1944, 1946 and 1948 for that Congressional District?

The Court: Is this the 16th?

Mr. Gladstein: The 19th, your Honor.

The Court: All right.

A. In 1944, 7.4 per cent of the Congressional vote was cast in the 19th Congressional District.

The Court: 7.4?

The Witness: That is correct.

A. (Continuing) In 1946, 7.3 per cent of the total Manhattan-Bronx Congressional vote was cast in the 19th Congressional District.

And in 1948 7.9 per cent of the Manhattan-Bronx Congressional vote was cast in the 19th Congressional District.

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(1997) Q. Now will you state what the percentage was of jurors coming from the 19th Congressional District in respect of each of the panels for which maps were made and have been introduced? A. On the panel of February 6, 1940, 4/10ths of one per cent of the Manhattan-Bronx jurors lived in the 19th Congressional District. Comparable proportions are for the panel of April 14, 1941, 1.6 per cent; for the panel of June 17, 1942, 2.8 per cent; for the panel of August 9, 1943, 1.2 per cent; for the panel of August 16, 1944, 2.6 per cent; for the panel of December 17, 1945, 1.8 per cent; for the panel of January 2, 1946, 3.1 per cent; for the panel of March 4, 1947, 2.2 per cent; for the panel of May 5, 1948, 6/10ths of one per cent; for the panel of November 15, 1948, 3.4 per cent; for the panel of December 7, 1948, zero per cent; for the panel of January 17, 1949, 2 per cent; and for the panel of February 1, 1949, one per cent of the Manhattan-Bronx jurors lived in the 19th Congressional District.

Q. Now, I want you to turn your attention to the neighborhoods in which the map shows particular clusters of pins all embraced within the 17th Congressional District. Would you take a pointer, and perhaps that would assist the Court—

(1998) The Court: This is back to the 17th?
Mr. Gladstein: Yes, your Honor.

Q. (Continuing)—and give the figures as you go along, Mr. Wilkerson, and point them out to the Court, if you will. Do you have a pointer? A. I have a pointer. May I understand the question?

The Court: Now, he has already given a certain amount of data based on what the witness considers to be the neighborhood of Central Park West, the neighborhood of Fifth Avenue, or east of Fifth Avenue, Fifth Avenue East, the neighborhood of South Central Park, the neighborhood that he calls Sutton, Beekman, Tudor, and the neighborhood of Washington Square Park.

Mr. Gladstein: Washington Square Park.

The Court: That is what you are bringing him back to now?

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Mr. Gladstein: Just for the purpose of indicating how the thing proceeds year by year, your Honor.

The Witness: May I ask whether you are asking for particular figures for each of the sub-areas that you are talking about?

Q. If you have them. I see these tabulations. It seems to me that— A. I have them, yes.

Q. All right, if you have them. A. And do you want (1999) me to proceed by areas for all of the maps or map by map for areas?

Q. I would like you to take the 17th first and do a complete job on that, Mr. Wilkerson. A. For all the maps?

The Court: Hasn't he got that down on these sheets? As I look at them I seem to see just what you are speaking of.

Mr. Gladstein: Perhaps we can simplify this, your Honor: What I would like to ask the witness to do, using the tabulations and pointing to the maps, is to indicate what the facts are as shown by the maps and the tabulation with respect to, say, an area like Fifth Avenue.

The Court: But he has got that.

Mr. Gladstein: Well, he has it here in the exhibit, that is true.

The Court: That is what I mean.

Mr. Gladstein: I understand that he has, but I want to have the record show, your Honor, the manner in which the figures as they proceed year to year establish a certain persistency of pattern and uniformity of pattern.

The Court: All I need do is look at the papers to see that, and you may argue that or brief it in the customary way.

(2000) Mr. Gladstein: Very well, your Honor. If those are sufficiently clear—

The Court: You may state what your contention is about it if you desire now, and that probably will suffice.

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Mr. Gladstein: Well, perhaps I can do that.

* * *

(Defendants' Challenge Exhibits 57 to 66 for identification, inclusive, received in evidence; and Defendants' Challenge Exhibits 57-A to 66-A for identification, inclusive, received in evidence.)

Mr. Gladstein: Now, the point I want to call to your Honor's attention is that if you examine each of these exhibits which are designated "A", commencing with 54 and running through 66, I think it is, you will find that in every single one of these panels every year you not only get this tremendous proportion of jurors from the 17th Congressional District as high as more than 50 per cent in some instances and never lower than about 40 per cent or 39 per cent of the entire panel covering (2001) Manhattan and Bronx, also bearing in mind that the number of voters in the 17th is much less than in some other areas and must be considered in the light of what we know the facts to be concerning Harlem, the Lower East Side, and so on—not only do you find that tremendous disproportion where the 17th Congressional District provides 40 to 50 per cent or more of all the jurors, whereas in contrast you get about one per cent or fewer from places like Harlem or the East Side, but in addition there is an inner or double concentration within the 17th Congressional District. As the witness has pointed out, that district is a rather large one; that is to say, it embraces a large area, and it is irregular in shape at the borders, and therefore it does—it is natural and it is true that it includes a number of different areas, neighborhoods. There are portions that are occupied by poor people because those houses on the outskirts, certain portions near the 17th—

Mr. McGohey: I object to this testimony, your Honor. There is not anything in the record from any witness about this.

The Court: I think that is right.

Mr. Gladstein: Well, I wasn't intending to testify. I was merely stating the facts.

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Mr. McGohey: You were doing a pretty good job (2002) of it.

The Court: It did seem as though you were perhaps wandering into factual matter that did not appear, but I think your contention about this is sufficiently clear to me. I see what you will later ask to have me infer, or I think I do, and I believe that what you desire to prove now is sufficiently disclosed in these papers, these exhibits.

Mr. Gladstein: May I add only this, your Honor, that in the 17th there are these particular neighborhoods or areas the witness has called attention to, and I will ask your Honor to note when you are studying these exhibits the persistence with which the jurors are concentrated in the Central Park West area, in the Fifth Avenue area, in the Sutton area, in the Washington Square area, and also with respect to other districts than the 17th, your Honor will notice that certain particular districts, such as Riverside, West End or the Highbridge, or the New York University—Fordham area, or the London Terrace area, areas of that sort, which are heavily represented within particular districts on each and all of these panels without any exception whatsoever.

Now, I will ask—

Mr. Sacher: Your Honor, I would like to point (2003) out that among the contentions that the figures cited by Mr. Wilkerson indicate that although the percentage of the total vote cast in Manhattan and the Bronx in Congressional elections in the 17th Congressional District was less than twice as much as the percentage of votes cast in the 22nd, the 17th Congressional District got 125 times as much representation on the jury panel as the 22nd got on the panel of February 6, 1940; that the 17th got 75 times as much representation on the panel of April 14, 1941; 25 times as much representation on the panel of June 17, 1942; 40 times as much representation on the panel of August 9, 1943; 42 times as much representation on the panel of October 16, 1944; 50 times as much representation on the panel of December 17, 1945, and so on down the line.

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By Mr. Gladstein:

Q. Now, Mr. Wilkerson, I observe that on the maps for the early years, 1940, 1941, 1942 and so on, there is no distinct outstanding cluster of pins in the Bronx; is that a correct observation? A. That is correct.

Mr. McGohey: What was the year you mentioned?

Mr. Gladstein: 1940, 1941, 1942 and so on. I said in the early years.

Q. Now, it appears that commencing with the year (2004) 1947 and going through particularly 1948 and 1949, that situation changed, is that right? A. That is correct.

Q. Now, first of all I call your attention to—well, take the panel for January 17, 1949, the date when this trial was about to commence. I see there a very large cluster of pins in the Bronx. Do you know what area that represents?

The Court: He says that is the Parkchester Development.

Q. Is that the Parkchester Development? A. Parkchester Development.

The Court: You see, I remember all that. You don't have to take him over the same things. I sometimes remember these things.

Q. Now, is that the same cluster that is found in 1948 and in one of the maps of 1947? A. It is, and I have here two additional 1948 maps that you don't have before you which show the same cluster.

Q. In 1948? A. Yes.

Q. Do you have figures for those? A. Yes.

Mr. Gladstein: Can your Honor see those from there?

(2005) The Court: I remember them very well.

Q. Do you know anything about that Parkchester Development? A. Some things, yes.

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Q. Do you know it by sight? You have seen it? A. Yes.

Q. Do you have any information concerning it? A. Yes.

Q. Do you know who operates it? A. I do.

Q. Will you state? A. *The Metropolitan Life Insurance Company.*

Q. And did you obtain any facts concerning that development from that company? A. I did.

Q. And what facts did you obtain concerning the nature of that development?

Mr. McGohey: I object to any such answer as that. It is hearsay.

The Court: Sustained.

Mr. Gladstein: Well, I can say this, your Honor: we can, of course, if the Court insists, if Mr. McGohey insists, subpoena and bring to court a representative of the Metropolitan Company. I realize that if technicalities are going to be insisted upon we can do that, and we will, your Honor. However, all that the witness was being asked to do was to testify to material obtained from that company and which is put out by that company as its official and factual statement of the facts concerning that development.

The Court: I don't consider that admissible.

(2006) Mr. Gladstein: In that form you mean?

The Court: Yes. I don't know just what you contend. Do you contend that that is a place where rich people live?

Mr. Gladstein: Wouldn't it be better to hear what the witness has to say, your Honor?

The Court: I don't know. I suppose it is always better to hear from the witness when his testimony is relevant and competent, which in this case I hold it is not.

Mr. Gladstein: Well, we will, if your Honor requires it, produce a witness—

The Court: I don't require anything. I am a little puzzled by this line of proof. I suppose it raises a clear question of law. I never understood

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that there was any requirement that the jury panel be made up in any particular way or with any particular proportion from any particular part of the district. Now, perhaps I may be enlightened on that. But however that may be, I am going to take the proof. That seems to me to raise a question of law.

