

Ex. 29

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NEW YORK: CRIMINAL TERM: PART 32

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4 PEOPLE OF THE STATE OF NEW YORK

: Indict.  
11987/91

5 - against -

: Att. Mur.

6 DOMINIC FRANZA.

7 Defendant.

: Hearing

8 -----  
9 111 Centre Street  
10 New York, New York  
11 January 21, 1992

12 B e f o r e :

13 HONORABLE PAUL P. E. BOOKSON,

J.S.C.

14 A p p e a r a n c e s :

15 ROBERT M. MORGENTHAU, ESQ.

16 District Attorney, New York County  
17 One Hogan Place  
18 New York, New York 10013

BY: JOHN BRANCATO, ESQ.

19 Assistant District Attorney  
20 For the People

21 ALLAN BRENNER, ESQ.

22 For the Defendant.

23 Joann Sokol, CSR

24 Frank Rizzo

25 Senior Court Reporters

Colloquy

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respect to Rosario, Mr. Brancato?

MR. BRANCATO: Counsel is correct when he says it has to do with an agency which I have no control over, the Federal authorities.

THE COURT: The fact that you have no control, the question is: Would that -- that would not excuse you from making available the Rosario.

MR. BRANCATO: That's correct. What is in my possession, over the past couple of weeks, Mr. Brenner has appeared in my offices on several occasions and we have exchanged some material. I am going to come up with a list that reflects everything that I have turned over to him for purposes of this hearing.

THE COURT: You see, Mr. Brenner is complaining that is a list of things that haven't been turned over to him. You are going to give me the list that you have. We will never resolve this. I want to know what is it that Mr. Brenner sees and he is entitled to that he has not yet received.

## Colloquy

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2 The fact that is so, in fact that it is  
3 so, how can I -- I take it that these agents  
4 are testifying at this hearing?

5 MR. BRENNER: One of them is testifying.  
6 How can I then engage in a cross examination  
7 on that material?

8 MR. BRANCATO: If I may just  
9 recapitulate, this Court ordered the  
10 hearing on the following matters? A Huntley  
11 hearing as to statements taken from the  
12 defendant.

13 THE COURT: Did you get a copy of that?  
14 It was a short decision?

15 MR. BRENNER: I saw it in the file.

16 MR. BRANCATO: The person who would  
17 testify to that branch of the defendant's  
18 motion is Detective Giorgio. That has  
19 been turned over to counsel in the Police  
20 Department file. Property that was  
21 recovered from the defendant pursuant to his  
22 arrest. Likewise, would be testified to  
23 through that evidence. Probably through  
24 Detective Giorgio. Lastly, the search of  
25 the defendant's apartment.

likewise



## Colloquy

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2 is concerning Mr. Behan's testimony and I  
3 believe we can have those papers copied for  
4 him today and turned over to him.

5 THE COURT: You contemplate to Federal  
6 Agent Behan testifying in this  
7 proceeding?

8 MR. BRANCATO: Yes.

9 THE COURT: What about the other Federal  
10 agent who obtained the warrant?

11 MR. BRANCATO: He will testify today.

12 THE COURT: Raffa?

13 MR. BRANCATO: Raffa will testify.

14 THE COURT: So both will testify.

15 MR. BRENNER: Your Honor, may I say  
16 something?

17 THE COURT: Yes.

18 MR. BRENNER: First of all, Mr.  
19 Brancato made certain representations as to  
20 Detective Giorgio. I received I believe  
21 complete police reports. But, I do not  
22 know whether Detective Giorgio testified in  
23 the Grand Jury. I have no Grand Jury  
24 minutes, which would be Rosario material  
25 regarding Giorgio.

## Colloquy

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MR. BRANCATO: He testified in the first proceeding and they are about eight pages. I can turn that over to counsel. If I recall correctly, one time we may have spoken about you coming to my office to pick up some of the Grand Jury testimony.

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MR. BRENNER: We may have. Second of all, with regards to Agent Raffa, who is the Federal agent who procured the warrant from the Magistrate, my response is twofold.

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First of all, if there are other materials which he embraced and communicated to the Federal Magistrate relying on them, then they are Rosario as well.

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THE COURT: Hold up a second. When Agent Raffa made applications for the warrant was there a proceeding on the record or was it solely exclusively on papers?

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MR. BRANCATO: When he secured the warrant?

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THE COURT: I don't mean the actual physical moment of the securing. But, he

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made application.

MR. BRANCATO: The application was made to the Magistrate who is on call at Foley Square and they spoke with the Honorable Berkinow, who took the application over the telephone due to what he turned were exigent circumstances. There is a transcript of that conversation with the Magistrate. That is affixed to our copy.

THE COURT: Were there any papers either at the time or subsequent to, filed with the Court which could not be done due to exigent circumstances, but the Court allowed it to be filed so they have a complete file?

MR. BRANCATO: My understanding is that they do not commence a proceeding over in the Federal Court on this case. That's my understanding to this day.

THE COURT: Let me just -- I want to focus on and streamline what it is precisely that you are making reference to in the paperwork.

MR. BRENNER: I have the transcript of the spoken application so we agree that is

## Colloquy

1  
2 Rosario material. I have that. If Agent  
3 Raffa, he didn't memorize the thing that he  
4 was saying to the Magistrate, he was  
5 either reading it for something or he had  
6 prepared on his own report and used it to  
7 make an application, in either case.

8 THE COURT: Do you have that?

9 MR. BRENNER: I don't have any of that,  
10 and I would like to be able to identify it.  
11 Perhaps when Agent Raffa takes the stand,  
12 that will be fine.

13 As far as Agent Behan is concerned, I  
14 have nothing. Mr. Brancato has conceded  
15 that.

16 MR. BRANCATO: Raffa has informed me that  
17 what happened on the night of February 11th  
18 was that he spoke with the U.S. Attorney  
19 McEnany, and I will provide this spelling  
20 at a later point. But at that point he had  
21 been in communication with Agents of the ATF  
22 down in Puerto Rico. They had faxed him  
23 certain material. Among that material being  
24 the bill that was faxed, the pipe bomb  
25 sent to the grandmother in Puerto Rico.

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THE COURT: Would it be correct to say that the Assistant U.S. Attorney who made the notes are in some filed as opposed to Agent Raffa?

MR. BRANCATO: That is a possibility. But, Raffa tells me he generated no material in this case. Rather, he communicated what was on the notes.

MR. BRENNER: My position is that he had adopted someone else's material.

THE COURT: It would be equal.

MR. BRENNER: Yes.

THE COURT: All I am saying to you is why don't we wait so we can flush this out. I am not precluding anything. I merely want to try to --

MR. BRENNER: Lastly, not directly germane to the hearing, a warrant application affidavit of Agent Raffa, he makes reference to an incident by which a pipe bomb was referred to, not in Puerto Rico, but at the home of Mrs. Franza's brother. My client's brother-in-law.

THE COURT: Where?

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MR. BRENNER: In the Bronx, and that is abstensibly put forth before the Magistrate to consider probable cause to search Mr. Franza's apartment. Information has come back to me that at the time that his incident was investigated by the arson and explosive squad, New York City Police as well as the detectives under Detective Giorgio's command, Mr. Franza -- Mr. DeCasta, the brother-in-law, provided a list of possible suspects, people who might have an interest in seeing him leaving this earth. That that did not include my client. In as much as that information was eventually used to inculcate Mr. Franza in the warrant, I would consider that list to be Brady material. I have made a request of Mr. Brancato for that without result.

THE COURT: Well, before I respond, I will let Mr. Brancato respond.

MR. BRANCATO: First is that at the time that Mr. Brenner told me about this, I spoke ---

THE COURT: Before you even go further,



## Colloquy

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2 let me get this straight. This is a  
3 verbal list, verbal list provided — how  
4 was it, verbal or written?

5 MR. BRENNER: I believe that a report  
6 was prepared.

7 THE COURT: Based on a verbal  
8 transmission?

9 MR. BRENNER: Pursuant to the victim of  
10 Mr. Franza's pipe bomb.

11 THE COURT: Purported victim.

12 MR. BRENNER: Well, Mr. DeCasta at the  
13 time didn't say that it was Dominic Franza's  
14 pipe bomb. In my position he said to the  
15 detective it could be a — could be,  
16 consider that it could be.

17 THE COURT: Something that would seek  
18 to do him harm?

19 MR. BRENNER: Yes. Months later an agent  
20 comes in and says Dominic Franza sent a  
21 pipe bomb to Mr. DeCasta, to give us a  
22 warrant to search his apartment. So to agree  
23 that is not the case, particularly with  
24 regard to this hearing, but that issue in  
25 this hearing would be favorable to the

## Colloquy

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3 the notion a list that contradicted a notice that my  
4 client sent that pipe bomb. It would  
5 undercut their own application for a  
6 warrant.

7 THE COURT: Would it undercut it or  
8 merely was one of the strong possibilities,  
9 whatever possibility they have had in the  
10 matter of such seriousness, they have an  
11 obligation to pursue.

12 MR. BRENNER: Or it may have an  
13 obligation to disclose to Mr. Franza.  
14 Your Honor, I don't know until I -- I know  
15 the existence. I don't know what line to  
16 take.

17 THE COURT: If you are saying that  
18 DeCasta was supplying names of what he  
19 thought conceivably would seek to do him  
20 harm, he didn't -- he did contemplate Mr.  
21 Franza's name. That constitutes Brady  
22 Material on the question now?

23 MR. BRENNER: I will go one step  
24 forward. Part and parcel of the defense  
25 here, this will come as no surprise to Mr.



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MR. BRANCATO: One of the statements that we initially turned over to the defendant in the voluntary disclosure information concerns the statement that the defendant gave to Detective Ortiz. When he said: I understand you have list of ten suspects or words to that effect. When Brenner told me about the possibility of the existence of this list, I contacted the following detectives. I contacted Detective Giorgio. I contacted members of the Arson Explosion Squad.

But, what I was informed of was that there was no list. But, that at some point the defendant may have been told that by the Detective Ortiz solely for the purposes of maintaining the defendant's cooperation through this investigation.

THE COURT: So there is something we agree upon or disagree upon. There are two versions now, your version and Mr. Brenner's version as to whether or not when the detective, whichever detective interviewed Mr. DeCasta, they came upon this pipe

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bomb, whether or not he supplied names in the course of a conversation or whether he did not. Your version was that he did not in effect give a list of the possible names?

MR. BRANCATO: That's correct.

THE COURT: Well, that is something now for us -- which detective was it that got the list? Is this the same Raffa?

MR. BRENNER: Two detectives from the Arson and Explosion Squad. Their names are on a report that Mr. Brancato provided.

THE COURT: Those detectives gave that information. Let me see if I have the sequence correct, to Detective or Agent Raffa who used that information in his application before the Magistrate?

MR. BRENNER: No, no, your Honor. The information that I am alleging exists is information that Agent Raffa made no use of.

THE COURT: I see.

MR. BRENNER: Instead Agent Raffa stated in fairly conclusive terms that my client sent a pipe bomb to Nelson DeCasta and now raises another issue.

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THE COURT: We don't know at this point, at least the Court doesn't know on what basis Agent Raiffa made that determination.

MR. BRENNER: That's correct.

THE COURT: So the fact that there is other information circulating amongst detectives doesn't exclude what information Agent Raiffa had with, leads him at least when he made that application to buttress it now. Again, those are the items we will have an opportunity to explore as we go through.

MR. BRENNER: Along these lines, your Honor, I have not received one tread of paper, either discovery or Rosario material, having to do with that pipe bomb. Now, it is a crime charged in this indictment. However, it is part and parcel of the Government's application at the time before the Magistrate for a warrant. In as much as it is part of the People's hearing, I had challenged the probable cause for the issuance of this warrant, I believe they would be obligated to provide me with Rosario

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## Colloquy

1 material on that uncharged crime. I didn't  
2 put it in the warrant. If it is the People's  
3 position that because they believe that  
4 Dominic Franza sent a pipe bomb to Nelson  
5 DeCasta, they should have a right to an  
6 arrest warrant. That's fine. As far as it  
7 goes. But, that entitles me to the  
8 material on discovery regarding that  
9 particular incident.

10 THE COURT: All right, Mr. Brancato.

11 MR. BRANCATO: I have those papers in my  
12 office. That was not charged in this  
13 indictment, and I can turn over these papers  
14 if you so order me.

15 THE COURT: What is the hesitation or  
16 reservation with respect to those papers?  
17 That is what I am inquiring now? You may  
18 not, the very act of turning over the  
19 papers, does not ipso facto characterize  
20 them necessarily the same way that the  
21 defendant does. But, in what way are the  
22 People either prejudiced or have any  
23 hesitation about turning that material over?  
24 You said the act of turning them over does  
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## Colloquy

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not constitute, then that these papers,  
either Rosario, Brady or anything else,  
doesn't mean any of these things. It is just  
a cooperative effort of a full disclosure  
which doesn't necessarily come under the  
ambit of the constitutional requirements.

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MR. BRANCATO: At this point I don't  
think that the People's case will be  
prejudiced by turning over that material to  
the defendant.

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THE COURT: All right. Then at some point  
let's make that material available to Mr.  
Brenner so there is no delay, no possible  
prejudice to the defendant.

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What else?

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MR. BRANCATO: Let me just state before I  
forget it, up to this point I have told  
counsel of the reports that have been  
generated by the scientist associated not  
only with ATF, but also with the Police  
Department. The other day I called him and  
I informed him of this over the phone. I  
just wanted to make it known. Now, there  
was a note that was recovered from the

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defendant's apartment. It had the name of Julio Ortiz.

The reason that that item was taken was the name of the person who is the name of the sender of the bomb to Puerto Rico beared Julio Ortiz' name. That property was taken and sent to the Police Lab some months ago.

THE COURT: The note?

MR. BRANCATO: Yes. About a week ago Detective Breslin appeared in my office along with Detective Giorgio in going through the items of that evidence that was taken in this case. I asked Detective Breslin to take the note out of the plastic so that we can see whether or not there was any writing on the reverse side. As he was sitting there in my office, he indicated to us that he could see that there was some imprinted writing on the note. With the naked eye could make out the brother-in-law's first name and a couple of letters of the last name. It could make out the address of the brother-in-law as well as the description. I requested at that time that



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that the detective take it back to the lab and use whatever procedure is available to him to raise the writing. He did and called me the next day. He said that he could make out the brother-in-law's entire name, address, his wife's name as well as the description of height and weight. Below that he could make out his mother-in-law's address and that since this piece of paper was creased between the mother-in-law's address and mother-in-law's name, address and description that he could be making out two letters that appeared above the name, which constituted S-H-O-O-T. He has tried to enhance this. He is preparing whatever exhibit he can from that.

But, what I did tell Mr. Brenner last week about that, in fact, I think that I may have told him the following day when we spoke up to this point that as well as all of the other documents I served upon him constitute the scientific examination and tests that have been done in connection with this case.

MR. BRENNER: Mr. Brancato informed me

## Colloquy

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2 about this on Friday. I find it somewhat  
3 disconcerting that an investigation that has  
4 been pending for a year and a half the police

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6 THE COURT: Would he ---

7 MR. BRENNER: That the Police stumbled  
8 upon Mr. Franza's number, what might be  
9 classified as incriminating piece of  
10 evidence. Nonetheless, two months ago when I  
11 first entered into the case I made a demand  
12 to see all of the property taken from Mr.  
13 Franza's apartment pursuant to the search  
14 warrant, without impuning Mr. Brancato's  
15 acquiescence in the court order to comply. I  
16 received it peacefully. <sup>Friday,</sup> I learned  
17 about this and I went the Wednesday before  
18 I learned about a two page document which  
19 purportedly pertains to <sup>be</sup> Mr. Franza's  
20 handwriting listing book prices, titles on  
21 how to make bombs, how to use guns, how to  
22 buy silencers.

23 This case has been in trial posture now  
24 for about a month. Discovery is still coming  
25 in and I am not sure that I understand



## Colloquy

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2 why this is. It is not that we are talking  
3 about reports. We are talking about ~~a~~  
4 property that was taken from my client's  
5 home pursuant to ~~his~~ <sup>he</sup> search warrant in  
6 February of 1991, almost a year ago, ~~and the~~  
7 ~~most~~ perhaps coincidentally the most  
8 incriminating pieces of that property are  
9 different in as we are talking about  
10 proceeding to jury selection and I don't  
11 know why. It is really not my place to  
12 answer that question. It is my place to  
13 insist that Mr. Franza's right to view  
14 evidence and otherwise make use of that  
15 pursuant to 240.20.

16 THE COURT: All right. Mr. Brancato, is  
17 there anything else that will now  
18 constitute newly discovered material with  
19 respect to this Prosecution?

20 I recognize and I take your  
21 explanation that on examination of the  
22 reverse side of this paper which was  
23 contained in a plastic covering that  
24 certain writings have now been delivered,  
25 even though it wasn't written in ink, it's

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the impression, but I don't want the trial to get underway and then find ourselves suspending as Mr. Brenner has to have an opportunity to examine what the prosecution produces.

MR. BRANCATO: At one time we turned over to counsel an inventory of what was recovered as to the first search warrant and second search warrant. That piece of paper was reflected on the inventory.

THE COURT: But not what was on it.

MR. BRANCATO: No.

MR. BRENNER: It says two pieces of paper.

MR. BRANCATO: I guess we are going to hold everyone's feet to the strictest sense. Counsel was aware, these items, these pieces of paper were taken from his apartment. Now, at a subsequent date counsel asked if I could arrange for him to see the silencer manual as well as the cards which bears the name U.S.A. Electronics and I told him that I would work to make it available so he could go

## Colloquy

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2 we'll deal with it on the basis that the  
3 Court has certain approaches to matters of  
4 that nature, certain restrictions which are  
5 imposed, ~~certain sanctions~~, but I don't  
6 want to get a fear, I'm accepting for the  
7 fact right now this case is trial ready and  
8 other than the matters we just eluded, all  
9 material that the defense is rightfully  
10 entitled have for their examination prior  
11 to the trial and prior to any cross even  
12 with respect to the hearing will be made  
13 and has been made available.

14 I don't want to hear any further  
15 applications.

16 I want you, Mr. Prosecutor, to search  
17 your files, to go over your case so that  
18 nothing is left to chance or nothing has  
19 been overlooked which will generate another  
20 set of motions by Mr. Brenner with respect to  
21 new material. I don't want that to happen.  
22 You'll recall earlier on the Court advised  
23 both counsel we were going to do this by  
24 cooperation, it wasn't necessary to have a  
25 series of orders as we went down the line

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and in the main I think that's been complied with. So just to recapitulate with respect to that which has now become available, they'll make it available to you. And I think Mr. Brancato you can represent there is nothing new at the moment that you're anticipating additional materials. That does not mean to say somebody examining something at some point saying wait a minute, this is something none of us can predict.

*prohibition*

MR. BRANCATO: There may be some more imprinted writing on some other papers. I don't see where we're under any sort of provision from going into what we have available to us up to the point that the case goes to trial and even during the trial and I know of no provision. *prohibition*

THE COURT: There's no provision going into it but it does constitute surprise because if you represent that you have a document and what that document is and then at a subsequent time or at the eve of trial or at the trial you now say this document

## Colloquy

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2 represents something else or something in  
3 addition to that. that's not the way I  
4 want this to proceed. It's not a case  
5 where counsel has the very same documents.  
6 Even if he had a xerox of the document it  
7 would not reveal this right so he would be  
8 in position to prepare.

9 MR. BRANCATO: That's correct. He had a  
10 xerox of that writing.

11 THE COURT: All right. Look, just to  
12 sum up, everything that's been made  
13 available or will be made available will be  
14 complied with respect to furnishing that to  
15 the defense and hopefully there will be no  
16 new material.

17 MR. BRENNER: There is the matter of the  
18 scope of the search---

19 THE COURT: The scope of the search?

20 MR. BRENNER: Whether the search exceeded  
21 the mandate of the warrant, which is  
22 always an issue.

23 THE COURT: Yes.

24 MR. BRENNER: I'm not sure that the  
25 Court can fairly rule -- well, can rule to

## Colloquy

1  
2 the degree that the defendant would like  
3 without the property.

4 THE COURT: Well, see, if the property --  
5 supposing they took a piece of paper and  
6 there's writings on the paper and that is the  
7 subject, and then it is determined there  
8 are other items not visible to the naked  
9 eye --

10 MR. BRENNER: That's not what I'm  
11 addressing. If the paper in and of itself  
12 was not connected in any way to the  
13 investigation of a manufacturer of  
14 shipping and explosive device, and  
15 that's the mandate of the warrant and it's  
16 outside the scope of the warrant it's  
17 suppressed.

18 THE COURT: How can I determine that  
19 without having a hearing.

20 MR. BRENNER: We should have a hearing.  
21 How can we determine at the hearing without  
22 the property because --

23 THE COURT: First of all, I take it all  
24 the material seized have been vouchered,  
25 Mr. Brancato?



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MR. BRANCATO: They have.

And I have a list of those items which were turned over --

THE COURT: Then what is the problem?

I'm still not following your --

MR. BRENNER: The voucher says a piece of paper. This is the problem. The Court feels comfortable ruling that a piece of paper --

THE COURT: You see, when the witness testifies the witness will be required to identify that which the witness took possession of during the course of the search and if the witness says I took a piece of paper and we'll refer to it as People's whatever, that is a piece of paper that had some indicia, and here it is and the Court knows what we are talking about. We are not doing this as an abstraction.

MR. BRENNER: If the witness says that, I have an absolute right to have the piece of paper and cross examine the witness. Where is the property?

THE COURT: All those properties will be

Colloquy

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available during the course of the hearing.

MR. BRANCATO: I can enunciate for you a list of all property taken pursuant to the search warrant.

THE COURT: You're going to seek to introduce that during the course of the hearing and Mr. Brenner will have an opportunity to cross examine.

MR. BRENNER: Thank you.

THE COURT: Call your first witness, Mr. Brancato.

MR. BRANCATO: We call Special Agent Gerald Raffa.

SPECIAL AGENT GERALD RAFFA, having been called by the People, having been first duly sworn, testified as follows:

THE COURT OFFICER: State your name for the record, spelling your last name.

THE WITNESS: My name is Gerald Thomas Raffa, R-a-f-f-a. I'm currently employed by the United States Treasury Department, Bureau of Alcohol, Tobacco and Firearms.



Colloquy

1 I'm a group supervisor for the Arson  
2 and Explosive Squad.

3 THE COURT: YOU may inquire, Mr.  
4 Brancato.  
5

6 DIRECT EXAMINATION

7 BY MR. BRANCATO:

8 Q Sergeant Raffa, how long have you been a  
9 member of the Alcohol, Tobacco and Firearms  
10 Department?

11 A Fifteen-and-a-half years.

12 Q Would you very briefly tell us what your  
13 duties are there?

14 A My duty now is as group supervisor to run  
15 the Arson Explosive Squad for the Federal Government  
16 of all New York City.

17 We investigate arsons and explosions in the  
18 New York City Metropolitan area.

19 Q Were you so employed in that capacity back on  
20 February 11, 1991?

21 A Yes, I was.

22 Q Did there come a point back in February of  
23 1991 that you learned of the defendant in this case,  
24 Dominic Franza?

25 A Yes.

Raffa - People - Direct

1  
2 Q And could you please tell us the circumstances  
3 surrounding how you became aware of the defendant?

4 A It was the morning of February 11, 1991,  
5 approximately 10 or 10:30 I received a call from  
6 a Detective Jerry Giorgio of the 34th Precinct of  
7 the Detective Unit. Basically he told me he was  
8 investigating an individual named Dominic Franza  
9 and that he had information that a bomb had been  
10 sent down to the Puerto Rico. At that time I told  
11 him I'd get back to him and I called our agent  
12 down Puerto Rico.

13 Q And did you then call a <sup>ATF</sup> TAF Agent in  
14 Puerto Rico?

15 A Yes, I did.

16 Q And who did you speak with?

17 A I spoke to an Agent down there, Reyne  
18 Rodriguez.

19 Q Is he also know as Reynaldo Rodriguez?

20 A Yes. He's one of our agents in Puerto Rico.

21 Q Did you learn whether a bomb had been sent to  
22 Puerto Rico from New York?

23 A Yes, I did.

24 Q Could you please tell us what you learned  
25 when you spoke to Reyne Rodriguez?

Raffa - People - Direct

1  
2 A I learned that -- dates I forget right  
3 now. Either February 7th, 8th, or 9th, package was  
4 sent down to Puerto Rico via a Federal Express. I  
5 believed it was mailed in New York on February  
6 4th. That this package had been sent down to  
7 individuals in Puerto Rico. That the individuals  
8 had partially opened the package, had seen a bomb  
9 in the package, had called the Puerto Rican Police  
10 Department who sent out their Bomb Squad. That they  
11 had defused the bomb and that our agents were  
12 working on this bombing investigation with them down  
13 in Puerto Rico.

14 Q Did you learn the name of the family that the  
15 bomb was sent to?

16 A Yes, I did.

17 Q What was their name?

18 A If I can check my records.

19 THE COURT: Just for the Court's  
20 edification, the name of the family name,  
21 it was addressed to a family or --

22 MR. BRANCATO: Addressed to a family.

23 MR. BRENNER: Is the question to whom  
24 it was addressed or whom received it?

25 THE COURT: Who it was addressed to.

Raffa - People - Direct

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MR. BRENNER: If the Court can ask the agent what he is using to refresh his recollection.

THE COURT: As soon as he gets to it, I will have him identify it.

Whatever papers you have, are they in chronological order?

THE WITNESS: To be honest, your Honor, I don't really know if they are in chronological order. Here, I have it here.

THE COURT: What are you referring to?

*(adding)* THE WITNESS: I'm referring to a bill of lading that was on the package, your Honor.

THE COURT: Is this your case file that all this is maintained in?

THE WITNESS: This is one of my agents. One of their case files. I'm the group supervisor. I don't know how he set up the

THE COURT: Well, does this file reflect the work of several agents, more than one agent?

THE WITNESS: Of the whole group, but

Raffa - People - Direct

1  
2 mostly the case agent, Chris Behan. He's  
3 the case agent.

4 THE COURT: All right.

5 THE WITNESS: It's a Federal Express  
6 form and it was sent to the Roman  
7 family.

8 Q And where was it addressed to the Roman  
9 family?

10 A P-a-s-c-o A-g-u-i-l-a, 2629, it looks like  
11 2N and then there's S-e-c-e, it appears to be, and  
12 it says Levittown --

13 MR. BRENNER: Does Mr. Brancato intend to  
14 offer it in Evidence before the agent reads  
15 it through its entirety?

16 Because if he is I will allow him to  
17 read it, if not I would object to its being  
18 read.

19 THE COURT: I will allow it to be read.

20 THE WITNESS: Levittown, spelling C-a-  
21 t-a-n-o, Puerto Rico.

22 Q Did you subsequently learn what the  
23 relationship was between the defendant Dominic Franza  
24 and the Roman family?

25 A Yes, I did.

Raffa - People - Direct

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Q What was the relationship?

A The relationship was that he was married to an individual named Myra Franza and from what I understand --

MR. BRENNER: Objection "From what I understand."

THE COURT: Tell us what you know.

THE WITNESS: It's either her aunt or grandmother. I think it's her aunt down in Puerto Rico who's a member of the Roman family.

Q What else did you do on February 11th once you had learned that this bomb had been sent to Puerto Rico?

A I had the agent down there send me all of their paperwork, the description of the bomb. I had them get back to the bomb personnel down there, get an exact description of the bomb, everything the bomb was made of. The bags that the bomb was in. Exactly everything that was in that parcel including the bomb, I had them do that.

Q Did you receive that information that day?

A Yes, I did. They faxed up all of their reports to us that day.



Raffa - People - Direct

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Q Did you receive a copy of the bill of lading that was affixed to the package which was sent to the Roman family in Puerto Rico?

A Yes, we did.

Q Now, did there come a point that day that you applied for a search warrant from a Judge in the Federal District Court here in New York County?

A Yes, that evening.

Q And could you please tell us how you went about applying for the warrant?

A Sometime that afternoon we had contacted the United States Attorney's office in the Southern District. Basically explained to them what we had. We spoke to an A-U-S-A, a Sharon Davis, she spoke to her bosses. She told us to come over. She spoke to her boss and at that time she got back to us and told us to come on over and we can apply for a search warrant.

Q And did you then go to her office?

A Yes, that evening at approximately 5:30. 6:00 I think it was.

Q Could you please tell us how you went about applying for the search warrant in connection with this case?

Raffa - People - Direct

1  
2 A Basically, we described to her the facts of  
3 the investigation that we had up to that time and we  
4 laid out all these facts to her and she in fact agreed  
5 that we had --

6 MR. BRENNER: Object as to --

7 THE COURT: Sustained.

8 THE WITNESS: She agreed that we had --

9 MR. BRENNER: Objection.

10 THE COURT: Don't tell us her conclusion.  
11 Just tell us what happened.

12 THE WITNESS: We went over and applied  
13 for the search warrant.

14 Q After speaking to her, did you along with  
15 Miss Davis then contact a Federal Magistrate?

16 A Yes, myself, Sharon Davis, her boss, I  
17 think his name is John McEnany.

18 Q And was this done in person with the Federal  
19 Magistrate or over the telephone?

20 A It was over the phone.

21 Q And could you please describe what the set  
22 up was in Miss Davis' office?

23 A We were in John McEnany's office.  
24 McEnany, Davis, myself and one of my other agents.  
25 They hooked up a recording device to the phone.



Raffa - People - Direct

1  
2 They called the Magistrate. At that time the  
3 Magistrate agreed it could be recorded and we put it  
4 on speaker phone so we could all hear what was being  
5 said.

6 Q And who was the Magistrate in this case? I  
7 believe his name is B-e-r-n-i-k-o-w.

8 MR. BRANCATO: I'd like to have this  
9 marked as People's Exhibit 1 for  
10 Identification.

11 THE COURT: People's 1, deemed marked.

12 Q Can you please tell us, you recognize it?

13 A Yes, I do.

14 Q What do you recognize it to be?

15 A Search warrant. authorization for a search  
16 warrant on oral testimony.

17 Q Does People's Exhibit 1 contain the  
18 request for a search warrant as well as the affidavit  
19 that was communicated to the Magistrate in  
20 connection with this case?

21 A Yes, it does.

22 Q Have you had an opportunity to review it?

23 A Yes, I have.

24 THE COURT: You say an affidavit  
25 communicator. How would that be?

Raffa - People - Direct

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Q Sergeant Raffa, in connection with this case did you provide an oral affidavit to the Magistrate?

A Myself and Sharon Davis had sat down and drawn up an affidavit which was then presented to the Magistrate through the United States Attorney McEnany.

Q And this affidavit, were you asked to confirm whether the portions of it were correct or incorrect?

A Yes, I was.

Q Prior to doing that were you sworn by Judge Bernikow concerning the testimony you're about to give concerning the statements that were about to be related to him concerning this application?

A Yes, I did.

Q And did you so swear?

A Yes.

Q At that point did Mr. McEnany relay certain information to the Magistrate?

A Yes, he did.

Q And were you asked to state whether or not it was true or false?

A Yes, it was.

MR. BRANCATO: At this time I would

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offer People's Exhibit 1 into Evidence.

THE COURT: Does Mr. Brenner have a copy of that?

MR. BRENNER: I don't know what he has, your Honor.

THE COURT: Show it to Mr. Brenner.

(People's Exhibit 1 for Identification handed to Mr. Brenner.)

MR. BRENNER: May I have a voir dire, your Honor?

THE COURT: Voir dire.

VOIR DIRE EXAMINATION

BY MR. BRENNER:

Q Agent, is this an original?

A No, I don't think it is an original.

Q Does an original exist?

A I would say yes.

Q Isn't it required as both a manner of Federal agency policy and a policy of the United States Attorney's office to maintain both the originals and the affidavit itself?

A Yes, you returned the original to the United States attorney who issued it and they would keep a copy of the affidavit.

Raffa - People - Voir Dire

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Q And a copy of your affidavit, there's an original of that as well?

A Yes, over at the United States Attorney's office.

Q Did you make any effort to obtain the original?

A No.

Q The document that is marked People's Exhibit 1 has a return sheet next to it, does it not?

A On the back, yes, it does.

Q Now, the return sheet reflects the property that was taken from the apartment, and you would enter that, correct?

A Yes.

Q And then you would sign on the bottom?

A Yes.

Q And did you?

A Yes, I did.

Q I'd ask that this be marked Defendant's Exhibit A.

THE COURT: What are we marking?

MR. BRENNER: It is a search warrant on oral statement with a return sheet on the

Raffa - People - Voir Dire

back provided by the District Attorney's office signed --

THE COURT: It is not contained in this People's Exhibit 1?

MR. BRENNER: It is a similar document but it is different.

THE COURT: All right. Defense Exhibit A for Identification, deemed marked.

MR. BRENNER: May I show it to the witness, your Honor?

THE COURT: Yes.

(Whereupon, Defense Exhibit A deemed marked for Identification was handed to the witness.)

Q Agent Raffa, do you recognize that, the face of the document?

A Yes, I do.

Q Would it be fair to say that that is a search warrant of oral statement?

A That's what it says on the top, yes.

Q And it bears your signature?

A Yes, it does.

Q Can you turn it over, please. Is that a return?

Raffa - People - Voir Dire

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A Honestly tell you I don't know that in fact I returned it. I think that Agent DiPiero returned it.

Q Does your signature appear on the bottom?

A Yes, it does.

Q That is your signature?

A Yes, it is.

Q Can you turn over the face sheet of the document previously marked as People's Exhibit 1?

A Go ahead.

Q That is also a return?

A That looks like -- yes, I would think it would be because Agent DiPiero signed it too. I would think so, yes.

Q Agent Raiffa, there are two different documents purporting to be the same thing, is that right?

A Well, --

Q Yes or no, sir.

A Yes.

Q One has just your signature on it, correct?

A That's correct.

Q And a list of property?

A That's correct.



Raffa - People - Voir Dire

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Q And another has your signature and Agent DiPiero's signature with a list of property described somewhat differently, they are different sheets; is that right?

A Yes, they're different, they are different.

Q Well, which one is right?

A Well, we made copies of this. So, honestly tell you, I probably filled out the back of a several of them that night and I can see like an exhibit, see it says green magic marker, Exhibit 3. I put on one green magic marker.

Q They are different documents?

A Yes.

Q The People are offering one and the one I provided you with is another one and you are here to testify about a search warrant. Which is the right search warrant?

A To honestly tell you, I probably filled out several that night just for our records, and for other records.

THE COURT: You say you filled out several, you made copies. These are ones that can be different than that other?

THE WITNESS: No, your Honor. The face of

Raffa - People - Voir Dire

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them are the same. We made several copies at the United States Attorney's office, which we normally do. When we got up there that night I probably filled out several of the back of the copies, and I didn't put in like an Exhibit 3 and 4. I didn't put down the word one.

THE COURT: You are saying there can be discrepancies and differences between the various copies?

THE WITNESS: Yes, your Honor. Basically, I didn't put down from what I can see here. I didn't put down the number one, your Honor.

Q So there are other copies?

A I would say there are other copies, yes. Like I said, I filled out several that night.

Q Where are they?

A We left one at the residence and one would have been returned to the Magistrate's office. One or two probably in our notes here.

Q So there are different copies than you have?

A We have. Yes, we have the copies.

Q Would there be any problem in furnishing them to Mr. Brancato?

Raffa - People - Voir Dire

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2 A No. We will give him.

3 THE COURT: Obviously he can't furnish  
4 you with the copies that was left at the  
5 home.

6 MR. BRENNER: No. Just the copies that  
7 exist in the file.

8 THE WITNESS: We will call up the United  
9 States Attorney and ask her for her --

10 MR. BRENNER: I would certainly direct  
11 you to do that, Agent Raffa, your Honor.  
12 I have no objection to the People's  
13 proffer so long as they have no objection to  
14 my proffering those documents admitted for  
15 the purpose of the hearing and at this point  
16 it is not clear which is the warrant which  
17 was the warrant that was used, which was --

18 THE COURT: May the Court see both  
19 exhibits, please?

20 What do you say these differ in, Mr.  
21 Brenner?

22 MR. BRENNER: Well, your Honor, as a  
23 matter of Federal policy an executing agent  
24 is not allowed to sign it and an inventory  
25 agent. Copy of that which I was provided

Raffa - People - Voir Dire

1  
2 with has just Agent Raffa's signature,  
3 and the copy that was filed with the  
4 Magistrate and the warrants are returned  
5 are both illegal and I would like to know  
6 which is which since we now have two.

