

COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 104

HON. CHARLES H. OLDER, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

CHARLES MANSON, SUSAN ATKINS,
LESLIE VAN HOUTEN, PATRICIA KRENWINKEL,
Defendants.

111

No. A253156

REPORTERS' DAILY TRANSCRIPT
Friday, October 2, 1970
A. M. SESSION

APPEARANCES:

For the People:

DONALD A. MUSICH,
STEPHEN RUSSELL KAY,

~~AARON H. STOWERS~~ and
VINCENT T. BUGLIOSI,
DEPUTY DISTRICT ATTORNEYS

For Deft. Manson:

I. A. KANAREK, Esq.

For Deft. Atkins:

DAYE SHINN, Esq.

For Deft. Van Houten:

~~RONALD HUGHES~~
RONALD HUGHES, Esq.

For Deft. Krenwinkel:

PAUL FITZGERALD, Esq.

LOIS R. JOHNSON,

VOLUME 111

~~LOIS R. JOHNSON~~ CSR.,
MURRAY MEHLMAN, CSR.,
Official Reporters

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I N D E X

<u>PEOPLE'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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FLYNN, Juan			12586	12561K 12578H 12585K 12588K
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LOS ANGELES, CALIFORNIA, FRIDAY, OCTOBER 2, 1970

9:47 A.M.

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(The following proceedings occur in chambers.
All counsel present, defendants absent.)

THE COURT: All counsel are present.

I wanted to bring up two matters, gentlemen.

First, with respect to the defendants. Have you
had an opportunity to talk with them about coming back into
the courtroom?

MR. FITZGERALD: Yes.

MR. KANAREK: Yes, your Honor.

THE COURT: What is their desire?

MR. KANAREK: Mr. Manson told me he does not wish to,
your Honor.

THE COURT: He does not what?

MR. KANAREK: He does not wish to return to the
courtroom.

MR. FITZGERALD: The female defendants indicated
to Mr. Hughes, Mr. Shinn and I that they could not assure us
of conduct that would be considered by the Court to be
decorous; but they didn't say they would act up.

They told us that they couldn't assure us they
wouldn't.

I am not trying to play word games with the
Court or anything. It is just that they did not say if they

1 were put into the courtroom and the Judge takes the bench,
2 we are going to sing or say anything; on the other hand,
3 they didn't give us any assurance that they wouldn't either.

4 My own personal opinion is that the situation has
5 not changed.

6 MR. BUGLIOSI: I would request that we start out
7 again with all of them in court. If they want to act up
8 again, I think we should at least start with them in court.
9 Maybe Manson won't act up. There is a chance that he won't.
10 If he does, then he will have to be removed.

11 I would not like to have the proceedings continue
12 with them outside the courtroom; especially with Mr. Flynn
13 on the stand, who is one of the principal witnesses against
14 Manson.

15 MR. SHINN: Your Honor, I think if they act up again,
16 your Honor, it is going to affect the jury.

17 MR. BUGLIOSI: How long are you going to keep --

18 THE COURT: Whose fault would that be?

19 MR. SHINN: That I understand, your Honor, but we
20 have to have a solution where we have a happy medium. If
21 they act up again in front of the jury, it is to their
22 prejudice.

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1 THE COURT: Well, the problem, from the Court's
2 standpoint, is that I can't --

3 MR. SHINN: Yes, I understand.

4 THE COURT: -- I can't get an unequivocal answer
5 from anybody as to what the defendants want to do, whether
6 they are willing to comply with the Court's rules and
7 orders regarding their conduct.

8 I will indicate it to all of you they may
9 return to the courtroom as soon as they are willing to
10 conduct themselves in a proper manner.

11 MR. SHINN: I talked to them --

12 MR. FITZGERALD: They will not make such an affirma-
13 tion. That's the problem.

14 I don't want to be equivocal but they are
15 equivocal. When you ask them if they will agree to come
16 back into the courtroom and not speak out of turn, they
17 won't agree to that sort of a commitment.

18 THE COURT: Of course, it's been clear from the
19 outset that the women take their -- the female defendants
20 take their lead from Mr. Manson.

21 MR. HUGHES: I don't think that's clear, your Honor.

22 THE COURT: It's clear to me. That has been the
23 pattern.

24 So I would suppose, from what's gone on in the
25 past, if Mr. Manson behaves himself, they will, too.
26 Although we have no assurance of it.

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1 MR. SHINN: Your Honor, is it possible that all
2 defense attorneys should talk to Mr. Manson together, then,
3 your Honor, to try to convince him.

4 THE COURT: If you think it will do some good, yes.

5 MR. SHINN: Do you think it will help, Paul, if we
6 all talked to him?

7 MR. FITZGERALD: Try.

8 THE COURT: I have no objection to that.

9 MR. SHINN: Do you want to, Mr. Kanarek?

10 MR. KANAREK: Certainly.

11 MR. SHINN: All go talk to him.

12 MR. HUGHES: I don't see any necessity for my talking
13 with Mr. Manson but --

14 THE COURT: I should think that Mr. Kanarek would be
15 perfectly able to communicate with Mr. Manson his thoughts
16 regarding his absence from the courtroom, but if you would
17 like to have other counsel present there --

18 MR. KANAREK: I have no objection to counsel --

19 THE COURT: I'm not suggesting it. Someone else
20 made the suggestion. I'm just telling you I have no
21 objection to it.

22 MR. KANAREK: Perfectly agreeable in this connection,
23 your Honor. I have -- perfectly --

24 THE COURT: Are you requesting that you have a
25 joint conference?

26 MR. KANAREK: Certainly. I join with Mr. Fitzgerald

1 and Mr. Shinn and I regret that Mr. Hughes will not.

2 MR. HUGHES: I'll go if I'm requested by Mr. Kanarek.

3 THE COURT: Is Mr. Manson in the lockup now?

4 THE BAILIFF: He's in the lockup, your Honor.

5 MR. FITZGERALD: Maybe we can go in the back way
6 and no one will see us.

7 THE BAILIFF: Is this a session with them inside the
8 lockup?

9 THE COURT: Yes. They may go inside the lockup.
10 Take them through the back door so they will not be
11 visible from the courtroom.

12 THE BAILIFF: Is that by themselves or with a
13 deputy in there?

14 THE COURT: By themselves.

15 MR. KANAREK: Thank you, your Honor.

16 MR. BUGLIOSI: Then we are going to come back to
17 the chambers?

18 THE COURT: I assume this will just take a few
19 minutes, won't it?

20 MR. FITZGERALD: Less than five.

21 THE COURT: We will wait here in chambers unless
22 you gentlemen want to step outside. You are welcome to
23 stay.

24 MR. BUGLIOSI: I have some work to do outside.

25 (Defense attorneys and Mr. Bugliosi retire
26 from the court's chambers.)

3-1
1 THE COURT: All counsel are present.

2 Do you have anything to report, gentlemen?

3 MR. FITZGERALD: Mr. Kanarek?

4 MR. KANAREK: What is that, your Honor?

5 THE COURT: Do you have anything to report?

6 MR. KANAREK: Yes, your Honor.

7 Mr. Manson wishes to remain in the lockup.

8 He feels that the oppression upon him by the
9 Sheriff, by the arbitrary action, for instance, of yesterday's
10 sui sponte, the sudden change of position as far as the
11 lockup goes, the fact that he feels -- well, without
12 belaboring it, your Honor, that is it.

13 THE COURT: Well, of course, that doesn't really
14 answer the question, Mr. Kanarek.

15 He doesn't have any right to remain out of the
16 courtroom while the trial is going on.

17 He has a right to be present. That right may be
18 forfeited by disruptive conduct.

19 If all he is saying is that, "I prefer to
20 remain outside," then he is coming back in.

21 MR. KANAREK: That is not what he is saying. I can't
22 make that representation to the Court.

23 He is saying if he does come back in that
24 there will be untoward conduct.

25 THE COURT: He is saying that?

26 MR. KANAREK: Well, what I am saying is that he is

1 implying, he is telling us -- I cannot make -- we were all
2 there, we all heard it, and I certainly can't make the
3 representation other than what I am making, namely, that I
4 cannot represent to the Court that he won't.

5 MR. HUGHES: I don't think he made any representation
6 that he would make disruptive tactics.

7 THE COURT: We will start the proceeding with all the
8 defendants back in the courtroom. I can't tell from what you
9 gentlemen say what the intention of the defendants is, so
10 I will give them the benefit of the doubt and we will start
11 back in the courtroom.

12 I don't see any other way to handle it.

13 MR. FITZGERALD: I want to be clear that I am not
14 playing any games with you, Judge, or this court.

15 THE COURT: No. I think the defendants are.

16 MR. FITZGERALD: That may be; but I hope you under-
17 stand the equivocal nature of the representations made to
18 us.

19 THE COURT: I have no criticism of counsel in this
20 regard. I think you are all attempting to get them back
21 into the courtroom where their best interests will be
22 served.

23 Sometimes you can't control your clients.

24 I recognize that. I also recognize that there is no way
25 that you can force an unequivocal answer out of a client
26 if he doesn't want to give it.

1 On the other hand, since I don't have an un-
2 equivocal answer from the defendants, I am going to assume
3 that they wish to be brought back into the courtroom and
4 wish to continue the trial and observe the usual rules of
5 conduct, and that is the way we will start.

6 If it becomes necessary to remove them again,
7 I will tell you once more, they may return to the courtroom
8 at any time they are willing to affirm their desire to
9 return and conform their conduct to the reasonable rules
10 of the Court.
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1 Now, the other matter I wanted to take up was
2 this question of conversation on Page 12,265, which I
3 indicated yesterday I was going to have stricken but the
4 People wanted an opportunity to offer some points and
5 authorities.

6 MR. BUGLIOSI: Before we get into that, I wanted to
7 make one or two comments about the Court's ruling yesterday
8 with respect to my contempt.

9 Does the Court want to hear me now very briefly,
10 or after this?

11 THE COURT: Very well.

12 MR. BUGLIOSI: I'm not going to ask the Court at this
13 point to revoke it. I may appeal.

14 I want the Court to know that I feel that the
15 Court's ruling was a gross, flagrant abuse of discretion.
16 I don't think the Court took into consideration some very
17 obvious points and I would ask the Court in the future to
18 consider two obvious points: Number one, this is the 16th
19 week of a hotly-contested trial and the Court knows that in
20 the heat of battle attorneys say things that they shouldn't
21 say and this is understandable and I think should be condoned,
22 unless it goes beyond permissible margins.

23 I would also ask the Court to keep in mind the
24 inflammatory conduct of Mr. Kanarek yesterday. It was just
25 kind of a culmination on my part. I don't think the Court
26 took into consideration what this man has been doing in

1 front of the jury for several months and he continues to get
2 by with it.

3 This was a response on my part. I did not
4 initiate it. Everyone I've spoken to -- not that the Court
5 is concerned at all -- but they are shocked and startled
6 and surprised. They read in the newspaper what I said.
7 I told him to keep quiet and I've had it up to here. And
8 you might say I was just talking to my friends, but the
9 impression I get is that everyone is totally shocked by the
10 Court's ruling, feels it is a gross abuse of discretion.

11 And the only reason I bring it to the Court's
12 attention right now is that in the future I would ask the
13 Court, please, to consider the two obvious points, that
14 this is a hotly-contested trial and tempers become a little
15 frayed and also take into consideration what Mr. Kanarek is
16 doing which incites a response on my part.

17 I will try to control my outbursts in the future
18 and just try to keep as quiet as I can in court, but I do
19 want the Court to be aware of these two things: a long, hot
20 trial and the fact that he's constantly implying to the jury
21 that I'm coaching these people, giving them a script.

22 He can argue that, and I think that even --
23 if he even argued that it would be bad, but he's not supposed
24 to do that in questions. My response yesterday, although
25 it was probably improper, I think it was understandable
26 under the circumstances.

1 I just wanted that to be in the record. That's
2 all I have to say.

3 THE COURT: All right.

4 Now, let's get on to the conversation,

5 Do you have any authorities you wish to offer
6 or argument in connection with this conversation on Page
7 12,265?

8 MR. BUGLIOSI: Yes. I think Mr. Musich and also
9 Mr. Kay are also going to argue the matter.

10 I think it clearly comes in under MO. And the
11 basic rule, which the Court is already aware of, but I think
12 it should be in the record, People vs. Pate, P-e-t-e,
13 28 Cal. 2d, 306, Page 314.

14 "It is settled in this State,
15 however, that, except when it shows merely
16 criminal disposition, evidence that is relevant
17 is not excluded because it reveals the commission
18 of an offense other than that charged. The
19 general tests of the admissibility of evidence
20 in a criminal case are, does it tend logically,
21 naturally and by reasonable inference to
22 establish any fact material for the people,
23 or to overcome any material matter sought to
24 be proved by the defense. If it does, then it
25 is admissible, whether it embraces the commission
26 of another crime or whether it be part of a

1 "single design or not. Whenever the case is
2 such that proof of one crime tends to prove any
3 fact material in the trial of another . . . to
4 prejudice the defendant in the minds of the
5 jurors is no ground for its exclusion."

