

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 104

HON. CHARLES H. OLDER, JUDGE

COPY

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

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

Defendants.

112

No. A253156

REPORTERS' DAILY TRANSCRIPT

Friday, October 2, 1970

P. M. SESSION

APPEARANCES:

DONALD A. MUSICH,  
STEPHEN RUSSELL KAY,

For the People:

~~AARON H. STAVITZ~~ 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~~, Esq.

For Deft. Krenwinkel:

PAUL FITZGERALD, Esq.

LOIS R. JOHNSON,

VOLUME 112

~~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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LOS ANGELES, CALIFORNIA, FRIDAY, OCTOBER 2, 1970

2:05 P.M.

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(The following proceedings were had in chambers outside the presence and hearing of the jury:)

THE COURT: All counsel are present.

Did you have something you wanted to bring up, Mr. Kanarek?

MR. KANAREK: Yes, your Honor.

During the noon hour, as best I could, your Honor, in the Law Library, I researched this point, and I believe that I would say -- I allege that going ahead with this witness' testimony at this point would be reversible error, your Honor.

Beginning with Priestly, which is 50 Cal. 2d, 812, which I'm sure is a case that your Honor knows about, the failure of the prosecution to respond to discovery means that whatever evidence that they have must be suppressed in view of the -- well, without belaboring it -- the circumstances of this case.

I have cases here that I would want the Court to consider. Because you can't unring the bell as far as this jury is concerned. Once that tape recording starts winding and they hear what Mr. Flynn purportedly said, the error is in.

Now, the only relief that the defendant --

1 THE COURT: Why don't you start out by telling me  
2 what subject we are talking about and what relief, if any,  
3 you are seeking, or motion you are making, or objection.  
4 You are jumping right into --

5 MR. KANAREK: Very well, certainly, your Honor.

6 THE COURT: -- some kind of a statement that I don't  
7 know what it relates to.

8 MR. KANAREK: I'm making a motion to suppress, your  
9 Honor, all of the testimony of the officer and the tape that  
10 he's going to lay the foundation for, purportedly, because  
11 of the failure of the prosecution to respond to discovery.

12 There's 11 hours of tape there. There is no  
13 relief -- there is no relief --  
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1 THE COURT: Mr. Bugliosi said he didn't know about  
2 it.

3 MR. BUGLIOSI: In fact, I haven't heard the tapes  
4 myself. The only thing I have heard is one minute. I  
5 haven't heard it all myself.

6 MR. KANAREK: First of all, we have no declaration  
7 to that effect, we have nothing under oath. We have merely  
8 the protestations of Mr. Bugliosi in that regard.

9 THE COURT: That's right. Because the question was  
10 just raised a few minutes before noon.

11 MR. KANAREK: But, your Honor, what I am saying is,  
12 you see, it isn't a matter of good faith or lack of good  
13 faith on the part of the prosecution, or their allegation  
14 of good faith. What it is, what it means is, that the  
15 prosecution, because they didn't do their homework, here  
16 we have Mr. Manson arrested, we have 12 hours of tape, and --

17 THE COURT: Now, Mr. Kanarek, if you are contending  
18 that you have the right to something that hasn't yet been  
19 discovered, I am afraid I am not aware of any authority  
20 that requires that.

21 MR. KANAREK: Law enforcement, your Honor -- if I may,  
22 your Honor -- what I am saying is that, at the very minimum,  
23 I think that the Court -- and I make the motion to continue --  
24 I refer here to -- I have here Witkin on Procedure, and I  
25 am sure your Honor recognizes that there are certain  
26 situations which are so important that the Court can order a

1 continuance -- but we don't have to actually continue  
2 this trial; your Honor can defer his ruling until they can  
3 present points and authorities, and I would want to present  
4 points and authorities in a more cogent manner than I can  
5 just over the noon hour.

6 I have the cases here, your Honor, which I think  
7 clearly substantiate. This is State action. It was in law  
8 enforcement officers' hands. There was coordination between  
9 the District Attorney of Los Angeles County and the District  
10 Attorney of Inyo County. There is 12 hours of tape.

11 The fact of the matter is that we were not  
12 furnished those 12 hours of tape.

13 So, the only relief --

14 THE COURT: You are going to be given an opportunity  
15 to listen to all of the tapes before cross-examination.

16 MR. KANAREK: But the damage is done, your Honor.

17 THE COURT: What damage?

18 MR. KANAREK: Well, in other words, purportedly,  
19 there is going to be some statement by Mr. Flynn about the  
20 knife and about some statements of Mr. Manson concerning  
21 the alleged Tate and La Bianca murders.

22 Now, we made discovery, your Honor. We did  
23 everything we could do.

24 THE COURT: How would discovery prevent those state-  
25 ments from coming in?

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1 MR. HUGHES: I think the point is, your Honor, that  
2 the discovery was not necessarily directed to Mr. Bugliosi  
3 personally. It was directed to the District Attorney's  
4 office, to the Police Department, and to various other  
5 agencies, and just because Mr. Bugliosi personally did  
6 not have knowledge of 12 hours of tape recordings, I  
7 don't think it means that it was not discovered.

8 MR. BUGLIOSI: I don't see how we could produce  
9 something we don't have.

10 THE COURT: I fail to see where the prejudice is  
11 myself.

12 MR. KANAREK: It is here --

13 THE COURT: Even assuming what you say is correct,  
14 Where is the prejudice?

15 MR. HUGHES: The discovery comes today, supposedly,  
16 and Mr. Bugliosi, apparently, for several days, anyway,  
17 has known of those tape recordings.

18 MR. BUGLIOSI: No, not several days.

19 THE COURT: What difference does it make? You will  
20 have an opportunity to listen to them before you cross-  
21 examine.

22 MR. BUGLIOSI: I called Fresno two nights ago and  
23 I asked if he had the tapes, and he said he did, and I  
24 asked him to bring them down, and he brought them down  
25 with him.

26 Was it yesterday?

1 MR. MUSICH: I think so.

2 MR. BUGLIOSI: I didn't know about the conversation  
3 until Juan Flynn testified on cross-examination that he  
4 told some sheriff in Shoshone about it.

5 So, I called Don Ward, and Ward said yes,  
6 he remembered a conversation in Shoshone.

7 And I said, "Who was it with?"

8 And he said, "Some guy from the CHP," and he  
9 didn't know the name of the man.

10 So, I knew about Dave Steuber, and I said,  
11 "Is it Steuber?" And he said, "Yes."

12 So, we called Fresno that night, and he  
13 verified that he had the tapes, and I asked him to bring  
14 them down.

15 Now, those are the facts. How is that a  
16 violation of discovery?

17 MR. FITZGERALD: There is a factual inaccuracy.

18 The tapes were in the possession of the  
19 District Attorney of Inyo County, Frank Fowles. I think  
20 one can make a substantial argument that you should have  
21 known about it.

22 MR. BUGLIOSI: There is no question, perhaps,  
23 that I should have known about it, but I didn't.

24 THE COURT: Have any of you listened to the tapes?

25 MR. FITZGERALD: I listened to a portion.

26 THE COURT: I mean, all the tapes?



1 MR. FITZGERALD: No. That was not possible.

2 MR. HUGHES: There are 11 hours of tapes, and we  
3 only had two hours over the noon recess.

4 THE COURT: I think maybe you are premature.  
5 Maybe there is nothing in the tapes worth discovering  
6 anyway.

7 MR. FITZGERALD: That could be.

8 MR. KANAREK: That could be, if Mr. Fitzgerald  
9 says, but they are going to use a portion now in connec-  
10 tion with the knife incident and the words uttered by  
11 Mr. Flynn, supposedly, to Mr. Manson.

12 THE COURT: Assume that you had discovered the  
13 tapes six months ago, Mr. Kanarek. What difference would  
14 this make? They would still offer the evidence.

15 MR. KANAREK: Not necessarily, because then, if we  
16 had knowledge of those tapes, then, perhaps, our question-  
17 ing would have been different. That is the point.

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1 THE COURT: What question?

2 MR. KANAREK: Preparing for trial.

3 THE COURT: What question?

4 MR. KANAREK: Questioning of Mr. Flynn. The only  
5 reason that they're offering it is supposedly because it's  
6 rehabilitating him. There wouldn't be any need for  
7 rehabilitation if they'd have made discovery and been --

8 THE COURT: My recollection is that he testified,  
9 either on direct or cross, or perhaps both, that he did  
10 tell an officer in Shoshone.

11 MR. KANAREK: Well, what I'm saying is, your Honor,  
12 this type -- this interrogation, and what occurred, would be  
13 -- would perhaps -- and there's some probability, would be  
14 different if they had made discovery and we'd have had a  
15 transcript of the tapes. Because this is now purporting to  
16 rehabilitate him. And there would be no need for  
17 rehabilitation if we'd have had -- if they'd have made the  
18 discovery that we requested.

19 And in that sense, the very relevance  
20 of the word, it gives him -- it gives him an aura of  
21 authenticity or credibility that doesn't exist, and need  
22 not have existed except for the fact that they did not make  
23 discovery. And I think that the cases are clear.

24 THE COURT: You keep saying that but I see no  
25 evidence that they didn't make discovery.

26 MR. KANAREK: Well, but -- well, what I'm saying is,

1 if your Honor makes a judicial decision that they didn't  
2 make discovery, it will be too late. Because the bell  
3 would have been rung as to this point by playing these  
4 statements to the jury at this time.

5 THE COURT: Even if they didn't make discovery,  
6 Mr. Kanarek --

7 MR. KANAREK: Yes.

8 THE COURT: -- which at this point is a poor assumption  
9 on your part, are you contending that there's some  
10 automatic requirement that the Court must exclude the  
11 evidence?

12 MR. KANAREK: Yes. What I'm saying is if --

13 THE COURT: All right. You give me the citation.

14 MR. KANAREK: People vs. Seach -- I mean this is the  
15 application clearly -- the Priestly case.

16 THE COURT: Do you have what the case holds?

17 MR. KANAREK: I can't represent that to the Court.  
18 215 Cal. Ap. 2d at 779 is one case.

19 THE COURT: People vs. what? What is the last name?

20 MR. KANAREK: Seach, your Honor.

21 MR. BUGLIOSI: 779?

22 MR. KANAREK: Yes.

23 THE COURT: All right. Any others?

24 MR. KANAREK: Yes. Well, the Priestly case, 50 Cal. 2d,  
25 812, where there --

26 THE COURT: Do you know what it holds?

1 MR. KANAREK: That had to do with informer evidence.

2 MR. BUGLIOSI: Seach holds just the opposite of  
3 what you say, if this headnote --

4 MR. KANAREK: Well, Mr. Bugliosi, again, is sliding  
5 off the point.

6 MR. BUGLIOSI: I think it says that. It says  
7 exactly the opposite of what you are saying.

8 MR. KANAREK: It doesn't, your Honor. It held in  
9 that -- if I may finish -- it doesn't hold that at all.

10 MR. BUGLIOSI: Maybe the headnote is wrong.

11 MR. KANAREK: The headnote says --

12 MR. BUGLIOSI: Mr. Kanarek --

13 MR. KANAREK: May I finish, your Honor?

14 MR. BUGLIOSI: All right.

15 MR. KANAREK: When Mr. Bugliosi has made very  
16 extended argument to the Court I have refrained, as your  
17 Honor may well recollect, from interjecting or interrupting.

18 Here. The headnote itself says:

19 "In a burglary prosecution, though the  
20 prosecution may have shown bad faith in with-  
21 holding the report of an expert witness as not  
22 having been received in time, in the time  
23 period covered by the Court's pretrial discovery  
24 order, failure to furnish defendants with the  
25 report of an expert who had examined physical  
26 evidence taken from defendants was not

1 "prejudicial where defendants were furnished  
2 with a copy of the report on the day before  
3 the expert testified and nothing in the nature  
4 of the report supported defendants' contention  
5 that they lack ample opportunity to prepare  
6 for cross-examination of the expert."

7 THE COURT: That relates to a report that was known  
8 about.

9 MR. KANAREK: Well, but, if your Honor will bear with  
10 me just a minute, that's reading the headnote because  
11 Mr. Bugliosi --

12 THE COURT: I am now looking at the opinion,  
13 Page 785.

14 MR. KANAREK: Yes, your Honor. What I'm saying is --  
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1 THE COURT: Well, don't you see any difference between  
2 something that is known to the prosecution and something that  
3 is unknown to them?

4 MR. KANAREK: Well, your Honor has to make the  
5 judicial decision. I don't think your Honor can make that  
6 decision based upon unverified protestations of a deputy dis-  
7 trict attorney.

8 But over and above that is the fact that in  
9 Search there's the clear implication -- it's implicit,  
10 if not explicit, that if you are deprived of fair cross-  
11 examination, or you are deprived of something that must take  
12 place, or that would have taken place had you been given  
13 this, then the evidence must be suppressed.

14 Now, in this case had we been given these  
15 tapes, the examination of Mr. Flynn would undoubtedly have  
16 been different. And so, therefore --

17 THE COURT: You don't know that. You haven't heard  
18 the tapes.

19 MR. KANAREK: Well --

20 THE COURT: I would suggest this, Mr. Kanarek:  
21 I think whatever you are trying to do is premature at  
22 this time. If, after you have listened to the tapes, you  
23 feel that you have grounds for some kind of a motion,  
24 then I think you should set that forth clearly in some kind  
25 of a declaration that I can consider in the light of  
26 whatever the tapes reveal.