7 THE COURT: How did they differ, is it  
8 identical signatures or --

9 MR. BRENNER: The inventory list  
10 property is the same which they were and the  
11 written was different.

12 THE COURT: These are the two documents.  
13 Am I missing one here?

14 MR. BRENNER: Your Honor, there is a  
15 written letter one written numeral one on  
16 one list.

17 THE COURT: Does that refer to the  
18 quantity or the itemization?

19 MR. BRENNER: Your Honor, there are  
20 different lists. Qualitatively, they are  
21 not different. But the way they are written  
22 are different. These are two different  
23 documents. What they contain is essentially  
24 the same.

25 THE COURT: In what way are they

Raffa - People - Voir Dire

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2 different?

3 MR. BRENNER: Agent Raffa already  
4 testified that the way he recognized it --

5 THE COURT: I am asking you what your  
6 claim is. What is the difference?

7 MR. BRENNER: Your Honor, on one list  
8 there is a numeral preceding each  
9 inventoried item.

10 THE COURT: Again, I am asking you,  
11 does that represent a number?

12 MR. BRENNER: I don't know.

13 THE COURT: Then we should clear that  
14 with the witness. Let me see. Other than  
15 that, what other way are there any other  
16 differences?

17 MR. BRENNER: Just in the signature at the  
18 bottom, your Honor.

19 THE COURT: Now, this is People's 1.  
20 Agent, is that a numerical list or is that  
21 a quantity?

22 THE WITNESS: Well, it is a numerical  
23 list, one through four, Your Honor, and then  
24 when it goes into the one it is one. say  
25 there was only one, one green magic marker,

Raffa - People - Voir Dire

one bag of miscellaneous papers.

THE COURT: Now, this lists quantities, are the same, are they not the same?

And what is the difference between this list and the previous?

THE WITNESS: In this list they are numbered the same, but --

THE COURT: Are they, in fact, numbered?

THE WITNESS: Well, no, your Honor. They are not numbered and I put down in this one here, there is one green magic marker. The word one is written out. Here I used the one in parenthesis.

THE COURT: Does that one refer to the position or is that one referring to the number, the quantity?

THE WITNESS: The quantity, your Honor.

Q So, --

THE COURT: All right now, as a matter of practicality, what you are really interested in -- I don't see any substantive differences, is whether or not the actual return filed with the Magistrate --

MR. BRENNER: Which one is it?

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Raffa - People - Voir Dire

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2 THE WITNESS: The one that contained the  
3 second signature or the second ---

4 MR. BRENNER: Or a different one?

5 THE COURT: An that, Agent Raffa,  
6 indicates that he will through the U.S.  
7 Attorney's office will make an effort to  
8 obtain that.

9 MR. BRENNER: If the Court may recall I  
10 had raised this issue three weeks ago in the  
11 last court appearance and Mr. Brancato  
12 informed the Court since I was questioning  
13 the factual validity of one, any one of  
14 these copies via a via signatures. Mr.  
15 Brancato indicated that he would bring the  
16 original copy and show it to me in the  
17 Court's presence.

18 THE COURT: Not a question of only the  
19 original. Now, it was actually returned and  
20 filed.

21 MR. BRENNER: Well, it would infer it  
22 would be a Court original.

23 THE COURT: All right. Anything else?

24 MR. BRENNER: Not on that offer.

25 THE COURT: You may continue with direct

Raffa - People - Voir Dire

1  
2 examination, Mr. Brancato.

3 Now, just a moment. The People have  
4 moved to admit People's 1 for  
5 Identification and the defendant having  
6 another offer -- why don't we at this point  
7 just admit People's 1 with the  
8 understanding that the Prosecution will  
9 supply whatever that copy is, that one file  
10 which will either render one or the other  
11 academic and then we will receive them and  
12 there will be other issues to deal with.

13 MR. BRENNER: I reserve my right to offer  
14 it at a later time.

15 THE COURT: Yes. I am not precluding  
16 that right at all. But, People's 1 for  
17 Identification now marked People's 1 for  
18 Identification and received.

19 (People's Exhibit 1 for identification  
20 was received into Evidence.)

21 THE COURT: Go ahead, Mr. Brancato.

22 DIRECT EXAMINATION

23 BY MR. BRANCATO CONTINUED:

24 Q What appears on the first sheet of Exhibit  
25 Number 1? Does that contain a request by you to

Raffa - People - Direct

1  
2 search Mr. Franza's apartment at Barker Avenue?

3 MR. BRENNER: Objection. Leading, your  
4 Honor. He can ask him what it contains.

5 THE COURT: Yes. But I think we are  
6 all astute enough to know.

7 MR. BRENNER: Fine, your Honor.

8 THE COURT: Let's go on.

9 Q What does it contain on the first sheet?

10 A Do you want to know the whole sheet, the  
11 substance or -- there is an address in there.

12 Q Who's address?

13 A Dominic Franza's address, which is 3320  
14 Barker, B-a-r-k-e-r Avenue, Bronx, New York, first  
15 floor.

16 Q Does it contain a request to look for certain  
17 property at that address?

18 A Yes, it does.

19 Q What property is that?

20 A Yellow sanitary napkins, black electrical  
21 tape, galvanized pipes and caps, explosive powder,  
22 fuses, two inch plastic tape, brown wrapping tape,  
23 brown wrapping paper, green magic marker, Casio  
24 keyboard, white index cards, heavy duty self sealing  
25 plastic bags, and other evidence of manufacturing

Raffa - People - Direct

1 shipping of explosive device in violation of 18  
2 U.S.C. 922.  
3

4 Q Was that request to search that location for  
5 that items granted by Judge Berkinow?

6 A Yes, it was.

7 Q And what is contained under the oral  
8 affidavit? Does that contain the total amount of  
9 information as communicated to Judge Berkinow through  
10 the U.S. Attorney in your presence when you were asked  
11 to respond to whether it was correct or incorrect?

12 A Yes, it was.

13 Q Where did you get that information to  
14 communicate to Judge Berkinow?

15 A I got it from our agent down in Puerto Rico,  
16 from our licensing section and from our -- the police  
17 officers in the 34th Precinct. Detectives in the  
18 34th Precinct.

19 Q When you say the officers in the 34th  
20 Precinct, who are you referring to?

21 A Jerry Giorgio. His partner, I think it's Gil  
22 Ortiz.

23 Q By agents in Puerto Rico, who are you  
24 referring to?

25 A Reynaldo Rodriguez. I think I spoke to one or

Raffa - People - Direct

1  
2 two others that day when we went in for awhile, so I  
3 spoke to them.

4 MR. BRANCATO: I have no further  
5 questions.

6 MR. BRENNER: I will do the Rosario  
7 inquiry if that is okay.

8 THE COURT: Go ahead.

9 CROSS EXAMINATION

10 BY MR. BRENNER:

11 Q You made reference earlier to sitting down  
12 with the U.S. Attorney Sharon Davis?

13 A Yes.

14 Q This was prior to the determination to do  
15 that over the telephone, I assume?

16 A By that time it was 6:30, 7:00 and the  
17 Magistrate had left for the day.

18 Q You see that is not my question. My question  
19 was, prior to the Magistrate leaving for the day the  
20 two of you sat down and prepared a written affidavit  
21 which is the normal course for a search warrant, is  
22 that right?

23 A No, you're wrong. About 5:30, 6:00 when  
24 we got there the Magistrate from my understanding had  
25 already left.

Raffa - People - Cross

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2 Q But, in any event, the two of you  
3 corroborated on a written document reflecting your  
4 knowledge of the events which were later included in  
5 the oral application, correct?

6 A Yes.

7 Q Did you read that document?

8 A She typed it up and then she had to revise  
9 it and when she did our revised -- yes, I read it.

10 Q Where is that document?

11 A She has a copy over at the United States  
12 Attorney's office.

13 Q You don't have a copy?

14 A I don't have.

15 Q Does Chris Behan have a copy?

16 A He might have a copy. There might be a copy in  
17 here.

18 Q There might be?

19 A There might be, yes.

20 Q Now, when the detectives from the 34th  
21 Precinct were relating all this information which you  
22 later transmitted orally, was it over the telephone?

23 A Yes. Spoke to Giorgio. Detective Jerry  
24 Giorgio over the phone.

25 Q Now, you told us before that the first



Raffa - People - Cross

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conversation was relative to a bomb, is that correct?

A Well, he called up, I would say that it was about ten, 10:30 in the morning.

Q Was that the first time that you ever had spoken to Detective Giorgio?

A Yes.

Q And did you speak to him again that day?

A I spoke to him several times that day.

Q Now, when he related the history of events that he believed to have taken place did you write them down?

A Honestly tell you, the first time I spoke to him, he basically identified himself and told me he was investigating a possible -- two attempted homicides. He had some information on a bombing.

Q Detective Raffa, I asked you whether during the course of any of your conversations in which he related seriatim all of this information to you, you wrote it down?

A And that is what I was trying to tell you.

THE COURT: The first conversation, any notes?

THE WITNESS: No, I didn't.

THE COURT: Your answer is no.

Raffa - People - Cross

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Q The next conversation?

2

A Next conversation took place. I might have written it down. I don't know.

3

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Q Well, you stated with certain specificity the facts in the oral application?

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A Yes.

7

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Q Were you referring to your written affidavit at that time?

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A Well, I was referring a large majority of the affidavit came from the agent down in Puerto Rico.

11

12

Q Well, certainly the information --

13

A Will you let me answer?

14

Q I thought that you were --

15

A No. You seem to do that to me. A large majority of the information in the affidavit relates to what I was told by the agent down in Puerto Rico. They faxed me up the description of the bomb, what was contained in the bomb, what is basically what we were after. We were after the bomb and the shipping explosive device from New York City to Puerto Rico. Our domain does not cover attempted murder charges, so we were basically looking at the shipping of an explosive device from New York to Puerto Rico.

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So, when I got their information I had a

Raffa - People - Cross

1  
2 large majority of what was contained in this  
3 affidavit.

4 Q Are you finished?

5 A Yes.

6 Q Agent Raffa, isn't it a fact that you had  
7 not one wit of information from any ATF agent  
8 regarding the bomb in Puerto Rico connecting it to  
9 Dominic Franza, just on the bomb and from your ATF  
10 Agent, not one thread of evidence?

11 MR. BRANCATO: I object.

12 MR. BRENNER: He gave an explanation, your  
13 Honor.

14 THE COURT: Questioning him vis-a-vis  
15 his explanation. He says that he was only  
16 interested in the bomb. The warrant speaks  
17 differently. He is pursuing that. I will  
18 allow it. May not consider it most  
19 artfully phrased, but I will allow it.

20 Q Do you understand my question?

21 A Did we have any information from the agent in  
22 Puerto Rico as to Dominic Franza?

23 Q Yes.

24 A WE had received some information. They told  
25 me that they had interviewed a woman down there who

## Raffa - People - Cross

1  
2 had received the package. Basically, and they told  
3 me that she told them a story that she had gotten a  
4 phone call from relatives in New York. These  
5 relatives had been shot. They felt that they had been  
6 shot by a Dominic Franza. That they had received  
7 letters in the mail just recently. They felt that  
8 these letters were from Dominic and that Dominic  
9 was going to kill their grandmother down in Puerto  
10 Rico, that they received this package. The woman  
11 says that she received this package and that she  
12 opened it up because they had told her that Dominic  
13 might be sending something down. But when they looked  
14 into the package they saw a bomb. They called the bomb  
15 squad. So, yes, I did receive information from them as  
16 to a Dominic Franza.

17 Q Was that apart from the affidavit where you  
18 described things that were related to you by the New  
19 York City Police Department, the information that you  
20 received from ATF in that form about that?

21 A That would be in the reports.

22 Q Which reports?

23 A In the reports that they generated down  
24 there and sent to us. Colateral type reports. They do  
25 their reports down there on what they did down there

## Raffa - People - Cross

1  
2 and then they send them up to us here and basically  
3 they relayed that to us, that we are going to send you  
4 the report which we did get reports that day.

5 Q Now, the information that you received  
6 interestingly from the detectives of the 34th  
7 Precinct, did you write any of that down?

8 A I think that I wrote his name down, Detective  
9 Jerry Giorgio.

10 Q You included in the affirmation something  
11 about a pipe bomb being sent to Myra Franza's  
12 brother?

13 A Learned later on that afternoon.

14 Q From whom?

15 A Giorgio had mentioned something to me that  
16 there was a pipe bomb found. So I had one of my agents  
17 contact the City Bomb Squad to see if in fact any  
18 bombs had been picked up, picked up in the area that  
19 Giorgio described. In fact, there was, so we got  
20 all that information from the Bomb Squad.

21 Q There were those reports as well?

22 A Yes.

23 Q You relied on those reports as well in  
24 preparing your oral affidavit?

25 A For the mentioning of the pipe bombs of the

Raffa - People - Cross

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brother's house, yes.

Q So, with regards to your mentioning shooting, you relied on the ATF Report from Puerto Rico where this was?

A No. Giorgio also mentioned to me later on that day that in fact there had been a shooting and that they were looking at Dominic Franza.

Q And for instance, the address of the shooting which you included in your oral affidavit, where did that come from?

A I got that from Detective Giorgio.

Q Did you write it down or did you memorize it, Detective?

A Agent.

Q Agent.

A I might have written it down.

Q What might have you had done with it after you wrote it down?

A Probably brought it to Sharon Davis.

Q Do you believe that Sharon Davis still has those documents?

A She put everything in a computer. Yes, I gave her whatever we had. They were having it in a computer. We were constantly on the phone calling



Raffa - People - Cross

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Detective Giorgio and his partner, Gil Ortiz for a lot more of the information.

Q When you say constantly, how often?

A We called them that day. I don't know from the United States Attorney's office. I don't know, maybe six or seven times.

Q As that information was being taken into, was it being incorporated into a document or written out?

A Yes.

Q By whom?

A By Sharon Davis.

Q Was the information related to her by you?

A Part of the information in several times she spoke with Detective Giorgio herself.

Q Agent Raffa, did you ever prepare -- withdrawn.

You are an agent for the Bureau of Alcohol, Tobacco and Firearms?

A Yes.

Q You are familiar with case summaries?

A Yes.

Q You prepare case summaries?

A Yes.

Q Did you prepare a case summary in connection

Raffa - People - Cross

1  
2 with any of your activities, just yourself, in this  
3 incident?

4 A No.

5 Q Did you prepare any reports in connection  
6 with your applying for and obtaining a search warrant?

7 A That might be. I believe that that's in the  
8 case summary, I think.

9 Q In who's case summary?

10 A In the Agent's case summary. Chris Behan is  
11 the case agent.

12 MR. BRENNER: Your Honor, at this point  
13 would leave to renew until we get the  
14 Rosario, that is the end of my Rosario  
15 inquiry and I call upon the Prosecutor to  
16 provide me with the affidavit between Miss  
17 Davis and Agent Raffa which I believe was  
18 the foundation for the oral affidavit and any  
19 notes that Agent Raffa may have taken or in  
20 Sharon Davis' custody or in her care, as  
21 well as any reports, which reflect  
22 statements made by Agent Raffa to an agent or  
23 which he relied upon in his formulation of  
24 the oral affidavit, the ATF report that he  
25 referred to both having to do with the bomb

Raffa - People - Cross

1  
2 at Nelson DeCasta's house and the  
3 shooting, the second or third had  
4 information obtained from Puerto Rico,  
5 vis-a-vis the shooting.

6 THE COURT: Mr. Brancato?

7 MR. BRANCATO: If we can break now  
8 perhaps we can have it by this afternoon's  
9 session. However, I would like to state  
10 that I am not conceding that any information  
11 that was given to him by agents down in  
12 Puerto Rico is Rosario material concerning  
13 this witness' testimony.

14 THE COURT: I tried to indicate to you  
15 gentlemen when you turned over material it  
16 is not because that is related. It has --  
17 will be characterized as Rosario. There  
18 is that legal obligation in an effort to  
19 streamline, so we need not reach that point.  
20 It is not under that compulsion of any  
21 kind. In any event, we are going to recess  
22 now until 2:30 and we will resume at that  
23 time.

24 MR. BRENNER: When I receive, <sup>only</sup> ~~and~~ given  
25 materials, will I be provided an opportunity

Raffa - People - Cross

to examine them before I resume cross?

THE COURT: Yes.

All right.

MR. BRENNER: Thank you.

THE COURT: That's it.

(Whereupon, a luncheon recess was taken.)

AFTERNOON SESSION:

THE COURT CLERK: This is recall on the hearing, People of the State of New York versus Dominic Franza.

MR. BRENNER: Judge, a few matters. First of all, during the break, Mr. Brancato was able to obtain a copy of the original search warrant filed in the Southern District, United States District Court. I've examined it. I have examined the photocopy of it. I'm prepared to stipulate for the purposes of this hearing the photocopy is a true and accurate copy of the original so the original can be returned.

Second matter, Assistant District Attorney Seheinlin came in for Family Court records and asked the Court to sign the

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## Colloquy

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2 subpoena which is returnable in the District  
3 Attorney's office. I believe pursuant to a  
4 recent line of cases in this Department and  
5 the Second Department it must be made  
6 returnable here. And I would request  
7 particularly for Family Court records which  
8 are confidential --

9 THE COURT: Why don't you get the  
10 record?

11 MR. BRENNER: I don't need the records. I  
12 put forth what I believe is enough to make  
13 out my motion.

14 THE COURT: Those are conclusions.

15 MR. BRENNER: They are not.

16 THE COURT: Suppose that resulted in a  
17 dismissal --

18 MR. BRENNER: Your Honor, the order of  
19 protection is the final document and it  
20 extends to November, 1991, it says so on  
21 it's face.

22 THE COURT: If you think an order of  
23 protection supercedes the jurisdiction of a  
24 justice of the Supreme Court show me  
25 something.

## Colloquy

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MR. BRENNER: I have shown you the case law.

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THE COURT: I have seen what you produced and it does not apply. It is obvious to me what your intentions are and what you intend to accomplish, but be that as it may, let's get back on the record with respect to response of the Rosario material with respect to Agent Raffa.

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MR. BRENNER: Your Honor, you waiting to hear from me?

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THE COURT: Mr. Brancato is going to respond.

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MR. BRANCATO: There are two things. First, Judge, before we jump to that may I just ask, we submitted a subpoena for the Court's signature. If we can get it up there this afternoon, we're told we can have the papers tomorrow. So we're going to send someone up to pick them up. We would request --

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THE COURT: That's not the issue before this Court at this point.

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MR. BRANCATO: No. In as much as the



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defendant has filed a motion seeking such drastic relief Mr. Scheinlin would like to get working on that response since he's going to handle that response for the Court.

THE COURT: Expeditious release of the records does not determine the result, nor does it determine the legal work or if there is going to be any briefs done in connection with it.

MR. BRANCATO: We are operating somewhat in the dark since the defendant has had the opportunity to discuss this with his attorney and we have not had an opportunity to see the Court papers.

THE COURT: Let's understand this. I believe Mr. Brenner is not urging this on the Court if he did not believe that to be the fact, that at some prior point the wife of the defendant instituted proceedings in the family court and Mr. Brenner takes the position that the initiation of that proceeding there precludes this court of jurisdiction.

## Colloquy

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2 MR. BRENNER: That's basically  
3 correct.

4 THE COURT: Now, whether or not the  
5 documents show what the petition was or the  
6 content of the petition that's not  
7 critical. I'm not -- again, I'm not  
8 saying that you're not going to get  
9 this. All I'm saying is I don't see how it  
10 impedes anything at this point. I'm more  
11 concerned now about this other material that  
12 Mr. Brenner has characterized as Rosario,  
13 whether or not that prohibits his  
14 opportunity to cross examine since he does  
15 not have the material.

16 MR. BRANCATO: Our position is that  
17 it does not inhibit him from cross examining  
18 the agent. The gentleman was asked right  
19 before the break what papers he generated.  
20 He indicated he was using some  
21 information that had been provided to him  
22 by Agents down in Puerto Rico and what  
23 he had been told by other people here in New  
24 York. I do not believe that that is a prior  
25 statement made by this officer. I will give

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you an example. If he had some information that had been told to him that was perhaps not accurate, then he would merely be relating what someone else told him, but that would not be a prior statement of actual events as he knew it. What was communicated to the Magistrate is what appears in the affidavit before the Court. Where he got that information from he can't ask him that question. That is not a prior statement on the part of the officer, by the agent.

THE COURT: I don't think he's asking for any inconsistency between the prior statement and the later statement.

MR. BRENNER: Your Honor, I elicited from this agent, I believe, on a Rosario inquiry and that he and an Assistant United States Attorney together had prepared an affidavit for him which he reviewed after she revised it. That's his affidavit. And that's his Rosario material.

THE COURT: He said that material is in the file of Miss Davis, I believe, who is

United States Colloquy

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an Assistant District Attorney.

MR. BRANCATO: We spoke with Miss Davis over the lunch hour and she indicated she did not have any papers made by this officer.

THE COURT: Each question is pragnated by another question. Does that mean these papers no longer exist or she was given these papers and thought they had no value and discarded them or they were put into another file.

MR. BRANCATO: I caught her between her summation and going back to Court, but she indicated to me she does not have any papers that this officer gave to her. My understanding, having spoken to the officer — I'll refer to him as the officer, but the agent, is that they prepared the affidavit that was read to the Magistrate based on information they received from Puerto Rico and based upon information they received from Detectives here in New York.

THE COURT: Was this affidavit in fact ever used?

MR. BRANCATO: It was read to the

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Magistrate.

THE COURT: So it was used in that sense.

Now, if it was read to the Magistrate and that entire conversation, that telephonic conversation was recorded, isn't there a recording of that affidavit?

MR. BRENNER: I believe Mr. Brancato is being inaccurate, perhaps not intentionally. The telephone recordings of a conversation, it's not of a reading --

THE COURT: I don't know what it is. I have never heard it.

MR. BRENNER: You have it before you. It's in Evidence.

THE COURT: I have it before me? You mean the search warrant application?

MR. BRENNER: Which has the affidavit.

THE COURT: But I don't have any recordings in front of me nor have I heard any recordings.

MR. BRENNER: You have a transcript of a recording and that does not reflect anybody reading anything, it reflects a

## Colloquy

1  
2 conversation, a United States Attorney asked  
3 Agent Raffa certain questions, he answered  
4 yes or no and then they made an application  
5 for a search warrant.

6 THE COURT: Did Agent Raffa read this  
7 affidavit to the Magistrate over the phone?

8 MR. BRENNER: I don't know.

9 THE COURT: Why don't you ask him?

10 MR. BRENNER: I was not planning not  
11 to.

12 THE COURT: Because if he says he did  
13 not, if he did not, then the basis was  
14 certainly as one of the bases of the  
15 issuance of the warrant --

16 MR. BRENNER: I'm sorry. Rosario has  
17 nothing to do with whether it was a  
18 factor in the warrant. The only lynch pin  
19 for Rosario material is whether it was a  
20 statement previously made by a witness  
21 having to do with the substance of his  
22 testimony. It does not matter whether it was  
23 something he relied on or not.

24 THE COURT: It is very possible that  
25 this so called affidavit is an issue. I



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believe Agent Raffa recalled that he  
believed it's in the file of Miss Davis.  
Now Miss Davis said to the Assistant  
District Attorney — I don't know if she  
has no statement or no papers or the matter  
is not clear because she's caught here on  
the fly between trial and summation. I  
don't know. I think you ought to look down  
the road, if in fact, Agent Raffa made an  
affidavit or a writing or something which  
he adopted as his, because it develops  
that the second version or some amended  
version was prepared by Miss Davis, if  
perhaps he adopted it, then the defense  
is entitled to it. If that document no  
long exists then we must be prepared to deal  
with other questions.

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MR. BRENNER: In addition, Agent Raffa  
testified as information was being relayed  
to him by the New York City Detectives he  
was writing things down which is also  
Rosario.

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THE COURT: I do not recall that. The  
one thing I recall he said he wrote down was

## Colloquy

1  
2 Detective Giorgio ---

3 MR. BRENNER: And later on in the inquiry  
4 he said he believed he made notes and those  
5 were in the possession of Miss Davis. And  
6 that is also Rosario material.

7 THE COURT: Whether it is exists ---

8 MR. BRENNER: The question whether it  
9 exists ---

10 THE COURT: I know, that's a separate  
11 issue.

12 MR. BRENNER: Finally, your Honor, the  
13 Special Agent says that he related  
14 information to the case agent, Agent  
15 Behan, which was included in Agent  
16 Behan's case summary, to that extent Agent  
17 Behan's recording of Agent Raffa's  
18 information is Agent Raffa's Rosario  
19 material.

20 THE COURT: Everything you said is  
21 correct. But that presupposes Agent Behan  
22 made a record of this or has this  
23 information. Now, if he made no  
24 record or if in fact it is included didn't  
25 you get Rosario from Agent Behan?

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MR. BRENNER: No.

MR. BRANCATO: That is the file that has been brought to my office today.

THE COURT: And being zeroxed?

MR. BRANCATO: Yes.

MR. BRENNER: The bottom line is I have nothing.

THE COURT: I don't think so, that that's fair because --

MR. BRENNER: I'm not impugning anyone, I'm saying I have no paper regarding Agent Behan or Agent Raffa.

THE COURT: In addition to the cross of Agent Raffa you have other witnesses; is that correct, for the hearing?

MR. BRANCATO: Yes, there are a couple of other witnesses who will have to testify at this hearing. It appears that Detective Giorgio -- Detective Giorgio would have to testify as well as Agent Behan, as well as Agent Petree (phon.) who obtained the second warrant and also did the return on the first warrant.

MR. BRENNER: Now I have Rosario for

*DiPietro*

## Colloquy

1  
2 Detective Giorgio and/or Detective Ortiz,  
3 to some degree they're interchangeable but  
4 they're not testifying today.

5 THE COURT: In the interest of time  
6 what I would like to do, we can hold the  
7 cross of Agent Raffa and you can put on  
8 Detective Giorgio. WE can go on to that.  
9 How about Petree?

10 Is there any Rosario material question  
11 of him?

12 This is with respect to the second  
13 warrant and the return of the first.

14 MR. BRANCATO: Yes. Her material would  
15 be encompassed in the reports that have to  
16 be copied which were turned over to the case  
17 agent. What I suggest -- I suggest several  
18 things. The first is to allow us the chance  
19 to give counsel an entire copy of Agent  
20 Behan's reports, that's that big bulk that  
21 you saw Agent Raffa holding on the stand.  
22 Once we turn that over -- in the interim,  
23 in the interim we can have Detective  
24 Giorgio testify here tomorrow regarding the  
25 statement taken from the defendant as well

DePetro

## Colloquy

1 as handwriting exemplars, while that's  
2 being xeroxed. Is that acceptable?

3 MR. BRENNER: Judge, if Mr. Brancato  
4 were to give me the Rosario material at any  
5 point this day, including the evening  
6 hours, I would be prepared to go forward  
7 with the cross examination of Agent Raffa  
8 tomorrow morning and proceed at pace.

9 THE COURT: Will that be completed some  
10 time this day?

11 MR. BRANCATO: We can try it, but I do  
12 know Raffa's schedule is such that he's  
13 the agent on call for the city and he's  
14 also the agent on call for today and we  
15 brought him away from his job and time -- I  
16 kind of gave him somewhat of an assurance  
17 that we can take his testimony today and  
18 let him go.

19 THE COURT: How are we going to do  
20 that?

21 MR. BRANCATO: I know that. I'm  
22 asking whether or not you would allow us to  
23 do the other people and then bring Raffia  
24 back?  
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THE COURT: We may have to do that because there's no other way to accomplish what we seek.

MR. BRENNER: The problem does not go away because Agent Behan's material comes from the same place.

THE COURT: That's not necessarily so.

MR. BRENNER: It's his file.

THE COURT: It's Behan's file.

MR. BRENNER: That's what I'm saying.

THE COURT: But the material with respect to Raffa may not come from that place. That's what you're seeking in order to cross-examine Raffa.

MR. BRENNER: Absolutely.

THE COURT: Why are you saying it's from the same place? I'm not following that.

MR. BRENNER: My mistake.

THE COURT: All right. Let me just try to run this thing through. On the return of the subpoena from the District Attorney's office is there any problem returning it to Part 32?

MR. BRANCATO: The only problem would be



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it would take some time for the Bronx to bring it back down here. Would you have any problem if someone from our office obtained it in a sealed envelope and brought it to this Part tomorrow?

I'm sorry, if you sign that they will return it in this Part.

THE COURT: Where do you see this is returnable in the District Attorney's office?

MR. BRENNER: I did not read it.

THE COURT: Tell me where it's returnable in the District Attorney's office?

MR. BRANCATO: At the very bottom just below the signature. I think the normal practice for Family Court is they will bring them here. We have taken the liberty of contacting them and they will have it down here tomorrow.

THE COURT: After two months we still don't have everything. All right. Once again schedule tomorrow -- how many cases do we have on?

THE COURT CLERK: Seventeen.

Colloquy

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THE COURT: What time do you think you will have the xerox material?

MR. BRANCATO: I can ask someone to work late today and do it.

THE COURT: Go ahead.

Why don't we arrange to have Mr. Brenner at your office at 10:30 and we will resume the hearing here at 11:30. At that time we will know how we are resuming, either you will have Detective Giorgio here and we will go with Detective Giorgio and followed by Behan and then we will bring back Raffa.

MR. BRANCATO: Yes.

THE COURT: Unless something else changes the order. I want to make another observation. I think it is important during these hearings and the preliminaries that we streamline some of the issues because I don't anticipate, nor will I allow, this kind of luxury once we go to trial as to the availability of witnesses or anything else that comes up. I will not tolerate a situation where the trial becomes so

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disjointed <sup>or</sup> of fragmented as a result of  
applications which of necessity should be  
complied with. Obviously, if they have  
no merit that will be no problem. I do  
not want us to get into a trial posture,  
that once that jury is selected that we  
have to take break after break after break  
in order to comply with certain requests.

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So I'm going to make a further  
suggestion, other than this material do you  
have any particular -- are you aware of  
anything in particular that you will be  
objecting to on the trial or that Mr.  
Brancato seeks to introduce or any other  
procedural matter other than those you  
have already raised?

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MR. BRENNER: I have several motions in  
liminae.

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THE COURT: When do you intend to make  
those motions?

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MR. BRENNER: Prior to jury selection.

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THE COURT: I'm just wondering, if  
those motions should probably be made on  
paper.

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MR. BRENNER: I was prepared to make them on paper.

THE COURT: Then Mr. Brancato should be prepared then. Did you serve him?

MR. BRENNER: Not yet.

THE COURT: Why don't you serve him today so sometime this week I can rule on those motions as well. I want to get this down to the substance so we are in a position to move ahead.

MR. BRANCATO: Can I just tell these guys that they can go forward today?

THE COURT: Yes, with the understanding, keep them on the schedule also don't discharge the wrong people.

MR. BRENNER: Judge, I have no objection stipulating that People's I should now be a copy of what was made as the original search warrant.

THE COURT: If it's the same thing.

MR. BRANCATO: This is the one. So you want it augmented with one and 1A?

MR. BRENNER: Yes.

THE COURT: Let me have them.

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MR. BRANCATO: What you have before you, Judge, is 1 in Evidence and 1A, which is stipulated to.

THE COURT: We better mark them because now we're going to get --

MR. BRANCATO: We're going to start to get other documents.

THE COURT: Yes. Did Raffa leave?

MR. BRANCATO: He's outside.

THE COURT: Why don't you ask him -- he's already testified to that, see, reading the transcript that is attached it does not seem he's using anything as opposed to Assistant District Attorney McEnany.

MR. BRANCATO: I know what happened. He told me what happened.

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: That's People's 1 in Evidence. The other one is 1A, by stipulation.

(So marked People's Exhibit 1 in Evidence and 1A in Evidence.)

MR. BRENNER: IN order to expedite the

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questions of prejury selection, at this point I make a demand upon the People pursuant to Section 240.43, that if and when the defendant chooses to testify in this case, whether the People intend to cross examine him with any prior crimes illegal, immoral, vicious acts which did not result in convictions.

THE COURT: Does he have an arrest record?

MR. BRENNER: NO, he has a prior Family Court proceeding with the same parties.

THE COURT: Mr. Brancato.

MR. BRENNER: There's no Sandoval.

THE COURT: It's not a Sandoval.

MR. BRENNER: That's right.

THE COURT: That's why I asked you that.

MR. BRANCATO: What I would like to elicit on direct examination of Miss Franza is what is reflected in her Grand Jury testimony which was handed up to the Court which had to do with prior problems she had with the defendant when he did threaten



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her, she related to the Grand Jury, and needless to say I hope to bring that out on her direct testimony and if the defendant wishes to testify ---

THE COURT: Do you intend to bring out through Miss Franza that she instituted a proceeding?

MR. BRANCATO: Would you hold it for just one second, Judge?

THE COURT: Yes.

MR. BRENNER: Your Honor, if I might interject, so that my own mind is clear, I believe what Mr. Brancato is talking about is Molineaux-Ventimiglia (phon.) Evidence. I will deal with that separately. My demand is if Mr. Franza takes the stand on the issue of credibility does the Prosecution intend to prevent him with the prior immoral acts <sup>for</sup> ~~in~~ which there are no convictions?

Confront

Whether they wish to introduce it as evidence in chief is a different issue and we can address that separately.

THE COURT: It is very tempting to ask

## Colloquy

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2 you, you must have something, I can pass  
3 upon it in a NYSIIS sheet or in some way  
4 define it, but not knowing what you're  
5 making reference to unless the District  
6 Attorney knows what you're making reference  
7 to, how can we be certain in making a  
8 ruling that we're covering the very ground  
9 that you seek to be covered or not.

10 MR. BRENNER: The statute is extremely  
11 open ended.

12 THE COURT: I know what the statute says.

13 MR. BRENNER: I'm supposed to say to  
14 the Court if the District Attorney intends to  
15 cross examine he has to tell you and we  
16 have to argue and you have to rule.

17 THE COURT: Other than what's been  
18 eluded to here, the Family Court petition,  
19 unless the District Attorney has knowledge  
20 of other acts which are in this case, but  
21 not charged, uncharged crimes, I'm not aware  
22 of.

23 MR. BRENNER: For example there's the  
24 bomb at Nelson DeCasta's house which is  
25 an uncharged crime. If the District Attorney

## Colloquy

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intends to cross examine Mr. Franza about  
that incident, and I did not make this  
application I would be guilty of ineffective  
assistance of counsel. Not knowing what  
the District Attorney has in mind, but  
assuming hypothetically he may pursue that  
questioning I'm making my demand.

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THE COURT: Do you have an idea what Mr.  
Brenner is anticipating?

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MR. BRANCATO: I think he does. One of  
the problems is, Judge, and without  
being wise or anything, I think that Mr.  
Brenner and I have tried to work in  
somewhat of a friendly manner, but we  
still had to retain somewhat of an adversary  
position here because of the stakes involve.  
If I had to guess I would guess at some  
point the defendant had informed his  
attorney that he was married to a woman  
in Colorado and during the course of being  
married to the woman in Colorado there was a  
messy divorce. There were allegations on  
her part that he tried to run her over with  
a car and there are allegations against the

## Colloquy

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2 defendant as to what happened with his  
3 first wife in Colorado.

4 I have reviewed that information with his  
5 first wife and it seems that the defendant  
6 in that situation may have been told by the  
7 first wife that he was the father of her  
8 child. that during the course of their  
9 relationship he provided for that child  
10 only to have her spring on him at a later  
11 point he was not the father of the child  
12 which resulted in some of the accusations  
13 she made before the Family Court in Colorado.

