









Appellate...:

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F = 3047-U472

SUPERIOR COURT OF NEW JERSEY CRIMINAL DIVISION - MIDDLESEX COUNTY INDICTMENT NO. 07-10-1579 APP. DIV. DOCKET NO. A-3047-09-T2

STATE OF NEW JERSEY,

Complainant,

PILED

APPELATE DIVISION Transcript of Proceedings (Jury Selection)

PABLO MACHADO,

vs.

OCT 2 9 2010

Defendant.

(With An Interpreter)

Place:

Middlesex County Courthouse

56 Paterson Street

New Brunswick, N.J. 08903

Date: DECEMBER 15, 2008

BEFORE:

THE HONORABLE BARBARA STOLTE, J.S.C., and a Jury

TRANSCRIPT ORDERED BY:

STEPHEN KIRSCH, ESQ., A.D.P.D.

(Designated Counsel Section)

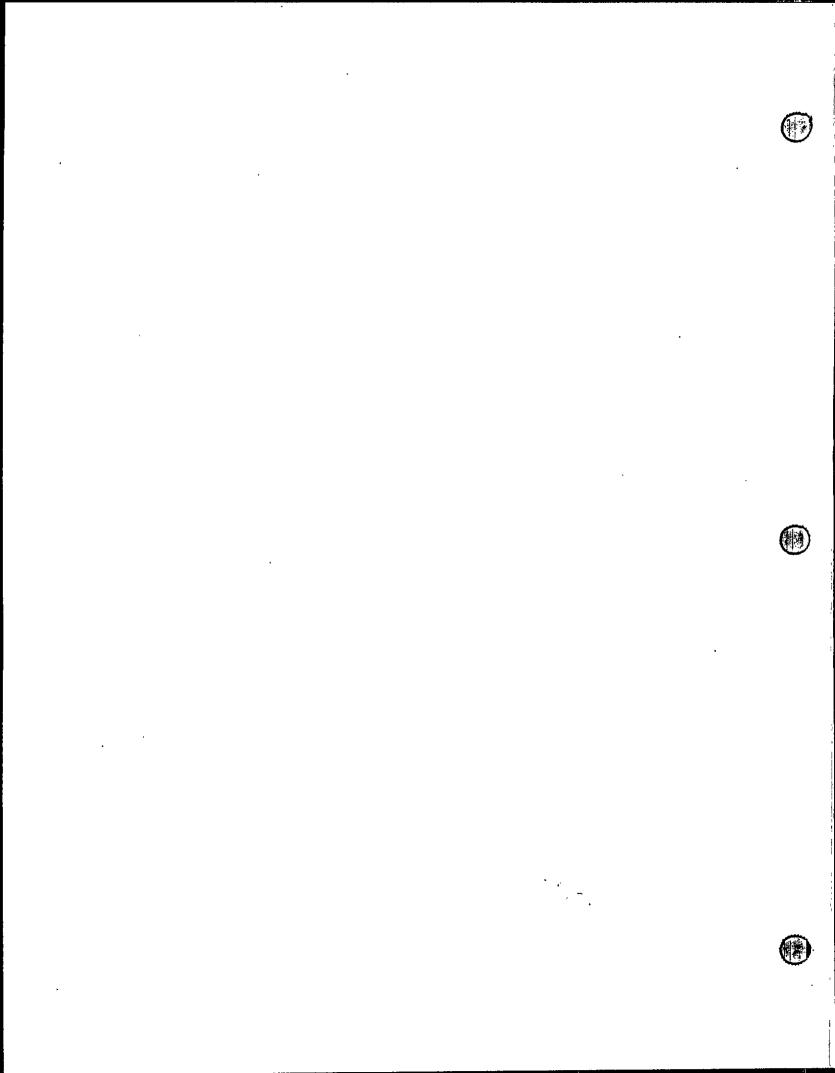
APPEARANCES:

MANUEL SAMEIRO, ESQ. Middlesex County Assistant Prosecutor Attorney for the State

DANIEL GONZALEZ, ESQ. (Perez & Gonzalez) Attorney for the Defendant

APPET ATE DIVISION off 29 2010 SUPERIUR COURT OF NEW JERSEY

Georgeann Crowell, C.C.R. Official Court Reporter Middlesex County Courthouse P.O. Box 964 New Brunswick, New Jersey



(Colloguy) 2 (Whereupon, the following hearing took place 1 2 with the use of a Spanish Interpreter.) (Whereupon, the following discussion occurred 3 4 outside the presence of the prospective jury panel.) THE COURT: Good morning, everyone. I just 5 wanted to -- before I let them know -- regarding the 6 time of trial -- it's hard -- I don't know if we'll get 7 the jury picked today. Obviously, a portion of this 8 trial -- two days -- I mean, you have witnesses --9 MR. SAMEIRO: Judge, good morning. 10 First of all, Manuel Sameiro, for the State. Mr. Gonzalez and I 11 were discussing this briefly before your Honor got out. 12 I should be able to put in my case tomorrow, if we 13 14 I'm expecting to call three witnesses. start at nine. Not more than that. There are a lot more on the 15 witness list. We can discuss evidential issues after 16 17 the jury is selected. 18 I don't want to waste any time now. are a couple things I do -- I wanted to put on the 19 20 record before I begin. But I expect, if we start at nine tomorrow, I would ask your Honor to start 21 tomorrow, not today, given my victim's work schedule. 22 I did not want to have him miss more than one day of 23 He is on call for this afternoon, if your Honor 24 overrules my request. But I prefer to call him 25 (Colloguy) Then finish the case after we present the 1 three witnesses that we intend to call. 2 3 THE COURT: Okay, Counsel. MR. SAMEIRO: And in answer to the question, 4 5 we can be done by Thursday. THE COURT: 6 Okay. Unless the jury takes a lot of 7 MR. SAMEIRO: 8 time. 9 THE COURT: All right. We should be done by If not -- We should close probably Thursday 10 Thursday. morning. What I'm thinking, I will probably tell them, 11 you should be getting the case at the latest on 12 13 Thursday. Which means, we have to schedule Thursday to 14 Potentially, Friday. We have no control over be here. their deliberations. So, this way, we're done this 15 16 week. 17 MR. SAMEIRO: As far as scheduling is concerned, I have a closing on my home, that my wife 18 and I are buying, on December 23rd. 19 I would prefer to 20 have that day off, since the home is in Hunterdon. 21 walk-through needs to be done. A lot of stuff needs to 22 My attorney has not yet told me what time the 23 closing is going to take place, what time during the 24 day.

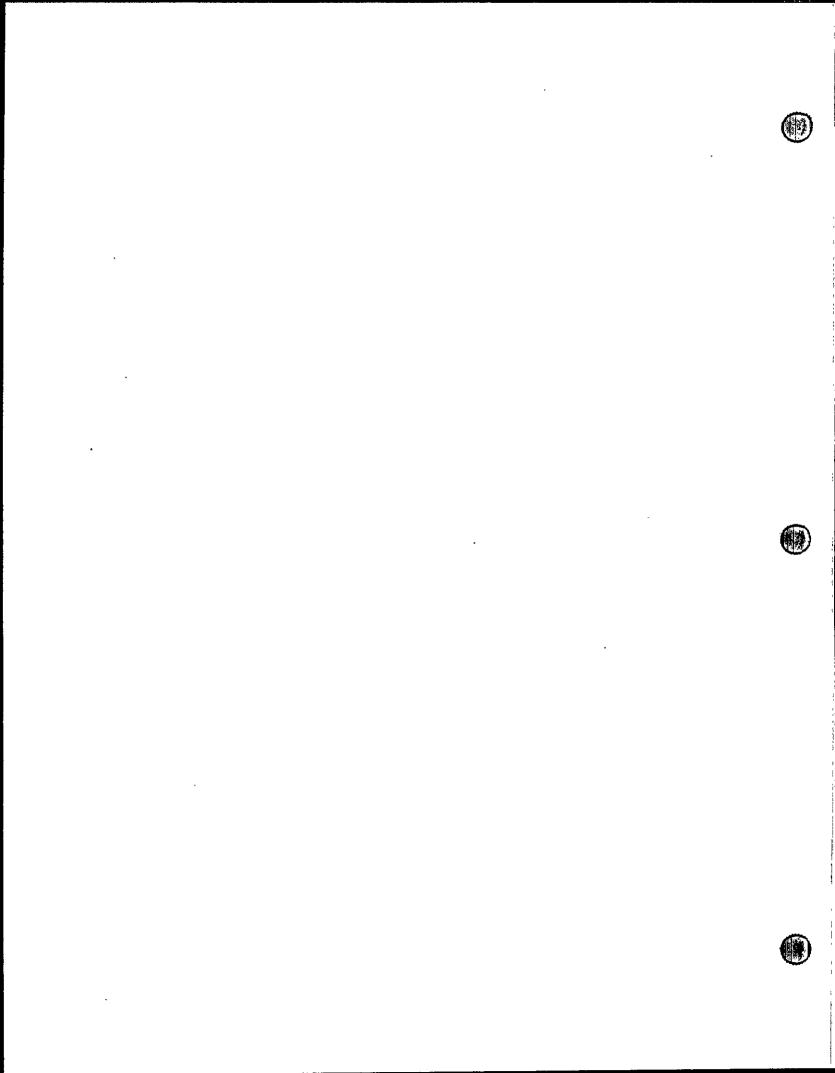
25

THE COURT:

Right.

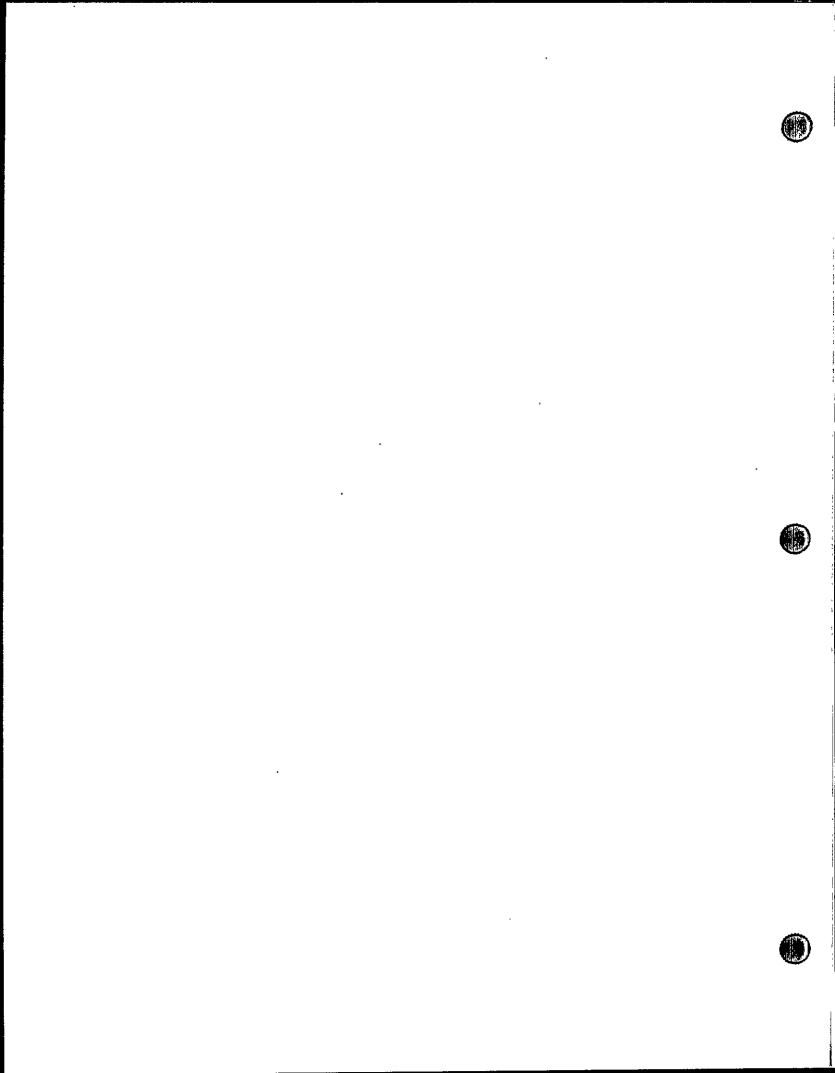
December 23rd.

That's



(Colloguy) next week. I am hoping to have this done by Friday. 1 2 MR. SAMEIRO: Right. I just say that in the abundance of caution. Okay. That is fine. THE COURT: 5 MR. SAMEIRO: That may impact on what you tell the jury. That is the only reason why I say that 6 7 now. I will let them know. Something THE COURT: 8 along the lines, if, in fact, that we don't finish on 9 Friday, if we went into next week, we wouldn't be here 10 on Tuesday. That's what I'll do. A lot of it is 11 12 depending upon them. 13 MR. SAMEIRO: Right. THE COURT: All right. Other than that, 14 15 we're ready to go? 16 MR. SAMEIRO: Ready to go. I think I only issue was, I 17 MR. GONZALEZ: think I spoke to Mr. Sameiro. I did a follow-up with 18 19 Officer Bobadilla Thursday and Friday. Left messages with the Sergeant. Also, left messages with the 20 Indicating he had to honor the subpoena that 21 was given to him prior to trial. I haven't heard back 22 from him -- Officer Bobadilla. I'm told by Mr. Sameiro 23 24 that he is currently working. It shouldn't be an issue. But should I need 25 5 (Colloquy) your Honor to order him to be here, if he decides that 1 he doesn't want to show up for any reason, I don't think he should -- he is just across the street -- but what was indicated to me -- when I called on Thursday, was he was hurt still. Mr. Sameiro indicates, he is 5 not hurt. MR. SAMEIRO: I didn't say that. 7 I said he's I do happen to know that he is on light duty. 8 His medical status was -- he is off -- despite the information -- he would be back working -- I've been 10 11 told he is behind the desk, not on the road. For the record, he was on bike patrol, and fell, and tore some 12 13 ligaments in his knee. And that was the nature of his 14 injury. 15 Judge, I don't know if Mr. Gonzalez is finished with that issue. But I did submit to the 16 17 Court by e-mail today, a witness list, a potential 18 witness list, with my proposed summary of the case. 19 don't know if Mr. Gonzalez wants to object to this. have not gotten from him a defense version of the 20 incident. And I don't have any additional witnesses 21 22 I guess, since we just discussed Officer 23 Bobadilla, I would expect he would be the only person 24 that he'll call. I have no additional witnesses from 25

the defense.



(Colloguy)

MR. GONZALEZ: Judge, there is no additional 1 With regard to the blurb submitted by the 2 witnesses. State, naturally I object to it. I would only ask, Judge, that your Honor do the easiest version, it is alleged that on April 24, 2007, that Mr. Machado 5 committed a robbery of Mr. Cedillo, in the City of New And he pleads not guilty to all the charges Brunswick. alleged in this Indictment. The most basic items. 8 State is getting into some facts, in this blurb, I 9 think it is too much. Naturally, I think it should be 10 11 neutral.

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THE COURT: All right. Here is the proposed information that the State has submitted. On April 24, 2007, Wilmer Cedillo was robbed at gunpoint. will indicate that the State alleges that on April 24, 2007, Mr. Cedillo was robbed at gunpoint by the defendant and others. Mr. Cedillo was operating a taxicab in the City of New Brunswick.

I don't think there is anything wrong with 19 I think it is pretty basic. It gives the idea, 20 21 where it occurred, that kind of information. about July 25, 2007, Mr. Cedillo recognized the 22 defendant from a photo line-up procedure, which was 23 videotaped at New Brunswick headquarters. 24 In addition to the out-of-court identification, the defendant has 25

(Colloguy)

been linked to the crime through his telephone records and address information, which you will hear more about during this case.

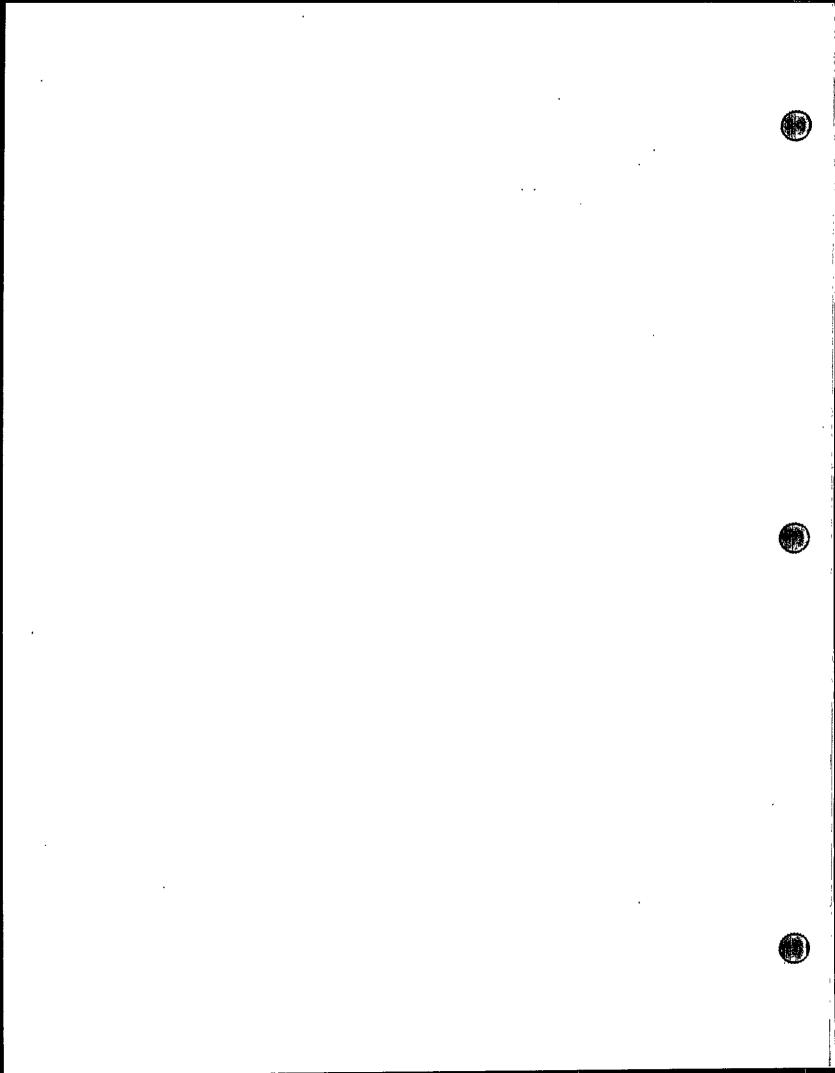
I mean, my purpose, first of all, is just giving them general information. Just that it's an allegation. The more you put in, the more that has to be proven. I always caution the State as to what they want to put in.

MR. SAMEIRO: I ask the Court to give them this anyway. There is clearly going to be a videotape that we're going to see.

THE COURT: I would assume that prior, we will hear information regarding the telephone records and address information.

MR. SAMEIRO: Which I wanted to discuss after jury selection. It's my intent to sanitize the information that the police had on file. That the defendant was previously arrested, and his address and information, his telephone information, was recorded. It's that information that we can link him to the events, notwithstanding the photo array.

Just so the Court understands, what I'm trying to say here, put in context, the very telephone number on file, that the police had, was used to call the taxi in this case. The taxicab kept it. They had



(Colloguy)

it in their caller ID. And that, obviously, was a piece of information, that the police utilized when they put the photo array together.

Because this defendant's address information, including his telephone number, is the very same ten-digit telephone number. That it turns out that the incident took place in front of the defendant's last known address, which also is recorded in the arrest report from the prior episode. And I don't remember the name of the street off the top of my head. was 400 Lee Avenue, I believe.

I not only have a defendant, who is identified by the victim, through a photo line-up. I have the crime scene taking place right in front of the defendant's last known address. And the cab being called with the phone number that the defendant had prior to this episode, which the police recorded.

> Okay. THE COURT:

MR. SAMEIRO: 19 That's the context, Judge. intend to ask my officers leading questions, so, that 20 it's not disclosed to the jury that we had the 21 22 information because of the arrest. Your Honor could give an instruction, similar to a mug photo charge, 23 where you could say, the police obtain photographs from 24 a variety of sources, like driver's license 25

(Colloquy)

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information, or passports.

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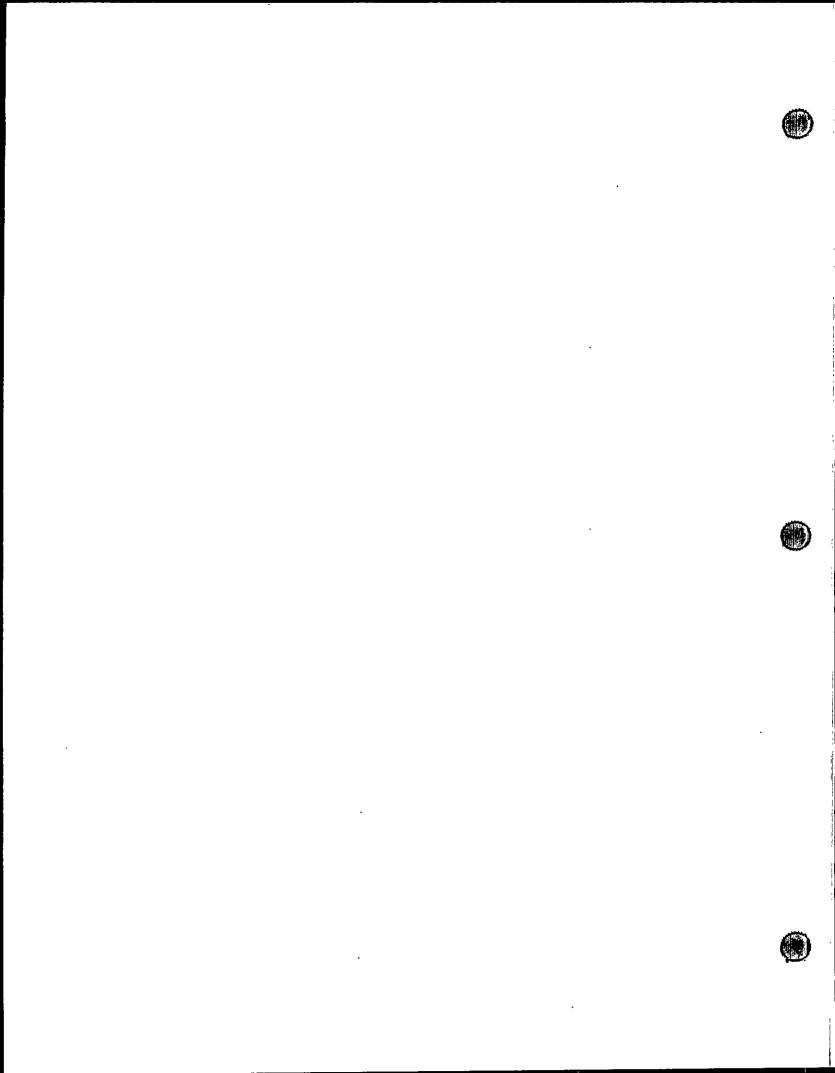
You could say the same thing about this Telling them that the police come into information. possession of the information, because witnesses report crimes, or witnesses are asked questions. And we could deal with that. But, again, I'm entitled to this information. It's going to be part of the case. that's why I think it's important in the summary of the Because the jury needs to understand, if we're going to give them a summary, to lead them along the right path, it is really an identification case.

If Counsel doesn't see it that way, he can explain his position to the Court. I see this as an identification case. So, my summary was intended to frame the issues along those lines. Thank you.

MR. GONZALEZ: I think Mr. Sameiro is putting the cart before the horse with regard to the evidence that will be allowed -- the evidence that will be introduced in this trial. There is an allegation that the phone number, that was given to Officer Bobadilla, at the time of the initial intake of this particular case, was a phone number that was included on his report. Now, if the State neglected to do an investigation, it is not my job to do so.

24

25 To say that that number came from a phone



(Colloguy)

call made by the alleged victim, to the taxi company, 1 wherein a taxi company person, whoever it was, whom I 2 do not know, that indicated that is the number that called for that address. Now, with regards to the information, that was obtained from the taxi company, the State would need the taxi company, this person who actually observed this phone number on the caller ID, 7 or the phone record log, indicating that the phone 8 number was, in fact, the phone number used. 9

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So, it's a hearsay type statement, Judge, which we would be objecting to the whole time, as to that particular fact, of the phone number, because the phone number, in and of itself, is hearsay. Because the cab driver never ever saw that particular phone He was allegedly, simply, relayed that 15 particular information. What was seen, as part of the State's evidence, whether it be the phone log, via a phone log, via a business record, or a person who could testify to this. And the statement itself is a hearsay statement.

It's going to be offered to prove the truth of the matter asserted, being the phone number which doesn't tie into this case. If the proper evidence rule, which will be objected to, and in part of my motion in limine, I intended on addressing that

(Colloquy)

11

The State does not have anything particular issue. that ties this information, through the witness, Mr.

Cedillo. So, it's clear hearsay, Judge. And I'm going to be asking, continuously, for it to be not included

in the State's evidence. I don't think it can.

Well, look, I am not going to get THE COURT: into this kind of stuff. The real issue is, I'd rather not go into the statement, if I don't have to.

Well, let me ask you: You have any problem just ending with the wording, recognized the defendant in a photo line-up procedure, that was videotaped at New Brunswick headquarters, and other corroborating information?

14 MR. SAMEIRO: I asked for the corroborating 15 information.

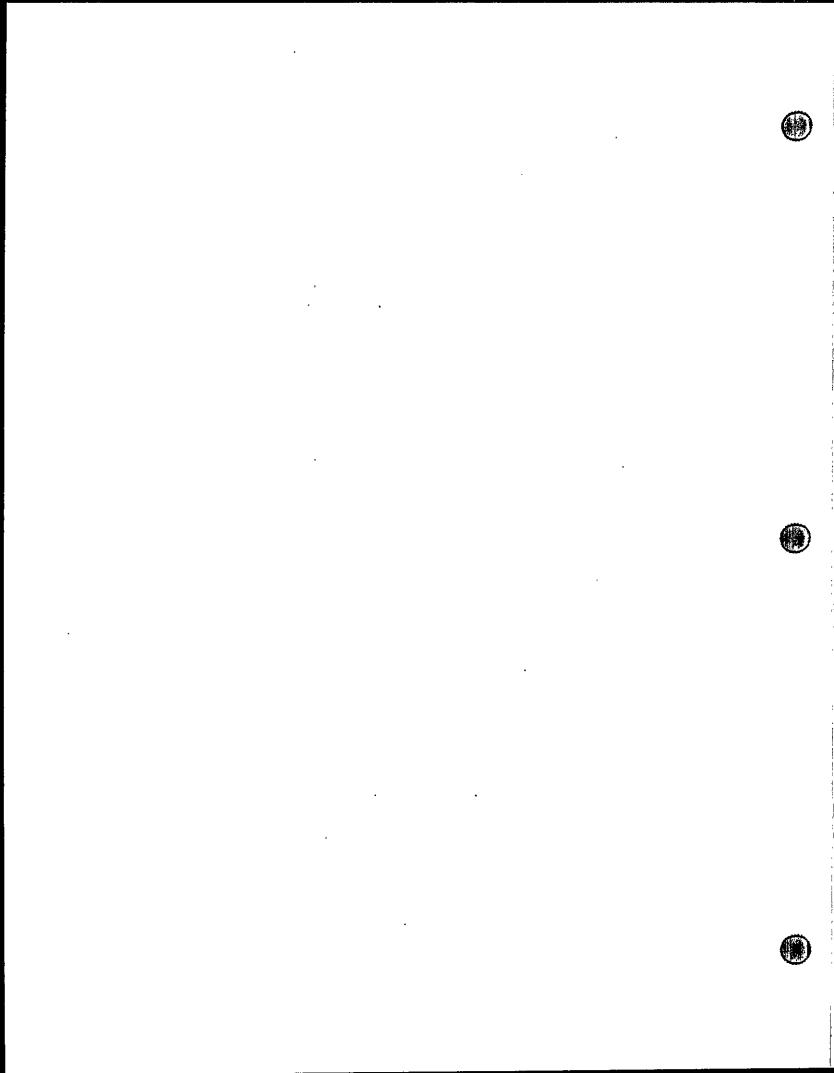
THE COURT: How about other investigation, or something very general?

MR. GONZALEZ: I haven't heard the Prosecutor 18 19 claim that the defendant's prior address information 20 won't be coming in.

MR. SAMEIRO: It is provided directly by the defendant, through his prior arrest.

23 MR. GONZALEZ: If Counsel wants me to have 24 the burden, then we won't sanitize that.

MR. SAMEIRO: But, in any event, the only



(Colloquy)

1 objection that I heard dealt with the phone number.

I'll concede, for the purposes of the Court's summary, you can remove that. But there are other corroborating

bits of information, that helps identify this

5 defendant.

And, Judge, I'm surprised to hear that Counsel alluded to the motion in limine. I don't recall reading about them or seeing them on the trial memo. Being told in advance, that there was going to be a motion in limine.

MR. GONZALEZ: Judge, just by virtue of what the State intends to prove, I anticipate Mr. Sameiro knows the Rules of Evidence, what can come in, and what can't come in. Him indicating that he is going to use this particular phone number, in his case-in-chief, is adverse to the Rules of Evidence. So, in hearing that, naturally, I have addressed it. It's been noted as an objection that I would have, Judge.

19 THE COURT: Okay. Let's address it when we 20 get to it.

For now, I think, the best thing to do is to indicate, that that second sentence, on or about July 25, 2007, Mr. Cedillo recognized this defendant from a photo line-up procedure, which was videotaped at New Brunswick headquarters.

(Colloquy)

MR. GONZALEZ: I would ask the Court to end there. And then proceed, Mr. Machado pleads not guilty to all charges in this Indictment.

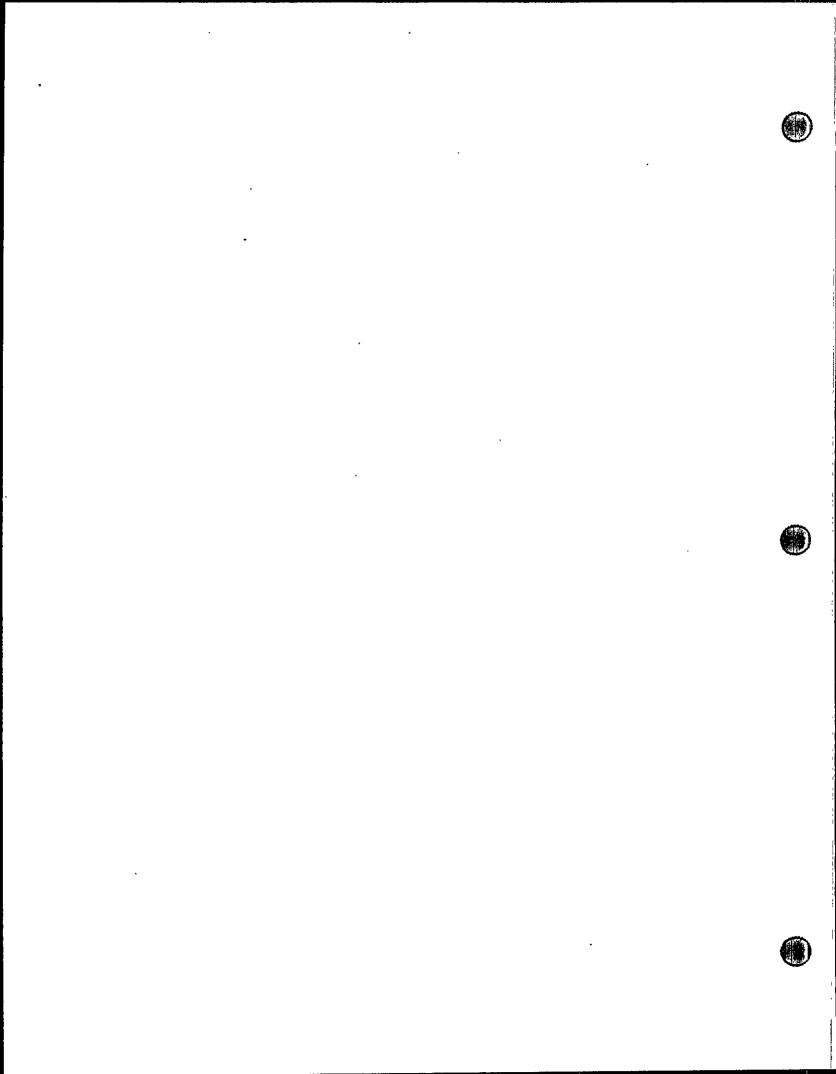
THE COURT: Now, let's just leave it there. That is very simple for them. What I'll read to them is, simply put, April 24, 2007, Wilmer Cedillo was robbed at gunpoint by the defendant and others, while Mr. Cedillo was operating a taxicab in the City of New Brunswick. On or about July 25, 2007, Mr. Cedillo recognized this defendant from a photo line-up procedure, which as videotaped at the New Brunswick police headquarters.

Hearing that -- The defendant, hearing these allegations -- what do you wish me to say? Mr. Machado pleads not guilty to all the charges in the Indictment?

MR. GONZALEZ: Fine. In addition -- it can

be added to that -- that the defendant denies the allegations or contests the allegations. That's not substantive.

MR. SAMEIRO: A not guilty plea. That is not substantive. It is a piece of evidence, contrary to the summary of the facts, which I'm offering is substantive evidence, to say that he contests the allegations. I guess, that statement is obvious. I wouldn't object to that.



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(Colloquy)
            THE COURT: I've said this before, in
 1
   previous trials, that the defendant denies these
 2
 3
   allegations.
            MR. GONZALEZ:
                           I would prefer, that the
   defendant pleads not quilty to these allegations.
   have used that before in other trials.
            MR. SAMEIRO:
                          I don't want it to be
 7
   substantive.
 8
            THE COURT: Look, I'm just trying to give
 9
   them some general information. It shouldn't be a
10
   20-minute argument. I will put down, he pleads not
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12
   quilty.
13
            MR. GONZALEZ: He pleads not guilty.
            MR. SAMEIRO: Obviously, that's why we're
14
15
   here.
           MR. GONZALEZ:
                           There we go, Judge.
16
            THE COURT: All right. Are we ready to bring
17
   the jury in?
18
            MR. GONZALEZ: Yes, Judge.
19
                         Yes, Judge.
            MR. SAMEIRO:
20
            THE COURT: Okay. Let's bring the jury in.
21
            (Whereupon, the prospective jury panel enters
22
23
   the courtroom.)
            (Whereupon, the jury selection process
24
25
   began.)
                         (Jury Selection)
                                                            15
            THE COURT:
                      All right. Good morning,
 1
              Hopefully, we can move through this process
 2
   everyone.
   in a little bit, and we can get those of you who are
 3
   standing, seated.
 4
            All right. My name is Barbara Stolte.
 5
   Judge of the Superior Court of the State of New Jersey.
   Ladies and gentlemen, you have been brought here today,
 7
   so, we may select a jury for this case, which is
 8
 9
   entitled the State of New Jersey versus Pablo Machado.
            Now, we are about to begin a process, which
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   is called the voir dire. The purpose of the voir dire
11
   is really very simple. To obtain a jury, which is very
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   able to hear this case, without any bias, prejudice, or
13
   preconceived ideas. In short, the idea is to select a
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15
   fair jury.
16
            Now, members of the panel, we are here to try
   the matter in dispute, between the State of New Jersey
17
   and Pablo Machado. This is a criminal case. I'll just
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   generally let you know what the charges are.
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   to you, more specifically, the charges in the
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   Indictment, in just a few minutes.
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            The charges are, one count of conspiracy, one
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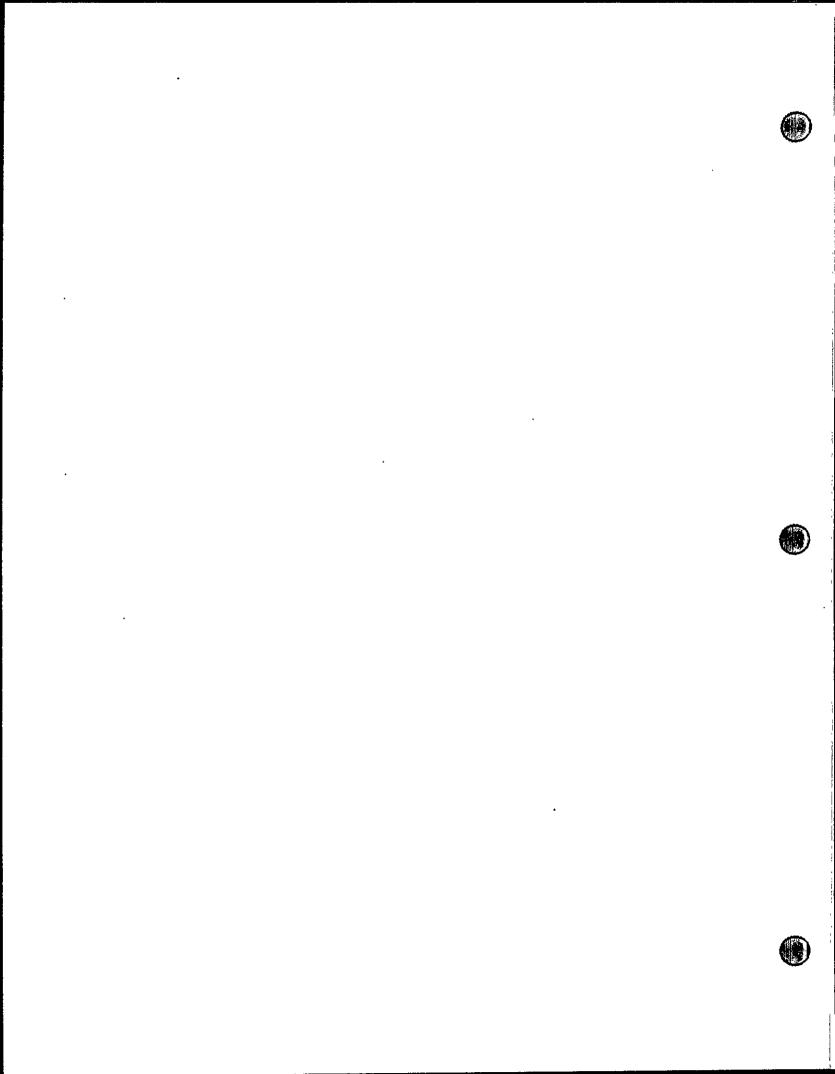
count of armed robbery, one count of unlawful

possession of a weapon, a count of possession of a

weapon for an unlawful purpose, one count of theft, and

23

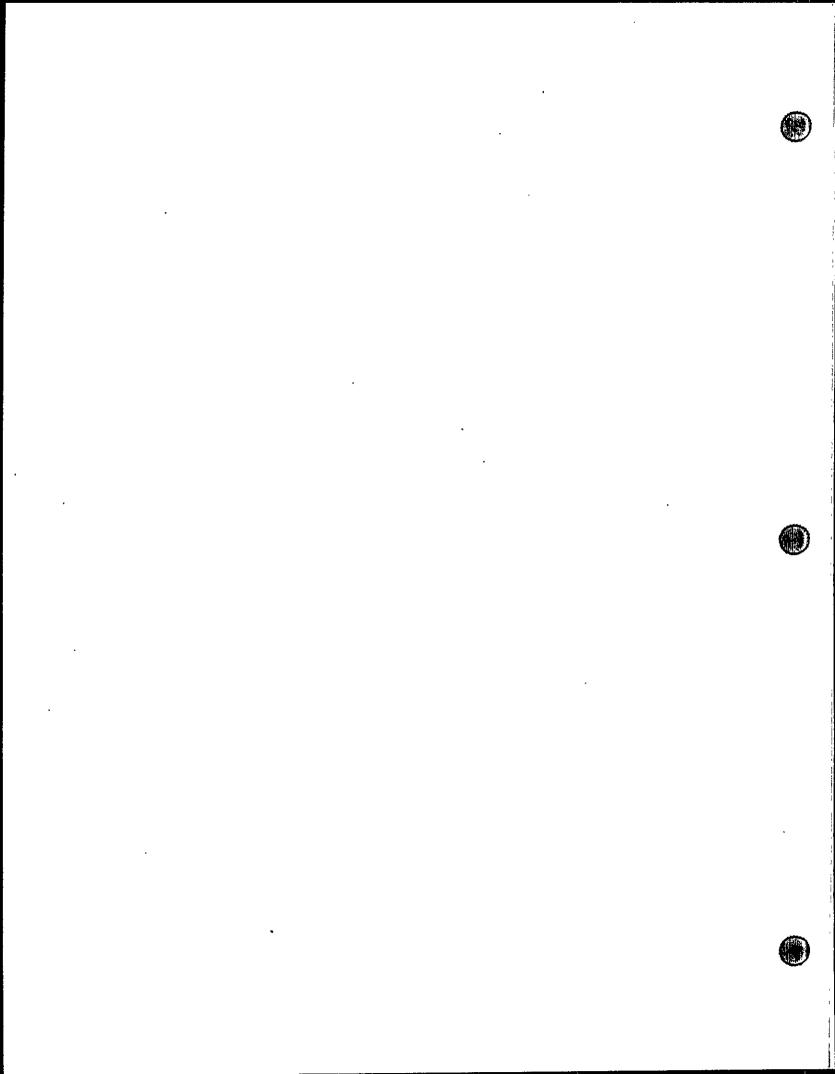
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(Jury Selection)
   two different counts of terroristic threats.
 1
 2
            Now, what I should now do first is make sure
   that everyone is qualified to be on the jury.
 3
   reading from the questionnaire. Let me make sure that
                                   Is everyone here age 18
   everybody has a questionnaire.
              It looks like that. Thank you. Is everyone
   or older?
   here a citizen of the United States?
 7
                                         Yes.
   Is everyone here able to read and understand the
 8
 9
   English language? Yes. Yes.
                                  Yes.
                                         Is everyone here a
   resident of Middlesex County? Yes.
                                        Yes.
                                               Yes.
10
            Has anyone here been convicted of an
11
   Indictable offense, in any State or Federal Court?
12
13
   No. No.
            JUROR KIMMEL:
                           What is an Indictable offense?
14
            THE COURT: I'm going to say, a fourth
15
   degree. You won't probably know that. One where a
16
17
   Grand Jury case has been presented to a Grand Jury.
   And it would be held, most likely, in Superior Court.
18
   DWI, things along those lines, are not Indictable
19
   offenses. Motor vehicle offenses are not Indictable.
20
21
   Municipal Court is not an Indictable offense.
22
            A JUROR:
                     Okay.
                       All right.
                                   Anybody have a
23
            THE COURT:
   response to that? No. No. Okay.
                                      Does anybody have
24
   any physical or mental disability, that would prevent
25
                         (Jury Selection)
   them from serving as a juror? Anybody who has that
 1
 2
   issue?
           No.
            All right. Now, I'm going to move to 2-A.
 3
   will let you know this. I've spoken to the attorneys
   in this case. And our assumption is that, depending
 5
   upon when you start. Obviously, we are starting to
   pick a jury. I don't know how long it is going to
 7
   take. More than likely, this jury would get this case
 8
   probably Thursday morning. Okay. Today is Monday.
 9
   However long it takes to pick a jury. The case will go
10
   to the jury on Thursday morning.
11
12
            What that means, once the case goes to the
   jury, the jury gets to deliberate. I can't tell -- I
13
14
   really can't say how long that would be. But because
15
   it would go to you Thursday morning, I would assume you
   would have to be available Thursday, and, potentially,
16
17
   Friday. So, we're looking at the trial to take this
18
   week.
19
           All right. If you have plans to be out of
20
   the state for next week, again, I don't anticipate it
21
   going into next week. But if you have plans to be out
   of state next week, hold that in the back of your mind.
22
   If you come up as a juror, I will address that. Okay.
23
24
   But I think we should be ending by Friday.
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All right. Also, before we keep going, we



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(Jury Selection)
                                                            18
   try to start as close to 9:00 in the morning as
 1
   possible. We do take a mid-morning break at 10:30 or
 2
        We usually break for lunch at 12:30 to 1:30.
   have an afternoon break. We finish really anywhere
   between 4:00 and 4:30, at the very latest.
            All right. I just wanted to give you the
 6
 7
   schedule, too, as well. Does anybody here -- This is
   the only reason I want to hear now -- who because of
 8
   their not getting paid from work, they have a prepaid
 9
   vacation this week, or a prearranged business trip this
10
   week, who cannot be here? Just those people. Other
11
   issues I will deal with. Only those people that I want
12
13
   with prepaid vacation this week, prearranged business
14
   trip, not getting paid, and it's a financial hardship.
15
   Anybody over here?
16
           Ma'am, what is your name? Your name and
17
   juror numbers.
            JUROR GU:
18
                       Lingping Gu.
                      How do you spell that?
            THE COURT:
19
20
            JUROR GU:
                       G-u.
            THE COURT: Linaping Gu?
21
22
            JUROR GU:
                       Lingping Gu. And, also, I have
23
   time scheduled --
24
            THE COURT:
                      Let me take one thing at a time.
   Miss Gu, what's the problem with this week?
25
                                                            19
                         (Jury Selection)
                       Well, I'm a physician.
            JUROR GU:
                                               I solely
 1
              I did ask one person to cover for me.
 2
   practice.
   Thursday and Friday, she is going to take vacation.
 3
 4
   cover for her.
            THE COURT: Well, here's the problem.
 5
   you get your notice, it should say, one day, one trial.
   Your trial could be three days. You come in.
 7
 8
   been able to work with whatever the schedule will be.
 9
            JUROR GU: Yeah.
                              I explained to them,
   initially, I say, very difficult to arrange time,
10
   because I do have patient in hospital and in my office.
11
12
   And one day ahead of time I schedule.
13
            THE COURT:
                       Okay.
                      But, after that, I didn't expect
14
            JUROR GU:
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   Thursday and Friday. So, my partner, we usually cover
                She is scheduled for vacation for this
16
   each other.
17
   week, end of the week. She is scheduled to be out on
   vacation the end of this week. So, I'm supposed to
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19
   cover for her.
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            THE COURT: All right. Miss Gu, I'll excuse
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   you, based on your issue, because the person taking
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over for you is not going to be here. But, next time,

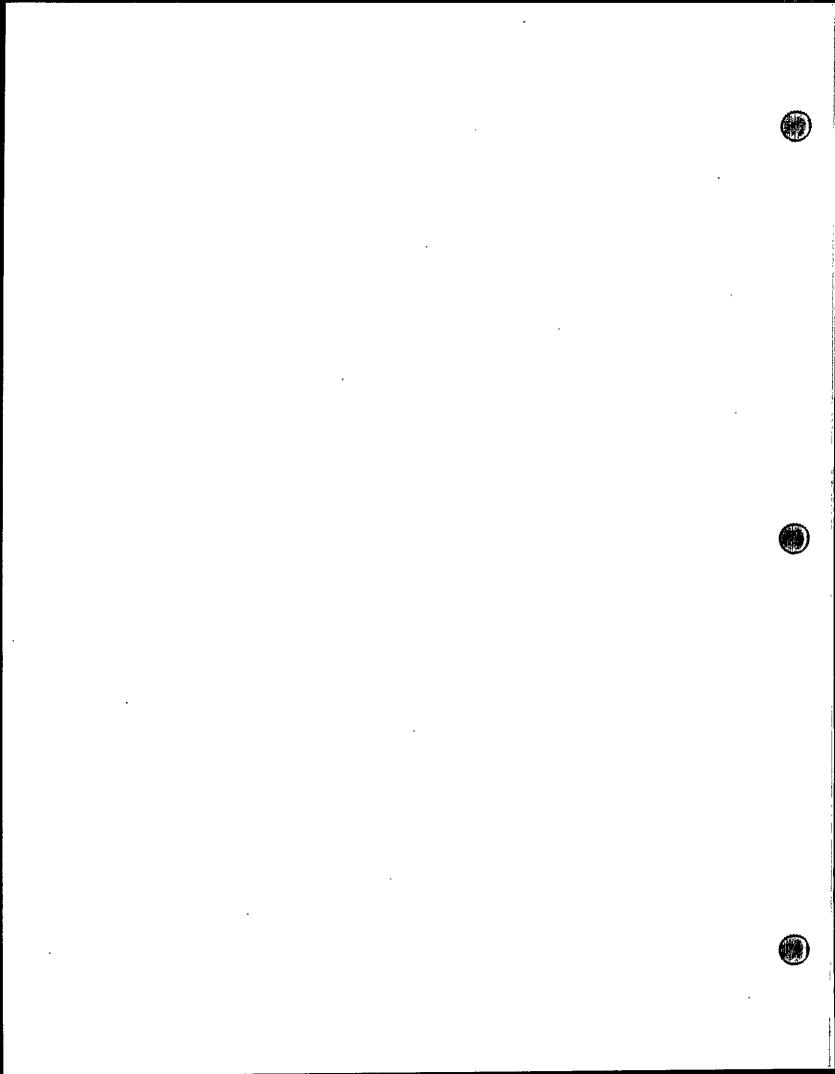
trial. One trial could be two weeks. It is somewhat

to schedule a back-up plan. It does tell you, one

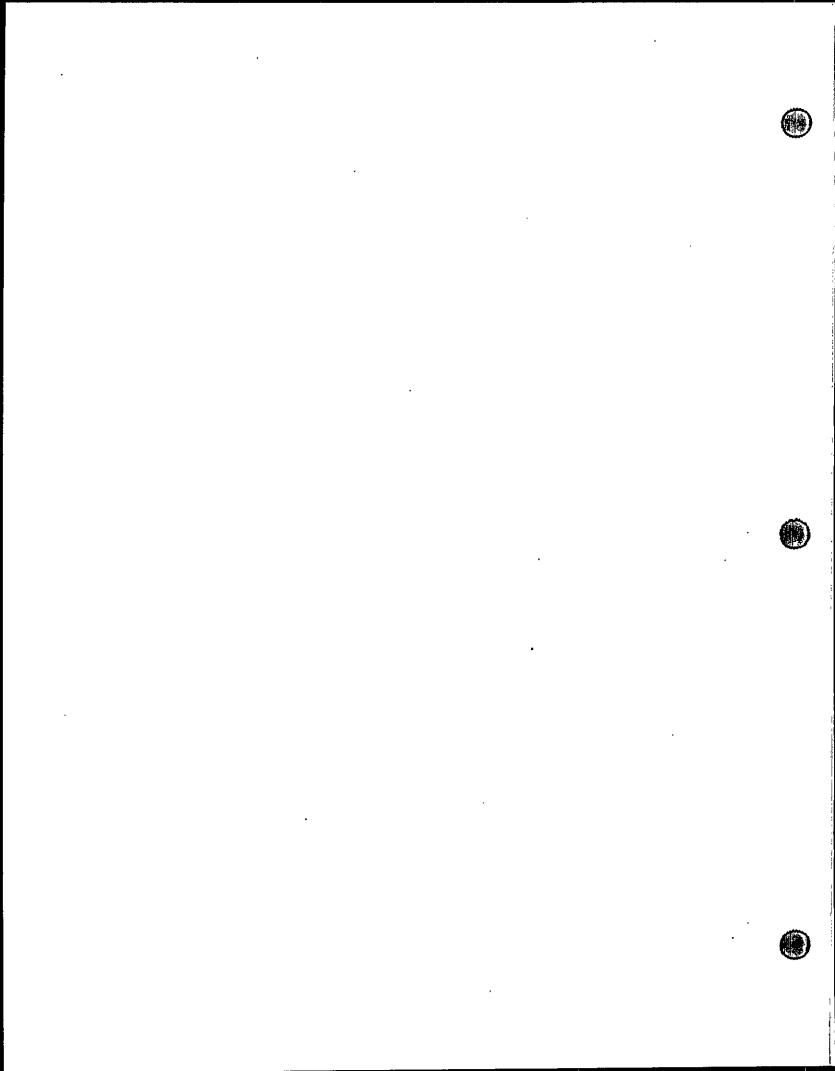
please remember, when you get that notice, you have got

22 23

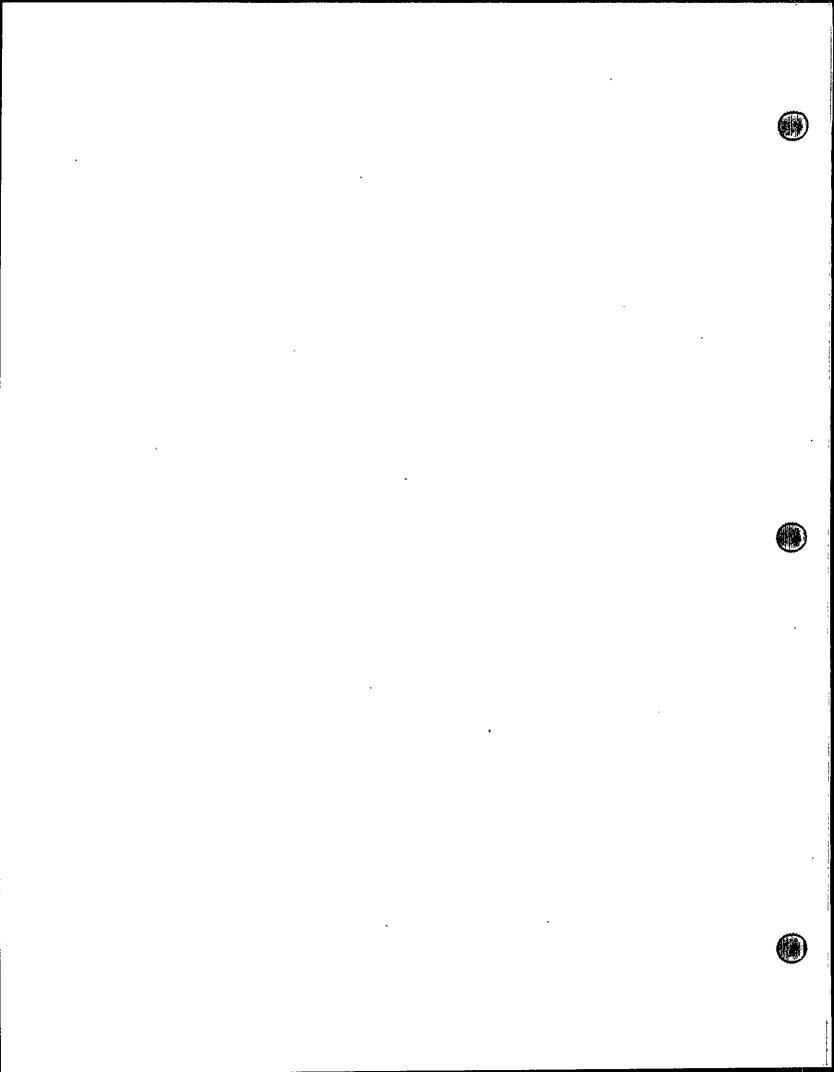
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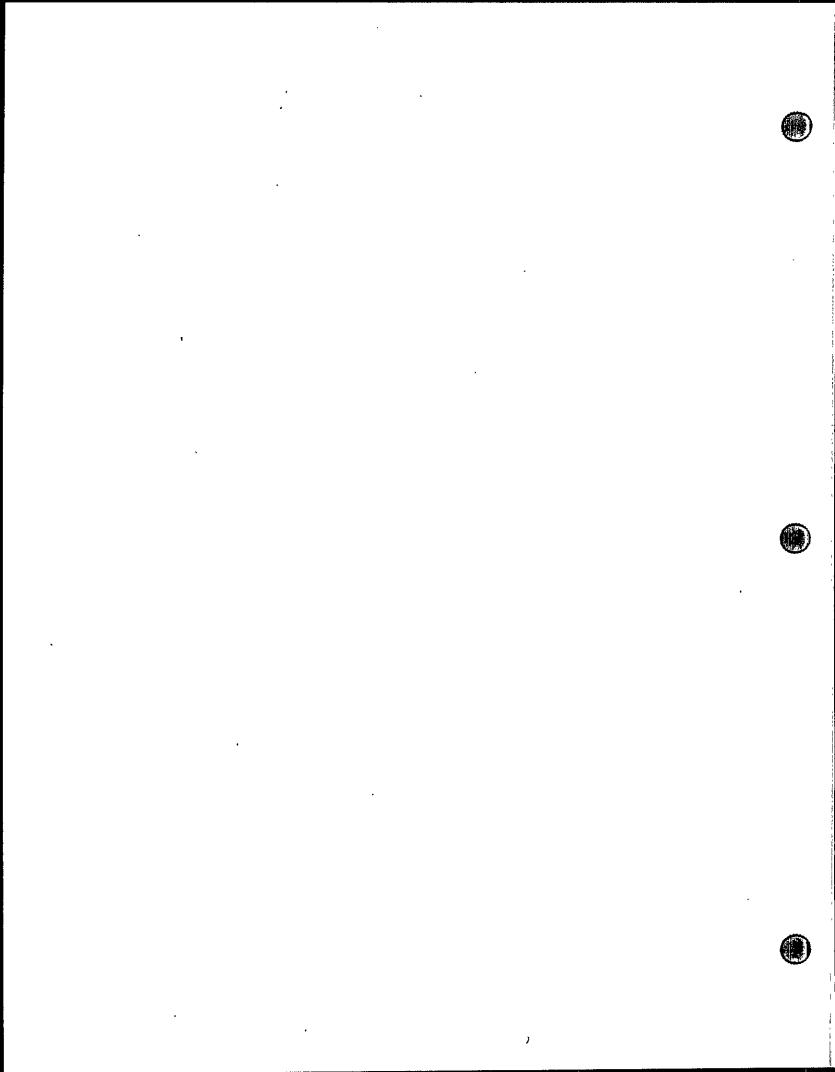
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(Jury Selection)
                                                           20
   rare for one day.
 1
           All right. I'll excuse you from this panel.
 2
   That doesn't mean that you are excused from the other
          From this one, I will excuse you from.
           All right. Yes, sir? What is your name?
 5
 6
           JUROR ALSTON: Alston.
 7
           THE COURT:
                       Alston.
            JUROR ALSTON: I have customers on Thursday.
 8
 9
   I have to go on Thursday.
                       Where is that?
10
           THE COURT:
            JUROR ALSTON:
                          Basking Ridge. I have to
11
   present to customers on Thursday.
12
13
           THE COURT: Can anybody else do that for you?
           JUROR ALSTON: No. Actually, my account is
14
15
   in sales.
           THE COURT: Mr. Alston, I will hold you. I
16
   will mark it down. If you get up here, I will question
17
18
   you further about it.
19
            JUROR ALSTON: I have to present to customers
  on Thursday. I am in sales.
20
            THE COURT:
                      Okay. I understand.
21
            Yes, ma'am?
22
23
            JUROR NEVES: Maria Neves.
24
            THE COURT: Maria Neves.
            JUROR NEVES: I have a small business, and
25
                                                           21
                        (Jury Selection)
   I'm only one running the business. If I'm here, I have
 1
   to close the doors.
 2
            THE COURT: What kind of business?
 3
            JUROR NEVES: It's a store. A dress shop. A
 4
   little dress shop. I'm the only one that is there.
 5
   And there is -- times are bad enough. I can't afford
 7
   to close the store.
            THE COURT: You don't have anybody to work
 8
 9
   for you?
10
            JUROR NEVES: I just only one. If I am not
   there, the store is closed, and I am not making any
11
12
   money now.
13
           THE COURT: Is that a financial hardship for
14
   you?
15
            JUROR NEVES: Yes.
16
           THE COURT: Okay, Miss Neves, based on your
17 circumstances, I will excuse you.
18
            JUROR NEVES:
                          Thank you.
19
           THE COURT:
                      Sir?
20
            JUROR ESSIEN: My name is Victor Essien.
21 an attorney, sole practitioner. And I have cases to
22
   attend to this week. Particularly, Wednesday, I have
23
   two hearings to attend. And I just relocated my
24
   office. And, any time, I haven't seen my clients for
   almost a week now. And any time you take from work it
25
```



