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FILED IN THE  
SUPREME COURT  
STATE OF COLORADO

1987-1988

W. H. B. B. Clerk

SUPREME COURT, STATE OF COLORADO

Case No. 87SA47

ORIGINAL PROCEEDING, DISTRICT COURT, CITY AND COUNTY OF DENVER  
HONORABLE LEONARD PLANK, JUDGE

---

PETITIONER'S REPLY BRIEF

---

LAWRENCE S. AOKI, Petitioner

vs.

THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER, THE  
HONORABLE LEONARD PLANK, one of the Judges Thereof,

Respondents.

---

DAVID F. VELA  
COLORADO STATE PUBLIC DEFENDER

STEVEN R. GAYLE  
Deputy State Public Defender

FRANK J. VIEHMANN  
Deputy State Public Defender

ATTORNEYS FOR PETITIONER  
331 14th Street  
Denver, Colorado 80202

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SUPREME COURT, STATE OF COLORADO

Case No. 87SA47

ORIGINAL PROCEEDING, DISTRICT COURT, CITY AND COUNTY OF DENVER  
Honorable Leonard Plank, Judge

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PETITIONER'S REPLY BRIEF

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LAWRENCE S. AOKI, Petitioner

vs.

THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER,  
THE HONORABLE LEONARD PLANK, one of the Judges Thereof,  
Respondents

---

I. STATEMENT OF FACTS

Petitioner Lawrence S. Aoki is charged in the respondent court with two counts of murder in the first degree, section 18-3-102 C.R.S.

The Petitioner is represented in the Respondent Court by the Office of the Public Defender, section 21-1-103, C.R.S.

Shortly after appointment as Petitioner's counsel in the Court below, the Deputy State Public Defenders representing Mr. Aoki retained Dr. Frederick M. Miller and Dr. John M. MacDonald. Dr. Miller and Dr. MacDonald are forensic psychiatrists. They were retained for the purposes of evaluating Petitioner's mental state, advising Petitioner's counsel with respect to the propriety of a mental status defense to the murder charges, and consulting with defense counsel with regard to trial tactics and strategy. (Appendix O, Affidavit of Steven R. Gayle; Addendum to

original proceeding 87SA49, Transcript of proceedings for February 9, 1987, page 7, line 14).

On separate occasions, Dr. Miller and Dr. MacDonald met with and evaluated Mr. Aoki at the Denver County Jail, where he was being held without bond pursuant to section 16-4-101, C.R.S. Jail officials recorded the fact that Mr. Aoki was visited by Dr. Miller and by Dr. MacDonald. (Appendix 6, page 14, line 1).

Upon meeting with Mr. Aoki, Dr. Miller and Dr. MacDonald each advised him of the purpose of their evaluation. The doctors further advised Petitioner that their evaluations were protected by the attorney-client privilege, section 13-90-107(1)(b), C.R.S., since they were acting as agents of Mr. Aoki's attorneys, and that any statements made by Mr. Aoki would be confidential and would remain confidential unless the doctors were called as witnesses on Petitioner's behalf. (Appendix O; Addendum to Original Proceeding 87SA49).

After their evaluations, Dr. Miller and Dr. MacDonald orally reported their impressions and advice to Petitioner's counsel. The doctors did not prepare a written report.

On June 13, 1986, Mr. Aoki entered a plea of not guilty by reason of insanity, section 16-8-103, C.R.S. The District Court thereupon appointed two psychiatrists, Dr. Jeffrey Metzner and Dr. Lawrence Wiberg, to evaluate Mr. Aoki pursuant to section 16-8-106, C.R.S. (Appendices A and B).

Mr. Aoki fully cooperated with the sanity examinations conducted by Dr. Wiberg and by Dr. Metzner. Each doctor filed a

written report with the Court pursuant to section 16-8-106(4), C.R.S. (Appendices A and B).

On September 17, 1986, trial began on the issue of Mr. Aoki's sanity. At trial Mr. Aoki called as witnesses on his behalf two psychiatrists, Dr. John Yost and Dr. Dean Plazak, and a toxicologist, Dr. Daniel Teitelbaum. Each of these doctors had filed written reports with the Court and with the District Attorney pursuant to section 16-8-108, C.R.S. (Appendices B, C and D).

Mr. Aoki also took the witness stand on his own behalf at the sanity trial, and was subjected to cross-examination by the District Attorney.

During the course of trial preparation, the District Attorney reviewed the record of persons who had visited Mr. Aoki in the Denver County Jail and thereby learned that Dr. Miller and Dr. MacDonald had seen Petitioner. The District Attorney then issued subpoenas to the doctors which purported to require them to give testimony on behalf of the prosecution at the sanity trial. (Appendix M).

In response, Mr. Aoki and doctors MacDonald and Miller each filed motions in the District Court to quash the subpoenas. After briefing and argument, the District Court denied the motions to quash. (Appendices O, S and T).

Dr. MacDonald, Dr. Miller, and Mr. Aoki each thereafter petitioned this Court for relief pursuant to C.A.R. 21. On September 25, 1986, this Court issued orders in case nos. 86SA352,



tember 25, 1986, this Court issued orders in case nos. 86SA352, 86SA351, and 86SA339 requiring the respondent to show cause why the subpoenas to doctors Miller and MacDonald should not be quashed. This Court did not stay trial proceedings, and the sanity trial in progress continued.

The District Attorney called Dr. Metzner as a witness at the sanity trial, and declined to call Dr. Wiberg.

On October 3, 1986, the jury returned verdicts finding Mr. Aoki to have been sane at the time of the alleged offenses.

On October 9, 1986, the District Attorney filed a motion in this Court to discharge the rules to show cause issued in 86SA352, 86SA351, and 86SA339, representing that "[t]he issue as to quashal [sic] of subpoenas is now moot as there is no longer a case or controversy." Over the objection of the Petitioner's, this Court granted the motion and discharged the rules.

On January 9, 1987, Mr. Aoki entered a plea of not guilty by reason of impaired mental condition, section 16-8-103.5, C.R.S. (Appendix V) The District Court thereupon appointed Dr. Jeffrey Metzner and Dr. John Yost to examine Mr. Aoki in accordance with sections 16-8-106, and 16-8-108, C.R.S. Trial on the issues presented by Mr. Aoki's plea was set for February 17, 1987. (Appendix W)

Thereafter, despite the representations to the contrary made by the District Attorney to this Court, the District Attorney issued subpoenas to doctors Miller and MacDonald purporting to require the doctors to testify on behalf of the prosecution at

tors Miller and MacDonald each filed motions to quash these subpoenas, which motions were denied by the District Court. (Appendices R and X).

On February 9, 1987, the District Court ordered Dr. Miller to testify on behalf of the prosecution. Dr. Miller refused, and was held in contempt. Dr. Miller thereupon filed an original proceeding in this Court (Case no. 87SA49) seeking relief from the District Court's order.

On February 9, 1987, immediately after Dr. Miller was held in contempt, counsel for Dr. MacDonald indicated to the District Court that Dr. MacDonald would reluctantly abide by the Court's order; the respondent Court then continued Dr. MacDonald's subpoena to the trial date and did not pursue contempt procedures against Dr. MacDonald. Mr. Aoki thereupon petitioned this Court for relief from the District Court's order to Dr. MacDonald (case no. 87SA47).

On February 12, 1987, this Court issued orders to show cause in 87SA47 and in 87SA49, and stayed trial proceedings.

## II. ISSUE PRESENTED

THE DISTRICT COURT'S ORDER VIOLATES MR.AOKI'S ATTORNEY-CLIENT PRIVILEGE AND HIS RIGHTS TO THE EFFECTIVE ASSISTANCE OF COUNSEL, TO DUE PROCESS OF LAW, TO THE EQUAL PROTECTION OF THE LAW, AND TO BE FREE FROM COMPELLED SELF-INCRIMINATION, ALL AS SECURED BY 13-90-107(1)(b), C.R.S., AND BY THE CONSTITUTIONS OF THE STATE OF COLORADO AND OF THE UNITED STATES.

### III. ARGUMENT

#### A. APPLICABILITY OF THE ATTORNEY-CLIENT PRIVILEGE

Section 13-90-107(b), C.R.S., provides:

An attorney shall not be examined without the consent of his client as to any communication made by the client to him or his advice given thereon in the course of professional employment nor shall an attorney's secretary, paralegal, legal assistant, stenographer, or clerk be examined without the consent of his employer concerning any fact, the knowledge of which he has acquired in such capacity.

The threshold question presented here is one of first impression in Colorado: Whether the attorney-client privilege as codified in Colorado extends to communications made, by a criminal defendant, to a psychiatrist retained by the defendant's counsel for the purpose of assisting counsel in the evaluation and preparation of the defendant's case.

The Respondent argues that since the term "psychiatrist" does not appear in the statute cited above, the attorney-client privilege therefore does not apply in the instant situation. This contention is without merit, as it ignores the policies which underlie the statute and further ignores previous caselaw propounded by this Court.

In Bellmann v. District Court, 531 P.2d 632 (Colo. 1975), this court found that the attorney-client privilege applies to statements made by a defendant to an investigator employed by the defendant's insurance carrier, even though the term "investigator" does not appear in the statute:

...[w]e hold that the insurance investigator who took the petitioner's statement was, in effect, an agent of the attorney for the purpose of acquiring and transmitting this information to them. As such, the communication falls within the attorney-client relationship and is therefore privileged.

Bellmann, supra, 531 P.2d at 634. Similarly, the psychiatrists in the case at bar were retained by Petitioner's attorneys for the purpose of acquiring and transmitting information about Petitioner's mental state to defense counsel. Here, as in Bellmann, communications made to agents of an attorney are covered by the attorney-client privilege. City and County of San Francisco v. Superior Court, 231 P.2d 26 (Calif. 1951). See also: United States v. Kovel, 296 F.2d 918 (2d Cir. 1961); 8 Wigmore, Evidence, Section 2301 (McNaughton rev. 1961); McCormick on Evidence, section 89 (3d Edition 1984).

#### B. WAIVER OF THE ATTORNEY-CLIENT PRIVILEGE

Arguing in the alternative, the Respondent asserts that even if the attorney-client privilege applies to the instant situation, Mr. Aoki has waived the privilege by asserting the defense of impaired mental condition and by electing to present psychiatric evidence on his behalf at trial. In support of this proposition the Respondent cites Clark v. District Court, 668 P.2d 3 (Colo. 1983).

Clark, however, is not applicable to the case at bar. Clark involved a civil plaintiff's attempt at obtaining, through pre-trial discovery, a defendant's psychiatric and psychological

records pertaining to previous treatment for mental problems and associated alcohol and drug abuse problems. Clark did not involve an attempt by the State, in a criminal prosecution, to force testimony from a psychiatrist who has been retained by the defendant's counsel for the express purpose of assisting in the evaluation and preparation of the defendant's case. Thus this Court did not have occasion in Clark to address the relationship between the attorney-client privilege and a criminal defendant's constitutional rights. As this Court observed in People v. Swearingen, 649 P.2d 1102, 1104 (Colo. 1982):

Although the [attorney-client] privilege is not explicitly grounded in constitutional protections, the inviolability of the privilege in criminal prosecutions is closely interrelated with the individual's right to immunity from self-incrimination under the Fifth Amendment to the United States Constitution and his right to counsel under the Sixth Amendment, which necessarily includes the right to confer in private with his attorney.

Although Colorado courts do not appear to have addressed the precise issue before this Court, a clear majority of sister jurisdictions have found that Constitutional entitlements to the effective assistance of counsel and to Due Process of Law protect a criminal defendant from the kind of disclosure which the Respondent Court sanctioned in the case at bar. As the United States Court of Appeals for the Third Circuit stated in United States v. Alvarez, 519 F.2d 1036, 1046 (3d Cir. 1975):

The effective assistance of counsel with respect to the preparation of an insanity defense demands recognition that a defendant be as free to communicate with a psychiatric

expert as with the attorney he is assisting. If the expert is later used as a witness on behalf of the defendant, obviously the privilege ends. But when, as here, the defendant does not call the expert the same privilege applies with respect to communications to the attorney himself.

In People v. Lines, 531 P.2d 793 (Calif. 1975) the California Supreme Court held that a physician employed by the defense to inform the attorney as to the defendant's mental condition is the agent of the defense attorney. Therefore, communications between the defendant and the physicians were protected by the attorney-client privilege:

"Thus, when communication by a client to his attorney regarding the physical or mental condition requires the assistance of a physician to interpret the client's condition to the attorney, the client may submit to an examination by the physician without fear that the latter will be compelled to reveal the information disclosed." (citation).

Lines, supra, 531 P.2d at 800. The California Court specifically rejected the argument that the information is subject to disclosure if the client places his mental condition in issue:

...[W]here the physician is an intermediate agent to inform defendant's counsel as to defendant's mental condition, the communications from the physician to counsel are still protected by the attorney-client privilege even after the client has put his mental or physical condition in issue.

Lines, supra, 531 P.2d at 802. Accord: United States v. Alvarez, supra; State v. Mingo, 392 A.2d 590 (N.J. 1978); State v. Kociolek, 129 A.2d 417 (N.J. 1957); State v. Moore, 609 P.2d 866 (OR. App. 1980); State v. Hilliker, 195 N.W. 2d 831 (Mich. 1971);

Houston v. State, 602 P.2d 784 (Alaska 1979); Ballew v. State, 640 S.W. 2d 237 (Texas Crim.App. 1980); State v. Pratt, 398 A.2d 421 (MD. 1979); Pouncy v. State, 353 So. 2d 640 (Fla.App. 1977).

Colorado's statutory scheme does not provide for the use by the prosecution of a defendant's communications to a privately retained psychiatrist unless the psychiatrist is called as a witness at trial:

Section 16-8-108(1), C.R.S. 1973, clearly contemplates that the defendant may retain a private psychiatrist for a sanity examination in connection with an insanity plea. The only limitation placed on a defendant seeking such examination is that a copy of the psychiatrists report be furnished to the prosecution reasonably in advance of the sanity trial if the defense intends to offer testimony about the examination. Section 16-8-108(2), C.R.S. 1973.

People v. Rosenthal, 617 P.2d 551, 555 (Colo. 1980) (emphasis added). See also Richardson v. District Court, 632 P.2d 595 (Colo. 1981). In fact, Mr. Aoki was advised by the Respondent Court on January 9, 1987, that he has the "right to be examined by a psychiatrist, psychologist or other expert of your choice", and that "the results of this examination will only be available to you and your attorney" unless the expert is called as a witness. (Appendix V, Paragraph 2). (emphasis added). The Respondent Court cannot renege upon this advisement and allow the District Attorney access to the Defendant's privately retained experts without violating Mr. Aoki's right to due process of law as secured by the Constitutions of the United States and the State of Colorado. Wainwright v. Greenfield, 474 U.S. \_\_\_\_; 106 S.Ct.

634; 88 L.Ed. 2d 623 (1986).

Mr. Aoki has entered a plea of Not Guilty by Reason of Impaired Mental Condition. The Impaired Mental Condition statutes (Sections 16-8-103 et sec) establish a procedure by which the Court appoints experts to evaluate a defendant, and those procedures have been followed. The statutes contemplate the problems attendant to the states' access to the defendants' mental processes. In the statutes there is a balance of the defendant's rights and the states' need to be prepared to deal with evidence of the defendant's mental state. There is no need to go outside of the statutory scheme to force testimony from privately retained psychiatrists. See for example, Appendices A thru E.

#### C. EFFECTIVE ASSISTANCE OF COUNSEL

This Court has consistently recognized the principle that the Sixth Amendment's guarantee of the effective assistance of counsel requires that defense counsel be fully prepared regarding his client's case:

In the absence of adequate pre-trial investigation - both factual and legal - knowledgeable preparation for trial is impossible. Without knowledgeable trial preparation, defense counsel cannot reliably exercise legal judgment and, therefore, cannot render reasonably effective assistance to his client.

People v. White, 514 P.2d 69, 71 (Colo. 1973).

In Ake v. Oklahoma, 470 U.S. 68, 84 L.Ed. 2d 53 (1985) the United States Supreme Court held that an indigent defendant has a



due process right to a psychiatrist or psychologist who functions in two capacities - evaluative and consultive. The evaluative services are "crucial to the defendant's ability to marshal his defense." Ake, supra, 470 U.S. at 80. If this right to the consultive assistance of a psychiatrist or psychologist is to have any meaning, it must entail restrictions on the prosecution's access to an expert retained by the defense. Defense counsel must be able to research his or her case in a context of confidentiality. As the Alaska Supreme Court observed in Houston v. State, supra, 602 P.2d at 791 - 792:

If the State were allowed to subpoena [the defense psychiatrist], the defense counsel's initial effort to become fully informed as to the possibility or likelihood of a valid insanity defense may be inhibited because of the potential that an adverse opinion will be used by the State. Furthermore, the defendant, who is aware of the possibility that the opinion of the expert who is examining him might be adverse to this defense and may be used against him at trial, will probably be less than candid at the examination, further exacerbating the problem. Although the State argues that if the defense is, in fact, valid, the defendant should have no fear of an adverse finding as to his sanity, in reality, the pressure involved to insure a correct result cannot help but to shape significantly the defendant's psychiatric interview.

In retaining psychiatrists to assist in the preparation of the defense case, Mr. Aoki and his attorneys were certainly exercising a Constitutional Right. People v. White, supra; Ake v. Oklahoma, supra. The State is therefore precluded from impermissibly burdening or "chilling" the exercise of that right. "A

Constitutional right may be said to be impermissibly burdened when there is some penalty imposed for exercising the right." Apodaca v. People, 712 P.2d 467, 473 (Colo. 1985). Examples of impermissible burdens upon Constitutional rights include allowing a District Attorney to comment upon a defendant's silence at trial (Griffin v. California, 380 U.S. 609 (1965)); requiring a defendant facing habitual criminal charges to choose between his constitutional right to testify on his own behalf and his right to require the state to prove the elements of habitual criminality beyond a resonable doubt (People v. Chavez, 621 P.2d 1362 (Colo. 1981)); and allowing the District Attorney to call as a witness in it's case-in-chief during a guilt trial a psychiatrist privately retained by the defendant in connection with an insanity plea (People v. Rosenthal, 617 P.2d 551 (Colo. 1980)). The Rule urged here by the respondent would similarly burden a criminal defendant's right to counsel; by adequately preparing the defense case as contemplated in People v. White, supra, defense counsel would run the risk of creating a witness for the State if he disagrees with one or more of his retained experts and proceeds with a mental status defense.

#### D. FIFTH AMENDMENT

The prosecution in the case at bar should also be denied access to the testimony of Dr. Miller and Dr. MacDonald under the Fifth Amendment principles of Estelle v. Smith, 451 U.S. 454; 68 L.Ed. 2d 359 (1981). If these privately retained experts are

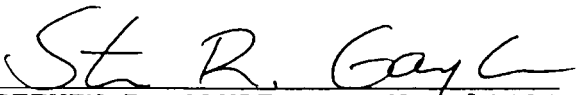
compelled to testify for the prosecution on the crucial issue of mental state, they must be viewed as "agent[s] of the State, recounting unwarned statements made in a post arrest custodial setting. Estelle v. Smith, supra, 451 U.S. at 467. Accordingly, the doctor's testimony should be prohibited because it will be based entirely on Mr. Aoki's unwarned statements and thus violates the Fifth Amendment to the United States Constitution and Article II, section 18 of the Constitution of the State of Colorado.


#### E. EQUAL PROTECTION OF THE LAW

Finally, Petitioner notes that but for the fact that Mr. Aoki was incarcerated, the District Attorney would never have learned of defense counsel's retention of Dr. Miller and of Dr. MacDonald. The rule urged here by the respondent would similarly work to the detriment only of defendants who are either indigent and unable to post bond or who are held without bond pursuant to Section 16-4-101, C.R.S., and is therefore violative of the right to the equal protection of the law as secured by the Constitutions of the United States and of the State of Colorado.

WHEREFORE, Petitioner's request that this court issue an Order making the rule issued in this matter absolute.

DAVID F. VELA  
COLORADO STATE PUBLIC DEFENDER

  
STEVEN R. GAYLE No. 10494  
Deputy State Public Defender  
815 Sixteenth Street  
Golden, Colorado 80401  
279-7841

  
FRANK J. WIEHMANN No. 9288  
Deputy State Public Defender  
331 14th Street  
Denver, Colorado 80202  
893-8939

ATTORNEYS FOR PETITIONER

SUPREME COURT, STATE OF COLORADO

Case No. 87SA47

ORIGINAL PROCEEDING, DISTRICT COURT, CITY AND COUNTY OF DENVER  
Honorable Leonard Plank, Judge

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LAWRENCE S. AOKI, Petitioner

v.

THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER,  
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- A. Report of Dr. Metzner
- B. Report of Dr. Wiberg
- C. Report of Dr. Yost
- D. Report of Dr. Plazak
- E. Report of Dr. Teitelbaum
- F. Transcript of Insanity Arraignment - June 13, 1986
- G. Transcript of Hearing - September 10, 1986
- H. Transcript of Hearing - September 11, 1986
- I. Transcript of Hearing - September 23, 1986
- J. Transcript of Hearing - December 12, 1986
- K. Transcript of Hearing - December 17, 1986
- L. Transcript of Ruling - December 17, 1986
- M. District Attorney's Endorsement of Drs. MacDonald and Miller
- N. District Attorney's Endorsement of Drs. Metzner and Wiberg
- O. Defendant's Motion to Strike Endorsement
- P. Defendant's Motion to Strike Endorsement (Fifth Amendment and Due Process)
- Q. Defendant's Brief in Support of Motion to Strike
- R. Defendant's Motion to Quash
- S. Motion to Quash Subpoena of Dr. MacDonald
- T. Motion to Quash Subpoena of Dr. Miller
- U. Motion to Quash Subpoenas (Dr. Miller)
- V. Advisement of Defendant on Plea of Not Guilty of Reason of Impaired Mental Condition
- W. Order for Examination of Defendant on Impaired Mental Condition
- X. Minute Order of December 17, 1986 and January 9, 1987

---

CERTIFICATE OF SERVICE

---

I do hereby certify that on March 4, 1987, I deposited a true and complete copy of the foregoing Petitioner's Reply Brief including appendices A through X properly addressed, in the United States mail to:

Donna Skinner Reed, Esq.  
Deputy District Attorney  
303 W. Colfax Avenue, Suite 1300  
Denver, Colorado, 80204

Craig Truman, Esq.  
1900 Wazee Street, Suite 305  
Denver, Colorado 80202

Larry Pozner, Esq.  
1890 Gaylord Street  
Denver, Colorado 80206

The Honorable Leonard Plank  
Denver District Court, Courtroom 12  
1437 Bannock Street  
Denver, Colorado 80202

Frank J. Viehman

SUPREME COURT, STATE OF COLORADO

Case No. 87SA47

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- X. Minute Order of December 17, 1986 and January 9, 1987

## APPENDIX A



JEFFREY L. METZNER, M. D., P. C.  
3300 EAST FIRST AVENUE  
SUITE 470  
DENVER, COLORADO 80206  
—  
TELEPHONE (303) 355-6042

July 30, 1986

The Honorable John W. Coughlin  
Denver District Court  
Courtroom 12  
City and County Building  
Denver, CO 80202

Re: Lawrence Steven Aoki  
Criminal Action No. 86 CR 0852

Dear Judge Coughlin:

I have psychiatrically examined Mr. Lawrence Aoki concerning the legal issue of sanity. Mr. Aoki is a forty-one year old divorced man who is currently charged with first degree murder. Sources of information utilized in compiling this report included review of pertinent police reports and prior military records; telephone conversations with his public defenders, Mr. Steven Gayle and Mr. Frank Viehmann; telephone discussions with district attorneys Kenneth Rock and David Olivas; and five individual interviews during July 8, 10, 13, 15, 29, 1986, lasting 6.42 hours.

#### The Alleged Crime

Mr. Aoki was able to provide a very detailed history of the events leading to the alleged crime during February 6, 1986. It is significant to note that Mr. Aoki has had a cocaine abuse disorder since around 1976. His usage significantly increased after he began dealing cocaine during the summer of 1984. He eventually was snorting about one-fourth to one-half ounce of cocaine per day around December 1985. By January 1986, he had increased his usage to one ounce per day after he started free-basing cocaine.

Mr. Aoki explained in great detail a proposed drug deal during the latter part of January which was to involve Craig Fisher, Jim Coffel, and several people from Nebraska. Craig Fisher was the brother of Rocky Fisher, who Mr. Aoki considered to be a good friend.

"Craig Fisher approached me ... asked me to supply him one pound of cocaine ... about six days before this happened ... I called my connection ... [he agreed to supply the cocaine] ..." Selling this amount of cocaine was apparently very unusual for Mr. Aoki. The most he had previously sold to Craig Fisher was about four ounces. Mr. Aoki became very concerned about the proposed method of delivering the cocaine to the people from Nebraska who wanted to buy the cocaine from Mr. Fisher and Mr. Coffel. Despite this concern, which was supported by his supplier, Mr. Aoki

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eventually agreed to have Craig Fisher and Jim Coffel sell the cocaine in a manner which made him very uncomfortable. This drug transaction did not take place as planned because the people from Nebraska were not in their motel during the time of the planned sale. Mr. Aoki then returned the pound of cocaine to his supplier around 8:00 or 9:00 p.m.

The following day he was again contacted by Mr. Fisher who told him the deal was back on again. The buyers from Nebraska were willing to conduct the transaction at a place more acceptable to Mr. Aoki. He again picked up the pound of cocaine from his connection and made arrangements for Mr. Fisher to sell one-half pound at a time to the people from Nebraska at a local hotel.

Mr. Aoki waited outside the hotel while Mr. Fisher and Mr. Coffel were selling the cocaine to the buyers. "I [told Craig] I would give him twenty minutes ... one and a half hours expired ... he came out without the money ... [he] didn't have the cocaine ... he gave it to Jim ... [he said] these guys are cool ... everything is going down ... they didn't bring the money with them ... the money is up north ... told him I would follow him up [north] ... to make sure that he didn't lose me ..."

However, Mr. Aoki did not see any of the people involved in this drug transaction leave the hotel. He eventually returned to his apartment after waiting two hours. He knew that something had gone wrong. He was eventually called by Craig Fisher around 1:00 a.m. He was essentially told that they had been ripped off. Mr. Aoki instructed Craig Fisher and Jim Coffel to immediately return to his apartment. "I was relieved that these guys were okay ... they came to my house ... explained that they were tied up in a room ... these guys claimed to be DEA agents ... bound them ... took the cocaine ..." However, Mr. Fisher and Mr. Coffel did not think that these people were DEA agents due to their actions that evening.

Mr. Aoki called his connection to tell him about the problem. "I told him I would be over ... I returned the half pound ... he and his associates asked me what happened ... I told them what Craig Fisher and Jim Coffel had told me ..." Mr. Aoki initially felt very sure that he had not been ripped off by Craig Fisher due to his prior interactions with him. However, his connection and associate were not so sure and "placed that [doubt] in my thoughts ... I argued with them [for about one hour] ... I trusted Craig Fisher with my life ... when they put that thought in my mind ... it really hurt me ..."

Mr. Aoki made it clear to his connection that he was responsible for payment of the half pound of cocaine. His connection and associate told him "we're not going to take this incident easily ... we're going to find out who is at the bottom of it ..."

Mr. Aoki followed a plan developed by his supplier which involved further questioning of Craig Fisher and Jim Coffel. Mr. Aoki continued to free-base

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cocaine during this time. Arrangements were made for Mr. Aoki to be met by friends of his connection at Mr. Fisher's apartment. "They were going to send some people over to question these guys ... [I was told that] these guys look and are scary ..." Mr. Aoki felt comfortable at this time that he was not being suspected of ripping off his supplier.

He was eventually joined by his supplier at Mr. Fisher's apartment where Mr. Coffel was also present. "[My connection] grabbed Craig Fisher ... [said] what the hell were you thinking about ... he was drilling him ..." Mr. Fisher and Mr. Coffel were eventually interrogated by "three huge mean guys ... I was frightened ... they meant business ..." The apartment was also searched for money and cocaine by these people.

A discrepancy was discovered, during the interrogation, in the accounts given to Mr. Aoki and to his connection by Mr. Fisher. Mr. Aoki now believed that Craig Fisher was lying and began hitting him. "I trusted [him] like my own brother ... [he] ripped me off ... I was pulled off by one of the big guys ..."

A possible explanation for this discrepancy was discovered after further questioning of Mr. Aoki by his supplier. The discrepancy involved where Mr. Fisher and Mr. Coffel had been ripped off. Mr. Aoki assumed that it happened at the Marriott Hotel because he did not see any of the people involved in the drug transaction leave this hotel. Mr. Fisher reported that the rip off occurred at the Holiday Inn in the northern part of Denver. Mr. Aoki realized that there was a very short period of time where he was not in a position to observe the people involved in the transaction leaving the Marriott Hotel. At one time he thought that he recognized several cars from the Marriott which he thought had been at the Bronco Inn the prior day. Mr. Aoki still does not believe that this perception was a delusional belief. "I was concerned that there was a gang up there ... I had returned to my car ... I drove down in front of the Marriott ... apparently that's when they had left the hotel ... occurred in [a] few minutes ..."

Mr. Fisher and Mr. Coffel were obviously very fearful for their lives after this interrogation. The interrogators told Mr. Aoki's connection that they would have to check out the stories in the morning. Mr. Coffel apparently had mentioned a man named Rocky Dvorak as possibly being involved in the rip off. "The big guys knew him and didn't like him." Mr. Aoki reports never having met Rocky Dvorak.

Mr. Aoki was told to go home and wait until morning. He was frequently called on the telephone by Mr. Fisher and Mr. Coffel. He received a phone call from Mr. Coffel stating that Rocky Dvorak's ex-wife or ex-girlfriend had come to his house informing them that Rocky had some excellent cocaine for sale. Mr. Aoki called his connection to inform him of this information.

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With direct questioning from the examiner, Mr. Aoki confirmed that Andy Brown had knocked on Craig Fisher's door after the interrogation was about three-quarters finished. Mr. Aoki told Andy Brown to come back later which was supported verbally by Mr. Fisher. Mr. Brown had asked Craig Fisher whether he was okay which Mr. Aoki thought was strange. He does not know whether he suspected Andy Brown at that time to have been involved in the rip off. Mr. Brown later drove with Mr. Fisher after the interrogation. Craig Fisher denied telling Andy Brown anything about the drug transaction but Mr. Aoki "couldn't understand why he would go on a ride with him."

Later that evening Mr. Aoki went to the Embassy Suites Hotel after he had been told by his connection to stay there for two to three days. "Apparently Rocky Dvorak got life threatening phone calls ... I thought the big guys had [threatened him] ... he had called the police ... [I was told] to make sure my apartment was clean [from drugs] ... go there and wait ..."

Mr. Aoki had not slept since the initial rip off. He noticed a newspaper truck and the driver placing the newspaper in the newspaper stand. "I was scared ... thought he was a cop or somebody connected with whoever made the rip off ... thought he was watching me ... I drove to the Embassy Suites ... saw the same newspaper delivery truck and [driver] ... I had been free-basing throughout this time ... I was paranoid ... thought that Rocky Dvorak had told the cops [about the threatening phone calls] ... called my connection ... told him I thought I was being followed ..." His supplier raised the issue of whether he was being paranoid. Mr. Aoki eventually picked up more cocaine from a park where he had previously hid his drugs. He then returned to the Embassy Suites Hotel where he stayed for the next three days. Mr. Aoki reports not sleeping during this time. "I kept envisioning the police or someone breaking down the door and arresting me ..."

During the second day he left the hotel in order to go to a movie. "I thought I was being followed by cars ... and they were very good ... they didn't want me to know that I was being followed but I was pretty sure ... I stopped and called my connection ... I drove two hours trying to lose them ... but they were pros ... didn't know if they were cops, north Denver gang, or my own people testing me ... I called my connection ... told him I was 99.9 percent sure I was being followed ... he said just don't come over here ..." Mr. Aoki continues to think that he was followed during this time period by either the police, a gang involved in the rip off, or people affiliated with his connection.

He free-based cocaine throughout his three days at the Embassy Suites Hotel. "I started to feel the same feelings as if in Vietnam ... frightened ... had to use the same skills and senses as in Vietnam ... be observant, covering tracks ... just being aware ..." During his last day at this hotel he was called for the first time by his connection. He informed this person that it appeared that his apartment was not being monitored

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by anyone. Mr. Aoki was told that it was probably okay to return to his apartment. "He said to quit dealing ... get a job ... [he] also recommended [I] get some form of protection ..."

Mr. Aoki returned to his apartment where he was again called by his supplier. "Larry, how would you like to get out of town for a few days ... [I said] I'd love it ... pack a suitcase for a few days ... make sure the apartment is cleaned out [from drugs] ... come to the office ... make sure you're not being followed ..." Mr. Aoki followed his supplier's instructions and met him at the office during the planned time. He was told that he was going to go to Kansas City, Missouri. "I would drive my connection's associate's car ... it was going to his daughter for a birthday gift ... [I] had to wait for a phone call before I left ..."

Mr. Aoki was given elaborate instructions concerning his trip to Kansas City which included planned phone contacts with his connection. He felt that he was delivering cocaine in addition to the car. He states that he was at that time without sleep for five nights. The only other time he had gone over five days without sleep was during his time in Vietnam. He left for Kansas City around 5:00 a.m. on February 5, 1986.

He did not free-base any cocaine during this trip but did continue to snort some cocaine in order to stay awake. He checked into the Airport Hilton after arriving in Kansas City. After making appropriate contact with his connection, he began free-basing more cocaine around 11:00 p.m. Mr. Aoki estimated that he smoked five to six ounces of cocaine during the six days prior to the alleged crimes.

"All of a sudden I started hearing voices ... a woman giggling ... the voices got louder and louder ... I started seeing some images in the morning ... mostly images of people in the mirror ... thought I was hallucinating ... then thought maybe I was not hallucinating ... the laughter got louder ... the images took human shapes ... all of a sudden [I] noticed people in the mirror ... women and men ... they were giggling and laughing ... went up to the mirror ... thought it was a two-way mirror ... back of my head thought this trip was arranged for me ... I thought my connection was affiliated with the Mafia ... these people were observing me ... I started having conversations with them ... how the hell do you do this ..." He then went into the hallway to look at the wall space in an attempt to understand his situation further.

Mr. Aoki eventually began hearing siren like sounds in his head. The images continued to take human shapes but he couldn't describe the faces. He reports that a male [image] with blond hair started talking to him about his past which included his family and Vietnam experience. This voice eventually became very serious. "Larry, you fucked up ... you'll have to handle the situation and take care of it ... you fucked up in this drug deal ... it was my responsibility ... I had to take care of it ..."

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Mr. Aoki states that up until this time the only suspects had been Craig Fisher and Jim Coffel. He then saw five people sitting around a table in the mirror. "Shortly the images became more clear ... began recognizing people around the table ..." He eventually received confirmation from the voices that these people were Craig Fisher, Jim Coffel, Andy Brown, Harry, and Susie. He described the following type of interchange with these voices. "I said I fucked up and had to take care of them ... [they said] yes ... I asked kill them ... they said yes ... basically got down that I had three options ... kill the five people ... if I did I was promised I would have nothing to worry about ... my identity would be changed and I would be sent to a different city ... I looked in the mirror ... my facial features were changing ..." His other options included being killed if he failed or killing himself if he failed.

Susie was a friend of Craig Fisher. Mr. Aoki had met her on about four occasions and did ask her out to dinner on at least one occasion. Harry was an acquaintance of Craig Fisher. Mr. Aoki had very little contact with Harry. He had worked with Andy Brown for four years at a Toyota dealership in the past. He reported that Andy Brown did not owe him any money. Mr. Brown was married to Jim Coffel's wife's sister. He also was a constant companion of Craig Fisher. Mr. Aoki had first met Jim Coffel during January 1986 when Mr. Coffel attempted to buy cocaine from him. Craig Fisher apparently supplied Mr. Coffel with cocaine.

He stated that he wanted to get some sleep but he was told by the voices to "take care of this while you heart is still mad ..." Mr. Aoki explained that he had previously thought that there was smoke being pumped into his room - "I was being drugged by some kind of gas ... a real flowery smell ..."

Mr. Aoki was told by a voice what hotel number to call in order to make plane reservations. "I left everything in the room ... got in the car ... thought I was being chauffeured by the car in front of me to the airport ... I was following this car ... never been to the airport ... got to the airport ... followed the car to the end of the terminal ... it was the Frontier Airlines [terminal] ..." He explained that he had a reservation on Frontier Airlines.

When Mr. Aoki boarded the aircraft he saw about six people who reminded him of other individuals in his past. He began to think that people on the aircraft were affiliated with the Mafia to assist him in his mission. "When I sat down ... a man and a woman my age ... sat down next to me ... they started talking ... about what I was supposed to do ... i.e., have you thought about how you are going to do this ... then they continued on with their conversation ... I thought they were talking about events that happened in Vietnam ... and my brother, who was also in Vietnam ..." Mr. Aoki presently is not sure how much of these perceptions were based on reality and how much were related to his cocaine intoxication.

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He also remembers seeing a man in the coat room who he thought was aiming a weapon at him with a laser sight. He thought that the people in front of him were talking about weapons.

About ten minutes prior to his arrival in Denver he had conceptualized his plan. "I didn't know how to get hold of most of the people I was supposed to kill ... only knew where Craig Fisher lived and where Andy Brown worked ... decided to go to Craig Fisher's place ... tie [him] up ... have him call the other people up ... so they would be together [at Craig Fisher's place] ... so I could kill them all at the same time ..." Mr. Aoki wanted to kill these people because "I was told by the people in the mirror [to do that] ..."

Mr. Aoki thinks that he told the people sitting next to him about his plan to go to Craig Fisher's home and the other details which have already been described. "They said it was a good idea ..."

