

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA
HONORABLE BRUCE R. THOMPSON, JUDGE

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CLERK OF DISTRICT COURT

UNITED STATES OF AMERICA,
Plaintiff,
vs.
PHILLIP CRAIG GARRIDO,
Defendant.

Cr. No. R-76-88-BRT

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME II

Pages 121 - 304

ALLAN D. BUNNELL,
Official Reporter.

1 Reno, Nevada, Thursday, February 10, 1977, 9:30 o'clock a. m.

2 ---o0o---

3 THE COURT: Case of U. S. against Garrido.

4 The record will show all the jurors are present, the
5 defendant and counsel are present.

6 You may proceed, Mr. Lutfy.

7 MR. LUTFY: Thank you, your Honor. Clifford Conrad.

8 CLIFFORD DEAN CONRAD,

9 produced as a witness on behalf of the plaintiff, and having
10 been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. LUTFY:

13 Q Would you please state your full name and spell
14 your last.

15 A Clifford Dean Conrad, C-o-n-r-a-d.

16 Q Where do you live, Mr. Conrad?

17 A Reno, Nevada.

18 Q What do you do for a living?

19 A Police officer for the City of Reno.

20 Q How long have you been a police officer?

21 A Five years.

22 Q And on the evening of November 22nd, 1976, early
23 morning of November 23rd, 1976, were you on duty during that
24 period of time?

25 A Yes, sir, I was.

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1 Q Where were you on duty?

2 A I was south side of town crime investigator on
3 patrol.

4 Q By "on patrol," were you walking on patrol?

5 A No, driving a vehicle.

6 Q And during that period of time did you have occasion
7 to stop your vehicle at a particular group of warehouses?

8 A Yes, sir, I did.

9 Q What was the purpose of your stopping there?

10 A To check a suspicious vehicle and suspicious
11 circumstances.

12 Q Would you explain what you mean by a suspicious
13 vehicle?

14 A Well, the vehicle was from California, and the
15 warehouses are normally rented by people in the area. The
16 vehicle shouldn't have been there that time of the morning,
17 so I checked further and found the lock on the warehouse
18 broken off.

19 Q And as a result of checking and seeing that lock
20 broken, what, if anything, did you do?

21 A I tried the door to see if I could open it, it
22 would only come up about four inches. And I kept trying the
23 door until it was answered.

24 Q And who answered that door?

25 A Mr. Garrido.

1 Q How was the door opened?

2 A It is a garage door type that rolls from the bottom
3 up to the top.

4 Q How do you know this individual's name was Garrido?

5 A When I asked him his name afterwards, he stated his
6 name was Phillip Garrido.

7 Q I ask you to look around the courtroom and tell me
8 whether that individual that you talked to that night is here
9 in court.

10 A Yes, sir, he is.

11 Q Will you point to him and describe the clothing he
12 has on now?

13 A The gentleman in the gray coat.

14 Q Can you describe what else you see?

15 A Brown tie and white shirt.

16 MR. LUTFY: May the record reflect that the witness has
17 identified the defendant?

18 THE COURT: Yes.

19 BY MR. LUTFY:

20 Q What was Mr. Garrido wearing at this point when he
21 opened the door for you?

22 A He had on a blue pair of pants.

23 Q Was he wearing anything else?

24 A No, that was it.

25 Q Was this a warm evening, Officer?

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1 A. No, sir, it was cold.

2 Q. Did you have a discussion with Mr. Garrido at that
3 time?

4 A. Yes, sir, I did.

5 Q. And would you tell us what that discussion was?

6 A. I questioned him about if the warehouse was rented
7 to him, if that was his vehicle parked in front.

8 Q. When you asked him if the warehouse was rented to
9 him, what did he say to that?

10 A. He said, no, it was rented to a friend of his.

11 Q. What else did you ask him?

12 A. At that time I asked him who the friend was and
13 where he lived.

14 Q. What did he say to that?

15 A. I am not sure if he gave me the friend's name or
16 not, I can't remember at this time; but he said that he lived
17 over on Market Street.

18 Q. Did you have any further discussion with him?

19 A. Yes, sir. In reference to what he was doing in
20 the warehouse and why -- if he had a key to it. I asked him
21 that.

22 Q. What did he say in response to that?

23 A. He said he had lost the key.

24 Q. Did you have any other discussion with him at this
25 time?

1 A. Not at that moment right about then. I asked him
2 for his date of birth and things like that, so I could check
3 with our dispatcher to see if they would obtain an address
4 and just everything to check a story.

5 Q. Was he able to respond to each of your questions?

6 A. Yes, sir, he was.

7 Q. Did he respond coherently?

8 A. Yes, sir.

9 Q. Did you understand him?

10 A. Yes, sir.

11 Q. Did you ask him any questions that he couldn't
12 respond to coherently?

13 A. No, sir.

14 Q. Was Mr. Garrido the only person you spoke to that
15 was in that warehouse?

16 A. No, sir. The victim, Miss Callaway, was also in
17 the warehouse.

18 Q. Would you describe the circumstances under which
19 you first saw Miss Callaway?

20 A. Okay. While I was talking to Mr. Garrido, she
21 stuck her head out behind some type of plastic material on
22 the left-hand side of the garage as you were looking in,
23 and said, "Help me."

24 And I asked her what she wanted.

25 She just said, "Help me" again and she ran out.

1 Q How was Miss Callaway dressed at this time?

2 A With no clothing at all.

3 Q After she came out, what, if anything, did she say
4 to you?

5 A She ran around the back of me and said, "Help me,
6 he is trying to rape me," is the way she put it.

7 Q What else, if anything, did she say at this time?

8 A She also said that she was afraid of him, and she
9 repeated that he was trying to rape her.

10 Q What did you say to her?

11 A I told her to go in and get her clothes on at that
12 time while I talked to Mr. Garrido further.

13 Q Did she in fact leave you and go back inside the
14 warehouse?

15 A Yes. Yes, sir.

16 Q And what did Mr. Garrido do during this period of
17 time?

18 A I talked to him a couple of more -- about another
19 minute -- and he went inside to get his jacket on, after he
20 asked me if he could.

21 Q Officer, you were in a circumstance where you said
22 you saw a strange car; is that correct?

23 A Yes, sir.

24 Q You saw a broken lock on the door; is that correct?

25 A Yes, sir.

1 Q You saw a broken lock on the door; is that correct?

2 A Yes, sir.

3 Q You had a man who came to the door with only his
4 pants on and nothing else; is that correct?

5 A Right.

6 Q You had a young lady who ran out who was naked,
7 crying something about rape or saying something about rape to
8 you?

9 A Yes, sir.

10 Q Why did you allow Mr. Garrido to go back into that
11 warehouse when Miss Callaway was in there?

12 A The circumstances that I was led to believe by Mr.
13 Garrido was that he was married and lived down the street,
14 and that was his girlfriend.

15 Q Is that what Mr. Garrido said to you?

16 A He implied that. He didn't come out exactly and
17 say that.

18 Q How did he imply it?

19 A He said he did live down the street, he was married,
20 and this was a friend of his, and he even called her by name.
21 He called her by "Kathie."

22 So that led me to believe that they were friends.

23 Q But Miss Callaway had said something about rape
24 when she came out?

25 A She said, "He is trying to rape me," is the words

1 she used.

2 Q You didn't feel at that point there that there was
3 any danger or anything like that?

4 A No, sir.

5 Q And how long were they inside that warehouse
6 together?

7 A I would say about 30 seconds to a minute at the
8 most.

9 Q Then who came out?

10 A I am not sure. They both came out about the same
11 time.

12 Q What happened after they came out?

13 A I placed Miss Callaway in my back seat of my patrol
14 car, as it was cold out there and she was shivering, and I
15 continued my conversation with Mr. Garrido.

16 Q To go back a point. Have you ever investigated
17 rape charges before?

18 A Not at the time of the occurrence. I have had
19 crime scene investigations afterwards or something like that.

20 Q But never prior to that?

21 A No, sir.

22 Q Now, you said Miss Callaway then came out and she
23 went into your automobile?

24 A Yes, sir.

25 Q Was that a police car?

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1 A. Yes, sir.

2 Q. Where did Mr. Garrido go?

3 A. He and I remained by Miss Callaway's car.

4 Q. Did you have any other discussions with Mr. Garrido
5 at this time?

6 A. Yes, sir, I did. I was still trying to check why
7 he was in there, why the lock was broken.

8 Q. And what were those discussions?

9 A. He said him and a friend used the place for storing
10 musical instruments and playing there, and that he lost the
11 key to the lock, so he broke it off.

12 Q. Did you have any further discussions with Miss
13 Callaway?

14 A. At a later time, I did, after Officer Soderblom
15 talked to her.

16 Q. Did you have occasion to go to a hospital or medical
17 laboratory, something relative to Mr. Garrido, at any further
18 date, a later date?

19 A. Yes. After he was arrested, Officer Soderblom
20 transported Mr. Garrido to Washoe Medical Center for a legal
21 blood alcohol test and public hair samples and other items.

22 Q. I ask you to look at Government's proposed Exhibit
23 No. 17. Tell me if you can identify that.

24 A. Yes, sir, I can.

25 Q. How can you identify it?

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1 A. By my handwriting.

2 Q. And what is it -- your handwriting is on it?

3 A. Yes, sir.

4 Q. And when did you put your handwriting on that?

5 A. 2:28 on November 23rd.

6 Q. What was the purpose for which you put your hand-
7 writing on that item?

8 A. To identify the items within the envelope.

9 Q. And what was it that you were identifying?

10 A. Pubic hair samples.

11 Q. Whose pubic hair samples were those?

12 A. The defendant's, Mr. Garrido's.

13 Q. How do you know they were Mr. Garrido's hair
14 samples?

15 A. I witnesses Dr. Boss of Washoe Medical Center take
16 them and place them in the envelope.

17 Q. Who placed them in the envelope?

18 A. Dr. Boss.

19 Q. Then what happened with that envelope?

20 A. I was holding the envelope at the time that he was
21 placing them in. I took the envelope, sealed it, placed it
22 in the Reno Police Department evidence room.

23 MR. LUTFY: Your Honor, the Government would move for
24 the admission of Exhibit No. 17.

25 MR. VAN HAZEL: No objection.

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1 THE COURT: It is admitted.

2 MR. LUTFY: Thank you.

3 (A sample of the pubic hairs of the defendant was
4 received and marked Exhibit No. 17 in evidence.)

5 BY MR. LUTFY:

6 Q During any of the times that you had the conversa-
7 tion with the defendant at the scene, at that warehouse,
8 were there any questions that you asked him that he did not
9 understand?

10 A No.

11 Q Was he able to answer each of the questions you
12 asked him?

13 A Yes, sir. He answered most of them. He was
14 evasive on some.

15 Q What do you mean by evasive?

16 A I asked him how long he knew the victim, Miss Calla-
17 way, and where he met her at, things like that. And he said,
18 "I don't have to answer that."

19 Q Did he -- the questions that he did answer, did he
20 answer coherently? Were you able to understand him?

21 A Yes, sir.

22 MR. LUTFY: No further questions.

23 THE COURT: You may cross-examine.

24

25

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CROSS-EXAMINATION

BY MR. VAN HAZEL:

Q Officer Conrad, as the investigating officer, you prepared the crime report in this case, didn't you?

A Yes, I did.

Q Is that the only report you prepared in this case?

A That and my follow -- continuation report.

Q And a continuation report?

A Yes.

Q Are you familiar with the contents of either of those, or both?

A Yes, sir.

Q You reviewed them before you came in the courtroom?

A Yes, sir.

Q In either of those reports, is there any mention that when you asked Mr. Garrido who owned the warehouse, he said a friend?

A No, sir.

Q Now, I believe you testified on direct that while questioning Mr. Garrido, Miss Callaway came running out?

A Yes, sir.

Q And she stated something to the effect, "He is trying to rape me"?

A Yes, sir. Those were her exact words.

Q Exact words?

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1 A. Yes, sir.

2 Q. And it couldn't have been, "He raped me," past
3 tense?

4 A. No, sir. When she said it, she said, "Trying."

5 Q. Did you also testify on direct something about, "He
6 was trying to get to me," she said, "or protect me"?

7 A. She said, "Help me" and also, "I'm afraid of him."

8 Q. "I'm afraid of him"?

9 A. Right.

10 Q. Now, is there any confusion in your mind that this
11 might have been the second time when she came out after you
12 had instructed her to get some clothes on that she said this?

13 A. Well, she said it both times.

14 Q. She said it both times?

15 A. Yes.

16 Q. You're clear in your own mind that the first time
17 she came out with no clothes she did say, "He is trying to
18 rape me" and "Protect me," that first time?

19 A. I don't remember the words "Protect me," but she
20 did say, "Help me."

21 Q. "Help me"?

22 A. Yes.

23 Q. And she was afraid of him, she said?

24 A. That is what she said; yes.

25 Q. Why didn't you have her go back in and retain what

1 would then be a suspect? You had a suspect in your presence,
2 didn't you?

3 A. Not at that time, no.

4 Q. Were you able to observe -- did you go into the
5 shed yourself?

6 A. Yes, sir.

7 Q. Did you go in at that point in time when you
8 directed Miss Callaway to go in and get dressed?

9 A. No, sir.

10 Q. When you allowed Mr. Garrido to go back, did you
11 accompany him?

12 A. No, sir.

13 Q. So Mr. Garrido and Miss Callaway were in the back
14 of the shed and you were not there?

15 A. Yes, sir.

16 Q. Could you observe them from where you were?

17 A. No, sir.

18 Q. Did either the victim or the defendant appear
19 intoxicated or under the influence of anything?

20 A. No, sir.

21 Q. There was no slurred speech on the part of the
22 defendant, Mr. Garrido, as though he had been drinking?

23 A. No, sir.

24 Q. Did you smell anything on his breath?

25 A. No, sir. I believe I had a cold at that time,

1 though.

2 Q All right. How close to him were you?

3 A Within a foot.

4 Q You didn't specifically smell his breath to see if
5 he had been drinking?

6 A No, sir, I didn't.

7 Q Did you detect the smell of wine on Miss Callway's
8 breath?

9 A No, sir.

10 Q Did you, at the time you were questioning either of
11 them or the time you were outside the shed, smell any odors
12 that were suggestive of marijuana or hashish?

13 A No, sir, I didn't.

14 Q Did you have a flashlight with you?

15 A Yes, sir.

16 Q Did you shine the light at all into the defendant's
17 eyes to see how his pupils looked?

18 A No, sir, I didn't.

19 Q Was there any indication at the time Miss Callaway
20 came back and you were questioning her -- and I am talking
21 about after they went back in and got dressed and came back
22 out -- Mr. Garrido was there, Miss Callaway is there, and
23 perhaps another unit has rolled up to assist you at this
24 point. Was there any mention of narcotics at that point in
25 time?

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1 A. No, sir.

2 Q. When did you first become aware that there might
3 have been any narcotics involved in the crime scene?

4 A. After Officer Bradshaw got there, I asked Mr. Gar-
5 rido if there was anyone else inside of the shed there, since
6 we couldn't see the rear, and he said, "No."

7 And I asked him if I could go and look, and he said,
8 "Yes."

9 Q. He gave you his consent to go in?

10 A. Right. And I started to go around the left side,
11 and he said, no, this is the way over here. And he pulled
12 back the carpet, or whatever it was hanging there, to show me
13 the way in. And at that time, as soon as I walked in I saw
14 a small cigarette on the floor and a small vial and a roach
15 clip and a few other things.

16 Q. Now, the small cigarette, was it still burning?

17 A. No, sir.

18 Q. Were you able to tell what kind of cigarette it was?
19 Was it an ordinary cigarette?

20 A. Well, I picked it up and tried to smell it, and I
21 couldn't smell anything. So I asked -- I can't remember if
22 it was Officer Bradshaw or Officer Soderblom that was in
23 there with me, I asked them to smell it to see what it was.
24 And they said it smelled like marijuana.

25 Q. Like marijuana?

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1 A. Yes, sir.

2 Q. Not hashish. I was just trying to make the distinc-
3 tion, because both were found; were they not?

4 A. Yes, sir. I believe. I saw all the items, and I
5 also observed a small vial, which appeared to me to be hashish
6 oil.

7 Q. Were you present when Officer Soderblom went
8 through the defendant's clothes?

9 A. No, sir, I wasn't.

10 Q. Now, what was the demeanor of the defendant when
11 you first saw him? Did he appear frightened or appear
12 apprehensive to you?

13 A. No, sir.

14 Q. When Miss Callaway ran out screaming, "Help me,"
15 what did the defendant do? Did he appear to run?

16 A. No, sir. He just stood there.

17 Q. Did you see what you might have interpreted as
18 fear on his face?

19 A. No, sir.

20 Q. Any reaction?

21 A. No, sir, none.

22 Q. Did he become excited or --

23 A. No, sir.

24 Q. All right. When they both came back out again,
25 after getting dressed, did the defendant's demeanor change at

1 any point in time? By "demeanor," I am talking about his
2 outward appearance, his calm state. Did it change at any
3 point?

4 A. About, I would say about a couple of minutes before
5 we placed him under arrest and I was asking him more specific
6 details about the victim, Miss Callaway, and that is when he
7 said, "I don't have to answer." And that is really about
8 the only time he got excited, was at that point.

9 Q. Now, I don't want to know what he said as much as
10 his demeanor, how he acted, what you observed physically
11 rather than what he said to you.

12 A. Prior to that time he was calm, rational; but that
13 other time after that, he was short and --

14 Q. And more hostile?

15 A. I wouldn't call -- well, trending towards that,
16 you know, but not actually hostile. Just on a defensive,
17 I would say.

18 MR. VAN HAZEL: Nothing further.

19 THE COURT: Redirect.

20 MR. LUTFY: No further questions of this witness, your
21 Honor.

22 THE COURT: You are excused, sir.

23 MR. LUTFY: Carolyn Carlon.
24
25

1 CAROLYN JEAN CARLON,
2 produced as a witness on behalf of the plaintiff, and having
3 been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. LUTFY:

6 Q Would you state your full name, please, and spell
7 your last.

8 A Carolyn Jean Carlon, C-a-r-l-o-n.

9 Q Where do you live?

10 A Reno, Nevada.

11 Q Is it Miss or Mrs. Carlon?

12 A Mrs.

13 Q Mrs. Carlon, what do you do for a living?

14 A Police officer, Reno Police Department.

15 Q How long have you been a police officer with the
16 Police Department?

17 A Fourteen years.

18 Q Have you ever met an individual named Katherine
19 Callaway?

20 A Yes, I have.

21 Q And were you ever with Miss Callaway at a hospital
22 or a medical center of any kind?

23 A Yes, I was.

24 Q What was the purpose of your being there?

25 A I was at Washoe Medical Emergency with Miss Callaway

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1 for the purpose of a physical examination.

2 Q And were you there when this examination took place?

3 A Yes, I was.

4 Q Do you know whether or not any pubic hair samples
5 were taken?

6 THE COURT: When was this?

7 MR. LUTFY: Excuse me?

8 THE COURT: When was this?

9 BY MR. LUTFY:

10 Q Do you know what the date was?

11 A I don't remember the date. It was the early morn-
12 ing hours right after the incident occurred, possible 3:00
13 or 4:00 o'clock that morning.

14 Q Were you there when any pubic hair samples were
15 taken from Miss Callaway?

16 A Yes, I was.

17 Q Were you physically present when they were taken?

18 A Yes, I was.

19 Q Do you know what happened to them?

20 A They were handed to me and they were taken by Dr.
21 Boss in the pelvic room of the Washoe Medical Emergency Center.
22 They were handed to me in an envelope. I sealed the envelope,
23 took the envelope to the Reno PD evidence locker.

24 Q I ask you to look at Government's Exhibit 9 and
25 tell me if you can identify it.

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1 A. Yes, I can.

2 Q. How can you identify it?

3 A. My handwriting.

4 Q. And when did you put your handwriting on that?

5 A. November 23rd, 1976.

6 Q. What was the purpose for which you put your hand-
7 writing on that?

8 A. To place in evidence the two brown envelopes con-
9 taining the comb and pubic hairs.

10 Q. I ask you to open up that envelope, please.

11 I ask you to look at Government's proposed Exhibit 9-A.
12 Tell me if you can identify it.

13 A. Yes, I can.

14 Q. What is it, please?

15 A. It is a comb.

16 Did you want me to unseal the envelope?

17 Q. No. It is a comb itself?

18 A. That's right.

19 Q. How can you identify that item?

20 A. My handwriting, again. I initialed -- I labeled
21 the envelope prior to putting the comb in. The comb was
22 handed to me by the doctor.

23 Q. What comb is this?

24 A. It is a comb used for pubic combing, to remove
25 any foreign hair from the pubic area.

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1 Q Is this relative to Miss Callaway?

2 A Yes, sir, it is.

3 Q I ask you to look at Government's proposed Exhibit
4 9-B. Tell me if you can identify it.

5 A Yes, I can.

6 Q How can you identify it?

7 A By my handwriting.

8 Q What is it?

9 A Pubic hairs.

10 Q And whose pubic hairs are these?

11 A Miss Callaway's pubic hairs.

12 Q The ones that were handed to you by the doctor at
13 that time?

14 A These are the ones that were removed by Dr. Boss
15 from Miss Callaway and handed to me and I placed them in the
16 envelope.

17 MR. LUTFY: Your Honor, the Government would move for
18 the admission of Government's Exhibits 9-A and 9-B.

19 MR. VAN HAZEL: Your Honor, at this time I think I
20 would renew -- I will renew the objection of relevancy to
21 the kidnap charge. I just don't see the relevancy of this
22 evidence.

23 MR. LUTFY: Your Honor, we are tying --

24 THE COURT: Overruled.

25 MR. LUTFY: Thank you, your Honor.

1 No further questions.

2 MR. VAN HAZEL: No examination.

3 THE COURT: You are excused, Mrs. Carlon.

4 MR. LUTFY: Nevada Wise.

5 NEVADA J. WISE,

6 produced as a witness on behalf of the plaintiff, and having
7 been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. LUTFY:

10 Q Would you please state your full name and spell
11 your last.

12 A Nevada J. Wise, W-i-s-e.

13 Q Where do you live, Mr. Wise?

14 A In Reno, Nevada, at --

15 Q That is all right.

16 A -- 2017 Westfield Avenue.

17 Q What do you do for a living, Mr. Wise?

18 A I am a police officer employed by the City of Reno.

19 Q How long have you been employed as a police officer?

20 A Total employment 21 years. I have been 17 of that
21 with the City of Reno.

22 Q And what position do you hold with them?

23 A I am currently assigned as a lieutenant in charge
24 of the technical services unit, which comprises the crime lab,
25 evidence and property, and the photographic laboratory.

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1 Q Were you working as a police officer on November
2 the 23rd of 1976?

3 A Yes, sir, I was.

4 Q Did you have occasion to go to a warehouse area at
5 that time?

6 A Yes, sir, I did.

7 Q What was the reason for going there?

8 A We went there in response to a call to assist in
9 the search of a mini-warehouse area pursuant to a search
10 warrant.

