

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

235

REPORTERS' DAILY TRANSCRIPT

Wednesday, February 2, 1972

VOLUME 35APPEARANCES:

For the People:

JOSEPH P. BUSCH, JR., District
Attorney

BY: ANTHONY MANZELLA

and

STEPHEN R. KAY,
Deputies District Attorney

For Defendant Davis:

GEORGE V. DENNY, III

KAUFMAN
SWARTZMARY LOU BRIANDI, CSR
ROGER K. WILLIAMS, CSR
Official Court Reporters

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I N D E X

<u>PEOPLE'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
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KAUFMANN, William John, 5291 K
 III 5325 K

5316D
5317K

(Continued)

SWARTZ, John, Jr. 5329 M 5384 5408
 5403

E X H I B I T S

<u>PEOPLE'S:</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
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103 - a diagram 5295

104 - a diagram 5301

A-1

LOS ANGELES, CALIFORNIA, WEDNESDAY, FEBRUARY 2, 1972 9:49 AM

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THE COURT: Gentlemen, we are going to proceed without you some morning.

MR. KAY: We were looking for a grease pencil.

MR. DENNY: It took two lawyers to get it, your Honor, but we got it.

MR. KAY: Dr. Kaufmann, I wonder if you could --

THE COURT: Excuse me. Just for the record --

MR. KAY: Oh, excuse me.

THE COURT: For the record, all the jurors are present. The defendant is present with his counsel, Mr. Denny. And Mr. Kay for the People.

WILLIAM JOHN KAUFMANN, III
called as a witness by and on behalf of the People, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued)

BY MR. KAY:

Q Dr. Kaufmann, I wonder if you could step down from the witness stand to the court blackboard there, and on that piece of paper -- which, after you get finished drawing it, I'll ask to have it marked as the People's next in order -- I wonder if you could describe the different phases of the moon, making a diagram, so that you can explain

1 it to the jurors.

2 A Okay. What I am about to talk about is found
3 in any standard astronomy text --

4 MR. DENNY: Sir, I wonder if we could have you use
5 the hand microphone that's in front of the witness stand?

6 THE WITNESS: Okay. How does this sound? Now, I
7 don't have enough hands.

8 (Laughter.)

9 THE WITNESS: What I am about to talk about is found in
10 any standard astronomy text, and is just simply: Why do
11 we have the various phases of the moon.

12 As you know from your personal experience, the
13 moon looks different from night to night.

14 This thing is squeaking.

15 MR. KAY: If you stand directly underneath the --

16 THE WITNESS: I'll have problems.

17 MR. KAY: -- speaker, it will squeak.

18 THE WITNESS: Suppose this is the earth. We'll draw
19 it green, for any old good reason.

20 And as you know, the earth goes around the sun;
21 but while the earth is going around the sun, the moon is
22 going around the earth.

23 Let's indicate by these red arrows the direction
24 of sunlight. In other words, the sun is off to the left of
25 this diagram, and the light is streaming in this fashion.

26 As a result, the right-hand side of the earth is
27 in darkness. And I'll indicate that by shading it black.
28 And in red again, I will -- I shall draw, crudely, the

1 moon's orbit about the earth. It's approximately circular.

2 And suppose we were to draw the moon at various
3 positions -- let's take this position, this position, this
4 position and this position.

5 Now, again, since the light from the sun is
6 coming from the left towards the right, the right-hand side
7 of the moon is in darkness.

8 Now, think about standing on the earth, and
9 observing the moon in these various configurations. For
10 an example, if you look at the moon when it's out here, you
11 will be seeing the entirely lighted side of the moon --

12 THE COURT: Excuse me. There are some jurors who
13 can't see.

14 THE WITNESS: Oh, excuse me.

15 THE COURT: There's a pointer behind the --

16 THE WITNESS: That's a very good idea. I still don't
17 have enough hands.

18 (Laughter.)

19 THE WITNESS: Suppose you are on the earth, looking
20 at the moon in this location. Clearly, you are going to
21 see the lighted side of the moon, and none of the dark side
22 of the moon.

23 As a result, you will see a completely illumi-
24 nated circle, and that's called new -- a full moon.

25 On the other hand, imagine that you are looking
26 at the moon when it is in this location of its orbit. You
27 are going to see one half lighted; and the other half in
28 darkness, so you will see something like this (indicating).

1 In this location, you are going to be able to see
2 only the dark side of the moon, but not the lighted side of
3 the moon, so you would see something in total darkness.

4 And in this location, you would see, again, one-
5 half of the moon lighted and one-half in darkness.

6 And as the moon goes around in this direction,
7 this (indicating) is called the first quarter.

8 THE COURT: Again, we can't see back here. Would you--
9 no, go ahead. Finish writing.

Aa fls.

AA-1

1 THE WITNESS: This (indicating) is called last
2 quarter. And this is called new moon.

3 And this is why we have the phases of the moon.
4 It takes approximately 28 days for the moon to go all the way
5 around the earth; and as a result, there is approximately 28
6 days from new moon to the next new moon, or 28 days from full
7 moon to the next full moon.

8 In other words, there's about one week between
9 each of the various phases of the moon.

10 At points in between these phases, what you can do
11 is sort of use your imagination -- or, again, go to this
12 diagram -- and realize that when you have the situation in
13 here (indicating), you are going to be seeing a crescent moon.
14 A crescent moon -- also, you would be seeing a crescent moon
15 in here, and what we call a gibbous moon out here, where
16 instead of being perfectly round, it has only a little bit in
17 shadow. This is called a gibbous moon, g-i-b-b-o-u-s.

18 And these are the various phases of the moon.

19 MR. KAY: Your Honor, I wonder if, at this point, we
20 could have this diagram that Dr. Kaufmann has drawn marked
21 as the People's next in order?

22 THE COURT: What is it, 102?

23 MR. DENNY: 103, I believe, your Honor,

24 THE COURT: Yes, it is 103.

25 MR. KAY: 103. I'll mark it in the lower right-hand
26 corner here.

27 MR. DENNY: For identification, I take it, only?

28 THE COURT: Yes. It's 103 for identification.

103 ID

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1 MR. KAY: Thank you.

2 Q Now, Dr. Kaufmann, I wonder if you could describe to
3 the jury the relative intensity of illumination on the earth of
4 the four phases of the moon, the new moon, the full moon, the
5 first quarter and the last quarter.

6 A By far, the full moon is the brightest of any of
7 these phases. And if we indicate the brightness of the full
8 moon by, say, 100 per cent, then in the first and last quarter,
9 you're down to about 20 per cent of illumination; and you
10 virtually have no illumination when you are around new moon.

11 Obviously, at the time of new moon, the moon will be
12 in the same direction as the sun, and you really can't see it
13 at all, because the sun is so blinding. So you don't see the
14 moon at all, and you get zero illumination from it around the
15 time of new moon.

16 And you get greater brilliance at the time of the
17 full moon.

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1 Q I wonder if you could now resume the witness stand.

2 A Yes.

3 Q Dr. Kaufmann, did you determine whether or not

4 there was a full moon between August 26th, 1969, and August

5 30, 1969, which would have illuminated the Chatsworth area?

6 A Yes, I did.

7 Q And on what day did you determine there was a

8 full moon?

9 A There was a full --

10 MR. DENNY: Just a minute, I'll object to the form of

11 the question as no foundation, calling for hearsay.

12 The question was, did it illuminate Chatsworth.

13 I think he can testify as to from Chatsworth, et cetera,

14 whether there was at that time, a phase of the moon, but

15 not what the illumination was in Chatsworth.

16 THE COURT: Sustained.

17 Q BY MR. KAY: Well, did you determine whether or not

18 there was a full moon which -- a full moon which would have

19 illuminated the Chatsworth area, barring such things as

20 maybe cloud covering?

21 A Yes, I did.

22 Q All right. And on what day did you determine

23 there was a full moon?

24 A The full moon occurred on August 27, 1969.

25 Q All right. And, Doctor, what is a moonrise?

26 A On that date -- in general?

27 Q Yes, in general.

28 A It is -- there are a number of varieties of

1 defining moonrise. It depends on which astronomer you're
2 talking to.

3 I define moonrise as that time when the entire
4 disk of the moon just rises above the geometrical horizon.

5 By that we mean, as you know, we have trees and
6 hills and buildings and people wandering around the earth.
7 And if you assume, however, you have a perfectly flat
8 horizon, the type of horizon out at sea, that's what we
9 mean by the astronomical horizon.

10 And moonrise is defined as the time when the moon
11 has just completely risen above this geometrical astronomical
12 horizon.

13 Q What do you mean by moonset?

14 A On moonset, we mean, on the other hand, when the
15 moon has just completely disappeared below the horizon.

16 Q Now, does the moon appear to be larger as it is
17 rising?

18 A Yes, it does. It appears --

19 Q And what causes that?

20 A This is a very curious thing. Perhaps if you
21 were to go out and look at the moon rising, this is especially
22 true of the full moon or the moon setting in the west, it
23 looks much larger than it normally does. And this is entirely
24 an optical illusion, a very curious optical illusion.

25 If you had a camera and you went out and you
26 took a picture of the moon rising, it usually looks big
27 and orange, particularly the harvest moon, for example.
28 And then, if you took a picture several hours later, when it

1 was up in the sky and compared the two photographs, you find
2 the size of the moon and the images on the photographs are
3 perfectly identical. It is entirely an optical illusion.

4 Other ways of removing this optical illusion
5 is to make a tiny hole (indicating) and look between the
6 chink between your fingers and you notice the moon, in fact,
7 looks small.

8 Another way is simply to turn around with your
9 back from the moon and then down with your head between your
10 legs and you look up at the moon upside down, you will also
11 see the illusion disappears. It is a very curious illusion
12 which, in my opinion, there's no real accurate explanation
13 for. I've never come across an explanation which satisfied
14 me. It just must be that the fact that the familiar objects,
15 the buildings and the trees and the mountains -- you know
16 how far away they are -- the moon looks much, much larger
17 when it is near the horizon.

18 Very curious illusion, indeed.

19 THE COURT: Doctor, we're all interested. It is very
20 interesting to hear you talk about this.

21 THE WITNESS: But it is not relevant.

22 THE COURT: Just listen to the question and don't get
23 carried away.

24 THE WITNESS: Oh, sorry.

25 Q BY MR. KAY: Doctor, on the night of the full
26 moon, does the moon appear to have the same amount of
27 brightness from the moment it rises until the moment it sets?

28 A No.

1 Q Could you explain that?

2 A Yes. I could best explain it with another
3 diagram.

4 However, in words, briefly --

5 Q Well, if you want to do it by another diagram,
6 I'll -- why don't you step down here and we'll remove this
7 diagram.

8 THE BAILIFF: You can just flip it.

9 (Whereupon, unrelated matters were called and
10 heard before the Court.)

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1 THE COURT: Sorry, go ahead.

2 Q BY MR. KAY: All right, Dr. Kaufmann, --

3 Your Honor, Dr. Kaufmann has made a diagram which I
4 would like to have marked as People's next in order for
5 identification.

6 THE COURT: All right, 104.

7 MR. KAY: All right. I have so marked it in the lower
8 right-hand corner.

9 THE WITNESS: To reca- -- reca- --

10 Q BY MR. KAY: Recapitulate the question --

11 A TO recapitulate the question, does the moon
12 appear to have the same illumination, the same amount of light
13 falling on the earth from the time of moonrise to moonset,
14 and the answer is no. The answer is no.

15 And the reason for this is, if this green circle
16 represents the surface of the earth, and by this red circle
17 we mean --

18 Q BY MR. KAY: Doctor, excuse me, would you use the
19 pointer? I don't think Mrs. Sandberg can see.

20 A Oh, certainly.

21 By this red circle, it represents the thickness
22 of the earth's atmosphere. Then, you see when the moon is near
23 the horizon, you're looking through a very great deal of
24 atmosphere. While it is higher in the sky you're looking
25 through much, much less atmosphere.

26 I could go on as to why this causes the moonrise
27 to be red and the sunrise to be red --

28 THE COURT: No.

104 ID

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1 THE WITNESS: -- but I won't.

2 (Laughter.)

3 Q BY MR. KAY: Okay. Doctor, could you take the
4 stand again?

5 A Yes.

6 Q Doctor, have you found that there's any difference
7 in illumination of the moon once it has risen in the sky to
8 30 degrees or more above the horizon?

9 A No. For all practical purposes, if you wanted to
10 pick an angle above which you would say from when it rises to
11 this angle (indicating), to when it sets to this angle
12 (indicating), the amount of illumination is essentially
13 constant. That angle would be, in my opinion, about 30 degrees.

14 Q Now, other than with sensitive electronic
15 equipment, could you tell the difference in illumination when
16 the moon is 30 degrees above the horizon to 40 degrees, 30 or
17 40 degrees?

18 A No, to the human eye, in my opinion, you would have
19 the same total amount of illumination.

20 Q Now, directing your attention to August 27, 1969.

21 At what time did the moon -- what time did the
22 moonrise occur in the Chatsworth area on August 27th, 1969?

23 MR. DENNY: Again, I'll object to the form of the
24 question. He cannot state unless there is more of a foundation
25 on hearsay at what time the moon rose, if it rose at all in the
26 Chatsworth area on that date. He can say what time the moon
27 arose in the sky, astronomically, but not moonrise.

28 THE COURT: If it rose anywhere on that date, it must have

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1 arisen in the Chatsworth area, that's what he means, what
2 he's referring to, not whether it can be seen.

3 You may answer.

4 THE WITNESS: Yes, our calculations tell us that moon-
5 rise occurred on August -- on the evening of August 27,
6 at 7:51 P. M., Pacific daylight time.

7 In the Chatsworth area at the longitude and
8 latitude for Chatsworth.

9 Q In other words, the calculations you've made
10 that you are going to testify in court today to are specifically
11 for the Chatsworth area; is that correct?

12 A That is correct.

13 Q Now, what time on August 27, 1969, did the moon
14 rise to 30 degrees above the horizon?

15 A Approximately 10:30. After 10:30, the moon was
16 above 30 degrees.

17 Q Now, in the early morning hours of August 28,
18 1969, at what time did the moon fall to 30 degrees above the
19 horizon?

20 A Okay, now, that's the same night, and that, of
21 course, is the morning of August 28. And at approximately a
22 quarter after 4:00, 4:16, the moon fell to 30 degrees.

23 Q So, in other words, between 10:30 P. M. on August
24 27, 1969, and 4:16 A. M. on August 28, 1969, the moon was
25 between 30 degrees above the horizon?

26 A Yes.

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1 Q Now, between 10:30 p.m. on August 27th, 1969,
2 when the moon had risen to 30 degrees above the horizon,
3 and 4:16 a.m. on August 28th, 1969, when the moon had fallen
4 to 30 degrees above the horizon, did the moon cast approxi-
5 mately the same brilliance?

6 A Approximately.

7 MR. DENNY: Just a moment. I'll object to that as
8 calling for opinion, hearsay; no foundation.

9 THE COURT: Sustained. You may rephrase the question.

10 Q BY MR. KAY: Well, I'm talking about the moon
11 itself.

12 Did the moon itself cast approximately the same
13 brilliance between that time?

14 MR. DENNY: Well, again --

15 THE COURT: Well, the moon always casts the same
16 brilliance, doesn't it, if you're out somewhere in space,
17 where you could see it shining all the time; isn't that
18 right?

19 THE WITNESS: Yes. The lumina --

20 Q BY MR. KAY: All right. Well, in Chatsworth,
21 assuming that there was no cloud covering of any type,
22 between 10:30 p.m. on August the 27th and 4:16 a.m. on
23 August the 28th, 1969, did the moon cast the same
24 brilliance?

25 MR. DENNY: Just a moment, Doctor.

26 I'll object to that as an improper hypothetical
27 question.

28 THE COURT: Sustained.

1 Q BY MR. KAY: Well, in other words, Doctor, when
2 the moon is above 30 degrees, 30 degrees above the horizon,
3 when it rises, until when it falls 30 degrees -- to 30
4 degrees above the horizon, in your opinion, does it cast
5 the same brilliance?

6 A Yes. From my own personal experience, for
7 carrying out various operations out of doors, in the middle
8 of the night, I do find that I personally cannot detect
9 with my own eyes any difference in illumination during that
10 period.

