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JFK ASSASSINATION SYSTEM

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STATE OF LOUISIANA V. CLAY L. SHAW  
WEGMAN  
ALCOCK  
FATTER, DR.

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EXEMPT

NOT PROOFED  
NOT BILLED TO ANYONE

CRIMINAL DISTRICT COURT  
PARISH OF ORLEANS  
STATE OF LOUISIANA

38-60

7-07

June

December

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and billed  
to court

file  
file

000012

STATE OF LOUISIANA

198-059

VERSUS

1426(30)

CLAY L. SHAW

SECTION "C"

PROCEEDINGS IN OPEN COURT,  
MORNING, FEBRUARY 12, 1969

Paul Williams,  
Reporter

(See page 38, typed instructions on blue sheet -  
document to be obtained and verified.)

B E F O R E : THE HONORABLE EDWARD A. HAGGERTY, JR.,  
JUDGE, SECTION "C"

Dietrich & Pickett, Inc.  
Stenotypists

333 ST. CHARLES AVENUE, SUITE 1221  
NEW ORLEANS, LOUISIANA 70130-522-3111

1 MR. WILLIAM WEGMANN: 2

2 Are we going to argue this in the 3  
3 presence of the Jury, or what? We  
4 are not going to argue this in the  
5 presence of the Jury?

6 THE COURT:

7 Tell them to stay upstairs.

8 I notice in the Clerk's records they  
9 did not have a copy of the trans-  
10 cript, they searched for it yesterday  
11 and this morning, no copy of it in  
12 the record itself.

13 The offer, the offer has been made, as  
14 I understand it, by the State to  
15 which the Defense has opposed.

16 I will listen to the opposition and I  
17 will listen to you, Mr. Alcock.

18 MR. WILLIAM WEGMANN:

19 We gave the Court last night the Law  
20 Review article which is the basis  
21 upon which the State believe it is  
22 permissible under the Esposito case,  
23 and as the Court observed is a New  
24 York City case. We rely on the  
25 case of Lindsey vs. The United States

1                   of America which is cited in                   3

2                   237 F.2d 893, it is an opinion out  
3                   of the Ninth Circuit Court of  
4                   Appeals, May 7, 1956.

5                   In this particular case, there are very  
6                   pertinent observations with relevance  
7                   to the use of sodium-pentothal and  
8                   with relation to the admissibility  
9                   of the results of the sodium-  
10                  pentothal tests into evidence, and  
11                  in this particular case the Court  
12                  of Appeals reversed the trial judge  
13                  who had admitted the results into  
14                  evidence.

15                  Now, at the very outset, and I won't be  
16                  long, but at the outset I think we  
17                  ought to point out what the State  
18                  is trying to do by putting into  
19                  evidence the testimony of Dr. Chetta  
20                  which is some seventy-five or eighty  
21                  pages in all, is to put into evi-  
22                  dence, in the record, indirectly  
23                  what this case definitely says it  
24                  cannot do and for which there is no  
25                  authority in law.

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1                   What the State in effect attempting to                   4  
2                   do is to rehabilitate Perry Russo,  
3                   this is the sole purpose that I  
4                   can see upon which they can even  
5                   state that Dr. Chetta's testimony  
6                   is admissible, and what Dr. Chetta's  
7                   testimony consists of is a series  
8                   of hypothetical questions asking  
9                   whether if certain facts existed,  
10                  whether that individual was sane,  
11                  and it also goes into the fact that  
12                  he had administered sodium-pentothal  
13                  to Russo and that he had been present  
14                  at the Russo hypnotic session with  
15                  Dr. Fatter, so the only conclusion  
16                  I can draw is they are trying to  
17                  show the man is not insane and he  
18                  is sane.

