

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.

85

No. A253156

COPY

REPORTERS' DAILY TRANSCRIPT  
Thursday, September 10, 1970  
A. M. SESSION

APPEARANCES:

For the People:

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

For Deft. Manson:

I. A. KANAREK, Esq.

For Deft. Atkins:

DAYE SHINN, Esq.

For Deft. Van Houten:

[REDACTED]  
RONALD HUGHES, Esq.

For Deft. Krenwinkel:

PAUL FITZGERALD, Esq.

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

I N D E X

PEOPLE'S WITNESSES:      DIRECT CROSS    REDIRECT    RECROSS

CALKINS, Robert L.	10,128B	1014CF
		10145Sh
		10152F
(fur.)		10187F
(reopened)	10,190	10191K
		10196S

DEFENDANTS':

BUGLIOSI, Vincent	10168X
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LOS ANGELES, CALIFORNIA, THURSDAY, SEPTEMBER 10, 1970

9:45 A.M.

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(The following proceedings were had in the chambers of the court, all counsel being present:)

THE COURT: The record will show all counsel are present and also Mr. Kay and Mr. Musich, new co-prosecutors.

I assume you have all met them.

(All indicate in the affirmative.)

THE COURT: I ask you all to come in because I don't like to have attorneys from one side in without the others, particularly in front of the jury.

But I also understand that someone has some motions to make.

MR. KANAREK: Yes, your Honor, I have a motion to make.

THE COURT: Do you wish to proceed at this time?

MR. KANAREK: Yes, your Honor, I would ask your Honor to voir dire the jury as to what they know about the bombing of Mr. Younger's floor, because that can be pregnant with all kinds of --

This sequestration which of course we have disapproved of --

As I say, it's pregnant with all kinds of possibilities of them getting all kinds of rumors and all that as to the source of the bombing.

1           So I would make a motion that your Honor voir  
2 dire the jury in connection with the alleged bombing of  
3 Mr. Younger's premises, as to what effect this has, if any,  
4 on their state of mind and what they know about it, if any.

5           THE COURT: Do you have some reason to think they  
6 know anything about it?

7           MR. KANAREK: I certainly do, your Honor, much as  
8 your Honor --

9           THE COURT: What is the basis for that?

10          MR. KANAREK: The basis is, your Honor, that the  
11 sequestration, I believe, is theoretical, in that they had  
12 conjugal meetings with their mates, that they are not  
13 lawyers, and whatever their intent is, your Honor, I believe  
14 that they know, I believe they all know about Susan  
15 Atkins' confession.

16           I believe --  
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1 THE COURT: What is the basis of that statement?

2 MR. KANAREK: I just believe it, your Honor.

3 THE COURT: I see.

4 MR. KANAREK: I believe it, because I don't believe  
5 that it is possible in this day and age, with the mass  
6 media what it is and communications what they are, I don't  
7 believe it is possible, as much as we might wish it, your  
8 Honor, I don't believe it is possible for these types of  
9 things to be kept away from these people when the focus  
10 is upon it.

11 Certainly, your Honor, there is no lack of  
12 good faith on your Honor's part, but I just disagree, I  
13 don't believe that it accomplishes the mission, this  
14 sequestration; and this bombing, I would say, without being  
15 able to prove it, I believe sincerely that they know that  
16 a bombing took place; and as I say, this kind of thing  
17 can sweep through the jury.

18 THE COURT: Assuming that they know it. What would  
19 the effect of that be?

20 MR. KANAREK: Especially with all of the publicity  
21 that has been engendered by the District Attorney's Office  
22 in connection with the Spahn Ranch, the people at the  
23 Spahn Ranch, violence and all of that, they could well  
24 believe that someone at the Spahn Ranch, someone on behalf  
25 of one or more of the defendants, is responsible.

26 I think the only way you are going to clear



1 it up and clean it up is by asking, asking what effect,  
2 if any, it has on their state of mind.

3 THE COURT: Does anyone else wish to be heard?

4 MR. FITZGERALD: I wish to be heard. Not on that  
5 matter.

6 THE COURT: All right. I will address myself to  
7 that first, then.

8 Contrary to what you say, Mr. Kanarek, I  
9 believe the sequestration is effective, and I know of  
10 no facts or evidence to the contrary.

11 So, I am not going to voir dire the jury now  
12 or every day or any time unless there is some reason to  
13 do so.

14 Now, in the case of Mr. Nixon's comments,  
15 there was a reason to do so because they saw the  
16 newspaper here in court.

17 So far as I know, and as I say, I know  
18 nothing to the contrary, the sequestration is effective,  
19 and I see no reason whatever to voir dire the jury.

20 Entirely apart from that, assuming they  
21 knew about the bombing -- I assume you are referring  
22 to the fact that a bomb apparently was placed on the  
23 sixth floor over the weekend when no one was in the  
24 building except, apparently, whoever is here on the  
25 weekends, maintenance men and what custodians there  
26 are -- I can't imagine what effect that would have on

1 them. It is just the facts of life. It has no connection  
2 with this trial. It is of no more significance than if  
3 they knew about the Arabs hijacking airliners, for example.  
4 It is just another fact of life. It may be unpleasant but  
5 it certainly wouldn't affect their thinking in this case.

2a fls.

2A

1 MR. KANAREK: Just one correction, your Honor. I  
2 don't believe there is any evidence that the bomb was  
3 placed while there was no one here. The evidence here is  
4 that the bomb went off. Perhaps someone inadvertently  
5 mistimed it.

6 THE COURT: I don't know, except what I read in the  
7 newspaper, Mr. Kanarek.

8 MR. KANAREK: I don't think anyone knows when the  
9 bomb was placed.

10 MR. HUGHES: There are always people in the building,  
11 including one of the defendants.

12 THE COURT: Yes, that is true, up on the upper floors.

13 But from the newspaper account -- and that is  
14 all I know about the affair -- the people in the jail were  
15 undisturbed by it.

16 MR. HUGHES: Although, for the moment, I am not  
17 inclined to join Mr. Kanarek's motion, I wish to point out  
18 to the Court that we don't have any way of knowing if the  
19 sequestration is effective; either way, you know, whether it  
20 is or isn't.

21 THE COURT: That's right, we don't, and that is the  
22 reason why we have it.

23 MR. HUGHES: As a matter of fact, there was an  
24 indication that one of the jurors, anyway, had seen the  
25 Nixon headline previous to Mr. Manson exhibiting it.

26 THE COURT: Yes.



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1 MR. HUGHES: So, we know, to that extent, anyway.

2 THE COURT: One man, one of the men, said that he  
3 saw it out of the bus window.

4 MR. HUGHES: So, to that extent, we know that it is  
5 not completely effective anyway.

6 MR. KANAREK: And they do have conversations with  
7 their friends and relatives, your Honor.

8 Your Honor is the one to rule, of course, but I  
9 think, as I say, the only way to clear it up and clean it  
10 up is by asking them.

11 In other words, your Honor, what I am saying is  
12 this: If your Honor ruled, -- and I believe erroneously --  
13 as to Mr. Nixon, I think that that is beyond belief,  
14 regardless of what they verbalized.

15 THE COURT: Let's not go into that.

16 MR. KANAREK: What I am saying is that your Honor  
17 interrogated on that, and they knew the alleged facts  
18 concerning Mr. Nixon.

19 I think that interrogating them on this, if  
20 they are as fair and impartial as your Honor believes they  
21 are -- which I don't believe they are -- I think that this  
22 would tend to stifle any kind of untrue rumor that they  
23 may be believing.

24 Because I heard rumors over the weekend, your  
25 Honor, since we have last been in court, about the bomb.  
26 You know how these things are, how people just talk, your  
Honor.

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1 THE COURT: That is another reason why they are  
2 sequestered, Mr. Kanarek, so they don't hear rumors and  
3 they don't read newspapers.

4 Your motion will be denied.

5 Anything further?

6 MR. KANAREK: Yes.

7 I have here a subpoena duces tecum on one  
8 Jeanne Plimpton, custodian of records, California Youth  
9 Authority, where I have subpoenaed the ward's file of the  
10 California Youth Authority as to Mr. Hendricks.

11 Mrs. Plimpton promised me that if she were not  
12 here, another person would be here with that file.

13 Could your Honor inform me whether, in fact,  
14 that person has come in?

15 THE COURT: I haven't the faintest idea, Mr. Kanarek.

16 MR. KANAREK: I thought maybe the Clerk had been  
17 notified.

18 THE COURT: Perhaps so. Have you asked the Clerk?

19 MR. KAY: That person is here. His name is Mr.  
20 Thompson.

21 MR. KANAREK: With the file? All right.

22 THE COURT: Anything further?

23 MR. BUGLIOSI: I have a point I wish to bring up  
24 after this.

25 MR. KANAREK: I have a request.

26 Mr. Fitzgerald has prepared a declaration which

1 I don't think he has accompanied by a motion, but I believe,  
2 your Honor, that there is ample evidence, I believe that  
3 Mr. Hendricks' testimony must be suppressed because the  
4 man, I believe, is insane. The man --

5 THE COURT: Are we now on another subject, Mr.  
6 Kanarek?

7 MR. KANAREK: Yes.

8 THE COURT: And if so, what is it?

9 MR. KANAREK: Your Honor, it is a notice of motion,  
10 or a motion that your Honor hear further concerning the  
11 competence of Mr. Hendricks, concerning whether or not he  
12 should be allowed to testify. Because he has stated, I  
13 believe, that he said he was insane to the California  
14 Youth Authority.

15 He is now in custody, at least conceptually,  
16 in Atascadero, for judgment, to determine his mental  
17 state.

18 Mr. Fitzgerald actually prepared this declara-  
19 tion. Maybe he wishes to proceed.

20 THE COURT: I don't know what declaration you are  
21 referring to. I haven't seen any declaration.

22 MR. FITZGERALD: There will be a motion to -- I  
23 believe your Honor has ruled under Evidence Code Section  
24 701 that Mr. Hendricks is competent to testify.



1 We would ask -- all of the defendants would ask  
2 that you reopen or reconsider that determination.

3 In support thereof I will file a declaration,  
4 in support of the motion in regard to the competency of the  
5 witness Michael Hendrix, the gist of that declaration is  
6 that over the weekend I had a lengthy interview with  
7 Mr. Hendrix, and Mr. Hendrix made statements to me of  
8 which I would like to apprise the Court.

9 I have the original out on my table. I will  
10 give you another one, if I could hand it to the Court. If  
11 you would excuse me for just a moment I will go get the  
12 original and the other.

13 THE COURT: I have read your declaration, Mr.  
14 Fitzgerald.

15 MR. FITZGERALD: I would submit both the motion to  
16 reconsider the motion, and if the motion to reconsider is  
17 granted, the motion itself, based on the affidavit.

18 I think we adequately argued the matter on Friday.

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

20 THE COURT: Yes.

21 MR. BUGLIOSI: There has been no adjudication of  
22 insanity of this witness, and I think it is clear from his  
23 answers on the witness stand that he is no fashion insane.

24 But even stipulating, arguendo, that he is insane,  
25 certainly 701 of the Evidence Code does not state that  
26 insane persons cannot testify.

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I am not stipulating that, obviously, because I think it is clear that he is not insane but even if he were, this is no ground for disqualification in the State of California either under Section 701 or under the cases.

All of these things in the declaration, they only go towards cross-examination.

THE COURT: Now, what do you propose to do, Mr. Fitzgerald, what is your motion now, to reopen?

MR. FITZGERALD: The motion would be to reopen.

THE COURT: On the subject of competency?

MR. FITZGERALD: On the subject of competency, and then to submit this affidavit in support of the witness' incompetency, and I would submit it.

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

THE COURT: Well, then, that would be the extent of the reopening as far as you are concerned.

MR. FITZGERALD: That would be the extent of the reopening as far as I am concerned.

MR. KANAREK: My motion would be, Your Honor, that your Honor appoint doctors to examine the man, and your Honor take reports; that we then have the benefit of knowing of expert testimony concerning this man's competency.

This is so sensitive to Mr. Manson's position in this case that I would allege on behalf of Mr. Manson that it is a violation of due process under the Fourteenth Amendment, and under California law for your Honor to

1 allow in this testimony because of the very prejudicial and  
2 the very emotional nature of this testimony.

3 THE COURT: Emotional!

4 MR. KANAREK: Emotional, yes, your Honor.

5 This man has stated to both Mr. Fitzgerald and  
6 myself --

7 THE COURT: I am not interested in anything that  
8 occurred somewhere else. I saw nothing emotional during  
9 the course of his testimony in this Court.

10 MR. KANAREK: What I mean is, your Honor --

11 THE COURT: I say I am not interested in anything that  
12 occurred somewhere else.

13 I am now talking about your statement, now,  
14 about what may have occurred outside of this court.

15 If you want to introduce something like that in  
16 a legal manner, that is something else. I am not fore-  
17 closing your right to offer evidence on the subject of  
18 competency.