1 MR. KANAREK: By that time the damage will have  
2 been done because the jury is going to hear the portion  
3 that is probably the portion -- the very portion that we  
4 are -- that has to do with the allegations about the knife  
5 and the statements. And you can't unring the bell. And  
6 that is the error, your Honor.

7 That's why I am asking that this matter be  
8 continued, this witness be held in abeyance until we can  
9 convince the Court, or try to convince the Court, that the  
10 Court should suppress the tape and the testimony of this  
11 witness because the prosecution didn't make discovery.

12 Maybe your Honor will decide against us. But  
13 if you let the jury hear it now, it's going to be fatal.  
14 Because the jury -- then you can't unring that bell.  
15 And that's -- your Honor has the power not to allow that  
16 error to occur by just merely holding in abeyance what  
17 supposedly is going to take place in the courtroom right  
18 now.

19 Maybe the prosecution is right. But this way  
20 we can offer declarations, points and authorities, and then  
21 we can have this evidence.

22 There's nothing magic. This evidence doesn't  
23 have to go right now. But he's offering it only in connec-  
24 tion, I gather, with this point about the knife and the  
25 statements of Mr. Manson allegedly in the kitchen.

26 MR. BUGLIOSI: Well, to clarify the issues, are you

1 alleging that the prosecution had this tape and deliberately  
2 never turned it over to the defense? I'd like to know if  
3 that is an allegation.

4 MR. FITZGERALD: I am not alleging that.

5 MR. KANAREK: Well, your Honor, I am not going to  
6 make -- do I have -- is your Honor asking me to answer  
7 that?

8 MR. BUGLIOSI: I am trying to find out what the  
9 issue is. Is that the issue, that we suppressed this  
10 tape?

11 THE COURT: Mr. Kanarek, I don't care whether you  
12 answer that or not.

13 MR. KANAREK: Very well. If I may --

14 THE COURT: But if you don't support your motion  
15 with something other than a bare assumption, you are not  
16 going to get very far. I can tell you that.

17 MR. KANAREK: I understand. But I think that we  
18 can convince the Court, your Honor, that if the District  
19 Attorney doesn't do their homework --

20 Now, I do not know for sure whether this was  
21 deliberate or not deliberate. How can I say that at this  
22 point?

23 And I'm not going to misrepresent to the  
24 Court, or just make something up out of whole cloth.

25 THE COURT: I think the suggestion that because the  
26 District Attorney comes into possession of something at a



1 later date and had no knowledge of it beforehand and is  
2 not acting in bad faith or deliberately covering up  
3 something, that that evidence automatically must be  
4 excluded, I think that that's absurd. And I know of no  
5 requirement in the law, statutory or case law, that  
6 requires any such result.

7 MR. KANAREK: Well, but what I mean, is, <sup>if,</sup> /for instance,  
8 the District Attorney, your Honor, deliberately did not  
9 go somewhere -- let's take that hypothetical.

10 THE COURT: Did not go somewhere and get something  
11 he didn't know existed? Is that what you mean?

12 MR. KANAREK: No. That he knew -- let's say  
13 hypothetically -- but what I'm saying is --

14 THE COURT: We are wasting time, Mr. Kanarek.

15 MR. KANAREK: Your Honor, I want a continuance  
16 so that these matters may be handled by points and  
17 authorities. I ask your Honor for a continuance, or  
18 merely that this witness be held in abeyance, so that we  
19 can approach the Court with points and authorities to  
20 convince the Court that this evidence should be suppressed.

21 We have merely the protestations of counsel,  
22 Mr. Bugliosi. They are not verified. No declaration.  
23 No points and authorities.

24 Because I believe in the context of our  
25 discovery order, and the context of our request for  
26 discovery, and the context of the entire way that this

1 case has been handled with the in depth -- the in depth  
2 supposed investigation, hundreds of people being spoken  
3 to --

4 MR. BUGLIOSI: Oh, really?

5 MR. KANAREK: What happens here constitutes a fact  
6 situation, your Honor, where your Honor must suppress this  
7 tape and it cannot be used as a remedy and failure to do  
8 that is a denial of due process and a fair trial in not  
9 making/<sup>the</sup> discovery that Mr. Manson's entitled to.

10 THE COURT: In the first place, Mr. Kanarek, all the  
11 People are offering, as I understand it, is a very brief  
12 conversation, or a portion of a conversation, that this  
13 officer had with Mr. Flynn. They are not offering the  
14 tapes.

15 MR. KANAREK: But, say, it turns out that that should  
16 have been suppressed. The jury now hears that. Your Honor  
17 makes an order that they shouldn't pay any attention to it.

18 What I'm saying is Bruton, and other cases,  
19 say you can't unring the bell in certain situations and this  
20 is one of them. And it's reversible error we allege.

21 THE COURT: I think you are creating a smoke cloud  
22 out of absolutely nothing.

23 MR. FITZGERALD: I have evidence that Mr. -- that  
24 Officer Steuber told the Los Angeles Police Department about  
25 the existence of these tapes well over six months ago.  
26 And I think that at some position of these proceedings

1 we ought to be able to ask this officer, outside the  
2 presence of the jury, whether, in fact, that's true.

3 I hate to allege that based on the informa-  
4 tion I have, but based on other --

5 MR. BUGLIOSI: You may ask that.

6 MR. FITZGERALD: -- on other information I have,  
7 in which case we have a little more direct chain, if,  
8 in fact, the Los Angeles Police Department knew about it,  
12b fls. 9 I think they are agents of the prosecution.

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1 MR. HUGHES: I would ask that my defendant, Leslie  
2 Van Houten, be present for these proceedings in chambers.

3 THE COURT: She can be present whenever you tell me  
4 that she is willing to come back into court and conduct  
5 herself in the proper manner.

6 MR. HUGHES: Well, your Honor, I don't know that I  
7 can make that representation, and barring not being --

8 THE COURT: Until she is willing to so affirm, she is  
9 not coming back.

10 MR. HUGHES: She would not specifically answer the  
11 question, which I understand that the --

12 THE COURT: Well, I understand the game-playing  
13 perfectly, Mr. Hughes.

14 MR. HUGHES: Well, I'm not playing the game. They  
15 may be, your Honor, or -- I don't know. I don't understand  
16 the game playing. But I would ask either that she be  
17 present for the proceedings or that she be allowed to hear  
18 them in some manner.

19 THE COURT: She can hear them.

20 MR. HUGHES: All proceedings. She cannot hear these  
21 proceedings. I don't see any microphones, your Honor.

22 THE COURT: She can't hear proceedings when they have  
23 them at the bench or in chambers in any event.

24 MR. HUGHES: Well, I'm not waiving her presence at  
25 any proceedings, your Honor. No proceedings. To hear them  
26 or in any way.

1 THE COURT: That will make it about the sixth time  
2 you have said that today, Mr. Hughes.

3 MR. HUGHES: I want the record to reflect amply that  
4 that is my position and that she is not either --

5 THE COURT: Doesn't reflect it any more amply when  
6 you say it six times than it does when you say it once.

7 MR. HUGHES: I don't think the record reflects that  
8 this was not being broadcast to the defendants, number one,  
9 your Honor.

10 THE COURT: Chambers discussions? No chambers  
11 discussion has been broadcast to the defendants since this  
12 trial started, and you have made no objections before.

13 MR. HUGHES: Well, at this point, your Honor, the  
14 picture is changed and I am objecting now. And I think --  
15 I hope it's clear that I am objecting and that I am not  
16 waiving her presence at these proceedings.

17 MR. KANAREK: Your Honor, if I might, I would ask your  
18 Honor to read People vs. Estrada, 54 Cal. 2d --

19 THE COURT: What is the holding in that case?  
20 Does it have anything to do with what we've been talking  
21 about?

22 MR. KANAREK: Yes, your Honor. 713.

23 I prefer, rather than to synopsize it, I would  
24 prefer that the Court consider all of the language of the  
25 case rather than take counsel's --

26 THE COURT: Well, I'm not just going to read cases at

1 random, Mr. Kanarek. I want to get on with the trial.

2 MR. KANAREK: Well, it's my position, your Honor --

3 THE COURT: I think when you cite a case to me you  
4 should be able at least to state what the holding of the  
5 case is so that I can have some idea whether it's relevant  
6 to anything under consideration.

7 MR. KANAREK: Well, your Honor, yes. I think -- you  
8 never get a case that's on all fours, but I'm saying that  
9 the --

10 THE COURT: I'll settle for all threes.

11 MR. KANAREK: Very well. Either before or during  
12 trial an accused can compel the People to produce the  
13 written statement of a prosecution witness relating to the  
14 matters covered in his testimony.

15 And it is my position that when the prosecution  
16 doesn't respond to discovery, so that counsel in connection  
17 with conducting the case hasn't the use of that material  
18 which should have been discovered in connection -- to  
19 prepare for his case, that the Court, the remedy that the  
20 defendant has is that the prosecution must not be able to  
21 use that. The remedy is to suppress.

22 I ask your Honor to read the Estrada --

23 THE COURT: That's one of the remedies.

24 MR. KANAREK: Yes, your Honor.

25 THE COURT: But that assumes a number of things that  
26 have not yet been demonstrated in this case.

1 MR. KANAREK: But you can't do everything at once.  
2 That's why we are asking your Honor to hold this.

3 THE COURT: You haven't even heard the tapes yet,  
4 Mr. Kanarek.

5 MR. KANAREK: I will make the motion that we hear the  
6 tapes before this witness is allowed to testify, lay a  
7 foundation, or allow the jury to hear it.

8 Furthermore, it's out of context. He's  
9 only going to play a small portion. Maybe there's something  
10 two and a half hours later in that tape that's going to be  
11 important in context with the small portion he is going to  
12 play.

13 MR. BUGLIOSI: I can still bring it in.

14 MR. KANAREK: So I think that we can eliminate  
15 error, we can have a tendency not to inject error by post-  
16 poning this witness' --

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1 THE COURT: Is there any reason why the part that  
2 you intend to offer couldn't be deferred until the first of  
3 the week?

4 MR. BUGLIOSI: Just that I don't see any need for it,  
5 your Honor.

6 The man is from Fresno. The defense has broken  
7 up our case several times. I just don't see any need for  
8 it.

9 This is prima facie evidence. I spoke to  
10 Mr. Flynn in my office. I gave the defense a copy of my  
11 conversation with him, which included that confession.  
12 So, there is the evidence right there that I am not trying  
13 to suppress it.

14 If I were trying to suppress it, I wouldn't  
15 have given you a copy of the confession.

16 MR. KANAREK: That isn't the point.

17 MR. BUGLIOSI: That is the point.

18 MR. KANAREK: That isn't the point.

19 We wouldn't have gone into certain aspects of  
20 the interrogation if we had known there was a tape from  
21 Shoshone.

22 MR. FITZGERALD: Speak for yourself, Mr. Kanarek.

23 THE COURT: I think you are making a mountain out of  
24 a mole hill. I don't have any idea what you are talking  
25 about in relation to any fact content. You are just giving  
26 us a make-weight argument.



1 MR. KANAREK: No, your Honor.

2 THE COURT: You haven't heard the tapes.

3 MR. KANAREK: I wouldn't have asked the questions if  
4 I knew about the tapes.

5 THE COURT: You don't know that any more than I do.

6 MR. KANAREK: Your Honor, if I knew there was a tape --

7 THE COURT: You are just talking and you are not making  
8 any sense.

9 MR. MUSICH: If I might interpose?

10 The purpose of the evidence is only to rehabili-  
11 tate the witness because of the cross-examination which  
12 raised the issue of the truth or falsity of this statement.

13 That is the only part of the tape that we are  
14 going into, your Honor.

15 Counsel has heard that portion of the tape, and  
16 whether or not Mr. Kanarek indicates he wouldn't have gone  
17 into that area on his cross-examination, there would have  
18 been no need to rehabilitate the witness if he hadn't, and  
19 his credibility as to that witness would have been just as  
20 well-founded and credible without cross-examination as we  
21 are now trying to do by rehabilitation.

22 So, Mr. Kanarek's theme and argument that he  
23 wouldn't have gone into it would have then alleviated the  
24 problem of going into it with the witness.

25 MR. BUGLIOSI: I will take the stand and testify  
26 under penalty of perjury that I found out about the tapes,

1 I guess, two days ago, when I called him late one night in  
2 Fresno.

3 That was the first time I found out about these  
4 tapes. I will state that under penalty of perjury.

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1 MR. KANAREK: It isn't just a question of Mr.  
2 Bugliosi. Mr. Stovitz has been on this case, and there  
3 have been other deputies that have been on the case.

4 MR. BUGLIOSI: I will call Aaron up here.

5 MR. KANAREK: And it is a sterile act for Mr.  
6 Bugliosi to say that he didn't --

7 THE COURT: You are making a mountain out of a mole-  
8 hill, as I have already stated.

9 The only purpose of the testimony to be  
10 elicited by the People is to show that the statements were  
11 made, not for the truth of the content.

12 Now, if you want to use the tapes for some  
13 other purpose, you have them.

14 MR. KANAREK: No, your Honor.

15 THE COURT: You have them.

16 If you want to recall Mr. Flynn, you may do  
17 that.

18 If you want to use the information in the  
19 tapes, whatever it is, and apparently none of us, except  
20 Mr. Bugliosi, knows what is in the tapes, because we  
21 haven't heard them --

22 MR. BUGLIOSI: I haven't heard them either.

23 THE COURT: He hasn't either.

24 MR. HUGHES: We don't know what is in them.

25 THE COURT: If there is something in the tapes that  
26 you want to use for some other purpose, you will have an

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1 opportunity to do so. That won't have the slightest effect  
2 on the testimony of the officer that the statements were,  
3 in fact, made.

