

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

245

REPORTERS' DAILY TRANSCRIPT

WEDNESDAY, FEBRUARY 16, 1972

VOLUME 45

BINDER

APPEARANCES:

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

NIELSEN

BRUK

COPY

KATZ

MARY LOU BRIANDI, CSR
ROGER K. WILLIAMS, CSR
Official Court Reporters

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

(None)

DEFENDANT'S:

BINDER, Miriam	7092	7102K		
WHITELEY, Paul J.	7105	7148M	7168	
GARRAHAN, Ronald D.	7171	7174K		
NIELSEN, Michael M.	7177	7191K	7192	
BRILL, James C.	7196	7208K		
KATZ, Burton S.	7226	7248K	7276	7286K
CHAMOUSIS, Peter	7291	7293	7293	7294K

E X H I B I T SDEFENDANT'S: 1 OR IDENTIFICATION IN EVIDENCE

BB - two-page report (withdrawn)	7186 (withdrawn)	7176
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1 LOS ANGELES, CALIFORNIA, WEDNESDAY, FEBRUARY 16, 1972 9:45 AM

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4 THE COURT: Case of People vs. Davis.

5 Good morning, ladies and gentlemen.

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

8 THE COURT: All the jurors are present, the record
9 should show.

10 The defendant is present with his counsel.

11 You may proceed.

12 MR. DENNY: Thank you, your Honor.

13 Mrs. Binder, will you take the stand, please.

14 THE COURT: Would you raise your right hand and be
15 sworn.

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

20 THE WITNESS: I do.

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

22 THE BAILIFF: Would you state and spell your full
23 name, please.

24 THE WITNESS: Miriam, M-i-r-i-a-m, Binder, B-i-n-d-e-r.

25
26 MIRIAM BINDER,
27 called as a witness by and on behalf of the defendant, having
28 been first duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

BY MR. DENNY:

Q All right, Mrs. Binder, you are the former or the present wife of Jerry Binder?

A Uh, we're separated.

Q All right. And you knew in 1969 and before, Shorty Shea, is that correct?

A True.

Q And have known Shorty or Don for how long?

A Approximately five years.

Q And on August 19, 1969, did Shorty come to see you?

A Yes, he did.

Q And where was this?

A 8010 Hollywood Boulevard.

Q And this was your residence at the time --

A At the time.

Q -- that you were occupying with Mr. Jerry Binder?

A That's correct.

Q On that date did he take you somewhere?

A Yes.

Q Where?

A To the ear doctor.

Q Did you have some conversation with him on that day?

A Yes, I did.

Q Did that conversation relate in any way to his marital situation?

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A Yes.

MR. DENNY: Now, your Honor, I'd ask to have this admitted for the state of mind of Mr. Shea at the time.

Q Would you state --

MR. KAY: Well, your Honor, I'm going to object and ask to approach the bench for an offer of proof.

THE COURT: All right, very well, I'll hear you.

2 fls.

MR. KAY: Thank you.

2-1

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

MR. DENNY: Your Honor, my offer of proof is that Shorty told her at that time that he had just separated from his wife; that she had left him, and left a note for him, and stated that his wife, Niki, had told him that she was leaving and going back to the man that she had been living with, because she was afraid that the man had threatened Shorty's life;

And that as a result of this, Shorty was greatly upset and worried.

MR. KAY: Well, I think -- as your Honor will remember-- you spent about an hour on this in the Manson trial, and I think your Honor correctly ruled there that it was inadmissible, under 1250, because it certainly doesn't show the -- the statement made by Niki certainly doesn't show Donald's state of mind.

He in fact made no statement of reaction, one way or the other about the -- he didn't say he was in fear because of the statement.

So what we have is a statement by a third party to Donald, Donald relating it to this witness. And I think it's clearly inadmissible, and that it has no weight on Donald's state of mind, and it's hearsay.

Therefore, since it's not -- it wouldn't come in under any exception, it's inadmissible.

MR. DENNY: Well, clearly, your Honor, this is--

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1 THE COURT: Now, wait a minute. The statement that
2 she is about to make is attributed to whom?

3 MR. DENNY: To Don Shea. Don Shea, Shorty Shea, who
4 told her that she had separated from his wife; --

5 THE COURT: Yes?

6 MR. DENNY: -- that she had left him; that she had left
7 him on --

8 THE COURT: And had made certain statements at the time
9 of leaving?

10 MR. DENNY: That's right. And the effect on him was
11 that he was greatly upset, worried and distressed because of
12 this; and it certainly goes to his state of mind and why he
13 had that state of mind -- just as all the other state of
14 mind exceptions that the People have had introduced, on
15 their part, that I have strenuously objected to, and the
16 Court has overruled.

17 MR. KAY: This isn't the same thing, though; because
18 No. 1, it's not a prior inconsistent statement --

19 MR. DENNY: Oh, that doesn't --

20 MR. KAY: -- statement of -- well, you are not trying
21 to admit it on those grounds.

22 MR. DENNY: Certainly not.

23 MR. KAY: But also, it doesn't go to Shea's state of mind.
24 It goes to Niki's state of mind, because -- well, let's see.
25 She would testify that Don Shea --

26 MR. DENNY: Well, listen to what I've offered -- my
27 offer of proof, not what was offered in proof in the Manson
28 case, Mr. Kay. I am making an offer of proof now.

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1 MR. KAY: Right. Well, I know what the witness will
2 testify to. We have statements from her. I know what she'll
3 testify to, and it's just the fact that Niki was worried
4 about that -- that that's why she was going back to her old
5 boy friend, because she was afraid that her old boy friend
6 might try and kill Don.

7 MR. DENNY: What have I just said in my offer of proof?
8 I'm showing that he was upset and worried, because of the
9 statement that had been made to him, and this is what --

10 THE COURT: I think you would be able to show his
11 state of mind, if it refers directly to what his spouse told
12 him, if this is your representation.

13 MR. DENNY: That is my representation, exactly.

14 THE COURT: I think it would be admissible.

15 MR. KAY: Your Honor, I -- knowing what statements she
16 has made in the past, I can't accept this offer of proof.
17 I would ask to have a hearing outside of the presence of
18 the jury, to see exactly what she will say; because I think
19 this would be very prejudicial to the People's case.

20 And if she's going to say what Mr. Denny repre-
21 sents, she has never before said it in the past, and --

22 MR. DENNY: Well, you can impeach her then, Mr. Kay.

23 MR. KAY: Yeah. But how do you unring a bell?

24 MR. DENNY: The same way --

25 THE COURT: I think I'll permit you to go ahead.

26 MR. DENNY: Thank you, sir.

27 (Whereupon, the following proceedings were
28 had in open court, within the presence and hearing

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of the jury:)

2a file

(Proceedings had on an unrelated matter.)

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1 THE COURT: You may proceed.

2 Q BY MR. DENNY: All right. Mrs. Binder, referring
3 to the conversation that Don had with you on this August 19th
4 date, would you relate that, please, to the Court and jury?

5 A I'm sorry. I didn't understand that.

6 Q What was it that Don said to you on that date?

7 A He had went back to his apartment, and found
8 Niki gone --

9 THE COURT: This is what he said?

10 THE WITNESS: Yes.

11 Q BY MR. DENNY: All right. Just continue with
12 what he said to you and what you said to him, if anything.

13 THE COURT: "He had went back to his apartment and had
14 found Niki gone," he said?

15 THE WITNESS: Correct.

16 Q BY MR. DENNY: All right. What else did he say?

17 A He said that he was -- he found the note -- and
18 I never saw the note, but he found the note, and she said
19 that she was leaving him, because she was afraid that this
20 man was going to hurt her, if she didn't go with him -- or
21 there would be trouble, one way or the other -- either with
22 Don or with her.

23 I don't know what it was all about.

24 Q And was it in sum and substance the conversation
25 that he had with you?

26 A Mostly, yes.

27 Q All right. Now, did you note at the time what
28 Don's -- what his sort of state of mind was in connection

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1 with this particular conversation?

2 Did he exhibit that in any way to you?

3 A Yes. He said he didn't believe it; it was -- he
4 felt -- he just didn't believe it.

5 Q And did you determine whether he appeared
6 happy over it, unhappy, sad, worried, anything of the kind?

7 A I imagine he was unhappy.

8 Q Don't tell me what you imagine, --

9 A Oh.

10 Q -- just --

11 MR. KAY: I would ask that that be stricken --

12 MR. DENNY: Yes, I would stipulate --

13 MR. KAY: -- as her conclusion.

14 MR. DENNY: Yes.

15 Q Not what you imagined. But what you saw him
16 exhibit to you, or what he indicated to you as to his
17 feelings over this conversation -- or, over the note that
18 he had gotten.

19 A Over the note?

20 Q Yes.

21 A Uhhh -- I don't think he believed what was written
22 in it.

23 Q Well, he said that to you, --

24 A Yes.

25 Q --is that right? All right.

26 But other than that, did he exhibit to you any
27 emotion over it?

28 A Well, he was emotional anyhow.

2a-3

1 Q Yes. But what emotion did he exhibit to you at
2 the time?

3 THE COURT: If any.

4 THE WITNESS: Nothing more than usual.

5 Q BY MR. DENNY: Well, what was that?

6 A She had done this before. She had left him
7 before.

8 MR. KAY: Well, I ask that that be stricken as non-
9 responsive, and as a conclusion.

10 THE COURT: Sustained.

11 Q BY MR. DENNY: Yes. Mrs. Binder, --

12 A Yes.

13 Q -- can you --

14 MR. KAY: Your Honor, I wonder if we could approach
15 the bench?

16 MR. DENNY: I would like to conclude my --

17 MR. KAY: Well, I would like --

18 THE COURT: I think he can straighten it out.

19 Q BY MR. DENNY: Mrs. Binder, not relating to any
20 other times or any other incidents that you were aware of,
21 but we are talking about this conversation on August 19th,
22 now.

23 A Oh, I see.

24 Q And how he exhibited any emotion, if he did
25 exhibit any emotion, and what that emotion appeared to be.

26 Did he exhibit some emotion in this conversation?

27 A Yes.

28 MR. KAY: Asked and answered, your Honor.

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Q And what was that?

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MR. KAY: Asked and answered.

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THE COURT: Overruled.

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THE WITNESS: What?

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THE COURT: You may answer.

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THE WITNESS: Well, he just said that --

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Q BY MR. DENNY: Not what -- go ahead. I'm sorry.

8

A -- that it upset him.

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Q All right. Did he indicate -- or, did you discern from his conduct how it upset him?

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MR. KAY: That calls for a conclusion.

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THE COURT: Sustained.

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THE WITNESS: No, I couldn't.

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WEDNESDAY

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MR. KAY: Withdraw the objection.

THE COURT: The answer may remain in.

MR. KAY: She's faster than I am.

MR. DENNY: All right.

THE WITNESS: I'm sorry.

MR. KAY: No, that's all right.

THE COURT: Anything further?

MR. DENNY: No, I have nothing further at this time.

Thank you very much, Mrs. Binder.

THE WITNESS: Okay. I can go now?

THE COURT: No. Remain there. There may be some cross examination.

MR. KAY: Yes, there is.

CROSS

CROSS EXAMINATION

BY MR. KAY:

Q Mrs. Binder, you said to Mr. Denny that Don said he didn't believe this note?

A No, sir, that's correct.

Q And when did he say he found this note? How long before the 19th?

A Before he came to my house? The same day.

Q Oh, on the 19th?

A Yes.

MR. KAY: Okay. I have no further questions.

THE COURT: This was the 19th of what?

THE WITNESS: 19th of August.

MR. KAY: Oh, let me just ask a couple of more questions.

WEDNESDAY
2-2

1 Q Have you ever seen or heard from Don since the 19th
2 of August?

3 MR. DENNY: Just a moment. I'll object to that as
4 irrelevant, immaterial, and beyond the scope of the direct
5 examination.

6 MR. KAY: Well, I would ask --

7 THE COURT: Sustained.

8 MR. KAY: -- to make her my witness, then, just for a
9 couple of questions.

10 MR. DENNY: I would object to that, your Honor.

11 THE COURT: I'll permit it.

12 MR. KAY: All right.

13 Q Mrs. Binder, have you seen or heard --

14 MR. DENNY: Well, your Honor, I would --

15 Q BY MR. KAY: -- from Don Shea since August 19th,
16 1969?

17 MR. DENNY: Again, your Honor, I am going to object.

18 Are they seeking to re-open their case, their case
19 in chief?

20 THE COURT: Whatever it may be, the Court will permit the
21 People to take her as their own witness.

22 MR. KAY: Thank you, your Honor.

23 MR. DENNY: Well, I do note my objection to their re-
24 opening their case in chief. It is not rebuttal, and I object
25 to their re-opening their case in chief.

26 THE COURT: The objection is overruled.

27 The Court will permit it.

28 Q BY MR. KAY: Mrs. Binder, have you seen or heard

2J-3

1 from Don Shea since August 19th, 1969?

2 A No.

3 Q And was he a very close friend of yours?

4 A Very.

5 MR. KAY: Thank you. I have no further questions.

6 THE COURT: You may step down.

7 THE WITNESS: Thank you very much.

8 MR. DENNY: May this witness be excused, your Honor?

9 THE COURT: And you may be excused, Mrs. Binder.

10 THE WITNESS: Thank you, sir.

11 THE COURT: Thank you, Mrs. Binder.

12 MR. DENNY: Your Honor, I am informed that Officer
13 Garrahan, who was supposed to be here, has not arrived. He
14 was called --

15 THE COURT: All right. Do you want a bench warrant
16 issued?

17 MR. DENNY: If you could hold it for a couple of minutes,
18 your Honor?

19 THE COURT: I don't recall a subpoena. But he is supposed
20 to be here in a couple of minutes?

21 MR. MANZELLA: He was here yesterday, your Honor, I
22 believe in answer to the subpoena. And I don't know if he was
23 told when to come back.

24 MR. DENNY: Yes, he was. And he was called. So I'm sure
25 he will be here, and --

26 THE COURT: Do you have any other witness you can proceed
27 with?

28 MR. DENNY: Well, Lieutenant Nielsen is supposed to be

2b-4
1 here at 10:00 o'clock.

2 Is he here?

3 MR. DENNY'S SECRETARY: Not yet.

4 THE COURT: Well, if Garrahan and Nielsen are not here,
5 do you have any other --

6 MR. DENNY: Apparently Sergeant Whiteley is here, and I
7 can use him.

8 (Pause in the proceedings while the witness
9 entered the courtroom.)

10 THE CLERK: Do you solemnly swear that the testimony you
11 are about to give in the cause now pending before this court
12 shall be the truth, the whole truth, and nothing but the
13 truth, so help you God?

14 THE WITNESS: Yes, I do.

15
16 PAUL J. WHITELEY,
17 called as a witness by and on behalf of the defendant, having
18 been first duly sworn, was examined and testified as follows:
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20 DIRECT EXAMINATION

21 BY MR. DENNY:

22 Q Sergeant Whiteley, you have previously been
23 identified to the jury as chief investigating officer in these
24 two cases, the murder of Mr. Hinman and the alleged murder of
25 Shorty Shea; is that correct?

26 A Yes.

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1 Q Sir, in connection with your investigation of
2 the alleged murder of Shorty Shea, or the disappearance of
3 Shorty Shea, you spent a good deal of time, I take it, going
4 back and forth to the Spahn Movie Ranch, and the Chatsworth
5 area, during the period of September, October, November and
6 December of 1969; is that correct?

7 A I don't know about September, but I did go back
8 and forth quite a few times the latter part of the year.

9 Q All right. And could you tell the jury, sir,
10 what the weather conditions were like during the latter part
11 of 1969, in the Chatsworth-Spahn Ranch area?

12 A Windy.

13 Q How about heat? During the daytime in particular?

14 A I can't recall it being extremely hot, no,
15 generally.

16 Q Well, was it extremely cold?

17 A No.

18 Q Well, during the October period in particular,
19 do you recall, Sergeant Whiteley, whether the temperature
20 got up in the eighties and nineties, say in that area?

21 MR. KAY: Your Honor, this appears to be irrelevant,
22 and I would object on that ground.

23 THE COURT: Sustained.

24 MR. DENNY: Relevant, your Honor, to the temperature.

25 THE COURT: Sustained. The Court doesn't wish to hear
26 argument.

27 If you want to argue, you may approach the
28 bench.

2c-2

1 MR. DENNY: May I approach the bench, your Honor?

2 THE COURT: You may approach the bench.

3 MR. DENNY: Thank you.

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

7 THE COURT: As I recall the testimony of the expert,
8 he wouldn't be able to say whether -- in the range of
9 temperature from freezing to 105 degrees, how long the
10 fingerprint would have lasted.

11 MR. DENNY: Except for the fact that he did indicate--
12 and other experts have indicated, or so-called experts have
13 indicated --

14 THE COURT: This is a waste of time, Mr. Denny.

15 MR. DENNY: -- that heat does tend to eradicate finger-
16 prints.

17 And it is relevant, your Honor, to show whether
18 or not the fingerprints that allegedly were recovered from
19 the trunk, the footlocker, were in fact; or whether they were
20 recovered from some other place.

21 The People (sic) have a right, I think, to put
22 on evidence to show that it was impossible for those finger-
23 prints to last for the period of time that they did; and that
24 therefore, the fingerprints that allegedly came from the
25 trunk, the footlocker, did not come from that footlocker.

26 And that is the relevancy of this evidence:
27 that there was extreme heat, extreme heat in the San Fernando
28 Valley, so that any fingerprint would have been --

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THE COURT: All right. The Court will permit it.

MR. DENNY: I'm sorry? I didn't hear the Court.

THE COURT: Yes, the Court will permit it.

MR. DENNY: Thank you.

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

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1 Q BY MR. DENNY: Repeating, Sergeant Whiteley, to
2 your recollection, in October, particularly, were the
3 temperatures during the day as high as in the eighties and
4 nineties, in that area?

5 A They could very well have been. I wouldn't
6 consider that extremely hot or cold.

7 Q Temperatures get up in the high nineties to
8 100, as far as you recall?

9 THE COURT: That's asked and answered.

10 MR. DENNY: I don't recall asking about 100 degree
11 temperature, your Honor. I guess --

12 THE COURT: All right, you may ask that.

13 Did it get up to as high as 100, as far as you
14 remember?

15 THE WITNESS: Not that I remember.

16 Q BY MR. DENNY: All right. Now, sir, in going
17 back and forth to the Spahn Ranch, you went back and forth
18 from your headquarters here, located just across the street
19 in the Old Hall of Records, is that right, or this building
20 that is?

21 A Yes.

22 Q All right. And essentially the driving time
23 between that location and the Spahn Ranch is the same as the
24 driving time between the New County Jail or the jail here
25 and the Spahn Ranch; is that right?

26 MR. MANZELLA: Objection, that doesn't appear to be
27 relevant.

28 MR. DENNY: I will state the relevancy, if the Court

1 wishes.

2 THE COURT: The objection is sustained. It does not
3 appear to be relevant.

4 MR. DENNY: I would like to make an offer of proof as
5 to the relevancy.

6 THE COURT: All right, you may approach the bench
7 again.

8 MR. MANZELLA: I'll withdraw the objection, your Honor.

9 THE COURT: All right.

10 Q BY MR. DENNY: What is the driving time between
11 the Civic Center area, the jail area, in particular, and the
12 Spahn Ranch?

13 And let me say this, did you go out at night?

14 A Yes.

15 Q All right. During the week, mid-week?

16 A Yes, I've gone out on the weekends, during the
17 week, at night.

18 Q All right. Let's take the nighttime, about
19 11:50 at night. Ever go out there about then?

20 A Yes.

21 Q All right. About the time that Mr. Manson was
22 released on the 26th, you didn't go out exactly at that time?

23 A No, I was not there on that date.

24 Q All right. But taking that period of the night
25 and the traffic conditions and the speed limit allowed on
26 the freeway, approximately how long would it take to get from
27 County Jail to the Spahn Ranch, keeping within the speed
28 limit?

1 MR. MANZELLA: Objection, your Honor, the way it is
2 phrased, it is an improper hypothetical.

3 THE COURT: Sustained.

4 MR. MANZELLA: It doesn't state the route.

5 Q BY MR. DENNY: Taking the most direct route, the
6 freeway, Topanga Canyon Boulevard, Topanga Canyon Boulevard
7 to Santa Susanna Pass Road, Santa Susanna Pass Road to the
8 ranch.

9 A I never timed it. However, I would approximate
10 it to 40 or 50 minutes.

3a fls.

3a-1

1 Q All right, sir.

2 Now, on October 1, 1970, did you interview Ruby
3 Pearl? And you interviewed her a number of times, I take it?

4 A Yes, I did.

5 Q Would you need to look at your report to determine
6 whether or not it was on that date you interviewed her, in
7 particular?

8 A Do you know where I interviewed her?

9 Q Doesn't say, Sergeant Whiteley.

10 A I did interview her sometime at the latter part of
11 October or the first part of November.

12 Q All right. And did she tell you at that time,
13 sometime late in August she went to Spahn's Movie Ranch around
14 11:30 P. M.

15 "Shorty had been drinking and asked if he
16 could come over to my house and stay because he
17 didn't like being around these weird hippies."

18 And that -- using her words, "I told Shorty
19 I didn't have room at my house for him and got into
20 my car and started to leave when I observed a blue
21 car pull into the ranch and Charles Manson, Tex
22 Watson, Bill Vance, Bruce Davis and Clem Tufts
23 jumped out of the car very fast and spread out
24 along the boardwalk. I thought it was strange, as
25 they never moved very fast. I didn't stop."

26 Did she say that to you?

27 MR. MANZELLA: Objection, your Honor, that's a compound
28 question.

1 THE COURT: Overruled.

2 MR. DENNY: Well --

3 MR. MANZELLA: It covers quite a few facts. She may have
4 stated some of it. That's my --

5 THE COURT: Well, overruled.

6 THE WITNESS: Yes, substantially she told me that. It was
7 not at Spahn's Ranch, however, she made that statement to me.

8 Q BY MR. DENNY: I am now indicating October 31,
9 1970.

10 A Yes, she stated substantially what you just read.

11 Q All right. On December 14, 1969, at Spahn's Ranch,
12 did you interview George Spahn, Randy Starr and Ruby Pearl
13 together?

14 A Together, no.

15 Q Separately on that date?

16 A I can't recall the date. I never spoke with
17 Mr. Starr in Mr. Spahn's presence. I did speak with Mr. Spahn
18 in Ruby Pearl's presence.

19 Q All right. You remember, however, talking to all
20 three of them on that particular date, whether together or
21 singly, or one, two --

22 A I remember speaking to all of them on one day, yes.

23 Q Well, would it refresh your recollection as to the
24 date to see the report?

25 A No, sir. I spoke to them many times all in one
26 day.

27 Q You did make a report concerning this particular
28 meeting where you did speak to all three of them on one day, is

1 that right?

2 A Yes, I believe so.

3 Q All right. Did Mrs. Pearl state to you at that
4 time that she had not seen Donald Jerome Shea since approxi-
5 mately the middle of September, 1969?

6 A Yes.

7 Q Now, sir, the Radom, People's 30, which has been
8 received into evidence and which you have seen a number of
9 times, I think.

10 Did you receive that Radom from some person?

11 A No.

12 Q When did you first get your hands on that Radom?

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

15 THE COURT: Overruled.

16 THE WITNESS: I can't recall the specific date. It was
17 recovered in Crestline, California.

18 Q BY MR. DENNY: Well, do you know who recovered it in
19 Crestline?

20 A Yes, I do.

21 Q Is that Sergeant Gleason?

22 A Yes, Deputy.

23 Q Deputy Gleason.

24 And did he bring it back to homicide here, to the
25 Homicide Bureau?

26 A Yes.

27 Q Did you see it at that time?

28 A No.

1 Q Well, when was it that you first saw it?

2 A I saw it at the Sheriff's Crime Lab ballistics
3 section a few days later.

4 Q At the time you first saw it, did it have with it
5 six unexpanded reload lead slug bullets?

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

8 THE COURT: Overruled, you may answer.

9 THE WITNESS: I don't recall seeing any ammunition.

10 MR. DENNY: Just a moment.

11 (Whereupon, Mr. Denny conferred with the clerk.)

12 Q BY MR. DENNY: It was not you, then, who submitted
13 the gun to the crime lab for testing?

14 A I don't believe so.

15 Q Sergeant Whiteley, I'll show you six reload 9-
16 millimeter bullets heretofore received in evidence as Defendant's
17 F.

18 MR. KAY: Well, your Honor, I don't believe they were
19 received.

20 THE COURT: They were not received, as the Court recalls.

21 Q BY MR. DENNY: Oh, all right, marked for identifica-
22 tion as Defendant's F.

23 Did you at any time ever have custody of those
24 particular bullets, to your knowledge?

25 MR. MANZELLA: It doesn't appear to be relevant, your
26 Honor.

27 THE COURT: Sustained.

28 MR. DENNY: Well, your Honor, I've got to establish the

1 foundation so they can be received into evidence.

2 THE COURT: The objection is sustained.

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1 Q BY MR. DENNY: Well, do you recognize those
2 bullets, sir?

3 MR. MANZELLA: Again, it doesn't appear to be relevant.

4 THE COURT: Overruled.

5 THE WITNESS: No, sir.

6 Q BY MR. DENNY: Do you know any identifying marks
7 on those bullets at all?

8 MR. MANZELLA: The question has been asked and answered.

9 THE COURT: Sustained.

10 MR. DENNY: I didn't ask the question, your Honor. I've
11 never asked that before.

12 THE COURT: The objection is sustained.

13 Q BY MR. DENNY: Did Sergeant Gleason, when he
14 takes evidence into his possession, make any kind of identify-
15 ing marks on the evidence, to your knowledge, sir?

16 MR. MANZELLA: It doesn't appear to be relevant, your
17 Honor.

18 THE COURT: Sustained.

19 Q BY MR. DENNY: Do you know of any marks of
20 Sergeant Gleason, his initials on those bullets?

21 MR. MANZELLA: Again, it doesn't appear to be relevant.

22 THE COURT: Sustained.

23 MR. DENNY: Your Honor, again, I have to have the right
24 to establish the foundation so these can be received into
25 evidence.

26 THE COURT: The Court doesn't quarrel with you on that,
27 even though you are arguing again in front of the jury. The
28 Court does sustain the objection. It is immaterial whether

3b-2

1 Sergeant Gleason makes identifying marks on bullets.

2 MR. DENNY: Excuse me, your Honor, just a moment.

3 (Whereupon, Mr. Denny conferred with the clerk.)

4 Q BY MR. DENNY: Do you have any independent
5 knowledge, Sergeant Whiteley, of whether or not when that
6 gun, the Radom, People's 30 was recovered, the bullets
7 were recovered with it?

8 A No, sir, I don't.

9 Q To your knowledge only Deputy Gleason would know,
10 is that right?

11 A Yes.

12 Q Now, on November 7th, 1969, in connection with
13 your investigation of the missing person, Donald Shea, did
14 you send a teletype to the Vallejo Police Department
15 concerning Mr. Shea's whereabouts?