19 I am just saying you are making a gratuitous  
20 statement now.

21 MR. KANAREK: Very well, your Honor, what I would  
22 ask your Honor to do is to appoint doctors to have this  
23 man examined.

24 The District Attorney has other evidence they  
25 can go ahead with, they can go ahead with other parts of  
26 their case.



1 I know Mr. Bugliosi is interested in getting the  
2 advantage of this before the jury, well knowing that no  
3 matter what your Honor says, that jury will never forget  
4 what this man is going to testify to, no matter how many  
5 admonitions --

6 THE COURT: That statement is meaningless as far as I  
7 am concerned. Of course he is interested in getting it in  
8 front of the jury. That is why he called the witness.  
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1 MR. KANAREK: What I'm asking your Honor to do, your  
2 Honor has the power to control the proceedings and there is  
3 no necessity for this man --

4 He is at Atascadero for mental observation --

5 As a result of Mr. Bugliosi's subpoena --

6 THE COURT: The record does not indicate why he is  
7 at Atascadero.

8 MR. KANAREK: I have his file here. I subpoenaed it.  
9 Let's have the witness come in here.

10 I have the file before the Court, we can have  
11 the benefit of his file so your Honor can see what the  
12 Youth Authority did.

13 They sent him up there to be treated and/or  
14 examined. I cannot make that representation exactly what  
15 it was because I have not seen the file yet.

16 But he was only up there a very few days when,  
17 as a result of Mr. Bugliosi's subpoena, he has been taken  
18 away from there and he has been deposited at the County  
19 Jail here for some period of time, since sometime in July.

20 So I would ask your Honor at this point, I  
21 make the motion that your Honor appoint doctors; that the  
22 reports be submitted to your Honor.

23 Failure to do that is a violation of funda-  
24 mental due process as far as Mr. Manson is concerned under  
25 both federal and California law.

26 I think the Ballard case, even though the

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1 Ballard case represents a sexual type of defense, and  
2 other cases, make it very evident that there is plenty of  
3 authority for the Court to appoint doctors in a situation  
4 such as this.

5 And I would, on behalf of our position here,  
6 may we have the witness in that is from the Youth  
7 Authority, your Honor, so I can offer that file to the  
8 Court, so the Court can use that file which is part of the  
9 official records of the California Youth Authority which we  
10 have subpoenaed?

11 MR. SHINN: Your Honor, may I be heard, your Honor --  
12 are you finished, Mr. Kanarek?

13 MR. KANAREK: No.

14 THE COURT: Referring to your declaration, Mr.  
15 Fitzgerald --

16 MR. FITZGERALD: Yes.

17 THE COURT: On page 1, line 27, that he attempted  
18 to interpose insanity as a defense in Ventura County --  
19 I don't understand that statement.

20 Is that of your own knowledge? Is that what  
21 he told you, or what?

22 MR. FITZGERALD: This is what he told me, yes.  
23 Everything in this declaration is what he told me. If  
24 that is not clear, I would like you to understand that I  
25 am alleging none of this on any basis other than what he  
26 told me.



1           Furthermore, he is unclear, but he told me,  
2 your Honor, that he pleaded not guilty by reason of  
3 insanity in the Juvenile Court.

4           Well, such a plea, based on my knowledge and  
5 experience in the Juvenile Court, that struck me as being  
6 extremely unlikely that he interposed any plea of not  
7 guilty by reason of insanity.

8           But he kept insisting that he pleaded insanity.

9           That is why I put in there in somewhat guarded  
10 terms that he attempted to impose insanity.

11           I have not had an opportunity to verify the  
12 records from San Bernardino or Ventura. It is based  
13 simply on what he told me.

14           Incidentally, the Clerk has the original of  
15 the declaration, your Honor.

16           THE COURT: Mr. Shinn, you had something you wanted  
17 to say.

18           MR. SHINN: I just wanted to add to what Mr. Kanarek  
19 was saying.

20           I think the Court has a duty to inquire further  
21 if there is any indication either by testimony or by  
22 documents that the witness somewhat may be incompetent,  
23 your Honor, because we are not the judge of whether a  
24 person is incompetent or not, and only a psychiatrist  
25 could make that determination.

26           Here we have evidence, your Honor, and I

1 think it does indicate to the Court that he may be  
2 incompetent, although he has not been adjudicated incompe-  
3 tent, your Honor.

4 This is not a situation where someone said the  
5 man is insane; here we have documents, your Honor.

6 MR. KANAREK: I am told it is very unusual for the  
7 California Youth Authority to send someone to Atascadero,  
8 your Honor.

9 I do have this subpoena, may that file be  
10 brought to your Honor now? We have the witness here.  
11 This is the very reason I subpoenaed this person at the  
12 California Youth Authority.

13 THE COURT: Do you have reference to some particular  
14 part of that file?

15 MR. KANAREK: I have not seen it, your Honor.

16 MR. FITZGERALD: I prefer to see it before you do,  
17 your Honor.

18 It may indicate he is sane.

19 THE COURT: I would prefer you would see it before  
20 I saw it.

21 MR. KANAREK: May we have a slight adjournment.  
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3b fls.

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1 THE COURT: I would have to wade through a lot of  
2 material that has nothing to do with the point under  
3 consideration.

4 MR. KANAREK: May we have a slight adjournment,  
5 so we can produce -- counsel and the District Attorney  
6 can also produce it.

7 THE COURT: Do you intend to proceed with Mr.  
8 Hendricks this morning?

9 MR. BUGLIOSI: No, your Honor, we are going to put  
10 on evidence of the consensual search at the Spahn Ranch  
11 on November 19th.

12 MR. KANAREK: Then the jury should not be in the box.

13 MR. BUGLIOSI: I still have Sergeant Lee on the stand.

14 THE COURT: What did you want to start with?

15 MR. BUGLIOSI: The consensual search aspects.

16 THE COURT: That would be out of the presence of the  
17 jury?

18 MR. BUGLIOSI: Yes.

19 THE COURT: Then why don't we get back into court  
20 with that.

21 In the meantime counsel can examine Mr.  
22 Hendricks' file from Atascadero, or wherever -- the  
23 Youth Authority file?

24 MR. KANAREK: Yes, your Honor.

25 THE COURT: Not the Atascadero file?

26 MR. KANAREK: No. Mr. Darrow tells me he requested



1 the Atascadero file. It has not arrived yet.

2 THE CLERK: It will just be a resume from the doctor  
3 up there in the form of a letter or something.

4 THE COURT: When did you intend to call Mr. Hendricks?

5 MR. BUGLIOSI: Right after Lee.

6 THE COURT: When will the actual file be here?

7 THE CLERK: Atascadero file? You won't get that  
8 unless it is subpoenaed. They will send a resume in the  
9 form of a letter.

10 MR. FITZGERALD: Mr. Darrow also informs me, and I  
11 think it is germane, that there is really no Atascadero  
12 file inasmuch as Mr. Hendricks was only at Atascadero one  
13 week or less before he was transferred down to Los  
14 Angeles County.

15 So, in effect, they have no results of  
16 diagnostic testing or evaluation.

17 MR. BUGLIOSI: The issue is, your Honor, 701, that  
18 is the only issue.

19 They can put on this evidence during their  
20 case in chief, that this guy is as looney as a three-dollar  
21 bill.

22 They can do that, but to prohibit him from  
23 taking the stand, there is just no authority for it.  
24 He's obviously in command of most of his mental faculties.

25 I cannot say he is in command of all of them  
26 because I don't know him that well. But when you ask him

a question he does not pause; he gives a responsive answer.

1           There is just no authority to keep this man off  
2 the witness stand.

3           MR. KANAREK: I have been in Department 95, your Honor,  
4 when people have made lucid answers --

5           THE COURT: You can say that about anybody, Mr.  
6 Kanarek, but the point is you have not produced any  
7 evidence at this point to show this man was incompetent,  
8 and I found him competent the other day on the basis of a  
9 rather lengthy voir dire from all counsel who wished to  
10 participate in it.

11           He is perfectly able to comprehend what is going  
12 on, to recollect, to communicate, to understand the nature  
13 of the oath and all of the other requirements under Section  
14 701.

15           MR. KANAREK: But I repeat, your Honor, so do people  
16 in Department 95, and they are put away.

17           They sound very lucid on the witness stand.

18           THE COURT: That becomes a matter for cross-examination.

19           MR. BUGLIOSI: I have a couple of other points, briefly.

20           MR. KANAREK: May we study the file, your Honor, before  
21 he takes the witness stand?

22           THE COURT: He is not going to this morning apparently.

23           MR. KANAREK: Very well.

24           MR. BUGLIOSI: With respect to the bomb, I have a  
25 related matter.  
26

1 One of our witnesses, Barbara <sup>Hugh</sup> ~~White~~, has left  
2 her parents' home. I don't have all of the details, but  
3 the mother said she received a threat on her life if she  
4 testified at this trial, she would be killed and so will  
5 her family.

6 I know two things. I know the threat did not  
7 come from the prosecution and it did not come from an aunt  
8 I have that lives in Minnesota.

9 I think the most reasonable inference is it came  
10 from the defense.

11 I just bring this out that these defense attorneys  
12 should tell their clients and all their friends that we are  
13 going to prosecute these people, and we are talking about  
14 subornation of perjury, a capital offense.

15 We will prosecute them and I will do my best  
16 to bring it in front of the jury if and when these people  
17 take the witness stand, that they received threats on their  
18 lives.

19 It is relevant.

20 I caution the defense attorneys to tell the  
21 defendants to tell their friends if they continue to do this  
22 we will prosecute for a capital offense and if at all  
23 possible, that I will get it before the jury.

24 MR. KANAREK: I will ask first that counsel's state-  
25 ments be stricken.

26 THE COURT: All right, Mr. Kanarek, let's not drag it



out.

MR. BUGLIOSI: I have no evidence of this, I'm just making a statement of this for the benefit of the defense.

THE COURT: I want to get on with this trial.

MR. FITZGERALD: I have one matter:

I think these gentlemen, Mr. Kay and Mr. Musich ought to be introduced to the jury. We also have the problem of whether or not any of the members of this jury know these gentlemen.

THE COURT: All right, let me have your full names.

Donald Musich.

MR. MUSICH: Yes, sir, M-u-s-i-c-h.

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1 THE COURT: Donald, is that right?

2 MR. MUSICH: Yes, your Honor.

3 THE COURT: M-u-s-i-c-h?

4 MR. MUSICH: Yes.

5 THE COURT: And Steven Kay?

6 MR. KAY: Right.

7 To my knowledge, your Honor, I don't know any of  
8 the jurors. I looked at all their faces. I have never  
9 seen them before.

10 Don has a couple of brothers on the jury,  
11 though, but other than that.

12 MR. MUSICH: No, there is no one on there that I  
13 recognize.

14 THE COURT: All right.

15 MR. KANAREK: Your Honor, if I may?

16 If Mr. Bugliosi has any such allegation, I ask  
17 that he do it by way of declaration and motion.

18 MR. BUGLIOSI: I made that statement for the benefit  
19 of the defense, believe it or not.

20 Your Honor, just very briefly, two points.

21 With respect to the jail records, which  
22 incidentally all three defense attorneys, with the  
23 exception of Mr. Kanarek, agree to stipulate to, the Court  
24 was going to reconsider -- not reconsider, but withhold its  
25 ruling on the admissibility of these records. And I  
26 indicated that I felt that they were circumstantial

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1 evidence of the fact that Linda did visit these people, or  
2 attempted to visit them at the jail.

3 Now, apart from that issue, I briefly draw the  
4 Court's attention to Page 5413, Volume 34 of the  
5 transcript where Linda says -- this is two days after the  
6 second night -- the La Bianca is August 10th -- two days  
7 later. She says:

8 "Then the next morning" -- which is the second  
9 morning following the La Bianca -- "Charlie came to me and  
10 told me that he wanted me to go to Sybil Brand to see Mary  
11 and Sandy because they were in jail, and also to go to, I  
12 don't know the name of the building, I think it is in this  
13 district, to see Bobby Beausoleil."

14 And then she repeats that on Page 5417.

15 Now, assuming that the Court feels that these  
16 records are not circumstantial evidence that Linda went to  
17 the County Jail -- and I think it certainly is -- it is a  
18 speck. I am not saying it is robust, it is a speck.

4A



4A-1

1 THE COURT: All it is is evidence that it was  
2 possible.

3 MR. BUGLIOSI: Right.

4 Certainly, your Honor, going away from the  
5 attempt to visit, certainly these records are evidence that  
6 Charles Manson did have a conversation with Linda subsequent  
7 to the La Bianca murders, unless we want to draw the  
8 inference, -- and this is a far-out, ridiculous inference --  
9 that Mr. Manson deliberately wanted to send Linda on a  
10 wild goose chase.

11 He is telling her -- and this is already in the  
12 record now -- he is telling her that Mary and Sandy and  
13 Bobby Beausoleil are in jail. And this evidence is that  
14 he had the conversation with her subsequent to the La Bianca  
15 murders.

