

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

DEPARTMENT NO. 104

HON. CHARLES H. OLDER, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

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

Defendants.

114

No. A253156

REPORTERS' DAILY TRANSCRIPT
Monday, October 5, 1970
P. M. SESSION

APPEARANCES:

For the People:

DONALD A. MUSICH,
STEPHEN RUSSELL KAY,
[REDACTED] and
VINCENT T. BUGLIOSI,
DEPUTY DISTRICT ATTORNEYS

For Deft. Manson:

I. A. KANAREK, Esq.

For Deft. Atkins:

DAYE SHINN, Esq.

For Deft. Van Houten:

For Deft. Krenwinkel:

[REDACTED]
RONALD HUGHES, Esq.
PAUL FITZGERALD, Esq.

VOLUME 114

PAGES 12801 to 12889

JOSEPH B. HOLLOMBE, CSR.,
MURRAY MEHLMAN, CSR.,
Official Reporters

COPY

I N D E XPEOPLE'S WITNESSES: DIRECT CROSS REDIRECT RECROSS

GUTIERREZ, Manuel F. 12801 12806F 12826
 12819 12826K

LA VALLEE, Albert J. 12828

HOLT, Jack 12832 12843K
 12844K

WOLFER, DeWayne A.
(In presence of jury) 12847 12880F

(Out of presence of jury) 12876 12885K
 128888

E X H I B I T SPEOPLE'S: FOR IDENTIFICATION IN EVIDENCE

262 - Aerial photograph 12829

1 LOS ANGELES, CALIFORNIA, MONDAY, OCTOBER 5, 1970

2 2:10 o'clock p.m.

3 - - -
4 THE COURT: All counsel are present; none of the
5 defendants nor the jury are present.

6 You may proceed, Mr. Bugliosi.

7
8 MANUEL F. GUTIERREZ,
9 the witness on the stand at the time of the noon recess,
10 resumed the stand and testified further as follows:

11 THE COURT: For the record, Mr. Bugliosi, would you
12 state the nature of this particular proceeding.

13 MR. BUGLIOSI: Yes, I believe it is a proceeding
14 under Section 1538.5 of the California Penal Code, your
15 Honor.

16 I believe the defense is making a motion to
17 suppress the officer's observations at Spahn Ranch on
18 November 25th, 1969, on the grounds that he had no consent
19 to enter the premises.

20 Is that correct?

21 MR. FITZGERALD: That is correct.

22 THE COURT: Very well, you may proceed.

23
24 DIRECT EXAMINATION (Continued)

25 BY MR. BUGLIOSI:

26 Q Sergeant, on November 25th, 1969, did you

1 proceed to Spahn Ranch in Chatsworth, California?

2 A I did, sir.

3 MR. BUGLIOSI: People offer to stipulate there was no
4 arrest warrant or search warrant.

5 So stipulated?

6 MR. FITZGERALD: It is so stipulated between and among
7 the parties.

8 MR. KANAREK: So stipulated.

9 MR. SHINN: So stipulated.

10 MR. HUGHES: So stipulated.

11 BY MR. BUGLIOSI:

12 Q And you went there with whom?

13 A Sergeant Broda, B-r-o-d-a, and I met Deputy
14 Gleason from the Sheriff's Department at that location.

15 Q And you know George Spahn?

16 A Yes, sir, I do.

17 Q An elderly gentleman in his eighties?

18 A Yes, sir.

19 Q Did you see him that day, November 25th, 1969?

20 A Yes, sir, I did.

8 fls.

8-1

1 Q Did you talk to him?

2 A I did.

3 Q Did you ask him for any consent to search the
4 premises?

5 A I did, sir.

6 Q What did you say to him and what did he say to
7 you?

8 A I greeted Mr. Spahn, as I recall, and then
9 told him that I was back again, and asked him if I could
10 check some of the premises and the property for a certain
11 item that I was looking for.

12 Q What did he say?

13 A He said, "Go ahead," I could search any place I
14 wanted to.

15 Q About what time of the day was this?

16 A When I first talked to Mr. Spahn, I believe it
17 was around noon.

18 Q Was this the time that you got his consent?

19 A Yes, sir, it is.

20 Q And where did you speak to him?

21 A In his residence at Spahn Ranch.

22 Q And then you left his residence and proceeded
23 to search the premises?

24 A Yes, sir, I did.

25 Q Did you ever enter the trailer there at Spain
26 Ranch?

1 A Yes, I did.

2 Q Where was the trailer located on the ranch?

3 A To the left of Mr. Spahn's residence as you
4 walk up -- as you walk toward it.

5 Q Was it close to the saloon area and the Longhorn
6 Cafe?

7 A No, sir. It was to the left of Mr. Spahn's
8 residence as you are looking toward it, and to the left of
9 the kitchen and saloon area. It is near a restroom.

10 Q Did you walk into the trailer?

11 A I did.

12 Q Was anyone inside the trailer when you entered?

13 A Yes, sir. Mr. Juan Flynn.

14 Q I show you People's 261 for identification.

15 Do you know what is shown in that photograph?

16 A Yes, I do.

17 Q What is shown in that photograph?

18 A Various writings on a cupboard door.

19 Q Did you see this cupboard door inside the
20 trailer?

21 A Yes, sir. It was visible when I walked in toward
22 the back of the trailer.

23 Q And this was on the cupboard door, you say?

24 A Yes, sir, it was.

25 Q This was printed right on the door?

26 A This was printed right on the cupboard door,

1 on the door itself.

2 Q Do you know who took this photograph?

3 A No, sir, I don't.

4 Q Was it taken under your direction?

5 A No, sir.

6 Q Does this photograph appear to be an accurate
7 representation of the way the door looked when you observed
8 it on November 25, 1969?

9 A Yes, sir.

10 Q It had all this writing on it?

11 A All except my initials, which I indicated on
12 there, "MFG".

13 Q Your initials are on the upper right-hand
14 corner of the photograph?

15 A Yes, sir, they are.

16 Q And actually written on the door itself?

17 A Actually written on the door, yes.

18 Q How did you get into the trailer?

19 A I was led into it. The door was open and I
20 was led into it.

21 Q Led by whom?

22 A By Mr. Flynn.

8a

23

24

25

26

8a-1

1 Q Going back a moment.

2 When you were speaking to Mr. Spahn, was anyone
3 else with you?

4 A I don't believe so.

5 I believe I walked in the house by myself. Mr.
6 Spahn was there by himself also.

7 MR. BUGLIOSI: No further questions.

8
9 CROSS-EXAMINATION

10 BY MR. FITZGERALD:

11 Q Sergeant Gutierrez, at the time that you went to
12 the Spahn Ranch on November the 25th, you knew that a number
13 of people resided at that location; isn't that correct?

14 A That is correct, sir.

15 Q You knew that there were a lot of young people,
16 and for the sake of communication, we will refer to them
17 as hippies, if you don't object.

18 You knew that there were a lot of young
19 hippie-type people residing at that location at the time,
20 did you not?

21 A At the time when I went back there, most of the
22 younger "hippie" people had already gone. There were only
23 the few ranch hands left there.

24 Q Was it your understanding that people actually
25 lived in this trailer where you made your observations?

26 A Yes, sir.

8a-2

1 Q So the record may be clear, this is what one
2 would refer to as a mobile home; isn't that correct?

3 It is a trailer that was apparently designed as
4 living quarters; is that right?

5 A At one time, yes, sir.

6 I believe, at that particular time, there were
7 no wheels on that trailer.

8 Q But it appeared that there were facilities within
9 the trailer for human habitation?

10 A That is correct.

11 Q I have in mind specifically facilities, whether
12 operative or not, for a refrigerator, stove, rest-room
13 facilities; that sort of thing.

14 A That is correct, sir.

15 Q It wasn't, for example, a trailer designed to
16 haul things or anything like that, was it?

17 A No.

18 Q It was a trailer for people to live in?

19 A It was a living quarters trailer.

20 Q Did it appear to you that the trailer was being
21 lived in at the time?

22 A It did, sir.

23 Q Did you ascertain, at any time on the 25th, who,
24 in particular, lived within the trailer?

25 A I did, sir.

26 Q And who was that?

8a-3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

A One was Juan Flynn.

Q Were there any other tenants of the trailer?

A I don't recall if there was or not, sir.

Q What sort of a conversation did you -- did you have a conversation with Flynn?

A I did.

Q Did you ask him if he lived there?

A Yes, sir.

Q What did he say?

A He said he was staying there, yes, sir.

Q Did he say he was staying with anyone?

A No, he didn't indicate he was staying with anyone, sir.

Q Did you ask Flynn permission, as well as Mr. Spahn?

A Yes, I did.

Q How did you do that?

A I had a conversation with Mr. Flynn regarding the object I was looking for, and he said there was something similar to that in his trailer.

MR. FITZGERALD: Now, that concludes the questions, your Honor, that I have on the issue of the search and seizure.

As long as I have the officer on the stand, though, I wonder if I might ask him one or two questions for the purpose of interposing an objection on relevancy grounds?

9 fls.

9-1

1 THE COURT: You may.

2 Q BY MR. FITZGERALD: Did you direct that any
3 representative of the Los Angeles Police Department perform
4 any scientific tests upon that door to determine when the
5 writings were placed on the door?

6 A No, sir, I did not.

7 Q Are you in possession of any information from
8 any source as to the date or age of the writing that appears
9 on that door?

10 A I have been working on that particular subject
11 for the last two months, yes, sir.

12 MR. FITZGERALD: I have nothing further.

13 THE COURT: Mr. Shinn, any questions?

14 MR. SHINN: Yes, your Honor.

15 CROSS-EXAMINATION

16 BY MR. SHINN:

17 Q Officer, did you determine at any time whose
18 writing was on the wall at all?

19 A No, sir.

20 Q You made no efforts to determine?

21 A I am trying to determine that now, sir.

22 Q How are you trying to determine that?

23 A By contacting various people.

24 MR. SHINN: Nothing further, your Honor.

25 MR. KANAREK: No questions, your Honor.

9-2

1 MR. HUGHES: No questions, your Honor.

2 THE COURT: Sergeant, have you related all of the
3 conversation that you had with Mr. Flynn on this occasion?

4 THE WITNESS: As near as I can recall, yes, sir, I have.

5 I did ask Mr. Flynn if I could remove that
6 particular item from the place and he said yes.

7 THE COURT: Where were you when you asked him this?

8 THE WITNESS: Inside the trailer after I had seen it.

9 THE COURT: Did you have any conversation with
10 Mr. Flynn outside of the trailer before you went in?

11 THE WITNESS: Yes, sir, I did. Mr. Flynn led me into
12 the trailer.

13 THE COURT: What was the conversation before he led
14 you in?

15 THE WITNESS: I told him what I was looking for; I
16 was looking for a particular jug with some writings on it,
17 and the writings was the words "Helter Skelter."