16 A I did send a teletype to the Vallejo Police
17 Department.

18 Q And if your manual reflects a copy of that dated
19 November 7, 1969, would that refresh your recollection that
20 that was the day?

21 A Yes, it probably was around that time.

22 Q All right. And in connection with your investiga-
23 tion, the investigation when you say you sought information
24 from the IRS and the Social Security, et cetera, you sought
25 the whereabouts of Mr. Shea because he was then supposed to
26 be working as a small train operator hauling salt from the
27 mine in the area --

28 MR. MANZELLA: Objection.

3b-3

1 Q BY MR. DENNY: -- in the Vallejo area, is that it?

2 MR. MANZELLA: Objection, calls for hearsay.

3 THE COURT: Sustained.

4 Q BY MR. DENNY: Well, what was the purpose of
5 sending a teletype to Vallejo?

6 A I had received information that he worked for
7 an unknown company driving a small train in the Vallejo
8 area.

9 Q That he was then presently working for a company
10 driving a small train, isn't that the information that you
11 had received?

12 MR. MANZELLA: Objection, it calls for hearsay, your
13 Honor.

14 THE COURT: Sustained.

15 MR. DENNY: Well, it is in evidence already, your
16 Honor, by his earlier testimony that was not objected to.
17 I would like to clarify it.

18 THE COURT: Ask your next question.

19 Q BY MR. DENNY: Sergeant Whiteley, you said that
20 you had received information that he was driving a train or
21 small train hauling salt in the area. The information you
22 had received was that he was then driving that small train,
23 is that not correct?

24 A I got several stories on this.

25 Q Well, is --

26 A One that he had at a previous time worked for a
27 salt company driving a train.

28 Also, that he was.

3b-4
1 And then, other people would say he could be.

2 Q All right. And from whom had you received informa-
3 tion that he was then driving a train --

4 MR. MANZELLA: Again, this calls for hearsay.

5 Q BY MR. DENNY: -- in the area?

6 THE COURT: Sustained.

7 Q BY MR. DENNY: Now, sir, where is the -- well, let
8 me go back one step.

9 When Mr. Hinman was discovered and you went out
10 there with your partner, Deputy Guenther, Mr. Hinman was
11 clothed in some clothing, is that correct?

12 A Yes, sir.

13 Q And you caused the body with certain clothing to
14 be brought to the Deputy County Medical Examiner for autopsy?

15 A Yes, sir.

16 Q And that clothing and whatever personal effects
17 were in that clothing were removed from the body, is that
18 correct?

19 A Yes, sir.

20 Q And when the body was actually received by the
21 Deputy Medical Examiner, it was received without such clothing;
22 is that correct?

23 A No, sir.

24 Q Well, the Deputy Medical Examiner, at least,
25 issued a receipt showing that no personal effects were
26 received from you, is that correct?

27 A Clothing is not considered personal effects.
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3c fls.

3c-1

1 Q Did you, sir, take into custody the clothing and
2 personal effects found therein off of the body of Mr. Gary
3 Hinman? Did you or your partner?

4 A Not that I recall.

5 Q Do you know what happened to the clothing and the
6 personal effects in that clothing which were on the body of
7 Mr. Gary Hinman at the time you caused it to be taken to the
8 Deputy County Medical Examiner?

9 A I remember the man in the Coroner's Office taking
10 the clothing off and wrapping them up in a brown bundle.

11 Q Well, did you not take those into custody?

12 A Not that I recall.

13 Q Didn't your partner take them into custody?

14 A Not that I recall.

15 MR. DENNY: Just a moment, your Honor.

16 Q Did you ever make any sort of inventory of the
17 personal effects found on the body of Gary Hinman?

18 A I believe I described in my report how he was
19 dressed.

20 Q Did you make an inventory of the personal effects
21 found on the body of Gary Hinman?

22 MR. MANZELLA: The question has been asked and answered,
23 your Honor.

24 MR. DENNY: I don't believe it has been.

25 THE COURT: You may answer, if there were any.

26 THE WITNESS: I don't quite understand. Are you speaking
27 if he had anything in his pockets?

28 Q BY MR. DENNY: That's correct.

1 A Yes, I believe it is all in the report.

2 Q Which report, sir?

3 A In the original report that -- supplementary
4 report made by myself and Deputy Gleason.

5 Q May I have just a minute, your Honor?

6 Other than what may be set forth in that report,
7 no specific inventory of items, then, was made of the personal
8 effects, the clothing and personal effects found on the body; is
9 that correct?

10 MR. MANZELLA: That's irrelevant; your Honor.

11 THE COURT: Sustained.

12 Q BY MR. DENNY: Did you make -- I'm not sure whether
13 we've asked you this previously or not, but the footlockers
14 that have been received into evidence as People's 65-F and G,
15 did you make an inventory of those?

16 A Yes, I did.

17 Q Where is that inventory?

18 A I have no idea.

19 Q Well, is that not an official report of the
20 Sheriff's department?

21 MR. MANZELLA: It is irrelevant, your Honor.

22 THE COURT: Sustained.

23 Q BY MR. DENNY: Well, was that not made a part of
24 the Sheriff's homicide manual as one of the official reports?

25 MR. MANZELLA: That's irrelevant, your Honor.

26 THE COURT: Sustained.

27 Q BY MR. DENNY: Well, have you made any attempt since
28 you were last questioned on the subject to find that inventory?

1 MR. MANZELLA: It is also irrelevant.

2 THE COURT: Sustained.

3 Q BY MR. DENNY: Well, Officer, do you think you can
4 find that inventory if given the time to do so between now and,
5 say, 1:00 o'clock this afternoon?

6 MR. MANZELLA: It is irrelevant.

7 THE COURT: Sustained.

8 MR. DENNY: Your Honor, I would ask the Court for such
9 an order at this time.

10 THE COURT: The Court denies that. You've had plenty of
11 time.

12 MR. DENNY: I've tried, your Honor.

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WEDNESDAY

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1 Q Mr. Whiteley, do you recognize the homicide manual
2 on the Hinman case?

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

4 THE COURT: Sustained.

5 Q BY MR. DENNY: Showing you what appears to be a
6 copy of the medical-examiner coroner's inventory of personal
7 effects, does that refresh your recollection as to whether or
8 not the Coroner took any property from the body of Mr. Hinman?

9 A Yes.

10 Q And having seen that, what is your memory now as
11 to whether any personal effects were taken by the Coroner?

12 A Again, we get to what they mean by "property."
13 His clothing, on him, is not considered property.

14 Q How about the personal effects? Money, rings, keys,
15 wallet, handkerchief?

16 That's considered property, isn't it?

17 A His wallet would be, yes.

18 Q Change?

19 A Yes, if he had any money on him.

20 Q Keys?

21 A Yes, they'd list that.

22 Q All right. And the report reflects that no
23 property was taken by the Coroner; is that correct?

24 A That's correct.

25 Q All right.

26 A I might add, though, that that's an error.

27 Q This is erroneous?

28 A Yes.

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1 Q Property was taken?

2 A Yes.

3 Q And when Deputy Guenther then signed it, he was
4 signing an erroneous document?

5 MR. MANZELLA: Objection. Calls for speculation, your
6 Honor.

7 THE COURT: Sustained.

8 Q BY MR. DENNY: Well, Deputy Guenther did sign that?

9 MR. MANZELLA: Objection. That's irrelevant.

10 THE COURT: Sustained.

11 Q BY MR. DENNY: Now, you've indicated that somewhere
12 in your report, there is reflected an inventory of the personal
13 effects on the body of Mr. Hinman.

14 Would you look through the reports and tell me where
15 that is?

16 A It states right here, "The victim was dressed in a
17 white T-shirt, blue Levi's, no socks or shoes. A white metal
18 wrist watch was on the left wrist."

19 And then it tells the time and so forth.

20 "A brown wallet was observed protruding out of the
21 right front pocket, which was removed and had no money and no
22 driver's license."

23 Q All right. Now, does that then reflect that that is
24 all that there was on the body?

25 A Yes.

26 Q And you are certain that there were no keys on the
27 body?

28 A I don't recall any.

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1 Q All right.

2 A He -- so that we understand it, Deputy Guenther
3 took care of -- you know, everything in his pockets. I pulled
4 his wallet out, when I first got there, and I did observe a
5 wrist watch on his arm.

6 Q Well, when you say, then, that you don't recall
7 any, you weren't specifically looking for those; is that
8 correct?

9 A That's correct. Deputy Guenther was.

10 Q That was his function, not yours; is that right?

11 A On this particular case.

12 Q All right. And Deputy Guenther made no inventory
13 of the personal effects found on the body, to your knowledge;
14 is that correct?

15 A You'd have to ask Deputy Guenther that.

16 Q It doesn't appear in the homicide manual at any
17 rate; is that right?

18 MR. MANZELLA: Objection. It doesn't appear to be
19 relevant.

20 THE COURT: Sustained.

21 Q BY MR. DENNY: All right. Now, sir, you went with
22 Deputy District Attorney Burton Katz and Deputy Guenther
23 to Tacoma, Washington, and had a conversation with Ella Jo
24 Bailey, certain officers of the Tacoma Police Department,
25 representatives of the Tacoma District Attorney's Office -- or
26 the Pierce County District Attorney's Office -- and Miss
27 Bailey's lawyer, Mr. Deutscher, on about May 15 and 16; is
28 that correct? 1970?

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1 A Yes.

2 Q Referring to the conversations specifically on
3 May 15, 1960, did she state to you, "Pulled capers in Beverly
4 Hills and North Hollywood. Never went. Charlie didn't trust"?

5 MR. KAY: Excuse me. I think Mr. Denny misspoke. It's
6 1970, not 1960.
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1 MR. DENNY: If I said 1960, I misspoke myself. I
2 certainly meant May 15, 1970.

3 THE WITNESS: Would you repeat the question?

4 Q BY MR. DENNY: Yes. Did she state to you,
5 concerning information she was then giving to you about Mr.
6 Manson and her relationship with the Manson Family, "Pulled
7 capers in Beverly Hills and North Hollywood. Never went.
8 Charlie didn't trust"?

9 A Yes.

10 Q Did she say to you on the same date, essentially
11 as follows:

12 "In Devil's Canyon, approximately July
13 24, 1969, moved camp site."

14 Did she state that to you?

15 A Yes.

16 Q Did she state, "Present --" pertaining to that
17 date -- "Charlie Manson, Tex Watson, Bruce Davis, Robert
18 Beausoleil, Bill Vance --" with some sort of question about
19 Mr. Vance --

20 MR. KAY: Well, that's unintelligible, your Honor. I
21 would object to --

22 Q BY MR. DENNY: With some sort of question about his
23 presence --

24 THE COURT: Sustained.

25 Q BY MR. DENNY: Well, let me go down.

26 Did she state that the following people were
27 present in the Devil's Canyon area, approximately July 24,
28 1969? Charlie Manson, Tex Watson, Bruce Davis, Robert

4a-2

1 Beausoleil, Danny DeCarlo, Steven Grogan, Susan Atkins,
2 Patricia Krenwinkel, Leslie Sankston, Catherine Share,
3 Larry Jones, Catherine Meyers, Brenda McCann?

4 A Yes, I believe so. Now, there are -- I might have
5 used a name that I know the person by. In other words, if she
6 told me "Gypsy," I wouldn't write necessarily "Gypsy." I would
7 put "Catherine Share" or something like that.

8 Q And Catherine Meyers? She used another name for
9 Catherine Meyers, didn't she?

10 A Oh, let's see. I can't remember.

11 Q Cathy, or --

12 A She could have.

13 Q All right. Now, did she tell you at the same time
14 that she wasn't sure whether or not Bill Vance was there?

15 A Yes. I -- I believe. Is there a question mark
16 behind his name?

17 Q That is correct.

18 A All right. That -- I believe she told me that
19 she didn't know whether he was in on the conversation --

20 Q All right.

21 A -- or overheard the conversation.

22 Q Did she tell you that she wasn't sure whether
23 Al Springer was there? There are two question marks behind his
24 name.

25 A Yes. Yes, because we couldn't -- she couldn't
26 quite understand who Al Springer was.

27 Q But she said she thought he might be there?

28 A Yes.

4a-3

1 Q Did she tell you she was not sure whether Lynn
2 Fromme was there? There's a question mark following that name,
3 one question mark.

4 A Yes.

5 Q Because she might have been taking care of George?

6 A Yes, could be. I can't remember now, but I --
7 as she was going down the list, she was trying to remember
8 everyone that was included in the conversation, or was within
9 hearing distance of the conversation.

10 Q And indicating -- after those that she had
11 specifically named, did she indicate, then, possibly others
12 present?

13 A Yes.

14 Q Did she state to you, concerning this same date and
15 time and conversation, July 24, 1969, "Someone: 'Let's
16 kidnap Tony Melcher and hold him for ransom.' Lived in
17 Santa Monica or Pacific Palisades."

18 Did she so state?

19 A That was the impression that I got, yes.

20 Q All right. Did she then further state --
21 MR. KAY: Well, I'm going to object to that as non-
22 responsive, "The impression." I think the question was
23 whether she stated that, and the answer was non-responsive.

24 THE COURT: Overruled.

25 That's your best memory of it?

26 THE WITNESS: Yes, sir.

27 Q BY MR. DENNY: All right. Concerning this same
28 conversation, the same time, did she state -- by the way, I've

4a-4

1 taken these statements in chronological sequence.

2 Are the statements as I have read them -- were
3 they given to you in the same sequence that I am reading them,
4 by her?

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5 A No, sir.
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1 Q All right. Did she state, "Don't know -- maybe
2 me -- said 'How about Gary Hinman?' Charlie said, 'Yeah,
3 he's single, owns that house, has stocks and bonds. Maybe
4 we can talk him out of this.'"

5 A Yes.

6 Q Did she further state, going back to the conver-
7 sation about Hinman, that Charlie said, "Ella knows Gary
8 best, and he likes her. Larry, you go with her; and Bobby,
9 you, too. Talk him into it any way you can. And if you can't,
10 kill him.' Set for next night."

11 A I thought that's what she told me. She later
12 corrected me on that.

13 Q Well, you made notes of it at the time, did you
14 not, sir?

15 A Yes, I did.

16 Q And the notes that you made were in the order
17 that I have been reading them; was that correct?

18 A I suppose so.

19 Q And you made notes -- these notes that I am
20 reading from are notes that you provided me out of your
21 notebook?

22 A Yes, sir.

23 Q All right. And were those notes made at the
24 time of the conversation?

25 A No, sir.

26 Q Did you make notes at the time of the conversation?

27 A No, sir.

28 Q Do you remember previously testifying here, in

4b-2

1 another hearing, that you did make notes of the conversation
2 at the time of the conversation?

3 MR. MANZELLA: At the time of which conversation, your
4 Honor? That's vague and ambiguous.

5 Q BY MR. DENNY: At the time of the May 15th, 1970,
6 conversation.

7 A No, sir. I made the notes -- all right. You
8 could say that I made the notes during the time of the
9 conversation. Someone else was talking to her, while I was
10 making the notes.

11 Q All right.

12 A But I did not make them as she was making these
13 statements to me.

14 Q You made them within a very brief period of time
15 after she had made the statements to you; is that correct?

16 A Yes.

17 Q By "a previous period of time," we mean within
18 minutes; isn't that correct? Within less than an hour?

19 A Yes, within less than an hour.

20 Q All right. And this conversation, again, was
21 held beginning at approximately 2:28 p.m.; is that correct?

22 A Yes.

23 Q All right. And did she say to you, "Next morning,
24 told Bill Vance I was scared and didn't want to go."

25 A Yes.

26 Q And that was referring to the next morning, after
27 the July 24th conversation; is that correct?

28 MR. MANZELLA: Objection, your Honor. It assumes a fact

4b-3

1 not in evidence.

2 THE COURT: Sustained.

3 Q BY MR. DENNY: Well, did she tell you that
4 following the July 24th conversation, the next morning after
5 that, she told Bill Vance "I was scared and didn't want to
6 go"?

7 MR. MANZELLA: Your Honor, excuse me. There's no
8 testimony that she said the conversation took place on
9 July 24th.

10 THE COURT: He is not assuming a fact not in evidence.
11 He is asking whether that is the case.

12 MR. MANZELLA: Well, your Honor --

13 MR. DENNY: Your Honor, we have been talking about the
14 Devil's Canyon --

15 THE COURT: Excuse me.

16 MR. DENNY: July 24th conversation.

17 THE COURT: So the objection is overruled.

18 You may answer.

19 Q BY MR. DENNY: Do you recall the question?

20 A No, sir.

21 Q All right. All of these statements that I have
22 related thus far, she told you pertained to the conversation
23 in Devil's Canyon on July 24? He initially told you that;
24 is that correct?

25 A Yes. Except for that last statement, regarding
26 not wanting to go.

27 Q Yes?

28 A Yes. That, she told me -- I believe she told me

4b-4

1 that happened down at the ranch.

2 Q Well, did she tell you that happened the next
3 morning, "Told Bill Vance I was scared and didn't want to
4 go"?

5 A Yes.

6 Q That is the next morning following the July 24th
7 conversation, that she was relating to you; is that correct?

8 A Yes.

9 Q Did she tell you, "Vance talked to Charlie at
10 the ranch house about me not going"?

11 A No. May I explain this?

12 Q Well, did you put in your notes a note to that
13 effect, --

14 MR. MANZELLA: That's irrelevant, your Honor.

15 Q BY MR. DENNY: -- that she said, "Vance talked
16 to Charlie at the ranch house about me not going"?

17 MR. MANZELLA: That appears to be irrelevant, your
18 Honor.

19 THE COURT: Overruled. You may answer.

20 THE WITNESS: I believe I put in there "at the ranch
21 house," or, "the back ranch"; I can't remember which.

22 Q Well, would you like to see the notes to
23 refresh your recollection?

24 A Yes.

25 MR. DENNY: May I approach the witness, your Honor?

26 THE COURT: Yes, you may.

27 Q BY MR. DENNY: (Indicating a particular document)

28 A Yes, sir.

4b-5

1 Q All right. And having looked at your notes, does
2 that refresh your recollection as to whether or not she
3 in fact told you that which is in your notes? That is, that
4 "Vance talked to Charlie at the ranch house about me not
5 going"?

6 A The only way I can answer that is to explain
7 what happened in regard to that conversation, regarding the
8 ranch house.

9 THE COURT: All right. You may.

10 MR. DENNY: Well, your Honor -- excuse me. If I may
11 proceed first?

12 Q Is it your testimony that she did or did not
13 tell you --

14 THE COURT: We'll take a recess now, ladies and gentlemen.

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

20 About 15 minutes.

21 (Mid-morning recess.)
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1 THE COURT: All jurors are present.

2 (Whereupon, unrelated matters were called and
3 heard before the Court.)

4 THE COURT: All right, all the jurors are present. All
5 counsel are present. The defendant is present. Let's proceed.

6 Q BY MR. DENNY: All right, Sergeant Whiteley, we
7 were back at the statement which I think you wanted to
8 explain. I'd asked you whether she had stated to you, "Vance
9 talked to Charlie at the ranch house about me not going."
10 And you said it was something like that, but there were some
11 different circumstances about that particular statement; is
12 that right?

13 A Yes, sir.

14 Q What was that?

15 A She explained to me that the ranch house by the
16 dump, and I assumed that she meant the ranch house in the
17 rear, because there's a dump right alongside of it.

18 This is also another dump up at the main buildings.
19 So I wrote down my impression there of the back ranch house
20 when, in fact, she really meant the front. She explained this
21 to me later.

22 Q How much later, sir?

23 After she was on the stand and cross-examined by
24 me?

25 A Oh, no, sir, it was before she ever testified.

26 Q Did she go on to state as follows:

27 "Charlie came on the boardwalk and said 'You're
28 not going. Sadie, you take her place.'"

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1 Did she so state?

2 A Yes.

3 Q Did she further state, "Left -- referring to
4 Mary, Sadie, Bobby.

5 "Left while I was at the ranch house."

6 A Again, I'm using the back ranch house, and when
7 she's talking of the main ranch house.

8 Q Well, the words, however, were the words she used,
9 and that is "ranch house"?

10 A No, sir.

11 Q What words did she use, then, that you put down
12 "ranch house" for?

13 A I don't recall what words she did use. But she
14 did explain the one by the dump. And I -- as I said, I
15 assumed she meant the back ranch house by the dump.

16 Q Well, when you assumed that she meant the back
17 ranch house by the dump, isn't that because she used the
18 words "ranch house" in describing it?

19 A That she could have, I don't know.

20 Q All right.

21 And showing you People's 29, the aerial photo
22 here of the Spahn Ranch, could you indicate by pointing it
23 out to the jury what building, edifice, whatever, is designated
24 there as the ranch house?

25 A This would be the ranch house (indicating).

26 Q You're referring to George Spahn's house?

27 A Yes.

28 Q And she told you that that is what she meant by

5-3

1 the ranch house?

2 A Yes, she told me that the dump which is shown in
3 the left-hand side of the photograph is what she was speaking
4 of and not the dump at the back of the ranch.

5 Q So that your statement is now that as of May 15,
6 1970, when you had this conversation with her, and she
7 said that Vance talked to Charlie at the ranch house, that
8 at least insofar as her later explanation, she was saying
9 that Vance talked to Charlie in George Spahn's house?

10 A No, no.

11 Q Where, then?

12 A I can't recall the exact words, but she said
13 that the conversation took place by the dump at the ranch
14 house. And I am -- I assume that she's meaning up in this
15 area (indicating).

16 Q Well, when you wrote it down, the notes that you
17 made, almost contemporaneously, shortly after she had uttered
18 the words, you didn't put in anything about "by the dump,"
19 did you?

20 A No, I did not.

6 fls.

6-1

1 Q All you put in was, "Charlie talked with Vance"
2 or "Vance talked with Charlie at the ranch house," is that
3 correct?

4 A That's what the notes reflect.

5 Q All right. And insofar as this dump here
6 (indicating), factually, the dump that has been circled in
7 red -- or the dump area, with the initials E. B. beside it on
8 People's 29 -- that dump area is far removed (indicating)
9 from George Spahn's house, even assuming you call George
10 Spahn's house the ranch house; isn't that right?

11 MR. MANZELLA: Objection, your Honor. That's vague and
12 ambiguous --

13 THE COURT: Sustained.

14 MR. KAY: -- and calls for speculation.

15 Q BY MR. DENNY: Well, how far is the dump from
16 George Spahn's house?

17 A Seventy-five yards.

18 Q One hundred-fifty feet?

19 THE COURT: Seventy-five yards is 150 feet?

20 Q BY MR. DENNY: That's your best estimate?

21 A I would say it's approximately 75 yards.

22 MR. DENNY: There are times, your Honor, when people can
23 talk more clearly in feet than yards.

24 THE COURT: That's true.

25 MR. DENNY: And hence the question.

26 I didn't transmit it into meters.

27 (Pause in the proceedings while a discussion off
28 the record ensued at the counsel table between Mr. Mansella and

6-2

1 Mr. Denny.)

2 Q BY MR. DENNY: All right. So we go back to the
3 particular subject we were talking about, when she told --
4 when you wrote down, "Left while I was at ranch house."

5 Did she use the phraseology "ranch house" as you
6 put it down here?

7 MR. KAY: That's asked and answered.

8 MR. DENNY: I believe that's not been asked and
9 answered, your Honor.

10 THE COURT: Can we move this along, please?

11 MR. DENNY: I expect we can, your Honor.

12 Q Did she tell you, "The police came --" now,
13 referring to a period of time after Sadie and Mary had
14 returned in the VW microbus owned by Gary Hingan, did she tell
15 you, "Police came, and we ran into hills and hid. Thought they
16 had found Gary."

17 A Yes.

18 Q And by the "we," was she speaking at that time
19 of she and Mary?

20 A I don't recall who "we" was, but I know she said
21 that she went up into the hills.

22 Q And when you put "We ran into the hills," why did
23 you put that?

24 A I don't recall.

25 Q Wasn't it because she said that she and Mary
26 together ran up in the hills?

27 A I don't recall her saying that. I just remember
28 her saying that she ran up into the hills.

6-3

1 Q Did she tell you, concerning the VW microbus,
2 "Can't remember if the bus was hot-wired or had a key"?

3 A Yes.

4 Q Then, going back to the meeting at Devil's Canyon,
5 did she tell you, "Charlie said, 'Get him -- Gary -- to sign
6 over his stocks and cars. Kill him if necessary.'"

7 A There was something about -- this was assumed. I
8 can't remember if she was saying this was -- you know, the
9 general impression, but not the words.

10 But I -- I can't remember how she put it.

11 Q Well, when you put it in your notes --

12 A I put it in like she assumed it.

13 Q Well --

14 A Not that he had said it.

15 Q Well, you put it in in quotes, didn't you?

16 A I could have.

17 Q Well, would it refresh your recollection to see
18 your notes?

19 A Possibly.

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

22 Q And you did put it in quotes, "Charlie, 'Get him --
23 Gary -- to sign over his stocks and cars.'" New paragraph.

24 "'Kill him if necessary.'"

25 Isn't that the way you placed it?

26 A Yes.

27

28

6a fol

6a-1

1 Q And isn't that because that's what she said
2 Charlie had said, specifically?

3 A No.

4 Q You were placing them in quotes in your report
5 only to show that it was the general sense of what was stated?
6 As distinguished from a direct quote of what Charlie said?

7 A Yes.

8 Q Did she tell you -- and again, I'm not sure,
9 looking at your notes, whether now this is in the conversa-
10 tion of May 15 or May 16 --

11 May I approach the witness again, your Honor?

12 THE COURT: Yes, you may.

13 Q BY MR. DENNY: Showing you a copy of your notes,
14 Sergeant Whiteley, there appears a date on the middle of the
15 page; is that correct?

16 A Yes.

17 Q Does the writing that appears above that indicate
18 it was written on the same date as the date in the middle
19 of the page?

20 A No.

21 Q Was that written, then, the day before, the day
22 preceding?

23 A Yes.

24 Q Therefore, on May 15, 1969, again in the presence
25 of the same parties, did she tell you "\$27 -- Sadie had the
26 money"?

27 A Yes, I believe so.

28 Q Then going over to a conversation you had -- did

6a-2

1 you have a conversation with her in the presence of Deputy
2 District Attorney Burton Katz, your partner at that time,
3 Deputy Guenther, representatives of the prosecution's office
4 of Pierce County, and detectives of the Police Department,
5 and her attorney on May 16, 1970, at approximately 12:46 p.m.?

6 A Yes, I had a conversation with her at that time.

7 Q Were --

8 A I can't recall if all those people were there
9 during the full conversation. They were coming in and out.

10 Q And did you make notes of the conversation as
11 the conversation was going on?

12 A No.

13 Q Did you makes notes shortly thereafter? Or the
14 same way that you made the notes of the preceding day's
15 conversation?

16 A Yes.

17 Q All right. And referring to the conversation --
18 specifically regarding when they left; that is, Mr. Beauso-
19 leil, Miss Atkins and Miss Brunner -- did she tell you,
20 "I heard they left"?

