

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

55

DEPARTMENT NO. 106

HON. RAYMOND CHOATE, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

CHARLES MANSON,

Defendant.

155

No. A-267861

REPORTERS' DAILY TRANSCRIPT

Tuesday, October 5, 1971
Wednesday, October 6, 1971
VOLUME 55

TAPE OF ELLA BAILEY

APPEARANCES:

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

For Defendant Manson: IRVING A. KANAREK, Esq.

DEFENSE: RUSSELL

COPY

MARY LOU BRIANDI, C.S.R.
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Official Court Reporter

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

BERLIN, Sheldon	8169	8170		
WHITELEY, Paul	8189		8230	
RUSSELL, Beverly	8255	8276		
	8257			
	8268			
	8296			

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

L - Declaration		8170
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PEOPLE'S SPECIAL EXHIBIT:

14 - Partial transcript of tape	8198
------------------------------------	------

SPECIAL COURT'S EXHIBITS:

O - Tape	8190
P - (Unidentified)	8192

1 LOS ANGELES, CALIFORNIA, TUESDAY, OCTOBER 5, 1971 9:38 A.M.

2 - - - -

3
4 THE COURT: All right, Mr. Kanarek is present, the
5 record should show, and Mr. Manzella is present for the
6 People. Mr. Manson is in the retaining tank to the rear
7 of the court.

8 Mr. Kanarek, would you approach your client and
9 determine whether or not he will promise the Court that he
10 will not interrupt the proceedings, and if he will not
11 interrupt the proceedings, the Court will permit him to be
12 present.

13 (Whereupon a discussion off the record ensued
14 at the detention room door between Mr. Kanarek
15 and the defendant.)

16 MR. KANAREK: (Inaudible statement to the Court at
17 the bench.)

18 THE COURT: He stated to you, Mr. Kanarek, that he
19 cannot or will not represent to the Court that he will not
20 interrupt the proceedings?

21 MR. KANAREK: Yes.

22 THE COURT: Since that's the case, the Court will ask
23 the bailiff to retain him in the tank, in the retaining tank,
24 rather than in the courtroom.

25 THE DEFENDANT: (Through the screen in the detention
26 room door) Do you have a problem --

27 (Unintelligible.)

28 THE COURT: All right. Mr. Kanarek, do you wish to

1 make a motion to strike the testimony of Ella Jo Bailey? And
2 if so, on what grounds?

3 MR. KANAREK: On the grounds, your Honor, that there
4 has been a willful suppression of evidence, by virtue of --
5 well, let's put it this way. There has been a suppression of
6 evidence. The willfulness, or whether it occurred without
7 deliberate intent, I don't know.

8 But Brady vs. Maryland makes it clear that if
9 state action --

10 THE COURT: All right. Instead of talking about Brady
11 vs. Maryland, would you tell me what your allegation is in
12 respect to the suppression of evidence?

13 MR. KANAREK: Yes. The allegation that, at the end of
14 this tape, there was a female voice, Ella Jo Bailey's, which
15 has been cut off --

16 MR. MANZELLA: Your Honor, excuse me. The People would
17 move for the exclusion of witnesses.

18 THE COURT: Are the witnesses here?

19 MR. KANAREK: Mr. Berlin is here.

20 Well, then, Mr. Whiteley should be excluded
21 also.

22 MR. MANZELLA: We have no objection.

23 THE COURT: All right. The record will show that Mr.
24 Berlin -- are you Mr. Berlin?

25 MR. BERLIN: Yes, your Honor.

26 THE COURT: -- and Mr. Whiteley are leaving.

27 Go ahead, Mr. Kanarek.

28 MR. KANAREK: Yes, your Honor.

1 THE COURT: Your allegation specifically is what?

2 MR. KANAREK: My allegation is, -- well, I have a --
3 well, I have a -- I have a formal motion here, your Honor.

4 (Whereupon a document was handed to the Court
5 through the bailiff.)

6 THE COURT: All right. I've read your Notice of Motion
7 to Dismiss Counts I and II.

8 It's alleged here that at the conclusion of the
9 tape, Ella Jo Bailey very clearly and distinctly said, "What
10 I want clarified are the money and concessions." And then
11 that was the end of the tape, and nothing further was
12 intelligible on the tape.

13 Is that correct?

14 MR. KANAREK: Well, that's what --

15 THE COURT: This is the first time that you have
16 alleged that this was what occurred. I've --

17 MR. KANAREK: No.

18 THE COURT: It has not been clear before that these
19 were the words that were uttered, in your opinion.

20 MR. KANAREK: But that --

21 THE COURT: All right. I'll hear evidence on it.

22 MR. KANAREK: Your Honor must remember, up to this
23 point, I -- Mr. Whiteley has been in the courtroom here,
24 and I have -- I mean, there's --

25 THE COURT: Very well. Now, what do you wish -- what
26 do you propose in connection with this?

27 MR. KANAREK: Well, what I propose to do is that your
28 Honor strike the testimony of Ella Jo Bailey.

1 THE COURT: Are you submitting it?

2 MR. KANAREK: No, not submitting it.

3 THE COURT: What do you propose to do?

4 MR. KANAREK: I propose, your Honor, that -- that your
5 Honor --

6 THE COURT: Do you wish me to hear evidence on it?

7 MR. KANAREK: Yes.

8 THE COURT: Would you put Mr. Berlin on, or whomever
9 you wish?

10 MR. KANAREK: Call Mr. Berlin.

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

12 You do solemnly swear that the testimony you
13 may give in the cause now pending before this court to be
14 the truth, the whole truth, and nothing but the truth, so
15 help you God?

16 THE WITNESS: I do.

17
18 SHELDON BERLIN,
19 called as a witness by and on behalf of the defendant, having
20 been first duly sworn, was examined and testified as
21 follows:

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

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

24 THE WITNESS: Sheldon Berlin; S-h-e-l-d-o-n, B-e-r-l-i-n.
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i fls.

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

2 THE COURT: Yes, you may.

3
4 DIRECT EXAMINATION

5 BY MR. KANAREK:

6 Q Mr. Berlin, I show you a declaration which purports
7 to be a declaration of Sheldon Berlin.

8 Did you make that declaration?

9 A Yes, sir, I did.

10 Q That is your declaration?

11 A Yes. I think there is an error, one word.

12 Q What is that?

13 A On Page 4, Line 13, the word "the same time," it
14 should be "the same thing."

15 THE COURT: Where you say, "We replayed the last few
16 minutes of the tape to make sure that we heard correctly," --

17 THE WITNESS: Yes, your Honor.

18 THE COURT: -- "we both heard the same thing"?

19 "We both heard the same thing."

20 THE WITNESS: "We both heard the same thing." Yes.

21 THE COURT: So you are saying you and Mr. Kanarek heard
22 the same thing?

23 THE WITNESS: Yes, your Honor.

24 MR. KANAREK: Well, your Honor, I submit on the
25 declaration --

26 Q BY MR. KANAREK: This is your declaration?

27 A Yes, it is.

28 MR. KANAREK: And may this be deemed in evidence, and

1 then Mr. Manzella can cross-examine?

2 THE COURT: It will be in evidence for the purpose of
3 this motion.

4 MR. KANAREK: That he has so testified?

5 THE COURT: No, I'm not going to take that stipulation.
6 Let's hear from him, unless the People so stipulate.

7 Do the People so stipulate that he is deemed to
8 have testified in accordance with this declaration here,
9 Mr. Manzella?

10 MR. MANZELLA: So stipulated, your Honor.

11 THE COURT: All right.

12 Do you wish to ask him about it?

13 MR. MANZELLA: Yes, your Honor.

14 May I have a moment?

15 MR. KANAREK: May the record reveal that although
16 Mr. Whiteley is not in the courtroom, another deputy sheriff
17 is now conferring or has been conferring with Mr. Manzella.

18 THE COURT: Somebody walked up and sat alongside of
19 Mr. Manzella for approximately ten seconds, as I observed.

20 MR. KANAREK: And spoke to him.

21
22 CROSS-EXAMINATION

23 BY MR. MANZELLA:

24 Q Mr. Berlin, --

25 MR. KANAREK: It is a deputy sheriff, I so represent to
26 the Court. I don't know his name right offhand.

27 BY MR. MANZELLA:

28 Q Mr. Berlin, in your declaration you say that

1 near the end of the taped conversation you heard a woman's voice
2 say, "What I want clarified are the money and concessions,"
3 or similar words to that effect and there was nothing further
4 intelligible on the tape.

5 What do you mean by the end of the taped
6 conversation?

7 A Well, the -- after I heard those words or that
8 statement, I couldn't make out anything further. The tape was
9 full of static all the way through. And after that, there was
10 more of the static and, uh, we played it on further, because I
11 was interested in finding out what that might have been, and
12 there was nothing further that could be made out. I mean, I
13 didn't hear any voices. All I heard was static. I don't know
14 whether that was the machine or whether there had been voices
15 and the static overcame it or what.

16 Q How much of the tape in terms of time was left
17 after that portion that you quote in your declaration?

18 MR. KANAREK: Well, I'll object to that as assuming --

19 THE WITNESS: I don't --

20 MR. KANAREK: Just a minute.

21 -- it is assuming facts not in evidence. It calls
22 for a conclusion, an opinion, actually, not relevant and
23 material. How can this man know?

24 THE COURT: Overruled.

25 MR. KANAREK: How much time --

26 THE COURT: Overruled.

27 THE WITNESS: I don't know.

28 THE COURT: He makes some conclusions in this declaration.

1 He says near the end of the tape. Mr. Manzella has the right
2 to cross-examine him about it.

3 THE WITNESS: I don't know how long the tape had to run
4 yet because we let it run for a few minutes and there was
5 nothing further, and the tape on the machine hadn't come to
6 an end. But there didn't appear to be anything -- anything
7 more. I don't know how long -- it wasn't to the end of the
8 actual physical tape.

9 THE COURT: Then, you didn't hear anything intelligible
10 after that statement?

11 THE WITNESS: No, I did not.

12 THE COURT: And you believed it was near the end of the
13 tape, this statement about money and concessions was made?

14 THE WITNESS: Yes, it was at the end of the conversation,
15 uh --

16 THE COURT: That was the last thing you understood?

17 THE WITNESS: That was the last thing I understood, yes.
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1 Q BY MR. MANZELLA: Now, did you listen to the entire
2 tape?

3 A Uh, yeah, from the beginning until the -- until
4 that point, and then I did not hear the tape until its physical
5 end.

6 Q All right.

7 A In other words, there was more tape to be played,
8 but there didn't appear to be anything on it.

9 Q But you didn't listen to the tape to the physical
10 end, right?

11 A To the physical end, right.

12 Q You say that near the end of the taped conver-
13 sation you heard a woman's voice very clearly and distinctly,
14 "What I want clarified are the money and concessions," and then
15 you add a phrase "or similar words to that effect."

16 Would you tell us what you heard, Mr. Berlin?

17 A Well, I heard what I -- I heard words like that.

18 Now, I can't swear at this time that those are the
19 exact words that she added.

20 THE COURT: You heard words like what?

21 THE WITNESS: Like "what I want clarified" or "what I
22 want made clear" or something like that, "are the money and
23 the concessions." The two words, "money and concessions" are
24 the ones that I -- stand out, because they struck me at the
25 time very forcibly and provoked my interest to a great extent.

26 Q Why did you add the phrase or words "similar to
27 that effect" in your declaration?

28 A Because I'm not -- I'm not quite sure or -- of the

1 exact terminology used when she said, "I want it clarified."

2 Q Now, did Mr. Kanarek hear those words on the tape
3 at the time you first heard them?

4 A Uh, I -- I don't --

5 THE COURT: Well, that calls for a conclusion.

6 THE WITNESS: I don't know whether he did or not.

7 MR. KANAREK: I'll object, as it calls --

8 THE COURT: He did say, "We both heard the same thing."
9 It is conclusionary.

10 MR. KANAREK: It is conclusionary.

11 THE COURT: Which is in his declaration, but there's no
12 reason to permit it here.

13 Q BY MR. MANZELLA: Now, did you make any notes
14 with regard to the conversation other than your declaration?

15 A No, I did not.

16 Q When was the first time that you wrote down any-
17 thing of the nature what you have in your declaration?

18 Was it when you wrote the declaration?

19 A When I wrote the declaration, yes.

20 Q Were you making any notes at the time you were
21 listening to the tape?

22 A No, I was not.

23 I might add that I did mention the matter to the
24 District Attorney and I believe it was to you, and the other
25 deputies present at the time, emphasizing the words "money
26 and concessions."

27 Q But are you sure that you said that a woman said
28 those words?

1 A Yes.

2 Q Now, what struck you about it, Mr. Berlin, the
3 fact the words were said or the fact a woman said the words?

4 A Well, the fact that the prosecution would use a
5 witness who was interested -- uh, whose testimony was forth-
6 coming, because she was going to get money and concessions.
7 It seemed to me that this was very much out of order.
8 It was sort of a frameup. In fact, I believe I mentioned to
9 you at the time that I could win any case in the world if I
10 were permitted to offer money and concessions to any witness
11 that I wanted to.

12 Q Now, you recall the words "money and concessions"
13 being used in one sentence, is that correct?

14 A That's correct.

15 Q Did you hear anyone else on the tape use the words
16 "money and concessions"?

17 A No, I did not.

18 Q And you listened to the entire tape, is that
19 correct?

20 A Well, I listened -- yes, until that -- that part,
21 yes.

22 Q You listened to all the intelligible parts of the
23 tape, is that right?

24 A Yes, as far as I know.

25 Q And you only heard what you say is Ella Jo Bailey
26 say "money and concessions"?

27 A Yes, the woman on the tape that had been speaking
28 all the way through.

1 Q All right. Mr. Berlin, directing your attention to
2 this document. Would you read this to yourself?

3 MR. KANAREK: Why is he showing him the document, your
4 Honor? I'll object to that.

5 THE COURT: The objection is overruled.

6 MR. KANAREK: Unless there's some legal basis for it.

7 THE COURT: I haven't any idea why he is doing it.

8 You're holding --

9 MR. KANAREK: Before --

10 THE COURT: -- what appears to be a sheet of paper.

11 What is that, Mr. Manzella?

12 MR. KANAREK: Before he interrogates in connection with
13 that paper, I'll object on the grounds of improper foundation.

14 MR. MANZELLA: I haven't asked any questions yet.

15 MR. KANAREK: And I'll object to the use of that, because
16 that was obtained from an amplified tape. And it is unfair.
17 This was not obtained --

18 THE COURT: Mr. Kanarek, you know the rules. Sit down.
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1 MR. KANAREK: May I make my point, your Honor?

2 THE COURT: Sit down. There's no -- no, you may not.
3 There's no question pending.

4 What is this, Mr. Manzella, that you propose to --

5 MR. MANZELLA: He's holding a partial transcript of
6 the tape in question, your Honor.

7 MR. KANAREK: The amplified tape, your Honor. And
8 that -- that's the point. I want to make that point. This
9 is not the original tape.

10 And I object to the use of this. I -- of course,
11 there is no question.

12 THE COURT: That's been pointed out.

13 MR. KANAREK: Yes.

14 THE COURT: Go ahead. Ask your question.

15 Q BY MR. MANZELLA: Mr. Berlin, do you know which
16 tape you were listening to at the Homicide Bureau?

17 MR. KANAREK: I'll object to that as calling for facts--

18 THE WITNESS: I know what I was told.

19 MR. KANAREK: Just a minute. I'll object on the
20 grounds it's assuming facts not in evidence, and it is
21 ambiguous, your Honor. It calls for a conclusion, and it's
22 irrelevant and immaterial.

23 THE COURT: You may rephrase your question. Objection
24 sustained.

25 Q BY MR. MANZELLA: Mr. Berlin, do you know whether
26 you were listening to the original tape or an amplified
27 tape?

28 MR. KANAREK: I'll object to that, your Honor, if I may.

2-2

1 It calls for a conclusion on the part of this witness. There's
2 no foundation for it. It's irrelevant and immaterial.

3 THE COURT: Overruled. You may answer.

4 THE WITNESS: I know that I was told by one of the
5 officers that this has been a recording -- that this tape had
6 been recorded in a briefcase, and that there would be a lot of
7 static on it, and -- and that was the reason for the lot of
8 static; and probably, I wouldn't be able to hear anything at
9 all.

10 Q BY MR. MANZELLA: So your answer is: You don't
11 know what tape -- whether you were listening to the original?

12 A Well, I know what I was told; that's all. I mean,
13 I -- I have no --

14 Q Thank you.

15 A -- no knowledge of anything else, except what I
16 was told by the officer who put the tape on the machine.

17 Q Thank you. Mr. Berlin, have you read the
18 document which I've shown you?

19 A I --

20 MR. KANAREK: Irrelevant -- just a minute. I'll object
21 to that on the grounds there's no foundation for it. It's
22 irrelevant, and it's immaterial.

23 THE COURT: Overruled.

24 MR. KANAREK: And there's no foundation.

25 THE COURT: Strike that ruling.

26 Mr. Manzella, would you explain to me -- do you
27 intend --

28 MR. MANZELLA: I'll read it, your Honor.

2-3

1 THE COURT: Do you intend to make this clear, as to what
2 it is that you have in your hand?

3 Q BY MR. MANZELLA: Mr. Berlin, I would like to ask
4 you this: Do you recall these questions and these answers
5 being made and being given on the tape which you listened
6 to?

7 MR. KANAREK: Well, your Honor, before he wastes the
8 time on doing that, I'll object on the grounds there's no
9 foundation. It's hearsay.

10 THE COURT: I assume that the tape is still in existence,
11 and we can determine at a later time whether it is -- if
12 necessary, whether --

13 MR. KANAREK: Well, your Honor --

14 THE COURT: -- the tape did -- the tape is accurate,
15 has been accurately transcribed on the paper.

16 MR. KANAREK: We have been talking about amplification,
17 and that's my point. This is --

18 THE COURT: Strike the Court's last comment.

19 I assume we will, at a later time, be able to
20 determine whether or not the paper Mr. Manzella holds in his
21 hand accurately reflects what is on part of the tape.

22 MR. KANAREK: Is your Honor speaking about the original
23 tape?

24 THE COURT: Either tape.

25 MR. KANAREK: Well, he only heard the original tape,
26 I can represent to the Court.

27 THE COURT: We will find out what tape it was he heard.

28 MR. KANAREK: Then I do object to that, on the grounds

2-4

1 that just reading --

2 THE COURT: I assume it's going to be tied in at a
3 later time. If it's not, the Court will strike any reference
4 to it.

5 Q BY MR. MANZELLA: Now, Mr. --

6 MR. KANAREK: But your Honor --

7 THE COURT: Your objection is overruled. You may sit
8 down.

9 MR. KANAREK: Well, your Honor, our objection is that
10 it is immaterial, irrelevant, and there's no foundation.

2a fls.

2-5

1 THE COURT: Your objection is overruled.

2 Go ahead. Ask him the question.

3 Q BY MR. MANZELLA: Mr. Berlin, do you remember,
4 when you listened to the tape, a male voice saying -- asking
5 the following question?

6 "Now, do you also know, Ella Jo -- and
7 just quick -- that we are going to ask you, as part
8 of what Mr. Katz and Mr. Deutcher are saying, that
9 we are going to expect you to testify for us as
10 policemen in Mr. Hinman's case against Bruce Davis,
11 against Sadie Atkins, and against Charlie Manson?
12 You understand that, and you are willing to do that --

13 "A" (By a female voice) "Yes.

14 "Q" (By the same male voice) (Continued) "--for
15 the concessions that Mr. Deutcher and Mr. Katz
16 make; is that right?

17 "A" (By the female voice) "Yes."

18 Do you recall those two questions and those two
19 answers being made on the tape?

20 MR. KANAREK: I will object on the grounds of no
21 foundation; it's ambiguous, as to which tape it came from.
22 It's irrelevant and immaterial. It solicits a conclusion.

23 THE COURT: Overruled.

24 MR. KANAREK: There's no foundation, no showing -- it
25 assumes facts not in evidence, your Honor.

26 THE COURT: Overruled.

27 THE WITNESS: No, I do not recall hearing anything like
28 that.

2-6

1 Q BY MR. MANZELLA: And you don't recall a male
2 voice using the word "concessions" on the tape; is that right?

3 MR. KANAREK: Object. Argumentative.

4 THE WITNESS: No.

5 THE COURT: Overruled.

6 THE WITNESS: No, I do not recall hearing that at all.

7 Q BY MR. MANZELLA: All right.

8 A I am sure if I had heard those words before, or
9 a male voice using them, I would have remembered it.

10 Q So all you remember is that the word "concessions"
11 was used, and that the word "money" was used, and you remember
12 that being said by a female voice?

13 A That's not true.

14 MR. KANAREK: Object on the grounds --

15 THE WITNESS: I remember the words --

16 MR. KANAREK: Just a minute, Mr. Berlin.

17 I'll object on the grounds that that's argumen-
18 tative, that question. There's no foundation for it. It's --
19 it solicits a conclusion, and it's irrelevant and immaterial.

20 THE COURT: Overruled.

21 THE WITNESS: No. Your question is incomplete. All I
22 heard were the words "concessions" and "money" used by the
23 female voice, and preceded by some sort of statement like,
24 "What I want clarified now are the concessions and the money,"
25 something of that nature. But the --

26 Q BY MR. MANZELLA: Well, Mr. Berlin --

27 A -- but the two words, "concessions" and "money,"
28 I heard.

2-7

1 Q Excuse me. I didn't mean to interrupt.

2 THE COURT: You mean you heard the words "concessions"
3 and "money" used twice by the female?

4 THE WITNESS: No, I heard it once.

5 THE COURT: Well, your statement was that the use of
6 the words "concessions" and "money" was preceded by the
7 words you just used.

8 Now, I want to clarify whether the words "con-
9 cessions" and "money" --

10 THE WITNESS: Oh, no.

11 THE COURT: -- were preceded by --

12 THE WITNESS: No, no. I didn't mean to suggest that.
13 It was one sentence.

14 THE COURT: What did you mean to suggest, then?

15 THE WITNESS: I meant one sentence. The -- she said,
16 "Now, what I want clarified are the money and the concessions."

17 THE COURT: I see. Go ahead.
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2b fls.

2b-1

1 Q BY MR. MANZELLA: Now, you remember the word
2 "concessions" being used during this tape once?

3 A Yes, sir.

4 MR. KANAREK: I'll -- I'll object to that.

5 Q BY MR. MANZELLA: And you --

6 MR. KANAREK: Just a minute. I'll object to that.

7 THE COURT: Your objection is overruled. Sit down.

8 MR. KANAREK: It's argumentative, your Honor.

9 Q BY MR. MANZELLA: All right. Now, Mr. Berlin,
10 do you remember this statement by a male voice on the tape?

11 "From now on, all your dealings will be with
12 Sergeant Hubert, H-u-b-e-r-t, here on it. I'll keep in
13 contact with him, and I'll be the one that will meet you at the
14 airport. I'll send the money to Mr. -- Sergeant Hubert, to put
15 you on the airplane, and I'll meet you at the other end."

16 MR. KANAREK: I will object on the grounds of no
17 foundation; hearsay; irrelevant and immaterial; it's ambiguous
18 as to which tape Mr. Manzella is speaking of, in view of the
19 fact that this record reveals there's an amplified tape and
20 an original tape.

21 Q BY MR. MANZELLA: Do you remember that?

22 THE COURT: The objection is overruled.

23 Q BY MR. MANZELLA: Do you remember that statement
24 being made?

25 A No, sir. I recall definitely no such explanation
26 for -- for the money -- or no explanation for it at all.

27 In the context I heard it, I mean, it sounded to
28 me like something else.

1 Q BY MR. MANZELLA: All right. Mr. Berlin, do you
2 recall a male voice using the word "money"?

3 A No.

4 MR. KANAREK: Object on the grounds of --

5 MR. MANZELLA: I don't have any more questions.

6 THE COURT: The objection is overruled.

7 The answer may remain in the record.

8 Anything further, Mr. Kanarek?

9 MR. KANAREK: No, I have nothing further of this
10 witness at this time, although I would ask that he be -- that
11 he remain.

12 THE COURT: You may step down.

13 MR. KANAREK: May the record reveal that Mr. Guenther is
14 not now in the room, but Charles Guenther --

15 THE COURT: Mr. Kanarek --

16 MR. KANAREK: -- was in the room during --

17 THE COURT: Mr. Kanarek?

18 MR. KANAREK: -- a portion of Mr. -- a major portion of
19 Mr. Berlin's testimony?

20 THE COURT: The Court doesn't need you to assist him in
21 observations as to what is going on in the courtroom.

22 Sit down -- unless you have something to say.
23 Anything further?

24 MR. KANAREK: Yes, your Honor. I do ask that the tapes,
25 the original tape, now be played to the Court; and the court
26 reporter take down --

27 THE COURT: How long is the tape?

28 MR. MANZELLA: The tape lasts for about an hour, your

1 Honor.

2 The People would oppose --

3 THE COURT: The Court is not going to listen to an hour's
4 tape, Mr. Kanarek.

5 MR. KANAREK: Well, I can only make the motion. May I
6 have the original tape, Mr. Manzella?

7 MR. MANZELLA: No.

8 THE COURT: The issue of credibility is one for the jury,
9 and not for the Court. The --

10 MR. KANAREK: Well, we wish to play the tape, your
11 Honor. We'll play the end of --

12 THE COURT: The issue of credibility of Ella Jo Bailey
13 is ultimately for the jury, and not for the Court.

14 MR. KANAREK: Your Honor --

15 THE COURT: This really is an attack on her credibility,
16 by alleging that something was said on the tape which indicates
17 that she received money and concessions.

18 Well, she admitted -- the Court has gone through
19 her testimony. There is an admission on her part that she has
20 received some concessions in connection with the prosecution
21 in another state. So --

22 MR. KANAREK: I haven't finished, your Honor.

23 THE COURT: You have not finished?

24 MR. KANAREK: No. I wish to have --

25 THE COURT: I'm sorry to interrupt. You may proceed.

26 MR. KANAREK: Yes. May I have the original tape that
27 you brought here, Mr. Manzella, here, please?

28 MR. MANZELLA: No.

1 MR. KANAREK: Well, then, would your Honor order --
2 that's the very -- they were ordered to bring the original
3 tapes here.

4 THE COURT: The Court knows that that is the case.

5 Are they here?

6 MR. MANZELLA: Both tapes are here.

7 MR. KANAREK: May I have the original tape for a moment?

8 THE COURT: He is not -- the Court does not order him
9 to deliver them to you.

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2c-1

1 MR. KANAREK: Well, then, I allege a violation of due
2 process, equal protection and fair trial for Mr. Manson, under
3 the Fourteenth Amendment, in that the Court cannot -- this --
4 your Honor misconceives this motion.

