

10-25-1976

**Appendix: Stenographic Transcript of Voir Dire Proceedings,
Volume 3A**

Lewis M. Steel '63

UNITED STATES COURT OF APPEALS
for the
THIRD CIRCUIT

Docket No. 85-5735

RUBIN CARTER,

Petitioner-Appellee,

vs.

JOHN J. RAFFERTY, Superintendent, Rahway Prison, and IRWIN I. KIMMELMAN,
The Attorney General of the State of New Jersey,

Respondents-Appellants.

JOHN ARTIS,

Petitioner-Appellee,

vs.

CHRISTOPHER DIETZ, Chairman, Parole Board of the State of New Jersey and
IRWIN I. KIMMELMAN, The Attorney General of the State of New Jersey,

Respondents-Appellants.

APPENDIX

VOLUME

3A

2702 To 497a

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-CRIMINAL
INDICTMENT NO. 167-66
A5166-76

1 THE STATE OF NEW JERSEY, :

: STENOGRAPHIC TRANSCRIPT

4 v. :

: OF PROCEEDINGS

5 RUBIN CARTER and
6 JOHN ARTIS, :

: VOLUME III

7 Defendants. :

8 Hudson County Courthouse
Jersey City, New Jersey

9 October 25, 1976

10 BEFORE:

11 HON. BRUNO L. LEOPIZZI, J.C.C.

12 TRANSCRIPT ORDERED BY:

13 RONALD J. BUSCH, ESQ.

14 APPEARANCES:

15 BURRELL IVES HUMPHREYS, ESQ.,
16 Passaic County Prosecutor

-and-

17 RONALD G. MARMO, ESQ., and
18 JOHN GOCELJAK, ESQ.,
Assistant Prosecutors
Attorneys for the State

19 BELDOCK, LEVINE & HOFFMAN, ESQS.,
20 BY: MYRON BELDOCK, ESQ.
Attorneys for Defendant Carter

21 EISNER, LEVY, STEEL & BELLMAN, ESQS.,
22 BY: LEWIS M. STEEL, ESQ.
Attorneys for Defendant Artis

23
24 RAYMOND E. AST, C.S.R., R.P.R.
OFFICIAL COURT REPORTER
25 PASSAIC COUNTY COURTHOUSE
PATERSON, NEW JERSEY

272 A

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROSPECTIVE JURORS:

VOIR DIRE

PHILIP J. ZYLKA:

By the Court

6

DONALD W. WETZEL:

By the Court

37

JOHN N. CARROTTA:

By the Court

47
84

DOMINICK R. DE ANGELO:

By the Court

87
129

BETTY H. KOHLEMAN:

By the Court

138
194
196

MORNING SESSION:

2

AFTERNOON SESSION:

84

Prospective juror, Dominick R. DeAngelo,
accepted

134

MORNING SESSION

(Following occurs in Court's chambers:

(Further jury excuses heard)

THE COURT: All right. With reference to DeSimone, he can sit down during voir dire.

On Saturday I'll hear further argument as to his being precluded from being in the courtroom during the trial and I'll rule on that aspect of it.

But, at this point I'm ruling, after having heard counsel last week, that he could sit during the trial during the selection of the jury even, because no testimony is being selected, being heard at this time.

MR. STEEL: Your Honor, before you go further.

THE COURT: Right.

MR. STEEL: I know you heard argument.

I would just like to state contemporaneously with your rulings, our strong objection to that. And I would like the record to note the objection is being made on Constitutional grounds, that the defense believes that DeSimone is a key prosecution witness.

THE COURT: You said this before.

MR. STEEL: Right.

PENGAD CO., BAYONNE, N.J. 07002 - FORM 3045

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Okay. You're protected.

MR. STEEL: Okay. I just wanted to make sure I was protected.

THE COURT: I just ruled DeSimone can sit in during the jury selection process.

About the participation at the trial, during the trial, I will reserve on that until Saturday until both counsel have had an opportunity to explore it.

MR. STEEL: Judge, we also want your Honor to know, and I think you do, that unless either defendant otherwise specifies the objection of one stands for both.

THE COURT: I'll proceed on that theory.

I assume one adopts the argument with reference to their client.

Now, with reference to the voir dire of the juror, I'll ponder it over a little further.

I'm not going to get into law any further. I'm not going to question on reasonable doubt or anything.

When I question the jurors individually, I'm still going to conduct the same address to the jury as I did to the other panel when I addressed them,

1
2 all collectively, but individually, I'm not going
3 to ask them any law except for the fact that I will
4 impress upon them that it is their obligation to
5 return a verdict in accordance with the law as I
6 give it to them and as I explain it and in accord-
7 ance with the law which will be presented at the
8 trial.

9 MR. STEEL: Your Honor, on that point we would
10 at least ask that your Honor as a minimum say to the
11 jurors, say, remind them that you gave them an open-
12 ing address with regard to burden of proof, reason-
13 able doubt, et cetera, et cetera, in which you laid
14 out what those factors were and you want to find out
15 now if they have any problem, trouble with any of
16 them.

17 THE COURT: I'm not going to particularize
18 any of that charge.

19 I'm going to ask them generally if they will
20 accept the law as I give it to them? Will they
21 apply it as to the facts in the case and return a
22 verdict in accordance with the law and the facts?
23 And your exception is noted. Your application is
24 noted on behalf of both defendants, and your appli-
25 cation, you've made your position clear.

1
2 All right.

3 Let us bring in the juror.

4 MR. HUMPHREYS: Your Honor, may I inquire as
5 to your order? Is your Honor not going into any
6 question about alcoholism?

7 THE COURT: Alcoholism, yes. That one I'm
8 going to ask them, do you have any feeling about
9 alcoholics? Do you have any such feelings about
10 alcoholics that you would be unable to consider
11 testimony by an alcoholic? I'm going to ask them
12 that period. I'm not going to get into any other
13 area.

14 MR. STEEL: Excuse me. Can we do this in the
15 courtroom?

16 THE COURT: No. This one juror was started
17 here. I feel he feels more at home here.

18 MR. STEEL: Let me get my papers.

19 THE COURT: What was the juror's number?

20 THE COURT CLERK: Number 425, Philip J. Zylka.

21 THE COURT: All right.

22 MR. HUMPHREYS: Your Honor, may I also in-
23 quire, if your Honor has definitely made up your
24 mind on the question of when peremptory challenges
25 have to be exercised?

1
2 THE COURT: They will be exercised after the
3 juror passes the cause challenge.

4 MR. HUMPHREYS: My objection to that is noted.

5 THE COURT: Your objection to that is noted.

6 (Prospective juror enters room)

7 P H I L I P J. Z Y L K A, called as a
8 prospective juror, having been previously sworn, testifies
9 further as follows:

10 BY THE COURT:

11 Q Okay. Good morning. I'm sorry to keep you
12 waiting.

13 A Good morning, your Honor.

14 Q You are not going to wait too much longer.

15 All right. I think we went into this area,
16 I think we went into this question 106, 107. We are going
17 to be very brief with you, Mr. Zylka, so we appreciate your
18 patience, okay?

19 Did I ask this juror about Bob Dylan or Dylan?

20 MR. HUMPHREYS: You did not, your Honor.

21 Q I did not. Okay. I think that's where I had
22 left off. Okay.

23 Are you familiar with a person named Bob
24 Dylan, D-Y-L-A-N?

25 A I've seen his name in the paper, but I don't know

1 Zylka - voir dire

2 what he does.

3 Q All right.

4 A Whether he's an entertainer or what.

5 Q Right. He apparently has written songs or
6 has an album where he sings songs, is that it?

7 MR. HUMPHREYS: Yes, your Honor.

8 Q Anybody know?

9 MR. HUMPHREYS: Yes, your Honor.

10 THE COURT: He's a singer?

11 MR. MARMO: Singer.

12 THE COURT: Arranger-singer?

13 MR. BELDOCK: Singer and writer.

14 Q You heard of him but never bought any albums?

15 A No, sir.

16 Q Or know anything about or attended any of his
17 concerts or anything?

18 A No, sir, your Honor.

19 Q All right.

20 Now, considering everything I asked you the
21 other day, just to reflect a little bit, do you know of any
22 reason, considering the questions I asked and the answers
23 which you gave, as to why you shouldn't serve on this case?

24 A Well, your Honor, I had a pretty rough weekend,
25 restless weekend. In fact, I couldn't sleep at all. I had

PENGAR CO., DAYTON, N.J. 07903 - FORM 2846

222 a A

1 Zylka - voir dire

8

2 a headache, and I had to go back and call my medication,
3 which I have a nervous stomach, and I also have capsules
4 for my nerves. I had to go back on them again. And your
5 Honor please, I would like to be dismissed.

6 Q Have you been to a doctor?

7 A Not over the weekend, no.

8 Q Well, are you under the care of a doctor?

9 A I was, yes.

10 Q Until when?

11 A Until May.

12 Q Last May?

13 A That's right.

14 Q I see. But you haven't been there since then?

15 A No, I haven't.

16 Q Do you feel that on Friday may have aggra-
17 vated your condition a little bit?

18 A I believe so, your Honor.

19 Q Well, you are not going and it is understand-
20 able that you would be a little upset, after all you are
21 not used to being questioned like you were, and although I
22 tried to do it as courteously as possible, I could appreci-
23 ate where it might upset you. But procedurally, depending
24 on what happens, if you are not accepted, of course, you go
25 home. If you are not excused and if you are excused,

2 you'll go home too. If you are accepted as a juror, you
3 will go home today. And if you are not accepted, you will
4 go home. The only thing is, if you are accepted, except
5 that you have to come back for the trial. But what I'm
6 trying to say is, the difficult part is over for you, you
7 are not going to be subjected to any questioning like that,
8 we try and tone it down as much as we can for the other
9 jurors as well. It is an ordeal to a lay person like your-
10 self, but you shouldn't let it really affect you. And if
11 you are accepted as a juror, you are not going to have that
12 type of situation anymore. Nobody will question you at all.
13 So you don't have to be concerned.

14 Now, I can appreciate where you would have
15 some reaction, but let us play that by ear. Let me finish
16 my questioning, and I'll cover that again and let you talk
17 to me about it.

18 So, in other words, other than that medical
19 reason you've given, you have no other reason why you
20 shouldn't serve on this jury? You don't have any feelings
21 about the case that would prevent you from being fair to
22 both sides in this case? Is that so? I can assume that?

23 A Probably, yes.

24 Q And---

25 MR. BELDOCK: I didn't hear that answer.

2 A I said probably.

3 Q All right. In other words, you don't have
4 any prejudice against anybody?

5 A No.

6 Q You don't have any feelings about the case
7 wherein your judgment would be affected without hearing
8 the evidence?

9 In other words, you have to hear the facts?
10 You have to hear the law, and then you'll make up your mind?

11 A I believe so.

12 Q Is that so?

13 A That's the way I did the last time I was on trial.

14 Q Okay. And you would do the same thing now?

15 A I think so.

16 Q And in the meantime you would, of course,
17 keep an open mind?

18 A Yes.

19 Q And you would not prejudge the case if I told
20 you not to do it, until you heard all the evidence, until
21 you have heard the charge of the Court, until you discussed
22 it with your fellow jurors; is that right?

23 A That's right, your Honor.

24 Q And, of course, ultimately, if you were chosen
25 as a juror, if you were, you would predicate, in other

2 words, you would base your verdict on two things, basically
3 the evidence and the law; is that correct?

4 A Yes, sir.

5 Q Not on what you might have read about it,
6 right? Not on what you might have discussed about it; is
7 that correct?

8 In other words, anything you read about this
9 case, anything you discussed about it before you came here
10 wouldn't be a basis for your verdict, would it?

11 A I don't think so.

12 Q Well, I would tell you. What if I told you
13 that you are not to consider anything you read, you are not
14 to consider anything you discussed as a basis for your ver-
15 dict, would you listen to me and follow the law as I give
16 it to you, because that is the law?

17 A I think I would.

18 Q Now, with reference to, you mentioned the
19 other day that you did have some discussions about this
20 case and you mentioned the other day that you did read
21 about the case.

22 Now, I did ask you, and I'm not going to be
23 too long, believe me, and I'm not trying to make you ner-
24 vous, and I'm not trying to embarrass you. I'm just trying
25 to elicit information so that I, as the judge hearing it

REPROD CO. BAYONNE, N.J. 07001 - FORM 2044

2 and these gentlemen as the attorneys, could evaluate in
3 deciding the selection of a juror.

4 So, first of all, I'd like for you to try to
5 relax and I would like for you not to feel embarrassed in
6 any way. It is a procedure which perhaps I'm not too happy
7 about it asking you these questions, but I have to. And by
8 the same token, I have to do it in such a way that the in-
9 formation is conveyed to the lawyers and to the Court for
10 the purpose of evaluating a juror for selection but yet we
11 don't want to put a juror in the position by saying what
12 are you doing this to me for, after all I'm a juror. You
13 know, I don't want to put you in that position. I don't
14 want to put you in a position where you might react against
15 any defendant, because this is my doing. You can't. I
16 don't want you to react against the State's position be-
17 cause of this.

18 In other words, I would, we would be defeat-
19 ing our whole purpose here if you went home and you were
20 angry at someone in this room today or any litigant that's
21 in this case because of my questioning. Do you understand
22 that?

23 A Yes, your Honor.

24 Q All right. So I am hoping that that isn't
25 the situation.

2 Now, one or two other questions and then I'll
3 be finished.

4 Do you have any personal feelings about alco-
5 holics, persons who may be alcoholics or who drink a lot?

6 A Well, I personally think they're weak people.

7 Q Okay. Now, assuming that these people, an
8 alcoholic or alcoholics were to testify in this case, do
9 you have such feelings about these people who are alcoholics
10 that you would be unable to consider their testimony just
11 because they are alcoholics?

12 A Well, it would depend upon the circumstances of
13 whatever they were talking about.

14 Q And you would weigh it?

15 A Yes.

16 Q And then you would make a decision?

17 A Yes.

18 Q But you are not prejudiced to the extent
19 where you would say to yourself that you don't believe him
20 period?

21 A No.

22 Q Now, have you held any salaried or appointed
23 governmental job at any time or job with a governmental
24 facility of any sort, such as a prison, a hospital, or
25 things of that nature?

2 A No, your Honor.

3 Q Are there any members in your immediate
4 family that are so associated?

5 A No, your Honor.

6 Q I'm going to ask you one, two, at the most
7 questions. Then I'm going to be finished.

8 Can you tell me as best you remember now, I'm
9 going to qualify the question for this reason. I don't ex-
10 pect you to remember exactly. Give me the benefit of what
11 comes to your mind with reference to this question. What
12 do you know about this case that you haven't told me? Or
13 have you told me everything you know about it?

14 A All I know that the two defendants are accused of
15 killing, as you told me the other day three people.

16 Q All right.

17 A At the time we were talking about I didn't know
18 whether they were white or black people.

19 Q All right. Now, do you know anything else
20 about the details?

21 A No, I don't, your Honor.

22 Q All right. Now, is that information which
23 you have just given me, is that the result of your having
24 read about the case?

25 A That's about as far as I read it. Yes. Actually

2 the case never interested me.

3 Q Okay. Now, with reference to your discus-
4 sions, do you remember specifically what you have discussed
5 about this case?

6 A Well, my wife asked me questions, what was it all
7 about.

8 Q What did you say to her?

9 A Because she herself hadn't known.

10 Q Is this after you were selected as a juror,
11 you mean?

12 A No. This was before.

13 Q Okay. And what did you say to her?

14 A I told her that it was two black people that were
15 accused of having killed three other people.

16 Q And you didn't know whether the other three
17 people were black or white at the time?

18 A Yes, your Honor.

19 Q When did you find that out for the first time?

20 A When you told me here Friday.

21 Q On Friday. Before that you didn't know that?

22 A No, I didn't.

23 Q What about your thinking on the case? Would
24 that make a difference to you whether the victims were white
25 or black, if you were chosen as a juror?

2 A Like I said Friday, I have no prejudice against
3 anyone.

4 Q Okay. So you still would be able to hear
5 this case and weigh the facts before you make up your mind
6 and listen to what the facts are and what the law is and
7 then apply the facts, the law to the facts; is that correct?

8 A I believe so.

9 THE COURT: Okay. I'm going to ask the State
10 to exercise its peremptory challenge.

11 MR. MARMO: Can we just be heard, Judge?

12 THE COURT: All right. I'll ask Mr. Zylka
13 to just step out for a few seconds.

14 (Prospective juror leaves room)

15 MR. MARMO: We would like to have a few min-
16 utes at the finish of your questioning of the juror.

17 THE COURT: All right.

18 MR. MARMO: I would like to, if I can impose
19 on you for two and a half minutes, and you can stop
20 me then, Judge, just to make some statement of the
21 problems that we're facing with this.

22 THE COURT: I'm not going to stop you at all.

23 MR. MARMO: I appreciate that. Because I
24 know you've ruled and we've been thinking about this
25 because we haven't had any thoughts about it before

1
2 you adopted this system this morning, and we have a
3 lot of problems with it, because; and I think it's
4 equally bad for both sides, because we have situa-
5 tions where we're exercising a challenge in a
6 vacuum, not knowing the composition of a juror. We
7 have that kind of problem, which we spoke about this
8 morning. We also have the problem of not knowing
9 the relationship of future jurors to the juror that
10 we're presently making a judgment upon.

11 We may have situations where we have a juror,
12 we have no problem with. We suddenly get another
13 juror, another person on the panel who perhaps works
14 with him or comes from his neighborhood. We think
15 there may be some problem. We can't go back to the
16 juror we already adopted, and we have a problem with
17 that.

18 We also have a very serious problem with re-
19 gard to what's going to happen as we get along the
20 line, since we don't have the total composition of
21 the jury we may move along and exhaust our challenges
22 by the time we are at number ten or twelve, then
23 there is absolutely no way to use peremptory chal-
24 lenges with regard to four or six, or eight more
25 jurors. And we think this is contrary to the scheme

1
2 of peremptory challenges.

3 THE COURT: I don't quite understand what
4 you're saying. If you put ten or twelve, you're not
5 entitled to four or six more.

6 MR. MARMO: By that I meant when we are at
7 juror ten or juror number twelve, if we exhausted
8 our challenges, at that point we've done it without
9 knowing what six jurors are going to be who will
10 survive your questioning and your challenge for
11 cause, and it puts us in a very, very difficult
12 position, one which we think is contrary to the
13 whole scheme of peremptory challenges and jury
14 selections.

15 We consulted with the appellate people and
16 the Prosecutor himself in Hudson County, and he tells
17 us that even in capital cases this is unheard of.
18 They never had this kind of situation.

19 In fact, they suggest that we do not permit
20 the precedent and that we should take an appeal.
21 But, of course, this is something that we have to
22 think about. We haven't made any kind of decision
23 on it.

24 THE COURT: You have any law on it as to this?

25 MR. MARMO: Well, we were just faced with

1
2 this this morning for the first time. Judge,
3 frankly, they tell us that even in capital cases
4 what they would do before this new system was, that
5 the jury would be questioned. They are put in the
6 box and then when there are sixteen people there,
7 and you had a view of the entire composition of the
8 jury panel, you could exercise your challenges.

9 It seems to me that the more we think about
10 this and discuss it, the more problems, very serious
11 problems we find that are inherent in this system
12 that we're now going to be forced to follow.

13 THE COURT: But I told you, you give me the
14 capital case, where we interrogate the juror.

15 MR. MARMO: I understand that.

16 THE COURT: Of course we interrogate them.
17 They are sworn right there and then.

18 MR. MARMO: Yes, but you have had the oppor-
19 tunity of having questioned them.

20 THE COURT: I know. But the Court has passed
21 upon that. The Court has a duty to question.

22 MR. MARMO: I understand that. But now we
23 are in a situation where we don't get a chance to
24 speak to the juror where we have to exercise our
25 challenge, we don't know when we say this juror is

1
2 satisfactory and along comes juror number nine,
3 which causes a problem for us with this juror and
4 the relationship between them.

5 THE COURT: Why type of problems?

6 MR. MARMO: We want number nine, but we don't
7 know number nine, if this juror is going to be on
8 the panel too, because they work in the same place,
9 but one fellow is in a higher position than the
10 other fellow, we like number nine, we think he will
11 be a fair juror, we don't want to waste a peremptory
12 challenge on him, but on the same---

13 THE COURT: Tell me to excuse him and maybe
14 I won't have you waste a peremptory challenge.

15 MR. MARMO: Judge, we don't think it is fair
16 to us to embark on this type of thing on the expect-
17 ation of maybe that kind of situation materializing.
18 And there are other situations along the same lines
19 that maybe you will agree with us that the man should
20 be excused for cause. Probably it's not a basis for
21 an excuse for cause. It sounds like, I would think
22 that in all probability in that type of situation,
23 it's a peremptory kind of situation.

24 THE COURT: I heard your argument. I think
25 you made it rather clear.

1
2 Gentlemen, what is your feeling on this?

3 MR. BELDOCK: Your Honor, I'll let Mr. Steel
4 argue it perhaps at length, if he needs to.

5 THE COURT: Are you opposed to it?

6 MR. BELDOCK: No. My position is pursuant to
7 your discussion off-the-record this morning, I was
8 willing to accept your suggestion of our exercising
9 the challenges after each individual juror.

10 THE COURT: Right.

11 MR. BELDOCK: Provided that is a final exer-
12 cise of challenges.

13 THE COURT: Right.

14 MR. BELDOCK: In the alternative, I still
15 believe that the fairest most expeditious, and most
16 sensible system would be the full struck jury system
17 where if I have one juror, as we discussed before,
18 and exercise our challenges in alternate manners so
19 we then end up with 16 jurors.

20 The system that seems less likely to be ex-
21 peditious and fair is the one proposed by Mr. Marmo.
22 In my opinion that's all I have to say to your Honor
23 on this subject.

24 I do want to ask to put some things before
25 your Honor concerning the questioning of this juror,

1
2 which I will do after Mr. Steel addresses you.

3 THE COURT: Let us hold off.

4 All I want to know, is do you oppose this
5 system or not? If you do, give me your reasons so
6 you'll be protected on the record.

7 Let us not repeat the same things.

8 If we keep repeating things that were said
9 before, we are never going to pick a juror here.

10 MR. STEEL: I did not oppose the system that
11 you suggested.

12 THE COURT: You don't prefer -- you don't
13 oppose it?

14 MR. STEEL: I don't oppose it. The only thing
15 that I do oppose is any system which allows the con-
16 sent of passing.

17 THE COURT: We discussed this. I'm not going
18 to permit you to discuss it again.

19 MR. STEEL: Okay.

20 THE COURT: I already made that clear. There
21 is not going to be any passes.

22 MR. STEEL: Okay.

23 THE COURT: The juror, once he survives a
24 challenge, a challenge for cause stage, then the
25 lawyers will exercise their challenges.

1
2 MR. STEEL: Okay.

3 THE COURT: Or they'll accept the juror.

4 MR. STEEL: No opposition to that.

5 THE COURT: Now, with reference to the ques-
6 tion of the juror, I'm going to give you a couple of
7 minutes to do that. I don't intend to spend a half
8 hour allowing you to tell me how I should question
9 the juror. We've gone through that.

10 Now, go ahead.

11 MR. BELDOCK: Well,---

12 THE COURT: What area?

13 MR. BELDOCK: Your Honor, there were a number
14 of responses that this juror would give, which had
15 you been sitting in my seat and had the ability to
16 look at objectively, you would have seen it, that he
17 was trying to consider saying the things he was about
18 to say, other things, that would have been pertinent
19 to us, and they all related to very sensitive re-
20 sponses to very sensitive questions. And I ask your
21 Honor once again, and I'll give you the questions
22 and answers, and I have in my notes once again to
23 please permit the juror to expose himself to dis-
24 close what is on his mind rather than you saying to
25 the juror, if I instruct you such and such a way,

1
2 you will follow it, because you'll see, I think as
3 I review these few questions and answers, that we
4 should have gotten the man's responses in detail.

5 THE COURT: Well, I think I permitted him to
6 answer.

7 MR. BELDOCK: Judge, he said as to the ques-
8 tion you were asking him, whether he would be biased
9 or prejudiced against either side, and he said:
10 "Probably not."

11 Probably not, now you asked him whether he
12 would be affected by what he read or discussed. He
13 said: "He didn't think so."

14 THE COURT: But he said, I would do the same
15 thing as I did in the other trial. That's what he
16 said. And then he explained what he did in the
17 other trial.

18 MR. BELDOCK: That doesn't answer our problem
19 here.

20 THE COURT: All right.

21 MR. BELDOCK: You asked him as to whether it
22 would make a difference to him that the victims were
23 white or black.

24 Now, Judge, he hesitated a number of seconds,
25 was about to say something, his face obviously showed

1
2 that he was trying to come out with an answer.

3 THE COURT: And he did.

4 MR. BELDOCK: No. Judge, he said his answer
5 was as I said the other day, I have no prejudices
6 and that is not the kind of answer that we should
7 get in fairness, because that's a stock answer and
8 the man is trying sincerely to give us a response,
9 Judge. And you said something to him as he was
10 hesitating, you went on.

11 THE COURT: But I did not suggest the answer.

12 MR. BELDOCK: No. But, Judge---

13 THE COURT: It was his response.

14 MR. BELDOCK: But by going on, you didn't,
15 you just missed that opportunity for us to get a
16 response from him, what he had on his mind, Judge,
17 and that's what we are here for.

18 THE COURT: But counsel have to appreciate,
19 that prejudice, racial prejudices we went into at
20 length on Friday.

21 MR. BELDOCK: But he is showing by his re-
22 sponses today that he has something else he wants to
23 tell us about what he read or what he thinks about
24 this matter.

