

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 106

HON. RAYMOND CHOATE, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

-vs-

BRUCE MCGREGOR DAVIS,

Defendant.

NO. A-267861

229

REPORTERS' DAILY TRANSCRIPT

Monday, January 24, 1972

VOLUME 29APPEARANCES:

For the People:

JOSEPH P. BUSCH, JR., District
AttorneyBY: ANTHONY MANZELLA
andSTEPHEN R. KAY,
Deputies District Attorney

For Defendant Davis:

GEORGE V. DENNY, III

DICKSTON
VICTORMARY LOU BRIANDI, CSR
ROGER K. WILLIAMS, CSR
Official Court Reporters

COPY

PEOPLE'S WITNESSES: DIRECT CROSS REDIRECT RECROSS

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PEOPLE'S: FOR IDENTIFICATION IN EVIDENCE

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1 LOS ANGELES, CALIFORNIA, MONDAY, JANUARY 24, 1972, 10:40 A. M.

2
3 THE COURT: Good morning, ladies and gentlemen. Good to
4 see you all.

5 (Whereupon, there were murmurs of "Good morning,
6 your Honor," heard throughout the members of the jury.)

7 THE COURT: Hope you all had pleasant weekends.

8 Case of People versus Davis.

9 The defendant is present with his counsel,
10 Mr. Denny. Mr. Kay is present for the People. And Mr.
11 Manzella is likewise present. All the jurors and alternates
12 are present, and we're ready to proceed.

13 MR. KAY: Our next witness is out in the hall, your
14 Honor. I think Mr. Manzella is calling him to come in.

15 THE COURT: Will counsel approach the bench, please.

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

19 THE COURT: I am informed by Mrs. Holt that one of our
20 lady jurors, Miss Frazier, called here this morning and Miss
21 Frazier says that she would like to be excused by reason of the
22 fact that she's pregnant. I don't know that that would make
23 any great difference except it may be that she's so ill that
24 she can't concentrate on things.

25 MR. KAY: I think we probably should inquire and find
26 out. I know my wife is pregnant now and some women get morning
27 sickness.

28 MR. DENNY: Mazeltov.

1 MR. KAY: Thank you, George.

2 My wife, before she got out of bed in the morning,
3 had to eat crackers and stay in bed for a half hour before even
4 getting up. And that might be something that is inconveniencing
5 her. I think before we make any decision, I think we should
6 inquire of her what her condition is, because different women
7 have different conditions.

8 THE COURT: Let's -- since she's presented no doctor's
9 letter or anything of that nature, I'll call upon her at the
10 recess, then, and I'll ask her to stay behind at the recess and
11 hear from her.

12 Shall we proceed now?

13 MR. DENNY: That's fine, your Honor.

14 MR. KAY: Fine.

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

17 THE COURT: All right, the People have called or are
18 calling --

19 MR. MANZELLA: Mr. Robert Bickston.

20 THE CLERK: Raise your right hand, please.

21 You do solemnly swear that the testimony you may
22 give in the cause now pending before this court shall be the
23 truth, the whole truth, and nothing but the truth, so help you
24 God?

25 THE WITNESS: I do.

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

27

28

ROBERT BICKSTON.

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

3 THE BAILIFF: Would you state and spell your full name,
4 sir.

5 THE WITNESS: Robert Bickston, B-i-c-k-s-t-o-n.

6
7 DIRECT EXAMINATION

8 BY MR. MANZELLA:

9 Q Mr. Bickston, what is your business or profession?

10 A Uh, actor and gunsmith.

11 MR. DENNY: I'm sorry, I didn't hear the last.

12 THE WITNESS: Gunsmith.

13 Q BY MR. MANZELLA: And did you know a man by the
14 name of Donald Jerome Shorty Shea?

15 A Yes, sir.

16 Q And when had you first met Mr. Shea?

17 A In 1957, sir.

18 Q And where was it that you met him?

19 A Corriganville Movie Ranch.

20 Q What were you doing at Corriganville at the time
21 you met Donald Shea?

22 MR. DENNY: Object to that as irrelevant and immaterial.

23 THE COURT: Overruled, you may answer.

24 THE WITNESS: I was working in the shows and stunt
25 coordinator. I was casting the shows that we put on for the
26 public.

27 Q And did you do some training of the stuntmen who
28 worked at Corriganville?

1 A Yes, sir, I did.

2 Q Now, do you have a union card as a member of the
3 Screen Actor's Guild?

4 MR. DENNY: Object to that as irrelevant and immaterial.

5 THE COURT: Sustained.

6 Q BY MR. MANZELLA: You said that you were an actor,
7 Mr. Bickston. That was part of your business and profession.

8 What do you mean by being a "actor"?

9 A Well, I work in live shows and in motion pictures,
10 both acting and doing stunt work.

11 Q And you have your union card?

12 MR. DENNY: Object to that as irrelevant and immaterial.

13 THE COURT: Sustained.

14 Q BY MR. MANZELLA: Are you a member of the Screen
15 Actor's Guild?

16 MR. DENNY: Object to that as irrelevant and immaterial.

17 THE COURT: Objection is sustained.

18 Q BY MR. MANZELLA: Now, what did Mr. Shea do after
19 you -- you met him at Corriganville.

20 What did he do there?

21 A Well, Mr. Shea worked as a horse wrangler and when
22 he first started, was doing what we call background work in
23 the skits that they were putting on for the public.

24 Q And what is background work?

25 A Well, when you're going through an apprentice
26 stage, you have to walk through the scenes as townspeople and
27 -- that is considered background until you get your education
28 as a stuntman.

1 Q And did you help train Donald Shea as a stuntman?

2 A Yes, sir, I did.

3 Q Was that at Corriganville?

4 A Yes, sir, it was.

5 Q And eventually did Mr. Shea begin doing stunt work
6 at Corriganville?

7 A Yes, sir, he did.

8 Q For how long did he do stunt work at Corriganville?

9 A Oh, he was doing stunt work at Corriganville until
10 I left about -- about May of 1959 to go on the road with a
11 show.

12 Q And Mr. Shea was still performing at Corriganville
13 at that time?

14 A Yes, sir, he was.

15 Q Now, had you trained other stuntmen other than
16 Donald Shea?

17 A Yes, sir, I had.

18 Q Approximately how many had you trained at
19 Corriganville?

20 MR. DENNY: Object to that as irrelevant and immaterial.

21 THE COURT: Sustained.

22 MR. MANZELLA: May we approach the bench, your Honor?
23 I would like to be heard on that briefly.

24 MR. DENNY: I'll withdraw the objection.

25 THE COURT: You may answer.

26 Q BY MR. MANZELLA: Approximately how many stuntmen
27 had you trained at Corriganville?

28 A Somewhere around twenty, twenty-five.

2-1

1 Q And have you trained stuntmen at places other
2 than Corriganville?

3 MR. DENNY: I'll object to that as irrelevant and
4 immaterial.

5 MR. MANZELLA: I would like to be heard on that, your
6 Honor.

7 THE COURT: All right. You may be heard.

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

11 THE COURT: What is the materiality of this?

12 MR. MANZELLA: Background. I want to establish through
13 his testimony that Shea was a good stuntman.

14 THE COURT: What is the materiality of that?

15 MR. MANZELLA: That Shea would have appeared in the
16 picture; that he was sincere about obtaining his union card
17 in the Screen Actors Guild; and that this picture that this
18 witness was about to produce in Phoenix, Arizona, would have
19 enabled Shea -- Shea was of the state of mind that this
20 picture would have enabled him to obtain his union card.

21 And that therefore, Shea would not have left
22 his family, friends, relatives, and the opportunity to
23 appear in motion pictures here in Los Angeles.

24 THE COURT: Do you anticipate showing that Shea was to
25 be employed as a stuntman? Was that it?

26 MR. MANZELLA: In the picture?

27 THE COURT: Yes.

28 MR. MANZELLA: I'm not sure, but I believe so.

2-2

1 MR. DENNY: My recollection --

2 MR. MANZELLA: I don't believe that that's really
3 significant, however, since the point is whether or not Shea
4 -- whether or not this witness thought that his abilities
5 were such that he would use him in a picture, and tell Shea
6 that by appearing in the picture, he could obtain his union
7 card.

8 MR. DENNY: Well, as I understand it, this witness
9 is supposed to testify as he has previously, that Shea was
10 going to appear as an actor, not as a stuntman, in the
11 picture that he was producing in Arizona;

12 And that he could therefore get his Phoenix
13 actors' card as an actor, and not as a stuntman.

14 So it's irrelevant whether he thought he was a
15 good stuntman or not, as far as his appearing in the picture
16 that we are talking about, the picture that was supposed
17 to be produced in August.

18 And I think it's irrelevant and immaterial.

19 MR. MANZELLA: In 65 and 66, the witness produced
20 three documentaries that Shea appeared in, and --

21 THE COURT: It would appear to be irrelevant.

22 MR. MANZELLA: -- he also appeared in a film, I believe,
23 in 1968, which was shot both on the ranch at Arizona and at
24 Spahn Ranch.

25 MR. DENNY: You're talking awfully loud, Tony.

26 MR. MANZELLA: And Shea played a character role.
27 He played a fight scene and handled a temperamental horse
28 in the picture, and this witness will testify it is his

1 opinion that he did a perfect job with the horse.

2 It seems to me -- I don't know much about the
3 field of acting, but it seems to me that if an actor handles
4 a difficult horse, to me that would come under the heading
5 of doing some stunt work.

6 This man's opinion as to his abilities would seem
7 to be relevant as to whether or not Shea would give all this
8 up, whether he was sincere in his desire to be an actor.

9 THE COURT: Well, if acting in this picture included --
10 in this proposed picture -- included doing some stunt work,
11 then I should think it would be relevant. Otherwise, I
12 don't think it would be.

13 MR. MANZELLA: Also, in the two documentaries that
14 Shea appeared in in '65 and '66, he --

15 MR. DENNY: You're still talking loud enough so that
16 the jury can hear you, Tony.

17 THE COURT: I don't think so. It's very difficult
18 for them to --

19 MR. MANZELLA: -- he had several character roles in
20 which he did stunt work. Now, I don't know whether he
21 qualified then as a stuntman or as an actor who also did
22 stunt work. I really don't think it's relevant --

23 THE COURT: Yes, hold your voice down.

24 MR. MANZELLA: But he had played several character
25 roles in '65 and '66, in which he did stunt work.

26 MR. DENNY: I don't think it's relevant that this
27 guy trained some other stuntmen, other than the 25 that he
28 trained at Corriganville, as to his opinion as to whether he

1 would hire Shorty.

2 That's the only thing I'm objecting to.

3 I think we are taking up a lot of time --

4 THE COURT: Yes, I agree.

5 MR. DENNY: -- and that's what "irrelevant" means.

6 MR. MANZELLA: I think we are taking a lot of time on
7 trivial objections, is what we are taking time on.

8 I am asking -- I am going to ask this witness
9 his opinion of Shea as a stuntman, and I'm just laying that
10 foundation; that's all.

2a fls.

2a-1

1 MR. DENNY: I don't think his opinion of --

2 THE COURT: It would be material, I think, if Shea had
3 intended to stay in Los Angeles County in order to continue to
4 do stunt work, and if -- if part of what Shea intended to do
5 and was supposed to do in this role that he was to assume
6 included stunt work. I can see your point there, if you can
7 establish that.

8 MR. MANZELLA: All right. Okay.

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

11 Q BY MR. MANZELLA: Mr. Bickston, what was your
12 opinion of Donald Shea as a stuntman?

13 A Very good.

14 Q And what did he do in the stunt work, the stunt
15 work he did at Corriganville?

16 A Falling off a roof; street fights, where he fought
17 three or four men; horse falls -- you know, getting shot off
18 a horse; doing what they call a stirrup drag; getting shot,
19 and letting the horse pull you up the street.

20 These kind of stunts.

21 Q All right. And did Donald Shea do all these
22 things?

23 A Yes.

24 Q Now, Mr. Bickston, have you produced any films?

25 A Yes, I have.

26 Q And directing your attention in particular, if I
27 may, to 1965 and '66, did you produce any films in that
28 period?

2a-2

1 A Yes. We produced three TV films.

2 MR. DENNY: I'll object to what "we" did. Move that that
3 be stricken. The question was what he did as a producer.

4 Move the answer be stricken.

5 THE COURT: It is stricken. The objection is sustained.

6 Q BY MR. MANZELLA: Did you act as a producer of these
7 three films?

8 A Yes, I did.

9 Q And what types of films were these? Were these
10 TV -- I'm sorry; what did you call them?

11 A Documentaries.

12 Q What types of films were these documentaries?

13 A They were documentaries of a day in the life of
14 somebody significant in the West. We took one day of their
15 life and re-enacted it.

16 Q And this was concerning the old West?

17 A Western Americana, yes, sir.

18 Q Now, did Donald Shea appear in any of those
19 documentaries?

20 A Yes, he did.

21 Q In how many?

22 A Two.

23 Q Two out of the three?

24 A Yes.

25 Q And what was his role in the two documentaries?

26 A He played a character -- a character role, plus
27 doubled in stunts.

28 Q In both of the documentaries?

2a-3

1 A Yes, sir.

2 Q And what do you mean by a character role?

3 A Like one of the men in the gang, or one of them in
4 a posse, or somebody supporting to a lead is considered a
5 character role.

6 Q And he also did some of the stunt work that you've
7 already told us about?

8 A Yes, sir, he did.

9 Q Do you know a man by the name of Lance Victor?

10 A Yes, I do.

11 Q And did he appear in any of these documentaries
12 filmed in '65 and '66?

13 A Yes, he did.

14 Q And where were the documentaries filmed?

15 A They were filmed at Spahn's Movie Ranch and
16 Iverson's Movie Ranch.

17 Q And that -- those are the ranches in Chatsworth,
18 California?

19 A Yes, sir.

20 Q Sometime thereafter, did you produce another film
21 in which Donald Shea appeared?

22 A Yes, I did.

23 Q In what year was that?

24 A 1968.

25 Q And what type of film was that?

26 A That was a full-length western motion picture.

27 Q And what did -- strike that.

28 What role did Donald play in that film?

2a-4

1 A A character bit, and stunt work.

2 Q Where was that picture filmed?

3 A The major part of the film was shot in Apacheland
4 Movie Ranch, in Apache Junction, Arizona, with pick-up shots
5 at Spahn's Movie Ranch.

6 Q And what are pick-up shots?

7 A Well, that's when you run out of time, or you need
8 extra footage, and you find a closer locale with the same
9 terrain, you know, and background; and you shoot it there.

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1 Q And when was the last time that Donald worked
2 with you on that picture?

3 A March, 1969.

4 Q And what happened in March of 1969?

5 A We went into a looping room, to loop the sound.
6 We had a bad sound track, and we had to do about 75 percent
7 of the picture, by mouthing the sound back onto the sound
8 track.

9 Q Do you mean the sound, when you filmed the
10 picture, was not as good as you wanted it?

11 A Yes, sir.

12 Q And you had to dub in some of the sound in March
13 of 1969?

14 A Yes.

15 Q And did Donald work with you doing that?

16 A Yes, sir, he did.

17 Q Now, sometime thereafter, did you talk to Donald
18 about another -- by the way, did you know him by some nick-
19 name?

20 A Yes, sir.

21 Q And what nickname was that?

22 A Shorty.

23 Q And how did you call him?

24 A Well, I called him Don.

25 Q And sometime thereafter, did you talk to Don
26 about another film?

27 A Yes, sir, I did.

28 Q And when was that?

2b-2

1 A Approximately May of 1969.

2 Q And what did you tell Donald about this other
3 film?

4 MR. DENNY: I'll object to that as calling for hearsay.

5 THE COURT: Sustained.

6 Q BY MR. MANZELLA: And where did you plan to
7 make -- strike that.

8 Was this about another film that you planned to
9 make?

10 A Yes, sir, it was.

11 Q And where did you plan to make this film?

12 A Apacheland, Arizona.

13 Q And did you tell Donald about the film?

14 MR. DENNY: Object to that as calling for hearsay.

15 THE COURT: Overruled. You may answer.

16 THE WITNESS: Yes, sir, I did.

17 Q BY MR. MANZELLA: And you told him about it in
18 May of 1969?

19 A Yes, sir, I did.

20 Q And where was this that you told him about it?

21 A At my home in Sun Valley, California.

22 Q Now, did you tell Donald what you wanted him to
23 do in the film?

24 MR. DENNY: Object to that as calling for hearsay.

25 MR. MANZELLA: I would like to be heard on that, your
26 Honor.

27 THE COURT: The objection is overruled.

28 This is admitted for a limited purpose, ladies

1 and gentlemen. Any conversation between Mr. Bickston and
2 Mr. Shea is admitted for the limited purpose of showing
3 Mr. Shea's state of mind, and it is not uttered for the --
4 or admitted to prove the truth of the matter, but only, as
5 I've stated, to show -- if it does, in your judgment --
6 Mr. Shea's state of mind at the time the statement was
7 uttered, and thereafter.

8 Q BY MR. MANZELLA: And what did you tell Donald
9 about the film?

10 A Well, I explained to Donald that we were shoot-
11 ing an integrated western; and asked him what his feelings
12 were on it, and if he would be available for work in it.

13 Q And did you tell him what role he was to play
14 in the film?

15 MR. DENNY: Just a minute. I'll object to this as
16 leading and suggestive.

17 THE COURT: Overruled.

18 THE WITNESS: (No response.)

19 Q BY MR. MANZELLA: You may answer the question.
20 Did you tell him what role he was to play in the film?

21 A Yes, sir, I did.

22 Q And what did you tell him?

23 A I told him that he was going to do one of the
24 members of the gang, and it would be probably the run of the
25 picture.

26 Q Was this another character role?

27 A Yes, sir, it was.

28 Q And did you -- strike that.

1 Was there any -- did you tell Donald that there
2 was any stunt work to be performed by him in this film?

3 MR. DENNY: This is leading and suggestive in the
4 extreme, your Honor. I object.

5 THE COURT: Sustained.

6 Q BY MR. MANZELLA: Was there any stunt work to be
7 performed in the film?

8 A Yes, sir, there was.

9 Q Did you tell Donald about that?

10 A Yes, sir, I did.

11 Q What did you tell him about that?

12 A I told him that he would have to do his role and
13 his own stunts.

14 Q Now, did you tell Donald anything else about the
15 consequences of the film, with regard to his career?

16 A Yes, sir, I did.

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Q And what did you tell him?

A I told him that this picture was going to be a union budget, and that he would get a letter from the producers to the union, where he would get his union card.

Q And what does that mean, a union budget?

A Well, union budget means you sign an agreement with the Screen Actors Guild, that you will abide by all of their by-laws, as far as hiring procedures, et cetera.

Q Now, what is this union card that you referred to? What union card is that? In what union?

A The Screen Actors Guild.

Q And when was the film -- strike that.

When were you to start filming?

A Approximately the 15th of July, 1969.

Q Now, when you told Donald about the film, did Donald say anything to you about it?

A Yes, sir, he did.

Q And what did he say to you?

A He just didn't believe that, after all these years, that he would be getting a union card.

Q Did he -- strike that.

During the time that you've known Donald --

MR. DENNY: Well, just a moment. I'm going to object and move that that answer be stricken as conclusionary and not responsive to the question, as to what Donald said.

THE COURT: All right. It isn't clear that that is what he said, so the Court will strike it.

Q BY MR. MANZELLA: Directing your attention to the

1 previous answer, Mr. Bickston, is that what Donald said to
2 you?

3 A Yes, sir.

4 MR. MANZELLA: The People would ask that it be
5 reinstated, your Honor.

6 THE COURT: So ordered.

7 Q BY MR. MANZELLA: Now, during the time that you
8 had known Donald, from 1957 at Corriganville, up to 1969,
9 did you have the opportunity to observe Donald's demeanor,
10 his behavior and conduct?

11 A Yes, sir.

12 Q And on this occasion, when you told Donald about
13 the film and what it was about, and what he was to do in
14 the film, did you have the opportunity to observe his
15 demeanor and his feelings, his attitude?

16 A Yes, I did.

17 Q And can you tell us, what was Donald's demeanor
18 and his feelings at that time, when you told him about the
19 film?

20 MR. DENNY: Well, I'll object, as far as his feelings
21 go, as calling for an opinion and conclusion and speculation.

22 He can say what he did.

23 THE COURT: Sustained. It is rather vague and indefi-
24 nite.

25 Q BY MR. MANZELLA: Mr. Bickston, I am asking you
26 to tell us, at the time you talked to Donald about the film,
27 what was his demeanor, his behavior?