21 A Yes. I have to explain that also. She corrected
22 me on -- about this "I heard they left" --

23 Q Well --

24 A -- in regard to there was two different times
25 that "they left."

26 Q Well, just a moment now. Is it a fact that at
27 the time, on May 16, 1970, when you had this conversation
28 with her, and she was discussing the time that Bobby Beausoleil,

6a-3

1 Sadie Atkins and Mary Brunner left to go to Gary Hinman's
2 house, on the night of the 25th of July, 1969, did she state,
3 in connection with that departure, "I heard they left"?

4 A I can't recall. I can only explain this --

5 Q Well --

6 A -- did not go in any type of a chronological
7 order. There were too many people speaking to her, and I
8 was trying to put this, when I wrote it down, into some type
9 of a chronological order, --

10 Q All right. Let me go then to the chrono- --

11 A And I wrote down that she -- that I heard she
12 said, "I heard they left."

13 And then later, she corrected my report.

14 Q When -- when was that? The same day?

15 A No. Because I didn't read it back.

16 Q Well, when was it that she corrected your
17 report?

18 A When she was brought down here from the -- or,
19 for the Grand Jury hearing.

20 Q Mary Brunner's Grand Jury hearing?

21 A I can't recall which Grand Jury hearing, whether
22 it was Mary Brunner's or this one.

23 Q Well, you recall she was the "secret witness"?
24 She didn't even appear at the --

25 MR. KAY: Objection, your Honor.

26 Q BY MR. DENNY: -- Manson Grand Jury hearing, did
27 she?

28 THE COURT: Sustained.

6a-6

1 Q BY MR. DENNY: All right.

2 So that it was Mary Brunner's Grand Jury hearing,
3 when she corrected it?

4 A Sometime around then, yes.

5 Q And you say she corrected your report?

6 A Yes.

7 Q What report? A typed report?

8 A Yes.

9 Q That's the report of May 18, 1970, that you made
10 out concerning the conversation of May 15, 1970?

6b fls.

11 A Yes.
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1 Q And that's the report which, on page 2, says,
2 "She stated that they left the location, but she did not
3 see them leave."

4 A Yes.

5 Q All right. And you say, then, that when she
6 talked to you at about the time she was brought down here
7 in, I think, September of this year, to testify in the Mary
8 Brunner case, she looked at that report and corrected it at
9 that time?

10 A Yes.

11 MR. KAY: Well, that -- we haven't -- I'm going to
12 object. We haven't reached September of this year, yet.
13 So it assumes a fact not in evidence.

14 THE COURT: Overruled.

15 MR. DENNY: If I said '72, I certainly meant '71, if
16 I misspoke myself.

17 Q By the way, at the time you went up to see Miss
18 Brunner -- I'm sorry -- Ella Jo Bailey in Tacoma, had you
19 placed any kind of hold on her?

20 MR. MANZELLA: Objection. It doesn't appear to be
21 relevant.

22 MR. DENNY: Again, this goes to --

23 THE COURT: Sustained.

24 MR. DENNY: Your Honor, under People vs. Pantages,
25 I submit it's relevant.

26 THE COURT: The objection is sustained.

27 Q BY MR. DENNY: Were you involved, sir, in
28 working out the agreement by which she would be granted

6b-2

1 immunity from any prosecution? In connection with the Hinman
2 matter?

3 A You are speaking of a formal agreement?

4 Q Informal or formal.

5 A Yes, I was.

6 Q And as a part of that agreement, although it did
7 not appear in the formal agreement, was there, as part of the
8 package, an agreement that her co-defendants, arrested with
9 her in connection with the forged credit card charge, would
10 also be released, found not guilty?

11 MR. MANZELLA: Objection. That doesn't appear to be
12 relevant.

13 MR. DENNY: Again, under People vs. Pan- --

14 THE COURT: Sustained.

15 MR. DENNY: -- tages, your Honor.

16 It goes to her state of mind.

17 THE COURT: Sustained.

18 MR. DENNY: I'm sorry.

19 THE COURT: Sustained.

20 MR. DENNY: I have no further questions of Sergeant
21 Whiteley.

22 MR. MANZELLA: I just have a few questions, your Honor.

23
24 CROSS-EXAMINATION

25 BY MR. MANZELLA:

26 Q Sergeant Whiteley, I want to -- I just have a
27 few questions of you.

28 I want to direct your attention to a portion

6b-3

1 of your interview, which was brought out by Mr. Denny,
2 with Ruby Pearl in October of 1970, when she told you about
3 the -- Charlie Manson, Bruce Davis, Steve Grogan, Tex
4 Watson and Bill Vance getting out of the car at about
5 11:30 at night, at Spahn Ranch.

6 In that same interview, did she also tell you
7 that that was the --

8 MR. DENNY: Excuse me, your Honor. May we approach
9 the bench, if further conversation is sought to be elicited?

10 THE COURT: Very well.

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

14 THE COURT: The Court didn't mean to preclude you from
15 asking a course of questions about what these discussions may
16 have been concerning any arrangements for immunity or for
17 dismissal of the actions pending in Washington against Miss
18 Bailey --

19 MR. DENNY: Well, I thought the Court was,

20 THE COURT: -- or the substance of the --

21 MR. DENNY: I asked a very direct question, your Honor,
22 on that.

23 THE COURT: Well --

24 MR. DENNY: And that was whether, as part of the
25 package deal, her co-defendants were to be released, in
26 order to secure her testimony.

27 THE COURT: The real question is whether she knew
28 about it, and whether it was part of --

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MR. DENNY: No, not whether she knew --

THE COURT: It's not important whether Ella Jo Bailey, before she made the statement or during the time she made the statement, knew of this transaction?

MR. DENNY: You are saying, as a foundation? I asked--

THE COURT: Isn't that important?

MR. DENNY: Certainly.

THE COURT: In order to determine whether or not she had a motive for in any way making a statement that was favorable to what the prosecution might want?

MR. DENNY: Well, your Honor sustained the objection on the grounds it was irrelevant.

THE COURT: It is irrelevant, unless you can establish that it was part of the transaction about which she knew.

If it was released -- if the People simply released her cohorts in the Washington matter, without her knowledge -- or if it were unknown to her -- I can't see how it would be relevant.

MR. DENNY: Well, I -- I thought I had asked it as part of the --

6c fls.

6c-1

1 THE COURT: All right. You understand now that I didn't
2 mean to preclude you from that course.

3 MR. DENNY: Well, I would like to --

4 THE COURT: If you wish to pursue it?

5 MR. DENNY: I would like to pursue it.

6 THE COURT: All right. Why did you wish to approach the
7 bench now?

8 MR. MANZELLA: The People wanted to offer, under Section
9 356, wanted to offer the -- that part of her statement where
10 she said that at that time in August, at 11:30 at night, when
11 she described what I have already asked in the question, she
12 said that was the last time she had seen Shorty.

13 In other words, I want to bring out -- see, Mr.
14 Denny brought out that she at one time said that she last saw
15 Shorty in September of '69.

16 What I am trying to bring out is that she ties her
17 remembrance of when she last saw Shorty to this -- to him being
18 surrounded by these people. And at least, that's what I am
19 going to argue.

20 And my point is that she -- when she's specific
21 about it, that's the last time she saw Shorty, no matter what
22 she says when that was. She ties it to that incident, no matter
23 when -- when she says she last saw Shorty, she does say that
24 the last time she saw him was at the time of that incident.

25 So I am just bringing that out under Section 356,
26 and also the --

27 MR. DENNY: Well, 356 --

28 THE COURT: What's 356?

6c-2

1 MR. MANZELLA: 356 says that we can bring out the rest of
2 a statement or conversation, once it's gone into by the
3 adverse party.

4 MR. DENNY: Not this way, your Honor. Because they can
5 -- they can bring it out, if in fact they have the witness on
6 the stand, and I seek to impeach her with a prior inconsistent
7 statement or something of that kind, then they can bring it
8 out --

9 MR. MANZELLA: No.

10 MR. DENNY: -- on her examination.

11 MR. KAY: No.

12 MR. MANZELLA: That's not what 356 says.

13 MR. DENNY: Well, your Honor, if I may just finish?
14 I have sought to show a prior inconsistent statement, solely
15 directed to one point and one point only.

16 Now, they can't bring out all of the rest of the
17 conversation --

18 MR. MANZELLA: We are not seeking to bring out all of
19 the rest of the conversation. We are going specifically to
20 that point -- that is, the date --

21 MR. DENNY: But this is a new --

22 MR. MANZELLA: -- when she says --

23 MR. DENNY: But this is a new point. I didn't bring
24 it out for the date. I didn't bring it out for the date at
25 all.

26 MR. MANZELLA: I don't care why you brought it out. It
27 wasn't limited for that purpose.

28 MR. DENNY: Yes, it was.

6c-3

1 MR. MANZELLA: No, it wasn't. I didn't hear any admonition
2 to the jury by the Court. I didn't ask you -- didn't hear you
3 ask to limit your question.

4 MR. DENNY: You don't have to. You limit it by the words
5 that are being brought forth in the question.

6 And the words that were brought forth here were
7 solely, simply and plainly that which set forth the fact that
8 she saw the five people, not four, get out of the car, and out
9 of the blue car.

10 THE COURT: Well, 356 is somewhat limited.

11 "...the whole on the same subject may be
12 inquired into by an adverse party," on the same subject.

13 MR. MANZELLA: That's correct.

14 MR. KAY: And this is the same type of --

15 MR. DENNY: It is not.

16 THE COURT: The Court believes it would probably not be the
17 same subject.

18 MR. MANZELLA: Well, your Honor --

19 MR. DENNY: All right.

20 THE COURT: I don't take it, for example, that you could
21 go into her entire conversation.

22 MR. MANZELLA: Well, I haven't asked to go into the entire
23 conversation.

24 THE COURT: I know you are not.

25 MR. MANZELLA: If Mr. Denny hadn't brought it out, I
26 wouldn't be asking this question.

27 My point is this --

28 THE COURT: Well, I would say that this is more your case --

60-4

1 In other words, you could bring it out in your case; but I
2 shouldn't think you would be able to bring it out now, just
3 because it's a part of the conversation.

4 MR. MANZELLA: I'm not bringing it out because it's part
5 of the conversation. I'm bringing it out because he's trying
6 to show that -- that she -- she said it was September that
7 she -- the last time she saw him.

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8 MR. DENNY: Not in this thing; not in this conversation.
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1 MR. KAY: Well, what was the date when she said --

2 MR. MANZELLA: Yes. What was the date that she said --
3 what was the date of that conversation?

4 MR. DENNY: That was a different conversation, your Honor.

5 THE COURT: You might inquire about it. It was a
6 different conversation.

7 MR. MANZELLA: Yes, I know.

8 MR. KAY: I think September 10th was the date.

9 MR. DENNY: All right. The conversation that I questioned
10 Sergeant Whiteley about was the one on October 31.

11 THE COURT: At any rate --

12 MR. DENNY: And this is when she said --

13 THE COURT: October 31 of what year? This year?

14 MR. DENNY: No. Of 1970.

15 THE COURT: 1970?

16 MR. DENNY: All right. That's the conversation which was
17 set forth as --

18 "Sometime in late August, I went to Spahn's
19 Movie Ranch about 11:30 P. M. Shorty had been
20 drinking and asked if he could come over to my
21 house and stay, because he didn't like being around
22 these weird hippies. I told Shorty I didn't have
23 room at my house for him and got into my car and
24 started to leave, when I observed a blue car pulling
25 into the ranch and Charles Manson, Tex Watson, and
26 Bill Vance, Bruce Davis and Clem Tufts jumped out
27 of the car very fast and spread out along the
28 boardwalk. I thought it was strange, as they

6d-2

1 "never moved very fast. I didn't stop."

2 And that's all.

3 THE COURT: All right. I don't think 356 allows you to
4 bring in anything that occurred in the conversation -- or that
5 was in the conversation, rather.

6 "Where part of an act, declaration,
7 conversation or writing is given in evidence by
8 one party, the whole on the same subject --"

9 MR. MANZELLA: Right. And what I'm saying is, this is
10 the same subject brought up by Mr. Denny.

11 MR. DENNY: That is a --

12 MR. MANZELLA: She says that incident was the last time
13 she saw Shorty. That's all I am saying.

14 MR. DENNY: But not if it's brought out on --

15 MR. MANZELLA: We aren't going into any other part of the
16 conversation.

17 THE COURT: This says, "And when a detached act,
18 declaration, conversation or writing is given in evidence," --

19 MR. MANZELLA: Right. Exactly.

20 THE COURT: -- "any other act, declaration, conversation
21 or writing which is necessary to make it understood may also be
22 given in evidence."

23 MR. KAY: Sure.

24 MR. DENNY: But there's nothing necessary to make that
25 understood, your Honor. That which they're trying to bring in
26 doesn't make that necessarily understood.

27 THE COURT: I think that's true.

28 MR. MANZELLA: It is. Otherwise, I wouldn't be offering

6d-3
1 it. Otherwise, I think it -- and Mr. Denny wouldn't be fighting
2 it, if it wasn't necessary to make it understood, because to
3 make it understood, that's how you understand, that she ties
4 the last time she saw Shorty to that incident.

5 THE COURT: How does she tie it in? What do you intend
6 to offer?

7 MR. MANZELLA: That she said that was the last time she
8 saw Shorty, at the time of that incident.

9 Even if she said now it was last month -- that's
10 the last time she saw Shorty, January of '72 -- she knows that
11 the last time she actually saw him was at that incident.

12 And this is why I'm trying to make it clear.

13 THE COURT: In the October conversation, did she also
14 say that? Now, he has gone into --

15 MR. MANZELLA: She said --

16 THE COURT: -- part of the October conversation. And if
17 she said that in the October conversation, then I think it
18 would be admissible, as part of the conversation, and it would
19 explain how she determines the date.

20 Do you follow me?

21 But I don't think, since it was not inquired about
22 in the 1969 conversation, that it would be -- that it would
23 come in under 356.

24 MR. MANZELLA: Well, I think she did say it in the
25 October conversation.

26 THE COURT: Well, if she did, everything is admissible.

27 MR. MANZELLA: I think that's what I asked Sergeant
28 Whiteley.

29 THE COURT: All right.

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1 MR. DENNY: Well, your Honor, excuse me.

2 MR. MANZELLA: I don't understand.

3 THE COURT: Well, because he directly asked in the
4 October conversation whether Ruby Pearl stated the last time she
5 saw --

6 MR. DENNY: No, I did not. No, I did not.

7 THE COURT: -- saw --

8 MR. DENNY: No.

9 THE COURT: Excuse me, Mr. Denny. You may correct me
10 after I've finished.

11 MR. DENNY: I'm sorry.

12 THE COURT: Please don't interrupt me when I'm speaking.

13 MR. DENNY: I beg your pardon. I do.

14 THE COURT: Let's see, where was I?

15 -- that the last time she saw Shorty Shea was some-
16 time in the middle of September.

17 MR. DENNY: That's another conversation, your Honor.

18 THE COURT: Well, I -- all right, well, what date was
19 that conversation? If that was a conversation I referred to,
20 and you told me it was in October.

21 MR. DENNY: No, that's the conversation on December 14th,
22 1969.

23 THE COURT: All right. Well, if she --

24 MR. DENNY: All right, now --

25 THE COURT: -- if she identified how she knew that date --

26 MR. DENNY: She did not. The only conversation -- and
27 the only conversation that I asked him about, was the conversa-
28 tion he had with her and George Spahn and Randy Starr, whether

1 together or separately, and he said separately, and whether
2 he stated that she had not seen Donald Jerome since the middle
3 of September, 1969, and that is all that is reflected in that
4 conversation in that report.

5 THE COURT: Well, you may inquire, if that is true, if
6 there's any other part that explains it. If that's what you had
7 in mind, you may use it. But I think Mr. Denny is correct in
8 connection with 356.

9 MR. MANZELLA: Okay.

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

12 MR. DENNY: Your Honor, before the machine gets back
13 together, may we approach the bench to explain one further
14 point?

15 THE COURT: Yes, you may.

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

19 MR. DENNY: Your Honor, I just want to make clear, 356,
20 in my opinion, does not apply to a prior inconsistent statement.
21 I have already established the foundation for this by asking
22 those questions previously and I asked her these very same
23 questions previously --

24 THE COURT: The Court knows that.

25 MR. DENNY: -- to establish the foundation.

26 All I can do at this point is to ask the witness
27 Whiteley who took the reports. Did she say thus and such,
28 thus and such, thus and such, exactly what I had asked her.

1 THE COURT: Why did you want to come back to the bench?

2 MR. DENNY: Because 356 doesn't even apply in that
3 situation.

4 THE COURT: The Court thinks so.

5 Let's proceed.

6 MR. DENNY: To permit the other side to go into it --

7 THE COURT: You did inquire about what was said in that
8 other conversation, and if there was something additional said
9 in the conversation about how she knows the date, they can
10 bring it in under 356.

11 MR. DENNY: I'm saying they can't. That's the point I
12 want to make clear.

13 THE COURT: The Court believes they can.

14 MR. DENNY: Well, your Honor --

15 THE COURT: Let's proceed.

16 MR. DENNY: Could I cite the Code section that's
17 involved here?

18 THE COURT: No, you may not, let's proceed.

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

21 Q BY MR. MANZELLA: Sergeant Whiteley, directing
22 your attention to that blue suitcase, it is not in the court-
23 room now. I'm sure you remember People's 65-H, the blue
24 suitcase; do you recall that?

25 A Yes.

26 Q All right.

27 MR. DENNY: This is beyond the scope of the direct
28 examination, your Honor.

1 MR. MANZELLA: He asked about the inventory, your Honor.

2 THE COURT: I think you did yesterday.

3 MR. DENNY: Of the footlockers, not of the blue suitcase.

4 THE COURT: Overruled.

5 Q BY MR. MANZELLA: Do you recall there being in the
6 blue suitcase now a few shirts with laundry marks including the
7 name of DeCarlo?

8 A Yes.

9 Q Were those in the suitcase when you first saw it?

10 A Yes.

11 Q Where did you first see it? Where did you first
12 see the suitcase?

13 A At Los Angeles Police Department, Robbery Homicide.

14 Q As a result of contacting the Vallejo Police
15 Department, were you able to locate Donald Jerome Shorty Shea
16 or his whereabouts?

17 A No.

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1 Q You testified in answer to a question or two
2 asked by Mr. Denny that some of the things that you wrote
3 in your notes of your conversation were your impressions.

4 Would you tell us what did you mean by that?

5 A Well, I can't write word for word what someone
6 says, so I just write my impressions.

7 Q Were the statements that you wrote in your notes,
8 were they taken in the sequence that Ella Bailey made the
9 statements or things similar to those statements, were they
10 taken in the same sequence?

11 A No.

12 Q Were your notes written as she was speaking to
13 you?

14 A No.

15 Q Were there a number of people questioning Ella
16 Bailey at those interviews in May and September of 1970?

17 A Yes.

18 Q Did the questions asked of Ella Bailey by all
19 the persons in the room, did they follow a chronological
20 order?

21 A No.

22 Q In the May interview with Ella Bailey, did she
23 tell you about the statements that Bruce had made to her on
24 Monday, July 28?

25 MR. DENNY: Just a minute, I'll object to that as
26 beyond the scope of direct examination.

27 THE COURT: Sustained.

28 Q BY MR. MANZELLA: Did she at any time correct

1 any notes or reports that you had made and tell you that
2 Mary, not Susan, had the money first?

3 MR. DENNY: Asking for hearsay.

4 THE COURT: Overruled, you may answer.

5 MR. DENNY: Your Honor, it is being sought for the
6 truth of the matter stated by a witness not here.

7 MR. MANZELLA: It is --

8 THE COURT: Mr. Manzella.

9 MR. MANZELLA: All right.

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

13 THE COURT: Was there something that I missed in the
14 course of the direct? Was that asked --

15 MR. MANZELLA: I thought there was. I thought Mr.
16 Denny had asked Sergeant Whiteley if Ella Bailey had told
17 him that Susan had the money.

18 MR. KAY: Right.

19 MR. MANZELLA: And she corrected him, Ella Bailey
20 corrected him and told him that Mary had the money.

21 MR. DENNY: Your Honor, this is asking for hearsay.

22 THE COURT: Well, is that true? Was that conversation
23 asked for?

24 MR. DENNY: The last thing I asked him was Item 13
25 on my list to ask him, was "\$27, Sadie had the money."

26 MR. MANZELLA: If you didn't ask him, I'll withdraw
27 the question. I thought you asked the question.

28 MR. DENNY: That's all I asked him, "Did she make that

1 statement to you?"

2 He said, "Yes."

3 Now, if they're asking for corrections she made
4 at some later time, that's asking for hearsay.

5 MR. KAY: I believe the corrections were brought up by
6 Mr. Denny on direct examination.

7 MR. DENNY: Oh, no.

8 THE COURT: I think if there is an explanation or
9 correction or if it is part of the same conversation on that
10 specific subject, then, it can be inquired about in order
11 to explain it.

12 MR. DENNY: That's perfectly all right if it is part
13 of that same conversation, but they're asking for corrections
14 that occurred much later.

15 THE COURT: Well, then, that would be objectionable.

16 MR. DENNY: Well, that's why I am objecting.

17 THE COURT: You may rephrase your questioning. If it
18 occurred during the same conversation, it can be brought out
19 by 356.

20 MR. MANZELLA: I don't think it did occur during the
21 conversation, but it is our position --

22 THE COURT: The objection would be sustained.

23 MR. KAY: Except for the fact the corrections occurred
24 the first time she had the conversation read back to her.

25 Remember on direct examination Sergeant Whiteley
26 testified that he didn't read his notes back to her. And the
27 first time that she saw it was when she came down here to
28 testify in the Mary Brunner case. And she read his reports

1 that he typed up from his notes on May 18. She read it and
2 she corrected him on some things. Said, you know --

3 MR. DENNY: Well, that's hearsay.

4 MR. KAY: No, it isn't. It is the same conversation.

5 MR. DENNY: How can it be the same conversation?

6 THE COURT: That was inquired about on direct examina-
7 tion, the corrections?

8 MR. DENNY: No, your Honor. No, your Honor, no indeed.

9 MR. KAY: It is the --

10 MR. DENNY: Let me, if I may, just set the record
11 straight on this. And I see my hand go out in President
12 Nixon's "I want to be perfectly clear" position, but I do.

13 Sergeant Whiteley volunteered certain information
14 on direct about corrections that she had made afterwards of
15 his notes when she came down here to testify in the Mary
16 Brunner Grand Jury hearing.

17 THE COURT: On direct, is that right?
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1 MR. DENNY: Specifically --

2 MR. MANZELLA: Yeah.

3 MR. DENNY: -- developed that. I could have objected
4 at that time. It was hearsay. I permitted him to get that
5 in. And I should have objected and I did not, but it was
6 pure, plain and simple hearsay as to what she did at that
7 time. There's no question about it. And he said that she
8 had read his report, the report of May 18, 1970, and on page
9 2 thereof it states "I was not present when they left."

10 And he says she corrected that.

11 All right, the mere fact he was able to get in
12 inadmissible matter by volunteering matters on direct
13 examination, does not in any way permit the People to get in
14 inadmissible hearsay on cross-examination.

15 And anything that --

16 THE COURT: I believe that was about the extent, he
17 said she corrected --

18 MR. DENNY: -- anything she said later is hearsay.

19 THE COURT: I'll sustain the objection.

20 MR. MANZELLA: Okay.

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

24 THE COURT: All right, I'll sustain the objection.

25 Q BY MR. MANZELLA: Sergeant Whiteley, do you have
26 an independent recollection of that -- of whether in that
27 May, 1970, interview with Ella Bailey she said that Susan
28 had showed her the money?

1 MR. DENNY: Irrelevant and immaterial.

2 THE COURT: Overruled. You may answer.

3 THE WITNESS: No, sir, I don't independently recall
4 whether she said it was Susan or Mary.

5 MR. MANZELLA: May I have just a moment, your Honor?

6 THE COURT: Yes, you may.

7 Q BY MR. MANZELLA: Sergeant Whiteley, in the
8 December 14, 1969, interview with Ruby Pearl, in which, as
9 Mr. Denny brought out, Ruby Pearl had said that she last
10 saw Shorty approximately the middle of September, 1969, did
11 she tell you whether there was an incident connected with the
12 time she last saw Shorty at that interview with her in
13 December of '69; if you recall?

14 A No, she did not.

15 Q All right.

16 All right, thank you, I have no further questions,
17 your Honor.

18 MR. DENNY: Just briefly, Sergeant Whiteley.

19
20 REDIRECT EXAMINATION

21 BY MR. DENNY:

22 Q You say your notes of May 15 did not follow
23 a chronological order?

24 MR. MANZELLA: No, that's not what he said, your Honor.
25 It assumes a fact not in evidence. He said the questions did
26 not.

27 THE COURT: You may rephrase your question.

28 Q BY MR. DENNY: Uh, let me rephrase it.

1 The questions did not follow the chronological
2 order that Miss Bailey was being asked, is that right?

3 A That's correct.

4 Q And the notes that you made did, in large
5 measure, attempt to set forth a chronological order,
6 particularly as regards the Hinman matter; is that correct?

7 A Yes.

8 Q But those notes were also interrupted in that
9 chronological sequence by various observations out of order;
10 isn't that correct?

11 A Yes, I believe so.

12 MR. DENNY: All right, nothing further.

13 MR. MANZELLA: No further questions, your Honor.

14 THE COURT: You may step down.

15 MR. MANZELLA: May Sergeant Whiteley be excused?

16 THE COURT: You may.

17 MR. DENNY: Your Honor, I have one request to make at
18 the bench, if I may.

19 THE COURT: All right, you may approach the bench.

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

23 MR. DENNY: I would ask the Court to order this witness
24 to attempt to locate the -- what he now refers to as a
25 missing inventory of the footlockers. I have attempted
26 diligently in prior questioning of Sergeant Whiteley to
27 locate that, to have it located, and it is extremely
28 relevant and material.

1 THE COURT: People.

2 MR. MANZELLA: We have attempted to locate it and we
3 can't locate it. The only reason I objected, because discovery
4 compliance is not a matter for the jury, that's why I objected
5 to these questions being asked in front of the jury.

6 THE COURT: Certainly it wasn't proper to ask in front
7 of the jury.

8 MR. MANZELLA: I tried to locate it and we can't locate
9 it. And we traced it down to Burt Katz. We have tried to
10 locate it since Mr. Denny first inquired about it and we
11 can't locate it.

12 MR. DENNY: Well, your Honor, there is a record section
13 in the Sheriff's Department which keeps records of this kind,
14 which keeps all records that are made, all official records.

15 MR. KAY: Whiteley turned it all over to Katz.

16 THE COURT: Whiteley says he's searched for it. Every-
17 body whom you have talked to and of whom the Court has
18 inquired --

19 MR. MANZELLA: We want it as much as Mr. Denny does,
20 your Honor, but we can't find it.

21 MR. DENNY: Well, has anyone gone to the Sheriff's
22 records?

23 THE COURT: In any event, we're wasting time.

24 MR. DENNY: I don't think we're wasting time on a very
25 important point.

26 THE COURT: The Court believes everything that could be
27 done has been done, and the Court is not going to make what
28 it considers at this time a futile order. Let's proceed.