5 This is a motion that has nothing to do with --
6 with credibility, per se, of Ella Jo Bailey. This has to do
7 with whether the Court will frankly --

8 THE COURT: Get to the point, Mr. Kanarek.

9 MR. KANAREK: I'm trying to, and your Honor has deviated --

10 THE COURT: What do you wish next to present on this
11 motion?

12 MR. KANAREK: I want to present the tape, and so your
13 Honor will then determine -- for all we know, maybe --

14 THE COURT: Do you want Mr. Manzella to put that tape in
15 your hands?

16 MR. KANAREK: I -- yeah, I want him to put the tapes in
17 my hand, and I want to play a certain portion.

18 THE COURT: All right. Your motion is denied.

19 MR. KANAREK: Then I ask that the tape be --

20 THE COURT: Do you have anything further to present by
21 way of testimony?

22 MR. KANAREK: Yes. I call Mr. Whiteley, then.

23 THE COURT: Are you prepared, after this motion, to
24 proceed with other witnesses today?

25 MR. KANAREK: Yes, your Honor.

26 (Pause in the proceedings while a discussion off
27 the record ensued at the counsel table between Mr. Manzella and
28 Sergeant Whiteley.)

1 MR. KANAREK: Mr. Whiteley, do you have the original
2 -- oh, I'm sorry.

3 THE COURT: Sergeant Whiteley, will you take the witness
4 stand?

5
6 PAUL WHITELEY,
7 recalled as a witness by and on behalf of the defendant, having
8 been previously duly sworn, resumed the stand and testified
9 further as follows:

10
11 DIRECT EXAMINATION

12 BY MR. KANAREK:

13 Q Mr. Whiteley, you see two tapes here (indicating)?

14 A Yes.

15 Q Which one is the original?

16 A I can't tell you from here.

17 Q Would you come down and pick out the original,
18 please?

19 A (Whereupon, the requested item was handed to
20 Mr. Kanarek.)

21 MR. KANAREK: Thank you.

22 Q This tape -- may I approach the witness, your
23 Honor?

24 THE COURT: Yes, you may.

25 Q BY MR. KANAREK: This tape that says "Ella Jo
26 Bailey, side No. 2" on one side, "Side No. 1" on the other,
27 "C-20," and has a -- a sticker, a stickum type of sticker,
28 "71-1029," is that the original tape --

1 A Yes, it is.

2 Q -- of Ella Jo Bailey's conversation with you and
3 Officer Guenther and Mr. Katz, also, I believe, on the tape?

4 A Yes.

5 MR. KANAREK: I ask that this be marked for identification,
6 your Honor, in connection with this motion.

7 There's no way that this Court can judge this
8 without listening to this tape.

9 I ask that it be marked for identification at this
10 time.

11 THE COURT: All right. It will be marked as special --
12 we do have a special exhibit schedule or record there, don't
13 we?

14 THE CLERK: Yes, we have.

15 It would be O.

16 THE COURT: Pardon me?

17 THE CLERK: O.

18 THE COURT: It will be O for identification.

19 MR. KANAREK: Thank you, your Honor.

20 Now, Officer, in connection with these matters,
21 you have made what you call an amplified tape?

22 A That's correct.

23 Q Would you get that for us, Officer?

24 A It's right in front of you.

25 Q This tape -- may I approach the witness, your
26 Honor?

27 THE COURT: Yes, you may.

28 Q BY MR. KANAREK: This tape has on it a "71-30,"

1 with a stickum kind of sticker that can come off, and it says,
2 "Ella Jo Bailey," and it says -- would you -- would you give
3 us this nomenclature? It has written on it "SYOE" or "2" or
4 "S" -- what are those letters there? These letters that
5 I'm looking at on the side that -- where it says "C-120," and
6 it also has the stickum? The sticker?

7 A That's places where you've requested portions of
8 the tape to be played.

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1 Q In other words, this is the amplified tape that
2 you have played for me; is that correct?

3 A Yes.

4 Q And you played that for me, the amplified tape,
5 not telling me that it was an amplified tape; was that correct?
6 You did not inform me that that was an amplified tape?

7 THE COURT: That's immaterial. You needn't answer
8 that.

9 MR. KANAREK: Well, I think it goes to show motive and
10 intent, your Honor. There's --

11 THE COURT: Let's get on with it, Mr. Kanarek.

12 You have a motion before the Court to strike her
13 testimony, based on --

14 MR. KANAREK: That --

15 THE COURT: -- an alteration of the tape.

16 MR. KANAREK: That's correct. And part of it has to do
17 with --

18 THE COURT: Let's proceed.

19 MR. KANAREK: -- the motivation of law enforcement.

20 THE COURT: Let's proceed.

21 MR. KANAREK: Well, your Honor, I ask that this be
22 marked next in line for identification, in connection with
23 this motion.

24 THE COURT: All right. It will be marked for
25 identification.

26 That will be Special P.

27 Let's move it along, Mr. Kanarek.

28 MR. KANAREK: Yes. I am, your Honor.

Special P Id.

2d-2

1 THE COURT: Well, there has been considerable delay
2 here.

3 MR. KANAREK: Well, your Honor, is your Honor --

4 THE COURT: You may proceed.

5 Q BY MR. KANAREK: Now, Mr. Whiteley, you have
6 caused a transcription to be made of the -- of a portion of
7 the amplified tape; is that correct?

8 A That's correct.

9 Q Have you made any transcription of the original
10 or unamplified tape?

11 A No.

12 Q And, Officer, did you see Mr. Berlin in the
13 Sheriff's Homicide headquarters on the -- is it the 10th floor
14 of the Old Hall of Records at 220 North Broadway? -- one
15 day during the summer recently past? At a time when this
16 original Ella Jo Bailey tape was played?

17 A Yes.

18 MR. KANAREK: Then, your Honor, I at this time ask the
19 Court to play and listen -- the Court play --

20 THE COURT: Do you wish to have the entire tape
21 listened to?

22 MR. KANAREK: Pardon?

23 THE COURT: Do you wish to have the entire tape listened
24 to, played in this --

25 MR. KANAREK: Well, your Honor, your Honor has made
26 the point about the entire tape. I would ask, in the --
27 after all, they're trying to put Mr. Manson in the gas chamber.

28 THE COURT: The Court has made no -- excuse me?

2d-3

1 MR. KANAREK: I say: They are trying to put Mr. Manson
2 in the gas chamber. The least we can do is devote our time,
3 when we -- we're making --

4 THE COURT: Devote our time to what?

5 MR. KANAREK: Well, your Honor has made the point about
6 playing the entire tape. Your Honor has stated something to
7 the effect that the -- about the entire tape being played at
8 some future time, and I ask that your Honor listen to the
9 tape, because how can your Honor tell whether or not our
10 motion is good? Maybe we are wrong. Maybe those words
11 that Mr. Berlin says that he heard may be there still on the
12 tape.

13 That's why we are having a judicial hearing, to
14 determine it. We can't determine it from law enforcement.
15 You can't determine it from what somebody tells me.

16 THE COURT: Excuse me just a minute.

17 Sergeant Whiteley, would you take the original
18 tape, which Mr. -- strike that.

19 The amplified tape was made when?

20 THE WITNESS: Approximately a week ago.

21 THE COURT: So that when Mr. Berlin heard the tape, how
22 many copies were in existence?

23 THE WITNESS: The one, the original tape only.

24 THE COURT: That was the original. There was no copy
25 at that time; is that correct?

26 THE WITNESS: That's correct.

27 THE COURT: Now, have you altered the original in any
28 way?

2d-4

1 THE WITNESS: No.

2 MR. KANAREK: Object. Calling for a conclusion, your
3 Honor.

4 THE COURT: Have you erased any part of the original?

5 THE WITNESS: No.

6 THE COURT: The Court will hear the last 15 minutes
7 of the tape. The Court is not going to hear the entire tape,
8 because judging from what your law partner, Mr. Berlin, has
9 said, Mr. Kanarek, it appears as though it's the latter part
10 of the tape that is in issue.

11 MR. MANZELLA: May I confer with Sergeant Whiteley,
12 your Honor?

13 THE COURT: Yes.

14 (Pause in the proceedings while a discussion
15 off the record ensued at the witness stand between
16 Mr. Manzella and Sergeant Whiteley.)

17 THE COURT: Can you do that for me?

18 THE WITNESS: Yes, sir.

19 THE COURT: Was Mr. Kanarek present at the time that
20 this tape was played, the original?

21 THE WITNESS: Yes, sir.

22 THE COURT: And did Mr. Kanarek appear to be listening
23 to the tape?

24 THE WITNESS: Yes, sir, portions of it.
25
26
27
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3 Fls.

3-1

1 THE COURT: Mr. Kanarek, the Court did note on the --
2 from the record, in reading Ella Jo Bailey's testimony, that
3 you observed that the tape was entirely unintelligible to
4 you when we were discussing this at the bench during the
5 course of Ella Jo Bailey's testimony.

6 MR. KANAREK: Uh --

7 THE COURT: Is it intelligible enough that it can be
8 played here with any --

9 MR. KANAREK: I'm -- I'm --

10 THE COURT: That it can be understood in any way?

11 MR. KANAREK: I'm merely introducing evidence at this
12 time.

13 THE COURT: All right, I'll hear --

14 MR. KANAREK: And I ask the record to reflect where
15 the court reporter is sitting, how many feet away she's
16 sitting from the tape as it plays.

17 THE COURT: Do you wish to pace it off?

18 MR. KANAREK: No, I'm saying -- or else, in order that
19 we get the maximum reproduction of what Mr. Berlin heard, I
20 would suggest that the Court -- that the tape be played in
21 immediate proximity to the court reporter and the record
22 reveal how close to the tape she was.

23 THE COURT: Well, the Court is not going to ask that
24 the reporter take this down. Since the tape will be marked
25 for -- it's marked, the tape can stand just as the record.

26 MR. KANAREK: Then, I allege a violation of due process,
27 a fair hearing and equal protection under the 14th Amendment
28 for your Honor to allow proceedings to take place in court

3-2

1 and not have them recorded by the court reporter. That's --

2 THE COURT: The Court believes that the tape itself
3 would be sufficient.

4 MR. KANAREK: But there is no way, your Honor -- there
5 is no way that this written record can reveal what is
6 enunciated on that tape, and we are then limited to these
7 subjective conclusions of the Court.

8 And I ask that the court reporter -- that the
9 court reporter take down every word that is uttered on the
10 tape that your Honor is ordering played.

11 THE COURT: May it be stipulated that she can play this
12 back at a later time and take it down?

13 MR. KANAREK: No.

14 MR. MANZELLA: So stipulated, your Honor.

15 MR. KANAREK: I want this --

16 THE COURT: You wish to have her take it down at this
17 moment?

18 MR. KANAREK: She is a certified --

19 MR. MANZELLA: Due process and equal protection does
20 not require that the court reporter take the tape down as
21 it is being played in open court.

22 MR. KANAREK: I allege that --

23 THE COURT: I don't believe it does.

24 MR. KANAREK: -- that Mr. Manson has been denied a fair
25 hearing before your Honor, a fair trial, for your Honor not
26 to allow the court reporter --

27 THE COURT: All right, the Court has ruled in respect
28 to that. I don't wish to hear anything further.

3-3

1 MR. MANZELLA: May I ask Sergeant Whiteley a few
2 questions with regard to a document I have at the hearing. I
3 have here what appears to be a partial transcript of the tape
4 recorded interview.

5 May I approach Sergeant Whiteley?

6 THE COURT: Yes.

7 Q BY MR. MANZELLA: Sergeant Whiteley, directing your
8 attention to -- strike that.

9 Your Honor, could I have this marked People's
10 Special Exhibit 1.

P Spec 1 Id.

11 THE COURT: All right, so ordered.

12 Now, you may have a list of Special Exhibits.
13 I think you do. They were listed as Special for pretrial
14 and when -- one thing and another, has preceded the trial.

15 MR. MANZELLA: Your Honor, it would be Special Exhibit
16 14 for identification.

P Spec 14 Id.

17 THE COURT: So ordered.

18 BY MR. MANZELLA:

19 Q Sergeant Whiteley, directing your attention to
20 People's Special 14 for identification.

21 Does that appear to be a transcript of the -- a
22 partial transcript of the tape recorded interview at which
23 you were present?

24 A Yes.

25 MR. KANAREK: We object on the grounds no foundation,
26 it is irrelevant and immaterial. What we are talking about
27 is the original tape, and his conclusions are not in issue.
28 The point the Court has to determine is whether the original

3-4

1 tape of Ella Jo Bailey has what Mr. Berlin testified it has.
2 That's the point.

3 THE COURT: Yes, but if the original is the same as the
4 amplified tape, and if this accurately reflects the -- that
5 this -- when I say "this," I mean the paper that's before
6 Sergeant Whiteley, if that paper accurately reflects what is
7 on the original, it may very well be that Mr. Berlin took
8 those words from what was said by persons other than Ella Jo
9 Bailey --

10 MR. KANAREK: There's no foundation --

11 THE COURT: -- on the original tape, and the People are
12 urging that the Court consider that.

13 MR. KANAREK: Your Honor, there's no foundation for the
14 use of this paper.

3a fls. 14

1 THE COURT: I understand there is no foundation at the
2 present time.

3 MR. KANAREK: They have to bring --

4 THE COURT: Mr. Manzella is attempting to lay a founda-
5 tion. Your objection is overruled.

6 MR. KANAREK: The point is, they have to bring in the
7 person --

8 Q BY MR. MANZELLA: All right, Sergeant Whiteley,
9 have you compared People's Special Exhibit 14 with the
10 two tapes of the interviews with Ella Jo Bailey which have
11 been marked here for identification?

12 MR. KANAREK: Object, improper foundation, calling for
13 a conclusion, irrelevant and immaterial, hearsay, and also
14 on the basis that this is calling for an expert --

15 THE COURT: Overruled.

16 MR. KANAREK: -- type of testimony where there's no
17 foundation for it.

18 THE COURT: You may answer.

19 THE WITNESS: Yes.

20 Q BY MR. MANZELLA: Does People's Special 14 for
21 identification accurately reflect what is contained and what
22 is recorded on both tape recordings?

23 MR. KANAREK: Calling for a conclusion, irrelevant,
24 immaterial, improper foundation and hearsay.

25 THE COURT: Overruled.

26 MR. KANAREK: And also an expert opinion with no
27 foundation.

28 A Yes.

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

2 People offer People's Special Exhibit 14 into
3 evidence.

4 MR. KANAREK: No foundation, your Honor. They have to
5 have the person that did the amplification, the expert --
6 this was done by some sort of amplification process.

7 MR. MANZELLA: Sergeant Whiteley listened to those tapes.
8 It is his testimony that People's Special Exhibit 14 accurately
9 reflects what is --

10 MR. KANAREK: It is conclusionary.

11 THE COURT: Did you listen to those tapes?

12 THE WITNESS: Yes, I did.

13 (Whereupon, Sergeant Whiteley commenced the
14 playing of the tape.)

15 THE COURT: All right, at the present time you are
16 playing -- you are playing what?

17 (Whereupon, Sergeant Whiteley turned the tape
18 off.)

19 THE WITNESS: This is the original tape.

20 THE COURT: Original tape.

21 And are you playing the last 15 minutes of the
22 conversation?

23 THE WITNESS: Yes, approximately.

24 THE COURT: Do you have any sort of a numbering device
25 on that machine?

26 THE WITNESS: The only thing I can do, is mark off
27 where the spools are. There is no numbering system on this
28 type of machine.

1 THE COURT: I see.

2 In your judgment it is about the last 15 minutes?

3 THE WITNESS: Approximately.

4 THE COURT: Miss Briandi, the Court would like to have a
5 record of this. If it is possible for you to take it --
6 if it is not possible for you to take it, then, at the
7 speed at which it is going, and considering the nature of the
8 tape, then, the Court would permit it to -- we'll just delay
9 proceedings until you can get each statement. I've changed
10 my mind in connection with it.

11 MR. MANZELLA: Your Honor, are you saying delaying the
12 proceedings now until she can get it?

13 THE COURT: Hold it up until it is played back and get
14 the statement right.

15 MR. MANZELLA: Your Honor, I don't believe due process
16 requires that.

17 THE COURT: Probably not, but the Court believes that the
18 record should be made clear.

19 (Whereupon, Sergeant Whiteley commenced the
20 playing of the tape.)

21 THE REPORTER: Your Honor, the tape is unintelligible
22 to me.

23 MR. KANAREK: May the record reveal that Mr. Whiteley
24 has the microphone on top of the tape recorder, your Honor?

25 (Whereupon, Sergeant Whiteley commenced playing
26 the tape again.)

27 THE COURT: All right, you may stop it.

28 The Court was unable to understand the words what

1 sounded to me to be a female voice.

2 Did you recognize that voice?

3 THE WITNESS: Yes, I do. Yes, I did.

4 THE COURT: Whose voice was that, if you know?

5 THE WITNESS: That's Ella Jo Bailey and myself.

6 THE COURT: The second voice was your voice?

7 THE WITNESS: I believe the second voice was Ella
8 Bailey's voice and the first one is mine. She's very hard to
9 hear on this original tape.

10 THE COURT: Is this tape in any way altered -- its
11 sound in any way altered?

12 THE WITNESS: No.

13 THE COURT: All right.

14 Was the reporter able to hear her voice at all?
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1 THE REPORTER: I think I could hear more of it if I
2 were closer to it.

3 THE COURT: Could you come closer, then, or perhaps
4 Sergeant Whiteley could bring the tape to you, and then use
5 the portable hand mike to amplify it so the Court can hear it,
6 so the Court can hear the tape from where I am.

7 (Whereupon, the playing of the tape was commenced
8 by Sergeant Whiteley and the following is a transcription of
9 what the reporter was able to hear, without interruption,
10 on the first playing.)

11 "Q And this is Hinman's Volkswagen bus?

12 "And this tells you * * * * * with Mary of
13 what happened at the Hinman house?

14 "A Uh-huh.

15 "Q What did she say then? How did that
16 happen?

17 "A Oh, well, first, you know, him and I
18 talked about getting rid of the * * * * * and I
19 went inside briefly. They stayed out. They both
20 came inside the back house and Mary and I talked
21 about what had happened and about how they had taken
22 care of Gary * * * * * and Charlie * * * * * they
23 pleaded with Gary and how they had gotten the gun
24 away and found a few shots. * * * * * about Bob
25 had written political piggy and they had gone back
26 * * * * * and political piggy on the wall and they
27 had wiped up the fingerprints * * * * * Gary had
28 * * * * *

1 "Q Did Sadie tell you who killed
2 Mr. Hinman after Gary had quieted down and was
3 resting?

4 "Did she ever tell you, by the way,
5 Sadie or Mary, about the words that they used,
6 their father used when they killed him?

7 "A I think they said something about
8 Communists, but I don't know.

9 "Q Without putting words in your mouth,
10 does anything like this sound familiar to you:
11 'I'm your brother and you deserve to die'?

12 "A Yeah. That -- you know, but that
13 was, you know, like philosophy of --

14 "Q Did you ever hear anybody use those
15 words or words similar?

16 "A No.

17 Yeah, I'm sure I did, but I don't
18 know who said it because Bob told us about * * * * *
19 go to Bobby's later.

20 "Q Okay, let's go on, now, to Mary
21 Brunner.

22 "A Well, wait a minute, are you telling --
23 "Go ahead.

24 "I want to * * * * * right now.

25 "You say that Sadie told you that
26 somehow Hinman's out of job and fired the gun
27 twice. Now, do you recall * * * * *

28 "Okay, Sadie told you she was holding

1 "the gun.

2 "Now, do you remember whether or not
3 she told you the gun discharged and the struggle
4 hold for the gun and whether the gun was purposely
5 fired at something, as it being pointed?

6 "A I think that she said, you know, that
7 Gary had managed to fire a few shots and Gary had
8 fired and he had gone wild and * * * * * into the
9 wall.

10 "Q Did she tell you what part of the
11 house or where the bullet entered?

12 "A No, I heard where the bullets were.

13 "Q All right, do you know whether or not
14 Mary Brunner told you that the same thing with
15 regard to the number of shots being fired or * * * * *
16 you remember as best you recall about the conversation?

17 "A No, I believe that it * * * * *

18 "Q Go on now to Mary.

19 "Did Mary make any statements before
20 she went to the Hinman house?

21 "A No, she told me she was going."

22 3c

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3c-1

1 "Q Did Mary come back in a vehicle?

2 "A She was driving the Volkswagen bus.

3 "Q And when Mary comes back, she tells the
4 same story that Sadie tells?

5 "A Yes.

6 "Q Was there any contradictions between the
7 two stories?

8 "A No.

9 "Q Good. When Mary left, how was Mary
10 dressed?

11 "A I don't remember the * * * * *

12 "Q Would it be what you call creepy-crawlers,
13 the dark clothing and all of that?

14 "A Yeah.

15 "Q By the way, do you know what kind of a * * * * *

16 "A She was * * * * * I believe * * * * *

17 "Q When she said * * * * *

18 "A I don't know the technical name. If I saw
19 the gun, I'd know it was the one they took over there.

20 "You would recognize the gun?

21 "A Sure.

22 "Q I'm sorry.

23 "I'm sorry.

24 "Q This is what you * * * * * yesterday you
25 called a sword or a dagger. You kept using the words
26 interchangeably.

27 "Yes, I kept * * * * *

28 "Q Would you recognize that sword if you

3c-2

1 "ever saw it again?

2 "A Uh, yeah, I believe I would. Charlie
3 played with it quite a bit,

4 "Q Could you describe the sword to us?

5 "A Huh-uh * * * * *

6 "Q What about two feet there * * * * * total
7 length or 18 inches * * * * *

8 "What kind of a handle?

9 "A (Unintelligible.)

10 "Q Was there anything specific or, in other
11 words, where you grabbed it?

12 "A Well, you know, it had a grip on it, but
13 I don't know if it has where you put your fingers.

14 "Q Was there anything about where you grabbed
15 it?

16 "A It probably was like this.

17 (Phone rang on tape.)

18 "Sort of in the lobby * * * * * old movies
19 * * * * * the sword * * * * * was this one a long sword
20 or a shorter * * * * *

21 "Was it in regards to this handle? Was
22 there some sort of a * * * * * a movable or a guard
23 * * * * *

24 "A I don't know.

25 "Q All right.

26 "Well, when Mary -- when Mary came back,
27 you and Mary wiped the fingerprints down off the
28 Volkswagen bus, and then that's when you went and hid

3c-3

1 "it in the bushes?

2 "A Yes.

3 "***** and Bobby Beausoleil *****
4 did you see him leave the ranch to go to Hinman's
5 house?

6 "A I didn't move the car.

7 "Q Did you see him just prior to it *****

8 "A No -- yeah, I saw him before he went. I
9 know -- you know --

10 "Q Did Bobby tell you he was going to Hinman's?

11 "A *****

12 "Q How was he dressed?

13 "A But what it was to me ***** it didn't
14 necessarily ***** to be along, but I --

15 "Q How was he dressed?

16 "A I believe he had on Levis.

17 "Q Was it dark clothing?

18 "Yes, yeah, something black *****

19 "Q Okay. After -- after Bobby came back, you
20 had a conversation with Bobby, that's when you and
21 ***** were with him *****?

22 "A Uh-huh.

23 "Q Okay. And at this time he runs down the
24 same story to you that you originally got from Sadie
25 and Mary and everyone else, and he tells you *****

26 "A He was very quiet about it, you know, he
27 didn't talk too much about it. He said something about,
28 you know, that he had ***** that Gary was quiet

3c-4

1 "when he finally * * * * * you know * * * * *

2 "Q Bobby told you, now, that he stabbed Gary,
3 right?

4 "A (Unintelligible.)

5 "Q And did he tell you whose directions it
6 was under? Did you just assume that?

7 "A I know Bobby said that, uh, that, uh, --
8 no, I don't know that.

9 "Q Did you ever see a Fiat stationwagon with
10 the engine sticking out?

11 "A No, I * * * * *

12 "Q Did you ever drive the car?

13 "A Did I ever drive the Fiat?

14 "Q Uh-huh.

15 "A No.

16 "Q Did you ever ride in the car as a
17 passenger?

18 "A I don't think so.

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3d fls.

3d-1

1 "Q You said Ella * * * * * you left a couple
2 of days after the Hinman killing, is that right?

3 "A Yeah.

4 "Q Did you ever hear Charlie tell Beausoleil
5 or Mary or Sadie to take the car down and get rid of
6 it?

7 "A Uh * * * * *

8 "Q You told me originally * * * * *

9 "A Yeah, yeah.

10 "Q That you had better drive the car * * * * *

11 "A The Volkswagen bus * * * * * out in the
12 country because we knew the police were down at the
13 bottom of the canyon there * * * * *

14 "Q Yeah.

15 "A We were going to drive to Santa Barbara
16 and Mary was pretty up tight that the cars would get
17 back to the ranch * * * * * and saw * * * * * in the
18 first place because these cars had been on that ranch
19 before, especially the Volkswagen bus and he was
20 pretty * * * * * and, what it was, and * * * * *

21 "Q But you never heard * * * * *

22 "A Talked about getting rid of them but I
23 don't know about the Fiat, now, like * * * * *

24 "Q Did you hear Charlie say, "Get rid of the
25 Volkawagen?"

26 "A No, Mary and Bill * * * * * but I know the
27 idea was to get money for them to sell them. * * * * *

28 "Q Did you ever hear Charlie * * * * * use

3d-2

1 "talk about getting rid of the gun that was used
2 at the house?

3 "A No, I don't think I did.

4 "Q How about the knife that Bobby used?

5 "No, I * * * * *

6 "Q Did you ever know what happened * * * * *
7 the gun overnight? Did you ever hear that?

8 "A No, I didn't. I didn't believe that, uh,
9 -- I believe that one of the girls that probably has
10 had it, but * * * * *

11 "Q Going back to Charlie.

12 "A Things like that.

13 " * * * * * for when?

14 "A They're ready * * * * *

15 "Q How do you know those were the gloves that
16 they wore in the house?

17 "A They told me.

18 "Q Who told you?

19 "Mary and Sadie. The gloves that Mary
20 wore * * * * * to tie back her hair, is what I * * * * *
21 the gloves * * * * * down by that bridge.

22 "Bobby * * * * * did Bobby tell you this?

23 "A Bobby told me.

24 "Q All right, okay.

25 "Now, you told us yesterday that Charlie
26 said to Gary Hinman, 'You might as well cooperate
27 because you're going to die.'

28 "He answered yesh.

