

3-10-1967

Trial Transcript # 01: New Jersey v. Rubin Carter and John Artis

Lewis M. Steel '63

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PASSAIC COUNTY COURT
CRIMINAL DIVISION
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STATE OF NEW JERSEY, :
-vs- :
RUBIN CARTER and :
JOHN ARTIS, :
Defendants. :

Paterson, New Jersey
March 10, 1967

MOTIONS

B E F O R E:

HON. SAMUEL A. LARNER, J.S.C.

A P P E A R A N C E S:

VINCENT E. HULL, JR., ESQ.
Assistant Prosecutor
For the State

RAYMOND A. BROWN, ESQ.
Attorney for Defendant, Rubin Carter

ARNOLD M. STEIN, ESQ.
Attorney for Defendant, John Artis

①

MARY BYSZYNSKI
Shorthand Reporter

1 MR. BROWN: Your Honor, both of these men
2 are manacled.

3 THE COURT: All right. They will be released.

4 In order to outline our modus operandi, I
5 will hear first the various motions with respect
6 to discovery in open court. With respect to
7 the application for bail, the Court will hear
8 that application in chambers. I feel, in fairness
9 to the defendants, there should be no publicity
10 of the application to the Court in connection
11 with the bail application. It may affect the
12 merits of the case. The date for trial will be
13 a short period from now. The bail application
14 will be heard in chambers.

15 MR. BROWN: Thank you, your Honor.

16 If your Honor please, the motion for bail
17 will be heard in council with the defendants
18 present, I'm certain. As to the issue on the
19 request for interrogatories, your Honor, they were
20 served upon the Prosecutor in February and for
21 reasons of necessity they were enshrouded by the
22 Prosecutor's office until this time.

23 The first request, if your Honor please, is to
24 inspect, copy and photograph all statements,
25 papers and confessions in connection with the

1 indictment, and for the purpose of argument, if you
2 will permit a request made by both Mr. Carter and
3 Mr. Artis to inspect, copy and photograph all
4 statements, papers and confessions concerned with
5 the indictment. The concept of the defense, your
6 Honor, is this will relate to confessions and
7 statements given by the defendants.

8 THE COURT: That, there can be no question
9 about. You are entitled to these, if they exist.
10 Let's find out now if any statement or confessions
11 are in writing from the defendants to the
12 Prosecutor.

13 MR.HULL: No, your Honor. On June 29, 1966,
14 I believe that's the correct date, both the
15 defendants, Rubin Carter and John Artis, appeared
16 before the Passaic County Grand Jury. Both
17 these defendants testified and that testimony
18 was taken down stenographically. In affidavits
19 both defendants say they cannot recall the
20 statements of testimony which they gave to the
21 Grand Jury. On the basis of those affidavits, the
22 State will turn over to the Defense Counsel
23 copies of the statements by the two defendants
24 on June 29, 1966.

25 THE COURT: Other than this record, is there

1 any writing by the defendants other than this Grand
2 Jury testimony?

3 MR. HULL: None that I am aware of, your
4 Honor.

5 THE COURT: The order will provide that the
6 Prosecutor will turn over copies of the Grand
7 Jury testimony to both defendants.

8 MR. BROWN: If your Honor please, the order
9 does not particularly specify in view of the
10 Supreme Court statement in State vs. Farmer with
11 regard to my view on confessions. Of course,
12 oral statements were advisable in State vs. Devlan
13 and other cases in our State. That is oral
14 statements made by the defendants. This, of
15 course, involves problems in interest on the part
16 of most as to whether or not the prospects are
17 received. Men have made oral confessions or
18 statements which would correspond as in State vs.
19 Cleveland. Just as Miranda's oral confession, a
20 statement or formal confession or admission again
21 is in interest, just as a written confession. It
22 might be employable.

23 THE COURT: It doesn't necessarily follow
24 that you are entitled to an oral statement or
25 such a paraphrase of an oral statement by way of

1 discovery.

2 MR. BROWN: This would exist most certainly
3 in the Prosecutor's notes or the police officers'
4 notes to a large extent. In the Bradley vs.
5 Moreland case, the statement was made that any
6 material in the Prosecutor's files useful to the
7 defense certainly would be those to which he
8 would be entitled. Moreland primarily talked
9 about the Prosecutor suppressing an informing
10 witness who might not have come.

11 THE COURT: That wide a proceeding or thesis
12 together with the expressing of allegations or
13 possibilities of allegations in the withholding
14 or suppressing by the Prosecutor or inspector is
15 the way you see discovery in the State of New
16 Jersey?

17 MR. BROWN: Under B, when we get to it, the
18 State of New Jersey will be concerned with
19 witnesses, and under A, oral statements made by
20 the defendants and recorded or within the knowledge
21 of the Prosecutor.

22 THE COURT: That should be divided into two
23 phases. Number one, whether or not there are
24 any, and, number two, if there are, whether the
25 defendants are entitled to the privileges to which

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they contend. I will hear you on that phase.

MR. HULL: Your Honor, the only thing I am expressly aware of that was taken down in any form is the stenographic transcript of the Grand Jury testimony on June 29, 1966. I am not aware that either of the defendants has signed any written statement. I am aware that both defendants were questioned prior to their appearing before the Grand Jury on June 29, 1966. No formal statement was taken to my knowledge, or no signed statement or anything taken down in writing or affirmed or disaffirmed by the defendants.