18 And Mr. Flynn stated he had not seen that jug for
19 quite some time; that it was in the back, but he thought it
20 might have gotten in one of the trailers -- not in one of
21 the trailers, but in one of the houses along the boardwalk,
22 and then I asked Mr. Flynn if he would accompany me back to
23 these different trailers and he said yeah.

24 And then he said, "I think I know what you are
25 looking for," he said, "There is some writing on one of the
26 cabinet doors."

1 And I said, "May I look in there?"

2 And he said, "Yes."

3 THE COURT: Any questions, gentlemen?

4 MR. KANAREK: No, your Honor, this is all on the
5 search and seizure issue, I gather.

6 THE COURT: That is what he is here for.

7 MR. KANAREK: No questions, your Honor.

8 THE COURT: Anything further?

9 You may step down.

10 THE WITNESS: Thank you.

11 MR. KANAREK: Your Honor, I would say, based upon this
12 foundation, that the District Attorney --

13 THE COURT: Just a moment.

14 Have the People rested on the motion?

15 MR. BUGLIOSI: Yes, your Honor.

16 THE COURT: Do the defense have any evidence?

17 MR. FITZGERALD: No, your Honor. The defendant
18 Patricia Krenwinkel rests.

19 MR. SHINN: Rest, your Honor.

20 MR. KANAREK: Rest, your Honor.

21 MR. HUGHES: Rest, your Honor.

22 MR. KANAREK: But I do have a motion, your Honor.

23 THE COURT: We have a motion being heard, Mr. Kanarek.

24 MR. KANAREK: Very well, your Honor.

25 THE COURT: Do you care to argue, Mr. Bugliosi?

26 MR. BUGLIOSI: Submit the matter, your Honor. I think

1 we put on a prima facie case of consent.

2 It has not been controverted in any fashion.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

9a

9a-1

1 MR. FITZGERALD: We submit that the People failed to
2 meet the burden of proof on the consent issue, and also I
3 will take the position that the prosecution has failed to
4 establish that there were not co-tenants of the precise
5 trailer whose consent would be necessary in order to secure
6 belongings within the trailer.

7 MR. SHINN: Submit it, your Honor.

8 THE COURT: Argument?

9 MR. KANAREK: Submit it, your Honor. No, I have no
10 argument.

11 MR. HUGHES: Submit it.

12 MR. BUGLIOSI: We are not submitting into evidence
13 the actual door itself, just a photograph of the door.

14 MR. FITZGERALD: I don't think that makes any
15 difference. I think there is an identity of issues there,
16 your Honor.

17 MR. KANAREK: The Court indicated that, I think,
18 previously.

19 THE COURT: It appears to the Court that consent was
20 obtained both from Mr. Spahn, the owner of the ranch,
21 and Mr. Flynn who was the tenant of the trailer.

22 It appears that that consent was freely and
23 voluntarily given.

24 The search was made pursuant to that consent.
25 Accordingly, the defendants' motions are denied.

26 MR. FITZGERALD: Could I be heard on the issue of

9a-2

1 relevancy?

2 THE COURT: Yes.

3 MR. FITZGERALD: I think that, as was brought out by
4 the officer, there has been no scientific investigation to
5 determine whether these writings were actually placed on
6 the door the photograph was taken of, nor have they estab-
7 lished the identity of the person or persons who placed the
8 writing on the door, and I think that is material in two
9 very crucial respects:

10 One is if this happened subsequent to the dates
11 alleged for the conspiracy, and the dates alleged within the
12 information for the substantive offenses, I think it is
13 immaterial in that it is beyond the scope of the issues in
14 this case, and it is irrelevant in the sense that the
15 probative value of some subsequent writing is remote if it
16 has any probative value whatsoever.

17 And I think furthermore, Mr. Shinn pointed out
18 by his questioning, that we don't know if it was Patricia
19 Krenwinkel, Susan Atkins, Leslie Van Houten, Charles Manson,
20 George Spahn, Randy Starr or anyone of literally hundreds
21 of people who had access to that location as a result of
22 your Honor's hearing the evidence in this case, and could
23 have placed it on.

24 In essence my argument is twofold:

25 One, there is no showing as to who put it there,
26 and, two, there is no showing as to when it was put there.

1 THE COURT: Do you wish to be heard on that, Mr.
2 Bugliosi?

3 MR. BUGLIOSI: Well, we know, No. 1, your Honor, that
4 it was observed there within a matter of moments after
5 these homicides. Irrespective of who put it there, it is
6 just circumstantial evidence.

7 Our case would be stronger if we could show
8 that Manson or one of the three female defendants did it,
9 but that only goes towards the weight of the evidence.

10 I think the defense can argue this to the jury
11 that we never put on specifically who made this writing.

12 But I think we are entitled to put this on as
13 circumstantial evidence that at Spahn Ranch, even though
14 subsequent to the murders, the extremely unusual and unique
15 term, Helter Skelter, was inside a trailer near where the
16 defendants lived, and of course Helter Skelter is on the
17 refrigerator door of the La Bianca residence.

18 So Mr. Fitzgerald's argument is an argument
19 to be made to the jury, and his argument only goes to the
20 weight of the evidence, not to the admissibility of it.

21 I think it definitely is circumstantial
22 evidence.

23 MR. KANAREK: May I respond just briefly, your
24 Honor.

25 Your Honor, I think it is clear that Juan
26 Flynn lived there, and the inference could be that this

1 is Juan Flynn's.

2 They got permission from Juan Flynn to enter
3 his premises. This is his property; it certainly is a
4 prima facie situation or a presumption indulged in to that
5 effect, to allow the prosecution to put this into evidence
6 just because it happens to be within these many acres,
7 your Honor, is very dangerous, and it is just -- how far
9b fls. 8 can you stretch circumstantial evidence?

9b-1

1 Mr. Bugliosi is using that as a bushel basket
2 for all kinds of error, and I think it would be error to
3 allow -- if this is their case as far as the foundation
4 goes, as to who it belonged to and where it was, your Honor,
5 it's clear it was Juan Flynn's.

6 Unless there is some other showing, I don't
7 think the jury should see this prejudicial exhibit or the
8 door, the picture, or any of that.

9 I don't think they have proved it has anything
10 to do with any of these defendants.

11 THE COURT: Well, my recollection is that the
12 evidence shows that the defendants spent a good deal of
13 time in this trailer watching television, and socializing
14 with other members of the group, and also Mr. Flynn.

15 I think it has some circumstantial evidentiary
16 value.

17 The weight, of course, is a matter to be
18 argued to the jury.

19 Are you offering it at this time, Mr. Bugliosi?

20 MR. BUGLIOSI: Yes, I would like to offer this in front
21 of the jury, your Honor, once the jury resumes the jury
22 box.

23 THE COURT: Very well.

24 Anything further before we bring the jury in?

25 (No response.)

26 THE COURT: Anything further before we bring the jury

1 in?

2 MR. BUGLIOSI: No, your Honor.

3 THE COURT: All right.

4 MR. KANAREK: Your Honor, we are in session now, aren't
5 we? So I don't interrupt in the presence of the jury, may
6 I have an objection also on the grounds of hearsay, your
7 Honor, as far as this Helter Skelter is concerned?

8 THE COURT: Very well.

9 MR. SHINN: Join that motion.

10 MR. KANAREK: And, of course, improper foundation.

11 MR. HUGHES: I will join those objections.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

10-1

1 (The following proceedings were had in open
2 court. All counsel and jury present. Defendants absent.)

3 THE COURT: The record will show all of counsel and
4 all the jurors are present.

5 You may proceed, Mr. Eugliosi.

6 MR. BUGLIOSI: Sergeant Gutierrez.

7
8 MANUEL F. GUTIERREZ,
9 the witness on the stand at the time of the noon recess,
10 resumed the stand and testified further as follows:

11 MR. BUGLIOSI: May I proceed, your Honor?

12 THE COURT: Yes, you may.

13
14 DIRECT EXAMINATION (CONTINUED)

15 BY MR. BUGLIOSI:

16 Q Sergeant Gutierrez, on November 25, 1969, did
17 you out to the Spahn Ranch in Chatsworth?

18 A I did.

19 Q And whom did you go there with?

20 A I went there with Sergeant Broda, and I met
21 Deputy Gleason from the Sheriff's Department at that
22 location.

23 Q About what time did you arrive at the Spahn
24 Ranch?

25 A Approximately noon.

26 Q After you arrived at the Spahn Ranch did you

1 enter a trailer at the Spahn Ranch?

2 A Later on I entered a trailer, yes, sir,

3 Q About what time did you enter the trailer?

4 A Around 3:00 o'clock in the afternoon.

5 Q And where is this trailer located on the Spahn
6 Ranch?

7 A It is located on the property itself. As you
8 face Mr. Spahn's residence, it was to the left, and to
9 the left of a restroom that was there.

10 Q In other words, the trailer is in the front
11 part of the ranch?

12 A No, sir. It would be toward the back of the
13 ranch.

14 Q Well, you know there is a group of buildings
15 there at the front of the ranch? You are aware of that?

16 A Yes, sir.

17 Q How far was this trailer in relation to those
18 buildings?

19 A Approximately 50 feet.

20 Q In other words, it was close to the front of
21 the ranch?

22 A No, sir. It was closer to the back of the ranch.

23 Q When you speak of the back of the ranch, are
24 you referring to the geographical boundaries of the ranch?

25 A Yes, sir, I am,

26 Q And you feel that the trailer, then, was near

1 the geographical boundaries of the ranch, on the other side
2 of the front buildings?

3 You understand the ranch has several acres; is
4 that correct?

5 A Yes, sir, it has.

6 I am trying to orient myself here.

7 As you face Mr. Spahn's residence, the trailer
8 was to the left. As you face the boardwalk with the numer-
9 ous little shacks on it, it is to the right of that.

10 Q Well, the boardwalk is in front of the ranch; is
11 that correct?

12 A Yes, sir.

13 It goes one way, and Mr. Spahn's ranch --

14 Q Mr. Spahn's house?

15 A Rather, Mr. Spahn's house is on the other end.

16 That would be the west end, I believe.

17 MR. BUGLIOSI: May I have just a moment, your Honor?

18 THE COURT: Yes.

19 (Mr. Bugliosi gets some photograph exhibits
20 from the clerk.)

21 MR. BUGLIOSI: Q I show you People's 29 for
22 identification.

23 Do you recognize this as being an aerial photo
24 of Spahn Ranch?

25 A Yes, sir, I do.

26 Q Where is the boardwalk here?

A This is the boardwalk in front here.

(Indicating)

Q Pointing to the group of buildings right off Santa Susanna Road; is that correct?