Mr. Gladstein: Well, your Honor's ruling at the present time is that this witness cannot testify—

The Court: Yes. He brings a lot of literature from the Metropolitan Life Insurance Company. What does that prove?

(2007) Mr. Gladstein: All right.

The Court: And, frankly, to show where all the poor people live, where all the rich people live, where all the medium income people live would involve an amount of proof utterly out of any form of reasonable handling; and I have great doubt as to whether when you got through it would prove anything of consequence.

Mr. Gladstein: Why, your Honor, of course, each part of our case will have to be considered in connection with other parts of the case.

The Court: Yes.

Mr. Gladstein: As your Honor knows, but perhaps it is necessary for me to remind your Honor at this point in the record, we are stating that since about 1940, as a result of deliberate exclusion—

The Court: Please don't go in again about how corrupt the system is and how awful Judge Knox is. Please don't do that again. You have said that and your colleagues have said it many times, and it is perfectly obvious to me that you claim that the whole system is entirely illegal and bad and illegally administered.

Now that covers everything from one end to the other, and I don't propose to listen to it all over again every day. I know just what your contentions are, and (2008) they are in your challenge. The paper is readable and clear, and I know just exactly what it is.

Mr. Gladstein: Very well.

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By Mr. Gladstein:

Q. Now, Mr. Wilkerson, on Friday when I was questioning you you stated that some charts had been prepared by which there was graphic depiction or pictorial representation of certain facts concerning the population, certain facts concerning the jurors with respect to their occupational classifications. Do you recall that testimony? A. Yes.

Q. Now, do you have a list of the charts that were prepared? A. I think I do have.

Mr. Isserman: If your Honor please, before we leave the subject of these maps, there are one or two questions I would like to ask Mr. Wilkerson to clear up one point. May I do that before we get into something else?

The Court: You may do that.

Mr. Isserman: May I do that?

The Court: Yes.

By Mr. Isserman:

Q. Mr. Wilkerson, would you look at Exhibit No. 65 with particular reference to the 19th Congressional District. I think your table shows that there were nine (2009) jurors in that district. A. That is correct.

Q. Now, can you tell me how many of those jurors lived in the district south of 14th Street? A. Two.

The Court: What did he say? I did not hear him.

The Witness: Two south of 14th Street in the 19th Congressional District.

Q. And I call your attention to the fact that most of the pins in the 19th Congressional District are along a line on the west boundary of that district, and from where I am looking above the figure 19, indicating the district, as it appears on the map, can you look and tell us in approximately what streets those jurors appear who are not below 14th Street? A. These jurors are—

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Q. Speak up, Mr. Wilkerson. Do you know which ones I refer to? A. You are referring I think to the jurors above this point in the 19th District (indicating).

Q. Those are above 14th Street, that is right. A. Those are above 14th Street.

Q. Would you tell me approximately what street you find the jurors on? A. Almost entirely, I believe every one of them is towards the west end of the block between Second Avenue and Third Avenue, right on the border of the 19th Congressional District.

(2010) Q. And running from what cross street to what cross street, if you can give it to us? A. Running from about 8th Street to 34th Street.

Q. You mean 8th or 18th Street? A. More accurately, running from 16th Street to 34th Street.

Q. And at that point on 16th Street there is an area known as Stuyvesant Square, is there not? A. Yes.

Q. Now, the jurors living from 16th up to the 30s do not live in an area known as the Lower East Side, do they? A. That is correct.

Q. And could you between now and tomorrow morning give us a breakdown of the 19th Congressional District showing which of the jurors you have referred to live below 14th Street and those which live above 14th Street? Could you make that tabulation? A. Yes.

Mr. Isserman: Thank you.

By Mr. Gladstein:

Q. I started to ask you, Mr. Wilkerson, for a list, if you have it handy, of charts prepared that will simply represent pictorially the occupational classifications of the jurors in respect of those jury lists that have been subjected to that study. A. It is charts you are asking for?

(2011) Q. Charts, yes. A. I do not have in one place those charts but I will tell you if you will just hold it a minute. There are, I think, exactly 14 charts, one big one, 13 small ones, which relate to this general subject—is this the information you are asking?

Q. Yes, that is what I want to know first. Do you have that many charts? A. Yes.

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Q. Now, before preparing any such charts what data was utilized and tabulated? A. Well, several types of data.

Q. Will you indicate what they were and the use to which they were put? A. Well, in the first place we sought information concerning the distribution among occupational groups of the gainfully employed population or the Southern District of New York. That information was one of the basis elements that went into the preparation of these charts, not only their numbers but particularly in the charts their percentage distribution among certain occupational groups. The second type—

Q. What was the source—

The Witness: Pardon me.

Mr. Gladstein: Go ahead.

A. (Continuing) The second type of information that the charts reflect is the occupational distribution (2012) of persons chosen for petit jury service in the Southern District among the same categories or occupations.

Q. Now, with respect to the first of the two that you have mentioned, was census data used for that purpose? A. Yes.

Q. And with respect to the second, where did you obtain the information concerning the occupations of the jurors? A. The official lists of jurors indicate the occupation beside the name of each juror.

Q. All right. Now will you describe just how this process of preparation took place?

The Court: Now, before you do that Mr. Gladstein, how do you get around the reasoning of Judge Hall in that case of United States against Local 36?

Mr. Gladstein: I don't think it applies here at all, your Honor.

The Court: You don't think it has anything to do with classifications of occupations?

Mr. Gladstein: I think that that case in the first instance is wholly differentiated from this factually; and secondly I call your Honor's attention to the fact that it is on appeal from—

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The Court: Well, it has not yet been reversed, and perhaps it may never be.

(2013) Mr. Gladstein: That is possible. At the same time there is a decision with which we have made your Honor familiar of a three-judge court on which Judge John Biggs of the Third Circuit sat as presiding judge of the three, and your Honor will note that the decision which carries a good deal, I would submit, greater authority than the decision of Judge Hall, is one that is based partially upon the racial exclusion in the Hawaiian Islands from the grand jury—in that case it was the Filipino people who were excluded—and partially upon the fact that the grand jury there had been made a defective organ of what the judges call the entrepreneur-employer group and their salaried employes.

(2014) The Court: There seemed to be quite a different situation. But what I was asking about had to do with these classifications. I have heard certain trials since I have been on this court where, oh, days and days have been taken up with testimony of classifications of workers, these wage and hour cases, and it seems to me to be a most complicated thing. And you apparently seek to take certain Census classifications and then on the other hand take certain descriptions that appear on the jury lists as though they were necessarily the same. And it seems to me that Judge Hall decided that you couldn't do that. And I am quite at a loss to see, when you consider all the factors that go into this personnel matter and occupational status matter and the different mental attitude of one person or another in making up the classification that no one could ever really get at the bottom of it, whether that data is of any value.

Mr. Gladstein: Would your Honor like me to address myself to that question in your mind?

The Court: Well, I really asked what was the answer to Judge Hall's decision on that. You say that it is up on appeal, which is doubtless your way of saying that you disagree with what he held

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and think he is wrong, which, of course, you have a right, and also that you (2015) feel that the other decision in the Hawaiian case bears upon the subject too. So I think perhaps we can drop it there and you go ahead with your proof.

Mr. Gladstein: Very well, your Honor.

By Mr. Gladstein:

Q. I had started to ask you, Mr. Wilkerson, to describe in general and in a brief way how you went about preparing the data, where it came from and what you did. A. Well, first, it was necessary to agree upon certain occupational categories that would be used as a frame of reference. And if you will let me have certain documents there which have been submitted in evidence I think I might make clearer to the Court precisely—

Q. I will be very happy to do that. Which do you want? A. The two that you have in your hand. Also the supplement to the Census volume, the 16th Census on the labor force.

Q. Two of these I have in my hand. They are Exhibits 16 and 17 for identification. A. Then there is a large, soft—I mean, paper-backed report.

Q. What is that entitled? A. It is the 16th Census report, one of those, with the labor force as its sub-title.

(2016) Q. Can you proceed without the last for a moment until we look for it? A. I can.

Q. All right. A. I just want to make sure I don't have it here. All right.

You will find that the Census Bureau enumerates gainfully employed persons 14 years of age and older by certain occupational groupings. I think it well to point out the occupational groupings that they use prior to defining—

Q. (Handing to witness.) A. Thank you.

The Court: That is the Census?

The Witness: The Census. What I have here, your Honor is the 16th Census of the United States, 1940 population, Third Series, The Labor Force, occupation, industry employment income, New York. It has already been entered as an exhibit.

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Mr. McGohey: If it has been marked would you let us know what the identification is?

The Witness: You mean this Challenge Exhibit 9, is that right?

The Court: 9 for identification.

Mr. McGohey: Exhibit 9 for identification.

A. Now, turning to—let us use the title that we use for these (referring to exhibit). All right. The data of the Census report are grouped under general (2017) categories first. The first of these, for example, is, professional and semi-professional and semi-professional workers, following which—

Mr. McGohey: May I have Mr. Wilkerson indicate the page of that exhibit that he is reading from?

* * *

The Witness: All right. At this moment I happen to be looking at Table X, page 24.

* * *

A. The initial category, general category is that of professional and semi-professional workers, following which there are a number of occupational groups listed which fall within that general category.

Q. Illustrate them.

The Court: Professional and semi-professional?

The Witness: That is right.

(2018) Q. Will you illustrate them, please. A. Actresses, for example; artists and art teachers. Authors, reporters. Dentists. Judges. Librarians. Musicians. Social welfare workers, trained nurses. And other professional workers.

Also included in there, if you want to make it clear, are designers and draftsmen, and other semi-professional workers.

I might say that the category of semi-professional workers, professional workers, is much broader than the ones we have listed here. You find even a prizefighter is listed as a semi-professional worker. They do happen not to be in such detail in this particular table.

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The Court: I think most of them consider that they are full professionals.