28 A Well, he was very excited, like a --

1 MR. DENNY: Well, I'll object to "like a". Move that
2 everything after "excited" be stricken.

3 MR. MANZELLA: All right. Thank you.

4 Q Now, did you begin filming in -- strike that.
5 Did you begin filming on July 15th, 1969, in
6 Arizona?

7 A No, sir, we did not.

8 Q Was the date that you were to begin filming
9 changed?

10 A Yes, sir, it was.

11 Q And to what date was it changed?

12 A The 15th of August, 1969.

13 Q And did you begin filming on August 15th?

14 A No, we did not.

15 Q And was the date changed from August 15th?

16 A Yes, sir.

17 Q And to what date was it changed?

18 A The 15th of September, 1969.

19 Q And did you begin shooting film on September 15th,
20 1969?

21 A No, sir, we did not.

22 Q And why was that?

23 A The backers of the film pulled out their money.
24 They were tired of all the postponements and postponements.

25 Q And what was the reason for the postponements?

26 MR. DENNY: I'll object to that as irrelevant and
27 immaterial.

28 THE COURT: Sustained.

1 Q BY MR. MANZELLA: Was that film ever made?

2 MR. DENNY: I'll object to that as irrelevant and
3 immaterial.

4 THE COURT: Sustained.

5 Q BY MR. MANZELLA: Now, Mr. Bickston, sometime
6 after you talked to Donald in May of 1969 about the film,
7 when you first told him about the film, did you talk to him
8 again about the film?

9 A Yes, sir, I did.

10 Q And when was that?

11 A In June of 1969.

12 Q And what did you tell him in June of 1969?

13 MR. DENNY: Again, your Honor, I assume this is being
14 received only for the state of mind of Mr. Shea at the time.

15 THE COURT: Yes. Ladies and gentlemen, it is.
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2d fls.

1 Q BY MR. MANZELLA: And what did you tell Donald in
2 June of 1969?

3 A I told him to keep in touch with my wife, and she
4 would let him know when he was due in Arizona.

5 Q And at that time, did you tell him that the film
6 was still --

7 MR. DENNY: I'll object to that as leading and suggestive.

8 THE COURT: Sounds like it.

9 MR. MANZELLA: I will withdraw that. I'll withdraw the
10 question.

11 Q At that time, did you tell Donald about any
12 postponements in the film, or was the date still July 15th,
13 the scheduled date for shooting?

14 A The date was still July 15th, sir.

15 Q And where did you talk to Donald in June of 1969?

16 A At my home in Sun Valley, California.

17 Q And at that time, did Donald make any statements
18 to you saying that he was not going to appear in the film?

19 A No, sir, he did not.

20 Q And did you have the opportunity on that occasion
21 to observe Donald's demeanor, his behavior, with regard to the
22 film?

23 A Yes, sir, I did.

24 Q And what was that -- what was his demeanor with
25 regard to the film?

26 A As I said, excited.

27 Q Now, after you talked to Donald in June of 1969,
28 had you seen or heard from Donald since that time, June of

1 1969?

2 A I myself, no, sir.

3 Q Now, did you ever, after June of 1969, tell
4 Donald that the film had been postponed, or that the film was
5 not going to be made?

6 MR. DENNY: I'll object to that as obviously calling for
7 hearsay or something. He's just said he didn't see him after
8 June of '69; he didn't talk to him.

9 THE COURT: Overruled. You may answer.

10 THE WITNESS: May I hear that again, please?

11 Q BY MR. MANZELLA: Yes. After June of 1969, did
12 you ever tell Donald that the film had been postponed, or that
13 it was not going to be made?

14 A No, sir, I did not.

15 Q Now, Mr. Bickston, during the years of 1957, when
16 you first met Donald, through June of 1969, when you last
17 talked to him, about how often would you see Donald?

18 MR. DENNY: I'm sorry. May I have that question re-
19 read?

20 THE COURT: Yes, you may.

21 Mr. Williams?

22 (Whereupon, the record was read by the reporter
23 as follows:

24 "Q Now, Mr. Bickston, during the years of
25 1957, when you first met Donald, through June of
26 1969, when you last talked to him, about how
27 often would you see Donald?"

28 MR. MANZELLA: Let me withdraw that question. Perhaps

1 it's not clear.

2 Q During the years of 1957 through June of 1969,
3 did you remain in contact, periodic contact with Donald Shea?

4 A Yes, I did.

5 Q And about how often were you in contact with
6 Donald Shea during those years?

7 A Well, in person, about every three weeks. Or maybe
8 no longer than six weeks, by telephone.

9 Q And what did you consider your relationship with
10 Donald to be?

11 A A good relationship.

12 Q Did you consider him a friend?

13 A Yes, sir.

14 Q Now, during the years 1957 and through to 1969,
15 that you remained in contact with Donald, what did you talk
16 about when the two of you met or talked on the phone?

17 MR. DENNY: Object to that as calling for hearsay.

18 THE COURT: Sustained.

19 Well, I'm not sure --

20 Q BY MR. MANZELLA: Did Donald ever ask you to find
21 him any work?

22 MR. DENNY: I'll object to that as calling for hearsay.

23 MR. MANZELLA: It's being offered as to Mr. Shea's state
24 of mind.

25 MR. DENNY: Well, just a moment.

26 THE COURT: During what period of time?

27 The objection is sustained.

28 Q BY MR. MANZELLA: During the years 1957 through

1 June of 1969, Mr. Bickston, did Donald Shea continually talk
2 to you about one thing?

3 MR. DENNY: I'll object to that as calling for hearsay.
4 It's indirect hearsay.

5 THE COURT: Overruled. You may answer.

6 THE WITNESS: Yes, sir.

7 Q BY MR. MANZELLA: And what was that?

8 MR. DENNY: I'll object to that as calling for hearsay.

9 THE COURT: The objection is overruled, and it's received
10 for the same purpose --

11 MR. DENNY: Well, your Honor, may we approach the bench on
12 this, please?

13 THE COURT: -- the Court has heretofore stated to you, --

14 MR. DENNY: May we approach the bench, your Honor?

15 THE COURT: -- as to Mr. Shea's state of mind.

16 You may, if you wish.
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1 (Whereupon, the following proceedings were had at
2 the bench among Court and counsel, outside the hearing of the
3 jury:)

4 MR. DENNY: Your Honor, hearsay exception for state of
5 mind is relevant if you are trying to show a state of mind at
6 a time close to the point in time that's relevant to the
7 case. But here we're asking for a state of mind going back to
8 1957 or 1959 to 1969, ten or twelve years.

9 MR. KAY: We're asking for a continuing state of mind,
10 that's the difference.

11 MR. DENNY: Well, I don't think, your Honor, you can
12 establish continuing state of mind by hearsay going back years
13 and years and years. It is irrelevant and it is immaterial,
14 and it is not the purpose for which state of mind evidence is
15 used.

16 THE COURT: Mr. Manzella.

17 MR. MANZELLA: Yes, your Honor, we're attempting to
18 show, as Mr. Kay says, Mr. Shea's continuing state of mind,
19 his continuing desire to do stunt work and his continuing
20 desire to appear in the movies. And it would seem to me where
21 we limit it to the month of August, 1969, that our case would
22 be much weaker, whereas if we can show his state of mind was
23 the same from 1957 and that he always worked towards doing
24 stunt work and working in the movies, that makes it much
25 stronger and much more unlikely that he --

26 THE COURT: You're attempting to show the attraction of
27 movie work to Mr. Shea?

28 MR. MANZELLA: I think that's clear, sure.

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1 THE COURT: Over a period of time.

2 I think it is admissible to show that and for only
3 that purpose.

4 MR. DENNY: Well, your Honor, there's a difference in
5 this attraction for movie work as it has been established by
6 his former wife, by his mother, by his present wife, et
7 cetera, to conversations he had concerning specific things,
8 about jobs, whatever, way back in '57, '58, '59. That period
9 of time is irrelevant. I think you've established from this
10 witness already that he had a job lined up for the guy. That
11 he told the guy that he was to appear in the job. That he
12 was waiting to proceed.

13 Now, that's presumably the state of mind that you
14 are talking about that is apparently relevant here, that he
15 was anxious to go and appear in this picture when it was
16 started to be produced in 1969, July 15th. But to go back two
17 years --

18 THE COURT: The Court is going to permit it. The
19 objection is overruled.

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

22 THE COURT: Miss Briandi, would you read the last
23 question back?

24 THE REPORTER: I did not take the last question.

25 THE COURT: Was that Mr. Williams?

26 THE REPORTER: Yes.

27 THE COURT: Would you restate the last question,
28 Mr. Manzella.

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1 MR. MANZELLA: Yes.

2 Q What did you talk about?

3 THE COURT: Again, the same admonition pertains, ladies
4 and gentlemen. It is admitted for the purpose of showing
5 Mr. Shea's state of mind toward the movie industry and towards
6 stunt work.

7 Q BY MR. MANZELLA: You may answer the question.

8 A We talked about if I knew of any independent
9 producers, that were looking for stunt men and extra work.

10 Q Now, Mr. Bickston, do you -- strike that.

11 Did you ever see Donald with any guns?

12 A Yes, I have.

13 Q Would you describe those guns for us, please?

14 A They were two Dakota single action, seven and a
15 half-inch barrel, .45 long Colt single action revolvers.

16 Q Directing your attention to the two weapons which
17 have been marked 53-A and 53-B for identification.

18 And if you would, would you examine both weapons to
19 make sure that they're not loaded?

20 A (Witness complies.)

21 Q And I take it neither weapon is loaded?

22 A Neither one, sir.

23 Q All right.

24 All right, do you recognize those guns?

25 A Yes, sir, I do.

26 Q Whose guns are they?

27 A Donald Shea's, sir.

28 Q And are those the guns about which you were just

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1 talking?

2 A Yes, sir.

3 Q Now, do you recall when it was that you first saw
4 Donald with those guns, if you recall?

5 A Approximately in the middle of October, 1968.

6 Q And where was Donald when you saw him with the
7 guns? Where were you?

8 A We were at Spahn's Movie Ranch doing the pick-up
9 shots for the picture "Hang Fire."

10 Q And is that the picture that you told us about
11 earlier?

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12 A Yes, sir, it is.
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- 1 Q And was Donald using those guns in the picture?
- 2 A Yes, sir, he was.
- 3 Q How was he using them?
- 4 Did he --
- 5 (Witness laughing.)
- 6 Q Let me withdraw that question.
- 7 Did he have -- did he carry them in a holster?
- 8 A He carried one in a holster, yes, sir.
- 9 Q Did he use and carry that holster in one of the
- 10 films?
- 11 A No, sir. I wore one of the guns in the film
- 12 and he had the other one, but he took it off when he had
- 13 to do our fight scene, so it was not in the picture itself.
- 14 Q All right. Now, did you see Donald carry those
- 15 guns, People's 53, in any kind of a container?
- 16 A Yes, sir, I did.
- 17 Q What kind of a container was it? Would you
- 18 describe it for us, please?
- 19 A Well, it was a brown attache case that he
- 20 brought to my home. And I made the inserts. I made foam
- 21 rubber inserts for the two weapons and a Bowie knife so
- 22 that he could carry the guns in the case.
- 23 Q Directing your attention to the exhibit which
- 24 is People's 54. Do you recognize that attache case?
- 25 A Yes, sir, I do.
- 26 Q All right, would you open it for us, please,
- 27 and tell us if the interior appears as it was when you
- 28 made the inserts for the interior of that case?

3a-2

1 A No, sir, it does not.

2 Q All right. Would you describe for us, please,
3 what you mean by making the inserts for the interior of this
4 attache case, People's 54?

5 A Well, on the bottom section there was a one-inch
6 thick solid piece of foam rubber. And then, on the top
7 section was a one-inch piece that -- with the cut-outs of the
8 two weapons, one facing north -- excuse me -- and one facing
9 south with the Bowie knife in the center.

10 Q And the last time that you saw the case opened,
11 were those inserts in the case?

12 A Yes, sir, they were.

13 Q Do you remember how Donald treated -- strike
14 that.

15 Did you see how Donald treated the two guns,
16 People's 53-A and -B for identification?

17 A Yes, I did.

18 Q How was that?

19 A Like newborn babies.

20 MR. DENNY: Just a moment, I'll object and ask that
21 that be stricken as complete conclusion and opinion.

22 THE COURT: Well, --

23 MR. MANZELLA: Well, I think that's a conclusion
24 that a witness can give.

25 MR. DENNY: Not in those words. He can show what he
26 did.

27 MR. MANZELLA: It doesn't call for expert testimony.

28 THE COURT: The Court will strike it.

3a-3

1 Q BY MR. MANZELLA: Mr. Bickston, would you tell
2 us what he did that you saw, how he treated the guns?

3 A Yes, sir.

4 He had a silicone cloth that he carried in that
5 brown bag and each time one of us handled the gun or used
6 the gun he took this cloth and wiped the gun completely clean
7 of anybody's fingerprints and put it back into the case by
8 holding it by the wood and not by the metal. That's what I
9 meant by "baby."

10 Q Did you -- strike that.

11 Did the guns -- the condition that the guns are
12 in now, did they appear different than the condition the
13 guns were in when you last saw them?

14 A Yes, sir, they do.

15 Q What's the difference in their condition?

16 A The wooden grips are all beat up. The cylinders
17 and the end of the barrel are completely worn off where the
18 blue was.

19 Q Now, Mr. Bickston -- strike that.

20 Your Honor, I have here a series of photographs,
21 black and white photographs which had previously been marked
22 People's 67-A through -N.

23 May they be so marked at this proceeding, for
24 identification?

25 THE COURT: So ordered.

26 Q BY MR. MANZELLA: All right, Mr. Bickston,
27 directing your attention to these photographs which have been
28 marked People's 67-A through -N for identification.

67-A - N

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Starting with People's 67-A.

Do you recognize what is shown in that photograph?

A Yes, sir, I do.

Q What is that?

A That is the cast from the TV show that we did.

Hmm, Wyatt Earp.

Q And in what years are we talking about with regard to the cast shown in that photograph?

A 1965 and '66.

Q This is one of the documentaries to which you've already referred?

A Yes, sir.

Q And is Donald Shea shown in this photograph?

A Yes, sir, he is.

Q Would you -- is he marked, is his location marked in any way on the photograph?

A Yes, sir, with a circle with his initials over the top of his head.

3b fls.

3b-1

1 Q Are you shown in that photograph?

2 A Yes, sir, I am.

3 Q And is your location marked in any way on the
4 photograph?

5 A Yes, sir.

6 Q How is that?

7 A With the circle with the initials on the front of
8 my vest.

9 Q And you stated you know a man by the name of Lance
10 Victor, is that correct?

11 A Yes, sir.

12 Q And is he shown in the photograph?

13 A Yes, sir, he is.

14 Q And is his location marked in any way?

15 A Yes, sir, with a circle and his initials over his
16 head.

17 Q Directing your attention for a moment to all the
18 rest of the 13 photographs appearing in People's 67. Do you
19 recognize all of these photographs and what is depicted in
20 those photographs?

21 A Yes, sir, I do.

22 Q All right. And what, generally, do these
23 photographs depict?

24 A Some of the photographs depict what we call
25 wardrobe shots. The costume the man had at the time we
26 started, they use for reference in case we have to go back,
27 that the clothes were in the same position.

28 Q Mr. Bickston, let me interrupt you for just a

3b-2

1 moment.

2 What I meant is generally to what do they refer?

3 A To the TV series we did.

4 Q In 1965 and '66?

5 A Yes, sir.

6 Q Now, Mr. Bickston, if you would, step down off the
7 witness stand --

8 Your Honor, at this time I would offer People's
9 67-A through N into evidence.

10 MR. DENNY: Well, I have no objection. I do object to
11 their being displayed to the jury at this time, to take up the
12 time of the jury at this point, your Honor. I think we've
13 done an awful lot more of that than is normal, passing evidence
14 around. It is not necessary to do that until the conclusion of
15 the case.

16 THE COURT: The Court will admit them into evidence.

17 Q BY MR. MANZELLA: All right, Mr. Bickston, so we
18 don't take up too much time, why don't you just remain seated
19 there and I'll hold them over your shoulder and you tell us
20 what some of the photographs are about.

21 Directing your attention to Photograph 67-N for
22 identification.

23 Can you tell us what is shown in that photograph?

24 A Yes, sir.

25 Q What is that?

26 A That is supposed to be Ben Thompson and two of the
27 outlaws from the TV show Wyatt Earp Becomes an Outlaw.

28 Q Is this the scene from the show itself?

1 A Yes, sir, it is.

2 Q And Donald Shea and yourself are shown in that
3 photograph, is that correct?

4 A Yes, sir, Donald Shea and Neil Ponticova and
5 myself.

6 Q And you are the gentleman to the left as you look
7 at the photograph and Donald Shea is the gentleman to the right,
8 is that correct?

9 A Yes, sir.

10 Q And directing your attention to the photograph which
11 is People's 67-J for identification.

12 Do you recognize what is shown in that photograph?

13 A Yes, sir, I do.

14 Q What specifically is that?

15 A It is Donald Shea and the wardrobe that he used for
16 one day that he shot.

17 Q All right.

18 Directing your attention to the photograph which is
19 People's 67-G for identification.

20 What is shown specifically in that photograph?

21 A The director laying us -- laying out the action that
22 we were going to do before the cameras started to roll.

23 Q All right. And this is something shot just before
24 you began filming a particular scene, is that correct?

25 A Yes, sir, it is.

26 Q And directing your attention to this photograph, is
27 Mr. Shea shown in that photograph with his head circled and the
28 initials "D. S." above his head?

1 THE COURT: May we have that identified for the record?

2 Q BY MR. MANZELLA: People's 67-E.

3 A Yes, sir, it is.

4 Q And is this a scene from one of the films?

5 A Yes, sir, it is.

6 Q And directing your attention to 67-B for identifi-
7 cation.

8 Do you recollect specifically what is shown in that
9 photograph?

10 A Yes, sir, it is a scene from a TV show.

11 Q All right. It looks like you are about to start
12 a fight, is that correct?

13 A No, I had just slapped my brother in his face.

14 Q All right.

15 THE COURT: We'll recess now for a few minutes, ladies
16 and gentlemen.

17 During the recess you are obliged not to converse
18 amongst yourselves, nor with anyone else, nor permit anyone
19 to converse with you on any subject connected with the
20 matter, nor form or express an opinion on the matter until it
21 is finally submitted to you.

22 About ten minutes.

23 I understand, Miss Frazier, you communicated with
24 Mrs. Holt about some problem that has arisen. The Court will
25 listen to you during the recess, the Court and counsel.

26 (Whereupon, the jury retired from the courtroom,
27 and the following proceedings were had:)

28 THE COURT: The panel has left, the record should show.

1 All the jurors have gone except Miss Frazier.

2 Miss Frazier, what is your problem that you
3 communicated to Mrs. Holt?

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1 JUROR FRAZIER: I told her that I was in my first two
2 months of pregnancy and that it was very uncomfortable for
3 me to sit here through the case.

4 THE COURT: What's the problem? Are you ill?

5 JUROR FRAZIER: Yeah.

6 THE COURT: Well, nausea, is that it?

7 JUROR FRAZIER: Yes.

8 THE COURT: Have you -- do you think -- have you gone
9 to a doctor yet?

10 JUROR FRAZIER: Well, I've been out to the hospital.
11 I won't get to see a doctor until the 10th of February.

12 THE COURT: Do you think that you might hold out until
13 that time and at that time perhaps get some sort of medication
14 that would -- or even beforehand get to a doctor and get some
15 sort of medication?

16 JUROR FRAZIER: I don't think so, because it is so hard
17 to see a doctor at Kaiser without an appointment.

18 THE COURT: Do you have a doctor whom you might go to
19 to get a prescription that would somehow or other keep you
20 from being nauseous?

21 JUROR FRAZIER: No.

22 THE COURT: You don't have a doctor in mind?

23 JUROR FRAZIER: Huh-uh.

24 THE COURT: Well, it hasn't been every day that you
25 have been ill, then?

26 JUROR FRAZIER: Well, about the past week and a
27 half.

28 THE COURT: Are you -- have you been ill this morning?

3c-2

1 JUROR FRAZIER: Yes, I have. I'm ill now.

2 THE COURT: And you say you are about in the two-month
3 period of pregnancy?

4 JUROR FRAZIER: Yes.

5 THE COURT: Have you consulted a private doctor or
6 is this a doctor from some hospital whom you'll be seeing?

7 JUROR FRAZIER: From Kaiser.

8 THE COURT: County Hospital?

9 JUROR FRAZIER: Yes.

10 MR. DENNY: Kaiser.

11 THE COURT: Kaiser.

12 MR. DENNY: Kaiser Foundation.

13 JUROR FRAZIER: Kaiser.

14 MR. DENNY: And it does take a long time, your Honor,
15 to get an appointment.

16 THE COURT: Let's see if we can do something for you
17 to get you to a doctor and help you so you won't, after
18 having spent all this time on the jury and listening to all
19 this evidence, you won't have to leave the jury.

20 If the Court can use its influence, we'll do
21 something today to talk to a doctor, and possibly let you go
22 early even this afternoon so you can see somebody.

23 Can you give that phone number to Mrs. Holt?

24 Do you know some place where we could contact a
25 doctor for you?

26 JUROR FRAZIER: At Kaiser, yeah.

27 THE COURT: Pardon?

28 JUROR FRAZIER: At Kaiser.

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4 fls.

I really do wish I could be excused because it
is really hard for me to sit up here.

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1 THE COURT: Well, if the doctor can make some -- could
2 assist you in some way or another, then you wouldn't have to
3 be excused, of course.