19               Now, without reading the whole case to  
20               the Court, I would like to read  
21               just sections which I think set  
22               forth the situation which existed  
23               in the case. I quote, "Here the  
24               Government's witness was subjected  
25               to psychiatric examination for the

1 avowed purpose of determining 5  
2 whether the story originally told  
3 the authorities was the truth.  
4 Obvious motive existed then to  
5 repeat that story. So if the  
6 original story were indeed a fabri-  
7 cation, it would be unreasonable  
8 to hold that motive did not exist  
9 to fabricate during the test insofar  
10 as will could assert itself."

11 It goes on to say, "In order to accept  
12 the Government's view, we must be  
13 able to say affirmatively that the  
14 sodium-pentothal interview is a  
15 test of truthfulness that is not  
16 only trustworthy, but reliably so  
17 in all cases."

18 It goes on, "Although Narco analysis in  
19 general, and the sodium-pentothal  
20 interview in particular, may be a  
21 useful tool in the psychiatric  
22 examination of an individual, the  
23 Courts have not generally recognized  
24 the trustworthiness and reliability  
25 of such tests as being sufficiently

1 well established to accord the  
2 results the status of competent  
3 evidence."

4 Then it goes on to say that, "The  
5 expected effect of the drug is to  
6 dispel inhibitions so the subject  
7 will talk freely, but it seems  
8 scientific tests reveal that people  
9 thus prompted to speak freely do not  
10 always tell the truth."

11 They cite a series of medical journals  
12 in support of this opinion that  
13 people who undergo this test do not  
14 always tell the truth.

15 It then states rather extensively from a  
16 Yale Medical School article which  
17 appeared in the Yale Law Review,  
18 and it says, "In summary, experi-  
19 mental and clinical findings indicate  
20 that only individuals who have  
21 conscious and unconscious reasons  
22 for doing so are inclined to confess  
23 and yield to interrogation under  
24 drug influence. On the other hand,  
25 some are able to withhold infor-

Reference copy, JRM

1 mation and some, especially  
2 character neurotics, are able to  
3 lie. Others are so suggestable  
4 they will describe, in response to  
5 suggestive questioning, behavior  
6 which never in fact occurred."

7 Now, this is one of our objections, every  
8 time that we have asked to review  
9 anything the State has said as they  
10 have, for instance, in the case of  
11 the VIP book, they want their agent  
12 present, and this is something they  
13 insist on, and our point is that  
14 they have rehabilitated the witness  
15 when nobody from the Defense was  
16 present, despite the fact the  
17 Defendant at this time had been  
18 arrested, the Defendant was arrested  
19 March 1, the tests took place after  
20 March 1, and they knew who Clay  
21 Shaw was, the Defense was not given  
22 an opportunity to be present at the  
23 rehabilitation tests.

24 The only one who submitted questions,  
25 the only one who did the suggesting



Reference copy, JFN Colson

1 to these people were representatives 8  
2 of the District Attorney's office,  
3 and I think it is significant to  
4 this Court that the District  
5 Attorney's office saw fit within a  
6 week after they first met this  
7 witness to attempt to rehabilitate  
8 him.

9 In other words, they were rehabilitating  
10 him before they even put him on the  
11 witness stand, and it goes on to  
12 say, "but drugs are not 'truth  
13 sera, they lessen inhibitions to  
14 verbalization and stimulate un-  
15 repressed expression not only of  
16 fact but of fancy and suggestion  
17 as well. Thus the material pro-  
18 duced is not truth in the sense  
19 that it conforms to empirical fact."  
20 They cite various Law Review  
21 articles again.

22 Then it cites in Article -- in the 46th  
23 J. Crim. L., page 259, it says,  
24 "The intravenous injection of a  
25 drug by a physician in a hospital

Reference copy, JPK 001000

1 may appear more scientific than 9  
2 the drinking of large amounts of  
3 bourbon in a tavern, but the end  
4 result displayed in the subject's  
5 speech may be no more reliable."

6 It goes on to say, "Hence it was error  
7 to admit the recording of the sodium-  
8 pentothal interview, even as a prior  
9 consistent statement for the limited  
10 purpose of rehabilitating the  
11 impeached witness."