14 I do not intend --

15 THE COURT: Let me interrupt. Mr.  
16 Brenner, the People who are family members  
17 here for Mr. Franza, I take it, they are  
18 not witnesses?

19 MR. BRENNER: No, your HOnor, neither of  
20 them are witnesses.

21 THE COURT: You may continue.

22 MR. BRANCATO: I do not intend to  
23 introduce that prior marriage in Colorado  
24 because, as I see it, it has no bearing on  
25 the events here.

## Colloquy

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2 THE COURT: YES. but that does not  
3 preclude the People, should the defendant  
4 take the stand, and based on that  
5 representation Mr. Brenner didn't elicit  
6 that on direct examination, on cross  
7 examination, on some unrelated matter,  
8 if the defendant made certain denials,  
9 concedingly like any other ruling it would  
10 open the door for the People to bring this  
11 in.

12 MR. BRENNER: All of these rulings,  
13 just like Sandoval, --

14 THE COURT: I understand that. All I'm  
15 trying to do, if you follow me closely,  
16 now that Mr. Brancato has made reference to a  
17 specific, if that's what you have in mind,  
18 you have his representation he has no  
19 intention of introducing it or  
20 questioning anyone with respect to that  
21 prior marriage. That does not mean I can  
22 anticipate everything that may come about  
23 unless you pin point something for me.

24 MR. BRENNER: I beg to differ and most  
25 respectfully the statute is clear. The

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burden in this instance, once the demand is  
timely made and it is timely made at this  
juncture, is upon the People to come  
forward and volunteer this information to  
the Court. If they have any intention to  
cross examine Mr. Franza with regard to any  
uncharged crimes, pure and simple. I  
have no burden other than to ask. This  
is not Sandoval where I have to come  
forward with convictions.

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THE COURT: Well, we will deal with the  
question of this Colorado marriage. What  
about the question of the bomb found in  
DeCasta's home?

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THE COURT OFFICER: There is a hold from  
Delaware.

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THE COURT: Do you have Franza's card?

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THE COURT OFFICER: Delaware hold.

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MR. BRENNER: That is a Federal  
Investigation, I assume.

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THE COURT: I make no assumptions.

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MR. BRENNER: Is the Federal  
Investigation. All I know is --

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THE COURT: Mr. Brancato, with respect to



## Colloquy

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the uncharged crime, with respect to the bomb found in the DeCasta's home?

MR. BRANCATO: I do not intend to bring that out in my case in chief, nor do I intend to cross examine the defendant at this time. However, I did not know what the defendant will say. As I had told Mr. Brenner, that perhaps if the defendant walks down this path there may be something that I may wish to ask him.

THE COURT: That I have already indicated. I think that he understands the rule depending on what the defendant does may very well change the ruling. But, initially, initially in 240 he wants a representation. Now, the only items I know of so far is the question of the bomb at the DeCasta home. I have learned about this Colorado marriage. I don't know if there is anything else. But, if there is, now is the time that we air it.

MR. BRANCATO: The bomb in the DeCasta home. I do not intend to ask him at this time.

## Colloquy

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MR. BRENNER: Your Honor, there is no other time. This is the issue of -- may I finish, Mr. Brancato?

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MR. BRANCATO: Wait a minute, he cut me off just a moment ago. I gave him his nickel and his time. Now it is my time.

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MR. BRENNER: Okay.

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MR. BRANCATO: I told Mr. Brenner at this point if anything came out on cross examination that might be a road that we both don't want to walk. One of us may like -- from what I understand, the bomb that was left at the DeCasta household had a firecracker fuse. Someone made a rather common looking pipe bomb and used a firecracker to ignite it. Now, that firecracker has been compared to firecrackers taken from the defendant's house and I point out this to the defendant, the defendant certainly is not a youngster. But, it certainly would be that if the defendant tried to make it out that someone else left a pipe bomb at the DeCasta home and that person is out there it is

## Colloquy

1 the one who did the shooting, that person  
2 out there is the one who sent the fire bomb  
3 to Puerto Rico, then I may want to ask the  
4 defendant what he was doing with the  
5 firecrackers that matched the firecracker  
6 fuse found in the pipe line, and this is  
7 one way that I see that may come before the  
8 jury if the defendant raises that and he says  
9 to the jury: I am going to tell you who  
10 did this attempted homicide. I am going to  
11 tell you who sent this bomb. It is the  
12 person who left the pipe bomb at my brother-  
13 in-law's doorstep. I want to ask him to  
14 explain the firecrackers.

15 THE COURT: All right.

16 MR. BRANCATO: I think it is a fair  
17 thing.

18 MR. BRENNER: You are mixing apples and  
19 oranges. Of course, substantively the  
20 issue opened by me or anyone else, that is  
21 fair game. But, this is not a question of  
22 substantive proof. The question of proof are  
23 prior bad acts.

24 THE COURT: But, unless --  
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Colloquy

1 MR. BRENNER: For purpose of credibility.

2 THE COURT: If you listen to what he  
3 said.

4 MR. BRENNER: I did, your Honor.

5 THE COURT: Mr. Brancato has no  
6 intention to initially introduce the  
7 subject. But, he did not even reserve that  
8 right onto him. But, it is always there. If  
9 the examination be it the direct or the  
10 cross examination develops something else and  
11 opens the door, we will then get another  
12 ruling. But, initially again, now I have  
13 those two areas. The pipe and the bombing of  
14 the DeCasta home, and the question of his  
15 Colorado marriage and the dissolution of  
16 that marriage. Those items will not be  
17 referred to by the People initially.

18 MR. BRENNER: Now the third issue, the  
19 issue of prior Family Court proceeding  
20 brought by Mrs. Franza against Mr. Franza was  
21 voluntarily discontinued by her as well as my  
22 understanding that the People don't offer  
23 this for purposes of credibility, but rather  
24 evidence in chief to prove this particular  
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crime, that it is more likely that Mr. Franza committed that crime because of a prior occasion Myra Franza alleged that he did certain things. That is a Monoventimiglia evidence. I believe that the Court of Appeals has said that the best way to handle that evidence is prior to the jury hearing it is for the Court to hear it in camera.

Make a determination of the probative value versus prejudicial value. That is what I move to exclude.

THE COURT: I am sure --

MR. BRANCATO: Let me just read into the record a portion of Mrs. Franza's Grand Jury testimony that the Court has already reviewed, but --

THE COURT: It is unnecessary, Mr. Brancato, because I am not prejudging it at this point. I will deal with it when we move to -- what else?

MR. BRENNER: With regard to the motion in liminae --

THE COURT: The motion in liminae you

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say that you have a written set?

MR. BRENNER: No.

THE COURT: Are they incorporated?

MR. BRENNER: I was going to preclude --

THE COURT: So when you refer to a written, you were going to prepare it based on this?

MR. BRENNER: Yes.

THE COURT: So you have made now orally your motion?

MR. BRENNER: For the most part.

THE COURT: I take it that for the moment you have exhausted any contemplated motion?

MR. BRENNER: I would like to submit authority on the last issue.

THE COURT: Fine. But we have time on that.

MR. BRENNER: Your Honor, I need to resolve that before Mr. Brancato opens to the jury.

THE COURT: He is not opening to the jury tomorrow.

MR. BRENNER: You want to do that?



## Colloquy

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2 THE COURT: I am going to have everything  
3 eliminated before we get to the jury. No  
4 question about it. Now, I don't have to  
5 anticipate that you are going to make a  
6 motion so that my earlier ruling that you are  
7 going to put in the set of motion papers and  
8 Mr. Brancato is going to respond by Monday  
9 -- Friday, that is now academic, is that  
10 correct?

11 MR. BRENNER: Yes.

12 MR. BRANCATO: The only thing that I  
13 would like to call to your attention at this  
14 time are my conversations with Mr. Brenner we  
15 have spoken about that aspect that the  
16 defendant took a polygraph test from a New  
17 York City Police Department, as well as went  
18 to other polygraph examiners and provided  
19 those results to the New York City Police  
20 Department.

21 It is my understanding after speaking to  
22 Mr. Brenner that he wishes to get before  
23 the jury not the results of the polygraph,  
24 but the fact that his client had appeared  
25 at a certain day because someone told him

## Colloquy

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2 he was going to take a polygraph test and I  
3 assume that in the long run he will be able  
4 to argue to them or they may ever consider  
5 when they are in the back --

6 THE COURT: The probative value of that  
7 is that he appeared for it at a time or a  
8 place and someone suggested that he take -- I  
9 don't like to hear your application  
10 paraphrasing what Mr. Brenner would say, so  
11 would you like to address that?

12 MR. BRENNER: Your Honor, I certainly  
13 intend to bring up the question of the  
14 polygraph and the setting and at the hearing  
15 part of the argument, custodial argument  
16 that I make vis-a-vis --

17 THE COURT: That is separate. See the  
18 rules are different in the hearing.  
19 Obviously, if this were in the trial of what  
20 value would that have in front of a jury? I  
21 can't conceive of.

22 MR. BRENNER: I am not quite sure that  
23 Mr. Brancato is properly paraphrasing what  
24 I told him.

25 THE COURT: That is why I give you that

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opportunity.

MR. BRENNER: I don't believe that I ever said before the jury. I do believe that I said I was going to raise the question of the investigation conduct vis-a-vis Mr. Franza going to the polygraphs.

THE COURT: Again, that is not a proper issue for the jury.

MR. BRENNER: I never said the jury.

MR. BRANCATO: So ---

THE COURT: We are dealing with that. WE will deal with that in the other form.

MR. BRANCATO: So I am clear, there will not be any mention of the word polygraph before the jury taking one or going down to meet?

THE COURT: To be available.

MR. BRENNER: The rule cuts both ways. Things could happen that open the door that a Prosecution witness ---

THE COURT: I don't have to go into that.

You need not resolve unto yourself.

MR. BRENNER: I have no intention of

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putting in inadmissible evidence.

THE COURT: What else gentlemen?

MR. BRANCATO: I think that's it.

THE COURT: At 10:30 give him the  
Rosario. At 11:30 we get underway.  
Hopefully, we will conclude tomorrow, the  
only exception to that may be we don't have  
Raffa. All right.

(Whereupon, the case was adjourned  
to Wednesday, January 22, 1992.)

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SUPREME COURT OF THE STATE OF NEW YORK

104

COUNTY OF NEW YORK ; CRIMINAL TERM : PART 32

-----X

THE PEOPLE OF THE STATE OF NEW YORK : INDICT: 11987/91

- against -

DOMINIC FRANZA, : CHARGE: Att.

DEFENDANT. : Mur.

-----X HEARING

111 Centre Street  
New York, New York  
January 22, 1992

B E F O R E :

HONORABLE PAUL F. S. BOOXSON, J.S.C.

(Appearances Same as Previously Noted)

#1 J.S.

THE COURT: For the record, let's represent where we are. Mr. Brancato, at the direction of the Court, and in agreement with Mr. Brenner, was to be supplied with whatever Rosario material the People had, or they were in the process of having to Xerox.

MR. BRANCATO: We turned over to Mr. Brenner this morning at 10:30 when he came to our office a copy of Special Agent Chris Behan's file. That was retrieved yesterday. At about quarter to twelve, 12:15, I supplied Mr. Brenner with memo book entries by Detective

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Colloquy

Giorgio, and these were several pages.

What we did was: we indexed them so that if he needs to see what Detective Giorgio wrote in regard to statements taken all he need do is look at the index. I would assume it is about 100 pages of sten note papers. On some pages there are two line entries. On some pages there are four line entries. These are augmented in the DD-5's that were prepared.

THE COURT: Once again, we now are in the position that all Rosario material with the exception of the records of Family Court, or are we in the position that all documents, all writings, all statements that the defendant would be entitled to are either transmitted, supplied or being prepared to be transmitted and supplied?

I want to get a time frame.

MR. BRANCATO: Well, Judge, this is going to be supplied.

THE COURT: Well, otherwise the hearing is going to be fragmented over days and days, since the defendant has a right on the cross. Yes?



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MR. BRANCATO: I am going to be very plain with you and Counsel on this point.

MR. BRENNER: As opposed to at some other point you won't be so plain? Just kidding.

MR. BRANCATO: During the course of this investigation the defendant either asked his brother or the brother of the defendant took it upon himself to go out to where this shooting occurred and whether he did this or not, I don't know. But, it was related to me by family members of his in-laws that the defendant's brother went to where the shooting occurred, took pictures of the apartment building, looked underneath the car owned by the family of the victims in this case, and in essence was snooping around where the shooting had occurred.

Now, whether that was decided to intimidate the witnesses in this case, I don't know. But, I do know that they felt a certain amount of fear and at one point we had his brother called and he was told either cease and desist, otherwise he was going to be arrested in this case because there is a great

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2 deal of fear on the part of the victim's  
3 family. They felt they were being intimidated.  
4 One of the underlying allegations in this case  
5 there were bombs placed and sent, one of which  
6 the defendant was charged with. There was  
7 a fear on the part of the family members that  
8 when the defendant's brother was looking under  
9 the car they were wondering whether or not  
10 there was a chance that something might be  
11 placed --

12 THE COURT: Planted a bomb?

13 MR. BRANCATO: Exactly so. I have in  
14 my possession some statements that he had been  
15 taken within recent weeks. They concern  
16 testimony of some of the witnesses in this  
17 case. They are not germane to the hearing.

18 THE COURT: Witnesses who you anticipate  
19 will be called?

20 MR. BRANCATO: On the People's case-in-  
21 chief. They are not relevant for the purposes  
22 of this hearing.

23 THE COURT: Now again, but since we are  
24 trying to streamline, any problems with  
25 respect to the trial? Those statements. Those

1  
2 statements, were you saying they are not  
3 material which you would give the defendant  
4 or not at this time?

5 MR. BRANCATO: Not at this time.

6 MR. BRENNER: Maybe I am confused about  
7 this.

8 THE COURT: We said he would make it  
9 plain.

10 MR. BRENNER: Maybe it is a failing on  
11 my part.

12 THE COURT: Go ahead.

13 MR. BRENNER: Does he intend to offer  
14 evidence that Dominic Franzese's brother --

15 THE COURT: No, I didn't get that impres-  
16 sion at all. All he is saying is that  
17 witnesses who will testify with respect to  
18 that which is charged --

19 MR. BRENNER: Maybe -- I understand now.  
20 Materials which Mr. Brancato might not  
21 otherwise be hesitant to provide are not being  
22 provided for the fear that the witnesses'  
23 safety may be compromised?

24 THE COURT: No, no. It's a very simple  
25 proposition if I understood Mr. Brancato.

1  
2 To avoid any conflict that you are not being  
3 supplied with Rosario material. There is some  
4 other material with respect to witnesses who  
5 will testify at the trial, but not at this  
6 hearing.

7 MR. BREWER: Right.

8 THE COURT: Relating to the fact that  
9 a relative of the defendant in this matter  
10 --

11 MR. BRANCATO: I don't want to offer the  
12 material, for between now and hence some of  
13 these witnesses may be --

14 THE COURT: Then there is that fear?

15 MR. BRANCATO: Yes. That is the concern  
16 I have and from what I am --

17 THE COURT: But, those witnesses are not  
18 testifying at the hearing?

19 MR. BRANCATO: They are not. From what  
20 I was led to believe, I don't know if this  
21 is true. I heard from some source or another  
22 that the defendant's brother may have had some  
23 prior involvement with the law. Maybe done  
24 some time for some acts. It is -- I am not  
25 talking about someone who has an unblemished

1  
2 record.

3 THE COURT: Ergo what?

4 MR. BRENNER: I am not sure I understand  
5 the significance of this. The other Mr. Franza  
6 is not on trial.

7 THE COURT: I just asked him: Ergo what?

8 MR. BRANCATO: I am saying that is the  
9 reason why I am not turning over that  
10 material at this time. I have the fear that  
11 because the defendant's --

12 THE COURT: Since it has no impact on  
13 the hearing --

14 MR. BRANCATO: On the hearing.

15 THE COURT: But, there is nothing else.  
16 That is what I am saying. Any other Rosario  
17 material which does apply to this hearing?

18 MR. BRANCATO: I do not believe so,  
19 except to the extent that Mr. Brenner  
20 brought up a very good point, that since there  
21 is --

22 THE COURT: The Federal warrant?

23 MR. BRANCATO: Federal arrest warrant,  
24 there should be some paperwork coming. I am  
25 checking that.

1  
2 THE COURT: With the U.S. Attorney?

3 MR. BRANCATO: That's correct, and I  
4 believe we are getting some sort of a fix on  
5 perhaps the missing material.

6 THE COURT: Well, inevitably, there is  
7 going to be an agent involved in that as well.

8 MR. BRENNER: In what?

9 THE COURT: In that arrest warrant.

10 MR. BRENNER: It would be Agent Behan.

11 THE COURT: All right.

12 MR. BRENNER: He would have a sworn  
13 affidavit, Behan.

14 THE COURT: Either that arrest affidavit  
15 -- I am surprised that you say it is not  
16 contained in his workbook.

17 MR. BRENNER: In any of these papers,  
18 no.

19 MR. BRANCATO: I will just alert you that  
20 a little bit down the road there was some  
21 statements when Mrs. Franza was in the  
22 hospital. She was shot. I believe her jaw  
23 was wired at the time when she did make some  
24 jottings of some accounts in which basically  
25 she said she was shot by -- that the husband



1  
2 was responsible for the shooting, that they  
3 had these problems. Those pieces of papers  
4 seen to be missing. At this point we cannot  
5 locate those papers and we are still looking  
6 for them.

7 THE COURT: Now, who took those  
8 statements?

9 MR. BRANCATO: That would be by Detective  
10 Ortiz in the presence of Detective Giorgio,  
11 essentially, when they went up to the  
12 hospital.

13 THE COURT: Well, does Detective Giorgio  
14 have an independent recollection that there  
15 was some writings and what these writings  
16 contained?

17 MR. BRANCATO: Yes. Essentially what  
18 it related to.

19 MR. BREYER: Well, Judge, whether or  
20 not they are found raises a different issue  
21 other than providing the Rosario material,  
22 whether they were destroyed. That is a  
23 different issue.

24 THE COURT: I don't think that is his  
25 assertion at this point, that they were

1  
2 provided or they weren't provided, but they  
3 were destroyed or misplaced, lost or any other  
4 explanation. I am not saying they were  
5 destroyed. That is a conclusion.

6 MR. BRENNER: The ultimate place of those  
7 notes is not before us now.

8 THE COURT: What else do we need now to  
9 get on with the hearing with respect to  
10 Detective Giorgio, since you already supplied  
11 Mr. Brenner with the material with respect  
12 to Detective Giorgio, and then we will have  
13 Detective Behan and eventually we will have  
14 Agent Behan and then Agent Raffa back.

15 MR. BRANCATO: There were some DD-5's  
16 that were prepared by Detective Giorgio con-  
17 cerning the statements that were made to him  
18 by these witnesses I referred to earlier.  
19 Those have not been turned over for obvious  
20 reasons of what I stated earlier.

21 Lastly, there was some DD-5s prepared  
22 by Detective Giorgio concerning the defendant's  
23 friend. I believe his name is Tracy, and this  
24 is a person that the defendant claimed that  
25 he went to the scene of the shooting with the

1  
2 night that his wife and his mother-in-law were  
3 shot. I have no intention of turning that  
4 material over to defendant because I believe  
5 that it is the possibility, very strong  
6 possibility that Tracy may be called as a  
7 witness for the defense. I do not intend to  
8 call that man as a witness. I see him more  
9 or less as an unknown quantity that could go  
10 one of several ways on him. I do not intend  
11 to turn over that material.

12 MR. BREWER: Your Honor, may I be heard?  
13 Perhaps we have a different understanding of  
14 the law. My belief is that every report that  
15 Detective Giorgio fills out and signs as  
16 Rosario material regardless of who provided  
17 the information, it's his report and Rosario  
18 material. Again, not limited to first-hand  
19 information, second-hand information or third-  
20 hand information.

21 THE COURT: I am just wondering, Mr.  
22 Brancato, why could you not redact certain  
23 facts from the 92-5s and supply them?

24 MR. BRANCATO: I can do that.

25 THE COURT: That would obviate that

1  
2 problem.

3 MR. BRENNER: As far as Tracy Jenkins'  
4 statements are concerned, Mr. Brancato believes  
5 that he will be called as a defense witness  
6 implicitly on the first score of that may well  
7 believe that the information is favorable to  
8 the defendant. But, second of all, more  
9 importantly, in the reports prepared by  
10 Detective Giorgio, it is Giorgio's Rosario  
11 material that has to do with that incident.  
12 It doesn't matter whether he is going to call  
13 the substantive witness included in the report.

14 THE COURT: Let's do as I have suggested.  
15 What else?

16 MR. BRENNER: Then is that going to be  
17 provided to me?

18 THE COURT: Yes.

19 MR. BRENNER: All of Detective Giorgio's  
20 DD-5s?

21 THE COURT: Exactly.

22 MR. BRANCATO: If I understand you  
23 correctly, what I can do is have him state  
24 I spoke to -- and just strike out the name  
25 of the person on and the address and telephone

1  
2 number. But, also the substance of what was  
3 told to those people because by revealing the  
4 substance it will reveal the identity of those  
5 people.

6 MR. BRENNER: That's --

7 THE COURT: Well --

8 MR. BRENNER: Then I am not being provided  
9 anything. I can't cross examine from that.  
10 There is no material, your Honor. And this  
11 way there's another concern at some point prior  
12 to jury selection. I mean, after jury selec-  
13 tion, prior to openings, all of that stuff  
14 will have to be unredacted if Mr. Brancato  
15 has a fear of security, it is going to be no  
16 less at that moment than there are now.

17 THE COURT: That's not true. There may  
18 be a lot more time between now and then, and  
19 the witnesses being called.

20 MR. BRENNER: Well it has to be -- I  
21 believe this case law will support that, that  
22 Mr. Brancato can't just get up and say Michael  
23 Franza has a criminal record, or he was taking  
24 photographs at the time when there was no  
25 charge pressing, his brother was a suspect

1  
2 in the case. That is not good enough for there  
3 to be a legitimate grounds for withholding  
4 the identity or information. There was a  
5 security threat that has to be there, when  
6 there are people out there who are clearly  
7 working on Mr. Franza's behalf who have  
8 intimidated witnesses, attempted. There is  
9 nothing. There is no proof that his brother  
10 has a criminal record, your Honor. Mrs.  
11 Franza's brother has a criminal record. So  
12 what?

13 THE COURT: Once again, does it relate  
14 to the hearing?

15 MR. BRENNER: Your Honor, if it has to  
16 do with Detective Giorgio's investigation,  
17 my position is that it has to do with the  
18 hearing. He is going to get up here and  
19 testify --

20 THE COURT: No, no. If there are  
21 witnesses who felt, whether they were intimi-  
22 dated or otherwise felt threatened, but this  
23 has nothing to do with the hearing. It has  
24 nothing to do with the determination as to  
25 the charge with respect to this defendant.



1  
2 This is separate and distinct.

3 MR. BRENNER: If those witnesses were  
4 interviewed at a time prior to Mr. Franza's  
5 arrest then it goes to the assessment of  
6 probable cause on the part of Detective  
7 Giorgio.

8 THE COURT: If in fact these -- if, in  
9 fact, that investigation did contribute to  
10 probable cause, if it had nothing to do with  
11 it, if it is separate and distinct, absolutely  
12 separate and distinct, then I don't see the  
13 need to have it disclosed at this time.

14 MR. BRENNER: We don't know.

15 THE COURT: Well --

16 MR. BRENNER: Since we are not being  
17 told that.

18 THE COURT: That is very true. But, if  
19 the totality of it, Mr. Brancato, is that these  
20 witnesses felt activities by the defendant's  
21 brother in some way they felt intimidated,  
22 threatened, is that what the totality of that  
23 is? On this issue, not anything else that  
24 they knew about?

25 MR. BRANCATO: This does not concern the

1  
2 family. I used the example of the family that  
3 felt intimidated by the defendant's brother  
4 as sort of a prelude to saying why I don't  
5 want to turn over things made by other  
6 witnesses in this case. Certain witnesses.

7 MR. BRENNER: There is no concrete evi-  
8 dence that the witnesses, that he has referred  
9 to, the witnesses ever felt threatened or  
10 intimidated. He is using an unrelated example  
11 that has nothing to do with that.

12 THE COURT: I haven't heard it. I haven't  
13 heard the complete elucidation.

14 MR. BRANCATO: I believe that the district  
15 attorney has a good faith basis at this time  
16 not to turn over.

17 THE COURT: Not to reveal the identity  
18 of certain people?

19 MR. BRANCATO: Certain witnesses. I feel  
20 --

21 THE COURT: What I want to get here, these  
22 witnesses can, will or it is expected they  
23 will testify as to the case-in-chief, not about  
24 these other post or investigatory --

25 MR. BRANCATO: Exactly.

1  
2 THE COURT: By revealing the name of these  
3 witnesses or revealing what they will -- is  
4 expected that they will testify to, based on  
5 the statements taken, that would compromise  
6 their safety or identity, is that what you  
7 are telling us?

8 MR. BRANCATO: I would not want to be  
9 responsible for something happening to those  
10 people.

11 THE COURT: So, in effect, you are saying  
12 that their safety would be threatened by the  
13 revelation of that material?

14 MR. BRANCATO: It could be.

15 I say that based upon what has happened  
16 to the Meniez family where the brother was  
17 seen snooping around.

18 MR. BRENNER: Your Honor, may I be heard?

19 THE COURT: Yes.

20 MR. BRENNER: Mr. Francato's notion, he  
21 doesn't want to be responsible raises a level  
22 of no legal threshold for withholding the  
23 identity of individuals. There has to be  
24 evidence, a proffer made that those individuals  
25 the safety of those individuals is actually

1  
2 jeopardized. Not that Mr. Brancato wouldn't  
3 want to be responsible, because I don't know  
4 any prosecutor who stands up and says: Judge,  
5 I will be responsible for the safety of my  
6 witnesses. So, it is okay for you to tell  
7 the defense attorney who they are.

8 MR. BRANCATO: I would be willing to  
9 reveal to the Court in an in-camera session  
10 what these witnesses are expected to testify  
11 to. If the Court determines that this infor-  
12 mation should be given to counsel in order  
13 to fulfill his obligation to his client during  
14 the pre-trial hearings, I will do it. If the  
15 Court determines otherwise, then we will abide  
16 by your decision.

17 THE COURT: All right.

18 MR. BRENNER: The only proviso, your Honor  
19 is that those reports be marked as a Court  
20 Exhibit. If the Court deems them not Rosario  
21 material, that they be annexed to the Court  
22 file. They are part and parcel of the records.

23 THE COURT: What else?

24 MR. BRANCATO: That's about it.

25 THE COURT: So the schedule now is that

1  
2 2:30 we are ready to go with Detective Giorgio.  
3 First have those reports to pass on.

4 MR. BRANCATO: I believe we can have those  
5 reports here this afternoon at 2:30, and if  
6 we can do it it will be in the robing room.

7 MR. BRENNER: I don't mean to pose a  
8 problem. Let's assume arguendo there are  
9 Rosario material. Are they going to be  
10 provided to me then?

11 THE COURT: It will take a moment. They  
12 are not voluminous reports.

13 MR. BRENNER: I don't know.

14 THE COURT: I imagine these are very short  
15 reports.

16 MR. BRENNER: Can I have 2:45, your Honor,  
17 to review some of these materials?

18 THE COURT: No. That doesn't refer to  
19 Giorgio.

20 MR. BRENNER: Yes, it does.

21 THE COURT: This is on Giorgio?

22 MR. BRENNER: There is Giorgio's stuff  
23 in there.

24 MR. BRANCATO: A portion of it.

25 THE COURT: Let's do it at 2:30. I want

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25

Giorgio - People - Direct  
to look at the CD-5s, and you will have until  
2:45.

(Whereupon, the Court took a luncheon  
recess.)

(Whereupon, an in-camera proceeding was  
held and the minutes were sealed.)

\* \* \* \*

THE COURT: Let's get under way. Call  
your next witness.

MR. BRANCATO: Detective Gennaro Giorgio.  
G-I-O-R-G-I-O.

D E T. G E N N A R O G I O R G I O ,                   having  
been called by the People, having been first duly  
sworn, testified as follows:

COURT OFFICER: Detective, be seated.  
In a loud, clear voice state your name for  
the record, spell your last name, your shield  
number and present assignment.

THE WITNESS: Detective Gennaro Giorgio,  
G-I-O-R-G-I-O, shield number 1335, 34th  
Squad, Homicide Team.

DIRECT EXAMINATION

BY MR. BRANCATO:

? Detective Giorgio, how long have you been a



1  
2 police officer of the City of New York?

3 A I'm in my 33rd year.

4 Q And of those 33 years, how long have you held  
5 the rank of Detective?

6 A Since '67.

7 Q What are your duties at the 34th Precinct?

8 A I assist in many homicide investigations.

9 Q Did you assist in the shooting of Myra Franza

10 --

11 THE COURT: I think you better rephrase  
12 the question.

13 Q Did there come a point during your time at  
14 the 34th Precinct that you assisted in the investigation  
15 of the shooting of Josephina Mendoz and Myra Franza which  
16 occurred on July 17, 1990 in the confines of the 34th  
17 Precinct here in New York County?

18 A Yes.

19 Q Can you please tell us how did you become  
20 involved in that investigation, specifically what did  
21 you do on July 17th?

22 A On the 17th I, as many other Detectives and  
23 the supervisor from the 34th Squad proceeded to 485 West  
24 187th Street, apartment 1-B as in David. We had received  
25 a call that there had been two women shot at that loca-

1  
2 tion.

3 Q Upon arriving there did you learn the names  
4 of the two women who had been shot?

5 A There came a time when I did, yes.

6 Q And what were their names?

7 A Mrs. Josephina Vender and Mrs. Myra Franza.

8 Q Myra Franza, was she the wife of the defendant  
9 in this case, Dominic Franza?

10 A Yes.

11 Q At that point did you learn of certain  
12 statements that Mrs. Myra Franza made to Officers who  
13 arrived on the scene, statements in written form?

14 A Yes, I learned of both verbal and written  
15 statements that she had made at the scene.

16 Q Can you tell us in substance what you learned?

17 A One point that she responded to a question  
18 put to her by a police officer as to who may have shot  
19 her. She responded, "Husband." She was then asked  
20 again, "Are you saying that your husband shot you?" She  
21 responded, "No." I think at one point she may have  
22 written or stated, "Sent." She wrote, I believe, 3320  
23 Barker and "House".

24 Q Who lived at 3320 Barker?

25 A Her husband. She had left approximately three

1  
2 weeks prior to the shooting. She gave a description,  
3 I believe, of the person who had shot her at that time.

4 Q Now, did there come a point that you spoke  
5 with the defendant in this case, Dominic Franza?

6 A Yes, later that evening.

7 Q And was that the first time that you met the  
8 defendant?

9 A No.

10 I first met him at the location. I was returning  
11 to 485 after having spoken to a sister-in-law of the  
12 victim, Myra Franza, and the defendant was arriving at  
13 the scene at that time.

14 Q And did there come a point that you asked the  
15 defendant to go to the 34th Precinct to speak with you?

16 A Yes.

17 Q And where was that that you first asked him  
18 to go to the 34th Precinct?

19 A After he arrived we entered the building, we  
20 spoke. After a short period of time I asked him if he  
21 would go to the 34th Squad office, pretty sure that he  
22 was driven there or a friend of his may have taken him.  
23 I don't think he rode back with us.

24 Q And at the point that he went back -- that  
25 you spoke with him at the 34th Precinct, could you please

1  
2 tell us where you spoke to him?

3 A In the -- an interview room within the 34th  
4 Squad office. We have two interview rooms. I believe  
5 it was the larger room of the two.

6 Q Do you know how the defendant got to the 34th  
7 Precinct that night?

8 A I believe he was driven there by a friend who  
9 was with him at the time or his friend may have -- when  
10 he arrived at the scene I believe he was with a friend  
11 of his. Whether that friend left from the scene and  
12 then he drove himself there or whether his friend drove  
13 him there and later left, I'm not sure.

14 Q Can you say whether or not you took him back  
15 to the precinct?

16 A I don't think we took him back.

17 Q Are you aware if any other police officers  
18 took him back to the precinct?

19 A I am not.

20 Q So could you please tell us the circumstances  
21 under which you told the defendant to go to the 34th  
22 Precinct to speak with you?

23 A At the scene I spoke with the defendant and  
24 asked him if he would come back to the 34th because we  
25 would like to ask him some questions that might aid or

1  
2 assist us in finding out exactly what had happened and  
3 who may have shot his wife and his mother-in-law.

4 Q And what did the defendant respond, if anything  
5 when you asked him to go back and speak with you?

6 A We agreed to do so.

7 Q Now, could you please tell us, when you got  
8 back to the 34th Precinct, where did you speak with the  
9 defendant?

10 A In, again, one of the interview rooms within  
11 the Squad office.

12 Q And who was present in the interview room with  
13 you aside from the defendant that time?

14 A I don't remember if Detective Ortiz was with  
15 me. I know he and I definitely were there. If I might  
16 look at the first statement it might have a notation.  
17 Okay. It would appear it was him and I.

18 Q The defendant and yourself?

19 A That's correct.

20 Q And could you please describe for us, did you  
21 have a conversation with the defendant at this time?

22 A I did.

23 Q And could you please describe how that conver-  
24 sation developed?

25 A I may have reintroduced myself --

1  
2 MR. BRENNER: Object as to what he may  
3 have done.

4 THE COURT: Overruled.

5 THE WITNESS: I believe I reintroduced  
6 myself, giving him my name, told him or repea-  
7 ted to him that I would like to get as much  
8 information as possible from him regarding  
9 the shooting of his wife and his mother-in-  
10 law, what may have been the motive behind it.  
11 His statement to me was that he would  
12 cooperate to the fullest in assisting me or  
13 Detective Ortiz in the investigation.

14 Q Now, did you tell the defendant at this point  
15 that he was under arrest?

16 MR. BRENNER: Objection. Leading.

17 THE COURT: Yes.

18 MR. BRENNER: I'm sorry, your Honor?

19 THE COURT: The Court agrees. The  
20 objection is sustained.

21 Q Did you take a statement from the defendant  
22 at this time in written form?

23 A Yes, I did.

24 Q Do you have a copy of that statement here with  
25 you?



1  
2 A Yes.

3 MR. BRANCATO: If you take it out, we'll  
4 have it marked as People's Exhibit Number Two.

5 (So marked People's Exhibit Two for  
6 identification.)

7 MR. BRANCATO: Your Honor, if it's okay  
8 with you what I would like to do at the end  
9 of the day is substitute a Xerox copy for that  
10 Exhibit just so that the original can be  
11 returned.

12 THE COURT: Fine.

13 Q Up to this point did you relate to the defen-  
14 dant in any way what Myra Franza had written on paper  
15 to other officers concerning the shooting?

16 MR. BRENNER: Your Honor, I'm going to  
17 object to the leading.

18 THE COURT: Within limits I'll allow it.

19 THE WITNESS: No, I did not.

20 THE COURT: Overruled.

21 Q What's in front of you is Exhibit Number Two.  
22 Is that the statement you took from the defendant that  
23 night?

24 A Yes.

25 Q And does it contain the defendant's signature?

1  
2 A Yes, it does.

3 Q When was that signed by the defendant?

4 A On the evening of July 17th, the interview  
5 started at 2040 hours, which is 9:40 p.m. I don't have  
6 a time of when the statement ended, but it's a three  
7 page statement. He signed the bottom of each page.

8 MR. PRAYCATO: At this time I would offer  
9 Exhibit Number Two for identification into  
10 evidence.

11 THE COURT: Does Mr. Brenner have a copy  
12 of that?

13 MR. BRENNER: I would just like to see  
14 the original. I do.

15 No objection.

16 THE COURT: Without objection, People's  
17 Exhibit Two received.

18 (So marked People's Exhibit Number Two  
19 in evidence.)