25 THE COURT: That's your feeling. I don't

1
2 quite agree. I think he was very objective, very
3 responsive to the questions. And for you to evalu-
4 ate it as to what I feel, what weight to give to his
5 responses, not to interpret them.

6 MR. BELDOCK: Let me put it this way.

7 Are you prejudiced? He will say, no. If
8 you are going to ask the man do you have, is there
9 anything you want to tell us about your attitudes
10 as to whether the defendants, the victims were white
11 or black, or about what you read that you think that
12 we might want to evaluate, we might get a response.

13 THE COURT: Okay. You're speaking for both.

14 MR. STEEL: Well, I just want to say---

15 THE COURT: Now, gentlemen. I'm not going
16 to waste time now. We just made it crystal-clear
17 that one attorney is the spokesman for both.

18 MR. STEEL: No, no, no, no, Judge.

19 THE COURT: We already discussed this juror's
20 responses on Friday at length. And I don't intend
21 to spend an hour discussing the juror's responses.

22 Now, you have your objection. Your objection
23 is that you feel that I should either probe more or
24 that I should excuse for cause, although you didn't
25 articulate it in that fashion, but I will interpret

1
2 it for you, I should excuse for cause because of the
3 manner in which he responded?

4 MR. BELDOCK: No, Judge. Not me.

5 MR. STEEL: Let me just add, I won't take more
6 than a minute of your time.

7 THE COURT: I will give you time, but I don't
8 want repetitive argument.

9 MR. STEEL: Will you wait until I'm repeti-
10 tious?

11 THE COURT: I will wait. Go ahead.

12 MR. STEEL: I think even on the question of
13 his medical problem, I think your Honor should say,
14 well, do you think that there is anything about your
15 medical condition, your stomach condition, which in
16 any way could interfere with your ability to sit and
17 listen to this case?

18 I think you owe it to that man as a prospec-
19 tive juror. I think you owe it to the defendants,
20 and I think frankly with regard to that, you owe it
21 to the State.

22 Now, I think you also have to ask him again
23 especially in light of the medical thing.

24 THE COURT: I'm not concerned about the
25 medical. He hasn't had any treatment since May and

1
2 he's acknowledged the fact that he was nervous when
3 he left here on Friday, which was understandable,
4 after being questioned for at least a half hour.

5 MR. STEEL: Okay. I would also---

6 THE COURT: And I'm sure also that he's given
7 the information of being sequestered, he doesn't
8 like it. I'm not going to excuse a juror because he
9 doesn't want to be sequestered. That's a real
10 problem.

11 MR. STEEL: I think sequestration in a way
12 could prejudice him.

13 THE COURT: I'm not going to ask him any more.
14 I've already explored these areas.

15 Your exceptions are noted.

16 Do you have any exceptions, Mr. Marmo?

17 MR. HUMPHREYS: No, your Honor.

18 MR. MARMO: No, Judge.

19 THE COURT: Anything further?

20 MR. STEEL: Will you ask him a few more
21 questions?

22 THE COURT: I'm not going to ask any more
23 questions.

24 We are at a point now where I have passed this
25 juror insofar as any challenge for cause is concerned.

1
2 You will exercise your perempt challenge.

3 Your objection is noted.

4 MR. STEEL: Your Honor, I challenge this man
5 for cause and I will tell you exactly why.

6 THE COURT: You already told me. And I
7 denied your request.

8 MR. STEEL: I haven't told you at all.

9 I think any person who can only say that he
10 would probably be fair and any person who can only
11 say that he doesn't think he would be influenced by
12 what he's read, and can't say any more than that, in
13 light of a voir dire, which does not ask him to be
14 specific about what he means, by what he means, by
15 probably and why, the best he can only say, he only
16 thinks that he can put aside prejudicial pre-trial
17 publicity, is not somebody who can be passed for
18 cause.

19 THE COURT: All right.

20 Your application is denied.

21 Anything further on the record, gentlemen?

22 All right. Bring in the juror.

23 MR. MARMO: Judge, I wonder, does the juror
24 have to be here when we use our challenges?

25 THE COURT: I don't think so. Not at all.

1
2 Leave him out there.

3 You want to think about it? You may think
4 about it. Take a few moments. I'll give you to
5 quarter of. You have five minutes to get in the
6 huddle .

7 Let the record indicate that it is twenty
8 minutes of. I'm going to give both sides five
9 minutes to confer before they exercise their preempt
10 challenges on this juror.

11 But no further argument.

12 MR. HUMPHREYS: We go first this time?

13 THE COURT: Yes, you do. Next time they go
14 first.

15 MR. STEEL: There is no law that says a
16 defendant goes first. On exercising, we keep
17 rotating.

18 THE COURT: That's the way we do it.

19 MR. STEEL: Excuse me. You rotate? I don't
20 understand that.

21 THE COURT: They go first. Who has defendant
22 one, Mr. Beldock?

23 MR. BELDOCK: Yes.

24 THE COURT: And then you. Then you finish.
25 You keep going around. The next time you still go.

1
2 Maybe we haven't gotten to defendant number two,
3 so you go the next time.

4 MR. STEEL: Excuse me.

5 Well, you wouldn't exercise two challenges.
6 What they're saying, if I were to exercise a chal-
7 lenge for this juror, then the next turn is Mr.
8 Beldock; is that what you're saying?

9 MR. MARMO: That's the way it would be done
10 if we were outside.

11 MR. STEEL: Well, I would object to ever
12 being put in a position where I have to exercise any
13 kind of challenge.

14 THE COURT: We'll talk about that later. Let
15 us take first things first.

16 I'm going to give you five minutes.

17 (Recess taken at 12:40 P.M.)

18 (Court reconvened at 12:45 P.M.)

19 THE COURT: I want everybody here at one time.
20 I don't want lawyers here alone. I'm not inferring
21 anything, Mr. Humphreys, believe me.

22 MR. HUMPHREYS: I know.

23 THE COURT: As you were going out Mr. Steel
24 came back in. And I want to be sure that there are
25 no inferences of any byplay in between.

1
2 All right. Let us go. State first.

3 MR. MARMO: The juror is satisfactory.

4 MR. HUMPHREYS: Without prejudice to our
5 position, your Honor, that we should not have to
6 exercise our peremptory challenge at this time.

7 THE COURT: Your application is on the record.
8 I've ruled on it. You've indicated you might take
9 an appeal. If you can, you go right ahead. But
10 that's my ruling.

11 All right. You don't have to reiterate it.

12 MR. STEEL: Well, your Honor, I must say that
13 the defense still does not understand the mechanics
14 of what we're doing now.

15 THE COURT: You're selecting a jury.

16 MR. STEEL: No, no. I understand that much,
17 your Honor.

18 MR. MARMO: I would object to getting into
19 arguments on any other points until after the chal-
20 lenges are used, because Mr. Steel doesn't want to
21 exercise a challenge without understanding the
22 mechanics. I certainly don't want him to do that.
23 Let me tell you my problem.

24 THE COURT: Let him say what he wants.

25 MR. STEEL: Okay. As of now, there are

1
2 twenty-two defense challenges, which as I understand
3 each defendant has eleven.

4 THE COURT: It's about time you knew that.
5 Go ahead.

6 MR. STEEL: Well, your Honor please,---

7 THE COURT: Didn't we rule on this before?
8 Didn't you make an application?

9 MR. STEEL: Please don't express irritation
10 at me.

11 THE COURT: I'm not irritated. I gave you
12 an extra challenge, and you still have twenty-two
13 challenges.

14 Go ahead.

15 MR. STEEL: Okay. I merely want to know,
16 your Honor, the mechanics now of how we challenge.

17 For example if---

18 THE COURT: Defendant number one is after
19 the State.

20 MR. STEEL: Right.

21 THE COURT: Defendant number two after
22 defendant number one.

23 MR. STEEL: Okay.

24 THE COURT: Now, if the State has accepted
25 the juror and Mr. Beldock should excuse him, then

1
2 the next time around you're number one, then the
3 State, and then Mr. Beldock. That's the way we do
4 it in Jersey.

5 MR. BELDOCK: And if I do excuse, if you
6 accept the juror, and Mr. Steel accepts him, then
7 the State is first, and if Mr. Steel should excuse
8 him---

9 THE COURT: Yes. Then Mr. Marmo is first.
10 Then we go one-two-three.

11 In other words, if Mr. Marmo should accept a
12 juror and you excuse him, we don't go back to Marmo
13 first. Then we go to Mr. Steel because he hasn't
14 had his turn.

15 All right. Now, that's the way we do it.

16 Now, do you understand it now? How about
17 you, Mr. Steel, the mechanics, that's what you
18 wanted to know?

19 MR. STEEL: I think if Mr. Beldock for example
20 doesn't exercise a challenge, he still has his eleven?

21 THE COURT: What do you mean if he doesn't
22 exercise?

23 MR. STEEL: I don't lose a challenge if I
24 don't exercise it.

25 THE COURT: If you say acceptable, you still

1
2 have eleven.

3 MR. BELDOCK: I move a challenge for this
4 juror.

5 THE COURT: Now, do we have that clear,
6 gentlemen, so there is no misunderstanding.

7 All right, Mr. Beldock.

8 MR. BELDOCK: The juror is acceptable.

9 MR. STEEL: I challenge.

10 THE COURT: All right. He's excused by
11 defendant number two.

12 Okay. The juror is excused.

13 (Prospective juror enters room)

14 THE COURT: Have a seat, Mr. Zylka.

15 All right, Mr. Zylka. You have been excused
16 and you may return to your profession or occupation.

17 MR. ZYLKA: Yes.

18 THE COURT: And we want to thank you for
19 your time.

20 MR. ZYLKA: Thank you, your Honor.

21 THE COURT: You have been very fair by being
22 here and we thank you for permitting us to impose on
23 you.

24 MR. ZYLKA: All right. Thank you, your Honor.

25 THE COURT: All right. Just go out that door.

1
2 (Prospective juror leaves room)

3 (Prospective juror enters room)

4 DONALD W. WETZEL, called as a
5 prospective juror, having been first duly sworn, testifies
6 as follows:

7 THE COURT: Have a seat here, please.

8 Gentlemen, I just want to make sure about
9 one thing. I'm quite sure. I just want to be
10 positive. When the panel was in court on Friday
11 and I introduced the attorneys and the litigants,
12 did I refer to Mr. Fogel as being associated in
13 this case?

14 MR. STEEL: We both mentioned their names.

15 THE COURT: In other words, the juror has
16 heard their names?

17 I think Mr. Goceljak, who was not, I did
18 mention him too.

19 MR. HUMPHREYS: I think you missed him.

20 THE COURT: All right. His name is John
21 Goceljak.

22 All right. Is Mr. John Goceljak here right
23 now?

24 MR. MARMO: He is in Hudson County.

25 THE COURT: Where does he live? Do you know?

1
2 MR. MARMO: West Milford, sir.

3 BY THE COURT:

4 Q Your name is Mr. Wetzel?

5 A Yes. Right.

6 Q All right. Mr. Wetzel, the other day vari-
7 ous persons were introduced to the panel. By various
8 persons, I mean the attorneys and the defendants, and
9 associates of the attorneys. And then we read a list of
10 witnesses. And among those names, I did not read the name
11 of Mr. John Goceljak, whose name is spelled G-O-C-E-L-J-A-K,
12 he lives in West Milford. He's an Assistant Prosecutor
13 with the Passaic County Prosecutor's office. Do you know
14 him, have you ever heard of him?

15 A No.

16 Q Where do you live, Mr. Wetzel?

17 A Jersey City.

18 Q And what is your profession or occupation?

19 A I'm a supervisor in a bolt and nut company.

20 Q All right. Now, with reference to education,
21 what type, have you had any formal education?

22 A No. I went two years of high school.

23 Q I see. And how long have you been associated
24 with the firm that you are with now?

25 A Seventeen years.

2 Q I see. What does your family consist of?

3 A Wife and three children.

4 Q And could you just give us the ages of your
5 children and what their status is?

6 A Daughter, twenty-two, married, nurse, lives in
7 Connecticut. Son works in the post office, twenty-one.
8 Another son goes to Jersey City State College.

9 Q I see. And what is your religious affilia-
10 tion?

11 A Catholic.

12 Q Do you belong to any social, professional
13 associations, or clubs of any kind?

14 A No.

15 Q And I may assume that there is a Mrs. Wetzel?

16 A Yes.

17 Q And what does she do?

18 A She's a security guard in school.

19 Q Would the fact that she's a security guard,
20 which has some image of law enforcement to the extent of
21 she takes care of traffic I suppose on the corner?

22 A No. She works in the school.

23 Q Oh. In the school. In other words, her
24 duties are what specifically? Do you know?

25 A Keep out unauthorized people and find out who comes

2 into the school and who goes out of it as far as visitors,
3 not the pupils.

4 Q Okay. With reference to those duties,
5 assuming that she had to eject or have to investigate
6 somebody who wasn't authorized, and in so doing she might
7 have to call on the police to help her, would that put you
8 in a position where you might favor the State in this
9 particular case, if you were chosen as a juror?

10 A I don't think so.

11 Q In other words, could you ignore your wife's
12 position as a security guard if you were chosen as a juror
13 in this case, and decide this case strictly on the facts
14 and on the law?

15 A Yeah. I could.

16 Q In other words, could you appreciate that
17 the fact that she is a security guard would have no bearing
18 on this case and it shouldn't influence your thinking at
19 all?

20 A No, it doesn't.

21 Q And it doesn't. It would not?

22 A (Prospective juror shaking head)

23 Q All right. You know the nature of the char-
24 ges in this case, do you not? You were told?

25 A Vaguely, yes.

2 Q All right. The defendants are charged with
3 homicide in the indictment.

4 A Right.

5 Q As I told you right from the outset, the
6 fact that they are charged, is no evidence of their guilt,
7 but they are charged with the charge of homicide, and it
8 relates to three charges of homicide in the indictment.
9 Were you aware of that?

10 A Yes.

11 Q Now, does the nature of the charge disturb
12 you in any way?

13 A The charge, no.

14 Q Is there something that does disturb you?

15 A Yeah, being locked up and being put away from my
16 family.

17 Q Okay. Other than that, do you have anything
18 that disturbs you, that is understandable, we do not take
19 it lightly, because I'm going to go over it, I'll get
20 back to it, but I will listen to you on that, but other
21 than that, do you have any prejudices at this point that
22 would affect your thinking in this case?

23 A I'm starting to become slightly prejudiced.

24 Q Why do you say that?

25 A Well, with what goes on, there are certain blocks

2 like in Jersey City I can't walk down with my wife. And
3 it goes against my grain a little bit.

4 Q And that would cause you to react to these
5 defendants to some extent?

6 A That I don't know. In fact, I have never seen
7 these guys before. I don't know them. I guess it
8 shouldn't.

9 Q It shouldn't. But if it does in any way I
10 want to know about it. I can appreciate what you just
11 expressed as perhaps being a fact. I don't know. I don't
12 live here. But is it going to affect your thinking in
13 this case? Are those feelings that you have developed
14 because of what happened in your town going to affect your
15 feelings?

16 A It's not only my town, it's a lot of towns. There
17 is a big piece going on in the News right now about the
18 old people up in the Bronx.

19 Q What does that got to do with this case?

20 A You asked me about prejudice.

21 Q Right.

22 A I said I am becoming slightly prejudiced. Like I
23 say, I don't know these guys. I never seen them before.
24 It shouldn't, but how do you answer that until you know
25 it's all over and you've become, well, here you say, yes

2 or no at the end. I don't know if I can answer that ques-
3 tion right now, like I say, it shouldn't affect me.

4 Q Well, let me put it this way. You don't
5 know whether it would affect you at this point, but you
6 think it might?

7 A Like I say, I don't know. It's according to what
8 I hear, you know, you know what goes too.

9 Q When is the last time you read about the
10 situation in the Bronx?

11 A This morning. And then there was one Saturday too
12 in the paper. It is a series that just started. It cries
13 out headlines.

14 Q And it upsets you?

15 A Sure it does.

16 Q And you feel if you are chosen---

17 A I've considered moving out of Jersey City.

18 Q Let me ask you this. I might as well ask
19 you right now. Were you aware in this particular case
20 that the victims are white?

21 A Yeah.

22 Q You're aware of that?

23 A Yes.

24 Q Would the fact that the defendants are black
25 and the victims was white, put you in a position where your

2 judgment would either be affected in any way or do you
3 think it might be affected in any way?

4 A That reason? Like I say, it shouldn't affect me,
5 because these guys I never seen before and they've done
6 nothing to me or they've done nothing as far as I know.
7 But according to, you know, during the trial, I don't know
8 whether it would or not. Like I say, it shouldn't.

9 Q Would you be able to hear this case and put
10 aside any feelings you may have developed because of what
11 happened in your community and what has happened in other
12 communities, and decide this case solely on the evidence
13 and solely on the law? Would you be able to do that, if
14 you were chosen as a juror, or do you feel that your feel-
15 ings as to what's going on, as you put it, are so strong
16 that you would find it difficult, you would find it diffi-
17 cult to not permit these feelings to affect your thinking?
18 Did I make myself clear?

19 A Yeah, you did.

20 Q All right.

21 A It's a lot easier to answer that. It could be dif-
22 ficult, yes.

23 Q All right. I observed you in your answers
24 very frankly and I think you're being very candid with me.
25 I don't think you're using this as an excuse to be excused

2 from this service.

3 A I try not to . I try to be honest with myself too.

4 Q You feel that these feelings could cause you
5 to react against these defendants during the trial?

6 A Like I say, it's a tough question to answer right
7 now. It might depend upon what I hear in here.

8 Q What you are going to hear has nothing to do
9 with Jersey City or the Bronx. It has to do with a spe-
10 cific situation where certain facts will be presented.
11 And from these facts you are going to have to sift the
12 truth and you're going to have to decide on the innocence
13 or guilt, starting on the premise as I said before, as far
14 as I'm concerned, that they're not guilty at this point.
15 The State is going to prove, if it can, its position. And
16 the burden as I told you Friday is always on the State.
17 It never shifts to the defendants. They don't have to
18 prove their innocence. The State has to prove their guilt
19 beyond a reasonable doubt.

20 Now, if after you've heard the facts and
21 you've heard the applicable law as I explain it to you,
22 you're not convinced of their guilt beyond a reasonable
23 doubt, would you acquit them laying aside all prejudices
24 that you may have developed because of collateral matters
25 not related to this matter? Could you acquit them?

2 A Worded like that, yes, yeah, I could.

3 Q But you do have a serious reservation that
4 your feelings as to what happens elsewhere might affect
5 your thinking here?

6 A There is a reservation, yes.

7 Q There is; and you feel it's strong enough
8 to affect your thinking?

9 A I honestly don't know if it's strong enough to or
10 not.

11 Q But you have given a lot of thought to the
12 situation in the Bronx?

13 A Yeah. I've had butterflies since we talked Friday
14 here. Like I say, I don't know whether I can give without
15 some reservation.

16 THE COURT: All right. I'm going to excuse
17 you. I think you've been candid and didn't use it
18 as an excuse not to serve. I don't have to get to
19 the next area about the sequestration.

20 All right. I'm going to excuse you for cause.
21 Is there any objection, gentlemen, at this
22 point?

23 MR. STEEL: No objection.

24 THE COURT: The State?

25 MR. HUMPHREYS: No objection.

2 THE COURT: All right. Mr. Wetzel, you are
3 excused.

4 I'm going to ask you to do a couple of
5 things. We've asked you to do enough I suppose by
6 having you here waiting around, which we know isn't
7 pleasant. Don't discuss the fact that you have
8 been excused and the reasons why you've been ex-
9 cused with anyone.

10 MR. WETZEL: Fair enough.

11 THE COURT: You're free to go back to your
12 employment.

13 As far as your service is concerned, you're
14 completely finished. Okay.

15 MR. WETZEL: Thank you, sir.

16 THE COURT: Go out that way, please. That
17 left door.

18 (Prospective juror leaves room)

19 THE COURT: Just wait one second.

20 All right. Okay.

21 MR. LIPTAK: Bring the next one in, Judge?

22 THE COURT: Yes.

23 (Prospective juror enters room)

24 J O H N N. C A R R O T T A, called as a
25 prospective juror, having been first duly sworn, testifies

2 as follows:

3 BY THE COURT:

4 Q What is your name?

5 A John N. Carrotta.

6 Q Have a seat. Good morning, Mr. Carrotta.
7 Just about good afternoon.

8 Where do you live? Just tell me your town.
9 You don't have to give me your address.

10 A Jersey City.

11 Q Jersey City. And for how long have you
12 lived in Jersey City?

13 A All of my life.

14 Q Okay. Now, I don't know if this is going to
15 help you, but I'm going to ask you to try and relax, be-
16 cause I'm not going to ask you anything that is going to
17 embarrass you. The sole purpose of this questioning is to
18 ascertain whether or not you'd be able to serve on this
19 case and return a verdict in accordance with the evidence
20 as well as the law.

21 So, if I could help you by telling you to
22 relax, I would appreciate that you would relax. You'll be
23 guided accordingly. I can see that you are a little tense,
24 which is understandable, but you are here with twelve
25 people, and they're just as human as you are. If I prick

2 my finger with a pin, I'll bleed just like you. Don't
3 let the title or anything like that bother you.

4 Okay. Let us talk about the case now.

5 What is your profession or occupation?

6 A I'm, I work for the Postal Service.

7 Q And how long have you been with the Postal
8 Service?

9 A Since August of '74.

10 Q And what did you do before that?

11 A I was in the Army for two years and I had just
12 gotten out of high school.

13 Q I see. Where did you go in the Army? Did
14 you go out of the country?

15 A No.

16 Q What division were you in?

17 A Third Infantry.

18 Q Have anything to do with military police?

19 A No.

20 Q Did you have any difficulty in the Army?

21 I'm not going to ask you embarrassing questions, but I
22 want to make sure that you didn't develop any feelings
23 about authority. You have any difficulty in the Army?

24 A No. No problems.

25 Q When did you get out, a year and a half ago,

2 two years ago?

3 A September 26, '73.

4 Q I see. Everybody remembers the day they
5 get out, don't they, right to the letter. Okay. And
6 since then you obtained this employment with the post
7 office, right?

8 A Yes.

9 Q Are you married?

10 A Yes.

11 Q Do you have any children?

12 A One.

13 Q How old is the child?

14 A Three years old.

15 Q What do you got?

16 A A boy.

17 Q By the way, what religion are you?

18 A Catholic.

19 Q And do I assume that you went through high
20 school?

21 A Yes.

22 Q You go to college at all?

23 A I'm attending college now.

24 Q I see. Where?

25 A Jersey City State.

2 Q What if you get into this case, what's
3 going to happen?

4 A Well, I would do whatever assignments I would be
5 assigned.

6 Q Would it create a real hardship for you?

7 A No, not really.

8 Q You're all right?

9 A Yes.

10 Q Okay. Because, you know, I would consider
11 that in evaluating you as a juror. If you had a hardship,
12 if we get a man in here who has a hardship, or a student
13 who has a hardship, who's trying to go to school at night,
14 and things of that nature, we consider that.

15 Now, if you told me you paid for your tuition;
16 and I'm not giving you an out now, I'm not trying to get
17 you off by any means, but what I'm saying to you, you are
18 going to school, you lose tuition, lose a semester, I am
19 not going to let you lose your tuition or a semester. I'm
20 sure these lawyers would not want to do that either. How
21 do you feel about that?

22 A Well, if it came to that, I wouldn't want that to
23 happen.

24 Q But that won't happen as far as you're
25 concerned?

2 A No.

3 Q What does your wife do?

4 A She's a housewife.

5 Q Does she have any formal education?

6 A Just graduate of high school. That's it.

7 Q She takes care of the family at home, the
8 child?

9 A Yes.

10 Q All right. Now, did I ask you your religion?

11 A Yes.

12 Q What did you tell me, Catholic?

13 A Catholic.

14 Q Okay. You know what this case is about to
15 the extent that as to what the charges are is, you know,
16 homicide?

17 A Yes.

18 Q The defendants are charged with homicide,
19 right?

20 A Yes.

21 Q Judge Marchese told you about that, correct?

22 A Correct.

23 Q Knowing the charge is homicide, does the
24 charge in and of itself disturb you at all? Does it affect
25 you in any way?

2 A Not particularly, no.

3 Q You could hear this type of case, in other
4 words, and decide it fairly and squarely on the merits,
5 right?

6 A Yes.

7 Q Do you know anything about this case at
8 this point except for what they told you in court from
9 other sources, like newspapers, television, magazines,
10 other people?

11 A Well, yes. What I've read in the papers in the
12 past, you know.

13 Q Okay. Tell me how long ago did you start
14 reading about it?

15 A Probably about a year ago or so.

16 Q All right. Do you remember what you read
17 about the case when you first read about it?

18 A That Mr. Carter was asking for a re-trial. And
19 that at that time it was up to the Governor. And he had
20 brought his petitions to the Governor. And it was then
21 turned over back to Passaic County. And they felt that it
22 wasn't to meet their approval, they felt that it should not
23 have been granted, and then it went to the Supreme Court
24 and it was granted.

25 Q All right. That's what you read as far as

2 you are concerned?

3 A Yes, as far as I remember.

4 Q How about that? Did you ever hear about
5 this case before a year ago?

6 A No.

7 Q You read about it in 1966 or after that
8 except for a year ago?

9 A I'm twenty-three years old, so I don't recall that
10 at that time.

11 Q So the first contact as you remember as you
12 sit there now, would be your reading about it about a year
13 or so ago?