11 Q Now, to the non-expert observer, would there
12 have appeared to be a full moon at any other time between
13 the period of August 26th, 1969, and August 30th, 1969?

14 MR. DENNY: I'll object to that as calling for a
15 non-expert opinion.

16 MR. KAY: Well, he --

17 THE COURT: All right. Sustained. You may rephrase
18 your question.

19 Q BY MR. KAY: Doctor, even with your -- well,
20 even -- can you yourself detect any difference -- well,
21 okay. Let me ask this:

22 Even to yourself, would there have appeared to
23 be a full moon at any other time between the period of
24 August 26th, 1969, and August 30th, 1969?

25 A Well --

26 MR. DENNY: Object to that as irrelevant; not calling
27 for expert opinion.

28 THE COURT: Sustained.

1 Q BY MR. KAY: Doctor, on August 26th, 1969, and
2 on August 28, 1969, would there have appeared to have been
3 a full moon in the Chatsworth area, excluding any cloud
4 covering?

5 MR. DENNY: I'll object to that as calling for a
6 non-expert opinion.

7 THE COURT: Overruled.

8 THE WITNESS: Yes.

9 In my expert opinion, I personally cannot
10 detect a difference. If I don't consult tables and data
11 between -- or make very careful observations myself, --

12 MR. DENNY: I'll --

13 THE WITNESS: -- I cannot --

14 MR. DENNY: Just a moment. I'm sorry, Doctor.

15 I will move that the answer be stricken as
16 non-responsive.

17 THE COURT: I'll strike it.

18 Q BY MR. KAY: Well, on August 26th, 1969, and
19 August 28th, 1969, the day before and the day after the
20 full moon, how would the moon have appeared in the sky to
21 an observer here on earth?

22 MR. DENNY: I'll object to that. He says "to an
23 observer." If he's talking about his own personal experience,
24 versus expert opinion --

25 Q BY MR. KAY: Well, in your expert opinion?

26 A In my expert opinion, it would have appeared
27 to be a full moon.

28 Q And can you explain that, Doctor?

1 A Yes. The differences in the shadowing of the
2 moon is so slight, the day before and the day after,
3 it's very difficult to distinguish just from looking up in
4 the sky as to whether or not you're right on the day of full
5 moon or the day before or the day after.

2a fls.

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1 Q All right. Now, directing your attention to
2 August 26th, 1969, the day before the actual full moon, at what
3 time was the moonrise in the Chatsworth area?

4 A The moon rose at 7:20 P. M., Pacific daylight
5 time.

6 Q All right. And at what time did the moon rise
7 to 30 degrees above the horizon?

8 A At approximately 10:00 o'clock.

9 Q And at what time in the early morning of August
10 27th, 1969 -- the same night -- did the moon fall to 30 degrees
11 above the horizon?

12 A At approximately a quarter to 4:00, or 3:45 A. M.

13 Q All right. Now, directing your attention to August
14 28th, 1969, the day after the full moon, at what time did you
15 determine the moon rose in the Chatsworth area?

16 A At 8:20 P. M., Pacific daylight time.

17 Q All right. And at what time did you determine
18 that the moon rose to 30 degrees above the horizon?

19 A At approximately 11:00 o'clock, that same evening.

20 Q And at what time did you determine that the moon
21 fell to 30 degrees above the horizon?

22 A Okay. Now, this is on the morning of August
23 29th. That's the same night. And I determined that time to be
24 a quarter to 5:00, or 4:45 A. M.

25 Q All right. Now, assuming that the cloud
26 conditions were the same, in your expert opinion, would there
27 be a discernible difference in the brilliance of the moon on
28 August 29th, 1969 -- that's the night of August 29th, not the

2aa-2
1 early morning hours -- on the night of August 29th from what it
2 was on August 26th, 27th and 28th, 1969?

3 MR. DENNY: I'll object to that as an improper hypo-
4 thetical question.

5 THE COURT: Sustained.

6 MR. KAY: May we approach the bench on that, your Honor?

7 THE COURT: No, you may not. You may restate it.

8 Q BY MR. KAY: Well, in your expert opinion, what
9 would be the difference in illumination on August 29th,
10 1969, if there would be any, from August 26th, August 27th and
11 August 28th?

12 MR. DENNY: Again, your Honor, this is -- I think this is
13 an improper hypothetical question. I think he can ask: What
14 would be the difference in illumination the day before a full
15 moon and three days after a full moon?

16 That is a hypothetical question in general. But
17 not taking these dates in particular.

18 THE COURT: Sustained.

19 Q BY MR. KAY: Well, I am taking these dates in
20 general, your Honor, because he figured it out for the
21 Chatsworth area on these particular dates. I think he has
22 already testified to that.

23 THE COURT: Well, all right. Let's approach the bench.
24 (Whereupon, the following proceedings were had at
25 the bench among Court and counsel, outside the hearing of the
26 jury:)

27 THE COURT: Go ahead.

28 MR. DENNY: My objection is that in attempting to use

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1 these dates, and in attempting to tie that in with the amount
2 of illumination that would be falling on Chatsworth -- or,
3 a person looking from Chatsworth on these dates -- he can't
4 say; and therefore --

5 THE COURT: He was not at Chatsworth, and he doesn't
6 know what the weather conditions were at Chatsworth.

7 MR. DENNY: No, no.

8 THE COURT: Even posing your -- in the form in which
9 you pose your question.

10 MR. DENNY: All you have to do is ask him -- since
11 you've got four days here, they're the same as any four days,
12 when there's a full moon. And the day preceding and two days
13 thereafter, you can ask him if there is a discernable differ-
14 ence in the amount of moonlight appearing two days after a
15 full moon, versus one day before and one day after.

16 MR. KAY: Well, certainly, I understand that.

17 However, he has testified that he has figured it
18 out specifically for the Chatsworth area; that these
19 calculations are specifically for the Chatsworth area. In
20 other words, the moonrise at 7:20. Well, maybe it rose at
21 7:30 here in the Los Angeles area -- or 7:21. But he's
22 figured all --

23 MR. DENNY: You still don't understand.

24 THE COURT: Your problem is, of course, in connection
25 with the word "illumination," because --

26 MR. DENNY: You don't know what the illumination was in
27 Chatsworth, and neither does he.

28 THE COURT: Unless he was there.

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1 MR. KAY: Well, I said: Assuming that the cloud
2 conditions were the same on the --

3 THE COURT: Well, keep your voice down.

4 MR. DENNY: You can't assume that, because that's an
5 improper hypothetical question.

6 You don't have the foundation to assume that.

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1 THE COURT: Oh, I think --

2 MR. DENNY: You are asking that as a hypothetical
3 question.

4 THE COURT: I think he can assume that.

5 MR. DENNY: Well, your Honor, you can't assume that the
6 cloud condition is the same on these four days, because
7 there's no evidence, no evidence to show that.

8 If he's asking a hypothetical question, you have
9 to establish the facts in the hypothetical question. They
10 have to be independently established, and they're not.

11 THE COURT: Well --

12 MR. DENNY: I have no objection to his asking a hypo-
13 theoretical question in general, about the amount of illumina-
14 tion from the moon the day before a full moon, the day after
15 full moon or two days after full moon, because I know what
16 his answer's going to be.

17 His answer is going to be: Yes, there is a
18 discernible difference two days after full moon. And I have
19 no objection to that getting in.

20 I don't want the jury to get the impression that
21 on these particular days, in Chatsworth, anybody can tell,
22 because unless that foundation is established, that on
23 these four days there were no clouds, or the cloud conditions
24 were the same -- and this is why we were not allowed to go
25 out there and make a view --

26 MR. KAY: Well, I would ask to -- I believe that the
27 witness, Barbara Hoyt, will testify that it was -- the
28 weather was clear; and we know that Mr. Denny's already called

1 Mr. Aldrich. If the Court wants --

2 MR. DENNY: And the Judge would not let us go out,
3 because he said we didn't know what the conditions were.

4 MR. KAY: Well --

5 THE COURT: I didn't know what the conditions would be.
6 If they had been prognosticated, I might have known. I didn't
7 know what they would be when we got there.

8 MR. KAY: Yes.

9 THE COURT: And I wasn't sure, judging from what had
10 been produced, as to what the conditions actually were.

11 MR. KAY: Um-hmm.

12 THE COURT: So Mr. Denny is correct in that respect.

13 Do you anticipate being able to establish, by
14 Barbara Hoyt, that the weather on each one of these nights
15 was --

16 MR. KAY: No, I can't represent that,

17 THE COURT: You can't represent that.

18 MR. KAY: On the night she heard the screams, that it
19 was clear; but I can't represent to the Court that she can
20 testify that on each night --

21 MR. DENNY: It's just --

22 THE COURT: Well, I think for the purpose of your
23 question, that you can assume -- you can tell him to make
24 the assumption, solely for the purpose of measuring moonlight,
25 and not for any other purpose, that -- you can have him
26 assume that the sky was absolutely clear.

27 MR. DENNY: Not on these nights, your Honor. Not on
28 these nights.

1 I strongly object to that. As I say, there is
2 absolutely no objection to his taking any "in general" in
3 a hypothetical situation, any four nights, where there is --

4 THE COURT: That's right.

5 MR. DENNY: -- the day before the full moon, the full
6 moon, the day after, and two days after.

7 THE COURT: Well, assume that the sky was at 30 degrees,
8 and that the -- I mean, assume that the moon was at 30 degrees,
9 and that the weather is absolutely clear in the Chatsworth
10 area.

11 MR. KAY: Um-hmm.

12 MR. DENNY: Not in the Chatsworth area, your Honor.

13 THE COURT: Without specifying the days.

14 MR. DENNY: In any area.

15 THE COURT: In any area.

16 MR. DENNY: In any area.

17 THE COURT: That --

18 MR. DENNY: And without specifying the days. The
19 hypothetical --

20 THE COURT: In any area, that's true. You are correct,
21 Mr. Denny.

22 MR. DENNY: Thank you, your Honor.

23 MR. KAY: Okay.

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

27 Q BY MR. KAY: Now, Doctor, two days after there
28 was a full moon, what percentage of brilliance would the moon

1 cast on earth? What percentage -- you said that on the full
2 moon, it would be 100 percent. Two days after the full moon,
3 what percentage would there be?

4 A Approximately 80 to 85 percent. You're down
5 between 15 and 20 percent of the maximum.

6 Q All right. And then, say, three days after the
7 full moon, what percentage of brilliance would be cast?

8 A It's beginning to fall quite rapidly the third,
9 fourth and fifth days. The third day, it would be approxi-
10 mately 60 to 75 percent.

11 Q Now, Doctor, did you yourself perform certain
12 experiments to determine how well you could see during the
13 light of the full moon, the day before the full moon, the
14 day of the full moon, and the day after the full moon?

15 A Yes.

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1 MR. DENNY: Just a moment. I'll object to anything
2 after "yes."

3 Q BY MR. KAY: Now, Doctor, I take it that -- from
4 what you've told me, that you wear contact lenses; is that
5 correct?

6 A That is correct.

7 Q All right. And what is your vision with the
8 contact lenses?

9 A 20-20.

10 Q All right. And when you were performing these
11 experiments, did you wear the contact lenses?

12 A Yes.

13 Q All right. So, in other words, your conclusions --
14 the results of your experiments would be for a person with
15 20-20 vision; is that correct?

16 A Yes.

17 Q All right. And what -- what experiments did you
18 perform?

19 MR. DENNY: Just a moment. May I take the witness on
20 voir dire, your Honor?

21 THE COURT: Yes, you may.

22
23 VOIR DIRE EXAMINATION

24 BY MR. DENNY:

25 Q Dr. Kaufman, have you had any training in the
26 field of optometry?

27 A No.

28 Q Have you had any training in the field of

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ophthalmics?

A No.

Q Have you had any training in psychology?

MR. KAY: Objection. That's irrelevant, your Honor.

THE COURT: Sustained.

Q BY MR. DENNY: Have you had any training in the psychology of sight?

MR. KAY: That's irrelevant also, your Honor -- assuming there is such a thing.

THE COURT: Sustained.

MR. DENNY: There is such a thing.

Q Sir, the experiments you made in this particular case, that you are about to tell us about, are they things that I could do, just as you did?

A Yes.

Q So that it does not take any expertise to do them; is that right?

A No.

MR. DENNY: All right. I'll object to any evidence of any experiments that are so-called experiments by an expert, since they are not the subject of expert testimony.

MR. KAY: Doctor --

May I inquire, just a few questions, your Honor?

THE COURT: All right. Still on voir dire.

VOIR DIRE EXAMINATION

BY MR. KAY:

Q All right. Doctor, did you -- you are Director of

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1 the Griffith Park Observatory; is that correct?

2 A Yes.

3 Q And did you perform these experiments as part of
4 your -- as part of your job, as part of your learning process in
5 the field of astronomy and astrophysics?

6 MR. DENNY: Irrelevant and immaterial.

7 THE COURT: Overruled. You may answer.

8 THE WITNESS: Yes, it's very important for an astronomer --

9 MR. DENNY: Well, I'll object --

10 THE COURT: You've answered when you said "yes."

11 THE WITNESS: Right.

12 MR. KAY: Your Honor, I would submit that the doctor should
13 be able to describe the experiments and testify to them. They
14 were part of his foundation and his expertise, his testifying
15 to the amount of illumination cast from the moon.

16 MR. DENNY: Your Honor, may we approach the bench on this?

17 THE COURT: Is it something that any one of us could not
18 have done? Anyone of the jury or anyone here in the courtroom?

19 Well, let me hear what this experiment was. Will
20 you approach the bench?

21 MR. KAY: Sure.

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

25 THE COURT: Off the record.

26 (Whereupon, proceedings were had among Court and
27 counsel, which were not reported.)

28 THE COURT: All right. What was the experiment the doctor

2c-4

1 did?

2 MR. KAY: Okay. He performed several different exper-
3 iments. Number one, he determined that on the day before the
4 full moon, the day after the full moon, and the day of the full
5 moon, he could very easily read a newspaper by the light of the
6 full moon.

7 MR. DENNY: Now, that --

8 MR. KAY: Number two --

9 MR. DENNY: I'm sorry. Go ahead.

10 MR. KAY: Number two, he determined, on the day before,
11 the day of, and the day after the full moon, that he could drive
12 his car without using his headlights, without any difficulty,
13 in areas where there was absolutely no artificial illumination.

14 He could see the road signs and the street signs
15 and the stop signs without any artificial illumination at all.

16 He also -- the third part was that he determined on
17 the day before, the day of the full moon, and the day after the
18 full moon, that he could see and recognize people that he knew
19 at distances exceeding 100 feet.

20 Basically, those would be the three --

21 THE COURT: What impels you to say that this is something
22 which is a matter of expert opinion?

23 MR. KAY: Well, we are -- whereas the layman might be
24 able to perform these same experiments, a layman doesn't do
25 them. I mean, this is an expert who is doing this as part of
26 his profession and as part of his learning process, to do this,
27 to determine the amount of illumination cast from the moon.

28 Now, I --

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1 MR. DENNY: Well, your Honor, he has just testified that
2 these things, any of us could do. Therefore, it is not --

3 MR. KAY: Yeah, but --

4 MR. DENNY: Well, look at Section 801 of the Evidence
5 Code.

6 "Related to a subject that is sufficiently
7 beyond common experience that the opinion of an expert would
8 assist the trier of fact."

9 And that's based on the old case law, that expert
10 opinion means just that. It's something that a layman can't
11 do; that anybody can't do.

12 MR. KAY: Well, I think it is beyond common experience.

13 MR. DENNY: Anybody can go out and they can --

14 MR. KAY: Yeah. But has anybody done this? I mean,
15 do you think any one of those jurors has done that?

16 MR. DENNY: Yes.

17 MR. KAY: Do you?

18 MR. DENNY: Yes.

19 MR. KAY: I don't think so.

20 MR. DENNY: I think they've probably driven in the moon-
21 light without car lights. I have done it. I used to do it
22 out on the desert all the time.

23 THE COURT: Just a second.

24 (Pause in the proceedings while the Court perused
25 the Evidence Code.)
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1 THE COURT: Now, what do you think this means, 800,
2 if he is not testifying as an expert -- testifying as an
3 expert, his testimony in the form of an opinion -- in other
4 words it -- if he were to express an opinion about whether or
5 not he could see such things, give certain conditions of the
6 moon.

