

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.

74

No. A253156

REPORTERS' DAILY TRANSCRIPT

Thursday, August 27, 1970

P. M. SESSION

APPEARANCES:

For the People:

AARON H. STOVITZ 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.

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Official Reporters

COPY

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1 LOS ANGELES, CALIFORNIA, THURSDAY, AUGUST 27, 1970

2 2:00 P.M.

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4 (The following proceedings were had in the
5 chambers of the court out of the hearing of the jury and
6 the defendants, all counsel being present:)

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

9 The subject that I want to bring up is a
10 matter that the Sheriff's Department representatives
11 mentioned to me.

12 They are concerned about the passing of physical
13 objects or documents through an attorney, that is, either
14 to or from one of the defendants from some third person who
15 is not either a party to the action or an attorney for any
16 of the parties.

17 The jail rules are, as you all know, that these
18 things have to go through the jail censor for security
19 purposes and for examination, and so forth.

20 Now, I am not talking about the passage of
21 documents or objects from an attorney to his client unless
22 he has received that from some person, as I have mentioned;
23 nor am I talking about the passage of a document or an
24 object from one defendant to another through an attorney.

25 What I am talking about is the circumvention
26 of the jail rules insofar as it applies to non-parties
and non-attorneys.

1 Just so that it will be perfectly clear I
2 propose to make an order but I wanted to hear from you
3 first.

4 Now, I can conceive that any order I might make
5 would be subject to some exceptions. I mean there may be
6 occasions, and perhaps there already have been, where an
7 attorney for some reason or another will think it is
8 necessary to transmit from some third party something to
9 his client without having to go through the usual jail
10 procedures.

11 If so, I think that the only way to solve that
12 kind of problem is to get permission from the court before-
13 hand.

14 As I say, I wanted to give everyone a chance
15 to talk about it.

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1 MR. STOVITZ: So far as the prosecution is concerned,
2 your Honor, if we get any mail -- like I have now -- if
3 it is addressed to the counsel, I hand it to them directly;
4 if it is addressed to any of the defendants, I give it to
5 the bailiff and let them process it in the ordinary course
6 of business.

7 So, as far as our partaking in this discussion,
8 we will just stay mute.

9 MR. FITZGERALD: Almost everything I can envision
10 that is handed to a client comes from a third party, with
11 the exception of documents that have actually been prepared
12 by the attorney himself.

13 I will give you a good example. There are a
14 number of witness statements in this case that we have
15 obtained through discovery from third persons, be it the
16 prosecution by way of the District Attorney, or of some
17 witness out in the field that we have had an investigator
18 take a statement from; or in the past we have passed
19 documents to the defendants that have appeared in the
20 media.

21 The source of almost every document is some
22 third party, with the exception of those documents that
23 are prepared by ourselves.

24 Now, if the Sheriff is talking about personal
25 correspondence or something like that, you could certainly
26 make an order in that regard that we, as attorneys, would

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1 certainly scrupulously obey. But I would ask consideration
2 in your Honor not making a blanket order.

3 Or maybe the Sheriff has something more particu-
4 lar in mind.

5 THE COURT: I don't know exactly what he has in mind.

6 He has mentioned a number of different things
7 ranging all the way from physical objects of one kind or
8 another to documents, letters, drawings.

9 I don't know if there is any one particular
10 thing. There has been a wide range of things mentioned.

11 So that is the reason that I wanted to talk to
12 you. I don't want to make an unreasonable order. On the
13 other hand, I think that the jail rules are reasonable and
14 necessary.

15 There must be some way that a happy medium can
16 be reached so as not to interfere unduly with the defendants'
17 trial preparation but at the same time to obtain the security
18 necessary.

19 MR. FITZGERALD: Actually, I myself have almost
20 literally abandoned attempting to hand anything to my
21 client in the jail because not only are they censored, they
22 are read.

23 I just can't take that risk as an attorney.
24 The Sheriff isn't neutral in this case. The Sheriff is
25 an adversary. The Sheriff has cases pending against some
26 of the female defendants and against Manson, and they are

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1 asking for the death penalty, and you just can't take the
2 chance.

3 I take the position that legally they are not
4 entitled to do what they do, but I can't stop them. I have
5 tried legally to stop them and it has been to no avail.

6 So, I really don't hand them anything. I would
7 rather read them the contents of the document, and in that
8 way it is not censored, rather than actually showing them
9 the document.

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1 MR. STOVITZ: I think what the Sheriff has in mind --
2 and this is just speaking as a third party here -- is that,
3 I am sure, if you learned of anything such as an escape or
4 any type of danger to third parties, you, as officers of the
5 court, would make that known directly to the Court.

6 But assume for the moment that there are some
7 people that are outside, in the outside world, that are
8 interested in rescuing the defendants and that they pass
9 them something without you reading it. This is a means
10 of getting information to the defendants about this rescue
11 attempt.

12 I think there has been a marked increase in
13 security in the building.

14 For instance, I have seen uniformed guards on
15 the parking lots. I have noticed uniformed guards on the
16 various floors in the building.

17 Since the incident in San Rafael, I think all
18 courts are aware of this particular thing. Before we were
19 just sleeping thinking that this couldn't happen. But it
20 has happened. Things that happen in South America can
21 happen here also.

22 MR. FITZGERALD: In that respect, your Honor, I am
23 no messenger boy for my client, and I am not going to
24 participate, implicitly or explicitly, with any attempt of
25 that nature.

26 I have never handed anything to my client that

1 I wasn't sure what the contents were, and I will represent
2 to the Court that I will do that in the future. We wish
3 to do things legally and properly.

4 THE COURT: Well, is it necessary, in your opinion,
5 Mr. Fitzgerald, for example, for an attorney to give some-
6 thing to his client which he retains as distinguished
7 from, say, handing him a letter to read or a document to
8 read in connection with his preparation of the case? Does
9 he have to have a copy of it?

10 MR. FITZGERALD: Well, usually not. Usually not, your
11 Honor. But as we have set forth in the affidavit, from
12 time to time we have attempted to give our client things
13 to take back to the jail and to review and to study.

14 In my particular case, I wanted to give
15 Patricia Krenwinkel a copy of the book "Five To Die,"
16 which purported to be an analysis of the events that took
17 place in this case. Also, I gave her copies of the gag
18 order, for example, and I gave her some witness statements.

19 THE COURT: The pretrial publicity order?

20 MR. FITZGERALD: The pretrial publicity order, right.

21 Believe it or not, we did.

22 THE COURT: I am sensitive about the use of that
23 term "gag."

24 MR. FITZGERALD: I am sorry. The pretrial
25 publicity order.

26 By and large, at any time in the past when I

1 have done that, the Sheriff has pointed out that this
2 creates some problems with the jail facilities in that
3 they didn't want the girls taking items back up to the
4 communal area in which they live. So we worked out an
5 agreement early in the case whereby any documents or any-
6 thing that was given to the defendants we would have to run
7 the risk of them being censored and reviewing, and also
8 they would be placed in the defendants' property, and that
9 they could review them any time they like in the jail,
10 but they would have to go to another location. Which is
11 perfectly all right.

12 But in answer to your question, usually it is
13 not necessary for us to give material to the defendants
14 that they retain. But in some situations it is helpful if
15 they review and analyze particular material. But that is
16 the exception rather than the rule.
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1 THE COURT: Two specific examples within the last
2 several days:

3 I noticed yesterday, I noticed from the bench,
4 one of the matters the Sheriff mentioned, I think it was
5 Miss Krenwinkel had some kind of a plastic spider.

6 MR. FITZGERALD: All of the girls, right.

7 THE COURT: It was three or four inches in diameter,
8 it appeared to be, it looked just like a child's toy.

9 Maybe that is all that it was. On the other
10 hand it could very easily conceal contraband, if that was
11 the purpose. I have no way of knowing.

12 MR. FITZGERALD: I think it belonged to Mr. Hughes,
13 actually.

14 MR. HUGHES: Right, right.

15 THE COURT: I'm not suggesting there was anything
16 wrong in having it.

17 MR. FITZGERALD: No.

18 THE COURT: But this type of thing creates a problem
19 because the Sheriff has no way of knowing what is inside
20 of it, yet it is a very simple way of transmitting some-
21 thing, even a weapon or something of that kind.

22 MR. SHINN: Well, she took it back -- she did not
23 take it back to the jail, did she? Usually they give it
24 back before they leave.

25 THE COURT: Now, that was an example of something
26 coming in to a defendant.

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1 The Sheriff informed me that there was a
2 drawing, I believe, one or more drawings made by one of
3 the female defendants that went out and got into the hands
4 of the media.

5 Now, in and of itself I suppose that is
6 relatively an innocuous form of diversion for the defendant.
7 But it also could be a communication which, for example,
8 involves an attempted escape, which does not go through the
9 jail censors.

10 So since all these things have possibilities
11 for bad as well as good, the Sheriff has to take them into
12 account. He is responsible for the security of the priso-
13 ners, the courtroom, the Judge, the attorneys and every-
14 body else.

15 This is what I am talking about.

16 MR. SHINN: We have the difficult task of trying to
17 keep these clients happy, and calm and quiet, otherwise
18 they would fall asleep, your Honor.

19 Many times I have to shake my client to wake
20 her up.

21 THE COURT: Yes, but that really does not have any-
22 thing to do with what we are talking about.

23 MR. SHINN: Yes, it does. If we keep them busy
24 drawing stuff, that keeps them awake.

25 THE COURT: I'm not saying about the drawing. I'm
26 speaking about the transmission to some third party outside

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1 of the court.

2 Well, is there any practical reason why an
3 order should not be made prohibiting the transmission back
4 and forth through an attorney either from or to his client
5 of either documents or physical objects, with the provision
6 that if the attorney deems that such a transmission is
7 necessary, without having gone through the usual procedures,
8 that he get permission first from the Court.

9 I am not talking now -- to make sure we under-
10 stand each other -- there is nothing wrong with an attorney
11 handing a document to a client to read, obviously.

12 But if he retains that document, no matter
13 what it is, then it creates a security problem or a poten-
14 tial security problem, and this is where the Sheriff
15 becomes concerned.

16 MR. KANAREK: May I be heard, your Honor?

17 THE COURT: Yes.

18 MR. KANAREK: I think that we are actually without
19 really realizing it treading in a very dangerous area of
20 constitutional law.

21 I think that the burden, the moving party in
22 this case, the Sheriff, should have some kind of a showing;
23 there should be an initial showing perhaps by a pleading of
24 some type by the County Counsel, because we are dealing
25 in an area not only of equal protection but fundamental
26 due process when we have the Sheriff judging some of these

1 matters.