6 And then I have other cases. People vs. Lopez.
7 Lopez even says -- in Lopez it goes further. It adds
8 whether the crime be similar in kind or not. Even if the
9 other crime is not similar in kind it can still come in if
10 there are some substantial similarities.

11 And I maintain, your Honor, that putting on
12 this evidence of what Manson asked Mr. Flynn to do does
13 logically, naturally and by reasonable inference cause the
14 jury to believe that if he asked Flynn to do something very
15 similar to what we are alleging he asked on the night of the
16 10th, there is a strong likelihood that he did, in fact,
17 order his co-defendants to commit these murders on the two
18 nights in question.

19 The Baker case, 25 Cal. 2d at Page 1, says,

20 "It is not essential that such similar
21 transactions shall have resulted in the
22 commission of a crime. It is sufficient if they
23 tend to prove a scheme of the defendant which
24 included the acts charged."

25 Now, in this case the murder was not completed
26 but as the basic case says that's not important. Mr. Manson,

1 we are not alleging that he murdered any of the Tate or the
2 La Bianca victims. We are alleging that he ordered these
3 murders or he asked that they be committed.

4 And this is what he did with Juan Flynn. The
5 fact that Juan Flynn declined, as far as I can see, is
6 totally irrelevant.

7 I think Mr. Musich, Mr. Kay, also --

8 MR. MUSICH: I would just like to make a point, your
9 Honor, that basically this is the common scheme and design
10 exception to show intent and motive.

11 MR. FITZGERALD: All those things? Each one of those --

12 MR. MUSICH: I'm sorry, to show identity and motive.

13 MR. BUGLIOSI: Actually, MO is identity, actually,
14 when you come right down to it.

15 MR. MUSICH: All right.

16 In any case, the problem I feel the Court is
17 having, or that the Court may be having, is as to the
18 prejudicial effect as to outweighing its evidentiary value.

19 I submit to the Court, as the Court indicated
20 itself, that it might be a form of rhetoric. I would sub-
21 mit to the Court that that is a matter that can be argued,
22 that the weight to be given to this statement is for the
23 jury, and it does not go to its admissibility.

24 I also submit to the Court that we do not have
25 a particular crime here. We do not have a completion of a
26 criminal offense. Therefore, it has to be less prejudicial

1 than evidence of similar crimes which is clearly admissible
2 under the law of the State.

3 I would submit to the Court --

4 THE COURT: And also by that fact less probative.

5 MR. MUSICH: Not -- well, not less probative in this
6 case, your Honor, as far as the facts and circumstances and
7 the evidence already introduced in this trial.

8 MR. BUGLIOSI: It is not less probative. The fact
9 that Mr. Flynn declines should not inure to the benefit of
10 Mr. Manson. He can't claim credit for the fact that
11 Mr. Flynn said no.

12 THE COURT: Well, if you examine the exact answer
13 you find that there is no order, there is only a question.

14 MR. BUGLIOSI: Well --

15 THE COURT: And the question is put in circumstances
16 without any accompanying conduct or any further steps being
17 taken to implement it if, in fact, there was an invitation
18 to do something.

19 MR. RAY: May I be heard, your Honor?

20 THE COURT: And I simply don't think that it's enough.

21 MR. BUGLIOSI: At the La Bianca residence there is
22 no language that he ordered them to go in there either.

23 THE COURT: Well, but that was an entirely different
24 situation. There they had conduct.

25 MR. BUGLIOSI: Because they were willing to carry out
26 his wishes. The fact that Flynn was not willing, Manson
can't claim credit for that.

5-1

1 THE COURT: Here we don't even have a member of the
2 alleged conspiracy. All we have, in effect, is a stranger,
3 Mr. Flynn, at some prior time.

4 MR. BUGLIOSI: But we are asking that it only come
5 in as to Manson, not on the conspiracy count but on the
6 seven counts of the murder; limited to Manson on the seven
7 counts of murder, not the conspiracy count.

8 Also, I direct the Court's attention to page
9 11,903 where this was gone into by Mr. Fitzgerald, and Juan
10 Flynn said: "And then we got right in front of the house
11 and this man right here, you know, asked me if I would go
12 in there."

13 He was there, your Honor, Mr. Flynn, and he
14 knows what Manson wanted him to do.

15 Like Mr. Musich said, I think it is up to the
16 jury to infer whether Manson was just kidding or not.

17 There is no doubt in my mind that he meant it.
18 I spoke to Mr. Flynn, and Mr. Flynn tells me he wanted him
19 to go in there, and Flynn said "No."

20 MR. KAY: May I be heard a minute, your Honor?

21 THE COURT: Yes.

22 MR. KAY: I am not denying anything that Mr. Musich
23 and Mr. Bugliosi has said, but I am going to tell you how
24 I read the cases.

25 I am not going to ask for as much as they are,
26 but I feel, after reading the cases, that this evidence

5-2

1 would be admissible limited to Mr. Manson, but to the
2 La Bianca murders and not to the Tate murders.

3 Let me explain my position.

4 First, we have the problem that I think the
5 Court has brought out that the incident that occurred
6 with Mr. Flynn was not a crime,

7 Well, the case of People vs. Baker, a 25 Cal.
8 App. 2d case, page 1, which is a 1938 case, states:

9 "It is not essential that such similar
10 transaction should have resulted in the commission
11 of a crime but it was sufficient if they tended to
12 prove a scheme of defendant which includes the
13 acts charged."

14 And also I cite to the Court a 1968 case of
15 People vs. Haston at 69 California Reports starting at
16 page 233.

17 I argue that the identity -- this is what we
18 are trying to bring out by what happened to Mr. Flynn --
19 the identity is very similar here as to what happened at
20 the La Bianca residence. We have people being tied up,
21 Mr. Manson mentioning on both occasions about -- well, with
22 Mr. Flynn he mentioned tying up, and at the La Bianca
23 residence they were tied up.

24 No. 2, and I think most significantly, we
25 have Mr. Manson actually present at both the Flynn incident
26 and at the La Bianca incident, whereas we don't have him

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present at the Tate incident.

Two, we have Mr. Manson as the one that is doing the talking about what is going to happen inside the location. Here we have him talking to Mr. Flynn about tying people up and cutting people up; and here we have Mr. Manson at the La Bianca residence with some of the defendants talking about, well, don't let them know that you are going to kill them.

I think that the identity there between the La Bianca incident and what happened with Mr. Flynn is very probative as to the identity of the fact that Mr. Manson is the one that did it with Mr. Flynn, because we know that from Mr. Flynn and from Linda Kasabian's testimony, and the jury can infer that just about the same thing happened.

5a fls.

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1 MR. BUGLIOSI: I would join in what Mr. Kay says,
2 but I think the main thing showing identity is that it is
3 just unheard of, and I would ask the defense if they can
4 come up with any other case. It is unheard of to drive
5 up in front of a home where you have no animosity toward
6 the persons, no contact, you don't want to rob them or
7 rape them, you just want to go in there and murder them
8 by stabbing.

9 This uniqueness is MO. It is so unique. I
10 can't think of any other case where that happened before.
11 If it has happened, I don't know where it is in the books.

12 You just don't go to strangers' homes and
13 say let's tie them up and go in there and cut them up.

14 The absence of a pedestrian, garden variety,
15 type of motive, the absence of that motive in itself shows
16 identity and MO.

17 If he had told Mr. Flynn, "Let's go in there
18 and rob them, and if there is a woman in there we will
19 rape her," that is different. Here we are talking about
20 something different. Just driving up in front of a home
21 and saying, "Let's go in there and tie them up and cut
22 them up."

23 It is the same thing as putting on evidence
24 on the night of the La Bianca murders. I really think it
25 can come in as to count 1 through 7. Just against Manson,
26 not as to the co-defendants and not on the conspiracy count.

1 There is such a remarkable similarity,
2 that I think this is what they are talking about, that
3 the cases say the fact that it may tend to prejudice the
4 defendants in the minds of the jury is no ground for its
5 exclusion.

6 THE COURT: That is not the basis.

7 MR. MUSICH: Your Honor, similar conduct, too.
8 It doesn't have to be a crime.

9 I'd like to point out the case of People vs.
10 Sykes, 44 Cal. 2d 166. Here the majority of the Supreme
11 Court, at that time, held that the evidence of the fact
12 that the defendant was attempting to solicit this minor
13 for prostitution and pimping purposes was admissible as
14 to a charge of furnishing a minor with a marijuana
15 cigarette. This was part of his plan and conduct to
16 influence this minor to become a part of his operation.
17 The court held that that far-out evidence in that case
18 was admissible. It is a very unique case.

19 THE COURT: I can see all that and I am familiar
20 with most, if not all, those cases, but I think here we
21 have something different.

22 Here we have a bare statement which is not,
23 in my opinion, a clear invitation to commit murder,
24 phrased in the form of what I consider to be, perhaps, a
25 stupid or a vicious -- or you can characterize it in many
26 ways -- statement, not implemented by any additional

conduct.

There is no evidence that there was a gun, a rope, a knife, or anything else present. No one took any steps to do anything.

It also occurred, as I recall, two months before the alleged murders.

I think it is too remote.

Now, I can conceive that depending on what defense, if any, the defendants put on, it might come in on rebuttal. I don't know. But at this stage, I think that the prejudicial effect would outweigh any possible probative value.

5b file.

SB-1

1 MR. BUGLIOSI: We have another situation where there
2 were knives in the car and Clem Tufts was with Mr. Manson.
3 I tried to get that in before and the Court wouldn't let me
4 get that in.

5 He told Juan Flynn to go inside, tie them up,
6 and then come out, and then they would all go in and cut
7 these people up. That was in the Chatsworth area. It was
8 an expensive home. And there were knives in the car.

9 I tried to get that in under MO and the Court
10 never let that in. But Clem Tufts was in that car and
11 Clem Tufts was with Manson on the night of the La Bianca
12 murders also.

13 That is a little closer to home there.
14 There were knives in the car.

15 At the house, we have got a similar thing. Go
16 in and tie them up, and then we will go in and cut them up.

17 In the La Bianca murder, Manson tied them up,
18 supposedly, and then came out.

19 THE COURT: As a matter of curiosity, why wasn't
20 Tufts prosecuted?

21 MR. BUGLIOSI: I can explain.

22 THE COURT: It is of no moment in this case but I am
23 just curious.

24 MR. BUGLIOSI: There are several reasons, and I can't
25 give the Court all the reasons.

26 One reason was that all we had at the time of the

1 Grand Jury was Susan Atkins, and what she told me, her
2 story was identical to Linda Kasabian's with one substantial
3 departure. She said that after the La Bianca incident they
4 drove straight back to the ranch instead of going to Venice
5 where these other things occurred. In the Grand Jury the
6 testimony was that he was with them at the La Bianca
7 residence and they drove back to the ranch.

8 We didn't have him doing anything affirmative
9 that night, not even disposing of anything.

10 There were other problems. He is a mental case.

11 Also, I had to put this Grand Jury thing
12 together in about three days, and I hadn't spoken to Tufts.

13 I was hopeful that maybe we could use him as a
14 witness for us at that time. Maybe he would have testified
15 for us at the trial.

16 There are several other reasons which I won't
17 go into now, but I am just giving the Court some idea.

18 THE COURT: You don't have to tell me.

19 MR. FITZGERALD: One of which involves certain
20 unprofessional and unethical conduct by the District
21 Attorney in obtaining the statement of Susan Atkins and the
22 subsequent publication by the Los Angeles Times and a
23 subsidiary of the Los Angeles Times.

24 MR. BUGLIOSI: Are you joining the remarks of
25 Mr. Kanarek?

26 MR. FITZGERALD: No.

1 MR. BUGLIOSI: I want you to say for the record what
2 the unethical conduct is.

3 MR. FITZGERALD: All right.

4 MR. BUGLIOSI: Tell me.

5 MR. FITZGERALD: The District Attorney secured, in-
6 appropriately, through the offices of a Superior Court
7 Judge, to get Richard Caballero to represent Susan Atkins,
8 and the District Attorney had knowledge that in a major
9 metropolitan newspaper, on Sunday, May 14, 1969, there was
10 to be published by the Los Angeles Times her confession.

11 Now, we also have information that Richard
12 Caballero, who was acting as an agent of the Los Angeles
13 County District Attorney's Office, destroyed tapes and
14 stenographic reports indicating that Susan Atkins denied
15 that she made such statements to you and denied that she
16 made such statements to any representative from your
17 office.

18 We have tried to litigate this matter many,
19 many times, Mr. Bugliosi.

20 I don't have any problems with your ethics, but
21 I have problems with some of the ethics of some of the
22 people in your office.

23 We tried to litigate this a hundred times, and
24 every time I try -- I resent your putting one side of the
25 story on the record, when it doesn't happen to be the case.

