Supreme Court of the United States

October Term, 1969

In the Matter of:

Docket No. 268

CHARLES LEE PARKER,

Petitioner

vs.

NORTH CAROLINA,

Respondent

Place Washington, D. C.

Date November 17, 1969

ALDERSON REPORTING COMPANY, INC.

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

C O N T E N T S

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The above-entitled matter came on for argument at 1:43 o'clock p.m.

BEFORE:

WARREN E. BURGER, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice

APPEARANCES:

NORMAN B. SMITH, ESQ.
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Greensboro, North Carolina 27402
Counsel for Petitioner

JACOB L. SAFRON, ESQ.
Staff Attorney, Office of
the Attorney General of N.C.
Raleigh, North Carolina
Counsel for Respondent

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: Number 268. Parker against North Carolina.

ORAL ARGUMENT OF NORMAN B. SMITH, ESQ.

ON BEHALF OF PETITIONER

MR. SMITH: May it please the Court, and Mr. Chief Justice.

MR. CHIEF JUSTICE BURGER: Mr. Smith.

MR. SMITH: I'm Norman Smith and I represent the Petitioner in this case. This is a companion case to the Alford case and it has to do with our North Carolina statutory system on the rendering of guilty pleas in capital cases.

This proceeding is, by our statutory subject, is for habeus corpus in North Carolina. Our statutory post-conviction hearing act. There was a petition for certiorari from an adverse determination there to our Court of Appeals of North Carolina, which is our intermediate Appellate Court for most matters, but which is a Court of Final Appellate jurisdiction for a post-conviction matter.

Again, there was an adverse determination and again, a petition for certiorari was filed in this Court and, of course was granted.

This case has its beginnings in 1964. In the summer of 1964, the Petitioner who was then a 15-year-old child, was arrested by the police at gunpoint about 11:00 o'clock one

night in the City of Roanoke Rapids in North Carolina. And he was taken to an interrogation cell and there he was interrogative for a time. He, of course, was extremely uncooperative and he refused to give his name and address. However, he apparently from some source knew that it is a good idea to ask for counsel under these circumstances and the record indicates without any impeachment or contradiction that he did request that a counsel be provided for him.

The police, securing no proofs from their labors of interrogation on the initial interview, placed him in a dimly lit or unlighted cell for the night in which there was no water available to him nor no food given to him. He was held overnight and the next morning he was then interrogated. This time he broke down rather quickly and did render the statement to the police, an oral statement to the effect that he had gone into the house in question; he had committed some form of housebreaking or he had gotten through the door in some manner. Precise details of this statement or confession is not a part of the record at any point along the way.

And I might like to point out to the Court here on this point that there was no hearing in Superior Court at the time the guilty plea was rendered inthis case. There was no evidentiary hearing; none of the state's testimony was given, insofar as the record indicates and I'm not personally aware that there was one.

Q Are you familiar enough with the law of your state -- which I certainly am not -- as to whether it is the practice to do that or not to do it or is it varied by county; or is it varied by case or what?

A It varies by the modes of operation of individual solicitors and judges. As far as I know there is no statutory compulsion that this be done. Some judges, in the exercise of care, always like to have something on this order. I think defendants quite clearly at this time also are permitted to make statements and present evidence if they wish to do so.

Q Unsworn, I gather; that is from the record of the other case.

A Yes, there is no attention to the rules of evidence during such hearings. The defendants are permitted to get up through counsel give all sorts of unsworn testimony as to what kind of good character they have and so forth.

Q This is a guilty plea and I suppose to purpose is to ascertain whether the guilty plea is knowingly and voluntarily made -- not to cut against your case -- I don't mean to. And then the purpose generally is for that and then also, I suppose, insofar as the trial judge has discretion in imposing sentence, to apprise him of the circumstances of the offense so he can intelligently exercise his discretion; would that be true?

A I think that's true, Your Honor. I think some of our judges accept the philosophy of Rule 11 to the effect that there should always be a basis in fact and plea and also of course, it must be knowingly and voluntarily.

Q In this case, there was no discretion, as far as -- the trial court had no discretion as far as -- am I correct about that?