2 I feel, as much as I have no quarrel with the
3 Court's over-all purpose, I think that it is incumbent
4 upon me to allege to the Court that this is pregnant in
5 what we are speaking with here because, I mean, in
6 practicing in our courts, what we are doing in this
7 case is presupposing.

8 We are more or less allowing this publicity
9 that has come about in this case to prejudice these
10 defendants, and assume that these defendants are different
11 than all the other defendants that have gone through the
12 Superior Court without a showing, your Honor.

13 THE COURT: I am not making any such assumption.

14 I am not talking about any rule that is peculiar
15 to these defendants.

16 MR. KANAREK: Well, what I'm saying, it would seem
17 like we are in an area which I think we should tread
18 cautiously, your Honor, because absent something that has
19 really -- that has some kind of weight to it, I don't
20 think that the defendants --

21 There has been no showing of any misbehavior
22 on their part, or on anyone's part on their behalf.

23 I tried to obey, and I'm sure all the other
24 attorneys tried to obey the jail rules.

25 I don't know how else to enunciate it except
26 that --

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1 THE COURT: The order that I am proposing is simply
2 an implementation of that rule. It doesn't do anything
3 except to clarify an area which apparently is not too
4 clear to some of you, because things have occurred.

5 That is, simply that these matters shall go
6 through the jail procedures.

7 MR. KANAREK: So is your Honor saying this so I
8 will know what the ruling is, even though I will try to
9 obey it.

10 Is your Honor saying that every time that some-
11 thing comes to us, Mr. Fitzgerald, let's say, we pass docu-
12 ments inter se, then what should we do, give them to the
13 Sheriff before we hand them to our respective clients?

14 THE COURT: No, what I'm saying is that --

15 MR. FITZGERALD: We are talking about retained
16 documents.

17 THE COURT: I am talking about retention of documents
18 or objects by a client that are not simply displayed to him
19 or discussed with him or shown to him but are kept by him.

20 MR. KANAREK: How about transcripts? Sometimes if
21 the client takes a transcript to the jail overnight to read.

22 Sometimes a witness' statement, as Mr. Fitz-
23 gerald points out, is given.

24 It becomes -- the mechanics of it -- the
25 administering of it becomes the tail wagging the dog kind
26 of thing because it could become monumental as far as the

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1 housekeeping aspect of it is concerned.

2 THE COURT: That is what I want to avoid.

3 MR. HUGHES: At what point, may I ask, is a document
4 retained?

5 MR. FITZGERALD: When they go back up to the jail.

6 MR. HUGHES: When they leave the courtroom?

7 THE COURT: I would think so.

8 MR. FITZGERALD: I don't think it is really a problem.
9 When there are those exceptions when we would like some-
10 thing to go up to the jail, we will tell you briefly what
11 it is, and ask permission to go up.

12 By and large when we give clients things to go
13 back to the jail, we assume the risk that it is going to
14 be read by other inmates or by the Sheriff, simply because
15 of the nature of incarceration, and we are not carping
16 about that, actually, so highly secret material to our
17 defense does not get retained by the clients.

18 THE COURT: All right. Well, then, I will attempt
19 to formulate an order here.

20 All right, the order will read as follows:

21 No unauthorized person shall transmit to
22 or from any of the defendants for retention by any such
23 defendant any physical object or document of any kind to
24 or from any person who is not a party or the attorney of a
25 party in this case.

26 Any such physical object or document must go
through the jail censor.

1 If any attorney for a party believes that it
2 is necessary for him to transmit any such object or
3 document directly for retention by his client, that
4 permission shall first be obtained from the Court.

5 MR. KANAREK: May I, in order to protect the record,
6 object to it, your Honor?

7 I am sure your Honor doesn't object --

8 It is my belief, your Honor, that that order
9 violates the equal protection under the 14th Amendment, and
10 due process, the right to effective counsel under the
11 Sixth Amendment which is incorporated in the due process
12 clause under the 14th.

13 And the right to a fair trial.

14 THE COURT: Let me point out, Mr. Kanarek, that that
15 order, until such time as a request is made by a counsel and
16 refused by the Court, has not precluded you from trans-
17 mitting anything.

18 MR. KANAREK: I understand, your Honor.

19 THE COURT: It provides for an exception within the
20 terms of the order.

21 MR. KANAREK: Right, right.

22 THE COURT: All right.

23 MR. HUGHES: For the record, I would like to join
24 in the objection.

25 MR. SHINN: I will join in the objection for the
26 record.

1 THE COURT: Mr. Fitzgerald, I received a letter from
2 a Dr. Harvey W. Oschrein which you can keep, if you like, or
3 read it and give it back to me, I really don't care.

4 MR. FITZGERALD: He sent me a letter telling me he
5 had written you a letter.

6 It is a common problem in the courts. I am not
7 about to pay him any witness fees, and he wants money.

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1 THE COURT: Is there anything else to be taken up,
2 gentlemen?

3 MR. BUGLIOSI: This hair business still has not been
4 resolved.

5 THE COURT: Would you state just what you are talking
6 about for the record.

7 MR. BUGLIOSI: Yesterday we put on evidence that a
8 deputy Tebbe from the Sheriff's Office, took strands of
9 hair allegedly belonging to Susan Atkins.

10 I was going to call Joe Granado to testify. He
11 found some hair on the clothing beside the hill in the
12 canyon area, as testified by Linda Kasabian; she threw
13 it over the side of the car.

14 His testimony will be that he compared Susan
15 Atkins' hair with hair found on some of the clothing. They
16 seemed to have the same color, length and medullary
17 characteristics, meaning the internal structure of their
18 hair.

19 We offer it as circumstantial evidence.

20 Thus far we put on the recovery of the hair
21 from the brush and the comb of Susan Atkins.

22 Then I believe Mr. Shinn made an objection on
23 the grounds this violated the Fourth and Fourteenth
24 Amendments to the United States Constitution.

25 Of course our position is that, No. 1, there
26 are several cases, I have in my notebook, including a

1 United States Supreme Court case, holding that the Fourth
2 and Fourteenth do not apply to civilians.

3 No. 2, even if it did apply to civilians the
4 United States Supreme Court has found that the Fifth
5 Amendment as incorporated into the Fourteenth does not
6 apply to taking physical items -- not physical items,
7 taking items that are actually a part of the defendant's
8 body such as a breatholizer or blood under the Duroncelay
9 case.

10 THE COURT: Schmerber vs. California, a United
11 States Supreme Court case involving blood --

12 MR. BUGLIOSI: As long as it is taken in a reasonable
13 fashion.

14 Now we are talking about hair by analogy.

15 Gilbert and Wade argued that if you take things
16 like that you don't even have to advise the defendant of
17 his rights to have an attorney present.

18 He doesn't have a right to have an attorney
19 present.

20 Compulsion under the Fifth Amendment, the
21 thing that is proscribed by the Fifth Amendment is
22 compulsion. It refers to verbal testimony, not to command-
23 ing a defendant to walk in court or take some hair from
24 him or blood samples.

25 It simply does not apply to that type of
26 physical evidence.

1 MR. SHINN: May I respond to that?

2 THE COURT: Yes.

3 MR. SHINN: I believe the cases he cited, the Wade
4 and the Gilbert case, I think holds that where a stage in
5 the proceedings is reached that the defendant has the right
6 to an attorney, that is brought out in the Gilbert and Wade
7 case, and I believe that the Massiah case states that a
8 defendant after he had been indicted has a right to have an
9 attorney present at all stages.

10 Now, in the Massiah case, the language used
11 there was the fact that they used, I believe, some deceit,
12 and the courts felt that once a person has been indicted
13 that he should be afforded all of the protections under
14 the Constitution, the Fourth, Fifth and Sixth Amendments.

15 Even in the Miller vs. California, which I believe
16 is a recent case, where they put an undercover agent in the
17 same cell with the defendant.

18 That case held against the defendant on the
19 grounds that her statements were not incriminating per se.

20 But I think the language, if we read through
21 all these cases, the language seems to indicate that this
22 element of deceit or fraud, that the courts are not going
23 to allow that.

24 Now, we have this situation here where the
25 Deputy Sheriff went down with Miss Atkins to the beauty
26 shop for the sole purpose of trying to obtain a sample of

1 her hair, and the Deputy Sheriff at that time knew she was
2 represented by counsel.

3 I think that is a critical stage of the proceed-
4 ings, where she should have at least been allowed to
5 refuse her hair to the Deputy Sheriff.

6 MR. STOVITZ: I submit, your Honor, if she had
7 refused, the Court could issue a valid order ordering the
8 removal of her hair for analysis purposes.

9 THE COURT: Here the hair was not taken from Miss
10 Atkins by the Deputy, but it was taken from the brush and
11 comb.

12 I think this falls squarely within the Schmerber
13 doctrine.

14 The test is, assuming the arrest was lawful,
15 the Schmerber case was a blood test, and the means used
16 are reasonable in obtaining a sample.

17 In this case it wasn't even taken from the
18 defendant. It was taken from a brush and comb which she
19 used.

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1 MR. SHINN: She stole it, your Honor.

2 THE COURT: I beg your pardon?

3 MR. SHINN: She stole it, your Honor. The Deputy
4 Sheriff stole it. It is still the defendant's property.

5 THE COURT: Let's concede that term can be used that
6 she stole it. Unless the means used are unreasonable, I
7 see no violation of any constitutional right.

8 MR. FITZGERALD: There is another aspect of the
9 problem. That is one thrust of the objection. There is
10 another aspect of the problem, and it is the seizure or
11 the obtaining of property, to-wit, the clothing, from an
12 area adjacent to Benedict Canyon by King Baggot and other
13 representatives of Channel 7, after having read in the
14 newspaper the published confession or statement of Susan
15 Atkins, which the defendants allege was illegally and
16 improperly obtained.

17 This aspect of the problem was discussed at
18 the bench the other day, the aspect of the problem that the
19 clothes at the bottom of the canyon were really the fruit
20 of the poisonous tree, the tree being the illegal and unlaw-
21 ful confession in the manner which it was procured and
22 published by way of state action, by the office of the
23 District Attorney and Susan Atkins' then-attorney,
24 Richard Caballero.

25 And so the record is clear, I feel I have
26 standing to object on behalf of Patricia Krenwinkel. I

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1 think that the cases are clear. I think it is clear from
2 People vs. Ybarra, and other cases, that counsel not only
3 has standing to object but I have a duty to object if
4 this evidence is going to be introduced against my
5 client as well. And it would appear that the prosecution is
6 going to introduce the clothing found at the bottom of the
7 canyon against all the defendants.

8 So, I would join not only with Mr. Shinn in his
9 objection that the sample of hair was illegally obtained
10 from the comb or brush of Susan Atkins, but also that the
11 clothing at the bottom of the canyon was illegally and
12 unlawfully obtained.

