

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

250

REPORTERS' DAILY TRANSCRIPT

Thursday, February 24, 1972

VOLUME 50APPEARANCES:

For the People: JOSEPH P. BUSCH, District Attorney,
BY: ANTHONY MANZELLA
and
STEPHEN R. KAY,
Deputies District Attorney

For Defendant Davis: GEORGE V. DENNY, III

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

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DEFENDANT'S ARGUMENT (Continued)

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1 LOS ANGELES, CALIFORNIA, THURSDAY, FEBRUARY 24, 1972 9:42 AM

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4 THE COURT: The case of People vs. Davis.

5 Good morning.

6 (Proceedings had on unrelated matters.)

7 THE COURT: Mr. Denny, here's a copy of the instruc-
8 tion the Court is going to give. Would you give the copy to
9 Mr. Kay?

10 All right. In the case of People vs. Davis,
11 the record will show that Mr. Davis is present with his
12 counsel; Mr. Kay for the People, and all of the jurors are
13 in the box.

14 Good morning, ladies and gentlemen.

15 (Whereupon, murmurs of "Good morning, your Honor,"
16 were heard from members of the jury.)

17 THE COURT: Are you ready, Mr. Denny?

18 MR. DENNY: Yes.

19 THE COURT: You may proceed, any time you're ready.

20 MR. DENNY: Again, your Honor, Mr. Kay, and ladies and
21 gentlemen:

22 I left yesterday, still talking about Sergeant
23 Christansen. And I would like to continue -- I don't like
24 to continue to say what I am required to say about the
25 testimony of Sergeant Christansen, but I thought it would be
26 important just to put up four of the ten photographs here --
27 or photomicrographs that were taken by Mr. Matlovsky.

28 Now, I thought, over the evening, that as I

1 talked to you about these photomicrographs, Mr. Kay may --
2 as he has the opportunity to talk after I do -- say, as he
3 attempted to show on his cross-examination -- which was
4 hardly cross-examination, really -- of Mr. Matlovsky,
5 "Well, of course, these are better than Sergeant Christansen
6 could have taken, because Mr. Matlovsky is an expert. Mr.
7 Matlovsky does this for a living. Mr. Matlovsky has done
8 this for the last --" what, 25 years or so? Since 1942?
9 Longer than that.

10 And, "Why, you can't expect the Sheriff's Crime
11 Lab to turn out photographs of this quality."

12 Well, why not? Why not?

13 They bought themselves, with our taxpayers'
14 dollars, a brand new American Optical Company photomicrographic
15 setup, two years ago. And supposedly, the representatives of
16 that company showed the representatives of the Sheriff's
17 Department of Los Angeles County how to get photomicrographs.

18 What is the purpose of paying taxpayers' dollars
19 for that kind of equipment -- and it's not Tinker Toys. You
20 may assume that when the Board of Supervisors authorized the
21 expenditure of funds for that particular piece of equipment,
22 a lot of thought had gone into it, that it would do the job.

23 But, it takes personnel with know-how to do the
24 job.

25 Now, again, I am in no way implying that a
26 ballistics expert makes his opinion, draws his opinion --
27 if he has the bullets to work with -- from photomicrographs.
28 He draws his expert opinion -- and it is just that, an opinion,

1 based on experience, based on expertise -- from what he sees
2 with his eyes through the microscope, a comparison microscope.

3 But if there is something there to see, to compare,
4 to establish a comparison, he can take a picture of it. And
5 that's why the defense in this case -- do you remember my
6 opening statement? I said:

7 "We'll show you that the so-called experts,
8 called by the prosecution, did a slap-dash, haphazard
9 job, until called by the defense, requested by the
10 defense to get evidence to present to you, the jurors.
11 And then we will show you the type of job they did in
12 response thereto."

13 Now, it's in evidence that the defense sought to
14 get Sergeant Christansen -- or whoever; I don't know who it
15 is who makes photomicrographs.

16 I just wanted evidence to present to you jurors.
17 And so the defense sought and got an order: "Make photomicro-
18 graphs of this bullet."

19 Whether it's Sergeant Christansen, Sergeant
20 Montgomery, General Whoever -- or just somebody who knows
21 how to operate a camera. Make photomicrographs so that a jury
22 can see what you, Sergeant Christansen, say you saw on that
23 bullet.

24 Now, we looked yesterday at what we got in
25 response thereto. And the only reason I brought these in--
26 well, it was twofold. One, to show that it could be done--
27 you know, I'm not a neophyte in the practice of law in
28 criminal courts, and neither is Mr. Kay or Mr. Manzella.

1 We've seen photomicrographs, used in evidence.

2 You have got the picture, Defendant's M. If there
3 is something on the bullet, a camera can take the picture and
4 show you.

5 But for some strange and extraordinary reason,
6 the Sheriff's photomicrographs couldn't show these land
7 impressions, or the single land impression, or the two
8 shoulders, and the groove impressions on either side that
9 Sergeant Christansen said he saw.

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1 And so I went to Mr. Matlovsky, who is an expert --
2 a renowned expert -- and he took these. And you jurors had the
3 opportunity, because you don't have a magnifying glass, to see
4 that bullet magnified 23 times, and see for yourselves exactly
5 what Harry Johnson saw and reported to you.

6 And Harry Johnson confirmed the reason why I sought
7 the photomicrographs in the first place from the crime lab,
8 and that is: That there just ain't nothing there!

9 There may be one very fine impression, one
10 mark that could be one shoulder of a land, but there are not
11 two shoulders, says Harry Johnson, the expert from CII, called
12 by neither the Court nor the People down here -- I'm sorry;
13 neither the defense nor the People.

14 Neither of us -- as I think Mr. Kay brought out in
15 his initial questioning -- sought his services. But they were
16 provided, and we both had the opportunity to question him.

17 And here again, the Case of the Unmasked Question.

18 You noticed the questions that Mr. Kay asked him,
19 questions that would support his point of view; that is,
20 that -- "Well, Mr. Johnson, could it have been fired from this
21 gun?"

22 Well, certainly, he's going to say: "Yes, it
23 could have been fired from this gun." It could have been
24 fired from any 9-millimeter pistol.

25 And as I said yesterday, the People want you to
26 then draw the inference, by circumstantiality, that it must
27 have been fired from this gun.

28 But let's go on. You see, there's another

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1 interesting thing about this case -- among many -- and that
2 is: What exhibits are introduced by a party sometimes tells
3 a little bit about this unasked question.

4 Obviously, the People wanted to introduce
5 People's 31, the bullet that was recovered from the Hinman
6 home, and so it was introduced, and it is essentially a
7 bald bullet, no markings.

8 Now, then, they introduce, as People's 99, a test-
9 fired bullet. You see, because there were several test-fired
10 bullets. But they introduced only one. Why?

11 Well, because People's 99 is an undersized bullet,
12 just as People's 31, according to all reports, is an undersized
13 bullet. And it doesn't have very good markings on it.

14 And so perhaps their theory was -- "Well, since
15 they're not too good markings on this, maybe we could argue
16 that -- well, the People's 31 is even more undersized, and this
17 is why there were no markings on it."

18 Well, the testimony of Mr. Johnson confirms
19 that People's 31 and People's 99 are undersized, but under-
20 sized by, at most -- at the very most, from the standard 9-
21 millimeter bullet, perhaps two one-thousandths of an inch.
22 Not very much -- particularly when, as Mr. Johnson testified,
23 the depth of a groove in the lands and grooves of a gun is
24 anywhere from three to four-thousandths of an inch.

25 Well, perhaps you were going to argue that, seeing
26 that that bullet -- again, People's 31 -- went through all this
27 material, that the markings were erased; that it originally
28 looked like People's 99, but then when it went through the wood

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1 and plaster, that erased the markings that may have been
2 similar to the markings on People's 99.

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1 But Mr. Johnson said no, not so. If there were
2 markings on that bullet, People's 31, there would still be
3 evidence of those markings. In his opinion that bullet was
4 fired through the barrel of a gun and because of its under-
5 sized state, it went almost straight, right through, without
6 picking up the rifling, without picking up any marks. But
7 going through the wood and going through the plaster would
8 not have erased the marks that were there.

9 Now, he also said in his opinion it would not
10 have cut down the size of the bullet any more, wouldn't
11 have decreased the diameter of the bullet any more. But,
12 in fact, because of the compressive forces that are built up
13 as a bullet pushes its way into wood or plaster and that
14 plaster pushes against it, it might have indeed expanded
15 the bullet a little bit as far as its diameter goes.

16 In other words, gotten shorter and fatter as
17 these compressive forces built up against it. And that
18 was his testimony.

19 Now, I want you to look at this bullet. You have,
20 each of you have looked at People's 31 and People's 99. And
21 you were admonished not to rub it between your fingers, not
22 to erase anything from it, as you recall.

23 But this bullet, the test-fired bullet, even an
24 undersized test-fired bullet, test-fired from that Radom,
25 does have land impressions on it, very distinct clear land
26 impressions on that bullet which are visible to the naked
27 eye, just as you look at it. You compare this with
28 Defendant's M, the picture showing land impressions on the

1 bullet, and you will see that they are, in all respects,
2 the same. These are a little wider. There is a little
3 slippage on it because the lands on the gun are not new.

4 Now, think about it. The two bullets are
5 essentially the same undersized, about two one-thousandths
6 of an inch less than standard, that's People's 31 and
7 People's 99.

8 All of the experts, Christansen, as well as Mr.
9 Johnson have testified that a gun barrel will wear with age.
10 It sure won't get better with age. You don't need an expert
11 really for that. But we got that in as expert testimony from
12 particularly, Harry Johnson.

13 If a gun is fired, because of the forces of
14 the gases around it and the action of the bullet going
15 through the barrel, that barrel wears and wears.

16 Now, the People contend that this bullet was
17 fired during the course of the murder and robbery of Gary
18 Hinman, and they contend that this evidence bullet, People's
19 31 was fired sometime on or about July 25, 26 or 27th. The
20 gun was not recovered up on Crestline by Deputy Gleason
21 until March of 1970.

22 You got August, September, October, November,
23 December, January, February, March, even in mid-March,
24 seven and a half months during which time there is no
25 evidence of how much it was fired or whether it was fired.
26 All there is -- there is evidence that at the time it was
27 recovered, there was a live round in the chamber and five
28 live rounds in the clip.

1 What kind of rounds? Not copper-jacketed bullets,
2 but reloads, lead slug reloads. The type of reloads which
3 Ella Bailey testified to were manufactured by Danny DeCarlo.

4 Strange that the gun should be firing lead reloads
5 when they're trying to show, the People, that copper-jacketed
6 slugs are fired.

7 Well, both can be fired in such a gun, obviously.
8 And the fact that reloads were found in the gun doesn't
9 necessarily mean that it couldn't have fired a lead or a
10 copper-jacketed slug in July.

11 But if the People are relying on circumstantial
12 evidence, the defense also has a right to, strangely enough,
13 rely on inferences to be drawn from circumstantial evidence.
14 That's what that circumstantial evidence instruction is.
15 They want you to assume the worst; that is, that inference
16 pointing toward guilt. When their own -- it wasn't their
17 own evidence. Isn't that funny, we had to bring it out
18 again. We had to call Sergeant Gleason to testify that
19 those bullets were with that gun.

20 Is there any reason why the People shouldn't
21 want the truth before you, shouldn't want those bullets and
22 the fact they were found with that gun to help you in your
23 deliberations? Well, ponder that. But you do have that.

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1 And an inference that can easily be drawn is
2 one that that gun was firing reloads ever since it was
3 purchased, purchased by Bruce Davis under the name of Jack
4 Paul McMillian at the same time that Danny DeCarlo, who made
5 the reloads, who used the reloads, purchased his .45, his
6 Colt Argentine .45.

7 Well, let's just assume, perhaps not an unwanted
8 assumption, that that gun was fired, that the Radom, People's
9 30 was fired.

10 If it was fired as both Sergeant Christansen and
11 Harry Johnson said, the barrel will wear and in time wear down
12 more and more.

13 And as I said, it sure ain't going to get better.

14 But, strangely enough, the bullet that was test-
15 fired from that Radom in March is better, the marks on that,
16 the land impressions are better, clearer, more distinct on
17 the undersized bullet that was fired from that Radom in March
18 than People's 31, the bullet which the People intend, by
19 circumstantial evidence and inferences that you are supposed
20 to draw therefrom, that gun is supposed to have fired in
21 July. It is backwards. Just like the rest of this case, it is
22 topsy-turvy. It is backwards. It just doesn't work that way.

23 People's 99 was the bullet that had been
24 recovered in the house, and then you've got People's 31 seven
25 months later, seven and a half months later, and it was even --
26 it showed evidences that the barrel was even more worn, that
27 would make sense. This doesn't. This doesn't.

28 But, you see, you hear it often enough and you

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1 almost believe it.

2 When the People tell you -- I've got to give you
3 just one more quote that comes to mind, because it is so
4 apropos here. This isn't from Alice in Wonderland, but it is
5 from Lewis Carroll. This is from Hunting the Snark. Just a
6 brief little quote.

7 "What I tell you three times is true."

8 That's what the People want you to believe. Tell
9 it often enough and you are supposed to believe it.

10 Well, there were some other bullets that were
11 test fired, regular sized bullets. And what are the markings
12 on those? Strange, Defendant's A and Defendant's G.

13 Now, I must say, Defendant's A was an exhibit which
14 I would not have expected the People to offer. This is a
15 bullet that was test-fired at my request at a later time. In-
16 dicates November 18, 1971, in connection with preparations
17 for this case. And it bears a legend "Test fired for
18 examination by Bill Harper re court order."

19 But how about Defendant's G? Defendant's G was
20 also test fired at the time People's 99 was test fired, but it
21 was a regular sized bullet.

22 Well, now, you look at Defendant's G and look at
23 Defendant's A, and they both bear very distinct, clear land
24 impression markings on the bullet.

25 This Radom -- I don't have it here this morning,
26 that so much has been made of the worn barrel -- this barrel
27 isn't that worn.

28 Nat Stanoff -- again, the pawnbrokers come out --

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1 the gun dealers come out as, I think, some of the most candid,
2 objective witnesses in this case.

3 But Nat Stanoff says, "When I sold that gun in
4 July, it was in good condition. That gun was in good condi-
5 tion. I work over the guns myself. It was a used gun, yes,
6 but I don't sell guns that are dangerous to fire."

7 Now, he sold that gun to Bruce Davis on July 14.
8 And it was in good condition.

9 And, according to the People's theory, that bullet
10 was supposed to have been fired within two weeks of that date,
11 within ten days almost, eleven, twelve days, perhaps within the
12 date of the purchase of that gun, which Mr. Stanoff says was
13 in good condition. Not dangerous.

14 Did that Radom fire that bullet on the weekend of
15 the 25th, 26th, 27th of July?

16 Well, that's what the People want you to think on
17 the basis of what -- on the basis of the testimony of Sergeant
18 Christansen. Saying, first, that he made an examination of
19 that bullet on about July -- on January 12th, 1970.

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1 And when he examined that bullet, he found that
2 it had six lands and grooves with a right-hand twist, with
3 a 1 to 1 land to groove ratio, and that they had similar
4 bullets on hand from guns in the Crime Lab, from an Astra,
5 Browning, several other guns and a Radom.

6 Now, ladies and gentlemen, he just could not
7 have found that from an examination of People's 31, either
8 on January 12, November 18, when he testified here, or any
9 time. And so Mr. Johnson said, "No way."

10 Is it a lie? Is it manufactured evidence? Did
11 he come to that conclusion after he had gotten the gun in
12 March, and then sort of back-date a new report? I don't
13 know. And that's why I went to all the trouble I did to
14 get these photomicrographs, because I couldn't see -- and
15 you saw me looking with that little jeweler's loupe, a
16 couple of them. I couldn't see anything on that bullet.

17 And so, finally, Mr. Johnson came down and he
18 confirmed it. There was nothing on that bullet that would
19 lead to that conclusion. And the only way you could draw
20 such a conclusion would be after you get the Radom, after
21 you fire the Radom, after you find that on firing the Radom
22 that it leaves on a bullet six land impressions with an
23 approximate 1 to 1 ratio and a right-hand twist.

24 Now, why is this so important?

25 Well, the fact of a lying expert witness is
26 important in any case, whether it is a murder case, whether
27 it is a traffic ticket. A lying expert is the most dangerous
28 thing in court.

1 Now, you know, attorneys, when they argue to a
2 jury, they're not supposed to call people liars. They're
3 supposed to use any euphemism that they can, because another
4 person doesn't like to hear another person castigated as a
5 liar.

6 But I told you I was not going to mince words
7 with you. Now, you may think I may be wrong. You may be
8 more charitable than I. You may see some other view of
9 this evidence.

10 But you tell me how, in God's name, with the
11 testimony we've gotten from Mr. Johnson, whom even the
12 People concede is an expert par excellence, how you can reach
13 any other conclusion but that Sergeant Robert Christensen
14 has fabricated evidence to present to you, the jury.

15 And why is that important again? Because Floie
16 White did the same thing. Two of them right from the same
17 office, the Sheriff's Crime Lab.

18 When he told you that a fingerprint under the
19 most ideal circumstances won't last more than ten days to
20 two weeks at the longest, and that was a lie. And a lie
21 specifically so that they could get Bobby Beausoleil's
22 prints within the necessary period of the death of Gary
23 Hinman. It begins to stink, doesn't it?

24 If you were on trial, if anyone near and dear to
25 you, if your brother, your husband, if your father or anyone
26 were on trial for any crime, wouldn't you fear for their
27 safety? Wouldn't you fear for the fairness of their trial
28 with testimony like that? Thank God for cross-examination.