A There was some colloquy between the Court and the defendant and between the Court and the defendant's mother in which the Court did inquire into certain circumstances of the defendant: his age, his educational background. It was show, for instance, that he had unsuccessfully been enrolled in the 9th grade, I think, the year prior. This was -- I think the record does indicate that this case had extreme racial aspects to it. The --

Q Just before you start -- you perhaps didn't understand my last question. Did the Court have any discretion whatsoever in the sentence to be imposed in this case

A I'm sorry. No; this was under our --

Q Mandatory life sentence.

A Mandatory life sentence, yes, sir.

Q It could not be less.

A That's right. This was a charge of first-degree burglary. While there is no indication that any other charges were being considered at that time, although there is a

gratuitous finding the judge who heard the post-conviction case that he should have been charged with rape as well.

Incidentally, the state has made the point in its brief, and I think if I may say so quite inappropriately, that there as an admission of the guilt by the defendant in the post-conviction hearing; that he fully admitted his guilt and so forth and so on. I think from reading the record, that the defendant did not admit guilt of either rape or burglary. He did admit that he entered this house and that he had relations with woman who was there but he was arrested, as the record indicates, on the very doorstep of the same house four nights later and it's quite clear that there was a strong element of consent or implied consent or sort of an arrangement, which is hidden by the background and has not been disclosed on the facts of the case and I hope that there will be a new trial in this case and I hope that at the new trial the defendant will have a fair and full right to bring all these matters out to the attention of the tryers of fact.

Also, some further brief background material on the defendant. There is a psychiatric evaluation of the Petitioner in the record, indicating that he's an unhibitive and impulsive individual and likely to act in such a way as to secure his immediate goals.

We submit in this case the immediate goal of the defendant and the overwhelming goal that looms in front of him

is the avoidance of capital punishment, because of the strong racial connections which this case had and the times -- the spirit of the times in which this case was heard, brought up.

And we think that the record demonstrates that there was a very substantial factor that was present. The whole theoretical basis for the Jackson case, as I understand it is this compulsion; this tendency to coerce people to render involuntary pleas for them to give up their rights to trial by jury and to plead not guilty; the right to have a full trial.

I realize that the actual fact of the Jackson case and the precise holdingof the Jackson case go off in a different direction, as the Court pointed out a moment ago, during Mrs. Bray's argument. It seems to me the whole theoretical basis for the case is to provide some protection for a person found in the position of the Petitioner in this case.

We say that the evidence on the record indicates that there was substantial coercion present. We say that there should be some test formulated by the Court in this case to determine when and when not to extend Jackson protections to an individual. We fully and candidly recognize that the Court is not prepared to carve out a per se rule and to say that every guilty plea to every capital offense heretofore in one of those states or Federal jurisdiction where a Jackson-type statute obtains, must be now set aside.

We do say, however, that some sort of test must be

devised by the Court to decide when and when not to set aside these judgments and convictions.

Q Well, Cousnel, could you tell me whether in any case where the death sentence is a possibility, is it permitted, in your view, for the defendant to plead guilty to some lesser offense? What would be the conditions that would have to exist to permit that?

A Well, Your Honor, the facts in my case do not involve any lesser offense, but I realize that the Court does have that problem in this series of cases. My client here pleaded to the capital offense. I would say -- I have discussed this point in the footnote in the brief. I suggested that where the lesser-included offense carries a sentence so large that it is tantamount to life imprisonment that then the matter should be considered on a parity with a guilty plea carrying life imprisonment itself. And thus, I hold that this rule would extend to Mrs. Bray's case. I don't know where the stopping point is, Your Honor. Like this case, as in many other cases, the stopping point somewhere must be arbitrary and where this Court should place it, I cannot say.

I would say, however, thatmy client falls within the boundaries and within the limit for which we contend here.

Q And that's becuase he entered his plea of guilty as charged?

A Yes, to the offense which ordinarily would be

capital were it not for the entering of the guilty plea.

Q I presume if there were a stopping place, there would be a constitutional stopping place, wouldn't it, the decision of this Court?

