

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

DEPARTMENT NO. 106

HON. RAYMOND CHOATE, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

CHARLES MANSON,

Defendant.

154
No. A-267861REPORTERS' DAILY TRANSCRIPT

Monday, October 4, 1967

VOLUME 54APPEARANCES:

For the People:

JOSEPH P. BUSCH, JR., District Attorney
BY: ANTHONY MANZELLA,
Deputy District Attorney

For Defendant Manson: IRVING A. KANAREK, Esq.

DEFENSE: NUCKLES
WHITELEY

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

NUCKLES, Sidney J.

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WHITELEY, Paul J.

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1 LOS ANGELES, CALIFORNIA, MONDAY, OCTOBER 4, 1971

2 9:45 A.M.

3 ---O---

4 THE COURT: Good morning, ladies and gentlemen.

5 (Murmurs of "Good morning, your Honor," by the
6 jury.)

7 THE COURT: Good to see you all. I hope you all had
8 pleasant weekends.

9 Very good, the Court would have -- would not have
10 brought you in here this morning so early because we're not
11 ready to go this morning. Certain witnesses are unavailable
12 and, however, Mr. Kuczera was already on his way down with you
13 when I found that out that we're not ready.

14 I think that we will be ready by 10:30, however.

15 Is that the time when you expect this witness,
16 Mr. Kanarek?

17 MR. KANAREK: Yes, your Honor.

18 THE COURT: All right, then, I'll excuse you until 10:30.
19 I'll just continue the recess and the admonition during the
20 recess governing the recess will pertain until 10:30.

21 (Recess.)

22 THE COURT: The record will show that all jurors are
23 present. Mr. Kanarek for the defendant.

24 MR. KANAREK: Yes.

25 THE COURT: Mr. Kanarek, Miss Briandi.

26 (Whereupon, the following proceedings were had at
27 the bench among Court and counsel, outside the hearing of the
28 jury:)

1 Have you talked with your client this morning?

2 MR. KANAREK: Yes.

3 THE COURT: Will you assure the Court that he won't
4 disturb the proceedings?

5 MR. KANAREK: I'll ask him.

6 (Whereupon, Mr. Kanarek conferred with the
7 defendant through the screen of the holding tank door.)

8 MR. KANAREK: No, he says he can't promise you.

9 THE COURT: Very well, then he'll have to remain in the
10 detention tank.

11 Let's proceed, gentlemen.

12 (Whereupon, the following proceedings were had in
13 open court within the presence and hearing of the jury:)

14 THE COURT: The defendant may call his next witness.

15 MR. KANAREK: Officer Nuckles, your honor.

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

17 You do solemnly swear the testimony you may give in
18 the cause now pending before this Court shall be the truth,
19 the whole truth, and nothing but the truth, so help you God?

20 THE WITNESS: I do.

21 THE COURT: Please take the stand and be seated.

22 THE BAILIFF: Would you state and spell your full name,
23 sir?

24 THE WITNESS: Sidney J. Nuckles, Jr., N-u-c-k-l-e-s.

25
26 SIDNEY J. NUCKLES,

27 called as a witness by and on behalf of the defendant, having
28 been sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KANAREK:

Q Now, Mr. Nuckles, what is your business or occupation, sir?

A Police officer, City of Los Angeles, presently assigned to Robbery-Homicide Division.

Q And, Officer, were you so assigned on February 22, 1970?

A I was.

Q And did you have occasion to interview one Jerry Binder?

A Yes, I did.

Q And in interviewing that Jerry -- uh, may I have a moment, your Honor?

THE COURT: Yes, you may.

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(Pause in the proceedings while a discussion off the record ensued at the Clerk's desk between Mr. Kanarek and the Clerk.)

MR. KANAREK: And -- your Honor, there's another exhibit in another court which the Clerk is going to assist us with.

THE COURT: Go ahead.

Q BY MR. KANAREK: And in speaking with Jerry Binder, Officer, did you discuss a check that he had made out to one Donald Shea?

A Yes.

Q And did Mr. Binder tell you that this check went towards the payment of two pearl-handled guns, pistols, which were allegedly purchased by Mr. Shea -- or Shorty -- for \$150 at a Valley gun shop?

MR. MANZELLA: Your Honor, I'm going to object on the grounds that part of the question calls for hearsay; that is, the purchase price of the weapons.

MR. KANAREK: Your Honor, it's offered --

THE COURT: Excuse me just a moment.. I'll hear from you at the bench.

(Whereupon the following proceedings were had at the bench among Court and counsel, outside the hearing of the jury:)

MR. MANZELLA: Your Honor, that portion of the question which calls for the purchase price of the weapons calls for hearsay, because Mr. Binder would have no way of knowing what the purchase price of the weapons was.

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1 MR. KANAREK: That's a --

2 MR. MANZELLA: I have no objection to the first
3 portion of the question, which asks for Mr. Binder's state-
4 ment with regard to what he gave to Donald Shea.

5 THE COURT: Well, is it admissible as a prior contra-
6 dictory statement?

7 MR. KANAREK: Yes, your Honor. It's not --

8 THE COURT: Is the portion concerning the price -- is
9 that contradictory of Binder's testimony?

10 MR. KANAREK: Yes, your Honor. Contradictory.

11 THE COURT: In what way?

12 MR. KANAREK: Well, it's contradictory in that -- in
13 that Mr. Binder said that this check was for rent. He told
14 us in open court this check was for rent.

15 And it's offered -- it's offered as impeachment.
16 It's not offered for the truth of the matter asserted.

17 And it's -- it works both ways. You can't
18 slice it one way on state of mind and all of that, when they
19 put on their case, and then cut us off. This is the
20 statement that the man made, and it's up to the jury to
21 determine what effect it has.

22 THE COURT: Well, first, there's the question of
23 admissibility, isn't there? And --

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1 MR. MANZELLA: Yes, your Honor. It's my position Mr.
2 Binder never testified to how much the guns cost. He just
3 testified to what he loaned Mr. Shea.

4 MR. KANAREK: But it's not offered for --

5 THE COURT: Excuse me just a moment. I'll overrule
6 the objection.

7 (Whereupon the following proceedings were had
8 in open court, within the presence and hearing of
9 the jury:)

10 THE COURT: The objection is overruled.

11 Would you read the question again to Mr. Nuckles?

12 (Whereupon the record was read by the reporter
13 as follows:

14 "Q And did Mr. Binder tell you that this
15 check went towards the payment of two pearl-handled
16 guns, pistols, which were allegedly purchased by
17 Mr. Shea -- or Shorty -- for \$150, at a Valley gun
18 shop?")

19 THE WITNESS: There was a conversation regarding loaning
20 of money for guns.

21 But at this time, I can't recall if that was
22 specifically for that check.

23 MR. KANAREK: May I approach the witness, your Honor?

24 THE COURT: Yes, you may.

25 Q BY MR. KANAREK: Officer, I show you a sheet
26 of paper, a file number of which appears to be something
27 that's a little obscure, but it appears to have a --

28 THE COURT: Keep your voice up, or use the microphone,

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1 would you?

2 Q BY MR. KANAREK: In the upper right-hand corner,
3 it appears to be a file number, which might be -- it might
4 have "211" at the end of it.

5 Do you see that?

6 A Yes.

7 Q But in any event, would you take that piece of
8 paper, please? And would you tell us whether that is a
9 report -- that is your report?

10 A Yes, it bears my name right at the bottom.

11 Q And would you read over to yourself the words,
12 beginning with "PI"? That means "Person Interviewed," right?

13 A Yes.

14 Q The "PI" means "Person --"
15 Beginning with that "PI," would you read over
16 that sentence, that ends with the word "Shop"?

17 A "PI Claims --"

18 THE COURT: No, no. Would you read it to yourself,
19 Officer?

20 THE WITNESS: Oh, I'm sorry.

21 (Pause in the proceedings while the witness
22 perused the document.)

23 A I've read it.

24 Q And is that sentence in your report?

25 THE COURT: That calls for hearsay.

26 When did you write that report, Officer?

27 THE WITNESS: The date bears 2-22-70.

28 THE COURT: And when you wrote it, were the matters

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1 that you wrote about fresh in your mind and in your memory?

2 THE WITNESS: Yes, your Honor.

3 THE COURT: Does reading the report refresh your memory--

4 THE WITNESS: Yes.

5 THE COURT: -- of the conversation?

6 THE WITNESS: Yes.

7 THE COURT: All right. Now, you may put your question.

8 Q BY MR. KANAREK: Do you -- does reading the
9 report refresh your memory of the conversation, such that you
10 remember it, that it snaps it back into your mind, so that as
11 you testify now you remember what occurred as you spoke to
12 Mr. Binder?

13 Or is it just a matter that it's written down on
14 this paper; and therefore, you -- because it's your report,
15 you're saying that it's that way?

16 A The latter, Counselor, in regards to the check.

17 Q In other words, you have no independent recollec-
18 tion as you sit there of the conversation?

19 A No, I don't have any detail, because it was
20 already over a year and a half ago.

21 MR. KANAREK: Then under past recollection recorded,
22 your Honor, I would offer: "Person interviewed claims that
23 the money --"

24 THE COURT: Just a minute. You would offer what?

25 MR. KANAREK: I offer that this is in the report taken
26 by the officer, as past recollection recorded. He has no
27 independent recollection of it.

28 THE COURT: Just a minute.

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MR. KANAREK: Yes, your Honor.

(Pause in the proceedings.)

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1 THE COURT: What did you do with that?

2 THE WITNESS: Counsel has it.

3 MR. KANAREK: Does your Honor -- would your Honor --
4 yes.

5 THE COURT: Would you two gentlemen approach the bench.

6 (Whereupon, the following proceedings were had
7 at the bench among Court and counsel, outside the
8 hearing of the jury:)

9 THE COURT: You wish to offer this? You wish to have
10 it marked for identification, the report that the officer
11 referred to?

12 MR. KANAREK: Uh --

13 THE COURT: Are you offering it?

14 MR. KANAREK: Well, no, I'm not offering the document
15 itself, your Honor.

16 THE COURT: The writing, according to 1237, may be
17 read into evidence, but the writing itself may not be received
18 in evidence unless it is offered by an adverse party; you
19 understand that?

20 MR. KANAREK: Well, I'm not offering -- I'm not offering
21 the document in evidence.

22 THE COURT: You understand that. The adverse party
23 could offer it, the adverse party under that section.

24 MR. KANAREK: Pardon?

25 THE COURT: The adverse party under that section could
26 offer it.

27 MR. KANAREK: Yes. Yes, I understand. I understand it.
28 However, if we wish to offer it, we have to delete matters.

1 Just because a portion of the document is admissible, doesn't
2 make every word admissible. If you wish, we probably could
3 excise the other material. In other words, you don't offer
4 the whole document. That section --

5 THE COURT: You wish to read that into evidence?

6 MR. KANAREK: Yes, your Honor.

7 THE COURT: You may proceed.

8 (Whereupon, the following proceedings were had
9 in open court within the presence and hearing of the
10 jury:)

11 MR. KANAREK: Your Honor, may we approach the bench
12 back just a minute?

13 THE COURT: Yes, you may.

14 (Whereupon, the following proceedings were had
15 at the bench among Court and counsel, outside the
16 hearing of the jury:)

17 MR. KANAREK: I am going to make it clear, I am going
18 to ask the Court -- the Court is not going to allow the entire
19 record into evidence? Just that portion that we are talking
20 about.

21 In other words, you can't take the entire docu-
22 ment -- that section doesn't contemplate the entire document
23 goes in, just the matter that we are talking about.

24 What that section contemplates is if you do read
25 the past recollection recorded, then the other side has a
26 right to offer the document in pertaining to what you are
27 talking about. That -- the law doesn't mean that all -- that
28 the matters -- that the subject matter we are talking about

1 can go into evidence.

2 I mean, that would be absurd. There may be all
3 kinds of prejudicial, irrelevant, objectionable matters in
4 the document.

5 Does your Honor agree with me?

6 THE COURT: Yes, the Court agrees.

7 MR. KANAREK: Thank you.

8 (Whereupon, the following proceedings were had
9 in open court within the presence and hearing of the
10 jury:)

11 Q BY MR. KANAREK: And so, Officer, your report
12 contains the words "PI" -- meaning Person Interviewed --
13 "claims that the money went towards the payment of two
14 pearl-handled guns (pistols) which were allegedly purchased
15 by Shorty for \$150 at a Valley gun shop."