1 Thank God for the powers of discovery the defendants in the
2 State Court have.

3 Just one more thing. People may still argue,
4 well, despite anything that Mr. Denny says, assume that
5 Sergeant Christansen's testimony is pure, plain, simple,
6 unadulterated perjury. Assume he fabricated the evidence.
7 Toss out his evidence. Just take what we got from Mr.
8 Johnson. Mr. Johnson still says, "Yes, that bullet, People's
9 31 could have been fired -- I can't exclude it as having
10 been fired from the Radom."

11 Well, then, ladies and gentlemen, you look at
12 Defendant's Exhibit N, which is the two-page list of 9
13 millimeter automatic pistols that will accept and fire the
14 same kind of ammunition as People's 31, People's 99,
15 Defendant's A, Defendant's F.

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1 Look how many kinds there are. When we counted
2 them up, Sergeant Christansen and I together, he counted
3 just 60 that had six lands and grooves with a right-hand
4 twist. That's when we were going along with the viewpoint
5 that he could see sufficient on People's 31 to show six
6 lands and grooves with the right-hand twist.

7 But if the People have got in the position where
8 they say, all right, toss out his testimony, let's take the
9 testimony of Mr. Johnson, let them take it all. And that is,
10 that there is no way of telling from that bullet, People's
11 31, what kind of 9 millimeter automatic fired it. So you
12 have to look and you see that there are 9 millimeter auto-
13 matics that have four lands and grooves with a right-hand
14 twist, about eight or nine of them; one with four lands and
15 grooves with a left-hand twist; one with five lands and
16 grooves with a right-hand twist; one with five lands and
17 grooves with a left-hand twist; and then, about sixty six
18 lands and grooves with a right-hand twist; and there's about
19 nine or ten more six lands and grooves with a left-hand
20 twist; and then one seven lands and grooves with a right-hand
21 twist, and one seven lands and grooves with a left-hand
22 twist. Millions of guns could have fired that bullet. And
23 you're still left with the question when? When?

24 Now, they're going to argue to you, maybe, again,
25 that Sergeant Whiteley is not a very good officer, their own
26 chief investigating officer, when he looked at that bullet
27 hole and drew the conclusion that it was not of recent origin.

28 Well, he was incompetent in drawing that conclusion.

1 He wasn't qualified to draw that conclusion.

2 Well, isn't it extraordinary, ladies and gentlemen,
3 that Sergeant Christansen cut out the piece of wood through
4 which that bullet went for later investigation, as his
5 report reflected, but nobody ever later investigated it.
6 And if they had tried to, they wouldn't have gotten very far,
7 because Sergeant Christansen, the expert that he is, took a
8 gun cleaning rod and jammed it through the hole so you never
9 could tell what made the hole, when?

10 So the People are left with the same evidence
11 that the defense is left with, and that is the testimony of
12 Sergeant Whiteley that that hole, when he saw it on the 31st
13 of July, was not of recent origin. You and I don't know
14 what goes on at another person's home, what goes on at Gary
15 Hinman's home. We barely know what went on on that weekend.
16 But what went on before, we have no idea. That bullet, according
17 to the opinion, the conclusion drawn by Sergeant Whiteley,
18 a qualified homicide officer, the chief investigating
19 officer in this case, apparently could have been fired any
20 time within a number of weeks or months before July 25th
21 weekend of 1969.

22 All right, again, why is this particularly
23 important, this bullet, other than to show, as I think we
24 have shown, the manufacture of evidence by the Sheriff's
25 Crime Lab to fit the needs of the People.

26 Well, I'll tell you why, because there are only
27 two other witnesses that have anything to do with the Hinman
28 count. And these, as indicated here, are the very much

1 interested and involved civilian witnesses: Mark Arneson and
2 Ella Jo Bailey.

3 One of them peripheral, Mark Arneson. Why he
4 got the deal that he got for his testimony, I don't know. It
5 wasn't even around Christmas. It was after Christmas. But
6 the People dismissed the receiving stolen property case that
7 he had against him, the outstanding warrant on which he was
8 arrested in exchange for his testimony.

9 MR. KAY: Your Honor, I must object to that. There's
10 no evidence as to that. Mr. Arneson testified that it was
11 dismissed because he was turned over to the Army and prosecuted
12 by the Army. And there's no contrary evidence.

13 THE COURT: Ladies and gentlemen, I'm sure that neither
14 side, counsel on neither side would deliberately misstate the
15 evidence. Ultimately, you are the judges of what the
16 evidence is.

17 You may continue.
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1 MR. DENNY: Thank you, your Honor. I don't mean to
2 misstate the evidence. If Mr. Kay's memory is different than
3 mine perhaps he can quote the testimony in his argument.

4 My recollection, however, of the cross examination
5 of Mr. Arneson developed the fact that, in West Los Angeles,
6 Division 64, there was an outstanding case against him for
7 receiving stolen property, and that that case was dismissed
8 by the People.

9 And we had some colloquy back and forth as to
10 why it was dismissed, and Mr. Arneson said, "Well, I really
11 don't know why it was dismissed. It was just dismissed."
12 And then, I think, as Mr. Kay says, he added, "Well, I --
13 I was sent back to the Service --" or whatever.

14 But strangely enough, Mr. Arneson -- who's
15 guilty of receiving stolen property, if anyone ever was --
16 and here's another case. Amazing. The defense attorney
17 becoming the prosecutor, prosecuting the case before this
18 jury that should have been prosecuted against Mark
19 Arneson before another jury, a jury of his peers, for the
20 crime he committed of receiving stolen property, the VW
21 microbus of the dead Gary Hinman -- of the dead Gary Hinman
22 that he knew was not a Black Panther.

23 And when he received that microbus, that stolen
24 microbus from Charlie Manson, and Charlie Manson told him,
25 "Well, if anybody asks you, tell them you got this from a
26 Black Panther," he knew very well that he wasn't getting it
27 from a Black Panther, when he got it from white Charlie
28 Manson.

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1 And he knew very well that that bus was stolen;
2 that it was hot; and it didn't take him too long to get rid of
3 it for \$350 cash, without ever getting his name on the pink
4 slip.

5 Another one -- as I say -- peripheral. He didn't
6 really need that testimony. But the People saw fit to call him
7 in, and he got his quid pro quo for it.

8 Now, before we get to the testimony of Ella Jo
9 Bailey, I did have a couple of sections that I did want to
10 read to you of Sergeant Christansen's testimony, because some-
11 times it's easy for the attorney to argue in perhaps -- well, I
12 won't term it generalities. Even if you are specific, it still
13 is not quite the same as hearing it verbatim, as it happened.

14 So -- and I do this, looking ahead to the argument
15 of Mr. Kay, in response to mine. If he seeks to rebut my more
16 generalized statements, let him rebut this, that appears in the
17 record, starting at Page 4737, cross examination of Sergeant
18 Christansen, continued,

19 "BY MR. DENNY:

20 "Q Good morning, Sergeant Chirstansen.

21 "A Good morning.

22 "Q Sergeant Christansen, would you look
23 at those negatives, removing them from the
24 envelopes, and tell me if you recognize them?"

25 Those are the negatives of Defendant's B.

26 "A Yes, I do.

27 "Q And what are those negatives?

28 "A These are the negatives of the

2-3 1 "evidence bullet and the test bullet that I and
2 Sergeant Warner took in the Sheriff's crime
3 laboratory.

4 "Q That is, the test bullet fired in
5 March of 1970, as compared with the evidence bullet
6 recovered in January of 1970; is that right?

7 "A Yes, sir.

8 "Q All right. And they are negatives
9 which you produced in November, pursuant to
10 court order; is that correct?

11 "A That's correct, yes, sir.

12 "Q Now, they're serially numbered one
13 through six; is that correct?

14 "A Yes.

15 "Q And what does that indicate?

16 "A Well, this was our method of showing
17 the continuity or the -- or differentiating between
18 them.

19 "We actually took six negatives, or from six
20 different positions.

21 "Q In other words, the six positions around
22 the six land impressions on the bullet?

23 "A Yes, sir."

24 To go on, Page 4766, starting at Line 4.

25 "Q What do you mean by a good, clear,
26 clean, high-quality photomicrograph?

27 "A Showing a great deal of detail, clear.
28

2a-1

1 "Q One that would show the land shoulder
2 impressions if there were any on a bullet?

3 "A Yes.

4 "Q One that would show some reasonable
5 clarity of the striation marks on a bullet?

6 "A Yes.

7 "Q And the pictures that you prepared
8 pursuant to court order, do they show any of
9 those things?

10 "A Yes.

11 "Q With any degree of clarity?

12 "A Yes.

13 "Q What do they show with any degree of
14 clarity?

15 "A They show some individual striations
16 and they show -- I believe one of them shows portions
17 of the land shoulders.

18 "Q Portions of the land shoulders?

19 "A Yes, sir.

20 "Q One of them shows portions of the land
21 shoulders of which bullet?

22 "A The evidence bullet.

23 "Q The evidence bullet?

24 "A Yes, sir."

25 Going on, page 4767, starting at line 1.

26 "Q All right. For the jury's edification,
27 can you describe how you set up the bullets in order
28 to photograph them?

2a-2

1

"A Yes, sir.

2

"Q How you set them up in this particular case.

3

4

"A Yes.

5

"The bullets are placed on the stages or the individual holding devices which are adjustable. They are held on by beeswax. The bullets are lighted from the side with indirect lighting.

6

7

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9

"Q Well, excuse me just a moment, Sergeant Christansen.

10

11

"Do you place them back to back, nose to nose, or noses going in the same direction?

12

13

"A Noses going in the same direction.

14

"Q And in which direction?

15

"A In this case, it was away from the stages.

16

It would be to the operator's right as they face the--

17

"Q As the operator faces the microscope?

18

"A -- microscope, yes, sir.

19

"Q And which bullet was on the left and

20

which bullet was on the right?

21

"A The evidence bullet was on the right.

22

The test bullet was on the left.

23

"Q All right. And your -- when you make

24

a picture, does the picture come out the same

25

way with the evidence bullet on the right and the

26

test bullet on the left?

27

"A I believe so. I'm not really sure."

28

Well, as you recall, he was dead wrong on that.

2a-3

1 Because they were going in the opposite direction.

2 All right. Starting at page 4769, line 5:

3 "Q And did you line them up in some way so
4 as to attempt to line up what appeared to be land
5 impressions on any particular land mark on the
6 evidence bullet?

7 "A Uh -- we lined them up so that the land
8 mark that was visible on the evidence bullet appeared
9 to coincide with the land mark on the test bullet.

10 "Q Well, do you recall so lining them up?
11 Was that the picture, then, that you took first
12 and labeled 1?

13 "A I don't recall.

14 "Q Well, was there any particular rhyme or
15 reason to the numbering that you used, 1, 2, 3, 4,
16 5, 6?

17 "A No. It was just a sequence numbering.

18 "Q Well, did you number those negatives
19 just sort of randomly, after the negatives came out
20 of the wash and the drying process?

21 "A No. The numbers -- the negatives
22 were numbered, I believe, by Sergeant Warner prior
23 to the shooting or just after taking the photo.
24 I'm not a photographer. I'm not sure of the process,
25 but it was done at the time that the pictures were
26 taken."

27 All right. Then, over to page 4854, starting
28 at line 14:

2a-4

2b fls.

"Q So that what's purported to represent two different land impressions, again, numbered serially, actually represents the same land impression, if indeed there is any land impression shown there; is that right?"

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1 This is when we are talking about the fact that
2 5 and 6 and 2 and 3 are actually the same area of the bullet.
3 And he says:

4 "Yes, sir.

5 "Q Now, where's land impression number
6 two, or where's land impression number three? Did
7 that just sort of disappear somewhere?

8 "A No, sir.

9 "Q And where is land impression 5 or
10 land impression 6, if they're duplicates of each
11 other? Did that just disappear somewhere?"

12 There was an objection, and the Court permits
13 him to answer, and he says:

14 "No, the -- I have had a chance to refresh
15 my memory on the photographic process and, in fact,
16 some of the pictures are duplicates and they do
17 show more than one land and groove marking or
18 the area where more than one land and groove
19 marking would be on the bullets.

20 "They show more than one land impression?" was
21 my question.

22 "A Yes, in some cases they do."

23 Well, you remember what I just read you at first,
24 and this is that he took the pictures, six pictures to show
25 the six land impressions. A little change in testimony, now
26 that he has had a chance to refresh his memory, after a
27 recess?

28 Finally, 4860, starting at Line 16 -- and this

2b-2

1 goes on for a little way.

2 "Q Well, which did you do, then, Sergeant
3 Christansen?

4 "Did you take six pictures serially, 1
5 through 6, showing the full circumference?

6 "A No, sir.

7 "Q What did you do?

8 "A I took pictures to show the full
9 circumference. However, some of the pictures are
10 duplicates in an attempt to obtain better pictures.

11 "Q If they are duplicates, Sergeant, why are
12 not they given the same serial number to show that
13 they are duplicates?

14 "A Because the numbers were placed on the
15 photo pack prior to the picture being taken and showed
16 the order in which the pictures were taken."

17 Now, let's stop just a minute there, because Mr.
18 Kay may want to read you some other material, and I've already
19 read it, where he says he's not sure.

20 Now, after that, some pages later, and after
21 a recess, too, he says to you, under oath, having sworn to
22 tell the truth, the whole truth, and nothing but the truth, so
23 help him God, "Because the numbers were placed on the photo
24 pack prior to the picture being taken and showed the order in
25 which the pictures were taken."

26 "Q Well, is there some reason, Sergeant,
27 why you took the same picture over again in the
28 photo pack with negative number 2 and negative

2b-3

1 "number 3?

2 "A Yes, there is.

3 "Q What is that?

4 "A Because I wasn't sure that negative
5 number 2 would produce a clear picture.

6 "Q Well, was there any difference in
7 lighting between the time that you took the
8 picture in negative number 1 and the time you
9 took the picture in negative number 2?

10 "A No, sir.

11 "Q Or negative number 2 and the time
12 you took the picture in negative number 3?

13 "A No, sir.

14 "Q Well, what made you feel that you
15 were not sure when you took the picture in number
16 2 that it wouldn't turn out so you had to take
17 another one?

18 "A I am not an accomplished photographer.
19 I wasn't sure about the focus of the picture and,
20 also, outside influences, such as someone walking,
21 in our very old and decrepit building set up
22 vibrations, and this could very well have happened
23 when the picture was taken. I don't recall the
24 exact circumstances on each one at this time.

25 "Q And is that about what happened
26 when you again took a duplicate picture with
27 number 5 with negative number 6?

28 "A Yes, sir.

2b-4

1 "Q And are you testifying at this time
2 that going one, two, and assuming two and three
3 are the same, and then four, and then five and six,
4 and assuming they're the same -- are you telling
5 this jury that those photographs now show the
6 entire circumference of the bullet?

2c fol

7 "A Yes, sir.
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2c-1

1 "Q Now, Sergeant, those dark spaces, those
2 dark areas, the darkened areas in the middle of each
3 of these pictures, those indicate an area of
4 depression caused by the lands, the lands in each
5 case, isn't that correct?

6 "A Quite possibly.

7 "Q Well, is it possible, or is it so?

8 "A I don't know whether it is possible or
9 it is so. It is possible or it is so. It is possible.
10 It is also true that we had to use a great deal of
11 indirect lighting on these in order to have anything
12 other than a blank piece of metal showing on the
13 evidence bullet. So this could be caused by the
14 lighting. Again, I'm not a photographer. I don't
15 know."

16 Funny, isn't it? That's exactly what Mr. Matlovsky
17 said. Because of the lighting, they got those dark areas
18 there -- which are supposed to represent to you, the jury,
19 that they're land impressions?

20 Let me continue reading:

21 "Well, you're not a photographer, sir,
22 but you're supposed to be an expert in the field of
23 firearms identification.

24 "MR. KAY: Argumentative.

25 "Q BY MR. DENNY: Well, can you read photo-
26 micrographs?

27 "A No, sir, not always.

28 "Q Have you had training in the field of

2c-2

1 "photomicrography so that you can read photomicro-
2 graphs?

3 "A No, sir."

4 Why, if he didn't have training in the field,
5 did he indicate to you it was part of his qualifications,
6 to build himself up, that he had had training from
7 representatives of the American Optical Company?

8 And why, if he's supposed to appear in a murder
9 case, where a man's life and liberty are at balance, and he
10 has had years and years, why can't he read a photomicrograph?
11 Why?

12 All right. Why is this testimony important?
13 Because there's a law -- and it will be given to you --
14 concerning accomplice testimony. The testimony of an
15 accomplice must be corroborated. And if you find that someone
16 testifies against someone else -- in this case, in connection
17 with a conspiracy, as alleged -- is an accomplice, then what
18 you have to do is exclude that accomplice testimony totally,
19 as if you'd never heard it, and then see if there is any
20 other evidence which connects the defendant with the commission
21 of the crime.

22 And if there is some independent evidence which
23 does have to take its directions from the evidence of the
24 accomplice -- you don't have to think about the accomplice
25 testimony -- and you say, "Well, if you add this and this
26 and this to what the accomplice said, then it corroborates it."
27 You have to exclude the accomplice's testimony entirely,
28 and look over at what the supposedly corroborating evidence

2c-3
1 is, and if there is an independent evidence which connects
2 the defendant with the commission of the crime, then the
3 accomplice testimony is corroborated. And then you may
4 consider them both together.

5 So the People, you see, want to establish that,
6 one, a bullet was fired during the weekend of July 25th,
7 26th and 27th; and that bullet came from the gun of the
8 defendant; and therefore, the testimony of Ella Bailey is
9 corroborated -- just the connection of the defendant with the
10 crime.

11 But you see, that mistakes the idea of corrobora-
12 tion in several respects. The mere fact that the gun that
13 was used -- if in fact, you thought that the Radom was the
14 gun used; and if in fact you thought -- you drew the
15 inference from the circumstantial evidence that's been
16 presented -- that the bullet that was recovered was fired
17 during that weekend, that doesn't connect the defendant with
18 the commission of the offense.