12 "Authorities who recommended use of the  
13 sodium-pentothal interview as an  
14 auxiliary procedure to full  
15 psychiatric examination, nevertheless  
16 caution that a transcript of the  
17 interview should definitely not be  
18 admissible in evidence, because of  
19 the difficulty that a lay jury would  
20 have in properly evaluating this  
21 evidence." This is the problem  
22 that we have there.

23 Now, one of the things that is continually  
24 before us in the preliminary hearing,  
25 and once again the Court has not

1 had the benefit of reading the 10  
2 transcript, but one of the things  
3 before us in the preliminary hearing  
4 was the three-judge court telling  
5 us all the time "We are three judges  
6 who are hearing this," and we argued  
7 that they were making a record that  
8 might eventually be used before a  
9 Jury. They took the opinion they  
10 were judges and they were able to  
11 make the distinction, and the Court  
12 sitting here day in and day out is  
13 much more qualified to make a  
14 hairline decision or distinction  
15 between certain facts and fantasies  
16 than is the lay jury that we have  
17 in this case.

18 THE COURT:

19 In my opinion, the only exception for  
20 hearsay is in a motion to suppress.  
21 That is the Aguilar case out of the  
22 Supreme Court. I do not believe  
23 the rules of hearsay are waived  
24 in a preliminary hearing.

25 MR. WEGMANN:

1 I believe that is true, while at one

11

2 time when you read the preliminary  
3 hearing, at one stage it appears  
4 that they sustained us on this  
5 motion, if you read it throughout  
6 you will find that they did not.

7 Judge Braniff, during Dr. Chetta's  
8 testimony the question of hearsay  
9 came up, Dr. Chetta says what Perry  
10 Russo told him on occasion, and this  
11 is what we objected to in the testi-  
12 mony.

13 As I say, I see no other argument, and I  
14 would like a chance to reply to the  
15 State. I see no other argument  
16 that they have but that they intend  
17 to prove that Dr. Chetta said that  
18 he found Mr. Russo sane at the time  
19 of his examination.

20 I lay the additional predicate that the  
21 question now before the Court is  
22 not whether Russo was sane in March  
23 of 1967, but the question before  
24 the Court is now whether he is sane  
25 on February 11, 1969, when he is

1                   testifying, a period of more than  
2                   two years later. Certainly the  
3                   Court on any kind of a psychiatric  
4                   hearing would not accept a psychi-  
5                   atric record of two years past to  
6                   determine a man's sanity at the  
7                   present time. They are not trying  
8                   to rehabilitate Russo in 1967, they  
9                   are trying to rehabilitate him today  
10                  in 1969.

12

11               THE COURT:

12                   I will be glad to hear from the State.

13               MR. OSER:

14                   It is the State's contention that the  
15                   jurisprudence on the point is that  
16                   the use of drugs such as sodium-  
17                   antothal and sodium-pentothal cannot  
18                   be used and introduced into a court  
19                   of law in order to show the truth-  
20                   fulness of the statement made by a  
21                   person, or to establish the credi-  
22                   bility of the person making the  
23                   statement; however, the State's  
24                   contention under the case of People  
25                   vs. Esposito, Mr. Wegmann referred

13

1 to, which is cited in 287 New York  
2 389, 39 N.E.2d, 925, the Court in  
3 this particular case allowed the  
4 testimony of the psychiatrist which  
5 was based on reactions and infor-  
6 mation received by the psychiatrist  
7 while the subject was under sodium-  
8 antothal to determine the question  
9 of sanity, also covered in the case  
10 was the fact that the only purpose  
11 that the testimony of the psychia-  
12 trist was given in the case was to  
13 determine the question of insanity,  
14 and not to determine the truthful-  
15 ness of the statements made by the  
16 subject under the influence of the  
17 drug.