7 He's limited to such an opinion as is permitted
8 by the law. It says: including but not limited to an opinion
9 as rationally based on the perception of the witness and be
10 helpful to a clear understanding of his testimony.

11 Let me ask you this, included in this experiment,
12 were any -- were any angles of the moon considered?

13 MR. KAY: I'm sure they were.

14 THE COURT: I mean, was it 30 degrees and so forth?
15 That would require, I think, an expert to testify to.

16 MR. KAY: Yes.

17 MR. DENNY: Sure.

18 THE COURT: And I think that goes out of the realm
19 of lay abilities.

20 MR. DENNY: All right, your Honor, that goes out of
21 the realm of lay opinion, and he's then --

22 THE COURT: Lay abilities to testify.

23 MR. DENNY: All right.

24 Well, if it goes out of that, then, if he is
25 going to testify that he made identifications of persons,
26 then, if it is going to be relevant to this proceeding,
27 you've got to show that the tests were comparable. And I
28 would cite to the Court --

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1 THE COURT: Comparable to what?

2 MR. DENNY: Comparable to the conditions involved here.
3 Otherwise, it is irrelevant. Otherwise, it is irrelevant.

4 And I would cite to the Court --

5 THE COURT: Well, I think that's true.

6 MR. DENNY: Uh --

7 THE COURT: I don't think you need any citation for
8 that. There's no point, whatever, in setting up an experiment
9 and having anybody testify to it unless --

10 MR. DENNY: All right, that's essentially what --

11 THE COURT: Unless it is probative.

12 MR. DENNY: -- attempting to get in here an experiment
13 he did under noncomparable conditions and we haven't been
14 able to get in certain evidence that we sought that way
15 and we haven't been able to get a jury view because you
16 were not able to show they were comparable. So he should
17 not be able to get in testimony of an experiment that he
18 conducted if they can't show it was under comparable conditions.

19 THE COURT: What's your view with respect to 800, Mr.
20 Kay?

21 MR. KAY: Well, it seems that the witness has complied
22 with all these sections. It is obviously based on his own
23 rationale -- ration based on the perception of the witness.
24 I mean, he performed experiments. I don't think we have any
25 problem with Subsection (a), and I think it is helpful to
26 an understanding of his testimony. He's been testifying all
27 morning about the illumination of the moon and how it
28 appears to somebody here on earth and the different angles

1 of the moon. And I think that it would be very helpful to
2 a clear understanding of his testimony.

3 MR. DENNY: I think his testimony has been admirably
4 lucid up to this point. I don't think you have to have
5 further testimony to help the jury or anyone else understand
6 what he's testified to thus far. His testimony has been
7 clear and explicit.

8 But if he's going to get into testifying about
9 experiments, an experiment that anyone can do, then, he's
10 going to have to establish that those experiments were
11 conducted under the same conditions that prevail in this
12 case. Otherwise, it is irrelevant and its prejudicial
13 aspects certainly outweighs its probative value. It is as
14 if I were to go out on the ranch and attempt experiments or
15 testify to experiments that I have made out there, as to
16 whether I could see or not. And I could testify I couldn't
17 recognize people.

18 MR. KAY: I think certainly we can't determine what the
19 actual conditions were at Spahn Ranch.

20 MR. DENNY: Exactly.

21 MR. KAY: At the end of August, 1969, as your Honor
22 knows from the meteorologist that Mr. Denny called, I think
23 it would be unfair to have such a requirement since there's
24 absolutely no way --

25 THE COURT: Well, it would be unfair --

26 MR. DENNY: Unfair to comply with the law?

27 THE COURT: It would be unfair to present such an
28 opinion unless you knew.

1 All right, I'll sustain the objection.

2 MR. DENNY: Thank you.

3 MR. KAY: Thank you.

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

7 THE COURT: The Court will sustain the objection.

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DIRECT EXAMINATION (Continued)

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1 Q BY MR. KAY: We won't have to use your contacts,
2 Doctor.

3 Now, Doctor, do you have any knowledge of the
4 meteorological conditions in Chatsworth between August 26th,
5 1969 and August 30, 1969?

6 A No.

7 Q Doctor, does an observer here on earth have to
8 face in the precise direction in which the moon is situated in
9 the sky from the earth in order to gain the benefit of all
10 its illumination?

11 A No.

12 Q And during these dates that you've told us about:
13 August 26th through August 30 of 1969, at what location in the
14 sky was the moon, north, east, south, west?

15 A Depends on what time. Obviously, they rise
16 approximately east and go high in the sky over the south and
17 set in the west. So it is what time of the night you have to --

18 Q Well, say on August 26th, 27 and 28, when the moon
19 appeared to be full, between 30 degrees above the horizon to
20 when it fell to 30 degrees below the horizon?

21 MR. DENNY: I'll object to that as assuming facts not in
22 evidence, "when it appeared to be full."

23 MR. KAY: He's already testified --

24 MR. DENNY: He has testified by calculations it would
25 have been full if you could see it.

26 THE COURT: The objection is sustained.

27 Q BY MR. KAY: All right, by your calculations, when
28 you stated August 26th, August 27, August 28, that the moon

1 appeared to be full on those three nights, when it was between
2 30 degrees above the horizon, when it had risen to that point,
3 to when it fell to 30 degrees above the horizon, where would
4 the moon have been in the sky?

5 MR. DENNY: I'll object to the question again on the
6 same basis, it assumes facts not in evidence. This witness
7 has not stated it appeared to be full at any time. He stated
8 what his calculations showed what it would have been in the sky.

9 THE COURT: The objection is overruled. You may answer.

10 Do you understand the question?

11 THE WITNESS: Uh, yes, but I'll object to the question.

12 THE COURT: All right, if you don't --

13 THE WITNESS: The moon --

14 THE COURT: Excuse me. Wait a minute. I'll let you
15 restate it.

16 MR. KAY: I'm not sure what the objection is.

17 THE WITNESS: The moon is moving, for Pete's sake.

18 THE COURT: Just a minute, Doctor.

19 Go ahead and restate it.

20 Q BY MR. KAY: All right.

21 On those three days, August 26th, 27 and 28, by
22 your calculations, can you explain the different places in the
23 sky that it was when it was between 30 degrees above the
24 horizon to when it fell to 30 degrees below the horizon?

25 A Yes.

26 Q Would you do so?

27 A Yes.

28 Q Okay.

1 A At the highest point in the sky -- the moon
2 obviously rises somewhere around the East and give me a date
3 at a time, I'll tell you precisely how it rises -- and it sets
4 somewhere in the West.

5 At its highest point, it is in the South and on
6 the table, if I can refer to that, I have the maximum
7 altitude in degrees off the southern horizon listed.

8 In other words, on the night of the 26th, 27, at
9 the highest point in the sky the moon reached, it was 44
10 degrees above the southern horizon.

11 On the following night, it was a little bit higher
12 at its maximum altitude, namely, 50 degrees.

13 On the following night, the night of the 28th-29th,
14 it was still yet higher, at 57 degrees. And on the 29th-30th,
15 on that night it was up at 64 degrees.

16 MR. KAY: Thank you, Doctor, I have no further questions.

17 MR. DENNY: I have no questions at all. Thank you,
18 Doctor.

19 THE COURT: Thank you, Doctor,

20 MR. KAY: Would this be a good time for a recess, your
21 Honor?

22 THE COURT: Any time is a good time for a recess.

23 The Court will advise you not to converse amongst
24 yourselves, nor with anyone else, nor permit anyone to converse
25 with you on any subject connected with the matter, nor form
26 nor express any opinion on it until it is finally submitted to
27 you.

28 We'll be in recess until 11:00 o'clock, ladies and

1 gentlemen.

2 (Whereupon, the morning recess was taken, to
3 reconvene at 11:00 o'clock A. M. of the same day.)
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1 THE COURT: All the jurors are present. The defendant
2 is present with counsel.

3 MR. MANZELLA: The People's next witness is John Swartz,
4 your Honor.

5 THE COURT: Mr. Swartz.

6 THE CLERK: You do solemnly swear that the testimony
7 you may give in the cause now pending before this court shall
8 be the truth, the whole truth, and nothing but the truth,
9 so help you God?

10 THE WITNESS: I do.

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

12 Please state and spell your full name.

13 THE WITNESS: John Swartz, Jr., S-w-a-r-t-z.

14
15 JOHN SWARTZ, JR.,
16 called as a witness by and on behalf of the People, having
17 been first duly sworn, was examined and testified as
18 follows:

19
20 DIRECT EXAMINATION

21 BY MR. MANZELLA:

22 Q Mr. Swartz, did you know a man by the name of
23 Shorty Shea?

24 A Yes.

25 Q Is that how you knew him, by the nickname
26 Shorty?

27 A Yes.

28 Q And when had you first met Shorty?

3b-2

1 A 1963.

2 Q And where was it that you met him?

3 A At the Spahn Ranch.

4 Q Were you employed as a cowboy at the Spahn

5 Ranch?

6 A Yes.

7 Q Now, in -- how long did you work at Spahn Ranch?

8 A Off and on, since 1963.

9 Q Were you there in August of 1969?

10 A Yes.

11 Q And were you aware of a raid on Spahn Ranch made

12 in August 16, of 1969?

13 A Yes.

14 Q Were you arrested in that raid?

15 A Yes, I was.

16 Q And did you -- were you in custody for some hours

17 after the raid, after you were arrested in that raid?

18 A We were in custody two days.

19 Q And after you were released from custody, did

20 you see Shorty?

21 A Yes, I did.

22 Q And under -- what was the circumstances?

23 A We were released, I called the ranch to see if

24 there was any transportation back. He was the only one

25 there, so he came and got me.

26 Q And did Shorty drive you back to the ranch?

27 A Yes, he did.

28 Q Did he take anybody else back to the ranch?

3b-3

1 A Larry Craven and Larry Jones with us, also.
2 Q And those two had been in custody as well?
3 A Yes.
4 Q Now, after you returned -- strike that.
5 How long after your arrest did Shorty bring you
6 back to Spahn Ranch?
7 A Two days.
8 Q And did you begin -- were you living at Spahn
9 Ranch at that time?
10 A Yes.
11 Q And do you know where Shorty was living after
12 he got back to the ranch?
13 A Yes, I do.
14 Q Where was that?
15 A Staying in his car.
16 Q And where --
17 A In his car.
18 Q At the ranch?
19 A At the ranch.
20 Q Now, after you returned to the ranch, did you
21 see Shorty every day at the ranch during the last half of
22 August?
23 A No.
24 Q Did you see him for some period of time after
25 you -- after he brought you back to the ranch?
26 A It was three or four days.
27 Q And during that period of time, did you have
28 conversations with Shorty?

3b-4

1 A Yes.

2 Q Now, was there any conversation with Shorty
3 during that period of time after he brought you back to the
4 ranch in which he mentioned Frank Retz?

5 A Yes.

6 Q All right. Approximately how many days after
7 you came back to the ranch, after he brought you back to the
8 ranch did that conversation take place?

9 A Three days.

10 Q Was anyone else present other than you and
11 Shorty?

12 A No.

13 Q Where did the conversation take place, if you
14 recall?

15 A The conversation took place on the boardwalk in
16 front of the main row of buildings at the ranch.

17 Q Would you tell us what did Shorty say in that
18 conversation?

19 MR. DENNY: Object on the grounds of hearsay.

20 MR. MANZELLA: People offer it on Shorty's state of
21 mind, if it does show his state of mind, your Honor.

22 THE COURT: The objection is overruled. It is admitted
23 for that purpose.

24 MR. DENNY: Your Honor, I'm not sure "for that purpose,"
25 if it does show the state of mind.

26 MR. MANZELLA: I mean, it is up to the jury to determine
27 if it does show the state of mind, but that's what is being
28 offered.

1 THE COURT: If the jury so determines, then, it is
2 admissible to show state of mind.

3 Q BY MR. MANZELLA: Would you tell us what Shorty
4 said in that regard?

5 A In the conversation with Shorty, he told me that
6 Mr. Spahn had been trying to get him a job with Frank Retz
7 as a night watchman on the adjoining property and that he
8 was going to go see Frank that night.

9 Q Now --

10 THE COURT: That instruction might have been confusing
11 to you. It is not the statement, the statements of Mr. Shea
12 have not been admitted to prove the truth of what was uttered,
13 but to show his state of mind, if in your opinion, as jurors,
14 it does so show to explain Mr. Shea's conduct.

15 Q BY MR. MANZELLA: Now, sometime thereafter,
16 did you stop seeing Shorty at the ranch?

17 A Yes.

18 Q And do you recall the car in which Shorty picked
19 you up at -- and brought you back to the ranch?

20 A Yes, I did.

21 Q Was that Shorty's car?

22 A Yes.

23 Q Was that the car he began living out of when you
24 returned to the ranch?

25 A Yes, it is.

26 Q Well, what kind of car was it, do you recall?

27 A Mercury Comet, a white one.

28 Q Now, at some time after the conversation with

1 Shorty, some time after he got back to the ranch, did you
2 notice that the car wasn't on the ranch?

3 A Yes, I did, too -- after the conversation with
4 Shorty, it wasn't too long that I started missing him.

5 Q All right.

6 And do you recall when that was in relation to
7 the -- when you got out of jail, when Shorty brought you back
8 to Spahn Ranch?

9 Do you recall how much time passed before you
10 noticed that Shorty was gone and his car was gone?

11 A Well, it was about three, three days after we
12 got out, I guess, I had the conversation with him. And then,
13 after that, I don't really remember seeing him.

14 Q Now, after you noticed that Shorty was not at
15 the ranch any more and that his car was gone, did you have
16 a conversation with anyone? Did you make any inquiries to
17 anyone about where Shorty was?

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18 A Well, after a little time passed --
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1 MR. DENNY: Just a moment. I'll object to that answer
2 and move that it be stricken as not responsive. That's a yes
3 or no question.

4 THE COURT: Sustained.

5 Do you want to state the question again, please,
6 Mr. Manzella?

7 MR. MANZELLA: Yes, your Honor.

8 Q After you noticed that Shorty was gone and his car
9 was gone, did you have a conversation with anyone with regard
10 to Shorty's whereabouts?

11 A Yes.

12 Q And with whom did you have the conversation?

13 A Charlie.

14 Q And you are referring to Charles Manson?

15 A Yes.

16 Q And what did you ask Mr. Manson?

17 MR. DENNY: I'll object to that as calling for -- it's
18 irrelevant as to what he asked him. It would be hearsay as to
19 what any answer might be.

20 MR. MANZELLA: May we approach the bench for argument,
21 your Honor?

22 THE COURT: The objection is sustained.

23 MR. MANZELLA: May we approach the bench for argument?

24 THE COURT: Yes.

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

28 THE COURT: This is a conversation which is alleged to

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1 have taken place after Mr. Shea disappeared; correct?

2 MR. MANZELLA: Right. It's after this witness missed
3 Shea at the ranch.

4 THE COURT: Yes.

5 MR. MANZELLA: And he asked Manson if he had seen
6 Shorty, and Manson replied, yeah; that Manson had had a
7 friend in San Francisco who had a job for Shorty -- or, who
8 needed somebody -- and that Manson gave him, Shorty, a few
9 dollars, and Shorty left for San Francisco to take this job.

10 THE COURT: And the defendant was not present at the
11 time, or --

12 MR. MANZELLA: The defendant was not present at the time.
13 However, we are offering this as a -- under Section 1223 as a
14 statement of a co-conspirator, in furtherance of the
15 conspiracy.

16 And the case that I cite for the proposition is
17 People versus Tinnin. Now, the Court's already read that
18 case, in relation to -- that's T-i-n-n-i-n -- I don't have the
19 citation with me. It's been cited in the briefs that have
20 already been submitted to the Court with regard to the co-
21 conspirator's exception to the hearsay rule.

22 And it's the People's position that the
23 conspiracy in this case continued after the death of Shea, to
24 include the -- to include a conspiracy to conceal the body and
25 conceal the crime itself.

26 In the Tinnin case, the evidence of the co-
27 conspirators to make the death of the female victim, the
28 deceased in that case, the efforts to make her death look like

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1 an accident, an automobile accident, were held to be part of
2 the conspiracy; in other words, that the conspiracy continued
3 beyond her actual death, to include the -- include their
4 efforts to make her death look like an accident.