13 Of course, we have not had an evidentiary hearing,
14 or we haven't got into the problem of whether or not
15 Susan Atkins' confession was, in fact, illegally obtained
16 as a result of state action on the part of the District
17 Attorney's office.

18 In connection with the statement itself,
19 Mr. Shinn has, from time to time, actually since the
20 beginning of this case, been seeking an opportunity, he
21 did it by way of a motion to suppress, he did it by way
22 of a 1538.5, and he most recently did it by way of a
23 proposed writ of habeas corpus.

24 He has attempted in a number of ways to attack
25 the validity of the statement of Susan Atkins.

26 That attempt has been largely thwarted and

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1 frustrated by the prosecution because of their assertion
2 that they did not intend to put in evidence of the state-
3 ment, which would render it moot.

4 However, the effect of the statement is
5 relevant in terms of how the clothing was obtained.

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1 In that respect, the Court may either want to
2 determine whether the statement was illegally obtained, or
3 the Court might want to decide that assuming arguendo it
4 was illegally obtained, that it doesn't make any difference.
5 The seizure is, in any event, immaterial.

6 THE COURT: What do you mean "immaterial"?

7 MR. FITZGERALD: Well, I take it that the prosecution
8 would contend that even if they illegally obtained the
9 statement of Susan Atkins, that the finding or the seizure
10 of the property by subsequent private person is not
11 illegally obtained, even if the confession was illegally
12 obtained.

13 THE COURT: Of course, there apparently was no search
14 involved.

15 MR. FITZGERALD: No, there wasn't.

16 THE COURT: In the conventional sense.

17 MR. FITZGERALD: Although we are in doubt of the
18 nature and character of the property from which the
19 clothing was taken.

20 We could make the argument that there was a
21 trespass onto private real property in order to obtain the
22 belongings. But the statement on the record now is,
23 apparently, that from a public thoroughfare they looked into
24 a canyon, they saw what appeared to be clothing, they called
25 the police, the police came out and photographed the
26 clothing and removed it.

1 MR. KANAREK: May I be heard?

2 MR. BUGLIOSI: I see your point, Mr. Fitzgerald.
3 There is some merit to it.

4 But assuming arguendo that Susan Atkins'
5 statement was obtained unlawfully, we are still confronted
6 with the law that the Fourth and Fourteenth Amendments
7 do not apply to civilians.

8 MR. STOVITZ: Also, as in the Tahl case, you cannot
9 say that he would not have found the clothing after hearing
10 the description from Linda Kasabian's statements.

11 You remember that the police went out searching
12 with Boy Scouts and couldn't find it. A civilian found it
13 without the help of the Boy Scouts.

14 MR. FITZGERALD: It would seem that the prosecution's
15 statement that the state of the law is such that it does
16 not apply to private persons is correct. But I can't
17 devine what the law is going to be by the time this case is
18 finally determined on appeal, if, indeed, the defendants
19 are convicted, and I just want the record to be clear that
20 we are objecting on both of those grounds. That is all.

21 THE COURT: What is the objection with respect to
22 Miss Atkins' testimony or confession, her alleged con-
23 fession?

24 MR. SHINN: What is the objection? You mean, before
25 the Grand Jury?
26

14b-1 1

2 THE COURT: Is that the same objection that you
3 raised in your various motions and petitions?

4 MR. SHINN: Yes, your Honor. That two of her consti-
5 tutional rights were violated: One, ineffective counsel
6 in violation of the Sixth Amendment; and the Fifth
7 Amendment, the right to remain silent.

8 I allege there was no waiver of her constitu-
9 tional right to remain silent.

10 For the Court's information, I took it to the
11 DCA and the DCA denied it.

12 Then I took it up to the State Supreme Court,
13 and they denied it.

14 And now I am in the process of taking it to
15 the Supreme Court on a writ of a certiorari.

16 THE COURT: It would appear that insofar as this court
17 is concerned that question has been decided.

18 MR. SHINN: At this level, yes.

19 THE COURT: Decided in the sense that although I
20 haven't decided myself --

21 MR. SHINN: You did, your Honor, on my habeas corpus
22 you denied it.

23 MR. BUGLIOSI: Not this court.

24 MR. SHINN: Yes. I filed it in this court.

25 THE COURT: I never determined the matter on its
26 merits, Mr. Shinn.

MR. FITZGERALD: That is correct. The Judge didn't.

1 The Judge denied you the opportunity to
2 proceed by way of writ of habeas corpus.

3 MR. SHINN: Yes. I asked for an evidentiary hearing,
4 and I believe the Court denied it.

5 MR. FITZGERALD: It might be better for this record
6 if Mr. Shinn were to bring in a copy of his brief on the
7 application for a writ of habeas corpus which would contain
8 procedural facts and would contain, in a succinct fashion,
9 the allegations of the impropriety of the statement.

10 We could then receive it into evidence as a
11 special exhibit or by reference, or incorporate it somehow,
12 and we could all join in it, and the record would be
13 protected.

14 MR. STOVITZ: We have no objection to your Honor
15 holding up on this.

16 Mr. Granado is going on vacation.

17 We could bring it in in a day or two, if your
18 Honor wants an opportunity to fully consider it.

19 MR. KANAREK: May I be heard briefly on this?

20 THE COURT: Yes.

21 MR. KANAREK: May I see the 1538.5 portion of the
22 Penal Code very briefly, your Honor?

23 THE COURT: Yes.

24 MR. FITZGERALD: Mr. Shinn informs me that there has
25 actually been a copy of his application for a writ of
26 habeas corpus and the appeal therefrom that was lodged in

1 the District Court of Appeal actually lodged with the
2 Clerk of this court in Department 104.

3 MR. KANAREK: Your Honor, I have a theory which I
4 would like your Honor to consider which is independent of
5 habeas corpus, and it goes under 1538.5, subsection (a) --
6 (2) Subsection 5.

14c flw.

14C-1

1 This code section says that a defendant may
2 move for the return of property or to suppress as evidence
3 any tangible or intangible thing obtained as a result of a
4 seizure on the ground that --

5 Then under Subsection 2 -- a search or seizure
6 with a warrant was unreasonable because --

7 And then under Subsection 5 -- there was "any
8 other violation of federal or state constitutional
9 standards."

10 My position is that Mr. Manson was arrested with
11 a warrant which came about after the Grand Jury indictment.
12 No question that was a warrant that caused his arrest up in
13 Northern California.

14 Now, that came about as a result of a Grand Jury
15 indictment which did not comport with Federal or State
16 constitutional standards, in that it is our allegation that
17 there was an illegal, illicit conspiracy which existed
18 between the Los Angeles Times and members of the District
19 Attorney's Office, including Mr. Ron Einstoss and Mr. Cohen
20 of the Los Angeles Times that has an office right in the
21 District Attorney's Office, Mr. Richard Caballero, who is an
22 ex-deputy district attorney, and people who are presently
23 in the District Attorney's office, whereby there was this
24 arrangement, either tacit or explicit, whereby \$90,000 was
25 changing hands with one Mr. Schiller as an intermediary.
26 Somehow or other, he participated in the \$90,000.

1C2

1 Mr. Caballero, as attorney, and Mr. Caruso,
2 as attorney, participated.

3 THE COURT: What are you talking about, Mr. Kanarek?
4 Let's get to some point.

5 MR. KANAREK: What I am saying, your Honor, is --

6 THE COURT: I don't even know what subject you are
7 on, Mr. Kanarek.

8 MR. KANAREK: I am on the subject that the Grand
9 Jury indictments, which is predicated upon Susan Atkins'
10 statements, came about as the result of -- I hate to use
11 the word -- subornation of perjury, or invasion of --

12 THE COURT: Are you now attacking the indictment?

13 MR. KANAREK: Yes.

14 What I am saying is that under 1538.5 --

15 THE COURT: Let's not waste any time with that,
16 Mr. Kanarek.

17 MR. KANAREK: I am not attacking the indictment
18 per se, but subsection 5 does say where the search or
19 seizure with the warrant was unreasonable because there was
20 either violation of federal or state constitutional
21 standards.

22 It is my position that under the case of
23 People vs. Ybarra, Mr. Caballero violated his duties as a
24 lawyer to Miss Atkins.

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1 What I am saying is, that is why we are asking
2 for a full-fledged hearing whereby your Honor would then
3 determine whether or not what happened before and during the
4 Grand Jury proceedings comported with the Constitution.

5 MR. STOVITZ: Where was the search? Where was the
6 seizure?

7 MR. KANAREK: The seizure was by a warrant.

8 MR. STOVITZ: Of whom? Of Mr. Manson's body?

9 MR. KANAREK: May I finish?

10 There is no question that 1538.5 covers the
11 situation with a warrant.

12 THE COURT: What is your point, Mr. Kanarek?

13 MR. KANAREK: My point is --

14 THE COURT: Give me the point first, Mr. Kanarek,
15 and then the argument, so I can know what you are talking
16 about.

17 MR. KANAREK: The point is that as a result of an
18 illicit agreement with the District Attorney and Mr.
19 Caballero, there came about a purported Grand Jury indictment.

20 THE COURT: Are you attacking the indictment now?
21 Is that what you are talking about?

22 MR. KANAREK: No. I am attacking the procedures.
23 I am attacking the relation between --

24 THE COURT: The time has long since gone by when I am
25 going to consider the indictments. That matter has come
26 up before and it has been passed on, and we are beyond that

1 stage.

2 MR. KANAREK: What I am saying is that 1538.5
3 encompasses that, because if you take my theory under
4 1538.5, there was a seizure with a warrant as the result
5 of a lawyer and the District Attorney coming to an illicit
6 agreement.

7 Miss Atkins says that what she stated were lies.
8 She has indicated that there is no question.

9 I am not the one to judge, but it sounds like
10 subornation of perjury. In other words, getting an
11 indictment by means of --

12 THE COURT: What does this have to do with anything?

13 MR. KANAREK: Well, we wouldn't be here today.

14 THE COURT: In other words, you are trying to attack
15 the indictment?

16 MR. KANAREK: Not per se.

17 Under the 1538.5 statute, if we read the clear
18 English of it, the clear English of the provision, it
19 involves seizure with a warrant where there was either
20 violation of federal or state constitutional standards.

21 It doesn't say "except what occurred at a
22 Grand Jury hearing."

23 THE COURT: Then what is your point?

24 MR. KANAREK: Well, my point is that Mr. Manson was
25 seized as a result of this purported Grand Jury action,
26 and the Grand Jury action did not comport with federal or

1 state constitutional standards.

2 THE COURT: We are getting away off the subject.
3 We started out talking about clothes found on the side of
4 the hill in Benedict Canyon.

5 MR. KANAREK: Right, your Honor.

6 It is my position that --
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1 MR. STOVITZ: Was Mr. Manson wearing those clothes?