While walking from the aircraft to a taxicab, he continued to see people who he thought were involved with the Mafia. He eventually took a cab to Dave Cook Sporting Goods store in Buckingham Square around 3:30 p.m. He asked the cab driver to wait for him. The driver was reluctant so he handed him a \$50.00 bill. "I told him I had to pick up some ski bindings ..." Mr. Aoki stated that he thought that everyone, including the cab driver, were involved in this plan. "I thought the cab driver had been assigned to me by organized crime ..." However, he does not know why he mentioned the ski bindings to him. He also reported hearing voices on the cab driver's radio which were not involved with the taxi business.

Mr. Aoki bought a Browning 9mm gun and two boxes of hollow point bullets. He then took the cab back to his apartment at Tamarac Village. He loaded the weapon at his apartment. He also put on sneakers because they would be quieter than his boots which he had been wearing. He took a sweatshirt and hat for disguise "so people wouldn't recognize me going in or out of the apartment ... so I wouldn't be caught ... it was like a mission in the service ... [except it was for the Mafia - organized crime] ..." Mr. Aoki placed his clothing and gun in a red runner's bag.

The cab driver then took him to the car he had been using prior to leaving Denver. This car was parked near his connection's office. He had the taxicab driver park in the apartment complex across the street "so he wouldn't know ... didn't know if he was connected [with this] ... I was being cautious ..."

Mr. Aoki drove to a hardware store in southeast Denver. He bought duct tape and nylon cord in order to tie and gag his potential victims. He continued to think that he saw people from the aircraft in the hardware store following him in order to make sure he would not run.

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he drove to a church parking lot across the street from the apartment complex where Craig Fisher lived. It was 5:00 p.m. and not yet dark. He stayed in his car and began cutting the rope and tape. He remembered from his Vietnam experience that he should not go out until after dark. He put all of his materials inside the red running bag before driving across the street from Mr. Fisher's apartment.

"I knocked on Craig Fisher's door ... he opened it ... noticed two of his friends inside ..." Mr. Aoki had previously met these other two people. "I realized the plan had been foiled ... now there were people there ... I was so mad inside because Craig had done this to me ..."

He told Mr. Fisher to go with him to his bedroom. This was not an unusual request because they generally conducted their drug transactions in his bedroom.

Mr. Aoki states that he "lost it" after Craig Fisher closed his bedroom door. "I turned around and hit him across the face with the weapon ... remember yelling at him and telling him how he screwed me ... how I trusted him ... I had the gun out ... he was on his hands and knees ... told him to tell those other people to get out of the apartment ... so there wouldn't be any witnesses there ... my whole plan from the airplane was foiled ... he told the people to leave ... they came up to the door ... I saw their shadows ... he said you guys get out of here ... they asked if he was okay ... he said yeah ..."

Mr. Aoki thought he heard a weapon being cocked. "I hit Craig Fisher over the head with the gun ... tell those guys to get out of here ... saw the shadows back up ... I started to get afraid ... I hit Craig on the back of his head ... the gun discharged ... I was trying to tie him up [during this time] ... he was struggling ... the people [had been] outside ... after the gun discharged I thought I heard the door close ... thought the firing of the weapon had scared them off ..."

Mr. Aoki described himself as becoming very frightened after the gun discharged. "I stood up ... shot him once through the temple ... about two feet away from him ..." Mr. Aoki reports being obsessed with killing all five people. "I was being ordered ... just like my colonel had told me to do this ... no question whether it was right or wrong ... a job to do ... [I was] ordered by the Mafia ... or whoever they were - somehow affiliated with my connection ... to kill these people ... in order to stay alive ... all I could think about was the anger ... they [ripped] me off ... never questioned the order to do it ..." Mr. Aoki immediately left the apartment and went to his car after he killed Mr. Fisher. "I knew people in the complex would have to have heard the gunshot ... thought people would call the police ... had to go seek out the other individuals ... had to get in and get out ..."



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Mr. Aoki began driving towards a Nissan dealership where he knew Andy Brown was working. He stated he left for this dealership around 6:30 p.m. He again experienced voices talking to him through the radio. He believes that the Mafia had put some type of transmitter in his car in order to communicate with him. "This voice told me that the next person I killed to make sure I had them looking into my face when I did it ... the male voice said to make sure they knew why they were being killed ..."

While driving to the dealership he thought several cars began flanking him in order to protect him from the police. He had trouble finding the dealership and initially went to the wrong dealership. He eventually reached the dealership in Lakewood. He reports during this time that the voices constantly warned him to watch out for unmarked police cars. He parked his car by a bank so he would not be detected. He did not know whether the news of Craig Fisher's death had reached people at this dealership. Mr. Fisher's brother, Rocky Fisher, was the used car manager at that particular dealership.

Mr. Aoki walked into the floor room where he saw Andy Brown by the tower. "I walked up to [him] ... asked him - can I talk to you privately ..." Mr. Brown and Mr. Aoki then walked outside of the showroom to the west side of the building to an area where they could not be seen. "I pulled the gun ... hit him across the face ... yelling at him ... thought he was my friend ... remember what the voices told me on the radio ... make sure he knows why he is going to die ... told him to look at me ... he did ... I shot him in the face once ..."

Mr. Aoki described difficulties with the gun due to his nervousness, fear, and drug usage. "I wasn't pulling the hammer all the way back ... caused the cartridge to jam ..."

Mr. Aoki returned to his car. "Now I didn't know where to go ... didn't know where the other three people were ... wanted to get away from the area ... I had just killed somebody ... the police would be after me ... I started driving ... following the cars that [I thought] were assigned to me ..." Mr. Aoki eventually was driving on County Line Road.

Mr. Aoki states that the voices on the radio began telling him that Susie was at a restaurant called Norman's. The voice told him that this restaurant was somewhere off Parker Road between I-225 and Havana Road. He felt that he was lost.

The voices were saying "[they were] in the house ... in the house ..." He passed a large building which the voices eventually told him was the house. "It looked like a fortress ... [the voices said] somebody was on the roof with a rifle ..."

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He parked his car in a field across from the house. He again described during this process other cars making various turns to divert the police from him. The voices had also been telling him to open his window due to his feeling of drowsiness. He was eventually told that the three other people were in this house.

He began observing the house and felt like he was back in Vietnam on a reconnaissance mission. He was trying to figure out how to get into this house without being detected and kill the three people. He described this house as being very well concealed. He was also concerned about the person on the roof with a rifle that had been identified by the voices.

He finally decided the only way to get in and complete the mission was to attempt to drive the car into one of the walk-in plate glass windows and come out shooting. "I got in the car ... figured this was it ... that I would be killed ... tried to drive through the window ..."

The window was partially blocked by a large beer truck and several other vehicles. Mr. Aoki states that he got stuck by a burm and ended up inches away from the plate glass window. "I knew they knew I was out there ... I jumped out against the wall ... finally I said to myself ... I failed ... I don't care if the mob, them, or the cops kill me ... I just don't care ... I was emotionally and physically done ... I had failed my mission ... for a split second I considered suicide ... I expected those people to come back and take me away ..."

Mr. Aoki reports that he suddenly did not hear any more voices and was "out there by myself ...". He states that he was arrested by the police within about forty-five minutes.

#### Past Medical History

Mr. Aoki is currently not on medications. He denies any current medical problems. Past medical history includes a broken hip and lacerations following an automobile accident during 1965 which resulted in a one month hospitalization in Cedar City, Utah.

There is a past history of drug and alcohol treatment on an outpatient basis at a Veterans Administration Clinic in Denver during 1984. This treatment was court ordered following a DUI arrest. He states that he stayed in this treatment for an additional six months. This treatment was at Park Place. Mr. Aoki had cocaine and alcohol abuse problems prior to entering this treatment.

He had been smoking marijuana on a regular basis since 1967. He generally smoked about one joint per day. Mr. Aoki started using drugs while in Vietnam which also included heroin, opium, morphine, and amphetamines. He continued using marijuana and alcohol following his discharge from the service during 1968.

Mr. Aoki began drinking beer at the age of fifteen. He states that it did not become problematic until following his Vietnam experience. Following Vietnam his alcohol usage consisted of mainly weekend binges. He generally would drink either beer, wine, or tequila. His alcohol usage significantly decreased following his substance abuse treatment.

His cocaine usage initially was on a binge basis beginning in 1976. His usage decreased following his marriage during 1979. His cocaine use again increased during 1983 after changing jobs. He was drug free for almost one year during his treatment at Park Place. He began using cocaine during February 1984 which coincided with his marital separation. Subsequent usage has already been described.

#### Educational History

Mr. Aoki graduated from South Utah College during 1970 with a Bachelor of Science degree. He had majored in business. He reported that he received good grades in college. He received a football scholarship.

Mr. Aoki was very involved in sports during high school as well as student government. There is no history of suspensions, expulsions, or behavioral problems.

#### Marital History

Mr. Aoki's first marriage was from 1969 through 1976. He states this was a good marriage but resulted in divorce due to problems related to his Vietnam experience. His alcohol usage was a problem during this marriage.

His second marriage was for about nine months which occurred immediately following his divorce. He essentially described this as a rebound marriage.

His third marriage was from 1979 through 1984. "It was a special marriage to me ... very sad to have it fail ... wife says it was because of my drug usage ..." The couple separated around the spring of 1984 and were divorced during October 1984.

Mr. Aoki does not have any children.

#### Interpersonal Relationship History

Mr. Aoki reports that he has always had close friends. He has not dated since his last marriage.

#### Military History

Mr. Aoki was drafted into the United States Army during his senior year of college. He served in Vietnam from 1967-68. He was with the 101st

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Airborne Division. He originally served in the region surrounding Phan Rang and later with the Special Forces in the central highlands near Ban Me Thuot. He volunteered to become a Green Beret because "I always drove myself to be the best I could ... felt I had a better chance of survival ..."

Mr. Aoki was in frequent combat which included participation in the TET offensive. He states that his Vietnam experience hardened him - "I didn't feel compassion as I used to ... came back feeling old and guilty about things that happened over there ... [saw] a lot of death and destruction ... experienced a lot of emotions that most people don't experience ... things that upset them seem just petty to me ... had seen a lot of disease and terrible things ..."

Since his return from Vietnam, Mr. Aoki has experienced recurrent and intrusive recollections of his Vietnam experiences which have included recurrent nightmares and intrusive thoughts about Vietnam. There also has been a feeling of detachment or estrangement from others. There is a history of an exaggerated startle response, chronic sleep disturbance, survival guilt, memory impairment, avoidance of activities that arouse recollection of Vietnam, and intensification of symptoms by exposure to events that symbolize or resemble his Vietnam experience.

#### Legal History

There is a past history of two arrests for a DWAI (1983) and careless driving (1974). He denies any incarcerations through a department of corrections.

#### Family History

Mr. Aoki was born in Murray, Utah and raised in Salt Lake City, Utah. He has three older full brothers and two younger half sisters. He described very close relationships with all of his siblings. He served in Vietnam with his brother, Dick.

His father died during a hit and run boating accident during 1977. He reported a very good relationship with his father who was "always real good to us kids ... took us fishing, camping ... his whole life revolved around the family ..." He had been re-establishing his relationship with his father following his Vietnam years immediately prior to the boating accident.

His adoptive mother was "a real loving lady ... found out at the age of nineteen that she wasn't my real mother ... found out by accident ... [she was] a loving, caring mother ... the perfect mother ..." His mother had been placed in a relocation center during World War II due to her Japanese background. She currently lives in Sacramento, California.

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Mr. Aoki thinks that his biological mother was either Irish or Scottish. His parents became divorced during World War II due to social and family pressures placed on his mother related to his father's Japanese background. He states that his mother abandoned him and his brothers when he was around 1½ years old. His father was serving with the United States Army in World War II during that time. He was raised with his siblings initially by his paternal aunts.

Mr. Aoki described his childhood as being very wonderful although there were problems being raised in a predominantly Caucasian, Mormon community. Mr. Aoki's paternal great-grandfather was the first Japanese Christian minister in Salt Lake City.

Mr. Aoki also experienced some difficulty feeling accepted by the Japanese community because he was not one hundred percent Japanese. It essentially was a family secret about his father's first marriage until he discovered this fact at the age of nineteen. He reported a period of time when he was actively searching for his biological mother. This search was eventually ended by his military service.

#### Occupational History

Mr. Aoki has always worked. During his school years his jobs included selling doughnuts, a newspaper route, and working at the family's fruit stand. He and his brothers owned a landscaping business where he worked for fifteen years beginning at the age of fifteen.

After completing college Mr. Aoki became married. He and his wife moved to Denver where he worked for Dave Cook Sporting Goods store for 2½ years. This job was followed by a sales job at Bob Post Chrysler-Plymouth for 1½ years. He remained with this job as a sales manager until his marital separation. After moving to Alaska for several months he began living with his family in California where he worked in the restaurant business. He then lived in Mexico for about six months during 1977 where he worked at a scuba diving shop. He returned to Denver where he worked in the car business for about the next three years. Mr. Aoki then moved to Alaska where he worked with his brothers in the construction business from April-December 1980. He moved back to Denver due to the social isolation in Alaska where he worked for Havana Toyota for the next 4½ years as a salesman. This job was followed by a similar job at Cherry Creek Dodge which he stopped about one month prior to the alleged crime.

#### Mental Status Examination

Mr. Lawrence Aoki is a forty-one year old man who was alert and oriented. He could remember the past four presidents, repeat six numbers forward, four numbers backward, and recall three out of three objects after five minutes. Serial seven subtractions were good. Similarity and proverb

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testing revealed an ability for abstract thinking. He denies suicidal or homicidal thoughts. There is not a past history of suicide attempts. Except for the time immediately surrounding the alleged crime, there is not a history of auditory hallucinations. There is not a history of visual hallucinations when in a drug free state. Thought withdrawal (perception that other people can take thoughts or feelings out of one's mind), insertion (perception that other people can insert thoughts or feelings into one's mind), and broadcasting (perception that one's thoughts or feelings are being broadcast on the radio or T.V.) were not present prior to the time immediately surrounding the alleged crime. Affect showed a full range of emotions. Intelligence is estimated to be above average. Verbal behavior demonstrated no evidence for the presence of a thought disorder. He demonstrated significant thought organization and an ability to speak in a goal oriented fashion.

#### Summary and Opinion

Mr. Lawrence Aoki is a forty-one year old man who is being psychiatrically evaluated concerning the legal issue of his sanity during February 6, 1986. His history is consistent with the differential diagnosis of a posttraumatic stress disorder related to his Vietnam experiences, mixed substance abuse disorder which includes abuse of cocaine, alcohol, and marijuana, a personality disorder, and a cocaine induced organic delusional syndrome, organic hallucinosis, or mixed organic brain syndrome. The cocaine induced organic disorder(s) were present at the time of the alleged crimes if the history obtained from Mr. Aoki is accurate. It should be emphasized that the cocaine induced organic disorder(s) were directly a result of Mr. Aoki's continued cocaine usage. The symptoms of his cocaine induced organic disorder(s) included the presence of auditory and visual hallucinations, paranoid thinking, and impaired judgment.

Mr. Aoki is currently not suffering from a mental disorder associated with either organic or psychotic features. It is my opinion that he continues to experience symptoms of a posttraumatic stress disorder related to his Vietnam experience. He also remains at high risk for further substance abuse.

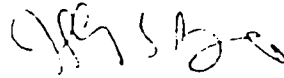
Despite the presence of the above disorders, it is my opinion that Mr. Lawrence Aoki was not so diseased or defective in mind at the time of the commission of the alleged act as to be incapable of distinguishing right from wrong with respect to that act. It is, therefore, my opinion that Mr. Aoki met the criteria for legal sanity at the time of the commission of the alleged act.

It is also my opinion that Mr. Aoki's actions during the time immediately surrounding the alleged crimes were very related to his cocaine intoxication and mental disorders which have already been described.

The Honorable John W. Coughlin  
July 30, 1986  
Page Fifteen

If I can answer any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeffrey L. Metzner", with a stylized flourish at the end.

Jeffrey L. Metzner, M.D.  
Diplomate, American Board of  
Psychiatry and Neurology

JLM/ms

**APPENDIX B**



CT RM 12 AUG 5 '86

J. LAWRENCE WIBERG, M.D., P.C.  
4700 CHERRY CREEK SOUTH DRIVE  
DENVER, COLORADO 80222  
---  
TELEPHONE (303) 759 0075

FELLOW, AMERICAN PSYCHIATRIC ASSOCIATION  
DIPLOMATE, AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY

August 4, 1986

The Honorable John W. Coughlin  
District Court  
City and County Building  
Denver, Colorado 80202

Re: Lawrence Aoki  
Case No. 86CR0852

Dear Judge Coughlin:

Thank you for referring Mr. Lawrence Aoki for psychiatric examination and evaluation of insanity. I met with and interviewed Mr. Aoki at the Denver County Jail on three separate occasions, June 24, July 1, and July 3, 1986. I found him to be quite cooperative and a good historian of the events leading to his arrest. The following narrative is based on my interviews with him.

Mr. Aoki is 41 years old (date of birth: February 16, 1945). He has been in the Denver County Jail since February 6, 1986, following his arrest for two homicides. He is being represented by defense counsel, Mr. Frank Veehmann. The events leading to his arrest are described by Mr. Aoki as follows. Mr. Aoki in February 1985, resumed using cocaine, and for the first time began dealing in cocaine. He was also employed as a car salesman for Cherry Creek Dodge. Though his use of drugs will be detailed later, it is pertinent to note that his personal use of cocaine had begun in 1975 and consisted of snorting the drug on a fairly frequent basis. He was abstinent for one year prior to February 1985 while in counseling at the Denver Veterans Administration Medical Center and participating in Narcotics Anonymous.

Mr. Aoki began freebasing the drug in large amounts on a daily basis three weeks prior to committing the alleged homicides. Two weeks prior to his arrest, he was working as a middleman between his "connection" (a man whose real name he allegedly never knew) and two cocaine dealers, Mr. Craig Fisher, and Mr. Jim Coeffel. Mr. Fisher and Mr. Coeffel were arranging a drug deal with parties from Nebraska and wanted one pound of cocaine from Mr. Aoki. Mr. Aoki was suspicious of the deal in that the Nebraska parties were strangers to Mr. Aoki and he wanted the transaction to take place at his own apartment. The Nebraska parties insisted that the transaction take place

August 4, 1986  
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at the Bronco Inn Motel in the north part of town. Mr. Aoki gave in to this on the condition that the pound of cocaine be delivered one-half pound at a time. Mr. Aoki would keep the second half pound until he had seen the money for the first half pound.

Mr. Aoki followed Mr. Fisher and Mr. Coeffel to the site. The deal fell through after several hours, as Mr. Aoki sat outside in his car waiting for the results. The Nebraska parties allegedly wanted the whole pound on first delivery. Mr. Aoki returned the pound to his connection. While surveilling the motel from his car, Mr. Aoki felt people around the motel looked suspicious, and he felt he was going to be "ripped off." It should be noted that at this time Mr. Aoki had been freebasing cocaine daily (up to a quarter of an ounce per day) for about one week.

Two days later, Mr. Fisher phoned Mr. Aoki to say that the Nebraska parties had apologized and that the deal was back on. This time the deal was to transpire at the southeast Denver Marriott Hotel. While Mr. Fisher and Mr. Coeffel went inside the hotel with one-half of the cocaine, Mr. Aoki observed from his car atop the parking structure. Mr. Fisher came out to say the Nebraska parties had the cocaine, but that money was in a motel north of town, and he and Mr. Coeffel were going there to collect. Mr. Aoki returned to his apartment. At midnight, he got a call from Mr. Fisher who said that the Nebraska parties identified themselves as drug enforcement agents, pulled guns, tied up Mr. Fisher and Mr. Coeffel, and took the cocaine. Mr. Aoki returned the remaining one-half pound to his connection, vowing to make up for "every penny" of the lost cocaine. Mr. Aoki felt Mr. Fisher and Mr. Coeffel were lying.

Mr. Aoki's connection instructed him to go to Mr. Fisher's apartment and to be sure Mr. Fisher and Mr. Coeffel remained there. The connection, his associate, and three "motorcycle types" came to the apartment, searched the apartment, interrogated Mr. Fisher and Mr. Coeffel, threatened and roughed them up, and then left. Mr. Aoki was told to go to his apartment to await further instructions. The next day his connection called saying a Mr. Rudy Devorah, who supposedly had put the Nebraska parties in touch with Mr. Fisher and Mr. Coeffel, had received a life threatening phone call and was going to the police. Mr. Aoki was told to take a room at the Embassy Suite Hotel in Denver for a few days. He packed his clothes, freebasing equipment, and personal cocaine supply and promptly did so.

From this point on, Mr. Aoki was sure that he was being followed by what he thought could be the police, the Nebraska parties, agents of his connection, and/or the Mafia. For example, he saw a newspaper delivery man and truck in front of his own apartment, and later in front of the Embassy Suite Hotel. He felt this was part of a plan to watch him. As noted, he continued his daily habit of freebasing cocaine.

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He stated he was only getting three to four hours of sleep every 24 hours. He felt "claustrophobic" in his hotel room and would take long drives -- "I drove all over trying to lose those people." Upon returning to his apartment, he would continue freebasing.

After three to four days of this, his connection called and they met at his connection's office. He was told to drive a car to Kansas City and deliver the car to an associate's daughter. He was to get a hotel close to the Kansas City airport and the connection's associate would meet him there. He was also given an attache case (the contents of which he never knew). To quote Mr. Aoki, "I felt they were connected with the Mafia and they were testing me. I felt it was a chance to prove my loyalty."

Having not slept for four days, he left, taking his own supply of cocaine, and drove straight through to Kansas City. While on the highway, he felt he was being "convoyed" by semi trucks who were controlled by his connection. He checked into the Kansas City airport Hilton. He purchased some Q-tips and ordered 151-proof rum from room service to be used in freebasing, and began freebasing his cocaine. He then heard men and women's voices and noticed movement in the hotel room mirror. It then seemed that the mirror was a "one-way mirror" and he began conversing with the five or six people who appeared to be behind it -- "they looked like holographs." He felt there was smoke in the room with a "flowery smell" and that he was being "drugged." He was called by his name, Larry, and was told to avenge for the rip-off by killing Mr. Fisher, Mr. Coeffel, and three of their friends, a Mr. Andy Brown, a Harry and a Suzie (last names not known). He was given a blue piece of paper by the people in the mirror, stating that between 3 and 7 p.m. the next day these five persons were to be killed. If he did this, "the mirror said I would be in the family." He then noted in the mirror his own reflection and it had appeared to be changed by "plastic surgery."

On my specific questioning as to whether this would be right or wrong to carry out the killings, he answered, "I was being ordered to kill these five people. I knew it would be wrong, but it wasn't a matter of right or wrong. It was a threat. I would have to kill the five or they (the people in the mirror) would kill me or I would be asked to kill myself. They said I couldn't rest. It would be like Viet Nam. I would have to work tired."

He immediately got a return flight on Frontier Airways. At this point, though everything appeared normal, he felt the flight, its crew, and the passengers worked for the Mafia, that it was a special flight, and everyone was to help him carry out the "executions." He arrived in Denver Thursday evening, February 6, 1986, took a cab to Dave Cook's in Buckingham Square where he purchased a 9 mm Browning handgun and two boxes of hollow point shells. He took a

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cab to his apartment, loaded the gun, put it and a knife in a red bag and got his own car at his connection's building. He drove to Handy Dan's Hardware Store and purchased rope and duck tape. He drove to Mr. Fisher's apartment and waited for darkness to fall. He felt he was being followed all this time. His plan was to tie up Mr. Fisher and have him call the other four to his apartment, at which point all five would be killed.

He went to the apartment. Mr. Fisher answered the door, and two other people were in the apartment. He ordered Mr. Fisher to the back room. The two people left. He struck Mr. Fisher in the head with the gun and it discharged, the bullet not striking anyone. Then at close range, he deliberately shot Mr. Fisher in the left temple, killing him. He left the apartment scared and went to his car. He knew where Andy Brown would be working. He heard voices on his car radio instructing him to kill the rest one by one. He felt he was being escorted by cars on the road. He drove to Andy Brown's place of employment, Empire Nissan on West Colfax. He found Mr. Brown, told him to come outside to talk, and there deliberately shot Mr. Brown in the right eye, mortally injuring him. He returned to his car and went to what he thought was Suzie's house, a house he had never seen before. He tried to drive his car through the window. The car "got stuck in the building." A Littleton police officer arrived shortly thereafter. Mr. Aoki felt he had failed in his mission. He briefly thought of killing the policeman or himself, and then let himself be arrested. The date was February 6.

Mr. Aoki believed in the veracity of many of the above events until May 1986 while in jail. He was startled to learn from his defense attorney that Suzie's house was an eye clinic.

In this report, I would now like to cover the pertinent details of Mr. Aoki's past history, military experience, job history, and pattern and onset of drug use.

Mr. Aoki was born in Murray, Utah, and was raised in and around Salt Lake City. His father is Japanese-American and managed a produce business and produce stand during Mr. Aoki's youth. Mr. Aoki's natural mother was Caucasian (Irish) and he was the fourth of four boys. While his father was in the Service, and Larry was 2 years old, mother left the family. His father got a hardship discharge so as to care for his sons. Father remarried a Japanese woman, whom Larry felt to be his real mother until he was told the real circumstances at 18 years of age. For the most part, he describes a good childhood, having only some difficulty being Japanese in a Mormon community. He was raised Protestant, and his paternal grandfather was the first minister of the Japanese Church of Christ in Salt Lake City.

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He had the usual childhood illnesses and a tonsillectomy. He attended Southern Utah State College on a football scholarship. Just prior to his senior year, he was drafted into the Service for the Viet Nam conflict. Following discharge from the Service, he completed the senior year and graduated with a Bachelor of Science degree in business.

Mr. Aoki served in Viet Nam from April 1967 to July 1968. Following basic training at Fort Bliss, he was selected for guerilla warfare in the Airborne Infantry. An older brother was already stationed in the 101st Airborne Unit in Viet Nam. He arrived in Viet Nam, thinking he would be a helicopter gunman, but his brother had arranged for Mr. Aoki to work with his brother as a driver on the Adjutant General's staff. At the end of nine months, at his own request, Mr. Aoki was transferred to Special Forces. He was in Pleiku when the Tet Offensive broke out, and served as a machine gunner fighting in the city. He also manned machine gun towers. He later volunteered for search missions and was in jungle combat. Weapons used were machine guns, rifles, and grenades. There was no hand-to-hand combat. Most of the people he shot at could not be seen. His commanding officer put him in for a bronze star, but the award never came through. He received an honorable discharge, and as noted above, returned for his senior year of college.

Prior to Viet Nam, Mr. Aoki occasionally drank beer. In Viet Nam, he and allegedly most of his peers, frequently used different drugs. He personally tried opium, cured marijuana, benzedrine (allegedly supplied with permission by corpsmen), morphine sulfate, and some heroine. Cocaine was not tried. Upon returning to the United States, his drugs of choice were alcohol and marijuana. He also tried LSD and when hallucinating under the influence of this drug, knew he was having drug-induced hallucinations. He contrasts this to the very real nature of the hallucinations he experienced in the Kansas City hotel room.

After graduating college in 1969, Mr. Aoki married a woman of Japanese descent and moved to Denver. He worked for Dave Cook's for 2.5 years and then at Bob Post Chrysler Plymouth until 1975, having been promoted to sales manager. In 1975 he began snorting cocaine along with the use of alcohol. He divorced, moved to Alaska, and then to Sacramento, California, where he worked in his parents' restaurant until 1978. He had a second marriage in Sacramento which lasted 6 months. He returned to Denver and in 1979 married for a third time to a Ms. Kathy Shurtleff. He continued working at various car agencies.

In 1983 Mr. Aoki was charged with driving under the influence of alcohol. He was assigned to receive alcoholism education and enrolled at Park Place, the Denver Veterans Administration Outpatient Substance Abuse Clinic. He completed 40 hours of required level II education, and because of having troubles in his marriage, elected to pursue counseling at Park Place. He was in treatment at Park Place

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and was drug free of all substances used for one year after confessing to his use of cocaine. He described group therapy with Viet Nam era veterans who had drug and/or alcohol problems as being most helpful. For the first time in 17 years he was able to cry about his combat experiences.

On discharge from Park Place, he was referred to and attended Narcotics Anonymous. I personally conferred with his therapist at Park Place, Nancy Behrendt, R.N., and though Mr. Aoki had issues about Viet Nam, she reported he was not considered to be suffering from post traumatic stress disorder. His primary problem was substance abuse. Though drug free, there were still marital problems. Feeling that he had proven something by being drug free for one year, and still remembering the euphoria effect of cocaine, he resumed using the drug in February 1985, as noted above. He states it was because of this that his third wife divorced him. As mentioned earlier, he also began dealing the drug at this time.

#### MENTAL STATUS EXAMINATION

On all three interviews, Mr. Aoki was well-groomed, pleasant, and communicated well. His speech was well-articulated, easy to follow, and was without evidence of blocking or loose associations. His affect was even and appropriate to the content at hand. He became briefly tearful when discussing how he was able to cry in group therapy at the Park Place program. On formal mental status examination questioning, he was oriented as to place, time, and person. I would judge his IQ to be above average. He subtracted serial 7's rapidly with one error. He remembered five digits forward and four digits backward without error. He remembered an object, an address, and a color after five minutes. He recalled the past presidents back to Roosevelt, but did leave out Gerald Ford. Similarities were correctly abstracted. Proverbs were interpreted appropriately. Judgment was sound and intact. He denies feelings of paranoia, thought broadcasting, or thought insertion at this time. He also denies auditory, visual, or olfactory hallucinations at this time.

As previously mentioned, it took somewhat over two months after being in jail, for his thoughts to clear and to realize that much of what he had been experiencing in the two to three weeks prior to his arrest had no basis in reality.

#### DIAGNOSTIC IMPRESSION

It is my opinion that due to the voluntary ingestion of large amounts of cocaine, Mr. Aoki suffered a period of temporary insanity diagnosable as organic mental disorder, delusional disorder, acute, cocaine-induced. The onset coincided closely with the practice of freebasing large amounts of cocaine and was characterized by ideas of reference, paranoia, vivid auditory, visual and olfactory hallucinations,

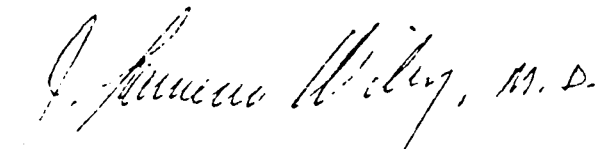
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aggressiveness and hostility, anxiety, and possibly psychomotor agitation. This condition cleared when he became cocaine free. I do not find evidence of a pre-existing condition of insanity, mental impairment, or psychotic illness. In his present drug-free state, my psychiatric diagnosis is mixed substance abuse disorder. There is no current condition of insanity, impairment, or psychotic illness.

At the time of the commission of the homicides, Mr. Aoki knew the difference between right and wrong, but due to his voluntary drug-induced organic psychosis, he felt right and wrong, "was not an issue," and acted on the content of his drug-induced delusions and hallucinations in carrying out the homicides.

Please contact me if further information is needed, and thank you very much for the opportunity to do this evaluation.

Sincerely,

A handwritten signature in cursive script that reads "J. Lawrence Wiberg, M.D.".

J. Lawrence Wiberg, M.D.

JLW/MD3/506/730

cc: Honorable Henry E. Nieto

## APPENDIX C



John F. Yost, M.D.

Forensic Psychiatry/Psychotherapy  
Psychopharmacology  
Stress Disorders

12361 East Cornell Avenue  
Aurora, Colorado 80014  
(303) 368-7808

September 4, 1986

Report of Psychiatric Examination

Mr. David A. Olivas  
Deputy District Attorney  
Second Judicial District  
303 W. Colfax Avenue, Suite 1300  
Denver, Colorado 80204

Re: Mr. Lawrence Stephen Aoki  
Criminal Action #86CR0852

Dear Mr. Olivas:

The following is a report of psychiatric consultation you requested on the above named client. In addition to my six hours of interview of Mr. Aoki, three hours on February 16, 1986, and three hours on February 24, 1986, I also interviewed Mr. Aoki's former third wife, Kathy Shurtluff, for one hour on February 24, 1986, and I reviewed an extensive packet of information provided to me by the Public Defender's Office. This information included police reports, military records, forensic reports, pathology reports, etc. I also had at least two discussions with the Public Defender's Office involving this case.

Mr. Aoki describes the history of events leading up to the alleged murders on February 6, 1986. Initially Mr. Aoki indicated that he was involved in a drug transaction during the later part of January 1986 which involved a Mr. Craig Fisher, a Jim Coffel and others, the names of whom he could not recall from the state of Nebraska. Craig Fisher approached Mr. Aoki and asked him to supply approximately one pound of cocaine somewhere around six days or so before the alleged double homicide. Mr. Aoki called his connection, whom he has never named in my presence, who apparently agreed to supply this rather large amount of cocaine for Mr. Aoki. Previously Mr. Aoki had sold cocaine to Mr. Fisher only in amounts up to four ounces. Mr. Aoki became suspicious about the way in which the cocaine was to be delivered to the people from Nebraska who apparently had decided to buy cocaine from Mr. Fisher. Apparently the drug transaction did not take place as originally planned since the people from Nebraska were not in the motel at the time the sale was planned. Mr. Aoki then returned the cocaine to his supplier later that evening. The next day Mr. Aoki was again contacted by Mr. Fisher who told him that the deal was now on again and that the people from Nebraska could conduct the buy at a place more acceptable to Mr. Aoki. He again obtained the cocaine from his connection and made arrangements for Mr. Fisher to sell one-half pound at a time to the people from Nebraska at a local motel. While Mr. Aoki waited at the motel, Mr. Fisher and his associates were selling cocaine to the buyers from Nebraska.

Mr. David A. Olivas  
Deputy District Attorney  
Re: Lawrence Stephen Aoki  
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Apparently Mr. Fisher and his associates indicated that they did not get money for the transaction because money was not brought by the people from Nebraska, that the money was kept in a motel north on I-25. Apparently Mr. Aoki did not see any of the people involved in the drug transaction or did not see them leave the motel. He eventually returned to his apartment after waiting several hours, he began to believe something was wrong and eventually called Mr. Fisher some time early in the morning. Mr. Aoki was told that Mr. Fisher and Mr. Coffel had been "ripped off" by the people from Nebraska. They further reported that these people had tied them up, taken the cocaine and claimed that they were DEA agents. However, Mr. Fisher did not think that was true.

Mr. Aoki was upset, called his connection and reported the difficulty, and returned the remaining half pound of cocaine. After discussing the events with his connection, Mr. Aoki began to become convinced that Craig Fisher was involved and was angry that he had trusted him and this really hurt him. Mr. Aoki felt responsible for the half pound of cocaine. The connection was angry and indicated to Mr. Aoki they were going to find out who was the problem. Following some intense interaction at Mr. Fisher's apartment where Mr. Coffel was present and Mr. Aoki's connection, it became apparent that another individual, a Mr. Rocky Dvorak, was possibly involved in the stealing of the cocaine. Following this encounter, Mr. Aoki went home to wait until the following morning. During that period of time, he called Mr. Fisher on the telephone on several occasions to try to find out what was happening. Sometime during that evening Mr. Aoki checked into the Embassy Suites Hotel, having been told to go there by his connection and remain there for a few days. Mr. Aoki had not slept since the initial theft of the cocaine. He also reported that he had been freebasing cocaine during this time and believed that he was becoming paranoid.

In January of 1986, Mr. Aoki quit his job at Cherry Creek Dodge where he had worked for two years. He was selling cocaine on a frequent basis to support his habit of using cocaine. During the last five months of his job, he was in constant trouble, using cocaine heavily and selling cocaine to support his habit. He was unable to get to work on time and eventually lost his job. Mr. Aoki had known Craig Fisher for some time, about two years, and was quite close to his brother. He knew Andy Brown for about four years; they had worked together at a Toyota dealership for a period of about three years.

After Mr. Aoki returned from staying at the Embassy Suites Hotel, where he had been for three nights on the advice of his connection, he believed that he was being followed and aware that cars were following him. He tried to lose these cars for over an hour and eventually called his connection from a 7-11 Store and told him he was being followed; "I didn't think they were cops, possibly they were a gang, a real organized gang. Maybe I was being tested by my own people." He first became aware he was followed the night he left his apartment and went to the Embassy

Mr. David A. Olivas  
Deputy District Attorney  
Re: Lawrence Stephen Aoki  
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Suites Hotel. He believes he saw a Denver Post newspaper truck, and the way the man behaved led him to believe he was being followed. At the Embassy Suites Hotel he saw the same man so he drove to a park trying to avoid being followed and stashed some drugs and went back to the hotel. The night before his connection told him he should get a job. The following day he was back at his own apartment cleaning it up. His connection called and suggested that he take a trip and pack a case for about two days. He was to make sure he was not being followed and to come to the connection's place of business. He states that during that time he did radical driving, like making left turns through red lights from the right lane so as not to be followed. His connection was not at his apartment so Mr. Aoki went to the connection's office; "I considered him to be a friend, I was just following orders. I think I got there around 5:30 or 6:00 P.M." He then drove his connection's or associates' car to Kansas City, the car that was to be delivered to the connection's daughter. His instructions were to drive to the airport in Kansas City and get close enough to the airport so he could pick up his connection somewhere around 10:00 P.M., and to call in and let them know how he was. He recalls that on the drive he got very tired and stopped several times to call them regardless of what time it was. He believes he got to Limon, Colorado, somewhere around 9:30 in the evening, got coffee at a McDonald's and called in. He drove all night to Hays, Kansas, stopped late at a truckstop early in the morning and had coffee and juice and then drove on to Lawrence, Kansas. By now his car was low on gas, and he knew he had about an hour, an hour and a half drive to Kansas City. He drove to the airport, checked into the Airport Hilton about 9:30 A.M. and called his connection. He was told to relax and that they would call him to pick him up at the airport. They told him that he would drive another car back or possibly he would fly back.