THE COURT: I'm one step further on, Mr. Brown. It is apparent that there is no intention to utilize any part of any oral statement made by the defendants at the trial.

MR. HULL: At this time, the State does not intend to use any such oral statement made by the defendants which were not taken down stenographically.

THE COURT: You see, you may be making a commitment for the State at the present time, and that is why we have to explore this. When you can or not, I don't know. Can you unequivocally state that the State will not use any oral statement

1 or answers to questions in a statement? Do you
2 understand what I mean?

3 In other words, any remarks made by the
4 defendants orally at the trial.

5 MR. HULL: At this point, I don't believe
6 that I can give a definite answer to the Court.
7 Now, I do not know specifically if what the
8 defendants have said orally was taken down in
9 any manner whatsoever. I would state to the
10 Court that if the State decides to use those
11 particular oral remarks and/or notations or
12 papers concerning what was related to certain
13 law enforcement officers, the State will provide
14 the defense with any such document.

15 THE COURT: All right. That's fair enough.

16 I do want to make it clear, however, Mr. Brown,
17 that there is no intention of the Court, nor is
18 there an intention of the Prosecution to refer to,
19 or include any extemporaneous remarks made by the
20 defendants at the time; only the recorded remarks
21 or the questions and answers in which the police
22 participated.

23 MR. BROWN: If your Honor please, if you would
24 hear me on that. Assume a situation where there
25 would be narrative response, for example, the

1 question, "Well, did you do it?" or, "Were
2 you --"

3 THE COURT: It is the result of the police
4 questioning that is contemplated.

5 MR. BROWN: Formal questions and answers.

6 THE COURT: For example, I don't know what
7 the facts are here with reference to the
8 defendants. Take an individual running away from
9 a crime and a third person hears him say
10 something. It is inadmissible, that is not
11 contemplated.

12 MR. BROWN: Res gestae.

13 THE COURT: That's a little old-fashioned,
14 but along that line.

15 MR. BROWN: I have a word for that, your
16 Honor.

17 THE COURT: Spontaneous.

18 MR. BROWN: Spontaneous statement.

19 I think a statement made by a defendant in
20 admission is ruling specifically against me in
21 terms of the extent of my argument. If all the
22 statements against interest for limiting police
23 custody are in --

24 THE COURT: Inculpatory or exculpatory.

25 MR. BROWN: -- it will be delivered.

1 THE COURT: Is that correct?

2 MR. HULL: That is my understanding.

3 MR. BROWN: And in respect to papers?

4 THE COURT: In other words, any record with
5 respect to any questioning or any statement made
6 by the defendants in the Prosecutor's or police
7 file. That will be delivered to Counsel.

8 MR. HULL: That is correct, your Honor.
9 The files will be searched for any document.

10 THE COURT: Very good.

11 Next problem.

12 MR. BROWN: If your Honor please, ^{with regard} to A.

13 Papers -- we're going backward in a sense --
14 inspect, copy and photograph all statements or
15 confessions concerned with the indictments.
16 In answer to work product, their only real
17 limitation is work production. It's going to be
18 revised. Criminal rules do not even go as far
19 as you see fit.

20 THE COURT: I don't see that. After a time,
21 it might be.

22 MR. BROWN: In respect to papers, I refer to
23 all items, including the work product of the
24 Prosecutor, and I understand your Honor will
25 deny that. Any work papers the Prosecutor might

1 have that is in any way useful to the defense,
2 whether they be those papers which outline as
3 I have already stated, any statement of the
4 defendants, but in this instance it might be
5 papers, for example, which would record anything.
6 Let's assume that in this tavern those things
7 such as purchases might be recorded, or there
8 might be any writing by any person, or someone
9 who is deceased or an injured person, any paper
10 aside from being a work product might be
11 important to a particular point that's not too
12 easy to define, I don't really know.

13 THE COURT: I can't conceive of anything
14 in this type of a case falling into that category,
15 unless it be a work product. Can you suggest
16 that there is anything in the Prosecutor's file in
17 this category beyond the work product resulting
18 from anything other than investigation by the
19 State?

20 MR. HULL: I am not aware of any document.
21 None come to my mind at all.

22 THE COURT: Any transaction or back record
23 or document, or whatever? Anything specific?
24 Anything in document form?

25 MR. BROWN: Rule 16. You certainly have to

1 have the statement, your Honor. The statement
2 would include that within the purview all
3 witnesses, or all statements which might come
4 from people who are not witnesses. Any record
5 in assisting the defense, either exculpatory or
6 inculpatory.

7 Take persons who are not going to be
8 witnesses because they exculpatory might state
9 something the same as, "I saw the man and he
10 did not resemble him." This colors quite
11 differently the main case, and all those
12 declarations which are recorded or are subject to
13 being recorded which would relate to this case
14 and amount to information which would aid the
15 defense. Information which would not necessarily
16 be used by the State, one way or another, if it
17 were an exculpatory statement. I'm sure an
18 inculpatory statement would be provided if it
19 were within the rules.

20 THE COURT: One moment.

21 Could the statement be developed through
22 investigation?

23 MR. BROWN: They might, your Honor, provided
24 they were not a work product. As I understand
25 it, a work product is developed by the Prosecution

1 in the form of legal determination and
2 conclusions and summary precis of what they may
3 be preparing in the form of strategy and
4 prosecution.