1 "I don't think Charlie said it in those
2 words, but I heard it.

3 "Q In substance, that's what he said?

4 "A Yeah. * * * * *

5 "Yeah, Charlie * * * * *

6 "Q Now, we talked about \$27 yesterday. Who
7 said that they got \$27?

8 "A Uh, Mary talked about it, too. I know the
9 girls talked about it because Sadie had * * * * *
10 there were from three to \$5 in her purse and they
11 had the change that Gary had. * * * * *

12 "Q You told us also that Charlie said that
13 'We got \$27 and his cards.'

14 "What was this * * * * *

15 "A Okay.

16 "Have a ball.

17 "Q All right.

18 "Let me ask you this, in regard to talking
19 to Bobby Beaussoull, how did he say he killed Gary
20 Hirman?

21 "A He said, uh, through the heart * * * * *

22 "Q Did he tell you through the heart?

23 "A * * * * *

24 "Q And at the time that he was talking to you,
25 do you know whether or not he was wearing a * * * * *

26 "A No.

27 "Q I'm sorry, I didn't hear you.

28 "A No.

1 "Q Did you ever notice him carrying a knife
2 in a scabbard?

3 "A Yeah * * * * *

4 "Q Did you ever pay any particular attention
5 to any kind of knife?

6 "A Yeah.

7 "Q And when did you see this knife?

8 "A It was a girl used a lot of coins * * * * *
9 yeah, Bobby used to throw out that knife because * * * * *

10 "Q Could you describe the knife that Bobby
11 had? If you saw the knife, would you recognize it?

12 "A Oh, yeah.

13 "Q Okay. Now, let me just go to the conversa-
14 tion just at different times.

15 "The first person you talked to, as I
16 understand it, concerns what happened at the Hinman
17 house.

18 "I'm talking about parts * * * * * Mary
19 * * * * * and is that right? When she came back in
20 the Volkswagen, is that right?

21 "Now, we talked about the Gary Hinman
22 Volkswagen.

23 "Now, * * * * * (Laughter), * * * * *
24 (Laughter), I tried to figure it out.

25 "A Yeah.

26 "Q And you had -- you helped Mary and * * * * *
27 in the trees * * * * * about a thousand dollars?

28 "A No, the Volkswagen was * * * * *

1 "Q All right. And that's the * * * * *.
2 "A Right.
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1 "Q All right. And when you and Mary parked
2 the Volkswagen microbus and had been in the trees or
3 whatever, was Sadie with you?

4 "A No, she * * * * *

5 "Q Mary, was she the person you talked to in
6 regards * * * * * she going to kill him * * * * *

7 "A No.

8 "Q First * * * * * before parked we had
9 trouble * * * * * I had * * * * *

10 "A And she just left it outside, right outside
11 the back ranchhouse and I -- Bill and I went out and
12 talked to Sadie and Mary and they both came in the
13 ranchhouse and we talked * * * * * she told them that
14 we should get the clothes and the * * * * * house * * * * *

15 "Q Who said that?

16 "A Both of them said that.

17 "Q All right, and so you, at that time, you
18 helped wipe down the microbus?

19 "Did you do that without moving the micro-
20 bus?

21 "A No, we parked it.

22 "Q All right, then, you * * * * * begun --

23 "Now, Shortly after that * * * * * did
24 the police come and take some field interrogation of
25 * * * * * at the ranch?

26 "A No, shortly after that, I figured out Mary
27 was gone and she had been * * * * * upset * * * * *
28 what she had * * * * * and so I tried * * * * * when

4-1

"I went back at the ranch, they were all gone.

"The time you helped to wipe down the * * * * *
bus -- * * * * *.

"A Yeah. * * * * *

"Q All right. That -- * * * * *
-- fingerprints * * * * *. Now, shortly after that,
the police come, and made some field interrogation
reports of the various persons at the ranch?

"A Yeah. Real shortly after that --
* * * * * -- was gone, and -- * * * * * she had
been gone -- * * * * * -- when I went back to the
ranch, they were all gone. And then I -- * * * * *.

"Q Now, when you became aware of the
fact that * * * * * ranch, what time of day or --
* * * * *

"A It was really -- * * * * *.
Everybody -- * * * * *.

"Q You were saying late --

"A Uh-huh.

"Q In other words, in the early
morning hours?

"A Right.

"Q All right. And sometime after
that, during which day, later in the day, did you
talk to Bruce and Bobby * * * * * Beausoleil * * * * *
within 24 hours, you talked to Charles, Charlie
Manson, Bruce Davis, Mary Brunner, and Susan Atkins
concerning -- * * * * *; is that right?

1 "A Yeah.

2 "Q I see. Now, do you also know, Ella
3 Jo -- just quick -- that we are going to ask you,
4 as part of what Mr. Katz and Mr. Deutcher are
5 saying, that we are going to expect you to testify
6 for us, as policemen, in Mr. Hinman's case
7 against Bruce Davis, against Sadie Atkins and
8 against Charlie Manson? You understand that, and
9 you are willing to do that --

10 "A Yeah.

11 "Q -- for the concessions that Mr.
12 Deutcher and Mr. Katz made; is that right?

13 "A * * * * *

14 "Q Don't * * * * *

15 "Q I know that Sergeant Whiteley * * * * *

16 "Do you have any doubt in your mind * * * * *
17 Bruce Davis * * * * * Charles Manson, and * * * * *

18 "A No. * * * * *

19 "Q * * * * * whichever way at all; you
20 understand that? And * * * * * they only want the
21 truth, --

22 "A * * * * *

23 "Q All right. And you are willing to
24 tell the truth * * * * * and the various obser-
25 vations * * * * *

26 "A Yes.

27 "Q We have got one more. When you hear
28 that the police are coming and you use the -- move

1 "the Volkswagen back to the Eucalyptus trees, do
2 you have the key to the car?

3 "A Do I have the key to the Volkswagen?

4 "Q Right. How do you start the Volks-
5 wagen?

6 "A * * * * *

4a-1

1 "Q Do you happen to know whether she had
2 the key to it or not?

3 "A * * * * *

4 "Q All right. From now on, all your dealings
5 will be with Sergeant Hubert here. I'll keep in
6 contact with him, and I will be the one that will
7 meet you at the airport. I'll send the money in
8 to Sergeant Hubert, to put you on the airplane, and
9 I will meet you at the other end. * * * * * Stay
10 here * * * * *

11 "She has got a couple of possibilities.
12 She has got the detention house * * * * *."

13 SERGEANT WHITELEY: There isn't any more.

14 THE COURT: Run it for another minute or two.

15 MR. KANAREK: Did you record where Mr. Whiteley said
16 "There isn't any more"?

17 THE REPORTER: Yes.

18 THE COURT: Run it for another minute or two.

19 The Court can hear a buzzing. What is that,
20 Sergeant Whiteley?

21 SERGEANT WHITELEY: This is a defective mike, and it's
22 -- the recording is going on, but it's just not picking it
23 up. It's grounding itself.

24 THE COURT: In other words, the -- not the microphone
25 you are now holding in your hand, but the microphone that
26 you were using at the time of the recording?

27 SERGEANT WHITELEY: Yes.

28 THE COURT: Will you bring Mr. Berlin in here?

4a-2

1 THE BAILIFF: Yes, sir.

2 (Whereupon Mr. Berlin was ushered into the
3 courtroom, and the following proceedings were had:)

4 THE COURT: All right. Run that back from the state-
5 ment concerning concessions.

6 MR. MANZELLA: Your Honor, are you going to start
7 before those statements?

8 THE COURT: No. Just at that statement.

9 All right. Mr. Berlin, the Court wants you to
10 listen to this tape.

11 MR. KANAREK: Without the microphone, your Honor.

12 THE COURT: Without the microphone?

13 MR. KANAREK: Because that's the -- if you are going
14 to simulate the conditions there, it could be without the
15 microphone.

16 THE COURT: The Court wants you to listen to this
17 tape with the microphone.

18 MR. KANAREK: Well, then -- well, then, I will object,
19 on the grounds that --

20 THE COURT: So that you will be sure to hear it.

21 Your objection is noted, and it's overruled.

22 MR. KANAREK: Well, I'll object on the grounds of
23 foundation, your Honor. The conditions aren't being
24 duplicated, and --

25 THE COURT: Overruled.

26 (Whereupon the tape recording was played as
27 follows:)

28 "Q Now, do you also know, Ella Jo -- and

4a-3

1 "just quick -- that we are going to ask you as part
2 of what Mr. Katz and Mr. Deutcher are saying, that we
3 are going to expect you to testify for us, as police-
4 men, in Mr. Hinman's case against Bruce Davis, against
5 Sadie Atkins, and against Charlie Manson? Do you
6 understand that? And you are willing to do that --

7 "A Yeah.

8 "Q -- for the concessions that Mr. Deutcher
9 and Mr. Katz make; is that right?

10 "A * * * * *"

11 THE COURT: All right. Cut it off.

12 Did you hear that, Mr. Berlin?

13 MR. BERLIN: I don't recall hearing that. I heard it

14 now.

15 THE COURT: You heard it now?

16 MR. BERLIN: Yes.

17 THE COURT: All right. And you don't recall hearing
18 it at the time that --

19 MR. BERLIN: That I heard the tape, no.

20 THE COURT: -- that you listened to the tape?

21 MR. BERLIN: No. This was --

22 THE COURT: All right. The Court is -- this paper
23 which Mr. Manzella has shown you, which has been marked for
24 identification and a Special Exhibit -- 14, was it?

25 THE CLERK: Yes.

26 THE COURT: (Continuing) -- and which you read,
27 appears to the Court -- the Court has read while some of this
28 was going on. It appears to the Court to be a copy of what

4a-4

4b

1 was just stated concerning concessions.

2 Now, does this help you with the -- does the
3 paper and the playing of the tape now help you recall that
4 you did hear the word "concessions"?

5 MR. KANAREK: Well, your Honor --
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1 MR. BERLIN: No. No. I mean, the -- I heard nothing
2 on the tape that -- that clear, or that -- in other words,
3 without static.

4 THE COURT: Let's play it without the microphone and
5 see whether or not --

6 MR. BERLIN: What I heard, --

7 THE COURT: -- playing it --

8 MR. BERLIN: -- everything that I heard had static
9 in the background.

10 THE COURT: All right. Well, let's hear it without
11 the microphone, and see what you can hear.

12 SERGEANT WHITELEY: Do you want me to go back to
13 "concession"?

14 THE COURT: Yes, if you would.

15 Turn it up as loud as possible.

16 SERGEANT WHITELEY: That's as loud as it will go.

17 THE COURT: Now, listen very carefully to it, Mr.
18 Berlin. Let's see if you hear the part wherein the female
19 voice mentioned "concessions" or "money."

20 MR. KANAREK: May the court reporter take down what is
21 supposedly on the tape, your Honor?

22 THE COURT: The court reporter has already taken it.

23 (Whereupon the tape was played, with Mr. Berlin
24 holding the speaker next to his ear, so that what was
25 played was not audible to the reporter.)

26 THE COURT: All right. Now, you've listened to the
27 tape. The Court has listened to it likewise, while you were
28 holding it, Mr. Berlin. And it is the tape as it has been

4b-3

1 played to us, and as the reporter has taken it down. And you
2 listened to it up until a buzz started; is that correct?

3 MR. BERLIN: That's correct.

4 THE COURT: All right. Now, did you hear those words
5 after the buzz started?

6 MR. KANAREK: That's assuming facts not in evidence,
7 that he heard the buzz, your Honor.

8 THE WITNESS: No.

9 THE COURT: He has stated -- you did hear the buzz?

10 MR. BERLIN: On the tape here, yes.

11 THE COURT: All right. Now, did you hear the words
12 of Ella Jo Bailey, mentioning "concessions" and "money" after
13 the buzz started, or before?

14 MR. BERLIN: No, no. There was no buzz; just a
15 continuation.

16 THE COURT: All right. Do you hear the buzz now?

17 MR. BERLIN: Yes, this is -- this is a --

18 THE COURT: All right. Do you remember the buzz when
19 you heard -- when you listened to the tape before, in August?

20 THE WITNESS: Yes. I remember that there was --

21 THE COURT: What I am trying to ascertain from you,
22 Mr. Berlin, is whether you heard the words of Ella Jo Bailey,
23 mentioning "concessions" and "money" before or after the
24 buzz started.

25 MR. KANAREK: I'll object to that, your Honor, as --

26 THE COURT: The objection is overruled.

27 MR. BERLIN: Well, may I explain?

28 MR. KANAREK: May I make my objection?

4b-4

1 THE COURT: The objection is overruled.

2 MR. BERLIN: May I explain, Judge? The -- on the tape
3 I heard, on the machine that I was listening to, it was --
4 there was this -- you hear the static now here? It was this
5 type of static all the time.

6 THE COURT: The Court hears a buzz, yes.

7 MR. BERLIN: All right. There was this type of static
8 all the way through the -- the tape as I heard it, including
9 when -- when she was speaking.

10 THE COURT: All right.

11 MR. BERLIN: In other words, it wasn't any different;
12 sometimes it was -- it was bad enough that you couldn't make
13 out anything.

14 THE COURT: All right. Now, Mr. Berlin, you heard the
15 buzz start, didn't you?

16 MR. BERLIN: Well, I heard it all the time when I --
17 just now? Yeah.

18 THE COURT: All right. And you mean there was no
19 differentiation at all in the sound when you heard it in
20 August? That there was a buzz like this all the way through?

21 MR. BERLIN: Yes.

22 MR. KANAREK: I'll object to the Court's question --

23 MR. BERLIN: Yes, except that it was more pronounced.

24 THE COURT: Your objection is overruled.

25 Would you stop interrupting me, please?

26 MR. BERLIN: It was more pronounced, your Honor. It
27 was -- that's the only way I can say it.

28 It was this type of a buzz, like -- you hear the

4b-5

1 static (indicating), and it was -- was more pronounced than
2 I hear on this machine.

3 But it was steady, all the way through the tape.

4 Sometimes, as I say, enough so that -- loud
5 enough so that you couldn't hear what was said at all.

6 THE COURT: Mr. Berlin -- just a minute.

7 Do you mean that the buzz was steady all the way
8 through the tape?

9 MR. BERLIN: Yes.

10 THE COURT: It didn't increase its sound at any
11 particular time?

12 MR. BERLIN: No -- well, it did. There were times when
13 it -- when it was -- through the tape, when the -- I don't
14 know whether the --

15 THE COURT: I don't understand you. But would you
16 let me -- would you answer this? Were the words that the
17 lady uttered on the tape concerning concessions and money
18 before or after what you have just heard concerning concessions
19 and money now?

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1 MR. KANAREK: That's assuming facts not in evidence,
2 your Honor. He has said he didn't hear --

3 THE COURT: Would you sit down, please? Your
4 objections are overruled.

5 MR. KANAREK: Well, then, may I make the --

6 THE COURT: No, you may not.

7 You just did hear this tape?

8 MR. BERLIN: I heard it just now, yes.

9 THE COURT: And you did hear male voices talking about
10 concessions and money, did you not?

11 MR. BERLIN: Yes. Yes, I did.

12 THE COURT: All right. Now, what I am trying to
13 ascertain -- and it seems to be very simple -- is whether the
14 female voice mentioning "concessions" and "money" came before
15 or after the portion of the tape that you've just heard?

16 MR. BERLIN: Well, I can't --

17 MR. KANAREK: It's assuming facts not in evidence, your
18 Honor.

19 MR. BERLIN: Well, I can't tell you, because I don't
20 recall hearing anything that -- that clear, --

21 THE COURT: You can't recall --

22 MR. BERLIN: -- as those male voices on this tape.

23 THE COURT: All right. Thank you, Mr. Berlin.

24 Sergeant Whiteley, I have a question or two for you.
25

26 PAUL WHITELEY,

27 having been previously duly sworn, resumed the stand and
28 testified further as follows:

4c-2
1 THE COURT: To your knowledge, were any concessions or
2 money given, other than those that you have set forth
3 previously in -- strike that.

4 What concessions or money were given, that you
5 know of, at this time?

6 MR. KANAREK: Object, on the grounds this is irrelevant
7 and immaterial --

8 THE COURT: That you know of?

9 MR. KANAREK: -- to this hearing.

10 THE COURT: It is not.

11 MR. KANAREK: What this hearing has to do with is --

12 THE COURT: The objection is overruled. You may sit
13 down,

14 THE WITNESS: The concessions were that if she would
15 testify for us, that she would have a charge of forgery
16 dropped against her in Tacoma, Washington.

17 The only money that has exchanged hands, I've
18 given her approximately \$20 for phone calls to me.

19 THE COURT: All right. Do you have any further questions,
20 Mr. Kanarek?

21 MR. KANAREK: Then you --

22 THE COURT: Or further evidence?

23
24 REDIRECT EXAMINATION

25 BY MR. KANAREK:

26 Q Then, Officer Whiteley, you have given Ella Jo
27 Bailey -- well, I won't --

28 I ask that this last bit of testimony that your

1 Honor elicited from Mr. Whiteley be stricken, on the grounds
2 it's not -- it has no pertinency to this.

3 THE COURT: All right, Mr. Kanarek, --

4 MR. KANAREK: Yes.

5 THE COURT: -- you are alleging that all of Ella Jo
6 Bailey's testimony should be stricken.

7 MR. KANAREK: Yes.

8 THE COURT: For what reason?

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1 THE COURT: For what reason?

2 MR. KANAREK: Well, on the --

3 THE COURT: That the People failed to disclose to you
4 that certain concessions and money were given to her, by reason
5 of their -- by reason of the People's alteration of the tape?
6 Is that --

7 MR. KANAREK: That's not the full story, your Honor.

8 THE COURT: All right. Spell out the full story.

9 MR. KANAREK: I am.

10 THE COURT: Without digressing.

11 MR. KANAREK: I am not digressing. In fact --

12 THE COURT: Please. Let's hear from you.

13 MR. KANAREK: In fact, I have -- well, are we finished
14 with the evidence?

15 THE COURT: That's up to you.

16 MR. KANAREK: Well -- well, then, I ask --

17 THE COURT: Do you wish the Court to hear the second
18 tape?

19 MR. KANAREK: (No response.)

20 THE COURT: You are alleging the tape was altered.

21 MR. KANAREK: Yes, your Honor.

22 THE COURT: All right. Do you wish the Court to hear
23 the second tape now?

24 MR. KANAREK: The amplified tape?

25 THE COURT: Yes.

26 MR. KANAREK: Well, the amplified tape is not pertinent
27 to these proceedings, your Honor.

28 THE COURT: All right.

1 MR. KANAREK: I -- let me put it this way: The
2 amplified tape is not what we are talking about. We are
3 talking about the original tape.

4 THE COURT: All right.

5 MR. KANAREK: Now, that's what we are talking about.

6 THE COURT: Now, you alleged that the tape was altered.

7 MR. KANAREK: Yes, your Honor.

8 THE COURT: All right. Let's hear from you in regard to
9 that.

10 MR. KANAREK: All right. Now, just a moment.

11 (Pause in the proceedings.)

12 THE COURT: We are waiting.

13 Q BY MR. KANAREK: Officer, directing your
14 attention to this tape that -- concerning which you have
15 testified here, is that tape a tape that you used to make this
16 -- what Mr. Manzella has given us as a transcript?

17 A No, it isn't.

18 Q The amplified tape was used; is that right?

19 A Yes. And then I ran this tape back through and
20 followed it.

21 Q My question is: The court reporter -- or, the
22 man who typed out this information -- did it from the amplified
23 tape; correct?

24 A Correct.

25 MR. KANAREK: That is right. Thank you.

26 THE COURT: You have compared People's Special 14 with
27 the original tape, however?

28 THE WITNESS: Yes.

1 THE COURT: And it is the same?

2 THE WITNESS: Yes.

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1 MR. KANAREK: No further questions at this time, your
2 Honor.

3 THE COURT: All right, you may step down. Unless the
4 People have something.

5 Do the People have something?

6 MR. MANZELLA: No, your Honor.

7 THE COURT: I'll hear from you, Mr. Kanarek. I've yet
8 to hear from you.

9 Your theory is the People should have stricken --
10 the Court should strike Ella Jo Bailey's testimony because
11 the detectives have altered or somebody has altered the tape.

12 MR. KANAREK: That's correct, your Honor.

13 THE COURT: All right. And thereby you were precluded
14 from knowing whether -- you are precluded from knowing that
15 Ella Jo Bailey received concessions and money.

16 MR. KANAREK: No, that is not the complete story.

17 THE COURT: All right, but is that part of it?

18 MR. KANAREK: Part of it.

19 THE COURT: All right. In other words, your discovery
20 was thwarted as a result of the alteration of the tape?

21 MR. KANAREK: No, our presentation to the jury was
22 thwarted.

23 We are entitled that that -- that those words of
24 Ella Jo Bailey, which have been removed from the tape, that
25 those words be presented to the jury in specie. Those
26 exact words as they come from the tape recorder are entitled
27 to be presented.

28 The jury is entitled to hear her voice when she

1 speaks of her request for concessions and money. That's what we
2 are entitled to.

3 THE COURT: All right.

4 MR. KANAREK: And that is the part of the story --

5 THE COURT: All right, now, do you have anything further
6 to present?

7 MR. KANAREK: I don't --

8 THE COURT: On the issue as to whether or not the tape
9 has been altered?

10 MR. KANAREK: Well, the broader issue is, I request that
11 all of their testimony be stricken because it is somewhat
12 akin -- it is like -- you don't add up --

13 THE COURT: Yes, I understand that, but let's deal with
14 the evidentiary hearing.

15 MR. KANAREK: I'm -- I'm -- I'm making argument to the
16 Court.

17 THE COURT: Do you have any further evidence?

18 MR. KANAREK: No, your Honor.

19 THE COURT: All right.

20 MR. KANAREK: The fact is, you don't -- it is like I was
21 trying to draw an analogy to the jury instruction your Honor
22 has given many times. You don't add up the number of witnesses
23 on one side versus the number of witnesses on the other side.
24 It is the convincing force of the evidence here.

25 THE COURT: Just a minute.

26 MR. KANAREK: But your Honor, I want to --

27 THE COURT: No, you may not.

28 Do the People have anything further?

1 MR. MANZELLA: No, your Honor.

2 Oh, oh -- the People would like to make it clear
3 or get clear, however, that this is merely a motion to strike
4 Ella Jo Bailey's testimony, is that correct?

5 THE COURT: Yes, as I understand it.

6 MR. MANZELLA: The People request that motion be
7 denied.

8 MR. KANAREK: I'm trying to point out to the Court --
9 I haven't finished my argument.

10 It isn't a great number of words and only a few
11 words are -- are missing. You don't add up the number of
12 words missing versus the numbers of word that aren't missing.
13 It is the significance of those words and the convincing force
14 of those words. And we are deprived from the jury hearing
15 Ella Jo Bailey and the effect it would have on that jury to
16 hear the words, "How about my money and my concessions, and
17 how about that, and that," and that has much greater utility
18 and denies Mr. Manson a fair trial, equal protection and due
19 process under the Fourteenth Amendment and under California
20 due process for those words to be deleted and removed so they
21 don't hear it, as we term it, in specie.

22 THE COURT: The People.

23 MR. MANZELLA: Your Honor, are we arguing now the
24 admissibility of Ella Jo Bailey's alleged statement on the
25 tape? Or are we merely arguing a motion to strike her testi-
26 mony?

27 MR. KANAREK: There is a motion to strike her testimony.

28 THE COURT: Yes, it is a motion to strike her testimony.

1 MR. MANZELLA: The People have nothing to say. We've
2 shown both Mr. Kanarek and Mr. Berlin, if they actually did
3 listen to the tape, were mistaken as to who said what, and we've
4 shown how they were mistaken. We've shown where the words
5 "money and concessions" were used on the tape.

6 MR. KANAREK: Not so, very cleverly. This -- her
7 final statements have been removed from that tape, your Honor.

8 THE COURT: The Court decides that the motion is not
9 well taken. The motion is predicated on your theory,
10 Mr. Kanarek, that the tape has been altered, and you've
11 presented Mr. Berlin and his declaration, but the Court
12 believes that it is a very fanciful motion and it is really
13 not worthy of great consideration. I've listened to Mr. Berlin
14 and I believe that he is incorrect. That his memory is faulty.
15 I do not believe -- and the Court finds that the tape was not
16 altered. And the Court believes that you have been accorded
17 the right to listen to this tape. That you have heard the
18 original tape.

19 And in addition to that, within the last week you've
20 heard the amplified copy of the tape.

21 The Court believes and finds that there was no
22 statement made by Ella Jo Bailey, "How about my money and my
23 concessions," or any other similar statement.

24 All right, the motion is denied.

25 You have a right, Mr. Kanarek, to have the jury
26 determine whether or not the tape was altered, however, and --

1 MR. MANZELLA: Your Honor, People would like to be
2 heard on that.

3 I don't believe Mr. Kanarek does have the right.

4 THE COURT: I believe the question of credibility is
5 one for the jury.

6 MR. MANZELLA: I would like to be heard on it, your
7 Honor.

8 THE COURT: Yes.

9 And if there was such statement, the Court has
10 already said that it does not believe that there ever was
11 such a statement made by Ella Jo Bailey and put on tape, but
12 Mr. Kanarek has a right to present Mr. Berlin, present whatever
13 evidence you may wish to present in addition to this point to
14 the jury.

15 MR. MANZELLA: I would still like to --

16 THE COURT: All right, I'll hear from you.

17 MR. MANZELLA: Now?

18 THE COURT: Pardon?

19 MR. MANZELLA: Now?

20 THE COURT: Yes.

21 MR. MANZELLA: I have two points.

22 In the first place, Section 405 and 403 of the
23 Evidence Code, and the comments thereto, when a prior inconsis-
24 tent statement is being offered or when a prior statement is
25 being offered -- and actually under 403 and 405 of the
26 Evidence Code, when any hearsay is being offered, if there is
27 a dispute as to whether or not -- or strike that.

28 If there is a dispute as to the identity of the

1 out-of-court declarant, that issue must be resolved by the
2 Court under Section 403 of the Evidence Code.

3 If that issue is resolved against the proponent of the
4 hearsay under 403 of the Evidence Code, that evidence is not
5 ever heard by the jury, that preliminary fact of admissibility,
6 i.e., that the hearsay statement was, in fact, that of the
7 alleged declarant.

8 If the Court decides that is not the case, then,
9 that preliminary fact is missing, and then that statement is
10 not admissible before the jury.

11 In other words, the Court has found that the
12 alleged declarant, Ella Jo Bailey, is not, in fact, the
13 alleged declarant and that, therefore, the statement is not
14 admissible, and that, therefore, that preliminary fact is
15 missing, and that statement under 403 is not admissible before
16 the jury.