A Well, since the Court is charged with finding such a stopping place, Your Honor, I don't know where it would be. I suggested, as I say, in a footnote, that maybe the stopping point would be where you get a sentence which is tantamount to life imprisonment, such as Henry Alford's 30-year sentence. Although, that's not in my case and I really am unable to say with certainty.

I would think that the test that the Court should invoke in these cases is something like the test devised in Chapman versus California, carrying forward the realization that in not every case would the guilty plea be set aside, but only in those cases where the evidence made some showing that the fear of the deathhouse, fear of the gas chamber had an effect -- substantial effect.

Q That would be every case, wouldn't it? Would the fear of the deathhouse always be a factor thatwould exert influence, if not coercion?

A Well, I think one would have to say substantial influence.

Q How could it not? Could it be otherwise?

A I think it probably could be otherwise.

Q Do you think -- do you see anything in the constitution which either forbids or tends to discourage or cast any doubt upon the whole idea of having guilty pleas entered in criminal cases?

A No, Your Honor, I certainly am not attacking the idea of allowing guilty pleas. I think you get into a quagmire when you have a disparity in sentencing: one involving life and the other involving death when you base a guilty plea of that distinction. Fortunately, not every state has gotten into that quagmire. There are only some eight states and the Federal jurisdiction, indicated from footnotes contained in our brief, and also footnotes or a portion of the amicus brief by the N.A.A.C.P. Legal Defense Fund.

Also, on the basis of some rather sketchy statistics which I have gathered in the brief, which are on file with the court, it is indicated that perhaps the total number of prisoners who would be affected by a favorable decision for my client in this case would not be an overwhelming number, and that a great number of prisoners have served out almost as many years as the average prisoner normally serves of a life sentence before dying or being paroled or in someother way terminating the service.

And that also, we're not contending for a per se rule but only provide new trial for those persons who would show in some sway that the fear of the gas chamber contributed

substantially to the guilty plea.

So that the argument may not be as persuasive in this case as it would appear on first blush.

Q Is your client out on bond or is he in jail?

A No; he's been denied relief all along the way and he is serving his life sentence.

Also, in the present case we feel that when you take the statutory construction, together with the coerced confession which was obtained on the Petitioner, that these together make a rather potent showing of an invalidity of the guilty plea. The confession was clearly in violation of the Escobedo Rule and subsequent to the pronouncement of the Escobedo case and also we feel that the confession violated the principles declared by this Court in Gallegos versus Colorado.

Considering the education limitations, the psychological deficit of the prisoner, the fact that the prisoner's mother was kept from seeing him during the night on which the confession was obtained; his isolation and the denial of drinking water and other matters which are brought out in the record and which are not overcome by any adverse evidence. Even giving the state the benefit of all its favorable testimony, we feel quite clearly that under constitutional standards drawn by this Court there was a coerced confession.

Q Is the United States against Jackson argument

really just a part of a coerced confession argument? Or do you think it's an additional or different argument?

A I think the two go forward together and both taint the plea. We feel that this coerced confession adds weight to the Jackson confirmity which was present in this case. How far the Court should go in allowing new trials where there is a Jackson defect in the statutes, I don't know. I would suggest, though, that because of this additional problem relating to the voluntariness of the confession, the Court would be justified, certainly in setting this guilty plea aside.

Q So, you think in this case your plan is that the guilty plea resulted from a combination of things, all bad: (a) a coerced confession and (b) the statutory scheme of North Carolina which was coercive upon a person to plead guilty; is that right?

A That's right, sir.

Q A combination of both.

A And we have another aspect to this case which I want to bring briefly to the Court's attention if I may. That is a completely unrelated matter, but certiorari was generally granted in this case so I assume that the Court is interested in it and this was a point concerning the systematic exclusion of Negroes from the grand jury which indicted the Petitioner. Of course, he never came to trial so the

trial jury is not in question here.

Quite clearly the statistics in this case show that the Petitioner comes within that long line of cases decided by the Court on the permissible limits of racial exclusion of grand jurors of providing he did not waive his right to attack this jurisdictional defect of the court. Evidence shows that seven and a half percent of the jurors served ongrand juries for the preceding four years. Five and a half percent of those who served on the particular grand jury which indicted him were Negroes; only 4.4 percent of the jurors who had served for four years on all jury venires were Negro; whereas the total population -- the total adult population of the county was 45 percent Negro and the taxpayers of the county were 39 percent Negro.