20 Q Now, could you please read that Exhibit into  
21 the record, please.

22 A "2040 Hours, 7/17/90, Tuesday. Interview of  
23 Dominic Franza, M/W/32. 3320 Barker Avenue, private  
24 house, Bronx. Telephone 212-881-7113. DOB 7/27/57.  
25 The subject states he will cooperate with the fullest

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PENGAD CO., BAYONNE, N.J. 07002 - FORM FED-25

1  
2 in order to assist in this investigation. He (subject)  
3 spoke with his mother Gladys Franza, 212-469-4459 and  
4 informed her he was at the 34th Squad. I also spoke  
5 with her explaining what the situation was at this time.  
6 Subject states he has been married to his wife, Myra,  
7 three years. Further states for about three months Myra  
8 (victim) wanted to move out of their apartment and that  
9 she needed -- and that she needed some space. About  
10 three weeks ago, on a Thursday, subject spoke with his  
11 wife on the phone and she later met him at the Olinville  
12 Gun Club where he, (the subject) was competing in a meet.  
13 His wife left the club and when he arrived home he found  
14 his wife and her belongings were gone. He also found  
15 some income tax papers and check stubs missing. The  
16 subject had called his mother-in-law, Josephina, on two  
17 occasions in an attempt to locate his wife. He told  
18 Josephina that he was buying a used 1988 Buick Sky Hawk  
19 for his wife (Liberty Buick, East Tremont) I have my  
20 signature, shield number 1335 and Dominic Franza's  
21 signature."

22 Q Is that the contents of the first page?

23 A Yes. Page two. "His mother-in-law told him,  
24 again (the subject) that she, Josephina, was not interes-  
25 ted in the car as if the subject was buying it for her,

1  
2 Josephina, and then hung up on the subject. Again the  
3 subject is the defendant.

4 During this period of separation (three weeks) the  
5 subject said he had beeped his wife 50 times a day" and  
6 then I have a thousand times in parenthesis. "He (the  
7 subject) finally got a call from his wife and he told  
8 her he had purchased cruise tickets for the two of them.  
9 His wife told him that again he planned the trip without  
10 consulting her and she got very emotional and hung up.  
11 He believes this was last Thursday, 7/12. On Friday  
12 -- or Friday, 7/13 subject went out and upon his return  
13 he had a message on his machine from his wife stating  
14 that she did not want to go on the cruise and that the  
15 subject should get his money back. The subject was going  
16 to pick up the tickets tomorrow (I have 7/13) and drop  
17 the tickets and a dozen roses with her, meaning the  
18 wife's supervisor at work and hoped his wife would come  
19 out and speak with him. Subject states he was going  
20 to buy a hundred roses from a wholesaler" and I have  
21 in parenthesis (Jerome and Gunhill). Subject spoke at  
22 length about the difficulties he has had with his  
23 mother-in-law. He went on to state that today he  
24 received a message on his machine from Hilda (basement  
25 apartment 485 West 187th) asking for Myra, stating Myra,

1  
2 something happened to your mother. Get home quick.  
3 Again I have my signature, my shield number 1335 and  
4 Dominic Franza's signature on the bottom of page two.

5 Page three, subject states that he was at home today  
6 and that his friend Tracy, telephone number 534-1178,  
7 Jenkins, male black, 34, came to visit at about 7:00  
8 p.m. and then left to get beer and pizza. Subject left  
9 to go to drug store to buy condoms (Gold Trojans) and  
10 in (I have drug store Burke and White Plains) but the  
11 store didn't have any.

12 The subject returned home and had the message for  
13 Myra for Hilda. Subject states he was raised on 106th  
14 Street on the east side. Subject had been unemployed  
15 since September, 1989, when he broke his leg on the job.  
16 I have electrician. He was working for Wade Electric  
17 in Queens. Subject had been collecting compensation  
18 due to the injury. Subject has a savings and checking  
19 account with the Chemical Bank. Subject states both  
20 accounts have a combined amount of \$2,500.00. Subject  
21 commented there is a lot less now because he has to pay  
22 a lot of bills. Subject will be staying with Edwin Diaz,  
23 718-591-3794, Queens or John Velasquez, 212-379-0033,  
24 Bronx. And then I have mother's telephone 369-4459.  
25 The defendant's signature, Dominic Franza, my signature,



1  
2 Detective Pennaro Giorgio, shield 1335."

3 Q Did you hand that to the defendant to read  
4 prior to asking him to sign it?

5 A As I recall I read it to him and then handed  
6 it to him and told him he could read it also. I don't  
7 know if he read it all or took the time to read it.  
8 He looked at it and then signed it.

9 Q About how long did this conversation with the  
10 defendant take?

11 A Maybe an hour, a little more or less.

12 Q And after concluding the conversation with  
13 the defendant, what happened?

14 A He left the precinct.

15 Q Did he say anything to you prior to leaving  
16 the precinct that night aside from what you just related  
17 to us?

18 A I think he left with the understanding that  
19 we were going --

20 MR. BRENNER: Object to what Mr. Franza's  
21 understanding was.

22 THE WITNESS: I made him understand that  
23 I would be in touch with him.

24 Q And did he say anything to you when you said  
25 that you would be in touch with him?



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A Not that I remember.

Q Did there come a point that you, along with Detective Ortiz, spoke with Myra Franza at the hospital?

A Yes, there came a time that we spoke with -- Detective Ortiz and I spoke with her at the hospital, Harlem Hospital.

Q And when was that?

A Okay. I'm checking some notations I made. On the 18th, Wednesday, the 18th myself and Detective Ortiz, we interviewed her at the hospital.

THE COURT: When you say "The 18th", of what month?

THE WITNESS: July.

Q This is the following day?

A Yes.

Q And at the time you went to speak with her, was she able to speak with you?

A No.

Q How did you communicate with her?

A Both myself and Detective Ortiz would ask a question and she would write an answer, she was able to write on a piece of paper.

Q Could you please tell us what you and Detective Ortiz asked her and what she responded?

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2           A    We -- I asked her as to what had happened,  
3           What she believed caused this to happen.  If she knew  
4           the person who had shot her.  She -- in her responses,  
5           in her written responses, the contents of what was there,  
6           the synopsis of what was there --

7                   MR. BRENNER:  Object to the "Synopsis",  
8                   your Honor.

9                   THE WITNESS:  I don't have the notes in  
10                  front of me.

11                  MR. BRENNER:  I understand --

12                  THE COURT:  Let's not argue.

13                  You have those notes?

14                  THE WITNESS:  I do not, your Honor.

15                  THE COURT:  So what you're telling us  
16                  now is your best recollection of what the  
17                  responses were?

18                  THE WITNESS:  Yes.

19                  THE COURT:  Did there ever come a time  
20                  that you recorded what you believe to be the  
21                  responses on some document?

22                  THE WITNESS:  We had those notes at some  
23                  time, I don't have them now.

24                  THE COURT:  So right now the only  
25                  reference you have to her, Mrs. Franza's

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responses on the 18th are memory; is that correct?

THE WITNESS: Yes.

Q Could you please tell us what you remember what her responses were?

A To the best of my recollection her responses were that her husband had her shot. That her husband had threatened her and that he had sent the person to shoot her.

Q Now, did there -- how long did this conversation with Miss Franza at the hospital take?

A I don't think we were there more than a half hour.

Q And you indicated that she wrote her responses. Why was it that she had to write it opposed to speaking with you?

A She had her jaw wired. She had received a gunshot wound to her face.

Q Her mother at this point, did you speak with Josephina Mendez, the other person who had been shot?

A She was unable to be spoken to at that time as I recall.

Q Did there come a time when you spoke to the defendant in this case, Dominic Franza a second time?

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A Yes.

Q And when was that?

A I believe that was the 23rd of July. Yes, on Monday, the 23rd of July, myself and Detective Imperato proceeded to 106th Street where we were met by the defendant. He accompanied us to the Brooklyn DA's Office and from there he came back to the 34th Squad.

Q Now, from the time that you spoke to him on the night of the shooting to the time that you and Detective Imperato went to 106th Street and took the defendant to Brooklyn, did you speak with him during that period?

A Yes. He called me on the 19th -- let me just check the 18th. Yes, he called me on the 19th of July. He spoke to me about having sent two hundred flowers to the hospital, two hundred roses, I believe, and we spoke of an appointment for the polygraph test.

Q So at some point that you spoke with him on, I believe you said the 19th --

A Yes.

Q The defendant indicated to you that he had sent two hundred roses to the hospital?

A Yes.

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Q What hospital was that?

A Harlem Hospital.

Q The one where his wife was a patient?

A Yes.

Q And you indicated that at that point you spoke to the defendant about a polygraph test. Could you please tell us the circumstances as to how that came up, taking a polygraph test?

A I had asked him if he would submit to a polygraph test and he agreed.

Q And did you just ask him that right out of the blue or did you have a conversation with him beforehand about taking the polygraph?

A No, I recall it was spoken of the night of the first interview.

Q And did the defendant express any reservation about taking the polygraph test the night --

MR. BRENNER: Object as to the form.

What did the defendant say I think would be the proper form.

MR. BRANCATO: I'll incorporate that question.

Q What did the defendant say when you spoke to him about taking a polygraph test the night of the first

1  
2 interview?

3 A I recall he repeated he wants to do everything  
4 in his power to cooperate in this investigation.

5 Q Did the defendant call you at any other time  
6 prior to coming down -- prior to meeting him on 106th  
7 Street?

8 A Other than the conversation on the 19th he  
9 called me on -- early in the morning, I would think --  
10 -- on the morning of the 23rd of July, which confirmed  
11 -- or I confirmed that the appointment had been made  
12 and then myself and Detective Imperato proceeded to 106th  
13 Street and then to Brooklyn.

14 Q Now, did you speak with the defendant on the  
15 way to Brooklyn from 106th Street?

16 A I'm sure we spoke. I don't remember what the  
17 conversation was about really, other than taking the  
18 test and he may have asked us how the investigation was  
19 proceeding, you know, what we had discovered, if any-  
20 thing.

21 Q Did you respond to him when he asked that?

22 A My response was that we were going to pursue  
23 any and all possible leads. I gave him no specifics as  
24 I recall.

25 Q About how long were you with the defendant



1  
2 and Detective Imperato in Brooklyn on that day?

3 A Well, my second statement, which was taken  
4 on that day of Mr. Franza was taken at 5:20 p.m. or  
5 1820 hours, so I would say we were together probably  
6 from about 12:00 noon, maybe 1:00 in the afternoon till  
7 we got back to the 24th, the statement was taken and  
8 he left.

9 Q How was the defendant transported from Brooklyn  
10 back into Manhattan?

11 A In one of our cars, one of the squad cars.

12 Q Was he cuffed in any way?

13 A No.

14  
15 (See next page)

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2 Q When you got back to the 34th Precinct, could you  
3 tell us what happened?

4 A Yes. When we arrived at the 34th, I informed him  
5 that the result of the test, the examiner had told us that  
6 Mr. Franca, the defendant's answers had been deceptive.  
7 I believe the test under his category was inconclusive, but  
8 he had clearly lied with respect to some of the questions  
9 asked of him.

10 Q And did you take a second statement, second  
11 written statement from the defendant at this point?

12 A Yes. At that time after I informed him of his  
13 not having passed the test, I gave him his Miranda warnings  
14 and he agreed to speak to us, to myself and Detective  
15 Imperato, and I took a second statement.

16 Q Now, up to that point, did you tell the defendant  
17 he was under arrest?

18 MR. BRENNER: Objection, leading.

19 THE COURT: Sustained.

20 Q Do you have a copy of the form that - how did  
21 you read the defendant his Miranda rights?

22 A From a Miranda form that we have in the squad  
23 office.

24 Q Do you have it here with you?

25 A Yes.

1  
2 MR. BRANCATO: Can we mark that as People's  
3 3 for Identification with the same provision that  
4 we will substitute the serox copy for the record?

5 THE COURT: Very well.

6 (Document marked People's Exhibit 3 for  
7 Identification.)

8 Q Could you please tell us how you went about  
9 reading the defendant his Miranda rights?

10 A Yes. I read him the following rights: You have  
11 the right -

12 Q Let me offer it into evidence first. That is the  
13 form that you used?

14 A Yes.

15 Q How do you know that is the form that you used?

16 A It has my name and Detective Imperato's name, the  
17 defendant's signature, and his name printed. It has a date  
18 and a time.

19 Q When was the information recorded on that form?

20 A Just prior to the interview.

21 MR. BRANCATO: At this time I would offer  
22 it into evidence.

23 MR. BRENNER: No objection.

24 THE COURT: Without objection, People's 3  
25 deemed marked and received.

(People's Exhibit 5 for Identification was deemed marked and received into evidence.)

Q Could you please tell us how you went about advising the defendant of his rights at this point?

A Yes. I read him the following questions, statements, and questions.

You have the right to remain silent, refuse to answer questions. Do you understand? Yes. He answered yes.

Anything that you do say may be used against you in a court of law. Do you understand? He answered yes.

You have the right to consult an attorney before speaking to the police and to have an attorney present during any questioning now or in the future. Do you understand? He answered yes.

If you cannot afford an attorney one will be provided for you without cost. Do you understand? He answered yes.

If you do not have an attorney available, you have the right to remain silent until you have an opportunity to consult with one. Do you understand? He answered yes.

Now that I have advised you of your rights, are you willing to answer questions? Do you understand? He answered sure.

Q Was that his response, sure?

A Yes.

1  
2 Q and at this point, did you take a second  
3 statement from the defendant?

4 A yes, I did.

5 Q and was this in written form or was this just an  
6 oral communication between --

7 A He. I wrote it out, two page statement.

8 Q Did the defendant sign that written statement?

9 A He did.

10 Q You have it here with you?

11 A I do.

12 MR. BRANCATO: I would ask this be marked  
13 People's Exhibit 4 for Identification.

14 THE COURT: All right. Mark it People's 4  
15 for Identification.

16 (Written statement was marked People's  
17 Exhibit 4 for Identification.)

18 Q What you are holding is Exhibit 4 for  
19 Identification. Is that the written statement that you  
20 took from the defendant that day?

21 A It is.

22 MR. BRANCATO: I would offer it into  
23 evidence at this point.

24 MR. BRENNER: May I see the original, your  
25 Honor. I have a copy. No objection.

1  
2 THE COURT: Received in evidence. Without  
3 objection, received.

4 (People's Exhibit 4 for Identification was  
5 marked and received into evidence.)

6 Q Could you please tell us how this conversation  
7 with the defendant went that day?

8 A Yes. As I stated earlier, I had informed the  
9 defendant that he had - the polygraph examiner had stated  
10 that he had given deceptive answers. I told him I was  
11 going to read him his Miranda warnings. I proceeded to do  
12 so. He agreed to speak with me and I then took the  
13 statement.

14 Q Could you please tell us, did you write that  
15 statement out or did the defendant write it out?

16 A I did.

17 Q When did you write it?

18 A At 6:20 p.m. or 18:20 hours on July 23, 1990,  
19 which was a Monday evening.

20 Q Could you please tell us how did you go about  
21 writing it? Did you speak to the defendant first and take  
22 an oral statement, or did you write part of it as you were  
23 going along?

24 A As I was going along I wrote it.

25 Q Did you read it back to the defendant as you were



1  
2 going along or --

3 A Ho. after I finished the statement, then I read  
4 it to him, then he signed it.

5 Q Can you please tell us what that says?

6 A 18:20 hours, 7-23-90, Monday. Interview.  
7 Dominic Franza M/W/32. Subject was advised of his Miranda  
8 rights, agreed to answer questions without an attorney  
9 present. I read the subject the first statement he made  
10 on 7/17/90 and he agreed that it was correct. The subject  
11 had two tickets for a cruise on Carnival Cruise Lines  
12 sailing 7/20/90, ticket purchased at the Allenville Travel,  
13 3356 White Plains Road, Bronx. States that on 7/17 when  
14 he went to the drug store he did not ask for the Golden  
15 Trojans. He entered and then he left. Subject purchased  
16 the ticket on Thursday 7/12 and spoke to Myra on the phone.  
17 Subject recalls that he got emotional, started crying on  
18 Tuesday, 7/10 during a phone conversation with his wife and  
19 I have in parenthesis (Myra) told him that his conversation  
20 on 7/10 that she was filing for divorce. Subject told her  
21 that he would not sign the papers and suggested a  
22 separation of a couple of months. When asked about the  
23 cruise ticket, flowers that he -- I have a parenthesis,  
24 "Rick," was going to drop off at the post office with  
25 Myra's friend Jenny.

1  
2 Q Who is Nick?

3 A This is Dominic. He says that you can call me  
4 Nick.

5 Q The defendant did?

6 A Yes, and at the bottom I have Dominic Franza's  
7 signature and my signature, Detective Genaro Giorgio shield  
8 1335.

9  
10 On page two subject states that he always sent flowers  
11 to Myra. He went on to state that he often sent them by  
12 F.T.D. He recalls when he sent flowers with his friend  
13 Negro. He purchased them on East 106th Street. Subject  
14 further stated that this occurred about two years ago. He  
15 directed his friend, Negro, to Josephina's house on West  
16 167th Street so that he, Negro, can leave the flowers for  
17 Myra this time (then I have about two years ago) I have a  
18 4/89, Myra had left the subject after an argument. The  
19 subject also described Myra's brother's apartment in the  
20 basement of the next building. Myra had stayed at that  
21 apartment on another occasion that she had left him.  
22 Subject states that he and Myra had separated four times  
23 in the two year period. I have Dominic Franza's signature  
24 appearing on the bottom and my signature, Detective Genaro  
25 Giorgio, shield 1335.

Q I want to go back to that statement. First I

1  
2 want to ask you: You made reference to a woman named Hilda  
3 in the first written statement that you took from the  
4 defendant?

5 A That's correct.

6 Q Who was Hilda?

7 A Her name is Hilda. Her name is HIL-de. She is  
8 the super of 485 West 187th Street.

9 Q Now, you indicated that the defendant told you  
10 that he had received message from Hilde on his answering  
11 machine?

12 A Yes.

13 Q Did there come some point that you obtained the  
14 tape to the defendant's answering machine?

15 A Yes.

16 Q When was that?

17 A Pretty certain it was the same night of the  
18 incident. If not, -- I'm pretty certain it was the same  
19 night.

20 Q Could you please tell us how did you go about  
21 obtaining that tape?

22 A Again, I'm not sure, but I'm -- I think I went  
23 to the Bronx and got it from the defendant.

24 Q Did you ask him for it or how did you go about  
25

1  
2 A I had asked him before obtaining the tape, I  
3 asked him if he would make the tape available to us and he  
4 agreed. When we went there, he or when I went, he gave -  
5 - whether I went - we got the tape.

6  
7 Q Do you remember if you had the tape in your  
8 possession prior to the taking of the second statement?

9 A The second statement being on the 23rd, yes.

10 Q Do you have that tape here with you?

11 A It is in the case folder, yes.

12 THE COURT: Is it your intention to play  
13 that tape?

14 MR. BRANCATO: Not today, Judge, since this  
15 is --

16 THE COURT: All right. I am just asking.

17 THE WITNESS: The answering machine tape.

18 MR. BRANCATO: I would just like to have it  
19 marked as Exhibit 5 for identification.

20 THE COURT: Have the tape marked.

21 MR. BRENNER: Your Honor, I have an  
22 application of an offer of proof as to the  
23 relevancy of the answering machine tape.

24 THE COURT: It can be marked. It need not  
25 have any relevancy at this point.

MR. BRENNER: But, there are questions

1  
2 asked, questions being asked, your Honor.

3 THE COURT: All right.

4 (An answering machine tape was marked  
5 People's Exhibit 5 for identification.)

6 MR. BRANCATO: Is there any claim by the  
7 defendant that that tape should not be  
8 admissible?

9 THE COURT: Well, has Mr. Brenner heard the  
10 tape?

11 MR. BRANCATO: He has a copy of it, Judge.

12 MR. BRENNER: Do I claim that it is  
13 inadmissible? It has never been represented to  
14 me that he intends to offer it into --

15 THE COURT: We will go on an assumption.

16 MR. BRENNER: No, your Honor. I am not  
17 going to assume until the People state until  
18 whether they intend to offer it.

19 MR. BRANCATO: I intend to offer this tape  
20 given by the defendant at the trial.

21 THE COURT: All right.

22 Q Is that the tape that you got from the defendant  
23 Dominic Franzar

24 A Again, whether I got it or Detective Ortiz. It  
25 could have been me. I'd have to check our movement log.

1  
2 If I went to that address, I don't have that before me at  
3 this time.

4 Q This tape, was it -- could you please describe  
5 once again how it was given to you?

6 A It came from the defendant. It got to us from  
7 the defendant. Whether it came directly through me or to  
8 my office, the defendant gave it to us.

9 Q Did he bring it? Did he bring it to you or did  
10 you go to his home to get it?

11 MR. BRENNER: Objection. Asked and  
12 answered, your Honor.

13 THE COURT: Overruled.

14 A I believe we went with him and got it from him,  
15 either myself or someone else in the office. I do not have  
16 a distinct recollection of whether I went up there. But  
17 I know this tape came into our possession from the  
18 defendant.

19 Q Now, concerning the second conversation you had  
20 with the defendant, the one in which you took a written  
21 statement from him --

22 A Yes.

23 Q How long did that conversation take?

24 A It could have been a half-hour.

25 Q And at the conclusion and the writing of the



1  
2 statement and defendant's signing, could you please tell  
3 us what happened?

4 A I am not quite sure if it was that conversation  
5 or the first conversation, but I know that the defendant  
6 and I had several conversations, always ending with the  
7 point that he wished to be made -- that he wanted to see  
8 his wife and -- excuse me, and I would state to him that  
9 I would make it known to her that he was cooperating, and  
10 he then expressed a wish to continue cooperating so that  
11 maybe his wife at some point would speak to him or see him.  
12 I know that happened more than once and I believe that  
13 night it was the topic of conversation and even subsequent  
14 to that night.

15 Q Did there come a point that you asked the  
16 defendant for handwriting examples?

17 A Yes.

18 Q When was that?

19 A That was sometime in August. I believe it was  
20 August 24th, O'Kay. On August 24, 1970, the defendant came  
21 to the 34th squad office.

22 Q Before going into that, after taking that second  
23 written statement from the defendant, what happened? Did  
24 there come a point that he left?

25 A Oh, yes.

1  
2 Q And did he leave on his own or with anyone else?

3 A I think it was on his own.

4 Q How, between the time that you took the second  
5 statement from the defendant, second written statement to  
6 the time that he came in and you requested handwriting  
7 examples, did you speak with the defendant during this  
8 time?

9 A That would be after the 23rd. Okay. I have a  
10 notation on the 25th of July that I contacted both Myra  
11 Franza and Rick Franza and spoke with him.

12 Q Did you speak with the defendant at this point?

13 A Yes.

14 Q Could you please tell us what, if anything, was  
15 said between you and the defendant at this time?

16 A I think at this time I was getting back to him  
17 with a response as to his request that he see his wife and  
18 I informed him that at that time she didn't wish to speak  
19 to him or see him.

20 Q How did Mrs. Franza make it known to you her  
21 feelings concerning wanting to see her husband during this  
22 time?

23 A She was emphatic that she did not want to speak  
24 to him nor see him at that time.

25 Q Did you speak with her after the 25th?

1  
2 A I have a notation on the 27th that I spoke to  
3 Nick Franza. That occurred -- whether it was on the  
4 conversation on the 24th or on the 27th. The defendant had  
5 stated that he had -- he was planning to take an  
6 independent polygraph examination, then that became the  
7 topic of conversation and again, if my memory serves me  
8 correctly, he was again asking about speaking to his wife,  
9 and I informed him that there was no change in her decision  
10 not to speak to him on the 31st. He called me and was  
11 asking and adjournment to take the second polygraph  
12 examination.

13 Q and what, if anything, did you say to him at that  
14 point?

15 A I told him that I would attempt to do that.

16 Q Did you speak with him after that?

17 A Okay. On the 7th, Dominic Franza, the defendant,  
18 came to the 34th squad. I hadn't contacted him, he came.

19 Q He came without being contacted, is that what you  
20 are saying?

21 A Yes, and he had an invoice from an Ace Polygraph  
22 and the invoice said that he was not deceptive and that a  
23 test was administered to him on that same day. He told me  
24 that he had taken a polygraph test that day and wanted to  
25 let me know what the results of that test were.

1  
2 Q Did you say anything to him when he showed you  
3 this invoice from Ace Polygraph?

4 A I know we spoke. I don't know for how long, but  
5 I just don't know whether -- remember what it was about.  
6 It was about the test. One of my responses, if I recall,  
7 was that this was a test again given by an independent  
8 person. I don't know what questions were asked. I didn't  
9 know who -- if it was under a controlled situation and he  
10 just wanted me to know that he had taken a test and that  
11 he had passed the test.

12 Q Now, did there come a point that you decided to  
13 take handwriting examples of the defendant similar to the  
14 note that was on -- I am sorry.

15 Did there come a time that you decided to take  
16 handwriting examples from the defendant?

17 A Yes. There came a time that I decided I was  
18 going to attempt to get handwriting samples from the  
19 defendant, yes.

20 Q What was your purpose in asking the defendant to  
21 give you handwriting samples?

22 A So that those samples that I obtained could be  
23 compared to the handwritten receipt that was affixed to the  
24 top of the box of flowers and were delivered to the home  
25 of Mrs. Mendez at the time that both she and her daughter

1  
2 were shot.

3 Q Very briefly, in brief form, tell us concerning  
4 this box of flowers. What part did it play in the shooting  
5 of Myra and Josephina Mendez?

6 A The shooter in this case had used the roof to get  
7 into the apartment. He had with him a box of flowers, I  
8 believe a dozen roses. On top of the box there was a red  
9 bow. On the box, it was a plain box no markings on it.  
10 There was a receipt which was handwritten with the  
11 notations R&R Florist. Had the F.T.D. number. The person  
12 had written out. It had the name, it had an address  
13 written out the address with almost directions where -- it  
14 stated the address, if there was no answer in one location  
15 that the person delivering it should go to the another  
16 location. At the bottom of the receipt, I believe it  
17 stated confirm delivery and line where someone can sign.

18 THE COURT: Was this written or printed?

19 THE WITNESS: It was written.

20 THE COURT: All written.

21 MR. BRANCATO: Can we have this marked  
22 People's Exhibit 6 for Identification?

23 (A note was marked People's Exhibit 6 for  
24 Identification.)

25 Q Please look at it and tell us if you recognize

1  
2  
3 III

4 A I do.

5 Q What do you recognize it to be?

6 A This is a copy of the receipt that was affixed  
7 to the top of the box of flowers.

8 MR. BRANCATO: I offer it into evidence.

9 MR. BRENNER: May I, your Honor?

10 THE COURT: Voir dire.

11 VOIR DIRE EXAMINATION

12 BY MR. BRENNER:

13 Q Detective, is this the same note that was on the  
14 box or is this an enlargement?

15 A Ho. The note is on the center of the eight and  
16 a-half by eleven piece of paper. The actual note

17 Q Is that a photocopy enlargement of the note or  
18 is it the same size?

19 A Ho. That's the same size.

20 Q You are sure?

21 A If you want, I'll get the original and make sure  
22 it is. But it looks like it is the same size.

23 Q Do you have the original?

24 A We have it on file.

25 Q If the original is here, I would ask for it.

A I believe the original is at the police



department lab. I believe. Maybe Mr. Brancato knows.

MP. BRENNER: I have no objection.

THE COURT: Without objection, People's 6 received.

(People's Exhibit 6 for Identification was deemed marked and received into evidence.)

DIRECT EXAMINATION

BY MR. BRANCATO:

Q Now, can you please tell us, you indicated that you are going to take handwriting samples the defendant?

A I was going to ask him to submit and give, submit handwriting samples for us.

Q And what were you going to ask him to write in the samples?

A I copied what is contained on this receipt in my writing and presented it to him.

Q Now, what day, was it that you are going to ask the defendant for handwriting samples?

A It was on August 24, 1990.

Q And did you speak with the defendant that day in person?

A Yes, I did.

Q and how was it that you met the defendant that day?

1  
2           Q     Got to go to another book. Okay. On the 22nd  
3 I was contacted by the defendant, which he related to me  
4 an incident that occurred in his home about some individual  
5 that came to his house and the problem he had in the home.

6           A     I spoke with him about that and made several calls  
7 about that particular investigation. I believe he had two  
8 people arrested at that time.

9           THE COURT: Was that in any way related to  
10 the incident?

11           THE WITNESS: No. No. But I spoke with him  
12 at that time about the possibility of giving me  
13 handwriting samples. I don't recall setting up  
14 a date because on the 24th I have present at the  
15 34 squad Dick Franza, so he came to the 34 squad  
16 on that day. But I don't have a notation that  
17 it was by pre-arrangements. I had mentioned it  
18 to him and as he had done in the past, he just  
19 showed up at the squad and at that time I first  
20 handed him an order of protection, which had been  
21 obtained by his wife. He got upset by that, and  
22 subsequent to telling him that I had information  
23 that he had been seen in the vicinity of where  
24 his wife had relocated to from her mother's home,  
25 and that was what caused her to obtain an order:

1  
2 of protection. He again was upset in that he had  
3 not been afforded the opportunity to speak with  
4 her or see her and in so many words accused me  
5 of preventing him from doing that.

6 I stated that it was not my decision, but  
7 his wife's decision. Subsequent to that, I asked  
8 him if he would submit handwriting samples.

9 Q Could you please tell us what his response was?

10 A He refused and left the squad.

11 Q When he walked out of the squad, did anyone  
12 follow him out?

13 A No.

14 Q What did you do after defendant walked out of the  
15 squad?

16 A Nothing.

17 Q Did you remain inside the squad room?

18 A I did.

19 Q Did there come a point that the defendant  
20 returned to the 34 P.D.U.?

21 A He did about a half hour later, he returned to  
22 the squad and he asked me, he said: What is it that you  
23 want me to write? I will write it.

24 I then gave him a receipt that I had written out in  
25 my own handwriting, and asked him to sit in the interview

1  
2 room. The initial conversation had taken place in the  
3 outer office at the desk. He was seated in a chair and I  
4 was at a desk. I gave him some blank paper. I gave him  
5 a pen, and asked him to copy the sample that I had given  
6 him.

7  
8 Q From the time that the defendant initially said  
9 that he didn't want to give handwriting samples to the time  
10 that he came back about half an hour later, did you  
11 contact the defendant in any way?

12 A No.

13 Q Did you ask any other officer to go after the  
14 defendant and speak with him?

15 A I did not.

16 MR. BRANCATO: Can we have this marked  
17 People's Exhibit 7 for identification?

18 THE COURT: 7 for identification.

19 (document marked People's Exhibit 7 for  
20 identification.)

21 THE COURT: Want it shown to the witness?

22 MR. BRANCATO: Please.

23 Q Do you recognize it?

24 A I do.

25 Q What do you recognize it to be?

A That is the sample copy that I gave to the

1  
2 defendant and made a notation on the bottom. The above was  
3 written by the undersigned and used as an example from  
4 which to copy from by Dominic Franza. I have 8/24/90,  
5 Detective Genaro Giorgio, shield 1335.

6 Q So that is the sample note that you provided to  
7 the defendant?

8 A It is.

9 MR. BRANCATO: I would offer it in evidence  
10 at this time.

11 MR. BRENNER: No objection.

12 THE COURT: Without objection, People's 7  
13 in evidence.

14 (People's Exhibit 7 for identification  
15 deemed marked and received into evidence.)

16 MR. BRANCATO: Can I have these marked  
17 collectively People's Exhibits 9 for  
18 identification. Mark them 9 A, B, C, and D.

19 THE COURT: What happened to 8? What  
20 happened to number 8?

21 MR. BRANCATO: I am sorry. 8 A, B, C, and  
22 D.

23 THE COURT: All right.

24 (Documents were marked as People's Exhibits  
25 8 A, B, C, and D for identification.)

MR. BRANCATO: I would ask that these be handed to the witness.

Q are those the handwritten samples that the defendant Dominic Franza provided or you in August of 1990?

A They don't look like the originals, they look like copies of the handwritten samples. Yes.

Q How do you recognize them?

A My signature is on the bottom of each page.

Q When did you write your signature on the bottom of each page?

A I believe when he was -- when he had finished. But I know I signed them as he finished each one. What happened was: I left him in the room by himself with paper and a pen. I returned to the room after about five minutes and the defendant was still writing the first sample copy. I asked him if there was any problem with the pen or what the difficulty was. He said there wasn't any difficulty. I then sat there with him and he completed all of the samples. And he completed each page. I signed the date and my signature on the bottom.

MR. BRANCATO: I offer them in evidence at this time.

THE COURT: Do you have copies of that, Mr. Brenner?



1  
2 MR. BRENNER: Yes, I do.

3 THE COURT: All right. People are offering  
4 them. Let me have them.

5 MR. BRENNER: I have no objection.

6 (People's Exhibits BA, B, C, and D were  
7 deemed marked and received into evidence.)

8 THE COURT: On application of counsel, we'll  
9 suspend the hearing until tomorrow morning until  
10 10:30, Mr. Brancato.

11 MR. BRANCATO: Let me just ask him.

12 THE COURT: Eleven o'clock.

13 MR. BRENNER: Your Honor, I have a very  
14 brief application.

15 THE COURT: The witness is excused.

16 (The witness excused.)

17 MR. BRANCATO: May we approach one minute,  
18 Judge.

19 THE COURT: Yes.

20 (A brief discussion off-the-record.)

21 THE COURT: Go ahead, Mr. Brenner.

22 MR. BRENNER: For several months I'd asked  
23 Mr. Brancato for the results of the Brooklyn  
24 Polygraph exam and Mr. Brancato told me he was  
25 having some difficulty getting it from Brooklyn.

1  
2 If seemed as if, based on the testimony, that  
3 Detective Giorgio reassessed Mr. Franza's status  
4 based on the polygraph, because up until that  
5 time he did not Mirandize him until after this  
6 deceptive answer, inclusive from the D.A.'s  
7 office, he Mirandized him and brought him down to  
8 the precinct. I assume that the suspect's status  
9 was elevated at that point. I would like to see  
10 it.

11  
12 THE COURT: That is a syllogism which is a  
13 non-sector. But I'll give Mr. Brancato an  
14 opportunity to respond.

15 MR. BRANCATO: He's got a copy of the papers  
16 that the polygraph examiner prepared in  
17 conjunction with this case.

18 MR. BRENNER: I have the questions and  
19 answers, but I don't have anything that says Mr.  
20 Franza was deceptive in answers. Now, it is  
21 either because it doesn't exist -

22 THE COURT: Assuming it exists but it may  
23 only exist in the mind, but it may only be used  
24 as a ploy by the detective and the case law  
25 approves of that.

MR. BRENNER: I don't take issue with that

1  
2 notion.

3 THE COURT: So therefore --

4 MR. BRENNER: But if it does exist, I would  
5 like to see it. I don't think that's an  
6 unreasonable request.

7 THE COURT: If it develops, we will hear  
8 from the witness at some point. If it develops,  
9 I'm going to suggest we defer on that until you  
10 have an opportunity to cross and at such time if  
11 in fact there was something there that propelled  
12 the detective to then change the status, at least  
13 then his own estimate of Mr. Franza, then we will  
14 find out what the basis was but at this point I  
15 think it's premature.

16 MR. BRENNER: Judge, off the record.

17 (An off the record discussion is held.)

18 THE COURT: Tomorrow morning, gentlemen,  
19 eleven o'clock.

20 MR. BRENNER: I think Mr. Brancato has  
21 something about the warrant application from  
22 Agent Behan.

23 MR. BRENNER: Yes. Agents for A.T.F.,  
24 special agent Carry DiPiero, she signed the  
25 affidavit which was the basis for the warrant in

1  
2 this case. I think it is about three, four,  
3 possibly five pages. I told them that I need a  
4 copy for the court and for counsel. They told  
5 me that they could not -- the agents could not  
6 give it to me without some sort of permission  
7 inasmuch it contained some allegations concerning  
8 tax -- possible tax violations which they claim --  
9

10 THE COURT: And that can't be redacted?

11 MR. BRENNER: Judge, not for nothing, but  
12 their arrest warrant is on my client.

13 THE COURT: They weren't arresting him on  
14 a tax violation.

15 MR. BRENNER: No, no, he's arrested on the  
16 basis of a complaint. He has an absolute  
17 statutory constitutional right to see the  
18 complaint.