17 My second point, however, is this: That even if
18 the statement was the statement of Ella Jo Bailey, if the
19 statement had been played, that it is not admissible under
20 any exception to the hearsay rule. It is not a prior incon-
21 sistent statement.

22 Assuming that this statement was made by Ella Jo
23 Bailey, and the only statement we have is the testimony of --
24 what's his name --- Berlin. The statement was, "I want
25 clarified about money and concessions." Not the statement
26 Mr. Kanarek tells us -- I forget what Mr. Kanarek just said in
27 his argument. That's not even in his partner's declaration.

28 "I want to talk about money and concessions" or

1 "I want my money and concessions, I want it clarified about
2 money and concessions," according to Berlin's statement. That's
3 not a prior inconsistent statement, so how would that be
4 admissible under any exception to the hearsay rule. It wouldn't
5 be.

6 Ella Jo Bailey testified to the bargain that was
7 struck between her and the District Attorney's Office.

8 Sergeant Whiteley, Deputy Guenther, they've never
9 been asked about it on the witness stand. So how would there
10 be any grounds for offering that hearsay when it is not
11 inconsistent with what anybody else's testified to.

12 So on those two points, both on the point that the
13 Court's already determined, the preliminary fact is missing,
14 i.e., that the declarant of that statement is Ella Jo Bailey.
15 That preliminary fact being present, under Section 403 of the
16 Evidence Code, the jury is not supposed to hear the evidence
17 because Mr. Kanarek hadn't carried his burden of proof.

18 And, secondly, even if he had carried his burden of
19 proof, and the Court was convinced that statement was made, it
20 is not admissible under any exception to the hearsay rule any-
21 way.

22 The fact that the -- there may be a third point,
23 I'm not sure.

24 The fact that something may have been altered in
25 itself --

26 THE COURT: The defense is offering her statement, if
27 it is offered to the jury, as a prior inconsistent statement.

28 MR. MANZELLA: Right, but it is not inconsistent with

1 anything she's testified to.

2 She says -- we're stuck with what Mr. Kanarek says
3 as far as his offer of proof is concerned.

4 THE COURT: That's correct. The Court has read her
5 testimony and it is not inconsistent.

6 You contend that it is, Mr. Kanarek?

7 MR. KANAREK: I contend that -- I contend that counsel
8 either deliberately misconceives the point or he misconceives
9 the point --

10 THE COURT: All right, let's hear from you.

11 MR. KANAREK: Yes, it is not hearsay. We don't talk about
12 hearsay. This is in the nature of a verbal act. It is not
13 offered for the truth of any matter asserted, and I think that
14 counsel knows that. That's why he is grasping at straws.
15 He's going to the Evidence Code and looking up things about
16 hearsay.

17 THE COURT: There are certainly some straws being
18 grasped at.

19 MR. KANAREK: That's right, and that's what counsel is
20 doing.

21 THE COURT: But I cannot say who is doing the grasping
22 at this moment.

23 MR. KANAREK: Well --

24 THE COURT: Would you indicate to me in --

25 MR. KANAREK: It goes to her state of mind, your Honor.
26 It is not offered for the truth of the matter asserted.

27 THE COURT: To show Ella Jo Bailey's state of mind,
28 is that correct?

1 MR. KANAREK: That's correct, to show that she -- and
2 you impeach people not just on grounds of prior inconsistent
3 statement, you impeach people because of threats, because of
4 benefits. There are various reasons that you impeach, and
5 these are the -- that's because the jury --

5b

5b-1

1 THE COURT: All right, now, you wish to show by a
2 statement that Mr. -- let's say you wish to put Mr. Berlin
3 on; is that correct?

4 MR. KANAREK: That's correct.

5 THE COURT: All right, you wish to put him on before
6 the jury, and he will testify that he heard this statement on
7 the tape?

8 MR. KANAREK: Right.

9 THE COURT: All right. And you believe that is not
10 hearsay?

11 MR. KANAREK: No.

12 THE COURT: Because what it does is show her state of
13 mind?

14 MR. KANAREK: It shows her state of mind. Definitely
15 is not offered for the truth of any matter asserted. It is
16 not hearsay. It is -- it is -- it is what --

17 THE COURT: You don't believe it is really being
18 offered as a -- and you're not offering it as a prior
19 inconsistent statement, then?

20 MR. KANAREK: Well, you could argue tenuously, but I
21 think effectively that it is inconsistent, if you take all
22 of her testimony and look at it, it would be for the jury
23 to decide as to whether or not it is inconsistent. It is not,
24 certainly not.

25 THE COURT: Can you find any -- we'll take a recess.
26 You find me some authority as to how such -- how the Court's
27 -- the statement on the part of Miss Bailey would be
28 admissible, and I'll consider it.

5b-2

1 MR. KANAREK: It shows her state of mind.

2 THE COURT: The People's point seems to be well taken.

3 Mr. Manzella, the Court interrupted you when you
4 were about to make your third point.

5 MR. MANZELLA: Well, the only thing I had to say about
6 that was the fact that something was altered does not in
7 itself make it admissible before the jury.

8 For example, suppose the officer had some --
9 some irrelevant piece of physical material that they
10 decided wasn't worth anything and threw it out, and then
11 they came to trial and the defense wanted to offer that
12 piece of physical evidence before the jury. Well, the fact
13 that the officers threw it away because they didn't think
14 it was worth anything, if the Court determines it is not
15 relevant, doesn't give the defense the right to offer that
16 testimony that it was thrown away after the Court has
17 determined it wasn't relevant anyway. And that's the point
18 I am trying to make, that the statement is not admissible
19 anyway so it really doesn't matter whether it was in
20 existence.

21 And in any event, the Court determined it was
22 not in existence. Under Section 403, Subdivision 4, the
23 Evidence Code holds that that testimony is not admissible
24 unless the Court finds that it was made by the person that
25 it is alleged to have been made by. And the Court has
26 already held that it wasn't made by Ella Jo Bailey.

27 MR. KANAREK: Well, your Honor, the fact of the matter
28 is, that we are entitled, under the Evidence Code -- we are

5b-3

1 entitled, under the Evidence Code -- we are entitled to offer
2 evidence, secondary evidence, when we can't offer the primary
3 evidence. It is clear, we have made other tapes before the
4 jury. We can lay the foundation. There's no difference in
5 kind between this bit of evidence and the evidence that we
6 played when we played what was said by Mark Arneson.

7 THE COURT: The Court is in recess.

8 MR. KANAREK: And we have a right to --

9 (Morning recess.)
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5b-4

1 THE COURT: The record will show the jury to be present.
2 Good morning, ladies and gentlemen.

3 (Whereupon, murmurs of "Good morning, your Honor,"
4 were made by the jury panel.)

5 THE COURT: The record will show Mr. Kanarek is present
6 for the defendant, Mr. Manzella for the People.

7 Proceed with your next witness.

8 MR. KANAREK: May we approach the bench, your Honor?

9 THE COURT: Yes, you may.

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

13 THE COURT: The Court believes that you would have a
14 right to present your law partner or any other evidence that
15 you might have of a statement by Ella Jo Bailey to the
16 effect that she was receiving money.

17 The Court believes that if you had affirmative
18 evidence of such a receipt of money for concession that you
19 could produce it. It appears to me that after looking at her
20 testimony in the transcript that it is -- that it may be an
21 inconsistency to now show that she said that she was
22 receiving money.

23 In other words, it can come in as a prior
24 inconsistent statement that she did state under cross-
25 examination that she was receiving some concession. So it
26 is not inconsistent.

27 The statement you wish to offer would not be
28 inconsistent in that respect, but it is inconsistent in

5b-5

1 the Court's opinion with what she testified to about what she
2 was receiving by way of compensation, and, therefore, I
3 believe it can come in.

4 Although, I don't believe that the statement was
5 ever made. I believe that Mr. Berlin and you are **mistaken**
6 in that respect and I have so found.

7 And I do think, however, that since credibility
8 is to be determined by the jury, that you have a right to
9 present Mr. Berlin. I think also that the People have a
10 right to present the tape.

11 MR. KAHANEK: May I say this, it is my view that that --

12 THE COURT: So the jury can determine whether or not it
13 was said on the tape as Mr. Berlin will state it was said.

14 MR. KAHANEK: Well, your Honor, I think the point is
15 that the People can present evidence that the tape has been
16 studied. Mr. Whiteley or whoever -- an electronic expert
17 or whoever they wish to present -- that that was not --
18 our point is that right at the end of the tape these are
19 matters that Mr. Berlin heard. They can present evidence
20 that they are not there, but to present the entire tape --

5c 1a.

1 THE COURT: The Court is not going to allow the entire
2 tape to be played. The Court is going to ask the last ten
3 minutes of the tape --

4 MR. KANAREK: You can't do that because it has --

5 THE COURT: Mr. Berlin is stating --

6 MR. KANAREK: He said it was right at the end.

7 THE COURT: Mr. Berlin was stating it was at the end of
8 the tape. He didn't say it was near the end.

9 MR. KANAREK: No, he said the tape -- he said it was
10 near the end -- he said it was at the end of the spoken part
11 and as far as the physical tape goes --

12 THE COURT: Do you have Mr. Berlin's affidavit?

13 THE CLERK: Yes.

14 THE COURT: "We replayed the last few minutes of
15 the tape to make sure we heard correctly and to
16 make sure we both heard the same thing."

17 This is what Mr. Berlin says in his declaration.
18 We replayed the last few minutes of the tape.

19 MR. KANAREK: All right.

20 THE COURT: All right.

21 All right, near the end of the taped conversation
22 he says on line 3, page 4, "I heard the man say something like,
23 'That's about it,' or, 'I guess that's all for now' or some-
24 thing to that effect. At that point I heard the woman's
25 voice on the tape say very clearly and distinctly that 'What
26 I want clarified are the money and concessions,' or similar
27 words to that effect and there was nothing similar or
28 intelligible on the tape."

5c-2

1 MR. KANAREK: Now, your Honor --

2 THE COURT: Now, if Mr. Berlin testifies, then, the
3 People have a right to offer evidence in the form of a tape
4 or whatever else they wish to present that would appear
5 acceptable to the point --

6 MR. KANAREK: Well, your Honor, it is our view that --
7 that the People --

8 THE COURT: You may argue that at a later time. I
9 simply wanted to warn you.

10 MR. KANAREK: That's what I wanted to convince the
11 Court about now.

12 THE COURT: The Court doesn't wish to hear further
13 argument.

14 MR. KANAREK: The Court is going to allow the tape
15 itself to be played?

16 THE COURT: I'm going to allow the last few minutes
17 of the tape to be played, yes, if Mr. Berlin testifies that
18 he heard on that tape that Ella Jo Bailey said she received
19 money.

20 MR. KANAREK: Well, the point is, there are -- it's
21 just like we edit in connection with the Aranda and Bruton
22 problems, we have a right to edit here. The law clearly
23 allows editing under certain situations. It is our view
24 that your Honor can edit the tape and -- and play the portions
25 they have from the amplified tape presented.

26 THE COURT: How can a jury be expected to determine
27 if the tape has been altered if the Court orders that the --

28 MR. KANAREK: Well, clearly --

5c-3

1 THE COURT: -- the tape has been edited and only
2 receive portions of it?

3 MR. KANAREK: This is clearly a woman's voice --

4 THE COURT: This is a question for the jury to
5 determine whether the tape has been altered and whether
6 there was a deletion of the statement that Mr. Berlin heard.

6 fls.

6- 1 MR. KANAREK: Well, your Honor, the point is, here, we
2 are dealing with a negative. They can testify that --

3 THE COURT: Well --

4 MR. KANAREK: -- there is no female who made those
5 statements. And you don't get the prejudicial matter before
6 the jury.

7 THE COURT: All right. Mr. Kanarek, I'm not interested
8 in hearing anything further from you.

9 MR. KANAREK: Well, we --

10 THE COURT: Do you have anything further to present at
11 this time, other than --

12 MR. KANAREK: I would like to know what portions of the
13 tape your Honor is going to --

14 THE COURT: I am going to have them play the last ten
15 minutes of the tape.

16 MR. KANAREK: Well, then --

17 THE COURT: And the Court believes that if they cannot
18 hear it properly, that the amplified tape could be played,
19 with the proper foundation.

20 MR. KANAREK: Well, it's our position that that is a
21 denial of a fair trial.

22 THE COURT: With a proper foundation, the amplified
23 tape could be played.

24 MR. KANAREK: Well, it's our position that --

25 THE COURT: So that they could hear it.

26 MR. KANAREK: But the point is --

27 THE COURT: It's difficult to hear that tape unless you
28 have --

1 MR. KANAREK: But then --

2 THE COURT: -- your ear fairly close to the machine.

3 MR. KANAREK: Then we get the --

4 THE COURT: And the entire jury could not hear it --

5 MR. KANAREK: But we then get the picture --

6 THE COURT: The entire jury could not hear it in this
7 courtroom, I'm afraid, from the original tape -- even
8 amplified.

9 MR. KANAREK: But --

10 MR. MANZELLA: Could I be heard, your Honor?

11 THE COURT: Yes.

12 MR. MANZELLA: I would like to ask the Court, if the
13 Court would release Defendant's Special Exhibit P, I believe it
14 is, for identification, to us? It's the amplified tape.

15 We have no objection to keeping the original
16 tape in evidence, but we would like to have the amplified
17 tape. It's the only copy of the tape that we have.

18 MR. KANAREK: Well, we would object to it being
19 released. I think that it's --

20 THE COURT: If it's played during the course of this --

21 MR. KANAREK: We would object to its being released.

22 THE COURT: -- hearing, of course it could not be
23 released.

24 But the Court at this time would order that it
25 be --

26 MR. KANAREK: We would object. It's necessary, if there
27 should be an appeal in this case -- it denies Mr. Manson a
28 fair trial, and it denies due process and equal protection,

1 and it's our position that this was deliberately done, and you,
2 Honor allowed the amplified tape to be used in the hearing.

3 THE COURT: Just a minute. The amplified tape was not
4 used. We played the original tape.

5 MR. KANAREK: I mean, it's marked for identification, so
6 that any appellate court can determine --

7 THE COURT: The Court allowed it to be marked for
8 identification, assuming that you were going to go ahead and
9 offer it, to show that there was some distinction between it
10 and the other tape; to show, perhaps, some point which would
11 have bearing on your motion to strike the testimony of Ella Jo
12 Bailey.

13 I am going to order it --

14 MR. KANAREK: Your Honor, we would --

15 THE COURT: I am going to order it released at this
16 time.

17 I don't wish to hear from you any further on that
18 point. Let's proceed.

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

21 THE COURT: Sorry to have kept you waiting this morning,
22 ladies and gentlemen, but we had business to accomplish on the
23 case that had to be conducted outside of your hearing.

24 All right. Mr. Kanarek, present your next
25 witness.

26 MR. KANAREK: I'll call Sergeant Whiteley then, your
27 Honor.

28 THE COURT: You want Sergeant Whiteley to return to the

1 stand again?

2 MR. KANAREK: Yes, your Honor.

3 THE COURT: All right. Sergeant Whiteley?

4
5 PAUL WHITELEY,

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

9
10 DIRECT EXAMINATION

11 BY MR. KANAREK:

12 Q Mr. Whiteley, did you have occasion to amplify the
13 original tape of Ella Jo Bailey?

6a-1

1 MR. MANZELLA: Objection, your Honor. It's not
2 relevant.

3 MR. KANAREK: It's --

4 THE COURT: Sustained.

5 MR. KANAREK: I am trying to lay a foundation, your
6 Honor.

7 THE COURT: The objection is sustained.

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

9 THE COURT: No, you may not.

10 Q BY MR. KANAREK: On this tape -- let's say the
11 original tape that was taken of Ella Jo Bailey -- was this
12 language present?

13 "DEPUTY GUENTHER: Now, do you also know, Ella
14 Jo -- and just quick -- that we are going to ask you,
15 as part of what Mr. Katz and Mr. Deutcher are saying,
16 that we are going to expect you to testify for us,
17 as policemen, in Mr. Hinman's case against Bruce
18 Davis, against Sadie Atkins and against Charlie
19 Manson? Do you understand that? And you are willing
20 to do that, --

21 "VOICE: Yes.

22 "Q -- is that correct?"

23 Deputy Guenther stated that, and that was Ella
24 Jo Bailey's voice that answered "Yes"?

25 A Yes.

26 Q Then did Deputy Guenther say: "For the
27 concessions that Mr. Deutcher and Mr. Katz make; is that
28 right?

6a-2

1 "VOICE: Yes."

2 Is that correct?

3 A Yes.

4 Q And then on that tape of Ella Jo Bailey, do
5 you say, in the presence of Ella Jo Bailey, the following?

6 "Sergeant Whiteley--" that's you --

7 "From now on, all your dealing will be
8 with Sergeant Hubert here on it. I'll keep in
9 contact with him, and I'll be the one that will meet
10 you at the airport. I'll send the money to Mr. --
11 Sergeant Hubert, to put you on the airplane, and
12 I'll meet you at the other end."

13 Is that what is on the tape of Ella Jo Bailey?

14 A Yes, that's what I said.

15 MR. KANAREK: That's all at this point with Sergeant
16 Whiteley, your Honor.

17 THE COURT: Do you want Sergeant Whiteley to step
18 down, then?

19 MR. KANAREK: Unless Mr. Manzella has some questions.

20 MR. MANZELLA: I have no questions.

21 THE COURT: Call your next witness.

22 MR. KANAREK: Yes. Call Beverly Russell, your Honor.

23 THE COURT: Come forward, Miss Russell. Come forward
24 and take the witness stand.

25
26 BEVERLY RUSSELL,

27 having been previously duly sworn, resumed the stand and
28 testified further as follows:

6a-3

1 THE COURT: Pull the microphone over to you, please.
2 Thank you. Remember, you have to move your chair forward,
3 so you are very close to the microphone.

4 MR. KANAREK: The Clerk's going to get an exhibit for
5 me, your Honor.

6 (Pause in the proceedings.)

7 THE COURT: Proceed with your examination.

8 MR. KANAREK: I need the exhibit, your Honor.

9 (Pause in the proceedings.)

10
11 DIRECT EXAMINATION

12 BY MR. KANAREK:

13 Q Miss Russell, directing your attention to Shorty
14 Shea, have you had occasion to think, since the last time you
15 were in court, concerning Mr. Shea?

16 A (No response.)

17 THE COURT: Clarify your question, please, Mr. Kanarek.
18 Whether she has had a chance to think since she has been in
19 court last time is rather vague and indefinite.

20 MR. KANAREK: Very well, your Honor.

21 Q Miss Russell, does the name Shorty Shea mean to
22 you a man? A person?

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

25 THE COURT: Sustained. It's a nonsensical question.

26 Ask your next question.

27 MR. KANAREK: Well, I -- I would like to approach the
28 bench, in view of this witness' previous testimony. I think

6a-4

1 it's most pertinent.

2 THE COURT: You may not approach the bench. Ask your
3 next question, please.

4 You put that question to her before, as the Court
5 recalls, on cross.

6 Go ahead.

6b fls.

7 MR. KANAREK: It was on direct examination that I
8 examined her, your Honor. We called her as a witness.

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6b-1

1 THE COURT: Oh, very well. The Court stands corrected.
2 It was your direct examination.

3 Go ahead.

4 Q BY MR. KANAREK: Now, Miss Russell, do you know a
5 person named Shorty Shea?

6 A No.

7 Q And you never in your lifetime have spoken with a
8 person you knew as Shorty Shea; is that what you are saying?

9 A That's right.

10 Q And did you discuss with Christine Berger the
11 name Shorty Shea?

12 A No.

13 Q At no time in your life have you used the word
14 "Shorty Shea" in conversation with Christine Berger?

15 A No.

16 Q Have you ever used the word "Mr. Shea" or the
17 words "Mr. Shea" in conversation with Christine Berger?

18 A No.

19 Q Have you ever used the words "Shorty" or --
20 I'll withdraw that.

21 Have you ever used the word "Shorty" in connec-
22 tion with any conversation that you've had with Christine
23 Berger?

24 A No.

25 Q You have -- have you ever spoken with Christine
26 Berger?

27 A Yes.

28 Q On how many occasions have you spoken with

1 Christine Berger?

2 A When I was at Sylmar.

3 Q Pardon?

4 A When I was at Sylmar.

5 Q My question is: On how many different occasions,
6 Miss Russell, have you spoken with Christine Berger?

7 THE COURT: You needn't answer that. It's immaterial.

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

9 THE COURT: No, you may not.

10 Q BY MR. KANAREK: You spoke with Christine Berger,
11 you tell us, at Sylmar; is that right?

12 A Yes.

13 Q Did you tell Christine Berger that -- do you see
14 this brown piece of paper, Miss Russell, that we had, that you
15 saw in court last time?

16 A Yes.

17 THE COURT: For the record, you are referring to what,
18 Counsel?

19 MR. KANAREK: I am referring to Defendant's J, your
20 Honor.

21 Q Did you tell Christine Berger that 817 South
22 Burlington Avenue was Shorty Shea's address and phone number
23 at the time -- I'll withdraw that.

24 When you spoke with Miss Berger at Sylmar, did
25 you tell Miss Berger that 817 South Burlington Avenue in
26 Los Angeles, and the number 389-8921 was the address and
27 phone number of Shorty at that time?

28 A No.

1 Q Did you tell Christine Berger that at the time
2 that you were speaking with her there in Sylmar, that the
3 address for Shorty Shea was 817 South Burlington Avenue in
4 Los Angeles?

5 MR. MANZELLA: Objection, your Honor. The question has
6 just been asked and answered.

7 THE COURT: Sustained.

8 Q BY MR. KANAREK: Did you tell Miss Berger, when
9 you spoke with her at Sylmar, that Mr. Shorty Shea was living
10 at 817 South Burlington Avenue in Los Angeles?

11 MR. MANZELLA: The same objection, on the same grounds.

12 MR. KANAREK: Your Honor, that is --

13 THE COURT: The objection is sustained.

14 MR. KANAREK: It's a different question, your Honor.
15 As to where someone is living is certainly different than the
16 previous question.

17 THE COURT: The objection is sustained.

18 MR. KANAREK: Well, may I make an offer of proof, your
19 Honor?

20 THE COURT: Yes, you may make an offer of proof. Come
21 forward, gentlemen.

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

25 THE COURT: All right. What do you hope to establish
26 with this witness?

27 MR. KANAREK: I am making an offer of proof as to what
28 she will testify to, if your Honor will allow --

1 THE COURT: What do you hope to establish?

2 MR. KANAREK: That if she told the truth --

3 THE COURT: What is your offer of proof?

4 MR. KANAREK: The offer of proof is that if she told
5 the truth, she would say that Shorty Shea was living -- that
6 she told -- that she told Christine Berger that Shorty Shea
7 was living at 817 South Burlington Avenue.

8 THE COURT: First, what is the materiality of her
9 testimony, in any event?

10 MR. KANAREK: Well, the materiality is, if Shorty Shea
11 was living at 817 South Burlington Avenue --

12 THE COURT: Well, first she states that she doesn't
13 know Shorty Shea. So you are attempting to impeach her by
14 showing that she stated that Shorty Shea was living at
15 817 South Burlington; is that right?

16 6c fls.
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1 MR. KANAREK: No, I'm not trying to impeach for the sake
2 of impeachment. I am offering evidence for the jury to
3 consider, your Honor.

4 THE COURT: To what effect?

5 MR. KANAREK: To the effect that Shorty Shea was living
6 at 817 South Burlington; and she was percipient to that; and
7 that --

8 THE COURT: So you are attempting to impeach her by
9 bringing out this --

10 MR. KANAREK: No, I'm not trying to -- I'm trying to
11 get evidence in before this jury.

12 THE COURT: Well, then, you don't have any direct
13 evidence from her to that effect, do you?

14 MR. KANAREK: Under your interpretation -- under your
15 Honor's interpretation of California vs. Green, and the cases
16 that -- that -- that your Honor has relied upon, this is
17 material and relevant; there's no question about it.

18 It's not a matter of impeaching her. This has to
19 do with substance.

20 I'm not talking about impeaching her as a witness.
21 This has to do --

22 THE COURT: So you've put her on the witness stand,
23 and she testifies she doesn't know Shorty Shea, and now you
24 wish to bring out prior inconsistencies; is that it?

25 MR. KANAREK: I wish to show that -- show the jury,
26 not for the sake of showing a prior inconsistency, but to
27 prove that Shorty Shea was living there, your Honor.

28 THE COURT: By means of her prior inconsistent statement;

1 is that it?

2 MR. KANAREK: By means of the entire bit of evidence.

3 Your Honor has allowed California vs. Green to be
4 used this way in connection with the prosecution's --

5 THE COURT: I am simply trying to get your offer of
6 proof.

7 MR. KANAREK: Well, the offer of proof --

8 THE COURT: I am trying to draw it from you, because
9 apparently you cannot make a statement that would encompass
10 the entire thing.

11 Now, please --

12 MR. KANAREK: Your Honor misconceives -- an offer of
13 proof is a statement of a factual matter.

14 THE COURT: Well, please, would you indicate what you
15 intend to prove?

16 MR. KANAREK: I am. An offer of proof indicates what
17 the witness would testify to. It doesn't include argument.
18 And your Honor is asking for -- is asking me for argument.

19 So evidently your Honor misconceives of what an
20 offer of proof is.

21 THE COURT: Please, Mr. Kanarek. What is your offer of
22 proof?

23 MR. KANAREK: My offer of proof is that --

24 THE COURT: Is that what?

25 MR. KANAREK: -- that if she testified truthfully, she
26 would testify that she told Christine Berger that
27 Shorty Shea was living at 817 South Burlington in the City of
28 Los Angeles, State of California.

1 THE COURT: That she made that statement?

2 MR. KANAREK: Yes, right. That she was percipient.

3 MR. MANZELLA: My objection is that he just asked her
4 that question.

5 MR. KANAREK: No, I didn't. Living is different than --

6 MR. MANZELLA: And the questions were also asked on
7 previous examination.

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

10 THE COURT: The objection will be sustained.

11 The Court has a -- we will be in recess until
12 2:00 o'clock at this time, ladies and gentlemen. You are
13 admonished that, during the recess, you are obliged not to
14 converse amongst yourselves nor with anyone else, nor are you
15 to permit anyone to converse with you on any subject
16 connected with this matter, nor are you to form or express any
17 opinion on the matter until it is finally submitted to you.