16 Now, there is evidence in the record --

17 THE COURT: I understand your point, Mr. Bugliosi.  
18 I apparently don't see in it what you see in it. I see it  
19 simply as a fact that, if true, would have made it possible.

20 MR. BUGLIOSI: I am not talking about the visit now.  
21 Let's depart from the attempted visit and forget about that  
22 temporarily. I am saying this: That these records here are  
23 circumstantial evidence that when Manson spoke to Linda,  
24 which was after August 10th -- let me reframe that -- these  
25 records are circumstantial evidence -- circumstantial  
26 evidence -- that the conversation that Manson had with

4a2

1 Linda was after the La Bianca murders.

2 She has testified that this was two mornings  
3 after, that he comes up to her and tells her to go visit  
4 these three people who are in jail.

5 These records are circumstantial evidence that  
6 the conversation she had with Charlie was after the  
7 La Bianca murders, unless we want to draw the inference  
8 that Manson told her to go on a wild goose chase. But the  
9 most reasonable inference is that he told her to visit these  
10 three people because he was aware that they were in jail.

11 Now, the defense brought out testimony that  
12 Linda told these people out in Saugus, or Sylmar, I think  
13 it was -- no, Saugus -- that she left town on August 6th or  
14 7th, which was before the murders.

15 Linda says no, I was around during the murders  
16 at the Tate-La Bianca residences. In fact, two days later,  
17 out at Spahn Ranch, Charlie told me to go visit these three  
18 people.

19 I think we can draw the inference that he  
20 wouldn't have told her that unless it was correct.

21 THE COURT: I am not going to argue with you. I  
22 think it is admissible, but to me it seems remote.

23 MR. KANAREK: I disagree, your Honor.

24 May I be heard?

25 MR. BUGLIOSI: I would appreciate that.

26 MR. KANAREK: It is not admissible.

4b-1

1 THE COURT: It is not being offered now.

2 MR. BUGLIOSI: No. But the point is this: That if  
3 the Court holds that it is admissible, presumably Mr.  
4 Kanarek will stipulate.

5 MR. KANAREK: Not so.

6 MR. BUGLIOSI: Very well. We will call in the  
7 people to testify.

8 MR. KANAREK: Your Honor, the fact of the matter  
9 is that Mr. Bugliosi keeps talking and talking and talking--

10 THE COURT: Get to the point, Mr. Kanarek. What is  
11 your point?

12 MR. KANAREK: Your Honor, the point is that these  
13 records don't prove anything as far as Mr. Manson is  
14 concerned.

15 THE COURT: That is something that you can argue  
16 to the jury to your heart's content.

17 MR. KANAREK: That the prejudicial effect of these  
18 people being in jail, all of that, the prejudicial value  
19 of it far outweighs any probative value, your Honor.

20 MR. BUGLIOSI: The fact is --

21 MR. KANAREK: May I be heard?

22 THE COURT: It is not being offered now, Mr. Kanarek.  
23 I am not going to hear you argue a half a dozen different  
24 times. You may argue at the time it is offered.

25 MR. BUGLIOSI: One brief point.

26 Page 9,396 of the transcript, Volume 74, the



4b-2

1 second paragraph, where we are stipulating to the dimen-  
2 sions of the blade on the knife removed from Leno's throat.

3 The blade has a length of four and seven-  
4 eighths inches, a thickness of just under one-sixteenth  
5 of an inch, and a blade width, it has here, of three-  
6 sixteenths of an inch at its widest point and three-  
7 eighths at its narrowest point.

8 I was reading the stipulation, and I said  
9 three-sixteenths, but may it be stipulated that it was  
10 thirteen-sixteenths?

11 MR. FITZGERALD: So stipulated.

12 MR. KANAREK: I don't know what you are talking  
13 about.

14 MR. BUGLIOSI: The transcript says three-sixteenths  
15 of an inch, and it was thirteen-sixteenths of an inch.

16 MR. HUGHES: This is not the blade thickness, this  
17 is the width.

18 MR. BUGLIOSI: The width.

19 If you look at the context here, it says the  
20 blade width. It couldn't be three-sixteenths of an inch  
21 at its widest point and three-eighths at its narrowest  
22 point.

23 So stipulated?

24 MR. SHINN: Yes. I will stipulate.

25 MR. BUGLIOSI: So stipulated, Mr. Kanarek?

26 MR. KANAREK: I will have to look at it, Mr. Bugliosi.

4b-3

1 I probably will, but I don't know what you are talking  
2 about.

3 MR. BUGLIOSI: Your Honor, he is just putting these  
4 things off.

5 MR. KANAREK: No, I am not. You bring this up out  
6 of the clear blue. I am saying if you give me a chance  
7 to see it --

KHXK

4c fls.

4C-1

1 THE COURT: Gentlemen, don't waste my time with your  
2 discussions between yourselves. I want to get on with this  
3 trial and I don't want to listen to you and Mr. Bugliosi  
4 bickering back and forth, Mr. Kanarek.

5 MR. KANAREK: Yes, your Honor.

6 THE COURT: About something that does not directly  
7 involve me or the case.

8 MR. KANAREK: May I make just one other point?

9 In connection with the jail records, Mr. Bugliosi  
10 walks over the fact, your Honor, that it isn't a matter of --

11 THE COURT: If you are talking about that again,  
12 save it until the offer is made, Mr. Kanarek, then I will  
13 hear you.

14 MR. KANAREK: Thank you, your Honor.

15 THE COURT: In toto.

16 MR. KANAREK: Thank you.

17 MR. BUGLIOSI: Do you want me to call Dr. Katsuyama?

18 MR. KANAREK: No, I don't. But let me have a chance  
19 to look at it.

20 THE COURT: All right, gentlemen.

21 (Whereupon, the following proceedings were had in  
22 open court, all defendants, counsel and jurors present:)

23 THE COURT: All parties, counsel and jurors are  
24 present.

25 Ladies and gentlemen, I wish to introduce to you  
26 two new co-prosecutors in the case who have replaced



C2

1 Mr. Stovitz. We have Mr. Donald Musich. Will you stand up,  
2 sir.

3 And Mr. Steven Kay.

4 Each of these gentlemen is a Deputy District  
5 Attorney.

6 Do any of you know either Mr. Musich or Mr. Kay?

7 (No response.)

8 All right.

9 I am going to ask the bailiffs at this time to  
10 take the jury back upstairs. We have some additional  
11 business that has to be taken up outside of your presence.

12 (Whereupon, the jury leaves the courtroom and the  
13 following proceedings occur with the jury absent:)

14 THE COURT: The jury has left the courtroom.

15 You may proceed, Mr. Bugliosi.

16 MR. BUGLIOSI: Call Sergeant Calkins.

17 THE CLERK: Just be seated, sir.

18 MR. KANAREK: Your Honor, if I may interrupt just a  
19 moment.

20 In order not to inconvenience the California  
21 Youth Authority representative, may he be allowed to come  
22 in, and if he could leave his records, then he could leave?  
23 I understand he is here.

24 THE COURT: I have no objection.

25 MR. KANAREK: But I think the way the procedure is,  
26 your Honor, he doesn't know. They keep the witnesses outside,

4C3

your Honor, and I have no way of directly communicating with him.

So, I wonder if the bailiffs could ask him to come in so it wouldn't be an inconvenience for him.

THE COURT: What is the name of the person?

MR. KANAREK: Mr. Thompson is the person that actually brought the records. I am told that, your Honor.

THE COURT: Is there a Mr. Thompson outside?

MR. FITZGERALD: Sergeant Moffett said he was checking.

So the record might be clear, in relation to this witness' testimony, Sergeant Calkins, the defendants are moving to suppress certain items of evidence, to-wit, some .22 caliber shell casings obtained from the area of 12000 Santa Susana Pass Road in the Chatsworth area of the City of Los Angeles in the County of Los Angeles on approximately November the 18th.

The aforementioned location is frequently referred to as the Spahn Movie Ranch.

4D

4d-1

1 THE COURT: November 18th?

2 MR. FITZGERALD: November 18th of 1969.

3 It is our contention that the seizure or  
4 obtaining of these shell casings was improper, unlawful  
5 and invalid and was the product of an illegal search and  
6 seizure.

7 THE COURT: You may proceed.

8 MR. FITZGERALD: And we would offer to enter into  
9 a stipulation with the prosecution that these items of  
10 evidence that have just been mentioned were not seized  
11 pursuant to a search warrant.

12 It is so stipulated?

13 MR. BUGLIOSI: So stipulated.

14 MR. KANAREK: Or a warrant of arrest?

15 MR. BUGLIOSI: So stipulated.

16 THE CLERK: Would you state your name, please?

17 THE WITNESS: Robert L. Calkins; C-a-l-k-i-n-s.

18 THE CLERK: You are still under oath.

19 THE WITNESS: Yes, sir.

20  
21 ROBERT L. CALKINS,  
22 recalled as a witness by and on behalf of the prosecution,  
23 having been previously duly sworn, resumed the stand and  
24 testified further as follows:  
25  
26



4d-2

## DIRECT EXAMINATION

1  
2 BY MR. BUGLIOSI:

3 Q Sergeant Calkins, on the date of November the  
4 19th, 1969, did you proceed to Spahn Ranch in Chatsworth,  
5 California?

6 A Yes, sir.

7 Q Who did you go there with?

8 A I went there in a police vehicle with Sergeant  
9 Bill Lee and yourself, sir, Deputy D.A. Vincent Bugliosi.

10 Q Did anyone else go out to Spahn Ranch that  
11 morning that you are aware of?

12 A Yes, sir. My immediate supervisor, Lieutenant  
13 Robert Helder and several Los Angeles County Sheriff  
14 detectives.

15 MR. KANAREK: Your Honor, I don't wish to interrupt  
16 but Mr. Thompson is now here, if it would be permissible,  
17 your Honor.

18 THE COURT: Well, he can wait.

19 Let's proceed.

20 MR. KANAREK: Very well.

21 Then may he be asked not to stay in the court-  
22 room? He was brought in with the idea that he would  
23 leave --

24 THE COURT: Is there anything that he needs to do  
25 besides leave the file?

26 MR. KANAREK: No.

4d-3

1 THE COURT: He may leave the file, and let's get  
2 on with the trial.

3 MR. THOMPSON: Your Honor, I can't leave the file.

4 THE COURT: All right. Then you will have to wait  
5 outside, sir.

6 MR. THOMPSON: Very well, sir.

7 MR. BUGLIOSI: Q About what time did our car  
8 arrive there at Spahn Ranch?

9 A Approximately 1000 hours.

10 Q You mean 10:00 a.m. in the morning?

11 A Yes, sir.

12 Q Was the purpose of our going there to search  
13 for shell casings on the premises?

14 A Yes, sir.

15 Q What happened after we arrived out at Spahn  
16 Ranch?

17 A We proceeded over to Mr. George Spahn's  
18 residence.

19 Q What was the purpose for doing that?

20 MR. KANAREK: Your Honor, I would ask that that last  
21 answer be stricken on the basis of a conclusion as to  
22 who George Spahn is.

23 There is no showing that this man knows George  
24 Spahn.

25 I would like to inquire on voir dire as to  
26 what relevancy George Spahn has.

4d-4

1 THE COURT: The answer will be stricken.

2 Let's proceed.

3 MR. BUGLIOSI: Your Honor, George Spahn was the  
4 person from whom the prosecution got consent.

5 THE COURT: It calls for a conclusion.

6 MR. BUGLIOSI: As to his name?

7 THE COURT: As to whose residence it was.  
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4e fls.



4E-1

1 MR. BUGLIOSI: Oh?

2 Q Did you contact a person by the name of  
3 George Spahn?

4 MR. KANAREK: Objection. Calls for a conclusion.  
5 Improper foundation.

6 I would like to inquire on voir dire, your  
7 Honor.

8 THE COURT: Overruled. The motion is denied.

9 THE WITNESS: I contacted a man who told me his name  
10 was George Spahn.

11 MR. KANAREK: Then I would ask that that be stricken  
12 on the grounds of hearsay.

13 THE COURT: Motion is denied.

14 MR. BUGLIOSI: Q And where was Mr. Spahn  
15 located at this point?

16 A He was inside one of the buildings at the ranch.

17 Q Who entered this building with you, if anyone,  
18 Sergeant?

19 A You entered it with me, Mr. Bugliosi, and  
20 Lieutenant Robert Helder.

21 Q What was the purpose of our going into -- strikes  
22 that.

23 Referring to the first time that we went to the  
24 building where Mr. Spahn was, was there anyone else, in  
25 addition to yourself and I and Lieutenant Helder?

26 MR. KANAREK: Your Honor, I would object on the

4E2

1 grounds that it is assuming a fact not in evidence.

2 THE COURT: Overruled.

3 THE WITNESS: Yes, sir.

4 Sergeant Bill Lee was present and Sheriff's  
5 Detectives Sergeants Whiteley, Gunther and Gleason were  
6 also present.