The Witness: But this is just to illustrate the category.

A. (Continuing) The first category we are calling attention to is professional, semi-professional workers.

Q. In other words, according to the United States Census, a group of occupations all of which—well, which you have enumerated or read some of them, are grouped together and called professional and semi-professional types of work? A. That is correct.

Q. What is the next one? A. There then follows the (2019) category known as farmers and farm managers which for purposes of the analysis you are about to have me report we ignored, for obvious reasons, in this metropolitan community.

Q. That is, there were no farmers and no farm managers in Manhattan and Bronx either on the juries or in the population, is that right?

Mr. McGohey: I object to that.

A. That is correct.

Mr. McGohey: Your Honor, there is no evidence as to that at all.

The Witness: Very well.

The Court: Sustained. The witness is willing to let that go.

Mr. McGohey: Sir?

The Court: I say, he is willing to let that go. He says, "Very well."

Mr. Gladstein: I will admit, your Honor—

The Witness: The fact is—

The Court: That is all right. Go ahead.

Mr. Gladstein: I am an outsider, but I am trying to learn about Manhattan and the Bronx I haven't yet heard that you have any big farms in either Manhattan or the Bronx.

The Witness: The fact is—

(2020) The Court: He said, "Very well." So let us get along.

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The Witness: I think I should make clear my position on that specific point. It is really of no significance to our analysis, but the technical fact is that the Census does list some farmers for New York City, a very few. One wonders where they are. But, technically, there are some farms in New York City.

The Court: But you felt that under the circumstances there were so few that you ignored them?

The Witness: Precisely. I can tell you precisely how many there were in 1940 if you want to.

The Court: Oh, I take comparatively little interest in farmers and farm managers at the moment. So you may pass on to the next classification.

Mr. Gladstein: Very well.

A. The next general category is that of proprietors, managers and officials, except farmers. Farm owners and managers are excluded from this category, and they are excluded not by me but by the Census report in this instance which includes miscellaneous specified managers, officials—proprietors, managers and officials not otherwise specified, and manufacturing, eating and drinking—

Q. I think you had better— A. I wonder—just a minute, Mr. Gladstein. Do you think it is essential (2021) for us to read all of these?

Q. Just by illustration, give us a few to indicate what that covers. A. All right.

Mr. Gladstein: I would suggest at this point, perhaps it would be wiser to do this so the record will be complete: I would like to offer in evidence the Exhibit 9 for identification and also 16 and 17 which were utilized in this connection.

Mr. McGohey: No objection.

(Defendants' Challenge Exhibits 9, 16 and 17 for identification received in evidence.)

A. I have indicated, I think that the third major grouping in the Census report and the second one with which we were here concerned is that of proprietors, managers and officials excluding those on farms. The next general one then is—

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Q. Before you pass to that, I would like you to indicate by skipping through that list—don't repeat them all—the type of occupation that the Census Bureau lists as coming within the occupational group of executives, proprietors or whatever they are called.

Mr. McGohey: Not "executives."

Q. Leave out "executives." A. Proprietors, managers and officials.

Q. Proprietors, managers and officials, all right.

(2022) Mr. McGohey: The exhibit is now in evidence, and if we are going to have discussion about anything that is in there let us have them all.

Mr. Gladstein: No objection.

Q. Read them all, if you will. A. I think it would be good—

Q. All right, do that. A. —because the Census classification is a little bit different in some respects from the popular thinking on these subjects, and particularly as they are true of this category that you are talking about.

The Court: Go ahead, read it.

A. So, proprietors, managers and officials, excluding farmers, includes here—

The Court: Do it slowly so the reporter can get it because this is the kind of reading that is a little hard to take down.

A. Conductors on railroads, paymasters and miscellaneous government officials. Other specific managers and officials, proprietors, managers and officials not otherwise specified, in mining, construction, manufacturing. Transportation, communication and utilities. Wholesale trade, eating and drinking places. Retail trade, except eating and drinking places. Finance, insurance and real estate. (2023) Business and repair services. Personal services, miscellaneous industries and services.

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And again I think I should point out that these are merely the categories used for tabulation purposes and they themselves represent sub-classifications of a much more detailed listing that the census have been utilizing.

Q. In other words, if it says "finance," if you went to a sub-classification under "finance" you would find—
A. You would find a portion—yes.

Q. For example, in other words, a person who was in the field of finance and was in that group of directors, et cetera—is that what is says, "Directors"? A. No.

Q. Proprietors? A. Proprietors, managers, officials.

Q. Proprietors, all right. Then there would be a breakdown underneath "Finance" to show the particular field in finance in which he was a proprietor or manager, is that right? A. There is a breakdown, yes, of each industry.

* * *

(Recess.)

By Mr. Gladstein:

Q. Now Mr. Wilkerson, you had indicated what the Census table shows as to the type of occupation embraced within the category managers, proprietors, et cetera. (2024) Will you quickly indicate the other main categories referred to in the Census tables? A. Yes. May I make this explanation? At one point I said I was reading from Table—I forget what it was—

The Court: 10.

The Witness: 10. Oh, yes. But from page 24, or was it 22—

Mr. McGohey: 24 you said.

The Witness: At another time I was reading from 25, where the same general categories are; but it should be pointed out that neither of these is a complete list of the occupations under these general categories. On one side of the page is female, the other side is male, except categories vary with the sexes. And what we are doing then is merely giving illustrations of what is included under professional, managerial and so on.

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Q. Thank you. A. If the Court wants a complete statement we have that readily acceptable.

Q. Well, that is in the exhibit actually, isn't it? A. That is right.

Q. All right. A. Following the Census category of proprietors, managers and officials there is the general category of clerical, sales and kindred workers. And reading now from page 25 of this—

The Court: And kindred what?

(2025) The Witness: Workers.

The Court: Yes.

A. (Continuing) Are these sub-categories on the male side of the page. Baggage men, express messengers and railway mail clerks. Bookkeepers, accountants, cashiers, ticket agents. Mail carriers. Messengers, except express messengers. Office machine operators. Shipping and receiving clerks. Stenographers, typists and secretaries. Telegraph operators. Telephone operators. Other clerical and kindred workers. Canvassers and solicitors. Hucksters, peddlers. Newsboys. Insurance agents and brokers. Real estate agents and brokers. Other sales agents and brokers. Other salesmen.

I have read here the sub-categories for male workers listed on page 25 of Table X-A, which again I must insist is not complete but illustrative of what is included in this category.

Q. In the category of sales, clerical and kindred workers. A. That is right.

Q. What is the next general category? A. The next general category is that of craftsmen, foremen and kindred workers. And listed under male are these: Bakers. Blacksmiths, forgemen, hammermen. Boilermakers. Cabinet makers and pattern makers. Carpenters. Compositors and type setters. Electricians. Foremen not otherwise (2026) classified in construction industry, manufacturing industry, transportation, communications and utilities. Miscellaneous industries and services.

The Court: Which do these come under?

The Witness: These are all under the category of craftsmen, foremen, kindred workers. Male.

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A. (Continuing) Moving on from foremen: Inspectors. Locomotive engineers. Locomotive firemen. Do you want me to continue?

Q. Well, that indicates the type of occupation or job that is embraced within the general category of craftsmen and foremen, is that right? A. Yes. And it includes also painters, plasterers, tailors, and many others that I am not reading.

Q. All right. However, they are to be found within the table that you are reading from; is that right? A. That is correct.

Q. What exhibit is that? Exhibit 9? A. This is Exhibit 9.

Q. Will you indicate the next general category appearing in the Census table? A. It is a category of operatives and kindred workers. And reading now from page 26, male, it includes such as these—there are very many, and I won't read them all: Apprentices, attendants at filling stations, parking lots and airports. Brakemen and (2027) switchmen. Chauffeurs, conductors. Dressmakers and seamstresses, not in factory. Laundry operatives and laundresses except in private family. Linemen, power station operatives, sailors and deckhands, except in United States Navy. Welders and flame cutters. Other specified operatives and kindred workers. And there follows a whole list of operatives in manufacturing and industries. Just to give a sample or so: operatives in the food and kindred products industry; in tobacco, manufacturing, in lumber, in paper, chemicals and so on. And then operatives in non-manufacturing industries and services. These are illustrations of the occupations included under the Census category, operatives and kindred workers, male.

Q. What is the next general category? A. The next general category is that of domestic service workers, and in this particular table that is not broken down in any further detail.

The next general category is that of protective service workers which includes firemen in Fire Departments, guards and watchmen, policemen service, maintenance. Soldiers, sailors, Marines and Coast Guards.

There is next a category of service workers inclusive of domestic and protective service workers.

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Q. What is that listed by? A. That includes barbers, (2028) beauticians, manicurists. Boarding house and lodging housekeepers. Char women, janitors, porters, cooks except in a private family. Elevator operators. Housekeepers, stewards. Hostesses except in private family. Professional nurses, midwife's services except in private family. Waiters and bartenders, and other service workers, except domestic and protective.

Q. Any other general category? A. The next general category is that of farm laborers and foremen which for purposes of this analysis we ignore.

The next general category is that of laborers except on farms and in mines. This includes also quite a string of—I will read just a few: Fishermen, oystermen. Longshoremen. Lumbermen, raftsmen, wood choppers. Other specified laborers. Then, laborers by industry. The construction industry. A long list of manufacturing industries and of non-manufacturing industries.

These are perhaps adequate to give you an idea of what is included in the Census category of laborers. That concludes the main—the listing of the main categories in which these Census data are reported. Now—pardon me.

Q. Have you completed with your reading from there? A. Yes.

Q. Now in connection with the charts that I have (2029) asked you about, what, if anything was done to use the Census Table classification or groupings? A. Yes, what we did was to accept certain of these Census categories as they are listed in the Census.

Q. Which ones? A. The category of professional and semi-professional workers we treated as one category.

Q. Yes. A. The category of managers, officials and proprietors—I think it is proprietors, managers and officials we treated as one category.