```
(Jury Selection)
   is going to cost me financially. I can't get anybody
 1
   to cover for those cases that I have hearings for.
            THE COURT: Mr. Essien, let me hold you for a
                If you get up, I will question you a
   little bit.
   little bit further regarding your status.
 6
            Sir?
 7
            JUROR HORWITZ: Alan Horwitz. Run a small
   business with a partner, who just -- Unfortunately, my
 8
   partner just texted me, that he could not come in
 9
   today, because he is ill. So, right now, nobody is
10
   running the business, besides my employees.
11
12
   and he's in bed. Because normally he would be able to
   take over. He just sent me a message about an hour
13
         He is in bed with a hundred and one.
14
            THE COURT: I will hold you a little bit.
15
   you get up here, I will question you a little further.
16
17
            Yes, ma'am?
            JUROR PADILLA:
                           Hi. Respectfully, Judge, I
18
                I have served in a jury before with no
19
   understand.
   problem. But if it is a week long, I am self-employed.
20
21
   I own a dancing school.
            THE COURT: Your name?
22
            JUROR PADILLA: Doreen Graham Padilla.
23
24
   Number 276.
           MR. SAMEIRO: Second page, middle, your
25
                         (Jury Selection)
                                                            23
 1
   Honor.
 2
            THE COURT: I have a different list from you.
 3
   There it is.
            Miss Padilla?
 4
            JUROR PADILLA:
                            I'm already paying somebody
 5
   to teach for me. It is a difficult time to come.
   is Nutcracker week. Sunday -- I've invested a lot of
 7
   money. I have the truck rentals and stage time.
 8
   I'm not there, the show won't go on.
                                         I have a hundred
 9
                           It is not a good week.
                                                   It is a
10
   children in the show.
   hardship. I have a small business. Times are bad as
11
12
   it is.
13
            THE COURT: You are paying somebody to teach
14
   the students?
15
            JUROR PADILLA: I am paying somebody right
16
   now.
            THE COURT: To do the work you would normally
17
18
   be doing?
19
            JUROR PADILLA:
                           Yes.
20
            THE COURT: Which day?
21
            JUROR PADILLA:
                           Thursday it starts.
22
   rental truck coming at 8:00 a.m. Thursday morning, to
23
   start moving all my scenery to Middlesex County
24
   College.
25
           THE COURT:
                        So, Miss Padilla, based on your
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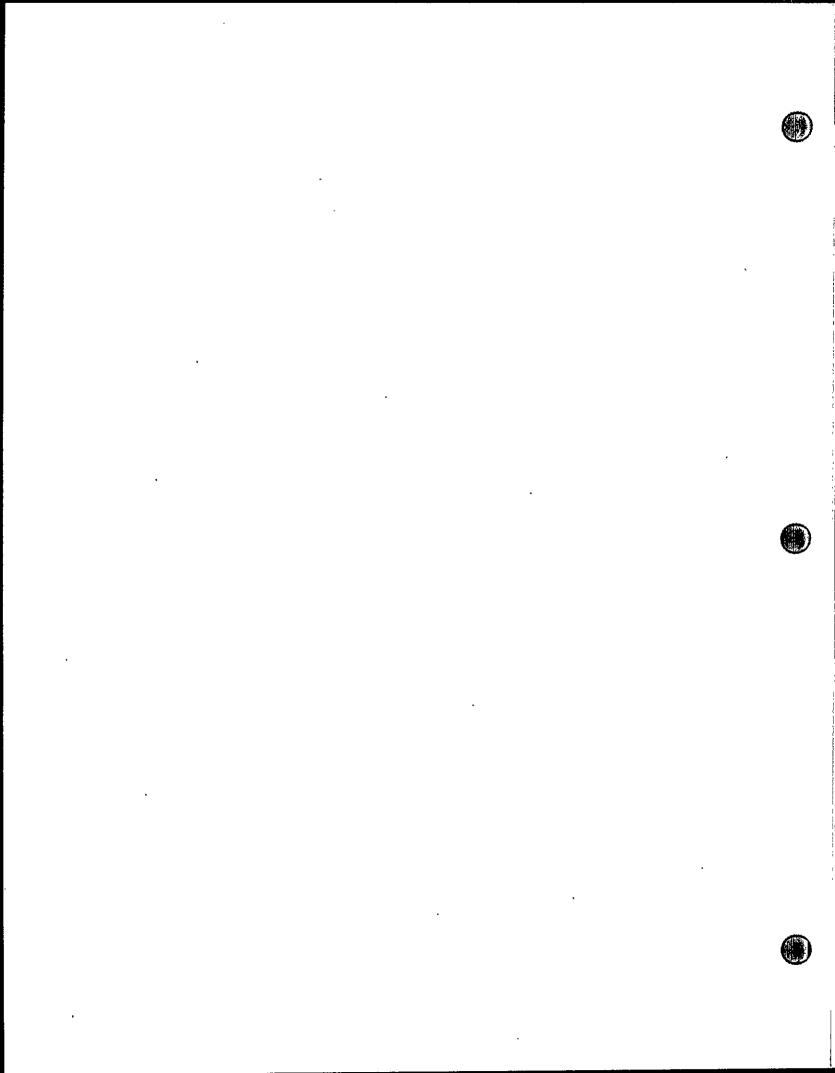
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(Jury Selection)
   set of circumstances, regarding this week, I will
   excuse you from the panel. Again, folks, I don't know
   if anybody else is going to excuse you.
 4
            JUROR PADILLA: I appreciate that.
   you.
 6
           THE COURT: Then let me continue on.
 7
            Sir?
 8
            JUROR KIMMEL: Going back to the question
   about the Indictable offense.
 9
           THE COURT: Right.
10
            JUROR KIMMEL: In the past, I've had, I
11
   believe, a misdemeanor. I am not sure --
12
           THE COURT: Tell you what, if you come up
13
   here, we'll come over to sidebar. We will see where we
14
   are. Could we have your name for the record?
15
            JUROR KIMMEL: Kevin Kimmel.
16
           THE COURT: Kevin Kimmel. Okay. If you get
17
   up here, then come over to sidebar.
18
           And to the left?
19
            JUROR AURIEMMA: Jessica Auriemma.
20
           THE COURT: Yes, ma'am. Stand up.
21
            JUROR AURIEMMA: Today is the only day I am
22
23 getting paid for.
                      Today is what?
           THE COURT:
24
            JUROR AURIEMMA: Today is the only day I'm
25
                        (Jury Selection)
                                                           25
  getting paid for work.
 1
                      Miss Auriemma, where do you work?
 2
           THE COURT:
            JUROR AURIEMMA: Gill & Chamas, an attorneys'
 3
 4 office in Woodbridge.
            THE COURT: Gill & Chamas are not paying you
 5
  to be here this week?
 7
            JUROR AURIEMMA: No.
 8
            THE COURT: Did you check with them?
 9
            JUROR AURIEMMA: Yes. I only get paid for
10
   today.
           THE COURT: That's Ray Gill?
11
            JUROR AURIEMMA: Ray Gill.
12
13
           THE COURT: Which I think is crazy. But
14 that's my opinion. That's surprising to me as well.
           All right. Miss Auriemma, you checked with
15
          They said, they are only going to pay you for
16
  them?
17
   today?
18
           JUROR AURIEMMA:
                            Yes.
19
           THE COURT: Is that a financial hardship to
20
   you?
           JUROR AURIEMMA: Yes.
21
22
                      I'll excuse you based on the fact
           THE COURT:
23 that I know this trial will go for -- I know that the
24
   case is expected to be given to you Thursday.
25
   least, three days or four days, perhaps, without you
```



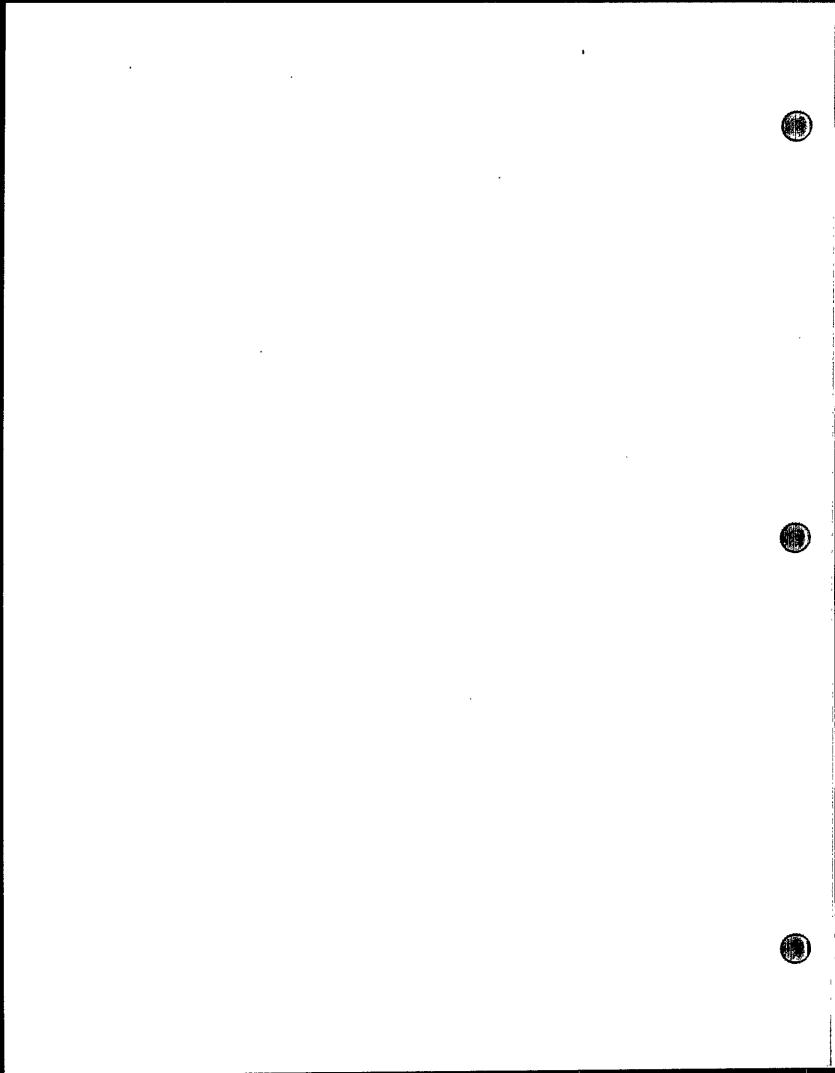
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(Jury Selection)
   having to be paid. That is a financial hardship.
   Thank you for that information. I will make a note of
 2
   that.
            So, what I'm going to do now, folks, I'm
   going to call our panel up of 14 people. Then I'll let
   you know what we are going to do from there. Ready?
   It seems like we are experiencing some technical
 7
   difficulties with the lists. We don't normally have
 8
   the same list. We have the same names, but not in the
 9
10
   same spot.
           Okay. My Clerk will start by calling out the
11
           I think we are ready now.
12
   names.
13
           THE CLERK: Juror Number 0466, Ammar,
   Estissam. First name, E-s-t-i-s-s-a-m. Juror Number
14
   0264, Alston, Corwin. Juror Number 0126, Colon, Rene.
15
16 Juror Number 0043, Essien, Victor. Juror Number 0296,
   Martinez, Jimmy. Juror Number 0196, Kimmel, Kevin.
17
   Juror Number 0006, Chan, Wailing. Juror Number 0413,
18
19 Sitton, Jose. Juror Number 0034, Gonzalez, Marianela.
   Juror Number 0085, Delgado, Scott. Juror Number 0069,
20
   Remick, Stacey. Juror Number 0162, Horwitz, Alan.
21
22 Juror Number 0063, Patel, Kunal.
                                     First name,
23 K-u-n-a-l. Juror Number 0273, Booker, Benjamin.
            THE COURT: Can I just see Counsel at
24
25
  sidebar?
                        (Jury Selection)
                                                           27
            (Whereupon, the following discussion occurred
 1
  at sidebar.)
 2
 3
            THE COURT: Wouldn't you know that every
 4 single person that has an issue is in the panel.
           May I get rid of them in some fashion now?
 5
  will bring them over here. I will start with Mr.
   Alston. He was the one -- as he comes over -- I'll
 7
 8
   remember.
 9
           Mr. Alston, come over here, sir.
10
           MR. SAMEIRO: He has a Thursday work
11 presentation.
12
           THE COURT: Yes.
13
            (Whereupon, Juror Alston complies.)
14
           THE COURT: Hi, Mr. Alston. You said you
   have a presentation for work on Thursday?
15
           JUROR ALSTON: Yeah. I do account sales for
16
17
   Verizon Wireless.
18
           THE COURT: What is your presentation on
19
   Thursday? You go to someone that you're trying to sell
20
   to and present?
21
           JUROR ALSTON: We actually have an executive
22
   briefing, where we present to the CEO. Some executive
23
   teams of IT.
24
           THE COURT: Let me ask you: Have you been
```

working on this presentation, I suppose, for some time?

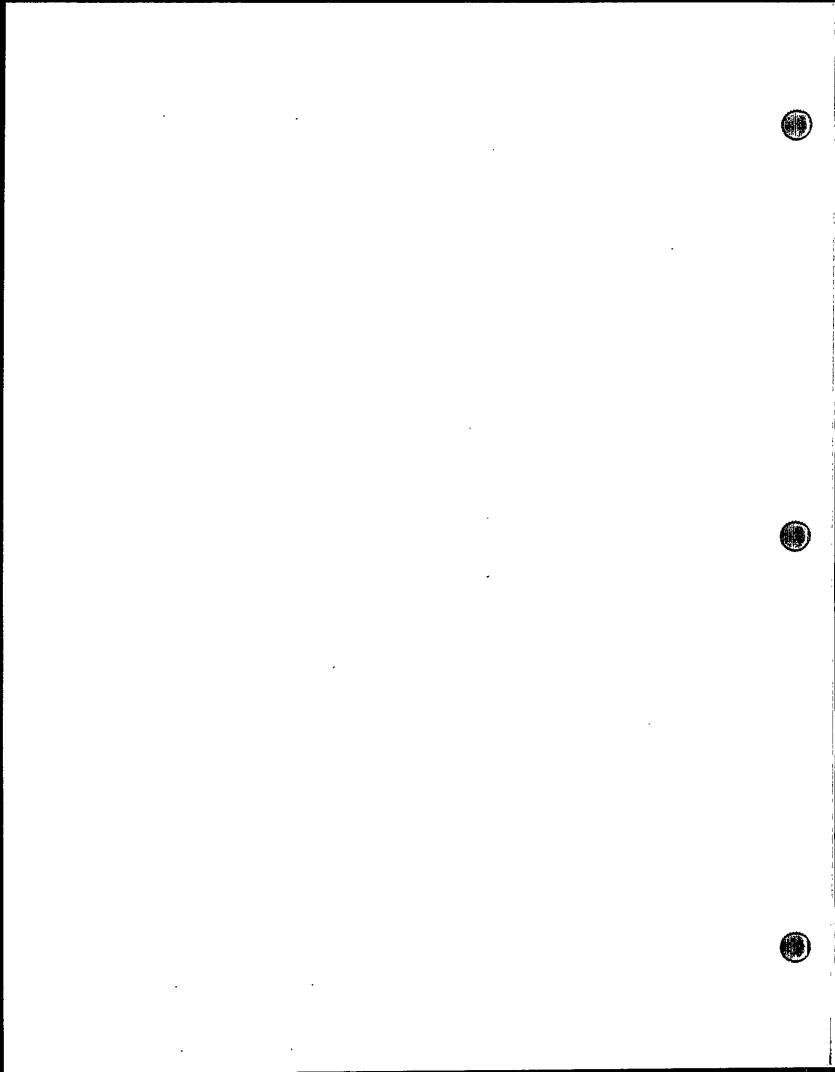
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28
                        (Jury Selection)
            JUROR ALSTON:
                           Yeah.
 1
 2
                      Is there anybody else that can go
            THE COURT:
 3
   do it for you?
            JUROR ALSTON: Well, my manager is going to
 4
               But as the account manager -- the manager
   be there.
   of the account, I actually have to kind of be present.
   I've done most of the leg work on the presentation.
 7
            THE COURT: Can I ask you a question?
 8
                                              Well, I don't
 9
   unlikely that you are sitting on Friday.
   know if you could adjourn it to Friday, or make it some
10
   other day? If you could maybe adjourn it to another
11
12
   date?
13
            JUROR ALSTON:
                           Some of the problem is, I
   can't postpone it now. I've been working on it for a
14
15
   long time.
16
            THE COURT:
                        I don't doubt that. I was just
17
   wondering if it could be a different day.
18
            Okay.
                   I'm going to excuse you, Mr. Alston.
   Perhaps, another time would be better. That appears to
19
   be a real genuine conflict. I think we have some other
20
21
   people who raised their hands.
22
            JUROR ALSTON:
                           Thank you.
                       Thank you. Have a good day.
23
            THE COURT:
            (Whereupon, Juror Alston leaves sidebar.)
24
                        Mr. Essien?
25
            THE COURT:
                                                            29
                        (Jury Selection)
            (Whereupon, Juror Essien comes to sidebar.)
 1
 2
            THE COURT: Mr. Essien, you have a law
 3
   practice. You have some motions you said for
   Wednesday?
 4
            JUROR ESSIEN: Wednesday. For separate
 5
 6
   individuals.
 7
            THE COURT: Usually the court system works
   with us in adjourning things. Is it possible that you
 8
   can get those matters put on for another day, so, you
 9
10
   will be able to sit?
11
            JUROR ESSIEN: Well, the problem is that this
   is -- It's in New York. And I think that they would
12
13
        You know, you have to be there to get the
14
   adjournment. I'm a sole practitioner. I can't get
   anybody to cover for me, given the short notice and
15
16
   everything else. '
17
            THE COURT:
                               Any questions?
                        Okay.
18
            MS. SAMEIRO:
                         No.
19
            THE COURT:
                       Mr. Essien, because you are a
20
   sole practitioner, and those schedules in New York,
21
   I'll excuse you from the panel.
22
            JUROR ESSIEN:
                           Thank you.
23
            THE COURT: Thank you. Another time might be
24
   better for you.
25
            (Whereupon, Juror Essien leaves sidebar.)
```



```
(Jury Selection)
                                                            30
            THE COURT: Mr. Kimmel, come up.
 1
            (Whereupon, Juror Kimmel comes to sidebar.)
 2
 3
            THE COURT: Hi, Mr. Kimmel. What did you
   have, as to the charge?
            JUROR KIMMEL: It was like more than 20 years
 5
 6
         There were four separate simple assaults total.
   ago.
            THE COURT: Some kind of fight situation, or
 7
   something like that?
 8
            JUROR KIMMEL: Yeah. Altercations.
 9
                       They were simple assaults?
            THE COURT:
10
11
            JUROR KIMMEL:
                           Yeah.
12
            THE COURT: Down in Municipal Court?
13
            JUROR KIMMEL:
                           Yeah. One set of two, I had
  come here, to the courtroom, to use PTI, because they
14
   were higher than misdemeanors. They got knocked down
15
   to simple assaults.
16
            THE COURT:
                       All one incident, so to speak?
17
18
            JUROR KIMMEL:
                           Two separate ones.
                                               And then
   one set of two, with the same incident.
19
20
            THE COURT: So, you came up here? You got
21
  PTI?
                                  I believe it was PTI.
22
            JUROR KIMMEL: Yeah.
               Because they were aggravated assaults to
23
   I believe.
24
   police officers.
            THE COURT:
                        Okay. They downgraded them, I
25
                         (Jury Selection)
                                                            31
 1
   quess?
 2
            JUROR KIMMEL: The PTI was the downgrade.
            THE COURT: Well, not necessarily. Because
 3
   PTI, if that's how it was handled, is not a conviction.
 4
   You have nothing. You weren't put on probation?
 5
 6
            JUROR KIMMEL: I was on probation once or
   twice, I believe.
 7
 8
            THE COURT: Was it the Municipal level?
            JUROR KIMMEL: The Municipal level, yes. And
 9
10
   I think, also, when I came here, to court for the one
   set of two simple assaults.
11
12
            THE COURT:
                        Okay. So, the PTI was on the
13
   aggravated assault.
            JUROR KIMMEL:
14
                           Right.
15
                        Then you were on probation for
            THE COURT:
16
   the simple assault?
17
            JUROR KIMMEL:
                           Yeah.
18
            THE COURT: It sounds to me that it might
19
   have been just a PTI, not a conviction for you.
20
            JUROR KIMMEL:
                           Yeah.
21
            THE COURT:
                       You said about 20 years ago?
22
            JUROR KIMMEL:
                           Yeah.
23
            THE COURT: When they got you over here, what
24
  happened?
25
           JUROR KIMMEL:
                           Well, with the police
```



officers?

1

2

3

9

10

11

12

13

1.4

15 16

17

18

19

1 2

3

5

6 7

14

15

16 17

18

THE COURT: Yes.

JUROR KIMMEL: In my opinion, I was provoked. And they just -- this is one of them -- they just wanted my license. They wanted my license. They wanted my information. They got my information. police officers -- One police officer gave my insurance card to the other police officer, to give back to me. Then he went to hand it to me, and, jokingly, when I went to grab it, he pulled it away from me. He did it like two or three times.

And then like the third or fourth time, he handed it to me. And I just grabbed it out of his hand real quick. And then it ripped, you know. And I still stood there. The other police officer was writing my information down, the license information. And the other police officer was like behind me. And he nudged me into the other one. That police officer was like, step back a little. I stepped back a little. He nudged me, again, into him. From there, it was like,

20 it just like escalated. 21 22 THE COURT: Okay. Let me ask you this:

getting a little ahead of myself in the guestion. 23 Since I do have you over here, do you feel that that 24 involvement -- you said, 20 years ago -- Where did this 25

(Jury Selection)

33

happen?

JUROR KIMMEL: East Brunswick.

Do you think that, if you heard THE COURT: from a police officer, if police officers came up and testified, would the fact you've had this experience, impact on your ability to judge the credibility of police officers?

8 JUROR KIMMEL: Not at all. No. years ago. I'd go by the facts and stuff. 9 10

THE COURT: All right.

Being that the police officers 11 JUROR KIMMEL: 12 are under oath, basically, I'd just go on the facts and 13 stuff.

Okay. All right. THE COURT: I'll certainly go through a lot of the questions with you, too. But since I have you up here, any questions regarding that, from the attorneys?

> MR. SAMEIRO: No.

19 Did you get an expungement MR. GONZALEZ:

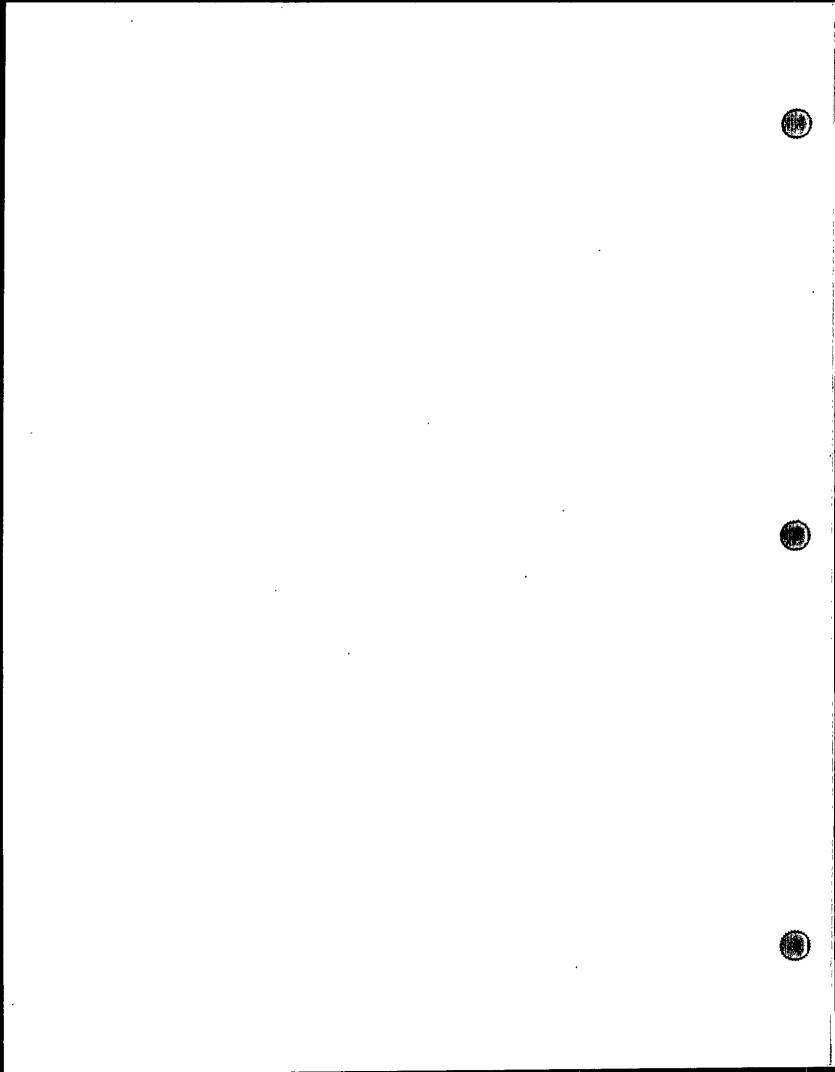
20 after?

21 JUROR KIMMEL: No, I never did. Never got it 22 expunged. I heard about it.

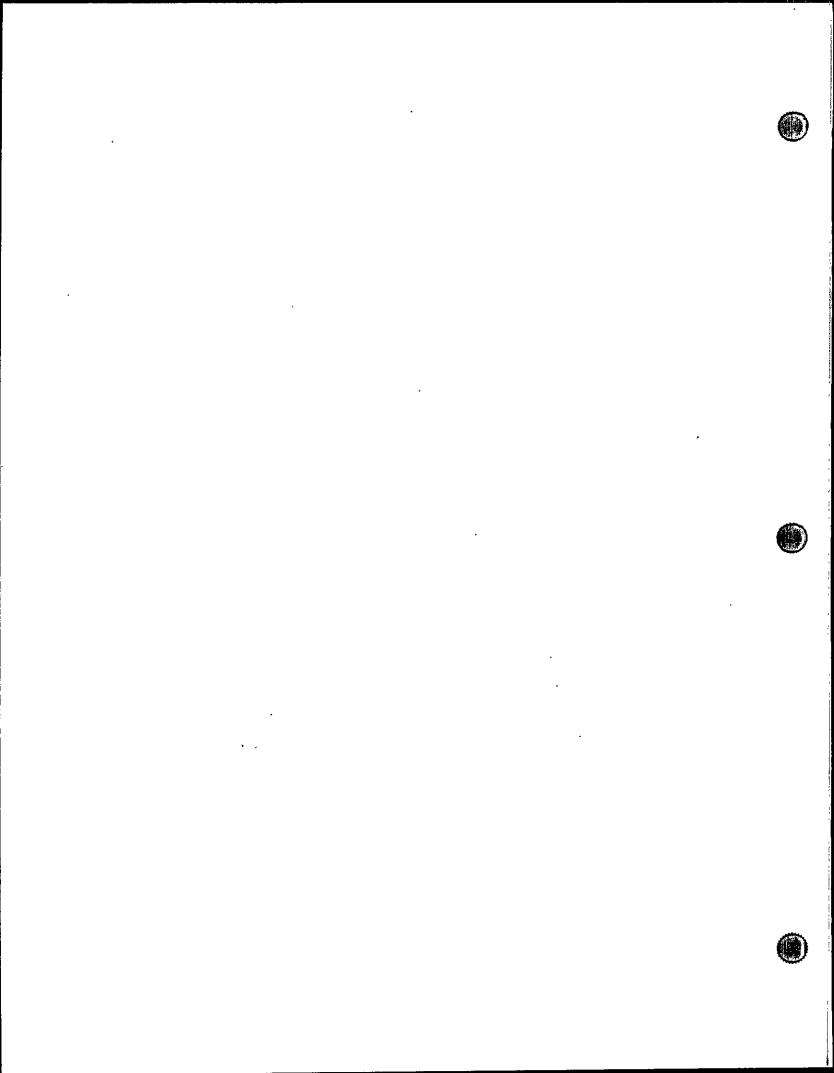
23 You just never got it done. MR. GONZALEZ:

I've had that happen before. You can get it expunged. 24

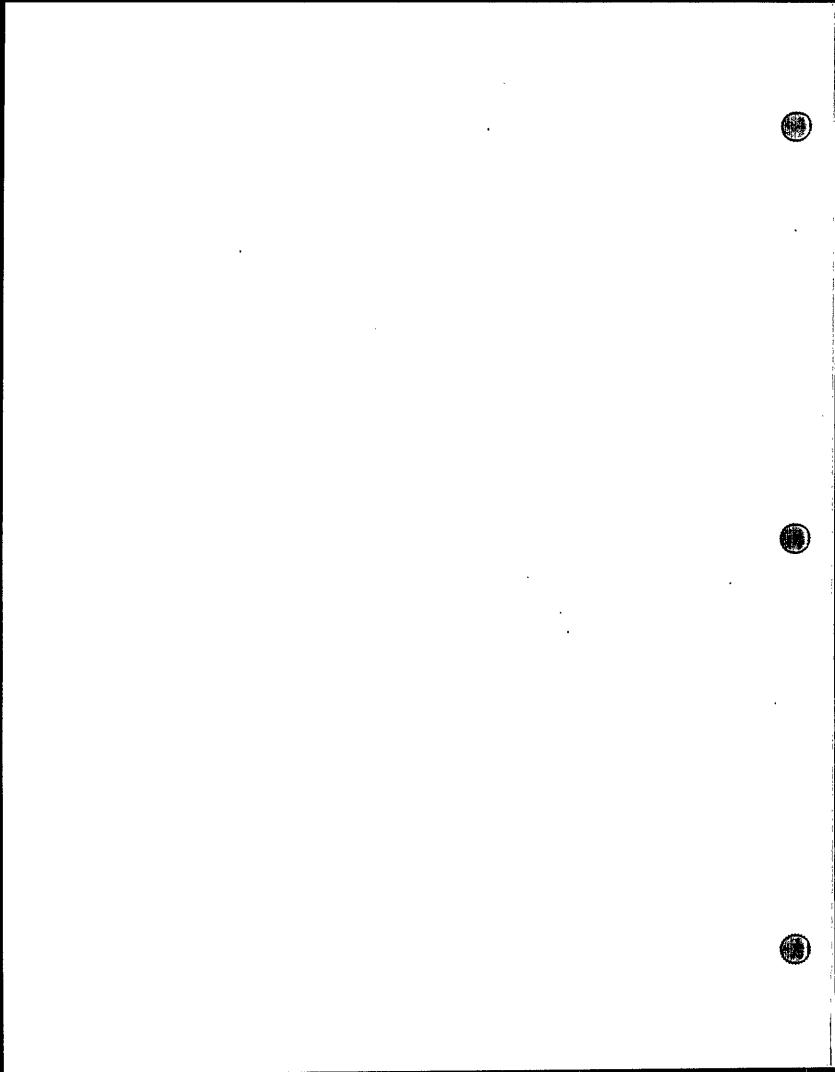
You are probably still eligible. 25



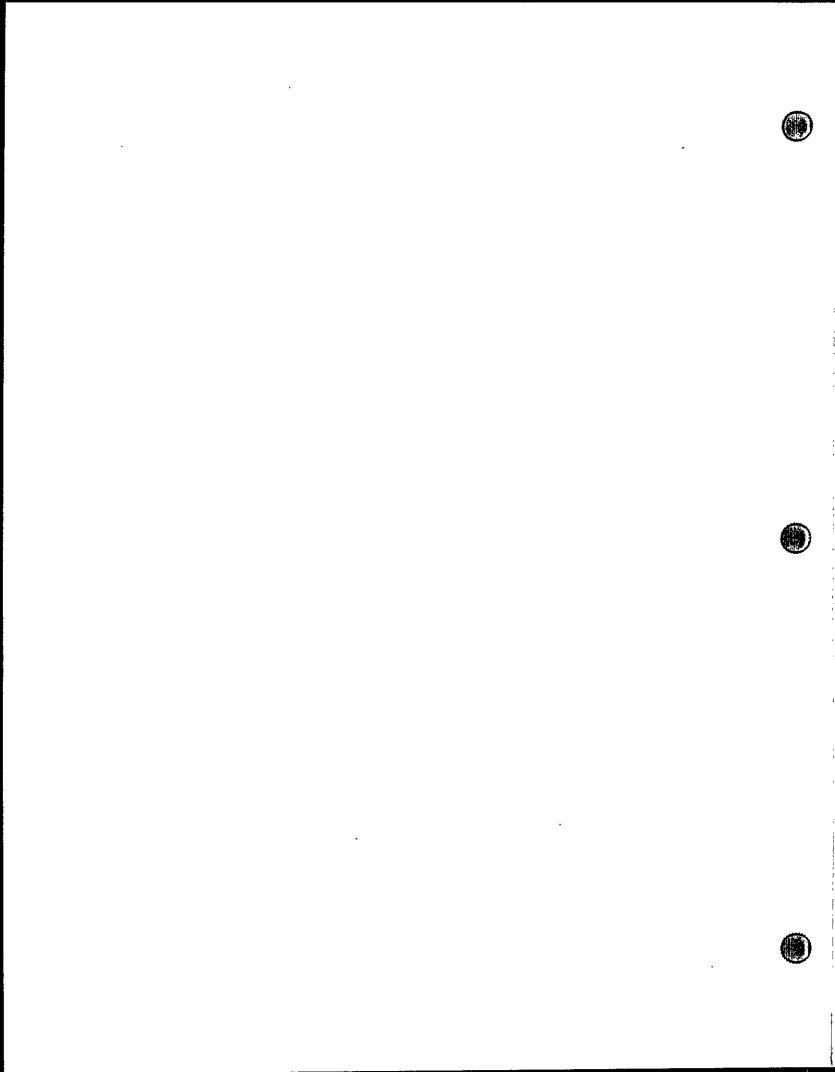
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(Jury Selection)
 1
            JUROR KIMMEL: Okay.
            MR. SAMEIRO: Actually, I do have a question,
 2
 3
   if I may. Are you done, Counsel?
           MR. GONZALEZ:
                           Sure.
            MR. SAMEIRO:
                          You mentioned two episodes.
 5
   That is, another assault episode in your history.
 6
   There were two separate simple assaults. One was
 7
   handled at the Municipal level. One was, I believe,
 8
 9
   actually, two ---
            JUROR KIMMEL: Actually, there was three.
10
   One was, I guess, about a special police officer.
11
   wasn't full-fledged. He was patrolling the high
12
13
   school.
14
            THE COURT: Different episode?
15
            JUROR KIMMEL:
                           Different episode.
            THE COURT: What about the third?
                                               Was there
16
   a third episode? Let's talk about the events.
17
            JUROR KIMMEL: Well, the first one was the
18
   simple assault on the regular civilian.
19
20
            THE COURT:
                        Where was that?
                           East Brunswick.
21
            JUROR KIMMEL:
                       About when was that?
22
            THE COURT:
                           Around the same time.
23
            JUROR KIMMEL:
   '86, '87, '88. Like they all pretty much happened --
24
   They were handled in Municipal Court.
25
                         (Jury Selection)
                                                            35
                       Were you convicted of that?
            THE COURT:
 1
 2
            JUROR KIMMEL: Yeah.
                                 I was charged with
                    Put on probation.
   simple assault.
            THE COURT: What was the sentence? Do you
 4
   remember?
 5
            JUROR KIMMEL:
                           I believe, maybe like one year
 6
   probation. Something like that. Then the incident
 7
   with the special officer, the law enforcement officer.
 8
            THE COURT: Where did that happen?
 9
10
            JUROR KIMMEL:
                           East Brunswick as well.
11
            THE COURT: That was Municipal Court as well?
                          Municipal Court.
12
            JUROR KIMMEL:
13
            THE COURT:
                       Were you found guilty? Did you
   plead guilty to that charge?
14
            JUROR KIMMEL: I believe, I was found guilty.
15
   I'm not sure if I pled guilty. I forget.
16
17
            THE COURT: You were put on probation?
            JUROR KIMMEL: I believe so.
18
                       Then the other incident, as you
19
            THE COURT:
20
   said, around the same time? The one that occurred in
21
   East Brunswick, that was up here, that you got the PTI
22
23
            JUROR KIMMEL:
                           I believe I got PTI.
24
   charges were, you know, aggravated assault on police
25
   officers, which, I believe, were felonies.
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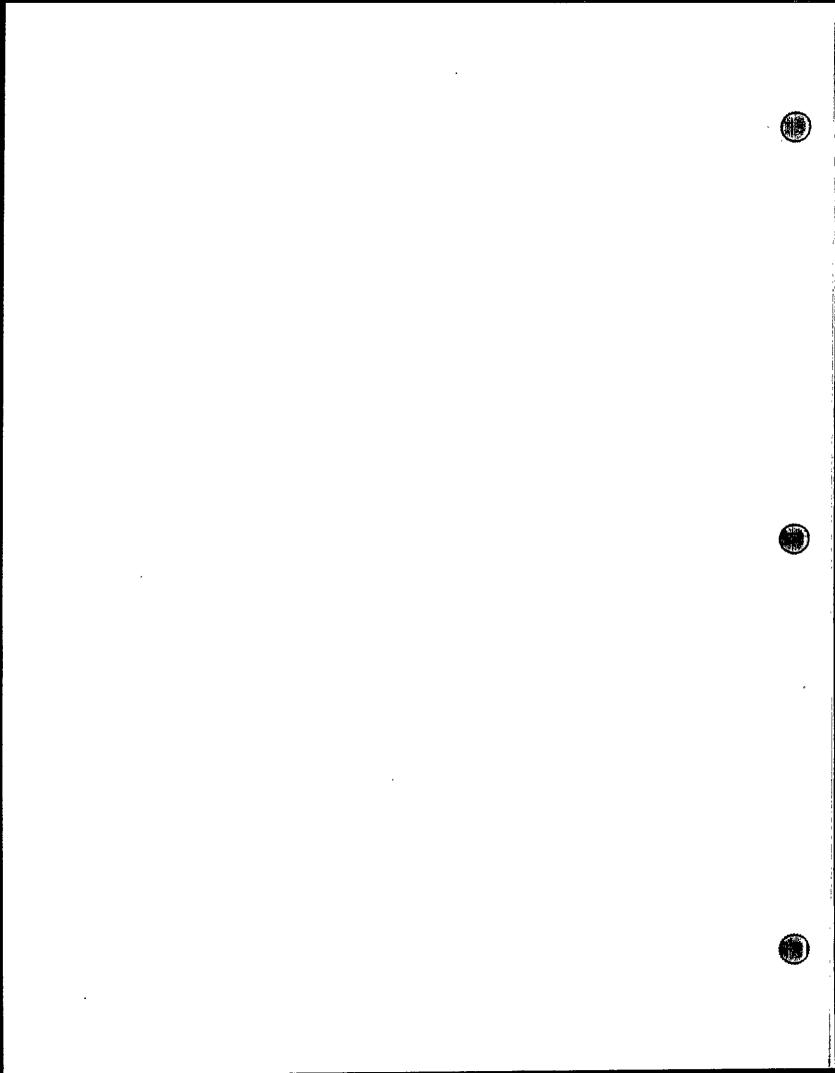
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36
                        (Jury Selection)
            THE COURT:
                        Uh-hum.
                                 Yes.
                                       I quess, you must
 1
   have been in the pre-trial intervention program.
 2
   know that you don't know. But the pre-trial
   intervention program is similar to probation.
                                                   You have
   to comply with conditions or fulfill conditions.
                                                       Once
   you complete the program, the case is dismissed.
 7
   you remember that happening?
            JUROR KIMMEL: I know I was on probation.
 8
   am not sure if it was PTI. I am pretty sure, because
 9
   that's what, I guess, my lawyer put in for, at first.
10
                   It was so long ago. I was young.
11
   I'm not sure.
            THE COURT: Okay.
                               All right.
12
13
            Anything further?
                          Do you feel like you were
            MR. SAMEIRO:
14
   provoked in the other two episodes?
                                         The one with the
15
   special police officer, the one with the civilian?
16
17
   said with the cops, who had the insurance card --
            JUROR KIMMEL:
                                  I was provoked.
18
                          Yeah.
            MR. SAMEIRO: You felt provoked in those
19
                        Yes?
                              No?
20
   other two matters?
            JUROR KIMMEL:
                           No.
                                They were totally
21
                              The one was just, because it
  different circumstances.
22
   was in a high school, he was chasing me. I ran down
23
   the hall. The door swung open. He wasn't too far
24
   behind. The door swung back and hit him.
                                               I didn't do
25
                                                            37
                         (Jury Selection)
                       You know, just running.
   it intentionally.
 1
 2
   other one, pretty much, I provoked it.
            MR. SAMEIRO:
 3
                          Okay.
                        Thank you.
            THE COURT:
 4
 5
            JUROR KIMMEL:
                           Thank you.
 6
            (Whereupon, Juror Kimmel leaves sidebar.)
 7
            THE COURT: You're Mr. Horwitz? Come over
   here, Mr. Horwitz.
 8
            (Whereupon, Juror Horwitz comes to sidebar.)
 9
10
            JUROR HORWITZ:
                            My brother and I own the
   business together. He contacted me this morning.
11
   is in bed.
               No one is there right now running the
12
13
   business except my employees.
                        What kind of business?
14
            THE COURT:
15
            JUROR HORWITZ:
                            It's a supply house.
   supply house in Perth Amboy.
16
17
            THE COURT:
                        I'm hoping you have good
18
   employees, who are able to run, at least, run the
   business, with no management there right now.
19
20
   people are there?
21
            JUROR HORWITZ:
                            Employees, 15.
22
                        I'm going to hold you for now.
            THE COURT:
23
   am not certain how sick your brother is.
                            I can tell you the message.
24
            JUROR HORWITZ:
25
                        That is not necessary.
            THE COURT:
```



```
(Jury Selection)
            Do you think he'll get better by tomorrow?
 1
 2
            JUROR HORWITZ: You want me to read the
  message? The message says, "I feel like shit. I'm in
   bed with a hundred and one."
           MR. SAMEIRO: It wasn't like his normal
 5
   message, no offense?
 6
 7
            JUROR HORWITZ: No. Not a normal message.
            THE COURT: Okay. Have a seat, Mr. Horwitz,
 8
 9
   for a minute.
10
            JUROR HORWITZ:
                            Thanks.
            (Whereupon, Juror Horwitz leaves sidebar.)
11
            (Whereupon, the hearing continued at
12
13
   sidebar.)
            THE COURT: I really don't want to go through
14
15 this whole thing, and have something happen. He can
   feel better tomorrow.
16
            MR. SAMEIRO: Well, I don't have an
17
   objection, if you excuse him for cause. I don't think
18
19 he wants to be here.
            THE COURT: That is the issue I'm having.
20
                           I don't have an issue either.
21
            MR. GONZALEZ:
            THE COURT: All right. I'll excuse him. I
22
23 have the same type of feeling. I really don't think he
24
   wants to be here. This is somebody who is going to
   look for something, as soon as they can, to get out
25
                        (Jury Selection)
                                                           39
  from serving on the panel.
 1
 2
            MR. GONZALEZ: What if it worsens?
                      That would be our luck.
 3
            THE COURT:
 4
            Okay.
                  Thank you.
 5
            MR. SAMEIRO: Thank you.
            MR. GONZALEZ:
                          Thank you.
 6
 7
            (Whereupon, the sidebar discussion
 8
   concluded.)
 9
           · (Whereupon, the hearing continued in the
10
   presence of the prospective jury panel.)
           THE COURT: Mr. Horwitz, I'll excuse you.
11
           Let's put new people in those seats. Then
12
13
   we'll go from there.
14
           THE CLERK: Juror Number 0108, Salley,
15
             Seat number two.
   Tamara.
16
            THE COURT: Seat number two.
            THE CLERK: Juror Number 0307, Velez, Joel.
17
   Seat number four. Juror Number 0151, Crockett,
18
19
   Phillip. Seat number 12.
20
            THE COURT: All right. Now, as I go through
21 my questions with those individuals who are seated in
   the box, I'm going to ask the individuals in the back
22
23
   just to follow along with your own questionnaire.
24
   may be excusing people. As we do, we will call new
   jurors up. I'm just going to ask you what your
25
```



```
(Jury Selection)
   responses are, if you have any responses up to the
 1
 2
   point that we're at.
 3
            All right. So, let me start with my group in
              I'm really going to start pretty much with
   the box.
          I really think we talked about 2-A. Do you have
   any medical, personal, or financial problem that would
   prevent you from serving on this jury? Anybody have an
   answer to that question? Seeing no response, I will go
 9
   on to the next one.
10
            Is there anything that would make it
11
   difficult for you to sit, listen, or deliberate, for
   about two hours without a break? Quite frankly, it is
12
   only about an hour and a half that you would have to
13
          Sometimes it is less. We take breaks pretty
14
            Sometimes there is just a reason for the jury
15
   to be excused while we do other things. You could
16
   always use the facilities during that point. Everybody
17
   okay for that period of time?
18
19
            Mr. Velez?
20
            JUROR VELEZ:
                          Going back to 2-B.
                                              My son is
21
               He's in the hospital with bronchitis.
   two months.
22
   wife is in the hospital. I don't know.
            THE COURT: Your two-month-old son has
23
24
   bronchitis?
            JUROR VELEZ: Yeah.
25
                                                           41
                        (Jury Selection)
                        Your wife is with him now?
            THE COURT:
 1
 2
            JUROR VELEZ:
                          Yeah.
                        Was he admitted?
 3
            THE COURT:
                          He was admitted since Monday.
            JUROR VELEZ:
 4
            THE COURT: Mr. Velez, I'm going to excuse
 5
   you. You have a two-month old in the hospital, Mr.
                              Thank you for being here.
 7
   Velez.
            You are excused.
            THE CLERK: Juror Number 0231, Cepeda, Lucy.
 8
   Seat number four.
 9
10
            THE COURT:
                        Okay.
                               We have gotten -- Miss
   Cepeda, any response to 2-B?
11
                          No. I just asked just one
12
            JUROR CEPEDA:
13
              Again, Miss Cepeda, any problem sitting,
   listening, for two hours without a break? Everybody
14
   okay with that? I have to go through many more
15
   questions, to give more information really for
16
17
   everyone.
18
            I will have the attorneys and Mr. Machado
19
   introduce themselves to you. I do realize that jury
20
   service is new to some of you. A few preliminary
21
   remarks may prove helpful. The first step in a jury
   trial is the selection of the jury. This process is
22
23
   important because both the State and the defendant are
24
   entitled to jurors, who are impartial and will agree to
   keep their minds open until a verdict is reached.
25
```



Jurors must be free from any possible bias, prejudice, or sympathy, and must not be influenced by preconceived ideas.

Those of you who are selected as jurors on this case shall serve as judges of the facts. In other words, you will listen to the testimony of the witnesses, examine any physical evidence that is introduced. Thereafter, determine the facts in the case. I am the judge of the law. At the conclusion of this matter, after the evidence has been presented, and Counsel have made their clothing arguments, I will tell you what the law is. And you must apply that law to the facts, in order to reach a fair and impartial verdict.

Now, although you may be qualified to serve as a juror, in most cases, there may be something that could disqualify you in this case. Or, perhaps, make it embarrassing for you to serve. In order to learn this, I will be asking you questions. Please understand, the questions I will ask are for a legitimate purpose. Not simply to pry into your personal affairs. Do not hesitate to speak your mind honestly and plainly. It is very important that you answer each question fully and truthfully. mind, too, there are no right or wrong answers.

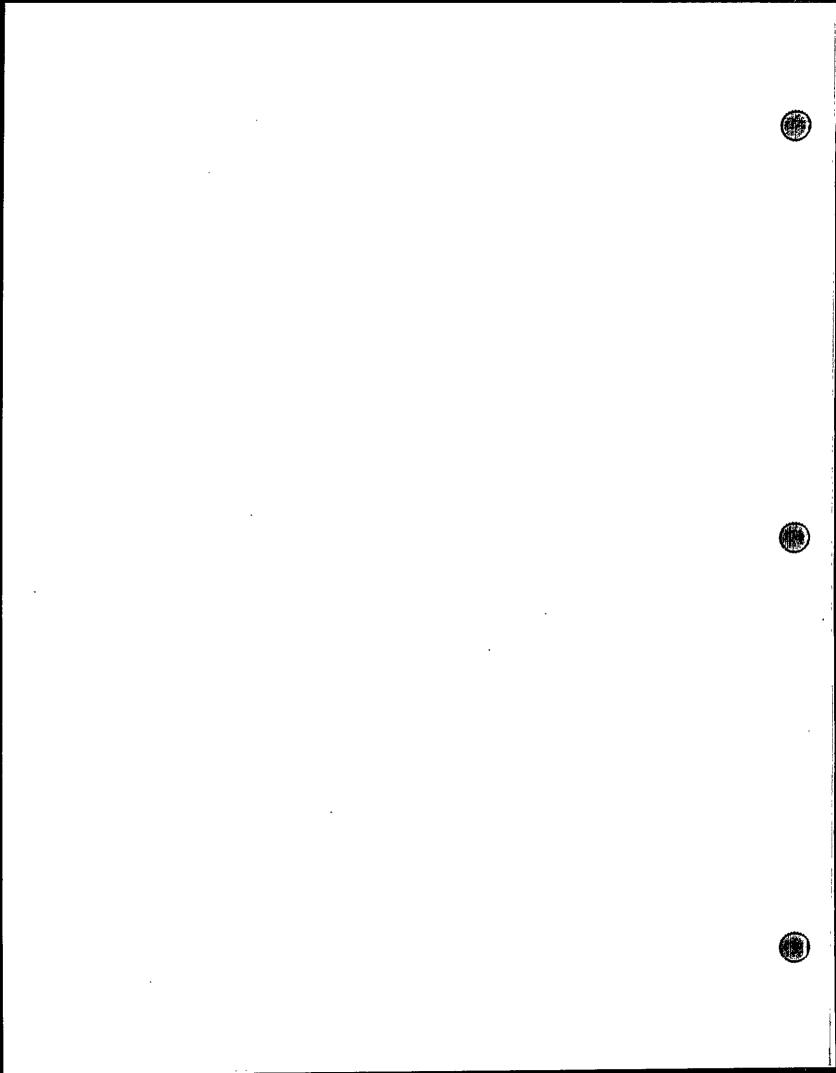
(Jury Selection)

Truthful and honest answers are necessary so that a fair, impartial jury will be selected.

Now, as we mature, we all, to some extent, develop certain biases and prejudices, fixed opinions and views. We develop these from our families, from others around us, the media, and from our own everyday experiences. You are entitled to be who you are. To feel and think about things as you do. It is important to recognize any biases and prejudices, fixed opinions and views, that you may have, and to disclose them to me during the jury selection process.

If, for any reason, my questions do not cover why you would not be able to listen with an open mind to the evidence in the case, or be unable to reach a fair and impartial verdict, it is necessary that you volunteer this information to me, when you are being questioned. If, at any time, during the jury selection process, you wish to discuss anything with me, concerning your ability to serve as a juror, raise your hands.

I will speak with you outside the presence of the other jurors; but in the presence of the attorneys. After I have had the ability to question each of you, you may be excused if, in my opinion, there is a valid reason why you should not serve. Each attorney may



also excuse a limited number of jurors, without giving a reason for doing so. In the event you are excused, please do not consider this an insult, or take it personally in any way. It is really just part of our process that we use, according to our court rules in selecting a jury.

Now, again, this is a criminal case. And there are certain principles of law that must be accepted and followed by jurors. The Indictment, I'm going to read it to you shortly. That Indictment is not evidence of the defendant's guilt on the charges. The Indictment is a step in the procedure, to bring the matter, before the Court and jury, for the jury's ultimate determination, as to whether the defendant is quilty or not guilty of the charges in it.

The defendant has pleaded not guilty to the charges. He is presumed to be innocent. Unless each and every essential element of the offense charged is proven, beyond a reasonable doubt, the defendant must be found not guilty of that charge. The burden of proving each element of the charge, beyond a reasonable doubt, rests upon the State. That burden never shifts to the defendant.

It is not the obligation, or the duty of the defendant, in a criminal case, to prove his innocence,

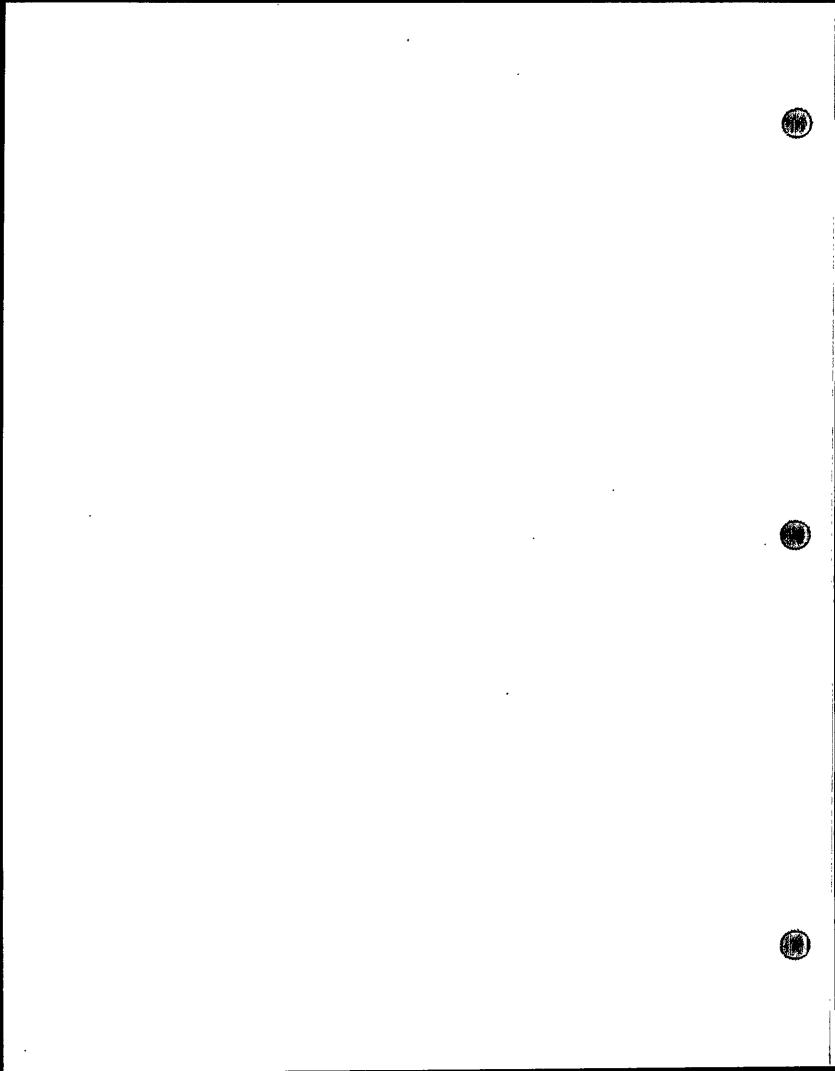
(Jury Selection)

or offer any proof relating to his innocence. The Prosecution must prove its case, by more than a mere preponderance of the evidence, yet not necessarily to an absolute certainty. The State has the burden of proving the defendant guilty, beyond a reasonable doubt.

As I question you, we may learn that some of you have been civil jurors before, where you were told that it's necessary to prove that the fact is more likely true than not true. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt. A reasonable doubt is an honest and reasonable uncertainty, in your minds, about the guilt of the defendant, after you have given full and impartial consideration to all of the evidence.

A reasonable doubt may arise from the evidence itself, or from a lack of evidence. A doubt, that a reasonable person, hearing the same evidence would have. Proof, beyond a reasonable doubt, is proof, for example, that leaves you firmly convinced of the defendant's guilt. Now, in this world, we know very few things with absolute certainty.

In criminal cases, the law does not require 24 proof that overcomes every possible doubt. If, based 25 on your consideration of the evidence, you are firmly



convinced that the defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you are not firmly convinced of the defendant's guilt, you must give the defendant the benefit of the doubt, and find him not guilty.

1 2

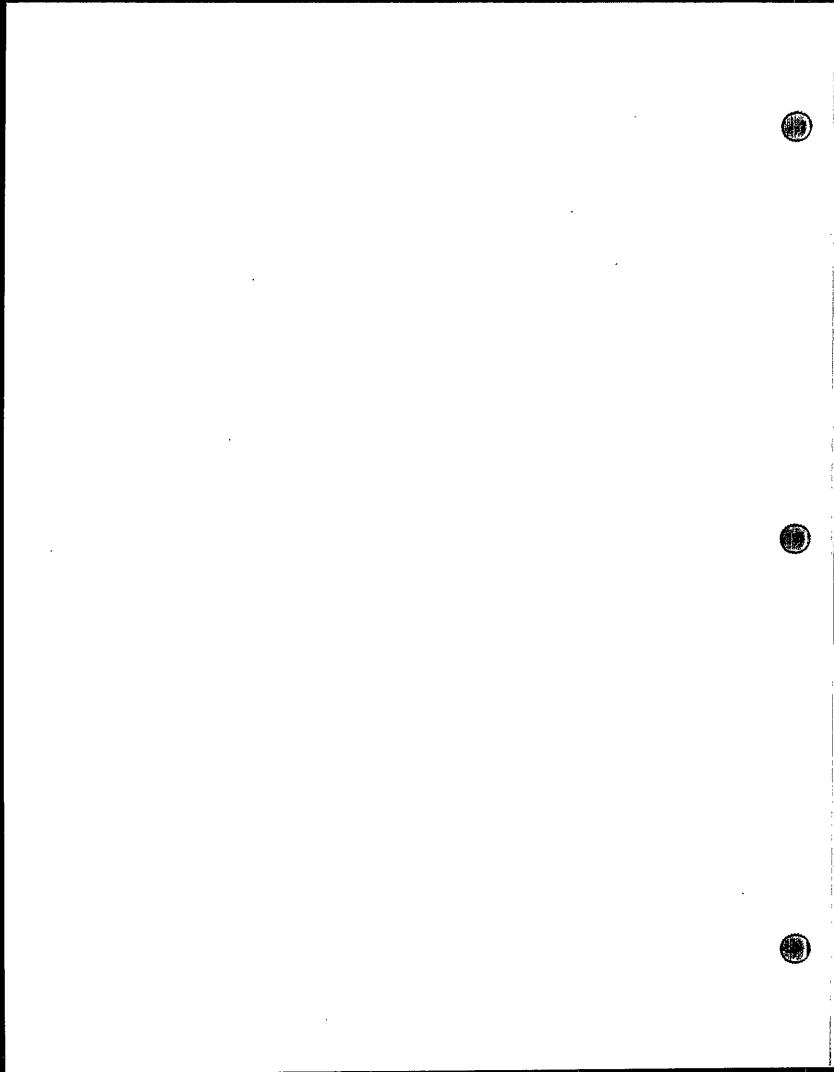
Now, you will have to apply the law, as I give it to you, regardless of your own personal feelings about it. Again, since this is a criminal case, any verdict that is returned by the jurors, must be unanimous. This simply means that all 12 jurors, who may be selected to deliberate, must agree upon any verdict that is returned to the Court.

Now, let me read to you the Indictment. As I said earlier, there are, let's see, seven different charges. The first is a conspiracy charge. It reads as follows: The Grand Jurors, of the State of New Jersey, for the County of Middlesex, upon their oaths, present that Pablo Machado, on or about the 24th day of April 2007, in the City of New Brunswick, in Middlesex County, within the jurisdiction of this Court, did conspire with other unknown and diverse individuals, to commit the crime of robbery, in violation of 2C:15-1, this is contrary to the provisions of our statute, 2C:5-2, against the peace of the State, the Government and the dignity of the same.