16 You read that over and that's a fair statement?

17 A Yes, I did.

18 Q Now, may I ask you --

19 May I approach the witness, your Honor?

20 THE COURT: Yes, you may.

21 Q BY MR. KANAREK: I show you this check, Officer,
22 and ask if you recall that check of Mr. Binder's?

23 A I recall seeing a check similar to this, if
24 not this one.

25 Q Referring to the bottom of your report, is it
26 a fair statement that there is a Xeroxed or Thermo-Faxed or
27 reproduced copy of what is People's 71 as an integral part
28 of your report?

1 A Yes, there is.

2 Q Did Mr. Binder tell you that he personally gave
3 this check to Shorty Shea?

4 A I don't recall that statement.
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1 Q Does this refresh your recollection, the words
2 beginning with "PI," and ending with "Shorty"? Does that
3 refresh your recollection that Mr. Binder told you that or
4 is your recollection not refreshed so that you can say on
5 the witness stand that you have no independent memory of it?

6 A I have no independent memory of it, but it
7 appears on my report, yes.

8 Q And it states "Person interviewed personally
9 gave the check to Shorty"?

10 A Yes.

11 Q And the "Person interviewed" was Mr. Binder;
12 is that a fair statement?

13 A Yes, it is.

14 Q Now, did Mr. Binder tell you when he wrote the
15 check to Shorty Shea?

16 A I believe he did, but I haven't -- I can't
17 recall.

18 Q You can't recall when he told you he wrote it?

19 A (Nods head.)

20 Q Beginning -- would you read in your report
21 beginning with the word "on" and ending --

22 THE COURT: Well, let him read it.

23 MR. KANAREK: Oh, yes.

24 -- ending with the word "bank." I just wanted to--

25 THE WITNESS: Yes, I've read it.

26 Q BY MR. KANAREK: Does that refresh your recollec-
27 tion so that you, independent of this paper, remember the
28 events that are set forth in that sentence?

1 A Uh, not independent, Counsel, but with refreshing
2 my memory from my report, and I know the date now.

3 Q But you don't remember as you sit there on the
4 witness stand Mr. Binder telling you that?

5 A I remember him telling me a date and recording
6 it, but I don't recall what date it was now.

7 Q What it was.

8 And your report reveals on 7/10/69, "Person
9 interviewed, PI, wrote a check for the amount of \$100 for
10 Shorty on the Las Vegas branch of the Las Vegas National
11 Bank"; is that a fair statement?

12 A Yes, it is.

13 MR. KANAREK: Thank you, Officer.

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15 CROSS-EXAMINATION

16 BY MR. MANZELLA:

17 Q Officer Nuckles, during the conversation that
18 you had with Mr. Binder in Las Vegas, did you discuss a
19 number of loans which he had made to Mr. Shea?

20 MR. KANAREK: Outside the scope of my direct examination,
21 your Honor, irrelevant, immaterial, hearsay.

22 THE COURT: Overruled.

23 A Yes, there was considerable conversation regard-
24 ing loans and checks and what have you.

25 THE COURT: In this same conversation?

26 THE WITNESS: Yes, your Honor.

27 MR. KANAREK: May I inquire on voir dire, your Honor,
28 in view of this witness's statement that he does not have --

1 that he does not have an independent recollection?

2 THE COURT: No, you may not, at this point.

3 Q BY MR. MANZELLA: And after the conversation with
4 Mr. Binder with regard to these loans which he had made to
5 Mr. Shea, did he give you a number of checks representing
6 those loans?

7 MR. KANAREK: Object on the grounds that it is assuming
8 facts not in evidence, outside the scope of direct examination,
9 irrelevant, immaterial, calling for a conclusion and hearsay.

10 THE COURT: Overruled, you may answer.

11 THE WITNESS: I don't recall if there were more than
12 one check or not at this time.

13 Q BY MR. MANZELLA: But in any event, you discussed
14 with him a number of loans which he had made to Mr. Shea
15 during the time that he and Mr. Shea knew each other, is that
16 correct?

17 MR. KANAREK: Asked and answered, your Honor. Also
18 outside the scope.

19 THE COURT: Sustained.

20 MR. MANZELLA: Thank you, no further questions.

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REDIRECT EXAMINATION

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BY MR. KANAREK:

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25 Q Officer, to the best of your recollection, the
26 only check that Mr. Binder showed you, was the check
27 concerning which we have spoken of this morning, is that
28 correct?

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A To the best of my recollection, yes, Counsel.

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MR. KANAREK: Thank you.

MR. MANZELLA: I have no further questions, your Honor.

THE COURT: You may step down.

MR. KANAREK: Thank you, Officer.

THE COURT: You may present your next witness.

MR. KANAREK: Yes, your Honor, I'll call Officer
Whiteley, if I may.

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PAUL J. WHITELEY,

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

THE COURT: You are still under oath, Sergeant Whiteley. Would you state your name?

THE WITNESS: Paul Whiteley.

DIRECT EXAMINATION

BY MR. KANAREK:

Q Officer Whiteley, referring to the transcript -- I'll withdraw that.

Referring to the tape recording of Ella Jo Bailey, you have, in recent days, -- is that a fair statement? -- played that tape and listened to that entire tape; is that correct?

A Yes.

Q And is it a fair statement -- well, I'll withdraw it and rephrase it.

In connection with that tape, Officer, were you able to find a statement by Ella Jo Bailey on that tape where she mentioned money and concessions?

MR. MANZELLA: Objection, your Honor. It calls for hearsay.

MR. KANAREK: I am laying a foundation, your Honor, in order to present this evidence to the jury.

This is the foundation that I believe --

THE COURT: Excuse me. Again, you are arguing an

1 objection without approaching the bench.

2 The Court sustains the objection.

3 You may go ahead, though, and lay your foundation,
4 but properly.

5 MR. KANAREK: Very well. Thank you, your Honor.

6 Q Officer, you have -- that is, Sheriff's Homicide
7 has a tape recording of Ella Jo Bailey; is that correct?

8 A Yes.

9 Q And is that tape recording a tape recording that
10 you have in that Headquarters here at 220 North Broadway, in
11 the Old Hall of Records?

12 A Yes.

13 Q And have you played that tape, wherein you were
14 listening to the female, Ella Jo Bailey's voice, in connection
15 with words uttered by her, where she speaks of money and
16 confessions?

17 MR. MANZELLA: Objection, your Honor. That's not
18 relevant to any foundation, and it calls for hearsay.

19 MR. KANAREK: I am laying --

20 THE COURT: Sustained.

21 Q BY MR. KANAREK: Did you -- all right. I'll with-
22 draw that.

23 When did you last play that tape, Officer?

24 A About five, six days ago.

25 Q And you played it in its entirety; is that
26 correct?

27 A Yes.

28 Q And in playing that tape, did you hear Ella Jo

1 Bailey make some statements referring to -- I'll withdraw that.

2 Is this the tape that you took of Ella Jo Bailey,
3 when you were in Seattle?

4 A I was never in Seattle with Ella Jo Bailey.

5 Q Is this a tape on which there was the voice of
6 Officer Guenther; is that correct?

7 A Yes.

8 Q And did the voice -- and on this tape, was there
9 the voice of Officer Guenther and Ella Jo Bailey?

10 A Yes.

11 Q And you listened to this tape in connection with
12 locating words uttered by Ella Jo Bailey, wherein the female,
13 Ella Jo Bailey, used the words "money" and "concessions"?
14 Is that correct?

15 MR. MANZELLA: Objection, your Honor. That is not a
16 proper foundation.

17 MR. KANAREK: I am laying the foundation, your Honor.

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1 MR. MANZELLA: And it calls for hearsay.

2 MR. KANAREK: May I approach the bench?

3 THE COURT: You may approach the bench.

4 The objection is sustained however.

5 (Whereupon, the following proceedings were had at
6 the bench among Court and counsel, outside the hearing of the
7 jury:)

8 MR. KANAREK: Your Honor --

9 THE COURT: Do you wish to play the tape?

10 MR. KANAREK: Pardon? No. I --

11 THE COURT: Do you wish to play a portion of the tape?

12 MR. KANAREK: Yes. That's what I've asked him to do, and
13 he claims it's not on there.

14 And I am laying a foundation, because I am going to
15 bring a witness who heard it, who is going to testify under
16 oath.

17 THE COURT: That he heard the tape?

18 MR. KANAREK: He heard those words,

19 MR. MANZELLA: Have you listened to the tape?

20 MR. KANAREK: I am only answering the Court. I am telling
21 the Court what I am doing. I am laying a foundation --

22 THE COURT: You can't do it that way.

23 MR. KANAREK: Why can't I?

24 THE COURT: The Court will order the tape played.

25 MR. KANAREK: Well, no.

26 THE COURT: If you want to have it played, the Court
27 will make it available to you so that you can find the portion
28 that you want to have played.

1 MR. KANAREK: No, but there is -- I'm not saying this --
2 I'm not saying that the prosecution or that law enforcement
3 has deliberately done this at this time; I don't know.

4 But I know that we go round and round, and they
5 tell me that it's not on the tape. Officer Whiteley says it's
6 not on the tape.

7 We have a right to get that evidence before the
8 jury, if it was on the tape, and I am offering --

9 THE COURT: Well, the Court agrees with you.

10 MR. KANAREK: All right. The way I am laying the
11 foundation is to show that the -- the best -- I have to put
12 in secondary evidence, because the best evidence is that the
13 tape supposedly now doesn't have it.

14 THE COURT: This is an argument between you and Officer
15 Whiteley, as to whether or not that statement that you say is
16 on the tape really is there. Now, you can't get it before the
17 jury in the way that you are seeking to get it before the
18 jury, because --

19 MR. KANAREK: I have a right to put in secondary evidence,
20 if the primary evidence, which was originally there, is --

21 THE COURT: The primary evidence is still there --

22 MR. KANAREK: Unless it's been destroyed.

23 THE COURT: -- in the form of the tape.

24 MR. MANZELLA: The tape has not been destroyed, your
25 Honor. The tape has not been deleted or tampered with in any
26 way.

27 MR. KANAREK: Well, how do we know?

28 MR. MANZELLA: It's available to Mr. Kanarek. But he has

1 already listened to it in its entirety once, and he asked
2 Sergeant Whiteley to find a certain passage, and Sergeant
3 Whiteley found that passage.

4 Now, Mr. Kanarek claims that this is not the
5 passage he was talking about.

6 MR. KANAREK: Well, I think the --

7 THE COURT: All right. We will do that now, then.

8 (Whereupon, the following proceedings were had in
9 open court, within the presence and hearing of the jury:)

10 THE COURT: Ladies and gentlemen, the Court will excuse
11 you now, and he will conduct some proceedings outside of your
12 hearing. You may be excused for 20 minutes.

13 During that time, you are admonished that you are
14 not to converse amongst yourselves nor permit anyone to con-
15 verse with you on any subject connected with this matter,
16 nor are you to form or express any opinion on the matter until
17 it is finally submitted to you.

18 (Whereupon, members of the jury exited the court-
19 room, and the following proceedings were had:)

20 THE COURT: All right. Now, it seems to the Court that
21 the question is whether or not the tape that you referred to,
22 a portion of which you wish to play, Mr. Kanarek, is unavail-
23 able.

24 MR. KANAREK: Yes, your Honor.

25 THE COURT: If it's unavailable, then you can proceed
26 in the manner in which you wish to proceed, to -- to have
27 somebody relate what the tape said.

28 MR. KANAREK: Yes, your Honor.

1 THE COURT: Or what Ella Jo Bailey said. And you may
2 do that, of course, without any reference to the tape, if you
3 have somebody here who can prove a prior inconsistent state-
4 ment, or a statement that you believe -- and the Court believes
5 -- is relevant and material in some way or other.

6 But you wish to play the tape itself?

7 MR. KANAREK: Yes. I'd prefer to have -- in fact, I
8 do wish that the actual tape be played, because --

9 THE COURT: All right. Now, the -- then it centers on
10 the dispute between you and Sergeant Whiteley, as to whether
11 or not the statement that you say is on the tape really does --
12 really does exist, or really whether it is on the tape, as you
13 say it is.

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1 I'll let you examine Sergeant Whiteley at this
2 time concerning that tape.