11 Q And did you in fact go there?

12 A Yes, sir, I did.

13 Q Did you in fact conduct a search?

14 A Yes, sir, I did.

15 Q In addition to the warehouse, did you search any
16 other thing that was there?

17 A Not at that scene; no, sir.

18 Q Did you at some later date search another thing?

19 A Yes, sir. I conducted a search of a Ford automobile
20 in the confines of the crime laboratory garage area at the
21 Reno Police Department.

22 Q And did you conduct that search with the permission
23 of the owner of the vehicle?

24 A Yes, sir, I did.

25 Q I ask you to look at Government's Exhibit 1 and

1 tell me if you can identify that item.

2 A. Yes, sir, I can.

3 Q. How can you identify it?

4 A. The item contains my initials on a metal tag
5 attached to the end of it.

6 Q. What was the occasion for which you put your initials
7 on that?

8 A. I initialed this to identify it at the time that
9 I removed it from a Ford automobile, which I searched in
10 the confines of the Reno Police Department Crime Lab Garage.

11 Q. What did you do after getting the belt and marking
12 it?

13 A. Following that I then transported this belt to the
14 Washoe County Criminalistic Laboratory for analysis of some
15 material adhering to it.

16 Q. Do you know whose vehicle it was that you were
17 searching in which you found that belt?

18 A. I don't recall the name of the individual. This
19 individual was a victim in a crime we were investigating.

20 Q. What kind of a crime was that at that time that
21 you were investigating?

22 A. I was investigating a case involving a rape.

23 Q. Do you remember what kind of a vehicle it was that
24 you were searching?

25 A. Yes, sir. It was a Ford.

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1 Q Do you know what kind of Ford?

2 A I believe it is a Falcon, I think.

3 Q A big Ford?

4 A No, it is a small compact-type car.

5 Q And what did you do after you --

6 THE COURT: Do you have any reports you can refer to
7 to refresh your memory?

8 THE WITNESS: Not with me; no, sir.

9 MR. LUTFY: Your Honor, may the witness step down and
10 look through here and see if his report is here, or may I
11 show this --

12 THE COURT: Yes.

13 Did you find it?

14 THE WITNESS: Yes, sir.

15 BY MR. LUTFY:

16 Q Can you, by looking at that report, now refresh
17 your memory as to whose vehicle it was that you were search-
18 ing at that time?

19 A Yes. The vehicle belonged to a Katherine Callaway.
20 It was a Ford Pinto, carrying California license plates.

21 Q And this belt you took from that vehicle?

22 A That is correct, sir.

23 MR. LUTFY: Your Honor, the Government would move for
24 the admission of Exhibit No. 1.

25 (Discussion off the record between Mr. Lutfy and Mr.

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1 Van Hazel.)

2 BY MR. LUTFY:

3 Q Is there a case number on that record, Officer, or
4 Lieutenant, on the bottom?

5 A No, sir, not in relation to the balance of the
6 report. It is a single-page report done by me.

7 THE COURT: Exhibit 1 is received in evidence.

8 (A belt was received and marked Exhibit No. 1 in
9 evidence.)

10 THE WITNESS: Excuse me. There is a number on the
11 bottom of the page that was not put there by me. It is
12 numbered "67." I don't know if that is in reference to your
13 file or --

14 MR. VAN HAZEL: Thank you.

15 MR. LUTFY: Move for the admission of Exhibit No. 1.

16 MR. VAN HAZEL: No objection.

17 THE COURT: I already admitted it.

18 MR. LUTFY: Thank you.

19 BY MR. LUTFY:

20 Q I ask you to look at Government's proposed Exhibit
21 No. 2. Tell me if you can identify that item.

22 A Yes, sir, I can.

23 Q How can you identify it?

24 A By my initials that I placed on it at the time it
25 was taken by me during a search of a mini-warehouse pursuant

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1 to a search warrant.

2 Q. And when was that, sir?

3 A. On the 23rd of November of 1976 at approximately
4 3:30 in the afternoon.

5 Q. And what did you do with that item?

6 A. After identifying the item I later transported this,
7 along with other items, to the Washoe County Criminalistic
8 Laboratory for examination for the presence of hair.

9 MR. LUTFY: Your Honor, the Government would move for
10 the admission of Exhibit No. 2, a pair of scissors.

11 THE COURT: What did you say that is?

12 MR. LUTFY: A pair of scissors, your Honor.

13 MR. VAN HAZEL: Your Honor, just once for the record I
14 am going to object again on the basis of relevancy and ask
15 that it be made a continuing objection, and it not be deemed
16 a waiver if I cross-examine after that; and also on the
17 ground that Rule 403 of the Evidence Code, that the prejudice
18 outweighs the probative value.

19 THE COURT: Agreeable.

20 MR. LUTFY: Is Exhibit No. 2 accepted into evidence,
21 your Honor?

22 THE COURT: Yes.

23 MR. LUTFY: Thank you.

24 (A pair of scissors was received and marked Exhibit
25 No. 2 in evidence.)

1 BY MR. LUTFY:

2 Q I ask you to look at Government's Exhibit No. 3.
3 Tell me if you can identify that item.

4 A Yes, sir, I can.

5 Q How can you identify it?

6 A By my initials that I placed on the item at the
7 time I obtained it at the mini-warehouse during a search
8 conducted there.

9 Q Where was this item?

10 A This item was on the floor at the door opening.

11 Q What is the item?

12 A The item is a padlock and a portion of a hasp
13 that has been broken or pried or tore from the metal to which
14 it was bolted.

15 MR. LUTFY: Your Honor, the Government would move for
16 the admission of Exhibit No. 3.

17 THE COURT: Exhibit 3 is admitted.

18 (A lock and a broken hasp were received and marked
19 Exhibit No. 3 in evidence.)

20 BY MR. LUTFY:

21 Q Lieutenant Wise, did you conduct the search of
22 this mini-warehouse pursuant to a search warrant?

23 A Yes, sir, we did.

24 MR. LUTFY: Your Honor, the Government would offer a
25 certified copy of a search warrant, which I have previously

1 shown to Mr. Van Hazel.

2 MR. VAN HAZEL: No objection.

3 THE COURT: It is admitted.

4 MR. LUTFY: Is that 21?

5 THE CLERK: Correct.

6 (A copy of a search warrant was received and marked
7 Exhibit No. 21 in evidence.)

8 BY MR. LUTFY:

9 Q Officer, I ask you to look at Government's pro-
10 posed Exhibit No. 4, and tell me if you can identify it.

11 A Yes, sir, I can.

12 Q How can you identify it?

13 A By my initials that I placed on the object at the
14 time I took it from the Ford Pinto automobile previously
15 mentioned.

16 Q What is that object?

17 A The object is a key to a master padlock.

18 Q Where did you obtain that key?

19 A The key was found on the floorboard of the rear
20 of the driver's side seat in the Ford Pinto automobile
21 previously mentioned.

22 MR. LUTFY: Your Honor, the Government would move for
23 the admission of Exhibit No. 4.

24 THE COURT: Exhibit No. 4 is admitted.

25 (A key was received and marked Exhibit No. 4 in
evidence.)

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1 BY MR. LUTFY:

2 Q Lieutenant Wise, prior to coming here today did
3 you have occasion to try Exhibit 4 to see whether or not it
4 worked in Exhibit No. 3, the lock?

5 A Yes, sir. This was done in the confines of the
6 Crime Lab at the Reno Police Department on the day these
7 searches were conducted.

8 Q And what in fact were you able to conclude?

9 A The key, marked as Item No. 4, does in fact open
10 the padlock, marked as Item No. 3.

11 Q I ask you to look at Government's proposed Exhibit
12 No. 12 and tell me if you can identify it.

13 A Yes, sir, I can.

14 Q How can you identify it?

15 A By my initials that I placed on the object at the
16 time it was located pursuant to the search conducted at the
17 mini-warehouse.

18 Q Did you in fact obtain that -- What did you do
19 with those handcuffs after you found them at the warehouse?

20 A They were marked and packaged to be held as
21 evidence. Later they were examined in connection with
22 another key submitted into evidence to determine if that key
23 would operate them.

24 Q I ask you to look at Government's Exhibit 13 and
25 tell me if you can identify it.

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1 A. Yes, sir, I can.

2 Q. How can you identify it?

3 A. The object is a plastic key folder or case contain-
4 ing several keys, among which is a handcuff key. The handcuff
5 key bears my initials.

6 Q. Did you in fact attempt to see if the key from
7 Government's Exhibit 13 would fit Government's Exhibit 12?

8 A. Yes, I did, and found the key to operate the hand-
9 cuffs in Exhibit 12.

10 MR. LUTFY: Your Honor, the Government would move for
11 the admission of Government's Exhibit No. 12, the handcuffs.

12 MR. VAN HAZEL: No objection.

13 THE COURT: They are received in evidence.

14 (A pair of handcuffs was received and marked
15 Exhibit No. 12 in evidence.)

16 BY MR. LUTFY:

17 Q. I ask you to look at Government's proposed Exhibit
18 No. 19. Tell me if you can identify that item.

19 A. Yes, sir, I can.

20 Q. How can you identify it?

21 A. By my initials that I placed on it at the time
22 that I removed it from the Ford Pinto automobile during a
23 search of that vehicle.

24 Q. You found that in the Ford automobile?

25 A. Yes, sir. The roll of tape was found on the

1 passenger's side dashboard.

2 MR. VAN HAZEL: No objection.

3 THE COURT: Exhibit 19 is admitted.

4 (A roll of tape was received and marked Exhibit No.
5 19 in evidence.)

6 MR. LUTFY: No further questions, your Honor.

7 THE COURT: You may cross-examine.

8 CROSS-EXAMINATION

9 BY MR. VAN HAZEL:

10 Q It is Lieutenant Wise?

11 A That is correct, sir.

12 Q Lieutenant Wise, did you find a blanket in the Ford
13 Pinto?

14 A I don't recall seeing a blanket in the car. If
15 there was, it was not taken as evidence.

16 Q Did you find a coat, a heavy coat, in the Ford
17 Pinto?

18 A I don't recall seeing any coat in the Pinto at that
19 time, either.

20 Q In the search of the mini-warehouse, was a heavy
21 blanket found?

22 A Yes, sir, there was.

23 Q Would you describe it to us?

24 A It was more like an imitation fur spread of some
25 sort, containing long fibers in the form of furry-like

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1 material on the surface of it, rather grayish-brown in color.

2 Q All right. There was an artificial gray fur cover
3 or something?

4 A That is correct, sir.

5 Q It didn't appear -- I mean, it was quite clear it
6 was an artificial fur coverlet rather than a wool blanket,
7 there would be no confusion?

8 A That is correct.

9 Q Did you recover any narcotics in the search of that
10 mini-warehouse?

11 A Yes. Several items were taken or seized in that
12 search that were believed to be narcotics of one type or
13 another, later were subjected to laboratory examination by
14 the Nevada State Narcotics Laboratory.

15 Q Will you tell us what they were, sir?

16 A There was a plastic bag or baggie containing some
17 little amount of a substance of the type and nature, leafy
18 material, believed possibly to be marijuana. There was a
19 small --

20 Q Excuse me, let me ask you each time. Did you get
21 a laboratory report back that confirmed --

22 A Yes, sir.

23 Q -- from the Nevada State Lab?

24 A That is correct, sir.

25 Q That would be Mr. Whalen, is it?

1 A. Yes, Mr. Whalen.

2 Q. Lloyd Whalen?

3 A. Yes.

4 Q. Confirming that it was marijuana?

5 A. Yes, sir.

6 Q. What else did you recover?

7 A. There was a small bottle containing a small piece
8 of hard brownish material believed to be hashish.

9 Q. Did you receive a lab report back that would sub-
10 stantiate that?

11 A. Yes, sir, we did.

12 MR. VAN HAZEL: May I have this marked?

13 BY MR. VAN HAZEL:

14 Q. You don't have a copy of that report in front of
15 you, do you?

16 A. Not here; no, sir.

17 Q. All right. Excuse me. Why don't we proceed.
18 What else did you recover?

19 A. There was a roach or small portion of a cigarette
20 believed to contain marijuana; a roach clip or an object
21 used to handle a small portion of a cigarette. This had a
22 braided strap attached to it and a small, what is known as
23 a hash pipe or smoking pipe. All of these items were sub-
24 mitted subsequently to the laboratory for examination.

25 MR. VAN HAZEL: Permission to approach the witness?

1 THE COURT: Yes.

2 BY MR. VAN HAZEL:

3 Q I place in front of you what has been marked
4 Defendant's Exhibit No. 22, and is that a report prepared for
5 your office by the State Narcotic Lab, Mr. Whalen?

6 A Yes, sir. This is a Xerox copy of that report.

7 Q And did you see the original of that report?

8 A Yes, sir, I did.

9 Q And is that a true copy?

10 A To the best of my knowledge; yes, sir.

11 MR. VAN HAZEL: I would move its admission.

12 MR. LUTFY: No objection, your Honor.

13 THE COURT: Exhibit 22 is admitted.

14 (A copy of a report entitled "Narcotic and Dangerous
15 Drug Submission Form" dated November 30, 1976, was
16 received and marked Exhibit No. 22 in evidence.)

17 BY MR. VAN HAZEL:

18 Q And does that indicate that there was a residue
19 of hasish in that pipe?

20 A The report indicates that the residue was identified
21 as cannabis.

22 Q Would that be hashish or don't you know, sir?

23 A I don't know.

24 Q Now, sir, I place in front of you what has been
25 marked Defendant's Exhibit No. 23, and ask: Apart from the

1 items recovered in the Ford Pinto and at the warehouse,
2 were other items of evidence turned over to you in your
3 capacity as the evidence custodian?

4 A. Yes. There were a number of other items, some of
5 which I did not handle directly but were submitted to the
6 narcotics laboratory, and this report concerns one of those
7 that was booked into evidence; and my evidence officer,
8 Gene Greeland, then transported that to the narcotics lab.
9 It was not subjected to my examination at all.

10 MR. VAN HAZEL: I will ask whether the Government will
11 stipulate whether that item was obtained by Officer Soderblom
12 on his search of the defendant?

13 MR. LUTFY: Yes, the Government will stipulate.

14 BY MR. VAN HAZEL:

15 Q. Now, did you receive back a report, though, from
16 Mr. Whalen and the State Lab as to Item 23?

17 A. Yes, sir, we did.

18 Q. And would you tell the jury what Item 23 was?

19 A. Item 23 was a small clear glass jar containing
20 an unknown reddish powder substance.

21 Q. And what did Dr. Whalen indicate it was?

22 A. His report indicates that the active ingredient
23 was d-lysergic acid diethylamide, which is LSD.

24 MR. VAN HAZEL: Thank you, sir. I move the admission
25 of Exhibit No. 23, your Honor.

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1 MR. LUTFY: I have no objection, your Honor.

2 THE COURT: Exhibit 23 is admitted.

3 (A copy of a report entitled "Narcotic and Dangerous
4 Drug Submission Form" dated November 23, 1976, was
5 received and marked Exhibit No. 23 in evidence.)

6 MR. LUTFY: One question.

7 REDIRECT EXAMINATION

8 BY MR. LUTFY:

9 Q Officer, on Exhibit 23, does the report indicate
10 how much of that LSD was found in there?

11 A No, it doesn't specifically state the amount. It
12 indicates a trace residue.

13 Q Trace residue?

14 A Yes.

15 MR. LUTFY: No further questions.

16 MR. VAN HAZEL: One question.

17 RECROSS-EXAMINATION

18 BY MR. VAN HAZEL:

19 In your experience with evidence, would a trace residue
20 be what would be left after something would be consumed if
21 the remaining residue or powder --

22 MR. LUTFY: Objection. Objection.

23 MR. VAN HAZEL: What ground?

24 MR. LUTFY: I don't see that this witness could answer
25 that. He didn't take it out --

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1 MR. VAN HAZEL: He is an experienced officer, 23 years'
2 experience.

3 THE COURT: You can find out if he has got any experience
4 in this area.

5 BY MR. VAN HAZEL:

6 Q You have had 23 years' experience?

7 A Twenty-one, sir.

8 Q How many years handling evidence?

9 A Most of that 21 years.

10 Q And is it common with a container that contained a --
11 Have you had experience handling narcotics?

12 A Yes, sir, I have.

13 Q And in the gathering of evidence pertaining to
14 narcotics, is it customary that a container in which narcotics
15 have been placed but are no longer present, that there may be
16 a trace or a residue of that?

17 A That is correct, sir. Any substance placed in any
18 type of container, once that substance has been dumped out
19 or otherwise removed, it is quite common to find a trace of
20 residue of whatever was contained in that prior to it being
21 -- or following it being dumped out or removed.

22 Q So based on Dr. Whalen's report, would you conclude
23 that LSD had been in that container that was found in the
24 defendant's pocket?

25 A Yes, sir, I would.

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1 MR. LUTFY: Just one or two questions.

2 REDIRECT EXAMINATION

3 BY MR. LUTFY:

4 Q Does that report, or does your own personal know-
5 ledge tell you how long ago that LSD was in that particular
6 container?

7 A To the best of my knowledge, there is no way to
8 determine that specifically.

9 MR. LUTFY: Thank you. Nothing further.

10 THE COURT: You are excused, Lieutenant Wise.

11 MR. LUTFY: Jerry Adams.

12 GERALD R. ADAMS,

13 produced as a witness on behalf of the plaintiff, and having
14 been first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. LUTFY:

17 Q Would you please state your full name and spell
18 your last.

19 A Gerald R. Adams, A-d-a-m-s.

20 Q Where do you live, Mr. Adams?

21 A South Lake Tahoe, California.

22 Q What do you do for a living?

23 A I am with the Federal Bureau of Investigation.

24 Q In what capacity?

25 A I am a Special Agent assigned to the Resident

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1 Agency at South Lake Tahoe.

2 Q Do you know an individual named Katherine Callaway?

3 A Yes, sir, I do.

4 Q And when did you first meet Miss Callaway?

5 A On December the 14th, 1976.

6 Q What was the purpose for which you met Miss Calla-
7 way?

8 A It was to have her retrace the steps of the events
9 which had occurred on November the 22nd.

10 Q And did you in fact do that with Miss Callaway?

11 A Yes, sir, we did.

12 Q And how was that conducted?

13 A I picked Miss Callaway and her boyfriend, David
14 Wade, up at his apartment. She told me that the incident
15 had occurred at the Ink's Market on Highway 50. We drove
16 to the Ink's Market and from there she directed me.

17 Q Did you bring with you today a map?

18 A Yes, sir.

19 Q Do you have it with you?

20 A You have the other copies.

21 MR. LUTFY: Your Honor, I have prepared and given copies
22 to Mr. Van Hazel, I made photostatic copies today of a
23 certain portion of this map, which, if your Honor would like,
24 I can pass out to the jury or your Honor so that they could
25 follow --

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1 THE COURT: Oh, they are familiar with the area. Just
2 put it on the easel.

3 MR. LUTFY: All right. Your Honor, may the witness come
4 off the stand?

5 THE COURT: You can move the easel up toward the jury.

6 THE CLERK: Exhibit 24.

7 (A map was received and marked Exhibit No. 24 for
8 identification.)

9 THE COURT: Back it up a little bit.

10 You can step down, Mr. Adams, face the court reporter
11 so that he can hear you.

12 THE WITNESS: This gentleman here, sir?

13 (Witness leaves witness stand.)

14 BY MR. LUTFY:

15 Q Please tell the jurors what you did and at whose
16 direction.

17 THE COURT: I guess you didn't hear me. I said will
18 you please get over on the other side and face the court
19 reporter.

20 THE WITNESS: This way?

21 THE COURT: Yes.

22 THE WITNESS: All right. Miss Callaway took me to the
23 Ink's Market, which we have indicated as No. 1. It is
24 located at the corner of Talac and Highway 50 in South Lake
25 Tahoe, California. This is where she was first contacted by

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1 Mr. Garrido.

2 She then was directed by Mr. Garrido, and then she
3 directed me to follow Highway 50 to Ski Run Boulevard, which
4 I have indicated by No. 2.

5 At Ski Run Boulevard, we were to turn right, which we
6 did. And we went to Willow Avenue.

7 We turned left on Willow Avenue, at which time she
8 stated that Mr. Garrido stated that he lived near an apart-
9 ment house there which had a yellow light. It was in the
10 evening and she could see the yellow light.

11 She pulled up to a vacant lot just near the yellow light,
12 at which time he reached over and turned the car keys off,
13 handcuffed her and strapped her neck and head down between
14 her legs.

15 BY MR. LUTFY:

16 Q Now, where is that spot? In which state is that
17 situated?

18 A That is in California on Willow Avenue, South Lake
19 Tahoe.

20 Q And have you shown on that map where the state line
21 is for the California-Nevada border?

22 A Yes, sir. It is right up here on No. 4.

23 Q Is this the route that Miss Callaway directed you
24 to follow when you went with her on this day?

25 A That is correct, sir.

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1 MR. LUTFY: No further questions of this witness, your
2 Honor.

3 CROSS-EXAMINATION

4 BY MR. VAN HAZEL:

5 Q Special Agent Adams, did you prepare any rough
6 notes as a consequence of that interview?

7 A Yes, I did.

8 Q And do you have them with you today?

9 A They should be in that blue thing. I can get them
10 out.

11 MR. VAN HAZEL: May we see that?

12 BY MR. VAN HAZEL:

13 Q And I think you have also prepared a typewritten
14 report from those notes; is that correct?

15 A Yes, I did.

16 Q And do you have that report with you, too?

17 A I have a copy of it.

18 Q Good. If you will put that in front of you.

19 Now, in this account, did Miss Callaway state that she
20 was following Mr. Garrido's directions when she traveled
21 from Ink's Tahoe Market?

22 A Yes, sir.

23 Q All the way?

24 Let me make the question clearer.

25 I understood you to testify on direct that when you

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1 proceeded from Ink's Marketplace, you followed a route that
2 Miss Callaway said she was directed to follow down Highway
3 50 by Garrido.

4 A. Yes.

5 Q. So it was your understanding that the entire trip
6 and direction she was going in was at Mr. Garrido's direction?

7 A. Well, she was going almost the same direction he
8 was. She was heading in that direction anyway.

9 Q. Well, what do your notes reflect? Which way was
10 it, that Garrido directed her or that she was going virtually
11 all the way until they got up near Slalom Run Inn?

12 A. Well, my notes reflect here that this was the
13 route that she and he took. They don't say specifically
14 that he directed her and she only went that way. She was
15 going that way anyway.

16 Q. Well, now, you testified on direct that he directed
17 her. Now, looking at your notes -- you have got both your
18 raw notes and the typed interview. At any time did she state
19 to you that he directed her?

20 A. Yes, sir, I do have it here that he directed her
21 to turn left onto Highway 50 from the Ink's Market.

22 Do you want me to go on with it?

23 Q. Yes.

24 A. Okay. And they drove to Ski Run Boulevard, where
25 she stated that Garrido advised her that he needed to be left

1 off up Ski Run Boulevard, and that he would point out the
2 location when we got there.