5 The People are submitting that in this case the
6 co-conspirators -- the conspiracy continued beyond the death of
7 Shea, to include the efforts to conceal this body, and to make
8 it look like no crime at all had occurred.

9 In other words, the burial of his body and the
10 attempts to make others believe that Shea had left Spahn Ranch
11 of his own free will, had gone to San Francisco.

12 Now, Manson, we are alleging, was an actual
13 participant in the murder of Shea; and that his part in the
14 conspiracy continued beyond that point, to include the hiding
15 of the body and attempts to divert attention from Shea's
16 disappearance by having people think that he had gone to
17 San Francisco, voluntarily.

18 THE COURT: I'll re-read the Tinnin case, but --

19 MR. MANZELLA: I'm sorry. I don't have the citation
20 with me.

21 THE COURT: I have it, I am sure. I have some notes on
22 it.

23 Before a statement of a co-conspirator is ad-
24 missible, there must be some evidence of the conspiracy
25 itself. How would you solve that?

26 MR. KAY: Ruby Pearl --

27 MR. MANZELLA: Well, first of all, I want to make the
28 distinction clear: We are not offering this as an admission.

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1 THE COURT: I understand that.

2 MR. MANZELLA: In other words, we are not offering it
3 for the truth of the matter contained in the statement. We
4 are offering --

5 THE COURT: Well, you're --

6 MR. MANZELLA: -- it as an act of a co-conspirator;
7 in other words, the attempt to divert attention from Shea's
8 disappearance, and --

9 THE COURT: Well, how would you distinguish that from
10 the cases that hold that acts of concealment of a -- of the
11 original conspiracy cannot, in effect, go on forever?

12 Conceivably, something that Manson said now,
13 if we were to follow your theory, --

14 MR. MANZELLA: Um-hmmm.

15 THE COURT: -- could be utilized against him -- against
16 the defendant, --

17 MR. MANZELLA: Well, the People --

18 THE COURT: -- because it's still an attempt -- could
19 possibly still be construed as a conspiracy to conceal.
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4a-1

1 MR. MANZELLA: Well, we are not attempting to offer
2 Manson's confession or Manson's admission of the killing of
3 Shea into evidence. We are offering a statement that he
4 made, that we are going to argue is not true.

5 In other words, I want to make that part clear,
6 that we are not offering it for the truth of the matter, as
7 a confession as to the --

8 THE COURT: You are offering it as a --

9 MR. MANZELLA: An act of a co-conspirator.

10 THE COURT: -- a substantive part of a conspiracy to
11 conceal?

12 MR. MANZELLA: That's correct.

13 Now, the reason we think it's not --

14 THE COURT: And you are saying because of its proximity
15 to Mr. Shea's disappearance and alleged death that -- that
16 the conspirators were still in the process of trying to
17 dispose of or conceal the body.

18 MR. MANZELLA: Yes, your Honor. I think the evidence
19 will show, if it doesn't show already, that Manson and most
20 of the members of the Family left the ranch within a day or
21 two after the death of Shea, and that -- so I don't think
22 that the act, this statement by Manson, is remote in time.

23 We are alleging that one of the reasons they
24 left the ranch, to go to this isolated part in the desert,
25 was to make it less likely that the police would finally
26 catch on that it was them that was committing -- that they
27 had committed the murders of Shea and Hinman.

28 The statement is by one of the persons who was

4a-2

1 involved in the actual killing, and not someone who was,
2 say, merely involved in the attempt to conceal the body.

3 THE COURT: Now, in that U. S. vs. Grunewald, and the
4 Krulewitch case -- that's K-r-u-l-e-w-i-t-c-h, I think --
5 those were fraud cases, wherein there were efforts at
6 concealment.

7 MR. MANZELLA: But --

8 THE COURT: And the Federal Courts found that the
9 conspiracy had ended before those efforts --

10 MR. MANZELLA: Well, in Grunewald -- I remember one of the
11 cases. I remember the fact situation in one of the cases.
12 I don't remember which one it was, but the defendant was in
13 custody at the time he made the statements. He was in
14 custody, under arrest for that -- for the offense -- and I
15 think it was a Mann Act offense.

16 He was in custody already at the time he made the
17 statements. He had already been detected and apprehended.
18 There was no detection. There wasn't even -- on the part of
19 the police, at least, there was no --

20 THE COURT: I don't recognize the factual situation,
21 but go ahead.

22 MR. KAY: On the other hand, you have Dutton vs. Evans.

23 THE COURT: The Dutton vs. Evans case was the Georgia
24 case, where the --

25 MR. KAY: Well, that --

26 THE COURT: -- Georgia cases had pretty well construed
27 a conspiracy as an on-going thing. The cases had gone much
28 farther than the California cases have gone.

1 MR. MANZELLA: But Tinnin has not been overruled,
2 and it hasn't been qualified in any way. And I think Tinnin
3 deals with the kind of situation that we have here, in that
4 it was a -- an attempt to -- not to escape from the scene of
5 a crime, or something that would be incident to any crime,
6 but an actual attempt to conceal the crime itself -- or, to
7 make what was a crime look like an accident, as it was
8 intended.

9 I mean, this was an active attempt on the part
10 of the killers, the conspirators --

11 THE COURT: I'll --

12 MR. MANZELLA: -- to do that.

13 THE COURT: I'll take a look at it. Certainly, there
14 was more here than -- if your theory is to be adopted --
15 than simply verbal efforts at misleading law enforcement
16 authorities.

17 In the Grunewald and Krulwitch cases, those
18 were income tax fraud cases, and it's difficult to compare the
19 two situations; but nevertheless, I think that the principle
20 of the law is still sound: That efforts at concealment of
21 a conspiracy must end at some time.

22 MR. MANZELLA: Oh, the People agree with that, your
23 Honor.

24 One thing I would like to say is that I agree
25 that the Georgia case --

26 THE COURT: In that case, I think --

27 MR. MANZELLA: -- went much further, because the
28 Georgia statute went much further.

1 But in our situation, the California cases don't
2 go that far. Neither does the statute.

3 THE COURT: All right.

4 MR. MANZELLA: However, the Tinnin case, it would seem,
5 does go that far.

6 And what Dutton vs. Evans does is tell us that
7 it's not unconstitutional to go that far.

4b fls.

4-b-1

1 THE COURT: All right. At the time of your opening
2 statement, the Court permitted you to proceed to make a
3 statement about what Charles Manson said about disposition of
4 the body with --

5 MR. KAY: On the day of the murder, to Barbara Hoyt.

6 THE COURT: -- to Barbara Hoyt, yes. And we argued
7 the question of whether or not -- argued at that time whether
8 or not 1223 would permit that to come in, or whether it should
9 be excluded.

10 And I think I asked both sides to present me with
11 any points and authorities that --

12 MR. MANZELLA: I have some points and authorities, as
13 the Court --

14 THE COURT: That you might discover.

15 MR. MANZELLA: -- if the Court would like them. They're
16 down in my office, and I can get them.

17 I have a copy for Mr. Denny, too.

18 THE COURT: Mr. Denny, have you worked up anything?

19 MR. DENNY: Your Honor, I haven't had time to work up a
20 brief. I have the points and authorities, but --

21 THE COURT: Well, you needn't work up a brief. That's
22 all right. The Court --

23 MR. DENNY: I have made copies of the Gruenwald case, the
24 Krulewitch case, the Lutwak -- that's L-u-t-w-a-k -- case; and
25 of course, the California cases that have followed, followed
26 those cases in -- specifically in People versus Smith.

27 THE COURT: Of course, in a robbery, you have a situation
28 where efforts to escape with the loot are --

1 MR. DENNY: That's still --

2 THE COURT: Efforts to get away, just to escape, can still
3 be construed as being part of the conspiracy.

4 MR. KAY: Sure.

5 MR. DENNY: Yes.

6 THE COURT: But in a murder case, I'm not sure that it
7 would be still an ongoing thing, once you have the objective
8 achieved -- that is, the death of the victim.

9 MR. KAY: Well, I think it would have to depend on the
10 facts of the case.

11 MR. MANZELLA: The People agree, generally, your Honor,
12 that a conspiracy doesn't --

13 THE COURT: Well, aren't you --

14 MR. MANZELLA: -- include what necessarily follows the
15 ordinary commission of a crime. But what we are suggesting
16 is that in this case, there were active efforts; there were
17 active efforts beyond the ordinary efforts of a killer to
18 leave the scene of a crime and to throw away the gun or some-
19 thing like that.

20 There were active efforts on the part of these
21 people to conceal the fact that a crime -- or, that a death
22 had occurred.

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

25 THE COURT: Ladies and gentlemen, the Court's going to
26 take a short time in chambers with these gentlemen, so -- and
27 you may step down, sir -- and we will be in recess.

28 Don't converse amongst yourselves nor with anyone

1 else about this case, nor form nor express any opinion on the
2 matter during the recess.

3 We will be in recess for perhaps ten minutes.
4 So, you can stay in the courtroom, move around, do whatever
5 you wish.

6 (Whereupon, the following proceedings were had at
7 the bench, outside the hearing of the jury:)

8 MR. MANZELLA: Your Honor, perhaps I can go down and get
9 my brief and bring it up.

10 THE COURT: All right. Run right up with it, will you?

11 MR. MANZELLA: Sure.

12 (Recess, following which proceedings were had
13 in chambers among Court and counsel, which were not reported,
14 following which an adjournment was taken until 1:30 P. M. of
15 the same day.)
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1 LOS ANGELES, CALIFORNIA, WEDNESDAY, FEBRUARY 2, 1972 2:35 PM
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4 (Whereupon, the following proceedings were
5 had in the chambers of the Court, out of the presence
6 and hearing of the jury:)

7 THE COURT: All right, the record will show we're in
8 chambers. We've consumed, oh, an hour or so arguing on
9 various matters, mostly involving the question of the
10 admissibility of the statement of the witness who is now
11 on the stand; and the purported statement that you wish to
12 offer again?

13 MR. MANZELLA: Is that Swartz asked Manson if he had
14 seen Shorty, and Manson said that Shorty had left and gone
15 to San Francisco.

16 THE COURT: The defendant, except for the last 20
17 minutes of this argument, was present in chambers. The last
18 half hour.

19 And you didn't wish to have the defendant present
20 in this last half hour?

21 MR. DENNY: That is correct, your Honor.

22 THE COURT: He didn't request to be present?

23 MR. DENNY: That is correct, your Honor.

24 THE COURT: Now, the Court has heard argument on the
25 law from both sides as to admissibility of this question.
26 The Court has read a number of citations concerning the point,
27 including rereading, in part, of the Grunewald and Krulewitch
28 case.

1 Do you need those citations?

2 The Krulewitch citation is Alvin Krulewitch,
3 K-r-u-l-e-w-i-t-c-h, 336 U. S. 440.

4 And Grunewald, G-r-u-n-e-w-a-l-d vs. United
5 States, 353 U. S. 391.

6 And the other case that we talked about at the
7 bench, I'll give you that citation, A. L. Dutton vs. Alex S.
8 Evans, 400 U. S. 74. The Court has read that. And the Court
9 has read the memorandum submitted by the People which the
10 Court will cause to be filed.

11 And the Court has read part of the cases, part
12 of each of the cases that have been cited therein, People
13 vs. Tinnin, People vs. Davis.

14 Let's hear the People's offer in respect to this
15 statement again. Why are you offering it and are you expect-
16 ing the Court, if it is received, to place any limitations on
17 it?

6 fls.

6-1
1 MR. MANZELLA: We are offering it under Section 1223 of
2 the Evidence Code, as the statement of co-conspirators, made
3 in furtherance and during the course of the conspiracy.

4 In this case, we are alleging that the concealment
5 of Shea's body and the attempt to conceal the fact that Shea
6 was dead, and on Spahn Ranch, was part of the conspiracy in
7 which Manson, Davis, Watson and Grogan had joined.

8 THE COURT: Very briefly, do you want to give me, for
9 the record, your argument?

10 MR. MANZELLA: I don't really need it for the record,
11 your Honor. I think under the cases, Tinnin and the cases that
12 I have cited in the brief to the Court, that we have established
13 sufficient evidence to support the jury's finding, if it was
14 to so find, that this conspiracy was in existence at the time,
15 and that Manson's statement that Shea had gone to San
16 Francisco was part of that conspiracy; and that Davis was a
17 part of that conspiracy; and that therefore, the statement is
18 admissible.

19 Furthermore, we are not offering it for the truth
20 of the matter asserted, but we are offering it to show that
21 the statement was made as an act of a co-conspirator.

22 THE COURT: Do you think, therefore, in view of the
23 fact that it's offered as an act toward the furtherance of
24 the conspiracy, that Grunewald and Krulewitch do not apply?
25 And you have argued to me here, in the course of this
26 session, that they would not in your opinion apply to -- at
27 any rate?

28 MR. MANZELLA: Yes, your Honor, because the language in

1 Dutton versus Evans, that -- of the Supreme Court itself,
2 who decided Grunewald and Krulwitch, that those cases were
3 not a product of the Sixth Amendment, the hearsay rule; but
4 rather, were a product of the Court's disfavor with federal
5 prosecutions for conspiracy, rather than for the underlying
6 substantive offenses.

7 And in this case, of course, we are not
8 prosecuting Bruce Davis for conspiracy, but for the murder
9 itself; and that therefore, Grunewald and Krulwitch would not
10 apply in a state prosecution, for a substantive offense,
11 because they're the products of the Court's disfavor with
12 conspiracy prosecutions, not with prosecutions for sub-
13 stantive offenses.

14 THE COURT: All right. Mr. Denny? Do you have any
15 further comment?

16 You had set out for the Court, when you were
17 arguing, the case of People versus Smith, 63 Cal 2d. And you
18 and Mr. Manzella were arguing that case, and you put forth
19 certain argument which was rather appealing to the Court, and
20 we had been discussing that. People versus Smith, 63 Cal 2d
21 779.

22 MR. DENNY: Well, my point is several-fold, your Honor.
23 First of all, although I am unable to cite the case -- it
24 comes to my mind as People versus Harmon; why that citation,
25 I don't know -- it's one citation I just left out of my note-
26 book here, because I did not think it would be relevant.

27 It is obviously relevant, when we are talking
28 about the Dutton versus Evans case and the Court's disfavor

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1 with it. The Court's -- the reference was there made by the
2 Court of Appeal -- it was not a Supreme Court, but by the
3 Court of Appeal -- that the California courts do look with
4 disfavor on the use of conspiracy charges to attempt to make
5 the substantive count, and the dual filing of conspiracy and
6 the substantive chart.

7 And I -- I will represent to the Court that
8 that language is in the cases, the Court of Appeal case, and
9 I think has been cited other times thereafter. It's not that
10 old a case; it's a 1960-some odd case, I believe.

11 At any rate, my point is: Under People versus
12 Lynd, 131 Cal Ap, and other cases following, that you cannot
13 establish a conspiracy by -- I think I can get the --

14 THE COURT: I have it.

15 MR. DENNY: You cannot establish a conspiracy by the
16 act or declaration of an alleged co-conspirator; that it must
17 be -- and citing specifically in Witkin, Evidence, Page 493 --
18 "Existence of a conspiracy cannot be proved by declarations of
19 an alleged co-conspirator out of the presence of the others."
20 And citing People versus Lynd, 131 Cal Ap 12 at Page 19.
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1 Until you have independent evidence of the
2 particular conspiracy -- in this case, the People allege they
3 have independent evidence of a conspiracy to commit murder,
4 which as yet I do not concede -- but assuming for the sake
5 of argument that they --

6 THE COURT: Yes.

7 MR. DENNY: --feel they have established such, --

8 THE COURT: Yes.

9 We have been assuming that the People will be
10 able, according to their opening statement, to prove that
11 there was a homicide here by criminal means.

12 Go ahead.

13 MR. DENNY: All right. Then, up to this point -- and
14 from their offer of proof, it does not appear that they will
15 be able to, in any other later time, under the Court's
16 discretionary powers under 1223, to admit it subject to being
17 connected up -- they have not yet -- and as I say, will not
18 be able to establish by any independent evidence, other than
19 the statement of Manson -- which, in itself does not estab-
20 lish a conspiracy, but merely an independent act of his --
21 they have not in any way, and will not be able to establish
22 the conspiracy which they are at this point apparently alleg-
23 ing; namely: not only a conspiracy to murder Shorty Shea,
24 but as part of -- part and parcel of that one conspiracy,
25 the total conspiracy, to murder and hide the murder of
26 Shorty Shea.