4 If you were -- of course, if you were not
5 feeling ill, you would just as soon sit, wouldn't you?

6 JUROR FRAZIER: Yes.

7 MR. DENNY: Your Honor, may we approach the bench just
8 a moment?

9 THE COURT: Yes, you may.

10 How does that proposition strike you? That we
11 could get you to a doctor perhaps this afternoon.

12 JUROR FRAZIER: I've heard of ladies going, you know,
13 to get medication for pains. They say it doesn't help.

14 THE COURT: Well, that may be true. And if it can't
15 help, well, of course, then it's quite possible that you
16 should be excused.

17 (Whereupon, proceedings were had at the bench
18 among Court and counsel, outside the hearing of the
19 juror, which were not reported.)

20 THE COURT: Well, we have an expert on each side of
21 the case, defense and prosecution, in respect to such
22 questions. They both feel, from their vast medical know-
23 ledge of such problems, that there's nothing to be done to
24 alleviate that situation for you.

25 MR. DENNY: Your clerk corroborates our expertise,
26 your Honor.

27 THE COURT: Yes. Her eldest child --

28 THE CLERK: It's been some time.

1 THE COURT: Her eldest child is 19 years old.

2 MR. DENNY: It ain't changed in a hundred years, Judge.

3 THE COURT: Have you been to some laboratory or to some
4 doctor to determine whether or not you are in fact pregnant?

5 JUROR FRAZIER: Kaiser.

6 THE COURT: And they have given you some sort of test--

7 JUROR FRAZIER: Yes.

8 THE COURT: And determined that you are in fact preg-
9 nant?

10 JUROR FRAZIER: Yes.

11 (Whereupon, proceedings were had at the bench
12 among Court and counsel, outside the hearing of the
13 juror, which were not reported.)

14 THE COURT: They both have agreed that -- both these
15 gentlemen have agreed, Miss Frazier, that you may be excused.
16 So the Court does thank and excuses you.

17 JUROR FRAZIER: Thank you.

18 MR. KAY: Thank you, Miss Frazier.

19 MR. DENNY: I wish you could stay with us.

20 MR. KAY: Yeah.

21 THE COURT: Put the names of the three alternates in
22 a box, and choose one of the three by lot.

23 That's Mrs. Corman, Mr. Jeffery and Mr. Chavers.

24 THE CLERK: Edna Corman.

25 THE COURT: The clerk has selected Mrs. Corman, who
26 will take Miss Frazier's place.

27 (Mid-morning recess.)

28 THE COURT: The record will show the jurors are all

1 present. The defendant is present with his counsel.

2 You may proceed, Mr. Manzella.

3 MR. MANZELLA: Your Honor, I have here a black and
4 white photograph of what appears to be Donald Shea, previously
5 marked People's 68.

6 May it be so marked, People's 68 for identifica-
7 tion, at this proceeding?

8 THE COURT: So ordered.

9 Q BY MR.MANZELLA; Mr. Bickston, directing your
10 attention to this photograph, which has been marked People's
11 68 for identification, do you recognize what is shown in
12 that photograph?

13 A Yes, sir, I do.

14 Q And what is that?

15 A That is Donald Shea.

16 Q And when was this picture taken?

17 A The latter part of 1969, at Spahn's Movie Ranch.

18 Q 1969 or 1968?

19 A I beg your pardon?

20 1968.

21 Q And was this in connection with some -- one of
22 the pictures about which you have been testifying?

23 A Yes, sir. This was a wardrobe picture of Don,
24 for Hangfire.

25 Q Hangfire?

26 A Yes, sir.

27 Q And that was the picture you shot in '68?

28 A Yes, sir, it was.

68 id.

1 Q And the holster and the gun shown in the photo-
2 graph, is that gun one of -- either People's 53-A or 53-B?

3 A Yes, sir, it is.

4 Q And this picture, where was this shot?

5 A At Spahn's Movie Ranch.

6 THE COURT: The record should show, incidentally, that
7 Mrs. Corman is seated in Miss Frazier's place.

8 Miss Frazier, ladies and gentlemen, has been
9 excused by the Court for reasons of illness.

10 And I see that you have already been informed,
11 Mrs. Corman.

12 JUROR CORMAN: Yes. He told me. I thought I was No. 3.
13 I thought I wouldn't be called until No. 3.

14 (Laughter.)
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1 THE COURT: No, we did it by lot. We put the three
2 names in the hat and drew one of the three, and yours was
3 selected.

4 Go ahead, Mr. Manzella.

5 Q BY MR. MANZELLA: Mr. Bickston, again directing
6 your attention to Donald's two revolvers, 53-A and 53-B, when
7 was the last time that you saw these?

8 A In June of 1969.

9 Q And where were you when you saw them?

10 A At my home in Sun Valley, California.

11 Q And would you describe the condition of the weapons
12 at that time?

13 A Well, the weapons at that time were in new -- still
14 in new condition then.

15 Q And was Donald still taking care of them the way
16 you've already testified?

17 A Yes, he had.

18 Q All right. Mr. Bickston, was June of 1969 the last
19 time you saw or heard from Donald Shea?

20 MR. DENNY: Object to that as asked and answered, twice.

21 THE COURT: Sustained.

22 Q BY MR. MANZELLA: All right. Prior to the last
23 time that you saw Donald Shea, had he said anything to you
24 about permanently leaving his family and friends?

25 MR. DENNY: Object to that as calling for hearsay.

26 THE COURT: Overruled. Ladies and gentlemen, it is
27 received for the same purpose, however, to indicate -- if it
28 does -- Mr. Shea's state of mind.

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1 MR. DENNY: Well, your Honor, excuse me. This is asking
2 for negative testimony, not positive testimony; not something
3 he did say, but something he didn't say.

4 THE COURT: It's admitted for the same purpose, however.

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

6 MR. DENNY: Well, your Honor, may we be heard just a
7 moment?

8 THE COURT: No, I believe not.

9 MR. DENNY: Well, your Honor, I would greatly appreciate
10 it, on this one point, being heard at the bench.

11 THE COURT: The request is denied.

12 You may answer.

13 THE WITNESS: (No response.)

14 Q BY MR. MANZELLA: Do you remember the question?

15 A No, sir, I don't.

16 THE COURT: Mr. Williams?

17 (Whereupon, the record was read by the reporter
18 as follows:

19 "Q All right. Prior to the last time
20 that you saw Donald Shea, had he said anything to
21 you about permanently leaving his family and friends?"

22 THE WITNESS: No, sir, he did not.

23 Q BY MR. MANZELLA: And again, prior to the last time
24 you saw Donald Shea, had he said anything to you about
25 permanently leaving Los Angeles or the State of California?

26 A No, sir.

27 MR. DENNY: Object to that as calling for hearsay; and
28 irrelevant and immaterial.

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1 THE COURT: The answer may remain in the record.

2 The objection's overruled.

3 MR. MANZELLA: Thank you. I have no further --

4 MR. KAY: Wait a minute.

5 MR. MANZELLA: Excuse me, your Honor.

6 (Pause in the proceedings while a discussion off
7 the record ensued at the counsel table between Mr. Kay and
8 Mr. Manzella.)

9 Q BY MR. MANZELLA: And on the last occasion that you
10 saw or heard from Donald, in June of 1969, did he say anything
11 about permanently leaving his family or friends?

12 MR. DENNY: Object to that on the same basis, your
13 Honor.

14 THE COURT: The objection is overruled.

15 You may answer.

16 THE WITNESS: No, sir, he did not.

17 Q BY MR. MANZELLA: And again, on the last occasion,
18 in June of 1969, did he say anything about leaving Los Angeles
19 permanently or leaving the State of California permanently?

20 A No, sir, he did not.

21 MR. MANZELLA: All right. Thank you. I have no
22 further questions, your Honor.

23 CROSS EXAMINATION

24 BY MR. DENNY:

25 Q Mr. Bickston, your friend Shorty -- or, you call
26 him Don; right?

27 A Yes, sir.

4a-4

1 Q All right. Don'ts kind of a peripatetic character;
2 he's a wanderer, isn't he?

3 MR. MANZELLA: Objection. That calls for speculation.
4 It's vague and ambiguous, your Honor.

5 THE COURT: Overruled. You may answer.

6 THE WITNESS: Well, he did like to travel, yes, sir.

7 Q BY MR. DENNY: Moved about from place to place?
8 During the nine years or so, twelve years that you knew him?

9 A Yes, sir.

10 Q And picked up a job here and there as he went?

11 A Yes, sir.

12 Q Kind of a carefree fellow, wasn't he?

13 A Yes, sir, he was.

14 Q He didn't have anything to hold him down after he
15 got divorced; isn't that right?

16 MR. MANZELLA: Your Honor, it calls for a conclusion and
17 speculation on the part of the witness.

18 THE COURT: Sustained on that ground.

4b fol

4b-1

1 Q BY MR. DENNY: Well, to your knowledge, you were
2 a friend of his -- a close friend, weren't you?

3 A Yes, sir, I was.

4 Q And after his divorce from his wife in '65,
5 he didn't see his kids, did he?

6 A Not to my knowledge, no, sir.

7 Q All right. And to your knowledge, until he
8 married in July of '69, he didn't have any other wife, did
9 he?

10 A No, sir, he did not.

11 Q He didn't have any family responsibilities to
12 hold him down, did he?

13 A No, sir.

14 Q And he kind of went from place to place as the
15 spirit moved him, didn't he? As far as you know?

16 A As far as I know, yes, sir.

17 Q If a job came up, he would take a job somewhere,
18 work for a while, and then go some place to the next job;
19 is that right?

20 A Yes, sir.

21 Q And if this job was in Arizona, shooting a movie
22 at Apache Movie Land, he would go there for a while; right?

23 A Yes, sir.

24 Q If it was at Spahn Ranch shooting, he would go
25 there for a while; right?

26 A Yes, sir.

27 Q And if it was the Leslie Salt Mines in Vallejo,
28 he would go there for a while; right?

4b-2

1 A I didn't know that he worked at the salt mines,
2 no.

3 Q You didn't know that?

4 A No, sir.

5 Q If he was trimming trees somewhere here in Los
6 Angeles, he'd do that; right?

7 A Well, I don't know about him trimming trees. I --

8 Q All right. If he tended bar somewhere here in
9 Los Angeles, he would go there; right?

10 A Yes, sir.

11 Q If he wanted to sell books at a pornographic
12 bookstore in Hollywood for a while, he would do that; right?

13 A Yes, sir.

14 Q If he wanted to sell books at a pornographic
15 bookstore in Las Vegas, he would go there and do that for a
16 while; right?

17 A I don't know about him working in Vegas, sir.

18 Q You don't know about that?

19 A No, sir. I know he went to Vegas to get married;
20 but I didn't know he worked in Vegas.

21 Q You didn't know he was there for about six weeks?

22 A Yes, sir. I said: I know he went down there to
23 get married, but I didn't know he was working in Vegas.

24 Q Did you hear from him in July?

25 A I personally did not, but my wife did, sir.

26 MR. DENNY: Well, move that the last be stricken as
27 not responsive to the question, anything other than "I
28 personally did not."

1 THE COURT: So ordered. The Court strikes the latter
2 part of the answer.

3 Q BY MR. DENNY: I'm asking what you know, sir, of
4 your own knowledge, when I ask for whether you heard from him.

5 Do you understand that?

6 A Yes, sir.

7 Q All right. Did you hear from him in June of 1969?

8 A Yes, sir, I did.

9 Q And when? Early or late?

10 A About the middle part of the month, sir.

11 Q Didn't he tell you he was going over to Vegas,
12 then, --

13 A No, sir, he did not.

14 Q -- to work for Jerry Binder?

15 A No, he did not.

16 Q Did you know, sir, that he and his wife had --
17 well, let me backtrack a minute.

18 You have done some work in the movies, you say,
19 producing; right?

20 A Yes, sir.

21 Q Who is Maurice Kosloff?

22 A I don't know him, sir.

23 Q Did Shorty tell you that he and his wife had
24 gotten parts in a Kosloff movie? That was set for about the
25 same time yours was being shot?

26 A No, sir, he did not.

27 Q Did he keep in touch with you in 1960?

28 A Yes, sir, he did.

1 Q About once every three weeks or four weeks, at the
2 most?

3 A Uh -- in 1960, it was mostly around every six
4 weeks or so.

5 Q Around every six weeks or so?

6 A Um-hmm.

7 Q Did you see him, then, in 1960?

8 A Yes, sir, I did.

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1 Q He dropped in on you in 1960, did he?

2 A Yes, he did.

3 Q This was in your house in Sunland?

4 A No, sir, this was in Columbus, New Mexico, at
5 the Pencho Villa Museum.

6 Q And you lived in New Mexico at the time?

7 A Yes, I did.

8 Q And Shorty dropped in on you there?

9 A Yes, sir.

10 MR. MANZELLA: Objection.

11 Q BY MR. DENNY: Every six weeks or so?

12 A No, I didn't say he dropped in every six weeks.
13 I'd hear from him approximately every six weeks.

14 Q You mean he'd telephone if he didn't come to see
15 you?

16 A Yes, sir.

17 Q About how often did he come and see you in 1960?

18 A Maybe about five times during the year, sir.

19 Q Travel from Los Angeles over to New Mexico to see
20 you?

21 A No, sir, he was working for a man, I think -- I'm
22 not sure of the town -- at Beaumont, Texas, somewhere where
23 they made these longhorn plaques that they sold, Texas
24 longhorn plaques.

25 Q He was working in Texas at the time?

26 A Yes, sir.

27 Q All right. And about five times during the year
28 he did drop over to see you?

5-2

1 A Yes, sir.

2 Q Or did you drop over to see him?

3 A I didn't drop over to see him -- or he had
4 contacted me at the Pancho Villa Museum in New Mexico.

5 Q By phone?

6 A By phone or by car.

7 Q Oh, in other words, these contacts you're talking
8 about were either letter or phone or personal contacts?

9 A Yes, sir.

10 Q Is that right?

11 Well, did you see him at all during 1960,
12 personally?

13 A Yes, sir, beginning of the year.

14 Q And that's all?

15 A Yes, sir.

16 Q And you had how many phone contacts with him?

17 A I'd say maybe seven or eight.

18 Q He called you or you called him?

19 A He called me.

20 Q Collect or --

21 A No, he paid for them.

22 Q He asked you at that time if you knew any
23 producers who had work or -- is that right?

24 A Yes, sir, he did.

25 Q This is what he always asked you whenever he
26 talked to you?

27 A Yes, sir.

28 Q Got kind of boring, didn't it?

5-3

1 A No, sir, it did not.

2 Q All right.

3 And in 1965 did you see him?

4 A Yes, sir, I did.

5 Q How frequently did you see him in '65?

6 A About the same amount, sir.

7 Q Where were you at that time?

8 A In Sun Valley.

9 Q Where was he?

10 A Well, he was in -- well, when he came back from

11 Boston, he was in Los Angeles. And then, I thought he was in

12 Frisco working, but he was at the salt mines, I later found

13 out.

14 Q You found out he was at the salt mines in '65

15 working?

16 A '65 or '66, I'm not sure.

17 Q Well, you don't remember too closely exactly what

18 Shorty was doing from year to year, do you?

19 A No, I don't remember what year he was at the salt

20 mines, sir, because I didn't know he was there.

21 Q All right.

22 Well, are you sure it was '65?

23 A That I seen him?

24 Q No, that he was working at the salt mines?

25 A No, sir, I am not sure it was '65 that he was at

26 the salt mines.

27 Q All right. And when did he get back from Boston?

28 A I'd say about the early part of 1965.

5-4

- 1 Q All right. And he called you from Boston, did he?
- 2 A No, sir, he did not.
- 3 Q Then, how long was he gone?
- 4 A Approximately four or five months. He had
- 5 broken his leg.
- 6 Q All right. So, during the time that he was
- 7 disabled and wouldn't have been able to work anyway, he
- 8 didn't call you asking you about work, is that right?
- 9 A No, sir, he did not.
- 10 Q And so if he were disabled in December and
- 11 November of 1969, it wouldn't seem unusual to you that he
- 12 wouldn't call you?
- 13 A Yes, it would.
- 14 Q Oh, all right.
- 15 Was he disabled from work any other time that you
- 16 know of during the ten or twelve years that you knew him?
- 17 A No, sir.
- 18 Q By the way, these guns, you say they were in new
- 19 condition.
- 20 He bought these guns secondhand, didn't he?
- 21 A Yes, he did.
- 22 Q And from whom did he buy them, do you know?
- 23 A I think it was Archie Hall. I'm not sure, sir.
- 24 Q All right. And when he bought the guns --
- 25 By the way, you are a gunsmith, you say, is that
- 26 right?
- 27 A Yes, sir.
- 28 Q How old are these guns?

5-5

1 A Uh, the guns couldn't be any older than five years
2 old, sir.

3 Q Five years old now?

4 A Yes, sir.

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1 Q And can you make any determination -- what is it
2 that you base your determination of their age on?

3 A Oh, because they are Dakotas, and Dakota fire-
4 arms only went into existence seven years ago. So the guns
5 were made in Italy, not the United States, so it is a new
6 manufactured gun.

7 Q Well, could they be seven years old?

8 A Well, according to the serial numbers, no, sir.

9 Q 2241, you figure would be how many years after
10 they started manufacturing?

11 MR. MANZELLA: Excuse me, your Honor, I believe Mr.
12 Denny made a mistake.

13 Q BY MR. DENNY: I'm sorry, 2421.

14 A Approximately two years after production.

15 Q Well, do you know how many they produced?

16 A No, not offhand. No, sir. They're -- I don't
17 know how many they produced as of this time, sir.

18 Q Do you know anything about the factory that
19 produces them?

20 A No, sir, except that we did handle those guns
21 in our gun shop.

22 Q All right. And what do they cost?

23 A Well, five years ago they would have cost about
24 eighty-seven fifty, sir.

25 Q Eighty-seven fifty new?

26 A Five years ago, yes, sir.

27 Q Second-hand, what would they cost?

28 A Second-hand, you'd still get \$75 for any

5a-2

1 single-action revolver. It is a very hard gun to get ahold
2 of.

3 Q For any single-action?

4 A Yes, sir.

5 Q All right. You're not in the lending business,
6 you're not --

7 A No, sir.

8 Q You don't lend money on guns?

9 A No, sir.

10 Q So a gun in good condition, at any rate, you'd
11 pay about \$75 for something like this?

12 A Yes, sir.

13 Q How about a regular Colt that this model is
14 based on? How much would you pay for that new?

15 A New, they were \$190, sir.

16 Q Over twice as much as this, is that right?

17 A Yes, sir.

18 Q All right. In other words, you'd say essentially
19 this is a cheaper replica of the real Colt, is that right?

20 A Well, in that sense, yes, sir.

21 Q All right. And cheaper in every respect, cheaper
22 in workmanship and design; is that right?

23 A No, sir.

24 Q High quality workmanship and design?

25 A Yes, sir. I find that they're a very good gun.

26 Q And the bluing on a gun, how long does the
27 bluing last on a gun -- well, let me go back just a minute.

28 You said that Shorty treated these guns very

1 well, that he was excited about them, right?

2 A Yes.

3 Q He was excited about owning a matched set of
4 guns?

5 A He was excited about owning them, yes, sir.

6 Q Certainly, anybody that hadn't had a matched set
7 of guns would be excited about owning them, is that right?

8 MR. MANZELLA: Objection, calls for speculation and
9 conclusion.

10 Q BY MR. DENNY: All right.

11 Shorty practiced quick draws with these guns?

12 A Yes, he did.

13 Q And he did that quite a bit, practicing going in
14 and out of the holster?

15 A Yes, sir.

16 Q And when a gun goes in and out of a holster
17 quite a bit, what happens to the bluing on the barrel?

18 A The bluing on the barrels rubs off, but the marks
19 and everything on the rest of the gun are not from fast draws.

20 Q Well, is the worn part of the bluing on the
21 barrel, on the inside of the barrel of each gun, in your
22 opinion, sir, caused by the repeated withdrawal and putting
23 back in the holster of the gun?

24 A Yes, sir, it is.

25 Q All right. And that's normal wear and tear, is
26 that right, on both the inside and the outside?

27 A And the ejector, too, yes, sir.

28 Q All right. Now, as far as the quality of the

1 varnish on the handles of the gun, do you know anything about
2 the manufacturing process in Italy of the varnish that's
3 used on these guns?

4 A No, sir, I do not.

5 Q All right. You don't know whether it is good
6 varnish or not, do you?

7 A No, sir.

8 Q In fact, you don't handle these guns used? You
9 sell them new from your shop, is that right?

10 A Well, we sell them new and used, if we get any
11 in on trade.

12 Q Well, have you gotten any in on trade?

13 A No.

14 Q So you don't know how they hold up under wear and
15 tear?

16 A Yes, sir.

17 Q Do you know how a Dakota holds up under normal
18 wear and tear?

19 A Yes, sir, I do.

20 Q All right, sir.

21 And you've seen these guns now in evidence since
22 about September 14, 1970, is that right?

23 A Yes, sir, I have.
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5b fls.

5b-1

1 Q And you don't know how much of the knocking off of
2 the varnish is caused by being knocked around in a thing like
3 this, as distinguished from -- when I say "a thing like this,"
4 this is a file cabinet drawer that all these exhibits are
5 kept in -- you don't know how much of the wear on the handles
6 of the gun is due to being knocked around in here as versus
7 the use outside, do you?