A That is correct, sir.

Q And to the right over here, is this Mr. Spahn's house?

A Yes, sir.

10a

10a-1

1 Q Okay.

2 Could you point out where on this photograph
3 the trailer was?

4 A Sitting back in here, sir.

5 Q Now, you call this in back of the ranch right
6 here?

7 A Yes, sir.

8 Q What do you call this area right up here?

9 A That is the back part of the ranch also, sir.
10 That is the hilly part of the ranch.

11 Q So, you call this the back of the ranch?

12 A I do.

13 Q Okay.

14 Can you put an X where the trailer was that you
15 entered?

16 (The witness marks.)

17 MR. BUGLIOSI: May I mark this, your Honor, "Trailer"?

18 THE COURT: You may.

19 BY MR. BUGLIOSI:

20 Q This is the trailer, then, that you entered;
21 is that right, sir?

22 A Yes, sir.

23 Q What did you observe inside the trailer? Were
24 there any beds in there, or a refrigerator, et cetera?

25 A There were living quarters. There was a bed,
26 as I recall, and a table, some chairs, a kitchen. And that

10a-2

1 is about all I recall being in there.

2 Q Do you know if anyone was living in the
3 trailer at the time that you went out there on November the
4 25th, 1969?

5 A Yes, sir. The person that I spoke to.

6 Q Who is that?

7 A Mr. Juan Flynn.

8 Q Was he living there with anyone else?

9 A I don't know, sir. I didn't ask him.

10 I didn't see anybody in the trailer.

11 Q I show you People's 261 for identification.

12 Do you know what that photograph depicts?

13 A Yes, sir.

14 Q What is that?

15 A This photograph depicts a picture of a cabinet
16 door with some various writings.

17 Q Where was this cabinet door?

18 A This cabinet was inside that trailer.

19 Q The trailer that you just mentioned?

20 A That I just mentioned.

21 And it was in the kitchen. It was a cabinet
22 door.

23 Q You saw this writing here that is on this
24 photograph, you saw the writing on the cabinet door?

25 A Yes, sir.

26 Q Inside the trailer?

10a-3

1 A Yes, sir.

2 Q On November 25th, 1969?

3 A That is correct, sir.

4 Q You didn't take this photograph?

5 A No, sir, I did not.

6 Q Does this photograph appear to be an accurate
7 and fair representation of the way the cabinet door looked
8 on November the 25th, 1969?

9 A Identical, sir.

10 MR. BUGLIOSI: No further questions.

11 THE COURT: Cross-examination?

12 MR. FITZGERALD: No questions.

13 I will make a motion to strike his testimony
14 on the grounds that it is irrelevant and immaterial; and
15 on the grounds heretofore stated.

16 THE COURT: Motion denied.

17 MR. SHINN: No questions. And I will join in
18 Mr. Fitzgerald's motion.

19 MR. KANAREK: Yes, your Honor.

20 I will join in Mr. Fitzgerald's motion and
21 also his comments before the jury entered. Join in those
22 comments.

23 I just have a couple of questions, if I may.
24
25
26

10a-4

CROSS-EXAMINATION

1 BY MR. KANAREK:

2 Q Officer, that was November the 25th of 1969;
3 right?
4

5 A That is correct, Mr. Kanarek.

6 Q And the Juan Flynn that you are speaking of
7 is the same Juan Flynn that you saw testify in this
8 courtroom?

9 A Yes. The identical person.

10 Q Right?

11 A Yes, sir.

12 Q Thank you.

13 And he was living there; right?

14 A He told me he was, yes, sir.

15 MR. KANAREK: Thank you.

16 MR. BUGLIOSI: Just one more question, your Honor.

REDIRECT EXAMINATION

17
18
19 BY MR. BUGLIOSI:

20 Q Did Mr. Flynn point this cabinet door out to
21 you?

22 MR. KANAREK: Immaterial and hearsay, your Honor.
23 Also calling for a conclusion.

24 That is hearsay by conduct.

25 THE COURT: Sustained.

10b Fls4

10b-1

1 MR. BUGLIOSI: On the grounds of hearsay, or on the
2 other ground, your Honor?

3 THE COURT: On the grounds stated, Mr. Bugliosi.
4 BY MR. BUGLIOSI:

5 Q Did Mr. Flynn direct you to this door, this
6 cabinet?

7 MR. KANAREK: That's the same thing, your Honor. It
8 is another way of saying the same thing, your Honor.

9 THE COURT: Sustained.

10 MR. BUGLIOSI: No further questions.

11 MR. HUGHES: I have no questions, your Honor.

12 THE COURT: Any redirect?

13 Very well.

14 You may step down.

15 MR. BUGLIOSI: Sergeant LaVallee.

16 (The witness enters the courtroom.)

17 THE CLERK: Would you raise your right hand, please.

18 Would you please repeat after me.

19 I do solemnly swear --

20 THE WITNESS: I do solemnly swear --

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

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

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

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

25 THE CLERK: -- before this court --

26 THE WITNESS: -- before this court --

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

2 THE WITNESS: -- shall be the truth --

3 THE CLERK: -- the whole truth --

4 THE WITNESS: -- the whole truth --

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

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

7 THE CLERK: -- so help me God.

8 THE WITNESS: -- so help me God.

9 THE CLERK: Would you be seated, please.

10 Would you draw the microphone back, sir.

11 Would you please state and spell your name.

12 THE WITNESS: Albert J. LaVallee; L-a-V-a-l-l-e-e.

13
14 ALBERT J. LA VALLEE,

15 called as a witness by and on behalf of the People, having
16 been first duly sworn, was examined and testified as
17 follows:

18
19 DIRECT EXAMINATION

20 BY MR. BUGLIOSI:

21 Q What is your occupation, sir?

22 A I am a Sergeant of Police for the Los Angeles
23 Police Department presently attached to the Scientific
24 Investigation Division.

25 MR. BUGLIOSI: Your Honor, I have here an aerial
26 photograph.

262 id.

May it be marked People's next in order?

THE COURT: 262 for identification.

BY MR. BUGLIOSI:

Q Sergeant, directing your attention to this aerial photograph, this People's 262 for identification.

Have you ever seen that before?

A I have.

Q I direct your attention to People's 98 for identification.

Have you ever seen this before?

A I have.

Q Did you prepare People's 98?

A Yes, I did.

Q How did you prepare People's 98?

A By taking a piece of tracing paper and placing it over the aerial photograph and then tracing the streets that I was directed to trace.

Q You placed this sheet of paper over People's 262, the aerial photograph; is that correct?

A Yes.

Q And then you traced certain streets on People's 98?

A Yes.

Q You did not make the scale on 98?

A I put in the approximate scale as near as I could determine.

1 Q People's 98 was made by you, then?

2 A It was.

3 Q From People's 262?

4 A That is true.

5 Q People's 98 is an overlay?

6 A It is an overlay.

7 MR. BUGLIOSI: No further questions.

8 MR. FITZGERALD: No questions.

9 MR. SHINN: No questions, your Honor.

10 THE COURT: Mr. Kanarek?

11 MR. KANAREK: No questions, your Honor.

12 MR. HUGHES: No questions, your Honor.

13 THE COURT: You may step down.

14
15
16
17
18
19
20
21
22
23
24
25
26
10c fls.

10C-1
1 MR. BUGLIOSI: People call Charles Friedman.

2 (No witness appears in the courtroom.)

3 MR. BUGLIOSI: We are having a little difficulty,
4 your Honor, finding him.

5 People call Lieutenant Jack Holt.

6 (Witness enters the courtroom.)

7 THE CLERK: Would you raise your right hand, please.

8 Would you please repeat after me.

9 I do solemnly swear --

10 THE WITNESS: I do solemnly swear --

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

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

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

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

15 THE CLERK: -- before this Court --

16 THE WITNESS: -- before this Court --

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

18 THE WITNESS: -- shall be the truth --

19 THE CLERK: -- the whole truth --

20 THE WITNESS: -- the whole truth --

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

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

23 THE CLERK: -- so help me God.

24 THE WITNESS: -- so help me God.

25 THE CLERK: Would you be seated, please.

26 Would you please state and spell your name.

10c2

1 THE WITNESS: Jack Holt, H-o-l-t.

2
3 JACK HOLT,

4 called as a witness by and on behalf of the People, being
5 first duly sworn, was examined and testified as follows:
6

7 DIRECT EXAMINATION

8 BY MR. BUGLIOSI:

9 Q What is your occupation, sir?

10 A Deputy Sheriff for the County of Los Angeles.

11 Q What are your functions there with the
12 Sheriff's Office?

13 A I am the watch commander in the Sheriff's
14 Record Bureau; keeper of the criminal records.

15 Q I show you a group of documents. The front
16 sheet, the cover sheet, says "Certification of Records."
17 And I direct your attention to the lower left-hand corner.

18 Is that your signature, Lieutenant Jack L. Holt"?

19 A Yes, it is.

20 MR. KANAREK: May I approach with Mr. Bugliosi, your
21 Honor?

22 THE COURT: You may.

23 MR. HUGHES: May I also, your Honor?

24 THE COURT: You may.

25 MR. BUGLIOSI: Q These documents that I am
26 leafing through here, are these certified records of the

10c3

1 Sheriff's office?

2 A Yes, sir, they are.

3 Q What is this document right here, the second
4 sheet?

5 A It is a booking slip.

6 Q For whom?

7 A Sandra Collins Pugh.

8 Q Is there also an aka, "also known as"?

9 A Sandra Collins Good.

10 MR. FITZGERALD: Your Honor, there has been an
11 inappropriate foundation for business record hearsay, and
12 I will object on those grounds.

13 MR. BUGLIOSI: It is a certified copy of the official
14 records of the Sheriff's Office.

15 MR. HUGHES: Join in the objection, your Honor.

16 MR. FITZGERALD: It does not fall within the official
17 document --

18 THE COURT: If you want to argue, come to the bench
19 and we will talk about it up here.

20 MR. FITZGERALD: I don't think it is necessary to
21 approach the bench.

22 I will object on foundational grounds.

23 MR. BUGLIOSI: Do you want to withdraw the objection?

24 MR. FITZGERALD: No, I am not withdrawing my
25 objection.
26

11-1
1 MR. FITZGERALD: May we approach the bench, your
2 Honor?

3 THE COURT: Very well.

4 (The following proceedings were had at the
5 bench out of the hearing of the jury:)

6 MR. FITZGERALD: Let me first point out, your Honor,
7 that I know the import of this testimony and if your Honor
8 has ruled that it is otherwise admissible, this officer is
9 going to testify to a period of incarceration of Sandy Good..