Q. Yes. A. The category of clerical, sales and kindred workers we treated as one category.

Q. Just as the Census does? A. Just as the Census does.

Q. So that those three were used just as the Census had? A. Exactly.

Q. What else? A. Now, the remaining categories which I read we grouped together. That includes the categories

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of craftsmen, foremen and kindred workers, operatives and kindred workers, domestic service workers, protective service workers, service workers except domestic and protective, and laborers except farmers. Those four categories we grouped together under the general rubric of all manual workers—

The Court: You mean those six.

The Witness: Did I say four?

(2030) The Court: You said four.

The Witness: I mean six. Those categories I did not mean to specify. One, two, three, four, five, six Census groupings which we here grouped together under the general heading of manual workers.

Q. All right. A. So that gives us four general categories in which we proceed to make analyses. The category of proprietors, managers and officials, which for purposes of convenience, and there is propriety, we abbreviate to the category executives.

Q. So you call one category executives under professional, a third— A. Clerical, sales.

Q. And the fourth? A. Manual workers.

Q. Now using those four classifications was a chart prepared showing how the population in terms of the gainfully employed and utilizing figures of the Census, how the population is occupationally divided into those four categories you have now mentioned? A. I did.

Q. A chart was made of that kind? A. Yes.

* * *

Q. Now, Mr. Wilkerson, I show you Defendants' Challenge Exhibit 67 for identification, the lefthand side of which reads "Occupations of the people"—I should say, the (2031) designation was, or at the top is "Occupations of the people and of jurors, Southern District of New York." On the lefthand side there is a sub-heading "The people." And I will ask you to explain what that portion, the lefthand side, appearing directly under the designation "The People" represents? A. Each of these columns—pardon me, your Honor?

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The Court: Don't make it too long because I think I am way ahead of you here. I think I know just what that is intended to show. And I have before me this photostatic copy of the same exhibit.

Mr. Gladstein: I will be very brief, your Honor.

A. (Continuing) Each of these columns indicates by its height the percentage of the gainfully employed workers in the Southern District, which according to the Census classifications we have just here defined—

The Court: Is that the gainfully employed over 14?

The Witness: That is right. Or executives, which is our brief name for proprietors, managers and officials, professionals, clericals, including clericals and sales and kindred and manual workers. And it shows that at the time of the 16th Census executives comprised 9.9 per cent of the gainfully employed persons in the Southern (2032) District, and by that I mean Westchester County and Bronx and Manhattan.

The Court: Oh, this includes Westchester as well?

The Witness: That is right.

The Court: But not Rockland?

The Witness: No. They were ignored because—

The Court: So this table covers New York County, Bronx County and Westchester County?

The Witness: That is correct.

A. (Continuing) It shows that 9.9. per cent of the gainfully employed persons of 14 years of age and older at the time of the Census in this country were what we call executives but which the Census refers to as proprietors, managers and officials. That 10.7 per cent were professional and semi-professionals. Approximately .1 of the workers—gainfully employed persons, rather, in each case. The clerical and sales persons comprise 24.8 per cent of the gainfully employed. Approximately one-fourth of the total. And that the categories we grouped together under the heading manual workers comprise 54.6 per cent of the

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gainfully employed people 14 years of age and older in the Southern District at the time of the 16th Census.

Q. Now I will ask you whether on the same basis, with (2033) utilization of the same four major groupings, a calculation was made to total the jurors based on the occupations as described in the official jury lists of the clerk's office of this court to ascertain into which of these four groupings the various jurors fell? A. You ask if such calculation was made?

Q. Yes. A. Yes.

Q. Was a chart prepared showing the tabulation or pictorial result? A. There was.

Q. How many panels was this calculation based upon? A. It was based upon 28 jury panels, the 28 we listed Friday, as comprising the basic sample used in this analysis.

* * *

Mr. McGohey: If your Honor please, might I ask a preliminary question here?

The Court: Yes, you may.

Preliminary cross examination by Mr. McGohey:

Q. I should like to know, Mr. Wilkerson, whether you personally made the chart that you have just testified to, about the distribution of population according to the four categories. A. By that do you mean did I draw the lines and color it? I did not. It was done (2034) under my direction. And I have checked it.

Q. You have? A. Yes.

Direct examination continued by Mr. Gladstein:

Q. Now I want to call your attention to No. 67-A for identification and ask you whether that is the chart to which your last answer had reference? A. It is.

Q. What does it show? A. It shows that among the jurors listed on the 28 panels we called attention to between 1940 and 1949, 46.1 per cent are classified as executives, which means in terms of the Census categories proprietors, managers and officials. 17.7 per cent are

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professionals and semi-professionals. 31.2 per cent—this is the jurors on these 28 lists—were clerical, sales and kindred workers. And only five per cent were manual workers.

Q. Did you check to ascertain the accuracy of those figures and those markings and that pictorial effect upon the chart? A. I did.

Q. Is it correct? A. It is correct.

Q. Is the other correct also? A. It is correct.

Mr. Gladstein: I offer in evidence Nos. 67 and 67-A, your Honor.

Mr. McGohey: Might I ask a question before the—

The Court: You may.

(2035) *Preliminary cross examination by Mr. McGohey:*

Q. Would you tell us, Mr. Wilkerson, who was it that set up these four classifications that you indicated on the chart? A. The four classifications were agreed upon by the lawyers and I in consultation.

Q. That is, you say the lawyers, you mean the lawyers who represent the defendants here, and you? A. The defense, that is right.

Q. At the counsel table.

Mr. McGohey: Now, subject to the reservation that I made with respect to all these charts, your Honor, I have no objection.

(Defendants' Challenge Exhibits 67 and 67-A for identification received in evidence.)

The Witness: I think it was—may I? I don't know whether to speak or not, your Honor. I am a little bit unused to this procedure.

The Court: Well, it is almost always better for a witness to wait until the lawyer who calls him asks a question.

The Witness: All right.

Direct examination continued by Mr. Gladstein:

Q. Now, Mr. Wilkerson, would you resume your seat.

(Witness resumes witness stand.)

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Q. Have you prepared a table in handy form so that the (2036) Court could have a copy of it and it would be offered as an exhibit that will show the figures that appear on the lefthand side of 67 in evidence? A. Yes. It is table No. II-A.

* * *

(2037) Q. Mr. Wilkerson, I show you Challenge Exhibit 67-B for identification, and ask you to state what it is.

The Court: Oh, this is 67-B.

Mr. Gladstein: 67-B.

The Court: I had it 68. 67-B.

A. This is a table which bears the title, "Occupational grouping of gainful workers, Manhattan, Bronx, and Westchester, 1940," and which indicates in round numbers (2038) the number of thousands of gainful workers in each of the four categories we have here talked about, and also for each of these four categories the percentage distribution of the workers, plus the specific sources from which the data were compiled.

Q. And that information contained on that table is the same as appears pictorially on 67? A. It is.

Mr. McGohey: 67-A.

Mr. Gladstein: 67-A. You are right.

Q. Is it accurate? A. It is.

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

Mr. McGohey: Subject to the same reservation, your Honor, I have no objection.

(Defendants' Challenge Exhibit 67-B for identification received in evidence.)

Q. Was a table prepared, Mr. Wilkerson, giving corresponding data concerning the right side of Exhibit 67, in other words, that portion which has now been received as 67-A? A. There was.

* * *

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Q. I show you a single page document marked 67-C for identification and ask you to state what that is? (2039) A. This table here labeled Table XII-B indicates the occupational distribution of jurors among the four general categories we are here using on all 28 panels, used as a sample in this analysis between 1940 and 1949, compared with the occupation distribution of gainful workers and of male gainful workers in non-exempt occupations in the Bronx, Manhattan and Westchester in 1940.

Q. Where were the figures obtained from? A. The figures for this table were taken from certain tables that you haven't offered in evidence here, which in turn were taken from the Census volumes.

Q. But they are Census data? A. Yes, except for the—

Q. Jurors? A. For the information about jurors.

The Court: Which table is it that you have there? 67-C?

The Witness: 67-C.

Q. The information regarding jurors, of course, was taken from the official jury lists put out by the clerk, is that right? A. Yes.

Q. Now are the figures and tabulations shown on 67-C for identification accurate? A. They are.

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

(2040) Mr. McGohey: Your Honor, before it is received in evidence I would like to get some clearer explanation of what tables we are talking about that are said to have been the basis for this table.

The Court: You may do that.

Mr. Gladstein: All right, perhaps that is so. I will withdraw the offer at this moment then. And ask that this be marked.

The Court: 67-C for identification is being withheld for a moment.

* * *

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Q. I show you, Mr. Wilkerson, a document marked Challenge Exhibit 67-D for identification. Will you be good enough to state what the information on that exhibit is? A. This is table 4-B for our—for my purposes at least. It shows the percentage distribution of jurors listed in the Southern District among occupation groups for each of 28 federal petit jury panels, 1940 to 1945.

(2041) Q. Those are the 28—

The Court: 1949.

The Witness: 1949. Thank you.

A. I should point out that the January 17th panel here represented includes the first listing only, not the second listing.

Q. All right. A. But for each panel then, each of the 28 panels we have here the percentage distribution of persons listed for jury service among the four major occupational groups we are dealing with.

Q. Is that an accurate tabulation? A. It is. And it is based on this IIII-A.

Q. Now, you say that No. 67-D for identification is based on another exhibit? A. That is right. Your Table IIII-A.

Q. When you say 28 panels, you mean the same 28 that you previously referred to? A. That we defined Friday as the basic sample used in this analysis.

* * *

(2042) Q. Now I show you a document consisting of two pages marked 67-E for identification, and I will ask you to state what it is? A. This is labeled Table IIII-A and shows the number of jurors in the Southern District of New York for each of the 28 sample panels used in this analysis who fall within each of the four broad occupational groupings to which we have called attention. I might point out that these numbers provide the base on which the previous table you called attention to—which is labeled IIII-B, isn't it?