14 A Yes.

15 Q Okay. As a result of what you read at that
16 time; incidentally, was that the only source that you've
17 had? Have you had any exposure to television about this
18 case at any time?

19 A Well, what I had mentioned, would include television
20 if it was on it.

21 Q Did you ever discuss it with anybody?

22 A No.

23 Q Have you formulated any opinions as to inno-
24 cence or guilt at this point?

25 A No.

2 Q Do you have an open mind about the innocence
3 or guilt of these defendants at this point?

4 A Yes.

5 Q In other words, you don't have an opinion
6 about innocence or guilt, or do you?

7 A No. No, I do not.

8 Q Do you know any of the participants in this
9 trial? By participants, I mean the lawyers for the State,
10 for the defendants, the associates with them, the defend-
11 ants themselves, or witnesses, whose names I've read the
12 names of persons that I read who might be mentioned in the
13 trial. Do you know any of these people?

14 A No, I don't.

15 Q Have you ever been associated with law en-
16 forcement yourself? By law enforcement, I mean local
17 police, like I said, the other day, on the city level,
18 municipal police, city police, township police?

19 A You mean do I know?

20 Q No, have you yourself ever been associated
21 with any law enforcement agency as I defined it?

22 A No.

23 Q Are you, any members -- I'll take it one at
24 a time now. Nine. I want to know how close, are there
25 any relatives in your immediate family associated with law

2 enforcement on either side, yourself or your wife?

3 A No.

4 Q Okay. Do you have any close friends that
5 are associated with law enforcement?

6 A No, I do not.

7 Q All right. Have you or any member of your
8 immediate family ever been the victim of a crime?

9 A No.

10 Q Have you ever been a participant in a crim-
11 inal proceeding such as a witness, a defendant, or a
12 complainant?

13 A No. No, I haven't.

14 Q Has any member of your family ever been a
15 victim of a crime that you know of?

16 A No.

17 Q All right. This is your first time that
18 you've been called as a juror?

19 A Yes, it is.

20 Q You've never been on jury duty before?

21 A Never before.

22 Q Okay. If you are chosen as a juror in this
23 case, would you have any difficulty in listening to the
24 testimony during the course of the trial, listening to the
25 law as I explain it to you, and returning a verdict in

2 accordance with the evidence as well as the law?

3 A No, I don't think I would have any problem.

4 Q Now, there is going to be sequestration in
5 this case, which means that procedurally we are going to
6 spend some time selecting a jury. And we don't know how
7 long that's going to take. But after you're through here
8 today, if you're excused, that means you're not going to
9 be a juror in this case. You go home and go to work, and
10 do whatever you have to do.

11 If you are accepted, you still will probably
12 be able to go home at this point until we have selected
13 the rest of the jury. And then once we select the jury,
14 we are going to ask you to come back. And then the trial
15 will start.

16 Procedurally, now once the trial starts, we
17 are going to sequester the jury. You know what sequestra-
18 tion is?

19 A Yes, I do.

20 Q It means that you'll be housed in a hotel
21 with your fellow jurors and you'll be under the supervision
22 of the Passaic County Sheriff's office. I suppose Passaic
23 County. At any rate, there will always be someone in at-
24 tendance and you'll be transported from there to the court-
25 house and back in the evening. And you'll have to stay

2 sequestered for the period of the trial, whatever it could
3 be. Five weeks. It could be six. It could be less. It
4 could be more. I don't know.

5 Now, how do you react to that? I know you
6 don't like it. Nobody would like it. But would you have
7 any real hardship except the inconvenience, the fact that
8 you wouldn't be with your family?

9 A Not particularly, but as long as I could make some
10 arrangements with my school that I could get assignments
11 brought over or something like that.

12 Q No problem with that. You'd be able to do
13 that?

14 A Yes.

15 Q All right. Let us get into some specific
16 areas.

17 Now, let me see. You told us that you don't
18 know any of the participants. That's correct; isn't it?

19 A Yes.

20 Q Okay. Are you familiar with the City of
21 Paterson at all?

22 A East Paterson, a little bit.

23 Q Do you ever recall socializing in Paterson?

24 A No.

25 Q Did you ever hear of a James Oliver?

2 A No.

3 Q And a Fred Nauyaks?

4 A I think you mentioned those names before.

5 Q Right. I just want to be sure. And then
6 there is one more person, a Hazel Tanis?

7 A No.

8 Q Okay. Did I ask you if you belonged to any
9 associations, professional, social, or otherwise?

10 A No, you didn't ask that. But, I don't.

11 Q Okay. How about in school? You have any
12 fraternities you belong to?

13 A No.

14 Q Okay. Generally, what newspapers or maga-
15 zines, or periodicals do you read?

16 A The Times and local papers, the Jersey City Journal
17 Star Ledger, one of those.

18 Q All right. Now, from what you -- maybe I
19 will get to that later.

20 Let me ask you about, did you ever hear the
21 name Rubin Hurricane Carter before?

22 A Not before the, like I said, the incidents, the re-
23 trial had come about.

24 Q Before that you had never heard of him as a
25 boxer?

2 A No.

3 Q You didn't know he was a boxer?

4 A I didn't know that. At that time I was only about
5 fifteen years old.

6 Q So you never saw him fight?

7 A No, I never did.

8 Q And you didn't follow his boxing career in
9 any way?

10 A No.

11 Q You never saw him fight on T.V. for that
12 matter either, did you?

13 A I never did.

14 Q Now, do you know, assuming I told you that
15 he was a boxer, would that create any difficulty insofar
16 as you're acting as a juror in this case?

17 A No.

18 Q Did you ever read a book entitled the
19 Sixteenth Round?

20 A I did not.

21 Q Let me ask you this question. You just think
22 about it for a moment. Do you have any opinions about
23 persons whose lifestyle perhaps differs from yours?

24 A I don't know what you mean quite by that question.

25 Q Well, let us assume you're a student and

2 you're a postman, right? And let us assume I have a bar-
3 tender maybe, would our lifestyles might be different in a
4 bar most of the time or things of that nature, would you
5 have any opinions about that?

6 A No.

7 Q What if I was on trial and I was a bartender,
8 would that put you in a position because my lifestyle is
9 different from yours, you might be prejudiced against me?

10 A No. What you decide to do with your life is your
11 own business.

12 Q All right. Now, if it developed that these
13 defendants lifestyles might be different from yours in
14 some way, shape, or form, I don't know that it would, but
15 assuming that it were different from yours, would that af-
16 fect your thinking in any way just by reason of the fact
17 that they don't do the things you do and you don't do the
18 things they do?

19 A No.

20 Q Now, you have told us quite specifically
21 what you remember reading about the case originally when
22 it was up for the re-trial; is that it?

23 A Yes.

24 Q Have you read anything about the case since
25 that time or heard anything about it?

2 A Not what was previously before. I was called for
3 that.

4 Q When you were called for this, did you read
5 about it again?

6 A Yes. I recall seeing that it was moved from this
7 Passaic County to Hudson County.

8 Q Okay. And what else do you remember reading
9 about this case other than what you told us so far?

10 A That's about it.

11 Q Have you formulated any opinion as to inno-
12 cence or guilt in this case?

13 A No.

14 Q Have you discussed the case with anyone,
15 your wife, or any employee, co-employee, or friend, or
16 anybody?

17 A No, no.

18 Q Well, did you discuss it? The next question
19 would be, that's why it's very important that you try to
20 search your mind. And I appreciate that you don't remember
21 the answers readily to some questions. But, the next ques-
22 tion would be, did they discuss it with you? And did they
23 formulate an opinion or did they express an opinion about
24 this case? You see, you just have stated you have not
25 formulated an opinion; is that correct?

2 A Well, as far as actually discussing any opinion on
3 it, I did not. But I spoke to my wife. Naturally she
4 wanted to know where I was going, and what I was doing.

5 Q Right.

6 A You know. So I had informed her that this was the
7 case that I was a possible juror.

8 Q You identified the case for her? You said
9 about these two fellows from Paterson and things of that
10 nature?

11 A Yes.

12 Q Now, did she express an opinion about their
13 innocence or guilt at that time?

14 A No.

15 Q Did you express an opinion about their inno-
16 cence or guilt?

17 A No, I didn't.

18 Q Do you have an opinion today about their
19 innocence or guilt at this point?

20 A No.

21 Q You feel if you were chosen as a juror, and
22 I asked you to keep an open mind as to innocence or guilt,
23 I would ask you to listen to all the facts in the case be-
24 fore you make up your mind. And I would tell you to with-
25 hold judgment even at that point, that you would have to

2 withhold judgment until, not only the evidence has been
3 presented. I would tell you to withhold judgment until I
4 have explained the applicable law to you. And then I
5 would tell you again, you still have to withhold judgment.
6 You can't decide this case even once the facts have been
7 developed and the law has been given, you have to wait
8 until the case has been given to you for decision by the
9 Court so that you can discuss it with your fellow jurors.

10 So, actually I'm making it brief and a little
11 less complicated, but you have three stages.

12 Number one, you must listen to all of the
13 evidence.

14 Number two, you must listen to the law.

15 Number three, you must have an opportunity
16 to discuss the case with your fellow jurors when it's
17 given to you for deliberation, and not before, of course.

18 And now, would you be able to do that, wait
19 until you make up your mind until all these things are done?

20 A You mean until everything is entirely---

21 Q In other words, you can't say, for example
22 the State goes first, okay. After they finish, oh, oh, I
23 know where I'm going on this case. You can't do that.
24 Would you be able to withhold judgment on the defendants'
25 innocence or guilt at that point?

2 A Yes.

3 Q Then I would say to you then, if the defense
4 decides to go ahead with the defense, you must still keep
5 an open mind. You can't decide innocence or guilt yet.
6 Would you be able to do that?

7 A Yes.

8 Q Then I would say to you that even though you
9 have heard the State's case and even though you have heard
10 the defense, you still can't make up your mind. You have
11 to wait until I give you the law. Would you be able to do
12 that?

13 A Yes.

14 Q And then I would say to you, even after I
15 have given you the law, you can't make up your mind until
16 you've had an opportunity to discuss the pros and cons
17 with your fellow jurors. That is what we call delibera-
18 tions. Would you be able to do that?

19 A Yes.

20 Q So, in other words, may the lawyers and may
21 I assume at this point you don't have an opinion as to
22 innocence or guilt?

23 A Correct.

24 Q May we assume then that you would be willing
25 to keep an open mind until the case is actually given to

2 you for decision?

3 A Yes.

4 Q All right. Now, let me just give you as a
5 sideline, you understand if a juror should make up their
6 mind before, let us assume that you are a litigant in a
7 civil case, all right, and you had a jury, right, and the
8 jurors are going to hear your case so you're interested in
9 the outcome, right.

10 Now, if one of the jurors during the course
11 of that trial before the case is tried and before it's
12 given to them they are charged on the law, and before it's
13 given to them for decision, deliberations, and decision,
14 one of the jurors says about your case, you know, I know
15 where I'm going on this case, if he did, let us assume
16 after you presented your facts or before you had an oppor-
17 tunity to present your facts, there wouldn't be any reason
18 to go ahead with the trial, would there?

19 A No.

20 Q So you realize how important it is that a
21 juror keeps their mind open?

22 A Yes.

23 Q Okay. You're willing to do that in this
24 case, aren't you?

25 A Yes, I am.

2 Q All right.

3 Now, you indicated you discussed it with
4 your wife. Did you discuss it with other persons too?

5 A Well, my employer to explain to him that again, the
6 same circumstances, where I had been.

7 Q I mean, other than that. I mean did you
8 ever discuss it with him before that?

9 A No.

10 Q At this time you discussed it solely for the
11 purpose of advising him why you wouldn't be at your place
12 of employment?

13 A Yes.

14 Q And what did you tell him specifically?

15 A I just showed him my summons and I told him that I
16 explained the case that I was selected for.

17 Q All right. Did he express any opinion about
18 the case?

19 A No.

20 Q Did he express any knowledge which he con-
21 veyed to you about the case?

22 A No.

23 Q Did you express any opinion to him about the
24 case?

25 A No, I didn't.

2 Q Okay. Now, are there any other persons that
3 you may have discussed it with either before you were sum-
4 moned as a juror or since that time?

5 A No.

6 Q Okay.

7 May we assume then that as a result of what
8 you may have read in the newspaper; as a result of what
9 you may have heard on television; as a result of what dis-
10 cussions you may have had about this case, may we assume
11 that you do not have any opinion about the innocence or
12 guilt of these defendants?

13 A Yes.

14 Q May I ask you this? To your recollection,
15 and I want you to think about this now. Have you ever at
16 anytime expressed an opinion about this case one way or
17 another?

18 A No.

19 Q Now, I'm going to get into an area and I
20 want your candid answers about this like I want throughout
21 all my questioning. I don't want to pick one area out.
22 I'm going to ask you this. The reason I'm qualifying it,
23 I'll make it clear. I told the jurors, I think I told you,
24 we're not here to embarrass anybody and we're not to pry
25 into your personal affairs. But we have a duty and

2 obligation to make inquiry which we think are necessary
3 for the purpose of evaluating a juror's service in this
4 case.

5 Now, do you have any black friends?

6 A Yes.

7 Q Do you work with any black persons?

8 A Yes. That's the friend I was referring to.

9 Q And aside from being co-employees, do you
10 extend your relationship any further? Do you socialize in
11 any way like bowl with them or go out drinking with them
12 from time to time, or socialize in any way?

13 A No.

14 Q Is there any reason why you don't do it?

15 A No, not particularly. Some of them live in New
16 York. Maybe that would be the reason there.

17 Q All right. Are you prejudiced against them
18 in any way?

19 A No.

20 Q Do your children have any black friends in
21 the school? Your child is only three years old?

22 A Yes.

23 Q So we're not going to get into that. All-
24 right. Have you had any disputes with black people?

25 A No.

2 Q Has race ever been part of an argument with
3 any black person?

4 A No, no.

5 Q You tell me you live in Jersey City?

6 A Yes, I do.

7 Q In Jersey City. How long have you lived in
8 Jersey City?

9 A All of my life.

10 Q All your life. Have there been any racial
11 disturbances in Jersey City?

12 A Yes, there have been.

13 Q And do you recall how old you were and when
14 that happened?

15 A When I was going to high school there were problems
16 like that, but there were that type of problems just about
17 in any major city.

18 Q All right. And as a result of those problems
19 did you formulate any opinions about black people that you
20 might think affect your opinion in this particular case in
21 any way?

22 A No.

23 Q Do you have any particular opinions or pre-
24 judices or biases against black people generally which might
25 affect your thinking in this particular case?

2 A No.

3 Q Now, you were in high school. You make note
4 of the fact that there were racial disputes in many major
5 cities, I think that is the way you put it, most major
6 cities you had these racial problems, right?

7 A Yes.

8 Q Do you have any opinions about these dis-
9 putes at this point that you think might affect your
10 thinking in this particular case?

11 A From what had occurred at that time?

12 Q Right.

13 A No.

14 Q Were you ever personally involved in any of
15 these disputes?

16 A No.

17 Q What was the extent of your knowledge? In
18 other words, may I assume that you never participated in
19 these disputes?

20 A Yes.

21 Q All right. What was the extent of your know-
22 ledge of these disputes? Was it by observations in the news
23 media or was it by personal contact?

24 A Well---

25 Q Or both?

2 A Both, yes.

3 Q All right. Now, can you tell us to what
4 extent you were personally involved? I'm using the word
5 "involved" advisedly. You might say you were involved,
6 but to what extent did you have contacts with these dis-
7 putes that you described?

8 A Well, there were problems within the school itself,
9 you know.

10 Q What were the problems?

11 A Well, minor disputes within locker rooms and that
12 type of thing.

13 Q Did they have racial overtones to them? In
14 other words, would it be a black boy picking on a white
15 boy, things of that nature or vice-versa?

16 A In some cases it was both. Even Spanish or, you
17 know, even Italian, you know.

18 Q Did you personally ever become involved in
19 an altercation of any kind with a black boy?

20 A No.

21 Q Or a Spanish boy?

22 A No.

23 Q Did you have any altercations yourself while
24 you were in high school, actual fight?

25 A I've had fights, but none were with a black person.

2 Q Was it because of any racial problems?

3 A No.

4 Q Now, considering that there might have been
5 racial disputes in and about your town or adjacent to your
6 town, or around the nation for that matter, as you put it,
7 most urban areas, and considering that you may have been
8 actively engaged in some of these areas, whether it be a
9 school or otherwise, to the extent that you described,
10 which apparently is minimal by the way; is that it?

11 A Yes.

12 Q Your actual participation, your personal
13 participation, but considering that and considering the
14 fact that you've read about it elsewhere, and you've heard
15 about it, and you've watched T.V. concerning racial dis-
16 putes, have you formulated any opinion about blacks or
17 against blacks as a result of these things?

18 A No.

19 Q May we assume that you don't have any opinion
20 about blacks specifically which could prejudice you in
21 this case?

22 A No.

23 Q Are you aware of the race of the persons who
24 were allegedly victims of the homicides?

25 A Yes.

2 Q And what is that knowledge that you have?

3 A Excuse me?

4 Q What do you know that the victims were?

5 A Three white people.

6 Q All right. Does that disturb you at all?

7 A No.

8 Q Would the fact that the two defendants are
9 black, the three victims are white, would that put you in
10 a position where if you were chosen as a juror, you might
11 feel that you should react because white people were
12 killed by two blacks?

13 A No.

14 Q Would you still be fair to both sides, the
15 State and the defendants?

16 A Yes.

17 Q And you would follow the law as I give it
18 to you?

19 A Until I considered it was completely, I heard both
20 sides, and deliberations had been complete, and the law
21 was applied.

22 Q And right up until that point you would at
23 that point then you would predicate your verdict on the
24 evidence and on the law?

25 A Yes.

2 Q And your verdict would not be affected by
3 any prejudices of any kind?

4 A No.

5 Q And affected by any opinions about this
6 case of any kind, although you stated that you don't have
7 any; is that correct?

8 A I don't have any.

9 Q You don't have any opinion?

10 A No.

11 Q At this point?

12 A No.

13 Q How old did you say you are, Mr. Carrotta?

14 A Twenty-three.

15 Q Twenty-three. In 1966 you were thirteen
16 years old?

17 A Yes.

18 Q And at that time were you aware of any dis-
19 putes outside of Jersey City? Do you recall any disputes
20 in any other towns that you're aware of?

21 A No, not at that time.

22 Q Let me ask you this. Have you yourself per-
23 sonally or any member of your family ever been inconveni-
24 enced or injured, or suffered any problem as a result of
25 these racial disputes which we have been discussing?

2 A No.

3 Q Do you think that blacks are more likely to
4 commit crimes than any other ethnic group or more than
5 whites generally?

6 A No.

7 Q Do you think that non-white people are more
8 prone to crime of violence than white people?

9 A No.

10 Q Would you be biased against a person because
11 he's either black or non-white?

12 A No.

13 Q Are you prejudiced against a person who
14 isn't white or he's a non-white?

15 A No.

16 Q Have you yourself suffered any incident or
17 had any incidents which would, which might interfere with
18 your judgment in this case?

19 A No.

20 Q And if you did have any incident, would you
21 be able to discard it from your thinking completely and
22 decide this issue fairly and squarely on the merits?

23 A Yes.

24 Q Did you ever hear of a fellow by the name of
25 Bob Dylan or is it Bobby Dylan? Bobby or Bob Dylan?

2 A I think he's a singer.

3 Q Yeah, I think he's a rock singer or what.
4 How would you describe him. He's a singer. Did you ever
5 hear him?

6 A I've heard of him.

7 Q You have any of his albums?

8 A No.

9 Q When is the last time you heard of him?

10 A Just heard of his name.

11 Q I see. You remember any songs that he may
12 have sang or arranged, if I asked you?

13 A No.

14 Q I'm going to be through in a minute. Let me
15 ask you this. Do you have any strong feelings about
16 alcoholics?

17 A No.

18 Q Do you have such feelings about alcoholics
19 that you would be unable to consider testimony by an
20 alcoholic?

21 A No.

22 Q Now, you already told us that you're employed
23 by the government, the United States Post Office; is that
24 right?

25 A Yes.

2 Q And have you had, held, and you've been in
3 the service, so we're not concerned with those two areas.

4 Have you held any other salaried or govern-
5 mental position or job?

6 A No.

7 Q And are there any members in your immediate
8 family with any governmental facilities like a prison or
9 a hospital?

10 A I have a brother-in-law in the Air Force.

11 Q All right. Okay. Let me just review very
12 briefly one or two questions. Then I won't impose on you
13 anymore. And I appreciate your patience with me.

14 May the lawyers and I assume at this point
15 you know of no reason why you should not serve on this
16 case? At this time do you know of any reason why you
17 shouldn't serve on this case?

18 A No.

19 Q May we assume that you have an open mind
20 about this case?

21 A Yes.

22 Q May we assume that if you're chosen as a
23 juror, you'll listen to the testimony, the charge of the
24 Court, and ultimately base your verdict on the evidence
25 and on the law?

2 A Yes.

3 Q And may we assume that you'll keep an open
4 mind until this case is given to you for decision, given
5 to you and your fellow jurors who will hear the case with
6 you?

7 A Yes.

8 Q You have any physical disability like hear-
9 ing or sight, or anything of that nature that might impair
10 you?

11 A You mean me personally?

12 Q Yes.

13 A No.

14 Q Did you want to say something else? Why did
15 you ask me personally?

16 A I didn't hear you.

17 Q In other words, you can hear well and you
18 don't have any physical impairment?

19 A Yes.

20 THE COURT: Okay. What I'm going to do, I'm
21 through with my questioning. I'm going to have to
22 ask you to go to lunch and come back at, well, let
23 us make it twenty minutes to two, and then you'll
24 just sit in the courtroom outside. Somebody will
25 be there. And we'll finish up at that time.

1
2 I'm through with my questioning.

3 Thank you very much.

4 MR. CARROTTA: Thank you.

5 THE COURT: Have a good lunch.

6 (Prospective juror leaves room)

7 THE COURT: All right. Are there any
8 general areas that I haven't covered.

9 I'll start off with the State at this time
10 and I'll alternate. This way I don't have any hard
11 feelings, then I'm not giving preference to one
12 side over the other.

13 Now, do you have any, first of all, try to
14 answer my question. Then I'll take it from there,
15 because I don't want to get too involved.

16 You have any general areas that I may have
17 missed? By that, I mean background, prejudice,
18 employment?

19 MR. MARMO: No. I have some specifics.

20 THE COURT: All right. Okay. I will get to
21 that.

22 We have any general areas?

23 MR. STEEL: No.

24 THE COURT: Okay. What are your specific
25 areas, Mr. Marmo?

1
2 MR. MARMO: I would like to know his address
3 in Jersey City if he still lives on Bleecker Street
4 (sic), which is indicated on the list. I would
5 like to know the address of all the prospective
6 jurors, frankly.

7 THE COURT: Okay. Except as a rule, what I
8 try to do is not make it a public record so it
9 doesn't appear in the newspapers where they live.
10 That's the only reason I don't ask for a street
11 address. It's on the list.

12 Who is privy to that list. I will impound
13 that list. It's privy.

14 MR. MARMO: Nobody, I don't think anybody
15 is going to give out the list.

16 THE COURT: Okay. If that's the case, I
17 don't want these jurors' addresses being published.

18 What else?

19 MR. MARMO: I'd like you to ask him what
20 type of work he does at the postal service. He's
21 listed as a mechanic. He looks like he has a little
22 grease under his nails now.

23 And let us see, his school, I think.

24 THE COURT: High school?

25 MR. MARMO: No, no. The college where he's

1
2 going to now. I'd like to know what he's majoring
3 in. And I don't frankly understand how he's going
4 to attend his classes for what his situation is
5 going to be. I think before we pass on him, we
6 ought to at least have that firmed up, so after
7 he's picked, if he is picked, a week or two from
8 then, there won't be any problem then that will
9 cause us a problem then.

10 THE COURT: I'll explore that area so that
11 there is no problem.

12 MR. MARMO: No. I don't think you followed
13 that up, frankly.

14 THE COURT: I thought I did explore it. I
15 did ask him what the situation was. He said, as
16 long as I can have my assignments where I'm seques-
17 tered, I'll be satisfied.

18 MR. MARMO: I understand he said that. I
19 just want to know whether he attends classes or
20 this is something that he just sends in.

21 THE COURT: In other words, could he cut
22 classes or what?

23 MR. MARMO: Whatever his schedule. And also,
24 you asked him what magazines and newspapers he read.
25 And he answered you, and gave you the newspapers.

1
2 And I don't know if that means he doesn't subscribe
3 to any magazines.

4 THE COURT: Okay. I'll explore that.
5 Anything further?

6 MR. MARMO: No.

7 THE COURT: How about the defense, the
8 defendant number one?

9 MR. STEEL: Mr. Marmo raised the material
10 that I was interested in.

11 THE COURT: All right. Is that it?

12 MR. BELDOCK: Just what did he do in the
13 Army?

14 THE COURT: You want it explored?

15 MR. BELDOCK: Just very briefly, Judge.

16 THE COURT: All right. Army. I'll add
17 that to the list by the State.

18 MR. BELDOCK: That's it, Judge.

19 THE COURT: All right. We will do that at
20 quarter of two.

21 MR. STEEL: I wanted to know, I really for-
22 got on the last juror, because I don't want to
23 forget on this juror.

24 I remember at one point, we were talking
25 about the State's knowledge, that you would ask

1
2 them after each prospective juror was brought in,
3 whether the State has any particularized knowledge
4 as to the individual juror. And I just wonder
5 whether that could be asked.