At this point Mr. Aoki decided to begin to freebase drugs but did not have any available rum. He called room service for rum and newspapers but was unable to get liquor until about 11:00 A.M. He got some Q-tips and then began to freebase the drug. After a few hours, "weird things began to happen to me." He first thought he heard a woman giggling and heard conversations. He felt that he saw movement in the mirror in the room. The sounds would get louder. He thought that it was a one-way mirror from the other room, and he began to talk to the people he saw in the mirror about what they were doing. He began to check the wall to see if it was built out to see if there were people between the rooms. He heard noise outside the room and went outside. The room door next to his was open, and he looked in to see if there was a one-way mirror there. He felt the wall was very thick, and there's no way there could have been anyone inside the wall, but he still was convinced he saw movement in the mirror. He denies that this had ever happened to him before. He continued to hear voices. He knew he was high and tired but he was intrigued by what was happening. He looked out the window and looked at cars in order to focus on the license plates in order to convince himself he was not hallucinating. He still felt that people were watching him and that he was talking out loud to them, "Come on in." They would giggle. He continued to freebase during

Mr. David A. Olivas  
Deputy District Attorney  
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this period of time, and he saw what he believed to be smoke or gas coming from the base of the mirror. The smoke or gas was of a lavender color and a very fragrant smell; "It made me even more high, I got more weird. I was listening to pop music on a radio station." He began to see images on the screen; the mirror was like a window. "I couldn't identify people, but they were male and female. I knew the color of their hair. There were three males and one female." Then the funny stuff began to stop and a blond fellow on the far end of the group in the mirror began to talk to him. "Why are you here?" They asked him questions, they told him about things in his past, about his brother-in-law Peter married to his sister, about him and his father's death, his driving to Kansas. "They knew why I was there and they knew about the rip-off. I said, 'I fucked up.' And they said, 'yes, and you will have to take care of it.'" He still had trouble figuring out how they were doing this. He really felt the effects of this lavender gas. They began to get into personal things like his trip to California after Christmas time and something he had done. He knew that they had been watching him for some time and must be an organized crime syndicate, "real big," and that the Hilton was a connection for them. Then another scene came in the mirror; there were people around a table. They asked him if he knew these people--one of the people was Craig Fisher. He could tell by his hair. Then he saw Andy Brown and then Jim Floyd, a friend of Craig Fisher's and then another guy he did not recognize in back, then a woman whose name was Susie. They would confirm these images that he saw, and said that the other guy he could not recognize was Harry. They began to say that you must take care of this. "You mean kill them?" And they said, "Yes." "It was Craig Fisher's living room, there were five people. I wasn't suspicious of Susie or Brown, I didn't trust Jim. Craig I trusted. They didn't really say anything but they talked in a round-about way, 'take care of it.' How? 'You take care of it--shotguns or rifles--no pistols.'" He felt he was on an A-Team and was responding to his commanding officer's orders, and they were asking for volunteers. He felt this was just another test. He had always trusted his connection and he would always honor his word with him. He felt that he had integrity in the business he had done with his connection. He felt he was being accepted a little more and recalls that he had been invited to a New Year's Eve party given by his connection. He wanted his connection to be able to trust him. "I trusted these people. They wouldn't just jeopardize me, I wanted to be accepted. I could be in. I didn't know the mob or what, just do this and you are in. I said, 'I'll take care of it.'" They indicated that when Mr. Aoki handled this, to let them know. He asked how shall he do this. They would report to him that, he must handle this himself. It was his responsibility, he fucked up and lost a half pound of cocaine, so he needed to handle it. All five people just kept repeating this. One said, "Six, Susie's roommate. No, not Donna." Just five people. "When you do it to Susie, have her suck your cock because she masterminded the whole thing. If you do this, there is nothing you won't have." Then they instructed him to look at himself in the mirror. He did and saw that his face was changing, his

Mr. David A. Olivas  
Deputy District Attorney  
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head got longer. They were changing his features and appearance. They changed his ears smaller and then back again, and he felt that he looked better. They changed his body. His shoulders were smaller. Then they giggled and returned his shoulders to the proper size. They also indicated that he would eventually be set up in another place and that he would be accepted, and he began to believe that this must be the mafia. Then he began to think of his family and asked what about his mother and how will she know him with his changed features. They said that his eyes would remain the same. They asked him not to lose his smile. They knew in detail about him and about his family, and he felt they must be well organized, but they were angry that people had ripped him off. He reported, "I'm angry, I trusted Craig and Andy. After all, he was Rocky Fisher's brother. They used my friendship. I had no clue at all that Susie and Andy were involved. They were all smiling and laughing." He felt very hurt and angry. He was concerned when he needed to do this. He heard a knock at the door and heard his name called from the mirror. He saw a blue memo come from the mirror. It read that by February 7, between a certain time. He read it and realized that they wanted him to kill these people between a certain time and no later than February 7. He then realized that he needed to sleep, and they told him he could go to sleep but said that he was used to not sleeping from Vietnam. They continued to tell him to handle it while your heart is mad. Handle it as if you had been in Vietnam. He got a phone book and called Frontier Airlines and found a flight to Denver in about 45 minutes. He believed it was Flight 330 or something, "maybe 337." He was obsessed with killing these people. He was mad. Once they told him who they were and he saw the pictures of them, he was very mad. He felt Andy and Craig had used him and ripped him off. He reported that he asked for specific instructions on how to do it, and they just would reply, "You do it." He felt he was just doing as he had been told by the voices from the mirror. He would ask questions about his clothes, and they would again reply for him to just do it. He eventually went outside and got in his car, was not sure where the airport was but believed a car pulled in front of him and escorted him to the airport. He wasn't sure at first it was leading him, but when he stopped, they would stop, so he knew it was leading him to Frontier Airlines. He parked the car and went to the ticket counter. Initially they couldn't find his flight. Then he believes he saw a fellow in the background he knew was the one, and he finally found the ticket. He was nervous and felt he would miss the flight, but the flight attendant reassured him that they wouldn't leave without him. This other person he saw acted like he was there to help him on the plane. He felt it was a special flight, that everyone on the flight knew what was happening except in the first row where there was a smoking section. He believes it was a small plane like a DC-6. He sat in a window seat, and a man and woman sat down beside him. He was angry, and they knew he was angry and they knew he was going to Denver to kill five people. They began to talk to him and everyone else was not talking. The girl said as she sat, "I want to sit next to a real man." The guy said something about this guy from Nam and his brother and

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about things that happened to Larry. He felt that they were part of the deal. When he looked around, he recognized people although they had changed appearance. They were people he knew who had left Denver, and some people he had never seen before. They were different but he knew them. The two guys in front were talking about weapons, "a 44 mag or a 357. They are telling me what kind of weapon." So he listened to them and felt that this was a special mission. They repeated what the five people in the mirror were saying. They indicated that if he did it in a round-about way that he must kill himself or they would kill him. There were lots of conversations on the aircraft, all about him. He didn't know that he could do it. For example, he would hear people say, "I don't think he can do it--he is a chicken." Then he would say that he would do it. He also saw someone behind the curtain near the flight deck. It was a fellow and there was a little red spot like a laser scope, the outline of a head and a red dot and heat which he felt on his forehead between his eyes.

Mr. Aoki continued to go on in considerable detail about all of the events he believed happened to him on the flight from Kansas City to Denver. Eventually he arrived in Denver and decided that he would get Craig Fisher and have him round everyone else up. He checked with other people on the plane and they apparently approved of this method. He continued to convince himself that he could handle it. He left the airport, got a cab and he felt it was a special cab by the way it pulled out around the other cars and came over to him. He believed it was now February 6. He told the cab to take him to Buckingham Square, that he was going to get some ski bindings and for the cab to wait. He believes he gave the cabbie \$50.00. At Dave Cook's he asked specifically for a Browning 9 millimeter. He opened the gun case. The fellow in back of him was a 25-year-old Chicano person who pointed to a 357 revolver. Mr. Aoki said he felt that he had had a 9 millimeter before and that he knew how to use it. He also got two boxes of jacketed hollow-point ammunition. He charged it on his credit card because he had only \$350 in cash and the price of the gun and the bullets came to over \$300; "I'm smart, I know you don't charge a gun unless you want to get caught. I don't care. I'm obsessed. I'm angry and besides they promised me a new identity." He believes this was just like in Vietnam that you have to do certain things even if there is a 50/50 chance that you won't make it. He felt this was the ultimate test. When he got back to the cab after buying the weapon, he knew that the cab was involved because he heard a voice over the cab radio, someone telling him that he may have made the choice of a wrong weapon. The cab drove to his apartment. He took the gun, filled up both clips of the gun, changed his cowboy boots to sneakers, put the gun in a bag, got a ballcap, blue and white, and a green hooded sweatshirt. The cab was still waiting and drove him to where his car was at his connection's apartment. He then drove in his car to Handy Dan's. He knew he was going to Craig Fisher's house and capture him in order to get the others all together. He didn't know where the others were but knew where Craig Fisher lived. At Handy Dan's he purchased rope and two rolls of duct tape, then went to a church across from Craig Fisher's. He had

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trouble driving because the lavender gas, he believed, had impaired his motor skills. He cut up the rope in strands and peeled the tape. At the church across from Craig Fisher's he put on the ballcap and sweatshirt. The lights were out at Craig Fisher's house and he stayed at the church lot until dark; "you never go on a mission until dark or the next dawn." He knocked on the door at Craig Fisher's. Two other people were there, Craig's roommate and a Craig Osborne. He indicated that he needed to talk to Craig Fisher alone, took him into the back bedroom, closed the door and began to hit him with the weapon. He told Mr. Fisher to get the other guys out of the house. Craig was on his knees, and he kept telling him to get the other people out of the house. Apparently they wouldn't leave. He recalls hearing the slide of the gun being jacked, and again he ordered Craig to get the people out of the house but they wouldn't leave. He was angry that his plan was failing and he hit Craig at least two more times. Craig eventually yelled for the other people to leave. He then hit Craig again, the gun discharged, he put his hand back and he had blood all over his hand. He believes the safety of the weapon was off and that Craig said to him, "Larry, you shot me." He then got frightened. Craig made a move for the gun and he believes he shot him again in the side of the head. He then picked up the bag and ran to his car. The others had left by now. He drove out front. The cars that had followed him, around both front and rear, picked him up again and kept him covered so no one could see him. He then went to Colfax and got lost, went to far west as he was looking for Empire Nissan where Andy Brown worked. "My mission is to get there and kill these five people. I was having trouble driving, I was high. I stopped first at Roger Mauro, then finally at Empire." He continued to feel that there were cars in front of and behind him, escorting him. Then he went to find Andy Brown. He believed that a police car also pulled around, and his escort drove away causing the police car to follow it. He found out that Andy Brown did not work where he used to, and he eventually went to find him. When he found him, he asked him to come out in back, somewhere near the back part of the body shop. He hit him with the gun. Andy Brown apparently fell down. He told him he would die for "fucking me." He believes he shot him, and he said as he looked at him, he shot him in the right eye. He believed there was some kind of communication in his car that they could hear what was happening, and he was talking to them all the time. Once the escort cars took out a white car with two people in it who he thought were police. After that, he began to feel, "I have problems, I don't know how to get out of here. They led me to Norma's in southeast Denver. Susie would be there feeding her fat face with ribs." He eventually got to southeast Denver, off Broadway and east on County Line Road where he was told by voices in the car that they have a house. He believed that she had a big house; it looked like a fort at Ban Me Thuot but apparently it was a medical building. He saw someone on the roof, so he went across the street and staked it out. He felt the person on the roof had a field of fire, and he heard voices saying, "He is scared." He knew he was scared and didn't know how to attack the fort.

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He felt that he would just attack one picture window that didn't have any sandbags around it. He felt that he would drive his car into it and get into the house. In front of the building was a beer truck and a pile of garbage so he drove into the building. He couldn't see the building, he was cold and tired by then and scared and knew that he couldn't take this place all by himself and that there was another day that he could do this. By now, he believed, his escorts had split and deserted him and felt that he could be killed. He left his car, walked into a field, he was not sure about what time it was but thought it was somewhere around midnight. He thought he could shoot himself but was unable to do so. He then felt that the cops could probably kill him. He had felt that he really messed up at this time. Eventually a police officer came with lights on, got out of the car. Larry had a gun and felt that he could shoot the police officer, but the police officer put a spotlight on him, got his gun and said "hands up." Larry raised his hands, dropped his gun and he felt that the police officer "freaked out." He eventually was taken to a Littleton police sub-station and then eventually the Denver Police came and took him to City Jail where he spent about nine days prior to coming to Denver County Jail.

Past History. Mr. Larry Aoki was born in Murray, Utah, apparently with normal birth and early development. He attended primary schools in Hawthorne, in Salt Lake, with his siblings. He was an average to above average student. He attended Lincoln Jr. High School through eighth and ninth grade and then South High School. He was active in sports, was the senior class vice president, played varsity football and wrestled. He attended Boys State, was in a math club. In high school his grades were above average. He denies any administrative or legal problems in high school and graduated in 1963. He attended college at South Utah State for three years. He started his fourth year when he was drafted. Mr. Aoki entered the service October 6, 1966, attended basic training at Ft. Bliss, Texas, and did not have any problems in adjustment in basic training. He was squad leader and earned his first stripe. He went to advanced infantry training at Ft. Gordon, Georgia. He was in an airborne infantry platoon and was a squad leader. He attended Ft. Benning, Georgia, jump school for five weeks and had no disciplinary or administrative problems there. In April of 1967 he arrived in Cam Ranh Bay, Republic of South Vietnam. He was picked up by friends of his brother from the 101st Infantry Division at Phan Rang. He then underwent infantry training with the 502nd Brigade of the 101st Infantry Division. His older brother Richard was a driver for the Adjutant General of the 101st and set it up so Larry could be in his unit. This was a combat unit stationed in Phan Rang. He spent nine months in this area; "It was like a big holiday in a secure area." He did not have any disciplinary actions. His MOS was changed to Clerical Specialist, and he worked as a driver for the Assistant Adjutant. He felt this was a very good duty. He eventually took R and R in Bangkok, Thailand, with his brother, and recalls getting venereal disease. His brother was about to rotate, and Larry decided



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he wanted to be in combat and got transferred to the 5th Special Forces Group. Larry then was transferred to Nha Trang and got training in weapons and was assigned to Pleiku. About this time TET broke out and he was stationed with a C-team at Pleiku at Camp Holloway. Larry was initially involved in three days of intensive fighting. He recalls being in a guard tower and the North Vietnamese were in a dry moat, and they were tossing hand grenades at each other. Larry does not recall ever being in hand to hand combat, although he recalls seeing people whom he had shot and people who had been killed with rockets, mortars and automatic weapons fire. There was a unit in the town of Pleiku that needed volunteers to provide ammunition so Larry volunteered to handle a machine gun on a three-quarter ton truck and for two days carried ammunition back and forth. He was then involved in a cleanup detail in which he and others had to pick up bodies from a combat situation one and one-half weeks old. He recalls in great detail that the bodies were decomposing and that when you would put your hand to pick up the body, it would sometimes go right into the body cavity as a result of the decomposition. Larry also recalls being involved in a heavy combat situation near Ban Me Thuot. He recalls being very frightened, and his unit at that time was led by an NCO who apparently was a cook without much combat experience. He was very scared at that time and realized for the first time that he could die and felt that he needed to overcome this fear. Larry still recalls that he had nightmares in which he will wake up and smell the smell of dead bodies.

Larry had extended his tour in Vietnam for six months in order to get out of the service upon his return, so ended up spending a total of about six months in heavy combat with special forces. He was involved in Cambodia with A-Teams and traveled to most of the A-Teams in his sector. He reports, "I did strange things to overcome my fear." He did not talk in any detail about these things, but I suspected that he may have been involved in some mutilations and was unable or unwilling to discuss this with me. Larry recalls one time when he saw a civilian indigenous trooper whose head was half blown off, sitting by a table. He knew the individual was dead but he was still alive and just wouldn't give up; "It was like a dead chicken that still flutters after you cut its head off." He recalls another incident in which he was sitting in a command bunker that was under heavy force at the time and that they were being overrun by NVA. There was one soldier wounded, and he recalls a guy who was about ready to rotate and was told by the commanding officer to go out and get involved in the fight. The individual was on his knees crying and begging not to go, so Larry decided to volunteer and go for him.

Larry continued to report to me numerous combat experiences which led me to believe that he certainly was involved in intense combat enough to qualify for combat experiences as being a major stressor leading to post-traumatic stress disorders. Larry recalls still having nightmares of jungle boots hanging out of pancho liners. Pancho liners were often used to transport the bodies of dead GI's back to the fire base on helicopters.

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Larry returned to the United States in late 1968, arriving at Travis Air Force Base, and then went to Salt Lake City to visit with his family. He recalls on the flight back being very fearful that the plane would get shot down before he got home. Larry recalls when he was first back it was not "real" when he got off the aircraft. His older brother Jim, his sister, his father, his mother were at home to greet him. He felt very close to his father for the first time and recalls hugging him. Larry's real mother had deserted the family when they were very young, and Larry's father had raised the family until his second marriage. Larry recalls when he was first back that it was so quiet at night that he couldn't sleep, and he would get up and smoke marijuana. Shortly after Larry returned to the states, he found out that a close uncle had died, and this took away some of the happiness of the homecoming. He had to go to the funeral and had difficulty with that. He was sad but unable to cry. He was asked to be a pallbearer but didn't feel he was able to do this. He felt his family didn't understand his apparent lack of feeling. Larry had trouble trying to justify his experience in Vietnam to his family members and was angry when his sister would comment on the reasons why the United States should not have been in Vietnam. At times he reported, "I felt like I was 22 going on 70." He felt that he couldn't understand his friends, and that they could not understand him and that they had nothing in common. When he first got back, he just wanted to celebrate. He recalls saving money to buy a new sports-car and driving up and down the coast of California with his sister. He had access to marijuana and recalls he would smoke it as often as he could when he got back. Prior to the service, he states that the only drug he used to any excess was alcohol although he recalls he may have experimented with LSD in college. He recalls that he had gotten hooked on speed when he took amphetamines for night operations with the special forces. He recalls many times in Vietnam during the six months with special forces when he was in combat that during the periods when he was not in combat he would frequently get high on marijuana, but that he never used drugs during combat situations.

Larry decided after he got back from Vietnam that he would finish college. He had to do another year for a total of five years and graduated from college with a major in business. He then decided he wanted to settle down, find a girl and get married. He met his first wife Toi, Japanese, and married her in 1969. That marriage lasted six years. There were no children. He felt that many times he wanted to tell her about Vietnam and talk about the nightmares he was having which apparently frightened her. He did not discuss his drug use with her. Her father was a Mormon bishop. He felt that they were very different and that her family was involved in status. Following graduation from college, they decided to move to Colorado and she got a job at a savings and loan and he worked for Dave Cook. Since he had been skiing in Utah and taught skiing, he became manager of the camping and ski department at Dave Cook and worked for about two and one-half years. He then left that job

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because he felt that automobile salesmen were making more money and went to work for Post Chrysler for three and one-half years. He had no difficulties on the job and no legal problems, but as his marriage began to break up in the final six months he began to get speeding tickets. His marriage ended in 1975 and the divorce was final in 1976. He then left Colorado in late 1975 and went to Alaska to see his brother. He stayed there about three months working construction, etc., but felt very lonely and eventually returned to California. He says around this time he became "semi-revolutionary" and lived in a collective with his sister and her boyfriend Peter and another sister and her friend Steve and Steve's brother Jamie. They were using drugs at this time. Steve was an ex-junkie, a black belt in karate and at this time they all shared the chores. He felt this was somewhat of a happy time although he was still having nightmares during this period. He remained in the commune in California from 1976 through 1978 and worked at washing dishes for his parents' restaurant and selling cut flowers and landscaping. In 1978 he married for the second time, a Japanese girl and she had problems. Larry's father had died in 1977 in a boat accident, and he was very upset by this situation. He felt he was just getting to know his father at the time of his death. Apparently as a result of his father's death, Larry and his brother became involved in scuba diving and apparently his father had been underwater for about a week before his body was found.

Larry came back to Colorado and got into car sales again and became a very good salesman, making about \$4,700 the first month back from Alaska. However, at the time he was in the commune he began to use drugs heavily, marijuana and heroin. He states that he never really stopped using drugs after he came back from Vietnam and also used cocaine and LSD although he still apparently didn't get into any legal problems until later. He worked at Post Chrysler for a year, then Havana Toyota with Bud Karsh. He sold cars for about three and one-half years and recalls that he was also salesman for the year for two years running.

Larry's second marriage ended after about six months. He remarried for the third time in 1979 to Kathy Shurtluff. They remained married approximately five years; there were no children. Larry had had a vasectomy before this marriage. He knew he did not want any children "because of the problems I had." One year before the divorce Larry could see that Kathy wasn't happy. He felt that he was very good to her, and he felt she seemed to feel that he was taking more than giving in this relationship. In my interview with Kathy Shurtluff on February 24, 1986, she reported that she knew Larry for about a year before their marriage. In the first few months of the marriage he was on drugs and alcohol and frequently would "fall down drunk." She felt that the relationship was touch and go most of the time although over a period of time he began to drink less and they began to take vacations together. Then there was a period of time during which he did no drugs at all. Most of the time she recalls

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that he was employed as a car salesman except the ten months that he spent in Alaska. It was nine months after their marriage that they moved to Alaska. He began to drink again, but after he started selling cars, he began to get involved in cocaine. He got much worse and began to be involved in heavy drinking over a three and one-half year period. He eventually got a DWI and was court ordered to the VA Drug and Alcohol Treatment Program. It was during this time that he stopped drinking for approximately one year, however, his cocaine use did increase. Kathy does not recall any incidence of violence in their relationship. She does recall one instance Larry described to her in Salt Lake City right after he was back from Vietnam in which there were two men in a truck that Larry felt were following him, and he stopped the truck, got out of his car and felt that they were the enemy and that they were trying to kill him at the time. Kathy recalls that much of the time during their marriage that Larry had trouble sleeping and would always awaken earlier. Often she would be aware that he was up early and would get up to investigate. She reports that he would often hear sounds in the night and tell her to get down while he checked the house even though she would not hear the noises. They did live by a highway and there often would be backfires, and he would jump up especially in the night and go outside and check around the house. She said that he did not talk of Vietnam in his sleep but did talk a lot about Vietnam to her when she was awake. During the last two years there would be lots of television shows about Vietnam, and he would get very upset and this would prompt him to tell her about Vietnam. She recalls at least one incident he described to her in which he was working with the popular indigenous forces in Vietnam who were all killed and that the bodies couldn't be recovered for a few weeks. This was pretty much the same incident that he had described to me in which he had recalled hallucinating the smell of death. Kathy felt that Larry's use of cocaine and alcohol was a principal reason for the breakup of their marriage. She had had alcohol problems in her own family and had joined ALAnon in the VA group when Larry was drinking heavily. When he finally stopped and was alcohol and drug free for close to one year, she pretty much put him on warning that if he began to use drugs again, that she would leave him. Apparently after a year of alcohol and drug free existence, he began to believe that he was not an alcoholic and could return to drug use, and it was this time that she decided after he had stopped going to meetings, began to isolate himself or others, that the marriage would terminate. Throughout the marriage Kathy recalls that Larry used army talk a lot, talking about perimeter checks, talking about going out in the jungle, talking about various missions and call signs that were used during his time in combat. She recalls how he described to her in great detail how he was so terrified about being in Vietnam that he finally realized that he could die, and it was at this time that he felt he stopped being scared of death. She does recall that during one period of time she was with Larry, that he got disgusted and gave away or sold many of his medals and awards for Vietnam.

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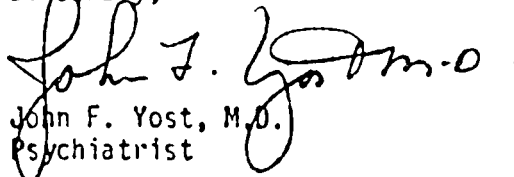
It was my feeling that Kathy confirmed the presence of nightmares and constant thinking about Vietnam which again led me to accept that Larry was suffering from post-traumatic stress disorder based upon his combat experience in South Vietnam.

Diagnostically, I feel that Larry Aoki is suffering from a rather typical post-traumatic stress disorder resulting from his combat experiences in Vietnam. Further, I feel that at the time of the alleged double homicide, Mr. Larry Aoki was suffering from a chemical or toxic psychosis as a result of freebasing cocaine. Since I feel Mr. Aoki was under the influence of a toxic psychosis during the time that he allegedly committed the double homicide, and that he was being controlled and ordered by a large organization, perhaps the mafia, to conduct this mission and carry out the killings of at least five people; it is my feeling then with a reasonable degree of medical certainty that Mr. Lawrence Aoki was so diseased or defective of mind as the result of a toxic psychosis due to cocaine that he was incapable of distinguishing right from wrong and therefore I feel he is legally insane.

At the time of my examination of Mr. Aoki in the Denver County Jail, on mental status examination during at least two specific times of the total of six hours, I did not feel he was at that time psychotic, that is, suffering from delusions, illusions, hallucinations or paranoid trends, nor suffering from any other functional psychiatric disorder. I did not feel there was present any personality disorder nor did I feel that Mr. Aoki was at any time malingering or faking mental illness in reporting his story to me.

I hope this information is useful to you.

Sincerely,

  
John F. Yost, M.D.  
Psychiatrist

JFY/ph

## APPENDIX D

DEAN J. PLAZAK, M.D.

2260 BASELINE ROAD

SUITE 104

BOULDER, COLORADO 80302

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September 3, 1986

Judge John W. Coughlin  
Denver District Court, Courtroom Twelve  
City and County Building  
1460 Cherokee Street  
Denver, Colorado 80202

Re: Lawrence Steven Aoki  
B.D. 2-16-45

Dear Judge Coughlin:

In accord with your court order dated August 29, 1986, the following represents a comprehensive report of my neuropsychiatric evaluation of Larry Aoki, age forty-one, divorced, to this date. The evaluation was performed at the request of the Public Defender's office, and specific information was requested with respect to his state of mind on or about February 6, 1986, with respect to charges of first degree murder alleged against him at that time.

Direct examinations of Mr. Aoki were conducted on February 7, 1986, at 7:30 p.m., February 11, February 18, February 20, February 26, and April 17, 1986, and consumed in excess of fifteen hours. The first two examinations were conducted at the Denver County Prearrest Detention Center; the rest at the Denver County Jail. During the first five examinations, Mr. Aoki was found to be suffering an acute schizophreniform psychosis with a complete classic thinking disorder and secondary psychotic elaboration consisting of delusions and hallucinations, which appeared to have had its onset in early January of 1986 shortly after he began utilizing free base cocaine by smoking. During the April interview, the thinking disorder was still present. In addition, Mr. Aoki was also found to be suffering what appeared to be a severe chronic post-traumatic stress disorder (post-Viet Nam syndrome), present since 1968, with frequent intrusive and nightmare experiences, sometimes of psychotic intensity. He also displayed an underlying dependent personality structure and a long history of substance abuse of alcohol, marijuana, and cocaine. The direct examinations consisted of the taking of a life history, past medical and psychiatric history, the performance of multiple mental status examinations, and the administration of appropriate neuropsychodiagnostic testing.

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In addition to the direct examinations, Mr. Aoki's adoptive mother, his third ex-wife, three brothers and two half-sisters were interviewed in detail in person and over the telephone during that same time interval. A number of documents were carefully reviewed, including police records of the relevant incidents from Denver and Jefferson Counties, witness statements and interviews, interviews with involved police officers, an interview with Mr. Aoki concerning his military experiences, Mr. Aoki's military service jacket, medical records of treatment for substance abuse and post-Viet Nam syndrome at a Veterans Administration facility in Denver in 1984 and 1985 and the results of a computer search for relevant medical literature.

Significant life history revealed indications of serious self-image and self-esteem problems related to ethnic conflicts of various types, abandonment by his biological mother at an early age, traumatic death of his father in 1977, self-destructive tendencies leading to traumatic injuries, onset of a severe post-Viet Nam syndrome in 1968, periodic substance abuse dating to time of college entry, specific cocaine abuse from the middle 1970's leading to cocaine addiction in the early 1980's, periodic cocaine hallucinosis during that period, as well as one cocaine-free period during Veterans Administration treatment, ultimately leading to cocaine free base use and addiction in early January of 1986, quickly leading to the development of a schizophreniform psychosis in early January of 1986. There were also indications of poor marital adjustment in three failed marriages subsequent to his return from Viet Nam. Alcohol abuse was episodic and frequent post-military service. Previous involvement in illegal activity was minimal and generally related to driving under the influence of alcohol. He was found to be a college graduate with a major in business, assisted by a football scholarship. He was strongly involved in competitive sports in high school and gave no history of behavioural problems during those years. His academic record was above average. Prior to his military experience he assisted in the family's truck farm business and in his older brothers' landscaping business. After military service he worked as a sporting goods salesman, an auto salesman and auto sales manager, in a construction business with his brothers and in sales in various other businesses. He was unemployed for about one month prior to the incidents in question. Viet Nam combat service in 1967-68 (101st Airborne Division) was verified by document. Post-Viet Nam syndrome symptomatology including exaggerated startle response, sleep disturbances, survival guilt, avoidance of activities that arouse recollection, intrusive daytime and nighttime recollections which intensify symptomatology, and symbolism leading to symptomatology because of some affective resemblance to Viet Nam experiences, were verified by interviews with his family, ex-wife, and by treatment records. Basic personality structure and previous life experiences were verified by interviews with his family.

With respect to the incidents under consideration, the following



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To: Judge Coughlin

Re: Lawrence Aoki 9-3-86

Narration represents the events in his life according to his own perceptions, from the end of January 1986 until late in February 1986. By late January 1986 Mr. Aoki was consuming amounts of free base smoked cocaine in quantities of one to four ounces a day. His unmetabolized level of serum cocaine was 25 nanograms per milliliter on February 7, 1986. His cocaine metabolite urine level was positive in a specimen taken on February 13, 1986. These findings are consistent with that unusually high level of consumption reported. During that same time period, Mr. Aoki reported partial disorientation, loss of ambition and motivation, lack of involvement with others, auditory and visual hallucinations, particularly of command type, paranoid delusions of reference, insomnia for days at a time, robot-like stereotyped behaviour following the direction of others without question, and obsessive concern with insignificant or unusual detail, and defensive attitudes toward fear of violence from certain perceived "enemies." At the end of January, Mr. Aoki perceived that he was approached by Craig Fisher, who, with another dealer, asked him to supply a pound of cocaine for a group of persons from Nebraska. The first transaction did not take place as planned and Mr. Aoki was allegedly told by Mr. Fisher that the potential purchasers did not show up. Mr. Aoki initially was very uncomfortable about the proposed sale and had severe paranoid ideas of reference which he expressed to his source, who he stated was empathic to those concerns. The sale failure substantially increased his paranoia, particularly toward Fisher and the other dealer, and resulted, by the time the deal was to be repeated a few days later, in Mr. Aoki feeling that he was being followed by the police and the mafia, and that he was going to be parted from the pound of cocaine violently. This time he supplied one half of the cocaine, and was told by Fisher after a fitful period in the parking lot of a motor hotel, where Aoki felt under various types of surveillance, that the cocaine had been forcibly taken and not paid for. Subsequent contact with interrogating individuals allegedly sent by Mr. Aoki's source "convinced" Mr. Aoki that he had been deceived by the dealers and that he was in mortal danger from them, but not from his supplier. During all of these events he reported seeing the same automobiles following him to different locations. He thought it odd that Andy Brown showed up during the interrogation, and began to link him to the conspiracy to harm him. Aoki was told by his source, after the interrogation, to check in at the Embassy Suites Hotel and stay there for a few days. He was convinced he was being followed and observed by the police and the mafia and the individuals who engineered the "rip off" and tested this thesis by driving around various Denver streets and highways, noting that he was always followed and accompanied by the same vehicles. He presumed that newspaper delivery persons and post office employees were a part of the conspiracy, as well as hotel employees. He continued consuming free base cocaine in large quantities on a daily basis. He began having severe Viet Nam combat flashbacks as if in mortal danger. After continued contacts with his supplier, he was asked to return home, to be sure he was not

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being followed, then to proceed to a contact with his supplier, who then asked him to drive a car to Kansas City for him. Mr. Aoki was convinced that this represented a request for him to deliver a large quantity of cocaine to that point. He drove to Kansas City overnight on the 5th and 6th of February and checked in at a motel near the airport. He continued utilizing large quantities of free base cocaine during that interval. While in the motel, he experienced holographic visions and images of five persons, complete with voices, behind a mirror in his room, sitting at a conference table, discussing the "rip off" with him. These people were Fisher, the other dealer, Andy Brown, and two other acquaintances, Harry and Susie. They instructed him to kill the five of them for "ripping him off", in the alternative to either kill himself or let them kill him. He felt that they were pumping poison gas into his motel room as this discussion progressed. He was told to call a telephone number to arrange transportation to the airport where he was to pick up a ticket on Frontier Airlines to return to Denver. He felt that he was accompanied by various members of the mafia, police agencies and individuals from various periods in his past, in autos to the airport, on board the aircraft, and in autos following his arrival in Denver. These individuals were perceived as assisting him in carrying out the assassinations he had been ordered to commit. He felt these orders as valid as those of a combat officer in Viet Nam, to be carried out without question and without any moral or ethical concern. On the way back, he was convinced that most of the accompanying individuals were discussing he and his brother, with whom he served in Viet Nam. He felt some individuals on the plane and in the motel were practicing sighting their automatic weapons on him and pinpointing him with lasers. He was convinced that the cab he hired in the Denver airport was assigned to him by organized crime because of radio messages he heard. The cab driver took him to a sporting goods store where he purchased a pistol and some hollow point bullets. He returned to his Denver apartment by cab and changed into "mission" clothing, as in combat or Viet Nam. He retrieved his own car by cab, and drove to a hardware store to buy nylon cord and duct tape. He waited until dark because of combat training, put all of his purchases in a running bag, and proceeded to Fisher's apartment. He felt followed and under protective surveillance the entire time, by both the police and the mafia. He shot Fisher twice, as ordered. He then drove to a Nissan dealership where he was told Andy Brown was working. Voice transmissions from his auto radio instructed him each step of the way, and he was accompanied by all of the previously described same vehicles that had been accompanying him for the past six days. He was told how to kill Andy Brown. He walked up to him, asked to speak to him, they walked off into the lot area, and shot him in the face as ordered. He was then told on the car radio to proceed to the vicinity of Parker Road between Interstate 225 and Havana Road to kill Susie. He saw in that area what he thought to be a fortress with armed soldiers on the roof firing at him. He felt that the remaining three persons he was assigned to kill

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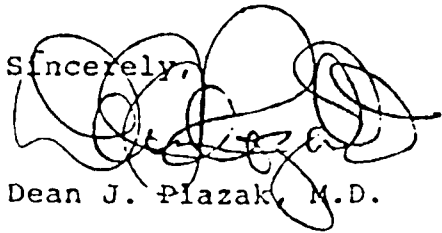
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were inside this fortress and he attempted to drive the car as a battering ram into the building to gain entry. The car encountered a berm and stopped. He was arrested within an hour by police in that location.

On mental status examination, during the first five interviews, he believed that these perceptions, as described above, were all reality. He also believed that the two police officers who took him to a police station from the scene of apprehension were assigned to further assist him in his assassination efforts. He displayed the characteristic thought disorder signs of ambivalence, autism, loosening of associations and shifting frames of reference during all six interviews, and delusions of reference, auditory and visual hallucinations, command hallucinations, extreme paranoia, feelings of being under attack and of mortal danger, with attempts to involve the examiner in his paranoid schemes, during the first five interviews. He was found to be suffering from severe sleep deprivation, appeared to be confusing the identity of those around him, but yet showed no significant disorientation for his own personal identity or for general time frame. In his verbalizations, he was obsessed with describing every event in minute detail. He scratched his arms frequently during the first two interviews. He seemed totally defeated by a sense of failure. The diagnoses at the time of examinations were those of schizophreniform psychosis, 295.40 DSMIII; post-traumatic stress disorder, chronic (post-Viet Nam syndrome), 309.81 DSMIII, contributing input to the schizophreniform psychosis; mixed substance abuse, 305.91 DSMIII, continuous for over six months, including cocaine abuse-addiction to regular and free base smoked cocaine; and a dependent personality disorder, 301.60 DSMIII.

As a result of the presence of the schizophreniform psychosis, a mental disease or disorder, Mr. Aoki, in the opinion of this examiner, was so diseased or defective in mind at the time of the commission of the alleged acts charged, those of first degree murders, as to be incapable of distinguishing right from wrong with respect to those acts. Thus, in the opinion of this examiner, Mr. Aoki met the criteria for legal insanity as set forth in CRS 16-8-101 (1), as amended. He also, in the opinion of this examiner, meets the definition of having suffered an impaired mental condition, with respect to and at the time of those acts charged, as defined in CRS 16-8-102 (2.7), as amended.

Sincerely,



Dean J. Plazak, M.D.

## APPENDIX E

# Denver Clinic Medical Centers, P.C.

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September 11, 1986

The Honorable John W. Coughlin  
Judge of the District Court  
City and County Building  
Denver, CO 80202

Re: Lawrence Aoki  
86CR0852

Dear Judge Coughlin:

Thank you very much for your request and order to produce a report in connection with my toxicological evaluation of Lawrence Aoki.

In the context of my review of this case, I interviewed Mr. Aoki at the Denver County Jail on March 17, 1986 from 8:30 am until 11:00 am.

In addition, I have reviewed the medical records of the Veterans Administration Hospital concerning Mr. Aoki, the police reports and attorney investigations, and certain literature which is relevant to the issue of cocaine intoxication.

I have recently received copies of the report of Dr. Jeffery Metzner and Dr. Jay Lawrence Wieberg, which I have reviewed.

Based upon these documents, my interview with Mr. Aoki, and my familiarity and knowledge of cocaine and its toxic effects on the human body and mind, it is my opinion that Mr. Aoki suffered an atypical organic mental syndrome, also known as a toxic psychosis due to cocaine during the period of time that he is alleged to have committed 2 homicides on February 6, 1986. It is further my opinion that he was continuously in this state of psychosis for at least 24-48 hours prior to this homicide. Because of insufficient information concerning the days prior to that, I am unable to form an opinion about his mental status at any earlier time.