10 We all discussed this and your Honor has ruled
11 it is relevant and material, that's all right inasmuch as it
12 is coming in on that ground, I have no real objection to its
13 coming in and I would have stipulated to it, although now
14 that there is going to be no stipulation, I would be incom-
15 petent if I let this evidence come in in the manner it is
16 coming in.

17 All I am asking for is a business record
18 foundation.

19 MR. KANAREK: I don't think this witness can give this
20 business record foundation, your Honor.

21 THE COURT: Why not? What do you base that on?

22 MR. KANAREK: Well, your Honor, I would gather --

23 THE COURT: Just speculation on your part.

24 MR. KANAREK: Yes, yes.

25 THE COURT: Then don't waste our time with
26 speculation, Mr. Kanarek.

1 MR. BUGLIOSI: All right, I will try to lay a
2 foundation for it.

3 THE COURT: I am afraid you will have to. It is
4 a valid objection.

5 MR. BUGLIOSI: Although I think there is another
6 exception to the hearsay rule, official documents section
7 does not require business record foundation.

8 MR. FITZGERALD: That Evidence Code section, I believe,
9 has as one of its requirements being that by order of law
10 the records are kept, in order for it to be an official
11 record.

12 In other words, the records must be kept
13 pursuant to some State rule or regulation.

14 I will stipulate to the facts themselves, no
15 question, I offered to do that before, and I will.

16 MR. BUGLIOSI: Can you try to convince Mr. Kanarek?

17 I can say this, Mr. Kanarek, you come up to
18 me for stipulations and I entered into them with you.

19 Now, I think to save time --

20 MR. KANAREK: No, the point is that these records
21 have all kinds of hearsay and all kinds of other material.

22 MR. BUGLIOSI: Well, they took their fingerprints
23 and stuff like that. That just takes up time.

24 MR. KANAREK: I have seen those jail records. They
25 make many mistakes in the jail, Mr. Bugliosi, many.

26 THE COURT: Well, 1280 is the record by public

1 employee.

2 You have to show, among other things, the
3 sources of information and method at time of preparation to
4 indicate its trustworthiness.

5 MR. BUGLIOSI: All right, I will try to lay a
6 foundation.

7 MR. KANAREK: Your Honor, I do -- I am asking for a
8 continuing objection on materiality and relevancy as to this
9 witness, your Honor.

10 THE COURT: Very well.

11 MR. HUGHES: May I join that objection, your Honor?

12 THE COURT: Very well.

13 MR. KANAREK: All of this testimony, thank you.

14 MR. FITZGERALD: Yes, I think the record was clear,
15 we talked about it at length, your Honor may recall the
16 argument which was later referred to as Mr. Bugliosi's spec
17 argument.

18 THE COURT: You mean about the fact that these people
19 were in custody?

20 Let's proceed.

21 MR. BUGLIOSI: Okay.

22 THE COURT: The objections are overruled except for
23 the foundational objection.

24 MR. FITZGERALD: Yes.

25 (The following proceedings were had in open
26 court in the presence and hearing of the jury:)

1 Q BY MR. BUGLIOSI: What are your duties?

2 A I am the watch commander responsible for all
3 personnel on the day shift, responsible for the maintaining
4 of all criminal records in our possession and the custody
5 thereof.

6 Q You say criminal records. Are you also referring
7 to records showing when a person is booked into the County
8 Jail and when that party is released from the County Jail?

9 A That's correct.

10 Q Looking at this first document here, do you
11 recognize this document?

12 A Yes, I do.

13 Q What type of document is that?

14 A That is a Sheriff's booking slip and property
15 record.

16 Q One slip is two things, in other words, a
17 booking slip and also a property record.

18 A That is correct.

19 Q Same sheet of paper?

20 A That's correct.

21 Q And who prepared this particular document in
22 the Sheriff's Office?

23 A Several people. It is originally prepared in
24 longhand.

25 Q By whom?

26 A The arresting officer, and it is later typed by
a typist-clerk.

1 Q When did these particular people make the
2 entries on this document?

3 A The arresting officer makes this entry right
4 here at the time of arrest.

5 Q The date and time booked?

6 A That's correct, that is the time they reach the
7 Sheriff's facility, be it the station or one of the jails.

8 Q Is this booking and property record a business
9 record of the Los Angeles Sheriff's Office?

10 A Yes, it is.

11 Q It is made in the regular course of business of
12 the Sheriff's Office?

13 A Yes, it is.

14 Q You are looking at this first document here,
15 the party who was booked, is that the party's name Sandra
16 Pugh, also known as Sandra Good?

17 MR. KANAREK: I object on the grounds of improper
18 foundation.

19 THE COURT: In what respect?

20 MR. KANAREK: In the respect, your Honor, I submit
21 the purported foundation that counsel has elicited is in-
22 adequate at this point.

la

23

24

25

26

11a-1

1 THE COURT: In what respect?

2 MR. KANAREK: It is inadequate because this witness
3 is merely stating what is done.

4 These papers are not the papers that were
5 written. These are papers he himself has said that have
6 been typed over by somebody else.

7 They are not the original documents, they are
8 not the best evidence.

9 There is no showing that the original handwritten
10 documents, if there were any, are available.

11 THE COURT: May I see the exhibit?

12 (Handed to the Court.)

13 THE COURT: Overruled.

14 BY MR. BUGLIOSI:

15 Q When does this document here, the booking and
16 property record, reflect that Sandra Pugh also known as
17 Sandra Good was booked into the County Jail?

18 A At 10:12 p.m. on August 8th, 1969.

19 Q It says 10:21 p.m.

20 A 10:21, I beg your pardon.

21 Q On August 8th, 1969?

22 A Yes, sir.

23 Q At Sybil Brand Institute?

24 A Yes, sir.

25 Q Skipping a few sheets, are you familiar with
26 this document right here?

11a-2

1 A Yes, sir, I am.

2 Q What is that document?

3 A That is an envelope used to keep all of the
4 documents pertaining to this particular party's case at
5 the jail.

6 Q This would be Sandra Pugh or Sandra Good's
7 jacket?

8 A That's correct.

9 Q Does this appear to be a photostatic copy of
10 the front part of the jacket?

11 A Yes, it does.

12 Q I notice some entries on this document, here,
13 do you know who would make these entries?

14 A No, I don't.

15 Q Who would normally make the entries on this
16 particular document, not referring to the people who
17 made the entries on Sandra Pugh's jacket, but on any
18 jacket?

19 A It would have to be someone at the Inmate
20 Reception Center, but who I don't know.

21 Q I'm not referring now to the name of the party,
22 but who at the Sheriff's Office occupying what position
23 would complete this particular document?

24 MR. KANAREK: That is calling for a conclusion, your
25 Honor.

26 THE COURT: Overruled.

11a-3

1 THE WITNESS: Why, it's someone assigned to the
2 Inmate Reception Center, a Deputy Sheriff.

3 BY MR. BUGLIOSI:

4 Q Inmate Reception Center?

5 A That's correct, that is where these records
6 are maintained prior to sending them to us.

7 Q How long have you been working for the Sheriff's
8 Office?

9 A Nine and a half years.

10 Q How long have you been working in your particu-
11 lar bureau?

12 A Ten months.

13 Q You are pretty familiar with the records there,
14 aren't you?

15 A Yes, sir.

16 Q The criminal records?

17 A Yes, sir.

18 Q Among those records are records indicating when
19 somebody is released from jail?

20 A Yes, sir, that's correct.

21 Q Who completes this particular document then?

22 MR. KANAREK: The man obviously cannot answer it.

23 THE COURT: Overruled, he may answer.

24 THE WITNESS: I do not know.

25 BY MR. BUGLIOSI:

26 Q It is not part of your job to know that?

11a-4

1 A No, sir, it is not.

2 Q Some other specialist knows this job?

3 A It would be someone at the Inmate Reception
4 Center who knows that.

5 Q I am not asking you whether you completed this,
6 but someone else in your department would know this?

7 A Yes, sir, that's correct.

8 Q Do you have any idea who that party is?

9 A Possibly the watch commander at the inmate
10 reception center or the officer that brought the information
11 back from court and caused it to be entered.

12 Q Okay, turning the page here I see another
13 document also. It looks like a booking and property record.

14 Is that the same type of record you looked at
15 earlier, the one for Sandra Pugh also known as Sandra Good?

16 A Yes, sir, it is.

17 Q This is one for Mary Brunner?

18 A Yes, sir.

19 Q And this document also would be made in the
20 regular course of business of the Sheriff's Office, is that
21 correct?

22 A Yes, it would.

23 Q It is a business record of the Sheriff's Office?

24 A Yes, it is.

25 Q What does this document reflect as to the date
26 that Mary Brunner was put into Sybil Brand Institute?

1a-5
1 MR. KANAREK: Improper foundation, your Honor, con-
2 clusion, hearsay.

3 THE COURT: Overruled.

4 THE WITNESS: She was booked at 10:21 p.m. August 8th,
5 1969, at Sybil Brand Institute.

6 MR. BUGLIOSI: Thank you, I have no further questions.

7 MR. FITZGERALD: No questions.

8 MR. SHINN: No questions, your Honor.

9 MR. KANAREK: May I, your Honor?

10 THE COURT: Yes.

11
12 CROSS-EXAMINATION

13 BY MR. KANAREK:

14 Q Officer, is it a fair statement you have no
15 personal knowledge whatsoever concerning those documents?

16 By personal knowledge, you yourself had nothing
17 to do with the creating of these documents?

18 A That's correct.

19 Q You are merely -- it is a fair statement you
20 are sort of -- you are merely bringing them to court here?

21 A That's correct.

22 MR. KANAREK: Thank you, thank you, your Honor.

23 THE COURT: Any questions?

24 MR. HUGHES: No questions, your Honor.

25 THE COURT: Are you the custodian of the records,
26 sir?

1 THE WITNESS: Yes, sir, I am.

2 THE COURT: Is that one of your official duties?

3 THE WITNESS: Yes, sir.

4 THE COURT: You are familiar with the method of
5 preparing the documents?

6 THE WITNESS: Some of the documents, not all of them.

7 I have not worked the Inmate Reception Center
8 so I do not know who finalized or puts various entries in
9 all the documents.

10 THE COURT: As to those you did testify to you have
11 personal knowledge of the method of preparation.

12 THE WITNESS: Yes, sir.

13 THE COURT: Any further questions?

14 MR. KANAREK: Yes.

15
16 FURTHER CROSS-EXAMINATION

17 BY MR. KANAREK:

18 Q Officer, you have personal knowledge of what
19 is written down in the book as to the way things are
20 supposed to be done, is that right?

21 A Yes, sir.

22 Q But is it a fair statement you have no knowledge
23 whether the book was followed in this particular case,
24 no personal knowledge, right?

