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Jury Misconduct

Carter v Rafferty 631 F Supp 533

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3-6-1979

**Juror - John T. Adamo**

Lewis Steel '63

**KAIRYS, RUDOVSKY & MAGUIGAN**

Law Offices  
1425 Walnut Street  
Philadelphia, Pennsylvania 19102

(215) LO 3-8312

David Kairys  
David Rudovsky  
Holly Maguigan  
Attorneys

Jayma Ann Abdoo  
Legal Worker

March 6, 1979

RECEIPT

I hereby acknowledge that I am from the office of Judge Bruno L. Leopizzi of Passaic County, New Jersey and that, on behalf of Judge Leopizzi, I have come to the office of David Kairys, at the above address, and received from David Kairys two tape cassettes marked "Adamo".

Gary A Kotler

RECEIVED MAR 9 1979

KAIRYS, RUDOVSKY & MAGUIGAN

Law Offices  
1425 Walnut Street  
Philadelphia, Pennsylvania 19102

(215) LO 3-8312

David Kairys  
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Legal Worker

March 6, 1979

Judge Bruno L. Leopizzi  
New Courthouse  
Patterson, New Jersey 07505

Dear Judge Leopizzi:

As I indicated in my call to your office today, Mr. Goceljak of the Passaic County Prosecutor's Office has contacted me regarding the possibility that my client, Barbara Hoekje, may be subpoenaed as a witness in the "Carter-Artis" case. He stated that either the Court or his office may want to call her to testify about her discussions with an alternate juror in that case, and he asked for a copy of a tape recording Ms. Hoekje made of the first such discussion.

I thought this tape, since it appears to be important to an inquiry the Court is conducting, should be turned over directly to the Court, which is why I called you. The original tape recording is enclosed, to be delivered with this letter directly to you. It has been exclusively in Ms. Hoekje's possession; no one has listened to it except Ms. Hoekje, some of her associates at the National Jury Project, and me.

A portion of side 2 of the tape is difficult to understand. Ms. Hoekje took it to a recording expert, who made a new, intelligible tape of certain sections by bringing the speed up to normal. Apparently, during the recording of those portions, either the machine speed was not normal or the tape stretched. I have the tape made by the expert and would provide it to you if you want it.

If the Court or either party would like to call Ms. Hoekje as a witness, she can be subpoenaed through me, and she will appear. I would appreciate receiving at least a few days notice if she is to be called.

I anticipate that Ms. Hoekje will freely testify if asked by the Court or either party. I am aware of New Jersey Rules of Court, Rule 1:16-1, which concerns discussions with jurors subsequent to trial. However, as I understand that rule at this point, it is not a criminal provision or court order, and Ms. Hoekje did not violate it, since it prohibits only conduct of an "attorney or party" acting directly or indirectly; her discussions were with an alternate juror, who did not participate in the deliberations or verdict; and she was not acting on behalf of any attorney or party. I also believe there is a serious question whether the rule is valid, since it infringes on important rights and does not seem to be supported by any legitimate state interest.

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In the event Ms. Hoekje is called as a witness, I would appreciate being allowed to represent her although I am not a member of the New Jersey bar.

Sincerely,

D. Kairys

David Kairys

cc.: John Goceljak, Assistant Prosecutor  
Myron Beldock and Louis Steele, defense counsel

Encl.: Two tape cassettes marked "Adamo"

it prohibits  
indirectly;  
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**RECEIVED**  
MAR 19 1979

**BRUNO L. LEOPIZZI**  
**JUDGE**

John T. Adamo, Jr.  
P. O. Box 4461  
Union City, NJ 07087

March 14, 1979

The Honorable Bruno Leopizzi  
Passaic County Court House  
Paterson, NJ

Dear Judge Leopizzi, Mr. M. Beldock, Mr. R. Marmo, and All Concerned:

I would like to clarify a matter that was brought up in the inquiry of March 13, 1979.