8 MR. MANZELLA: Objection, it assumes a conclusion and a
9 fact not in evidence.

10 THE COURT: Sustained. You may rephrase it.

11 MR. DENNY: Well, sir, I'd ask the Court to take
12 judicial notice that these guns were initially introduced into
13 evidence on December 9 -- well, just a moment.

14 THE COURT: Mr. Bickston, when did you see these guns
15 first in a courtroom? As nearly as you can remember. How
16 many months ago?

17 THE WITNESS: Might be fourteen months ago.

18 THE COURT: About fourteen months ago?

19 THE WITNESS: Yes, sir.

20 THE COURT: Is there any substantial difference in them
21 between when you saw them then and now?

22 THE WITNESS: No, sir.

23 MR. DENNY: Well, I would ask the Court to take judicial
24 notice that the guns were introduced before the Grand Jury on
25 approximately December 14, 1970.

26 THE COURT: Very well.

27 Q BY MR. DENNY: Now, sir, do you remember what
28 these things looked like fourteen months ago?

5b-2

1 A Yes, sir, I do.

2 Q Do you remember specifically how the handles
3 looked like fourteen months ago?

4 A I remember the roughness on the guns, yes, sir.

5 THE COURT: We'll take a recess now until 1:45.

6 During the recess you are obliged not to converse
7 amongst yourselves, nor with anyone else, nor permit anyone
8 to converse with you on any subject connected with this
9 matter, nor are you to form or express anything on the matter
10 until it is finally submitted to you.

11 See you all at 1:45.

12 (Whereupon, at 12:04 the noon recess was taken.)
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1 LOS ANGELES, CALIFORNIA, MONDAY, JANUARY 24, 1972, 1:49 P. M.

2
3 THE COURT: The jurors are all present. The defendant
4 is present with his counsel.

5 Mr. Manzella, you may proceed.

6 Let's see. You were on cross, weren't you?

7 MR. DENNY: Yes, I was, your Honor.

8 THE COURT: All right. Mr. Denny, you may proceed.

9
10 ROBERT BICKSTON,
11 called as a witness by and on behalf of the People, having been
12 previously duly sworn, resumed the stand and testified further
13 as follows:

14 THE COURT: State your name again for the record.

15 THE WITNESS: Robert Bickston.

16 (Pause in the proceedings while a discussion off
17 the record ensued at the clerk's desk between Mr. Denny and
18 the clerk.)

19
20 CROSS EXAMINATION (Continued)

21 BY MR. DENNY:

22 Q Mr. Bickston, I was a little curious. When asked
23 by Mr. Manzella what your occupation was, you said, "actor
24 and gunsmith."

25 Are you then referring to your present occupations,
26 as distinguished from your past occupations?

27 A No. Both, sir.

28 Q Well, you don't include in there "producer."

1 Do you count yourself an actor and a gunsmith and
2 just kind of incidentally a producer?

3 A Well, it was an experimental production, yes.

4 Q An experimental production. And by an
5 experimental production, what do you mean?

6 A We had the format of a -- of what we thought was a
7 good western series. So we did it as an experimental produc-
8 tion.

9 Q And when you say "we did it," who are you referring
10 to?

11 A Lindsay Crosby and myself.

12 Q Is that Bing's son?

13 A Yes, sir, it is.

14 Q And he was supposed to be footing the bill for --
15 for this?

16 A No. We both were, sir.

17 Q All right. And when you say, "it was an
18 experimental production," are you talking about the TV shorts
19 that -- a day in the life of a famous western character that --

20 A Yes, sir.

21 Q -- you had filmed?

22 And were these fifteen-minute, half-hour, ten-
23 minute?

24 A A half-hour TV show, sir.

25 Q All right. And were they ever shown anywhere?

26 A No, sir, they were not.

27 Q All right. So that Shorty then did not appear on
28 the TV screen by virtue of his work in any of your productions;

1 is that right?

2 A Yes, sir.

3 Q And neither did you?

4 A No, sir.

5 Q And neither did anybody else that appeared in all
6 of these pictures that you have got in People's 67, that
7 you've shown us; is that right?

8 A Yes, sir.

9 Q So this was what is referred to in the trade as
10 kind of a fly-by-night operation?

11 A Oh, you could call it that, yes, sir.

12 Q All right. I don't mean to be disparaging of it.
13 But there are a lot of these operations that go on in the
14 industry that don't result in anything; is that right?

15 A Yes, that's right, sir.

16 Q All right. And a lot of them result in a bunch of
17 pictures like this (indicating) being taken for, as you say,
18 wardrobe purposes; is that right?

19 A Well, wardrobe and story line, yes, sir.

20 Q All right. Now, as a result of Mr. Shea's work
21 with you, did he ever appear in anything that appeared before
22 the public?

23 A Yes, sir, he did.

24 Q And which was that?

25 A Excuse me. Is that on the screen or in person?

26 Q On the screen.

27 A Yes, sir, he did.

28 Q And what was that?

1 A "Chukko the Clown" TV show; Jo Allison's
2 Wonderland; Red Rowe's Panorama Pacific.

3 Q What was Chukko the Clown -- what did he do on
4 that?

5 A Well, he had a children's program, and we used to
6 appear on it and do little skits for them.

7 Q You mean Chukko, when you say, "he had a
8 children's --"

9 A Chukko the Clown had a children's program, right,
10 sir.

11 Q And you appeared -- or let's say Shorty appeared
12 once or twice, did he, on that?

13 A Yes, sir, he did.

14 Q All right. And the same on these others that
15 you've mentioned?

16 A Yes.

17 Q All children's programs?

18 A Well, Red Rowe's Panorama Pacific was not a
19 children's program. It was an all-round -- like a talk show.

20 Q And you demonstrated some stunt work?

21 A Yes, we did.

22 Q All right. But other than that, on any of these
23 things that were put down on either tape or movies, celluloid,
24 anything, did any of that appear before an audience --

25 A No, sir, it did not.

26 Q All right, sir. And this enterprise that you were
27 engaged in, and attempting to put together a show in July,
28 August and into September of 1969, that never even got off

1 the boards; right?

2 A No, sir, it did not.

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1 Q And as far as Shorty was concerned, you kind of
2 built up his hopes, all to no avail, is that right?

3 A Yes, sir.

4 Q All right. And even these things that did shoot
5 in connection with these TV pilots, if you want to call them
6 that, Shorty have a talking part in any of them?

7 A Yes, sir, he did.

8 Q But in the main he was, as you said, either one of
9 the gang or one of the posse, is that right?

10 A Yes, sir.

11 Q And in the parlance of the trade, that would
12 essentially be an extra with a talking, possible talking part,
13 a few lines, is that right?

14 A No, sir. What he did would be considered in the
15 trade as a bit.

16 Q A bit?

17 A Yes, sir.

18 Q All right. That's just above an extra with a
19 talking part?

20 A Yes, sir.

21 Q All right, sir.

22 Now, there are plenty of stuntmen around in
23 Hollywood, aren't there?

24 A Yes, sir, there are.

25 Q And you are a professional stuntman, among other
26 things?

27 A Yes, sir.

28 Q And you have done work where the work that you did

1 did appear before people in a theater?

2 A Yes, sir.

3 Q Or on TV?

4 A Yes, sir.

5 Q And in the shows in which you appeared, you had to
6 have a union card, is that right?

7 A Yes, sir.

8 Q This isn't just a Screen Actor's Guild card, there
9 is a special card for stuntmen, is that right?

10 A No, sir, there is not. You have a stuntmen
11 association, but you do not have to belong to the association.

12 Q All right.

13 Do you?

14 A I do not belong to the association, no, sir.

15 Q Do you know what percentage of stuntmen that work
16 in the profession do?

17 A Yes, sir. Maybe about twelve or fourteen per
18 cent of them.

19 Q All right. But in order to get work in a real
20 production, a major production, that's going to appear before
21 an audience somewhere, you have to be a member of the Screen
22 Actor's Guild, is that right?

23 A Yes, sir, you do.

24 Q All right. And Shorty never was a member of the
25 Screen Actor's Guild, was he?

26 A No, sir, he was not.

27 Q As long as you knew him he never was?

28 A No, sir.

1 Q What does it take to become a member of the Screen
2 Actor's Guild?

3 A Well, it takes a letter from a producer saying
4 that he is going to use you in his forthcoming production.

5 Q That's all it takes?

6 A That's all it takes, yes, sir.

7 Q And to your knowledge, Shorty never even got that
8 far in the business, is that right?

9 A Yes, sir.

10 Q In other words, would you say that Shorty might
11 have had high hopes to be a stuntman, but he never got very far
12 at it?

13 A Yes, sir.

14 Q Or Don, as you call him.

15 By the way, in March of '69, when Don worked in a
16 looping -- or was he working in the looping room?

17 A Yes, he was.

18 Q And this was just kind of helping you out, was he?

19 A Yes, he was.

20 Q Was he paid for that?

21 A Well, he was paid to a deferral. He was paid \$25 a
22 day while he helped us.

23 Q When you say on a deferral, what do you mean?

24 A Well, I mean he was paid a nominal fee, and then
25 when the picture was sold, he would get the balance of his
26 pay, plus the bonus of going along with it.

27 Q But the picture was never sold?

28 A No, sir, it was not.

1 Q So it was deferred unto the end of time?

2 A Yes, sir.

3 Q Indefinitely?

4 A Yes, sir.

5 Q But that's standard, too, in the industry, isn't
6 it?

7 A Yes, it is.

8 Q All right.

9 By the way, were you aware of Don's ever being
10 hospitalized during the time that you knew him?

11 A No, sir.

12 Q Were you aware of his being hospitalized for a
13 period of time in Arizona?

14 A No, sir.

15 Q Do you know if he lived in Arizona for a period of
16 time?

17 A No, sir, I didn't know that he lived in Arizona.

18 Q During the time that he lived with his first
19 wife.

20 A As I said, I didn't know they lived in Arizona.
21 I know they lived in Texas for a period.

22 Q Now, do you have any particular recollection of
23 when you heard from him in 1967?

24 A Well, I heard from him periodically in 1967. He
25 was, I think, working for Jerry Binder or with Jerry Binder.

26 Q In '67?

27 A I'm pretty sure it was '67. I'm not sure of what
28 dates, but I know he worked for Jerry Binder off and on

1 periodically.

2 Q And how frequently in '67 did he contact you while
3 he was working and making money?

4 A Pretty regular. As I say, once about every six
5 months -- or six weeks, rather. He would call me and leave a
6 phone number for me to get a hold of him at.

7 Q All right. Now, sir, you indicated, I think
8 among the other things that was in his attache case was a
9 place for a Bowie knife, is that right?

10 A Yes, sir.

11 Q Did Don possess a Bowie knife?

12 A Yes, sir, he did.

13 Q Do you recollect that Bowie knife?

14 A Yes, I do.

15 Q Have you seen that Bowie knife before in court?

16 A Yes, sir, I have.

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

18 THE COURT: Yes, you may.

19 MR. DENNY: I think we're going to have to get the
20 exhibits, so I'll get them out.

21 (Whereupon, Mr. Denny exited the courtroom,
22 and returned shortly, and the following proceedings were had:)

23 MR. DENNY: Do you know where the exhibit, the knife is?

24 MR. MANZELLA: I beg your pardon?

25 MR. DENNY: Where the exhibit the knife is? Or did you
26 even use it last time?

27 MR. MANZELLA: 79.

28 (Whereupon, there was a pause in the proceedings

1 while Mr. Denny conferred with the clerk.)

2 Q BY MR. DENNY: I think we'll be able to get it out
3 shortly.

4 Did you ever see Don practice anything with that
5 Bowie knife?

6 A No, sir, I did not.

7 Q You never seen him practice throwing it?

8 A No, sir.

9 Q Use it in any way?

10 A Well, used it in the motion picture we made, Hang
11 Fire, in a fight that him and I did. But as far as him throwing
12 it, I have never seen him throw it.

13 Q All right.

14 MR. DENNY: Your Honor, I have what appears to be a knife
15 in two parts. The blade and the metal portion of the handle
16 in one part and a bone handle with rivets through it separate
17 from the blade, another part, I think previously marked in
18 another proceeding People's 79. If the People have no
19 objection, may it be similarly marked?

20 MR. MANZELLA: No objection.

21 THE COURT: May be so marked.

22 Q BY MR. DENNY: Showing you, sir, a blade and handle.
23 Were you sufficiently familiar with Don's knife to
24 know whether that is, indeed, his knife?

25 A Yes, sir, I was.

26 Q And is that his knife?

27 A Yes, sir, it is.

28 Q And how do you identify that?

79 ID

1 A Uh, in June of 1969 --

2 Q Without going through --

3 A Oh.

4 Q -- any conversation you may have had, did you see
5 it --

6 A He handed --

7 Q -- in that condition?

8 A Yes, sir, he handed it to me in that condition.

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1 Q All right. And it was broken at that time?

2 A Yes, it was.

3 Q And did you make any attempt to repair it?

4 A Yes, sir.

5 Q And was it you who gave this knife to the police?

6 A Yes, sir, it was.

7 Q All right. Fine. And it was in your possession

8 from that time on; is that correct?

9 A Yes, sir.

10 Q And that was indeed the last time that you saw

11 Don; is that right?

12 A Yes, sir, it was.

13 Q And again, do you recall whether it was early

14 or late June?

15 A No, sir, I don't.

16 Q All right.

17 Now, sir, Don didn't ask you for your leave

18 before he took off to go some place, I take it, did he?

19 A No, sir, he did not.

20 Q And indeed, you were aware at times Don just

21 did take off to go places; is that right?

22 A Yes, sir.

23 Q And then maybe after he'd gotten there, and

24 after he had been there for a period of time, he might have

25 called you and told you where he was, or dropped you a note;

26 is that right?

27 A Yes, sir.

28 Q All right. And this was extremely usual, --

8-2

1 A Yes, sir.

2 Q -- this was his MO, you might say?

3 A Yes, sir.

4 Q All right. And are you aware of any time that
5 Don was missing, during a period of time before this
6 September period, when he seemed to have come up missing,
7 September of 1969?

8 MR. MANZELLA: Objection. Calling for --

9 Q BY MR. DENNY: Were you aware of --

10 MR. MANZELLA: Excuse me, go ahead.

11 Q BY MR. DENNY: Were you aware of any other time
12 when you felt that Don -- you hadn't heard from Don for such
13 a period of time that you were worried that he was missing?

14 MR. MANZELLA: Objection, your Honor. Calls for
15 opinion, speculation, and a conclusion on the part of the
16 witness.

17 THE COURT: Sustained.

18 Q BY MR. DENNY: Well, were there times -- maybe
19 once or twice or three times -- or even once -- in the ten
20 or twelve years that you say you've known Don that he went
21 for longer than six weeks, without getting in touch with you?

22 A Yes, sir.

23 MR. DENNY: No further questions.

24 THE COURT: Mr. Manzella, any redirect?

25
26 REDIRECT EXAMINATION

27 BY MR. MANZELLA:

28 Q Mr. Bickston, you quoted a price of eighty-seven

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1 fifty for the Dakota revolvers, People's 53. Was that new?

2 A In a -- a five-year period ago, it was new, yes,
3 sir.

4 Q Was that for one gun, each gun, or both guns
5 together?

6 A No, one gun.

7 Q Mr. Denny asked you if you knew how a Dakota
8 held up under normal wear and tear, I believe. You said that
9 you did.

10 Why don't you tell us about that?

11 A Well, the Dakota is a very fine made Italian gun.
12 It's a replica of the Colt single-action. All parts in the
13 Dakota, except the barrel and the cylinder, are interchange-
14 able with the original Colt.

15 The reason I know the -- they handle good and
16 hold up good, Johnny Carpenter, who is a producer, has bought
17 ten of them from me, and I have yet to work on the guns.

18 MR. MANZELLA: All right. Thank you. I have no further
19 questions.

20
21 RECROSS-EXAMINATION

22 BY MR. DENNY:

23 Q Again, I don't want to beat the subject to death,
24 sir. But when you say that Johnny Carpenter bought ten of
25 these and you've yet to work on them, these guns right now,
26 except for the exterior condition, are in perfect firing
27 condition, are they not?

28 A No, sir, they are not. The guns -- at the first

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1 time I seen them, in the Grand Jury, the guns had been fired,
2 and those guns haven't been cleaned since the first time I
3 seen them.

8a fls.

4 Now, they were --
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1 Q Now, excuse me just a minute. You say they have
2 not been cleaned since the first time you saw them?

3 A At the Grand Jury, sir.

4 Q Oh. All right.

5 A The first time I've seen them at the Grand Jury.

6 Q And at the time that you saw them at the Grand
7 Jury, the barrel of the gun was dirty?

8 A Yes, sir.

9 Q The interior?

10 A Yes, sir.

11 Q Well, the fact that the barrel of the gun is
12 dirty does not keep it from firing; is that right?

13 A But it can make the gun dangerous, when they have
14 been shot with blanks, because black powder will erode the
15 barrels and the cylinders.

16 Q Now, are you a ballistics expert, sir?

17 A No, sir, but I am a gunsmith.

18 Q All right. In other words, you take guns apart
19 and clean them and so forth?

20 A Yes, I do.

21 Q And is it your statement, sir, that merely by
22 virtue of having black powder fired a number of times through
23 a barrel, without cleaning it, that will so foul the barrel
24 that it will make the gun dangerous to fire?

25 A Yes, sir.

26 Q Dangerous to fire a regular bullet?

27 A Yes, sir.

28 Q And is that because deposits of black powder build

1 up on the interior of the barrel of the gun?

2 A Yes, sir.

3 Q All right. And do those black powder deposits
4 build up to such a degree that they will inhibit the passage
5 of a bullet through the bore of the gun?

6 A The black powder in studio guns have been known
7 to build up from a .45 caliber down to a .22 caliber, if
8 they're not cleaned.

9 Q All right. And as far as these particular guns
10 go, now, as you look into them, you can still see the lands
11 and grooves of the gun all right, can't you, --

12 A Yes, sir.

13 Q -- of the barrel?

14 A Yes, sir.

15 Q So these guns are not fouled to such a degree
16 that they are any less than the .45 caliber that they were
17 bored to be; isn't that correct?

18 A I'm not saying that.

19 I am saying that black powder erodes; black
20 powder gets into the metal and eats little tiny pinholes.
21 And this is the concern I was talking about.

22 Any time you have pits in the barrel, you have
23 weakened the steel. Now, it's hard to say how much it has
24 weakened it, but they are filthy.

25 Q Well, you are not saying that you can determine
26 merely from looking at the interior of the barrel that it is
27 so pitted and corroded by the action of the black powder
28 that the barrel is weakened, can you?

1 A No, sir. Not until it's cleaned.

2 Q All right. So when you say that this is a
3 fine gun, you are talking about the fact that it's serviceable;
4 is that right?

5 A Yes, sir.

6 Q All right. Not how it stands up, as far as its
7 exterior wear goes; is that right?

8 A Again, I can't answer that yes or no.

9 Q You can't make a comparison, then, between the
10 manufacture -- the excellence or lack of excellence of
11 manufacture of the gun, of the exterior of the gun, versus
12 the exterior of a true Colt; is that right?

13 A Well, as I said, I can't answer that. It's
14 according to the care the individual has taken of that gun.

15 MR. DENNY: All right. I have no further questions.

16 MR. MANZELLA: No further questions. Can Mr. Bickston
17 be excused, your Honor?

18 THE COURT: There being no objection, the Court does
19 excuse you, Mr. Bickston. Thank you. You are excused.

20 MR. MANZELLA: Your Honor, I have here some informa-
21 tion that Mr. Denny has requested. Could we excuse the jury
22 at this time to handle this matter?

23 THE COURT: Would you approach the bench -- you needn't
24 have the reporter -- and tell me what you are talking about?

25 MR. MANZELLA: All right.

26 8b fls.
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1 (Whereupon, proceedings were had at the bench
2 among Court and counsel, outside the hearing of the jury, which
3 were not reported.)

4 THE COURT: Which do you wish at this time, Mr. Manzella?

5 Do you wish to call your next witness, or do you
6 wish to take a short recess?

7 MR. MANZELLA: Can we take a short recess, your Honor?

8 THE COURT: All right. Five minutes, ladies and
9 gentlemen. During the recess, you are obliged not to converse
10 amongst yourselves nor permit anyone to converse with you on
11 any subject connected with the matter, nor to form nor express
12 any opinion on it until it is finally submitted to you.

13 About five minutes. The Court will request that you
14 remain in the corridor until the bailiff calls you.

15 (Whereupon, the members of the jury exited the
16 courtroom, and the following proceedings were had:)

17 THE COURT: Do you have the files at hand that you are
18 talking about?

19 MR. MANZELLA: Yes, your Honor.

20 THE COURT: For the record, --

21 MR. MANZELLA: I've got --

22 THE COURT: -- the jury has left.

23 And you are talking about what files?

24 MR. MANZELLA: I have got here Superior Court -- the
25 District Attorney's file in Superior Court case No. A-058070,
26 which is the People versus Alan Springer.

27 And I've taken out of the District Attorney's file
28 arrest reports and crime reports, property reports and the

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1 Complaint, our copy of the Complaint.