4 MR. KANAREK: And in order to zero in on it, what  
5 I am saying is that the whole reason that Mr. Bugliosi  
6 went through this extreme effort to get him at this point  
7 is because Mr. Bugliosi knows that this, in the eyes of the  
8 jury, will purportedly rehabilitate Mr. Flynn because what  
9 he said happened in Shoshone allegedly did happen, and  
10 that is the vice of not making discovery, because if he  
11 had made discovery --

12 THE COURT: Now you are assuming something as to  
13 which there is no evidence whatever, that he didn't make  
14 discovery.

15 He told you just the opposite.

16 MR. KANAREK: That is why we have motions, your  
17 Honor.

18 I am asking merely that this witness's testimony  
19 be held in abeyance.

20 THE COURT: Mr. Bugliosi has offered to take the  
21 stand and be sworn to testify that he knew nothing about  
22 it. He is the chief counsel in the case.

23 MR. KANAREK: But on equal protection of the law,  
24 your Honor, you made it very important, you said we must  
25 have points and authorities and written motions.

26 There is no reason that this police officer's

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1 testimony can't be held in abeyance.

2 THE COURT: Here you have the direct testimony of  
3 the witness.

4 MR. BUGLIOSI: Do you want me to testify in open  
5 court under oath?

6 THE COURT: No matter what anybody suggests, including  
7 the Court, you don't want it, even though it is diametrically  
8 opposed to the position that you take.

9 MR. KANAREK: My position is not to crucify Mr.  
10 Bugliosi or to hold him up and say "You are lying."  
11 My purpose here is merely -- if he will stay to the point--  
12 the point is that I believe the law is clear, that your  
13 Honor has an obligation to suppress this evidence because  
14 they didn't make discovery.

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1 THE COURT: That assumes the very fact which has  
2 already been denied.

3 MR. KANAREK: That is why we have the power here --  
4 we have a continuing, on-going trial --

5 THE COURT: You are objecting to Mr. Bugliosi taking  
6 the stand and denying the very thing you are claiming.

7 MR. KANAREK: I am not objecting. If your Honor  
8 wishes to?

9 THE COURT: It is not what I wish. It is your motion.

10 MR. KANAREK: But I am saying that we, also, under  
11 People vs. Crovedi, have a right to prepare.

12 THE COURT: Prepare what?

13 MR. KANAREK: Prepare points and authorities in a  
14 cogent, in a good lawyer-like manner, to convince your  
15 Honor that even if he didn't know, even if he didn't know,  
16 because the law says "knew or ought to have known," --

17 THE COURT: I thought you already cited those  
18 authorities to me.

19 MR. KANAREK: I haven't done it complete.

20 There is People vs. Cartier, 51 Cal. 2d --

21 THE COURT: You certainly will have the opportunity  
22 to do so.

23 MR. KANAREK: But by that time the jury will have  
24 heard it.

25 The only thing that I want, your Honor --

26 MR. BUGLIOSI: I will take the witness stand.

1 MR. HUGHES: But 6 months ago, Mr. Bugliosi, you  
2 weren't chief counsel. Aaron Stovitz was chief counsel,  
3 and we don't know if he knew about it, and we don't know  
4 what the LAPD knew six months ago.

5 MR. BUGLIOSI: Are you now deciding who was chief  
6 counsel six months ago?

7 MR. HUGHES: Mr. Stovitz said he was.

8 I believe that you were chief counsel for all  
9 intents and purposes. However, I believe that Mr. Stovitz  
10 had that title, and I believe that you were pretty angry.

11 MR. BUGLIOSI: Who told you that I was angry?

12 THE COURT: Gentlemen, we are wasting time.

13 MR. HUGHES: Six months ago, I believe that LAPD  
14 knew about these tapes.

15 MR. BUGLIOSI: The only one that called me an  
16 assistant was this guy over here. He called me Aaron's  
17 assistant in open court.

18 MR. KANAREK: May the record reflect that he is pointing  
19 to Mr. Shinn.

20 MR. BUGLIOSI: Aaron was my boss, obviously. He  
21 was the head of the trial department.

22 MR. KANAREK: Here your Honor has the power to  
23 avoid error getting before the jury, if your Honor decides  
24 to suppress this, and I believe, your Honor, that we did  
25 everything we could do, and I believe that the state of the  
26 law is that if the prosecution doesn't come up with it, then

1 they are --

2 THE COURT: You keep saying that.

3 MR. KANAREK: Well, I can't do it without doing it,  
4 your Honor.

5 I think that in holding it in abeyance a  
6 couple of days is not going to hurt anybody.

13c fls.



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1 MR. HUGHES: As a matter of fact, Mr. Bugliosi, you  
2 told me on numerous occasions that Mr. Stovitz used to come  
3 down and take things from your files, and that he did other  
4 things, and that he was always losing evidence; that you had  
5 a lot of evidence that he went through that you lost.

6 MR. BUGLIOSI: If he took something out, I had already  
7 looked at it.

8 Before I put it in there, I looked at it, and  
9 I had never seen or heard of these tapes until two days  
10 ago.

11 THE COURT: Then I will put it over until Monday to  
12 give the defendants' counsel an opportunity to listen to  
13 the tapes.

14 Now, don't come in here on Monday, Mr. Kanarek,  
15 and tell me that you didn't listen to the tapes, because  
16 we don't want to delay the matter any longer than that.

17 MR. KANAREK: I won't. But is there, maybe, a day  
18 more convenient to the officer?

19 THE COURT: Let us worry about that.

20 All you are asking now is for the weekend,  
21 and that is all you are going to get.

22 MR. KANAREK: I have mechanical problems in that  
23 the weekend, in getting this tape -- what I am saying,  
24 mechanical problems of this type can --

25 THE COURT: Whatever the problems, you will have to  
26 solve them.

1 MR. BUGLIOSI: I am worried about the possible  
2 destruction of the tape by accident.

3 MR. KANAREK: That is what I mean.

4 I don't want to have anything to do with the  
5 tape personally.

6 MR. BUGLIOSI: That is why I would like to play it  
7 today.

8 No matter what is on the other other portion  
9 of the tape, no matter what it is, this particular portion  
10 is admissible.

11 MR. KANAREK: That is the point. He wants it, and  
12 they didn't make discovery, you see, your Honor. He doesn't  
13 care about the rest of it.

14 MR. BUGLIOSI: I don't know what is on the rest of  
15 it.

16 I am saying that irrespective of the rest of it,  
17 this particular portion is admissible.

18 THE COURT: That can be solved by having it played in  
19 chambers and having the reporter take down the portion you  
20 are interested in. It could be read into the record if,  
21 in fact, it were destroyed.

22 MR. BUGLIOSI: All right. I would appreciate that.

23 Should we bring Mr. Steuber in here?

24 THE COURT: Yes.

25 MR. KANAREK: The jury is in the box. They will see the  
26 police officer coming in here.

1 THE COURT: We won't be needing the jury the rest of  
2 the afternoon.

3 MR. BUGLIOSI: No.

4 Roni Howard is here, and Virginia Graham is  
5 supposed to be here.

6 THE COURT: Let's take the jury upstairs, at least  
7 until the mid-afternoon recess, and then we will have a  
8 better idea whether they will be needed at all this  
9 afternoon.

10 MR. BUGLIOSI: Do you want Mr. Steuber back here now?

11 THE COURT: Wait until the jury leaves.

12 MR. BUGLIOSI: Yes. But do you want Mr. Steuber back  
13 here?

14 THE COURT: Yes.

15 (Recess.)

16 (Mr. Steuber enters the Court's chambers.)

17 THE COURT: Did you bring the recorder in?

18 MR. BUGLIOSI: Yes. Do you have it, Mr. Steuber,  
19 the recorder, with you?

20 MR. STEUBER: Yes.  
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1 MR. BUGLIOSI: And do you have the tape about the  
2 knife?

3 MR. STEUBER: Yes, I do.

4 MR. BUGLIOSI: This is Judge Older, Mr. Steuber.

5 MR. STEUBER: Very glad to know you.

6 Mr. Bugliosi, this tape isn't at the very  
7 beginning, but it is at the start of the knife story.

8 Is that where you want it?

9 MR. BUGLIOSI: Yes.

10 MR. KANAREK: Maybe you can go back a couple of  
11 sentences, or have you?

12 MR. STEUBER: I think I have.

13 THE COURT: Before we get into it, let's clarify the  
14 record here.

15 All counsel are present, and the purpose of  
16 this proceeding at the moment is simply to have the reporter  
17 take down the substance of the conversation from the tape  
18 which Mr. Bugliosi desires to offer into evidence on Monday,  
19 so that in the event, for one reason or another, the tape  
20 should be destroyed or damaged, there would be a record  
21 of the conversation.

22 Is that correct, Mr. Bugliosi?

23 MR. BUGLIOSI: Yes, your Honor.

24 THE COURT: I do not anticipate that there will be  
25 any examination by counsel at this time.

26 MR. BUGLIOSI: Right.

1 THE COURT: Since it is not being offered at this  
2 time. This is purely a recording.

3 MR. BUGLIOSI: Kind of a perpetuation of testimony,  
4 as it were.

5 THE COURT: A perpetuation proceedings.

6 MR. HUGHES: Since this is a recording of, purportedly,  
7 Juan Flynn, and for the other reasons I stated previously,  
8 I would ask that either Leslie Van Houten be present or  
9 these proceedings be broadcast to her.

10 THE COURT: When you assure me, Mr. Hughes -- I have  
11 told you a dozen times before -- if your client is willing  
12 to affirm a willingness to conduct herself properly in  
13 court, she may be present.

14 MR. HUGHES: Your Honor, she would not answer that  
15 question for me.

16 THE COURT: Let's proceed.

17 MR. KANAREK: Out of an abundance of precaution,  
18 although I see some infirmities in the argument, I want to  
19 join with Mr. Shinn's argument about the constitutional  
20 right of Mr. Flynn not being here.

21 I see no harm in joining with that argument.  
22 I would join in that regard.

23 Lack of foundation.

24 MR. HUGHES: Join.

25 THE COURT: Let's proceed.

26 MR. BUGLIOSI: May the record reflect what we are

1 doing now? We are going to play a tape recorded conversa-  
2 tion of, what, December --

3 MR. STEUBER: December the 19th, 1969.

4 MR. BUGLIOSI: Between yourself, sir?

5 MR. STEUBER: Officer David Steuber, in Shoshone,  
6 California.

7 MR. BUGLIOSI: With Juan Flynn?

8 MR. STEUBER: That is correct.

9 MR. BUGLIOSI: And we are back in chambers now,  
10 and you are playing this particular portion of the tape  
11 referring to the knife incident to perpetuate this  
12 particular testimony.

13 MR. STEUBER: Correct, sir.

14 MR. KANAREK: Not testimony. To perpetuate the  
15 tape.

16 MR. BUGLIOSI: This particular passage of the tape.

17 MR. KANAREK: If I may? Just a couple of questions,  
18 so I can get ahold of Officer Steuber if I need him?  
19 Just where I can locate him?

20 May I ask the questions, your Honor?

13e fls.

21 THE COURT: Yes, you may.  
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1 MR. KANAREK: How could you be reached if I wanted  
2 to reach you?

3 MR. STEUBER: Let me offer you my business card, and  
4 I may be reached 24 hours a day through the Highway Patrol  
5 Office at Fresno. The area code is 209. The number is  
6 485-7440.

7 MR. KANAREK: Thank you very much.

8 MR. STEUBER: Is it corrected on that card in the  
9 upper right-hand corner?

10 MR. KANAREK: 485-7440.

11 MR. STEUBER: Yes.

12 MR. KANAREK: Thank you.

13 MR. STEUBER: You are welcome.

14 THE COURT: All right, sir. You may press the button,  
15 Officer, and proceed.

16 MR. STEUBER: He asked me to run back two sentences  
17 before, which I did, and it is about to start now.

18 I will manipulate the volume, if I may, if you  
19 will indicate whether you want it quieter or a little more.

20 (Whereupon, the tape recording was played as  
21 follows:)

22 "Q All right. Now, did you ever  
23 hear him say anything about the Tate killing or  
24 anything like that?

25 "A Well, sort of, you know.

26 He never mentioned anything to me

1 "about it, you see, but I know one time I  
2 came in the kitchen, you know. I was doing  
3 some heavy work outside, and after it was all  
4 done, you know, they were sitting down on the  
5 porch, just watching. There was a whole bunch.  
6 And after I got through, I went in the kitchen  
7 and I fixed something and I sat down. And there  
8 was some more girls in there, you know.

9 "So he came in and he went like that, you  
10 know.

11 "So everybody went outside, you know, and  
12 placed themselves outside.

13 "Then he was looking at me real funny.

14 "Then I started to get back down to where  
15 I was eating.

16 "And then he grabbed me by the hair like  
17 that, and he put a knife by my throat.

18 "He said, 'You son-of-a-bitch, I am  
19 going to kill you.'

20 "I said, 'Well, I can't do nothing about  
21 that,' you know.

22 "And then he says, 'Don't you know I am  
23 the one who is doing all the killings,' you know.

24 "Q. 'Don't you know I am the one that  
25 is doing all the killings'?