27 And I submit that without some independent
28 evidence of that, they cannot create that second conspiracy,

6a-2

1 or that -- as they would have it -- continuing conspiracy,
2 by the statement of Manson;

3 That under the case law, particularly the
4 Grunewald and the -- the Lutwak and the other case -- I've
5 forgotten the citation now, the U. S. Supreme Court case --
6 which have expressed Federal policy, under the Federal Rules
7 of Criminal Procedure, which rules are consistent with and
8 have been interpreted the same under California State law,
9 that they cannot get this in because there is no conspiracy
10 shown, other than perhaps if they can show that -- a second
11 conspiracy to conceal.

12 And even there, all they have -- and apparently
13 all they will show -- are statements by Manson. And I guess
14 if they're going to try to get Juan Flynn's testimony in,
15 that Clem Grogan said, on a trip of some sort, to say that
16 Shorty was in San Francisco, they may have a conspiracy
17 between Manson and Grogan.

7 fls.

7-1

1 MR. KAY: Don't forget Davis' reaction to Grogan.
2 That's the important thing. He agreed with it when Grogan
3 said to Juan Flynn, "If anyone asks you about Shorty, tell
4 them that he went to San Francisco." At which point Davis
5 said, "Yeah, yeah."

6 THE COURT: Go ahead, Mr. Denny.

7 MR. DENNY: You may have evidence of a second conspiracy
8 to conceal, but separate and apart from those statements, and
9 assuming you get the Juan Flynn statement in, that would be
10 binding on Davis not by virtue of the fact that it was said
11 in the course and scope of the conspiracy, but under the
12 Osuna doctrine as an adoptive admission. So let's
13 leave that out for a minute. Here, we're in a class where
14 there is no adoptive admissions and we're seeking solely
15 by virtue of the conspiracy doctrine that there is nothing
16 other than the statement itself. And that statement itself
17 does not show a conspiracy. So there's no independent
18 evidence of the conspiracy. Manson's statement doesn't
19 even show a conspiracy.

20 If Manson were to say, for instance, "Well, all
21 of us have agreed that Shorty's up in San Francisco," or
22 something like that, that might show some sort of concerted
23 effort. But thus far, even by the statement itself, it
24 only shows one person's statement. And the mere fact you're
25 going to say, well, this is not a statement -- we're not
26 offering it for the truth of the statement, we're offering
27 it simply as a verbal act or an act, it is clear the purpose
28 for which they're offering it and it is still, under the Lynd

7-2

1 case, and under the citation I've given here, which is just
2 a quote, essentially, from the Lynd case in Witkin, an
3 attempt to establish that conspiracy by the statement.

4 THE COURT: People.

5 MR. DENNY: And I would like to make just one more
6 observation, your Honor.

7 THE COURT: All right, very quickly.

8 MR. DENNY: This is a key determinative point in this
9 case as far as the defendant is concerned.

10 MR. KAY: As far as the People are concerned, too.

11 MR. DENNY: It may be as far as the People are
12 concerned, but the ruling of the Court here is critical.

13 MR. KAY: Agreed.

14 MR. DENNY: And I think thus far, and we have gone now
15 some two months in this case, plus the amount of time before
16 that, over a year in this case, that this is a place where
17 I think the Court itself has expressed, and quite properly
18 so, reservations about the admissibility of this evidence,
19 reservations about the fact whether the People have really
20 shown any kind of continuing conspiracy by independent
21 evidence. All sort of reservations which the Court should
22 show. And I think in an area of this kind where the damage
23 that can be done to the defense is obviously going to be of
24 great magnitude, so that if error is committed, it will be
25 reversible error, that this Court should, where those
26 reservations have been expressed by the Court, certainly
27 tend to, if there's going to be error here, error on the
28 side that there will not be a reversal on clearly reversible

1 error, if that error is committed by admitting the evidence.
2 Where it is so finely balanced. And I don't think it is
3 that finely balanced. I think just clearly evidence should
4 be inadmissible. But even where the Court, then, may not
5 go that far, but feels that it is finely balanced, that
6 to create error at this point is, I think, going to be a
7 very, very -- well, bad thing, and leave it at that.

8 MR. KAY: Of course, if we don't get evidence like
9 this in, we might not get a conviction and the People don't
10 have any tribunal to appeal to.

11 THE COURT: I don't think that's a proper argument
12 or relevant.

13 MR. MANZELLA: All right, I agree.

14 Your Honor, briefly, Mr. Denny has stated a
15 statement of a co-conspirator cannot be used to prove the
16 existence of a conspiracy. The statement he's referring to,
17 however, is the statement which admits the existence of a
18 conspiracy.

19 MR. DENNY: No, any statement, any statement. It is
20 not just an admission. It is any statement made in the
21 course and scope of the conspiracy. That's under 1223.

22 THE COURT: That can't possibly be true.

23 MR. MANZELLA: That can't possibly be true.

24 THE COURT: Because some statements made in the
25 course of, say, fraud, fraud cases, are part of the --

26 MR. MANZELLA: Conspiracy itself.

27 THE COURT: -- conspiracy itself.

28 MR. MANZELLA: Exactly. The statement cannot be

1 admitted until the conspiracy has been proved. This is a
2 statement which admits the existence of a conspiracy.

3 In other words, it is, in a sense, an admission
4 against the co-conspirator making the statement. That's
5 the kind of statement that must be excluded until there's
6 independent proof of the conspiracy.

7 What I have been saying all along, that this
8 statement of Manson's is not being offered for the truth
9 of the matter asserted in the statement. That under Dutton
10 vs. Evans there is, because of that no hearsay problem, and
11 that statement is itself a part of the conspiracy, that's
12 why I referred to it as an act instead of a statement.
13 That statement itself is part of the conspiracy.

7a fls.

7a-1

1 There is no way one can prove the conspiracy with-
2 out proving the acts of a conspiracy. This is not a statement
3 again by Manson -- and Mr. Denny made the suggestion that I'm
4 not sure if he was saying this -- that it might somehow be
5 admissible if Manson had said to Swartz, "We have all agreed,
6 Davis, Watson, Grogan, have agreed if anybody asked about
7 Shorty, he is in San Francisco."

8 It is my opinion that statement would not be
9 admissible because that's not a statement of a conspiracy.
10 That's an admission which cannot be admitted until there's
11 independent evidence of a conspiracy. That kind of statement
12 is the kind of statement that is being talked about when I say
13 you must prove the conspiracy independently of that kind of
14 statement.

15 We're not using Manson's statement to prove, as
16 an admission, that there was a conspiracy, but as an act of the
17 conspiracy itself. That's what we're using Manson's statement
18 for. We're not offering it for the truth thereof.

19 All right, the reliance on Gruenwald and Krulewitch
20 is not, I don't think, well taken because of the language I
21 read from Dutton versus Evans.

22 Now, Mr. Denny cites a case, and he doesn't
23 have the citation for it and I don't know the case, so we
24 can't read the case. It is not an expression of opinion by the
25 California Supreme Court. And Mr. Denny was wrong about the
26 facts of the Krulewitch case and he was wrong about my reading
27 of the Smith case. And I don't think he's read about the
28 reading of this case with regard to how the California courts

7a-2

1 look at this rule. Even if they agree with the U. S.
2 Supreme Court that they don't like conspiracy prosecutions,
3 we don't have that here. We're not trying to get Davis for
4 conspiracy because we can't get him for murder.

5 MR. DENNY: You're trying to get in evidence by
6 virtue of conspiracy that you can't otherwise.

7 MR. MANZELLA: What we are trying to do is prosecute
8 him for murder. We're not prosecuting him for the sub-
9 stantive offense of conspiracy in the Shea case. So the
10 Grunewald and Krulewitch cases don't apply.

11 And the best support of that interpretation is the
12 language I read from Dutton versus Evans, where the court,
13 although they agreed the membership is changed, but the court
14 decided Krulewitch and Grunewald are saying they didn't base
15 those decisions on the Sixth Amendment or hearsay rule but,
16 rather, on the -- their disfavor with federal -- and they use
17 that term "federal" conspiracy prosecutions.

18 Now, there's one thing I thought Dutton versus
19 Evans says, the hearsay rule is not of constitutional
20 dimension, and that's the objection to this testimony. It is
21 hearsay and we're saying under 1223 it comes in as an
22 exception to the hearsay rule. And what Dutton says, the
23 hearsay rule is not of constitutional dimensions and they
24 leave that. They say the right of confrontation is, but that
25 the hearsay rule is not --

26 THE COURT: Yes, they state as long as the declarant
27 is -- strike that -- as long as the person is available for
28 cross examination, who overheard the statement, and there's

7a-3

1 no such objection constitutionally.

2 Excuse me a minute.

3 (Whereupon, there was a pause in the proceedings.)

4 MR. DENNY: Your Honor, may I make one observation dur-
5 ing this pause.

6 THE COURT: I'll give you a shot at it in just a
7 moment.

8 MR. DENNY: All right.

9 MR. MANZELLA: Finally, what I wanted to say was that
10 in -- I don't think that just the Smith case has to be cited
11 for the proposition. The final question of whether or not
12 something is in the furtherance of the conspiracy is up to the
13 jury.

14 What I am saying is, that Davis's prior association,
15 his many months of association with the Family, his participa-
16 tion in welding dune buggies -- in other words, in the broad
17 sense, assisting Manson and the Family in getting ready to
18 move, and his participation in the murder of Shea;

19 The fact that the evidence we have so far that
20 while Vance and DeCarlo disobeyed Manson, that Davis has not
21 been mentioned as one that disobeyed Manson;

22 That all of these things put together supply the
23 evidence from which a jury could find that this statement was
24 made in the furtherance of the conspiracy and that Davis was
25 part of that conspiracy. That the jury could so find even if
26 another interpretation was reasonable. That the jury could
27 find from this evidence that my interpretation is reasonable
28 and that, therefore, the Court, with the limiting instruction,
29 should allow the evidence in.

7b fol

7b-1

1 THE COURT: And your suggestion is, in respect to the
2 limiting instruction, is that it be what?

3 MR. MANZELLA: That the jury be instructed that the
4 testimony is not being offered for the truth -- that Manson's
5 statement is not being offered for the truth of the matter.
6 That the statement is admitted, that the jury may consider
7 the statement only if they find at the time the statement
8 was made a conspiracy to conceal the death of Shea -- well,
9 you can't say it that way, but there was a conspiracy to
10 conceal the fact that a crime had been committed and that
11 this statement was made in furtherance of that conspiracy.
12 And that Davis was a part of that conspiracy at the time
13 the statement was made.

14 THE COURT: I'll let you reply, Mr. Denny.

15 MR. DENNY: Your Honor, again, I will state that I
16 have sought from the beginning of this, perhaps not from
17 the beginning of this case, but at least from the time I
18 filed the motion to require the People to charge what
19 conspiracy they were talking about, I sought to get them
20 to charge what conspiracy.

21 Now, all of a sudden, at this juncture of the
22 case, they say we're not charging a conspiracy simply to
23 murder or we're not relying on a conspiracy to murder,
24 which would seem to have been any conspiracy under which
25 they had yet gotten in evidence, they're saying no, now,
26 we are charging not only a conspiracy to murder, but a
27 conspiracy to murder and to conceal and to hide. And that
28 is an unusual thing. This is not the normal type of thing

7b-2

1 that happens in a murder. So that they are not saying,
2 look, in any murder where there are multiple defendants
3 it is normal, reasonable, like in any robbery where there is
4 a conspiracy to commit robbery or any burglary that there is
5 a continuing conspiracy until the spoils are divided or
6 whatever, but they're saying that, no, we admit in the normal
7 case where there is a conspiracy to murder it stops at the
8 time of the murder. Look at the Hinman murder, look at the
9 Tate murders, look at the La Bianca murders. They're saying
10 here, look, because we can't find a body, they're saying in
11 that case there must have been. You can just sort of grab
12 it out of the sky, because we can't find the body, there must
13 have been a conspiracy to conceal. And, thus, in this
14 particular murder, because we want to get some evidence in
15 now of statements made after we allege the murder was
16 committed, we are going to say that, yeah, here there was a
17 conspiracy to conceal as part of the original conspiracy
18 and although we don't have any independent proof of it, this
19 is what we're charging and this is what the jury could so
20 find if they wanted to and if we can get this evidence in.

8 fls.

8-1

1 Now, the jury -- well, let me step back. I
2 submit that it's a denial of due process, a denial of equal
3 protection, a denial of notice at this point, a denial of the
4 Sixth Amendment right to effective counsel for them to come
5 up at this point and allege this new type of conspiracy here,
6 in order for them to get in evidence.

7 Furthermore, I would like to talk to the point
8 that they're seeking not to introduce this by way of an
9 admission. In the Miranda case, the Miranda case made it very
10 clear that it doesn't matter if a statement is one of
11 admission or one that's exculpatory. If the People are going
12 to use it, they're going to use it for one purpose and one
13 purpose only; and that is: To try to convict a guy; because
14 it hurts him.

15 Now, it may hurt him because he admitted some-
16 thing; it may hurt him because he's saying something that was
17 untrue at the time, and that they can show now by the rest of
18 their testimony was untrue; it may hurt him because he's
19 testifying to something different now than he said then.

20 But whatever it is, whether it's incriminatory
21 or exculpatory, they're not going to let the People use it
22 under the Miranda circumstances.

23 So -- now, Mr. Manzella says, "Well, we are not
24 using it for the truth of the matter asserted. In fact, we are
25 attempting to show that it wasn't true at all, but merely for
26 the fact that it was said."

27 The effect is the same. The People are trying to
28 get in this statement by a single person, to bind Bruce Davis

1 to what they contend was this highly unusual -- and which they
2 have to admit -- highly unusual continuing conspiracy.

3 And I submit that, other than that statement, they
4 don't have any independent proof of it as they should have; and
5 that for all the other reasons that I have given, that the
6 Court should not permit it.

7 THE COURT: Well, the Court is aware of the established
8 rule that admitting statements in furtherance of the objective
9 of a conspiracy, under 1223, shouldn't be expanded to make
10 admissible any declarations made in the course of an uncharged
11 conspiracy to prevent detection or punishment.

12 But in spite of that rule -- which is most strongly
13 put by Krulewitch and -- by the Krulewitch and the Grunewald
14 cases -- these citations that have been presented to me by the
15 People are persuasive.

16 There's no doubt that the cover-up activities can
17 be part of a conspiracy to commit those crimes; and that the
18 rules are clear in California with regard to that.

19 MR. DENNY: Your Honor, I'm sorry to interrupt the Court.
20 I have not cited to the Court one case, and it is a key case
21 in California.

22 THE COURT: All right.

23 MR. DENNY: I'm sorry to do it at this point. And that
24 is Davis versus Superior Court, 175 Cal Ap 2d.

25 MR. KAY: You cited that, didn't you, Tony?

26 MR. MANZELLA: No.

27 THE COURT: 175?

28 MR. DENNY: Cal Ap 2d, Page 8. And if I may just run it

1 down briefly? I don't want to take too much of the Court's
2 time, but it is a key case.

3 This was the case in which George Davis was charged
4 with having conspired with Caryl Chessman and with a publishing
5 company to smuggle Chessman's book out of San Quentin.

6 And they used -- they attempted to use the book;
7 they attempted to use certain correspondence; they attempted
8 to use a forward and a post logue or something in the book --
9 all of which were statements by the publisher or by George
10 Davis or whatever -- to show that he was guilty of the
11 conspiracy.

12 Now, this was on a writ of prohibition that was
13 taken up after -- I'm not sure whether it was a preliminary
14 hearing or an indictment; possibly an indictment had been
15 returned on it -- so that it was just a question of a matter
16 of law at this point.

17 And they said: "All of these things that you are
18 trying to get in --" and they sought to show the fact that
19 Davis was, of course, associated with Chessman; and they bring
20 out the fact that mere association is not evidence; that the
21 post logue in the book, you can't use as hearsay, unless you
22 establish independently the evidence of the conspiracy. There
23 must be some independent evidence of the conspiracy.

8a fol

8a-1

And it says:

"Considering, first, the correspondence and the 'afterward' these are hearsay statements not admissible against Davis in the absence of independent proof tending to establish the conspiracy."