2 And I am giving those -- in those files -- to
3 Mr. Denny to look at.

4 Do you want me to deposit them with Mrs. Holt, or
5 should I just hand them to Mr. Denny?

6 THE COURT: I think not. So long as the record reflects
7 that Mr. Denny has had access to the file.

8 MR. DENNY: Well, your Honor, I am not sure whether we
9 want to take them case by case.

10 MR. MANZELLA: Yeah.

11 MR. DENNY: And I'm not sure which --

12 THE COURT: What are you referring to? Are you taking
13 these case by case?

14 MR. DENNY: Well, I subpoenaed --

15 MR. MANZELLA: Yes, right. We are. I have got more
16 cases here, so we don't have to argue that.

17 MR. DENNY: Well, I also subpoenaed certain other records
18 in each of the cases, the alibi sheet and documents setting
19 forth reasons for --

20 MR. MANZELLA: Right.

21 MR. DENNY: -- transfer of cases.

22 MR. MANZELLA: In case No. --

23 THE COURT: Are we still talking about Springer now?

24 MR. MANZELLA: Yes, your Honor. Case No. A-058070, the
25 case of People versus Springer.

26 There is no alibi sheet. The only information --
27 the information that we have that Mr. Denny asked for is what
28 I've given him. If I haven't given it to him, we don't have it.

8b-3

1 In other words, he asked for an alibi sheet,
2 which is -- I believe he's referring to a Report of
3 Dismissal, which is the District Attorney's form used to
4 report the reasons for dismissal.

5 There is none in this case No. A-058070.

6 MR. DENNY: Or for anything occurring by way of losing
7 the case or having a not guilty.

8 MR. MANZELLA: Right. There isn't any.

9 He asks for letters, documents, memoranda setting
10 forth the reasons for transfer of this case and another case
11 from Department West B of Santa Monica to Department 100.

12 There is nothing in the District Attorney's files
13 which matches that description. There's no reason, set forth
14 on the file or in the file.

15 And there's --

16 Paragraph 5 of his subpoena asks for communications
17 between the District Attorney's Office and the Sheriff's
18 department or the L.A.P.D. pertaining to the transfer.

19 There's nothing of that nature in the file. So,
20 I've given him copies of crime and arrest reports,
21 Complaints, witness lists; and that's it, for case No. A-
22 058070.

23 THE COURT: All right. What is the next one?

24 MR. MANZELLA: Case No. A-164985, the People versus
25 Magdalene Fuery.

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MR. DENNY: Let me interrupt just a minute.

2

You don't have the copy of the Complaint here.

3

You have got the copy of the information.

4

MR. MANZELLA: I'm sorry. Copy of the information.

5

THE COURT: All right. That's in A-058070.

6

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

7

MR. DENNY: Yes.

8

THE COURT: You do have a copy of the information and Complaint now?

10

MR. MANZELLA: Right, your Honor. And I am stapling a copy -- I've stapled a copy of the Complaint to the documents I've handed to Mr. Denny in that case number A-058070.

14

THE COURT: All right. Let's get on to the other one that you mentioned, A-164985, Magdalene Fuery.

15

16

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

17

In this case, I am handing Mr. Denny copies of the Complaint, the property report, burglary report and arrest report, and a Memorandum of Dismissal, in case No. A-164985.

21

In that case, we do have a memorandum of the reasons for which the case was dismissed. I might point out that it turns out to be the reason that the People suggested to the Court, when we argued the point as to whether Mr. Denny should or should not be allowed to bring that out.

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THE COURT: It was the unavailability of the witness?

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MR. MANZELLA: Yes, your Honor. The only address we had for the witness was the Florida address.

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1 I might point out that the information that I
2 withheld from that file is the -- or documents which contain
3 the conclusions, statements of statistics and strategy and
4 expected testimony of -- written by the Deputy District
5 Attorneys who filed the case. And I withheld that material
6 from the file because I don't believe it is discoverable. It
7 constitutes a portion of our work product and it does not
8 purport to be notes of interviews with witnesses, but rather
9 it is the -- the notes of the District Attorney that filed the
10 case as to how the case should be presented at the preliminary
11 hearing.

12 MR. DENNY: I concur and did not subpoena it just on that
13 basis.

14 THE COURT: Anything more?

15 MR. DENNY: Yes, there are, your Honor.

16 MR. MANZELLA: I'm sorry, I didn't hear you.

17 MR. DENNY: Any more?

18 THE COURT: Go ahead.

19 MR. MANZELLA: I just got these, your Honor. Other-
20 wise I would have had them all prepared to give Mr. Denny.

21 I just received these just before the lunch hour -- or just
22 after the lunch hour.

23 I have here before me case No. A-117469, in the
24 case of People versus Donald Fehr, F-e-h-r.

25 THE COURT: I don't recollect that name.

26 MR. DENNY: He was a co-defendant of Alan Springer.

27 MR. MANZELLA: This case, there is a three-Count
28 Complaint in this case.

1 Counts -- in Count I, the name of James Curtiss
2 Blank is alleged to have committed a felony, James Curtiss
3 Blank.

4 Count II and Count III are the same, they all
5 charge felonies against James Curtiss Blank. There is no
6 mention of Mr. Springer in this file.

7 Now, either Mr. Denny's information was incorrect
8 or he subpoenaed the wrong case number.

9 MR. DENNY: No, I subpoenaed the right case number
10 because this was one of the files that was consolidated with
11 several other files -- four files, in fact, of Mr. Fehr, in
12 one of which Mr. Springer was a co-defendant.

13 The consolidated information of 19 Counts was
14 permitted to be filed of this case, case No. 113570, 116185,
15 062778, and I think possibly 117025, but four out of those
16 five that I have numbered pertain to Mr. Fehr and he was
17 permitted to plead to Count I and got a misdemeanor on that
18 one Count. The cases involving robbery, burglary -- that is
19 first degree robbery, burglary, receiving stolen property,
20 possession of codeine and numerous Counts of receiving stolen
21 property.

22 MR. MANZELLA: In this case, your Honor, 117469, the
23 District Attorney's file indicates that "The defendant pleaded
24 guilty to Count II. But no agreement was entered into as to
25 sentence and the defendant was sentenced to County Jail."
26 It was -- he pleaded guilty to burglary in the second degree.
27 But there was no agreement with sentence as to the District
28 Attorney's Office and that the defendant was sentenced to County

1 Jail. And that's James Curtiss Blank.

2 THE COURT: What kind of case was it? That probation
3 report about the third or fourth page, generally, in
4 discussing the case --

5 MR. DENNY: Well, are you saying the file you have here
6 just by file number is not Fehr but Blank?

7 MR. KAY: Right. That's right.

8 MR. DENNY: People versus James Curtiss Blank?

9 MR. MANZELLA: No one else appears to be mentioned.
10 No one else charged in this case No. 441769. The only one
11 charged was James Curtiss Blank.

12 I'm sorry, when the information was filed, it
13 apparently was consolidated and two Counts were added. The
14 first four Counts charge James Curtiss Blank, and the fifth
15 Count charged William Donald Fehr. The fifth Count charges
16 William Donald Fehr.

17 THE COURT: So Fehr had four Counts against him?

18 MR. DENNY: No, Fehr had one out of five Counts against
19 him.

20 MR. MANZELLA: Blank had four Counts against him.

21 THE COURT: Four Counts.

22 And the nature of the burglary was what? A
23 commercial burglary?

24 Well, it is not important.

25 Do you have --

26 MR. MANZELLA: Your Honor, I don't know.

27 MR. DENNY: You don't have a probation report on Fehr
28 there. It is a probation report on Blank.

1 MR. MANZELLA: Right. It was a residential burglary,
2 at least part of it was a residential burglary.

3 THE COURT: And have you presented those or copies of
4 those to Mr. Denny, is that right?

5 MR. MANZELLA: No, I haven't yet, your Honor. I'm
6 doing that now.

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1 MR. DENNY: Your Honor, I may say for ease of handling
2 and for making certain that these records do not get lost and
3 remain within the easy grasp of the D.A.'s Office, I would be
4 more than happy to have these deposited with the clerk, since
5 I feel it is only necessary for me to look them over and have
6 them here.

7 MR. MANZELLA: We would appreciate that.

8 MR. DENNY: Yes, that would be fine with me.

9 THE COURT: If Mrs. Holt wants to encumber herself with
10 it, I'll allow her to do that. However, if you wish to arrange
11 it, gentlemen, between yourselves and Mrs. Holt, it is
12 satisfactory with the Court.

13 MR. MANZELLA: May I inquire of Mrs. Holt if she would
14 take these, if we can deposit them with her? We'd certainly
15 appreciate that.

16 THE COURT: All right, she'll close that desk down over
17 them this evening. They should be safe.

18 MR. MANZELLA: All right, I've handed Mr. Denny arrest
19 reports, crime reports, property reports and I guess burglary
20 reports and a copy of the Complaint and information in a A-
21 117469. There is no statement in this District Attorney's file
22 with regard to the reasons for whatever happened in the case
23 other than what I told the Court on the face of the file. It
24 says that the "Defendant Blank pleaded guilty to Count II,
25 second degree burglary. But no agreement was made with the
26 District Attorney's Office as to sentencing and that on July
27 9, 1971, I believe, the defendant was sentenced to County Jail."

28 MR. MANZELLA: Oh, Mr. Kay informs me that the reason

1 Mr. Blank received that sentence --

2 MR. KAY: Is that Fehr?

3 MR. MANZELLA: Blank or Fehr, which one?

4 MR. KAY: It is the one that had all the Counts, Fehr
5 or Blank.

6 MR. MANZELLA: There is another file --

7 MR. KAY: Fehr, I know why he got what he got.

8 MR. MANZELLA: The one that had all the Counts was Blank.
9 In that file, anyway.

10 Which one was it?

11 MR. DENNY: It was consolidated, A-062778.

12 MR. KAY: It was Fehr.

13 MR. DENNY: 062778 is the one that should have some
14 statement on it as to Fehr.

15 MR. MANZELLA: Okay, your Honor, I have the District
16 Attorney's file No. A-062778. There's an information
17 alleging twelve Counts of -- it would seem to be burglary,
18 grand theft and receiving stolen property.

19 I'm giving Mr. Denny a copy of the arrest reports,
20 crime reports and property reports in that case and a copy of
21 the information and a copy of the Complaint.

22 And, apparently, in this District Attorney's file
23 there's no information concerning reasons for whatever
24 disposition was made in this case.

25 That's it.

26 MR. DENNY: It shouldn't be. There's A-113570,
27 A-116185, A-117025 --

28 MR. MANZELLA: I have case No. A-117025 here.

1 I'm giving Mr. Denny a copy of the -- the follow-
2 up report of the Los Angeles Police Department and a copy of
3 the burglary report and arrest report and Complaint and
4 information in A-117025.
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1 (Pause in the proceedings while a discussion off
2 the record ensued at the counsel table among Mr. Manzella,
3 Mr. Kay and Mr. Denny.)

4 MR. MANZELLA: Your Honor, one of the cases -- one of
5 the case files that Mr. Denny has subpoenaed, case No.
6 A-115370, apparently the People have been unable to locate
7 their copy of that file -- or, the District Attorney's
8 file in that case.

9 MR. KAY: Yes. Mr. Watnick came to my office during
10 lunch, and he informed me that he could not locate that file;
11 that it was -- he had looked for it.

12 THE COURT: Who is Mr. Watnick?

13 MR. KAY: Mr. Watnick is the head of the Van Nuys
14 office.

15 He said to say "Hello" to your Honor also.

16 And Mr. Boon out in Santa Monica informed me
17 that he missed his dental appointment on Friday because he
18 was looking for Mr. Denny's files, and he can hardly wait
19 to see Mr. Denny out in Santa Monica.

20 And Mr. Provenzano, who is the head of the
21 Torrance D.A.'s Office, informed me that he had to spend a
22 considerable amount of time locating the file on Magdalene
23 Shea;

24 And he is also very desirous of seeing Mr. Denny
25 out in Torrance.

26 MR. DENNY: Looks like we might have a happy card game.

27 MR. MANZELLA: And Mr. -- I have a note here from Mr.
28 Boon saying that he's the head of the Santa Monica office;

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1 he was unable to locate case No. A-058094, the District
2 Attorney's file on that case.

3 THE COURT: All right. Does that take care of it,
4 then?

5 MR. DENNY: No, it doesn't, your Honor.

6 THE COURT: Well, in any event, that's all that you
7 have been able to come up with?

8 MR. MANZELLA: Yes, your Honor.

9 MR. DENNY: I hate to discommode the various heads of
10 the branch offices of the Los Angeles County District
11 Attorney's Office -- especially the old friends of mine,
12 all of whom are named -- but I --

13 THE COURT: You don't look the least regretful.

14 MR. DENNY: I beg your pardon?

15 THE COURT: You don't look the least regretful.

16 MR. DENNY: Well, I think that's part of what the
17 taxpayers pay them for, and --

18 MR. MANZELLA: Looking for files, Mr. Denny?

19 MR. DENNY: Yeah, if they're subpoenaed, certainly.

20 MR. KAY: I can represent, your Honor, that the three
21 gentlemen I've mentioned informed me that the files are not
22 at their offices; that they have exhausted every possibility
23 of finding those files at the Van Nuys office, the Santa
24 Monica office, and the Torrance office.

25 And they are not there.

26 THE COURT: They wouldn't be destroyed, would they?

27 MR. KAY: I'm sure they wouldn't.

28 THE COURT: What happens to old District Attorney's

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1 files? Or old files -- let me put it another way -- old files
2 of the District Attorney's office?

3 MR. MANZELLA: Anybody who has the solution to finding
4 lost files, your Honor, could make a fortune in our office.

5 THE COURT: Well, is a file kept for a certain number
6 of years and then discarded, or --

7 MR. MANZELLA: I don't know, your Honor.

8 MR. DENNY: Well, your Honor --

9 MR. MANZELLA: I don't know what the procedure is.

10 MR. DENNY: These are all relatively current files.
11 I can represent to the Court that as far as case No. A-058094,
12 that Mr. Boon cannot find, it was the companion case, and was
13 going along right together with, A-058070.

14 THE COURT: Well, that may explain --

15 MR. DENNY: The one that we do have here.

16 THE COURT: -- the reason for its loss.

17 It may simply have been combined with another file.

18 MR. DENNY: Well --

19 THE COURT: But go ahead.

20 MR. DENNY: The two cases were joined together.

21 THE COURT: I see no point in spending a great deal of
22 time on this. So make it quick, will you please?

23 MR. DENNY: Well, all I am saying is --

24 THE COURT: We want to bring the jury in.

25 MR. DENNY: -- if they can find A-058070, they ought
26 to be able to find A-058094, which was the companion case,
27 which was heard at the same time in Department 111 -- which
28 was disposed of at the same time.

10-4

1 They should be able to find it, and I think
2 somewhere within the DA's Office, if Mr. Boon has been
3 subpoenaed and Mr. Boon is supposed to be in charge of those
4 records, and he was in charge and found A-058070, either he
5 or somebody in the DA's Office should be able to come up
6 with the other one.

10a fls.6

10a-1

1 As far as A-115370, that was one that was combined
2 with the other Springer Counts, according to the Superior
3 Court records, when he entered a plea to a consolidated
4 information in Van Nuys, Department Northwest G.

5 And it's together with the -- the court file; and
6 it should be together with the D. A.'s file. And if
7 Mr. Watnick can't find it, somebody in the D. A.'s Office
8 should have it and should be able to find it.

9 And I would like to get that here, too. I think it
10 doesn't help one bit to say, "We've looked and we can't find
11 it, and we are going to stop now."

12 THE COURT: Well, if it doesn't exist, of course, that's
13 another problem. And the Court will simply ask that --

14 MR. DENNY: Well, if it doesn't exist, I would like to
15 have those gentlemen come in and swear under oath that it
16 doesn't exist, and not just send down a note to a deputy saying,
17 "Well, my clerks have looked, and I have to take the
18 responsibility for my clerks, and they can't find it. And so
19 it must be gone somewhere."

20 THE COURT: I'm not sure that the Court would require
21 these men to come in and make such a --

22 MR. DENNY: Well, your Honor, I've subpoenaed them, and
23 they have been served with subpoenas --

24 THE COURT: -- declaration under oath.

25 All right. Let's have them in here tomorrow
26 morning, then, at 9:00 o'clock, each one of them.

27 And you be here at 9:00 o'clock, and we'll take
28 it up at that time and let them get back to their offices.

1 MR. DENNY: Well, your Honor, I have indicated --

2 THE COURT: In the meantime, they're to -- would you
3 communicate with them and let them know that the Court wants
4 them here?

5 MR. KAY: I'll say -- I might say that as far as
6 Mr. Provenzano is concerned, that he has delivered the only
7 file that he was supposed to have had, and that's the
8 Magdalene Shea file.

9 THE COURT: Yes. That would appear to be the case as to
10 Provenzano.

11 As to the others, let's have them here.

12 MR. DENNY: Your Honor, I am not attempting to be hard-
13 nosed and difficult, except if they can't find them. If they
14 can find them, I don't want to take them out of their offices,
15 where they have a job to do -- and I know doggone well they
16 have got a job to do -- and I would prefer to have them
17 there.

18 And that's all I am asking, that they get those
19 records in. Only if they can't find them --

20 MR. KAY: I'll represent to Mr. Denny that I have
21 personally talked to both Mr. Boon and Mr. Watnick, and they
22 say that they can't find them.

23 MR. DENNY: Well, I think --

24 THE COURT: Mr. Boon and Mr. Watnick will be here
25 tomorrow morning at 9:00 o'clock.

26 MR. MANZELLA: Your Honor, I just realized that the
27 probation officer had a file here, Springer's probation
28 officer, Mr. Abrams. He was here, and he had one of the

1 District Attorney's files.

2 MR. KAY: That's right.

3 MR. MANZELLA: It would seem to me that the burden is on
4 the defense to particularize the person who has the informa-
5 tion, and -- the information he wants; and if --

6 THE COURT: Nevertheless, he has named these two
7 gentlemen who are heads of the offices, and in whose custody
8 the files normally would be.

9 MR. MANZELLA: I understand that. What I am pointing
10 out is that a probation officer had a District Attorney's
11 Office file. And I am asking Mr. Denny if he knows what
12 number that was.

13 It may well be one of the files that we don't have
14 here.

15 THE COURT: Well, I -- the Court can understand how
16 losses of files might occur, where there have been a number of
17 cases combined, and where the files might very well have been
18 combined.

19 MR. DENNY: Your Honor, let me have just a minute. I
20 may be able to assist on that -- no, no, your Honor. The
21 probation officer had D.A.'s file No. A-116185, copies of which
22 we have here.

23 Again, your Honor, may I say to the Court that if
24 those files can be found anywhere within the D. A.'s Office --
25 whether downtown -- and they may be downtown, because the
26 case was tried downtown, as far as the one from Santa Monica --
27 or --

28 THE COURT: If there is any other place that you can

1 look for those files, in the downtown office of the District
2 Attorney's Office, well, then, the Court would direct you to
3 do so.

4 Is there such a place, Mr. Kay?

5 MR. DENNY: Well, the 5th floor record section, your
6 Honor, is where they keep those records.

7 THE COURT: All right. Have you looked? I judge from
8 what you have said that you looked in there.

9 MR. KAY: We haven't looked downtown, because downtown
10 was not served with a subpoena duces tecum.

11 Mr. Denny just served Santa Monica and Van Nuys --

12 THE COURT: Well, before I order Watnick and the other
13 deputy in -- Watnick and Boon in -- the Court will ask that
14 you examine the files down here to determine whether or not
15 those missing files of the District Attorney's Office are here;
16 that is, in the Los Angeles Central Division.

17 (Pause in the proceedings while a discussion off
18 the record ensued at the counsel table among Mr. Manzella,
19 Mr. Kay and Mr. Denny.)

20 THE COURT: Get the jury back in.

21 THE BAILIFF: Yes, sir.

10b fol

10b-1

1 THE COURT: The record will show the jurors are all
2 present.

3 It was a long five minutes, ladies and gentlemen.

4 (Laughter.)

5 THE COURT: The defendant is present. All counsel are
6 present.

7 MR. KAY: The People would call Mr. Lance Victor.

8 THE CLERK: You do solemnly swear that the testimony
9 you may give in the cause now pending before this court shall
10 be the truth, the whole truth, and nothing but the truth, so
11 help you God?

12 THE WITNESS: I do.

13
14 LANCE VICTOR,
15 called as a witness by and on behalf of the People, having
16 been first duly sworn, was examined and testified as follows:

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

18 Would you state and spell your full name, sir?

19 THE WITNESS: Yeah. Lance Victor. L-a-n-c-e;
20 V-i-c-t-o-r.

21
22 DIRECT EXAMINATION

23 BY MR. KAY:

24 Q Mr. Victor, would you try as much as possible to
25 speak directly into the microphone?

26 A Yes, right.

27 Q I know you have been on the witness stand before,
28 so just remember that.

10b-2

1 Did you know Donald Jerome Shea?

2 A Yes, I did.

3 Q And when did you meet him?

4 A I met Don back around '65.

5 Q And what did you call Mr. Shea?

6 A Well --

7 Q Did you call him Don or what?

8 A Well, he was known as Don or Shorty. But I had
9 a special nickname for him.

10 Q What was that?

11 A I called him "Pirate."

12 Q All right.

13 And on what occasion was it that you first met
14 Don in 1965?

15 A I met Don when we was filming on a picture with
16 Mr. Bickston.

17 Q And what was the name of that picture?

18 A Hmmm -- that was "Joaquin Murrietta."

19 Q All right. And was Mr. Bickston the producer?

20 A Yes.

21 Q Where was "Joaquin Murrietta" filmed?

22 A It was filmed at Spahn's Ranch.

23 Q That's in Chatsworth?

24 A Yes.

25 Q All right. Did both you and Don appear in that
26 movie?

27 A Yes, we did.

28 Q All right. Now, between the time that you first

10b-3

1 met Don in 1965 and, say, August of 1969, approximately how
2 often would you see Don?