19 Because there are all sorts of testimony by
20 different people, including Ella Bailey, that there were a
21 number of guns there at the ranch. And we have the testimony
22 of Mr. Stanoff that Danny DeCarlo had purchased the .45 at
23 the same time.

24 We have the testimony of Ella Bailey -- and I
25 think Barbara Hoyt, if I'm not mistaken -- that there was a
26 machine gun; there were some other weapons there; and that
27 Danny DeCarlo was the armorer; and the guns were kept in
28 Danny DeCarlo's cubicle -- in jail, I think it was, that had

2c-4

3 fls.

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been turned into -- I think they called it the gun shop.

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1 So that the mere fact that Bruce Davis may have
2 purchased a gun two weeks earlier, even if that gun were
3 connected with the offense by your jumping to the conclusions
4 based on the circumstantial evidence that's presented to you
5 that the bullet which was recovered was fired during that
6 weekend and was fired from that gun, that doesn't connect
7 the defendant with the offense. It only connects him with
8 the gun. But there has to be some guilty knowledge, some
9 guilty knowledge. Otherwise, the mere ownership of a gun
10 is enough to connect you to the crime. Particularly in the
11 face of evidence that there was an arsenal there, small
12 arsenal, but an arsenal.

13 So that's one of the reasons that the People
14 struggled so hard to get in the evidence of Sergeant Christansen,
15 and that's one of the reasons why I believe Sergeant Christansen
16 doctored his testimony to fit their need. And I think we've
17 established that.

18 Your Honor, I wonder if perhaps this might be
19 a convenient time that we could take a break?

20 THE COURT: Very well. The Court will grant a recess
21 until 11:00 o'clock.

22 You are excused until that time, ladies and
23 gentlemen. 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 this matter, nor are you to form or express any opinion
27 on it until it is finally submitted to you.

28 (Morning recess.)

3-2

1 THE COURT: The case of People vs. Davis. The
2 defendant is present with his counsel. The jurors are all
3 in the box and Mr. Kay and Mr. Manzella for the People.

4 MR. DENNY: May I proceed, your Honor?

5 THE COURT: Yes, please. Sorry for the delay,

6 MR. DENNY: Thank you.

7 Me too.

8 I wanted to make two observations before we get
9 fully into Ella Bailey's testimony, and one specifically on
10 this gun, again.

11 I don't want to beat a dead horse but, you know,
12 an attorney is in an awful position, really, in arguing to a
13 jury, particularly a defense attorney, one who is attempting
14 to be conscientious and do a reasonable job in presenting
15 the case, and you never know what one thing may be important
16 to a particular juror or to all of the jurors. And so if I
17 seem to be a little loquacious in attempting to lay before
18 you what I think is the evidence and what I think is a
19 reasonable interpretation of the evidence, I hope you will
20 forgive me for being a little bit verbose and taking a little
21 bit extra time. But I just want to make sure that somehow
22 or other, as Mr. Kay responds, that there is not a thought
23 left in your mind in connection with this gun and the bullet
24 and its value or their value as corroborative evidence that
25 because Bruce Davis bought this gun, it thereby shows that
26 he is in some way connected with the conspiracy.

27 And I admit here and now, concede and stipulate,
28 that there was a conspiracy to rob and murder Gary Hinman. I

3-3

1 told you, and Mr. Manzella didn't have to spend so much time
2 arguing that because I'm going to argue it perhaps maybe
3 even more forcefully than he to you.

4 But you see, the People have taken a very
5 interesting position. The People have alleged a specific time
6 period for this conspiracy, between July 25 and July 28, I
7 think it says on the indictment. There is an additional
8 reason which we'll go into in just a minute for that.

9 But, clearly, there was no conspiracy afoot to
10 rob and murder Gary Hinman on July 14 when Bruce Davis bought
11 this gun. So don't be misled somehow if they parade this
12 purchase certificate before you showing Jack Paul McMillian
13 as having bought the gun on July 14th, that somehow any evil
14 connotation can be derived out of that. Apparently even
15 from Ella Bailey's testimony, what portion of it you may
16 believe, there has been no mention about Gary Hinman or
17 going to his house or getting money from him or anything until
18 a good week later.

19 And as I said to you, the mere fact that he
20 bought the gun under a false name -- they were all using
21 false names, different names, pseudonyms, as did Richard A.
22 Smith, Danny DeCarlo, as did Ella Bailey.

23 All right, the second interesting thing about the
24 People's conspiracy count, in Count III, why are they so
25 particular there, that starting date, July 25?

4 fls.

4-1

1 Now, it is phrased in the standard phraseology,
2 "On or about July 25th to July 28th," but why put a date of
3 July 25th?

4 Well, I submit to you that part of the reason --
5 if not the whole reason -- is to get around, again, this
6 fundamental part of the law, and that is: If Ella Jo
7 Bailey is a conspirator, an accomplice, her testimony must be
8 corroborated. And they've got no real corroboration.

9 So they don't want the conspiracy to start back
10 when it actually did start (indicating) in that first meeting
11 at the Devil's campground, the Devil's Canyon campfire meeting.
12 That's when the conspiracy started, not on July 25th -- not
13 even "on or about July 25th."

14 The People have it within their power, because
15 they're the ones who framed the indictment, to say with more
16 precision than that when that conspiracy began, and they know
17 full well when that conspiracy began, but it is very cute,
18 if you will, very particular, in the way they've tried to
19 narrow it.

20 Well, I'll show you that "on or about" in that
21 case means just exactly what it says. And now, while I am
22 on that subject, why not a conspiracy charge as to the Shorty
23 Shea Count?

24 Why? You see, the People don't have to charge
25 conspiracy at all, as has been shown by the evidence and
26 by introduction of evidence here of various hearsay exceptions.
27 They can proceed on a conspiracy theory, just as they are doing
28 in the Shea alleged murder charge, without ever charging it.

4-2

1 It's a strange quirk in the law, but it is the law,
2 even if a defendant jumps up and down and says, "I want to be
3 charged with conspiracy. If you are going to proceed on a
4 conspiracy basis, charge me with a conspiracy. Let me know what
5 kind of a conspiracy you are charging me with. Let me know
6 who are supposed to be my co-conspirators. Let me know when
7 the conspiracy is supposed to have started and when it's
8 supposed to have ended. Let me know what the objects of the
9 conspiracy are, that you say I am guilty of."

10 But the People don't have to. They don't have to
11 put it down on paper. They can do it -- as they have done in
12 Count III here -- and simply say, "Well, we say there was a
13 conspiracy, and we are going to show that there was a
14 conspiracy, and we don't have to advise the defendant, really,
15 of what the conspiracy was, or who were the co-conspirators
16 or when it began or when it ended. You'll find that out as the
17 evidence comes along."

18 Now, they could have done that as to Count I,
19 the Hinman Count. But they didn't. There, they did become
20 very, very directive. They charged specifically what the
21 objects were, murder and robbery of Gary Hinman; who the
22 alleged co-conspirators were -- Manson, Atkins, Davis -- and
23 the dates; because they wanted to be that specific. And when
24 they want to be that specific, they can be.

25 This is going to be important, when we discuss
26 some of the testimony that came in here, the testimony that
27 was emphasized rather strongly by Mr. Manzella in his argument,
28 of things that were admitted under the conspiracy doctrine,

4-3

1 statements allegedly made by Charlie Manson to Johnny Swartz,
2 in one case, and to Danny DeCarlo, supposedly overheard by
3 Barbara Hoyt, in the other case -- evidence which could only
4 come in under a conspiracy theory, and which could only come
5 in, in this case, under a fantastic conspiracy theory that the
6 People are espousing here. But we'll get into that anon.

7 Now, again, back to Ella Jo Bailey. And again,
8 "The Case of The Unasked Question."

9 Let's look at her testimony presented by the
10 prosecution in this case and see what was left out when the
11 People presented to you the truth, the whole truth, and nothing
12 but the truth. Starting at Page 3011, Line 25. Question by
13 Mr. Manzella to Miss Bailey -- and this is talking about this
14 meeting at the Devil's Canyon campground, after she had run
15 down a list of people who were supposedly there.

16 "Would you tell us what Mr. Manson said on that
17 occasion?

18 "A Yes, he asked if any of us knew --
19 could think of any person that had money that
20 we could bring to the Family or get money from
21 to -- uh -- more rapidly get our things ready
22 to go to the desert.

23 "Q Did you mention the names of anyone
24 you knew?

25 "A Yes.

26 "Q And whose names -- what name or names
27 did you mention?

28 "A I mentioned Gary Hinman."

4a fol

4a-1

1 Now, let me stop there just a minute. Interest-
2 ing here, the People were forced into the position of having
3 her testify that way, although prior to her testimony in the
4 Manson trial, that preceded this -- and this is in evidence,
5 because I examined her on this, later in cross-examination --
6 she had attempted to do just exactly what she did before the
7 Grand Jury, when she appeared as a principal witness against
8 Mary Brunner.

9 "It was mentioned.

10 "The name of Gary Hinman was brought up."

11 Do you remember that? And I can go through that
12 Grand Jury testimony right now. Page 57 of that transcript.

13 "And could you tell the Grand Jury what that
14 conversation was, generally? Again, this initial
15 conversation?

16 "A Yes. We were in Devil's Canyon, and
17 there was some talk about raising money so that we
18 could go to the desert. Gary Hinman was mentioned
19 as someone who possibly had some money, and there
20 was a discussion relating to that."

21 And I read also from the date of the -- the
22 transcript of the Manson trial, in which she said, "Well,
23 the name of Hinman was suggested."

24 Objection.

25 "Well, it was mentioned that --"

26 Objection.

27 And finally, the Judge -- Judge Choate, in that
28 case, said in effect: "Miss Brunner, who mentioned it?"

4a-2

1 "I did."

2 Is the prosecution trying to -- was the prosecution
3 trying to get away with the unasked question again? That the
4 Court finally had to ask in that case?

5 Well, the prosecution knew that I knew about that,
6 and would certainly not let her get away with the same type
7 of attempt to befuddle this jury. So the prosecution at least
8 testified to that much of the truth.

9 Going back, now.

10 "And whose names -- what name or names
11 did you mention?

12 "I mentioned Gary Hinman.

13 "Q Now, as of that time, the latter half of
14 July, 1969, how long had you known Gary Hinman?

15 "A About a year.

16 "Q And you met -- and had you met him when
17 you were staying at Topanga in 1968?

18 "A Yes.

19 "Q Now, is that the first time that Gary
20 Hinman's name was mentioned in the presence of the
21 other members of the Family as the person that had
22 money?

23 "A No."

24 And there's an objection, and it goes on:

25 "Q BY MR. MANZELLA: Were any other names
26 mentioned by any of the other people present?

27 "A Yes.

28 "Q And was Bruce Davis present at that time

4a-3

1 "that Mr. Manson made those statements?

2 "A Yes.

3 "Q Now, at some time thereafter did Charles
4 Manson, Mr. Davis and yourself and the other members
5 of the Family move back to Spahn Ranch?

6 "A Yes, we did.

7 "Q Why did you move back to Spahn Ranch?

8 "A We had been spotted by the fire patrol
9 over at Devil's Canyon.

10 "Q You had been spotted by a fire patrol
11 on foot or some other manner?

12 "A Uh -- there had been trucks going through
13 the canyon and, also, there were helicopters flying
14 over.

15 "Q Now, how long after that, that Mr. Manson
16 made those statements in Devil's Canyon, did you move
17 back to Spahn Ranch?"

18 And I haven't skipped anything. What statements
19 in Devil's Canyon? The only statements that we have got thus
20 far are those that I started reading about on page 3012 and
21 the bottom of 3011.

22 "Yes, he asked us if any of us knew --
23 could think of any person that had money, that we
24 could bring to the Family or get money from, to --
25 uh -- more rapidly get our things to go to the desert.

26 "Q Did you mention the names of anyone you
27 knew?

28 "A Yes."

1 And she goes on with that portion that I've read,
2 that she mentioned Gary Hinman's name.

4b fls.

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1 No further testimony about any discussion by
2 Mr. Manson, or any discussion by anyone. Simply: "Were other
3 names mentioned by any of the other people present?"

4 "A Yes.

5 "Q And was Bruce Davis present at that
6 time that Mr. Manson made those statements?"

7 I should have objected then as assuming
8 facts not in evidence, because there are no
9 other statements."

10 All right. Going back to Page 3014, starting at
11 the top.

12 "Q Now, how long after that, that Mr. Manson
13 made those statements in Devil's Canyon, did you
14 move back to Spahn Ranch?

15 "A A matter of a few days.

16 "Q Now, sometime after the Family moved
17 back to Spahn Ranch, did you have a conversation
18 with Mr. Manson with regard to Gary Hinman?

19 "A Yes.

20 "Q Approximately how long after you
21 moved back to Spahn Ranch -- rather -- strike that.

22 "Approximately how long after Mr. Manson had
23 made the statements about which you've testified in
24 Devil's Canyon did this occur?

25 "A Later that same week.

26 "Q Do you recall the day on which you had
27 this conversation with Mr. Manson, back at Spahn
28 Ranch?

1 "A Yes, I do.

2 "Q What day was that?

3 "A It was Friday, the 25th of July.

4 "Q Approximately what time of day was
5 that?

6 "A It was around dusk.

7 "Q And where were you at the time?

8 "A I was down in the area we called
9 the dump, down by the semi-trailers."

10 Now, what was left out? What are the Unasked
11 Questions? And why? Why are they unasked.

12 Why did the prosecution not want to go into what
13 was brought out on cross examination? Why did the prosecution
14 want to present to you, at best, half of the truth?

15 Because the prosecution knew everything that I
16 knew; they have all the notes that I have -- perhaps more --
17 but they had at least all the notes that I have, and all the
18 reports that I had.

19 Why did they want to present a picture to you of
20 this lady -- lady? -- of this woman having one brief conversa-
21 tion in Devil's Canyon campground, and then nothing bad about
22 it, just mentioning the name of Gary Hinman as someone who
23 might join the Family and bring money to the Family?

24 And then, jumping to the second conversation, July
25 25th, 1969, in, as she says, the dump area? I'll tell you
26 why:

27 Because they knew full well that at that
28 original conversation, Ella Bailey became the co-conspirator

1 of Charles Manson in the conspiracy to rob and murder Gary
2 Hipman; and they knew that, because the notes of Paul Whiteley
3 established that, the notes of their chief investigator; the
4 notes that he had taken in his original conversation with Ella
5 Bailey on May 15th and May 16th, 1970.

6 But they didn't want to get into that.

7 Well, I guess it's all right for the prosecution to
8 present half-truths, but it sure makes it scary for a person
9 who is charged with the offenses that this defendant is charged
10 with, to be prosecuted on the basis of half-truths.

11 Again, thank God for cross examination. Thank God
12 for the right of cross examination. Because on cross examina-
13 tion, perhaps a little more of the truth came out. Hopefully,
14 you became aware of a little more of the truth.

15 Now, Mr. Manzella made, I guess, the only attempt
16 that he could have made -- and I -- I have been waiting to see,
17 and I am going to be interested to see how Mr. Kay approaches
18 this, how they reconcile the diametrically opposed testimony of
19 their principal witness, their key witness, Ella Bailey, and
20 their chief investigating officer, Sergeant Whiteley, whose
21 testimonies are diametrically opposed on every major point
22 involved in this conspiracy.

23 4c fod
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4c-1q

1 Mr. Manzella's attempt to reconcile that
2 conflict is to forget everything that Sergeant Whiteley said
3 -- don't even mention it to you, the jury -- and to say,
4 simply, "Well, Ella Bailey's recollection was a little
5 confused at the time of her conversation up there in Tacoma,
6 because for some seven months or so, she had tried to put
7 all of the business of the Manson Family out of her mind,
8 and it was only after she had had time to reflect -- with
9 the help, of course, of some police officers, and some
10 Deputy District Attorneys and the rest of it -- that she was
11 able to reconstruct the true picture of what occurred.

12 Well, it's a valiant effort, but I submit: not
13 very convincing. Not very convincing at all.

14 Now, let me go on into some of the testimony,
15 because we've got another interesting case here that we have
16 to talk about, as far as the law.

17 You see, the law of conspiracy is -- is fraught
18 with little nuances. That's why I told you earlier that
19 the defendant is still clothed with the presumption of
20 innocence, until you walk through this door to begin your
21 deliberations, having been advised by the Court of what all
22 the law is.

23 Because even lawyers, who labor in the vineyards
24 here in the field of criminal law, have to go through the
25 books and refresh themselves as to what the fine nuances of
26 the law may be in a particular area.

27 And in the area of conspiracy, there are many
28 fine nuances -- as, for instance, this: That in order to

4c-2

1 convict anyone of conspiracy, in order to convict -- and I
2 underlined that word -- convict anyone of conspiracy, it is
3 necessary for the People not only to show the conspiracy, the
4 unlawful agreement, or the agreement to do some unlawful
5 act, but to allege and prove at least one overt act, one act
6 done to further that agreement.

7 Now, the act, as the law says, need not be
8 criminal in itself. Somebody may conspire with someone else
9 to burn down a building, and they go and they buy a can of
10 gasoline.

11 Well, there's nothing unlawful about buying a
12 can of gasoline. But if the purchase of that can of gasoline
13 was in fact done to further the conspiracy, to burn down the
14 building, and if the People prove that that was done, then
15 they have proved at least one overt act toward the commission
16 of that conspiracy.

17 And that's all they have to prove -- assuming
18 they have shown, generally by circumstantial evidence but
19 perhaps by direct evidence, of conversations overheard or
20 whatever, of an agreement to burn the building, to establish
21 the conspiracy.