5 THE COURT: You don't think statements of
6 witnesses are work product?

7 MR. BROWN: Product of interrogation.
8 Everything is work product really. The work of
9 art.

10 THE COURT: Any statement from any witness
11 or potential witness does not necessarily mean an
12 eyewitness..

13 MR. BROWN: Right.

14 THE COURT: I will deny it.

15 MR. BROWN: I have not gotten to that yet,
16 to be precise.

17 THE COURT: Now you're talking about
18 exculpatory statements..

19 MR. BROWN: Yes.

20 THE COURT: That I will hear you on. First,
21 whether any such document exists and, secondly,
22 if so, whether or not that should be furnished
23 to the defendants on the basis of their use.
24 Anything in favor of the defendants, the
25 Prosecutor, I'm sure, won't be accused of with-

1 holding any information or any evidence even if
2 it is favorable to the defendants.

3 MR. HULL: May I have a clarification of
4 exculpatory, your Honor?

5 THE COURT: Anything that would favor the
6 defense.

7 In other words, eliminate the defendants
8 from guilt or participation in this offense.

9 MR. HULL: There may be a statement in the
10 Prosecution's file which I believe could be
11 termed neutral. I'm not aware of any that could
12 be classified as exculpatory.

13 THE COURT: In other words, I suppose what you
14 mean is during the development of this
15 investigation you ran down every lead and there were
16 many which were of no value one way or another?

17 MR. HULL: I believe that would be a fair
18 statement, your Honor.

19 THE COURT: That may be it.

20 MR. HULL: Certain people in questioning had
21 no knowledge whatsoever.

22 THE COURT: Any objection to submitting those
23 statements?

24 MR. HULL: The State is not aware of any
25 case which holds such a statement is required to be

1 turned over to the defendant. Now, the question
2 has been raised as to witnesses who will be
3 produced at trial.

4 THE COURT: We have not gotten into that yet.

5 MR. HULL: At this point, trial is slated for
6 April 3rd of this year, and between now and
7 April 3rd, of course, the State will have a sheet
8 prepared of the witnesses who we intend to call.
9 It may also be even after the trial commences
10 that the State may want to call witnesses to
11 testify whom it had not thought it necessary to
12 call prior to that trial.

13 THE COURT: We will do a little more on the
14 immediate subject in order to understand each
15 other and have a clear record. We have to take
16 one step at a time.

17 My question was do you have an objection to
18 the furnishing of these so-called either neutral
19 or exculpatory statements.

20 MR. HULL: I do object to it, your Honor.

21 THE COURT: I see no basis in our procedure
22 on rules to compel the State to furnish
23 statements of of any witnesses, whether they be
24 valuable witnesses or whether they say nothing.
25 As a result, I deny that phase of your application.

1 MR. BROWN: If your Honor please, based on the
2 Bend vs. Maryland concept, if the witness was in
3 jail, the idea of aid to the defense might be a
4 little different. If the witness were released,
5 under the circumstances in this particular case,
6 under the custom and not the law, the injury to
7 both would be to aid them by these different
8 exculpatory statements. Merely because it is
9 neutral, your Honor, would not make a difference.

10 May I have permission to submit a brief on
11 it?

12 THE COURT: I'll accept a brief on it.
13 If I am to change my mind, you'd better have a
14 brief in by Monday.

15 MR. BROWN: I might not be able to go on the
16 3rd. The reason why I'm here --

17 THE COURT: You are a little late in this
18 motion to start with.

19 MR. BROWN: Your Honor, I filed my notice
20 in February and the Prosecutor for good reason --

21 THE COURT: Well --

22 MR. BROWN: I don't think it is late, your
23 Honor. The date given by the Assignment Judge
24 as the call date was beyond February 10th. I
25 sent in before that my notice, and just after --

1 I'm not criticizing the Prosecutor, but he sent a
2 note to me and the reason was valid.

3 THE COURT: Any other statement?

4 It is denied unless you convince me to the
5 contrary.

6 MR. HULL: Your Honor, if he has a brief in on
7 Monday, do I have until Tuesday to reply?

8 THE COURT: Yes. I don't think that Mr. Brown
9 will have a brief in on Monday. It is more
10 probable it will be on Tuesday.

11 MR. BROWN: You can't tell, your Honor. My
12 habits sometimes change.

13 I respectfully ask that we turn to B, to
14 inspect, copy and photograph all statements made
15 by witnesses.

16 If your Honor pleases, except for Farmer, I
17 don't know if there are other cases which are
18 in support of it, with the exception of Johnson.
19 All other cases we have argument against are based
20 on the fact that defendant was unable to receive
21 aid, except as to the point of visitation rights
22 which were liberal, and the cooperation with
23 attorneys excellent. I have knowledge through
24 investigation of two witnesses, who are in jail,
25 who have not been made available to us. Both

1 Both defendants in this case have cooperated to
2 an unusual degree. One's name is, I think -- I
3 know it as Garbela, and the second one the State
4 knows better than I who they are. They are in jail,
5 but to try to find out what their names are or to
6 talk to them was impossible. I think a witness
7 does not belong to anybody. In prudence the
8 defense certainly should have the chance to
9 talk to the witness, even those adverse, if they
10 are willing to talk.