2 MR. KANAREK: It doesn't make any difference. He
3 does not have to have been wearing the clothes.

4 He has a right to assert that he has been
5 brought before the court by way of an illegal process.

6 MR. BUGLIOSI: We are not going to mark as an
7 exhibit and introduce him into evidence, Mr. Kanarek. What
8 is the problem?

9 THE COURT: All right, gentlemen.

10 MR. KANAREK: I would like to make a point very
11 briefly, your Honor:

12 I would welcome your Honor studying this code
13 section, 1538.5 --

14 THE COURT: I am familiar with the section.
15 I have no question about the section.

16 MR. KANAREK: Whether it happened at the Grand Jury
17 hearing, the fact is that Mr. Manson is here as a result
18 of this illegal activity.

19 Furthermore, your Honor --

20 THE COURT: You have challenged the Grand Jury
21 indictments on many occasions, Mr. Kanarek, and
22 apparently you are trying to do it again now. I am not
23 going to entertain any further action on the indictment.

24 MR. KANAREK: Very well.

25 I would join in Mr. Fitzgerald's comments
26 and in Mr. Shinn's comments, your Honor, on behalf of

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1 Mr. Manson also.

2 THE COURT: Mr. Fitzgerald has made a suggestion with
3 respect, as I understand it, to the purported confession of
4 Susan Atkins and Mr. Shinn's attack on that, that the brief
5 or briefs be filed in this case, if they have not already
6 been filed or lodged, and that --

7 Did I understand you correctly to suggest
8 that the Court determine, on the basis of those briefs,
9 this question of -- perhaps you had better state it again,
10 Mr. Fitzgerald. I am not sure exactly where you went from
11 there.

12 MR. FITZGERALD: Yes.

13 I felt that if the Court had the opportunity
14 to read Mr. Shinn's brief, that the Court could read, in a
15 succinct fashion, the allegations that Mr. Shinn was making
16 concerning the alleged illegality of the confession.

17 That is all I was suggesting, your Honor. That
18 the brief might be offered into evidence.

19 I had a further alternate also, and I was saying
20 that the Court may choose ultimately to decide, after
21 reading the succinct statement of the allegations
22 concerning the confession, that the Court may decide that
23 assuming arguendo that those allegations are correct, none-
24 theless the seizure or the finding of the property by some
25 civilian third person was, nonetheless, proper or all right.

26 I take it that is the People's position.

1 THE COURT: I am certainly willing to consider any-
2 thing that I haven't already considered in connection with
3 that question.

4 I have read Mr. Shinn's various papers
5 attacking the confession of Susan Atkins. And I believe
6 the people responded, did you not, with some declarations
7 and answers?

8 MR. BUGLIOSI: Yes. Yes, your Honor.

9 THE COURT: I read all of these materials. I think
10 I understand what occurred.

11 MR. FITZGERALD: I see.

12 The only alternative is, it seems to me, to
13 have actually an evidentiary hearing and go into the
14 circumstances surrounding the obtaining of the confession,
15 which may well take three or four days.

16 I was looking for some sort of method or
17 procedure whereby we could obviate a hearing and the taking
18 of evidence, and so on and so forth.

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1 THE COURT: Well, I agree.

2 I think the first step is to assume, for the
3 sake of argument, that the confession is illegal or
4 involuntary, and then determine whether or not that would
5 make any difference.

6 IF it would, then you can go to the next step
7 as to whether or not it was, in fact, involuntary.

8 MR. FITZGERALD: Right.

9 THE COURT: If it doesn't make any difference whether
10 it was voluntary or not if some civilian, using that
11 information or using a newspaper article based upon that
12 confession, went out on his own and found the clothing,
13 then we don't have to go to the second step to be able
14 to determine whether or not it was, in fact, involuntary.

15 MR. FITZGERALD: Correct.

16 MR. ZANAREK: I wouldn't be adverse to that as an
17 alternative procedure, your Honor.

18 THE COURT: The first stage is purely a matter of law.

19 MR. FITZGERALD: Correct.

20 THE COURT: We don't have to take any evidence on
21 that. All we have to do is consider the appropriate
22 authorities.

23 MR. STOVITZ: We believe that under the appropriate
24 authorities, your Honor, and of course assuming this point
25 arguendo, we are in no way, of course, consenting with
26 the defense's theory that the finding of the clothes by

1 the ABC news man was not with the connivance of the Police
2 Department, it was not under their direction, they were
3 not acting as an agent of the Police Department. They
4 were acting as news men gathering a news story. It was
5 the action of a citizen, and not barred by the Fourth
6 Amendment of the Constitution.

7 THE CLERK: Pardon me, your Honor.

8 Do you want to let the jury take a break now
9 so that we don't have to take a break later?

10 THE COURT: Yes, let's do that.

11 MR. SHINN: Are you going to put on that evidence
12 on the hair now?

13 MR. BUGLIOSI: On the hair?

14 MR. SHINN: Yes.

15 MR. BUGLIOSI: It is up to the Court, whether the
16 Court rules it is admissible.

17 THE COURT: As far as the recovery of the hair from
18 the brush and comb by the Deputy at Sybil Brand, I see
19 no difficulty with that at all. It is clearly covered
20 by Schmerber vs. California and other cases, that the
21 samples were lawfully obtained and can be used.

22 As to the clothes, I would suggest that the
23 People submit some authorities on that question.

24 MR. BUGLIOSI: As to the recovery of the clothing?

25 THE COURT: As to the recovery of the clothing by
26 the civilian.

1 MR. STOVITZ: By the civilian?

2 THE COURT: Yes.

3 In other words, assuming for the sake of this
4 determination that the confession was involuntary and
5 unlawfully obtained, as to whether or not it makes any
6 different with respect to the recovery by the civilian
7 relying on the information that he obtained through a
14g fls.8 newspaper article based on that confession.

14G-1

1 MR. STOVITZ: I would say that the case of People vs.
2 Helfand would be helpful there, where a Mexican border
3 guard stopped and searched --

4 MR. BUGLIOSI: May I leave and come back, your Honor?

5 THE COURT: Yes.

6 MR. STOVITZ: -- an automobile driven by the defendant
7 and found a dead body in the trunk of the automobile.

8 We have all the authorities in that case.
9 It was decided approximately a year ago. It is in the
10 new --

11 THE COURT: Helfand?

12 MR. STOVITZ: Helfand, H-e-l-f-a-n-d.

13 It is in the California Official Reports, the
14 brown book.

15 I don't have the citation at the top of my head,
16 your Honor, but it is a case that I tried.

17 THE COURT: There is a table of the cases in the book.

18 MR. STOVITZ: Yes. I will look.

19 It is a DCA opinion, and review was denied
20 by the California Supreme Court.

21 MR. BUGLIOSI: Here are the cases, your Honor, on
22 this subject matter.

23 People vs. Johnson, 153 Cal. Ap. 2d at Page 873
24 and 874.

25 Stapleton vs. Superior Court, 70 Advance Cal.
26 101.

4G2

1 Incidentally, Stapleton holds that even private
2 detectives are not covered by the Fourth Amendment.

3 THE COURT: 70 Advance Cal?

4 MR. BUGLIOSI: 70 Advance Cal. 101.

5 Also, People vs. Superior Court, 70 Advance Cal.
6 129.

7 People vs. Randazzo, 220 Cal. Ap. 2d 768.

8 In that case, incidentally, Randazzo held that
9 the Silver Platter Doctrine of Elkins vs. United States did
10 not apply. The defense argued the Silver Platter Doctrine
11 by analogy.

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14H

1 The Supreme Court cases are Boyd vs. United
2 States, 116 U.S. 616 and Berdo vs. MacDowell, 256 U.S. 465.

3 THE COURT: All right.

4 MR. BUGLIOSI: I don't myself have any other cases
5 to give the Court.

6 You indicated you wanted authorities. Did you
7 want a written brief on it?

8 THE COURT: No, that is not necessary.

9 MR. STOVITZ: The Helfand case, your Honor, is
10 Cal. Ap. 3d, Page 880.

11 THE COURT: Do you have it there?

12 MR. STOVITZ: Yes. I have it right here.

13 THE COURT: All right.

14 You are not planning to get to that point this
15 afternoon, are you?

16 Of course, that evidence has been received
17 but it hasn't been connected up.

18 MR. BUGLIOSI: No, it hasn't been connected up, and
19 I won't go into it until the Court makes a ruling.

20 THE COURT: All right.

21 MR. KANAREK: Your Honor, I am sure your Honor agrees
22 that under 1538.5 a defendant has a right to make a motion
23 to suppress even though he or she is not the one from whom
24 the evidence was taken.

25 I mean, we are agreed on that, I assume.

26 MR. BUGLIOSI: Yes. That is People vs. Martin,

1 45 Cal. 2d. I would go along with that.

2 MR. KANAREK: So, therefore, I think that subsection
3 5 is quite important, your Honor.

4 THE COURT: I am sure it is. All you need to do is
5 apply it to the proper facts.

6 MR. FITZGERALD: Everybody concedes that we all
7 have standing to raise the issue, although it only relates
8 to Susan Atkins.

9 MR. BUGLIOSI: You have standing, and I think it is
10 wise for you to raise it, because conceivably the Court
11 can go the other way and make it retroactive. I wouldn't
12 be surprised if they do.

13 THE COURT: Is there anything pending before we go
14 back into court?

15 I will read the authorities on this question of
16 the confession of Susan Atkins and the applicability, if
17 any, assuming it to have been unlawfully obtained, to the
18 discovery of the clothing.

19 MR. BUGLIOSI: I would like to give the Court, now
20 that the Court has mentioned it, some other cases dealing
21 with the poisoned fruit doctrine, standing for the propo-
22 sition that just because there is an umbilical cord, as
23 it were, between the recovery of the evidence and the
24 unlawful search and seizure does not necessarily mean that
25 the evidence is tainted.

26 The Court might read People vs. Garay, 247 Advance

1 Cal. Ap. 974.

2 Also People vs. Martin, 240 Cal. Ap. 2d, 653
3 at Page 656.

4 People vs. Wheeler, 243 Cal. Ap. 2d, 340 at
5 Page 347.

6 People vs. Thomson, 239 Cal. Ap. 2d, 84 at
7 Page 90.

8 People vs. La Peluso, 239 Cal. Ap. 2d, 715 at
9 Page 724.

10 People vs. Dumas, 251 Cal. Ap. 2d, 613.

11 People vs. Koelzer, 222 Cal. Ap. 2d. I don't
12 have the page on that.

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1 THE COURT: That should be sufficient.