Q What do you say to the answer the Court of Appeals that that was objected to three years after the conviction?

A That's the problem, Your Honor, we're faced with here. We have a conflict of authority prevailing in our part of the country and we're depending on this Court to clear it up. The Fourth Circuit, under the case of McNeil versus North Carolina and I might add the Fifth Circuit under the case of Cobb v. Balkcom, has determined that there can be no waiver of such a constitutional jurisdictional defect of the court unless there is a showing of an intentional knowing

waiver leading up to the full requirements of Carnely v. Cochran and Fay v. Noia and the other waiver cases that this Court has determined.

TheCourt of Appeals of North Carolina, on the other hand, said he's represented by counsel; counsel presumtively competent, even though this matterwas not discussed between Petitioner and his counselnor even thought of by the counsel, nor was it in any way brought to anyone's attention by the court, nevertheless he's deemed to waive it. We say there cannot be a valid waiver when it takes place in a vacuum; when it takes place in themidst of ignorance and lack of information; lack of discussion and so forth.

This Court quite clearly has stated that waiver is a personal decision which must be arrived at by the defendant himself in consultation with counsel. He must have all the facts at his disposal and that he must, himself, participate in the decision. Applying these principles to a similar case the Fourth Circuit in McNeil versus North Carolina, and in the Fifth Circuit of Cobb v. Balkcom, it has come to me what is the inescapable conclusion that a waiver of a constitutional nature must be established. Here there is utterly an absence of evidence on this point that would favor the state and all the evidence is clearly in the Petitioner's favor in that there was no discussion or no consideration of it. And we feel that the constitution compels a new trial on that grounds.

Q The Constitution, you say, compels that this conviction be set aside; this judgment be set aside?

A Yes, sir.

Q And for what.

A Well, for two reasons.

Q Yes, I understand why you say that it should be set aside; but set aside for what further proceedings?

A I should think the state would have to bring a new indictment against the Petitioner and would have to try him anew.

Q Try him, or could he plead guilty?

A He probably could plead guilty if he chose to do so.

Q Then wouldn't he be back here with the same case?

A Well, if I were his lawyer I wouldn't adivse him to plead guilty under thecircumstances. I think I'd advise a "not guilty" plea. And some ofthe persons of his own race nowadays in North Carolina would be on his jury and I think he would have a fair shake and I would be quite willing to try this on a not guilty plea and quite willing to bring it up here again if constitutional defects came into the trial which I hope and pray would not be the case.

Q But that would, as a practical matter, I suppose, be the result of a reversal, would it not, that he

would be tried again by the state, which as I understand it, if there is a finding of guilt which results in a death sentence, unless the jury recommended mercy and which would be a life sentence, which is what he is under now.

A Yes, sir. He fully understands that because I explained this very thoroughly before the post-conviction proceeding was commenced. Whether -- a point Mrs. Bray discusses -- whether one, once having received life, can be put at the risk of death again under these double jeopardy cases is, I suppose an issue here.

Q Did you say you thought if you won and he were reindicted he could plead guilty under the North Carolina statute?

A No, he could not plead guilty to burglary or rape, because you can no longer do so.

Q That's all I wanted to know.

A Well, I believe I have nothing further, except to thank the Court for hearing the argument and praying once again that the relief requested be granted.

Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Safron.

ORAL ARGUMENT BY JACOB L. SAFRON, ESQ.

ON BEHALF OF RESPONDENT

MR. SAFRON: Mr. Chief Justice and may it please the Court: Initially I believe I have to disagree with the

presentationof Counsel's facts. Admittedly

Admittedly, approximately four nights before the night his client was arrested, this particular house in Roanoke Rapids in North Carolina was broken into and the female occupant raped. As a result the house was put under surveillance; thatit occurred at approximately 11:00 p.m. on that Sunday night and now at approximately 11:00 p.m. four nights later there is a -- the house is under surveillance and the youth is viewed as he comes upon the grounds and comes to the door. At that point he is arrested, at gunpoint, of course, naturally.