6 THE COURT: Of course, I ruled on that. And
7 if they have any knowledge, they are to give it to
8 you. If they don't have it, they can't give you
9 what they have if they're not privy to the informa-
10 tion that I directed them to give to you, then they
11 don't have to. All I need is their representation
12 that they don't have it.

13 You have any knowledge about this juror?

14 MR. HUMPHREYS: We spoke to Prosecutor
15 O'Halloran earlier this morning. And he's checking
16 them out and he hasn't gotten back to us.

17 THE COURT: Right now they don't have any
18 knowledge of this juror.

19 MR. STEEL: I take it the ruling is, if you
20 do get it---

21 THE COURT: If they get it during lunchtime
22 they will give it to you before they come back.

23 (Further jury excuses heard)

24 THE COURT: All right.

25 Gentlemen, I'll see you at that time, quarter

1
2 of two.

3 At that time I'll ask the juror the areas
4 that have been asked of me.

5 Thank you.

6 (Recess taken at 12:45 P.M.)

7 AFTERNOON SESSION

8 (Following occurs in Court's chambers:

9 (Court reconvened at 1:50 P.M.)

10 (Prospective juror, Mr. Carrotta, reenters
11 room)

12 J O H N N. C A R R O T T A, called as a
13 prospective juror, having been previously sworn, testifies
14 further as follows:

15 BY THE COURT:

16 Q All right. Mr. Carrotta, I just have a few
17 more questions I'm going to ask you. And let me see. What
18 is your address in Jersey City? This will be kept
19 confidential.

20 A 120 Booraem Avenue.

21 Q And how long have you lived there at that
22 address?

23 A Three years December.

24 Q Okay. What type of work do you specifically
25 do for the post office?

2 A Maintenance mechanic.

3 Q Okay. In other words, you don't handle mail
4 or anything?

5 A No. I work on machinery, conveyor systems, and
6 that type of thing.

7 Q Okay. And in college, what are you majoring
8 in, what field?

9 A Geoscience.

10 Q What does that incorporate?

11 A Geology, oceanography.

12 Q And with reference, you did tell us that you
13 read certain newspapers. Do you subscribe to any period-
14 icals or magazines of any kind?

15 A The New Yorker.

16 Q Newsweek or anything like that?

17 A New Yorker.

18 Q All right. And in the Army, I know you told
19 us you were with the infantry?

20 A Yes.

21 Q Can you give us a little bit more, you were
22 in the Army, the time you were there?

23 A I was stationed out of Washington, D.C. in Fort
24 Myers, Virginia, and it was a unit assigned to take care
25 of the Arlington National Cemetery, Tomb of the Unknown

2 Soldiers, parades, and things like that.

3 THE COURT: I have another here. I don't
4 know what that means, the last area somebody men-
5 tioned. No, I guess that's about it.

6 Okay. All right.

7 All right. Let us see. I'm going to give
8 the lawyers about until two o'clock. That will be
9 five or six minutes. Then I'll call you back then.
10 All right. You're through with my questions though.
11 Okay. I'll be right with you.

12 (Prospective juror leaves room)

13 THE COURT: All right, gentlemen. You want
14 to take a few minutes to confer unless you're ready?

15 MR. STEEL: We would like a few minutes.

16 THE COURT: You want a few minutes?

17 MR. STEEL: Yes.

18 THE COURT: No more than five.

19 MR. STEEL: No. We'll be back in court in
20 five minutes.

21 THE COURT: Don't let me call you in all the
22 time.

23 (Brief recess)

24 THE COURT: All right. Mr. Marmo, Mr.
25 Humphreys?

1
2 MR. HUMPHREYS: Pardon?

3 MR. MARMO: Yes. We'll excuse Mr. Carrotta.

4 THE COURT: Excused by the State.

5 Okay. You want to let the juror come in?

6 (Prospective juror enters room)

7 THE COURT: All right. Mr. Carrotta, you
8 have been excused, which means that your services
9 will no longer be required.

10 But we want to thank you for your patience,
11 the time you have given us, and we would urge you
12 very strongly not to discuss what was discussed in
13 here with anybody. All right.

14 Thank you. Good luck in your studies.

15 MR. CARROTTA: Thank you.

16 (Prospective juror leaves room)

17 (Prospective juror enters room)

18 D O M I N I C K R. D E A N G E L O, called
19 as a prospective juror, having been first duly sworn,
20 testifies as follows:

21 BY THE COURT:

22 Q Mr. DeAngelo, how are you, sir?

23 A Fine, your Honor.

24 Q First of all, thank you for your patience so
25 far, but unfortunately, we don't have much of a choice but

2 to do it this way. It is a little time-consuming and we
3 recognize that we are imposing on you people. But we ask
4 you to bear with us, and of course, by all means, don't
5 ever, if you are disturbed in any way, don't react against
6 any of the participants in the trial, whether it be the
7 defendants or the State.

8 Now, I'm quite sure you are familiar with
9 the nature of the charges. In other words, you know what
10 these defendants are charged with?

11 A Yes.

12 Q They are charged with three counts of homi-
13 cide.

14 Now, like I told you before, the fact that
15 they are charged is no evidence of guilt.

16 Does the charge in itself, the charges in
17 and of themselves, put you in any position where you are
18 prejudiced against any of these defendants?

19 A Prejudiced, you say, your Honor?

20 Q Yes.

21 A No, I'm not prejudiced.

22 Q Okay. Does the nature---

23 Yes, Sylvia?

24 MRS. SCHWARTZ: (Judge's secretary) Ray.

25 THE COURT: You want to take it? All right.

2 Go ahead.

3 (Slight pause while Court Reporter answers
4 telephone call).

5 MR. ABT: Thank you, Judge.

6 Q All right. Do you know of any reason at
7 this point before I even question you about anything; and
8 let me, before I even ask you the question, I want you to
9 understand that we are not here to embarrass you or pry
10 into your affairs by our questioning. Okay. We are going
11 to ask you some questions which have a bearing on this
12 matter. But we want to make it crystal-clear that it is
13 not to embarrass you, to pry into your personal affairs.
14 It is just for the purpose of ascertaining whether you
15 have any prejudices or any opinions, or any feelings about
16 different subject matters that may affect your thinking.
17 Do you understand that?

18 A Yes, I do, your Honor.

19 Q All right. Now, do you have any knowledge
20 about this case at all. At this point, do you know any-
21 thing except what we have told you?

22 A No, just what I've been reading, your Honor.

23 Q All right. You have been reading about it?

24 A Yes.

25 Q And you read newspapers?

2 A Yes.

3 Q And you've read, have you read any magazines
4 about it?

5 A Not magazines, sir.

6 Q How about television media?

7 A Yes. I have seen T.V.

8 Q Okay. All right. Now, will the nature of
9 the charge prevent you from returning a fair verdict, the
10 nature of the charge being a homicide?

11 A Well, I really couldn't answer that, your Honor,
12 because I haven't drawn my own opinion.

13 Q I understand that. But that's not the ques-
14 tion I'm asking you.

15 In other words, does the nature, the word
16 "homicide" affect you in any way? Does it disturb you?

17 A Well, homicide does upset me a little, yes.

18 Q Does it upset you to the extent where you
19 couldn't render a fair and proper verdict in this case in
20 accordance with the evidence and the law?

21 A I guess I could keep an open mind on it.

22 Q All right. Now, do you know any of the par-
23 ticipants in this trial? Remember I defined the word
24 participant?

25 A Yes.

2 Q Do you know anyone connected with this case?

3 A No, I don't.

4 Q Have you ever been associated with law
5 enforcement?

6 A No, your Honor.

7 Q Outside are there any members of your im-
8 mediate family associated with law enforcement?

9 A Well, not now. I had some, but not now.

10 Q In what regard?

11 A I had a brother-in-law who was a detective in the
12 City of Bayonne.

13 Q And he's not any more?

14 A No. He's a fireman now.

15 Q What's that?

16 A He's a fireman.

17 Q Would that put you in a position because of
18 that relationship, that you might side with the State in
19 this case or be against the State for that reason?

20 A No. I don't think so.

21 Q Would you consider the fact that your
22 brother-in-law was associated with law enforcement at all?

23 A No, I don't think so.

24 Q Would have nothing to do with this case; you
25 appreciate that, don't you?

2 A Right.

3 Q And, therefore, you would not consider it?

4 A I don't think so, your Honor.

5 Q All right. I have to be a little more spe-
6 cific. When you say, I don't think so, you leave it open
7 as if you might. You have to start out on the premise
8 thinking along these lines, the fact that you have a
9 brother-in-law who was in law enforcement, really has
10 nothing to do with this case; that's what I am trying to
11 find out.

12 A Right.

13 Q Would you permit it to enter into your
14 thinking at all?

15 A No, I won't.

16 Q Have you ever been a victim of a crime, you
17 yourself? You ever had a car stolen, ever been assaulted?

18 A I got burglarized twice.

19 Q Your home?

20 A My home and my car, yes.

21 Q How long ago was that?

22 A That was the end of August of this year down in
23 Miami, Florida.

24 Q I see.

25 A And approximately five years ago at the home,

2 burglarized.

3 Q In other words, as a result of these experi-
4 ences, do you feel that this being a criminal case, you
5 might be prejudiced against the defendants?

6 A No, not against the defendant himself.

7 Q All right. Would you be prejudiced against
8 the State, against the prosecution?

9 A No, I don't think so.

10 Q In other words, would you be able to say to
11 yourself, well, although I had two instances where my
12 home, my car was burglarized, it has nothing to do with
13 this case and therefore, it shouldn't affect my thinking?
14 Would you be able to say that?

15 A I don't think I would associate the two of them
16 together.

17 Q All right. Fine. Okay. Now, are there any
18 members of your immediate family who have suffered any,
19 have been the victim of a crime?

20 A We are a large family, your Honor. I'm trying to
21 think a minute.

22 Q Immediate family, I'm not talking about long-
23 distance cousins or one of those things. I'm talking
24 about immediate family?

25 A No. I would say no.

2 Q Have you or any member of your immediate
3 family ever been a participant in a criminal proceeding,
4 such as a witness or a complainant?

5 A No.

6 Q Or a defendant for that matter?

7 A No.

8 Q Have you ever served on a -- as a juror
9 before?

10 A No.

11 Q This is your first experience as a juror?

12 A Yes.

13 Q Is there any reason why you could not apply
14 the laws to the facts, the law as I give it to you to the
15 facts in this case? Any reason why you couldn't do that?

16 A No, I don't think so, your Honor.

17 Q Do you have any prejudice against the de-
18 fendant just because he's charged with a crime?

19 A Well, I'm not prejudiced against the defendant him-
20 self, but I don't believe in violence or crime. This I
21 don't believe in.

22 Q Well, the fact that you don't, in other
23 words, you don't approve of it?

24 A Right.

25 Q Okay. Would the fact that these defendants

2 are charged with the, if I told you that the fact that
3 they are charged with a crime is no evidence of guilt,
4 would you still hold it against them because they are
5 charged with a crime because you have feelings against
6 crime, or would you consider them innocent until and if
7 proven guilty beyond a reasonable doubt?

8 A Well, you couldn't. You would have to hear the
9 case in order to.

10 Q In other words, let us start off. Let me
11 try to explain it this way. You are sitting there, Mr.
12 DeAngelo, and you say to yourself, I don't approve of
13 violence, I don't like people stealing, I don't like people
14 hurting other persons or committing murder, right. But if
15 I'm chosen as a juror, the fact that I have those feelings,
16 I'm still going to hear this case and decide it on the
17 merits; is that what you are telling me?

18 A Yes, sir.

19 Q So the fact that you have these feelings,
20 does that make you prejudiced against the defendants in
21 this case?

22 A No. I'm not prejudiced, your Honor, no.

23 Q Would you be able to keep your feelings sep-
24 arate and apart from your thinking in deciding this case?

25 A Well, I couldn't answer that until I heard the whole

2 case, your Honor.

3 Q No. I'm talking about your personal feel-
4 ings about crime generally. Would you be able to keep
5 those personal feelings away from this case so they
6 wouldn't affect your judgment in this case?

7 A I imagine so, your Honor.

8 Q But are your feelings against crime so
9 strong that they would affect your judgment?

10 A Like I said before, I am definitely against crime.
11 There is no two ways about it.

12 Q Would that affect your judgment in this case
13 your feelings, are they that strong?

14 A It is hard for me to answer, your Honor.

15 Q Well, let us assume you read in the papers
16 that there had been a homicide in New York and one in
17 Pennsylvania, and you don't approve of it. Now, you are
18 a juror on this case. Would the fact that you don't ap-
19 prove of it, would that put you in a position where you
20 start out on the premise these guys must be guilty, these
21 defendants must be guilty until they're proven innocent?
22 Would that change your thinking that way?

23 A No.

24 Q You would follow the law that they are inno-
25 cent until proven, and if proven guilty beyond a reasonable

2 doubt; is that correct?

3 A Well, they would have to, yes, your Honor.

4 Q The State would have to prove their guilt
5 beyond a reasonable doubt?

6 A Yes.

7 Q And you understand that I am going to tell
8 you, like I told you on Friday, a defendant doesn't have
9 to prove his innocence. You understand that, don't you?

10 A Yes, your Honor.

11 Q Will you accept the law as I give it to you?

12 A I would have to accept the law, yes.

13 Q Now, if you are chosen as a juror, I want to
14 advise you in all fairness to you that this case may take
15 several weeks to try. By several, I don't know. Five,
16 six, seven, I don't know.

17 Now, procedurally, if you should be accepted
18 as a juror today, you would probably, the way I have it
19 planned right now, that the juror will go home and I'll
20 ask you not to discuss the case. I'll ask you not to read
21 about it, not to watch T.V. I'll ask you not to formulate
22 any opinions about this case. I'll ask you not to pre-
23 judge it. Then I will call you back when we are ready for
24 the trial. That means after we've selected a jury, we
25 will call you back.

1 Now, once you are called back and the case
2 starts, the actual trial starts, you are going to be se-
3 questered with your fellow jurors. You know what seques-
4 tration is?
5

6 A Yes, sir, your Honor.

7 Q And that means that you will be housed in a
8 hotel, a local hotel, and instead of going home after
9 court each day, you will be going back to the hotel. Does
10 that present any special problem? I know it is an incon-
11 venience, I know.

12 A Well, I wouldn't particularly care for it, your
13 Honor. I have a boy down in college in Florida, which will
14 be flying home for the holidays, and all. If he does fly
15 home, and I'm held up, it would present a little problem.

16 Q And if, I don't know that the case will go
17 beyond the holidays. If it did, I would probably make
18 some arrangements for the jurors to see their families.
19 I wouldn't before the holidays. And I would try to do
20 everything within my power to make it as comfortable as I
21 could for the jurors than not, you know, minimize the hard-
22 ship as much as I can.

23 All right.

24 Now, where do you live, Mr. DeAngelo?

25 A 149 West 30th Street, Bayonne.

2 Q And for how long have you lived there?

3 A Thirteen years, your Honor.

4 Q And you are married?

5 A Yes, sir.

6 Q Do you live with your wife?

7 A Yes.

8 Q All right. What is your occupation?

9 A I'm a warehouseman for Acme Markets out in South
10 Kearny.

11 Q And for how long have you been so employed?

12 A Twenty-one years.

13 Q Have you had any other major occupations
14 besides that?

15 A No, your Honor.

16 Q Have you had any formal education or any type
17 of education, high school, I suppose?

18 A Three years of high school, your Honor.

19 Q And what does Mrs. DeAngelo do?

20 A She's a school teacher in Elizabeth.

21 Q Is she presently employed as a school teacher?

22 A Yes, she is.

23 Q What types of grades does she teach, what.
24 year?

25 A Well, this year she had kindergarten, but she teaches

2 anywhere from kindergarten to the fourth.

3 Q And has she been teaching for a long time?

4 A Twenty-one years.

5 Q Do you know what type of children she
6 teaches? Is it mixed group or is it just white, black,
7 Spanish?

8 A Ninety percent black, and the rest is white and
9 Spanish.

10 Q As a result of her teaching experiences,
11 have you developed any opinions for or against black
12 people?

13 A Would you explain that to me, your Honor?

14 Q In other words, your wife teaches 90 percent
15 did you say, black children?

16 A Yes. Yes, 90 percent.

17 Q I am sure she comes home at the end of the
18 day, either they are black children or white children or
19 mixed, I am sure she has problems with the children. I
20 don't mind telling you I've got a daughter who teaches
21 grammar school and a daughter-in-law for that matter, they
22 complain about the children. But aside from that, general
23 complaints about trying to handle children in a minimal low
24 grade like kindergarten or first or second and third grades,
25 does she complain about them because of their race anytime?

2 A No, not because of their race, your Honor. The
3 children themselves in some instances.

4 Q Have you developed any opinions against
5 black people because of your wife's profession? That's
6 what I'm trying to get at.

7 A No, I haven't, your Honor.

8 Q Now, can you just tell me what your family
9 consists of? You, your wife, and your boy at college?

10 A Yes.

11 Q And who else?

12 A I have a daughter also.

13 Q And what grade?

14 A She's in the eighth grade.

15 Q Eighth grade. You have two children. What
16 year college is your boy?

17 A He's a freshman.

18 Q What school, Miami U.?

19 A No. He's at Rollins in Winter Park, Rollins.

20 Q What is he taking up?

21 A Well, the first two years he majored in a bachelor
22 of arts, and the third and fourth year you dig into what
23 you want.

24 Q What is your religious affiliation?

25 A Catholic, your Honor.

2 Q Do you belong to any organizations?

3 A No, I don't.

4 Q Do you subscribe to any newspapers or
5 magazines of any kind?

6 A We get many magazines, Home Journal, the wife gets
7 a lot of women's magazines more or less, Readers Digest.

8 Q You read them, of course?

9 A Yes.

10 Q All right. How about other, what newspapers
11 do you read?

12 A New York Times, New York News, Jersey Journal.

13 Q Did you ever hear the name, Rubin Carter
14 before, Rubin Hurricane Carter?

15 A Yes, your Honor.

16 Q Did you hear of him as a boxer at any time?

17 A Yes, your Honor.

18 Q You ever follow his boxing career?

19 A I did.

20 Q You ever see him fight?

21 A Eugene Giardello.

22 Q Is that when he fought in Philadelphia?

23 A I read about that.

24 Q You didn't see the fight?

25 A No, I didn't see the fight.

2 reviews on books and all and just through it.

3 Q What do you know about it today? What, tell
4 me.

5 A I don't know anything about it.

6 Q Do you know who wrote it?

7 A No, I don't. I believe it was Hurricane.

8 Q All right. But you never read the book?

9 A No, I haven't.

10 Q Do you know, do you remember reading the
11 review about it anyplace, any specifics about the book?

12 A I might of, but I don't recall.

13 Q What if I asked you to give me an idea about
14 what the book is about except that sixteenth round inti-
15 mates a fight, I suppose. But other than that, do you know
16 anything else about the book?

17 A No. I couldn't tell you.

18 (At this point, the defendants Rubin Carter
19 and John Artis entered the Court's chambers.)

20 THE COURT: Let us see. There are a couple
21 of chairs there. One there, and I think, oh, there
22 they are.

23 These two gentlemen that just walked in are
24 Mr. Carter. They were introduced to you the other
25 day, and Mr. Artis.

2 Q Okay. Have you ever been on the Grand Jury
3 before?

4 A No. I never been on any jury, your Honor.

5 Q Okay. Let me see now.

6 You are, I'm sure, you have your own life-
7 style about things. You have your own daily routine, your
8 social activities, your professional activities in connec-
9 tion with your work, et cetera. If other persons' life-
10 styles differ from yours, would you have any prejudice
11 against that person for that reason alone?

12 A No. I believe everyone should lead their own life,
13 your Honor.

14 Q Now, you told me that you did discuss this
15 case, or you did read about it?

16 A Yes. I did read about it.

17 Q And your source of information was the news-
18 papers and the radio, and the T.V. Should I include radio,
19 too?

20 A Well, you might of, yes.

21 Q All right. How about magazines, you remember
22 reading anything in any specific magazines?

23 A No. Only newspapers and television.

24 Q I know some of those questions you are going
25 to say to yourself, well, he asked how do I remember, well,

2 you try to remember. If you don't remember, we don't have
3 any problem with that. Give us the benefit of your best
4 recollection.

5 When is the first time that you became aware
6 of this case, if you remember? In other words, whether
7 year ago, five years ago, ten years ago, yesterday, you
8 know?

9 A Well, I recall the incident when it did happen.

10 Q All right. If I told you the allegation is
11 that this incident occurred in 1966, would that refresh
12 your memory a little better? Would that be about right?

13 A Well, it would be vague in my memory.

14 Q Do you remember at that time what you found
15 out? How did you find out anything about that time?

16 A Through the papers, television.

17 Q News media?

18 A Yes.

19 Q Okay. Do you remember what you found out at
20 that time about this case?

21 A Well, just what I read, your Honor.

22 Q What did you read?

23 A I read where there was an incident in Newark.

24 Q Where? What?

25 A In Newark. Newark, New Jersey, involving these two

2 gentlemen. And that's about it.

3 Q All right. Actually, I am going to try to
4 refresh your recollection. I'm not trying to educate you
5 as to any facts of this case, but it was in Paterson, the
6 allegation is.

7 A Paterson.

8 Q Okay. Now, do you remember specifically what
9 the charges were at that time?

10 A I believe it was murder, your Honor.

11 Q All right. And did you know at that time the
12 race or color of the persons who were charged with it?

13 A Well, yes. Like I say, I knew Hurricane Carter from
14 the fighting game. That's how I knew.

15 Q You knew his race, you knew he was what?

16 A Yes. I knew he was black. Yes, sir.

17 Q And the other defendant, Mr. Artis, did you
18 know anything about him?

19 A No. I wasn't too familiar with Mr. Artis.

20 Q Did you know whether he was black or white?

21 A No, I didn't.

22 Q Did you know the color of the victims at
23 that time?

24 A No, I didn't.

25 Q Do you know what they are now, you know the

2 Q Now, you understand, I told you before that
3 they don't have to prove their innocence. The State has to
4 prove their guilt. You understand that?

5 A Yes.

6 Q The defendant doesn't have to do anything,
7 because the law is, he is presumed innocent until and if
8 proven guilty beyond a reasonable doubt; and, therefore, a
9 lot of laymen like yourselves may think that a trial is
10 where a defendant proves he's innocent. Well, that's a
11 misconception of the law. The law is, he stands innocent
12 until and if proven guilty beyond a reasonable doubt.
13 Would you accept that the State has the burden to do that
14 and that the defendant doesn't have to prove his innocence?

15 A Yes.

16 Q Now, let us assume, like you told us, that
17 you read about the case and you heard something on the news
18 media about the case, and you have some knowledge. Do you
19 think I'm giving you a chance to tell me everything you
20 know about this case or is there more you know about it
21 that I haven't asked you?

22 A No. There isn't in particular.

23 Q Now, when you read about it, did you have
24 occasion to discuss it with anybody, whether it be with
25 your wife, your boy who is in college now or your fellow

2 employees, or your friends? Did you discuss it with
3 anyone?

4 A No.

5 Q Did you ever discuss it with your wife?

6 A No. We don't discuss these things.

7 Q In other words, may we assume here that you
8 did not discuss the case with anyone?

9 A No, we didn't, no.

10 Q Or as a result of your exposure to the case,
11 whether it be through the news media, papers, television,
12 or whatever you might have read here or there, did you make
13 an opinion, did you formulate an opinion in your mind and
14 say, oh, these guys must be guilty or these guys must be
15 innocent? You make any opinions about innocence or guilt?

16 A No, your Honor.

17 Q As you sit there today and as you reflect,
18 do you have an opinion about the innocence or guilt of
19 these defendants?

20 A No.

21 Q And except for what you've told us so far,
22 you know nothing about this case?

23 A Nothing, your Honor.

24 Q Now, you worked in the same place for twenty-
25 one years?

2 A Yes, sir.

3 Q And you lived in the same neighborhood for
4 how many years?

5 A Going on fourteen years now.

6 Q Are there any black people in your neigh-
7 borhood?

8 A None in our neighborhood, but in the city, yes.

9 Q Are there any black people where you work?

10 A Oh, yes, many.

11 Q About how many people work in your place?

12 A Two hundred, your Honor.

13 Q Two hundred?

14 A Yes.

15 Q And would you have any idea how many are
16 blacks and how many are white, just roughly? In other
17 words, would you have fifty, sixty black people or Spanish?

18 A Well, we have, I'd say, approximately forty-five
19 blacks in the place.

20 Q Are you in any supervisory capacity at your
21 work?

22 A No, I'm not.

23 Q Are you ever in a position where you have any
24 black people supervise your work or you supervise their
25 work?

2 A No.

3 Q With reference to your work, have you had
4 any disputes with any black persons which could cause you
5 to be prejudiced against a black man?

6 A No.

7 Q Do you, as you sit there now, do you have
8 any prejudice against a black man?

9 A (Prospective juror shaking head.)

10 Q Would the fact that these two defendants are
11 black, would that prejudice you against them?

12 A No, your Honor.

13 Q Would the fact that the two black men are
14 charged with a crime of homicide and that the victims are
15 white, would that prejudice you against these defendants?

16 A No.

17 Q You have any feelings as a result of that?
18 When I say these two defendants are black, they are charged
19 with the homicide of three white people, does that cause
20 you to react so that your judgment may be affected?