22 The building need not have been burned, either.
23 If there's that agreement and the proof of the overt act.

24 In the case of conspiracy to commit murder and
25 robbery, the murder need not have occurred. The robbery need
26 not have occurred, if you can establish -- if the People can
27 establish -- an agreement, and at least one overt act done
28 to further that conspiracy.

1 Now, you will be instructed that there is in
2 this case an allegation in Count II, charging a conspiracy
3 to rob and murder Gary Hinman, a conspiracy among the three
4 named parties, Manson, Atkins and Davis, and there's alleged
5 one overt act.

5 fls.

5-1

1 And the People have not introduced sufficient
2 evidence to establish that one overt act, then you cannot
3 convict the defendant of Count II.

4 Now, that's kind of interesting, too, you see. They
5 sort of tie themselves down in a way there which they haven't
6 done in the Shea Count. They're alleging, without putting it
7 in writing, the same sort of conspiracy in the Shea Count.
8 But they haven't tied themselves down to any specific overt
9 act. They haven't tied themselves to any dates. They haven't
10 tied themselves down to who the co-conspirators are, et
11 cetera.

12 As Judge Cardoza once said about negligence,
13 "sort of negligence in the air"; this is sort of a conspiracy
14 in the air. We'll get to that again.

15 So, now, we have to look at what the testimony is
16 of Ella Jo Bailey, even to establish that overt act, because
17 she's the only one. She's the only one that can establish the
18 overt act.

19 And what is the overt act which you have to find in
20 this case in order to convict the defendant, if you find
21 initially that there was a conspiracy and that he was a part
22 of the conspiracy? You see, you can't convict him -- obviously
23 if you find that there was a conspiracy among A, B, C, -- but
24 this is D, Davis, and if you find A, B and C conspired to rob
25 and murder Gary Hinman, but that Mr. Davis was not part of it,
26 well, then, you can't convict him either, obviously.

27 All right, now, as far as the overt act that is
28 alleged, it is that on or about July 25th, 1969, Robert

1 Beausoleil, Susan Atkins and Bruce Davis, all three together,
2 drove in an automobile to 964 Old Topanga Road, the home of
3 Gary Hinman. Now, you must find that. You must make a
4 specific finding in your deliberations. That the proof -- and
5 the burden on the people is still the same -- that the proof
6 establishes beyond a reasonable doubt and to a moral certainty
7 that those three people together on that day traveled to the
8 home of Gary Hinman at 964 Old Topanga Road.

9 Let's look and see if it does. We have to go back
10 a little way, and it will be tedious, perhaps.

11 Now, let's just assume that I am the prosecutor
12 arguing this case to you. And I'm going to tell you I want you
13 to believe everything that Ella Jo Bailey tells you. I'm no
14 longer the defense attorney expressing to you what I am going
15 to express about Ella Bailey's testimony throughout here, but
16 let's just say that you can believe everything she says that's
17 in here in order to prove this overt act.

18 What does she say?

19 All right, starting at Page 3061, Line 17:

20 "Q BY MR. MANZELLA: Now, sometime after
21 you left the dump and walked up toward the Rock
22 City Cafe, did you see this defendant, Bruce
23 Davis?

24 "A Yes, I did.

25 "Q And where was he when you saw him?

26 "A He was standing in the front of the
27 saloon.

28 "Q And is the saloon also shown in that

1 "same photograph?

2 "A Yes, it is.

3 "Q Did that saloon have a sign over it,
4 which shows in the photograph?

5 "A Yes, it does.

6 "Q And what was on that sign?

7 "A 'Saloon.'

8 "Q Was anyone with Mr. Davis at that
9 time?

10 "A Yes, Charles Manson.

11 "Q Was anyone else with him?

12 "A Robert Beausoleil.

13 "Q And what were they doing, as far
14 as you could see?

15 "A As far as I could see, they were just
16 standing there having a conversation.

17 "Q Did you hear any part of that conversa-
18 tion?

19 "A No, I did not, just because I was --"
20 I'm sorry, there is no "just" in there.

21 "No, I did not, because I was talking with
22 someone else --"

23 And then, there's some interruptions here.

24 All right.

25 "Q Were you with anyone when you were
26 walking up towards Rock City Cafe? Strike that.

27 "When you arrived at this point that you are
28 at now in your testimony, were you with anyone?

29 "A Yes, I was.

5a-1

1 "Q Who was that?

2 "A Mary Brunner and Susan Atkins.

3 "Q All right. Now, did you see them after
4 you saw Mr. Davis, and Mr. Beausoleil and Mr. Manson
5 standing, talking in front of the saloon?

6 "A It was at the same time.

7 "Q And where were they -- Mary Brunner and
8 Susan Atkins -- when you first saw them?

9 "A They had just come out of the trailer,
10 and we were standing between the trailer and George
11 Spahn's house.

12 "Q Now, Susan Atkins and Mary Brunner, were
13 they Family members?

14 "A Yes.

15 "Q When had they come with the Family?"

16 Et cetera.

17 All right, going over to page 3064.

18 "Q BY MR. MANZELLA: Let me ask you this,
19 Miss Bailey.

20 "Is the area in which you saw the trailer
21 shown in the photograph?

22 "A Yes.

23 "Q All right. Would you mark it --" and then
24 they go and mark the X's in front of this photograph,
25 People's 29, showing where, supposedly, the People were
26 standing and showing the area, the trailer. All right.
27 And marked it with her initials "EB" and put X and X-prime.

28 All right, then, on page 3066, continuing after

5a-2

1 this marking business.

2 "Q BY MR. MANZELLA: Now, where were Susan
3 Atkins and Mary Brunner when you first saw them?

4 "A They were stepping out of the trailer.

5 "Q All right. And did they come up to you?

6 "A Yes, they did.

7 "Q And did you -- strike that.

8 "Did they make any statements at that time,
9 when they came up to you?

10 "A Yes.

11 "Q Did Mary Brunner make a statement?

12 "A Yes.

13 "Q Did Susan Atkins make a statement?

14 "A Yes.

15 "Q And what did Mary Brunner say to you?"

16 And then, there's an objection. Certain proceed-
17 ings were at the bench. And then, Mr. Manzella goes on at
18 page 3070, starting at line 15.

19 "Q BY MR. MANZELLA: Miss Bailey, what did
20 Mary Brunner say to you?

21 "A She told me that she had been asked to
22 get on creepy-crawler clothes; and she told me she
23 was looking for a pair of gloves to wear, because
24 she was going to Gary Hinman's.

25 "Q And did Susan Atkins make a statement to
26 you?

27 "A Yes. She told me that she was going to
28 Gary Hinman's with Bobby Beausoleil.

5a-3

1 "Q Now, what happened right after that?

2 "A I went into the trailer with them.

3 "Q At some time later, did the three of you
4 come out of the trailer?

5 "A Well -- yes.

6 "Q How much time did you spend in the trailer?

7 "A Perhaps half an hour or so.

8 "Q And when you came out, were Mr. Manson and
9 Mr. Beausoleil and Mr. Davis still standing where they
10 had been before?

11 "A No."

12 All right, let's pause just a moment.

13 Assuming for the sake of the People's case here
14 that everything she has said thus far is true. She says
15 that at one point she saw Beausoleil, Manson and Davis
16 talking. That she had a conversation with Mary Brunner and
17 Sadie Atkins about getting creepy-crawley clothes on, about
18 getting gloves, et cetera. That they went into the trailer.
19 That she was in there for a half hour or so and that when she
20 came out, Davis, Manson and Beausoleil were not there where
21 they had been talking before, where she had seen them.

22 And then, going on, just following the same line
23 after the no answer previously.

24 "Q Now, at some time after that did you
25 see Mr. Beausoleil, and Mary Brunner and Susan Atkins
26 again?

27 "A Yes, I did.

28 "Q And where did you see them?

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"A They were in John Swartz' car.

"Q Was that a Ford?

"A Yes.

"Q And Johnny Swartz, who was he?"

And then, they go on that he was a cowboy, et
cetera.

"Q--" This is after they have established that
he was a cowboy, he was just like Shorty Shea, a ranch hand.

5b fls.

5b-1

1 "Now, who was in Johnny Swartz's Ford when
2 you saw it?"

3 And then, I make an objection because I didn't think
4 it had been called a Ford. I thought it was just a car. And
5 so Mr. Manzella questioned:

6 "Was it a Ford?"

7 "A Yes.

8 "Q Who was in it when you saw it?"

9 "A I saw Bob, Mary and Susan.

10 "Q Bob Beausoleil, Mary Brunner, and Susan
11 Atkins; is that correct?"

12 "A Right.

13 "Q Did you see this defendant, Bruce
14 Davis?"

15 "A No, I didn't see Bruce.

16 "Q Did you see who was driving?"

17 "A No, I did not.

18 "Q All right. So the person that you saw
19 driving was not Beausoleil, Brunner or Atkins; is
20 that correct?"

21 "A That's correct.

22 "Q All right. Was it a man?"

23 "A Yes.

24 "Q Now, where was the Ford -- well,
25 strike that.

26 "Where did you see the Ford go? How long
27 was it in your vision, from when to when?"

28 "A Well, I was standing near the corral

1 "when the car passed by me, on Santa Susanna Road,
2 and it stayed in my vision just a matter of a few
3 seconds before it rounded the bend.

4 "Q All right. Before we get into that,
5 Miss Bailey, let me ask you this: At the -- when
6 you saw Mr. Manson, Mr. Davis and Mr. Beausoleil
7 standing in front of the saloon, was Mr. Beausoleil
8 carrying anything?

9 "A Yes.

10 "Q What was he carrying?

11 "A He had his knife in the sheath.

12 "Q And when you say 'his knife,' is this a
13 knife that you had seen before?

14 "A Yes.

15 "Q On one occasion or more than one
16 occasion?

17 "A Several times.

18 And then, they go on and discuss the knife and the
19 sheath. And the buckskin sheath. And still talking about this
20 occasion when she had first seen the three of them, Manson,
21 Davis and Beausoleil standing together in front of the saloon
22 before they disappeared for a half hour into the trailer.

23 All right. And again, we are assuming everything
24 she says here is true for the sake of the People.

25 "Q Was Mr. Davis carrying anything?

26 "A Yes, he was.

27 "Q And what was he carrying?

28 "A He was carrying a gun.

1 "Q And can you describe the gun for us?

2 "A Yes. It's a gun that has a blunt nose.
3 It's a -- just a metal color. It had a plastic handle
4 on it.

5 "And it's the kind of gun that required a
6 clip that slipped up into the handle of the gun.

7 "Q And had you ever seen that gun before?

8 "A Yes.

9 "Q Before that night, I'm talking about,
10 Friday, July 25th? Had you ever seen it before?

11 She goes on, on one occasion and it was in
12 Mr. Davis's possession.

13 All right, then, she goes on to identify People's
14 18 as the knife. And People's 18-A as the sheath. And
15 People's 30 as the Radom.

16 She says it appears to be the gun that Davis had.
17 That the handle is broken, that it had plastic grips on it then.
18 Though she didn't have glasses at the time, she could see. And
19 states that, in answer to the question, "How was Mr. Davis
20 carrying the pistol?

21 "He had it in his hand.

22 "Q And had you seen that weapon at a
23 distance near to you before?

24 "A Yes.

25 "Q Had you ever held that weapon?"

26 We're now at Page 3080.

27 "A Yes.

28 "Q All right. Now, Miss Bailey, returning

1 "to that point in time when you saw Beausoleil,
2 Brunner and Atkins and a male person driving away in
3 Johnny Swartz's Ford, approximately how long was
4 the vehicle in your line of sight?

5 "A Just a matter of a few minutes.

6 "Q How far away was the vehicle when you
7 saw it?

8 "A It almost passed directly at my side,
9 a matter of maybe 15, 20 feet."
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1 "Q Directing your attention to the photograph
2 which you've already seen, which is People's 29, the
3 aerial photograph of a portion of Spahn Ranch.
4 Does the area in which you saw the Ford, shown in
5 that photograph when it was at its point closest
6 to you?

7 "A Yes."

8 And then she marks it. And it's marked here
9 (indicating) on 29, circled, with "EB" above it, where she
10 was supposed to be standing, outside the corral, and
11 "Ford" written right on the road, showing how close the car
12 was to her.

13 All right. So that's all reflected here in the
14 transcript. Now, going on to page 3081:

15 "When you saw Beausoleil, Mr. Davis and
16 Mr. Manson standing, talking together in front of the
17 saloon, about how far from you were they?

18 "A I'd say approximately 30 feet.

19 "Q How far was the Ford from you --"

20 "Q BY MR. MANZELLA: How far was the Ford
21 from you at its closest point, the point you've
22 indicated on People's 29?

23 "A Ten feet, fifteen."

24 A third to half the distance. And she said that
25 she recognized Davis, Beausoleil and Manson, when she was
26 30 feet away. Now, the car passed ten to fifteen feet from
27 her, but she couldn't recognize the driver.

28 Continuing after that answer, "Ten feet, fifteen."

6-2

1 "Q Now, sometime thereafter, later that same
2 evening, did you see Johnny Swartz' Ford again?

3 "A Yes, I did.

4 "Q About how much time later?

5 "A Between half an hour and 45 minutes later.

6 "Q Where was it when you saw it?

7 "A Parked in front of the trailer.

8 "Q And was the trailer in the same location
9 you've already marked it in People's 29?

10 "A Yes.

11 "Q Was that where the Ford was parked,
12 incidentally, at the time that you saw Mr. Manson,
13 Mr. Beausoleil and Mr. Davis talking in front of the
14 saloon?

15 "A Yes.

16 "Q In other words, it was parked roughly
17 in the same place?

18 "A Yes.

19 "Q Was anyone near the Ford when you saw it
20 a half hour to 45 minutes later?

21 "A Yes.

22 "Q Who was that?

23 "A Bruce Davis.

24 "Q Now, sometime later that same weekend,
25 did you see Mary Brunner and Susan Atkins again?

26 "A Yes, I did.

27 "Q And when was it that you saw them again?

28 "A Two nights later."

6-3

1 THE COURT: All right. Let's take a recess at this
2 time, ladies and gentlemen.

3 1:00 o'clock satisfactory with everybody? Would
4 anybody be inconvenienced, if we were to reassemble at 1:00
5 o'clock, rather than 1:30?

6 (No affirmative response.)

7 THE COURT: Let's do that, then. I'll see you all at
8 1:00 o'clock.

9 During the recess, you are admonished that you are
10 not to converse amongst yourselves nor with anyone else, nor
11 permit anyone else to converse with you on any subject
12 connected with this matter, nor to form or express any opinion
13 on it until it is finally submitted to you.

14 I'll see you all at 1:00 o'clock.

15 (Whereupon, at 12:05 o'clock p.m., the members
16 of the jury exited the courtroom, and the following
17 proceedings were had:)

18 THE COURT: Here are the instructions, gentlemen, the
19 way I've got them presently lined up.

20 You may want to take a look at them.

21 MR. DENNY: Is this the order in which you are going to
22 give them?

23 THE COURT: Yes, they're lined up now in the order in
24 which I am going to give them.

25 (Whereupon, at 12:06 o'clock p.m., an adjournment
26 was taken until 1:00 o'clock p.m. of the same day.)
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6a fls.

6a-1

LOS ANGELES, CALIFORNIA, THURSDAY, FEBRUARY 24, 1972, 1:05 P. M.

THE COURT: The defendant is present with his counsel; Mr. Kay and Mr. Manzella for the People; the jurors are all present and in their places.

You may begin.

MR. DENNY: Thank you, your Honor.

Well, I know that after lunch is usually the doldrums, but I hope none of you had time to eat that much.

(Laughter and unintelligible responses from members of the jury.)

MR. DENNY: All right. Let me go on now and read you -- from what there was in the direct testimony of Ella Bailey concerning the departure of Bobby Beausoleil, Mary Brunner and Sadie Atkins -- and some male driver -- to testimony then on redirect.

Again, question by Mr. Manzella -- and this is in Volume 24, at Page 3609, starting at Line 11.

"Q Now, Miss Bailey, at any of the proceedings at which you've testified, have you ever claimed that you saw Bruce Davis as the driver of Johnny Swartz's Ford that evening?

"A No.

"Q Prior to the time you saw four people leaving in Johnny Swartz's Ford, prior to that time, did you see Bruce Davis with that gun?

"A Yes.

"Q Did you see him leave with the gun?

1 "A Yes.

2 "Q Did you see him leave with the gun?

3 "A No.

4 "Q Have you ever claimed that you did
5 see Bruce Davis leave with the gun?

6 "A No.

7 "Q Have you ever told anyone, at any
8 trial proceeding or interview, that you could
9 identify Bruce Davis as the driver of Johnny
10 Swartz's Ford?

11 "A No."

12 Now, that's the testimony that the People rely
13 on -- assuming, as I presume Mr. Kay is going to tell you --
14 that you accept the credibility of Ella Jo Bailey; that you
15 say she's telling the truth.

16 Well, I don't concede for one minute that Ella
17 Jo Bailey knows how to tell the truth, about much of anything.

18 But even assuming she's told the truth here, for
19 the sake of this point, to argue it as strongly as you can
20 for the prosecution, her evidence shows that Bruce Davis did
21 not go with Bobby Beausoleil, Mary Brunner and Sadie Atkins
22 on July 25th, to 964 Old Topanga Road or anywhere else.

23 It specifically negatives or negates any such
24 inference. And the only possible -- the only possible
25 inference that they can expect you to draw pointing toward
26 the guilt of the defendant, where there are these reasonable
27 inferences -- and I don't even submit that it's a reasonable
28 inference, pointing to his guilt -- but assume they tell you

1 that it's reasonable to infer guilty connections, because a half-
2 hour to 45 minutes later, the car was returned and in the
3 parking lot, and in the same place where it had been parked
4 before it left, with Beausoleil, Atkins, Brunner and some fourth
5 party, and Bruce Davis was near it, does the fact that Bruce
6 Davis was near that car mean that he drove that car there and
7 back?