5c-1

1 MR. BUGLIOSI: I solicited your response, Paul. I
2 wanted you to state it for the record.

3 THE COURT: All right, gentlemen. I assume
4 responsibility for letting the conversation take a divergent
5 turn. My question to Mr. Bugliosi simply was one of
6 curiosity. It has nothing to do with what we are doing
7 here.

8 Is there anything else before we go back in?

9 I am going to admonish the jury, strike the
10 conversation and admonish the jury not to consider it for
11 any purpose.

12 I want to do it in such a way that I will
13 call their attention to it without unnecessarily rehearsing
14 it.

15 Do you have any suggestions as to that?

16 MR. BUGLIOSI: You could probably say the incident
17 wherein Mr. Hanson suggested that something be done inside
18 of a relative's home.

19 THE COURT: I thought that what I might do is simply
20 read the witness's answer up to the point where he says:
21 "And then he says" -- this is Mr. Flynn talking about Mr.
22 Hanson -- "Well, why don't we go in there and tie them
23 up and cut them up to pieces, you know."

24 In other words, the preceding parts of that
25 answer describe there was one night they were going to an
26 ice cream parlor and talking about some relatives of Flynn,

5c-2

1 and they went looking for the house, and so forth.

2 This will orient them as to the conversation
3 without giving them the actual conversation.

4 MR. BUGLIOSI: I think that will suffice.

5 MR. MUSICH: You are going to order that they dis-
6 regard the conversation, not the fact that they went to an
7 ice cream parlor?

8 THE COURT: The conversation?

9 MR. MUSICH: The conversation in front of the
10 location, the conversation following this meeting at the
11 ice cream parlor.

12 Or are you going to have him disregard that
13 they were at the ice cream parlor?

14 THE COURT: What I am inclined to do is to strike
15 Mr. Flynn's answer -- that is what is being stricken --
16 and admonish them not to consider the answer for any
17 purpose.

18 MR. KANAREK: Your Honor, may I state, I want to
19 thank the Court for doing this, and I am prefacing it that
20 way, your Honor, because I am going to ask for a mistrial,
21 and I just wanted --

22 THE COURT: Thanks are not necessary, Mr. Kanarek.

23 Let's get on with the trial.

24 MR. KANAREK: I understand that, but I don't want
25 the court to think --

26 THE COURT: That you are unappreciative?

1 MR. KANAREK: Yes.

2 THE COURT: I don't think you are.

3 MR. KANAREK: But the point is, if I may just
4 briefly state it, it is my position, without belaboring
5 it, alluding to the language in Bruton vs. the United
6 States, especially, that thinking that you can't unring
7 the bell, I make the motion for a mistrial because of the
8 prejudicial effect of that.

9 MR. HUGHES: I would join the motion.

6 fls. 10 THE COURT: The motion will be denied.

6-1

1 MR. HUGHES: Your Honor, I have another area, which
2 is similar, and which concerns a statement, and that which
3 also is a solicitation of a crime which did come in and
4 which I would ask your Honor to consider striking and
5 admonishing the jury about, and that is the testimony of
6 Barbara Hoyt to the fact that Mr. Manson solicited her to
7 engage in an act of oral copulation with Juan Flynn, which
8 would be solicitation of the commission of a felony.

9 I don't believe that that was brought up at the
10 time, that it was a solicitation of a felony.

11 MR. BUGLIOSI: No, it wasn't.

12 MR. HUGHES: 288, I believe, of the Penal Code.

13 MR. FITZGERALD: A. 288a.

14 MR. HUGHES: 288a of the Penal Code.

15 And I would ask that on that basis that that
16 testimony be struck and that the jury be admonished to
17 disregard that testimony.

18 MR. BUGLIOSI: Your Honor, that was proper redirect.
19 On cross-examination, I think it was, Mr. Kanarek brought
20 out that she engaged in voluntary sexual practices and this
21 shows that it wasn't voluntary. There were things she did
22 which were not voluntary. She testified this was against
23 her will.

24 MR. FITZGERALD: I think we have the same problem in
25 regard to testimony yesterday wherein Mr. Flynn testified
26 that in order to rid the girls of their inhibitions Manson

1 ordered them to, (a) copulate one another, and (b) to
2 copulate him, which are, of course, felonies.

3 MR. KAY: That testimony was stricken.

4 THE COURT: That answer was stricken. The answer
5 simply wasn't responsive to the question. I couldn't
6 anticipate that he was going to give an unresponsive
7 answer and it was stricken and the jury was admonished.

8 However, the other one, I think, was responsive
9 and proper redirect.

10 MR. KANAREK: I have just another motion, your Honor.

11 MR. HUGHES: Well, I think we are acting on my motion.

12 MR. KANAREK: Oh, I'm sorry.

13 MR. HUGHES: And my position would be that an
14 admonishment not sufficing on the Barbara Hoyt's statement,
15 that there be a mistrial declared.

16 THE COURT: Motions will be denied.

17 MR. KANAREK: May I join in Mr. Hughes' motion?

18 MR. SHINN: Join in that motion, too, your Honor.

19 MR. FITZGERALD: And I think the admonishment doesn't
20 suffice in terms of Mr. Flynn's statement yesterday.

21 I happened, for example, to notice the press,
22 where the press talked about Manson ordered sexual perversions
23 among his followers.

24 The press, I think, is a reasonable barometer
25 of what the general public believes or feels and I think
26 it's a reasonable barometer of what the jury thinks. And if

1 the jury heard evidence, although I think they'll honestly
2 do their best to keep it out of their mind, but if they
3 hear evidence of sexual perversion of this kind of
4 magnitude --

5 THE COURT: But they didn't. You see, that is not
6 what the answer said. Mr. Flynn didn't say that Mr. Manson
7 ordered that. What he said was that Mr. Manson said you
8 could do this and you could do that. It was totally un-
9 responsive to the question as to what, if anything, he did.

10 MR. BUGLIOSI: The Court is not going to let me go
11 into it, but he did order these things.

12 THE COURT: That wasn't what the answer was.

13 MR. BUGLIOSI: Well, I got the impression the Court
14 thought this was too prejudicial. That was the impression
15 I got from the Court.

16 MR. FITZGERALD: These are my arguments. I'm arguing
17 that it is too prejudicial.

18 MR. BUGLIOSI: Right. And I got the impression that
19 that was the basis for the Court's ruling. I just went on
20 to another subject. But I think it's very relevant and
21 there is evidence that he did have them do these things.

22 THE COURT: Well, all right, gentlemen, we'll go
23 back out.

24 MR. KANAREK: Your Honor, just one brief -- it will
25 take a half a minute.

26 Your Honor, may I ask for your Honor to

1 admonish the jury not to consider for any purpose
2 Mr. Bugliosi's solicitation from Mr. Flynn of testimony
3 concerning Mr. Manson offering him LSD and mere admonishment
4 not sufficing I ask for a mistrial.

5 Mr. Bugliosi did ask him whether Mr. Manson --

6 MR. KAY: That answer was stricken.

7 MR. KANAREK: No, I don't believe it was.

8 MR. KAY: Yes, it was.

9 MR. BUGLIOSI: There was an objection. The objection
10 was sustained. Again, on cross-examination, he was asked
11 whether he took LSD out at the ranch. This is on redirect
12 that -- did Mr. Manson ever give you the LSD. All these
13 things are coming in on redirect and I think they are proper.
14 You have to watch your questions on cross --

15 MR. HUGHES: I would join in Mr. Kanarek's motion.

16 MR. BUGLIOSI: -- because I read these transcripts
17 every night.

18 MR. SHINN: So do we.

19 THE COURT: All right, gentlemen.

20 MR. KANAREK: May I have a ruling on that last
21 motion? Your Honor didn't rule.

22 THE COURT: What was the motion?

23 MR. KANAREK: For mistrial because of the solicitation
24 in connection with the LSD.

25 THE COURT: That the question was asked?

26 MR. KANAREK: Yes.

THE COURT: Motion is denied.

6a-1

(The proceedings were resumed before the jury in open court.)

ALL FEMALE DEFENDANTS: (In unison.) Hail Caesar.

THE BAILIFF: No talking while court is in session.

DEFENDANT MANSON: Your Honor, may I suggest that the Court continue to try itself, as it has been doing a very poor job of showing the public any justice. You've only shown your force and your power.

THE COURT: Mr. Manson, I order you to sit down, sir. Remain quiet during the proceedings so that we can continue this trial. You are now disrupting this trial.

DEFENDANT MANSON: (Singing.) That old black magic has me in its spell. That old black magic that you keep so well. Those icy fingers --

THE COURT: I order you once again to sit down, sir, and stop this.

DEFENDANT MANSON: I'd like to go back to my room and relax. You can handle your own matters.

THE COURT: Sit down, sir.

DEFENDANT MANSON: I find it hard not to do what I'm told because all my life I've done what I have been told.

THE COURT: All right, sir. We are going to continue this trial.

DEFENDANT MANSON: Now, your Honor, if you would allow me to maintain a voice, I could probably bring to

6a-2

1 you the thought that I have done what I'm told.

2 THE COURT: I order you to stop, sir.

3 DEFENDANT MANSON: You have been ordering me
4 forever. All my life you have ordered me. You have
5 ordered me to cease to live. You bring me in here and
6 you charge me for murder and you say I have rights and
7 you hold up rights in front of me but you give me none.

8 THE COURT: If you don't stop, Mr. Manson, I'm
9 going to have you removed from the courtroom.

10 DEFENDANT MANSON: Okay. That's all right. I'm
11 not here anyway. You can put a picture up here and
12 prosecute yourselves. Because that's all you're doing.

13 THE COURT: Are you ready to proceed now, sir?

14 DEFENDANT MANSON: I've been ready to proceed. May
15 I ask the man some questions?

16 THE COURT: No, you may not.

17 DEFENDANT MANSON: I can't speak? I'm a dummy, a
18 dummy.

19 THE COURT: We are going to go ahead now.

20 DEFENDANT MANSON: You are going ahead. But where
21 are you going ahead to? Look at yourselves. Look at
22 all of you. Where are you going? You're going to
23 destruction, that's where you're going. You will end
24 up being judged. That's what you're going to do. All
25 of you. Everyone of you. It's your judgment day, not
26 mine. I've already judged me.

6a-3

1 THE COURT: Remove Mr. Manson from the courtroom.

2 You will be permitted to return, Mr. Manson,
3 whenever you are willing to affirm your willingness to
4 remain quiet.

5 DEFENDANT MANSON: Have a good day. I will. Every
6 day is a good day for me.

7 DEFENDANT ATKINS: Who are you judging?

8 DEFENDANT VAN HOUTEN: Look in the mirror. Follow
9 your own reflection.

6b fls.

10 THE COURT: I order you ladies to stop.
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1 DEFENDANT VAN HOUTEN: The guilt you find is yours.

2 DEFENDANT ATKINS: Who is going to order you on
3 judgment day?

4 DEFENDANT VAN HOUTEN: Go look in the mirror and try
5 yourself.

6 THE COURT: If you don't remain quiet, ladies, I
7 will have you removed from the courtroom.

8 DEFENDANT ATKINS: For what?

9 DEFENDANT VAN HOUTEN: You did it when you took
10 away our pro per.

11 DEFENDANT KRENWINKEL: You let us have no advice,
12 either.

13 THE COURT: Are you able to get down what these
14 ladies are saying, Mrs. Reporter?

15 THE REPORTER: Yes.

16 DEFENDANT ATKINS: You don't hear it anyway. It
17 goes right in one ear and out the other.

18 DEFENDANT KRENWINKEL: You don't want to hear it.

19 DEFENDANT ATKINS: Look at yourself, man. You are
20 nothing but a machine. You're a machine.

21 DEFENDANT KRENWINKEL: You are headed for complete
22 destruction of yourself because that's who you judge is
23 yourself and only yourself.

24 THE COURT: Are you ready to proceed now?

25 DEFENDANT VAN HOUTEN: Now.

26 DEFENDANT ATKINS: Proceed.

1 THE COURT: Remove the ladies from the courtroom.

2 DEFENDANT ATKINS: Have a nice day.

3 THE COURT: The jury is admonished to disregard the
4 remarks of the defendants in their entirety. Counsel are
5 again advised that their clients may return to the court-
6 room at any time that they are willing to affirm their
7 willingness to proceed and conform to the Court's rules
8 regarding their conduct.

9 The record will show that all counsel are
10 present and the jurors are present. All of the defendants
11 have been removed from the courtroom.

12 Ladies and gentlemen, during the course of
13 Mr. Flynn's testimony on Wednesday, during the afternoon
14 session, Mr. Flynn was asked a question by Mr. Bugliosi
15 during the course of redirect examination and I'm going to
16 strike Mr. Flynn's answer from the record.

17 I'm going to read you a portion of the answer
18 so that you will have in mind what question and what
19 answer I'm referring to. I will not read you all of the
20 answer. And you will be admonished to disregard the entire
21 answer of Mr. Flynn, not only the part I read but the part
22 that I don't read.