He was then brought to thepolice station --

Q Did you say the house was under surveillance?

A Yes, Your Honor.

Q At the time the burglary was committed?

A This is four nights later when he comes back, the house wasunder surveillance.

Q Four nights later?

A That's right, Your Honor.

Q It was not the night it was broken into?

A Oh, no; of course not, Your Honor.

He was brought to the police station for interrogation; he refused to tell his name; he refused totell where he was from. He was interrogated for approximately two hours. He was put in a cell for the remainder of the evening. This is

from approximately one o'clock at night on. Whether or not I would believe that the cell was either dimly lit or not lit at all for the middle of the night.

He hadn't told the police officers who he was or where he had come from. The police officers had to find out who he was independently and having determined independently whohhe was, in the middle of the night, at approximately 3:30 or 4:30 they went to the mother's house and told the mother that her son was in custody. And if they said, "Don't bother coming now or whatever they might have said, I don't know. But the next morning at sunrise the mother was on the door-steps of a very competent law firm in Roanoke Rapids, North Carolina, waiting for the doors topen up and as soon as an attorney came in she employed Mr. Cranford almost contem-poraneously.

The defendant was interrogated again that morning -- this is before counsel was employed and he admitted and confessed to the crime.

Counsel arrived on the scene, having been hired by the mother, just a few minutes after --

Q What did you say counsel's name was?

A Cranford.

Q Not the counsel that's now representing him?

A No, no, Your Honor. This was privately retained

counsel George L. Cranford of the Roanoke Rapids Bar. He arrived and he asked the Petitioner -- this is in the record -- just a few minutes later, was he scared and the attorney questioned Petitioner as to whether when he made the confession had he been threatened in any manner; whether any promises had been made to him and whether he was scared at the time he made this statement. It's in the record.

Petitioner told counsel that no threats or promises had been made; that he was not scared.

For two days --

Q Is that evidence undisputed?

A Completely undisputed, Your Honor.

Q What did you say?

A That's undisputed; that's on Page 67 of the Appendix.

At the time of thetrial or when the case was on the docket for that term, for two days preceding the trial, counsel spent these two days with Petitioner and his mother. And a written authorization was prepared, as required by North Carolina law upon the submission of a plea of guilty to a capital case. The law requires that a plea of guilty to a capital case be in writing.

Out of an abundance of caution, privately-retained counsel, Mr. Cranford after these two days that he spent with the defendant andhhis mother, called in a fellow-member of the

Bar to witness the execution of the authorization. This fellow-member of the Bar, out of an abundance of caution in his own right, interrogated the defendant and his mother at the time the defendant signed the written authorization. This is in the record, too. It's in the Appendix, Page 73.

Charlie D. Clark, Jr., an attorney of Roanoke Rapids, wanted to be absolutely certain that Petitionerknew what he was doing and the consequences of his act. The written tender of the plea of guilty was submitted to the court and was accepted by the solicitor in writing; was accepted by the judge.

The court interrogated the defendant as to the voluntariness of his plea and the court also interrogated the defendant's mother in the courtroom, whereupon the mandatory sentence of life imprisonment was imposed.

From the facts of this case --

Q How old was he at that time?

A He was 15, Your Honor.

Q From the facts of this case I don't believe a discussion is necessary upon whether or not the confession was involuntary. I believe the facts speak for themselves.

And of coures, the Jackson defect, we have previously argued, I'd like to spend some time on this question of grand jury discrimination.

Mr. Smith, the post-conviction attorney, he

conducted -- he represented Mr.Parker at the post-conviction. The only witness put on the stand was a register of deeds of Halifax County. And from the testimony of Mr. Smith's witness, Mr.Wilson's testimony it was apparent that there was no racial discrimination; that the then-statutory scheme of North Carolina was that the names for the grand jury were selected from the tax rolls. Admittedly, at that time there were tax rolls maintained for both caucasian and white -- caucasian and Negro. This has subsequently been changed by statute and no longer exists.