26 "Now, when would this have been about,



1 "Juan?

2 "A. Well, I can't recall too well  
3 whether it was before or after the raid, you  
4 know.

5 "Q Uh-huh.

6 "A. But he says, 'Are you going to  
7 come with me to the desert?'

8 "I says, 'Well, I am not planning to do  
9 it. I am right here. Here is where I am doing  
10 my work.'

11 "He says, 'I am going to kill you, you  
12 son-of-a-bitch.'

13 "And then he turned around and he gave me  
14 the knife, you know, and I said, 'Well, I don't  
15 have no use for that.'

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1 "And then he says, 'Well, I will  
2 kill you,' you know.

3 "He was going through this emotional  
4 thing, you know, act.

5 "And then he says, 'Well, if you are  
6 ready to die, or if you are dead, I want you to  
7 go down the creek and make love to my girls,' you  
8 know.

9 "So I said, 'No,' you know, 'I am not  
10 going to do nothing.'

11 "And then, you know, I kept doing what  
12 I was doing, and he stood there for a minute, and  
13 he turned around, and I guess he walked out or  
14 something.

15 "Q He wanted you to go down to the  
16 creek and make love to the girls there. Okay.

17 "A Yes.

18 "Q Now, he said he was the one that was  
19 doing all those killings?

20 "A Yes.

21 "Q Did you ask him what killings he  
22 meant or anything?

23 "A No, no. I, you know --

24 "Q Were you a little afraid of him?

25 "A Well, I wasn't afraid of him, you  
26 know, but if the man means what he talks about,

1 "you know.

2 "Q Yes.

3 "A I don't want to find out and put  
4 myself in a spot.

5 "Q Sure. Sure."

6 MR. STEUBER: At this point, Deputy Ward from Inyo  
7 County Sheriff's Office came to the door and entered, and  
8 that is why I introduced myself to Deputy Ward.

9 THE COURT: That is the end of what you want?

10 MR. BUGLIOSI: Yes.

11 THE COURT: All right.

12 MR. KANAREK: Your Honor --

13 THE COURT: We are not doing anything except record-  
14 ing through the reporter now, Mr. Kanarek, so there is no  
15 reason to make any objection or anything else. Nothing is  
16 being offered.

17 MR. KANAREK: I understand.

18 THE COURT: So let's not clutter up the record with  
19 any speeches.

20 MR. KANAREK: No. I am just making a point. I  
21 hope it is helpful. I don't know. I certainly intend it  
22 to be.

23 I recall in the Huey Newton case, where  
24 Charles Geary was the lawyer, I remember in that case,  
25 one word in a tape recording played back to a jury,  
26 I think it had something to do with "Yes" or "No," or

1 something like that, that had a critical effect on the  
2 trial, as I recall reading it in the paper, and your Honor  
3 probably does too, and the jury -- there was a question as  
4 to what this one word meant, and it had a very critical  
5 effect, and the jury came back and wanted it.

6 THE COURT: Get to the point.

7 MR. KANAREK: What I am getting at, I think this  
8 tape should be in custodia legis.

9 MR. FITZGERALD: Oh, no.

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MR. KANAREK: Just a minute.

Mr. Fitzgerald can object, but I would like to be allowed to finish.

What I am saying is this: I don't know, and I would say, especially after Mr. Bugliosi's statements about the reporters being only human, I could not hear all the words in that tape.

I am sure that your Honor will agree that there are spots there where your Honor would not be able to say he heard the words, the English, fully enunciated.

I say there is a problem there. I am not going to stipulate to this record being a true reproduction of all the words that were uttered.

MR. FITZGERALD: This is just an incredible waste of time.

Could we get on, your Honor?

THE COURT: We are going on.

MR. FITZGERALD: There is nothing improper here. Tape recordings have been played before.

THE COURT: That will be all, Mr. Kanarek. You have made your position clear a number of times.

MR. HUGHES: I want to make one point.

THE COURT: If you mention Miss Van Houten again, Mr. Hughes, I am going to be a little upset.

MR. HUGHES: I want to make the point that on this tape recording, purportedly of Juan Flynn, he has decidedly

1 less of an accent than Mr. Flynn had on the witness stand  
2 today, in my estimation.

3 THE COURT: That will be enough.

4 You can stop right there, Mr. Reporter, because  
5 we are going on to a new subject now.

6 MR. KANAREK: May I just have a ruling, your Honor?

7 THE COURT: A ruling on what?

8 MR. KANAREK: That the Court keep custody of this  
9 tape?

10 THE COURT: The motion is denied.

11 MR. KANAREK: Very well. I was just making the  
12 motion.

13 THE COURT: You make many motions, Mr. Kanarek,  
14 whether they make sense or not.

15 MR. BUGLIOSI: I hate to waste time, but I am  
16 wondering now if you did get the crucial part there,  
17 Mr. Reporter, about his saying he is the one that is  
18 doing all those killings?

19 Could you look at your transcript?

20 MR. KANAREK: Mr. Bugliosi is interrogating the  
21 reporter now.

22 MR. BUGLIOSI: This is informal.

23 THE COURT: He took down what was played. I assume  
24 he heard it or he wouldn't take it down.

25 All right. Then, as to this witness, Officer  
26 Steuber, when do you want him to resume?

1 MR. BUGLIOSI: Monday morning.

2 MR. STEUBER: Your Honor, I am under subpoena  
3 for a court in Anaheim on a prelim there, with a number  
4 of witnesses. I have the subpoena.

5 THE COURT: You are in this court now.

6 MR. STEUBER: Oh, boy. They are hurting. There  
7 are about 20 people.

8 THE COURT: So are we.

9 MR. STEUBER: Mr. Bugliosi, is there any way that  
10 my being here could be delayed or you could put on another  
11 witness?

12 MR. BUGLIOSI: I would like to put you on this  
13 afternoon, Dave, and I would ask the court again to  
14 permit him to play this tape recording this afternoon.

15 The Court has heard the recording. It is  
16 Mr. Flynn's precise testimony on the witness stand.  
17 It is classic textbook rehabilitation under Section 791.

18 Irrespective of what else is on the tape,  
19 that part is admissible. No matter what else is on the  
20 tape.

21 So, we could wait for five years, and there  
22 could be all types of other things, but the particular  
23 prior consistent statement would be admissible.

24 THE COURT: Well, there is a question in my mind  
25 as to whether or not because of the limitations of this  
26 particular recording machine, whether all of the jurors

and alternates will be able to hear it when it is played.

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1 Now, one other suggestion which you gentlemen  
2 can think about. We can have copies made of the transcript  
3 taken down by Mr. Mehlman, our reporter, and a copy of the  
4 transcript could be given to each of the jurors --

5 MR. BUGLIOSI: Yes, I was going to suggest that.

6 THE COURT: -- during the course of the playing of  
7 the tape.

8 MR. BUGLIOSI: In fact, they could keep that.

9 MR. SHINN: That would be prejudicial.

10 MR. BUGLIOSI: They could keep the written transcript  
11 under People vs. --

12 THE COURT: The transcript would be taken away from  
13 them after the playing of the tape recorder.

14 MR. SHINN: You mean after they --

15 THE COURT: For use only to assist them in hearing  
16 the recording while it is being played. It would then be  
17 taken away from them.

18 MR. BUGLIOSI: People vs. Sears and Ketchel, your  
19 Honor, 59 Cal. 2d 503. The Court permitted the written  
20 transcript of the tape recording to be marked as an  
21 exhibit --

22 THE COURT: I've already done this.

23 MR. BUGLIOSI: -- introduced into evidence --

24 THE COURT: It was done in the Jerry Weber case, for  
25 example.

26 MR. BUGLIOSI: Right.



1 THE COURT: Extensive use of the transcript.

2 MR. BUGLIOSI: Taken into the jury room during  
3 deliberations.

4 THE COURT: We didn't permit them to take it into the  
5 jury room.

6 MR. BUGLIOSI: I am just saying that the Supreme Court  
7 of California does permit the jury to have these tran-  
8 scripts back in the jury room.

9 THE COURT: I don't think it's necessary. They have  
10 to rely on their memory just as they have to rely on their  
11 memory of any conversations. The transcript isn't for the  
12 purpose of reenforcing at some future date their memory.  
13 It's simply for the purpose of helping them listen to a  
14 tape which is not as clear as the conversation of a witness  
15 from the witness stand. That's all.

16 MR. KANAREK: Well, your Honor, I would object to  
17 that. I would request that they listen to just the tape.

18 Now, it's my position that there are words, I'm  
19 sure, that --

20 THE COURT: Well, the words will be taken down -- have  
21 been taken down.

22 Now, if the testimony is received, or if the  
23 tape is played to the jury, then any party will always have  
24 the right to refer to the transcript and the record of that  
25 recording.

26 MR. KANAREK: Well, I would --

1 THE COURT: So you are not going to argue, Mr. Kanarek,  
2 that he didn't say what he said.

3 MR. KANAREK: Well, you see --

4 THE COURT: You can argue the meaning.

5 MR. KANAREK: I understand, your Honor. But what I'm  
6 saying is I believe that a motion to correct the transcript  
7 is conceivably in order. I haven't seen the transcript,  
8 of course, yet.

9 THE COURT: Well, we won't do it, then. I'm not  
10 surprised, but we won't do it.

11 MR. MUSICH: Your Honor, I think the Court would have  
12 to play this through the speaker.

13 MR. BUGLIOSI: This holds that we can actually produce  
14 the written transcript.

15 MR. KANAREK: What I mean is, your Honor, I think  
16 there are some infirmities in that tape recording that should  
17 allow us to have an independent word-for-word --

18 THE COURT: Well, you will have an opportunity to  
19 argue that at the appropriate time, Mr. Kanarek.

20 MR. BUGLIOSI: The Court does not desire that this  
21 be played this afternoon; is that correct, your Honor?

22 THE COURT: I can't see any possible ground for  
23 excluding it. I think we have wasted enough time talking  
24 about it. I see no reason why it should not be played at  
25 this time. So I'm going to do it.

26 MR. FITZGERALD: Can it come in subject to a motion to

1 strike?

2 THE COURT: Yes.

3 MR. FITZGERALD: Pending any subsequent relevant  
4 and germane evidence or argument we can present to the Court  
5 on Monday.

6 THE COURT: All right. I'll let it come in subject  
7 to a motion to strike and it will not be necessary for any  
8 of you gentlemen to renew these motions and objections in  
9 open court. They will all be deemed incorporated into the  
10 proceedings in front of the jury as to this taped  
11 conversation. So it will expedite the procedure.

12 MR. SHINN: In other words --

13 MR. KANAREK: Well, then -- very well, your Honor.  
14 Very well.

15 THE WITNESS STEUBER: Your Honor, may I set the tape  
16 back to the beginning to this conversation regarding to  
17 "What do you know about the Tate --"?

18 THE COURT: Yes.

19 I really don't think the jury is going to be able  
20 to hear all of this the one time. I don't think it's loud  
21 enough.

22 Is that the full volume?

23 WITNESS STEUBER: The batteries are weak in the set.  
24 It sounds to me as though the batteries are weak. I think  
25 with fresh batteries it's somewhat clearer than this. How-  
26 ever. I'm not an electronic or tape recorder expert.

1 THE CLERK: Your Honor, we could put the movable  
2 mike -- it might amplify it a bit.

3 THE COURT: Well, we can try it.

4 MR. KANAREK: Then -- very well, your Honor. All of  
5 my utterances are deemed --

6 THE COURT: Do you gentlemen want a recess before we  
7 resume?

8 MR. KANAREK: May we, your Honor?

9 MR. HUGHES: May we, your Honor?

10 THE COURT: Ten minutes.

11 MR. KANAREK: Thank you, your Honor.

12 (Whereupon, the proceedings were resumed  
13 before the jury in open court.)  
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1 THE COURT: The record will show counsel and the  
2 jurors are present.

3 Mr. Kanarek, has Mr. Manson indicated his  
4 willingness to come back into court and to conduct himself  
5 in the proper manner?

6 MR. KANAREK: Well, your Honor, I haven't spoken with  
7 him since we have been in chambers, your Honor.

8 THE COURT: Well, whenever that is the case, let the  
9 Court know, and he will be brought back immediately.

10 The same is true with each of the other  
11 defendants.

12 MR. KANAREK: Yes, your Honor.

13 May I enunciate an objection -- I don't know if  
14 I have -- on materiality and relevancy as well as the other  
15 points that we have advocated to the Court in connection  
16 with this witness' testimony and matters occurring while  
17 this witness is on the stand, your Honor.

18 May I have that?

19 THE COURT: You are asking for a continuing objection?

20 MR. KANAREK: Yes, your Honor.

21 THE COURT: Very well.

22 MR. KANAREK: Thank you, your Honor.

23 THE COURT: You may proceed, Mr. Bugliosi.  
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DAVID STEUBER,

the witness on the stand at the time of the noon recess,  
resumed the stand and testified further as follows:

DIRECT EXAMINATION (RESUMED)

BY MR. BUGLIOSI:

Q Just going back a little bit, Mr. Steuber,  
this conversation, you say, was on December 19, 1969, in  
Shoshone, California?

A That is correct.

Q Between yourself and one Juan Flynn?

A That is correct.

Q And the conversation was tape recorded?

A That is correct.

Q You say there was a portion in the tape-  
recorded conversation that pertained to a knife incident  
between Mr. Flynn and Mr. Manson; is that correct?

A That is correct.