18 We are in recess, then, until 2:00 o'clock.

19 (Whereupon, the following proceedings were had
20 as the members of the jury were exiting the courtroom, and
21 after they had left:)

22 THE COURT: Are you two ladies probation officers?

23 VOICES: Yes.

24 THE COURT: Would you approach the bench here?

25 (Whereupon, a discussion off the record ensued
26 at the bench between the Court and the probation officers
27 escorting the witness Beverly Russell.)

28 THE COURT: Young lady, we'll see you at 2:00 o'clock.

1 Mr. Kanarek, let me -- the jury has all gone, the
2 record should show.

3 You have gone over this extensively, concerning
4 this brown piece of paper with the address on it, previously,
5 in your direct examination of this witness.

6 The Court doesn't wish to have any undue or
7 prolonged repetition -- or any repetition at all. Do you
8 understand?

9 MR. KANAREK: I understand, your Honor.

10 THE COURT: All right. I can't see the point thus far
11 in what you have asked her, in proceeding again to question
12 her, and -- concerning this matter. There's nothing new, it
13 appears to me from what you have stated to me at the bench
14 you intend to show.

15 MR. KANAREK: That was only an offer of proof as to one
16 question, your Honor, one particular question.

17 THE COURT: All right. Then you have something other
18 than what you have asked her about previously on direct
19 examination --

20 MR. KANAREK: Yes.

21 THE COURT: -- that you wish to broach?

22 MR. KANAREK: Yes, your Honor.

23 THE COURT: All right. Do you wish to disclose it at
24 this time?

25 MR. KANAREK: No, I would prefer not to at this time,
26 your Honor.

27 THE COURT: All right. We will wait for it, then, and
28 see what it is at 2:00 o'clock.
(Whereupon, a recess was taken to reconvene at
2:00 o'clock p.m., same day.)

7
1 LOS ANGELES, CALIFORNIA, TUESDAY, OCTOBER 5, 1971

2 2:25 P.M.

3 ---O---

4 THE COURT: Case of People versus Manson. The record
5 will show that the jurors are present. Mr. Kanarek is present
6 for the defendant. Mr. Manzella for the People.

7 You may proceed.

8 MR. KANAREK: Yes, thank you, your Honor.

9
10 BEVERLY RUSSELL,

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

14
15 DIRECT EXAMINATION (CONTINUED)

16 BY MR. KANAREK:

17 Q Now, Miss Russell, could you speak into the
18 microphone when you speak?

19 A You mean --

20 Q Yes, so all of us can hear you?

21 A Yeah.

22 Q Now, you've previously told us, Miss Russell, that
23 you have spoken the words "Shorty Shea."

24 Do you remember telling us that?

25 A I never talked of his name.

26 Q Pardon?

27 A I said I never talked of his name.

28 MR. KANAREK: I didn't hear that answer, your Honor.

1 Would you -- would your Honor ask her to speak into
2 the microphone?

3 THE COURT: Repeat your answer.

4 THE WITNESS: I said I never talked about him.

5 Q BY MR. KANAREK: Did you ever, out of your mouth,
6 have the words "Shorty Shea" come out?

7 A No.

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

9 THE COURT: No, you may not.

10 MR. KANAREK: Well, then, your Honor, I allege a
11 violation of due process and a fair trial. I wish to approach
12 the witness and show her certain language in this transcript.
13 I can't do it except by showing it to her.

14 THE COURT: You wish --

15 MR. KANAREK: It is a denial of effective counsel and
16 the Sixth Amendment.

17 THE COURT: What you wish to do is -- the purpose of
18 approaching her is to show her something in the transcript?

19 MR. KANAREK: That's correct.

20 THE COURT: All right, you may do that.

21 MR. KANAREK: Thank you.

22 Q BY MR. KANAREK: Miss Russell, would you --
23 Miss Russell, would you look at Page 7862 of this transcript,
24 and would you read to yourself Lines 21 through 23.

25 Would you read those two lines or lines 21 through
26 23, those three lines to yourself?

27 A (Witness complies.)

28 Q Have you read those lines?

1 A (No response.)
2 Q Have you read those lines?
3 A Yeah.
4 Q Now, would you read Line 24 to yourself?
5 A What's that got to do --
6 Q Pardon?
7 A What's that got to do with the question?
8 Q I'm asking you to do this slowly, Miss Russell, so
9 there's no question about that you are reading what I am
10 referring to here.
11 Now, would you read Lines 25 and 26 to yourself?
12 A (Witness complies.)
13 Q And would you read the top -- the first line at
14 7863; would you read that to yourself?
15 A (Witness complies.)
16 THE COURT: Now, you may step away from her.
17 MR. KANAREK: Yes, your Honor.
18 THE COURT: You are about to read something?
19 MR. KANAREK: Yes, your Honor.
20 THE COURT: And is it stipulated that it is the
21 transcript of the proceedings held on direct during the course
22 of this trial on --
23 MR. MANZELLA: I don't know, your Honor, I haven't seen
24 it.
25 THE COURT: During Mr. Kanarek's direct examination,
26 was it?
27 MR. KANAREK: Yes, your Honor.
28 THE COURT: Of this witness?

1 MR. MANZELLA: So stipulated.

2 MR. KANAREK: "Q Have you ever in your
3 lifetime, Miss Russell, have you ever in your
4 lifetime uttered the words 'Shorty Shea'?

5 "A Wait a minute, can you say that
6 over again?

7 "Q Certainly.

8 "In your lifetime have you used the word
9 'Shorty Shea'? Have you ever spoken those words?

10 "A BY THE WITNESS: Yeah, I have."

11 Q Now, do you remember giving that answer to those
12 questions, Miss Russell?

13 A No.

14 MR. KANAREK: Well, it is stipulated, your Honor,
15 by counsel that that question -- that those questions were
16 asked and the witness did give that answer.

17 MR. MANZELLA: Yes, it is so stipulated.

18 Q BY MR. KANAREK: Now, Miss Russell, when you gave
19 that answer, "Yeah, I have," would you tell us, Miss Russell,
20 what -- in whose presence at Sylmar were you when you uttered
21 the words "Shorty Shea"?

22 A I never used his name.

23 Q In your life?

24 A In my life.

25 Q You've never --

26 A To Miss Berger. I never have.

27 Q Oh, to Miss Berger you never have.

28 Well, to whom have you?

1 A To no one.

2 Q Then, when you said, "Yeah, I have," on a previous
3 date, Tuesday, September 28, 1971, that was untrue?

4 A (No response.)

5 Q Is that so, Miss Berger -- or Miss Russell? That
6 was untrue when you uttered those words, "Yeah, I have"?

7 A (No response.)
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1 THE COURT: Ask your next question.

2 MR. KANAREK: Well, may I -- perhaps a couple of minutes
3 have gone by, at least, your Honor. May I have the assistance
4 of the Court and ask the Court to order the witness to answer
5 the question?

6 THE COURT: Repeat your question.

7 MR. KANAREK: Yes. Certainly.

8 Q When you said, "Yeah, I have," on September the
9 28th, 1971, as reflected by what you have read at Line 1 of
10 Page 7863 of the transcript, was that statement untrue,
11 Miss Russell?

12 A (No response.)

13 THE COURT: Can you answer the question, Miss Russell?

14 THE WITNESS: (No response.)

15 THE COURT: Or do you wish to explain it?

16 THE WITNESS: (No response.)

17 THE COURT: Do you understand the question?

18 THE WITNESS: Yeah.

19 THE COURT: Do you wish to explain your answer given
20 Mr. Kanarek before?

21 THE WITNESS: (No response.)

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

23 THE WITNESS: (No response.)

24 THE COURT: Miss Russell? Can you answer Mr. Kanarek's
25 question?

26 THE WITNESS: (No response.)

27 THE COURT: Are you listening to me?

28 THE WITNESS: Yeah.

1 (Pause.)

2 THE COURT: Do you wish to have your counsel present
3 before you proceed? The man I appointed as your counsel?

4 THE WITNESS: (No response.)

5 THE COURT: All right. The Court will allow her to have
6 her attorney present.

7 Mrs. Holt, contact the attorney who was present
8 before.

9 You may step down and go to the rear of the court-
10 room.

11 Call your next witness, Mr. Kanarek.

12 MR. KANAREK: Yes, your Honor.

13 THE COURT: Unless you wish to go on with your cross --
14 with your direct examination of this lady on some other
15 subject.

16 MR. KANAREK: No, your Honor. I would -- if your Honor
17 would allow her to be out of the courtroom while I -- I can
18 proceed on other matters.

19 THE COURT: All right. I want you to approach the
20 bench, however.

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

24 THE COURT: Now, I want an offer of proof from you as
25 to what you expect to educe from this witness.

26 MR. KANAREK: Well, she --

27 THE COURT: Is it simply repetition? If so, the Court
28 has a right to excuse her, and will not ask her to return.

1 MR. KANAREK: No, it's not repetitious.

2 THE COURT: All right. Tell me what you expect to --

3 MR. KANAREK: I expect to prove that this girl has
4 stated that she has been in Shorty Shea's presence; that she
5 has lived with Shorty Shea; that she has -- that she has --
6 that she knows him well.

7 I have -- if she tells the truth, there's no
8 question about it, this is what she stated, as of the early
9 part of -- well, March or April or thereabouts of 1970.

10 And this is very vital in this case, because if
11 Shorty Shea -- I mean, I don't have to delineate the vitality
12 of it in this case. And there is no question about it.
13 If --

14 THE COURT: Just tell me what you wish to prove.
15 I don't want to hear any argument.

16 MR. KANAREK: Well, I wish to prove exactly that.

17 THE COURT: That's what you expect to prove?

18 MR. KANAREK: That's correct. I certainly do.

19 THE COURT: All right. Call your next witness.

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

22 THE COURT: Call your next witness.

23 MR. KANAREK: Yes, your Honor.

24 Mr. Whiteley, I have some --

25 THE COURT: Mr. Whiteley?

26 MR. KANAREK: Yes, your Honor. Mr. Manzella, on many
27 occasions, --

28 THE COURT: All right. Mr. Whiteley?

1 MR. KANAREK: -- has called Mr. Whiteley, during the
2 People's case, and it --

3 THE COURT: All right.

4 MR. KANAREK: -- and I am trying to make use of the time
5 as expeditiously as possible, your Honor.

6 THE COURT: Very well, Mr. Kanarek.

7 You may proceed.

8 PAUL WHITELEY,
9 recalled as a witness by and on behalf of the defendant,
10 having been previously duly sworn, resumed the stand and
11 testified further as follows:
12

13 DIRECT EXAMINATION

14 BY MR. KANAREK:

15 Q Mr. Whiteley, did Madeline Shea, according to your
16 investigation, tell -- reveal or state that John -- that
17 Donald Jerome Shea was living at -- that his address was
18 3451 South La Brea Avenue, Room 206, in Los Angeles, on
19 December the 12th, 1969? Did your investigation reveal that to
20 be what Madeline Shea told you?
21

22 A No.

8a-1

1 Q Your --

2 May I approach the witness, your Honor?

3 THE COURT: I see you have a paper in your hand. Is
4 it for the purpose of showing him the paper?

5 MR. KANAREK: Yes.

6 THE COURT: You may.

7 MR. KANAREK: Thank you.

8 Q I show you a document, Officer, and ask you if
9 this is not part of your investigative file?

10 The -- a document which shows that Donald Shea's
11 address as 3451 South --

12 THE COURT: Just a minute, Mr. Kanarek. You know very
13 well that's improper.

14 MR. KANAREK: No, I do not, your Honor.

15 THE COURT: Let me see the document.

16 MR. KANAREK: Certainly.

17 (Handing the document to the Court.)

18 THE COURT: Do you have a copy of it?

19 MR. MANZELLA: I don't know. He didn't show it to me,
20 your Honor.

21 MR. KANAREK: I got this from the District Attorney --

22 THE COURT: All right. Let's have Mr. Manzella look
23 at it.

24 MR. KANAREK: Certainly, your Honor.

25 Although I assume that --

26 (Whereupon the document was handed to Mr.
27 Manzella, which document Mr. Manzella perused.)

28 MR. KANAREK: I did not show it to him, because I'm

8a-2

1 sure he has seen it before --

2 THE COURT: Never mind. You may proceed.

3 Q BY MR. KANAREK: Officer, is that document part
4 of the investigative file in connection with this case?

5 A Yes, it is.

6 Q And does it reveal that the address of Donald
7 Jerome Shea is 3451 South La Brea Avenue, Room 206, and it has
8 a date of December the 12th, '69; is that correct?

9 A No.

10 Q That does not -- that address is not given as
11 the address of Donald Shea by Magdalene Shea, --

12 A No.

13 Q -- is that correct?

14 Then may I ask you: Is the informant here
15 Magdalene Shea?

16 MR. MANZELLA: Your Honor, I'm going to object on the
17 grounds that all these questions are irrelevant. It's clear
18 what the address is on this form here.

19 MR. KANAREK: Well, it's not clear, and --

20 MR. MANZELLA: And these questions are irrelevant.

21 MR. KANAREK: It's not --

22 THE COURT: Sustained.

23 MR. KANAREK: -- clear at all.

24 THE COURT: It also calls for hearsay, Mr. Kanarek.

25 MR. KANAREK: Well, it has to do with the investigation,
26 your Honor, wherein your Honor has allowed -- may I approach
27 the bench?

28 THE COURT: No, you may not.

8a-3

1 Q BY MR. KANAREK: Referring to this document,
2 Officer, which you tell us is part of the investigative file,
3 does it not show Donald Jerome Shea's address as the same
4 as Magdalene Shea, with the address of 3451 South La Brea
5 Avenue, Room 206?

6 A No.

7 Q Then what does the word "same" mean opposite
8 Magdalene Shea in connection with Donald Shea?

9 A That means where she lives.

10 If you look down below, you'll see an "L" and it
11 says -- that means "Location," and there's another address
12 there.

13 Q But, Officer, does this document, opposite the
14 name Magdalene Shea, have the address "Same", s-a-m-e, which --
15 which -- which refers to the address for Donald Jerome Shea,
16 two lines up, as 3451 South La Brea Avenue, Room 206, Los
17 Angeles? Isn't that what this document shows?

18 A Perhaps the document does show that, but that was
19 not his address.

20 Q Huh? Well, Officer, were you -- did you ever live
21 at 3451 South La Brea Avenue?

22 MR. MANZELLA: Objection, your Honor. It's not
23 relevant.

24 MR. KANAREK: Well, how can you --

25 THE COURT: Sustained.

26 Q BY MR. KANAREK: The question is, Officer, does
27 the investigative report show the same address for Magdalene
28 Shea on December 12th, 1969, as Donald Jerome Shea?

8a-4

A No.

Q Then, Officer, would you explain to us what the word "same" means opposite the word "address" which is immediately parallel to the name "Magdalene Valma Shea"?

MR. MANZELLA: Objection --

Q BY MR. KANAREK: What does that word "same" mean?

MR. MANZELLA: Objection, if the Court please, on the grounds that none of this is relevant.

8b fls.

8b-1

1 MR. KANAREK: It's the very investigation --

2 THE COURT: I am inclined to agree with you. But since
3 there has been no objection, the Court has permitted it.

4 The Court will overrule the objection.

5 You may answer.

6 THE WITNESS: The word "same" there means that they were
7 living as man and wife, but that was not the address that was
8 given to us as his home address.

9 Q BY MR. KANAREK: But the document is as I've
10 indicated; is that correct?

11 MR. MANZELLA: Objection, your Honor. It's irrelevant
12 as to what the document contains.

13 THE COURT: Objection sustained.

14 MR. KANAREK: And in fact, Officer, you did not take
15 this information; is that correct?

16 THE WITNESS: I didn't prepare that report, no. But
17 I took the information.

18 Q BY MR. KANAREK: You did not prepare -- you did
19 not prepare this document; this was prepared by Robert W.
20 Winter, Deputy No. 663; right?

21 A Yes, it was done at my direction.

22 Q But you -- but he prepared this document; right?

23 A Yes, he did.

24 Q Now, did your investigation reveal, Officer, that
25 as of December the 3rd, 1969, the last known address of
26 Donald Jerome Shea was 1811 North Tamerind in Los Angeles?

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

28 MR. KANAREK: This has to do with the investigation,

8b-2

1 the very matters, your Honor, that they have brought up in
2 connection with sending fliers out, all over the country --
3 and perhaps elsewhere.

4 I -- certainly, we have a right to go into the
5 investigation that we are speaking of here.

6 THE COURT: Will you approach the bench?

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

10 THE COURT: The Court finds that, in your last response,
11 arguing before the jury -- as I have warned you consistently
12 not to do, in response to an objection -- that you are in
13 contempt of court.

14 The Court fines you \$50, or requires that you
15 spend two days in the County Jail.

16 MR. KANAREK: Your Honor, if I may, that is unfair,
17 if I may say so.

18 THE COURT: No. You have been warned repeatedly.

19 MR. KANAREK: Well, Mr. Manzella just made --

20 THE COURT: In order to urge your point before the jury,
21 you have consistently and continually argued an objection.

22 If you continue to do it, I will not give you the
23 alternative of paying a fine. I'll impose the sentence
24 requiring jail time.

25 MR. KANAREK: Well, your Honor, then I -- I object on
26 the grounds it's a violation of the effective counsel. Mr.
27 Manzella -- just previous to this, I made -- he made
28 argument to the Court on several points. There's no

8b-3

9

1 question about it.

2 THE COURT: It is the Court's order before you leave
3 this courtroom you'd better produce today -- you'd better
4 produce \$50 or you're going to spend two days in the County
5 Jail.

6 MR. KANAREK: Well, then, I would ask the Court to
7 disqualify itself from hearing this case and declare a
8 mistrial.

9 The right to effective counsel --

10 THE COURT: Your motion is denied.

11 Now, in connection with any argument that either
12 of you wish to make, other than making an objection, the Court
13 will hear you both at the bench in connection with any of
14 it.

15 MR. KANAREK: Then, he -- well, I ask --

16 THE COURT: Well, the Court will, at least, hear a
17 request from you. I may not wish to hear argument.

18 MR. KANAREK: Well, this is clear --

19 THE COURT: It is your obligation to argue, if you
20 argue at all, on any objection, at the bench. And I've
21 told you repeatedly in connection with that, that that's
22 what the Court wants to do.

23 Now, you're asking about an investigative file,
24 and you're asking --

25 MR. KANAREK: The very fact --

26 THE COURT: -- for what obviously calls for hearsay.
27 Do you wish to open the whole of the investigative files?

28 MR. KANAREK: When they opened their case, they opened

9-2

1 the whole investigation in the world. I have a right -- that's
2 the one very thing, they put out is these fliers, they put
3 out these fliers throughout the whole United States. He
4 contacted Coroners and missing persons --

5 THE COURT: You have a right --

6 MR. KANAREK: That's a right -- I have a right to see
7 if his file --

8 THE COURT: You have a right --

9 MR. KANAREK: That's correct.

10 THE COURT: Excuse me just a minute.

11 You have a right to cross-examine him on -- and
12 this is your -- I wish to remind you, you're putting him on
13 direct. You've already had an opportunity to cross-examine
14 him on this. So it is within the Court's discretion to
15 allow you to do this, because what it constitutes really,
16 is further cross-examination. And I'm letting you do it.
17 But the Court has the right to control this examination to a
18 certain extent.

19 Now, do you wish to cross-examine him about the
20 investigation to determine whether or not his investigation --
21 how thorough it was? Because the People have put on some
22 evidence concerning the nature of this investigation and
23 its thoroughness, and you wish, if you wish to question it,
24 then, of course, you can, and you can ask him about specific
25 things that he may or may not have investigated.

26 MR. KANAREK: Then, I ask the Court to rescind the
27 order --

28 THE COURT: I do not. That is not the point. The

9-3

1 fact that you are right or that your argument may be right,
2 does not alter the fact that you argued in front of the
3 jury.

4 MR. KANAREK: The point is, your Honor, under Cooper
5 vs. Superior Court -- well --

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

9 Q BY MR. KANAREK: Mr. Whiteley, does your -- I
10 refer you now to a report dated 12-3-69, from a Sergeant
11 Whiteley and Guenther, and ask you if that does -- if that,
12 in fact, does reveal the last known address of Donald Jerome
13 Shea at 1811 North Tamerind, Los Angeles?

14 MR. MANZELLA: I'm going to object on the grounds that
15 that calls for hearsay, your Honor.

16 THE COURT: Sustained.

17 Q BY MR. KANAREK: Then, I ask to approach the
18 bench, your Honor.

19 THE COURT: Your request to approach the bench is
20 denied.

21 Q BY MR. KANAREK: Did your investigation reveal
22 a driver's license, as of October 22, 1968, for Donald
23 Jerome Shea, wherein his address was 8010 Hollywood Boulevard?

24 MR. MANZELLA: Objection, it calls for hearsay.

25 THE COURT: Sustained.

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

28 THE COURT: No. you may not.

1 Q BY MR. KANAREK: Did -- does your investigation
2 reveal -- I'll withdraw that.

3 MR. KANAREK: Well, your Honor, I would like to approach
4 the bench, if I may? I think it is most important.

5 THE COURT: Very well, the Court would permit you to
6 approach the bench then.

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

4 MR. KANAREK: I just want to -- uh -- argue to the
5 Court for me not to -- when he sends out a request for
6 locations on Donald Jerome Shea, we have a right, as part of
7 our case, to show that they have addresses right here in
8 Los Angeles for Donald Jerome Shea, for the very pertinent
9 -- for the very periods for which your Honor has allowed
10 them fantastic latitude on hearsay and all kinds of irrele-
11 vancies and statements that have been made by Donald Jerome
12 Shea, purportedly, and other people.

13 This is the very thing, your Honor, that they
14 supposedly did in their investigation, is try to locate them,
15 and we're denied due process and equal protection under the
16 14th Amendment and, in fact, a fair trial if your Honor
17 doesn't allow me to get before the jury the fact that these
18 other -- that these addresses are addresses that they have
19 for Donald Jerome Shea.

20 THE COURT: Anything further?

21 MR. KANAREK: No, except that I can't urge upon -- I
22 urge for a mistrial if your Honor is not going to allow me
23 to present the very matters that the People raised in their
24 very case in chief that --

25 THE COURT: If you present the evidence in the correct
26 way, so it is not objectionable, the Court would overrule
27 the objections.

28 MR. KANAREK: That the hearsay --

1 THE COURT: If there were any.

2 MR. KANAREK: The hearsay objection, your Honor is
3 sustaining is the very objection I made initially to their
4 whole investigation, to him testifying to matters that he was
5 not percipient to. It was clearly hearsay when he sends out
6 these fliers to these various places throughout the country
7 and gets responses.

8 Now, equal protection under the 14th Amendment
9 allows us to use the exact same procedures that your Honor
10 allowed during the People's case. We have a right to show
11 that they have these matters in their investigation. Other-
12 wise, what is the point of discovery? These are matters
13 that we've gleaned from discovery. It is arbitrary and
14 capricious and an abuse of discretion for your Honor not to
15 allow me to go into these places where Donald Jerome Shea
16 supposedly -- that's correct, your Honor.

17 THE COURT: Mr. Manzella.

18 MR. MANZELLA: The People didn't go into any of this
19 material. We elicited no responses. There is no testimony
20 from Sergeant Whiteley with regard to what responses he
21 received from these agencies. The only question which
22 Sergeant Whiteley was asked was whether he was successful as
23 a result of these inquiries in locating Donald Jerome Shea.
24 His answer to that question was, "No." That's the only
25 question that was asked of Sergeant Whiteley with regard to
26 his investigation.

27 Mr. Kanarek doesn't remember Sergeant Whiteley's
28 testimony on that point and he's confusing --

1 THE COURT: He remembers it because he's been reminded--

2 MR. KANAREK: I remember, but that opens up the entire
3 field that I am speaking of.

4 THE COURT: You mean as a result of that you believe
5 that you can put in any statement that may be in the homicide
6 book which is an investigation as to the whereabouts of Mr.
7 Shea?

8 MR. KANAREK: Yes, they opened up the subject of his
9 whereabouts.

10 THE COURT: Well --

11 MR. KANAREK: Well, your Honor is asking --

12 THE COURT: Can the People likewise do that?

13 MR. KANAREK: Your Honor is -- well, they have done it.
14 Your Honor has allowed it in direct. Your Honor has allowed
15 him --

16 THE COURT: The Court believes to ask for -- to ask
17 for the contents of a specific report constitutes a request
18 for hearsay.

19 MR. KANAREK: But so was his response about his not
20 getting --

21 THE COURT: The Court permitted it.

22 MR. KANAREK: And that opens up the field, your Honor.

23 THE COURT: And it does -- it opens to you the right
24 to cross-examine and examine him about the extent of his
25 investigation. It does not open up to you, in the Court's
26 opinion, the right to put in, from the investigative files,
27 hearsay statements.

28 MR. KANAREK: Well, in view of your Honor's allowing

1 hearsay in on -- during the People's case in chief, equal
2 protection dictates that we should be allowed to --

3 THE COURT: I think you have that point across. You've
4 made it at least six times.

5 MR. KANAREK: I'm trying to convince the Court.
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1 THE COURT: At least that you mentioned it today.

2 MR. KANAREK: I am trying to convince the Court. I
3 believe it is a valid point.

4 THE COURT: The Court does not believe it to be a valid
5 point.

6 The fact that the Court permitted him to respond
7 that he contacted agencies and was unable as a result of such
8 contact to locate Mr. Shea does not permit you to bring into
9 the record any statement from any report that he may have in his
10 file.

11 If you wish -- and the Court will repeat to you
12 that it has stated to you before, if you wish to ask him about
13 specific information which he may have, which he has not
14 thoroughly investigated, I think that that can be done or you
15 can introduce evidence in connection with it to show that he
16 did not exhibit the degree of thoroughness that you believe,
17 which you believe is the case. That he has not been thorough
18 in the investigation. You may do that. But you must be bound
19 by the rules of evidence just as any counsel.

20 MR. KANAREK: Yes, your Honor.

21 THE COURT: All right.

22 MR. KANAREK: But, I --

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

25 Q BY MR. KANAREK: Officer Whiteley, in connection
26 with your investigation, did you investigate 1811 North Tamarind,
27 Los Angeles, California?

28 A I didn't do that personally, no.

1 Q I'm asking you, did you investigate 1817 -- pardon
2 me, 1811 North Tamarind, Los Angeles, California?

3 A I didn't personally, no.

4 MR. KANAREK: Well, your Honor, my questions -- I assume
5 -- I ask that that be stricken. I am asking the officer for
6 what he has done. I ask that that be stricken, the word
7 "personally."

8 THE COURT: All right, after -- would you read the
9 answer to me, please?

10 (Whereupon, the answer was read by the reporter
11 as follows:

12 "A I didn't personally, no.")