(Jury Selection)

Count two charges armed robbery. It states that the Grand Jurors, of the State of New Jersey, for the County of Middlesex, upon their oaths, present that Pablo Machado, on this same date, in the same location, within Middlesex County, in the course of committing a theft, did use force upon Wilmer Cedillo, and/or did inflict bodily injury upon Wilmer Cedillo, and/or did threaten immediately to commit the crime of aggravated assault upon Wilmer Cedillo, and/or did threaten immediate bodily injury to Mr. Cedillo, and/or did purposely put Mr. Cedillo in fear of immediate bodily injury, while armed with and/or threatening the immediate use of a deadly weapon. This is contrary to 2C:15-1, and against the peace of the State, the Government and dignity of the same.

Now, count three is unlawful possession of a weapon. It states, that the Grand Jurors, of the State of New Jersey, for the County of Middlesex, upon their oaths, present that Pablo Machado, at the same time, in the same location in Middlesex County, within the jurisdiction of this Court, knowingly and unlawfully did possess a certain weapon, to wit, a handgun, without first having obtained a permit to carry the same, as provided in 2C:58-4, contrary to 2C:39-5b, and against the peace of the State, the Government and the



dignity of the same.

1

2

20

21

22

23

24

25

1 Now, count four is possession of a weapon for 2 an unlawful purpose. It states, that the Grand Jurors, 3 of the State of New Jersey, for the County of Middlesex, upon their oaths, present that Pablo Machado, on the same date, in New Brunswick, in Middlesex County, knowingly and unlawfully did possess 7 a certain weapon, to wit, a handgun, with the purpose 8 to use it unlawfully against the person of another. 9 This is contrary to 2C:39-4a, and against the peace of 10 the Stage, the Government and the dignity of the same. 11 Count five is a theft charge. It states, 12 that the Grand Jurors, of the State of New Jersey, for 13 the County of Middlesex, upon their oaths, present that 14 Pablo Machado, on that same date and location, did 15 unlawfully take, or exercise unlawful control over the 16 17 movable property of Wilmer Cedillo, with a value in excess of five hundred dollars, with the purpose to 18 deprive the owner thereof. This is contrary to 19 2C:20-3, and against the peace of the State, the 20 Government and dignity of the same. 21 Count six is a terroristic threats charge. 22 It states that, the Grand Jurors, of the State of New 23 Jersey, for the County of Middlesex, upon their oaths, 24 present that Pablo Machado, on the same date and 25

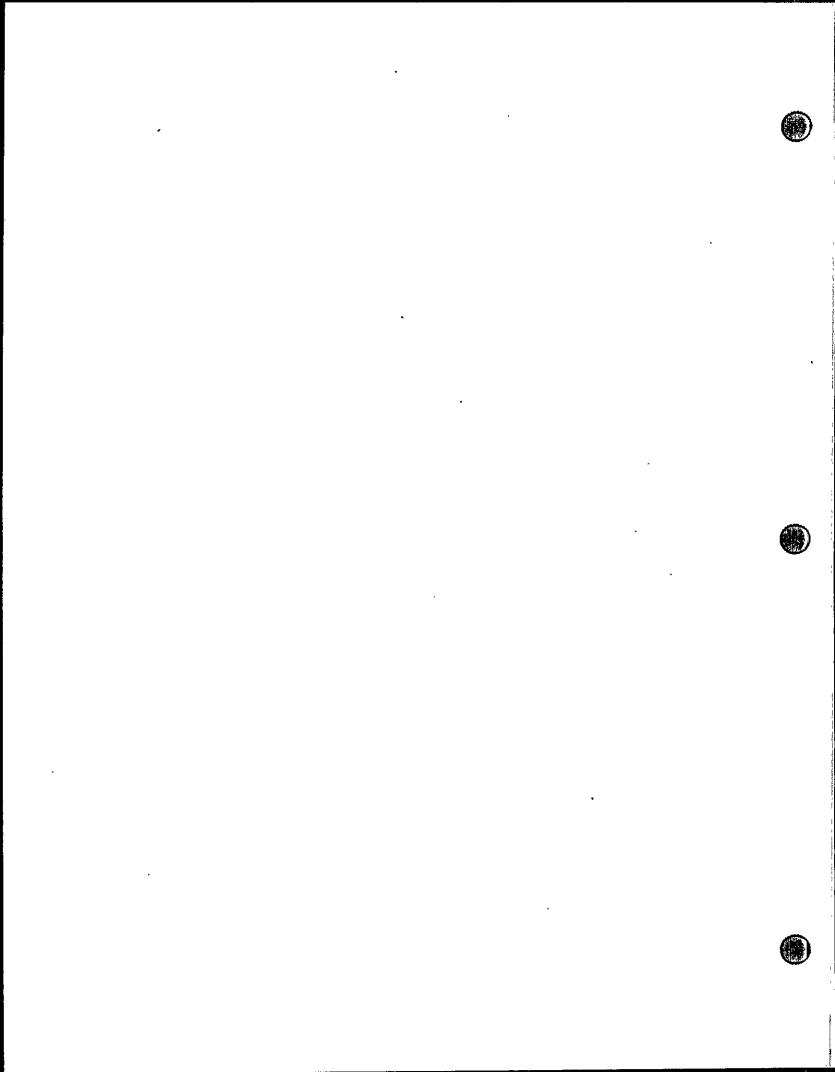
(Jury Selection)

location, did threaten to inflict serious bodily

49

injury, aggravated assault, against Wilmer Cedillo, with the purpose to terrorize Wilmer Cedillo, or in reckless disregard of the risk of causing such terror, contrary to 2C:12-3a, and against the peace of the 5 State, the Government and dignity of the same. 7 Count seven, also terroristic threats. 8 will read it to you. There is a different theory. Ιt states, that the Grand Jurors, of the State of New 9 Jersey, for the County of Middlesex, upon their oaths, 10 present that Pablo Machado, again, on the same date, 11 the same location, did threaten to kill Wilmer Cedillo, 12 with the purpose to put him in imminent fear of death, 13 14 under circumstances reasonably causing Mr. Cedillo to 15 believe the immediacy of the threat and the likelihood that it would be carried out, contrary to 2C:12-3b, and 16 17 against the peace of the State, the Government and 18 dignity of the same. 19 Now, I read to you before about the

Indictment. I stated to you, that the Indictment, which I have just read to you, is not evidence of the defendant's guilt on knife of the charges. step in the procedure, that brings the matter before the Court and the jury, for the jury's ultimate determination, as to whether the defendant is guilty or

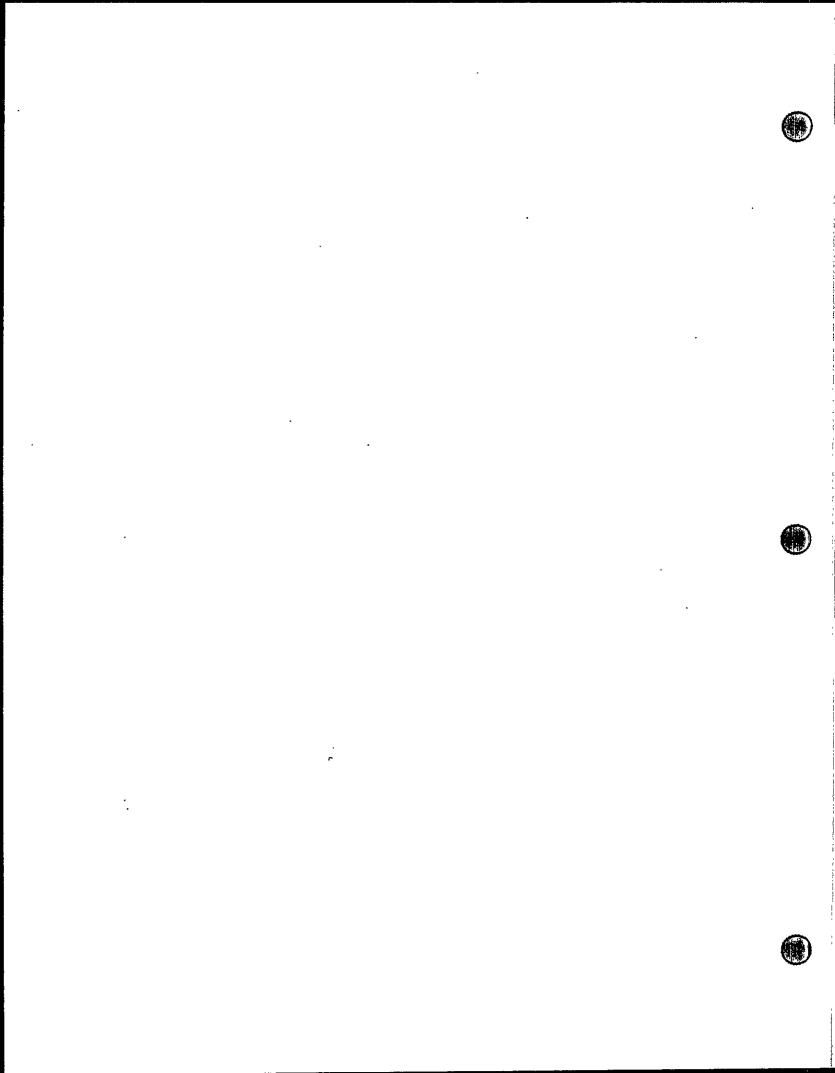


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50
                        (Jury Selection)
   not quilty of the charges stated in it.
 1
 2
           Now, ladies and gentlemen, I have read you
   the Indictment. I have asked the State just to give me
   some general information about what they allege.
   this is what I'll read to you. The State alleges that
 5
   on April 24, 2007, Wilmer Cedillo was robbed at
   gunpoint by the defendant and others, while Mr. Cedillo
 7
   was operating a taxicab in the City of New Brunswick.
 8
   On or about July 25th, 2007, Mr. Cedillo recognized
9
   this defendant from a photo line-up procedure, which
10
   was videotaped at New Brunswick police headquarters.
11
   Here, Mr. Pablo Machado pleads not guilty to these
12
13
   charges.
           Now, ladies and gentlemen, if you go back to
14
   your questionnaire, I'm going to ask now for the
15
   attorneys to introduce themselves to you. The State of
16
   New Jersey will be represented, throughout these
17
   proceedings, by Mr. Manuel Sameiro.
18
                                         Mr. Sameiro?
                         Thank you, Judge.
19
           MR. SAMEIRO:
   morning, everyone. Thank you for your patience and
20
   your diligence. My name is Manuel Sameiro. I'm an
21
  Assistant Prosecutor. I represent the State of New
22
   Jersey in this matter. I want to thank you for being
23
24
   here.
                        Thank you, Mr. Sameiro.
           THE COURT:
25
                        (Jury Selection)
            The defendant in this case will be
 1
   represented by Mr. Daniel Gonzalez.
 2
 3
           Mr. Gonzalez?
           MR. GONZALEZ: May it please the Court,
 4
```

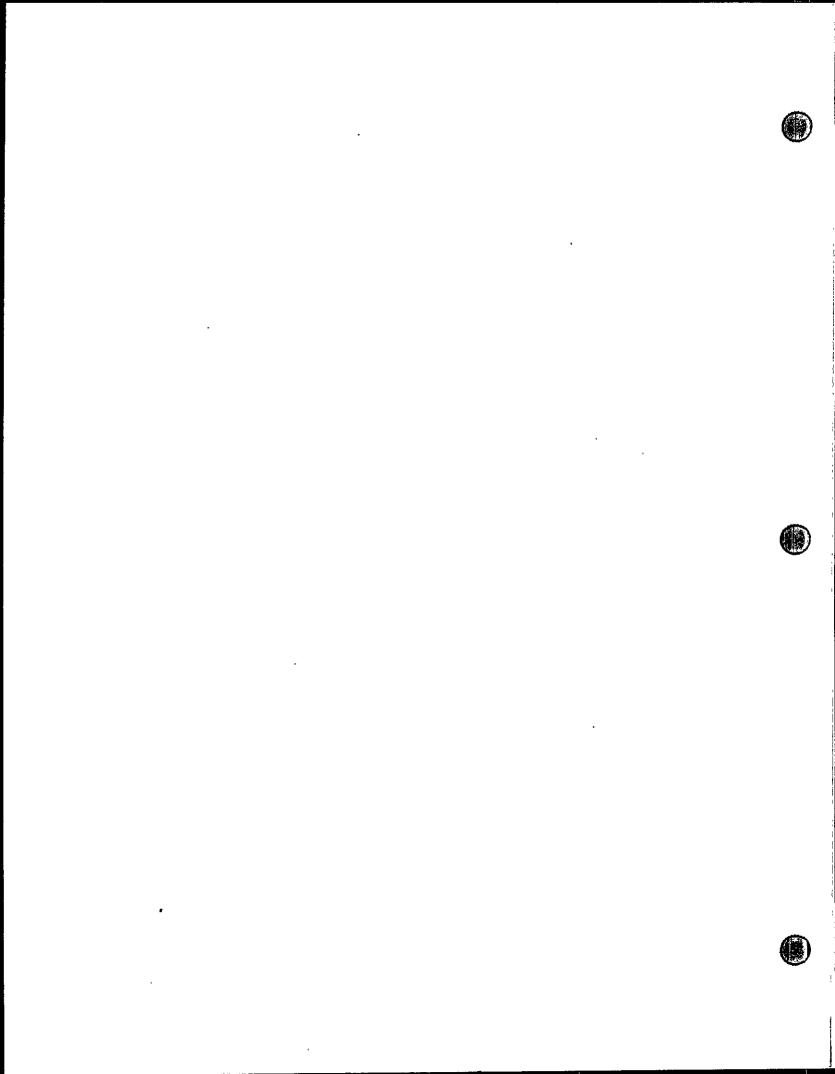
51 ladies and gentlemen, my name is Daniel Gonzalez. 5 represent Mr. Pablo Machado in this matter. 6 Thank you. Mr. Machado, can you 7 THE COURT: just stand and introduce yourself to the jurors? 8 9 THE DEFENDANT: Good morning. My name is Pablo Machado. 10 THE INTERPRETER: I did not hear the last 11 12 thing. THE DEFENDANT: And thank you for being here. 13 THE COURT: I didn't mean to interrupt you, 14 15 Mr. Machado. All right. Thank you, folks. 16 Mr. Machado, 17 you can have a seat. Question number three, that I will ask the 18 jurors, who are presently seated, do you know any of 19 20 the attorneys or do you know Mr. Machado? No. 21 Now, if you could turn to the back of your questionnaires. The last thing I'll go over with you, 22 23 the list of witnesses. Now, not every one of these witnesses will be called. But their names could come 24

up during the testimony. I just want to know if

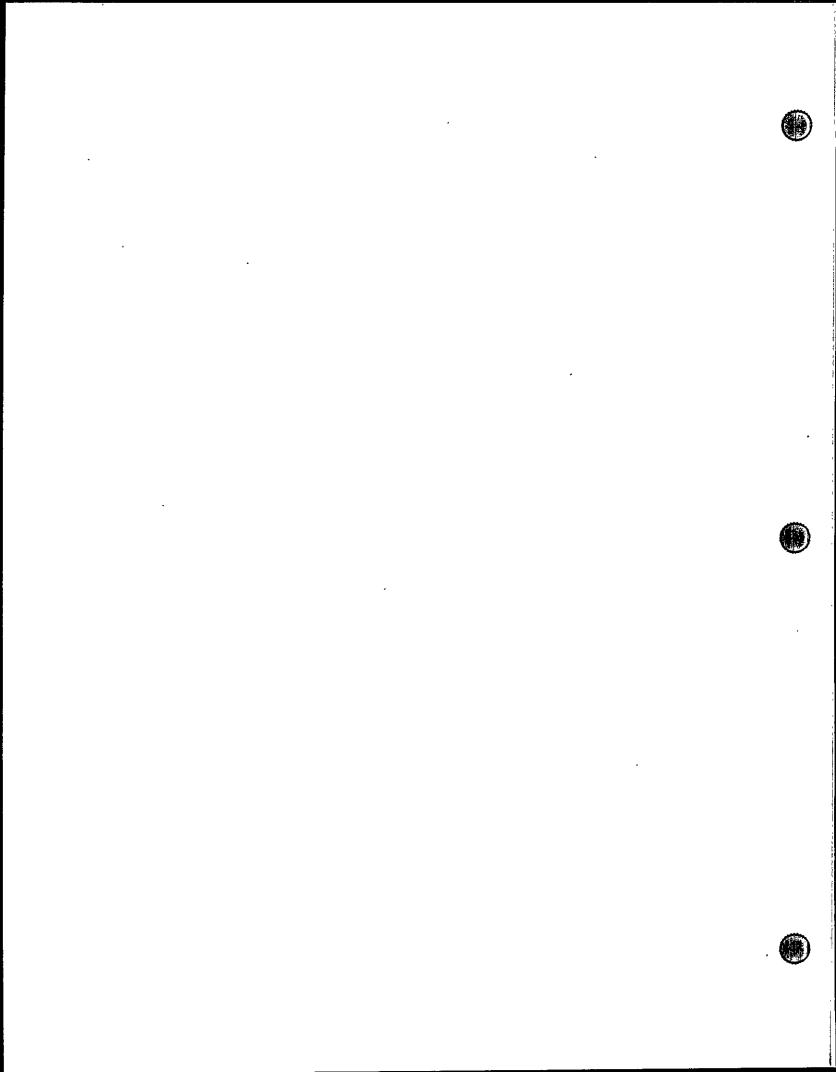
25



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(Jury Selection)
                                                            52
   anybody knows any of these individuals.
 1
            We have Wilmer Cedillo, from North Brunswick.
 2
  Agent John Selesky, from the Middlesex County
   Prosecutor's Office. From the New Brunswick Police
   Department, we have Patrolman Sergio Mattias, Patrolman
   Edward Bobadilla, Patrolman Donald Taylor, Patrolman
   John Yurkovic, Patrolman Miguel Chang, Patrolman
 7
   Michael Coppola, Patrolman John Langan. Anybody know
   any of those individuals? And I see everybody shaking
 9
10
   their head, no.
            Now, again, ladies and gentlemen, looking to
11
12 question five, I have briefly described the case to
13
   you. Does anybody here know anything about the case,
   from any source, other than what I've just told you
14
   here today? No. Anybody know anything about the case?
15
   I have given you a little bit of a general area, as to
16
17
   where the incident occurred in New Brunswick.
   haven't given any specific street address.
18
   specific street address that I have, I think, is near
19
             Near the area of 400 Lee Avenue.
20
   400 Lee.
21
           MR. SAMEIRO:
                          Yes.
22
           MR. GONZALEZ:
                           Yes.
            THE COURT: Anybody have any specific
23
   familiarity with that specific area of New Brunswick?
24
        Okay. Has anybody here ever served as a juror
25
                         (Jury Selection)
                                                            53
   before, either here in New Jersey, or in any State,
 1
 2
   Federal Court?
                  No.
 3
           Mr. Kimmel?
 4
            JUROR KIMMEL:
                           Civil matter.
            THE COURT: Civil matter. About when was
 5
 6
   that?
 7
            JUROR KIMMEL:
                           I'd say maybe ten or more
              Maybe fifteen.
 8
   years ago.
            THE COURT: Was it here in Middlesex County?
 9
10
            JUROR KIMMEL: I'm trying to think about
   that. The incident happened at the Collingswood
11
   Auction. I'm not sure if that is Middlesex or Ocean
12
13
   County.
            THE COURT: Probably not in this County.
14
15
   Were you living down there?
            JUROR KIMMEL: I was living down there, down
16
17
   in that area.
18
           THE COURT: So, it probably wasn't Middlesex
19
           Monmouth or Ocean. Okay.
   County.
20
            Let me ask you this: You said about an
21
   incident that occurred at the Collingswood Auction.
22
   What do you remember about that? Was it an assault or
23
   was it a theft? What was involved in it? Do you
24
   remember?
25
           JUROR KIMMEL:
                          No. I believe, it was a civil
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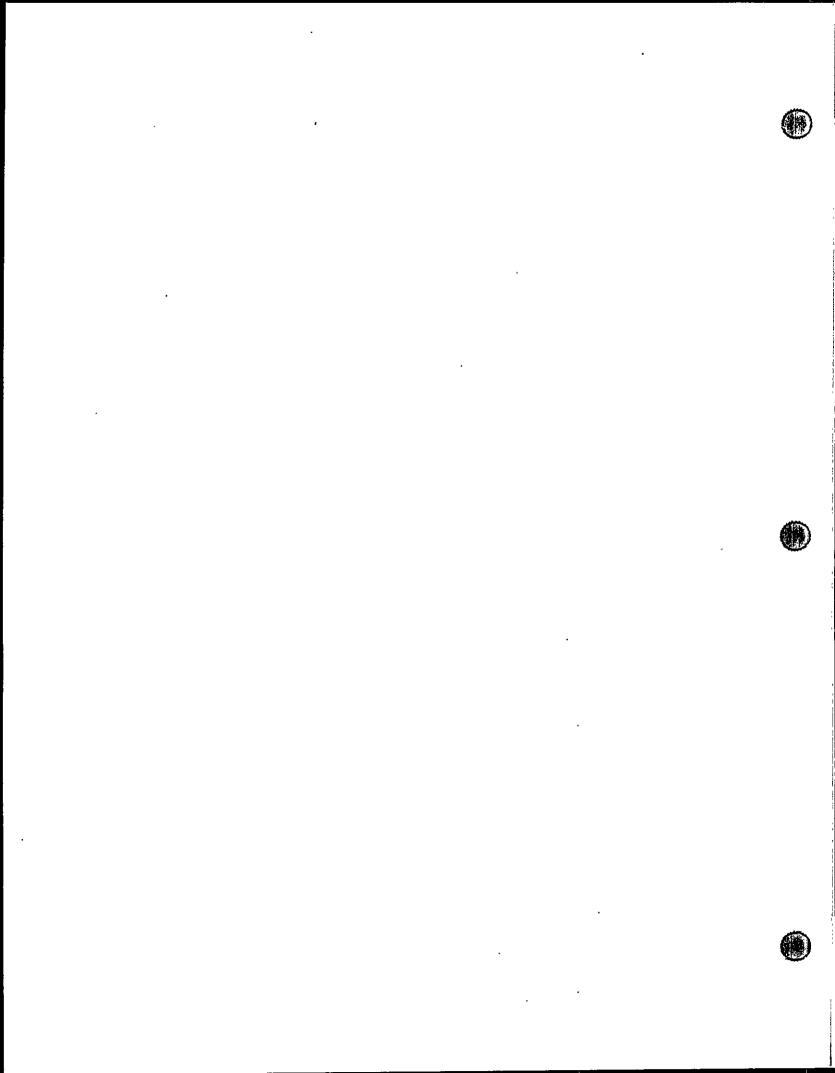


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(Jury Selection)
                                                           54
   matter. A woman slipped on a banana peel.
 1
 2
            THE COURT: Let me ask you this: Were you on
 3
   the jury that actually reached a verdict?
            JUROR KIMMEL: Yes.
                                 Yes.
 5
            THE COURT: Now, you may not remember the
   standard of proof. It was different. Preponderance of
 6
 7
   the evidence. In a criminal trial, it's beyond a
   reasonable doubt. Are you able to set aside that
 8
   standard and use the standard that I give you in a
 9
10
   criminal trial?
            JUROR KIMMEL:
                          Yes.
11
            THE COURT: Anything from that experience, as
12
   a civil juror, that would affect your ability to be
13
14
   fair and impartial in this case?
            JUROR KIMMEL:
15
                           No.
                       Thank you. Anybody else ever
16
            THE COURT:
17
   been a juror?
18
           Mr. Martinez?
            JUROR MARTINEZ: Yes. I served as a juror
19
   way back in 1983 in Middlesex County.
20
                       What kind of case, Mr. Martinez?
            THE COURT:
21
            JUROR MARTINEZ: Criminal case.
22
23
           THE COURT: Do you remember generally what
24
   the charges were?
25
            JUROR MARTINEZ: Yeah, a stick-up.
                                                Armed
                        (Jury Selection)
                                                           55
   robbery.
 1
 2
           THE COURT: Armed robbery. Again, without
   telling me the verdict, were you on a jury that reached
   a verdict?
 5
            JUROR MARTINEZ:
                            Yes.
            THE COURT: Now, the standard of proof, in a
 6
 7
   criminal case, is beyond a reasonable doubt. Are you
   able to set aside the facts in that case, and listen to
   the facts in this case, and be a fair, impartial juror?
10
            JUROR MARTINEZ:
                             Yes.
11
           THE COURT: Thank you, Mr. Martinez.
           Anybody else have a response as to being a
12
                       I will continue on.
13 juror before? No.
           Has anybody here ever sat as a Grand Juror?
14
        Does anybody know anybody else in the jury box,
15
   other than as a result of reporting here today?
16
          Nobody does. Would your verdict, in this case,
17
18
   be influenced in any way, by any factors, other than
19
   the evidence in the courtroom, such as friendships or
   family relationships, the type of work you do? Anybody
20
                    No. Everybody is responding, no.
21
  have that issue?
22
           Is there anything about the nature of the
23
   charge itself, that would interfere with your ability
24
   to be fair and impartial? Anything about the nature of
25
   the charge itself?
                       No. No responses there.
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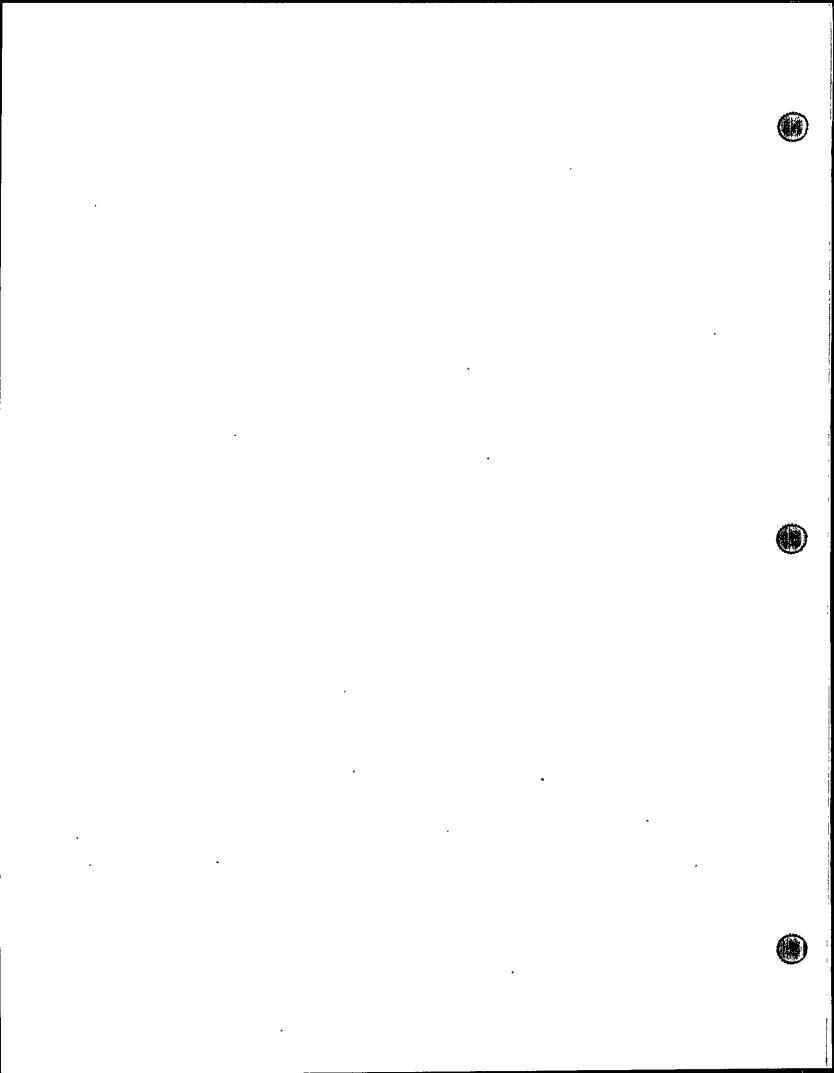


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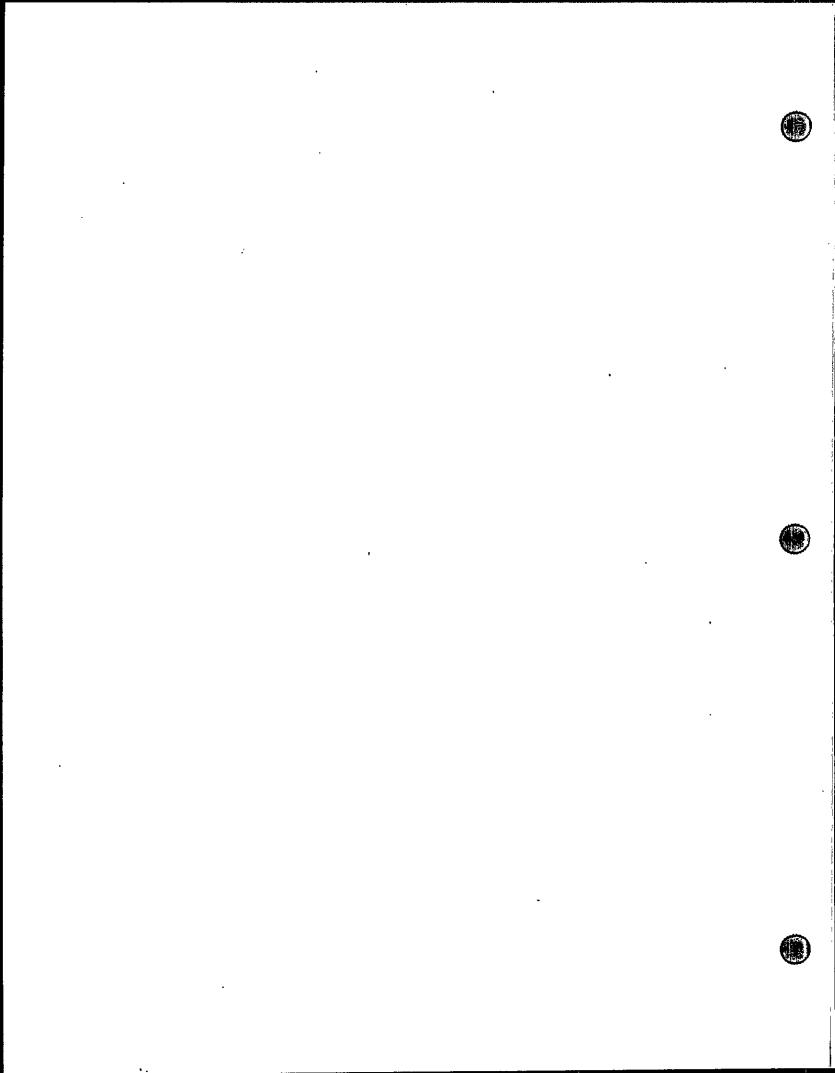
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(Jury Selection)
           Has anybody here ever been a witness in a
 1
   criminal case, regardless of whether it went to trial
 2
   or not? No. No. Okay. No responses there.
           Has anybody ever testified in any court
   proceeding? No. No. No responses there. Nobody has.
   Has anybody here ever applied for a job, as a state or
   local police officer, or with the Sheriff's Department,
 7
   County Jail, or State Prison? Anybody ever applied for
 8
 9
   any of those jobs?
                       No.
                       Have you, or any family member,
10
           All right.
   or close friend, ever worked for any agency, such as
11
   the Police Department, Prosecutor's Office, F.B.I., or
12
13
   D.E.A., Sheriff's Department, jails or prisons, either
   here in New Jersey, or in any other state? Let me
14
   start from the row here. Start with Miss Salley?
15
            JUROR SALLEY: My brother is a Prosecutor in
16
17
   one of the other Counties.
18
            THE COURT: An Assistant Prosecutor in one of
   the other Counties. What other County? Do you know?
19
20
            JUROR SALLEY:
                          Essex.
            THE COURT: Essex County. You said your
21
  brother-in-law?
22
            JUROR SALLEY: No.
23
                               Brother.
            THE COURT: Oh, brother. Okay. You see him
24
   on a regular basis, Miss Salley?
25
                         (Jury Selection)
            JUROR SALLEY:
                          Yes.
 1
 2
           THE COURT:
                       Would the fact that you have a
  brother, that is an Assistant Prosecutor in Essex
   County, affect your ability to sit and listen to the
   fact in the case? Be a fair, impartial juror?
 5
            JUROR SALLEY: No. Other than that, that's
   all I know, that he's a Prosecutor. I have never seen
 7
   him work or anything.
 8
            THE COURT: Okay. Anybody else?
 9
10
            JUROR SALLEY: Just a nephew by marriage is a
   Sheriff's Officer, also up in Essex County.
11
            THE COURT: In Essex County. Would that
12
13
   affect you, in any way, being a fair, impartial juror?
14
            JUROR SALLEY: No, it would not.
                       Thank you, Miss Salley. Who
15
            THE COURT:
          The next hand raised is Mr. Colon. Who do you
16
   else?
17
   know?
            JUROR COLON: My cousin, NYPD.
18
19
           THE COURT: You see your cousin on a regular
20 basis?
21
           JUROR COLON:
                         Yes.
22
           THE COURT: Would the fact that your cousin
23
   is a New York police officer, would that affect your
24
   ability to sit and listen to the witnesses here, and be
25
   a fair, impartial juror?
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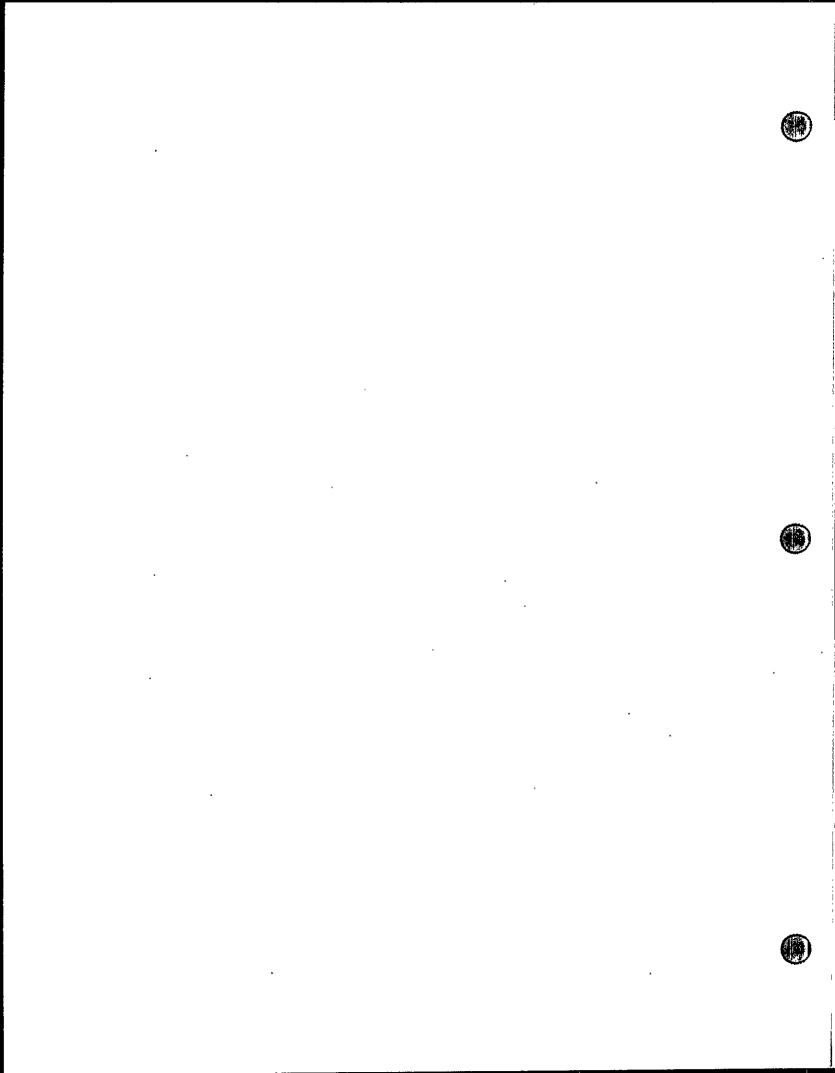
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(Jury Selection)
 1
            JUROR COLON: No.
           THE COURT: Thank you, Mr. Colon. Anybody
 2
  else in that row? Miss Cepeda?
 3
           JUROR CEPEDA:
                          My cousin also.
 4
                       Where are they?
 5
           THE COURT:
 6
                           In NYPD.
           JUROR CEPEDA:
 7
           THE COURT: Also, in New York. See them on a
 8
   regular basis?
           JUROR CEPEDA:
 9
                          No.
           THE COURT: Would the fact that you have a
10
   cousin, employed with the New York Police Department,
11
   affect your ability to be a fair, impartial juror?
12
           JUROR CEPEDA: No.
13
           THE COURT:
                       Thank you, Miss Cepeda.
14
           Mr. Martinez?
15
16
           JUROR MARTINEZ: Yes. My brother, Perth
17 Amboy Police Officer. He is also on the Middlesex
18
  County SWAT Team.
           THE COURT: Perth Amboy Police Officer, with
19
20 the County SWAT Team. Now, do you see your brother on
   a relatively regular basis?
21
22
           JUROR MARTINEZ: Yes.
                      Would the fact that your brother
           THE COURT:
23
   is a Perth Amboy Police Officer, as well as on the SWAT
24
   Team, would that affect your ability to sit and listen
25
                        (Jury Selection)
                                                           59
   to the witnesses here, and be a fair, impartial juror?
 2
           JUROR MARTINEZ: It wouldn't affect me.
                       Thank you. Anybody else with a
           THE COURT:
 3
              Mr. Sitton? Who do you know?
 4 response?
           JUROR SITTON: I have a cousin who is an
 5
 6 Assistant District Attorney for the City of Alexandria,
              His wife is a Judge for the EOC.
٠7
   Virginia.
           THE COURT: The fact you know those two
 8
   individuals, that are, as you say, law enforcement,
 9
   would any of those -- Do you see them on a regular
10
   basis? I realize they live out of state. Do you speak
11
   with them?
12
13
            JUROR SITTON: Four or five times a year.
           THE COURT: Would the fact that they are in
14
   those positions, affect your ability to sit and listen
15
   to the witnesses here, and be a fair, impartial juror?
16
17
           JUROR SITTON:
                          No.
18
                      Thank you, Mr. Sitton.
           THE COURT:
19
           Who else along that row? Mr. Delgado?
20
           JUROR DELGADO:
                          Yes.
21
           THE COURT:
                       Who do you know?
22
           JUROR DELGADO: My brother-in-law is a
23 correctional officer at Jamesburg. My brother is a
24
   State Trooper.
25
           THE COURT: You have a brother-in-law who
```



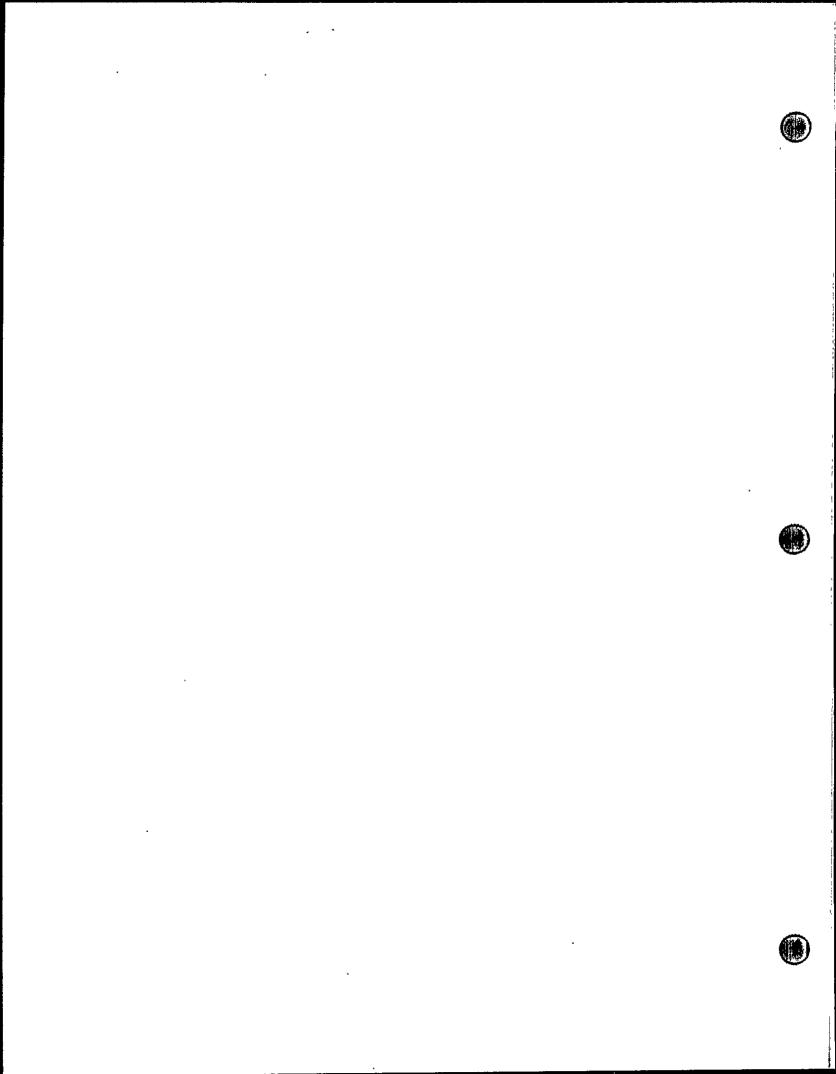
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(Jury Selection)
                                                            60
   works in Jamesburg, and a brother who is a State
 1
   Trooper? ·
 2
            JUROR DELGADO:
 3
                            Correct.
            THE COURT: You see them on a regular --
 5
   relatively regular basis?
 6
            JUROR DELGADO:
                            Yeah.
 7
                       Would it affect your ability?
            THE COURT:
   The fact you have a brother who is a State Trooper, and
 8
   a brother-in-law who is an officer in Jamesburg, would
 9
   that affect your ability to sit and listen, and be a
10
   fair, impartial juror?
11
            JUROR DELGADO:
                            No.
12
                        Thank you, Mr. Delgado.
13
            THE COURT:
14
            Miss Remick?
15
            JUROR REMICK:
                           I have a cousin who is a
  retired detective in New York. My mom's cousin.
16
   him maybe once every couple years. Then my younger
17
   cousin just started the police academy in Ocean County.
18
19
                       Youngest son?
            THE COURT:
20
            JUROR REMICK:
                           Youngest cousin.
                       Would either of those cousins in .
21
            THE COURT:
   law enforcement affect your ability to be fair and
22
23
   impartial?
                           No.
24
            JUROR REMICK:
            THE COURT: Thank you. Anybody else?
25
                         (Jury Selection)
                                                            61
                   All right. Now, just because of the
            Okay.
 1
   way that this question is worded, I am probably going
 2
   to ask you individually. As a general proposition, do
   you think that a police officer is more likely, less
   likely, or just as likely to tell the truth than a
   witness who is not a police officer?
 7
            Okay.
                   Miss -- I can't read my own writing.
   I write so darn fast. I will check the name.
 8
   Ammar, I will start with you, since you are sitting in
 9
10
   the first seat.
            Let me ask you this question.
11
            JUROR AMMAR: Okay. I would say, just as
12
13
   likely.
                       And Miss Salley?
14
            THE COURT:
15
            JUROR SALLEY:
                           Just as likely.
                       Mr. Colon?
16
            THE COURT:
17
            JUROR COLON:
                          Just as likely.
                       Miss Cepeda?
18
            THE COURT:
19
            JUROR CEPEDA:
                           Just as likely.
20
            THE COURT:
                       Mr. Martinez?
21
            JUROR MARTINEZ:
                             Just as likely.
22
            THE COURT:
                       Mr. Kimmel?
23
            JUROR KIMMEL:
                           Just as likely.
24
            THE COURT:
                       Miss Chan?
25
            JUROR CHAN:
                         Just as likely.
```



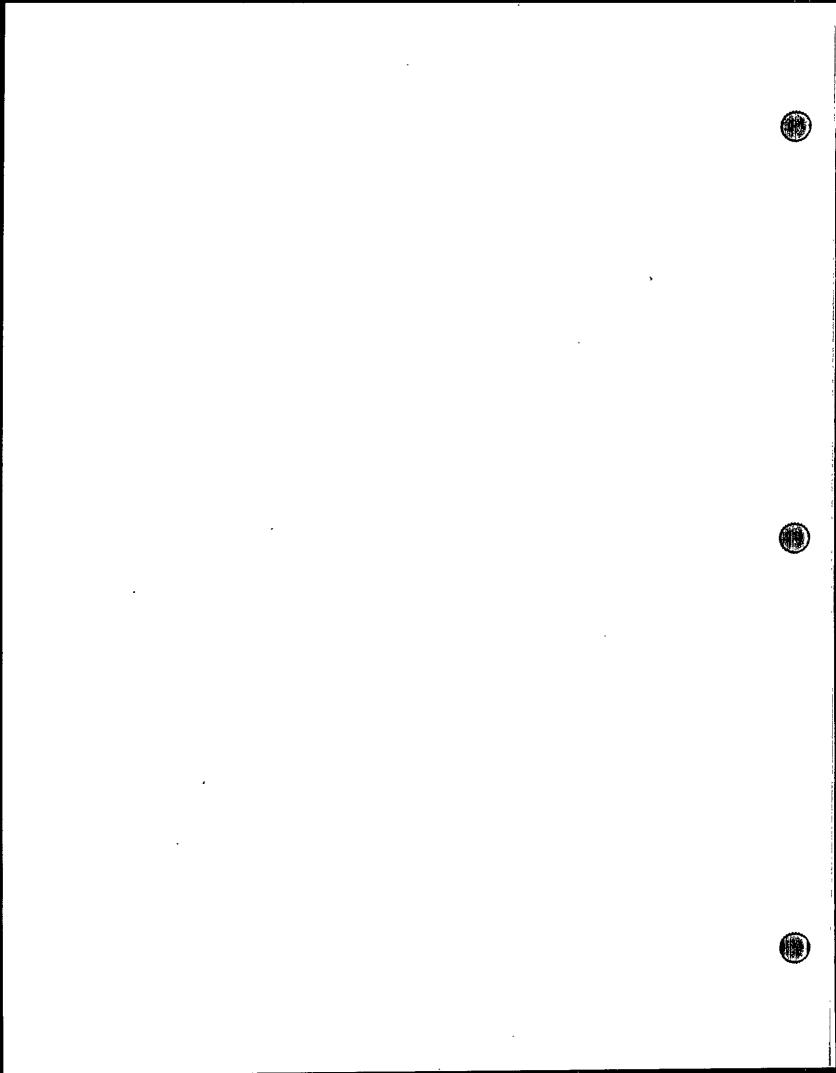
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(Jury Selection)
                         Mr. Sitton?
 1
            THE COURT:
 2
            JUROR SITTON:
                            Just as likely.
 3
            THE COURT:
                         Miss Gonzalez?
 4
            JUROR GONZALEZ:
                              Just as likely.
 5
            THE COURT:
                         Mr. Delgado?
 6
            JUROR DELGADO:
                             Just as likely.
 7
            THE COURT:
                         Miss Remick?
 8
                            Just as likely.
            JUROR REMICK:
 9
            THE COURT:
                         Mr. Crockett?
10
            JUROR CROCKETT:
                              Just as likely.
11
            THE COURT:
                         Mr. Patel?
12
            JUROR PATEL:
                           Just as likely.
                        And Mr. Booker?
13
            THE COURT:
14
            JUROR BOOKER:
                            Just as likely.
15
            THE COURT:
                         Thank you. Now, we have the next
   question, which is similar to this question that I just
16
                Let me ask you it. Would you give any
17
   asked you.
    greater weight or lesser weight to the testimony of a
18
   police officer, merely because of his or her status as
19
   a police officer? Or would you be able to give them
20
21
    equal weight?
22
            Miss Ammar?
23
            JUROR AMMAR:
                           Equal weight.
24
                        Miss Salley?
            THE COURT:
                            Equal weight.
            JUROR SALLEY:
25
                                                               63
                          (Jury Selection)
            THE COURT:
                         Mr. Colon?
 1
 2
                           Equal weight.
            JUROR COLON:
 3
                         Miss Cepeda?
            THE COURT:
 4
            JUROR CEPEDA:
                            Equal.
 5
            THE COURT:
                         Mr. Martinez?
 6
            JUROR MARTINEZ:
                               Equal.
 7
            THE COURT:
                         Mr. Kimmel?
 8
            JUROR KIMMEL:
                            Equal.
 9
                         Miss Chan?
            THE COURT:
10
            JUROR CHAN:
                          Equal.
11
            THE COURT:
                         Mr. Sitton?
12
                            Equal.
            JUROR SITTON:
13
            THE COURT:
                         Miss Gonzalez?
14
            JUROR GONZALEZ:
                               Equal.
15
            THE COURT:
                         Mr. Delgado?
16
            JUROR DELGADO:
                             Equal.
17
            THE COURT:
                         Miss Remick?
18
            JUROR REMICK:
                            Equal.
19
            THE COURT:
                         Mr. Crockett?
20
            JUROR CROCKETT:
                              Equal.
21
            THE COURT:
                         Mr. Patel?
22
            JUROR PATEL:
                           Equal.
23
            THE COURT:
                         Mr. Booker?
24
            JUROR BOOKER:
                            Equal.
25
            THE COURT:
                         This is a more general question.
```



```
(Jury Selection)
   Have any of you, or any of your family members, or
 1
   close friends, ever been accused of committing an
 2
   offense, other than a minor motor vehicle offense?
   anybody has that, if you want to come to sidebar.
                                                       or
   are you okay sitting there?
           Miss Salley? A friend, family member, close
 7
   friend, accused of committing an offense?
 8
            JUROR SALLEY: My brother is incarcerated at
                I don't know the charges. Up in upstate
 9
   the moment.
   New York. And I had an older sister, who, previously,
10
   I don't know what the charges were. She is much older
11
12
   than I am.
13
            THE COURT: Okay. Regarding your brother,
   you said, who was incarcerated in New York?
14
            JUROR SALLEY:
15
                           Uh-hum.
            THE COURT: You don't know what the charges
16
17
   are.
            JUROR SALLEY: I'm not clear on what it is.
18
   I didn't care, to be honest. But the second round, I
19
   didn't get any details.
20
           THE COURT: Then let me ask you:
21
                                              From what
22 you do know, I know it may be limited, do you feel that
   he was treated appropriately or fairly by law
23
   enforcement?
24
            JUROR SALLEY: I honestly wouldn't know.
25
                                                      But
                        (Jury Selection)
                                                           65
  probably. Probably.
 1
           THE COURT: Would the fact that you have a
 2
  brother that is incarcerated, impact on your ability to
   sit and listen to the case, and be a fair, impartial
 4
 5
   juror?
 6
            JUROR SALLEY:
                           Not at all.
 7
            THE COURT: You also said, you had a sister
   who was also incarcerated previously?
 8
 9
           JUROR SALLEY: Yes. I believe hers was a
10
   theft.
           THE COURT: She is not incarcerated now?
11
12
           JUROR SALLEY:
                         Oh, no. She turned her whole
                 She is much better.
13
   life around.
14
           THE COURT:
                       That was some time ago?
15
            JUROR SALLEY:
                           Yeah.
                                  Years ago.
16
           THE COURT: In New Jersey or a different
17
   state?
18
           JUROR SALLEY:
                          I don't know. I was a little
19
   kid.
20
           THE COURT: You were young.
            I will ask you -- Again, you may not even
21
   know the answer. From what you know, do you think or
22
23
   know if she was treated appropriately and fairly by law
24
   enforcement?
                If you know.
25
           JUROR SALLEY:
                          She says she was.
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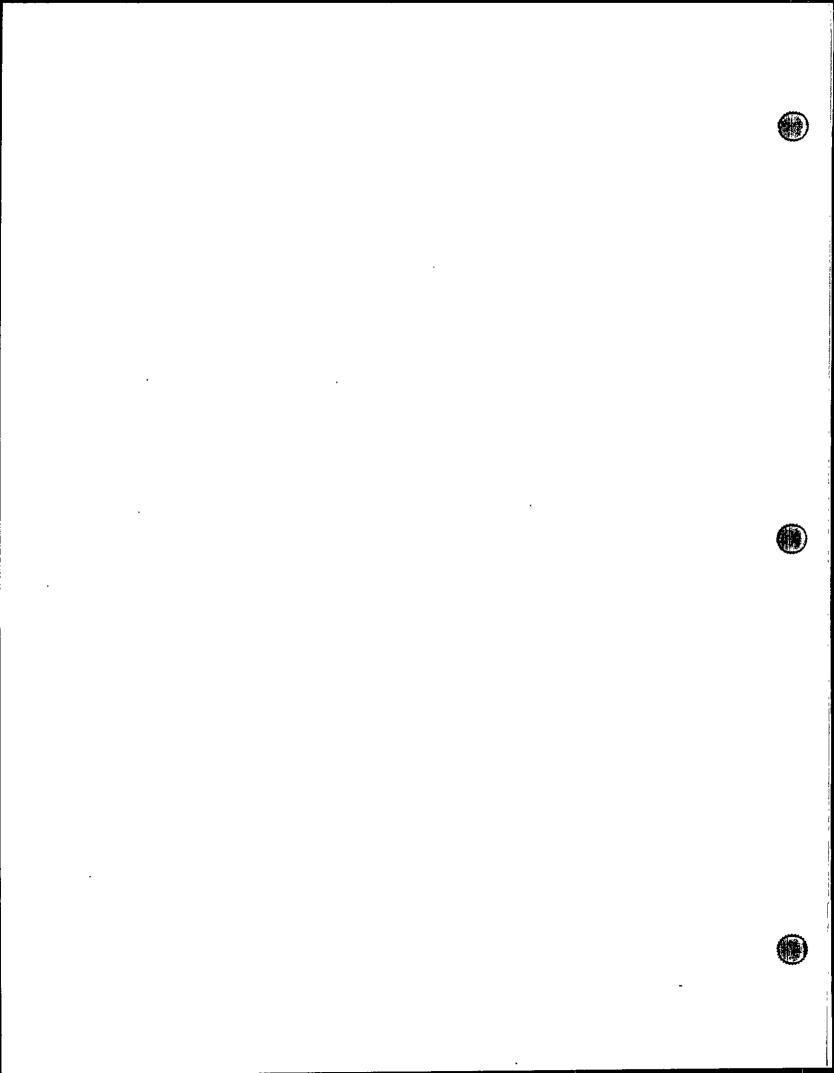
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(Jury Selection)
            THE COURT: Okay. Would that affect your
 1
   ability to be a fair, impartial juror in this case?
 2
 3
            JUROR SALLEY:
                         Not at all.
            THE COURT:
                       Anything, from both of those
 4
   combined, that would, in any way, affect your ability
 5
   to sit and listen and be a fair, impartial juror in the
 7
   case?
            JUROR SALLEY:
                           No.
 8
 9
            THE COURT: Anybody else in the first row?
10
   Mr. Colon?
11
            JUROR COLON:
                          Sidebar.
            THE COURT: Sidebar.
12
            (Whereupon, the following discussion occurred
13
14 at sidebar.)
            THE COURT: Mr. Colon?
15
            JUROR COLON: I was arrested for a
16
17 misdemeanor, shoplifting, 13 years ago.
            THE COURT: How old were you then?
18
            JUROR COLON:
                          17.
19
            THE COURT: What happened?
20
            JUROR COLON: I was arrested for shoplifting
21
22 in Filene's Basement.
            THE COURT: Were you prosecuted?
23
            JUROR COLON: I just went to court.
24
                     I paid the fine.
   pleaded quilty.
25
                                                           67
                        (Jury Selection)
            THE COURT:
                        No probation, anything like that?
 1
 2
            JUROR COLON:
                         No.
            THE COURT: Was that here in Middlesex
 3
 4
   County?
           JUROR COLON: No. In Jersey City, Hudson
 5
 6
   County.
            THE COURT: You feel you were treated fairly
 7
   by law enforcement?
 8
 9
            JUROR COLON: Yes.
10
            THE COURT: You hold any kind of grudge
11 against law enforcement because of that?
            JUROR COLON:
12
                          No.
13
            THE COURT: Anything from that situation that
   might affect your ability to be fair and impartial?
14
            JUROR COLON:
15
                          No.
16
            THE COURT: Any follow-up?
17
           MR. SAMEIRO: Just a question. Was law
   enforcement involved or store security that followed
18
19
20
            JUROR COLON:
                          No.
                               Store security caught me.
21 And then law enforcement was involved, because they
   arrested me. They called the cops.
22
23
           MR. SAMEIRO: Okay. Got you.
                                           Thank you.
24
           THE COURT:
                      Anything further?
25
           MR. SAMEIRO: No. Thank you.
```