11 I fully understand that the names of the
12 witnesses are the key to this trial. I state
13 for the record that as far as I know, there are
14 two witnesses that appeared to be important in
15 the early stages of the events which led to the
16 indictment of these people. As far as I know,
17 from what information I have, they say they saw some
18 crucial events on the very night these actions
19 occurred. These people are not available to the
20 defense under normal instances. We want their
21 names and numbers for inquiry into a very real
22 problem. We know these two exist, your Honor.
23 We have information and certainly I believe, as
24 I stated, that there is in existence a line of
25 communication and they have by their own means

1 communicated by those means available to them
2 a kind of an underground in jail. It gets around.

3 THE COURT: An aid to investigation then, is
4 it?

5 MR. BROWN: This kind of telegraph between
6 people in that informal society is in reality and
7 is to the extent of statements made by these
8 witnesses. I would like them to be available.
9 Certainly, I would want the names of these people
10 and their designations so that I can talk to
11 these witnesses and ascertain what they have seen
12 and done.

13 THE COURT: As far as any research, New Jersey
14 has not yet reached the stage compelling the
15 stating of names or addresses of witnesses,
16 except as they may be used, as you are very familiar
17 with.

18 MR. BROWN: In Manfry, Farmer and Johnson,
19 they haven't reached that point of circumstances
20 and the rules are going to be relaxed. The real
21 difficulty we have here, Judge Lerner, is talking
22 to witnesses who may exist, and do exist, and who
23 have information which may influence this case
24 one way or another. We know they are considered
25 key witnesses and have information. I believe

1 they were interviewed extensively and appeared
2 before the Grand Jury and gave information which I
3 believe and I think is important. Because of
4 that, in order for the defense to properly
5 prepare itself, I say to your Honor that these
6 witnesses' names should be given to Defense Counsel.

7 THE COURT: I will deny it. Not because of
8 the instance here, but because of the existing
9 law and rules.

10 MR. BROWN: Your Honor, C. With respect to
11 inspecting and copying of minutes and any
12 remaining transcript, I understand that the
13 circumstances were that the defendants made one
14 appearance and that was on June 29th.

15 If your Honor pleases, I would further request
16 under the same argument proposed, because of the
17 extraordinary nature of the trial, the Grand Jury
18 proceeding might even include the testimony of
19 witnesses. I've named Garbello and John Doe, plus
20 other witnesses who might provide the defense
21 necessarily with exculpatory information.

22 THE COURT: That also will be denied, except
23 for an application for the defendants' testimony
24 themselves.

25 MR. BROWN: Does your Honor recall rewards

1 offered or paid with respect to the defendants in
2 participation leading to their arrest?

3 THE COURT: You mean by the State or police?

4 MR. BROWN: Any reward within the knowledge of
5 The State or police, and particularly those
6 offered by the enforcement authorities of the
7 State, police or the local police or anyone.

8 THE COURT: Is there information of their
9 existence?

10 MR. BROWN: I believe there was a reward, yes,
11 on record in the press. It had been for
12 information and, I believe, it was known as a
13 "come-on", proposed as a come-on. Even in this
14 community, there was a reward offered in respect
15 to the defendants' participation or any information
16 leading to the solution of the crime, and to the
17 defendants.

18 THE COURT: Is there anything to support
19 the application? Mr. Hull, have you any information
20 on this to give to the Court?

21 MR. HULL: Your Honor, to the best of my
22 knowledge, no reward was offered or paid by the
23 State or County or any State agencies.

24 THE COURT: How about municipality?

25 MR. HULL: My information is based upon

1 newspaper reading, and I am aware it may have been
2 the City of Paterson who offered a reward or some-
3 thing was offered by the Tavern Owners' Association
4 of the City of Paterson. That is the extent of
5 my knowledge.

6 THE COURT: Does your file contain anything
7 with respect to these rewards?

8 MR. HULL: I'm not aware of anything contained
9 in our files.

10 THE COURT: Do you have any data and
11 information on this subject? It can be subpoenaed
12 by the defendant. I can see no reason to direct
13 the State to do anything over which they have no
14 control, no power.

15 MR. BROWN: Your Honor, I don't disavow the
16 Municipal bodies.

17 THE COURT: The Town Council, the City
18 Commission, or a relation offering the reward is
19 not the same as the State or the Prosecutor's
20 office.

21 MR. BROWN: I think Counsel specifically
22 avoided law enforcement bodies in the area. Take
23 the occasion in the City where a policeman in
24 particular --

25 THE COURT: A police official?

1 MR. BROWN: Anybody.

2 THE COURT: In the legislative body of
3 officers, a reward is not an enforcement on the
4 part of the police attorney. It is part of the
5 enforcement agency group. I would say from
6 the Prosecutor down to the cop.

7 MR. BROWN: This is where an important
8 defendant receives information which is exculpatory
9 or inculpatory, and I submit that we are entitled
10 to know it.

11 THE COURT: See the Town Council. You can
12 get any information from them.

13 MR. BROWN: They have no information to give.
14 This is the Prosecutor's domain.

15 THE COURT: The Prosecutor does not have that
16 and he will not be compelled to furnish it.

17 MR. BROWN: In E, your Honor, pro forma
18 as to the paraffin records, in State vs. Cook
19 it made the same impression as was made in E.
20 To inspect and copy all ballistic reports and
21 paraffin reports made in connection with any
22 firearms allegedly used. And, pro forma, the issue
23 has been decided in Cook. In this case it was
24 paint and they were entitled to it.