8 Well, hardly. And particularly where you are bound
9 by the instruction which I had up here (indicating) -- and which
10 I may put up a little bit later -- that where the case of the
11 People rests chiefly or primarily on special evidence, you are
12 not permitted to find him guilty unless the proved circumstances
13 are irreconcilable with any inference except guilt;

14 And where two inferences are to be drawn from the
15 evidence, two reasonable inferences, one pointing to the guilt
16 and one to the evidence -- and one point to the innocence, you
17 must adopt that pointing to his innocence.

18 Now, the most that the People can say is -- "Well,
19 because Bruce Davis was standing with Bobby Beausoleil and
20 Charlie Manson, and apparently in some sort of conversation
21 a half-hour or more before they left, and because there is
22 testimony that Bruce Davis was near the car, some half-hour or
23 45 minutes after the car had left, with the identified parties
24 in it, you are supposed to infer from that that Bruce went
25 with them."
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7-1

1 Well, if you swallow that as even a reasonable
2 inference, there is also the reasonable inference and not
3 just a reasonable inference, but the testimony directly
4 contradicting that from their own witness, Ella Jo Bailey,
5 that she did not identify him. That she did not see Bruce
6 Davis leave with the gun. She did not see him drive off.

7 Now, how do they square that with proof of that
8 overt act? They don't. They can't. They simply have not
9 proven that overt act. And having failed to prove that,
10 they have not proven, and you may not convict the defendant
11 of Count II, the conspiracy charge.

12 Now, I have chatted with the Judge on this,
13 and I am permitted to tell you, at the commencement of the
14 case, the allegations, the indictment was read to you and
15 there were three overt acts alleged, if you remember. I don't know
16 whether you remember that there were, as to Count II, three overt
17 acts alleged. For reasons that are not relevant to your
18 considerations or deliberations, when the case is submitted
19 to you at the conclusion of argument, the Court will read
20 to you the one charge and the one remaining overt act, overt
21 act No. 1, which it is yours to consider, and which you must
22 make a determination of whether the People have proven that
23 act or not. So there is just that one overt act. And that's
24 why I have directed my conversation with you this morning
25 and this afternoon to that one overt act.

26 As I say, having failed to prove it, and indeed
27 having proven the opposite, having proven that Bruce Davis
28 was not the driver, the People have proven themselves out of

7-2

1 Count II. Now, again, Mr. Manzella mentioned the fact that
2 when Ella Bailey saw this car drive out, she did recognize the
3 three people in the car. Beausoleil, Atkins and Brunner, but
4 didn't see who the fourth person was because the fourth person
5 was the driver and on the opposite side from where she was
6 standing. So, therefore, you are supposed to infer from that,
7 I think, that, well, because of the extra distance she couldn't
8 see who it was.

9 Well, she saw who was in the back seat, apparently,
10 who was equally far removed unless all four were in the front
11 seat, which doesn't seem likely. She could see that person
12 and identify them. Had no trouble. And that person was still,
13 as the car passed within ten to fifteen feet, within fifteen
14 to twenty feet of her, even inside the car, on the opposite
15 side.

16 Now, whose car was it? It was Johnny Swartz'
17 car. That's the testimony.

18 Johnny Swartz drive them? Why not?

19 Well, neither of us, neither the prosecution nor
20 the defense asked Johnny Swartz when he was the stand. You
21 may say that's my oversight. You may say that's the People's
22 oversight.

23 Was it Charles Manson?

24 You see, the People are contending it had to be
25 Bruce Davis because he was standing there talking with Bobby
26 Beausoleil and who else, Charles Manson. This is assuming,
27 again, you believe this testimony. I'm now arguing for the
28 People's standpoint here, assuming that you believe it, that

7-3

1 Bruce Davis was standing there. But those are three men
2 standing there.

3 And why should you pick out -- having accepted that
4 Beausoleil went -- why should you pick out Davis as being the
5 driver any more than Charles Manson as being the driver? Is
6 that any more a reasonable inference? Isn't it just as
7 reasonable an inference that Charles Manson, the arch
8 conspirator, if you will, drove them to the location, and
9 then drove back? Two reasonable interpretations.

10 And then, you get into the point, if there are
11 two interpretations, but one reasonable and the other
12 unreasonable, then, obviously, you reject the unreasonable.
13 And it seems to me in this case the unreasonable interpreta-
14 tion is that espoused by the People. That is, that Bruce
15 Davis drove. Since their own key, prime, chief witness said
16 no, it wasn't he.

17 All right, so much for conspiracy for the moment.

18 Well, let's go on a little bit to some further
19 examination of Ella Bailey at 3197 of the transcript.
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7a fls.

7a-1

1 "Q But as you say, there were at least
2 several people of the Family who had this same
3 information that you had about the fact that
4 Gary had property?

5 "A Yes.

6 "Q But you were the only one at this
7 particular meeting at Devil's Canyon campsite
8 that put the finger, if you'll -- or, suggested
9 Gary Hinman? You were the one that did that;
10 right?

11 "A I first mentioned his name; but it
12 was talked about by several members of the Family,
13 after his name was mentioned.

14 "Q Oh. All right.

15 "But nobody mentioned killing him at
16 that particular meeting, is that right?

17 "A No, not that I can recall.

18 "Q Well, now, ma'am, is there anything
19 that would help your recollection there?

20 "A I don't know.

21 "Q Well, a report, prior testimony, any-
22 thing help you?

23 "A No, I don't believe so.

24 "Q All right. I want to go to your
25 redirect examination, after the cross examination,
26 in the Manson case that you testified at, your
27 redirect by Mr. Manzella here."

28 And then quoting from the Manson case.

1 "Q BY MR. MANZELLA: All right, Miss
2 Bailey, directing your attention to the occasion
3 when you were at the campsite at Devil's Canyon
4 in the latter part of July, 1969. During that
5 conversation, during the one in which you suggested
6 Gary Hinman's name as somebody who might come with
7 the Family -- strike that."

8 And then, I insert here, and this is at Page
9 5244 of the Manson transcript, continuing the quotation from
10 Mr. Manzella:

11 "During that conversation did you suggest
12 Gary Hinman's name?

13 "A Yes.

14 "Q All right. And what did you say
15 specifically about Gary Hinman?

16 "A Well, the conversation was about
17 money. And I suggested Gary Hinman's name and I
18 don't remember what was said after that.

19 "Q All right. Now, was there any conversa-
20 tion or any statement made during that conversation
21 at the campsite in Devil's Canyon?

22 "A Oh, yes.

23 "Q In which someone said or anyone said
24 that Gary Hinman was to be killed?

25 "A Not that I remember."

26 And then, I continue in my examination here with
27 Miss Bailey.

28 "Do you remember that?

1 "A Yes.

2 "Q And was that the truth?

3 "A As I recollect it, yes.

4 "Q Well, do you recollect differently now?

5 "A No, I -- I still believe that no
6 reference was made at that campsite about Mr. Hinman
7 being killed.

8 "Q Does your recollection vary with the
9 occasion, ma'am?

10 "A No.

11 "Q All right.

12 "Well, let's go to your testimony, then, before
13 the Grand Jury this summer sometime in the Brunner
14 case. Shall we do that, starting at Page 58."

15 And then, we start questioning her there, and
16 this is a quote from the Grand Jury transcript.

17 "Q Was there any discussion of the manner
18 of obtaining money from Gary Hinman? Was that
19 discussed in these two conversations that you
20 mentioned?

21 "A Yes, sir. First of all, it was
22 suggested that perhaps he just be approached
23 and he might willingly give his money to the
24 Family and perhaps come with us.

25 "Q Who was it, if you know? Who made
26 that particular suggestion?

27 "A Well, I know Charles Manson mentioned
28 it.

1 "Q Was that at the first conversation?

2 "A Yes.

3 "Q And was that in Devil's Canyon;
4 is that right?

5 "A Yes.

6 "Q And after -- and -- strike that.

7 "And was that after his name had first been
8 brought up as a person who had money?

9 "A Yes.

10 "Q Was there some subsequent conversation
11 about getting money from him in some other way?

12 "A Yes.

13 "Q Was that conversation strictly about
14 Mr. Hinman or were there others, other names
15 mentioned?

16 "A There were other names mentioned, too.

17 "Q You have told us about a continuation
18 of the first conversation.

19 "A Yes.

20 "Q Was this still in Devil's Canyon?

21 "A Yes.

22 "Q Can you tell us who the conversation_{was}
23 with and who the speakers were?

24 "A Well, Charles Manson did most of the --
25 although there were several other people who also
26 talked at the time, I don't remember exactly who
27 said what at the time of the conversation. But
28 both kidnaping, and then later killing. And then,
29 later on killing was mentioned in the conversation.

7b-1

1 "Q Was it Mr. Manson who made the mention
2 of kidnapping and killing?

3 "A Yes, he did.

4 "Q Was Mary Brunner present at that particular
5 conversation?

6 "A Yes, she was.

7 "Q You have a specific recollection of that?

8 "A Yes, I do."

9 And then I continue in my questioning here of Ella
10 Bailey.

11 "Q Do you remember that testimony?

12 "A Yes.

13 "Q Does your testimony change with the
14 circumstances, ma'am?

15 "A No, I don't think so.

16 "Q Who determines the truth of that, the
17 Sheriff or the District Attorney?

18 "A I don't know."

19 Well, then, we go into another area here, into
20 the subject of the notes of Mr. Whiteley.

21 Now, I cross-examined her further because of the
22 fact that she tried to weasel out of her testimony with the
23 help of the questions on redirect examination. That quotation
24 was starting at line 58.

25 So, then, because she had tried to weasel out,
26 I went back later to question her from page 57, having to go
27 back farther in that Brunner Grand Jury transcript to show
28 that there were just two conversations. There were two

7b-2

1 conversations, one in Devil's Canyon, at the campfire, and
2 the other one is conversation where supposedly Charlie Manson
3 and Bill Vance and she were down in the dump area and had a
4 conversation. And I just query again whether that conversation
5 among the three of them ever actually occurred, as we find
6 when we get into Sergeant Whiteley's notes.

7 But in questioning her from the Mary Brunner Grand
8 Jury transcript, I read her this, starting at page 57, line 1.

9 "Q At sometime around July of 1969, was there
10 any conversation that you had or that you were present
11 at when Mr. Manson had some conversation with regard
12 to Gary Hinman?

13 "A Yes.

14 "Q And could you tell the Grand Jury what that
15 conversation was, generally?

16 "A Yes, we were in Devil's Canyon and there
17 was some talk about raising money so that we could go
18 to the desert. Gary Hinman was mentioned as someone
19 who possibly had some money. And there was a discussion
20 relating to that.

21 "Q Was that discussion relating to the
22 legitimate or illegitimate obtaining of money from
23 Mr. Hinman?

24 "A Yes, it was."

25 Now, let's pause there just a minute. She
26 stumbled on a few words, questions, when I questioned her
27 and said "I don't understand what that word is." But she
28 didn't stumble here. She didn't ask to be advised what a

7b-3

1 legitimate or illegitimate means of obtaining property from
2 Mr. Hinman was, because she knew very well what Mr. Goldsobel,
3 the Deputy D.A. who questioned her before the Grand Jury to
4 get the Brunner indictment meant when he said, "Did that
5 discussion involve the legitimate or illegitimate obtaining
6 of money from Mr. Hinman?"

7 Because she knew full well that it had included
8 the illegitimate obtaining of money by force, as Sergeant
9 Whiteley's notes also reflect, which we will now get into.

10 So, then, continuing, after her answer to that
11 question, the legitimate or illegitimate obtaining of money
12 from Mr. Hinman:

13 "A Yes, it was.

14 "Q Now, with relation to Mr. Hinman, did
15 you have any particular discussion or did you hear
16 any particular discussion regarding him?

17 "A Yes, later Charles Manson came up to me
18 and asked me to go to Mr. Hinman's house.

19 "Q So that we have some point in time, when
20 was the original mention of the name Hinman made?

21 "A It was within a week of the time when Mr.
22 Hinman was killed.

23 "Q This, of course, would be prior to his
24 death?

25 "A Yes.

26 "Q Do you recall where the conversation had
27 taken place?

28 "A One took place in Devil's Canyon, at the

7b-4

1 "campsite, and the other was at the Spahn Ranch."

2 Just two conversations, just as Sergeant Whiteley's
3 notes reflect.

4 "Q Where is Devil's Canyon with relation
5 to the Spahn Ranch?

6 "A Right across the street, there is the Spahn
7 Ranch.

8 "Q Is that located in the Santa Susanna Pass,
9 in the County of Los Angeles or is that just over the
10 line?

11 "A I am not sure.

12 "Q In relation to the general outline of the
13 county, what town or area is near by?

14 "A Canoga Park and Chatsworth and Simi Valley.
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7c fls.

7c-1

1 "Q That would be within several miles of
2 Topanga Canyon, where Mr. Hinman lived?

3 "A Yes.

4 "Q Was there any discussion of the manner
5 of obtaining money from Gary Hinman? Was that
6 discussed in these two conversations that you
7 mentioned?

8 "A Yes. First of all, it was suggested
9 that perhaps he just be approached and might will-
10 ingly give his money to the Family and perhaps come
11 with us."

12 Now, I'm repeating what I read previously, but you
13 listen because it is all in the context now as it's been shown
14 on Page 57 and the top of 58, of these two conversations.

15 "Yes, first of all, it was suggested that perhaps
16 he just be approached and he might willingly give
17 his money to the Family and perhaps come with us.

18 "Q Who was it, if you know, who made
19 that particular suggestion?

20 "A Well, I know Charles Manson mentioned
21 it."

22 Now, let's stop for just a minute there.

23 Is that honest testimony before the Grand Jury of
24 this county?

25 You see, she has said back on Page 57 Gary
26 Hinman was mentioned as someone who possibly had some money.
27 And then, over here on Page 58, yes, it was suggested that
28 perhaps he be approached and might willingly give his money.

1 "Q Who was it, if you know, that made
2 that particular suggestion?

3 "Well, I know Charles Manson mentioned it."

4 Is she trying to fool that jury, the same as
5 she's trying to fool you? Dissembling with them, giving them
6 half-truths. Because if you look at that testimony -- and
7 the Grand Jurors don't know any background of it. They only
8 know what they hear. It would appear from listening to this
9 that Charles Manson was the one who brought up the name of Gary
10 Hinman. And Charles Manson was the one that discussed this
11 and this. And she was just a bystander or a bysitter, just
12 listening, you see. Because that's the way the prosecution
13 wanted it to come over to the Grand Jury in order to get the
14 indictment against Mary Brunner. And there's no defense
15 attorney to cross examine the witnesses in the Grand Jury,
16 before the Grand Jury, as Mr. Davis has here, and as Mr. Manson
17 had when she tried to put over the same thing in his case.
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"Q All right.

"A Well, I know Charles Manson mentioned it.

"Q Was that at the first conversation?

"A Yes.

"Q And was that in Devil's Canyon? Is that right?

"A Yes.

"Q Was that after his name had first been brought up as a person who had money?

"A Yes.

"Q Was there some subsequent conversation about getting money from him in some other way?

"A Yes.

"Q Was that conversation strictly about Mr. Hinman, or were there other names mentioned?

"A There were other names mentioned, too.

"Q You told us about a continuation of the first conversation.

"A Yes.

"Q Was this still in Devil's Canyon?

"A Yes.

"Q Can you tell us what the conversation was and who the speakers were?

"A Well, Charles Manson did most of the -- although there were several other people who also talked at the time. I don't remember exactly who said what at the conversation, but both kidnapping and then later on killing was mentioned at this

1 "conversation.

2 "Q Was it Mr. Manson who made the mention of
3 kidnapping and killing?

4 "A Yes, he did.

5 "Q And was Mary Brunner present at that
6 particular conversation?

7 "A Yes, she was.

8 "Q Do you have a specific recollection of
9 that?

10 "A Yes, I do.

11 "Q And who were some of the others that
12 were talked about, that might have money, by Mr.
13 Manson and Miss Brunner?

14 "A Terry Melcher."

15 Does that tie in with Sergeant Whiteley's notes?
16 We will see in just a minute, again.

17 "Q Was there any subsequent conversation
18 on another day about going to Mr. Hinman's house?

19 "A Before that date?

20 "Q After that day.

21 "A Yes.

22 "Q When was that?

23 "A That was on the Spahn Ranch. It was
24 later that week. It was on the night -- the date
25 slips my mind right now.

26 "Q Can you tell us when it was in relation
27 to the last week of July?

28 "A It was the night the other people went "

1 "to the -- to Mr. Hinman's house.

2 "Q Do you remember the day of the week?

3 "A It was on the weekend. It was a Friday.

4 "Q All right. What was the conversation that
5 was had?

6 "A Mr. Manson came up to me and told me he
7 wanted me personally to go to Mr. Hinman's house.

8 "Q Did he say why or anything like that?

9 "A No.

10 "Q Was anybody with you at that time?

11 "A Yes, Bill Vance.

12 "Q Did Mr. Vance make any statement about
13 that? While you were there, or in your presence?

14 "A He told Mr. Manson I had better things
15 to do on the ranch, and I wasn't going to Mr.
16 Hinman's house.

17 "Q He was referring to you?

18 "A Yes.

19 "Q So you did not go?

20 "A That's right.

21 "Q What did Mr. Manson do?

22 "A He said he would get someone else to go,
23 and he walked away."

24 Were there two conversations? And only two? And
25 was she privy to both of them?

26 Now, you listen to that testimony before the Grand
27 Jury, and you get a little different idea of Ella Jo Bailey's
28 participation.