13 THE COURT: That will be stricken.

14 MR. KANAREK: Thank you, your Honor.

15 Q BY MR. KANAREK: Then, I will ask the question,
16 if I may, did you investigate 1811 North Tamarind, Los Angeles,
17 California?

18 MR. MANZELLA: Objection, the question has been asked
19 and answered.

20 THE COURT: Overruled. You may answer.

21 THE WITNESS: The only way I could answer it would be
22 to say no, not personally.

23 MR. KANAREK: Well, then, I ask that that be stricken,
24 the word "personally," your Honor. I'm asking for what this
25 man has done. Like any other witness, he can only testify --

26 THE COURT: All right, you've -- "not personally" is
27 stricken. The "no" may remain.

28 MR. KANAREK: Thank you.

1 THE COURT: You wish to explain your answer?

2 THE WITNESS: Yes, I think I could clarify it.

3 MR. KANAREK: I'm not asking for an explanation.

4 THE COURT: All right, ask your next question.

5 MR. KANAREK: All right, thank you.

6 Q And, Officer, did you create a report wherein you
7 stated that the last known address of Mr. Shea was this 1811
8 North Tamarind?

9 MR. MANZELLA: Objection, it calls for hearsay.

10 MR. KANAREK: Your Honor, I'm not offering it for the
11 truth -- may I approach the bench?

12 THE COURT: Yes, you may.

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

16 MR. KANAREK: In view of what I allege to be your Honor's
17 unequal application of the hearsay rule, I would ask that this
18 not be admitted on the grounds I am offering it for the truth
19 of the matter asserted. It is on the efficacy and the --
20 uh, uh -- strength and the extent of their investigation.

21 In other words, they have placed before the jury a
22 certain posture of investigation. We've done all of these
23 things. We've gone everywhere. We've gone to hell and back
24 trying to find Shorty Shea. And we have a right -- this is not
25 -- this is not -- if I may suggest to the Court, it is offered
26 to show what he has done and what he hasn't done. And we have
27 a right to do that during our case, in view of the fact that
28 he raised the issue of investigation.

1 I'm bringing up the place and asking him if he
2 is --

3 THE COURT: Well, you're asking for the contents of a
4 report.

5 MR. KANAREK: No, but -- your Honor -- your Honor has
6 allowed a great wealth of evidence on some kind of a state of
7 mind --

8 THE COURT: Now, let's don't go through that again.

9 Your theory is that you can ask for the
10 contents of the reports, the specific sentences from the
11 reports, hearsay from the reports?

12 MR. KANAREK: Well --

13 THE COURT: That the Police Department have or the
14 Sheriff's Department has in its possession?

15 MR. KANAREK: I don't know what you mean by specific
16 sentences. This is done in --

17 THE COURT: For the purpose of -- what purpose?

18 MR. KANAREK: This is to show, your Honor, the extent of
19 their investigation. We have a right --

20 THE COURT: The inference is --

21 MR. KANAREK: We have a right, during our defense, to
22 show that -- that their protestations of investigation are
23 simply camouflage.

24 THE COURT: I say the Court agrees with you.

25 MR. KANAREK: All right. May I have a particular --

26 THE COURT: Now, just a moment.

27 You believe, then, that the contents of the report
28 are admissible for what reason?

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1 MR. KANAREK: To show -- to show the extent or lack of
2 extent of this investigation. He's made a broad-brush
3 statement that -- that he has received no responses, and all
4 of this.

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

7 THE COURT: The Court will declare a recess at this time,
8 ladies and gentlemen.

9 You are admonished during the recess not to
10 converse amongst yourselves nor with anyone else, nor permit
11 anyone to converse with you on any subject connected with this
12 matter, nor are you to form or express any opinion on the
13 matter until it is finally submitted to you.

14 (Mid-afternoon recess.)

15 THE COURT: I believe counsel is here for the witness
16 who was on the stand previously.

17 Will you bring her in?

18 THE BAILIFF: Yes, sir.

19 (Pause in the proceedings.)

20 THE COURT: I believe counsel for Miss Russell is here.
21 Miss Russell and Mr. Repetto, they may be brought into the
22 courtroom.

23 THE BAILIFF: Yes, sir.

24 THE COURT: The record will show that the jurors and
25 alternates are all present. Mr. Kanarek is present, and
26 Mr. Manzella.

27
28 BEVERLY RUSSELL,

1 recalled as a witness by and on behalf of the defendant,
2 having previously been sworn, resumed the stand and
3 testified further as follows:

4 THE COURT: The record will show that Mr. Repetto is
5 present.

6 Mr. Repetto, have you spoken with Miss Russell?

7 MR. REPETTO: Yes, I have, your Honor. She's apparently
8 ready now to testify again.

9 THE COURT: Very well. Proceed, then, with your direct
10 examination, Mr. Kanarek.

11 MR. KANAREK: Is your Honor asking me to withdraw
12 Mr. Whiteley at this time as a witness? I do -- if that is
13 your Honor's wishes, I would certainly --

14 THE COURT: Yes.

15 MR. KANAREK: -- agree.

16 THE COURT: Proceed with the examination of Miss Russell.

17 MR. KANAREK: That is your Honor's wish?

18 THE COURT: Yes.

19 MR. KANAREK: Very well.

20
21 DIRECT EXAMINATION (CONTINUED)

22 BY MR. KANAREK:

23 Q Now, Miss Russell, has -- you have spoken with
24 your attorney --

25 A Yeah.

26 Q -- just in the last few minutes or thereabouts?
27 Is that correct?

28 A Yeah.

1 Q Would you please speak into the microphone,
2 Miss Russell?

3 Your Honor, would your Honor ask her to speak into
4 the microphone? I have difficulty hearing her.

5 THE COURT: Proceed with your questions. If we have
6 difficulty, the Court will attempt to help.

7 Q BY MR. KANAREK: Now, when you, under oath,
8 Miss Russell, testified at Page -- as indicated at the top of
9 Page seven eighty-six -- 7863, Line 1, when you answered,
10 "Yeah, I have," when you so testified under oath, that was un-
11 true, and you knew it to be untrue; is that correct?

12 A (No response.)

13 THE COURT: Do you wish to speak to her, Mr. Repetto?
14 You may.

15 MR. REPETTO: Yes. Thank you.

16 (Whereupon, a discussion off the record was
17 commenced at the witness stand between the witness and her
18 counsel.)

19 THE COURT: You can move that microphone.

20 MR. REPETTO: Thank you.

21 (Further discussion off the record at the
22 witness stand between the witness and her counsel.)
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1 MR. REPETTO: I think she's ready, your Honor.

2 THE COURT: Sit forward, and pull your chair up.

3 Repeat your question, Mr. Kanarek.

4 MR. REPETTO: Your Honor, might I at this time -- I
5 don't know what my standing in this trial is. It would appear
6 the question was compound in the sense he was asking her for
7 answers to two questions. I don't know if I do have standing
8 at this time to object to these questions.

9 THE COURT: The Court thinks not, but let's have
10 Mr. Kanarek repeat the question.

11 Q BY MR. KANAREK: Miss Russell, when you answered
12 "Yeah, I have," is indicated at Page 7863, Line 1 of the
13 transcript, which you have read over, when you so testified,
14 you lied under oath; is that correct?

15 A Yes.

16 Q Now, directing your attention, then, to the words
17 "Shorty Shea," Miss Russell. Have you, since you were at
18 Sylmar, used those words in the presence of any probation
19 officer?

20 MR. MANZELLA: Objection, your Honor. The question has
21 been asked and answered.

22 THE COURT: Sustained.

23 Q BY MR. KANAREK: Now, have you, Miss Russell --
24 have you ever -- I'll withdraw that.

25 You -- you have told us that you know Randy Starr,
26 right?

27 A Yes.

28 Q Have you been with Randy Starr at a time that you

1 were with Shorty Shea?

2 A I don't understand what you are saying.

3 Q You don't understand that question?

4 A No.

5 Q Do you know what it is to be at the same place with
6 more than one person?

7 A Yeah.

8 Q Have you been in the presence of Randy Starr at a
9 time when you were also present with Shorty Shea?

10 MR. MANZELLA: I object, your Honor, on the grounds it
11 assumes facts not in evidence. That is, that she was in the
12 presence of Shorty Shea.

13 MR. KANAREK: I'm asking her --

14 THE COURT: The objection is overruled.

15 Have you ever been together with Randy Starr and
16 Shorty Shea?

17 THE WITNESS: No.

18 Q BY MR. KANAREK: Now, did you try to put a tattoo
19 on yourself of the initials of Shorty Shea, Miss Russell?

20 A No.

21 MR. MANZELLA: Objection, your Honor, it is not relevant.

22 MR. KANAREK: Pardon?

23 THE COURT: The answer may remain in the record.
24 The objection is overruled.

25 Q BY MR. KANAREK: Did you have any discussion with
26 anyone at Juvenile Hall concerning your attempt to put a
27 tattoo upon yourself?

28 MR. MANZELLA: Objection.

1 Q BY MR. KANAREK: You -- may I finish the question,
2 your Honor?

3 THE COURT: Yes, you may finish the question.

4 Q BY MR. KANAREK: Did you have any discussion with
5 anyone in Juvenile Hall in connection with putting on a
6 tattoo of Shorty Shea?

7 MR. MANZELLA: Objection, as not relevant.

8 THE COURT: Sustained. You need not answer that.

9 MR. KANAREK: Well, may we approach the bench, then,
10 your Honor?

11 THE COURT: No, you may not.

12x 1 Q Miss Russell, I am going to read something to you
2 and ask you if this refreshes your recollection as to your
3 being in the presence of Shorty Shea.

4 MR. MANZELLA: Your Honor, I object on the grounds that
5 these questions have already been asked and answered.

6 MR. KANAREK: No, that's not so, your Honor. I am trying
7 -- this is a most -- may we approach the bench?

8 THE COURT: Yes, you may.

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

12 MR. KANAREK: First, your Honor --

13 MR. MANZELLA: My objection --

14 MR. KANAREK: No. First, your Honor --

15 MR. MANZELLA: May I state my objection?

16 MR. KANAREK: No. First of all, I would ask that your
17 Honor find Mr. Manzella in contempt of court. He argued
18 outside the presence -- without asking your Honor to approach
19 the bench. Clearly, that was argument that he made to the
20 Court.

21 And I ask that your Honor find him in contempt of
22 court.

23 THE COURT: The Court does not find that his --

24 MR. KANAREK: He clearly -- that was -- that wasn't the
25 -- that wasn't a bare objection. It -- it was a statement
26 which was --

27 THE COURT: You asked to approach the bench?

28 MR. KANAREK: Yes, your Honor, that's right.

1 THE COURT: Why did you want to approach the bench?
2 In order to make this last statement?

3 MR. KANAREK: No.

4 THE COURT: Well, then, state why you wanted to approach
5 the bench.

6 MR. KANAREK: Well, I would like to make the point that
7 the -- the fact that -- that it is necessary for -- that it is
8 necessary for a lawyer, many times, to make argument to a court.

9 THE COURT: All right. Would you get on with why you
10 are asking your last question?

11 MR. KANAREK: Yes. Because this is a most -- obviously,
12 this witness is lying. She has just judicially confessed to
13 perjury.

14 THE COURT: All right. You were just about to ask her --

15 MR. KANAREK: That's right. I have a right to refresh --

16 THE COURT: You were just about to ask her about a question
17 that you put to her when she was on direct before; is that
18 correct?

19 MR. KANAREK: No, that is not so. I am trying to refresh
20 her recollection.

21 THE COURT: With what?

22 MR. KANAREK: With something else.

23 THE COURT: With what?

24 MR. KANAREK: With a question that was asked of
25 Christine Berger.

26 MR. MANZELLA: Well, your Honor --

27 MR. KANAREK: And I have the right -- the Code provides
28 we have a right to attempt to refresh a witness' recollection

1 in many, many ways; and one of them is to -- to read to the
2 witness matters concerning which he has testified, to see if
3 it jars her memory -- especially since we have a judicial
4 confession of perjury at this point, which she knowingly lied
5 under oath.

6 We have a right -- we have to -- after all,
7 Mr. Manson is on trial here, and we have a right to have in
8 evidence before the jury -- and this witness, for reasons of
9 her own, or whatever the reasons may be, has deliberately --

10 THE COURT: Mr. Manzella, what do you have to offer?

11 MR. KANAREK: It's deliberately impeding the processes
12 of this Court. And that is why I --

13 MR. MANZELLA: When these questions were previously
14 asked of her regarding her relations with Shorty Shea, her
15 observations of Shorty Shea, when she was previously called,
16 it's on that basis that I make my objection, that these
17 questions have all been asked and answered.

18 Mr. Kanarek has just raised another point, and
19 this is that he has a right to read -- if I heard him
20 correctly -- some other witness' testimony to this witness
21 in front of the jury, in order to refresh her memory.

22 I have two quick comments.

23 First of all, she hasn't testified that she
24 doesn't recall anything; she has given yes or no answers.

25 She has never testified that her memory is --
26 needs to be refreshed as to any point.

27 Secondly, that the witness may read anything
28 concerning -- including somebody else's testimony, to see if

1 it refreshes her memory; but Mr. Kanarek does not have the
2 right to read that testimony, somebody else's testimony, in
3 front of the jury.

12a

12a-1

1 THE COURT: The foundation must be established, I
2 think, that --

3 MR. KANAREK: Well, it's clear that --

4 THE COURT: -- her memory needs to be refreshed.

5 MR. KANAREK: Well, the fact -- the record is manifest,
6 as far as this witness is concerned, that with these long
7 pauses, and with no response at all and all of that --

8 THE COURT: She's a very -- the Court has observed that
9 she is very dull; that she does not respond readily; that she
10 takes a long time between answers and reflects very
11 deliberately sometimes on her answers.

12 She does appear to be somewhat vague and
13 unresponsive to many of your questions, that's true.

14 But nevertheless, that doesn't establish a
15 foundation for what you wish to ask. The objection will be
16 sustained.

17 MR. KANAREK: Your Honor, I object to your Honor
18 finding she's dull. In my view, she is deliberately -- she
19 is deliberately --

20 THE COURT: Well, that's just the Court's observation
21 of the witness' demeanor on the stand.

22 MR. KANAREK: She's -- she's deliberately deceiving this
23 Court. There's nothing wrong with her intellect. She is
24 deliberately -- and she has -- what she's doing here is
25 interfering with Mr. Manson's right to a fair trial, and --

26 THE COURT: I see.

27 MR. KANAREK: -- Mr. Manson has a right to --

28 THE COURT: All right. You may get back to the counsel

1 table now.

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

4 MR. KANAREK: May I have a moment, your Honor?

5 (Whereupon, a discussion off the record ensued
6 at the clerk's desk between Mr. Kanarek and the clerk.)

7 BY MR. KANAREK:

8 Q Miss Russell, when you were living with Sue -- do
9 you remember Sue, the girl you spoke to us about?

10 A Yeah.

11 Q Did you have male visitors when you were -- where
12 you were living with her?

13 MR. MANZELLA: Objection. The question has been asked
14 and answered, and it's not relevant.

15 THE COURT: Sustained.

16 MR. KANAREK: Well, then, it --

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 Q BY MR. KANAREK: Miss Russell, did you ever sleep
22 overnight at a place where Donald Shea slept overnight?

23 A No.

24 Q And was Donald Shea ever in your immediate
25 presence? That is, like in the same room with you? Or
26 standing right next to you? Has he ever been in the same room
27 with you?

28 A No.

1 Q Has he ever stood right next to you?

2 A No.

3 Q Well, how do you know that, Miss Russell, if you
4 don't know what Donald Shea looks like?

5 MR. MANZELLA: Objection, your Honor. That's argumen-
6 tative.

7 THE COURT: Sustained.

8 Q BY MR. KANAREK: You tell us, Miss Shea, that you
9 -- or, Miss Russell, that you don't know what Donald Shea
10 looks like; right?

11 MR. MANZELLA: Objection. It's argumentative, and it's
12 been asked and answered.

13 THE COURT: Sustained.

14 Q BY MR. KANAREK: Did you tell anyone at Juvenile
15 Hall, at Sylmar, or anywhere else in a juvenile facility for
16 the County of Los Angeles, that you were with Donald Shea on
17 more than one occasion?

18 MR. MANZELLA: Objection. This question has been asked
19 and answered.

20 MR. KANAREK: That -- I don't believe that has, your Honor.

21 And I have the record here, and your Honor's free
22 to peruse it, if your Honor wishes.

23 THE COURT: I'll overrule the objection. You may answer.

24 THE WITNESS: Can you say the question over again?

25 MR. KANAREK: Yeah. May that be read, your Honor?

26 THE COURT: Yes. Mr. Williams will read it for you.

27 (Whereupon, the record was read by the reporter
28 as follows:

1 "Q Did you tell anyone at Juvenile
2 Hall, at Sylmar, or anywhere else in a juvenile
3 facility for the County of Los Angeles, that you
4 were with Donald Shea on more than one occasion?"

5 THE WITNESS: No.

6 Q BY MR. KANAREK: And have you ever spoken, in your
7 lifetime, to anyone that you thought was Donald Shea?

8 MR. MANZELLA: Objection. The question has been asked
9 and answered.

10 MR. KANAREK: That's not so, your Honor. I have the
11 transcript, your Honor, if your Honor --

12b

12b-1

1 THE COURT: Mr. Kanarek, don't argue. I'll rule on it.

2 The objection is overruled.

3 You may answer.

4 Do you want that read back?

5 THE WITNESS: Yeah.

6 THE COURT: Mr. Williams?

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

9 "Q And have you ever spoken, in your
10 lifetime, to anyone that you thought was Donald Shea?")

11 THE WITNESS: No.

12 Q BY MR. KANAREK: You understand that question
13 that I just asked you?

14 A Yeah.

15 Q Have you ever spoken, in your lifetime, with
16 anyone that you knew was Donald Shea?

17 MR. MANZELLA: Objection. The question has been asked
18 and answered.

19 MR. KANAREK: There's a dis --

20 THE COURT: The objection is sustained.

21 MR. KANAREK: May I approach the bench on that, your
22 Honor?

23 THE COURT: No, you may not.

24 Q BY MR. KANAREK: Have you, at any time in your
25 lifetime, gone in the company of Donald Shea to any place?

26 MR. MANZELLA: Objection. The question has been asked
27 and answered.

28 THE COURT: Sustained.

12b-2

1 MR. KANAREK: May we approach the bench, your Honor?

2 THE COURT: No, you may not.

3 Q BY MR. KANAREK: Have you, Miss Russell discussed--
4 no, I'll withdraw that, your Honor.

5 Have you, Miss Russell, outside of Juvenile Hall --
6 or a Juvenile Hall facility -- spoken the words "Donald Shea"
7 to any human being, any person whatsoever?

8 MR. MANZELLA: Objection. The question has been asked
9 and answered.

10 THE COURT: Overruled. You may answer.

11 THE WITNESS: (No response.)

12 THE COURT: Miss Russell, have you ever used the name
13 "Shorty Shea" outside of a Juvenile Hall facility?

14 THE WITNESS: (No response.)

15 THE COURT: Do you understand the question?

16 THE WITNESS: Not really.

17 MR. KANAREK: Your Honor, may the record reveal that
18 there was a long pause between the time that I asked her and
19 the -- and also between the time that you asked her, and the
20 time that she spoke? Is that a fair statement, your Honor?

21 THE COURT: The -- Mr. Kanarek, the jury is able to
22 characterize that better than you or I.

23 MR. KANAREK: I'm not saying it for the jury, your Honor.
24 I'm saying it for the record.

25 THE COURT: Miss Russell, have you ever used the name
26 "Shorty Shea" outside of -- strike that.

27 Have you ever used the name Shorty Shea at any
28 time, anywhere?

12b-3

1 THE WITNESS: Yeah.

2 Q BY MR. KANAREK: Then you have spoken the words
3 "Shorty Shea"?

4 MR. MANZELLA: Objection. The question is argumentative.

5 THE COURT: Sustained. And asked and answered.

6 Q BY MR. KANAREK: On what day did you speak the
7 words "Shorty Shea"?

8 A I don't know.

9 Q Well, give us your best estimate, Miss Russell,
10 as to when you uttered the words "Shorty Shea."

11 A (No response.)

12 THE COURT: Ask your next question.

13 MR. KANAREK: Well, may we have an answer to that? I
14 ask for an answer to that question, your Honor. If the
15 question is not clear, I will be glad to rephrase it.

16 THE COURT: The question is not clear. It calls for
17 speculation. She doesn't know when she used the word.

18 Q BY MR. KANAREK: How long ago was it, Miss Russell,
19 when you uttered the words "Shorty Shea"?

20 MR. MANZELLA: Objection. The question has been asked
21 and answered.

22 THE COURT: Sustained.

23 MR. KANAREK: Well, then, may I approach the bench,
24 your Honor?

25 THE COURT: No, you may not.

26 Q BY MR. KANAREK: Where were you, Miss Russell,
27 when you uttered the words "Shorty Shea"?

28 A I don't know.

12b-4

1 MR. KANAREK: Your Honor, may we approach the bench?

2 THE COURT: Yes, once again you may approach the bench.

3 (Whereupon the following proceedings were had at
4 the bench among Court and counsel, including counsel
5 for the witness, outside the hearing of the jury:)

6 MR. KANAREK: We have a right --

7 THE COURT: You haven't remotely, Mr. Kanarek, touched
8 upon the proof that you stated that you would bring forth
9 from this witness, when I asked you for an offer of proof.

10 MR. KANAREK: Your Honor won't allow me to -- your
11 Honor sustains the objections. I've covered these -- such
12 matter with my questions, and Mr. Manzella objects, and
13 you've sustained them.

14 THE COURT: You have gone through all of this before.

15 MR. KANAREK: No.

16 THE COURT: Yes, you have.

17 MR. KANAREK: If your Honor will read the transcript --

18 THE COURT: The record is clear that most of these
19 questions have been asked before -- perhaps not with the
20 exact words, but they have been asked before.

12c fls.

21 MR. KANAREK: Well, your Honor --
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12c-1

1 THE COURT: The Court has permitted a great deal of
2 leniency, but what do you wish to develop with this witness?

3 MR. KANAREK: I wish to develop what this witness --

4 THE COURT: Now, you told me before that you would be
5 able to establish that, in early 1970, the early months of
6 1970, she was with Shorty Shea.

7 MR. KANAREK: Yes, your Honor.

8 THE COURT: You haven't yet asked her that, have you?

9 MR. KANAREK: Well, I am -- your Honor, I'm trying to
10 do it, in view of her recalcitrance, as a -- in view of
11 the way she's testifying, I'm trying to do it step by step,
12 by asking her when she --

13 THE COURT: All right. Now, she has responded to your
14 questions regarding whether she was ever in the presence of
15 Shorty Shea. She responded: No.

16 Now, what do you wish to do?

17 MR. KANAREK: Well, what I wish to do is to be allowed
18 to ask these questions, without your Honor sustaining
19 objections.

20 THE COURT: Well, if you ask proper questions, the Court
21 will allow the questions.

22 MR. KANAREK: But there's nothing improper about asking
23 her when. This is the most proper of questions. I'm asking
24 her when. Your Honor is sustaining an objection of Mr.
25 Manzella's -- which -- which is not even in point.

26 She is now saying she uttered words after a long
27 time of --

28 THE COURT: That doesn't mean --

12c-2

1 MR. MANZELLA: She said that on her direct testimony,
2 when she was first called as a witness.

3 THE COURT: I am sure she did.

4 MR. KANAREK: I am asking her when. When, your Honor.
5 I didn't -- I did not ask her that previously.

6 THE COURT: All right. We will allow you to ask her
7 that.

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

11 THE COURT: All right. The Court will permit you to
12 ask her the questions.

13 MR. KANAREK: Thank you.

14 THE COURT: When did you use the words "Shorty Shea,"
15 if you can remember? Do you remember?

16 THE WITNESS: No.

17 BY MR. KANAREK:

18 Q How long ago was it, when you last used the words
19 "Shorty Shea," Miss Russell?

20 MR. MANZELLA: I object again on the grounds that ques-
21 tion has been asked and answered.

22 THE COURT: Sustained.

23 MR. KANAREK: Well, then, may we approach the bench,
24 your Honor? I --

25 THE COURT: No, you may not.

26 Q BY MR. KANAREK: In whose company were you, Miss
27 Russell, when you last used the words "Shorty Shea"?

28 A (No response.)

12c-3

1 THE COURT: Miss Russell? Will you answer that
2 question?

3 THE WITNESS: (No response.)

4 THE COURT: Do you remember in whose company you were
5 when you used the words "Shorty Shea," if you were in
6 anyone's company?

7 THE WITNESS: (No response.)

8 THE COURT: Do you remember, Miss Russell?

9 THE WITNESS: (No response.)

10 THE COURT: Miss Russell, are you listening to me?

11 THE WITNESS: Yeah.

12 THE COURT: All right. Do you remember in whose company
13 you were when you used the words "Shorty Shea"?

14 THE WITNESS: It was my dad.

15 Q BY MR. KANAREK: You were in your father's
16 company?

17 A Yeah.

18 Q And how long ago was that, that you last used the
19 words "Shorty Shea" in your father's company?

20 A I don't know.

21 Q Where were you, Miss Russell, when you last used
22 the words "Shorty Shea" in your father's company?

23 A Central.

24 Q Pardon?

25 A Central.

26 Q You mean Juvenile Hall?

27 A Yeah.

28 Q And at that time, would -- would you tell us how

12c-4

1 long ago that was?

2 A (No response.)

3 THE COURT: Miss Russell?

4 THE WITNESS: (No response.)

5 THE COURT: Would you respond, please?

6 THE WITNESS: I am trying to think of the day.

7 Q BY MR. KANAREK: Do you recall the date?

8 A It was either Friday or Saturday.

9 THE COURT: Just last Friday or Saturday?

10 THE WITNESS: Huh-uh. The day that -- uh -- Mr. Kanarek
11 came over to Central, to talk to me.

12 THE COURT: The day that Mr. Kanarek what?

13 THE WITNESS: The day he come over there to talk to me.

14 THE COURT: Was it this month or last month?

15 THE WITNESS: It was -- he came there first.

16 THE COURT: Was it this year?

17 THE WITNESS: It wasn't -- (inaudible)

18 THE REPORTER: I am sorry, your Honor. I didn't hear
19 the last response.

20 THE COURT: Say that last word. The reporter didn't
21 catch it.

22 THE WITNESS: It wasn't too long ago.

23 Q BY MR. KANAREK: And when I came there to speak
24 to you, you refused to talk to me; right?

25 A Yeah.

26 Q And when, just prior to the time that you spoke
27 to your father, on that day -- whatever day that was -- was it
28 that you mentioned the words "Shorty Shee"?