After somewhere remarking that I had made a little note in the margin of my dairy-notes of this trial you questioned me in a rather hostile manner. In fact it could be considered nothing short of cross examination. In very suspicious tones you asked me if I was being so conscientious why didn't I report it to you when I was told the story by George Demitriotis that I felt influenced his objectivity. I was very flustered by this new accusatory tone and I felt guilty. I explained two factors that had stopped me from speaking up during the trial. The first I mentioned was that I had become curious about the case and the second was that you had singled me out at trial accusing me of not paying attention when I was in fact the only one willing to go out on a limb to try to understand what was going on.

You didn't seem to be too convinced at the inquiry of the validity of those reasons. Frankly something struck me wrong about this also and I went home and re-read my notes. I found that I was chastized after George told me the story. This made me feel more guilty (last night).

I woke out of a sound sleep this morning saying, "what am I stupid?" You as well as everyone else involved already knew about the story in question. I told you already that this was the story that he had previously related at voidire. I saw no reason why I should tell you what you already knew and which according to George you were going to dismiss him for, until Mr. Steele's intervention. This is the reason I didn't speak up. I am very annoyed with myself for letting the tone of your questions make me feel so defensive and fluster me to the point of ignoring the obvious answer to your rather pointed question.

It seems to me that since the taped interview has been listened to that the judge has taken a suspicious and sometimes hostile attitude toward me. I have already apologized for subjecting you to that but it was not I who decided that the court should listen to it, I only wanted to hear it to refresh my recollection. I'm sure if the thoughts of the other jurors about the parties and events involved were known some would be no less offensive to the court.

March 14, 1979

I feel that due to the nature of the questions asked in the interview, all geared to getting responses favorable to the defense; my opinion of the case during the trial may appear to have been colored. This is not true. I went into the case slightly favoring the prosecution because of the Caroline Kelly incident. I intended to mention this in voidire but the course of questioning took it far from my mind. I'm sure that if someone who believed in the guilt of the defendants interviewed me they could elicit responses that would sound favorable to their point of view. (e.g., if they continually asked me what I thought of the alibi witnesses.)

The fact is that I was trying to be as objective as possible and was swayed away from the prosecution during their presentation. I was swayed back to the prosecution during the defense's presentation and finally made up my mind as to my opinion the night before the jury was charged.

About my observations regarding evidence presented: I do not care who agrees or disagrees with my conclusions. I can never know if they were correct. I do know that they were based on reasons more valid than the fact that someone was black or had an obnoxious lawyer. Since it relates tangentially to my credibility I will say this: what I said to Barbara Hoekja was said to someone who was eager to hear what pleased her so I didn't have to explain anything in depth. My notes as well as my thoughts during the trial were not as superficial as my conversation with her.

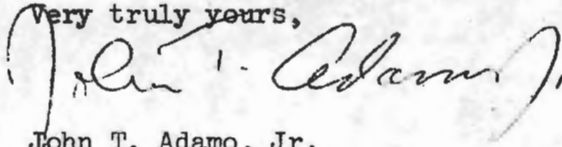
The last thing I had been flagellating myself over was the fact that I did not tell the judge immediately when Guy told me about the lie detector test. I thought this was extremely poor judgment on my part. There is an extenuating factor here though. Looking back at my notes of November 19th and 20th, 1976 they read: "He also told me something in JR that he shouldn't have and what it was disturbed me somewhat I hope that its not as I think inadmissable evidence because I would like to hear it under cross." While I still think that it was poor judgment, you can see that I wasn't sure whether or not this was going to be aired later in the trial. This was also the very same day or the day after (my notes encompass two days) I had been reprimanded in court for "not paying attention," so I was probably feeling very sensitive about rocking the boat. As I have said before I also did not realize how profoundly that remark had affected me.

The fact that I had become interested in the case was not as big a factor as the judge would make it out to be and in any event, no matter how interested I was does not affect the truth of what I have said. In view of the fact that I will subject myself to a polygraph or sodium pentathol or anything else short of the rack, this testing of my credibility appears to be just so much posturing. It is at best silly and at worst hypocritical. I am therefore no longer going to voluntarily subject myself to this sort of questioning.