23 The answer to which I refer began as follows:

24 "Well, the conversation was that one
25 night --" and I might say, in orienting you to the
26 specific question and answer, this was an answer

1 Mr. Flynn was giving regarding an alleged conversa-
2 tion that he had with Mr. Hanson on a particular
3 occasion.

4 The answer began as follows:

5 "Well, the conversation was that one
6 night, I can't say the date, but we went to the
7 ice cream parlor and we was talking about some
8 relations, some family, you know, relative. And
9 I wanted to look into them, you see, to see where
10 they live. You know, I just wanted to see where
11 they live, look up the street.

12 "So, you know, I asked Mr. Hanson if
13 he would drive me there, you know. And he says,
14 yes, you know. So we went looking for the house
15 and the street, you know, and we found it. And
16 we parked outside.

17 "And then Mr. Hanson asked me if they
18 had a dog in there, you see, and I says, yes, they
19 have a little dog."

20 And then there was some more conversation
21 allegedly between Mr. Hanson and Mr. Flynn which was
22 related in this answer.

23 Now, this is the answer to which I refer and
24 the entire answer of Mr. Flynn is being stricken and the
25 jury is admonished to disregard it for all purposes.

26 You may proceed, Mr. Bugliosi.

1 MR. MULLIOSI: I believe there is still cross-
2 examination of Mr. Flynn.

3 I would ask the Court to state on the record
4 that although the defendants have been removed from court
5 microphones have been installed where they are and they
6 are hearing these proceedings. I don't know if that's
7 on the record right now.

8 THE COURT: Yes, that is the case. There is a
9 microphone -- a speaker, rather, in the lockup for Mr.
10 Hanson and there is a speaker upstairs in the room in
11 which the female defendants are being kept and they will
12 be able to hear all of the proceedings.

13 MR. FITZGERALD: I have no information -- I have
14 no reason to doubt your Honor's statement, but I can't
15 agree that they can hear the proceedings because I haven't
16 been up there and determined whether they could hear the
17 proceedings.

18 THE COURT: All right. Let's proceed.

19 MR. KANAREK: Yes, your Honor.

20 MR. HUGHES: I wish to state for the record that
21 the exclusion of Leslie Van Houten is over my objection,
22 your Honor.

23 A JUROR: Your Honor --

24 MR. KANAREK: Your Honor, I wonder if we might
25 approach the bench.

26 A JUROR: We couldn't hear the end of Mr. Hughes'

1 statement.

2 THE COURT: Would you read that back.

3 (Record read.)

4 THE COURT: Objection is overruled.

5 MR. KANAREK: May we approach the bench briefly?

6 THE COURT: Mr. Kanarek, we've had lengthy conver-
7 sations in chambers this morning.

8 MR. KANAREK: Very well, very well, your Honor.

9 THE COURT: I see no reason for another bench
10 conference now.

6c fls. 10

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RE-CROSS-EXAMINATION (Resumed)

1
2 BY MR. KANAREK:

3 Q Mr. Flynn, is it a fair statement, Mr. Flynn,
4 that when you spoke with, you know, Mr. Davis and the
5 other man that was with Mr. Davis --

6 Do you have those conversations in mind?
7 Ivar Davis?

8 A Yes.

9 Q Is it a fair statement, Mr. Flynn, that you
10 made no mention concerning -- I'm not now asking about
11 the knife, but concerning the language, the words that you
12 say Mr. Manson told to you in the kitchen.

13 MR. BUGLIOSI: Are you through?

14 MR. KANAREK: Yes, your Honor.

15 MR. BUGLIOSI: Repetitious and beyond the scope of
16 redirect.

17 MR. KANAREK: I don't think that I've asked that
18 question of this witness, your Honor, and it certainly --

19 MR. BUGLIOSI: Beyond the scope of redirect, your
20 Honor.

21 THE COURT: Read the question.

22 MR. KANAREK: Yes, your Honor. Mr. Fitzgerald
23 brings up what I think is a valid point. If I'm not
24 talking through the microphone he fears that --

25 THE COURT: Well, I might say that it might assist
26 your clients to hear through the speakers if you would use

1 the microphones in examination.

2 MR. KANAREK: Yes, your Honor.

3 THE COURT: You may do so or not, as you desire,
4 but --

5 MR. KANAREK: Yes.

6 THE COURT: -- I'm sure it would assist them.

7 MR. KANAREK: May I use that, Mr. Harrow?

8 Has your Honor ruled on that?

9 THE COURT: You started to say something about what
10 Mr. Fitzgerald had raised, Mr. Kanarek.

11 MR. KANAREK: Yes, your Honor.

12 Mr. Fitzgerald raised the point, which I think
13 is very valid, concerning the use of this microphone.

14 THE COURT: All right.

15 MR. KANAREK: That the defendants would be able to
16 hear better if I used the microphone.

17 THE COURT: I had asked to have the question reread,
18 so just a moment.

19 (Question read.)

20 MR. KANAREK: I'm breaking it up, your Honor, in
21 two parts. I don't believe that this question has been
22 asked.

23 THE COURT: Do you understand the question, Mr.
24 Flynn?

25 THE WITNESS: Yes, sir.

26 THE COURT: You may answer.

1 THE WITNESS: I don't remember.

2 BY MR. KANAREK:

3 Q Whether you did or not, Mr. Flynn.

4 A I don't remember if I told him.

5 Q I see.

6 A If I talked to him about that.

7 Q Now, Mr. Flynn, you and I had conversation.

8 Remember that?

9 A Here?

10 Q No, not here in court. I mean outside of
11 court.

12 A Yes.

13 Q And did I tell you to tell me any events
14 that you might know of concerning this case?

15 MR. BUGLIOSI: Improper foundation.

16 THE COURT: Overruled. You may answer.

17 THE WITNESS: I don't remember.

18 BY MR. KANAREK:

19 Q You don't remember?

20 A No.

21 Q Well, may I ask you this, Mr. Flynn:

22 Concerning the matter about the knife and the
23 matter of the words that you say occurred in connection
24 with the knife in the kitchen --

25 A Yes.

26 Q -- do you have that all in mind? You have

1 that all in mind, haven't you?

2 A Yes.

3 Q What you've testified to here in court, have
4 you?

5 A Yes.

6 Q Did you at any time in talking with me ever
7 mention those matters to me?

8 A I don't remember if I did or not.

9 Q You don't remember --

10 A I don't remember.

11 Q I see. Now, then, may I ask you, Mr. Flynn,
12 is it a fair statement that you have difficulty in remembering?

13 MR. BUOLIOSI: This implies -- assumes a fact not
14 in evidence. It implies that he did tell Mr. Kanarek this
15 and that he has forgotten it.

16 MR. KANAREK: This question stands on its own two
17 feet, your Honor. This isn't limited to --

18 THE COURT: Objection is overruled. You may answer.

19 THE WITNESS: Would you repeat the question?

20 MR. KANAREK: Certainly.

21 Q Is it a fact, Mr. Flynn, that you have
22 difficulty in remembering?

23 A Well, I have as much difficulty as anybody
24 else. And if it's brought to me, you see, if it's brought
25 to me, you see, then, you know, then I acknowledge, you
26 know, whatever statement is brought to me, or, you know --

1 Q Now, you mentioned that also yesterday,
2 Mr. Flynn. In other words, when you say brought to you,
3 what you mean is if someone tells you something, tells
4 you that something occurred -- well, let me withdraw that
5 and ask you:

6 What do you mean, Mr. Flynn, by "brought to
7 me," rather than my suggesting it? You tell us what you
8 mean by that.

9 A Well, I could be doing some work and someone
10 comes up to me and says, "I want swimming today," and
11 discusses the matter with me to a point, you know, to an
12 effect, you know. Then it's brought to me, the effect is
13 brought to me of what they've done, you know.

14 Q Well, have you finished that?

15 A Well, then, therefore, I become a part of it,
16 you see. And that's it.

17 Q Now, directing your attention to your own
18 words, Mr. Flynn, "brought to me," did Mr. Bugliosi in
19 his conversation with you bring anything to you?

20 A Well, I came here on my own free will, you
21 see. I was asked by the police officers, you know, if I
22 would see him, you see. So I didn't for a period of time.
23 And then I came. You know, I felt like coming here, so I
24 came. You see?

25 Q Well, now, when you just told us a few moments
26 ago what you meant by "brought to me," you were referring to

1 things that were brought to your attention by people
2 pointing them out to you; is that correct?

3 A Well, I was asked, you see. I was asked.

4 Q In other words, are you telling us, Mr. Flynn,
5 that what you testified to here in court concerning matters
6 that Mr. Bugliosi interrogated you about were matters
7 which were brought to your attention by Mr. Bugliosi?

8 A Would you repeat that question again?

9 MR. KANAREK: Yes. May it be read, your Honor?

10 THE COURT: Read the question.

11 (Question read.)

12 THE WITNESS: What I testified here in court were
13 matters that I brought here to court, you see. You see, I
14 was asked if I was willing to see the District Attorney,
15 you see. But at that time -- that's the question.

16 BY MR. KANAREK:

17 Q That's your answer?

18 A The answer.

19 Q That's your answer, Mr. Flynn?

20 A Yes.

21 Q Well, I'm not speaking now, Mr. Flynn, of
22 your physical person being brought to Mr. Bugliosi.

23 A Yes.

24 Q I'm speaking now of ideas, conversation,
25 questions. I'm asking you now to answer this, if you
26 would, please.

1 Did Mr. Bugliosi bring any thoughts to you,
2 bring any ideas to you, that you testified to here in
3 court when he spoke to you?

4 Did he bring these ideas to you?

5 MR. BUGLIOSI: Too ambiguous, your Honor. I object
6 on that ground.

7 THE COURT: Sustained.

8 BY MR. KANAREK:

9 Q You had conversation with Mr. Bugliosi before
10 coming to court, right?

11 A Yes.

12 Q And my question is now, directing your
13 attention to the matters that you spoke of about the
14 knife and the statements that you say Mr. Hanson made in
15 connection with the knife, now, were those matters matters
16 that you spoke to Mr. Bugliosi about when you talked to
17 him?

18 A Well, I spoke to Mr. Bugliosi and the police
19 about these matters.

20 Q And you spoke to Mr. Bugliosi and the police
21 about these matters in the last few weeks; is that correct?

22 A Well, you could say nine months; about nine
23 months, a year, somewhere around there.

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Q A year ago you mentioned these to the police?

A Yes.

Q Pardon?

A Yes.

Q All right. That would be September of 19 -- in September of 19 -- or October, this is October the 2nd, around October 2nd of 1969 you mentioned these matters to the police; is that right?

A I said from nine months to a year, sir.

Q From nine months to a year ago?

A Something like that, yes, in that length of time.

Q I see. It could have been in October of 1969. A year would be October 2nd, 1969. Could have been that long ago; is that right, Mr. Flynn?

A It was from, I'll say, nine months -- you know, eight months, nine months to a year, something like that, in that length of time, you see.

Q All right. So the extreme end of it would be October the 2nd, 1969. That would be what you are saying is the extreme end of the time that you may have told this to the police.

Is that what you're saying, Mr. Flynn?

A I didn't say I could have. I said I did.

Q You did?

A I did.

1 Q And it could have been in October -- you're
2 picking the time now, Mr. Flynn, so that would be -- you
3 agree that a year ago from today would be October the 2nd,
4 1969. Do you agree with that?

5 A Well, I don't keep dates, you know.

6 Q My question is, today is October the 2nd,
7 1970, Mr. Flynn.

8 A Yes.

9 Q Do you agree that a year ago today would be
10 October 2nd, 1969?

11 A Yes, I agree with you.

12 Q Now, Mr. Flynn, is it a fair statement that
13 as far as talking to me is concerned, that you spoke to
14 me in the last few weeks during the summer of 1970?

15 A Yes.

16 Q Is that a fair statement, Mr. Flynn?

17 A Yes.

18 Q Now, is it a fair statement, Mr. Flynn, that--
19 and I don't wish to -- I don't wish to pry, Mr. Flynn,
20 into your reasons for not wanting to discuss Vietnam, I'm
21 only interested in what effect, if any, your experiences
22 in Vietnam have had upon your state of mind or your thinking.

23 Do you understand that, Mr. Flynn?

24 A Yes.

25 Q I am not doing this. I'm not asking you these
26 questions just to be asking the questions.

Do you understand that?

A Yes.

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1 Q Is it a fair statement, as you look into your
2 mind, as you think of yourself and the thinking that you
3 do in connection with whatever you may do, is it a fair
4 statement that your experiences in Viet-Nam have affected
5 your thinking?

6 MR. BUGLIOSI: Repetitious.

7 MR. KANAREK: I don't think this question has been
8 answered directly, your Honor.

9 I think if we had a direct answer to the question --

10 THE COURT: It is ambiguous, Mr. Kanarek. I don't
11 see how the witness can possibly answer.

12 The objection is sustained.

13 MR. KANAREK: Q May I put it to you this way.
14 May I ask you for a comparison, Mr. Flynn.

15 Is it a fair statement that your ability to
16 remember and think was different before you went to Viet-Nam
17 than it is now?