Mr. Aoki related to me that he served in Vietnam beginning in April of 1967. He had been inducted into the Army in October of 1966, at the beginning of his senior year of college. He had been at Southern Utah State College on a football scholarship, when he was drafted. During the time he was in Vietnam, he had a number of different activities, but after non-combat duty, he choose to enter the Special Forces and served in the Central Highlands. He was involved in the TET offensive and was very frightened by many of his experiences in the war. During the time that he was in Vietnam, he first used drugs. The first drug he employed was opium-cured marijuana. He states that he was lonely and afraid. He used drugs "to keep himself sane." He also injected morphine on two occasions

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See reverse for professional staff listing

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when he was in Vietnam. This was medicinal morphine which had been diverted from legitimate supplies. In addition, he used heroin a few times in Vietnam. He also had occasion to visit certain opium dens and to take Benzedrine® which was supplied from the infirmary. Whenever he was on an operation, he would use one tablet of Benzedrine® for 24 hours of duty. His maximum use of amphetamines was for five straight days in Vietnam. He stated that he was up continuously for the five day period. He indicates that this type of over-use of Benzedrine® occurred perhaps three dozen times while in Vietnam. This drug made him feel "hyper". He felt a fast heart-beat, and he became nervous. It kept him awake and permitted him to function. He used to think he saw movements which were not actually taking place, and he had visual hallucinations when he was using Benzedrine®. He noted that it took him as many days to come off the Benzedrine®, as he had taken it. On one occasion he slept three to four days after a Benzedrine® run.

He stated that he really liked the marijuana with opium because it functioned like a tranquilizer. He was not particularly fond of the the Benzedrine® because it disrupted his ordinary patterns of thought and behavior, made him hyperactive, and paranoid.

It is of consequence to note that the Benzedrine® was administered by the Special Forces team doctor. No records were kept of this, however. He was in the first Special Forces group B, APO 96240, in Binh me thout. He does not recall the name of the physician, but he was a Native American. Box C was how the doctors were addressed. The use of Benzedrine and the hallucinations as a result of it, is of considerable importance in evaluating Mr. Aoki's subsequent hallucination under cocaine. Bejerot<sup>1</sup> and others have demonstrated that cocaine and amphetamines produce qualitatively similar effects on the mind and that patients who hallucinate with one are quite likely to hallucinate with the others.

The patient was discharged from the Army in July of 1968, at which time he returned to the United States. At the end of July he returned to Utah. He worked the summer for his brother at Dugway Proving Grounds in a

Bejerot, Nils: A Comparison of the Effects of Cocaine and Synthetic Central Stimulants; Br J Addict, 1970, Vol 65, pp. 35-37. Pergamon Press.

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construction company. He then returned to Southern Utah State College in the fall and finished school. He received his degree in June of 1969. His major subject was business administration and his minor, sociology.

He stated that after he returned from Vietnam, he used drugs virtually continuously. Marijuana was the principal drug which he used daily, at least one joint per day. Half-way through the school year he began to use "acid" (LSD). He was having a great deal of trouble readjusting. He felt that he could not leave the war behind him. This was very troublesome. He felt guilty about his friends who were still in Vietnam and was generally quite nervous and not comfortable in the school environment.

Mr. Aoki also stated that at this time he used peyote. He did not use any cocaine during this period.

In 1969, Mr. Aoki was married and moved to Denver after school. He worked at Dave Cook in sales. He continued to use marijuana, LSD and other hallucinogens, but used no speed (amphetamines) or cocaine. When he returned from Vietnam he realized that the amphetamine and amphetamine-like drugs were dangerous for him. They made him "hyper", he felt his heartbeat faster, and was afraid he would have a heart attack. The speed also made him very paranoid "...he felt like people could tell he was speeding, or people could tell that he was really high." This awareness became quite remarkable when he began to sell cars.

He further stated that when he did use speed, he would by choice use Dex-amyl® or Dexadrine®. At that time he would use one 20 mg capsule per day if he had a supply. He would take drugs for seven to twelve days in a row. He would then go off and get very depressed and down and would be thoroughly upset. When he was doing speed he could not sleep. He recalls specifically taking speed when he was taking final examinations. He would stay up all night and drink coffee and take speed. At that time however, he did not have any hallucinations.

In 1972 in Denver, he began to work for Post Chrysler Plymouth. He found out that the use of amphetamines or speed was very common in the car business. He said, "everyone used them". The particular drugs which were used were common in those days in Denver; white crosses, black beautics, pharmaceutical speed. These substances were used mainly on Saturdays when bonuses were available, and long work hours were the rule. The sales manager at the business at which he worked, a gentleman by the name of Ben Ballman, gave him speed. The sales manager would regularly ask "do you need an eye opener?", and would give out the pills. The result in Mr. Aoki was,

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he became extremely loquacious, he had a great deal of energy. He found that this was a problem, because he could not turn off the energy. He would talk so much that he would talk himself out of sales. He found himself extremely paranoid and uncomfortable at this time also. When he stopped using this material he would clear up and sell well.

His wife at that time did not do any drugs. He was, however, divorced from this wife in 1976.

Mr. Aoki was promoted to Sales Manager at Bob Post in 1974-1975. He and his wife began to have problems. Part of the problem was associated with her medical status. She had gynecological problems. After his wife had an operation and illness, he began to use marijuana, hallucinogens, acid, and mushrooms heavily. He was generally very much involved in the drug culture. He then moved to Alaska.

He lived in Alaska. He was alone and he became very depressed. He went to California where his family lived, in 1976. He did not work at that time for 2 1/2 years. He lived on his savings. He became involved in karate, bike riding and lived in a collective with his sister, her boyfriend and six other people, in Sacramento. He used a great deal of drugs. He began to use cocaine regularly in 1977. He also shot heroin on one occasion. He used most other drugs as well as well. He did not use speed.

Mr. Aoki stated that once he began to work regularly in the automobile business, he stopped using amphetamines and began to use cocaine. He stated that he met a woman in California in 1977, not from the commune at which he was living but rather a friend of his sister. Because he missed the relationship with his first wife, he married this woman and remained married for approximately six months. After that he was divorced and went to Mexico with his brother, sister and mother. He stayed in Mexico approximately four months. He lived in Puerto Vallarta in a hotel. He did nothing except drink alcohol. He used no cocaine because he could not afford it. He did use marijuana but no other drugs.

The patient thinks that his alcohol tolerance is very low. He gets drunk and sloppy on one can of beer. He can get happy but not violent. When he was younger he did get involved in some bar fights but was never arrested. He did get arrested in 1983 in Aurora where he was charged with driving under the influence of alcohol. At that time his blood alcohol concentration was .200%. He also had done a great deal of cocaine at the time he was arrested.



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In 1978, Mr. Aoki returned to Denver and went back to Bob Post Chrysler Plymouth. During the first month he did well. However, he used a great deal of cocaine which was readily available at that time at approximately \$90.00 per gram. He was using .25-.5 grams of cocaine per day. On some days, if he could obtain the cocaine he would use as much as one gram per day. Most of the drug was taken by snorting but on occasion he did inject the substance.

He states that cocaine made him feel "cool" and he could function well, but he did not feel that it made him "hyper" in the same fashion that amphetamines did. It was a "muscle" drug for him. It allowed him to stay awake and party, drink more than usual and generally to enjoy his life. He liked it and used cocaine on many days; whenever he had money. He used cocaine as a daily sales tool. Sometimes cocaine made him paranoid, but less so than the LSD or speed did. Marijuana also made him feel like people were watching him. He had much difficulty sleeping when he was using cocaine. He used more cocaine on days when he would work late into the evening. At that time he would only fall asleep at three or four in the morning. He was not obviously agitated, however.

His sexual activity was quite good at this time. It was during this period after he was divorced from his second wife that he met his third wife, Kathy. She was using cocaine regularly. He felt that his sexual performance was adequate. His appetite during this period of time was sporadic. The cocaine markedly suppressed it, but he had no dramatic weight gain or losses.

He denies any hallucinations at that point in time. He was using as much as one gram, two to three times a week. Because he thought that cocaine heightened his sexual activity, he would use it particularly with the goal of increasing his sexual performance. He was married in 1979. Both he and his wife were regularly using cocaine which was available at the automobile dealership. He brought a quarter of an ounce of cocaine of very high quality, he stated prior to his trip to Alaska.

In 1979 he went back to Alaska as a partner in his brother's business. While he was in Alaska he did not use much cocaine which was very expensive and difficult to get. He also stated that he was tired of cocaine. He stayed for one season in Anchorage, Alaska. His wife was lonely and they moved back to Denver in 1980. He states that while he was away in Alaska, he distinctly missed the availability of the cocaine.

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When he returned to Denver he went to work for Havana Toyota and had two good years. Things went very well. He was selling cars well, he liked his boss. His wife was working as office manager in an accounting firm at that time. Both were using a great deal of cocaine. He was sporadically buying one eighth of an ounce. He states that by the time 1982 came around he was spending a great deal of money of cocaine.

The patient stated that if he had cocaine that he would do it as often as three or four days per week. He always wanted more. On occasion he would become very strange. His sexual drive became very high, he states that on rare occasions if he used a great deal of cocaine, he was sexually impotent. His wife on the other hand continued to have very pressing sexual needs while she was using cocaine. He himself had some difficulty performing during this period of time. He developed a predilection for "kinky" sex fantasies. He would go to adult motels and movies, he needed much stimulation and always wanted sex, some of which was rather bizarre.

About this time, 1982, his wife began to notice that his behavior was strange. He became very paranoid about what Kathy thought of him. Kathy then ceased to use cocaine and gained some insight into the bizarre sexual activity and bizarre behavior which he was into because of his cocaine use. She became judgmental and "difficult". His relationship with her began to deteriorate. The patient states that during this period of time, he had a hand gun in his house which he kept in a drawer. He also hunted deer all of his life but he never carried a gun and never used it, except as a hunter.

His marriage continued to deteriorate and by 1983 as his relationship changed, he increased his use of cocaine. His wife continued to criticize him and a series of disagreements ensued, and she threatened to divorce him.

He would frequently go out with his friends, drink and do cocaine after work. They would go to the pool hall or bar hopping. The would go to Rich Hudson's house. Even though he was told he should not drive, he would often drive home. On one of those occasions he was arrested for DUI on a Saturday night in Aurora.

After the 1983 event, the patient stated that his job was in jeopardy. He was going to lose his driver's license, wife and was very disorganized. He was however, able to keep his job and his license and was put on probation with 48 hours of community services, alcohol school, and so on. He went to the Veterans Administration Program, which he stated "pissed him off". He subsequently went to the Park Place Program, which is part of the Veterans

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Administration Outpatient Department, where he gained some insight into the fact that he was an alcoholic and a drug addict. He found out about poly-drug use and began to get some of his problems under control. He tried to clean up his behavior. He informed the VA about his cocaine use and they began to do urine surveillance twice a week. He stopped using cocaine for approximately one year. He felt good about himself, did well at work. He became re-involved in Karate and exercise. Unfortunately, he found that his wife was further and further out of his existence. He subsequently decided to retry cocaine and found it to be a very positive experience. He began to use it in a compulsive fashion again. His marriage then broke up and he was divorced.

At about that time, he found that in order to maintain his cocaine habit, he had to sell cocaine so that he would have a sufficient supply for himself. He sold for approximately nine months, during which he was using cocaine daily.

His work began to deteriorate. He was selling cars and doing well. He had some regular cocaine customers at the dealership; but overall, it was only a "front" since his major activity was selling cocaine. After six or seven months, he was told he would have to leave the dealership because he was not selling cars adequately. He left on January 2, 1986.

As he sees it, this was the turning point for him. Before this he was "legal". He earned approximately \$50,000 selling cars in 1983. When he over-did cocaine he would feel very poorly, shakey; very paranoid about being caught by the law. He was certain that people were watching him, he was however, very meticulous about people paying him for his cocaine. He left his job and began to look for cocaine business. One individual for instance, was buying three or four ounces of cocaine a week from him. Mr. Aoki stated that during this period of time he was thinking about putting away a nest egg for himself.

About this time, late January 1986, the patient first began to free base on a regular basis. He had used some free base cocaine previously in early January when he was at his connection's house. He free based and stayed up all night. He stated that free basing made him feel more mellow. There was no tiredness and he liked it very much. He smoked this but he never realized how high he was when he was free basing.

He became very paranoid and began to hear things which were not there, when he was free basing. He became very bizarre in his sexual practices. He wanted sex but was afraid to go out. He began to spend all of his time

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inside in the house or in a room, free basing cocaine. He never had been so involved with anything, previously. During this period, days and nights became very mixed up. He could not tell night from day. He was completely disoriented to time. He slept during the day and went out during the night. His cocaine customers often could not reach him.

On February 2, the "rip off" of the half pound of cocaine, which has been discussed extensively in other documents, occurred. From early January to February 2, the patient free based all day, every day. He had become alienated from his customers and acquaintances. He was frightened of being arrested and stayed inside almost all of the time.

Craig Fisher indicated that he had a customer for one pound of cocaine. Mr. Aoki wanted to know who this was and wanted details about the deal and so on. He was told that Jim had set up the deal with some rich farmers from Nebraska. He personally thought that this was a set up. Mr. Aoki wanted the deal to take place in Craig Fisher's apartment. He set up a partial delivery scheme at a motel. He was convinced that it was a set up and the money would be siphoned off or in some other fashion not given to him. He did however trust Craig because he had paid for cocaine which he had purchased from Mr. Aoki in the past, although he was slow payer.

The cocaine was taken by someone named George and Craig to the Bronco Inn. The quantity of half a pound was taken. Mr. Aoki went there to look at the situation. He did not in fact take part in the deal. He watched what was going around, and was convinced that the various cars which were driving around were watching them. He believed that he was seeing automobiles that he had previously seen in various places and that these individuals were "passing" on the deal. He decided not to permit the deal to go through and he left. Later it did go through at the Marriot on I-25 and he was "ripped off". He stated that he was at the Marriot as an observer, he saw the deal occur, people did not have the money, Jim had the cocaine. They went to north Denver supposedly to collect the money, at this time he became very paranoid, he did not know whether the individuals were police officers or were someone out to get him and he was terribly frightened. After the rip off, his connection suggested that Craig and Jim ripped him off and he went to Craig Fisher's house to interrogate and threaten him to get the cocaine back.

Jim began to tell him about how he was going to work on this. He mentioned Rocky Dvorak and stated that he had threatened him. Some goons had picked him up.

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His connection then told him that it would be best if he got out of the immediate environment. He went to the Embassy Suites and checked in. He stayed there for three days and was convinced that he was going to be arrested. He free based throughout the day and night. He had half an ounce of cocaine in his possession. He stayed three nights. He did not sleep. He was convinced that at any moment that the door was going to be broken down. He went back to his house after his connection told him it would be alright, although he was absolutely certain he was being followed. His connection told him he should get some "protection". He cleaned up his paraphernalia but he kept his bong. His connection then asked him to go out of town that afternoon to make a delivery. He cleaned himself up and went to the connection's office. He delivered a car to Kansas City with a briefcase, the contents of which he did not know. He was told the amount to deliver was not large. At this time he had been five nights without sleep. He did not free base during the drive to Kansas City.

In Kansas City, he began to free base again and was staying at the Hilton Hotel. He saw people in the mirror and smelled an odor of flowers. The people in the mirror told him to kill five individuals. He understood that these people in the mirror were giving him instructions to kill five people. He thought that he had to do this immediately. All these "weird" things happened to him.

He stated that he had snorted cocaine on the trip but had not done any free basing until he arrived in Kansas City. When he did free base, he had the hallucinations which were both auditory and visual. First, he had heard people giggling, thought people were behind the mirror, he went to check the room, he thought that these people were perhaps a photo-projection or hologram on the mirror. He had a conversation with them. He thought that the people in the mirror were "the mob". They told him things about himself and his family, that he believed only he could know about himself. He believed that he had to kill or would be killed. He told the people in the mirror that he had to sleep and they told him he had to do it now while he was still mad.

He called for an airline ticket. He believed that everyone one on the telephone was affiliated with his activity and that the flight which was being arranged to Denver was a special "charter" flight. He thought he saw people in the closet and that there was some kind of beam scope acting on his forehead. He further thought he smelled gas when he was in the toilet.

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He then left the hotel, used his credit card and came to Denver on a Frontier flight. When he arrived in Denver he took a taxi and went to Dave Cook's in Buckingham Square. He bought a gun which he charged on his credit card and went to his apartment. He loaded the weapon and took two boxes of ammunition. The weapon was a Browning, 9mm automatic. He had two boxes of hollow point ammunition. He took the cab from Dave Cook's to his house, loaded his gun. He put on tennis shoes, hat, pants, sweatshirt and went down to his connection's office to pick up his car. He then went to Handy Dan and bought rope and duct tape. He went to the parking lot of a church in the neighborhood to cut up the rope. He waited for it to get dark and then he went to Craig Fisher's house. He told Craig Fisher he wanted to talk to him. While in the room with Craig, he did not hear any voices, but after the shooting he stated that he did hear voices and the voices told him, "Larry, make sure they all know why they are dying, have them look into your eyes when you shoot them."

He left and drove to Empire Nissan where he found Andy Brown. During this time he thought he was getting a radio message which again said to him, "if you wanted him to be in, make him look at your eyes". He kept feeling like he was being chauffeured around and protected. He was talking to himself out loud. He did not know where to go next after the shooting of Andy Brown. However the voices directed him to "the house" were the other three people were to be found. This was in fact an eye clinic in an industrial area of Littleton. At that time he thought there was a person on the roof of the house. He had to attack the house. He believed he had to kill the people or they would kill him. He "scoped out" the house but he could not get in because the person was on the roof guarding the entrance. He drove his car into the house in an attempt to get into it and became stuck, he waked away and he was subsequently arrested, one to two hours later. He was waiting for the police to come, he was too tired to carry on any more.

Subsequently, he stated that being in jail was a relief. The pressure were off. Since he had stopped using cocaine, he had cleared and was feeling more like himself again. He felt that he could cry and think with a clear head. He felt better physically, he was able to sleep, he was aware of what he had done at the time he was interviewed, but felt that he would not dwell on it. He recognized "that it was an atrocity" and he feels very bad. He is unable to explain the events beyond what has been stated above.

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Comment

The story told by Lawrence Aoki is quite characteristic of the heavy compulsive use of cocaine which produces in the earliest phases euphoria, later dysphoria and finally psychosis. Cocaine psychosis has been described in detail by Post<sup>2</sup> and others. It has been recognized as an organic mental syndrome since the early 20th century. It is my opinion that the shootings which Mr. Aoki allegedly carried out, were carried out during a period when he was continuously psychotic as a result of the usage of cocaine as described above. His psychosis was indistinguishable from paranoid schizophrenia. It was accompanied by the bizarre thinking, ideas of reference, paranoid behavior, hostile and aggressive behavior, auditory, visual and olfactory hallucinations and other manifestations as detailed in the paper by Post which accompanies this letter.

I do not believe the issue of distinguishing between right and wrong even entered Mr. Aoki's mind during the performance of these acts. He was continuously in a state of severe mental disease during this episode; the behavior was driven and inevitable, in it's own right.

My diagnosis is atypical organic mental syndrome, secondary to cocaine use.

I trust this information will be useful to you.

Sincerely yours,

Daniel T. Teitelbaum, MD

DTT/md

enclosures

cc: David Olivas, Esquire  
Steve Gayle, Esquire

**APPENDIX F**



1 DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

2 Case No. 86 CR 852, Courtroom 12

3 -----  
4 REPORTER'S TRANSCRIPT: Arraignment  
5 -----

6 THE PEOPLE OF THE STATE OF COLORADO,

7 Plaintiff,

8 v.

9 LAWRENCE AOKI,

10 Defendant.  
11 -----

12  
13 This matter came on for arraignment on Friday,  
14 June 13, 1986, before the HONORABLE JOHN W. COUGHLIN, Judge  
of the District Court.

15 APPEARANCES:

16 FOR THE PEOPLE: DAVID A. OLIVAS, Reg. No. 12888  
17 Deputy District Attorney

18 FOR THE DEFENDANT: FRANK J. VIEHMANN, Reg. No. 9228  
Deputy State Public Defender  
19 STEVEN REESE GAYLE, Reg. No. 10494  
20 Deputy State Public Defender

21 Defendant personally present.  
22  
23  
24  
25

FRIDAY, JUNE 13, 1986  
MORNING SESSION

P R O C E E D I N G S

THE COURT: 86 CR 852, Lawrence Aoki.

MR. OLIVAS: Good morning. David Olivas on  
behalf of the People.

THE COURT: Good morning, Mr. Olivas.

MR. VIEHMANN: Frank Viehmann and Steve Gayle  
appearing with Mr. Aoki.

Your Honor, after reviewing this Court's ruling  
and the ruling in Jefferson County, we chose not to file  
any extraordinary writ or petition and at this time we're  
ready to be arraigned.

THE COURT: All right. Is he going to enter a  
not guilty by reason of insanity?

MR. VIEHMANN: Yes.

THE COURT: And impaired mental condition?

MR. VIEHMANN: No.

THE COURT: All right. Just curious. What was  
the Jefferson County -- in Jefferson County?

MR. VIEHMANN: Different. With regard to the  
non-cooperation, Court in Jefferson County had made the  
statement interpretation of non-cooperation but only as it  
relates to the guilt phase and not -- declining to incriminate  
yourself could be considered non-cooperation and disallowed

1 to the jury during the sanity phase.

2 THE COURT: Mr. Aoki, before accepting your tendered  
3 plea of not guilty by reason of insanity, the Court advises  
4 you that the effect and consequences of such a plea are as  
5 follows: No. 1, upon the acceptance of the plea, the Court  
6 will forthwith commit you for a sanity examination by one or  
7 more psychiatrists to be appointed by the Court. A written  
8 report of any such examination must be filed with the Court  
9 and copies thereof will be furnished to both the District  
10 Attorney and to your lawyer. The issues raised by the plea  
11 of not guilty by reason of insanity shall be tried separately  
12 to different juries, and the issue of sanity or insanity shall  
13 be tried first.

14 No. 2, you also have the right to be examined  
15 by a psychiatrist, psychologist, or other expert of your  
16 own choice, and at your own expense. A copy of the report  
17 of any such examination, containing information concerning  
18 which you intend to introduce evidence or testimony, must  
19 be furnished to the District Attorney a reasonable time  
20 in advance of your sanity trial.

21 In the course of any such sanity examination it is  
22 permissible to administer to you various drugs such as  
23 sodium amythal and sodium pentothal, which are hypnotic  
24 drugs, or metrazol, which is a stimulant, and like drugs.  
25 And it is also permissible to subject you to a polygraph

1 examination. In any trial or hearing on the issue of your  
2 sanity, eligibility for release, or competency to proceed;  
3 the physicians and other personnel conducting the examination  
4 may testify to the results of any such procedures and your  
5 statements and reactions insofar as the same entered into  
6 the formation of their opinions as to your mental condition.

7 I have made a decision in this case, sir, which  
8 somewhat limits that which I trust that you have talked to  
9 your lawyers about.

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: All right.

12 The examination will take place at the Denver  
13 County Jail, the Colorado State Hospital at Pueblo, the  
14 Colorado Psychiatric Hospital in Denver, or at such other  
15 public institution as may be designated by the Court.

16 You may invoke the privilege against self-  
17 incrimination during the course of any such examination,  
18 but the fact of your non-cooperation with the psychiatrists  
19 and other personnel conducting the examination may be  
20 admissible in your trial on the issue of sanity.

21 Again, sir, that portion of the statute I have  
22 somewhat modified by my decision and, again, have you talked  
23 to your lawyers about that decision?

24 THE DEFENDANT: Yes, I have, your Honor.

25 THE COURT: Thank you.

1           No evidence acquired directly or indirectly for the  
2 first time from a communication derived from your mental  
3 processes during the course of any such Court-ordered  
4 examination will be admissible against you on the issues  
5 raised by your plea of not guilty, if you are put on trial  
6 on those issues, except to rebut evidence of your mental  
7 condition introduced by you in support of a defense of  
8 impaired mental condition, in which case any such evidence  
9 acquired from a communication derived from your mental  
10 processes during the course of a Court-ordered examination  
11 may be considered by the trier of fact but only as bearing  
12 upon the defense of impaired mental condition.

13           However, if you testify on your own behalf upon  
14 the trial of the issues raised by your plea of not guilty,  
15 then any such evidence acquired during the course of any  
16 Court-ordered examination may be used to impeach or rebut  
17 your testimony. In any trial or hearing concerning your  
18 mental condition, physicians and other experts may testify  
19 as to their conclusions reached from their examination of  
20 hospital records, laboratory reports, X-rays -- what is  
21 that word?

22           MR. VIEHMANN: Electroencephalograms.

23           THE COURT: Thank you. -- electroencephalograms,  
24 and psychological test results if the material which they  
25 examine in reaching their conclusions is produced at the

1 time of the trial or hearing.

2 You have the right to a trial by a jury or by  
3 the Court on the issue raised by your plea of not guilty  
4 by reason of insanity.

5 You are further advised that every person is  
6 presumed sane; but once any evidence of insanity is  
7 introduced, then the People have the burden of proving  
8 sanity beyond a reasonable doubt.

9 If, after trial on the issue of insanity you are  
10 found sane, then your case will be set for trial on  
11 the issues raised by your plea of not guilty.

12 No. 10. If, after trial on the issue of insanity  
13 you are found insane, then the Court will commit you to  
14 the custody of the Department of Institutions until such  
15 time as you are found eligible for release.

16 When the Chief Officer of the institution to which  
17 you have been committed under this article determines that  
18 you no longer require hospitalization because you no longer  
19 suffer from a mental disease or defect which is likely to  
20 cause you to be dangerous to yourself, to others, or to the  
21 community in the reasonable foreseeable future, such Chief  
22 Officer shall report this determination to the Court that  
23 committed you, including in the report a report of examination  
24 equivalent to a release examination. The clerk of the court  
25 shall forthwith furnish a copy of the report to the

1 prosecuting attorney and to counsel for you.

2 Thirty days after receiving the report of the  
3 Chief Officer of the institution having custody of you, the  
4 Court shall order your discharge in accordance with Section  
5 16-8-115(3), unless before that day the District Attorney  
6 notifies the Court that the report is contested.

7 If the report is contested and timely notice given,  
8 the Court shall conduct a release hearing and proceed as  
9 provided in Section 16-8-115.

10 Knowing this, sir, do you still wish to enter  
11 the plea not guilty by reason of insanity?

12 THE DEFENDANT: Yes, I do, your Honor.

13 THE COURT: All right. The Court will accept that  
14 plea. Defendant sign he's received that advisement. Two  
15 copies signed.

16 MR. VIEHMANN: Does the Court want the two signed  
17 copies?

18 THE COURT: I guess we have to give him one. Do  
19 you have a copy now?

20 MR. VIEHMANN: Yes.

21 THE COURT: Doctors appointed in Jefferson County?

22 MR. VIEHMANN: No. We're going there on Monday.

23 THE COURT: Somebody made a comment that you were  
24 in these cases to have him sent to the Colorado State Hospital.

25 MR. VIEHMANN: Your Honor, I have seen it done

1 either way, to the County Jail or to the State Hospital. It  
2 depends upon where the Court -- if the Court wishes to name  
3 specific psychiatrists from the Denver area that the Court  
4 is aware of, have it done at the County Jail. I think that  
5 is just as expeditious. If the Court sends him to the  
6 State Hospital, the Court could either rely on the staff  
7 at the State Hospital or again may specify doctors to examine  
8 him there.

9 THE COURT: I'd rather, I guess, keep him here and  
10 then when it comes to trial we don't have witnesses come  
11 from Pueblo and also make him more available to be able to  
12 talk to him.

13 MR. VIEHMANN: That is our preference.

14 THE COURT: That is fine. I'll appoint Dr. Larry  
15 Wiberg.

16 MR. VIEHMANN: How's the last name spelled?

17 THE COURT: W-i-b-e-r-g.

18 Do you have somebody you want me to appoint?

19 MR. VIEHMANN: Your Honor, we might suggest Dr.  
20 Metzner.

21 THE COURT: All right. I've seen a couple of  
22 his reports. He seems to be fairly decent. That's fine with  
23 me. Any objection to that?

24 MR. OLIVAS: No objection.

25 THE COURT: Dr. Metzner will be appointed.



1 Barbara will call both of those and make sure they'll  
2 be available and let you know.

3 Anything else? Yes.

4 I have to set a date for doctors' reports.

5 MR. VIEHMANN: Actually, it would be our request  
6 to be able to set trial date. I don't think it really should  
7 take that long especially if Mr. Aoki's going to be in the  
8 County Jail. We do have experts whose schedules if we  
9 know in advance of the trial date will help everybody.

10 THE COURT: That's fine. We'll get a trial date  
11 now then. We'll set doctors' reports in, say, 45 days just  
12 for return of doctors' reports. There is no need for the  
13 defendant to be present that day, is there, the day we  
14 receive the reports?

15 MR. VIEHMANN: We would waive his presence for  
16 the actual filing.

17 THE COURT: All right.

18 THE CLERK: August 7.

19 MR. OLIVAS: Return of doctors' reports?

20 THE COURT: See if we can set a trial date in  
21 September.

22 MR. VIEHMANN: Any date in September is available  
23 both on Mr. Gayle's calendar and mine.

24 THE COURT: What about the 22nd?

25 MR. OLIVAS: Mr. Alderman's -- also sexual assault

1 on September 22nd. Mr. Alderman has his sanity trial on  
2 September 22nd.

3 THE COURT: We'll have to go to October.

4 MR. VIEHMANN: Mr. Aoki's trial in Jefferson County  
5 is set on the 7th of October.

6 MR. GAYLE: Week of the 8th, is that possible, or  
7 even the week of the 1st.

8 THE COURT: Is Alderman going to go to trial?

9 MR. OLIVAS: That is Miss Balkin's. As you know,  
10 he has a number of aggravated robberies. I'm not sure.

11 THE COURT: I'll set it September 8. I'm not  
12 sure that you can go to trial that day. Lots of other  
13 things that have to happen.

14 There is a sexual assault that day and there is  
15 another sanity trial that day but we'll set it.

16 MR. VIEHMANN: If the clerk will notify us about  
17 whether there is any problems with either of these doctors --

18 THE COURT: Yes. Thank you.

19 (The hearing was concluded at this time.)  
20  
21  
22  
23  
24  
25

REPORTER'S CERTIFICATE

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

I, Pamela R. Baclawski, do hereby certify that I am a Certified Shorthand Reporter and an Official Court Reporter for the Second Judicial District; that as such reporter I was present upon the occasion of the hearing of the above-entitled matter; that I stenographically recorded all proceedings had in the above-entitled matter on Friday, June 13, 1986.

I do hereby further certify that I caused my stenotype notes to be reduced to typewritten form, and that the foregoing 10 pages constitute a true, correct, and complete transcript of the arraignment.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 13th day of February 1987.

  
Pamela R. Baclawski, C.S.R.

## APPENDIX G

1 DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

2 Case Nos. 86 CR 852 and 86 CR 1684, Courtroom 12

3 -----  
4 REPORTER'S TRANSCRIPT: Hearing  
5 -----

6 THE PEOPLE OF THE STATE OF COLORADO,

7 Plaintiff,

8 v.

9 LAWRENCE AOKI,

10 Defendant.  
11 -----

12  
13 This matter was heard on Wednesday, September 10,  
14 1986, before the HONORABLE JOHN W. COUGHLIN, Judge of the  
15 District Court.

16  
17 This transcript is of the portion of the hearing  
18 requested.

19 APPEARANCES:

20 FOR THE PEOPLE: DAVID A. OLIVAS, Reg. No. 12888  
21 Deputy District Attorney  
22 ALVIN J. LaCABE, Reg. No. 11785

23 FOR THE DEFENDANT: FRANK J. VIEHMANN, Reg. No. 9228  
24 Deputy State Public Defender  
25 STEVEN REESE GAYLE, Reg. No. 10494  
Deputy State Public Defender  
KAREN M. ASHBY, Reg. No. 13128  
Deputy State Public Defender

Defendant personally present.

1 WEDNESDAY, SEPTEMBER 10, 1986  
2 MORNING SESSION

3 P R O C E E D I N G S

4 THE COURT: 86 CP 852, 86 CR 1684, Lawrence Aoki.

5 Miss Ashby, you're going to argue this matter  
6 for the defendant?

7 MS. ASHBY: That's correct, your Honor.

8 THE COURT: Mr. Olivas, you're going to argue the  
9 matter for the People?

10 MR. OLIVAS: Yes, your Honor, with the one  
11 proviso. We just received, as I indicated to the Court  
12 a little earlier, the cases from the defense. Obviously,  
13 we have not had time to take a look at those cases. I  
14 don't have any problem with presenting our position on the  
15 case to the Court, and then if the Court would allow us  
16 some additional time to respond to the defense, and I  
17 guess what I'm asking for some time to read their cites  
18 and at least to point out the distinguishing case  
19 characteristics to the Court if that is necessary.

20 I don't want to delay. I know the Court agrees  
21 we need to get back and continue to work on the case, but  
22 it's an important issue and I think that, you know, we  
23 should be well prepared to present --

24 THE COURT: I'll listen to your argument, give  
25 you until five o'clock to submit any more cases that

1       you want. I'll take it under advisement and give you a  
2       decision tomorrow.

3               MR. OLIVAS: Only thing with respect to their  
4       cases I guess what I'm wondering or asking is that rather  
5       than reducing our position to writing in terms of our  
6       position on their cases, I would like to have some more  
7       time for oral argument, I suppose, you know, unless the  
8       Court is ready to rule this morning. If it obviously  
9       rules in our favor, we won't need to rebut.

10              THE COURT: I'm not going to be ready to rule  
11       this morning. I've just been given ten cases to read.

12              MR. OLIVAS: You're in the same position we  
13       are. Might if it be more economical then just to present  
14       the arguments. I know that we need to get the issue  
15       resolved so we can get MacDonald and Miller properly  
16       subpoenaed, and I'm thinking two things. One, I'm not  
17       trying to push but either presenting the total argument  
18       this afternoon after both the Court and everybody has  
19       taken time to read the cases and depending on the Court's  
20       schedule, maybe even tomorrow morning. I'm thinking  
21       why bifurcate the proceeding if we have more to say on  
22       the issue.

23              THE COURT: Do you have any problem with that?

24              MS. ASHBY: If that is the agreement.

25              THE COURT: I have a civil case that I'm going

1 to have to hear today and tomorrow, so I'm not going to  
2 be able to read the cases today. It will be tonight.

3 MR. OLIVAS: Okay.

4 THE COURT: Do you need the defendant tomorrow  
5 for this? We'll waive the defendant's presence then for  
6 tomorrow. Tomorrow we have a horrible docket.

7 Why don't you argue now. I'll read the cases  
8 over tonight and I'll give you a decision tomorrow.

9 MR. OLIVAS: Okay, with one concern. Oftentimes  
10 you can read cases with two different lights and I mean  
11 that is obvious from the legal business. I just don't  
12 want to present half an argument and, you know, after we  
13 read the defense's cases have something significant to  
14 bring out about them that may change the Court's mind.  
15 That is my problem.

16 THE COURT: Fine. Well, I want to hear your  
17 argument now. Tomorrow morning everybody show up, the  
18 attorneys from each side show up at 8:30. If you have  
19 any more to say, fine, and I'll rule. Let's use this  
20 time because I won't have much time tomorrow.

21 MR. OLIVAS: Your Honor, we raise the issue  
22 and I think we indicated to the Court the last time we  
23 were here that we had information that MacDonald -- Dr.  
24 MacDonald and Dr. Miller examined the defendant at the  
25 request of the defense. Our brief makes clear the issues



1 that we think are involved here, and I just may explain  
2 or expound on those issues a little bit.

3 The psychologist-client privilege -- and I  
4 might point out to the Court -- there is no psychiatrist-  
5 client privilege at least that is set out in Title 13.  
6 What Title 13 sets out is the attorney-client privilege,  
7 the spouse privilege. It refers to a physician. The  
8 statute sets out as well as patient-client privilege and  
9 psychologist-client privilege. There is nothing in the  
10 statute specifically addressing a psychiatrist-patient,  
11 but I think if you take a look at the case of The People  
12 v. Taylor case, The People v. District Court case, and  
13 the Clark case that I've tendered to the Court -- by the  
14 way, I apologize to the Court. I realize that the cases  
15 I tendered were not entirely readable. I discovered that  
16 this morning. If the Court doesn't have those cases  
17 available, I'll make clear copies as soon as I leave so  
18 you'll have them. That makes clear and the analysis  
19 that these cases deal with is the same and it deals  
20 with the same in terms of psychiatric as well as  
21 psychologists' privilege. You can read those cases as  
22 dealing with a privilege in the same way. There is  
23 no difference between them in terms of analysis, so I  
24 would encourage the Court to follow that train of thought  
25 by the various justices when they talk about these

1 privileges.

2 We set out the psychologist-client privilege  
3 in our brief because I think it basically sets out the  
4 reasons for the privilege. People v. Taylor and the  
5 Craney case -- I'll cite those for the court reporter --  
6 The State v. Craney, 347 N.W.2d 668; People v. Taylor is  
7 found at 681 P.2d 1127. Those cases basically --

8 THE COURT: 1127?

9 MR. OLIVAS: Yes. 1127. Deal with the proposi-  
10 tion there is reason for the privilege. You want to  
11 encourage an honest communication between the doctor and  
12 the patient so he can adequately treat his patient.  
13 This is a little different situation.

14 Our position is that the privilege doesn't  
15 apply because this wasn't done for purposes of treatment.  
16 It was done specifically for the purpose of litigation,  
17 and I think that purpose and the primary purpose relating  
18 to that takes it out of the privilege itself, so we don't  
19 have an issue of privilege from that regard; and basically  
20 People v. District Court and People v. Taylor make that  
21 clear. A person who consults with a forensic psychiatrist  
22 which may mutually lead to an opinion of sanity or  
23 insanity is certainly not for purposes of treatment.  
24 I don't know how you can say otherwise with respect to  
25 this case.

1 I gave the defendant's brief a cursory reading  
2 just now, and then even state we hired these folks and  
3 we told Mr. Aoki this was to help us what kind of a plea  
4 to enter. Even by their own admission, it wasn't for  
5 purposes of treatment. But even assuming arguendo that  
6 you assume that the privilege applies with respect to  
7 the constitution and the statute, our position that you  
8 know it's waived. And that has been very clear in The  
9 People v. District Court, the cite that I gave previously,  
10 and in The State v. Craney case.