18 Furthermore, the State wishes to rely  
19 on the case of People vs. Cartier,  
20 35 Pac.2d, 114, wherein this  
21 particular case there was a question  
22 of insanity and the testimony of  
23 the psychiatrist was allowed regard-  
24 ing his sodium-antothal treatment  
25 or administration of the drug as a

1 diagnostic aid. 14

2 Now, in these particular matters before  
3 the Court today, the State is not  
4 attempting to introduce the testimony  
5 of Dr. Chetta to show the truthfulness  
6 of the statements made by the  
7 witness under sodium-pentothal, nor  
8 to establish the credibility of the  
9 witness. The State is attempting  
10 to use Dr. Chetta's testimony to  
11 show that Dr. Chetta made a determination  
12 of the question on sanity  
13 of the individual Perry Russo and  
14 that one of the diagnostic aids  
15 used by the doctor was that of  
16 sodium-pentothal, and based on the  
17 jurisprudence, Your Honor, the State  
18 feels it should be allowed to introduce  
19 this testimony only for that  
20 purpose, as it was the only purpose  
21 introduced in the preliminary hearing,  
22 and this is the State's  
23 position.

24 MR. WEGMANN:

25 The cases cited by Mr. Oser, or the case

Reference copy, JFK LOU

1 which was cited in that Law Review 15  
2 article, both of which are State  
3 cases, the case that we cite to you  
4 is a Federal Court of Appeal case,  
5 which we submit has more binding  
6 effect upon this Court than would  
7 a New York decision or a California  
8 decision.

9 Now, once again, Mr. Oser says exactly  
10 what I predicted he would say, it is  
11 a question of sanity.

12 Now, we now raise the objection of  
13 relevancy as to the relevance of  
14 Russo's sanity in 1967 as opposed  
15 to today. The State has continuously  
16 maintained that this trial is going  
17 to go on for several days. Dr.  
18 Chetta made his examination based  
19 upon an hour, less than an hour's  
20 examination of Russo despite the  
21 fact that he said one of the true  
22 tests of sodium-pentothal was to  
23 know the patient whom you were treat-  
24 ing, and he admitted, and this is a  
25 weakness in my humble opinion to



1 Dr. Chetta's, to the validity of 16  
2 Dr. Chetta's testimony, and we  
3 questioned him on that fact, he  
4 knew him only for less than an hour  
5 or forty-five minutes, but if they  
6 really want to know the sanity of  
7 Russo as of today, now is the time  
8 to have him psychiatrically examined  
9 and have that doctor brought in here  
10 and have him subject to cross-  
11 examination.

12 If Dr. Chetta were alive today, the  
13 testimony that is contained in this  
14 preliminary report, namely the  
15 sanity of Russo as of March 1, 1967,  
16 would not be admissible at this  
17 time because it would not be rele-  
18 vant, whether he was sane or insane  
19 when he made that statement.

20 It is not relevant, the condition of  
21 Russo in '67 is not relevant on  
22 February 12, 1969.

23 MR. ALCOCK:

24 If I might just be heard on that point.

25 I agree to some extent with Defense

1 Counsel that we are now talking 17  
2 about the Russo testimony in 1969;  
3 however, during the course of argu-  
4 ment and during the course of  
5 presentation in this case, Mr.  
6 Dymond announced that he will put  
7 a witness on the stand, an expert  
8 witness in the area of hypnosis, who  
9 will allegedly show that Russo's  
10 testimony was the result of sugges-  
11 tions during hypnosis, that sodium-  
12 pentothal testimony is inadmissible,  
13 and the whole question here is that  
14 at the time the tests were admin-  
15 istered to Perry Russo, that is  
16 the critical area and the critical  
17 time we are concerned about, and  
18 that is the critical time that Dr.  
19 Chetta addressed himself at that  
20 time.