3 BY MR. KANAREK:

4 Q Well, Officer, where is the tape presently?

5 A It's in my locker.

6 THE COURT: Who took the tape?

7 THE WITNESS: I did.

8 THE COURT: And does it contain your voice?

9 THE WITNESS: Yes. 75 per cent of the speaking is my
10 voice.

11 THE COURT: And who are the others whose voices appear
12 on the tape?

13 THE WITNESS: Ella Jo Bailey, Deputy Charles Guenther,
14 Deputy District Attorney Burton Katz.

15 THE COURT: Have you had the tape in your possession
16 since it was recorded?

17 THE WITNESS: Yes.

18 Q BY MR. KANAREK: Have you altered it in any way?

19 A Yes.

20 Q In what way?

21 A I -- well, I made a duplicate tape and had it
22 filtered and amplified.

23 I still have the original tape, but -- and it
24 has not been altered.

25 THE COURT: I see. The original is not altered?

26 THE WITNESS: That's correct.

27 THE COURT: Did you permit Mr. Kanarek to hear the
28 original tape?

1 THE WITNESS: Yes, I did. You can't hear it.

2 THE COURT: Pardon?

3 THE WITNESS: You can't hear most of it.

4 THE COURT: So you had it worked on, modified, in order
5 to bring up the sound in the original?

6 THE WITNESS: That's correct.

7 THE COURT: Well, did you cut out any part of the
8 original in this modification?

9 THE WITNESS: No.

10 THE COURT: Now, what is the phrase that you say exists
11 on the tape which you would like to get before the jury?

12 MR. KANAREK: It has -- the phrase that I would like to
13 get before the jury, your Honor, includes the words uttered
14 by Ella Jo Bailey, where she speaks of money and concessions.

15 THE COURT: Do you know what the sentence is?

16 MR. KANAREK: I -- no, I don't.

17 THE COURT: Did you mark it -- now, you heard this
18 phrase, did you not, --

19 MR. KANAREK: Yes.

20 THE COURT: -- during such time as you were listening
21 to the tape?

22 MR. KANAREK: That's correct.

23 THE COURT: And were you listening to the original or
24 to a modification?

25 MR. KANAREK: I don't know. That's why I -- may I ask
26 a question of the officer?

27 THE COURT: He has responded to me that he believes you
28 listened to the original.

1 Q BY MR. KANAREK: But when did you make the
2 modification? Or when did you make the -- what you call the
3 amplification, Officer?

4 A About ten days ago.

5 Q And you have not informed me of this amplification,
6 have you?

7 A No.

8 Q And you are aware of the fact that there is a
9 continuous motion for discovery in this case --

10 MR. MANZELLA: This is all irrelevant.

11 MR. KANAREK: It's most relevant, your Honor. It goes
12 to show --

13 THE COURT: Sustained. We are inquiring now about
14 whether or not the phrase that you heard when you listened
15 to the tape, and which you wish to have played before the jury,
16 is really on the original.

17 MR. KANAREK: Well, yes, except that in view of this
18 added information, the fact that the tape was not -- was not --
19 you couldn't hear it, I ask the Court to seize -- I ask
20 that the Court seize both of these tapes, and that we have a
21 transcript made of the amplified tape, because --

22 THE COURT: Your motion is denied.

23 Go ahead with your question, will you?

24 MR. KANAREK: Well, I am, your Honor. I am --

25 THE COURT: Go ahead.

26 MR. KANAREK: This is my motion, because it's denying
27 us due process and equal protection and discovery. The
28 prosecution has the benefit of the amplifi- --

1 THE COURT: The Court is not going to make any such
2 order. The Court will make the amplified tape available to
3 you, if you wish to take the time to hear it.

4 Go ahead. Put your next question.

5 Q BY MR. KANAREK: Did you, Officer, make this
6 amplification that you are speaking of after I requested of
7 you certain language?

8 A No.

9 Q Your -- you made the amplification before I
10 requested the language?

11 A No, I take that back. I did it afterwards, yes.

12 Q After you knew that I wanted certain matters
13 brought here before the jury, you went ahead and amplified
14 the tape; is that right?

15 MR. MANZELLA: Objection. It's not relevant.

16 THE COURT: Sustained.

4c-1

1 MR. KANAREK: It's relevant on the Brady vs. Maryland
2 suppression of the evidence.

3 MR. MANZELLA: The tape's available, your Honor. Mr.
4 Kanarek can hear it if he wants to hear it. We are not
5 suppressing anything.

6 MR. KANAREK: But hearing it --

7 THE COURT: The objection is sustained. Ask your next
8 question.

9 MR. KANAREK: Yes.

10 Q And did you inform me of this amplification, other
11 than this instant in the courtroom, in formal proceedings
12 before Judge Choate?

13 MR. MANZELLA: Objection. It's not relevant.

14 MR. KANAREK: It's relevant and material.

15 THE COURT: It's not relevant to what we are inquiring
16 about. Now, let's proceed.

17 If you wish to argue with the witness, you may
18 do that off the witness stand.

19 MR. KANAREK: Well, I'm not arguing. I am --

20 THE COURT: Let's proceed.

21 Q BY MR. KANAREK: Officer, have you heard --

22 THE COURT: You listened to the tape --

23 Q BY MR. KANAREK: Have you heard on the tape, in
24 the voice of the female, Ella Jo Bailey, where she speaks of
25 money and concessions, or words involving the words "money"
26 and "concessions"?

27 A Yes.

28 Q You have heard that?

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A Yes.

THE COURT: On either tape?

THE WITNESS: Yes.

Q BY MR. KANAREK: And you told me previously, when we were in court before the jury, that it wasn't on the tape; is that correct?

A That's correct.

THE COURT: Did you --

THE WITNESS: May I explain?

MR. KANAREK: Well, --

THE COURT: Yes.

MR. KANAREK: -- your Honor, I thought -- may I go ahead, then.

THE COURT: Yes, you may.

MR. KANAREK: Then I ask that we bring the tape here, we bring the tape here. I allege a violation of due process and equal protection and fair trial.

THE COURT: All right. Just a moment. Your request is that the tape be brought here?

MR. KANAREK: Absolutely.

THE COURT: All right. Have you marked the spot on the tape, or do you have a note as to where it can be found on the tape?

THE WITNESS: Where -- now, where what can be found?

THE COURT: Well, the sentence that Mr. Kanarek has referred to, wherein Ella Jo Bailey uses the word "Money" or "concessions" or both?

MR. KANAREK: I think she says "Money and/or concessions"

4c-3

1 or something like that, your Honor.

2 THE WITNESS: She never uses the two words together.
3 There are two different parts of the tape.

4 THE COURT: What is your best recollection as to what
5 she does say?

6 THE WITNESS: Well, I talked to her about -- "When we
7 are ready to bring you down to Los Angeles to testify, I
8 will send the money up to bring you down to Los Angeles." And
9 then we talk about the traveling down here.

10 And then in another portion of the tape, we talk
11 about that if she testifies for us, that we will help her with
12 the forgery charge.

13 But the two conversations are different, and
14 they're not all together.

15 THE COURT: All right. Is that the way you heard it,
16 Mr. Kanarek?

17 You are not under oath, but is that the way you
18 heard it?

19 MR. KANAREK: Well, the way I have my notes, your Honor--
20 which I took at the time --

21 THE COURT: Perhaps it's under that pile in front of
22 you there.

23 MR. KANAREK: I just had that paper, your Honor. Here
24 it is.

25 I have -- and I'm trying to read my notes -- I
26 have "Money sent and concessions as --" of course, I don't
27 take shorthand. And as I was listening --

28 THE COURT: That's too bad. But --

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MR. KANAREK: Right. It -- I --

THE COURT: Mr. Kanarek, do you want to have that portion -- do you want to have that portion played for you?

MR. KANAREK: Yes. I --

THE COURT: And for the jury?

MR. KANAREK: I have been -- I would like to have it played for me first.

THE COURT: All right. That's reasonable.

MR. KANAREK: And -- and the way I have it, it appears to be "Money sent and concessions."

And I also have a witness who will testify, who was there, and who was -- who will testify concerning this matter. But --

4d fls.

4d-1

1 THE COURT: Well, if you have the -- the tape played
2 for the jury, then there would be no need to have the witness;
3 is that correct?

4 Now, you may do either.

5 MR. KANAREK: Except that --

6 THE COURT: But it would be cumulative.

7 MR. KANAREK: Except that the tape has been tampered
8 with. Except if, through inadvertence or otherwise, some of --

9 THE COURT: Well, you may listen to both the original
10 and the amplified copy, then.

11 MR. KANAREK: But if the original has somehow or other
12 been -- whatever the source may be, if it isn't on the
13 original, it won't be on the amplified --

14 THE COURT: Officer Whiteley, --

15 MR. KANAREK: Pardon?

16 THE COURT: -- have you altered the words or tampered
17 with this at all? Have you altered that tape?

18 THE WITNESS: The original tape has never been altered.

19 THE COURT: Have you spliced it in any way?

20 THE WITNESS: No, no portion of it.

21 THE COURT: Have you augmented or arranged any portion?

22 THE WITNESS: Nothing.

23 THE COURT: All right. Anything further with respect
24 to the condition of the original tape?

25 MR. KANAREK: I have nothing further. Because I
26 haven't -- I can't ask the questions, because I haven't heard
27 what the officer has located now.

28 THE COURT: I've forgotten your response to the question

1 as to whether or not you had it designated.

2 THE WITNESS: I have the portion that he just spoke of,
3 where I talked about sending the money up, and I played it
4 in court here, and he told me that that was not what he wanted
5 to hear.

6 THE COURT: All right. Mr. Kanarek, the Court would
7 order that both tapes, the original and the --

8 MR. KANAREK: Well --

9 THE COURT: -- amplification be made available to you,
10 and the Court will recess until 2:00 o'clock.

11 Between now and 2:00 o'clock, the Court orders
12 that -- that those tapes be played for you.

13 The Court would order that, if you wish to
14 present the portions of the tape that you are referring to,
15 that you listen to those tapes and designate what portions you
16 want played.

17 MR. KANAREK: Well, from what he tells me, your Honor --

18 THE COURT: And the Court will rule as to whether or not
19 they should be played.

20 Would you have a shorthand reporter take down
21 whatever it is, so that I will know, before it is played,
22 so that we won't have to delay before playing the tapes or
23 tape for the jury?

24 THE WITNESS: Are you speaking of just the short portions?

25 THE COURT: Just the portions that Mr. Kanarek wishes
26 to have played.

27 MR. KANAREK: Well, of course, that assumes that the
28 portions I wish to have played are still on the tape. I --

1 I mean, I don't --

2 THE COURT: Yes, it does, doesn't it?

3 MR. KANAREK: Yes. And from what the officer tells me,
4 I --

5 THE COURT: Well, the Court finds that, at this moment,
6 that there is -- there's no reason whatever to believe that
7 the tape has been altered in any way.

8 MR. KANAREK: Well, your Honor hasn't heard evidence on
9 the other side.

10 THE COURT: All right. Present your evidence.

11 MR. KANAREK: Well, the witness is not here at this
12 time, your Honor.

13 THE COURT: Well, do you wish to take the stand yourself?

14 MR. KANAREK: No, I'd rather not.

15 THE COURT: Who is the witness?

16 MR. KANAREK: The witness is Sheldon Berlin.

17 THE COURT: Who is Sheldon Berlin?

18 MR. KANAREK: He is a lawyer that I practice law with.
19 And I have -- I have --

20 THE COURT: Why didn't you have him here, if you
21 anticipated producing this?

22 MR. KANAREK: Because this morning, I didn't --

23 THE COURT: Well, you bring in Sheldon Berlin before 2:00
24 o'clock. The Court wishes you to -- if you wish to proceed
25 with this matter -- to listen to the tapes between now and
26 2:00 o'clock.

27 MR. KANAREK: Well, your Honor, if I may, I have some
28 other matters that I have to --

1 THE COURT: Well, don't handle any other matter. You
2 are ordered to listen to the tape, if you wish to present
3 such matters.

4 MR. KANAREK: But you don't need the entire tape.

5 THE COURT: So that we can go forward.

6 MR. KANAREK: It is not necessary, because our position
7 is that it's not on the -- it's not at -- where the officer's
8 speaking of it.

9 THE COURT: How could you know that, Mr. Kanarek, unless
10 you listened to it?

11 MR. KANAREK: Because I've listened to it previously,
12 and our position is -- and we will offer testimony under oath
13 that this is at the end of the tape. We don't have to listen
14 to all of the tape, it's our position; and we will offer
15 sworn testimony that this is --

16 THE COURT: Where is Mr. Berlin?
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1 MR. KANAREK: Mr. Berlin is in Norwalk this morning.

2 THE COURT: Norwalk Hospital or -- where in Norwalk?

3 MR. KANAREK: The Superior Court in Norwalk.

4 THE COURT: Oh. Well, would you call him now, when I
5 recess, and tell him that I want him here forthwith, if he
6 is not engaged in some matter in Norwalk?