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

MR. DENNY: I would request Sergeant Whiteley be excused at this time, but to remain on call.

MR. MANZELLA: Yes, Sergeant Whiteley will remain on call.

THE COURT: You are excused. You might keep your whereabouts known to Mr. Manzella, if you would.

All right, Mr. Denny, anything further?

MR. DENNY: Yes, your Honor, I'm having a witness called.

THE CLERK: Raise your right hand.

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

THE WITNESS: I do.

THE CLERK: Please take the stand and be seated.

THE BAILIFF: Would you state and spell your full name, please.

THE WITNESS: Ronald D. Garrahan, G-a-r-r-a-h-a-n.

RONALD D. GARRAHAN,
called as a witness by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

1 BY MR. DENNY:

2 Q Your occupation and assignment, sir?

3 A I'm a police officer for the City of Los Angeles,
4 assigned to the missing persons section.

5 Q And your rank?

6 A Investigator 3 or Sergeant.

7 Q And we refer to you as Sergeant Garrahan, I take
8 it?

9 A Yes, sir.

10 Q All right. And how long have you been employed
11 as a police officer?

12 A About twenty-five and a half years.

13 Q And how long have you been employed, sir, in the
14 missing persons section?

15 A Since September of last year.

16 Q September of --

17 A 1971.

18 Q 1971.

19 And are you the person in charge of that section?

20 A Yes, sir.

21 Q All right.

22 As such, you have the care, custody and control
23 of the records of the missing persons going back for a number
24 of years?

25 A Yes, sir.

26 Q And in response to a subpoena, did you make a
27 search of those records to determine whether there were any
28 records of a report made by Magdalene Shea concerning a

1 Donald Jerome Shea?

2 A I did.

3 Q And did you find any such missing person's
4 report?

5 A Not an actual missing person's report, no.

6 Q Did you, in an attempt to find any sort of a
7 report, find some sort of report in the police records?

8 A Yes, sir, I did.

9 Q What sort of report was it that you found?

10 A It appears to be some notes, handwritten notes
11 taken at an interview.

12 Q By whom, sir?

13 A An officer Carey from Homicide Division.

14 Q What date, sir?

15 A I believe the date was 12-8-69.

16 Q At 11:30 in the morning?

17 A I believe it has that time on it, yes.

18 Q All right.

19 But insofar as any records of -- pertaining to
20 missing persons, specifically your search of the records
21 under your care, custody and control, revealed none; is that
22 correct?

23 A That's correct.

24 MR. DENNY: All right, no further questions.

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CROSS

CROSS EXAMINATION

BY MR. KAY:

Q Sergeant Garrahan, in December, 1969, isn't it true that Missing Persons was a part of Homicide?

A Yes, sir.

Q All right. And that report you have -- by the way, do you have a copy of that report?

A Yes, sir, I do.

Q And you've read the report?

A I've glanced at it, yes.

Q All right. And this was a report given by Niki Shea to this Officer Carey in Homicide?

MR. DENNY: Calls for hearsay; the best evidence --

MR. KAY: Well, I believe he's --

THE COURT: What was that?

MR. DENNY: It would call for hearsay, and as to the best evidence.

THE COURT: Overruled. It's been referred to on direct.

MR. DENNY: Not the contents, your Honor.

THE WITNESS: I believe the name on the report --

THE COURT: Excuse me just a minute, Officer.

Overruled. You may answer.

THE WITNESS: I believe the name on the report is Magdalene Shea.

Q BY MR. KAY: All right. And the contents of this report indicates that it is a missing persons report, doesn't it? Doesn't she say that he's missing, and give a description

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1 of him and everything?

2 A Yes, sir.

3 MR. DENNY: Well, again, your Honor, I have raised the
4 objection that it's not the best evidence, and hearsay.

5 THE COURT: It's not offered for the truth of the -- do
6 you have the notes with you?

7 THE WITNESS: Yes, I do.

8 THE COURT: It's not offered for the truth of the matter,
9 ladies and gentlemen.

10 Is that correct? As to whether or not a report was
11 made?

12 MR. KAY: Well, the reason it's offered is because on
13 direct examination Mr. Denny said, "Was there --"

14 THE COURT: Well, excuse me. For what reason are the
15 people offering this?

16 MR. KAY: To show that a missing persons report was made.

17 THE COURT: All right. That's the only reason it's
18 offered, and you are to accept it only for that, if you do
19 accept it.

20 Q BY MR. KAY: And this is a two-page report; is that
21 correct?

22 A That is a photocopy of a single-page report, written
23 on both sides.

24 Q Written on both sides?

25 A Yes, sir.

26 Q And both sides are completely filled up with informa-
27 tion; is that right?

28 A Yes.

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1 Q And this, again, is dated 12-8-69, at 11:30?

2 A Yes, sir.

3 MR. KAY: No further questions.

4 MR. DENNY: I'll ask that the report be received, then, --

5 THE COURT: Any objection?

6 MR. DENNY: -- for the limited purpose for which
7 apparently the People sought to have the information set forth
8 therein, as Defendant's BB.

9 MR. KAY: Well, I haven't had a chance to read it. I
10 don't think there will be any objection, but let me -- if I
11 might have a moment, your Honor?

12 (Pause in the proceedings while Mr. Kay perused
13 the document.)

14 MR. KAY: No objection.

15 THE COURT: It will be received as BB, then, ladies and
16 gentlemen.

17 Anything further?

18 MR. KAY: Nothing further.

19 MR. DENNY: Nothing of this witness, your Honor.

20 THE COURT: You may step down.

21 MR. DENNY: Your Honor, I do have one -- one more witness
22 that I think can be taken care of very briefly, Lieutenant
23 Nielsen.

24 THE COURT: Very well.

25 MR. DENNY: Thank you, Sergeant.

26 THE CLERK: Do you solemnly swear that the testimony you
27 are about to give in the cause now pending before this court
28 shall be the truth, the whole truth, and nothing but the truth,

BB rec'd

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1 so help you God?

2 THE WITNESS: I do.

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4 MICHAEL M. NIELSEN,

5 called as a witness on behalf of the defendant, having been
6 first duly sworn, was examined and testified as follows:

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

8 Would you state and spell your full name, sir?

9 THE WITNESS: Michael M. Nielsen; N-i-e-l-s-e-n.

10
11 DIRECT EXAMINATION

12 BY MR. DENNY:

13 Q Your occupation and assignment, sir?

14 A Police officer for the City of Los Angeles,
15 presently attached to Administrative Narcotics Division.
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- 1 Q And your rank is now lieutenant; is that correct?
- 2 A Yes, sir.
- 3 Q And between October and December of 1969, what
- 4 was your rank, occupation and assignment?
- 5 A I'm sorry. Between October and what date?
- 6 Q And December, 1969.
- 7 A I was a detective sergeant attached to Robbery-
- 8 Homicide Division.
- 9 Q And your partner at that time?
- 10 A Sergeant Philip L. Sartuche; S-a-r-t-u-c-h-e.
- 11 Q And you were assigned to a team, among others,
- 12 consisting of Sergeant Gutierrez and Sergeant Patchett; is
- 13 that right?
- 14 A Yes, sir.
- 15 Q And that was in connection with the investigation
- 16 of the Tate and La Bianca murders; is that correct?
- 17 A Yes, sir.
- 18 Q And in connection with your investigation, did
- 19 you, on December 29, 1969, at approximately 10:20 hours,
- 20 have a conversation with Barbara Jean Hoyt?
- 21 A Yes, sir.
- 22 Q In that particular conversation, did she tell
- 23 you, "On one particular evening, sometime between August
- 24 19th and August 31st, she recalls hearing screams that
- 25 sounded as if they were coming from the creek area"?
- 26 A I don't recall the exact dates. It's been quite
- 27 some time.
- 28 But I do recall her saying that she heard

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1 screams.

2 Q Would looking at your report refresh your
3 recollection as to the dates?

4 A Yes, sir.

5 MR. DENNY: May I approach the witness, your Honor?

6 THE COURT: Yes, you may.

7 (Pause in the proceedings while the witness
8 perused a document.)

9 THE WITNESS: Yes, sir. She told me that.

10 Q BY MR. DENNY: And did she further tell you,
11 "These screams sounded as if they were from a male"?

12 A Yes, sir.

13 Q And did she further tell you she remembered
14 seeing Shorty before that evening, but has not seen him
15 since?

16 A Yes, sir.

17 Q Now, sir, on approximately November 12th, 1969,
18 were you involved in an interrogation, a tape-recorded
19 interrogation of Alan Leroy or Alan Larry Springer?

20 A I have interviewed -- or, I interviewed Mr.
21 Springer once or twice. I don't recall the specific days --
22 I should say, I was present at an interview when Mr. Springer
23 was interviewed.

24 Q And was that interview largely carried on by
25 Sergeant Gutierrez and Sergeant Patchett?

26 A As I recall, it was.

27 Q All right. And a day or so later, were you
28 present when Danny DeCarlo was brought in for interview, to

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1 Parker Center?

2 A If it was the first interview of Mr. DeCarlo, I
3 was not physically present. However, I was listening to
4 the interview, via an intercom system.

5 Q All right. And did Mr. Springer, to your knowledge,
6 come in with Mr. DeCarlo at that time?

7 A (No response.)

8 Q If you have any --

9 A I don't recall.

10 Q -- recollection. All right.

11 Now, did you then, or at any time thereafter,
12 promise Danny DeCarlo immunity from prosecution for any
13 crime he may have committed in connection with the Manson
14 Family, in exchange for his testimony in the Tate and La
15 Bianca cases?

16 MR. MANZELLA: That appears to be irrelevant, your
17 Honor.

18 THE COURT: Sustained.

19 MR. DENNY: It goes to --

20 THE COURT: Sustained. The objection is sustained.

21 The Court will recess now, ladies and gentlemen,
22 until 2:00 o'clock.

23 During the recess, you are admonished not to
24 converse amongst yourselves, nor with anyone else, nor
25 permit anyone to converse with you on any subject connected
26 with the matter, nor to form or express any opinion on the
27 matter until it is finally submitted to you.

28 I'll see you all at 2:00 o'clock.

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1 MR. DENNY: At 2:00 o'clock, your Honor?

2 THE COURT: At 2:00 o'clock.

3 MR. DENNY: May I make an offer of proof, after the jury
4 has left, your Honor?

5 THE COURT: You might make a short one before 2:00
6 o'clock.

7 MR. DENNY: All right.

8 THE COURT: Return at 2:00 o'clock, Officer.

9 (Whereupon, at 12:03 o'clock p.m., an adjournment
10 was taken in this matter until 2:00 o'clock p.m.
11 of the same day, Wednesday, February 16, 1972.)
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LOS ANGELES, CALIFORNIA, WEDNESDAY, FEBRUARY 16, 1972 2:00 PM

- - -

THE COURT: All right, in the case of People vs. Davis. Mr. Denny is present.

MR. KAY: May we approach the bench?

THE COURT: Yes, you may.

The witness was on the stand.

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

MR. KAY: Before I forget, there was one thing that --

THE COURT: Mr. Spahn was ordered back by 11:30. He was supposed to make a plane by 5:00.

I told Mr. Denny we didn't intend to call him and he could be excused.

MR. DENNY: That's right. The only problem we've got is making out the expense voucher for that. I understand it has to be signed before a Notary or something. And when I talked about it down in the D.A.'s Office, normally on the defense matters the clerk of the court makes those up, and I don't know whether there is a regular format involved or not.

THE COURT: Yes, there is a regular form. You might ask Mrs. Holt about it. She'll supply them, and if she doesn't have them, she'll get them.

MR. DENNY: We've got the form. What they are authorized to pay -- and the one problem here, Mr. Spahn,

1 because he was blind, -- he is blind, had to have somebody
2 come down with him.

3 THE COURT: I don't know that that would be a justified
4 expense.

5 MR. DENNY: Well, this was the problem that we had when
6 I wanted him brought down with Ruby Pearl so that there would
7 not be an additional expense.

8 THE COURT: The Court understands that.

9 MR. DENNY: Well, what I am wondering, is if the Court
10 will authorize the expensiture or reimbursement.

11 THE COURT: Let me see your affidavit first and see
12 where we go from there.

13 MR. KAY: The reason I approached the bench was because
14 when Mr. Denny asked for the admission of the exhibit, the
15 Niki Shea's missing person's --

16 THE COURT: Missing person's informal report.

17 MR. KAY: Right, right. That was done in front of the
18 jury and that puts -- I don't like to argue --

19 THE COURT: That puts you in a bad spot.

20 MR. KAY: There is a part of that that I do want to
21 object to and have deleted, and it is on the back of that --

22 THE COURT: Where is it?

23 MR. KAY: -- exhibit.

24 MR. DENNY: It is BB.

25 THE COURT: All right, I am informed that Mr. Grogan
26 will be here sometime this evening.

27 MR. DENNY: Oh, that's wonderful. Thank you, Judge.

28 Do you have any information on Mr. Manson, when

1 he'll be down.

2 THE COURT: Well, the last information I have is that
3 Mr. --

4 THE BAILIFF: Mr. Manson will be in tomorrow afternoon
5 early and Grogan will be in tonight, sir.

6 THE COURT: Yes, thank you.

7 So Mr. Manson will be available for you to
8 interview tomorrow night.

9 MR. DENNY: And Grogan tonight?

10 THE COURT: Tonight.

11 MR. DENNY: Fine.

12 MR. KAY: This is the part that I would like to have
13 deleted.

14 THE COURT: "DeCarlo identified the fellow is the
15 right Shorty."

16 MR. KAY: Evidently she submitted a photograph and I
17 guess it was later shown to DeCarlo or something.

18 THE COURT: Otherwise, you have no objection?

19 MR. KAY: No.

20 THE COURT: Seems reasonable.

21 MR. DENNY: All right.

22 THE COURT: And I'm sorry, I thought it was a matter
23 of course that you would want this in, but I didn't know
24 which or, rather, either of you wanted it in and the Court
25 shouldn't have asked you that in front of the jury.

26 MR. KAY: Yes, it is (laughing) --

27 THE COURT: -- does contain a lot of hearsay, doesn't it?
28 Well, you both agree it should be in.

1 All right, I'll --

2 MR. DENNY: Well, your Honor, I'm not sure, really,
3 as I reflect on it, under the circumstances in which the
4 questioning had been allowed to develop over my objections
5 that I felt the best evidence prohibited some of the answers,
6 I moved to get it in. I do think under the circumstances,
7 perhaps with the amount of hearsay that is involved there,
8 it might not be admissible. I frankly think at this time
9 it would be preferable to withdraw or request to have it
10 withdrawn as an exhibit. And the facts have been established
11 that it was made as a missing person's report on December 8
12 to LAPD.

13 THE COURT: People?

14 MR. KAY: Well, he's the one that offered it. I mean--

15 THE COURT: Well, the jury hasn't seen it yet. If you
16 are withdrawing your offer --

17 MR. DENNY: Yes, I am, your Honor.

18 THE COURT: -- I'll permit the withdrawal.

19 MR. KAY: Also, you know, I'd like to state for the
20 record that Mr. Mansella went home sick. He has a temperature
21 of 102, so I'm trying to get him well for the opening argu-
22 ment.

23 THE COURT: All right.
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(Whereupon the following proceedings were had
in open court within the presence and hearing of the
jury:)

THE COURT: The Court permits Defendant's BB to be
withdrawn from evidence, ladies and gentlemen. It remains
marked for identification as BB.

MR. DENNY: Your Honor, now that we are back, I had
asked to make an offer of proof at the bench.

THE COURT: Ask your next question. If I think it is
necessary, I'll allow you to approach.

MR. DENNY: Well, it was in conjunction with the last
question, your Honor.

THE COURT: Read it to me -- or do you have it?

THE REPORTER: No.

THE COURT: Do you remember it?

MR. DENNY: Yes, I remember it.

MICHAEL M. NIELSEN,
the witness on the stand at the time of the noon recess,
resumed the stand and testified further as follows:

CROSS-EXAMINATION (Continued)

BY MR. DENNY:

Q In your interview with Mr. DeCarlo or any time
thereafter, did you promise DeCarlo immunity from prosecution
for any crime that he may have committed in connection with
the Manson Family in exchange for his testimony against
Beausoleil or against Manson and any other people in the

1 Tate-La Bianca case?

2 MR. KAY: To which I object as being irrelevant.

3 THE COURT: The objection is sustained, and I'll let
4 you approach the bench on an offer of proof.

5 MR. DENNY: Thank you, your Honor.

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

9 MR. DENNY: Your Honor --

10 THE COURT: How is this admissible?

11 MR. DENNY: It is the defense contention, among other
12 things, that as I indicated to the Court at the time, I
13 made my motion under 1118.1, the evidence as far as the
14 defense is concerned, points more toward the fact that
15 DeCarlo was guilty of the murder of Shorty Shea, if any
16 murder, in fact, did occur, than my client because of his
17 connection with the guns and because --

18 THE COURT: Well, now, you don't have to go into that.

19 MR. DENNY: I don't intend to.

20 Now, in this connection, your Honor, Mr. Springer
21 has said that one of the motivating factors in his going
22 to the police was in order to get DeCarlo off because he
23 was in big trouble, murder.

24 And I submit that the big trouble that he was in
25 was the murder of Shorty Shea.

26 MR. KAY: (Laughing.)

27 MR. DENNY: As through the guns and the rest of it.
28 And that DeCarlo's being granted immunity does bear on

1 Springer's statements, on Springer's motive for fabricating,
2 and I submit fabricating evidence of this alleged conversa-
3 tion of November 26th against Bruce Davis, all in order to
4 help get immunity from prosecution for Danny DeCarlo.

5 And I --

6 THE COURT: You're asking a policeman whether or not
7 there was immunity granted for Danny DeCarlo?

8 MR. DENNY: Whether he made any promises of immunity
9 to Danny DeCarlo. That's my first question.

10 My second question would be: Was he involved
11 in any negotiations with himself representing LAPD in the
12 District Attorney's Office so as to grant Danny DeCarlo
13 immunity from prosecution.

14 And Mr. Springer has already said that Officer
15 Gutierrez told him that he would see to it that the cases
16 that were then pending against him were taken care of, so
17 they have that power.

18 THE COURT: People.

19 MR. KAY: I can represent this, being familiar with
20 Mr. DeCarlo in the Tate-La Bianca case, that Mr. DeCarlo
21 was never granted immunity on any of the --

22 THE COURT: Aside from that.

23 MR. KAY: -- on any of the Manson Family cases.

24 MR. DENNY: Well, not any formal immunity.

25 MR. KAY: No.

26 MR. DENNY: A lot of these witnesses weren't granted
27 formal immunity, at least not granted immunity under the
28 Penal Code section, but granted immunity.

1 With Ella Jo Bailey, we had a written contract
2 that's undated and does not conform to the statutory type
3 grant of immunity.

4 THE COURT: I think the Court can probably take notice
5 of a transaction in the Beausoleil, Manson cases involving
6 Mary Brunner, that was an informal agreement.

7 MR. DENNY: That is correct.

8 THE COURT: But I think that you asking the wrong man.
9 I think that if you want to ask that, then you should ask
10 somebody, some Deputy D.A. so authorized to grant some type
11 of immunity.

12 MR. DENNY: Well --

13 THE COURT: I don't think you can ask a policeman
14 whether or not there was any agreement for immunity.

15 MR. DENNY: Well --

16 THE COURT: I would sustain the objection. It would
17 be hearsay, in any event.

18 MR. KAY: Thank you, your Honor.

9b fls.

9b-1

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

THE COURT: The objection is sustained.

Q BY MR. DENNY: Sir, skipping from Mr. DeCarlo to Mr. Springer.

Did you or any of your fellow officers, in your presence, that is Gutierrez, Patchett or Sartuche, tell Mr. Springer at or about November 12th, 1969, or at any time thereafter, in any conversation with him, that you would help to get the four felony charges then pending against him dismissed him or otherwise taken care of in exchange for the information that he had then given to you?

A Not that I -- excuse me, not that I recall.

Q Well, I've asked a somewhat compound question, and let me break it down.

Did you make any promises to him that you would see to it that the cases then pending against him, a grand theft and receiving stolen property, and receiving stolen property and possession of marijuana, that those cases would in some way be taken care of for him?

A No, sir.

Q And is it your statement, then, that none of your fellow officers in your presence made such a representation to him?

A That's correct.

MR. DENNY: All right, I have no further questions, your Honor.

CROSS-EXAMINATION

BY MR. KAY:

Q Lieutenant Nielsen, -- on the statement that Mr. Denny cross-examined you on the interview with Barbara Jean Hoyt, did you make the report?

A No, sir, Sergeant Sartuche made the report.

10 fls.

10-1

1 Q All right. Now, in describing the screams, did
2 Barbara Hoyt tell you who -- whose screams they were?

3 MR. DENNY: I'll object to that as beyond the scope of
4 the direct examination, and not within the confines of cross
5 examination on a -- an establishment of a prior inconsistent
6 statement.

7 MR. KAY: It's the very same conversation, your Honor.

8 THE COURT: Would you make that clear in your question?

9 MR. KAY: Yes.

10 Q All right. In the very same conversation which is
11 reflected in your report on the interview with Barbara Hoyt
12 on 12-9-69, wherein the report it says, "These screams sounded
13 as if they were from a male," did Barbara Hoyt tell you and
14 Sergeant Sartuche whose screams they were?

15 A Yes.

16 Q And whose screams did she say they were?

17 A She said they were Shorty's.

18 MR. KAY: No further questions.

RED.

19
20 REDIRECT EXAMINATION

21 BY MR. DENNY:

22 Q Now, Lieutenant Nielsen, if she said they were
23 Shorty's screams -- let me take it step by step.

24 She said that she heard the screams one particular
25 evening sometime between August 19th and August 31st; is that
26 correct?

27 A Yes, sir.

28 Q Do you recall specifically her stating those dates?

10-2

1 A Specifically, no, sir.

2 Q Well, if they appear in the report, that's
3 sufficient to refresh your recollection that those dates were
4 the dates she mentioned?

5 A Yes, sir.

6 Q All right. And you've seen the report, and those
7 dates do appear in the report, is that correct?

8 A Yes, sir.

9 Q All right. And so therefore, reflected in the
10 report was that information, is that correct?

11 A Yes, sir.

12 Q All right. And then she said she recalls hearing
13 screams that sounded as if they were coming from the creek
14 area. She said that?

15 A Yes, sir.

16 Q All right. And so that was reflected in the
17 report, is that correct?

18 A That's correct.

19 Q And then she said, "These screams sounded as if
20 they were from a male," --

21 A Correct.

22 Q -- is that correct?

23 A Yes.

24 Q And so that was reflected in the report, --

25 A Correct.

26 Q -- is that right?

27 And then you say she said, "And they were
28 Shorty's screams," is that right?

10-3

1 A Yes, sir.

2 Q But that was not reflected in the report; is that
3 correct?

4 A That is correct.

5 Q And can you tell us, sir, why that was not
6 reflected in the report?

7 A It's a rather significant statement, number one --

8 Q Yes, it is. Yes, it is!

9 A Secondly, we asked Barbara Hoyt, "How do you know?"
10 She said that this was her opinion; she knew -- she just knew --
11 knew that they were Shorty's screams, because she knew Shorty.
12 Because we had a -- excuse me; because we had a
13 very complex and delicate case under investigation, we discussed,
14 following the interview, Sergeant Sartuche and myself, --

15 Q Yes.

16 A -- whether we should include this opinion in.

17 And until we had had an opportunity to see if we
18 could verify it, including such a significant opinion can have
19 a tendency to predispose people to certain lines of thinking.

20 Q So you attempted to verify it; is that correct?

21 A Yes, sir.

22 Q All right. And you never changed that report; is
23 that correct?

24 A No, sir. We -- we, ourselves, knew this informa-
25 tion.

26 Q All right. And you kept that particular informa-
27 tion secret until now?

28 A No, sir, not to my knowledge.

10-4

1 Q The fact that she had said, on December 29, 1969,
2 that they were Shorty's screams?

3 A Well, I'm certain -- well, my partner, of course,
4 knew. And I am certain that we discussed it with Sergeants
5 Gutierrez and Patchet.

6 Q But you never put it in writing, anywhere else, is
7 that correct?

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

9 THE COURT: Overruled. You may answer.

10 THE WITNESS: Not to my knowledge.

11 Q BY MR. DENNY: All right, sir. And is it a fact
12 that the reason you didn't put it in the report was that you
13 didn't think it was credible, --

14 MR. KAY: Argumentative.

15 Q BY MR. DENNY: -- what she said to you?

16 THE COURT: Sustained.
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1 MR. DENNY: Well, your Honor, this goes to the reason
2 for whether it is or is not in the report. It goes to his
3 state of mind, your Honor.

4 MR. KAY: His state of mind is irrelevant.

5 MR. DENNY: It's relevant at this point.

6 THE COURT: He has already expressed his state of mind.
7 Sustained.

8 MR. DENNY: All right.

9 Lieutenant Nielsen, thank you. I have no further
10 questions.

11 MR. KAY: I have no further questions. Thank you,
12 Lieutenant Nielsen.

13 THE COURT: May this witness be excused?

14 MR. KAY: No objection.

15 MR. DENNY: May we have Dr. Brill?

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

17 Do you solemnly swear that the testimony you
18 are about to give in the cause now pending before this court,
19 shall be the truth, the whole truth, and nothing but the
20 truth, so help you God?

21 THE WITNESS: I do.

22
23 JAMES C. BRILL,

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

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

27 Would you state and spell your full name, please?

28 THE WITNESS: James C. Brill; B-r-i-l-l.

10a-2

DIRECT EXAMINATION

BY MR. DENNY:

Q Dr. Brill, pull that microphone right over in front of your face. Pull it all the way over so you are talking right into it.

A All right.

Q Dr. James C. Brill, B-r-i-l-l; is that correct?

A Correct.

Q All right. Dr. Brill, what is your present function, duty, calling, occupation, profession?

A I am a general surgeon.

Q And are you practicing in a particular locale?

A I practice in Westwood, specifically at UCLA Hospital.

Q Pull that microphone a little closer to you, would you?

A I practice at UCLA Hospital, specifically.

Q All right.

And do you have a particular post or function there?

A I am director of the emergency room at UCLA, and do general surgery in addition?

Q And as director of the emergency room at UCLA, what is your particular function?

A Well, it's chiefly in an administrative function; and to give -- to teach emergency medicine.

Q And are you an associate professor, or anything of that kind?

10a-3

1 A Assistant professor of general surgery.

2 Q At UCLA?

3 A Right.

4 Q And how long have you been so employed, sir?

5 A I have been six months in that employ.

6 Q And could you trace back for us what your educa-
7 tional background is, starting with your college degree, and
8 then into your medical degree?

9 A Four years of college at Pomona College; four
10 years of the medical school at UCLA Medical School; one year
11 of surgery internship at UCLA Hospital;

12 Four years of surgical residency at -- it's been
13 thread through several hospitals, including UCLA Hospital,
14 Sepulveda VA Hospital, Johns Hopkins Hospital, San Bernardino
15 County General Hospital.