3 A Oh, it would be on and off.

4 Q Well, can you give us any range of time?
5 Approximate range of time?

6 My first question is whether you actually saw
7 him; and then, I'm going to ask you about contact, like over
8 the phone or letters.

9 A Oh, yes. I see.

10 Yes, I had seen him like -- you know, like a week
11 or so, and then three or four weeks would lapse, and then I'd
12 see him again.

13 Q Now, are you talking about actually personally
14 seeing him, or just being in contact with him, like getting
15 a phone call or something?

16 A Oh, I would see him personally.

17 Q All right. And is this over the period that I asked
18 you, between 1965 and August of '69?

19 A Yes.

20 Q All right. Now, other than the filming you
21 described, did you make any other films with Don?

22 A Yes. We did -- we did "The Lawman," and "Pat
23 Garrett, U. S. Marshal."

24 Q All right. And when did you make those films?

25 A Those were done around '66.

26 Q All right. And were both you and Don in those
27 films?

28 A Yes.

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Q And where were those two films made?

A That was at Iverson's --

Q Now, when you say that, which one are you referring to?

A Oh, Iverson's is across the street from Spahn's, --

Q But --

A -- on the north side.

Q Across the street from Spahn's Ranch?

A Yes.

Q That's across Santa Susanna Pass; is that right?

A Right.

Q Now, which film was filmed there at Iverson's Ranch?

A Iverson's, we did the -- "The Lawman" there.

Q All right. And where was "Pat Garrett, U. S. Marshal," filmed?

A In -- "Pat Garrett, U. S. Marshal," was filmed partly across the street, and then over at Spahn's again.

Q All right. So both at Iverson's and Spahn's Ranch?

A Right.

10c fls.

10c-1

1 Q Now, directing your attention to some time in the
2 year 1968, did you go to work at the Leslie salt mines in
3 Vallejo, California?

4 A Yes.

5 Q All right. And did you go there with somebody?

6 A It was Donald Shea.

7 Q All right. And did you go there with somebody?

8 A It was Donald Shea.

9 Q All right. And when was it that you and Donald
10 went up there? Approximately what month?

11 A Oh, what month? It was August. It was about the --
12 the later -- the latter part of August.

13 Q All right. And before you went up there, did you
14 and Don stay some place together at somebody's house?

15 A Oh, Mr. Binder's house.

16 Q Jerry Binder?

17 A Jerry Binder.

18 Q And where was that house?

19 A That was in North Hollywood, off of Hollywood
20 Boulevard. But I don't know the address at the present time.

21 Q It was off of Hollywood Boulevard?

22 A Yes.

23 Q All right.

24 A It was right on the corner, as you come around the --
25 around this corner.

26 Q And how did you know Jerry Binder?

27 MR. DENNY: I'll object to that as irrelevant and
28 immaterial.

1 THE COURT: Overruled. You may answer.

2 THE WITNESS: I met Jerry Binder through Don.

3 Q Were Jerry Binder and Don good friends?

4 A Yes, they were.

5 MR. DENNY: I'll object to that as calling for a
6 conclusion, and also as hearsay.

7 THE COURT: Sustained. The answer's stricken.

8 Q BY MR. KAY: All right. Had you seen Jerry
9 Binder and Don together?

10 A Yes, sir.

11 Q On many occasions?

12 A Well, yeah. You know, like when I was over there.

13 Q All right. And did you observe the relationship
14 that they had?

15 A It was friendly.

16 Q Now, when you and Don arrived at the Leslie salt
17 mines in Vallejo, California, how long did you stay?

18 A I stayed for the whole remainder of the thing.

19 Q The whole season?

20 A The whole season.

21 Q And how long did that last?

22 A That lasted up until about the last part of
23 November or December -- depending on how many breakdowns they
24 had. But usually, it stopped in November.

25 Q The last part of November or the first part of
26 December?

27 A Yes.

28 Q Now, how long did Don stay?

1 A Don stayed only a short time, which is three or
2 four weeks. And then he left to come down here.

3 He had some business down here.

4 Q When you say "here," do you mean Los Angeles?

5 A Yes. Down here in Los Angeles.

6 MR. DENNY: I'll object, your Honor, and move the last
7 part be stricken -- that he had some business down here -- as
8 calling for both hearsay and a conclusion.

9 THE COURT: All right. Sustained. That's stricken.

10 Q BY MR. KAY: Now, after Don left the Leslie salt
11 mines up there in Vallejo, California, to come back to L. A.,
12 did you keep in contact with him?

13 A Yes, I did.

14 Q And how did you do that?

15 A I phoned him at the Wilcox Hotel where he was
16 staying down here.

17 Q All right. Now, did he phone you first up there?

18 A Yes, he did. That's how I got the number to phone
19 him later on.

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1 Q All right.

2 And how often would you keep in contact with him
3 while you were still there at the Leslie Salt Mines and he
4 was down here?

5 A It was about three or four times.

6 Q Now, after you left, after you finished work at
7 the Leslie Salt Mines in December of 1968, did you come back
8 to L.A.?

9 A Yes, I did.

10 Q All right. And when you returned, did you see
11 Don?

12 A Yes.

13 Q Now, during the first part of 1969, did you
14 continue seeing Don while you were down here in L.A.?

15 MR. DENNY: Question --

16 A Yes, I saw him on and off.

17 Q BY MR. KAY: By "on and off," how often would
18 that be that you saw Don?

19 A Oh, I don't know. Two or three times, like, you
20 know. It was kind of a small -- he was doing something else
21 and I was doing something else.

22 Q All right. So you saw him two or three times
23 during the first part of 1969?

24 A Yes, sir.

25 Q Now, do you know Jim and Sharon Babcock?

26 A Yes, I do.

27 Q All right. And directing your attention to the
28 first part of August, 1969. Did you live behind the Babcocks?

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A Yes, I did.

Q That was a small cottage?

A Cottage in the back.

Q All right. And sometime during the first part of August, 1969, did you have occasion to see Don over at the Babcocks'?

A Yes, I did.

Q All right. And at the time you saw him, did you have a conversation with him?

A Yeah, we talked about show business, and, you know, different little things.

Q Now, did he show you any pictures?

A Yes, he did.

Q What type of pictures were these?

A They were his wedding pictures.

Q Mr. Victor, I'm going to show you two photographs which have previously been marked 48-A and 48-B.

First, showing you 48-A.

Do you recognize that as being one of the pictures that Don showed you when -- in the first part of August, '69, over at the Babcocks'?

A Yes.

Now, when I seen these, weren't these in color originally?

Q Well, I don't know.

A All right.

Q And directing your attention to 48-B, do you also recognize that?

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A Yes, I remember that.

Q And was that one of the pictures Don showed you?

A Yes.

Q And you can't remember whether it was in color or black and white like it is now?

A No.

Q Now, at the -- over the years since you first met Don in 1965, had you become familiar with his demeanor, how he acted when he was happy and how he acted when he was sad?

A Oh, yes.

Q All right. Now, when he was showing you these pictures, his wedding pictures, what was his demeanor? How was he acting?

A He was happy.

Q Also, when he came over to the Babcocks', do you remember if he was driving a car?

A Yes, he was.

Q What kind of car was that?

A That was a white Comet.

Q Now, sometime after August 16, 1969, did you have occasion to go out to Spahn's Ranch?

A Yes.

Q And did you see Don there?

A Yes, I seen him there.

Q Did you also see his car there, the white Comet?

A Yes, it was sitting up, when I saw it, by the ranch house.

11-4

1 Q When you say "the ranch house" is that where
2 George Spahn lived or --

3 A Yes, he did.

4 Q Now, in relation to the 16th of August, 1969,
5 when was it that you went out to Spahn Ranch and saw Don there?

6 A It seemed like to me it was about the middle of
7 August.

8 Q Well, in relation to the 16th, if you can give us
9 -- was it -- do you know how long after that or what, do you
10 remember?

11 A Well, I went out -- I was out there to see him --
12 it was on a Monday or Tuesday.

13 Q Yeah, but do you remember how many days it was
14 after the 16th?

15 A No, I don't. It may have been -- it may have been
16 about a week or so or something like that.

17 Q A week or so after the 16th?

18 A Yeah.

19 Q Now, where was Don when you saw him at Spahn Ranch
20 on that occasion?

21 A Well, he was -- he was down by the corrals.

22 Q Now, when you went out to Spahn Ranch on that
23 occasion, did you go with anybody?

24 A Yes, I did.

25 Q And who was that?

26 A That was Bob Ferrin.

27 MR. DENNY: Could I have the spelling of that name?

28 THE WITNESS: I believe it is F-e-r-r-i-n.

11a fls.

11a-1

1 Q Now, did you have an occasion to talk to Don
2 when you were there at Spahn's Ranch? Did you have any
3 conversation with him?

4 A Yes, I did.

5 Q Did you notice anything unusual about his demeanor
6 while you were having the conversation with him, how he acted?

7 A Well, he was kind of edgy, you know. Kind of a
8 little nervous and he kind of, you know, looked around like
9 this (indicating), you know, when he was talking, you know.
10 And he would move around a lot and stand on one foot and the
11 other.

12 Q Was this unusual for the way --

13 A Yes, because usually he would lean against a
14 post, just naturally, and just stand and talk to you.

15 Q Did he do anything unusual with someone other
16 than the cowboys would come by?

17 A Yeah, he would change the subject. If he was
18 talking, he would stop or he would stop talking.

19 Q And who were the people that would come by that
20 would make him change the subject or --

21 A It was -- well, some of the cowboys would walk
22 by and some of the other people, but it was mostly the other
23 people that was there.

24 Q Well, by "other people," what do you mean? Old
25 people, young people?

26 A I believe it was -- I believe it was some of the
27 Family members. They looked like some of the Family members,
28 but I couldn't tell whether it was or not.

11a-2

1 Q Did they have long hair or short hair?

2 A They all had long hair, just like the frontiersmen.

3 Q On the many occasions that you talked to Shorty
4 since you first met him in 1965, had you ever seen him act
5 that way?

6 A No, I never did.

7 Q Now, when you had the conversation with Don,
8 did your friend Bob, did he participate in the conversation?

9 A No.

10 Q Well, where was he when you and Don were having
11 the conversation in relation to where you and Don were?

12 A Well, he was out of earshot.

13 Q How many feet away was he?

14 A Oh, I would say he was about -- well, almost to
15 you. Just past the court reporter.

16 Q From where you are?

17 A Yes.

18 THE COURT: Indicating about 15 feet.

19 Q BY MR. KAY: And, again, do you remember -- do
20 you recall what day of the week it was that this conversation
21 took place?

22 A Monday or Tuesday.

23 MR. KAY: May we approach the bench to -- I'm going
24 to ask Mr. Victor for the conversation and --

25 THE COURT: All right, you may.

26 MR. KAY: It might be best to argue --

27 THE COURT: All right, ask the question.

28 Q BY MR. KAY: All right, Mr. Victor, the conversation

11a-3

1 that you had with Don on this occasion, what did he say to
2 you and what did you say to him?

3 MR. DENNY: I will object as hearsay, your Honor.

4 THE COURT: All right, you may approach the bench.

5 MR. KAY: I knew that was coming.

6 MR. DENNY: Got to do it right.

7 (Laughter.)

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

11 MR. KAY: I'm sure that your Honor is probably familiar
12 with the conversation, since it has been before your Honor
13 once before and it was also admitted in the Grogan trial
14 against Mr. Grogan.

15 THE COURT: Refresh my memory.

16 MR. KAY: Okay.

17 THE COURT: And sort of sotto voce tell us what the
18 conversation is.

19 MR. KAY: All right.

20 THE COURT: Or what you think it will be.

21 MR. KAY: The conversation --

22 THE COURT: And hold your voice down.

23 MR. KAY: Okay.

24 I'm reading from the case of People vs. Steve
25 Grogan, Volume 4.

26 THE COURT: Let's see.

27 MR. KAY: Page 300.

28 THE COURT: You've seen it, Mr. Denny?

11a-4

1 MR. DENNY: I have seen it somewhat. I would like to
2 refresh my memory again on it.

3 MR. MANZELLA: You mean it would refresh your recollec-
4 tion?

5 MR. DENNY: Yes, it would.

6 Can I see what volume?

7 MR. KAY: Volume 4.

8 Basically, your Honor, the statements --

9 THE COURT: Just a second.

10 MR. KAY: Okay.

11 (Whereupon, there was a pause in the proceedings
12 up at the bench while the Judge perused the transcript.)

13 THE COURT: All right, I've read page 300 and 301,
14 302, which --

15 MR. DENNY: May I see it for a moment?

16 THE COURT: -- is the transcript of the People of the
17 California against Steve Grogan, and which purports to be the
18 conversation -- it is in Volume 4.

19 MR. KAY: Basically, it is our position that it is
20 admissible under two theories, both covered by Evidence Code
21 1250. And that is that it is a statement of present intent
22 to do a future act and it also explains the contemporaneous
23 conduct --

24 THE COURT: Present intent to do a future act.

25 MR. KAY: Present intent to do a future act.

26 And --

27 THE COURT: What part of the statement of Mr. Shea will
28 fall in that category?

11a-5

1 MR. KAY: That's about his intention to go to the Leslie
2 Salt Mines because of fear he told Mr. Victor about. He asked
3 him if he had any money, and Mr. Victor got \$2 from his friend
4 and said that Friday is payday and I'll give you \$30 on
5 Friday. And Shorty said he'd wait for him to get the money.

6 THE COURT: I concur with you there, that is -- that is
7 the kind of a classic expression of intention which would be
8 an exception to the hearsay rule.

9 MR. DENNY: Your Honor, I don't object to that at all.
10 I do object to the first part, "I think they're trying to
11 kill me."

11b fls.12

12 THE COURT: Let's get around to that.
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1 MR. DENNY: "No, I believe they're trying to kill me.
2 They threw a knife at me." That's past conduct.

3 THE COURT: Mr. Kay.

4 MR. KAY: All right, we believe that that can be
5 admissible under both section -- Subsections 1 and 2 of 1250 of
6 the Evidence Code. Basically, 1250 of the Evidence Code would
7 allow Shea's then existing state of mind then, of course, he's
8 expressing fear.

9 MR. DENNY: Again, hold your voice down. They can hear
10 you.

11 THE COURT: I don't think the jurors can hear. The
12 reporter and I have previously checked this. It is difficult
13 to hear from this position on the other side of the room.

14 MR. DENNY: May I have just a moment to get my --

15 THE COURT: Yes.

16 MR. DENNY: May I have just a moment.

17 (Whereupon, Mr. Denny left the bench and went to
18 counsel table, returning shortly, and the following proceedings
19 were had:)

20 MR. KAY: All right, we believe it is admissible because
21 quoting some parts of Section 1250, Shea's then existing state
22 of mind, emotion, including statement of intent, plan or mental
23 feeling is admissible when, number one, the evidence is
24 offered to prove the declarant's state of mind or emotion at
25 that time or at any other time when it is an issue in the
26 action and also that the evidence is offered to prove or explain
27 acts of conduct of the declarant.

28 Well, obviously Mr. Shea disappeared about a week --

1 well, within the week of this conversation, and it is
2 incumbent upon the People -- his emotion and state of mind
3 is in issue. He's disappeared. We have to show, you know --
4 we're showing that he's murdered. Mr. Denny is going to argue
5 that he probably just disappeared. I think that Mr. Shea's
6 state of mind that here he was in fear, in this conversation
7 with Mr. Victor, is quite relevant and his state of mind and
8 emotion are in issue.

9 MR. DENNY: Well, your Honor --

10 THE COURT: Well, certainly his state of mind is in
11 issue.

12 MR. KAY: Well, this goes to his state of mind. He's
13 in fear and he's going somewhere because he's in fear. And I
14 think that's the classic example of 1250.

15 MR. DENNY: He's --

16 THE COURT: In other words, he's in fear. He says to
17 Mr. Victor, "I would like to go to the salt mines. I don't
18 have the money." And Victor says, "I'll have some money for
19 you on Friday."

20 MR. KAY: Shorty said he'd wait and Mr. Victor came
21 back --

22 MR. DENNY: I don't object to any of this. I want
23 that to come in or I am not objecting to it getting in. The
24 only thing I am objecting to is under People versus
25 Hamilton and People versus Lew, it says you cannot get in --
26 and that is a statement of past conduct, a hearsay statement
27 which is hearsay on hearsay, really, but a hearsay statement of
28 past conduct leading to a state of mind, which this first part

1 is.

2 "I believe they're trying to kill me. They threw
3 a knife at me." That's what I'm objecting to, and that's
4 all I'm objecting to.

5 MR. MANZELLA: It is two separate sentences. One is a
6 state of past conduct and the other is a statement of state of
7 mind.

8 MR. DENNY: Which is certainly based on that, they are
9 part and parcel, one and the other.

10 MR. MANZELLA: How about separating them?

11 MR. DENNY: I don't believe it is proper to sever it
12 because, again --

13 MR. KAY: You have to under Miranda.

14 MR. DENNY: Well, this is a different situation.

15 MR. KAY: All right.

16 MR. DENNY: You're talking about a hearsay statement,
17 "They threw a knife at me," which is past conduct leading to
18 the state of mind. And that is inadmissible under People
19 versus Lew and People versus Hamilton. You can show that she
20 has fear because of a threat of future conduct by the
21 defendant, but you cannot show that a person has fear because
22 of past conduct of the defendant. And that's, I'm sure,
23 spelled out in the annotations specifically to 1250 there. If
24 it is not spelled out in the cases, I would like the Court to
25 look at the case of People versus Lew, L-e-w, and People --

26 MR. KAY: Let me see --

27 MR. DENNY: -- and People versus Hamilton.
28

12 fol

12-1

1 MR. KAY: Your Honor --

2 MR. DENNY: People vs. Lew isn't in the annotations,
3 your Honor -- it's L-e-w -- because it came out after the
4 West's Code that the Court has.

5 I believe it's 71 Cal 2d.

6 MR. MANZELLA: We are saying that the two sentences
7 could be severed. One is a statement of a present state of
8 mind; the other sentence is a hearsay declaration of past
9 conduct.

10 I think, "I think that they're trying to kill
11 me" is a statement of fear.

12 MR. DENNY: Well --

13 MR. MANZELLA: It's two separate sentences, and they
14 can be severed, and the witness can be admonished not to
15 refer to the other sentence.

16 MR. DENNY: But it's obvious, in the context that it's
17 been stated, both at the Grand Jury hearing and this case,
18 the context is obviously that of "I'm in fear because of the
19 fact that they threw a knife at me."

20 MR. KAY: That's not what he says.

21 MR. MANZELLA: There's no evidence to make that connec-
22 tion, unless he testifies to it.

23 MR. DENNY: Well, that's right. That's right.

24 MR. MANZELLA: So he can say, "I'm afraid that they're
25 trying to kill me," but not refer to the knife incident.

26 MR. DENNY: But all you are doing is getting around the
27 rule of People vs. Lew and People vs. Hamilton indirectly,
28 because you can't show a state of mind based on past conduct.

12-2

1 You can show a state of mind based on a threat of future
2 conduct.

3 MR. MANZELLA: Well, that's obviously what it is.

4 MR. KAY: That's what it is.

5 MR. DENNY: No, it is not.

6 MR. KAY: "They're trying to kill me." "They're trying
7 presently."

8 MR. DENNY: "Because they threw a knife at me."

9 MR. KAY: No, he doesn't say that.

10 MR. DENNY: But it's implicit in there.

11 MR. KAY: No. I think this gets around -- this statement
12 is not what Hamilton and those line of cases were talking
13 about. It's --

14 MR. DENNY: It's exactly what they were talking about.
15 And this is why they were reversed.

16 MR. KAY: It's a 1250, a classic example of a person
17 going somewhere because he is in fear, indicating an intent
18 to go somewhere because he is in fear.

19 THE COURT: Hold on just a minute.

20 (Pause in the proceedings while the Court perused
21 the Evidence Code.)

22 THE COURT: We will go off the record for a minute while
23 we discuss these cases.

24 (Whereupon, proceedings were had at the bench
25 among Court and counsel, outside the hearing of the
26 jury, which were not reported.)

27 THE COURT: Ladies and gentlemen, we'll take a short
28 recess here. We cannot resolve matters without giving you

12-3

1 another recess, so we'll argue out of your presence -- or the
2 Court will hear argument out of your presence.

3 And therefore, the Court will grant you a recess
4 for -- we'll make it ten minutes this time.

5 Remember the admonition. Don't converse amongst
6 yourselves nor with anyone else, nor permit anyone to converse
7 with you on any subject connected with this matter, nor form
8 or express any opinion on it until it is finally submitted
9 to you.