And they cite Taylor vs. Bernheim, B-e-r-n-h-e-i-m.

"The fact of conspiracy cannot be proved by evidence of extrajudicial declarations of an alleged co-conspirator. Only after and upon the proof of the conspiracy itself can such declarations be admitted. Indeed, the very danger of admitting such hearsay testimony is that it might be accepted by the jury as proof of the existence of the conspiracy itself.

"The absence of independent evidence of the conspiracy in the instant case cannot be overcome by the device of introduction of alleged hearsay statements of co-conspirators, because conspiracy cannot be built upon imposed vicarious responsibility for other persons' declarations to whom a defendant has not been related by some showing of common action."

And then they go on here:

"The third fact upon which the prosecution relies as proof of petitioner's participation in the conspiracy rested in certain statements in the book itself. While the language on page 22 of the book could conceivably be

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1 "interpreted to indicate that Davis planned
2 with Chessman wrongfully to withdraw the manu-
3 script in disregard of the warden's prohibition
4 of Chessman's writing, the text likewise may be
5 read to mean that Davis contemplated a legal
6 procedure to test the legality of the warden's
7 order. We need not resolve the ambiguity because
8 the book, too, is hearsay which cannot be used
9 to prove the existence of the conspiracy itself."

10 THE COURT: I think that your point -- is that your
11 main point in connection with it? That there must be
12 independent proof of a conspiracy?

13 MR. DENNY: That's right. And here, they were alleg-
14 ing several conspiracies.

15 If the Court would look at the book, which --

16 MR. MANZELLA: Can I just make a couple of brief
17 statements about the case? I just had a chance to read it
18 as Mr. Denny was talking. What Mr. Denny left out was the
19 fact that these were offered as admissions by the co-
20 conspirators of the conspiracy. And this is exactly the
21 point I was making.

22 There's a distinction between using the co-
23 conspirator's admission that a conspiracy existed, and
24 using an act of a co-conspirator which is not being offered
25 for the truth of the matter asserted.

26 And I think that distinction is clear in this
27 case. These were statements of admissions of the existence
28 of a conspiracy, not acts of co-conspirators.

8a-3

1 MR. DENNY: But again, in -- well, if the Court wants
2 to read it, then I won't --

3 THE COURT: Yes. What were you saying, Mr. Denny?

4 MR. DENNY: Again, there was this thing from the
5 book itself that I read -- page 22 of the book -- which is
6 possibly indicative of conspiracy; possibly not. And they
7 say: "You can't look to that --" and this was by Davis
8 himself, supposedly -- "You can't look to that. You can't
9 look to those things, until that conspiracy is independently
10 shown."

11 Your Honor, in this case, if I may, again, if --
12 well, let's take -- here, I've got it!

13 Let's suppose Johnny Swartz says, "I saw Manson
14 cutting up (indicating) and burying Shorty Shea."

15 Now, this is just as if Manson had made a
16 statement, a verbal act. Here he sees the act itself.

17 "I saw him cutting him up and burying him."

18 Is that admissible against Bruce Davis?

19 MR. MANZELLA: (Laughing) Not admissible, to show
20 that Shea's dead?

21 MR. DENNY: Is that admissible against Bruce Davis,
22 as part of a conspiracy?

23 MR. MANZELLA: How about as part of a murder?

24 MR. DENNY: All right. But it wouldn't -- it wouldn't
25 be under the conspiracy doctrine.

26 MR. MANZELLA: How about part of a murder? We couldn't
27 show that Swartz saw Shea's body being cut up and buried?
28

8b fls.

8b-k

1 MR. DENNY: If you saw that -- if you saw that and you --

2 MR. MANZELLA: We'd still be trying a "no body" case --

3 MR. DENNY: No, no indeed.

4 MR. MANZELLA: -- because Davis wasn't there at the time
5 Shea was cut up.

6 THE COURT: Let him finish.

7 MR. DENNY: All right. This is exactly what they're
8 doing. This is an independent act now, done after the
9 conspiracy.

10 Now, if you are trying to get that evidence in,
11 under the conspiracy doctrine, you don't get it in under the
12 conspiracy doctrine. This is an act of Manson, and you -- there
13 is nothing up to this point to show that it was anybody's idea
14 to cut up that body and bury it.

15 Manson is doing this himself. Now, suppose there
16 were an additional --

17 THE COURT: Well, is the inference there --

18 MR. DENNY: -- an additional penalty, an additional
19 penalty for cutting up and burying bodies.

20 THE COURT: Well, there probably is, somewhere in the --

21 MR. DENNY: In the Great Beyond.

22 THE COURT: No, probably right in one of the California
23 codes.

24 MR. DENNY: Well, there probably is. Desecrating a
25 Corpse or something.

26 MR. KAY: Sure.

27 THE COURT: Well, probably some sort of a -- if we were
28 to look at it, it probably is a misdemeanor to do something like

1 that, --

2 MR. DENNY: All right.

3 THE COURT: -- to dispose of a body without following
4 the sections of the Health and Safety Code.

5 MR. DENNY: All right. Let's say that under the Health
6 and Safety Code, there's a separate offense of cutting up
7 bodies.

8 Could the People, by virtue of having evidence that
9 they saw Manson cutting up this body, convict Bruce Davis of
10 that?

11 No. Because they don't have any independent
12 proof that Bruce Davis conspired with or agreed with Charlie
13 Manson to cut up that body.

14 If Manson did it, he did it on his own hook -- or,
15 that's all the evidence they've got. They have just that act.

16 And it's no different than a verbal act of Charlie
17 Manson alone.

18 Unless they have some other evidence that there was
19 a conspiracy, they could not convict Bruce of a Health and
20 Safety Code violation, an additional offense.

21 He cannot be bound by Manson's act of cutting up
22 that body. No more can he be bound by Manson's statement,
23 without some other independent evidence to show that that was
24 part of the conspiracy.

25 THE COURT: And Mr. Manzella, the People contend that the
26 evidence they have produced -- or will produce -- that evidence,
27 together, is sufficient to establish that disposition of the
28 body was part of the conspiracy?

1 MR. MANZELLA: Exactly. Yes, your Honor.

2 THE COURT: What things do you point to?

3 MR. MANZELLA: I've already named some of them for the
4 Court:

5 Davis's many months of association with Manson;

6 His participation in the Manson plan to gather
7 together money and supplies and getting the dune buggies to-
8 gether to go to the desert;

9 His -- the evidence of his participation in the
10 Shea murder itself; and that includes -- well, actually, that
11 is the broad -- the broad encompassing category: The evidence
12 of his participation in the murder itself.

13 THE COURT: In other words, if Ruby Pearl were to be
14 believed, that he was one of those who approached Manson, or --

15 MR. KAY: Shea.

16 MR. MANZELLA: Shea.

17 THE COURT: -- Shea, on the night before Shea
18 disappeared --

19 MR. MANZELLA: Right. That's one piece of evidence that
20 comes in that category.

21 Further, he made statements to -- to -- I believe he
22 made statements to Flynn; and he made statements to Watkins
23 about disposing of the body.

24 And Watkins -- didn't he say to Watkins that the
25 body was buried at the ranch?

26 MR. KAY: It was either Watkins or Springer.

27 MR. MANZELLA: He said something to Watkins, I'm sure.

28 THE COURT: Well, now, that --

1 MR. MANZELLA: And --

2 THE COURT: -- doesn't come in as part of the
3 conspiracy. That's not --

4 MR. MANZELLA: No. I'm talking about the evidence, the
5 circumstantial evidence that concealment was part of the
6 conspiracy. That's what I am talking about.

7 MR. DENNY: That's not circumstantial evidence. That's
8 an admission made of --

9 MR. KAY: Well, an admission's circumstantial evidence.

10 MR. MANZELLA: That's circumstantial evidence.

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11 MR. DENNY: Well, I --

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1 THE COURT: The Court believes that it would be
2 admissible under the theory that you have presented to me.

3 The Court believes that since cover-up activities
4 can be part of a conspiracy to commit the crime, that under the
5 cases, the cases cited, that -- the Genser case, 250 Cal Ap
6 2d 351, and the Tinnin case, 136 Cal Ap, and other cases which
7 you've argued to me -- that this would be a matter for the jury.

8 The Court finds that there is sufficient evidence
9 in the record at this time to warrant the presentation to the
10 jury of this evidence, with the admonition that has been
11 suggested.

12 MR. DENNY: Well, your Honor, may I just offer this one
13 further objection? And that is --

14 THE COURT: We have been arguing this now for --

15 MR. DENNY: I understand that. But I want to -- I
16 certainly hope to protect the record in this case, because I
17 think the Court is committing grave prejudicial error here.

18 And that is that there is not sufficient evidence
19 thus far in the record to establish a prima facie case yet of
20 either murder or conspiracy to commit murder.

21 THE COURT: Well, since --

22 MR. DENNY: And there's no corpus delicti yet
23 established.

24 THE COURT: We have said somewhere along the line here --
25 and I hope that it's clear in the record -- that the Court is
26 assuming that, for the purpose of this argument, we have been --
27 all of us have been assuming --

28 MR. DENNY: I have not been assuming it, your Honor.

1 THE COURT: Well, the Court is assuming that the People
2 will be able to establish that there is a -- there has been a
3 homicide committed; and that it was committed by criminal
4 means.

5 MR. DENNY: Well, your Honor, I think at this point, with
6 this testimony, as dangerous as it is, that until the People
7 do that, under 1223, if the Court's admitting it under 1223,
8 that the Court should not allow this to be admitted at this
9 time.

10 Because when it's once in, you're never going to
11 unring this bell, no matter what the Court does. So that it
12 should not --

13 THE COURT: Well, if --

14 MR. DENNY: -- should not be admitted until the People
15 have established the corpus delicti. And as yet, I don't
16 believe they have established the corpus delicti of murder, --

17 THE COURT: Well, haven't they --

18 MR. DENNY: -- nor have they established the corpus
19 delicti of conspiracy to commit murder.

20 MR. MANZELLA: I might point out that there's only one
21 witness left to testify strictly on the corpus. And when that
22 witness testifies, there will have been all of the witnesses
23 who testified to the satisfaction of the jury in both the
24 Grogan case and the Manson case.

25 MR. DENNY: Well --

26 MR. MANZELLA: Which is some indication that we have
27 come pretty close to establishing the corpus, if we haven't
28 already done so.

1 MR. DENNY: It's no indication to me.

2 THE COURT: No, it's no indication to me. It's different
3 defense counsel and different issues. The trial of this case
4 has gone considerably different than the Manson case.

5 MR. DENNY: And your Honor, I --

6 THE COURT: But I am making an assumption, for the
7 purpose of admitting -- and altering the order of proof, as I
8 have a right to do under Section 1223 --

9 MR. DENNY: Well, your Honor, I -- with all due respect,
10 I don't know where Mr. -- what's the name of this witness?

11 THE COURT: Swartz.

12 MR. KAY: Swartz.

13 MR. DENNY: Swartz. -- where Mr. Swartz comes from, from
14 what distance he comes. Barbara Hoyt does not come all that
15 great a distance.

16 But I submit that at this point, the Court should
17 not alter the order of proof, because -- unless this Court is
18 going to make a finding now, over my objection, that the corpus
19 delicti has been established.

20 THE COURT: Well, if the corpus delicti is not established --

21 MR. MANZELLA: Then there's no case.

22 THE COURT: -- do you believe that the case will go any
23 further, over your motion under 1118?

24 MR. DENNY: Your Honor, I don't know. I -- I don't know.

25 But if the Court is of the opinion that it has not
26 as yet been established, then I don't think we should get this
27 testimony in.

28 THE COURT: Well --

1 MR. DENNY: Because we've still got -- we've still got --
2 your Honor, we've still got another case here, where there
3 obviously has been a corpus. And I think it's going to be
4 prejudicial to this defendant in the extreme, if certain
5 evidence is --

6 THE COURT: The Court does not believe that it would be
7 prejudicial whatever to the defendant, in the Hinman case.

8 I think the jury is fully capable of separating
9 the two cases. And this obviously pertains to the -- these
10 statements obviously pertain to Shea.

11 And if the People are unable to establish the
12 corpus in the Shea case, this whole thing will --

13 All right. Basically, the People have brought me
14 to the opinion that this is a matter for the jury to
15 determine, and the Court does find that the evidence is
16 sufficient to permit the People to present the statement.

17 So, let's proceed.
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(Whereupon, the following proceedings were had in open court within the presence and hearing of the jury:)

THE COURT: The record will show the jurors are present. Off the record.

(Whereupon, a discussion was had off the record.)

THE COURT: On the record.

All right, the record will show that all the jurors are present. The defendant is present with his counsel, Mr. Denny. And Mr. Manzella for the People.

There was a question pending. Do you wish to repeat it?

MR. MANZELLA: I'm not sure how far we had gotten, your Honor. Yes, I will.

Q BY MR. MANZELLA: Mr. Swartz, will you tell us in this conversation that you had with Charles Manson, would you tell us what you said and what Mr. Manson said?

THE COURT: All right, an objection has been raised, ladies and gentlemen. The Court overrules the objection, but the Court admonishes you that the --

MR. DENNY: Your Honor, I wonder if the Court could bring the microphone up. I'm having a little difficulty hearing and I wonder if some of the jurors are.

THE COURT: Of course.

The Court admonishes you that the statement is not admitted by the Court to prove the truth of what was stated, and you are not to accept it to prove the truth of what was stated. Any evidence of a statement made by Mr.

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1 Manson shall not be considered by you against Mr. Davis unless
2 you shall first determine, from other independent evidence,
3 that at the time the statement was made a conspiracy to commit
4 a crime existed and unless you shall further determine that
5 the statement was made while Mr. Manson was participating in
6 the conspiracy and before or during the time that Mr. Davis
7 was participating in the conspiracy.

8 And, finally, that such statement was made in
9 furtherance of the objective of that conspiracy.

10 I'll read that once again to you.

11 Any evidence of a statement made by Mr. Manson
12 shall not be considered by you against Mr. Davis unless you
13 shall first determine from other independent evidence that at
14 the time the statement was made a conspiracy to commit a crime
15 existed. And unless you shall further determine that the
16 statement was made while Mr. Manson was participating in the
17 conspiracy and before or during the time Mr. Davis was
18 participating in the conspiracy, and, finally, that such
19 statement was made in furtherance of the objectives of the
20 conspiracy.

21 You may proceed.

22 Q BY MR. MANZELLA: All right, Mr. Swartz, would
23 you tell us what you said and what Mr. Manson said in that
24 conversation?

25 A In a passing conversation with Charlie, which
26 took a very short time, I asked him if he had seen Shorty.
27 And he said, yes, that a friend of Charlie's had a friend in
28 San Francisco, and needed someone to work and that Charlie

9-3

1 told Shorty about it and I guess, apparently, he took the job.
2 Charlie said he gave him some money and that Shorty had went
3 to San Francisco.

4 Q Sometime after that conversation did Mr. Manson
5 and other members of the Family leave the ranch?

6 A Yes, they did.

7 Q And approximately within what period of time
8 after the conversation did they leave?

9 A The last of August, as far as I can remember.

10 Q Well, within, if you can recall -- within what
11 period of time after the conversation did they leave the
12 ranch?

13 A Ten days.

14 Q Now, sometime after the conversation with Mr.
15 Manson -- strike that.

16 Your Honor, excuse me, I thought the exhibits
17 were out here.

18 May I have a moment?

19 THE COURT: Yes, you may.

20 (Whereupon, Mr. Manzella exited the courtroom,
21 returning shortly, and the following proceedings were had:)

22 Q BY MR. MANZELLA: Mr. Swartz, had you ever seen
23 Shorty with a set of revolvers?

24 A Yes.

25 Q And if you recall, had you seen Shorty with those
26 revolvers on one occasion or more than one occasion?

27 A More than one occasion.

28 Q Can you describe those revolvers for us, please?

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1 A .45 caliber Colt-type pistols.

2 Q And did the revolvers appear similar to each
3 other?

4 A Yes, they were twin -- a set.

5 Q All right. Did you ever see Shorty carrying
6 those revolvers in any kind of container?

7 A In a brown attache case.

8 Q All right.

9 Now, at some time after you had this conversation
10 with Charles Manson, did you see Bill Vance and Danny DeCarlo
11 at the ranch?