18 A I will say that as far as the commitment in
19 Viet-Nam.

20 Q What is that?

21 A As to the commitment in Viet-Nam.

22 Q What do you mean by that?

23 A Well, what I went there and saw, you know, and
24 what I thought I was going to see there.

25 Q Have you answered that question?

26 A Yes.

Q Well, now, before you went to Viet-Nam, Mr. Flynn, did you walk, for instance, along the streets of Los Angeles without any shoes on?

MR. BUGLIOSI: Irrelevant. Beyond the scope of re-direct.

THE COURT: Sustained.

MR. KANAREK: Q Mr. Flynn, may I ask you this: Since you have come back from Viet-Nam, do you find that you have greater difficulty in relating and remembering than you did before you went to Viet-Nam?

A I don't understand the question, sir.

Q Pardon?

A I don't understand the question.

Q You don't understand it?

A No.

Q Directing your attention to your own ability to remember whatever you may see, Mr. Flynn, or hear. Is it a fair statement that your ability to remember is less now than before you went to Viet-Nam, that which you may have seen or heard?

A I couldn't answer it yes or no.

Q Would you answer it in your own way, please?

A I will say that I remember, you know. I have got a pretty good head.

Q I am asking for a comparison, Mr. Flynn.

MR. BUGLIOSI: Objection --

6-3

1 MR. KANAREK: A comparison before you went to
2 Viet-Nam compared with right now.

3 MR. BUGLIOSI: -- on the grounds it is irrelevant.

4 THE COURT: Sustained.

5 MR. KANAREK: Q For instance, Mr. Flynn, you
6 have, at some time, stated that the car that you now think
7 is a Ford --

8 A Yes.

9 Q -- a yellow Ford --

10 A Yes.

11 Q -- at one time you stated that that was a
12 Plymouth; is that correct?

13 MR. SHINN: Your Honor, I am going to object on the
14 grounds it has been asked and answered.

15 THE COURT: Overruled.

16 You may answer.

17 MR. KANAREK: Is that correct?

18 A Not that I thought it was a Plymouth.

19 I said a Ford is a Ford and a Plymouth is a
20 Plymouth.

21 MR. KANAREK: Q Have you finished?

22 A Yes.

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7a-1

1 Q Do you remember telling Mr. Sartucci that this
2 very car was a Plymouth?

3 MR. FITZGERALD: Asked and answered yesterday.

4 THE COURT: Overruled.

5 You may answer.

6 THE WITNESS: I could have told him that.

7 MR. KANAREK: All right.

8 Q Would you tell us the reason why you said that
9 Ford that you now believe to be a yellow Ford is, in fact,
10 a Plymouth?

11 I will withdraw that.

12 Could you tell us why you told, why you once
13 stated that the car you now believe to be a yellow Ford,
14 why did you previously say it was a Plymouth?

15 A Well, I saw Mr. Charles Manson drive in the yard
16 one day -- one night, you see -- it was just starting to
17 get dark, you see -- and he got out of the car, you know.
18 He was with Brenda. He was coming over the Santa Susanna
19 Pass, you know, from that direction.

20 And he told me that he wanted me to go to a
21 place --

22 MR. KANAREK: Your Honor, I submit that he is not
23 answering the question.

24 THE COURT: You asked him why. He is apparently
25 trying to answer the question.

26 MR. KANAREK: Well, your Honor --

7a-2

1 THE COURT: Do you want to withdraw the question?

2 MR. KANAREK: Yes, I will withdraw the question.

3 Q Mr. Flynn, as you sit there on the witness
4 stand --

5 A Yes.

6 Q -- do you consider that you are a witness for
7 the prosecution? In your own mind, do you consider your-
8 self a witness for the prosecution?

9 MR. BUGLIOSI: It is irrelevant. Also, beyond the
10 scope of the redirect, your Honor.

11 MR. KANAREK: It goes to bias, your Honor, and
12 impeachment, his state of mind in this matter.

13 THE COURT: Overruled.

14 You may answer.

15 THE WITNESS: Well, I am a witness as well for you,
16 too, as for the prosecution.

17 MR. KANAREK: And in your mind, you are a witness
18 for both sides; is that right?

19 A Well, I am a witness for the testimony that I
20 serve, in my mind.

21 Q In your mind?

22 A Yes.

23 Q And in your mind, Mr. Flynn, is it a fair state-
24 ment that you, at this time, like Mr. Manson?
25 Is that correct?

26 A I feel that although I don't agree with every-
thing that he says, that he has everything and every right

1 to do what he does, you see, and I don't dislike him, you
2 know.

3 I will say that.

4 Q You don't dislike him?

5 A No.

6 Q I see,

7 Is it a fair statement that you like him?

8 MR. BUGLIOSI: Repetitious, your Honor. It was gone
9 into yesterday.

10 MR. KANAREK: No, your Honor. I don't believe that
11 I have gone into this yesterday.

12 THE COURT: Overruled.

13 MR. KANAREK: My notes don't indicate that, your
14 Honor.

15 THE COURT: The objection is overruled.

16 You may answer.

17 THE WITNESS: You could say. I can say yes.

18 MR. KANAREK: Q That you do not like him;
19 right?

20 A Well, that I like him, you know, and that I
21 don't like him.

22 Q Pardon?

23 A That I like him and that I don't like him.

24 Q Well, as you sit there in the witness stand, is
25 it a fair statement that you do not like him, Mr. Flynn?

26 MR. BUGLIOSI: Asked and answered.

1 MR. KANAREK: I don't think it has been, your Honor.
2 The witness can give an answer.

3 MR. BUGLIOSI: He said he does not dislike him. He
4 already testified to that.

5 THE COURT: The question has been answered, Mr.
6 Kanarek. The objection is sustained.

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1 MR. KANAREK: All right.

2 Q Now, Mr. Flynn, since yesterday, have you
3 spoken to Mr. Bugliosi?

4 A Yes.

5 Q And you spoke to Mr. Bugliosi yesterday a couple
6 of times; right?

7 A Yes.

8 MR. KANAREK: Thank you.

9 THE WITNESS: You are welcome.

10 THE COURT: Any questions, Mr. Hughes?

11 MR. HUGHES: Yes. Thank you, your Honor.

12
13 RECROSS-EXAMINATION

14 BY MR. HUGHES:

15 Q Juan, do you recall the leather laces that I
16 showed you the other day, the four sets?

17 A You showed them to me, yes. I recall them.

18 Q Now, do you remember any of those being the
19 laces that you were wearing on the August 16th raid, the
20 day of the August 16th raid?

21 MR. BUGLIOSI: This was asked and answered. It is
22 also beyond the scope of the redirect.

23 THE COURT: Sustained.

24 MR. HUGHES: Q You said you received some
25 threat notes; is that right?

26 A Yes.

1 Q And that they were washed in your pants a
2 couple of months after you received them; is that right?

3 A Yes.

4 Q Did you make any Xerox copies of those threat
5 notes?

6 A No.

7 Q Did you take a picture of them?

8 A No.

9 Q Did you write them out somewhere else?

10 A No.

11 Q What did those notes say, Mr. Flynn?

12 A One of the notes said: "This is an indictment
13 on your life because it is coming down. In the course --
14 and when in the course of human events life becomes
15 intolerable to sustain under a power, the people will
16 invoke their initial right to revolution."

17 And there was another little part there that
18 said, "Where the eagle flies, we will lie under the sun;
19 where the eagle flies, we will die to be one."

20 And that is one of the -- you see, I remember
21 it, you see, from one of the songs, you know.

22 Q Didn't one of the notes also say, "I am going
23 to sneak up on you and give you a kiss"?

24 A Yes. It is the same one. It said something
25 like that.

26 Q Was that a threat?

1 A Well, to start with, I felt that "This is an
2 indictment on your life" and "a kiss" didn't go too well,
3 you know. So, I thought that I would take it for what
4 it was coming and the source.

5 Q Were there any drawings on the notes?

6 A Yes.

7 Q Flowers?

8 A There was a cross on it.

9 Q Little pictures of smiling faces?

10 A Well, they had a picture that looked like me,
11 you know.

12 Q Were you smiling?

13 A Well, it was just a profile.

14 Q Actually, besides being an actor, you are sort
15 of an amateur poet, too, aren't you?

16 A I like to write.

17 Q You write limericks?

18 A I write who?

19 Q Limericks.

20 A Well, I just write what feels good inside.

21 Q You gave some of your poetry to the press the
22 other day, didn't you, to the news media?

23 MR. BUGLIOSI: That is irrelevant.

24 THE COURT: Sustained.
25
26

7C-1

1 MR. HUGHES: Q Didn't you actually make up that threat
2 note, that poetry, yourself?

3 A That threat note?

4 Q What you call a threat note?

5 A No.

6 I was at the Fountain Of The World one night,
7 and I won't mention the name because I was asked not to
8 mention those names but the source that it came from
9 approached me at the Fountain Of The World and handed me
10 this, you know.

11 Q Didn't you recently ask some of the girls
12 for the words to one of Mr. Manson's songs?

13 A Yes. Yes.

14 Q And aren't those words, "Where the eagle flies,"
15 aren't those from one of Mr. Manson's songs?

16 A Yes.

17 Q And those are words that you say were in the
18 note; is that correct?

19 A Well, the note that says, "This is an indictment
20 on your life," you see.

21 Q Now, you say a couple of people came and
22 threatened you physically with your life, is that right,
23 when you had an ax, when you were chopping wood; is that
24 correct?

25 A Well, I was working, you know, and they came
26 down there.

1 Q One of them was a girl?

2 A Yes.

3 Q Did you hold her hand?

4 A I don't remember.

5 Q Could you have?

6 A Well, I like to be nice to girls, yea.

7 Q Did you go with her the next day for a car ride?

8 A Yes.

9 Q Didn't you ask her the next day to drive you
10 down to the County Jail to see Mr. Manson?

11 A Well, they kept insisting that I should see
12 Mr. Manson, you see.

13 Q Well, did you go with her?

14 A No.

15 Q Are you afraid of Mr. Manson?

16 MR. BUGLIOSI: Ambiguous, your Honor.

17 Now? Or at Barker Ranch in the middle of the
18 night? Or Spahn Ranch? Or what?

19 MR. HUGHES: Right now.

20 THE WITNESS: Well, of Manson himself?

21 MR. KANAREK: Your Honor, before the next question is
22 enunciated, may the record reflect that at least 18 seconds
23 elapsed before the witness answered?

24 I can represent that to the Court.

25 MR. HUGHES: Did you understand the question?

26 THE COURT: That is not evidence, Mr. Kanarek.

1 You are not testifying as a sworn witness.

2 MR. KANAREK: I would offer to be sworn, if your
3 Honor wishes.

4 THE COURT: That won't be necessary.

5 Let's proceed.

6 THE WITNESS: Would you repeat the question?

7 Am I afraid of Mr. Manson right now?

8 MR. HUGHES: Yes.

9 THE WITNESS: Well, not of Mr. Manson himself, but
10 the reach that he has, you know.

11 MR. HUGHES: Q You testified about a crossbow.
12 You had a crossbow at one time?

13 A Yes.

14 Q Did you once shoot at an old man with a crossbow?

15 MR. BUGLIOSI: Irrelevant, your Honor.

16 THE COURT: Sustained.

17 MR. HUGHES: Q Mr. Flynn, you have been in
18 the movies somewhat. Have you ever used an English accent
19 in the movies, or can you do an English accent?

20 MR. BUGLIOSI: That is irrelevant.

21 THE COURT: Sustained.
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1 BY MR. HUGHES:

2 Q Can you do an American accent, Mr. Flynn?

3 MR. BUGLIOSI: Ambiguous. Also irrelevant.

4 THE COURT: Sustained.

5 BY MR. HUGHES:

6 Q Is how you are talking now an accent that
7 you have put on for this court?

8 A I wouldn't say so.

9 MR. KANAREK: Your Honor, may the record reflect
10 at least a 15-second wait in connection with this last
11 answer?

12 I offer to be sworn on that, your Honor.

13 MR. BUGLIOSI: Do you want me to call you as a
14 witness, Mr. Kanarek?

15 THE COURT: The jury is perfectly capable of
16 observing the demeanor of the witness and the manner in
17 which questions are answered.

18 MR. KANAREK: If I may address myself to that,
19 your Honor?

20 THE COURT: It is not necessary for you to make
21 such comments.

22 MR. KANAREK: Very well.

23 It is just that the record is silent on
24 time, your Honor.

25 THE COURT: The jury has to determine the facts in
26 this case.

7d-2

1 MR. KANAREK: Yes, sir.

2 MR. HUGHES: I have no further questions, your Honor.

3 Thank you, Mr. Flynn. Have a nice day.

4 THE COURT: Anything further, Mr. Bugliosi?

5 MR. BUGLIOSI: Yes.

6 MR. KANAREK: Your Honor, before he proceeds, I
7 promise I will just ask one question, if I may reopen?

8 THE COURT: Very well.

9
10 RECROSS-EXAMINATION

11 BY MR. KANAREK:

12 Q Mr. Flynn, it appears to me, it may be
13 erroneous, that there is a marked difference in your
14 demeanor on the witness stand now than before. I believe
15 that is a fair statement.