25 I say it is a matter of right and, I believe,

1 I am entitled to it.

2 THE COURT: Any question?

3 MR. HULL: In the Cook case it appeared
4 specifically that it provided the reports of the
5 scientific laboratory records and I would state
6 that the State would consent to this; that it
7 would turn over to the defense any such reports
8 in existence at the present time.

9 THE COURT: Very well. No question about
10 that.

11 Any question about the right of the defendants
12 to examine any firearm you have or whatever
13 equipment you would have?

14 MR. HULL: The State would allow an inspection
15 of the firearms and instruments in the possession
16 of the State at the present time. However, I
17 think, your Honor, I would like to know where this
18 inspection is going to take place.

19 THE COURT: At your office.

20 MR. BROWN: No question.

21 THE COURT: In E and F a professional
22 inspection is indicated. I think he would come
23 to you. You should have the right to inspection
24 with him.

25 MR. BROWN: It is back to you for the ground

1 rules for this setup.

2 THE COURT: I don't think there is any issue
3 on that.

4 MR. BROWN: Is the inspection mutually
5 decided upon?

6 THE COURT: Yes, yes; the only problem is with
7 Mr. Brown.

8 MR. BROWN: I come to you and Mr. Hull is
9 to come with me to inspect and copy all medical
10 reports, of course, your Honor.

11 THE COURT: You are entitled to those.
12 There is no question about that.

13 MR. HULL: No question as to autopsy reports
14 and hospital reports.

15 THE COURT: That's all there is, isn't there?

16 MR. BROWN: Well, there's Cook and Johnson.
17 I'm entitled to them and certainly under Palmer.

18 MR. HULL: I'm not aware of any reports in
19 this case indicating the hospital and medical
20 records.

21 THE COURT: Autopsy reports and hospital
22 reports and medical reports pertaining to the
23 defendants too.

24 For example, I don't think, I don't believe
25 it is true in this case --

1 MR. BROWN: Psychiatrist -- Cook holds
2 specifically --

3 THE COURT: Of course..

4 MR. BROWN: I don't know if this is true.
5 It may well be there was an injury which the
6 defendant sustained, or an examination of the
7 defendant of which I'm not aware. It should
8 include any injury in relation to them that they
9 have.

10 MR. HULL: I'm not aware of any such report.

11 THE COURT: If there are, issue all reports.

12 MR. BROWN: H. To inspect and copy all
13 photographs or drawings in the possession of
14 the Prosecutor. This would include the deceased.
15 I have a very good reason for that. Someone
16 has to make a decision in a preemptory way which
17 we are not prepared to do in court.

18 THE COURT: You have a quick mind. If proof
19 is submitted to you in court, you can make a
20 fast decision.

21 MR. BROWN: I'm not that fair in decisions and
22 I find them interesting.

23 THE COURT: I don't think I can compel the
24 Prosecutor to furnish these material work products.
25 It is an investigative proceeding and he is

1 unwilling to submit it.

2 MR. BROWN: Just like an autopsy. I tell the
3 Court that what I propose to do is to take
4 photographs to a medical person, and consider angles
5 of fire, because in this case the charges
6 concern three deaths and an aggravated assault.
7 The particular place a picture places a body is
8 obviously beyond the reach of the defendant.
9 I've been to the place. That I've done, but I can't
10 get the position, I can't get the interior. The
11 body is taken away and the people at the hospital
12 have a record. Photographs are made of that area,
13 beyond the ability of the defense to acquire.

14 THE COURT: Well, Mr. Hull, do you feel that
15 there could be any possibility of prejudice to
16 the State by showing these to the defense now?

17 MR. HULL: No, I don't know about prejudice to
18 the State, your Honor. The State contends that the
19 photographs and drawings are work product and the
20 State will not agree to it.

21 THE COURT: Why not forget the drawing or
22 drawings and conclusively go to the photograph or
23 photographs of the scene of the crime, the bodies,
24 and how they were supposed to be, how they existed
25 there and such?

1 MR. HULL: We object to the photographs of
2 the scene, your Honor.

3 THE COURT: Why should they be objectionable
4 as far as you are concerned?

5 MR. HULL: Solely because --

6 THE COURT: Forgetting the ruling of a moment
7 ago and the words of the Court.

8 MR. HULL: Solely because of the fact that
9 they are work product.

10 MR. BROWN: Everything is work product to the
11 State and everything to the defense is work product.

12 THE COURT: There is physical evidence which
13 you have and we know it must be shown. Of course,
14 there is the distinction of the physical evidence
15 that was utilized in connection with the alleged
16 offense. In trial I concede that is true. But
17 nevertheless, in view of the fact that time
18 changes physical instances, to prevent a view by
19 Counsel and an educated examination of the
20 physical surroundings, prohibits him from defending
21 and trying the case with intelligence. Since
22 there is nothing prejudicial in that, I concede that
23 they be submitted by the State, the showing of such
24 photographs. I would be inclined to authorize
25 this inspection of the photographs by the defense

1 at this time.

2 MR. BROWN: I've got the right to make copies,
3 your Honor, as a matter of law, just like the
4 paraffin report.

5 THE COURT: Not just like it.

6 MR. BROWN: A work product?

7 THE COURT: In any event, that will be accorded
8 to the proofs. It does not include any drawings.

9 MR. BROWN: I haven't argued it.

10 THE COURT: Be happy that you have got the
11 photographs. Don't retract that portion.

12 MR. BROWN: I don't have to worry about losing
13 anything. I am not talking about the Judge. I
14 realize that in making every word there, it is to
15 the discretion of the Court. Specifically, I
16 understand that unfortunately these were composite
17 drawings, particularly of Mr. Carter. On an
18 exculpatory basis of this, I am forming
19 information, that some of the composite drawings
20 are so different from either of the defendants,
21 that it is exculpatory and would aid in the defense.