7 MR. BUGLIOSI: What was the purpose of your going to  
8 see Mr. Spahn?

9 A I wanted to obtain permission from Mr. Spahn to  
10 search the ranch.

11 Q Who suggested that we obtain permission from him?

12 A Mr. Bugliosi suggested to me that we obtain  
13 permission from him.

14 Q All right.

15 Did we have any conversation with Mr. Spahn?

16 A Yes, sir.

17 Q Would you please relate that conversation?

18 MR. KANAREK: Your Honor, I will object on the grounds  
19 of improper foundation, calling for a conclusion and hear-  
20 say, your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: I introduced myself to Mr. Spahn, and  
23 due to the fact that he has very poor vision, I handed him  
24 my badge and badge case and let him feel my deputy badge,  
25 and I explained to him who I was and why I was there.

26 MR. KANAREK: Your Honor, may that portion be stricken

4E3

1 about the poor vision? All of that which is not respon-  
2 sive to the question, your Honor, because I believe that the  
3 question solicited conversation, your Honor.

4 MR. BUGLIOSI: Your Honor, this is not in front of  
5 the jury. This is an evidentiary hearing.

6 THE COURT: The motion is denied.

7 MR. BUGLIOSI: Q You may continue, Sergeant.

8 A I had conversations with Mr. Spahn, and in the  
9 conversations he gave me and all the other police officers  
10 that were with me permission to search his ranch any time,  
11 day or night.

12 MR. KANAREK: Your Honor, I would ask that that be  
13 stricken as a statement of a conclusion.

14 Your Honor is the one, your Honor is the trier  
15 of the fact, the one to determine whether there is consent.

16 THE COURT: The answer will be stricken.

17 MR. BUGLIOSI: Your Honor, the only way you prove  
18 consent, your Honor, is by having the person testify they  
19 were given consent.

20 THE COURT: He can testify to the conversation,  
21 Mr. Bugliosi.

22 MR. BUGLIOSI: All right.

23 THE COURT: Consent is a conclusion.

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F-1

1 MR. BUGLIOSI: Q Well, did Mr. Spahn use the  
2 word "consent" or did he use the word "permission"?

3 Please relate what Mr. Spahn said to you and the  
4 rest of us.

5 MR. KANAREK: May we have a foundation as to who was  
6 present at that time, your Honor?

7 THE COURT: Very well. Lay a foundation.

8 MR. BUGLIOSI: Q What time did this conversa-  
9 tion take place with Mr. Spahn?

10 A Approximately 10:15.

11 Q As soon as we arrived at the ranch?

12 A Yes, sir.

13 Q You have already indicated the people who  
14 were present at that time; is that correct?

15 A Yes, sir.

16 Q What did Mr. Spahn say with respect to our  
17 searching the ranch?

18 MR. KANAREK: May that question be read to me, your  
19 Honor? I didn't hear it all. I am sorry.

20 THE COURT: No. We will proceed, Mr. Kanarek.  
21 You will have to pay attention if you want to hear these  
22 things.

23 THE COURT: He told me, in his words, that he wanted  
24 to cooperate with the Police Department in any way he  
25 could, and that he was completely willing to let myself and  
26 all the other investigators, including Mr. Bugliosi,

452

1 have access to the ranch.

2 He said, "It is my ranch and you are welcome to  
3 search it any time you want to, as many times as you want  
4 to."

5 MR. BUGLIOSI: Q Do you recall my talking to  
6 Mr. Spahn?

7 A Yes.

8 Q What did I say to him and what did he say to me?

9 A You told him of the legal requirement to obtain  
10 legal permission from the point of view that we would some  
11 day have to use this evidence in trial.

12 You explained it to him very thoroughly, and he  
13 related that he understood it, and I was completely con-  
14 vinced that he understood everything that you explained to  
15 him.

16 Then he gave me permission to search the ranch.

17 MR. KANAREK: Your Honor, I would ask that the  
18 conclusionary aspect of this response be stricken, where this  
19 gentleman stated something about he understood it and  
20 Mr. Spahn thoroughly understood it.

21 Those are conclusions, your Honor.

22 THE COURT: Those portions of the answer will be  
23 stricken.

24 MR. BUGLIOSI: Q What did we do thereafter,  
25 Sergeant?

26 A We proceeded outside and went to the out buildings,

where

4E3  
1 or the buildings away from Mr. Spahn lived, and searched  
2 through a number of these buildings.

3 Then we proceeded out to the rear portion of the  
4 ranch and the corral area, and with Sergeant Lee super-  
5 vising, we began to look for shell casings.

6 MR. KANAREK: Your Honor, I would ask that that por-  
7 tion of the response wherein the witness says something  
8 about this is where Mr. Spahn lived, that is assuming  
9 facts not in evidence, and I ask that that conclusion,  
10 that hearsay statement, be stricken.

11 There is no evidence in this record whatsoever  
12 that Mr. Spahn, or whoever he is, lives at the location  
13 that this man is talking about.

14 THE COURT: The motion is denied.

15 MR. BUGLIOSI: Q Now, without going into what  
16 we found, if anything, was there any further attempt to  
17 secure permission from Mr. Spahn to search the ranch?



5-1

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

2 THE COURT: Overruled.

3 THE WITNESS: Yes, sir.

4 Q BY MR. BUGLIOSI: How did that come about?

5 A I had a discussion with you, Mr. Bugliosi, and  
6 it was determined that you suggested that we go back and  
7 obtain, if possible, a tape recording of the substance of  
8 our earlier conversation, in that we wanted to obtain  
9 permission on a tape of Mr. Spahn giving us permission.

10 MR. KANAREK: I ask that this last answer be stricken  
11 on the grounds that it is immaterial, irrelevant, a  
12 conclusion and hearsay.

13 THE COURT: Denied.

14 Q BY MR. BUGLIOSI: I asked you if you had a tape  
15 recorder with you?

16 A Yes, sir.

17 Q You said you did?

18 A Yes, sir.

19 Q In the trunk of your car?

20 A Yes, sir.

21 Q You got the tape recorder?

22 A Yes.

23 Q What happened after you got the tape recorder?

24 MR. KANAREK: I ask this be stricken on the grounds  
25 it is immaterial and irrelevant, either there was a consent  
26 at this point or there wasn't.

-2

1 THE COURT: Overruled.

2 Q BY MR. BUGLIOSI: What happened after you got the  
3 tape recorder, Sergeant?

4 A You and I proceeded in to Mr. Spahn's house  
5 again and we had another conversation with Mr. Spahn at that  
6 time.

7 Q On tape?

8 A Yes, sir.

9 Q And would you relate that conversation?

10 MR. KANAREK: I object on the grounds it is not the  
11 best evidence, hearsay, immaterial, irrelevant.

12 THE COURT: Overruled.

13 THE WITNESS: The substance of the conversation  
14 between yourself, Mr. Spahn and myself was substantially the  
15 same as the earlier one.

16 We asked permission, and he once again agreed to  
17 give us permission to search his ranch anytime we wanted to,  
18 day or night.

19 MR. KANAREK: I ask that be stricken as a con-  
20 clusionary statement.

21 It states a conclusion about substantially the  
22 same.

23 The further statement about what the conclusion  
24 was as far as Mr. Spahn is clearly conclusionary.

25 And if there is a tape recording, the best  
26 evidence is the tape recording, your Honor.

-3

1 THE COURT: Do you remember the exact words of the  
2 conversation, Sergeant?

3 THE WITNESS: No, sir.

4 THE COURT: Was your answer the substance of what was  
5 said?

6 MR. KANAREK: May I respectfully object to the Court's  
7 question as calling for a conclusion?

8 THE COURT: Overruled.

9 THE WITNESS: Yes, sir.

10 Q BY MR. BUGLIOSI: What did you do with that  
11 tape, after we spoke to Mr. Spahn?

12 MR. KANAREK: Immaterial, irrelevant.

13 THE COURT: Overruled.

14 THE WITNESS: I returned it to Parker Center to my  
15 office.

16 Q BY MR. BUGLIOSI: Do you know where that tape is  
17 now?

18 MR. KANAREK: Immaterial and irrelevant.

19 THE COURT: Overruled.

20 THE WITNESS: No, sir, I do not.

21 Q BY MR. BUGLIOSI: You have not been able to  
22 find it?

23 A Not yet, sir.

24 MR. BUGLIOSI: I have no further questions at this  
25 time, your Honor, on the issue of consent to search the  
26 Spahn Ranch on November 19, 1969.



1 THE COURT: Was it the 19th, Mr. Bugliosi?

2 MR. BUGLIOSI: I believe it is November 19th.

3 MR. FITZGERALD: May our statement in regard to the  
4 suppression of the evidence be amended to reflect the date  
5 of November 19th as opposed to the 18th, your Honor?

6 THE COURT: Very well.

7 Cross-examination, Mr. Fitzgerald?

8 MR. FITZGERALD: Yes, your Honor.

9  
10 CROSS-EXAMINATION

11 BY MR. FITZGERALD:

12 Q Now, Sergeant Calkins, how many police officers  
13 altogether were in your presence at the time you had the  
14 conversation with George Spahn in regard to searching his  
15 ranch?

16 MR. KANAREK: I would object to Mr. Fitzgerald's  
17 statement -- to Mr. Fitzgerald's question on the ground  
18 there is nothing in the evidence to show this was  
19 Mr. Spahn's ranch.

20 It is a conclusion. It is hearsay.

21 THE COURT: Overruled.

22 THE WITNESS: To the best of my knowledge there were  
23 six of us, three Los Angeles County Sheriff's Detectives  
24 and three Los Angeles Police Department Detectives.

25 Q BY MR. FITZGERALD: And you were armed, were you  
26 not?

1 A No, sir, not at that time.

2 Q You had your pistol in your holster, didn't you?

3 A No, sir -- well, my pistol and my holster were  
4 in the trunk of the car.

5 I had a pair of coveralls on.

6 Q Was there some reason for that, that you were  
7 wearing coveralls, I mean?

8 A Yes.

9 Q Why?

10 A I was going to conduct a search. I did not  
11 want to get my suit dirty.

12 Q Did any of the other officers have their weapons  
13 on their person at the time you had this conversation with  
14 Mr. Spahn?

15 A I don't know. They could have.

16 Q It is standard operating procedure with the  
17 Los Angeles Police Department for their in-the-fields  
18 detectives to be armed at all times, isn't it?

19 A I would say that is a true statement.

20 Q Now, did this conversation take place with  
21 Mr. Spahn at a particular place or within a particular  
22 building?

23 A Yes, sir.

24 Q Where was that building located, if it was a  
25 building?

26 A Well, it is on the west side of the main cluster

1 of buildings.

2 This house is known to me as Mr. Spahn's  
3 residence.

4 MR. KANAREK: May that be stricken, that portion,  
5 "This house is known to me as Mr. Spahn's residence,"  
6 may that go out?

7 THE COURT: The motion is denied.

8 Q BY MR. FITZGERALD: Was this a small ranch house?

9 A I would say that is correct.

10 Q All right. Mr. Spahn was not alone, was he?

11 A No, sir.

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1 Q Who was with him?

2 A There was a female Caucasian there, but I don't  
3 remember who it was.

4 Q Was that person present to your knowledge in  
5 order to care for Mr. Spahn?

6 A I don't know.

7 Q Did you inquire of Mr. Spahn as to his age?

8 A I believe he volunteered it. I don't believe I  
9 asked him his age.

10 Q How old did he say he was?

11 A As I recall he told me 87 years old.

12 Q And Mr. Spahn was also blind, to your knowledge,  
13 wasn't he?

14 A I was under the impression he was blind.

15 Q And you were aware, were you not, that arrests  
16 had been made at the location, 12000 Santa Susanna Pass  
17 Road, previous to November 19th, 1969, right?

18 A Yes, sir.

19 Q And did you have a discussion with Mr. Spahn  
20 about arrests that had been made at that location previously?

21 A No, sir.

22 Q Were you aware of any proceedings to abate that  
23 location as a nuisance?

24 A No, sir, I was not.

25 Q Did you have any conversation with Mr. Spahn in  
26 regard to the consequences of his not cooperating with the

5a-2

1 police in conducting this search?

2 A Absolutely not, sir.

3 Q Did you question Mr. Spahn to determine whether  
4 or not he was the owner of the property at that location?

5 A Yes, sir.

6 Q What was the nature of your inquiry?

7 MR. KANAREK: I object to that on the grounds of  
8 hearsay, your Honor.

9 THE COURT: Overruled.

10 MR. KANAREK: A conclusion, immaterial and  
11 irrelevant.

12 THE COURT: Overruled.

13 THE WITNESS: I said "Are you Mr. George Spahn?"  
14 He said, "Yes."

15 And I said, "Is this your ranch? Do you own  
16 it?"

17 And he said "Yes."

18 BY MR. FITZGERALD:

19 Q You knew however that other people resided  
20 at that location in addition to Mr. Spahn, did you not?

21 A I have been told that a number of people had  
22 lived there.

23 Q Did you question Mr. Spahn in regard to the  
24 identities of the persons residing at that location in  
25 addition to himself?