16 MR. BUGLIOSI: This is argumentative, your Honor.
17 It is not time for argument.

18 MR. KANAREK: I am asking him.

19 Q Is there some reason, Mr. Flynn, why your
20 demeanor on the witness stand now is different than it
21 was when you first took the witness stand?

22 MR. BUGLIOSI: That is argumentative and assumes
23 facts not in evidence.

24 THE COURT: Sustained.

25 MR. KANAREK: Thank you.
26

7d-3

FURTHER REDIRECT EXAMINATION

BY MR. BUGLIOSI:

Q Mr. Flynn, this arrest on August the 18th, 1970, did that take place after you spoke to Sergeant Sartucci and myself?

A Yes.

Q You had already spoken to us, and you were arrested that same day; is that correct?

A Yes.

Q What were you arrested for?

A For drinking a beer out in the desert.

Q And you requested that you be arrested for that; is that correct?

A Yes. I felt that I needed it.

Q Where is the Fountain of the World, Juan?

A In Box Canyon.

Q How far is that from Spahn Ranch?

A Five miles; something like that.

Q You testified in court as to some of the words in these threat notes that you received, or these notes that you received.

Did you study these notes rather carefully?

A Yes.

Q Is that why you remember the words?

A Yes.

Q You have also heard Mr. Manson sing songs out

7d-4

1 at Spahn Ranch; is that correct?

2 A Yes.

3 Q And you recognized that some of the words
4 in these notes were words that you had heard him sing
5 before?

6 A Not him, himself, but I heard at the ranch.

7 Q Sung by whom?

7e flx.

8 A By members of the Family.

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1 Q Has Mr. Kanarek approached you several times
2 outside this court and spoken to you, Mr. Flynn?

3 A Yes.

4 Q On any occasion, did he tell you not to say
5 anything to anyone?

6 A Yes.

7 MR. BUGLIOSI: No further questions.

8 THE COURT: Anything further?

9 MR. FITZGERALD: No recross.

10 MR. KANAREK: Yes, your Honor.

11 May I ask a question on this last point
12 about my approaching --

13 THE COURT: Mr. Shinn?

14 MR. SHINN: No, your Honor. No questions.

15 THE COURT: Go ahead, Mr. Kanarek.

16
17 RECROSS-EXAMINATION

18 BY MR. KANAREK:

19 Q Now, Mr. Flynn, would you tell the jury all
20 of the circumstances when you say that I said that you
21 shouldn't say anything to anyone?

22 A Well, after I requested to be arrested,
23 you see, I called some people that I know and I told them
24 where I was, you see. Then I spent two, three days in
25 jail. And these people asked me, you know, if I wanted
26 out, you know. I told them where I was.

1 THE COURT: Mr. Flynn, I don't think you are
2 answering the question that Mr. Kanarek asked you.

3 Would you reframe the question, Mr. Kanarek?

4 MR. KANAREK: May it be read, your Honor, so that
5 there is no question? It is the same question.

6 THE COURT: All right. Go back and read the ques-
7 tion.

8 Listen to the question, Mr. Flynn.

9 THE WITNESS: Yes.

10 (The question was read by the reporter.)

11 THE WITNESS: Okay.

12 I will say it like this. When I walked out-
13 side, Mr. Kanarek bailed me out of jail, you see, and
14 then I walked outside, and I said, "Oh, it is you?"

15 And Mr. Kanarek says, "Yes," you know.

16 So he says, "What happened to you?"

17 So I related -- I told him that, you know,
18 I was in jail for drinking a beer, you see.

19 Then, he says, "Have you had anything to
20 eat," you know?

21 "No," I says to him. I says, "I haven't
22 had anything to eat because I was in -- how do you call
23 them places -- the hole, the tank, all day, you see."
24 And I told him that I wanted something to eat.

25 So, he offered to buy me something to eat.

26 And in the meantime, he told me that I shouldn't

1 worry, you know, and I shouldn't -- you know, I shouldn't
2 worry, you know, and that he would have some of the girls
3 to come down and pick me up.

4 Then we went and had some food, you know, and
5 on this, he said that I shouldn't talk to anyone. In this
6 period of conversation, he told me not to talk to anyone,
7 you see.

8 This is all Mr. Kanarek said: "Don't talk to
9 anyone," you see.

10 Then he says: "The girls are coming," you
11 know.

12 So I told him, "No. I am going somewhere
13 else," you see.

14 So, I had Mr. Kanarek drop me off in this
15 place, this remote place.

16 And he says, "Call me in the morning," you
17 know, and he gave me a card, you know.

18 And I said that I would, but I didn't.

19 And that was the relation of the conversation,
20 you know.

7F Fls. 20

P-1
1 MR. KANAREK: Q Did I tell you not to talk to
2 anyone concerning the case that you came out of jail on?

3 A The only thing that you ^{said} to me, you know, in
4 repetition, you know, at various times of the conversations
5 that we had, was, "Don't talk to anyone; don't talk to
6 anyone."

7 Q And we discussed the case in Barstow involving
8 why you were in jail here in Los Angeles; is that right?

9 A Well, I don't know if I talked about Barstow,
10 you know. I don't remember.

11 Q You don't remember telling me why you were
12 arrested?

13 A Yes, I think I told you.

14 Q And it involved a traffic -- a drinking matter
15 in Barstow; is that right?

16 A Drinking of beer, right. Yes.

17 Q And I told you not to discuss it with anyone,
18 is that correct?

19 A Well, you said that, too, yes.

20 MR. KANAREK: Thank you.

21 THE COURT: Anything further?

22 MR. HUGHES: No questions.

23 THE COURT: Anything further, Mr. Bugliosi?

24 MR. BUGLIOSI: No further questions.

25 THE COURT: You may step down, Mr. Flynn.

26 THE WITNESS: Thank you.

MR. BUGLIOSI: People call Dave Stauber.

(Mr. Stauber enters the courtroom.)

THE CLERK: Would you please repeat after me.

I do solemnly swear --

THE WITNESS: I do solemnly swear --

THE CLERK: -- that the testimony I may give --

THE WITNESS: -- that the testimony I may give --

THE CLERK: -- in the cause now pending --

THE WITNESS: -- in the cause now pending --

THE CLERK: -- before this Court --

THE WITNESS: -- before this Court --

THE CLERK: -- shall be the truth --

THE WITNESS: -- shall be the truth --

THE CLERK: -- the whole truth --

THE WITNESS: -- the whole truth --

THE CLERK: -- and nothing but the truth --

THE WITNESS: -- and nothing but the truth --

THE CLERK: -- so help me God.

THE WITNESS: -- so help me God.

THE CLERK: Would you be seated, please.

Would you draw the microphone back, sir, and
would you please state and spell your name.

THE WITNESS: David Stauber, S-t-a-u-b-e-r.

DAVID STUBER,

called as a witness by and on behalf of the People, being
first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BUGLIOSI:

Q What is your occupation, sir?

A State traffic officer, California Highway
Patrol, 1382 East Olive, Fresno, California.

Q You are not one of the investigating officers
in the Tate-La Bianca murders, are you?

A I am not.

Q Do you know Juan Flynn?

A I do.

Q Have you ever had a conversation with Juan
Flynn?

A I have.

Q Where did this conversation take place?

MR. KANAREK: Your Honor, may we approach the bench?

MR. FITZGERALD: It is hearsay.

MR. KANAREK: And it is hearsay. I agree with
Mr. Fitzgerald.

I would like to approach the bench.

THE COURT: It is not hearsay yet. This is a
foundation.

MR. FITZGERALD: The question calls for hearsay.

1 MR. KANAREK: Also, it is improper.

2 I would like to approach the bench.

3 THE COURT: Overruled.

4 You may answer the question.

5 THE WITNESS: In Shoshone, California.

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1 Q BY MR. BUGLIOSI: Where is Shoshone, California?

2 A It's just east of Death Valley National
3 Monument in California.

4 Q It's a little stop in the road?

5 A Yes, sir.

6 Q Small little town?

7 A Population approximately 75 to a hundred.

8 Q And when did you speak to Mr. Flynn in Shoshone?

9 A On December 19, 1969.

10 Q Where did you speak to him in Shoshone?

11 A In a house that he was sharing with two other
12 occupants.

13 Q Who was present at that time in addition to
14 yourself and Mr. Flynn?

15 A Paul Crockett, Paul Watkins, Brooks Postin and,
16 at one phase of the conversation, Deputy Don Ward, Inyo
17 County Sheriff's Office.

18 MR. KANAREK: Your Honor, if I may, I would like to
19 object on the grounds of due process and I'd like to do it
20 at the bench, if I might make my point to the Court.

21 THE COURT: Are you talking about this conversation?

22 MR. KANAREK: Yes, your Honor.

23 THE COURT: This witness' testimony?

24 MR. KANAREK: Yes, I don't believe it's --

25 THE COURT: I assume you are going to offer the
26 conversation, is that right, Mr. Bugliosi?

1 MR. BUOLIOSI: Yes, your Honor.

2 THE COURT: Then let's approach the bench, gentlemen.

3 MR. HUGHES: Your Honor, may defendant Leslie
4 Van Houten be present for the bench conference? I don't
5 wish to have any proceedings outside of the presence of the
6 defendants.

7 THE COURT: I stated to you what the ground rules
8 were, Mr. Hughes.

9 MR. HUGHES: Well, your Honor, may the record be
10 clear, then, that there is no microphone and that the
11 defendant is not able to take part in those proceedings at
12 the bench and that accordingly --

13 THE COURT: You are, however, if you wish.

14 MR. HUGHES: Accordingly, your Honor, I wish to be
15 able to make the point so that the defendant may hear it
16 now.

17 Accordingly, your Honor, I will approach the
18 bench. However, I will not waive Miss Van Houten's
19 presence at any of the proceedings in this court.

20 (The following proceedings were had at the
21 bench outside the hearing of the jury:)

22 THE COURT: Let's hear from Mr. Kanarek first.

23 MR. KANAREK: I don't believe the District Attorney
24 can put this on at this point because --

25 THE COURT: Put what on?

26 MR. KANAREK: This evidence. I don't think he can put

1 this on at this point. He must do that on rebuttal. I
2 disapprove of this witness coming on at this time.

3 In other words, because there has been some
4 testimony by Mr. Flynn, I don't think that allows him to
5 put this, what would normally be, rebuttal evidence on,
6 and I will object to that because it pinpoints and causes an
7 undue emphasis on the purported authenticity of Mr. Flynn's
8 statement.

9 THE COURT: I assure the objection is going to be
10 one of hearsay.

11 MR. KANAREK: Also, yes, your Honor.

12 MR. FITZGERALD: If he is not going to put the
13 conversation on, it's immaterial and irrelevant. He can't
14 put a witness on the stand and ask him if he's had a
15 conversation.

16 MR. BUGLIOSI: I am going to put it on.

17 MR. FITZGERALD: If he is going to put the conversation
18 on itself, that's hearsay.

19 THE COURT: He has to lay the foundation first,
20 Mr. Fitzgerald. In other words, he is entitled to try to
21 get the conversation in, but he has to first lay a foun-
22 dation.

23 MR. FITZGERALD: What exception to the hearsay rule?

24 THE COURT: I don't know.

25 MR. BUGLIOSI: I'll make my offer of proof right now,
26 your Honor.

1 This goes towards my flare-up in court yesterday.
2 Mr. Kanarek, and I have it in the record, I have an
3 authentication for it, has implied that Juan Flynn's
4 statement was recently fabricated. As early as this morning
5 he started off by saying, "Did Mr. Bugliosi bring anything
6 to you?" And then he went further. He says, "About the
7 knife incident in the kitchen, were these matters brought
8 to your attention by Mr. Bugliosi?"

9 He said that this morning.

10 Now, let me read you Section 791, your Honor:

11 "Prior inconsistent statement,

12 "Evidence of a statement previously made
13 by a witness that is consistent with his
14 testimony at the hearing --"

15 THE COURT: Keep your voice down.

16 MR. BUGLIOSI: Oh.

17 "--- is inadmissible to support his
18 credibility unless it is offered after (b) an
19 express or implied charge that has been made that
20 his testimony at the hearing is recently
21 fabricated."

22 Now, again, I turn to Volume 106 and I read
23 some of the statements that Mr. Kanarek made to Mr. Flynn
24 implying that he made up this story while talking to me.
25 Says,

26 "As a matter of fact, it's a fair state-
ment, Mr. Flynn, that you have not told us the

1 "truth in this courtroom concerning the knife
2 at your throat." And he says, "You are saying
3 that, sir."

4 "Q I'm asking you, Mr. Flynn.

5 "A I told you the truth.

6 "Q Did you tell Mr. -- then there is
7 some reason, there is some reason, did you tell
8 Mr. Sartucci when you were at the Police Building
9 on August the 18th, 1970, did you tell
10 Mr. Sartucci about the knife at your throat
11 when Mr. Manson made these threats to you?"