11 Those cases talk about -- and The People v.  
12 District Court which is a recent case that came down from  
13 the Supreme Court of Colorado June 2, 1986, that is when  
14 it was reported, and that is a matter of fact a case  
15 right out of a case that is a case dealing with Mr. Silva  
16 that Mr. LaCabe tried last week and Mr. Loewi took up  
17 on an original proceeding, the issue about the disclosure  
18 of the victim's record when they went to this treatment  
19 facility. The defense wanted to get ahold of those  
20 records and the Court talked about and gave us insight  
21 into the issues regarding this privilege, and they said,  
22 look, they dealt with the issue of whether privilege  
23 applied and they talked about, you know, who's the doctor  
24 in charge and who's the therapist, and they said it  
25 didn't matter. Anybody working within the same coverage

1 had if they go ahead and talk to somebody and treat him,  
2 counsel them, they come within the privilege. After that  
3 they dealt with that issue. They said she did not by,  
4 you know, taking the stand interject other mental status  
5 into the case and it dealt with the waiver issue. They  
6 talk about, you know, the fact that the defense is merely  
7 speculating that she may have told the therapist some-  
8 thing which was inconsistent that she told the police  
9 officers not enough to waive the privilege. They held  
10 in that case the privilege still applied but there was  
11 no waiver but they also said and they made a statement  
12 in that case that: "A waiver must be supported by evidence  
13 showing that the privilege holder, by words or conduct,  
14 has expressly or impliedly forsaken his claim of confi-  
15 dentiality with respect to the information in question."

16 They go on to say and they cite another case  
17 which the language says: "The appropriate inquiry under  
18 such circumstances should be whether the privilege holder  
19 has injected his physical or mental condition into the  
20 case as the basis of a claim or an affirmative defense."  
21 And they said there if that is clear, then the privilege  
22 is waived.

23 And what we have here is a specific waiver.  
24 We have insanity defense and that certainly deals with the  
25 person's mental state insofar as sanity is concerned.

1 I think it is blatantly clear that his mental state is  
2 in issue in this case and that by interjecting that  
3 defense we should be able to call whatever witnesses  
4 we can to help bring out the truth in that regard.

5 And I might also want to point out, Judge, in  
6 this case that we seem to be harping about the statements  
7 given to Dr. MacDonald, Dr. Miller. This is an interesting  
8 situation because, as you read these cases, you get the  
9 impression that the statements given to the psychiatrists --  
10 incriminating statements that were elicited from the  
11 defendant during the course of that communication weren't  
12 known by the prosecution. This is a little different  
13 here.

14 Mr. Aoki has talked to five psychiatrists and  
15 he has given a thorough, detailed account of what  
16 happened on the particular day in question. It's not  
17 like something that we haven't heard before. The reason  
18 I mention that is because I think it throws a little  
19 different light onto the case. It's not as compelling  
20 in this case in terms of the communication itself. What  
21 we're dealing here and what we're asking for is not  
22 necessarily the statements by Mr. Aoki to Dr. MacDonald  
23 and Dr. Miller but we're asking for their opinions.  
24 Now, we realize that their opinions are based on what he  
25 told them but what he told them is well known to everybody

1 and it's well known as reflected in the doctors' reports.

2 I encourage the Court to read State v. Craney.

3 It's a Supreme Court of Iowa case and that case is  
4 particularly on point because it was an insanity defense.  
5 It's a little unclear from reading the case whether it was  
6 bifurcated trial. I suspect that it wasn't, that it  
7 was one trial situation where sanity was raised as an  
8 affirmative defense and the jury could have returned a  
9 verdict of guilty--not guilty by reason of insanity, and,  
10 of course, a guilty on the substantive count. That case  
11 talks about the privilege itself and it talked about the  
12 fact that the privilege really didn't apply because it  
13 wasn't for the consultation of the diagnosis and treat-  
14 ment. That case the prosecution wanted to call the  
15 defense psychiatrists that were sent in. They didn't  
16 endorse them and we attempted to call them. Same thing  
17 as what we have here, and the Court said, look, first  
18 of all, we don't think the privilege applies because  
19 there is no treatment or consultation here because of  
20 treatment itself.

21 They next talked about the issue of waiver,  
22 and they also, you know, the same thing as went along  
23 with People v. District Court. They also talked about  
24 the fact that he put his mental state in issue when he  
25 raises the defense of insanity and therefore he waives it.

1 I note as an aside and I am not really properly  
2 prepared to present this Court -- to the Court is they  
3 raised the Sixth Amendment right issue. The defense  
4 did that. That is they say that he violates the attorney-  
5 client privilege or if the doctors are allowed to testify.  
6 State v. Craney talks about the attorney-client privilege,  
7 and there is a good analysis of how that privilege applies.  
8 And I would note for the Court in Title 13 there is the  
9 attorney-client privilege set out in C.R.S. 13-90-107(1)(b),  
10 and they talk about the attorney-client in that respect.  
11 And I'll come back to that in a moment.

12 I want to say one last thing about a similar  
13 analogy that we presented when we submitted to the Court  
14 People v. Perez. People v. Perez is a case that was  
15 found 701 P.2d 104, and again I'll make some clear copies  
16 for the Court. I know that was one of the cases that  
17 couldn't be read. That is a handwriting case, and I know  
18 that this is one of the distinguishing characteristics.  
19 I mean, we don't have a handwriting situation here, but  
20 that case dealt with the fact that the defense hired a  
21 handwriting person. The handwriting person or expert  
22 didn't have very favorable results to report thereby  
23 didn't endorse him. We called that handwriting expert  
24 as a witness. That was the issue in the Perez case.  
25 And the Court basically said that, first of all, the

1 attorney-client privilege didn't apply and there is some  
2 very quotable language in that case. For instance:  
3 "Attorneys should not be able to thwart the factfinding  
4 process and take unfavorable experts off the market simply  
5 by placing them on their payroll and claiming the attorney-  
6 client privilege." They say: "We are in accord with  
7 this line of reasoning and agree that the attorney-client  
8 privilege was not established nor designed as a strategic  
9 tool to allow one party to gain an advantage by keeping  
10 unfavorable evidence to itself rather than sharing it  
11 with others."

12 "A witness is not the property of either party  
13 to a suit and simply because one party may have conferred  
14 with a witness and even paid him for his expert advice  
15 does not render him incompetent to testify for the other  
16 party." What they're saying is, and I think the Court  
17 was very willing to shed some light on another issue here,  
18 Dr. MacDonald from what I understand is one of the top  
19 forensic psychiatrists in this state. I have heard  
20 statements from other attorneys in our office if one  
21 were to put on a forensic psychiatrist you would want  
22 to have Dr. John MacDonald as the one. He's been around  
23 for a long time and he's very credible, very reputable.  
24 If you wanted to prevent Dr. MacDonald from getting  
25 involved in this case, of course, if you went along with



1 the defense's argument, all you would have to do is to  
2 hire him, have him talk to the defendant, then he becomes  
3 unavailable as a witness. I think the Perez case makes  
4 him -- this is a fact finding process and keep in mind  
5 this is an insanity defense. If we want the jury to  
6 have the total picture about his frame of mind on this  
7 particular day, we shouldn't be able to be prevented from  
8 calling an expert just because he interviewed the  
9 defendant. I think if you take that case and you read  
10 that case in light of the other cases that are cited,  
11 it becomes clear that we should be able to call  
12 Dr. MacDonald and Dr. Miller.

13 I would like to reserve comment. I know that  
14 I have received the cases regarding the Sixth Amendment  
15 issue, and I would like to reserve comment with respect  
16 to those issues.

17 THE COURT: Miss Ashby.

18 MS. ASHBY: Your Honor, I would just like to  
19 state a few facts and then to structure the argument  
20 I'll simply respond to the issues as raised in the  
21 District Attorney's brief.

22 But in this case we've heard the District  
23 Attorney say that the truth finding process has been  
24 thwarted because they do not have access to the psychiatrists.  
25 I think it's important to note that the District Attorney

1 has at its disposal at this time reports from five --  
2 well, from four. Dr. Teitelbaum is going to submit a  
3 report if he has not done so at this point, so they'll  
4 have access to five reports relating to Mr. Aoki's  
5 mental status. Two of them were Court-appointed  
6 psychiatrists with whom Mr. Aoki cooperated. So, for  
7 the District Attorney to stand here and say that the  
8 truth finding process has been thwarted by the defense,  
9 I think it's clearly not shown by the facts in this case.

10 At the time that the psychiatrists were hired  
11 to examine Mr. Aoki, they were hired to assist the defense  
12 in determining what would be appropriate courses of  
13 defense to pursue in this case. An attorney generally  
14 is not in a position to know or have the qualifications  
15 to know whether a client is incompetent or competent,  
16 whether a client is insane or sane. That is something  
17 which of necessity he must enlist the expertise of people  
18 who do know how to make those assessments. In this case  
19 these psychiatrists were hired specifically for that  
20 purpose by the defense, were paid for by the defense, and  
21 were told or told Mr. Aoki that any communications he  
22 would make to them were confidential. The doctors were  
23 acting as agents of the attorney and in order to garner  
24 information from Mr. Aoki and put in a form which was  
25 useable by the attorneys.

1 I think it's important to note, also here that  
2 because Mr. Aoki's in custody in this case that is the  
3 reason that the District Attorney even has notice that  
4 these psychiatrists were hired. If Mr. Aoki were not  
5 in custody and were not indigent, we would be in the  
6 position that the District Attorney would probably not  
7 even know who, if any, psychiatrists had been hired by  
8 the defense. So, because of Mr. Aoki's situation, the  
9 District Attorney now is attempting to take advantage of  
10 that and in another form by getting access to those  
11 confidential communications between Mr. Aoki and  
12 psychiatrists hired by him.

13 Your Honor, going through the District Attorney's  
14 brief, I can possibly make the Court's job a little  
15 easier because I will state from the beginning that we're  
16 not seeking to the psychologist-patient privilege in this  
17 case. That is not a position that I am taking. What is  
18 important in this case, however, is that the defendant  
19 has certain constitutional rights guaranteed to him  
20 including the right to counsel as guaranteed by the Sixth  
21 Amendment to the United States Constitution and Article 2,  
22 Section 16 of the Colorado Constitution. That right to  
23 assistance of counsel means you have a right to effective  
24 assistance of counsel. You cannot have an effective  
25 assistance of counsel if you are denying to the attorney

1 the right to hire experts to assist him in reviewing the  
2 case and determining what are appropriate courses of  
3 action to take. The attorney-client privilege is  
4 applicable in this case. The reason it is applicable is  
5 that the communications between the doctors and Mr. Aoki  
6 were as a result of Mr. Aoki's hiring these psychiatrists  
7 through his attorneys. The attorneys were acting as  
8 agent -- I'm sorry. His psychiatrists were acting as  
9 agents of the attorney in speaking with Mr. Aoki. There  
10 had been prior to the attorney-client privilege no  
11 communications between Mr. Aoki and these communications.  
12 The communications were a direct result of the attorneys  
13 requesting the psychiatrists' examinations.

14 District Attorney states that People v. Perez  
15 is dispositive of this issue. I vehemently disagree  
16 with that on a number of grounds. The Perez case the  
17 District Attorney stated had to do with handwriting  
18 exemplars which the Court in Perez specifically stated  
19 were non-communicative and non-testimonial. That is not  
20 the situation that we have here. We're talking about  
21 statements made by Mr. Aoki to the psychiatrists and  
22 discussions that were had between them as well as  
23 discussions were held between the psychiatrists and  
24 attorneys and the attorneys and Mr. Aoki. In Perez  
25 the defendant had already given handwriting exemplar to

1 the District Attorney's Office and police department prior  
2 to his hiring counsel. So, he had already voluntarily  
3 communicated exemplars to the prosecution. That is not  
4 the case here.

5 The reports in this case, as I indicated, were  
6 generated after the establishment of the attorney-client  
7 privilege which I feel is a very significant difference  
8 from Perez. In Perez the Court states that the attorney-  
9 client privilege extends to confidential matters communi-  
10 cated by or to the client. That perfectly fits Mr. Aoki's  
11 situation. He was told that these matters were confi-  
12 dential. They were meant to be confidential and unless  
13 the witness were called to the witness stand and the  
14 attorney-client privilege had therefore been established  
15 and had been communicated to Mr. Aoki that this was going  
16 to be protection for him. The Court in Perez also stated  
17 that it was relying on the fact that the information  
18 which the expert was using to render opinion, an opinion  
19 was derived from sources other than the defendant. Here  
20 the experts' opinions are directly related to the  
21 communications which Mr. Aoki and the psychiatrists have.

22 For the District Attorney to state that they're  
23 seeking the opinion and are not trying to get into the  
24 communications that these psychiatrists have is ludicrous.  
25 They cannot get to the opinion without delving into what

1 communications were held between Mr. Aoki and the  
2 psychiatrists and that these communications were  
3 privileged.

4 The District Attorney also states that there  
5 has been a waiver in this case by introducing or by  
6 utilizing the insanity defense. The majority of cases  
7 from varying jurisdictions are to the contrary. In  
8 the brief which has been tendered to the Court, I would  
9 direct the Court's attention to Page 6 wherein United  
10 States v. Alvarez, the 3rd Circuit Court of Appeals  
11 stated: "We reject the contention that the assertion of  
12 insanity at the time of the offense waives the attorney-  
13 client privilege with respect to psychiatric consultations  
14 made in preparation for trial." The majority opinion is  
15 that U.S. v. Alvarez.

16 I do want to bring one other issue to the  
17 Court's attention, and that is that the attorney-client  
18 privilege is necessarily an outgrowth of the Sixth  
19 Amendment right to effective assistance of counsel.  
20 Unless this Court allows an attorney to consult expert  
21 witnesses and in trying to determine what the courses of  
22 defense should be in a case without subjecting the  
23 attorney to the risk of creating possible prosecution  
24 witnesses, the Sixth Amendment right to counsel means  
25 very little. If the Sixth Amendment is going to be

1 construed so narrowly as to prevent the types of  
2 consultations which are required and necessary in these  
3 types of cases, the Sixth Amendment is meaningless at  
4 that point.

5 I want to bring to the Court's attention again  
6 the case People v. Rosenthal at 617 P.2d 551. It's a  
7 1980 Supreme Court case. The District Attorney mentioned  
8 in their brief that the due process clause would prohibit  
9 the prosecution from using a statement made by the  
10 defendant to a psychiatrist for the purpose of establishing  
11 any element of the offense. Well, the mental state,  
12 mens rea, is an element of the offense which is very  
13 analogous to what the insanity issue is all about.  
14 People v. Rosenthal stated that the procedures governing  
15 an insanity defense cannot be applied in a manner that  
16 destroys the safeguard against self-incrimination. That  
17 statement is equally applicable to the fundamental right  
18 of effective assistance of counsel. If the procedures  
19 governing the insanity defense are going to be allowed  
20 to destroy that right, then that leaves us with nothing.  
21 I think that the Court has to look to how an attorney is  
22 going to effectively represent a client and the things  
23 that are required ethically by the attorney to do in  
24 representing that client; and if we're going to have  
25 to play Russian roulette in hiring experts and take the

1 gamble that we're going to get an unfavorable opinion  
2 that is going to be used by the District Attorney, that  
3 is going to chill any right to effective assistance of  
4 counsel because the attorney is going to be put in a  
5 position of either not pursuing a possible course of  
6 defense or risking creating prosecution witnesses. The  
7 Sixth Amendment right is not designed to do that.

8 THE COURT: Miss Ashby, I'm going to stop you  
9 there.

10 MS. ASHBY: That is fine. Most of the arguments  
11 which I have presented to the Court are already contained  
12 in the brief.

13 THE COURT: All right.

14 Mr. Olivas, I'm going to give you time tomorrow  
15 very brief time to respond about the client-attorney  
16 privilege phase or issue. Then, I'll give you any ruling  
17 tomorrow morning.

18 (A discussion was had off the record at this  
19 time.)

20 (Other matters were put on the record not  
21 relating to this issue.)

22 (The hearing was concluded at this time.)  
23  
24  
25



### REPORTER'S CERTIFICATE

STATE OF COLORADO )  
 )  
 ) ss.  
CITY AND COUNTY OF DENVER )

I, Pamela R. Baclawski, do hereby certify that I am a Certified Shorthand Reporter and an Official Court Reporter for the Second Judicial District; that as such reporter I was present upon the occasion of the hearing of the above-entitled matter; that I stenographically recorded all proceedings had in the above-entitled matter on Wednesday, September 10, 1986.

I do hereby further certify that I caused my stenotype notes to be reduced to typewritten form, and that the foregoing 20 pages constitute a true, correct, and complete transcript of the portion of the hearing requested.

IN WITNESS WHEREOF, I have hereunto set my hand  
and seal this 1st day of March 1987.

Pamela R. Baclawski  
Pamela R. Baclawski, C.S.R.

## APPENDIX H

1 DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

2 Case Nos. 86 CR 352 and 86 CR 1684, Courtroom 12

3 -----  
4 REPORTER'S TRANSCRIPT: Judge's Ruling  
5 -----

6 THE PEOPLE OF THE STATE OF COLORADO,

7 Plaintiff,

8 v.

9 LAWRENCE AOKI,

10 Defendant.  
11 -----

12  
13 This Judge's Ruling was given by the HONORABLE  
14 JOHN W. COUGHLIN, Judge of the District Court, on Thursday,  
September 11, 1936.

15 APPEARANCES:

16 FOR THE PEOPLE: DAVID A. OLIVAS, Reg. No. 12393  
17 Deputy District Attorney  
ALVIN J. LaCABE, Reg. No. 11785  
18 Deputy District Attorney

19 FOR THE DEFENDANT: FRANK J. VIEHMANN, Reg. No. 9228  
Deputy State Public Defender  
20 KAREN M. ASHBY, Reg. No. 13128  
Deputy State Public Defender  
21  
22  
23  
24  
25

THURSDAY, SEPTEMBER 11, 1986  
AFTERNOON SESSION

P R O C E E D I N G S

THE COURT: Aoki. This is the case of People of the State of Colorado v. Mr. Aoki. We're here concerning, one, the Court is going to give its decision regarding the District Attorney's right to call certain psychiatrists that have been consulted with by the defendant prior to his entering the plea; and we're here to take a deposition of a witness.

I'd address first the issue of the District Attorney's right to take--call witnesses--those psychiatrists that were consulted by the defendant prior to his entering a plea of not guilty by reason of insanity; and the Court is ruling that the District Attorney will be allowed to call those witnesses in their case.

The issues as pointed out on the cases and the briefs submitted by counsel are really three different ones. One is a doctor/patient privilege, Fifth Amendment matters, and Sixth Amendment right matters regarding effective assistance of counsel. And the Court does not feel, first of all, that the privilege--doctor/patient privilege applies and that that consultation was not done with the idea of seeking treatment. And in that regard I cite the case of People v. Rosenthal, 617 P.2d 551,

1 where our Colorado Supreme Court decided the case with  
2 regards to testimony of psychiatric Fifth Amendment grounds,  
3 but in that decision the Court says that citing Page 553:  
4 "The defendant concedes that the doctor/patient privilege  
5 is inapplicable to this case." And that is what the Court  
6 feels: the doctor/patient privilege is not applicable in  
7 this case, and I think Miss Ashby conceded that matter in  
8 her argument.

9 And this next argument is the Fifth Amendment  
10 right argument, and the Court does not feel again that is  
11 applicable.

12 The difficult issue in this case is the effective  
13 assistance of counsel, and certainly there is some issue  
14 to that because having the defendant examined by psychiatrists  
15 prior to his entering a plea for the purpose of assisting  
16 counsel when counsel is deciding what plea to enter and  
17 then preparing for trial obviously does involve an issue  
18 of counsel giving effective assistance. But the Court  
19 would note in this case that the psychiatrists were contacted  
20 --and please correct me if I'm wrong--prior to the defendant  
21 --each psychiatrist we're talking about were contacted and  
22 examined the defendant prior to the entrance of the plea;  
23 isn't that right, Mr. Viehmann?

24 MR. VIEHMANN: That's correct.

25 THE COURT: So counsel had the benefit of that

1 consultation, had the benefit of that opinion whatever  
2 it might have been, at least of those psychiatrists, and  
3 based upon that were able to enter a plea that they thought  
4 was appropriate for their clients. They had not been  
5 hampered in preparation of trial in this matter by having  
6 these doctors' names revealed. Couple of days before trial--  
7 it was not until, I guess, two or three weeks prior to trial  
8 that the District Attorney learned of these doctors and  
9 asked that they be endorsed and allowed to testify, so  
10 I don't think there has been a problem with counsel's  
11 preparing for trial by the release of these doctors' names.

12           There is some effect on preparation and the  
13 effective assistance of counsel by these doctors testifying  
14 in the fact that in the future counsel knows that these  
15 doctors may be called to testify, it will be difficult,  
16 it may create some difficulties to obtain these opinions  
17 and the ability or desire to obtain these opinions entering  
18 a plea. But balanced against that is the trial is here to  
19 find the truth, and we want to put in front of the jury  
20 all relevant information about the defendant's mental state  
21 at the time of the commission of these acts. And to do  
22 that, if there are qualified psychiatrists that examined  
23 him and can offer testimony on that issue to hold those  
24 back from the jury frustrates the truth finding process.

25           For that reason, any effect detrimental to the

1 effective assistance of counsel I think is outweighed by  
2 the truth finding process and would therefore--the ruling  
3 is that they will be able to be called.

4 I have gone through the cases that both sides  
5 have given me, and there is obviously a split in the  
6 decisions. Alvarez is a very good written decision.  
7 I thought the decision in Noggle, N-o-g-g-l-e, v. Marshall  
8 which goes the other way which is a decision as well as  
9 a decision by Judge Weinstein in the Federal District Court  
10 in New York that went in favor of the People. I recognize  
11 it is a conflicting problem but come on the side that I  
12 think the trial as truth finding process outweighs any  
13 detriment to counsel and effective assistance of counsel.

14 Another issue that would convince me that if these  
15 doctors were not to be able to be called, the defendant  
16 could go out and find the best doctor, get his opinion  
17 prior and consultation, and then preclude the District  
18 Attorneys from calling the best possible witness that would  
19 be available. That might not be such a problem in the  
20 City of Denver where there are numerous doctors available  
21 to give opinions, but in smaller areas it might be a  
22 problem.

23 So, overall and balancing the two interests of  
24 trying to find the truth at the trial and then recognize  
25 there has to be effective assistance of counsel, the Court

1 in this situation comes out on the side of making sure  
2 that the jury gets all the information they can to find the  
3 truth in this matter and will allow the District Attorney  
4 to call these witnesses. Those witnesses that they plan  
5 to call now they will have to prepare reports and give  
6 those reports to the defendant just like I required the  
7 defendant's psychiatrists to give reports to the District  
8 Attorney.

9 In addition, we have in this trial, as I under-  
10 stand it, two psychiatrists testifying on behalf of the  
11 People, two psychiatrists testifying on behalf of the  
12 defendant, one toxicologist testifying on behalf of the  
13 defendant. The doctors' testimony at some point might  
14 get to be so many doctors that instead of being helpful  
15 to the jury we're creating more confusion. For that  
16 reason, I want the doctors' reports of any witness that  
17 the People want to call prepared. If the Court feels  
18 that each one of those--are there three doctors we're  
19 talking about?

20 MR. OLIVAS: Three.

21 THE COURT: If each one of those three doctors  
22 are talking about the same things, I'm going to require  
23 to decide which they are and call that one and not the  
24 other two or call two of them if they have somewhat  
25 different opinions, not the third, that we'd just be



1 repeating what the other doctor said.

2 When did you plan to call those witnesses and  
3 prior to that time you're going to have to get the report  
4 to the defendant?

5 MR. OLIVAS: Judge, as I stated, we plan to rest  
6 on the presumption. It's kind of hard for us to judge  
7 how long the defense will put on evidence. I would suspect  
8 that it won't be until the first of next week just because  
9 they'll have to prepare reports. We'll have a number of  
10 other witnesses we can put on in addition to the  
11 psychiatrists that we have to finish out our week. What  
12 I'm thinking is that maybe Monday of the following week  
13 following the September 15th might be a good day to shoot  
14 for.

15 THE COURT: Well, I'm asking you now to call the  
16 doctors as soon as possible and tell them to prepare the  
17 reports, get them.

18 MR. OLIVAS: I will do that, and I will tell them  
19 to have them prepared as soon as possible.

20 The other thing I would ask is that I talked  
21 to Dr. MacDonald. He was very reluctant--while he didn't  
22 talk to me because of the privilege involved, I told him  
23 at that time I said, well, I'm not going to put you on the  
24 spot. I want you to know we intend to call you. The Judge  
25 will resolve the issue, and we'll get back to you.

1           My feeling is that if I call him up he may  
2           require an order of the Court telling him that the privilege  
3           has been waived and the Court's ordering a report so at  
4           least he is covered in terms of his responsibility and  
5           that I think that I'll need just to make sure everything  
6           is fine.

7           THE COURT: Let Barbara do that. I'll sign it.

8           MR. OLIVAS: If need be, I'll prepare something  
9           to that effect and I'll let her know.

10          THE COURT: Mr. Viehmann, do you have anything?

11          MR. VIEHMANN: Your Honor, I'm wondering if  
12          with regard to the facts of the situation whether the  
13          Court would make a finding whether or not these doctors  
14          when they consulted with Mr. Aoki whether they were in  
15          fact agents of defense counsel which was our factual  
16          position.

17          THE COURT: Yes, sir, they were. I don't know--  
18          were they hired by the Public Defender's Office or family?

19          MR. VIEHMANN: By the family, yes.

20          THE COURT: They were hired by the family at the  
21          request, I would imagine, of counsel?

22          MR. VIEHMANN: Well, actually, hired by counsel  
23          and through counsel with the agreement of the family  
24          would actually be the most appropriate way of stating it.

25          THE COURT: All right. I'm so finding that and

1 that they were doing this in the idea of assisting counsel  
2 in preparation of deciding what plea to enter and perhaps  
3 preparation of the trial. I am finding that.

4 MR. VIEHMANN: Is the Court finding a waiver by  
5 Mr. Aoki of any privilege that may apply?

6 THE COURT: I am. When he puts the issue of his  
7 sanity at the time of the incident into issue, he is,  
8 I think, waiving any client/physician privilege. In  
9 addition, I don't think the client/physician privilege  
10 applies when it's not done for treatment, and I don't--I'm  
11 not finding that it was done for treatment. It was done  
12 for assisting counsel in preparing for a plea and for  
13 preparation of trial. So I'm saying that there is not a  
14 client--a patient/doctor privilege.

15 MR. VIEHMANN: And that is there a waiver of  
16 attorney/client or that the Court is, in essence, weighing  
17 even though there is not a waiving the interests of the  
18 privilege which presumably applies against the truth  
19 seeking?

20 THE COURT: I'm not finding a waiver of the  
21 privilege of attorney/client. I am finding that there is  
22 an attorney/client privilege but what benefit there is  
23 from that privilege is outweighed by interest of the Court  
24 making a truthful decision and giving all the information  
25 that is relevant to the jury so they can make the correct

1 decision.

2 MR. VIEHMANN: Thank you.

3 THE COURT: If you think about it and there is  
4 more that you want me to address, I'll be happy to address  
5 that.

6 (The Judge's Ruling was concluded at this time.)  
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### REPORTER'S CERTIFICATE

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

I, Pamela R. Baclawski, do hereby certify that I am a Certified Shorthand Reporter and an Official Court Reporter for the Second Judicial District; that as such reporter I was present upon the occasion of the hearing of the above-entitled matter; that I stenographically recorded all proceedings had in the above-entitled matter on Thursday, September 11, 1986.

I do hereby further certify that I caused my stenotype notes to be reduced to typewritten form, and that the foregoing 10 pages constitute a true, correct, and complete transcript of the Judge's Ruling.

IN WITNESS WHEREOF, I have hereunto set my hand  
and seal this 17th day of September 1986.

Pamela R. Baclawski  
Pamela R. Baclawski, C.S.R.

## APPENDIX I

1 DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

2 Case Nos. 86 CR 852 and 86 CR 1684, Courtroom 12

3 -----  
4 REPORTER'S TRANSCRIPT: Hearing  
5 -----

6 THE PEOPLE OF THE STATE OF COLORADO,

7 Plaintiff,

8 v.

9 LAWRENCE AOKI,

10 Defendant.  
11 -----

12  
13 This matter came on for hearing on Tuesday,  
14 September 23, 1986, before the HONORABLE JOHN W. COUGHLIN,  
Judge of the District Court.

15 APPEARANCES:

16 FOR THE PEOPLE: DAVID A. OLIVAS, Reg. No. 12888  
17 Deputy District Attorney

18 FOR THE DEFENDANT: FRANK J. VIEHMANN, Reg. No. 9228  
Deputy State Public Defender  
19 STEVEN REESE GAYLE, Reg. No. 10494  
Deputy State Public Defender

20 FOR DR. JOHN  
21 MacDONALD: CRAIG T. TRUMAN, Reg. No. 5331

22 FOR DRS. MILLER  
AND KADUSHIN: LARRY S. POZNER, Reg. No. 2792

23 FOR THE NATIONAL  
24 ASSOCIATION: DANIEL R. CHRISTOPHER, Reg. No. 5707  
25

1 TUESDAY, SEPTEMBER 23, 1986  
2 MORNING SESSION

3 P R O C E E D I N G S

4 (The following was heard in the courtroom outside  
5 of the presence and hearing of the jury.)

6 THE COURT: This is the matter of People v.  
7 Larry Aoki. We're outside the presence of the jury.

8 Would the attorneys that are involved please  
9 enter their appearances.

10 MR. OLIVAS: David Olivas on behalf of the People.

11 MR. VIEHMANN: Frank Viehmann and Steve Gayle  
12 appearing with Mr. Aoki who is present in custody.

13 MR. TRUMAN: Your Honor, my name is Craig Truman  
14 and I represent Dr. John MacDonald.

15 MR. POZNER: Larry Pozner representing Dr. Miller  
16 and Dr. Kadushin.

17 MR. CHRISTOPHER: I'm Daniel Christopher,  
18 registration 5707, appearing on behalf of the psychiatrists  
19 here that are also represented by Mr. Pozner and Mr. Truman  
20 through their national association.

21 THE COURT: All right. All right, gentlemen, I  
22 have read your motions and I've read the briefs submitted.  
23 Is there any additional that either side or anybody would  
24 like to state?

25 Mr. Truman, I guess you're the one to speak.



1 MR. TRUMAN: Your Honor, I guess I would have  
2 an amendment to the brief initially. This was in a hurry,  
3 and I noticed that I didn't proofread it as well as I should  
4 have. On Page 7 of my brief the Nagel case, N-a-g-e-l, is  
5 Noggle, N-o-g-g-l-e, and I'd ask that that simply be  
6 corrected.

7 Secondly, I would ask that the Court consider,  
8 your Honor, we've searched for District Court Colorado  
9 while not binding is certainly persuasive concerning this  
10 same issue, and Mr. Savitz was kind enough to send me an  
11 order in a Douglas County case entitled The People v.  
12 Ross Carlson, 83 CR 73, in Division 9. That is a ruling  
13 by Judge Turelli on essentially the same issue. I've only  
14 got one copy that I brought. I'm showing it to Mr. Olivas  
15 now.

16 Needless to say, that ruling by Judge Turelli  
17 certainly not binding case that it is improper to call the  
18 defense experts when they have not been called to testify.  
19 It deals with a competency hearing rather than a sanity  
20 trial but it deals with Doctors MacDonald and Sundell who  
21 were retained by the defense for evaluation of Mr. Carlson.  
22 Subsequently, it was determined that they didn't testify  
23 at the competency hearing.

24 The prosecutor, Mr. Chappell of the Arapahoe  
25 District Attorney's Office, moved to endorse them and

1 Judge Turelli found that endorsement was improper citing  
2 primarily Alvarez v. United States.

3 Your Honor, where there is kind of a hurry  
4 situation -- I got the transcript Thursday and we filed  
5 our brief Friday -- it's not an easy issue. It's a tough  
6 one. And in reading the transcript I find and cite in  
7 my brief that the Court apparently ruled that Dr. MacDonald  
8 was, one, covered by the attorney-client privilege; two,  
9 that that privilege had not been waived but, three, that  
10 the interest is in truth in finding out about their  
11 evaluation outweighed the privilege.

12 Your Honor, I'm troubled by that ruling and  
13 I'm troubled by that ruling because of several reasons.  
14 Initially, my trouble is that Dr. MacDonald believed that  
15 that which was told him was confidential, advised Mr. Aoki  
16 that which was told him was confidential, and gave Mr. Aoki  
17 his word. Secondly, assuming the Court's rationale, that  
18 means that all privileges only apply in cases where they  
19 don't make a difference, assuming the Court's rationale,  
20 that is to say that in a murder case where it's a clear  
21 murder case and there are some information that he may  
22 have talked to a priest after the arrest while the priest-  
23 penitent privilege may apply but in the interests of  
24 truth we're waiving the priest-penitent privilege or  
25 further the attorney-client privilege.

1           If the interests of truth outweighs privileges,  
2       let's just call Mr. Gayle and Mr. Viehmann and find out  
3       what Mr. Aoki told them. Privilege has always when asserted  
4       gone against the fact-finding process. That is why  
5       privileges are in the public policy so strong, husband-  
6       wife, priest-penitent, lawyer-client, patient-physician.

7           Now, I believe that this case is covered by  
8       attorney-client and I've not talked about patient-physician.  
9       Although there is an argument that could be made, I find  
10      that it's squarely the attorney-client situation.

11          Now, going still further, the Court indicated  
12      reliance of Noggle and Granviel v. Estelle; and I guess  
13      I'd like to distinguish those because I think there is  
14      a salient fact in both of these cases that makes a big  
15      difference. In those cases, Noggle, Granviel talk to --  
16      either talk to defense psychiatrists. They enter a plea  
17      of insanity or at least a mental health defense. At that  
18      point they refuse to cooperate with the Government, the  
19      State's experts, so that essentially the evidence that  
20      they have was sealed off by the defendant's own action.

21          In both Noggle and Granviel and to a lesser  
22      extent the Edney case, both the New York State and the  
23      habeas case, they said, look, here is your problem. It's  
24      not constitutionally mandated. Secondly, there is Noggle  
25      and Granviel by their own actions have sealed their own

1       fate. Therefore, if you're not going to cooperate, the  
2       Government doesn't have a choice. Therefore, we're going  
3       to balance that out.

4               The difference is here we have a statutory privi-  
5       lege that has been enacted. Secondly, your Honor, it  
6       appears to me that from my brief reading of the transcript  
7       that there are two doctors on each side, that Mr. Aoki  
8       has in fact cooperated with the Government, the State's  
9       experts. Therefore, the Government, the State, in this  
10      case the People, are not sealed off by Mr. Aoki's own  
11      actions as was the prosecutor in Noggle and Granviel.

12     Your Honor, I think that is the key difference. I don't  
13     think that federally -- under the federal constitution a  
14     citizen accused can hide behind a constitutional privilege  
15     when they're cutting off the Government at the pass. That  
16     hasn't happened here. There is enough. It's a fair fight,  
17     two and two.

18              Your Honor, I submit to the Court that the  
19     privilege as enacted by a legislature is more than  
20     constitutionally mandated under the federal constitution.  
21     It's under the state constitution as well, and further  
22     the legislature has determined that in truth determinations  
23     these relationships, husband-wife, attorney-client, priest-  
24     penitent, and lawyer-client as it applies to their agents,  
25     there is no question in anybody's mind that Doctors MacDonald,

1 Miller, and Kadushin were the agents of defense lawyers.  
2 They took their place. I find and I ask the Court to find  
3 that there is no waiver of that whatsoever and Mr. Aoki's  
4 actions don't put him in the position of Noggle or Granviel.

5 Your Honor, in Edney, so-called New York rule,  
6 the minority rule that it can be called, Edney was a much  
7 discussed case and on habeas the Court at least in the  
8 dissent indicates we're not deciding if it's a good practice  
9 to call defense evaluators. We don't think it is, but  
10 we're finding that the federal constitution doesn't make  
11 it impossible to call them.

12 Your Honor, I think the best practice is not to  
13 call defense evaluators. I think the best practice is to  
14 quash the subpoenas in this case, and that is what I'm  
15 asking the Court to do.

16 THE COURT: Thank you very much. Mr. Pozner.

17 MR. TRUMAN: Your Honor, I'd ask as soon as  
18 Mr. Olivas has a chance to read it, and I've just sprung  
19 this on him, the Court to find the order signed by  
20 Judge Turelli on May 4, 1984, in Carlson, we'd ask to  
21 submit that as part of the record.

22 THE COURT: I will. All right, I'll certainly  
23 look at that. Mr. Pozner.

24 MR. POZNER: Be brief, your Honor.

25 The principle before the Court is the scope of an

1 indigent defendant's due process right to psychiatric  
2 assistance similar to that recognized by the Supreme Court  
3 in Ake v. Oklahoma, 105 S.Ct. 1087, 1985 case, and the  
4 parallel right to the assistance of psychiatrists. In  
5 Ake the Supreme Court recognized the right to a criminal  
6 defendant to a psychiatrist who serves in two capacities.  
7 He serves in the evaluative capacity and he serves in the  
8 consultative capacity. Both are involved in this case.  
9 In the evaluative capacity Ake recognizes that a defen-  
10 dant's right to an expert, a psychiatrist, for making  
11 that type of evaluation that only an expert can make, a  
12 psychiatric evaluation of the defendant, and that these  
13 services are crucial to the defendant's ability to marshal  
14 his defense.

15 The words of the Supreme Court: "As you can  
16 see, it would be impossible for the defense to mount a  
17 psychiatric defense without a psychiatrist to assist in  
18 evaluating the defendant."