7 If he is engaged in some matter in Norwalk, I
8 want to find out from you when he will be free, and when he
9 can be here:

10 I'll hear evidence and make a decision as to
11 whether or not the tape has been altered.

12 MR. KANAREK: Yes. But it's pointless for me to listen
13 to all of that tape, because the point is --

14 THE COURT: As you choose, Mr. Kanarek. But you must
15 lay a proper foundation.

16 MR. KANAREK: I am. I am. I am. That's why I am --
17 I have Mr. Berlin --

18 THE COURT: You are going to have -- Mr. Berlin is your
19 law -- he is your law partner; is that it?

20 MR. KANAREK: Pardon?

21 THE COURT: Your law partner?

22 MR. KANAREK: Yes. Yes, he --

23 THE COURT: And in the event the Court should determine
24 that the tape is -- has been altered, then you would present
25 your law partner to testify as to what the tape did say; is
26 that correct?

27 MR. KANAREK: Well, but how can your Honor, if I may --

28 THE COURT: Is that correct?

4e-2

1 MR. KANAREK: How can your Honor --

2 THE COURT: Is that correct?

3 MR. KANAREK: I would offer his testimony.

4 But the point is, unless you do it judicially,
5 my going over and listening to that tape is pointless,
6 because I've listened to it, and my position is that this
7 matter is on the tape.

8 It's right near the end of the tape; and to go
9 over there and listen to what Officer Whiteley -- there's
10 no judge there to do anything about it.

11 I think we should bring the tape to court and
12 let the Judge listen to it.

13 THE COURT: All right. If you will pinpoint the portion
14 of the tape -- and in order to do that, since you did not
15 do it before when you took notes --

16 MR. KANAREK: Well, it's right --

17 THE COURT: -- I assume you'll have to listen to at
18 least a portion of the tape again.

19 If you will pinpoint it for me, the Court will
20 listen to it.

21 MR. KANAREK: It's near the end of the tape.

22 THE COURT: And we'll make a determination as to
23 whether or not it's admissible.

24 All right. So you are ordered, then -- if you
25 wish to proceed -- to accomplish that between now and 2:00
26 o'clock.

27 And the Court orders that Sergeant Whiteley play
28 those tapes for you -- or the portion of the tape that you wish

4e-3

1 to hear.

2 MR. KANAREK: I ask the Court to strike the statement
3 about Norwalk Hospital. I didn't -- I ask the Court --

4 THE COURT: You simply designated he was in Norwalk.
5 The Court has no way of knowing where he might be in Norwalk.

6 MR. KANAREK: I ask the Court --

7 THE COURT: And the Court meant nothing. The Court
8 doesn't know Mr. Berlin, and the Court has no idea where he
9 might be in Norwalk.

10 Your remark is well taken.

11 All right. Now, I'll recess this --

12 MR. KANAREK: Would you --

13 THE COURT: -- until 2:00 o'clock, and I will see you
14 at 2:00 o'clock. And by 2:00 o'clock, you will have
15 accomplished what the Court has asked you to accomplish.

16 MR. KANAREK: I will -- I will -- I will --

17 THE COURT: And you will have Mr. Berlin --

18 MR. KANAREK: I'll accompany Officer Whiteley --

19 THE COURT: -- here, if you wish to present anything
20 further, to testify that the tape, in his judgment -- if
21 he believes so -- has been altered.

22 MR. KANAREK: Well, to paraphrase, I'll go anywhere for
23 peace, your Honor.

24 And I will go anywhere to get this done.

25 THE COURT: All right.

26 MR. KANAREK: But what I am saying is --

27 THE COURT: You don't have to go far; just go to where
28 the tape will be played for you.

4e-4

1 MR. KANAREK: But I --

2 THE COURT: And the Court will hear from you at 2:00
3 o'clock.

4 We are in recess at this time.

5 MR. KANAREK: I can't represent that I can have Mr.
6 Berlin here by 2:00 o'clock, your Honor. I'll do my best.

7 THE COURT: Let me hear why he's not here then, if
8 you intend to put him on. You may not wish to present him,
9 because you may --

10 MR. KANAREK: That's right.

11 THE COURT: -- in listening to the tape, you may
12 determine that this is what you did hear.

13 You haven't heard the amplification, and it may
14 be that that will help you. I hope so.

15 (Whereupon, at 11:28 o'clock a.m., an adjournment
16 was taken in this matter until 2:00 o'clock p.m.
17 of the same day, Monday, October 4, 1971.)
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LOS ANGELES, CALIFORNIA, MONDAY, OCTOBER 4, 1971 2:35 P.M.

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THE COURT: All right. The record will show the jurors and alternates are present.

Mr. Kanarek, call your next witness.

MR. KANAREK: Yes. To accommodate Mr. Barrett, your Honor, if I may call him now? Samuel Barrett?

MR. GUTH: Your Honor, John Guth from the U. S. Attorney's Office, representing Mr. Barrett.

At this time, I would like to make a motion to quash the subpoena.

THE COURT: Excuse me just a minute, Counsel.

Before you proceed, perhaps we'd better have members of the jury --

MR. KANAREK: Well, I can't see -- he's just a witness --

THE COURT: Excuse me just a minute.

MR. KANAREK: -- why.

THE COURT: Perhaps you gentlemen may approach the bench.

Mr. Barrett, you may just remain where you are.

(Whereupon the following proceedings were had at the bench among Court and counsel, outside the hearing of the jury:)

THE DEFENDANT: (From within the detention room door.) Irving, why are you calling this guy? He can't testify to anything.

MR. KANAREK: Your Honor, he's just a witness. He

1 happens to be Mr. Manson's federal probation officer.

2 I understand there's no reason to suppress his
3 testimony.

4 THE COURT: What, generally, do you wish to ask Mr.
5 Barrett?

6 MR. KANAREK: Mr. Barrett was out at the Spahn Ranch,
7 and I have certain questions I want to ask him. He is a
8 percipient witness.

9 THE COURT: What is your problem in connection with
10 this, Mr. Guth? What problems do you see?

11 MR. GUTH: To the extent that his information is
12 related to his job, he is not allowed to testify without the
13 prior permission of the Attorney General.

14 That's pursuant to an executive order.

15 THE COURT: What is his job?

16 MR. GUTH: He is a probation officer.

17 THE COURT: Oh, I see.

18 MR. GUTH: And that is the grounds for him going out
19 there to talk to Manson.

20 THE COURT: Oh, I see. Well, then, Mr. Barrett -- do
21 you anticipate eliciting anything from Mr. Barrett which would
22 in any way concern his job?

23 MR. KANAREK: Well, yes. But he is a percipient
24 witness. Counsel doesn't perceive of the -- the privilege
25 has to do with matters that are -- that I am not going to --
26 that he -- he can exercise that privilege if those questions
27 are asked.

28 I mean, he's a percipient witness.

1 THE COURT: Just in general, what do you intend to ask
2 Mr. Barrett?

3 MR. KANAREK: I intend to ask him matters that --
4 concerning his -- concerning Mr. Manson and his -- just like
5 any probation officer is called.

6 THE COURT: Well, what about?

7 MR. KANAREK: First of all --

8 THE COURT: What Mr. Manson was wearing out there?

9 MR. KANAREK: Well, in --

10 THE COURT: Could you spell it out for me?

11 MR. KANAREK: No, I don't have to, your Honor, because
12 I haven't seen anything here by way of any kind of legal
13 points and authorities, where I can't call a witness.

14 Now, the duty is upon the -- if they're going to
15 suppress this man, then I allege it's a violation of the
16 5th Amendment, because it's the United States Government
17 that's suppressing it. And this is incredible of belief.

18 THE COURT: What do you have there, Mr. Guth?

19 MR. GUTH: In a prior case, a prior Manson case, he was
20 subpoenaed. Mr. Barrett was subpoenaed, and this motion --

21 THE COURT: By the defense?

22 MR. GUTH: By the defense, right. And this motion was
23 submitted to the Court at that time.

24 MR. KANAREK: Well --

25 THE COURT: And what was the result?

26 MR. KANAREK: And he testified.

27 MR. GUTH: Apparently he testified as to some informa-
28 tion. He was able to answer some questions.

1 It seems to us, your Honor, that some of the
2 questions -- or the questions that he will be able to answer
3 are probably a matter of public record, something that could
4 be obtained from the transcript of this prior case.

5 So there doesn't seem to be any reason to subject
6 him to the --

7 THE COURT: Well, generally speaking, what do you
8 intend to ask him?

9 MR. KANAREK: Ask him questions that he -- questions
10 concerning Mr. Manson and -- he's a percipient witness,
11 your Honor. I have seen nothing here --

4g fls.

4g

1 THE COURT: To what?

2 MR. KANAREK: To matters at the Spahn Ranch and other-
3 wise. I have a right to bring a witness here.

4 They don't have -- I've seen nothing here that --
5 well, why he shouldn't be called as a witness.

6 THE COURT: Mr. Guth, I am going to allow Mr. Barrett to
7 testify. If there is any particular phase of his testimony
8 which you think would cause -- would constitute a violation of
9 any of the regulations that are involved, let me know, --

10 MR. GUTH: Correct.

11 THE COURT: -- and just ask to approach the bench, and
12 the Court will decide that at the bench.

13 MR. GUTH: All right. Fine.

14 THE COURT: Your contention would be that, under certain
15 governmental regulations, he is not permitted to testify
16 concerning matters about a probationer; is that it?

17 MR. GUTH: Let me show you the wording, your Honor.

18 It's approximately the middle of the paragraph.

19 THE COURT: Under Title 28, it provides that no employee
20 or former employee of the Department of Justice shall in
21 response to a demand from a court or authority produce any
22 material contained in the files of the Department of Justice
23 or disclose any information relating to material contained
24 in the files of the Department of Justice, or disclose any
25 information or produce any material acquired as a part of the
26 performance of his official duties, or because of his official
27 status, without the prior approval of the Attorney General.

28 Did you approach the Attorney General to ask about

1 the release of any of this information?

2 MR. KANAREK: No, I'm not -- there's no necessity for it,
3 your Honor.

4 THE COURT: All right. Let's proceed. It may be that --

5 MR. GUTH: Certainly.

6 THE COURT: -- the testimony may not be admissible.

7 I can't determine from what Mr. Kanarek has said whether or not
8 it is.

9 MR. GUTH: Right.

10 (Whereupon, the following proceedings were had in
11 open court, within the presence and hearing of the jury:)

12 MR. KANAREK: Call Mr. Barrett, your Honor.

13 THE COURT: Mr. Barrett, would you come forward and
14 raise your right hand?

15 THE CLERK: Would you raise your right hand, please?

16 You do solemnly swear that the testimony you may
17 give in the cause now pending before this Court shall be the
18 truth, the whole truth, and nothing but the truth, so help you
19 God?

20 THE WITNESS: I do.

21
22 SAMUEL BARRETT,

23 called as a witness by and on behalf of the defendant, having
24 been sworn, was examined and testified as follows:

25 THE CLERK: Please take the stand and be seated.

26 THE BAILIFF: Will you state and spell your full name,
27 sir?

28 THE WITNESS: Samuel Barrett; S-a-m-u-e-l, B-a-r-r-e-t-t.

DIRECT EXAMINATION

BY MR. KANAREK:

Q Mr. Barrett, what is your business or occupation?

A United States Probation and Parole Officer.

Q And are you -- and where is your office located?

A In Room 600 of the U.S. Courthouse, in Los Angeles.

Q And you were interviewed -- were you interviewed by some state authorities concerning Mr. Manson?

MR. MANZELLA: Objection, your Honor. That's not relevant.

THE COURT: Sustained.

MR. KANAREK: I'm laying a foundation, your Honor. I -- whether he was interviewed.

THE COURT: The objection is sustained.

Q BY MR. KANAREK: Mr. Barrett, did you have -- did you have occasion to visit Mr. Manson at the Spahn Ranch?

A Yes, sir, I did.

Q And you knew that -- as his probation officer, you knew that he was living at the Spahn Ranch?

A Yes, I did.

Q Is that correct?

A Yes.

Q And you knew that Mr. Manson was living at the Spahn Ranch during the summer of 1969?

A Yes, that is right.

Q Is that correct?

A Yes, it is.

Q And it was with your approval that he was living

1 there; is that right?

2 MR. MANZELLA: Objection, your Honor. That's not
3 relevant.

4 THE COURT: Sustained.

5 Q BY MR. KANAREK: On how many occasions did you
6 visit Mr. Manson at the Spahn Ranch?

7 A Oh, about three or four times.

8 Q And would you tell us what those dates were that
9 you visited him?

10 A Well, do you mean the specific date?

11 Q Yes.

12 A I don't know if I can remember. I remember the
13 last time was about the end of June of '69.

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4h-1

1 Q And when did you --

2 A And --

3 Q Pardon?

4 A And any other contacts previous to that would have
5 been probably within about a four or five-month period before
6 that.