10 MR. MANZELLA: Can Mr. Victor stand down, too?

11 THE COURT: And Mr. Victor, you may stand down, too.

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

15 THE COURT: And you fellows, do you want to take a
16 break, just very quickly?

17 MR. MANZELLA: I want to look up some cases I've got.

18 THE COURT: What is your citation on Lew?

19 MR. DENNY: 71 Cal 2d.

20 (Pause in the proceedings while a discussion
21 off the record ensued at the bench between the Court
22 and the clerk.)

23 THE COURT: All right. We are in recess. Come on into
24 chambers, as soon as you've taken a brief respite.

25 MR. KAY: Okay. Thank you, your Honor.

26 (Mid-afternoon recess.)
27
28

13 fls.

1 (Whereupon the following proceedings were had
2 in the chambers of the Court out of the presence and
3 hearing of the jury:)

4 THE COURT: All right, let's get it on the record what
5 your expression was. Yours, George, and yours.

6 The record will show that we're in chambers.
7 We've been talking about the admissibility of the statement
8 of Shorty Shea.

9 MR. KAY: To Lance Victor.

10 THE COURT: To Lance Victor to the effect -- what?

11 MR. KAY: "No, I believe they're trying to kill me.
12 They threw a knife at me." But he never said who. He just
13 pointed out where in the building.

14 THE COURT: Well, the Court has already expressed
15 considerable doubt as to whether or not the statement "They
16 threw a knife at me" would be admissible. I don't believe
17 that it would be. But his belief that they are trying to
18 kill him shows his state of mind and that's what we are arguing
19 about at the present time.

20 Do you believe that it should not be admissible,
21 Mr. Denny?

22 MR. DENNY: I do.

23 THE COURT: Under the Hamilton and Lew cases?

24 MR. DENNY: I would read --

25 THE COURT: There is no need to reread it.

26 MR. DENNY: I'm not rereading it. This would be in
27 addition to what we've already discussed.

28 THE COURT: Excuse me a minute, Mr. Denny.

(Whereupon, there was a pause in the proceedings.)

THE COURT: Go ahead.

MR. DENNY: All right, citing from page 895 of People vs. Hamilton, 55 Cal. 2d, says:

"There is an additional reason why the great mass of these declarations were inadmissible, and that is that most of them referred to past acts of the defendant. In such cases the authorities are agreed that it is impossible for the jury to separate the state of mind of the declarant from the truth of the facts contained in the declarations, and that for such reasons such declarations are inadmissible."

And they go on to quote from -- United States Supreme Court in Shepard vs. United States, and they discuss the impossibility of the lay mind of the jurors, even a psychoanalyst being able to distinguish between the state of mind based on the past conduct and that past conduct, and they finish -- and this is again quoting from the United States Supreme Court.

"The testimony now questioned faced backward and not forward. This at least it did in its most obvious implications. What is even more important, it spoke to a past act, and more than that, to an act by someone not the speaker. Other tendency, if it had any, was a filament too fine to be disentangled by the jury."

THE COURT: Well --

MR. DENNY: And I submit, your Honor, that is exactly

1 the same thing here. If you remove the statement upon which
2 the statement of fear was based, then, you give an entirely
3 different flavor to the statement, "Someone's trying to kill
4 me" or "I think they're trying to kill me," because you don't
5 know what it is based on. And the jury can speculate as to all
6 kinds of things, as to why he made that statement there.

7 We know why he made the statement in the context
8 it has been related previously, and that is "Someone threw
9 a knife at me."

10 And when you've got that in context, as it should
11 be, it goes to a past act.

12 THE COURT: All right.

13 MR. DENNY: And as the United States Supreme Court
14 points out, you can't disentangle the two.

15 MR. MANZELLA: People are offering -- although Shea
16 expressed an intent to go to Vallejo, that he did so out of
17 fear for his well being. And that contrary to his state of
18 mind, being that he was permanently leaving his friends and
19 his family and associates, that he was intending to go to
20 Vallejo, in large part, to repair to a place of safety and that
21 he did not intend to abandon his friends and family but,
22 rather, intending to go to this place, and then, you know,
23 contact -- regain his contacts with them.

24 In other words, it explains his statement that he
25 intended to go to Vallejo.

26 THE COURT: All right, the Court --

27 MR. DENNY: Your Honor --

28 THE COURT: -- believes that it would be admissible to

1 show his state of mind and to explain his conduct.

2 The Court believes that it would be probative.
3 And the Court feels that it does not have the defect that you
4 cite, Mr. Denny, in reading the case of People vs. Lew and
5 listening to the account of the statement in the Hamilton
6 case. I can well imagine it would be much, much too difficult
7 to separate the past acts related from the state of mind
8 statements.

9 But, here, I think it is relatively simple and
10 the Court believes that with the admonition to the jury that
11 it will admit his expression solely for that purpose, of
12 showing the state of mind.

13 MR. DENNY: Well, your Honor --

14 MR. KAY: And may we ask your Honor to give that
15 admonition before we get the statement out of Mr. Victor?

16 MR. DENNY: Well, may I suggest, your Honor, that by
17 permitting that statement -- well, the jury can hear it.

18 THE COURT: Let's proceed.
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13a fls.

13a-1

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

3 Q BY MR. KAY: Mr. Victor, getting back to my last
4 question. This conversation you had with Don at Spahn's Ranch,
5 what did -- in August, approximately a week after August the
6 16th, on a Monday or a Tuesday -- what did you say to Don and
7 what did he say to you?

8 Does the Court want to give the admonition at this
9 time? Before Mr. Victor starts.

10 THE COURT: All right, ladies and gentlemen, the Court is
11 admitting this conversation for the purpose of showing, if in
12 your judgment it does show, Mr. Shea's state of mind at the
13 time that the statement was made for the purpose of explaining
14 his subsequent conduct. It is admitted for that limited
15 purpose, to show his state of mind.

16 MR. DENNY: And not for the truth of the matter?

17 THE COURT: And not for the truth of the matter.

18 Q BY MR. KAY: All right. Okay, Mr. Victor, what did
19 he say and what did you say?

20 A Well, Don, he was very nervous and he said -- he
21 says, uh, he says, "I think there's something wrong." He says,
22 "I think, you know, they're trying to kill me."

23 And I says, "Oh, come on, Don, you're probably just
24 feeling bad because of being out of a job and everything." I
25 said, "That's impossible because, you know, because the people
26 didn't strike me as that way." And he says, "No, I'm not
27 kidding you." He says, "There's something wrong."

28 And so the conversation went on like that.

1 And I says, "No, that's impossible." I said,
2 "What you need is a little bit of money under your belt and
3 you'd feel a lot better." I said, "You're stranded here like a --
4 last man and everything and you're kind of getting paranoid
5 about it."

6 Q And what else was said about the money?

7 A Oh, then he says he wanted to go up North, back up
8 to Leslie where we had been before.

9 Q Leslie salt mines?

10 A Yes.

11 And I says no. Well -- I says, "Well, I can't
12 go." You know, he asked me to go, you see. And I said,
13 "I can't go with you."

14 And he says, "Well, we could leave this week."

15 And I said, "I can't." I said, "What do you have
16 to have, you know?"

17 He says, "Well, do you have any money on me
18 right now, a couple dollars?" And I said, "I don't have no
19 money," but Robert Ferrin that was with me had two dollars and
20 so I borrowed the two dollars off of him and gave it to Don.

21 Q And did you say anything about giving Don more
22 money?

23 A Yes. Yes, I told him I would be back later on,
24 which was a Friday.

25 Q Why was Friday mentioned?

26 A Well, that's the day that the eagle flies -- you
27 know, you get paid.

28 (Laughter.)

1 Q BY MR. KAY: And so did you tell -- what did you tell
2 Don about Friday?

3 A I said, "I'll be back Friday and I'll give you \$30."

4 Q And what did Don say?

5 A He said, "Good, that's okay, fine."

6 Q Did he say whether or not he would wait?

7 A He said he would wait, in so many words, like "Good,
8 good, I'll be here."

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14-1

1 Q And did you come back on Friday with the \$30?

2 A Yeah. I came back on a Friday, but I think it was
3 in the afternoon, because I had to go to the bank in the
4 morning.

5 And by the time I got out there, it was in the
6 afternoon.

7 Q And did you see Don?

8 A No, I didn't see him around.

9 Q And did you see his car?

10 A No, his car wasn't there.

11 Q Have you ever seen Don again?

12 A I never saw him again.

13 Q Have you ever heard from him?

14 A No.

15 Q And in the conversation that you had with Don --
16 we are talking about where he asked to borrow the money,
17 and he said, "I believe they're trying to kill me" -- what was
18 his demeanor?

19 A He was very nervous.

20 Q Now, when you came back to the ranch that Friday,
21 to look for Don to give him the \$30, did you inquire of anyone
22 to his whereabouts?

23 A Yeah. Some --

24 MR. DENNY: Just a moment. I'll object to anything
25 beyond "Yes."

26 MR. KAY: Well --

27 THE COURT: Sustained.

28 Q BY MR. KAY: And as a result of your inquiries,

14-2

1 were you successful in finding him?

2 A No, I never found him.

3 Q Did you go back to the Spahn Ranch at any time
4 after that Friday to look for Don?

5 A Yes, I did. It was -- you know --

6 MR. DENNY: I'll object to anything beyond "Yes."

7 Q BY MR. KAY: When?

8 A When?

9 Q When did you go, after that Friday?

10 A Oh. It was a couple of days after.

11 Q And did you make any inquiries then about Don?

12 A Yes, I did.

13 Q And as a result of your inquiries, were you
14 successful in locating him?

15 A No.

16 MR. KAY: May I have just a moment, your Honor?

17 (Pause in the proceedings while a discussion off
18 the record ensued at the counsel table between Mr. Kay and
19 Mr. Manzella.)

20 Q BY MR. KAY: Mr. Victor, during 1968, up to the
21 last time you saw Don in 1969, did you have any conversations
22 with Don about -- where he expressed to you his attitude about
23 work in the movies?

24 A Yes. Yes, sir, he did.

25 Q And did you have many conversations with him on
26 the subject?

27 A Yes. On and off, yes.

28 Q And what did he say to you was his attitude about

11-3

1 working in the movies?

2 MR. DENNY: I'll object to that as calling for hearsay.

3 MR. KAY: This is offered as to Mr. Shea's continuing
4 state of mind, your Honor.

5 MR. DENNY: I'll also object that it's cumulative, your
6 Honor.

7 THE COURT: I'll overrule the objection.

8 But again, the Court admonishes you that it is
9 received for the limited purposes of showing Mr. Shea's state
10 of mind toward the movie industry.

11 Q BY MR. KAY: Go ahead, Mr. Victor. You can answer.

12 A Oh. Yeah. What was --

13 THE COURT: Toward gaining work in the movie industry.

14 THE WITNESS: He wanted to get into a series, you know,
15 where he could get -- you know, established. By getting into a
16 series, like on TV, he felt that would -- and he wanted to do
17 some other films, too; you know, like for the movie house.

18 Q BY MR. KAY: How often did he talk about the
19 movies and his working in the movies?

20 A It was quite frequently.

21 Q Was that the main topic that he talked about?

22 A Yes.

23 Q Now, do you know if Don owned a matched set of
24 guns?

25 A Yes, he did.

26 Q And were you with him when he bought these guns?

27 A Yes, I was.

28 Q And who did he buy them from?

14-1

1 A He bought the guns from Arch Hall.

2 Q All right. Can you describe these guns?

3 A Yeah. They're Dakotas, a matching set; and they have
4 the wooden handles, with the bronze grip, and long barrels.

5 Q Mr. Victor, I am showing you People's 53-A and
6 53-B. Examine them for a minute, and then I'll ask you a
7 question.

8 A Right.

9 Q Do you recognize them?

10 A Yes.

11 Q And are those Don's?

12 A Yes.

13 Q All right. Now, I want you to examine the other
14 one, too, so you can examine both of them. And then I'll ask
15 you a question.

16 Okay. Now, you see the condition that these guns
17 are in presently?

18 A Yes.

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fol.

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14a-1

1 Q And are they in the same condition now as when
2 you saw them with Don?

3 A No, they're -- they're more roughed up.

4 Q What do you mean by that?

5 A They're scarred up. You know, like the handles
6 are more chipped out; the varnish is more -- you know, like
7 it's slid over rocks or -- (indicating).

8 Q You are pointing to the --

9 A Varnish off here (indicating).

10 Q -- varnish on 53-A, the varnish and the scratches?

11 A Right.

12 Q All right. Did you see how Don treated these
13 guns in your presence?

14 A Yes. He always had them where there -- you know,
15 you could look with a magnifying glass and you couldn't see
16 no dust on them,

17 Q How often would Don have these guns when you saw
18 him? Or would he have them with him?

19 A Yes, he had them with him a few times when I seen
20 them.

21 Q Would he talk about the guns or --

22 A Yes, he would. Sometimes, I would ask him, I
23 would say, "How's your -- how's your revolvers?" And he
24 would say, "Oh, they're all right."

25 Q Did Don have these guns when you and he went up
26 to work at the Leslie Salt Mines?

27 A Yes, he did.

28 Q Did Don ever tell you how he felt about those

14a-2

1 guns?

2 A Yes. They were his pride and joy.

3 Q Well --

4 MR. DENNY: Just a moment. Move the answer after
5 "Yes" be stricken.

6 THE COURT: Sustained. It is stricken.

7 Q BY MR. KAY: What did Don say about how he felt
8 about these guns?

9 A He was -- he was very proud of them, because they
10 was --

11 MR. DENNY: Well, just a moment.

12 Q BY MR. KAY: What did he say?

13 A Oh --

14 MR. DENNY: I'll move that answer be stricken as not
15 responsive.

16 THE COURT: All right. "He was very proud of them"
17 is stricken.

18 MR. DENNY: And I assume, also, your Honor, if this
19 is hearsay, it's being permitted on the same basis, for his
20 state of mind only, and not for the truth of the matter
21 asserted?

22 THE COURT: Yes. It is permitted, ladies and gentlemen,
23 to show -- if it indeed does show, in your view -- Mr. Shea's
24 state of mind toward these guns.

25 Q BY MR. KAY: Okay. Mr. Victor, you can answer.

26 A He treated them like babies --

27 MR. DENNY: Well, I'll object to that and move that
28 that be stricken as not responsive.

14a-3

1 THE COURT: That's stricken.

2 Q BY MR. KAY: Did he specifically --

3 THE COURT: Would you rephrase the question, Mr. Kay?

4 MR. KAY: All right.

5 Q If you don't understand me, tell me, and I'll
6 try my best --

7 A Yeah.

8 Q -- to restate it again.

9 What did Don say -- what did he himself say? Not
10 how he treated the guns. You've already told us about how
11 he treated the guns and his relationship to the guns.

12 But did Don ever tell you specifically how he
13 felt about the guns?

14 A Oh, yes. He -- those -- those were like a part
15 of him.

16 MR. DENNY: I'll object to that.

17 Q BY MR. KAY: Is that what he said?

18 MR. DENNY: Just a moment. I'll object to that and move
19 that that be stricken as not responsive, as to what he said.

20 May the Court strike it?

21 MR. KAY: Well --

22 THE COURT: Sustained. It's stricken.

23 Q BY MR. KAY: What did Don say about the guns?

24 A Well, he told me that they were the greatest
25 thing that he had.

26 Q Fine. That's what --

27 A Oh. I see.

28 Q You see, you already told us about his relationship.

1 Mr. Victor, if you would --

2 (Pause in the proceedings while a discussion off
3 the record ensued at the clerk's desk between Mr. Kay
4 and the clerk.)

5 MR. KAY: We are looking for Mr. Kanarek's memorial
6 stand.

7 Looks like he reclaimed his memorial stand.

8 THE BAILIFF: Excuse me.

9 MR. KAY: Oh. Mr. Kuczera hid it.

10 Q Mr. Victor, if you could step down here for a
11 moment?

12 MR. DENNY: Again, your Honor, if these are the
13 photographs, I am going to object to their being displayed
14 to the jury at this time. They have not been received into
15 evidence, I think; and if they have, I don't believe there's
16 any necessity for them seeing them at this time, any more
14b fls 17 than any other evidence that has been received.

14b-1 1

MR. KAY: I believe they have been received into evidence. I'm going to have to have Mr. Victor identify each one of them, and I know when it's done up at the witness stand, it's very hard for the jury to tell what's going on.

THE COURT: They have been received already. The Court would permit it, if you do it expeditiously.

MR. KAY: I will, your Honor.

MR. DENNY: Your Honor, I think Mr. Bickston went through most of these already. This is just cumulative and time consuming --

MR. KAY: Well, Mr. Bickston was examined by Mr. Manzella, and --

THE COURT: The objection is overruled. Let's move on quickly.

Q BY MR. KAY: Mr. Victor, I show you People's 67-N. Would you please tell us what you see in that picture?

Can all the jurors -- well, here, let me --

All right. Very quickly, if you can, describe who's in the photograph and what it's a photograph of.

A This is Don Shea here (indicating.) This is Bob Bickston. And that was one of the other cowboys.

Q All right. Was that in one of the pictures you were in?

A Yes, it was.

Q Do you remember which one that was?

A I believe that was "Joaquin Murrietta."

Q All right. Now, I show you photograph 67-M.

A Yes. That's "The Lawman" -- or, I should say

1.b-2 1 "Wyatt Earp." Because I remember that scene there, because we
2 was shooting --

3 Q Is that you (indicating)?

4 A Yes, that is me right there (indicating).

5 Q And do you have a "LV" --

6 A On my hat.

7 Q -- on your hat?

8 A On my white hat.

9 Q And I take it, in the first picture, you have
10 identified that Don Shea has a "DS" on his body, and Bob
11 Bickston has a "BB"?

12 A Yes.

13 Q And I show you --

14 A We just blew it.

15 Q I show you photograph 67-L. Could you tell us
16 who's in that photograph?

17 A That looks like -- there's Don Shea in the back
18 (indicating).

19 Q And he has a "DS" --

20 A A "DS" on his shirt; and the gentleman in the
21 front is Bill Willingham.

22 Q And what picture was that?

23 A That looks like a costume check there.

24 Q Well, for what production?

25 A Well, that would -- that would be for "Joaquin
26 Murrietta," I believe.

27 Q And here's another photograph, 67-K. Who's in that
28 photograph?

1.b-3

1 A That's me there, with the "LV" on the white hat.

2 Q Is this also "Joaquin Murrietta"?

3 A No, that there is "Wyatt Earp."

4 Q And here's photograph 67-J. Who does that depict?

5 A That's Don Shea with a "DS" on his shirt.

6 Q And what picture is that?

7 A I believe that's from "Joaquin Murrietta" also.

8 I believe, if I remember right, that's the one --
9 the one -- the outfit he was wearing when he drove the stagecoach.

10 Q And here's photograph 67-I.

11 A That's me again, with the "LV" on my white hat.

12 Q And what picture is that from?

13 A That was the "Wyatt Earp."

14 Q Here's a picture of somebody putting on some make-
15 up. It's 67-H.

16 Who is that a picture of?

17 A That was Don Shea.

18 Q And he has a "DS" on his body?

19 A A "DS" on his shirt.

14c fol

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14c-1

- 1 Q And is it also "Joaquin Murrietta"?
- 2 A That is also.
- 3 Q I have here a photograph, 67-G. What is depicted
- 4 in that photograph? Who is in that one?
- 5 A There's Don Shea, with the "DS" under his left
- 6 foot.
- 7 And Bob Bickston, with a "BB" under his.
- 8 Q And do you recognize what picture that was?
- 9 A I believe that's "The Lawman."
- 10 Q And here I have a picture, 67-F. Do you recognize
- 11 who's in that photograph?
- 12 A Yes. There's Don Shea with a "DS" above his head.
- 13 And Bob Bickston over here with a "BB" over his hat.
- 14 Q And what picture is that from?
- 15 A That, I believe, is "The Lawman."
- 16 Q Here's a picture of three gentlemen on horses,
- 17 67-E. Do you recognize who's in that photograph?
- 18 A Yes. The gentleman with the circle around his
- 19 head is Don Shea.
- 20 Q And what picture was this for?
- 21 A I believe that's "The Lawman."
- 22 Q I just have a few more here, Mr. Victor.
- 23 Showing you photograph 67-D, do you recognize that
- 24 good looking gentleman?
- 25 A Well, that's not good looking, but that's me with
- 26 the "LV" on the hat.
- 27 Q And what picture was that?
- 28 A I believe that's "Pat Garrett, U. S. Marshal."

1 Q Did you play Pat Garrett?

2 A Yes.

3 Q Now, I show you picture 67-C. Do you recognize
4 who's in that?

5 A Yes. That's me with the "LV" in the white hat.
6 And that was "Wyatt Earp."

7 Q Just two more here. Photograph 67-B, do you
8 recognize who's depicted in that photograph?

9 A Yes. Don with a circle around his head, with a
10 "DS" above him; and Bob Bickston, a circle around his head, and
11 a "BB" above him.

12 Q And do you recognize what picture that was from?

13 A Well, I believe that there was -- would be
14 "The Lawman."

15 Q Okay. And the last picture, 67-A?

16 A That's a cast shot, with a circle around Bob
17 Bickston's head, and a circle around Don, over here
18 (indicating), with a "DS" and a circle around mine, with a
19 "LV."