19 Now, if the right to have a psychiatrist and to  
20 mount a psychiatric defense is to have any real meaning,  
21 there must be restrictions on the prosecution's access to  
22 the psychiatrists consulted by the defense. If the right  
23 that is recognized in Ake is abandoned, then by hiring  
24 a doctor to evaluate a defendant the defense is in fact  
25 hiring a Government agent. They're in fact hiring an

1 investigator for the government and putting them in their  
2 own camp.

3 Now, the Colorado legislature never intended  
4 that to happen, and that is why they created a statute  
5 that has a balanced procedure in it. It does not deprive  
6 the Government of its own agents on the issue of psychia-  
7 tric incapacity. Instead, it says the defense can hire  
8 doctors but the psychiatrists for the defense while  
9 remaining theirs cannot keep their doctors out of the room.  
10 Their doctors get appointed, their doctors have access,  
11 and the Court can even appoint its own experts. That  
12 is where the balance was. It was not an abdication of  
13 the truth-finding procedure. It was a balanced approach  
14 as to a method that the defense can keep their privileges  
15 intact yet the Government is not deprived of evidence.

16 Now, in the consultive role where a defense of  
17 psychiatric nature is interposed by the defense and where  
18 the lawyers are not psychiatrists, they need the aid of  
19 psychiatrists to help them determine how to cross-examine  
20 the Government's experts and how to directly examine their  
21 own experts. They need doctors to tell them what the  
22 tests mean, what the reports really say what is significant  
23 in a defendant's background; and when they hire a  
24 psychiatrist, they're also hiring him in that role to  
25 say to them not just what I see in your client but what

1 is it in the field of medicine you're going to need to  
2 know in order to properly handle this case. In that  
3 consultive role, they're no different than hiring the  
4 pathologist, the forensic chemist, or any other expert.  
5 It just so happens they're doctors.

6 A ruling that says by hiring an expert to consult  
7 with the defense you must give that expert over to the  
8 Government means that whenever they hire their own  
9 pathologist that becomes the Government's pathologist.  
10 What we're doing is we're saying to the defense even if  
11 you want to truly investigate if you want to be honest  
12 and ethical and competent you do so at the price of your  
13 client because the more you find out the more you must  
14 give back to the Government. What we're saying to the  
15 defense is you're better off not hiring experts to examine  
16 because the experts you hire aren't yours and the findings  
17 they make are not yours. They belong to the Government.

18 Now, beside this investigative role, there is  
19 a final issue, and that is a Fifth Amendment issue. If the  
20 Court holds that these doctors may be required by the  
21 Government to testify, then I think what we have here  
22 is a situation in which when the defense hires an expert  
23 who has their own privilege, a physician-patient privilege  
24 and a lawyer-client privilege, that they're covered by  
25 and they say to these people you can talk to me. You're



1 covered. They're giving them the wrong advice. The truth  
2 of the matter is they should be saying to them I am an  
3 agent of the Government, and everything you say can and  
4 may be used against you in a court of law. That would  
5 be the truth. Well, what defendant is going to cooperate  
6 with the counsel or run the risk of interposing these  
7 kinds of defenses that require an expert? In fact, the  
8 opposite has occurred here.

9           The doctors in good faith have said what they  
10 understand the law to be. It's not that they've given  
11 their word because the word in the face of law would have  
12 to fall, but what has happened they have given their  
13 privilege as they understand it to a patient who is  
14 covered independently and under an attorney-client relation-  
15 ship.

16           May I analogize to Simmons. In Simmons v.  
17 United States at 390 U.S. 377, Supreme Court had this  
18 issue before it. A defendant wished to testify at the  
19 suppression hearing. He took the stand. He said what  
20 the Government's conduct when they did this and this were  
21 illegal. At the end of the suppression hearing, he got  
22 off the stand. The trial went ahead and then the Govern-  
23 ment sought to use his testimony at the trial, didn't  
24 you admit the following things during a hearing? Well,  
25 it put the defendant in a bind. If he really wanted to

1 say when the Government broke down the door of his house  
2 and took my marijuana or whatever, these are the circum-  
3 stances, but if he loses the motion, then he's admitting  
4 that it's his marijuana; and the Supreme Court said that  
5 would be a violation of due process. A defendant has to  
6 have the right to contest these illegalities.

7 Similarly, if what we're saying to a defendant  
8 is if you consult an expert you can only consult an expert  
9 if you acknowledge that they're experts free to report to  
10 the Government what they found. We're saying to the  
11 defendant you cannot afford to put a case together if you  
12 put it together wrongly, if you're not perfect in your  
13 analysis, if one of your retained experts disagrees with  
14 you, then they must talk to you and become an agent of  
15 the other side. We're saying to the defense and to  
16 defendants you cannot properly prepare a defense. You're  
17 no longer covered by a privilege. Our search for the  
18 truth has extended to the extent that there are no agents  
19 of defense lawyers. They're only agents of the State.  
20 I don't think that is the ruling we need.

21 Thank you.

22 THE COURT: Mr. Christopher, you want to say --

23 MR. CHRISTOPHER: I have nothing to add, your  
24 Honor. Thank you.

25 THE COURT: Mr. Viehmann.

1 MR. VIEHMANN: First just for the record we  
2 would adopt the arguments and citations, briefs of counsel.

3 I just want to make the record clear that we  
4 feel that equal protection is implicated here because since  
5 the last hearing on the record the District Attorney had  
6 acknowledged that the way they discovered the existence  
7 of these doctors was by going through jail records. Now,  
8 it may be that almost everybody who is in jail on First  
9 Degree Murder case is there because of no bond is set.  
10 We do feel that this implicates equal protection because  
11 if they'll be able to do this on every case any case that  
12 an issue is developed or that involves experts, they'll  
13 be allowed to go to the County Jail. As they've already  
14 argued, these are public records and be able to pull them  
15 and see what experts, what agents, as Mr. Pozner says are  
16 out there to be called.

17 Secondly, we agree with counsel. We want the  
18 record to reflect the Fifth Amendment analysis. If the  
19 Court -- well, the Fifth Amendment is clearly implicated  
20 here because Mr. Aoki didn't just make a couple of little  
21 comments to the known police agent, that is Lt. Michaud,  
22 and he's been allowed to testify about them but he gave  
23 all sorts of intimate evidence to these doctors who then  
24 worked with that and worked with the defense lawyers  
25 regarding the case. Obviously, these are his words that

1 the Court has just been or has at this point ordered to  
2 be used against him by the State, his intimate thoughts  
3 about it, his background, what was going on in his mind,  
4 all of those sorts of things, so clearly these are state-  
5 ments and they're being compelled against him not directly  
6 personally but through his attorneys, as it were. The  
7 Court to allow that would have to find that at a specific  
8 point, at some point Mr. Aoki knowingly and intelligently  
9 waived his right to keep those matters secret. And there  
10 is no point at which the Court can say -- there is no  
11 evidence at all that anywhere along the line Mr. Aoki  
12 intelligently, knowingly said I waive my right to remain  
13 silent when I talked to Doctors Kadushin, MacDonald, and  
14 Dr. Miller.

15 Finally, your Honor, the Court has imposed a  
16 balancing test, as it were, and I don't believe that in  
17 any of the cases implicating the attorney-client privilege  
18 there is a balancing test. There are just two issues.  
19 One is there the existence of privilege and has it been  
20 waived. And my recollection is that the Court has ruled  
21 on both of those that there was a privilege existing and  
22 that Mr. Aoki has not waived it, and fortunately, there  
23 is no balancing test which the Court has imposed. When  
24 there are limited privileges, then the Courts had allowed  
25 some sort of balancing test, for example, access to

1 Department of Social Service records, that type of thing,  
2 access to reports or complaints against the police  
3 department, and the limited privileges that apply there.  
4 But in the areas that we're talking about, the privileges  
5 are absolute.

6 Thank you.

7 THE COURT: Mr. Christopher.

8 MR. CHRISTOPHER: Your Honor, as a supplement  
9 to counsel's argument, the Court is well aware that  
10 historically the value or the genesis of the privileges  
11 are the values that we as a society place on the confi-  
12 dentiality or the nature of the relationship giving rise  
13 to a privilege or constitutional privilege of statutory  
14 privilege of confidentiality.

15 Our concerns here are that if the Court is to  
16 allow the Government to extend itself and to invade the  
17 confidential relationship of the defense and their witnesses,  
18 albeit consulting witnesses, that it would have a severe,  
19 chilling impact on the psychiatric profession and the  
20 ability of the profession to assist you, the Court, in  
21 answering issues raised during certain specific -- certain  
22 criminal cases.

23 I would respectfully submit that if this case  
24 becomes precedent that the value of psychiatric testimony  
25 and the medical profession and psychiatric profession's

1 ability to assist the Court and the constitutional right  
2 of that profession to assist the defense would be almost  
3 terminated.

4 Thank you.

5 THE COURT: Mr. Olivas, you'd like to make a --

6 MR. OLIVAS: Thank you. I'll be brief.

7 I just want to raise several points. One is  
8 I suppose we ought to talk about Dr. Kadushin. Not only  
9 are we certainly incorporating him into all the arguments  
10 and all the analyses with respect to the attorney-client  
11 privilege but he's also on a little shakier ground in  
12 other respects, as I understand, and I think I've indi-  
13 cated to this Court before. We spoke with Dr. Teitelbaum,  
14 and in his office he told us that he hired Dr. Kadushin  
15 to go out and interview Mr. Aoki to determine whether  
16 there was anything organically wrong with him.

17 He reported back to Dr. Teitelbaum on his  
18 findings and as a result of that Dr. Teitelbaum certainly  
19 considered those findings in his analysis. I am told by  
20 the defense in this case that is not true. I would be  
21 very surprised if Dr. Teitelbaum were to get on the stand  
22 and deny that statement before -- after he made it to me  
23 and also my investigator, and Mr. Tingle. Nevertheless,  
24 I think that you know he's separate issue in that regards,  
25 and I think we're entitled under the rules to discovery

1 concerning the basis for Dr. Teitelbaum's opinion of which  
2 incorporates the findings of Dr. Kadushin.

3 With regard to the main issue that we're talking  
4 about here, the attorney-client privilege, none of the  
5 attorneys has raised anything new that we haven't discussed  
6 before, so I'm not going to rehash my argument to that I  
7 made to the Court and rehash that argument and the cases  
8 that this Court finds to be persuasive.

9 They would have the Court believe that the  
10 attorney-client privilege is absolute and it never can  
11 be waived. Your Honor, you take a look at all of those  
12 cases and nowhere in any of these cases, even their cases,  
13 is that even suggested. On a number of different issues,  
14 privileges can be waived in certain limited circumstances.

15 We would submit to the Court that this is a  
16 limited circumstance very narrow that the attorney-client  
17 privilege can be waived on. The Noggle case is quite  
18 clear. I mean, that case is on point. The analysis is  
19 on point. It refers to Texas and New York, and, you know,  
20 Mr. Truman tried to distinguish these cases in terms of  
21 well, they don't find that the attorney-client privilege  
22 was constitutionally mandated. That wasn't the real  
23 issue that they were grappling with. They were dealing  
24 with the analysis where they would do something like  
25 we're trying to do in this case.

1           As a matter of fact, if you recall in the People  
2 v. Edney case which is found 395 N.Y.S.2d 23, 350 N.E.2d 400,  
3 they just matter of factly when somebody pled not guilty  
4 by reason of insanity that the defendant waives any  
5 privilege, patient-physician as well as attorney-client.  
6 That is the way it is in New York, and Judge Weinstein  
7 articulated the analysis to support that rule that is just  
8 the way it is. At some point the truth-seeking process  
9 has to give way to the privilege.

10           And really what you're looking at here, your  
11 Honor, is we're talking about and Mr. Viehmann referred  
12 to this is statements that were made by the defendant to  
13 Doctors MacDonald, Miller, and Kadushin. I would be very  
14 surprised -- well, No. 1, we're not after necessarily  
15 what the defendant said. We're after the opinions and  
16 expertise that Doctors MacDonald, Miller, Kadushin had  
17 to offer this Court in terms of finding out the material  
18 truth here. We're not necessarily out to get the state-  
19 ments that Mr. Aoki made to these doctors. I would be  
20 quite surprised if there is anything new that he told  
21 them that he didn't tell anybody else. So, we're really  
22 after their opinions.

23           The Texas Court which is Granviel v. Estelle  
24 also addressed the same. Judge, you know, and we all know  
25 this is a minority approach. This is the minority view.



1 I think that this Court has agreed and I would -- this  
2 Court has already ruled that in this type of situation  
3 that the rule that we think we should adopt. I would  
4 argue to the Court and urge the Court if the Supreme  
5 Court, and I'm sure they will hopefully have to deal with  
6 this issue, will follow the minority rule because at some  
7 point in dealing with, you know, we're into the '80s,  
8 insanity and the issues concerning drugs are becoming  
9 more and more of an issue. We're already seeing N.G.I.  
10 pleas more so than we have in the past.

11 Mr. Pozner made the distinction with the  
12 Simmons case and the fact that the defendant testified  
13 at the suppression, and Supreme Court said you can't use  
14 his statements in the case in chief. I'd like to use  
15 the same analogy that he did. Really, we have the same  
16 situation here. We have the defendant testifying through  
17 his doctors on the stand, and certainly in the Simmons  
18 case had the defendant taken the stand at trial, we  
19 would have been able to use his statements to impeach him.

20 I think the same situation is here. He's talking  
21 to the doctors and he is taking the stand through them  
22 giving us his statements as related to the doctors, and  
23 we ought to be able to use anything that we can to impeach  
24 his statements.

25 Judge, there is good analysis, there is good

1 language in the Noggle case. It makes it quite clear  
2 why we're doing this. I would urge this Court strongly  
3 not to reverse its decision because you've already decided.  
4 The fact that you have four attorneys new and arguing  
5 the same thing should not change the analysis; and,  
6 as I understand it, it has not. I would suggest to the  
7 Court to deny the motion to quash the subpoenas.

8 THE COURT: Would you show me the case from  
9 Douglas County?

10 MR. TRUMAN: May I come to the bench?

11 THE COURT: Yes.

12 MR. TRUMAN: I'll tender to the Court what I  
13 believe to be an order in People v. Ross Carlson previously  
14 set forth on the record.

15 THE COURT: My decision is the same as before  
16 except I think counsel's well pointed out that my statements  
17 last week with regards to the attorney-client privilege  
18 was an error.

19 The defendant was charged with two counts of  
20 First Degree Murder. Prior to entering the plea, the  
21 defendant was determined to be indigent and was represented  
22 -- by the state -- was represented at state expense by  
23 the Public Defender's Office, was able through his family  
24 to retain Doctors MacDonald, Kadushin, and Miller to  
25 examine the defendant. The doctors were hired not for

1 the purpose of impeachment but for the purpose of assisting  
2 counsel in determining what plea to enter and effectively  
3 representing the defendant.

4 Dr. MacDonald and presumably the other doctors  
5 understood the evaluation was confidential because it was  
6 covered by the attorney-client privilege and advised the  
7 defendant in the interview that the interview would be  
8 confidential and only shared with the attorneys for the  
9 defendant. The doctors through their attorneys also stated  
10 they would not testify at trial unless called by the  
11 defendant.

12 The motion to quash the subpoena and the earlier  
13 motions prohibit the testimony by the defendant raise  
14 two issues. The first issue is is the doctors' testimony  
15 barred by the attorney-client privilege; and, second  
16 issue if not barred by the attorney-client privilege, is  
17 the testimony excluded by virtue of the Sixth Amendment  
18 provision regarding effective assistance of counsel.

19 The attorney-client privilege, like all other  
20 privileges which excludes relevant testimony from a  
21 Court, must be strictly construed. The statute establishes  
22 in the client-attorney privilege reads as follows: "An  
23 attorney shall not be examined without consent of his  
24 client as to any communication made by the client to him  
25 or his advice given thereon in the course of professional

1 employment; nor shall any attorney's secretary, paralegal,  
2 legal assistant, stenographer, or clerk be examined without  
3 consent of his employer concerning any fact, the knowledge  
4 of which was acquired in such capacity." That statute  
5 does not state that it covers also any expert whether a  
6 doctor or otherwise hired by the defendants in preparation  
7 of trial.

8           So, the first answer to the question is the  
9 attorney-client privilege is not applicable. I agree with  
10 Mr. Truman that if it is applicable there is no weighing  
11 of different factors. If it is applicable, that means  
12 the doctors do not testify. When the Court stated last  
13 week, Page 9 of the transcript starting about Line 21:  
14 "I am finding that there is an attorney-client privilege  
15 but what benefit there is from that privilege is outweighed  
16 by interest of the Court making a truthful decision and  
17 giving all the information that is relevant to the jury  
18 so they can make the correct decision," that was in error  
19 by the Court to say that the attorney-client privilege  
20 exists. The Court finds that it does not.

21           So, the next issue is going to the Sixth Amend-  
22 ment, the effective assistance of counsel. Also going  
23 back to the issue of whether the experts covered by the  
24 attorney-client privilege, in the case of People v. Perez,  
25 701 P.2d, and I don't remember the page number, the Court

1 of Appeals in that case found a handwriting expert hired  
2 by the defendant was not covered by the attorney-client  
3 privilege. Now, the issue is whether the effective  
4 assistance of counsel requires that these doctors be  
5 barred from testifying. There is support for that  
6 position in the case of U.S. v. Alvarez, 519 F.2d 1036,  
7 and other cases. But, as I indicated last week, this  
8 Court finds the case of Noggle v. Marshall, 706 F.2d 1403,  
9 and Judge Weinstein's decision in U.S. ex rel Edney v. Smith,  
10 415 F.Supp. 1038, is the position that this Court will  
11 follow.

12 The facts of this case show the defendant has  
13 very effective assistance of counsel. Attorneys for the  
14 defendant were able to obtain psychiatric examination of  
15 the defendant within twenty-four hours from these homicides.  
16 Prior to entering the plea of not guilty by reason of  
17 insanity, defendant was examined by doctors in question  
18 and other doctors. Counsel was well advised prior to  
19 entering the plea by various doctors.

20 Counsel for the defendant has endorsed two  
21 psychiatrists and one toxicologist to testify for the  
22 defendant. Trial preparation and presentation of  
23 evidence for the defendant has not been hampered and  
24 will not be hampered if this Court allows the District  
25 Attorney to call these witnesses in question.

1           It is true the attorneys for the defendant risk  
2 obtaining a witness for the District Attorney by consulting  
3 with doctors prior to entering the plea, but this does  
4 not -- this seems to be the only detriment to the defense.  
5 This is not a big detriment, nor is this a game in which  
6 one side can take away some of the players by consulting  
7 with them in confidence. This is a search for truth, and  
8 if the doctors have relevant information for the jury, he  
9 or she should not withhold from the jury.

10           By requiring the doctors to testify, the Court  
11 does not feel defendant will be unable to obtain advice  
12 regarding a plea in preparation for trial. Defendant will  
13 still be able to receive effective assistance of counsel.

14           The Court appreciates Dr. MacDonald's statement  
15 made in the motion that he feels his testimony would  
16 violate his understanding of the code of medical ethics  
17 and his own personal code because he has told Mr. Aoki  
18 in his evaluation would be given only to defense counsel  
19 and to nobody else. Privilege not to testify must be  
20 decided by the legislature and by statute and Courts in  
21 interpreting the constitution and common law. Decisions  
22 of privilege to testify or not testify are not left with  
23 a potential witness to decide.

24           The Court is going to deny defendant's motion  
25 to strike the endorsement of these witnesses based upon the

1 Fifth Amendment and due process grounds. No Court has  
2 promised Mr. Aoki that his conversations with these  
3 doctors would be confidential. The State is not bound  
4 by representations made by defense counsel to their  
5 clients. Mr. Aoki put the mental status in issue and  
6 any statements he made to these doctors as to the issue  
7 of sanity will be admissible.

8 The argument that the experts of the defendant  
9 become witnesses for the People is true. The contrary  
10 is also true. If the District Attorney hires an expert  
11 to examine the defendant for some other reason and that  
12 expert comes out with testimony or position that is  
13 favorable to the defendant through discovery, the District  
14 Attorney is required to give that information over. It  
15 really just goes both ways. If your expert is helpful  
16 to the other side, that expert will be able to be called  
17 by the other side.

18 For those reasons, then, the Court is going  
19 to deny the motion to quash the subpoenas and the motion  
20 to prohibit the testimony of these doctors.

21 MR. TRUMAN: Your Honor, may I be heard?

22 THE COURT: Yes, sir.

23 MR. TRUMAN: Your Honor, it seems if the Court's  
24 in a box and I understand the Court has been placed in  
25 that box somewhat by circumstances; and thinking it through,

1 let me offer an alternative to the Court because by  
2 your Honor's, the Court's ruling, Dr. MacDonald is in a  
3 box and he's got to decide what he's going to do.

4 Let me opt for the Court an alternative. Now,  
5 it's two to two as my understanding is with these  
6 psychiatrists, the medical experts, and I don't represent  
7 Dr. Kadushin and I have no opinion as to Mr. Olivas's  
8 statements whether he was Teitelbaum's agent at this  
9 point, but it appears to me that the Court has the power  
10 to appoint another psychiatrist. And the Court can appoint  
11 a psychiatrist, your Honor's own psychiatrist, to examine  
12 Mr. Aoki right now. At this point, your Honor, that  
13 person could testify if they want and give their expert  
14 opinion based on what they know. That eliminates what  
15 the Court alluded to in terms of bad faith and defense  
16 lawyers taking doctors out of the game. Court can appoint  
17 a doctor -- choose one. They can see Mr. Aoki and come  
18 in and testify as the Court's expert.

19 Now, if the defense could cross-examine the  
20 Court's expert but you didn't see him within twenty-four  
21 hours and isn't that important, then I can see an argument  
22 that perhaps the door is opened to be examined. Isn't it  
23 a fact that there were people that saw him quicker than  
24 that the defense has decided not to call. I think that  
25 shifts the box, takes it from the Court and places it



1 elsewhere, and it certainly takes it off Dr. MacDonald.

2 I offer that as a substitute.

3 Now, there is a cost to that, and it's clearly  
4 going to take a day if the Court can find a psychiatrist  
5 that the Court believes in. It's going to take time for  
6 that psychiatrist to see Mr. Aoki and to render an opinion,  
7 but it's an emergency situation. It's not going to take  
8 that much time, and I think that that, one, takes the  
9 Court out of the box and while that is important to me,  
10 it's not as important as taking Dr. MacDonald out of his  
11 dilemma.

12 THE COURT: Out of that box.

13 MR. TRUMAN: Well, whether he gets in that box  
14 or not.

15 THE COURT: I understand that.

16 MR. TRUMAN: So, that is my alternate motion.  
17 It seems to me that it's an unusual solution which may  
18 remedy because, frankly, in light of the Court's new  
19 ruling, I know there has been a Rule 21 application to  
20 the Supreme Court already. If that alternative motion  
21 is not granted, then there is going to be another one,  
22 and Mr. Olivas predicts what the Supreme Court -- I don't  
23 know what they're going to do, but it appears to me that  
24 this trial could be delayed or, too, there could be  
25 certain built-in error for the Supreme Court to wrestle

1 over at some length. The alternative motion, as I have  
2 stated --

3 THE COURT: I appreciate that, but I think we  
4 have to stay that decision. If they want to call  
5 Dr. MacDonald, they can. If he doesn't testify, then  
6 I'll certainly listen to what you have to say, may impose  
7 sanctions, may not, and I can stay that sanction.

8 MR. TRUMAN: He's got some ties to the community.  
9 We'd hope there would be a reasonable bond.

10 THE COURT: What I'm saying, Mr. Truman, whatever  
11 sanctions there may be could be stayed for a reasonable  
12 period of time and you could go to the Supreme Court.

13 MR. TRUMAN: The problem with that delaying,  
14 the trial goes forward but irrespective the prosecutor  
15 doesn't get what they want, that is Dr. MacDonald's  
16 testimony.

17 THE COURT: Then they may want to stop the  
18 matter at that point. If they do, they do. We'll just  
19 have to wait to see if they call him and what the doctor  
20 wishes to do at this point, but I want to tell you, sir,  
21 and I think your client knows it, I have a great deal  
22 of respect for him.

23 MR. TRUMAN: What I'd like is a transcript of  
24 today's session be prepared as quickly as possible. I  
25 don't want to give away any secrets, but I do have a Rule

1       21 on the word processor right at this point, so it  
2 shouldn't take very long. Could the Court give me some  
3 information as to about where we are in terms of decision  
4 time?

5               THE COURT: My understanding that the defendant  
6 has two more days of testimony, so they told me yesterday  
7 they're not going to finish their case at Wednesday at  
8 five or thereabouts, so it will be Thursday when the  
9 District Attorney starts to put on their case, and they  
10 already have two psychiatrists to call and I don't know  
11 how many other witnesses.

12              MR. TRUMAN: So that there is no misunderstanding  
13 then, I am on Dr. MacDonald's behalf intending to under  
14 Rule 21 seek a writ of prohibition from the Colorado  
15 Supreme Court. I'll try to get that in Thursday, and the  
16 transcript would be helpful although not necessary.

17              THE COURT: I think you can appreciate Pam's  
18 situation. She's going all day long on a trial, but she  
19 will do the best she can.

20              MR. TRUMAN: Understood, your Honor. Thank you.  
21 I have no --

22              MR. CHRISTOPHER: Obviously, as co-counsel with  
23 Mr. Truman for Dr. MacDonald, we also intend to make that  
24 same representation to the Court. On behalf of Dr. Miller,  
25 my understanding is we'll be taking the same position.

1 I need to talk with Mr. Pozner about Dr. Kadushin.

2 THE COURT: Fine.

3 (The hearing on this issue was concluded at  
4 this time.)

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REPORTER'S CERTIFICATE

STATE OF COLORADO                    )  
                                          )       ss.  
CITY AND COUNTY OF DENVER        )

I, Pamela R. Baclawski, do hereby certify that I am a Certified Shorthand Reporter and an Official Court Reporter for the Second Judicial District; that as such reporter I was present upon the occasion of the hearing of the above-entitled matter; that I stenographically recorded all proceedings had in the above-entitled matter on Tuesday, September 23, 1986.

I do hereby further certify that I caused my stenotype notes to be reduced to typewritten form, and that the foregoing 30 pages constitute a true, correct, and complete transcript of the hearing.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 26th day of September 1986.

Pamela R. Baclawski  
Pamela R. Baclawski, C.S.R.

## APPENDIX J

1 DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

2 Case Nos. 86 CR 852 and 86 CR 1684, Courtroom 12

3 -----  
4 REPORTER'S TRANSCRIPT: Hearing  
5 -----

6 THE PEOPLE OF THE STATE OF COLORADO,

7 Plaintiff,

8 v.

9 LAWRENCE AOKI,

10 Defendant.  
11 -----

12  
13 This matter was heard on Friday, December 12,  
14 1986, before the HONORABLE JOHN W. COUGHLIN, Judge of the  
District Court.

15 This transcript is of the portion of the hearing  
16 requested.

17 APPEARANCES:

18 FOR THE PEOPLE: DAVID A. OLIVAS, Reg. No. 12888  
Deputy District Attorney  
19 CHARLES W. TINGLE  
Deputy District Attorney

20 FOR THE DEFENDANT: FRANK J. VIEHMANN, Reg. No. 9228  
Deputy State Public Defender  
21 STEVEN REESE GAYLE, Reg. No. 10494  
Deputy State Public Defender  
22 KAREN M. ASHBY, Reg. No. 13128  
Deputy State Public Defender  
23

24 Defendant personally present.  
25

FRIDAY, DECEMBER 12, 1986  
MORNING SESSION

P R O C E E D I N G S

THE COURT: Mr. Gayle, you want to wait for Mr. Viehmann?

MR. GAYLE: Well, if we get to evidence. If the Court wants to take up some preliminary matters.

THE COURT: What I want to take up is whether we're going to hear these motions.

MR. GAYLE: Sure. I can handle that.

THE COURT: 86 CR 852, 86 CR 1684, Lawrence Aoki.

MR. OLIVAS: Good morning. David Olivas on behalf of the People along with Charles Tingle.

MR. GAYLE: Good morning. My name is Steven Gayle for defendant Mr. Aoki, Court-appointed counsel. Mr. Aoki's in custody.

THE COURT: What are the motions we're scheduled to hear?

MR. GAYLE: Your Honor, on behalf of the defendant, we have filed motions to suppress which have to do with stated evidence seized. In addition, there are -- we have filed a motion to quash subpoenas which were issued to three doctors who were employed by Mr. Aoki for purposes of assisting counsel on the sanity trial. There are some additional motions filed by the



1 State with regard to the applicability of the defense  
2 of impaired mental condition at trial. There is a motion  
3 of sequestration of jury which is pending.

4 I think the bulk of the evidence, your Honor,  
5 will go to the suppression hearing. There will be  
6 several police officer witnesses that we have under  
7 subpoena. In addition, we'll present expert testimony.  
8 We've asked our expert witness to be ready this afternoon,  
9 cleared out time for this afternoon.

10 I believe the State has filed a motion to  
11 continue the whole thing. Some of these issues, your  
12 Honor, regardless of how the Court feels about the motion  
13 to continue, should be addressed this morning.

14 In addition, the motion with regard to the  
15 subpoenas from -- on the doctors I think we at least need  
16 to get some initial feelings from the Court as to where  
17 we are on that.

18 THE COURT: Don't we also need the doctors'  
19 lawyers here for that? I know Mr. Truman came to me and  
20 said to me --

21 MR. GAYLE: We called him as well. I told him  
22 that I understood he had to go elsewhere. I really didn't  
23 have a problem with him being elsewhere, but we'd like  
24 to put some statements on the record. We think the  
25 Court can summarily quash, and if the Court doesn't agree

1 with that, we'll need a full hearing some other day.

2 THE COURT: I can tell you that I'm in a sanity  
3 trial -- release trial. For that reason, I am inclined  
4 to grant the motion to continue and give you some time  
5 this morning and do preliminary hearing matters if you  
6 want to help clarify issues.

7 MR. GAYLE: We'd at least appreciate that,  
8 your Honor, and I would like Mr. Viehmann to be here when  
9 we go into the substance of the issues.

10 THE COURT: My only concern is can I talk about  
11 the motion to quash the subpoenas for the doctors without  
12 their doctors being here?

13 MR. GAYLE: Well, insofar as we're talking  
14 about Mr. Aoki's interests, I surely think so, your Honor.

15 THE COURT: I would like to rule on that matter  
16 as soon as possible and then you can go to Court of  
17 Appeals or Supreme Court as soon as possible.

18 MR. GAYLE: We would at least like to make our  
19 motion to summarily quash. If we prevail that would be  
20 the end of the matter; if the Court does not agree with  
21 us, then we'll need a further hearing with Mr. Truman and  
22 Mr. Pozner.

23 THE COURT: We can hopefully do that part today.  
24 And as soon as Mr. Viehmann is ready, then we'll get rid  
25 of those other matters.

1 MR. OLIVAS: Just so we're clear on that, what  
2 we're for clarification purposes, we filed a motion to  
3 continue based on the statements that Mr. Aoki made at the  
4 time of his arrest and immediately thereafter. I think  
5 the bulk of the evidence will be addressed to those, and  
6 those are the ones that we'll need witnesses on.

7 We have no problem with addressing some of the  
8 other preliminary matters. Is the Court inclined to grant  
9 the continuance as to the substantive so we don't have to  
10 have witnesses here and then we can deal with whatever  
11 our motion to compel and the motion regarding the MacDonald  
12 issue.

13 THE COURT: Yes. So your witnesses are -- both  
14 your witnesses are free to go but what date can we do this  
15 then?

16 MR. GAYLE: I'm going to need --

17 THE COURT: The day I'm thinking --that is why  
18 I asked -- we have a case December 29.

19 MR. GAYLE: I'm going home. I'm going out of  
20 the state. I'll be back January 5. I'm leaving the day  
21 after Christmas and be gone for a week.

22 THE COURT: I'm afraid I have another case,  
23 Dennis Gallegos, and that I have motions that week of  
24 January 5, another homicide case.

25 MR. GAYLE: It might be tough. I'm starting

1 another First Degree January 12. It will take that week  
2 in Summit County, but we'll be as flexible as we can. I  
3 haven't had a vacation. I'd love to take that week off.

4 THE COURT: I'm not requiring you to be here.  
5 Why don't you get Mr. Viehmann's calendar while I'm doing  
6 the rest of the board and talk to Mr. Olivas and see if  
7 you can work it out.

8 MR. GAYLE: Thank you, your Honor.

9 (Other matters were taken up at this time.)

10 THE COURT: Miss Ashby, you're going to argue  
11 the motion with regards to the doctors?

12 MS. ASHBY: That is correct, Judge.

13 THE COURT: All right.

14 MS. ASHBY: Are we ready?

15 THE COURT: We're ready?

16 MR. OLIVAS: Your Honor, I need to receive the  
17 motion to quash. I wonder if somebody has an extra copy  
18 that I can take a look at.

19 THE COURT: Miss Ashby, go ahead. You may  
20 proceed.

21 MS. ASHBY: Thank you, Judge.

22 Your Honor, the first thing I'd like to address  
23 concerning the motion to quash is that based on the  
24 circumstances where we found ourselves when we were in  
25 the sanity trial, we should not even be here having to

1       argue this motion again.

2               The Supreme Court took jurisdiction of this  
3 matter and dismissed it, dismissed it or discharged it  
4 somehow because based on the District Attorney asking  
5 them to saying that there was no longer a case in contro-  
6 versy. In fact, there still exists the case in controversy  
7 which is evidenced by the fact that the District Attorney  
8 has once again subpoenaed the doctors in the court.

9               The case in controversy, your Honor, was not  
10 merely their subpoenaing the doctors but we have speci-  
11 fically have requested that the Court grant a motion to  
12 strike the District Attorney's endorsement of these  
13 psychiatrists. I think that the District Attorney's  
14 actions in requesting the Supreme Court to discharge the  
15 show cause were improper, and I think that they have  
16 misled the Court in saying that there was no longer a  
17 case in controversy because here we are arguing it before  
18 you again simply because they decided to subpoena the  
19 doctors once the Supreme Court lost jurisdiction of the  
20 case. I feel that the District Attorney is harassing  
21 the psychiatrists in this case and harassing the defense  
22 by their actions.

23               As far as the merits of the case, your Honor,  
24 these motions were argued extensively once before when  
25 the District Attorney subpoenaed the agents, and I'm not

1 going to make another extensive argument. I'd  
2 incorporate the arguments and briefs that were made at the  
3 previous hearing on this issue, but I think we're even  
4 that the defense is even in a stronger position at this  
5 stage of the proceedings because we're no longer looking  
6 at the sanity trial. We're dealing with the issue of  
7 guilt, and in that regard People v. Rosenthal strengthens  
8 the defense position to a great extent. It's R-o-s-e-n-  
9 t-h-a-l, and it's at 617 P.2d 551, and I would direct the  
10 Court's attention to the fact that in this case the Court  
11 held that the procedures governing the insanity defense  
12 cannot be applied in a manner that destroys the constitu-  
13 tional safeguard against self-incrimination.

14 And in that case, Dr. Metzner, the psychiatrist  
15 who had been subpoenaed by the District Attorney had,  
16 in fact, testified at the sanity trial; and the Court  
17 in Rosenthal held that the prosecution was not going to  
18 be allowed to endorse Dr. Metzner and have him testify  
19 in their case in chief as to statements that were made  
20 by the defendant to him. The only limitation, the Court  
21 stated and interpreting the statutes concerning raising  
22 the insanity defense, was that once a defendant requested  
23 an examination by a privately retained psychiatrist if  
24 they were going to present testimony at the sanity trial  
25 as to the examination, they have to submit a report to the

1 District Attorney. Nowhere in the statutes and nowhere  
2 in Rosenthal does it state that the defense has any  
3 obligation to let the District Attorney know that there  
4 was going to be an examination, and that if there is an  
5 examination held that any communications between the  
6 defendant and the psychiatrists need to be disclosed to  
7 the District Attorney unless the defense is going to be  
8 presenting evidence of the examination in the trial.

9 The District Attorney's position really is,  
10 well, I'd like to analogize this to the situation where  
11 if the District Attorney wanted to require the defense  
12 counsel or the defendant to testify, it is really no  
13 different than what they're trying to do in this case.  
14 They're simply assuming that because the defense has not  
15 endorsed these -- has not subpoenaed these witnesses to  
16 testify at some specific hearings that therefore there  
17 is some information which they assume is going to help  
18 them rebut specific evidence presented at the hearing.

19 Your Honor, it is not allowable for the District  
20 Attorney to proceed under that assumption. In order to  
21 call someone as a rebuttal witness, they have to be using  
22 the doctors to specifically rebut evidence which is  
23 admitted at the trial, and there is no requirement anywhere  
24 in the statutes that I can see that requires the defense  
25 to tell them about the communications which have been held.

1 It really is no different than the District Attorney  
2 requiring the defendant to get up there on the stand and  
3 testify. The communications to the doctors were privileged.  
4 The defendant was told that they would be privileged and  
5 it's simply a means of the District Attorneys to get  
6 around the defendant's right against self-incrimination.

7 Your Honor, I would ask the Court to refer to  
8 Page 555 of People v. Rosenthal which is part of the case  
9 which I feel is most significant and addresses the issues  
10 that I'm raising. I think it is an important distinction  
11 in Rosenthal anticipating a possible argument by the  
12 District Attorney that Dr. Metzner in that case had testi-  
13 fied at the sanity trial and it was an issue as to what  
14 evidence, if any, had been presented would now be allowed  
15 on the trial on the issue of guilt.

16 Again, in this case these doctors have not  
17 testified. They did not testify because the Supreme Court  
18 took jurisdiction of the case and did not stay the  
19 proceedings, and I think that is an important distinction.  
20 So we're not talking about a situation where the defense  
21 has utilized these psychiatrists at one point and is now  
22 attempting to prevent the District Attorney from using  
23 them again. The defense has never used these witnesses  
24 in the course of the trial, and the District Attorney  
25 should be precluded from calling them to the stand as their



1 own witnesses.