7 Q And after that, he and -- during the summer of
8 1969, did you go to the Spahn Ranch?

9 A After? After the summer of --

10 Q After June of 1969?

11 A Yes, I did.

12 Q And when was that?

13 A I think that was in September of '69.

14 Q And in September of '69 -- that is, from June to
15 September of '69, did you go to the Spahn Ranch?

16 A No.

17 Q And when was it in September of '69 that you went
18 to the Spahn Ranch?

19 A Probably sometime after the first two weeks. It
20 would have been in -- in other words, during the latter part
21 of September of '69.

22 Q In the last two weeks of --

23 A Somewheres toward the end of the month.

24 Q After September 15th?

25 A Probably so.

26 Q Is that correct?

27 A Yes.

28 Q Now, exactly what is your title, Mr. Barrett?

4h-2

1 A United States Probation and Parole Officer.

2 Q And in that connection, have you had in your
3 custody certain records pertaining to Mr. Manson?

4 A Yes, we have.

5 Q May we see those records?

6 MR. MANZELLA: Your Honor, I'm going to object on the
7 grounds --

8 THE WITNESS: I'm not privileged to --

9 MR. MANZELLA: Excuse me, Mr. Barrett.

10 THE WITNESS: -- to make those available.

11 MR. MANZELLA: Excuse me, Mr. Barrett.

12 Your Honor, I'm going to object to that on the
13 grounds it isn't relevant.

14 THE COURT: Sustained.

15 MR. KANAREK: How can we tell unless we look at the
16 records, your Honor?

17 THE COURT: The objection is sustained.

18 You need not answer the question, and you need
19 not produce the records.

20 MR. KANAREK: Then I allege a violation of the 5th
21 Amendment to the United States Constitution, if the United
22 States Government does not produce -- a violation of due
23 process under the 5th, not the 14th, if the United States
24 Government does not produce records pertaining to Mr. Manson,
25 your Honor.

26 THE COURT: The records don't appear to be material
27 or relevant.

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4h-3

1 MR. KANAREK: How can you tell without looking at the --

2 THE COURT: The objection is sustained.

3 Q BY MR. KANAREK: Mr. Barrett, do your records
4 reveal that Mr. Manson was first imprisoned at the age of
5 eight years?

6 MR. MANZELLA: Objection, your Honor. That's not
7 relevant.

8 THE COURT: Sustained.

9 Q BY MR. KANAREK: These records that you have,
10 Mr. Barrett, are these records that cover Mr. Manson's life,
11 so to speak, in custody?

12 MR. MANZELLA: I'm going to object on the same grounds,
13 your Honor.

14 THE COURT: Sustained.

15 MR. MANZELLA: It doesn't appear to be relevant.

16 MR. KANAREK: On what grounds is your Honor sustaining
17 the objection?

18 THE COURT: Irrelevancy and immateriality.
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5 fls.

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1 Q BY MR. KANAREK: Do your records, Mr. Barrett,
2 reveal anything concerning the personality of Mr. Manson?

3 MR. MANZELLA: Objection, your Honor, it doesn't
4 appear to be relevant.

5 THE COURT: Sustained.

6 Q BY MR. KANAREK: You have -- when you went to
7 the Spahn Ranch, you saw people there other than Mr. Manson,
8 is that correct, Mr. Barrett?

9 A Yes, I did.

10 Q And did you view Mr. Manson in the setting of the
11 Spahn Ranch?

12 A Yes, I had.

13 Q Do your records reveal, Mr. Barrett, the custody
14 of Mr. Manson was subjected to as a result of alleged viola-
15 tion -- a check violation?

16 MR. MANZELLA: Objection, your Honor, it does not
17 appear to be relevant.

18 THE COURT: The objection is sustained.

19 Q BY MR. KANAREK: When was it -- I'll withdraw
20 that.

21 Were you interviewed on February 2nd, 1970, Mr.
22 Barrett?

23 MR. MANZELLA: Same objection on the same grounds,
24 your Honor.

25 THE COURT: The objection is sustained.

26 Q BY MR. KANAREK: Mr. Barrett, between June of
27 1969, and the last two weeks of September, 1969, did you
28 attempt to see Mr. Manson?

5-2

1 A No, I did not.

2 Q And there was -- there was no reason for
3 attempting him in those periods -- in that period of time,
4 is that right?

5 A Well, not necessarily. I was on vacation for
6 part of that time.

7 Q Well, to your knowledge was -- was any parole or
8 probation officer sent out to see Mr. Manson from the June
9 date that you saw him until the last two weeks of September,
10 1969?

11 A No.

12 Q Is that correct?

13 A Right.

14 Q And is it a fair statement that your records
15 reflect Mr. Manson's conduct in prison for some 24 years of
16 his life; is that a fair statement?

17 MR. MANZELLA: Objection, your Honor, it does not
18 appear to be relevant to any issue in the case.

19 THE COURT: The objection is sustained.

20 Q BY MR. KANAREK: How old is Mr. Manson, Mr.
21 Barrett?

22 A About 30 -- about 36 or 37.

23 Q 36 or 37 years old?

24 A I think so. I think he's 36, I believe.

25 Q And are you telling us that the Attorney General
26 of the United States is forbidding you to allow this Court
27 and us to use the records you have?

28 THE COURT: You needn't --

1 MR. MANZELLA: Objection, your Honor, it is not rele-
2 vant.

3 THE COURT: Sustained.

4 Q BY MR. KANAREK: Would you tell us the age of
5 Mr. Manson when he was first thrown into a prison?

6 MR. MANZELLA: Objection, your Honor, it does not
7 appear to be relevant to any issue in the case.

8 THE COURT: The objection is sustained.

9 Q BY MR. KANAREK: Do your records reveal a single
10 crime of violence by Mr. Manson?

11 MR. MANZELLA: Objection, your Honor, it does not
12 appear to be relevant to any issue in the case.

13 THE COURT: Sustained.

14 Mr. Kanarek, approach the bench.

15 (Whereupon, the following proceedings were had
16 at the bench among Court and counsel, outside the
17 hearing of the jury:)

18 THE COURT: You know very well such questions as the
19 last question that you asked, which question is similar to
20 many that you have asked and have had objections sustained
21 to is improper. The Court tells you that you should --
22 orders you to desist from this line of questioning concern-
23 ing his records, this man's records.

24 MR. KANAREK: Well, is --

25 THE COURT: You may ask him other aspects of the case
26 which are relevant and material.

27 MR. KANAREK: Is your Honor saying -- is your Honor
28 saying that notwithstanding -- of the issuance of valid process

1 that your Honor is not going to order the -- that we make
2 use of these records?

3 THE COURT: I am allowing him to answer anything that's
4 material and relevant.

5 MR. KANAREK: But we have a right to --

6 THE COURT: And you know -- you know from the Court's
7 sustaining of the objections one after the other to the
8 records, to what is contained in the records, that the Court
9 is not going to permit that --

10 MR. KANAREK: Well, may I --

11 THE COURT: -- concerning Mr. Manson's records.

12 MR. KANAREK: It is our position, your Honor --

13 THE COURT: I know what your position is. You've made
14 it clear.

15 MR. KANAREK: It is a violation of due process and
16 equal protection under the 14th Amendment as well as under
17 the 5th Amendment for these records not to be made available
18 to us, seeing that they're government records.

19 THE COURT: You may ask this man any questions that
20 the answers to which would appear to be material, even
21 including the records, if there's anything that's material
22 or relevant in issue, but you are instructed now by the Court
23 that the line of questioning that you have taken is highly
24 improper and you must know it from the sustaining of the
25 objections.

26 MR. KANAREK: No, your Honor -- they have claimed that
27 Mr. Manson has dominated people. We have a right to show
28 that in the major portion of his life --

1 THE COURT: You may ask -- you may ask this man about
2 Mr. Manson's character, his reputation, his character. The
3 Court is not precluding you from doing that.

4 MR. KANAREK: All right, very well.

5 (Whereupon, the following proceedings were had
6 in open court within the presence and hearing of the
7 jury:)

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5a-1

1 Q BY MR. KANAREK: Mr. Barrett, as a result of your
2 study of the records of Mr. Manson, have you come to know
3 Mr. Manson's reputation in the prison environment for
4 attempting to dominate people?

5 MR. MANZELLA: Objection, your Honor. There's no
6 foundation for that opinion.

7 THE COURT: Sustained. You may reframe your question.

8 MR. KANAREK: All right, very well.

9 Q The records that you have are United States
10 prison records, is that correct?

11 A In part.

12 Q In part, they're prison records, right?

13 A In part, yes.

14 Q In part, they are probation and parole records?

15 A Yes.

16 Q And when you say prison records, you are referring
17 to the United States Bureau of Prisons, wherein the custodial
18 officers from time to time make reports?

19 A Yes, sir.

20 And also when they're on parole.

21 Q And the parole officers make reports?

22 A Yes.

23 Q Is that right?

24 A Yes, sir.

25 Q Then, would you tell me -- and you've studied those
26 reports?

27 A Yes.

28 Q Then, have you, from those reports, have you formed

1 an opinion as to -- well, let me back off and ask you, is it
2 a fact that those reports cover some 24 years of Mr. Manson's
3 life in custody in prisons?

4 MR. MANZELLA: Objection, your Honor, that's not
5 relevant.

6 MR. KANAREK: I'm laying the foundation, your Honor.

7 THE COURT: Sustained.

8 MR. KANAREK: Well, then, may I approach the bench?

9 THE COURT: No, you may not.

10 MR. KANAREK: Well, may I make -- may I approach the
11 bench to make an offer of proof?

12 THE COURT: No, you may not. Ask your question.

13 Q BY MR. KANAREK: The records reflect -- pardon me,
14 I'll withdraw that.

15 The records that you have in your custody and the
16 United States Government has in its custody, are records that
17 reflect the conduct of Mr. Manson in custody, is that correct?

18 A Yes.

19 Q And is it correct that these records encompass
20 some 24 years of Mr. Manson's life in custody?

21 MR. MANZELLA: Objection, your Honor, on the same
22 grounds. It is not relevant.

23 MR. KANAREK: Then, may I approach the bench, your Honor?

24 THE COURT: The objection is sustained. No, you may
25 not.

26 Q BY MR. KANAREK: In all the years that Mr. Manson
27 was in custody, Mr. Barrett, do the records reflect any
28 attempt by Mr. Manson to dominate anyone?

1 MR. MANZELLA: Objection, your Honor, there's no
2 foundation for that opinion.

3 THE COURT: The objection is sustained, irrelevant and
4 immaterial.

5 Q BY MR. KANAREK: Is it a fair statement, Mr.
6 Barrett, that your records reveal that Mr. Manson, in a number
7 of years -- whatever it may be that he was in custody --
8 created no custodial problems?

9 MR. MANZELLA: Objection, your Honor, on the grounds it
10 is not admissible. There's no foundation for that.

11 THE COURT: The objection is sustained and, once again,
12 Mr. Kanarek, the Court warns you that you are not to ask the
13 type of question which the Court has successively sustained
14 objections to.

15 MR. KANAREK: Well, then, may I approach the bench,
16 your Honor?

17 THE COURT: No, you may not.

18 Q BY MR. KANAREK: I --
19 Is it a fair statement, Mr. Barrett, that you do
20 not know Mr. Manson except in your work, right?

21 A Yes, right.

22 Q And you -- and your work is conducted in large
23 part with a person who has been in prison from the records
24 that pertain to that person, is that true?

25 A Yes, I guess it would be.

26 MR. KANAREK: Well, in view of the Court's rulings, your
27 Honor, I have no further questions.

28 MR. MANZELLA: I have no questions.

1 THE COURT: Do you know Mr. Manson personally?

2 THE WITNESS: Have I met him personally, your Honor?

3 THE COURT: Do you know him personally?

4 THE WITNESS: Yes.

5 THE COURT: You met him in the course of your work in
6 the probation office?

7 THE WITNESS: Yes. Yes, your Honor.

8 THE COURT: Do you have any opinions or do you have an
9 opinion as to his character for peace and quiet?

10 MR. KANAREK: I'll object to the Court's question, if
11 I may.

12 THE COURT: You may.

13 MR. KANAREK: I object to the Court's question on the
14 basis of lack of foundation, your Honor.

15 THE COURT: I'll sustain your objection.

16 MR. KANAREK: All right.

17 THE COURT: You don't have to argue.

18 MR. KANAREK: Thank you.

19 THE COURT: You may approach the bench.

20 MR. KANAREK: Very well.

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(Whereupon, the following proceedings were had at the bench among Court and counsel, outside the hearing of the jury:)

THE COURT: Mr. Kanarek, I was -- I thought perhaps I was being helpful to you because you are -- you seem to be floundering in the probation officer's records here, whereas if he knows him and you wish to produce evidence of this man's opinion as to Mr. Manson's character in certain respects, you can do that. I don't preclude you from doing that.