20 Q And what picture was this from?

21 A That was "Wyatt Earp." That was a cast shot.

22 MR. KAY: Thank you. You can resume the stand, if you
23 will, Mr. Victor.

24 THE WITNESS: Um-hmmm.

25 Q BY MR. KAY: I have one last photograph to show you
26 here, People's Exhibit 68. Do you recognize that?

27 A Yes. That's Don Shea.

28 Q And do you remember what picture that was from?

1 A I'm not sure, but I think that was when they were
2 working on what they called "Hang Fire." I'm not too sure.

3 Q Now, other than your conversation with Don, after
4 August 16th, 1969, where he told you that he wanted to go to
5 the Leslie salt mines in Vallejo, did -- did he ever tell you
6 that he was going to leave the Los Angeles area permanently?

7 MR. DENNY: Just a moment. I'll object to that as
8 calling for hearsay.

9 MR. KAY: We'd offer this on the same grounds as with the
10 prior witnesses, your Honor.

11 THE COURT: The objection is overruled, and it is
12 accepted, ladies and gentlemen, to show -- if it does show --
13 Mr. Shea's state of mind.

14 MR. DENNY: Your Honor, may I say again, how can you show
15 a state of mind when the answer is going to be "no"?

16 THE COURT: Do you wish to argue the --

17 MR. DENNY: Yes, I do, your Honor.

18 THE COURT: Do you wish to say anything in response to
19 that?

20 MR. KAY: Well, we are offering it for the same purpose.

21 THE COURT: All right. The Court overrules the objec-
22 tion, and the Court permits the response -- even though it be
23 negative -- to show Mr. Shea's state of mind, if it does show
24 his state of mind, toward his leaving or staying in the
25 community, or his intentions towards leaving or staying in the
26 community.

27 MR. KAY: All right.

28 Q You can answer that question now.

1 THE COURT: Restate the question.

2 Q BY MR. KAY: All right. Did Don, other than when
3 he talked to you in this conversation we've already gone
4 through, about his wanting to go to the Leslie salt mines,
5 did he ever state any intention to you about permanently
6 leaving the Los Angeles area?

7 A No, he didn't tell me anything about that.

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1 Q Did he ever say anything to you about permanently
2 leaving the United States?

3 A No.

4 Q Or California?

5 A No.

6 MR. KAY: May I have just a moment, your Honor?

7 THE COURT: Yes, you may.

8 MR. KAY: Thank you, I have no further questions.
9 Thank you, Mr. Victor.

10 THE COURT: Mr. Denny.

11
12 CROSS-EXAMINATION

13 BY MR. DENNY:

14 Q Did he ever tell you about permanently going
15 anywhere?

16 A No, he didn't.

17 Q Did he ever tell you about whether he was going
18 to Sacramento?

19 A No.

20 Q Did he ever tell you about whether he was --

21 A Or Oshkosh.

22 Q -- going to Oshkosh?

23 A No.

24 Q Or the fact that he didn't tell you that he
25 wasn't going to do something didn't mean he was or he wasn't
26 as far as you were concerned?

27 MR. KAY: Calls for speculation on the part of the
28 witness.

15-2

1 MR. DENNY: Well, that's exactly what my last objec-
2 tions have been.

3 THE COURT: Mr. Denny.

4 Mr. Denny's remarks are stricken. The objection
5 is sustained.

6 Q BY MR. DENNY: Sir, what kind of car did he have?

7 A He had a Comet, a white Comet.

8 Q What kind of car did he have before he got the
9 white Comet?

10 A It was an old Cadillac, blue.

11 Q Blue Cadillac?

12 A Yes.

13 Q '59 Cadillac?

14 A Yes.

15 Q Had that for a long time, did he?

16 A It was for quite a while.

17 Q Is that the Cadillac that you drove up to
18 Vallejo in '68?

19 A No, that was my car.

20 Q What happened to his car?

21 A Well, the brakes were out on it because the
22 reason why I know it is because I had a heck of a ride down
23 a hill.

24 Q Kind of scary?

25 A Yes, it was.

26 Q The brakes were out on that '59 Cadillac?

27 A Yes.

28 Q That's why you took your car?

1 A Right.

2 Q By the way, do you know anything about whether
3 the brakes were out on this Comet?

4 A No, I don't, sir.

5 Q Or the condition of the brakes on the Comet?

6 A No.

7 Q But, at least, in '68 you didn't travel in a car
8 with bad brakes because you wanted to be safe going up there,
9 is that right?

10 A Yeah, I used my own.

11 Q Right. And Don felt the same way?

12 A Right.

13 Q All right. And by the way, what is your occupa-
14 tion, now, sir?

15 A I work for the Loomis Armor Car Corporation.

16 Q Guard or driver or what?

17 A Driver.

18 Q And about these guns.

19 You were there when he got them from Arch Hall,
20 were you?

21 A Oh, yes.

22 Q Were you with him?

23 A Yes, I was with him in the office.

24 Q And did you know Arch Hall very well yourself?

25 A I had spoke to him once in a great while. It is
26 not really a good -- you know, a close friendship.

27 Q All right. And Shorty was kind of excited about
28 getting them, right?

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1

A Right.

2

Q Now, these were gotten for a particular purpose, weren't they?

3

4

A Yes, he wanted them for motion picture work.

5

you were?

Q Well, he was appearing in a particular picture at that time, wasn't he, in Arizona?

6

7

A Yeah, with Bob Bickston.

8

Q Bob Bickston was shooting a picture out at the Apache Movie Ranch out in Arizona at that time, wasn't he?

9

10

A Yes.

11

Q So these guns were gotten for that particular purpose?

12

13

A Yes, he was going to keep them, too, for further productions.

14

15

Q All right. And did Shorty ever tell you that he was going to give those guns back to Arch Hall?

16

17

A No.

18

Q All right. By the way, you were aware that Shorty got married, weren't you?

19

20

A Yes, he showed me the pictures.

21

Q They were colored pictures, the ones he showed you?

22

23

A Yes.

24

Q Not those black and whites?

25

A Yes.

26

Q And he seemed upset at the time he talked to you about his marital situation, didn't he?

27

28

A Yes, because what he wanted to do --

15-5

1 Q Well, without going into what he wanted to do.

2 A Oh, okay.

3 Q He was upset, wasn't he?

4 A Yes.

5 Q And he discussed that with you? Not at great
6 length, but at least some length, didn't he?

7 MR. KAY: This is ambiguous as to time. When did the
8 conversation take place? I'll object to it on that ground.

9 Q BY MR. DENNY: Well, how many times did you see
10 him up at Spahn Ranch around August 16th or after?

11 A Well, it was after.

12 Q It was after August 16th, you saw him just once
13 or twice?

14 A I believe it was twice.

15 Q When was the first time?

16 A The first time I went up there it was right --
17 well, I guess he was working up there or doing something. I
18 don't know what it was. But everything was all right. It
19 was about -- maybe a couple of weeks or something before that,
20 because I used to go up and see Pearl and them.

21 Q Well, did you just happen to meet up there?

15a fls.

22 A Yes.

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15-a-1

1 Q All right. And it is the second time that you
2 are talking about that he had this other conversation with you
3 that you related to Mr. Kay, about wanting to go up to
4 Vallejo and all?

5 A Yes, yes.

6 Q All right. And part of that conversation also
7 involved the fact that he was upset about the breakup of his
8 marriage, is that right?

9 A Right, because what he wanted to do was get some
10 money to --

11 Q All right. He wanted to get some money to just
12 get out?

13 A Well, he was very happy about being married. And
14 he said, "My wife, you know, I don't want her to work." And he
15 says, "I'd rather foot the whole thing myself."

16 Q All right. And so he was going to try to go some-
17 where to get some money to work?

18 A Yes.

19 Q To earn some money?

20 A Uh-huh.

21 Q That's why he wanted to go up to Vallejo?

22 A Uh-huh.

23 Q All right. And he was upset, though, about the
24 fact that he and his wife had just split up, though, wasn't
25 he? Didn't he indicate that to you?

26 A I don't know if he said about them splitting up.
27 I know he --

28 Q I'm sorry to interrupt you, but do you recall

1 anything about his stating to you in words or effect that she
2 had run out on him or she had walked out on him?

3 A No.

4 Q All right. But you did get from the conversation
5 you had with him at least that things were not well between
6 him and Niki, right?

7 A Right.

8 Q And he seemed distraught about it?

9 A Right.

10 Q All right. By the way, this Comet which you saw
11 at the ranch, I take it you did see it at the ranch?

12 A Yes.

13 Q At Spahn Ranch.

14 And in what condition was it when you saw it?
15 My notes just don't reflect that and I think you said some-
16 thing about it.

17 A Oh, it was white and --

18 Q Was it parked out in the --

19 A It was parked in the -- it was parked out toward
20 the ranch house, you know, right --

21 Q Yeah.

22 A -- just -- the last building, and the ranch house
23 is over here (indicating).

24 Q Well, there's been some testimony earlier -- you
25 weren't here -- about something called the farmhouse and
26 sometimes called the ranch house way back about three-
27 quarters of a mile back from the main buildings.

28 You don't mean that ranch house or farmhouse?

1 A No, no. It was just the house right there in the
2 town where Mr. Spahn stayed. That's it.

3 Q All right. All right. And did you notice the
4 condition of the car at all?

5 A It was fairly dusty.

6 Q Did you notice the interior at all?

7 A No, I never walked that close to it, where I could
8 look into it.

9 Q By the way, when you saw Shorty on this particular
10 occasion, do you recall how he was dressed?

11 A Yes, he --

12 Q I'm talking about the occasion when you had this
13 conversation about Niki and about going up to Vallejo and all
14 of that; do you recall how he was dressed then?

15 A No, not that, no.

16 Q Well, was he dressed in a suit like me or was he
17 dressed in more kind of jeans?

18 A Well, he had --

19 Q And a shirt?

20 A Oh, he had his boots on, I know, and then he had
21 some kind of an off-looking colored pants.

22 Q And a work shirt?

23 A And a kind of -- well, no, it was kind of like a
24 T-shirt kind of thing.

25 Q All right. Did he wear a hat at all?

26 A No.

27 Q Did he usually wear a hat when he was working?

28 A Yeah, in westerns he wore the Stetson type hat.

1 Q Well, I'm not talking about for pictures. I'm
2 talking --

3 A Oh, for everyday-type job?

4 Q Yes.

5 A Not that I know of.

6 Q All right. And, again, I'm not sure how
7 frequently you said you were in touch with him.

8 Would you say about every -- you'd see him every
9 week or so or every three or four weeks between 1965 and
10 August, '69?

11 A It would be like three weeks, then sometimes it
12 would go on longer than that. Just like -- take, for
13 instance, Mr. Babcock, who -- I don't know if you know --

14 Q Yes, I know Mr. Babcock.

15 A Do you?

16 And he -- see, like Jim, I'm lucky to get over
17 there -- I'm lucky to get over to his place in a month and
18 a half.

19 Q Well, I wonder if you recall having a conversation
20 with Mr. Katz and Mr. Whiteley back on November 20th, 1970,
21 about 12:20 P. M., in which you said between 1965, when you
22 first met Shorty and a couple of months before September 4,
23 1968, you did not see Shorty. That you renewed your friend-
24 ship with Shorty in '68 and went with him to the Leslie
25 salt mines in Vallejo where you both worked?

26 A Oh, yes, there was a time lapse there.

15b fol

1 Q So that actually --

2 A It was kind of a --

3 Q There were a couple of years there when you
4 didn't see him after you first met him?

5 A I don't know how long it was but it was a little
6 while there.

7 Q All right, fine.

8 Thank you very much, sir. I have no further
9 questions.

10 THE WITNESS: Oh, thank you.

11
12 REDIRECT EXAMINATION

13 BY MR. KAY:

14 Q Mr. Victor -- I have just a few questions.

15 When you saw Don's -- when you had the conversation
16 with Don up at the Spahn Ranch, the one we went into, and you
17 saw his Comet there, do you know whether or not he was living
18 out of his Comet?

19 MR. DENNY: Well, that calls for an opinion and con-
20 clusion.

21 THE COURT: Sustained.

22 Q BY MR. KAY: Well, to your own knowledge, you
23 know --

24 A He could have.

25 MR. DENNY: Well, move that answer be stricken as
26 obviously opinion.

27 THE COURT: Sustained.

28 Q BY MR. KAY: Now, during the conversation that

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1 you had with --

2 THE COURT: I say it is sustained. What I meant,
3 ladies and gentlemen, those last two responses were stricken
4 -- strike that. The last response is stricken. The objec-
5 tion was sustained to the previous question.

6 Excuse me for interrupting, Mr. Kay, I didn't
7 intend to stop you. Go ahead.

8 MR. KAY: May I have just a moment, your Honor.

9 (Whereupon, there was a pause in the proceedings
10 while Mr. Kay conferred with Mr. Manzella, and then
11 Mr. Denny off the record at the counsel table.)

12 Q BY MR. KAY: At the time you had the conversation
13 with Shorty out at Spahn Ranch, were you also working for the
14 Loomis Armored Car Company?

15 A Oh, yes.

16 Q That's why you said that you couldn't go with
17 him?

18 A Right.

19 MR. KAY: I have no further questions.

20 MR. DENNY: No further questions.

21 THE COURT: You may step down. You are excused for
22 the day.

23 THE WITNESS: Oh, thank you.

24 THE COURT: Ladies and gentlemen, we'll recess until
25 9:30 tomorrow morning. The Court will try to start
26 promptly at 9:30 and lay aside other business so that we can
27 proceed.

28 I assume that both sides can be ready tomorrow

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1 morning at 9:30?

2 MR. DENNY: Yes, your Honor.

3 THE COURT: All right.

4 So the Court will admonish you again that you
5 are not to converse amongst yourselves, nor with anyone
6 else, nor permit anyone to converse with you on any subject
7 connected with the matter, nor are you to form or express
8 any opinion on the matter until it is finally submitted to
9 you.

10 Good night, see you tomorrow morning at 9:30.

11 MR. DENNY: Your Honor, may I be heard on a matter
12 after the jury leaves?

13 THE COURT: Yes.

14 (Whereupon, the jury retired from the courtroom
15 at approximately 4:25, and the following proceedings
16 were had:)

17 THE COURT: I think Mrs. Corman wants to speak to you,
18 Mr. Kuczera.

19 (Whereupon, Juror Corman and the bailiff exited
20 the courtroom, and the following proceedings were had:)

21 MR. MANZELLA: Your Honor, I have a copy of arrest
22 reports, burglary reports and other reports, the Complaint
23 and information in case No. A-058094.

24 THE COURT: Is that one of the missing cases?

25 MR. MANZELLA: Yes, your Honor.

26 MR. DENNY: That's the Santa Monica cases that were
27 transferred down here on Springer.

28 MR. MANZELLA: There is a notation on the outside

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1 jacket of our file which indicates that Springer and one other
2 defendant --

3 MR. DENNY: Tamberen.

4 MR. MANZELLA: -- were found not guilty in a court
5 trial, in Department 111, Judge Ackerman, in November sometime,
6 1970, I believe, although I'm not sure. I think it is
7 November, 1970, but they were found guilty in Department 111
8 in a court trial.

16 fls.

1 MR. DENNY: Not guilty.

2 MR. MANZELLA: Not guilty. And I will give this
3 information to Mrs. Holt, as well as the other information
4 we've given to her.

5 THE COURT: So you are missing only one file now, on
6 Mr. Springer?

7 MR. DENNY: Yes, your Honor. That's the Van Nuys file.

8 MR. MANZELLA: That takes care of the information which
9 was requested in the subpoena to Owen Boon.

10 I think we've gotten all that information.

11 THE COURT: He need not be here tomorrow, then.

12 MR. MANZELLA: There were no reports, memoranda, notes
13 or anything else with regard to the disposition of the case
14 in case No. A-058194, other than that which I've already
15 stated to the Court.

16 THE COURT: You wish to have the other deputy here
17 tomorrow morning?

18 MR. DENNY: No, I don't, your Honor. If the thing can
19 be found within a reasonable period of time, or we get a later
20 report on it.

21 I don't want to bring Lew Watnick down and take him
22 away from his work -- if we can have somebody in the D. A.'s
23 Office try to track it down.

24 This was tracked down, and I am sure they can
25 track down that file as well somewhere. And if it can be done
26 within the next day or so, I certainly think that that's
27 reasonable.

28 If it's bouncing around in the file somewhere, it

1 will take some time to find it; I know that. But it would be
2 a waste of time to have Lew come down here and just say, "We
3 are still looking for it."

4 THE COURT: All right. Well, then, the Court's order
5 directing Mr. Watnick to be here tomorrow at 9:00 o'clock is
6 vacated.

7 MR. DENNY: May the subpoena, however, still be on
8 call, in effect, as far as the subpoena duces tecum, placing
9 him on call, until we determine whether that record is
10 available somewhere within the District Attorney's files?

11 THE COURT: All right. The Court will ask that you
12 gentlemen, Mr. Manzella and Mr. Kay, continue to look for that
13 file.

14 MR. MANZELLA: Every waking moment, your Honor.

15 THE COURT: And let the Court and Mr. Denny know
16 tomorrow whether or not you have had any success in finding
17 it.

18 MR. MANZELLA: I can say that I've looked for it this
19 afternoon. I've looked for the file this afternoon and have had
20 no success.

21 I have had some clerks in our Central Records
22 Bureau attempting to locate it. They have been -- they have
23 said that we have established dummy files downtown here, which
24 is a file jacket with the same case number, indicating the
25 charges, but without any of the information contained in the
26 regular file, which would indicate that if the file -- that the
27 file would still be out in a branch office.

28 MR. DENNY: But --

1 MR. MANZELLA: We don't have it down here.

2 THE COURT: Perhaps Mr. Watnick can find it.

3 Anything further, Mr. Denny?

4 MR. DENNY: Yes, your Honor. I did want to apologize
5 to the Court for my outburst, which I felt was unseemly,
6 in retrospect. And a moment after I did it, in connection
7 with the question --

8 THE COURT: The Court accepts your apology.

9 MR. DENNY: Your Honor --

10 THE COURT: I know that it doesn't happen often with
11 you -- nor with any of the counsel here.

12 MR. DENNY: Well, I felt --

13 THE COURT: The Court understands it.

14 MR. DENNY: I do apologize. But I do want to be
15 heard, if I can, because you have not given me a chance on
16 two separate days to be heard on that, and that's --

17 THE COURT: Well, the Court believes that the -- you're
18 talking about the question put to the People's witnesses,
19 "Did Mr. Shea --"

20 MR. DENNY: -- "say that he wasn't going to do something?"

21 THE COURT: "Did he tell you that he was leaving?"

22 MR. DENNY: All right. Knowing the answer is going to
23 be "No," it's like, "Did he tell you he was going to stop
24 beating his wife?" Or, "Did he tell you that he was going to
25 start beating his wife?"

26 Or, "Did he tell you that he was going to do
27 anything?" when you know the answer is going to be "No."

28 You can ask a hundred-fifty-thousand questions,

1 "Did he tell you this, this, this?" knowing the answer is
2 going to be "No." And all you do is plant the idea in the
3 minds of the jurors as to what he might have said, but he
4 didn't say.

5 It's a leading, suggestive type of question, which
6 has no relevancy, if you know the answer.

7 THE COURT: The Court believes not. The Court allowed
8 it and did not permit argument on it, because I thought that
9 they had established that these people were friends of Shea's;
10 and being friends of Shea's, Mr. Shea would have told them,
11 had he had any intention of permanently leaving the County of
12 Los Angeles -- or leaving for a long period of time -- and this
13 is a matter which can be argued to the jury.

14 They can take inferences both ways. Your argument
15 can certainly be made to the jury; and likewise, the People
16 may argue that point.

17 So, in the absence of a report by Mr. Shea that
18 he's going to leave the jurisdiction, that gives some weight --
19 what weight, I don't know; and you might be perfectly correct
20 in stating that he may not have told the witnesses anything at
21 all, because --

22 MR. DENNY: Well, your Honor, I --

23 THE COURT: -- because of the relationship in some way or
24 another --

25 MR. DENNY: Well, your Honor, the only other thing is that
26 all of the other witnesses thus far have established that he
27 never told them where he was going anyway; that his MO was to
28 take off and leave and go where he wanted to go.

1 So, the -- the relevancy of his not saying that
2 he planned to permanently leave the locality, that he was not
3 going to permanently leave his friends, is -- there is no
4 relevancy.

5 THE COURT: Well, there's --

6 MR. DENNY: Because all of the testimony thus far has
7 established that he would never have said that anyway; that he
8 would never have told them.

9 THE COURT: There is some evidence that Mr. Shea reported
10 to his friends that he was going to Las Vegas to get married.

11 MR. DENNY: No, no. There is none, your Honor.

12 THE COURT: That ordinarily, the inference would be that
13 a good friend would be told if -- if a man were planning to
14 leave the jurisdiction.

15 But you can argue it your way, when it comes to
16 the time for argument.

17 MR. KAY: Good night, your Honor.

18 THE COURT: Good night.

19 (Whereupon, at 4:31 P. M., an adjournment was
20 taken in this matter until 9:30 A. M. of the following
21 morning, Tuesday, January 25, 1972.)
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