19 THE COURT: Who's affected by this tax  
20 question? Is it the defendant or some third  
21 party?

22 MR. BRANCATO: No, it's the defendant and  
23 I think -- I think of the long and the short of  
24 it is I don't think it's going to be a problem  
25 providing it for the court. They have certain

1  
2 procedures they have to follow before they turn  
3 over information to the state and I might add we  
4 are the same in turning over our information to  
5 the government, but I think that we're going to  
6 have it here tomorrow. I told them to bring it  
7 in breast pocket, even if they wouldn't show it  
8 to me, I could at least tell the Court that that  
9 agent has it and that we can flush it out at that  
10 point.

11 THE COURT: Fine. Now that concludes the  
12 business before the Court with respect to the  
13 matters before today and we're off the record.

14 (Whereupon, the hearing was adjourned to  
15 Thursday, January 23, 1992 at eleven a.m.)  
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1 SUPREME COURT OF THE STATE OF NEW YORK

171

2 COUNTY OF NEW YORK: CRIMINAL TERM: PART 52

3 THE PEOPLE OF THE STATE OF NEW YORK

4 - against -

5 DOMINIC FRANZA,

6 Defendant.

7 January 22, 1992

8 B e f o r e:

9 HONORABLE PAUL P. E. BOOKSON,

10 Justice

11 (appearances as previously noted.)

12 THE COURT: All right. We are ready to get  
13 underway. Recall Detective Giorgio.

14 D E T E C T I V E G E R A R D G I O R G I O, shield  
15 number 1335, having been previously duly sworn, was  
16 examined and testified further as follows:

17 THE COURT (Clerk): Detective Giorgio, you are  
18 resumed.

19 THE COURT: You are reminded that you are  
20 still under oath.

21 THE WITNESS: Yes, your Honor.

22 THE COURT: Mr. Brancato.

23 DIRECT EXAMINATION

24 BY MR. BRANCATO:

25 Q First, Detective Giorgio, yesterday when we



1  
2 broke, one of the exhibits that was marked for  
3 identification was People's Exhibit Number 5 for  
4 identification, which was a cassette tape which was roughly  
5 an inch and a half long. Do you have that here with you?

6 A I do.

7 Q And at that time yesterday when it was marked for  
8 identification you indicated that that was the tape that  
9 you received from that was taken from the home I believe  
10 of Dominic Franca, the defendant in this case?

11 A That's correct.

12 Q Now, have you had an opportunity to yesterday  
13 afternoon when we went back to my office, to review that  
14 tape as well as to here the other tapes that were in your  
15 possession when you testified yesterday?

16 A Yes.

17 Q The one that was marked for identification  
18 yesterday, was that the one that was taken from the  
19 defendant's apartment the night during the time of the  
20 shooting?

21 A No.

22 Q Do you have the tape here with you that the  
23 police recovered from the defendant's apartment out in  
24 Barber Avenue?

25 A I do.

MR. BRANCATO: May we have this marked  
People's Exhibit Number 9 for identification.

(The tape was marked People's Exhibit 9 for  
identification.)

Q How do you recognize that to be the one that was  
turned over to police from the defendant's apartment in  
connection with this case?

A It has my initials scratched on it.

Q What is that, GUT?

A GUT.

Q And whose scratched those initials?

A I did.

Q And when did you scratch those initials into the  
tape?

A I'm not sure if it was that night or early  
morning of the next day, but I know it was not that night.  
It was definitely the next day.

Q Who did you receive that tape from?

A Detective Gilbert Ortiz.

MR. BRANCATO: I offer it into evidence at  
this time.

MR. BRENNER: No objection, your Honor, with  
the proviso that I be provided with a copy of it.  
Mr. Brancato and I have the discussed that.

1  
2 THE COURT: Without objection, People's 9  
3 deemed marked into evidence.

4 (People's Exhibit 9 for identification  
5 deemed marked into evidence.)

6 Q Now, yesterday, during the course of your  
7 testimony you indicated that you had spoken to Myra Franza  
8 at the hospital and other times during the course of your  
9 investigation, specifically, from the time of the shooting  
10 to the time that the defendant was arrested in this case?

11 A Yes.

12 Q When was the defendant arrested in this case?

13 A February 11th of 1991.

14 Q Could you please tell us, you indicated yesterday  
15 that Ms. Franza had indicated to you that the defendant had  
16 made some threats against her?

17 A Yes.

18 Q Could you please tell us what she told you  
19 concerning that?

20 and, specifically, I am concerned with from the time  
21 of the shooting to the time of that the defendant was  
22 arrested.

23 A From the time of the shooting to the time of the  
24 arrest it is my understanding that she - I don't think she  
25 had any contact with him during that period. What we

discussed and what she told myself and Detective Ortiz was that she had been knocked about, punched by

MR. SPEHNER: Objection. I move to strike it. It is not between the time of the shooting and the time of the arrest. What relevance is it to this hearing?

MR. BRANCATO: Well, I believe that what he is going to testify to now, your Honor, is threats that the defendant had made to Ms. Franza prior to the shooting in that regard.

THE COURT: all right, I am allowing it.

Q Yes. She told me that the defendant had threatened her with bodily harm and as we continued talking over some months, she told me that if she were to leave him he had threatened to kill her.

MR. BRANCATO: Now, just one moment, Judge.

Q Did there come a point that you took a third statement from the defendant?

A Yes.

Q and when was that?

A That was on February 11th prior to him being placed under arrest.

Q and where was that done?

A In the 34th Squad.

1  
2 Q Do you know how the defendant got to the 54th  
3 Squad that day?

4 A Yes. He arrived in the company of Detective  
5 Herbert and Ramon from the Arson and Explosion Unit.

6 Q And do you have a copy of that statement that was  
7 taken from the defendant?

8 A I am looking for it now.

9 Q All right.

10 A I do.

11 Q Could you please take it from your folder and  
12 we will have it marked as People's Exhibit 10 for  
13 identification.

14 MR. BRANCAIO: Judge, can we treat this the  
15 same way we treated the other statement? We will  
16 have the original marked and we will substitute  
17 copies into the record.

18 THE COURT: Give Mr. Brenner an opportunity  
19 see them.

20 MR. BRANCAIO: To see them, sure.

21 The document was marked People's Exhibit 10  
22 for identification.

23 Q Do you have it?

24 A I do.

25 Q And what do you recognize it to be?

1  
2 a It is the statement I took Dominic Franza on  
3 02/11/91, Monday.

4 Q How do you recognize that as the statement you  
5 took from the defendant, Dominic Franza on 2/11/91?

6 a I wrote it out.

7 MR. BEARCATO: I would offer it into  
8 evidence at this time.

9 THE COURT: Mr. Brenner.

10 MR. BRENNER: No objection.

11 THE COURT: Same ruling.

12 (People's Exhibit 10 for identification  
13 deemed marked into evidence.)

14 Q Could you please tell us how you took that  
15 statement from the defendant, Dominic Franza on 02/11/91?

16 a Yes. Myself and Detective Ortiz asked Mr. Franza  
17 to accompany us into the interview room and at that time  
18 I asked him some questions.

19 Q Could you please tell us what you asked him and  
20 what if anything he answered to those questions?

21 a I asked him, I spoke to him regarding two letters  
22 that had been mailed to Myra Franza and Josephine Hardez  
23 and to Myra's brother, Nelson Betasta.

24 Q What about those letters? What did you ask him  
25 about those letters?



1  
2 a at that time I asked him if he again would submit  
3 and provide handwritings samples.

4 Q What, if anything, did he respond?

5 A He said he would not.

6 Q Did you say anything else to him at that time?

7 A I asked him about a person by the name of Julio  
8 Ortiz and he denied knowing any such person initially,  
9 and then a short time later stated that Julio Ortiz had  
10 been an apprentice who had worked with him in the  
11 electrical field.

12 Q Now, when you brought up the name of Julio Ortiz,  
13 or did William Ortiz bring that name?

14 A It could have been either one of them.

15 Q When the defendant initially said he didn't know  
16 Julio or did I, you or Detective Ortiz say anything back to  
17 him that caused him to respond?

18 MR. SPENNER: I object to the leading nature  
19 of the question that caused him.

20 THE COURT: Just a moment, don't argue.  
21 Rephrase your question, Mr. Brancato.

22 Q Well, after the defendant denied knowing Julio  
23 Ortiz, did you say anything to him prior to saying that  
24 Julio Ortiz was an apprentice?

25 A I asked him to give it some thought, repeated a

1 name to him. Again, he thought about it for a very short  
 2 while, a few seconds. Yes. In fact, he knew the name and  
 3 that again he repeated that it was Julio Ortiz had been an  
 4 apprentice who had worked with him. He being an  
 5 electrician and Julio Ortiz working under him or with him.  
 6

7 Q Did you ask the defendant any other questions at  
 8 this point?

9 A No.

10 Q Did Detective Ortiz ask him anything else during  
 11 that time?

12 A No.

13 Q Did the defendant say anything else to you at  
 14 this point?

15 A As I recall, he didn't want to answer any more  
 16 questions.

17 Q Could you please tell us how he indicated to you  
 18 that he didn't want to answer any more questions?

19 A He stated that he didn't want to answer any more  
 20 questions.

21 Q At what point was it that you informed the  
 22 defendant that he was under arrest in this case?

23 A I would think it was shortly after this  
 24 conversation, within a half hour or so.

25 THE COURT: This is a 34?

THE WITNESS: At the 34, yes, your Honor.

Q Now, you indicated that at one point during this conversation, the defendant on February 11th of 1991, that you spoke to him concerning some letters that had been sent to the Mendez family?

A During that conversation?

Q Yes.

A Yes.

Q Do you have copies of those letters here with you?

A I believe they are either still with the police lab or you may have them in your possession. I don't have them readily available that I can see. I will look through my other notes.

MR. BRENNER: Your Honor, if it might make things easier after the hearing, you can put the into evidence, I have no objection. But if you don't need them immediately --

MR. BONCATO: One of the things that I would like to put the letters into evidence, additionally, what I would like to do -- first I want to take the detective's testimony as to what he understood the letters to contain.

THE COURT: What he understood them to

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contain?

MR. BRANCATO: Well, they have been translated to him. But, in other words, because these letters are in Spanish, in order to make them a part of the record, we should have a Spanish translation of those letters in the record, English translation in the record.

MR. BREHNER: Who is going to provide it?

MR. BRANCATO: Well, I recommend that we get a Court Interpreter.

THE COURT: Let's first determine if we have the letters here. Now, I take it the letters have never been transcribed into English version?

MR. BRANCATO: I have a version, Judge, but that is for my own personal use.

THE COURT: Call for an interpreter, 4976.

MR. BRANCATO: Judge, if we can have just a minute, I can pull copies and we can xerox them and put it into the record.

MR. BREHNER: Your Honor, to make it easier, I have extra.

MR. BRANCATO: Could you give it to me, please? Judge, if I have a minute, I will xerox this and I will right back.

1                   GIORGIO    PEOPLE    DIRECT

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2                   (Whereupon, Mr. Broncato left the courtroom  
3                   and returned.)

4                   MR. BRANCATO:   Can we have this marked as  
5                   People's 11 for identification, the page that  
6                   starts with Josephine and Myra.   Number 12 for  
7                   identification, the one that starts to Voluntas.

8                   (Document's were marked as People's Exhibits  
9                   11 and 12 for identification.)

10                  Q    Detective Giorgio, you spoke before about some  
11                  letters.   Could you please amplify for us what you are  
12                  referring to when you say these letters?

13                  A    Yes.   I had received information.   I believe it  
14                  was on February 6th, okay.   It was the 7th of February,  
15                  1979 that

16                  Q    What information did you receive on that day?

17                  A    Mrs. Josephina Mendez contacted me at the office  
18                  and stated that she had received a letter.   As I recall the  
19                  letter, it was addressed to both she and Myra and it was  
20                  in Spanish and it was death threats against her husband and  
21                  family.

22                  Q    Again, whose husband?

23                  A    Mr. Mendez' husband, Cecile.   There was talk in  
24                  the letter about -- he was the super of the next building,  
25                  I think 495 and that they knew when he took out the

1  
2 garbage, that they could, or they would kill him at the  
3 particular time when he was removing the garbage. Words to  
4 that effect.

5 Q Was there any other letters mentioned aside from  
6 the one that was sent to Myra Franza and Josephina Mendez?

7 A Yes.

8 Q What letter was that?

9 A She mentioned a letter that her son, very similar  
10 letter, same envelope, same return address. The person  
11 listed was Julio Ortiz. I believe the return address was  
12 the name and address listed and that it was sent to her  
13 son, Nelson Betasia, and that similarly it made some  
14 allegation with regard to either the tipping off or the  
15 taking of drugs and that he and the family or members of  
16 the family were going to be killed, and that a gift or a  
17 present either had - was going to be sent to the  
18 grandmother, and my understanding was that Myra's  
19 grandmother and Nelson's grandmother.

20 Q Where did the grandmother live?

21 A In Puerto Rico.

22 Q This conversation that you had with Mrs. Mendez,  
23 was it on the telephone or was it face to face in person?

24 A No. It was on the telephone. I had - that she  
25 contacted the - I'm sorry. I contacted her. There was



1  
2 a message. Means I called her and she told me about this  
3 and that at some point, I'm not sure, but I'm pretty sure  
4 either myself and Gil Ortiz obtained the letters, or he  
5 went over and obtained the letters, which we delivered the  
6 police lab.

7 Q How, did you have an opportunity look at those  
8 letters as well as the envelope in which they came?

9 A I did.

10 Q By the way, did Mrs. Mendez indicate to you who  
11 she thought had sent these letters?

12 A Yes.

13 MR. BENNER: Objection.

14 THE COURT: I am going to allow it.

15 A Yes. She wished to make an - - and I believe the  
16 - I don't know if it was the first time, but, she wished  
17 to make, she wanted to impress upon me. She said that  
18 Nelson, the only people that knew that Nelson had the last  
19 name of Becasta would be the immediate family. She  
20 specifically singled out the defendant stating he would  
21 know that and he would be the only person in her opinion  
22 that would have known to use that name and send him such  
23 a letter or send them such a letter.

24 Q Did you have an opportunity to look at the  
25 envelopes?

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A Yes.

Q Let me ask you to please look at what has been marked People's Exhibit 11 for identification. Please look at that and tell us if you recognize it?

A I do.

Q What do you recognize it to be?

A The letter that was addressed to Helen Betasia, at least the envelope and the envelope that was addressed to Myra Franza and Josephine Hendel.

Q That is a xerox copy of both letters?

A Yes. With the return, again, Julio Ortiz in the upper left hand corner. Looks like 750 West 181st Street, New York, New York, 10032.

Q When did you see those envelopes?

A It wasn't that day, it was the next day.

Q Is that prior to the defendant being arrested in this case?

A Yes.

Q How, when you saw the envelopes prior to see the envelopes, had you seen copies of the defendant's writings?

A Yes.

Q And is that among other things what is in evidence as People's Exhibit Number 6a through 6d?

A Yes.

1  
2 Q When you saw these envelopes at the time, how did  
3 that -- well, when you saw them, did the writing look  
4 familiar to you?

5 A Yes.

6 Q Who did you -- whose writing did you think was  
7 on the envelopes?

8 A I was in agreement with Mrs. Hendez that these  
9 envelopes --

10 MR. BRENNER: OBJECTION. The question is  
11 very simple, who he thinks it was.

12 THE WITNESS: Yes, Dominic FRANZA, the  
13 defendant.

14 Q Now, let me hand you what has already been marked  
15 as People's Exhibit 12 for identification. The one that  
16 starts Josephine and Hyra, please look at it and tell us  
17 if you recognize it?

18 A Yes, I do.

19 Q What do you recognize that to be?

20 A As a copy of the letter that was received by  
21 Josephine Hendez at her home.

22 Q And let me hand you what's now marked People's  
23 Exhibit Number 13 for identification. What do you recognize  
24 that to be?

25 A Yeah, this is a copy of the letter that was

1 received by Nelson DeLuca.

2  
3 MR. BRANNON: I would offer them into  
4 evidence at this time.

5 THE COURT: I take it Mr. Branner has copies  
6 of these.

7 MR. BRANNER: I do. These are my copies,  
8 your Honor.

9 MR. BRANNON: 11, Judge, for the record,  
10 is the two envelopes. 12 and 13 contain the two  
11 letters.

12 (Go marked People's Exhibit 11, 12 and 13  
13 in evidence.)

14 THE COURT: Madam Interpreter, will you step  
15 up. Place your name on the record.

16 a Lizette Colon.

17 Q Detective Giorgio, can you read Spanish?

18 a Somewhat.

19 Q and did you look at these letters?

20 a I did.

21 Q and did you look at them by yourself or did you  
22 look at them with anyone else?

23 a I looked - I have a recollection I believe I  
24 looked at them with Mrs. Mendez or with Mrs. Franza at some  
25 point.

1  
2 Q Did there come a point that Detective BRILL  
3 looked at these letters?

4 A Yes.

5 Q And did he indicate to you the contents of the  
6 letters?

7 A We discussed the contents of the letters, yes.

8 MR. BRENEAU: If we can have number 10  
9 interpreted at this point.

10 THE COURT: Madam Interpreter, I will ask  
11 you to interpret it as it appears. I don't want  
12 you to correct it in any way. I don't want you  
13 to make better sentences of it. I want you to do  
14 it in effect verbatim.

15 THE INTERPRETER: Your Honor,  
16 interpretations -- if I say the word, it will  
17 probably not make sense.

18 THE COURT: That may very well be, but  
19 that's what you are going to do.

20 THE INTERPRETER: Okay.

21 "Josephine, Myra no speak with no one speak  
22 with your son the approximate time the two are  
23 going die and your husband I can kill. And him,  
24 someone is looking your husband when he throws  
25 the garbage to the street Tuesday at 1 in the

1 morning, I don't want to kill. The police cannot  
2 help. You are without hope." Something, "Myra,  
3 your husband, he is asking for investigating a  
4 lot. I am going to kill him also. Your son  
5 lacks respect. Your husband throws the garbage  
6 Wednesday at 1 in the morning. The other day is  
7 incorrect. So that you know it is not a game I  
8 tried to kill your husband two times."

10 MR. BRANCATO: Judge, if we could have  
11 what's in evidence as Number 13 translated.

12 THE COURT: That's the second letter?

13 MR. BRANCATO: Yes.

14 THE COURT: All right.

15 THE INTERPRETER: Same way, your Honor?

16 THE COURT: Same way.

17 THE INTERPRETER: "I volunteered to kill all  
18 your family here in Puerto Rico. I order you  
19 grandmother a present. I know where all your  
20 family lives. I leave you only so that you can  
21 suffer. You feel what happens with your family.  
22 you learn. I know that you and your friends steal  
23 a place of mine. Your friends return my things.  
24 I have no need for a thing your friends"  
25 correction. "I know of a thing your friend said



1  
2 you have that I need. I know everything of your  
3 life. you produce. I will wait. you turn over  
4 the object a 175th - either street or fifth -  
5 yeah, Street.

6 "Audobon at 4 a.m. in the morning alone,  
7 solitary. Put the thing in the garbage. Someone  
8 will be looking. I have much money" -

9 MR. BRACCATO: Judge, can we approach for  
10 one minute.

11 THE COURT: Yes. Hold it.

12 (Whereupon, the attorneys approach for a  
13 sidebar for a discussion off the record.)

14 THE COURT: I'm just going to ask you to  
15 make certain the tenses you are referring to,  
16 whether it past, whether it's first or third  
17 parties. I am not a Spanish expert, nor do I  
18 claim to be, but I just want you to make certain  
19 that you're giving us -

20 THE INTERPRETER: The way you have told me  
21 to translate it is the way I'm translating it and  
22 sometimes it does not make sense.

23 THE COURT: We're not questioning the sense  
24 at best, the tenses maybe, so just look at it  
25 carefully and we will proceed.

1  
2 THE INTERPRETER: "I have much money. No  
3 can hide. I find you where you go." There is a  
4 word I do not know in the Spanish language, C  
5 O H E I O. "Conato with everything." another  
6 word, C O E R H I R S E. "Concentrate and not  
7 everyone die little by little. You no speak with  
8 the police. With no one in your family. Tell  
9 no speak with the police. No everything I am  
10 saying. That the police fine. Everything will  
11 be bad manner for everybody. Your friend is  
12 friend of mine. Your friends say it is not  
13 correct. Say the truth. Write a letter. I will  
14 verify no lie. I have patience. You turn over  
15 the 8th day of February in the morning." That  
16 is it.

## DIRECT EXAMINATION

BY MR. BRANCATO (CONTINUED):

19 Q Detective Giorgio, having heard the translation  
20 of those two letters by the court interpreter, was that  
21 your understanding as to what those letters contained when  
22 you received them on -- prior to the defendant's arrest in  
23 February of 1967?

A Yes.

25 Q And there come a point that you learned about a

1 letter -- about a bomb that had been sent to Mrs. Mendez's  
2 family in Puerto Rico?

3 A Yes.

4 Q When did you learn about that?

5 A I learned that on Sunday February 16th. I had a  
6 message when I arrived at work to contact Myra Franza and  
7 her mother, Josephine Mendez. You want me to read it out  
8 of the book or just --

9 Q Read it to yourself and then just tell us.

10 A About a bomb that had been sent to a family, last  
11 name Roman, it was sent to Levittown in Puerto Rico and I  
12 then started to make some contacts and phone calls.

13 Q What was your understanding as to when this bomb  
14 had been sent to Puerto Rico?

15 A I think it was received on Saturday of the 7th  
16 of February, 1971.

17 Q Did it mean anything to you when you learned that  
18 it had been sent on or about the 7th -- well, what's in  
19 evidence is People's Exhibit 13. Did you read the last  
20 sentence of People's Exhibit 13 when the letters were shown  
21 to you?

22 A Well, I'm not sure what the word E-R-T-E-P-C-O-R  
23 O, but it says the day of the 6th of February. That's  
24 translated into English. It may mean it will arrive on  
25

1 words to that effect.

2  
3 Q Did Mrs. Bender say anything to you other than  
4 she thought that the defendant in this case had sent those  
5 letters to the family?

6 A She said that in her mind she was certain that  
7 the bomb had been sent by the defendant.

8 Q We'll get you that. But now, we're talking about  
9 the letters.

10 A Ho, she had no doubt in her mind that these  
11 letters were sent by the defendant, Dominic Franza.

12 Q You indicated earlier that she had made mention  
13 to you about Nelson, her son, and the last name that  
14 appeared on the envelope, DeCasta?

15 A Right.

16 Q What did she say to you concerning the use of the  
17 name DeCasta with Nelson's name?

18 A She said that only the immediate family knew that  
19 Nelson might use the last name DeCasta. I'm not sure what  
20 other last name. It escapes me at the moment, but I heard  
21 what name. It escapes me at the moment, but I heard what  
22 name he would use in his daily activities in his  
23 identification, et cetera, but I'm not sure what that name  
24 was. The name Perez comes to me but I could be wrong.

25 Q Did she say who else besides herself knew that

1  
2 Nelson's name was DeCasta?

3 A She was quite emphatic that besides the immediate  
4 family the defendant Dominic Franza knew that he had that  
5 last name.

6 Q Now, those letters that have been translated  
7 together with those envelopes, were they vouchered in  
8 connection with this case?

9 A Yes, they were.

10 Q And were they sent to the police laboratory here  
11 in New York County?

12 A Yes.

13 Q Just for the record, number 11 in evidence shows  
14 the face of the two envelopes. Could you please tell us  
15 what postage appears on each envelope? Let's first start  
16 with the one that is sent

17 THE COURT: Referring to the amount of the  
18 postage of the origin, the country issuing the

19 the amount of the postage stamps used on the  
20 envelope on the letter of DeCasta?

21 A On the letter for DeCasta is a 25 cents, or copy  
22 of it and two three cent stamps.

23 Q Could you tell us the stamps that appear on the  
24 envelope for Heiler and Franza?

25 A Also a 25 cent stamp and two three cent stamps.

1  
2 Q Now, can you please tell us what you learned  
3 about the [redacted] prior to the defendant's arrest, could you  
4 please tell us what you learned about the bomb that had  
5 been sent at the grandmother's residence in Puerto Rico?

6 A I had made an inquiry by calling Puerto Rico to  
7 find out if in fact the bomb was a live bomb or a bomb that  
8 could be detonated rather than a dud or something that was  
9 not a danger to life or limb and I was informed, in fact,  
10 their preliminary investigation and examination of the bomb  
11 was that it was a live bomb.

12 Q Did you learn how this bomb had been sent to  
13 Puerto Rico?

14 A Yes, it was [redacted] I believe it was air federal  
15 expressed.

16 Q And did you learn how [redacted] the point of origin of  
17 the bomb?

18 A It was Manhattan, I believe.

19 Q Did you receive any information from the  
20 Hernandez/Myra Franza concerning relatives in Puerto Rico,  
21 specifically what I'm asking, did she give you any  
22 telephone numbers?

23 A Yes, on the 10th of February, I obtained a phone  
24 number from the family. I am not sure if it was Myra  
25 Franza or Josephine Hernandez, who gave it to me.



1  
2 Q Could you please tell us what that number was?

3 A I have a notation of what I believe to be two  
4 and's, one, a Roman Figueroa, another Angelis with a  
5 telephone number. The telephone number that I have here for  
6 the man, to the best of my recollection was in Pio Pedras  
7 and I think either Mrs. Franza or Mrs. Mendez suggested I  
8 speak with a relative and Angelis, who had spoke English  
9 or spoke better English than the other family.

10 Number 209-7654722.

11 Q Now, did there come a point that you learned  
12 where in Puerto Rico the bomb had been sent?

13 A Yes. I was told initially by - again, Mrs.  
14 Mendez and Mrs. Franza that it was in Levittown.

15 Q In Puerto Rico?

16 A In Puerto Rico.

17 Q Did there come a point that you informed the  
18 defendant, Dominic Franza that he was under arrest in  
19 connection with this case?

20 A Yes.

21 MR. BRENNER: Judge, when he says "this  
22 case", could he be more specific?

23 THE COURT: Yes, I think you should specify.

24 Q Did there come a point that you arrested the  
25 defendant for the shooting of Myra Franza and Josephine

1  
2 Henderz that occurred on July 17, 1990 within the confines  
3 of the 54th Precinct here in New York County?

4 A Yes, he was arrested by Detective Ortiz, the  
5 assigned detective.

6 Q And pursuant to arresting him, did you ask the  
7 defendant to empty his pockets?

8 A Yes. He was searched and he was asked to empty  
9 his pockets, yes.

10 Q Did there come a point that you inventoried the  
11 contents of his wallet?

12 A I inventoried a piece of paper from his wallet  
13 and a telephone book, a little pocket telephone book.

14 MR. BRANCATO: May we have this piece of  
15 paper marked as People's Exhibit Number 14 for  
16 identification.

17 (So marked People's 14 for identification.)

18 Q Detective Giorgio, looking at that piece of  
19 paper, do you recognize it?

20 A Yes.

21 Q What do you recognize that serozed copy to be?

22 A It's a copy of the piece of paper that was  
23 removed from the defendant's wallet.

24 MR. BRANCATO: I would offer it into  
25 evidence at this time.

1                   GIORGIO - PEOPLE DIRECT

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2                   MR. BRENNER: I would like to see it.

3                   (People's Exhibit 14 for identification was  
4 handed to the defense's attorney.)

5                   MR. BRENNER: No objection.

6                   THE COURT: All right, without objection 14  
7 received.

8                   (Co marked People's 14 in evidence.)

9                   Q     Now, Detective Giorgio, was that piece of paper  
10 vouchered in connection with this case?

11                   A     Yes.

12                   Q     And could you please read into the record the  
13 information that's contained in that piece of paper?

14                   A     Okay, it has LEV, you can't read L. It's a bad  
15 copy of the piece of paper. JOHN 809754 16, it looks like  
16 60, Rio Pedras. 807-765-4792. 933-9771. 655-8319.

17                   Q     Now, Detective Giorgio, when you saw that piece  
18 of paper, could you tell us why you vouchered it?

19                   A     What did you notice about it?

20                   A     Well, when I saw Levittown, I was already aware  
21 that a bomb had been mailed to Levittown and the number on  
22 the Levittown at that time I don't think meant anything to  
23 me, the number. When I saw the Rio Pedras, and I saw that  
24 telephone number, I had received that telephone number just  
25 the day before. I went back to my notes and it was the

1  
2 same number that I had been given by Mrs. Franza and Mrs.  
3 Hernandez for a family member in Rio Piedras in Puerto Rico.

4 Q Did there come a point after you received that  
5 piece of paper that you communicated the contents of that  
6 piece of paper to Special Agent Gerald Raffa of the  
7 Alcohol, Tobacco, and Firearms?

8 A Yes.

9 Q And was that the same day or another day or what?

10 A No, it was on the 11th - I'm sorry, it was the  
11 same day - I conferred with agent - or supervisor Jerry  
12 Raffa from AT&F -

13 THE COURT: When you say conferred with him

14  
15 THE WITNESS: By phone.

16 THE COURT: Just regarding this paper or  
17 other matters?

18 THE WITNESS: This paper and other matters.

19 THE COURT: Relating to this investigation?

20 THE WITNESS: Yes, totally. That last  
21 reference I made with conferring with Jerry  
22 Raffa, I conferred with him prior to obtaining  
23 the piece of paper and subsequent to obtaining  
24 this piece of paper.

25 Q Now, the telephone book, would you please

1  
2 describe the telephone book for us?

3 A Yes, it was about maybe two and a half inches  
4 long, maybe an inch and a half wide, a small pocket phone  
5 book.

6 Q and was there writing in the telephone book?

7 A yes.

8 Q Was that vouchered in connection with this case?

9 A yes.

10 Q I just want to shift gears a minute and go back  
11 to what's in evidence as Exhibit 9 in evidence, this is a  
12 copy of the note that was affixed to the box of roses?

13 A Could you please I don't think it has been  
14 read in yet, could you please read in line by line what  
15 appears on that exhibit?

16 A "P, what appears to be plus P florist, FID,  
17 order number 5792, person Myra Franza, address 485 East  
18 137th Street."

19 Q Okay, if I could just stop you at this point,  
20 on the first line you indicated P plus P florist, FID,  
21 and order number 5792.

22 A correct.

23 Q The second line that has "person" with Myra  
24 Franza?

25 A correct.

1  
2 Q Read it line by line. So the third line has  
3 "address".

4 A "485 West 187th Street, apartment 1B or -

5 Q Is there another line that has the remainder of  
6 that writing.

7 A Yes, the next line. "Or basement apartment in  
8 rear, ring bell, apartment 2. Next line has left".

9 Q The words, "apartment", that appear in the fourth  
10 line, are they both abbreviated with the "APT"?

11 A Yes, with "APT", just as the "ST" for street is  
12 indicated.

13 Q Is there anything on the next line, "left"?

14 A There are two blank spaces and then there's the  
15 writing, "confirmed delivery," and then an X, and a line  
16 drawn next to the X.

17 Q Was any printing on that paper -- by that I mean  
18 any printing on that paper with a machine?

19 A No, all of this appears to be handwriting, both  
20 print and script.

21 Q Did you take any steps to find out if there was  
22 an R and use R Florist in New York County?

23 A If my memory serves me correctly, I not only  
24 checked it in New York County, I checked it state wide.  
25 It may have been gone nationally. If you want, I will refer



1  
2 to my notes.

3 Q Okay, if it will refresh your recollection,  
4 please go ahead.

5 A I contacted a person in customer service for FID.  
6 They have an 800 number and the woman who I spoke to there,  
7 S-C-H-R-E-L-T-E P, stated that in conjunction to their 800  
8 number or to the FID florist there is not or does not exist  
9 any P & P Florists.

10 Q Detective Giorgio, all right -- the note that was  
11 on the box, was that sent to Detective Schmetter at the  
12 police laboratory?

13 A Initially I believe it was Detective Goshwin at  
14 the police laboratory and they conducted some test both on  
15 the box and on the slip of paper to be determined if there  
16 were any legible or -- or latent or patent print on it and  
17 they came up with a negative result as far as prints. It  
18 was then -- I then referred it to Detective Breslin and had  
19 a conversation with him that I was going to attempt to  
20 obtain handwriting samples from the defendant in this case,  
21 Dominic Franz.

22 Q What is Detective Breslin's job at the police  
23 laboratory?

24 A He works in the document section, he does  
25 handwriting analysis.

1  
2 Q Is he a document examiner?

3 A Exactly.

4 Q Was the note that was affixed to the box turned  
5 over at some point to Detective Breslin?

6 A Yes, it was still at the lab, it just went from  
7 Detective Goodwin who had processed the prints and, I  
8 guess, just moved across the hall and down the hall to  
9 Detective Breslin.

10 Q Did you forward the handwriting exemplars that  
11 the defendant gave you which is in evidence as Exhibits 8A  
12 through 8D, did you forward those to Detective Breslin  
13 prior to the defendant being arrested in this case?

14 A I hand carried them down, yes.

15 Q And did you likewise give him a copy of the note  
16 that you prepared for the defendant taking those  
17 handwriting exemplars?

18 A I did.

19 Q Could you please tell us, did you make a request  
20 of Detective Breslin to compare 8D through 8D against the  
21 note that was affixed to the box of flowers that were left  
22 at the Mendez house the night that the Mendez family was  
23 shot?

24 A I'm sorry, I didn't --

25 Q Did you request that Detective John Breslin

1  
2 compare the samples given by the defendant, which are in  
3 evidence, against the note that was affixed to the box of  
4 the flowers that the shooter brought into the Mendez house  
5 the night of the shooting?

6 A I did.

7 Q And did Detective Breslin indicate to you his  
8 opinion concerning authorship of the note left on the box  
9 of flowers?

10 A After his examination -- if I'll check the dates

11 --  
12 Q Please do.

13 A On August 27th of 1990, I was present at the  
14 police lab and gave the handwriting specimens to Detective  
15 Breslin. He contacted me -- if my memory serves, he may  
16 have commented that day, just as an initial investigation  
17 that he thought there to be similarities but that he would  
18 have to examine it further.

19 In fact -- if you want, I'll find the date he called  
20 me but I know it's in my notes.

21 Q Can you give us the month of 1990?

22 A It was August of 1990 that I delivered it, again  
23 on the 27th of August.

24 Q Let me ask you a couple of questions as you look  
25 for it.

1  
2 A Sure.

3 MR. BREHNER: I have the date the report was  
4 furnished, September 5, 1990. Does that sound  
5 about right?

6 Q Prior to the arrest of the defendant on February  
7 11, 1991, did you have at your disposal did you have within your  
8 information an opinion from Detective Breslin concerning  
9 the note that was found on the box of flowers against the  
10 notes that the defendant wrote, RA through SD?

11 A Yes.

12 Q What opinion did Detective Breslin communicate  
13 to you concerning authorship of the note on the box of  
14 flowers?

15 A Said to me that the conclusion of his examination  
16 of the note on the box of flowers and the samples submitted  
17 by me with the handwriting samples of the defendant, that  
18 they were one in the same.

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Giorgio - People - Direct

Q That is the person who wrote BA through D was the person who wrote the note that was on the box of flowers?

A That's correct.

MR. BRANCATO: I have no other questions.

THE COURT: Does that complete your examination of this witness?

MR. BRANCATO: Yes, Judge.

THE COURT: All right. We will work to at least 1:00 and get going.

CROSS EXAMINATION

BY MR. BRENNER:

Q Detective Giorgio, if there is any questions that I ask you that you don't understand, please tell me that you don't understand and I will ask the question in another way, all right?

A Yes, sir.

Q By the way, Detective are you a family member of the Mendez family?

A No.

Q You met Nelson on July 17, 1990, did you not? You met Nelson on July 17, 1990?

A I did.

Giorgio - People - Cross

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Q As a matter of fact, you made an entry in your memobook of meeting him, did you not?

A Yes.

Q And he gave you his name?