2           There is also the case of Lewis v. Thulemeyer  
3 which is 538 P.2d 441 which, in fact, addresses what  
4 the differences are between having the issue of sanity  
5 and having a trial on the issue of guilt and the fact  
6 that the issue is sanity there are more things that  
7 are going to be allowed to be brought out by the defense  
8 and/or the District Attorney. Once you reach the stage,  
9 however, that you're litigating the issue of guilt, there  
10 are limitations placed on the District Attorney as  
11 to what information they can elicit which was elicited  
12 at the sanity trial. I think that the Lewis case is  
13 helpful for the Court because it does set forth the fact  
14 that now that we're at the guilt phase there are even  
15 more issues which support the defense position in this  
16 case, and we would ask the Court to grant the motion to  
17 quash the subpoenas, and I would again renew the motion  
18 to strike the District Attorney's endorsement of these  
19 witnesses.

20           THE COURT: People's position.

21           MR. OLIVAS: I'll try to be very brief.

22           The first issue concerning the distinction  
23 between the insanity phase I think is not as clear cut  
24 as Miss Ashby would have the Court to believe.

25           We still have the issue of his mental state, and

1 if Dr. Plazak and Dr. Yost and Dr. Teitelbaum were going  
2 to come in in the guilt phase or even particularly the  
3 motion to suppress the statement based on voluntariness,  
4 if they're going to come in and say because of his mental  
5 state he could not voluntarily give a statement or if  
6 they come into the guilt phase at guilt trial, he could  
7 not form a culpable mental state, I think the analysis  
8 of the Noggle case and arguments that we made to this  
9 Court previously still apply. The analysis is the same.  
10 You can't have your cake and eat it, too. If you're  
11 going to offer evidence that shows the jury that you  
12 didn't have a culpable mental state or couldn't voluntarily  
13 give a statement, then what we have is the truth; and  
14 if the doctors that examined him right after the crime  
15 were helpless to see what the truth is, I think we should  
16 be able to call them.

17 I'm not going to rehash all the arguments that  
18 we did make. I think there are cases on either side.  
19 I think this Court looked at the issue very carefully  
20 and decided that -- and in these particular cases that  
21 they should be able to call the doctors. You just can't  
22 take doctors off the market even given the fact that by  
23 the time Court experts are given the opportunity to  
24 examine the defendant in this case at least it was, I  
25 think, sometime in July I think the order for the appoint-

1 ment of the experts was made by the time or June by the  
2 time they got the order and were able to get out to the  
3 jail to interview it was July which was many months  
4 after the crime occurred.

5           The advantage is to go out and take off the  
6 market all the doctors that, well, or take off these  
7 doctors that are on the Court appointment list and have  
8 them interview the defendant shortly after the crime and  
9 by using the Sixth Amendment to preclude us from calling  
10 them as witnesses I think is what the Noggle and those  
11 line of cases address; and I think that we should be able  
12 to call them based on the same analysis because it's the  
13 same issue. We're looking at the mental state in both  
14 cases.

15           THE COURT: Call them when -- in your case in  
16 chief?

17           MR. OLIVAS: And I'm presuming that they're  
18 going to attack the statements based on the fact that  
19 he could not voluntarily give a statement or the statements  
20 that he made. Now, certainly, if they don't attack it  
21 on those grounds and don't bring in experts to testify  
22 to that fact at the motion to suppress, my argument  
23 wouldn't apply. And even if they come into the guilt  
24 phase and don't attack the culpable mental state or  
25 assert that he couldn't form the culpable mental state,

1 then, of course, my arguments wouldn't apply, but if  
2 they do, it's the same issue in the insanity case, I  
3 could not -- I'm not aware of when I'm doing the guilt  
4 phase what was issue inside of his mind, that is important.

5 So, from that standpoint I'd rest on all the  
6 arguments that we made previously.

7 From the standpoint of or the position that  
8 we took on our motion to dismiss, I believe is what it  
9 was characterized because the issue was moot. As this  
10 Court knows, the Supreme Court issued a rule to show cause  
11 saying, you know, why shouldn't we grant the relief that  
12 the doctors are petitioning us for. You've got twenty  
13 days to do it, but they didn't tell us what was going to  
14 happen to the trial. And so what we did is we ended up  
15 finishing the insanity trial and verdict was returned.  
16 Well, what we were concerned about was that because the  
17 subpoenas were issued to testify in the insanity case and  
18 because the insanity case was completed, the issue, that  
19 is, the issue being give us relief from testifying  
20 pursuant to our subpoenas at the insanity case. We felt  
21 that that issue is moot. There was no longer insanity  
22 case. It was completed and so there was no issue in  
23 controversy with respect to the subpoenas as they applied  
24 to the insanity case.

25 The reason we did it that way is because we felt,

1 and we didn't know as an officer of the Court, we didn't  
2 know what was going to happen as a result of any plea  
3 dispositions. I believe we were still open and still  
4 are open to discuss a possible plea arrangement in this  
5 case. At this point we have not reached any sort of an  
6 agreement, but at least at the time we filed the motion  
7 we didn't know what was going to happen. We don't have  
8 a crystal ball; and, in addition to that, we really didn't  
9 know although certainly there was every chance, every  
10 possibility that they were going to present expert  
11 testimony with regard to the voluntariness issue and  
12 expert testimony with regard to the culpable mental state  
13 issue.

14 We have no notice of intent to assert impaired  
15 mental condition. That is why it caused us some concern  
16 as to what they were going to do. So, at the time they  
17 were given the motion, we didn't know when we wanted to  
18 call the doctors. Even if we did know, we were still  
19 uncertain as to whether they wanted to pursue that  
20 position, that is calling the doctors at the guilt phase  
21 given the evidence that we heard and everything that  
22 happened in the insanity trial. So, we felt that there  
23 could very well be a moot issue because it would never  
24 arise again. We either would not have called them or  
25 some sort of plea arrangement would have been made. And

1 so we felt rather than having everybody spend a lot of  
2 money and lot of time and just to send the issue up to  
3 the Supreme Court to have them on their own merit say  
4 it's moot, well, let's ask them to decide whether it's  
5 moot and if it's not, we'll proceed further.

6 We certainly didn't -- our position was not to  
7 harass the doctors. It doesn't make any sense.  
8 Dr. Miller and Dr. MacDonald testify very frequently on  
9 behalf of the State. I think if you were to accept  
10 Miss Ashby's argument that we mooted it just so we could  
11 reopen and cause a bunch of headaches for everybody, I  
12 think you'd have to ask where would that get us by hassling.  
13 Does it put us in a better position? No. Does it  
14 prejudice the defendant any way other than economically?  
15 Probably not. Because the State is paying for it at least  
16 for his defense. And certainly we don't want to put the  
17 doctors through any expense that is unnecessary. We felt  
18 that we mooted the issue or if the issue was in fact not  
19 moot and it did arise, then we'd tackle the issue at that  
20 time. As a matter of fact, it wasn't until a couple of  
21 weeks ago that we decided that it's in the State's better  
22 interest to call the doctors. It's for that reason we  
23 went ahead and did it.

24 I'd ask the Court to deny the motion to quash  
25 the subpoenas and to allow us as it has previously to

1 subpoena the doctors to find out what the truth was as  
2 to his mental state if that is going to be the defense.

3 MS. ASHBY: Your Honor, just briefly and in  
4 response, I just want to clarify a few things that  
5 Mr. Olivas stated.

6 I think he's making the issue much more narrow  
7 by saying that we're simply attacking the subpoenaing  
8 of the doctors. Again, our Rule 21 went to having the  
9 Court prohibit the District Attorney from requiring  
10 these doctors to testify, and we're asking in our motion  
11 to strike the endorsement. Even if Dr. MacDonald's motion  
12 to quash the subpoena and ultimately the Rule 21 which  
13 was granted on behalf of Dr. MacDonald, the relief that  
14 they're requesting is an order from this Court quashing  
15 the subpoenas issued by the District Attorney requiring  
16 him to testify as to confidential matters in the evaluation  
17 of Lawrence Aoki. It does not specifically require him  
18 to testify in the sanity trial, and what the District  
19 Attorney gains from this is here we are back again  
20 relitigating this whole issue over again when it was  
21 already before the Supreme Court and the Supreme Court  
22 was going to probably rule on the issue.

23 So, that is what they're gaining. The fact  
24 that the defense is having to come in here again and go  
25 through this I think is extremely unfair because the

1 District Attorney I feel misled the Court in believing  
2 that there was not still a case in controversy. We  
3 wouldn't be here otherwise.

4 THE COURT: What I'm about to say is not my  
5 ruling, and I don't want anybody to interpret it as that,  
6 but if I can express these thoughts, I can perhaps get  
7 ideas from you folks on procedure.

8 It would be my idea that the doctors could not  
9 be called to testify in the District Attorney's case in  
10 chief on the guilt phase. The only possible way that I  
11 would allow the doctors to testify is if the defendant  
12 put on evidence of a mental disease or defect which made  
13 him incapable of forming the mental state or the defendant  
14 put on testimony in a suppression hearing that the  
15 defendant could not voluntarily waive his constitutional  
16 rights as to self-incrimination. That would probably be  
17 the only way that I would ever allow Dr. MacDonald,  
18 Dr. Miller to testify.

19 But with that idea, we would be right back where  
20 we started in the sanity trial. How can we get that  
21 issue to the Supreme Court prior to trial? If the defense  
22 is never going to put in his mental state as any part of  
23 the defense, there is no way that the doctors would be  
24 called.

25 MR. GAYLE: But, your Honor, it can't be any



1 surprise to Mr. Olivas, they didn't know we were going  
2 to put on mental state. Obviously, it's not an identifi-  
3 cation case. It can't be a surprise to them and I'll tell  
4 the Court now as we did in our disclosure that we intend  
5 to introduce evidence of the various mental states of  
6 Mr. Aoki which are known to everybody because we've  
7 heard from four different psychiatrists, and we'll charge  
8 that the existence of that mental disease or defect,  
9 mental state, if you will, in it negates the culpable  
10 mental state element of the crimes charged.

11 So, I agree with the Court that we need to get  
12 a ruling in advance, and procedurally what we  
13 intend to do is to ask the Court to reconsider their  
14 discharge of rule to show cause.

15 THE COURT: Ask --

16 MR. GAYLE: Ask the Supreme Court to reconsider  
17 their discharge of the rule to show cause. We need to  
18 get that procedurally in the correct posture as soon as  
19 possible so that in case they issue a stay or for whatever  
20 reason we're not caught in the same thing we were last  
21 time which is being in trial basically and during breaks  
22 calling over to the Supreme Court and seeing what is  
23 happening. We need to try to avoid that if at all  
24 possible.

25 THE COURT: I agree.

1           MR. GAYLE: What the Court sees coming is going  
2 to come because we certainly will present this type of  
3 evidence on Mr. Aoki's very likely the suppression hearing  
4 but also certainly at trial. So, procedurally we need  
5 to perhaps to set this matter for a full-blown hearing so  
6 that Mr. Pozner and Mr. Truman could participate and so  
7 that we could also perhaps place additional matters on the  
8 record, and once that record is complete, we're going to  
9 send it on to the Supreme Court.

10          THE COURT: What if we did this. What if we  
11 set it sometime really soon and maybe it wouldn't take  
12 all that much time?

13          MR. GAYLE: Probably not.

14          THE COURT: And you could make an offer of proof  
15 that you're going to call Dr. somebody who is going to  
16 testify to the effect that at the time you made these  
17 statements his mental condition was whatever, and because  
18 of that it wasn't a voluntary statement. And at that time  
19 Mr. Olivas would say based upon that offer of proof, he  
20 would want to be calling Dr. MacDonald, Dr. Miller to see  
21 if they may have testimony that would rebut that.

22          MR. GAYLE: Of course, our position would also  
23 be we would like to see if they have an offer and how  
24 Miller and MacDonald will assist them. I think they are  
25 really shooting in the dark. They don't know what these

1 individuals will say as to this issue. And that again  
2 will go to the point of whether or not they really have  
3 sufficient issue to issue a subpoena, but we can argue  
4 all of that. I will be glad to make such an offer of  
5 proof if I can to the mental state's really of record,  
6 however you want to call it.

7 Mr. Aoki's state of mind at the time that the  
8 statements were taken would be such that they would  
9 negate the voluntariness of any statement made and the  
10 mental state would negate the propriety of any Miranda  
11 advisement given. So, that is our offer of proof and  
12 we'll call expert witnesses to testify to that point.

13 Is that sufficient offer to present in that  
14 issue? I think so, perhaps.

15 THE COURT: I hope so.

16 MR. GAYLE: Counsel can tell us if they want --

17 THE COURT: Why don't you very carefully write  
18 out an offer of proof the best way you think you can that  
19 would get the issue to the Supreme Court. I could look  
20 at based upon that offer of proof I will allow the  
21 District Attorney to call Dr. Miller and Dr. MacDonald  
22 even though at this point maybe they don't know what they're  
23 going to say because Dr. Miller and Dr. MacDonald won't  
24 talk to them. I could even issue an order to those doctors  
25 that they have to talk to the District Attorney to give

1 what information they have that would be relevant to this  
2 issue and would stay that order for X period of days until  
3 Supreme Court took jurisdiction.

4 MR. GAYLE: Problem with that really going to  
5 put these poor doctors in a bind because we will not --  
6 they see it as an ethical issue.

7 THE COURT: I understand that. I'd stay it  
8 for a long enough time Supreme Court could say I'm right  
9 or wrong.

10 MR. GAYLE: I think if we follow those procedures  
11 if we do it in a hurry, who knows what the Supreme Court  
12 is going to do, but at least give them the best opportunity  
13 to --

14 THE COURT: Why don't you get together with  
15 Mr. Pozner and Mr. Truman and get their ideas and how  
16 they think we can get this issue to the Supreme Court.  
17 Set it for December 30. Is that when you're gone?

18 MR. GAYLE: I'll be out of town that whole week.

19 THE COURT: If you can do it, get it done by  
20 next week. I can hear you whenever you want. We're  
21 not talking about a five-hour hearing. You're giving me  
22 something in writing about an offer of proof, giving me  
23 something in writing of why they would want to call  
24 Dr. Miller or to rebut that. What has been offered I  
25 rule on it, say that I allow them to call these doctors.

1 I'll be here Monday through Thursday of next week.

2 MR. VIEHMANN: The Court anticipating being  
3 in trial? Want a morning setting then?

4 THE COURT: Yes. If it's a big thing and it  
5 won't be, I could do it at four o'clock some day. Do  
6 it Wednesday or Thursday.

7 You know, the other thing if it doesn't work  
8 out next week, I'd come down the week of Christmas, you  
9 know, for an hour or something.

10 MR. VIEHMANN: Assuming that --

11 THE COURT: How about the 22nd or 23rd?

12 MR. VIEHMANN: Assuming that the other lawyers  
13 would be here, I think the best we'd be able to do it  
14 Wednesday morning.

15 THE COURT: Let's set it for Wednesday morning.  
16 Then we can set the time the week of Christmas.

17 (Other matters in this case were taken up at  
18 this time. This concludes the portion of the hearing  
19 requested.)  
20  
21  
22  
23  
24  
25

### REPORTER'S CERTIFICATE

STATE OF COLORADO )  
 ) SS.  
CITY AND COUNTY OF DENVER )

I, Pamela R. Baclawski, do hereby certify that I am a Certified Shorthand Reporter and an Official Court Reporter for the Second Judicial District; that as such reporter I was present upon the occasion of the hearing of the above-entitled matter; that I stenographically recorded all proceedings had in the above-entitled matter on Friday, December 12, 1986.

I do hereby further certify that I caused my stenographic notes to be reduced to typewritten form, and that the foregoing 23 pages constitute a true, correct, and complete transcript of the portion of the hearing requested.

IN WITNESS WHEREOF, I have hereunto set my hand  
and seal this 1st day of March 1987.

Pamela R. Baclawski  
Pamela R. Baclawski, C.S.R.

## APPENDIX K

1 DISTRICT COURT, CITY AND COUNTY OF, DENVER, COLORADO

2 Case Nos. 86 CR 852 and 86 CR 1684, Courtroom 12

3 -----  
4 REPORTER'S TRANSCRIPT: Hearing  
5 -----

6 THE PEOPLE OF THE STATE OF COLORADO,

7 Plaintiff,

8 v.

9 LAWRENCE AOKI,

10 Defendant.  
11 -----

12  
13 This matter was heard on Wednesday, December 17,  
14 1986, before the HONORABLE JOHN W. COUGHLIN, Judge of the  
15 District Court.

16  
17 This transcript is of the portion of the hearing  
18 requested.

19 APPEARANCES:

20 FOR THE PEOPLE: DAVID A. OLIVAS, Reg. No. 12888  
21 Deputy District Attorney

22 FOR THE DEFENDANT: FRANK J. VIEHMANN, Reg. No. 9228  
23 Deputy State Public Defender

24 FOR DRS. MILLER  
25 AND KADUSHIN: LARRY S. POZNER, Reg. No. 2792

Defendant personally present.



WEDNESDAY, DECEMBER 17, 1986  
MORNING SESSION

P R O C E E D I N G S

THE COURT: 86 CR 852, 86 CR 1684, Lawrence Aoki.

MR. OLIVAS: Good morning, your Honor.

THE COURT: Mr. Olivas.

MR. OLIVAS: David Olivas on behalf of the People.

May I approach the bench?

THE COURT: Yes, sir.

MR. OLIVAS: Sorry I didn't get this to you  
earlier. Just popped up.

THE COURT: Mr. Pozner, you represent Dr. Miller.

MR. POZNER: Dr. Miller and Dr. Kadushin.

May I tender a motion to quash subpoenas. The  
prosecution in its brief refers to three psychiatrists.  
It's two psychiatrists and a psychologist counting  
Dr. MacDonald.

THE COURT: All right. Is Dr. MacDonald  
represented?

MR. POZNER: He is represented by Mr. Truman  
and I'm authorized to state Mr. Truman joins in the motion  
to quash for the reasons I have stated and for reasons  
he stated in his original motion.

THE COURT: All right. Do you wish to make any  
argument?

1 MR. POZNER: Yes.

2 THE COURT: I'll be happy to hear.

3 MR. POZNER: I know you've heard what you think  
4 are all the arguments, but in behalf of Mr. Truman I am  
5 specifically authorized to tell you this.

6 This is bad faith. You made a ruling and we  
7 didn't like your ruling and we did what the law allows us  
8 to do. We took you to the Supreme Court and they filed  
9 a motion in front of Supreme Court saying it's moot.  
10 Don't hear it. Supreme Court had this on its calendar  
11 to be decided and they filed a pleading saying, oh, no,  
12 there is nothing to be decided in Aoki any more; and  
13 after the Supreme Court dismissed it on their word, they  
14 turned right around and subpoenaed the same three doctors  
15 in the same case. That is bad faith.

16 The reason to do that maybe we hear stories.  
17 It was the appellate division. It was something else,  
18 but the fact of the matter it was Denver District  
19 Attorney's Office. Now, why should these three doctors  
20 be put through this again? They're running up attorneys  
21 fees. They had the matter at issue in front of the  
22 Supreme Court. The opponent talked the Supreme Court  
23 into dismissing it and then turned around and did it  
24 again.

25 In equity this Court ought to quash these

1 subpoenas for that reason alone.

2 Our position as to the merits remains as it  
3 always has been. These people have confidential relation-  
4 ships. They're not up for grabs. They're not the  
5 Government's witnesses. They're the work product of  
6 the defense. They have defense privileges and they have  
7 physician-patient privileges, and none of these privileges  
8 are being observed; and, frankly, if the Court orders  
9 them to testify, they must in good conscience and in  
10 respect to their oaths decline to testify.

11 I ask you to ask the Government why it told  
12 the Supreme Court was moot, then resubpoenaed the doctors  
13 in the identical case.

14 THE COURT: Mr. Olivas, address that point.

15 MR. OLIVAS: I'd be happy to identify it again  
16 for Mr. Pozner's benefit.

17 As indicated to the Court the last time we  
18 were here on Monday, our position in asking the Supreme  
19 Court to decide the moot question was basically save a  
20 lot of time and expense. We felt that the subpoenas  
21 that were issued to the doctors were for the insanity  
22 case. The Supreme Court decided to tell us how; they  
23 didn't tell us what to do with the trial, and given the  
24 fact that we were in the middle of trial, we proceeded  
25 in the insanity trial. Insanity trial were included and

1 subpoenas for the insanity trial basically were moot.  
2 It was over with.

3 We decided that rather than go through the  
4 expense and time given for all the parties in asking the  
5 Supreme Court to review the matter when the issue could  
6 very well be moot for all times, that is, things happen  
7 to cases, plea bargains are struck, there could very well  
8 have been -- there could very well have been a situation  
9 where we were not proceeding on the guilt phase. We  
10 didn't know at the time, and we had not formulated our  
11 position whether to call Dr. MacDonald and Dr. Miller and  
12 Dr. Kadushin at the guilt phase. We decided to call them  
13 at the insanity phase, but we were unsure exactly how  
14 the defense was going to posture their case.

15 We decided -- and immediately after the insanity  
16 case we hadn't sat down and contemplated that issue. It  
17 was fine for the Supreme Court to hear what we were going  
18 to do about it, so we decided to ask them to tell us  
19 whether it was moot or not. It was later after that that  
20 we sat down after a conference with all the District  
21 Attorneys involved and decided that we would need and  
22 we should call the doctors in or try and call the doctors  
23 at least in the rebuttal of the defense case at the  
24 guilt trial.

25 That it was for those reasons that we decided

1 to ask the Supreme Court to look at the issue.

2 THE COURT: Mr. Olivas, your responsibilities  
3 were -- are for the trial.

4 MR. OLIVAS: That is correct, your Honor.  
5 We decided to subpoena the doctors for the motions hearing  
6 on the motion to suppress statements based on the issue  
7 of voluntariness. Our real concern is for the trial,  
8 but we thought that if we raised the issue early enough  
9 we could at least get the thing decided before the  
10 February trial so we wouldn't have to continue it  
11 possibly.

12 THE COURT: When would these subpoenas tell  
13 the doctors to appear?

14 MR. OLIVAS: We had them personally served  
15 and I believe they were for the motions hearing which was  
16 set -- it was when we last came in on Monday, I believe,  
17 Monday.

18 MR. POZNER: Friday, December 12.

19 MR. OLIVAS: That is correct.

20 THE COURT: I think we're going to have to make  
21 the record clear when these subpoenas are for and they  
22 were continued and now that we have not reset a date for  
23 the resumption.

24 MR. OLIVAS: We have January 23 is the new date,  
25 so the Court -- asked the Court to continue the subpoenas.

1 I have talked to Mr. Pozner and Mr. Truman. We're not  
2 going to require that the doctors be personally here as  
3 long as we're in agreement that we have all of proper  
4 notice and subpoenas. They would otherwise be here but  
5 for our stipulation.

6 THE COURT: All right. And they do accept the  
7 fact that they were served and know that they're supposed  
8 to be in here on the 23rd day of January 1987?

9 MR. POZNER: Dr. Miller was not served properly  
10 but I think we'll waive that.

11 Judge, there is no plea negotiations -- not  
12 that I'm aware. There was never any talk of disposition.  
13 They didn't ask the Supreme Court to tell them whether it  
14 was moot. They moved the Supreme Court to declare it  
15 moot. Let's call a spade a spade.

16 This issue was absolutely postured to be  
17 decided. These doctors had to hire lawyers and file  
18 pleadings to get before the Supreme Court. Now, they  
19 must go through it all again. They have had three Deputy  
20 District Attorneys on a case and to now say that they  
21 never contemplated on the case in the case in chief is  
22 just absurd. They should have thought it out. And there  
23 has got to be penalties for this kind of conduct, and the  
24 least stringent penalty is to quash the subpoena. The  
25 most stringent penalty is to quash the subpoena or in the

1 alternative order them to pay the attorneys fees these  
2 doctors are running up to do this, and it's solely because  
3 they got the Supreme Court to dismiss the case. At least  
4 make them pay for what they've done to the doctors.

5 THE COURT: Mr. Viehmann, at the suppression motion  
6 hearings the defendant is going to offer -- intends to  
7 offer testimony from experts regarding the defendant's  
8 mental state; is that correct?

9 MR. VIEHMANN: Yes.

10 THE COURT: All right. Based upon that statement  
11 of defendant that he intends to offer expert testimony  
12 on the issue of mental state, the Court would find that  
13 the prosecution would be allowed to offer relevant evidence  
14 on the issue of defendant's mental state from experts,  
15 and the Court would further rule that the experts who  
16 have examined the defendant shortly after his arrest,  
17 namely, Dr. MacDonald and Dr. Miller which the record  
18 should reflect examined him prior to the Court-appointed  
19 psychiatrist, would be allowed to be called by the  
20 prosecution on the issue of defendant's mental state at  
21 the time of the statements being made.

22 The other doctor -- when did he see him? Do  
23 we know? Dr. Kadushin?

24 MR. OLIVAS: Judge, I don't have those records  
25 before me but I believe it was prior to the Court-appointed

1 psychiatrists. I don't have a specific date.

2 THE COURT: All right. With the understanding  
3 that also Dr. Kadushin saw the defendant prior to the  
4 Court-appointed doctors, his testimony would also be  
5 relevant as to the issue of defendant's mental state at  
6 the time he made these statements. Service is acknowledged  
7 and Court is going to deny the motion to quash the  
8 subpoenas and allow at the suppression hearing the  
9 District Attorney to call these witnesses if the defendant  
10 does offer expert testimony on the issue of the defendant's  
11 mental state.

12 MR. POZNER: We've agreed to enter a stipulation  
13 that if called or the Court may presume they have been,  
14 they are declining to answer so that they may immediately  
15 go to the Supreme Court and not go through the necessity  
16 of taking them away from their practices and incurring  
17 even more expenses to go through; is that all right with  
18 the Court?

19 THE COURT: It certainly is.

20 MR. VIEHMANN: We wanted the record to reflect  
21 that not only are we asking the Court to quash these  
22 subpoenas but also to order their names stricken as  
23 endorsed witnesses for the prosecution because when they're  
24 under subpoena at this particular time apparently the  
25 District Attorney wishes to manipulate this according to



1 whether they're under subpoena or not. It's our motion  
2 that they just be absolutely stricken as witnesses against  
3 Mr. Aoki.

4 THE COURT: Either at the suppression hearing  
5 or at the trial?

6 MR. VIEHMANN: That's correct.

7 THE COURT: That request is denied.

8 Is there anything else that we need to do to  
9 make sure that issue is properly before the Court?

10 MR. POZNER: I don't know.

11 THE COURT: If you think of something, you come  
12 back.

13 MR. POZNER: We'll say that as of what date  
14 have they refused to answer -- as of today's date?

15 THE COURT: As of today's date.

16 MR. POZNER: Fine. Does the Court wish to  
17 hold them in contempt now?

18 THE COURT: You're authorized to act for all  
19 three?

20 MR. POZNER: No. As to holding doctors in  
21 contempt, I'll let Mr. Truman state the position of  
22 Dr. MacDonald, or does the Court set it for a contempt  
23 hearing and have counsel appear?

24 THE COURT: That just delays it. I'm sure you  
25 all want to get started as quickly as you can.

1 MR. POZNER: I'll contact Mr. Truman and we'll  
2 talk with each other and then call the Court on how we  
3 think the record can best be perfected as to the contempt  
4 issue.

5 THE COURT: That's fine. And what I'll require  
6 is that December 29 you and Mr. Truman here and tell me  
7 whatever you want to tell me and I'll take what I think  
8 is appropriate action.

9 MR. POZNER: Do you want to -- if we decide it --

10 THE COURT: I'm not going to be here next week.

11 MR. POZNER: I am thinking Mr. Truman and I  
12 may know this week and so we can get it up and get it  
13 decided.

14 THE COURT: I'm not going to be here Friday, so  
15 it's tomorrow.

16 MR. POZNER: I understand all grounds that we've  
17 previously filed upon are extended to cover this latest  
18 usage. Any permutations that the prosecution conjures  
19 up to call defense doctors for any purpose to testify  
20 against the interests of the defendant we're objecting to  
21 whether it be called a sanity trial, a hearing on motions,  
22 a trial on the merits. It all as long as it goes to the  
23 issues of their examinations as opposed to being a lay  
24 witness seeing the defendant to do something on the  
25 street, we're objecting.

1 THE COURT: All right.

2 MR. POZNER: Thank you.

3 MR. VIEHMANN: I would ask for the District  
4 Attorney to state whether or not he intends to call these  
5 doctors at the motions hearing and at trial.

6 MR. OLIVAS: If we're allowed to, of course,  
7 Judge.

8 Judge, before we leave the Aoki case, I'm not  
9 sure --

10 THE COURT: I did the other issue.

11 MR. OLIVAS: Impaired mental condition.

12 THE COURT: No.

13 Mr. Pozner, then, I'm going to hear from you  
14 and Mr. Truman today.

15 MR. POZNER: I'll call Mr. Truman immediately  
16 and see if we can come up with a concise statement of  
17 the position so that that could be entered on record.  
18 The Court could take whatever action it wishes and we can  
19 pursue appellate remedies.

20 THE COURT: That should be tomorrow morning.

21 MR. POZNER: Assuming I can find Mr. Truman  
22 in town.

23 Thank you, your Honor.

24 (Other matters were taken up at this time, but  
25 this concludes the hearing on this issue.)

REPORTER'S CERTIFICATE

STATE OF COLORADO )  
 ) SS.  
CITY AND COUNTY OF DENVER )

I, Pamela R. Baclawski, do hereby certify that I am a Certified Shorthand Reporter and an Official Court Reporter for the Second Judicial District; that as such reporter I was present upon the occasion of the hearing of the above-entitled matter; that I stenographically recorded all proceedings had in the above-entitled matter on Wednesday, December 17, 1986.

I do hereby further certify that I caused my stenotype notes to be reduced to typewritten form, and that the foregoing 12 pages constitute a true, correct, and complete transcript of the portion requested.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 1st day of March 1987.

  
Pamela R. Baclawski, C.S.R.

**APPENDIX L**

1 DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

2 Case Nos. 86 CP 852 and 86 CP 1684, Courtroom 12

3 -----  
4 REPORTER'S TRANSCRIPT: Judge's Ruling  
5 -----

6 THE PEOPLE OF THE STATE OF COLORADO,

7 Plaintiff,

8 v.

9 LAWRENCE AOKI,

10 Defendant.  
11 -----

12  
13 This matter came on for the Judge's Ruling on  
14 Wednesday, December 17, 1986, before the HONORABLE  
JOHN W. COUGHLIN, Judge of the District Court.

15 This transcript is of the Judge's Ruling only.

16 APPEARANCES:

17 FOR THE PEOPLE: DAVID A. OLIVAS, Reg. No. 12888  
18 Deputy District Attorney

19 FOR THE DEFENDANT: FRANK J. VIEHMANN, Reg. No. 9228  
Deputy State Public Defender

20 FOR DRS. MILLER LARRY S. POZNER, Reg. No. 2792  
21 AND KADUSHIN:

22 Defendant personally present.  
23  
24  
25

1 WEDNESDAY, DECEMBER 17, 1986  
2 MORNING SESSION

3 JUDGE'S RULING

4  
5 THE COURT: All right. Based upon that statement  
6 of defendant that he intends to offer expert testimony on  
7 the issue of mental state, the Court would find that the  
8 prosecution would be allowed to offer relevant evidence on  
9 the issue of defendant's mental state from experts; and  
10 the Court would further rule that the experts who have  
11 examined the defendant shortly after his arrest, namely  
12 Dr. MacDonald and Dr. Miller, which the record should  
13 reflect examined him prior to the Court appointed psychia-  
14 trists, would be allowed to be called by the prosecution  
15 on the issue of defendant's mental state at the time of  
16 the statements being made. The other doctor, when did  
17 he see him, do we know?

18 MR. POZNER: Kadushin.

19 MR. OLIVAS: Judge, I don't have those records  
20 before me but I believe it was prior to the Court appointed  
21 psychiatrists. I don't have a specific date.

22 THE COURT: All right. With the understanding  
23 that also Dr. Kadushin saw the defendant prior to the  
24 Court appointed doctors, his testimony would also be  
25 relevant as to the issue of defendant's mental state at

1 the time he made these statements. Service is acknowledged  
2 and the Court is going to deny the motion to quash the  
3 subpoenas and allow at the suppression hearing the  
4 District Attorney to call these witnesses if the defendant  
5 does offer expert testimony on the issue of the defendant's  
6 mental state.

7 MR. POZNER: We've agreed to enter a stipulation  
8 that if called or the Court may presume they have been  
9 they are declining to answer so that they may go immediately  
10 go to the Supreme Court and not go through the necessity  
11 of taking them away from their practices and incurring  
12 even more expenses to go through; is that all right with  
13 the Court?

14 THE COURT: It certainly is.

15 MR. VIEHMANN: We wanted the record to reflect  
16 that not only are we asking the Court to quash these  
17 subpoenas but also to order that their names be stricken  
18 as endorsed witnesses for the prosecution because whether  
19 they're under subpoena at this particular time, apparently  
20 the District Attorney wishes to manipulate this according  
21 to whether they're under subpoena or not. It's our motion  
22 that they just be absolutely stricken as witnesses against  
23 Mr. Aoki.

24 THE COURT: Either at the Supreme hearing or  
25 at the trial?



1 MR. VIEHMANN: That's correct.

2 THE COURT: That request is denied.

3 Is there anything else that we need to do to  
4 make sure that issue is properly before the Court?

5 MR. POZNER: I don't know.

6 THE COURT: If you think of something, you can  
7 come back.

8 MR. POZNER: We'll say that as of what date  
9 have they refused to answer -- as of today's date?

10 THE COURT: As of today's date.

11 MR. POZNER: Fine. Does the Court wish to hold  
12 them in contempt now?

13 THE COURT: You're authorized to act for all  
14 three?

15 MR. POZNER: No. As to holding doctors in  
16 contempt, I'll let Mr. Truman state the position of  
17 Dr. MacDonald, or does the Court set it for a contempt  
18 hearing and have counsel appear?

19 THE COURT: That just delays it. I'm sure you  
20 all want to get started as quickly as you can.

21 MR. POZNER: Mr. Truman and I will talk with  
22 each other and then call the Court on how we think the  
23 record can best be perfected as to the contempt issue.

24 THE COURT: That's fine. And what I'll require  
25 is that December 29 you and Mr. Truman here and tell me

1 whatever you want to tell me, and I'll take what I think  
2 is appropriate action.

3 MR. POZNER: Do you want to if we decide it --

4 THE COURT: I'm not going to be here next week.

5 MR. POZNER: I am thinking Mr. Truman may know  
6 this week and so we can get it up and get it decided.

7 THE COURT: I'm not going to be here Friday  
8 so it's tomorrow.

9 MR. POZNER: I understand all grounds that we've  
10 previously filed upon are extended to cover this latest  
11 usage. Any permutation that the prosecution conjures up  
12 to call defense doctors for any purpose to testify against  
13 the interests of the defendant we're objecting to whether  
14 it be called a sanity trial, a hearing on motions, a trial  
15 on the merits. It all as long as it goes to the issues  
16 of their examinations as opposed to being a lay witness  
17 seeing the defendant to somebody on the street, we're  
18 objecting.

19 THE COURT: All right.

20 MR. POZNER: Thank you.

21 MR. VIEHMANN: I would ask for the District  
22 Attorney to state whether or not he intends to call these  
23 doctors at the motions hearing and at trial.

24 MR. OLIVAS: If we're allowed to, of course,  
25 Judge.

1 Judge, before we leave the Aoki case, I'm not  
2 sure --

3 THE COURT: I do. The other issue.

4 MR. OLIVAS: Impaired mental condition.

5 THE COURT: No. Mr. Pozner, I'm going to hear  
6 from you and Mr. Truman today?

7 MR. POZNER: I'll call Mr. Truman immediately  
8 and see if we can come up with a concise statement of the  
9 position so that that could be entered on record. The  
10 Court could take whatever action it wishes, and we can  
11 pursue appellate remedies.

12 THE COURT: That should be tomorrow morning.

13 MR. POZNER: Assuming I can find Mr. Truman  
14 in town.

15 Thank you, Judge.

16 (The Judge's Ruling on this topic was concluded  
17 at this time.)  
18  
19  
20  
21  
22  
23  
24  
25

### REPORTER'S CERTIFICATE

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

I, Pamela R. Baclawski, do hereby certify that I am a Certified Shorthand Reporter and an Official Court Reporter for the Second Judicial District; that as such reporter I was present upon the occasion of the hearing of the above-entitled matter; that I stenographically recorded all proceedings had in the above-entitled matter on Wednesday, December 17, 1986.

I do hereby further certify that I caused my stenotype notes to be reduced to typewritten form, and that the foregoing 6 pages constitute a true, correct, and complete transcript of the Judge's Ruling on this topic.

IN WITNESS WHEREOF, I have hereunto set my hand  
and seal this 5th day of January 1987.

Pamela R. Baclawski  
Pamela R. Baclawski, C.S.R.

Pamela R. Baclawski, C.S.R.

25

## APPENDIX M

FORM 12

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 86CR0652

Courtroom 12

SUPPLEMENTAL LIST OF WITNESSES

THE PEOPLE OF THE STATE OF COLORADO  
Plaintiff



FEB 23 1987

v.

LAWRENCE S. AOKI,

By Michelle Adams  
Deputy Clerk

Defendant

Comes now the People of the State of Colorado, by NORMAN S. EARLY, JR. District Attorney, Second Judicial District, State of Colorado, and his duly appointed Deputy District Attorney, and pursuant to C.S.R., 1973, 16-5-203, as amended, submits and tenders this Supplemental-List of Witnesses in the above-captioned cause:

Dr. John McDonald

Sheriff Jim Leahy

Sheriff Bobby May

Dr. Fred Miller

Sheriff Tom Greer

4900 Cherry Creek Drive So.

Sheriff Furman Chavez

Suite E

Sgt. Marge Hess

Denver, CO 80222

Sgt. Ted Sasin

759-2332

Sgt. Kevin Kelly

Dr. Ben Galloway

Denver Sheriff's Department

Jeffco Coroner's Office

1351 Cherokee

Denver, CO 80204

Brock Redden

2727 South Havana Street

Denver, CO 80014

751-1104

Tendered this

5<sup>th</sup>

day of

September

, 19

86

NORMAN S. EARLY, JR.