22 THE COURT: Suppose some of these were very
23 like the defendants?

24 MR. BROWN: I'm not aware of that, but all of
25 these, your Honor, are work products in a sense,

1 the ballistic reports and the paraffin reports,
2 and they are already determined.

3 THE COURT: Let me stop you right there,
4 Mr. Brown. You know as well as I that if the State
5 tried to put in the composite drawings there would
6 be the potential of hearsay remarks of a person
7 or a witness and you would object in the loudest
8 voice of which you were capable, and of that you
9 are capable, and I would sustain your objection
10 without question.

11 MR. BROWN: If it looked like me and they're
12 using it for evidence, of course I would object
13 to it.

14 THE COURT: The State would not offer it and
15 you would not offer it either. Are there drawings
16 of the defendants or drawings of the building or
17 otherwise?

18 MR. BROWN: I didn't ask.

19 THE COURT: Fine.

20 MR. BROWN: For a specific purpose only.

21 THE COURT: On the proofs, I only know of
22 photographs of the interior of the premises, and of
23 the poses of the deceased.

24 MR. BROWN: There are photographs of the
25 exterior too.

1 THE COURT: May I have whatever you have
2 with respect to this case which will be utilized
3 in evidence?

4 MR. BROWN: If your Honor pleases, there are
5 15 photographs and I want to use 10 and common
6 sense the other 5 --

7 THE COURT: All proofs?

8 MR. BROWN: All shall be shown and, of course,
9 if Counsel wishes to make copies, they can make
10 them at his expense. They wouldn't want us to
11 have a negative.

12 THE COURT: At the defendants' expense.

13 MR. BROWN: Set forth which of the alleged
14 defendants used the weapons referred to in the
15 indictments. There were multiple weapons, or
16 only one weapon. As far as the indictment is
17 concerned, there is no statement that would ask
18 which of the defendants used the weapons, plural,
19 or one weapon. Which one used the weapon?

20 THE COURT: Mr. Hull, you tell me when you
21 disagree with me. Can you state in particular who
22 did the actual shooting?

23 MR. HULL: The State will answer the question,
24 your Honor.

25 THE COURT: As alleged.

1 MR. BROWN: J, your Honor. Set forth time and
2 place for the events of this kind and this
3 situation.

4 THE COURT: Time and place. Of course, you
5 are entitled to that. The State will answer that.

6 MR. BROWN: If your Honor pleases, at this
7 time I would like to point out that which
8 technically is a statement of a bill of particulars
9 for the State on time. We can't answer until we
10 get this. We will immediately. That is to be
11 a part of the defense, immediately to be
12 delivered to them.

13 THE COURT: They haven't made a demand?

14 MR. BROWN: Yes, they did. At the pleading,
15 I think.

16 THE COURT: No; no such thing at the pleading.

17 MR. BROWN: There was no point at the time,
18 your Honor.

19 K. Set forth the charge and state
20 specifically whether or not they acted in concert.
21 I hope your Honor will regard this as separate Counsel,
22 as individuals, although in a way Mr. Stein is --

23 THE COURT: I will.

24 MR. BROWN: The way and how they acted. In
25 concert? Each is charged in the conjunctive here

1 with having killed these people. Three people,
2 I don't know, in denying we do get it of course.

3 THE COURT: You want the State to commit
4 itself with the charge against each one
5 individually. You don't want it as if they were
6 involved in the killing of three people, but
7 rather one attributed to A and two attributed to
8 B, et cetera. They acted in concert in aiding
9 and abetting in direct killing.

10 MR. BROWN: One man may have waited outside
11 and the other man could have shot three people.

12 THE COURT: I don't know.

13 MR. HULL: The State will answer that question
14 to the best of its ability, but one thing concerns
15 me. Do the actions of each have to be spelled out
16 step by step or in general?

17 THE COURT: We want the details so as to
18 merely point out so that the defendant will know
19 whether it's alleged that one man did all the
20 shooting, or both men, or one shot and the other
21 aided and abetted. Did Artis shoot anyone and so
22 on and so forth?

23 MR. BROWN: L, if your Honor please. State
24 whether or not the theory of --

25 MR. HULL: The State will answer that question.

1 MR. BROWN: M. If your Honor pleases, I
2 think we are entitled to that. That, in fact, is
3 one of the others. At least evidence from the
4 defendants or anyone else, including names and
5 addresses from whom such was obtained.

6 THE COURT: Of course, this is lawful search
7 and seizure in preparing the defense.

8 MR. BROWN: Particularly in this case, your
9 Honor. Insofar as the defendants involved, as
10 far as I know, there is no allegation of
11 robbery. There may be sample allegations,
12 say money was taken from the register or anywhere,
13 or there was a seizure of the automobile.

14 THE COURT: Yes, well --

15 MR. HULL: The State will go and request a
16 seized list. They were obtained by the police and
17 I don't think the defendant can object to much
18 else.

19 THE COURT: I was going to say that.

20 MR. BROWN: That is plural, defendants.

21 THE COURT: That will be limited to the
22 defendants, plural, and, of course, not any evidence
23 secured from any third person.