3 Q Now, when you were traveling with her, did she
4 point out where her boyfriend lived?

5 A Not on this route; no, sir.

6 Q Did you subsequently accompany her to where her
7 boyfriend lived?

8 A Yes. I had picked them up at the boyfriend's
9 house earlier that day to start this.

10 Q And how close was the boyfriend's house?

11 THE COURT: To what?

12 MR. VAN HAZEL: Thank you, your Honor. That isn't clear.

13 BY MR. VAN HAZEL:

14 Q Was Point 3 on the map here the place where the
15 lot was?

16 A Yes, sir. Yes.

17 Q How close was --

18 A That is just a few blocks away from his place. His
19 house is on Birch and, I don't know, I couldn't tell you
20 exactly how far it is unless we looked at the map.

21 Q Now, when you came to Point 4, did she identify
22 that in any manner?

23 A Is Point 4 the state line?

24 Q Yes. Excuse me.

25 A She said we crossed in front of the casinos and

1 headed up toward a service station which was self-service.

2 Q Now, did she state that she had observed those
3 casinos in crossing the state line?

4 A No, sir, she did not state that.

5 Q Did you also accompany her to that self-service
6 station?

7 A Yes, sir.

8 Q And does that have unleaded gas?

9 A I didn't ask.

10 Q Did you interview the attendant there?

11 A No, sir, I did not.

12 MR. VAN HAZEL: Thank you.

13 THE COURT: Do you have any redirect?

14 MR. LUTFY: No, your Honor.

15 THE COURT: You are excused, Mr. Adams.

16 MR. LUTFY: Vincent Vitale.

17 VINCENT VITALE,

18 produced as a witness on behalf of the plaintiff, and having
19 been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. LUTFY:

22 Q Would you please state your full name and spell
23 your last.

24 A Vincent Vitale, V-i-t-a-l-e.

25 Q Where do you live, Mr. Vitale?

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1 A. In Reno, Nevada.

2 Q. What do you do for a living?

3 A. Criminalist, Washoe County Sheriff's Department.

4 Q. What is a criminalist?

5 A. Scientist who examines physical evidence in legal
6 matters.

7 Q. How long have you been a criminalist?

8 A. Four and a half years.

9 Q. What training or special education have you had
10 relative to becoming a criminalist?

11 A. I have two degrees in science; bachelor's in
12 chemistry, master's in biochemistry. And I have attended
13 seminars, courses and other like teaching sessions in
14 criminalistic matters.

15 Q. What professional societies, if any, do you belong
16 to?

17 A. I belong to the American Society of Criminal
18 Laboratory Directors, the Northwest Association of Forensic
19 Scientists, the Society of Sigma Chi, which is a research
20 society, and the American Chemical Society.

21 Q. And what work experiences have you had?

22 A. In chemistry, I was, prior to this appointment, I
23 was a research laboratory supervisor.

24 Q. And have you ever appeared in court before and
25 testified as an expert?

1 A. Yes, I have.

2 Q. How many times would you estimate that you have
3 appeared in court?

4 A. An estimate would be about 20.

5 Q. Is this your first appearance in Federal Court?

6 A. Yes, it is.

7 Q. All these other appearances have all been in State
8 Court?

9 A. State Courts.

10 MR. LUTFY: Your Honor, the Government would move that
11 this witness is an expert in this particular area as a
12 criminalist.

13 THE COURT: That is for the jury to determine.

14 MR. LUTFY: All right, your Honor.

15 BY MR. LUTFY:

16 Q. On November the 30th, 1976, were you working as a
17 criminalist at that time?

18 A. Yes, I was.

19 Q. Where were you doing that work?

20 A. In my laboratory at the Sheriff's Department.

21 Q. Did you have occasion to perform some tests at
22 that time?

23 A. Yes.

24 MR. VAN HAZEL: Your Honor, if I may be heard.

25 I anticipate this witness will testify as to the results

1 of those tests. As of this date, I do not believe I have
2 been furnished with copies of any reports on tests done by
3 this witness.

4 THE COURT: We will be in recess for fifteen minutes,
5 and please comply with my instructions. After the recess we
6 will convene with the jury absent.

7 (Short recess.)

8 (The following proceedings were held in open court in
9 the absence of the jury:)

10 THE COURT: The record will show the jurors are absent.
11 Do you have a problem?

12 MR. VAN HAZEL: Yes, your Honor. I raised before the
13 recess the question that we were not furnished with any lab
14 reports by this witness.

15 THE COURT: What do you mean by that? How long have you
16 had them in your file?

17 MR. LUTFY: This report is dated January 11th. The
18 25th of January, your Honor, they were in our file, as far
19 as I know. The file was an open file. Mr. Van Hazel said
20 he did not receive one. I don't question that he did not,
21 but it has been in our file.

22 THE COURT: It is the obligation of defense counsel to
23 investigate the Government's file in an open file policy.

24 MR. VAN HAZEL: It is, your Honor. And I made a
25 continuing inquiry of the United States Attorney and also the

1 FBI Agent as to all materials I could obtain.

2 MR. LUTFY: I did not personally supply Mr. Van Hazel
3 with any copies. I told our secretaries that the file was
4 open for Mr. Van Hazel, and any reports in that file he was
5 allowed copies of. There was nothing that was foreclosed
6 from him.

7 THE COURT: Are you suggesting somebody in the United
8 States Attorney's Office misrepresented the situation to you?

9 MR. VAN HAZEL: Inadvertently at best, your Honor. I am
10 not suggesting any kind of deliberate action. I asked if
11 anything new had come in on several occasions. I was told
12 of various things that were given to me as being new. On
13 that representation, I did not go and check and see if they
14 were doing their job. I think it is an inadvertent slipup
15 at this point.

16 THE COURT: The objection is overruled.

17 Bring in the jury.

18 MR. VAN HAZEL: Your Honor, also, the defendant --
19 The U. S. Attorney just advised me that he is about at the
20 close of his case, and my psychiatrist is standing by for
21 this afternoon on the basis that that was the projected time
22 until just now.

23 MR. LUTFY: We had discussed it earlier, your Honor, and
24 had projected it would be up until lunchtime by the time the
25 Government closed its case. It seems that we will be done

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1 before that.

2 THE COURT: All right, we will recess until 1:30.

3 You have your man ready for 1:30.

4 MR. VAN HAZEL: I will endeavor to, your Honor. He is
5 on notice to stand by for 1:30 this afternoon. I assume he
6 is ready.

7 THE COURT: All right.

8 (The following proceedings were held in open court in
9 the presence of the jury:)

10 THE COURT: All the jurors are present.

11 BY MR. LUTFY:

12 Q Mr. Vitale, I ask you to look at Government's
13 Exhibit No. 1. Tell me if you have ever seen that item before.

14 A Yes, I have.

15 Q When did you see that, sir?

16 A In my laboratory.

17 Q For what purpose did you see it?

18 A Examination.

19 Q I ask you to look at Government's Exhibit No. 2.
20 Have you ever seen that item before?

21 A Yes, I have.

22 Q For what purpose?

23 A Examination.

24 Q I ask you to look at Government's Exhibit No. 9,
25 9-A. Inside 9 will be 9-A and 9-B. Have you seen 9-A before?

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1 A. Yes, I have.

2 Q. For what purpose, sir?

3 A. Examination.

4 Q. And 9-B?

5 A. Also examination.

6 Q. I ask you to look at Government's Exhibit 15-D.

7 I believe it is that -- right in your hand right now. Have
8 you seen that item before?

9 A. Yes, I have.

10 Q. For what purpose?

11 A. Examination.

12 Q. I ask you to look at Government's Exhibit 16.

13 16 or 16-A.

14 I am sorry, sir.

15 Have you seen that item before?

16 A. Yes, I have.

17 Q. For what purpose?

18 A. Examination.

19 Q. I ask you to look at Government's Exhibit 17.

20 A. I don't have it in front of me, Counsel.

21 Q. Yes.

22 A. Yes.

23 Q. For what purpose did you see that?

24 A. Examination.

25 Q. Lastly, I ask you to look at Government's Exhibit

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1 No. 11, starting with A. Have you seen that before?

2 A. Yes, I have.

3 Q. For what purpose?

4 A. Examination.

5 Q. And Government's Exhibit 11-B?

6 A. I have seen this, also, for examination.

7 Q. Government's 11-C?

8 A. And this, also for examination.

9 Q. And 11-D?

10 A. I have examined this, also.

11 Q. Can you tell me for what purpose you examined
12 these items? Did you examine all of these items together or
13 at different times?

14 A. At one time; yes.

15 Q. For what purpose were you making this examination?

16 A. To determine -- some of these are exemplars or
17 known samples, others are unknown. We examined the clothes
18 and belt for hairs which might be contained in the material.

19 Q. What would you be looking for with hair, sir?

20 What kind of an examination could you make of hair?

21 A. You make a comparative examination.

22 Q. What does that mean? Would you explain, please?

23 A. You take two samples of hair, one known, one
24 questioned, and place them on a special microscope. This is
25 after they are being mounted in slides, regular biological-type

1 slides. They are placed side by side on the special micro-
2 scope. You have two images which are focused into eyepiece.
3 We have the known on one side, the questioned on the other,
4 then a side-by-side comparison of various physical character-
5 istics in the hair can be made.

6 Q Did you in fact conduct that kind of examination?

7 A Yes, I did.

8 Q Did you prepare certain charts or other items that
9 are in front of you, that I believe are Government's Exhibits
10 25, 26, 27 and 28?

11 A Yes.

12 Q Can you tell us what examination you did, sir?

13 A As I mentioned before, a comparative examination
14 of specimen hairs, which were from a known source, together
15 with those gathered from certain items of evidence here.

16 Q Can you tell us which known source hairs you com-
17 pared against which other hair sources?

18 A Yes, I can. The Exhibits 11-A through 11-D
19 represent the samples of head hair from Miss Callaway. Those
20 were used as known samples. There is also a known sample,
21 which was taken at the hospital, of pubic hair from the same
22 lady. These were used as exemplars or known samples to check
23 against the hairs derived from the other items.

24 Q And that pubic hair sample that you are talking
25 about is known, Government's Exhibit No. 9; is that correct,

1 sir?

2 A. Yes, it is.

3 Q. Now, what did you compare these known hair samples,
4 Government's Exhibits 11-A, B, C and D, what did you compare
5 them to or with?

6 A. Certain hairs which were found on the shirt and on
7 this black web belt.

8 Q. Did you make any comparisons between those known
9 hair samples and the item which is Government's Exhibit 16?

10 A. Yes, I did.

11 Q. Would you first tell us what kind of examination
12 you did relative to that Government's Exhibit 16, which is
13 the tape?

14 A. Tape. The tape was first examined to see if there
15 were in fact any hair adhering to this tape.

16 Q. Did you conduct these examinations yourself, sir?

17 A. I conducted them or my assistant conducted them in
18 my presence.

19 The tape band that was found had about four hairs on
20 it. These hairs were then compared with the known head
21 hairs in Exhibit 11.

22 Q. And how did you conduct that comparison?

23 A. By mounting them on slides and examining them under
24 the special microscope, as I previously mentioned.

25 Q. What, in fact, did you conclude as a result of this

1 examination relative to the Government's Exhibit 16, which
2 is the tape, with -- sorry -- with which Government's Exhibit
3 did you compare Exhibit 16?

4 A. With the hairs contained in Exhibit 11.

5 Q. And what were you able to find, sir?

6 A. I was able to conclude that the hair which I
7 examined as the unknown could have come from Miss Callaway's
8 head.

9 Q. Did you make -- you also said that you examined
10 Government's Exhibit No. 9, which is the known pubic hair
11 of Miss Callaway.

12 A. Yes.

13 Q. And with which item, or which exhibit did you
14 compare them?

15 A. That was from some sort sections of hair taken from
16 the scissors.

17 Q. And as a result of your comparison, what were you
18 able to conclude?

19 A. That certain sections of hair found on the scissors
20 could have been from Miss Callaway.

21 Q. Did you make a comparison with Government's Exhibit
22 1, which is that belt, with any of the known hair samples?

23 A. Yes.

24 Q. And with which known hair samples?

25 A. With these contained in Exhibit 11.

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1 Q That is from the head?

2 A From the head.

3 Q What were you able to conclude as a result of
4 that examination?

5 A That hairs, derived from this black belt and
6 mounted, compared favorably with those shown in Exhibit 11
7 and could have come from Miss Callaway's head.

8 Q Can you tell us what you have there as Government's
9 proposed Exhibits 25 through 28?

10 A These are the actual slides that were mounted.

11 Q Could you open one, please.

12 Are these sealed?

13 A Yes, they are.

14 Q Have they been sealed since you conducted this
15 test?

16 A They have been in my possession, sealed in my
17 evidence locker.

18 Q Which exhibit number are you opening now, sir?

19 A No. 25.

20 Q Will you tell us what that is?

21 A Consists of two slides labeled "Hair Samples," and
22 they are labeled with the origin and various case numbers
23 and a slide number.

24 Q And where did you get these samples?

25 A These were derived from the black web belt.

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1 Q And are they compared with a known hair sample?

2 A Yes, they were.

3 Q What hair sample were they compared with?

4 A They were compared with a known sample contained
5 in these other file folders.

6 Q Can you open that and tell us what you compared
7 them with, exactly?

8 Were these exhibits prepared by you?

9 A By me or under my direction and supervision.

10 MR. LUTFY: Your Honor, the Government would move for
11 the admission of Government's Exhibits 25, 26, 27 and 28 at
12 this time.

13 MR. VAN HAZEL: What, exactly, are Exhibits --

14 THE COURT: I don't know what 26 and 27 are.

15 BY MR. LUTFY:

16 Q Could you explain what Government's 26 is?

17 A 26 is a folder containing two slides.

18 Q What are those slides of?

19 A These slides are of hair from the black belt.

20 THE COURT: So was 25; is that right?

21 THE WITNESS: Yes, sir.

22 BY MR. LUTFY:

23 Q Tell us what Government's proposed Exhibit 27 is.

24 A They are mounted specimens of known and questioned
25 hairs.

1 Q And do you know from what part or which known hairs
2 they are?

3 A Yes. They are all labeled.

4 Q What about Government's proposed Exhibit 28, sir?
5 What is that?

6 A That is all mounted slide specimens of known and
7 questioned hairs.

8 Q These are known and questioned hairs relative to
9 the previous Government's documents that were in front of
10 you?

11 A Correct.

12 Q Looking at Government's Exhibit 25, can you tell us
13 what that is and explain it, please.

14 A These are two slides, each of them having a cover
15 slip and a mounting median to hold the hair sample which was
16 derived from, in this instance, the black belt. These are
17 the questioned hairs which are examined in conjunction with
18 the known sample.

19 Q What did you compare them with, sir?

20 A I compared them with known hairs of Miss Callaway.

21 Q Are they contained anyplace there?

22 A They are here. They are my slides 1 through 10.

23 Q And 1 through 10 on which exhibit, sir?

24 A Exhibit 28.

25 Q And what were you able to conclude as a result of

1 these comparisons?

2 A. That the hairs are similar enough to have had a
3 common origin.

4 Q. That is 25 with which?

5 A. Yes, 25 with slides numbered 1 through 10 contained
6 in Exhibit 28.

7 Q. What about Government's Exhibit 26? What is that,
8 sir?

9 A. 26 are also hairs from the black belt, mounted in
10 the same manner.

11 Q. What did you compare them with?

12 A. With the known head hair samples, slides 1 through
13 10.

14 Q. What were you able to conclude as a result of
15 that?

16 A. That they also were in common with the hairs that
17 are known and could have come from the same source.

18 Q. What is contained on Government's Exhibit 27?

19 A. 27 are various hair mounts from items of clothing.

20 Q. Do you know what items of clothing that is from?

21 A. Yes, they are. They are from a pair of trousers
22 and a shirt and a shirt.

23 MR. LUTFY: Your Honor, the Government would move for
24 the admission of Government's Exhibits 25, 26 and 28 and not
25 27 at this time.

1 MR. VAN HAZEL: Permission to voir dire?

2 THE COURT: Yes.

3 BY MR. VAN HAZEL:

4 Q Mr. Vitale, on your direct testimony I understood
5 you to say several times, "Possibly, could be -- "

6 THE COURT: That is not voir dire examination; it is
7 cross-examination.

8 MR. VAN HAZEL: All right.

9 THE COURT: If you want to question him about the founda-
10 tion for these exhibits, you may.

11 BY MR. VAN HAZEL:

12 Q Mr. Vitale, are some of the exhibits duplicates?

13 A I don't quite understand.

14 Q Yes, all right. When we talk about -- is it 25,
15 26 --

16 MR. LUTFY: And 28.

17 BY MR. VAN HAZEL:

18 Q -- and 28, are any of them duplicates of the same
19 thing? In other words, a hair exemplar and a hair from a
20 black belt, do they appear on more than one of those slides?

21 A Yes.

22 THE COURT: The same hair?

23 THE WITNESS: No, not the same hair. They are -- usually
24 only one hair is mounted, only one per slide. If there are
25 several hairs found on an item, they are mounted separately.

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1 BY MR. VAN HAZEL:

2 Q How do you make your comparison?

3 A With the comparison microscope.

4 Q You need a comparison microscope?

5 A Yes.

6 Q What can a person observe then on the slide with
7 the naked eye?

8 A With the unaided eye?

9 Q Yes.

10 A Very little. You can see it here as it is. It
11 just looks like a hair, a thread.

12 Q Are you able, by hair comparison with that micro-
13 scope, to make positive personal identification?

14 THE COURT: That is cross-examination.

15 MR. VAN HAZEL: Nothing further, your Honor.

16 THE COURT: Exhibits 25, 26 and 28 are received in
17 evidence.

18 MR. LUTFY: Thank you, your Honor.

19 (Mounted slide specimens of known and questioned
20 hairs were received and marked Exhibits Nos. 25,
21 26 and 28 in evidence.)

22 MR. LUTFY: No further questions of this witness, your
23 Honor.

24

25

CROSS-EXAMINATION

BY MR. VAN HAZEL:

Q Did you make a film of what you observed under the microscope?

A No.

Q Have you any way of demonstrating to the jury on what you base your comparisons?

A Only if we had the microscope here.

Q And you don't have your microscope?

A No.

Q Is it possible to use hair comparisons as a basis for positive personal identification?

A Only in very rare instances.

Q Why is that, sir?

A The characteristics which we observe are common to other people.

Q So it does not have the certitude that we associate with things like fingerprints?

A No.

Q Now, did you also make a comparison -- Strike that. Did you also screen pubic hair that was combed from the victim to see if there were any foreign pubic hairs?

A Yes, I did.

Q What did you find?

A Did not find any foreign hair in that comb.

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1 Q What is the purpose of that comparison or examina-
2 tion?

3 A The purpose is to determine if during physical con-
4 tact hairs were transferred from one person to another.

5 Q Now, you have handled prior rape cases?

6 A Yes, I have.

7 Q Is it common to find a foreign pubic hair of the
8 assailant in the victim?

9 A In my experience, no.

10 Q Why do you make the comparison?

11 A You make an examination at all times to determine
12 whether or not there is a foreign hair. Regardless of the
13 fact that nine out of ten may not, that tenth one must be
14 examined, also.

15 Q You customarily then check the pubic hair sample
16 from the alleged assailant to see if you can come upon a
17 foreign hair?

18 A Yes, we do.

19 Q Or a victim's hair, even?

20 A True.

21 Q Can you make comparisons of pubic hair the same
22 way we do head hair?

23 A Yes. The same principles are involved.

24 Q The same principles are involved?

25 A Yes.

1 Q Did you detect, in the sample of pubic hair taken
2 from the defendant, Miss Callaway's pubic hair?

3 A No, I did not.

4 Q Did you find any foreign hair?

5 A No foreign hair.

6 MR. VAN HAZEL: Thank you.

7 MR. LUTFY: No further questions, your Honor.

8 That is the Government's case.

9 THE COURT: With respect to examination comparison of
10 hairs, are the results that you reach primarily that you
11 could make a positive exclusion of a hair as being compared;
12 is that right?

13 THE WITNESS: You can exclude, yes, based on color,
14 structural form, the details that are noted under the micro-
15 scope.

16 THE COURT: But so far as any affirmative conclusion
17 that the hairs are comparable, that would mean that they are
18 similar?

19 THE WITNESS: They are similar; yes, your Honor.

20 THE COURT: All right. You are excused.

21 MR. LUTFY: That is the Government's case, your Honor.

22 THE COURT: I understand, Mr. Van Hazel, you won't be
23 ready to proceed until 1:30 this afternoon; is that correct?

24 MR. VAN HAZEL: That is correct, your Honor.

25 THE COURT: And that is because you were informed that

1 the Government's case would consume the balance of the morn-
2 ing?

3 MR. VAN HAZEL: Yes, your Honor. I didn't learn differ-
4 ently until the recess. The jury was already back.

5 THE COURT: This trial is continued until 1:30 this
6 afternoon. Please follow my instructions.

7 (The jury retired from the courtroom and the following
8 proceedings were held in open court in the absence of the
9 jury:)

10 THE COURT: It occurred to me on the way out that we
11 ought to take care of your problem now.

12 MR. VAN HAZEL: Your Honor, I requested permission of
13 the Court to put on the record at this time, before proceed-
14 ing with the defense, the fact that Mr. Garrido and I have
15 conferred about trial strategy --

16 THE COURT: You listen to this, Mr. Garrido, very care-
17 fully.

18 MR. GARRIDO: All right.

19 MR. VAN HAZEL: -- both before I brought him in on the
20 motion to withdraw his not guilty plea and since then.

21 The substance of that advice has been that in the course
22 of presenting the line of defense, that I understand the
23 defendant is raising, of insanity or lack of specific intent,
24 I am afraid, or I have cautioned my client that if he takes
25 the stand, which would almost seem necessary to sustain that

1 defense of not knowing that what he did at the time was
2 morally wrong, that he exposes himself to incrimination on
3 outstanding charges in the State of Nevada, charges which I
4 believe are pending in the State of California, carrying
5 major penalties.

6 THE COURT: Let's discuss first the possibility of the
7 introduction by the Government of other similar acts.

8 MR. LUTFY: Well, if he takes the stand, I am sure going
9 to want to go into that, your Honor.

10 THE COURT: On what basis do you think you are entitled
11 to go into it?

12 MR. LUTFY: We believe we can show that this -- the
13 defense is coming up with the insanity or some kind of
14 defense based on LSD abuse, as I understand it, that this
15 man was in some kind of fantasy, could not differentiate
16 between fantasy and reality. We think by pointing to and
17 questioning the defendant about prior specific acts prior
18 to this incident, we can show he is following a pattern of
19 attempting to kidnap and attempting to, and raping, other
20 women.

21 THE COURT: How does that relate to his proposed defense?

22 MR. LUTFY: Because I think that the jury has a right
23 to be able to see that the fact that the defendant is claiming
24 that here in this one instance he couldn't differentiate
25 between reality --

1 THE COURT: How do you know he is claiming it in this
2 one instance?

3 MR. LUTFY: I don't know. I don't know what he is claim-
4 ing. I don't really know at this point anything other than
5 the fact that I have been served with a notice of some kind of
6 a basis like that. And we do have evidence, we do have infor-
7 mation of other acts by this defendant.