1 Was she tailoring her testimony to fit the needs
2 of the prosecution there, just as I submit she was doing
3 here?

4 Again, listening to that, why, she's Little Miss
5 Innocence. All she was was present at a conversation in the
6 Devil's Canyon campground area, and heard Charles Manson
7 talking about this. And Charles Manson suggested it.

8 And then Charles Manson later in the week, on
9 Friday, the night on -- the night the others went to the
10 Hinman home, came and asked her to go, but Bill Vance said,
11 "No, don't go; you have got other -- she has got other
12 better things to do around the ranch."

13 And Mr. Manson at that time didn't say what she
14 was supposed to go for.
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8a fls.

8a-1

1 Miss Innocence. Miss Innocence of 1969, 1970,
2 1971 -- and here before you -- 1972.

3 Miss Prevaricator? Miss Liar?

4 Miss Half-Truth Teller! Miss Accomplice!
5 Miss Co-conspirator of 1969 -- of the weekend, and the few
6 days preceding that, of July 24th, 25th, 26th, 27th, 28th,
7 1969.

8 Now, you see, before the Grand Jury, the People
9 didn't want her to appear an accomplice, because later on,
10 they're going to be bound by the same rules in any trial against
11 Mary Brunner that they're bound by in the trial against Bruce
12 Davis.

13 But before the Grand Jury, as I say, there's not
14 even the engine of truth, that cross examination would bring
15 out and has brought out here. So they can do it even better
16 there, just by asking the little questions and permitting the
17 witness to tell the half-truth. The half-truth -- which is that
18 she was there, and that she did hear Gary Hinman's name
19 discussed, and that there was discussed the legitimate and
20 illegitimate means of obtaining money from him.

21 But that's only half the truth. What is the rest
22 of the truth? That she's the one who fingered Gary Hinman.

23 You know, it's interesting. Her own testimony
24 shows that, back in 1968 and in the early part of 1969, at
25 Gresham Street, they were talking about getting money from
26 people.

27 Her own testimony shows that she's gone several
28 times perviously herself, at the behest of Mr. Manson, to try

8a-2

1 to get Hinman to join the Manson Family -- unsuccessfully.
2 So she knew -- she knew that he was not willingly going to join
3 the Manson Family.

4 She knew, because she had personally made attempts
5 herself to get money from him, that he was not going to turn
6 over his assets -- willingly -- to the Manson Family.

7 But what was this discussion, then? Was that the
8 discussion that was related by her to Sergeant Whiteley on
9 May 15 and May 16? It certainly was.

10 I would like to go down those notes, briefly,
11 as we went down them on cross examination. And let me preface
12 my remarks to you by this observation:

13 The People, it seems to me, have got to take one of
14 two positions here -- either of which, I think, would be
15 extraordinary. Either Sergeant Whiteley is a storyteller, a
16 perjurer, a fabricator of evidence; or he's incompetent,
17 totally, abysmally incompetent.

18 Now, those are the alternatives. If Mr. Kay can
19 come up with more in his closing argument -- well, I will be
20 interested to hear it.

21 But the foundation for this argument, that --
22 "Well, he was perhaps incompetent; perhaps he didn't get the
23 notes down" -- was set in the -- in both the redirect
24 examination of Ella Bailey and the cross examination, if you
25 will, of Paul Whiteley, after I had called him, to get this
26 evidence before you, in substantive form, so that it could be
27 considered by you -- not just for impeachment purposes, but as
28 substantive evidence.

1 And when I called him as a defense witness, then
2 the prosecutor cross examined him, if you will, to establish
3 the fact --

4 "Well, now, Sergeant Whiteley, you were taking
5 these notes when other people were asking questions; isn't
6 that right?

7 "Yes.

8 "And these notes were hurriedly taken;
9 isn't that right?

10 "Well, yeah, to a degree."

11 Are they trying to infer by that line of question-
12 ing that he is a bumbling, stumbling idiot? That he is an
13 incompetent -- and I used this word to him -- nincompoop?
14 Is that what they're saying about their chief investigating
15 officer?

8b fol

8b-1

1 That he doesn't know how to take notes at an
2 interview? When he or other officers are interviewing? Isn't
3 that one of the prime functions of an investigator, to be able
4 to take notes at an interview, to make good, accurate notes
5 so that at a later time he doesn't have to remember and
6 rely on memory, two, two and a half years old, as someone who
7 does not make notes -- like Ella Jo Bailey -- must do?

8 Is Sergeant Paul Whiteley incompetent? Hell, no!
9 He is not incompetent! He is a competent officer.

10 And if the People seek to imply otherwise, they
11 should be ashamed of themselves -- or is he a perjurer? A
12 manufacturer of these notes?

13 There's some other perjurers in this case, but I
14 don't think Paul Whiteley is one. I subjected Paul Whiteley
15 to as searing a cross-examination as I knew how, and I didn't
16 find him wanting.

17 There are a couple of areas that I was a little
18 disturbed and a little unhappy with his responses; but on
19 the whole, I found that his testimony rang true -- even when
20 I didn't like it.

21 Now, there are a couple of areas where I don't
22 give him A for keeping inventories, one, because we can't
23 yet find the inventory of the personal effects of Gary Hinman,
24 what was there on the body; and two, because he made out an
25 inventory on a plain piece of paper and put it in a trunk that
26 he had inventoried, and that he shouldn't have done.

27 But I believe him. I believe that's what he did.
28 And I believe him when he says he took those trunks and the

1 suitcase to Mr. Katz' office and left them there, and when he
2 got them back, there was no inventory.

3 All right. So what does he say? And what do his
4 notes reflect? Let's go down step by step in the chronological
5 sequence that he took them.

6 First of all, "Squeaky and Mary assigned to take
7 care of George Spahn."

8 I asked Ella Bailey about that.

9 "Oh, I don't think I said that. No, I --
10 I told him that Squeaky and maybe Gypsy, but not
11 Mary."

12 Why is that important? It's important for two
13 reasons. One -- you see, she's still called on to testify
14 in the Mary Brunner case. And she testified in the Mary
15 Brunner case, as I just read to you, that Mary Brunner was
16 there at this initial conversation in the Devil's Canyon
17 campground area.

18 But there are two reasons why Mary Brunner would
19 not have been there. One, because she had a new baby --
20 as was testified to, finally, by Miss Bailey, after her
21 memory had been refreshed overnight -- and two, because she
22 was one of those who took care of George Spahn.

23 And as Ella Bailey said, the people who took care
24 of the babies and the people who took care of George Spahn
25 were not at the Devil's Canyon campsite.

26 And that's why she says, when she's confronted
27 with this, that Squeaky and Mary were assigned to take care
28 of George Spahn, "Oh, no, no, I don't remember saying that."

1 Well, it's in Sergeant Whiteley's notes, and I
2 think she said that. Again, we questioned her:

3 "Is it true that Charlie didn't trust you?

4 "Oh, I don't know about that.

5 "Well, isn't that what you told Sergeant
6 Whiteley?

7 "No, I don't think I said that."

8 Page 6 of his notes:

9 "Pulled capers in Beverly Hills and North
10 Hollywood. Never went. Charlie didn't trust."

11 Did she tell Sergeant Whiteley that? It's in
12 his notes. I think she did.

13 And this is interesting, too. This is interesting,
14 too, because it comes up later -- at page 22, if I'm not
15 mistaken -- I am mistaken; it's page 20:

16 "Charlie said he didn't trust me."

17 Another statement.

18 And there's testimony from Ella Bailey on that
19 very subject.

20 (Pause in the proceedings while Mr. Denny
21 leafed through various transcripts.)

22 Well, with all the notes that I've got here, it
23 seems as if I can't find that specific testimony, where I
24 cross-examined her on it.

25 But my recollection of it is -- having gone over
26 it last night -- that she said, "Well, Charlie said three
27 times that I would leave the ranch --" or, I think the
28 phraseology was: "Charlie said I would leave the ranch

1 three times."

2 And this was in connection with my cross-examina-
3 tion on this very point, as to whether Charlie trusted her or
4 not.

5 And first of all, she said, "Well, he didn't trust
6 me around July 25th, I guess," and she said -- and I said,
7 "Well, it was before that, too, wasn't it?"

8 And then she said, "Charlie said that I would
9 leave the ranch three times."

8c fls.

8c-1

1 It was known, apparently, to supposedly these
2 co-conspirators that she had bugged out on the caper, if you'll
3 pardon the phraseology. Who is going to trust her? Who is
4 going to unburden themselves to her? Who's going to cop out
5 to the commission of a hideous crime to her? She, who is not
6 trusted?

7 Well, she says Bruce Davis did. Now, does that
8 make sense? Does that make sense?

9 You know, I'm reminded somehow of the phrase, in
10 connection with this movie about the Mafia, "The Gang That
11 Couldn't Shoot Straight," the bumblers, stumblers that the
12 Mafia is supposed to be, as they're pictured in that movie.

13 Well, we are getting a little bit into the Shea
14 aspect of the case, but it seems apropos to bring it up here,
15 because the People are alleging that not only was there a
16 conspiracy there to murder Donald Shea, but a conspiracy to
17 hide the body and to conceal the fact of the murder.

18 And they're saying this was all part of the
19 conspiracy. Good God! To listen to the People's witnesses,
20 this was the most blabbed about, broadcast murder that ever
21 was. Everybody was confessing to it -- to hear the People's
22 witnesses.

23 Juan Flynn, Barbara Hoyt, Paul Watkins, everybody
24 says, "Oh, they told me about it. They told me about it.
25 They told me about it. They told me about it."

26 And there's a conspiracy to hide it? You know,
27 you've got to look with a little rationality at the craziness,
28 the topsy-turviness, this whole case.

8c-2

1 I keep saying this case is the Case of the Unasked
2 Question. It's an upside-down case. This whole case is
3 upside-down.

4 The People tell you -- well, one thing on one hand,
5 and another thing on another. They tell you there's a
6 conspiracy to hide a murder, and yet they tell you, "Look at
7 all the evidence we have got of just the opposite. People
8 talking about the murder all over the place.

9 Does that make sense?

10 Let's get back to Ella Bailey now. And these are
11 all references, again, to Sergeant Whiteley's notes, references
12 that I cross examined Ella Bailey about, and then examined on
13 direct evidence Paul Whiteley, when he was called as a defense
14 witness.

15 Going to the bottom of Page 8:

16 "Devil's Canyon --" C-y-n -- "approx. July 24th,
17 1969. Moved campsite. Gypsy rolled drum. Charlie
18 beat her up.

19 "Present: Charlie Manson, Tex Watson, Bruce
20 Davis, Robert Beausoleil, Bill Vance --" With a
21 question mark.

9 fol

9-1

1 Let's stop there a minute.

2 Do you remember I asked her -- oh, I guess maybe
3 the People on direct, I know I did on cross -- are you sure
4 Bill Vance was there? Oh, yeah, Bill Vance was there.

5 And I asked Sergeant Whiteley when he took the
6 stand how come he put the question mark there? Does that
7 indicate that there was some question that she expressed to you
8 as to whether he was there? "Yeah." Her boyfriend, Bill Vance.
9 And she wasn't sure until she got here under oath and testified
10 before you all. Then she's sure.

11 All right, Danny DeCarlo, Al Springer were two
12 question marks.

13 Now, that brings up an interesting point. As I say,
14 I don't give much credence to the testimony of Ella Jo Bailey
15 because I feel that she has indeed tailored her testimony to
16 the needs of the prosecution in this case. Whatever they wanted,
17 she's given them because she's getting a quid pro quo, a very
18 nice quid pro quo. She's getting immunity from prosecution
19 in connection with her participation in this case. And the
20 case dropped for forgery up in Tacoma. That's good enough
21 to fudge a little here and there.

22 But you see, I asked her things that the
23 prosecution hadn't talked to her about. I asked her such
24 things as, "Uh, by the way, you knew Al Springer, didn't you?

25 "Oh, yeah, sure I knew Al.

26 "And did he visit around the ranch often?

27 "Oh, not often. Every so often.

28 "Well, how about did he know Charlie?

9-2

1 "Oh, yeah, he met Charlie when we lived down
2 on Topanga Canyon back in 1968.

3 "Used to come there?

4 "Yeah.

5 "Oh! And did Al Springer come to the ranch
6 in April, May and June, July, after you all had
7 gone there?

8 "Oh, well, he didn't come regularly, but he
9 came."

10 Now, that seemed innocuous enough to her.

11 She didn't figure there was anything wrong in
12 talking about that, because the People hadn't told her
13 that Al Springer was going to get on the stand and say the first
14 time he'd ever met Charlie Manson was August 11 or 12. The
15 first time he had ever gone to the Spahn Ranch was August 11th
16 or 12th, 1969. They hadn't primed her quite well enough and,
17 low and behold, their own prime witness in Count I undercuts
18 the credibility, the veracity of one of their prime witnesses
19 in Count III.

20 You see, the truth. The truth. It is interesting,
21 isn't it, when you can finally dig it out, when you can finally
22 dig it out of a lying witness. Isn't it interesting. A lying
23 witness who had been primed pretty well, but not on every point.

24 Barbara Hoyt the same.

25 Now, I'm not sure whether it was Barbara Hoyt or
26 Paul Watkins, one or the other, who also indicated they knew
27 Al Springer and they'd seen him there before. You see, inter-
28 estingly enough, if Ella Bailey even knew Al Springer, he had

1 to have been there before August 2nd, because she left July 28.

2 But he said the first time he had ever gone to the
3 ranch, the first time he ever met Charlie was August 11th or
4 12th, two weeks after Ella Bailey split with Bill Vance in
5 Johnny Swartz's truck and headed for points east.

6 All right, that observation over, let's go down the
7 list of names again as they appear on Page 9.

8 Al Springer with two question marks. Steve
9 Grogan, Susan Atkins, Patricia Krenwinkel, Leslie Sankston.

10 And when I was talking to her on cross examination
11 about this, she said, "Well, there are some names I didn't
12 give. I don't know Leslie Sankston."

13 And I said, "Oh, was that Leslie Van Houten?"
14 And she said, "Oh, yeah."

15 Lynn Fromme. Again, with a question mark.
16 Catherine Share. That's Gypsy. Larry Jones. Catherine
17 Meyers.

18 She said, "Well, I didn't say 'Catherine
19 Meyers.' I don't know Catherine Meyers."

20 I said, "How about Cathy Gillis?"

21 "Oh, yeah."

9a fol

9a-1

1 Brenda McCann, possibly others.

2 Going right on.

3 "Charlie needs money to go to desert.

4 Supplies, vehicles, et cetera. Someone, let's

5 kidnap Terry Melcher and hold him for ransom.

6 Lived in Santa Monica or Pacific Palisades.

7 Asked us to come --" I wish I could read Paul

8 Whiteley's notes. Something with his something

9 Charlie.

10 Then, continuing right on.

11 "Don't know. Maybe me. 'How about

12 Gary Hinman?' Charlie 'Yeah, he's single, owns

13 that house, has stocks and bonds. Maybe we can

14 talk him out of it.'"

15 The next line, it is not in evidence, but -- so
16 I can't read it to you. But there's one line here, and then
17 the following paragraph.

18 "Back to Hinman. Charlie said, 'Ella

19 knows Gary best and he likes her. Mary, you go

20 with her and Bobby, you come too. Talk him into

21 it any way you can. And if you can't, kill him.'"

22 "Kill him."

23 And there's a close quote there.

24 There is no beginning quote in that particular
25 paragraph, but there is a close quote after killing.

26 And then, on the same line, "Set for next night."

27 Is that what she told Paul Whiteley or is Paul
28 Whiteley a perjurer, a prevaricator, a maker of false testimony

9a-2

1 and false evidence?

2 How did the People get around that? How did
3 they get around the facts? How did they get around the truth?
4 How? They ignore it. They don't talk about it. They don't
5 ask. They present half truths or quarter truth or an eighth-
6 truth and want you to convict that man on that half truth,
7 quarter truth, eighth-truth.

8 Is that justice? Is that justice in a court of
9 law in America, in California, in Los Angeles? Is that
10 justice?

11 Do they think simply because they can spear a
12 man with his associations, and it is admitted he was associ-
13 ated with Charles Manson, do they think that's enough to
14 convict someone? Well, I don't think that a jury is so
15 blind and so gullible and so filled with the same kind of
16 passion, prejudice, et cetera, that the prosecutors -- and
17 I don't use it as far as these two individuals, I use it as
18 far as the District Attorney's Office is concerned -- have
19 displayed in this case and in these cases. I don't think
20 that there's any jury that is so wrapped up in this
21 extraordinary vendetta that they're going to convict someone
22 simply because he was associated with Charles Manson, unless
23 the evidence is there, unless the evidence convinces them
24 beyond a reasonable doubt, and unless the evidence -- unless
25 the witnesses who presented that evidence are thought by each
26 juror to have told the truth, the whole truth and nothing but
27 the truth.

28 I have more faith. Not in you, personally,

9a-3

1 because I don't know any of you personally.

2 We're not supposed to know any of you personally.
3 But I have more faith in you as representative citizens and
4 in the jury system, because I happen to think it is a rather
5 magnificent system.

6 All right, let's go on, following right after
7 this.

8 "Set for next night."

9 New paragraph.

10 "Next morning, told Bill Vance I was
11 scared and didn't want to go."

12 Did she tell him that? I think so.

13 Now, there's about three paragraphs here which,
14 again, were not read into evidence, so I can't read them to
15 you at this point, but then we follow right along after those
16 three paragraphs.

17 "Vance talked to Charlie at ranch house
18 about me not going."

19 "Vance talked to Charlie at ranch house
20 about me not going."

9b fls.

9b-1

1 Now, this is the one area where I was not
2 wholly satisfied with Paul Whiteley's testimony and his
3 recollection of what she said, because it seems to me it
4 doesn't quite make sense the way he described it.

5 He said, "No, I was wrong in writing 'ranch
6 house' down there. She used the word 'dump,' and
7 I assumed it was the dump by the ranch house,
8 but actually it was the other dump."