24 MR. BROWN: I have no objection.

25 As to N, I think we have a right to inspect

1 any criminal record of State witnesses before they
2 testify so that we are prepared essentially in
3 attacking credibility.

4 THE COURT: What do you say about that?

5 MR. HULL: The State objects to this request
6 at this time. However, I say that Defense Counsel's
7 request for it is -- if any State witness has a
8 criminal record, it will be turned over to
9 Defense Counsel before --

10 THE COURT: Before he needs it for examination.

11 MR. BROWN: I think this is a distinction without
12 a meaning. The State knows within reasonable time
13 if they're going to use Mr. X. There are two
14 purposes for Rule 16 and they are unabashedly in
15 part mine.

16 THE COURT: The Federal Court and the State
17 Court, somehow they're quite different.

18 MR. BROWN: The Prosecutor's position here is
19 that Defense Counsel wanted witnesses' names and
20 now they ask for the criminal record. That is
21 not my purpose. Not every prospective witness
22 will have a criminal record. The purpose is to
23 also attempt to ascertain who these two people
24 in custody are. That is a part of my position,
25 to ascertain that with some reliable certainty,

1 so that I don't proceed against a fact that has
2 nothing to do with this case. If I'm going to
3 get them at all, they will have to be given to me
4 now to aid in the defense's discovery.

5 THE COURT: They will be denied now. They
6 may be given before cross-examination.

7 MR. BROWN: I take an exception, your Honor.
8 Now O, of the defendants.

9 THE COURT: Don't the defendants know?

10 MR. BROWN: I appeal to your Honor's long
11 experience. I won't say that I don't rely on
12 that.

13 THE COURT: There is nothing lost in
14 furnishing that, is there?

15 MR. HULL: The State will cooperate on that,
16 your Honor, if Defense Counsel could not obtain the
17 criminal record from his own client.

18 THE COURT: His own client might be able to --

19 MR. BROWN: I've tried everything. It forced
20 me to bring suit. I didn't get them.

21 THE COURT: All right then.

22 MR. BROWN: Thank you, your Honor.

23 MR. STEIN: I'm not clear whether or not
24 the Court is permitting us to obtain exculpatory
25 statements from the State. I'm not clear as

1 to your precise ruling.

2 THE COURT: That was under Number 3-A.

3 It could be considered A-3.

4 MR. STEIN: Yes.

5 THE COURT: That was denied in that they have
6 no statements of the defendants, no written
7 statements. You do get the Grand Jury testimony.

8 MR. BROWN: Your Honor, one other thing.

9 One question on an issue that was not
10 concluded. An informal request came up which is
11 a matter of importance to us, and that is whether
12 or not the Grand Jury -- your Honor may recognize
13 this. It was asked that they be polled to see
14 if it was the same Grand Jury, the same as that
15 which issued the indictment and had to do with
16 the Fifth Amendment.

17 THE COURT: I think he should be advised of
18 that.

19 MR. HULL: Whatever is in the record.

20 THE COURT: Any waivers and so on will be
21 furnished as well.

22 MR. HULL: The date of the Grand Jury, and
23 was it the same one before which they appeared.
24 The defense will prepare the orders?

25 MR. BROWN: We will get a transcript of the

1 notes, including the dates on which we were
2 supposed to obtain these things.

3 THE COURT: Just a minute, please.

4 I can see that your associate took detailed
5 notes. Suppose you prepare the order and submit
6 it to Mr. Brown? It will save time and so on.

7 What can you tell us as to time with regard
8 to inspections?

9 MR. HULL: With respect to the turning over
10 of certain materials to the defense, again the
11 Grand Jury testimony and the photographs --

12 THE COURT: Well, in compliance in full, what
13 do you figure as an outside date that is
14 necessary?

15 MR. HULL: At least one week, your Honor.
16 A week from Monday, your Honor.

17 MR. BROWN: I don't want to wait the week-
18 end. It is as valuable to the trial as I am.

19 THE COURT: Next Friday.

20 MR. BROWN: If it is possible, I certainly
21 would appreciate it.

22 THE COURT: March 17th. Can you arrange for
23 your inspections at the Prosecutor's office some
24 time within the next week?

25 MR. BROWN: I thought maybe Friday.

1 MR. HULL: That is fair. I can give the
2 Defense Counsel the information on the same date.

3 MR. BROWN: I'll communicate with them for
4 answers and so forth.

5 MR. HULL: If it is not possible a week from
6 Friday, is there another day, Mr. Brown?

7 THE COURT: Are you certain we will be
8 prepared to move on April 3rd?

9 MR. BROWN: I ask your Honor's aid. I am
10 supposed to be in Essex County that date. I have to
11 inform the Assignment Judge and ask that it be
12 adjourned.

13 THE COURT: If you need a direct call from
14 me to affirm it, let me know.

15 All right, gentlemen, we will adjourn to
16 chambers to consider the bail application.

17 (The following is taken in chambers.)

18 MR. BROWN: Your Honor, before we go into
19 this hearing, I would like to place on the record
20 something more on a point discussed in open
21 court, on the further extension of the drawing
22 situation. Please excuse my sitting. This is
23 awkward.