21 A No, your Honor.

22 Q Could you still be fair to the State and to
23 the defendants in spite of the facts as they are?

24 A I would have to be, yes.

25 Q All right.

2 Newark, Paterson, Jersey City. I don't know about Bayonne,
3 where you live in Bayonne?

4 A Bayonne.

5 Q Have you had any problems like that in
6 Bayonne?

7 A No. We're in a pretty good town. People seem to
8 get along pretty well.

9 Q You read about the racial disturbances in
10 other towns?

11 A Yes, I have.

12 Q As a result of that, have you formulated any
13 opinion against black people as a result?

14 A Not against black people, but as a whole, I think it
15 is a crime what's going on, that it shouldn't have been.

16 Q You think there shouldn't have been racial
17 disturbances?

18 A No, I don't think so.

19 Q Okay. Now, if you were chosen as a juror,
20 are your feelings so strong that you would react against
21 these two defendants because of racial disturbances invol-
22 ving black people? You have two defendants who are black.
23 Would it cause you to react against them?

24 A No. It wouldn't, your Honor.

25 Q Would you and could you be fair to these two

2 defendants considering the fact that you do have feelings
3 about racial disturbances in the cities?

4 A Yes.

5 Q You could. You wouldn't permit that to cause
6 you to react against the defendants?

7 A No.

8 Q Do you have, Mr. DeAngelo, any opinions about
9 governmental programs which have been designed for the
10 purposes of racial integration?

11 A In what field? Would you say, your Honor?

12 Q Well, let us talk about busing for example.
13 Do you have any feelings about that program which are
14 strong enough to affect your judgment or thinking in this
15 case?

16 A Well, I never really thought about it, your Honor.

17 Q You haven't thought about it?

18 A No. I read about it, but I feel more or less what-
19 ever the government wants to do, it is up to them.

20 Q Do you have any strong feelings about these
21 governmental programs concerning racial integration?

22 A Well, it is according on what subject, your Honor?

23 Q Well, what you mean by that? I would like
24 you to elaborate what you mean by what subjects?

25 A I believe like on this school busing, if a child

2 wants to go to another school, he should be allowed to go
3 to the other school.

4 Q All right. As a result of any program that
5 has to do with racial integration, do you have any strong
6 feelings that might affect your judgment here?

7 A No.

8 Q Have you ever been the victim of any racial
9 disputes?

10 A No, I haven't, your Honor.

11 Q Have you ever had a fight with a black man?

12 A I can't say I did.

13 Q Have your children ever been the victims of
14 disputes with black children?

15 A No.

16 Q Has your wife, as a school teacher, ever been
17 assaulted by any black students?

18 A No.

19 Q Do you think that black people are more
20 likely to commit crimes than any other ethnic group or
21 more than whites, generally?

22 A Well, I would say it is up to the individual them-
23 selves, your Honor.

24 Q But do you have a feeling inside of you that
25 black people are more inclined to commit crimes of violence

2 Would that fact alone prevent you from being fair to both
3 the State and the defendants?

4 A No.

5 Q Now. Listen to this question, Mr. DeAngelo.
6 Is there any incident in your background or in your past
7 that you would have reason to believe might interfere with
8 your judgment in this case or prevent you from being fair
9 to both sides?

10 A No, your Honor.

11 Q Have you had any experience that stands out
12 in your mind which puts you in a position where you know
13 now as you sit there, and by this time, you know exactly
14 what I'm attempting to do. I'm attempting to find out your
15 philosophies. I'm trying to find out if you have any opin-
16 ions. I want to find out if you have expressed any opinions,
17 I want to find out what your feelings are about this case,
18 and I want to know now if you've had any experience in your
19 past which would interfere from your rendering a fair and
20 impartial jury verdict in this case?

21 A No.

22 Q Did you ever hear the name of Bob Dylan?

23 A No, I haven't, your Honor.

24 Q If I told you he's a singer, would that ring
25 a bell?

2 A No, it wouldn't.

3 Q You don't. You are in the age group that
4 doesn't hear about Bob Dylan?

5 A I only know Perry Como, Bing Crosby.

6 Q Okay.

7 Now, do you have any feelings about alco-
8 holics, generally? Have you ever thought about it?

9 A Well, I don't approve of alcoholics, your Honor.

10 Q Well, let us assume; in other words, you have
11 the feelings that you don't approve of them, right?

12 A Right.

13 Q All right. Are your feelings about alcoholics
14 such that you would be unable to consider the testimony of
15 a person, if it were shown that he was an alcoholic, would
16 you still be able to consider it, or would you not be able
17 to consider it just because he's an alcoholic?

18 A Well, I guess that would depend on the nature of the
19 crime, if it was done under the influence of alcohol.

20 Q I'm talking about witness now.

21 Let us assume a witness were called by any
22 side, and that witness is, was shown that that particular
23 witness was an alcoholic, are your feelings so strong
24 against alcoholism that you wouldn't be able to consider
25 his testimony at all, or would you be willing to listen to

2 what that person says, and then give it whatever weight you
3 think is necessary?

4 A I would be willing to listen.

5 Q Have you ever held any salaried position in
6 the government?

7 A No, I haven't.

8 Q Or anybody in your family associated with the
9 government in any way, work for a hospital, the government,
10 or prison, or things of that nature?

11 A Well, I don't know if it would be associated with
12 the government. I have two uncles with the weights and
13 measures.

14 Q On a local level, or the city level?

15 A Yes, city level, and the board of health.

16 Q I see. What are they, inspectors?

17 A Yes. Inspectors.

18 Q That wouldn't -- would that affect your
19 thinking in this case in any way?

20 A No, it wouldn't.

21 Q Were you in service?

22 A Yes, I was.

23 Q What branch?

24 A U.S. Army.

25 Q Were you ever with the M.P.'s?

2 A No.

3 Q Or things of that nature?

4 A No. I was with the 14th A.C. Armored Cavalry.

5 Q Cavalry. What years was that?

6 A 'Fifty-seven to 'fifty-nine.

7 Q And were you in this country or overseas?

8 A I was overseas in Germany.

9 Q Germany?

10 A Yes, sir.

11 Q You ever have any trouble with black soldiers
12 while you were there? I'm sure you had black soldiers in
13 your outfit.

14 A Many.

15 Q You get along with them all right?

16 A Very well.

17 Q Now, as you sit there now, like I said before,
18 do you know why we are questioning you. We want to make
19 sure that we have a fair and impartial juror. As you sit
20 there right now, do you know of any reason why you couldn't
21 serve in this case, except for the personal hardships of
22 being a juror and being sequestered?

23 A No, I have no personal hardships, your Honor.

24 Q All right. Would you, if you were chosen as
25 a juror, listen to the testimony in this case, once the

2 THE COURT: All right. Thank you very much.

3 Mr. DeAngelo, I'm going to ask you to step
4 out for a couple of more minutes. I don't have any
5 more questions. If there is, it is only one or two,
6 and I appreciate your patience.

7 MR. DE ANGELO: Thank you.

8 (Prospective juror leaves room)

9 THE COURT: Well, you can be on the record.
10 That juror took how long, gentlemen? I would say
11 it took at least forty minutes approximately.

12 MR. MARMO: About forty minutes.

13 THE COURT: Forty minutes.

14 All right, I'll take the defense first.

15 MR. STEEL: I just have a few questions.

16 Could I know whether he has any friends who
17 are in law enforcement. You asked him family.

18 THE COURT: Okay. I thought I did. Okay.
19 I'll re-read it.

20 MR. STEEL: I would also like to know if he
21 has any union affiliation, I would like to know.

22 THE COURT: Why do you want to know his union
23 affiliation?

24 MR. STEEL: I think as a background fact.

25 THE COURT: Okay.

1
2 MR. STEEL: I would like to know other than
3 high school, whether he has ever taken any kind of
4 courses.

5 THE COURT: Well, I was going to do that,
6 Mr. Steel in all fairness, but, you know, it's a
7 little embarrassing when you ask a man what is your
8 educational background, he said, third year of high,
9 which I would assume he hasn't got anything further.
10 I would be embarrassed to pry further, unless you
11 insist.

12 MR. STEEL: Well, I would like to know. He
13 might have taken night courses or something. I
14 would also like to know if he has any outside
15 interest.

16 THE COURT: Like what? I asked what he does
17 and I thought---

18 MR. STEEL: The only reason I say that, he
19 indicated that he didn't do the bowling because he
20 was very busy.

21 THE COURT: Didn't have time.

22 MR. STEEL: Doesn't have time. And it just
23 struck me that might be---

24 THE COURT: I will ask him what his hobbies
25 are.

1
2 cause him to be prejudiced in this case because the
3 defendants are black, considering he doesn't like to
4 see racial disturbances. I think I explored it.
5 I'm not going to reopen that.

6 Anything else?

7 MR. BELDOCK: The other area is that he made
8 it very clear that he's opposed to crime, which we
9 all share. That he has particular feelings about
10 any criminality.

11 Then when you questioned him about if he
12 would follow the extent of the charge about reason-
13 able doubt, his initial response was somewhat
14 ambiguous to the effect that he would have to see
15 what the facts are, rather than give a direct re-
16 sponse to your question.

17 And I would like to ask, because of those
18 responses, I would like to ask him whether he has
19 any opinion to the effect that the courts have been
20 liberal in regard to criminal charges, or something
21 to that effect, which would give us a little more
22 information in that regard.

23 THE COURT: All right. You have anything?

24 MR. STEEL: I just have one more going over
25 my notes.

1
2 THE COURT: Wait a minute. Off-the-record.

3 (Off-the-record discussion had)

4 MR. STEEL: Okay. I have almost as a direct
5 quote, as I'm going over my notes, the question
6 where you asked him when he got into his problems
7 with violence, whether he could deal with that.

8 THE COURT: He hasn't had any problems
9 involving violence.

10 MR. STEEL: Not approving of violence.

11 THE COURT: Oh.

12 MR. STEEL: And I have, I think it's almost
13 a quote, it's hard for me to answer whether my
14 feelings are so strong that I could put them aside.

15 THE COURT: I don't recall him saying that.
16 But I do recall exploring the area rather thoroughly,
17 and I thought he handled them very well.

18 MR. BELDOCK: He said, I imagine so, if I
19 remember correctly. And he said that several times,
20 or words to that effect. I see, I have notes to
21 the same effect.

22 MR. STEEL: As a final question, I would like
23 your Honor to go back to that and see if he's really
24 totally satisfied with himself that those feelings
25 wouldn't cause him any difficulty.

1
2 THE COURT: All right.

3 Anything further, gentlemen?

4 MR. MARMO: No. I think that last area was
5 covered, and I think the juror gave satisfactory
6 responses.

7 THE COURT: I think all the areas have been
8 covered.

9 I will ask him if he has any friends in law
10 enforcement. I will ask if he has any union affil-
11 iations. I will ask him about any hobbies. I will
12 ask him about any further education. I'm not going
13 to make any inquiry as to his daughter in the eighth
14 grade. I don't think it is imperative that we go
15 that far.

16 And with reference to feelings against crime,
17 opinions as to crime and not approving of violence,
18 I think I've explored it sufficiently, but your
19 application is noted.

20 You want to bring him in, please?

21 (Prospective juror, Mr. DeAngelo, enters room)

22 D O M I N I C K R. D E A N G E L O,
23 called as a prospective juror, having been previously
24 sworn, testifies further as follows:
25

2 BY THE COURT:

3 Q All right. Mr. DeAngelo, just three or four
4 questions, and they'll be very brief. I asked you if you
5 yourself had been ever associated with law enforcement. I
6 asked if your family, if there was any member of your
7 family; and you responded.

8 Now, do you have any close friends that are
9 associated with law enforcement?

10 A Yes, many friends.

11 Q Many friends that you socialize with? In
12 other words, that you go out with, they visit you, they
13 visit your home?

14 A We get together at parties normally.

15 Q Okay. And are you associated -- first of all,
16 do you ever discuss their work with them?

17 A No. I can't say we do, your Honor.

18 Q All right. Would the fact that you have
19 friends that are associated with law enforcement, would
20 that put you in a position, where, if you were a juror in
21 this case, you are going to be in favor of the State be-
22 cause your friends are associated with law enforcement, the
23 State represents law enforcement?

24 A No.

25 Q Would it put you in a position where you

2 would be prejudiced against the defendants because you have
3 friends that are associated with law enforcement?

4 A No.

5 Q Would it put you in a position where you
6 would be prejudiced against the State because you have
7 friends in law enforcement?

8 A I'm not prejudiced, your Honor.

9 Q Would that color your thinking at all because
10 you have these friends?

11 A No. I wouldn't say that.

12 Q Let me ask you. You went through high school,
13 third year, you mentioned. Have you taken courses, any
14 other evening courses, or any after that, pursuits of any
15 kind?

16 A No, I haven't.

17 Q You have any hobbies? You say you don't bowl
18 because you don't have time. You have any other hobbies?

19 A Well, I like to fool around with my cars and house.
20 Things like that. More or less family.

21 THE COURT: I see.

22 Okay. That's sufficient. All right. I'm
23 going to ask you to step out one more time.

24 MR. DE ANGELO: Okay.

25 THE COURT: And then I'll be calling you

2 back in.

3 All right. No more questions.

4 (Prospective juror leaves room)

5 THE COURT: All right, gentlemen.

6 MR. STEEL: Judge, I just have seriously one
7 follow-up, which is, if he has some friends in law
8 enforcement, I would like to know whether if he
9 voted for an acquittal in this case, whether he
10 would have any feeling that that could in any way
11 embarrass him.

12 THE COURT: He said it wouldn't affect his
13 judgment. I don't think I have to go much further
14 than that. I'm not going to go much further than
15 that.

16 Okay.

17 You have got five minutes, gentlemen.

18 (Brief recess)

19 THE COURT: I want the record to indicate
20 while waiting for counsel for the defendants and
21 the defendants, and their associates to come in
22 here, the door was opened and that there was no
23 discussions with the Prosecutor's office on this
24 case at all.

25 All right. Now I want to further indicate --

4012R

1
2 all right. Never mind. I'll withdraw that.

3 The challenge at this time is defendant
4 number one.

5 MR. BELDOCK: No.

6 THE COURT: I think it's now, no, Mr.
7 Carrotta was excused by the State.

8 MR. MARMO: That's correct.

9 THE COURT: Therefore it's defendant number
10 one is the first one.

11 MR. BELDOCK: The juror is acceptable to
12 defendant number one.

13 MR. STEEL: Acceptable to defendant number
14 two, your Honor.

15 THE COURT: Number one. Number one, did you
16 say the same?

17 MR. STEEL: We both said the same. The State
18 goes next according to you.

19 THE COURT: All right. The State---

20 MR. STEEL: Can I just ask one question?
21 Judge, if this juror is accepted, does he
22 become juror number four in the box?

23 THE COURT: No, number one.

24 MR. STEEL: In other words, he becomes juror
25 number one?

1
2 THE COURT: Yes. He's the first one
3 selected, sure.

4 MR. MARMO: He's acceptable to the State.

5 THE COURT: All right.

6 Now, I'm going to call the juror inside and
7 I'm going to give him instructions.

8 I want the record to indicate before I do
9 that that this juror's questioning commenced at
10 two-oh-one, I checked my court clerk who swore him
11 at two-oh-one, and that it is now three-oh-five,
12 that forty-five minutes were devoted to questioning
13 of the juror.

14 I gave counsel at least ten minutes to confer
15 before they exercised their challenges. And it is
16 now three-oh-five, at which time I will call the
17 juror in to make inquiry, to give him specific in-
18 structions.

19 Yes, I'm sorry. Go ahead.

20 MR. HUMPHREYS: I was going to say, I assume
21 that your Honor is going to instruct him with re-
22 spect to not reading anything.

23 THE COURT: Oh, yes.

24 MR. HUMPHREYS: Or discussing it with anybody.

25 THE COURT: I'm going to do that now.

1
2 Communicate it to you, anyone tries to con-
3 tact him, let me know immediately.

4 In fact, if you don't have any objection,
5 I'm going to ask both of you gentlemen, the three
6 of you, I would give the juror my private telephone
7 number.

8 MR. HUMPHREYS: No objection.

9 MR. STEEL: Your Honor, I just, I assumed
10 that it goes for every single prospective juror,
11 I assume, if there is any information known by the
12 Prosecutor, they would have put that on the record.

13 THE COURT: That's a standard.

14 MR. HUMPHREYS: The Hudson County Prosecutor's
15 office advised us this morning, the 16 people ori-
16 ginally put in the box, that none of them have
17 criminal records or arrest records. That there
18 possibly might be some DP hanging around some muni-
19 cipal court that they don't know about it, and they
20 don't have any expression by a juror of a philosophy,
21 whatever that order said.

22 THE COURT: All right.

23 Bring in the juror.

24 (Prospective juror enters room)

25 (Prospective juror duly sworn)

1
2 THE COURT: All right.

3 Mr. DeAngelo, you have been selected as
4 juror number one in this case.

5 At this time I'm going to excuse you until
6 further notice, which means that you should go back
7 to work, if you care to, because I can't tell you
8 now when I'm going to call you again. Whether it's
9 a week from now or ten days, or fifteen days, or
10 twenty days. I don't know.

11 I'm going to ask you at this time to give me
12 your word that you are not going to read about this
13 case in the meantime. That you are not going to
14 discuss it. That you are not going to expose your-
15 self to any news media, whether it be T.V., radio,
16 or newspapers.

17 I'm also going to ask you to keep an open
18 mind, not to think about the case or prejudge it in
19 any way. Don't let anybody discuss it with you at
20 work or anyplace else.

21 Now, I'm sure it's going to be in the papers
22 that Mr. DeAngelo has been selected as a juror.
23 And I'm sure that your wife and your children per-
24 haps, and your co-workers, and your friends are
25 going to be asking you about it.

405 a A

1
2 Now, it would be really a burden on jurors
3 to start sequestering them from the minute they're
4 selected; but when these people make any inquiry of
5 you, you are to be very firm and blunt about it.
6 You are to tell them, I'm not to discuss it period.
7 And that's it. Don't discuss it. Don't let them
8 discuss it with you.

9 I'm going to give you my private telephone
10 number here and home. And if anybody, and I'm not
11 suggesting this for one moment that anybody would,
12 but if anybody should, sometimes these things happen
13 from perhaps outside the courthouse, outside this
14 case, you never know, should ever call you and con-
15 tact you about this case in any way, you immediately
16 call me and I'll take whatever steps are necessary.

17 Like I said, I'm not suggesting that anybody
18 would. I'm going to give you both my phone numbers
19 before you leave.

20 I don't think there is anything else that I
21 have to tell you at this point, is there, gentlemen?

22 Do you have any other suggestion, Mr.
23 Humphreys?

24 MR. HUMPHREYS: No. Except, your Honor,
25 said about it appearing in the newspaper. I don't

1
2 think it has to, perhaps your Honor might want to
3 advise Mr. DeAngelo, if a newspaper man asks him,
4 say "No comment"; don't talk to him at all.

5 THE COURT: I would be very happy to give
6 the names of the jurors thus far selected. They're
7 hounding me for it.

8 MR. HUMPHREYS: I think you should not.

9 THE COURT: I can tell them that we have one
10 juror. Should I tell them a machinist or whatever
11 occupation?

12 MR. MARMO: Why should you tell him anything?

13 MR. STEEL: I think for the prospective juror
14 it is better that they know nothing about him and
15 let him live his normal life. And when he is se-
16 questered, the press will ask their names, it won't
17 bother him then.

18 THE COURT: Suppose we do that. Let us now
19 formulate a directive here agreeable by all parties,
20 that the jurors' names, addresses, or occupations,
21 will not be divulged to the press until the jury
22 has been totally completed, the selection has been
23 completed. And this way we'll just tell the press
24 perhaps that we have one juror, two this afternoon.

25 All right, Mr. DeAngelo.

2 You have to understand our problem, too, that we don't have
3 any short cuts unfortunately and we can only do the best we
4 can. We are not unmindful of your feelings and of the
5 jurors' problems. We are concerned about it and we try to
6 be as considerate as we can. Let me ask you right off
7 where do you live? What's your address?

8 A 111 Hancock Avenue, Jersey City.

9 Q This is kept confidential. It will not be in
10 the newspaper, so you don't have to be concerned. Okay.
11 You know what type of a case this is at this point?

12 A I believe it is a second trial or something of
13 something that happened ten years ago or something like
14 that, but it was supposed to be a murder trial, I believe.

15 Q Right. Two defendants, Mr. Rubin, who is
16 here now, Rubin Carter and Mr. Artis, they are charged with
17 three homicides in the indictment. And you know, I told
18 you right from the outset, the fact that these defendants
19 are charged in a criminal case is no evidence of guilt.
20 You can't say to yourself, well, where there is smoke there
21 is fire, they wouldn't be charged, if they weren't guilty.
22 If you said that, we would be starting off on the wrong
23 foot. You have to presume the defendants innocent until
24 they have been proven guilty beyond a reasonable doubt.
25 But I'll go into the law a little more further in the

2 trial, not now. At any rate, you start out on the premise
3 at this time that they're innocent until and if proven
4 guilty beyond a reasonable doubt. Do you have problem
5 with that?

6 A No.

7 Q Does the charge itself depress you or upset
8 you in any way, as to preclude you from sitting as a juror?

9 A I don't know enough about it.

10 Q In other words, if this were another criminal
11 case, the charge in and of itself doesn't disturb you,
12 does it? You could hear this type of case.

13 A Oh, yes. I mean, would I be upset with it?

14 Q Yes.

15 A No.

16 Q All right. Now, do you know any reason at
17 this point why you couldn't sit on this jury before I ask
18 you any questions?

19 A Well, I don't know, unless, I believe in capital
20 punishment.

21 Q Well, there isn't any capital punishment in
22 this State.

23 A I know we don't have, but that's why I said what I
24 do believe in.

25 Q We really don't want your opinion about it.

2 But the fact is that you stated that you do. You don't
3 have to concern yourself with it here; and you shouldn't
4 concern yourself with any punishment in this particular
5 case.

6 A I don't know anything about it.

7 Q Well, it is not the jurors' function. The
8 jury does not decide the punishment. The court does. You
9 understand that, don't you?

10 A Yes.

11 Q So whatever your feelings about punishment
12 are, you shouldn't concern yourself.

13 A I just thought if that meant anything.

14 Q Now, I'm going to ask you some questions, and
15 there are a few questions, but they are not designed to
16 embarrass you and they are not designed to pry into your
17 personal affairs. I'll give you a general statement as to
18 what the purpose of my questioning is. The purpose is
19 first of all, we start out on the premise that we want a
20 fair and impartial jury. And by fair and impartial jury,
21 we mean fair and impartial to the State and to the defend-
22 ants, both sides. Could you do that in this case? Could
23 you be fair to both sides?

24 A I believe so. I mean you have to go by evidence,
25 right?

2 Q Right. And the evidence and the law. Would
3 you be able to do that?

4 A Evidence and what?

5 Q And the law as I explain it to you.

6 A Oh, the law.

7 Q You see, procedurally---

8 A Subject to the law.

9 Q Right. In other words, at the end of the
10 case, after both sides have rested, I will explain the law
11 to you and then the case will be given to you to discuss
12 with your fellow jurors. And based on the evidence that
13 you receive in the courtroom, based on the law as I explain
14 it to you, you will return a verdict. Could you do that?

15 A In other words, I don't prejudge until I hear what's
16 there?

17 Q Fine. And at this point you haven't pre-
18 judged this case, could we assume that?

19 A You could assume it, because I don't know anything
20 about it.

21 Q Now, let me ask you this. You just said you
22 don't know anything about this case?

23 A All I know that there was supposed to be three people
24 that were killed. And what the circumstances were why there
25 is another trial, why anything else, I don't know, because---

2 Q All right. The less you know---

3 A I didn't even know about the original. I didn't
4 even know that such as that happened.

5 Q I'm going to ask you two questions along
6 those lines. Just relax. When did you find out anything
7 about this case for the first time?

8 A When they called me.

9 Q You didn't know about it before that?

10 A No. I'm not interested in those cases. I mean, I
11 don't. The news is very bad today. Whatever you see on
12 the news is nothing good. I never see anything good in the
13 news. It is always someone dying. Somebody getting killed
14 or something else. So I don't bother with the news and I
15 don't read up on all this stuff.

16 Q So you don't have any knowledge about this
17 case?

18 A Only those first few circumstantial things.

19 Q Now, when did you find out those things?

20 A That was only recently.

21 Q How long ago?

22 A Maybe last week.

23 Q And what did you find out?

24 A Well, they said there was going to be a re-trial or
25 something on the Rubin Carter case.

2 Q And what did you find out that last week?

3 A Well, just the case, that they were going to be re-
4 tried. That they wanted another trial. Why I don't know.
5 I mean, they don't have every detail in an article. Being
6 called, me on this jury, this is why I looked at that
7 stuff, because---

8 Q Now,---

9 A They don't give you enough information on any case.

10 Q All right. Where did you get your inform-
11 ation?

12 A Jersey Journal.

13 Q All right. And after you got your inform-
14 ation, did you discuss it with anybody?

15 A My daughter.

16 Q How old is your daughter?

17 A Forty-two.

18 Q And you have a Mr. Kohleman?

19 A No. He's in a mental hospital.

20 Q All right. And you discussed it with your
21 daughter. As a result of what you discussed with your
22 daughter, did she give you any additional information that
23 you didn't have? Was she aware of this case?

24 A She's the same as I am. We don't delve into those
25 things.

2 Q And as a result of what you read about it,
3 did you formulate an opinion about the case? You have?

4 A I couldn't.

5 Q All right. Did you, in addition to reading
6 about it, did you see any television programs, which made
7 any reference to it?

8 A There might have been on that side something about
9 it, something about the jury was called off until another
10 week or something. That's it. It was very short.