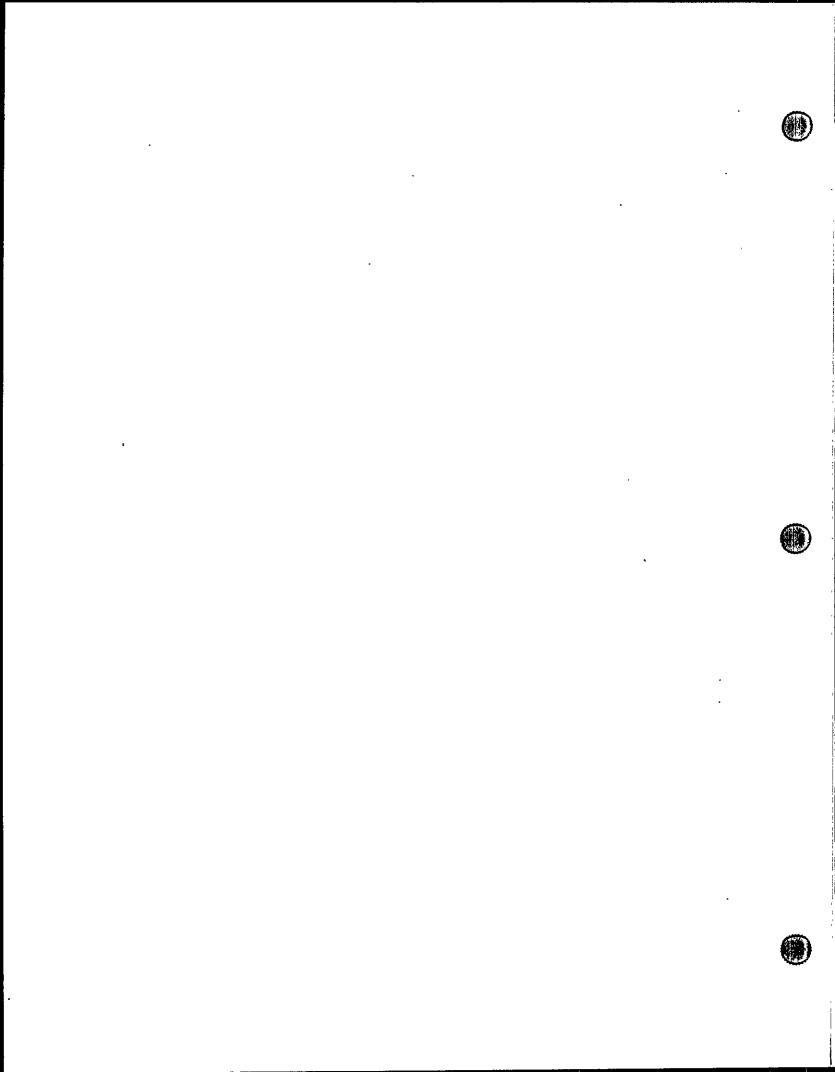
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(Jury Selection)
                                                           68
            THE COURT: Okay. Thank you.
 1
            (Whereupon, Juror Colon leaves sidebar.)
 2
 3
            (Whereupon, the hearing continued at
 4
   sidebar.)
            MR. SAMEIRO: We might as well stay here.
 5
            THE COURT: Okay. Along this first row,
 6
 7
   anybody else have a response to that question? No.
   Let me go up to the second row. Does anybody have a
 8
   response to question 18? Mr. Crockett? Come over, Mr.
 9
   Crockett.
10
            (Whereupon, Juror Crockett comes to sidebar.)
11
            THE COURT: Hi, Mr. Crockett. So, question
12
   18, family member or close friend?
13
            JUROR CROCKETT:
                             Yes.
                                   My nephew. He served
14
   -- He is serving time in upstate New York prison.
15
   was convicted of an Indictment for rape. And he is
16
   serving a 4 to 12 consecutive sentence, for 15 of those
17
18
   counts, or 12 of those counts.
            THE COURT: When did that happen?
19
20
            JUROR CROCKETT: 1991.
21
            THE COURT:
                        1991. Did you go to the trial?
   Did you get involved?
22
            JUROR CROCKETT: I was in and out of the
23
            I was in school at the time.
                                          I couldn't be
24
   trial.
   there every day. But I was there as much as I could
25
                        (Jury Selection)
                                                           69
   possibly be.
 1
 2
            THE COURT: Let me ask you: Close to your --
 3
   Did you say nephew?
            JUROR CROCKETT: It was my nephew.
 4
            THE COURT: Close to your nephew?
 5
 6
            JUROR CROCKETT:
                            Yes.
            THE COURT: From what you know about it,
 7
   sitting at the trial or talking with him, do you feel
 8
   he was treated fairly by law enforcement?
 9
10
            JUROR CROCKETT: Law enforcement is different
   from the court system?
11
12
            THE COURT:
                        Right.
13
            JUROR CROCKETT:
                            Yes. Yeah. I would say, in
   terms of like the police officers, or things like that,
14
   I would probably say, yes. I'm not sure, but in terms
15
16
   of the court system, and the sentence that was meted
   out, I don't believe he was treated fairly.
17
18
            THE COURT:
                       Too harsh of a sentence?
19
            JUROR CROCKETT:
                             Yeah. Very much. Yes.
20
            THE COURT: Because of your feelings on the
21
   sentence, do you hold that against law enforcement, in
22
   any way?
23
            JUROR CROCKETT:
                             No.
            THE COURT: Would that affect your ability to
24
25
   sit and listen, and to be a fair juror in this case?
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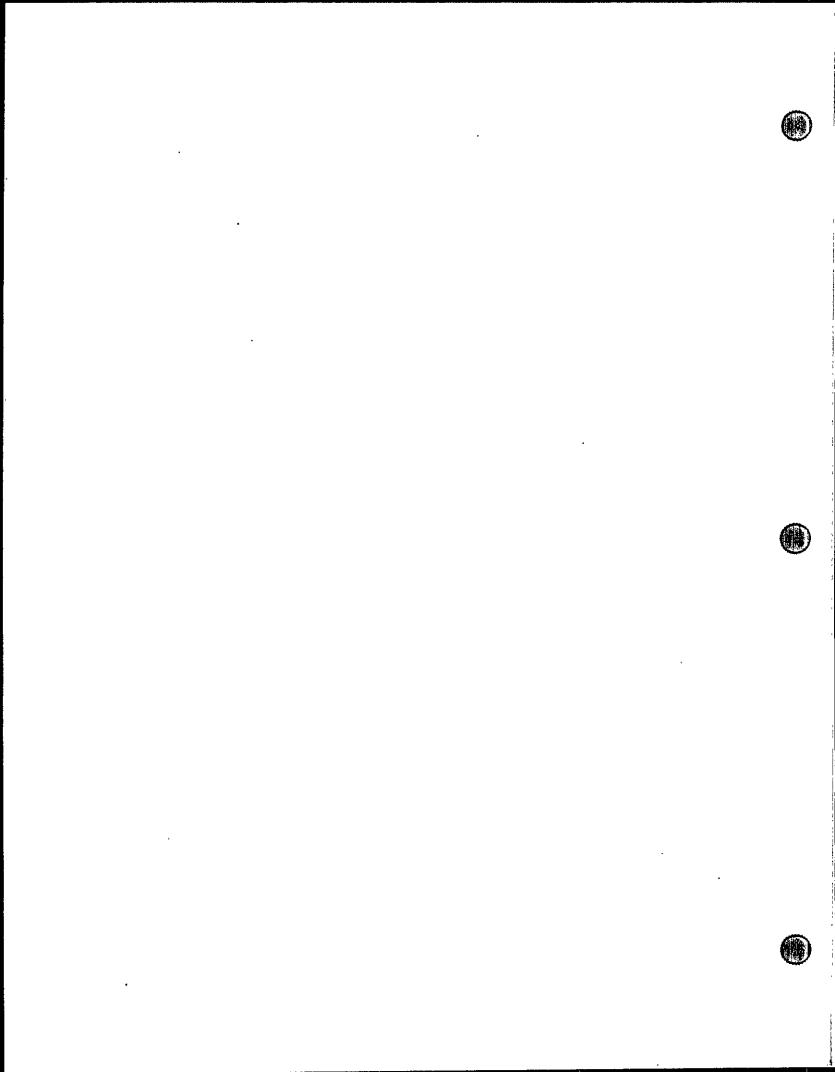
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(Jury Selection)
                                                           70
            JUROR CROCKETT: I don't think so, no.
 1
 2
            THE COURT: All right. Any follow-up
   questions on this one?
           MR. SAMEIRO:
                        I do. That was in State or
              I assume State Court.
 5
   Federal?
 6
            JUROR CROCKETT: State Court.
            MR. SAMEIRO: You felt that your nephew was
 7
   wrongly convicted?
 8
 9
            JUROR CROCKETT: Yes.
10
            MR. SAMEIRO: Did you testify as a character
11
   witness?
            JUROR CROCKETT:
                             No.
12
13
            MR. SAMEIRO: I assume other members of the
   family were there. When you went to court, you were
14
   just an observer?
15
            JUROR CROCKETT: Just an observer.
16
                       Any questions?
17
            THE COURT:
            JUROR CROCKETT: Basically, we weren't called
18
   to testify as character witnesses.
19
            THE COURT: Any follow-up?
20
            MR. GONZALEZ: No, Judge.
21
           MR. SAMEIRO: I do have some. Did your
22
23 nephew testify?
            JUROR CROCKETT: No, he did not.
24
                                              That was a
25 strategic decision by his attorney.
                                                           71
                        (Jury Selection)
            MR. SAMEIRO: Okay. Thank you.
 1
 2
           MR. GONZALEZ:
                           Thank you.
 3
            THE COURT:
                        Thank you.
            JUROR CROCKETT:
                             Thank you.
 4
            (Whereupon, Juror Crockett leaves sidebar.)
 5
            (Whereupon, the hearing continued from
 6
 7
   sidebar.)
 8
            THE COURT: Anybody else have a response over
 9
   there before we leave?
           Let me go to the next question before we go
10
11
  back.
            That is, have you, or any family member, or
12
   close friend, ever been the victim of a crime, whether
13
   it was reported to law enforcement or not? Anybody?
14
15
   Reported to law enforcement or not?
16
           Mr. Kimmel?
17
            JUROR KIMMEL: Car theft.
18
            THE COURT: Out of where? Where were you
19
   living at the time? Where was it stolen from?
20
            JUROR KIMMEL: Belleville, New Jersey -- up
21
  next to -- which is next to Newark.
22
           THE COURT: Did you report it to law
23 enforcement?
24
           JUROR KIMMEL:
                           Yeah.
25
           THE COURT: Was anybody ever apprehended?
```



```
(Jury Selection)
            JUROR KIMMEL:
                          I don't believe so. I quess,
 1
   they would have contacted me.
 2
           THE COURT: Ever get the car back?
 3
            JUROR KIMMEL: Yes. The next day.
 4
                       Damage to the car?
 5
           THE COURT:
            JUROR KIMMEL: No damage. But the whole
 6
   front end was gone. They unbolted everything, took the
 7
 8
   whole front end.
           THE COURT: When did that happen?
 9
            JUROR KIMMEL: Going on -- I believe -- when
10
11 did that happen -- I believe it was 2005.
            THE COURT: Let me ask you:
                                         That situation,
12
   that experience, would that stop you from sitting and
13
   listening to the facts in this case, being a fair,
14
   impartial juror?
15
           JUROR KIMMEL:
                          No.
                               No.
16
17
           THE COURT: Thank you, Mr. Kimmel.
           Anybody else? Miss Ammar?
18
           JUROR AMMAR: Yes. You want me to come over
19
20
  there?
21
            THE COURT: No. You can do it from there.
            JUROR AMMAR: My son's car was stolen, and a
22
23 week later it was found, because the person who stole
   it was having a race with someone else.
                                             That's how the
24
   police found the car. It was kind of like --
                        (Jury Selection)
                                                           73
            THE COURT:
                      Let me ask you:
                                       Your son's car,
 1
   where was it stolen from? What town?
 2
                          In Newark. He used to work in
 3
           JUROR AMMAR:
            In front of his house.
  Newark.
            THE COURT: Did he report it to the Newark
 5
   Police?
 7
            JUROR AMMAR:
                          Yes.
            THE COURT: Then you say a week later, it was
 8
   involved in some form of police activity, where they
 9
10
   found the car?
11
           JUROR AMMAR:
                         Right.
           THE COURT: Did he, ultimately, get the car
12
13
  back?
            JUROR AMMAR:
                         Yes.
14
15
           THE COURT: Was there damage to the car?
16
            JUROR AMMAR:
                         Yes.
17
           THE COURT: Would the fact that your son had
   this incident, affect your ability to be a fair and
18
19
   impartial juror?
20
            JUROR AMMAR: I actually forget about it; but
  somebody said something about a car theft.
21
22
           THE COURT: When did it happen?
23
           JUROR AMMAR: About six or seven years ago.
24
   And another incident where his checks were stolen.
25
   Somebody wrote checks in his name. And then the bank
```



```
(Jury Selection)
                                                           74
   called me -- my bank account -- that is another thing
 1
 2
   about two years ago.
            THE COURT: Was anybody ever apprehended?
  Did he report that to law enforcement?
            JUROR AMMAR: The bank dealt with all that.
 5
   I have no idea what was going on.
 6
            THE COURT: All right. Okay. Would that
 7
   incident affect your ability to be fair and impartial?
 8
           JUROR AMMAR: No. I tend to forget these
 9
10
   things.
           No.
            THE COURT: Okay. Thank you, Miss Ammar.
11
            Anybody else in the front row? No?
12
         Mr. Crockett?
13
  row?
            JUROR CROCKETT: Yes. My house was
14
15 burglarized.
           THE COURT: Where were you living at the
16
17
  time?
18
            JUROR CROCKETT:
                            Montgomery County, Maryland.
           THE COURT: Did you report it to the police?
19
            JUROR CROCKETT: Yes.
20
           THE COURT: Was anybody apprehended?
21
           JUROR CROCKETT: No.
22
           THE COURT: Items taken from the home?
23
            JUROR CROCKETT: Uh-hum.
24
           THE COURT: Did you ever receive any of those
25
                                                           75
                        (Jury Selection)
 1 items back?
 2
            JUROR CROCKETT:
                            No.
            THE COURT: Hold any grudge against law
 3
 4 enforcement that nobody was apprehended?
            JUROR CROCKETT:
                            No.
 5
            THE COURT: Anything from that situation
 6
  affect your ability to be a fair and impartial juror?
 7
            JUROR CROCKETT: No.
 8
 9
            THE COURT: Mr. Crockett, when did that
10
   happen?
           JUROR CROCKETT: About 1986.
11
            THE COURT: Okay. Thank you.
12
           Anybody else have any response to that
13
   question? No? Thank you.
14
15
            I think we can go back to our seats.
16
            (Whereupon, the sidebar discussion
17
   concluded.)
18
            (Whereupon, the hearing continued in the
19
   presence of the prospective jury panel.)
20
            THE COURT: Okay.
                              All right. The next
21 question is: Would you have any difficulty following
   the principle, that the defendant on trial must be
22
   innocent, must be found not guilty of a charge, unless
23
   each and every essential element of the offense charged
24
25
   is proven, beyond a reasonable doubt? Anybody have any
```



```
(Jury Selection)
```

1 problem with that concept? No? Everybody is shaking 2 their head, no.

When I read to you the charges, the Indictment is not evidence of guilt. It is simply a charging document. Would the fact that the defendant has been arrested and indicted, and is here in court facing these charges, cause you to have any preconceived opinion on the defendant's guilt or innocence? Anybody have that? No? Everybody is shaking their head, no.

Okay. Now, I have given you the definition of reasonable doubt. I will explain it again at the end of the trial. Would any of you have any difficulty in voting not guilty, if the State fails to prove the charge, beyond a reasonable doubt? Anybody have any problem with that? No. I see no response.

Okay. If the State does prove each element of the alleged offense, beyond a reasonable doubt, would you have any difficulty in returning a verdict of guilty? Anybody have any problem with that? No? Everybody is shaking their heads, no.

Okay. Now, the burden of proving each
element of a crime, beyond a reasonable doubt, rests
upon the Prosecution. That burden never shifts to the
defendant. The defendant, in a criminal case, has no

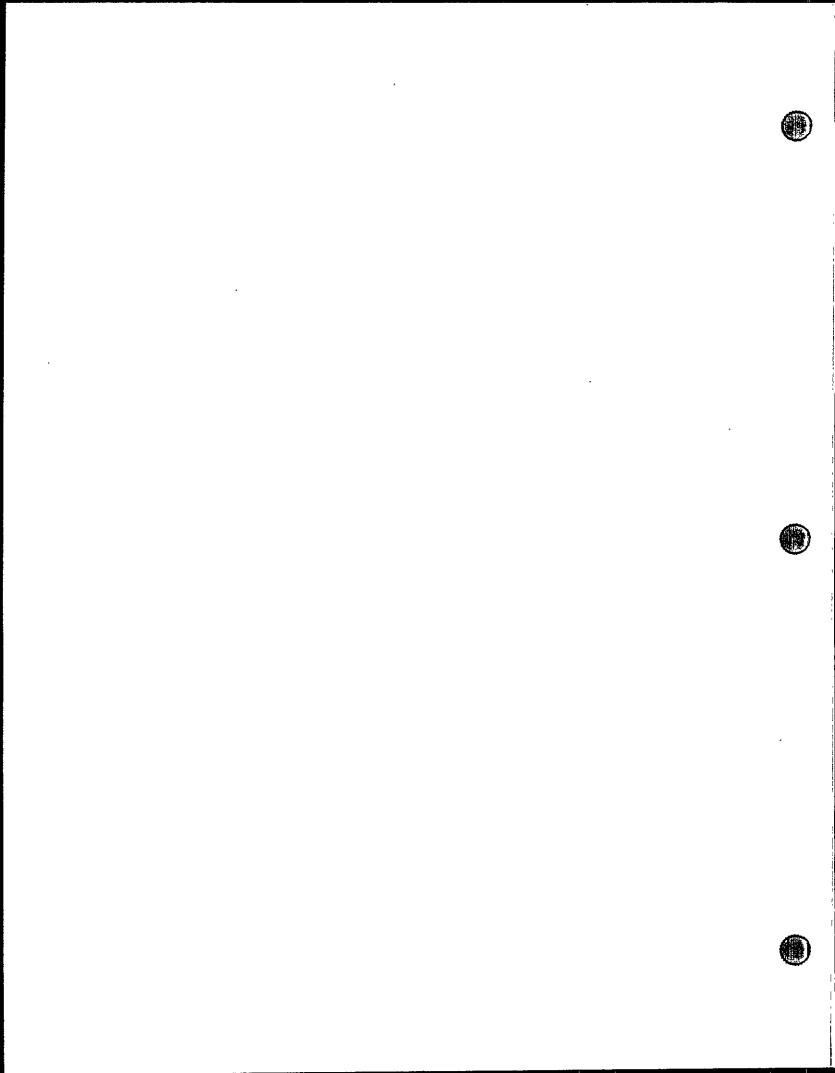
(Jury Selection)

obligation or duty to prove his innocence, or offer any proof relating to his innocence. Would any of you have any difficulties in following these principles?
Anybody have any problem following these principles?
No? No?

A defendant, in a criminal case, has the absolute right to remain silent, an absolute right not to testify. If the defendant chooses not to testify, the jury is prohibited from drawing any negative conclusions from that choice. The defendant is presumed innocent whether he testifies or not. Would any of you have any difficulty in following these principles? Anybody have any difficulty following these principles? No? No?

Okay. Would you have any difficulty or reluctance in accepting the law as explained by the Court, and applying it to the facts, regardless of your own personal beliefs about what the law should be or is? Anybody have a problem with that? No?

Okay. Is there anything about the case, 21 based upon what I've told you so far, that would 22 interfere with your ability to be fair and impartial? 23 Perhaps, I haven't asked you about something. Anything 24 that would interfere with your ability to be fair and 25 impartial? No?



78

(Jury Selection)

All right. 28 is a similar question. The 1 purpose of questioning you as prospective members of 2 the jury, is to select a jury, which will be fair and impartial. Is there anything, perhaps, not covered by my previous questions, that would affect your ability to be fair, impartial jurors? Or, in any way, be a problem for you serving on the jury? Anybody? Something that I haven't asked? No? 8 All right. 29, I kind of ask you a little 9 I am going to ask you this in just a second. 10 later. think what I'm going to do is, give you your little 11 break right now. Let you know what is going to happen 12 when you come back. When you come back, I think, the 13 next set of questions, is what we call the personal 14 15 questions. They are not too personal. Don't worry about that. I will just go through the personal 16 questions, and then some general open-ended questions 17 I do this individually. 18 that I have for you. All right. So, that will be your next step 19 in the process of the jury selection. I will give you 20 21 a chance to go downstairs, use the bathroom, if you need to. We will bring you back up in about 10, 15 22 Then we'll continue in the jury selection 23 minutes. Folks, I also need you to come back, those of 24 process. 25 you in the back. As you see, I may end up excusing

(Jury Selection)

79

individuals for whatever reason. You may end up being in the position of a potential juror.

Again, Judge Stolte. Go downstairs.

1

2

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18 19

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21

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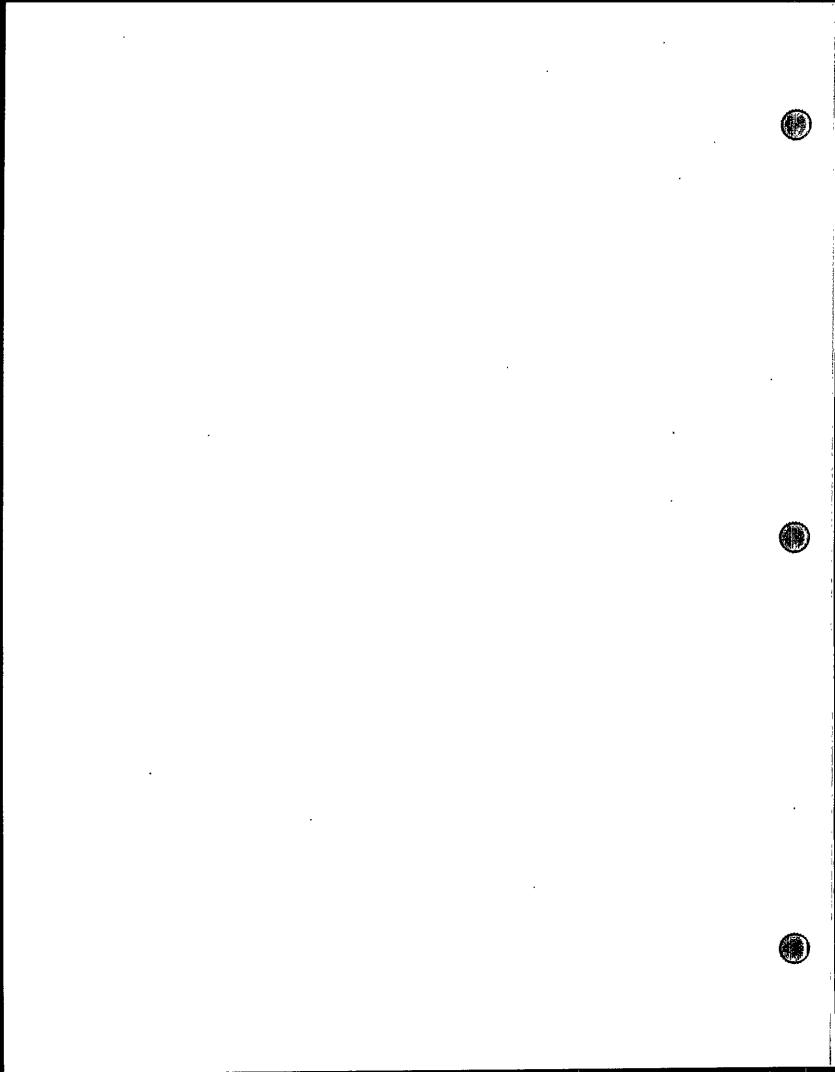
Reconvene. We will bring you back up in about 10, 15 minutes. You haven't heard anything about the case. So, please do not discuss the case among yourselves or with anybody else. We'll bring you back up in just a few minutes. Keep your questionnaires. You can put your questionnaires in your pockets. So, you have them when you come back up.

(Whereupon, the prospective jury panel leaves the courtroom.)

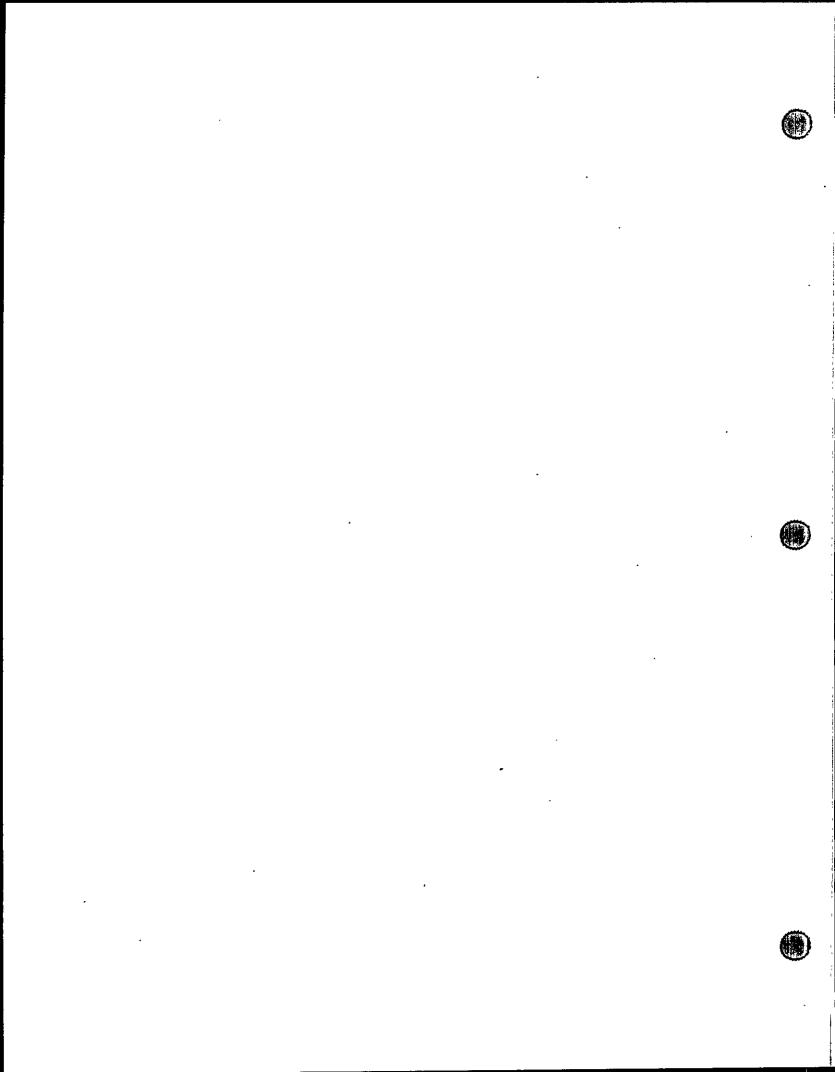
(Whereupon, the hearing continued outside the presence of the prospective jury panel.)

THE COURT: All right, folks. Take your little break. We'll come back and have the open-ended questions. I normally ask whether or not somebody thinks they can be a good juror in the case and why. Whether they think that the criminal justice system is fair and effective. I have been asking their favorite famous person question. And any other questions that you feel compelled. I'll probably ask those three.

MR. GONZALEZ: The only thing I ask, Judge, 24 instead of "yes" or "no" answers, that they expand, 25 when you ask them if they think they'd be a good juror.



```
(Jury Selection)
                        I ask them that, and then I ask
 1
            THE COURT:
 2
   them, why.
 3
           MR. GONZALEZ:
                          Right.
                        And then whether or not they
            THE COURT:
   think our criminal justice system is fair and
 5
   effective. I also follow-up, and ask them, why they
 6
   think so. Because they usually say, yes.
 7
            MR. GONZALEZ: Some Judges just leave it at
 8
 9
   that.
                             I go to the next step.
10
            THE COURT:
                       No.
11
   ask them, why do you feel that way.
            MR. GONZALEZ: Okay.
12
13
            MR. SAMEIRO:
                          I don't have any problem, if we
                   I don't want anything negative said in
14
   go to sidebar.
   front of the whole jury pool. I'd ask that we go to
15
   sidebar if they say, I don't think so.
16
17
            THE COURT: We'll go to sidebar.
          Let's take our break, and then we'll come back.
18
   fine.
19
           MR. SAMEIRO:
                         Thank you.
                           Thank you.
20
           MR. GONZALEZ:
21
            THE COURT: Thank you.
22
            (Whereupon, a short recess was taken.)
            (Whereupon, the hearing continued.)
23
            (Whereupon, the prospective jury panel enters
24
   the courtroom.)
25
                         (Jury Selection)
                                                            81
                        All right, folks. We are now
            THE COURT:
 1
 2
   going to go into the personal questions. Let me just
   tell you what they are first. And you can fell free
   to give the information to me. Or if you need me to
 5
   repeat them, I certainly will.
 6
            So, we are going to start with Miss Ammar.
           Miss Ammar, we will start with you.
 7
   going to ask you, just the town, where you live.
 8
   the town. What you do. Who you live with.
 9
        If you have children, just their ages and their
10
   sexes. What you like to do in your free time.
11
12
         If you have any military background. What your
13
   educational background is. Do you have any favorite TV
   shows. Where you get your news from. And do you have
14
15
   any bumper stickers.
16
                          I will start with the last one.
            JUROR AMMAR:
17
   I have a bumper sticker.
18
            THE COURT: You have. Okay.
            How about, where you live.
19
                                       The town.
20
            JUROR AMMAR:
                          I live in Plainsboro.
21
  now I live by myself. I have two sons. They both live
   in California.
                  And I was managing a gym until like two
22
23
   years ago. Then I decided to quit. And now I visit my
24
   sons a lot. I do a lot of volunteer work.
                                                And I love
25
   to read in my spare time. I watch a lot of news.
```



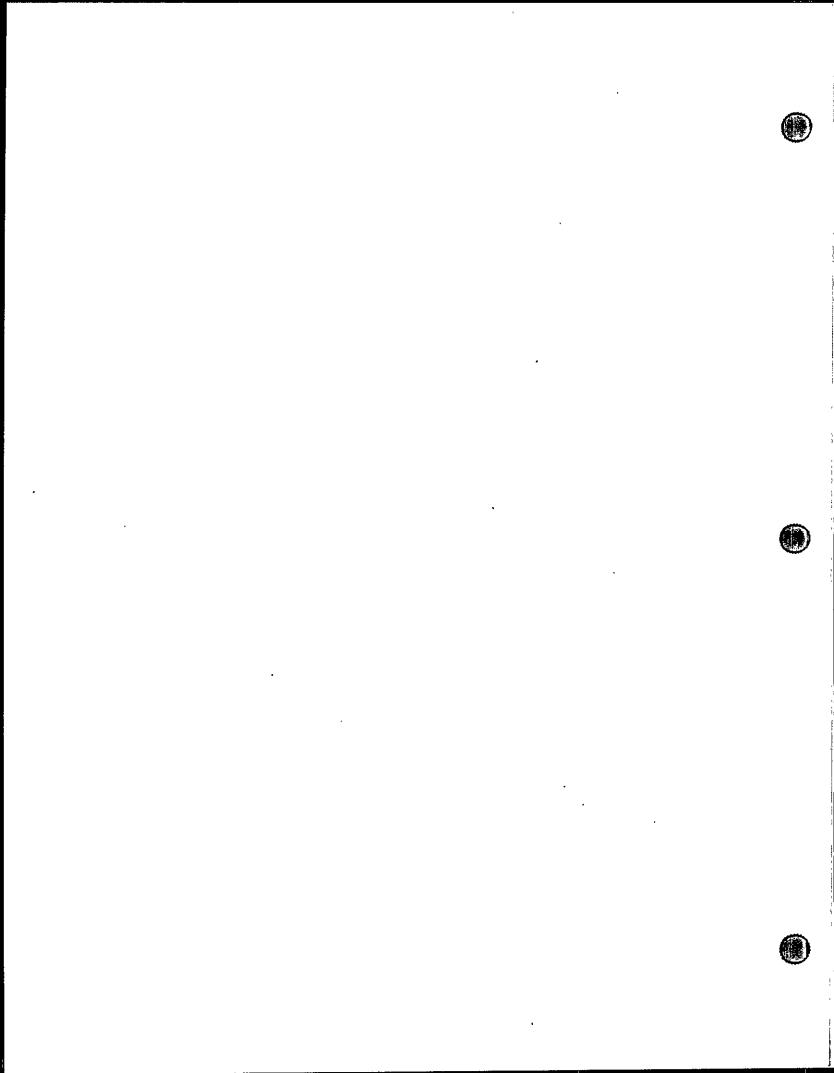
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(Jury Selection)
   watch, what I consider, political shows, that are
   substantial, like Meet the Press, and, you know, This
          I watch CNN a lot. I watch sitcoms.
   Week.
   about it.
 5
            THE COURT: Okay.
                               That is it. How about,
   let me ask you, any military background?
 6
            JUROR AMMAR:
 7
                          No.
            THE COURT: Educational background?
 8
 9
            JUROR AMMAR: I got my undergrad from Trenton
   State College at the time, in psychology, sociology.
10
   And then I did graduate work at Rutgers in social work.
11
12
   That's it.
            THE COURT: How about -- Now, you said what
13
   you like to watch. You watch a lot of news programs or
14
   sitcoms. Do you find that you read papers, too?
15
   papers? New York papers?
16
                          Basically, if something is very
17
            JUROR AMMAR:
   interesting, and somebody sends it on e-mail, I'll read
18
   it. But I don't read the papers everyday. I read a
19
20
   lot of books.
                       And let me ask you -- Let me go
21
            THE COURT:
   to the open-ended questions. Do you think you would
22
   make a good juror for the case?
23
24
            JUROR AMMAR:
                          I hope so.
                                      I don't know.
            THE COURT: Let me ask you this: Are you
25
                         (Jury Selection)
                                                            83
   able to keep an open mind during the trial, listen to
 1
 2
   all of the witnesses?
            JUROR AMMAR: I do.
 3
            THE COURT: Are you able to judge their
 4
   credibility or their truthfulness as they testify?
 5
            JUROR AMMAR:
                          As best as I can.
 6
 7
            THE COURT: From what you know about our
   criminal justice system, do you think it's fair and
 8
   effective?
 9
10
            JUROR AMMAR:
                          It could be.
            THE COURT: All right.
11
                                    Let me ask you a
12
   little bit about that. What areas do you feel there
13
   could be work on? It could be better?
14
            JUROR AMMAR: I think, mostly, it always
   comes down to people's biases. That's really what I
15
   feel makes the difference in, you know, people's
16
   ability to really be rational and weigh the facts.
17
18
   Yeah.
          It's hard.
19
            THE COURT:
                      Are you willing to be rational
20
   and weigh the facts, and listen to the evidence?
21
            JUROR AMMAR: I try in life. But as best as
22
   I can.
                       Here's the question, that you get
23
            THE COURT:
```

kind of cold and the other jurors get to think about

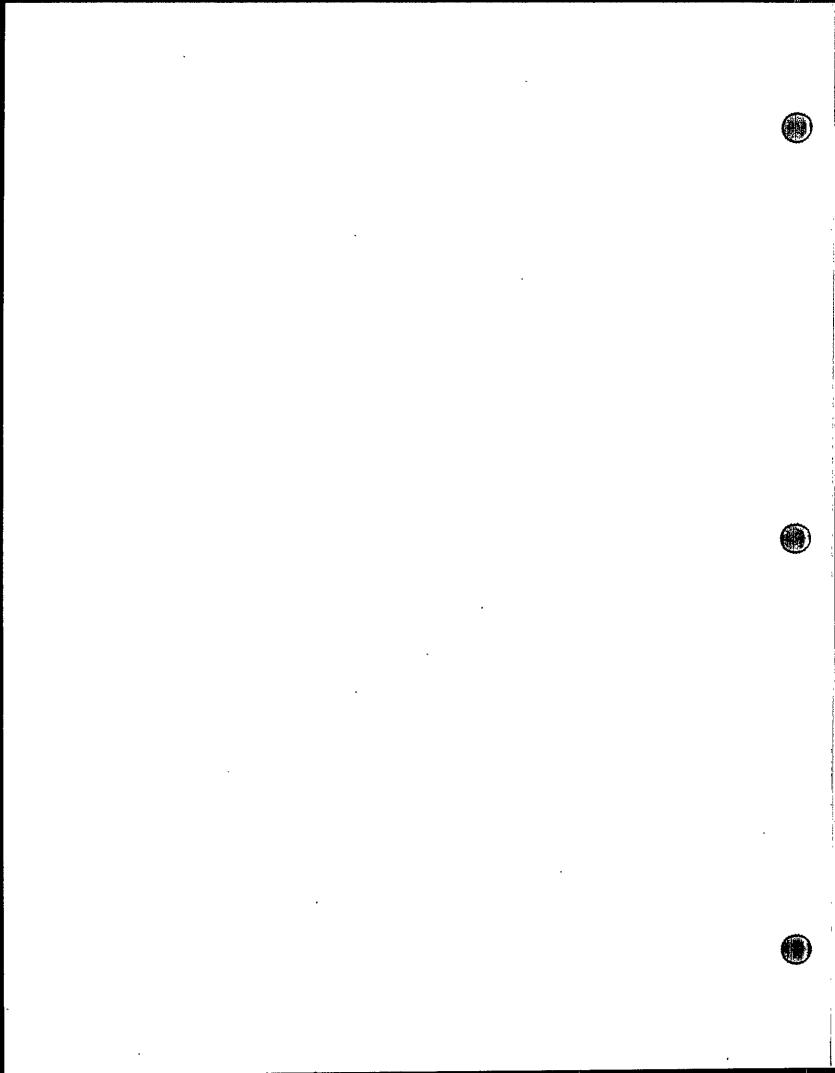
That is: Do you have a favorite famous person?

24

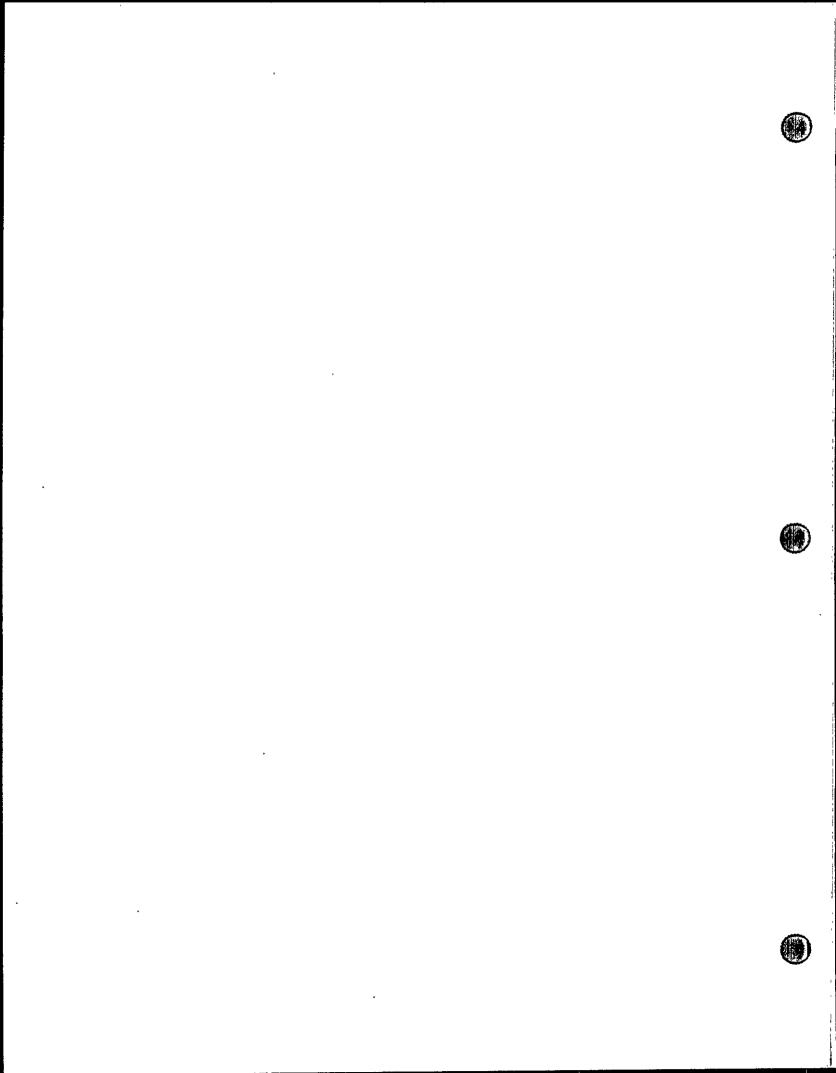
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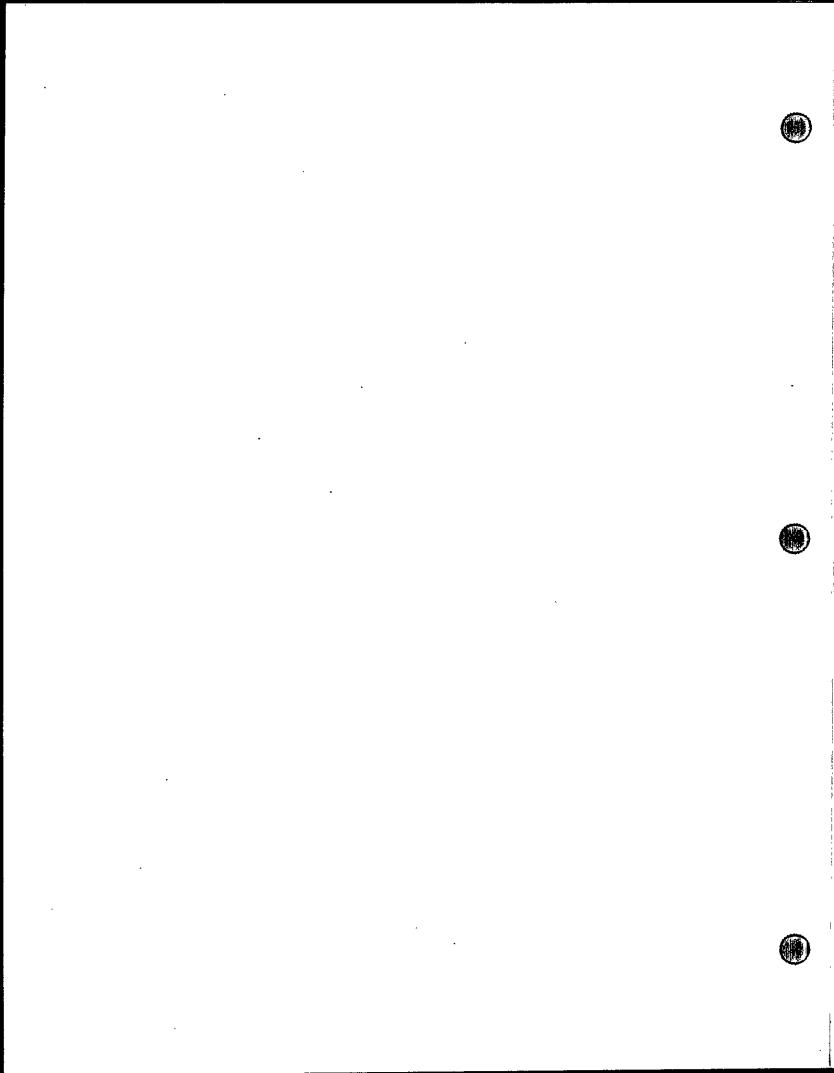
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84
                        (Jury Selection)
   They can be dead or alive.
 1
            JUROR AMMAR: Martin Luther King comes to
 2
 3
   mind.
          Yeah.
            THE COURT:
                        Thank you.
 4
            Let me go to Miss Salley. You have some
   extra seconds to think about your favorite famous
 6
             If you have a favorite famous person.
 7
   person.
            Let me start you off with the town you live
 8
   in, what you do.
 9
            JUROR SALLEY: Iselin. I am a claims
10
11
   examiner.
            THE COURT: You live with anybody else in the
12
13
  house?
            JUROR SALLEY: I have two girls and my
14
15
   boyfriend.
16
            THE COURT: Boyfriend employed?
17
            JUROR SALLEY:
                          Yes, he is.
                       What does he do?
18
            THE COURT:
            JUROR SALLEY: Security for the school
19
20 system, in, I think, it's Franklin.
21
            THE COURT: You said two girls? How old are
22
  they?
                           16 and 18.
            JUROR SALLEY:
23
            THE COURT: In school?
24
            JUROR SALLEY: Yeah. One in college. One is
25
                                                            85
                        (Jury Selection)
 1 a junior in high school.
 2
            THE COURT:
                        What do you like to do in your
 3
   spare time?
            JUROR SALLEY: I like to sing, I like to
 4
 5
   read.
            THE COURT: Any military background?
 6
 7
            JUROR SALLEY:
                           None.
            THE COURT: Educational background?
 8
                           First year college.
 9
            JUROR SALLEY:
                        Favorite TV shows?
10
            THE COURT:
            JUROR SALLEY:
                          I think all the court shows.
11
   All the Law and Orders, CSI, Criminal Minds I like.
12
            THE COURT: Okay. Where do you find you get
13
   your news from?
14
15
            JUROR SALLEY:
                           MSNBC, CNN, Channel 4.
                       Bumper stickers?
            THE COURT:
16
17
            JUROR SALLEY:
                           No.
            THE COURT: Do you think you'd make a good
18
   juror for the case?
19
20
            JUROR SALLEY:
                           I believe so. Yes.
21
            THE COURT: How come?
22
            JUROR SALLEY: Because I am open-minded.
23
   have many relatives and friends on both sides, you
24
   know.
          I don't know -- I think I'm just fair. I have a
25
   big sense of fairness.
```



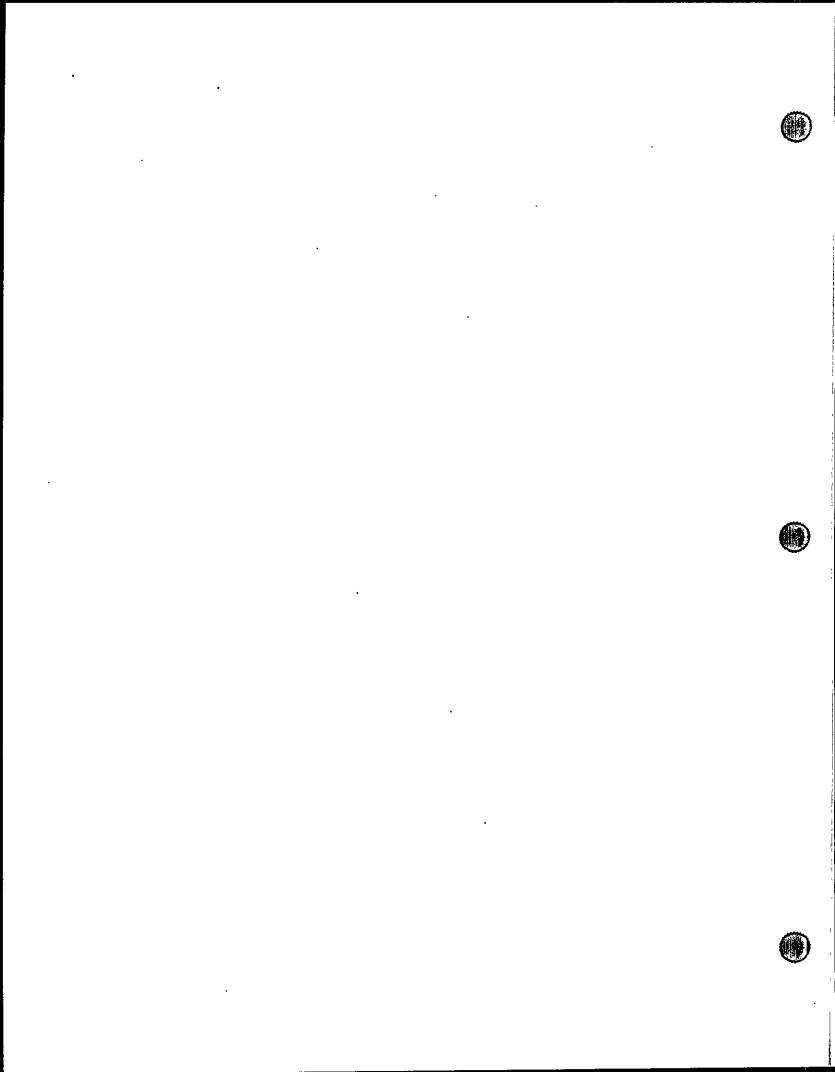
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(Jury Selection)
            THE COURT: From what you know about the
 1
 2
   criminal justice system, do you think it is fair and
   effective?
            JUROR SALLEY: I think it could be better, it
   could be worse. I think it's the best in the world.
 5
 6
           THE COURT:
                      Thank you. Do you have a
 7
   favorite famous person?
            JUROR SALLEY: Oh, I would say that I have
 8
 9
             None that come to mind really, that is my
   several.
   absolute favorite, no.
10
           THE COURT:
                       Thanks.
11
           Mr. Colon, I will start you off with who you
12
13
   live with, where you live.
            JUROR COLON:
                        I live with my wife in Parlin,
14
                We have one son.
15
   New Jersey.
           THE COURT: How old is he?
16
            JUROR COLON: A year and ten months.
17
            THE COURT: Okay. What do you do?
18
            JUROR COLON: I am a financial analyst. My
19
20 wife works in commercial operations for a television
21
   station.
22
            THE COURT: Spare time?
           JUROR COLON: I'm a sports fanatic. Anything
23
24 sports related.
           THE COURT: All right. Any military
25
                                                           87
                        (Jury Selection)
  background?
 1
            JUROR COLON:
 2
                        No.
 3
            THE COURT: Educational background?
            JUROR COLON: College graduate, Bachelor's.
 4
            THE COURT: How about news? Where do you get
 5
   your news from?
                         Either Channel 7 or CNN.
 7
            JUROR COLON:
   recent ones, two sources.
 8
 9
           THE COURT: TV shows?
            JUROR COLON: TV shows is ESPN. I mean,
10
11
   anything sports related or some shows I like, 24, CSI.
   Those are possibly two that stick out.
12
            THE COURT:
                      Bumper stickers?
13
                         None.
14
            JUROR COLON:
15
           THE COURT: Do you think you would make a
16 good juror for the case?
            JUROR COLON:
                          I hope I will.
17
18
            THE COURT: Why? Let me hear a little bit
          Do you think you would be able to keep an open
19
   more.
20
   mind?
21
           JUROR COLON: Yeah. I do my best to keep an
22
   open mind.
               I'm a fairly fair person. I try to keep
23
   any biases out of my thinking.
24
           THE COURT: From what you know about our
25
   criminal justice system, do you think it's fair and
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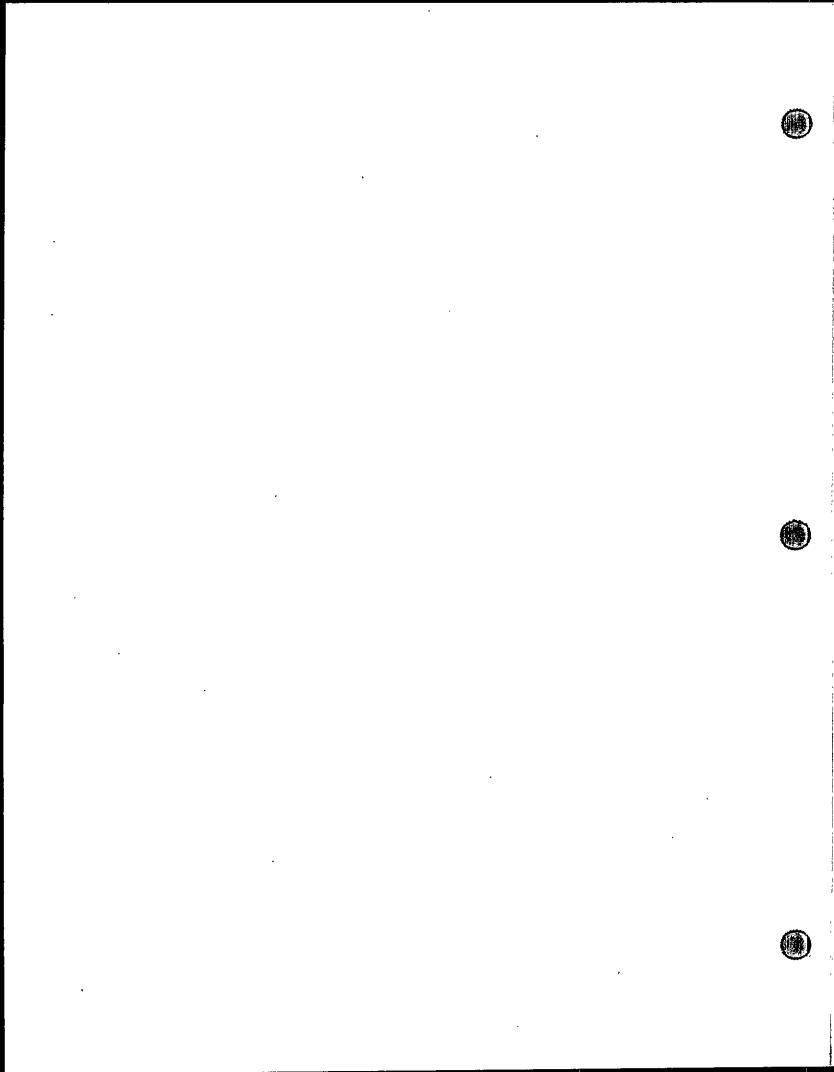
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(Jury Selection)
 1
  effective?
            JUROR COLON: I don't know too much. But I
 2
 3 believe it to be fair.
           THE COURT: When you say you don't know too
 5 much, do you feel you get most of your information from
  the news, what you hear from others?
 7
           JUROR COLON: Exactly. So, you never know
   what the news is reporting, if it's accurate or not
 9
   accurate information. That's why, I quess, I'll say, I
   feel it's a good system.
10
           THE COURT: Do you have a favorite famous
11
12 person?
13
           JUROR COLON: Roberto Clemente.
           THE COURT: Thank you.
14
           Miss Cepeda? Where do you live?
15
16
           JUROR CEPEDA: I live in Perth Amboy. I live
17 with my parents and my brothers.
18
           THE COURT:
                      What do you do?
           JUROR CEPEDA: Right now I am unemployed.
19
20
           THE COURT: What were you doing before?
           JUROR CEPEDA: Working in a law office.
21
22
           THE COURT: A law office you worked for?
23 Where was that located?
           JUROR CEPEDA: In Morganville.
24
           THE COURT: What was the name of the firm?
25
                        (Jury Selection)
                                                          89
           JUROR CEPEDA: Samson Law Group.
 1
           THE COURT: Do you know if they did criminal
 2
 3 work?
           JUROR CEPEDA: Yes, they do.
 4
           THE COURT: Were you working on any criminal
 5
 6 matters or documents?
           JUROR CEPEDA: No. Just translated in
 7
  Spanish. I just did translations.
 8
 9
           THE COURT: Okay. You also live with your
10 parents?
11
           JUROR CEPEDA: Yes.
           THE COURT: Are they working?
12
13
           JUROR CEPEDA: My father. My mom, no.
14
           THE COURT: What does your father do?
15
           JUROR CEPEDA: He works in a factory.
16
           THE COURT: How about -- There was one more
17 person in the house?
18
           JUROR CEPEDA: My sister.
19
           THE COURT: Your sister. And is she employed
20 outside the home?
21
           JUROR CEPEDA: Yeah. She works for the
22 Jewish Renaissance Medical Center.
23
           THE COURT: What do you do in your spare
24
   time?
25
           JUROR CEPEDA: Listen to music, watch TV.
```