2 MR. STOVITZ: Here you are, your Honor.

3 THE COURT: All right, gentlemen. I will read these
4 authorities.

5 MR. BUGLIOSI: Our next witness might be Dr. Katsuyama.

6 MR. STOVITZ: Actually, it will be Sergeant Broda.

7 Sergeant Galindo will be very, very brief,
8 and then it will be Dr. Katsuyama.

9 MR. BUGLIOSI: Right.

10 We have some color photographs of the
11 victims, but the Court has already ruled with respect to
12 the Tate victims that they are too prejudicial, so that
13 issue is already resolved, your Honor.

14 THE COURT: You are talking about the Coroner's
15 photographs?

16 MR. BUGLIOSI: Yes.

17 But we have black and whites again on Rosemary
18 and Leno La Bianca, your Honor.

19 THE COURT: Have counsel seen the black and white
20 photographs?

21 MR. STOVITZ: Yes. They have availed themselves
22 of discovery and seen all the black and white photographs.

23 MR. FITZGERALD: They have availed themselves of
24 a subpoena duces tecum on the Coroner's Office.

25 THE COURT: All right, gentlemen. We will resume
26 at 3:00 o'clock.

1 MR. BUGLIOSI: Your Honor, it is two minutes after
2 3:00 right now.

3 Oh, I am sorry. No, it is not. I have got the
4 wrong time.

5 THE COURT: Do you want to take a little recess?

6 MR. SHINN: Yes, your Honor.

7 MR. KANAREK: Can we make it 3:15, your Honor?

8 THE COURT: Let's make it 3:10.

9 MR. KANAREK: Very well, your Honor.

10 THE COURT: At 3:10 we will bring them back in.

11 All right.

12 (Recess.)

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1 (The following proceedings were had in open
2 court in the presence and hearing of the jury, all defendants
3 and all counsel being present:)

4 THE COURT: All parties, counsel and jurors are
5 present.

6 You may continue, Mr. Stovitz.

7 MR. STOVITZ: Yes, with the permission of the
8 defense counsel, if it's agreeable to the Court we have
9 Dr. Katsuyama, who will be our witness in a moment or two
10 in the courtroom.

11 Is that agreeable?

12 MR. FITZGERALD: No objection.

13 MR. HUGHES: No objection.

14 MR. SHINN: No objection.

15 MR. KANAREK: No objection.

16 THE COURT: Yes.

17 MR. STOVITZ: I have an envelope, your Honor. Con-
18 tained within the envelope are four kitchen utensils.
19 May the envelope and its contents be marked as People's 214
20 for identification?

21 MR. HUGHES: Wasn't this witness excused?

22 MR. STOVITZ: Yes, I'm asking permission to recall him
23 for this inquiry on direct.

24 THE COURT: Very well.
25
26

15-2

DANNY GALINDO,

recalled as a witness by and on behalf of the People, having been previously duly sworn, resumed the stand and testified further as follows:

FURTHER DIRECT EXAMINATION

BY MR. STOVITZ:

Q Showing you Exhibit 214, these four utensils, are these the articles you referred to that were similar to the exhibit, 207, the kitchen fork previously to which you testified?

A Yes, sir.

Q You recovered these items, Exhibit 214, at the home of Mr. and Mrs. La Bianca at 3301 Waverly?

A That's correct.

Q And you recovered this exhibit, 207, from the stomach of Mrs. La Bianca at that same address?

A Yes.

MR. STOVITZ: You may inquire, Counsel.

MR. FITZGERALD: No questions, your Honor.

MR. HUGHES: No questions, your Honor.

MR. SHINN: No questions, your Honor.

MR. KANAREK: No questions, your Honor.

MR. STOVITZ: May this witness be excused?

MR. FITZGERALD: He may, no objection, your Honor.

THE COURT: You are excused.

15a fls.

15a-1

1 MR. STOVITZ: Mr. Broda, would you kindly take the
2 witness stand?

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

4 Would you 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 state and spell your name.

23 THE WITNESS: Gary L. Broda, B-r-o-d-a.

24 THE CLERK: How do you spell your first name, sir?

25 THE WITNESS: G-a-r-y.
26

15a-2

GARY L. BRODA,

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

DIRECT EXAMINATION

BY MR. STOVITZ:

Q Is it Sergeant Broda?

A Yes.

Q And what is your business or occupation, sir?

A Sergeant of police for the City of Los Angeles, presently assigned to Robbery-Homicide Division.

Q Directing your attention to August of 1969, what was your assignment at that time?

A I was assigned as a homicide investigator, robbery-Homicide Division.

Q I direct your attention to a male person, depicted in the photograph Exhibit 92, and ask you did you ever see that person depicted in that photograph?

A Yes.

Q When did you first see the person depicted in that photograph which we have identified as Mr. Leno La Bianca?

A On August 11, 1969, at approximately 10:00 a.m. in the morning at the Los Angeles County Morgue.

Q So then, the first time you ever saw this

15a-3

1 Mr. La Bianca was at the morgue, is that right?

2 A Yes.

3 Q And what was taking place at that time?

4 A A post-mortem examination was being performed.

5 Q And did you see Mr. La Bianca in the position
6 as he appears now with a pillowcase covering his head?

7 A Yes.

8 Q Did you see if anyone removed that pillowcase
9 from Mr. La Bianca's head, and who it was?

10 A Yes.

11 Q Who was it?

12 A I believe it was Dr. Katsuyama.

13 Q And was that done in your presence?

14 A Yes.

15 Q And after that pillowcase was removed from
16 Mr. La Bianca's head did you notice anything unusual about
17 his neck or throat?

18 A Yes.

19 Q What did you notice, sir?

20 A Mr. La Bianca had a knife protruding, a
21 knife handle protruding from his throat, the knife blade
22 was secreted in his throat.

23 Q I show you Exhibit 210 for identification,
24 directing your attention to that knife, sir, is that the
25 knife that was removed by the Coroner?

26 A Yes, it is.

15a-4

1 Q How do you identify it, sir?

2 A By the inscription on the knife blade, and I
3 booked this knife after it was removed from Mr. La Bianca's
4 throat, and I had photographs taken of the knife.

5 MR. KANAREK: Your Honor, I gather I may have the
6 same continuing objection on the grounds of immateriality
7 and irrelevancy, as to this witness?

8 THE COURT: Very well.

9 MR. KANAREK: Thank you.

10 MR. STOVITZ: Your Honor, I have two photographs,
11 may the one photograph showing a partial face, chin
12 protruding, be marked as People's Exhibit next for
13 identification -- I believe it would be 215 for identifica-
14 tion.

215 Id.

15 THE COURT: It will be so marked.

16 MR. STOVITZ: And a second color photograph which
17 shows the nose and eyes of the face of Mr. Leno La Bianca,
18 as 216 for identification.

216 Id.

19 THE COURT: It will be so marked.

20 BY MR. STOVITZ:

21 Q Sergeant, I direct your attention to Exhibit
22 215, do you recognize the scene depicted in that photograph?

23 A Yes.

24 Q Were you present when that photograph was
25 taken?

26 A Yes.

15a-5

1 Q And is this photograph an accurate portrayal
2 of Mr. Leno La Bianca as the pillowcase was being removed
3 from his face?

4 A Yes.

5 Q The knife shown in this exhibit, 215, is this
6 the knife in front of you, Exhibit 210?

7 A Yes.

8 Q I show you Exhibit 216 for identification,
9 is this another view after the pillowcase was further
10 removed, of Mr. Leno La Bianca?

11 A Yes.

12 Q And does this photograph accurately depict
13 what you saw at that time?

14 A Yes.

15 Q Were you present when this photograph, Exhibit
16 216 was taken?

17 A Yes.

18 MR. STOVITZ: You may inquire, Counsel.

19 MR. FITZGERALD: No questions.

20 MR. SHINN: No questions, your Honor.

21 MR. KANAREK: No questions, your Honor. Thank you.

22 MR. HUGHES: No questions.

23 MR. STOVITZ: May this witness be excused, your
24 Honor?

25 MR. FITZGERALD: No objection.

26 THE COURT: You are excused, Sergeant.

15a-6

1 THE WITNESS: Thank you.

2 MR. BUGLIOSI: People call Dr. Katsuyama.

15b fls.

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1 THE CLERK: Raise your right hand, please.

2 Would you please repeat after me:

3 I do solemnly swear --

4 THE WITNESS: I do solemnly swear --

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

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

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

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

9 THE CLERK: -- before this Court --

10 THE WITNESS: -- before this Court --

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

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

13 THE CLERK: -- the whole truth --

14 THE WITNESS: -- the whole truth --

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

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

17 THE CLERK: -- so help me God.

18 THE WITNESS: -- so help me God.

19 THE CLERK: Would you be seated, please.

20 Would you please state and spell your name.

21 THE WITNESS: My name is David M. Katsuyama. The
22 last name is spelled K-a-t-s-u-y-a-m-a.

23
24 DAVID M. KATSUYAMA,

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

. 15B2

DIRECT EXAMINATION

BY MR. BUGLIOSI:

Q What is your occupation, sir?

A I am a licensed doctor to practice medicine in the State of California.

I am a deputy medical examiner for the Coroner and Medical Examiner of the County of Los Angeles.

Q Please state your education, training and experience in the field of medicine, including your duties and experience as a deputy medical examiner for the Los Angeles County Coroner's Office.

A I graduated from medical school in 1959, from the College of Medical Evangelists, Loma Linda.

I interned the following year at the Los Angeles County General Hospital.

I took a four-year residency next in pathology in 1960 to 1964 at the Glendale Sanitarium and Hospital.

I was certified by the American Board of Pathology in clinical pathology in 1965, in anatomical pathology in 1966 and in forensic pathology this past May.

Since 1964 I have been with the Orange County Medical Center, associated with the Coroner of the County of Orange since approximately 1965 and since the 2nd of June, 1969, I have been associated with the Coroner and Medical Examiner's Office of the County of Los Angeles.

Q How many autopsies have you performed?

SB3

1 A I kept count until I counted to 2,000, and then
2 I quit counting since then.

3 Q Very well, directing your attention, Doctor,
4 to the date August 11th, 1969, did you perform an autopsy
5 on the deceased body of one Leno La Bianca?