11 Q All right. Did you read anything on it in
12 any other newspaper besides the Jersey Journal?

13 A I very seldom even read the Jersey Journal. I just
14 happen to get it on Saturday. That's all. I don't have
15 time for reading those things.

16 Q Did you read any magazine articles about it?

17 A I don't read magazines.

18 Q Okay.

19 A I read the Bible.

20 Q All right. And incidentally, what is your
21 religion by the way?

22 A I'm a Born Again Christian.

23 Q Do you know anybody in this case? I talked
24 about participants. You know any of them?

25 A Nobody. The only time I had anything to do with a

2 court was five years ago. I was on the Grand Jury.

3 Q Okay. I'm going to get to that later on.
4 Now, remember I defined law enforcement for you the other
5 day. I said, law enforcement is people associated with a
6 local police department, state police, the county police,
7 the Prosecutor's office, the federal police, that would be
8 the F.B.I., remember that? Have you ever been associated
9 with law enforcement?

10 A (Shaking head).

11 Q Are there any members of your immediate
12 family associated with law enforcement?

13 A (Shaking head).

14 Q Do you have any real good friends that are
15 associated with law enforcement?

16 A (Shaking head).

17 MR. ABT: You are going to have to say yes
18 or no, ma'am.

19 THE COURT: Please say yes or no, Mrs.
20 Kohleman. He has to write it down.

21 A He has to hear it.

22 Q What is that?

23 A He has to hear it.

24 Q Right. He has to hear it. That's right.
25 What about that?

2 A No. I don't know any of them in the service or
3 anything like that.

4 Q Have you ever been the victim of a crime?

5 A Me?

6 Q Yes.

7 A No.

8 Q Any member of your immediate family ever been
9 the victim of a crime or have you or any member of your
10 family ever been a participant in a criminal proceeding?

11 A No.

12 Q Such as a witness or a complainant, or a
13 defendant?

14 A No.

15 Q Now, you say you served on the Grand Jury
16 five years ago?

17 A That's right.

18 Q Now, did you ever have any other experience
19 as a juror?

20 A That's all.

21 Q Now, I am just going to elaborate on that for
22 you so you answer my next question. All right. Let me ad-
23 vise you that your function as a petit juror, as you will
24 sit here, now you are a petit juror?

25 A Yes.

2 Q As opposed to that of a grand juror is
3 decidedly different.

4 A Right.

5 Q But I'm sure you are pretty familiar, but I
6 am going to go over it for the record. As a grand juror,
7 you just decide whether a charge should be preferred
8 against a defendant, but you don't hear the entire case.
9 Are you aware of that?

10 A No. Only the Prosecutor's side.

11 Q A one-sided proceeding?

12 A That's right.

13 Q And the defendant invariably doesn't have
14 any lawyer there present. It is the Prosecutor who pre-
15 sents certain facts?

16 A That's right.

17 Q And even the Prosecutor doesn't present the
18 entire case?

19 A Just the one side. Yes, that's right.

20 Q And the purpose of a Grand Jury function or
21 the purpose of a hearing is to decide whether a defendant
22 should be charged, period, nothing else, right?

23 A Right.

24 Q Now, as a petit juror---

25 MR. LIPTAK: This is for you, Judge.

2 (Cup of coffee handed to the Court)

3 THE COURT: Well, I'm not going to drink it.
4 It wouldn't be fair to the other people here. But
5 I appreciate it.

6 MRS. KOHLEMAN: You're excused.

7 THE COURT: What's that?

8 MRS. KOHLEMAN: I'll excuse you.

9 Q No. We are not interested. As a petit juror
10 you are going to decide the issue of innocence or guilt,
11 which is not considered by a Grand Jury.

12 A Which I don't think I would like very much.

13 Q I'm sure if I asked every juror who would
14 come into this courthouse, they would say, if I didn't have
15 to have the responsibility, I would rather not have it.
16 And I can appreciate that. I'm sure these lawyers appreci-
17 ate it. But, at any rate, we have to take on responsibili-
18 ties that we are not too fond of. But the point is, you
19 understand your function as a petit juror as opposed to a
20 grand juror?

21 A Right.

22 Q So, if you are chosen as a juror in this
23 case, you have to decide the issue of innocent or guilty,
24 which you didn't do as a grand juror.

25 A Right.

2 Q Did anything occur during the course of your
3 experience as a grand juror, which you think might affect
4 your judgment in this case? In other words, did you for-
5 mulate any opinions in your mind about criminal cases gen-
6 erally, which would affect your thinking in this case?

7 A No I didn't.

8 Q If you were chosen as a petit juror in this
9 case, you could be fair to both sides in spite of your
10 experience as a grand juror? May I assume that?

11 A Yes.

12 Q All right. So the fact that you have served
13 as a grand juror will not affect your ability as a petit
14 juror in any way?

15 A I wouldn't see how it could.

16 Q All right. Now, I think you indicated before
17 that if you were chosen as a juror, you would want to hear
18 the facts in this case. You would also want to hear the
19 law, wouldn't you, that's applicable, so you could apply
20 the law to the facts before you make a decision?

21 A Right.

22 Q Now, a defendant in a criminal case by way of
23 the indictment is charged with a crime.

24 A That's right.

25 Q That in itself is no evidence of guilt.

2 A No, because in the Grand Jury you only hear one
3 side, so, it can't.

4 Q Now, are you prejudiced against the defendant
5 because he's charged with a crime?

6 A I don't even know him. I have prejudices, if that's
7 what you want to know.

8 Q Okay. I'm going to get to that.

9 A I have prejudices.

10 Q What prejudice do you have?

11 A I can be prejudiced against a white person as well
12 as any other color, or creed, or anything else.

13 Q Well, are you prejudiced?

14 A It is the individual.

15 Q All right. I am going to explore that in
16 time, but I want to take one step at a time. First of all,
17 I want to know that just because a man is charged with a
18 crime, are you prejudiced against him?

19 A If he isn't proven guilty, how can I be prejudiced?

20 Q So, therefore, you are not prejudiced?

21 A I wouldn't be.

22 Q All right. Now, what does your family con-
23 sist of at this point? I understand your husband is ill.
24 Who else is in your family?

25 A I have a daughter, a son-in-law, and three

2 grandchildren.

3 Q And does your daughter live with you or is
4 she apart from you?

5 A No, she has her own place.

6 Q And who lives in your household with the
7 exception of your husband?

8 A Just myself.

9 Q What would be the situation if you were
10 chosen as a juror in this case and the jury would have to
11 be sequestered?

12 Now, before you answer that, let me explain
13 it to you. Right now we are going through what we call the
14 jury selection process. And that may take a week, two
15 weeks. It all depends. It is a slow process unfortunately,
16 but it will take one to two weeks hopefully.

17 What happens is, if we select a juror now,
18 he or she is excused and you go home, you go back to your
19 employment or whatever your duties are, your personal
20 activities.

21 A I'm retired.

22 Q What's that?

23 A I'm retired.

24 Q You are retired. Now, after we pick our
25 jury, then we call back our jury that's been picked.

1
2 Now, if you were picked for today, you were
3 one of the first ones questioned, you might not be called
4 for two weeks. Then we would call you back and the trial
5 would start. Once the trial starts, we are going to se-
6 quester the jury. And there is a reason for it. We don't
7 want the jury to be exposed to publicity. We want the jury
8 isolated for those reasons. We want a fair verdict here.
9 And we don't want it predicated upon what some newspaper
10 might decide to write about this case. So, we found
11 through experience the best way to do it is to segregate a
12 jury, sequester a jury, that's what it is called. You'll
13 be comfortable. You will be in a hotel with your fellow
14 jurors and you will be very comfortable. As far as that
15 is concerned, would that create any real problem?

16 A That wouldn't be comfortable.

17 Q It wouldn't?

18 A Who wants to be isolated?

19 Q No. When we say isolated,---

20 A I like to walk.

21 Q Let me give you the routine. You would come
22 to court all day and at night you probably would have dinner
23 somewheres. They probably have different places for the
24 jury. We would permit that. You would probably have some
25 form of entertainment, which would have to be arranged,

2 whether it be a theatre or a trip somewhere. I mean, you
3 are not going to be isolated from the public. You will be
4 able to read newspapers and watch television. The only
5 thing is, we are going to supervise it. We are going to
6 make sure you don't see a program that has to do with this
7 case. There might not be, maybe they won't care by then.
8 I don't know.

9 A A free prisoner.

10 Q What's that?

11 A Be a free prisoner.

12 Q No, you wouldn't be a prisoner at all.

13 A I like to walk. I wouldn't be.

14 Q You will get a chance to walk. You will get
15 a chance to walk.

16 All right. Now, let us get down to some
17 other questions. You are not going to have any difficulty
18 with being a juror.

19 A I hope so.

20 Q You told us your occupation is that of re-
21 tired lady. What did you do before you retired?

22 A I was a comptometer operator for S. Cole and Company.

23 MR. BELDOCK: What kind of operator?

24 MR. ABT: Comptometer.

25 A Adding machine, multiplies and divides.

2 Q And for how long did you do that type of work?

3 A Well, I was in that company eighteen years.

4 Q All right. How long have you been retired?

5 I'm not going to ask your age.

6 A Seven years. I'm sixty-eight.

7 Q With reference to your duties after
8 retirement---

9 A You say women are afraid of their age; I'm not.

10 Q I know. How old are you?

11 A Sixty-eight.

12 Q God bless you. So you have been retired
13 seven years?

14 A That's right.

15 Q Have you had any educational background of
16 any kind?

17 A Left school at fourteen.

18 Q And how about your machines that you learned
19 to operate?

20 A I learned that in a business school.

21 Q Business school; what place?

22 A McGrady's, downtown New York.

23 Q Do you go to any other school?

24 A That's all.

25 Q What does your daughter do?

2 A My daughter is a housewife.

3 Q And her husband?

4 A Well, he works in a water conditioning place, you
5 know.

6 Q How old are their children?

7 A The boy is twenty-one and the girl is eighteen; and
8 the little boy, seven.

9 Q All right. What does the boy do, the twenty-
10 one year old?

11 A He works where his father works, in water condi-
12 tioning, repair.

13 Q What about the other?

14 A And the girl works for Nestle's.

15 Q Nestle's Candies?

16 A Yes. In Secaucus.

17 Q What does she do, secretary?

18 A No, clerical worker, tracer.

19 Q Are those the only two children?

20 A And the boy seven.

21 Q Boy seven.

22 A He goes to school.

23 Q Incidentally, what town do they live in?

24 A They live in Jersey City Heights, a few blocks from
25 me.

2 Q How long have you lived in the Jersey City
3 area or in Jersey City?

4 A Since 'fifty-one.

5 Q And before that?

6 A I came from Glen Hill, Long Island, Ridgewood, New
7 York.

8 Q And did your husband have an occupation
9 before he became ill?

10 A Yes. He was a bookkeeper.

11 Q Was he ever connected with law enforcement?

12 A No.

13 Q Do you belong to any organizations?

14 A (Shaking head)

15 Q What newspaper do you read? I'm now getting
16 a little nose.

17 A I told you, once a week I get the Jersey Journal on
18 a Saturday.

19 Q What about magazines?

20 A No magazines.

21 Q Now, you don't know too much about this case,
22 do you?

23 A No.

24 Q Did you know that Mr. Carter is a boxer?

25 A No, I didn't know that.

2 Q Would that make any difference to you what
3 his profession or occupation was?

4 A No. To each his own.

5 Q So the fact that it might develop during the
6 course of the trial that Mr. Carter was in the boxing pro-
7 fession, would that affect your judgment either for or
8 against him?

9 A No. I've watched boxing. I've watched Ali or
10 whatever his name is.

11 Q Muhammad Ali?

12 A Yes.

13 Q Did you ever see Mr. Carter box?

14 A No. I didn't even know he does it.

15 Q All right. Did you ever hear of the book---

16 A He don't look that big.

17 Q All right. Did you ever read the book or
18 hear of the book entitled "The Sixteenth Round"?

19 A Book, Sixteenth Round?

20 Q The name of it is "The Sixteenth Round".

21 A I don't read books. The Bible is the only book I
22 read.

23 Q Okay.

24 A Ask me something on that. Maybe I can give you an
25 answer. That's why I couldn't swear. James 5:12,

2 Matthew 5:37.

3 Q Do you watch the news at night on T.V. or in
4 the morning, early in the morning?

5 A A little bit once in a while. I might hear it on
6 WMCA, I put on that five minutes news, listen to Bob Grant.

7 Q I think I did ask you if you belonged to any
8 organizations. All right. You know we all have our own
9 different lifestyles. You appreciate that?

10 A I certainly do.

11 Q Do you have any opinions about people whose
12 lifestyle may differ from yours?

13 A Well, today life is very different from what I've
14 known of it.

15 Q Well, do you have adverse opinions for or
16 against?

17 A When it comes to morals, sure.

18 Q To morals?

19 A To morals, yes.

20 Q I see. Would you be prejudiced against people
21 whose morals are different from yours?

22 A If they were degrading, yes.

23 Q You are giving me some answers that are making
24 me think a little bit, Mrs. Kohleman. All right. Let us
25 try to pursue that. The issue in this case is for you to

2 determine, if you're chosen as a juror, to start off with,
3 after you have heard all the evidence and have heard the
4 charge of the Court and have been given the opportunity to
5 discuss the case with your fellow jurors, when it is given
6 to you to determine, the issue of innocence or guilt in
7 this case.

8 Now, let us assume that you have certain
9 feelings about lifestyles and it developed during the
10 course of the trial that a witness or witnesses or persons
11 who might testify had different lifestyles than yours --
12 let us assume somebody got up there and for argument's
13 sake; and admitted he's an alcoholic for example, would
14 that prejudice -- I'm sure you probably have feelings
15 against people who drink or people who have different
16 morals than yours; is that right?

17 A Well, I don't drink.

18 Q All right.

19 A But each one lives his life as he sees fit.

20 Q Now,---

21 A It is wrong in my eyes, but if that's what he wants
22 to do, that's his life.

23 Q That's what I am trying to find out.

24 A That's his life.

25 Q Would people who may have a different moral

2 standard than you have, would you still feel that it is
3 their life?

4 A It is not for me to judge actually.

5 Q All right. Now, you do have feelings about
6 it though?

7 A Yes.

8 Q Are they strong enough to be prejudiced
9 against those people? In other words, would you still be
10 fair to those persons regardless of their lifestyle?

11 A Well, I guess I would be. Well, take a man, if he
12 is depriving his family of food or something because of
13 that drink, then I would be very much prejudiced against
14 him.

15 Q Would you just find him guilty because of
16 that, if you were otherwise convinced that he wasn't guilty
17 beyond a reasonable doubt? If I didn't make myself clear,
18 I will rephrase that.

19 A No.

20 Q In other words, let us assume you hear the
21 case, okay, it has nothing to do with this case, but you
22 hear a case, and if it was brought out that the defendant
23 in the case was a drunkard, but it had nothing to do with
24 whether he committed a robbery or not, would you hold that
25 against him?

2 A No. You couldn't hold it against him.

3 Q Okay. So then you would decide the case on
4 the merits of that particular case?

5 A Yes. Absolutely.

6 Q Then may I assume that you are prejudiced
7 against those people so as to have your judgment affected?

8 A No. You take things as you see them.

9 Q Now, you already told us that there is very
10 little you know about this case at this point; isn't there?

11 A I told you what I know about it.

12 Q Okay. Is there---

13 A Unless you tell me more about it.

14 Q No, no. If you're chosen as a juror, you
15 will listen to the testimony. All right. You have told us
16 all you know about it?

17 A As far as I know, I mean---

18 Q Now, let me ask you this. From what you know,
19 which you indicated is minimal---

20 A There were three people who were supposed to have
21 died; am I right?

22 Q Right.

23 A Who they are, what they are, what they were, or any-
24 thing else, I know nothing about it.

25 Q Okay. Have you developed or formulated any

2 opinion about this case from what you know?

3 A One opinion I can give you.

4 Q What's that?

5 A If a man was convicted originally, why is he going
6 to get another trial?

7 Q Well, let us assume that he went through the
8 judicial process and for some reason the court decided that
9 he is entitled to it?

10 A You mean, there is new evidence or something?

11 Q He may be entitled to it for many reasons,
12 but they have decided. And if a court decides a defendant
13 is entitled to a new trial, then he is entitled to a new
14 trial, and is entitled to a fair trial as though he was
15 never tried before. Would you be able to do that?

16 A I can't see it.

17 Q You can't? In other words, if I told you
18 now, all right, you know, Mrs. Kohleman, that these defend-
19 ants have been tried before, but they have been granted a
20 new trial by another court now, can you hear this case and
21 decide it fairly and squarely on what you hear ignoring the
22 fact that they were tried before? Could you do that?

23 A No, because if the circumstances and the evidence
24 and everything came out in the first trial and the people
25 said that they were guilty, why do they need another trial?

2 I can't see it.

3 Q Well, what if there was something done at the
4 first trial, which for example wasn't in accordance with
5 the law, for example, and the court now feels that they
6 should be granted a new trial; and what if I told you that
7 you're not to concern yourself with that, and that it is
8 your obligation, if you're chosen as a juror, that you must
9 give them a fair and new trial? What would you say about
10 that? Would you still feel---

11 A In other words, there was -- were circumstances that
12 came up that said---

13 Q Warranted a new trial.

14 A Well then, yes.

15 Q Okay.

16 A Then you would have to listen.

17 Q In this particular case there were circum-
18 stances where a new trial was granted. And if you're
19 chosen as a juror, I am going to have to instruct you and
20 your fellow jurors that you are to completely disregard the
21 fact that they were convicted at a prior trial, because
22 that is why they are getting a new trial. And it has to be
23 exactly that, a fair trial. What about that? Would you
24 accept that and would you say to me, I can forget the fact
25 that they had another trial, because now that they have

2 been given a new trial, I don't have a right to consider
3 that? Would you do that, if I asked you to?

4 A If you are going to hear a trial, you have to go by
5 what you hear.

6 Q Okay.

7 A You can't go by what happened before, because you
8 don't know what happened before.

9 Q All right. Would you be willing to do that?

10 A I certainly would.

11 MR. STEEL: Judge, can I make an application
12 now?

13 THE COURT: No. You are not going to make
14 any application at this point.

15 Counselor, you know the procedure. Write it
16 down and you may make it later.

17 MR. STEEL: Well, your Honor---

18 THE COURT: We established a procedure.

19 MR. STEEL: I'm saying that with all due
20 respect---

21 THE COURT: And I'm telling you with all
22 respect that I've established a procedure, that I'm
23 going to follow.

24 MR. STEEL: I think it dissipates.

25 THE COURT: All right. Counsel, the

2 procedure has been established.

3 MR. STEEL: I object, your Honor.

4 Q At this point then, considering what you and
5 I have discussed thus far, do you have any opinion about
6 this case?

7 A What opinion could I have?

8 Q In other words, I assume you do not from that
9 statement?

10 A The only opinion like I say is that I felt that if
11 they had a trial, why should they have another one.

12 Q But, if I instructed you that you must dis-
13 regard the fact that they had another trial, that you're
14 not to concern yourself with the prior trial, and that if
15 you're chosen as a juror, it will be incumbent upon you to
16 judge this case on the facts which you will hear in this
17 case only, and the fact that there was another trial should
18 not affect your thinking, can you do it? Will you be able
19 to do it, or is your feeling about the prior trial so
20 strong, that you can't be fair in a subsequent trial? I
21 want to know that. In other words, would that put you in
22 a position where your judgment would be affected, you keep
23 saying to yourself, well, they had a new trial, I don't see
24 why it was given, I don't care what the judge said; would
25 it put you in that position, or would you say to yourself

2 the judge---

3 A Actually I told you before, I don't like to judge
4 anybody.

5 Q I know that, but neither does anyone else,
6 perhaps.

7 (Judge answered telephone call, and left
8 chambers for approximately five minutes).

9 Q Let the record indicate that I took about
10 five minutes for a phone call; and at that point we were
11 discussing this juror's opinions about the case in view of
12 a re-trial being ordered.

13 Now, I want to make myself clear, Mrs.
14 Kohleman about this, in this area, it is very important to
15 me. It is very important to the attorneys. You came in
16 here today and you didn't know too much about this case,
17 and you correct me if I am wrong, as I try to recapitulate
18 your thinking. And then you said to me, well, I don't know
19 too much about this case, but I do know that they were
20 tried before?

21 A Right.

22 Q And my feeling is, why should they be tried
23 again, another jury heard it?

24 A Right.

25 Q They disposed of the matter, why should they

2 have a new trial?

3 A Right.

4 Q Okay. You have a right to that opinion?

5 A Right.

6 Q Now, I am asking you this. If I told you
7 that as a citizen, if you thought that way, and if you
8 think that way as a citizen, fine. As a juror, I am going
9 to say to you, I will instruct you as to the law in this
10 case; and among the things that I will tell you is, now,
11 Mrs. Kohleman, the fact that these men have been re-tried
12 should be of no concern insofar as not Mrs. Kohleman the
13 citizen is concerned, as Mrs. Kohleman the juror is con-
14 cerned. Now, can you take a position, if I asked you to --
15 of saying to yourself although they have been re-tried, I
16 am not going to consider that in this case, I am going to
17 hear this case new, de novo from the beginning, and what
18 happened in the other trial and why it happened, the judge
19 told me not to concern myself with. Can you do that?

20 A Yes.

21 Q So, if you're chosen as a juror, then you are
22 going to predicate your verdict on what you hear in this
23 trial and you are going to forget that there was even a
24 trial before; is that possible? Can you do that?

25 A Right.

2 Q Now, other than what you told me about this
3 case, you don't know anything else about it?

4 A No.

5 Q Okay. Relax. I am not going to be too long.
6 Just a few more questions. Like I say, I have asked you
7 most of the questions. There are a couple of things. I
8 am going to get into a different area.

9 Now, the two defendants in this case are
10 black. You know that. You saw them. Do you know the race
11 of the alleged victims in this case?

12 A No.

13 Q If I told you that it will develop during the
14 course of the trial that the victims are white, would that
15 shock you?

16 A No. I don't know who they are.

17 Q What if they were? If that's all you knew at
18 this point, you knew that the defendants were black and the
19 victims were white, would that put you in a position where
20 you will say to yourself---

21 A I don't know the circumstances of why it happened.

22 Q All right. In other words, at this point
23 you're in a position where the fact that the defendants are
24 black and the victims are white, that has nothing to do
25 with innocence or guilt as far as you're concerned, unless

2 something develops that would bear on it?

3 A A mugger tried to steal my pocketbook, and if I had
4 a brick in my hand, I would have hit him with it, as much
5 as I hate to hurt anybody.

6 Q Okay. I'm going to get to that later.

7 A You can do things.

8 Q Didn't I ask you before if you ever were the
9 victim of a crime?

10 A I don't know. What did I do? They took my pocket-
11 book, that was all.

12 Q I want to know about that.

13 A You want to know about that? I'm sorry.

14 Q Let us talk about it.

15 A I didn't think that was so important.

16 Q How long ago was that?

17 A About two years ago, a year or so ago.

18 Q Was the person caught?

19 A No.

20 Q Was the person black or white?

21 A I think they were white.

22 Q White. As a result of that experience would
23 you be prejudiced in any criminal case you might hear?

24 A Well, when someone, something, take an individual,
25 this boy came along. I'm walking along minding my own

2 business.

3 Q All right.

4 A And I had a bundle in my arm and a pocketbook. He
5 come along and he swung in front of me and I felt a prick
6 in my finger, like a knife or something dug it, and I let
7 go of the bag because it stung, you know.

8 Q Would you hold that against these men?

9 A No. Why should I hold it against them? They had
10 nothing to do with it. I say, if something happens to you
11 personally, you can want to do things at that moment.

12 Q I understand that. The point I am -- oh, I
13 understand what you're saying.

14 A I'm looking at things, if somebody does something
15 to you, you could for that moment want to do something back
16 to them.

17 Q Want to react?

18 A You can't help it.

19 Q The fact that your purse was taken, would
20 that put you in a position that you would be prejudiced
21 against the defendant?

22 A That has nothing to do with them. That's entirely
23 different. But you wanted to know what it was about.

24 Q Okay. Let us get back to the situation of
25 two black people charged with killing three white people.

2 Does that in and of itself prejudice you against the
3 defendants?

4 A No. I told you, I don't know what the circumstances
5 are.

6 Q Okay. Now,---

7 A Listen, there is good and bad in all kinds. I don't
8 care who they are, even white.

9 Q What type of neighborhood do you live in?
10 Mixed, black people, minority groups?

11 A No, mostly -- well, it might be Cubans. I'm up in
12 the Heights. A lot of Cubans around. There might be
13 Puerto Ricans.

14 Q You have any black people?

15 A I noticed -- yes, there are blacks. Yes, there are
16 a couple of blacks in the different buildings.

17 Q Have you ever worked with black people?

18 A There have been black people in the office, yes.

19 Q And did you get along with them?

20 A Yes.

21 Q Do you have any prejudices against black
22 people?

23 A No.

24 Q Do you feel that they are more inclined to
25 commit crime than white people?

1
2 A I don't know. I really don't know because like I
3 say, this was a white boy that did it to me. I don't care
4 who the kids are. I've been walking down the block here to
5 come here from the Heights. I see windows broken and they
6 must have been done by white kids, because that neighbor-
7 hood has white kids in it.

8 Q Let me ask you---

9 A So, I don't care who you are.

10 Q Do you have any feeling about black people
11 that might prejudice you in this case?

12 A It is like I said originally, if people are decent
13 morally, individually, they could be white or black or any-
14 thing else, no matter what color they are, if they are
15 decent people. But if they are not decent people, then,
16 yes, I'm prejudiced against them. We have a society that
17 needs a little more correction.