21 It is not Perry Russo's testimony today,  
22 but it is during the course of these  
23 tests which Defense Counsel have  
24 announced that they will attack  
25 strongly during the course of this

18  
trial, so this is the area and the  
time that we are concerned about,  
and the fact that Mr. Dymond brought  
out that Perry Russo had allegedly  
attempted to commit suicide, he  
asked him whether or not he had  
been under psychiatric care, and  
additionally, if you will recall,  
at this same time or within this  
same period Mr. Dymond asked Mr.  
Russo whether or not he had made a  
statement whether or not he knew  
the difference between fact and  
fantasy, and again these things  
are critical, and we wish to show  
by this testimony of Dr. Chetta,  
who saw him often during that period,  
the stability of this witness, which  
would in effect negate the arguments  
of Defense Counsel that he was  
unstable and the tests were used  
merely to buttress him up, which  
is not the case at all.

MR. WEGMANN:

First of all, it would appear to me that

19  
what we say in argument before the  
Court is not evidence before the  
Jury, what was stated by Mr. Dymond  
was stated specifically out of the  
presence of the Jury as it should  
have been.

THE COURT:

You offered two exhibits and they were  
marked for identification and he  
has not reoffered them.

MR. WEGMANN:

And the State refused to join in the  
offer, which means they are not in  
evidence, and if everything that  
you offered was considered evidence,  
it would be a wild affair.

THE COURT:

It has been marked for identification  
only.

MR. WEGMANN:

Is the Court saying at this time it is  
going to admit it into evidence?

THE COURT:

I don't know, if --

MR. WEGMANN:

What is offered by the State at this time is premature, the Court may never admit it into evidence. I would like to have a lot of things for the Court to put into evidence, but what is offered and what is admitted is two different things, and once again it gets back to whether or not this Jury is going to know the nicety of the fact that the testimony of Dr. Chetta refers to this man's condition on a specific date in 1967 as opposed to his condition in 1969.

THE COURT:

We have no transcript except the transcript of 1967.

MR. WEGMANN:

Going back to my argument, and not to be repetitious, if Dr. Chetta were here today, I would make the same objection to Dr. Chetta's testimony that

MR. ALCOCK: I am now making. Dr. Chetta's examination of 1967 is not admissible at this time. If they want to

rehabilitate the witness, they have  
to rehabilitate him with a 1969  
psychiatric examination.

21

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THE COURT:

If you say this transcript has no legal  
effect today, then the criticism  
of the Defense as to what Dr. Fatter  
or Dr. Chetta did is not relevant  
either. That is two years ago.

MR. WEGMANN:

That is not true either, Judge, that is  
not true at all, because one of the  
things we were trying to show with  
Russo which the Court would not let  
us go into was a prior inconsistent  
statement made under hypnosis which  
was different from what he was  
testifying to, and this is entirely  
different, a prior inconsistent  
statement as opposed to a man's  
psychiatric examination, these are  
two different things.

MR. ALCOCK:

That is contrary, he announced he was  
not trying to impeach him with his

hypnotic testimony, he was trying  
to show the testimony that he gave  
in Court was the result of suggestions  
during hypnosis, and I think I am  
correct --

22

THE COURT:

On the part of the State, do you intend  
to oppose the introduction of those  
documents?

MR. ALCOCK:

I announced Dr. Fatter was going to take  
the witness stand and he would have  
an opportunity then to cross-  
examine him relative to the document  
and put their expert on the stand.

THE COURT:

You will not object to those documents  
being introduced?

MR. ALCOCK:

Not at all, but under the proper  
predicate, not with Perry Russo  
testifying.

THE COURT:

There is a question of much hearsay  
being in the record. There is no

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question about it, it did get  
into the record, and of course that  
was ruled on by a three-judge court.

MR. DYMOND:

Who admitted it was hearsay but admitted  
it because it was a preliminary  
hearing.

THE COURT:

Well, the ball game has been played  
already.