District Attorney

Second Judicial District

State of Colorado

CERTIFICATE OF SERVICE/MAILING

I hereby certify that on the 4<sup>th</sup> day of September, 1986, I served/placed in the United States Mails, properly addressed, a true and complete copy of the foregoing to:  
Frank Viehmann

Deputy State Public Defender

331 - 14th Street

Denver, CO 80204

By [Signature]  
Deputy District Attorney

Reg. No. 12888

By: \_\_\_\_\_

Received by: \_\_\_\_\_

## APPENDIX N

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 86 CR 852

Courtroom 12

CT RM 12 AUG 12 '86

SUPPLEMENTAL LIST OF WITNESSES

THE PEOPLE OF THE STATE OF COLORADO  
Plaintiff

v

LAWRENCE S. AOKI,

Defendant



District Court  
City and County of Denver, Colo.  
Certified to be a true and correct  
copy of the original in the records.

FEB 25 1987

Clerk of the District Court  
By Michelle Adams  
Deputy Clerk

Comes now the People of the State of Colorado, by NORMAN S. EARLY, JR. District Attorney, Second Judicial District, State of Colorado, and his duly appointed Deputy District Attorney, and pursuant to C.S.R., 1973, 16-5-203, as amended, submits and tenders this Supplemental-List of Witnesses in the above-captioned cause:

Dr. Jeffrey Metzner  
3300 E. 1st Avenue, Suite 470  
Denver, Colorado 80206  
#355-6842

Dr. Lawrence Wiberg  
4900 Cherry Creek South Dr.  
Denver, Colorado 80222  
#759-0075

Alex Jannicelli  
c/o 2727 South Havana Street  
Aurora, Colorado 80014

Bruce Scott  
address unknown

John Lee Gallardo  
18733 East Louisiana Ave.  
Aurora, Colorado 80012

Custodian of Records or Agent  
c/o Richard Chiles  
Director of Security  
Frontier Airlines  
8250 Smith Road  
Denver, Colorado 80207  
#329-4770

Tendered this 12th day of AUGUST, 1986

NORMAN S. EARLY, JR.  
District Attorney  
Second Judicial District  
State of Colorado

CERTIFICATE OF SERVICE/MAILING

I hereby certify that on the 12th day of August, 1986, I served/placed in the United States Mails, properly addressed, a true and complete copy of the foregoing to:

Frank Viehmann, Deputy State  
~~Public Defender, 331 14th Street,~~  
Denver, Colorado 80202.

By David A. Chiles  
Deputy District Attorney

Reg. No. 12888

By: Frank A. Chiles

Received by: \_\_\_\_\_



## APPENDIX O

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 86CR852 & 86CR176

Courtroom 12

MOTION TO STRIKE DISTRICT ATTORNEY'S  
ENDORSEMENT OF DEFENSE-RETAINED PSYCHIATRIST

PEOPLE OF THE STATE OF COLORADO, Plaintiff

v.

LARRY AOKI, Defendant

The Defendant moves this Court for an Order striking the District Attorney's endorsement of Doctors Miller, McDonald and Kadushin, and as grounds therefore states the following:

1. The Defendant is charged with two counts of First Degree Murder, C.R.S. Section 18-3-102.
2. The Defendant has tendered a plea of not guilty by reason of insanity.
3. The Defendant hired Doctors Kadushin, Miller and McDonald solely for the purpose of assisting counsel and adequately and affectively representing Mr. Aoki.
4. The Defendant was told by counsel that all communications between himself and the doctors would be confidential unless the doctors were endorsed with the Defendant's consent. (See attached affidavit.)
5. The District Attorney has been furnished reports by those doctors endorsed by the defense.
6. The Defendant has cooperated with examinations conducted by two court-appointed psychiatrist.
7. The District Attorney's endorsement of these witnesses violates the Defendant's right to effective assistance of counsel as provided by the Sixth Amendment to the United States Constitution and Article II, Section 16 of the Colorado Constitution.

District Court  
City & County of Denver, Colo  
Certified to be a full, true and correct  
copy of the original in my custody.



FEB 23 1987

Court  
Sec  
By Michelle Maes  
Deputy Clerk

8. The District Attorney's endorsement violates the attorney-client privilege, C.R.S. Section 13-90 107(1)(b).

DAVID F. VELA  
COLORADO STATE PUBLIC DEFENDER

*Frank Vietmann, for*  
KAREN M. ASHBY, NO. 13128  
Deputy State Public Defender  
331 Fourteenth Street  
Denver, CO 80202  
893-8939

DATED: September 10, 1986

-----  
O R D E R  
-----

MOTION: ( ) GRANTED ( ) DENIED

DATED: \_\_\_\_\_

JUDGE: \_\_\_\_\_

st

## APPENDIX P

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 86CR0852 &amp; 86CR1684

Courtroom 12

MOTION TO STRIKE ENDORSEMENT OF DEFENSE EXPERTS  
(5TH AMENDMENT AND DUE PROCESS)

District Court

City & County of Denver, Colo.  
Certified to be a full, true and correct  
copy of the original in my custody.

PEOPLE OF THE STATE OF COLORADO, Plaintiff

v.

FEB 23 1987

LAWRENCE AOKI, Defendant



Court Clerk of the District Court  
By *Nichole M. Reed*

Defendant moves for an Order striking the District Attorney's endorsement of Doctors Kadushin, McDonald and Miller on 5th Amendment and Due Process grounds, and would state:

1. Counsel for Mr. Aoki engaged the above listed doctors to assist in the preparation of the defense, to evaluate Mr. Aoki concerning his mental state, and to consult with counsel.

2. Counsel and each of the doctors explained the confidential nature of the discussions between Mr. Aoki and each of the doctors.

3. Because of the assurances of confidentiality, Mr. Aoki freely discussed his background, the two homicides he is charged and his mental state. He made these statements only because he was promised that they would not be used against him, in any manner, unless the defense chose to endorse the doctors.

4. Mr. Aoki has been informed by the Court, on several occasions, that he has a right to remain silent. Mr. Aoki was informed that there were certain uses that could be made of statements made to Dr. Metzner and Dr. Wiberg, but there was no such advisement concerning statements made to Doctors Kadushin, Miller and McDonald. In fact, the Defendant believes they were confidential, like making statements to his attorneys.

5. To compel Doctors Kadushin, Miller and McDonald to testify, thereby revealing Mr. Aoki's statements to them, as well as his mental state, would be tantamount to eliciting statements by deception. In light of the Court's assurances, the attorney's assurances and the doctors' assurances, it can not be said that Mr. Aoki knowingly, freely and intelligently waived his right to remain silent when he spoke with the doctors.

6. For the Court to promise Mr. Aoki that he has a constitutional right to remain silent, and then compel his

testimony through the doctors violates Mr. Aoki's due process rights as well as his right to remain silent, under both the Colorado and United States Constitutions.

DAVID F. VELA  
COLORADO STATE PUBLIC DEFENDER

Frank J. Viehmann  
FRANK J. VIEHMANN, NO. 9228

Steven R. Gayle  
STEVEN R. GAYLE, NO. 40494

Attorneys for the Defendant  
331 Fourteenth Street  
Denver, CO 80202  
893-8939

✓ CERTIFICATE OF SERVICE

This do-

by \_\_\_\_\_

DATED: September 15, 1986

-----  
O R D E R  
-----

MOTION:    (    )    GRANTED        (    )    DENIED

DATED: \_\_\_\_\_

JUDGE: \_\_\_\_\_

## APPENDIX Q

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 86CR852 & 86CR176

Courtroom 12

BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO STRIKE DISTRICT  
ATTORNEY'S ENDORSEMENT OF DEFENSE-RETAINED PSYCHIATRIST

PEOPLE OF THE STATE OF COLORADO,

v.

LARRY AOKI, Defendant



FEB 23 1987

STATEMENT OF THE ISSUES PRESENTED

1. Does the District Attorney's endorsement of Doctors Miller, McDonald and Kadushin violate the Defendant's right to effective assistance of counsel as provided by the Sixth Amendment to the United States Constitution and Article II, Section 16 of the Colorado Constitution?

2. Does the District Attorney's endorsement of Doctors Miller, McDonald and Kadushin violate the attorney-client privilege, C.R.S. Section 13-90-107(b)?

SUMMARY OF THE ARGUMENT

The Defendant's right to effective assistance of counsel pursuant to the Sixth Amendment to the United States Constitution and Article II, Section 16 of the Colorado Constitution is violated if the District Attorney is allowed to endorse and/or call as a witness at trial psychiatrists hired by the defense to assist counsel.

Communications between Mr. Aoki and psychiatrists hired by the defense are protected from disclosure to the prosecution by the attorney-client privilege.



## ARGUMENT

I. THE DISTRICT ATTORNEY'S ENDORSEMENT OF DOCTORS MILLER, McDONALD AND KADUSHIN VIOLATES THE DEFENDANT'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE II, SECTION 16 OF THE COLORADO CONSTITUTION.

To assist in his defense, Mr. Aoki hired Doctors Miller, McDonald, Kadushin, Teitlebaum, Plazak and Yost to interview Mr. Aoki, consult with his attorneys and render their expert opinions as to what would be appropriate pleas to enter in the above-captioned case. Prior to the interviews being conducted, Mr. Aoki was advised by counsel that communications between any retained doctor and himself would remain confidential unless the doctor were endorsed by defense counsel with Mr. Aoki's consent.

Doctors Plazak, Yost and Teitlebaum have been endorsed by the defense. The District Attorney has orally moved to endorse Doctors Miller, Kadushin and McDonald over the Defendant's strenuous objection. The allowance of the District Attorney's endorsement and/or adversarial use of any doctor hired by the defense would violate Mr. Aoki's right to effective assistance of counsel.

The Sixth Amendment to the United States Constitution and Article II, Section 16 of the Colorado Constitution provide that an accused is entitled to assistance of counsel. Effective assistance of counsel is a fundamental right. People v. O'Neill, 185 Colo. 202, 523 P.2d 123 (1974). An attorney

must often enlist the assistance of experts to adequately and effectively counsel his or her client. Defense counsel is generally not qualified to render an opinion as to a Defendant's sanity and of necessity must employ the assistance of those who possess the expertise to do so. The ability to effectively counsel one's client is severely infringed upon if counsel must risk discovering unfavorable information, which can be used adversely by the prosecution, while seeking that information which is crucial to effectively representing the client.

The issue here is whether a defense counsel in a case involving a potential defense of insanity must run the risk that a psychiatric expert whom he hires to advise him with respect to the Defendant's mental condition may be forced to be an involuntary government witness. The effect of such a rule would, we think, have the inevitable effect of depriving Defendants of the effective assistance of counsel in such cases... The attorney must be free to make an informed judgment with respect to the best course for the defense without the inhibition of creating a potential government witness.

U.S. v. Alvarez, 519 F.2d 1036, 1046, 1047 (1975). See also People v. Superior Court for the County of Los Angeles, 51 Cal. App. 3d, 459, 124 Cal.Rptr. 158 (1975); People v. Goldbach, 27 Cal. App. 3d 563, 103 Cal.Rptr. 800 (1972); People v. Hilliker, 29 Mich. App. 543, 185 N.W.2d 831 (1971); Houston v. State, Alaska, 602 P.2d 784 (1979); State v. Moore, 45 Ore. App. 837, 609 P.2d 866 (1980). Alvarez supra, represents the majority opinion.

In addition the pressure which a Defendant, who is aware that the psychiatrist to whom he is speaking might be used

against him, might feel could significantly effect the interview process. Houston v. State, supra.

The abuses to which a holding contrary to that stated in Alvarez, supra, would lead are evident in the case now before the Court. The District Attorney has received five reports bearing on the Defendant's mental status at the time of the commission of the offenses charged: two (2) from court-appointed psychiatrists with whom the Defendant cooperated and three (3) from witnesses endorsed by the Defendant. The prosecution need, if any, to endorse witnesses hired solely for the purpose of assisting defense counsel is far outweighed by the Defendant's constitutional right to effective assistance of counsel.

To date there is no Colorado case which squarely addresses the issue of whether the prosecution may endorse and/or call to testify at a sanity hearing, a psychiatrist hired to assist defense counsel. People v. Perez, \_\_\_ Colo. \_\_\_, 701 P.2d 104 (1985) held that there were no denial of the effective assistance of counsel when a handwriting expert, originally retained by the defense, was called by the prosecution in its case-in-chief. Perez, Id., is distinguishable from the case now before the Court for at least two significant reasons: (1) Mr. Perez had voluntarily given handwriting exemplars to the District Attorney and Police Department prior to hiring his own expert and (2) the expert based his opinion on handwriting exemplars, which are non-communicative or non-testimonial in nature. Perez, Id., is now up on certiorari to the Supreme Court on a number of issues including the Defendant's right to

effective assistance of counsel pursuant to the Sixth Amendment to the United States Constitution and the applicability of the attorney-client privilege.

II. THE DISTRICT ATTORNEY'S ENDORSEMENT OF DOCTORS MILLER, MCDONALD AND KADUSHIN VIOLATES THE ATTORNEY CLIENT PRIVILEGE. C.R.S. SECTION 13-90-107(b).

The constitutional mandate for effective legal assistance has been recognized as a basis for the common law attorney-client privilege. The common-law privilege has been codified in Colorado.

An attorney should not be examined without the consent of his client as to any communication made by the client to him or his advice given thereon in the course of professional employment; nor shall an attorney's secretary, paralegal, legal assistance, stenographer, or clerk be examined without the consent of his employer concerning any fact, the knowledge of which he he has acquired in such capacity.

C.R.S. Section 13-90-107(1)(b).

Doctors Yost, Miller, Teitlebaum, Plazak, McDonald and Kadushin were employed and paid by Mr. Aoki through his attorneys to assist them in understanding Mr. Aoki's mental state at the time of the commission of the alleged offenses and to provide a basis upon which the course of the defense could be decided. The doctors considered themselves to be agents of the attorneys from the time they were initially retained up through the present. Mr. Aoki was advised by counsel that all communications would be confidential unless with his consent a witness were endorsed to testify at trial.

The privilege extends to the necessary intermediaries and agents through whom the communi-

cations are made. And it includes communications between the attorney and a scientific expert retained to aid in the presentation of the defense, a confidential employment.

State v. Kociolok, 23 N.J. 400, 129 A.2d 417, 424 (1957). See also, City and County of San Francisco v. Superior Court, 37 Cal. 2d 227, 231 P.2d 26 (Sup. Ct. 1951); People v. Hilliker, 29 Mich. App. 543, 185 N.W.2d 831 (Ct. App. 1971); People v. Lines, 13 Cal. 3d 500, 119 Cal. Rptr. 225, 531 P.2d 793 (1975).

The doctors employed by Mr. Aoki through his attorneys are clearly embraced within the attorney-client privilege and any communications between Mr. Aoki, the doctors and Mr. Aoki's counsel are privileged unless the privilege has been waived.

[W]e reject the contention that the assertion of insanity at the time of the offense waives the attorney-client privilege with respect to psychiatric consultations made in preparation for trial.

U.S. v. Alvarez, 519 F.2d 1036, 1046 (3d Cir. 1975). Houston v. State, Alaska, 602 P.2d 784 (1979); State v. Moore, 45 Ore. App. 837, 609 P.2d 866 (1980); State v. Mingo, 77 N.J. 576, 392 A.2d 590 (1978).

The District Attorney's endorsement and presumed intent to call to the witness stand any doctor or other expert hired but not endorsed by the defense would violate the attorney-client privilege existing between Mr. Aoki and his attorneys.

#### CONCLUSION

Mr. Aoki requests this Court to grant the Defendant's Motion to Strike the District Attorney's Endorsement of Doctors McDonald, Miller, and Kadushin.

## APPENDIX R

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Case Nos. 86CR852 & 85CR1684

Courtroom 12

-----  
MOTION TO QUASH SUBPOENAS  
-----

PEOPLE OF THE STATE OF COLORADO, Plaintiff

v.

LAWRENCE AOKI, Defendant  
-----

Defendant moves for an Order quashing subpoenas issued by the District Attorney to Doctors Fredrick Miller, John MacDonald and Fredrick Kaduskin, and as grounds would state:

1. Defendant incorporates by reference all facts and legal arguments asserted in earlier pleadings, briefs and oral arguments concerning prior subpoenas issued to these same doctors.

2. The professionals involved here were all privately retained by the Defendant. They assured Mr. Aoki that their interviews were privileged unless Mr. Aoki chose to endorse them as witnesses. The evidence sought to be elicited flows directly from statements made by the Defendant to the doctors.

3. The District Attorney has acknowledged that they discovered the fact that these doctors had interviewed the Defendant by reviewing records at the Denver County Jail.

4. To allow the State to call these witnesses would violate the Defendant's rights under both the Colorado and United States Constitutions, including his right to due process, equal protection to counsel, to be free from self-incrimination, as well as his rights under C.R.S. Section 16-8-101 et seq. See, People v. Rosenthal, 617 P.2d 551.

DAVID F. VELA  
COLORADO STATE PUBLIC DEFENDER

FRANK J. VIEHMANN No. 9228  
Deputy State Public Defender  
331 Fourteenth Street  
Denver, Colorado 80202-5092  
893-8939

DATED: December \_\_\_\_\_, 1986

sdg

-----  
CERTIFICATE OF SERVICE  
-----

I certify that copies of this document were served on all  
opposing counsel on December \_\_\_\_, 1986.

BY: \_\_\_\_\_

sdg



## APPENDIX S

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Cases No. 86CP352 and 86CR1684, Courtroom 12

MOTION TO QUASH SUBPOENA OF JOHN M. MacDONALD, M.D.

THE PEOPLE OF THE STATE OF COLORADO,  
Plaintiff,

vs.

LAWRENCE AOKI,  
Defendant.



District Court  
City & County of Denver, Colorado  
For the filing of the original and  
copy of the original in the office,

FEB 23 1987

Court  
By *Michelle M...*  
County Clerk

John M. MacDonald, M.D., by and through his attorney Craig L. Truman, moves this Court to quash the subpoena issued in the above captioned action for Dr. MacDonald's expert testimony. In support of this motion, John M. MacDonald, M.D. states the following:

1. Witness John M. MacDonald is a licensed physician in the State of Colorado, a professor of psychiatry and director of forensic psychiatry at the University of Colorado Health Sciences Center, Denver, Colorado. Dr. MacDonald has testified as an expert witness for both prosecution and defense in courts throughout the United States but mostly in the State of Colorado since the early 1950's.
2. In the course of his expertise, Dr. MacDonald was retained by the family of Lawrence Aoki. He was retained through counsel for Mr. Aoki, the Colorado State Public Defender, and specifically Deputy State Public Defender Frank J. Viehmann.
3. The family of Defendant Aoki retained Dr. MacDonald to evaluate Mr. Aoki and to advise the lawyers for Mr. Aoki concerning the propriety of a mental status defense in these cases.
4. Dr. MacDonald was of the impression and understanding that his evaluation of Mr. Aoki was confidential, in that it was covered by the attorney-client privilege because he was acting as an agent of the defense attorney represented by the Colorado State Public Defender's office.
5. In the course of the evaluation of Lawrence Aoki, Dr. MacDonald advised Aoki of his belief that those items set

forth by Mr. Aoki in the interviews would be confidential and covered by the attorney-client privilege.

6. After the evaluation of Defendant Aoki, Dr. MacDonald orally reported conclusions to the Deputy State Public Defenders but has prepared no written report.

7. On September 11, 1986 this Court ordered the People's endorsement of Dr. MacDonald and that Dr. MacDonald prepare a report concerning the Aoki evaluation.

8. Neither Mr. Aoki, his family, nor the office of the Public Defender has waived the attorney-client privilege which Dr. MacDonald believes binds his confidentiality of the evaluation.

9. To require Dr. MacDonald to testify concerning his confidential evaluations of Lawrence Aoki would be to violate:

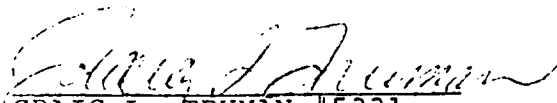
a) Mr. Aoki's right to the effective assistance of counsel as guaranteed to him by the Sixth Amendment to the United States Constitution and the parallel Article II, Section 16 of the Colorado Constitution,

b) the dictates of C.R.S. Section 13-90-107(b) which statutorily incorporates the common law attorney-client privilege and extends it to agents of the attorney, such as secretaries, stenographers, clerks,

c) the code of medical ethics that Dr. MacDonald has sworn to uphold in that Dr. MacDonald gave Defendant Aoki advice that whatever was revealed to Dr. MacDonald in the course of the evaluation would be reported only to the lawyer and would be confidential as to any other person,

d) Dr. MacDonald's own personal code of ethics in that Dr. MacDonald gave Mr. Aoki his personal word that Dr. MacDonald would not testify unless called by Aoki or Aoki's own lawyer.

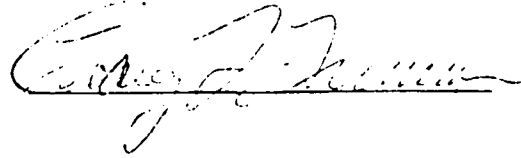
WHEREFORE, witness John M. MacDonald, M.D. seeks an Order from this Court quashing the subpoena issued by the District Attorney requiring him to testify as to confidential matters in the evaluation of Lawrence Aoki.

  
CRAIG L. TRUMAN #5331

CRAIG L. TRUMAN & ASSOCIATES  
1900 Wazee, Suite 305  
Denver, CO 80202  
(303) 297-8800

CERTIFICATE OF SERVICE

I hereby certify that I hand-delivered a true and accurate copy of the foregoing MOTION TO QUASH SUBPOENA OF JOHN M. MacDONALD, M.D. to the office of the District Attorney, 303 W. Colfax, Suite 1300, Denver, CO 80204, this 19th day of September, 1986.

A handwritten signature in cursive script, appearing to read "Craig A. Hansen", is written over a horizontal line.

APPENDIX T

CT. RM 12 SEP 16 '86

DISTRICT COURT, DENVER COUNTY, COLORADO

Case No. 86CR0852, Division 12

MOTION TO QUASH SUBPOENA

THE PEOPLE OF THE STATE OF COLORADO

Plaintiff

v.

LAWRENCE S. AOKI

Defendant



District Court  
City & County of Denver, Colo.  
Certified to be a true and correct  
copy of the original in my custody.

FEB 23 1987

Court  
Secy  
By Michelle Mas  
Deputy Clerk

IN RE: SUBPOENA TO FREDERICK MILLER, M.D.

Witness Frederick Miller, M.D., moves to quash the subpoena to him on the following grounds:

1. Dr. Miller is a psychiatrist licensed as a physician within the state of Colorado.
2. During the course of representation of the Defendant, Lawrence S. Aoki, the Colorado Public Defender System retained Dr. Miller to consult with the defense and to examine their client.
3. Dr. Miller accepted the appointment with the understanding that he was being retained by the defense, as a consultant to the defense, and that his notes, impressions, and advice remain confidential between he, Mr. Aoki and the defense.
4. Before interviewing Mr. Aoki, Dr. Miller advised Mr. Aoki that their conversation would remain confidential and anything related by Mr. Aoki or learned by Dr. Miller in the course of his investigation in this matter remain confidential and could not be shared with third parties without the permission of the Mr. Aoki and his attorneys.
5. Dr. Miller has filed no written report and he has not been subpoenaed by defense counsel to testify in this matter.
6. Dr. Miller has not received a release from Mr. Aoki allowing him to discuss any of the matters learned through privileged communications in this case.
7. Dr. Miller's meetings with Mr. Aoki are covered under both the physician-patient privilege and the attorney-client privilege and

are work product of the defense as he was retained solely by the defense and with an express understanding that he was an adjunct to the defense investigative effort. For these reasons, Dr. Miller may not testify without permission of the defense and Mr. Aoki.

LARRY POZNER & ASSOCIATES, P.C.



Larry S. Pozner, #2792  
Attorney for Frederick Miller  
1890 Gaylord Street  
Denver, Colorado 80206  
333-1890

CERTIFICATE OF SERVICE

I certify that on September 16, 1986 a copy of this pleading was served by hand on the Office of the District Attorney.



APPENDIX U



DISTRICT COURT, DENVER COUNTY, COLORADO

Case Nos. 86CR852 and 86CR176, Courtroom 12

MOTION TO QUASH SUBPOENAS

THE PEOPLE OF THE STATE OF COLORADO

Plaintiff

v.

LAWRENCE AOKI

Defendant



District Court  
City & County of Denver, Colo.  
Certified to be a full, true and  
correct copy of the original in my custody.

FEB 23 1987

Court  
Secy Clerk of the District Court  
By Michael M. [Signature]  
Deputy Clerk

In Re: Subpoenas to Frederick M. Miller, M.D., and Fredrick Kadushin, Ph.D.

Frederick M. Miller, M.D., and Fredrick Kadushin, Ph.D., through their attorney, Larry Pozner & Associates, P.C., move this Court to quash the prosecution subpoenas of these individuals on the following grounds:

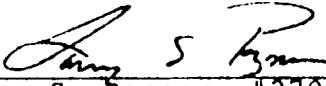
1. Counsel incorporates by reference the matters alleged in the Petition for Relief Pursuant to Rule 21 of the Colorado Appellate Rules in the Nature of Prohibition, attached hereto as Exhibit A.
2. The Petition for Relief in the Nature of Prohibition was filed with the Supreme Court on September 24, 1986.
3. On September 25, 1986, the Court issued an order to show cause.
4. On October 9, 1986, before the Court had replied to the order to show cause, the district attorney's office moved the Supreme Court to discharge the rule to show cause on the grounds that it was moot.
5. On October 17, 1986, defense counsel filed a motion requesting the Court not to discharge the rule, stating that the matter was highly likely to arise in other cases involving these physicians and others similarly situated.
6. Nonetheless, the Supreme Court believed the government's assertion that the matter was moot and dismissed the order to show cause.
7. Subsequently, the same prosecutors have served the same doctors with subpoenas asking for essentially the same testimony in the same cause of action.

8. These actions are taken in bad faith and are pursued with full knowledge that the Supreme Court previously had the matter under consideration, and the actions of the district attorney in filing a motion to moot the issue and then following up with subpoenas to these doctors is indicative of a lack of good faith on their part.

Wherefore these expert witnesses ask for the following relief:

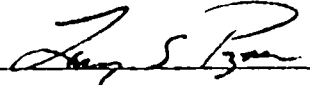
- A. The subpoenas served in this matter be quashed.
- B. These expert witnesses be entitled to compensation from the court for costs they have incurred for attorneys fees in this matter.
- C. Such other ruling as the Court may deem just and proper.

LARRY POZNER & ASSOCIATES, P.C.

  
\_\_\_\_\_  
Larry S. Pozner, #2792  
Attorney for Frederick Miller and  
Fredrick Kadushin  
1890 Gaylord Street  
Denver, Colorado 80206  
333-1890

CERTIFICATE OF SERVICE

I certify that on December 17, 1986, a copy of this pleading was served by hand on the Office of the District Attorney, 303 West Colfax, Suite 1300, Denver, Colorado 80204.

  
\_\_\_\_\_

**APPENDIX V**

Case No. 87SA47

AFFIDAVIT OF COUNSEL

LAWRENCE S. AOKI, Petitioner

v.

Appendix V is a written copy of the advisement to Mr. Aoki which had been read to him at his arraignment on the plea of Not Guilty By Reason of Impaired Mental Condition. The Court read from an identical copy, which Defendant and counsel signed and returned to the Court.

Frank J. Viehmann  
FRANK J. VIEHMANN  
Deputy State Public Defender

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

Subscribed and sworn to before me this 5<sup>th</sup> day of March, 1987.

My Commission expires: Feb. 10, 1990.

Cathy Sheis  
Notary Public

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO

Criminal Action No. 86CR 852, Courtroom 12

86CR 1684

ADVISEMENT OF PLEA OF NOT GUILTY BY REASON OF IMPAIRED MENTAL  
CONDITION

PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

v.

Lawrence Aoki

Defendant.

TO THE DEFENDANT, \_\_\_\_\_:

Before accepting your tendered plea of Not Guilty by Reason of Impaired Mental Condition, the Court advises you that the effect and consequences of your plea are as follows:

1. Under certain circumstances, it is appropriate for you to assert the defense of impaired mental condition against the charges which have been brought against you by the District Attorney. Upon entry of a plea of not guilty by reason of impaired mental condition, I will commit you for an examination by one or more psychiatrists appointed by me. A written report of any such examinations will be given to the court and copies will be given to the District Attorney and your lawyer.
2. In addition to the psychiatrist or psychiatrists appointed by me, you have the right to be examined by a psychiatrist, psychologist or other expert of your own choice at your own expense or at the expense of the court if you are indigent. A copy of the report by your expert must be given to the District Attorney within a reasonable time of trial if you intend to call your expert as a witness. Otherwise, the results of his examination will only be available to you and your attorney.
3. During any examination ordered by the Court, you may be subject to a narcoanalytic interview in which such drugs as are medically appropriate (e.g. sodium amytal and sodium pentothal) may be used and you may also be required to take a polygraph examination.
4. The examinations will take place at the Denver County Jail, the Colorado State Hospital at Pueblo, Colorado, the Colorado Psychiatric Hospital in Denver, Colorado, or at such other public institution as may be designated

5. You may invoke the privilege against self-incrimination during the course of any such examination, but the fact of your noncooperation with the psychiatrists and other personnel conducting the examination may be admissible in your trial on the issue of impaired mental condition.
6. The psychiatrist or other personnel performing the examinations ordered pursuant to your plea may examine any evidence in the control of the prosecution concerning the facts and circumstances surrounding the commission of the offense or offenses for which you are charged. In addition, they may also rely upon any hospital records, laboratory reports, X-rays, electroencephalograms, psychological testing, and medical and social histories given by you in reaching their conclusions.
7. You are entitled to have a trial by a jury or by the court on the issue raised by your plea of not guilty by reason of impaired mental condition.
8. Evidence acquired either directly or indirectly for the first time from a communication derived from your mental processes during the course of any ordered examination will be admissible against you ONLY to rebut evidence of your mental condition introduced by you to show incapacity to form a culpable mental state; or, if you testify on your own behalf during your trial, it may be used to impeach or rebut your testimony.
9. If after trial on the issues raised by your plea of not guilty by reason of impaired mental condition you are found guilty, then you will be sentenced accordingly. If you are found not guilty, a judgment of acquittal will enter accordingly. If you are found not guilty by reason of impaired mental condition, you will be committed to the custody of the Department of Institutions where you will be held for care and psychiatric treatment in any facility the Executive Director of the Department of Institutions deems appropriate for your proper care, custody and treatment and the protection of the public. You will be kept in the custody of the Director of the Department of Institutions until it is determined by the court or a jury after a hearing that you have no abnormal mental conditions which would be likely to cause you to be dangerous either to yourself or to others or to the community in the reasonably foreseeable future. Your rights concerning eligibility for release are set out in C.R.S. 16-8-115, et. seq.

DATED this \_\_\_\_\_ day of \_\_\_\_\_.

BY THE COURT:

~~John N. McMullen~~ JOHN W. COUGHLIN  
District Court Judge

ACKNOWLEDGEMENT

I, \_\_\_\_\_, acknowledge that I have received a copy of this advisement and have gone over the advisement with my attorney. I fully understand my rights concerning my plea of not guilty by reason of impaired mental condition.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Attorney for Defendant

**APPENDIX W**



Criminal Action No. (86CR0852)  
87CR1684

Courtroom 12

**CT. BM. 12**

ORDER FOR SANITY AND IMPAIRED MENTAL CONDITION EXAMINATION(S)

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

v.

LAWRENCE AOKI,

Defendant.

On FEBRUARY 9, 1987, this matter came before the Court for MOTIONS HEARING at which time the Defendant LAWRENCE AOKI ~~of not guilty and not~~ ~~guilty by reason of insanity and~~ ~~not guilty by reason of impaired~~ ~~mental condition at the time of the alleged commission of~~ THE OFFENSE (MURDER 1<sup>st</sup>)

DISTRICT ATTORNEY

Based upon the MOTION by the ~~Defendant~~, the Court, pursuant to C.R.S. 16-8-105, 16-8-103.5(4) and 16-8-106, orders that the Defendant shall be examined at DENVER COUNTY JAIL by DR JEFFREY METZNER, who shall conduct an evaluation(s) of the Defendant, complete a written report(s) and render an opinion(s) concerning the Defendant's sanity and/or the mental condition of the Defendant at the time of the alleged commission of the offense(s) charged. Three copies of said report(s) shall be submitted to the Court on or before FEBRUARY 17, 1987.

The test for "insanity" is set forth in 1973 C.R.S. 16-8-101 (as amended, 1983):

District Court  
City & County of Denver, person who is so diseased or defective

in mind at the time of the commission of the act as to be incapable of distinguishing right from wrong with respect to that act.

FEB 23 1987

But care should be taken not to confuse such mental disease or defect with moral obliquity, criminal depravity, or passion growing out of

Clerk of the District Court  
By Michael A. [Signature]  
Deputy Clerk

anger, revenge, hatred, or other motives, and kindred evil conditions, for when the act is induced by any of these causes, the person is accountable to the law.

- (2) The terms "diseased or defective in mind" as used in subsection (1) of this section, do not refer to an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

The definition of "impaired mental condition" is set forth in 1973 C.R.S. 16-8-102(2.7) (as amended, 1983):

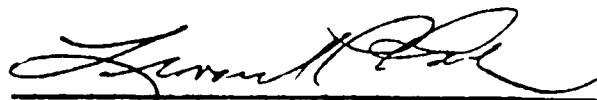
"Impaired mental condition" means a condition of mind, caused by mental disease or defect, which does not constitute insanity but, nevertheless, prevents the person from forming a culpable mental state which is an essential element of a crime charged. For the purposes of this subsection (2.7), "mental disease or defect" includes only those severely abnormal mental conditions which grossly and demonstrably impair a person's perception or understanding of reality and which are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance; except that it does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

The culpable mental state in the case of MURDER 1<sup>o</sup>  
WHICH is AN ESSENTIAL ELEMENT OF THE CRIME CHARGED.  
as defined in 1973 C.R.S. 18-1-501 (1978 Repl. Vol.) INTENTIONALLY,  
AFTER DELIBERATE

A further hearing in this case is set FEBRUARY 17,  
1987 at 8:30AM

DATED this 11th day of FEBRUARY, 1987.

BY THE COURT:

  
Judge

## APPENDIX X

86CR1684 LAWRENCE AOKI  
JAIL (FRANK VIEHMAN/STEVE GAYLE)  
DA: DAVID OLIVAS/AL LACABE/CHARLES TINGLE  
DEFT, ATD'S & DA'S APPR FOR CONT JTRL  
DEFT'S CASE TO CONCLUSION  
JURY INSTRUCTED; FINAL ARGUMENTS HELD  
ON CT'S OWN MOTN 13TH JUROR DISCHARGED  
JURY RETIRES IN CHARGE OF SWORN BAILIFF  
ORD: CONT FOR DELIBERATIONS UNTIL 10-3-86 AT 9:00 AM  
JURORS SWORN & CAUTIONED  
ORD: DEFT REMANDED  
FLGS: DEFT'S TENDERED INSTRUCS #1,2,3 & 4  
\*\*FILE RETAINED

District Court  
City & County of Denver, Colo  
Certified to be a full, true and correct  
copy of the original in my office



MAR 03 1987

Clerk of the District Court  
*Arma Nuten*  
Deputy Clerk

CTRM 12 JUDGE JOHN W COUGHLIN  
12-17-86 CT RPTR PAM BACLAWSKI

86CR1684 LAWRENCE AOKI  
JAIL (FRANK VIEHMAN)  
DA: DAVID OLIVAS  
DEFT, ATD & DA APPR; LARRY POZNER APPR FOR DRS McDONALD, KADUSHIN &  
MILLER  
STMTS FROM ATD, DA, LARRY POZNER & CT  
ORD: DEFT'S MOTN THAT DRS BE STRICKEN AS WITNESSES - DENIED  
ORD: ATTY POZNER'S MOTN TO QUASH SUBPOENAS OF DRS - DENIED  
ORD: DRS WHO EXAM DEFT WILL BE ALLOWED TO BE CALLED BY PROSECUTION IF  
DEFT OFFERS EXPERT TESTIMONY AS TO MENTAL STATE  
ORD: SET ON 12-29-86 AT 8:30 AM FOR STATUS (POZNER & TRUMAN TO APPR)  
ORD: SUPPRESSION HRG SET ON 1-23-87 AT 8:30 AM

ORD: DEFT REMANDED

CTRM 12 JUDGE JOHN W COUGHLIN  
1-9-87 CT RPTR PAM BACLAWSKI

86CR1684 LAWRENCE AOKI  
JAIL (FRANK VIEHMAN/STEVE GAYLE)  
DA: DAVID OLIVAS  
DEFT, ATD & DA APPR FOR STATUS  
STMTS FROM ATD, DA & CT  
DEFT ENTERS PLEA OF NOT GLTY BY REASON OF IMPAIRED MENTAL COND; DEFT ADV,  
CT ACCEPTS PLEA  
ORD: DR JEFFREY METZNER APPT TO EXAM DEFT AS TO IMPAIRED MENTAL COND  
ORD: DR METZNER TO EXAM DEFT AFTER 1-16-87 - AFTER DECISION ON MOTNS  
ORD: DEFT GRTO STAY OF EXEC TO FILE MOTNS UNTIL 1-16-87  
ORD: MOTNS TO REMAIN SET ON 1-23-87 AT 8:30 AM & DRS RPT DUE  
ORD: DEFT REMANDED  
\*\*ALL FLGS FILED IN CASE #86CR852  
\*\*NO FILE

## APPENDIX X

[illegible]

1. *Introduction*  
 2. *Background*  
 3. *Methodology*  
 4. *Results*  
 5. *Discussion*  
 6. *Conclusion*  
 7. *References*  
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Deputy Clerk

86CR1684      LAWRENCE AOKI  
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CTRM 12 JUDGE JOHN W COUGHLIN  
1-2-87 CT RTTR PAM BACLAWSKI

18041804 LAWRENCE AOKI  
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