A Yes.

Q And the name that he gave you was Nelson DeCasta Mendez, is that right?

A I'll check my notes. Yes. I have Nelson. I have DeCasta in parenthesis and Mendez. That's correct.

Q So at least as far as you are concerned he didn't feel that it was necessary to be on an intimate relationship with you to give you his name DeCasta?

MR. BRANCATO: I object to the form of the question.

MR. BRENNER: There has been testimony by this witness that in Josephine Mendez' opinion only family members would know the name DeCasta connected with the name Nelson. That was -- the witness was given that name by DeCasta himself.

THE COURT: That is not for him to interpret why he gave him that name. You are



Giorgio - People - Cross

1 asking for the operation of Mr. DeCasta's  
2 mind.  
3

4 Q Well, did Mr. DeCasta say to you, Detective,  
5 I only give this name to family members, but I will  
6 give it to you?

7 A No. What he said was -- often times when I  
8 interview a person or take a person's pedigree with  
9 Spanish people, people will give me their mother's  
10 maiden name and the married name and often times  
11 indicate which name they used. So in this instance  
12 he gave me Nelson DeCasta Mendez. I placed DeCasta in  
13 parenthesis because he indicated that he doesn't use  
14 DeCasta.

15 Q Oh, he did?

16 A Yes.

17 Q Where is that written down?

18 A Where is what?

19 Q Where is that written down?

20 A It is not written down.

21 Q That he told you that he doesn't use the name?

22 A I didn't write it down. But that's what he  
23 told me.

24 Q Well, did you make a report of your meeting  
25 with Mr. DeCasta Mendez?

Giorgio - People - Cross

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A I spoke with him that night.

Q So the fact that he told you he doesn't use that name is only by operation of your memory, is that right?

A Yes.

THE COURT: He just testified as to that. He made an indication by the name, by putting the name DeCasta in parenthesis. That is what he just testified to.

MR. BRENNER: Is the Court objecting to my question?

THE COURT: No. You are misconstruing the testimony. You want that read back to you?

Read back the answer by Detective Giorgio with respect to when he obtained the name.

(Record read.)

THE COURT: Let's move on.

Q Have you had occasion to review the warrant filled out by Agent Raffa in this case, the affidavit?

A No.

Q The information you relayed to Agent Raffa?

A Yes.

Q Did you relay information relative to Nelson

Giorgio - People - Cross

1  
2 to Agent Raffa?

3 A I don't recall.

4 Q Well, do you recall telling him about a  
5 pipe bomb recovered at Nelson's house?

6 A I may have.

7 Q Do you what name you used?

8 A What name did I use?

9 Q With regard to Nelson, whether you Nelson  
10 Mendez or Nelson DeCasta?

11 A I don't recall.

12 Q Now, Detective how long have you been a  
13 detective?

14 A Since 1966.

15 Q So, approximately 26 years?

16 A Yes.

17 Q And what DD-5's?

18 A Those are follow-up reports to a complaint  
19 report.

20 Q They are informational, are they not?

21 THE COURT: Can I interrupt for one  
22 minute?

23 Is there any reason for the interpreter  
24 to remain?

25 MR. BRENNER: No.

Giorgio - People - Cross

1  
2 THE COURT: Then she is excused at this  
3 time.

4 (Whereupon, an interpreter left the  
5 courtroom.)

6 Q They are informational?

7 A Yes.

8 Q And during the course of an investigation  
9 would it be fair to say that information that is  
10 important to that investigation is usually recorded in  
11 a DD-5?

12 A That would be correct.

13 Q For instance, everytime that you spoke to  
14 Dominic Franza you filled out a DD-5, did you not?

15 A Absolutely not.

16 Q Everytime that you took the statement from  
17 Mr. Franza you filed out a DD-5?

18 MR. BRANCATO: I object to the form of  
19 the question, Judge. Written, oral?

20 Q The District Attorney has offered three  
21 statements in Evidence, is that right?

22 A Yes.

23 THE COURT: Is there a DD-5 for each  
24 statement?

25 THE WITNESS: I am checking that right

Giorgio - People - Cross

now, your Honor.

THE COURT: I take it that is your question, Mr. Brenner?

MR. BRENNER: Yes.

THE WITNESS: Three statements. That's correct.

Q Three DD-5's?

A No.

Q One DD-5 reflects an arrest, is that correct?

A This is -- yes. The blue is it. A blue five, yes.

Q One DD-5 reflecting your first meeting with Mr. Franza on the night of July 17th to which you attached his statement?

A That is correct.

Q And one DD-5 was prepared in connection with the polygraph examination and the interview following it to which you attached his statement, is that correct?

A Polygraph and reinterview, correct.

Q So would it be fair to say with regard to your interviews of Mr. Franza at least to the degree that the Prosecution has offered into Evidence there were three DD-5's prepared on each occasion?

Giorgio - People - Cross

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A Yes. That would be correct.

Q Now, this was as far as you were concerned an attempted homicide investigation, is that right?

A Yes.

Q And as of July 17, 1990, you were not sure in fact whether it was going to become a homicide investigation?

A I was not sure.

Q Two victims were taken from the scene in critical condition, correct?

A Yes.

Q They remained in critical condition for some period of time?

A Correct.

Q So that on July 18, 1990, when you went to the hospital to speak to Myra Franza --

A Correct.

Q At least in your mind it was possible that that still could have been a homicide investigation, could become one?

A Yes.

Q And would it be fair to say that this was both a who done it and a what happened case? You needed to know what happened and who was responsible?



1 Giorgio - Peccole - Cross

2 MR. BRANCATO: I object to the form of  
3 the question.

4 THE COURT: Well, since Mr. Brenner  
5 expanded on it, I don't like the  
6 characterization.

7 Q I will rephrase it. Detective, would it be  
8 fair to say that in the course of your investigation at  
9 least in the inception you wanted to know what had  
10 occurred and who was responsible, is that right?

11 MR. BRANCATO: I object to the form of  
12 the question. It is a complex question.

13 Q Do you understand my question?

14 A I do.

15 THE COURT: All right.

16 Q Would it be fair to say that?

17 A It would be fair.

18 Q AND as far as you knew at that juncture there  
19 were only two eyewitnesses to the shooting, is that  
20 right?

21 A Correct.

22 Q One of them was Myra Franza and one was  
23 Josephine Mendez?

24 A Yes.

25 Q Josephine Mendez could not be interviewed

Giorgio - People - Cross

1  
2 according to your testimony on direct, is that correct?

3 A Right.

4 Q Myra Franza could be spoken to, but she  
5 couldn't speak verbally?

6 A Correct.

7 Q Would it be fair to say that that interview  
8 took on importance in the course of the investigation?  
9 Would it be fair to say that?

10 A Yes.

11 Q Did you prepare a DD-5 in connection with  
12 your interview of Myra Franza?

13 A I did not.

14 Q Did you relate what she told you in any way  
15 personally? Did you memorialize what she said to you  
16 as you sat next to this critically wounded woman in  
17 the hospital?

18 A Could you explain what you mean by  
19 memorialize?

20 Q Well, Detective, there are two ways. two  
21 routine ways, are there not, for an investigating  
22 detective to memorialize information. One is to put  
23 it in a memobook.

24 A Correct.

25 Q Which is routine, is it not?

Giorgio - People - Cross

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A For some.

Q The other is to prepare an informational follow-up report to a complaint known as a DD-5?

A That's correct.

Q Aside from memory, there are no other routine ways to memorialize information.

A Okay. I'll agree.

Q Did you in any way other than memorialize the information related to you by Myra Franza?

A Not the information, but the interview.

Q Why didn't you memorialize the information?

A Because in my opinion it was memorialized by the handwritten notes that she gave us.

Q Well, the existence of those handwritten notes is not contained in any reports, is it?

A No. We had the notes themselves.

Q But, the fact that they exist is not memorialized, is it?

A In my steno pad it is.

Q They are in your notes?

A Yes.

Q And you didn't prepare a DD-5 of what those notes contained?

A I did not.

Giorgio - People - Cross

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Q Where are the notes?

A Apparently they are lost.

Q When you say apparently they are lost, what does that mean?

A It means we are still looking for them.

Q Sorry?

A We are still looking for them.

Q When were they lost?

A They were in a brown manila envelope, to the best of my knowledge, contained in this folder.

Q Well, isn't it a fact that DD-5's are prepared, designed to event such occurrences that a police officer routinely in a report form memorializes information given to him?

A I do not routinely do that, no.

Q But, you routinely memorialize everything Mr. Franza had to say, is that right?

A That's not right.

Q Certainly as a result of your interview you memorialized everything that he had to say?

A That is also not right.

Q So there are other statements Mr. Franza made to you that have not, are not offered into Evidence?

A That wasn't my answer. If you want me to

Giorgio - People - Cross

1  
2 answer your question.

3 Q Or reduced to writing, Detective Giorgio,  
4 statements that Mr. Franza made to you on the night  
5 of July 17, 1990?

6 A I did.

7 Q You asked him to sign it?

8 A I did.

9 Q Then you interviewed him again six days  
10 later, you reduced that statement to writing and you  
11 asked him to sign it again, did you not?

12 A I did.

13 Q And then you interviewed him again on  
14 February 11, 1990 and you reduced that statement to  
15 writing?

16 A Correct.

17 Q For reasons best known to yourself you did  
18 not ask him to sign that, did you?

19 MR. BRANCATO: I object to the form of the  
20 question, your Honor.

21 Q You did not ask him to sign February 11th  
22 statement, did you?

23 A I may have.

24 Q I didn't ask you whether you may have. I  
25 asked when you did.

Giorgio - People - Cross

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A I don't remember. I may have.

Q And why is that you don't remember?

A I just don't remember if I asked him to sign.  
He may have refused to sign it.

Q So with regard to things that you remember  
about your investigation, you don't remember. It comes  
and goes, your memory?

A Sure.

MR. BRANCATO: I object to the form of the  
question.

Q With regards to what Nelson DeCasta Mendez  
told you about his name without a report or any  
explicit mention of that fact you remember it, did you  
not?

A I did.

Q But whether Mr. Franza was asked to sign a  
statement which has been offered in Evidence here, that  
you don't remember?

A I do remember distinctly that he refused to  
answer any more questions.

Q That's not what I asked.

MR. BRANCATO: I object to the question.  
I object on several grounds. One he is  
badgering the witness. But, essentially,



Giorgio - People - Cross

1  
2 more importantly, at some point the  
3 defendant refused to answer questions. He  
4 would be arguing that you were trying to  
5 inculcate the defendant when he is asserting  
6 his right by having him sign something.

7 MR. BRENNER: Mr. Brancato is  
8 speculating.

9 MR. BRANCATO: No, Judge.

10 MR. BRENNER: He an answer that on  
11 redirect, your Honor.

12 MR. BRANCATO: Judge, this is --

13 THE COURT: Just a moment. The fact  
14 remains that the witness testified that he  
15 does not recall why it is not signed. Now,  
16 the composition of why it was not signed  
17 can take many forms. Either he did not ask,  
18 or he asked and it was refused or it just  
19 wasn't asked at all. He has no  
20 recollection.

21 MR. BRENNER: I understand, your Honor,  
22 that is why --

23 THE COURT: Therefore, we will move on,  
24 and I think that this is a good time to call  
25 a luncheon recess.

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Giorgio - People - Cross

MR. BRENNER: Thank you.

THE COURT: Off the record.

(Whereupon, a luncheon recess was taken.)

THE COURT: Let's resume now with the cross examination.

All right, Mr. Brenner.

CROSS EXAMINATION

BY MR. BRENNER CONTINUED:

Q Detective, you went to the scene of this occurrence on July 17, 1990, is that right?

A I did.

Q At the time that you arrived Mrs. Franza and Mrs. Mendez was still there, is that right?

A Yes.

Q They were being escorted out by the EMS?

A Mrs. Mendez was being escorted out and Mrs. Franza was being attended to by some EMS people.

Q Now, you testified on direct that Mrs. Franza had said her husband sent this shooter, is that right?

THE COURT: Husband what?

Q Sent, words to that effect?

A She did.

Q She didn't say that to you?

Giorgio - People - Cross

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A She did not.

Q Who did she say that to?

A She wrote that in a -- I believe a steno pad very similar to mine at the time being held by Detective Joseph Montore (phon.) from the 34th Squad.

Q And when did you get that information?

A I saw it being done. I saw her attempting to write -- I believe she had also scribbled something on the wall I believe in blood subsequent to that. I had discussed it with Detective Montore and then I prepared a DD-5 that was submitted by Detective Montore.

Q What she had written on the wall was the number of her father, was it not? Telephone number and father?

A I don't think so, but I don't know.

Q Weren't you at the crime scene?

Q I don't remember if I was.

THE COURT: Just a minute. We are jumping to two different places.

What was written on that memobook or similar steno pad, where was that written? Where did you observe it being written?

Giorgio - People - Cross

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THE WITNESS: It is being written in steno pad.

THE COURT: Where, where was the location?

THE WITNESS: In the apartment.

THE COURT: In the apartment.

THE WITNESS: While she was lying on the floor. It may have been in the stretcher.

THE COURT: Whatever she was trying to say say in blood, appeared to be blood on the walls?

THE WITNESS: Had been written prior.

THE COURT: But it was also in the apartment?

THE WITNESS: That's correct.

THE COURT: That's right.

Q Now, was she doing the writing?

A I believe she was writing in the steno pad, yes.

Q And where is that?

A Steno pad.

Q Well, with her?

A Those notes?

Q Yes.

## Giorgio - People - Cross

1  
2 A With the same notes we obtained at Harlem  
3 Hospital, missing.

4 Q Well, again, I don't mean to belabor the  
5 point, they weren't taken at the same time, those  
6 notes, were they?

7 A No.

8 Q They had to do with two separate interviews,  
9 right?

10 A Correct.

11 Q And how is it that they ended up in the  
12 same place if they were not related in time or space?

13 A As often happens in this investigation and in  
14 others certain particular notes that are taken are  
15 placed into a manila envelope, sometimes attached to  
16 the case folder and sometimes placed into the large  
17 brown manila folder just as the tapes were. Sometimes  
18 the steno book is there at the crime scene, notes.

19 Q So, in this instance, every word during the  
20 course of the investigation that Mrs. Franza wrote  
21 herself is gone at this point?

22 A That she wrote herself, yes.

23 Q Is gone. Anything else gone?

24 A Not that I am aware of.

25 Q Now, so you were at least in part a witness

## Giorgio - People - Cross

1  
2 to the transmittal of this information, correct?

3 A Correct.

4 Q And shortly thereafter you saw Mr. Franza at  
5 the scene?

6 A Yes.

7 Q And did he identify himself to you?

8 A There came a time I found out who he was, yes.

9 Q At that time was Mr. Franza in your mind a  
10 suspect?

11 A No.

12 Q Well, did he identify himself to you as  
13 Mrs. Franza's husband?

14 A Yes.

15 Q And you had just witnessed Mrs. Franza right  
16 or communicate in some fashion about the person  
17 responsible for the shootings was her husband?

18 A Well, the writings were words or very short  
19 phrases. I'd not been able to put or I could not  
20 know at the time what she meant by writing those  
21 things. I later found out when she wrote the word  
22 sent she was trying to convey the thought that were  
23 husband had sent the shooter. I did not know that at  
24 the scene.

25 Q Well, during the course of your discussion



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A After.

Q Did you have a conversation with her?

A Yes, I did.

Q Did you tell her that this arrest was investigatory in nature?

MR. BRANCATO: Judge, I object.

THE COURT: Sustained. Post arrest, what is this doing?

MR. BRENNER: Just asked the question.

THE COURT: I understand that and I'm here to sustain those objections.

Q At any point during the course of the hours between 5:30 -- withdrawn.

When did he arrive, Mr. Franza?

A I believe he arrived approximately noon.

Q At the precinct?

A That's correct.

Q And you placed him under arrest at 5:30?

A That's correct.

Q So he was in the precinct -

A 5:15.

Q So he was in the precinct for 5 and a half hours before you arrested him?

A That's correct.

1  
2 Q And he wouldn't answer any questions, right, he  
3 said I don't want to answer any more questions?

4 A Mr. Franza initially was speaking to Detective  
5 Giorgio. There came a point where Mr. Franza said I refuse  
6 to answer any further questions and I refuse to give any  
7 handwriting samples which is at the time that he alleged  
8 that someone had taken a picture of him. I took him to the  
9 back to show him at which time he, "Either arrest me or let  
10 me go."

11 Q That was about 5:30?

12 A Approximately 5:15.

13 Q And what preceded I don't want to answer any more  
14 questions was this brief discussion about Julio Ortiz,  
15 right?

16 A Yes.

17 Q And in which Mr. Franza purportedly said first  
18 I don't know Mr. Julio Ortiz and then said I do, I used to  
19 work with somebody by that name, words to that effect, is  
20 that right?

21 A Yes.

22 Q What was going on in the five hours preceding  
23 that at the 34th Precinct?

24 THE COURT: Were you present during that  
25 time - I mean in the house.

1  
2 THE WITNESS: I wasn't there for the entire  
3 time, no. I was at court and then I came back  
4 from court.

5 Q Well, during the period of time you were there,  
6 I wouldn't expect you to tell us what was happening when  
7 you were not there. During the period of time you were  
8 there what was going on with Mr. Franza?

9 A We had a conversation with Mr. Brancato who was  
10 present at the 34th Precinct.

11 Q Was he introduced to Mr. Franza?

12 A Not to my knowledge.

13 Q Well, again, I ask you, Mr. Brancato was there,  
14 what was going on -- during the period of time you were  
15 there, during this five hour period of time which Mr.  
16 Franza was at the 34th Precinct?

17 A Other than interview Mr. Brancato I interviewed  
18 Mrs. Myra Franza who was present also. I had conversations  
19 with Puerto Rico Police Department in regards to an  
20 explosive device that had been sent to Puerto Rico.

21 And there was other investigatory work that I took  
22 care of.

23 Q Mrs. Franza was in the precinct?

24 A That's correct, Mrs. Myra Franza.

25 Q Do you know whether the two saw each other?

1  
2 A They did not.

3 Q You're telling me what you were doing. I guess  
4 what I want to know, if you know, what was being done with  
5 Mr. Franza in that period of time that you were there  
6 between noon and 5:30?

7 A Mr. Franza was sitting in the interview room.  
8 Like I said he had conversations with the Detective  
9 Giorgio, but other than I couldn't really tell you. I had  
10 my own part of my investigation I was conducting.

11 THE COURT: So, you didn't spend the time  
12 within the framework of five hours or so that he  
13 was at the house, there was a period that you  
14 were there?

15 THE WITNESS: Yes.

16 THE COURT: In that with the other period  
17 that you were there, other than those minutes  
18 leading up to the arrest at 5:15 or 5:30, were  
19 you physically together with Mr. Franza, did you  
20 stay in the same room with him, or were there for  
21 some portion of that time that you were together?

22 THE WITNESS: Yes, there was.

23 THE COURT: All right.

24 THE WITNESS: And that's when he was having  
25 this conversation with Detective Giorgio.

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Q About Julio Ortiz?

A Right.

Q Do you know whether there was any other conversation other than regarding Julio Ortiz?

A That day, I don't know.

Q At the time that you were present, was there a point in time that Mr. Franza's constitutional rights -- do you understand what I'm saying, constitutional rights, what I mean?

A Yes, I do.

Q Was there a point in time when you were present when he was advised of his constitutional rights?

A When the arrest was effected.

Q When the arrest was effected, he was apprised of his constitutional rights?

A He was advised.

Q By whom?

A By myself.

Q Did you use a card?

A I used a form, standard form that we used.

Q Did you ask him to sign it?

MR. BRANCATO: Judge, I object. This is not relevant for the hearing.

THE COURT: Unless there is something that

1  
2 I am not aware of, from this point forward  
3 wouldn't apply to anything.

4 MR. BRENNER: Just allow me this one  
5 question, your Honor.

6 THE COURT: Sure.

7 Q Did you ask him to sign it?

8 A Yes, I did.

9 Q Did he?

10 A I don't recall.

11 Q But, prior to that time during the conversations  
12 with Detective Giorgio when you were present, he was not  
13 advised of his constitutional rights, to the best of your  
14 knowledge?

15 A That's correct.

16 Q So, correct me if I'm wrong, on this date when  
17 you had decided to arrest Mr. Franza he was brought to the  
18 precinct at your request and he was there for five and a  
19 half hours, during which conversations with him took place  
20 and during which time he was not advised of his  
21 constitutional rights?

22 A That's correct.

23 MR. BRENNER: I have nothing further.

24 THE COURT: Any redirect?

25 MR. BRENNER: No redirect. Can we have one



1  
2 minute to consult with each other?

3 MR. SHEINDLIN: Just a few questions on  
4 redirect, your Honor.

5 THE COURT: Yes.

6 MR. SHEINDLIN: Thank you.

7 REDIRECT EXAMINATION

8 BY MR. SHEINDLIN:

9 Q At the approximate time that you told the  
10 defendant he was under arrest was 5:15 in the afternoon,  
11 correct?

12 A That's correct.

13 Q Prior to that time when the defendant had entered  
14 the precinct on February 11th, did you tell him he was  
15 under arrest?

16 A No, I did not.

17 Q Prior to that particular time, 5:15, do you know  
18 if any other officers in the precinct told the defendant  
19 he was under arrest?

20 A No, they did not.

21 Q Prior to approximately 5:15, did the defendant  
22 tell you that he wanted to leave the police precinct?

23 A Not to my recollection.

24 Q Was the defendant handcuffed at all prior to 5:15  
25 while he was in the police precinct?

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A No, he wasn't.

Q Did you in any way indicate to the defendant prior to 5:15 on February 11th that he was not free to leave the police precinct?

A No, I did not.

MR. BRENNER: Objection, leading.

THE COURT: I will allow it.

Incidentally, Detective, during this period of time did Mr. Franza ask for any food or drink?

THE WITNESS: Not that I recall, your Honor.

THE COURT: Did you at any time observe him actually eating food or drinking something?

THE WITNESS: No, sir.

THE COURT: After he was arrested at 5:15 or whatever, did he ask for any food or drink?

THE WITNESS: Not to my recollection.

THE COURT: Did you observe him having any food or drink subsequent to his formal arrest?

THE WITNESS: No, I did not.

THE COURT: You may continue.

MR. SHEINDLIN: Your Honor, no further questions.

RECROSS EXAMINATION

BY MR. BRENNER:

1  
2 Q Detective, you just told us that nobody else in  
3 the precinct told him that he was under arrest?

4 A That's correct.

5 Q But, you weren't there?

6 MR. BRANCATO: He said to his knowledge.

7 MR. BRENNER: Actually, he said no, nobody  
8 else did.

9 THE WITNESS: Well --

10 Q That would just cover the period of time that you  
11 were there?

12 A That's correct.

13 Q You don't know for a fact whether Detective  
14 Giorgio or any other detective in your absence said to Mr.  
15 Franza, well, you better not leave, you better stick  
16 around?

17 A During the period I wasn't there, I couldn't tell  
18 you one way or the other.

19 Q So, your answer to Mr. Sheindlin's question is:  
20 No, not while I was there?

21 A That's correct.

22 MR. BRENNER: Thank you. I have nothing  
23 further.

24 THE COURT: You may step down, Detective.  
25 You are excused.

1  
2 THE WITNESS: Thank you.

3 (Witness excused.)

4 THE COURT: What about the matter that you  
5 dealt with inside, nothing to be said?

6 MR. BRANCATO: No. He already has said he  
7 has no objection to its admissibility on  
8 constitutional grounds. I believe I stated that  
9 on the record.

10 THE COURT: You did. Gentlemen, unless I  
11 have missed something, that concludes the  
12 witnesses that you have prepared for today?

13 MR. BRANCATO: That's correct, your Honor.  
14 On Monday, I have to finish defense trial.

15 THE COURT: Therefore, you will be available  
16 to conclude this hearing on Tuesday with Agent  
17 behind?

18 MR. BRENNER: And DePiro, that's correct.

19 THE COURT: Now off the record.

20 (Discussion was held off the record.)

21 THE COURT: We will resume Tuesday. You  
22 will submit your brief on Monday.

23 (Whereupon, the case was adjourned until  
24 Tuesday, January 28, 1992.)

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January 28, 1992 New York, New York

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : CRIMINAL TERM : PART 32

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PEOPLE OF THE STATE OF NEW YORK, :

- against -

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: Index#  
: 11987/91  
:

DOMINIC FRANZA, :  
Defendant. :

-----x  
BEFORE: HON. PAUL P. E. BOOKSON, Justice.

APPEARANCES: (Same as previously noted.)

Reported by: William L. Kutsch, and  
Frank J. Rizzo,  
Senior Court Reporters

-oOo-  
THE COURT: Call your witness.

MR. BRANCATO: Special Agent Chris Behan.

THE COURT: Agent Behan to the stand.

MR. BRENNER: Your Honor, I had brought this  
up preliminarily.

THE COURT: Yes, Mr. Brenner.

MR. BRENNER: Since one of the attacks on the  
propriety of the search is that the search itself  
exceeded the mandate of the warrant, I was con-  
cerned that the property itself which was recover-  
ed from the apartment, at least in original or in  
authenticated form, be provided to the Court so

1  
2 the Court can make a determination facially as to  
3 whether those items exceeded the mandated warrant.  
4 I don't know what Mr. Brancato's position is.

5 THE COURT: We'll get to that.

6 MR. BRENNER: We'll get to it shortly.

7 THE COURT: Let's go on. Get the agent.

8 C H R I S B E H A N, called as a witness by the  
9 People, having been first duly sworn by the Clerk  
10 of Court, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BRANCATO:

13 THE COURT OFFICER: For the record, state  
14 your name and your present employment.

15 THE WITNESS: Chris Behan, agent with the  
16 U.S. Treasury Department, Bureau of Alcohol  
17 Tobacco and Firearms.

18 Q Agent Behan, how long have you been a member  
19 of the Alcohol, Tobacco and Firearms?

20 A Almost 21 years.

21 Q Very briefly could you tell us what your  
22 duties are?

23 A Mostly it's to investigate violations of the  
24 Federal Explosive acts, parts of the Federal Firearms Law  
25 and also the Federal Arson laws.



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Q Do you know Special Agent Gerald Raffa?

A Yes, he's my supervisor.

Q Let me direct your attention back to February 11, 1991, in the evening here in New York County. Did there come a point - - well, withdrawn.

Did there come a point in February, 1991, that you, along with other agents, executed a search warrant at the home of Dominic Franza, the Defendant in this case?

A Yes.

MR. BRANCATO: I'm handing up to the witness what's in evidence as People's Exhibit 1.

Q Was it pursuant to that warrant that the Defendant's apartment at 3320 Barker Avenue in the Bronx was searched?

A Yes.

Q Approximately what time was his apartment searched in the Bronx?

A On February 12 it was searched I believe at about 2:00 a.m. in the morning.

MR. BRENNER: I'm sorry. I didn't hear.

THE WITNESS: 2:00 a.m. in the morning.

Q Did you learn from Agent Raffa whether that warrant had been signed by the time that you went to

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execute it?

A Yes, we did.

Q Was it signed?

A It had. That's my understanding.

Q That it had been signed?

A Yes.

Q Now, when you went to 3320 Barker Avenue, who  
aside from yourself was present for this search?

A The supervisor, Jerry Raffa, some other  
agents.

Q Could you tell us what their names are?

A Allen Kushinski, Lee Floyd, Bruce Laundis,  
Cary Dupiro. I think that was all the agents.

Q Were there members of the New York City  
Police Department who were present at the time of the  
search?

A Yes.

Q Who were they?

A I believe it was Detective Raymond.

Q Was Detective Raymond's partner present at  
this time?

A I believe so.

There were also members of the New York City bomb  
squad, emergency services.

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Q Did there come a point that you along with the other people that you mentioned went into the apartment of Dominic Franza on Barker Avenue?

A Yes.

Q And could you please tell us what items if any were seized from the Defendant's apartment?

A May I refer to my file?

Q Yes, if it would help refresh your recollection, you may refer to your notes.

A There was a can labeled Bull's Eye Smokeless Pistol Powder.

Q Let's take it one at a time.

That item, Bull's Eye smokeless pistol powder, where was that recovered from in the apartment?

A In the bedroom.

Q Mr. Franza's bedroom?

A I assume so.

Q How many bedrooms were there in the apartment?

A Just one.

Q What was the purpose for seizing the Bull's Eye powder?

A The explosive devise that prompted the search warrant contained, reported to us, some kind of explosive

1  
2 powder, black or smokeless powder.

3 Q Could you please continue.

4 A With what we seized?

5 Q Yes.

6 A A roll of black electrical tape.

7 Q Now, the black electrical, the roll of black  
8 electrical tape, where was that seized in the apartment?

9 A That was in a either a tool box or a box  
10 containing tools that I believe was in a hall closet in  
11 the apartment.

12 Q Continue down your list.

13 A A green magic marker.

14 Q Where was that taken from in the apartment?

15 A That was in the livingroom. There was a  
16 shelf unit. It was taken from that shelf unit or the  
17 general area.

18 Q And could you please continue? What else was  
19 taken from the apartment?

20 A Some miscellaneous papers.

21 Q By the way, what was the purpose of seizing  
22 the green magic marker?

23 A It was reported to us that the box that the  
24 pipe bomb was shipped in had some green markings on it.

25 Q And likewise, the purpose for taking the

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black electrical tape?

A The device had some black electrical tape on it.

Q Now, so after those three items, could you please tell us what else was seized in the apartment?

A Some miscellaneous papers.

Q Would you please tell us, can you enumerate for us what these miscellaneous papers encompass?

A There was one sheet of three cent stamps, two sheets of yellow paper with handwritten notes, four sheets of white paper with typed lettering or a letter, three sheets of white paper with typewritten letter, four sheets of white paper with typewritten letter, one sheet of white paper with typewritten notes, two receipts from Olinville Arms, and one credit card receipt, and there was one silencer manual, one telephone bill, one receipt numbered 19182, one postal money order receipt and one business card bearing the notation U.S.A. Electronics.

Q Let's go down that list.

MR. BRANCATO: May I approach counsel for just one moment?

THE COURT: Yes.

Q Now, on this batch of property, let's start with the first one.

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The sheet of three cent stamps, could you please tell us where were these stamps recovered?

A Again, in the shelf unit area in the livingroom.

Q And what was the purpose in retrieving those stamps?

A We had been made aware of some threatening-type letters that had been received by the family a few days I guess prior to the search warrant. When we were in the apartment, the stamps were noticed I believe by a police officer, and it was brought to my attention that these letters contained three cent stamps.

Q Where was it brought to your attention? Where were you when it was brought to your attention?

A We were in the livingroom and the stamps were basically in front of us.

Q Was it at that point that you learned of these three cent stamps on the envelopes?

A Yes.

Q The next item that was taken, two sheets of yellow paper with handwritten notes - -

MR. BRANCATO: I'd like to have this marked as People's Exhibit number 15 for identification, pages 1355 and 1356.



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THE COURT: Mark it 15A and B.

(Documents referred to above as handwritten notes were received and marked as People's Exhibits 15A and B, for Identification.)

Q Looking at that, do you recognize 15A and 15B?

A Yes, I do.

Q What do you recognize it to be?

A They are copies of two sheets of paper with handwritten notes that we took out of the apartment of the Defendant.

Q Are those the two pages that you referred to a moment earlier as the two sheets of paper?

A Yes, copies of them.

MR. BRANCATO: I would offer them into evidence at this time.

MR. BRENNER: No objection.

THE COURT: Without objection, 15A and B received.

(Documents referred to above as handwritten notes were received and marked as People's Exhibits 15A and B, in Evidence.)

THE COURT: Yes, Mr. Brancato, you may continue.

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Q Now, could you please read to us the first ten lines of that exhibit?

A Advanced Gunsmithing, WF, Vickory, American -  
- not sure of the second word, Explosives in World War I,  
Bombs and Bombings, Brody, Booby Traps, FM 5-31. CIA  
Field Expedient Incendiary Material, CIA Methods for  
Explosive Preparation, CIA Preparation of Black Powder,  
CIA Improvised Sabotage Manual, Destruction by  
Demolition - - can't make out the rest. Directory of  
American Military Goods. The rest of it I can't make  
out. Expedient - - rest of it I can't make out.  
Explosives and Demolition, Explosives and Homemade Bombs,  
Explosives and Propellants from Commonly Available  
Materials, Explosives, Propellants and pyrotechnics,  
Firearms Silencer, Wilson, Firearms Silencer Volume Two,  
Incendiary - - rest of it I can't make out.

MR. BRENNER: Is he going to read the entire list?

MR. BRANCATO: No.

Q The remaining books or remaining titles that appear on pages one and two, do they have to do with such similar topics as bombs and propellants and guns?

A Yes.

Q Now, just for the record, what you have just

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read to us, those are handwritten entries on those pages?

A Yes.

Q At the time that you took -- at the time that you seized these items, could you please tell us where they were in the apartment?

A They were in the same shelf unit in the livingroom.

Q Where the stamps were found?

A Yes.

Q And could you please tell us the purpose in taking those two pages at that time?

A It had been reported to us that there was some handwriting on some of the evidence collected in connection with the device down to Puerto Rico.

Q That there was handwriting. Could you please tell us where you were told that there was handwriting?

A There was handwriting on the Federal Express receipt, at least a signature on it.

We were also aware that there was handwriting on the two threatening letters that had been received by the family.

There was also handwriting on the American Express money order that was used to pay the shipping charges for the package down to Puerto Rico.

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Q And when you say the Federal Express, are you referring to the method in which the bomb was sent to Puerto Rico?

A Yes.

Q Now, at the time that these papers - - these two papers were taken, what was the purpose then in taking them?

A For future comparison with any of the handwriting that we knew about at that time.

MR. BRANCATO: Your Honor, may we have this marked as People's Exhibit number 16 for identification? Could we mark it A through D?

THE COURT: Mark it.

(Documents referred to above as typewritten notes were received and marked as People's Exhibits 16A through D, for Identification.)

Q Now, before we refer to those documents, you were giving us a list of the items that were taken from Mr. Franza's apartment the night that the warrant was executed, the early morning hours of February 12, 1991?

A Right.

Q You told us about the stamps and you told us about the two pages that are now an exhibit concerning bombs and bombings and those other items. What else did

1  
2 you seize from the Defendant's apartment. Let's go down  
3 the list.

4 A In addition to the miscellaneous papers, we  
5 took one piece of paper bearing the name Julio Ortiz, and  
6 phone numbers 487-3425 and 3430.

7 And we took a piece of paper bearing the word  
8 Levittown, and Rio Pedras, and numbers 809 784-1630 and  
9 809 765-4792.

10 Q Before we talk about those two pieces of  
11 paper that were recovered from the Defendant's apartment,  
12 one bearing of the name of Julio Ortiz and one bearing  
13 the word Levittown with telephone numbers, aside from the  
14 stamps and those two pages of yellow paper with hand-  
15 written notes, did there come a point where you recovered  
16 four sheets of paper with typed lettering?

17 A Yes.

18 Q That is what I want to refer to at this point  
19 and follow down that listing.

20 Now, you have in front of you what is marked 16A  
21 through 16D. Do you recognize those pieces of paper?

22 A Yes, I do.

23 Q What do you recognize them to be?

24 A They are copies of the four sheets of white  
25 paper with typed lettering on them that we took from the



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2 apartment.

3 Q Needless to say, everything that you have  
4 referred to up to this point was taken during the course  
5 of the first search warrant?

6 A Yes.

7 Q Now, where were those four sheets recovered  
8 from?

9 A In the same general area of the shelves and I  
10 think there was a desk next to it in the livingroom.

11 Q And could you please tell us what was the  
12 purpose in retrieving those four sheets of typed paper?

13 A It had been reported to us that the shipping  
14 label on the box holding the devise, the pipe bomb, down  
15 to Puerto Rico had some typing on it.

16 Additionally, the threatening letters that had  
17 been received by the family were typewritten.

18 Q So then knowing that there was typing on the  
19 bill sent to Puerto Rico and the letters sent to the  
20 family, what then did you hope to accomplish by taking  
21 these four documents?