Q And you have the tape recorder and the tape with  
you in court here today?

A That is correct.

Q And you have already played the tape?

A Yes, I have.

Q And you find it to be an accurate reproduction  
of your conversation?

A It is.

Q And nothing has been added or deleted?

1 A No, sir.  
2 Q And you recognize your voice on the tape?  
3 A Yes, I do.  
4 Q You recognize Mr. Flynn's voice on the tape?  
5 A I do.  
6 Q All right, sir. Would you please play the  
7 particular portion of the tape pertaining to the knife  
8 incident. Play that portion for the Judge and the jury.  
9 You might increase the volume on the recorder  
10 as high as you can.

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1 (Whereupon, the tape recording was played as  
2 follows:)

3 "VOICE: They mentioned it a couple of  
4 times (unintelligible.)

5 "VOICE: All right. Now, did you ever hear  
6 him say anything about the Tate killing or anything  
7 like that?

8 "VOICE: Well, sort of, you know.

9 "He never mentioned anything to me  
10 about it, you see, but I know at one time I came  
11 in the kitchen, you know. I was doing some heavy  
12 work outside, and after it was all done, you  
13 know, they were sitting down on the porch, just  
14 watching. There was a whole bunch of them, you  
15 know. And after I got through, I went in the  
16 kitchen and I fixed something and I sat down.  
17 And there was some more girls in there, you know.

18 "So he came in and he went like that,  
19 you know.

20 "So everybody ran outside, you know,  
21 and placed themselves outside.

22 "Then he was looking at me real  
23 funny. Then I started to get back down to where  
24 I was eating.

25 "And then he grabbed me by the hair  
26 like that, and he put a knife by my throat.



1 "He said, 'You son-of-a-bitch, I am going  
2 to kill you.'

3 "I said, 'Well, I can't do nothing about  
4 that,' you know.

5 "And then he says, 'Don't you know I am  
6 the one who is doing all the killings?' you know.

7 "VOICE: 'Don't you know I am the one that  
8 is doing all the killings'? Now, when would this  
9 have been, about, Juan?

10 "VOICE: Well, I can't recall too well  
11 whether it was before or after the raid, you know.

12 "He says, 'Are you going to come  
13 with me to the desert?'

14 "I says, 'Well, I'm not planning to  
15 do it. I'm right here. Here is where I am doing  
16 my work.'

17 "He says, 'I'm going to kill you,  
18 you son-of-a-bitch.'

19 "And then he turned around and he  
20 gave me the knife, you know, and I said, 'Well, I  
21 don't have no use for that.'

22 "Then he says, 'Well, I'll kill  
23 you,' you know.

24 "He was going through this emotional  
25 thing, you know, act.

26 "And then he says, 'Well, if you

1 "are ready to die, or if you are dead, I want  
2 you to go down the creek and make love to my  
3 girls,' you know.

4 "So I said, 'No,' you know, 'I'm not going  
5 to do nothing.'

6 "And then, you know, I kept doing what  
7 I was doing, and he stood there for a minute,  
8 and he turned around, and I guess he walked out  
9 or something.

10 "VOICE: He wanted you to go down there to  
11 the creek and make love to the girls there.  
12 Okay.

13 "VOICE: Yes.

14 "VOICE: Now, he said he was the one that  
15 was doing all those killings?

16 "VOICE: Yes.

17 "VOICE: Did you ask him what killings  
18 he meant or anything?

19 "VOICE: No, no. I -- you know.

20 "VOICE: Were you a little afraid of  
21 him?

22 "VOICE: Well, I wasn't afraid of him,  
23 you know, but if the man means what he talks  
24 about, you know, I don't want to find out and  
25 put myself in a spot."  
26

14c-1

1 BY MR. BUGLIOSI:

2 Q Is that it, sir?

3 A That's correct.

4 Q The particular portion about the knife incident?

5 A That's correct.

6 Q And that was yourself talking to Mr. Flynn?

7 A Yes, sir.

8 Q And this tape will be made available for the  
9 defense to listen to, in toto?

10 MR. KANAREK: Your Honor, I'll object to that question.  
11 I mean, that question --

12 MR. BUGLIOSI: I'll withdraw the question.

13 THE COURT: It will be, so there is no secret about  
14 it, Mr. Kanarek.

15 MR. KANAREK: Well, your Honor, in the context of  
16 these proceedings I don't think that's a proper question.

17 THE COURT: Anything further?

18 MR. BUGLIOSI: I'll withdraw the question.

19 Q You just heard the conversation now, yourself;  
20 is that right, sir?

21 A That's correct.

22 Q And you recall that the conversation you heard  
23 on tape, was that the actual conversation that took place  
24 at Shoshone, California, on December 19, 1969, between  
25 you and Mr. Juan Flynn?

26 A That's correct.

14c-2

1 MR. BUGLIOSI: Thank you. No further questions.

2 MR. FITZGERALD: No questions.

3 THE COURT: Mr. Shinn?

4 MR. SHINN: Yes, your Honor, I have a few questions.

5  
6 CROSS-EXAMINATION

7 BY MR. SHINN:

8 Q Officer, when you talked to Mr. Flynn, was he  
9 in custody?

10 A No, he wasn't.

11 Q How did you happen to meet him?

12 A I had interviewed other witnesses in this case  
13 I was working and they had brought Mr. Flynn's name into the  
14 case as a potential witness.

15 Q And how did you contact Mr. Flynn?

16 A I went to Shoshone with the express purpose of  
17 interviewing Crockett, Postin and Watkins, and Mr. Flynn was  
18 there working in the cafe at the time and was also available.

19 MR. SHINN: I have nothing further, your Honor.

20 THE COURT: Mr. Kanarek.

21 MR. KANAREK: I have no questions, your Honor.

22 MR. HUGHES: No questions, your Honor.

23 MR. BUGLIOSI: Just one more question.

14c-3

## REDIRECT EXAMINATION

1  
2 BY MR. BUGLIOSI:

3 Q You said you had been interviewing witnesses  
4 in this case. You are not referring to the Tate-La Bianca  
5 murder case, are you?

6 MR. KANAREK: I'll object to that, your Honor, as  
7 calling for a conclusion on the part of this witness.  
8 Because at that time -- if we may approach the bench, your  
9 Honor? I don't think --

10 THE COURT: Overruled. You may answer.

11 THE WITNESS: I was not investigating the Tate-  
12 La Bianca. It was another situation pertaining only to  
13 Inyo County.

14 BY MR. BUGLIOSI:

15 Q All right. Had nothing to do with these murders.

16 A No.

17 MR. KANAREK: Calling for a conclusion, your Honor.

18 THE COURT: Overruled.

19 MR. BUGLIOSI: Thank you. No further questions.

20 MR. KANAREK: Officer, at the time -- may I inquire,  
21 your Honor?

22 THE COURT: Mr. Fitzgerald, do you have any questions?

23 MR. FITZGERALD: No, your Honor.

24 THE COURT: Mr. Shinn?

25 MR. SHINN: No, your Honor.

26 THE COURT: You may.

14c-4

## RECROSS-EXAMINATION

1  
2 BY MR. KANAREK:

3 Q On December 19th, 1969, Officer, is it a fair  
4 statement that Mr. Manson was in custody?

5 MR. BUGLIOSI: It's irrelevant.

6 MR. KANAREK: Well, your Honor --

7 MR. BUGLIOSI: Also calls for a conclusion.

8 MR. KANAREK: Counsel raised this issue about this  
9 case, is what he's asking, your Honor, and I'm questioning  
10 in connection with the issue that Mr. Bugliosi raised.

11 THE COURT: Objection is sustained.

12 BY MR. KANAREK:

13 Q Officer, on December 19, 1969, you purported  
14 to interrogate Mr. Flynn about the Tate-La Bianca murders;  
15 is that right?

16 A And other matters on the case I was working on,  
17 sir.

18 Q Well, Officer, if I may -- is it a fair statement,  
19 Officer, that you spoke to Mr. Flynn concerning the Tate-  
20 La Bianca murders?

21 A That is correct.

22 Q So-called, right?

23 A Right.

24 Q And no matter what else you may have  
25 interrogated him on, you were interrogating concerning the  
26 very matters that we're in this courtroom for; is that

14c-5

1 correct?

2 A That is also correct, sir.

3 Q And so you were a law enforcement officer on  
4 the California Highway Patrol?

5 A That's correct.

6 Q What was your rank, Officer?

7 A A traffic officer.

8 Q And you were doing this at the instigation of  
9 the District Attorney of Inyo County?

10 A This is correct.

11 Q Mr. Fowles?

12 A Mr. Frank Fowles.

13 Q How do you spell that, sir?

14 A F-o-w-l-e-s.

15 Q And was your state of mind, Officer, such that  
16 you were attempting to get evidence in connection with the  
17 very case that we're here before Judge Older on?

18 A My primary concern was the case pending in Inyo  
19 Count, sir. This was of a secondary nature.

20 Q Directing your attention to December of 1969,  
21 as a matter of fact, this case was more important, was more  
22 important to law enforcement officers, than the very matters  
23 that you are alluding to; is that correct?

24 MR. BUGLIOSI: It's irrelevant, your Honor, and also  
25 conclusionary.

26 THE COURT: Sustained.

14c-6

1 BY MR. KANAREK:

2 Q Now, is it a fair statement, Officer, that you  
3 knew when you were interrogating Mr. Flynn that Mr. Manson  
4 was being accused of the very matters that we're in this  
5 courtroom for?

6 MR. BUGLIOSI: It's irrelevant.

7 MR. KANAREK: This is the tape.

8 MR. BUGLIOSI: It's irrelevant, your Honor.

9 MR. KANAREK: It's most relevant because this is --  
10 Mr. Bugliosi has brought this tape to the courtroom. Other-  
11 wise, your Honor, why are we having this tape?

12 MR. BUGLIOSI: To hear the conversation.

13 MR. FITZGERALD: The jury has been instructed on  
14 the limited purposes for which this tape has been received.

15 THE COURT: That's right. And the jury is again  
16 reminded of that limited purpose which I stated to you this  
17 morning, which is simply on the question of whether or not  
18 Mr. Flynn made these statements to this officer. And  
19 the testimony as contained on the tape recording is not  
20 received for any other purpose. It should not be considered  
21 as evidence of the truth of the matters contained in that  
22 conversation.

23 The objection is sustained.

24 BY MR. KANAREK:

25 Q And so, Officer, it is a fair statement that  
26 you knew of this very case that we're trying before Judge



14c-7

1 Older when you conducted this interrogation?

2 MR. BUGLIOSI: Irrelevant.

3 THE COURT: Sustained.

4 MR. KANAREK: What?

5 THE COURT: Sustained.

6 MR. KANAREK: Very well, your Honor.

7 I want to make a motion to the Court in connec-  
8 tion with this and I wondered, I don't want to do it in the  
9 presence of the jury unless your Honor wishes me to.

10 THE COURT: No, I do not wish you to.

11 MR. KANAREK: Very well. May I approach the bench,  
12 then, your Honor?

13 THE COURT: Have you finished your examination?

14 MR. KANAREK: Yes. I finished except for a motion  
15 I'd like to make to the Court perhaps while this witness  
16 remains.

17 THE COURT: All right. Do you have any questions,  
18 Mr. Hughes?

19 MR. HUGHES: No questions, your Honor.

20 THE COURT: Do you have any further questions, Mr.  
21 Bugliosi?

22 MR. BUGLIOSI: No, your Honor. But I was wondering  
23 if the Court could inquire of the jury if they all heard the  
24 tape, if there is any one of them that would like to hear it  
25 again if they didn't hear it the first time?

26 MR. KANAREK: Your Honor, if I may, I would object to

1 that. This evidence is no different than any other  
2 evidence. I think the jurors would raise their hands if  
3 they wished to hear it, like any other evidence, your Honor.

4 THE COURT: I assume so. I hope none of you will  
5 sit there and not let us know if you can't hear anything  
6 because we will have it replayed or restated, if that is  
7 the case. All you have to do is raise your hand at any  
8 time if you do not hear anything or you do not understand  
9 anything that has been said.

10 All right. You may approach the bench, Mr.  
11 Kanarek.

12 MR. KANAREK: Thank you, your Honor.  
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1 (The following discussion was had at the bench  
2 outside the hearing of the jury:)

3 MR. KANAREK: Your Honor, in order --

4 THE COURT: Make your motion.

5 MR. KANAREK: Yes, your Honor. My motion is that your  
6 Honor tell the jury directly that this evidence is not to be  
7 used against Mr. Manson for any purposes; that it only goes  
8 as to the state of mind of Juan Flynn. I think that will --  
9 that is the motion that I make.

10 THE COURT: The motion is denied.

11 (Whereupon, the proceedings were resumed before  
12 the jury in open court:)

13 THE COURT: You may step down, Officer.

14 THE WITNESS: Your Honor, may I be excused from  
15 this courtroom?

16 THE COURT: Yes, you may.

17 MR. KANAREK: Subject, your Honor, to -- in case --  
18 may I just inquire whether the officer is going on vacation  
19 or something like that in the next foreseeable future?

20 THE COURT: Very well.

21 Q BY MR. KANAREK: Officer, are you -- if we need  
22 you, are you available in the next foreseeable future? Are  
23 you going on vacation or anything like that?

24 A There's two sides to this question. Number one,  
25 I'm subpoenaed to another court for Monday, and perhaps  
26 Monday and Tuesday. And then I, hopefully, will be going

1 on a vacation that I missed last year. I'm planning on  
2 hunting in Idaho starting the 15th of this month through  
3 November 1st. But I would make myself available, break my  
4 vacation, if you will just let me know.