25 A That is correct.

26 MR. KANAREK: Thank you, your Honor.

1 THE COURT: You may step down.

2 MR. BUGLIOSI: People call DeWayne Wolfer.

3 THE COURT: I see it is 3:00 o'clock, Mr. Bugliosi,
4 we will take our recess at this time.

5 Ladies and gentlemen, do not converse with
6 anyone or form or express any opinion regarding the case
7 until it is finally submitted to you.

8 The court will recess for 15 minutes.

9 (Recess.)

12 fls.

2-1

1 THE COURT: All counsel and jurors are present.

2 You may continue, Mr. Bugliosi.

3 MR. BUGLIOSI: DeWayne Wolfer.

4 THE CLERK: Please repeat after me.

5 I do solemnly swear --

6 THE WITNESS: I do solemnly swear --

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

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

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

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

11 THE CLERK: -- before this Court --

12 THE WITNESS: -- before this Court --

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

14 THE WITNESS: -- shall be the truth --

15 THE CLERK: -- the whole truth --

16 THE WITNESS: -- the whole truth --

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

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

19 THE CLERK: -- so help me God.

20 THE WITNESS: -- so help me God.

21 THE CLERK: Would you be seated, please.

22 Would you please state and spell your name.

23 THE WITNESS: Yes. It is DeWayne A. Wolfer;

24 D-e capital W-a-y-n-e, W-o-l-f-e-r.

25

26

DIRECT EXAMINATION

1
2 BY MR. BUGLIOSI:

3 Q What is your occupation, sir?

4 A I am a police officer for the City of Los Angeles
5 assigned to the Scientific Investigation Division Crime
6 Lab where I act as a criminalist.

7 MR. BUGLIOSI: May it be stipulated that the witness is
8 an expert in the field of firearms and ballistics?

9 MR. FITZGERALD: I'd prefer a foundation.

10 THE COURT: Very well.

11 MR. BUGLIOSI: Q Please relate your training and
12 experience in the field of firearms and ballistics.

13 A Just in that field, basically, I got my
14 Bachelor's Degree from the University of Southern California
15 where I was a pre-med student and have a background in the
16 field of chemistry and physics, and all different types of
17 laboratory technique courses.

18 Since my graduation, I have served in the
19 laboratory as a criminalist since 1951, during which time I
20 served both in the capacity as a civilian criminalist and as
21 a police officer criminalist.

22 I am currently a professor at California State
23 College of Long Beach where I have been so employed for the
24 past -- well, I am starting on my 16th year now.

25 During this time I have offered a year and a half
26 course in the field of criminalistics, both the theory and

1 the laboratory science portions.

2 In addition to my present teaching assignment,
3 I have taught criminalistic subjects on the campuses of the
4 University of Southern California, El Camino College,
5 Fullerton College, Santa Barbara College and Ventura
6 College.

7 During the summer session, under the auspices
8 of the State Board of Education, I have taught at Cal in
9 San Francisco, UCLA, the California State College in
10 Los Angeles.

13

13-1

1 In the way of criminalistics in just the field
2 of firearms I have traveled throughout the United States,
3 through all the major firearm factories where I worked in
4 the manufacturing processes for the purpose of forensic
5 studies -- that would be the studies belonging to a court
6 of law.

7 Some of the factories which I made these studies
8 in would include that of Smith & Wesson, Colt, Iver-Johnson,
9 High Standard, Harrington & Richardson, Great Western,
10 Remington, Winchester and others.

11 In addition to these studies I made similar
12 studies of all of the major munition factories, some of
13 these factories again would include that of Remington,
14 Peters, Winchester, Western, Federal and others.

15 I made all these similar studies of firearms
16 and ballistics with major smokeless powder manufacturers.

17 I have testified hundreds of times involving
18 firearms and ballistic matters here in our State, both in
19 the Municipal Courts and the Superior Courts systems.

20 I have published my fourth edition of my
21 laboratory manual.

22 In addition to my testimony here in the State of
23 California I testified in at least eight other states on
24 numerous occasions involving firearms and ballistic matters.

25 I'm a member of the American Association of
26 Forensic Scientists, and others.

13-2

This is basically my background in ballistics.

BY MR. BUGLIOSI:

Q When do you have time to work at the Los Angeles Police Department?

A I don't.

Q On the date August 18th, 1969, did you proceed to the Tate residence at 10050 Cielo Drive, Los Angeles?

A I did.

Q Did you proceed there with anyone?

A Yes, I went to that residence with an officer, Dave Buckler, and myself.

Q What was the purpose of your going there on that date and time?

A To make tests to see if certain sounds could be heard at different positions at that location.

MR. FITZGERALD: If the Court please, I wonder if counsel might approach the bench in regard to this officer's testimony. It is an important matter.

THE COURT: Very well.

(The following proceedings were had at the bench out of the hearing of the jury:)

MR. FITZGERALD: I take it that this officer is going to testify that William Garretson could not hear gunshots from his position in the back house at the Tate residence.

Is that essentially correct?

MR. BUGLIOSI: Right.

13-3

1 MR. FITZGERALD: Now, what I would like to allege,
2 your Honor, and I'm alleging, is a total deprivation of
3 discovery in this area.

4 And I particularly have been interested in
5 obtaining reports concerning any such experiment that was
6 conducted, and I have been told that there are no reports
7 of any such experiment work done there other than were
8 in the official police reports.

9 Now, on page 28 and 29 of the official reports
10 of the Los Angeles Police Department which I received
11 pursuant to a court order directing ^{that} the prosecution
12 turn over to me results of any and all lab tests of the
13 Scientific Investigation Department concerning any examina-
14 tion, physical, photographic or written evidence connected
15 with the investigation of the above-entitled case together
16 with any and all written reports concerning said evidence.

17 I was informed that the only such reports
18 relating to any tests were as follows, contained on page
19 28 and 29, on the first homicide investigation report.

20 It is brief and as follows:

21 Investigating officers went back to the
22 crime scene and reviewed the physical and acoustical
23 aspects of the scene as related to what Garretson, who
24 claimed to have been awake all night in the guest house
25 writing letters, claimed he heard or saw.

26 In the opinion of the investigating officers,

1 and scientific research by the Scientific Investigation
2 Department, it is highly unlikely that Garretson was not
3 aware of the screams, gunshots and other turmoil that
4 would result from a multiple homicide such as took place
5 in his near proximity.

6 These findings however did not absolutely
7 preclude the fact that Garretson did not hear or see any
8 of the events connected with the homicide.

9 Now, I suggest they are going to put on an
10 expert who testified that he conducted an acoustical
11 investigation on August 18th, and we have been deprived
12 all of these months of the reports concerning this
13 acoustical investigation so that we could prepare for
14 trial.

15 I suggest that either one of two things have
16 happened:

17 Somebody has been grossly negligent or some-
18 body has willfully suppressed evidence.

19 I have known Mr. Bugliosi for a long time. I
20 am not suggesting he willfully suppressed any evidence.

21 But if representatives of the Los Angeles Police
22 Department suppressed evidence, that is just as bad, and
23 what disturbs me so terribly, substantially about this is
24 that I sought on several different occasions to obtain
25 this very evidence because I suspected it existed.

14-1
1 MR. BUGLIOSI: So have I. I have sought to obtain it,
2 too.

3 I just got a copy about 20 minutes ago. My
4 first copy that I had gotten.

5 MR. HUGHES: I want to join in Mr. Fitzgerald's
6 motion, your Honor.

7 MR. KANAREK: I join in Mr. Fitzgerald's comments
8 and also, your Honor, I suggest that there are some subjects
9 that -- this man can't be an expert in everything, and I
10 suggest there is improper foundation for him to be an expert
11 in acoustics, no matter how many firearm factories he may
12 have visited.

13 THE COURT: We don't know what he is going to say yet.
14 At least I don't.

15 Apparently everybody here knows what he is going
16 to say except me.

17 MR. KANAREK: I would ask for an offer of proof.

18 THE COURT: How did you all find out what he is
19 going to testify to?

20 MR. FITZGERALD: They are not going to call him to
21 put on negative evidence, your Honor. I am smart enough to
22 know that.

23 THE COURT: You seemed to know exactly what he was
24 going to testify to when you came to the bench. I am curious
25 to know how you knew that?

26 MR. FITZGERALD: We are all familiar with who and what

1 DeWayne Wolfer is.

2 Once he said he went to the Tate house on the
3 18th for the purpose of an acoustical investigation, I knew
4 what he was ^{to} going to testify to.

5 If I am wrong, correct me.

6 THE COURT: When did you find out that he went to the
7 Tate house on the 18th?

8 MR. FITZGERALD: When I heard him say that he went to
9 the house on the 18th.

10 I have dealt with the LAPD for a number of years,
11 your Honor.

12 THE COURT: Today is the first time that you knew
13 about it?

14 MR. FITZGERALD: Today is the first time.

15 MR. HUGHES: I had not known about it.

16 MR. BUGLIOSI: What is that?

17 MR. HUGHES: I had not known about his testimony.

18 THE COURT: Did he prepare a report? And if so, what
19 is the date of it?

20 MR. BUGLIOSI: I don't know the date, but I just got
21 the report this afternoon for the first time. It was brought
22 over to me by Mr. Wolfer.

23 MR. KANAREK: May we have an offer of proof, your
24 Honor?

25 THE COURT: I think Mr. Fitzgerald has a point. I
26 don't know how much of a point it is. I don't really know.

1 MR. BUGLIOSI: It is very simple testimony, your
2 Honor.

3 The testimony is that he went out there with
4 Mr. Butler, and Mr. Butler test-fired -- not test-fired,
5 but fired a .22 caliber revolver similar to this one --
6 from the driveway, and from inside the Tate residence and
7 from the front part of the Tate residence, and Mr. Wolfer was
8 in the back house, Garretson's house, with a certain type of
9 machine to record sounds, and they turned the volume up on
10 the stereo, and they could not hear the shots when they were
11 fired.

12 THE COURT: That really isn't a test that requires an
13 expert at all, is it?

14 All it requires is somebody with a pair of
15 ears.

16 MR. KANAREK: That's right.

17 MR. BUGLIOSI: I didn't even want to ask for his
18 expertise, just to show that he is familiar with firearms.

19 THE COURT: The point I am getting at is that assuming
20 there has been a failure of discovery. What is the
21 prejudice? I mean, he either heard it or he didn't. That is
22 the only possible results of the test.

14a-1

1 MR. FITZGERALD: I believe that Mr. Garretson, in a
2 sense, committed perjury.

3 I believe that Mr. Garretson, the witness who
4 testified in this court on Friday, July 24, 1970, when he
5 testified about the events surrounding his knowledge of
6 the events of the evening of August the 8th and August the
7 9th, was subject to a great deal of suspicion, and I intend
8 to argue it to the jury.