12 A Yes.

13 Q All right. And within what period of time after
14 the conversation with Manson did you see them at the ranch?

15 A A few days. I can't remember exactly how many
16 days it was.

17 Q Would you say a few days?

18 A Yes.

19 Q Now, when you saw Vance and DeCarlo at the ranch,
20 was this after Mr. Manson and other members of the Family
21 had left the ranch?

22 A Yes.

23 Q All right.

24 I want to direct your attention to the two
25 revolvers which have been marked People's 53-A and 53-B for
26 identification.

27 Do those two revolvers appear familiar to you?

28 A Yes.

9a fls.

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1 Q And what do those two revolvers appear to be?

2 A They're Shorty's pistols.

3 Q Directing your attention to People's 54, does
4 this case appear familiar to you?

5 A Yes.

6 Q And what does that appear to be?

7 A That's the case that the pistols were carried in.

8 Q By Shorty?

9 A Yes.

10 Q Now, when you saw Vance and DeCarlo at the Spahn
11 Ranch, where did you see them the first time you saw them
12 at the Spahn Ranch at this time that you have been testifying
13 about; where did you see them?

14 A I was in a room at the east end of the boardwalk,
15 I call the prop room. I was in there cleaning some car parts
16 and they walked in with the case and the two pistols.

17 Q Now, this room that you were in, was that anywhere
18 near the office?

19 A Yes, right next door.

20 Q The office, was that the last building?

21 A At the extreme east end of the buildings.

22 Q All right. And the room you were in, was the
23 room that you called the prop room which was next to the
24 office?

25 A Right.

26 Q Now, what did Vance and DeCarlo do when they
27 walked in with --

28 Well, strike that.

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You said you saw them with the pistols and the case. What pistols and case are you referring to?

A The pistols lying right in front of me and the brown case laying on the table over there.

Q Referring to People's 54, which is the case in People's 53, which is the guns?

A Right.

Q All right. What did they do after they walked in with the guns and the case?

A Well, after they came into the room, they each took one of the pistols and started breaking it down and cleaning it.

Q And did you know Bill Vance before that occasion?

A Yes.

Q Where did you know him from?

A Well, the first time I met him was after I got out of the Army, up at the ranch.

Q All right. So you knew him from Spahn Ranch, is that correct?

A Correct.

Q How about DeCarlo? Had you seen him before that occasion?

A Yes.

Q And you knew him from around the ranch as well or did you know him from --

A Not for a very long length of time, no.

Q Well, when you did know him, did you know him from around the ranch?

9a-3

1 A Yes.

2 Q All right.

3 May I have just a moment, your Honor? I'm sorry,
4 I need two other exhibits.

5 THE COURT: Yes.

6 (Whereupon, Mr. Manzella exited the courtroom,
7 returning shortly, and the following proceedings were
8 had:)

9 Q BY MR. MANZELLA: All right, Mr. Springer,
10 directing your attention to the photograph which has been
11 marked People's 77 for identification.

12 Do you recognize the person shown in that photo-
13 graph?

14 A It is Bill Vance.

15 MR. DENNY: I think you may have misspoken. You called
16 him Mr. Springer.

17 MR. MANZELLA: I called --

18 MR. DENNY: You called Mr. Swartz Mr. Springer.

19 MR. MANZELLA: I'm sorry.

20 Q BY MR. MANZELLA: Mr. Swartz, directing your
21 attention to People's 77-E.

22 Do you recognize who is shown in that photograph?

23 A It's Bill Vance.

24 Q And directing your attention to People's 73.

25 Do you recognize who is shown in that photograph?

26 A It is Danny DeCarlo.

27 Q Now, sometime after that, did DeCarlo or Vance
28 leave Spahn Ranch, if you recall?

9a-4

1 MR. DENNY: Well, I'll object to that as compound,
2 DeCarlo or Vance.

3 THE COURT: Sustained.

4 Q BY MR. MANZELLA: All right. Sometime after
5 that did Danny DeCarlo leave the ranch, if you recall?

6 A Yes.

7 Q Do you recall within what period of time after
8 you saw him with one of Shorty's guns, within what period of
9 time that he left the ranch?

10 A Well, it was either -- last -- the real latter
11 part of October or the first part of September sometime. I
12 can't remember exactly.

13 Q You mean the latter part of August?

14 A August, right. Right, excuse me.

15 Q And do you recall whether or not sometime there-
16 after Bill Vance left the ranch?

17 A I think he did, yes. I don't remember seeing him
18 around much.

19 Q All right. And after that, the last time that
20 you saw Shorty at the ranch, when you had the conversation
21 with him, have you ever seen Shorty again?

22 A No.

23 Q Have you ever heard from Shorty again?

24 A No.

25 MR. MANZELLA: All right, thank you. I have no further
26 questions, your Honor.

27 THE COURT: Cross.

28 MR. DENNY: Yes, your Honor.

9a-5

CROSS-EXAMINATION

BY MR. DENNY:

Q Now, Mr. Swartz, your position at the ranch was
what?

9b fls.5 A I had no position. I just worked there.

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1 Q Doing what?

2 A Oh, spent most of our time cleaning the barn out.

3 Q And what did Shorty do?

4 A Oh, basically the same thing when he was there.

5 Q Which wasn't very often?

6 A He came and he went.

7 Q He came and he went?

8 A Yeah.

9 Q During August he came and he went, August of '69?

10 A Right, right.

11 Q Some days he was there, some days he wasn't?

12 A Absolutely.

13 Q And after the August raid, after he came to

14 pick you up, after your two days in jail there, he still

15 came and he went, right?

16 A I guess he did.

17 Q All right. And when he wasn't there, you did

18 the work with some of the other guys there, too, right?

19 A Right.

20 Q When he was there he helped with the work?

21 A Absolutely.

22 Q All right. And how long had you been at the

23 Spahn Ranch, say, in August of 1969?

24 A How long?

25 Q Yeah.

26 A Two, three months, I guess, four.

27 Q Ever worked there before?

28 A Off and on since 1963.

1 Q All right. And you came and went?

2 A Right.

3 Q Off and on?

4 A Right.

5 Q You didn't tell Shorty when you were cutting out,
6 did you?

7 MR. MANZELLA: Objection, it is beyond the scope of
8 direct. It doesn't appear to be relevant.

9 THE COURT: Sustained.

10 Q BY MR. DENNY: Shorty didn't tell you when he
11 was cutting out, did he?

12 A He had no reason to.

13 Q That's right. So the answer is he didn't?

14 A Right.

15 Q All right. Each of you were your own boss?

16 A Absolutely.

17 Q Both pretty independent souls?

18 MR. MANZELLA: Objection, it is beyond the scope of
19 direct. It doesn't appear to be relevant.

20 THE COURT: Overruled. You may answer.

21 THE WITNESS: The question again, please?

22 Q BY MR. DENNY: Both independent souls, you and
23 Shorty?

24 MR. MANZELLA: Objection, calls for a conclusion on
25 the part of the witness without foundation.

26 THE COURT: Sustained.

27 Q BY MR. DENNY: All right, sir.

28 Now, this conversation you had with Shorty about

1 Frank Retz, Shorty wasn't secretive about it at all, was he?

2 A No, he wasn't.

3 Q And he didn't pull you aside and whisper in your
4 ear, "I got a job that's lined up with Frank Retz"? He
5 didn't do anything like that, did he?

6 A No.

7 Q To your knowledge he talked about it with other
8 guys around, didn't he?

9 A It is quite possible, yes.

10 Q Well, you heard it from other guys that Shorty
11 may have a job, didn't you?

12 A I believe he was the first one to tell me about
13 it.

14 Q Afterwards?

15 A It is quite possible I may have, yes.

16 Q It was kind of common talk around the ranch,
17 wasn't it?

18 A Yeah, I believe it was.

19 Q Sure. And he told you that this job -- well,
20 let me ask you this:

21 Now, when you had this conversation with him
22 about the job, was this daytime, nighttime or do you remember?

23 A It was daytime.

24 Q All right. And, in effect, you said more power
25 to you, good luck, right?

26 A Absolutely.

27 Q All right. Did he tell you anything about the
28 terms of the job; what he was going to get?

1 A Yes, he did.

2 Q By way of money?

3 A Yes, he did.

4 Q What did he say?

5 A He said he had been offered \$80 a week.

6 Q \$80 a week?

7 A Right.

8 Q Anything else?

9 A Well, it was to be a watchman on the adjoining
10 property for that, \$80 a week.

11 Q Well, what was he going to get? Anything else
12 besides this \$80 a week?

13 A Nothing I know of, no.

14 Q And is it your statement or your testimony now
15 that after that conversation you didn't see him again or
16 would you say that you might have seen him around a time or
17 two after that, and then didn't see him again?

18 A Well, I might have seen him a time or two that
19 day, but the next day and the day after that, and the day
20 after that, I don't remember seeing him.

21 Q You don't remember seeing him?

22 A No.

23 Q But you're not sure about what particular day it
24 was that you had this conversation with him?

25 A It was about three days after we got out of jail.

26 Q About three days after you got out of jail?

27 A Approximately, yes.

28 Q All right. And you were arrested the 16th,

1 released on the 18th, so that would make it about the 21st
2 this conversation happened; around there?

3 A Approximately, yes.

4 Q All right. And then, you might have seen him
5 that day, but you didn't see him after the 21st?

6 A I don't believe I did, sir.

7 Q Okay.

8 By the way, when you did see Shorty around the --
9 around the ranch, he was living out of his car, is that
10 right?

11 A Well, the few days after he brought me back from
12 the County Jail, yes.

13 Q All right. And you drove in that car, did you?

14 A I rode in the car, yes.

15 Q Yes.

16 And did he comment to you anything about the
17 condition of the car at the time he was driving you?

18 MR. MANZELLA: Objection, calls for hearsay.

19 MR. DENNY: It is not admitted for the truth of the
20 statement, your Honor, but for Shorty's state of mind about
21 the condition of his car and whether he would have used
22 that to go some place or not.

23 THE COURT: All right, overruled. I'll let you answer
24 it.

25 THE WITNESS: No.

26 Q BY MR. DENNY: All right. Did you observe his
27 car, the condition thereof at all, sir?

28 A In comparison to the rest of the vehicles around

1 the ranch, it looked pretty good to me.

2 (Laughter.)

3 Q BY MR. DENNY: How about your car, sir?

4 A Well, that's one that looked a little better
5 than his.

10 fls.

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1 Q What kind of car did you have?

2 MR. MANZELLA: Objection. It doesn't appear to be
3 relevant.

4 MR. DENNY: Well, it is very relevant. I'll connect it
5 up in just a moment.

6 THE COURT: It appears to be outside the scope of
7 direct. Sustained.

8 MR. DENNY: Well, your Honor, may we reserve this point,
9 to take him as my own witness here at the conclusion, for just
10 a moment?

11 THE COURT: Yes, you may.

12 Q BY MR. DENNY: Now, Mr. Swartz, I am interested in
13 Danny DeCarlo and Bill Vance, these two fellows that you say
14 you saw with Shorty's guns sometime after Mr. Manson and most of
15 the other members of the Manson Family, if you will, left; is
16 that right?

17 A Yes.

18 Q And that was after Mr. Davis had also left the
19 ranch, huh?

20 A (No response.)

21 Q Well, let me ask you this, sir. Do you remember
22 Mr. Davis being at the ranch at about the time you say that
23 you had this last conversation with Shorty? Say around the
24 21st or so of August?

25 Was Mr. Davis even there?

26 A Well, I can't -- he wasn't -- I can't remember
27 his being around when I had the conversation. But I think he
28 was on the ranch.

10-2

1 Q Mr. Davis came and went, too, didn't he?

2 A Everybody did.

3 Q Everybody did.

4 A Right.

5 Q All right. And Mr. Davis left and was gone for
6 several days, and then he'd come back; right?

7 A Quite possible.

8 Q All right. And you didn't keep particular track of
9 Mr. Davis's comings or goings, did you?

10 MR. MANZELLA: Objection. It's beyond the scope of
11 direct.

12 THE COURT: Sustained.

13 Q BY MR. DENNY: All right. Well, let's get back
14 to your direct testimony, then, about these two characters,
15 Vance and DeCarlo.

16 And you say you --

17 Excuse me, your Honor. I wonder if I may get an
18 exhibit out, just for a moment?

19 THE COURT: Yes, you may.

20 (Pause in the proceedings while Mr. Denny
21 repaired to the exhibit room, returning shortly, whereupon the
22 following proceedings were had:)

23 Q BY MR. DENNY: Well, sir, I wonder if you'd come
24 down here, and grab that hand-mike a moment, in front of the
25 witness stand?

26 Can the jurors see that, at the end there?

27 Maybe if you'll take this pointer and -- first of
28 all, let me just show it to you here, so you can familiarize

10-3
1 yourself with the layout.

2 This is People's 29, and we are looking at the
3 aerial photograph.

4 Do you recognize the corral and the yard area,
5 George Spahn's house (indicating), the boardwalk, the barns?

6 A Yes.

7 Q All right. Now, so the jury -- well, why don't
8 you just, to me, at this point, point out this room where you
9 saw Bill Vance and Danny DeCarlo with those guns?

10 A I saw them right here (indicating) at the extreme
11 east end of the boardwalk.

12 Q All right. Now, if you would, I'll put this in
13 front of the jury, and with the pointer here -- I'll ask you to
14 move over a little, so that all of the jurors can see -- would
15 you point that out to those jurors?

16 A It's the last room, right there (indicating).

17 Q All right. And what room did you call that?

18 A Well, I called it the prop room.

19 Q Did DeCarlo sometimes call that the gun room?

20 A Yes.

21 Q That's where he had his guns, all laid out?

22 A Yes, sir.

23 Q And this is where he made bullets for the guns,
24 reloads?

25 A Yes.

26 Q All right. And when you went in there on this
27 particular occasion, were there guns -- other than these that
28 you've talked about -- were there guns there in the gun room?

29 A I think there were. But I wouldn't swear to it.

10a-1

1 Q All right. Now, sir, I'll show you a picture
2 that's been marked 80-C, and I'll just show it to you at this
3 point.

4 Do you recognize that?

5 A Yes, I do.

6 Q And what is that? What does that depict?

7 A This is the gun room door right here (indicating).

8 THE COURT: The building below which it shows "gun" and
9 the initials "J. S."?

10 THE WITNESS: Yes.

11 MR. DENNY: All right. And I will place that here so
12 again the jurors can see it.

13 Q And would you point to the gun room?

14 A This building right here (indicating).

15 Q And do you know if there were sleeping facilities
16 there, as well as gun loading equipment and stuff?

17 A Yes, there was.

18 Q How many? For how many people?

19 A I've got no idea.

20 Q More than one?

21 A Yes.

22 Q All right. And do you know if more than one
23 person slept in there?

24 A I -- I don't believe I've ever been in there.

25 Q All right. You have been around late at night,
26 though, while people were in there; is that right?

27 A Well, I assumed there were, yes.

28 Q All right. Do you want to retake the stand, sir?

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1 Thank you. Now, sir, you say they brought these
2 guns in. Did they bring them in in the case (indicating)?

3 A (Pause) I think they did, yes.

4 I'm positive they did.

5 Q You don't by any chance have such a vivid
6 recollection of this that you can remember who was carrying the
7 case, do you?

8 A I seem to remember Bill Vance was carrying it.

9 Q All right. And then, when they got in there, they
10 opened up the case, took out these guns, and started breaking
11 them down and cleaning them; is that right?

12 A Yes.

13 Q All right. You don't happen to remember the
14 conversation that was going on, then, do you?

15 A Yes, I do.

16 Q I see. And did the conversation involve Mr. Shea?

17 MR. MANZELLA: Objection. Calls for hearsay.

18 THE COURT: Sustained.

19 MR. DENNY: All right. Your Honor, may I approach the
20 bench?

21 THE COURT: Yes, you may.

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

25 MR. DENNY: Your Honor, I would like to make an offer
26 of proof that the witness would state that he overheard Vance
27 and DeCarlo, and Vance and DeCarlo were talking and stated,
28 "Well, we finally got Shorty's ego." That Vance said they

10a-3

1 bought the guns from Shorty.