26 A No, sir.

5a-3

1 Q Did you attempt to obtain the permission of  
2 any other tenant at the location?

3 MR. KANAREK: I object to that, your Honor -- I  
4 will withdraw the objection, your Honor.

5 THE WITNESS: No.

6 MR. FITZGERALD: I have nothing further.

7 THE COURT: Mr. Shinn?

8 MR. SHINN: Yes, your Honor.

9  
10 CROSS-EXAMINATION

11 BY MR. SHINN:

12 Q Officer, was this the first time you went to  
13 the Spahn Ranch?

14 A Yes, sir.

15 Q And when you went to the Spahn Ranch you did  
16 not have a search warrant?

17 A No, sir.

18 Q Before entering the premises of this ranch did  
19 you ask anyone for permission to enter the ranch?

20 A No, sir.

21 Q In other words, you just barged in?

22 A I drove my vehicle onto his property and parked.

23 Q That is what I mean, before entering you did not  
24 ask anyone's permission to enter, did you?

25 A No, sir.

26 Q Now, after you went into the ranch, went onto



5a-4

1 the ranch, did you ask anyone's permission to enter at  
2 that time?

3 A Would you repeat that, sir, I don't understand  
4 it.

5 Q After going into the ranch did you ask of  
6 anyone permission whether or not you can enter?

7 A No, sir.

8 Q You did talk to Mr. Spahn?

9 A That's correct.

10 Q I believe you stated that you thought he was  
11 the owner?

12 A Yes, sir.

13 Q And you did not ask him, "Mr. Spahn, I'm here,  
14 may I enter your premises?"

15 A No, sir, I did not say that.

16 Q Okay, now, you stated you had a conversation with  
17 Mr. Spahn regarding searching his premises, correct?

18 A Yes, sir.

19 Q Now, did you advise him of his constitutional  
20 rights?

21 A No, sir.

22 Q Did anyone in your presence advise Mr. Spahn  
23 of his constitutional rights?

24 A No, sir.

25 Q In other words, you did not tell him, Mr.  
26 Spahn, "You have a right to give us consent to search your

5a-5

1 premises and, Mr. Spahn, if we find anything on your  
2 premises we may use this against you," no rights at all,  
3 is that correct, Officer?

4 A I did not make those statements to Mr. Spahn.

5 Q And you don't know whether or not Mr. Bugliosi  
6 or your fellow officers advised him of his constitutional  
7 rights?

8 A They did not in my presence.

9 MR. SHINN: Due to the fact that no one advised Mr.  
10 Spahn of his constitutional rights, your Honor, I believe  
11 I will make a motion at this time to strike the testimony  
12 of this witness and to strike his statements on the grounds  
13 Mr. Spahn's constitutional rights were not given to him.

14 THE COURT: Do you have authority for that, Mr.  
15 Shinn?

16 MR. SHINN: Yes, your Honor, I have authority.

17 THE COURT: What is your authority?

18 MR. SHINN: There is ample authority.

19 Mr. Fitzgerald has some.

5b fls.

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1 MR. FITZGERALD: Cipres vs. United States, 243 Fed. 2d,  
2 Page 95 and Page 97.

3 THE COURT: The citation again?

4 MR. FITZGERALD: 343 Fed. 2d 95 at Page 97.

5 Also United States vs. Nikrasch.

6 That is a 7th Circuit case decided in 1966,  
7 located at 367 Fed. 2d 740.

8 Also United States vs. Moderacki, a 1968 case,  
9 that is at 280 Fed. Sup. 633, and a lengthy discussion at  
10 Page 635 and 636.

11 Also United States vs. Blalock, a 1966 case at  
12 255 Fed. Sup. 268.

13 Now, the law in California is somewhat  
14 different, and this very problem is discussed in People vs.  
15 Roberts, a 1966 case at 246 Cal. Ap. 2d, Page 715, and it  
16 is discussed at length in a recent case, People vs. Superior  
17 Court in 71 Advance Cal., Page 281 at 287.

18 MR. SHINN: Your Honor, I do have some cases in  
19 point:

20 People vs. Reeves, 61 Cal. 2d, 269, and People  
21 vs. Lopez, L-o-p-e-z, 74 Cal. Reporter 740 and also Badillo  
22 vs. Superior Court, 46 Cal. 2d, 269.

23 And another case in point would be People vs.  
24 Henry, 65 Cal. 2d 842.

25 Now, all of these cases indicate that the  
26 People must show justification for the search, and I believe



1 they discussed the giving of the constitutional rights to  
2 the owner before making the search, your Honor.

3 I believe in this case the officer has  
4 testified that no constitutional rights were given to  
5 Mr. Spahn, your Honor.

6 On the basis of that I will make the motion to  
7 suppress any evidence and strike his testimony.

8 MR. FITZGERALD: We join in that motion, your Honor.

9 MR. KANAREK: May I join in connection with the  
10 statements of Mr. Fitzgerald and Mr. Shinn, your Honor?

11 MR. BUGLIOSI: The law in California is clear that  
12 even when the police approach a defendant or a suspect, they  
13 do not have to advise him of his constitutional rights  
14 to refuse to give consent.

15 The cases on that are People vs. Mills, 235  
16 Cal. Ap. 2d and also People vs. Chaddock, 249 Cal. Ap. 2d.

17 These are cases where the police actually  
18 approached a suspect and secured consent from him without  
19 advising him of his constitutional rights.

20 I think the rationale of the Court's position is  
21 simply this:

22 When you are seeking consent from a person, the  
23 Fifth Amendment is not involved.

24 Consent to search is not an incriminating  
25 statement, so the Fifth and Sixth Amendments are not  
26 involved, the only thing involved is the Fourth Amendment.

1           Of course, the Fourth Amendment only prohibits  
2 unreasonable searches and seizures, and certainly a  
3 consensual search is not an unreasonable search and seizure.

4           If Mills and Chaddock do not require the advice  
5 of constitutional rights to a suspect, a fortiori,  
6 Mr. Spahn being a civilian, not involved in this case  
7 whatsoever, he was never arrested or suspected; the law is  
8 very clear on that point.

9           MR. FITZGERALD: In California I agree that the rule  
10 is different from the Federal rule.

11           However, as recently as People vs. Superior  
12 Court in 71 Advance Cal. 281, the California courts have  
13 held that a failure to advise the person giving the consent  
14 of his right to withhold consent is a factor to be taken  
15 into consideration by the trial court in making its  
16 determination, whether free consent was given.

17           In other words, the fact that this officer did  
18 not advise Mr. Spahn may be taken into consideration by  
19 your Honor in determining whether Mr. Spahn freely consented  
20 to the search and whether the People have met their burden  
21 in that respect.

22           THE COURT: It seems to me the motion is premature  
23 at this time. I will deny it now without prejudice to renew  
24 it after I have heard the rest of the evidence on this  
25 question we are hearing.

26           MR. HUGHES: So the record is clear, I believe

1 Mr. Bugliosi and I have a stipulation that this officer's  
2 testimony in relation to the shell casings will not be  
3 offered against Leslie Van Houten.

4 MR. BUGLIOSI: May I just think about that for a  
5 moment, your Honor, and Mr. Hughes can bring that up again  
6 later.

7 THE COURT: Anything further, Mr. Shinn?

8 MR. SHINN: Yes. In response to Mr. Bugliosi's  
9 statement, your Honor, I believe that the People would have  
10 a stronger case if the officer testified that he asked  
11 Mr. Spahn, "May I search the ranch, and if I find any  
12 contraband you will not be arrested or you will be immune  
13 from it," then I would say they would have a stronger case,  
14 your Honor.

15 Now, what if they found something that was  
16 contraband connected with Mr. Spahn? Are they saying they  
17 would not have arrested Mr. Spahn, your Honor?

18 THE COURT: You are re-arguing the motion. I already  
19 ruled you may redo it later on, Mr. Shinn.

20 MR. SHINN: All right, your Honor.

21 THE COURT: You may proceed.

22 Any cross-examination, Mr. Kanarek?

23 MR. KANAREK: Yes, your Honor.  
24  
25  
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## CROSS-EXAMINATION

1  
2 BY MR. KANAREK:

3 Q Officer, how long did you plan this trip to the  
4 ranch before you went there?

5 A I don't exactly understand.

6 It was probably determined a day ahead of time  
7 that we would go out there the following morning.

8 Q In other words, you spoke about it with  
9 Mr. Bugliosi?

10 A Yes, sir.

11 Q And Mr. Stovitz?

12 A I'm not sure about that.

13 Q And did you speak about it with other people in  
14 the Los Angeles Police Department?

15 A Yes, sir.

16 Q And you decided that you were going to go there --  
17 and you decided you were going to make the trip to the  
18 ranch, is that right?

19 A I think the decision was probably Mr. Bugliosi's,  
20 but I certainly was in agreement with it.

21 Q Did you attempt to approach any magistrate, any  
22 judge, in order to get a search warrant or a warrant of  
23 arrest?

24 A No, sir.

25 Q No, sir?

26 A No, sir.

1 Q Was there any discussion between yourself and  
2 Mr. Bugliosi concerning getting a search warrant?

3 A No, sir.

4 Q No one even spoke about that?

5 A Not to my knowledge, no, sir.

6 Q And directing your attention, Officer, was your  
7 state of mind to go there to make an exploratory search?

8 You were going to go in to the ranch and just  
9 look for all kinds of evidence, is that right?

10 A No, not necessarily.

11 My state of mind was I wanted to find some shell  
12 casings.

13 Q How is it, Officer, you wanted to find some  
14 shell casings when you had not yet known about the gun?

15 A I had not yet known what?

16 Q Well, the gun you tell us, was not found --  
17 You did not know about it until sometime in  
18 December?

19 A We certainly knew what kind of a gun it was and  
20 what we were looking for.

21 We knew what kind of shells it fired.

22 Q I see. You did not know anything about the gun,  
23 however, right?

24 A That's correct.

25 Q So, therefore, you were going there to search,  
26 make a general exploratory search just to find out --

1 Just to pick things up and look at things and  
2 try to get evidence in connection with some litigation in  
3 the Superior Court, is that correct?

4 A No, sir.

5 Q You were only worried about shell casings, is that  
6 correct?

7 A I was concerned about shell casings.

8 Q Why were you as a police officer concerned about  
9 shell casings if you did not even have a gun to connect  
10 up with the shell casings?

11 MR. BUGLIOSI: Argumentative and irrelevant.

12 THE COURT: Sustained.

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1 BY MR. KANAREK:

2 Q Directing your attention to your state of mind  
3 at this time you went there, you did not even know the gun  
4 existed, is that right?

5 A I knew there was a gun that had killed some  
6 people and I knew what kind of a gun it was.

7 Q Well, my question to you is, at the time that  
8 you went there did you know the location of any gun that  
9 you thought had been involved in any of the matters that  
10 we are now before this court about?

11 A No, I did not know the location of the gun.

12 Q So you are telling us that at the time before you  
13 even knew that a gun existed you went out there to look for  
14 shell casings?

15 A I knew a gun existed.

16 Q How did you know the gun had not been destroyed  
17 or tossed off the end of Diamond Head in Pearl Harbor?

18 MR. BUGLIOSI: This is argumentative and ridiculous.

19 THE COURT: Sustained.

20 BY MR. KANAREK:

21 Q As a matter of fact, Officer, you had no know-  
22 ledge whatsoever that any gun existed that you could  
23 connect up or attempt to connect up with this case, is that  
24 right?

25 THE COURT: What is the relevancy of this?

26 MR. KANAREK: Your Honor, it is to show -- it impeaches



5c-2

1 the credibility of the purpose and the intent as far as what  
2 the police officer was doing there with Mr. Bugliosi.

3 It shows that there wasn't even a gun -- they  
4 did not even know a gun existed that could be connected up  
5 even purportedly with this case.

6 THE COURT: What difference does that make?

7 MR. KANAREK: Well, then it is for your Honor to  
8 decide on the credibility.

9 THE COURT: I am trying to find out why these questions  
10 are relevant.

11 MR. KANAREK: Because, your Honor, if the witness  
12 deliberately, let's say the witness is not candid with the  
13 Court on a material point, your Honor could disregard all  
14 of his testimony.

15 THE COURT: This goes to credibility then, is that it?

16 MR. KANAREK: Yes, your Honor.

17 THE COURT: All right, let's proceed.

18 BY MR. KANAREK:

19 Q Then would you tell <sup>us</sup> this, officer, when you went  
20 out there, is it a fact that you went out there to make an  
21 exploratory search all over the ranch to see what you could  
22 find?

23 Your intent was not just on shell casings?

24 A I had no intention of searching the entire  
25 ranch.

26 Q You were just looking for shell casings, is

5c-3

1 that right?