9 Also, I might point out to the Court that many
10 police officers investigating this case from the
11 Los Angeles Police Department were also of the opinion that
12 Mr. Garretson was not being entirely candid with them in
13 their investigation, and I can cite to you chapter and
14 verse in the official reports of the Police Department in
15 connection therewith.

16 I feel it is relatively important because he
17 was the only person actually found at the scene at the time
18 of the discovery of the bodies. He was the first suspect
19 of the Police Department, and I suggest that he is a
20 prime suspect.

21 THE COURT: Maybe I missed the point.

22 If I understood Mr. Bugliosi, he is going to
23 say that he didn't hear the shot.

24 MR. BUGLIOSI: That he did not hear the shot.

25 THE COURT: Did not, right.

26 MR. FITZGERALD: That is exactly what Garretson said,

1 but I suggest that he could.

2 THE COURT: Garretson or Wolfer?

3 MR. FITZGERALD: I suggest that Garretson could.

4 I am also suggesting that somebody in the
5 Police Department is not telling the truth.

6 I just read to you where their official con-
7 clusion was that he could hear. Now they are saying that
8 he can't.

9 MR. BUGLIOSI: Doesn't the report say that they
10 thought he could?

11 THE COURT: You have a right to go into any incon-
12 sistency.

13 What I am trying to ascertain at the moment is,
14 are you making some kind of a motion with respect to an
15 alleged failure to make discovery?

16 MR. FITZGERALD: Yes.

17 Now, the last time we brought a similar subject
18 up, your Honor made some comments about the effect of
19 wilful suppression.

20 People vs. Teal, a 1965 California case in
21 63 Cal. 2d, Page 178, points out that the test in
22 California for the effect of failure to comply with a proper
23 discovery order is as follows:

24 One, where there is a wilful suppression of
25 evidence, an adverse inference will be drawn and the jury
26 will be so instructed;

1 And number two, if the failure is excusable,
2 non-compliance to a discovery order does not go in front
3 of the jury.

4 I am going to ask that your Honor admonish the
5 jury.

6 I would ask, number one, for an evidentiary
7 hearing to determine if there was a wilful suppression;
8 and I might point out that I am essentially about at the
9 end of my line in dealing with the Los Angeles Police
10 Department in terms of cooperation and concerning evidence
11 in this case.

12 Mr. Bugliosi has been very open and helpful,
13 but they have frustrated us at every turn in the road.

14

15

16

17

18

19

20

21

22

23

24

25

26

14b-1

1 MR. BUGLIOSI: I am the prosecutor and I have to
2 put the evidence on first, and I have had just as much
3 difficulty as you have had.

4 I have asked for this report for several
5 months, and Mr. Wolfer just brought it in to me this day.
6 I haven't had it.

7 THE COURT: What is the explanation?

8 MR. BUGLIOSI: I don't want to say on the record,
9 your Honor. You know, it is just one of those things.

10 THE COURT: Let's start at the end and work back-
11 wards, Mr. Fitzgerald.

12 Let's assume everything you say is true, that
13 it was a willful suppression of evidence. Now, how have
14 the defendants been injured? What is the prejudice and
15 what, if anything, can be done about it?

16 MR. FITZGERALD: Okay.

17 First, I would like to at least argue in an
18 attempt to demonstrate that Mr. Garretson, in fact, killed
19 some of the defendants in Counts I through V of the infor-
20 mation -- of the indictment.

21 Okay. This, in a very material respect,
22 exculpates Mr. Garretson on an important point. It does
23 not relate directly to the defendant, it relates to an
24 extraneous --

25 THE COURT: How does it exculpate him? If he was
26 involved in a killing, he wasn't where he said he was in

14b-2

1 the first place. He not only heard it, he caused it,
2 under your theory.

3 MR. FITZGERALD: That is quite true.

4 THE COURT: There couldn't be prejudice in that
5 regard.

6 MR. FITZGERALD: I am prejudiced in the sense that
7 it is pretty difficult for me to cross-examine something,
8 not having been presented with the report.

9 THE COURT: That I agree with you on. If you need
10 additional time, that is another matter. Do you know
11 where the report is now? Have you seen it?

12 MR. FITZGERALD: No.

13 MR. BUGLIOSI: I just got it.

14 THE COURT: Why don't we do this. It appears, at
15 least it is questionable, there is no explanation yet as
16 to why discovery was not made, if it wasn't. In any
17 event, why don't we --

18 MR. BUGLIOSI: It is just a short report. We could
19 take a ten-minute recess. Then I will show it to the
20 defense counsel right now.

21 It is a short report, your Honor, saying that
22 Buckler fired a revolver, and he was in the background and
23 couldn't hear it. He had turned up the stereo and couldn't
24 hear the shot.

25 THE COURT: It doesn't even require any expertise.

26 MR. KANAREK: That is correct, your Honor.

14b-3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

14c fls.

MR. BUGLIOSI: There is a certain amount of expertise required because he did use, basically, the same type of a revolver and cartridges to fire.

14c-1

1 THE COURT: In other words, similar conditions?

2 MR. BUGLIOSI: Yes.

3 So, he will be testifying to that.

4 I didn't want to go into a long background.

5 I thought there would be a stipulation, but
6 there wasn't.

7 MR. KANAREK: You hit the nail on the head. There
8 are some things that are just not the subject of expertise,
9 and Mr. Witkin points out that --

10 THE COURT: Of course, there is nothing to keep an
11 expert from testifying to a fact, even though it doesn't
12 require expertise.

13 MR. KANAREK: But it gives an added synthetic dignity
14 to it.

15 Furthermore, your Honor, there has to be an
16 exact duplication of conditions if you are to conduct
17 a test.

18 THE COURT: That goes to the weight.

19 MR. KANAREK: There has to be a showing as to whether
20 or not the conditions are the same. How do we know?
21 Just because Linda Kasabian has testified concerning
22 bullets and firing?

23 MR. BUGLIOSI: So, could we just take a ten-minute
24 recess? We have been getting so little evidence in in the
25 last couple of weeks, your Honor. Could we just take a
26 ten-minute recess? It is a very short report. Then we

could put him back on.

I will give them the copy. I just got it.

MR. SHINN: How long will your examination be?

MR. BUGLIOSI: About three or four minutes on direct.

THE COURT: How long is the report?

MR. BUGLIOSI: It is just one sheet.

THE COURT: I will leave the jury in the jury box, and if you want to come into chambers for any further discussion, very well. Otherwise, let the Clerk know when you are done and I will come back.

MR. BUGLIOSI: Very well. Thank you.

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

THE COURT: We are going to take a very brief recess, ladies and gentlemen.

I will ask you to remain in the jury box. I am going to leave the bench for just a few minutes until counsel tell me they are ready to proceed.

(Recess.)

15 fls.

15-1

1 (The following proceedings were had in the
2 chambers of the court, out of the hearing of the jury:)

3 MR. FITZGERALD: If the Court please, we were in fact
4 given a one-page report signed by DeWayne A. Wolfer.
5 Interestingly this report is dated October 5th, 1970.

6 MR. BUGLIOSI: I have another one here; I didn't even
7 give it to you, you will get it later, but I'm not going to
8 get into it, dated 10-5-70, isn't that today's date?

9 MR. FITZGERALD: Yes.

10 MR. BUGLIOSI: Well, these were where/ ^{they} fired weapons
11 at the Tate residence, and sought to hear the sound other
12 places, other than the back house, far-away places, a mile
13 away, but I'm not going into that. I'm just concerned with
14 the back house now.

15 MR. FITZGERALD: I had a brief conversation with
16 Officer Wolfer. He declined to discuss the circumstances
17 surrounding the late date of the report with me without
18 Mr. Bugliosi being present.

19 But he said, and I quote, "The reports were
20 lost. The original reports were lost and they have been
21 recently rediscovered."

22 MR. BUGLIOSI: He gave me a report about three weeks
23 or a month ago, totally inadequate, and I gave it right
24 back to him and I told him I want a report on exactly what
25 happened out there.

26 This afternoon he brought this in, what you have

1 there.

2 So this is the first report I've got that I kept.

3 MR. FITZGERALD: Yes, and the testimony has already
4 indicated the test took place in August of 1969.

5 THE COURT: I agree it seems a little tardy.

6 MR. FITZGERALD: Mr. Kanarek had some point he wanted
7 to make to the Court.

8 MR. KANAREK: This was a Colt revolver which he used.
9 He did not use a High Standard.

10 THE COURT: I don't know anything yet --

11 MR. KANAREK: That's what the report says, your Honor.
12 I think it is incompetent evidence.

13 MR. BUGLIOSI: He said it makes the same sound,
14 uses the same cartridges.

15 I think it's a matter of cross-examination.
16 According to him it is the same sound.

17 MR. KANAREK: But I agree with the Court, you cannot
18 be an expert on everything. You are adding a synthetic
19 dignity to it by putting a man, who calls himself a
20 criminalist, in front of a lay jury, have him go out and
21 shoot a couple of guns, one of the police officers yelled,
22 "Help." He could not hear it.

23 It dignifies Mr. Garretson and I think it
24 deprives us of certain inferences, without the prosecution
25 having any competent evidence there.

26 I mean, why couldn't any of us go out there?

1 THE COURT: It depends on the circumstances of the
2 test, if the test was performed under reasonably similar
3 conditions.

4 MR. KANAREK: He did not even use a High Standard
5 gun.

6 THE COURT: There would be nothing wrong with it.
7 On the other hand, if the conditions were so dissimilar that
8 the jury were likely to be confused or misled, that is
9 something else.

10 MR. KANAREK: A Colt gun -- I don't know whether
11 a High Standard is different --

12 THE COURT: I don't know either. Presumably that is
13 why an expert was called to testify.

14 MR. KANAREK: I think, your Honor, with all of this
15 there are grave questions as to whether or not the dupli-
16 cation is anywhere near -- especially when they use a
17 different gun, he used a Colt gun, he did not use a
18 High Standard --

19 THE COURT: That is a matter that will have to be
20 determined when Mr. Wolfer testifies, if he testifies.

21 I won't determine that in chambers in a vacuum.
22 I don't know what he is going to say.

23 MR. KANAREK: I think the prejudice far outweighs any
24 competency or probative value.

25 THE COURT: I think the first question that was
26 raised, namely the discovery, until we have some further
statement from someone who knows the facts, the Court is in

1 no position to know whether there was a wilful or inadver-
2 tent failure to make discovery. Apparently it was a failure
3 to make discovery.

4 MR. BUGLIOSI: I don't know why the police would want
5 to suppress this information.

6 Apparently they suppressed it from me. I just
7 got it today.

8 MR. KANAREK: Mr. Fitzgerald asked for an evidentiary
9 hearing. Again it is one of those things you cannot unring
10 the bell.