Q. Yes, the one that is now marked 67-D for identification. A. 67-D for identification is a table for percentages for the 28 panels computed from the numbers which are on 67-E for identification.

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Q. Are the calculations and the data shown on 67-E accurate? A. They are accurate.

Mr. Gladstein: I offer them in evidence, and at the same time—

The Witness: I think I should call attention—

The Court: The housewives and retired persons are tabulated on IV-A but are disregarded on IV-B.

Mr. Gladstein: There will be testimony as to (2043) the extent.

The Court: Yes.

The Witness: I was just going to explain just that point.

Mr. Gladstein: You were? Then we will have some testimony on that.

By Mr. Gladstein:

Q. Now, on which of these, if on either, 67-E or D, is 67-C based? A. 67-C gains its first column of percentages from Table IV-B.

Q. Well, when you say Table IV-B, you are referring to 67-D for identification? A. That is right.

The Court: No, he is referring to 67-E, isn't he?

Mr. Gladstein: He said IV-B.

Q. Which is it, sir? A. I am talking about 67-D, the table of percentages.

* * *

Q. Now, on what is the balance appearing on 67-C for identification based? A. The distribution, percentage distribution of male gainful workers in non-exempt occupations is based upon a table which we here label as Table XII-B.

(2044) Q. Table XII-B? Well, we will get that one.

Mr. McGohey: 67-C for identification is what it is.

Mr. Gladstein: I don't see it.

Does your Honor have 67-C for identification?

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The Court: I have got Table XII-D before me that you just last referred to.

The Clerk: Here is C, Mr. Gladstein.

The Witness: Forgive me, sir.

The Court: Are we back on III-A now, which is given the Exhibit No. 67-C?

Mr. Gladstein: Just a minute. Let us get the Court designations.

The Court: What is it you are looking for?

The Witness: What is it you want now?

Q. Let me ask this. There is only one question I want to put to you: You have a tabulation of figures on Exhibit 67-C for identification which gives as to the 28 panels the percentage figures that you found and that are portrayed on—

The Court: 67-A.

Q. (Continuing)—on 67-A in evidence, is that right?
A. Yes.

Q. Now, you also have a third column clear over to the (2045) right of 67-C for identification which gives the figures that you have already given as corresponding with 67 in evidence, is that correct? A. That is correct.

Q. Now, there is a middle column which is designated “Male gainful workers in non-exempt occupations.” Now, what do those figures represent?

The Court: Is that on 67-C?

Mr. Gladstein: Yes, Judge, it is on 67-C.

The Court: Read me that question, Mr. Reporter.

(Question read.)

The Court: That is where I went off the track before, and there must be some difference between your 67-C and my 67-C because there is not any such column on here. That non-exempt attracted my attention before but I did not say anything about it because I thought possibly I had not read the paper quickly enough.

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The Witness: Here is 67-C (handing).

Mr. Gladstein: I will undertake to find one, your Honor.

The Court: I see where the trouble is. It is all right.

Mr. Gladstein: I have an extra copy of that, your Honor.

The Court: I thought III-A was 67-C, but I find that Table XII-B has been marked 67-C. So that (2046) I am changing that in my notes.

Now, what was it you wanted to bring out about that 67-C, because I have sort of lost the trend? I have a recollection it has something to do with that middle column entitled "Male gainful workers in non-exempt occupations."

Mr. Gladstein: Yes. I want to ask the witness on what, if any, other exhibit or table that column is based.

The Witness: You were right, Mr. Gladstein, before. It is in Table XII-A, and if I may—

* * *

The Witness: And also XII-B.

The Court: 67-F is Table XII-A?

* * *

(2047) The Court: The whole point of these last few papers is to indicate, as I understand it, that in making up your main charts, which were 67 and 67-A, there were excluded those in exempt occupations?

Mr. Gladstein: Well, no. No, I don't think so, your Honor.

The Witness: No.

Mr. Gladstein: We did not exclude them, but we have a table to show the impact of exempt occupations on the whole, which the witness will tell about.

The Court: So that in those charts, 67 and 67-A, the exempt persons are included also?

Mr. Gladstein: Yes, along with the non-exempt, and we will have testimony to establish the extent

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to which there would be any impact on the question of exempt occupations one way or the other on this question of jurors. For example, I may indicate, your Honor, that generally speaking the exempt occupations, as we read them in the statute, fall within the professional groups a good deal, for example, and will not affect the manual workers in the same way that they would the professionals. In other words, we will have some testimony to show, we will have the statute—

(2048) The Court: It seems to me there is so much guesswork about it. You have all the male workers over 14 that are gainfully employed, and right there there is a big difference between 14 and whatever age the other tables are; then you have the exempt people in, and you have taken the housewives and the retired people out, and it all seems to be a great deal of guesswork. However, I will wait until you get through, and then see what it adds up to.

Mr. Gladstein: I want to say that we are going to address ourselves to the points your Honor has mentioned.

The Court: I wish you would bear in mind, as I indicated earlier, that these United States Supreme Court cases very clearly lay down the rule that it must be a deliberate and wilful exclusion and discrimination. I understand the law, not law made by me but the law established by the Supreme Court, to be very clearly that merely because you have not a certain proportion of those in one occupation or another, or in one age or another, or one section or another, but that the point that you must establish is a wilful and deliberate discrimination and exclusion, which I take it you understand.

Mr. Gladstein: I understand, and I am satisfied that we can comply with all the standards the Supreme Court (2049) has laid down, your Honor, but I take it you don't want to have any argument on that point.

The Court: No. I just wanted to mention that these tables, as I look at them right now, is a

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sampling, and they are made up with so many gaps and so much guesswork and drawing of conclusions, that I feel right now it is going to be extremely difficult to infer from the aggregate of these tables that there has been this wilful and deliberate discrimination that you speak of.

Mr. Gladstein: Now, your Honor, we will address ourselves to each of the possible contentions that might be made or thought to be made against any of the charts. We will come to that in due time.

The Court: You know, in some of these arguments that we had last week there was some talk about tokens, a token person put here or there. Now, these statistics do not seem to bear out anything about tokens. The percentages, even the minimum percentages, seem to me to be not insubstantial. However, I just mention that in passing.

Mr. Gladstein: Now, I want to ask the witness as to 67-F for identification, what it purports to be.

The Witness: 67-F is a table which gives the occupational distribution of gainful workers in Manhattan, Bronx and Westchester and of those exempt from jury (2050) duty in 1940—or, rather, the distribution is on the basis of Census data in 1940. I might say that at this point the relevance of this table is that it provides the basis for one of the other tables—

Q. Which other table? A. That you have—

Q. I want you to look at them all and indicate which.

A. This is it (indicating).

Q. Well, name it. A. Table XII—

Q. No, the identification number. A. It is Exhibit 67-C for identification, which includes among its three columns a column of figures which is taken from XII-A.

Q. Not XII-A, but 67-F. A. 67-F for identification.

Q. All right. Now, are the figures and tabulations on 67-F for identification correct? A. They are.

Q. Now, 67-C for identification, then, you have described as containing figures obtained from one or another of the other exhibits for identification here, is that right? A. That is right.

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Mr. Gladstein: Now, which have been admitted, 67-A and B?

Mr. McGohey: That is right.

Mr. Gladstein: Now, I think with the witness's testimony we are ready to offer in evidence, your Honor, 67-C, D, E and F.

* * *

(2051) Mr. McGohey: Pardon me. If your Honor please, before we adjourn, 67-F appears to have a footnote—

The Witness: That is an error.

Q. The footnote is an error? A. Is this the one that says taken from Table XII-A?

The Court: It just says "Source see table."

Mr. McGohey: In the papers which we have, on the page immediately following the table which is now marked Exhibit 67-F for identification, and which is designated XII-A, the very following page starts off with these words "Footnote to Table XII-A."

The Court: Well, that is a blank page in my set, and I suggest that you gentlemen sort of get together on this and we can dispose of this tomorrow morning. You may confer with one another and straighten this out, and we will now adjourn to 10.30—

Mr. McGohey: I just wanted to find out if the footnote being appended to the table was being offered.

Mr. Gladstein: It is.

* * *

(2052) (Defendants' Challenge Exhibits 67-C 67-D, 67-E and 67-F for identification received in evidence.)

* * *

(2053) Mr. McGohey: If your Honor please, this is just simply for the purpose of the record. As to these exhibits which have just been received in

Colloquy of Court and Counsel

evidence now, just so the record will be straight, with the reservation that I have made with respect to all the others, I have no objection to their admission.

The Court: Yes, and that reservation may apply to this entire line of exhibits and testimony.

* * *

(2053-A) (Adjourned to February 1, 1949, at 10.30 a.m.)

(2054)

New York, February 1, 1949;
10.30 a. m.

* * *

(2055) Mr. McGohey: Your Honor, the New York Times this morning reports a decision yesterday in the Supreme Court in the case of Zimmerman against The State. It is a case involving this question of alleged exclusion of jurors. It is a case that arose in the State of Maryland. The account in the Times this morning indicates that there was a per curiam opinion, with a dissent by Justices Black, Murphy, Douglas and Rutledge; but the Court affirmed the opinion below. And the opinion below you will find in 59 Atlantic Reporter, second series.

Mr. Sacher: Is that a State case?

Mr. McGohey: That is a State case, coming up from the Court of Appeals of Maryland.

The Court: What is the page number?

Mr. McGohey: 675.

The Court: 59 Atlantic (2d) 675.

Mr. McGohey: Zimmerman against The State.

The Court: Zimmerman against The State. I have a note of that.

Mr. McGohey: The Supreme Court affirmed that on the authority of Akins vs. Texas, which I think your Honor has there on the bench. You will find Akins vs. Texas in 325 U. S., around 395, 398 somewhere.

(2056) The Court: Just a second now. 325?