March 14, 1979

In conclusion, I would like to say that this is turning into just the mudslinging horror show I feared and expected when I was being urged to come forward with this information. This was of course a large contributing factor in my reluctance to do so. This nonsense will not go any further with my cooperation. The court will receive a letter concerning this shortly.

Very truly yours,

A handwritten signature in dark ink, appearing to read "John T. Adamo, Jr.", written in a cursive style.

John T. Adamo, Jr.

JTA/amm

cc: Mr. M. Beldock  
Mr. R. Marmo



**RECEIVED**  
MAR 19 1979

**BRUNO L. LEOPIZZI**  
JUDGE

John T. Adamo, Jr.  
P.O. Box 4461  
Union City, NJ 07087

March 15, 1979

The Honorable Bruno Leopizzi  
Passaic County Court House  
Paterson, NJ

Dear Judge Leopizzi, Mr. M. Beldock, Mr. R. Marmo, and All Concerned:

In reference to the proceedings investigating jury misconduct in the 1976 Carter-Artis Trial, I would like to advise you that I will appear before the court or any of it's constituents voluntarily only once more.

At this voluntary appearance I will answer only questions directly related to the allegations made with reference to jurors who were ultimately involved in the verdict. I will not voluntarily answer questions that have to do with anything whatsoever that occurred after the trial. Furthermore, I will not voluntarily answer any questions that I feel are for the purpose of determining my credibility, motivation, or veracity.

Inasmuch as I have offered a final solution in regard to these questions, specifically that the parties I have accused and myself be asked to take a polygraph, I fail to see how further questioning along these lines can be for any purpose other than to harass and embarrass me, or to attempt to refute and impugn my testimony by inference and innuendo.

I will not answer any questions which I have already answered, except in cases where clarification is sincerely sought.

I restate here for the record to obviate questions along this line that none of my allegations were made lightly or thoughtlessly. None were due to confusion or misinterpreting someone. In the matter of those who prejudged the case or made slanted remarks, the instances were not isolated but represented what I could only view as the genuine and on going attitude of the parties concerned.

I reiterate here that I have never been offered anything by anyone for my testimony save legal counsel should I wish it.

Any reluctance which I have shown to discuss certain topics or occurrences is due to the fact that I do not wish to stir up dirt, defame or embarrass anyone connected with these proceedings. I regret that my testimony causes some conflict to be inevitable.



March 15, 1979

I feel these proceedings, besides costing me time and money, have most likely cost me a friend. I don't wish to be involved in any further vitriol.

If the court seeks to legally compel me to speak in any areas that I have proscribed, please advise me so that I may retain legal counsel and institute proceedings enjoining the court from harassing me and invading my privacy any further.

Very truly yours,

John T. Adamo, Jr.

JTA/amm

cc: Mr. M. Beldock  
Mr. R. Marmo



**PASSAIC COUNTY PROSECUTOR**

COURT HOUSE  
PATERSON, NEW JERSEY 07505  
(201) 345-8500

**BURRELL IVES HUMPHREYS**  
PROSECUTOR

**JOSEPH A. FALCONE**  
FIRST ASSISTANT PROSECUTOR

**ANTHONY P. TIRINATO**  
DEPUTY FIRST ASSISTANT PROSECUTOR

RECEIVED APR 10 1979

**JOHN P. GOCELJAK**  
CHIEF, APPELLATE SECTION

**RONALD G. MARMO**  
CHIEF, TRIAL SECTION A

**GEORGE TOSI**  
CHIEF, TRIAL SECTION B

**MARTIN R. KAYNE**  
CHIEF, HOMICIDE AND  
SPECIAL INVESTIGATIONS SECTION

**FRANK M. SANTORA**  
CHIEF, ORGANIZED CRIME,  
GAMBLING AND NARCOTICS SECTION

**W. JOSEPH WEINER**  
CHIEF, GOVERNMENTAL CORRUPTION  
AND WHITE COLLAR CRIME SECTION

April 10, 1979

Honorable Bruno L. Leopizzi, J.S.C.  
Passaic County Court House  
Paterson, New Jersey 07505

Re: State v. Carter and Artis  
Indictment No. 167-66

Dear Judge Leopizzi:

Enclosed is the State's response to the defendants' brief regarding alternate Juror John Adamo's allegations of misconduct. The State reserves the right to enlarge upon the arguments and to present additional argument on the return day of this matter.