12c-5

1 THE COURT: That assumes a fact not in evidence, Mr.
2 Kanarek.

3 Did you ever use the name "Shorty Shea" before
4 that date, when you spoke to your father?

5 THE WITNESS: No.

6 Q BY MR. KANAREK: And your father, out of a clear
7 blue sky, spoke to you of Shorty Shea, of all subjects; is
8 that correct?

9 MR. MANZELLA: Objection. The question is argumentative, --

10 THE COURT: Sustained.

11 MR. MANZELLA: -- and it assumes a fact not in evidence.

12 Q BY MR. KANAREK: Well, did you and your father on
13 that occasion talk about Shorty Shea?

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

15 THE COURT: Sustained.

16 MR. KANAREK: I am laying -- may I approach the bench,
17 your Honor?

18 THE COURT: No, you may not.

19 Q BY MR. KANAREK: Is that the first time in your
20 lifetime that you had ever heard the words "Shorty Shea," --

21 MR. MANZELLA: Objection. That's --

22 Q BY MR. KANAREK: -- Miss Russell?

23 MR. MANZELLA: Objection. It's not relevant, and it's
24 been asked and answered.

25 THE COURT: Sustained.

13 Fls.

13-1

1 MR. KANAREK: May we approach the bench on that, your
2 Honor?

3 THE COURT: No, you may not.

4 Have you heard the name Shorty Shea before that
5 date, that's what Mr. Kanarek wants to know? Before you said
6 it yourself.

7 THE WITNESS: I don't understand what you just said.

8 THE COURT: Go ahead. You may put that question again.
9 I'll reverse my ruling.

10 MR. KANAREK: I'll take the Court's question and have
11 it read. I think it is a very clear question, your Honor.

12 THE COURT: Have you ever used the word -- strike that.

13 Have you ever heard the words "Shorty Shea" before,
14 before that date when you were talking about your father?

15 THE WITNESS: No.

16 Q BY MR. KANAREK: Have you ever used the word
17 "Shorty" before in your life?

18 MR. MANZELLA: Objection, the question --

19 Q BY MR. KANAREK: Before that day that you spoke
20 with your father.

21 MR. MANZELLA: Objection, the question has been asked
22 and answered.

23 THE COURT: Sustained.

24 Q BY MR. KANAREK: Had you ever used the word "Shea"
25 in your life before that day you spoke with your father?

26 MR. MANZELLA: Objection, the question has been asked
27 and answered.

28 THE COURT: Sustained.

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

3 THE COURT: No, you may not.

4 Q BY MR. KANAREK: On the day, Miss Russell, that I
5 was there, is that the day that you spoke to your father and
6 you used the words "Shea" or "Shorty Shea," is that right?

7 THE COURT: Do you understand the question?

8 THE WITNESS: Yeah.

9 THE COURT: Would you answer it, then?

10 Was it the same day that you talked -- that
11 Mr. Kanarek was there, rather? Was it the same day that
12 Mr. Kanarek was there that you spoke with your father?

13 A Yeah.

14 Q BY MR. KANAREK: Was that the day that you first
15 saw me, Miss Russell?

16 MR. MANZELLA: Objection, as not relevant.

17 THE COURT: The objection is sustained.

18 Let's move along, Mr. Kanarek.

19 Q BY MR. KANAREK: Had you ever seen me before,
20 Miss Russell?

21 THE COURT: That's not --

22 MR. MANZELLA: Same objection, same grounds.

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

25 THE COURT: You needn't answer.

26 No, you may not.

27 Q BY MR. KANAREK: Did you talk with your father
28 over the telephone when you spoke about Shorty Shea?

1 MR. MANZELLA: Objection, it is not relevant.

2 THE COURT: Sustained.

3 MR. KANAREK: May I approach the bench on that, your
4 Honor?

5 THE COURT: No.

6 MR. KANAREK: Well, your Honor, I would like to approach
7 the bench so that I can follow the orders of the Court.

8 THE COURT: Ask your next question.

9 MR. KANAREK: Well, your Honor, I think it is important
10 to approach the bench.

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

12 Q BY MR. KANAREK: Miss Russell, on this day that
13 you spoke with your father, how long did you talk to him?

14 MR. MANZELLA: Objection, it is not relevant.

15 THE COURT: Sustained.

16 Q BY MR. KANAREK: On the day that you spoke with
17 your father concerning Shorty Shea, did you discuss with your
18 father your father's connection with Shorty Shea?

19 MR. MANZELLA: Objection, it is not relevant and
20 assumes a fact not in evidence and calls for hearsay.

21 MR. KANAREK: Well, then, may we approach the bench, your
22 Honor?

23 THE COURT: The objection is sustained.

24 Q BY MR. KANAREK: Then, Miss Russell, would you
25 please tell us what was the conversation between yourself
26 and your father concerning Shorty Shea?

27 MR. MANZELLA: If the Court please, there is an
28 objection on the grounds it calls for hearsay and it is not

1 relevant.

2 MR. KANAREK: It is not -- your Honor, may we approach
3 the bench?

4 THE COURT: The objection is sustained.

5 MR. KANAREK: May we approach the bench?

6 THE COURT: No, you may not.

7 MR. KANAREK: If I may have a moment, your Honor.

8 Your Honor, I would like to approach the bench
9 and point a matter out to the Court.

10 THE COURT: All right, you may approach the bench again.

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

14 MR. KANAREK: Your Honor, I have a right, in view of
15 this witness' -- uh -- of her conduct on the witness stand, I
16 have a right to have these questions answered.

17 In other words, this witness cannot, by her
18 recalcitrance, intransigence or whatever you want to call it,
19 she cannot -- she cannot dictate to the Court. The Court --
20 I ask that the Court find her in contempt of court for this
21 procedure that she is going through, what she is doing by
22 deliberately not responding to the questions that we have
23 asked of her. I ask that she --

24 THE COURT: She's a dull, immature girl who has -- who
25 is in the custody of the Probation Department and whose
26 understanding of your questions is negligible. And she
27 appears to have some sort of problem which I am professionally
28 unable to analyze, but it appears to be some sort of a

1 psychological problem to me.

2 MR. KANAREK: Well, that is not so, your Honor.

3 THE COURT: That's my observation of her conduct --

4 MR. KANAREK: I've seen her --

5 THE COURT: -- her conduct on the witness stand.

6 But that's aside from the points that you've been raising
7 heretofore. I do not find her in contempt at this point.

8 MR. KANAREK: Very well, your Honor.

9 THE COURT: Now, why did you approach the bench?

10 MR. KANAREK: Because I wanted your Honor to find her
11 in contempt and order if she doesn't answer these questions --

12 THE COURT: Well, you put a question to her which the
13 Court believes she should answer and I'll order her to answer.

14 MR. KANAREK: All right, very well, your Honor.

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

17 Q BY MR. KANAREK: Miss Russell, do you believe
18 that something is going to happen to you if you answer
19 questions truthfully in this courtroom?

20 MR. MANZELLA: Objection, the question is argumentative.

21 THE COURT: Sustained.

22 Q BY MR. KANAREK: Now, directing your attention to
23 the -- to the time that you say that you spoke with your
24 father and this time that you told us about that you say the
25 name Shorty was -- came up in the conversation.

26 At that time when you spoke, where was your father?

27 MR. MANZELLA: Objection, it is not relevant.

28 THE COURT: Sustained.

1 MR. KANAREK: Well, may I approach the bench on that,
2 your Honor?

3 THE COURT: You may not.

4 Q BY MR. KANAREK: Was anyone else present, Miss
5 Russell, when you spoke with your father concerning Shorty
6 Shea?

7 MR. MANZELLA: Objection, it is not relevant.

8 THE COURT: Sustained.

9 Ask your next question, Mr. Kanarek. Let's move
10 along, please.

11 MR. KANAREK: Well, your Honor, I am trying to.

12 Q BY MR. KANAREK: Miss Russell, have you been --
13 I'll withdraw that.

14 When did you go to Juvenile Hall, Miss Russell?

15 MR. MANZELLA: Objection, it is not relevant.

16 THE COURT: Sustained.

17 Q BY MR. KANAREK: Miss Russell, have you ever --
18 I'll withdraw that.

19 When -- when you were living with Sue, Miss
20 Russell, did you have occasion to visit with people at the
21 place where you were living other than Sue?

22 MR. MANZELLA: Objection, it is not relevant.

23 THE COURT: Sustained.

24 MR. KANAREK: Well, then, your Honor, I ask to approach
25 the bench.

26 THE COURT: Your request is denied.

27 There's been a considerable delay between your
28 last question and this moment. Is something --

1 MR. KANAREK: Yes, your Honor, the exhibits that I wish
2 are in another courtroom.

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1 THE COURT: What exhibits are you asking for?
2 Would you let me know?

3 (Whereupon, a discussion off the record ensued at
4 the bench between the Court and the clerk.)

5 THE COURT: Ask your question without the exhibits at
6 this moment.

7 MR. KANAREK: Well, I don't think that I can, your
8 Honor. I -- it's not --

9 THE COURT: I believe you can.

10 MR. KANAREK: Well, I -- uh --

11 THE COURT: Will you approach the bench?

12 MR. KANAREK: Yes, your Honor.

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

16 THE COURT: Are you deliberately delaying this matter?

17 MR. KANAREK: No, I'm not!

18 THE COURT: There has been a delay of some five minutes
19 while you sat there at the counsel table.

20 Now, what are you waiting for?

21 MR. KANAREK: Well, that is not -- your Honor, I must
22 respectfully state that is not so.

23 THE COURT: Well, it's true, as the Court saw it. Now,
24 what are you waiting for?

25 MR. KANAREK: I asked the clerk -- I asked the clerk to
26 get these exhibits. I want to get those guns and see if -- I
27 have a right to try and supposedly jar this witness' memory.
28 This witness --

1 THE COURT: For what? As to whether or not she saw
2 Shorty Shea in 1970?

3 MR. KANAREK: And the guns, that's right.

4 MR. MANZELLA: If I may, it seems more like Mr. Kanarek's
5 examination is designed to put the witness to sleep.

6 MR. KANAREK: Well -- well, the point is --

7 THE COURT: Well, your comment isn't called for,
8 Mr. Manzella.

9 MR. KANAREK: And I would also like to point out, your
10 Honor, that this witness is lying on the witness stand. She
11 is deliberately -- she -- it's obvious that she's lying.

12 THE COURT: It's not obvious to me.

13 MR. KANAREK: And your Honor --

14 THE COURT: It's not obvious to the Court, as perhaps
15 it is to you, Mr. Kanarek.

16 But now, what -- can you ask her generally about
17 any guns?

18 MR. KANAREK: No, that's not -- I'm not here just to
19 ask questions in a vacuum.

20 THE COURT: Is somebody going to get them?

21 THE CLERK: I'll get them myself.

22 MR. KANAREK: Just to ask questions in a vacuum. But to
23 allow this witness to get away with this is reprehensible. She's
24 deliberately lying. She has confessed to perjury already.

25 THE COURT: Well, there's something that's definitely
26 reprehensible about this entire examination.

27 Let's resume our places, gentlemen. Resume your
28 places, if you would, at the counsel table.

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

3 THE COURT: Ladies and gentlemen, we'll recess for five
4 minutes. We will give you a short break. We will make it
5 five minutes.

6 The Court admonishes you, you are not to converse
7 amongst yourselves nor with anyone else, nor permit anyone
8 else to converse with you on any subject connected with this
9 matter, or are you to form or express any opinion on the matter
10 until it is finally submitted to you.

11 You may stay in your places, or you may move
12 around, if you wish.

13 (Recess.)

14 THE COURT: The jurors are all present.

15 Mr. Kanarek, you may proceed.

16 MR. KANAREK: Yes, your Honor.

17 BY MR. KANAREK:

18 Q Miss Russell, you have been around people in a
19 Western atmosphere; is that correct?

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

21 THE COURT: Sustained.

22 Q BY MR. KANAREK: Do you see these guns, Miss
23 Russell?

24 A Yeah.

25 Q Can you tell from there whether you have ever
26 seen these guns before or not?

27 A No.

28 Q Pardon?

1 A No.

2 Q Well, have you ever seen these guns?

3 A No.

4 Q Can you tell from where you are?

5 A No.

6 Q Which way is it, Miss Russell? You say you
7 can't tell from where you are, and you are saying, "No," that
8 you've never seen them before.

9 MR. MANZELLA: That's argumentative, your Honor, and it's
10 irrelevant.

11 THE COURT: Sustained.

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

13 THE COURT: Yes, you may.

14 For the record, the record should show that you
15 are holding 53-A and 53-B, and have referred to those revolvers.

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14aQ
1 Q BY MR. KANAREK: You've seen guns before in your
2 life; is that right, Miss Russell?

3 A Yeah.

4 Q And you are familiar with guns; right?

5 A No.

6 Q Your father has some guns, --

7 MR. MANZELLA: Objection.

8 Q BY MR. KANAREK: -- is that right?

9 MR. MANZELLA: It's not relevant.

10 THE COURT: Sustained.

11 Q BY MR. KANAREK: Would you look at those guns,
12 Miss Russell? And would you tell us whether or not -- well,
13 first, would you look at them?

14 Have you seen those guns before?

15 A No.

16 Q Never saw them before in your life?

17 A No.

18 MR. MANZELLA: Objection. The question has been
19 asked and answered.

20 THE COURT: The answer may remain.

21 The objection is overruled.

22 Q BY MR. KANAREK: Did you have a gun with you,
23 Miss Russell, when you lived with Sue --

24 A No.

25 Q -- in Chatsworth?

26 You never did?

27 A No.

28 Q Anybody come to that house that you lived in in

1 Chatsworth with guns?

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

3 THE COURT: Overruled. You may answer.

4 THE WITNESS: Can he say the question over again?

5 MR. KANAREK: May it be read?

6 THE COURT: Mr. Williams, please?

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

9 "Q Anybody come to that house that you
10 lived in in Chatsworth with guns?"

11 THE WITNESS: No.

12 Q BY MR. KANAREK: Shorty Shea came to your house in
13 Chatsworth with guns; is that right?

14 A No.

15 Q Now, Miss Russell, what was the reason you went
16 to Juvenile Hall in Sylmar?

17 A I don't understand what you are saying.

18 Q You don't understand that question?

19 A No.

20 Q Is your state of mind, Miss Russell, such that
21 when you don't want to make an answer to a question, you say
22 you don't understand it? Or you don't answer for long periods
23 of time? Is that -- is that why you do it, Miss Russell?

24 MR. MANZELLA: Objection. The question is argumentative.

25 THE COURT: The question is argumentative, Mr. Kanarek.

26 You need not answer that.

27 MR. KANAREK: Well, then -- your Honor, may the question
28 be read?

1 THE COURT: Restate your question.

2 Q BY MR. KANAREK: What -- do you understand the
3 word "what", Miss Russell? You've heard that word before,
4 haven't you?

5 MR. MANZELLA: Object to that.

6 THE COURT: That's argumentative. You need not answer
7 that.

8 Q BY MR. KANAREK: What is the reason that you were
9 taken to Sylmar, Miss Russell?

10 THE COURT: That's vague and ambiguous. It calls for
11 a conclusion.

12 You need not answer that.

13 Q BY MR. KANAREK: What events occurred just prior
14 to the time that you were taken to Sylmar, Miss Russell?

15 MR. MANZELLA: Objection, your Honor. It doesn't
16 appear to be relevant --

17 THE COURT: Sustained.

18 MR. MANZELLA: -- to any issue in the case.

19 MR. KANAREK: I -- it's preliminary, your Honor.

20 May I approach the bench, your Honor?

21 THE COURT: No, you may not.

22 The objection is sustained.

23 Q BY MR. KANAREK: Where were you, Miss Russell,
24 when you were picked up and taken to Sylmar?

25 A At the ranch.

26 Q And that was in -- you have -- now, you answer
27 that, Miss Russell, immediately, without a moment's hesitation.

28 MR. MANZELLA: Objection. It's argumentative.

1 THE COURT: Sustained.

2 Mr. Kanarek, restrain yourself, will you?

3 MR. KANAREK: I am. May I approach the bench, then,
4 your Honor?

5 THE COURT: No, you may not.
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1 Q BY MR. KANAREK: And what month was that in,
2 Miss Russell, when you were taken from the ranch to Sylmar?

3 A February.

4 Q 1970, right?

5 A (No response)

6 THE COURT: Was that last year, Miss Russell?

7 THE WITNESS: (No response.)

8 THE COURT: Are you thinking, Miss Russell?

9 THE WITNESS: (No response.)

10 THE COURT: Miss Russell, do you hear me?

11 THE WITNESS: Yeah.

12 THE COURT: Well, answer Mr. Kanarek's last question.

13 MR. KANAREK: I think the last question was your Honor's.

14 THE COURT: Would you answer Mr. Kanarek's last question.

15 1970? Was it 1970 when you were picked up and
16 taken to Sylmar?

17 THE WITNESS: It was '70, but I said '69 the last time
18 I was here.

19 THE COURT: Ask your next question.

20 Q BY MR. KANAREK: And you call it the ranch, Miss
21 Russell? When you say "the ranch," what do you mean?

22 A Spahn's.

23 Q Spahn Ranch?

24 A Uh-huh.

25 Q And at that time, Miss Russell, were you living
26 at a house away from Spahn Ranch?

27 MR. MANZELLA: Objection, it is not relevant.

28 THE COURT: Sustained.

1 Q BY MR. KANAREK: Well --

2 Where were you -- where were you physically
3 located when you were taken, picked up and taken to Juvenile
4 Hall, Miss Russell?

5 A What do you mean by "physically"?

6 Q You don't understand that?

7 A No.

8 Q When you were taken to Sylmar just a few moments
9 before you left, you were in some particular place. And I'm
10 asking where were you when you were picked up and taken to
11 Sylmar?

12 A At the ranch.

13 THE COURT: Mr. Kanarek wants to know where at the ranch,
14 is that correct?

15 MR. KANAREK: Yes, your Honor.

16 THE COURT: Were you at the bunk house or at the kitchen?

17 THE WITNESS: Oh.

18 THE COURT: Where were you when you were picked up?

19 THE WITNESS: In the trailer.

20 Q BY MR. KANAREK: You were in Randy Starr's trailer?

21 A Yeah.

22 Q And directing your attention, Miss Russell -- does
23 that refresh your recollection as to what Shorty Shea looks
24 like, when you think back to Randy Starr in the trailer? Does
25 that refresh your thinking about Shorty Shea?

26 THE COURT: All right, that's a vague and indefinite
27 question, and assumes facts not in evidence.

28 MR. KANAREK: I'm just asking, your Honor.

1 THE COURT: Rephrase your question.

2 Q BY MR. KANAREK: Now, directing your attention to
3 Randy Starr's trailer and Randy Starr, and thinking of those
4 two, Randy Starr and the trailer. Does that bring to mind
5 Shorty Shea?

6 MR. MANZELLA: Objection, your Honor --

7 THE WITNESS: No.

8 MR. MANZELLA: I'll withdraw the objection.

9 THE COURT: The answer may remain. The objection is
10 overruled.

11 Q BY MR. KANAREK: And when you went to Sylmar --
12 (Whereupon, Mr. Kanarek conferred with the clerk.)

13 Q BY MR. KANAREK: And when you went to Sylmar, you
14 had with you this brown piece of paper, is that correct?

15 MR. MANZELLA: Objection, the question has been asked
16 and answered.

17 THE COURT: Sustained.

18 MR. KANAREK: Then, may I approach the bench on that,
19 your Honor?

20 THE COURT: No, you may not.

21 Q BY MR. KANAREK: Well, do you now remember, now
22 that you are telling us that you remember in February, 1970,
23 Miss Russell, do you now remember having with you this brown
24 piece of paper?

25 A No.

26 THE COURT: And you are referring, for the record, to
27 what?

28 MR. KANAREK: Defendant's J.

1 THE COURT: Thank you.

2 MR. KANAREK: Your Honor --

3 Q Now, when you were taken from Randy Starr's
4 trailer to Sylmar, did you, after getting to Sylmar, speak to
5 a counsellor?

6 MR. MANZELLA: Objection, it is irrelevant.

7 THE COURT: Sustained.

8 MR. KANAREK: Then, may I approach the bench, your
9 Honor, to lay a foundation?

10 THE COURT: No, you may not.

11 MR. KANAREK: I mean, -- I'm sorry, I misspoke. I mean
12 to approach the bench to make argument concerning a foundation.

13 THE COURT: No, you may not.

14 Q BY MR. KANAREK: Well, you have previously told
15 us, Miss Russell, that this is your writing on the brown piece
16 of paper, but that the paper is -- was not yours.

17 Do you remember telling us that?

18 MR. MANZELLA: Objection, the question has been asked
19 and answered.

20 THE COURT: Sustained.

21 MR. KANAREK: I -- I -- this is preliminary, your Honor.

22 THE COURT: Sustained. That has been explored and the
23 record speaks for itself.

24 Q BY MR. KANAREK: Now, after going to Sylmar,
25 Miss Russell, did you then leave the custody of Juvenile
26 Hall?

27 MR. MANZELLA: Objection, it is not relevant.

28 MR. KANAREK: Your Honor, may I approach the bench?

1 THE COURT: You may answer that. The objection is
2 overruled.

3 THE WITNESS: Can he read the question over?

4 THE COURT: After going to Sylmar, did you leave there?

5 THE WITNESS: I don't understand.

6 THE COURT: Have you been at Sylmar during all the time
7 since you were picked up? At Spahn Ranch.

8 Are you thinking about that question now?

9 THE WITNESS: I still don't know what you are talking
10 about.

11 THE COURT: All right, Mr. Kanarek, you may rephrase it.

12 MR. KANAREK: Your Honor is asking me to rephrase it,
13 very well.

14 THE COURT: No, don't -- rephrase your own question.
15 I tried.

16 MR. KANAREK: I'll try, your Honor. Thank you.

17 Q BY MR. KANAREK: Miss Russell, you went to Sylmar
18 and at some time you left Sylmar, is that correct?

19 A Yeah.

20 Q When was it that you left Sylmar?

21 A In August.

22 Q Where did you go when you left Sylmar?

23 MR. MANZELLA: Objection, it is not relevant.

24 THE COURT: Sustained.

25 MR. KANAREK: Well, your Honor, I would ask to approach
26 the bench before --

27 THE COURT: Very well, you may approach the bench.
28

15a-1

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

MR. KANAREK: Your Honor, this witness has made incredible statements such as the writing is mine but the paper is not mine. And I have a right to go into that area that we -- in connection with that. We are certainly not bound by the statements of this girl which are completely lacking in truth.

THE COURT: Mr. Kanarek, you put this witness on the stand and you have treated her as a hostile witness, and you have cross-examined her extensively about the statements in respect to this paper.

MR. KANAREK: No, but she --

THE COURT: Now, why are you approaching the bench?

MR. KANAREK: Because I wanted to find out --

THE COURT: The Court is not going to allow you to resume the examination about this paper.

MR. KANAREK: Well, we --

THE COURT: Unless there is something new.

MR. KANAREK: Well, that's the purpose, when you say something new, we have a right to interrogate.

THE COURT: Now, you have told me in your offer of proof that you would be able to establish in your opening that she was living with Shorty Shea in the early months of 1970.

MR. KANAREK: If she tells the truth, that is what she represents -- I believe she has told people. I have a right --

1 if your Honor is going to --

2 THE COURT: You approached the bench because you wanted
3 to resume examination about the piece of brown paper.

4 MR. KANAREK: That's right, because this triggers --

5 THE COURT: Your request is denied.

6 MR. KANAREK: We -- it is our position that we are not
7 stuck -- when -- when the record reveals incredible statements
8 such as the handwriting is mine, but I don't remember ever
9 seeing it before, things like that, we have a right to go
10 into that and probe and try to get this witness to testify.
11 So far she is -- she has committed perjury. She has lied.
12 And your Honor has not -- by your Honor's rulings, your Honor
13 is foreclosing us from going into areas wherein it is clear
14 that the witness is just saying words and cares not about
15 their truthfulness. When she says like -- I said the paper,
16 the handwriting is mine, but the paper -- I don't know what
17 it is or I don't know what it is, never saw it before, things
18 like that, even though the handwriting --

16 fs

16-1

1 THE COURT: So the reason you approached the bench is
2 to -- is to request that you be allowed to examine her more
3 extensively concerning the paper?

4 MR. KANAREK: Yes. We are not bound by such a
5 ridiculous answer -- or answers.

6 THE COURT: You had --

7 MR. KANAREK: And your Honor himself --

8 THE COURT: You had considerable time, and the Court
9 has allowed you to go into many of those things that were
10 covered before.

11 Now, I see no point in retracing the steps that
12 you took before in connection with that examination.

13 MR. KANAREK: Well, the point is, we have a right --

14 MR. MANZELLA: Oh, boy!

15 MR. KANAREK: -- to go into --

16 THE COURT: You have a right to redo it?

17 MR. KANAREK: But it's so patent -- when it's so
18 patently untrue, yes, I believe we --

19 THE COURT: Well, --

20 MR. KANAREK: The piece of paper --

21 THE COURT: -- everyone in the courtroom, I am sure,
22 of ordinary intelligence recognizes the inconsistency and
23 the untruth of the statement.

24 MR. KANAREK: But my purpose is to -- well, if this
25 witness tells --

26 THE COURT: But you examined extensively on that point,
27 after she stated what she did.

28 MR. KANAREK: Yeah, but it's not --

16-2

1 THE COURT: The Court believes she's very slow and very
2 dull, mentally, and that there may be something wrong with
3 her; but --

4 MR. KANAREK: There's nothing wrong with her, except
5 she doesn't want to tell the truth.

6 THE COURT: But there is no reason why you should be
7 allowed to go over ground which has already been covered.

8 MR. KANAREK: Well, what --

9 THE COURT: Anything further?

10 MR. KANAREK: Well, other than the fact that the matter
11 is obviously -- that paper is quite important, and we --

12 THE COURT: Is there anything further?

13 MR. KANAREK: Well -- uh -- yes, your Honor, there is
14 something further, which I wish to -- to interrogate on. And
15 I wish to --

16 THE COURT: This witness?

17 MR. KANAREK: Yes, upon criminal matters, that I believe
18 that she has -- that she has engaged in, and which would --
19 and which would shed light.