MR. KANAREK: The only thing this man can testify to is reputation in the custodial atmosphere. Otherwise, there is no foundation for it. He doesn't know him personally.

THE COURT: This man can testify -- you can find out whether or not he has an opinion as to the man's -- as to Mr. Manson's character or certain aspects of it that you want to inquire about. You can find out if he has any knowledge of his reputation.

MR. KANAREK: But it has to be in a certain community, and this man doesn't know Mr. Manson in -- except in the prison community.

THE COURT: I see.

MR. KANAREK: And so there's no foundation for your Honor's question.

THE COURT: Very well. The Court is going to accept that. I thought I was being helpful to you.

MR. KANAREK: No, because the foundation I want to lay within the prison community where the man has spent most of his life.

1 THE COURT: The Court is not precluding --

2 MR. KANAREK: I asked how many years. Your Honor won't
3 let me ask that question, and that is most --

4 THE COURT: First, you'd better ascertain whether he
5 has any opinion concerning his character.

6 MR. KANAREK: Before you do that, you have to lay the
7 foundation, your Honor.

8 THE COURT: Excuse me, if I may.

9 Find out whether or not he has any opinion
10 concerning it, and then you can ask the basis for it, if the
11 basis is other than records for that length, you may have some
12 justification for it.

13 The People believe that such testimony from the
14 records is admissible?

15 MR. MANZELLA: No, your Honor, not his opinion or
16 reputation evidence. Opinion and reputation evidence has to
17 be based on personal knowledge of the witness.

18 THE COURT: You may ask that -- you may ask those
19 foundational questions first, of course.

20 MR. KANAREK: I think that your Honor -- I think
21 that if your Honor studies Mr. Witkin, that your Honor will
22 agree with me that reputation can come -- reputation can be --
23 you can know someone's reputation in prison without being a
24 convict.

25 THE COURT: Mr. Kanarek, it is obvious that what you are
26 doing is simply offering whatever is in the records that you
27 think might be helpful to you, and you're leading this witness
28 by asking questions about his records.

1 Now, you know very well that's not permissible
2 and you understand very well what the basis of the objections
3 have been, why the Court has been sustaining the objections
4 concerning these records.

5 Now, if you wish to offer a background, ask him
6 about background. Ask him about a foundation, then, the Court
7 would permit it.

8 MR. KANAREK: You won't even allow me to ask how many
9 years he's been in prison because that's relevant to show --

10 THE COURT: That hasn't any materiality.

11 MR. KANAREK: It shows the man's reputation in the
12 community in which he's living and his community is a prison
13 community.

14 THE COURT: I don't think you've shown that.

15 MR. KANAREK: Your Honor won't allow me to.

16 THE COURT: You haven't even asked that.

17 MR. KANAREK: Your Honor, Mr. Witkin --

18 MR. MANZELLA: Your Honor.

19 THE COURT: Yes, Mr. Manzella.

20 MR. MANZELLA: It is our position that this witness or
21 any witness who has had personal contact with Mr. Manson in
22 the community which Mr. Kanarek is concerned with, and I
23 guess it is the prison community, that that witness could
24 testify to Mr. Manson's character in that community or his
25 reputation or give an opinion as to his character for peace
26 and quiet in that community. That testimony has already been
27 elicited by Mr. Kanarek from one of his witnesses. I believe
28 it was Ernest Shepard or it may have been Charles Rich.

1 Now, this witness does not live with Mr. Manson
2 in the prison community and has not known Mr. Manson for
3 36 -- or 24 years, and there is no foundation.

4 THE COURT: Yes, the Court doesn't know that and neither
5 do you, because Mr. Kanarek hasn't chosen to ask those ques-
6 tions.

7 MR. MANZELLA: That's correct, your Honor.

8 THE COURT: So I don't think there is sufficient
9 background to allow --

10 MR. KANAREK: May I ask your Honor, when your Honor
11 says "those questions," what questions your Honor is referring
12 to?

13 THE COURT: I'm not going --

14 MR. KANAREK: It is obvious --

15 THE COURT: I'm not going to pursue that. I'm sure you
16 understand. The Court is not going to allow you to select
17 from this man's records whatever you wish to ask him about
18 those records for the purpose and under the guise of presenting
19 character evidence.

20 Now, I'm not preventing you from setting up
21 proper foundation for character evidence.

22 Let's proceed.

23 (Whereupon, the following proceedings were had
24 in open court within the presence and hearing of the
25 jury:)

26 THE COURT: Mr. Kanarek, you may proceed.

27 MR. KANAREK: Yes, your Honor.

28 THE COURT: If you wish to.

6-1

1 Q BY MR. KANAREK: Mr. Barrett, I think that you
2 may already have told us: You do not know Mr. Manson
3 socially at all; is that right?

4 A No, sir.

5 MR. KANAREK: Thank you.

6 MR. MANZELLA: I have no questions, your Honor.

7 THE COURT: Any further questions?

8 MR. MANZELLA: No, your Honor.

9 MR. KANAREK: No, I have none in view of your Honor's
10 rulings.

11 THE COURT: Thank you, Mr. Barrett.

12 THE WITNESS: Yes, sir.

13 MR. KANAREK: Thank you, Mr. Barrett.

14 THE COURT: Call your next witness.

15 MR. KANAREK: Yes, your Honor. Then I'll recall Mr.
16 Whiteley, your Honor.

17
18 PAUL J. WHITELEY,
19 having been previously duly sworn, resumed the stand and
20 testified further as follows:

21 THE COURT: All right, Mr. Kanarek.

22 MR. KANAREK: Yeah.

23
24 FURTHER DIRECT EXAMINATION

25 BY MR. KANAREK:

26 Q Mr. Whiteley -- if I may have a moment, your
27 Honor?

28 (Pause in the proceedings.)

6-2

1 Q BY MR. KANAREK: In your investigation in connec-
2 tion with this case, Mr. Whiteley, did your investigation
3 reveal that Arch Hall told you that Shorty Shea said he was
4 going to return the two guns concerning which so much has
5 been made of in this courtroom?

6 MR. MANZELLA: Objection, your Honor. It calls for
7 hearsay.

8 MR. KANAREK: It has to do with the investigation,
9 your Honor.

10 THE COURT: The objection is sustained.

11 Q BY MR. KANAREK: Well, you conducted an investiga-
12 tion into -- into Mr. Shea and these guns; right?

13 A Yes.

14 Q And you wrote a report; right?

15 A Yes.

16 Q Is this your report?

17 May I approach the witness, your Honor?

18 THE COURT: You may.

19 Q BY MR. KANAREK: Does your report state that Mr.
20 Hall stated, in July, 1969, he received a phone call from
21 victim who stated he had just gotten married, and was going
22 to return the guns?

23 Is that your report, Mr. Whiteley?

24 MR. MANZELLA: Objection, your Honor. It calls for
25 hearsay.

26 MR. KANAREK: It has to do with --

27 THE COURT: The objection --

28 MR. KANAREK: -- the investigation, your Honor.

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1 THE COURT: -- is sustained.

2 The question is stricken, ladies and gentlemen.
3 You are to disregard it.

4 Q BY MR. KANAREK: Did you interview Arch Hall?

5 MR. MANZELLA: Objection, your Honor. Based on the
6 foregoing questions, the answer to that question is
7 irrelevant.

8 THE COURT: Overruled. You may answer.

9 THE WITNESS: Yes.

10 Q BY MR. KANAREK: And did you discuss Mr. Shorty
11 Shea with Arch Hall?

12 A Yes.

13 Q And did you discuss these guns with Arch Hall?

14 MR. MANZELLA: Objection, your Honor. It's irrelevant,
15 and it calls for hearsay.

16 MR. KANAREK: It has to do with the --

17 THE COURT: The objection is sustained.

18 MR. KANAREK: Then may we approach the bench, your
19 Honor?

20 THE COURT: No, you may not.

21 MR. KANAREK: May I make an offer of proof at the bench?

22 THE COURT: If you wish to approach the bench for an
23 offer of proof, you may.

24 (Whereupon the following proceedings were had
25 at the bench among Court and counsel, outside the
26 hearing of the jury:)

27 MR. KANAREK: Your Honor, this witness has previously
28 stated that it was in September of 1968 that he had certain

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1 matters involving these guns.

2 I have his own report that says it -- no, he
3 said it was something like June, the middle of '68, that his
4 information was concerning these guns.

5 And I have -- I have direct impeaching evidence
6 of his own that it was October of '68.

7 He has testified previously concerning the middle
8 of 1968.

9 THE COURT: All right. What is the impeaching evidence?

10 MR. KANAREK: Right here, his own report. October of '68.

11 THE COURT: I don't recall that it impeaches him.

12 MR. KANAREK: I'll get the transcript and show it to you,
13 your Honor.

6a fls⁴ 14 THE COURT: Very well. All right, bring it here.

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1 MR. KANAREK: Well, I don't have it immediately available.
2 I'll have to get it. He clearly said -- he said his
3 investigation showed that in June of '68 is the time that he
4 bought the guns.

5 This (indicating) clearly shows it was October of
6 '68.

7 THE COURT: Well, does this -- this that you are showing
8 me is a report --

9 MR. KANAREK: By Mr. Whiteley.

10 THE COURT: -- dated November 7, 1970?

11 MR. KANAREK: That's right.

12 THE COURT: It's signed by Whiteley, and it says,
13 "The undersigned contacted Arch Hall of Fairway Films Company.
14 Mr. Hall stated that in October, 1968, 'I gave victim two
15 Colt Dakota pistols to use in a movie being filmed in Arizona.'"

16 Do you mean that Sergeant Whiteley has
17 previously said that --

18 MR. KANAREK: It was June.

19 THE COURT: -- that Arch Hall said he gave them to him
20 in June?

21 MR. KANAREK: Yes.

22 THE COURT: All right. If you can produce that, I'll
23 let you --

24 MR. KANAREK: Well, I mean, counsel will remember it.

25 THE COURT: -- ask him about it.

26 Can you remember?

27 MR. MANZELLA: No, your Honor. I don't understand what
28 that has to do with the question that Mr. Kanarek asked,

1 something about the victim saying something to Mr. Hall.

2 MR. KANAREK: It has to do --

3 THE COURT: It doesn't have anything to do with the
4 questions that you've asked thus far.

5 MR. KANAREK: I'll try to phrase a proper question,
6 then -- what your Honor deems a proper question.

7 THE COURT: Yes, I am the one you have to please in that
8 respect.

9 MR. KANAREK: Pardon?

10 THE COURT: Yes. I said, I --

11 MR. KANAREK: I believe what I already have asked is
12 proper, but I will try to --

13 THE COURT: Well, the Court has not found the questions
14 that you've asked thus far to be proper, and they were not
15 designed, as I see from what you have told us here at the bench,
16 to establish a foundation for a prior inconsistent statement.

17 MR. KANAREK: Very well.

18 THE COURT: You may ask him directly about this, if you
19 can -- if you, Mr. Manzella, concede that he did say that
20 Mr. Hall previously had told him June.

21 MR. MANZELLA: Your Honor, that calls for hearsay.

22 THE COURT: Yes, it does call for hearsay.

23 MR. MANZELLA: I don't know how -- Mr. Hall didn't
24 testify. I don't understand how --

25 THE COURT: Mr. Hall did not testify, and I cannot
26 recall that Sergeant Whiteley stated that Hall --

27 MR. KANAREK: Well, I will show --

28 THE COURT: -- had so stated previously.

1 I'll let you find it in the transcript.

2 MR. KANAREK: Very well.

3 THE COURT: If you can, then you can attempt to
4 impeach him with a prior inconsistent statement.

5 MR. KANAREK: Very well.

6 THE COURT: Very well.

7 Where is your transcript?

8 MR. KANAREK: Well, I have to -- maybe I can use the
9 Court's copy. But I'll go to another -- I can attack it in
10 a different way, your Honor.

11 THE COURT: Very well.

12 (Whereupon, the following proceedings were had
13 in open court, within the presence and hearing of the jury:)

14 Q BY MR. KANAREK: Mr. Whiteley, you have told us
15 that you conducted an investigation to find Mr. Shea; is
16 that right?

17 A Yes.

18 Q And you've -- in your -- in this investigation,
19 you've talked to people, as well as sent out a report -- or,
20 a request to the Coroner's Office in Cayuga County, Ohio,
21 that kind of thing?