22 A We wanted to compare this typewriting against  
23 the typewriting on the bill of lading or the shipping  
24 label and the threatening letters.

25 Q Now, continuing down that list, specifically



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line 4D, what else was taken from the Defendant's apartment?

A Three sheets of white paper with typewritten letter.

MR. BRANCATO: Your Honor, can we have this marked People's Exhibit 17A through C?

THE COURT: Yes.

(Documents referred to above as typewritten letters were received and marked as People's Exhibit 17A through D, for Identification.)

Q Looking at those pages, could you please tell us, do you recognize them?

A Yes, I do. They were the three sheets of white paper with typewritten lettering that we took from Dominic Franza's apartment on February 12.

Q What was the purpose in taking those three sheets of paper from the Defendant's apartment?

A Again, for comparison with the typewriting on the shipping label and the threatening letters.

MR. BRANCATO: I would offer them into evidence at this time, your Honor.

MR. BRENNER: No objection.

THE COURT: Without objection, 17A through C.

MR. BRANCATO: We offer both 16 and 17.

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THE COURT: They are received.

(Documents referred to above previously marked 16A through D, and 17A through C, respectively, for Identification, were received and marked in Evidence.)

Q Let me ask you, at the time that these documents - - the ones that have just been handed to you, 17A through C, 16A through D, and 15A and B, at the time that you seized those, were they - - did you read those documents at the time that you seized them?

A Not entirely, no.

Q So basically what was your purpose then in seizing them?

Was it solely for the comparative type analysis?

A That's definitely true of the typed letter.

The handwritten note, I recall definitely drawing my attention because of the contents of some of the - - or all of the books or family threats that are referred to.

Q Now, continuing down that list of items that were taken that night from Mr. Franza's apartment, could you please tell us what else was seized?

A Four sheets of white paper with typewritten letter.

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MR. BRANCATO: May we have this marked collectively as 18A through D?

THE COURT: Yes.

(Documents referred to above as typewritten notes were received and marked as People's Exhibit 18A through D, for Identification.)

Q Now, what is marked 18A through D, could you please tell us, do you recognize those four sheets?

A Yes. They were the four sheets - - copies of the four sheets of white paper with typewritten letter that we removed from Dominic Franza's apartment.

Q Those papers likewise were recovered the night that the warrant was executed; am I correct?

A Yes.

Q Where were those sheets found?

A Similarly in the livingroom, in the shelf area.

MR. BRANCATO: I would offer them into evidence.

MR. BRENNER: No objection.

THE COURT: Without objection, 18 in evidence.

(Documents referred to above as typewritten notes were received and marked as People's Exhibit

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18, in Evidence.)

Q What was the purpose in seizing these pages?

A To compare the typewriting on those pages to the shipping label and the letters.

Q As you go down, were any other items taken from the apartment that are annunciated on this list?

A One sheet of white paper with typewritten notes.

MR. BRANCATO: Nineteen, Judge?

THE COURT: Nineteen, mark it.

(Document referred to above as a resume was received and marked as People's Exhibit 19, for Identification.)

MR. BRENNER: I have no objection to its admission.

THE COURT: Have it marked, received in evidence, 19.

(Document referred to above as a resume was received and marked as People's Exhibit 19, in Evidence.)

Q Is that one sheet of typewritten notes basically with the Defendant's resume on it?

A Yes.

Q What was the purpose in seizing that piece of

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evidence?

A Compare the typewriting with the shipping label and the letters.

Q Item 4G as appears on your list, could you tell us what that is?

A Two receipts from Olinville Arms and one credit card receipt.

MR. BRENNER: Your Honor, I have no objection if it will speed these things up.

THE COURT: Twenty received.

(Document referred to above as a copy of a receipt was received and marked as People's Exhibit 20, in Evidence.)

Q Could you please tell us what is contained in Exhibit 20 very briefly for the record?

A Two receipts indicating purchases at Olinville Arms in the Bronx, and there is a credit card receipt for \$545.

Q Credit card receipt for the purchase of those items?

A Appears to be for some or all of them.

Q What you have marked at 4H, could you please tell us what that is?

A One silencer manual, one telephone bill, one

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receipt number 19182, one postal money order receipt and one business card bearing the words U.S.A. Electronics.

Q Do you have those items here with you?

A Yes, I do.

Q Are they in these three envelopes?

A Yes.

(Continued on next page.)

\* \* \*



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2 Q Don't take anything out of them. You have  
3 the envelopes with the card USA Electronics in there?

4 A Yes.

5 MR. BRANCATO: Judge, if we could deem  
6 this marked Exhibit 21.

7 MR. BRENNER: I would just like to see  
8 it. I don't think I'd ever seen it.

9 No objection to his offering it.

10 MR. BRANCATO: Just the card. If we  
11 could do like we did with the statements,  
12 I'll admit the original and substitute  
13 copies into the record.

14 THE COURT: Very well. That's going to  
15 be 21, received.

16 Q What was the purpose in seizing that card  
17 that US Electronics?

18 A It was reported to us that the package --  
19 the shipping label on the package contained the pipe  
20 bomb down in Puerto Rico listed the shipper as USA  
21 Electronics with an address in Manhattan.

22 Q When does that that card that you have  
23 there, could you please read it into the record.

24 A Base of it says USA Electronics. Gives an  
25 address 2561 Austin Road, Bronx, New York, 10467.

1  
2 The whole thing?

3 Q No. Now, the labeling that was affixed to  
4 the package sent to Puerto Rico, what address did that  
5 last for USA Electronics?

6 A 750 West 181st Street, New York, New York.

7 Q Prior to going to Mr. Franza's apartment the  
8 night you executed the warrant did you or other agents  
9 at your request go to check 750 West 101st Street?

10 A I believe somebody did but I'm not a hundred  
11 percent sure.

12 Q So then -- the purpose then that you took  
13 this piece of property is it because it said USA  
14 Electronics?

15 A Yes.

16 Q Now you also recovered a silencer manual?

17 A Yes.

18 Q What was the purpose in recovering that  
19 manual?

20 A Silencers and pipe bombs are the same  
21 general description under the Federal law. We took it  
22 because we found it interesting that it was in the  
23 apartment.

24 Q And the telephone bill, could you please  
25 tell us what the purpose was in retrieving the

1  
2 telephone bill?

3 A The telephone bill I believe was taken to  
4 show that the apartment was in fact rented by Dominic  
5 Franza and that was his phone number.

6 Q And the postal money order?

7 A We knew that the package, the shipping on  
8 the package had been paid for with a money order. We  
9 took it, I guess, thinking either it was a receipt for  
10 that specific money order or connected somehow to the  
11 package shipping.

12 Q Now, going back to the preceding page you  
13 told us about the powder. You told us about the tape.  
14 You told us about the marker and we've gone over these  
15 miscellaneous papers. What else was taken from the  
16 defendant's apartment?

17 A Piece of paper bearing the name Julio  
18 Ortiz and the phone number.

19 Q And what was the purpose in taking that  
20 piece of paper that had Julio Ortiz and some telephone  
21 numbers?

22 A We'd been told that the package -- the  
23 shipping label on the package down to Puerto Rico, the  
24 signature on the bottom indicated Julio Ortiz. Also  
25 the sender of the letters, the threatening letters.

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Q And number six, what else was recovered from the defendant's apartment?

A Piece of paper bearing Levitown and Rio Padars and two phone numbers.

Q And was this a handwritten piece of paper?

A Yes I believe it was.

Q Do you have it here with you?

A No.

Q What was the purpose in taking this piece of paper?

A We knew that the package to Puerto Rico had been addressed to somebody, the address contained Levitown as the town in Puerto Rico where they lived.

Q Was there a telephone number on the piece of paper that was recovered?

A Yes, there was.

Q What was the telephone number?

A It was two phone numbers. 809-784-1630 and 809-765-4792.

Q Were you aware of information that was on -- on the bill that was sent along with the bomb to Puerto Rico?

A Some of it, yes.

Q Either of those telephone numbers appear on

1  
2 the bill?

3 A I am not certain.

4 Q You have a copy of the bill here with you?

5 A I think so.

6 MR. BRENNER: Your Honor, I'm going to  
7 object at this point. I don't know whether  
8 the issue is the bill contained the number  
9 or whether the executing agent or anyone  
10 with him was under that impression at the  
11 time. Whether it in fact it contains the  
12 bill, the agent says he doesn't recall.

13 Q Agent Behan, you indicated that this was the  
14 warrant that was executed that night. Let me direct  
15 your attention to the affidavit XM6U, specifically the  
16 second paragraph by Mr. Macinary. I'm going to ask  
17 you to read the first seven or eight lines of it.

18 A Out loud?

19 Q Read it to yourself.

20 A Okay.

21 Q Does that affidavit in support of that  
22 search warrant make reference to one of the two  
23 telephone numbers that you just told us?

24 A Yes, it does.

25 Q Which one does it make reference to?



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2 A 809 - 874-1630.

3 Q Where was this paper found in the  
4 defendant's apartment?

5 A Also in the living room in the area of the  
6 shelf, the wall shelf.

7 MR. BRANCATO: Judge, at this time I  
8 have no further questions of this gentleman  
9 concerning that first search warrant that  
10 was executed by him.

11 THE COURT: Before you start the cross  
12 we are going to take a short recess. Step  
13 down.

14 (Whereupon a short recess was taken.)

15 THE COURT: Let's continue.

16 MR. BRANCATO: Your Honor I've had some  
17 conversations with Mr. Brenner that you're  
18 not privied to but let me just state this.  
19 I spoke to Mr. Brenner and I told him that  
20 in addition to the first warrant that was  
21 executed in this case, on subsequent  
22 occasions ATF agents went back to 3320  
23 Barker Avenue. There were two occasions  
24 that I'm aware of. One is a situation where  
25 Mr. Guzman, the person who is the owner of



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that building, allowed the agents to go into the basement. This was an area that the defendant had access, although this was the landlord's basement.

THE COURT: Was it co-mingled with other people? Did they keep things there? Did he have an expectation of privacy? Was it his property in the sense that only he and the landlord had access to?

MR. BRANCATO: Our understanding is that these were items that the landlord kept in the basement, the defendant on occasion went down there but there was nothing down there that belonged to the defendant.

THE COURT: is the defendant challenging anything removed from that area?

MR. BRENNER: What was removed from that area was a wide variety of tools, which I believe the People will allege could have been used in the structure in any one of a number of devices in this case.

MR. BRANCATO: He's correct in that regard. It is our understanding that these are Mr. Guzman's tools.

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2 THE COURT: On what basis would the  
3 defendant be challenging?

4 MR. BRENNER: I believe that I could  
5 not in good faith assert that the defendant  
6 had a reasonable expectation of privacy and  
7 therefore it is my belief that he cannot  
8 challenge -- Constitutionally challenge the  
9 admission of these items.

10 MR. BRANCATO: That which I referred to  
11 is the first time they went back. The  
12 second time they went back was a time after  
13 the defendant's family had vacated the  
14 premises on Barker Avenue. In fact, there  
15 was a new person who was going to move into  
16 that apartment. They went back with agents  
17 Carlo Rosati and Czaranyops and at that time  
18 they went back into the basement, recovered  
19 some items that belonged to the landlord.

20 Additionally they went back up to the  
21 apartment that had been vacated. There was  
22 a bag of vacuum cleaner holdings, the vacuum  
23 cleaner bag was up there and they took that  
24 from the vacated apartment. I told that to  
25 Mr. Brenner.

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MR. BRENNER: I was confused. I'm not prepared to waive Mr. Franza's right to challenge the propriety of that search --

THE COURT: Just a moment. In fact, did the defendant at that point vacate, abandon, give up any rights to that apartment?

MR. BRENNER: I don't know the date.

THE COURT: That's something I imagine you can quickly establish.

MR. BRANCATO: I will establish that with that Mr. Behan.

THE COURT: We can establish there was debris, vacuum debris, and I don't know if it does or does not have evidentiary basis. In any event if in fact that's the status of the apartment I don't see the basis of the defendant would have to challenge it. If in fact that's the fact at hand. Let's get on.

Have the witness resume the witness stand.

(Whereupon Agent Behan resumed the witness stand.)

THE COURT: Are you finished?

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BEHAN-PEOPLE-DIRECT

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MR. BRANCATO: I'll put a couple of questions to him.

CONTINUED DIRECT EXAMINATION

BY MR. BRANCATO:

Q Agent Behan, did there come a point after the defendant had been arrested on February 11, 1991 that you along with Agents Rosati and Czarnopys of ATF Lab in Rockville, Maryland, went back to 3320 Barker Avenue to search for evidence with this case?

A Yes.

Q Could you please tell us what date that you went with Rosati and Czarnopys t 3320?

A March the 28th, 1991.

MR. BRENNER: The defendant asserts his right to challenge the Constitutionality of this evidence. The rent for that apartment was paid by Mr. Franza or members of his family for the entire month of March. Even though the premises may have been vacant the payment of rent -- and I am asserting this as I would in an affirmation to the Court in a motion to controvert. I believe the payment of rent gives the defendant sufficient proprietary interest to invest

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2 with a reasonable expectation of privacy to  
3 the premises.

4 THE COURT: You took part in that  
5 search, Agent Behan?

6 THE WITNESS: Yes.

7 THE COURT: When you arrived at that  
8 apartment on March 28th, what was the  
9 condition you found the apartment -- what  
10 did you observe when you went to this  
11 apartment?

12 THE WITNESS: It was vacant, empty of  
13 furniture.

14 THE COURT: How did you gain entry to  
15 this apartment?

16 THE WITNESS: The landlord -- landlady  
17 let us in.

18 THE COURT: All right.

19 MR. BRANCATO: If I could just ask him  
20 a couple of questions because I think it may  
21 be dispositive of the issue.

22 THE COURT: Yes.

23 Q What, if anything, was taken from the  
24 apartment that Mr. Franza had previously occupied?

25 A A used vacuum cleaner bag.

1  
2 Q Anything else taken from the apartment at  
3 the time that you went in with Czarnopys and Rosati at  
4 the defendant's previous address?

5 A Yes.

6 THE COURT: Let me ask you this. As a  
7 practical matter was there anything that was  
8 taken that you intend to offer?

9 MR. BRANCATO: You know, Judge, I'm  
10 going to once again just check my papers. I  
11 don't think that there is anything that day.

12 THE COURT: That would render it  
13 academic.

14 MR. BRENNER: There were spent  
15 cartridges; is that right?

16 THE WITNESS: Yes.

17 MR. BRANCATO: I don't intend to  
18 introduce those.

19 THE COURT: Cross examine.

20 CROSS EXAMINATION

21 BY MR. BRENNER:

22 Q Agent Behan, you were present during the  
23 presentation of the affidavit underlining the search  
24 warrant, the first search warrant?

25 A No.



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2 Q Where were you when that was taking place,  
3 if you know?

4 A I was in the 34th Precinct.

5 Q You were in the 34th Precinct. Were you  
6 discussing this case with Detective Giorgio and Ortiz?

7 A Yes.

8 Q Now, at that time did you see any of the  
9 physical evidence which was in their possession,  
10 Detective Giorgio's possession?

11 A I don't believe so, but I really don't  
12 recall.

13 Q You were in the 34th Precinct while Mr.  
14 Franza was there?

15 A Yes.

16 Q Were you there during the period of time in  
17 which Mr. Franza was held in a line up?

18 A Yes.

19 Q Were you aware of the outcome of that line  
20 up?

21 A Yes.

22 Q Did you communicate the outcome of that line  
23 up to Agent Raffa?

24 A Probably, but I have no recollection of  
25 doing that.

1  
2 Q When you reviewed the affidavit underlining  
3 the search warrant was there any mention in the  
4 affidavit that the Federal Express individual, Ksar  
5 Rodriguez, had failed to pick Mr. Franza out of the  
6 line up?

7 A Is that in the affidavit? I'm not sure.

8 Q You have a copy?

9 A I think so.

10 Q You can review that.

11 A I don't see any reference to that, the line  
12 up.

13 Q Now, Ksar Rodriguez was the Federal Express  
14 clerk who had accepted the package and ultimately sent  
15 it on its way; is that correct?

16 A Yes.

17 Q And he's the individual who also accepted  
18 payment at the time the package was tendered; is that  
19 correct?

20 A Yes.

21 Q You spoke to Mr. Rodriguez at the 34th  
22 Precinct; is that right?

23 A Yes.

24 Q And you prepared a report in connection with  
25 that interview?

1  
2 A Yes.

3 Q And at that time you learned that a male  
4 tendered the package -- had tried to tender the  
5 package, asked how much it was, left and subsequently  
6 came back?

7 A Yes.

8 Q And that this Mr. Rodriguez could identify  
9 this man if he saw him again?

10 A I guess so, yes.

11 Q So that was the setting for the line up, Mr.  
12 Rodriguez was viewing this line up to determine if he  
13 could identify Mr. Franza as the individual who  
14 tendered the package?

15 A Correct.

16 Q And at that time he could not identify Mr.  
17 Franza and did not identify Mr. Franza; is that  
18 correct?

19 A Yes.

20 Q And Mr. Rodriguez indicated to you the  
21 matter in which payment was made to him; is that  
22 right?

23 A Yes.

24 Q He told you he had been paid with an  
25 American Express money order for \$41?

3           A     Again, I have no recollection. We knew  
4 that. I don't know whether Mr. Rodriguez -- I  
5 overheard Mr. Rodriguez say that or not but we knew  
6 that.

7           Q     So with regard to the manner in which this  
8 package was paid for you knew that it was an American  
9 Express money order?

10          A     Yes, I knew it was a money order.

11          Q     You knew it was an American Express money  
12 order?

13          A     Yes, I did.

14          Q     Because you ultimately contacted American  
15 Express?

16          A     Somebody in our office.

17          Q     And requested the original money order be  
18 sent back to you?

19          A     Yes.

20          Q     Which you now have in your possession, in  
21 whatever safe keeping place you have it in?

22          A     I believe the New York City Police  
23 Department has it.

24          Q     Was Agent Raffa present at the apartment  
25 during the search?

          A     Yes.

1  
2 Q And was Detective Giorgio and Ortiz?

3 A I am pretty sure Detective Ortiz was there.  
4 I am not at all sure about Detective Giorgio.

5 Q When you were at the 34th Precinct was it  
6 there that you learned the postage involved in the  
7 threatening letters?

8 A No.

9 Q You didn't have that information prior to  
10 arriving at the apartment?

11 A No.

12 Q You knew, however, that no postage was  
13 involved, no United States postage was involved in the  
14 shipping, the transportation of the explosive device;  
15 is that right?

16 A That's correct.

17 Q And just so that we're clear for the record,  
18 the pipe bomb which was recovered in Puerto Rico on or  
19 about February 6th, is the explosive to which we  
20 refer?

21 A Yes.

22 Q And that was shipped by Federal Express?

23 A Yes.

24 Q So the time you left the 34th Precinct you  
25 didn't have any information that United States postage

3 had been used on anything in connection with this  
4 matter; is that right?

5 A When I left -- I'm sorry, repeat that?

6 Q When you left the 34th Precinct, at some  
7 point you proceeded to the apartment?

8 A Right.

9 Q You didn't have any information that United  
10 States postage has been used in connection with this  
11 incident, did you?

12 A At that time, I don't believe so.

13 Q In reviewing the affidavit for the search  
14 warrant is there any mention of stamps or United  
15 States Postal Service made by Agent Raffa?

16 MR. BRANCATO: The affidavit speaks for  
17 itself.

18 THE COURT: I'll allow it.

19 THE WITNESS: Do I recall anything like  
20 that?

21 Q Does the face of the warrant -- withdrawn.  
22 Omitting for a moment the other evidence of shipping  
23 and manufacture line, the face of the warrant is  
24 specific with regard to the property being sort; is  
25 that right?

A Yes.



1  
2 Q And each and every item listed on the face  
3 of that warrant was property being sort specifically  
4 with regard to the manufacture of the explosive device  
5 recovered in Puerto Rico?

6 A I'd like to look at the warrant.

7 Q Well, let's go through it. There's black  
8 electrical tape referred to.

9 A Yes.

10 Q That's because there was black electrical  
11 trace in the preparation of the pipe bomb?

12 A Yes.

13 Q There are galvanized pipes and end caps,  
14 because allegedly such materials were used in the  
15 preparation of the pipe bomb?

16 A Yes.

17 Q There are yellow sanitary napkins -- you're  
18 going to have to tell me why those were listed. I  
19 assume there was something in the manufacture of the  
20 pipe bomb that had to do with these materials?

21 A I assume you're right.

22 Q Explosive powder as well?

23 A Yes.

24 Q Uses two inch plastic tape, brown wrapping  
25 tape, brown wrapping paper, green magic marker. Casio

3 board. Those items were somehow related to the  
4 physical preparation of this explosive device?

5 A Yes.

6 Q White index cards, heavy duty plastic bags,  
7 all of that was connected to the physical manufacture  
8 of the pipe bomb?

9 A I don't know about the white index cards,  
10 but I'll assume it was.

11 Q In that line there is no evidence of  
12 threatening letters, is there?

13 A No.

14 Q There isn't any evidence of attempted murder  
15 or shooting, is there?

16 A No.

17 Q There is a line "other evidence of the  
18 manufacture and shipment of an explosive device."  
19 Isn't that right?

20 A Yes.

21 Q And you already told us that you United  
22 States postage was either used or alleged to have been  
23 used in the shipping of that explosive device; is that  
24 right?

25 A Correct.

Q Now, when you entered the apartment --

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withdrawn.

You told us that you found a green magic marker.  
Where was that?

A That was in the wall unit or shelves on the wall in the living room.

Q And the electrical tape?

A In a -- it was either a tool box or some kind of box from -- I believe it was in a hall closet in the apartment.

Q It was in a tool box?

A In a tool box or a box that held tools.

Q So the magic marker and the electrical tape were not in the same place?

A No.

Q From that tool box in which the electrical tape was taken did you remove any tools?

A No.

Q At any time?

A No.

Q Now, who found the three cent stamps, agent?

A I don't know who noticed them first. I saw them on the shelves in the living room.

Q And who pointed out to you that they had, at least to that person, some significance?

3 A I believe it was Detective Ortiz but I'm not  
4 positive, mentioned to me that there were three cent  
5 stamps. Somebody mentioned it to me. I believe it  
6 was Detective Ortiz, that there were three cent stamps  
7 on the threatening letters.

8 2A Q The warrant did not authorize any search  
9 with regard to any threatening letters, did it?

10 MR. BRANCATO: I object, Judge. That's  
11 a legal question.

12 MR. BRENNER: Well, I'm asking for a  
13 factual answer.

14 THE COURT: Explicitly the warrant  
15 makes no reference to it. We have the  
16 warrant.

17 MR. BRENNER: All right. I'll withdraw  
18 the question.

19 Q Now, you've made reference to two sheets of  
20 yellow paper with handwritten notes which are a list  
21 of titles; is that right?

22 A I'm sorry. Where are you?

23 Q I'm on your item 4B on your appraisal  
24 report?

25 A Yes.

Q Two sheets of yellow paper with handwritten

1 notes which you identified for us I believe as  
2 People's 16A and B, as including a list of titles?

3 A Yes.

4 Q Would it be fair to say that those titles  
5 were arranged in alphabetical order?

6 A I didn't notice that but that's possible.

7 Q Could you take a look at the document and  
8 tell me, if it is or isn't I'll concede.

9 THE COURT: Wait. Just a minute. Is  
10 it listed in the inventory in a  
11 chronological or alphabetical order or did  
12 they find it in that fashion? I'm not sure  
13 of your question.

14 MR. BRENNER: If I can have the exhibit  
15 I'll resolve it.

16 Q Agent, are the titles listed on those two  
17 pages, the titles themselves in alphabetical order?

18 MR. BRANCATO: Whether it is or isn't  
19 I'll concede it if he shows it to him.

20 MR. BRENNER: I want the agent to tell  
21 me.

22 THE COURT: You may answer.

23 THE WITNESS: Yes, it appears to be  
24 in alphabetical order.  
25

2 Q Are the prices of each of the titles or many  
3 of the titles listed in the columns to the left of  
4 those items?

5 A What appears to be prices is listed on the  
6 left of the titles.

7 Q Did you find any of the titles or volumes or  
8 text listed in that list in the apartment?

9 A The only possible one the silence manual and  
10 I never checked whether the silencer manual that we  
11 took is the one that's listed on here.

12 Q With regard to the silencer manual, since  
13 you mentioned it, Agent, you had ascertained that Mr.  
14 Franza was a licensed firearms dealer?

15 A Yes.

16 Q Licensed by your agency?

17 A Correct.

18 Q And with regard to that you knew him to be  
19 involved in gunsmithing, did you not?

20 A No, I didn't know that. I only knew that he  
21 had a license from ATF. I didn't know -- he's also  
22 required to have some city and state licenses and I  
23 don't recall whether we knew whether he had those or  
24 not.

25 Q Well, in any event, a silencer in and of



2 itself is not an explosive device, is it?

3 A No.

4 Q And there was no silencer allegedly used in  
5 connection with the explosive device recovered in  
6 Puerto Rico?

7 A No.

8 Q The Postal money order receipt is a United  
9 States Postal order, is it not?

10 A Yes, it is.

11 Q You had information that the mode of payment  
12 here was American Express money order, as you  
13 testified earlier; is that correct?

14 A Yes.

15 Q And the Postal Money Order was made out to  
16 El Paso County Court; is that correct?

17 A I believe that's what it was.

18 Q Do you have any information that El Paso  
19 County Court was at all connected with the shipping or  
20 manufacture of the explosive device recovered in  
21 Puerto Rico?

22 A No, I didn't.

23 Q Did you have any information that any mode  
24 of payment for the explosive device was a United  
25 States Postal order?

2 A I knew it was a money order. I probably  
3 knew before we went to obtain the warrant that it was  
4 an American Express money order but I'm not sure.

5 Q But in any event this particular money order  
6 did not detail payment to Federal Express, did it?

7 A No.

8 Q The Olen bill Arms receipt, those were for a  
9 gun, a holster and a gun box.

10 A One of them was for that. I don't recall  
11 what the other one was for. Yes.

12 Q Was there any connection between a Colt  
13 holster or gun box and explosive device recovered in  
14 Puerto Rico?

15 A In my mind there was, yes.

16 Q What was that?

17 A We had been told that there had been a  
18 shooting -- two shootings back in July, I believe it  
19 was, another device that had been delivered I think to  
20 the brother of Myra Franza and then we were in the  
21 apartment looking for evidence in connection with the  
22 bombing. To me there was a pattern of acts that were  
23 connected and we knew there had been a gun use in the  
24 shooting and when we saw the receipt indicating the  
25 purchase of a firearm we thought we should take it.

2 Q There were guns actually in the apartment,  
3 weren't they?

4 A Guns in the apartment, not that I recall.

5 Q Was there a safe in the apartment. I don't  
6 think so.

7 So you took the receipt for the purchased weapon  
8 because of the shooting, the allegations regarding the  
9 shooting?

10 THE COURT: That wasn't his testimony.  
11 It's a mischaracterization of his testimony.

12 MR. BRENNER: Well, did you take --

13 THE COURT: Have the reporter read back  
14 the agent's last complete answer.

15 (Whereupon the last answer was  
16 read back by the Court Reporter.)

17 MR. BRENNER: Your Honor, with all due  
18 respect I don't think I mischaracterized.

19 THE COURT: The agent testified it was  
20 almost a continuing, he believed this was  
21 all inter-related to the bombing. That's  
22 his characterization. If you seek to  
23 characterize it as solely or exclusively  
24 that the firearms or the ammunition or that  
25 purchase was related to solely to the

2 shooting that is a mischaracterization.

3 Q Well, Agent, do you know for a fact, only  
4 if you know, whether the belief that there was a  
5 continuing, as the Court has referred to it, was  
6 shared by Agent Raffa?

7 MR. BRANCATO: I object to that.

8 THE COURT: Sustained.

9 MR. BRANCATO: On what grounds, your  
10 Honor.

11 THE COURT: Sustained. Your next  
12 question.

13 Q Did Agent Raffa ever tell you that he  
14 believed that these three incidents were related?

15 MR. BRANCATO: I object.

16 THE COURT: I'll allow that.

17 THE WITNESS: At what point?

18 Q At any point prior to the search of the  
19 apartment?

20 A I really don't recall. I honestly think it  
21 was everybody's impression that the three incidents  
22 were related.

23 Q Did Agent Raffa, to the best of your  
24 knowledge, ask the United States Magistrate to be  
25 allowed to search for evidence of each of the three

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incidents because in fact they were related?

A Not that I'm aware of.

Q And he was, of course, free to so apply?

MR. BRANCATO: I object.

THE COURT: Sustained.

Q Based on your experience --

MR. BRANCATO: Objection.

THE COURT: Sustained.

MR. BRENNER: On what grounds, your Honor?

THE COURT: The objection is sustained.

MR. BRENNER: Your Honor, I'm sorry, just so that I don't probe further along these lines I'd like to know --

THE COURT: You won't. Let me assure you.

MR. BRENNER: Because the Court will keep sustaining objections.

THE COURT: No, no, let's move on, that's why.

Q Now, --

MR. BRENNER: Your Honor, may we approach?

THE COURT: Yes. Step down, Agent.

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BEHAN-PEOPLE-CROSS

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(Whereupon Agent Behan  
left the courtroom.)

THE COURT: All right. Two o'clock.  
Two o'clock we'll resume.

(Whereupon the luncheon  
recess commenced.)



(Continued from preceding page.)

A F T E R N O O N      S E S S I O N

(After the luncheon recess, the following occurred:)

THE COURT: Would counsel step up?

(At this time a discussion was held off the record among Court and counsel.)

THE COURT: We'll put this matter over until tomorrow to await the production of the second search warrant in question.

(At this time the matter was concluded and adjourned to January 29, 1992, at 9:30 a.m.)

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January 29, 1992 New York, New York

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : CRIMINAL TERM : PART 32

-----x  
PEOPLE OF THE STATE OF NEW YORK

- against - : Index#  
11987/91

DOMINIC FRANZA, Defendant.  
-----x

BEFORE: HON. PAUL P. E. BOOKSON, Justice.

APPEARANCES: (Same as previously noted.)

Reported by: William L. Kutsch, and  
Frank Rizzo,  
Senior Court Reporter

-oOo-

THE CLERK: People v. Franza.

THE COURT: Call your next witness, Mr.

Brancato.

MR. BRANCATO: Your Honor, we would ask that  
Agent Behan be recalled.

MR. BRENNER: I have some cross-examination  
left pertaining to the first warrant which I  
developed over the evening, then I believe Mr.  
Brancato intends to reopen direct regarding the  
second warrant.

C H R I S B E H A N, recalled as a witness by the

1  
2 People, having been previously duly sworn by the  
3 Clerk of Court, was examined and testified as  
4 follows:

5 CROSS EXAMINATION

6 BY MR. BRANCATO (cont'd):

7 Q Agent Behan, yesterday a brief reference was  
8 made to a subsequent search of the basement of the  
9 apartment at 3320?

10 A Yes, a consent search.

11 Q At the time that you executed that search you  
12 drew up a diagram, did you not, of where various items  
13 were found in relationship to the room?

14 A Yes, I did.

15 Q Did you create such a diagram with respect to  
16 the search of 3320?

17 A No, I didn't.

18 Q Well, yesterday you testified that the roll  
19 of tape was in a tool box?

20 A Yes.

21 Q That was the only item that was recovered  
22 from the tool box; is that right?

23 A Yes.

24 Q Can you be more specific with regard to where  
25 each of the items alluded to by Mr. Brancato on direct

1  
2 were found?

3 A The black powder, can of black smokeless  
4 powder was in the bedroom. The black tape - -

5 Q If I may just interrupt you for a moment.  
6 The bedroom gives us a fix on terms of the room. But  
7 within the room itself, can you be more specific as to  
8 where the black powder was located?

9 A I did not myself first see the smokeless  
10 powder, so I don't know specifically where in the bedroom  
11 it was found.

12 Q No notation was made by you or by any other  
13 federal agent as to the specific location of the black  
14 powder?

15 A None by me and none that I'm aware of any  
16 anybody else.

17 MR. BRANCATO: Judge, if I may talk to  
18 counsel for one moment?

19 (At this time a discussion was held off  
20 the record between counsel.)

21 Q The documents that were alluded to yesterday,  
22 you testified at various times both during cross-  
23 examination and direct that they were on the shelf, a  
24 shelf, a wall unit I think you referred to, or desk. Can  
25 you be more specific as to what was found where?

1  
2 A If you mean specifically what shelf, no. My  
3 recollection is the shelf contained a lot of personal  
4 type papers, the phone bill, magazines.

5 Q Did you yourself go through those papers?

6 A Yes.

7 Q That was your particular area of the search?

8 A Well, myself, and I know other people went  
9 through them. I don't know if I went through every  
10 single piece of paper.

11 Q When you were conducting the search were you  
12 wearing gloves so as to not leave prints?

13 A No, I wasn't wearing gloves.

14 Q Did you examine those materials in the place  
15 where they were found or did you remove the entire lot to  
16 an area where you could actually go through them?

17 A I don't have any specific recollection.  
18 Normally with a shelf, you would do a shelf-at-a-time-  
19 type of thing.

20 Q Now, you mentioned a desk. Can you describe  
21 the desk, if you recall?

22 A I'm not sure it was a desk. My recollection  
23 is there was the shelf, wall unit or shelves, and to the  
24 right of that was either a desk or just one shelf at  
25 about waist level.

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Q You mean with just a surface, no drawers?

A I couldn't say for sure whether it had drawers or not.

Q Do you recall whether the search involved the opening of any closed drawers or closed doors or closed cabinets?

A In that particular area, I really don't recall.

Q So with regard to your testimony on direct as to where the papers were found, that's about as specific as you can get; is that right?

A Yes.

Q Yesterday you made reference to a silencer manual?

A Yes.

Q Do you have that?

A I believe I do.

Q May I see it?

(Document handed to counsel.)

Q Thank you. I show you People's Exhibit 15A and B. You made reference to the possibility, I believe you said you weren't sure, that the silencer manual that you found was on the list that you found. Without marking it, to make it easier, without marking it for



1  
2 identification, can you check the silencer manual as it  
3 is before you against the list and tell me whether that  
4 is, in fact, on that list?

5 A It doesn't appear to be, no.

6 Q So not questioning that you made a  
7 misrepresentation, but now upon scrutiny of the title of  
8 the books that that silencer manual does not appear on  
9 the list that you prepared?

10 A No.

11 MR. BRENNER: I have nothing further with  
12 regard to the first warrant.

13 THE COURT: Now we'll do it on redirect or  
14 open the direct, actually, with respect to the  
15 second.

16 MR. BRANCATO: Can we just come up to your  
17 bench for a moment?

18 THE COURT: Yes.

19 (At this time a discussion was held off the  
20 record among Court and counsel.)

21 REDIRECT EXAMINATION

22 BY MR. BRANCATO:

23 Q Agent Behan, I just want to go over that list  
24 of material that was taken by you and other agents during  
25 that first search warrant. Let me make it a little more

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clearer. I wasn't exactly too clear.

You indicated that the can of Bull's Eye smokeless pistol powder was found in the Defendant's bedroom?

A Yes.

Q And the person who recovered that, was that Agent DePirro, the lady outside?

A I believe it was, yes.

Q Is it fair to say then that you don't know specifically where in the bedroom it was taken from?

A Right.

Q Now, the second item, the roll of black electrical tape, I'm just coming down this list with you, you indicated it was taken from a tool box?

A Or a box with tools or like items in it.

THE COURT: Some container which contained what appeared to be tools?

THE WITNESS: That's my recollection.

Q Where in the apartment was that?

A My recollection is there was a hall closet.

Q Is this a hall closet within the confines of the apartment that the Defendant -- that you were aware that the Defendant had occupied?

A Yes.

Q Now, the green magic marker, where was that?

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A In the wall unit, in the livingroom.

Q Could you please describe for us very briefly this wall unit, what kind of a unit is it? Let's first start, how tall is it?

A About six feet, five to six feet.

Q And are there shelves on the unit or are there shelves and drawers to the unit?