8 THE COURT: On what basis is that type of evidence ever
9 admissible?

10 MR. LUTFY: I think it is admissible --

11 THE COURT: On the face of it it is prejudicial, so you
12 have to have some reason to offer it.

13 MR. LUTFY: I think to show that the fact that he has
14 the intent, that he had the intent prior, and this is a
15 consistent act with prior intent to --

16 THE COURT: How does it bear on intent, if he claims
17 that he has been using LSD for four years, and that he is
18 spaced out, or whatever they call it?

19 THE COURT: I don't know how often he has used it, when
20 he has used it, what the circumstances were. I don't know
21 whether or not he used it then. We have no evidence at this
22 point that he used it during the course of this event.

23 THE COURT: I know it, but we are talking about possible
24 defenses and what the defendant should do about it, and
25 apparently one of the elements to be considered is whether

1 he should be fearful that you can offer evidence of other
2 similar acts. And it is not admissible just because it is a
3 similar act close in time; there has got to be some basis
4 for it. I don't know what he is going to testify to.

5 MR. LUTFY: Neither do I. We think --

6 THE COURT: If he admits the offense, there is no issue
7 of identity.

8 MR. LUTFY: No.

9 THE COURT: I don't mean the offense, but if he admits
10 that he consorted with Miss Callaway in the way she described,
11 there wouldn't be any issue of identity.

12 It seems to me that if his only defense is that he didn't
13 know what he was doing, it is equally arguable that he didn't
14 know what he was doing a month before.

15 MR. LUTFY: We can also show a similar pattern of
16 behavior in a prior offense relative to the handcuffs, the
17 whole thing there. I think, again, it goes to intent. I
18 think it can show the jury -- the jury has the right to see
19 that and determine whether or not this man was fantasizing
20 one time or whether or not this was a thought-out plan of
21 kidnapping and raping women.

22 I am not stating at this time that the Government
23 intends to go into that; I just want the opportunity to be
24 able to, if we so desire to, on cross-examination or rebuttal.

25 THE COURT: You can offer it, but you are going to offer

1 it in the absence of the jury and not mention anything like
2 that in the presence of the jury until you obtain a ruling.

3 I presume the issue now before the Court is whether Mr.
4 Garrido is going to testify in his own behalf.

5 Mr. Garrido, I want to advise you that that is a
6 decision you have to make.

7 MR. GARRIDO: Yes, your Honor.

8 THE COURT: In the final analysis, you can listen to Mr.
9 Van Hazel and consider his advice, but it has to be your
10 decision as to whether you are going to testify or not.

11 At the moment the Government has rested, and the only
12 thing the jury has to consider is the testimony of Miss
13 Callaway and the corroborating circumstances.

14 You have indicated that you intend to present a defense
15 of drug abuse and that you are not in control of yourself,
16 and that you should not be held legally responsible for your
17 conduct because of it.

18 I don't know if there is any way that you can prove the
19 extent of your drug abuse without testifying yourself. You
20 might consider that. But if in order to establish the extent
21 of your drug abuse, if that is a defense that you want to
22 present, that would seem to be the only way you could present
23 it. So you will have to discuss that with your counsel.

24 I don't know whether these horrible side effects that
25 Mr. Van Hazel envisions would happen or not. I have indicated

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1 somewhat that I think that the other evidence might be
2 irrelevant, but I haven't decided.

3 MR. VAN HAZEL: Can I seek clarification, your Honor?

4 THE COURT: Yes.

5 MR. VAN HAZEL: When we refer to other crimes, I think
6 the U. S. Attorney addressed himself, as I did, to crimes
7 not concerned -- attendant to this particular kidnap that
8 preceded this. The Court --

9 THE COURT: Oh, the other thing you were concerned about
10 is that he might incriminate himself in connection with
11 certain unprosecuted offenses.

12 MR. VAN HAZEL: I also have a concern, your Honor, with
13 the rape count, that the Court has held, under its ruling
14 of relevance, and has admitted testimony on --

15 THE COURT: Yes.

16 MR. VAN HAZEL: I don't know the distinction the Court
17 would make, if any, between, say, cross-examination going
18 not only to the rape count but to the unnatural act count,
19 too, which so far has stayed out of this courtroom.

20 THE COURT: There wasn't any testimony on direct examina-
21 tion regarding any unnatural act.

22 MR. VAN HAZEL: No, there was not. I certainly don't
23 intend to go into that area, if I put the defendant on.

24 THE COURT: That would be ruled out. Although, proof
25 of it, it seems to me, would be more consistent with your

1 defense than leaving it out. I don't know just what it is.

2 MR. VAN HAZEL: It is a dilemma that I have with the
3 jury, your Honor.

4 THE COURT: I have to tell you this, also, Mr. Garrido:
5 that if you decide to take the stand and testify, any testi-
6 mony that you give can be used in any criminal prosecution.
7 You are not testifying under any form of immunity whatsoever.

8 Do you understand that?

9 MR. GARRIDO: Yes, your Honor.

10 THE COURT: All right. You will have to make your own
11 decision.

12 MR. VAN HAZEL: Thank you, your Honor.

13 THE COURT: We will be in recess.

14 (At the hour of 11:30 o'clock a. m. the Court took a
15 recess until 1:30 o'clock p. m.)

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1 Reno, Nevada, Thursday, February 10, 1977, 1:30 o'clock p. m.

2 ---o0o---

3 THE COURT: The record will show the defendant and
4 counsel and all the jurors are present.

5 You may call your first witness, Mr. Van Hazel.

6 MR. VAN HAZEL: Thank you, your Honor.

7 I will waive any opening argument at this point.

8 THE COURT: Oh, all right.

9 MR. VAN HAZEL: To save the jury time, and also all of
10 us.

11 Gregory Lyle Sheppard.

12 GREGORY LYLE SHEPPARD,
13 produced as a witness on behalf of the defendant, and having
14 been first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. VAN HAZEL:

17 Q Would you please state your name, residence and
18 occupation, sir.

19 A My name is Gregory Lyle Sheppard. My residence is
20 403 Mill Street, and I am a carpenter by trade.

21 Q How do you spell your last name, for the record?

22 A S-h-e-p-p-a-r-d.

23 Q Would you state your age, sir?

24 A Twenty years old.

25 Q Do you know the defendant, Mr. Garrido, in this

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1 A. Yes, I do.

2 Q. Would you, for the record, identify him, if you see
3 him in the courtroom?

4 A. Sitting over here.

5 Q. All right. Would you describe his clothing?

6 A. Wearing a blue suit top, brown tie, striped shirt.

7 MR. VAN HAZEL: May the record show that he identified
8 the defendant?

9 THE COURT: Yes.

10 BY MR. VAN HAZEL:

11 Q. How long have you known Mr. Garrido?

12 A. Approximately two years.

13 Q. And how did you first become acquainted with him?

14 A. I used to be in business and he was a customer in
15 my store.

16 Q. Would you tell us what that business is?

17 A. Shep's Discount Liquor.

18 Q. Where was that located?

19 A. On the corner of 79 South Wells Avenue.

20 Q. Was that a family-owned store?

21 A. Yes, my mother and I.

22 Q. And did Mr. Garrido come in as a customer?

23 A. Yes.

24 Q. Did you subsequently become a friend of his?

25 A. Yes, I did.

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1 Q Do you have any common interests with him?

2 A Well musician, and we had played a lot together.

3 Q Mr. Garrido is a musician?

4 A Yes, he is.

5 Q What instrument or --

6 A He plays bass guitar.

7 Q Now, during the two years that you knew him, did
8 you ever observe him using any drugs?

9 A Yes, I have.

10 Q Would you tell us -- and by "drugs," I mean some-
11 thing other than aspirin. I am talking about narcotics or
12 other types of drugs of that character.

13 A Yes.

14 Q What types of drugs have you observed Mr. Garrido
15 using?

16 A I have seen him taking LSD, d-lysergic acid diethyl-
17 amide; pot, cocaine, downers, uppers.

18 Q All right, sir. How often would you see him? At
19 what intervals during the two years? How frequently?

20 A Well, the first year I met him I hadn't seen him
21 that much, he was just a customer. The second year I met
22 him, I would see him about once every two weeks.

23 Q All right. Seeing him every two weeks, how often --
24 how long would you be with him on those occasions?

25 A Well, most of the time we would be playing or

1 something, playing our guitars together.

2 Q At the time he was playing, was he also administer-
3 ing drugs to himself?

4 A Yes.

5 Q Do you have any idea of the type of dosage of LSD
6 he would take?

7 Do you understand the question?

8 A Yes, I do. I would say one or two at a time,
9 sometimes maybe three. It just depended on what mood he was
10 in.

11 THE COURT: Three what?

12 THE WITNESS: Three tabs of acid.

13 THE COURT: Three what?

14 THE WITNESS: Tabs of LSD.

15 BY MR. VAN HAZEL:

16 Q How do they come, for my clarification and the
17 jury and the Judge?

18 A Comes in pill form, capsule form, it comes in paper,
19 comes in sugar cubes. Those are the most common forms that
20 LSD does come in.

21 Q Is it usually taken orally?

22 A Yes.

23 Q Put in your mouth and swallow?

24 A Yes, it is.

25 MR. VAN HAZEL: Nothing further.

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1 THE COURT: You may cross-examine.

2 MR. LUTFY: Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MR. LUTFY:

5 Q Do you know whether or not LSD has different
6 strengths?

7 A Yes, it does.

8 Q Could you have different strengths within, let's
9 say, in a sugar cube? You say it comes in sugar cube form?

10 A Right. It would be stronger in sugar cubes because
11 it is dropped in a pure form on the sugar cube.

12 Q Is that something you make up yourself?

13 A No, it is not.

14 Q Something that you buy?

15 A Something you would buy; yes.

16 Q Is it possible that you can have different strengths
17 within sugar cubes?

18 A Yes, it is.

19 Q When you saw the defendant taking this LSD, did
20 you, of your own knowledge, know the strength of the LSD
21 that he was taking at that time or those times that you saw
22 him?

23 A I wasn't aware -- I was aware of what kind it was.
24 Yes, I was.

25 Q You were aware --

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1 A. It was fairly strong. It was a blotter-type LSD.

2 Q. Blotter type?

3 A. Yes. That would be on a piece of paper.

4 Q. And the blotter type of LSD, there are different
5 strengths in that; is there not?

6 A. Yes, there is.

7 MR. LUTFY: No further questions.

8 MR. VAN HAZEL: Nothing further of this witness, your
9 Honor.

10 THE COURT: You are excused, Mr. Sheppard.

11 MR. VAN HAZEL: The defendant, Phillip Craig Garrido.

12 PHILLIP CRAIG GARRIDO,
13 defendant herein, produced as a witness in his own behalf,
14 and having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. VAN HAZEL:

17 Q. Would you please state your full name for the
18 record.

19 A. Phillip Craig Garrido.

20 Q. And what is your occupation, sir?

21 A. Musician.

22 Q. How old are you, sir?

23 A. Twenty-five.

24 Q. Are you married?

25 A. Yes, sir.

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1 Q Happily?

2 A Very happily.

3 Q Do you find your wife attractive?

4 A She is beautiful.

5 Q Mr. Garrido, how long have you been using drugs?

6 And by that I mean either hallucinogens, like acid or
7 cocaine, or marijuana?

8 A When I graduated high school, within that first
9 month after graduation is when I was first introduced into
10 marijuana; and within a month after that, I was introduced
11 to LSD.

12 Q You were arrested for that, possession of marijuana,
13 weren't you?

14 A In 1969, and also with LSD.

15 Q Have you had occasion to use marijuana and LSD
16 from then until the present?

17 A Yes.

18 Q What other drugs besides marijuana and LSD have
19 you used?

20 A Cocaine has been one of the more frequent drugs
21 I have used. LSD has been the most frequent. On occasion
22 I have taken downers and uppers, but not very often.

23 Q And downers and uppers are the jargon for -- an
24 upper is an amphetamine?

25 A Yes.

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1 Q. Like a diet pill?

2 A. Yes, sir.

3 Q. And a downer is a barbiturate, like Seconal?

4 A. Exactly; Seconal.

5 Q. Or Tuinal or something like that?

6 A. Yes.

7 Q. Did you ever take these drugs in conjunction with
8 each other? Did you ever taken more than one drug on
9 occasion at the same time?

10 A. Yes. I have taken -- whenever I take LSD, I also
11 smoke marijuana with it; and whenever I have had the chance,
12 I have snorted cocaine, also at the same time. It is a very
13 expensive drug, so that the occasion is only off and on.

14 Q. Apart from marijuana, have you ever had hashish or
15 hash?

16 A. Yes, I have, quite frequently. Mostly whenever it
17 was available.

18 Q. Now, will you tell us, in the last two years with
19 what frequency you were taking LSD?

20 A. In the amounts or in the period of times?

21 Q. Yes. Let's go first: Did you take it every day or
22 would you take it every month, or what?

23 A. No. Usually I would -- I would always try to get
24 it; and if I didn't have it, it would be no more than a week.
25 But when I had it, I would take it between two-day intervals.

1 And then my dosage would increase. Because of taking it,
2 you get immune to it in a sort of a way where you have to
3 take more each time, if it is too frequent.

4 Q Now, in what form were you taking it? Let's just
5 hold it down to the last two years.

6 A Mostly pill form, because most of the other forms
7 are not too frequently seen. They are seen, though.

8 Q All right. Now, you heard that testimony about
9 coming in different strengths. Is there any way you can
10 determine the strength of what you were taking?

11 A Yes. By taking it and sampling it, then I can
12 determine it. Not by technical means, but by my own means
13 of how strongly it affected me.

14 Q What is the most you have ever taken on an
15 occasion in the last two years?

16 A I have taken up to ten hits.

17 Q Ten hits?

18 A Yes.

19 Q What is it a hit?

20 A A pill or a paper, one tablet.

21 Q What time span was this consumed in?

22 A All at once.

23 Q You don't mean over a period of hours?

24 A No. I would take it all at once. All ten at once.

25 Q Have you ever OD'd or whatever the proper expression

1 is, overdosed yourself?

2 A. The only time that I have ever had any bad trips
3 is in my younger part of my experiences with LSD. As far
4 as frightening experience.

5 Q. Does LSD act as a sexual stimulant on you, if
6 you understand me?

7 A. Beyond a doubt, it does.

8 Q. Does cocaine?

9 A. Beyond a doubt.

10 Q. Which more?

11 A. LSD.

12 Q. With LSD, what type of physical effect or reactions
13 do you have? Do you sweat?

14 A. Yes. When I first take it, within the first half-hour
15 you start to get off, and then I start to get body temperatures,
16 and it gets warm and you can get chills, too. Right within
17 the next minute, you could be chilled. And I get dry mouth.
18 I usually always become nervous.

19 Q. Is there anything that you have gotten into the
20 habit of taking when you have a dry mouth?

21 A. I usually have always something to drink, such as --

22 Q. Liquor?

23 A. Not too often, no.

24 Q. What is the usual?

25 A. Mostly just Seven-Up, Coke, some type of beverage.

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1 Q Now, turning your attention to the time span around
2 November 22nd, 1976.

3 A Yes, sir.

4 Q How long before that date -- how long before that
5 had you taken cocaine in any dosage?

6 A Within a two-week period.

7 Q Can you be more specific on that? Do you know?

8 A Well, it was definitely within the two-week period,
9 because -- the exact day, no, because there is involvement
10 of a few days. Because usually the only time when I would
11 get cocaine is when I would have the money in excess, and I
12 would buy quite a bit, a large amount, which I would put
13 myself up on a cocaine high for two or three days, and some-
14 times even without sleep to the manner of burning out my
15 whole body.

16 Q How short a time span before November 22nd had you
17 taken LSD in some form?

18 A A week.

19 Q On the date, November 22nd, 1976, did you take
20 cocaine?

21 A On the 22nd?

22 Q Yes.

23 A No, sir.

24 Q Did you take LSD?

25 A Yes, sir.

1 Q How much?

2 A Four hits.

3 Q Where did you acquire that LSD?

4 A From South Lake Tahoe.

5 Q Now, turning back to the time that you testified to
6 already when you started using drugs with some greater
7 frequency, which was around '68, '69 -- was that your testimony?

8 A '69 is when I started. By the year '70 I was con-
9 suming very much.

10 Q At that point in time in your life, were you also
11 suffering from certain sexual fantasies?

12 MR. LUTFY: Objection, your Honor; very leading question.
13 No evidence he is suffering from any sexual fantasies.

14 MR. VAN HAZEL: There was testimony by Miss Callaway --

15 THE COURT: The objection that it is leading is overruled.

16 BY MR. VAN HAZEL:

17 Q I will ask the question again. Back in '68, '69,
18 at the time you started taking drugs, was this coupled with
19 any sexual fantasies or behavior?

20 A Yes.

21 Q What was that?

22 A Well, the effect that I was having with sexual
23 fantasies was to be able to masturbate myself while I was
24 either watching a movie or looking at magazines.

25 Q Were these movies in the privacy of your home?

1 A. No, sir.

2 Q. Where were the movies?

3 A. Drive-in.

4 Q. What would you do at a drive-in theater? You have
5 already said masturbate. Would you do that in an automobile
6 in the theater?

7 A. Yes, sir. I would take my automobile and I would
8 put up on the side windows two towels, some type of something
9 to keep anybody from seeing me, and I would sit in the back
10 seat.

11 Q. You also mentioned you did this when you were look-
12 ing at magazines. Where did this occur?

13 A. This occurred in the privacy of my own home.

14 Q. What type of magazines, would you tell the jury?

15 A. Pornographic of all types.

16 Q. Did that include books or --

17 A. No, they were all magazines.

18 Q. All magazines. All with pictures?

19 A. Yes; Penthouse, Oui, Playgirl -- Playboy, I mean.

20 Q. Did you acquire any pornographic films to look at
21 in the privacy of your own home?

22 A. I did within the last two years. Two years ago I
23 started purchasing some.

24 Q. Did you engage in the same type of activity when
25 you watched those films, that you described already?

1 A. Yes.

2 Q. Now, as far as public places, did you engage in
3 that activity -- I am talking about masturbation. Did you
4 engage in that activity in any other public places?

5 A. You mean masturbation?

6 Q. Yes.

7 A. Yes, I did.

8 Q. Where?

9 A. Well, I have done it in restaurants, bathrooms,
10 lavatories, different type of amusement places, such as a
11 bar, something like that.

12 Q. Have you done it in other public places?

13 A. Yes.

14 Q. Where?

15 A. I believe I understood you right. I have done it
16 in not an actual public place of business, but I have done it
17 in public places.

18 Q. Have you done it in residential areas?

19 A. Yes.

20 Q. What were you doing in the residential area at the
21 time?

22 A. Looking into windows.

23 Q. Windows of homes?

24 A. Yes, sir.

25 Q. What were you looking at?

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1 A. Women.

2 Q. What were the women doing?

3 A. They were either unclothed or partly clothed.

4 Q. And you would masturbate yourself then?

5 A. Yes.

6 Q. Now, did you do it on any other -- like on a public
7 street while you were watching something or anything?

8 A. Yes, I did.

9 Q. Could you tell the jury where?

10 A. I have done it by the side of schools, grammar
11 schools and high schools, in my own car while I was watching
12 young females.

13 Q. How old were they, would you guess?

14 A. From seven to ten.

15 Q. Did you ever expose or exhibit yourself on those
16 occasions?

17 A. A few times.

18 Q. What would you do?

19 A. Open the car door.

20 Q. How would you be dressed?

21 A. Pants down to my knees.

22 Q. Now, Mr. Garrido, when you would masturbate some-
23 times in the privacy of your home, were there certain types
24 of pictures that increasingly turned you on?

25 A. Yes.

1 Q What kind?

2 A Well, I always looked at women that are naked, but
3 there has been a type of bondage pictures.

4 Q What do you mean by "bondage"?

5 A Women in handcuffs, chained. There is the
6 positions that the women are in in the magazines, the different
7 positions.

8 Q Did this sexual fantasy, or whatever you want to
9 call it become increasingly real to you, so that you could
10 visualize it without pictures, just by closing your eyes?

11 A Yes.

12 Q Were you increasingly obsessed with it?

13 A Yes. It started -- the first time I went to a
14 drive-in and started masturbating myself, I found that from
15 that point on I just increased it into a realm that I didn't
16 even realize.

17 Q Mr. Garrido, on November 22nd, did you get into a
18 car in California with Katherine Callaway?

19 A Yes, I did.

20 Q And did you drive with her from Ink's Market to a
21 residential area in California?

22 A Yes, I did.

23 Q And when she stopped the car to let you out, did
24 you seize her?

25 A Yes, I did.

1 Q Thereafter did you handcuff her?

2 A Yes.

3 Q Bind her with a strap?

4 A Yes.

5 Q Did you take her with tape on her mouth across the
6 line into Nevada?

7 A No. She had no tape on her at that time. I didn't
8 tape her until I got to the gas station, and then I pulled
9 into it, and only taped her for the few minutes that we were
10 there until we left.

11 Q But you did take her across that state line against
12 her will, didn't you?

13 A Yes.

14 Q Why?

15 A I have had this fantasy and this sexual thing that
16 has overcome me.

17 Q Didn't you know you could be caught and criminally
18 punished for it?

19 A Criminally; yes, I did know that.

20 Q Didn't you think it was wrong?

21 A No.

22 Q Well, who told you it was right? Did your parents
23 bring you up to believe that was right --

24 A No.

25 Q -- morally right to do?

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1 A. No. My parents never instructed me sexually at
2 all; but just from my parents bringing me up, no.

3 Q. You didn't learn in school it was right, did you?

4 A. No.

5 Q. But you didn't think it was wrong?

6 A. Not at that point in time, no.

7 Q. Did you tell Miss Callaway that you had a sexual
8 fantasy?

9 A. Yes, I did.

10 Q. Did you tell her you couldn't help yourself?

11 A. Yes, I did.

12 Q. Was it true?

13 A. Yes.

14 Q. Did you tell her you were sorry you were doing this?

15 A. Yes.

16 Q. Why were you?

17 A. Because she was so nice to me.

18 Q. But you weren't sorry enough to stop, were you?

19 A. No.

20 Q. You weren't sorry enough to let her get out of the
21 car, were you?

22 A. No.

23 Q. If all that you wanted was sex, why didn't you
24 just let her out in California when she said, "Let's go in
25 the bushes"?

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1 A. Because I couldn't help myself.

2 Q. What do you mean, you could not help yourself?

3 A. I had this fantasy that was driving me to do this,
4 inside of me; something that was making me want to do it
5 without -- no way to stop it.

6 Q. Did you seek psychiatric help to cut this off?

7 A. No.

8 Q. Why not?

9 A. I don't know. It must be like a person that has
10 any other kind of trouble; he doesn't seek help, neither.

11 Q. Miss Callaway, when she testified here, told us
12 that you did a number of things that were almost like you
13 wanted to get caught. You gave away your name, you said what
14 your wife's occupation was, the type of place she worked,
15 that you owned a shed, and there were some others; that you
16 were in a band, that there was a current failure that inter-
17 fered with playing there. Did you do that because you wanted
18 to get caught?