Mr. McGohey: Yes, sir.

Colloquy of Court and Counsel

The Court: No, I haven't got that here.

Mr. McGohey: You will find it in—

The Court: But I will check that up.

Mr. McGohey: I have it here if your Honor wants to look at it now.

The Court: Yes, I think I would.

Mr. McGohey: This copy of the Atlantic Reporter comes from the Circuit Court library, your Honor.

The Court: So there is no use of my sending up there to get it.

Mr. McGohey: No, indeed.

Now, the copy I have here of volume 325 of the United States Reports containing Akins vs. Texas, that comes from the library of the United States Attorney's office.

The Court: Well, I have one of these upstairs in my chambers. But I will keep that Atlantic for the time being. And if you will just pause for a minute, gentlemen, to let me glance at this decision.

Well, of course, they say in this Akins case what was true of all of the authorities: "Fairness in selection has never been held to require proportional representation of races upon a jury."

(2057) And I take it that counsel for the defendants recognize that, and they are urging something different upon me. But however that may be, I shall doubtless get the slip sheet report from the Supreme Court in the course of the day or tomorrow, and I shall study these cases very carefully.

Mr. Gladstein: Your Honqr, of course, this is not a time for, and I know your Honor does not want any extended discussion, and I do not intend to offer any in connection with—

The Court: No, but you may always refer me to authorities.

Mr. Gladstein: Yes.

The Court: And I welcome references of that kind.

Mr. Gladstein: Yes, we will be very happy to do that.

Colloquy of Court and Counsel

At this point I just would like to have the Court's attention called to one very important factor: As Mr. McGohey stated to the Court, the Zimmerman decision that has just been called to your Honor's attention arose from a charge of discriminatory and exclusionary practice in the jury system in a State court, and the reliance in the Zimmerman case upon *Akins vs. Texas* is again reliance on a case that arose in Texas in a State court.

(2058) Your Honor will recall that portion in the *Fay* case where the five Justices who decided against your Honor—and I think incorrectly because I think on the record in that case the facts were adequate to support your Honor's position—but nonetheless—

The Court: Well, you know, I have to take the law as the Supreme Court gives it, and if I get licked I get licked, and I did get licked. However, that is all right.

Mr. Gladstein: I am not suggesting that your Honor not follow what the Supreme Court says. I am simply saying that in my judgment the facts were adequate to warrant a 5 to 4 decision in your favor rather than against you.

But I call your Honor's attention to this: In the *Fay* case four of the nine Justices, just as in the Zimmerman case, stated that in their judgment the panel, the selection of juries in New York State courts was bad. The five who ruled against that view, the same five who apparently maintained that view in the Zimmerman case, said this through Mr. Justice Jackson. I desire to remind your Honor at this point, and I am quoting:

“These defendants”—and that was referring to your Honor's clients—“rely heavily on arguments (2059) drawn from our decisions in *Glasser vs. United States*”—I will skip the citations—“*Thiel vs. Southern Pacific Company* and *Ballard vs. United States*. The facts in the present case are distinguishable in vital and obvious particulars from those in any of these cases. But

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those decisions were not constrained by any duty of deference to the authority of the State over local administration of justice. They dealt only with juries in federal courts. Over federal proceedings we may exert a supervisory power with greater freedom to reflect our notions of good policy than we may constitutionally exert over proceedings in State courts, and these expressions of policy are not necessarily embodied in the concept of due process."

The Court: I am fully cognizant of that. You may remember that right about the opening guns of this proceeding I said in some little colloquy that you present the point in a double aspect, the constitutional aspect and the aspect of supervisory powers of the federal courts over their juries. I realize that.

Mr. Gladstein: Yes. I merely wanted to call your Honor's attention to the fact that the Zimmerman case, like the Akins case, being a State court jury case, receives the attention from the United States (2060) Supreme Court in the manner indicated by virtue of the fact that the five Justices of the Supreme Court feel constrained to defer to the authority of the State.

The Court: I got that.

Mr. Gladstein: We, however, are dealing here with a federal system.

The Court: You are dealing with it in a double aspect.

Mr. Gladstein: Yes, that is true.

The Court: That is what I think is clear. I have that very much in mind, and I understand the power of the Supreme Court in view of all these questions and all those little details. I think you may assume that I am quite familiar with them.

Mr. Gladstein: Very well.

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Doxey A. WILKERSON, resumed the stand.

Direct examination continued by Mr. Gladstein:

Q. Now, Mr. Wilkerson, at the close of yesterday's proceedings your attention had been called to and there had been introduced in evidence an over-all chart which is now located on the blackboard and which is designated No. 67 in evidence, plus a smaller chart received in evidence as 67-A, defendants' exhibit in the challenge, and those I understand represent the over-all picture for the people on the one hand and for the jurors on (2061) the other in connection with 28 panels. A. Yes.

Q. With respect to the occupational breakdown, is that right, sir? A. Yes.

Q. Now in arriving at the over-all figure for 67-A, or the over-all picture, I should say, together with the figures indicated on that exhibit, what was done? A. If I get your question, you want to know how we determined—

Q. How you proceeded. A. —that 46.1 per cent of the jurors represented on those panels belonged to what we are here designating as the executive class?

Q. That is correct.

The Court: Didn't he tell us that yesterday, that he took it from the designations of occupations appearing on the jury lists?

Mr. Gladstein: Well, I do not think that that is a sufficient answer, your Honor, because—

The Court: All right.

Mr. Gladstein: I would like to have him describe how he proceeded to get the over-all picture.

The Court: He may do that.

Mr. Gladstein: Thank you.

The Witness: There are several types of things essential, I think, for an adequate answer to that question.

The Court: Now, you know, that is the kind (2062) of thing, Mr. Witness, that I think you can begin cutting down on a little bit. You have a way of wandering around and making a lot of preliminaries. Now just get to work and give us the answer to the question without all these preliminaries

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and explanatory matters and digressions, which I am sure you can easily avoid.

The Witness: All right, your Honor, I am sorry if I seem to be delaying things unduly.

In the first place, it was essential to ascertain what is the occupation of the juror, and what we said yesterday was that we took that from the—

The Court: Now that is the kind of thing. Why do you do that? He asks you to tell us how you proceeded to work out the 46.1 per cent. Now go ahead and do it without explaining what you did yesterday and what you did some other time, but just go down to the question and indicate as briefly as you reasonably can what you did and the manner in which you proceeded.

Mr. Gladstein: Your Honor, I think the witness, if I may say so, was simply using a point of departure to call our attention to something and then—

The Court: That is what I am telling him not to do. I have been reading over the record of his testimony thus far, and he has a way that is very pleasant and very interesting, of wandering along. I don't mind it, (2063) but really, we must reach an end some time here, and I think it is going to be easy for him to answer questions a little bit more succinctly. That is all I am telling him to do. It is just to save time, and if there is anything that is confusing or inadequately stated, why, I am not going to prevent your following it up with another question that will bring out whatever you desire to bring out.

Do you understand what I mean?

The Witness: Yes, your Honor.

The Court: I think so.

The Witness: I hope you understand that I am simply seeking to connect with what I was about to say with where we left off yesterday.

The Court: I do, I understand that, and I do not mean what I have spoken of here as any criticism of you at all.

The Witness: Shall I now proceed?

The Court: Yes.

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By Mr. Gladstein:

Q. Please do so. A. It would be best, I think to illustrate this procedure with reference to a particular jury list because the point of procedure here is important. It would be inadequate to say that we did it just like the Census (2064) cite of this chart does, because these data we merely copied from a Census report.

Q. When you say "these data"— A. The data on the left side of this chart which is Exhibit 67, indicating the occupational distribution of the population gainfully employed.

It was necessary on the basis of information provided concerning the jurors for these panels—

Q. By the clerk? A. By the clerk.

Q. That is on the panel? A. Yes. (Continuing) With the use of certain guides and manuals provided by the Census Bureau to go through the process of classifying these individual jurors just as the Census went through the process of classifying each of the individual people enumerated in the 1940 Census.

There are several things that are important there. Let me illustrate: I have one of the jury lists here. We might take any jury lists. This one has as the first name Victor Alvarez, whose occupation is listed as general office manager, 8 Dunham Road, Scarsdale; 7 Battery Place, New York City, is his office address.

We then took the alphabetical index of occupations and industries, which has already been entered as Challenge Exhibit 16, and look up office managers—

Mr. McGohey: If your Honor please, may I (2065) ascertain what jury list the witness is referring to now?

The Witness: This is the list of January 17, 1940.

Q. The first or the second?

The Court: 1940, he said.

The Witness: 1940.

The Court: He is taking Exhibit 54 as the basis.

The Witness: We will find when we look up manager, office, it happens to be on—

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Mr. McGohey: May I interrupt, your Honor. I do not think that is 54. A jury list?

The Court: No, 54 is the chart like one of these that is made up from the jury panel—

Mr. McGohey: It appears to be Exhibit 25, I think.

The Court: You are quite right that the jury panel itself bears another number. That is 25, is it?

The Witness: That is correct.

The Court: Very well.

The Witness: One will find in the alphabetical index on page 314 the category manager of office, and behind it certain symbol numbers, 156. If one then turns to the earlier part of the classification index he finds that the symbol number 156 refers to the category which the Census lists in its reports as proprietors, managers (2066) and officials.

Hence we give to Victor Alvarez, who is a general office manager at Garcia & Dia the classification of managers—proprietors, managers and officials, which in our category here we designated by the term “executives.”

Now if the Court would like I should be delighted to illustrate this process with others. Should I or is it perfectly clear?

Q. Would you do a few just to indicate, if you will, Mr. Wilkerson, what the process was?

The Court: Just answer the questions.

The Witness: Pardon me, sir.