24 THE COURT: You may remain seated.

25 MR. BROWN: Your extension on the drawing

1 request -- these drawings were allegedly made
2 by the deceased person, Mrs. Tanis, particularly,
3 and certainly are not in the sense a work
4 product in the course of investigation. She
5 designated by this drawing, as close as she could
6 come to this person. It might be exculpatory on
7 examination and advisable for my making a
8 decision as to whether or not to make a declaration
9 at a point which might change our position. We
10 all ask for the drawing from the man still living,
11 and the subject of the atrocious assault charge
12 of his assailants. I think this goes a little
13 beyond the explanation in open court. It is what
14 the deceased and the victims have said.

15 THE COURT: Number one, suppose we first
16 explore whether they exist and if either one of
17 these will be offered in evidence by the State.

18 MR. HULL: I'm not at this point positive of
19 their existence and, accordingly, I'm not -- I
20 do not know at this point if I would attempt to
21 make the offer. And assuming that I did, I don't
22 think they are admissible.

23 THE COURT: Wait a minute; one step at a time.

24 Number one, if anything of that kind were to
25 be offered, copies should be submitted to the

1 defense. So, use that as a standard first. If
2 the State intends to utilize any such drawings
3 by offering them in evidence, bear in mind that the
4 State can't determine now whether they will be
5 admitted in evidence by the Court. If you intend
6 to offer them, copies should be submitted.

7 Now, the next question, if they exist and
8 if the State has no intention of offering them,
9 are the defendants entitled to them? What do you
10 say about that?

11 MR. HULL: My response is that again any
12 such matter would be a work product and should
13 not be turned over prior to trial.

14 MR. BROWN: My argument, your Honor, is that
15 they are not work product of law enforcement
16 people in identification or in dying declaration.
17 A statement may say that's not the man. In
18 presentation, the State has the obligation to
19 turn that over to the defense. The man still
20 living made a drawing. If it depicts the two de-
21 fendants entirely differently and if the defendants
22 have no control or possession thereof, the
23 defendants have no earthly means of getting them.

24 THE COURT: How are you going to be able to
25 use them?

1 MR. BROWN: We may offer them too, subject to
2 your ruling as pictures of the defendants, or of
3 either one of these two men. Also, there is the
4 advisability to the defense in an exculpatory
5 manner the statement of Mrs. Tanis in dying that it
6 was not either of these two men. That statement
7 is introducible, advisable and real.

8 THE COURT: A statement is admissible in very
9 narrow confines. The dying declaration would be
10 admissible. A person injured may make a statement
11 and a drawing in December and then three months
12 later, it may not necessarily be admissible.

13 MR. BROWN: My question is this, and I cannot
14 decide on its admissibility. Of course, not that
15 I have it, but I might offer it to the Court
16 to make a decision on what has been developed.
17 Of course, the police have it and the point is to
18 know whether or not they're going to offer it.
19 I would try to offer it.

20 THE COURT: Nobody here today knows what
21 posture the case will be at when it is offered.
22 That will be a problem for the Prosecution and
23 the defense.

24 However, I ask you how such a drawing, if
25 it does exist by a witness, differs in any

1 respect from a statement made in words by a
2 witness?

3 MR. BROWN: I believe, your Honor, that it
4 differs because the drawing is something which
5 is not alterable. A witness testifying, that is
6 alterable. The witness can be cross-examined.
7 Any statements made can be alterable. Whereas,
8 a drawing is different from the spoken word.

9 THE COURT: I still think it falls in the
10 category of a statement.

11 MR. BROWN: How about insofar as the work
12 product concept is concerned?

13 THE COURT: Well, there is also the work
14 product investigatory processes pointing to the
15 culprit, if he exists, or the alleged culprit.

16 MR. BROWN: You have the paraffin tests made
17 under their direction by a third person. I am
18 not talking about artists. I am asking to
19 see something drawn by the persons who were
20 attacked.

21 THE COURT: I believe the basic distinction
22 of a paraffin test being performed on someone
23 involves a physical object being taken from them.
24 The source of it is similar to Federal Rules and
25 so on. Here you have something foreign from

1 the defendants. Something never taken from
2 them. There was never an association with the
3 third person. The State has developed certain
4 information. It is the same as a statement.

5 I have to deny it. However, you have raised
6 an interesting problem.

7 MR. BROWN: Yes, I think it is and, particularly,
8 since it may be exculpatory.

9 THE COURT: There is basically, of course,
10 in any criminal case, a thin obligation on the
11 part of the State, exclusive of discovery.
12 With regards to orders to reveal any evidence
13 which may be exculpatory in any affirmative way,
14 I am sure the defense and the State will carry
15 out their duty and obligation. I am not minimizing
16 the ruling in any respect. However, I don't
17 think the problem of discovery is that basic.

18 MR. BROWN: Would your Honor direct Mr. Hull
19 to tell us whether or not such drawings exist,
20 so that we can assemble properly the very real
21 issue if it is submitted to your Honor?

22 Would your Honor direct Mr. Hull to tell
23 us whether or not they exist by next Friday?

24 THE COURT: Any objection to that?

25 MR. HULL: I will check the file.

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MR. BROWN: By next Friday?

THE COURT: Merely advise whether or not they exist.

All right. We will proceed with the application for bail as made by the defendants.

STATE OF NEW JERSEY:

SS:

COUNTY OF UNION :

I swear that the foregoing is a true and accurate transcript of the testimony and proceedings in the above entitled cause.

Mary Byszynski
SHORTHAND REPORTER

Sworn and Subscribed to before me this 18th day of April, 1967.

E. Louise Telle
A Notary Public of New Jersey