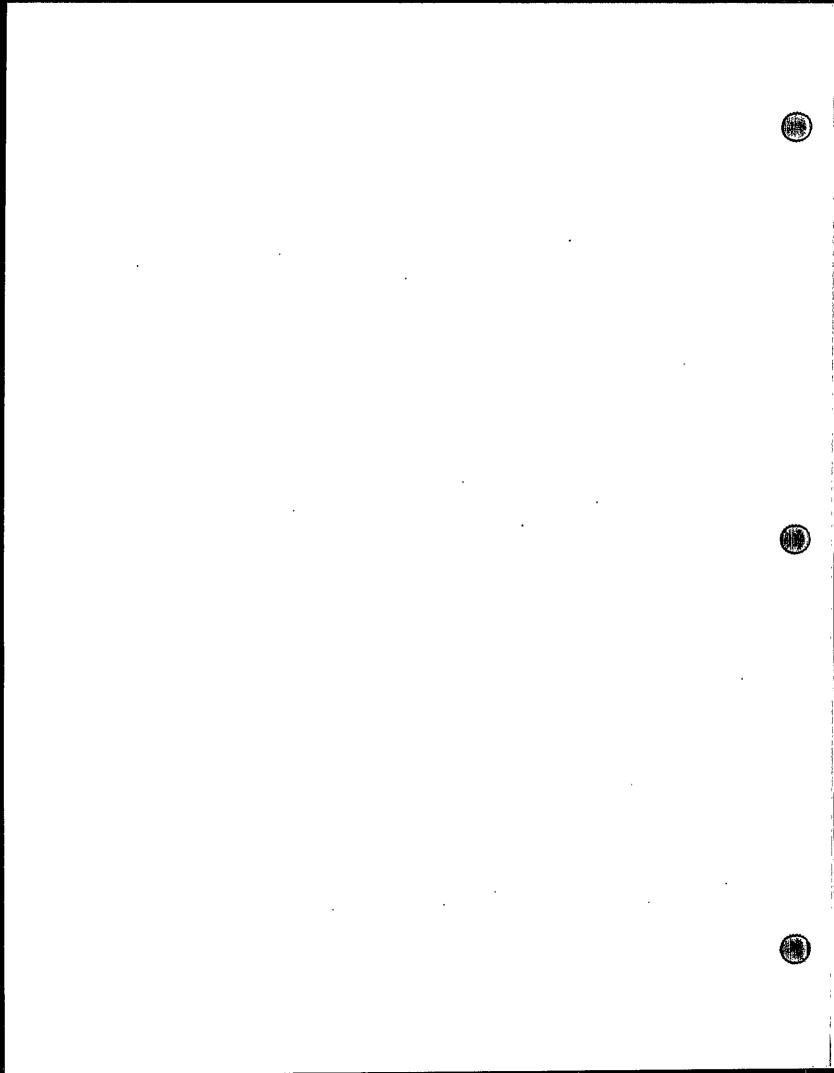
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(Jury Selection)
                                                           90
 1
   favorite TV shows, all of them, everything. I like
 2
   everything.
 3
            THE COURT: Any military background?
            JUROR CEPEDA: No.
 5
            THE COURT: What is your educational
 6
  background?
 7
            JUROR CEPEDA: High school, and two years of
 8
   college.
 9
            THE COURT: How do you get your news?
   do you get your news from?
10
           JUROR CEPEDA: MSN, watching TV, like Spanish
11
12
   TV.
13
           THE COURT: Bumper stickers?
14
           JUROR CEPEDA:
                          Yes.
15
           THE COURT: Oh, good. What are they?
           JUROR CEPEDA: Speeding. Just one. Speeding
16
17 tickets.
18
            THE COURT:
                      No.
                            No. Bumper stickers.
   thought maybe you had a bumper sticker.
19
                                            See how
   excited I was. I don't usually get anybody with bumper
20
   stickers. Not speeding tickets.
21
           Do you think you would make a good juror for
22
23 the case?
            JUROR CEPEDA: I will try.
24
25
            THE COURT: Are you able to keep an open mind
                        (Jury Selection)
                                                           91
  and listen to each of the witnesses and determine their
   truthfulness or their credibility?
 3
            JUROR CEPEDA:
                          Yes. ·
            THE COURT: From what you know about the
 4
  criminal justice system, do you think it's fair and
 5
   effective?
 7
            JUROR CEPEDA: I will try to be fair.
            THE COURT: Do you know -- You may not know
 8
 9 too much about the criminal justice system.
                          I don't know that much.
10
            JUROR CEPEDA:
11
            THE COURT: From what you've heard or read or
   seen, do you believe our system of justice is fair and
12
   effective? Do you think there is room for improvement?
13
            JUROR CEPEDA: Try to be a fair system.
14
            THE COURT: Now, let me ask you: Do you have
15
16
   a favorite famous person?
17
            JUROR CEPEDA:
                          Yes.
18
           THE COURT: Who is that?
19
           JUROR CEPEDA:
                          Selena.
20
           THE COURT: Okay.
                              Thank you.
21
           JUROR CEPEDA: You are welcome.
22
           THE COURT: Mr. Martinez, where do you work?
23
   Where do you live?
24
           JUROR MARTINEZ: I live in Woodbridge.
25
   live with my wife and three children.
                                          Total of five
```



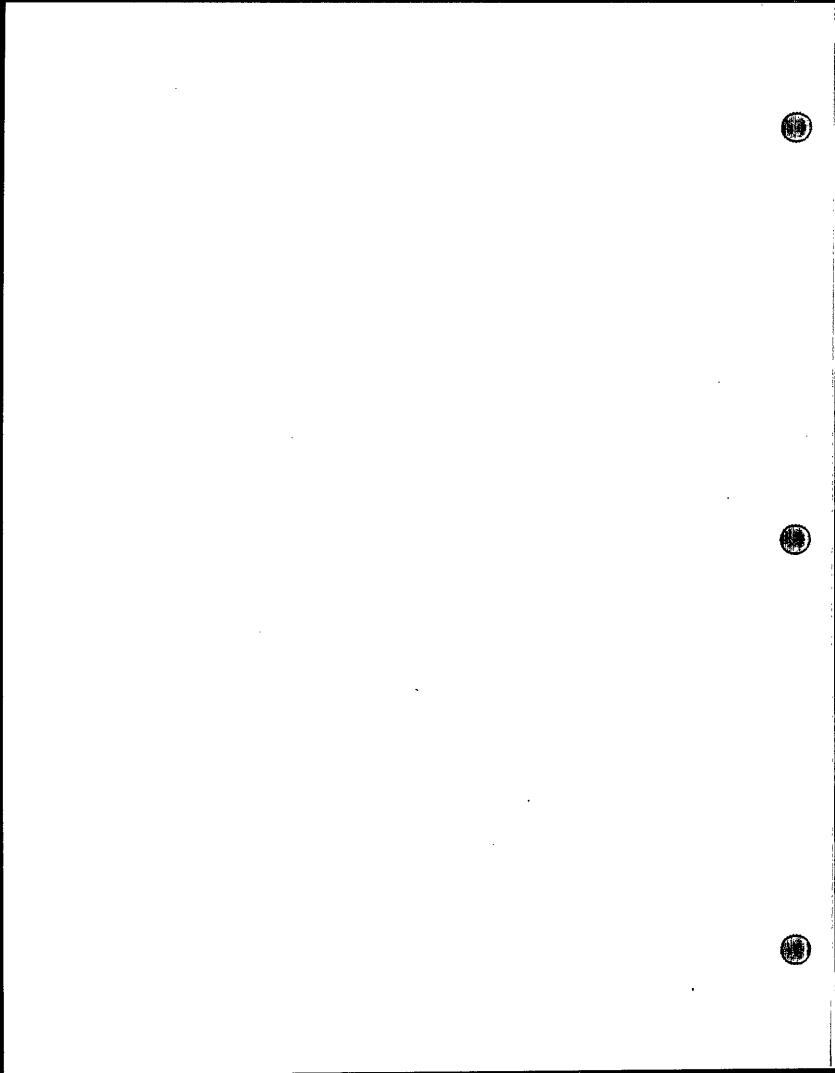
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(Jury Selection)
   children, two are older and have moved away. I work as
 1
   a project accountant. I have a degree in business
 2
   administration, with a concentration in accounting.
                       Any military background?
 4
            THE COURT:
 5
            JUROR MARTINEZ:
                             No.
                       Wife employed outside the home?
 6
            THE COURT:
 7
            JUROR MARTINEZ: Yes, she is a bus driver.
            THE COURT: Now, the three that are living in
 8
   the house, what are their sexes and ages?
 9
            JUROR MARTINEZ: Two boys and a girl, 10, 11,
10
11
   and 12.
            THE COURT:
                        All in school?
12
13
            JUROR MARTINEZ: All in school.
                        Free time?
14
            THE COURT:
            JUROR MARTINEZ: My free time is spent with
15
16
   church.
17
           THE COURT: News? Where do you get your news
18
   from?
19
            JUROR MARTINEZ: Either New Jersey 12, News
   12, or Yahoo online.
20
21
            THE COURT: Bumper stickers?
22
            JUROR MARTINEZ: No bumper stickers.
            THE COURT: I think I have to take that
23
   question off. Do you think you would make a good
24
25
   juror?
                                                            93
                         (Jury Selection)
            JUROR MARTINEZ: I think I'm a good listener.
 1
 2
   I usually am a good judge of character.
            THE COURT: How about the criminal justice
 3
   system? Do you think it is fair and effective?
 4
            JUROR MARTINEZ: I think it's fair.
 5
   90 percent effective. I heard of cases where people
   have been tried unjustly. But, for the most part, I
 7
   think that ample chance is given to everybody.
 8
            THE COURT: Okay.
 9
                              Thanks, Mr. Martinez.
10
   you have a favorite famous person?
            JUROR MARTINEZ: My favorite person would be
11
   the Lord Jesus Christ. For a living person, Pastor
12
13
   John Hagget.
14
            THE COURT: Thank you, Mr. Martinez.
           Mr. Kimmel, I will start you off with, who
15
   you live with, and where you live.
16
            JUROR KIMMEL: I live in East Brunswick.
17
18
   live in a two-family house. My parents live on one
19
         My brother-in-law and sister live on the other.
20
   I rent the apartment upstairs.
21
           THE COURT: What do you do?
22
                          I'm a lead man. A machine
           JUROR KIMMEL:
23
   operator.
24
           THE COURT: Any military background?
25
           JUROR KIMMEL: No.
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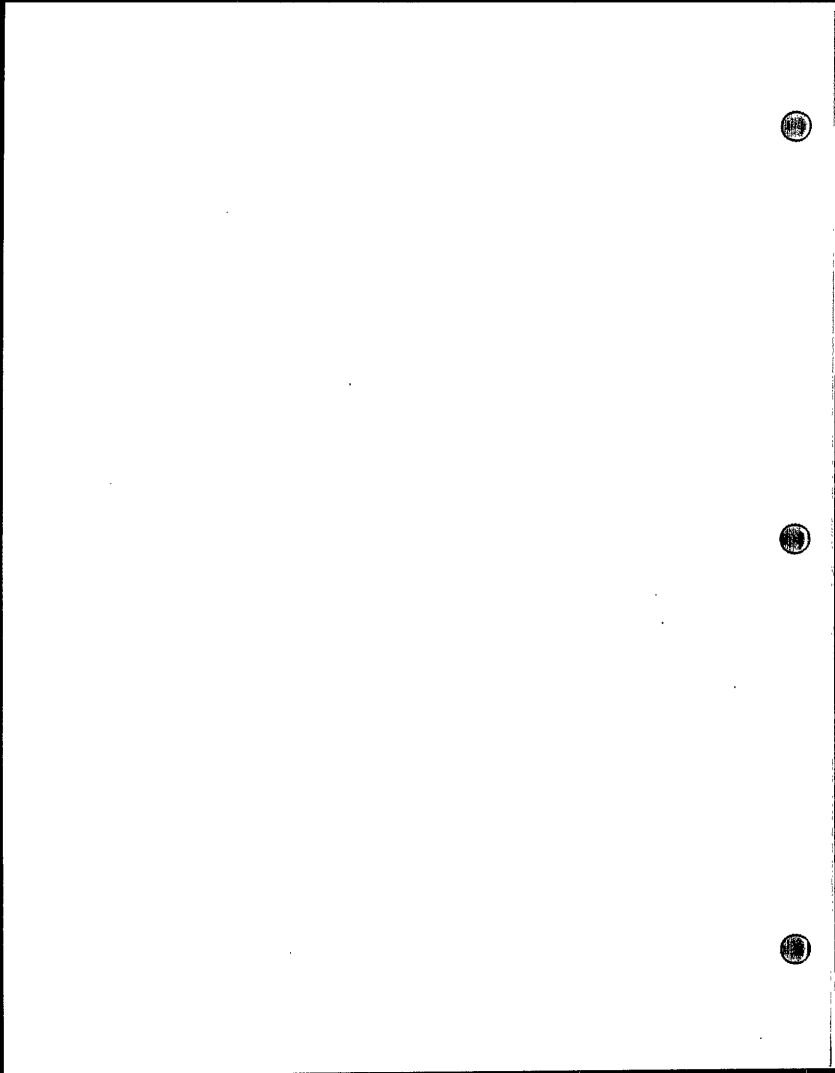
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(Jury Selection)
                                                           94
            THE COURT: Educational background?
 1
 2
            JUROR KIMMEL:
                           High school.
 3
            THE COURT: How about spare time? What do
   you like to do in your spare time?
            JUROR KIMMEL: Spend a lot of time with my
 5
   fiancee, and just going out to movies, stuff like that.
 6
 7
            THE COURT: News. Where do you get your news
 8
   from?
            JUROR KIMMEL:
                           Usually, just looking at the
 9
   front page of the newspaper. A little bit on the
10
11
   internet.
                      Not so much on TV shows?
12
            THE COURT:
            JUROR KIMMEL: No. I don't watch that much
13
14
   TV.
            THE COURT: My next question is, any favorite
15
16
   TV shows?
            JUROR KIMMEL: Nothing in particular, no.
17
                      Any bumper stickers?
            THE COURT:
18
19
            JUROR KIMMEL: No bumper stickers. Just
20 window sticker, American flag.
            THE COURT: Okay. How about the question, do
21
22 you think you'd make a good juror?
23
            JUROR KIMMEL:
                           I think I'd make a good juror.
24
            THE COURT:
                       How come?
                           I strongly listen to both
            JUROR KIMMEL:
25
                        (Jury Selection)
                                                           95
  sides, weigh all the facts and testimony.
 1
            THE COURT: From what you know about the
 2
   criminal justice system, do you think it is fair and
 3
 4
   effective?
            JUROR KIMMEL: I think it's fair and
 5
   effective.
 7
            THE COURT: Okay. Any particular reason why
   you think that? From what you hear, what you read?
 8
                           I just have a strong belief in
 9
            JUROR KIMMEL:
   the entire judicial system.
10
11
            THE COURT: Okay. Do you have a favorite
12
   famous person?
                           Not in particular.
13
            JUROR KIMMEL:
            THE COURT: Thanks, Mr. Kimmel.
14
15
           Miss Chan, let me ask you, who you live with,
16
   what you do.
            JUROR CHAN: I live with my husband and my
17
18
   three sons.
19
            THE COURT: What does your husband do?
            JUROR CHAN: My husband is systems
20
21
  admihistrator.
22
           THE COURT: How about you? Are you employed
23 outside the home?
24
           JUROR CHAN:
                         I am a computer programmer.
25
           THE COURT: How old are your three boys?
```



```
96
                         (Jury Selection)
                         Nine and five and five.
 1
            JUROR CHAN:
 2
            THE COURT: Any military background?
 3
            JUROR CHAN: No.
 4
            THE COURT:
                        Educational background?
            JUROR CHAN:
 5
                         I have MBA.
 6
            THE COURT:
                        What do you like to do in your
 7
   spare time?
 8
            JUROR CHAN: Sleeping, watching TV.
            THE COURT: How about TV shows?
 9
            JUROR CHAN: CSI, Criminal Minds, House.
10
            THE COURT: Where do you get your news from?
11
            JUROR CHAN: TV, internet.
12
13
            THE COURT: Any bumper stickers?
            JUROR CHAN: No.
14
            THE COURT: Do you think you would make a
15
   good juror for the case?
16
17
            JUROR CHAN: Not sure, but try.
            THE COURT: Well, are you able to keep an
18
   open mind, to listen to all the testimony?
19
            JUROR CHAN: Yeah.
20
            THE COURT: From what you know about our
21
   criminal justice system, it could be from any source,
22
   do you think it is fair and effective?
23
            JUROR CHAN: I think so.
24
                        Do you have a favorite famous
25
            THE COURT:
                                                            97
                         (Jury Selection)
  person?
 1
            JUROR CHAN:
                         No.
 2
            THE COURT: Okay, folks. What I'm going to
 3
 4 do, I'm going to break. Then I will go to the next
          After I go through the personal questions with
 5
   you, then comes the attorneys. They have the ability
   to excuse individual jurors. That will be the next
 7
   step in the process. That may be when the other jurors
   will come up, and I will go through the questions with
 9
         I am keeping you advised of the process.
10
            I'm going to break now for lunch.
11
   about twenty of. Just about an hour. Come downstairs.
12
   Reconvene, all of you. We will bring you back up and
13
14
   continue our process. Please remember, you haven't
   heard any information about the case. Don't discuss
15
   the case in any way. But please have a nice lunch.
16
17
   See you downstairs in about an hour. We will bring you
18
        All right.
   up.
19
            (Whereupon, the prospective jury panel leaves
20
   the courtroom for lunch.)
21
            (Whereupon, the hearing continued in the
22 presence of Juror Number 13, Kunal Patel.)
23
           THE COURT: Mr. Patel, right now, is in seat
24
   -- Juror Number 13.
25
           JUROR PATEL:
                          That is correct.
```



```
(Jury Selection)
                                                           98
           THE COURT: Stand right there. What is the
 1
 2
   matter, Mr. Patel?
           JUROR PATEL: I work in the airport. I am a
 3
            I don't get paid for today. I am not going to
   get paid for tomorrow. If it goes to Thursday, I am
 5
   not going to get paid. The number two thing is, the
   second person who does it, he's not going to be here.
 7
   He's called out. Nobody else that has a license to do
 8
 9
                       Let me ask you, Mr. Patel, when I
           THE COURT:
10
   asked about getting paid, you did not respond.
11
            JUROR PATEL: I'm sorry. No.
                                           It's not -- I
12
                 I checked. I had to call in. Like, I
13
   wasn't sure.
   don't work like directly for the airport. I work for
14
               That is the way it is.
15
   an agency.
16
            THE COURT: You were able to check. They do
   not pay you for any days?
17
            JUROR PATEL: They don't pay for any days.
18
            THE COURT: Is that a financial hardship, Mr.
19
20
   Patel?
            JUROR PATEL: The thing is, I live with my
21
   dad, my mom. And my dad, he gets paid minimum wage
22
23
   where he work.
            THE COURT:
                      Mr. Patel, thank you for
24
   checking. I probably should have reminded those other
25
                                                           99
                        (Jury Selection)
  jurors, in case they didn't know, to check, too.
 1
           But I do thank you for checking.
 2
   Counsel, I think I'm going to excuse Mr. Patel for a
 3
 4
   hardship.
           MR. GONZALEZ: No objection.
 5
           MR. SAMEIRO: No objection.
 6
                         Sorry.
 7
            JUROR PATEL:
                                  I didn't mean to cause
   any trouble. I didn't want to do it too late.
 8
            THE COURT: I appreciate that. It is a good
 9
   thing you did that.
10
            JUROR PATEL: Also, one more thing. My dad
11
   is here as well. He is sitting back over there.
12
13
            THE COURT: Father and son on the same date.
            JUROR PATEL: The thing is, he doesn't
14
15
   understand English. Only understanding is basic
            He works at a bank. But like in the back, at
16
   English.
17
   the sorter center.
18
            THE COURT: Well, if he does come up, I will
19
   question him a little bit. If there is an issue --
20
            JUROR PATEL: Sorry about that.
            THE COURT: Thank you. Maybe you can stay
21
22
   and translate, if necessary, this afternoon.
23
            (Whereupon, Juror Patel leaves the
24
   courtroom.)
25
            (Whereupon, the hearing continued outside the
```



100 (Jury Selection) presence of the prospective jury panel.) 1 2 MR. SAMEIRO: I have two comments I want to make before we break for lunch. To give the Court, I quess, some time to think about my request during the lunch break, rather than rush out now. 5 Perhaps, I should have thought about this 6 earlier; but I didn't. I apologize. We have two 7 jurors, it appears to me, understanding Spanish. 8 would be Miss Cepeda, Juror Number 4, and Mr. Martinez, 9 Juror Number 5. 10 Or, at least, these two have come to my 11 attention, in light of the colloquy. I would like to 12 13 know if they, or anybody else in the jury, understands Spanish. Whether they can read and write Spanish. 14 if that gets affirmative answers, your Honor needs to 15 tell the jurors -- the jury -- these witnesses --16 excuse me -- these jurors in particular, that it's the 17 Because we have Interpreters 18 translation that matters. here. My victim is Spanish speaking. Okay. 19 going to need an Interpreter, number one. Number two, 20 the videotape, that I intend to play for the jurors, 21 2.2 has the photo array procedure done entirely in Spanish. Now, the import of the tape is really visual. 23 The most important thing for me is having the witness 24 identify the photograph, which is his nodding in the 25 101 (Jury Selection)

That requires no translation. But there affirmative. is a photo display sheet in Spanish, read to the witness, which I have marked.

> Okay. THE COURT:

1

2

4

5

7

8

9 10

11

12

13 14

15

16

17

18

19

20

21

22

23

24

MR. SAMEIRO: I expect that Officer Sergio Mattias, who is a Spanish speaking officer, that did the photo array procedure, to translate that document, with the English version, that we have also premarked. I say all this to put it in context. Because you're going to have jurors, perhaps, hearing something that is not a hundred percent translated accurately, with all due respect to the Interpreters, you could have more than one translation. What I would like to know is, in terms of their Spanish speaking ability during the process.

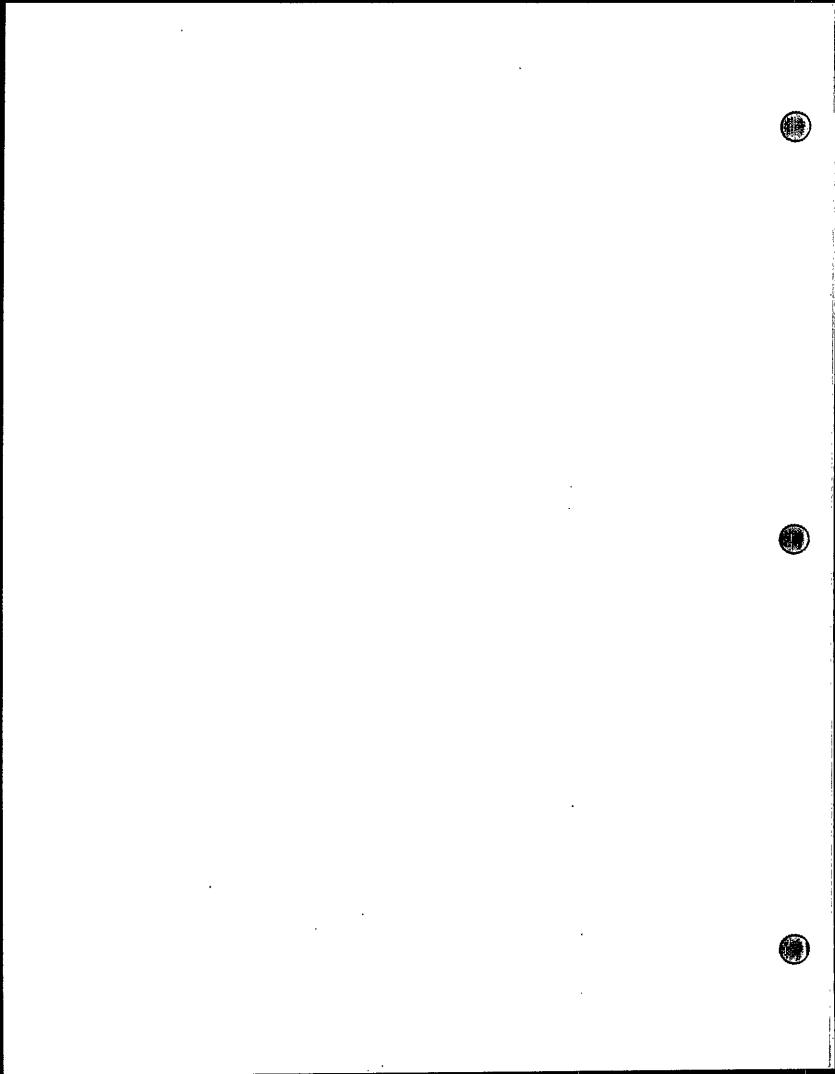
> THE COURT: Okay.

MR. SAMEIRO: I don't think there is any harm If they answer in the affirmative, to in asking them. have the Court telling them, that they need to be quided by and bound by the official translation.

> THE COURT: I have no problem with that. MR. SAMEIRO: I think that is number one.

Number two, Mr. Martinez said something that piqued my curiosity, when asked about the most famous person

25 question. He said, the Lord Jesus Christ.



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102
103
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(Jury Selection) I would like the Court to not necessarily 1 highlight the particular juror, but ask the panel, in relation to any religious beliefs that would prevent them from judging another. I do happen to know, I just don't have chapter and verse, at my hand, in the Christian faith, there is a passage in the Bible, that some evangelicals believe, prevents them from judging 7 I have seen those answers before. 8 another. I've had pastors, in fact, come before the 9 10 Court, in other cases, you know, Judge, I can't be I can't judge another human being, you know, 11 based upon my religious belief. I don't know if Mr. 12 Martinez believes that way. I think it is worth 13 I don't certainly want anybody to be precluded 14 from judging Mr. Machado, or any of the witness' 15 credibility, based upon a religious obstacle. 16 MR. GONZALEZ: I think what the juror said 17 18 about the criminal justice system was pretty unequivocal, and his ability to listen. 19 That he had an open mind. 20 THE COURT: Right. I got into some of the things, where he would be a good 21 22 juror. I think his resounding, "Jesus 23 MR. GONZALEZ: Christ" -- I don't know. It might be a problem, a 24 jurisdictional problem. 25 (Jury Selection) MR. SAMEIRO: I'm just asking, perhaps, your 1 Honor could say it, not necessarily picking out Mr. 2 Martinez. You can say, does anybody have any religious principles or beliefs, that would get in the way of judging people. 5 THE COURT: I don't have a problem asking I think they're dealt with, through the guilty 7 and not guilty. Would you be able to find someone quilty. Would you be able to find someone not quilty. 9 10 It is kind of dealt with in those questions. Again, I have no problem, with personal or 11 religious beliefs, that would interfere in the judgment 12 of another. Normally, these people do come forward. 13 14 It might be much to do about nothing. 15 MR. SAMEIRO: Like Mr. Gonzalez said, a 16 resounding, "Lord Jesus Christ." That just made me 17 think about the issue. To think that there may be a 18 problem. 19 THE COURT: I have no problem asking that.

22 trial, regarding Spanish speaking jurors. 23 MR. GONZALEZ: I heard about that. 24 THE COURT: I'll ask if anybody does speak

MR. SAMEIRO:

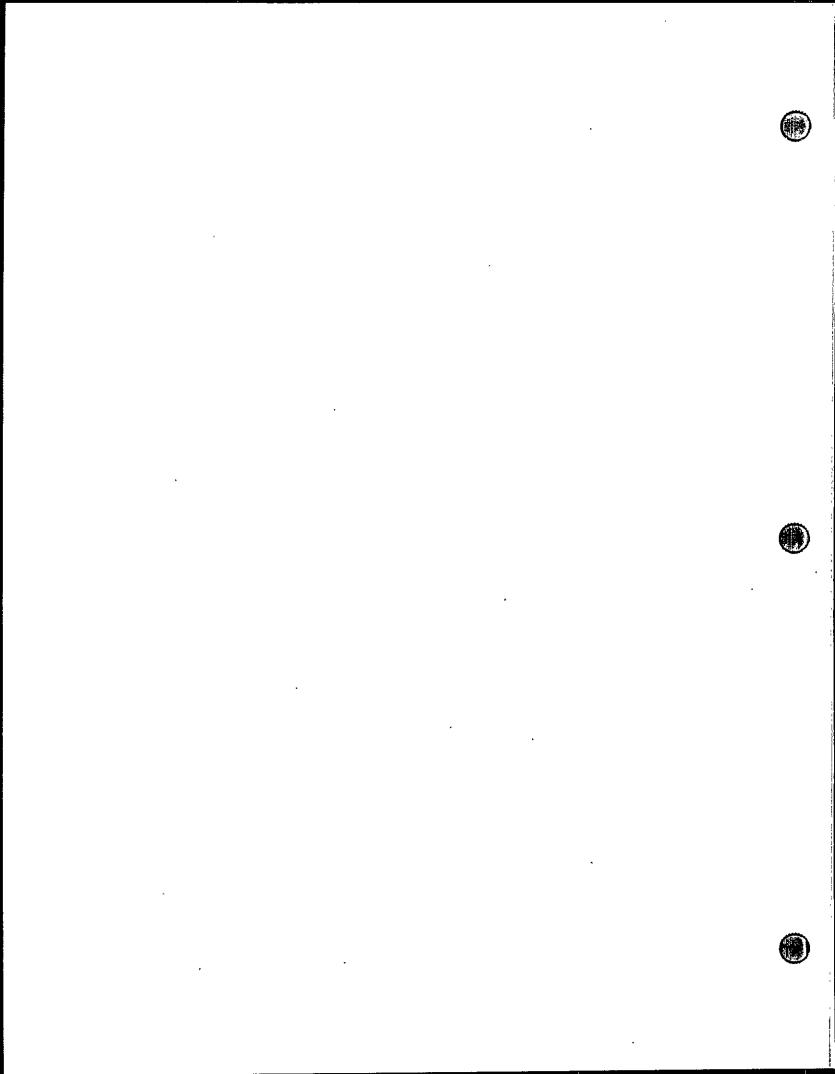
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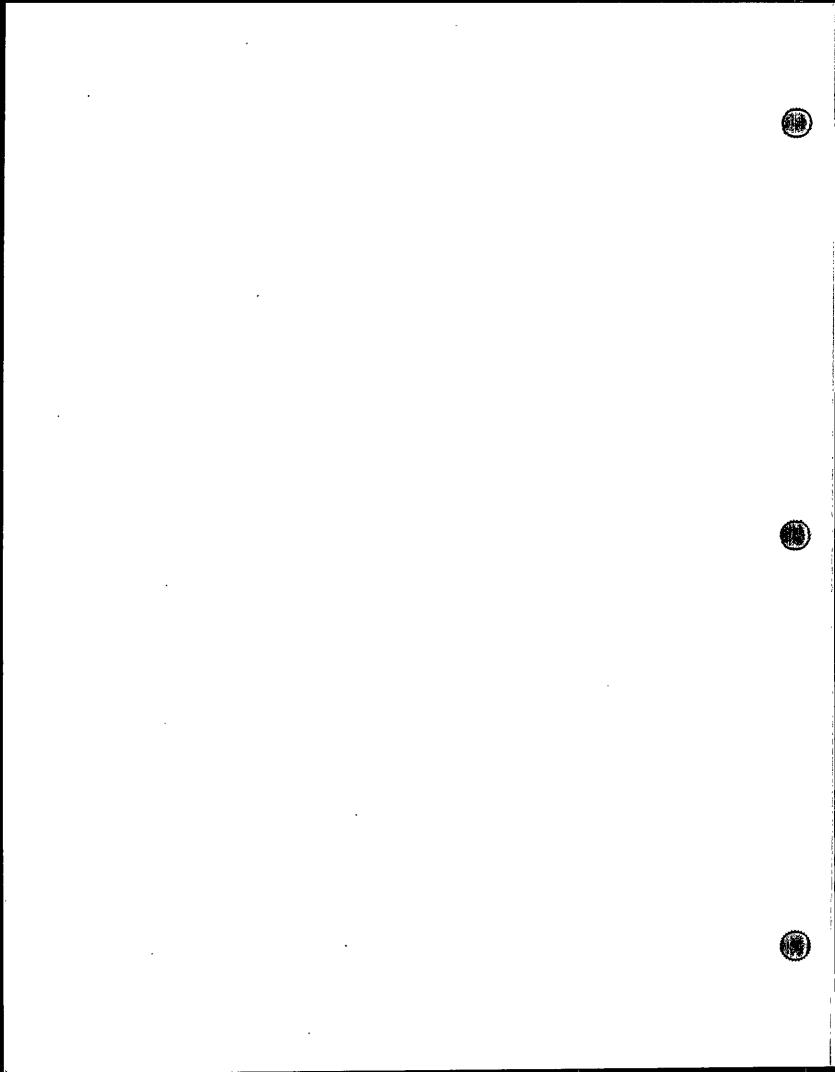
I'll ask it.

25 Spanish, write Spanish, read Spanish.

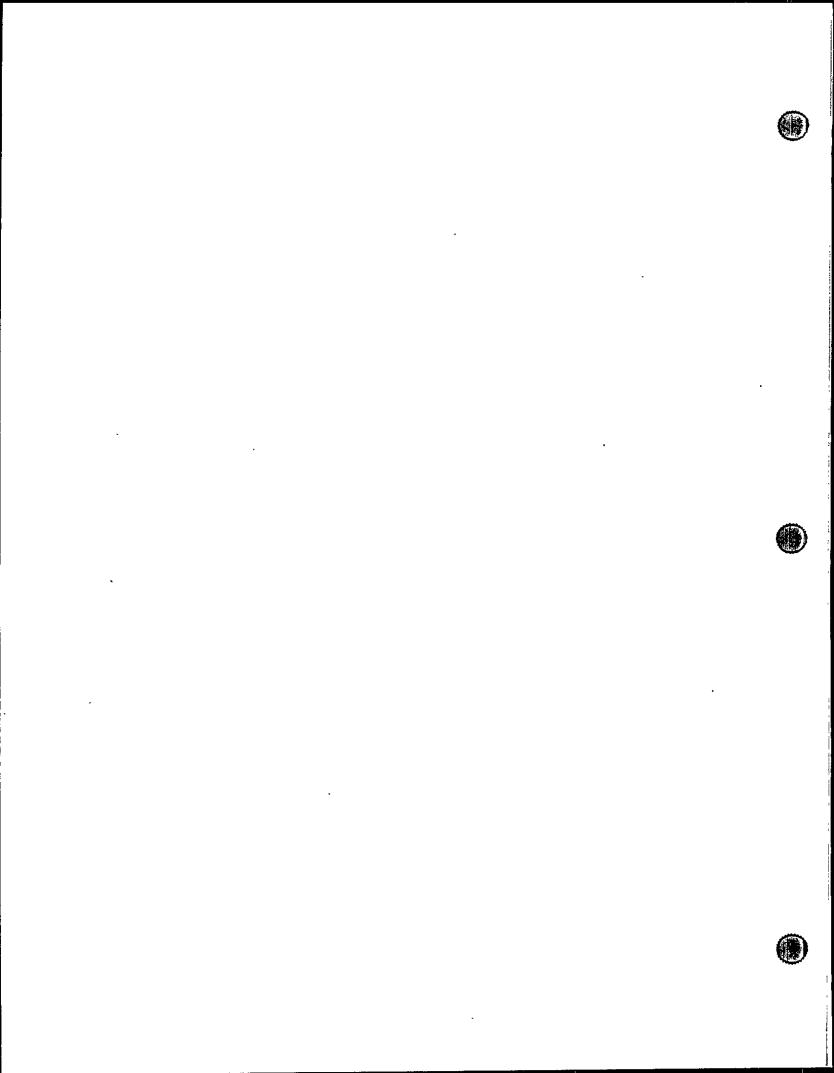
I had an ironic issue my last



```
(Jury Selection)
                                                            104
                         And indicate to them, as you
 1
            MR. SAMEIRO:
   can see we are using the assistance of an Interpreter.
 2
   And they must understand that the translation, that is
   given by the Interpreter, is what we must go by.
   you differ, fine. But you have to use the translation
   of our Court-appointed translator. You can also
 7
    indicate that the victim will be using an Interpreter.
            THE COURT: I have no problem with that.
 8
 9
   Both the defendant and the victim.
                          They will be using the
10
            MR. SAMEIRO:
11
    assistance of an Interpreter.
            MR. GONZALEZ: I think they noticed that.
12
            MR. SAMEIRO: You know, you'd be surprised
13
   how many times, that somebody thinks that he has a
14
15
   hearing problem.
16
            THE COURT: You know, I've heard that in the
17
   past from jurors.
18
            Okay.
                   So, I'll ask them those questions when
   we come back.
19
20
                          Thank you.
            MR. SAMEIRO:
21
            MR. GONZALEZ:
                           Thank you.
22
            THE COURT:
                       Thank you, folks.
            See you at 1:45. We'll come back at 1:45.
23
            (Whereupon, a luncheon recess was taken.)
24
25
                                                            105
                         (Jury Selection)
                                 SESSION
 1
            AFTERNOON
            (Whereupon, the hearing continued after
 2
 3
    lunch.)
            (Whereupon, the prospective jury panel enters
 4
 5
   the courtroom.)
 6
            THE COURT: Thank you, folks. Please have a
 7
           I'd like to tell you that we took an extended
    seat.
            I apologize. It was a totally separate matter.
 8
 9
    I do apologize, ladies and gentlemen.
            Let me come back to asking those personal
10
11
    questions, starting where we left off, with Mr. Sitton.
12
            Mr. Sitton, where do you live and who do you
13
    live with?
14
            JUROR SITTON:
                           I live with my wife and two
15
                We live in Metuchen, New Jersey.
   daughters.
16
            THE COURT:
                       What do you do?
17
            JUROR SITTON:
                           I work in finance for
18
   JP Morgan.
19
            THE COURT:
                       How about your wife? Is she
20
   employed outside the home?
21
            JUROR SITTON:
                           She works for Cordis
22
   Endovascular, out of Warren, New Jersey.
23
            THE COURT: You said two daughters?
24
   are they?
25
            JUROR SITTON:
                           Thirteen and six.
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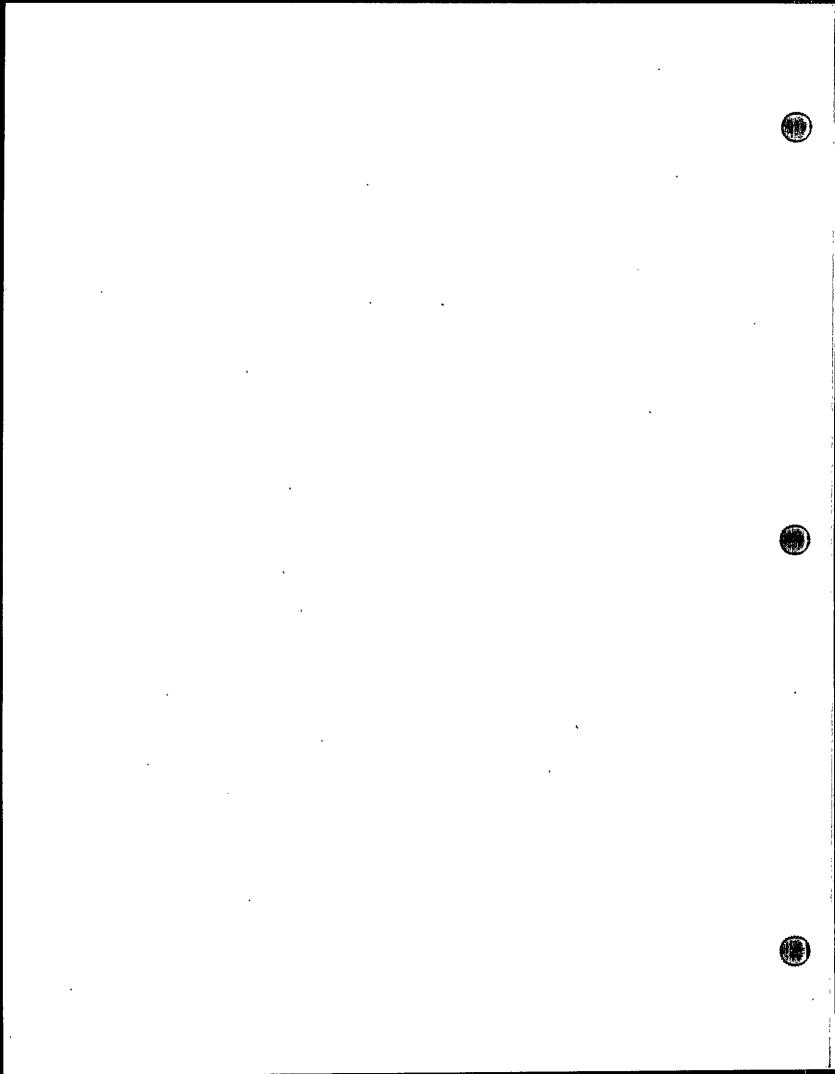


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(Jury Selection)
                                                          106
 1
            THE COURT: What do you like to do in your
 2
   spare time?
 3
            JUROR SITTON: Once in a while, I get to play
   some golf, sporadically. I do like to watch TV, read.
            THE COURT: What are your favorite shows?
 5
 6
            JUROR SITTON: Law and Order.
 7
   Supernatural with my oldest daughter.
            THE COURT: Any military background?
 8
 9
            JUROR SITTON:
                           No.
10
            THE COURT:
                        Educational background?
                           College degree. And I'm also
11
            JUROR SITTON:
   a charter financial analyst.
12
13
                       How about the news? Where do you
            THE COURT:
14
   get your news from?
                           The Wall Street Journal,
15
            JUROR SITTON:
   mostly for business, and CNN.
16
            THE COURT: Any bumper stickers?
17
18
            JUROR SITTON: Metuchen Bull Dogs, Go Bull
19
   Dogs.
                      Do you think you would make a
20
           THE COURT:
21 good juror for the case?
            JUROR SITTON: Yes, I do. I think so.
22
   a fair-minded person, open-minded. Try not to reach a
23
   judgment on any situation, or anybody, without sort of
24
   hearing both sides.
25
                                                          107
                        (Jury Selection)
                        With what you know about our
            THE COURT:
 1
   criminal justice system, do you think it is fair and
 2
 3
   effective?
            JUROR SITTON: I think it's as far as a large
 4
 5
   system can be.
                    So, yes.
            THE COURT: Do you have a favorite famous
 6
 7
   person?
 8
            JUROR SITTON: Not particularly. Although, I
   will note that Clemente is not a bad choice.
 9
10
            THE COURT:
                        Thank you.
11
           Miss Gonzalez, where do you live, what do you
12
   do?
            JUROR GONZALEZ: I live in Cranbury with my
13
   husband, and my 12-year-old daughter, and 9-year-old
14
   twins. I teach in high school. And I actually
15
16
   encountered a problem during the break.
17
            THE COURT: All right.
18
            JUROR GONZALEZ:
                             I very much would like to
   serve. But I have encountered a problem, when I called
19
20
                I called several stay-at-home moms, to see
   my husband.
   if they could help me, in terms of a week long trial.
21
22
   I have my kids to pick up at 3:00 o'clock, which I
23
   always do.
24
                        Okay.
           THE COURT:
25
            JUROR GONZALEZ: And I only found one mom who
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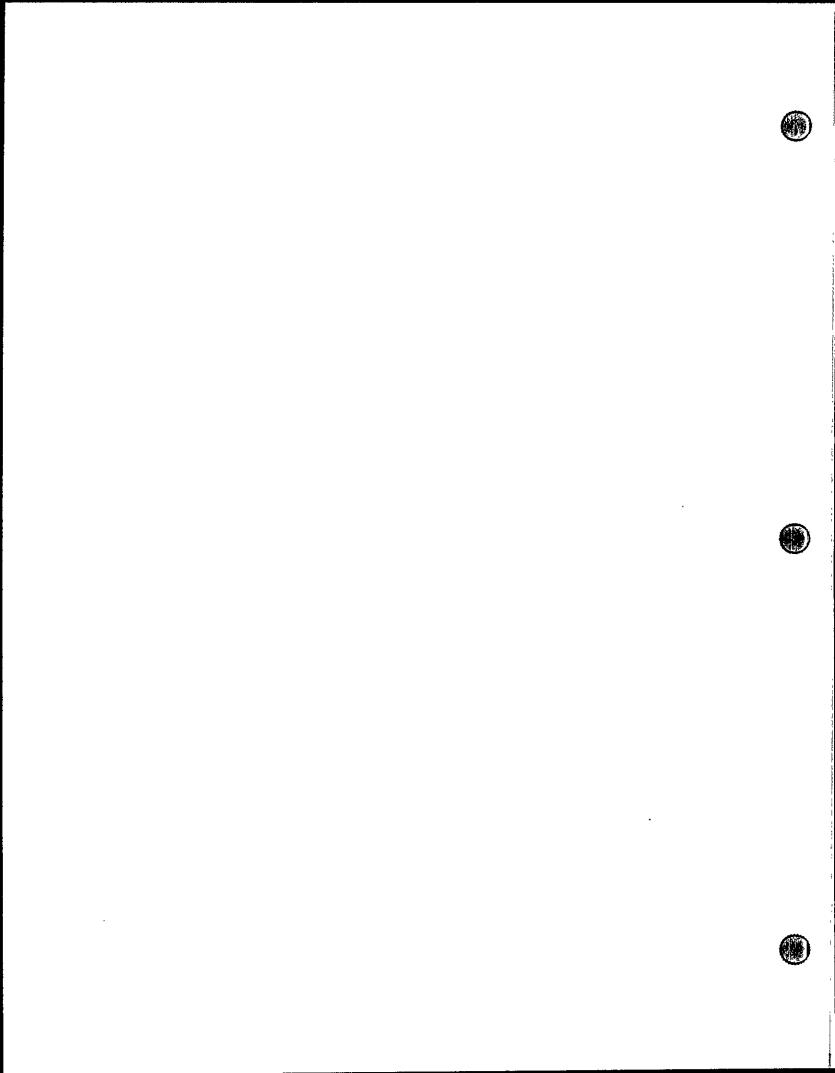


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would; but the others tell me, it was a very bad week.
 1
   to drive three additional kids. And my husband said to
   me -- he works as a sales manager. That this is the
   toughest week of the year. That he has a quota to get
   in sales. And there is a lot of pressure this week.
 5
   He would be unable to pick up the kids.
                       Okay.
 7
            THE COURT:
            JUROR GONZALEZ: So, help me out.
 8
 9
   really --
            THE COURT: Is there after care?
10
            JUROR GONZALEZ:
                             There used to be, when I
11
   taught at the elementary level. Right now, there isn't
12
   after care. They are not registered for it.
13
   private after school care that serves Metuchen,
14
   Cranbury, Monroe. It is not an after care school
15
   program, that the Cranbury School has. So, I would
16
   also be stressed. I don't know if I could -- They're
17
   not registered for it. You have to preregister.
18
   have to do that a month ahead of time. I would have to
19
   see if they would be able to take them on such a short
20
21
   notice.
            THE COURT: Okay. You've got to get over to
22
   my school, it is only a day's notice.
23
            But I understand your problem.
24
                                            I appreciate
   you doing all that work, checking on the other mothers,
25
                        (Jury Selection)
                                                          109
   to see if they can pick up the children.
            JUROR GONZALEZ: It is just a tough week.
 2
                        I know that it is a tough week.
 3
            THE COURT:
            JUROR GONZALEZ: A lot of people had all
 4
   kinds of reasons.
 5
            THE COURT: Okay. We thought about the after
 6
          No relative or anything like that?
 7
            JUROR GONZALEZ: No. My family consists of
 8
 9 my children and my husband. My husband and I are only
   children. And our last surviving parent, my father,
10
   passed away a year ago. Except for the neighbors that
11
    I have, who I called, and only one would say sure, no
12
   problem, for one day a week. The others couldn't
13
14
   promise me anything.
15
            THE COURT: Miss Gonzalez, I'm going to
16
   excuse you, based upon your issue, that, I think, is
17
   somewhat unique to you this week, unfortunately.
18
   another week, you will be able to come back in.
19
            JUROR GONZALEZ:
                            Thank you.
20
            THE COURT: Thank you. All right, Miss
21
   Gonzalez.
22
           Before I put someone else in, let me go to
23
   Mr. Delgado, with the personal questions. Who do you
24
   live with, what do you do?
25
            JUROR DELGADO:
                           I live by myself.
                                               I live in
```

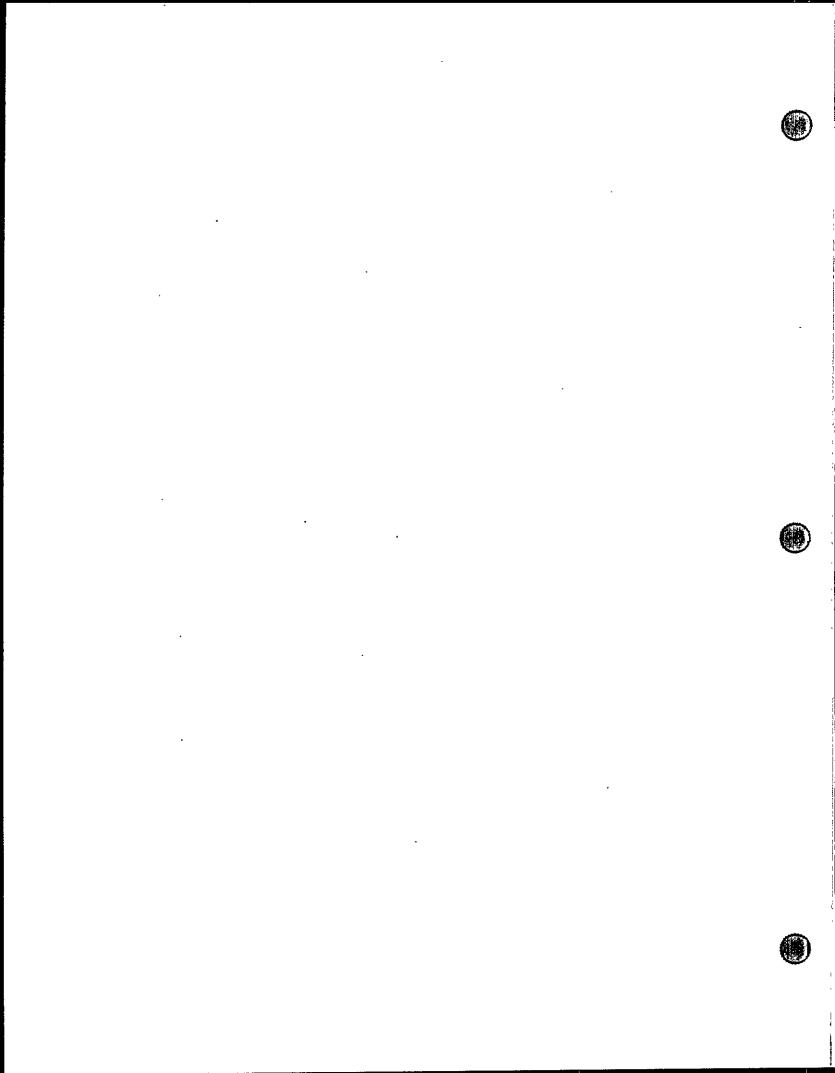
(Jury Selection)



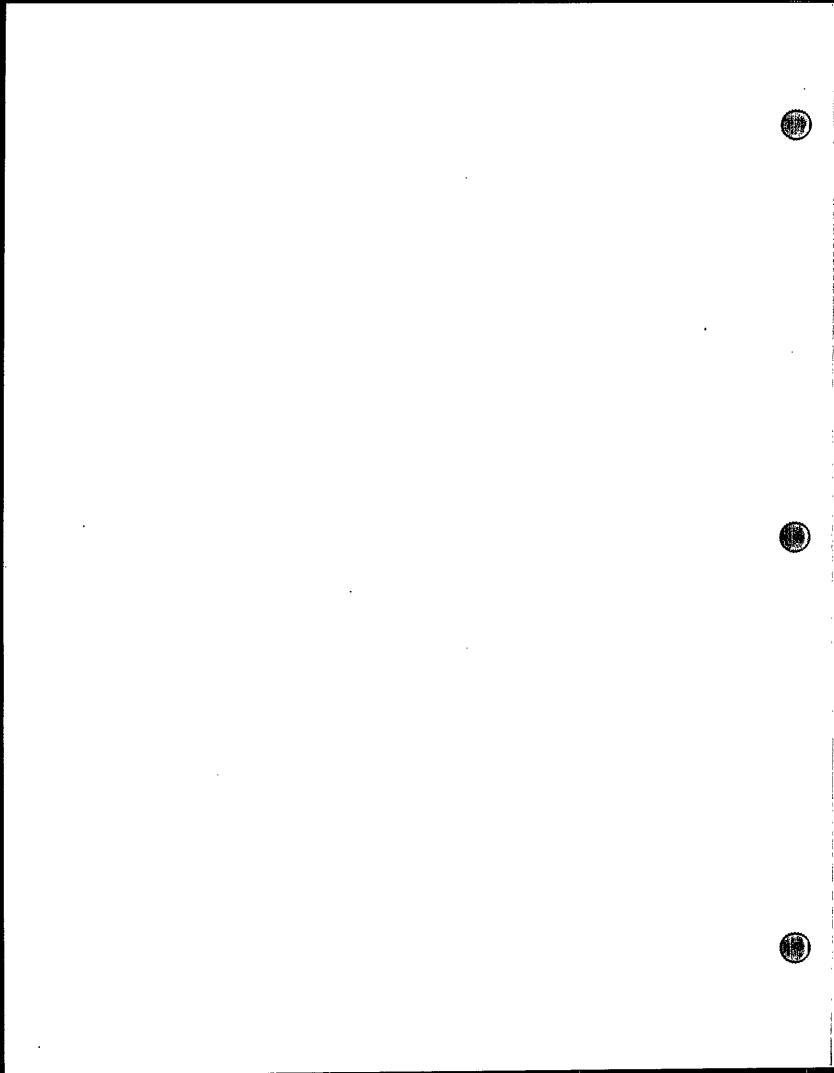
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(Jury Selection)
                                                          110
   New Brunswick. I'm a network technology support
 1
 2
   specialist. I have military background. Two years in
   the military academy. That's about it.
                      How about educational background?
            THE COURT:
            JUROR DELGADO:
                           Graduated Rutgers, with a
 5
   degree in Japanese. And that's it.
 6
            THE COURT: Free time? What do you like to
 7
   do in your free time?
 8
 9
            JUROR DELGADO: I train at the academy about
   four, five days out of the week.
10
            THE COURT:
                       TV shows?
11
            JUROR DELGADO: TV shows, I don't watch TV
12
   that much, unless I am watching the Simpsons, I quess.
13
14
            THE COURT:
                       News?
                          BBC online, that is usually
15
            JUROR DELGADO:
   where I get my news from.
16
17
           THE COURT:
                      Bumper stickers?
18
            JUROR DELGADO:
                          None.
            THE COURT: Do you think you'd make a good
19
20
   juror for the case?
            JUROR DELGADO: I hope so.
                                        I think so.
21
            THE COURT: Can you keep an open mind when
22
23 you are listening to all the witnesses?
            JUROR DELGADO:
                            I think so.
24
                       What you know of our criminal
25
            THE COURT:
                                                          111
                        (Jury Selection)
  justice system, do you think it is fair and effective?
 1
            JUROR DELGADO: I don't know much about it.
 2
            THE COURT: Would you say you get, what you
 3
  do know about it, from newspapers or what you hear from
 4
   people? Where would you say you get your information
 5
   about our criminal justice system?
            JUROR DELGADO: Actually, I've got a few
 7
   friends who are lawyers and such. So, we don't really
 8
   talk a lot, a whole lot, about it.
 9
10
           THE COURT: Okay. Do you have a favorite
11
   famous person?
12
            JUROR DELGADO: Dalai Lama.
                              Miss Remick, who do you
13
            THE COURT: Okay.
   live with, and where do you work?
14
           JUROR REMICK: I live with my husband and two
15
   sons, ages seven and five. I'm a middle school
16
             I live in Perth Amboy. My husband is a
17
   teacher.
18
   computer consultant.
19
           THE COURT:
                       Military background?
20
           JUROR REMICK:
                          Nope.
21
           THE COURT: Educational background?
22
           JUROR REMICK:
                          Bachelor of Arts in teaching.
23
           THE COURT: What do you like to do in your
24
   spare time?
25
           JUROR REMICK:
                          Keep after the kids pretty
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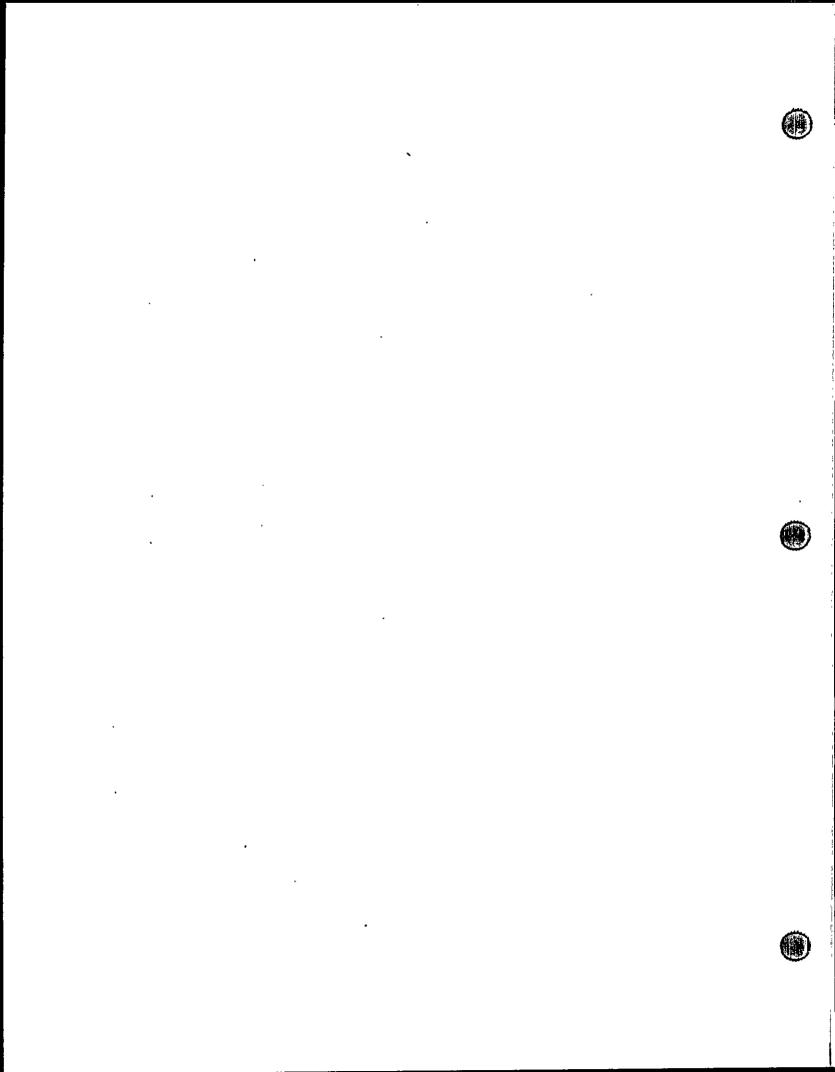
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(Jury Selection)
                                                          112
 1
   much.
          Lots of family activities.
 2
           THE COURT: Favorite TV shows?
           JUROR REMICK: None. They don't give me the
 3
   remote. So, mostly just kids shows for now. I watch
 5
   with them.
 6
           THE COURT: How about news? Where do you get
   your news from?
 7
            JUROR REMICK: CNN and Home News Tribune.
 8
 9
            THE COURT: Do you think you'd make a good
   juror for this case?
10
            JUROR REMICK: I do. I am an objective
11
   person. With my students, I always play the devil's
12
13
   advocate. Try to show them both sides.
                        Both sides of the situation?
14
           THE COURT:
            JUROR REMICK:
                           I do.
15
16
                       Do you think that our criminal
           THE COURT:
   justice system is fair and effective?
17
18
            JUROR REMICK: I do think it's fair.
   trying to recall -- I can't think of any time that I've
19
   seen a verdict, that I've been outraged at or surprised
20
   by. So, it's fair.
21
            THE COURT: Favorite famous person?
22
23
            JUROR REMICK:
                          None.
            THE COURT:
                       Thank you. Mr. Crockett, who do
24
   you live with, what do you do?
25
                                                          113
                        (Jury Selection)
            JUROR CROCKETT: My girlfriend and I live
 1
   together in North Brunswick. And I work as a project
 2
   manager for a digital imagining company.
 3
           THE COURT: Now, is your girlfriend employed?
 4
            JUROR CROCKETT: Yes, she is. She works for
 5
   Off Track Betting in New York City. She is one of the
 6
 7
   senior executives of that organization.
           THE COURT: Any military background?
 8
           JUROR CROCKETT: Six years in the U.S. Army.
 9
10
           THE COURT:
                       Educational background?
           JUROR CROCKETT: Currently working on my
11
                     Undergraduate.
12
   doctorate.
               MBA.
13
            THE COURT:
                        Spare time?
           JUROR CROCKETT:
                            Spare time, I run. You
14
15
   know, usually, I have time constraints, relative to my
16
   studies. So, running, sleeping.
17
           THE COURT: How about any TV?
18
           JUROR CROCKETT: TV, I'm a flipper. Wherever
19
               A spectrum of channels I watch.
20
           THE COURT: How about the news? Where do you
21
   find that you get your news from?
22
           JUROR CROCKETT:
                            I listen to MPR. I like to
23
   watch MSNBC and FOX news reports.
24
           THE COURT:
                      Any bumper stickers?
25
           JUROR CROCKETT:
                            No.
```



```
(Jury Selection)
                                                          114
                        Do you think you'd make a good
 1
            THE COURT:
 2
   juror for the case?
 3
            JUROR CROCKETT:
                             Yes, I do.
            THE COURT:
                        How come?
 4
                             Well, I feel that I am
 5
            JUROR CROCKETT:
               I feel that I could weigh both sides of an
 6
   objective.
 7
   argument. And, you know, I feel I would be persuasive
   enough, to be able to present my own points of view.
 8
 9
            THE COURT:
                       Okay. When you deliberate?
            JUROR CROCKETT:
                             Yes.
10
                       How about, from what you know
            THE COURT:
11
   about our criminal justice system, do you think it is
12
   fair and effective?
13
            JUROR CROCKETT: I think that it's biased.
14
   And I say that because, I am an African American male.
15
   I look at the percentages of, you know, men in the
16
   population, relative to the prison population.
17
   think it's also a function of one's resources, in terms
18
19
   of the quality of representation, that you may get.
   So, I do have my own continuing opinions about the
20
   justice system. That said, I wouldn't want to be tried
21
22
   -- on trial -- anywhere else in the world.
            THE COURT: Okay. Thank you. How about a
23
   favorite famous person? You have a favorite famous
24
25
   person?
                        (Jury Selection)
                                                          115
            JUROR CROCKETT: So many. There is so many
 1
             You know, there are so many, I don't want to
 2
   of them.
 3
   pick one.
 4
            THE COURT:
                       Okay.
 5
            JUROR CROCKETT: I don't want to slight the
   others.
 7
            THE COURT: Thanks, Mr. Crockett.
            And, Mr. Booker, who do you live with, and
 8
 9
   what do you do?
            JUROR BOOKER: I live with my wife, and I
10
11
   have three small kids. I have two older ones. We have
12
   four sons and one daughter.
13
                        What do you do?
            THE COURT:
14
            JUROR BOOKER: I work for the Franklin
15
   Township Board of Ed, maintenance custodian in the
16
   department.
17
            THE COURT: Is your wife employed outside the
18
   home?
19
                           No, she is not.
            JUROR BOOKER:
20
            THE COURT: You said three younger children
21 and two older?
22
            JUROR BOOKER:
                           Yes.
                      How old are the younger ones?
23
            THE COURT:
24
   What are they?
                           Girls?
                   Boys?
25
            JUROR BOOKER:
                           There is two boys and a girl.
```



```
(Jury Selection)
                                                           116
   Eleven, nine, and seven.
 1
 2
            THE COURT: And how old are the older ones?
 3
            JUROR BOOKER: 19 and 25, I think.
 4
            THE COURT: But they're out of the home?
            JUROR BOOKER: 'Yes.
 5
 6
                       Any military background?
           THE COURT:
 7
            JUROR BOOKER:
                           No.
 8
            THE COURT: Educational background?
                           Just high school.
 9
            JUROR BOOKER:
            THE COURT: Free time. What do you like to
10
   do in your free time?
11
            JUROR BOOKER:
                           I catch a movie with the kids.
12
   Get them involved with sports, things like that.
13
            THE COURT: News. Where do you get your news
14
15
   from?
16
            JUROR BOOKER:
                           I watch CNN. And my wife
17
   likes to watch Nancy Grace.
            THE COURT: Bumper stickers? Any bumper
18
19
   stickers?
                           I have a Pop Warner Vikings.
20
            JUROR BOOKER:
            THE COURT: Pop Warner Vikings.
                                             Okay.
21
22 you think you'd make a good juror in this case?
23
            JUROR BOOKER:
                           Yes, I do.
24
            THE COURT:
                       Why?
            JUROR BOOKER:
                          I am a very objective,
25
                         (Jury Selection)
                                                           117
 1
  open-minded person.
 2
            THE COURT:
                       From what you know about our
   criminal justice system, do you think it is fair and
 3
   effective?
 4
            JUROR BOOKER: I think it's fair.
 5
                                               Because,
   you know, even sitting here now, looking around at the
   people, from all different walks of life, I believe we
 7
   are part of that. I think the system is fair.
 8
            THE COURT: Okay. Mr. Booker, do you have a
 9
   favorite famous person?
10
                          It's an artist named Robert
11
            JUROR BOOKER:
12
   Byrd. A big inspiration, as far as art. I used to be
13
   fond of drawings and things like that. I don't have
   time anymore. Time to do that. He has inspired me a
14
15
   great deal.
            THE COURT: Thank you, Mr. Booker.
16
17
           All right. Now, we need to ask additional --
   a couple additional questions. I will ask them as a
18
          Let me ask you, first of all, does anybody else
19
20
   here, at this point, who speaks Spanish?
21
           Okay. So, we have Mr. Sitton, Miss Cepeda,
22
   and Mr. Martinez. The three of you speak Spanish.
23
   you also read and write Spanish? Yes? You are all
24
   shaking your heads, yes.
25
           As you can see, this is to all our potential
```