2 A That is what I was looking for, yes, sir.

3 Q Only shell casings; yet you had no gun with  
4 which you intended to hook up these shell casings, right?

5 A I had no gun at that time.

6 Q Right. I see. Now, Officer, directing your  
7 attention to the person, this elderly man that you say you  
8 saw at the ranch.

9 You have never seen him before in your life,  
10 right?

11 A That's correct, sir.

12 Q And directing your attention to this man, he  
13 was, as far as you could see, he was blind, right?

14 A He appeared to be blind to me.

15 Q And he appeared to be very elderly, right, is  
16 that right?

17 A That's correct.

18 Q And did he appear to be -- did his -- would  
19 you say that he was halt; that his ability to move around  
20 was impaired?

21 A I made no such determination.

22 Q Because he never moved while you were seeing  
23 him, right? He stayed in the one place?

24 A He stayed in one chair, yes, sir.

25 Q He stayed in one chair and he never moved from  
26 the chair, right?

5c-4

1 A Not to my knowledge.

2 Q Now, directing your attention, Officer, to this  
3 tape that you say --

4 You say you made a tape of Mr. Spahn's?

5 A Yes, sir.

6 Q Now, are you telling us that the Los Angeles  
7 Police Department in connection with this case which the  
8 prosecution has deemed to be so important, one of the most  
9 fantastic cases of all time, and all of that, that you lost  
10 the tape?

11 MR. BUGLIOSI: Argumentative and compound and also  
12 absurd.

13 THE COURT: Reframe the question, Mr. Kanarek.

14 MR. KANAREK: Yes, your Honor.

15 THE COURT: The objection is sustained.

16 BY MR. KANAREK:

17 Q Directing your attention, Officer, to this tape  
18 that you say disappeared, Officer, would you tell us, what  
19 did you do with this tape after you purportedly took it?

20 A Would you ask that again? I'm not sure what  
21 you said.

22 MR. KANAREK: Certainly. May it be read, your Honor?

23 THE COURT: Read the question.

24 (Whereupon the reporter reads the pending  
25 question as follows:

26 "Q Directing your attention, Officer,



5c-5

1 "to this tape that you say disappeared, Officer,  
2 would you tell us, what did you do with this tape  
3 after you purportedly took it?")

4 THE WITNESS: After I returned to Parker Center I  
5 went to my office, placed the tape in one of my file  
6 cabinets.

7 I believe I then took the tape to the sound  
8 lab. I have been unable to locate it. It has not  
9 disappeared.

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Q BY MR. KANAREK: It has not disappeared. You tried to locate it, right?

A Yes, sir, I have been unsuccessful so far.

Q Well, you know you were going to come to court to testify?

A I was aware of that, yes, sir.

Q Concerning this very matter that we are before Judge Older on?

A Yes, sir.

Q So would you tell us where did you look for it?

A Well, we have three tape file cabinets in the Homicide Room, and we have a section up at Scientific Investigation where a number of other tapes are stored.

I searched both these places and searched the records upstairs and downstairs.

Q And the tape has disappeared, right?

A I cannot locate it at this time.

Q And you have made a sort of a continuous search for it, for the last several weeks?

A No, not the last several weeks. I started Friday looking for it.

Q I see.

And directing your attention to this tape, officer, was this tape deliberately destroyed because of the fact that the language that was on the tape was language that you or someone else did not wish to come out

1 in this courtroom?

2 A No, sir.

3 Q Who else had this tape other than yourself,  
4 had physical possession of it?

5 A No one that I know of.

6 Q You are the only one?

7 A As far as I know, yes.

8 Q Well, when you take it to the sound lab you give  
9 it to someone else?

10 A I am not positive I got it to the sound lab.

11 Q I see.

12 A That is what I am trying to determine now.

13 Q I see. Now, directing your attention,  
14 Mr. Calkins, to Mr. Spahn, you have not seen fit to cause  
15 Mr. Spahn to be subpoenaed to these proceedings, right?

16 A No, sir.

17 Q Is that correct?

18 A That's correct.

19 THE COURT: Are you talking about the sergeant  
20 personally, Mr. Kanarek?

21 MR. KANAREK: Pardon?

22 THE COURT: Are you talking about Sergeant Calkins  
23 personally subpoenaing Mr. Spahn?

24 MR. KANAREK: I said caused.

25 THE COURT: That is usually the function of counsel.  
26 I wanted to be sure I understood your question.



1 Q BY MR. KANAREK: To your knowledge, Mr. Calkins,  
2 has anyone caused, on behalf of the prosecution of this  
3 case, caused a subpoena to be issued to bring Mr. Spahn to  
4 this courtroom?

5 A Not to my knowledge, sir.

6 Q Or has anyone asked Mr. Spahn to come to this  
7 courtroom to testify?

8 A Not to my knowledge, sir.

9 Q And to your knowledge -- you are one of the  
10 investigating officers in this case, is that correct?

11 A That is correct, sir.

12 Q Would it be fair to say that you are one of the  
13 individuals who is in charge of the prosecution in this  
14 case?

15 A No, sir, I don't think that it is fair to say that.

16 Q Well, would it be fair to say that you are one  
17 of the investigating officers in charge of the investigation  
18 in this case?

19 A Yes, sir, that is correct.

20 MR. KANAREK: Thank you, your Honor.

21 THE COURT: Any questions, Mr. Hughes?

22 MR. HUGHES: May we have that stipulation?

23 MR. BUGLIOSI: So stipulated, this evidence with  
24 respect to the gun does not pertain to Leslie Van Houten.

25 MR. KANAREK: We object to this evidence on the grounds  
26 of immateriality.

1 THE COURT: The examination is not finished yet.  
2 Mr. Kanarek.

3 Is there any redirect examination?

4 MR. BUGLIOSI: I have no redirect examination, your  
5 Honor.

6 MR. KANAREK: I meant continuing objection, your  
7 Honor, on all of this witness' testimony as to materiality  
8 and relevancy.

9 THE COURT: Very well.

10 You may step down, Sergeant.

11 We will take a recess at this time.

12 MR. SHINN: Your Honor, may I renew my motion now  
13 or later?

14 THE COURT: You may renew it later when the hearing  
15 is concluded.

16 MR. SHINN: Thank you.

17 THE COURT: 15 minutes.

18 (Recess.)  
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1 (The following proceedings were had in open  
2 court, defendants and counsel present, the jury absent:)

3 THE COURT: All parties and counsel are present, the  
4 jury is now present.

5 You may continue, Mr. Bugliosi.

6 MR. KANAREK: Your Honor, I have a motion to make,  
7 if I may.

8 I want to check with Mr. Bugliosi first.

9 THE COURT: Has it something to do with this particu-  
10 lar hearing?

11 MR. KANAREK: With this very witness, yes, your  
12 Honor.

13 (Mr. Kanarek and Mr. Bugliosi confer.)

14 MR. KANAREK: Your Honor, I was trying to expedite  
15 matters in that I was asking the prosecution to agree  
16 that a subpoena duces tecum be deemed made, duly served  
17 and returned as to this tape recording that the officer  
18 says that he can't locate, because it is our position,  
19 based on Brady vs. Maryland and People vs. --

20 THE COURT: Let's get to the point, Mr. Kanarek.

21 MR. KANAREK: The motion is, your Honor, to suppress  
22 all this witness's testimony, and especially the testimony  
23 concerning consent.

24 THE COURT: On what grounds?

25 MR. KANAREK: On the ground that there has been a  
26 suppression of evidence by the prosecution.

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1 THE COURT: The motion will be denied.

2 Let's proceed.

3 MR. BUGLIOSI: Your Honor, if the Court has any  
4 question as to the admissibility of this evidence on the  
5 shell casings, with respect to the shell casings, then we  
6 are prepared to put on additional evidence at this time  
7 with respect to consent.

8 THE COURT: Until I hear all the evidence, Mr.  
9 Bugliosi, I can't rule in advance.

10 I don't know what you intend to put on or what  
11 the defense counsel intend to put on.

12 MR. BUGLIOSI: The other evidence, your Honor, would  
13 be from the other officers that were present, and their  
14 testimony would be corroborative of Sergeant Calkins'  
15 testimony.

16 THE COURT: I will make no commitment to you.  
17 Put on whatever evidence you wish.

18 MR. BUGLIOSI: I am not looking for a commitment,  
19 your Honor, but I wish to save precious time. There were  
20 seven or eight officers out there, and I could call seven  
21 or eight.

22 If the Court has some question in its mind, I  
23 wish you would indicate or tell us to call the officers to  
24 the stand.

25 THE COURT: I have made my position clear to you,  
26 Mr. Bugliosi. I don't know what else to say.



6-3

1 MR. BUGLIOSI: I don't believe we will put on any more  
2 evidence at this time, your Honor, on that issue.

3 THE COURT: Very well.

4 Do the People rest on the motion?

5 MR. KANAREK: Your Honor --

6 MR. BUGLIOSI: Yes, on the motion.

7 MR. FITZGERALD: Defendant Krenwinkel rests.

8 We would like to be heard, obviously, in terms  
9 of argument, or we would like to renew our motion to strike  
10 the officer's testimony.

11 THE COURT: Any evidence, Mr. Shinn?

12 MR. SHINN: Nothing further, your Honor.

13 THE COURT: You rest on the motion?

14 MR. SHINN: Yes, your Honor.

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1 THE COURT: Mr. Kanarek?

2 MR. KANAREK: No, I don't rest.

3 I call Mr. Bugliosi as a witness, your Honor.  
4 He was a percipient witness. He injected himself into  
5 this.

6 I call Mr. Bugliosi as a witness.

7 THE COURT: All right.

8 THE CLERK: Raise your right hand, please.

9 Would you please repeat after me.

10 I do solemnly swear --

11 THE WITNESS: I do solemnly swear --

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

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

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

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

16 THE CLERK: -- before this court --

17 THE WITNESS: -- before this court --

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

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

20 THE CLERK: -- the whole truth --

21 THE WITNESS: -- the whole truth --

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

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

24 THE CLERK: -- so help me God.

25 THE WITNESS: --so help me God.

26 THE CLERK: Please be seated.

6a-2

1 THE WITNESS: Take it easy on me now, Irving.

2 THE CLERK: Would you please state your name.

3 THE WITNESS: Vincent Bugliosi.

4  
5 VINCENT BUGLIOSI,

6 called as a witness by the defendants, having been first  
7 duly sworn, was examined and testified as follows:

8  
9 DIRECT EXAMINATION

10 BY MR. KANAREK:

11 Q Now, Mr. Bugliosi, how long have you been  
12 connected with this case?

13 MR. BUGLIOSI: May I object, your Honor?

14 MR. KANAREK: There are two other deputy attorneys.

15 THE WITNESS: I was assigned to the case by Mr.  
16 Younger on November the 18th, 1969, at approximately 2:00  
17 p.m.

18 BY MR. KANAREK:

19 Q You are aware of the law in connection with  
20 obtaining search warrants?

21 A Yes, I am.

22 Q Is that correct?

23 A Yes.

24 Q Did you prepare a declaration or did you  
25 prepare any moving papers to ask any magistrate or any  
26 judge to issue a search warrant or a warrant of arrest

6a-3

1 prior to your going to the Spahn Ranch?

2 A No, I did not.

3 Q Directing your attention to the time that you  
4 went to the Spahn Ranch. Was it your intent to participate  
5 in a search of the ranch?

6 A Yes.

7 Q And was it your intent to participate in a  
8 search of the ranch for whatever evidence that you could  
9 find in connection with this case?

10 A Basically shell casings. Of course, if we  
11 came across something else, obviously, we would have picked  
12 it up. But that is not the reason why we went out there.

13 Q Your state of mind was such that you wanted  
14 evidence to present in this court or in the Superior Court  
15 in connection with this case; right?

16 A Yes. To connect these defendants with the  
17 corpus delicti of the crime.

18 Q And your purpose was not limited to shell  
19 casings; is that correct?

20 A I would say 99 percent of the reason why we  
21 went out there was to look for shell casings.

22 Q May I have an answer to the question?

23 Your purpose, Mr. Bugliosi, was not limited  
24 just to shell casings; is that correct?

25 A I think that would be a correct statement.

26 Q And you, as a lawyer, knew that if you were



1 not forced to discipline yourself in connection with  
2 moving papers, in connection with a search warrant, that  
3 you then could, or would, attempt to make an exploratory  
4 search; is that correct?

5 A I don't understand your question.

6 Q Well, your state of mind was such that --  
7 are you aware of the law of search warrant?

8 A Yes.

9 Q Are you aware that in the law of search  
10 warrants, the area to be searched must be precisely set  
11 out in the search warrant?

12 A No search warrant was involved here, Mr.  
13 Kanarek.

14 Q My question is, Mr. Bugliosi: At the time  
15 that you went to the Spahn Ranch, and immediately prior  
16 thereto and the time prior thereto, were you aware of  
17 our law of search warrants?