16 Q Is that Johns Hopkins in Baltimore?

17 A Right.

18 Q All right. And that residency was strictly in
19 the field of surgery; is that correct?

20 A Strictly in general surgery.

21 Q General surgery. All right.

22 And the teaching you do, I think you said, was
23 also in the field of general surgery, or emergency room --

24 A General surgery -- well, general and emergency
25 surgery, and emergency medicine.

26 Q All right. Now, sir, in your work as a general
27 surgeon, and particularly in your work in connection with the
28 emergency room -- and let me jump into one thing, as far as the

10a-4

1 emergency room of UCLA.

2 Is that one of the busier emergency rooms in the
3 country, would you say?

4 A (Pause) Oh, I think so.

5 Q All right. And what kind of traumatic injuries
6 are treated there?

7 MR. KAY: Well, that appears to be irrelevant, your
8 Honor.

9 MR. DENNY: Again, it goes to his expertise.

10 THE COURT: I'm sorry. What was the question? What
11 kind of cases are treated there?

12 MR. DENNY: What kind of traumatic injuries are treated
13 in the emergency room?

14 THE COURT: Overruled. You may answer.

15 THE WITNESS: Oh, there's a full spectrum of traumatic
16 injuries. It would take a --

17 THE COURT: Every type?

18 THE WITNESS: Every type.

19 Q BY MR. DENNY: Gunshot wounds, cuts, auto
20 accidents?

21 A Every conceivable thing you can think of.

22 Q All right. And would you say that in the course
23 of your practice, you have treated most of those kinds that --

24 A Oh, I'd say so.

25 Q -- occur there? All right.

10b fls.

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10b-1

1 Now, sir, you have had an opportunity to look at
2 this exhibit -- now wearing an epaulette on his right arm --
3 but a portion of it being marked People's 19 in evidence in this
4 case.

5 Now -- is that right? Have you?

6 A Yes, I have.

7 Q All right. And you have also had an opportunity
8 to read the protocol prepared by Dr. David Katsuyama, the
9 Deputy Medical Examiner, who posted Gary Hinman in this case?

10 A Uh -- I'm not specifically sure whether I read the
11 protocol or excerpts of it that were written into the record.

12 Q All right. But you do recall descriptions --

13 A Descriptions --

14 Q -- of --

15 A -- of the various injuries.

16 Q -- of the various wounds?

17 Now, Doctor, I want to direct your attention to the
18 portion of the anatomy of the human body, taking in that area
19 along the left cheek and side of the face and neck, in the area
20 where you see this indicated red slash, cut mark along the ear
21 into the cheek (indicating).

22 Now, in that area, if you will -- and perhaps you
23 could come down, with the pointer, and take this hand-
24 microphone -- maybe if you can stand here; I think it might be
25 better if you could stand here where I am, and then you won't
26 cut off the jurors over there.

27 Could you show the jurors the arteries and major
28 vessels, and name those arteries and major vessels in the area

10b-2

1 of the left side of the cheek and face there? And approximately
2 where they are on that mannequin?

3 A Well, the blood supply to the head is symmetric---

4 Q Hold that up a little.

5 A The blood supply to the head is symmetric.

6 Q All right.

7 A And to describe one side is to describe the other.
8 But it starts here in the neck, where the common carotid
9 artery comes up inside the sternocleido-mastoid muscle, and
10 divides into two branches, the internal and the external
11 carotid arteries.

12 The internal carotid artery, which goes on into the
13 brain, has no branches in the neck. The external carotid
14 artery begins to subdivide below the angle of the jaw, so that
15 the arteries supplying the external surface of the face and
16 head have begun to divide up by the time they're down in the
17 neck.

18 There are various branches of the external
19 carotid artery, and the major ones are the superior thyroid
20 artery, the lingular artery -- which goes to the tongue;
21 a branch of the mandibular artery, which comes up along the
22 face here (indicating); the facial artery, which comes up
23 across this way; the --

24 THE COURT: Indicating up and forward?

25 THE WITNESS: Yes. The superficial temporal arteries
26 and other branches, which come up along and in front of the
27 ear; the posterior auricular artery is the one that comes
28 up the back of the ear and across to the top of the head.

10b-3

1 Q Now, if a person received a cut wound, such as
2 described on the mannequin here, People's 19, either starting
3 from just behind the ear, the left ear -- as this one does,
4 if you are starting from right to left -- and going down to
5 a point just a little below and ahead of the left sideburn --
6 or, if you are reading from left to right, starting at that
7 point and going behind the ear (indicating) -- if a person
8 received such a cut, and the cut did not penetrate into the
9 oral cavity, would such a cut sever any of the blood vessels
10 that you have described?

11 A It perhaps could sever the superficial temporal
12 artery.

13 Q And again, would you point out to the jury where
14 that superficial temporal artery goes, where it comes from and
15 where it goes?

16 A It comes up the neck, behind the jaw, and runs in
17 front of the ear (indicating).

18 Q And up over the top of the --

19 A It comes up over the top of the head like this
20 (indicating).

21 Q All right. And is that particular artery a large
22 artery, or a small artery, in comparison with other arteries
23 in the body?

24 A Oh, it's quite small. It's about the size that
25 one could feel in the radial pulse.

26 One can feel it themselves, if you put your finger
27 here (indicating).

28 It's just a small artery.

10c fol

10c-1

1 Q At the temple (indicating)?
2 A Yeah.
3 Q All right. In fact, the pulse sometimes is taken
4 there?
5 A (No response.)
6 Q Or could be?
7 A Occasionally. It could be, yes.
8 Q All right. Now, assuming a healthy male individual
9 of approximately 30 years of age, what would be the effect,
10 with such a cut, assuming that that artery were severed?
11 MR. KAY: Well, I'll object that it assumes facts not
12 in evidence.
13 And I would like to take the doctor on voir dire,
14 if I may.
15 THE COURT: Your request for voir dire is denied.
16 Would counsel approach the bench?
17 (Whereupon, the following proceedings were had at
18 the bench among Court and counsel, outside the hearing of the
19 jury:)
20 THE COURT: May I see the -- let's see. The Coroner's
21 report is not in evidence, is it?
22 MR. KAY: No.
23 MR. DENNY: No, it's not, your Honor.
24 THE COURT: Do you have it? I've forgotten whether
25 Dr. Katsuyama testified that that artery was severed or not.
26 MR. DENNY: No, he did not know whether it was severed.
27 He didn't check.
28 THE COURT: All right. The best that the People could

10c-2

1 have, from the standpoint of cause, would be that the artery
2 would be severed.

3 That's true, isn't it?

4 MR. DENNY: That is correct, your Honor. I am taking it
5 at the -- at its very worst. The doctor testified that he did
6 not check; that he doesn't know whether the artery was
7 severed or not.

8 THE COURT: I think it's within the ambit of inference
9 that the jury would say, from what this witness has described --
10 and what Dr. Katsuyama has stated, that the artery was
11 severed.

12 I think that they could infer -- take that
13 inference.

14 So, I will overrule the objection.

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

17 (Proceedings had on an unrelated matter.)

18 THE COURT: You may restate your question.

19 MR. DENNY: Yes, your Honor.

20 People's 32 has been received in evidence, has it
21 not? I believe it has.

22 MR. KAY: It has, your Honor.

23 THE COURT: I think that is the --

24 MR. DENNY: The temporary license of Gary Alan Hinman.

25 THE COURT: Yes.

26 MR. DENNY: With a date of birth of December 24, 1934.

27 Q So, Doctor, let me put that in the hopper, as far
28 as the information goes.

10 -3

1 In a man born on December 24, 1934, assuming the
2 wound here was inflicted in July of 1969 -- thereby, I think,
3 making him --

4 THE COURT: 35.

5 MR. DENNY: -- almost 35, and assuming the severance of
6 the small temporal artery that you have described, could you
7 state with medical probability what the results of such a cut
8 would be?

9 MR. KAY: Well, I'm going to object to medical probability.
10 It's ambiguous and uncertain.

11 THE COURT: Sustained.

12 Do you have an opinion -- strike that.

13 All right. Would you rephrase your question?

14 MR. DENNY: Yes, I will.

15 Q Doctor, based on your --

16 THE COURT: It is rather vague and ambiguous.

17 MR. DENNY: All right.

18 Q Based on your experience, Doctor, as a general
19 surgeon, and one who has specialized and perhaps treated
20 numerous cases of an emergency nature, would you have an
21 opinion as to what consequences would result from such a cut on
22 such a person?

23 MR. KAY: Well, I am going to object to "such a person."
24 That's ambiguous.

25 MR. DENNY: A person, a male 35 years old.

26 THE COURT: Overruled.

27 THE WITNESS: That particular laceration would be a bad
28 laceration.

10a-4

1 Q BY MR. DENNY: All right.

2 A It just would have no consequence, other than as a
3 wound.

4 Q Well, what would happen as far as loss of blood?

5 A The patient perhaps could bleed profusely for a
6 period of time, but there's almost a certain probability that
7 the -- that the bleeding would cease.

8 I -- I infer that -- that you are asking me whether
9 or not this injury could be one of a serious nature, and I would
10 answer "no" to that.

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1 Q Well, to go one step further than merely
2 serious, what was such an injury as has been described here,
3 as consistent with the cut described on the mannequin -- even
4 assuming at most the severance of the one artery that might
5 be severed, the temporal artery -- would such a cut be
6 fatal?

7 A No.

8 Q And why not?

9 A Well, I -- as I explained, if the -- if the
10 individual were to bleed for a period of time, even massively,
11 his blood pressure would begin to drop, and then the artery
12 would squeeze itself shut and -- you know, that would be the
13 end of it.

14 In general, this kind of wound bleeds profusely
15 for -- you know, a brief period, and then just stops bleeding.

16 Q And what do you mean by "a brief period"?

17 A Oh, anywhere from 30 minutes to an hour.

18 Q All right. And in -- in such a period of time,
19 in your experience, is the bleeding that would be produced
20 from a wound of that kind -- even assuming an hour's worth
21 of bleeding -- sufficient to cause a man to die?

22 A I don't think so.

23 Q All right. So that -- would it be fair to say
24 that such a wound, in your opinion, because of the consequence
25 of the function of the body, the decrease in pressure,
26 causing the wound -- or the artery to pinch off, would not
27 be fatal?

28 A That's not a lethal wound.

10d-2

MR. DENNY: All right. No further questions.

CROSS-EXAMINATION

BY MR. KAY:

Q Dr. Brill, are you saying that, in every 35-year-old man, that this would be the case? I mean, aren't people different?

Well, what about -- okay. Could you answer that. And then I'll ask you another one.

A 35-year-old people are different.

Q Right. People are hemophiliacs, aren't they? Would your opinion be the same for a person who was a hemophiliac?

MR. DENNY: Well, obviously, that's irrelevant and immaterial.

THE COURT: Sustained.

Q BY MR. KAY: Well, is your opinion that you've just stated for Mr. Denny -- do you apply that opinion to every 35-year-old male?

MR. DENNY: Well, your Honor, I posited in my question a healthy 35-year-old male, and certainly not a hemophiliac or a bleeder.

THE COURT: Mr. Denny, if you have an objection, state your objection.

MR. DENNY: That's my objection, your Honor, that it's irrelevant and immaterial.

THE COURT: That's your objection, not your previous argument.

1 And again, let me ask you not to argue it.

2 Just state your objection.

3 The objection is sustained.

4 Q BY MR. KAY: All right. Dr. Brill, do you have
5 any information that Mr. Hinman was a healthy 35-year-old
6 male?

7 A I'm not sure that we've related this mannequin
8 to Mr. Hinman, whoever Mr. Hinman may be.

9 Q Well, this is a mannequin of Mr. Hinman. I
10 think we can agree on that.

11 A And would you repeat your question?

12 Q Yes.

13 Do you have any information that, at the time of
14 Mr. Hinman's death, that Mr. Hinman was a healthy 35-year-
15 old male?

16 A I have no -- no specific information of that
17 nature.

18 Q And would that make any difference in your opinion,
19 whether he was healthy? Say he was unhealthy.

20 MR. DENNY: Well, then, your Honor, I'm going to object
21 to this as irrelevant and immaterial.

22 THE COURT: Overruled. You may answer -- although it
23 is vague and indefinite.

24 He might have hangnails or something.

25 MR. DENNY: Again, irrelevant, based on no evidence
26 to the contrary.

27 MR. KAY: Well, there's --

28 THE COURT: I'll talk to you at the bench.

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

4 THE COURT: I could see you wanted to argue, and I
5 would rather you'd save your arguments for my ears alone.

6 MR. KAY: You see, the problem is that when Mr. Denny--

7 THE COURT: On the issue of proximate cause, if it's
8 a contributory cause, and you want to ask him about that,
9 you can.

10 But you have to base it -- you have to base your
11 assumption, just as Mr. Denny had to base his, on what's
12 in evidence.

13 MR. KAY: That's right. And when Mr. Denny asked him
14 the question, "Say, assume that you have a healthy 35-year-
15 old male," I objected to assuming facts not in evidence,
16 and the Court overruled my objection.

17 There's no evidence --
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1 THE COURT: Well, that's correct. I don't think good
2 health is presumed, so you -- you may ask, I think, just
3 generally -- I'll permit you to ask, in view of what has gone
4 on, in direct examination, that question generally.

5 MR. DENNY: Well, your Honor, I don't think, either, you
6 can presume ill health, when there is no --

7 THE COURT: I don't think so.

8 MR. DENNY: -- evidence whatsoever.

9 THE COURT: I don't believe so. But --

10 MR. DENNY: And if Mr. Kay is going to --

11 MR. KAY: But you can ask for a --

12 THE COURT: You can't ask for an example -- "Suppose a
13 hemophiliac" -- because there is no evidence of that.

14 MR. DENNY: That's right.

15 THE COURT: There is no evidence of good health, and
16 there is no evidence of bad health.

17 MR. DENNY: Well, I think the absence -- well, yes, there
18 is evidence of good health, your Honor, and that is the
19 testimony of Glenn Krell, the testimony of Joan Farley, the
20 testimony of one other person who testified --

21 THE COURT: That is true.

22 MR. DENNY: -- concerning Gary Hinman. And they all said
23 he was in good health, the last time they saw him.

24 THE COURT: I guess that is correct.

25 MR. KAY: I don't think anybody testified he was in good
26 health.

27 MR. DENNY: Yes, they did.

28 THE COURT: I think that is the case. So I would

10a-2

1 sustain the objection.

2 It doesn't appear -- there doesn't appear to be
3 any basis for assuming that the clotting time would in any
4 way be different as a result of any illness this man had,

5 But this doesn't preclude you from phrasing
6 hypothetical questions which would bring out your theory of
7 the case.

8 But they must be based on the evidence.

9 MR. KAY: All right.

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

3 MR. KAY: May I have just a moment, your Honor?

4 I have no further questions. Thank you,
5 Dr. Brill.

6 MR. DENNY: I have no further questions.

7 May the witness be excused, your Honor?

8 THE COURT: You may step down. You may be excused.

9 MR. DENNY: Thank you, Dr. Brill, very much.

10 Your Honor, Mr. Katz is on his way up. He's been
11 called by the bailiff. And I had thought that there would be
12 some longer examination here and had excused him to go down to
13 his office, but he should be here in just a minute.

14 THE COURT: Joyce, did you call him?

15 THE CLERK: I did not.

16 THE BAILIFF: I just called him. Just contacted him.
17 He's on his way up.

18 THE COURT: You talked to him personally?

19 THE BAILIFF: Yes, sir.

20 MR. DENNY: Your Honor, while we are waiting, could we
21 approach the bench a moment for an offer of proof?

22 THE COURT: Yes, you may.

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

26 MR. DENNY: Judge, I don't want to be in contempt of the
27 Court's order, but I feel the Court has made a ruling and
28 I'm not sure whether the Court had an opportunity to read the

1 cases that I cited as far as the admissibility of People's 110,
2 whether the Court was going to reconsider the admissibility
3 of the picture of Davis with the X on the forehead.

4 THE COURT: Yes. I'm not interested in hearing any
5 further argument from you.

6 MR. DENNY: I'm not going to argue any further.

7 THE COURT: I have reviewed the cases.

8 MR. DENNY: Well, is the Court's ruling the same?

9 THE COURT: The Court's ruling is the same.

10 MR. DENNY: Well, your Honor, the Court has stated that
11 the People did not have to stipulate as far as the other means
12 of identifying Mr. Davis as the onemaking the fingerprints.
13 You said that the People could prove they were his fingerprints
14 any way they wanted to. I want to prove they are his finger-
15 prints any way I want to, namely, by establishing that the
16 booking number of Bruce Davis is the same now as it was then.
17 And I would like to call your bailiff, unless the People want
18 to stipulate that the booking number on his wrist band is the
19 same. I think we have the same right to offer proof on any
20 relevant matter.

21 THE COURT: I think it is misleading, because there are
22 two booking numbers.

23 MR. DENNY: No, your Honor, it is not misleading at
24 all as to the identification of the fingerprint exemplar which
25 was rolled by Deputy Chamousis on --

26 THE COURT: Your motion is denied.

27 MR. DENNY: I'm not going to be permitted to?

28 THE COURT: That's correct.

1 MR. DENNY: To offer evidence on that?

2 THE COURT: The Court's belief is it is cumulative and
3 the Court believes it serves no purpose except to confuse,
4 because there is testimony that one of the exemplars came from
5 another fingerprint card.

6 MR. DENNY: Well, your Honor, I'm not attempting --

7 THE COURT: 86-A, I believe it was, which was a different
8 booking number.

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

10 THE COURT: And I think that your offer in this case is
11 simply intended to confuse the jury.

12 MR. DENNY: I don't intend to confuse the jury at all.
13 I tell you exactly why I want to offer this, and I think I have
14 the right to do so. I want to argue to the jury, when they see
15 that picture, the reason that picture is in front of them is
16 simply to inflame them. And there is no reason to put that
17 picture in. And I will argue that unless I am not permitted to
18 do so.

19 THE COURT: I can't understand your concern about the
20 picture. Is it simply because of the cross on the forehead?

21 MR. DENNY: Absolutely. Absolutely. There is no other
22 reason why that picture is in this case, but to inflame a jury
23 because of the cross on the forehead.

24 MR. KAY: There is no testimony in the case about any
25 significant --

26 MR. DENNY: There doesn't have to be. There doesn't have
27 to be.

28 THE COURT: Your motion is denied.

1 MR. DENNY: All right.

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

4 MR. DENNY: Mr. Katz.

5 THE CLERK: Raise your right hand.

6 Do you solemnly swear the testimony you may give in
7 the cause now pending before this court shall be the truth,
8 the whole truth, and nothing but the truth, so help you God?

9 THE WITNESS: I do.

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

11 THE BAILIFF: State your name, please.

12 THE WITNESS: Burton S. Katz.

13
14 BURTON S. KATZ,
15 called as a witness on behalf of the defendant, having been
16 first duly sworn, was examined and testified as follows:

17
18 DIRECT EXAMINATION

19 BY MR. DENNY:

20 Q Mr. Katz, what is your occupation or profession?

21 A I am an attorney, and I am employed with the Los
22 Angeles County District Attorney's Office.

23 Q And you are employed as a Deputy District Attorney,
24 is that correct?

25 A Yes, sir.

26 Q And how long have you been so employed?

27 A Approximately eight years.
28

11a-1

1 Q And you are the Deputy District Attorney who was
2 assigned at some point to the Hinman and Shea prosecutions,
3 that is for the murder of Gary Hinman and the alleged murder
4 of Donald Jerome Shea; is that correct?

5 A Yes, sir.

6 Q And you and Mr. Manzella -- were you jointly
7 involved in the pre-trial motions at a time when the -- all
8 four defendants charged in the indictment were being jointly
9 tried?

10 A Yes, sir.

11 Q And that is Mr. Manson, Susan Atkins, Mr. Davis
12 and Mr. Grogan; is that correct?

13 A That's correct.

14 Q All right. And directing your attention
15 specifically to May 4, 1971.

16 Do you recall at that time being present in the
17 chambers of the Court, this court, the chambers back behind
18 the Judge's bench in connection with hearings of proposed
19 statements to be offered by the People, a hearing commonly
20 known as an Aranda-Bruton hearing?

21 MR. KAY: That would appear to be irrelevant, your
22 Honor.

23 MR. DENNY: Make an offer of proof, your Honor.

24 THE COURT: Read it to me again, please.

25 (Whereupon, the question was read by the
26 reporter as follows:

27 "Q All right.

28 "And directing your attention specifically

11a-2

1 "to May 4, 1971, do you recall at that time being
2 present in the chambers of the Court, this court,
3 the chambers back behind the Judge's bench in
4 connection with hearings on proposed statements to
5 be offered by the People, a hearing commonly known
6 as an Aranda-Bruton hearing?")

7 MR. DENNY: An Aranda-Bruton hearing.

8 THE COURT: The objection is sustained.

9 MR. DENNY: May I make an offer of proof?

10 THE COURT: All right, you may.

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

14 MR. DENNY: Your Honor, I intend to offer by a line of
15 questioning to Mr. Katz the following evidence:

16 That on May 4, 1971, in chambers, with all four
17 defendants represented by counsel, and the People represented
18 by Mr. Katz and Mr. Manzella, there was a hearing on the
19 same 20 odd statements that were to be presented by the People
20 in the combined trial for the sanitization of those statements.

21 THE COURT: That was assuming that there would be a
22 joint trial.

23 MR. DENNY: That is correct.

24 THE COURT: And there is a question of whether those
25 statements would be allowable under the circumstance without--
26 okay, go ahead.

27 MR. DENNY: That in connection with that hearing, the
28 People presented a statement, statement No. 3, in the list

11a-3

1 of statements purporting to relate conversation overheard by
2 Barbara Hoyt at the Meyers Ranch, conversation of Charles
3 Manson stating, in effect, he had killed Shorty Shea. That
4 at that time an objection was raised by me that the statement
5 proposed was inconsistent with the statement which had been
6 given by Barbara Hoyt at the Grand Jury hearing. That I did
7 not feel the People were going to put on perjured testimony,
8 but I thought the statement as proposed in the list of
9 statements set forth was not consistent with that.

10 The Court listened to the statement made by
11 Barbara Hoyt as it was read from the Grand Jury transcript
12 and indicated that there was a difference.

13 At that time I indicated that because what was
14 said in the Grand Jury transcript in no way mentioned Bruce
15 Davis, in no way showed any acknowledgement by Bruce Davis,
16 that it would not be admissible against him under the Osuna
17 doctrine.

18 And Mr. Manzella at that time submitted, with
19 Mr. Katz present, that the statement would be admissible
20 anyway on the grounds of an adoptive admission by silence,
21 because he was silent. He had said as far as their evidence
22 went to that point, he said nothing.

23 Then, I stated that my view of the law was that
24 silence, that the circumstances, when one is not even
25 mentioned, does not constitute an adoptive admission.

26 THE COURT: Okay. What do you intend to show with
27 Mr. Katz?

28 MR. DENNY: That Mr. Katz then stated as follows:

11a-4

1 "Your Honor, here's my problem, if I may state
2 something for the record, and as an officer of the
3 court.

4 "Now, when I talked with Barbara Hoyt,
5 obviously prior to putting her on before testifying
6 in the Grand Jury proceedings, she was very reluctant
7 to talk to me at all."

8 In the first place, she has testified that she
9 was not and it took several sessions.

10 THE COURT: Is there any way of putting in a nutshell
11 what you are trying to show?

12 MR. DENNY: I'm trying to show, your Honor, that her
13 testimony, when Mr. Manzella went out to Pierce College on
14 May 20, 1971, to get a statement which would bring it within
15 the Osuna doctrine was fabricated testimony.

11b fls.

11b-1

1 THE COURT: Well, specifically, what do you want to
2 ask Katz? This is taking a long time. If you get to the
3 point, I can make a wild guess as to whether or not it is
4 admissible.

5 You want to show a prior inconsistent statement?

6 MR. DENNY: No, your Honor, I do not.

7 I want to show, because we've got the prior
8 inconsistent statement already in the Grand Jury transcript
9 impeaching Barbara Hoyt, I want to show the way the District
10 Attorney's Office got the evidence that they finally then
11 did produce in this court, which I submit was fabricating
12 testimony.

13 THE COURT: What do you intend to show?

14 MR. DENNY: I intend to show that at the time of May 4,
15 when this hearing was held, they didn't have any information
16 other than that Bruce Davis was silent and said nothing.
17 That because I raised the objection that it would not come
18 within any exception to the hearsay rule, and the Court
19 sustained that and held it in abeyance, that they then went
20 out and got this information that they needed in order to get
21 something on Bruce Davis to hang on him, to bring it within--

22 THE COURT: And you intend to show what by Katz?

23 MR. DENNY: That this is the statement I was just going
24 to read.

25 THE COURT: All right, go ahead and I'll listen.

26 MR. DENNY: All right.

27 "When I talked to Barbara --"

28 "--" All right.

1 "When I talked to Barbara Hoyt obviously before
2 -- prior to putting her on before testifying in the
3 Grand Jury proceedings, she was very reluctant to talk
4 to me at all and it took several sessions to bring out
5 what I considered to be the full information concern-
6 ing the so-called 'Last Supper Rites.'"

7 "Now, I don't know whether or not she will divulge
8 more information to which she was percipient or now has
9 recalled whether in fact she has ability to recall informa-
10 tion. What I am saying is I don't want to box ourselves in
11 at this time to represent to the Court that she would only
12 testify to those matters contained in the Grand Jury
13 transcript. Obviously if she cannot recall anything more,
14 then Mr. Denny has a right -- any reference to Mr. Davis
15 would have to be deleted, because it would not be a proper
16 sanitization under the Aranda-Bruton doctrine. But assuming
17 after talking to her she brings out more matters and has
18 better recall, then I think we are in a position to present
19 that testimony and should not be estopped from so doing."

20 Now, I submit, your Honor, if they did not have
21 the testimony, and as I've stated to the Court time and again--

22 THE COURT: Well, isn't that a part of the record, that
23 she did not remember it and did not so testify at the time --

24 MR. KAY: That's right.

25 THE COURT: -- at the time of the Grand Jury hearing?
26 And you've got it in the record?

27 MR. DENNY: I have it in the record as far as the
28 Grand Jury, but not as far as May 4, 1971, and not as far

1 as how the District Attorney's Office came --

2 THE COURT: The Court was sustaining the objection --
3 the Court does not believe it is material, whatsoever. If
4 Katz decided to question her further, and she stated something
5 that she had not stated previously to their knowledge, I
6 can't see that you can do anything more than establish any-
7 thing that you have already established.

8 MR. DENNY: No, your Honor, I have made an offer of
9 proof and made a statement in my opening statement to this
10 jury, and I intend to make good on that by any means legally
11 permissible, and I think this is legally permissible. That
12 there is a conspiracy in this case. The conspiracy involved
13 is a conspiracy involved in the District Attorney's and the
14 Sheriff's Office and other police agencies to convict anyone
15 involved in the Manson case, and evidence has been fabricated
16 to do so. And further, that witnesses have tailored their
17 testimony to fit the needs of the prosecution.