A. The next name on the list is that of Alfred P. Anderson, who is a compositor at the F. E. Fitch Company, Incorporated. His address and office address for our purposes are important. If we look in the alphabetical list for compositors, we will find a symbol number 310 which indicates that the worker involved, the employed person involved, by reference to the key in the Census is in the category of craftsmen, foremen and kindred workers, which happens to be one of the six categories that we grouped together with the general heading manual workers.

So we classified Mr. Anderson as a manual worker.

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(2067) In like manner for all of the names on the individual lists, we went through the process of classifying each individual juror as regards occupation. I think I should point two or three things out in reference to the procedures there. At times, take a real estate man, for example,—

The Court: Take a what?

The Witness: A real estate worker, without referring to specifics here; you can check it with the alphabetical index; if he be an owner of a real estate establishment he would be classified as 1, or rather, in our executive category.

Q. When you say "1" you are referring to— A. To our category of executives.

Q. That is right. And the second? A. He would be classified by Census category or proprietors, managers and officials.

Q. Yes? A. If he is a salesman, a real estate agent, the Census classification would list him in what is then in our third group, clerical sales persons, and very frequently the jury lists did not make clear whether this juror, who is in real estate, is an owner and a proprietor, or whether he is a sales agent of some other outfit.

In all such cases, and I think many such cases, (2068) what we did was to take the lower, speaking figuratively here, of two possible categories in which he might be placed. In this particular case—and there are many instances—rather than executive where he might have been classified, but we didn't know, we put him in the lower category of clericals, which was also a possibility on the basis of the information available from the census reports. This is true incidentally with many other individual cases. We sought to lean over backwards in the sense of utilizing the lower of possible alternative categories whenever there was any possibility of doubt concerning the proper classification of a person listed on the jury list.

(2069) Q. When you say the lower you mean lower economic brackets? A. I mean the lower in terms of the Census groupings. I am using it here not in sociological

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sense so much, though it is so commonly used or so described, but rather for executives as the highest, manual workers as the lowest, and professionals and clericals ranging in between—in that sense am I using the term also.

Q. Let me ask you this: Have you had this kind of situation, did you run across any question where from the occupational description given by the clerk concerning a particular juror, using that description alone, and that is the only information you had, it was possible that that man might be either a manual worker or he might be in one of the other three categories? A. There were many such instances.

The Court: There might be in real estate, too.
 Mr. Gladstein: Yes.

Q. Do I understand that in all instances where there was doubt or ambiguity or uncertainty the choice made was to place such a juror in the lowest, and now I am using "lowest" in the terms of executives being the highest, the professionals, semi-professionals next, the clerical and sales next, and the manual workers lowest, in all such cases you placed that juror in the lowest of those (2070) four possible groupings; is that correct? A. That is correct.

The Court: Well, he just said he did not do that.

Mr. Gladstein: The lowest to which it—

The Court: The man in real estate, knowing that that might be in the class of manual workers, he only took two, the executives and clerical and assumed that he was in the lower of those two. But he did not, as I understand his testimony, say that he ever put a man who just said "real estate" down in what you called the lowest—although I am surprised to hear you use that kind of expression.

Mr. Gladstein: I used it—I thought I made it clear.

The Court: Not lower than the others, as I understand your theory.

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Mr. Gladstein: Certainly not. I want to make that very clear. But I think there can't be any question in the mind of anybody who is realistic, that speaking economically, speaking occupationally, speaking in terms of income, matters of that kind, in the economic brackets of our society manual workers derive that portion of income which puts them in the lowest scale. And executives derive that portion which puts them in the (2071) highest scale. I am only speaking in that respect. I don't want any inference at all to be derived that I am paying respect therefore to a higher degree to people who are and who happened to be wealthy, your Honor.

The Court: I thought maybe you slipped up a little bit there. But I understand what your position is.

The Witness: I think the Court was not quite clear on my illustration.

Q. Would you give it again or give it so that it is clear? Perhaps I misunderstood you. A. There is never an instance in which a real estate worker or person employed in real estate would be classified as a manual worker unless perhaps she was a charwoman in a real estate office or something of that sort. An agent, or a person who runs the business, can be either executive or clerical sales, according to our categories.

However, take another illustration that I recall from some of these—a tailor. You will find if you analyze the classification, alphabetical index of occupations in industries, that a tailor who is a proprietor and owns his business would be classified as a proprietor, manager and official, our category of executives. There are, however, certain other (2072) categories of tailors who would be classified as manual workers.

If the designation on the jury list for this particular juror who was a tailor was not sufficiently explicit to make clear with certainty which of the two categories he should go into, we chose the manual worker category rather than the executive. In that sense we always—wherever there was any possibility of doubt we chose that alternative which would have the effect of tending to increase the pro-

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portion of manual workers, clericals, what-have-you, or, rather, those below executives on the jury lists.

Q. In other words, resolving any question of doubt in favor of including people in the higher rather than the lower economic brackets, as I use that term. The other way around I should say. Is that right? A. Including them in the lower, rather than the higher, if there were any doubt.

I think it would be well, Mr. Gladstein, if you wish to read to the Court, not the component subdivisions in these various categories as we did yesterday, but rather a more definitive and interpretive description of the nature of these four categories that we are here using. I think—

Q. Does the United States Census Department have (2073) such a description? A. It does.

Q. Is that contained in the exhibit? A. It is.

Q. Would you be good enough to call the Court's attention to it? And indicate the page from which you read when you do. A. I am reading from "Alphabetical Index of Occupations in Industry," which is Challenge Exhibit 16.

The Court: Page?

The Witness: Page 3 and 4—page 3, yes, and 4, describe what is meant by a proprietor and manager and an official, the categories included in what we are calling executives.

Q. Very well.

Mr. McGohey: If the Court please, isn't this exhibit in evidence? Or, if it is not in evidence it seems to me that it could be put in evidence.

Mr. Gladstein: It is in evidence, Mr. McGohey.

Mr. McGohey: Well, if it is in evidence then why do we have to take up the time reading it now? I object to this as—

The Court: I really don't think we need to.

Mr. McGohey: I am going to object to this line of testimony now as irrelevant.

(2074) Mr. Gladstein: Your Honor, that is a document, that is an exhibit—may I see it, Mr. Wilkerson?

Colloquy of Court and Counsel

(Witness hands to Mr. Gladstein.)

Mr. Gladstein: This happens to be an exhibit of some 600 pages.

The Court: Yes. He can refer to the page numbers.

Mr. Gladstein: Yes.

The Court: And then I will examine those. It is not necessary to read all those things out unless there is some special point. You know, this does seem to drag out so as though I did not understand what he was saying. And oftentimes when I make some statement that indicates a trend of thought that may not show complete acquiescence in what this is saying or counsel is saying then they always come back and say I don't understand, and they have to do it two or three times more.

Now, I have a rather quick understanding of these things in some ways, and I believe I understand perfectly the method that he has stated that he has used. And I believe you can have him just refer to those pages and then I can examine them.

Mr. Gladstein: Your Honor, I think as your Honor well knows it is customary with an exhibit of this sort—as I say, it is over 600 pages—it is customary (2075) at this point in the record to have attention called and to have read into the record any brief passages that are particularly significant and to which the attention of the Court is invited and which ought to be in the record, and rather than simply—

The Court: You say the same thing. I can hand something to you, I can suggest it to you, I can be just as pleasant about it as possible and you utterly disregard it and you go right on. Now, it is all right; if there is something in this particular one that you desire to read in there you may do so.

Mr. Gladstein: Very well. I can do it as well as the witness as a matter of fact. What I want particularly to call your Honor's attention to is the United States Department of Commerce, Bureau of Census' own statement concerning certain characteristics of these Census classifications or groupings.

Colloquy of Court and Counsel

With respect to professional workers the exhibit says this:

"The professional worker is one who performs advisory, administrative or research work which is based upon the established principles of a profession or science and which requires professional, scientific or technical training equivalent to that represented by graduation from a (2076) college or university of recognized standing, or one who performs the work which is based upon the established facts or principles or methods in a restricted field of science or art, and which work requires for its performance an acquaintance with these established facts or principles or methods gained through academic study or through extensive practical experience or both."

Now, with respect to "proprietor" the Census exhibit says this:

"A proprietor is an entrepreneur who owns or who owns and alone or with assistance operates his own business and is responsible for making and carrying out its policies.

"A manager is one who manages all or a part of the business of another person or agency who has large responsibilities in the making and/or in the carrying out of the policies of the business and who through assistance is responsible for planning and supervising the work of others.

"An official of a company, a corporation or an agency is an officer whose work involves large responsibilities in the making and/or in the carrying out of the policies of the concern or agency and/or in planning and supervising the work of the concern (2077) or agency or that of one or more of its departments."

Colloquy of Court and Counsel

Now with respect to clerical and kindred workers the Census Table reads as follows:

"A clerical or kindred worker is one who under supervision performs one or more office activities, usually routine, such as preparing, transcribing and filing written communications and records, editing and coding schedules, compiling statistical or other data, operating office machines, and in general assisting in the work of the office or in the work of a superior by making appointments, acting as information clerk or as record clerk, or as telephone operator or as messenger. Less routine but also clerical is the work performed by such persons as clerks of accounts, mail carriers and railroad station agents. A salesman or a saleswoman is one who usually under supervision is selling commodities, insurance, real estate, securities or services."

And then, with respect to craftsmen, one of the classifications included in our grouping called "Manual Workers" the Census says this, your Honor:

"A craftsman is one engaged in the"—

The Court: Mr. Gladstein, why do you want to (2078) read all of that in there? It is right in that book. You know, it does seem unnecessary for you to keep doing this. I do not—

Mr. Gladstein: Very well, your Honor.

The Court: I do not want to have a fuss about it, but it just does seem as though you keep it up and up. But go on, read some more.

Mr. Gladstein: Let me just call your attention, without reading the balance, to the fact that with respect to the classifications known as craftsmen operatives, service workers and laborers, that in each of those the Census points out that these are all workers who are engaged in manual pursuits. That is to say, manual workers.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. Now Mr. Wilkerson, did you subject to analyses particular panels of the jury lists for the purpose of presenting charts reflecting the actual occupational picture of those particular panels? A. What we did was to analyze not individual panels in terms of pictorial representations, though we do have tabular presentations, but rather groups of panels.