A It was definitely shelves.

THE COURT: When you say shelves, open shelves?

THE WITNESS: Yes, sir.

THE COURT: Where exactly was this green marker?

THE WITNESS: I don't think I can recall exactly where it was, your Honor. It was papers and things lying on all the shelves.

MR. BRENNER: Judge, may we approach?

THE COURT: Yes.

(At this time a discussion was held off the record among Court and counsel.)

Q Now, the items that were marked 4A through 4H, the sheet of stamps, was that recovered from this wall unit?

A Yes, it was.

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Q Was it on one of the shelves to the unit?

A It was either on the wall unit or the desk-type platform I described a few minutes ago attached to I believe the wall unit, to the right of the wall unit shelves.

Q The two sheets of yellow paper with handwritten notes, 4B, that contained those listings, where was that found?

A The wall unit.

Q Was it retrieved off of one of the shelves?

A I don't specifically recall.

Q And the four sheets of white paper with typed lettering?

A Also the wall unit.

Q Three sheets of white paper with typewritten letters?

A Also the wall unit.

Q And the four sheets of white paper with typewritten lettering?

A Also the wall unit.

Q One sheet of white paper with typewritten notes?

A Wall unit.

Q Two receipts from Olinville Arms and one

1 credit card receipt?

2 A Wall unit.

3 Q Silencer manual, phone bill, money order and  
4 the U.S.A. Electronics card?

5 A The wall unit.

6 Q In order to retrieve this did you and other  
7 agents look in the drawers to that unit?

8 A If there were drawers, we would have looked  
9 in them. I have no -- I really don't remember whether  
10 there were drawers or doors on the bottom type of thing.

11 Q And the shelves, were the shelves of the unit  
12 checked by you and other agents?

13 A Yes.

14 MR. BRANCATO: At this time Judge, I have no  
15 further questions regarding that first search.

16 THE COURT: The witness has yielded, Mr.  
17 Brenner.

18 MR. BRANCATO: I want to go back on redirect  
19 for the purposes of the second warrant.

20 THE COURT: All right.

21 Q Now, did there come a point that you along  
22 with other federal agents from Alcohol Tobacco and  
23 Firearms searched 3320 Barker Avenue in the Bronx under  
24 the authority of a second search warrant?  
25

1  
2 A Yes - - I'm not certain. I don't think there  
3 were any other agents with me.

4 Q So did you have a warrant at the time that  
5 you entered that apartment at another time, at a  
6 subsequent point?

7 A Yes.

8 Q When was that that you searched the  
9 Defendant's apartment under the second warrant?

10 A February 14, 1991.

11 Q Prior to that was an application for search  
12 warrant made to a federal Magistrate here in New York?

13 A Yes.

14 Q And who made that application?

15 A Carrie DePirro.

16 Q Is she a special agent of ATF that you work  
17 with?

18 A Yes.

19 Q What time did you go back to execute that  
20 second warrant?

21 A It was in the early afternoon, as best as I  
22 remember.

23 Q Do you recall the date?

24 A February 14.

25 Q When was the application for the warrant



1  
2 signed?

3 A The previous day, February 13.

4 MR. BRANCATO: I would like to have this  
5 marked as People's Exhibit Number 22 for  
6 Identification, A through D.

7 (Document referred to above as an Affidavit  
8 was received and marked as People's Exhibit 22A -  
9 D, for Identification.)

10 Q Do you recognize those four papers that you  
11 are holding?

12 A Yes.

13 Q What do you recognize them to be?

14 A The affidavit for the search warrant, and a  
15 copy of the search warrant.

16 Q Is that the warrant that you had in your  
17 possession at the time that you went to conduct the  
18 second search at the Defendant's apartment on Barker  
19 Avenue?

20 A Yes.

21 MR. BRANCATO: I would offer it into evidence  
22 at this time.

23 MR. BRENNER: No objection.

24 THE COURT: Without objection 22A through D  
25 is received.

1  
2 (Document referred to above as an Affidavit  
3 was received and marked as People's Exhibit 22A -  
4 D, in Evidence.)

5 THE COURT: You may continue.

6 Q Agent Behan, when you went to that address  
7 could you please tell us what, if anything, you recovered  
8 on the second search, pursuant to the warrant?

9 A We recovered four packages of firecrackers,  
10 two pieces of duct tape, one piece of paper with type-  
11 written notes, one file marked Mr. Franza's file, and one  
12 roll of black tape.

13 Q Could you please tell us starting from the  
14 top of that list, could you tell us where you recovered  
15 each item, if you recall?

16 A The four packages of firecrackers were on a  
17 coffee table in the livingroom.

18 Q Had you observed those firecrackers on a  
19 previous occasion?

20 A Yes, I had.

21 Q Now, at the time that you observed them on  
22 the previous occasion, did you make any note concerning  
23 that? Did you notice any significance concerning the  
24 fact that there were firecrackers in the Defendant's  
25 apartment?

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A I'm not sure I understand the question.

Q There came some point that you went back to recover some firecrackers; am I correct?

A Yes.

Q And the application for the warrant states permission to retrieve those firecrackers?

A Yes.

Q Were you aware at the time that you retrieved them what the significance of the firecrackers were?

A When I retrieved them, yes.

Q What was the significance?

A An explosive device that had been left in front of Myra Franza's brother's apartment had contained a firecracker.

Q When you say the explosive device contained a firecracker, was that a method contained to detonate the device?

A I'm not sure of that.

Q But you were aware that there was a firecracker in the explosive device; am I correct?

A Yes.

Q When was the first time that you learned of that?

A Of the pipebomb having a firecracker in it?

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Q Yes.

A I believe it was either on the 12th after we had left the apartment or on the next day, the 13th. Probably the 12th of February.

Q So when was the first time that you observed the firecrackers?

A On the 12th of February during the first search warrant.

Q So what else was taken, the second item that was taken? Could you please tell us what that was?

A Two pieces of duct tape.

Q Was there a request in the second warrant for duct tape?

A Yes, there was.

Q Why don't you read to us what the authority to take items from the apartment on the second warrant states?

MR. BRENNER: I'm going to object to this. Grounds is that this warrant, the affidavit, makes reference to a complaint.

MR. BRANCATO: That will be put in.

MR. BRENNER: Can we put it in now because it makes reference to paragraph 3E. He'll read paragraph 3E of the complaint and it will have no

1  
2 meaning.

3 Q Do you have in your papers the complaint by  
4 Agent DePirro?

5 A I don't think so.

6 MR. BRANCATO: Judge, if we could have this  
7 marked People's Exhibit 23 for Identification?  
8 That's 23A, B, C, D, E and F.

9 THE COURT: Let's mark it for identification.

10 MR. BRANCATO: This is a copy of my trial  
11 notebook on this case so I would like to substi-  
12 tute a Xerox copy for this at the appropriate  
13 point.

14 MR. BRENNER: No objection.

15 THE COURT: Mark it received 23A through F.

16 (Document referred to above was received and  
17 marked as People's Exhibit 23A - F, in Evidence.)

18 Q Is that the warrant of arrest complete with  
19 the complaint that was signed by Agent DePirro in  
20 connection with this case?

21 A Yes, it is.

22 MR. BRANCATO: I would offer it into  
23 evidence.

24 MR. BRENNER: No objection.

25 THE COURT: Without objection I believe we

1  
2 already ruled that it's in evidence.

3 Q Now, the gray duct tape, where was that found  
4 in the apartment?

5 A I'm not really certain where that was found.

6 Q When was the first time that you noticed gray  
7 duct tape?

8 A In the apartment? Beyond removing it from  
9 the apartment, I don't really recall where it was found.

10 Q Now, papers upon which the normal handwriting  
11 of Dominic Franza appears, did you recover any papers,  
12 handwritten papers, from the apartment?

13 A Yes, we did.

14 Q When you say, "Yes, we did," is this you?

15 A Yes, I did. I was with New York City police  
16 detectives.

17 Q Where were they recovered in the apartment?

18 A The file, Mr. Franza's file was recovered  
19 from the same shelf unit in the livingroom.

20 Q Were there any other papers that were taken  
21 that day?

22 A It was a piece of paper with typewritten  
23 notes.

24 Q Do you recall where that was taken from?

25 A Not specifically, no.



1  
2 MR. BRANCATO: Your Honor, as we stated at  
3 the bench, those typewritten notes, the People do  
4 not intend to introduce in their case in chief.

5 Q Were there any other items taken aside from  
6 firecrackers that were on the coffee table, the gray duct  
7 tape, the Mr. Franza's file, and the typewritten notes?

8 A There was a roll of black tape.

9 Q Where was that retrieved from?

10 A That, I also don't specifically remember  
11 where it was gotten from.

12 MR. BRANCATO: Can we have this marked  
13 People's Exhibit Number 24 for Identification? I  
14 would ask that it be collectively marked 24.  
15 According to Mr. Scheindlin, there were 39 pieces  
16 of paper which comprises it.

17 MR. BRENNER: May we mark it for purposes of  
18 the hearing just collectively as opposed to A and  
19 double A?

20 THE COURT: Just mark it as 24.

21 (Document referred to above was received and  
22 marked as People's Exhibit 24, in Evidence.)

23 THE COURT: All right. It's marked received,  
24 24.

25 Q Is that the file that you referred to earlier

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as Mr. Franza's file?

A Yes.

Q Where was that recovered from?

A From the wall unit in the livingroom.

Q And could you please tell us, was it in anything at the time that you took it out? Was it in a folder? Was it just there? Just tell us.

A I really don't recall.

Q Was that file, what is referred to as Mr. Franza's file, was that notation on the front of those papers when you received it?

A Mr. Franza's file? That notation, yes.

Q And was it on the unit when you recovered it?

A Yes.

Q Is that what's referred to as the file with the numerous handwritten notes?

A Yes.

Q Now, lastly, the black tape, as you sit here do you recall where that was retrieved from in the apartment?

A No, not specifically.

Q All five of these items, were any of them recovered outside of the doorway in which you were aware the Defendant had lived, 3320 Barker Avenue?

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A No, they were all recovered in the apartment.

Q Did there come a point that you made a return on the search warrant?

A Yes, there did.

Q And where was that that you made the return?

A At the Magistrate's office in the Southern District of New York.

Q Was it at that time that you signed the return in this case?

A I probably signed it previously and then returned the warrant.

Q That was done at the Magistrate's office here in New York County?

A Yes.

MR. BRANCATO: I have no further questions at this point.

THE COURT: Mr. Brenner, the witness is yielded.

CROSS EXAMINATION

BY MR. BRENNER:

Q The roll of black tape, I think you told Mr. Brancato you don't know where you found this?

A I have no clear recollection of where I found it.

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2 Q Did you make any notes during the course of  
3 the search or immediately thereafter reflecting where  
4 various things had been found?

5 A No.

6 Q Would you agree that the face of the warrant  
7 does not specifically authorize the seizure of a roll of  
8 black tape, the second warrant to be specific.

9 A I honestly don't recall.

10 MR. BRENNER: This is not People's 23, your  
11 Honor, but it's a duplicate.

12 A No, it doesn't say black tape.

13 Q You don't know where you found it?

14 A I don't recall where I found it in the  
15 apartment, no.

16 Q Do you recall on the previous search,  
17 February 12, having seen a second roll of black tape?

18 A No.

19 Q Now, during the course of the first search,  
20 according to your testimony on direct, you took  
21 miscellaneous papers, some of which included ostensibly  
22 Mr. Franza's handwriting; is that right?

23 A Specifically the two pieces of paper with the  
24 books on it I think is the books on the - - with the  
25 first warrant is what we took.

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2 Q At the risk of correcting you, there were the  
3 telephone numbers and names?

4 A Yes, that's correct.

5 Q You testified that at least in part, your  
6 purpose was because they contained what you believe to be  
7 Mr. Franza's handwriting?

8 MR. BRANCATO: On what now?

9 Q On the two-page list of books, when Mr.  
10 Brancato asked you yesterday what the significance of  
11 that was, I believe that you testified that because it  
12 had the signature the handwriting of Mr. Franza, who was  
13 a suspect certainly, and that the Federal Express invoice  
14 had had handwriting on it, you believed that there would  
15 be value in comparison?

16 MR. BRANCATO: I object to the question.

17 It's not a fair characterization of what he  
18 stated.

19 MR. BRENNER: Well, I can do it another way.

20 MR. BRANCATO: I would appreciate that.

21 MR. BRENNER: Okay. If I may have a moment  
22 to find it.

23 (Continued on next page.)  
24  
25

T2-fr

BEHAN - PEOPLE - CROSS

444-445

Q Bringing your attention to page -- well, I'll read to you, but on page 381 of your testimony yesterday, beginning at line 11--and if you do not think this specifically refers to these two pages listing the titles, please tell me.

Were you asked the following questions and give the following answers?

"QUESTION: Could you please tell us the purpose of taking those two pages at that time?

"ANSWER: It had been reported to us there was some handwriting on some of the evidence collected in connection with the device down to Puerto Rico."

I believe the correct record should be "sent down to Puerto Rico."

"QUESTION: That there was handwriting. Could you please tell us where you were told that there was handwriting?

"ANSWER: There was handwriting on the Federal Express receipts, at least a signature on it. We were also aware that there was handwriting on the two threatening

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BEHAN - PEOPLE - CROSS

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2 letters that had been received by the  
3 family. There was also handwriting on the  
4 American Express money order that was used  
5 to pay the shipping charges for the package  
6 down to Puerto Rico.

7 "QUESTION: And when you say the Federal  
8 Express, are you referring to the method in  
9 which the bomb was sent to Puerto Rico?

10 "ANSWER: Yes.

11 "QUESTION: Now, at the time that these  
12 papers -- these two papers were taken, what  
13 was the purpose then in taking them?

14 "ANSWER: For future comparison with any  
15 of the handwriting that we knew about at  
16 that time."

17 Were you asked those questions by Mr.  
18 Brancato and did you give those answers?

19 A Yes.

20 Q So, would it be fair to say yesterday at  
21 least initially when Mr. Brancata asked you, you  
22 testified your purpose in seizing those was for  
23 future comparison with regard to handwriting?

24 A Yes.

25 Q And those items were found on the shelf,

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T2-fr

BEHAN - PEOPLE - CROSS

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1  
2 is that correct?

3 A Yes.

4 Q Mr. Franza's file was also present on  
5 the shelf?

6 A Yes, it was.

7 Q Why did you not take it for that same  
8 purpose on February 12th?

9 A I have no real recollection of why we  
10 didn't take it. There were other things, as I  
11 recall, that we did not take. I think we took a  
12 representative sampling.

13 Q Well, were you present when Agent  
14 DiPerro made her application before the  
15 Magistrate?

16 A For the second search warrant?

17 Q Yes.

18 A No.

19 Q Is it fair to say in your review of the  
20 application that Agent DiPerro specifically  
21 applied for documents bearing the handwriting of  
22 Mr. Franza?

23 MR. BRANCATO: I object, Judge.

24 Whatever she applied for isn't in  
25 the papers.

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BEHAN - PEOPLE - CROSS

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2 THE COURT: If he's aware of it, he  
3 may respond.

4 Would you repeat the question?

5 Q Would it be fair to say that Agent  
6 DiPerro specifically applied to be able to seize  
7 documents which contained Mr. Franza's  
8 handwriting?

9 A Yes.

10 Q Would it also be fair to say that you had  
11 already seized documents for that purpose in the  
12 first search?

13 A Yes, we had seized some.

14 Q You know whether Agent DiPerro reported  
15 to the Magistrate on the second application that  
16 papers had already been taken from the apartment  
17 for that purpose?

18 MR. BRANCATO: I object. Whatever  
19 she told the Magistrate is contained in  
20 those papers.

21 THE COURT: Unless he was present  
22 and had knowledge of it.

23 MR. BRENNER: All I asked him in his  
24 review of the papers. The People put  
25 the affidavit and the warrant and the

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T2-fr

BEHAN - PEOPLE - CROSS

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1  
2 complaint in evidence through this  
3 witness.

4 MR. BRANCATO: I only put it in  
5 because he wanted the complaint in.

6 MR. BRENNER: And the warrant.

7 THE COURT: You can ask the witness  
8 if he reviewed it and based upon that  
9 review of the documents.

10 Q Based on your review of the warrant and  
11 the affidavit, was there any mention by  
12 Detective DiPerro to the Magistrate that papers  
13 had been taken previously for the purpose of  
14 handwriting comparison?

15 A My review of the second warrant and  
16 application?

17 Q Yes. I believe you have it in front of  
18 you. If you need to further --

19 A I'm not sure I reviewed the application  
20 prior to going to do the second search.

21 Q Before you came to testify, I mean as  
22 you sit here now.

23 A Oh.

24 Q Will this help?

25 A I'm sorry, the question again?

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T2-fr

BEHAN - PEOPLE - CROSS

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1  
2 Q Did Agent DiPerro make any reference  
3 after your review of the documents to the  
4 Magistrate that papers had already been seized  
5 in the first search for purposes of handwriting  
6 comparison?

7 MR. BRANCATO: Judge, I am going to  
8 object and I'd ask that we approach.

9 (Discussion off the record.)

10 Q Agent, the first warrant, aside from  
11 it's reference on other evidence of shifting and  
12 manufacture, the first warrant, February 12th  
13 warrant --

14 A Right.

15 Q -- did it specifically delineate taking  
16 documents for the purpose of handwriting  
17 comparison?

18 A I don't think so, but I'm not positive.

19 MR. BRENNER May I have the first  
20 warrant that was marked into evidence?

21 MR. BRANCATO: Yes.

22 THE COURT: No, the warrant doesn't  
23 mention handwriting.

24 Q The first warrant does not specifically  
25 delineate that; is that correct?

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T2-fr

BEHAN - PEOPLE - CROSS

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1  
2 A Right.

3 Q The second warrant does?

4 A Yes.

5 Q And the second warrant was applied for  
6 by an agent who had been present during the first  
7 search?

8 A Yes.

9 Q Now, I think you told Mr. Brancato that  
10 you're not sure of the exact condition of Mr.  
11 Franza's file, as it were, was it enclosed in  
12 anything or --

13 A My recollection it was like a file  
14 folder with that notation on the cover,  
15 something like that, but without seeing it --

16 Q In your discussion -- withdrawn.

17 Subsequent to the first search and  
18 before you went back to the apartment, did you  
19 have discussions relative to these two searches  
20 with Miss DiPerro?

21 A I suppose we did, yes.

22 Q Do you know, based on your discussions,  
23 if any, whether Miss DiPerro was interested in  
24 Mr. Franza's files specifically?

25 A No, I don't think so.

1/29/92



T2-fr

1  
2 Q Did you seize any other documents for  
3 the purpose of handwriting analysis when you  
4 went back?

5 A For handwriting comparison?

6 Q Yes, the second time.

7 A No.

8 Q Were there other documents there?

9 A I believe there were, but I had no clear  
10 recollection of any specific things.

11 Q But that file which you had seen on  
12 February 12th, was the only document that you  
13 took on February 14th?

14 A Yes.

15 MR. BRENNER: I have nothing  
16 further, Judge.

17 THE COURT: Any redirect?

18 MR. BRANCATO: Just a little.

19 REDIRECT EXAMINATION

20 BY MR. BRANCATO:

21 Q In Exhibit 23C, specifically like the  
22 bottom of the paragraph, that affidavit states  
23 what papers are attached, am I correct?

24 A I'm sorry, what papers are what?

25 Q What papers are attached and

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incorporated in that application, is that correct?

A Yes.

Q And what does it indicate as incorporated?

A "One bag of miscellaneous papers."

Q Does that -- that application and the affidavit make a reference to the incorporating of the attached first warrant and it's return?

A Yes.

Q So then when Mr. Brenner tells you that there was no mention of papers being returned -- papers being taken during the first search of the apartment, is there reference on the return?

MR. BRENNER: Your Honor, I'm going to object. On numerous occasions this Court has interrupted me and said I mischaracterized the testimony. My question to Agent Behan was, was there any papers taken for handwriting comparison, that was my question, not whether papers were taken.

THE COURT: I believe that is so.

2 Q The papers that were taken, the one that  
3 has the written book titles along with the  
4 authors and prices, that was taken the first  
5 night; is that right?

6 A Yes.

7 Q Just once again, just restate why was  
8 that taken?

9 A To compare that handwriting with the  
10 handwriting on the shipping label for the device  
11 to Puerto Rico, the threatening letters and  
12 money order.

13 Q Now, when Mr. Brenner asked you did you  
14 have specific authorization to take handwriting  
15 papers that night, you indicated no?

16 A I said that it was not specifically  
17 mentioned on the warrant.

18 Q Under what portion on the warrant did  
19 you take those papers?

20 A Last phrase, "and other evidence of the  
21 manufacture and shipping of an explosive  
22 device."

23 MR. BRANCATO: I have no further  
24 questions.

25 THE COURT: Any recross?

T2-fr1

BEHAN - PEOPLE - REDIRECT

455

MR. BRENNER: No, your Honor.

THE COURT: You may step down, Agent  
Behan.

Call your next witness.

MR. BRANCATO: Special Agent Carrie  
DiPirro.

S. A. C A R R I E D i P I R R O, called as a  
witness by the People, having been first  
duly sworn, testified under oath as follows:

COURT OFFICER: For the record, can  
you state your name, spelling your last  
name, shield number and present  
assignment.

THE WITNESS: Special Agent Carrie,  
C-A-R-R-I-E, DiPirro, D-I-P-I-R-R-O.  
Shield 2472, I'm a special agent, Bureau  
of Alcohol, Tobacco, and Firearms.  
Presently assigned to New York Group  
Three.

THE COURT: You may inquire.

DIRECT EXAMINATION

BY MR. BRANCATO:

Q Agent DiPirro, how long have you been  
employed by the Bureau of Alcohol, Tobacco, and

1/29/92

Firearms?

2 A Approximately five-and-a-half years.

3 Q Very briefly can you tell us what your  
4 duties are as an agent with the Bureau of  
5 Alcohol, Tobacco, and Firearms?

6 A Criminal investigator.

7 Q You work with Special Agent Gerald  
8 Raffa?

9 A Yes, I do, he's my supervisor.

10 Q And Agent Christie?

11 A Yes.

12 Q And what is the relationship to Agent  
13 Behan?

14 A We are co-workers.

15 Q You're on what's called the same team;

16 Team One?

17 A We consider it Group Three.

18 Q Group three, I'm sorry.

19 A Yes.

20 Q Who are the other members of Group  
21 Three?

22 A Presently Al Kashinsky, Bruce --

23 THE COURT: Is that in addition?

24 THE WITNESS: Yes. Bruce Laudners,  
25

T2-fri

DIPIRRO - PEOPLE- DIRECT  
Tom Kelly, and Bill Temple.

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2  
3 Q Were they members of the team back in  
4 February, 1990?

5 A No, not all were.

6 Q Who wasn't?

7 A Bill Temple was not.

8 Q But Raffa and Behan were members?

9 A Yes.

10 Q Let me hand you what's already in  
11 evidence, this is Exhibit 1.

12 That's the warrant together with the  
13 attached affidavit.

14 Now, did there come a point in February,  
15 February 12th or February 13th, that you made  
16 the return on that warrant in connection with  
17 this case?

18 A Yes.

19 Q And where did you make the return?

20 A Southern District in New York.

21 Q And was that in the Office of the  
22 Magistrate Barbara Lee?

23 A Yes, it was.

24 Q Was that your signature there?

25 A Yes, it is.

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T2-fri

DiPIRRO - PEOPLE- DIRECT

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Q And when you came down to make the return on the first search warrant, that was executed in connection with the case the People -- the Federal Investigation against Dominic Franza, did you apply for an arrest warrant

A Yes, I did.

Q Was that the same day you made the return?

A Yes, sir.

Q Let me hand you what's already been marked in evidence, it's Exhibit 23A through D.

(handing)

Q Looking at that, could you please tell us is that the arrest warrant together with the complaint that was prepared in connection with the Federal Investigation against Dominic Franza?

A Yes, it is.

Q And was that signed by the Magistrate that day?

A Yes, it was.

Q What's the Magistrate's name?

A Barbara A. Lee.

Q Now, when you make the request for the

1/29/92

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DIPIRRO - PEOPLE- DIRECT

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1  
2 arrest warrant, did you make a similar request  
3 after that for a search warrant for 320 Barker  
4 Avenue?

5 A Yes, I did.

6 MR. BRENNER: Objection as to  
7 "similar", your Honor.

8 Q Did you make another request for a  
9 search warrant at 320 Barker Avenue?

10 A Yes, I did.

11 Q This is already in evidence, it's 22A  
12 through D.

13 (Handing)

14 Q Is that the search warrant on written  
15 affidavit which is 22A together with the return  
16 on 22B, together with your affidavit for that  
17 search warrant?

18 A Yes, it is.

19 Q Now, I'm going to direct your attention  
20 to paragraph two of your affidavit. Paragraph  
21 two sets forth supporting the warrant, the  
22 attached complaint. What complaint is that in  
23 reference to?

24 A That is in reference to the complaint  
25 for the arrest warrant that was submitted the

1/29/92

2 same day.

3 Q And was that provided to the Magistrate  
4 at the point that you requested that warrant?

5 A Yes, it was.

6 Q It also makes reference to a copy of the  
7 warrant itself with its return also attached.  
8 What warrant is that referenced to?

9 A That's in reference to the warrant that  
10 was issued on February 11th and executed on the  
11 12th, the first warrant that was executed at the  
12 residence of Dominic Franza.

13 Q Is that what's in evidence then as  
14 Exhibit 1?

15 A Yes.

16 Q So is it fair to say then that at the  
17 point you requested the warrant to search the  
18 defendant's premises, what you have in front of  
19 you, the papers supporting that, in addition to  
20 the affidavit which is attached is the first  
21 search warrant with it's return as well as the  
22 attached complaint that is on the arrest  
23 warrant?

24 A Yes, sir.

25 Q Does that contain the information that

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DiPIRRO - PEOPLE- DIRECT

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was stated to the Magistrate that day concerning the search warrant?

MR. BRENNER: What day, your Honor?

Q The day that you went down to get the search warrant, do those papers contain the information that was handed to the Magistrate at the point where you asked for the Magistrate's signature?

A Yes, sir.

Q And did the Magistrate then sign the search warrant of the defendant's premises on Barker Avenue?

A Yes.

Q Was it at the same time that you went to speak to the Magistrate?

A Yes.

MR. BRANCATO: I have no further questions.

THE COURT: You may inquire.

CROSS EXAMINATION

BY MR. BRENNER:

Q Agent DiPirro, you sought in addition to specified items other evidence of the shipping and manufacture of an explosive device in your

1/29/92

1 application?

2 A Yes.

3 Q Was that granted?

4 A That phrase directly was crossed out.

5 Q And what did you take that to mean?

6 MR. BRANCATO: I object.

7 MR. BRENNER: No, your Honor, it's  
8 not a legal conclusion, there was an  
9 application made and granted in part. I  
10 would like to know what part the agent  
11 feels was denied.

12 MR. BRANCATO: I object. It's  
13 irrelevant.

14 THE COURT: You want to step down,  
15 please?

16 Approach.

17 (Discussion at sidebar, off the  
18 record)

19 THE COURT: Have the witness return.

20 BY MR. BRENNER:

21 Q Sergeant DiPirro, just to rehash  
22 briefly, you had submitted an application for a  
23 warrant requesting to be able to search for  
24 other evidence of the manufacture and shipping  
25

T2-fr1

DIPIRRO - PEOPLE - CROSS

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1 of an explosive device pursuant to the relevant  
2 statutory sections; is that right?

3 A Yes, sir.

4 Q And that application, that portion of  
5 your application was stricken; was that correct?

6 A Yes.

7 Q The question to you is, what did you  
8 take that to mean?

9 A That the magistrate didn't want it  
10 written in the application.

11 Q With regard to the permissible  
12 parameters of the search, what did you take it to  
13 mean?

14 A I'm not really sure exactly what she  
15 meant by that. I wasn't part of the second  
16 search team.

17 Q When you applied for it, having been a -  
18 - withdrawn.

19 You participated in the first search, is  
20 that right?

21 A Yes.

22 Q Having been a participant in the first  
23 search, you made the application for the second  
24 warrant, is that right?

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A Yes.

Q Would it be fair to say that the wording, "any other evidence" is a catch-all phrase, it applies to things that you determine to be evidence of the violation, is that right?

MR. BRANCATO: I object to what the language is.

THE COURT: Well --

MR. BRENNER: I'll rephrase it.

Q Would it be fair to say that the wording that you applied for allows the searching agent to make a determination as to whether in their mind something is evidence of the violation?

A Could you repeat that?

(Transcript continues)

(Continued from preceding page.)

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3 Q Wouldn't it be fair to say that the wording  
4 "any other evidence" of the shipping or manufacture of an  
5 explosive device permits the searching agent to make a  
6 determination at the premises whether, in fact, that  
7 material is evidence?

8 A Based on subsequent investigation, yes.

9 Q And when you made that application, what did  
10 you mean? What did you want to search for by saying "any  
11 other evidence"?

12 A Actually it just says, "other evidence."

13 Q Other evidence. Were you looking for  
14 anything in particular?

15 A The items that were listed as well as other  
16 evidence that may have been - -

17 Q Agent DiPirro, you had already been in the  
18 apartment?

19 A Yes.

20 Q Would it be fair to say that the search was  
21 conducted by more than one agent; right?

22 A Yes.

23 Q And it was by more than five agents, there  
24 were ATF agents, your team members as well as New York  
25 City Police Department officers?

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A Yes.

Q Would it be fair to say that it was a fairly thorough search?

A Yes, that's fair.

Q Now, I ask you again, after having been in the apartment two days earlier when you said in your application "other evidence," what were you referring to?

A I can only say personally other evidence that other people may find that - - every one person doesn't search everything. Other evidence that other people, you know, that I may not have seen the first time, if that's what you're asking me.

Q Would it be fair to say then that the items that you listed based on your first search of the apartment were all that you felt were remaining in the apartment that you knew of that were evidence?

MR. BRANCATO: I don't understand that question. Could it be re-read?

Q Do you understand?

A Not really.

Q You listed gray duct tape; is that right?

A Yes.

Q And what else, firecrackers?

A Yes.

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Q And you requested papers with Mr. Franza's handwriting on them?

A That's correct.

Q You had seen papers previously with Mr. Franza's handwriting in the apartment; had you not?

A Yes.

Q Had you seen the item which was - - withdrawn. You have seen the return?

A Yes, I've seen the return.

Q Have you seen the ATF inventory?

A Yes.

Q You are aware that the document seized was a multi-page document named Mr. Franza's file?

A Yes.

Q Had you seen that document on February 12?

A No, I had personally not seen it.

Q Was it communicated to you that such a document existed prior to your application on February 14?

A Not that particular document, no.

Q What particular documents if any had you been made aware of?

A None specifically. Only that there were other samples with his handwriting. I was not in the

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search team for that part of the room.

Q When you say other samples, would it be fair to say that documents had already been taken on February 12 for that purpose?

A Samples of handwriting, yes.

Q Yet you proceeded to seek a separate warrant specifically requesting samples of handwriting?

A Additional samples for comparison, yes.

Q Did your warrant application say additional?

A It said papers upon which the normal handwriting of Dominic Franza appears.

Q Miss DiPirro, did you make any - - Agent DiPirro, did you make any representation to Magistrate Lee that papers had been seized already for the specific purpose of handwriting comparison?

A No, I don't believe so.

Q So, in fact, Magistrate Lee, the application to Magistrate Lee was not for additional papers for handwriting comparison but for handwriting comparison in the first instance; isn't that right?

A Well, knowing now, looking back I know more specifically as to which miscellaneous papers were taken. At the time I was not aware of which papers were taken exactly as miscellaneous papers.

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Q I understand. But my question is whether you applied to Magistrate Lee on February 13 for this warrant, the application that you made was for the seizure of papers for handwriting analysis as if this was that in the first instance; isn't that correct?

A No.

Q Did you say that we have already done this?

A No, I didn't.

Q Did you ask for additional papers for handwriting analysis?

A No. The miscellaneous papers were miscellaneous papers to me at that time. I didn't know what exactly they were.

Q Agent DiPirro, I think you testified previously that you knew that papers had already been taken for handwriting comparison during the first search?

A Now I know that.

Q You didn't know that then?

A At the time the miscellaneous papers were considered as a group. And I was not - - I did not have them itemized at the time. I didn't know what the miscellaneous papers consisted of exactly.

Q So when you went to search for - - when you went to make the application on February 13 for a second



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warrant, you did not know what had been seized the first time?

A No, I knew that item four was a bag of miscellaneous papers. I had not at that point - -

THE COURT: You didn't know the significance or the utilization was being made of those papers, is that what you're saying?

A Basically, yes.

Q Did you know what they were?

A Not specifically. I wouldn't be able to - -  
I mean, looking now at sheets that were taken - -

THE COURT: Not looking now.

A At that time, no, I did not know exactly what they were.

Q Did you seize anything from the apartment on February 12?

A I was considered the seizing officer.

Q You inventoried things; is that right?

A At a later date.

Q No. You did the return, I mean?

A Yes.

Q And I'm just trying to be clear, Agent

DiPirro.

A Sure.

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Q You made a return on property to a Federal Magistrate without specifically knowing what that property was?

A No. I specifically knew that it was one bag of miscellaneous papers.

Q But apart from that, as the returning agent, you didn't look through the papers, you did not know what was in there?

A I couldn't itemize them at the time. I did not finish the processing because everything was done pretty quickly.

Q Did you seize any property on February 12? I know you have referred to yourself as the seizing agent. But what I mean is, apart from the vernacular, did you physically seize any property from the apartment on February 12?

A The word seize means perhaps something different to me than it does to you.

Q I suspect that that's true.

A I saw item one which is the can of Bull's Eye smokeless powder in the apartment that night.

Q Did you find anything else? You.

A Nothing else that is listed, no.

Q Were you present when anyone else did?

*DiP*

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A Not when they found it, no.

Q Where were you, searching the bedroom?

A Yes.

Q And the only item was the Bull's Eye  
smokeless powder that you found?

A Yes.

MR. BRENNER: Thank you. I have nothing  
further.

MR. BRANCATO: Just one.

REDIRECT EXAMINATION

BY MR. BRANCATO:

Q Where was the can of Bull's Eye powder in the  
bedroom?

A It was in plain view.

MR. BRENNER: Objection. Perhaps to borrow  
the agent's word, perhaps the words plain view  
mean something different to her than they do to  
us.

THE COURT: Mr. Brancato.

Q Where was the smokeless powder in the  
bedroom?

A It was on an open shelf bookcase style.

RE-CROSS EXAMINATION

BY MR. BRENNER:

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Q Where? I assume four walls - -

A Four walls. It was under the front windows on that wall.

Q On the bookcase, under the windows, top or on a shelf, underneath the top or where?

A I don't understand what you mean. It was right under the windows. It wasn't a tall bookcase. It was a short one.

THE COURT: The powder, was that on the bookcase, in the bookcase?

THE WITNESS: It was completely open.

THE COURT: But where was it?

THE WITNESS: The exact location, I do not recall.

Q What was around it, if anything?

A Miscellaneous reloading equipment for ammunition.

Q Ammunition which would be consistent with the use of the powder? I'm not sure I understand. Was the powder next to bullets and guns and stuff?

A No, there were no guns there.

Q When you say reloading equipment, what do you mean?

A Just paraphernalia for lack of a better word.

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Q Of reloading?

A Yes.

Q That's where the powder was?

A Yes.

Q Did you seize any of the reloading equipment?

A No.

MR. BRENNER: Thank you. I have nothing further.

THE COURT: I believe that completes your testimony, Agent DePirro.

(At this time the witness was excused.)

MR. BRANCATO: We rest.

MR. BRENNER: Defense rests.

THE COURT: Gentlemen, to the bench.

(At this time a discussion was held off the record among Court and counsel.)

THE COURT: For the record, defense briefs by the end of the close of the business day on the third, prosecution briefs by the close of the business day on the fifth. Jury selection on the following Monday which will be February 10.

(At this time the proceedings were concluded.)

\* \* \*