22 A Yes.

23 Q And in connection with the investigation, did you
24 speak to Arch Hall?

25 A Yes.

26 Q And would you tell us, what did Arch Hall tell you
27 concerning Shorty Shea?

28 MR. MANZELLA: Objection, your Honor. It appears to

1 call for hearsay.

2 MR. KANAREK: Your Honor, this is -- this is not -- this
3 is the exact --

4 THE COURT: Excuse me, Mr. Kanarek.

5 MR. KANAREK: Very well.

6 THE COURT: The objection is sustained.

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1 MR. KANAREK: Then may I approach the bench?

2 THE COURT: No, you may not.

3 MR. KANAREK: Then I allege a violation of equal
4 protection of the law, under the Fourteenth Amendment, your
5 Honor, in that we --

6 THE COURT: You are not to argue from the counsel table.
7 And the Court does not wish to hear further argument.

8 The Court just discussed this matter with you at
9 the bench.

10 MR. KANAREK: Not this precise matter, your Honor.
11 I am talking about the investigation now.

12 THE COURT: The last question you asked calls for
13 hearsay, --

14 MR. KANAREK: As --

15 THE COURT: -- and the objection is sustained.

16 MR. KANAREK: Well, I don't want to argue in the
17 presence of the jury, your Honor, but --

18 THE COURT: Then don't.

19 Ask your next question.

20 MR. KANAREK: Very well.

21 Q Officer, you've sent out flyers to various
22 coroners' offices throughout the country; right?

23 A Yes.

24 Q And you've sent out flyers to various Missing
25 Persons Bureaus throughout the country; right?

26 A Yes.

27 Q And you have testified here in court that these
28 things came back negative; that they didn't find Shorty Shea;

1 right?

2 A Yes.

3 MR. KANAREK: Then I would like to approach the bench,
4 your Honor.

5 THE COURT: No, you may not.

6 Q BY MR. KANAREK: Now, those were faceless pieces
7 of paper that you got back; is that right, Mr. Whiteley?
8 You didn't speak to people? You merely took the hearsay
9 statement on the piece of paper that -- no, Shorty Shea wasn't
10 in Waco, Texas, and he wasn't in Allentown, Pennsylvania, and
11 he wasn't in Valparaiso, Indiana, or -- or Rio de Janiero or
12 something like that; is that right?

13 MR. MANZELLA: Objection. The question is argumentative,
14 and it's rude and insulting to the witness.

15 MR. KANAREK: It's to prove a point, your Honor. It's
16 not intended to be argumentative at all.

17 THE COURT: The Court will overrule the objection.

18 THE WITNESS: I can't remember the full question.

19 Q BY MR. KANAREK: As I understand your investigation,
20 Officer, you have received back pieces of paper from various
21 and sundry places where you tell us you have sent messages
22 and requests concerning Shorty Shea; is that right?

23 A Yes. That's a small part of the investigation.

24 Q And the other part of the investigation --
25 or, another part -- is talking to people; right?

26 A Yes.

27 Q And one of the people that you talked to was
28 Arch Hall; is that right?

1 A Yes.

2 Q What is Arch Hall's address?

3 A He's -- he's either in Newport Beach or he is
4 down in Florida -- I -- right now, I don't know where he is --
5 or he is in South America.

6 He travels quite extensively.

7 Q Newport Beach or South America?

8 A Or Florida.

9 Q Or Florida. And part of your investigation
10 included Mr. Hall and the statements that he gave you con-
11 cerning these guns that we've seen in this courtroom so much; is
12 that right?

13 A Yes, sir.

14 Q And do you recall testifying previously concerning
15 the time when Mr. Hall stated that he had -- I'll withdraw
16 that.

17 Do you recall testifying previously as to the
18 time that Mr. Hall told you that he transferred his guns to
19 Shorty Shea?

20 MR. MANZELLA: Objection, your Honor. What is in the
21 record speaks for itself.

22 THE COURT: Sustained.

23 MR. KANAREK: Well, if your Honor wishes to take a recess
24 at this time, I'll get the transcript, your Honor. It -- I --
25 I recall it clearly, without the transcript, but --

26 THE COURT: I'll overrule the objection.

27 Do you recall anything about what you have
28 previously said about when the guns were acquired from Mr. Hall?

1 A Yes.

2 Q And did you say it was about the middle of 1968?

3 A Yes, I think I did.

4 Q And in fact, does your own report state that it
5 was October of 1968 when Mr. Hall gave Shorty Shea two Colt
6 Dakota pistols -- do you have to look at it again, Officer?

7 A Yes. I don't know what you are reading.

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1 THE COURT: The record may show that the Sergeant was
2 looking at a report dated -- what date?

3 THE WITNESS: 11-7-70.

4 THE COURT: Can you answer Mr. Kanarek's last question?

5 THE WITNESS: I've forgotten what the question was.

6 THE COURT: Mr. Williams?

7 (Whereupon, the record was read by the reporter
8 as follows:

9 "Q And in fact, does your own
10 report state that it was October of 1968 when
11 Mr. Hall gave Shorty Shea two Colt Dakota pistols?")

12 THE WITNESS: Yes.

13 Q BY MR. KANAREK: And does this report state that
14 Mr. Hall received a phone call from Shorty Shea, who said he
15 was going to return the guns?

16 MR. MANZELLA: Objection. It calls for hearsay.

17 MR. KANAREK: It has to do with the --

18 THE COURT: The objection is sustained.

19 MR. KANAREK: May I approach the bench, then, your
20 Honor?

21 THE COURT: Yes, you may.

22 (Whereupon, the following proceedings were had
23 at the bench among Court and counsel, outside the hearing of the
24 jury:)

25 THE COURT: How do you believe this is admissible?

26 MR. KANAREK: Pardon, your Honor? Your Honor has
27 allowed hearsay --

28 THE COURT: How do you believe this is admissible?

1 MR. KANAREK: Because it impeaches the prosecution --
2 the prosecution, your Honor has allowed multitudinous --

3 THE COURT: How do you believe this is admissible?

4 MR. KANAREK: It's admissible to show the investigation
5 that -- around these guns. They are using these guns to show
6 that Mr. Shea would not have -- they say that Mr. Shea would
7 not ever have left those guns.

8 This shows his state of mind. This is the -- this
9 is the very investigation that they're talking about.

10 THE COURT: Have you tried to subpoena Mr. Hall?

11 MR. KANAREK: I can't. I can't find him. I can't find
12 him anywhere, your Honor.

13 THE COURT: Have you made any effort to find him?

14 MR. KANAREK: Yes, I have.

15 THE COURT: What have you done?

16 MR. KANAREK: Well, I have gone down -- there's a
17 Fairway Films that's mentioned, and I've tried to find that
18 company; and to my knowledge, that company is no longer in
19 existence.

20 THE COURT: All right. The objection is sustained.

21 MR. KANAREK: Well, your Honor, this has to do with the
22 very investigation that we are talking about.

23 It -- it has nothing -- your Honor allowed in
24 hearsay, to prove that Shorty Shea isn't here; he isn't there;
25 he's in various places.

26 THE COURT: Well, if you had Mr. Hall here to testify
27 to what Mr. Shea said, it would show Mr. Shea's state of
28 mind.

1 MR. KANAREK: But your Honor has allowed statements
2 concerning these guns to be -- to -- your Honor has allowed
3 hearsay upon hearsay concerning these guns.

4 THE COURT: The Court has allowed --

5 MR. KANAREK: To show --

6 THE COURT: -- testimony about Mr. Shea's attitude
7 towards the guns, his statements concerning the guns, yes.

8 MR. KANAREK: Well, then, we have a right -- if they
9 can send out flyers --

10 THE COURT: Do the People wish to be heard?

11 MR. MANZELLA: Yes, your Honor. We object on the
12 grounds it calls for hearsay, in that the statements by Shea,
13 if any, about guns were not made to this witness, Sergeant
14 Whiteley, but were made to Arch Hall.

15 We would have no objection to testimony with
16 regard to the guns, if it were by the person to whom Shea
17 was speaking when he made the statements. Then it would be
18 admissible.

19 This, however, constitutes hearsay upon hearsay,
20 in that the statements were not made to Sergeant Whiteley but
21 to Arch Hall.

22 MR. KANAREK: Well, if I may, your Honor, they have
23 conducted the investigation. They -- your Honor has allowed
24 in, over objection, the hearsay returns as to those --

25 THE COURT: The Court doesn't wish to hear anything
26 further, unless you have a further offer of proof.

27 Do you have anything further?

28 MR. KANAREK: Well, your Honor, it's a denial of equal

1 protection. We are allowed to use hearsay the same way that
2 the prosecution was allowed to use hearsay, to prove their
3 investigation.

4 Your Honor allowed Mr. Manzella to put on
5 evidence that these flyers were sent out to -- and all these
6 places were contacted, and that nothing came back from them;
7 that all of them were negative.

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5d 1 THE COURT: Yes.

2 MR. KANAREK: And we have, by the same token, we have a
3 right to put on an exact conversation that he had with a
4 particular witness.

5 This is -- this has more credibility and reliability
6 than a mere piece of paper, which may or may not be returned
7 from Upstate New York.

8 THE COURT: The objection is sustained.

9 (Whereupon, the following proceedings were had in
10 open court, within the presence and hearing of the jury:)

11 Q BY MR. KANAREK: Mr. Whiteley, when you spoke to
12 Mr. Hall, that was in connection, you've told us, with the
13 investigation concerning Shorty Shea; right?

14 A Yes.

15 Q Would you tell us what was said by you and what
16 was said by Mr. Hall?

17 MR. MANZELLA: Objection. It calls for hearsay.

18 MR. KANAREK: Your Honor, then I -- oh, then may I --

19 THE COURT: The objection is sustained.

20 MR. KANAREK: Then -- may I approach the bench, your
21 Honor?

22 THE COURT: You just argued that same point at the
23 bench.

24 No. The objection is sustained.

25 Q BY MR. KANAREK: What was the address at which you
26 spoke with Mr. Hall, Mr. Whiteley?

27 A At which time?

28 Q How many times did you talk to him?

1 A In total?

2 Q Yes.

3 A Probably a dozen times.

4 Q Would you tell us the address that he was at on
5 each of those occasions?

6 MR. MANZELLA: Your Honor, I am going to object. This
7 doesn't appear to be relevant to any issue in the case.

8 THE COURT: The objection is sustained -- well, I'll
9 overrule the objection.

10 You may answer that.

11 THE WITNESS: Well, the first time I was in the Homicide
12 Bureau --

13 Q BY MR. KANAREK: Would you give us the dates?

14 A I couldn't possibly give you the dates.

15 Q The approximate -- well, give us the approximate
16 dates and places -- the precise places -- the places as
17 precise as possible, and the approximate dates, Officer.

18 MR. MANZELLA: Your Honor, I object on the grounds
19 that the question appears to be different now, and that
20 question doesn't appear to be relevant to any issue in the
21 case.

22 THE COURT: Sustained.

23 Q BY MR. KANAREK: All right. Tell us the places
24 that you talked to him.

25 MR. KANAREK: The same objection on the same ground,
26 your Honor.

27 THE COURT: Overruled. You may answer.

28 THE WITNESS: The first time, at the Homicide Bureau.

1 I spoke to him on the telephone. The second time I spoke to
2 him in Burbank.

3 Q BY MR. KANAREK: At what address?

4 A I have no idea.

5 Q Is that with -- in connection with Fairway Films
6 or --

7 A Yes.

8 Q -- a company with that -- a name similar to that?

9 A Yes.

10 Q Yes, go ahead.

11 A The next time I spoke to him was again on the
12 telephone.

13 The next time I spoke to him at the County Grand
14 Jury.

15 The next time I spoke to him was at another trial,
16 over in the new County Courthouse.

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1 Q How long ago?

2 A In August.

3 Q Of this year?

4 A Yes.

5 The next time I spoke to him was again on the
6 telephone.

7 And the next time after that was on the telephone.

8 And the others -- I just can't remember the
9 others.

10 Q And what is, to the best of your knowledge, is
11 his Los Angeles address? Or Los Angeles area address?

12 A He doesn't live in Los Angeles any more, to my
13 knowledge, sir.

14 Q To your knowledge he lives in Newport Beach?

15 A No, sir.

16 Q Where does he live?

17 A He commutes between South America, Florida,
18 Newport Beach and he vacations in England.

19 Q I see.

20 On that note, I would like to approach the bench,
21 your Honor.

22 THE COURT: No, you may not.

23 MR. KANAREK: I don't have any further questions of
24 Mr. Whiteley at this time, your Honor.

25 THE COURT: You may step down.

26 Call your next witness.

27 Call your next witness.

28 MR. KANAREK: I -- your Honor knows the problem of a

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1 witness who has refused or has not made the appearance.