6 A Yes, I did.

5c

15C-1

1 MR. KANAREK: May I have the continuing objection on
2 immateriality and irrelevancy as to this witness also?

3 THE COURT: You may.

4 MR. KANAREK: Thank you. ↑↑

5 Q BY MR. BUGLIOSI: Where did you perform the
6 autopsy?

7 A The autopsy was performed at the offices of the
8 Coroner and Medical Examiner of Los Angeles County,
9 Los Angeles.

10 Q What time of the day on August 11th did you
11 perform the autopsy?

12 A The autopsy began approximately at 1:30 p.m. on
13 August 11th, 1969.

14 Q And it was finished approximately when?

15 A I don't have the exact time of finishing; I
16 would say approximately an hour to an hour and a half.

17 Q Did you reduce your autopsy findings to an
18 autopsy report?

19 A Yes, I did.

20 Q Do you have that autopsy report with you today
21 in court?

22 A Yes.

23 MR. BUGLIOSI: Any objection to the doctor referring
24 to his report as he testifies?

25 MR. FITZGERALD: No objection, your Honor.

26 MR. HUGHES: No objection, your Honor.

5C-2

1 MR. SHINN: No objection, your Honor.

2 MR. KANAREK: No objection, your Honor.

3 Q BY MR. BUGLIOSI: As a result of your autopsy
4 examination, Doctor, of Leno La Bianca, did you form an
5 opinion as to the cause of death?

6 A Yes, I did.

7 Q What is that opinion?

8 A That death was due to multiple stab wounds to
9 the neck and abdomen, causing massive hemorrhage.

10 MR. BUGLIOSI: Your Honor, I have here a photograph
11 of a male, may it be marked People's next in order?

117 THE COURT: 217 for identification.

118 MR. BUGLIOSI: I have another photograph of a portion
14 of a male, may it be marked 218 for identification?

15 THE COURT: It will be so marked.

16 MR. BUGLIOSI: I have here another photograph of
17 another portion of a male, may it be marked People's 219
18 for identification?

19 THE COURT: It will be so marked.

20 MR. BUGLIOSI: I have here another photograph of
21 another portion of a male, may it be marked People's 220
22 for identification?

23 THE COURT: It will be so marked.

24 MR. BUGLIOSI: I have here another photograph of
25 another portion of a male, may it be marked People's 221
26 for identification?

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THE COURT: It will be so marked.

MR. BUGLIOSI: I have here another photograph of another portion of a male, may it be marked People's 222 for identification?

THE COURT: It will be so marked.

MR. BUGLIOSI: I have here another photograph of another portion of a male. May it be marked People's 223 for identification?

THE COURT: It will be so marked.

MR. BUGLIOSI: I have here another photograph which shows the entire body of a male Caucasian. May it be marked People's 224 for identification?

THE COURT: It will be so marked.

MR. BUGLIOSI: I have here another photograph of another portion of a male, may it be marked People's 225 for identification?

THE COURT: It will be so marked.

MR. BUGLIOSI: I have here another photograph depicting another portion of the body of a male Caucasian. May it be marked People's 226 for identification?

THE COURT: It will be so marked.

MR. BUGLIOSI: I have here another photograph of a male, may it be marked People's 227 for identification?

THE COURT: It will be so marked.

Q BY MR. BUGLIOSI: I show you People's 217 for identification, Doctor, was that photograph taken under your

5C4

1 direction?

2 A Yes, it was.

3 Q At the Coroner's Office?

4 A Yes, it was.

5 Q What date?

6 A On August 11th, 1969.

7 Q Is that a photograph of Leno La Bianca?

8 A This is a photograph of the decedent identified
9 as Leno La Bianca.

10 Q What part of his body is shown in that
11 photograph?

12 A The upper portion of the body, including the
13 neck and the lower portion of the head with an object
14 appearing like a knife.

15 Q Protruding from his neck?

16 A Protruding from his neck.

17 Q I show you People's 218 for identification, was
18 that also taken of Leno La Bianca?

19 A Yes, this was taken at my direction following
20 the removal of his clothing on that same day.

21 Q August 11?

22 A August 11.

23 Q What part of Mr. La Bianca's body is depicted
24 in that photograph?

25 A This shows his back.

26 Q I show you People's 219 for identification, is

5C5

1 that also a photograph of Mr. La Bianca taken under your
2 direction at the Coroner's Office on August 11?

3 A Yes, it is.

4 Q What portion of the body is depicted in that
5 photograph?

6 A It shows the upper right side of the trunk
7 and a part of the right side of the face.

8 Q I show you People's 220 for identification, what
9 is shown in that photograph? Is that also Mr. La Bianca?

10 A Yes, this is also Mr. La Bianca. This shows
11 his hands with what appears to be a material tying his wrists
12 together.

13 Q That photo was taken under your direction on
14 August 11th?

15 A Yes, this photo was taken under my direction.

16 Q I show you People's 221, was that also taken
17 at your direction, of Mr. La Bianca?

18 A Yes, it was taken prior to the removal of it
19 before the clothing was removed, it shows the head covered
20 with a pillow case, and a portion of the electric cord
21 knotted around the pillow case.

22 Q Taken on August 11th?

23 A Yes.

24 Q I show you People's 222 for identification, is
25 that also a photograph of Mr. La Bianca taken at your
26 direction at the Coroner's Office on August 11th?

A Yes, another photo taken of the neck area.

1 This one from the left side showing the knife protruding
2 from his neck.

3 Q I show you People's 223 for identification,
4 what is shown in that photograph?

5 A This is another photograph, very similar to the
6 one previous with the hands, showing a thong-like material
7 tying his wrists together.

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1 Q That is of Mr. La Bianca taken on August 11th
2 under your direction at the Coroner's Office, is that
3 correct?

4 A Yes, it was.

5 Q I show you People's 224 for identification,
6 what is shown in that photograph?

7 A 224 shows an over-all general front view of
8 the body with the abdomen exposed, with a lettering on the
9 surface of the abdomen above the umbilica, the belly
10 button, also showing several stab wounds there. It also
11 shows the pillowcase as it was found, and the electrical
12 cord shown wrapped around it.

13 Q Was that taken under your direction on
14 August 11?

15 A Yes, it was.

16 Q I show you People's 225 for identification,
17 was that also taken of Mr. La Bianca under your
18 direction?

19 A Yes, it was.

20 Q At the Coroner's Office on August 11?

21 A Yes, it was.

22 Q What is shown on that photograph?

23 A It shows the stabbing wound of the neck,
24 it encompasses the front portion of Mr. La Bianca's
25 chest, neck and face.

26 Q I show you People's 226 for identification,

15d-2

1 is that also a photograph of Mr. La Bianca's body?

2 A Yes, it is.

3 Q Taken under your direction on August 11th at
4 the Coroner's Office?

5 A Yes, it was taken under my direction at the
6 Coroner's Office.

7 It showed the -- it better exposed the view
8 showing the four stab wounds, several scratch marks on
9 his abdomen with the lettering of "War", w-a-r, and several
10 superficial marks on the skin, which are of the kind of
11 the tine marks of the fork.

12 MR. BUGLIOSI: Your Honor, may I withdraw People's
13 227 for identification?

14 THE COURT: Very well, 227 will be withdrawn.

15 BY MR. BUGLIOSI:

16 Q Doctor, are the exhibits, People's 217 through
17 226 for identification, all of these photographs, are
18 these all fair and accurate representations of the
19 respective portions of Mr. La Bianca's body depicted therein?

20 A Yes, they are.

21 Q At the time these photographs were ordered under
22 your direction?

23 A Yes, they were.

24 Q Referring to this photograph, People's 221
25 for identification, does there appear to be a pillowcase
26 over Mr. La Bianca's head, sir?

1 A Yes, a pillowcase is over his head and around
2 the pillowcase and on it is an electrical cord.

3 The plug of an electrical cord is visible
4 by the identified number card.

5 Q Was this pillowcase covering Mr. La Bianca's
6 head when his body arrived at the Coroner's Office on
7 August 11?

8 A Yes.

9 Q And was the electrical cord on top of the
10 pillowcase at the time you observed Mr. La Bianca's body?

11 A Yes.

12 Q So the pillowcase was over the head and then
13 the electrical cord was wrapped around the head, is that
14 correct?

15 A Yes.

16 Q Was the electrical cord tied in some type of
17 knot around Mr. La Bianca's head?

18 A In a knot. That knot is visible at about
19 the center of the photograph.

20 Q Was the electrical cord tied tightly, loosely,
21 moderately or what?

22 A It was moderate in tightness. The cord
23 itself could not be removed without cutting, and it was
24 not so tight that it could not be slightly moved on
25 pressure.

26 Q Did you remove the pillowcase from around the

head of Mr. La Bianca?

A Yes, I did.

Q What did you do with the pillowcase?

A The pillowcase, I believe, I recommitting it to the people of the Police Department who were present at the autopsy.

Q You turned the pillowcase over to a representative of the Los Angeles Police Department?

A Yes.

MR. BUGLIOSI: Your Honor, I have here an electrical cord. May it be marked People's next in order?

THE COURT: 228 for identification.

MR. BUGLIOSI: 227 was withdrawn I believe.

THE COURT: Make it 228.

MR. BUGLIOSI: All right.

BY MR. BUGLIOSI:

Q I show you People's 228 for identification, an electrical cord, have you ever seen that electrical cord before?

A Yes, I have.

Q Does this appear to be the electrical cord that was tied around Leno La Bianca's head when his body arrived at the Coroner's Office?

A It does.

MR. BUGLIOSI: Your Honor, I have here an electrical plug, may it be marked People's 229 for identification?

228 id.

229 1d

THE COURT: So marked.

BY MR. BUGLIOSI:

Q I show you an electrical plug, 229 for identification.

Was this plug attached to this cord at the time that the cord was wrapped around Mr. La Bianca's head?

A Yes, it was, and the wire itself was cut before removal.

The end of the wire that was cut was tied with string and labeled so that the relationship could be preserved.

Q Did you turn the electrical cord and the plug over to a representative of the Los Angeles Police Department?

A Yes, it was turned over.

15a fls.

K5-E

1 Q I show you People's 215 for identification, do
2 you know what is shown in that photograph?

3 A It is a color photograph of the upper portion
4 of the body of Mr. La Bianca, with the pillow case still in
5 place, the cord still in place, the neck exposed with the
6 knife handle -- with the knife with its handle still
7 protruding out, and with the blade embedded into his neck.

8 Q I show you People's 210 for identification,
9 a knife, have you ever seen that knife before?

10 A I believe I have.

11 Q Is that the knife that was in Leno La Bianca's
12 throat?

13 A I believe it is.

14 Q Did you remove that knife from his throat?

15 A I removed the knife from his throat after
16 looking at it and noting the serrations on one edge, and
17 handed it to a member of the Scientific Investigation
18 Division of the Los Angeles Police Department.

19 Q Directing your attention once again to
20 People's 215 for identification and specifically the knife
21 which was People's 210 for identification, was this knife
22 visible when Mr. La Bianca's body first arrived at the
23 Coroner's office?

24 A No, it was not.

25 Q Do you know why it was not?

26 A Because the lower portion of the pillow case,

1 the bloody portion of it, was still down, pulled over the
2 lower portion of his face and neck.