The State has no objection to supplementing the record in this matter by the inclusion of the letters of March 14 and 15, 1979, to Your Honor from alternate Juror John Adamo.

**RECONSIDERATION OF MOTION FOR FURTHER HEARINGS**

The State objects to the defendants' application for reconsideration of their motion for further hearings regarding Mr. Adamo's allegations of misconduct. This matter was explored fully at the hearings conducted by the Court. The defense attorneys were permitted wide latitude to propose questions to be put to the jurors who were examined. The Court honored the defendants' requests as to each of these jurors. On the Court's initiative, several jurors were recalled, and an additional juror was summoned and questioned. The matter has been properly and comprehensively explored. When the Court completed questioning the last juror, the parties were asked whether anything further would be required prior to filing Motions regarding the hearings conducted to that point. The defense did not at that time request that additional jurors or witnesses be summoned or that those previously interrogated be recalled. The defendants' motion for further hearings has been argued and ruled upon. The defendants' dissatisfaction with this ruling should be pursued in regular course through normal remedies.

Letter to: Honorable Bruno L. Leopizzi, J.S.C.

April 10, 1979

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### MOTION TO DISQUALIFY JUDGE

The defendants' present attack upon this Court follows a tired and worn pattern which they have pursued for the last five years.

Since the time that present defense counsel became involved in this matter, they have attacked the Paterson police officers who initially investigated this matter by accusing them and the county detective who investigated the matter for the Prosecutor's Office of framing the defendants. They have accused the assistant prosecutor who presented the case for the State at the first trial of misconduct.

When Judge Lerner ruled against the defendants at the recantation hearings in 1974, they attacked him and moved to disqualify him. After the recantation hearings, a Black assemblyman of New Jersey requested the Governor to consider the question of pardoning the defendants. This assemblyman and a Black investigator from outside Passaic County conducted a new investigation of this case and reported back to the Governor. Both the assemblyman and his investigator were attacked by the defense when their report inculpated the defendants.

When the Governor refused to grant the defendants a pardon, he was the subject of attack from the defense.

After the second jury convicted the defendants of these murders, the defense accused the now chief of county detectives, who took part in the original investigation of this case, of new acts of misconduct. They also accused the County Prosecutor and assistant prosecutors who represented the State at the second trial of committing misconduct.

During the pendency of their appeal after the convictions of the second trial, the defense filed numerous applications with the Appellate Division. When these applications were denied by the Appellate Division, they attacked the Appellate Division.

The members of the public who served as jurors at the second trial are presently under attack by the defense for having committed acts of misconduct.

The underlying motivation for this pattern has long been clear to the State. Since the media blitz and celebrity recruitment and endorsement campaign began in 1974, the defense has attempted to avoid having matters decided upon their merits in the courtroom. The record of the pendency of the present appeal amply demonstrates the efforts of the defense to avoid a disposition of the appeal in-chief.



Letter to: Honorable Bruno L. Leopizzi, J.S.C.

April 10, 1979

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This Court, exclusively, is qualified to resolve the issue of the allegations put forth by alternate Juror John Adamo. Any question of the Court's partiality would be dissipated in the mind of any reasonable observer who examines the record of the second trial. From voir dire to sentence, the Court conducted the trial in an exemplary fashion. On some occasions when the Court ruled on matters of substantial importance, the State took the position that the Court's sensitivity for insuring the defendants a fair trial was working a prejudice to the State by depriving the State of important evidence to which it was fairly and properly entitled. This Court has extensive familiarity with this case and, in addition to receiving Mr. Adamo's allegations in October, 1978, has conducted comprehensive hearings related to those allegations. This Court observed the demeanor of those who testified at those hearings. The State and the defense will dispute the demeanor of these witnesses. This Court, solely, is qualified to assess the credibility of the witnesses based on its familiarity with the case and its evaluation of the demeanor of the witnesses. As is always the case, the demeanor of a witness cannot be as clear on the record as it was in the courtroom.