2 THE COURT: All right.

3 Ladies and gentlemen, I'll excuse you now until
4 tomorrow morning at 9:30.

5 MR. MANZELLA: Your Honor, may we approach the bench,
6 please?

7 THE COURT: All right, you may both approach it.

8 Just one minute, we'll get you on the freeway
9 early tonight.

10 (Whereupon, the following proceedings were had
11 at the bench among Court and counsel, outside the
12 hearing of the jury:)

13 MR. MANZELLA: Linda Kasabian will be out on -- she's
14 flying out Wednesday. I think she'll be here at 5:00 p.m.
15 on Wednesday at the Los Angeles International Airport.

16 THE COURT: Can't you get her any sooner than that?

17 MR. MANZELLA: They tell me they can't. They can't
18 get her any earlier. That's the earliest they can get her
19 here. They made contact with her today and they said that's
20 the earliest they can get her here.

21 THE COURT: Well, I would like you to talk to them and
22 tell them the Court is highly displeased. I believe that
23 somebody gave her information which led her to leave the
24 State.

25 MR. MANZELLA: So do I.

26 THE COURT: And I think she may very well be in contempt
27 of court.

28 MR. MANZELLA: I think she received some misleading

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1 advice with regard to the validity of the service.

2 THE COURT: And someone else may very well be, too. I
3 don't want this trial delayed. I don't know whether it is
4 delaying it, Mr. Kanarek, but I don't want it delayed by
5 reason of her absence. I want her on that plane tomorrow so
6 we can have her testimony in Wednesday and possibly tomorrow
7 afternoon. She's only five hours away and she can be here,
8 conceivably tomorrow, and we can get this thing moving.

9 MR. MANZELLA: Did you want to excuse the jury until
10 Wednesday morning?

11 THE COURT: No, I'll bring them here tomorrow.

12 Do you have other witnesses?

13 MR. KANAREK: Yes, I would like your Honor to order
14 Beverly Russell. That -- that --

15 THE COURT: For what reason? You've had her under
16 cross-examination.

17 MR. KANAREK: I know, your Honor, but I have -- I have --

18 THE COURT: You've thought of something else to ask?

19 MR. KANAREK: It is not a matter of I thought of
20 something else.

21 THE COURT: Why should the Court order her here?

22 MR. KANAREK: Because I have -- have some information
23 concerning -- concerning --

24 THE COURT: Is she out of the state?

25 MR. KANAREK: No, she's at the Juvenile Hall.

26 THE COURT: She's the one that's being held at Juvenile,
27 and you wish to have her again?

28 MR. KANAREK: Yes, your Honor.

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THE COURT: For what reason?

MR. KANAREK: I wish to ask her -- cover some subject matter --

THE COURT: That you didn't cover?

MR. KANAREK: No, that I was not aware of.

You know, you have no idea -- you have no idea --

THE COURT: You intend to put her on direct as your witness concerning some aspect of this case?

MR. KANAREK: Yes. Yes.

THE COURT: All right, the Court will order Beverly Russell brought here tomorrow morning at 9:00 o'clock.

Well, what other witnesses do you --

MR. KANAREK: I want this Arch Hall. I've been looking for him.

THE COURT: This is the first time I have heard you request --

MR. KANAREK: Because I didn't want to alert the prosecution. I believe they'll do the same thing that they are doing --

THE COURT: Alert the prosecution to what?

MR. KANAREK: To the fact -- these witnesses have a way, when they find out it has anything to do with Mr. Manson or any of the defendants allegedly connected with Mr. Manson, these -- there's sort of a paranoid reaction. These witnesses--

THE COURT: Well, this tactic of yours of not wanting to alert the prosecution and, therefore, not asking about Mr. Hall, may have resulted in such a delay that he has moved out of the state.

7a fls.

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1 MR. KANAREK: Well, it wouldn't do any good, your Honor,
2 if I talked to him and he were told not to go. He is of the --
3 to go to Europe, what could I do?

4 THE COURT: If he had been subpoenaed by the Court,
5 there might have been some difference.

6 MR. KANAREK: Well, he's in a slightly different position,
7 your Honor, than --

8 THE COURT: What are you asking in respect to Arch
9 Hall?

10 MR. KANAREK: What I am saying is it is my view because
11 of what the prosecution has opened up, it is not necessary.
12 We have a right to go into that investigation. They used
13 hearsay upon hearsay, your Honor, which I believe is wrong.
14 That evidence can be legally admitted based on the investiga-
15 tion.

16 If they can put in evidence concerning pieces
17 of paper where somebody writes back negative, they don't
18 even bring out witnesses.

19 THE COURT: No piece of paper was quoted. The only
20 response was that in regard to the questions that were put
21 concerning Mr. Shea's whereabouts, where there were any
22 records, they got negative results.

23 MR. KANAREK: Negative results which is offered for the
24 truth of the matter asserted.

25 THE COURT: As I recall, it was a question of whether or
26 not he was able to find Mr. Shea as a result of such
27 inquiries. I think that's about all.

28 MR. KANAREK: That's hearsay because of the negative of

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1 what's being proved.

2 THE COURT: But I believe it is a type of hearsay that
3 would be admissible. But what you are --

4 MR. KANAREK: This is the same question.

5 THE COURT: You are asking about a conversation, and
6 the Court is not going to admit Mr. Hall's conversation.

7 MR. KANAREK: It is the same investigation, your Honor.

8 THE COURT: Mr. Hall is testifying to it.

9 MR. KANAREK: But it is the same.

10 THE COURT: I'm not interesting in discussing this point
11 with you any further, Mr. Kanarek.

12 Do you have witnesses available tomorrow and
13 ready tomorrow?

14 MR. KANAREK: Well, I'll have -- I'll have Beverly
15 Russell, and as I say, we have not delayed this trial. The
16 prosecution went on for many months and our problems are --
17 are -- evolving around -- by people we think are being
18 spirited --

19 MR. MANZELLA: The prosecution took six weeks in the
20 trial of its case, your Honor. That's all. Six weeks,
21 including one week where we only had two court days.

22 THE COURT: That's true, and we've been approximately
23 two weeks now since --

24 MR. KANAREK: It is not my fault that --

25 THE COURT: The Court agrees with you, it is not your
26 fault in connection with Kasabian. She should have been here.
27 You served her properly, apparently, and the Court wishes
28 to have her here tomorrow, if we can get her here. So do what

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1 you can about that.

2 We'll excuse the jury now until 9:45 tomorrow
3 morning.

4 (Whereupon, the following proceedings were had
5 in open court within the presence and hearing of the
6 jury:)

7 THE COURT: The Court admonishes you, ladies and gentle-
8 men, that during this recess you are not to converse amongst
9 yourselves, nor with anyone else, nor permit anyone to
10 converse with you on any subject connected with this matter,
11 nor are you to form or express any opinion on it until it is
12 finally submitted to you.

13 Remember the admonition concerning publicity
14 that I have heretofore given to you likewise.

15 I'll excuse you now until 9:45 tomorrow morning.

16 See you tomorrow morning at 9:45.

17 (Whereupon, at 3:40 o'clock p.m. the jury
18 retired from the courtroom and the following proceed-
19 ings were had:)

20 THE COURT: If you wish, Mr. Kanarek -- the record will
21 show that the jurors have left.

22 If you wish, Mr. Kanarek, tomorrow to have your
23 law partner testify that he heard the tape differently, and
24 the tape has been altered from the way you heard it this
25 noon, you may have him here to testify. I believe that it
26 would be a matter in which the jury would have a right to
27 determine.

28 The Court may, however, since the inference is

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1 that the tape has been altered in some way or the other,
2 permit the playing of the entire tape of --

3 MR. MANZELLA: Ella Jo Bailey.

4 THE COURT: -- Ella Jo Bailey.

5 MR. KANAREK: It is our view in which I have a motion
6 which I prepared to suppress all of the evidence of Ella Jo
7 Bailey.

8 THE COURT: On what grounds?

9 MR. KANAREK: On the grounds of willful suppression of
10 the evidence under Brady vs. Maryland and People vs. Kiihoa.

11 THE COURT: How do you see that there has been a
12 willful suppression?

13 MR. KANAREK: It is our view that based upon the
14 testimony -- and I have the papers here --

15 THE COURT: Yes.

16 MR. KANAREK: It is our view under Brady vs. Maryland
17 that this is a willful and deliberate tampering with evidence.

18 THE COURT: What is a willful and deliberate --

19 MR. KANAREK: That the termination of that tape --
20 the end of that tape was sliced off. That the voice of
21 Ella Jo Bailey was obliterated near the end of that tape.

22 Now, your Honor, as the trier of fact, would
23 decide that independent of the jury. The jury -- that's a
24 legal question, wherein your Honor --

25 THE COURT: Where is Mr. Berlin?

26 MR. KANAREK: Pardon?

27 THE COURT: Where is Mr. Berlin?

28 MR. KANAREK: Well, I can't say at this instant.

1 THE COURT: He's your law partner. You called your
2 office.

3 MR. KANAREK: Well, I'll call --

4 THE COURT: What have you ascertained as to his
5 whereabouts?

6 MR. KANAREK: I have not ascertained his whereabouts.
7 He was in Norwalk.

8 THE COURT: Get on the telephone and call and let me
9 know in five minutes his whereabouts, if you wish to conduct
10 an evidentiary hearing of the tape and whether or not it
11 should be suppressed. I want him here and I want him here
12 this afternoon.

13 MR. KANAREK: Well, I will try to get ahold of him,
14 your Honor.

15 (Short recess.)

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1 THE COURT: I am told by Mr. Kanarek that he's unable to
2 obtain his --

3 MR. KANAREK: No.

4 THE COURT: -- partner, a Mr. Berlin, because he's --

5 MR. KANAREK: No.

6 THE COURT: -- in the far end of the Valley, and cannot
7 be here for -- what? A half hour?

8 MR. KANAREK: No, for probably over an hour.

9 My representation to the Court -- and your Honor is
10 free to call him; his phone number is 988-1528 --

11 THE COURT: Why should the Court call him?

12 MR. KANAREK: Well, I --

13 THE COURT: You are the one who wishes to present his
14 testimony --

15 MR. KANAREK: Yes. I was just going to suggest to the
16 Court --

17 THE COURT: -- in connection with the altering of the
18 tape, and -- in connection with the alleged altering of the
19 tape.

20 And therefore, I'll order him to be -- rather than
21 prolong this -- I don't know how diligent you were in
22 attempting to secure him. I suspect that you weren't at all
23 diligent, and that you made very little attempt to follow the
24 Court's order.

25 MR. KANAREK: Well, your Honor is welcome to call him;
26 your Honor is free to call him. I think he went straight home,
27 not --

28 THE COURT: Did you -- have you called him at his home?

1 MR. KANAREK: Yes. That's his home phone number. I
2 called my office, and my secretary told me that he was not in
3 the office, and then I called at home, and he was at home.

4 THE COURT: Well, this is --

5 MR. KANAREK: And I called up.

6 THE COURT: Well, this is not an appropriate time to
7 call, when the Court asked you to contact him before this.

8 MR. KANAREK: I called up earlier. He -- he went -- why
9 don't you call? I would welcome your Honor to ask my secretary
10 about it.

11 THE COURT: The Court is not going to belabor the point,
12 but will simply continue the matter until tomorrow morning.

13 I want him here at 9:00 o'clock. I will hear
14 evidence on the issue as to whether or not the tape had been
15 altered at 9:00 o'clock.

16 MR. KANAREK: Well, your Honor, the problem there is this,
17 your Honor. If I may, the -- I am sure your Honor is going to
18 want to listen to the tape. In fact, we have to introduce it
19 into evidence, in connection with this motion; and this is why --

20 THE COURT: I'll hear his testimony first, at 9:00
21 o'clock.

22 MR. KANAREK: Oh. Very well, your Honor.

23 Would your Honor order that the Sheriff have
24 that tape here?

25 THE COURT: I assume the tape will be here, both tapes,
26 the original and the amplified copy.

27 MR. KANAREK: Thank you, your Honor.

28 And may the record reflect, your Honor, I welcome --

1 as I say, I welcome your Honor to -- to check with the girl in
2 my office. I called up --

3 (Pause in the proceedings while a discussion off
4 the record ensued at the bench between the Court and the
5 bailiff.)

6 THE COURT: Mr. Berlin is on the phone now. Would you
7 tell him that I want him here at 9:00 o'clock tomorrow
8 morning?

9 MR. KANAREK: Yes, your Honor.

10 (Whereupon, at 3:58 p.m., an adjournment was
11 taken in this case until 9:00 o'clock a.m., Tuesday, October 5,
12 1971.)
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