19 A. No.

20 Q. You didn't want to get caught, did you?

21 A. No.

22 Q. Why did you do that?

23 A. She was convincing me that she was enjoying what
24 she was doing, and I just didn't know what I was doing to be
25 able to tell her that.

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1 Q You really thought she wanted to do that?

2 A In my own mixed-up mind, yes.

3 Q In the state of Nevada in some counties we have
4 places where people can go to seek sexual gratification,
5 a bawdy house, whore house. Why don't you go to those?

6 A I went once when I was younger and it never did do
7 nothing for me. I have had the advantage of being with many
8 women.

9 Q Say that again?

10 A I say, I have had the advantage of being with many
11 of women, with their will.

12 Q But that isn't your sex thing?

13 A No.

14 Q That isn't what drives you?

15 A (Witness shakes head negatively.)

16 Q And yet have you stated, "I live a clean life"?

17 A Besides this fantasy, yes.

18 Q You live a clean life?

19 A I don't go breaking into people's houses. I don't
20 go to hurt anybody.

21 (Mr. Van Hazel sits down at counsel table.)

22 MR. LUTFY: If your Honor please, I believe that prior
23 to the lunch break, that you said that prior to certain
24 questions being asked that we should have a discussion on
25 that matter. I would like to raise that issue now. There is

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1 at least one area that I wish to go into that I would like
2 to discuss with the Court.

3 THE COURT: Can you tell me what it is so I will recog-
4 nize it?

5 MR. LUTFY: Yes. It is an incident that occurred
6 immediately preceding Miss Callaway being kidnapped on the
7 same day, within a short period of time prior to it.

8 THE COURT: I would rather hear some psychiatric testi-
9 mony first, and then I will, if necessary, permit you to
10 recall the defendant for further cross-examination.

11 MR. LUTFY: All right.

12 CROSS-EXAMINATION

13 BY MR. LUTFY:

14 Q Do you know what the terms right and wrong mean?

15 A Yes.

16 Q Do they have any meaning for you?

17 A Yes.

18 Q Is it right to beat your wife?

19 A No.

20 Q Would it be wrong to beat your wife?

21 A Yes.

22 Q You and your wife have an understanding --

23 A Yes.

24 Q -- about your sexual activity?

25 A Yes.

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1 Q Did she know where you were the night that you
2 kidnapped Miss Callaway?

3 A No. The only thing my wife knew was that I went
4 to South Lake Tahoe to get LSD.

5 Q How many of your friends or acquaintances used
6 drugs? In this particular instance I am talking about LSD.

7 A A few.

8 Q Do they use it with the same frequency you do?

9 A No.

10 Q You are the only one you know that uses it as
11 often as you do?

12 A Yes.

13 Q Other people do use it, though?

14 A Yes.

15 Q You have been with them when they used it?

16 A Yes.

17 Q Do you know how many of them kidnap girls?

18 A I know nothing of their private life.

19 Q You don't know any of them that have kidnapped
20 girls, do you?

21 A No; correct.

22 Q You said you took four hits of acid on the night
23 you kidnapped Miss Callaway; is that correct?

24 A Yes.

25 Q At what point did you take that acid?

1 A. Right after the abduction.

2 Q. Right after the abduction?

3 A. Yes.

4 Q. You didn't take it before the abduction?

5 A. No.

6 Q. Do you have sexual relations with your wife?

7 A. Yes.

8 Q. Does she restrict your sexual activities with her?

9 A. No.

10 Q. Does she let you do what you want to do?

11 A. Well, I don't hurt her, so she does restrict me, yes.

12 Q. Why don't you harm your wife?

13 A. Because I love her.

14 Q. Is it only people that you don't love that you harm?

15 A. The harm that I did to Katherine Callaway --

16 Q. I asked you: Is it only people that you don't like
17 that you harm?

18 A. I didn't feel I was harming Katherine Callaway, so
19 I don't feel I was harming anybody.

20 Q. You didn't think you were harming her when you put
21 handcuffs on her?

22 A. No.

23 Q. You didn't think you were harming her when you
24 grabbed her by the back of the neck and pushed her neck down
25 to her knees?

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1 A. No.

2 Q. You didn't think you were harming her when you put
3 that strap around her?

4 A. No.

5 Q. You didn't think you were harming her when you threw
6 that coat over her in the front seat?

7 A. No.

8 Q. You didn't think you were harming her when you
9 threw her in the back seat or put her in the back seat with
10 that coat over her again?

11 A. No. I didn't put the coat over her, in the first
12 place.

13 Q. You never put any coat over her?

14 A. I did after the gas station.

15 Q. What coat was that, your own jacket?

16 A. Yes.

17 Q. Was that the jacket in which you had the key to
18 the lock at the shed?

19 A. Yes.

20 Q. You didn't think you were harming her when you put
21 her in the back seat with her hands handcuffed?

22 A. No.

23 Q. You didn't think you were harming her when you put
24 that tape over her mouth?

25 A. No.

1 Q What about the fact that you didn't -- you didn't
2 put tape over her eyes, did you?

3 A No. She asked me not to.

4 Q She asked you not to. Why didn't you put the tape
5 over her eyes?

6 A Because she asked me not to.

7 Q She asked you not to rape her, didn't she?

8 A No.

9 Q Not at the beginning?

10 A No.

11 MR. VAN HAZEL: Your Honor, I will object; outside of
12 the direct.

13 THE COURT: Overruled.

14 BY MR. LUTFY:

15 Q Most of the time then you did this public masturbat-
16 ing, you did it in public, but in your car or someplace like
17 that?

18 A Yes.

19 Q You didn't do it standing out in the middle of the
20 street?

21 A No.

22 Q You said you went to the drive-ins and you mastur-
23 bated in the drive-ins; is that correct?

24 A Yes.

25 Q Did you put towels up on the windows?

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1 A. Yes.

2 Q. Why?

3 A. To hide myself.

4 Q. Why?

5 A. Because at that time I hadn't done that for a long
6 time, but that is when I first started getting into that.
7 I felt an embarrassment.

8 Q. You thought it was wrong, did you?

9 A. At that time, yes.

10 Q. Is that the reason that you also, when you were
11 masturbating in public, you only did it in your car or some-
12 place like that, because you thought that was wrong, too, to
13 have done it anyplace else in public?

14 A. No, I never considered that. I just did it in my
15 car because of the circumstances of being able to pull up
16 on the side of the street.

17 Q. You could have gotten out of your car, couldn't
18 you?

19 A. I opened my door.

20 Q. But you could have gotten out of your car and just
21 stood right outside, couldn't you?

22 A. Yes.

23 Q. You could have masturbated right there, just as
24 well as in your car, couldn't you?

25 A. Yes.

1 Q. You didn't do that, though, did you?

2 A. No.

3 Q. Was this the first time that you-- Strike that.
4 You said, I believe on direct examination, you didn't
5 want to get caught; is that correct?

6 A. Yes.

7 Q. And why didn't you want to get caught?

8 A. Because of the law.

9 Q. You thought you would get punished for getting
10 caught?

11 A. Yes.

12 Q. You didn't want to get punished, did you?

13 A. No.

14 Q. You did want to punish Miss Callaway, didn't you?

15 A. No.

16 Q. You put those handcuffs on because you thought
17 she wanted you to put those handcuffs on to begin with?

18 A. No.

19 Q. You said you get nervous after you take LSD; is
20 that right?

21 A. Yes.

22 Q. What happens? Your hands begin to sweat, you said.
23 Anything other than that?

24 A. Start to feel the body trembling. Your body is not
25 calm.

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1 Q How about your speech? Your speech change?

2 A No.

3 Q Slur your words at all?

4 A No.

5 Q What about your eyes? What happens visually? Have
6 you ever seen yourself in a mirror when you are on LSD?

7 A Yes.

8 Q What do your eyes look like, the same as they look
9 now?

10 A No. Usually the pupils get larger.

11 Q The pupils get large. What about redness in the
12 eyes in the white area? Does that happen with LSD?

13 A No.

14 Q Does your nervousness take any other form besides
15 your sweating palms when you are on LSD?

16 A I am sorry?

17 Q You said you get nervous when you take LSD?

18 A Yes.

19 Q You said your palms sweat?

20 A Yes.

21 Q Is there any other physical reaction other than
22 that from the nervousness?

23 A Sometimes my stomach gets cramped. I will get hot
24 and cold chills.

25 Q Are you able to deal-- Strike that.

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1 Have you ever sought psychiatric help for this problem
2 you say you have?

3 A. No.

4 Q. Did you think anything was wrong with your wanting
5 to do these things, for instance the masturbation?

6 A. No.

7 Q. Did you think everybody else does that?

8 A. I don't know.

9 Q. Do you know anybody else that does that?

10 A. Privately, no; but in magazines you read about it
11 constantly and see it.

12 Q. But in real life?

13 A. Well, that is real life.

14 Q. Real life here, people that you know, do you know
15 any people that do the same thing that you do about going
16 in cars and masturbating?

17 A. No.

18 Q. You said you masturbated in bathrooms in restau-
19 rants and so forth. Is that correct?

20 A. Yes.

21 Q. You went into the bathrooms to masturbate?

22 A. Yes.

23 Q. Did your parents ever teach you right and wrong?

24 A. Yes.

25 Q. Did you get slapped when you were a boy when you

1 did something your parents said was wrong?

2 A. Very unfortunately, no.

3 Q. Did they ever verbally tell you you were wrong,
4 you shouldn't do this?

5 A. Up to the point when I was ten years old; after
6 that I was spoiled, my father never did take any restrictions
7 of beating me or disciplining me and my mother spoiled me.

8 Q. Do you feel he should have done that?

9 A. Yes.

10 Q. Why do you think he should have done that?

11 A. Because of what I have learned.

12 Q. Do you think you shouldn't do things that are wrong?

13 A. Yes.

14 Q. Pursuant to this court action, have you been
15 examined by any psychiatrist?

16 A. Because of this court action?

17 Q. Yes.

18 A. Yes.

19 Q. Do you know what their names are?

20 A. Dr. Kuhn and Dr. Peterman.

21 Q. What about a Dr. Gerow?

22 A. Yes.

23 Q. Did they ask you numerous questions about yourself?

24 A. The two psychiatrists did; the other doctor just
25 asked me a little bit. Mostly it was a brain wave test.

1 Q That is Dr. Peterman; is that correct?

2 A I believe so. I don't know -- associate with the
3 places.

4 Q If I were to tell you Dr. Kuhn and Dr. Gerow were
5 the psychiatrists, would that conform with what you know?

6 A Yes.

7 Q Dr. Peterman would have been the one that did the
8 neurological test on your brain.

9 A Okay. Yes, I didn't have clear who was who.

10 Q When you talked to Dr. Gerow and Dr. Kuhn, were you
11 honest with them?

12 A Yes.

13 Q Did you answer every question they put to you
14 honestly?

15 A Yes.

16 Q Why didn't you lie to them?

17 A I don't really want to bring that up, because I
18 might feel it might be prejudice against me, but I will if
19 I must answer it.

20 THE COURT: All he asked you was: Why didn't you lie
21 to the doctor?

22 THE WITNESS: Because I have been working very steadily
23 the last two months with a minister getting close to God.

24 BY MR. LUTFY:

25 Q Do you feel you have discovered God?

1 A. Yes.

2 Q. How long ago did you discover God?

3 A. I believe in God for the last three years, but it
4 was just the last three months that I have been brought to
5 God.

6 Q. In fact, you told Miss Callaway that you had dis-
7 covered God or Jesus, didn't you?

8 A. I told her I believed in Him and that someday I
9 would like to turn to Him.

10 Q. Someday. It wasn't going to be that day, was it?

11 A. No.

12 Q. You think God would like the things you have done?

13 A. Absolutely not. I am ashamed of them.

14 MR. LUTFY: At this time, your Honor, no further ques-
15 tions, subject to the other questions we have discussed.

16 THE COURT: All right.

17 REDIRECT EXAMINATION

18 BY MR. VAN HAZEL:

19 Q. Mr. Garrido, were you ashamed when you did what you
20 did to Mrs. Callaway -- or Miss Callaway?

21 A. No.

22 Q. You were not ashamed?

23 A. No. I couldn't feel shame. I didn't even realize
24 the reality of shame for what I was doing.

25 Q. The only reason you are ashamed now is because you

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1 fear going to prison or being convicted of a crime; is that
2 where your shame comes from?

3 A. No.

4 Q. Well, what is the difference between then and now?

5 A. Because I have come close to God, because I feel
6 God, because God has shown me he is real.

7 Q. But you were talking about God that night?

8 A. Yes. But I did not say I had any contact with God
9 or with even trying to study or trying to become His, or
10 even learn. I didn't know nothing about God at that time.

11 Q. Since November 22 you have had contact with God?

12 A. Yes. I have studied very hard and I have learned
13 what it takes to find God.

14 MR. VAN HAZEL: Nothing further.

15 THE COURT: Mr. Lutfy?

16 MR. LUTFY: No further questions, your Honor.

17 THE COURT: You are excused, Mr. Garrido.

18 MR. VAN HAZEL: Dr. Charles P. Kuhn.

19 CHARLES PHILLIP KUHN,
20 produced as a witness on behalf of the defendant, and having
21 been first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. VAN HAZEL:

24 Q. Would you please state your full name for the
25 record and spell the last name.

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1 A. Charles Phillip Kuhn, K-u-h-n.

2 Q. Where do you reside, sir?

3 A. Reno, Nevada.

4 Q. And what is your occupation?

5 A. Psychiatrist.

6 Q. Do you maintain offices in Washoe County?

7 A. Yes, I do.

8 Q. Professional offices?

9 A. Yes, I do.

10 Q. What is the address for that?

11 A. 100 West Grove Street.

12 Q. Now, is a psychiatrist also a medical doctor?

13 A. Yes, he is.

14 Q. You have to be a medical doctor to be a psychiatrist?

15 A. Yes, you do.

16 Q. Where did you do your undergraduate work, sir?

17 A. Ohio State University.

18 Q. And that was when?

19 A. Between the years of 1945 and 1948.

20 Q. Prior to that, had you been in the Armed Services?

21 A. Yes, I had.

22 Q. In what capacity?

23 A. A pilot.

24 Q. Fighter pilot?

25 A. Bomber pilot.

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1 Q Where did you do your medical school?

2 A Ohio State University.

3 Q And thereafter did you do an internship?

4 A Yes, I did.

5 Q Where would that be?

6 A Jackson Memorial Hospital in Miami, Florida.

7 Q Do you recall the year?

8 A 1952 to 1953.

9 Q Would you explain what an internship is, briefly,
10 very briefly?

11 A It is a more intensive clinical experience wherein
12 you take blocks of time in all the different fields of
13 your specialty.

14 Q Thereafter did you do what is termed a residency?

15 A Yes, I did.

16 Q And was that residency in a particular field or
17 area?

18 A I took three years of adult psychiatry and two
19 years in child psychiatry.

20 Q Where did you do your residency, sir?

21 A Two years of it was in Miami and three years of it
22 was in Detroit.

23 Q Where in Detroit?

24 A Lafayette Clinic.

25 Q Was the residency in Miami at Jackson Memorial

1 Institute?

2 A. Yes, it was.

3 Q. The same place you did your internship?

4 A. Yes.

5 Q. Now, thereafter did you hold a position in psychi-
6 atry with the Lafayette Institute?

7 A. Yes. I was the Chief of the Adolescent Psychiatry
8 Department.

9 Q. At the Lafayette Clinic?

10 A. Yes.

11 Q. And where is that located, sir?

12 A. In Detroit, Michigan.

13 Q. And how long were you in that capacity?

14 A. Four years.

15 Q. Approximately '56 to '60?

16 A. Yes.

17 Q. Thereafter in the years 1960 to '70, what did you
18 do?

19 A. I was in private practice in adolescent psychiatry
20 in Miami, Florida.

21 Q. And from 1970 forward, what have you done by way
22 of your profession?

23 A. I was a Director of the Mental Health Center in
24 Idaho from 1970 to '72; and I was the Director of the Child
25 and Adolescent Psychiatry Service in Kings County, California

1 for three years, from '72 to '75; and I have been here in
2 private practice since.

3 Q Now, just to pin it down for the record, the Idaho
4 one, where was that?

5 A Idaho Falls.

6 Q And the one with Kings County, what community is
7 that in California?

8 A That is a large rural county down southwest of
9 Fresno.

10 Q Now, do you hold licenses to practice medicine in
11 one or more states?

12 A Yes, I do.

13 Q Do you recall what states they are?

14 A A memory test now. Ohio, Michigan, Florida, Idaho,
15 California, Nevada.

16 Q Now, have you done anything else to prepare yourself
17 for your specialization in the area of psychiatry? Have you
18 taken any type of examinations?

19 A I have certified in the American Board of Psychiatry,
20 both in adult and child psychiatry.

21 Q Again, very briefly, what is necessary to be board
22 certified?

23 A You must have three years of approved training and
24 two years of practice in your field before you can take the
25 exam, then you must pass an examination they give, which lasts

1 a full day. The same applies to child psychiatry; you have
2 to have your board in adult psychiatry for two years before
3 you become eligible to take the child psychiatry board, and
4 then they give you another stiff examination.

5 Q Are those examinations both oral and writing?

6 A They are -- they were and then they weren't and
7 now they are again. When I took them, they were all oral.

8 Q And they are administered by what, other psychiatrists?

9 A And neurologists.

10 Q And neurologists?

11 A Yes.

12 MR. VAN HAZEL: I would submit on those qualifications.

13 THE COURT: Just ask a question. If there is any objec-
14 tion, we will hear it. The jurors will pass on the doctor's
15 qualifications.

16 BY MR. VAN HAZEL:

17 Q Dr. Kuhn, were you asked to examine the defendant,
18 Phillip Craig Garrido?

19 A Yes, I was.

20 Q And was that for purposes of a psychiatric examina-
21 tion and report?

22 A Yes, it was.

23 Q Was that by me?

24 A No.

25 Q Who was it by?

1 A. Mr. Ron Bath.

2 Q. Do you know what position Mr. Ron Bath holds?

3 A. He is the Public Defender for the County. One of
4 them.

5 Q. Now, what did you do upon being requested to make
6 an examination?

7 A. I went to see Mr. Garrido at the Washoe County Jail,
8 spent an hour with him and then wrote up a report and submit-
9 ted it.

10 Q. You spent approximately one hour?

11 A. One hour.

12 Q. Just one hour?

13 A. Right.

14 Q. Do you recall about when you did that?

15 A. December 10th.

16 Q. December 10th. Have you since that time seen or
17 observed Mr. Garrido?

18 A. Yes, I have.

19 Q. On what occasions?

20 A. I have seen him several times in passing and said
21 hello, being over there to see other patients; but I saw
22 him this week for another hour.

23 Q. On the different occasions you have had an oppor-
24 tunity to observe Mr. Garrido since early in December, close
25 to the time of this, have you observed any changes in his

1 behavior?

2 A. Well, I think it would be presumptuous for me to
3 observe changes in his behavior insofar as I wasn't there to
4 spend time with him. His appearance changed. He looks some-
5 what more healthy, and he certainly seems quite lucid and
6 pretty well together.

7 Q. Excuse me. More healthy when, when you first saw
8 him?

9 A. No, after he was there.

10 Q. And more lucid when, now or then?

11 A. Now.

12 Q. Now, in the course of interviewing Mr. Garrido, what
13 did you learn?

14 A. Are you asking me to give my impressions as far as
15 a diagnosis?

16 Q. Please.

17 A. The diagnosis I gave on the report was one of drug
18 dependence, both on LSD and cannabis.

19 Q. Cannabis is what, sir?

20 A. Marijuana.

21 THE COURT: Did you say drug dependence?

22 THE WITNESS: Yes, sir.

23 BY MR. VAN HAZEL:

24 Q. Now, what do you base drug dependence on, just the
25 word of the defendant?

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1 A. Oh, I think it isn't that difficult to determine
2 whether somebody has in fact had experience with drugs; and
3 both from their own description of past events, as well as
4 whatever information you draw from other sources, it tends
5 to confirm it or cast suspicion on it.

6 Q. Was there anything, as a trained psychiatrist, in
7 terms of either memory lapses or anything else, that suggested
8 to you that perhaps Mr. Garrido had had experiences with
9 drugs?

10 A. Well, perhaps the most salient part of his behavior
11 and medical background that impressed me was his -- let's say
12 judgment or lack of it during the commission of this crime.
13 There is no question in my mind that Mr. Garrido has an
14 intelligence somewhat better than average.

15 There are many things in his behavior that do not reflect
16 his use of his intelligence. And from my point of view, there
17 is always a need to look at why that is so.

18 One example I can give right off the top would be his
19 strangely erratic judgment in terms of seeking a girl to
20 abduct in South Lake Tahoe, for example, rather than Stateline.

21 Q. Why?

22 A. Well, I would think that if one were only interested
23 in fulfilling this sexual fantasy, and if in fact they were
24 driven to do so, there is nothing in the sexual fantasy that
25 has any geographical significance; and unless a person were

1 pretty fogged up one way or another, they wouldn't incur the
2 involvement of the Federal law, which almost every person
3 would know they were doing.

4 Q Apart from drug dependence, did you observe or see
5 any evidence of thinking disorders?

6 A Not in terms of the medical-clinical evaluation.
7 Sometimes one's opinion regarding that sort of thing has to
8 come off of the material you gather historically; and I think
9 there are a great many examples of the type of thinking dis-
10 order that has prevailed from time to time in the past. This
11 wasn't very prominent at all at the time that I examined him.

12 Q Well, what kind of historic --

13 What you have developed historically, is it relevant --
14 which is a legal term -- to you as a doctor, medically in
15 reaching a conclusion as to Mr. Garrido's mental capacity at
16 the time of the offense?

17 A Yes, I think so.

18 Q Well, then, will you tell us why you think it is
19 relevant and what you think is relevant?

20 A I think that many of the aberrations in Mr. Gar-
21 rido's sexual fantasies and sexual behavior might be viewed in
22 the same light if they were to occur in a more circumscribed
23 way or occur in a less intense way. I think there are a great
24 many people amongst us who engage in various perversions,
25 some of which Mr. Garrido described; certainly there are a

1 great many people that engage in a number of deviant type
2 of auto-eroticism and that sort of thing. Very few people
3 engage in it to the extent he did, daily, or thereabouts,
4 over a period of years without it becoming disruptive to
5 the other kinds of functioning. And I think that is relevant.
6 I think it does reflect some force or some explanation for
7 his ability to conduct himself in such a preoccupied obsessed
8 way without having mental illness or without having seriously
9 impaired intelligence.

10 I think that speaks highly of the likelihood of a drug
11 being involved.

12 Q Now, when you refer to certain perversions or
13 actions, are they sometimes defined by psychiatrists as
14 sexual deviations?

15 A Yes.

16 Q And those are then listed and they are recognized
17 as mental disorders?

18 A Yes, they are.

19 Q Is there a term for Mr. Garrido's looking into
20 people's windows?

21 A Voyeurism.

22 Q And is that classified in a little book?

23 A Diagnostic manual?

24 Q Yes.

25 A It is the same diagnostic manual that made me refer

1 to the drug dependency for lack of any other explanation.