18 A Yes.

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26  
6b fls.

1 Q Were you aware that in connection with a search  
2 warrant you must precisely define the area to be  
3 searched?

4 A Yes.

5 Q And so, is it a fair statement that you intended  
6 to take advantage, by this technique of going there absent  
7 a search warrant, so that you could then make an exploratory  
8 search and go where you wished with the law enforcement  
9 officers?

10 A No.

11 MR. KAY: To which I will object as being argumenta-  
12 tive, your Honor.

13 THE COURT: Well, it is ambiguous.

14 Are you talking about with or without consent,  
15 Mr. Kanarek? I don't understand the question.

16 It is argumentative, but apart from that phase  
17 of it, it is ambiguous.

18 The objection is sustained.

19 MR. KANAREK: Very well, your Honor.

20 Q Now, Mr. Bugliosi, directing your attention to  
21 your knowledge of the law as a lawyer and as a prosecutor.

22 A Don't compliment me now.

23 MR. KANAREK: Your Honor, may I?

24 THE COURT: Let's proceed.

25 MR. KANAREK: Q Directing your attention,  
26 Mr. Bugliosi, to your knowledge of the law, your state of

1 mind.

2 Was your state of mind such that you felt that  
3 you would have greater latitude by purporting to obtain  
4 whatever you were going to obtain by way of a consent than  
5 you would if you had to discipline yourself to the four  
6 corners of a search warrant?

7 A No. I feel that the perimeters of the search  
8 warrant would have been just as broad.

9 Q Then what was your reason for not getting a search  
10 warrant?

11 A You don't need a search warrant under United  
12 States vs. Rabinowitz and People vs. Laurentzan when you  
13 have a consensual situation.

14 Q At that time had you been familiar with Chimel  
15 vs. California?

16 A I don't know if Chimel had come down at that  
17 point, but in any event it did not overrule Rabinowitz, not  
18 on that point.

19 Q Are you telling me that you do not know whether  
20 in November of 1969 Chimel vs. California had come down from  
21 the United States Supreme Court?

22 A I don't know the exact date of Chimel. I do know  
23 that it didn't overrule Rabinowitz on that point.

24 Q My question is: Did you know --

25 THE COURT: You are getting far afield, Mr. Kanarek.  
26 It has nothing to do with the issue at hand.

1 Let's either get your examination back on the  
2 track where it has some relevancy to the issues or con-  
3 clude it.

4 MR. KANAREK: Your Honor, I think the state of mind of  
5 this witness is in issue.

6 THE COURT: Let's proceed. Ask your next question.



6c-1

MR. KANAREK: Very well.

BY MR. KANAREK:

Q Now, Mr. Bugliosi, directing your attention to your intent and your state of mind.

Was your intent such that you wished to make an exploratory search of that entire ranch?

A What do you mean by exploratory?

Q Go out there and look for evidence in connection with this case?

A I intended to go out there with the officers and look for the shell casings on the premises of Spahn Ranch. Obviously, if we stumbled over something that was valuable, we would have picked that up too.

Q Right.

Your state of mind was such that you intended to perhaps stumble over something; right?

A Is that what I said?

Q I am asking you for your state of mind.

A No. My state of mind was not to stumble over anything.

Q Your state of mind was if, as you put it, if you "stumbled over something valuable," you would bring it to court and attempt to use it?

A If I stumbled over the knives that were used, I would have picked them up, right.

Q Now, my question to you is: Because of the

6c-2

1 fact -- well, let me withdraw that.

2 I will ask you: Did you attempt to get a  
3 declaration from anyone concerning items that you thought  
4 might be at the Spahn Ranch?

5 MR. MUSICH: Object, your Honor, as immaterial.

6 THE COURT: Sustained.

7 MR. KANAREK: Q And is it a fair statement,  
8 Mr. Bugliosi, that you issued no process, you caused no  
9 process whatsoever to be issued in connection with this  
10 case as far as the search of the Spahn Ranch is concerned?

11 THE COURT: You have a stipulation, don't you?

12 MR. KANAREK: No, your Honor. He won't stipulate.

13 MR. MUSICH: Objection, your Honor. Asked and  
14 answered.

15 THE COURT: Don't you have a stipulation that there  
16 was no arrest or search warrant involved?

17 MR. FITZGERALD: Yes, we do have, your Honor,

18 THE COURT: That was my understanding from the  
19 outset of this hearing.

20 MR. KANAREK: Your Honor, but the question, I  
21 know there is no search warrant, but this goes to the  
22 state of mind.

23 My position is that the prosecution, especially  
24 when the prosecution --

25 THE COURT: What was your question?

26 MR. KANAREK: My question involved whether or not

6c-3

1 there was any process, whether he attempted to get any  
2 process, your Honor.

3 THE COURT: You have a stipulation that there was  
4 none.

5 MR. KANAREK: I mean, I am after his state of mind.  
6 It is our position that his state of mind was such --

7 THE COURT: It is irrelevant on this issue. The  
8 objection will be sustained.

9 Let's proceed.

10 MR. KANAREK: May I make an offer of proof then?

11 THE COURT: Yes.

12 MR. KANAREK: I believe that it is a fair statement  
13 that this man did not obtain a search warrant and did not  
14 attempt to obtain a search warrant in order to pervert  
15 the law of consent so that he could use the purported law  
16 of consent in order to just go willy-nilly anywhere he  
17 wanted to on the ranch.

18 Your Honor, it is relevant to that issue.

19 THE COURT: Ask your next question, Mr. Kanarek.

6d fls.



6D-1

1 MR. KANAREK: Q Now, Mr. Bugliosi, did you  
2 cause any title search to be made as to this area as to  
3 who, in fact, was the owner?

4 A No.

5 Q And is your state of mind such that you recognize  
6 that in the law of consent it isn't the owner that  
7 counts, it is who is in occupancy that counts?

8 MR. MUSICH: Your Honor, I will object to this line of  
9 questioning regarding the legal knowledge of these two  
10 attorneys.

11 THE COURT: Sustained.

12 Q BY MR. KANAREK: Mr. Bugliosi, did you deter-  
13 mine, did you make any determination or any kind of  
14 investigation to determine who the occupants were at this  
15 area that you called the Spahn Ranch?

16 A On November the 19th?

17 Q Or prior thereto.

18 A Not all of the occupants.

19 I knew it was the former residence of the so-  
20 called Family, and I knew that George Spahn was living there.

21 MR. KANAREK: Your Honor, may that be stricken? It  
22 is not responsive to my question.

23 May the question be read to the witness?

24 THE COURT: The question is ambiguous, so the answer  
25 will, of course, have to be ambiguous also to that extent.

26 Overruled.



1 MR. KANAREK: Q Had you, Mr. Bugliosi, ever  
2 seen this man who held himself out, you say, to be  
3 Mr. Spahn before that day?

4 A I didn't see him in person, and I don't think  
5 I had seen a photograph -- I hadn't seen a photograph of  
6 him at that point. Later on I saw a photograph of him else-  
7 where.

8 MR. KANAREK: Your Honor, may the "later on" be  
9 stricken?

10 THE WITNESS: My answer is that I don't believe I  
11 saw any photograph of him, and I definitely did not see  
12 him personally prior to November 19th.

13 MR. KANAREK: May this portion that he enunciated  
14 about later on be stricken, your Honor?

15 THE COURT: No.

16 Let's proceed. Ask your next question.

17 MR. KANAREK: Q Now, Mr. Bugliosi, have you  
18 attempted to find this tape that officer Calkins testified  
19 about?

20 A No.

21 Q Have you caused anyone to attempt to locate that  
22 tape?

23 A I told Sergeant Calkins late Friday to look for  
24 it, that we would need it.

25 Not Friday. Today is Thursday. Yes, late  
26 Friday.

1           Late Friday, I told him that Thursday morning  
2 we would have an evidentiary hearing on this issue, and I  
3 wanted him to bring the tape with him. But I didn't  
4 look for it myself.

5           MR. KANAREK: I see.

6           Q     Has any such tape been handed to you?

7           A     No.

8           MR. KANAREK: Thank you, your Honor. Thank you,  
9 Mr. Bugliosi.

10          THE COURT: Any questions, Mr. Hughes?

11          MR. HUGHES: No.

12                I believe, by our stipulation, your Honor, I  
13 was not asking questions.

14          THE COURT: I am not certain that the record indicates  
15 that there is any stipulation, or if there is a  
16 stipulation, as to what. So, if you are relying on a  
17 stipulation, you had better enunciate it for the record so  
18 there is no question about it.

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1 MR. HUGHES: Well, the stipulation was that this  
2 testimony of Sergeant Calkins relating to the gun and  
3 shell casings was not to be considered in any way or  
4 manner against Leslie Van Houten.

5 Is that correct, Mr. Bugliosi?

6 MR. BUGLIOSI: So stipulated.

7 THE COURT: All right.

8 MR. HUGHES: Could the jury be so instructed if,  
9 indeed, the evidence is admitted?

10 THE COURT: Yes. If you will make such a request  
11 at such time as that evidence is offered.

12 MR. HUGHES: Thank you.

13 THE COURT: Anything further, Mr. Kanarek?

14 MR. KANAREK: No. Except by way of argument.

15 THE COURT: Do you rest on the motion?

16 MR. KANAREK: Yes.

17 It is our position, your Honor -- well,  
18 Mr. Fitzgerald will argue first, your Honor.

19 THE COURT: The People have the burden. They have  
20 the right to open the argument.

21 MR. BUGLIOSI: I think it is clear, your Honor, we  
22 have here a consensual search from <sup>Mr.</sup> r. Spahn.

23 Even assuming arguendo that Mr. Spahn is not  
24 the owner of the ranch -- and I would never stipulate to  
25 that, of course, because I have heard that he was -- but  
26 assuming that he is not, the law is clear -- may I have



6e-2

1 a moment, your Honor -- that the crucial issue to be  
2 determined is whether or not the officers reasonably  
3 relied upon the person giving consent. If they had  
4 reasonable grounds for believing that the person giving  
5 the consent had the authority to give consent, then the  
6 search that occurred thereafter is lawful, even though it  
7 is ascertained at a later point that the party giving  
8 consent did not, in fact, have authority to do so.

9 I would cite to the Court this language in  
10 People vs. Gorg, 45 Cal. 2d 776 at 783, where the Court  
11 held:

12 "It has been held that a search is  
13 lawful where it is made with the permission or  
14 consent of a person who either has or believes  
15 that he has actual exclusive or joint control  
16 over the premises and <sup>who</sup> the police officers,  
17 under the circumstances, reasonably and in good  
18 faith believe has the authority to consent to  
19 their entry and search."

20 The language, I think, is clear there that the  
21 <sup>is</sup> issue/whether the officers reasonably relied upon the person  
22 who gave consent.

23 I would also cite to the Court People vs.  
24 Caritativo, 46 Cal. 2d 68 at pages 72 and 73.

25 There is also similar language in People  
26 vs. Correo, 201 California Appellate 2d, 851 at 852.



1 I think one of the most important cases in  
2 the area of searches and seizures in the State of  
3 California, a case that led to subsequent Supreme Court  
4 decisions, is People vs. Kahan, 44 Cal. 2d, 434.

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1 There is a footnote in Cahan which talks about  
2 good faith and mistakes made by police officers with  
3 respect to searches and seizures.

4 But this argument by me, your Honor, is all  
5 assuming, of course, that Mr. Spahn never had the authority  
6 to grant consent, and I think the only evidence now is that  
7 he did.

8 The man identified himself as Mr. Spahn. This  
9 is Spahn Ranch. The only reasonable inference is that he  
10 is the owner of the property.

11 Now, if the defense wants to put on evidence  
12 that Mr. Spahn is not the owner of the property and he never  
13 had authority to grant consent, then this is a different  
14 issue, but I don't think this issue has even arisen at this  
15 point.

16 So, I will submit the matter, your Honor.

17 THE COURT: Any argument, Mr. Fitzgerald?

18 MR. FITZGERALD: Yes, your Honor.

19 First of all, I would agree with Mr. Shinn that  
20 there is a constitutional impediment to the offered consent  
21 of Mr. Spahn in that Mr. Spahn was not advised that he need  
22 not submit to the search, and that if he did submit his  
23 property to a search, that the fruits of the search could  
24 be used against him.

25 Now, obviously, the prosecution has the burden  
26 of proof on the issue of consent, and I submit that they

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1 failed to meet that burden.

2 The state of the record is that an 87-year-old  
3 blind man who apparently needs care, in the presence of  
4 approximately nine police officers, consented to a search  
5 without being told of any alternative.

6 I think that the state of the record is such  
7 that they failed to demonstrate, even beyond a preponderance  
8 of evidence, that a free and voluntary consent was entered  
9 into by Mr. Spahn.

10 I think, secondly, we have a problem in that the  
11 record indicates that persons other than Mr. Spahn resided  
12 at the location; that there may have been or there was  
13 other tenants.