The tax rolls had been prepared that way but the names in the jury box had no indication; no racial discrimination.

The testimony presented by Mr. Smith's witness showed that the jury commissioners who came from different parts of the county who were known to them to be of good moral character; that the same criteria were applied uniformly. Now, I submit that perhaps what we get to in this instance, is something akin to the former blue ribbon grand jury selection used in the Federal District Courts. There is no deliberate showing of racial exclusion; merely a showing that these jury commissioners picked out people known to them to be of good moral character.

Perhaps of any issue confronting this Court today, this issue could perhaps be the most vital, because it is

counsel's contention here that unless there is a free voluntary and knowing waiver of the right to attack the grand jury, that that attack can be made at any time.

So, that it would appear that not only upon a plea of guilty, if counsel's arguments were to be followed, but also upon a plea of not guilty unless the state could show that the waiver to attack the grand jury was freely and voluntarily and understandingly made.

Inthe State of North Carolina since 1902, the case of State v. Peoples, the Supreme Court of North Carolina had held that a defendant who could show racial exlcusion in the composition of the grand jury which indicted him was entitled to relief.

Our statutes expressly provide that the method of grand jury selection may be attacked. But that attack has to come either (1) prior to arraignment, or (2) prior to the swearing in of the petit jury. The rule is quite similar to the rule in effect i n the Federal system.

Q Mr. SAfron, what worries me just a moment, is that these two laywers were so abundantly cautious in getting all of this business for the plea of guilty but they didn't get it written up that he voluntarily waived his grievance against the grand jury; ist that correct?

A That's true, Your Honor; it's not included. And I'll be frank with you, in all the authorizations of

guilty pleas that I've ever seen prepared by counsel, I have yet to see counsel include thatparticular waiver. Usually it's an authorization to plead guilty and the defendant understands his rights, but I have never seen that specified.

Q Well, during all this discussion with his mother over two days; am I correct

A That's correct, Your Honor.

Q Was that matter ever discussed?

A Apparently not.

Q How could it have been waived if it wasn't discussed?

A Well, he was represented by privately-retained counsel, Your Honor,and apparently privately-retained counsel was performing for his client the best services that he had available under the circumstances. But what concerns me is this: our statutes provide you may attack a grand jury selection. The Federal rules provide that you can attack grand jury selection any time prior I believe similar -- hereeit is Rule 12(b)(2). "The Federal Rules of Criminal Procedure provide defenses and objections based on defects and institution of prosecution or an indictment on information other than it fails to show jurisdiction of the charge and offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to defendant."

I submit that in either a trial upon a plea of not

guilty or a trial -- or submission of a guilty plea, that this could have horrendous effects if this Court were now to require that each and every such instance that the waiver be on the record. The Federal system had blue ribbon grand jury selection.

Not only are we talking now about Negro defendants; we are talking about Spanish-American defendants; we are talking about Puerto Ricans and an attack would be made in the Federal system that collateral attack could be made on grand jury selection on behalf of every indigent white defendant because the former system in effect in the Federal Courts under the former blue ribbon system of grand jury selection presented a middle-class grand jury; the indigents were not on that grand jury, and so I submit that the total effect here would permit every defendant convicted on either a plea of guilty or not guilty, unless somehow an expressed waiver could be shown, that he would now be permitted to collaterally attack the grand jury which indicted him.

That this defendant is now given the opportunity to choose his own time and his own place to contest his guilt now that the evidence is, in most instances, no longer available; now that the witnesses have moved or they have forgotten or that many instance are dead, and the evidence has been destroyed.

I submit that the picture presented would perhaps

completely overburden the courts of all the states and the Federal Judiciary.

This case, of course, also presents the Jackson issue and also, in a sense, the issue of whether or not Jackson is retroactive, if Jackson is applicable. There are at the present time, according to my research, either eight or nine states which have possible Jackson defects if this court should rule that these defects do exist.

In the Federal system, of course, there is the Federal Kidnapping Act; the Federal Bank Robbery Act. There is the sale of narcotics to minors; the Atomic Secrets Act, and in the District of Columbia there is the Rape Statute.