18 Now, that's what I said verbatim, that witnesses
19 have tailored their testimony to fit the needs of the
20 prosecution. And in this case I think I have the right to
21 show that the prosecution needed her testimony. That the
22 only way legally to get that testimony in was for them to go
23 out and get exactly what they got from her, and that is
24 three phrases from Miss Davis, "Yeah, yeah," and --

25 THE COURT: Want to say it louder?

26 MR. DENNY: No, I am trying to keep it down, your
27 Honor.

28 THE COURT: I hadn't noticed that.

11c-1

MR. KAY: We would object.

THE COURT: Mr. Denny, I realize that you are emotionally involved in this.

MR. DENNY: I think I'm being quite objective about it, your Honor.

THE COURT: Very well. I think you're going to have to restrain your voice.

Now --

MR. KAY: I think that he's trying to get in a pre-trial hearing which was out of the presence of the jury before this jury was even seated. He's trying to get a lot of hearsay in about what Mr. Katz said in chambers and it is all irrelevant. The fact is that Barbara Hoyt was interviewed, she made her statements, she made this statement to Mr. Manzella, she's testified that Mr. Manzella didn't tell her what to say about Bruce Davis. If you -- if Mr. Denny wants to call Mr. Manzella and ask him if he told her what to say, that's fine. But I think all of this other stuff is irrelevant. And it is -- I don't think it should be in front of the jury.

THE COURT: I think that you can question him about the acquisition of any further statement from Barbara Hoyt.

MR. KAY: But he didn't take the statement. Mr. Manzella took the statement. He wasn't even present.

MR. DENNY: Well, your Honor --

THE COURT: You can put Mr. Manzella on or you can determine from him whether or not he, in fact, did talk to Barbara Hoyt and did induce her to change her testimony or to add to her testimony in any way.

MR. DENNY: Your Honor, is the Court --

11c-2

1 THE COURT: But the Court at this time is going to
2 sustain any objection to the May 5th proceedings.

3 MR. DENNY: It is May 4th.

4 Your Honor, may I just -- are the People the only
5 ones that can use circumstantial evidence?

6 THE COURT: I am not inclined to hear anything further.

7 MR. DENNY: Well, I submit this is circumstantial
8 evidence of the facts that I can prove.

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

11 Q BY MR. DENNY: All right, Mr. Katz, is it a fact
12 that as of the date that Barbara Hoyt testified before the
13 Grand Jury of this county, on about December 14, 1970, you did
14 not have any information from her that at a particular dinner
15 that she is supposed to have been at at Meyers Ranch in
16 September of 1969, Bruce Davis had said or done anything to
17 acknowledge anything that Charlie Manson was supposed to have
18 said about the death of Shorty Shea?

19 MR. KAY: Well, I'll object to it, assumes a fact not in
20 evidence that he asked her for any such information.

21 THE COURT: Overruled, you may answer.

22 THE WITNESS: That is correct, Mr. Denny.

23 Q And as of May 4, 1971, you still did not have
24 any information from her --

25 THE COURT: Excuse me, Mr. Denny, you are --

26 MR. DENNY: Is that correct?

27 THE COURT: Excuse me, Mr. Denny, the Court has precluded
28 you from that line of questioning concerning May 4. You

1 understand.

2 MR. DENNY: I understand. I'm not questioning how we got
3 into it.

4 THE COURT: I want to let you know that the Court has so
5 ruled.

6 MR. DENNY: Well --

7 THE COURT: And the Court interrupted you, I'm sorry.

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1 MR. DENNY: Well, is the Court raising an objection to
2 that question as asked?

3 THE COURT: I didn't let you finish the question, because
4 I wanted to make sure that you knew where you stood with the
5 Court in respect to that ruling.

6 MR. DENNY: Well, I'm not sure that I do, your Honor.

7 THE COURT: All right.

8 MR. DENNY: May we approach the bench?

9 THE COURT: Then you'd better approach the bench.

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

13 THE COURT: The Court has observed that it's a tactic
14 which has been used by both sides in this case, from time to
15 time, to ask a question which -- the attorney asking the
16 question knows -- is an improper question, for the purpose of
17 imparting information, presumably, to the jury.

18 Now, I have made a ruling in connection with this
19 line of questioning concerning the May 4th Aranda-Bruton
20 hearing, and I don't anticipate, in view of that ruling, that
21 you will go into the question.

22 I think the record is clear. You have made your
23 record. You have stated what your offer of proof would be, and
24 the Court would not permit you to --

25 MR. DENNY: Well, your Honor, I don't -- I certainly
26 don't want to do anything that is going to be in any way
27 violative of a ruling of this Court. But I thought the Court's
28 ruling was simply that I could not go into the hearing.

1 I thought simply --

2 THE COURT: Hold your voice down, please.

3 MR. DENNY: I'm sorry. I thought, strictly -- well,
4 I could at least get into his state of knowledge, which the
5 Court, I thought, --

6 THE COURT: Well --

7 MR. DENNY: -- as of any particular date, would permit.

8 THE COURT: Well, if you restrict yourself to --

9 MR. DENNY: Well, that's all I was asking.

10 THE COURT: I just wanted to make sure that you under-
11 stood.

12 MR. DENNY: Oh, yes. I thought that's what the Court
13 had said, and I thought I was complying with it.

14 THE COURT: All right.

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

17 Q BY MR. DENNY: All right. And is it also a fact
18 that from that time -- that is, about December 14th or 15th,
19 1970 -- until May 4, 1971, you still had no information
20 whatsoever from Barbara Hoyt that Mr. Davis had in any way
21 signified, by word or deed, any sort of concurrence in any
22 statements purportedly made by Charlie Manson at a dinner at
23 the Meyers Ranch on or about September, 1969?

24 MR. KAY: Same objection, that it assumes a fact not in
25 evidence, that she was asked.

26 THE COURT: Overruled. You may answer.

27 THE WITNESS: That is not true, Mr. Denny.

28 Q BY MR. DENNY: As of May 4, you had information --

1 A The manner -- excuse me. The manner in which you
2 phrased your question indicated that I had absolutely no idea
3 that Miss Hoyt had knowledge concerning what transpired at
4 Barker and Meyers Ranch --

5 Q Oh.

6 A -- in September of 1969.

7 Q Well, let me rephrase the question, then.

8 And let me go back a little bit beyond it, in fact.

9 As the prosecutor assigned to the prosecution of
10 the -- specifically, the alleged Shea murder, you talked at
11 some length with Miss Hoyt before you put her on at the time of
12 the Grand Jury hearing; is that correct? On a number of occa-
13 sions?

14 A I did talk with her, but I never talked with her
15 extensively, Mr. Denny.

16 Q Well, on how many occasions before you put her on
17 as one of the witnesses at the Grand Jury hearing, in December
18 of 1970, did you talk with her?

19 A I would say at least three or four times. And each
20 time, I attempted to extend the session, so that I may extract
21 from her everything I believed that she knew concerning the --
22 That is, Shea and Hinman.

23 Q All right. And as a careful practitioner, a
24 careful prosecutor, you did attempt, in those sessions, to
25 extract from her everything she knew about the matters that you
26 were going to present to the Grand Jury; is that correct?

27 A To the best of my ability, Mr. Denny.

28 Q All right. And you have a certain modicum of

1 ability, in all modesty; is that correct?

2 A You'll have to make that assessment, Mr. Danny.

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1 Q All right, sir. And among the subjects which you
2 discussed with her was this dinner at the Meyers Ranch, in
3 September of 1969, a dinner at which, among others, Juan
4 Flynn, Charlie Manson, Tex Watson, Bruce Davis, Danny DeCarlo
5 were supposed to have been present; is that correct?

6 A That's correct, sir.

7 Q And I take it, as the careful practitioner --
8 which you say that you are -- you did intend to put on
9 evidence of that particular dinner before the Grand Jury; is
10 that correct?

11 A I did intend to put evidence on in connection
12 with that dinner incident, but not with that witness.

13 Q But in fact, you did use that witness and put
14 on that testimony at the Grand Jury; is that correct?

15 A If you say so. I haven't -- I have no independent
16 recollection, Mr. Denny.

17 Q All right. And you did question her about that
18 particular dinner?

19 A Yes, sir.

20 Q All right. And again, being the careful
21 practitioner that you are, you questioned her rather fully,
22 to determine whether the story that she might give corroborated
23 that of Mr. Juan Flynn also; is that not correct?

24 A No, sir, I did not succeed in interrogating her
25 rather fully in that regard. I tried, but I was unable to.

26 Q You tried but you were unable to?

27 A That's correct.

28 Q All right. I take it, at the time she appeared

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1 before the Grand Jury, she was not an unwilling witness?

2 A That is not true.

3 Q She was an unwilling witness?

4 A Well, it depends on how you define "unwilling."

5 Q Well, assume, sir, that she has testified here
6 under oath that she was not an unwilling witness. What --
7 what do you define, then, as an unwilling witness, if you
8 say she was an unwilling witness?

9 A Well, the psychological aura that pervaded the
10 circumstances under which she testified before the Grand Jury,
11 the fear she expressed, and a number of other things she
12 expressed to me.

13 Q All right. She was afraid, perhaps, to testify,
14 again having already testified several times in various
15 Manson cases; is that right?

16 A Yes.

17 And as a matter of fact, she told me she didn't
18 want to testify.

19 Q All right. But you imposed upon her to do so;
20 isn't that right?

21 A I did, yes, sir.

22 Q All right.

23 And she testified at reasonably great length?

24 A Yes.

25 Q And you questioned her at some length before the
26 Grand Jury; is that right?

27 A Yes, sir, I did.

28 Q All right. And in connection with her testimony

12-3

1 in this trial, is it true that sometime after May 4, 1971,
2 you sent Mr. Manzella out to see if he could get some further
3 information from her about this alleged Meyers dinner, in
4 September of 1969?

5 A Yes, sir.

6 Q All right. And it was your specific purpose at
7 the time, was it not, to get any information from her,
8 possible information from her, that would connect Mr. Davis
9 with statements made by Mr. Manson, so that the statements
10 made by Mr. Manson would be admissible against Mr. Davis,
11 by some sort of adoptive admission; is that correct?

12 MR. KAY: Well, that's irrelevant, your Honor.

13 THE COURT: Sustained.

14 MR. DENNY: I would like to make an offer of proof as
15 to the relevancy, your Honor.

16 THE COURT: All right. You may.

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

20 THE COURT: Read it to me, would you, Ken?

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

23 "Q All right. And it was your specific
24 purpose at the time, was it not, to get any
25 information from her, possible information from
26 her, that would connect Mr. Davis with statements
27 made by Mr. Manson, so that the statements made
28 by Mr. Manson would be admissible against Mr. Davis,

1 "by some sort of adoptive admission; is that correct?")

2 MR. KAY: Your Honor, I can't see why Mr. Denny asked
3 that question, after what your Honor said to him. That's
4 exactly what you told him not to do, because that was part
5 of the May 4th ruling of your Honor.

6 MR. DENNY: I don't think that's in any way violative
7 of the Court's --

8 THE COURT: It's argumentative in form, but it's not --
9 it doesn't concern the May 4th ruling.

10 You may restate your question.

11 MR. DENNY: Thank you, your Honor.

12 MR. KAY: Your Honor, I believe that's the exact
13 subject --

14 THE COURT: But it's argumentative in form, and you may
15 ask him the purpose of the -- what the purpose was, if you
16 wish.

17 MR. KAY: I think that's irrelevant, what the purpose
18 was.

19 THE COURT: Well, you put him on -- pardon me?

20 MR. KAY: I think it's irrelevant, what the purpose
21 was. In fact, she was interviewed and did make the statement.

22 I think Mr. Katz' state of mind is irrelevant.
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1 THE COURT: He didn't actually conduct the interview,
2 but --

3 MR. KAY: That's right.

4 MR. DENNY: But he sent Mr. Manzella out to conduct it
5 for a specific purpose.

6 THE COURT: And whether Manzella knew what his purpose was
7 would be more relevant.

8 I think you're probably right.

9 MR. KAY: I think his state of mind is clearly
10 irrelevant.

11 MR. DENNY: Your Honor, his state of mind and the
12 statement that was gotten thereafter was very specific, very
13 precise. And his state of mind is the --

14 THE COURT: Since he didn't do the questioning, would it
15 be important what his state of mind was?

16 MR. DENNY: Yes, it would, your Honor. Again, to my --

17 THE COURT: Suppose Mr. Manzella didn't understand him?

18 MR. DENNY: Well, strangely enough, it came back that
19 this is exactly what --

20 THE COURT: Do you want to put Manzella on?

21 MR. DENNY: I have been attempting to keep from putting
22 Manzella on, because I don't like to put the trial deputy on in
23 a case, if there's any way that I can get around it.

24 And that's why I am putting Mr. Katz on. I think
25 it's extremely awkward for the trial deputy to be put on the
26 stand in his own case, particularly in a situation where the --

27 THE COURT: Well --

28 MR. DENNY: -- situation is as touchy as it is here.

12b-2

1 THE COURT: Well, the Court believes that it probably
2 would be immaterial, what was in Mr. Katz's mind, and I will
3 sustain the objection.

4 MR. KAY: Thank you, your Honor.

5 THE COURT: But --

6 MR. DENNY: Well, your Honor, may I make the offer of
7 proof that his answer, I believe, would be in this case that he
8 specifically sent Mr. Manzella out to get a statement from
9 Barbara Hoyt, which would form an adoptive admission on the
10 part of Bruce Davis?

11 THE COURT: Well, you may ask him about that.

12 MR. DENNY: Thank you.

13 THE COURT: But directly, rather than beating around it.

14 MR. DENNY: All right. I'll ask him the exact question.

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

17 Q BY MR. DENNY: Mr. Katz, was your purpose in
18 sending Mr. Manzella out to see Miss Hoyt, on or about May
19 20th, for Mr. Manzella, if he could, to get some statement from
20 her which would form an adoptive admission by Bruce Davis of
21 the statements supposedly made by Charlie Manson at the Meyers
22 Ranch in early September, 1969?

23 MR. KAY: That's irrelevant and argumentative.

24 THE COURT: Sustained.

25 MR. DENNY: Your Honor, I thought that's the question the
26 Court had directed me to ask.

27 THE COURT: Did you send Mr. Manzella to get a further
28 statement from Barbara Hoyt?

1 THE WITNESS: Yes, your Honor, I did.

2 THE COURT: And did you discuss with him what you
3 wanted? What type of statement you wanted?

4 THE WITNESS: Yes, your Honor.

5 THE COURT: And what did you tell him?

6 This is not for the -- not for the --

7 MR. DENNY: Your Honor, I am going to object that this
8 is --

9 THE COURT: You object to that?

10 MR. DENNY: Yes, I do.

11 THE COURT: The Court will sustain the objection.

12 Go ahead and ask your question.

13 Q BY MR. DENNY: Was your purpose in sending him there
14 to have him get an adoptive admission by Bruce Davis of the
15 Manson statement at the Meyers Ranch?

16 MR. KAY: The same objection, your Honor.

17 THE COURT: Sustained.

18 Q BY MR. DENNY: All right. Now, Mr. Katz, you were
19 the deputy who presented this case before the Grand Jury?

20 A Yes, sir.

21 Q And during that presentation, you --

22 May I have just a moment, your Honor?

23 (Pause in the proceedings.)

24 Q BY MR. DENNY: To go back again, you had questioned
25 Ruby Pearl on various occasions before putting her on as a
26 witness at the Grand Jury; is that correct?

27 A Yes, sir.

28 Q And in connection with that, you had specifically

1 questioned her at some length, and on at least more than one
2 occasion, about the incident concerning her last having seen
3 Shorty Shea at the ranch, as she was about to leave it; is that
4 correct?

5 A Yes, Mr. Denny.

6 THE COURT: We'll take a recess at this time, ladies and
7 gentlemen. You have been sitting for over an hour's time.

8 During the recess, you are obliged not to converse
9 amongst yourselves, nor with anyone else, nor permit anyone to
10 converse with you on any subject connected with the matter, nor
11 to form or express any opinion on it until it is finally sub-
12 mitted to you.

13 We are in recess till about 3:30.

14 (Mid-afternoon recess.)
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1 THE COURT: The record will show the reporter is
2 present.

3 (Laughter.)

4 THE COURT: The defendant is present, together with his
5 counsel, and Mr. Kay for the People.

6 All right. You may proceed.

7 Q BY MR. DENNY: Mr. Katz, I think we were at the
8 point where I had inquired as to the conversations that you
9 had had with Ruby Pearl prior to putting her on the stand
10 at the time of the Grand Jury hearing, on about December 14,
11 15 and 16, 1970.

12 And did you indicate that you had had several
13 conversations with her concerning this incident about the last
14 time that she had seen Shorty Shea, or recalls having seen
15 Shorty Shea?

16 A Yes, sir.

17 Q And in the conversations that you had with her,
18 up until the time that you put her on -- by the way, you did
19 intend for her to testify about that particular event at the
20 Grand Jury hearing, when you were questioning her; is that
21 right?

22 A That's correct.

23 Q And you were questioning her specifically for
24 that purpose, to determine as much as you could about what
25 she remembered as to that particular evening; is that
26 correct?

27 A Not specifically for that purpose, but certainly,
28 that was the most material aspect of her testimony, yes.

12c-2

1 Q All right. And in your questioning, before you
2 put her on as a witness before the Grand Jury, in 1970, did
3 she ever state to you that there was a full moon on this
4 particular evening?

5 A She did not volunteer that, and I did not ask
6 her that question.

7 Q All right. And when you put her on as a witness
8 in the first Grogan case, you talked to her again about her
9 testimony, before she testified in that case; is that correct?

10 A Yes, Mr. Denny.

11 Q And before she testified in that case, you again
12 went over this last time she's supposed to have seen Shorty,
13 at the Spahn Ranch, and around midnight of one night; is that
14 correct?

15 A Yes, that's correct.

16 Q And you talked with her specifically, so as to
17 determine whether or not, in fact, she remembered various
18 things about that particular evening; is that correct?

19 A I think that's correct, yes.

20 Q All right. And at that time she did not in any
21 way indicate to you, did she, that this occurred -- this last
22 contact she had -- or recalls having had with him -- occurred
23 under the light of the full moon?

24 A She never used that phrase, that is correct,
25 Mr. Denny.

26 Q All right. To the contrary, she said it was
27 dark; is that right?

28 A She used that in a different context.

1 Q All right.

2 A Meaning that there was no artificial light.

3 Q All right. And when you put her on, in the
4 second Grogan trial, did you interview her again concerning
5 specifically the subject matter about the last time she
6 recalls having seen Shorty?

7 A Yes, that is correct.

8 Q All right. At that time, however, is it a fact
9 that you had received information that Barbara Hoyt, on
10 cross-examination in the Manson case, by Mr. Kanarek, had
11 mentioned that there was a full moon --

12 MR. KAY: That's irrelevant.

13 Q BY MR. DENNY: -- at the time she heard the
14 screams she says she heard of Shorty Shea?

15 MR. KAY: That's irrelevant.

16 THE COURT: Sustained.

17 Q BY MR. DENNY: Well, sir, is it a fact that prior
18 to Mrs. Pearl's testifying in the second Grogan case, you
19 received some information from some source, somewhere, that
20 the condition of the moon on that particular evening might
21 have some relevance in establishing whether Barbara Hoyt and
22 Pearl's testimony coincided?

23 MR. KAY: That's irrelevant.

24 MR. DENNY: I submit, again, it's relevant as to the
25 offer of proof I have made here.

26 THE COURT: Overruled. I'll permit the question.

27 THE WITNESS: I'm sorry. May that be read back, your
28 Honor?

1 (Whereupon, the record was read by the reporter
2 as follows:

3 "Q Well, sir, is it a fact that prior to Mrs.
4 Pearl's testifying in the second Grogan case, you received
5 some information from some source, somewhere, that the
6 condition of the moon on that particular evening might
7 have some relevance in establishing whether Barbara
8 Hoyt and Pearl's testimony coincided?")

12d fls. 9 THE WITNESS: Yes.

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1 Q BY MR. DENNY: Let me go back just a little bit,
2 because when you put Barbara Hoyt on at the Grand Jury, you
3 questioned her prior thereto concerning this alleged screaming
4 incident; is that correct? Where she's --

5 A Yes.

6 Q -- supposed to have overheard Shorty scream?

7 And at the time that you put her on the Grand Jury,
8 you had no information from her as to the fact that these screams
9 occurred under the light of the full moon; is that correct?

10 A I did not ask her.

11 Q And you did ask her all sorts of other things about
12 the circumstances of the screaming, where she was, whether she
13 was awake or asleep, what time it was; is that correct?

14 A Yes.

15 Q All right. And when you interviewed her, before she
16 testified -- as I take it you did interview her before she
17 testified at the first Grogan trial -- is that right?

18 A Yes.

19 Q And you interviewed -- or reinterviewed her again,
20 to determine once more her recollection of the events around
21 this time where she allegedly heard Shorty screaming in the
22 night?

23 A Yes.

24 Q And it was your theory of the case, was it not, that
25 the screams she heard were on the night that -- that same night
26 that Pearl last saw, she believes, Shorty?

27 MR. KAY: That's irrelevant.

28 THE COURT: Sustained.

12d-2

1 Q BY MR. DENNY: Well, it was your state of mind,
2 was it not, sir, in attempting to question these two women,
3 before they were placed on the stand, both before the Grand
4 Jury and the first Grogan trial, to try to establish that
5 their testimony about the last time they saw or heard Shorty
6 correlated as to time?

7 MR. KAY: That's irrelevant and argumentative.

8 THE COURT: Sustained.

9 Q BY MR. DENNY: Did you make --

10 THE COURT: Before the second Grogan trial, did you
11 talk to Ruby Pearl?

12 THE WITNESS: Yes, sir, your Honor.

13 THE COURT: Once again?

14 THE WITNESS: Yes.

15 Q BY MR. DENNY: At that time, isn't it a fact, sir,
16 that you pumped her and pumped her and pumped her, to try to
17 get her to recollect whether or not in fact there was a full
18 moon, which Barbara Hoyt had testified to in the Manson trial?

19 MR. KAY: That's argumentative.

20 THE COURT: Sustained.

21 Q BY MR. DENNY: Before the second Grogan trial, sir,
22 did you ask her specifically whether she remembered the
23 condition of the moon on this night when she last allegedly
24 saw Shorty?

25 A Not precisely.

26 Q Did you seek to get from her, in some way, some
27 statement as to her recollection about the condition about the
28 -- about what the condition of the moon was before she testified

1 in the second Grogan trial?

2 A I did, but indirectly, Mr. Denny.

3 Q All right. And was the basis of your questioning
4 her on that subject the moon? Because you had heard that
5 Barbara Hoyt had said, in the course of her Manson cross
6 examination, that there was a full moon the night she heard
7 the screams?

8 MR. KAY: That's irrelevant.

9 THE COURT: Sustained.

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13-1

1 Q BY MR. DENNY: And, sir, was it at the second
2 Grogan trial, as far as all of your questioning from the first
3 time that you got into the case until that point, was it just
4 at that point that you questioned them at all about the
5 condition of lighting on the night in which Barbara Hoyt
6 is supposed to have heard screams and Pearl was supposed to
7 have last seen Shorty?

8 A No, sir.

9 Q You had questioned them about lighting before that?

10 A Yes, but not with reference to whether or not the
11 moon was out or whether or not there was artificial lighting.

12 I had questioned Ruby Pearl specifically as to
13 how long she worked for Spahn Ranch, whether she was used to
14 working in the dark and seeing in the dark and recognizing
15 objects that were familiar to her and the like.

16 Q All right. And your source of questioning along
17 that line, was it not specifically, assuming that it was dark
18 on the night that she supposedly saw Shorty for the last time?

19 MR. KAY: That's irrelevant.

20 THE COURT: Sustained.

21 Q BY MR. DENNY: All right, now, sir, going to your
22 connection with Ella Jo Bailey.

23 Did you conduct an interview with Ella Jo Bailey
24 in the presence of Paul Whiteley on February 18, 1971, at
25 10:00 a.m., in Room 649 of the Hall of Justice in this
26 building?

27 A I'm sure if that's the date on the statement, yes,
28 it would be that date.

1 Q All right. That is the date.

2 And was anyone else present at that time besides
3 you, Miss Bailey and Mr. Whiteley?

4 A I don't believe so, Mr. Denny. But I don't --
5 but I can't say for certain.

6 Q All right. Well --

7 A Throughout the interview the only two persons
8 other than Miss Bailey would have been Sergeant Whiteley and
9 myself.

10 Q All right. And on that particular date and time,
11 in the presence of persons noted, did Ella Bailey state to
12 you as follows:

13 "That same day" -- and this is supposedly
14 at a day, according to the rest of the body of the
15 report when Mr. Vance told Charlie that Ella didn't
16 want to go with him.

17 "That same day Ella heard Manson talking
18 with Beausoleil in the parking lot at Spahn Ranch.
19 This conversation took place several hours after the
20 conversation between Ella, Bill" -- Bill Vance, I
21 assume.

22 A Yes.

23 Q -- "and Manson."

24 Do you recall her so stating?

25 A Yes, sir.

26 Q All right.

27 Did she state as follows:

28 "Beausoleil was carrying around an automatic

1 "pistol which took a clip. This is the same gun
2 that Ella saw Bruce Davis" -- spelled here Davies,
3 D-a-v-i-e-s, misspelling -- "Bruce Davis with on
4 many occasions"; did she make that statement?

5 A Yes, she did.

6 Q "Beausoleil was also carrying a Mexican knife
7 housed in a sheath. Ella identified the knife as
8 one in the photographs. The above knife had Mexican
9 engravings on the blade."

10 Did she make that statement and so identify that
11 knife?

12 A Yes.

13 Q That is, that she saw Beausoleil with the gun
14 on and also wearing the knife; is that correct?

15 A That is correct.

16 Q Did she further state at the time of the conversa-
17 tion between Manson and Beausoleil, "Bruce Davis was in the
18 general vicinity where the conversation took place"?

19 A Yes, she made that statement.

20 MR. DENNY: All right, I have no further questions.

21
22 CROSS-EXAMINATION

23 BY MR. KAY:

24 Q Mr. Katz, did you ever ask Barbara Hoyt what
25 Bruce Davis said at the Meyers Ranch dinner?

26 A No, sir.

27 Q Did you have some agreement with her that you
28 wouldn't ask her such questions?

1 A Yes, sir.

2 MR. DENNY: Just a moment, I'll object. That's hearsay,
3 and move the answer be stricken for the purpose of the objec-
4 tion.

5 THE COURT: Sustained to the question as formed.

6 Q BY MR. KAY: Well, Mr. Katz --

7 MR. DENNY: Is the answer stricken, your Honor, and the
8 jury admonished to disregard the question and the answer?

9 THE COURT: So ordered. It is stricken.

10 Q BY MR. KAY: Mr. Katz, you testified on direct
11 examination to Mr. Denny that you felt Barbara Hoyt was in
12 fear.

13 Did you feel that at the time you questioned her
14 that she didn't want to testify, that she was a reluctant
15 witness?

16 A Yes, sir.

17 Q All right. And what fear did she express to you?

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

19 MR. KAY: I think it was gone into on direct, your
20 Honor.

13a fls.

13a-1 1

THE COURT: Overruled. You may answer.