20 THE COURT: How does that have any bearing on her
21 testimony?

22 MR. KANAREK: Well, if she's done these things with
23 Shorty Shea, it would have a lot of bearing.

24 MR. MANZELLA: Incredible!

25 MR. KANAREK: If she committed some kind of crime,
26 where she obviously -- it's most important to know --

27 THE COURT: Do you have any information that -- that
28 she was ever in the presence of Shorty Shea in 1970?

16-3

1 MR. KANAREK: Well, look at the testimony of Christine
2 Berger.

3 THE COURT: The Court understands what Miss Berger has
4 testified to. But do you have any such evidence?

5 MR. KANAREK: Well --

6 THE COURT: If you do, the Court urges you to put it on,
7 and to stop --

8 MR. KANAREK: But that's --

9 THE COURT: -- this incessant repetition in your
10 questioning of this witness.

11 MR. KANAREK: Well, she's -- she's the witness. If she
12 testifies truthfully -- does your Honor believe that Miss
13 Berger testified truthfully?

14 THE COURT: That's not for the Court to judge.

15 MR. KANAREK: Well, the fact --

16 THE COURT: All right. Let's hear from you. You wish
17 to -- you just wish to prolong this examination?

18 MR. KANAREK: No, your Honor, but I --

19 THE COURT: What do you wish to ask about?

20 MR. KANAREK: I am not asking to prolong it for the sake
21 of prolonging --

22 THE COURT: What do you wish to do?

23 MR. KANAREK: What I wish to do is, in view of the fact
24 that she has made these patently untrue statements -- it's
25 obvious when she makes a statement --

26 THE COURT: Why do you continue to reiterate that?

27 MR. KANAREK: Because it --

28 THE COURT: You've stated it now numerous times, and

16-4

1 the Court --

2 MR. KANAREK: It's so obvious, your Honor, and --

3 THE COURT: Would you please, in simple language, tell
4 me what you wish to pursue?

5 MR. KANAREK: I wish to be able to get this girl to tell
6 the truth. That's the point -- especially about that piece of
7 paper. We have a right to --

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8 THE COURT: Ask your next question.
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(Whereupon a discussion off the record ensued at the detention room door between Mr. Kanarek and one of the occupants of the detention room.)

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

THE COURT: Mr. Kanarek, would you resume your place at the counsel table?

MR. KANAREK: Yes, your Honor.

THE COURT: It's ten minutes to 5:00, Mr. Kanarek.

You may proceed.

(Pause in the proceedings.)

THE COURT: Do you have any further questions?

MR. KANAREK: I do, your Honor, but I wish to obey the Court's orders.

THE COURT: What is your next question?

BY MR. KANAREK:

Q Miss Russell, when you were in the house, away from Spahn Ranch -- you know the house that you lived in, that was not on Spahn Ranch?

Are you familiar with that? Do you know what I am talking about?

A Yeah.

Q When you lived in that house, did you have male visitors?

MR. MANZELLA: Objection. It's irrelevant.

THE COURT: Sustained.

MR. KANAREK: Then I have no -- if your Honor is going

16a-2

1 to so rule, I have no further questions, your Honor.

2 MR. MANZELLA: I have no questions.

3 THE COURT: You may step down, and you are excused,
4 Miss Russell.

5 MR. KANAREK: I ask that she not be excused, your
6 Honor.

7 THE COURT: She is excused.

8 Thank you, ladies and gentlemen. It's been a
9 warm afternoon.

10 I will see you tomorrow morning at 9:30.

11 You are admonished that during the recess, you
12 are not to converse amongst yourselves nor with anyone else,
13 nor permit anyone to converse with you on any subject
14 connected with this matter, nor are you to form or express
15 any opinion on the matter until it is finally submitted to
16 you.

17 Good night.

18 (Whereupon, at 4:52 o'clock p.m., the members of
19 the jury exited the courtroom, whereupon the following
20 proceedings were had:)

21 THE COURT: Mr. Reppetto, thank you very much for coming
22 again here to court.

23 MR. REPPETTO: Yes. You're welcome.

24 THE COURT: We appreciate your assistance.

25 MR. REPPETTO: Certainly, your Honor.

26 MR. KANAREK: Your Honor, I would ask for a bench
27 warrant, and ask that it be held, concerning Mr. Guenther.

28 I subpoenaed him here for 2:00 o'clock, and --

16a-3

1 now, I'm not asking that he be arrested, but -- but I have a
2 -- a bench warrant -- I subpoenaed him for 2:00, and he didn't
3 show.

4 So would your Honor issue a bench warrant and hold
5 it?

6 SERGEANT WHITELEY: He's here (indicating).

7 THE COURT: Mr. Guenther, I believe, is --

8 MR. GUENTHER: I'm here.

9 MR. KANAREK: Where has he been?

10 THE COURT: The Court has seen him here most of the
11 afternoon. I can't say whether he was here at 2:00.

12 MR. KANAREK: Well, that's it. The witness -- further-
13 more, witnesses were ordered excluded.

14 THE COURT: Were you here at 2:00 o'clock, Officer
15 Guenther?

16 MR. GUENTHER: Yes, I was. I have been here all day.

17 MR. KANAREK: I have not seen him, your Honor. But I --

18 THE COURT: The Court has. I saw him previously this
19 morning; but I can't recall that I saw him at 2:00 this
20 afternoon.

21 MR. KANAREK: Well, the point is that my purpose is
22 not -- is not to --

23 THE COURT: Would you keep yourself on call, Mr. Guenther,
24 to Mr. Kanarek? The Court will not issue a bench warrant.

25 MR. KANAREK: Well, my purpose --

26 THE COURT: Do you wish to have him on the stand tomorrow?
27 Is that it?

28 MR. KANAREK: Yes. My purpose was not to harass him,

16a-4

1 but merely to make sure that --

2 THE COURT: Very well. You needn't state what your
3 purpose was.

4 MR. KANAREK: Well, but --

5 THE COURT: But --

6 The Court has placed him on call to you. What
7 else do you want?

8 MR. KANAREK: Well, furthermore, if he was in the
9 courtroom, that's clearly a violation of the Court's order.
10 We have a court order excluding witnesses.

11 THE COURT: The Court has not observed him constantly
12 in the courtroom. I have seen him here today from time to
13 time. I don't know when he was in the courtroom or when he
14 arrived.

15 But I have seen him here this morning, and I have
16 seen him here this afternoon, at times.

17 MR. KANAREK: Then I ask --

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1 MR. MANZELLA: Your Honor, no one informed me that --
2 Mr. Kanarek did not inform me that Deputy Guenther was to be
3 a witness, so I advised Deputy Guenther that he could sit in
4 the courtroom.

5 MR. KANAREK: Well, your Honor, then I would ask that --
6 I do ask --

7 THE COURT: Yes? You would ask what?

8 MR. KANAREK: For a mistrial, due to the violation of
9 the Court's order concerning the exclusion of witnesses.

10 THE COURT: All right. The motion for a mistrial is
11 denied.

12 Now, Mr. Kanarek, you are committed for a period
13 of two days.

14 MR. KANAREK: I have the -- I am -- I have the funds,
15 your Honor.

16 THE COURT: Do you have the funds?

17 MR. KANAREK: Yes.

18 THE COURT: Very well.

19 MR. KANAREK: And I would like to state this for the
20 record, your Honor. This morning, your Honor explicitly
21 ordered us to be here at 9:00 o'clock, and your Honor didn't
22 come in until 25 minutes to 10:00.

23 There is no such thing as contempt -- as contempt
24 of lawyer. But I want --

25 THE COURT: Your remarks are certainly not well taken.
26 The Court had other matters on its calendar, and the Court
27 had matters that could not be -- could not be handled until
28 25 minutes after 9:00.

16b-2

1 MR. KANAREK: Well, we explicitly --

2 THE COURT: Your remarks, Mr. Kanarek --

3 MR. KANAREK: I am just making the record, your Honor.

4 THE COURT: Yes.

5 (Continuing.) -- have no bearing whatever on
6 your conduct, and your lack of good faith in respect to the
7 orders of this Court.

8 MR. KANAREK: I put it on the record most reluctantly,
9 your Honor. There is no such thing, as I say, of -- as
10 contempt of lawyer. There is contempt of court.

11 Perhaps some day lawyers will be accorded the --
12 the protection that I believe that they should be entitled to.

13 THE COURT: All right. A lawyer -- and the Court is
14 very eager to extend to lawyers the protection that they
15 deserve.

16 MR. KANAREK: Well, Mr. Berlin made a special point to
17 be here at 9:00 o'clock, and your Honor made it explicit that
18 we were to be here at 9:00 o'clock. At great sacrifice, he
19 came here at 9:00 o'clock.

20 THE COURT: The Court commends Mr. Berlin.

21 At the time that the Court was ready, however,
22 and did call this case, I noted that neither you nor Mr.
23 Berlin was in the courtroom.

24 MR. KANAREK: We were next door.

25 THE COURT: Now, Mr. Kanarek, you are committed at this
26 time, or you are to pay a fine of \$50 --

27 MR. KANAREK: I do have the funds.

28 THE COURT: -- for contempt of this court, which the

6b-3

1 Court has placed on the record.

2 MR. KANAREK: I do have the funds.

3 THE COURT: Now, Mr. Manzella?

4 MR. MANZELLA: Yes, your Honor.

5 THE COURT: You indicated to the Court that you would
6 make efforts in response to the Court's request to get Miss
7 Kasabian here?

8 MR. MANZELLA: Yes, your Honor. We were unable to get
9 her out here tonight. We have her scheduled to be on a plane,
10 to arrive in Los Angeles tomorrow evening at 7:33.

11 Your Honor, we were unable to make any alternate
12 arrangements, due to the difficulty in contacting Miss
13 Kasabian in New Hampshire.

14 THE COURT: All right. The Court has not previously
15 done this, but the Court issues a bench warrant at this time.

16 The Court believes that, although she was served
17 in the courtroom of this court, that it was a proper service,
18 a service by Mr. Kanarek, and the Court issues a bench
19 warrant.

20 The Court finds that she's in contempt of court
21 for having failed to appear.

22 It's not really a bench warrant; it's a body
23 attachment. The Court issues it at this time.

24 MR. MANZELLA: Could it be held until Thursday morning,
25 your Honor?

26 THE COURT: No. The Court will not hold it. I --

27 MR. MANZELLA: Well, your Honor --

28 THE COURT: -- don't know, from a practical standpoint,

16b-4

1 how it will be implemented, but --

2 MR. MANZELLA: I mean, if she's in my presence, when I
3 am transporting her from court -- to the courtroom, I take it
4 she won't be arrested on a body attachment, if on her way to
5 the courtroom --

6 THE COURT: I want her here as soon as possible.

7 MR. MANZELLA: She will be here Thursday morning, your
8 Honor, in court.

9 THE COURT: And if -- if there's any way whatever that
10 she can be brought here before Thursday morning, I want her
11 here before Thursday morning.

12 MR. KANAREK: Yes, your Honor.

13 Is your Honor issuing the bench warrant? We do
14 ask that the bench warrant issue, your Honor.

15 THE COURT: Mr. Kanarek, I would like to announce to
16 you again that if you continue the conduct that you exhibited,
17 time after time -- that is, arguing an objection in the
18 presence of the jury, and arguing for what apparently is --
19 arguing for the jury's hearing -- that the Court will take
20 more severe measures with you in finding you in contempt.

21 MR. KANAREK: Well, then, may I state this, your Honor,
22 for the record? That it's my belief, under Cooper vs. the
23 Superior Court, that under the 6th Amendment to the United
24 States Constitution -- which is incorporated into the due
25 process -- that your Honor's -- that your Honor's blanket
26 order about not arguing, not making arguments to the Court --

27 THE COURT: If you wish to argue any point, the Court
28 will hear from you at the bench.

16b-5

1 MR. KANAREK: But --

2 THE COURT: And I am not precluding you or prohibiting
3 you from argument.

4 But the Court will ask -- will allow you to argue
5 at the bench, on an objection.

17 fls.

17-1
1 MR. KANAREK: Well, may --

2 MR. MANZELLA: Your Honor, Sergeant Whiteley --

3 THE COURT: If it wishes to hear you --

4 MR. MANZELLA: Your Honor, has Sergeant Whiteley been
5 excused?

6 THE COURT: He is excused.

7 MR. KANAREK: He's still on the witness stand.

8 THE COURT: He is excused until tomorrow morning at
9 9:30. 9:30 tomorrow morning.

10 MR. MANZELLA: Yes, thank you, your Honor.

11 THE COURT: All right, the --

12 Off the record.

13 (Whereupon, there was a discussion had off the
14 record.)

15 THE COURT: You may be on the record.

16 MR. MANZELLA: May I be excused, your Honor?

17 THE COURT: You may be excused.

18 MR. KANAREK: Your Honor wants points and authorities
19 on something that I am not asking for. I'm not asking that
20 these records go into evidence. I'm not asking that at all.
21 My point merely is, and I believe that it is correct, that if
22 hearsay is allowed in, by one party, equal protection should
23 allow hearsay to come in from the other -- advocated by the
24 other party. I'm not asking that these particular
25 documents go into evidence. I certainly haven't even -- I
26 don't believe that I've asked that any of them be marked for
27 identification. Those that we are on this afternoon, I'm
28 merely asking questions, your Honor, so I don't know what

1 points and authorities your Honor has in mind.

2 THE COURT: We're in recess.

3 (Whereupon, an adjournment was taken at 5:00 p.m.
4 to reconvene Wednesday, October 6, 1971 at 9:30 a.m.)
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1 LOS ANGELES, CALIFORNIA, WEDNESDAY, OCTOBER 6, 1971

2 10:00 A.M.

3 ---O---

4 THE COURT: People versus Manson.

5 Good morning, ladies and gentlemen.

6 (Whereupon, there were murmurs of "Good morning,
7 your Honor," by the jury.)

8 THE COURT: Gentlemen, you can take your coats off and
9 hang them over there if you become too warm, and since we
10 have the air conditioners going, if you at all can't hear,
11 let us know. Good to see you this morning.

12 The jurors are all present. Mr. Kanarek is
13 present for the defendant. Mr. Manzella for the People.

14 Mr. Kanarek.

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

18 THE COURT: Will you make the usual inquiry of your
19 client, if he wishes to, he may be in the courtroom. But he
20 must not disturb the proceedings.

21 (Whereupon, Mr. Kanarek conferred with the
22 defendant Manson through the screen of the lockup door.)

23 MR. KANAREK: Your Honor, yes, Mr. Manson would like to
24 come in the courtroom.

25 THE COURT: Will he -- will he state to the Court that
26 he will not disturb the proceedings?

27 MR. KANAREK: Your Honor, he says he will tell you that
28 he will not disturb the proceedings.

1 THE COURT: Very well, he may come out.

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

4 THE COURT: All right, the record will show the
5 defendant to be present.

6 THE DEFENDANT: Good morning.

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

8 MR. KANAREK: Yes, your Honor.

9 Call Mr. Guenther, your Honor.

10 THE COURT: Mr. Guenther.

11 THE CLERK: Raise your right hand.

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

15 THE WITNESS: I do.

16 THE BAILIFF: Please state and spell your name.

17 THE WITNESS: Charles C. Guenther, G-u-e-n-t-h-e-r.

18

19 DIRECT EXAMINATION

20 BY MR. KANAREK:

21 Q Now, Mr. Guenther, did you go to the home of Gary
22 Hinman?

23 A Yes.

24 Q On how many occasions?

25 A Perhaps a dozen.

26 Q And did you assist in looking through the house of
27 Gary Hinman?

28 A Yes.

1 Q Did you find two pounds of marijuana at the Gary
2 Hinman house?

3 A No.

4 Q Was two pounds of marijuana found, to your know-
5 ledge, at the Gary Hinman house?

6 A No.

7 MR. MANZELLA: Objection, your Honor, it is not relevant.

8 THE COURT: The objection is overruled. The answer may
9 remain in the record.

10 Q BY MR. KANAREK: Does the investigation that you
11 conducted indicate that approximately two pounds of marijuana
12 was found?

13 A Yes.

14 MR. MANZELLA: Objection, your -- I'll withdraw the
15 objection.

16 Q BY MR. KANAREK: Or was? "Yes"? Your answer is
17 "yes"?

18 A There were indications there were approximately two
19 pounds of marijuana, yes.

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

22 MR. MANZELLA: No questions, your Honor.

23 THE COURT: You may step down.

24 May the witness be excused?

25 MR. KANAREK: Yes, your Honor.

26 THE COURT: You are excused, Mr. Guenther.

2-1

1 You may proceed.

2 MR. KANAREK: Well, may we approach the bench, your
3 Honor? We can't -- there's no --

4 THE COURT: Yes, you may approach the bench.

5 MR. KANAREK: Well, they -- we have no further witnesses.

6 THE COURT: You may approach the bench.

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

10 THE COURT: You had Sergeant Whiteley on the stand --

11 MR. KANAREK: Well, I have no further questions of
12 Sergeant Whiteley.

13 THE COURT: -- yesterday. And I don't mean to preclude
14 you from asking him, since the People raised the subject,
15 about the extent of his investigation. If you wish to put him
16 on, you may ask him about the extent of his investigation,
17 but to ask about the contents of a report -- and I imagine
18 that there are all kinds of reports that have been submitted
19 to the Sheriff's Office and the Police Agencies about Shorty
20 Shea -- would be requesting hearsay.

21 And the Court would not permit the introduction
22 of the reports themselves, nor of the statements in the
23 reports, unless you can show me some good reason why you
24 believe, under the rules of evidence, they could come in.

25 But don't misunderstand me. You --

26 MR. KANAREK: I have no further questions of Sergeant
27 Whiteley.

28 THE COURT: You understand that the Court's not

1 precluding you from asking about the extent of the investigation?

2 MR. KANAREK: I have no further questions of Sergeant
3 Whiteley, your Honor.

4 THE COURT: But you don't understand that, or you do
5 understand that?

6 MR. KANAREK: I hear what the Court is saying.

7 THE COURT: Very well.

8 MR. KANAREK: But as I say, I have no further questions
9 of Sergeant Whiteley.

10 THE COURT: Very well. Now, do you have another witness
11 to proceed with?

12 MR. KANAREK: No, your Honor.

13 THE COURT: All right. Now, then, your sole remaining
14 witness is Linda Kasabian?

15 MR. KANAREK: Yes, at this point. I am trying to
16 locate another witness.

17 THE COURT: Do you know where she is?

18 MR. MANZELLA: She's due to arrive in at 7:00 o'clock
19 tonight, your Honor.

20 THE COURT: Tonight?

21 MR. MANZELLA: And which means she probably is just
22 about on her way now.

23 THE COURT: All right. What do you wish to do?

24 MR. KANAREK: Well, your Honor, we want her as a witness.

25 THE COURT: Pardon?

26 MR. KANAREK: There's nothing I can do, your Honor.

27 THE COURT: All right. Are you going to rest or --

28 MR. KANAREK: No, no. I'm not ready to rest.

1 THE COURT: All right. Then put on your next witness.

2 MR. KANAREK: She is my next witness.

3 THE COURT: She is not here.

4 MR. KANAREK: Well, that's not my fault, your Honor.

5 THE COURT: What do you wish to do?

6 MR. KANAREK: Well, I guess we would adjourn until
7 tomorrow morning.

8 THE COURT: All right. We will adjourn until tomorrow
9 morning, then, in view of your --

10 MR. KANAREK: Your Honor, in that regard, tomorrow
11 morning is the time that I have the appearance in the Court of
12 Appeal. I will ask for a priority. It's set for 9:30.

13 And if your Honor -- I will ask for a Court of
14 Appeal -- for a priority, and I will be there, and the argu-
15 ment will be very brief.

16 THE COURT: All right. Let's sort of look at what will
17 occur, then. Tomorrow, you will put on Linda Kasabian. How
18 long do you anticipate that that will be?

19 MR. KANAREK: It's hard to say; depending upon her --

20 THE COURT: Well, an hour or two?

21 MR. KANAREK: I don't know. I have never been allowed
22 to speak to this witness.

23 THE COURT: She is your witness, and you must know why
24 you have subpoenaed her.

25 MR. KANAREK: Yes, I do, your Honor.

26 THE COURT: And why she is --

27 MR. KANAREK: I would say it would take a few hours. A
28 few hours.

1 THE COURT: So that you will be able to close tomorrow
2 afternoon?

3 MR. KANAREK: It is conceivable.

4 THE COURT: And how long would you think your testimony
5 might take?

6 MR. MANZELLA: On rebuttal? No more than, I would say,
7 about an hour.

8 THE COURT: All right. Now, have you told Mr. Manson --
9 I'm not sure, because of what has developed between you and
10 Mr. Manson, in the presence of the Court and jury, whether
11 there is the rapport that's necessary between you to permit
12 your advising him.

13 Have you advised him that he has the right to
14 testify?

15 MR. KANAREK: Yes, he's aware of that. Yes, your Honor.
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1 THE COURT: I think at this point, I will tell him that,
2 and then we'll take --

3 MR. KANAREK: I think it's -- I do allege it's an
4 invasion of the right to counsel, effective counsel, under
5 the 6th Amendment to the United States Constitution, and due
6 process, and -- for your Honor to inquire of Mr. Manson.

7 THE COURT: I am not going to inquire. I am simply
8 going to inform him.

9 MR. KANAREK: Well --

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

13 THE COURT: Mr. Manson?

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

17 THE COURT: Mr. Manson, the law in California, as I
18 understand it, is that if a man wants to testify, he has the
19 right to testify, even though his lawyer may determine that--

20 THE DEFENDANT: Um-hmm.

21 THE COURT: -- he should not do so.

22 THE DEFENDANT: Yeah.

23 THE COURT: And the Court's not asking you for any
24 reply to this. I simply wish to inform you that you have
25 the right to testify.

26 You likewise have the right to refuse to take
27 the witness stand.

28 THE DEFENDANT: Um-hmm.

2a-2

1 THE COURT: All right. We will adjourn until tomorrow
2 morning.

3 THE DEFENDANT: May I say this for the record?

4 THE COURT: Yes.

5 THE DEFENDANT: That you can't rise above the question,
6 because the question implies -- unless -- the main purpose
7 that I wanted to defend myself; second, I am held by a code,
8 too. I can't snitch.

9 See, I've lived by that law all of my life, and
10 I have to keep -- my word is my bond, and my bond is whatever
11 it is. And I can't break that, see?

12 Like I can call someone and get the truth out of
13 them, but I can't -- there's a lot of things I can't say.
14 It's not up to me to say.

15 It's up to the persons that --

16 THE COURT: Well, you've understood what I said about
17 the Court's belief as to what the law is.

18 THE DEFENDANT: Yeah. If I could recommend to this
19 Court, that the most advantageous thing that could possibly
20 happen -- in this State of California, or the country of the
21 United States of America -- would be that I be allowed to
22 defend myself.

23 THE COURT: All right. The Court will adjourn until
24 tomorrow morning at -- 10:00 o'clock? Can you be here by
25 then?

26 MR. KANAREK: Yes, your Honor.

27 (Whereupon the following proceedings were had
28 in open court, within the presence and hearing of the

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jury:)

THE COURT: The Court is unhappy to tell you that we are going to have to adjourn now until 10:00 o'clock tomorrow morning. I don't know how unhappy you are. It's going to be rather warm down here today.

Perhaps you -- perhaps you are pleased with the announcement.

In any event, during the recess, you are admonished not to converse amongst yourselves nor with anyone else, nor permit anyone to converse with you on any subject connected with this matter, nor are you to form or express any opinion on the matter until it is finally submitted to you.

I'll see you tomorrow morning at 10:00 o'clock. Be here about five minutes early, if you would, please, and perhaps we can start promptly at 10:00 o'clock.

It's anticipated that we -- at this point, at least, the Court anticipates that we may be able to terminate this week with the evidence.

The Court would then hear argument from counsel, and the Court will instruct you and give you the case, presumably early next week.

That's the prognosis at this time, in any event.

All right. Good day. And I'll -- yes.

JUROR NO. 8: Is there a holiday coming up?

THE COURT: On October 11th, that's right. It's a court holiday, so I won't see you that day.

And remind me of that, so that I don't call you

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1 back on Monday morning.

2 All right. I'll see you tomorrow morning at
3 10:00 o'clock. Have a good day.

4 We are in recess until 10:00 o'clock tomorrow
5 morning, then.

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1 MR. MANZELLA: Your Honor, I would like to be heard on
2 one point that the Court raised yesterday at the evening
3 recess.

4 THE COURT: All the jurors have left.

5 MR. MANZELLA: At the evening recess yesterday the
6 Court asked for points and authorities --

7 THE COURT: Well, the Court believed that Mr. Kanarek
8 was going to pursue the question of the investigation.

9 MR. MANZELLA: Yes, your Honor. I wanted to make it
10 clear that based on the research that I have done, I believe
11 that my position was in error with regard to one specific
12 objection that I made.

13 THE COURT: All right.

14 MR. MANZELLA: That was the objection to the question
15 Mr. Kanarek asked, whether Sergeant Whiteley had received and
16 investigated a particular address for the location of Donald
17 Shea. I believe that my objection was not well taken.

18 THE COURT: I believe that I overruled that objection.

19 MR. MANZELLA: I wasn't sure. I didn't remember if you
20 did or not, your Honor.

21 THE COURT: At least I would at this time overrule an
22 objection to any question where Mr. Kanarek asked whether a
23 certain address was investigated, a certain lead was
24 investigated. I think Mr. Kanarek has the right to inquire
25 about the extent of the investigation, whether it was an
26 investigation which was taken in good faith, and whether it
27 was a thorough investigation or not.

28 But the point that was urged upon the Court was

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1 that the contents of the investigatory reports -- and most of
2 which -- probably all of which are hearsay and reports by
3 various members of the public concerning Mr. Shea, and Mr.
4 Shea's whereabouts, whether the contents of those reports
5 would be admissible. It is a question raised by Mr. Kanarek.
6 And the Court believes that those reports would not be
7 admissible, the contents would not be admissible. A question
8 was asked whether a report states a certain address is the
9 address of Shorty Shea, the question put in that frame would
10 be objectionable.

11 MR. MANZELLA: Yes, your Honor, that is the People's
12 position. The contents of the reports are not admissible,
13 but questions with regard to what investigation was conducted
14 with regard to specific locations and so on would be
15 admissible.

16 THE COURT: Yes. So the Court would permit that for
17 your guidance, Mr. Kanarek. The Court would allow you to go
18 into the question of the thoroughness or lack of thoroughness
19 of such investigation.

20 Tomorrow morning at 10:00 o'clock, gentlemen.

21 I would like to talk to you both briefly about
22 instructions. Perhaps we can save time by employing the
23 time today. We can discuss instructions and perhaps save
24 some time. I'll talk to you in chambers about instructions.

25 (Whereupon, at 10:20 o'clock a.m. an adjournment
26 was taken until the following day, Thursday,
27 October 7, 1971, at 10:00 o'clock a.m.)
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