2 Q That is assigned a number, almost like the Internal
3 Revenue Code?

4 A Yes, it is.

5 Q There is a section for it?

6 A Right.

7 Q With regard to Mr. Garrido's testimony, which you
8 were present and heard, were there some other deviations that
9 have a defined term that he referred to?

10 A Yes. Exhibitionist is another one.

11 Q That again has a number, a recognized mental dis-
12 order?

13 A (Witness nods head affirmatively.)

14 Q And I suppose --

15 THE COURT: You didn't answer that question.

16 THE WITNESS: Beg pardon?

17 THE COURT: Is that a recognized mental disorder or
18 emotional disorder or what?

19 THE WITNESS: Yes, it is.

20 THE COURT: What?

21 THE WITNESS: It is a mental disorder.

22 BY MR. VAN HAZEL:

23 Q And does some of the other behavior he described
24 come either within specified definitions or broad definitions,
25 which are either sexual deviation or unspecified deviation?

1 A. Yes, it would.

2 Q. Now, I showed you in the course of getting ready
3 for your testimony today Dr. Gerow's report and Dr. Peterman.
4 And you know Dr. Gerow to be a psychiatrist like yourself.
5 And you reviewed those reports?

6 A. Yes, I did.

7 Q. Now, Dr. Gerow refers to a mixed sexual deviation.
8 Is that what we have been talking about here?

9 A. I would agree with that term. I am not familiar
10 with whether that exists in our manual or not.

11 Q. But you would --

12 A. That would be more descriptive than trying to
13 specify each.

14 Q. And you would concur with his chronic drug abuse--

15 A. Yes.

16 Q. -- diagnosis?

17 THE COURT: As long as we don't know what Dr. Gerow
18 had to say, your examination, I am sure, doesn't mean any-
19 thing to anybody.

20 MR. VAN HAZEL: I am sorry, your Honor. I was trying
21 to see if I could pull the terminology together here.

22 BY MR. VAN HAZEL:

23 Q. In your examination, you refer to a term "reality
24 testing," and state it was seriously impaired during much
25 of that time. And that time, by the concept of the report,

1 would seem to indicate the time that the crime occurred on
2 or around November 22nd-23rd. Is that when you are referring
3 to, first of all?

4 A. No, I wasn't referring to that. That inclusive,
5 I was referring to a period that was many years; five or six
6 years.

7 Q. And what does the term "reality testing" mean?

8 A. It is the function that allows us to discern what
9 is real in terms of actions, observe people, from what isn't.

10 Q. In your professional opinion, did Mr. Garrido have
11 some difficulty in separating this sexual fantasy from
12 reality?

13 A. I think there are two different issues involved in
14 terms of the degree of control or the degree of awareness of
15 Mr. Garrido and this type of behavior. One of the issues
16 involves the sexual aberration itself and the implications
17 of that in terms of how that determines or shapes his behavior;
18 and then the other issue, of course, is the drug involvement
19 and the prolonged or lasting effect of that. In some
20 respects I feel that the question you are asking, or the
21 question that is being raised, is how do I view the effect
22 of his drug use in terms of his ability to conform his
23 behavior with what the law demands.

24 My point of view on that is that I feel that he, and
25 many other people in similar positions, don't, or can't get

1 involved with certain real issues, such as the legal issue or
2 the moral issue. It isn't a question of whether he is think-
3 ing or feeling something is right or something is wrong. It
4 seems to me that in most cases these people don't even raise
5 that question. That is not even a part of their behavior;
6 just as it isn't a part of the behavior if they are in the
7 private confines of their own bedroom and they are engaged in
8 some type of sexual behavior.

9 One of the issues around reality testing would be the
10 normal change in one's thinking or one's attitude when they
11 leave the bedroom.

12 Without the influence of any of this drug involvement,
13 I think Mr. Garrido would pause before carrying out sexual
14 fantasies.

15 Q Well, are you ascribing the responsibility for Mr.
16 Garrido's act to his use of drugs?

17 A Responsibility for his acts?

18 Q Because --

19 A I am describing his inability to use a reasonable
20 degree of self-control or self-discipline when it comes to
21 doing things that are clearly wrong, clearly illegal and
22 clearly self-destructive.

23 Q Well, surely, Doctor, everybody that takes drugs
24 does not go out and commit these type of offenses, do they?

25 A I don't believe that the drug, in this case LSD,

1 if that is the drug we are talking about -- because I happen
2 to feel the other drugs would have almost the same effect --
3 I don't think the drug is responsible for creating either the
4 obsession or the content or quality of the fantasy. I really
5 don't believe the drug did that. I think the drug permitted
6 it to flourish, so to speak, and survive; and ultimately the
7 drug, or the effects of the drug, permitted it to get acted
8 out.

9 Q So you are saying that Mr. Garrido had this sexual
10 fantasy for reasons apart from the drug; the drug merely
11 enabled him to detach himself further from --

12 MR. LUTFY: Objection, your Honor. Counsel is testifying
13 and not asking the questions.

14 THE COURT: Objection sustained.

15 BY MR. VAN HAZEL:

16 Q What was the causation of Mr. Garrido's sexual
17 fantasy?

18 A I think that would be too difficult to explain
19 in any short period of time. But in any case I do not feel
20 that the drug caused the fantasy.

21 Q Now, when we talk about fantasy, Doctor, it sounds
22 like Disneyland, Fantasy World. Is it something stronger,
23 more vivid, that you can convey to the jury when you are
24 talking about fantasy?

25 A Yes. I think that is a poor choice of words on my

1 part. It would be much better to refer to it as a sexual,
2 either preoccupation or obsession, because, among other
3 things, it is a very complex ideation, it is something that
4 pushes its way into a person's conscious thoughts, and in
5 this case into his actions.

6 One of the issues that I am trying to deal with is what
7 did he have available to keep it in check. It seems to me
8 that that was very limited.

9 Q Why?

10 A Because of the drug.

11 Q So we have an impulse or an obsession compounded
12 by drug use; is that it?

13 A Exactly.

14 Q And the restraint that the rest of us would have
15 was impaired by the drug usage?

16 A I think that is correct.

17 Q Doctor, in discussing this case with me, did you
18 use a term "autistic," a-u-t-i-s-t-i-c?

19 A Yes, I did.

20 Q Now, I had to look up a definition, and I will ask
21 you whether you would agree with this definition --

22 MR. LUTFY: Objection. Just have the witness define it.
23 It is his term.

24 THE COURT: What?

25 MR. LUTFY: If it is the witness' term, why doesn't he

1 define it instead of counsel coming up with a definition.

2 THE COURT: All right, let him define it. You are trying
3 to lead the witness.

4 MR. VAN HAZEL: I was trying to use Webster's Dictionary
5 to keep it within the terms of the jury.

6 BY MR. VAN HAZEL:

7 Q. Go ahead.

8 A. Well, the term gets used a number of different ways
9 in the profession. The way I used it, the meaning I had
10 when I did use it, was that it is a phenomena that occurs
11 wherein a person's feelings are more responsible for determin-
12 ing their thoughts or their actions than their conscious
13 awareness of the reality about them.

14 Q. Now, Doctor, do you have an opinion on the issue
15 of whether the defendant lacked, as a result of mental disease
16 or defect, substantial capacity either to appreciate the
17 wrongfulness of his conduct or to conform his conduct to the
18 requirements of the law?

19 A. Yes, I do. I am fairly strong about the latter
20 part of that alternative. I think that the defendant did not
21 have adequate control to conform his behavior.

22 Q. So it would be your professional opinion that he
23 lacked substantial capacity to conform his conduct to the
24 requirements of the law?

25 A. Yes.

1 Q And as a result of a mental disease or a defect?

2 A Yes.

3 Q You have not stated you believe that the defendant
4 was psychotic at any point; is that correct?

5 A That is correct.

6 Q You do not suggest he is suffering from one of
7 the recognized --

8 THE COURT: Why don't you just ask him what the mental
9 disease or defect is and he can identify it.

10 BY MR. VAN HAZEL:

11 Q All right. What is the disease or defect?

12 A We have already discussed several bits of nomencla-
13 ture that were taken out of the diagnostic manual. I think
14 maybe we are a little bit hamstrung by the diagnostic manual
15 and the limitation of terms available.

16 As I have said before, there are two different aspects
17 to the problem, both of which are relevant and both of which
18 have a bearing on why I feel he did not have the capacity to
19 conform his behavior.

20 One, of course, is the effect of the drugs and how that,
21 in my opinion, does impair the person's -- not only impairs
22 the person's judgment, but above all it impairs that part of
23 their normal process that would cause them to consider such
24 issues as the other person's well-being.

25 Perhaps even more important than that, however, is what

1 I would call this impulse neurosis, which is not an official
2 name of anything, but it is fairly typical of most perversions
3 wherein the person's attention and anxieties mount over a
4 period of time in a way that is not particularly unpleasant,
5 it is rather exciting, stimulating, sometimes sort of scary.

6 And as the tension does mount, they are driven to do
7 some particular act such as engage in a type of voyeurism
8 or exhibitionism or much more complex some kind of sexual
9 ritual, which is what in this case we are considering. The
10 effect of this is that throughout the whole act their physi-
11 ology does change, they become stimulated, their heart rate
12 changes, their breathing changes, and at times it seems to
13 be almost an uncontrollable, irreversible driven sort of
14 behavior.

15 The outcome or the end result of it is, of course, that
16 the sexual -- at some point in time -- not necessarily
17 coinciding with the sexual gratification -- they experience
18 a very pleasurable release of tension.

19 It is that type of situation that I feel describes the
20 behavior of Mr. Garrido.

21 Q Doctor, do you believe that Mr. Garrido would be
22 a menace to the health, safety and morals of himself and
23 others without psychiatric treatment?

24 A. I certainly do.

25 THE COURT: Ladies and gentlemen of the jury, you will

1 be excused from the courtroom and we will take our afternoon
2 recess right after I take care of a little business.

3 (The jury retired from the courtroom and the following
4 proceedings were held in open court in the absence of the
5 jury:)

6 THE COURT: Dr. Gerow, will you come up where you can
7 hear, please.

8 Now, Mr. Lutfy, there have been certain matters that
9 we have discussed that so far have been excluded from the
10 testimony in this case. I want you to tell these two doctors
11 what you desire to prove, either through cross-examination
12 of Mr. Garrido or with respect to his conduct.

13 MR. LUTFY: We offer to prove, your Honor, that approxi-
14 mately an hour prior to the kidnapping of Katherine Callaway,
15 that Mr. Garrido at that time attempted the kidnap of another
16 woman, in which he entered her car, by again asking for a
17 ride. He again got in the vehicle, went a certain distance
18 with her, again directed her to a different street, the same
19 as he did with Miss Callaway.

20 Upon her stopping the vehicle, again Mr. Garrido grabbed
21 this woman, put one handcuff on this woman, was unable to
22 put the other one on; that she jumped out of the vehicle
23 struggling with him; and that after he promised -- after
24 she promised that she would not tell the police or tell any-
25 body about what he had done, he agreed to loosen that

1 handcuff; that she refused to get in the vehicle, the vehicle
2 was moving; he undid that one handcuff that was on her,
3 attached to her, jumped out of the car and ran up the street
4 and took off.

5 I believe under Rule 404 --

6 THE COURT: I didn't ask you for a legal argument. What
7 else do you want to prove?

8 MR. LUTFY: We want to show that conduct, your Honor.

9 THE COURT: That is all?

10 MR. LUTFY: That is all.

11 THE COURT: Nothing else? All right. This is forever,
12 you are not going to change your mind, this is all you want
13 to prove?

14 MR. LUTFY: As far as that testimony is concerned.

15 THE COURT: With respect to other so-called bad acts?

16 MR. LUTFY: That is correct.

17 THE COURT: All right. Now, Dr. Kuhn, would that infor-
18 mation be important to you in reaching a psychiatric opinion
19 in this case or would it have any influence on your opinion
20 whatsoever?

21 THE WITNESS: Not at all, sir.

22 THE COURT: Dr. Gerow, if I asked the same question of
23 you?

24 DR. GEROW: It just tells me, your Honor, part of the
25 state of mind prior to the alleged offense, in that he formed

1 the intent.

2 THE COURT: Would it change the opinion you have reached
3 with respect to Mr. Garrido in any respect?

4 DR. GEROW: No, sir.

5 THE COURT: All right. Well, then, I will rule out
6 that evidence.

7 We will be in recess for fifteen minutes.

8 (Short recess.)

9 (The following proceedings were held in open court in
10 the absence of the jury:)

11 THE COURT: The record will show the defendant and
12 counsel are present, the jurors are absent.

13 MR. LUTFY: If your Honor please, after leaving court
14 I had a further discussion with Dr. Gerow relative to the
15 question you asked him while he was in here. I asked him
16 whether or not that testimony we were talking about would
17 reinforce his opinion, and the doctor has informed me that
18 it would. And on that basis, because of that reinforcement
19 of his opinion, we would ask that that testimony be allowed,
20 or the questions be allowed relative to that testimony.

21 MR. VAN HAZEL: I don't think Dr. Gerow's opinion needs
22 reinforcement. It was clear at the time I got it, forcibly
23 stated, and there was no equivocation that I could perceive.
24 He did the neurological and we ruled that out, and we have
25 Dr. Peterman here, too.

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1 THE COURT: I am not sure I know what his present
2 opinion is. What is his point of view, that the defendant's
3 ability to control his actions with respect to a woman who
4 resists him has something to do with his opinion?

5 MR. LUTFY: I think that may be part of it. He is
6 obviously here, he can better answer than I can. I think we
7 are dealing with the intent of the defendant and the mental
8 intent necessary in that kind of action.

9 THE COURT: At least Dr. Kuhn's opinion was directed
10 toward the defendant's ability to control his conduct and
11 make it conform to the requirements of the law, which is a
12 little bit different from intent.

13 MR. LUTFY: Dr. Gerow, I do not believe will testify in
14 agreement with Dr. Kuhn on that issue of his ability to
15 conform his conduct to the requirements of the law. We are
16 dealing here, I believe, with LSD abuse.

17 THE COURT: What did Dr. Gerow tell you was the importance
18 of this other evidence, which obviously has the impact of
19 establishing in the minds of the jurors that this defendant
20 is a dangerous man?

21 MR. LUTFY: Not so much a dangerous man, but that this
22 man knew what he was doing, he planned it out and had
23 specific intent to do that. This doctor has already said
24 that he thought the defendant was a danger.

25 THE COURT: This doctor doesn't say that he didn't know

1 what he was doing.

2 MR. LUTFY: I am sorry, sir?

3 THE COURT: Dr. Kuhn, as I understand him, didn't say
4 that the defendant didn't know what he was doing.

5 MR. LUTFY: I am not real sure. I am hoping on cross-
6 examination I can really find out what Dr. Kuhn means. I
7 was left a little bit confused.

8 THE COURT: Dr. Gerow, you tell me what the importance
9 of this evidence is.

10 DR. GEROW: Your Honor, to me, when I talked to Mr.
11 Garrido, I went in a stepwise fashion to determine the
12 events that transpired, one of which was he told me about
13 this --

14 THE COURT: He did tell you about it?

15 DR. GEROW: Yes, sir.

16 THE COURT: And you based your opinion partially on
17 that?

18 DR. GEROW: All I was saying was he was clear-minded and
19 he formed the intent prior to leaving this area and going to
20 Lake Tahoe, and he followed through with his intent, this
21 first abduction being just one part of the sequence of events.

22 THE COURT: What do you have to say to that, Mr. Van
23 Hazel?

24 MR. VAN HAZEL: Your Honor, I think the record that is
25 already in is replete with what they are talking about, which

1 is preparing himself to the extent of having handcuffs along,
2 the strap that bound her. These are the issues that he wants
3 to get across to the jury, or by the doctor, that there was
4 some planning; there was a place he was going to, it took
5 planning. I think we have all of those things. It would be
6 the argument that we take the other evidence, even though it
7 is relevant, it is so important and critical to Dr. Gerow's
8 conclusions that it outweighs the prejudicial effects that
9 obviously is attendant, that we are all aware of; that the
10 jury will now be hearing of a crime that the defendant is
11 not charged with.

12 THE COURT: Dr. Gerow, do you need the reinforcement
13 of that evidence in order to express an informed opinion?

14 DR. GEROW: No, sir.

15 THE COURT: I will rule it out.

16 You may bring in the jury.

17 (The following proceedings were held in open court in
18 the presence of the jury:)

19 THE COURT: All the jurors are present.

20 You may proceed with your cross-examination.

21 CROSS-EXAMINATION

22 BY MR. LUTFY:

23 Q. Dr. Kuhn, what kind of tests did you perform on
24 or with the defendant during this hour interview you had
25 with him?

1 A. No tests. It is a clinical evaluation.

2 Q. Did you give him any proverbs?

3 A. No, I didn't.

4 Q. Isn't that a usual procedure to give when you are
5 examining a man under these circumstances?

6 A. There is a limit to the number of different aspects
7 of mental status examination you can do and at the same time
8 select an adequate amount of history in one hour. It is
9 only done if you have some reason to suspect that he has
10 some type of thinking disorder or some type of organic
11 impairment.

12 Q. So during this examination you didn't think he had
13 any kind of thinking disorder?

14 A. No, I didn't.

15 Q. You didn't think he had any kind of mental -- what
16 was that?

17 A. Organic --

18 Q. Organic.

19 A. -- impairment.

20 Q. You didn't think he had that, either?

21 A. No, I didn't.

22 Q. Now, you conducted the first interview of the
23 defendant back in December of 1976?

24 A. December 10th.

25 Q. Is that correct? That was pursuant to the request

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1 of another individual other than somebody here today?

2 A. That is correct.

3 Q. And then you said you had another interview with
4 the defendant; is that correct?

5 A. Yes, I did.

6 Q. At whose request was that?

7 A. At the Federal Defender's request.

8 Q. Did he tell you that he wanted your opinion, he
9 wanted a new opinion?

10 A. He wanted me to see him to update my impressions
11 regarding how he is doing.

12 Q. And that was for your appearance here today to
13 testify?

14 A. Yes.

15 Q. Did you have any intentions, other than at the
16 request of Mr. Van Hazel, to do this second interview, to do
17 one yourself?

18 A. I will put it this way: I had the desire to do it,
19 but I don't know about the propriety of it.

20 Q. But you didn't do one until Mr. Van Hazel asked
21 you for that new one?

22 A. That is correct.

23 Q. Did your opinion change at all?

24 A. No, it did not.

25 Q. Did you give any proverbs at this new interview?

1 A. No proverbs, again.

2 Q. No tests at this new interview?

3 A. No tests.

4 Q. Just go over the same stuff you went over the
5 previous time?

6 A. Not at all.

7 Q. New material?

8 A. Yes.

9 Q. And who gave you the background information on
10 Mr. Garrido?

11 A. I got a certain amount of information from Mr. Ron
12 Bath and Mr. Garrido.

13 Q. Did you verify that information that Mr. Garrido
14 gave you?

15 A. No, I didn't.

16 Q. It was Mr. Garrido who told you he had abused LSD,
17 isn't it?

18 A. That is correct.

19 Q. Did you ask for any kind of a physical or organic
20 examination of Mr. Garrido as a result of these statements
21 by him of this LSD abuse?

22 A. I would not consider that appropriate.

23 Q. You didn't do it?

24 A. Of course I didn't do it.

25 Q. Would consistent LSD abuse somehow or other change

1 or affect you physically?

2 A That is somewhat controversial. I think it does
3 myself, but it is not something that is demonstrable usually
4 in terms of any lab study.

5 Q You think it would?

6 A Oh, yes.

7 Q But you didn't order any tests?

8 A I wouldn't need to; I can see it.

9 Q Is your opinion changed between now, when you are
10 testifying, and the opinion that you put on a letter to Mr.
11 Bath, dated December 14, 1976, as to Mr. Garrido's state at
12 the time of the incident?

13 A Not appreciably. I have a slightly better under-
14 standing of the underlying problem now than I did then.

15 Q At that time in that report did you not say, I
16 question whether he did -- dealing with the question of under-
17 standing right from wrong at the time -- did you not question
18 whether he did at the time of the alleged offense?

19 A I did say that.

20 Q You didn't say definitely, you definitely knew
21 that, you said you questioned it?

22 A That is correct.

23 Q You said at that time, did you not, that he had the
24 ability to assist his counsel in the preparation of his
25 defense?

1 A. Yes, I did.

2 Q. You also said at that time he had a rational and
3 factual understanding of the nature of the charges and the
4 proceedings against him?

5 A. Yes.

6 Q. Do you ever use proverbs in your examination of--

7 A. Yes, I have used proverbs.

8 Q. Did you ever use the proverb, "Those who dance
9 must pay the fiddler"?

10 A. No, I haven't.

11 Q. You never used that one?

12 A. No, I haven't.

13 Q. If you used that one, hypothetically, Doctor, and
14 the patient said to you, quote -- not quote -- but if the
15 patient uses as his response, "I have committed a crime" and
16 now I have to pay," what would that mean to you?

17 A. That is an abnormal response.

18 Q. That is an abnormal response?

19 A. Yes, it is.

20 Q. If you are examining a patient, pursuant to a Court
21 order, for a criminal charge, and you ask him, "Those who
22 dance must pay the fiddler," and he says, "I committed a
23 crime, I must pay," you consider that to be an abnormal
24 response?

25 A. I certainly do. It is an over personalization.

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1 Q Overpersonalitization. Is that a more concrete or
2 abstract answer?

3 A It is an abstract answer, but it is overpersonal-
4 ized.

5 Q It is overpersonal if a particular person is being
6 subject to criminal prosecution for kidnapping?

7 A I don't understand what that has to do with
8 interpreting a proverb.

9 Q I asked a question: You still consider that to
10 be overpersonal when a person is facing kidnapping charges
11 and he gives that response --

12 A Yes.

13 Q -- to that proverb?

14 A Yes, I do.

15 Q How do you know what length of time Mr. Garrido
16 used LSD, if ever?

17 A I don't. But much of our work is based on calcu-
18 lated guesses regarding the validity of what people tell us.

19 Q Is your opinion of Mr. Garrido's mental state
20 another calculated guess?

21 A Not so.

22 MR. VAN HAZEL: Your Honor, I will object to the framing
23 of a question of that type to a professional person.

24 THE COURT: What is your objection?

25 MR. VAN HAZEL: I think it is one thing to cross-examine

1 him; it is another to badger or talk of guess and whatnot
2 to a professional witness.

3 MR. LUTFY: This is their witness.

4 THE COURT: Overruled.

5 MR. VAN HAZEL: I still think he is entitled to
6 courtesy, your Honor.

7 BY MR. LUTFY:

8 Q Getting corroboration background material of Mr.
9 Garrido, would that be able to assist you in making an evalu-
10 ation of him?

11 A That would assist in evaluating anybody.

12 Q Did you ever have occasion when you are examining
13 somebody that they lie to you?

14 A Many times.

15 Q If you could get corroboration, that would help
16 you to know whether or not somebody was lying to you; would
17 it not?

18 A Yes.

19 Q Do you think somebody can be remorseful about hav-
20 ing committed an act and still not have known right from
21 wrong?