2 THE COURT: Vance said --?

3 MR. DENNY: They bought -- "We bought them."

4 All I've got here in the statement -- and again,
5 this is one of the statements purportedly made in front of
6 Mr. Katz and Mr. Whiteley, on December 1, 1970, at 3:00
7 P. M. -- that "Vance said they bought the guns from Shorty."

8 Now, I would admit that this is -- I would submit
9 that this is admissible under People versus Spriggs. People
10 versus Spriggs is a California Supreme Court case that says
11 where another person admits a crime -- a person other than the
12 defendant who has been charged with it -- that is admissible
13 in evidence.

14 And I submit that this statement, "We finally got
15 Shorty's ego" --

16 THE COURT: Not the statement, "We bought the guns from
17 Shorty"?

18 MR. DENNY: I would submit that under Miranda, that
19 even if it's exculpatory, it still constitutes an admission;
20 that if it were used by the People, they would use it as an
21 admission; that it's up to the jury to determine whether they
22 were making a false statement or not.

23 But that this conversation, along with, "Well, we
24 finally got Shorty's ego," is admissible; and if the Court
25 holds that "Well, we bought the guns from Shorty," is
26 inadmissible, for some reason, then certainly the statement,
27 "Well, we finally got Shorty's ego," I submit, is admissible
28 as an admission, an admission against penal interest.

10b fol

10b-1

1 THE COURT: Well, under Miranda, how does the --

2 MR. DENNY: Well, Miranda says any statement taken
3 from a defendant will not be admissible without the required
4 Miranda admonition, whether it is incriminatory or exculpa-
5 tory, because if the People are seeking to admit it,
6 obviously, they are seeking to admit it in some kind of
7 incriminatory way.

8 And I submit the same is true here. We are
9 seeking to admit this conversation, these statements, in
10 evidence as admissions against penal interest, which, even
11 though part of it might be exculpatory, nevertheless, I can
12 argue -- just as the prosecutor would be able to argue --
13 that this was simply a dodge that they were making in
14 front of Swartz, to try to throw him off the track -- the
15 same as Manson was trying to throw, supposedly, Swartz off
16 the track, when he said Shorty went up to San Francisco.

17 I can make the same argument that the prosecutor
18 could make in the use of these statements.

19 THE COURT: The People?

20 MR. MANZELLA: Two points. First of all, this
21 doesn't apply under the Spriggs, because it's not an
22 admission that Vance or DeCarlo killed Shea.

23 MR. DENNY: Oh, yes. It -- it's an admission that
24 could be used against them, if they were charged with it.

25 MR. MANZELLA: It's not an admission that Vance and
26 DeCarlo killed Shea, so therefore it's not admissible under
27 the Spriggs doctrine, because it's not an admission that the
28 declarant or declarants -- against the penal interests of

1 the declarant or declarants.

2 Secondly, that the evidence would -- the
3 probative value is outweighed by its prejudicial effect on
4 the jury. And I have got some cases I would like to cite
5 on this.

6 This is an attempt on the part of the defense
7 to show that there are -- that other persons committed the
8 crime. And we have already argued this one, but I have
9 got some cases I would like to cite to the Court, which say
10 that there has to be a certain amount of evidence that other
11 persons were guilty of the crime before the defense can
12 argue it.

13 MR. DENNY: We have got it.

14 MR. MANZELLA: And the reason is that -- that it
15 prejudices the People's case and tends to confuse the jury.

16 MR. DENNY: Well, your Honor, strangely and interest-
17 ingly enough, their own witness, Ruby Pearl, testified that
18 she thought it was Bill Vance involved. So that's one thing
19 from their own witness.

20 Secondly, their own evidence shows that the
21 suitcase, the gray suitcase here -- which is in evidence --
22 and the bag, the attache case, the gun case, contained
23 a number of items of identification, driver's licenses,
24 a number of checks, all made out to either Dwayne Schwarm or
25 another of Bill Vance's aliases -- and these were recovered
26 up in the Ballarat-Goler Wash area -- all of which tends to
27 show that Bill Vance was responsible for the death of
28 Shorty Shea.

1 It certainly shows it as much as any evidence
2 that they have produced that Bruce Davis or Charlie Manson
3 were responsible, and --

4 THE COURT: Well, now, who purportedly says these
5 statements? Is it Bill Vance or -- who says --

6 MR. DENNY: Your Honor, I --

7 THE COURT: Does the statement show it?

8 MR. DENNY: I don't know. We can have an en camera
9 hearing to determine what the witness would testify as to
10 who said what. All I have are the typed notes of the
11 interview had by Mr. Katz -- and presumably Sergeant Whiteley
12 -- on December 1 with this witness.

13 And it's just set out that Vance and DeCarlo
14 were talking and stated, "Well, we finally got Shorty's
15 ego." Smirking. And the "smirking" is in parentheses.

16 THE COURT: It seems to me as though --

17 MR. DENNY: Now, whether either one of them said it
18 as far as that goes, doesn't really matter.

19 THE COURT: It seems to me insufficient -- well,
20 what do you contend shows that DeCarlo might have been the --

21 MR. DENNY: Because DeCarlo is Richard Alan Smith,
22 and DeCarlo is the one who got the guns out of hock.
23 DeCarlo is the one who went to the pawnshop and initially
24 signed the name of Donald J. Shea.

25 MR. KAY: No, that's wrong. The evidence shows --
26 the only evidence we have on the point is from the Manson
27 trial, and it shows that it was -- it wasn't DeCarlo who
28 did that; it was Grogan who went to Sam Launer and

1 signed the name "Shea."

2 And in fact, he testified to it at the Manson
3 trial, and then on redirect examination, that the reason he
4 remembered that it wasn't Shea who signed the name was that
5 it was some tall guy.

6 And it was later discovered that it was Grogan
7 who signed, who went in to get the guns and signed Shea's
8 name.

9 MR. DENNY: Well, at any rate, the guy who finally
10 did get the guns out of hock was Richard Alan Smith.
11 And they have established by the testimony of either Wachsmuth
12 or -- well, I think it was Wachsmuth who identified Richard
13 Alan Smith as Danny DeCarlo.

14 THE COURT: Well --

15 MR. DENNY: Danny DeCarlo then was the one who
16 supposedly got the fruits of the murder -- which, presumably,
17 he could only have gotten by getting the pawn tickets off
18 the dead body of Shorty.

19 So, whether either one says it, one or both,
20 it's admissible against the penal interests of the declarant.
21 And if the other adopts it, it would seem to be, under the
22 Osuna doctrine, a declaration against penal interests as
23 to the other to whom he is talking, to whom he adopts it.

24 THE COURT: Well, it seems to me as though it might be
25 very well admissible against Vance, because of the evidence
26 that has been produced concerning Vance, and his possible
27 connection with Mr. Shea's demise.

28 MR. DENNY: Well, your Honor, you don't even have to

1 establish -- you don't even have to establish prima facie --

2 MR. MANZELLA: Yes, you do. And I would like to get
3 those cases before the Court rules. You have to -- you do
4 have to establish that.

5 THE COURT: I think under Spriggs, you do. But we
6 have gone through that before, haven't we?

7 MR. DENNY: No, not in this case.

8 THE COURT: Not in this case? All right. All right.
9 I'll recess the jury, and let's find out from Mr. Vance after
10 the jury's gone what he would testify.

11 MR. DENNY: Mr. Swartz.

12 THE COURT: Mr. Swartz, yes.
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1 (Whereupon, the following proceedings were had in
2 open court within the presence and hearing of the jury:)

3 THE COURT: Ladies and gentlemen, we're going to excuse
4 you for the evening and continue to work here alone without
5 you. I'm sorry you've been deprived of having us present all
6 day, but --

7 (Laughter.)

8 THE COURT: -- but perhaps tomorrow you'll be in
9 on something more often.

10 During the recess, you are obliged not to converse
11 amongst yourselves nor with anyone else, nor permit anyone to
12 converse with you on any subject connected with this matter,
13 nor form or express any opinion on the matter until it is
14 finally submitted to you.

15 Mr. Swartz, you remain where you are, if you will,
16 please.

17 And, ladies and gentlemen, you are excused until
18 tomorrow morning at 9:30.

19 (Whereupon, at 4:11 P. M., the jury retired from
20 the courtroom, and the following proceedings were had:)

21 THE COURT: Excuse me just a moment.

22 MR. DENNY: Your Honor -- well, that's all right.

23 (Whereupon, the Court left the bench, returning
24 shortly and the following proceedings were had:)

25 MR. DENNY: Your Honor, I wonder if I may proceed now
26 with examination to determine --

27 THE COURT: Yes.

28 The record will show that the jurors have all left

11-2

1 the courtroom.

2
3 CROSS EXAMINATION

4 BY MR. DENNY:

5 Q Mr. Swartz, after they brought in the guns or at
6 the time they brought in the guns, did Bill Vance say anything?

7 A Yes, they did.

8 Q What did he say?

9 A He came in the room and he made the remark that
10 they had finally gotten Shorty's ego --

11 Q And what did that --

12 A From him.

13 Excuse me.

14 Q I'm sorry.

15 Did --

16 MR. MANZELLA: Excuse me, I think you interrupted the
17 answer.

18 MR. DENNY: Yes, I did.

19 Q Was there more?

20 A No.

21 Q And did Danny DeCarlo make any response to that?

22 MR. MANZELLA: Your Honor, excuse me, Mr. Denny started
23 talking when Mr. Swartz said "from him," I thought. "Finally
24 got Shorty's ego from him."

25 THE WITNESS: That's what I said, yes.

26 MR. MANZELLA: All right.

27 THE COURT: The phrase that Bill Vance said was, "Well,
28 we finally got Shorty's ego from him" or "I"?

11-3

1 THE WITNESS: We or I, I don't remember exactly.

2 THE COURT: All right.

3 Q BY MR. DENNY: And did Danny DeCarlo make any
4 response?

5 A I can't remember, no.

6 Q All right. And when Bill Vance said this, could
7 you -- do you recall what his demeanor was, what is facial
8 expression was?

9 A Well, they were happy. They weren't sad, is the
10 only way I can --

11 Q Smirking would be a proper or improper way to
12 characterize it?

13 A Smirking?

14 Q Vance, when he said this?

15 A A smirking.

16 Q All right.

17 A They weren't grinning, like they were laughing,
18 you know. They weren't laughing.

19 Q All right. And was there any other conversation
20 that you can recall between them?

21 A No.

22 Q Concerning how they had gotten the guns or when
23 they had gotten them or where they had gotten them or any-
24 thing, or any other kind --

25 A I can't remember.

26 Q Well, is there anything that would refresh your
27 recollection?

28 THE COURT: How can he know that?

11-4

1 MR. DENNY: Well, I don't want him to come in tomorrow
2 morning and say, yeah, all of a sudden I remember, I refreshed
3 my recollection from a report or something.

4 THE WITNESS: Well, I might possibly remember something
5 tomorrow morning, I don't know.

6 Q BY MR. DENNY: That's what I am worried about, and
7 I want to know what it would be that would refresh your
8 recollection, if you know? Did you make some sort of a report?

9 MR. MANZELLA: Objection, assumes a fact not in evidence.

10 Q BY MR. DENNY: Did you talk to somebody?

11 A No.

12 If I sit down and think about it --

13 THE COURT: Overruled.

14 Q BY MR. DENNY: You didn't make any report about it
15 or you don't have any notes on it?

16 A No, sir.

17 Q Has anyone interviewed you and taken down
18 statements from you concerning this particular conversation?

19 A Yes, they have.

20 Q Who?

21 MR. MANZELLA: Objection, doesn't appear to be
22 relevant.

23 MR. DENNY: Well, it is relevant, your Honor, to his --
24 refreshing his recollection.

25 THE COURT: Sustained.

26 MR. DENNY: I'm sorry?

27 THE COURT: No, overruled. You can answer that.

28 THE WITNESS: Okay.

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1 Well, the District Attorney's Office, I believe
2 I've talked to them about it.

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1 Q BY MR. DENNY: Well, I've got a report here that
2 was supposedly concerning a conversation held between you and
3 Mr. Katz on December 1st, 1970.

4 May I approach the witness, your Honor?

5 THE COURT: You may ask --

6 MR. MANZELLA: I object to showing this to the witness
7 on the grounds it is leading and suggestive.

8 THE COURT: Overruled. You may ask him about it.

9 Q BY MR. DENNY: Do you remember being interviewed
10 by Mr. Katz on December 1st, 1970, about 3:00 o'clock,
11 Mr. Katz and Sergeant Whiteley?

12 A Oh, I think they came out to my house, I think.

13 Q All right.

14 A I don't know.

15 Q You do remember that?

16 A Yes.

17 Q All right. And at that time you told them about
18 this conversation?

19 A I believe I did, yes.

20 Q All right. Now, were you interviewed at any other
21 time by any other representative of the District Attorney's
22 Office?

23 A I've been interviewed so many times I can't
24 remember exactly when, where and how.

25 Q All right. And have you seen any reports of those
26 interviews you had?

27 A No.

28 Q You didn't sign any reports?

11a-2

1 A I don't believe I did. If I did, I can't
2 remember signing any.

3 Q Do you remember ever telling any representative
4 of the District Attorney's Office or the police any more about
5 this conversation than what you have just told the judge and
6 us right now?

7 A I don't believe that I did.

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

9 THE COURT: So that the best you can remember, the entire
10 conversation was a remark by Bill Vance that we or I finally
11 got Shorty's ego from him?

12 THE WITNESS: Yes, sir.

13 MR. MANZELLA: May I ask just a couple of questions, your
14 Honor?

15 THE COURT: Go ahead.

16
17 REDIRECT EXAMINATION

18 BY MR. MANZELLA:

19 Q Mr. Swartz, when you first answered the question,
20 you said that Vance said "We finally got Shorty's ego from
21 him." You didn't say "I." You said "We've."

22 A We've -- we, I.

23 Q We've?

24 Was he referring to the guns?

25 A Yes, he was.

26 THE COURT: How do you know that?

27 Q BY MR. MANZELLA: And --

28 THE COURT: How do you know that?

1 THE WITNESS: He was in love with these pistols. That
2 was his --

3 Q BY MR. MANZELLA: Vance or Shorty?

4 A Shorty.

5 Q Yes.

6 THE COURT: How do you know that Vance was referring to
7 the guns? He had the guns in hand or some way refer to them or
8 what?

9 THE WITNESS: He came in and he took the guns out of the
10 case, uh, he showed them to me and he said, "We've finally got
11 Shorty's ego."

12 THE COURT: All right.

13 MR. MANZELLA: Okay.

14 THE COURT: Anybody?

15 Q BY MR. DENNY: That is, in fact, what he said? Not
16 from "him," but just those words, "Well, we've finally got
17 Shorty's ego"; is that right?

18 A Yes, "We've finally got Shorty's ego."

19 Q Period?

20 A Period.

21 Q Good, thank you.

22 Q BY MR. MANZELLA: He didn't say from "him"?
23 If you don't recall, just say so.

24 A From Shorty?

25 Q No, from "him." Did he use the words "from him"?

26 A No, I don't believe so.

27 Q He just said, "We've finally got Shorty's ego"?

28 A "We've finally got Shorty's ego."

11a-4

1 THE COURT: Any more questions?

2 MR. MANZELLA: No more questions.

3 MR. DENNY: Nothing.

4 MR. MANZELLA: Is the jury gone for the day?

5 THE COURT: Yes, I excused them.

6 Do you want to go ahead at this moment?

7 MR. MANZELLA: I thought maybe we could.

8 THE COURT: That was kind of remarkably short, and we've
9 got six minutes left. It seems like a huge waste of time to
10 give the jury six minutes. Unfortunately, it is already done.
11 They're not due back until tomorrow morning at 9:30.

12 It appears to the Court, after having heard this
13 and considering the evidence that heretofore has been
14 presented --

15 MR. MANZELLA: We withdraw our objection to the
16 evidence.

17 THE COURT: Well, it is lucky you did, because I was just
18 about to rule that the statement was admissible.

19 MR. MANZELLA: Well, it hurts my feelings when you rule
20 against me, so I thought --

21 (Laughter.)

22 THE COURT: You wanted to be with me, I see.

23 Good night, gentlemen.

24 MR. KAY: Good night, your Honor.

25 MR. MANZELLA: Good night.

26 MR. DENNY: Good night, your Honor.

27 (Whereupon, at 4:24 P. M., an adjournment was
28 taken in this matter.)