9 Well, as I believe -- this is Exhibit 93 -- yes,
10 shows -- and as Sergeant Whiteley pointed out, there is a
11 dump area here by the farm house called the ranch house by
12 everybody. This is also as was pointed out by Ella Bailey
13 and others a dump area over by the corral.

14 But I find it a little difficult to reconcile
15 that if she had, in fact, said "dump" -- because of the way
16 he took notes as to everything else, he would not simply
17 have put in "dump."

18 I find it also a little difficult to reconcile,
19 because in the report that he made on May 18, which reflected
20 these notes, he said "a conversation took place at the ranch
21 house (rear of Spahn Ranch) between Bill Vance and Charles
22 Manson. And Charles Manson replaced Miss Bailey with Susan
23 Atkins."

24 Now, he's very specific there. He is more
25 specific even than in his notes. And this was made just
26 three days after he took the notes. So in spite of what his
27 memory may be now, based on what Ella Bailey may have told
28 him was her intent, and perhaps trying to give her the benefit

1 of every doubt, it seems to me as if when he put "Vance
2 talked to Charlie at ranch house about me not going," that's
3 exactly where the conversation took place. The ranch house is
4 where they were sleeping, apparently. So I leave that up to
5 you. It is not a major discrepancy except for the fact that
6 nowhere is there mentioned in here, and there is specifically
7 not mentioned in either the notes or the report that she was
8 present.

9 You see, she testified on direct examination, as
10 she did in the Mary Brunner trial -- not trial, Grand Jury
11 hearing that there were two conversations. One in Devil's
12 Canyon, one between Bill Vance, Charlie and her at the dump
13 area. That would appear to be a fabrication, because the
14 notes don't reflect that she was there. The notes reflect
15 that "Vance talked to Charlie at ranch house about me not
16 going," and that's actually in chronological sequence after
17 "Next morn told Bill Vance I was scared and didn't want to
18 go. So what happened? Vance talked to Charlie at ranch
19 house about me not going. Charlie came on boardwalk and said
20 'You're not going. Sadie, you take her place.'"

21 Then, the interesting part.

22 "Left while I was at ranch house."

23 Now, here again, if she had been where she
24 testified she was, and if she had told Paul Whiteley what
25 she told you at this trial, that she was within ten to
26 fifteen feet of that car as it went out, don't you think those
27 notes would have reflected that? Don't you think there
28 would have been something in there rather specific on that

1 particular point?

2 "Yes, I saw them leave. I saw them as
3 they went out." Or "I saw Beausoleil, Atkins, Brunner
4 and some other person drive out. I was at the corral.
5 Not the dump."

6 She didn't say she was at the dump then. She's
7 testified to you that she was right at the corral, right at
8 this point here (indicating), right next to the road, Santa
9 Susanna Pass.

10 Now, don't you think that something similar to
11 her testimony here would have been mentioned instead of
12 something that is exactly opposite, and that is "Left while I
13 was at ranch house."

14 Listen to the phraseology of that.

15 "Left while I was at ranch house."

16 Now, even assuming that maybe those aren't
17 quoting her exact words, the sense of it is they left while
18 I was at somewhere else, while I was at the ranch house.

19 And, again, this is corroborated by the notes
20 of the conversation of the next day, May 16.

21 "I heard they left."

22 "I heard they left."

23 Now, there's nothing about dump, ranch house,
24 anything else there. So there's no confusion there. I heard
25 they left, not I saw them leave.

26 Now, he's not that incompetent a note taker that
27 he doesn't know the difference between seeing and hearing.
28 I heard through hearsay that they left.

1 Is she perjuring herself here? Getting up before
2 you jurors, making marks all over this aerial photograph,
3 People's 29, trying to make it all the more definite, all the
4 more specific?

5 "Oh, yes, here I was, right here. And I
6 saw that car go out where it is marked 'Ford' right
7 there."

8 If I tell it to you three times, then, it is
9 true. If you tell a big enough lie, often enough, maybe
10 they'll believe it.

11 All right, here, again, a small point.

12 "Police came and we ran into hills
13 and hid. Thought they had found Gary."

14 You know she testified to the business of she and
15 Mary driving -- driving over the bridge into the eucalyptus
16 grove.

17 And, first of all, they went to the ranch house
18 and cleaned up some of the microbus, and then drove to the
19 eucalyptus grove with Mary, where she is supposed to have
20 counted the money because she always counts money in purses.

21 And then, she said that Mary disappeared and she
22 looked around for and couldn't find her, and then she saw the
23 lights approaching, and then Mary being absent she went to the
24 ranch house, the farm house there, saw no one there, grabbed
25 the walkie-talkie that apparently connected the sort of
26 instant communication to the boardwalk area, no answer there,
27 so she decided to take off and head for the hills.

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1 Strangely enough, the police came, "and we ran
2 into the hills and hid. Thought they had found Gary."

3 Well, again, is Paul Whiteley an incompetent
4 notetaker? Does he know the difference between "we" and "I"?
5 Is he making things up?

6 I don't think so. I don't think so.

7 Now, this is rather interesting. She testified
8 on direct -- and even on cross -- that the bus was hot-wired.
9 She was sure it was hot-wired. Yes, it was hot-wired.

10 The notes, page 15 of the notes: "Can't remember
11 if bus was hot-wired or had keys."

12 Now, that's a small thing. It's not critical.
13 It's not critical to the guilt or innocence of this defendant.
14 It's not critical to anything, except her credibility.

15 If she's going to lie about such a small thing,
16 such a small thing that is not critical, isn't she just as
17 willing to -- and perhaps more willing -- to lie about
18 something that is a big thing? On an issue, in an area where
19 she knows the people want and need a particular bit of informa-
20 tion? Like a confession or an admission?

21 What do the People need most in this case about
22 Bruce Davis? Because they have precious little. Do you know
23 what they've got? They have got this circumstantial --
24 wholly circumstantial, almost admittedly inconsequential
25 evidence about the gun. And then they have got Ella Bailey's
26 testimony that she saw him standing in a group, before
27 Beausoleil, Atkins and Brunner left.

28 They have got her testimony that he was there

1 at this Devil's Canyon campground meeting, where supposedly
2 the killing of Hinman was discussed.

3 But if you are going to accept her testimony here,
4 that the People want you to believe -- so that she isn't an
5 accomplice -- it was an innocuous conversation there, that
6 first conversation, where Bruce Davis was also present.

7 And Bruce Davis didn't even enter into it. Bruce
8 Davis didn't do as much as she did. Bruce Davis didn't
9 suggest Gary Hinman. She did. He just sat there.

10 THE COURT: Let's take ten minutes.

11 Is this a convenient time?

12 MR. DENNY: I was going to just say two more words,
13 and then it would be convenient, your Honor.

14 THE COURT: Go ahead.

15 MR. DENNY: Bruce Davis at that conversation didn't even
16 say, "Yeah. Yeah."

17 Now, let's take a recess.

18 THE COURT: During the recess, you are admonished not
19 to converse amongst yourselves nor with anyone else, nor
20 allow anyone else to converse with you on any subject
21 connected with this matter, nor are you to form or express
22 an opinion until it is finally submitted to you.

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

25 THE COURT: Mr. Denny?

26 MR. DENNY: Yes, your Honor.

27 THE COURT: On the record, I think counsel have had an
28 opportunity now to thoroughly look at the instructions.

1 However, you had not asked for -- there are no jurors present?

2 MR. DENNY: No, your Honor.

3 THE COURT: You had not asked for an instruction on
4 any lesser included offense on the homicide charges, murder
5 second or manslaughter.

6 It's -- the Court might very well give a murder
7 second and a manslaughter instruction, if you wished it.

8 MR. DENNY: I do not wish it, your Honor. I specifically
9 do not wish it.

10 And I think we had discussed this, and the People
11 and I both agreed that it was either first degree or nothing
12 at all. That is, that the defendant was either guilty of
13 first degree murder or was not guilty.

14 THE COURT: In either the first count or the third?

15 MR. DENNY: That is correct.

16 THE COURT: All right. Then in view of your agreement,
17 the Court will not give any lesser included events
18 on the homicide, regarding the homicide.

19 MR. DENNY: Your Honor, there's one matter I would like
20 to bring up. I mentioned this with Joyce, and that's about
21 the exhibits.

22 I do feel that the exhibits should go into the
23 jury room. There's no reason, since there's no similar trial
24 going on -- as there was when Manson and Grogan jurors were
25 deliberating -- that they should be kept down and only called
26 up when the jurors want them.

27 But in that connection, Joyce mentioned that there
28 would be the possibility of mixing up the bullets here. I

1 think I know which bullet is which, but I think it would be
2 perhaps wise to have Joyce mark them, just make some kind of
3 -- either a color mark or a number mark on either the base or
4 the tip of the bullet, and indicate to the jury that this has
5 been done, purely as a bookkeeping function, and advise them
6 that such a mark does appear, and this is what the significance
7 of it is.

8 THE COURT: Well, that seems reasonable. Perhaps you
9 could assist Mrs. Holt in so marking the bullets.

10a fls. 10 MR. DENNY: Fine.
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1 THE COURT: Anything further about the instructions?

2 MR. DENNY: Yes, there was one, Judge, as far as finding --
3 making a separate finding as to the guilt or innocence of each
4 defendant in the conspiracy charge, and since there's only one
5 defendant, I don't think that --

6 MR. KAY: Yes. I brought that up, too.

7 THE COURT: Yes, that one has been eliminated.

8 MR. DENNY: Right. Now, I do think that before the
9 Court instructs we should simply get on the record the
10 opposition that each one of us may have --

11 MR. KAY: Right.

12 MR. DENNY: -- to particular instructions.

13 MR. KAY: Definitely.

14 MR. DENNY: And I think the record reflects, from what I
15 had filed, my requests for instructions and the --

16 THE COURT: All right.

17 MR. DENNY: -- specials I've requested.

18 THE COURT: Let me see. Mr. Kuczera?

19 THE BAILIFF: Sir?

20 THE COURT: As soon as you can break loose from that
21 telephone -- I realize you are busy now -- if you can get
22 Mr. Davis out here? And we'll get his consent to have 2.60
23 and 2.61 --

24 THE BAILIFF: Yes, sir.

25 THE COURT: -- read.

26 (Proceedings had on unrelated matters.)

27 THE COURT: In connection with the instructions, the
28 defendant has requested 2.60 and 2.61, regarding the failure of

10a-2
kaxx

1 the defendant to testify.

2 Have you gone over those?

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

4 THE COURT: Yes.

5 (Proceedings had on unrelated matters, during which
6 time a discussion off the record was had at the counsel table
7 between the defendant and his counsel.)

8 THE COURT: Mr. Davis, have you spoken to Mr. Denny
9 about the instruction 2.60 and 2.61, which are instructions
10 to the jury concerning your constitutional right not to
11 testify?

12 THE DEFENDANT: Yes.

13 THE COURT: And you concur that they should be given?

14 THE DEFENDANT: Yes.

15 THE COURT: Very well. Mr. Kay?

16 MR. KAY: Yes, Judge?

17 THE COURT: It will take me an hour to read these
18 instructions. I was figuring you'd take a day.

19 MR. KAY: Well, I don't know --

20 THE COURT: If I -- if I can utilize Monday. I will
21 be here Monday.

22 MR. KAY: That's right. I don't know how long I'll
23 take. I don't know. My argument's quite thick, and I don't
24 know how long it's going to take me to --

25 THE COURT: Well, you're going to have to pare it down
26 or tailor it or do something, --

27 MR. KAY: Well, I have --

28 THE COURT: -- because --

10a-3

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1 MR. KAY: -- as much as I can.

2 THE COURT: -- we can't go beyond Monday night. And I
3 have got to give these instructions.

4 MR. KAY: I know.

5 THE COURT: We can't get another judge to give these.

6 MR. KAY: I just don't want to be cut off at the end.

7 THE COURT: Well, that's where you are going to be,
8 unless you terminate, say, about --

9 MR. MANZELLA: 4:00 o'clock on Monday?

10 THE COURT: -- about 3:00 o'clock. And even so, that's
11 slicing things a bit thin.

12 (Whereupon, the members of the jury commenced
13 to enter the courtroom, during which time a discussion was had
14 off the record at the bench between the Court and Mr. Kay.)

15 MR. DENNY: Are we ready to proceed now?

16 THE COURT: All right. The record will show that all the
17 jurors are present, all counsel and the defendant are present.

18 You may proceed.

19 MR. DENNY: All right. During the recess, I happened to
20 be going over the notes that I made of Mr. Manzella's argument,
21 and as you may have noted, I take my notes in multi-colored
22 pens.

23 And in big black ink, in -- with a big black star
24 next to it, I have, as Item No. 11:

25 "If you don't believe Ella Bailey, you must acquit
26 Davis."

27 "If you don't believe Ella Bailey --" it's true --
28 "you must acquit Davis."

1 Now, why did I spend so long cross examining her?
2 Why did I spend so long -- why have I spent so long in summa-
3 tion, talking about her? Because she's the People's whole
4 case, as to Count No. 1.

5 And ladies and gentlemen, Count No. 1 is a very
6 important Count. It charges Mr. Davis with murder, the most
7 serious crime on the books.

8 I think she deserves my rather rapt and undivided
9 attention, both on cross examination and during the course of
10 argument, as it's called here, at the close of the case.

11 And again, thank God for discovery; thank God for
12 the engine of cross examination. Otherwise, we'd have never
13 had these notes from Paul Whiteley.

10b fol

10-1

1 You'd be stuck with essentially the same informa-
2 tion -- even though Mr. Davis does have a lawyer -- as the
3 Grand Jury got in the Brunner case, in the tailored-to-
4 measure -- tailored-to-fit presentation that was given to
5 them.

6 But you didn't get that. You got instead two
7 diametrically opposed stories, one from an admitted Manson
8 Family member, one of the earliest Manson girls -- one who
9 answers to the questions as far as how she looks upon lying
10 this way:

11 "By the way, Manson was sort of a teacher
12 of the group, wasn't he?"

13 This is page 3492, this case's transcript.

14 "A Yes.

15 "Q And among the other things he taught was:
16 that it was all right to lie to the authorities; is
17 that right? To the police?

18 "A Yes.

19 "Q You didn't lie to each other?

20 "A No.

21 "Q But it was perfectly permissible to lie
22 to the authorities, if it was worth while to your
23 own purposes; that's what he taught, isn't that right?

24 "A In giving names and things like that, yes.

25 "Q And in giving false information about
26 yourself; is that right?

27 "A Yes.

28 "Q And false information about others; is that

10-2

1 "right?

2 "A I don't know what you mean by 'others.'

3 No.

4 "Q If it fit your purposes, it was all right
5 to give false information about others?"

6 Well, there was an objection to that.

7 "Q BY MR. DENNY: Well, that's what he taught
8 you, didn't he?

9 "A He taught that it was all right to give
10 false information, that's true."

11 Now, I believe that. This female who, by the
12 grace of -- well, not God -- the District Attorney, the
13 Sheriff's Office and the prosecuting officers of Tacoma
14 County, or Pierce County in Tacoma, Washington -- who but
15 for the grace of those agencies, officers and officials,
16 would be standing trial before a jury of her peers for her
17 involvement as an accomplice, as a co-conspirator to the
18 brutal murder and the robbery of Gary Hinman; this one, who
19 has used false names from one end of the country to the other,
20 top to bottom; who wanted to get away from the Manson Family
21 and their influence and lead the good life, lead a good,
22 clean, wholesome life and escape the terrible influence of
23 them, winds up seven months later in the wholesome atmosphere
24 of Tacoma, Washington, passing forged credit cards.

25 It's topsy-turvy. It's -- it's topsy-turvy.
26 The world is upside down.

27 The People are asking you to believe a person who,
28 if they were attempting to prosecute her -- as they should have

1 done -- if she took the stand and testified to that which
2 she testified for them in this case, and they had the evidence
3 that -- Paul Whiteley's notes, don't you think they would be
4 ripping her up one side and down the other?

5 Don't you think they'd be arguing to you, just
6 as I am arguing to you? Don't you think that they'd say to
7 you, "Look at the facts. Believe Sergeant Whiteley. Don't
8 believe the garbage that she's dishing out to you, ladies and
9 gentlemen," if they were prosecuting here as they should?

10 But now, out of the mouths of Miss Innocence,
11 in this particular count -- and Barbara Hoyt, another Miss
12 Innocence, in the Hin- -- in the Shea count -- comes nothing
13 but truth, now.

14 And out of the mouths of police officers come
15 nothing but either lies or incompetent mistakes. It's
16 crazy.

17 All right. Going again to page 19 of the notes --
18 and I asked her about this, and I asked Sergeant Whiteley,
19 after some other matters were gone into.

20 "Meeting, Devil's Canyon --" C-a-n-y-o-n --
21 "Charlie -- 'get him (Gary) to sign over his stocks
22 and cars.'

23 "'Kill him if necessary.'" Close quote.

24 "Did you tell Sergeant Whiteley that,"
25 I asked her on cross-examination.

26 "Oh, no, I didn't tell him that."

27 "Oh, you are misquoted again?"

28 "I must be. I didn't tell him that."

1 Sergeant Whiteley, whom I had to call -- who I
2 had to call on -- on the People's case -- "Sergeant Whiteley,
3 did she tell you that?"

4 "Yes, she did."

10c fls.

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1 Who do you believe?

2 Now, again, just a cursory note here, but "\$27.
3 Sadie had money."

4 "Sergeant Whiteley, did she tell you that?"

5 "Yes."

6 But she made a correction. She made a correction
7 on the May 18 report, the typed report, that showed in that
8 report, the paragraph on Page 2.

9 "They stated they got \$27 from Hinman, and
10 Susan --" and above that is written in "Mary" -- "showed
11 her the money in her pocket."