The Court of Appeals of course, for the District of Columbia has previously held in Bailey versus the United States that retroactivity is not to be applied in the Rape Statute.

The effect, once again, if retroactivity were to be applied, regardless of the argument previously presented, well, the state isn't going to retry him after all, some of the defendants have served a great deal of time and they are eligible for parole. This argument, I think, denie -- is an argument of expediency in that regard because that argument says well, there are a great number of men, but however, they will be eligible for parole and a good number of them won't attack.

I can advise this Court that I handle habeus corpus every day of the week. I represent the state in the Federal system and in District Courts, that the floodgates have opened up; that petitions are coming in at a rate that's unbelievable.

All these defendants, and particularly those in instances where the weight of the evidence is overwhelming, are coming in: "I was coerced to plead guilty because of the fear of death;" "I was coerced to plead guilty because of the statutory scheme." They are denying the fact that they pled guilty because at the time of their trial the state had overwhelming proof of their guilt. But now they are coming in and now they are trying to choose this time and this place to once again litigate, now that the states in most instances, most probably, cannot successfully reprosecute.

If the Court has no questions, that will conclude my argument.

Q What did they do about the segregated tax lists -- white and Negro?

A That has been, of course, Your Honor, that has been abolished by statute. At that time itwas required by statute.

Q How about this case, though?

A Now, at the time this grand jury was selected there were two tax lists: one for white and one for Negroes.

The tax lists -- however, the grand jury list had no

racial designation at all.

Q Well, not that -- you mean the names that were drawn off the tax lists. After they were drawn --

A After they were taken from thelists they had no designation at the time. I believe in this case and --

Q Well, that was true of whites, too.

A Of course, this case, at thepost-conviction hearing conducted by Mr. Smith himself, he completely failed to show, except through his statistics that there was any discrimination. His own witness refuted that contention. His own witness said, "this is the procedure that was used," and--

Q Well, what universal were you measuring the Negroes on these grand juries against, all the total population or just males? Were there women serving on the grand juries in North Carolina at this time?

A This, Your Honor, we have had no idea how far back.

Q I understood fromthe briefs that women weren't serving on those grand juries at that time.

A Pehaps in this one county, because it's one of this middling poor counties, and I don't think they had restrooms for women in the courthouse. If that's the situation I beleive that perhaps women had been excluded from that jury because they didn't have restroom facilities for the women.

Q So, we're measuring this against half the adult

population?

A Perhaps so, Your Honor.

Q But even so, the 134 Negroes of the total number of the grand jurors is -- how do you suppose that happened?

A Well --

Q Just because the Commissioners didn't know Negroes? Or was it because they knew Negroes and thought they were incompetent?

A No. The testimony that was brought out was that the same criteria was used in selecting white prospective grand jurors as Negro grand jurors; that the criteria used was the criteria of the North Carolina statutes.

Q Well, then if they applied the same criteria and they examined the same number of Negroes and whites, why, you would get the same number of Negroes and whites on the jury list. But that wasn't so.

A I would submit this: that the Commissioners knew more white people.

Q That's the answer; isn't it?

A By --

Q And they didn't know very many Negroes to whom to apply the criteria?

A The criteria was equally applied and I submit it's similar to the situation formerly in effect in

the Federal system, the blue ribbon-type of jury where there was a recommendation.

Q Since the tax lists were segregated then, they knew how many Negro names they were considering and how many white names they were considering; didn't they?

A Of course, the total number of names was before them in the tax list. You would have two volumes at that time: one white; one colored. Now, of course, the statutes have been amended and we only have one for individuals and corporations and additional sources have been added by statute. The voter registration lists and other items all thrown into one pot now to increase the listing.

Of course, this is the tax list. People who have listed for the purpose of both personal property taxation and a valorem taxation, so I would submit that this is perhaps another basis for a difference; that perhaps you had more white residents of the county with property, who listed for the purpose of taxation.

MR. CHIEF JUSTICE BURGER: The case is submitted. Thank you for your submissions, gentlemen.

(Whereupon, at 2:30 o'clock p.m. the argument in the above-entitled matter was concluded)