11 THE COURT: Let's assume for the purposes of this
12 discussion that it was a wilful failure to make discovery,
13 what then?

14 MR. KANAREK: Then it would not be admitted.

15 This was reported in 10-5-70, but it took place
16 in August of '69.

15a-1

1 MR. FITZGERALD: If there was a willful suppression,
2 I think we are entitled to an instruction to the jury that
3 an adverse inference should be drawn to the testimony of
4 an agent of willful suppression.

5 THE COURT: Let us assume it is not a willful but an
6 inadvertent suppression, then what?

7 MR. FITZGERALD: Under existing California law,
8 if the failure was excusable, then certainly counsel
9 should be provided with an opportunity to absorb the
10 recently acquired discovery, but there would be no
11 instruction to the jury, or the evidence would not of
12 itself be inadmissible.

13 Now, maybe at some point negligence is so
14 gross that it becomes almost reckless, and maybe we can
15 argue like you do in civil areas that at some point the
16 negligence becomes a willful suppression even though it is
17 without intent.

18 They just exercised a careless disregard with
19 respect to their reports so that no one, you know, can
20 ascertain them. That would border on willful suppression.

21 MR. BUGLIOSI: This is not the kind of document
22 anyone would want to suppress even if someone had an
23 evil intent.

24 Furthermore, how does the suppression hurt you?

25 MR. FITZGERALD: I don't know. Maybe I am making a
26 mountain out of a molehill, but this is about the 48th time

XMK2

1 this has happened in this case.

2 MR. BUGLIOSI: I have been on the phone for months
3 trying to get reports from the Los Angeles Police Depart-
4 ment. You may say they are trying to suppress it from
5 me.

6 This is not a case of suppression -- there is
7 another word for it, I am not going to use.

8 MR. FITZGERALD: Incompetence.

9 MR. BUGLIOSI: I am not going to use it. If anyone
10 were over there trying to sabotage the defendants, this is
11 not the type of document they would suppress.

12 MR. FITZGERALD: No, no, I am reacting and it is
13 almost emotionally, Judge, you try to minimize the vari-
14 ables in these cases.

15 I try to get this stuff out of the way if
16 I can get this on discovery, read it carefully, plan some
17 strategy; I know where I am in terms of a lawsuit.

18 What is happening in this case is there constantly
19 is all this new material that change various perspectives in
20 materials of the entire case.

21 Maybe I am overreacting to the fact they are
22 suppressing this.

15b fls. 22

23

24

25

26

15b-1
1 THE COURT: Well, if it turns out that it was un-
2 intentional and not grossly negligent to the point of being
3 intentional, how much time do you anticipate you will require
4 before you will be prepared to proceed?

5 MR. FITZGERALD: Actually I am prepared now. I mean,
6 I read the report; there is nothing earth-shaking in the
7 report except it is diametrically opposed apparently to
8 some other reports.

9 I mean, essentially it did not involve any
10 material difficult to absorb.

11 THE COURT: How do you wish to proceed then?

12 MR. FITZGERALD: Well, I mean I don't want to withdraw
13 any of my remarks, and I certainly don't want to withdraw
14 any motions I made, but I certainly am willing to submit
15 it.

16 If your Honor is disinclined to follow my
17 suggestions, I am ready to proceed.

18 THE COURT: What suggestions are those?

19 MR. FITZGERALD: Well, my suggestion that we assume
20 that it is a wilful suppression of evidence, and we be
21 entitled to a contemporaneous instruction to the jury to
22 that effect.

23 THE COURT: I cannot assume that, if you are going to
24 make objection and request that relief I have to give the
25 People an opportunity to be heard as to what the reason for
26 the non-discovery is.

1 MR. BUGLIOSI: I should think we would all be very
2 concerned about expediting this trial.

3 MR. FITZGERALD: I am, I am.

4 MR. BUGLIOSI: It is not you; usually it is Mr. Kanarek,
5 and we are just taking up a lot of time here.

6 I told the Los Angeles Police Department three
7 months ago, and I realize it was a very complex, intricate
8 assignment I gave them, to find out who made the scale on
9 that map that Mr. Kanarek won't stipulate to.

10 THE COURT: We still don't know.

11 MR. BUGLIOSI: They brought in the wrong party today.

12 He said he told them he could not do it.
13 So I am saying if we could stipulate to some of these things
14 we could save a lot of time.

15 THE COURT: It is rather difficult to stipulate to
16 the scale of an aerial photo when you don't know what the
17 scale is.

18 I don't blame anybody for not stipulating to
19 that. I wouldn't either.

20 But as to something like this, I don't know.
21 If it isn't important, why don't we get on with it?

22 If it is important, let's get on with it also.

23 MR. KANAREK: Let the prosecution stipulate that it
24 is a wilful -- well, you see, he verbalizes, "Let's all
25 cooperate," but when it gets down to nitty-gritty, he won't
26 do it.

1 This has been a year in coming --

2 THE COURT: We don't have to go over that again.

3 MR. BUGLIOSI: I will bring out in front of the jury
4 that this report was very belated; it took a long time.
5 I will bring that out in front of the jury.

6 MR. KANAREK: We need that instruction because
7 Mr. Garretson has made some very --

8 MR. FITZGERALD: It is probably not that terribly
9 crucial. It is vexing; it shows to me a pattern of conduct,
10 but aside from that --

11 THE COURT: Mr. Fitzgerald, I think your point is a
12 good one. I don't think we can just simply ignore it.

13 It is there. Unless you are willing to with-
14 draw it it has to be met. If it isn't met, I probably
15 would have to rule in your favor.

16 In other words, the People will now have the
17 burden of showing some justification for not making a
18 discovery just as in any other case.

19 I see no problems in that.

20 What I want to know is, what do all of you want
21 to do? Do you want to continue to assert your objection?
22 Then it is clear the People have the burden of going forward
23 to show why the discovery was not made.

24 If it turns out to be wilful I will have to
25 consider that in light of what the facts are.

26 If it turns out to be non-wilful, maybe I can
consider that.

15c-1

1 MR. FITZGERALD: Maybe we can do that in the way of
2 a short hearing. I don't anticipate I will have many
3 questions.

4 Maybe we can ask Mr. Wolfer some questions
5 outside the hearing of the jury. Is that agreeable?

6 MR. BUGLIOSI: Actually, wasn't the discovery
7 directed toward the People?

8 MR. FITZGERALD: Right.

9 MR. BUGLIOSI: So I cannot give you something I don't
10 have.

11 MR. FITZGERALD: That's right.

12 MR. BUGLIOSI: Actually, you should be questioning me.

13 MR. FITZGERALD: That's right, except, you see, I
14 have been through this before, fortunately, and so I served
15 a copy of the discovery order upon the Police Department as
16 well.

17 MR. BUGLIOSI: But they were not directed, though,
18 the Court directed the prosecution to turn over everything.

19 I don't think the Court, Judge Lucas, or any
20 of the other judges in this case, have ever directed the
21 police. Maybe I'm wrong on it.

22 MR. FITZGERALD: They directed the police to turn it
23 over to you who in turn would turn it over to the
24 representative of the defendants.

25 MR. BUGLIOSI: Is there an order there directing the
26 police to turn things over to me or to the prosecution?

15c-2

1 MR. FITZGERALD: Yes. These are my copies but, you
2 see, "It is hereby ordered that you and each of you
3 transfer all items," and so forth.

4 And then it is further ordered -- we will get
5 it out of the Superior Court file and I will show you
6 exactly.

7 MR. BUGLIOSI: We are taking up time. Do you want
8 to interrogate Wolfer or me, either one, I don't care.

9 MR. FITZGERALD: I accept Mr. Bugliosi's representa-
10 tions that he did not have it until today.

11 I don't see any reason to question Mr. Bugliosi.
12 Maybe some other counsel would, but I do not. I don't
13 think it is Mr. Bugliosi's problem.

14 But I do not think we can obviate the whole
15 problem by saying "Well, the District Attorney is not
16 culpable."

17 Actually the Los Angeles Police Department are
18 agents of the prosecution.

19 THE COURT: That's right, the prosecution is the
20 State of California represented by the District Attorney's
21 Office.

22 MR. FITZGERALD: If your Honor is inclined to feel
23 that it is immaterial --

24 THE COURT: I don't think I am called upon to make
25 that kind of decision, Mr. Fitzgerald. You are defending;
26 I am not.

1 MR. KANAREK: The last probable cause hearing was
2 very brief, your Honor. Mr. Wolfer is the only witness.
3 It could be very brief.

4 THE COURT: All right, let's send the jury upstairs,
5 adjourn for the day as far as they are concerned.

6 We still have a few minutes left for a normal
7 adjournment. We will have a brief examination of Mr.
8 Wolfer.

9 Is that agreeable?

10 16 Fls.

11 MR. FITZGERALD: That is agreeable.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

16-1

1 (The following proceedings are held in open
2 court. All counsel present. Defendants and jury absent.)

3 THE COURT: All counsel present. The jury has been
4 excused for the day and is not now present in the courtroom.

5 You may proceed.

6
7 DE WAYNE A. WOLFER,
8 called as a witness by and on behalf of the People, resumed
9 the stand and testified further as follows:

10
11 DIRECT EXAMINATION (CONTINUED)

12 BY MR. BUGLIOSI:

13 Q Officer Wolfer, you went out to the Tate
14 residence on August the 18th, 1969, and you conducted some
15 type of an experiment out there to determine whether if a
16 .22 caliber revolver were fired, if the sound could be
17 heard from the back house; is that correct?

18 A That is correct.

19 Q Did you prepare any report on the result of
20 your experiments?

21 A I did.

22 Q When did you prepare the report?

23 A I believe within a day or two after that.

24 Q Now, several months ago you received a request
25 from me to send the report over to me; is that correct?

26 A That is correct.

- 1 Q And at that time did you search for the report?
- 2 A I searched for the report, yes, and was unable
- 3 to find it.
- 4 Q All right.
- 5 Now, subsequent to my original request for the
- 6 report, did you again look for the report?
- 7 A I did, yes.
- 8 Q And were you able to find it?
- 9 A I wasn't able to, no.
- 10 Q Okay.
- 11 Was anyone able to find it?
- 12 A Yes.
- 13 Just a week or two ago, the Captain -- when I
- 14 returned from a trip -- said that the report and several
- 15 other reports had been found.
- 16 Q Okay.
- 17 Over at the Police Department?
- 18 A That is correct.
- 19 Q Now, you gave me a report today dated 9-21-70;
- 20 September the 21st, 1970.
- 21 That was not the report that was originally
- 22 lost?
- 23 A No.
- 24 Q This was a new report?
- 25 A That is a new report.
- 26 Q And how come you made a new report?