3 Therefore, it was covering the knife handle.

4 Q You first became aware, then, of this knife
5 when you removed the pillow case from around Mr. La Bianca's
6 head?

7 A Yes.

8 Q Doctor, how many stab wounds were there in the
9 body of Mr. La Bianca?

10 A There were six major stab wounds, a total of
11 12 stab wounds, not including one exit wound.

12 Q So there were a total of 12 stab wounds, is
13 that correct?

14 A Yes.

15 Q Could you break down the location of these 12
16 stab wounds very briefly?

17 A Yes, I did.

18 Q What are the locations of these 12 stab wounds?

19 A Five were on the anterior portion of the neck.

20 Q You say "anterior," you mean the front?

21 A The front of the neck, one of which included
22 the knife wound -- the one with the knife embedded in it.

23 Another on the left side of the neck. The back
24 showed one; the chest showed one and the abdomen showed
25 four.

26 Q That is a total of 12.

1 A A total of 12.

2 Q Did you notice any fork wounds on Mr. La
3 Bianca's body in addition to these 12 stab wounds?

4 A Yes, there were seven pairs of double-tined
5 fork wounds.

6 In other words, two needle-like or prick-like
7 marks on the abdomen, a total of 14 puncture wounds.

8 Q So then Mr. La Bianca -- you counted these 14
9 separate tine wounds and 12 stab wounds -- he had a total
10 of 26 separate wounds, is that correct?

11 A Yes.

12 Q Were all of these 26 wounds penetration wounds?

13 A Breaking the skin, yes.

14 Q Did the seven pairs of fork wounds all appear
15 to be essentially the same?

16 A They appeared similar to each other.

17 Q I show you People's 207 for identification,
18 have you ever seen that fork before?

19 A Not prior to being present in this courtroom.

20 Q This fork was removed from Mr. La Bianca before
21 the body arrived at the Coroner's Office.

22 A Yes.

23 Q Now, looking at this fork right now, does it
24 appear to be the type of fork that could have caused the
25 seven pairs of double-tined wounds that you refer to?

26 A Yes.

1 Q In addition to the 26 wounds to Mr. La Bianca,
2 did you find any other wounds or cuts or abrasions on his
3 body?

4 A Yes, on the abdomen, the word "war," was
5 scratched on the surface of the abdomen between the lower
6 portion of the rib cage and his umbilicus, his belly
7 button.

8 Q You say war, w-a-r, is that correct?

9 A W-a-r.

10 Q I show you people's 226 for identification,
11 is this the w-a-r that you observed carved on Mr. La
12 Bianca's abdomen?

13 A Yes, it is.

14 Q How many of the 26 wounds, do you feel,
15 Doctor, were fatal in and of themselves?

16 A I believe six of them would have been fatal
17 separately over a certain period of time.

18 Q Over a period of time, what do you mean by
19 that?

20 A Within a matter of minutes or within a matter
21 of several minutes.

22 Q I take it you prepared some diagrams on the
23 body of Leno La Bianca, is that correct?

24 A Yes, I have them in the courtroom, and the
25 wounds are traced upon them.

26 Q How many diagrams did you make of the body of

1 Leno La Bianca?

2 A Two diagrams, one of the front and one of the
3 back.

4 MR. BUGLIOSI: May I mark the diagrams next in order,
5 your Honor?

6 THE COURT: 230 for identification.
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1 BY MR. BUGLIOSI:

2 Q Doctor, would you please step to the diagram,
3 and insert on the diagram the location of all 26 wounds.

4 Also the location of the w-a-r on Mr. La
5 Bianca's abdomen.

6 When you come to a fatal wound, indicate the
7 wound as being fatal.

8 Tell the Judge and jury why it was a fatal
9 wound.

10 Also indicate the organ or part of the body that
11 the wound penetrated, such as the spleen, the heart, the
12 lungs, whatever the case may be.

13 Also indicate the direction of thrust of each
14 wound.

15 A I will indicate according to the numerical
16 sequence I have utilized in my report.

17 Stab wound No. 1, which was the one that had
18 the knife still present, was in the anterior portion of the
19 neck.

20 It had gone into the neck in a direction from
21 up toward downward and actually from left to right.

22 It partly transected his right carotid artery.

23 Q Was that a fatal wound there, by the way?

24 A Yes, it is.

25 Q And you marked it as such. Thank you.

26 A Stab wound No. 2, slightly to the left side of

15f-2

1 the body, slightly to the left and down towards -- it cut
2 through a portion of the trachea.

3 The other four major wounds were on the
4 abdomen -- (witness draws on the diagram) in about these
5 locations.

6 These are Nos. 3, 4, 5 and 6.

7 It penetrated the abdomen and portions of the
8 mesentery, the small bowel, and colon, and all of their
9 directions of penetration were from the left to the right
10 in a front to a back direction, and in a downward direc-
11 tion.

12 These I considered inevitably fatal if no
13 medical attention would be given.

14 Q Have you marked them as fatal?

15 (Witness so marks.)

16 Put a parenthesis and then another paren.

17 (Witness complies.)

18 A In addition there were several other stab
19 wounds, four stab wounds relatively superficial in nature
20 in the neck, and a small abrasion at that location
21 (indicating), also a stab wound on the front part of the
22 chest, which was also superficial, relatively long but not
23 penetrating a vital structure.

24 The word war, I will use another color, was
25 present at about that location, and with a third color I
26 will place the seven pairs of tine marks as best as I can

15f-3

1 in their locations.

2 May I see the photograph?

3 (Photograph handed to the witness.)

4 These are the locations of the injuries found
5 in the front part of Mr. La Bianca's body.

6 This shows the back of Mr. La Bianca's body,
7 what appears to be the exit wound of the knife was at
8 about this location.

9 I will use the proper color, according with the
10 other one, and another relatively deep penetration, as
11 far as penetration goes, in the back, however no vital
12 structures were penetrated or transected by this particular
13 knife wound.

16 fls.

16-1

1 Q Is that the extent of the wounds, Doctor?

2 A This is the extent of the wounds, except for
3 the skin slippage that I noted next to the wrist of his
4 hand.

5 MR. BUGLIOSI: All right. You may resume the stand,
6 Doctor.

7 THE COURT: Mr. Bugliosi, I don't believe that the
8 doctor testified as to whether wound No. 2 was fatal or
9 non-fatal.

10 The chart does not indicate.

11 MR. BUGLIOSI: Thank you.

12 MR. STOVITZ: I believe it is marked, your Honor.

13 Let's see. No. The trachea -- no, it doesn't.

14 (Whereupon the witness marks.)

15 THE WITNESS: I believe that wound No. 2 would
16 eventually have proven fatal, provided no medical treatment
17 was given.

18 BY MR. BUGLIOSI:

19 Q You are now talking about within a few minutes
20 after its infliction?

21 A Within several minutes or so.

22 MR. BUGLIOSI: All right. You may resume the stand.

23 Q Doctor, did you personally examine each of
24 Mr. La Bianca's stab wounds?

25 A Yes, I did.

26 Q And based on your examination of these wounds,

16-2

1 Doctor, did you form any opinion as to the type of weapon
2 or weapons that caused the wounds?

3 A Yes, I did.

4 Q What is that opinion?

5 A By measurement, including the depth of the
6 measurement --

7 Q Before we get into measurements, Doctor, basically,
8 what type of a weapon was it that caused the wounds?

9 A A sharp cutting type of instrument like a
10 knife.

11 Q All right.

12 Now, based on your examination of the wounds,
13 did you form any opinion as to the dimensions of the blade
14 that caused the wounds?

15 A Yes, I did.

16 By the maximum opening size of the wounds,
17 it was about one and one-quarter of an inch in maximum --
18 is it width?

19 Q Well, let's start out with length, Doctor.

20 A Length?

21 By the maximum penetration of depth, approxi-
22 mately five and a half inches in length.

23 Q Were many of Mr. La Bianca's wounds five and
24 a half inches in depth, Doctor?

25 A At least two of them were five and a half
26 inches in length. Others about five inches in length.

1 Q Did any wound have a depth in excess of five
2 and a half inches?

3 A Not that I can remember.

4 Q So, you feel that the blade had a maximum
5 length of five and a half inches; is that correct?

6 A It could possibly be.

7 Q At least five and a half inches?

8 A At least one was five and a half inches.

9 Q And it could be longer?

10 A Yes.

11 Q But you found no wounds which had a depth in
12 excess of five and a half inches?

13 A Yes.

14 MR. KANAREK: Your Honor, I don't wish to interrupt,
15 but I think counsel is again assuming facts not in
16 evidence, that it is one weapon, that this is a single
17 weapon.

18 That is implicit in his questions, your Honor.

19 THE COURT: It is merely descriptive of the type
20 of weapon, as I understand it.

21 If that is an objection, it is overruled. That
22 is a matter for cross-examination.

16a fls.

16A-1

1 MR. BUGLICSI: Q What about the width? I am
2 not talking about the thickness now, I am talking about the
3 width. The width of the blade or blades that caused the
4 wounds to Mr. La Bianca, Doctor.

5 A The width, I believe, was approximately 1-1/4
6 of an inch in maximum width. Perhaps 1-1/8, 1 inch.

7 Q There was a rather large wound around the word
8 "war," is that correct, Doctor?

9 A Yes.

10 Q What width did that particular wound have?

11 A That was approximately 1-1/4 of an inch.

12 Q There were other wounds with a width of about
13 1-1/8 inches?

14 A Yes. Slightly over 1 inch in width.

15 Q What about the thickness of the blade?

16 A The thickness of the blade appeared to be
17 ranging from about an eighth of an inch to 3/16ths of an
18 inch in thickness.

19 Q What about that large wound around the word
20 "war"? Do you have any opinion as to the thickness of the
21 blade that caused that wound, Doctor?

22 A Yes.

23 Q What is that opinion?

24 A I would say that it was about a little over an
25 inch in width. Approximately an inch and a quarter.

26 Q I am talking about thickness now.

16A2

1 A Thickness? About 3/16ths of an inch in
2 maximum thickness. Perhaps an eighth.

3 THE COURT: I don't think it is clear, Mr. Bugliosi,
4 which wound you are talking about.

5 MR. BUGLIOSI: Yes. I am going to mark it right now,
6 your Honor.

7 THE WITNESS: That would be wound No. 5, I believe.

8 MR. BUGLIOSI: All right.

9 Q You are talking about this wound right here
10 (indicating)?

11 A Yes.

12 Q That is wound No. 5 on the diagram, is that
13 correct?

14 A Yes.

15 MR. BUGLIOSI: May I encircle that, your Honor, and
16 put "wound No. 5"?

17 THE COURT: Yes.

18 (Mr. Bugliosi so marks.)

