

1 and was apparently careful to name no names. He did not blame
2 La Costa or its principals for the multitude of disasters
3 Penthouse laid at their door. The Los Angeles Times article did
4 not even make an accusation but referred solely to speculation
5 by an unidentified member of the District Attorney's staff
6 ("What's to prevent" La Costa from becoming another Apalachin).
7 It also quoted unnamed "federal authorities" as calling La Costa
8 a "watering hole" for hoods and gangsters, but this is far short
9 of alleging active involvement in their crimes. Neither article
10 cited facts or accused individuals by name. Nevertheless,
11 Penthouse pulled out all stops, citing imaginative chapter and
12 verse, and implicating by association alone Roen, Adelson and
13 Molasky along with Dalitz as purported leaders of organized
14 crime. Nothing in the prior articles supported this unrestrained,
15 indiscriminate attack.

16
17
18 The alleged "official reports" relied on by Penthouse
19 are no more probative than the newspaper articles. In the first
20 place, all three "official reports" (Exhibits F, G and H hereto),
21 are unauthenticated. The Penthouse libel attorney, Gerard Adler,
22 states in his affidavit that the authors "represented" to him
23 that the documents were genuine, but I must challenge the
24 responsibility of a policy that would accept such a representa-
25 tion at face value, without critical evaluation. I am personally
26 familiar with Life magazine's refusal to accept such assertions
27 at face value from a writer of excellent repute and established
28 reputation. See Cerrito v. Time 302 F.Supp. 1071 (N.D. Cal 1969),
29 affd., 449 Fed. 306 (9th Cir. 1971). Life instead retained
30 a panel of experts, on which I served, to review the documents
31 and information submitted. Life did not take the unsubstantiated
32

1 word of an established investigative reporter; it sought expert
2 help, as suggested in the Butts case by Mr. Justice Harlan.
3 Penthouse should have done no less. There is no showing here that
4 either the authors or any member of the Penthouse staff was
5 qualified to evaluate either the documents or the authors'
6 very serious charges - which the documents in fact do not support.
7

8 It should be noted that it is not apparent on the face
9 of any of the documents themselves that they are indeed official
10 agency reports. They are mere unsigned memoranda. It is possible
11 that the documents originated with official agencies, but if so
12 they are more likely internal documents prepared by a particular
13 member of the staff rather than an official report of the agency
14 itself. If so, the documents do not carry the weight of the
15 agency but are entirely dependent on the credibility of the
16 individuals who prepared them, including their status, competence,
17 reputation and access to information. They could even be prelim-
18 inary memoranda that were actually rejected or disapproved by
19 higher authority. None of these factors can be assessed where the
20 writer is not identified or specific supporting information
21 supplied. Apparently, Penthouse (and perhaps also the authors) di-
22 not know the identities of the writers and was, therefore, not
23 in a position to assess any of these factors.
24

25
26 The first of the three "official" documents cited by
27 Penthouse's libel attorney, Gerard Adler, as having been the
28 basis for his appraisal of the La Costa article was a "Report,
29 represented to me by the authors as issued by the FBI, entitled
30 'A History of the Las Vegas Group Behind the Rancho La Costa
31 Operation' noting La Costa's connection with La Cosa Nostra."
32

This so-called "FBI Report" is annexed hereto as

1 Exhibit F. It is written in the style of and may well be an
 2 internal memorandum prepared by a Bureau agent. The document
 3 reports early "criminal interests" of Dalitz in Cleveland,
 4 citing gambling and bootlegging, but does not allege any present
 5 criminal involvement. It notes that "according to J. Richard
 6 'Dixie' Davis, attorney for slain gangster 'Dutch' Schulz",
 7 Dalitz "in the 1930's . . . was the real power in Cleveland,
 8 and anyone who questioned this would have to deal with 'Lucky',
 9 Luciano, 'Bugsy' Siegel, and Meyer Lansky". The author of the
 10 memorandum does not endorse this statement attributed to Davis
 11 (which Dalitz denied at the Kefauver hearings in 1951) but
 12 reports it without comment. The conclusion of the "FBI Report"
 13 was as follows:

Conclusion:

14
 15
 16
 17 The DALITZ group, known in Las Vegas as
 18 the "Jewish crowd", are the sole operators
 19 of the Desert Inn and Stardust in Las Vegas,
 20 as well as the Rancho La Costa development
 21 at Carlsbad. This does not divorce them from
 22 the La Cosa Nostra, as they could never
 23 successfully operate without the approval of
 24 the Italian crowd. This is quite apparent
 25 from the "red carpet" treatment afforded any
 26 LCN member of stature.

27
 28 Thus, it is possible a top LCN member
 29 may be observed in the Rancho La Costa area,
 30 possibly as a guest or visitor, but there is
 31 no indication such person will move in as a
 32 part of the management or policy making group

1 at Rancho La Costa. (emphasis added)

2 It appears, therefore, that it was the conclusion of
3 the writer of this report that Dalitz engaged in illegal boot-
4 legging and gambling ventures in Cleveland. It was clearly also
5 his conclusion that although "the Dalitz group" apparently operated
6 with the approval of La Cosa Nostra, they were not part of it.
7 The report states flatly that "it is possible that a top LCN
8 member may be observed in the Rancho La Costa area possibly as
9 a guest or visitor, but there is no indication such person will
10 move in as a part of the management or policy making group at
11 Rancho La Costa". This statement directly contradicts the
12 Penthouse allegation (based largely on the very guest visits
13 the "FBI Report" discounts) that La Costa and its principals are
14 themselves actually syndicate leaders.