5 MR. KANAREK: Thank you, Officer.

6 THE WITNESS: Your Honor, am I excused?

7 THE COURT: Yes, you are excused.

8 MR. BUGLIOSI: Your Honor, may we talk to the  
9 witness, the attorneys, just for a short period of time?

10 MR. FITZGERALD: Yes, may we have a moment?

11 (Conversation was had off the record out of the  
12 hearing of the jury.)

13 MR. BUGLIOSI: Your Honor, the People's next witness  
14 is Virginia Graham. I believe there will be some legal  
15 discussion back in chambers on it.

16 THE COURT: As soon as counsel have finished talking  
17 to Officer Steuber,

18 Will counsel approach the bench, please.

19 (The following discussion was had at the bench  
20 outside the hearing of the jury:)

21 THE COURT: I take it from what you have said a  
22 moment ago, Mr. Bugliosi, that you now want to proceed with  
23 Roni Howard and Virginia Graham.

24 MR. BUGLIOSI: Right. And they are both here, as I  
25 understand it.

26 THE COURT: All right. Now, previously we discussed

1 I think it was mentioned briefly this morning, about a  
2 preliminary proceeding in chambers out of the presence of  
3 the jury where these witnesses would testify to the alleged  
4 conversations that they had with Susan Atkins at Sybil  
5 Brand Institute and which conversations would, if true,  
6 constitute confessions and admissions on the part of Susan  
7 Atkins and which might implicate one or more of the co-  
8 defendants.

9 Counsel at that time indicated an agreement to  
10 such a procedure. Is that still agreeable for all of you?

11 MR. FITZGERALD: It is agreeable.

12 MR. SHINN: Your Honor, before we go into that, I  
13 think we should take up the question of whether or not it is  
14 admissible.

15 THE COURT: I forgot to say one thing. The purpose of  
16 the proceeding in chambers is to then, from their testimony,  
17 determine whether any or all of it is admissible and  
18 whether any or all of it raises any Bruton-Aranda problems.  
19 And if so, whether or not effective deletion can be made.

20 MR. FITZGERALD: It is an agreeable procedure and a  
21 preferable one and I would request that we do it in that  
22 fashion.

23 MR. SHINN: In open court?

1 MR. FITZGERALD: Oh, Mr. Shinn is referring to his  
2 motion to suppress statements on other grounds.

3 THE COURT: Yes, now, you do have pending a motion to  
4 suppress.

5 MR. SHINN: Yes.

6 THE COURT: However, I think that the proper procedure  
7 is to first determine whether or not the statements are  
8 admissible, apart from your motion, and whether or not  
9 effective deletion can be made, if it's required. Because  
10 it may well be that your motion will become moot.

11 Then if it's determined by the Court that all  
12 or a portion of the statements are admissible, then we can  
13 hear your motion to suppress.

14 Is that agreeable?

15 MR. SHINN: Yes, that's satisfactory, your Honor.

16 MR. KANAREK: Your Honor, it's not on this point, it's  
17 on a slightly different -- or a different point. I wonder  
18 if the ground rules are changed in view of the fact that  
19 your Honor, over objection, allowed the tape recording and  
20 the officer to testify, Officer Steuber. May we not have to,  
21 during this weekend, use the time, because I have other  
22 things to do, in connection with the 12 hours of tape?

23 THE COURT: Mr. Kanarek, I don't care if you ever  
24 listen to the tape recordings. It doesn't make the  
25 slightest bit of difference to me.

26 MR. KANAREK: Right. Your Honor, may I say this:

1           Your Honor indicated in chambers that we were  
2 to do it and I was prepared to sacrifice some personal --

3           THE COURT: That was in a different context. That  
4 was if the testimony of the officer was going to be  
5 deferred until Monday.

6           MR. KANAREK: Right.

7           THE COURT: I didn't want to wait until Monday and  
8 have you tell me you hadn't listened to the tapes, since  
9 that was going to be the reason for the continuance.

10          MR. KANAREK: Right. Now --

11          THE COURT: Since he's already testified, it doesn't  
12 make any difference to the Court whether you ever listen  
13 to the tapes.

14          MR. KANAREK: Right. I was just going to say, there  
15 are some matters, personal and otherwise --

16          MR. BUGLIOSI: Let's not take up the Court's time  
17 on that. That's between you and me.

18          MR. KANAREK: I have just one further request.

19                The officer turned the tapes over to  
20 Mr. Bugliosi. Will your Honor at this time make the order  
21 that those tapes be made available to us?

22          THE COURT: Well --

23          MR. KANAREK: They are obviously tapes which --

24          MR. FITZGERALD: He's agreed to make them available.

25          MR. BUGLIOSI: We will furnish them.

26          THE COURT: This is something you can work out

1 between yourselves.

2 MR. BUGLIOSI: Your Honor, now, Virginia Graham is  
3 here. Do you want me to bring her back into chambers?

4 THE COURT: Yes. We will go back into chambers.

5 We are going to excuse the jury, since we won't  
6 have any use for them for the balance of the day.

7 MR. KANAREK: I have one request, your Honor.

8 MR. FITZGERALD: Let's answer the Judge's question.

9 No, we are not going to have any need for the  
10 jury this afternoon. Are we, gentlemen?

11 MR. BUGLIOSI: It's twenty to 4:00 and we've got a  
12 lot of issues to discuss.

13 MR. KANAREK: May I just have Mr. Bugliosi tell us  
14 how many tapes the officer turned over.

15 MR. BUGLIOSI: I believe five, but I think only two  
16 pertained to Juan Flynn.

17 MR. KANAREK: But all five are available?

18 MR. BUGLIOSI: All five are available.

19 MR. HUGHES: I want it clear that my earlier position  
20 remains.

21 THE COURT: (To the jury:) Ladies and gentlemen,  
22 we are going to adjourn at this time so far as the jury is  
23 concerned and the Court and counsel have some matters to  
24 take up in chambers.

25 Again, I remind you not to converse with anyone  
26 on any subject relating to the case, nor to form or express



1 any opinion regarding the case until it is finally submitted  
2 to you,

3 The Court will adjourn until 9:45 Monday  
4 morning.

5 (Whereupon, the jury was excused at the hour of  
6 3:45 p.m.)

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

MR. KAY: Do you want the witnesses in?

MR. FITZGERALD: One at a time. Roni Howard first.

THE COURT: That was my understanding of what Mr.  
Bugliosi wanted to do.

MR. FITZGERALD: We discussed this with him, and he  
is going to bring in Roni Howard first, and Virginia Graham  
second.

As a matter of fact, he told her she could be  
excused until Monday morning.

MR. KANAREK: Your Honor --

THE COURT: Let's wait until Mr. Bugliosi comes in,  
Mr. Kanarek, so he can hear whatever it is you have to say.

(Roni Howard enters the Court's chambers.)

THE COURT: The record will show that all counsel  
are present.

This is Roni Howard?

MR. BUGLIOSI: Yes, that is Roni Howard.

This is Judge Older, Roni.

THE COURT: Is it Miss or Mrs.?

RONI HOWARD: Miss.

MR. BUGLIOSI: I was going to bring Virginia Graham  
back but --

THE COURT: Perhaps you should state, Mr. Bugliosi,  
what you plan to do.

15-2

1 Let me change that. I will state what my  
2 understanding is, and you gentlemen can comment if you  
3 don't agree.

4 I had suggested the procedure in connection  
5 with the possible Bruton-Aranda problems involving the  
6 testimony of this witness that rather than go over various,  
7 perhaps, somewhat disjointed written statements of her  
8 testimony, that it would be simpler and more effective to  
9 bring her into chambers and have her testify just as she  
10 would testify but for the problems in open court, and then  
11 with the transcript in hand, the Court and counsel could,  
12 Monday, or some other day, determine what the problems  
13 are, and if there are Bruton-Aranda problems, if effective  
14 deletions can be made.

15 I do not anticipate that there will be any-  
16 thing in this proceeding other than the bare questioning  
17 of the witness by Mr. Bugliosi.

18 There is no need for any cross examination  
19 since, if her testimony is admissible in whole or in part,  
20 it will be testified to by her in open court in front of  
21 the jury, and the opportunity for cross-examination will  
22 exist.

23 Does anyone disagree with that?

24 MR. BUGLIOSI: The only thing that I am a little  
25 concerned about, the defense have been given her statements  
26 with the Los Angeles Police Department and her conversation

15-3

1 with me. They have that.

2 THE COURT: Yes?

3 MR. BUGLIOSI: Now she is going to give it o<sub>n</sub>ce again.

4 This is just something the defense can use as  
5 impeachment. There has to be inconsistencies in words and  
6 clauses. It is just another opportunity, basically, for  
7 the defense to impeach her once she takes the stand.

8 They have the statement from the LAPD and  
9 my prior conversation with her, and now this conversation  
10 back in chambers.

11 I am wondering, your Honor, whether the defense  
12 is entitled to that?

13 They are entitled to the two statements that  
14 have already been given, one to LAPD, and one to me.  
15 They have been given that.

16 Now, in effect, this is a third statement,  
17 and I am just wondering whether we could get around it some  
18 other way by my relating what I think she will testify to,  
19 and maybe she can say, "Substantially that is what I am  
20 going to testify to."

21 If there is any significant departure, then she  
22 can advise. But otherwise, it will just be a third statement.

15a fls.

15a-1

1 MR. MUSICH: It would be a problem if the defense  
2 were allowed to impeach, under the circumstances, with  
3 times, place and persons present. It might have some  
4 detrimental effect for one side or the other with the jury,  
5 depending on what the type or manner or area of impeachment  
6 was.

7 MR. BUGLIOSI: I would say this is kind of unusual  
8 for the defense to have another shot at a prior inconsistent  
9 statement.

10 I am not implying that any witness that would  
11 be called to the stand would deliberately state a falsehood,  
12 but in human nature, people make mistakes in relating an  
13 incident. I mean, every time they relate it, it comes out  
14 slightly different. We are all human beings. If she tells  
15 the story ten times, basically, you will have ten slightly  
16 different versions. The defense can then avail themselves  
17 of every one of the versions for impeachment purposes.

18 So, I am just a little concerned about that  
19 aspect of it.

20 MR. SHINN: Your Honor, may I make a suggestion?

21 THE COURT: The difficulty with what you have handed  
22 me in the past, Mr. Bugliosi, let's say, in respect to this  
23 witness, Roni Howard, I have here a typed statement which  
24 says "Statement of Roni Howard," but it really isn't a  
25 statement of Roni Howard, it is somebody else's statement of  
26 what they think she is going to say or what they heard her

1 say.

2 That is the problem.

3 MR. BUGLIOSI: It shouldn't say "Statement" on there,  
4 your Honor. It is not a statement of Roni Howard.

5 THE COURT: That is exactly the point.

6 MR. BUGLIOSI: What this is right here, your Honor,  
7 is what I expect her testimony to be, based on her conversa-  
8 tion with the LAPD, which the Court has right here, I believe--  
9 yes, right there -- also based on the statements she made to  
10 me.

11 MR. SHINN: Your Honor, may the witness be excused while  
12 we discuss this?

13 THE COURT: That is not necessary.

14 MR. SHINN: It is not necessary? Very well, your  
15 Honor.

16 MR. BUGLIOSI: Also, based on a conversation that she  
17 had with me, which I think I gave the Court a copy of.

18 Based on those two things, I reduced those  
19 conversations to tentative questions and answers.

20 Basically, your Honor, you have here the expected  
21 answers that she is going to give to my questions.

22 The two statements are the LAPD statement and  
23 the conversation she had with me. That is, with the LAPD,  
24 and my statement here. This one right here.

25 These lines that are crossed out. I always do  
26 that. I am converting my interviews into tentative questions

1 and answers, and after I go over a certain area and I am  
2 through with it, I cross it out.

3 Now, there is one issue that I think we can  
4 resolve right now, your Honor.

5 Mr. Shinn, apparently, has some evidence, or  
6 he is making an allegation that Roni Howard was an agent of  
7 the Los Angeles Police Department.

8 MR. SHINN: It is not an allegation. We have a right  
9 to go into that.

10 MR. BUGLIOSI: I am not questioning that.

11 Maybe we can handle it right here.

5b fls.

15-B-1

1 THE COURT: Let's not confuse the two.

2 Mr. Shinn does have a pending motion to suppress  
3 the testimony of this witness along with that of Virginia  
4 Graham. We have just covered that at the bench not 10  
5 minutes ago as to how we were going to handle it.

6 MR. BUGLIOSI: Right.

7 THE COURT: So I don't think we need to take it up at  
8 this time.

9 You will have an opportunity to go into that  
10 fully, Mr. Shinn.

11 MR. SHINN: Yes, your Honor. I understand that.

12 THE COURT: Now, are you saying that you don't want  
13 to proceed in this way, Mr. Bugliosi, or what?

14 MR. BUGLIOSI: It wasn't my idea to bring her back in  
15 chambers. The defense wanted to bring her back.

16 MR. SHINN: No. No, we didn't.

17 MR. FITZGERALD: No.

18 THE COURT: The suggestion was mine originally, and  
19 it seemed agreeable with everyone.

20 I went through and asked you again several times  
21 if that was agreeable, and the indication was in the  
22 affirmative.