2

THE WITNESS: She indicated --

3

MR. DENNY: Well, may I be heard and ask for an offer of proof as to how much hearsay we're getting in here?

5

THE COURT: All right, the Court will hear from you.

6

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

9

THE COURT: If you have some -- if there is some reason which --

10

11

MR. KAY: Why he didn't ask her --

12

THE COURT: -- which was stated why he didn't ask her --

13

MR. KAY: There was.

14

THE COURT: -- and which was a part of these conversations, then, I think it is admissible, because this is what you have -- why you have raised this. You have raised this to show that the District Attorney's Office is manufacturing evidence, and if there is some reason why she did not state it, why, I think they have a right to show it.

20

What do you purport to show, then?

21

MR. KAY: Well, Mr. Katz, in order to talk to Barbara Hoyt, had to promise her that he would ask her very few questions because she was in fear of her life and she didn't want to testify and her mother was with her and her mother didn't want her to testify. And he had to -- and Burt had to make representations that he'd ask her very limited questions if she testified for him in order to get her to testify at all.

28

MR. DENNY: Your Honor, I cannot conceive of Mr. Katz

13a-2

1 testifying to this. If this is an offer of proof, it is an
2 offer of proof. But in light of Barbara Hoyt's testimony that
3 she has talked with millions of police officers and thousands
4 of attorneys, and talked with Deputy D.A.'s on hour after hour
5 after hour, if they want to get that in through Mr. Katz, that's
6 up to them.

7 MR. KAY: Sure, but there are different times, Mr. Denny.

8 MR. DENNY: All right.

9 THE COURT: It was established when you were asking her
10 questions that she did express fear.

11 Was this something that was said during one of these
12 conversations?

13 MR. KAY: Oh, yes, yes, it certainly was.

14 THE COURT: During one of the conversations referred to?

15 MR. KAY: Sure, uh-huh.

16 THE COURT: Which one? Can you identify or --

17 MR. KAY: Well, the conversation before she testified at
18 the Grand Jury.

19 Remember, Mr. Denny asked Mr. Katz if he had
20 interviewed Barbara Hoyt thoroughly before the Grand Jury, and
21 it is this conversation that --

22 THE COURT: Where did it take place, as far as you know?
23 In the Hall of Justice?

24 MR. KAY: I'm not sure, but Mr. Denny didn't bring that
25 out either. I'm referring to the same conversation.

26 THE COURT: The same day?

27 MR. KAY: Oh, yeah, sure, it was all in the same conversa-
28 tion.

13a-3

1 MR. DENNY: Well, your Honor, I don't see how
2 Mr. Kay can say, "Oh, yeah, the same conversation." I asked
3 several conversations. Did you have several conversations with
4 her before she testified before the Grand Jury. And he said,
5 "Yes, I did. I had several conversations with her, three or
6 four conversations with her."

7 MR. KAY: He brought up all those conversations, so I
8 think I should be able to ask about those conversations.

9 MR. DENNY: I don't think you can get in --

10 THE COURT: I don't think you can, but if it explains why
11 she had facts concealed by the District Attorney's Office
12 deliberately or were manufactured by them, rather -- not
13 concealed, but manufactured by them at a later time, why, then,
14 the Court believes it is admissible. If it is part of the
15 same conversation, if you can establish that, the Court will let
16 you do that.

17 MR. DENNY: Well, I -- are you saying if it is part of
18 the same conversations plural or is the Court --

19 MR. KAY: That's what you asked him about, conversations
20 before she testified before the Grand Jury.

21 MR. DENNY: Well, it is sort of interesting, though,
22 because I've asked specifically about conversations he had with
23 her on one particular subject and that is the alleged screams
24 of Shorty Shea and whether there was any moonlight.

25 Now, we're going to get in --

26 THE COURT: All right, now, we're talking about
27 Barbara Hoyt?

28 MR. DENNY: Yes, yes.

13a-4

MR. KAY: No, he asked her about --

MR. DENNY: And the Manson dinner.

THE COURT: That's it.

MR. DENNY: Those two things. That's not all she testified to at the Grand Jury hearing or this trial.

THE COURT: That's all we're referring to now.

13b fol

MR. DENNY: All right, the offer of proof --

13b-1

1 THE COURT: Isn't your statement and the offer of proof
2 you made to the Court consistent with your theory that the
3 District Attorney manufactured this evidence as part of a
4 conspiracy against all Manson members after they found the
5 need to have such a statement?

6 MR. DENNY: That is correct.

7 THE COURT: All right. Well, then, I think the District
8 Attorney can explain why, if it was the case, she was reluc-
9 tant to expand upon any statement, why she might not have said
10 what Bruce Davis is alleged to have said.

11 MR. DENNY: That's fine, your Honor, if they want to
12 get that in, I'm more than --

13 THE COURT: All right.

14 MR. KAY: Thank you.

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

18 Q BY MR. KAY: Mr. Katz, getting to the conversations
19 that Mr. Denny asked you about, when you questioned Barbara
20 Hoyt before the Grand Jury indictment in this case.

21 THE COURT: As part of the Grand Jury or before?

22 MR. KAY: Before.

23 THE COURT: Before the time of the Grand Jury?

24 MR. KAY: Before the time of the Grand Jury.

25 THE COURT: Your question was ambiguous.

26 THE WITNESS: You mean prior to the proceedings?

27 Q BY MR. KAY: Prior to the Grand Jury proceedings
28 on December 14, 15th and 16, 1970, did Barbara Hoyt express

1 fear to you?

2 A Absolutely.

3 Q What did she say?

4 MR. DENNY: Again, hearsay objection, your Honor.

5 THE COURT: Overruled. It is admitted simply, however,
6 to show Barbara Hoyt's state of mind and for that purpose
7 only, if the jury so chooses to accept it.

8 MR. DENNY: Well, your Honor, I don't think that's the
9 purpose we discussed at the bench. The purpose at the bench
10 is the good faith of the District Attorney's Office.

11 THE COURT: All right, Mr. Denny's statement is stricken
12 and it is admitted for that sole purpose, to show Barbara
13 Hoyt's state of mind.

14 THE WITNESS: She told me specifically, and it was in
15 front of her mother that was there during the entire conversa-
16 tion as her home, that she was specifically threatened by
17 various female members of the Manson Family. But not only
18 was she threatened, but the lives of members of her family.

19 Q BY MR. KAY: And did she say she did not --

20 A And the mother also stated she did not want her
21 daughter to testify.

22 Q And did you make certain promises to her about
23 the limited scope of the interview that you would have with
24 her at this time?

25 A Absolutely.

26 Q All right. What did you say?

27 A Well, I indicated to her that --

28 MR. DENNY: Again, objection as to hearsay.

1 THE COURT: The objection is overruled.

2 THE WITNESS: I indicated to both Barbara Hoyt and her
3 mother that the inquiry would be extremely limited and would
4 relate to non-critical matters so that no great burden would
5 fall upon her in testifying.

6 And I promised to limit it to roughly five or
7 ten minutes to the inquiry on the stand.

8 And I did tell her specifically I would not go
9 into certain areas, such as the Barker-Meyers Ranch dinner
10 in September of 1969, in that first meeting.

11 Q BY MR. KAY: Now, did you ever tell Barbara Hoyt
12 to say that there was a full moon on the night that she
13 heard Shorty Shea screaming?

14 A Absolutely not.

15 Q Did you ever tell Ruby Pearl to say there was a
16 full moon on the last night that she saw Shorty Shea?

17 A Absolutely not.

18 Q You, Mr. Katz, were the prosecutor in both the
19 Beausoleil trial and the Grogan trial, is that right?

20 A That's right, as well as being the chief prose-
21 cutor in this case.

22 MR. DENNY: Just a moment, I'll object.

23 THE WITNESS: Prior to the severance.

24 Q BY MR. KAY: All right.

25 THE COURT: Was there an objection?

26 MR. DENNY: Oh, no, no objection.

27 MR. KAY: Let me see -- may I have just a moment, your
28 Honor?

1 THE COURT: Yes, you may.

2 Q BY MR. KAY: Did -- in your questioning of Ruby
3 Pearl about the last time she saw Shorty that evening, did
4 she ever express to you that she had any difficulty in
5 seeing the persons she described that night?

6 A No, to the contrary, she indicated there was no
7 doubt in her mind she was able to identify all but one
8 individual.

9 Q Who was that one individual?

10 A Well, possibly she thought a fifth man was
11 involved, Bill Vance, but she didn't know.

12 Q Now, in the February 18th, 1971, statement that
13 you and Sergeant Whiteley took from Ella Jo Bailey, in
14 that statement, in the same conversation that Mr. Denny
15 went into, did Ella Jo Bailey mention the gun that -- in
16 the statement, in your answer to Mr. Denny's question that
17 she saw Beausoleil carrying around, did she mention that
18 gun in connection with Bruce Davis in this conversation?

19 A Yes, she did.
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13c fls.

13c-1

1 Q And what did she say?

2 MR. DENNY: Just a moment, I'll object to that as hearsay.

3 THE COURT: Sustained.

4 MR. KAY: Well, your Honor, I'm asking in the same
5 conversation.

6 MR. DENNY: It is hearsay.

7 MR. KAY: Under 3 --

8 THE COURT: Well, if you will establish it, that it was
9 the same conversation -- I must have misheard.

10 Q BY MR. KAY: Oh, this was the same conversation,
11 Mr. Katz?

12 A Oh, yes, very definitely.

13 Q And she did mention the gun?

14 THE COURT: Excuse me a minute, let me inquire.

15 It was the same conversation in which she
16 mentioned that Robert Beausoleil was carrying a pistol?

17 THE WITNESS: Yes.

18 THE COURT: Which -- is that correct?

19 THE WITNESS: Yes, that was on February 18.

20 THE COURT: That was the conversation?

21 THE WITNESS: Yes.

22 THE COURT: That was the date of the conversation?

23 THE WITNESS: Yes.

24 THE COURT: And what you are relating is part of that
25 conversation?

26 THE WITNESS: Absolutely. And part of that same subject
27 matter partially covered by Mr. Denny.

28 MR. DENNY: Well, your Honor --

13c-2

1 Q BY MR. KAY: All right.

2 THE COURT: All right, you may proceed.

3 Q BY MR. KAY: And what did Ella Jo Bailey say about
4 that gun in part of that conversation?

5 MR. DENNY: Objection, and I would like an offer of
6 proof at the bench.

7 THE COURT: Overruled, you may answer.

8 MR. DENNY: I don't think it comes in under any exception
9 of the hearsay rule.

10 THE COURT: Under 356 of the Evidence Code.

11 MR. DENNY: Well, that's why I would like an offer of
12 proof because I would like to make an objection.

13 THE COURT: All right, the Court will hear you.

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

17 THE COURT: Part of the conversation was stated about
18 Bob Beausoleil having a gun. Now, what do you purport to show?

19 MR. KAY: All right, that Ella Jo Bailey in the same
20 conversation said that Bruce Davis told her that he had that
21 same gun at a later time when he was over at Gary Hinman's
22 house.

23 MR. DENNY: Your Honor, that is no part of this conversa-
24 tion as far as bringing it in under anything -- I'm bringing
25 up what I have to bring up to establish a prior inconsistent
26 statement. And they're going way out of the ball park now to
27 go into an entirely different field and area.

28 My question was specifically related to that which

13c-3

1 I cross examined Ella Jo Bailey on, namely, this one para-
2 graph from Page 2, -- the third paragraph of Page 2, as to her
3 seeing Beausoleil with the gun and a knife, and that Bruce
4 Davis was just in the location. That's all.

5 Now, they are --

6 THE COURT: Your statement -- his statement would be
7 what?

8 MR. KAY: Okay, in the same conversation where he was
9 talking --

10 THE COURT: Where she said that she saw Beausoleil with
11 the gun.

12 MR. KAY: Right in the same conversation, she also said
13 that Bruce Davis told her that he had the gun over at Hinman's
14 house after that.

15 THE COURT: Now, how would you think that would be
16 admissible under 356?

17 MR. DENNY: To explain --

18 MR. KAY: Because it is part --

19 MR. DENNY: To explain this --

20 MR. KAY: It is part of the very same conversation about
21 the very same gun.

22 THE COURT: And you represent that it was said in
23 conjunction with what she said about the gun?

24 MR. KAY: It was all in the same conversation about the
25 gun, right.

26 MR. DENNY: That's not in answer to the Court's question.
27 You pointed out in the course of the statement here --

28 THE COURT: In other words, she identified the gun as

1 being the same gun that Davis had in his hand?

2 MR. KAY: Right, right. She said that the very same gun
3 that Beausoleil had, that Davis told her that he had the same
4 gun over at Hinman's house.

5 MR. DENNY: Your Honor --

6 THE COURT: At that time when she was looking at
7 Beausoleil?

8 MR. KAY: No, no, not at the time she was looking at
9 Beausoleil, at a time shortly thereafter.

10 THE COURT: Oh, I don't think it would be -- I don't
11 think it would come in. How do you think it would come in under
12 356? You couldn't bring in all the conversation, but if it is
13 explaining what has been said by Ella Jo Bailey about the gun,
14 well, it would be admissible. But, again, you can't open up
15 the entire conversation in the Court's opinion.

16 MR. KAY: No, I just -- just specifically about the
17 gun, the fact that Bruce Davis said that he had the gun over at
18 Gary Hinman's house.

13d fol

13d-1

1 MR. DENNY: Your Honor, may I read to the Court --
2 first of all, that which I questioned Mr. Katz about was
3 on page 2.

4 Now, out of a six-page statement --

5 THE COURT: Is this the entire statement?

6 MR. DENNY: Yes, your Honor.

7 THE COURT: Let me see the statement.

8 MR. DENNY: Now, going to page 5, the middle paragraph,
9 now, that's what they are talking about.

10 THE COURT: Excuse me just a minute.

11 MR. DENNY: Which occurred two days later.

12 THE COURT: Excuse me just a minute.

13 MR. KAY: You see, even though Davis might have made
14 the statement to her a couple of days after, she made the
15 statement to Katz all in the same conversation talking about
16 the specific gun, so it is irrelevant that Davis made the
17 statement to her a couple of days after she saw Beausoleil
18 with the gun. The fact is, under 356, is that she made --
19 all part of one conversation, relating to the gun.

20 That's the important thing with 356.

21 THE COURT: All right, now, I'm looking at page 5
22 of Ella Jo Bailey's statement. Where was -- which would
23 be the part that you wanted to get in?

24 MR. KAY: Okay. Let's see.

25 Okay, this is the part that -- oh, wait, no.
26 Wait.

27 This is different than mine. I have to find
28 where I am.

13d-2

1 Just that (indicating).

2 The part "the gun."

3 MR. DENNY: I think the bare record is going to be
4 awfully bare with the pointing out of just "that."

5 THE COURT: Page 5 relates that Ella asked Bruce to
6 tell what happened at Gary's. To which Bruce said that
7 when Charlie and Bruce got there, Bobby, Sadie and Mary
8 already had the gun back. That Charlie and Gary had words
9 and Charlie sliced him open from ear to chin on the left
10 side of the face while Bruce held the gun on Gary.

11 MR. KAY: And all I'm offering is that Bruce said that
12 he held the gun on Gary Hinman, on Gary.

13 MR. DENNY: I submit, your Honor, those are discussing
14 entirely separate unrelated instances and that the latter --

15 THE COURT: Excuse me just a minute.

16 All right, this page 2 reveals that at the time
17 Ella Jo Bailey heard Manson talking to Beausoleil in the
18 parking lot at Spahn Ranch, Beausoleil was carrying around
19 an automatic pistol which took a clip. This is the same gun
20 that Ella saw Bruce Davis with on many occasions.

21 Well, here you have a statement --

22 MR. DENNY: I didn't read that in, your Honor.

23 THE COURT: I know you didn't. But it refers to the --
24 it refers to the same gun and that would be admissible.

25 MR. DENNY: If they want to read that in, that's fine.

26 THE COURT: If you wish to.

27 And if -- if that's -- is that what you are
28 referring to?

14 fls.

14-1

You say there's some --

MR. KAY: I am referring to, on page 5, the part that I pointed out to the Court, where Mr. Davis told Miss Bailey that he had -- he held the gun on Gary Hinman -- or, on Gary.

THE COURT: All right. The People -- you have brought in this statement, to show that Bobby Beausoleil was carrying around this automatic pistol, before they left?

MR. DENNY: Bruce Davis' automatic pistol.

THE COURT: All right. In this conversation, there is-- there are many references to this gun, mostly attributed to Bruce Davis by Ella Jo Bailey.

The Court believes that, as part of the conversation, the -- any reference to the gun, in fairness, should be permitted in --

MR. DENNY: Well, your Honor, there's a -- a relevancy matter here.

THE COURT: -- for the identification of the gun.

MR. DENNY: Well, you have got the identification in the section right above it, your Honor (indicating).

THE COURT: And as well to --

MR. DENNY: As the Court has pointed out.

THE COURT: And as well to determine --

MR. DENNY: Well, your Honor, if you are going to --

THE COURT: -- whether her statement is really inconsistent, or whether it's explainable by what further was said in the conversation.

In other words, I think that once having opened

1 the subject of who had the gun, and what gun it was, that the
2 entire conversation can be gone into.

3 MR. DENNY: Your Honor, I -- I -- it's -- I so strongly
4 disagree with the Court.

5 THE COURT: I know you do.

6 MR. DENNY: Well, the only thing that 356 says is that
7 you can go into other portions of the conversation to explain
8 the portion used.

9 Now, in the first place --

10 THE COURT: Well, you've used it as a prior inconsistent
11 statement.

12 MR. DENNY: That's right.

13 THE COURT: But within that same conversation are
14 explanations which do not make it inconsistent.

15 MR. DENNY: That is not so, your Honor.

16 THE COURT: And which explained the --

17 MR. DENNY: Your Honor, then how --

18 THE COURT: -- what her statement was in reference to
19 the gun.

20 MR. DENNY: No, your Honor.

21 THE COURT: Her full statement in reference to the gun.

22 MR. DENNY: Your Honor, no. There's no ambiguity
23 whatsoever in what gun it was. This statement that I have
24 used (indicating) here is a statement which can be explained
25 simply by referring to the sentence above it.

26 There's no ambiguity in what gun it is, if you
27 look at that statement.

28 THE COURT: The Court thinks that's true.

1 She said, "This is the same gun that Ella saw
2 Bruce Davis with on many occasions."

3 MR. DENNY: All right. Now, that -- that tells what
4 gun Bobby Beausoleil had.

5 THE COURT: All right. Now, the previous --

6 MR. DENNY: Now, that can be used to explain, if you
7 are going to use that at all, under 356 --

8 THE COURT: The previous statement, "Beausoleil was
9 carrying around an automatic pistol which took a clip.
10 This is the same gun that Ella saw Bruce Davis with on many
11 occasions."

12 In that same conversation, she states that,
13 "Bruce stated that he held the gun on Gary Hinman."

14 MR. DENNY: But, your Honor, I haven't gone into that
15 to show a prior inconsistent statement. I haven't brought
16 that in. I haven't in any way gone into that.

17 I haven't touched that subject matter.

18 The only subject matter I've touched upon is:

19 "Who had the gun at the time that gun was in
20 the parking lot, with Bobby Beausoleil?"

21 Which is directed to her testimony, solely,
22 surely, plainly and simply her testimony as to whether or
23 not Bruce had the gun, or Bobby Beausoleil had the gun.

24 She testified in this case that she saw Bruce
25 Davis with the gun; that he always carried the gun around,
26 whenever she saw him.

27 And we had the eye demonstration and everything,
28 to determine whether she could do that, and impeached her by

1 this statement, this specific statement, prior inconsistent
2 statement.

3 And I asked her, "Isn't it a fact that on
4 February 18th, in the presence of Sergeant Whiteley and Mr.
5 Katz, you stated to them as follows?"

6 And I read the section which is -- which has been
7 read to Mr. Katz. And she said, "No, I don't believe I said
8 that."

14a fls.

14a-1

1 All right. Now, that's the specific area to which
2 this prior inconsistent statement is directed. And I have to,
3 then, ask Mr. Katz to establish that that was asked of her,
4 and he has established that that was asked of her, and that's
5 the answer she gave.

6 Now, the only issue involved is: Who she saw with
7 the gun? Whether it was Bobby Beausoleil or Bruce Davis.

8 It isn't even the identity of the gun. It's just:
9 Who had the gun, that she saw in the parking lot?

10 Now, if the Court's going to let in anything --

11 THE COURT: In reference to the gun.

12 MR. DENNY: -- in reference to the gun, the preceding
13 sentence --

14 THE COURT: Anything concerning the -- that she might have
15 said at the time about the gun.

16 MR. DENNY: No, your Honor. About who had the gun in the
17 parking lot. Not anything she said about the gun at all. She
18 could have said a million things about the gun.

19 THE COURT: That's right.

20 MR. DENNY: She could have said she fired the gun.

21 MR. KAY: That's all part of the same conversation.

22 MR. DENNY: No.

23 MR. KAY: And under 356, to explain what gun she's talk-
24 ing about --

25 MR. DENNY: It is not to explain what gun she's talking
26 about. It is to explain who had the gun. There's only one
27 gun that's been talked about at all, and that is this Radom,
28 and this specific conversation.

14a-2

1 THE COURT: Well, that's true.

2 MR. DENNY: All right. That's all the gun that's been
3 talked about. And the issue isn't what gun, the issue is: Who
4 had it?

5 THE COURT: If you'd hold your voice down, the Court
6 would appreciate it, Mr. Denny. You'll have to restrain your-
7 self, please.

8 MR. DENNY: I'm sorry, your Honor. I thought I was
9 whispering.

10 THE COURT: It was more a shout.

11 The Court believes that --

12 MR. DENNY: Your Honor, suppose she said --

13 THE COURT: Excuse me just a moment.

14 MR. DENNY: All right.

15 (Pause in the proceedings while the Court
16 perused the Evidence Code.)

17 MR. DENNY: Your Honor, if I may add an additional
18 observation?

19 THE COURT: Yes.

20 MR. DENNY: The People are attempting, by this means, to
21 get in prior consistent statements, which, under 791 of the
22 Penal Code -- of the Evidence Code -- I believe it's 791 --
23 would not be admissible for any purpose. It is 791.

24 They're attempting in this way to get in prior
25 consistent statements -- that is, consistent with her testi-
26 mony at this trial -- when there is no showing that that
27 statement was not made at a time when she had reason to
28 fabricate.

1 THE COURT: That may be true. But if you open it up, --

2 MR. DENNY: Well, your Honor --

3 THE COURT: 356 says "where part of an act, declaration,
4 conversation or writing is given in evidence by one party,
5 the whole on the same subject may be inquired into by an adverse
6 party."

7 MR. DENNY: All right. Your Honor, may I just stop the
8 Court there?

9 THE COURT: Yes.

10 MR. DENNY: Because that's talked about --

11 THE COURT: "When a letter is read --" go ahead.

12 MR. DENNY: Well, that is talking about direct
13 evidence, direct evidence used in the course of a -- either an
14 examination or cross examination, where you go into part of --
15 part of the -- part of a conversation, a letter, part of a
16 letter, whatever, either on direct or cross.

17 It does not apply in a situation where you are
18 simply establishing the prior inconsistent statement, which you
19 have already gone into on direct or cross.

20 MR. KAY: Where is your authority for that? I don't --
21 I've never seen any cases that say that.

22 MR. DENNY: Well, you read the -- you read the purpose of
23 356.

24 MR. KAY: I have.

25 MR. DENNY: And the purpose of 356 is to give the
26 opposite party -- for instance, when Ella Jo Bailey was on the
27 stand, you had the opportunity at that time to go into all of
28 the facts of this conversation, pertaining to this prior

1 inconsistent statement that I sought to establish.

2 You didn't go into it with her. Now, you don't
3 have a right to go into it when I bring it in, to just close the
4 door to prior inconsistent statements, by --

5 THE COURT: I think that's correct. I am going to rule
6 with Mr. Denny in respect to that.

7 However, you can question him about the -- about
8 this statement, which refers to this being the gun, the same
9 gun she saw Bruce Davis carry around.

10 MR. DENNY: Well, your Honor --

11 MR. KAY: Well, I think under 356, your Honor, that
12 since this is the same conversation, that 356 would allow me to
13 go into wherever she mentioned, in that conversation, about the
14 gun.

15 THE COURT: About the gun?

16 MR. KAY: Yeah.

14b fol

14b-1

1 THE COURT: Why do you believe so?

2 MR. KAY: Because it's part of the same conversation,
3 and it would explain which gun she's talking about.

4 Now, Mr. Denny's pointed out one sentence,
5 which -- which can point that out. But I don't have to
6 limit myself to --

7 THE COURT: Well, there's no dispute as to the gun,
8 is there?

9 MR. DENNY: That's right. There's no dispute.

10 MR. KAY: Well, that -- that doesn't mean I can't
11 bring it out. I mean, maybe Mr. Denny's not disputing that,
12 but for the benefit of the jurors --

13 THE COURT: All right. Now, specifically what you
14 want to bring out is that -- Bruce Davis' use of the gun,
15 holding it on Gary Hinman, at the time that Manson slashed
16 him.

17 MR. KAY: Well, I'm not going to bring out the fact that
18 Manson slashed him, but the fact that Bruce Davis held the
19 gun on Gary Hinman, the gun -- the same gun that she's talking
20 about in this conversation.

21 MR. DENNY: Your Honor, just -- very, very simply,
22 will you look at that statement itself? The statement in
23 and of itself doesn't explain. It helps confuse, because
24 it doesn't say which gun. It just says "the gun."

25 MR. KAY: Mr. Katz -- as an offer of proof, Mr. Katz
26 will say that she specifically said "the same gun."

27 THE COURT: All right. The Court realizes that it is
28 vacillating in connection with it, and I don't know, really,

14b-2

1 but what you may be right, Mr. Kay. Having once broached the
2 subject of who -- by reason of whether you brought it in as
3 a prior inconsistent statement or otherwise, if you brought in
4 the statement that Bobby Beausoleil had the gun, and it was
5 part of the same conversation, then I think probably anything
6 that was said about who may have had the gun at any particular
7 time can be -- can be opened up.

8 I am going to adhere to the first ruling I made.
9 You may do it.

10 MR. KAY: Thank you, your Honor.

11 MR. DENNY: Well, will the record reflect my strong
12 objection --

13 THE COURT: I think it's --

14 MR. DENNY: -- that it's irrelevant?

15 THE COURT: I think the record must be clear on that.

16 MR. DENNY: Well, its prejudicial effect certainly
17 outweighs its probative value, your Honor.

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

21 Q BY MR. KAY: We will finally get back to the
22 question.

23 Do you remember the question, or do you want me
24 to ask it again?

25 A I believe I remember it, Mr. Kay.

26 THE COURT: All right.

27 THE WITNESS: We did have a discussion concerning a
28 conversation she allegedly had with Bruce Davis on July 28th,

1 1969. And in that connection, with reference to the gun --
2 and I think that's where --

3 Q BY MR. KAY: Particularly, yes.

4 A -- that it pertains to, she told me that Bruce
5 Davis told her, while standing in front of the boardwalk
6 on Spahn Ranch, during the early morning hours of July 28th,
7 1969, that upon arrival at the Hinman house -- that is, upon
8 Davis' arrival, together with Charles Manson, that Bruce
9 Davis secured the gun and held it on Hinman while Mr. Manson
10 had severed the ear of Mr. Hinman.