18 Q Let me ask you about that. Why do you feel
19 that way?

20 A Why? Because I think the children today get away
21 with murder.

22 Q The who?

23 A Children, the young people.

24 Q Do you feel that if these defendants were
25 tried and you were not convinced of their guilt beyond a

2 reasonable doubt, that they would be getting away with
3 something?

4 A If they were tried and I was not convinced?

5 Q And you were not convinced, they weren't
6 proven guilty beyond a reasonable doubt, do you feel that
7 they would be getting away with something?

8 A Oh, no, I wouldn't say that. If they were guilty,
9 yes. But if they weren't proven guilty, no.

10 Q All right. Now have you ever had any diffi-
11 culty with black people yourself personally?

12 A No.

13 Q Has your family ever had difficulty with them?

14 A Never. No.

15 Q With reference to that, you have been aware
16 of racial disturbances in some of the cities in this coun-
17 try within the last ten years, have you not?

18 A Yes.

19 Q And have you had any in your town?

20 A No.

21 Q Have you read about them in other towns?

22 A Yes.

23 Q And do you recall specifically any towns that
24 you may have heard that may have had racial problems?

25 A Specifically? Well, New York.

2 Q How about Newark?

3 A I guess, too.

4 Q How about Paterson? You ever hear of racial
5 troubles in Paterson?

6 A I have never been in Paterson.

7 Q You ever heard of any racial problems?

8 A No. Not that I know of.

9 Q Okay. Have you ever been the victim of any
10 racial disturbances you yourself?

11 A No.

12 Q Have you ever participated in a racial
13 disturbance?

14 A No.

15 Q Do you have any opinions about governmental
16 programs designed for the purpose of racial integration?

17 A Well, I'm against busing.

18 Q All right.

19 A Because I can't see taking little children from
20 across the street and taking them blocks away from the
21 parents' guidance and lunches, and things of that nature.
22 I'm very much against that.

23 Q Because of that do you think that you would
24 be prejudiced against the defendants?

25 A No, because I believe the colored people are the

2 same way. They feel the same way. They don't want their
3 children bused a mile away.

4 Q So the fact that you have some feelings
5 about busing wouldn't put you in a position where you would
6 react against these two defendants? Would it?

7 A Absolutely not. They have nothing to do with it.

8 Q Let me ask you some other questions about
9 black people.

10 Do you think black people are more likely to
11 commit crime than any other people?

12 A I couldn't say.

13 Q Well, do you have any opinions?

14 A I have no statistics.

15 Q I mean, do you have any feelings, your own
16 feelings about that? Do you feel black people more than
17 white people are more inclined to commit crime?

18 A Well, I think young people, if they were working,
19 they wouldn't get into the troubles that they are getting
20 into. It is a lack of work that does it. I worked when
21 I was fourteen.

22 Q All right. Do you feel---

23 A I had money in my pockets to buy the things that I
24 wanted. The kids today are left on the streets. The
25 mothers are working; and the kids are left on the streets.

2 And I don't think it should be that way. The mothers
3 should be home.

4 Q All right. Do you feel that black people are
5 inclined to be prone to crimes of violence more than white
6 people or vice-versa?

7 A They maybe because of the dope that's going around.
8 And they pick on these people for those reasons.

9 Q Would that enter into your consideration
10 these feelings that you might have, in this case when you
11 decide the issues in this case?

12 A I don't see any connection.

13 Q As you sit there now, Mrs. Kohleman, would
14 you be biased against a person just because he's black?

15 A No.

16 Q Or because he's not white?

17 A No. I was sitting outside with colored people; and
18 they are very nice.

19 Q And may the lawyers and may the Court assume
20 that you're not prejudiced against a person just because he
21 isn't white?

22 A No. His color means nothing.

23 Q Have you had an incident in your personal
24 life; and I'm not trying to get personal, when you hear the
25 question, you know it isn't. It is a general question.

2 Is there any incident in your past which would put you in a
3 position or which would put you in a position where you
4 have reason to think that it might interfere with your
5 judgment in this case and prevent you from giving the de-
6 fendants and the State a fair trial? Have you had any
7 incident?

8 A I don't know what you mean incident.

9 Q Well, you had the incident about somebody
10 stealing your purse?

11 A Yes. That's the only thing.

12 Q You said that would not affect your thinking
13 here in this case?

14 A No.

15 Q Have you had any other incident in your life
16 which would put you in a position where your judgment
17 would be affected here?

18 A Not that I know of, no.

19 Q And if you did, would you be able to chase it
20 out of your mind and say it has nothing to do with these
21 defendants, I'm going to decide this case on the merits?
22 You would be able to do that?

23 A That's the only thing. You have to listen to what's
24 going on.

25 Q Did you ever hear the name of Bob Dylan?

2 A No.

3 Q If I told you he is a singer, would that mean
4 anything to you?

5 A No.

6 Q Never heard of him?

7 A I don't listen to those singers.

8 Q All right. Only a couple of more questions.

9 Now, I am going to ask you about alcoholics.

10 Do you have any feelings generally about alcoholics? I
11 think you indicated that you don't approve of people who
12 drink?

13 A Yes. I don't drink. Like I say each man has his
14 own life, but as long as he's not harming somebody with it.

15 Q All right. Do you have such feelings about
16 alcoholics that you would be unable to consider their tes-
17 timony? In other words, just because a person drank and
18 you say, well, he's a drunk, I don't want any part of him
19 or---

20 A If it is connected with what's happening, then na-
21 turally you would. But, if it has no connection with
22 what's happening, you can't condemn somebody for something
23 that happened just because he takes a drink. No.

24 Q All right. Would you be willing to listen to
25 a person who is an alcoholic and say, well, I'm going to

2 listen to him and I'm going to evaluate what they say, and
3 give them whatever credence I think---

4 A You mean an alcoholic like somebody that drinks all
5 the time?

6 Q Let us assume he drinks all the time or he
7 testifies or she testifies in this case for one side or the
8 other, would you still be willing to say, well, I want to
9 hear what they have to say and then decide how much to be-
10 lieve or not to believe? Would you be able to do that?
11 Or would you say to yourself, oh, oh, he's an alcoholic,
12 I'm not going to believe anything?

13 A Well, I couldn't believe he would know what went on,
14 if he was an alcoholic, because if he was under the influ-
15 ence of liquor, I believe it would affect his mind.

16 Q All right. Do you believe that people who
17 drink have lucid moments wherein they could testify as to
18 events? Would you be able to judge for yourself whether
19 that was the case or not?

20 A Well, not drinking myself, I don't know anything to
21 judge anything like that. I don't know if they have sane
22 moments or what they have.

23 Q Well, in other words,---

24 A If a person drinks, is he drunk? I don't know.
25 Does he ever have a moment when he knows what he's doing?

2 I don't know. I think they are very senseless. I heard
3 that a person who's drunk, if they fall down, they don't
4 feel nothing. So?

5 Q If a person were testifying that he fell and
6 he was trying to tell you what he felt as a result of
7 falling while in a drunken stupor, you might come to that
8 conclusion.

9 Well, let us assume that people testify or a
10 person might testify, it was just brought out that he's an
11 alcoholic, but when he testifies he's sober and he's testi-
12 fying as to an experience perhaps that you would have to
13 decide whether he really knew what he was talking about or
14 not. Would you be able to listen to him and make that
15 judgment?

16 A Well, it would be difficult.

17 Q Would you be prejudiced against him just be-
18 cause he was an alcoholic?

19 A No. A person could be an alcoholic, right? He
20 could be drinking this one day, but if something happened
21 and he wasn't drunk that time, then all right, I would
22 believe him.

23 Q Well, would you be willing to at least listen
24 to him?

25 A Oh, yes. If he wasn't drunk when something happened,

2 I could believe him. But who knows?

3 Q In other words, would you be able to keep an
4 open mind and listen to him first and then make a decision?

5 A Yes.

6 Q Are there any people in your immediate family
7 or have you ever been employed by the government or been
8 appointed to a government job?

9 A (Shaking head).

10 Q Or has any member of your family ever been
11 so employed?

12 A No.

13 Q Have you ever been in the service, by the way?

14 A Me? No.

15 Q Yourself?

16 A No. Too young.

17 Q What's that?

18 A Too young.

19 Q All right.

20 A They didn't take women when I was young.

21 Q All right. Let me ask you this. Mrs.
22 Kohleman, assuming that you were chosen as a juror in this
23 case, and I said to you, Mrs. Kohleman, you and your fellow
24 jurors, I want you to keep an open mind in this trial from
25 the day this trial starts, if you were accepted now, right

2 until the time it ends, I'm going to ask you to keep an
3 open mind during that period and I am going to ask you to
4 keep an open mind when I give you the applicable law, and
5 I am going to ask you to keep an open mind until the case
6 is given to you for decision, but even then you have to
7 withhold judgment until you have had an opportunity, when
8 I give it to you for decision, to discuss it with your
9 fellow jurors. Would you be willing to do that?

10 A You mean after you hear a case?

11 Q In other words, I would---

12 A Hear all sides of the case?

13 Q Yes. Hear both sides. Then I will give you
14 the applicable law; then the case is given to you for deci-
15 sion, you discuss it with your fellow jurors and then
16 decide it. Could you keep an open mind right up until that
17 point?

18 A I believe I could, yes.

19 Q Now, what if I asked you then, if you're
20 chosen as a juror, would you and could you return a verdict
21 in accordance with the evidence and in accordance with the
22 law as I give it to you? Would you be able to do that?

23 A Give a what?

24 Q In other words, your verdict.

25 A Yes.

2 Q Which would have to be predicated and would
3 have to be based on the law and on the facts, the facts
4 which---

5 A Would the law be in accordance with the facts?

6 Q You would have to apply it to the facts.

7 A Oh.

8 Q You would have to apply the law to the facts
9 as I give it to you. At the end of the case I charge the
10 jury on the law; and I say under the laws of this case.

11 A You say the law says so-and-so?

12 Q Right. Now, I want you to apply the law of
13 this case to the facts. Would you be able to do that?

14 A Yes.

15 Q Then your verdict would be based on the law
16 and the facts; is that understandable?

17 A Right.

18 THE COURT: All right. You know what I am
19 going to do. I am going to ask you to just step out
20 for a few moments. I want to confer with counsel.
21 And bear with us just a little longer.

22 MRS. KOHLEMAN: All right.

23 (Prospective juror leaves room)

24 THE COURT: All right. I'll hear you, Mr.
25 Marmo.

1
2 MR. MARMO: Judge, the only thing, the only
3 point that concerns me about this woman is, I know
4 we have gone through this and re-argued and re-argued
5 it and that is, the business about a witness who's
6 given prior statements under oath, which are incon-
7 sistent.

8 Now, in light of her religious beliefs and
9 so forth, I am interested to know what her feelings
10 are in that kind of setting. Would you say because
11 a person has given a different or varying statements
12 under oath, different than what he's testifying to
13 today, that that means I can't believe what he's
14 telling me now.

15 THE COURT: How about you, Mr. Humphreys?

16 MR. HUMPHREYS: I have nothing, your Honor.

17 THE COURT: Okay, Mr. Beldock.

18 MR. BELDOCK: I don't know what she does do
19 with her time.

20 THE COURT: What's that?

21 MR. BELDOCK: What does she do with her time
22 now that she's retired? She's been retired for
23 seven years, and she says she doesn't have time to
24 read the newspapers. I think I might want to find
25 out what she does in her daily life. She might be

1
2 a housewife so to speak, or she might proliferize
3 her religion on a daily basis.

4 THE COURT: I'll ask her. I'll ask her.
5 Anything else?

6 MR. BELDOCK: Well, your Honor, I think if
7 I may say so, you did not properly handle the pro-
8 blem raised by this potential juror's comments about
9 prior convictions.

10 She was candid when she presented a very
11 serious problem. And she said on a number of occa-
12 sions words to the effect, she can't see why they
13 should get a new trial and raised a question about
14 newly-discovered evidence, then she might be able to
15 understand. She wasn't given a direct answer and
16 she was given, I understand why you might not choose
17 to give a direct answer, she was given a general
18 answer, well, as a result of the law they got a new
19 trial. Put that aside and she went back to it and
20 gave her opinion, if they had a trial already, why
21 should they have another.

22 And then your Honor in a number of leading
23 questions went over and over again the proposition
24 that if you charged her in such and such a way would
25 her opinion be so strong, then put in would your

1
2 judgment be affected. And her response then was
3 that she doesn't like to judge anyone.

4 THE COURT: She what?

5 MR. BELDOCK: That she didn't like to judge
6 anyone.

7 Then your Honor went on with leading ques-
8 tions and in effect, and finally she had to say yes.

9 Therefore, we are left with a neutralization
10 and serious problem and that may have been a basis
11 for challenge for cause.

12 On the face of it, it certainly seemed to me,
13 I think what your Honor should have done is to have
14 drawn the potential juror out some more and some
15 words she started to speak, in her words, we should
16 find out if it might affect her judgment considering
17 the evidence. She didn't know why a new trial was
18 granted. I mean it's not possible for us to put
19 before her why a new trial was granted in new detail.
20 I would have no objection.

21 But I'm sure the other side would, and I
22 think led to the question whether she would require
23 the defendant to put on some evidence, put on some
24 evidence, or to offset here her attitude.

25 THE COURT: What's your suggestion?

1
2 MR. BELDOCK: Left where we're at, I have to
3 challenge her for cause. And I'm suggesting to your
4 Honor that I might not have done that had the ques-
5 tioning gone differently.

6 THE COURT: All right.

7 MR. BELDOCK: She is a candid witness, candid
8 potential juror apparently, but yet we got stymied
9 at the circumstances at the point where we should
10 have gone further.

11 THE COURT: Well, don't you agree, Mr.
12 Beldock, if a juror as a lay person comes in here
13 and is under a misapprehension as to her thinking
14 as a citizen as opposed to her obligations as a
15 juror, that I have a right to explain it to her.
16 And after I have explained it to her, I have a right
17 to ask the juror if she would accept my explanation
18 and be guided accordingly.

19 In this situation don't you think I explored
20 sufficiently the fact that she is not to concern
21 herself with the prior trial? And ultimately didn't
22 I establish through her whether or not in fact she
23 could place herself in a position where she would
24 not be affected by the fact that there was a prior
25 trial.

1
2 MR. BELDOCK: But you placed her in the po-
3 sition where she practically could say nothing else
4 but yes, your Honor.

5 And I'm trying to pose the dilemma. I'm not
6 saying that I'm inclined to challenge this juror in
7 general, and I might not have challenged her for
8 cause, you know, a candid statement from this woman,
9 we have a lot of information about her now.

10 THE COURT: You sure do.

11 MR. BELDOCK: I certainly consider what I
12 would do on this one issue.

13 THE COURT: All right.

14 MR. BELDOCK: I feel if your Honor had ex-
15 plored further, we would have been in a better
16 position to know whether or not her opinion might
17 affect her judgment and whether or not she would
18 require some explanations in the course of this
19 trial to offset her opinion about what happened in
20 the prior trial. And there is no way to do that by
21 leading questions.

22 THE COURT: All right, Mr. Beldock. Mr.
23 Steel.

24 MR. STEEL: Well, we would like to just add a
25 word to what Mr. Beldock said.

1
2 THE COURT: You can have two words.

3 MR. STEEL: Okay.

4 First of all, your Honor, I must say with all
5 respect that I felt that you used your authority as
6 a judge to get the answers you wanted to get from
7 this witness, this prospective juror, rather than
8 let her talk. And by doing so you destroy the con-
9 cept of the voir dire. You used judicial authority
10 to save a witness from telling the truth. And your
11 Honor---

12 THE COURT: That statement sounds very aca-
13 demic. For myself, I don't think from a practical
14 standpoint that really happened. If you just place
15 that on the record as a characterization, you may
16 do so.

17 MR. STEEL: In this particular case I do wish
18 to do that.

19 THE COURT: All right. Is that your opinion?

20 MR. STEEL: In this particular case that's
21 exactly what I think you did.

22 THE COURT: You have that. What else?

23 MR. STEEL: Having done that, your Honor---

24 THE COURT: Okay. We're not conceding. That
25 may be your opinion.

1
2 MR. STEEL: I can't have an opinion for your
3 Honor?

4 THE COURT: Okay.

5 MR. STEEL: I assume you want---

6 THE COURT: What's your application, Mr.
7 Steel?

8 MR. STEEL: I assume you want to hear my
9 opinion, otherwise you wouldn't ask me to talk.

10 THE COURT: I want your application.

11 MR. STEEL: My application is that when you
12 call her back, that you ask her in very, in very
13 unleading terms a question to the effect, now that
14 we've had this discussion with you, do you feel that
15 the fact that you know that these defendants are
16 having a re-trial and were convicted, and were con-
17 victed once before, do you feel that may have any
18 effect on you whatsoever if you became a prospective
19 juror? And, if so, what effect would it have?

20 THE COURT: Now, wait a moment. They were
21 convicted once before. Would that have any effect?

22 What was the second question?

23 MR. STEEL: And, if so, what effect would it
24 have?

25 THE COURT: All right.

1
2 There is only one problem as I see it with
3 that. You see, she was under the impression before
4 when she first started, that once they've been con-
5 victed, there is no reason for a new trial.

6 When I told her that she would not be per-
7 mitted, if chosen as a juror, to consider that fact
8 because they have been granted a new trial and,
9 therefore, she has to start from scratch, as it
10 were, and must evaluate the case as she hears it
11 here, she said she could accept that and do that.

12 Now, I can't just out of context say, well,
13 you know, they were convicted before, would have any
14 effect on you? It would destroy everything that she
15 said before because it's being taken out of context
16 and I don't think that would be fair. It would be
17 wasting time.

18 MR. STEEL: Let me, my problem, Judge---

19 THE COURT: Go ahead.

20 MR. STEEL: It's always a problem that I feel
21 when a judge conducts a voir dire as opposed to me.
22 I know that is the law.

23 THE COURT: I told you my feeling. I don't
24 see, I don't agree with the law. I'd rather have
25 the lawyers do it.

1
2 MR. STEEL: I think what happens that a
3 person in trying to please the majesty of the court,
4 who is the judge, listens carefully to what the
5 judge is saying on these matters and tries to do the
6 right thing by agreeing with the judge, which leaves
7 us in the dilemma frankly as to whether or not we're
8 going to get a prospective juror who may have said
9 the right thing to the judge, but doesn't believe it
10 in her heart. And I don't know if that's the case
11 in this situation. And that's why I objected so
12 strongly to what your Honor did. And I understand
13 your Honor has a hard job. I think we all do.

14 THE COURT: Don't worry about it. That's my
15 job.

16 MR. STEEL: I think we all have hard jobs.

17 THE COURT: I know.

18 MR. STEEL: But I'm desperately trying to
19 find out what people believe, not what people think
20 what you think they should believe.

21 THE COURT: All right.

22 Anything further, gentlemen?

23 MR. MARMO: No, sir.

24 THE COURT: All right. Bring in the juror.

25 (Prospective juror enters room)

1
2 THE COURT: Mrs. Kohleman, have a seat.

3 B E T T Y H. K O H L E M A N, called as a
4 prospective juror, having been previously sworn, testifies
5 further as follows:

6 BY THE COURT:

7 Q How are you doing? You're ready to go?
8 You'll be going very shortly.

9 Mrs. Kohleman, just one area and it's for me.
10 I want to clear myself, clear my mind as to this.

11 You started out by saying that I don't know
12 too much about this case. Like I said before, I think I
13 covered it, but I just want to be sure. I don't know too
14 much about this case, but I do know they had a trial before.
15 You remember you told me that?

16 A A re-trial.

17 Q And, well, if you're chosen as a juror, you
18 have to disregard that fact. I asked you once and I'm
19 going to ask you once more, at the risk of being repetitious,
20 could you disregard a new trial if I asked you to do that?

21 A Yes.

22 Q And would you be able to judge this case on
23 what you hear in this courtroom and forget the fact that
24 they had another trial, which has nothing to do with you?
25 Would you do that? Would you be able to hear this case

2 from scratch in this courtroom and not consider the fact
3 that they had another trial? You would be able to do that?

4 A Yes.

5 THE COURT: All right. Would you step out
6 for a moment, one more moment. We'll have you back.

7 (Prospective juror leaves room)

8 THE COURT: Gentlemen, I'm not going to ex-
9 plore anymore. I thought myself very honestly,
10 asking more, the questions in much more detail
11 before.

12 MR. STEEL: But I have the same objection,
13 your Honor.

14 THE COURT: Okay.

15 MR. STEEL: You did it in a manner which
16 compelled the answer because you put yourself on
17 the line.

18 THE COURT: All right.

19 MR. STEEL: As a judge.

20 THE COURT: Okay. Your exception is noted.

21 I'm not going to go any further on voir dire
22 of this witness. All exceptions have been noted by
23 both counsel, the State, as well as the defendants.
24 I'm going to proceed.

25 Let us see if there was anything I did want

1
2 to ask her that was brought out.

3 MR. MARMO: Her time element.

4 THE COURT: Okay. That's too bad. I let her
5 step out.

6 All right. Let us bring her in.

7 (Prospective juror enters room)

8 B E T T Y H. K O H L E M A N, called as a
9 prospective juror, having been previously sworn, testifies
10 further as follows:

11 BY THE COURT:

12 Q Okay. Mrs. Kohleman, I'm sorry, I meant to
13 ask you. You can stand where you are. What do you do with
14 your time during the day? Are you engaged in any activi-
15 ties at all?

16 A I go shopping. I do a lot of walking.

17 Q You do? Do you belong to any social
18 organization?

19 A I help my daughter with her work. I used to belong
20 to a couple of Senior Citizen clubs, but I gave them up.

21 Q That's the extent of your activities during
22 the day?

23 A Yes.

24 THE COURT: Okay. Thank you again. Have
25 another seat.

1
2 MRS. KOHLEMAN: I have to wait yet?

3 THE COURT: Just a few minutes, not even five
4 or six minutes.

5 (Prospective juror leaves room)

6 THE COURT: Gentlemen, I'm going to give you
7 five minutes. It's now four-fifteen, since we
8 started with this juror, and I want to give counsel
9 five minutes to consult among each other, their
10 respective sides, as to challenges.

11 MR. BELDOCK: Your Honor, I find five minutes
12 inadequate. I would ask your Honor to give us ten
13 minutes and we come back sooner in many instances.

14 THE COURT: Ten minutes?

15 MR. BELDOCK: But five minutes, it is a
16 pressure, it's only four minutes.

17 THE COURT: Mr. Beldock, you have ten minutes.

18 MR. BELDOCK: Thank you, Judge.

19 THE COURT: And if you need more, you ask for
20 it, you'll have it.

21 (Brief recess)

22 THE COURT: All right. Before the juror comes
23 in, it seems to me, Mr. Beldock went first last time.

24 MR. BELDOCK: Yes, sir. You're talking about
25 exercising challenges, and we want to make an

1
2 application first.

3 THE COURT: All right. Wait until the State
4 gets here.

5 MR. BELDOCK: You're talking about exercising
6 a challenge.

7 THE COURT: Now, Mr. Steel would go first.
8 Then the State, and then you, then next time the
9 State goes first.

10 MR. STEEL: That's right.

11 THE COURT: They went first last time.

12 MR. STEEL: No, Mr. Beldock went first.

13 THE COURT: Oh, that's right. Then it's you.

14 MR. STEEL: I go first this time?

15 THE COURT: You keep alternating.

16 MR. BELDOCK: Who goes first next?

17 THE COURT: Right now I have Mr. Steel would
18 go first, because you went first last time. After
19 this one, Mr. Humphreys will go first.

20 MR. STEEL: Goes and then Mr. Marmo?

21 THE COURT: And then you.

22 Let the record indicate that it's now four
23 twenty-five. Counsel have returned to chambers
24 after having been given an opportunity to confer
25 with their associates on the challenge.

1
2 All right. Before we proceed with the chal-
3 lenge, I think Mr. Beldock has indicated he has an
4 application.

5 MR. BELDOCK: Well, yes.

6 Your Honor, I would like to argue a challenge
7 for cause of this potential juror on a combination
8 of factors.

9 THE COURT: Is it anything in addition other
10 than what you told us?

11 MR. BELDOCK: It's a combination of what I've
12 told you plus other factors that I see as being
13 significant.

14 She said in answer to several questions the
15 following, blacks might be more inclined to violent
16 crimes. Because of that she indicates a cultural
17 prejudice that's going to be difficult to eradicate
18 in that she doesn't know whether blacks are more
19 inclined to commit crimes.

20 She said at one point, then we have her par-
21 ticular experience with crimes. She said that she
22 was mugged and it involved a pocketbook snatch and
23 she was, of course, very angered by that. She says
24 there are good and bad in all kinds and obviously
25 quite correct she thinks that's an example of bad

1
2 action.

3 Your Honor may not know it, but if you follow
4 the ruling that Judge Marchese previously followed,
5 there was no change. And if Mr. Carter takes the
6 stand, the record to be elicited will involve ex-
7 actly that type of crime. In fact, 1959, I think it
8 was as long ago as it was nonetheless.

9 MR. CARTER: 'Fifty-six.

10 MR. BELDOCK: 'Fifty-six. I'm corrected.
11 There were three charges. I think all on the same
12 day or about the same time all involving that type
13 of crime, one of which involved a woman and a
14 pocketbook.