22 A You are asking me a hypothetical question now?

23 Q Yes.

24 A Yes.

25 Q What does it mean to be remorseful?

1 A. Feel badly.

2 Q. Feel bad. Why does one feel bad, Doctor, from
3 your experience?

4 A. Any number of reasons.

5 Q. Could it be because he felt that what he had done
6 was wrong, he shouldn't have done it?

7 A. Yes.

8 Q. Feeling that way, would that be consistent with
9 being remorseful?

10 A. Yes.

11 Q. Would it make any difference in evaluating a person
12 in the situation that Mr. Garrido was in to find out that he
13 took LSD after he had kidnapped the person and not before
14 the person had been kidnapped?

15 A. Well, I knew he took it after he kidnapped the
16 person. At least that is what he told me.

17 Q. Does that help you in your evaluation of Mr.
18 Garrido?

19 A. Not appreciably.

20 Q. Would it have made any difference if he had taken
21 the LSD before he kidnapped Miss Callaway?

22 A. You are asking a question in a sort of blank frame
23 of reference. I was in possession of the knowledge that he
24 had already made, or taken steps to carry out this act and
25 had prepared for it in terms of preparing this warehouse and

1 that sort of thing. Once you know that, it doesn't seem to
2 me that it makes that great a difference when he drops the
3 acid, unless you are assuming that he dropped it before he
4 started thinking about it or before he started preparing for
5 it in Reno.

6 Q. You have no reason to believe that, do you?

7 A. No, I don't.

8 Q. Is the defendant psychotic?

9 A. No.

10 Q. Is he neurotic?

11 A. Not technically, according to our nomenclature.

12 I think he is.

13 Q. You can be neurotic and still know right from
14 wrong, can't you?

15 A. Oh, yes.

16 Q. Can you be a sexual deviant and still know right
17 from wrong?

18 A. Yes.

19 Q. Facts, sexual deviation really has nothing to do
20 with right from wrong, does it?

21 A. I have never said at any point that Mr. Garrido
22 didn't know right from wrong.

23 Q. Do you think he knew right from wrong?

24 A. Yes.

25 THE COURT: There is another prong to this Wade test

1 that you seem to ignore.

2 MR. LUTFY: I understand, your Honor. I know what the
3 other one is.

4 THE COURT: All right.

5 BY MR. LUTFY:

6 Q Does the defendant, in your opinion, have a mental
7 disorder?

8 A Yes.

9 Q What is it?

10 A Sexual perversion.

11 Q And do those who have sexual perversions, can
12 they appreciate right from wrong?

13 A Yes.

14 Q And have you ever -- and people who have sexual
15 perversions conform their conduct to the requirements of
16 the law?

17 A Some can.

18 Q LSD is not a mental disorder, is it?

19 A It produces one.

20 Q But it is not in and of itself one?

21 A Well, that point seems to get repeated. It is
22 listed in our nomenclature as an example of one, yes.

23 THE COURT: LSD is?

24 THE WITNESS: Yes.

25 THE COURT: As an example of what?

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1 THE WITNESS: Type of mental disorder. Obviously not
2 LSD; the dependence on LSD or the use of it.

3 THE COURT: Oh.

4 BY MR. LUTFY:

5 Q That is assuming one is dependent on LSD?

6 A I think that is faulty semantics in our nomenclature,
7 because we rarely are in a position to know who is or isn't
8 dependent on a drug, particularly something like LSD. Conse-
9 quently, what we really know is that they either use it or
10 they don't.

11 Q You usually know that through their own statements
12 to you?

13 A Many times through their own behavior, yes.

14 Q Can you tell me what a disease is?

15 A In the sense that we use it, it is anything that
16 interferes with the normal efficient functioning of the
17 individual.

18 Q And that could be anything whatsoever?

19 A Well, it is contiguous with the person, yes.

20 Q Is it biological?

21 A Not necessarily.

22 Q Psychological?

23 A Probably both.

24 Q Tell me what a defect is?

25 A It is an impairment or disfunction of a particular

1 part of the personality part of the person.

2 Q Isn't drug abuse different than mental disease?

3 A That would probably depend on who was offering an
4 opinion. I think there is a distinction to be made, yes.

5 Q If somebody is drug dependent on LSD, is that what
6 we think of, like, you know, a heroin junky, that sort of
7 thing that has got the habit all the time, or is this some-
8 thing different?

9 A I think that there should be a distinction made
10 between addiction and dependency.

11 Q Can you tell me what that is?

12 A Well, in the case of addiction a person has
13 unpleasant physical effects from withdrawal or abstinence
14 from the drug. Dependency is more of a psychological matter.

15 Q Something that can be overcome by the individual?

16 A Theoretically. Addiction can be overcome, also.

17 Q Do you think that at the time of the commission of
18 this act of kidnapping that Mr. Garrido was suffering from
19 any thinking disorder?

20 A I think it will be extremely irresponsible, let's
21 say, on my part to try to presume what type of mental status
22 or what type of thinking was occurring at the time of this
23 offense. I address myself more generally to what I think
24 the effect of taking LSD and other substances over a period
25 of time has on persons, on their ability to think. And in

1 that respect, I think his thinking was impaired.

2 Q How much work have you done with LSD?

3 A A great deal.

4 Q Have you taught other psychiatrists or something
5 like this on LSD?

6 A The semantics of that -- I haven't been on it,
7 they haven't been on it. I have taught many psychiatrists
8 on the abuse of it.

9 Q Was Mr. Garrido well oriented as to time, place?

10 A Are you asking me, when I saw him?

11 Q Yes.

12 A Or when he did this?

13 Q When you saw him.

14 A Yes, he was.

15 Q What did you consider his intelligence level?

16 A Better than average.

17 Q I am not sure whether you said it. Did you, during
18 direct or at any time, say that you felt that the defendant
19 had a lack of judgment during the commission of the crime?

20 A Definitely.

21 Q And is the source of that opinion material that
22 this defendant told you or the things the defendant told you
23 during your interviews with him?

24 A And all else I have heard of any factual nature
25 relating to the incident.

1 Q Was it the defendant that told you he only wanted
2 to go to South Lake Tahoe and not to Stateline?

3 A No. He didn't mention that at all.

4 Q Assuming that the defendant at one time had been
5 to South Lake Tahoe and saw an attractive girl and decided
6 he wanted to kidnap her, you wouldn't think anything strange
7 of his going there to do that kidnapping as opposed to going
8 to Stateline, would you?

9 A It depends on where he planned to take her.

10 Q Do you know how far it is from Ink's Market, South
11 Lake Tahoe, to Stateline?

12 A No, I don't.

13 Q Looking at your report, Doctor, of which I have a
14 copy here, your testimony now about the defendant being pre-
15 occupied and being in a preoccupied and obsessed way, I
16 believe was the terms you used. Now, you didn't put that
17 in your report; is that correct?

18 A That is correct.

19 Q During your discussion here now you talked about
20 voyeurism. That is looking into windows. You didn't put
21 that in your report, did you?

22 A That's correct.

23 Q During testimony here you talked about exhibitionism,
24 but you didn't put that in your report, did you?

25 A That's correct.

1 Q Can you have a mental disorder of some kind or
2 other and still know right from wrong?

3 A Yes, you can.

4 Q Can you have a mental disorder and still be able
5 to conform your conduct to the requirements of law?

6 A Yes, you can.

7 Q If you have sexual aberrations -- is that the
8 term -- you don't necessarily have to go out and kidnap
9 somebody, do you?

10 A Of course not.

11 Q You can satisfy those sexual aberrations in a
12 way other than by using force against another individual?

13 A I think it would depend entirely on what they were.

14 Q But you could do it that way?

15 THE WITNESS: Your Honor, may I clarify a point?

16 THE COURT: Yes.

17 THE WITNESS: Much is being made of that report. The
18 type of report that is requested and expected for the
19 Public Defender's Office routinely is, number one, it is
20 to be extremely brief; number two, it is to address itself
21 to four specific questions. You make it seem like I did a
22 psychiatric evaluation and then failed to give a good
23 psychiatric report, which is certainly true; but they don't
24 want a good report, they want the four questions answered
25 to determine whether or not the person is capable of standing

1 trial.

2 BY MR. LUTFY:

3 Q Do they ask for a basis of those positions or do
4 they just accept your opinion?

5 A They accept my opinion.

6 Q What disease or defect, if any, do you believe
7 the defendant suffers from?

8 A Well, we are still categorizing the drug abuse as
9 one of these, and the other is, I think he has what I would
10 refer to as a sort of an impulse neurosis. That is available
11 in the literature, but it is not available in our manual.
12 It refers to the dynamics behind a good many sexual pervers-
13 sions.

14 Q You didn't put that in your report, the impulse
15 neurosis part?

16 THE COURT: You call that an impulse what?

17 THE WITNESS: Neurosis.

18 BY MR. LUTFY:

19 Q You talked a lot during your examination about
20 sexual aberrations and other sexual matters. Do all of
21 those opinions you have given hold true when the only crime
22 you are dealing with is kidnapping?

23 A Most certainly not.

24 MR. LUTFY: No further questions.

25 THE COURT: Redirect.

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REDIRECT EXAMINATION

BY MR. VAN HAZEL:

Q. Doctor, one of the points the U. S. Attorney made was in connection with your phrasing of, "I question whether he did at the time of the alleged offense," referring to the ability to understand right and wrong. I would like to give you an opportunity to read the full paragraph of your finding to the jury, so it will be in context.

I will ask you if this copy I am putting in front of you is your report. Is it a Xerox copy of the report that you did?

A. Certainly my signature. It is a copy of the report.

Which paragraph shall I read? "There is very little evidence"?

Q. I believe it was the second paragraph of your findings that he read part of it.

A. The part you are referring to is the quotation, "There is very little evidence of any thinking disorder"?

Q. No. I believe --

May I approach the witness, your Honor?

I believe he asked you the question where you state --

THE COURT: Just tell him which paragraph.

MR. VAN HAZEL: Paragraph II, please.

THE WITNESS: And you want me to read all four things?

1 BY MR. VAN HAZEL:

2 Q No, Paragraph II. Number two.

3 A Oh, all right. Paragraph II:

4 "He does understand right from wrong at this
5 time. I question whether he did at the time of the
6 alleged offense."

7 That is it.

8 Q Thank you. Now, Doctor, looking at that, when you
9 say, "I question," the question goes to whether he knew
10 right and wrong at the time of the offense; doesn't go to
11 any kind of equivocation or uncertainty as to whether or not
12 he knew right and wrong at the time of the offense?

13 MR. LUTFY: I am confused by the question, your Honor.

14 THE COURT: I think it is a non-understandable question.

15 MR. VAN HAZEL: Well, let's see if we can do a better
16 one.

17 BY MR. VAN HAZEL:

18 Q When you used the term, "I question," are you
19 qualifying your opinion?

20 MR. LUTFY: Objection, your Honor.

21 THE COURT: Ask him what he meant by it and we will find
22 out.

23 BY MR. VAN HAZEL:

24 Q What did you mean by it?

25 A All right. That is a very good way of putting it.

1 We are many times expected or asked to come up with
2 an opinion based upon a particular definition or particular
3 frame of reference that had been thrust upon us legally.
4 Frequently it is very difficult to do that. One example of
5 that is relevant to what we are discussing here where you
6 have two different definitions or two different examples
7 of the relative degree of responsibility for one's own
8 actions; one being a definition of right or wrong, the other
9 being a question of being able to conform their behavior.

10 Normally, like in this report, we do not have that
11 choice to make. It usually refers specifically to whether
12 they know the difference between right and wrong. Conse-
13 quently, when you have reservations about the other part of
14 it, there is no way to express that other than something
15 such as this where I would question whether he did at the
16 time, meaning in my opinion there were aspects of what
17 went on at the time that were not fully competent or fully
18 under his control.

19 THE COURT: What the doctor is trying to explain is
20 that the state penal system has a different definition of
21 insanity than the Federal penal system has.

22 MR. VAN HAZEL: Thank you, your Honor.

23 BY MR. VAN HAZEL:

24 Q. Doctor, you wrote that report for the state --

25 A. Yes, I did.

1 Q -- Court for Judge Bowen?

2 A Exactly.

3 Q Now, something was said about you not checking or
4 corroborating the defendant's story. Is it not correct
5 last week -- did you do anything last week in my office,
6 review any kind of statements, to corroborate what the
7 defendant had told you?

8 A This week, I think.

9 Q Maybe so, Doctor; it has gone fast.

10 Do you remember reading a 16-page Reno Police Statement
11 signed by the victim --

12 A Yes, I did.

13 Q -- Miss Callaway?

14 A Exactly.

15 Q And did you also compare that to a 17-page trans-
16 cript of her testimony in front of the Grand Jury?

17 A Yes, I did.

18 Q And did we review other investigative files with
19 regard to certain details of the crime?

20 A You reviewed with me some of your own, information
21 you had gathered in interviewing Mr. Garrido. I believe
22 those were the three things.

23 Q So you did have the victim's account of the crime
24 to compare with Mr. Garrido's account of what had occurred?

25 A Yes, I did. I must have misunderstood the question,

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1 because I thought that was in reference to before I wrote
2 the report.

3 Q. Before you wrote the report back in December?

4 A. Yes. I had nothing other than that input.

5 Q. But now your present testimony is based upon having
6 reviewed those statements?

7 A. Yes.

8 Q. Now, Doctor, something was said about the December
9 report not referring to voyeurism. Had the defendant told
10 you anything that would have qualified for an opinion of
11 voyeurism at the time you wrote the December report?

12 A. I am not sure.

13 Q. How about with respect to the exhibitionism?

14 A. All right. The answer to the question is I knew
15 that I knew about it, but in different context than I now
16 know about it. Now Mr. Garrido has told me a great deal in
17 depth regarding his sexual past and present. Then, among
18 other things, the matter of sexual perversion was intrinsic
19 in terms of the problem behavior in the first place; and
20 the elements of exhibitionism and voyeurism were brought
21 out in describing the experiences of that night.

22 MR. LUTFY: Just one further question, your Honor,
23 please.

24

25

RECROSS-EXAMINATION

BY MR. LUTFY:

Q. You did prepare one written report about Mr. Garrido, and that was subsequent to an examination you did of him?

A. Correct.

Q. You have since examined him again?

A. Yes, I have.

Q. You have since examined, from what Mr. Van Hazel said, some other documents that he had in his office?

A. Yes, I have.

Q. Why didn't you prepare another written report?

A. Nobody asked me to.

MR. LUTFY: Thank you.

THE COURT: You are excused, Dr. Kuhn.

Do you have another witness?

MR. VAN HAZEL: No, your Honor. That is the defense.

THE COURT: Defense rests?

MR. VAN HAZEL: Yes, your Honor.

THE COURT: Do you have any rebuttal evidence?

MR. LUTFY: Yes, your Honor. Call Dr. Lynn Gerow.

1 LYNN B. GEROW,
2 produced as a witness in rebuttal on behalf of the plaintiff,
3 and having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. LUTFY:

6 Q Please state your full name and spell your last.

7 A Lynn B. Gerow, G-e-r-o-w.

8 Q Where do you live, Mr. Gerow?

9 A I live here in Reno.

10 Q What do you do for a living?

11 A I am a physician and a psychiatrist.

12 Q Where did you go to college, sir?

13 A I attended college at the University of Nevada
14 here in Reno.

15 Q Did you graduate?

16 A Yes.

17 Q What did you do thereafter?

18 A Went to medical school.

19 MR. LUTFY: Is that a signal, your Honor?

20 THE COURT: Mr. Van Hazel wanted to stipulate to Dr.
21 Gerow's qualifications, but I think you might as well bring
22 them out.

23 BY MR. LUTFY:

24 Q I am sorry, I didn't hear your response to the
25 last question.

1 A. After I graduated from college, I went to medical
2 school and graduated.

3 Q. What medical school did you go to, sir?

4 A. McGill University.

5 Q. What did you do after that, sir?

6 A. I interned for one year at Walter Reed General
7 Hospital in Washington, D. C.

8 Q. In any particular area?

9 A. No; four different areas for that year.

10 Q. What were those areas?

11 A. Four months of surgery, four months of internal
12 medicine, two months pediatrics, two months psychiatry.

13 Q. What did you do after that?

14 A. I did five years of psychiatric residency.

15 Q. Where was that?

16 A. The first three were at Letterman General Hospital
17 and the last two were at Langley-Porter Neuropsychiatric
18 Institute in San Francisco.

19 Q. What did you do after that, sir?

20 A. After that I was clinical instructor at the
21 medical school in San Francisco, and I was Director of
22 Training for Child Psychiatry at Letterman General Hospital.

23 Q. And after that?

24 A. After that I came back to Reno and opened a private
25 practice.

1 Q How long have you been in private practice?

2 A Since 1975.

3 Q Do you belong to any professional associations?

4 A Yes, I do.

5 Q What are they?

6 A American Medical Association, American Psychiatric
7 Association, American Academy of Child Psychiatry, American
8 Orthopsychiatry Association, Canadian Psychiatric Association,
9 Nevada Psychiatric Association, Intermountain Psychiatric
10 Association, Northern California Psychiatric Association,
11 and there are some more but I am forgetting them.

12 Q Do you know the defendant here in this courtroom,
13 Phillip Craig Garrido?

14 A I do.

15 Q What were the circumstances under which you first
16 met him?

17 A I was asked by the Court to examine him and give a
18 report.

19 Q By "the Court," you mean this Court here, the
20 Federal District Court?

21 A That is correct.

22 Q Did you in fact make an examination or have an
23 examination of Mr. Garrido?

24 A I did.

25 Q Do you remember when that was, approximately?

1 A. I saw him on December 19th, 1976.

2 Q. How long did you spend -- how long a period of
3 time did you spend with him?

4 A. About an hour and forty-five minutes.

5 Q. Can you tell me what you did during this hour and
6 forty-five minutes?

7 A. I met Mr. Garrido and took his history, and then
8 I did a formal mental status examination on him.

9 Q. Can you tell us what that formal -- I am sorry?

10 A. Mental status examination.

11 Q. Can you tell us what that is and what it encompassed?

12 A. Encompasses making observations about a person's
13 appearance, their behavior, the way they think, their mood,
14 whether or not they display any particular habit or trait
15 disturbances, whether or not they are oriented to time,
16 place and person; whether their memory is intact for immediate
17 recent remote events; their judgment, their insight, their
18 intelligence, that sort of thing.

19 Q. Can you tell us what occurred during your examina-
20 tion of Mr. Garrido relative to the things you have just
21 mentioned?

22 A. I formed some opinions about Mr. Garrido.

23 Q. Can you tell us on what you base those opinions?

24 A. On the material that was supplied to me by the
25 defendant's attorney, the history that Mr. Garrido supplied

1 to me and my examination.

2 Q Can you tell us what those opinions were?

3 A Yes. I felt that he was competent to stand trial
4 and I felt he was responsible for the act in question.

5 Q Can you tell us on what basis you made those
6 opinions or were able to draw them?

7 A Just what I said.

8 Q Yes, but what took place during this examination
9 that allowed you to reach those opinions?

10 A The defendant did not have a psychiatric disorder,
11 a mental disorder, and it would lead one to conclude anything
12 else.

13 Q Can you tell us what the defendant, what kind of
14 information you received from the defendant that allowed you
15 to be able to reach that conclusion?

16 A He gave me a clear, concise statement of the events
17 in question in sequence, told me what had happened from
18 early on, I think, on November 22nd, until the next
19 morning. There was nothing in what he told me, nothing in
20 the mental status examination that one could say that he
21 wasn't responsible and competent.

22 Q Did you give Mr. Garrido any tests of any kind
23 during this examination?

24 A I didn't give him any psychological tests, if that
25 is what you mean.

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1 Q. What kind of tests, if any, did you give him?

2 A. It was a clinical examination. Tests usually mean
3 psychological tests. I asked him certain things. Some people
4 refer to tests. For example, I asked him the date.

5 Q. Was he able to answer that?

6 A. Yes. And I asked him where he was. I asked him
7 things about his childhood, to check his remote memory; and
8 I asked him things about more recent events to check recent
9 memory.

10 Q. Did he have a remote memory?

11 A. Very good.

12 Q. Did he have a recent memory?

13 A. Yes.

14 Q. What else?

15 A. I asked him to subtract seven from a hundred.

16 Q. Is that called the sevens test?

17 A. Yes.

18 Q. Was he able to perform it satisfactorily?

19 A. Yes.

20 Q. What else did you do, sir?

21 A. I asked him proverbs.

22 Q. Do you remember which proverbs you asked him?

23 A. I discussed one proverb with him and what it might
24 mean to an average man, and then I asked him four additional
25 proverbs to see what his thinking was.

1 Q Can you tell us the proverb that you asked him in
2 which you explained what a -- did you say what a normal man
3 would answer?

4 A Yes, average man.

5 Q Average.

6 A I told him that some people use the proverb, "Don't
7 cry over spilled milk." And we discussed that proverb for a
8 period of time, and he seemed to understand the proverb but
9 stated he had never heard it before.

10 Q And did you ask him any other proverbs in which
11 you were looking for answers from him?

12 A Yes.

13 Q Can you tell us what they were and what his answers
14 were?

15 A I mentioned the proverb, "The squeaky wheel is the
16 one that gets the grease," and he didn't respond to that. He
17 didn't know what that meant.

18 Q Did you ask him any other proverbs?

19 A I asked him, "People who live in glass houses
20 shouldn't throw stones." And he interpreted that correctly.

21 Q How did he interpret that?

22 A He said something to the effect that people who
23 were vulnerable about something should be careful, should
24 cover their flank in that regard.

25 Q You said he answered it correctly?

1 A. Appropriately. He answered it in an abstract way,
2 which is what I was really after, was to see if he could.

3 Q. What is it that you are looking for when you ask
4 somebody a proverb and listen to their response?

5 A. You are looking either for a thought disorder or
6 some kind of organic impairment.

7 Q. Did he evidence any of these?

8 A. No.

9 Q. Did you ask him any other proverbs?

10 A. I asked him, "Those who dance must pay the fiddler."

11 Q. And what was his response to that one?

12 A. He responded that he had committed a crime and
13 that he should pay for that crime.

14 Q. Did you find anything strange about that response?

15 A. It seemed like a fairly appropriate abstract
16 response from somebody in jail.

17 Q. Did you conclude as a result of your examination
18 that Mr. Garrido was a psychotic?

19 A. He is not psychotic.

20 Q. Did you conclude whether or not he was neurotic?

21 A. He is not neurotic.

22 Q. We have heard the term impulse neurosis. Do you
23 know what that is, sir?

24 A. No.

25 Q. Did you conclude whether or not Mr. Garrido had a

1 sexual preoccupation?

2 A. He does.

3 Q. What did you conclude as a result of that?

4 A. Nothing.

5 Q. Would you explain a little bit?

6 A. Well, he had a lot of things, one of which was
7 sexual preoccupation. But that in itself didn't lead me to
8 any diagnosis.

9 Q. Is that a strange thing for somebody to have, a
10 sexual preoccupation?

11 A. Not necessarily.

12 Q. Did you conclude whether or not Mr. Garrido had
13 sexual aberrations? Is that something you have or don't have?

14 A. I don't use that word. I concluded that he had a
15 sexual disorder.

16 Q. What did that mean to you when you concluded that?

17 A. It meant that he gave a history of being a peeping
18 Tom or a voyeur, as has been described here. He gave a
19 history of being an exhibitionist and taking his clothes off
20 in front of little girls.