15
16 The second "official" document cited by Mr. Adler is a
17 "Report dated April 16, 1967 represented by the authors as origin-
18 ating with a law enforcement agency". In this instance it appears
19 that Mr. Adler was not even told which "agency" was involved.
20 Mr. Adler cites this "Report" (Exhibit C hereto) for the state-
21 ment that the backers of La Costa "have connections with organized
22 crime figures". It is noteworthy, however, that even in this
23 internal document no direct accusation is made. (The document
24 later states of Dalitz that "he is acquainted with numerous
25 individuals throughout the country, both those with criminal
26 backgrounds and also reputable individuals".) Where the cited
27 document referred only to a suspicious relationship (unspecified
28 "connections") Penthouse made a public statement of actual guilt.
29 Unless guilt by association is to receive approval as a sound
30 basis for public denunciation - a proposition I do not believe
31
32

1 this Court willing to accept -- it must be concluded that this
 2 anonymous document did not, and could not, support the various
 3 Penthouse charges. Certainly, it did not support all of the de-
 4 tailed accusations Penthouse added, nor do they appear to be
 5 supported anywhere else.

6
 7 The third "official" document cited by Mr. Adler is
 8 an "84 page report dated May 20, 1967 concerning 'the modus
 9 operandi of the organized crime element' represented by the
 10 authors as having been prepared by the California Corporations
 11 Commission". Mr. Adler cites this 84 page report for the state-
 12 ment in it that "It has often been said by those who have made a
 13 study of the matter that years ahead of any activity, certain
 14 areas were portioned out to certain clans. In the introduction
 15 it was established that Moe Dalitz had an Eastern area. Later he
 16 apparently was given, in addition, an area of the northern part
 17 of San Diego County". The "report" itself consists of a collec-
 18 tion of names, places and quotations, largely from the popular
 19 literature, interspersed with guesses by the writer, such as his
 20 surmise based on Dalitz alleged Cleveland past and his current
 21 presence in Northern San Diego County that Dalitz "apparently was
 22 given" this area by unidentified persons, presumably by "the mob"
 23 Such collections of raw data, even if unsophisticated, as this
 24 document appears to be, can provide useful information within an
 25 agency. But to release its surmises to the public, drop the
 26 "apparently", and state surmise as fact on the front cover of a
 27 widely distributed national magazine, seems reckless in the
 28 extreme. (See Exhibit H hereto.)

29
 30
 31 It is clear that the Penthouse allegations went far
 32 beyond the material that is now cited to support them. No facts

1 basis appears for the assertions that La Costa is a syndicate
2 headquarters, that Lansky was a founder, that La Costa was
3 somehow involved in the "Watergate" cover-up, or was implicated
4 in Teamster prosecutions, or was responsible for the United
5 States National Bank failure, or for a Baptist Foundation
6 swindle, or, most importantly, was financed by organized crime
7 money. As the record stands, all of these allegations appear
8 to have been the product of imaginative sensationalism, inspired
9 by rumor, speculation and a single flat aside in the New York
10 Times. As pointed out previously, the Times named no names and
11 gave no details. Penthouse, however, did not hesitate to go
12 all out. What the Times left out, Penthouse apparently made
13 up. It is evident that Penthouse was less responsible, not
14 better informed.

15
16
17 In making this affidavit, it is not my purpose to
18 assert the innocence of the plaintiffs. Their guilt or
19 innocence remains to be established at trial. No matter what
20 their past might have been, if they were indicted by a grand-
21 jury today, they would be entitled to a fair trial. They have
22 been indicted by apparently irresponsible individuals and a
23 magazine in the public forum. Nothing in the First Amendment
24 or the jurisprudence of the Supreme Court requires this Court
25 now to deny them a fair trial. If Dalitz and the others
26 are willing to hazard a trial, they are entitled to it and
27 its verdict - and Dalitz's associates are even more so entitled.

28 ///

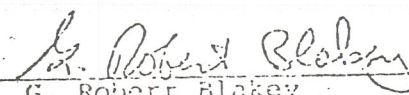
29 ///

30 ///

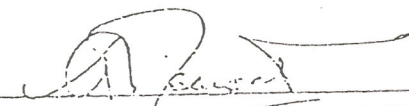
31 ///

32 ///

1 On the basis of the papers reviewed, it is my definite opinion
 2 that the good faith and recklessness of the defendants has
 3 seriously been put in question by the facts so far developed
 4 and that the matter should be tried. Basic fairness requires
 5 no less.
 6

7
 8 
 9 G. Robert Blakey

10 Sworn to before me this
 11 4th day of February, 1976.

12
 13 
 14 Notary Public State of Florida

15 NOTARY PUBLIC STATE OF FLORIDA AT LARGE
 BY COMMISSION EXPIRES MAY 31, 1977
 BONDED WITH GENERAL INSURANCE UNDER #1111

16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28
 29
 30
 31
 32