MR. WEGMANN:

Just so that we understand the legal  
situation which exists, we challenged  
the validity of the three-judge  
court at the time that it was heard.  
We said there was no authority for  
it under law for three judges. The  
rule out here for generations in  
the whole history of Criminal Court  
has been one judge runs his section,  
and we admit it is all one big court,  
but unheard of for two, three, or

four judges to get together and say

"We are hearing this case;" and we

challenged the validity of it, we



still do. This Court on more than  
one occasion has stated this pre-  
liminary hearing did not form part  
of this record and the Court has  
refused us permission to attach  
the bills of exception that we have  
taken at one time or another because  
it did not form part of this record,  
and what the Court is now getting  
ready to do, if it is going to rule  
with the State, reverse its position  
and say yes, this preliminary hear-  
ing is part of the record. Now, I  
admit I am on the horns of a dilemma.

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1

THE COURT:

Because Dr. Chetta is deceased, that is  
the reason.

MR. WEGMANN:

If it was not part of the proceedings  
last week, I don't see how it could  
be part of the proceedings overnight  
by osmosis this week.

THE COURT:

I consider it to be admissible.

MR. WEGMANN:

If you give me time, I can find it in  
here where the State makes the  
statement that the preliminary  
hearing was not for the purpose  
of perpetuating testimony, it is  
like a deposition, a civil deposi-  
tion, you either take it for per-  
petuation or discovery, and when  
they did it by the strange proceed-  
ings before the three judges, they  
were in effect in a discovery pro-  
ceeding as opposed to perpetuation  
of testimony.

25

MR. ALCOCK:

The State is not the Louisiana Legislature,  
the Louisiana Legislature passed  
that Act, not the State. The State's  
personal appreciation of a particular  
legal procedure is irrelevant. I  
think that is quite properly being  
done by this Court.

MR. WEGMANN:

The fact remains when you make a repre-  
sentation before a Court, you are  
making a judicial admission by which

1 you are bound, and this statement 26  
2 that I read in here is a statement  
3 by the State, a judicial position  
4 which is taken by the State.

5 THE COURT:

6 The Court --

7 MR. WEGMANN:

8 Did the Court read the part that I am  
9 talking about, about the perpetuation?  
10 There is no need for me to find it  
11 in the transcript.

12 THE COURT:

13 That point is covered in the Criminal  
14 Code, to cover any bill of discovery,  
15 pre-trial discovery.

16 MR. WEGMANN:

17 It is our position, Your Honor, that the  
18 State has taken a position at the  
19 preliminary hearing, they made a  
20 representation to these three judges  
21 it was not for the purpose of per-  
22 petuating testimony. They are doing  
23 now a flipflop and coming before  
24 this Court and saying yes, that is  
25 why we did it. It is for the reason

of perpetuating testimony, and I  
don't see how they in good faith  
can appear before this Court and  
say it was for the purpose of per-  
petuating testimony.

27

MR. ALCOCK:

I have one small point and I won't per-  
petuate this argument. I think it  
is quite obvious on its face and  
rather the statements, the rather  
ludicrous statements that the State  
is using the preliminary hearing as  
a fishing expedition. We put our  
own witnesses on, and what were we  
doing, fishing from our own wit-  
nesses? Obviously it was not a  
fishing expedition.

MR. WEGMANN:

This is Judge Bagert, Page 30, "Suppose  
this was taken by deposition in a  
civil matter, for instance. Let's  
remove it from this type of pro-  
cedure. If there was an objection  
made and the attorney propounding  
the question says I insist that my

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question be answered, who rules on  
that -- nobody, certainly the  
Reporter doesn't. Certainly this  
is a matter being taken extra  
judicially. Now, isn't that handled  
when the matter is presented to the  
Court who has to try to case before  
a Jury that they then rule on the  
admissibility of the questions and  
the testimony." Judge Bagert at  
one time was a civil lawyer, why the  
State asks for it I don't know, and  
we were under no obligation to put  
any witnesses on and we can't be  
criticized or we can't be penalized  
for not putting any witnesses on.  
They are the ones that put the wit-  
nesses on the stand, they put the  
witnesses on in their admosphere.  
We had nothing to do with the  
control of the proceeding.

