

JFK ASSASSINATION SYSTEM

IDENTIFICATION FORM

AGENCY INFORMATION

AGENCY : HSCA
RECORD NUMBER : 180-10097-10192

RECORDS SERIES :
NUMBERED FILES

AGENCY FILE NUMBER : 002012

DOCUMENT INFORMATION

ORIGINATOR : CRIMINAL DISTRICT COURT PARISH OF ORLEANS, LA
FROM :
TO :

TITLE :

DATE : 02/12/69
PAGES : 38

SUBJECTS :
SHAW, CLAY L. TRIAL
STATE OF LOUISIANA V. CLAY L. SHAW
WEGMAN
ALCOCK
WATTER, DR.

DOCUMENT TYPE : TRANSCRIPT
CLASSIFICATION : U
RESTRICTIONS : OPEN IN FULL
CURRENT STATUS : 0
DATE OF LAST REVIEW : 05/06/93

OPENING CRITERIA :

COMMENTS :
Transcript of court proceeding. Box 43.

[R] - ITEM IS RESTRICTED

date: 08/13/93

PAGES - 1 - 39

EXCERPT

NOT PROOFED
NOT BILLED TO ANYONE

39-60

✓ OK

given

Seibman

1/22/71

and billed
to [unclear]

file
file

CRIMINAL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. WILLIAM WEGMANN:

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

THE COURT:

Tell them to stay upstairs.

I notice in the Clerk's records they did not have a copy of the transcript, they searched for it yesterday and this morning, no copy of it in the record itself.

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

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

MR. WILLIAM WEGMANN:

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

2

3

Reference Copy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

3

of America which is cited in
237 F.2d 893, it is an opinion out
of the Ninth Circuit Court of
Appeals, May 7, 1956.

In this particular case, there are very
pertinent observations with relevance
to the use of sodium-pentothal and
with relation to the admissibility
of the results of the sodium-
pentothal tests into evidence, and
in this particular case the Court
of Appeals reversed the trial judge
who had admitted the results into
evidence.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

4

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

avowed purpose of determining whether the story originally told the authorities was the truth. Obvious motive existed then to repeat that story. So if the original story were indeed a fabrication, it would be unreasonable to hold that motive did not exist to fabricate during the test insofar as will could assert itself."

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

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

Reference copy, JFK Collection.

1 well established to accord the 6
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, JRN 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

7

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

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

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

Reference copy, JFN Collier

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, Jrk Co. 100-10000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

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

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

Reference Copy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

THE COURT:

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

MR. WEGMANN:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I believe that is true, while at one time when you read the preliminary hearing, at one stage it appears that they sustained us on this motion, if you read it throughout you will find that they did not. Judge Braniff, during Dr. Chetta's testimony the question of hearsay came up, Dr. Chetta says what Perry Russo told him on occasion, and this is what we objected to in the testimony.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

THE COURT:

I will be glad to hear from the State.

MR. OSER:

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

Reference Court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

to, which is cited in 287 New York
389, 39 N.E.2d, 925, the Court in
this particular case allowed the
testimony of the psychiatrist which
was based on reactions and infor-
mation received by the psychiatrist
while the subject was under sodium-
antothal to determine the question
of sanity, also covered in the case
was the fact that the only purpose
that the testimony of the psychia-
trist was given in the case was to
determine the question of insanity,
and not to determine the truthful-
ness of the statements made by the
subject under the influence of the
drug.

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

Reference copy, J...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

diagnostic aid.

14

Now, in these particular matters before the Court today, the State is not attempting to introduce the testimony of Dr. Chetta to show the truthfulness of the statements made by the witness under sodium-pentothal, nor to establish the credibility of the witness. The State is attempting to use Dr. Chetta's testimony to show that Dr. Chetta made a determination of the question on sanity of the individual Perry Russo and that one of the diagnostic aids used by the doctor was that of sodium-pentothal, and based on the jurisprudence, Your Honor, the State feels it should be allowed to introduce this testimony only for that purpose, as it was the only purpose introduced in the preliminary hearing, and this is the State's position.

MR. WEGMANN:

The cases cited by Mr. Oser, or the case

Reference copy, JFK COLL.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

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

MR. ALCOCK:

If I might just be heard on that point.

I agree to some extent with Defense

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Counsel that we are now talking
about the Russo testimony in 1969;
however, during the course of argu-
ment and during the course of
presentation in this case, Mr.
Dymond announced that he will put
a witness on the stand, an expert
witness in the area of hypnosis, who
will allegedly show that Russo's
testimony was the result of sugges-
tions during hypnosis, that sodium-
pentothal testimony is inadmissible,
and the whole question here is that
at the time the tests were admin-
istered to Perry Russo, that is
the critical area and the critical
time we are concerned about, and
that is the critical time that Dr.
Chetta addressed himself at that
time.

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

3/93

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

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

7 THE COURT:

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

11 MR. WEGMANN:

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

17 THE COURT:

18 It has been marked for identification
19 only.

20 MR. WEGMANN:

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

23 THE COURT:

24 I don't know, if --

25 MR. WEGMANN:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

9/13/6

[R] - ITEM IS RESTRICTED

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

21

8/13/93

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 records. There is no

08/13/93

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.

08/13/93
1

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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:

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 deposition, you either take it for perpetuation or discovery, and when they did it by the strange proceedings before the three judges, they were in effect in a discovery proceeding as opposed to perpetuation of testimony.

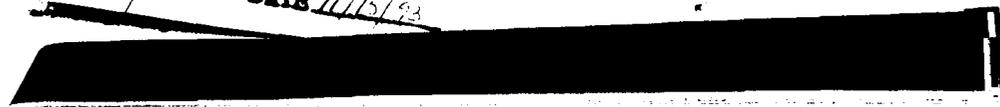
MR. ALCOCK:

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 representation before a Court, you are making a judicial admission by which

[R] - ITEM IS RESTRICTED



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

26

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

THE COURT:

The Court --

MR. WEGMANN:

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

THE COURT:

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

MR. WEGMANN:

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

[R] - ITEM IS RESTRICTED

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 perpetuating testimony.

08/1
1

MR. ALCOCK:

I have one small point and I won't perpetuate 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 witnesses? 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 procedure. If there was an objection made and the attorney propounding the question says I insist that my

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

28

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

08/13/93
1

Jury indicted the Defendant.

29

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

[R] - ITEM IS RESTRICTED

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

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

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

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

08/13/93
1

31

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

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.

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:

08/13/93

1 May I ask the Court one question? So 32
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

[R] - ITEM IS RESTRICTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

in toto.

I would suggest we read the whole thing.

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

MR. WEGMANN:

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

THE COURT:

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

MR. DYMOND:

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

THE COURT:

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

MR. WEGMANN:

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

THE COURT:

Reference copy, 3/18/77

Reference copy, JFK Collection

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

[R] - ITEM IS RESTRICTED

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

37

MR. DYMOND:

At this time we would like in the presence of the Jury to renew our objection to the Court's ruling on the grounds of relevancy and on the grounds previously stated.

08/13/93
1

THE COURT:

Overruled.

MR. DYMOND:

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

THE COURT:

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

[R] - ITEM IS RESTRICTED