```
(Jury Selection)
   jurors. We are using the assistance of an Interpreter.
 1
   And if there are witnesses that speak Spanish, which
 2
   there may be, we're going to be using a translator to
   assist us again.
            Now, my first question is, is there anybody,
 5
   first of all, that believes, because we're using a
   translator during this case, that it will impact their
 7
   ability to be fair and impartial? Anybody have any
 8
   problem, with the fact that we are using the translator
 9
   to assist us? No? That is my first question.
10
            My second question is, those jurors, who
11
   speak or read or write Spanish, all of the above
12
   jurors, when there is a translation being made from the
13
   witness stand, you must accept the translation that the
14
   Official Court Translator gives. Okay?
                                             Even if there
15
   may be a different interpretation, you have to use that
16
   interpretation, that our Official Translator is giving
17
   the Court. Miss Cepeda, do you have any problem with
18
19
   that?
            JUROR CEPEDA:
20
                           No.
                        Mr. Martinez, do you have any
21
            THE COURT:
  problem with that?
22
23
            JUROR MARTINEZ:
                             No.
                       Mr. Sitton, do you have any
24
            THE COURT:
25 problem with that?
                                                           119
                         (Jury Selection)
            JUROR SITTON:
                           No.
 1
 2
            THE COURT:
                        I just want to make sure, that
   when we have the Official Court Translator, that's
   here, that we have to go by that, listening as all the
   jurors would have to go by, as when the testimony is
 5
   being given.
            My first question to you then, let me ask as
 7
   a group, once again, does anybody have any religious or
 8
   personal beliefs, that would stop them from sitting, on
 9
   this trial, or sitting in judgment of another? Anybody
10
   have any personal or religious beliefs that would stop
11
12
   them from doing that? No? Okay.
            Now, I just wanted to ask those questions
13
   generally. So, if there was any response, I would have
14
                We're now going to fill those two seats.
15
   heard them.
                        Juror Number 0232, Fahmy, Sandra.
16
            THE CLERK:
17
   F-a-h-m-y. Seat number 13. Juror Number 0175,
                        I-b-r-a-h-i-m.
18
   Ibrahim, Roswitha.
                                        Seat number --
19
           MR. SAMEIRO: Before your Honor begins, can
   we have a brief sidebar?
20
```

21

22

23

24

25

THE COURT:

MR. SAMEIRO:

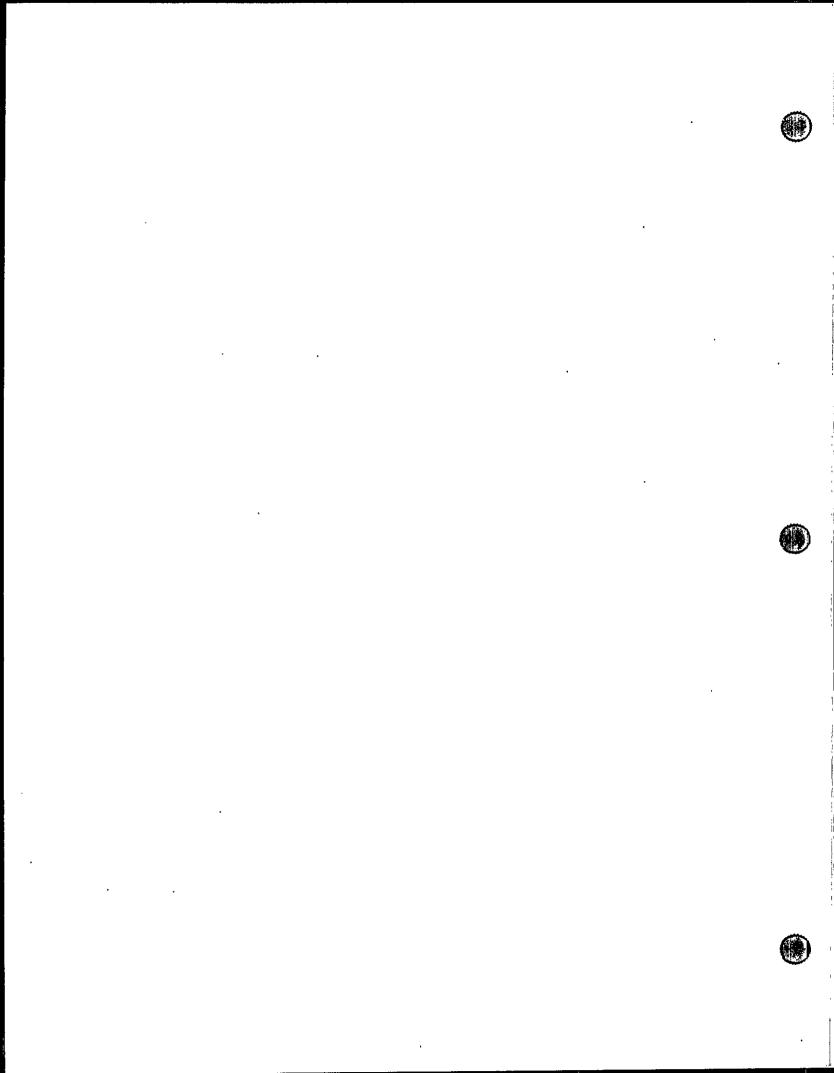
at sidebar.)

Sidebar.

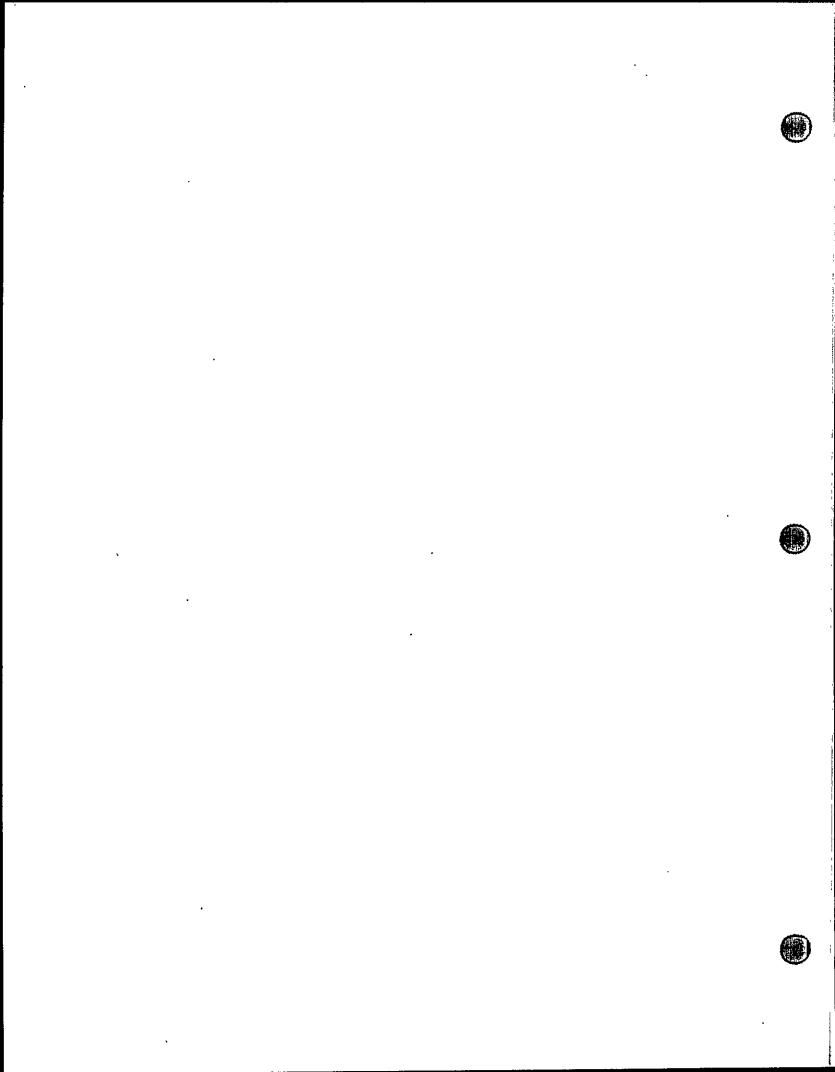
At 12:30, I was given a message from a colleague about

(Whereupon, the following discussion occurred

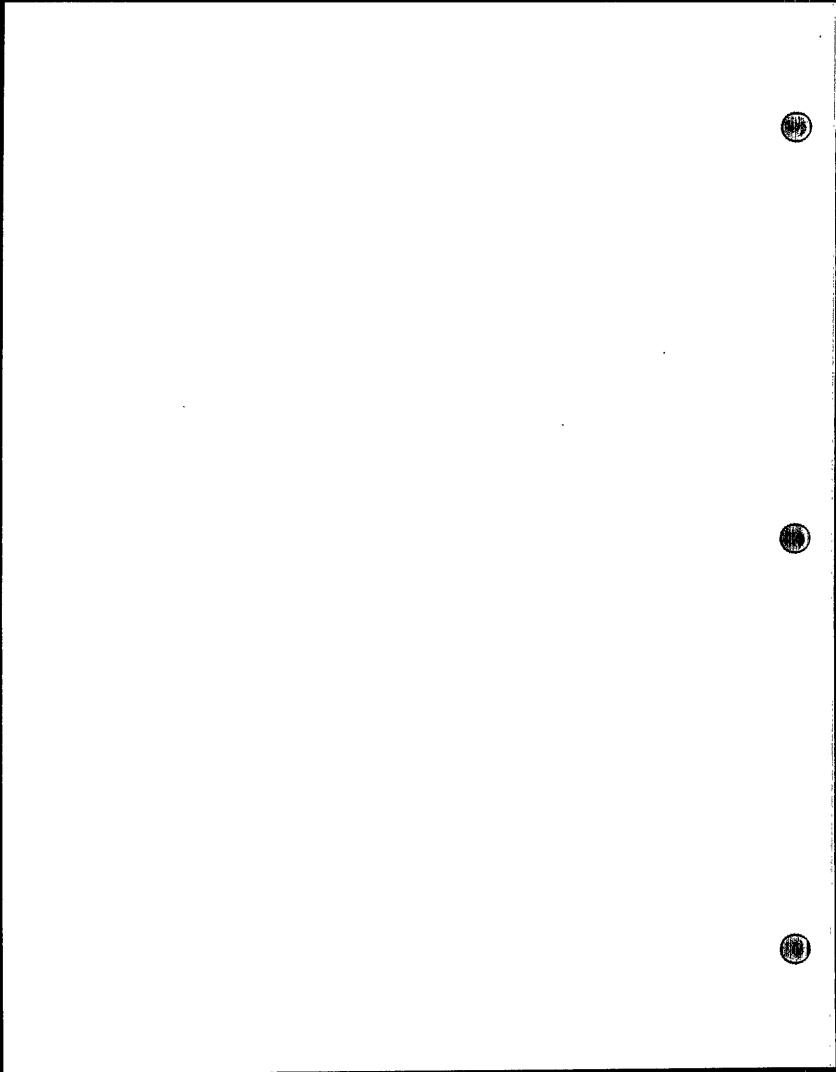
Judge, I have some information.



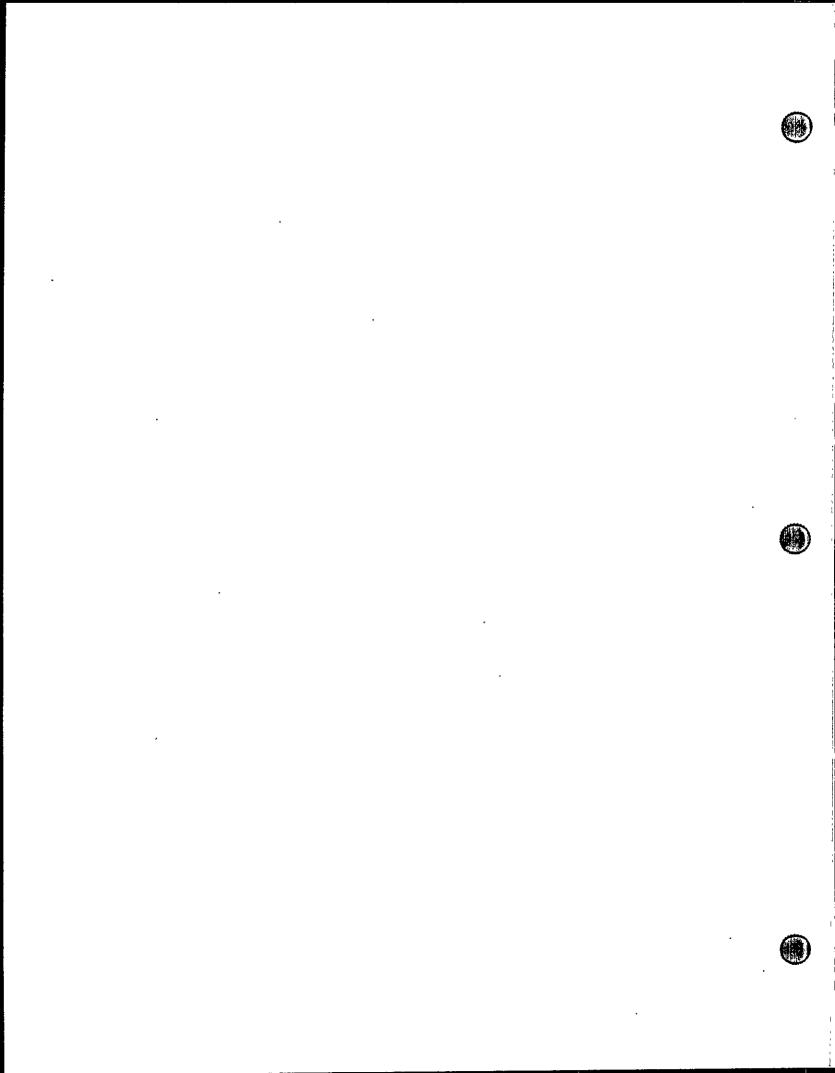
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(Jury Selection)
                                                           120
   Miss Fahmy. That Miss Fahmy is the sister of Mr.
 1
 2
   Arango, Guillermo Arango. And that she is pregnant.
   Mr. Arango came in this afternoon, at around quarter to
   three, while the jury was downstairs, and I witnessed
 5
   Mr. Arango acknowledge that his sister was in the
   courtroom.
 7
            THE COURT: Uh-hum.
            MR. SAMEIRO: Before that happened, Counsel
 8
   and I both had an opportunity to speak with Mr. Arango
 9
   about Miss Fahmy. That was especially after Mr. Arango
10
   told us that she is not pregnant right now. She had a
11
          But that was not the information originally
12
   conveyed by the individual.
13
            THE COURT:
                        Right.
14
            MR. SAMEIRO: In fact, Mr. Arango is confused
15
   himself on that point. So, I asked him. I guess, Mr.
16
17
   Arango and I don't talk that much. But, in any event,
                  I didn't want to be personal.
   I asked him.
18
19
   asked him anyway. Do you know if your sister is
   nursing. He told me she was. Now, this entire
20
   colloquy, the fact that Mr. Arango was here,
21
   acknowledged his sister, he stayed here -- he chose to
22
   stay in the courtroom -- I didn't say anything to him
23
   about it; but that causes me concern.
24
            Furthermore, when I asked him, flat out, who
25
                         (Jury Selection)
                                                           121
   do you think she would be better for -- Mr. Gonzalez or
 2 · me -- his answer was, well, she doesn't like the
   business that I'm in, which was a suggestion to me, she
   probably doesn't like defendants or defense attorneys,
 5
   or things of that nature.
            So, Judge, she is an issue. I would ask she
   be removed for cause, based upon these representations.
 7
 8
   I don't know if you want to question her on this.
   could save time, if you were to remove her, if there is
 9
10
   no objection.
11
            MR. GONZALEZ: No objection, Judge.
            MR. SAMEIRO: Probably the easiest way to
12
   have her removed for cause, would be that she is
13
   nursing. She just had a baby a month ago.
14
15
            THE COURT:
                        I'd want to ask her that at
16
             Then I'd excuse her today for that purpose.
   sidebar.
            MR. SAMEIRO: I think you can draw an
17
   inference there, since the baby is not here.
18
                        I had -- just to let you know --
19
            THE COURT:
20
   I had a juror a couple months ago that was nursing.
                                                         Ιt
21
   was a complete disruption to the trial tremendously.
22
   We had to change our schedule. We had to stop and take
   breaks at times that I didn't want to.
23
                                           As much as this
24
   juror really wanted to sit, it was very, very
25
   difficult. So, that, to me, is reason enough.
```



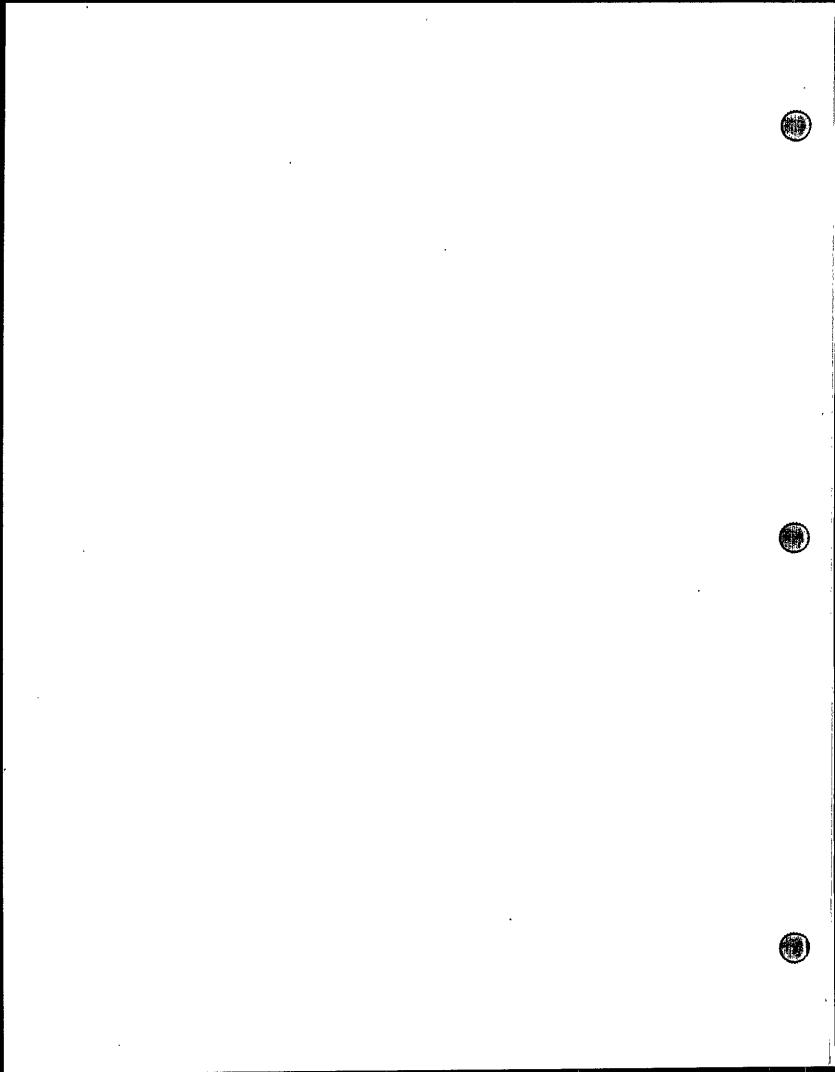
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(Jury Selection)
           MR. SAMEIRO: I think you can call her over.
 1
   Also, what I said here, as to Mr. Arango, what happened
   in the courtroom, causes me some concerns.
            If you want to question her, to kind of
   smooth it over with her. Number two, when you asked
 5
   the question about -- my question number two -- point
   number two -- When you asked the jurors about -- the
 7
   question about religious or personal reasons that may
   influence their ability to be fair -- Juror Number One
 9
   squinted and squinted and struggled with the question.
10
   I need your Honor to follow up on that.
11
            THE COURT: I didn't notice that.
12
13
           MR. SAMEIRO:
                          I noticed she looked at me.
   looked at her, as if she had an answer, and she didn't
14
   want to disclose it.
15
            THE COURT: I'll bring her over and just ask
16
17
   her about that.
           MR. SAMEIRO: I think that's all I have at
18
19
   this time.
            THE COURT: That was Juror Number One?
20
            MR. SAMEIRO: Yes. That is all I have at-
21
22
   this point.
23
           MR. GONZALEZ:
                           I have nothing further.
            THE COURT: Let me bring over Miss Ammar.
24
   Miss Ammar, come over for one minute, please.
25
                         (Jury Selection)
                                                           123
            (Whereupon, Juror Ammar comes to sidebar.)
 1
            JUROR AMMAR:
                          I'm so glad you called me.
 2
            THE COURT: It is nice to have you over here.
 3
            JUROR AMMAR: Yes.
 4
 5
            THE COURT:
                       I wanted to follow-up on the
   question about religious beliefs.
 7
            JUROR AMMAR: Yes. Because, actually, I'm
          I was going to make a comment about that.
 8
   way you phrased the question, it might not be religious
 9
   beliefs, that might impede me from making a judgment.
10
   But there is that spiritual force that, like you don't
11
   want to be put in a position, when you make a judgment
12
   on someone else, even if you have -- like unless you
13
   really have enough -- It is a tremendous
14
15
   responsibility.
           Unless you have like really tremendous
16
17
   evidence that this person did what he did, it would be
18
   very hard to say, yeah, he's guilty. It would be just
   a tremendous responsibility. You don't want it on your
19
   conscience, unless you have all the evidence in the
20
21
   world, that somebody saw him with the gun. I mean,
   then if somebody actually saw him with the gun, then,
22
   yes, he should not be let go. But unless you have that
23
   kind of evidence, I don't know that I can say, yes.
24
25
           THE COURT: You don't know if you can sit in
```



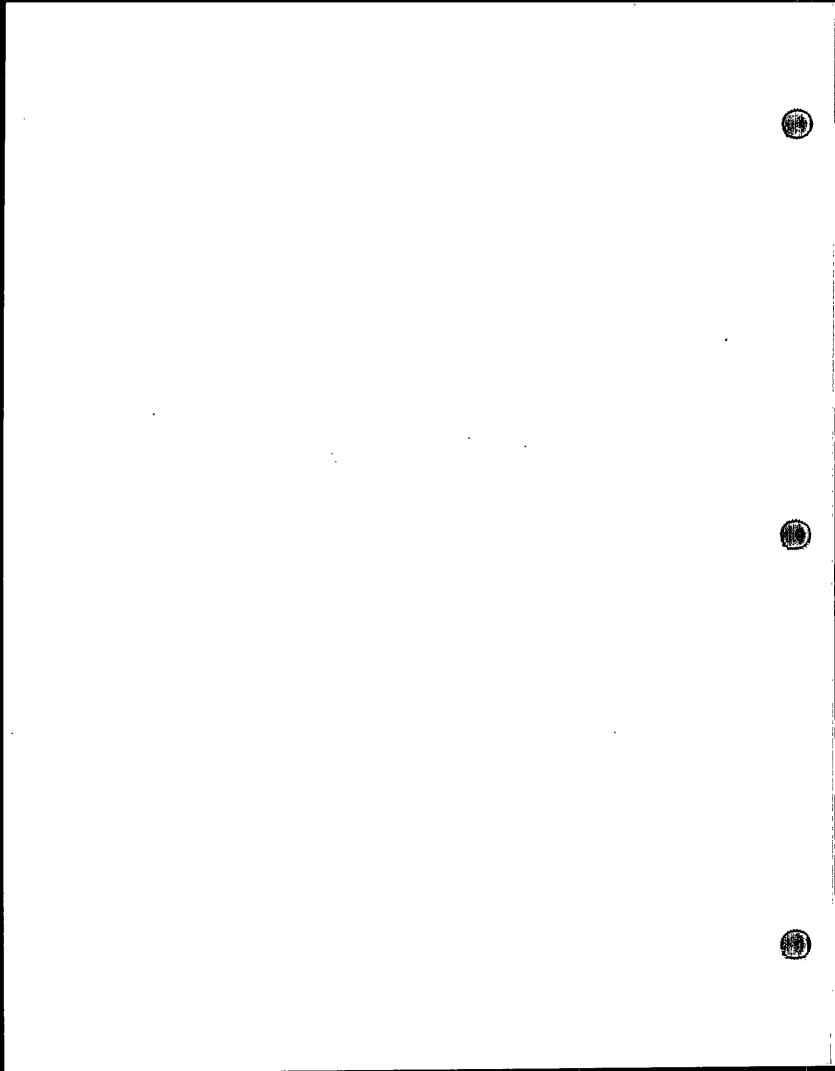
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(Jury Selection)
                                                           124
 1
   judgment?
            JUROR AMMAR: No.
                               No. It's hard. It's a
 2
   tremendous responsibility.
 3
            THE COURT:
                       Any follow-up questions?
            MR. SAMEIRO: Would you want me to prove the
 5
   case, beyond any possible doubt in your mind?
 6
 7
            JUROR AMMAR: It has to be beyond any
   reasonable doubt, that he did commit that.
 8
                          I didn't ask you that question.
 9
            MR. SAMEIRO:
   The Judge has not defined what reasonable doubt is.
10
   Because I'm wondering if you're going to increase the
11
12
   burden, given your personal beliefs. You said you
   needed tremendous evidence.
13
            JUROR AMMAR:
14
                          Yes.
                                I needed hard evidence,
   what that person did, to commit these crimes.
15
   Otherwise, I would be feeling very uncomfortable,
16
17
   saying that he did it.
                       Well, that is the standard,
18
            THE COURT:
   beyond a reasonable doubt. I did give you a little bit
19
   of a definition as to what it is. I guess, the
20
21
   Prosecutor is asking if you can listen to what that
   standard is, beyond that standard, or if you feel you
22
   need more than beyond a reasonable doubt.
23
            JUROR AMMAR: No.
                               If we agree on the
24
   definition of beyond a reasonable doubt.
25
                                                           125
                         (Jury Selection)
                        Which I would give to you.
 1
            THE COURT:
 2
            JUROR AMMAR: And I know what it is. And
   that person absolutely, you know, had met that burden,
 3
   and, you know, because it is a tremendous
 4
   responsibility.
 5
            THE COURT:
                      Okay.
 6
            MR. GONZALEZ: If I can just follow-up?
 7
   Judge is going to instruct you on the law. Basically,
 8
   what the State and I both are curious, whether or not
 9
   you'd be able to follow the law, follow the definition
10
   that the Judge gives you, and you understand it. You
11
12
   said it is, beyond a reasonable doubt.
13
            JUROR AMMAR:
                          Right.
14
            MR. GONZALEZ:
                           If it's beyond a reasonable
15
   doubt, that you could convict?
16
            JUROR AMMAR: Oh, yeah. Absolutely.
17
   know somebody did something, oh, yeah.
            MR. GONZALEZ: If it is less than that, you
18
19
   would have no problem saying not guilty?
20
            JUROR AMMAR: Absolutely. Absolutely. It's
21
   my duty. If somebody did something wrong, yeah, they
22
   should pay for it. It has to be proven.
23
            THE COURT: Okay.
                               Thank you. You can have a
24
   seat.
25
            (Whereupon, Juror Ammar leaves sidebar.)
```



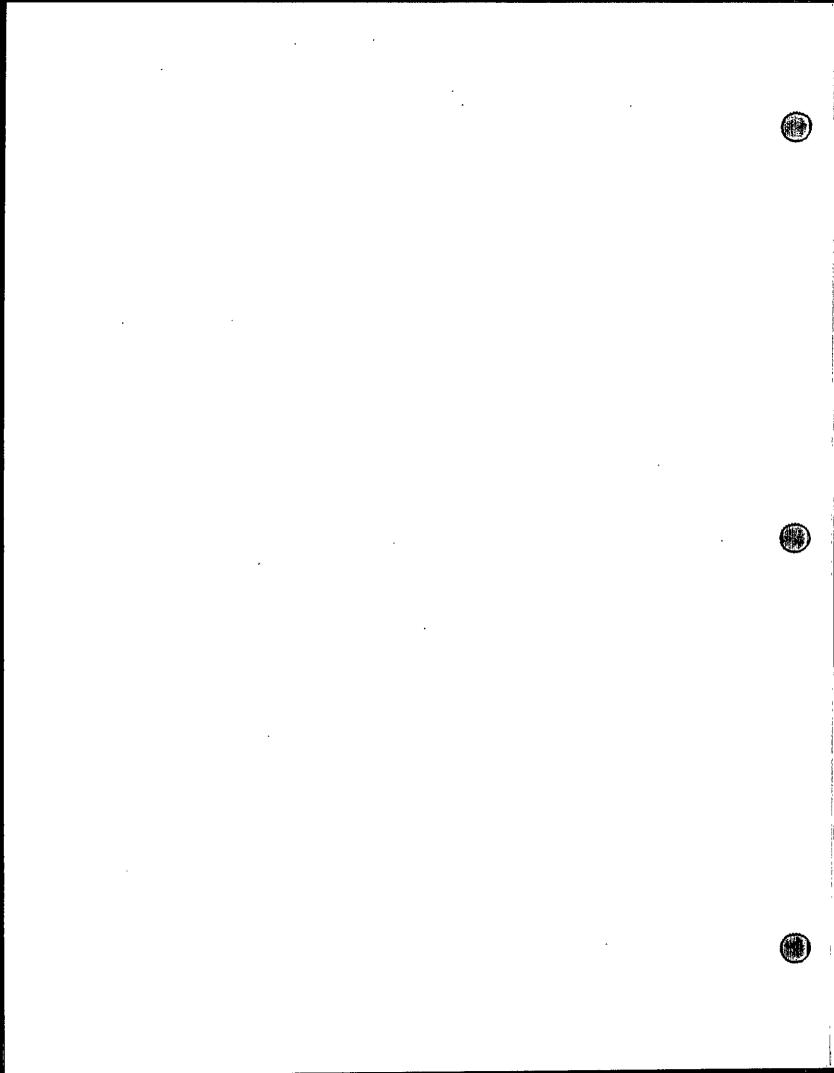
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(Jury Selection)
                                                          126
            (Whereupon, the hearing continued at '
 1
 2
   sidebar.)
 3
            THE COURT: Let me speak to Miss Fahmy. Can
   I ask you to come over for a minute?
            (Whereupon, Juror Fahmy comes to sidebar.)
 5
            THE COURT: Hi, Miss Fahmy. I have two
 6
   things. It's come to our attention that you are the
 7
   sister of Guillermo Arango, who does a lot of cases
 8
   here on the fifth floor. Which is one thing.
 9
   other thing is, I think the Sheriff's Officer had told
10
   me earlier -- I don't want to embarrass you in any way
11
   -- that you are nursing?
12
            JUROR FAHMY: I'm breast-feeding.
13
            THE COURT: It takes some time to
14
15
   breast-feed.
                          Exactly.
16
            JUROR FAHMY:
            THE COURT: We can't always take a break at a
17
18
   certain time.
            JUROR FAHMY:
                          Yeah.
19
            THE COURT: And I only say that because a
20
21 couple months ago, we had a juror who was nursing.
  tried to accommodate her; but it was so difficult.
            JUROR FAHMY:
                          Yeah.
23
24
            THE COURT: So, I wanted to let you know
25
           I wanted to also bring it to your attention,
   that.
                                                          127
                        (Jury Selection)
   that I know there are times, when we can't take a
 1
   break, and you need to take a break, no matter what.
            So, I'm going to excuse you, just because I
 3
   don't think it would really work out. Now, any other
 5
   time --
 6
            JUROR FAHMY:
                          Okay.
            THE COURT: -- would be a better time for
 7
         But this is a tough time.
 8
   you.
            JUROR FAHMY: Thank you.
 9
10
            THE COURT:
                      I appreciate you being here.
            MR. GONZALEZ: Thank you.
11
12
            MR. SAMEIRO: Thank you.
13
            (Whereupon, the sidebar discussion
14
  concluded.)
15
            (Whereupon, the hearing continued in the
16
   presence of the prospective jury panel.)
17
            THE CLERK: Juror Number 0274, Derek May,
18
   M-a-y.
19
           THE COURT: Okay. My first question, to my
20
   two new jurors, let me start with Miss Ibrahim.
21
   ask you: Were you able to follow along with the
22
   questionnaire?
23
            JUROR IBRAHIM:
                            Yes.
24
            THE COURT: Do you have any responses to
25
   these questions?
```



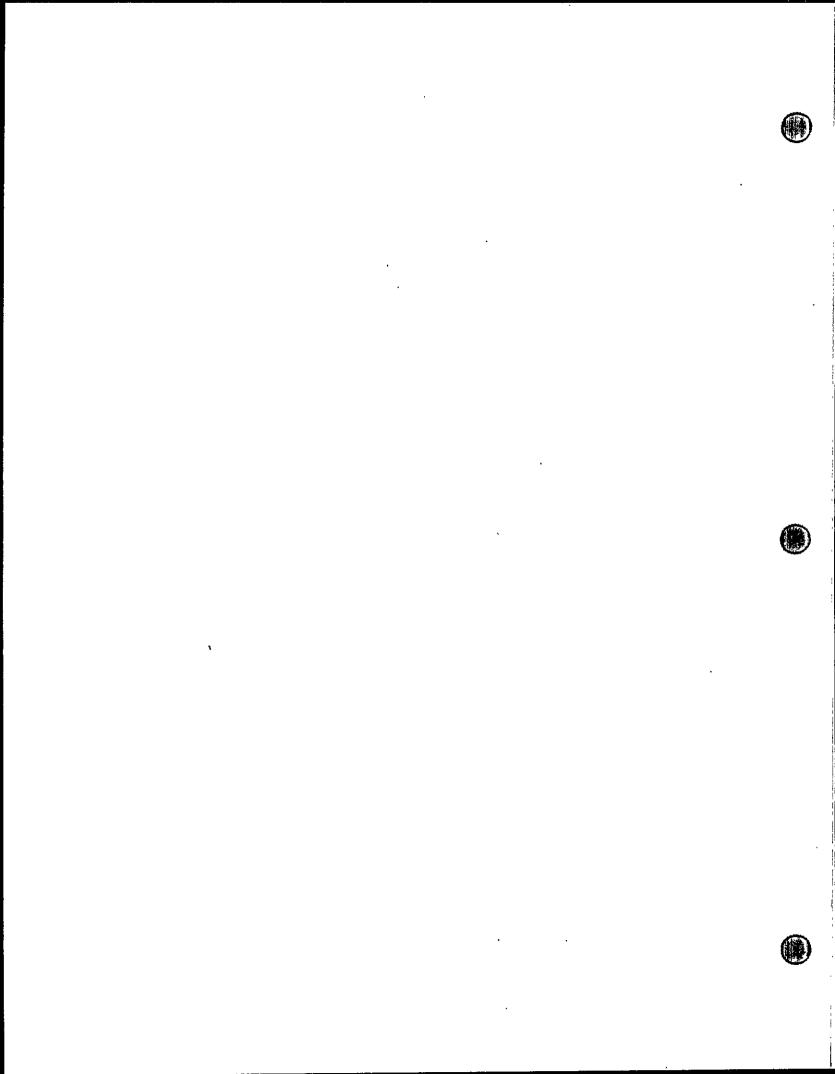
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(Jury Selection)
                                                            128
            JUROR IBRAHIM:
 1
                            No.
 2
            THE COURT: Have you ever been a juror
 3
   before?
            JUROR IBRAHIM:
                            No.
                        Any personal or financial or
 5
            THE COURT:
   medical problem, that would keep you from serving as a
 6
 7
   juror?
            JUROR IBRAHIM:
                            No.
 8
                        Anything you responded to on your
 9
            THE COURT:
10
   little sheet there?
11
            JUROR IBRAHIM:
                            No.
                        Everything was okay?
12
            THE COURT:
                            Yes.
13
            JUROR IBRAHIM:
14
            THE COURT:
                        Then let me ask you:
   general proposition, do you think police officers are
1.5
   more likely or less likely or as likely to tell the
16
   truth than a witness who is not a police officer?
17
18
            JUROR IBRAHIM:
                           As likely.
            THE COURT: Would you give any greater weight
19
   to the testimony of a law enforcement officer, or
20
   lesser weight to the testimony of a law enforcement
21
   officer, just because they're in law enforcement?
22
   Would you give them equal weight?
23
            JUROR IBRAHIM:
24
                            Equal.
            THE COURT:
                        This wasn't on the questionnaire.
25
                                                            129
                         (Jury Selection)
   I ask you, do you speak Spanish?
 1
            JUROR IBRAHIM:
                            No.
 2
 3
            THE COURT:
                        How about any personal or
   religious beliefs that would stop you from sitting in
 4
 5
   judgment of another?
            JUROR IBRAHIM:
 6
                            No.
            THE COURT: Okay. No other responses?
 7
   Towards the end of the questions, there are many
 8
   general principles of law that I read to you. Do you
 9
   have any problem regarding these principles of law?
10
11
            JUROR IBRAHIM:
                            No.
12
            THE COURT:
                        Then I am going to go right to
   those personal questions, and ask you who you live with
13
14
   and what you do.
15
            JUROR IBRAHIM:
                            I live with my husband.
16
   is a retired chemist. Ph.D. Chemist from Rutgers.
17
   am also retired. I used to be a teacher.
                                                Degree from
18
   Rutgers as well.
                      That's it. Just the two of us.
19
                        What do you like to do in your
            THE COURT:
20
   spare time?
21
            JUROR IBRAHIM:
                            I like to travel.
                                                I like to
22
   swim.
           I like to read.
23
            THE COURT: How about any military
24
  background?
25
            JUROR IBRAHIM:
                            No.
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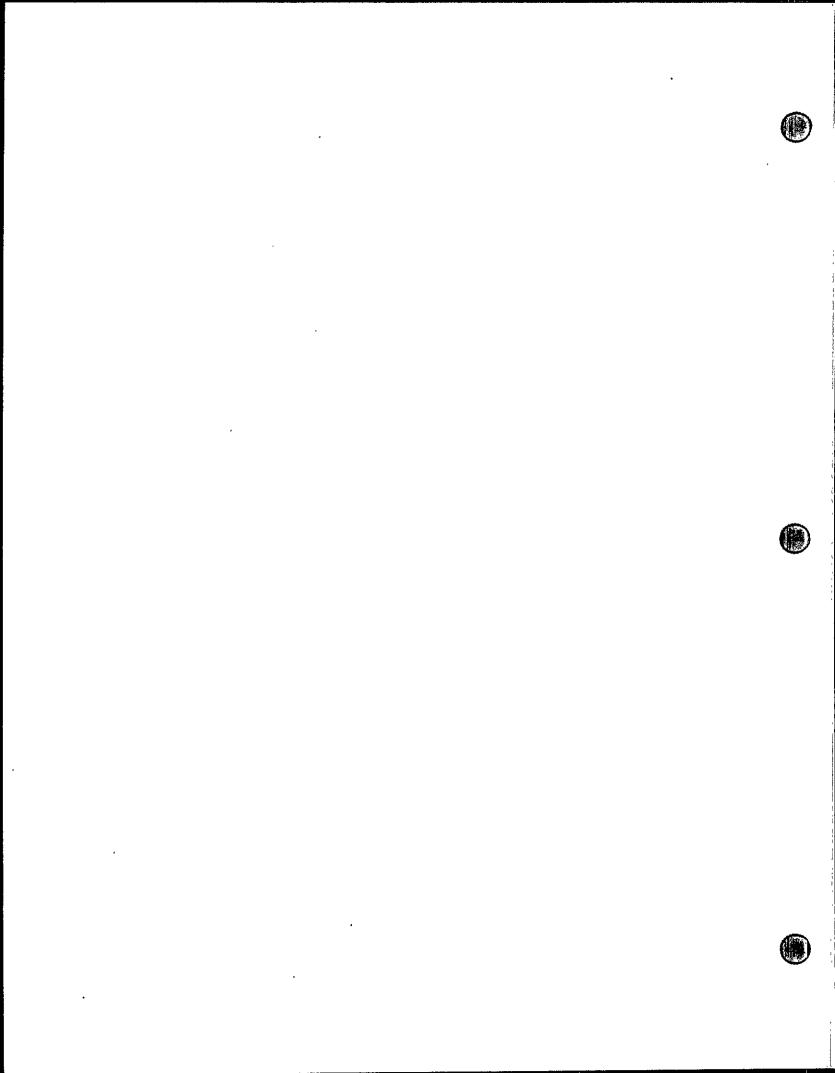
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(Jury Selection)
                                                          130
            THE COURT: Educational background?
 1
 2
            JUROR IBRAHIM: I have a Bachelor's degree.
           THE COURT: Let's see. TV shows? Any
 3
   favorite TV shows?
            JUROR IBRAHIM: I like the CSI's. And I like
 5
   the Amazing Race, because of the travel.
 6
           THE COURT: Right. How about the news?
 7
   Where do you get your news from?
 8
           JUROR IBRAHIM: FOX News, and radio, talk
 9
   radio, and the Home News, the local paper.
10
            THE COURT:
                      Okay. Bumper stickers?
11
            JUROR IBRAHIM:
12
                           No.
13
            THE COURT: Do you think you'd make a good
14
   juror for the case?
            JUROR IBRAHIM: I think so.
15
            THE COURT:
                       How come?
16
            JUROR IBRAHIM: I think I can be fair-minded.
17
           THE COURT: From what you know about our
18
19 criminal justice system, do you think it is fair and
20
  effective?
            JUROR IBRAHIM:
21
                           Yes.
            THE COURT: Any particular reason why you
22
  feel that way? Just based on what you read or hear, or
23
24
   both?
           JUROR IBRAHIM: Well, it's been in effect for
25
                                                          131
                        (Jury Selection)
                 It served us well this long time.
  a long time.
 1
           THE COURT: Okay. How about the question
 2
  about a favorite famous person? Anybody come to mind?
           JUROR IBRAHIM: So many of them. No one in
 4
 5
   particular.
           THE COURT: Okay.
 7
            JUROR IBRAHIM:
                          Mother Teresa.
                      Mother Teresa.
 8
           THE COURT:
            JUROR IBRAHIM: I'd like to talk to her.
 9
           THE COURT: Okay. Mr. May, were you able to
10
11
  follow along with the questionnaire?
12
            JUROR MAY: Yes.
           THE COURT: Any responses to that
13
14 questionnaire?
15
            JUROR MAY: No.
16
           THE COURT: Have you ever been a juror
17
  before?
18
           JUROR MAY: Yes, I have.
19
           THE COURT: What kind of case, Mr. May?
20
           JUROR MAY: I was on a murder case. Two
21 separate occasions.
22
           THE COURT:
                       Two separate trials?
23
           JUROR MAY:
                       Yes.
24
           THE COURT: Both murder?
25
           JUROR MAY:
                       Yes.
```



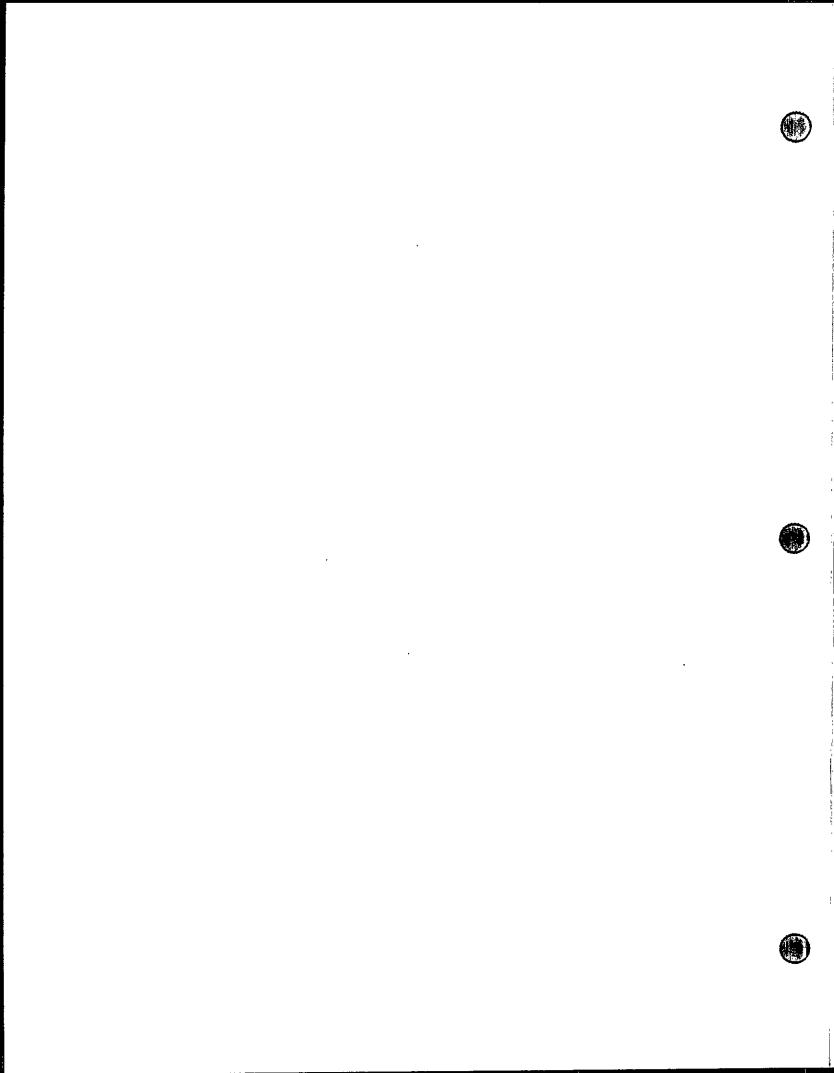
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(Jury Selection)
                                                          132
                       What County were they in?
            THE COURT:
 1
 2
            JUROR MAY: In the Bronx, New York.
           THE COURT: In New York. Now, on both of
 3
   those, were you actually on the jury panel that reached
 5
   a verdict?
 6
                       Yes, I was.
            JUROR MAY:
                       They were criminal trials, so,
 7
            THE COURT:
   the standard of proof was the same, beyond a reasonable
 8
           But are you able to set aside those two
 9
   experiences and listen to the facts in this case, and
10
   be fair and impartial?
11
                       Yes, I can.
            JUROR MAY:
12
            THE COURT: When were they, Mr. May?
13
            JUROR MAY: They both were in the nineties.
14
15
           THE COURT: In the nineties?
            JUROR MAY: In the nineties.
                                          I'm not sure
16
17
   which year.
            THE COURT: That is fine. Anything from
18
   those circumstances that would stop you from being fair
19
   and impartial in this case?
20
            JUROR MAY:
                       No.
21
            THE COURT: Let's see. Do you know any of
22
23 the witnesses that are listed?
24
           JUROR MAY: No, I don't.
           THE COURT: Let me ask you: As a general
25
                        (Jury Selection)
                                                          133
   proposition, do you think police officers are more
 1
   likely, less likely, or as likely to tell the truth
   than a witness who is not a police officer?
 4
            JUROR MAY:
                      As likely.
                       Would you give any greater weight
 5
            THE COURT:
  or lesser weight to the testimony of a law enforcement
 7
   officer, just because he is in law enforcement?
            JUROR MAY: Equal weight. No, I would not.
 8
            THE COURT: All right. Then let me go to
 9
   those personal questions, and ask you who you live with
10
   and what you do.
11
12
            JUROR MAY: I live in Perth Amboy, with my
   wife and my daughter. Working in a Museum in New York
13
   City, custodial supervisor. My wife works in a law
14
15
   firm, on Wall Street. She is a trainer. My daughter
   is a junior in college in Pennsylvania. My military
16
   background, I was in the Army for six years.
17
   Educational background, high school.
18
19
           THE COURT: What do you like to do in your
20
   spare time?
21
           JUROR MAY: Fish.
           THE COURT:
                              How about TV shows?
22
                       Fish.
23
           JUROR MAY: TV programs, mostly sports.
           THE COURT:
                       Sports. And, let's see, news.
24
25 Where do you get your news from?
```



```
(Jury Selection)
                                                          134
 1
            JUROR MAY: From the newspaper, internet and
 2
   television.
 3
           THE COURT: Bumper stickers?
            JUROR MAY:
                       I have New York Jets and New York
 4
   Yankees logos on the back of my car.
 5
 6
           THE COURT: Okay. How about, do you think
 7
   you'd make a good juror for the case?
            JUROR MAY: Yes, I would.
 8
           THE COURT: How come?
 9
            JUROR MAY: I feel that I'm even-keeled and
10
11
   I'm impartial.
            THE COURT: Okay. From what you know about
12
   the criminal justice system, do you think it is fair
13
   and effective?
14
15
            JUROR MAY:
                       Yes, I do.
            THE COURT: Any particular reason why you
16
   feel that way? Just what you've heard or read or both?
17
            JUROR MAY: It's the only system I've ever
18
           So, I just feel, it's fair.
19
   known.
                       Do you have a favorite famous
           THE COURT:
20
21
  person?
22
           JUROR MAY: Not necessarily.
           THE COURT: Do you speak Spanish?
23
            JUROR MAY: No, I don't.
24
           THE COURT:
                       Okay.
                              Anything, in your
25
                                                          135
                        (Jury Selection)
   personal, in your religious beliefs, that would stop
 1
   you from sitting on a case like this, where you would
   be sitting in judgment of another?
            JUROR MAY: No, there is not.
 4
 5
            THE COURT: Okay. We have gone through our
   personal questions. As I indicated, the next step, in
   this phase of jury selection, is the attorneys
 7
   themselves get to excuse jurors, really for reasons
 8
 9
   best known to them.
10
            I might state, if you are excused in that
   manner, please do not take it personally in any way.
11
   It is just the process used in selecting our jury.
12
13
           Okay. We're going to start with the State.
           Mr. Sameiro?
14
           MR. SAMEIRO:
15
                         Thank you, Judge.
           You're smiling. I know you know what is
16
   coming. Please thank and excuse Miss Ammar.
17
           THE COURT: Thank you, Miss Ammar.
18
19
           JUROR AMMAR: You are very welcome.
           MR. SAMEIRO: You were smiling. You knew it
20
21
  was coming.
22
           THE COURT:
                       Thank you, Miss Ammar.
23
           JUROR AMMAR: You're very welcome.
24
           THE CLERK: Juror Number 0280, John Genoni,
25
   G-e-n-o-n-i, seat number one.
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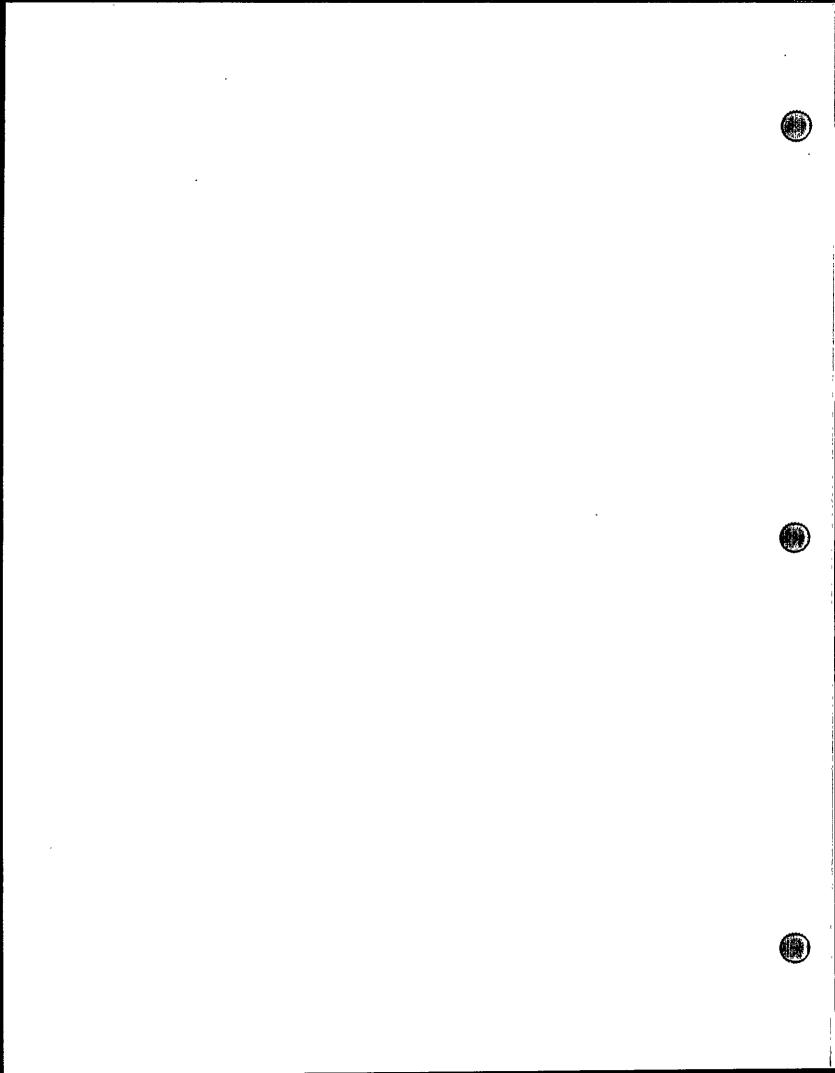


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136
                        (Jury Selection)
                       Genoni?
 1
            THE COURT:
 2
            JUROR GENONI:
                          Genoni.
 3
            THE COURT: Mr. Genoni, how are you this
   morning?
 5
           JUROR GENONI: Fine. How are you, your
 6
   Honor?
 7
           .THE COURT: Okay. Now, were you able to
    follow along with the questions?
 8
 9
            JUROR GENONI:
                          Yes.
10
                       Any responses to the questions?
            THE COURT:
            JUROR GENONI: 2-B. Just to kind of address
11
   the two little issues that I have. Normally, I drop my
12
13
   kids off.
              I have twins. They're seven years old.
   drop them off, and come here by nine. My wife goes
14
   like at seven. I would have to secure some pre-care,
15
   like we did this morning.
16
17
            Secondly, on December 1st, I took a new
18
   position in my company. I'm a sales rep for Fed Ex.
   And this is only one of my positions under my manager.
19
   So, I have customer calls the rest of the week.
20
21
   like I said, nobody else that can take my spot.
   Because they all have their own territories that they
22
   have to deal with.
23
                              The issue with the
            THE COURT:
24
                       Okay.
   children, who took them today? Neighbor? Friend?
25
                                                          137
                        (Jury Selection)
                         Well, I took them. I just
            JUROR GENONI:
 1
                  Normally, I don't use the before care.
 2
   left earlier.
 3
            THE COURT: You dropped them off?
            JUROR GENONI: It is too expensive.
 4
                      Well, now, what I said to
 5
            THE COURT:
   everybody, you tell me, there is no question being here
   is an inconvenience for everybody.
 7
            JUROR GENONI:
                         Uh-hum.
 8
            THE COURT: Absolutely no question. Even not
 9
10
   working outside the home, it is simply difficult to be
11
          In your particular case --
12
                           I just started a new position.
            JUROR GENONI:
13
            THE COURT: You may not even know. Would
   there be anybody to take over your calls, what you have
14
   to do during this period of time?
15
16
            JUROR GENONI: Probably not. Because if it
17
   doesn't get done, the work just piles up for myself.
18
           THE COURT: All right. Let me hold onto you
   at this point. Now, do you have any other responses,
19
   before we go through the form?
20
21
           JUROR GENONI: One that I did have, my
22 brother and sister-in-law are police officers.
                      Where are they police officers?
23
           THE COURT:
24
           JUROR GENONI: Verona, North Caldwell.
25
           THE COURT: Would the fact that your brother
```

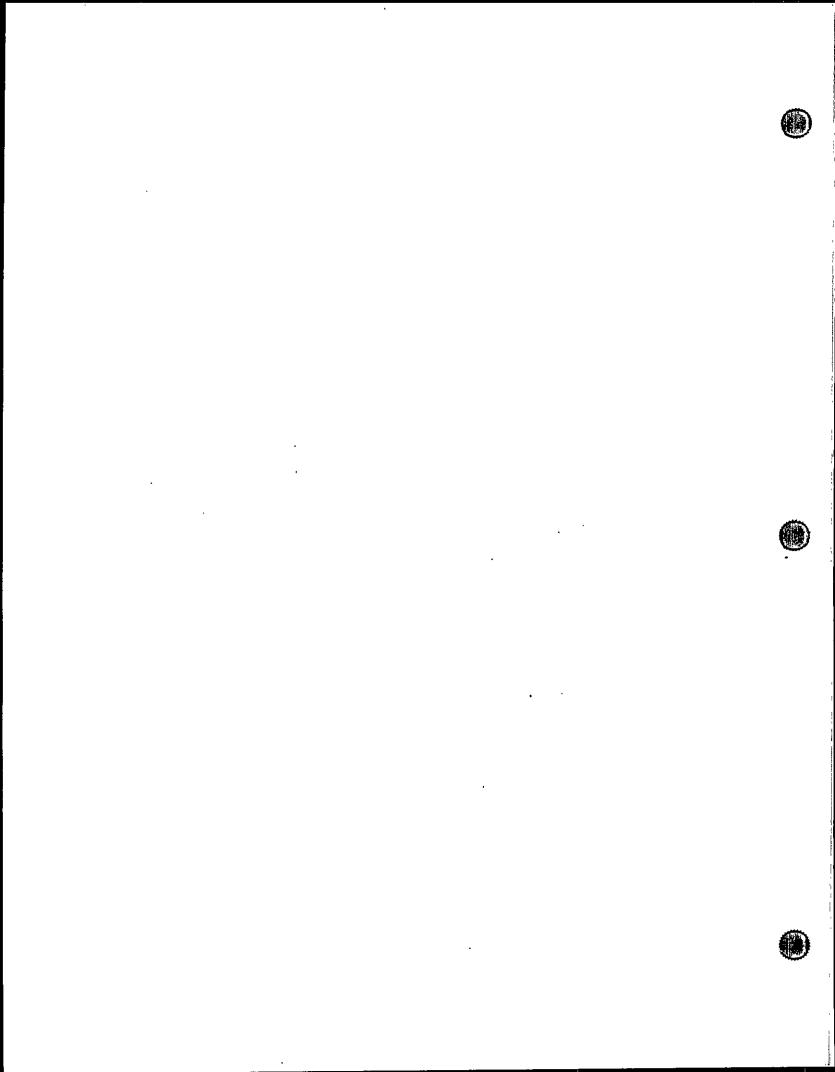


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(Jury Selection)
   and sister-in-law are in law enforcement affect your
 1
   ability to be fair and impartial?
            JUROR GENONI: No, I don't think so.
 3
                       Any other responses?
            THE COURT:
                           I did have one note.
 5
            JUROR GENONI:
   is. With the friend or family being a victim of a
 6
           My dad was robbed in Atlantic City about two
 7
   crime.
 8
   years ago.
            THE COURT: Was a weapon used during that
 9
10
   robbery?
11
            JUROR GENONI: No. They just kind of
   snatched his ticket after he won like eight hundred
12
13
   dollars on the slot machine, and ran out of the place.
            THE COURT: Did he report it?
14
            JUROR GENONI: He reported it; but the guy
15
16 was long gone.
17
            THE COURT: Nobody was ever caught?
18
            JUROR GENONI: No. He's handicapped.
   couldn't even go after them.
19
            THE COURT: Do you hold any grudge against
20
   law enforcement for not apprehending the individual?
21
            JUROR GENONI:
                          No.
22
            THE COURT: Anything from that situation stop
23
   you from sitting as a juror, being fair and impartial
24
25
   in this case?
                                                           139
                         (Jury Selection)
            JUROR GENONI:
                           I don't think so.
 1
 2
            THE COURT:
                       Let me ask you a question:
 3 you were sitting here, listening to the case, would you
 4 be able to focus on the case, knowing, I guess, that,
   anybody who is sitting here, "oh, shoot, my work is
 5
   piling up." I'm sure that all of you are thinking
 7
   that.
            But would you be able to continue to
 8
   concentrate on the matter?
 9
            JUROR GENONI: Yeah. Like, during the break,
10
   I'm checking my e-mails, on my BlackBerry and stuff.
11
            THE COURT: The other issue, regarding the
12
13
   children, is something you would be able to work with?
   Would it be a financial hardship for you for this week?
14
            JUROR GENONI: It is not going to put me in
15
                    But I'd rather not incur the cost, if
16
   the poor house.
   I didn't have to.
17
18
           THE COURT: And the cost then is, it's about,
   every day, at least, an hour or so?
19
20
            JUROR GENONI: Yeah, about an hour and a
21 half.
22
           THE COURT:
                       I'll let you think about that for
23 a little bit, and see how we go from there.
24
           JUROR GENONI:
                           Sure.
25
           THE COURT: Now, let me go ask the next
```