The defense must recognize that Mr. Adamo's allegations have appeared unfounded and unbelievable. Their motion to disqualify the Court is part of their customary tact to avoid having matters decided on the merits.

#### HARASSMENT OF JURORS

The desperation with which the defense must view their present plight is emphatically demonstrated by their recent efforts to conduct an investigation into the background of Juror Edward Fischer by checking with charitable organizations with which he stated he had worked. The fact that defense counsel would stoop so low by engaging in such unethical and proscribed conduct demonstrates their recognition that Mr. Adamo's allegations have been unborne.

In State v. LaFera, 42 N.J. 97, 107 (1964), the Supreme Court interpreted current Rule 1:16-1 to specifically prohibit the kind of activity to which the defense has now resorted.

"We see no difference between an intrusion upon a juror personally of which the Rule speaks literally and an intrusion into the juror's private relationship with others. If anything, an investigation conducted among others may be even more disturbing in that it tends to suggest to those who are interviewed that something is already known to be amiss. Hence, it is unfair to



Letter to: Honorable Bruno L. Leopizzi, J.S.C.

April 10, 1979

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jurors to permit a disappointed litigant to pick over their private associations in search of something to discredit them and their verdict. And it would be unfair to the public, too, if jurors should understand that they cannot convict a man of means without risking an inquiry of that kind by paid investigators, with, to boot, the distortions an inquiry of that kind can produce."

In order to preclude any further harassment of jurors, the State will move (Motion enclosed) before Your Honor on the return day of the aforesaid matters for an order directing the defense not to undertake any further background investigation of the people who served as jurors in this case.

Respectfully yours,

BURRELL IVES HUMPHREYS  
PASSAIC COUNTY PROSECUTOR

By: Ronald G. Marmo  
Chief Assistant Prosecutor

RGM:jd

Enclosures

cc: Myron Beldock, Esq.  
Louis M. Steel, Esq.

REC'D APR 16 1979

BELDOCK LEVINE & HOFFMAN

565 FIFTH AVENUE

NEW YORK, N. Y. 10017

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VIALE MONTE SANTO, 4  
20124 MILAN ITALY  
Counsel:  
GILBERTO GILIOLI  
Member Republic of Italy Bar Only

April 11, 1979

Ronald Busch, Esq.  
Messrs. Busch & Busch  
99 Bayard Street  
P.O. Box 68  
New Brunswick, N.J. 08903

Re: State v. Carter & Artis

Dear Ron:

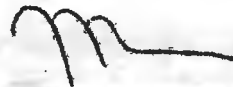
Please correct the text of the affidavit attached to the motion of 4/3/79 as follows:

page 3, 4th line, should read "the premise is not";

page 10, 9th line, should read "that he did not speak".

I enclose a copy of the papers served by the Prosecutor in response to our motion regarding jury misconduct.

Very truly yours,



Myron Beldock

MB/sjg

Encls.

cc: Jeffrey Fogel, Esq.  
Harold Cassidy, Esq.  
Prof. Leon Friedman  
Mr. Rubin Carter  
Mr. John Artis  
Lewis Steel, Esq. ✓  
Jimmy Meyerson, Esq.

P.S. Beldock, Steel & Meyerson were involved in oral argument all this day. The Judge denied the application to have proceedings in open court; and denied our motion to disqualify him. Adjourned for arguments on merits until April 27th at 1:30. All lawyers please call Myron Beldock promptly re current problems and decisions.

REC'D MAR 20 1979

BELDOCK LEVINE & HOFFMAN

565 FIFTH AVENUE

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Counsel:  
GILBERTO GILIOLI  
Member Republic of Italy Bar Only

March 16, 1979

BY HAND

The Honorable Bruno L. Leopizzi  
Passaic County Courthouse  
Hamilton Street  
3rd Floor - New Building  
Paterson, N.J. 07505

Re: State v. Carter and Artis  
Criminal Indictment No. 167-66  
Carter Docket No. A-5166-76  
Artis Docket No. A-5167-76

Dear Judge Leopizzi:

I am writing this letter on behalf of counsel for John Artis, with the authorization of Lewis Steel, as well as for Rubin Carter.