1 A Because I was requested to make a narrative
2 report.

3 The original report merely stated on it several
4 facts, and that they wanted in narrative form, and after
5 the report was found, I made up that report that I handed to
6 you here in the courtroom. I made it up yesterday at home.

7 Q Well, there is one report dated September 21st,
8 and another one dated October the 5th, 1970?

9 A Well, the one report that you have is Officer
10 Butler's report. I did not make that report.

11 Q The report you made is dated October the 5th;
12 is that correct?

13 A Yes.

14 Q And that also makes reference, of course, to
15 what happened on August the 18th, 1969?

16 A That is correct.

17 Q A couple of weeks ago you showed me the original
18 report; is that correct?

19 A No. I don't believe I showed you it.

20 I believe when the Captain found it, it was
21 a possibility that an officer brought it over to you, or
22 something, I don't know, but I did not show you the original
23 report.

24 Q Do you recall my discussing it with you, though,
25 on the 5th floor?

26 A Yes.

1 Q And I told you that I wanted a more complete
2 report?

3 A That is correct.

4 Q And then, based on that, you prepared this
5 report dated October the 5th, 1970?

6 A That is correct.

7 Q Using your original report as a basis?

8 A Yes.

9 MR. BUGLIOSI: I have no further questions.

10 THE COURT: Mr. Fitzgerald?

16A

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

16a-1

CROSS-EXAMINATION

BY MR. FITZGERALD:

Q When you originally prepared this report the very first time, what did you do with it?

A The report was made in at least four copies that would be turned over to my lieutenant.

Q And is that Lieutenant --

A Lieutenant Don Mann.

Q And he is in charge of the Scientific Investigation Division of the Los Angeles Police Department?

A Well, no. I would say Captain Martin was.

Don Mann is a lieutenant. I would say he was watch commander of the Division of Criminalistics only.

Q And you never saw the reports again for approximately one year?

A I did not see the reports until I returned, and the captain said that he had found the reports; which would be, well, yes, about a year, yes.

Q Do you know how the Captain received the information that the reports were lost?

A Yes. Because they were asking for the reports, and I said that I had made the reports and I refused to make any additional reports because I had no figures to base the reports on.

So, with this, there was a search made, and for several weeks there was a search made.

16a-2

1 Do you know when the search was begun? Or
2 do you know when the first inquiries were made of you in
3 regard to the lost copies?

4 A Well, I believe -- I mean, it is hard for me
5 to recall now, but it was when they were asking for all the
6 reports in this case.

7 Q Do you remember when that was?

8 A I could only guess.

9 I would believe it was the early part of this
10 year, but I am not sure.

11 Q And were they looking for the reports for
12 discovery or for transmittal to the District Attorney's
13 Office, or for what purpose were they looking for all the
14 reports in the case, if you know?

15 A Well, they came to me and asked for all the
16 reports that I had involving the case.

17 I said that I had filed all my reports.

18 So, then they came back to me, and they said,
19 well, there were some reports missing regarding some
20 sound tests.

21 And I said, that is correct, I made sound
22 tests. I had no idea where the reports were.

23 And this was a continuous -- they continuously
24 kept coming to me and asking me if I knew anything about these
25 reports for several months.

26 Q When you say they kept coming to you, are you

16a-3

1 referring again to the Captain?

2 A I am referring to the Captain of our division,
3 a captain of Homicide, the lieutenant of Homicide, the
4 investigators of Homicide, the District Attorney's Office,
5 everybody. I mean, just everybody involved.

6 Q Now, I believe that the conclusion of your
7 test was essentially --

8 MR. BUGLIOSI: Your Honor, I object to this. It
9 is beyond the scope of this hearing.

10 The only issue here is whether there has been
11 a willful suppression of evidence.

12 Now he is going into substantive matters,
13 also calling for hearsay.

14 This is a matter of cross-examination in front
15 of the jury if you want to bring this stuff up.

16 MR. FITZGERALD: Correct, it is hearsay.

17 What I have in mind is for the Court, on this
18 issue, to present evidence that in the reports made
19 available to the defendants the results of the tests
20 purport to be different than the results of the test
21 contained in the lost reports.

22 I think that is circumstantial evidence of
23 possible suppression.

24 MR. BUGLIOSI: If there was suppression, you wouldn't
25 have been given the original reports showing the difference.
26 That report would have been suppressed also.

16b fls. 26

6b-1

1 THE COURT: I think this is a matter that you can go
2 into on cross-examination, surely, Mr. Fitzgerald.

3 I don't see how it is relevant to this inquiry.

4 MR. FITZGERALD: Q Do you have the original report
5 with you, Officer?

6 A I don't, but the office has it. I can have it
7 brought over in a matter of minutes.

8 Q And the typewritten report that you gave to
9 Mr. Bugliosi is an embellishment? I don't mean any untoward
10 connotations either. It is an embellishment of your
11 original report? It is a more expanded report; is that
12 right?

13 A No. I would say quite to the contrary. It is a
14 more concised report.

15 MR. FITZGERALD: I have nothing further.

16 THE COURT: Mr. Shinn?

17 MR. SHINN: Your Honor, I believe the officer
18 testified that he has his original notes at the office.

19 Could we have a copy of them, your Honor?
20 Could he also be directed to bring us a copy of them, the
21 original report?

22 He said this is a condensed form. We would like
23 the original.

24 THE COURT: You mean the notes from which the original
25 report was made?

26 MR. SHINN: Yes. Either the notes or the original

1 report.

2 He stated that he did have the original report,
3 which is a more expanded one than this one here, your Honor.

4 We want to see his original report.

5 THE COURT: Can you bring those notes?

6 THE WITNESS: Yes, your Honor. I can have them here
7 in five minutes.

8 THE COURT: I am not sure I understood your testimony.

9 When you discovered that the reports you had
10 transmitted to the Police Department were lost, why could you
11 not then make up some new reports?

12 THE WITNESS: Well, your Honor, it was to relate
13 to all of the figures and reading of decibel levels taken
14 at the scene.

15 Q Well, weren't those in your notes from which the
16 reports were made?

17 THE WITNESS: Your Honor, I had no notes. Those notes
18 were destroyed. The reports were made and right after the
19 notes were destroyed at that time.

20 THE COURT: What were you referring to, Mr. Shinn?

21 MR. SHINN: Your Honor, I believe that the officer
22 testified that he does have an expanded version of this
23 report that he gave us today.

24 Is that right, Officer?

25 THE WITNESS: I have the original report that was made
26 and filed with my lieutenant. It was later found.

1 That report is available now if the Court so
2 wishes it.

3 THE COURT: But you don't have any handwritten
4 personal notes from which these reports were made?

5 THE WITNESS: Well, I don't recall any handwritten
6 notes anyway.

7 I returned to the office and made up the report,
8 which was typed.

9 THE COURT: Go ahead.

10 MR. SHINN: Could we have the expanded report of this?

11 THE COURT: Yes. He has agreed to bring that.

12 MR. SHINN: Thank you.

13 THE COURT: Mr. Kanarek?

14 MR. KANAREK: Just a couple of questions, your Honor.
15

16 CROSS-EXAMINATION

17 BY MR. KANAREK:

18 Q I notice there are two separate reports here,
19 Officer.

20 Can you explain, within your knowledge, Officer,
21 how many separate times the police officers went to the
22 Tate residence in order to make the purported sound tests?

23 A Counsel, I wouldn't know.

24 I know the number of times that I went, but I
25 would not know the number of times that policemen went.
26

16c-1

1 Q How many times did you go, Officer?

2 A Twice.

3 Q On what days?

4 A I went on August the 18th and on September
5 the 22nd.

6 Q And directing your attention to -- do you know
7 Mr. Garretson, who was originally arrested?

8 A I do not know him. I don't believe I ever
9 saw him.

10 Q Do you know the name?

11 A Yes.

12 Q Now, is it a fair statement, Officer, that
13 before August the 18th, when you say you first went,
14 there were other ballistics or sound tests made at the
15 Tate residence by other law enforcement officers? Do
16 you know that of your own knowledge?

17 A No, I do not.

18 Q Is it your knowledge that you were the first
19 one to conduct a test as to sound?

20 A As to my knowledge, Counsel, that is correct.
21 They were waiting for me to return from vaca-
22 tion so that I could do this. That was my instructions.

23 Q Well, now, to your knowledge, Officer, do you
24 know when Mr. Garretson was released?

25 A No, I do not.

26 Q To your knowledge, were the tests that you were

16c-2

1 making going to be used in connection with making the
2 determination as to whether Mr. Garretson would be released
3 or not?

4 A Counsel, I am not certain here today, but I
5 was on vacation and I am almost certain that Mr. Garretson
6 was released before the 18th when I came back, but I
7 don't know.

8 Q You don't know that?

9 A No, I don't.

10 Q So, therefore -- now, I am asking of your
11 own knowledge, and asking you to recall or try to recall
12 other police officers that you have talked to. Now --

13 MR. BUGLIOSI: Your Honor, this doesn't go to the
14 issue of suppression.

15 MR. KANAREK: Yes, it does. There may be other
16 reports.

17 MR. BUGLIOSI: It goes to the credibility of the
18 report itself.

19 THE COURT: Why don't you ask him, then.

20 MR. KANAREK: That is what I am trying to do.

21 THE COURT: Just ask him. You are wasting time.

22 MR. KANAREK: Yes, sir.

23 Q To your knowledge, Officer, -- let me ask you
24 this -- have you ever had conversations with police
25 officers concerning sound tests made at the Tate residence
26 before you returned on August the 18th, 1969?

16c-3

1 A No, I have not.

2 Q You have not?

3 A I have not, no.

4 Q I see.

5 You had no such conversation?

6 A No.

7 MR. KANAREK: Thank you.

8 MR. SHINN: Your Honor, I have one more question,
9 your Honor.

10
11 CROSS-EXAMINATION

12 BY MR. SHINN:

13 Q Officer, you stated that you went back to the
14 Tate residence twice; correct?

15 A Yes.

16 Q Does your report that you are going to bring
17 to us, does that include both of those visits?

18 A Well, yes. I was going to bring you -- there
19 are two separate reports. I had fully intended to bring
20 both reports, yes.

21 MR. SHINN: Thank you.

22 MR. HUGHES: Your Honor, I am not going to ask any
23 questions of this officer inasmuch as Mr. Bugliosi has
24 agreed to enter into a stipulation that it is not to be
25 offered in any way against Leslie Van Houten.

26 MR. BUGLIOSI: So stipulated.

1 THE COURT: Very well.

2 Now, do you wish to continue with Mr. Wolfer
3 in the morning, Mr. Bugliosi?

4 MR. BUGLIOSI: Yes.

5 THE COURT: All right.

6 We will adjourn at this time.

7 9:45 tomorrow.

8 (Whereupon at 4:20 o'clock p.m. the court
9 was in recess.)
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26