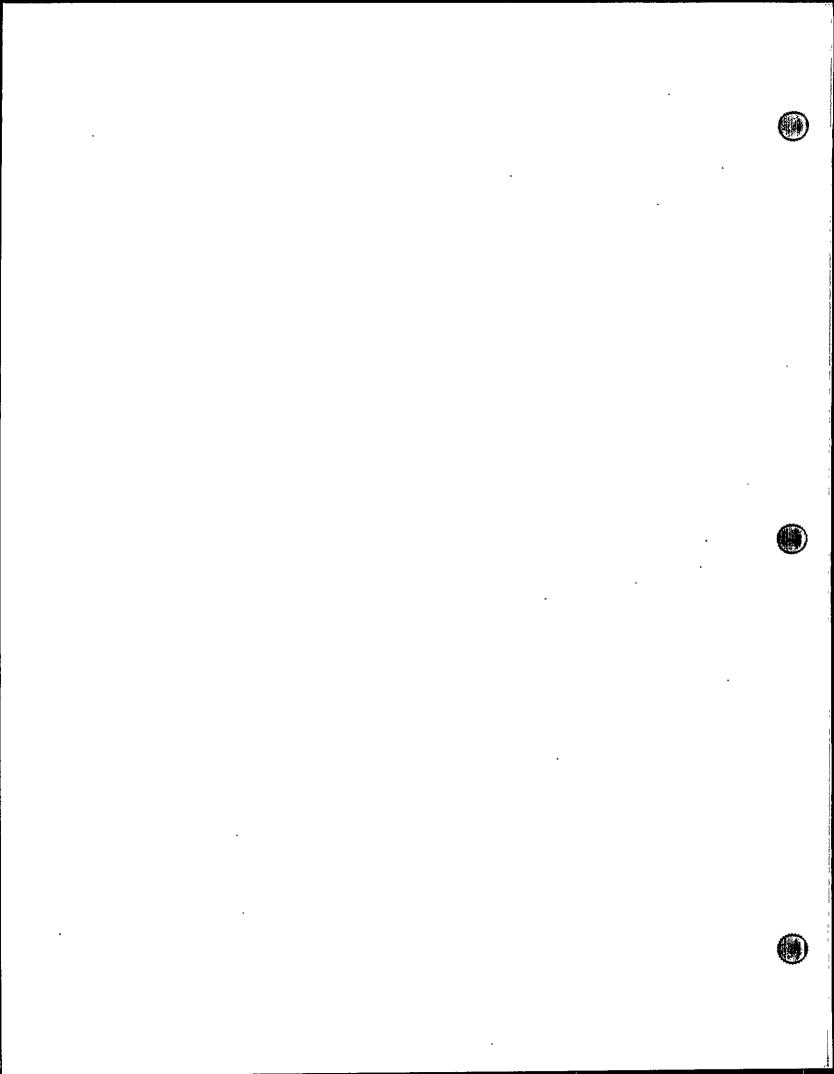
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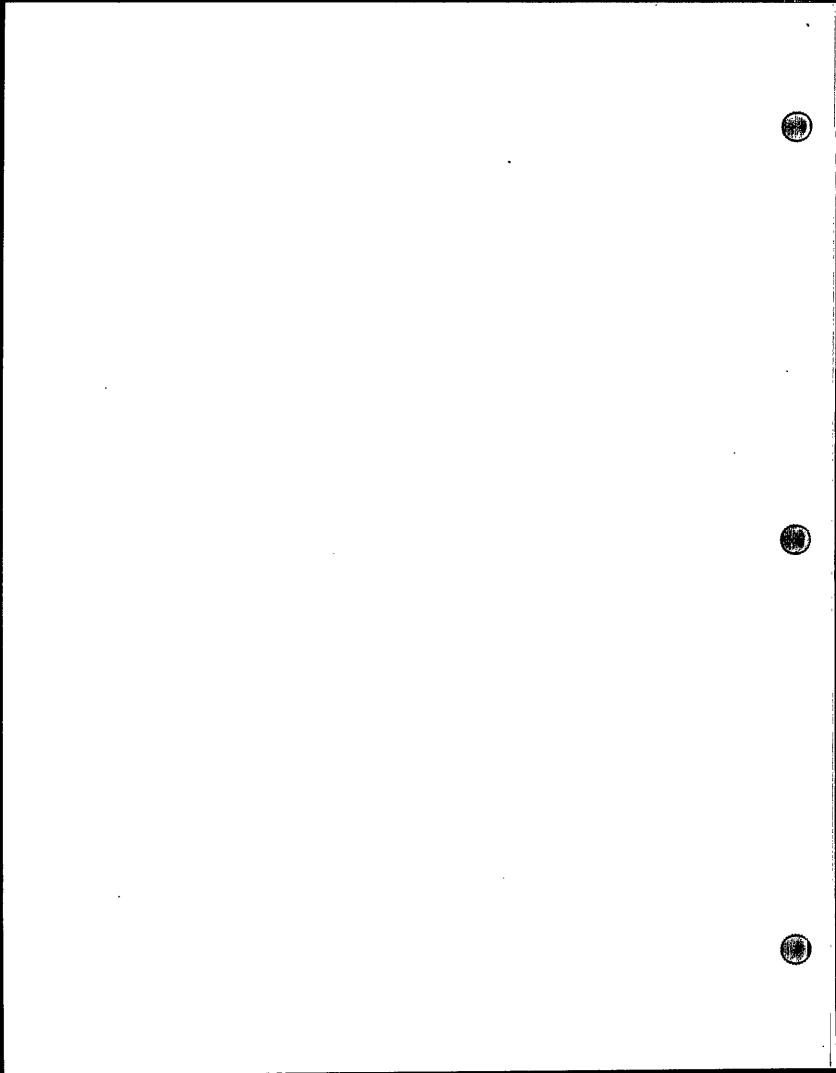
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(Jury Selection)
   question about, would you give any greater weight to
   law enforcement or lesser weight, just because they are
 2
   law enforcement?
            JUROR GENONI:
                           No.
                                Equal.
                       As a general proposition, do you
            THE COURT:
 5
   think a police officer is more likely, less likely or
 7
   as likely to tell the truth than any witness?
 8
            JUROR GENONI: As likely.
 9
            THE COURT: Do you know any of these jurors
   -- these potential witnesses that I listed on the
10
   witness list?
11
12
            JUROR GENONI:
                           No.
                       Any other responses?
13
            THE COURT:
                           No, I don't think so.
14
            JUROR GENONI:
                        Then let me ask you the personal
15
            THE COURT:
   questions, what you do, where you live.
16
                          I'm a sales rep for Fed Ex.
17
            JUROR GENONI:
   live in Colonia, with my wife, and twin children.
18.
19
   twin children, both three years old.
                        Military background?
20
            THE COURT:
21
            JUROR GENONI:
                           No military background.
                       Educational background?
            THE COURT:
22
            JUROR GENONI: Graduated from Seton Hall
23
24
   University.
            THE COURT:
                        Spare time? What do you like to
25
                                                           141
                        (Jury Selection)
   do in your spare time?
 1
                           I work out, fish, play with
 2
            JUROR GENONI:
 3
   the kids.
            THE COURT: News?
                               Where do you get your news
 4
 5
   from?
 6
            JUROR GENONI: Mostly from FOX News.
 7
            THE COURT:
                       Any favorite TV programs?
            JUROR GENONI: I used to watch a show -- it
 8
   just ended -- so, I have to find a new one. Exactly.
 9
   Little Einsteins and all that stuff.
10
                        How about bumper stickers?
11
            THE COURT:
12
   bumper stickers?
13
            JUROR GENONI: I have a Giant's helmet. I'm
   really ashamed to say that today.
14
15
            THE COURT: Let me ask you: Do you think
16
   you'd be a good juror for the case?
17
            JUROR GENONI:
                           I hope see.
18
            THE COURT: Do you think you'd be able to
   keep an open mind, and listen to all the testimony?
19
20
            JUROR GENONI:
                          I can take a look at the
   facts, look at them objectively.
21
                       How about, from what you know
22
            THE COURT:
23
   about our criminal justice system, do you think it is
   fair and effective?
24
25
            JUROR GENONI:
                           For the most part.
                                               You know,
```



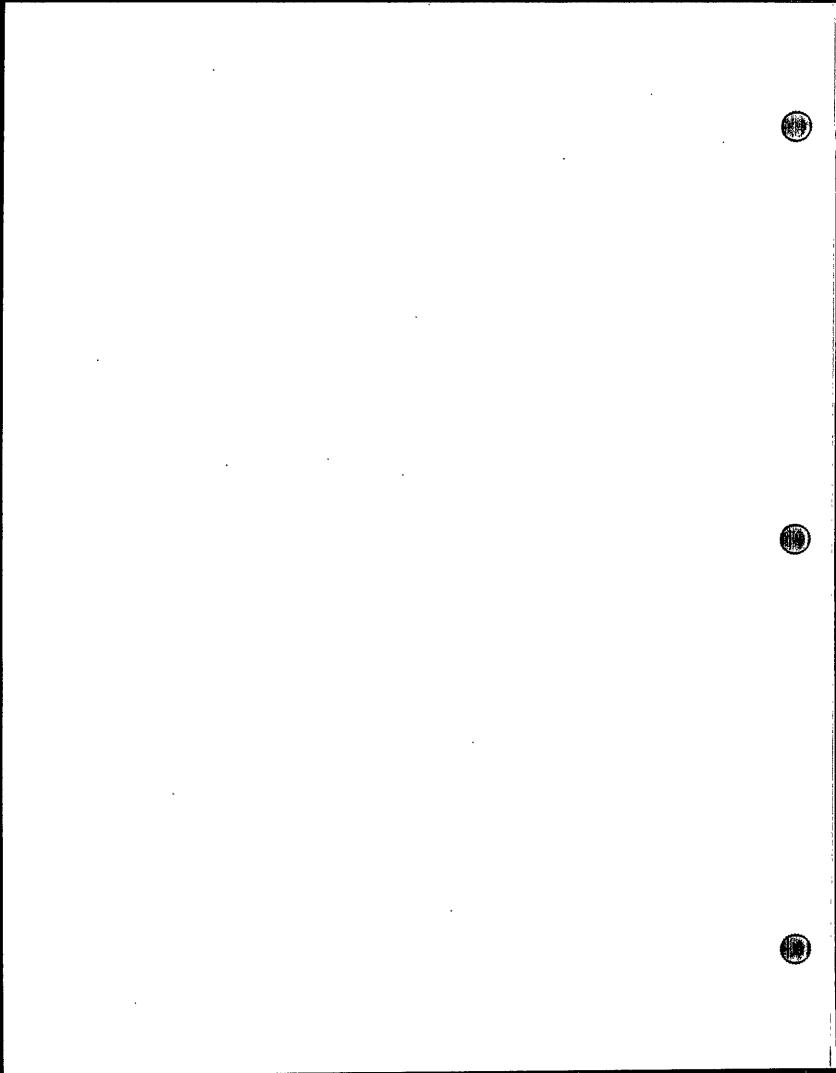
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(Jury Selection)
                                                          142
   pretty much what everybody else is saying, that it's
 1
   the best system that we have. I wouldn't want to be
 2
   tried anywhere else. But I think it does have flaws in
   some spots.
            THE COURT: All right. Favorite famous
 5
 6
   person?
 7
            JUROR GENONI: Well, aside from members of my
    family, I guess, I have to say, probably Jerry Garcia.
 8
            THE COURT: Okay. Thank you.
 9
            Mr. Gonzalez?
10
                           Judge, we would like to thank
            MR. GONZALEZ:
11
   and excuse Juror Number Six.
12
13
            THE COURT: Juror Number Six. Mr. Kimmel,
   thank you very much, sir. You are excused.
14
            THE CLERK: Juror Number 0275, Patricia
15
   Mindel, M-i-n-d-e-l.
16
17
            THE COURT: Miss Mindel, I will get to you in
   one second. I realize that I forgot to ask Mr. Genoni,
18
   if you speak Spanish.
19
                           No, I do not.
20
            JUROR GENONI:
            THE COURT: Let me ask you:
21
                                         Is there any
22 religious or personal beliefs, that stop you from
   sitting in judgment of another?
23
            JUROR GENONI:
                           No.
24
            THE COURT:
                        Thank you. Miss Mindel, let me
25
                        (Jury Selection)
                                                           143
   ask you, if you have been able to follow along with the
 1
   questionnaire?
 2
 3
            JUROR MINDEL:
                           Yes.
            THE COURT:
                       Do you have any responses?
 4
 5
            JUROR MINDEL:
                           No.
 6
            THE COURT:
                       As a general proposition, do you
   think a police officer is more likely -- Let me start
 7
    again. Do you think that a police officer is more
 8
    likely, less likely, or as likely to tell the truth?
 9.
10
            JUROR MINDEL: As likely.
            THE COURT: As likely. Would you give any
11
   greater weight or lesser weight to the testimony of a
12
    law enforcement officer, just because they are in law
13
    enforcement?
14
                                Equal weight.
15
            JUROR MINDEL:
                           No.
            THE COURT: Equal weight: Any other
16
17
   responses?
18
            JUROR MINDEL:
                           No.
            THE COURT: Then let me go to the personal
19
20
   questions, and ask you where you live, who you live
21
   with, and what you do.
22
            JUROR MINDEL: Avenel.
                                    I live with my
23
             And I work in a nursery school.
   husband.
24
                        Is your husband employed?
            THE COURT:
25
            JUROR MINDEL:
                          Yes.
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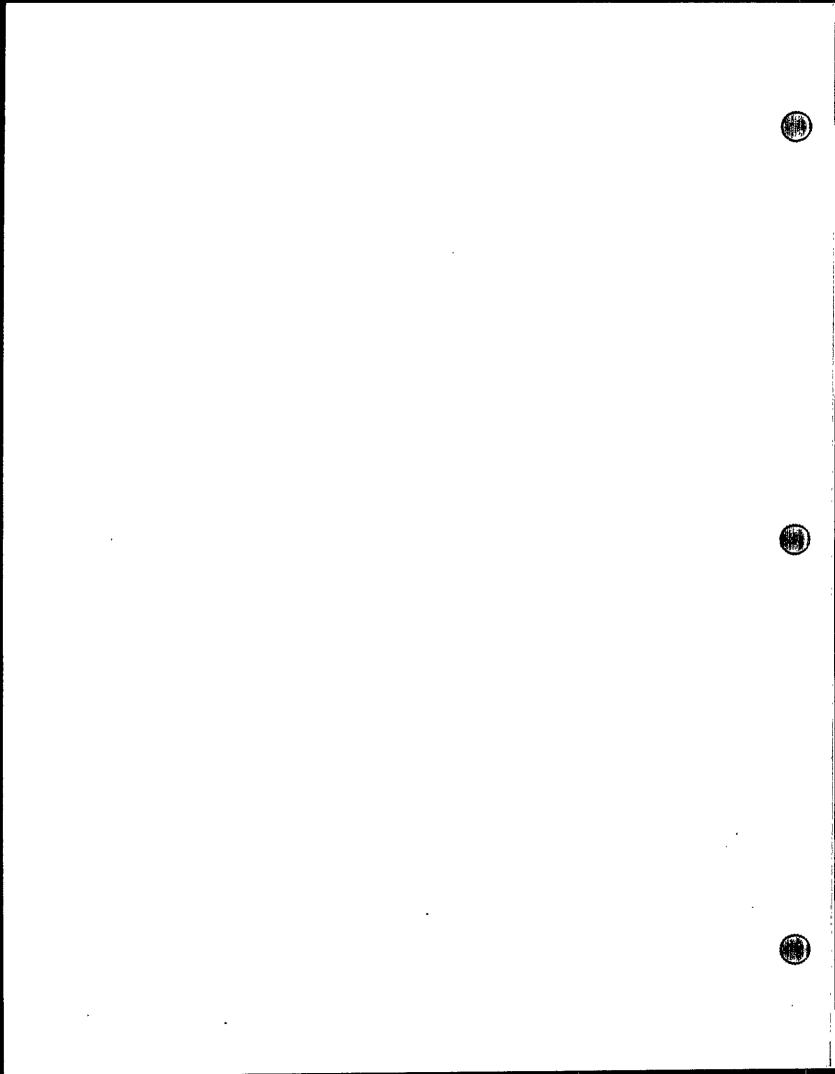
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(Jury Selection)
           THE COURT: What does he do?
 1
 2
           JUROR MINDEL: Recycle company in Keasbey.
 3
           THE COURT: Military background?
           JUROR MINDEL:
                          No.
 4
 5
           THE COURT: Educational background?
           JUROR MINDEL: High school.
 6
           THE COURT: What do you like to do in your
 7
 8
   spare time?
 9
           JUROR MINDEL: Read and watch TV.
           THE COURT: Any favorite TV programs?
10
           JUROR MINDEL: Nancy Grace and Young and the
11
12
   Restless.
           THE COURT: How about the news? Where do you
13
14
   get your news from?
           JUROR MINDEL: I watch the news, Channel 7,
15
  from the paper, the newspaper.
16
           THE COURT: What newspapers?
17
           JUROR MINDEL: Home News Tribune and local
18
19
  papers.
           THE COURT: Bumper stickers?
20
           JUROR MINDEL:
                          I don't drive.
21
           THE COURT: On the husband's car, any bumper
22
23 stickers?
           JUROR MINDEL: Yankees and Rangers.
24
           THE COURT: Do you think you would make a
25
                                                         145
                        (Jury Selection)
 1 good juror for the case?
           JUROR MINDEL: I think so.
 2
 3
           THE COURT: How come?
           JUROR MINDEL: I think I'm pretty fair.
 4
           THE COURT: From what you know about our
 5
 6 criminal justice system, do you think it is fair and
 7
  effective?
           JUROR MINDEL: I think so.
 8
           THE COURT: Why do you feel that way?
 9
           JUROR MINDEL: Well, compared to other
10
11 countries, I think we're the best.
           THE COURT: Do you have a favorite famous
12
13
   person?
14
           JUROR MINDEL:
                          Oprah.
           THE COURT: Oprah. All right. Thank you.
15
16
           State?
           MR. SAMEIRO: Would your Honor please thank
17
  and excuse Mr. Crockett, in the 12th seat.
18
           THE COURT: Mr. Crockett, thank you very
19
   much, sir. You are excused, Mr. Crockett.
20
21
           THE CLERK: Juror number 0735, Joseph
              Seat number 12. D-e-S-a-n-d-r-e.
22 DeSandre.
23
           THE COURT: Mr. DeSandre, how are you?
24
           JUROR DE SANDRE: I'm fine. Thank you.
25
           THE COURT: Able to follow along with the
```



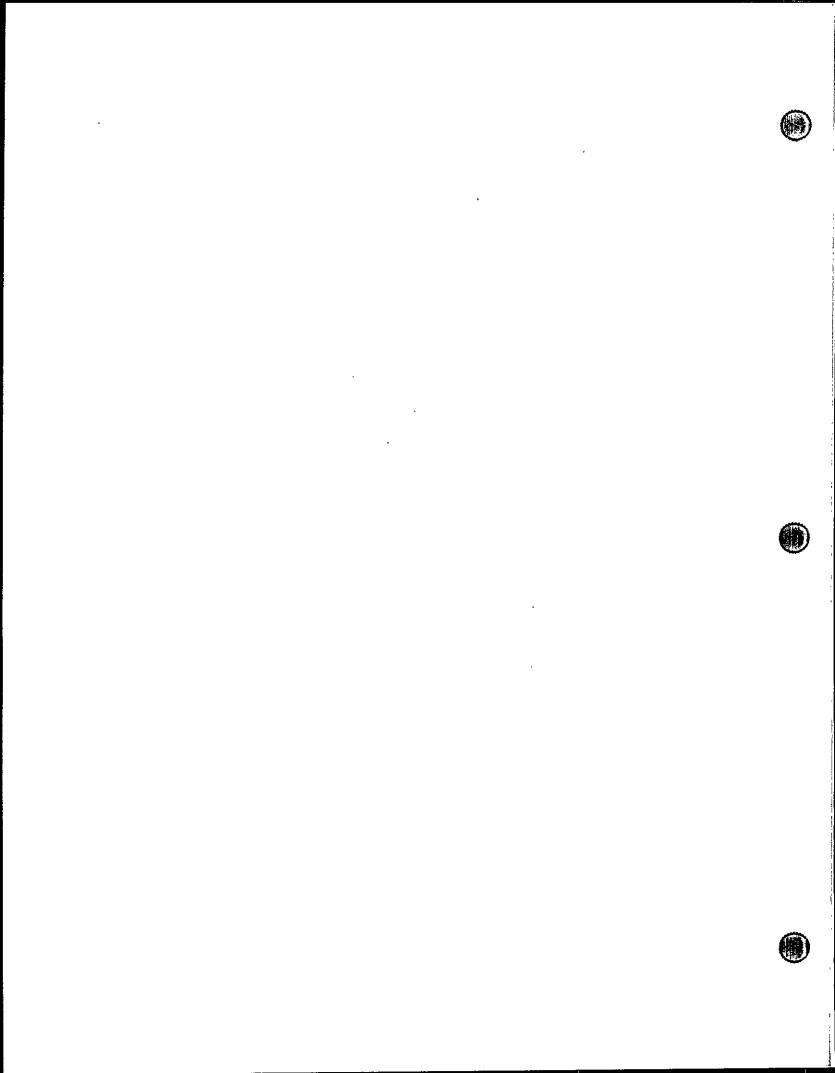
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. (Jury Selection)
                                                          146
 1
   questionnaire?
 2
            JUROR DE SANDRE:
                              Yes.
 3
            THE COURT: Do you have any responses to
   those questions?
            JUROR DE SANDRE: I just have one issue.
 5
   The other night, I was informed of a friend of ours,
   that was a hundred three years old, who was a mentor,
 7
   if you will, passed away. I was asked to be a
 8
   pallbearer tomorrow. And I said I had to wait.
 9
   couldn't give them an answer until I had come to court.
10
            THE COURT: Okay. I'm assuming it is
11
12
   tomorrow morning?
13
            JUROR DE SANDRE: That's correct.
                       You tell me. Do you want to be a
14
            THE COURT:
   pallbearer for the funeral?
15
            JUROR DE SANDRE: I would like to.
16
            THE COURT: I'm going to excuse you based on
17
18
   the death.
                              Thank you.
19
            JUROR DE SANDRE:
                       Juror Number 0115, Arsenio
20
            THE CLERK:
            A-r-o-c-h-o.
21
                           Seat number 12.
   Arocho.
            THE COURT: Hi, Mr. Arocho. Were you able to
22
   follow along with the questionnaire?
23
24
            JUROR AROCHO:
                          Yeah.
                       Do you have any responses?
            THE COURT:
25
                                                          147
                        (Jury Selection)
                          No. I only have one thing
            JUROR AROCHO:
 1
   that I wanted to say in private.
 2
            THE COURT: Okay. Come over to sidebar.
 3
            (Whereupon, the following discussion occurred
 4
 5
   at sidebar.)
 6
            JUROR AROCHO: Sorry about that.
            THE COURT: Not a problem, Mr. Arocho.
 7
            JUROR AROCHO: If it was a different case, I
 8
   wouldn't mind. But my daughter got mugged twice.
 9
   can't get that out of my mind.
10
            THE COURT: You think a different case, you
11
   would be all right?
12
13
            JUROR AROCHO: Yes.
            THE COURT:
                       Based on the information --
14
            JUROR AROCHO: I want to be fair, you know.
15
                       You feel like you kind of already
16
            THE COURT:
   have made up your mind regarding this case?
17
            JUROR AROCHO: I still -- It's just every
18
   time I hear about muggings, all the stuff I remember,
19
20
   it's the same thing.
21
            THE COURT: Okay. All right.
   affect your ability to be fair and impartial?
22
23
            JUROR AROCHO: That's what I don't want. I
   don't want to hurt nobody.
24
25
            THE COURT:
                       I'm going to excuse you, Mr.
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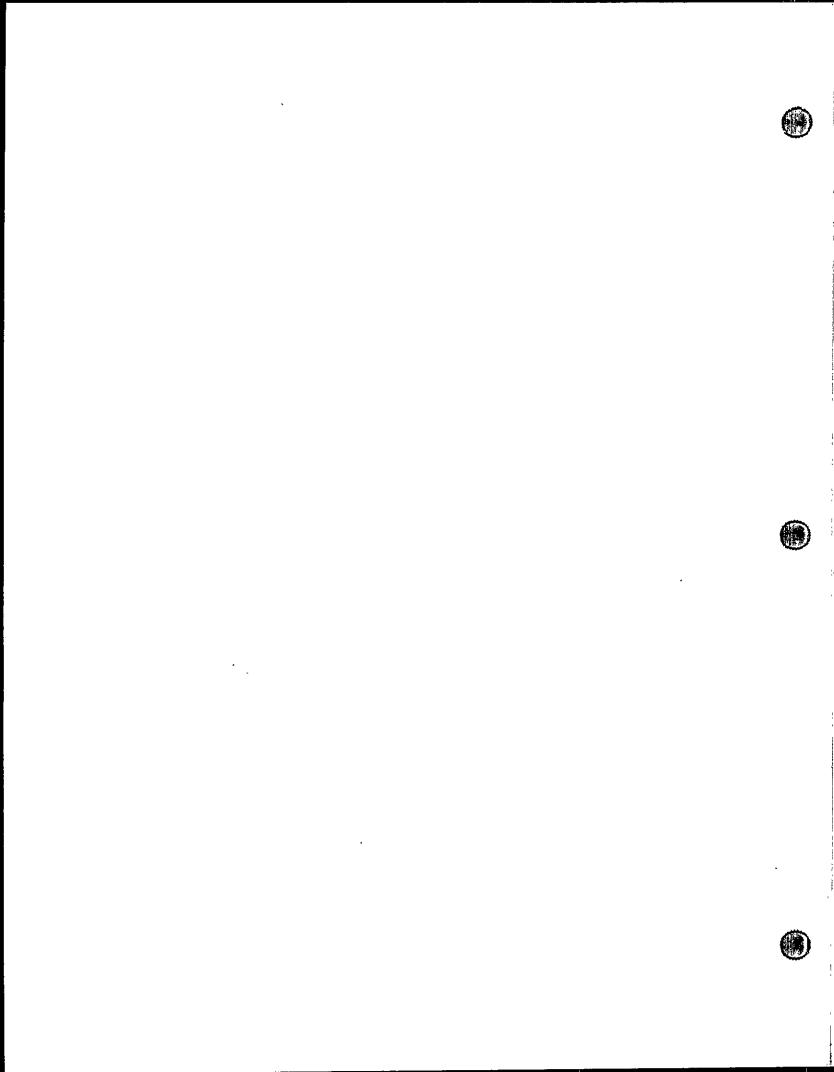
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(Jury Selection)
   Arocho. Your daughter being mugged -- being the victim
 1
   of a mugging twice -- this isn't the case --
 2
 3
           JUROR AROCHO: She was going from high school
 4
   in Amboy.
              Twice, actually mugged and hurt.
 5
            THE COURT: Okay. I'm going to excuse you.
            JUROR AROCHO: I don't know that I could be
 6
 7
          I don't want to lie.
   fair.
           THE COURT: No. I thank you for telling me
 8
                I'm going to excuse you. Thank you.
 9
   the truth.
10
            JUROR AROCHO: Thank you.
           MR. GONZALEZ: Thank you.
11
12
           MR. SAMEIRO: Thank you.
           JUROR AROCHO: Where do I go?
13
           THE COURT: Right over there.
14
15
           JUROR AROCHO:
                           Let me get my stuff.
16
           THE COURT: Okay.
            (Whereupon, Juror Arocho leaves sidebar.)
17
            (Whereupon, the hearing continued at
18
19
   sidebar.)
20
            THE COURT:
                       I just wanted to ask you what
   your thinking is about Mr. Genoni, Juror Number One.
21
   mean, it is going to cost him more for child care.
                                                        But
22
   he seems like he is okay to sit.
23
24
           MR. SAMEIRO: I agree with the Court's
                I don't know how much the child care costs
25
   assessment.
                                                          149
                        (Jury Selection)
   will impact on him financially. It didn't appear to
   me, that he was, you know, going to have to take a loan
 2
 3
   out or anything.
           MR. GONZALEZ: I think he would have pressed
 4
   a little harder if he really didn't want to be here.
 5
           THE COURT: I think so. Because other people
 6
 7
   have pressed.
 8
           MR. SAMEIRO: That's true.
 9
           THE COURT: I think he is okay.
           MR. SAMEIRO: Now, Judge, there is something
10
11
   that I forgot to ask you earlier. I didn't want to
12
   highlight it. But, I guess, I'll highlight it now.
   There is a juror who said he was in the military
13
   academy -- Scott Delgado. Can we ask him which one it
14
15
         I was just curious if it was Admiral Farragut.
16
           THE COURT:
                      Well, I'll find out.
17
           MR. SAMEIRO: Do you want to just bring him
18
   over?
19
           THE COURT:
                             I'll ask him in open court.
                       No.
20
           MR. SAMEIRO:
                          Okay.
21
                           Thank you.
           MR. GONZALEZ:
22
           THE COURT:
                       Thank you.
23
           MR. SAMEIRO: Thank you.
24
            (Whereupon, the sidebar discussion
25
   concluded.)
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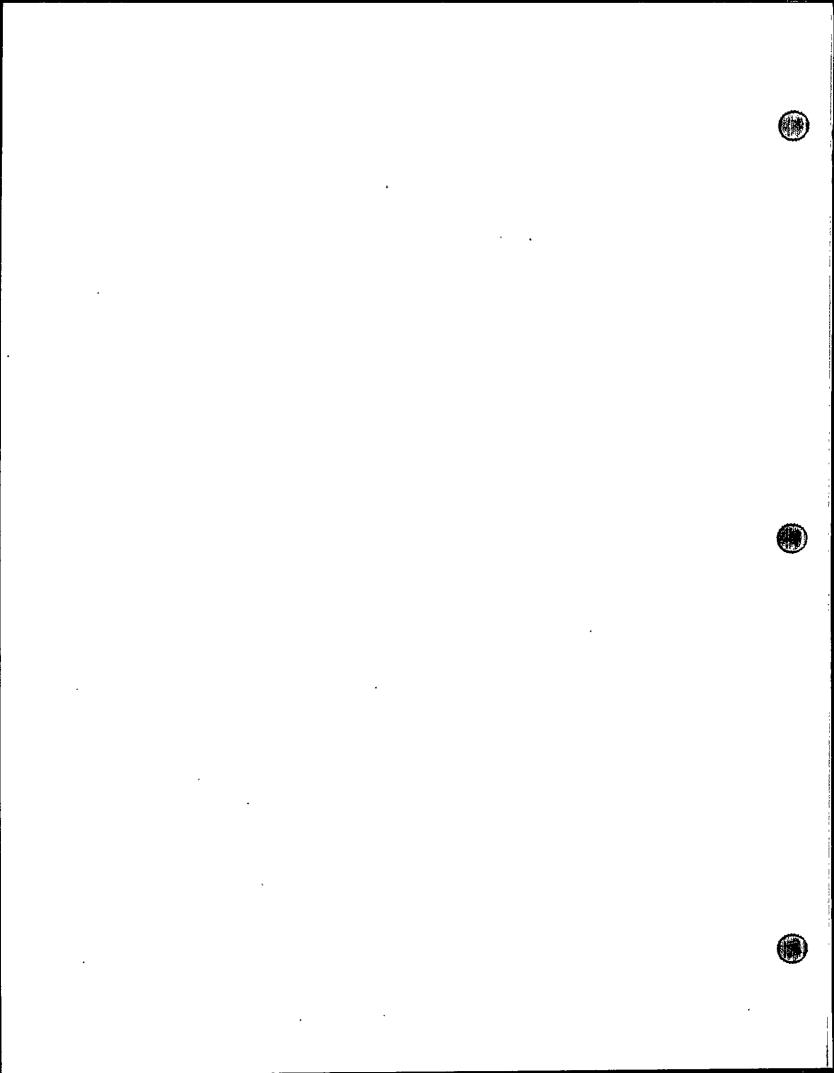
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(Jury Selection)
            (Whereupon, the hearing continued in the
 1
 2
   presence of the prospective jury panel.)
 3
            THE COURT: Let me ask you, Mr. Delgado.
   Before, Mr. Delgado, you had said you went to a
 5
   military academy.
 6
            JUROR DELGADO:
                            Correct.
 7
            THE COURT: Where did you go?
            JUROR DELGADO: Admiral Farragut Academy,
 8
 9
   Pine Beach, New Jersey.
                      Thank you.
            THE COURT:
10
                        Juror Number 0189, Shailesh
            THE CLERK:
11
            Seat number 12. P-a-t-e-1.
12
   Patel.
13
            THE COURT: If we can approach sidebar with
   regards to Mr. Patel. I would ask you to come over to
14
15
   sidebar, Mr. Patel.
16
            (Whereupon, the following discussion occurred
17
   at sidebar.)
18
            THE COURT: Mr. Patel, I wanted to ask you,
   do you feel comfortable with understanding everything?
19
            JUROR PATEL:
20
                          No.
21
            THE COURT: For the record, we had your son,
22 who was here earlier. All right. He said, you might
   have some issues with the English language. Have you
23
   been able to understand everything?
24
            JUROR PATEL:
                          No.
25
                        (Jury Selection)
                                                          151
                       I'm going to excuse you.
            THE COURT:
                                                  I know
 1
   he came here -- Actually, I know, he was helping you.
 2
 3
            JUROR PATEL: Yes. He help me.
            MR. SAMEIRO: He was helping him.
 4
            THE COURT: Okay. Then I'll excuse you.
 5
   Thank you, Mr. Patel. You can go.
 7
            JUROR PATEL:
                          I can qo?
 8
            THE COURT: Yes.
                              Thank you.
            (Whereupon, the sidebar discussion
 9
   concluded.)
10
            (Whereupon, the hearing continued in the
11
   presence of the prospective jury panel.)
12
            THE CLERK: Juror Number 0106, Edward Rella.
13
   R-e-l-l-a.
               Seat number 12.
14
            THE COURT: Mr. Rella, were you able to
15
   follow along with the questionnaire?
16
17
            JUROR RELLA:
                          Yes.
18
            THE COURT: Do you have any responses?
19
            JUROR RELLA: Item 7. I was, in March of
   this year, I was on a Federal District Jury.
20
21
            THE COURT: Okay. Did the jury actually
22
   reach a verdict in the case?
23
            JUROR RELLA: Well, it was a hung jury.
24
            THE COURT: Let me ask you this: What was
25
   the case about? Just generally.
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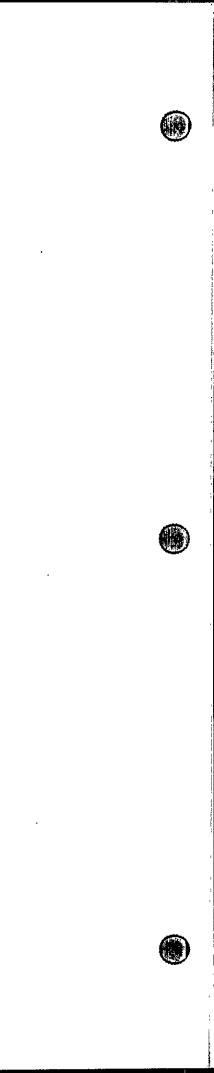
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(Jury Selection)
            JUROR RELLA: It involved, basically, police
 1
   brutality. A civil case. But it involved brutality by
 2
 3
   the police.
            THE COURT: Okay. Now, again, the standard
   of proof is different here. Beyond a reasonable doubt.
   Are you able to set aside the facts in that case, the
   standard of proof, and listen to the facts here, and
 7
   use the standard of proof that I give you?
 8
 9
            JUROR RELLA: Yes.
                       Anything in that situation, that
10
            THE COURT:
11
   experience, that would stop you from sitting and being
   a fair, impartial juror?
12
13
            JUROR RELLA:
            THE COURT: Any other responses to the
14
15
   questions?
            JUROR RELLA: I mean, I was on some other
16
   juries. Several over the years. But, mostly, small
17
   ones, like civil cases.
18
                       Civil cases.
19
            THE COURT:
            JUROR RELLA: Accidents, civil cases.
20
21
            THE COURT: In this County or other Counties?
            JUROR RELLA: Other Counties. Nothing like
22
23
   this.
            THE COURT: Are you able to set aside those
24
   experiences, and deal with the facts here, and be a
25
                                                           153
                         (Jury Selection)
   fair, impartial juror?
 1
 2
            JUROR RELLA:
                         Yes.
 3
            THE COURT: Are you able to set that aside?
 4
            JUROR RELLA:
                          Yes.
 5
            THE COURT: As a general proposition, do you
   think that police officers are more likely, less
 6
 7
   likely, or as likely, to tell the truth, than a witness
   who is not a police officer?
 8
 9
            JUROR RELLA:
                          As likely.
10
            THE COURT: Would you give any greater weight
   to the testimony of a law enforcement officer or lesser
11
   weight, just because they're in law enforcement?
12
13
            JUROR RELLA:
                          No.
14
            THE COURT: Do you speak Spanish?
15
            JUROR RELLA:
                          No.
16
            THE COURT: Do you have anything, regarding
17
   your religious or personal beliefs, that would stop you
18
   from sitting in judgment of another?
19
            JUROR RELLA:
                          No.
20
            THE COURT: Any other responses?
21
            JUROR RELLA: No.
22
            THE COURT:
                       Then I'll go to those personal
23
   questions. I will ask you, who you live with, what you'
24
   do.
25
            JUROR RELLA:
                          I live in East Brunswick, with
```



```
(Jury Selection)
                                                           154
   my wife. I'm retired. I worked for Revlon for 32
 1
   years. Mainly in engineering, industrial engineering,
   facility engineering, safety engineering. Some quality
   control.
            THE COURT: Is your wife employed outside the
 5
 6
   house?
            JUROR RELLA: Yes, she was. She was an
 7
   accountant. But, basically, she's been a housewife for
 8
 9
   many years.
10
            THE COURT: You have any children in the
11
   house?
12
            JUROR RELLA: No. My daughter -- I have a
   daughter, 33.
                  She lives in Maryland.
13
14
            THE COURT: Military background? Any
15
   military background?
            JUROR RELLA:
                         Vietnam veteran.
16
            THE COURT: Educational background?
17
                          Two years of college.
18
            JUROR RELLA:
            THE COURT: Free time? What do you like to
19
20
   do in your free time?
21
            JUROR RELLA: Gardening. Play with the
   computer now and then.
22
23
            THE COURT: News. Where do you find you get
24
   your news from?
            JUROR RELLA: Star Ledger, TV news, some
25
                                                           155
                         (Jury Selection)
  magazines, and TV shows.
 1
            THE COURT: Any favorite TV shows that you
 2
 3
   watch?
                          Mostly sports. With the
 4
            JUROR RELLA:
 5
   exception of maybe Monk.
            THE COURT: Okay. How about bumper stickers?
 6
 7
   Any bumper stickers?
 8
            JUROR RELLA:
                         No.
            THE COURT: Do you think you would make a
 9
   good juror for the case?
10
11
            JUROR RELLA: Yes.
12
            THE COURT: How come?
            JUROR RELLA: I think I'm a pretty good judge
13
                  I'm pretty fair in my judgment.
14
   of character.
15
            THE COURT: All right. From what you know
16
   about our criminal justice system, do you think it is
17
   fair and effective?
18
            JUROR RELLA:
                          I think it is fair.
19
            THE COURT: Any reason? Any particular
   reason why you feel that way?
20
21
            JUROR RELLA: Just from my observations.
22
            THE COURT: Do you have a favorite famous
23 person?
24
            JUROR RELLA: Not really.
25
           THE COURT: Thank you.
```



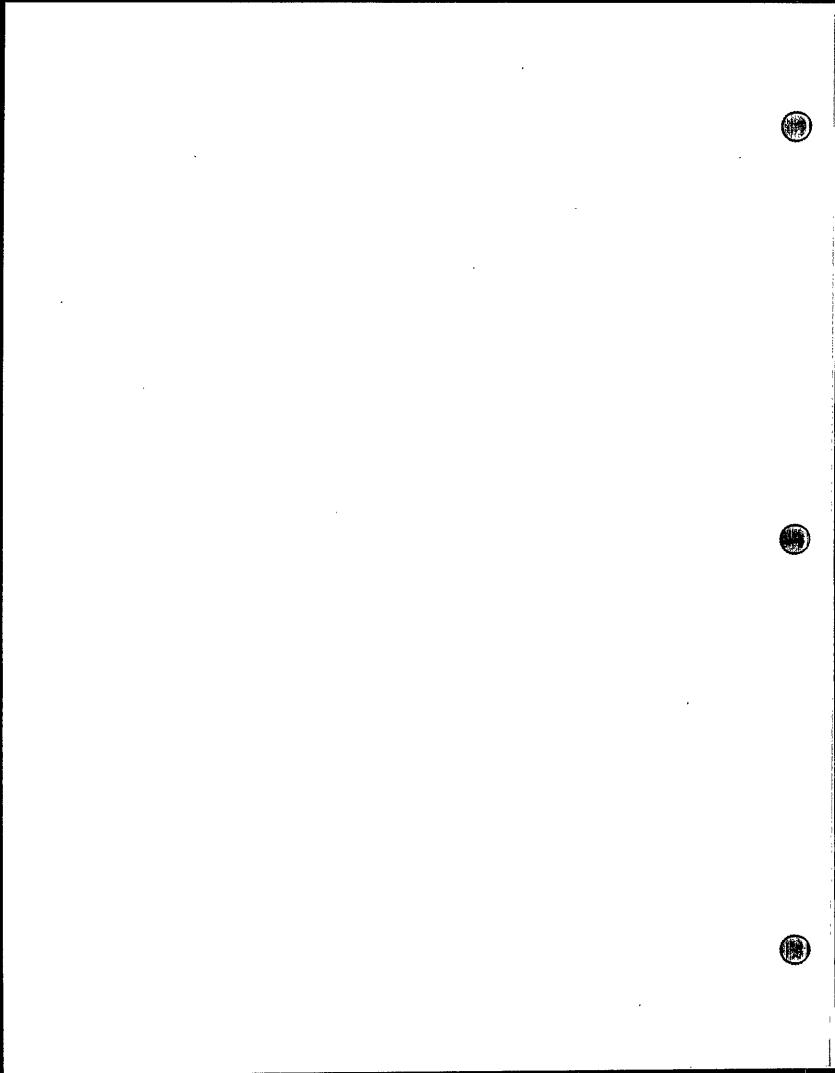
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(Jury Selection)
                                                          156
           Is it Mr. Sameiro? Mr. Gonzalez?
 1
                           The jury is satisfactory.
 2
           MR. GONZALEZ:
           THE COURT: Mr. Sameiro?
 3
           MR. SAMEIRO: The jury is satisfactory.
 4
                       There you go.
                                      We have two people
 5
           THE COURT:
   saying that the jury is satisfactory.
                                          Ladies and
 6
   gentlemen, that means that they are satisfied with the
 7
   jury as it is presently constituted.
 8
 9
            So, let me ask you now, because I think what
   our intention is, once we get a good group, to break
10
   for the night, and have you come back tomorrow, ready
11
   to start at nine o'clock tomorrow morning, and go right
12
13
   through the case.
           Any reason, perhaps, that I don't know about
14
   you, anything at all, that would stop you from serving
15
   on the jury? Everybody okay to serve as a juror?
16
           A JUROR: Actually, I have one question.
17
   received a text at the lunch break.
18
19
           THE COURT: Right.
           A JUROR: You said, we would not be doing the
20
   jury on Thursday?
21
22
           THE COURT: Our feeling is, it should
   probably go on Thursday morning.
23
                     I have to be -- My brother is
24
           A JUROR:
   having surgery Friday morning. But if you don't
25
                        (Jury Selection)
                                                          157
 1
   think --
           THE COURT: Well, that is the thing, I don't
 2
 3 know how long deliberations are going to take.
   up to the jury. But you should be getting this case --
   it looks like -- what my goal is -- to start at nine
 5
   o'clock -- as close to nine tomorrow as possible. Move
   right through the witnesses in the trial. So, we don't
 7
   have too many delays. I don't think I have anything
   else scheduled. My goal is to get the case to you. Be
 9
   as efficient with your time as possible.
10
11
           Okay?
                   Is everybody okay?
                          My only question is, if you
            JUROR GENONI:
12
   would reconsider your decision for my job.
13
           THE COURT: Let me ask you: Do you think --
14
   in all honesty -- I leave it up to you -- you are able
15
16
   to sit and listen?
17
            (Whereupon, Juror Genoni shakes his head.)
18
           THE COURT: I mean, I know things back up
   when you are sitting here. If you are able to sit and
19
   listen, and be able to get that done?
20
21
           JUROR GENONI: For example, I have four
   appointments scheduled for tomorrow. And I have, at
22
23
   least, two scheduled for every day during the rest of
              One of the ones I have for tomorrow
24
   the week.
25
   afternoon, like I said, I am a sales rep for Fed Ex.
                                                          Ι
```



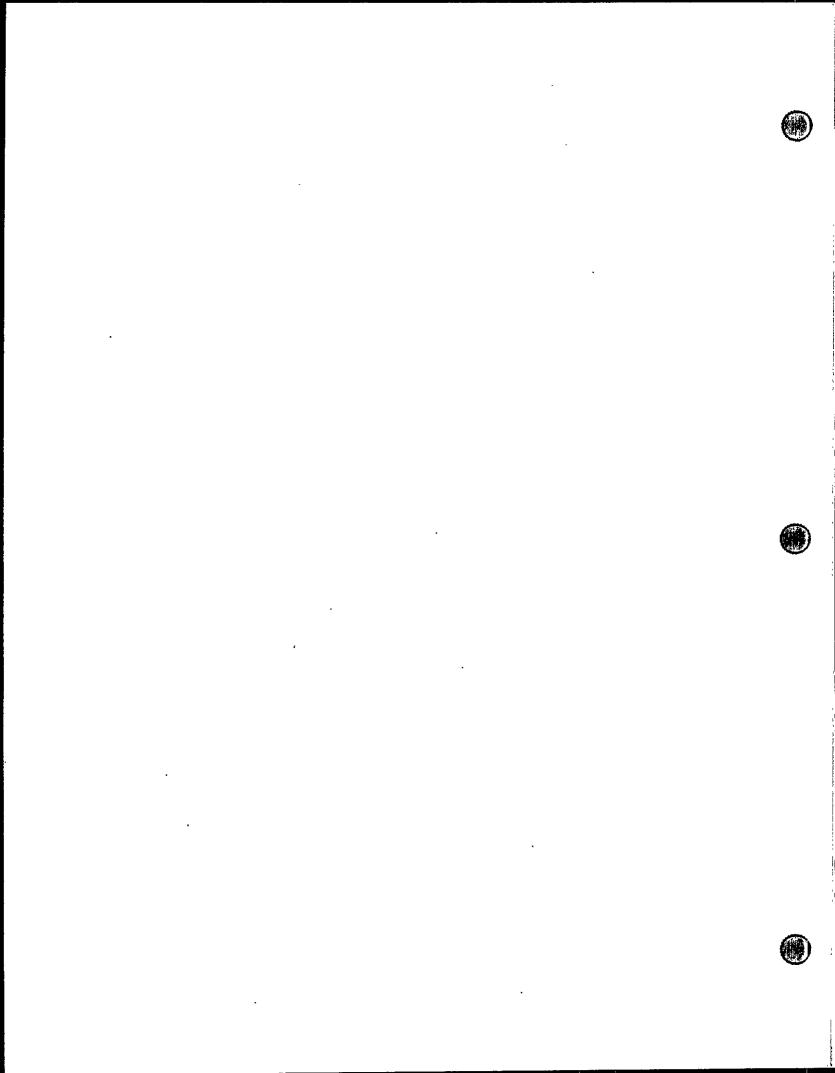
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nobody else that will go there, and help implement the
   Fed Ex program for them.
                        So, there is nobody else to take
           THE COURT:
   over your spot? What if you are sick or out? Does
 5
 6
   anybody take over?
 7
            JUROR GENONI: Pretty much, I do it.
   Sometimes we have reps covering for us, if I go away
 8
   for vacation. But I prepare for that, when I know that
 9
   I'm going to go away. Like I said, the only reason it
10
   is happening now, because it is a new position in the
11
   company that I took. I'll respect your decision,
12
13
   whatever it will be.
           THE COURT: Okay. Well, my biggest concern
14
   is going to be something that I keep thinking about.
15
   That you can't focus on the case. That would be a
16
   concern to me. Because, as jurors, you need to be
17
   listening to the testimony, and being able to focus.
18
   don't want you to be distracted, so to speak. That is
19
   why I'm asking you. I'd like to have you as a juror.
20
            JUROR GENONI: Right. Okay.
21
            THE COURT: You tell me, if you think you'd
22
   be too distracted with these concerns, that you
23
   wouldn't focus. That would be a concern for me.
24
   about it. I mean, it is just human nature.
25
                                                 Ι
                                                          159
                        (Jury Selection)
   shouldn't say, "think about it." Are you able to set
 1
   it aside? At least, listen, and be a juror in this
 2
 3
   case?
            JUROR GENONI: I quess. Like I said, it is
 4
   going to hold me up for another week with these
 5
 6
   accounts.
 7
            THE COURT:
                       That I do understand.
   truly do. I guess, my biggest concern is to make sure
 8
   that, even though this is it now, everybody sitting
 9
   here is probably saying the same thing. All the work
10
   on my desk. Even though when people say, they'll do
11
   it, they're not doing it. I know it is difficult.
12
   That they're not going to do it the way you want it
13
   done, if they do it at all. That some people wouldn't
14
15
   even do it.
            If you are able to sit and listen and focus,
16
   for these three days as a juror, I'd like to have you.
17
   If it is going to interfere with your ability to think,
18
19
   let me know that.
                      Okay. You think you'll be able to
20
   do it?
21
           JUROR GENONI:
                          Sure.
22
           THE COURT:
                       Everybody else okay?
23
           Mr. May?
24
           JUROR MAY: On question 15 on here, I failed
25
   to mention that I was in the service. I was in the
```

(Jury Selection)

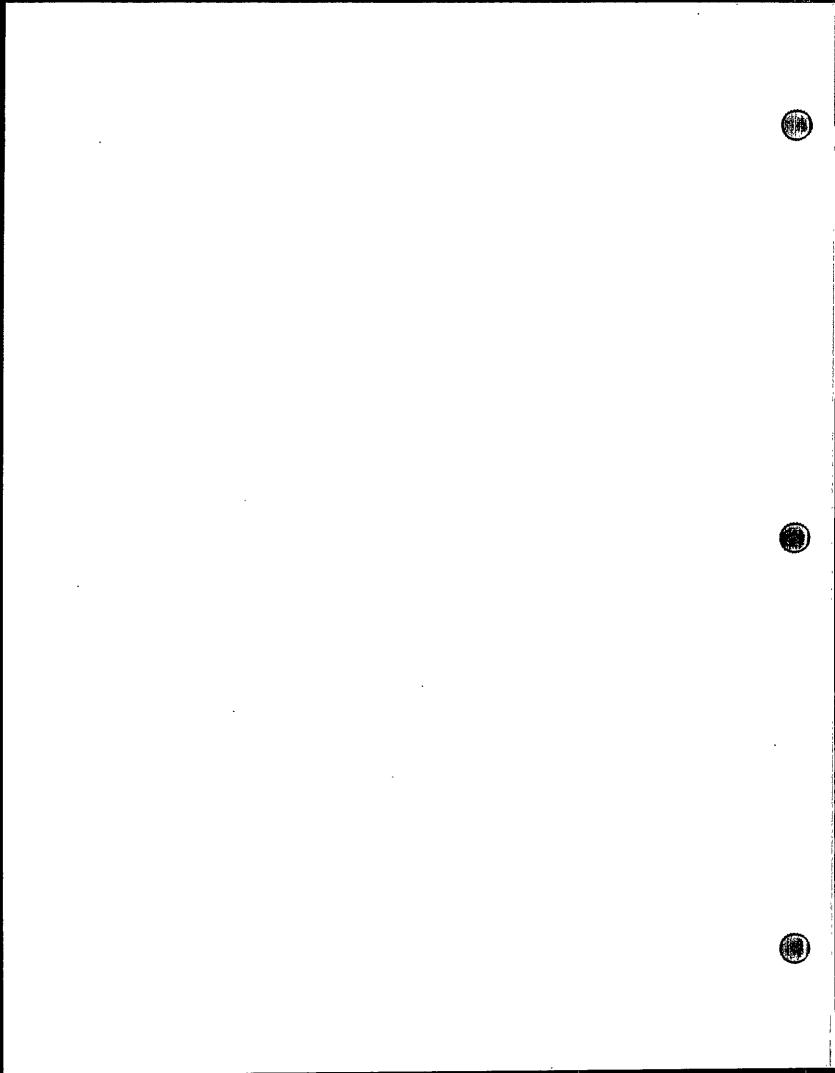
have a brand new customer coming on board. There is



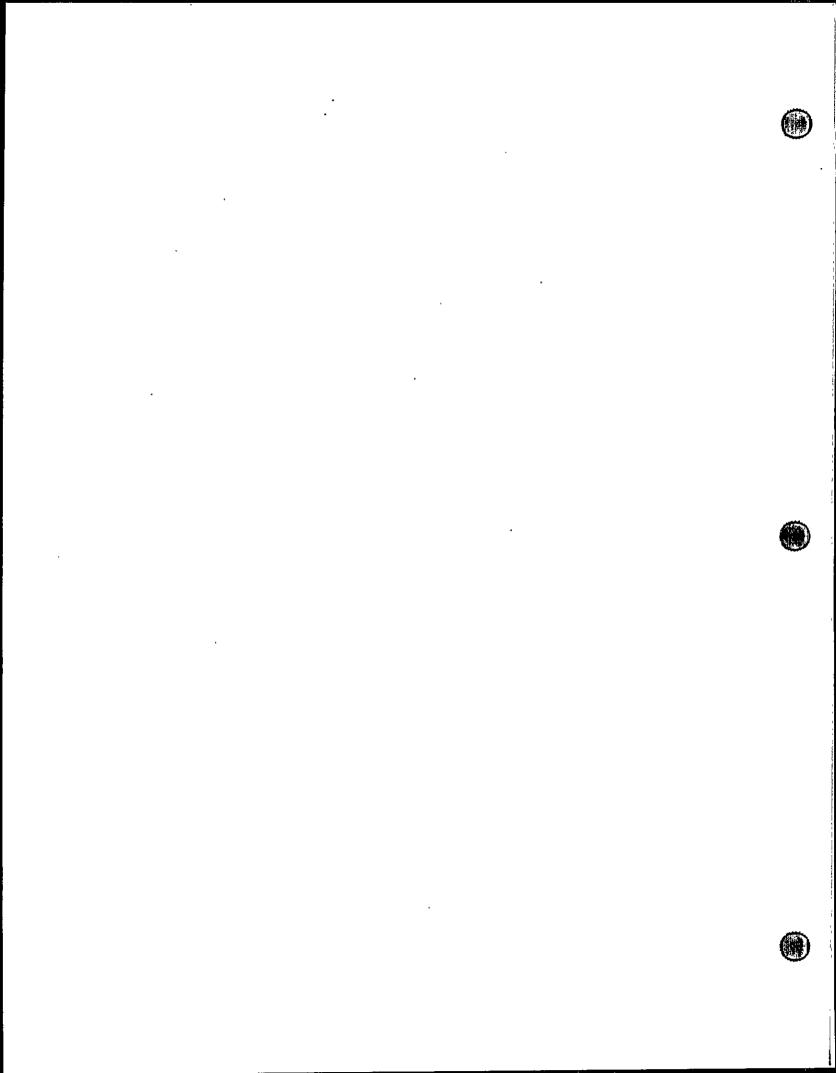
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(Jury Selection)
                                                          160
 1
   military police.
 2
            THE COURT: Okav.
 3
            JUROR MAY: I was a military police officer
   in the service.
 5
            THE COURT: How long were you in that
 6
   position?
 7
            JUROR MAY: For six years, I was in.
            THE COURT: You were in for six years. Let
 8
   me ask you: Would that impact your ability to sit and
 9
10
   listen to the witnesses? Be fair and impartial?
            JUROR MAY: No, it would not.
11
12
            THE COURT:
                        Let me ask you, Counsel, with
   this new information, any change in the decision?
13
14
            MR. SAMEIRO: No.
                               Nothing said by any of the
15
   three jurors would affect me.
16
            THE COURT:
                       Mr. Gonzalez?
            MR. GONZALEZ: Nothing from me, Judge.
17
   a follow-up question for Mr. Genoni. Are you getting
18
19
   paid by commission?
20
            JUROR GENONI:
                           Yes.
21
                           So, will it affect -- I know
            MR. GONZALEZ:
   you just started your new job. I imagine that you want
22
23
   to make a good impression.
            JUROR GENONI:
                           In all fairness, I'd ask, it
24
   is a new company. The position that I took with Fed Ex
25
                        (Jury Selection)
                                                          161
   -- Yeah, I get paid. By putting the packages on the
 1
   belt, that's how we get paid. But for the new customer
   starting -- they're supposed to start tomorrow.
 3
   postpone that, they're not going to start next week.
 5
   Next week, being Christmas. It's probably going to get
   pushed to January. It's probably two weeks worth of
   revenue that I'll lose.
 7
 8
            THE COURT: I think, in a nutshell, where I'm
   going, is that going to affect your thought process?
 9
10
            JUROR GENONI: Christmas is coming. They're
11
   going to evaluate me in my new job.
                           I was just wondering, whether
12
            MR. GONZALEZ:
13
   or not you think that would affect you personally,
   because often our minds wonder. That's all.
14
15
            JUROR GENONI:
                           I mean, can I separate it,
16
   yeah.
           Sure. Will I think about it, like human nature,
17
   of course.
18
            MR. GONZALEZ:
                           But, the bottom line is, would
19
   you be able to focus on the case?
20
            JUROR GENONI:
                           Sure.
21
            THE COURT:
                       Okay?
22
           MR. GONZALEZ:
                           Okav.
23
           MR. SAMEIRO:
                          Sure.
24
            THE COURT: All right, folks.
                                           This is what
25
   I'm going to do. I am not going to swear you in until
```