After considering the proceedings which have taken place to date concerning the question of alleged jury misconduct, we believe that this Court should summon the members of the jury and alternates who have not yet been called to testify.

We believe that interrogation of those jurors and alternates is necessary for a full and fair hearing; and as a proper exercise of your discretion. We also believe that the proceedings which have taken place to date have been inadequate.

It is our contention that the jurors who have been questioned were placed in the position where they had to deny the allegations of Mr. Adamo. In effect they became adverse and hostile witnesses. In part this was so because, having been informed of the existence and specifics of the allegations, they were led to think of them as accusations as to which their integrity would be severely damaged if they did not issue denials. Under these circumstances it was helpful, but not sufficient,

The Honorable Bruno L. Leopizzi  
March 16, 1979  
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to advise the jurors that there would be no civil or criminal consequences. All the jurors know how important and unusual this case was; and how seriously they could be criticized for misconduct which could lead to a new trial. The nature of the interrogation to date has not been designed to overcome these barriers to candid responses.

We submit that all of the jurors should be subjected to examination by the attorneys in this case. We also submit that the jurors previously questioned should then be recalled to be questioned by counsel. Your Honor conducted the voir dire of the jurors prior to the trial. They know from that voir dire how they are expected to answer Your Honor's questions. They can be expected to answer in the same way now. Moreover, we do not believe that Your Honor's questioning of the jurors has been an adequate substitute for, or can replace, examinations by counsel. We believe that Your Honor has not sufficiently pressed the questioning of the jurors except for Mr. Adamo; and that there was a marked contrast between the manner of your questioning the latter and your questioning of the others. In any event, we submit that under due process concepts, counsel are entitled to conduct the examinations.

When these proceedings began we understood, from the Appellate Division order, that your mandate was limited to interrogation of jurors and that motions were to be made to the Appellate Division. Your role and the proceedings before you were expanded when you learned from the Appellate Division that you are to entertain motions and make the findings of fact and conclusions of law regarding the interrogation of jurors. In the process you will presumably determine all issues of credibility. It was not initially contemplated that you were being placed in the position of judge, jury and interrogator. Under the present circumstances, as a matter of due process, counsel must be allowed to fill the traditional role of examining the witnesses.

We urge that the record to date and the circumstances require that all the jurors be called. Aside from the detailed and forcefully presented Adamo testimony, it is clear from the testimony of the prior jurors that certain questionable conversations did take place in the jury room concerning attitudes of jurors and evidentiary matters prior to deliberation. There are, of course, disputes concerning what was said. Substantial evidence as to serious jury misconduct has already been developed.



The Honorable Bruno L. Leopizzi  
March 16, 1979  
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The other jurors may well have significant information concerning these matters. We recognize and appreciate your concern for the jurors. Nonetheless, the defendants have a due process right to have the allegations fully explored. This right certainly should be of a higher consideration than any right of privacy which the jurors may have and the inconvenience that will result from the interrogations.

Additionally, at the hearing, the prosecutor injected innuendo concerning how and why Mr. Adamo decided to reveal what other jurors had said to him prior to deliberations. We believe that the prosecution's innuendo may well infect these proceedings unless the Court calls as a witness Barbara Hoekje who, according to the testimony of Mr. Adamo, was the person who first interviewed him and made the tapes which are now Court's Exhibits 1 and 2. We therefore request that Ms. Hoekje be called as a witness in these proceedings.

I trust that you will accept this letter as a motion. If you require more formal papers, please inform me so that I may comply with any instructions that you give me. We request prompt oral argument. We suggest 9:00 a.m. on March 20th.

Respectfully yours,



Myron Beldock

cc: Burrell Ives Humphreys, Esq. (By Hand)  
Jeffrey Fogel, Esq.  
Lewis Steel, Esq.  
Ronald Busch, Esq.  
James Meyerson, Esq.  
Charles Carter, Esq.  
Nathaniel Jones, Esq.  
Mr. Rubin Carter  
Mr. John Artis