23 MR. BUGLIOSI: Why don't I read into the record what  
24 I expect her testimony, essentially, will be. I would like  
25 to have it in my words, not her words. Then I can ask her:  
26 Miss Howard, is this essentially what you expect to testify



1 to?

2 If I have her using her words, the defense just  
3 has another statement for them to impeach her with.

4 I don't think we should be forced to give them  
5 a third crack at it.

6 THE COURT: I think you are making a lot out of nothing.

7 MR. BUGLIOSI: They have two.

8 MR. FITZGERALD: Actually, we have more than that.

9 MR. BUGLIOSI: You do?

10 MR. FITZGERALD: Yes.

11 We have statements that she made to her attorneys,  
12 and also we have been trying for a number of months to get  
13 letters that Susan Atkins allegedly wrote to her that are  
14 in the possession of Mr. Stovitz, that we know the contents  
15 of, but we have been unable to get copies.

16 MR. BUGLIOSI: I want to talk to her about the letters  
17 myself.

18 But here we have two statements, the LAPD  
19 statement and her statement to me, and I have no other  
20 knowledge of any statements she made.

21 That is the point that I am trying to make. Her  
22 exact articulation of this conversation I don't think is  
23 necessary at this point.

24 THE COURT: The point that I have tried to make to you,  
25 Mr. Bugliosi, on a dozen occasions is that I see no way  
26 that the Court is in a position to evaluate the Bruton-Aranda

1 problems and to know whether effective deletion can be made  
2 unless I see her testimony. Not your testimony, hers.

3 MR. BUGLIOSI: This is the statement she made right  
4 here.

5 THE COURT: That is part of it.

6 MR. BUGLIOSI: No, that isn't the statement she made.  
7 This one with the blue back, the statement that she made to  
8 the LAPD; and this one here is the statement that she made  
9 to me.

10 THE COURT: I can't read your notes, to begin with.

11 That doesn't tell me anything. It isn't  
12 testimony, it is notes. Unintelligible notes.

13 Now, I would suggest, for your own good as  
14 prosecutors in this case, that you make abundantly clear  
15 to the Court what this witness is going to testify to.

16 I don't care whether we follow this procedure  
17 or some other, but there is a very grave danger that there  
18 is going to be a serious problem here.

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1 MR. BUGLIOSI: That sheet right there is what I  
2 expect her to testify to. That sheet right there, your  
3 Honor.

4 THE COURT: This is not her testimony, as I pointed  
5 out and as you admitted several times. This is apparently  
6 something prepared by you.

7 MR. BUGLIOSI: I got this from those two documents.

8 THE COURT: I can't make it any clearer than I have,  
9 Mr. Bugliosi.

10 MR. SHINN: Your Honor, the Aranda rule doesn't  
11 permit the prosecutor to condense the original confession  
12 of the defendant, your Honor.

13 If Mr. Bugliosi can show me a case that permits  
14 it?

15 THE COURT: That is correct, if you are talking about  
16 what goes to the jury. We are not going to hand this  
17 condensed statement to the jury and say that is the testimony  
18 of Roni Howard. That is perfectly true.

19 MR. SHINN: Correct.

20 MR. BUGLIOSI: To save time, I have my tentative  
21 questions and answers, may I ask her the questions now?

22 THE COURT: You may.

23 THE CLERK: Shall I swear the witness?

24 THE COURT: Yes.

25 MR. BUGLIOSI: I don't think it is necessary.  
26 She is not testifying under oath right now.

1 MR. FITZGERALD: Unsworn isn't any good.

2 MR. BUGLIOSI: It is like the other two statements.  
3 They were not sworn.

4 THE COURT: With Bruton-Aranda situations, the Court  
5 is always looking at unsworn statements to determine where  
6 the deletions are going to be. The witness has not testified.

7 MR. FITZGERALD: But there is nothing to prevent her  
8 from getting on the witness stand and testifying to something  
9 entirely different.

10 THE COURT: Is there any reason why she shouldn't  
11 be sworn?

12 Swear the witness.

13 THE CLERK: Will you please stand one moment.

14 Would you raise your right hand.

15 Would you repeat after me?

16 I do solemnly swear --

17 MISS HOWARD: I do solemnly swear --

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

19 MISS HOWARD: -- that the testimony I may give --

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

21 MISS HOWARD: -- in the cause now pending --

22 THE CLERK: -- before this court --

23 MISS HOWARD: -- before this court --

24 THE CLERK: -- shall be the truth --

25 MISS HOWARD: -- shall be the truth --

26 THE CLERK: -- the whole truth --

MISS HOWARD: -- the whole truth --

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

2 MISS HOWARD: -- and nothing but the truth --

3 THE CLERK: -- so help me God.

4 MISS HOWARD: -- so help me God.

5 THE CLERK: Would you state your name.

6 MISS HOWARD: Roni Howard.

7 THE COURT: Keep your voice up, please, so everyone  
8 in the room can hear you.

9 MR. SHINN: May the record state, are you offering  
10 this as the proposed deleted form of the confession now?  
11 Is that right?

12 MR. BUGLIOSI: Yes.

13 Miss Howard --

14 THE COURT: No. No.

15 MR. SHINN: Proposed, I said, your Honor.

16 THE COURT: Let's make sure we are not talking about  
17 different things.

18 If it is going to have any value at all, this  
19 must be the complete statement of this witness as to the  
20 complete conversation that she had with Susan Atkins.

15d fls. 20

15-D

1 MR. BUGLIOSI: I am not prepared to do that. I am  
2 not even prepared to do that with her.

3 MR. FITZGERALD: That is the whole point.

4 THE COURT: How can I possibly pass on the Bruton-  
5 Aranda problems if I don't have the entire picture?

6 MR. BUGLIOSI: I am not even prepared for that because,  
7 from the very beginning, when I spoke to her I was aware of  
8 the Aranda problem, and I didn't concern myself with any-  
9 thing that she said that Susan Atkins told her about other  
10 people. It was worthless to me. I didn't concern myself  
11 with it because I knew it was valueless.

12 I only concerned myself with what she told me  
13 that Susan told her that she did.

14 MR. FITZGERALD: The whole point was that we were  
15 going to get together and we were going to determine what  
16 she knew, in toto, so we could determine what could be  
17 edited sufficiently within the realm of Bruton-Aranda.

18 As a matter of fact, we suggested earlier that  
19 the Judge conduct the questioning. The Judge suggested  
20 that he had to know what she was going to say in toto so  
21 that he could have something from which he could decide  
22 what the probabilities or possibilities of Aranda error  
23 creeping in could be.

24 MR. BUGLIOSI: What I would suggest is this: That  
25 I go over with her now what I expect her testimony to be on  
26 the stand.

1 Now, the defense has access to a statement  
2 that she gave the LAPD. If they find anything in that  
3 statement which they feel is favorable to their clients,  
4 then we can discuss that particular issue.

5 THE COURT: That doesn't do it, Mr. Bugliosi.

6 You don't seem to get the point.

7 MR. BUGLIOSI: There is her whole statement to the  
8 LAPD, that blue one. That is the whole statement she gave.  
9 That implicates other parties.

10 THE COURT: That isn't all her testimony. She talked  
11 to you.

12 MR. BUGLIOSI: There is only a little extra, which will  
13 come out right now.

14 As I say, from the very beginning, my only  
15 concern was --

16 THE COURT: The whole purpose of the proceeding,  
17 Mr. Bugliosi, and let's review it once again, in determining  
18 whether the admission or confession of a co-defendant comes  
19 within Bruton and Aranda, the Court has to review everything  
20 that the witness knows in the way of the conversations that  
21 were purportedly had with the declarant defendant, for the  
22 reason that no matter how you <sup>may</sup> think they are being edited,  
23 as Mattola, the opinion in People vs. Mattola, points out,  
24 the error may be made not on direct examination but on  
25 cross-examination or redirect examination or recross  
26 examination, and I have to look at the entire statement of

1 what this witness purportedly heard from Susan Atkins to  
2 determine whether there are any of those problems present  
3 and, if so, whether there can be effective deletions.

4 It isn't going to help me one bit if all you do  
5 is ask her your edited version of what she heard, because  
6 that isn't going to stop the co-defendants' counsel, all  
7 defense counsel, from going on, on cross-examination, and  
8 finding out what else she heard.

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1 MR. BUGLIOSI: I can say this, then. Every person  
2 in this room is just as capable of asking her what Susan  
3 Atkins told her, just as capable as I am. I am more capable  
4 than anyone in this room of asking her what I expect her  
5 testimony to be at this trial.

6 But if the Court wants the whole statement,  
7 anyone can ask her exactly what Susan Atkins told her.  
8 The Court could or anyone.

9 THE COURT: Then ask it. That is all.

10 MR. BUGLIOSI: When I spoke to her at the very beginning  
11 I told her: Don't concern yourself with anything that Susan  
12 Atkins said other people did. Just tell me what Susan  
13 Atkins said she did.

14 And this is all that I know. I wasn't even  
15 concerned with other people.

16 THE COURT: That doesn't solve the problem, unfortunately.

17 MR. BUGLIOSI: Do you want me to just ask her to relate  
18 the entire --

19 THE COURT: I want everything that the witness claims  
20 that Susan Atkins told her.

21 MR. BUGLIOSI: All right.

22 MR. FITZGERALD: The Judge has asked the question.  
23 Can she answer it?

24 MR. BUGLIOSI: I will nominate myself to ask.

25 MR. SHINN: Why can't she tell it in a natural  
26 way? I think the questions you are going to ask will be

1 leading.

2 THE COURT: What I would suggest you do is lay the  
3 foundation as to the, place, and persons present, and then  
4 just let her state everything that was said by Susan  
5 Atkins without any deletions whatever.

6 MR. BUGLIOSI: All right.

7 Have you ever been incarcerated at Sybil  
8 Brand Institute for Woman here in East Los Angeles?

9 MISS HOWARD: Yes.

10 MR. BUGLIOSI: During what period of time were you  
11 incarcerated?

12 MISS HOWARD: From September to about February.

13 MR. SHINN: I can't hear.

14 MISS HOWARD: I am sorry. I have a cold.

15 THE COURT: Turn the air conditioning down.

16 MISS HOWARD: From September, I think it was, until  
17 about February.

18 MR. BUGLIOSI: September of '69 to February of 1970?

19 MISS HOWARD: Yes.

20 MR. BUGLIOSI: What dormitory were you in over there?

21 MISS HOWARD: In the working dorm.

22 MR. BUGLIOSI: 8000?

23 MISS HOWARD: 8000.

24 MR. BUGLIOSI: Do you know the Defendant Susan Atkins?

25 MISS HOWARD: Yes.

26 MR. BUGLIOSI: Did you know her as Sadie Glutz?

1 MISS HOWARD: Yes.

2 MR. BUGLIOSI: Was she with you in dormitory 8000?

3 MISSHOWARD: Yes.

4 MR. BUGLIOSI: And that consisted of several beds  
5 there in the dormitory?

6 MISS HOWARD: Yes.

7 MR. BUGLIOSI: Where was her bed in relation to your  
8 bed?

9 MISS HOWARD: Next to mine. Right next to mine.

10 MR. BUGLIOSI: Did Miss Atkins, or did Sadie, ever  
11 say anything to you with respect to the fact that her bed  
12 was next to yours?

13 MISS HOWARD: Just that she felt we were put next to  
14 each other for a reason.

15 MR. BUGLIOSI: Did you ever have conversations with  
16 Susan Atkins which -- with respect to murders of any kind  
17 whatsoever?

18 MISS HOWARD: Yes.

19 MR. BUGLIOSI: Did you have several conversations  
20 with her with respect to murders?

21 MISS HOWARD: Quite a few.

22 MR. BUGLIOSI: More than one?

23 MISS HOWARD: Uh-huh, yes.

24 MR. BUGLIOSI: How many, approximately?

25 MISSHOWARD: Maybe six.

26 MR. BUGLIOSI: During what period of time?

MISS HOWARD: I started just before she went for arraignment on the Hinman case, which was probably the last week in October, I imagine. Somewhere around there.

15f fls.

5F-1

1 MR. BUGLIOSI: That was your first conversation with  
2 her?

3 MISS HOWARD: About the murders.

4 MR. BUGLIOSI: Well, about all murders; is that  
5 correct?

6 MISS HOWARD: Yes.

7 MR. BUGLIOSI: We are not just talking about the Tate-  
8 La Bianca murders now, we are talking about all murders.

9 MISS HOWARD: Yes.

10 MR. BUGLIOSI: If she did, in fact, talk about other  
11 murders.

12 MISS HOWARD: Yes.

13 MR. BUGLIOSI: Would you please relate, then, all of  
14 your conversations that you had with Susan Atkins,  
15 commencing with the first one in late October, '69,  
16 pertaining to murders of any kind whatsoever and her involve-  
17 ment in them, if any.

18 MISS HOWARD: Well, it started off we were talking  
19 about the Hinman case.

20 She told me that the police had it all backwards  
21 and everything, because she said that, "Imagine, how can  
22 they figure a little girl like me could hold a man almost  
23 200 pounds."

24 So I was sympathizing with her, and that is  
25 why we were talking about that.

26 I mean, shall I just tell you briefly? We don't

1 have to go into details, do we?

2 THE COURT: I am afraid so.

3 MISS HOWARD: I mean, it is so long.

4 THE COURT: I understand that but, unfortunately,  
5 it is necessary.

6 MISS HOWARD: You want me to go into all the details?

7 THE COURT: Yes.

8 Will you tell us each time you go into a new  
9 conversation, will you tell us, if you can, approximately  
10 when it occurred and who was present, if there was someone  
11 other than just the two of you present.