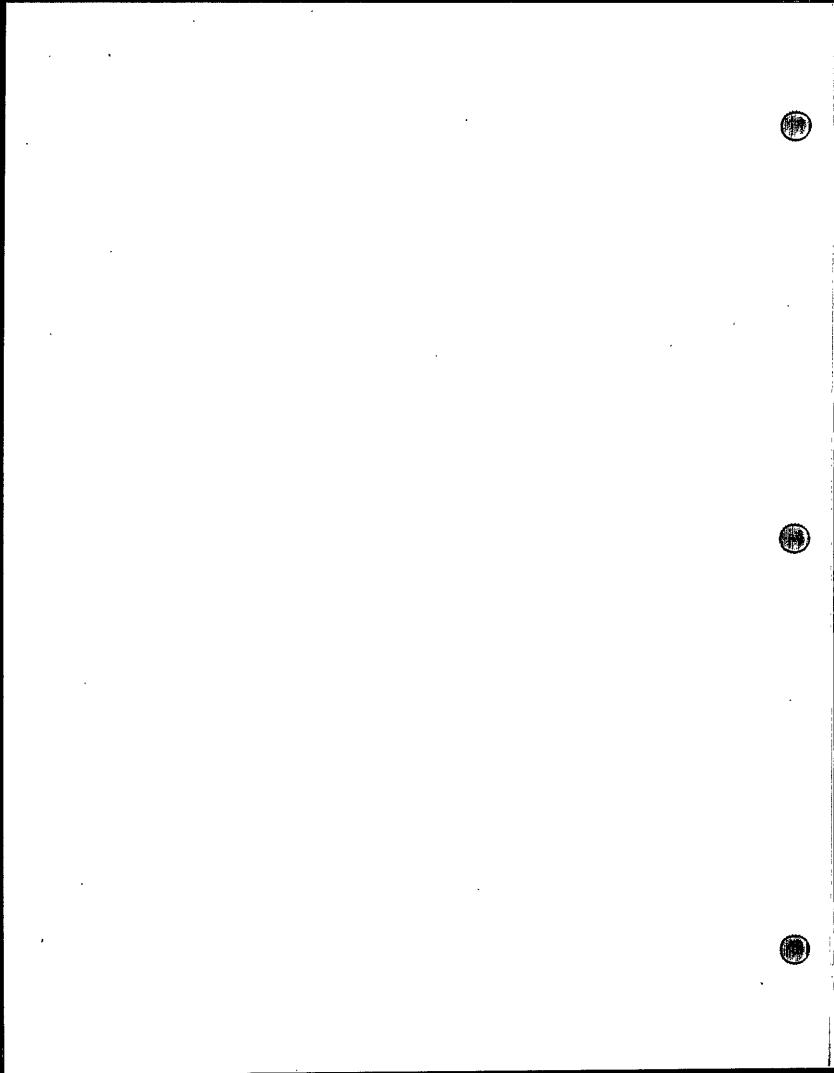
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(Jury Selection)
                                                          162
                     I will let you go home for the
 1
   tomorrow morning.
   evening. Get a little bit of a head start on the New
 2
   Brunswick traffic.
            Tomorrow morning, be downstairs at 8:30.
   What we'll do is, we will bring you up as close to 9:00
   as we can. We will then swear you in, and I will give
   you some general information regarding the trial. Then
 7
   we go right into the witnesses in the case.
 8
 9
            Okav.
                  Is everybody good?
           Hold on, folks. My trusty Clerk thought of
10
   something really important. For those poor people in
11
   the back, because if I don't swear you in, I have got
12
   to bring back the people in the back tomorrow.
13
   sure that you all don't want to come back tomorrow.
14
   But I think what I'll do is swear in the jurors now.
15
   So, we don't have to bring back the people in the back
16
17
   tomorrow. I forgot all about that.
           THE CLERK: Would everyone in the jury box
18
19
  please stand.
20
            (Whereupon, the jury complies.)
21
            (Whereupon, a jury panel is duly impaneled
22
  and sworn.)
            THE COURT: You can be seated.
23
24
            (Whereupon, the jury complies.)
                      Okay. Now, we'll do this again.
25
           THE COURT:
                           (Colloguy)
                                                          163
                          We'll take you back downstairs.
   You are now sworn in.
 1
   We will bring you upstairs as soon as we can.
   not to discuss the case. You haven't heard anything
   about it.
 4
           And, to my jurors in the back, I hope that,
 5.
  if you wanted to get on a jury panel, and you were not
   able to, just let me let you know that, just for being
 7
   here, just for being potential jurors, for being part
 8
   of the process, you were very important, and I thank
 9
10
   you very much.
11
            (Whereupon, the jury leaves the courtroom for
12
   the day.)
13
            (Whereupon, the hearing continued outside the
   presence of the jury.)
14
           THE COURT: Okay. One thing we don't have to
15
   do tomorrow. We are all done swearing in the jurors.
16
17
   What we'll do, I can be ready to go at 9:00. We'll get
   them up here. Your witnesses will all be ready.
18
19
           MR. SAMEIRO:
                        Right.
20
           Judge, I didn't want to interrupt anything.
21
   There is something I need to address.
22
           THE COURT:
                       Yes.
23
           MR. SAMEIRO: Once upon a time, I filled out
24
   a trial memo.
                  I objected to the introduction of any
25
   interview reports that were provided to Counsel by the
```



(Colloguy) 164 1 Public Defender's Investigator. 2 THE COURT: All right. I assume there will be no 3 MR. SAMEIRO: There will be no cross-examination on this. surprises. 5 MR. GONZALEZ: Certainly. MR. SAMEIRO: Nor is there anything on the 6 And Counsel thought it was work product. 7 witness list. And it's going to remain work product. I just want to 8 put that on the record. 9 10 THE COURT: I remember that. MR. GONZALEZ: Judge, there are no surprises. 11 MR. SAMEIRO: On the issue of there being no 12 surprises, today I was given a chance to review six 13 14 photographs that were in the possession of Counsel. They purport to be the crime scene. I don't know if 15 they are, in fact. It's late in the game to have 16 photographs of the alleged crime scene. I certainly 17 18 don't even have copies to take with me. 19 Counsel should have, at the very least, provided me with copies of these pictures, so, I could 20 do my own independent review, after leaving here today. 21 I don't have that opportunity. I'm going to object to 22 23 the introduction of these photographs during the case. The crime scene has been around since this defendant 24 was indicted in November of 2007. I don't know why 2.5 (Colloguy) 165 these photographs are being given to me today. Ι 1 2 object. 3 MR. GONZALEZ: Judge, I think they will be authenticated by the State's own witnesses, as to what 4 400 Lee Avenue looks like. 5 THE COURT: What they are, are pictures of 6 7 the outside? 8 MR. GONZALEZ: These are just the vicinity, as to where the crime is alleged to have taken place. 9 I didn't do so this morning, Judge, but I'm going to 10 11 get a google, I guess, picture of what it is. apologize that I hadn't presented it. You can really 12 take judicial notice of that type of thing. 13 It is just 14 a picture of the crime scene itself. Just a description, I'm sure, that Officer 15 Bobadilla or Detective Selesky, all of those people 16 17 that know what's in New Brunswick, will describe what 18 What 400 Wood Avenue looks like. Just so the Court knows, it's a cul-de-sac, basically, surrounding 19 the apartment area, where there is numerous buildings 20 on the outside of the cul-de-sac type area. 21 22 The allegation is that the robbery occurred 23 in front of 400 Wood Avenue, which is this entire cul-de-sac. 24 25 THE COURT: You are saying Wood. Is it Lee?



166 (Colloguy) MR. GONZALEZ: I am sorry. Lee. I 1 apologize. Lee. 400 Lee Avenue. Like all the 2 buildings are not 402. It's, basically, all of the buildings. There is lots of people that live there. All the pictures depict the buildings themselves. 5 there is, in fact, a parking lot in the middle. 6 7 THE COURT: I quess the question is, why didn't Counsel give them to Mr. Sameiro. Can you 8 9 address that? 10 MR. GONZALEZ: Simply because I had them in my possession. I didn't give them to the State. 11 MR. SAMEIRO: That's the point. 12 13 I expected that the State MR. GONZALEZ: would take pictures of the crime scene area. And, in 14 addition, I didn't say that I went out and I actually 15 got these pictures taken. So, with that in mind, I'm 16 not trying to hide anything. There is no surprises. 17 400 Lee Avenue is what it is. It's not a -- There is 18 no other defendants hiding in the bushes or anything 19 like that. 20 MR. SAMEIRO: I'd like the photographs, to 21 have them with me, so, I can inspect the area tonight 22 23 or tomorrow morning. I would agree. 24 THE COURT: MR. GONZALEZ: Now, if the State wants to 25 (Colloquy) 167 take pictures of the surrounding area, and present them 1 to us -- They are simply pictures of the scene. they want their own pictures, maybe that look nicer or maybe more in focus, I think that would be fine. presents, essentially, the crime scene area. 5 it would be beneficial for the jury to actually view 7 8 THE COURT: Here's what I ask you to do. you can make -- I certainly want either copies of those 9 photos. At least, photocopies that are legible --10 11 photocopies -- clear pictures. I don't want the State to not be able to see what they are, so, they can talk 12 to their witness about it. Do you have copies of them? 13 MR. GONZALEZ: I don't have copies. I don't 14 15 have copies of them. 16 THE COURT: Let me ask you, if you have 17 copies, you give him copies. 18 MR. GONZALEZ: I don't have copies. I don't 19 have copies of these photographs. I would ask you to simply turn them over to the State. Do you have the 20 21 negatives? 22 I don't have the negatives. MR. GONZALEZ: 23 THE COURT: You do? 24 MR. GONZALEZ: I don't have the negatives. The person who took them -- I don't know -- there is 25



```
(Colloguy)
                                                          168
 1
   one, two, three --
 2
           THE COURT: Give them to Counsel.
 3
           MR. GONZALEZ: -- four, five, six, seven.
  Seven photographs.
 5
           THE COURT: Seven photographs.
                                           If one
   doesn't come back, you know that one is missing.
 6
   Sameiro, I doubt would --
 7
           MR. SAMEIRO: You know, one thing with
 8
   photographs, when they are developed, it has the date.
9
   It says here, 08/12/2008.
10
           MR. GONZALEZ: They were turned over to me by
11
12
   my client.
13
           MR. SAMEIRO: He is in jail. He can't take
   pictures in jail, Judge. I heard Counsel say, I think,
14
   that he had them taken. That's what he told me off the
15
            That family members had them taken.
16
   record.
           MR. GONZALEZ: I didn't have them taken.
17
   family of my client. I understand where Mr. Sameiro is
18
   trying to go. But that is not a fact. Somebody from
19
   his family took the pictures. They gave them to him.
20
   He then gave them to me, in preparation for the first
21
   time we came to trial, I think, in September. That is
22
   when I received them.
23
           MR. SAMEIRO: Well, it's been a long time
24
   since September.
25
                                                          169
                           (Colloquy)
                          He can take possession of the
           MR. GONZALEZ:
 1
  photos until tomorrow morning.
 2
           MR. SAMEIRO: I don't think Counsel gets it.
 3
 4 It is about trial prep. It is ten after four, and I am
   finding out about this. Without having to go to the
 5
   crime scene, with the photos, and see if the angles may
   or may not be accurate. I haven't had a chance to go
 7
   over there with the victim at all. I'm entitled to
 8
   that type of trial prep.
           MR. GONZALEZ: He should have prepared --
10
           MR. SAMEIRO: Counsel doesn't get it. I'm
11
12
   sorry.
           THE COURT: His issue is, they weren't here
13
   before today. So, he's not using the photos. He
14
   doesn't need to use the photos. He wasn't going to use
15
16
          It's fine, if you wish to use them. His
   position is, they should have been turned over a long
17
18
   time ago. If you are going to use them, he is
   objecting at this point.
19
           My feeling is, if they're photos of the area
20
21
   -- you are right -- they are not some kind of, you
```

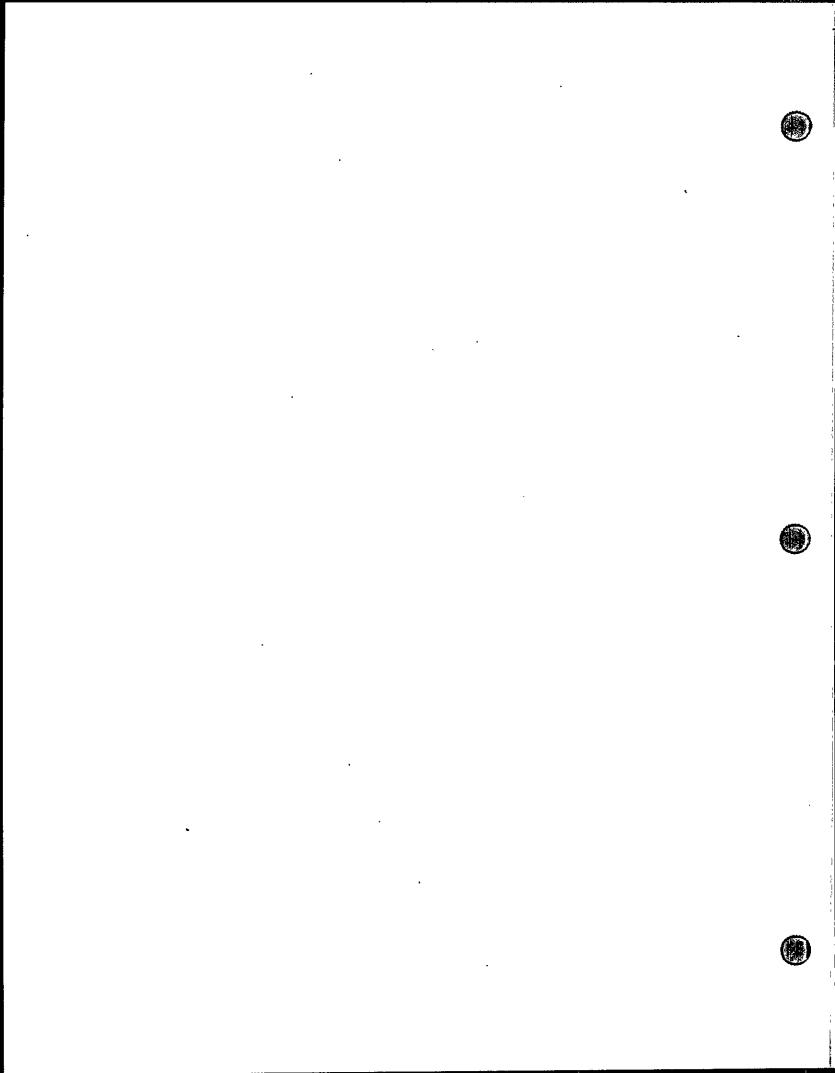
know, just like a neighborhood picture of the area.

-- He has not had a chance to go over them with his

defendant, there may be -- And, also, they were taken

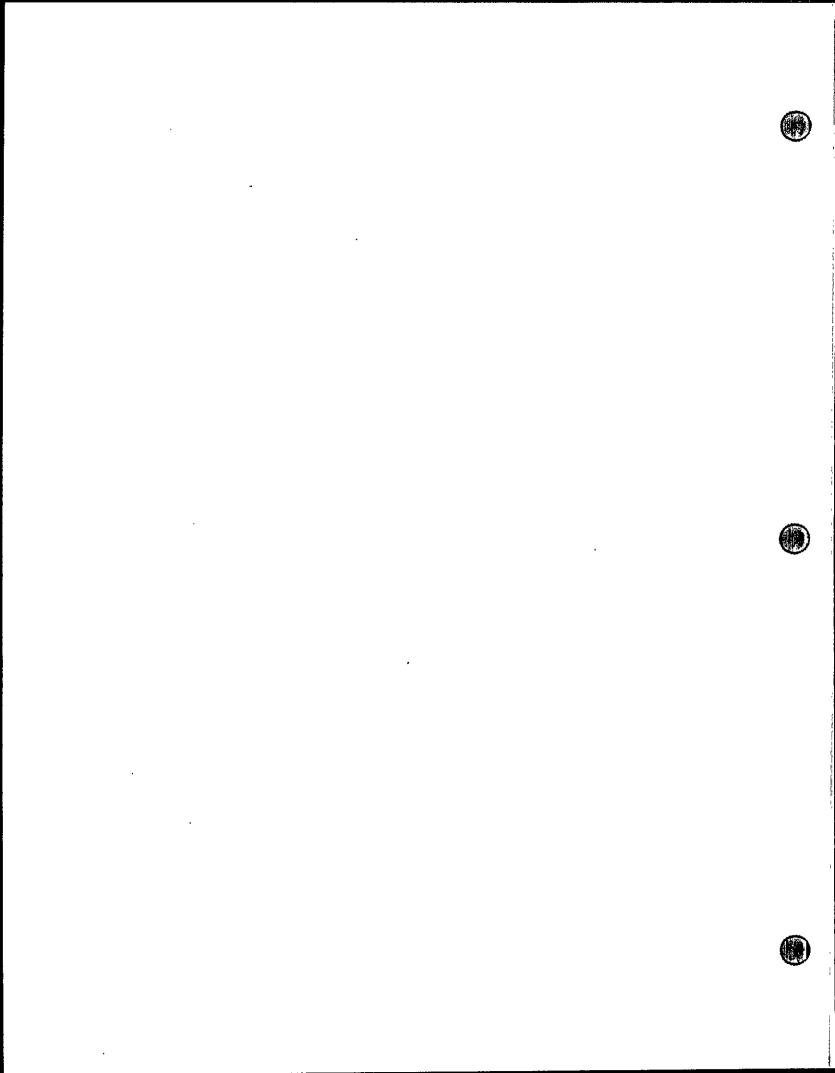
Sobeit. But the concern now, coming from the

22 23

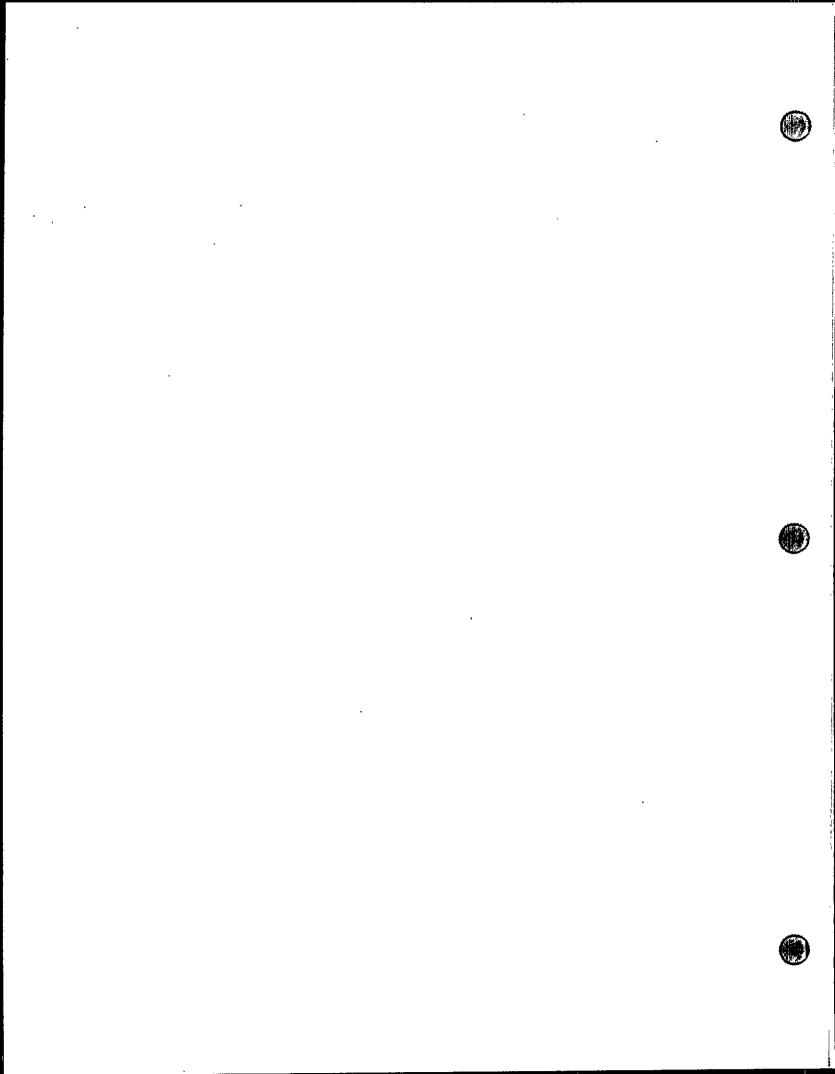


```
170
                           (Colloguy)
 1
   witness.
 2
            Let me ask you this, Mr. Sameiro:
                                               Tomorrow
   morning, if your witnesses take a look at them, and
   there is not a problem, any objection to them, perhaps,
   going into evidence or used for ID?
 5
            MR. SAMEIRO: No, there wouldn't be.
 6
   like, in the interim, to have an opportunity to see the
 7
   scene myself. Have these pictures with me. That's
 8
 9
   all.
                        Any objection, Mr. Gonzalez, to
            THE COURT:
10
   Mr. Sameiro taking the photos with him?
11
            MR. GONZALEZ: No objection.
                                          If it will make
12
13
   him feel more comfortable, I'd love for him to have
14
   them.
            THE COURT:
                        I have to tell you, making a
15
   copy, it is not going to be that clear. If you can
16
   give him those copies, I'm sure the family has the
17
   negatives. It is seven pictures.
                                       I do trust that Mr.
18
   Sameiro will be careful with them. Because it is
19
   difficult when you are copying them to really get a
20
   good view.
21
                           I agree. You can take them.
22
            MR. GONZALEZ:
23
   Take a look at them. No objection.
                       We'll see if we can't --
            THE COURT:
24
                           I do apologize to Mr. Sameiro
            MR. GONZALEZ:
25
                                                          171
                           (Colloquy)
   and the Court. I have had pictures brought in by the
 1
 2
   Prosecutor.
            THE COURT:
                      You're right. The recommended
 3
  way is to get them ahead of time.
            MR. GONZALEZ: It just shows the area.
 5
            THE COURT:
                       There may not be -- You have had
 6
   a chance to take a look at them. If there is no
 7
   objection, then that's what we'll do. You may take a
   look at them tonight. Have anybody take a look at
10
   them.
            MR. SAMEIRO:
11
                          If Counsel wants to duplicate
   these, with a good photocopy machine, we can go back to
12
                So, that he can take them back.
13
   my office.
            THE COURT: Or, if not, you trust him.
14
                          I trust him.
15
            MR. GONZALEZ:
16
            THE COURT: All right.
                                    Then we'll be back --
                          There is seven there.
17
            MR. SAMEIRO:
18
            THE COURT: Okay. We'll be back tomorrow
19
   morning and that is the only issue.
20
            MR. SAMEIRO:
                          That's the only issue.
21
            THE COURT:
                       Okay.
22
           MR. GONZALEZ:
                           The other issue of the phone
   number. But I think we can flesh that out with the
23
24
   first witness.
25
```

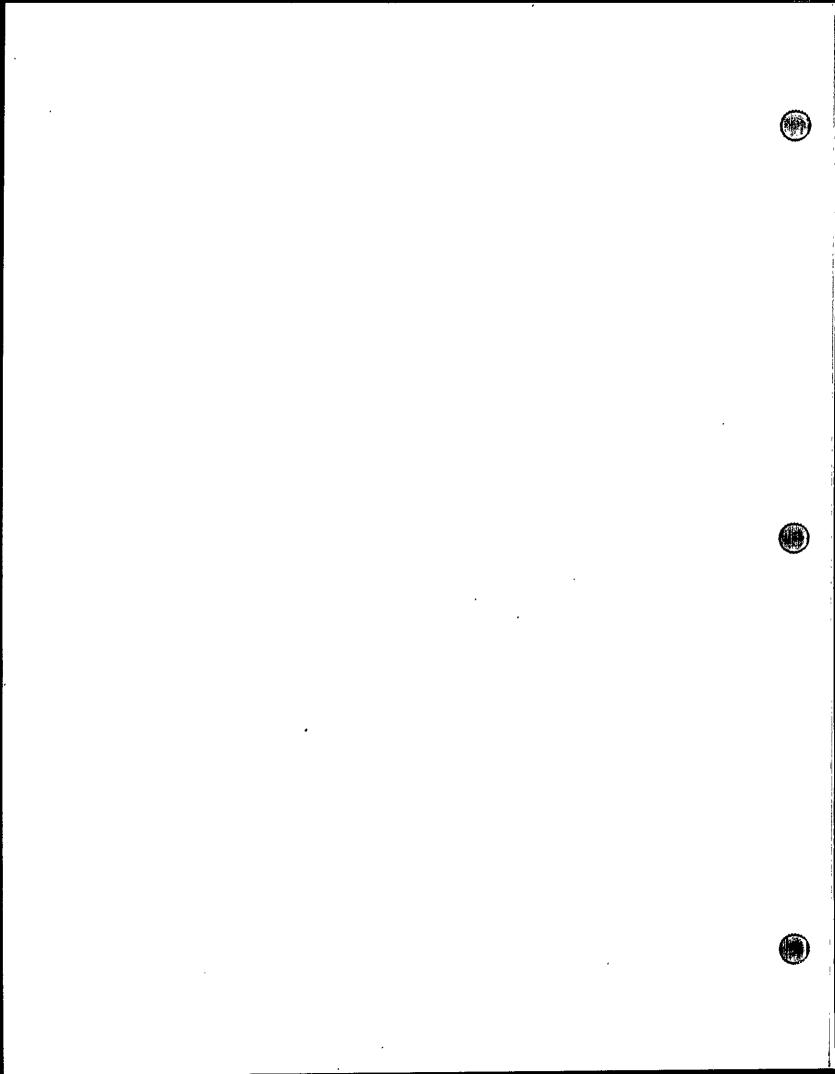
MR. SAMEIRO: All the witnesses -- except for



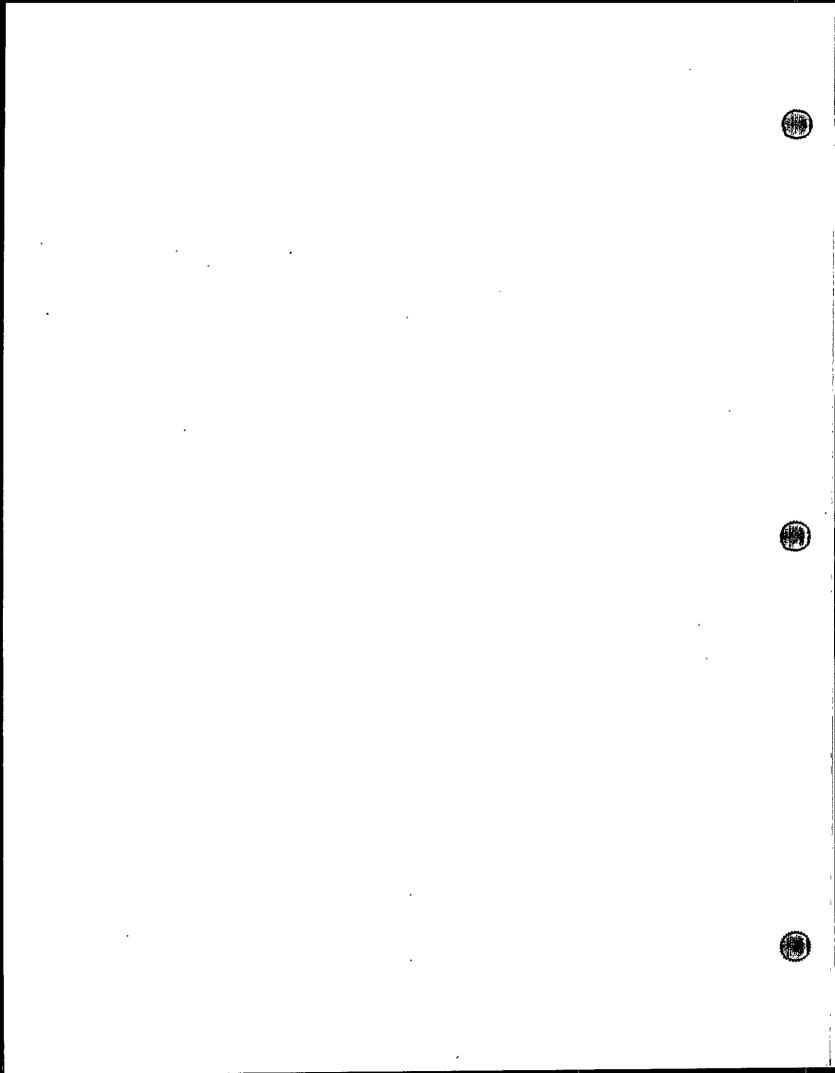
(Colloguy) Sergio Mattias -- makes reference to it. I can 1 2 overcome the hearsay objection. This is just an ordinary hearsay issue that Counsel seems to have latched onto. And I did my homework. I know the rule and what the exceptions are. 5 THE COURT: We'll wait to see what happens. 6 7 The question could be asked. If there is an objection to it, we'll come to sidebar. And I'll hear you. If I 8 need to focus the jury in to it, we will go from there. 9 MR. SAMEIRO: Let's deal with the evidence 10 that is objected to, Counsel, so, I can prepare my 11 witnesses with respect to this. In respect to the 12 sanitization, this defendant was previously arrested, 13 and he provided a phone number. That comes from the 14 defendant's own lips. That's how this information is 15 put on the arrest report. 16 Now, frankly, I don't want to ask the Lead 17 Investigator, how did you get the records, who filed 18 the information, and where it came from, under what 19 circumstances. I can simply ask John Selesky, isn't it 20 true, on such and such a date, you obtained the 21 telephone number of the defendant, and his address 22 information. You have that on file, yes. That would 23 be the answer. Then I would say, well, what's the 24 address that he provided to the Police Department, and 25 (Colloquy) 173 what is the telephone number that he provided, without 1 getting into arrests and the like. 3 Now, if Counsel wants to put me to my proofs in this, he does it at his own peril. Clearly, there is no business record exception, that he could argue, 5 vis-a-vis what the taxi dispatcher had. That was his 7 issue this morning. The number that the taxicab company trapped, which was provided to the police, 8 after the defendant's first arrest. I hope you're 9 10 following me. 11 THE COURT: I have got it. MR. SAMEIRO: There is two sources of the 12 13 information. 14 THE COURT: With the same number? MR. SAMEIRO: With the same number. So, I 15 don't believe Counsel is challenging me as to the prior 16 17 arrest, and the so-called hearsay nature of that, because the defendant provided that. 18 THE COURT: Right. 19 The pedigree 20 information? 21 The pedigree information. MR. SAMEIRO: MR. GONZALEZ: That is the way that they get 22 23 Mr. Machado's name, to put him in the photo array. MR. SAMEIRO: That pedigree information. 24 25 Because, allegedly, in the records, that they have,



```
(Colloguy)
   that they previously had, that was entered in.
 1
   came back as a hit, in whatever computer system is
 2
   used, with regard to the hit, or how they -- I don't
   even know that end of the activity.
                           With regard to the phone
 5
            MR. GONZALEZ:
   numbers, I don't think they do.
 6
 7
            THE COURT:
                       Okay.
 8
            MR. GONZALEZ:
                           With regard to the pedigree
   information, there is no objection to that.
 9
            THE COURT:
10
                       Okav.
            MR. GONZALEZ:
                           Through their investigation,
11
   they composed a photo line-up.
12
13
            THE COURT:
                       Okay.
14
            MR. GONZALEZ:
                           I wouldn't object to that.
15
            THE COURT:
                        Okay.
                           The photo line-up, and then
16
            MR. GONZALEZ:
17
   they found out that he lived at 400 Lee Avenue.
   yes, the victim, eventually, identifies him.
18
   what I did have a problem with is the original phone
19
   number put in the original police report. Just so you
20
   know, your Honor, a robbery occurs allegedly.
21
   allegedly, a phone number is given. That the
22
   dispatcher, from Victoria Taxicabs, did give,
23
   supposedly, to the victim.
24
            The victim then comes to the New Brunswick
25
                                                           175
                            (Colloquy)
   police station, and gives this number, allegedly.
 1
   know, that number, later on, when they find out that
   Mr. Machado lives at 400 Lee Avenue, they find out that
   he had given this phone number. That they then
                                        My issue is, the
   comprise this photo identification.
 5
   gaining of that particular number, at the original
   police report, that that's hearsay.
 7
            THE COURT: Why isn't it a part of his
 8
   pedigree?
 9
10
            MR. GONZALEZ: I agree that's part of his
11
   pedigree.
            MR. SAMEIRO: Through further investigation,
12
13
   we comprised.
14
            THE COURT: You get the phone number.
15
            MR. SAMEIRO:
                         Yes.
16
                       Well, the phone number is fine.
            THE COURT:
17
            MR. GONZALEZ: But that linking it to this
   original phone number, whether or not that is, in fact,
18
19
   the number that was given to Mr. Cedillo, and then
20
   through Officer Bobadilla. But my point is that, that
21
   particular number was given by someone who we don't
22
   know who it is.
23
            THE COURT:
                        So, somebody calls in from this
24
             Is that how this works?
   number.
25
           MR. GONZALEZ: Well, it's alleged that Mr.
```



```
(Colloguy)
   Cedillo calls the taxicab company, and asks them where
 1
   that last call came from, or what is the number of the
 2
 3
   last call.
 4
            MR. SAMEIRO: It is alleged that the victim,
   Mr. Cedillo --
 5
 6
            THE COURT: He is the taxicab driver?
 7
            MR. SAMEIRO:
                          Right.
 8
            THE COURT: He calls this company?
 9
            MR. SAMEIRO: Right. And says, what's the
   phone number, which is regularly trapped in their
10
   system.
11
12
            THE COURT: It is in their system.
13
            MR: SAMEIRO: As a part of ordinary business,
   that number was trapped. That number was presented to
14
   the victim, as a present sense impression, by the
15
   dispatcher. It was recorded in the document, given to
16
17
   the victim, who turned it over to the police.
18
            THE COURT:
                        Okay.
                          Now, let me correct the record.
19
            MR. SAMEIRO:
20
   I made a mistake. Because of the hour, I guess.
21
   watch Einsteins, too.
                          I have the arrest report of the
22
   defendant, which postdates the incident, just so the
   Court is aware of the chronology. The robbery incident
23
   is alleged to have taken place in April '07.
24
   defendant was arrested in June of '07 on a warrant.
25
                                                         He
                                                            177
                            (Colloguy)
   was found to be in the company of another person, who
 1
   had a gun on him. And when the defendant was arrested
   on the warrant, he gave the police the telephone number
   which is the same number that the victim provided to
   the police earlier.
 5
            THE COURT: Okay. In an attempt to identify
   his assailants, the photo ID hadn't occurred yet?
 7
            MR. SAMEIRO: No. But it's because of the
 8
   number and the address. Mainly the number.
                                                 It came to
 9
10
   the officers' attention.
                             That they were able to put
   two and two together. Because they had that number
11
   from the prior report of that episode.
12
13
            THE COURT:
                       Okay.
14
            MR. SAMEIRO:
                          Of course, they then had the
15
   defendant's mug shot from the subsequent arrest.
16
            THE COURT:
                       Okay. All right.
17
                          There is more to this.
            MR. SAMEIRO:
18
            THE COURT: All right.
19
            MR. SAMEIRO: The police did a -- They then
20
   did a subpoena for a records check on the phone number.
21
  And the telephone company gave them information about
22
   the phone number. They came up with a different name,
   other than the defendant, as the owner of this cell
23
24
   phone. But the information was indicated, as the
25
   person being born in Honduras.
                                   When the defendant was
```



178 (Colloguy) 1 arrested in June, he indicated that Honduras was his place of birth. There is a little bit more to it than just the number found in the arrest report. Detective Selesky issued the Grand Jury subpoena to the cell phone company for their business records. In response, we have all that information. Actually, the police 7 were waiting for the results of the subpoena. made clear in the photo array preamble. It's on the 9 He did it on camera. 10 He just did not have the information that 11 came back on the phone. They're now waiting -- you can 12 see in the photo array -- that they're waiting to see 13 what came back. That the name on the account, that 14 It was a different name. wasn't his name. 15 But, nevertheless, we had the defendant's 16 phone number from the June arrest on file. 17 18 that's what he provided to the police when he was arrested. That's undisputable. Your concern is as to 19 when Mr. Cedillo gets the phone number. It is from the 20 cab people, basically. 21 Yeah. So, that is the base of 22 THE COURT: this whole business, so to speak. 23 MR. SAMEIRO: Uh-hum. 24 THE COURT: So, what you are saying, that's 25 179

(Colloquy)

really hearsay. 1

4 5

6 7

8

9

10

11

12

13

14 15

16

17

18

19

20 21

22

MR. GONZALEZ: It is. That's what I'm 2 3 saying.

MR. SAMEIRO: I agree. There are clearly exceptions.

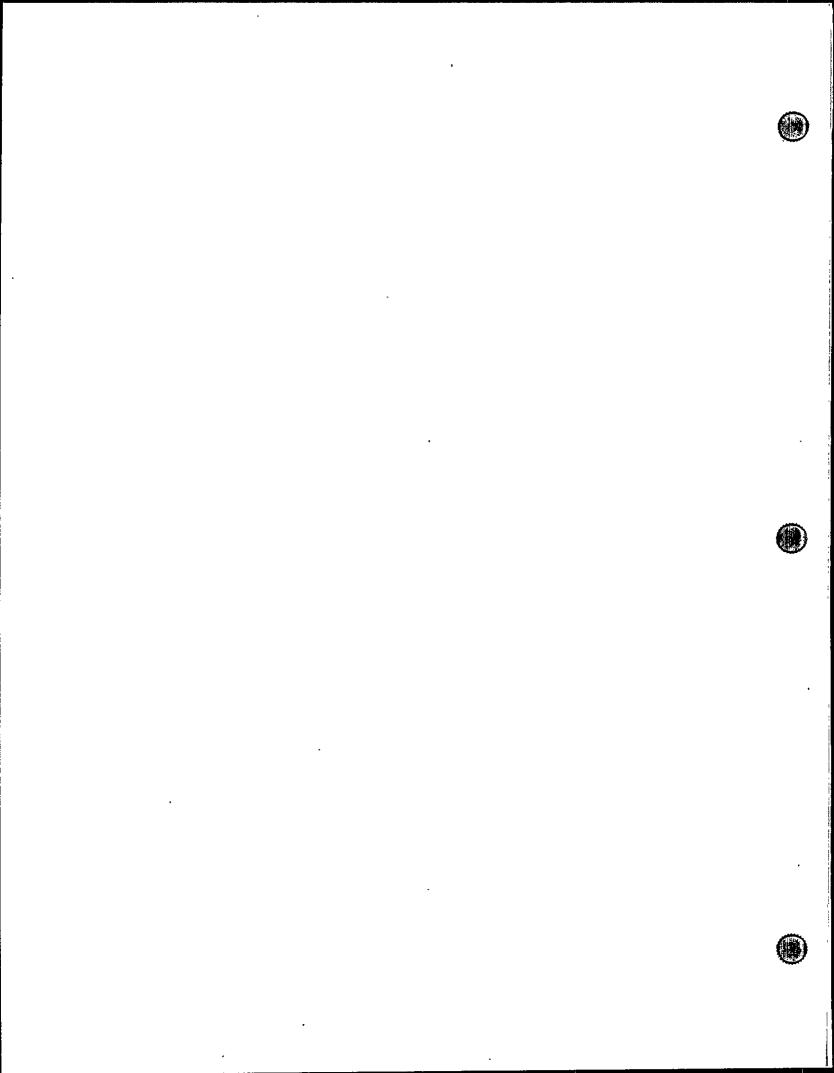
THE COURT: That was my next question.

MR. GONZALEZ: If this is a present sense impression of a person that is present, I understand. But if it's a present sense impression of a person, who is not present, who is merely hearing something on the other side of the phone, he can't say what that guy saw, on the other side of that phone. They're looking at the screen at the taxi company, and it is also whether or not the investigation is then done exactly at that time.

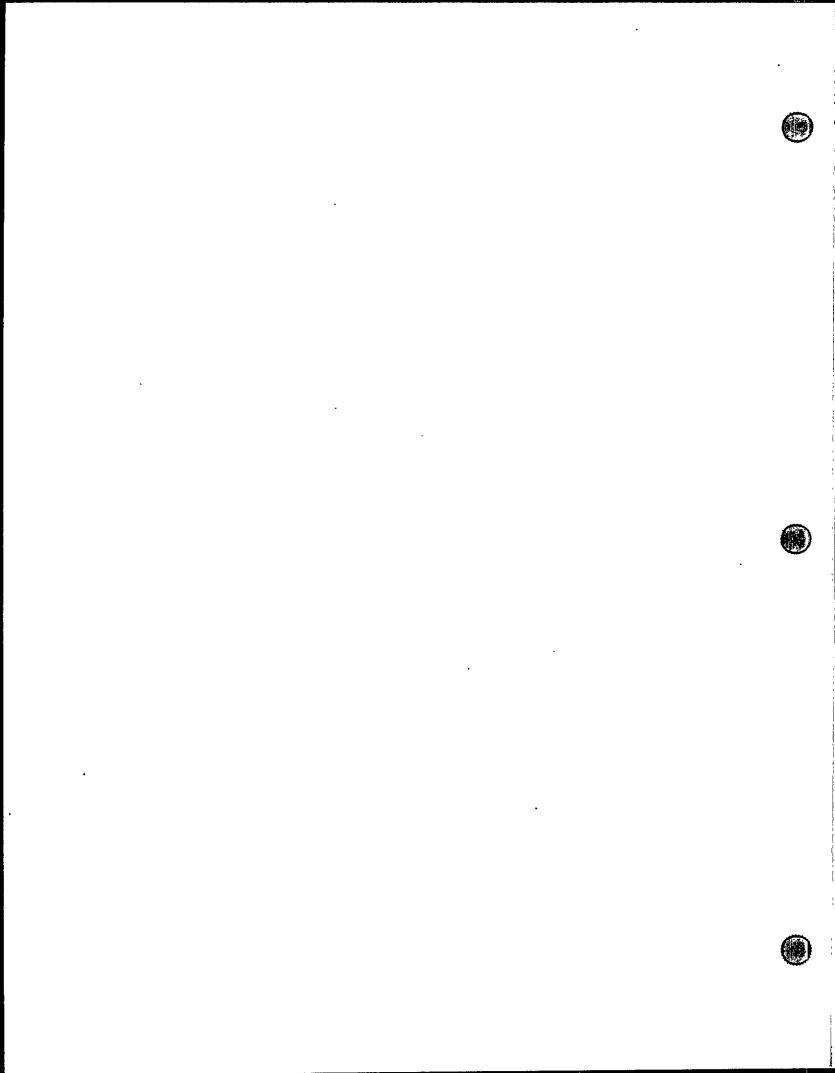
What I'm saying is, that that stuff has not been proved in the State's case. Nor did the State investigate that particular issue. So, with regards to this, it is not my burden to go and find it. ahead and find that stuff. If the State intends on introducing that particular number, through Wilmer Cedillo --

23 THE COURT: You're going to be objecting, 24 that he can't do it, because it's hearsay.

25 MR. GONZALEZ: There is layers of hearsay.

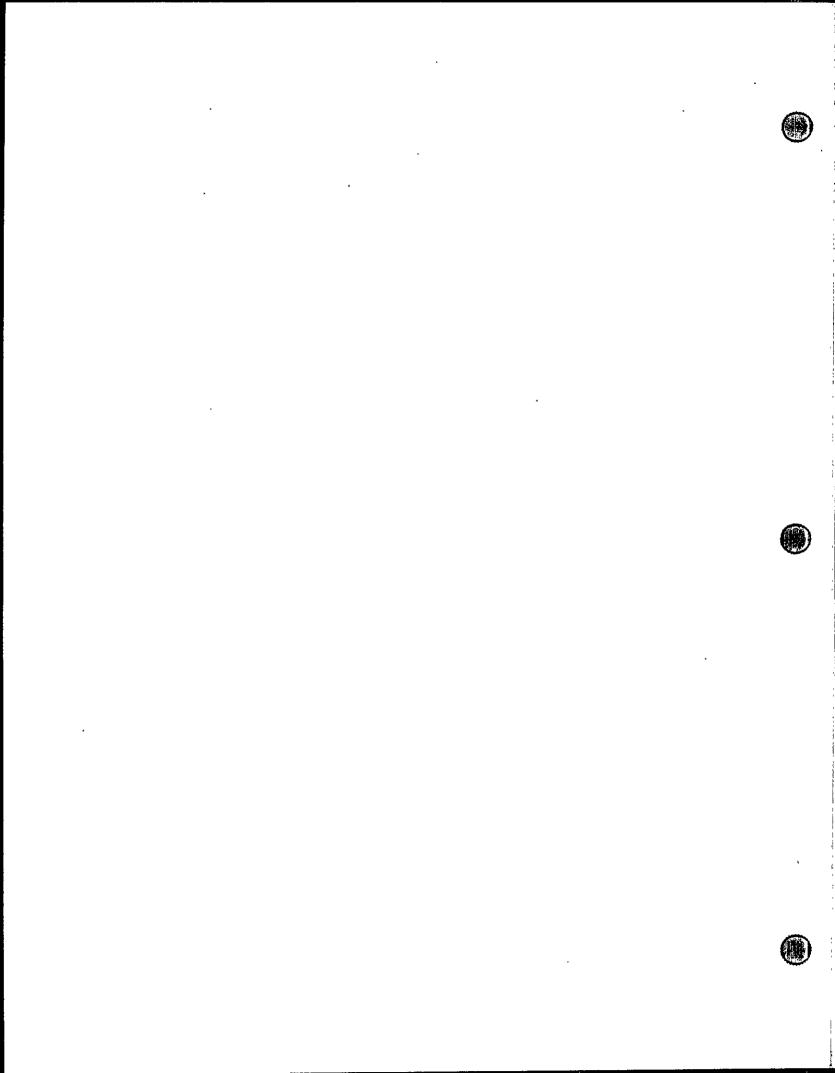


180 (Colloguy) If the present sense impression -- As I said, the person who is sitting there, would have to have that present sense impression. THE COURT: 5 MR. GONZALEZ: Which is where I'm going. It's layers of hearsay. With that in mind, Judge, I 6 would have no objection, that the pedigree information 7 -- if, in fact, it is pedigree information. 8 9 THE COURT: All right. MR. GONZALEZ: But the original giving of 10 what's on the police report, from Officer Bobadilla, on 11 the original information, that phone number, cannot be 12 13 testified to. From Mr. Cedillo. 14 THE COURT: By Mr. Cedillo or Officer MR. GONZALEZ: 15 Because they're both hearsay. Bobadilla. 16 THE COURT: Your feeling is that, they're not 17 going to get it in through them? 18 MR. SAMEIRO: There is an exception to the 19 I could get it in through them, Judge. 20 hearsay rule. THE COURT: Okay. 21 Now, that we're arguing this 22 MR. SAMEIRO: point, to start from the beginning, there is no 23 prohibition against hearsay. It is intended to prevent 24 information, that is deemed unreliable, to go before a 25 181 (Colloguy) There are so many exceptions to the rule jury. 1 because there are so many ways that hearsay can be To make something reliable. found to be reliable. What are the odds that Wilmer Cedillo, who 4 doesn't know Pablo Machado from a hole in the wall, 5 could come in with the following number, written on a piece of paper? 732-801-5418. And that not being the 7 number belonging to the defendant, who two months later, when he is arrested, on an unrelated crime, 10 presents the very same number to the police? I mean, how more reliable can we get, in 11 terms of that kind of information? The testimony will 12 be, I've got the telephone number as an exhibit 13 (indicating). That with all of these phone numbers, 14 with the caller ID, the number is trapped. 15 What we have here is, someone using the 16 defendant's number, calling the cab, moments before the 17 defendant and others get in it, and rob the victim. 18 19 This happens to take place in front of 400 Lee Avenue, 20 which is also the same address found on the arrest 21 report, that is put together in June of '07, when the 22 defendant got arrested. 23 THE COURT: Okay. 24 MR. SAMEIRO: Now, I would argue that when 25 the dispatcher looked at this number, and wrote it

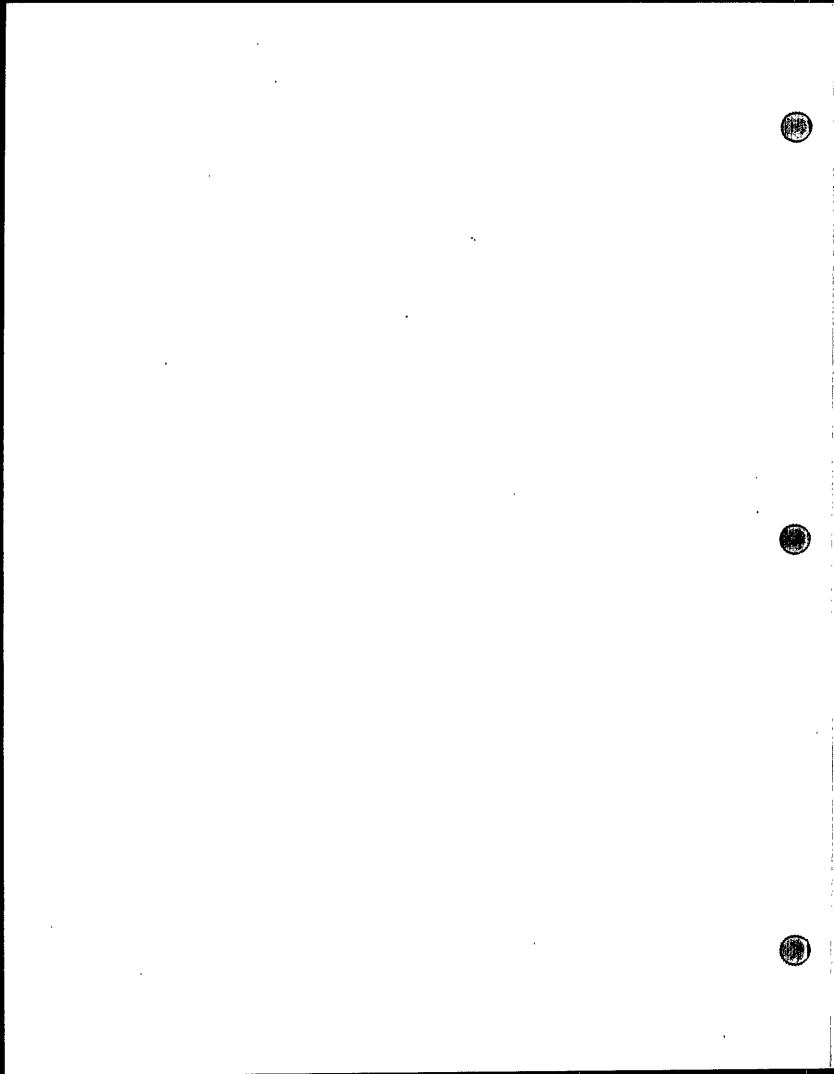


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down, he was playing out his present sense impression
 1
 2
   of a phone number.
                       Okay.
 3
            THE COURT:
                          That was trapped in a caller
            MR. SAMEIRO:
        And when he wrote that down, for the benefit of
 5
   ID.
   the victim, the victim gave it to the police officer,
   who transcribed that information. Unfortunately, we
 7
   don't have that little piece of paper. I will admit
 8
          But Officer Bobadilla didn't just dream up,
 9
   732-801-5418 two months before the defendant got
10
   arrested on something unrelated. Which, by the way, is
11
   what touches upon a gun incident, where the
12
   co-defendant was arrested.
13
            MR. GONZALEZ: Which doesn't matter.
14
            MR. SAMEIRO: It is a firearm case, Counsel.
15
   That if you put me to the proofs on this, which dealt
16
   with a warrant that the defendant had, after he was
17
   apprehended next to someone else who had a gun, who the
18
   police saw that gun being passed to, by another person.
19
                       This third person, that is the
            THE COURT:
20
   suggestion?
21
            MR. SAMEIRO: There is the suggestion, that,
22
   perhaps, this defendant passed the gun to his -- let's
23
   call him his companion -- Javier Rivas -- who has been
24
   charged and indicted and sentenced.
25
                                                           183
                            (Colloguy)
                        By this Court?
            THE COURT:
 1
            MR. SAMEIRO:
                         Yes, your Honor.
 2
                       The name is familiar.
 3
            THE COURT:
            MR. SAMEIRO: Mr. Rivas never implicated or
 4
   exculpated that Machado had the gun or who gave him
 5
   that gun. But those are the circumstances.
 6
 7
            THE COURT: Okay.
                              All right.
                          In any event, I think also the
            MR. SAMEIRO:
 8
   rules of hearsay, or the exceptions to the rules of
 9
   hearsay, allow this information. And it's interesting
10
   that Counsel touched upon how the number factored into
11
   the photo array process. I could alternatively argue,
12
   that I wouldn't offer it for the truth of the matter.
13
   To explain to the jury how they came up with the
14
   defendant's picture for the photo array.
15
            THE COURT: All right. I quess, that's the
16
                                      They are really two
17
   issue for the Court to consider.
18
   issues, regarding the possible exception and/or the
19
   hearsay.
20
                           Judge, I'd just like to note,
            MR. GONZALEZ:
21
   that all of what Mr. Sameiro said, regarding some other
   charge, that he never was arrested for, never charged
22
   with -- never --
23
24
            MR. SAMEIRO: I don't intend on doing that.
                           It would be improper, totally
25
            MR. GONZALEZ:
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(Colloguy)



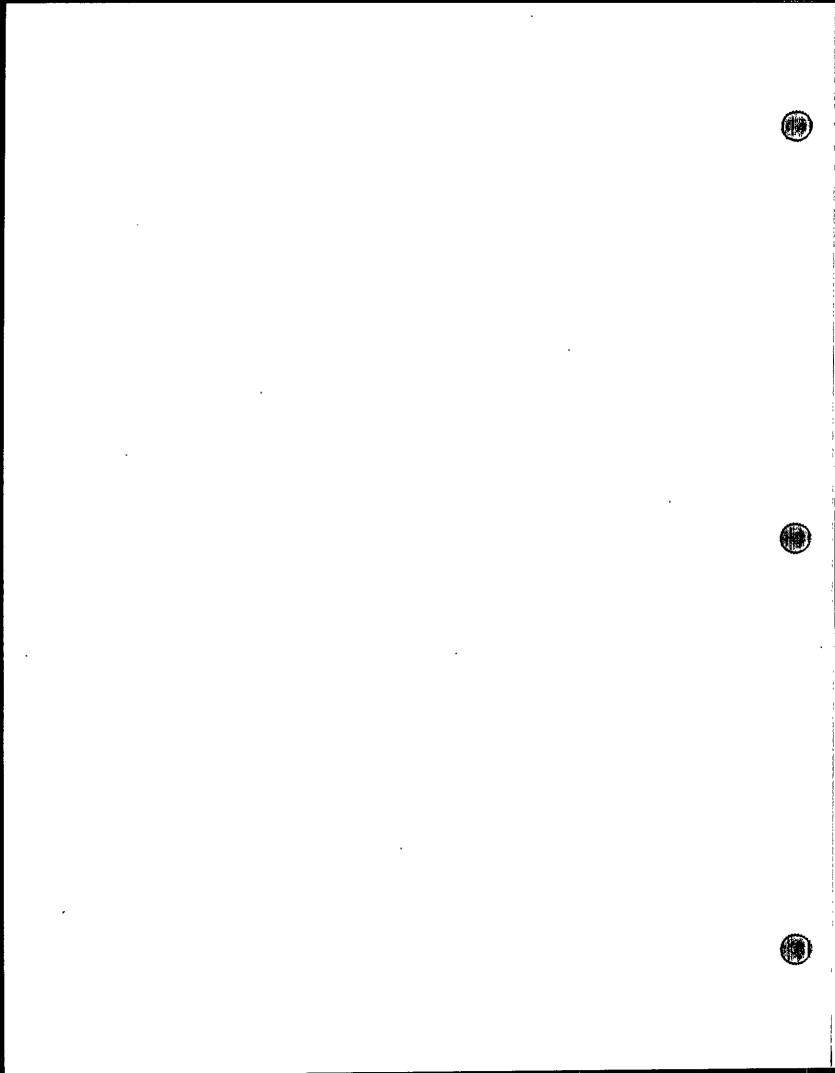
184 (Colloquy) improper, if the State went there at all. That's what 1 2 I'm worried about. 3 MR. SAMEIRO: I don't intend to go there. MR. GONZALEZ: What is interesting is that, 4 if there was a piece of paper, Judge, that Mr. Cedillo 5 had written that number down on, I would say that, possibly, I could still argue against it. 7 possibly would be a present sense impression, that he 8 9 wrote it down, having heard it. 10 THE COURT: Right. MR. GONZALEZ: That's what he heard from the 11 Now, it doesn't exist. There is no number. 12 13 There is no nothing linking that number at all. a business record, via Victoria Taxi. It probably 14 would be fine that the person, from Victoria Taxi, that 15 person, that he told Mr. Cedillo what the number was, 16 it would probably be fine if he said that he saw it at 17 18 that time. 19 THE COURT: Right. 20 I'd probably say -- I'd MR. GONZALEZ: probably say that the taxicab company gets many calls 21 that go to 400 Lee Avenue. Lee Avenue is a big 22 23 cul-de-sac. All these people that live there, there is hundreds of people that live there. There is hundreds. 24 of people that live on Lee Avenue. The cul-de-sac is 25 185 (Colloquy) all 400 Lee Avenue. 400 Lee Avenue is designated A, B 1 2 and C. I don't know about that. 3 MR. SAMEIRO: MR. GONZALEZ: That is why in the discovery 4 that I should have been given an answer, because I have 5 one photograph -- I will show the Court -- that says Building 301-320 -- suggesting to me different 7 8 apartment buildings. That is, how would the postman deliver 9 10 anything to the apartments at 400 Lee Avenue? are about a hundred different people who live there. 11 12 Judge, this is just preposterous. There is Building Three, Apartment One, 13 Building Two, Apartment Three. I mean, that's for the 14 State to look at these things. 400 Lee Avenue is 15 16 unique. 400 Lee Avenue is the name of the apartment It is the name of the complex. Each building 17 complex. 18 has its own number and apartment. But it's a group of This isn't like the Livingston Apartments 19 apartments. or like a larger name for all these apartments back 20 21 there. MR. SAMEIRO: Counsel, I can disprove this 22 23 point, with one little sign, 301-320, suggesting 20 24 different units are in the building. 25 All right. THE COURT:



(Colloquy) I can do that through the 1 MR. SAMEIRO: testimony of the taxi driver himself. He's called to 2 3 400 Lee Avenue. THE COURT: All right. MR. SAMEIRO: I was there last night. 5 It is a popular place. 6 7 THE COURT: I'll hear you tomorrow. point is well taken, in the sense, if you had the 8 person who saw the number, or, perhaps, if you had the 9 number, there would be no objection from the defense. 10 I think it is classic hearsay. 11 MR. GONZALEZ: I think that is unequivocal. 12 THE COURT: Well, I have Mr. Boda looking 13 it up. We can talk about this tomorrow. This is one 14 of those situations where the Rules of Evidence --15 That's why I gave it to my Law Clerk to do some 16 research, as to the exceptions to the rules of evidence 17 18 and the rules of hearsay. Again, I have no objection. 19 MR. GONZALEZ: By further investigation, we found out that they 20 comprised a line-up. So, they have got a line-up. 21 22 THE COURT: Okay. MR. GONZALEZ: And he picked out this person. 23 Meaning that he'll say, I'm a hundred percent sure it 24 was this quy. It wouldn't matter, is what I'm saying, 25 187 (Colloquy) that they comprise a line-up through further 1 investigation. That's where I think that the hearsay is being brought in. That's what I think the State --I don't want to try the State's case. The State would love for the number to come in. They would love for 5 that to occur. But I think it is improper and clear 7 hearsay. 8 And, so, with that being said, I'm going to 9 rest my argument. 10 THE COURT: All right. MR. GONZALEZ: I guess, we'll probably all do 11 12 a little research tonight and figure it out. 13 THE COURT: We sure will. MR. SAMEIRO: It's reliable. It is a true 14 He was given the address. You have to look 15 at the totality of the circumstances. 16 The same 17 address, 400 Lee Avenue, with that number. It is very, very unique. The number appears on the arrest report. 18 19 The arrest report would not support the 20 present sense impression of the taxicab guy, who 21 relayed that information. I mean, frankly, they want 22 to solve this crime. They want the police to have 23 accurate, reliable information. It behooves them, 24 therefore, to give the police the right info.

course, you haven't heard the testimony.

25



20 Thank you very much.

MR. GONZALEZ: Thank you, Judge.

THE COURT: All right. See you tomorrow

23 morning. Thank you.

(Whereupon, the hearing concluded for the

25 day.)

21

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CERTIFICATION

I, GEORGEANN CROWELL, C.C.R., License Number XI00983, an Official Court Reporter in and for the State of New Jersey, do hereby certify the foregoing to be prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of my stenographic notes taken in the above matter to the best of my knowledge and ability.

Georgeann Crowell, C.C.R. Official Court Reporter Middlesex County Courthouse P.O. Box 964 New Brunswick, New Jersey

Georgeann Crowell, C.

Date: OCTOBER 21, 2010