Q. Do you have a list of such groups of panels? A. Yes.

Q. Would you indicate which ones you have? A. We made such an analysis and a corresponding chart (2079) for the panel of the January—panels previously designated in our sample of January and February 1940. I can give you the exact dates of those panels if you like.

Q. Would you do so, please.

The Court: January 1940?

The Witness: January 17th.

The Court: I thought the first one was February 6, 1940. Am I wrong about that?

The Witness: You are referring now to the first map that we introduced.

The Court: Yes.

The Witness: But the occupational charts do not correspond necessarily to the ones—

The Court: The occupational charts do not correspond with these other charts?

The Witness: That is right. Rather than February 6th—

Mr. Gladstein: In point of time only, your Hon. That is to say, the occupational charts, as I understand the witness, cover a greater number of panels than the maps do.

(To witness) Is that correct?

The Witness: I was going to say that the February 6th panel and the January 17th panel, 1940, are (2080) both analyzed together and reproduced on a chart.

Mr. Gladstein: I see. All right, now. Let me ask the clerk to mark this, please.

* * *

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. Mr. Wilkerson, I show you Defendants' Challenge Exhibit 68 for identification. Will you identify it, please?

A. Yes, I do.

Q. What is it? A. It is a chart—

Mr. Gladstein: Can your Honor see it?

The Court: Yes. Put it just a little bit further over that way. That is fine.

A. (Continuing) It is a chart which compares the percentage distribution of jurors, 418 jurors, gainfully employed in the January 17th and February 6th panels, 1940; compares their percentage distribution among four occupational categories, here used, with the percentage distribution of the gainfully employed population of the Southern District in 1940.

The Court: That is, gainfully employed over 14?

The Witness: All Census data, yes.

Q. Would you explain therefore what these bars represent on this 68 for identification? A. Yes. (2081) You will note two red bars, two green, yellow, and blue. There is a key chart, incidentally, Mr. Gladstein, which may help the Court in its reference.

The Court: Well, I wish you would hand them to me so that I can have them before me. But I was thinking of the numbers. That book that you have, does that take in the numbers?

The Witness: Of the panels?

The Court: No. You see, on your chart there it is E-41, A-179, E-45, A-60, and so on. Those numbers come from somewhere and I thought that is what you were going to explain to me. But you may come to that later. You can't do everything at once, I know.

Mr. Gladstein: Very well, your Honor.

The Witness: I might call attention, if the Court wishes, to the sources of those numbers now. Do you want—

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. We will do that as we go along.

The Court: I think if you will follow Mr. Gladstein's order it is going to be better, because he knows just what he wants to bring out, and I think it is better to let a lawyer follow his own bent in such things.

(Marked Defendants' Challenge Exhibit 69 for identification.)

(2082) Q. I show you No. 69 for identification, Mr. Wilkerson. Will you explain what that chart is? A. This is merely a chart which provides the legend that enables one to interpret the several charts which you are about to present here. And I think we should explain certain terms here which are used in a statistical sense and not in a moral sense because there may be some question about it. It is observed—

The Court: What do you mean by that?

The Witness: I will explain it, if your Honor permits.

The Court: Yes, I will.

A. The red bars designate our category of executives. The green bars designate professionals. The yellow bars designate clerical, sales employees. And the blue columns represent manual workers.

Now, you will note here the symbol E and expected in quotation marks. We put it in quotation marks because we mean expected in this sense: If jurors were distributed among the four occupational categories in precisely the same proportion that the gainfully employed population of the Southern District is, one would expect a certain percentage of jurors to fall in each of the categories.

I make this explanation because "expected" here has no implication with reference to intent; it is (2083) merely a statistical term; also the sub-item "if chosen without bias." We are using that term in the statistical sense. If there were a completely random selection you would expect the distribution of jurors which corresponds to the distribution of the general population.

Doxey A. Wilkerson—for Defendants on Challenge—Direct

Q. Can I ask you if what you mean is this, Mr. Wilkerson: taking the occupational classifications or descriptions given on the jury lists, you were able to find which of the four groupings they fall into, based on that information; that is right, isn't it? A. That is right.

Q. All right. Now when you take all of these jury lists, or in this case, for example, January and February 1940, for that particular exhibit, when you take all those classifications, why, you are able to find out how many of them in numbers or in percentage fall respectively in each of the four major groupings, is that right? A. Yes.

Q. At the same time, based on the Census data, you are able to say what the actual population is like occupationally distributed, is that correct? A. Yes.

Q. So that the figure and the size of the bar designated with the letter E represents what the jury composition would be like if it corresponded to the population generally, occupationally speaking? A. Yes, in the (2084) strictly descriptive sense, yes.

The Court: Just a theoretical concept made up by the witness.

Mr. Gladstein: No, your Honor. I thought he had answered that if the jury, if the composition of the jury, occupationally, was a reflection of the occupational composition of the people, that you would find the kind of number and the size of the bar indicated by the letter E on this chart.

Q. Am I correct about that, Mr. Wilkerson? A. That is correct.

The Court: Now that is a roundabout way of saying that taking the figures in the Census and taking the figures on these panels of jurors and making mathematical computations you reach certain mathematical conclusions.

Mr. Gladstein: That is correct.

The Court: All this part of it, "selected without bias" and "expected" and so on is just so much dressing that is put on there. It is a mathematical computation and nothing else but.

Colloquy of Court and Counsel

Mr. Gladstein: What we are saying is, in effect, your Honor, that if you apply the occupational distribution of the people to the jurors on these lists you would find one type of pattern, whereas if you (2085) address yourself to the actual lists you find a different one.

The Court: That is what I say.

Mr. Gladstein: Yes.

The Court: And all this part about what he has expected and to do it without bias and so on, that is just added on. And so the accuracy of the conclusions depends upon the basic data. And one of the difficulties that has occurred to me, and I have mentioned once or twice, is whether the description of occupations given in the list of jurors is on the same basis as the descriptions of occupations appearing in the Census.

Mr. Gladstein: Yes.

The Court: And other difficulties, such as the Census being based not on those eligible for jury service but those over 14 who are gainfully employed, and so on.

Mr. Gladstein: We will come to that, your Honor.

The Court: So that we have got to get all those things together.

Mr. Gladstein: That is right.

The Court: But I do not feel that this key chart contributes very much. But, however, it does explain, supplemented by the witness's testimony, what he means, and that, of course, is the important thing.

(2086) Mr. Gladstein: All right. Then I will offer the key chart in evidence at this point.

Mr. McGohey: If your Honor please, I have an objection. I object to this legend, "Social selection, federal petit jury, Southern District of New York." It appears to me that that designation is completely misleading because the witness has been testifying about some occupational distribution. And there is no evidence in this record that there is any

Doxey A. Wilkerson—for Defendants on Challenge—Direct

relation between the occupations of persons and their social or economic views.

I object further to it, if your Honor please, because of this language, this legend which is down here in small print, saying, "If chosen without bias." Now, those words have definite meanings in a case of this kind, your Honor. The charge here is that there has been bias, that there has been a systematic bias in the exclusion of certain types of classifications of persons. There has been a charge here that there is bias on the part of the Court. That has added nothing whatever to the explanation that is given. And, then, it assumes, it seems to me, a state of facts as to which there is no evidence and for which there is no support.

(2087) Furthermore, I object to the exhibit as a whole as irrelevant.

The Court: I will sustain the objection.

Mr. Gladstein: Now, your Honor, may I offer an amendment to the chart as it stands so as to meet the objections that have been raised?

The Court: Mr. Gladstein, you don't need that chart at all. What you have indicated as the division of colors, the classifications, are all perfectly clear without that chart.

Mr. Gladstein: But I would like nevertheless to offer the chart in the following amended form. I desire to have the word "social" deemed removed from the chart, and I am willing later on to have some blank piece of paper pasted over it so that there will be no question about it; as well as the phrase "if chosen without bias" so that neither of those words or phrases will appear on the chart.

And in that amended form I offer it in evidence.

Mr. McGohey: I still press my question, your Honor, on the ground that it is irrelevant.

The Court: The same ruling.

Q. Now, address yourself, if you will, to 68 for identification, Mr. Wilkerson, and tell us what the letter A stands for in each of the bars in which it (2088) appears. A.

*Doxey A. Wilkerson—for Defendants on Challenge—
Preliminary Cross*

The letter A represents the number of jurors on the two panels we called attention to for January and February 1940, to be found in each of the four occupational categories here indicated.

Q. And the letter E followed by a figure represents what? A. The letter E indicates the number of jurors there would be if the proportion of jurors in a given category, occupational category, but the total were the same, as the proportion of the gainfully employed population in the Southern District in that particular occupational category is to the total. In other words,—

The Court: That is clear.

The Witness: That is clear? Very well. I think it would be well—

The Court: And I got that about 15 minutes ago.

Mr. Gladstein: Very well, your Honor.

Now I offer 68 in evidence.

The Witness: I think, Mr. Gladstein, it would be well to call attention to the exhibit in the record from which—

Mr. Gladstein: I offer 68 in evidence, your Honor.

Mr. McGohey: If your Honor please, before passing on that, might I ask the witness one or two (2089) questions?

The Court: Yes. Unless there is some objection. I take it this has to do with the way in which he got up the chart.

Mr. McGohey: Yes. It has to do with this particular exhibit which he offered in evidence, before I determine to make an objection to its admission.

The Court: You may do that.

Preliminary Cross examination by Mr. McGohey:

Q. Mr. Wilkerson, is it a fact that in taking the total number of persons, 418, whom you list here as jurors for the two panels in January and February 1940 as appear on Challenge Exhibit 68 for identification, you exclude cer-