15 Now, obviously if this case were one invol-
16 ving that type of charge, I would say automatically
17 that her response would be a basis for challenge
18 for cause---

19 THE COURT: Except,---

20 MR. BELDOCK: ---I think and one that should
21 be granted.

22 It would be very, very questionable whether
23 anyone with such a strong feeling about that kind of
24 crime could eliminate from her feelings, attitudes,
25 opinions, and ultimate determinations, that part of

1
2 her personality and being, as you see a moralistic,
3 a very strong-minded person, and I think that the
4 fact that we do not have that kind of crime here,
5 but we also have charges of crimes of violence, and
6 we will have elicited, if Mr. Carter takes the
7 stand, exactly the type of crime that she was in-
8 volved in, is in itself a good basis to grant a
9 challenge for cause and I combine that with a few
10 matters that I just brought to your attention.

11 Now, the fact that she volunteered at the
12 beginning that she believes in capital punishment,
13 now the fact that this doesn't involve capital pun-
14 ishment, does not mean that volunteered information
15 should be disregarded. It indicates a cultural
16 attitude which goes along with the other matters I
17 am bringing to your attention.

18 And it is perfectly clear to me and to the
19 Court, and experienced members of the bar and bench,
20 that we are dealing with a person that has definitive
21 strong attitudes and they are attitudes I think that
22 would affect her judgment as a juror no matter how
23 many times she says well, I can be fair-minded.
24 Those attitudes exist and persist. They're reflected
25 by her, the fact that she doesn't read the newspapers

1
2 very much, because the news is very bad today and
3 people are being killed, dying, that's all she reads
4 about. More of the same, your Honor. It reflects a
5 sort of cultural attitude that is prejudiced.

6 Now, she says she's only prejudiced against
7 individuals. And that's a fair statement for her to
8 make, but her words and her expressions are enough
9 to indicate what most of us would consider to be a
10 prejudice of a strong nature and one that should not
11 be involved with a juror in this case in view of the
12 kind of evidence that is going to come before the
13 jury.

14 Now, we go back to what I raised before, her
15 opinion, if a man is convicted originally, why a new
16 trial? She can't see it. She said she can't see
17 that they should get---

18 THE COURT: I explored that. I considered it.

19 MR. BELDOCK: I think you should combine all
20 those arguments that I now make with the factors
21 that I presented before and one off-the-record mat-
22 ter that occurred when your Honor stepped out to
23 make the phone call. I don't know whether the
24 reporter did pick it up, he was closer to her. I
25 don't know whether he was then making a record, but

1
2 she did turn and smile and say something to the
3 effect about our being mad at her. It was a very
4 pleasant exchange, but it indicates more of the
5 sort of an involvement beyond her beliefs.

6 THE COURT: Was that the extent of the col-
7 loquy between the jurors and counsel?

8 MR. BELDOCK: It was her statement. We made
9 no statements. The words as I can remember, you're
10 not mad at me or are you mad at me? Or something
11 like that. I heard the "mad at me" referring to
12 her. They heard it over there. I don't know what
13 it was over there.

14 THE COURT: Can you help?

15 MR. MARMO: I think her comment was to Mr.
16 Steel. And as Mr. Beldock said, she said it in a
17 very light manner. I think it was, "Did I make you
18 mad at me?" But it was said with smiles, in a
19 jovial manner.

20 MR. STEEL: I said absolutely nothing to her,
21 your Honor. I was sitting here.

22 THE COURT: I didn't say you did.

23 MR. STEEL: Your Honor walked out of the room,
24 and she said, "Are you mad at me?" I think it was
25 addressed to me.

1
2 MR. BELDOCK: That is also a factor, smiles
3 and lightness, it's a comment that goes deep into
4 her psychic and I think she is sort of saying to us
5 that she knows that her attitudes somehow is re-
6 flecting something she thinks we would not like.
7 That's what she's saying. She says that her com-
8 ments reflect something that she thinks we would not
9 like. She doesn't know that. She may be completely
10 wrong.

11 The fact is, she has that attitude.

12 THE COURT: I think when Mr. Steel, while I
13 was still in the room attempted to state an objec-
14 tion on the record before that, didn't that happen
15 before that?

16 MR. STEEL: That's correct, your Honor.

17 THE COURT: All right. I think that's what
18 precipitated saying that. She thought she was at-
19 tempting to tell me something which would reflect on
20 his feelings towards her. And I think she attempted
21 to make that inquiry when she said that. I'm not
22 going to give it any significance to the extent that
23 I would have to excuse her for cause because of it.

24 That's why I would hope that counsel would
25 abide by my directive. And like I said before, I

1
2 think I've given counsel the opportunity by ex-
3 cusing the juror to give you an opportunity to state
4 on the record areas that you wanted covered. It
5 doesn't have to be done while the juror is in the
6 room. And I wish we wouldn't.

7 All right. Is that your application to ex-
8 cuse this juror for cause for the reasons given; is
9 that correct?

10 MR. BELDOCK: Yes.

11 THE COURT: All right.

12 MR. STEEL: I join in. I just wanted to add
13 one thing.

14 THE COURT: Go ahead.

15 MR. STEEL: That she said over and over again
16 that she had prejudices.

17 THE COURT: Okay.

18 MR. STEEL: And then she said, when she ex-
19 plained her prejudices, your Honor kept asking her,
20 well did she have prejudices against blacks? And
21 you kept trying to explore that. Her answer was,
22 well, I got prejudices against a lot of people,
23 against whites as well. And the "as well", your
24 Honor, I must say can only be interpreted one way,
25 indicating a general prejudice against blacks in

1
2 which you can also throw in some whites.

3 THE COURT: All right.

4 MR. STEEL: Your Honor did not choose to ex-
5 plore that either.

6 THE COURT: All right.

7 MR. STEEL: To follow-up what she meant by
8 that type of statement.

9 But it seems to me that if we are going to
10 have a fair voir dire, if the purpose of the voir
11 dire is to see whether or not a juror can sit fairly
12 rather than to see whether they can answer questions
13 by route then, I guess those things should be taken
14 into account.

15 MR. BELDOCK: May I say one other thing
16 before you rule?

17 Judge, I find it very unsatisfactory in the
18 area particularly of possible challenges for cause
19 that you should be the sole person questioning a
20 juror. That when you come to sensitive responses
21 that you should be the person reconstructing the
22 jury and that you should be the person ruling.

23 Now, at least in that area, why I would say
24 that, our being deprived of the ability to person-
25 ally conduct a voir dire on a challenge for cause is

1
2 improper, an improper excess of discretion and
3 Constitutional deprivation of the right to counsel.

4 THE COURT: Anything further, gentlemen?

5 All right. The application to excuse the
6 juror for cause is denied.

7 The application to voir dire the juror by
8 counsel is denied.

9 You may bring her in.

10 Let the record indicate, it's now four
11 thirty-four.

12 MR. MARMO: You want us to exercise the
13 challenge before she is brought in? That's the
14 practice we have been following.

15 THE COURT: Oh, yes. I'm sorry.

16 Okay. Let us proceed, Mr. Beldock.

17 MR. BELDOCK: Mr. Steel is first.

18 MR. MARMO: No, it's Mr. Beldock's turn,
19 I think.

20 THE COURT: Mr. Beldock was first last time.

21 MR. MARMO: That's true. And he said satis-
22 factory and Mr. Steel said satisfactory, and I said
23 satisfactory. And consequently it's now Mr.
24 Beldock's turn again.

25 THE COURT: Why wouldn't you go to Mr. Steel?

1
2 MR. MARMO: The last time we challenged, Mr.
3 Beldock went first. He said satisfactory. Then Mr.
4 Steel went and said satisfactory or acceptable, and
5 then I indicated that the juror was satisfactory.

6 THE COURT: That's the status quo.

7 MR. MARMO: That's it. Mr. Beldock's turn.
8 He follows me.

9 MR. STEEL: I thought the system was that it
10 rotated each time.

11 THE COURT: Why don't we rotate? Don't we
12 start off with Mr. Steel at this time being that Mr.
13 Beldock went first and then you?

14 MR. MARMO: No.

15 THE COURT: Then Mr. Beldock, then the next
16 time it would be Mr. Beldock and Mr. Steel?

17 MR. MARMO: No.

18 Now, if we were out in the jury room, Judge--

19 THE COURT: Right.

20 MR. MARMO: ---exercising challenges and the
21 last round of challenges went this way, that it was
22 Mr. Beldock's turn first and he stood up and said
23 satisfactory; and then Mr. Steel stood up and said
24 satisfactory, and then I stood up and said satis-
25 factory, and now a new juror were placed in the box

1
2 and we started again, it would be Mr. Beldock's turn.

3 THE COURT: I agree. That's the way it works.
4 If we were out in the courtroom, that's the way it
5 would work. But once you have excused, then it
6 moves on to the next man; is that so?

7 Once you exercise. Then it moves on to the
8 next person.

9 MR. BELDOCK: Well now -- really, what's the
10 order at this point?

11 THE COURT: Right now you would go first. If
12 you should excuse the juror then Mr. Steel would go
13 first next time. You see, because you haven't
14 really gone first.

15 All right. Wait a moment. The last time the
16 three of you accepted the juror, right?

17 MR. BELDOCK: Yes.

18 THE COURT: Had you excused the juror, then
19 the move would be after, next to you would be Mr.
20 Steel would go first.

21 MR. BELDOCK: You're saying it's my turn to
22 exercise a challenge or not exercise a challenge.
23 I open my mouth and close it, who goes next on this
24 round?

25 THE COURT: Mr. Steel and then Mr. Marmo,

1
2 Mr. Humphreys.

3 MR. BELDOCK: That's reversing the order.

4 THE COURT: No it isn't. That's the way,
5 that's the order.

6 I didn't say anything.

7 MR. STEEL: First of all, my understanding
8 was that the State always exercised its peremptory
9 challenge first; so that I don't even understand how
10 we're getting ourselves in a position.

11 THE COURT: No, no. We rotate. The State
12 doesn't always go first. So, let us assume the
13 State said excuse the juror. The State wouldn't go
14 first again. Then it would be next, the first de-
15 fendant to go first.

16 MR. STEEL: Well.

17 THE COURT: Let me show you, Mr. Steel. With
18 Mr. Carrotta, the State went first. They excused
19 him. Okay. You didn't have to exercise any chal-
20 lenge, did you, because they excused him, they were
21 the first one and they excused him. You recall that?

22 MR. STEEL: Yes.

23 THE COURT: Okay. Then Mr. Beldock and Mr.
24 Steel didn't have to say anything, because he was
25 excused. They exercised their challenge.

1
2 Now, when Mr. DeAngelo came up, Mr. Beldock
3 went first because the State just before him excused
4 the juror. They had exercised a challenge. Then it
5 was, then you, and then the State. But at that
6 point with DeAngelo the three, whole three of you
7 said okay. So everybody excused a juror. So nobody
8 excused a juror.

9 So, we start again with Mr. Beldock.

10 MR. STEEL: The logic escapes me.

11 THE COURT: The last challenge that was used
12 was by the State. The last one that was used by
13 Mr. Marmo when he excused Mr. Carrotta. There
14 haven't been any excuses since then.

15 In other words, the man who goes first is the
16 man who follows the last excuse.

17 MR. STEEL: Well, that, it seems to me to be
18 terribly unfair because that means that any time,
19 any time Mr. Marmo exercises a challenge, it goes
20 back to Mr. Beldock and skips me.

21 THE COURT: No, it doesn't skip you. If Mr.
22 Beldock should exercise a challenge for example at
23 this point---

24 MR. STEEL: Right.

25 THE COURT: With this juror, then you would

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

go first next, then Marmo would go after him.

MR. MARMO: The State and then you would go first.

MR. STEEL: But---

THE COURT: On a circle.

MR. STEEL: But it's not going in a circle, because what Mr. Marmo is saying, that any time he exercises a challenge---

THE COURT: Not any time he exercises a challenge.

Let me give you an example.

If Mr. Beldock exercises a challenge at this time---

MR. STEEL: Right.

THE COURT: Then you go first.

Okay. Then, if on the next person you go first.

MR. STEEL: Okay. I go first. Say I pass and say Mr. Marmo exercises a challenge.

THE COURT: Then Mr. Beldock.

MR. STEEL: But that's exactly the point, my turn at going first, but you're not going in rotation.

THE COURT: Of course you are.

1

MR. STEEL: Absolutely not.

2

3

MR. BELDOCK: The rotation is in a circle.

4

They're not alternating rotation.

5

MR. STEEL: But every time the State exercises, you got two defendants and one Prosecutor.

6

7

MR. CARTER: Yes on them.

8

THE COURT: Twice as many challenges.

9

10

MR. STEEL: Every time Mr. Marmo exercises or Mr. Humphreys exercises a challenge, no matter what the order, you're saying it comes back to Mr. Beldock.

11

12

13

THE COURT: Because he's defendant number one.

14

15

MR. STEEL: But then it's not going in a circle, it's very clear.

16

17

THE COURT: Can I explain? I don't see any question.

18

19

MR. MARMO: I thought I explained it as best as I could.

20

21

MR. STEEL: There is no question it is not going in a circle.

22

23

MR. MARMO: Apparently they do it different in New York.

24

25

MR. STEEL: It's not a question of doing it in New York. If we are doing it in a circle; we are

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

not doing it in a circle.

THE COURT: How should you say it should be done?

MR. STEEL: I think we should keep going around. One time Mr. Beldock goes first. The next time I go. The next time Mr. Marmo first. The next time Mr. Beldock. I think it should either be that way or the State should go first all the time. But the New York practice, but you say you don't follow that practice, but I object in the absence of that, at least it should be going around in a circle. Mr. Beldock went first last time. That means I should go first this time. That means Mr. Marmo should go first next. That means Mr. Beldock should go after that.

THE COURT: You see any objection to that?

MR. MARMO: Yes.

THE COURT: Why?

MR. MARMO: Why should we follow special procedures in this case?

THE COURT: I don't think it's a special procedure.

MR. MARMO: I think you do know, Judge, that it's a special procedure. You are certainly aware

1
2 of the procedures that are uniformly followed in
3 trying cases in New Jersey. Why should we depart
4 from that now. If we follow their procedures, then
5 there will be rounds when one party or another might
6 not go.

7 THE COURT: You object to the way we're doing
8 it? You say we shouldn't do it this way?

9 MR. STEEL: I say we should go around in a
10 circle, which I understood you said we should do.

11 THE COURT: Yes, but from the time you exer-
12 cise a challenge; in other words, you follow the
13 attorney following the person who exercises the last
14 challenge goes first. That's the way we do it in
15 New Jersey.

16 MR. STEEL: Well, that really is, does not
17 seem to me to be proper.

18 THE COURT: All right. That's the way we're
19 going to do it.

20 Now, you have your objection noted.

21 Now, in this case we start off with Mr.
22 Beldock.

23 MR. BELDOCK: This juror is excused.

24 THE COURT: Now, the next juror that comes
25 in, Mr. Steel will be first.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Okay. You want to bring in the juror?

(Prospective juror enters room)

THE COURT: All right. Mrs. Kohleman, you have been excused from this case.

MRS. KOHLEMAN: Oh, thank you.

THE COURT: We did impose on you until, to wait almost until quarter of five. It is now five forty-two.

At any rate you don't have to come back.

But, I'm going to ask you not to discuss what we discussed in here with anybody.

MRS. KOHLEMAN: Okay.

THE COURT: That's why we do it in chambers, all right?

MRS. KOHLEMAN: Thank you.

THE COURT: And I want to thank you for your time and your patience.

MRS. KOHLEMAN: All right. Thank you very much.

(Prospective juror leaves room)

MR. STEEL: Your Honor, I would like to make an application, if I could.

THE COURT: All right.

MR. STEEL: Your Honor, I say this with all

1
2 respect.

3 Your Honor promised us a fair voir dire,
4 which your Honor promised would root out people that
5 were prejudiced. And I have sat and listened to
6 your Honor's voir dire for two days. And I must
7 say that I feel frankly that your Honor is resorting
8 to the old device of moving in very quickly to save
9 virtually every prosecution witness, every prospec-
10 tive juror. I'm sorry. When they show the least
11 sign of exposing their prejudice, I must say that I
12 feel like I'm sitting with my hands tied behind my
13 back. When it happens, it's very frustrating. It
14 seems to me, your Honor, that in this case where
15 people obviously do know quite a bit about the case
16 and more than they tell you about the case, and this
17 last witness was the classic example, she came in
18 and told you she knew about the case, but she knew
19 more than nothing. She knew that there had been a
20 conviction and God knows what else she knew.

21 THE COURT: You're inferring I don't know
22 from what, but for you to make these statements on
23 the record, I want the record to be crystal-clear
24 that this is your statement. I'm not agreeing with
25 the fact that this witness knows, that a juror knew

1
2 anything about this case any more than what she
3 testified to. I don't know where you get that in-
4 formation from.

5 I have to assume that a juror who's under
6 oath is at least attempting to be candid with me.
7 I'm not going to come out and say she's an unmiti-
8 gated liar.

9 Let us proceed.

10 MR. STEEL: Judge, I'm saying, that I really
11 think that in a case that has had this much pub-
12 licity, it's actually been moved to another juris-
13 diction because of publicity, and that has been
14 around for as long as this case has been around, so
15 the jurors have had much opportunity to have some
16 feelings for the case.

17 THE COURT: You're asking me to disbelieve a
18 juror when she tells me her knowledge of the case is
19 limited.

20 MR. STEEL: No, no.

21 THE COURT: Because of the tremendous publi-
22 city. I'm not going to do that.

23 MR. STEEL: What I'm asking your Honor to do
24 is rather than stepping right in on the juror who
25 indicates some problem with sitting as a fair juror

1
2 and saying, well, if I told you the law was so and
3 so, ta-ta-ta-ta, could you follow that, which is
4 what your Honor has been doing in virtually in every
5 single case rather than doing that, it seems to me
6 that your Honor is obligated to ask some open-ended
7 question to probe the question of that prejudice
8 rather than doing what I consider is showing judi-
9 cial disapproval of that attitude and in effect---

10 THE COURT: I don't know what you mean by
11 that. I wish you would clarify that. I don't know
12 what you mean by judicial disapproval.

13 MR. BELDOCK: By telling the juror wouldn't
14 you follow this rubric that I give you? The juror
15 is standing, sitting there in front of the judge and
16 the judge says, wouldn't you do it? And the juror
17 automatically says, yes, I will. And the juror
18 knows that if he says, no, I won't, or indicates
19 hesitation that will involve disapproval because a
20 citizen recognizes that sitting here. And as soon
21 as you close that door, you close the juror's mind
22 and you close our source of information. I think
23 you did. And you know we're here. There is no one
24 else around except all the persons participating in
25 this.

1
2 We feel very strongly that we had to exercise
3 two challenges today rather blindly because your
4 Honor did not sufficiently inquire in the areas that
5 would have given us that information.

6 THE COURT: All right. I've heard you on
7 that. I think you're well-protected on the record,
8 gentlemen.

9 MR. BELDOCK: It's not the record I'm con-
10 cerned about, Judge.

11 I'm concerned about the rest of the voir dire.
12 I'm concerned about what happened today. But I'm
13 concerned about the rest of the voir dire. And I
14 find that your Honor's tendency, if I may put it
15 that way to say the standard things, certainly with
16 no improper intent, has a very poor result to us
17 when the jurors are indicating by their hesitation,
18 by the words they're trying to formulate, that they
19 have more that is significant to tell us.

20 THE COURT: Well, I'll tell you what I'm
21 going to do.

22 Gentlemen, I'm going to ask my reporter to
23 type up the voir dire of these witnesses, the jurors.
24 And I'm going to go over it. I think that I have
25 explored areas more so than I would ordinarily, that

1
2 I would explore them in this particular instance.
3 And I'm going to go over it and as soon as I can
4 get it; let me ask him. What's the situation on
5 that. Actually you only have two hours of work.

6 You can take a day off tomorrow and you do
7 it for me, and send someone else here and I want it
8 as soon as possible.

9 I'm going to want my voir dire typed. And
10 I'm going to go over it myself first and I'm going
11 to let counsel go over the questions and you will
12 see that I have explored the areas a lot more than
13 you mentioned for the record. I notice, I have
14 noticed that I have opened areas, and when I did,
15 I went into them very thoroughly.

16 But I'm going to do this. I'm going to have
17 my reporter type Zylka, Carrotta, and DeAngelo, and
18 Kohleman, if possible by tomorrow. I will have it
19 sometime tomorrow or the next day. In the meantime
20 I'm going to proceed as I am. And if I'm going to
21 reserve on the motions, I'll reserve on the motion.

22 MR. HUMPHREYS: What motion is this?

23 THE COURT: He just made a motion now that I
24 should explore further certain areas and I should
25 change my method of voir diring the jurors and that

1
2 I should review this motion that this juror be
3 excused for cause, apparently, and I'm going to
4 reserve on it for the purpose of being able to
5 examine the transcripts of the voir dire. I feel
6 that I have explored the areas, but I don't want to
7 preclude counsel from having that opportunity of
8 my reviewing what we've done so far.

9 MR. STEEL: Thank you, your Honor. We
10 appreciate that.

11 THE COURT: All right.

12 MR. STEEL: Do we have a question about, you
13 have a pending motion, your Honor, as to whether or
14 not you're going to hold an evidentiary hearing.

15 THE COURT: I'll decide that during the week,
16 if we do have it.

17 MR. STEEL: That's the only thing. There is
18 a scheduling problem.

19 THE COURT: Okay. I will tell you why I
20 won't decide it at this moment, but I'll decide it
21 tomorrow morning before we start.

22 I want to couch it in my own language and I
23 want to make my decision clear so that there is no
24 misunderstanding.

25 And the motion will be, if I grant it, it will

1
2 be, the hearing will be held on a Saturday.

3 We will save a lot of things for Saturday.

4 Is there anything else before we recess?

5 MR. STEEL: Yes, your Honor. I think your
6 Honor asked that by tomorrow that we have prepared
7 a pre-trial list.

8 THE COURT: Open question of things that have
9 to be resolved.

10 MR. STEEL: I just wonder if we could have
11 another day.

12 THE COURT: You want until Friday?

13 MR. STEEL: Well, not necessarily.

14 THE COURT: Thursday?

15 MR. STEEL: Hopefully we'll be through by
16 Thursday.

17 THE COURT: Is that all right with you, Mr.
18 Humphreys?

19 MR. HUMPHREYS: Yes, your Honor.

20 MR. BELDOCK: If you rule on the other matter
21 tomorrow, I think we can put it over for at least
22 one day, your Honor, because we want to keep moving
23 with the jurors. We want to keep moving with jurors.
24 And the other matter would take, I suspect a few
25 hours' time and that would be bad procedure for the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

moment.

THE COURT: All right. Okay. Could we recess until tomorrow morning?

MR. BELDOCK: May I ask your Honor's permission on one matter?

Whether the defendants at their option with counsel's consent may be absent from time to time during the voir dire of the jurors.

THE COURT: If they, if they choose to be and they waive their right to be here, I'm not going to insist that they're here.

MR. BELDOCK: I just want to have that option on the record, if I might.

THE COURT: Do you have any objection?

MR. HUMPHREYS: No, your Honor. I think the record should indicate that the defendants were absent during a part of the day.

THE COURT: And that was by choice?

MR. BELDOCK: In other words, Mr. Carter apparently didn't have a ride, Mr. Artis had to go get him.

THE COURT: But you have no objection, gentlemen?

I'll ask you individually, the fact that we

1
2 went ahead without you, you have no objection to
3 that, Mr. Carter?

4 MR. CARTER: No, sir. I certainly don't have
5 any objection.

6 THE COURT: How about you, Mr. Artis?

7 MR. ARTIS: None whatsoever.

8 THE COURT: Now, if you want to be excused
9 when we are selecting the jury, you have my per-
10 mission. And that is by your request; is that by
11 Mr. Carter?

12 MR. CARTER: Yeah, that's correct. As I was
13 going to say as a follow-up to what you were saying,
14 without trying to be facetious to the Court at all,
15 as long as my attorneys are here while things are
16 going on, I'm perfectly satisfied.

17 THE COURT: You understand you have a perfect
18 right to be here. If you're not here, you're absent
19 by your own choice, not because anyone is precluding
20 you from being here.

21 MR. CARTER: Absolutely by my own choice and
22 by circumstances which I can't help.

23 THE COURT: How about you, Mr. Artis?

24 MR. ARTIS: All right. The same thing.

25 THE COURT: You are absent because it is of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

your own choice and not because you're being precluded?

MR. ARTIS: Absolutely.

THE COURT: If we do proceed with your counsel in the event that you choose to be absent during the voir dire?

MR. ARTIS: Definitely, with my counsel.

THE COURT: No objection. No problem.

All right. Gentlemen, tomorrow morning.

(Whereupon Court adjourned at 4:55 P.M.)

* * * * *


PENGAD CO., BAYONNE, N.J. 07002 - FORM 3048

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-CRIMINAL
INDICTMENT NO. 167-66

1 THE STATE OF NEW JERSEY, :
2 :
3 :
4 :
5 v. :
6 :
7 RUBIN CARTER and :
8 JOHN ARTIS, :
9 :
10 :
11 :
12 Defendants. :

REPORTER'S CERTIFICATE

11 I, RAYMOND E. ABT, C.S.R., R.P.R., and Official
12 Court Reporter of the State of New Jersey, do hereby
13 certify that the foregoing is a true and accurate
14 transcript of the testimony and proceedings had in the
15 above-entitled matter, as reported by me, stenographically,
16 on the date and at the place hereinbefore set forth.

17
18
19
20
21 
22 Raymond E. Abt, C.S.R., R.P.R.
23 Official Court Reporter

24 DATED 11/2/77
25

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2048