12 There's objections.

13 "Well, I told him the truth.

14 "Mr. Flynn, my question is, as a matter of
15 fact, you made no statement to Mr. Sartucci in
16 your interview of August 18, 1970, about a knife
17 at your throat at a time when Mr. Manson supposedly
18 made these statements to you, did you, because it
19 did not happen? Is that right, Mr. Flynn?"

20 "A I didn't mention it if it is
21 not in the record because, you know, I says,
22 you know, I'll bring it up here.

23 "Q Oh, you'll bring it up here.

24 "A Yes.

25 "Q You had in your mind -- in other
26 words, you deliberately lied to Mr. Sartucci;

1 "is that right?

2 "A No."

3 "BY MR. KANAREK: You are holding that
4 back, is that right, Mr. Flynn, to spring it
5 on us in this courtroom; is that right?

6 "A No, I told the officers about
7 this before, you see.

8 "Q And Mr. Flynn, are you telling
9 us, do you remember when the man was there
10 taking down all the notes, like this Mr. Hollombe
11 is here in this court?

12 "A Yes.

13 "Q You were talking to Mr. Sartucci
14 on August the 18th, 1970?

15 "A Yes.

16 "Q You deliberately did not tell
17 him about the knife at the throat?

18 "A You say 'deliberately.' I say
19 I might not come up with it.

20 "Q You might not have come out with
21 it?

22 "A Yes.

23 "Q It wasn't a very important
24 point. The reason it wasn't is because it
25 never happened, is that right?"

26 Just constantly here. I'll go on further.

1 "You were at the Police Building
2 because you wanted to be there and help the
3 police; is that right?

4 "A Well, you see, I was asked if
5 I was willing to testify by the officers, you
6 see, or come down and see the District
7 Attorney, you see, and I was -- and I says,
8 yes, you know. So it might not have sprung
9 right there, but I know it happened. You know,
10 it happened.

11 "Yes, I see.

12 "Yes.

13 "Q Do you mean, Mr. Flynn, that you
14 made it up for the purposes of this courtroom?
15 Is that correct, Mr. Flynn?"

16 Direct -- direct questions.

17 MR. KANAREK: He's going to -- I mean --

18 MR. BUGLIOSI: Direct. There is no question about
19 it.

20 MR. KANAREK: I'm afraid he is going to have a
21 hemorrhage here this morning.

22 MR. SHINN: What date is that?

23 MR. BUGLIOSI: I am just taking some of it.

24 THE COURT: There is no question. There was an
25 implied, if not express, charge of recent fabrication.

26 MR. FITZGERALD: I'll stand on my objection that it's

hearsay. I represent Patricia Krenwinkel.

8a-1

1 THE COURT: There is a limiting instruction. If
2 it's limited solely for the purpose of letting a jury
3 determine whether or not the statements were made to this
4 officer at the time he alleges it, not for the content or
5 the truth of it.

6 MR. KANAREK: Before your Honor proceeds on this
7 point, I think our point is valid. This testimony does
8 not come in in connection with their case in chief.

9 THE COURT: Certainly it does.

10 MR. KANAREK: No, your Honor. I don't believe that
11 they can rehabilitate this witness -- I think the orderly
12 procedure would be on rebuttal for them to bring in this
13 type of a witness.

14 THE COURT: Then you would raise the objection that
15 they were bringing in a matter that wasn't covered in your
16 defense; therefore, they couldn't raise it on rebuttal.

17 MR. KANAREK: No, I think --

18 THE COURT: I think it's clearly admissible but
19 there must be a limiting instruction.

20 MR. BUGLIOSI: Well, your Honor, I'm not too sure.
21 This might come in substantively. The inconsistent state-
22 ments rule, I forget the name of the case, People vs.
23 Johnson, held that prior inconsistent statements cannot
24 come in substantively, they can only come in for impeachment
25 purposes.

26 I don't think there is any case that says

8a-2

1 that prior consistent statements can't come in substan-
2 tively. They aren't hearsay but they come in under an
3 exception to the hearsay rule.

4 I think we will have to do some research on
5 this. But to my knowledge, they come in substantively.

6 THE COURT: If you want to pass it for the time
7 being --

8 MR. BUGLIOSI: I don't want to pass this because
9 he has to leave. He is from Fresno.

10 THE COURT: I'm going to give a limited instruction.

11 MR. BUGLIOSI: Well, there is no indication in the
12 Evidence Code that this can't come in substantively.

13 MR. KANAREK: This isn't Mr. Manson's declaration.

14 MR. FITZGERALD: It's covered by 1235 of the
15 Evidence Code and the case you are referring to, most
16 recent case, is People vs. Green.

17 MR. BUGLIOSI: That's on prior inconsistent state-
18 ments. This is a prior consistent statement.

19 MR. FITZGERALD: Same rule applies.

20 MR. KANAREK: But you can't bootstrap that into
21 evidence as against Mr. Manson.

22 THE COURT: 1236 covers the prior consistent
23 statement.

24 MR. BUGLIOSI: Right. And 1236 refers to Section
25 791. And 791 in sub (b) they talk about an implied
26 charge of recent fabrication.

44-3
1 MR. KANAREK: And we have the Sixth Amendment,
2 right of confrontation, your Honor, involved. And we have
3 a right to confront. And how can you confront your accuser
4 if this man is a gentleman whom Mr. Manson has never seen.

5 THE COURT: Well, I think to avoid that problem --

6 MR. BUGLIOSI: All right, your Honor, why don't you
7 instruct them now that it is limited for that purpose and
8 then maybe later, if I could give the Court some authority,
9 the Court could reinstruct the jury.

10 Would that be okay, your Honor?

11 THE COURT: Yes.

12 MR. KANAREK: May we have an offer of proof as to
13 what this witness is going to say in this regard? I think
14 it's a fair request to have an offer of proof because Mr.
15 Bugliosi has talked to him but certainly I don't think any
16 of us have.

17 THE COURT: I think there should be an offer of
18 proof.

19 MR. BUGLIOSI: Oh, the offer of proof, your Honor,
20 is that he asked Mr. Flynn in Shoshone if Mr. Manson had
21 ever confessed to him or spoken to him about the Tate
22 murders and Mr. Flynn says, "Well, there was one time in
23 the kitchen at Spahn Ranch and Mr. Manson put a knife at
24 my throat, pulled my hair back, and says, 'You SOB. Don't
25 you know I am the one doing all these killings?'"

26 Almost precisely the testimony here in court.

8a-4
1 And it just couldn't be more consistent. The
2 language is almost identical.

3 MR. KANAREK: Yes, your Honor.

4 I would object to the use of this evidence
5 in any event because it is hearsay upon hearsay, if we
6 want to get poetic about it, and the fact of the matter
7 is, furthermore, that I don't believe that the jury -- the
8 jury can make that fine distinction that your Honor is going
9 to instruct them. I think that interferes and denies Mr.
10 Manson a fair trial, a fair jury trial, because we are now
11 dealing with a purported confession, your Honor, which has,
12 as your Honor knows -- all the cases are legion that when
13 you come to words of confession you get into an area that
14 is very, very dangerous. And here is a purported confession
15 that is coming in.

16 So it's our position that the jury should not
17 be allowed to hear any of this, not only on hearsay but --

18 THE COURT: The objection is overruled.

19 MR. BUGLIOSI: Thank you.

20 MR. SHINN: Join in the objections and it is hearsay
21 as to Susan Atkins.

22 MR. HUGHES: Join in the objections and it is hear-
23 say as to Defendant Van Houten.

24 So that the record is abundantly clear, I
25 want it clear the Defendant Van Houten not only is not
26 present but is not able to hear this conference.

8a-5

1 THE COURT: Under Illinois vs. Allen there is no
2 requirement that she even hear. She has a right to be
3 present if she conforms her conduct to the reasonable
4 requirements of the court and does not disrupt the trial.
5 When she is removed under Illinois vs. Allen there is no
6 right to hear.

7 MR. FITZGERALD: No, I disagree with your Honor.

8 MR. HUGHES: I'm not waiving her right to --

9 THE COURT: At any rate, she has a speaker and she
10 can hear.

11 MR. HUGHES: She cannot hear the proceedings that
12 take place at the bench and I am not waiving her presence.

13 MR. FITZGERALD: She couldn't even hear it when she
14 was in court.

15 THE COURT: Those are purely legal arguments.

16 MR. HUGHES: I am making a legal argument, your
17 Honor, and it is that she cannot hear this conference.

18 THE COURT: You said that, Mr. Hughes. There is
19 no need to repeat it.

20 MR. HUGHES: I'm not waiving her presence at any
21 proceedings before this Court. Any proceedings, your
22 Honor --

23 MR. KANAREK: May I join --

24 MR. HUGHES: -- to hear or otherwise.

25 MR. KANAREK: -- on behalf of Mr. Manson with Mr.
26 Hughes' comments.

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1 THE COURT: Very well.

2 MR.KANAREK: And Mr. Fitzgerald, if he did make
3 a comment in connection with this subject matter.

4 (Whereupon the proceedings were resumed before
5 the jury in open court.)

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1 BY MR. BUGLIOSI:

2 Q How long was the conversation you had with
3 Mr. Flynn?

4 A I don't recall the exact length of that
5 conversation. There was a series of conversations during
6 the day with each of the witnesses as I interviewed them
7 and I started, perhaps, at 1:30, 12:00 o'clock in the
8 morning, and it didn't conclude until somewhere around
9 10:00 or 11:00 that night.

10 Q Was your conversation with Mr. Flynn tape
11 recorded?

12 A Yes, a good portion of it was.

13 Q Did you bring that tape recording to court
14 with you today?

15 A Yes, I did.

16 Q After the conversation at any time did you
17 play the tape recording?

18 A I have played just a small part of this tape
19 within the last two days. It's the only time.

20 Q All right. With respect to that small part
21 of the tape, did it appear to accurately record the conver-
22 sation that you engaged in with Mr. Flynn?

23 MR. KAMAREK: Calling for a conclusion, your Honor.
24 And I think that the best evidence is not this witness's
25 editorializing, your Honor.

26 MR. BUGLIOSI: It's a necessary foundation, your

8b-2

1 Honor, to determine whether anything was deleted or
2 added. It's part of the foundation.

3 THE COURT: Well, you are not offering the tape.

4 MR. BUGLIOSI: We are going to play the tape, your
5 Honor. We are going to offer the tape.

6 MR. HUGHES: Furthermore, your Honor, I would
7 object that this has never been made a part of discovery
8 and I would ask for an exclusion or suppression.

9 MR. BUGLIOSI: This is legal argument that should
10 be made up at the bench, your Honor.

11 THE COURT: Objection is overruled. You may answer
12 it.

13 THE WITNESS: Will you repeat the question, please.

14 MR. BUGLIOSI: Yes.

15 Q When you played the tape, did you determine
16 that it fully and accurately reported the conversation
17 that you recall having with Mr. Flynn?

18 A It did.

19 Q Was anything added or deleted, to your know-
20 ledge, in that tape?

21 A No, it was not.

22 Q And do you have that tape with you in court
23 today?

24 A I do.

25 Q And you have a tape recorder to play it on?

26 A I do.

8b-3

1 Q In the conversation that you had with Mr.
2 Flynn, did he mention any knife incident at Spain Ranch
3 with Charles Manson?

4 MR. KANAREK: Object, your Honor, on the grounds
5 it's leading and suggestive and not the best evidence,
6 if we have the tape, your Honor.

7 THE COURT: Overruled.

8 MR. KANAREK: I wondered if we also might make a
9 motion at the bench on this.

10 THE COURT: Objection is overruled.

11 The jury is admonished that evidence of the
12 alleged conversation to which this witness is ~~apparently~~
13 going to testify will be received for a very limited
14 purpose and that purpose is only to permit the jury to
15 consider it with respect to the question of whether or
16 not Mr. Flynn made these statements to this witness at the
17 time indicated. And the evidence is not received with
18 respect to the truth of the statements which Mr. Flynn may
19 have made.

20 In other words, you are not to consider the
21 statements for the matters contained therein, but only for
22 the purpose of determining whether or not Mr. Flynn made
23 the statements to this witness on the date indicated.

24 MR. SHINN: Your Honor, may I address the Court,
25 your Honor?

26 THE COURT: Yes.

1 MR. SHINN: May I take this witness on voir dire
2 to determine whether or not the constitutional rights of
3 Mr. Flynn were violated or not?

4 THE COURT: That motion is denied.

5 MR. HUGHES: Your Honor, I would move for a continu-
6 ance so that we can have time to hear this tape. And also
7 I would move that all of the testimony of Mr. Flynn be
8 struck because this tape was not made available to us
9 and apparently the prosecution had full knowledge of it.

9 fls.

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1 MR. BUGLIOSI: Your Honor, this is legal argument
2 and should be up at the bench, and defense counsel knows it.