19 MR. BUGLIOSI: All right.

20 Q And you feel that the thickness of the blade
21 that caused wound No. 5 was what, Doctor?

22 A Approximately an eighth to 3/16ths of an inch
23 in thickness.

24 MR. BUGLIOSI: May I mark that, your Honor, as an
25 eighth of an inch to 3/16ths in thickness?

26 THE COURT: Very well.

A3

(Mr. Bugliosi marks.)

MR. BUGLIOSI: May it be stipulated that People's 210 for identification, the knife which was removed from Mr. La Bianca's throat, had the following measurements:

The blade has a length of 4-7/8 inches. A thickness of just under 1/16 of an inch. And a blade width of 3/16 of an inch at its widest point, and 3/8 of an inch at its narrowest point.

So stipulated?

MR. FITZGERALD: So stipulated.

MR. SHINN: So stipulated.

MR. HUGHES: So stipulated.

MR. KANAREK: So stipulated, your Honor.

MR. BUGLIOSI: Q Doctor, looking at this knife here, People's 210 for identification, and in view of the stipulated dimensions of the blade, do you have an opinion as to whether or not this particular knife which was removed from Mr. La Bianca's neck caused all of the other wounds to his body?

A May I measure it?

Q Would you like to measure the blade?

A Yes, I would.

Q You are not going to accept the stipulated dimensions, Doctor?

A No.

MR. BUGLIOSI: All right. Very good.

(pause while the witness measures.)

THE WITNESS: The blade length is --

MR. BUGLIOSI: I hope you don't prove me wrong,
Doctor. I am going to be in serious trouble if you come
out with different measurements.

16B

16b-1

1 THE WITNESS: The length is less than five inches.
2 Four and 13/16 approximately.

3 Just a hair over three-quarters of an inch in
4 width.

5 Q You say in width? Are you talking about the
6 maximum width?

7 The blade at different points varies in
8 width; is that correct, Doctor?

9 A Yes, it does.

10 At its maximum width it is just a little
11 over three-quarters of an inch, and it narrows down
12 progressively towards the tip.

13 The thickness is about one-sixteenth of an
14 inch.

15 These dimensions are much smaller than many
16 of the wounds which I previously described.

17 Q So, it is your opinion, then, Doctor, that
18 People's 210 for identification, this knife, could not
19 have caused many of the other wounds on Leno La Bianca's
20 body; is that correct?

21 A Yes, it is.

22 Q Did you form any opinion as to whether the
23 knife or knives which caused Mr. La Bianca's wounds
24 was single or double-edged?

25 A It appears to be a double-edged blade.

26 The wound comes to points at both sides

1 of the wounds that I have described, indicating a double-
2 edged blade.

3 A single-edged blade I would expect to form
4 a blunt edge, a blunt margin, at one of the sides, one
5 of the ends of the stab wounds.

6 Q You, of course, do n_ot know the number of
7 knives that were used to kill Mr. La Bianca; is that
8 correct, Doctor?

9 A I cannot state, except probably a minimum of
10 two.

11 Q Showing you People's 92 for identification,
12 particularly the two wounds which are in the immediate
13 vicinity of the word "war."

14 Were those two wounds caused by a knife or
15 by the double-tined fork?

16 A These large gaping openings?
17 (Indicating.)

18 Q Yes.

19 A These were caused by a knife rather than a
20 double-tined fork.

21 Q Referring now to the word "war," w-a-r,
22 which was carved on Mr. La Bianca's abdomen,

23 Do you have an opinion as to the type of
24 weapon used to carve that wound?

25 A Whatever was used did not have a very sharp
26 edge. It probably did have an edge sharp enough to scrape,

1 say like the end of a screwdriver or, for that matter,
2 an electrical plug, the portion that is placed into the
3 plug.

4 Q Showing you People's 229 for identification,
5 the electrical plug which has been severed from People's
6 228 for identification, the electrical cord.

7 Could the metal prongs on this electrical
8 plug, the two metal prongs, could that have been the
9 instrument that caused the word "war" to come upon Mr.
10 La Bianca's body? Could the word "war" have been carved
11 with those two metal prongs?

12 A Possibly, yes.

13 Q Or else a screwdriver-type of an instrument?

14 A Something of that type of an edge.

15 Q But not a knife?

16 A Not the sharp edge of a knife.

16c fls.

.6C-1

1 Q The fork that you were shown on the witness
2 stand, Doctor, could the double-tined edges or points or
3 tips of that fork have caused the "war" on Mr. La Bianca's
4 stomach?

5 A Used singly, it could possibly have. One side
6 at a time it could have.

7 However, no parallel marks of that distance
8 were noted.

9 Q Did all of Mr. La Bianca's wounds appear to
10 have been inflicted while he was still alive, or did any
11 of them appear to have been inflicted after death,
12 Doctor?

13 A The tine mark appeared to have been inflicted
14 in his last phase of life, or shortly after death.

15 Q The fork wounds?

16 A The fork wounds. And also the word "war"
17 appeared to have been in the dying phase or shortly after
18 death.

19 Q Why do you form that opinion?

20 A The lack of significant bleeding into the
21 scratched areas.

22 Q The wounds were, comparatively speaking,
23 light colored?

24 A Light colored, and bloodless in comparison
25 to the other wounds.

26 Q When a person has died, obviously the heart

.6C2

1 stops pumping blood. Is that why the wounds are more
2 light colored?

3 A Yes,

4 Q If the wound is inflicted prior to death, it
5 is usually darker around the wound?

6 A There is usually a little bit of bleeding into
7 the area causing a darker shade, a reddish to a brownish
8 shade.

9 Q Did you find any defense wound on Leno La Bianca's
10 body?

11 A No defense marks that I could consider
12 defense marks.

13 Q Did the absence of any defense marks or wounds
14 have any significance? Was that of any significance
15 to you?

16 A In my opinion, Mr. La Bianca was tied up prior
17 to being killed.

18 Q You associate his being tied up and incapacitated,
19 then, with the lack of defense wounds; is that correct?

20 A Yes.

21 MR. BUGLIOSI: Your Honor, would this be a convenient
22 time before we get into Rosemary La Bianca?

23 THE COURT: Very well.

24 MR. KANAREK: Your Honor, may we approach the bench
25 before the Court leaves, but after the jury leaves.

26 THE COURT: Yes.

16C3

1 Ladies and gentlemen, do not converse with
2 anyone nor form or express any opinion regarding the case
3 until it is finally submitted to you.

4 The jury is now excused until 9:45 tomorrow
5 morning.

6 Do counsel wish to approach the bench?

7 MR. KANAREK: Yes.

8 (Whereupon, the following proceedings occur
9 at the bench:)

10 MR. SHINN: First of all, we would like to have a
11 15-minute meeting, your Honor, with all of the defendants.

12 THE COURT: Fine.

13 MR. SHINN: The second thing, your Honor, Mr. Kanarek
14 will present.

15 MR. KANAREK: Yes.

16 These are certain items that --

17 MR. STOVITZ: What is that?

18 MR. KANAREK: There are certain items that we
19 would like Mr. Manson to have with him.

20 I wonder if your Honor would peruse them, in
21 view of your Honor's order.

16D

16d-1

1 THE COURT: What is the nature of the items, Mr.
2 Kanarek?

3 MR. KANAREK: They are statements of witnesses and
4 they are reports, allegedly homicide reports.

5 THE COURT: It is something that you obtained in
6 the course of your investigation? Is that it?

7 MR. KANAREK: Yes.

8 MR. SHINN: And this book. It is all entered here.

9 MR. STOVITZ: Is there anything sharp in the book
10 that they can take the book apart and use it as a weapon?

11 THE COURT: Is there some way of identifying these,
12 Mr. Kanarek, without revealing the contents?

13 MR. KANAREK: It would be quite lengthy. I would
14 be willing to do it. I mean, I will do it if the Court
15 wishes.

16 THE COURT: Just classify them generally.

17 MR. KANAREK: Yes, sir.

18 They are written documents which are inter-
19 views, which purport to be interview statements and
20 investigation reports concerning matters pertaining to
21 this case.

22 THE COURT: All right. You may have permission,
23 then, to give them to Mr. Manson, and he may retain them
24 with him.

25 MR. KANAREK: Thank you.

26 MR. HUGHES: I am aware, your Honor, from my

1 incarceration that the Sheriff will take away the binder.

2 THE COURT: Will take away what?

3 MR. HUGHES: Will take away the ring binder because
4 of the metal objects, your Honor.

5 MR. SHINN: This binder here.

6 THE COURT: I thought you were talking about the
7 matters that you are holding in your hand, Mr. Kanarek.

8 MR. KANAREK: Yes. There are two separate items.
9 These and the matters in the binder, your Honor.

10 THE COURT: All of the matters in the binder?

11 MR. KANAREK: Yes.

12 MR. FITZGERALD: Mr. Stovitz took a look at the
13 material.

14 MR. STOVITZ: Yes. I perused these, and these are
15 primarily witness statement sheets that we have furnished
16 to the defense, plus summaries by counsel.

17 We see nothing harmful, your Honor, so long
18 as the defendants do not give these statements to their
19 friends so that their friends can go out and intimidate
20 witnesses.

21 MR. SHINN: He will have it in the jail.

22 THE COURT: I don't think that is the problem.

23 The binder may very well be a problem. I
24 don't know.

25 MR. KANAREK: I would be willing to take everything
26 out of the binder, so far as the binder is concerned.

1 MR. SHINN: It is indexed though.

2 MR. STOVITZ: The point is that you can put a string
3 in the holes instead of the metal binder.

4 THE COURT: What I am saying is that because of the
5 metal portions of the binder, the Sheriff may consider this
6 to be a hazard of some kind. I don't know.

7 MR. KANAREK: I would be glad to take them out of the
8 binder, and I think they can be kept in sequence.

9 THE COURT: And simply placed in a large brown
10 envelope or something?

11 MR. KANAREK: That is correct. We can do that, your
12 Honor.

13 THE COURT: All right.

14 MR. SHINN: We will withdraw this today, your Honor,
15 and bring it in tomorrow. I will put some string in it.

16 THE COURT: Very well.

17 MR. KANAREK: Will your Honor inform the Sheriff?
18 I have seen on other occasions where the Court makes an
19 order and it doesn't get down to the working personnel.

20 So, if your Honor would make an order --

21 THE COURT: All I can do is make the order. I don't
22 have any idea what person in the Sheriff's Department will
23 be connected with it.

24 You will have a copy of the transcript with
25 the order in it.

26 MR. KANAREK: We want to have it tonight, and the

1 transcript won't be done until later this evening.

2 THE COURT: You may represent to anyone involved
3 that I have made such an order.

4 MR. KANAREK: Very well.

5 Thank you, your Honor.

6 (Whereupon at 4:15 p.m. the court was in
7 recess.)
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