11 He then complained to her about the condition of
12 the gun, that the handles were broken on the grips.

13 MR. KAY: May I have just a moment, your Honor?

14 THE COURT: Yes, you may.

15 (Pause in the proceedings while Mr. Kay produced
16 his notes.)

17 Q Mr. Katz, to your recollection, how did it --
18 how did it come up that Ruby Pearl remembered that there was
19 a full moon on the last night she saw Shorty?

20 Do you have any recollection on that?

21 MR. DENNY: Hearsay, your Honor.

22 THE COURT: Sustained.

23 MR. KAY: All right.

24 THE COURT: Speculation.

25 Q BY MR. KAY: When did you first specifically ask
26 -- if you did -- Ruby Pearl whether or not there was a full
27 moon on the last time she saw -- the last night she saw Shorty?

28 A That would have been prior to the commencement of

1 the second Grogan trial.

2 Q And had you ever asked her before?

3 A No, sir.

4 Q All right.

5 And what did she say when you asked her?

6 MR. DENNY: Object to that as hearsay.

7 THE COURT: Sustained.

8 MR. KAY: Thank you, Mr. Katz. I have no further

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REDIRECT EXAMINATION

1
2 BY MR. DENNY:

3 Q When prior to the commencement of the second
4 Grogan trial did you even speak to Mrs. Pearl?

5 A It would have been after we had brought her down
6 from Oregon.

7 Q Well, that was in the middle of the second Grogan
8 trial, wasn't it?

9 A Well, it may have been. I don't recall the
10 specific date. I know I talked to her before I put her on the
11 stand, and this is what I had reference to, Mr. Denny.

12 Q That's what I was having reference to.

13 It was not before the jury was impaneled; it was
14 not before the first witnesses were called, but it was into the
15 middle of the trial procedure; is that correct?

16 A I'm sure that is correct.

17 Q All right. And was it before or after Barbara
18 Hoyt testified in the same second Grogan trial?

19 MR. KAY: That's irrelevant.

20 THE COURT: Overruled.

21 THE WITNESS: That's a difficult question to answer,
22 because I had no knowledge of that testimony at that particular
23 time.

24 In other words, you're telling me -- you are
25 assuming for a moment that I had knowledge, immediate knowledge,
26 of Barbara Hoyt's testimony in Department 106.

27 Q BY MR. DENNY: No. I'm saying: Was it before or
28 after Barbara Hoyt testified at the time of the second Grogan

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1 trial?

2 A I have no frame of reference, Mr. Denny. I do not
3 know, because I asked her specifically the question regarding
4 the moon and the lighting --

5 Q Well --

6 A -- for other reasons.

7 THE COURT: Perhaps you misunderstood the question.

8 You tried the second Grogan trial?

9 THE WITNESS: Yes, your Honor, I did.

10 THE COURT: Well, he's simply asking you whether, in that
11 trial that you tried, had Barbara Hoyt testified before you
12 talked to Ruby Pearl?

13 THE WITNESS: Oh, I'm sorry, your Honor. I mis- --
14 I did definitely misunderstand the question.

15 You have reference, in other words, to Barbara
16 Hoyt's testimony in -- in the Grogan trial; is that right?

17 Q BY MR. DENNY: That's right, yes. The second
18 Grogan trial.

19 A All right.

20 THE COURT: It should be clear now.

21 (Laughter.)

22 THE WITNESS: It's exceedingly clear, your Honor.

23 I'm sorry. It's getting late in the day, I
24 guess.

25 I don't know why, Mr. Denny -- my recollection
26 could be in error -- but as I recall, it was Ruby Pearl who
27 first gave the testimony in the second Grogan trial regarding
28 the moonlit night, and that it was on rebuttal, when I brought

1 Barbara Hoyt back, that I elicited from her specifically the
2 lighting.

3 Now, I may be in error, but that is my best
4 recollection.

5 Q All right. Let's go now to Barbara Hoyt.

6 You testified here on earlier examination that you
7 had three or four conversations with her before she testified at
8 the Grand Jury; is that correct?

9 A Yes, Mr. Denny.

10 Q And she testified before the Grand Jury on --

11 A December 14th or 15th or 16th.

12 Q -- December 14th, in the morning session; is that
13 right?

14 A If you say so. It's one of those dates, yes.

15 Q All right. And you made some sort of promise that
16 you would limit your inquiry to non-critical areas? Is that
17 what you said?

18 A I did use that -- that phraseology, yes, I did.

19 Q All right. When you told her that -- when you
20 promised her that you would limit your inquiry to non-critical
21 areas, what did you mean?

22 MR. KAY: Well, I'll object that that's irrelevant,
23 what he means.

24 THE COURT: Sustained on its form.

25 Q BY MR. DENNY: Well, did you discuss with her what
26 "non-critical areas" meant?

27 A I -- yes, I did, basically.

28 Q All right. And what was that discussion with her,

1 as to what "non-critical areas" meant?

2 A Those areas in which she would not be required to
3 divulge admissions or confessions made by various members who
4 were charged with the Shea and Hinman offenses.

5 Q No admissions or confessions?

6 A And specifically, I alluded to the Barker and
7 Meyers Ranch supper rites in September of 1969.

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1 Q And told her she would not be required to testify
2 to that before the Grand Jury; is that correct?

3 A Definitely, in front of Mrs. Hoyt.

4 Q All right. Let me direct your attention to a
5 copy of the Grand Jury proceedings, Volume 4, starting at
6 page 805.

7 Would you read 805, 806, 807, 808? That's good
8 enough.

9 (Pause in the proceedings while the witness
10 perused a transcript.)

11 THE WITNESS: Yes, Mr. Denny, I've read it.

12 Q You've seen the Grand Jury transcript before?

13 A Certainly.

14 Q That appears to be an accurate copy of the Grand
15 Jury transcript?

16 A Yes, it appears to be an accurate copy.

17 Q Having looked at this, does that refresh your
18 recollection as to whether or not you asked her, in detail,
19 about the occurrences at this alleged dinner in early
20 September, at the Meyers Ranch?

21 A Mr. Denny, perhaps you misunderstood.

22 I at no time said that I did not ask her regard-
23 ing this conversation before the Grand Jury.

24 You asked me specifically as to whether or not
25 I had promised her whether I would make such inquiry, prior
26 to the presentation before the Grand Jury.

27 And I told you that I indicated to her I would not
28 inquire, or make inquiry, into the Barker-Meyers Ranch

14d-2

1 supper rites of September, 1969.

2 Q Well, this is what you told her?

3 A That's what I told her.

4 Q But then, you went ahead and did inquire of her?

5 A Oh, most certainly.

6 Q This was, then, a technique you used, simply to
7 get further information from her, promising her one thing and
8 doing another?

9 A Only partially. I had gained the confidence
10 of Miss Hoyt by the time she was testifying before the Grand
11 Jury.

12 During my initial conversations with Mrs. Hoyt,
13 she would hardly -- or Barbara Hoyt -- she would hardly even
14 talk to me.

15 Q All right. By December 14, 1970, she had already
16 testified in the Tate-La Bianca case; is that right?

17 MR. KAY: That's irrelevant.

18 THE COURT: Overruled. You may answer.

19 THE WITNESS: I don't know. I don't recall when the --
20 when she testified in the Tate and La Bianca proceedings.

21 Q Well, you knew, by the time you had talked to
22 her, she had already passed through the hands of Vince
23 Bugliosi, --

24 MR. KAY: Oh, that's argumentative.

25 Q BY MR. DENNY: -- the prosecutor in the Tate-
26 La Bianca case, as his witness?

27 THE COURT: Yes. Sustained.

28 Q BY MR. DENNY: Isn't that correct?

14d-3

1 THE COURT: The objection is sustained.

2 Q BY MR. DENNY: Well, you had reports, at the time
3 you questioned her, concerning things that she had testified
4 to in the Tate-La Bianca case, did you not?

5 A I had access to those reports, Mr. Denny.

6 Q And those reports reflected that at the time
7 you talked to her, prior to her testimony in December, 1970,
8 she had already testified in the Tate-LaBianca case; isn't
9 that correct?

10 A Once again, I assume you are correct.

11 I just don't have an independent recollection
12 of it.

13 But that's probably correct.

14 Q And at the time she testified in December, 1970,
15 she had already testified again in the famous hamburger
16 case; isn't that correct? Before a Grand Jury?

17 A Do you have reference to the LSD case?

18 Q That's correct.

19 A Yes, I believe so.

20 Q And had you been the prosecutor in that case?

21 A No, sir.

22 Q All right. But you were aware of her testimony
23 there; is that right?

24 A Yes. And that was one of the problems in connec-
25 tion with developing confidence with Miss Hoyt.

26 Q All right. So, by the time you talked with her,
27 and before her testimony in December, 1970, she had already
28 testified before the Grand Jury, and been -- and been

14d-4

1 questioned by a representative of the District Attorney's
2 Office, pursuant thereto?

3 A Yes.

4 Q By the way, do you know if she testified before
5 the Grand Jury in connection with the Tate-La Bianca case?

6 A Not of my own personal knowledge. I wasn't
7 there, Mr. Denny, and I didn't -- I don't believe I read
8 her testimony.

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1 Q All right. So at least from a chronological
2 standpoint, the things that you are aware of, she had testified
3 in the Tate-La Bianca trial, she had testified before the
4 Grand Jury in the hamburger case, the LSD hamburger case; is
5 that right?

6 A Yes, sir.

7 Q All right. And then, she was talking with you
8 about her testimony in the upcoming Grand Jury hearing in the
9 Shea presentation; is that right?

10 A Yes, sir.

11 Q And isn't it a fact that by the time you were
12 talking to her here, before her testimony in 1970, she had
13 become practically a fixture, practically a fixture in the
14 District Attorney's Office, in the office that you were
15 occupying with Mr. Manzella over on the sixth floor?

16 A Are you referring to what --

17 THE COURT: Just a minute.

18 THE WITNESS: I'm sorry.

19 MR. KAY: That's ambiguous, what he means by "fixture."

20 THE COURT: Sustained.

21 Q BY MR. DENNY: Isn't it a fact that she was
22 constantly in the offices of the District Attorney during that
23 period of time?

24 THE WITNESS: Should I answer that, your Honor?

25 THE COURT: Yes. There is no objection.

26 THE WITNESS: All right, constantly -- I don't know
27 what you mean by "constantly." On a day-to-day basis once
28 a month.

15-2

1 Q Almost on a daily --

2 A I would have no knowledge. I only had dealings
3 with her when I was making inquiries concerning the Shea or
4 Hinman killings, so I had no specific or personal knowledge
5 of whether or not she was present during other circumstances.

6 Q All right. And when you questioned her at the
7 time of the Grand Jury hearing about this alleged Meyers
8 Ranch dinner, at that time she never said anything about any
9 sign, whatsoever, of acquiescence by word or deed on the part
10 of Bruce Davis in anything that Charlie Manson said; is that
11 correct?

12 MR. KAY: Well, your Honor, I'm going to object. That
13 assumes a fact not in evidence that she was asked.

14 THE COURT: Would you read it to me, I'm sorry.

15 (Whereupon, the question was read by the reporter
16 as follows:

17 "Q And when you questioned her at the time
18 of the Grand Jury hearing about this alleged Meyers
19 Ranch dinner, at that time she never said anything
20 about any sign, whatsoever, of acquiescence by word
21 or deed on the part of Bruce Davis in anything that
22 Charlie Manson said; is that correct?"

23 THE COURT: Overruled. You may answer.

24 THE WITNESS: I'm sorry, your Honor, I lose --

25 Q BY MR. DENNY: Let me rephrase the question.

26 A I lost the train of thought. Yes, thank you.

27 Q When she testified before the Grand Jury, and
28 when you were asking her these questions before the Grand Jury,

1 questions which you said you would not ask her, but when you
2 asked her these questions before the Grand Jury as to the
3 Meyers Ranch dinner in early September, is it a fact that
4 she did not state that Bruce Davis acquiesced in anything
5 that Charlie said by either word or deed?

6 MR. KAY: Well, I'm going to object. Again that assumes
7 a fact not in evidence that she was asked. She couldn't answer
8 if she was not asked.

9 THE COURT: Sustained.

10 MR. DENNY: All right, I have no further questions.

11
12 RECROSS-EXAMINATION

13 BY MR. KAY:

14 Q Mr. Katz, this hamburger case that you mentioned
15 on Mr. Denny's questioning, did Barbara Hoyt relate that to
16 her fear for her life?

17 A Absolutely.

18 Q What happened in that case?

19 MR. DENNY: Well, your Honor, that's irrelevant
20 in this particular hearing. I think it's been gone into.
21 In fact, on examination of Barbara Hoyt.

22 THE COURT: All right, sustained. We don't want to try
23 that case.

24 Q BY MR. KAY: Well, did she specifically mention
25 something that had happened to her personally as part of her
26 reason for her fear, why she was in fear for her life?

27 A Very definitely, yes.

28 MR. DENNY: Well, it is --

1 THE COURT: I didn't hear that.

2 MR. DENNY: No, I'm withdrawing any objection I had to
3 the question or answer.

4 MR. KAY: Let me see, may I have just a moment, your
5 Honor?

6 THE COURT: Yes.

7 Q BY MR. KAY: And, Mr. Katz, was it your intention
8 to trick Barbara Hoyt into testifying before the Grand Jury,
9 and then opening up the questioning on a broader level than
10 you had promised her?

11 A No, it was not. I was hopeful, however, that
12 she would be more candid and divulge more of what I believe
13 she knew.

14 Q And did she, in front of the Grand Jury?

15 A Yes. But once again, I limited my questioning
16 at that time, hoping to save her testimony in the forthcoming
17 trial proceedings.

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1 Q And she did testify in the Grogan trial?

2 A Yes, she did.

3 Q In the Manson trial?

4 A As well as the Watkins -- or the Watson trial.

5 MR. KAY: All right, I have no further questions.

6 MR. DENNY: Nothing further.

7 Your Honor, we do have a witness that will be very
8 brief. He's been waiting all afternoon. I wonder if we can
9 put him on.

10 MR. KAY: All right, may Mr. Katz be excused?

11 THE COURT: Mr. Katz, you are excused.

12 MR. KATZ: Thank you.

13 THE COURT: Anybody need a short recess? It will just
14 be about five minutes or less.

15 MR. DENNY: Deputy Chamousis.

16 THE COURT: Would you approach the bench while that
17 witness is coming in?

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

21 THE COURT: Before Mr. Katz gets away completely, I
22 wanted to tell you that I sustained a couple of the objections
23 to the questions that you had concerning Ruby -- Ruby
24 Pearl's interview with Katz before she testified in the second
25 Grogan case, but I did not mean to preclude you from examining
26 further if you want Katz back in connection with that.

27 MR. KAY: Does that go for me, too?

28 THE COURT: Well --

15a-2

1 MR. KAY: I mean, obviously Mr. Denny --

2 THE COURT: I sustained Mr. Denny's objections because
3 Denny hasn't gone into the conversations between the two of
4 them and it was hearsay to pursue it.

5 MR. KAY: Well, I think he may --

6 THE COURT: As you started to. But I -- if there was any
7 suggestion made to her, I think that you have the right to
8 inquire about that.

9 MR. KAY: That's what I was inquiring.

10 THE COURT: The thing that I objected to was your inquiring
11 -- or the objections were raised and I concurred with the objec-
12 tions as to what was in Katz's mind. I don't think it was
13 important what was in Katz's mind. What was important was what
14 was suggested, if anything, to Mrs. Pearl.

15 MR. DENNY: Your Honor, when I'm trying to make a showing
16 to the jury that the District Attorney's Office does have some --
17 let's just say some bad design in mind, it certainly appears
18 to me relevant and material to show what is in the mind of the
19 Deputy District Attorney handling the case. That's my
20 continuing offer of proof in this case and I can't seem to get
21 it across to the Court that I think the defendant has a right
22 to establish his case by circumstantial evidence and by the
23 same type of evidence that the People have to establish their
24 case.

25 THE COURT: You have a right to determine what was said
26 to the witness in order to induce that witness -- in order
27 to induce that witness to testify.

28 MR. DENNY: But when we --

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1 THE COURT: Nobody disputes the fact that a District
2 Attorney -- the District Attorney's Office wanted a conviction
3 of Mr. Grogan and they went ahead and got it.

4 Now, you have a right to inquire about that. And I
5 didn't mean to preclude you from doing that. But I didn't want
6 you to misunderstand.

7 MR. KAY: Yes, I wouldn't --

8 THE COURT: Because you terminated rather abruptly.

9 MR. KAY: I wouldn't object to a direct question, did you
10 coach her or not? Did you coach her.

11 THE COURT: Well, there are more questions than that, but
12 as to what was in Mr. Katz's mind is certainly not -- is what
13 Katz did, and what he may have suggested to her if he did
14 suggest anything to her which is important.

15 If you want him back, you can call him.

16 MR. DENNY: No, your Honor, I don't want him back for that
17 reason.

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

20 THE CLERK: Raise your right hand.

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

24 THE WITNESS: I do.

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

26 Please state and spell your full name.

27 THE WITNESS: Peter Chamousis, C-h-a-m-o-u-s-i-s.
28 PETER CHAMOUSIS,

15a-4

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

DIRE

DIRECT EXAMINATION

BY MR. DENNY:

Q The jury is familiar with your prior testimony,
sir, so we don't need to go into the background, qualifications,
et cetera.

I want to direct your attention to a period approxi-
mately December 12th, 1969. You've heretofore testified
concerning the fact that a print was lifted from the footlocker
in the right-hand trunk; is that correct? That is, the trunk
of the car, the 1962 Mercury Comet, contained two footlockers.
And as you faced it, you said a single palm print was recovered
from above or below the strap of the right-hand footlocker
facing the trunk of the car; is that right?

A Yes, sir.

Q All right. And you were the one who recovered
that, is that correct?

A That's correct.

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1 Q And did you state, sir, that you dusted the entire
2 interior, exterior -- strike that. The entire interior of the
3 car as well as all of the footlockers and certain other things
4 in the trunk of the car, and the only print that you came up
5 with was this latent, People's 85?

6 A Yes, sir.

7 Q All right. Did you make a report concerning your
8 investigation?

9 A Yes, I did.

10 MR. KAY: Can I see that, George?

11 Q BY MR. DENNY: While Mr. Kay is looking at that,
12 I'll ask you, the initial identification that was made between
13 the latent that you say you lifted from the footlocker and
14 a fingerprint exemplar of Mr. Davis was not made by you, is
15 that correct?

16 A Not the initial identification, no, sir.

17 Q All right. Is it a fact, sir, that you recovered
18 two partial palm prints, and not just one palm print from within
19 the interior of the car somewhere?

20 A There may have been two palm prints -- they were
21 both the same right palm print, if there were two. I don't
22 recall.

23 Q Would it refresh your recollection to see a report
24 you made out on December 12, 1969?

25 A Yes, there were two palm prints.

26 Q Where is the lift of the second palm print? Did
27 you make a lift?

28 A Yes, I did.

1 Q Where is it?

2 A I don't know.

3 MR. DENNY: I have no further questions.

4
5 CROSS EXAMINATION

6 BY MR. KAY:

7 Q So when you said you made two lifts, Deputy
8 Chamousis, are you talking about you made two lifts of the
9 same print?

10 A Yes, sir.

11 MR. KAY: All right, thank you. I have no further
12 questions.

13
14 REDIRECT EXAMINATION

15 BY MR. DENNY:

16 Q How do you know they are the same print?

17 A Because I compared them both.

18 Q Where is the second palm print so the jury can
19 compare them?

20 MR. KAY: Well, that's irrelevant.

21 THE COURT: The form of the question is objectionable.

22 Q BY MR. DENNY: Well, isn't it standard operating
23 procedure, sir, in the Sheriff's Office, Fingerprint Detail,
24 to keep all lifts for evidentiary purpose?

25 A I didn't say I threw it away, sir. It must be in
26 our records somewhere.

27 Q Can you get it?

28 A Probably.

15b-

1 Q Can you bring it to court in the morning?

2 A I'll make an effort to.

3 MR. DENNY: I'll ask the Court to so order.

4 MR. KAY: Your Honor, I think this is irrelevant.

5 THE COURT: It appears to the Court to be.

6 Where did you get the second palm print from, from
7 where did you get it?

8 THE WITNESS: The same adjacent area.

9 THE COURT: You mean on the footlocker?

10 THE WITNESS: Yes.

11 THE COURT: Do you know that you do have such a print?

12 THE WITNESS: Now that I reread that copy, I'm sure
13 I must have.

14 THE COURT: You may step down.

15 Anything further?

16 MR. DENNY: I would like to approach the bench.

17 MR. KAY: I think. --

18 THE COURT: On this matter?

19 MR. DENNY: Yes, your Honor.

20 THE COURT: All right, you may step down.

21 Anything further?

22 MR. KAY: May I ask him one question?

23

24

RECROSS EXAMINATION

25

BY MR. KAY:

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Q The fact that you can take two lifts from this same
print, did that -- do you have an opinion as to how the print
was made?

1 MR. DENNY: I'll object to that, one, irrelevant and
2 immaterial, beyond the scope of direct examination and, two,
3 assuming facts not in evidence. There were two lifts from the
4 same print.

5 THE COURT: Sustained.

6 Q BY MR. KAY: Well, you did testify just to my
7 question a couple of minutes ago you took two lifts of the
8 same print; isn't that right?

9 A I'm not sure whether it was two lifts from the
10 same print or two separate lifts. But they were both of the
11 right palm. I remember that.

12 Q In other words, both made by the same person in
13 your opinion?

14 A Yes.

15 MR. KAY: Okay, I have no further questions.

16 THE COURT: In other words, when you find a latent print,
17 you can sometimes take a number of lifts from it, is that
18 right?

19 THE WITNESS: That's correct, your Honor.

20 THE COURT: And to this point you're telling us you
21 don't know whether you took multiple lifts from one print or
22 whether you had another print and took lifts from it?

23 THE WITNESS: I'd have to see the print again.

24 THE COURT: Would you know?

25 THE WITNESS: Yes, if I saw the print.

26 THE COURT: I see. At any event, you -- strike that.

27 All right, anything further?

28 MR. KAY: Nothing further.

1 MR. DENNY: May I approach the bench?

2 THE WITNESS: Your Honor, you want me to bring the palm

15c fol. 3 print here tomorrow?

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1 THE COURT: All right, bring it here tomorrow at 9:00
2 o'clock, if you will, please.

3 THE WITNESS: Yes, sir.

4 THE COURT: All right, it is ten minutes of 5:00, and
5 you've been very patient, most patient and the Court appreci-
6 ates it.

7 9:30 tomorrow morning, then.

8 Excuse me just a moment.

9 Would counsel come to the bench, please.

10 The reporter need not come.

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

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

17 THE COURT: We've sort of been planning here at the
18 bench, ladies and gentlemen, the time table so that the
19 time can best be used to advantage during the next few days.
20 So the Court again will start very close to 9:30 tomorrow.
21 And during the recess you are obliged not to converse
22 amongst yourselves, nor with anyone else, nor permit
23 anyone to converse with you on any subject connected with
24 the matter, nor form or express any opinion on the matter
25 until it is finally submitted to you.

26 The Court would ask you, ask that within the next
27 24 hours you desist from reading any news article, reading
28 or exposing yourself to any of the news media concerning

15c-2

Charles Manson or this case or the Manson Family.

You remember the admonition that I have given you many times.

When we have a time table figured out with a little more definiteness, we'll let you know what to expect. The Court does not at this point expect to sequester you. I did tell you at one time I might sequester you during deliberations, but the Court at this point does not intend to do so unless something unusual should arise.

Thank you, good night.

(Whereupon, at 4:55 o'clock p.m. the jury was excused for the day.)

16-1

1 THE COURT: In connection with tomorrow's testimony,
2 then, Mr. Denny, do you anticipate putting two witnesses
3 on?

4 MR. DENNY: That's all.

5 THE COURT: And they are?

6 MR. DENNY: Chamousis and Gleason -- assuming we can
7 get Gleason in.

8 THE COURT: All right.

9 MR. KAY: I might say that Deputy Chamousis told me
10 that he's going to look for the print tonight, but the record
11 section people go home at 4:30, so he -- he said that he'd
12 let us know at 9:00 if he hadn't found it.

13 But he would look for it until he found it.

14 THE COURT: All right. Do you want -- you wouldn't
15 anticipate putting any other print expert on at that time?

16 MR. DENNY: Well, your Honor, I -- I don't know. I
17 am -- I -- I may want to have Mr. Clements come in and take
18 a look at this print to determine whether it is the same
19 print; whether it's a second lift from the same print --
20 and you can generally tell, because one is lighter than the
21 other --

22 THE COURT: All right. I was referring to that. And
23 I thought perhaps that if there was some way that we might
24 clarify that, beforehand -- for example, if Chamousis does
25 go over tonight and pick this print up, and you can communi-
26 cate with him, you might have Clements on tap, if you have
27 any doubt in your mind, so that we don't delay proceedings.

28 MR. DENNY: Well --

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1 THE COURT: And incidentally, we have had a long argu-
2 ment here on the record, on the applicability of 356.

3 In retrospect, I think that the admissibility of
4 that testimony concerning Ella Jo Bailey's statement concern-
5 ing the gun, the pistol, was properly admitted, because there
6 has been some question during the course of the case about
7 identification of the gun.

8 And one of her statements that was in there does
9 definitely identify the gun.

10 There is still some question in my mind, but I
11 think probably that the Court's ruling was correct in regard
12 to allowing it in.

13 But I raise this point, because apparently
14 tomorrow you will be questioning in the same way about prior
15 inconsistent statements, and opening up conversations, and--

16 MR. DENNY: I'm not sure with whom.

17 THE COURT: I thought --

18 MR. KAY: I don't think either Gleason or Chamousis --

19 THE COURT: Oh. I thought Gleason might -- Gleason
20 is who?

21 MR. KAY: He is a --

22 THE COURT: Well, in any event, if you do intend that,
23 I should like to have both of you submit some authorities to
24 me.

25 I know that you are both caught by surprise.

26 MR. DENNY: Well, your Honor, I wasn't caught short at
27 all, and I'll state to the Court --

28 THE COURT: You are willing to rest on the Code?

1 MR. DENNY: -- that, one, the Code is clear; and, two,
2 your own reasoning that you've just stated shows that you
3 permitted that to come in as a prior consistent statement,
4 in effect, and --

5 THE COURT: Well, that was your argument at the bench,
6 and the Court doesn't want to go over that in its entirety
7 with you.

8 But the Court permitted that statement to come in,
9 concerning the gun, for several reasons.

10 And I've already stated them to you.

11 All right.

12 MR. KAY: Good night, your Honor.

13 See you in the morning.

14 (Whereupon, at 4:55 o'clock p.m., an adjournment
15 was taken in this matter until 9:30 o'clock a.m.
16 the following morning.)
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