3 MR. HUGHES: This was not made a part of discovery.

4 THE COURT: Do you wish to make an argument at the
5 bench, Mr. Hughes?

6 MR. HUGHES: Yes, your Honor.

7 THE COURT: All right.

8 MR. HUGHES: However, I also wish to point out that I
9 am not waiving --

10 THE COURT: I don't want any more argument in front
11 of the jury, sir. I am giving you the opportunity to
12 come to the bench.

13 MR. HUGHES: Yes, sir.

14 (Whereupon, all counsel approach the bench
15 and the following proceedings occur at the bench outside
16 of the hearing of the jury:)

17 MR. HUGHES: I just wish to point out, also, again,
18 that I do not wish to waive defendant Van Houten's rights.

19 THE COURT: You said that now about three or four
20 times, Mr. Hughes. Don't clutter up the record by saying it
21 any more. You don't add anything to it.

22 You have made your objection. It has been
23 overruled.

24 MR. HUGHES: May I have a continuing objection, then,
25 for any time there is any proceeding outside of her hearing?

26 THE COURT: You may.

1 MR. KANAREK: May I join and have the same on behalf
2 of Mr. Manson?

3 THE COURT: All right.

4 Let's get on.

5 MR. BUGLIOSI: Will the Court admonish the jury to
6 disregard his comment that we never furnished anything?

7 Again, your Honor, it is argument in front of
8 the jury that the District Attorney is doing something
9 wrong.

10 THE COURT: Let's get on.

11 MR. HUGHES: We have never been furnished or did we
12 even have knowledge of the existence of the tape
13 recording which is here alluded to, and I would move, number
14 one, that all of the testimony of Juan Flynn -- this is a
15 tape recording of Juan Flynn, and Juan Flynn is a critical
16 witness -- that all of his testimony be struck for failure
17 of the prosecution to comply with the various discovery
18 orders made in this case.

19 THE COURT: Your contention, first, is that it comes
20 within the discovery order; is that right?

21 MR. HUGHES: Yes.

22 MR. FITZGERALD: Yes. The statement of the
23 witness. I will agree.

24 I move for a one week's continuance -- he said
25 this was an 11-to-12 hour conversation -- I move for a one
26 week's continuance to listen to it. It will take a week to

1 listen to it.

2 MR. BUGLIOSI: I just got this yesterday myself. I
3 didn't know about it.

4 I called him in Fresno and he came down with
5 the tape.

6 The first time that I found out about it is
7 when Mr Flynn was on the stand and he testified that on a
8 previous occasion he made a statement at some Sheriff's
9 Office/^{up}in Shoshone. I started inquiring, and I found out
10 it was the CHP officer.

11 So, I just got this tape myself. I was totally
12 unaware of it.

13 MR. HUGHES: In the event that --

14 THE COURT: Just a minute.

15 I want to make sure that I understand.

16 Did you gentlemen know about the existence of
17 Officer Steuber?

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1 MR. HUGHES: No.

2 MR. FITZGERALD: No.

3 MR. KANAREK: No.

4 THE COURT: Did you know about him?

5 MR. BUGLIOSI: I knew of his existence, of course.
6 I didn't know that he had spoken to Flynn until he related
7 this.

8 THE COURT: Didn't Officer Steuber report this
9 conversation to somebody?

10 MR. BUGLIOSI: Well, he reported it to Frank Fowler,
11 the District Attorney in Inyo County.

12 Somehow it never reached the LAPD or me.

13 The first time that I found out about this is
14 when I spoke to Mr. Flynn in my office and he stated that
15 Manson put the knife to his throat. That is the first time
16 that I found out about it.

17 THE COURT: Well, I agree that if there is a tape,
18 in view of the fact that counsel have not, apparently,
19 had an opportunity to hear it -- is that right?

20 MR. FITZGERALD: Right.

21 THE COURT: -- that they should have an opportunity
22 to hear it.

23 MR. BUGLIOSI: We could do that at 2:00 o'clock.

24 THE COURT: Obviously, in connection with their
25 cross-examination.

26 How long is it going to take for them to listen

1 to it?

2 MR. BUGLIOSI: This particular portion here is
3 extremely short. This is the only thing that I am bringing
4 in right now.

5 THE COURT: I know, but before they are in a
6 position to cross-examine, they have a right, and will want
7 to, I am sure, to hear the entire tape.

8 MR. FITZGERALD: And it is my understanding from the
9 witness's testimony that that is 11 or 12 hours in length.

10 THE COURT: Now, let's consider also, gentlemen,
11 that this evidence is being received for a limited purpose.
12 That is, only as to whether or not it was said, not for
13 the truth of the matters stated therein.

14 MR. KANAREK: That is theoretical, though, your Honor,
15 as far as the jury is concerned.

16 THE COURT: All right, Mr. Kanarek, that will make
17 about the 357th time you said that in this trial. You
18 don't need to say it again. This is not final argument.

19 MR. KANAREK: Yes, your Honor, but the point I was
20 trying to make to the Court is that I believe that the
21 objection of the best evidence rule is valid. I think
22 that the present Evidence Code indicates that higher
23 evidence should be used as opposed to just oral testimony.

24 Therefore, in the context of these proceedings
25 with the jury knowing there is a tape, there is a synthetic
26 authenticity given to this man if he is allowed to testify.

1 I think that if there is a tape, then he
2 should try to use the tape.

3 THE COURT: Why is that any different than a man
4 who testifies after having made notes of a conversation?

5 MR. KANAREK: I am saying that the tape is higher
6 evidence.

7 MR. BUGLIOSI: I am going to play the tape.

8 MR. FITZGERALD: I think that essentially there are two
9 problems, and I wouldn't like to see them confused.

10 One is that this officer, if he testifies to
11 a tape recording, I think we are entitled to hear the
12 entire recording, because other portions may amplify or
13 ameliorate or contradict.

14 THE COURT: No question.
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1 MR. FITZGERALD: Number two, I think this is the tape
2 recording of Juan Flynn, who is a major prosecution witness,
3 and we ought to be entitled to listen to that tape in order
4 that we might be able to bring Mr. Flynn back for further
5 cross-examination in the event that the tape recording
6 contains any contradictory statement, any prior inconsistent
7 statements.

8 So, your Honor, we are talking about two things.
9 We are talking about this officer's recorded statement, and
10 we are talking about Juan Flynn's recorded statement.

11 That seems to be the big problem.

12 THE COURT: I have no problem with that at all,
13 gentlemen. You are entitled to hear it in its entirety,
14 and as far as I am concerned, you are entitled to play it,
15 if you want to, any portion that Mr. Bugliosi does not
16 play, so far as it has any relevance.

17 The only question now is how will we proceed?

18 Mr. Bugliosi apparently has a very brief portion
19 that he wishes to offer under --

20 MR. BUGLIOSI: Extremely brief. About a half a minute
21 or a minute.

22 THE COURT: -- 791 of the Evidence Code.

23 MR. KANAREK: I would ask that before this witness
24 testifies any further, that as far as his testimony goes,
25 the matter be adjourned.

26 THE COURT: We are going to adjourn in a minute because

1 it is after 12:00 noon.

2 MR. FITZGERALD: Let me ask him if he has the tape
3 with him, or you can ask him. Inyo County is 240 miles
4 away.

5 THE COURT: He said that he has it.

6 MR. FITZGERALD: The entire tape.

7 Can I ask him?

8 MR. SHINN: May I be heard, your Honor?

9 THE COURT: One thing at a time.

10 MR. FITZGERALD: As to the logistics, Would you ask
11 him if he has the entire tapes here, because if he doesn't,
12 it is unlikely that we are going to hear them over this
13 weekend. We won't be able to hear them until the first
14 part of next week.

15 Let's find out what he has got available that
16 we can listen to.

17 THE COURT: If he has them all here, they can be
18 listened to over the weekend. Mr. Bugliosi can then proceed
19 to play the limited portion that he is interested in, and
20 at the end of the direct examination of this witness, we
21 will then adjourn until such time as you get an opportunity
22 to hear the tapes.

23 MR. FITZGERALD: All right.

24 MR. BUGLIOSI: I think we should be able to play that
25 particular portion right now.

26 THE COURT: That is what I said.

1 MR. BUGLIOSI: At this particular moment.

2 THE COURT: When we come back after lunch.

3 MR. BUGLIOSI: Yes.
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1 MR. KANAREK: I would object to it being used at
2 this time under the doctrine of People vs. Crovedi, the
3 right for the defendant to prepare.

4 THE COURT: You will be given a complete opportunity
5 to prepare.

6 MR. KANAREK: But the effect on the jury of allowing
7 the jury to hear it, and then going ahead to prepare, that
8 deprives, your Honor.

9 THE COURT: You are not going to have to cross-
10 examine before you hear it.

11 MR. FITZGERALD: He said he has five reels of tape
12 that purport to be Juan Flynn's conversation. He actually
13 has two with him in this building and three are in his
14 car.

15 THE COURT: So they are all here in Los Angeles?

16 MR. FITZGERALD: Apparently.

17 THE COURT: All right.

18 MR. SHINN: May I say something now, your Honor?

19 THE COURT: Yes.

20 MR. SHINN: I think we should take up the question
21 of whether or not the tape, or this witness's testimony
22 regarding the conversation with Mr. Flynn, is admissible
23 or inadmissible.

24 We have a constitutional question here, your
25 Honor, whether or not Mr. Flynn was aware of his constitu-
26 tional rights. We have a right to go into that before he

1 even goes into the conversation, your Honor, before Mr.
2 Bugliosi goes into that.

3 THE COURT: What is your authority for that?

4 MR. SHINN: It is a constitutional right, your
5 Honor. We should know whether or not Mr. Flynn gave up
6 his constitutional right.

7 THE COURT: You cite me some cases after the noon
8 recess on that.

9 We are going to recess at this time, but what
10 I anticipate doing, gentlemen, is letting Mr. Bugliosi
11 go ahead and play that portion of the tape that he desires
12 to.

13 We will then adjourn until -- I suppose it
14 will take until Monday -- or as long as you indicate --
15 and you can play the tapes over the weekend, and you can
16 commence your cross-examination.

17 MR. HUGHES: Would the Court order copies made for
18 each counsel so counsel can prepare?

19 I don't know, logistically, whom we are going
20 to do that.

21 THE COURT: Just get together and play them. You
22 are going to listen to them here in court. Put the tape
23 on the machine and play it.

24 MR. HUGHES: Will the Court make this building with
25 a machine available, or what? I don't understand.

26 THE COURT: You and Mr. Bugliosi can work out the

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details.

1 MR. BUGLIOSI: Before you go any further. I will be
2 through in five minutes after 2:00 o'clock. I suggest that
3 we might utilize this afternoon for Roni Howard and Virginia
4 Graham, to bring them into your chambers.

5 I have my original notes now on Virginia Graham,
6 and I had them photostated,

7 Did the Court get a copy of the Roni Howard
8 notes?

9 THE COURT: I think so.

10 MR. BUGLIOSI: We can either discuss the legal
11 aspect of this or bring them in this afternoon, but I think
12 we should utilize this afternoon.

13 Things have slowed down tremendously at this
14 trial, and I don't think we should throw away the afternoon.

15 THE COURT: I certainly agree with you, if there is
16 something that can be done.

17 MR. BUGLIOSI: Does the Court want me to bring in
18 Virginia Graham and Roni Howard this afternoon, or does the
19 Court want to just consider the legal aspects of the
20 admissibility?

21 I think we already discussed the admissibility
22 aspect. It seems to me that the issue now is: What are they
23 going to testify to?

24 THE COURT: As I indicated to you the other day, and
25 counsel seemed to be in accordance, that this is what they
26 wanted done, to have the witnesses come into chambers and

1 testify as they are going to testify, and then, on the
2 basis of that testimony determine whether or not effective
3 deletions can be made.

4 Is that agreeable, gentlemen?

5 MR. FITZGERALD: Agreeable.

6 MR. BUGLIOSI: I can have them here this afternoon.

7 MR. KANAREK: Can we hear what counsel is going to
8 play this afternoon now, before he plays it, your Honor?

9 THE COURT: I have no objection to that.

10 MR. KANAREK: Would your Honor order that?

11 THE COURT: We will take a recess now until 2:00
12 o'clock this afternoon anyway.

13 MR. KANAREK: But will your Honor order it?

14 THE COURT: How long will it take to play?

15 MR. BUGLIOSI: This particular portion that we will
16 play in the courtroom after the noon recess will take a
17 minute.

18 THE COURT: Why don't you work it out between you
19 during the recess.

20 MR. KANAREK: Very well.

21 (Whereupon, all counsel return to their
22 respective place at counsel table and the following
23 proceedings occur in open court in the presence and hearing
24 of the jury:)

25 THE COURT: We will take the noon recess at this time,
26 ladies and gentlemen.

1 Do not converse with anyone or form or express
2 any opinion regarding the case until it is finally
3 submitted to you.

4 The Court will recess until 2:00 p.m.

5 (Whereupon, at 12:07 p.m. the court was in
6 recess.)
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