14 Now, whether or not Mr. Spahn has the authority  
15 to consent to a search of areas of the ranch that are used  
16 by other people is problematical.

17 THE COURT: What other tenants are you referring to?

18 MR. FITZGERALD: In fact, the other tenants that  
19 Mr. Calkins referred to in his testimony in response to my  
20 question: Did he have information that people other than  
21 Mr. Spahn resided at the location.

22 We don't know the nature and character of the  
23 relationship between Mr. Spahn and those other persons,  
24 but if there was some relationship, or if other people  
25 lived at the location, Mr. Spahn may not have, in fact,  
26 authority to consent to the search of their belongings or

1 an area of the ranch that is exclusively theirs pursuant to  
2 some lease or pursuant to some verbal agreement those people  
3 may have with the owner-possessor of the property.

4 I think we are in the area of search and seizure  
5 where we are talking about the consent of the landlord to  
6 police officers to search the belongings or search areas in-  
7 habited by persons other than the landlord.

8 Now, certainly, you are not deciding this case in  
9 a vacuum, you are not deciding this issue in a vacuum. You  
10 have heard considerable evidence in connection with the  
11 Spahn Ranch in other phases of this case, and it is abun-  
12 dantly clear --



6g-1

1 THE COURT: Not so far as November, 1969, is  
2 concerned.

3 MR. FITZGERALD: The state of the record is that  
4 persons other than Mr. Spahn were living on the ranch,  
5 according to the only witness, Sergeant Calkins.

6 THE COURT: I didn't so understand that testimony,  
7 Mr. Fitzgerald.

8 You asked him a question in closing which  
9 assumed facts which were not then in evidence, and he  
10 answered it. But other than that, I don't recall any  
11 evidence that indicated that there was anyone else  
12 residing at the Spahn Ranch in November of 1969.

13 MR. FITZGERALD: Well, I felt that I had clearly  
14 established that.

15 I think that is an issue that would be  
16 uncontroverted, and if that is the state of the Court's  
17 mind, I wonder if I might have the opportunity to reopen  
18 to simply ask Sergeant Calkins a few more questions.

19 I think I can easily establish that, your  
20 Honor. Or perhaps we can stipulate.

21 (Pause while Mr. Bugliosi and Mr. Fitzgerald  
22 confer.)

23 MR. FITZGERALD: Could I recall Sergeant Calkins  
24 for this very limited purpose, your Honor?

25 THE COURT: Very well, you may.

26 THE CLERK: Just be seated, sir.

6g-2

1 State your name, sir, please.

2 THE WITNESS: Robert L. Calkins.

3 ROBERT L. CALKINS,

4 resumed the stand and testified further as follows:

5 FURTHER CROSS-EXAMINATION

6 BY MR. FITZGERALD:

7 Q Sergeant Calkins, when you went to the location  
8 at 12000 Santa Susanna Pass Road on November the 19th,  
9 did you have information that persons other than Mr. Spahn  
10 resided at that location?  
11

12 A I had been told by other law enforcement  
13 officers that from time to time people resided there.  
14 I had no names or any specific information at all.  
15

16 Q Did those other law enforcement personnel who  
17 told you that purport to have first-hand knowledge?

18 A I don't believe I ever got the impression it  
19 was first-hand knowledge. It was just conversations.

20 Q Did you find out from Whitely and Gunther?

21 A I had conversations with them regarding this,  
22 yes, sir.

23 Q Whitely and Gunther were Los Angeles County  
24 Sheriff's officers; isn't that correct?

25 A Sheriff's detectives, yes, sir.

26 Q Sheriff's detectives?

1 A Yes.

2 Q And they had investigated a related homicide  
3 case that may have been connected with this same location;  
4 isn't that correct?

5 A It may have been connected. I don't know this  
6 for sure, sir.

7 Q Well, they were the investigating officers in  
8 People vs. Beausoleil, were they not?

9 A That is correct.

10 Q And had they told you that they had been to the  
11 ranch previously?

12 A I am sure they did. I don't have an independent  
13 recollection, but I am sure they did.

14 Q And Whitely and Gunther were there with you on  
15 the 19th?

16 A That is correct, sir.

17 Q And as a matter of fact, they introduced you  
18 to Mr. Spahn; isn't that right?

19 A I am not sure. It very well could be correct,  
20 but I am not sure who introduced me.

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1 Q Now, is the Spahn Ranch at that location?

2 A Yes, sir.

3 Q And the ranch has horses, right?

4 A Yes, sir.

5 Q And ranchhands to take care of those horses --  
6 or were there ranch hands there on November 19th?

7 A There were several male adults at the location.  
8 I don't know that they were ranch hands. I did assume  
9 they were, though.

10 Q Did they live at the location?

11 MR. KANAREK: That would be calling for a conclusion,  
12 your Honor.

13 THE COURT: If he knows of his own personal knowledge.

14 THE WITNESS: I don't know that they lived there.

15 Q BY MR. FITZGERALD: You searched the place,  
16 right? Or you conducted some sort of an examination of the  
17 premises, right?

18 A Some sort of an examination of the premises.

19 Q Did you discover any living quarters?

20 A The only living quarters that I entered were  
21 Mr. Spahn's, when I talked to him.

22 I did not enter any other living quarters, at  
23 least I did not believe they were living quarters.

24 Q Did you see trailers at the location?

25 A I believe there were two trailers there.

26 Q Did you enter those trailers?



7-2

1 A No, sir.

2 Q And the female Caucasian you described as being  
3 in the presence of Mr. Spahn, do you know if she resided  
4 at the location?

5 A I don't know.

6 MR. FITZGERALD: I have nothing further.

7 THE COURT: Any questions, Mr. Bugliosi?

8 MR. BUGLIOSI: Your Honor might feel it is relevant  
9 as to where the shell casings were found, on the issue of  
10 joint tenancy.

11 May I ask one or two questions in that regard?

12 THE COURT: Do you want to reopen?

13 MR. BUGLIOSI: Yes, your Honor.

14 THE COURT: Very well.

15  
16 DIRECT EXAMINATION (Reopened)

17 BY MR. BUGLIOSI:

18 Q Were shell casings in fact found on the Spahn  
19 Ranch on November 19, 1969?

20 MR. KANAREK: Immaterial, irrelevant to the issue of  
21 consent.

22 Either there is consent or there isn't.

23 THE COURT: Overruled.

24 THE WITNESS: Yes, sir.

25 Q BY MR. BUGLIOSI: In what area of the Spahn  
26 Ranch?

1           A     I call it the creek area, approximately 100  
2 yards south of the main cluster of buildings in the wooded  
3 area where there is no buildings of any type, and then we  
4 found some more, several, maybe three or four hundred yards  
5 up a canyon, which is a good quarter of a mile from any of  
6 the buildings.

7           Q     No shell casings then were found inside any  
8 building at Spahn Ranch?

9           A     Not to my knowledge.

10          MR. BUGLIOSI: No further questions.

11          MR. KANAREK: I have some questions, if I may, your  
12 Honor.

13          THE COURT: All right.

14  
15                                   CROSS-EXAMINATION

16          BY MR. KANAREK:

17           Q     Officer, directing your attention to your state  
18 of mind, would you give us your estimate of the area that you  
19 thought the Spahn Ranch was before you went there?

20           A     I was under the impression it was around 10  
21 acres, something like that, 10 or 15 acres.

22           Q     Of area, right?

23           A     Right.

24           Q     And directing your attention to your state of  
25 mind as far as any search that you were going to do, your  
26 intent was to search all of the Spahn Ranch, right?

1 A No, sir.

2 Q The area you call the Spahn Ranch?

3 A My state of mind was not as such that I was  
4 going to search ten acres.

5 Q Well, you had an intent to search for whatever  
6 you were going to search for, right?

7 (No response.)

8 You had an intent to search?

9 A Yes, sir.

10 Q And this intent was to search the entire area  
11 looking for whatever you were looking for.

12 You were not going to stop in the first five  
13 square feet, were you?

14 A I did not intend to stop in the first five  
15 square feet, no.

16 Q You intended to go all over the entire area  
17 looking for whatever you were looking for, is that  
18 correct?

19 A Well, you asked me for my state of mind.

20 I never had the state of mind that I was going  
21 to have to search ten acres of land to find what I was  
22 looking for.

23 Q Directing your attention to your state of mind,  
24 you were going to search to your heart's content looking for  
25 whatever you were looking for, is that a fair statement,  
26 is it, Officer?

Is that a fair statement?

A Are you asking for my state of mind?

Q Yes.

A I'm sorry, maybe I don't understand you.

Q You did not know where the items were that you were supposedly -- that you had in mind, right?

A I thought that I had an area in mind as to where they were, yes, sir.

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1 Q All right, now, and if it turned out whatever  
2 you had in mind was not in that area, you were going to  
3 search the entire area, the entire ten acres or whatever  
4 the Spahn Ranch consisted of.

5 Is that a fair statement?

6 A That was not my state of mind.

7 Q Your state of mind was that if you did not find  
8 what you were looking for in the area you thought it was  
9 you were going to abandon the search, is that what you are  
10 telling us?

11 A No, that was not my state of mind either.

12 Q So your state of mind was that you were going  
13 to search and search and search the entire area until you  
14 found whatever you were looking for, is that correct?

15 A I was not prepared to search the entire ten  
16 acres of land with the people we had with us, so it was not  
17 my state of mind.

18 I felt there were several places we wanted to  
19 search, and I had not any impression or state of mind we  
20 would not find them there.

21 I felt sure we would.

22 Q Do you know what area you were going to search?

23 A The general area, yes, sir.

24 Q The general area of the --

25 Did you know what area you were looking for  
26 as far as these cartridges or whatever it is you were

7a-2

1 looking for?

2 A I felt I did.

3 Q All right, what area was that?

4 A The area behind the ranch down by the creek.

5 Q All right, how many acres was that that you were  
6 going to search?

7 A I made no such determination until I got there.

8 After I got there I made an approximate observa-  
9 tion as to how big an area it was.

10 Q Directing your attention to your state of mind,  
11 a fair statement is that you were going to search until  
12 you decided you had searched enough for your law enforcement  
13 purposes, is that correct, Officer?

14 A That is approximately correct, sir.

15 Q And would it have required the whole ten  
16 acres, you would have gone back and got reinforcements or  
17 whatever it took to search the whole ten acres, right?

18 A If it became necessary, yes.

19 Q So that was your intent, to search all that  
20 was necessary, right?

21 A My intent was to find the shell casings.

22 Q And if it took looking at every inch and every  
23 nook and cranny of those ten acres you were going to do it,  
24 right?

25 A That was not my state of mind when I went out  
26 there.

7a-3

1 Q But your purpose was to look for these shell  
2 casings?

3 A That's correct.

4 Q And if it necessitated that, you would have  
5 done it, right?

6 A As I sit here now, that is a correct statement.

7 THE COURT: We are getting beyond the scope of  
8 redirect examination.

9 MR. KANAREK: Thank you, your Honor.

10 MR. SHINN: One short question.

11 CROSS-EXAMINATION

12 BY MR. SHINN:

13 Q Officer, were you looking for any bodies too?

14 A No, sir, I was not.

15 Q Just shell casings?

16 A That's right.

17 MR. SHINN: Nothing further, your Honor.

18 THE COURT: You may step down, Officer.

19 We will recess at this time until 2:00 p.m.  
20 this afternoon.

21 MR. BUGLIOSI: Your Honor, may I briefly state one  
22 point:

23 Sergeant Lee also found more shell casings at  
24 Spahn Ranch on April 15th, 1970.

25 Does the Court want us to go into the  
26



1 consensual search on April 15th at this time, at 2:00  
2 o'clock?

3 THE COURT: It is not a question of what I want, Mr.  
4 Bugliosi.

5 If the scope of the motion covers that, and of  
6 course the motion was made somewhat indefinite.

7 MR. BUGLIOSI: Thus far we have only dealt with  
8 November 19th, but there was a separate incident on  
9 April 15th, 1970.

10 THE COURT: Well, the motion has been directed to  
11 November 19th, 1969.

12 MR. KANAREK: Your Honor, <sup>in</sup>the interest of saving time  
13 I would solicit the good services of the court.

14 It is our position -- I think the law says that  
15 if you issue a subpoena and the subpoena that comes back --  
16 negative that on this, you have suppression of evidence.

17 I mean, this is one of the foundations that  
18 must be laid now --

19 THE COURT: Why don't you tell me what you are talking  
20 about, Mr. Kanarek, and I will be better able to understand  
21 your argument.

22 MR. KANAREK: This tape, in the language of Brady  
23 vs. Maryland, for instance, states even it's innocent,  
24 even if the suppression is not deliberate, it constitutes  
25 a suppression of evidence --

26 THE COURT: There hasn't been any, has there?



1 MR. KANAREK: I am trying to expedite matters.

2 THE COURT: We will recess until 2:00 p.m.

3 (Whereupon the court stood in recess until  
4 2:00 o'clock p.m.)  
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