12 MISS HOWARD: I will try.

13 We were alone the first time.

14 I was trying to help her figure out how to  
15 defend herself against the Hinman case.

16 And she went on to tell me how she and this  
17 other girl and this guy were in the house, and they were  
18 going to tear the house up and make it look as if a fight  
19 had been there and everything, so it would like somebody  
20 had robbed Gary, or something.

21 Anyway, they wanted some money out of Gary,  
22 and he wouldn't give it to them.

23 Anyway, that is why they killed him.

24 Anyway, from there we went on to -- we were  
25 talking about LSD, or something, one time.

26 And anyway, she was telling -- Sadie told me

1 that she done everything that there is to be done, and  
2 she was thinking, she said, "There is nothing that would  
3 shock her or anything." She said she had done just about  
4 everything there is to do.

5 And I said, "Oh, really?"

6 And she said, "Oh, yes."

7 And anyway, that is when she went on to tell  
8 me about -- she says, "Well, you know about the Tate  
9 murder."

10 I said, "Yes."

11 She said, "Well, we are the ones that did it."

12 And I said -- I didn't believe her at first --  
13 I said, "Oh, really?"

14 And she said, "Oh, no, really. We did it."

15 I said, "Well, anyone can say that."

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1 MR. BUGLIOSI: May I interrupt her now for a point?

2 MISS HOWARD: I wish you would ask me what you want  
3 because it is such a long detailed thing.

4 MR. BUGLIOSI: Excuse me.

5 May I read this report, your Honor, because  
6 I recall something a little different.

7 MISS HOWARD: It was so long and detailed.

8 MR. BUGLIOSI: I realize that.

9 MISS HOWARD: I can't remember all of the details.

10 MR. BUGLIOSI: I want to find the place in here where  
11 you are talking about the murders.

12 MR. FITZGERALD: Maybe we can ask her to relate any  
13 conversation she had with Susan Atkins where Susan Atkins  
14 mentioned other persons, and then we could get right to the  
15 heart of the Aranda problem.

16 MISS HOWARD: I see what you mean. Okay.

17 For example, the Tate case?

18 MR. FITZGERALD: The Tate case.

19 MISS HOWARD: Okay.

20 THE COURT: Well, I am not sure that would necessarily  
21 solve all the problems. I think the entire conversations  
22 have to be considered together.

23 It is 4:15 now, gentlemen. We obviously  
24 aren't going to finish with Miss Howard this evening.

25 MISS HOWARD: I think I know the point that you mean.

26 You mean regarding other persons? Isn't that



1 what you mean?

2 THE COURT: I think we had better adjourn at this  
3 time and resume on Monday morning.

4 Will you gentlemen have any objection to  
5 starting this proceeding, say, at 9:00 o'clock on Monday  
6 morning rather than 9:45, since we are going to be in  
7 chambers and there isn't any problem of the jury being here.

8 MR. KANAREK: I know, your Honor. I could do it a  
9 day later.

10 Your Honor indicated that 9:45 was the starting  
11 time. If we could do it a day later?

12 THE COURT: I don't understand.

13 MR. FITZGERALD: I don't either.

14 MR. KANAREK: Well, your Honor, I hadn't planned on  
15 being here at 9:00 o'clock Monday morning.

16 MR. KAY: There is no objection from me.

17 These two witnesses, Roni Howard and Virginia  
18 Graham, are the next two witnesses. So we have to clear  
19 this matter up before they can go on.

20 So, your Honor, 9:00 o'clock is fine.

21 THE COURT: I am afraid this may take longer than  
22 we anticipate, and I want to get on with it and use as  
23 much time every day as possible.

24 MR. BUGLIOSI: To save time, your Honor, here was  
25 the statement she made when it was still relatively  
26 fresh in her mind, November 25th. It is a complete statement

1 to the LAPD.

2 In addition to this, there were a couple of  
3 other little points that I forgot when I spoke to her.

4 I am wondering if she has to go through --  
5 here we have 50 pages.

6 MR. MUSICH: Maybe it would be possible that we could  
7 take a statement over the weekend, or whenever we can, take  
8 a complete statement as to everything Susan Atkins told her.

9 MR. BUGLIOSI: What is the purpose of that?

10 MR. MUSICH: That is what we are doing here.

11 MR. BUGLIOSI: That is what the police did.

12 THE COURT: All you need is a supplement to this  
13 present statement. Why don't you prepare the supplement,  
14 then, over the weekend, in testimony form, not your version  
15 of what she said, but the actual questions and answers?

16 MR. BUGLIOSI: That is not my version right there.

17 What I put down on the paper is what she told  
18 me, her words.

19 THE COURT: Put it in question and answer form.

20 MR. BUGLIOSI: I have that right here. I have it in  
21 question and answer form, what she told me.

22 THE COURT: All right.

23 Then we can have her indicate if that is the  
24 complete record of the conversations that she had with  
25 Susan Atkins, and Monday, if so, that will obviate the  
26 necessity of having her testimony to it all over again.

I just want to make sure that whatever I am considering in connection with this problem is the total testimony of this witness with respect to those conversations and not just selected portions.

16 fls.

16-1

1 MR. BUGLIOSI: All right. I already have written  
2 out here in question and answer form what I believe her  
3 testimony will be.

4 What I have on that sheet, your Honor, are the  
5 answers taken from this page. I don't have the questions  
6 but I have the answers.

7 THE COURT: Do you need this sheet back?

8 MR. BUGLIOSI: No, no, you can have it.

9 THE COURT: All right.

10 MR. BUGLIOSI: I've got the answers right here.

11 THE COURT: Is that agreeable, then?

12 MR. BUGLIOSI: In fact --

13 THE COURT: To prepare a supplement --

14 MR. BUGLIOSI: What I can do is just photostat this  
15 and give everyone a copy of it.

16 MR. KAY: The Judge has a hard time reading your  
17 handwriting.

18 THE COURT: It doesn't have the answers on it.

19 MR. BUGLIOSI: It has the answers. I asked the  
20 question, "What dormitory?"

21 Parenthesis, "8,000"  
22 Do you want this in typewritten form, your  
Honor?

23 THE COURT: I've said it so many times I'm ---

24 MR. BUGLIOSI: Do you want this in typewritten form?

25 MR. KAY: Yes, he does.

26 THE COURT: Yes. I want it in testimony form, not

1 shorthand, not condensations, not paraphrasing, but the  
2 actual questions and the actual answers this witness gives  
3 to those questions.

4 MR. BUGLIOSI: All right.

5 MR. MUSICH: Our questions?

6 MR. SHINN: May I make a suggestion, your Honor:

7 I believe the safest way to do it is to let her  
8 read the tape recordings that we have and let her refresh  
9 her memory to it, your Honor, and then she can read it and  
10 study it and then we can ask her if this was the answer  
11 that she gave on a particular day, your Honor. And then  
12 Mr. Bugliosi could try to delete from that, your Honor.

13 Because this way we'd have three different  
14 versions here.

15 THE COURT: She can do the same thing with the  
16 transcript.

17 MR. FITZGERALD: Logistically I will estimate that  
18 we will not be in front of the jury at all on Monday.  
19 If we conduct a proceeding in regard to Roni Howard and with  
20 Virginia Graham and we hear in open court outside the  
21 presence of the jury Mr. Shinn's motion, it's likely to  
22 take the balance of Monday.

23 MR. MUSICH: If we could do away with the sworn  
24 testimony and prepare statements of the witnesses as to  
25 everything Susan Atkins told, present that to her, in  
26 addition, is there anything that isn't in the statements

1 that Susan Atkins told her, put that in, and put them all  
2 together, and if the witness could be sworn if that's  
3 substantially the same, or if that is substantially all that  
4 she heard Susan Atkins tell her, maybe that would  
5 eliminate the need to have her go through the question and  
6 answer and the statement under oath.

7 THE COURT: I think it probably would. That might  
8 alleviate some time. No necessity to duplicate anything  
9 that's already been done if, in fact, that is all that's  
10 been done.

11 MR. BUGLIOSI: Well, I have the questions and answers  
12 here. I will type this up and give a copy to the Court and  
13 the defense attorneys. Questions and answers I expect her  
14 to testify to at the trial.

15 THE COURT: In the meantime, hopefully before Monday,  
16 she will have had a chance, if she hasn't already, to  
17 review everything that you are preparing, or have prepared,  
18 and then be prepared to testify that that is --

19 MR. MUSICH: Refresh her memory and if there is  
20 anything else --

21 THE COURT: -- that that is all of the conversations  
22 that she had with Susan Atkins.

23 MR. SHINN: Vince, you have one other alternative.

24 MR. BUGLIOSI: What is that?

25 MR. SHINN: <sup>Omit</sup> Admit the confession.

26 MR. BUGLIOSI: I knew you were going to say that.

1 THE COURT: Miss Howard, I do want to remind you, if  
2 you are not already aware of it, that there is a publicity  
3 order which the Court put out in connection with the  
4 proceeding which covers all witnesses, not only those who  
5 have testified but those who will testify, which includes  
6 you. And you are not to discuss the substance of your  
7 testimony with anyone other than the lawyers in this case,  
8 and specifically members of the media, --

9 THE WITNESS: I understand.

10 THE COURT: -- television, newspapers and so forth.

11 Anything else, gentlemen, before we adjourn?

12 MR. SHINN: Is it 9:45 or 9:00? I did not --

13 THE COURT: Let's make it 9:00 o'clock, gentlemen.  
14 I don't think that's unreasonable.

15 MR. KANAREK: Well, your Honor, I depended upon the  
16 Court's being at 9:45, your Honor.

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1 MR. BUGLIOSI: For clarification purposes, will I be  
2 satisfying what I'm supposed to do by typing up the ques-  
3 tions and answers -- the questions I intend to ask her,  
4 or want to ask her, and the answers I expect her to give me  
5 on the witness stand?

6 MR. MUSICH: Your Honor, may I --

7 THE COURT: No.

8 MR. MUSICH: -- state that the Court wants the  
9 witness to look over the statement she made, the statement  
10 that she told Mr. Bugliosi, and the Court wants to know if  
11 there is anything else in addition to those that the  
12 Defendant Susan Atkins told her in regard to these incidents.

13 THE COURT: And, if there is, then we will either have  
14 to have her testify to it or it should be included in the  
15 supplemental that you prepare --

16 MR. MUSICH: Some report.

17 THE COURT: -- in the form of her actual testimony.

18 It's the only way that I can consider the  
19 Bruton-Aranda problems. If you examine the cases, that's  
20 exactly what the Court has to do. I can't simply take  
21 an edited version and anticipate the problems. I have to  
22 know everything that this defendant allegedly told this  
23 witness to be able to anticipate the possible problems  
24 that may come out not just in your examination on an edited  
25 version but their cross-examination on everything that was  
26 said.



1 MR. MUSICH: This is basically the sum and substance  
2 of what was said.

3 MR. KANAREK: Very briefly, your Honor, I think just  
4 for the record, if I may, hopefully, to convince the Court,  
5 I believe that the prosecution, your Honor, has waived their  
6 right to use any of these statements by virtue of the fact  
7 that they did not take down all the words that were uttered.  
8 They had the power to, if I may, your Honor, if I may,  
9 they had the power to tape record and take down all the  
10 words that were uttered, or at least stenographically record.  
11 As a result, we have an editing by a biased -- obviously  
12 an advocate. So, therefore, it's a violation of due  
13 process and a fair trial.

14 THE COURT: Didn't you hear what I just said,  
15 Mr. Kanarek?

16 MR. KANAREK: It isn't your Honor's fault.

17 THE COURT: We are not talking about fault. I just  
18 told them that there must be a complete statement of her  
19 testimony relating the conversations in full.

20 MR. KANAREK: Right, your Honor. And I'm -- what  
21 I'm saying is that if this is possible, that's one thing.  
22 If it isn't, then I believe that there is no alternative  
23 but that it cannot be used at all.

24 We also have a 1204.5 problem.

25 THE COURT: Well, you have had either tapes or  
26 transcripts of these conversations for months, haven't you?

1 MR. KANAREK: Oh, yes, your Honor, purportedly.  
2 But what I'm saying is --

3 THE COURT: Well, what's the objection?

4 MR. KANAREK: The objection is, your Honor, that  
5 the only thing that's put down, the only thing that's put  
6 down is Mr. Bugliosi -- Mr. Bugliosi, for instance, has  
7 interrogated the lady and he has not made a tape or a  
8 word for word statement by a stenographic reporter.

9 As far as it went, it was perhaps okay. But  
10 he has spoken --

11 THE COURT: You are saying that the prosecution has  
12 some duty to anticipate questions that defense counsel  
13 may want to ask a witness?

14 MR. KANAREK: No, your Honor. I suggest that the  
15 prosecutor, being a sophisticated person, and especially  
16 in the posture that they have in this case, or in any case,  
17 they have an obligation not to edit, not -- but they have  
18 an obligation to take down all the words that are uttered.  
19 This is what I'm suggesting.

20 Your Honor is the one to rule.

21 I say there is a 1204.5 Penal Code problem  
22 also.

23 THE COURT: This court is now adjourned until 9:00  
24 o'clock Monday morning.

25 MR. SHINN: 9:00.

26 (Whereupon the evening adjournment was taken  
at the hour of 4:32 o'clock p.m.)