21 He gave a history of impulsive masturbation. These
22 things led me to believe that he was sexually deviant and
23 had that mental disorder.

24 Q. What does it mean to be a sexual deviant?

25 A. It means that your sex life is primarily directed

1 towards inanimate objects or in some way not normally
2 channeled.

3 Q Can you be a sexual deviant and still differentiate
4 between right and wrong?

5 A Yes.

6 Q Can you be a sexual deviant and still conform your
7 conduct to the requirements of the law?

8 A Yes.

9 Q You said you concluded that Mr. Garrido was a
10 sexual deviant?

11 A Yes.

12 Q And did you conclude whether or not Mr. Garrido,
13 for being a sexual deviant, could conform his conduct to
14 the requirements of the law?

15 A I felt that he could.

16 Q And did you conclude as a result of Mr. Garrido
17 being a sexual deviant that he knew the difference between
18 right and wrong?

19 A I did; yes.

20 Q Does he know the difference? Is that your conclus-
21 ion, that he did know the difference between right and wrong?

22 A He knew the difference between right and wrong.

23 Q There has been testimony of a long planned out event,
24 kidnapping, which ended up occurring at a warehouse which was
25 set up. Did Mr. Garrido tell you anything about these events?

1 A. He told me a great deal about these.

2 Q. Did he go into detail about all of what occurred?

3 A. He went into a great amount of detail.

4 Q. Is it still your opinion, after hearing all of
5 this from Mr. Garrido about what he did, that he could
6 conform his conduct to the requirements of law?

7 A. I think he could.

8 Q. And it was still your conclusion, as a result of
9 hearing all of this, that Mr. Garrido knew right from wrong
10 at the time of the incident that occurred?

11 A. Yes, he knew right from wrong.

12 Q. And looking at the report that you prepared for the
13 Court, you say that he has a mixed sexual deviation; is that
14 correct, sir, on Page 2?

15 A. That is correct.

16 Q. You also state chronic drug abuse; is that correct?

17 A. That is correct.

18 Q. How do you feel these work together, if at all?

19 A. He used the LSD as a sexual stimulant and had
20 for some years. He became psychologically dependent on the
21 LSD over a period of time.

22 Q. As a result of that psychological dependence on
23 LSD, could Mr. Garrido conform his conduct to the requirements
24 of the law?

25 A. Yes.

1 Q As a result of that LSD dependence, could he
2 differentiate between right and wrong?

3 A Yes.

4 Q One last question: Is it your opinion, as a result
5 of any mental disease or defect that Mr. Garrido could
6 conform his conduct to the requirements of the law?

7 A He can conform his conduct to the requirements of
8 the law.

9 Q Can he appreciate right from wrong?

10 A He can appreciate right from wrong.

11 MR. LUTFY: Thank you.

12 THE COURT: You may cross-examine.

13 CROSS-EXAMINATION

14 BY MR. VAN HAZEL:

15 Q Dr. Gerow, in December of this year did I furnish
16 you with some material to assist in your diagnosis here?

17 A Yes, you did.

18 Q Did that include a statement taken from the victim,
19 Miss Callaway?

20 A Yes, it did.

21 Q So you had that to compare with what the defendant
22 told you?

23 A That is correct.

24 Q Did you have any reservation about the defendant
25 recounting the history of drug abuse, or did you find some

1 evidence of that in your own examination of the defendant?

2 A. There was no direct evidence of that, but there
3 were some presumptive -- what I mean is there were some
4 things that lent themselves to that. One was he gave an
5 extensive history of drug abuse, and his knowledge of these
6 drugs was -- he was very knowledgeable about these drugs,
7 much more knowledgeable than someone would be that, you know,
8 wasn't taking them.

9 In addition, his mood was -- it fluctuated during the
10 interview. This is not an uncommon thing to see in people
11 who are coming off any kind of medication or drugs. That
12 is not hard evidence, but it gives one an idea.

13 Q. In addition, Doctor, in that report that you pre-
14 pared for the Court and myself, did you speak of the defen-
15 dant referring to things called hallucinations but you felt
16 they were something else?

17 A. That's right.

18 Q. Could you tell us what you are referring to?
19 Perhaps if I gave you a copy of your report.

20 A. I've got it right here.

21 Q. All right.

22 A. He said he had hallucinations, and he said he had
23 visual hallucinations, he was seeing things that weren't
24 there. And in my report, what I did was comment that what
25 he said that he saw was really a problem in perception; that

1 when he would look, like at the grain in the wood there,
2 it might move a little bit. That is what he called an
3 hallucination. That is not an hallucination; that is just
4 a perceptual problem, and I think he does have that.

5 Q Are perceptual disturbances like that common in
6 any type of people that you examine or are familiar with?

7 A They are very common in people that abuse LSD and
8 other hallucinogens.

9 Q How would you characterize his judgment?

10 A Poor judgment.

11 Q Very poor?

12 A Very poor.

13 Q Insight?

14 A Very poor.

15 Q Do you use the term reality testing or an analogous
16 term?

17 A Yes, I use that reality testing.

18 Q How would you characterize Mr. Garrido's reality
19 testing?

20 A You have to break reality testing down into two
21 parts. Judgment, which we just talked about, his judgment
22 was poor. On his reality testing in terms of his ability
23 to tell what is relevant from what isn't relevant, I think
24 it is intact.

25 Q Did he describe a fantasy to you?

1 A. He described several fantasies.

2 Q. Is that a term of art within psychiatry, a fantasy?

3 A. Everybody uses that term, not just the psychiatrists.
4 Day-dreaming. Day-dreaming, yes.

5 Q. Is there a level where a fantasy can become more
6 real to an individual than reality that is recognized in
7 psychiatry?

8 A. I am not sure what you mean by that.

9 Q. Is there a term autism or something like that?

10 A. There is a term autism.

11 Q. What does that mean?

12 A. It can mean several things. Some people it just
13 means that if a person is autistic, they are living within
14 themselves, meaning they are just wrapped up in day-dreams.
15 So that would be one way to use that term.

16 Q. Is it sometimes used as to connote a person who
17 has reached the point where their absorption in a fantasy is
18 to the exclusion of reality? Have you used it that way,
19 or seen it used?

20 A. Yes.

21 Q. What is religiosity? You used that in your report;
22 did you not?

23 A. I did.

24 Q. What is it?

25 A. One of the things he was preoccupied about was

1 religious events. He talked at some length about the Bible.
2 He had a Bible with him when I saw him and talked about the
3 Lord and God, and he talked about it to enough of an extent
4 that I felt he was preoccupied by those things, and therefore
5 I used the term religiosity.

6 Q Is there a connotation in that he spoke about it to
7 an excessive amount? It is not just a case of being religious,
8 is it?

9 A No, he was excessive.

10 Q What is satyriasis?

11 A Satyriasis?

12 Q Yes.

13 A That is a term which you use to describe a man
14 who has excessive heterosexual experiences or the desire to
15 have excessive heterosexual experiences.

16 Q When it is used in psychiatry, does it have any
17 connotation whether it is controllable?

18 A There is no attempt with the term to say whether
19 it is controllable or not.

20 Q Would nymphomania be the converse of this in the
21 female?

22 A Yes, I think that is a pretty good analogy.

23 Q And did you find in your examination of the defen-
24 dant, Mr. Garrido, in December, that he was suffering from
25 satyriasis?

1 A. He was, yes.

2 Q. Now, do you feel -- and I think this was asked
3 you on direct examination -- what was the linking between
4 chronic abuse, which was one diagnosis you made -- is that
5 correct?

6 A. Yes.

7 Q. -- and mixed sexual deviation, which was the other
8 diagnosis? Is that correct; that was the second?

9 A. That's right.

10 Q. What was the relationship, if any, you described
11 in your report between them?

12 A. He used LSD as a sexual stimulant, and that was
13 the link I tried to draw. He, without LSD, was not sexually
14 stimulated to any great degree.

15 Q. Did you arrive at the conclusion in that report
16 then that the latter, being chronic drug abuse, may be
17 responsible in part for the former, that being mixed sexual
18 deviation?

19 A. Not responsible for the mixed sexual deviation so
20 much as I was applying just the tremendous sexual drive the
21 man had under LSD.

22 Q. Well, Doctor, I would ask you to refer to that
23 report.

24 A. Yes.

25 Q. And specifically on Page 2. And I am looking at

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1 the second full paragraph on that page, the one that begins
2 with, "My diagnosis."

3 A. Right.

4 Q. And the second sentence and the third sentence
5 reads how?

6 A. Second sentence:

7 "I feel that he is a mixed sexual deviation
8 and chronic abuse. The latter may be responsible
9 in part for the former."

10 Q. So a part of that qualification in part you did
11 feel that it might be responsible for the mixed sexual
12 deviation at the time of the report?

13 A. I did, yes.

14 MR. VAN HAZEL: Thank you, Doctor.

15 THE COURT: Do you have any redirect?

16 MR. LUTFY: No further questions.

17 THE COURT: Dr. Gerow, have you made any study of the
18 effect on the human being of the alleged long continued use
19 of LSD?

20 THE WITNESS: I haven't studied it personally. I
21 examined a number of people in the late sixties, I was in
22 San Francisco during what they called the "Summer of love,"
23 the hey day of the Haight-Ashbury problem horticulture, and
24 I saw a lot of young people who had taken a lot of LSD.

25 THE COURT: In your opinion can it have a lasting effect

1 on the brain function?

2 THE WITNESS: Yes.

3 THE COURT: Of what sort?

4 THE WITNESS: Taken in sufficient quantity, in some
5 individuals it will produce dementia. What I mean by that
6 is memory disturbances, orientation problems; and they break
7 down socially, they don't have the normal social give and
8 take that they once had.

9 THE COURT: If that had occurred with respect to Mr.
10 Garrido, would it have been disclosed by your mental status
11 examination?

12 THE WITNESS: Yes, he would have shown those things.

13 THE COURT: Was there any indication that brain damage
14 had occurred?

15 THE WITNESS: No indication of brain damage.

16 THE COURT: Are there any other means of determining
17 whether there has been organic damage as a result of the
18 use of drugs?

19 THE WITNESS: You can do psychological tests. You can
20 get a neurological consultation.

21 THE COURT: Did you request a neurological consultation
22 in this case?

23 THE WITNESS: I did. I suggested that seemed in order,
24 in my opinion. Not because of the LSD.

25 THE COURT: That was not because of the LSD?

1 THE WITNESS: No. That was because of the sexual drive
2 that the man manifested.

3 THE COURT: And what could the neurological examination
4 have disclosed with respect to the sexual drive?

5 THE WITNESS: People that have this intensive sexual
6 drive sometimes have epilepsy, they sometimes have syphilis;
7 and a neurologist needs to be consulted to rule those ill-
8 nesses out. And that was my thinking, was in that regard.

9 THE COURT: Do you have any further questions?

10 MR. LUTFY: Just one, your Honor.

11 REDIRECT EXAMINATION

12 BY MR. LUTFY:

13 Q Doctor, did you feel, after your examination, that
14 as a result of the defendant's alleged LSD abuse that he
15 could not conform his conduct to the requirements of the law?

16 THE COURT: You asked him that.

17 MR. LUTFY: Did I already ask him that?

18 THE COURT: You surely did.

19 MR. LUTFY: I don't need to ask it again. Thank you.

20 THE COURT: Do you want to ask him further questions?

21 MR. VAN HAZEL: Yes, your Honor.

22 RECROSS-EXAMINATION

23 BY MR. VAN HAZEL:

24 Q If you refer to your report again, Page 2, the
25 second paragraph. The Judge's question to you elicited

1 something about memory and the degree of intact, and there
2 is a reference to a spotty memory. Would your answer be
3 that the loss of memory here was not sufficient to suggest
4 the type of damage you referred to with LSD?

5 A. People who have a memory problem after using LSD
6 develop problems with remote memory first. And when I use
7 the word "spotty," I mean that he was forgetful about certain
8 things, but it didn't follow any pattern like one would
9 expect with LSD dementia or LSD brain syndrome.

10 MR. VAN HAZEL: Thank you.

11 THE COURT: You are excused, Dr. Gerow.

12 THE WITNESS: Thank you.

13 MR. LUTFY: Just one minute.

14 (Discussion off the record.)

15 MR. LUTFY: We had one other witness subpoenaed, your
16 Honor, who was the neurologist. He has been subpoenaed, but
17 I got a note he was tied up and could not be here today.
18 The Government has no further rebuttal in the absence of
19 that witness.

20 THE COURT: Do you want him?

21 MR. LUTFY: Yes, we would like to have him, your Honor.
22 He was subpoenaed.

23 THE COURT: What good is our subpoena if he can just say
24 he can't be here today?

25 MR. LUTFY: The note says he had to have a specific time

1 to be present. I informed him as a convenience to him to
2 be here at 1:30 rather than any earlier time in the trial,
3 but he is not here.

4 THE COURT: Was he here at 1:30?

5 MR. LUTFY: No, your Honor, he was not. We have been
6 trying to reach him.

7 THE COURT: You hadn't told him; is that right?

8 MR. LUTFY: I hadn't told him what, sir?

9 THE COURT: When he should be here.

10 MR. LUTFY: Yes, I did. Definitely, he was told to be
11 here. In fact, he agreed -- I believe our secretary said
12 he was going to be here at 1:30. Dr. Gerow I think was going
13 to be here at 1:15 and he was going to be here at 1:30.

14 THE COURT: How do you know he wasn't here?

15 MR. LUTFY: Excuse me?

16 THE COURT: How do you know he wasn't here?

17 MR. LUTFY: He has not been here. He has not reported
18 here. He was told to report to our office and then come here.
19 He has not been to our office. Our secretary has been trying
20 to reach him, she has not been able to.

21 THE COURT: You tell him to be here at 10:30 tomorrow
22 morning.

23 MR. LUTFY: Yes, your Honor.

24 THE COURT: And if he isn't here, I'll get out a warrant
25 for his arrest.

1 MR. LUTFY: Yes, your Honor.

2 THE COURT: This trial will be continued until 10:30
3 tomorrow morning, except for the settlement of instructions,
4 which will take place at 10:00 o'clock after the criminal
5 calendar.

6 Counsel and the defendant will be here at 10:00 o'clock.
7 The jury is excused until 10:30 tomorrow morning.

8 We will be in recess.

9 (At the hour of 4:20 o'clock p. m. the Court took a
10 recess until 10:00 o'clock a. m., Friday, February 11, 1977.

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1 Reno, Nevada, Friday, February 11, 1977, 10:00 o'clock a. m.

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3 (The following proceedings were held in open court in
4 the absence of the jury:)

5 THE COURT: Defendant and counsel are present, the
6 jurors are absent.

7 The record will show I have delivered a set of proposed
8 instructions to counsel.

9 Mr. Lutfy, do you have any objections or suggestions for
10 additional instructions?

11 MR. LUTFY: No, your Honor; we are agreeable with the
12 instructions that you set forth.

13 THE COURT: Mr. Van Hazel?

14 MR. VAN HAZEL: Your Honor, I might seek clarification
15 on the moral wrongfulness instruction. I believe the first
16 part was the part tendered by the defendant pursuant to
17 the decision in Sullivan, United States versus McGraw, 515
18 Federal 2nd, 758; Wade versus United States, 426 Fed. 2nd, 64.

19 I don't mean to belabor the point, your Honor, but I
20 wonder whether the second paragraph clarifies the first para-
21 graph or will confuse it for the jury on the mistaken belief.

22 THE COURT: The second paragraph was taken out of the
23 Sullivan opinion.

24 (Discussion off the record.)

25 THE COURT: I have it here if you want it.

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1 MR. VAN HAZEL: I have it, too, your Honor. Thank you.
2 The slip opinion.

3 I recognize the Court's appreciation of brevity; I
4 just wonder whether the whole sentence after that, where it
5 goes on to say, "Irrespective of whether it can be correctly
6 diagnosed medically it is delusional or not," I think we are
7 working in a very difficult area of psychiatric testimony.
8 It isn't that clear an issue. It is not like we have a
9 case where we are dealing with a recognized psychosis.

10 THE COURT: What do you want me to add, "Irrespective
11 of whether it can be classified as delusional"? That
12 wouldn't mean anything to the jury.

13 MR. VAN HAZEL: Well, I believe the Court -- acts
14 pursuant to mistaken belief is where you picked up on that
15 second paragraph. Am I correct?

16 THE COURT: Yes. That parenthetical clause was put in
17 there because they were explaining the counts of presumed
18 conflict of the other case; that you had to find the delusion
19 before you would give the instruction.

20 MR. VAN HAZEL: That is the way I read Sullivan. They
21 said, no, we didn't mean delusional in that strict a semantic
22 sense; we were trying to convey any type of bizarre thought
23 or something.

24 THE COURT: If I just say false belief, that is broader.

25 MR. VAN HAZEL: All right, your Honor, I will accept

1 that. On that basis, I will accept the instructions as the
2 Court has drawn them.

3 THE COURT: You don't want to make a record on any of
4 your proposed instructions? Some of them have been modified,
5 as we just indicated.

6 MR. VAN HAZEL: Yes, your Honor. Perhaps I should put
7 on the record that the Court has given instruction on the
8 rape as being a limiting or cautionary instruction --

9 THE COURT: I have the one you offered and will file it,
10 and the record will show what change I made in it.

11 MR. VAN HAZEL: Thank you, your Honor. Nothing further,
12 then, on the instructions.

13 THE COURT: You have no problems, Mr. Lutfy?

14 MR. LUTFY: None whatsoever, your Honor.

15 THE COURT: We will be in recess until 10:30.

16 (Short recess.)

17 THE COURT: The record will show the presence of the
18 defendant and counsel and all the jurors.

19 You may call your next witness.

20 MR. LUTFY: Thank you, your Honor. Dr. Peterman.

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1 ALBERT F. PETERMAN,
2 produced as a witness in rebuttal on behalf of the plaintiff,
3 and having been first duly sworn, testified as follows:

4 MR. LUTFY: Your Honor, I believe, for the sake of
5 brevity, that Mr. Van Hazel has agreed that Dr. Peterman is
6 a--will stipulate that Dr. Peterman is a doctor, a neurolo-
7 gist, and is qualified.

8 MR. VAN HAZEL: And board certified. Yes, he is qualified
9 in his field, your Honor.

10 THE COURT: In the field of neurology?

11 MR. VAN HAZEL: In the field of neurology.

12 THE COURT: All right. Thank you.

13 DIRECT EXAMINATION

14 BY MR. LUTFY:

15 Q Will you please state your full name and spell your
16 last.

17 A Albert F. Peterman, P-e-t-e-r-m-a-n.

18 Q And you are a medical doctor?

19 A Yes.

20 Q What is your specialty?

21 A Neurology.

22 Q Dr. Peterman, on January the 6th of 1977, did you
23 have occasion to examine Phillip Garrido?

24 A Yes.

25 Q Can you tell us the nature of the examination that

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1 you did on him?

2 A. Well, it was a standard neurological examination
3 in which I elicited a history, did a physical and neurologi-
4 cal examination, and also did an electroencephalogram, common-
5 ly called a brainwave test.

6 Q. Could you just go into some detail on, for instance,
7 the physical examination, what you did and what your findings
8 were?

9 A. Yes. I examined the various nerve functions of
10 the body, including what we call the cranial nerves about
11 the head and the neck, the muscle strength stretch reflexes,
12 coordination and various tests of sensation.

13 I also asked him a number of questions concerning brain
14 function, memory calculation, intellectual functions.

15 Q. Can you tell us what conclusions you were able to
16 reach as a result of those tests?

17 A. I found that he had a normal examination. I was
18 asked specifically if there was any evidence of brain damage.
19 I did not feel that there was.

20 Q. And did you perform any other examinations?

21 A. I did, as I said, an EEG or a brainwave test in
22 my office, which was normal.

23 Q. And were there any other examinations that you did?

24 A. No.

25 Q. Can you tell us exactly what findings you made as

1 a result of the examinations you did of the defendant on that
2 date?

3 A. Well, I didn't find any evidence of any impairment
4 of his brain function or nervous system function.

5 MR. LUTFY: Thank you, Doctor.

6 THE COURT: You may cross-examine.

7 CROSS-EXAMINATION

8 BY MR. VAN HAZEL:

9 Q. Doctor, are all mental disorders detectable by the
10 type of neurological testing that you conducted on the
11 defendant?

12 A. All mental disorders are not; no, sir.

13 Q. It is just certain ones that have an organic
14 origin?

15 A. Yes. If there was a severe mental or personality
16 disturbance, I would usually recognize it.

17 Q. Doctor, would all instances of drug addiction,
18 which is defined within the terminology of psychiatry as a
19 mental disorder, would all of those show some type of organic
20 change or disorder that the tests you gave would pick up?

21 A. No, they would not.

22 Q. And would the answer be precisely that if I asked
23 you in the instance of addiction to LSD?

24 A. In the instance of addiction to LSD, I would likely
25 find nothing on examination.

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1 Q How about cocaine?

2 A Nothing.

3 MR. VAN HAZEL: Thank you, Doctor.

4 MR. LUTFY: No further questions, your Honor.

5 THE COURT: You are excused, Dr. Peterman.

6 THE WITNESS: Thank you.

7 MR. LUTFY: That is the Government's case in rebuttal.

8 THE COURT: Do you have any surrebuttal?

9 MR. VAN HAZEL: No, your Honor.

10 THE COURT: Both sides rest?

11 MR. VAN HAZEL: Yes, your Honor.

12 THE COURT: You may make your opening argument.

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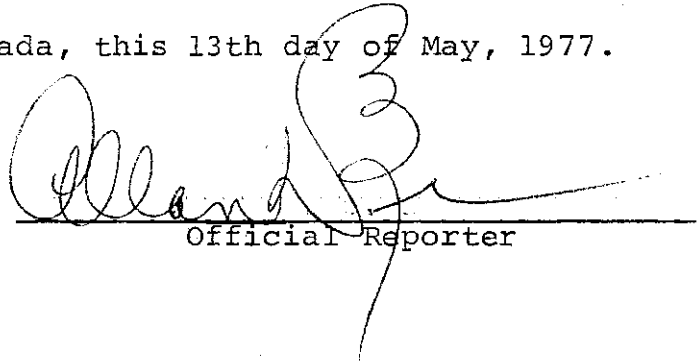
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1 UNITED STATES OF AMERICA)
2) ss.
3 DISTRICT OF NEVADA)

4 I, Allan D. Bunnell, Official Reporter for the
5 United States District Court for the District of Nevada,
6 do hereby certify that I was present and correctly
7 reported in Stenotype writing all the testimony and
8 proceedings had in the above-entitled matter; that I
9 thereafter caused my said Stenotype notes to be reduced
10 to typewriting; that the foregoing transcript constitutes
11 a full, true and correct transcript of the testimony and
12 proceedings had therein.

13 Dated at Reno, Nevada, this 13th day of May, 1977.

14 
15 Official Reporter
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