THE COURT:

The whole preliminary examination was a  
useless effort because the Grand  
Jury indicted Mr. Shaw, the Grand

28

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RELEASED PER P.L. 102-528 (JFK ACT)  
NARA DATE //

Jury indicted the Defendant.

29

MR. WEGMANN:

I submit --

THE COURT:

I have heard enough argument, Gentlemen.  
Under Article 295, "The transcript of the  
testimony of a defendant who testi-  
fied at the preliminary examination  
is admissible against him upon the  
trial of the case, or, if relevant,  
in any subsequent judicial proceed-  
ing. The transcript of the testimony  
of any other witness who testified  
at the preliminary examination is  
admissible for any purpose in any  
subsequent proceeding in the case,  
on behalf of either party, if the  
Court finds that the witness is  
dead, too ill to testify, absent  
from the State, or cannot be found,  
and that the absence of the witness  
was not procured by the party offer-  
ing the testimony."

I understand that the State is offering  
these pages of the transcript

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concerning Dr. Chetta's testimony -- 30  
let's see, Pages 314 to 361, then  
361 to 381.

That is roughly, that is roughly sixty-  
seven pages of transcript of Dr.  
Chetta.

Now, the purpose, as I understand it as  
stated, is that they are trying to  
rebut the inferences that Perry  
Russo was undergoing psychiatric  
examination consultation care for  
some twelve to eighteen months, that  
he attempted to commit suicide, and  
from the way he answered the ques-  
tions, they were trying to give the  
impression publicly that he was not  
-- he was not completely sane.

I understand from Mr. Oser and Mr. Alcock  
that they are offering this for a  
specific purpose, they are offering  
this not to buttress the credibility  
of Mr. Russo, they are not offering  
it to show that the statements made  
were truthful or not, but the total  
substance of Dr. Chetta's testimony

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is whether or not he thought with  
the aid of diagnostic psychiatric  
aid that Mr. Russo was a sane person.

31

I think that is the purpose of their  
offering, and for that limited  
purpose I am going to permit it, so  
I will permit it, and you can take  
a bill, and let's get the Jury down.

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Now, one other thing while I have the  
floor, just a second, if there is  
no objection on the part of the  
State or Defense, and this is going  
to be read verbatim, I would make a  
request that we do not impose another  
hardship on the Court Reporter if it  
is read verbatim and you follow it,  
would you permit it to be Xeroxed  
and put into the record.

MR. WEGMANN:

I think the easiest way would be to  
furnish the Reporter with a copy  
and let him re-copy it.

THE COURT:

You have a copy to follow it, do you not?

MR. WEGMANN:

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May I ask the Court one question? So

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2 that the record is clear, Your Honor,  
3 I would now like to ask the Court  
4 to include in its ruling whether or  
5 not -- what I understand to be the  
6 Court's ruling, the Court is now  
7 ruling that this transcript, pre-  
8 liminary hearing, is part of this  
9 proceeding?

10 THE COURT:

11 No, I am not.

12 MR. WEGMANN:

13 The Court is standing by --

14 THE COURT:

15 I am only admitting that part of Dr.  
16 Chetta because he is deceased. The  
17 whole transcript is not a part of  
18 this record, no indeed.

19 MR. WEGMANN:

20 Is the Court going to rule on the admiss-  
21 ibility of each question and the  
22 objections we made at the time, or  
23 is the --

24 THE COURT:

25 I will let him read the whole thing

1 in toto.

2 I would suggest we read the whole thing.

3 I am going to let it all go in and  
4 see what you object to. I am going  
5 to give them both sides of the  
6 picture.

7 MR. WEGMANN:

8 You are still ruling the transcript is  
9 not part of the proceeding?

10 THE COURT:

11 If he was here, I would not let that in,  
12 we would let him testify.

13 MR. DYMOND:

14 We would like to object on the grounds,  
15 first, proper predicate has not  
16 been laid for the introduction of  
17 this transcript of the testimony of  
18 the preliminary hearing.

19 THE COURT:

20 Dr. Chetta is now deceased, that was the  
21 predicate, Dr. Chetta is deceased.

22 MR. WEGMANN:

23 It is not in the record that he is  
24 deceased, Judge.

25 THE COURT:

Reference copy, J.A.

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1 I will ask you this, Gentlemen: Can you 34  
2 tell me that you will supply me with  
3 a copy of the death certificate?  
4 MR. OSER:  
5 I will send down and get it.  
6 THE COURT:  
7 Contingent upon you presenting that to  
8 me, I will proceed with the case and  
9 I will permit you to make that offer  
10 from the Bureau of Vital Statistics  
11 of the death of Dr. Nicholas J.  
12 Chetta, Coroner.  
13 MR. DYMOND:  
14 Further on the grounds that the prelimi-  
15 nary hearing was not conducted  
16 according to the rules of evidence  
17 as set forth in our law, and it was  
18 so held by the three-judge panel,  
19 and that this Court has in the course  
20 of its ruling on the admissibility  
21 of this material, affirmatively  
22 stated that objections to particular  
23 questions contained in the trans-  
24 cript of Dr. Chetta's testimony will  
25 not be permitted, and on the further

1 ground that it is the contention of 35  
2 the Defense that the said three-judge  
3 court was illegally constituted and  
4 had no basis in law, and the further  
5 reason that the testimony of Dr.  
6 Chetta which is approximately two  
7 years old is not at this time rele-  
8 vant for the purpose of trying to  
9 refute alleged testimony or alleged  
10 questions to the effect that there  
11 was doubt or question as to the  
12 sanity of Perry Raymond Russo at  
13 the present time in view of the fact  
14 that the testimony of Dr. Chetta  
15 relates to a period some two years  
16 ago.

17 We will reserve the bill making the  
18 entire testimony up to this point,  
19 the Defense objection, the State's  
20 offering, the transcript of Dr.  
21 Chetta's preliminary hearing testi-  
22 mony, parts of the bill.

23 THE COURT:

24 Bring the Jury down.

25 Let the record show the Jury is present,

1 the Defendant is present, both 36  
2 Counsel are present.  
3 Now, let me get the status of the case  
4 as it is, as of this moment. There  
5 has been an offer made by the State  
6 to read from the transcript of  
7 testimony of Dr. Nicholas J. Chetta,  
8 based on Article 295 wherein he  
9 alleged and will prove by the offer  
10 of the death certificate from the  
11 Bureau of Vital Statistics, and the  
12 offer is made by the State not to  
13 buttress or improve the credibility  
14 of Mr. Russo, it is not to buttress  
15 or prove the truthfulness of the  
16 statements he may or may not have  
17 said, but it is merely for the  
18 purpose of contradicting the impli-  
19 cation that Perry Raymond Russo was  
20 not of sound mind.  
21 With that limited purpose, I will permit  
22 the reading of the transcript from  
23 pages 314 to 381 inclusive from the  
24 transcript, and you may take your  
25 bill of exception.

1 MR. DYMOND:

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2 At this time we would like in the presence  
3 of the Jury to renew our objection  
4 to the Court's ruling on the grounds  
5 of relevancy and on the grounds pre-  
6 viously stated.

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7 THE COURT:

8 Overruled.

9 MR. DYMOND:

10 Including in the bill of exception the  
11 Court's ruling, the Counsel for the  
12 State's offering, the transcript of  
13 Dr. Chetta's testimony, the Defense  
14 objection and the reasons given by  
15 the Court.

16 THE COURT:

17 Now, take this down, Mr. Reporter. There  
18 has been no objection, and in fact  
19 there is agreement in the request  
20 by the Court that the Court Reporter  
21 need not take down the reading of  
22 the transcript of Pages 314 to 381,  
23 but that Mr. Oser will let me have  
24 his copy and we will Xerox those  
25 pages and give it to the Court

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