12 Well, the report -- the typed report, made three
13 days after the conversation, reflects apparently what she said
14 at the time. And that's "Susan" who had the \$27. "\$27. Sadie
15 had money."

16 Now, that's what she said.

17 All right. Let's just assume she corrected some-
18 thing, and that this correction is that Mary had the money.
19 It still stands. "They stated they got \$27 from Hinman, and
20 Mary showed her the money in her pocket."

21 Where is this \$27.64 that Ella Bailey says, "I
22 counted, because it's just a habit of mine to count people's
23 money in their purses." Not in their pockets, but in their
24 purses.

25 Well, that's a weird habit -- unless she counts
26 it after she steals it. Personally, I don't know whether
27 that was an implied admission on her part or not.

28 But getting far from that, she stated she got

1 \$27 from Hinman. And leaving the correction, "Mary showed her
2 the money in her pocket."

3 Now, why? Why, then, \$27.64? "And I counted
4 it, in the purse that was between the seats, between Mary and
5 me as we drove."

6 Why? Just to be more specific? The same reason
7 that she says, "Here I was, right here on the picture of
8 People's 29. Right here by the corral." To make it seem more
9 believable?

10 "If I tell it to you three times, it's true."

11 "If I tell you a big enough lie, often enough,"
12 says Ella Bailey, "it's true."

13 Well, let's go a minute to my cross examination
14 of her, as to what corrections on what reports she did make.

15 And this is starting at Page 3667, Line 1. And
16 this is a full week after she started testifying.

17 "Now, what report is it that you were asked to
18 check for corrections?

19 "A I believe it was one that Mr. Katz
20 wrote up."

21 Not Sergeant Whiteley. Mr. Katz.

22 "Q This was a report of a conversation
23 that you had with him and Sergeant Whiteley, in
24 Room 649 of the Hall of Justice on February 18,
25 1971?

26 "A I'm not sure of the date, you know, that
27 the report's written up from.

28 "Q Well, were there other reports that

1 "were made, of conversations between you and
2 Mr. Katz and Mr. Whiteley, --

3 "A I don't know.

4 "Q -- other than that one that you are
5 aware of?

6 "A I don't know."

7 And then I asked to approach the witness.

8 "Q Would it refresh your recollection to
9 see a copy of that report that I've just described?

10 "A Yes.

11 "Q Does that appear to be the report that
12 you say you checked? Showing you a copy of a state-
13 ment, 'Ella Jo Bailey, taken in Room 649, Hall of
14 Justice, by Burton Katz and Sergeant Paul Whiteley,
15 February 19, 1971, at 9:00 A. M.'

16 "A Yes.

17 "Q And were you ever asked to check any
18 reports made by Sergeant Whiteley?

19 "A That's the only report I was asked
20 to check.

21 "Q Were you ever asked to make any
22 reports pertaining to Sergeant Whiteley's notes?

23 "A No.

24 "Q Or any official reports that he had
25 written pursuant to those notes?

26 "A No.

27 "Q And this report that you checked for
28 this meeting between you and Mr. Katz and

1 "Mr. Whiteley on February 18, was that accurate in
2 all respects?

3 "A No.

4 "Q In how many respects -- don't tell me
5 what they were at this point, but just how many
6 errors were there in that report?

7 "A I don't recollect.

8 "Q Do you have any idea?

9 "A No. I hadn't -- I haven't seen it
10 for a long time. I didn't -- I don't remember.

11 "Q Well, did you personally, in your own
12 handwriting, make corrections on any report that
13 was shown to you?

14 "A No. They were never written in."

15 That's her testimony.

16 Now, that "Mary" -- again, Sergeant Whiteley
17 testified, it was not her handwriting; it was somebody else's
18 handwriting on this report.

19 Again, a small point. It doesn't matter, really,
20 who had the money, between Mary Brunner and Susan Atkins. It
21 doesn't really matter if it was \$27 or \$28 or \$27.64.

22 What matters is: Is she telling the truth, even
23 about such a small thing? Or is she lying about such a small
24 thing? And if she's lying, why?

25 Is it to try to make more concrete, more specific,
26 more exact, more particular her evidence, so that you, the
27 jurors, will think she really, really remembers what happened,
28 down to not only dollars but cents?

11-1

1 Is that why? Well, I think that's why.

2 Well, we've gone over Whiteley's notes.

3 There was another portion of notes, that's the
4 report that we referred to, we were just reading about,
5 Mr. Katz's notes. Interesting, again, there, too.

6 Now, when was this? This was February 18, 1971
7 at 649, Hall of Justice, by Burton Katz, and Paul Whiteley.

8 Now, Sergeant Whiteley, as I say, a competent
9 officer. Burt Katz you saw on the stand, a competent attorney,
10 prosecutor. And they're questioning here. And they're
11 questioning her as a potential witness, a witness they know
12 will testify in this case. How do they know? Because they
13 know that if she doesn't testify and testify the way they want
14 her to testify, why she's got that rap in Washington hanging
15 over her head at the minimum, and she can be charged with what-
16 ever they want to charge her with in connection with any of
17 her relations with the Manson Family, because it is all down
18 here in black and white for you, the jurors, to see, in
19 Defendant's E.

20 And another interesting thing about that. Who are
21 the people listed here that she is selling herself for, for
22 immunity? She said it was Bruce Davis, Charlie Manson, Susan
23 Atkins and Mary Brunner. And I know that it was those four,
24 and I'm sure it was those four, and if I testified against
25 those four and told the truth -- again, who determines that but
26 the people who made this up -- then, I would gain immunity I
27 thought, then I would gain the freedom from prosecution in
28 Tacoma that I also sought.

11-2

1 Well, you look at it, ladies and gentlemen. Three
2 of those names are mentioned. Charles Manson, Susan Atkins and
3 Bruce Davis. Nowhere Mary Brunner. A small matter, perhaps,
4 but again, interesting as far as her credibility and her
5 memory, because that's one of the factors you look to in
6 determining the credibility of a witness, the ability to
7 perceive, the ability to remember and the ability to relate
8 what one has perceived and remembered.

9 Now, she relates fine. Oh, does she relate. Just
10 like the prosecution's dummy here. The ventriloquist sitting
11 at the table here opens her mouth and she says what they want
12 her to say. She relates beautifully, but does she remember?
13 She doesn't even remember this, which is pretty critical to
14 her own self. And does she perceive? Well, we'll get to that
15 in a minute, too, as to whether or not she actually saw some
16 of the things that she talked about.

17 All right. But in this report made by Mr. Katz'
18 and Mr. Whiteley, in connection with their interview of her,
19 what does she say in comparison with her testimony here that
20 she saw Bruce Davis with a gun standing out before the saloon
21 with Charlie Manson?

22 "That same day Ella heard Manson talking with
23 Beausoleil in the parking lot at Spahn Ranch. This conversa-
24 tion took place several hours after the conversation between
25 Ella, Bill and Manson. Beausoleil was carrying around an auto-
26 matic pistol which took a clip. This is the same gun that
27 Ella saw Bruce Davis with on many occasions. Beausoleil was
28 also wearing a Mexican knife housed in a sheath. At the time

11-3

1 of the conversation between Manson and Beausoleil, Bruce Davis
2 was in the general vicinity where the conversation took place."

3 Now, are they incompetent note takers? You know
4 full well that Burt Katz, who is going to prosecute the case,
5 is going to want to get down as much against Davis as possible.
6 He's not interested in Beausoleil. Beausoleil has already been
7 prosecuted at this point, February 18, 1971. He's interested
8 in the upcoming prosecution against Davis.

9 But what does she say? Davis didn't have the gun.

10 Don't you think they questioned her? Davis didn't
11 have the gun, Beausoleil had the gun.

12 "Beausoleil was also wearing a Mexican knife."

13 "Also," what does that mean? It means that he had
14 the gun and was also wearing the Mexican knife. That's not
15 a gratuitous word that Katz just threw in there. Thank God for
16 discovery so that we can get these reports and that we can run
17 down the truth and we can bring it to you, the jurors, so that
18 you can make a determination not only whether it happened this
19 way, but whether the person that's up before you testifying
20 inconsistently is lying.

11a fol

11a-1

1 Because if they are lying, as the Court will tell
2 you, willfully, and with a design to deceive, then, you may
3 toss out all of that person's evidence unless you feel that
4 as to other matters they are truthful.

5 How do you know? How do you know? How do you
6 know when a liar leaves off lying and starts telling the
7 truth? If a person is caught in ten lies, are they telling
8 the truth on the eleventh item that they are talking about?
9 If they are caught in twenty lies, can the prosecution reach
10 for a straw and say, "Yes, but the 21st thing was the truth"?
11 Because the 21st thing is the vital piece of evidence that
12 they've got, the confession, the alleged admission or
13 confession that Bruce Davis is supposed to have related to
14 this woman that Manson didn't trust.

15 If she's lied about A, B, C, D, E, F, G, and we've
16 been able to prove it, is it reasonable that she's told the
17 truth on X up here? Well, you know the law looks at the
18 testimony of an oral admission or an oral confession with a
19 jaundiced eye. Because, again, this is an instruction you
20 will get, it has been shown over the years as our body of
21 jurisprudence has built up, that oral confessions or oral
22 admissions are not necessarily trustworthy. Even if related
23 by police officers. Even if related by supposedly disinterested
24 parties. It doesn't matter who relates an oral admission or
25 confession. The same admonition is given to a jury that an
26 oral admission or confession should be looked at with -- not
27 necessarily distrust, but with great care, great care.

28 Now, add to that the instruction that you will

11a-2

1 get from the Judge that the testimony of an accomplice is to
2 be viewed with distrust. And that's part of the law, too.
3 You didn't know that. You haven't heard that before.

4 I wouldn't expect the prosecution to tell you
5 that, and I don't belittle them for that because that's
6 strictly the type of information that you'd get from a, uh,
7 defendant, generally.

8 But the testimony of an accomplice is to be
9 viewed with distrust. And if Ella Jo Bailey was, as I submit
10 she was and is the accomplice of Charlie Manson or Bobby
11 Beausoleil and Sadie Atkins and Mary Brunner, the one who
12 instigated, encouraged, advised the commission of the
13 offense against the man who had asked her to marry him,
14 Gary Hinman, then her testimony is to be looked on with
15 distrust.

16 And why? The law understands, based on experience,
17 that if one is involved in the commission of a crime, one may
18 have an interest in relieving one's self of any liability
19 that they have for the offense and dumping it over on the
20 other parties, anyone else. It is human nature. And the
21 law takes that aspect of human nature into account and
22 says, you know, you can accept the testimony of an accomplice
23 if you find it to be truthful, but just look at it with a
24 jaundiced eye. Be doubly careful about the testimony of
25 an accomplice. Because historically it has been shown, and
26 human nature being what it is, we know that an accomplice may
27 try to escape liability for his or her part in a crime and
28 enhance the liability of another. It often happens. Two

11a-3

1 people involved in a murder, and one of them turns State's
2 evidence and says he did it, he shot him, he pulled the
3 trigger. I just stood by and watched horrified. And any
4 jury listening to that type of evidence is told, "Think about
5 it." Think about the possibility that the man who is testi-
6 fying, who is an accomplice, may be trying to put off on his
7 co-defendant or his co-conspirator or his accomplice or
8 co-principal his own liability for the crime and curry favor
9 with the prosecution in the process.

10 All right, I would like to just read you a few
11 things from Ella Bailey's testimony that are, I think,
12 sort of pertinent.

13 Again, on cross-examination, this will establish
14 this business about whether he was at the ranch house when the
15 car left or not. I just wanted to get her nomenclature, her
16 terminology so that at 3228, said, "Miss Bailey, we've marked
17 -- you're marked or designated certain areas on this Exhibit
18 93.

19 "Again, is there a place called the ranch
20 house?

21 "A Uh -- the farm house; is that what you
22 are referring to?

23 "Q Well, I don't know. Is there a place known
24 as the ranch house? On the Spahn Ranch?

25 "A That's what I called the back -- the back
26 house.

27 "It's labeled on there as the farm house.

28 "Q But you refer to it as the ranch house;

1 "is that right?

2 "A Yes."

3 Now, I admit I was a little devious there. I
4 used the terminology that they use here, the farm house,
5 because I wanted to see if there was some one place on
6 Spahn Ranch that she would refer to as the ranch house
7 because of the references in Paul Whiteley's notes of
8 conversation by Vance and Manson at the ranch house.

9 "I was at the ranch house when they
10 left."

11 So I wanted to get from her, is there a place on
12 the Spahn Ranch that is referred to as the ranch house? She
13 said yes. It is designated here the farm house, but we call
14 that the ranch house.

15 That's the only place. Not George Spahn's house,
16 which was called George Spahn's house, designated here on the
17 29th. That wasn't called the ranch house. There was only
18 one place, and that's the place designated on 93 as the
19 farm house, called by all people there the ranch house.

20 Now, again, just an interesting little sidelight,
21 starting at 3236.

22 "Q By the way, when's about the first time
23 you ever saw Bruce carrying, as you say, this gun
24 around?

25 "A I'd say at least a month -- uh, the month
26 of June I definitely saw him with a gun on several
27 occasions."

28 "With a gun on several occasions."

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"Q In the month of June?

"A In 1969.

"Q In 1969?

"A Uh-huh.

"Q Now, you're sure of that?

"A Yes.

"Q Positive?

"A Sure, I'm positive, yes."

Well, then, I went on a little bit later to show here that the gun couldn't have been seen by her in June because it was not bought by Bruce Davis until July 14.

But this is relevant, again, why? Again, it is like the marking of the exhibit here. "There I was right at the tip of the corral at Spahn Ranch.

12 fls.

12-1

1 It's like the statement that the car was hot
2 wired. It's like the statement, "I counted the money, and
3 there was \$27.64."

4 She wants to be -- and come across to you jurors
5 as -- so particular, so definite, so precise, so true. And
6 she's so wrong and so false! And she's lying to you people
7 under oath here, and I can prove it. And I did prove it.

8 And then she backtracks and hedges and fudges a
9 little bit. "Well, I thought it was in June."

10 "But Miss Bailey, you told the jury under
11 oath.

12 "Are you sure of that?

13 "A Yes.

14 "Q Positive?

15 "A Sure, I'm positive. Yes."

16 How much else is she positive of, that she's
17 told you, just that positive? When it's positively wrong?

18 Now, again, just -- I had mentioned it to you
19 yesterday, but this is from her testimony, 3256, starting at
20 Line 2.

21 "Q Now, you remember Linda --" that is Linda
22 Kasabian -- "bringing a good deal of money to the Family
23 at the time she came?

24 "A Yes.

25 "Q How much?

26 "A Uh, the figure \$5,000 comes to my
27 mind. I'm not sure if it was exactly that."

28 And then there was testimony that Linda came in

1 June or July, and brought the Family \$5,000.

2 They needed money? They weren't going to leave
3 for the desert? Just as they had planned?

4 Then, interestingly enough, at 3257, starting at
5 Line 7:

6 "Q Smoked marijuana every night around the
7 campfire there out at Devil's Canyon; is that right?

8 "A I don't think you can say about every
9 night, no, sir.

10 "Q Smoked marijuana on the night of this
11 conversation that you told us about that occurred
12 where Gary Hinman's name was mentioned; right?

13 "A I don't know.

14 "Q Well, do you have any recollection at
15 all?

16 "A I don't.

17 "Q All right. Let me try to refresh your
18 recollection, ma'am.

19 "5203 of the transcript of your testimony on
20 August 13, 1971." Quoting now.

21 "QUESTION BY MR. KANAREK: On the occasions
22 that you have spoken of, Miss Bailey, on -- let
23 us say that night when you say Mr. -- you mentioned
24 Mr. Hinman's name first concerning money, on that
25 night did you take any marijuana?

26 "A I really don't remember if we did or not.

27 "You might have, though?

28 "A Possibly we did.

1 "You might have been under the influence of
2 marijuana when all of that occurred; right?

3 "A When all of what occurred?

4 "Q That evening that you purportedly are
5 telling us about.

6 "A Well, I could have been smoking marijuana.
7 I don't remember."

8 And then my question to her, as I was questioning
9 her:

10 "Do you remember that?

11 "A As you read it, yes, I remember it.

12 "Q And having had that read to you, is it
13 true that you could have been smoking marijuana?

14 "A Yes, it is true we could have been.

15 "Q And you could have been under the
16 influence of marijuana that night?

17 "A We could have been smoking it, yes.

18 "Q Well, when you smoke it, you become
19 under the influence of it, don't you? That's why
20 you smoke it, isn't it?"

21 And then the Court advises me that I have
22 asked two questions, which I have. All right.

23 "Q BY MR. DENNY: Take the first one,
24 and then the second one.

25 When you smoke marijuana, you become under
26 the influence of it?

27 "A Yes.

28 "Q You do, personally?

1 "A Yes.

2 "Q That's why you smoke it; isn't that right?

3 "A Yes.

4 "Q All right. And you were under the
5 influence of marijuana that night; is that right?

6 "A No, I can't say that I was or I can't
7 say I wasn't. I don't remember."

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1 Now, we get down to the ability to perceive that
2 I talked about, and said we would get to in a moment. I
3 discussed the ability to perceive, the ability to remember,
4 and the ability to relate that which you have perceived and
5 remembered.

6 Was she under the influence of marijuana?
7 Apparently it was a pretty regular thing.

8 Does she remember? What does she remember?
9 Apparently she remembers enough to relate in some detail, so
10 that Sergeant Whiteley puts it in quotes in his notes of May
11 15 and May 16, statements that she and Charlie Manson made
12 together, as they were hatching the plan to do in Gary
13 Hinman, and to rob him.

14 You know, that's another interesting thing here.
15 You are going to receive a bunch of instructions on felony
16 murder. Now, I submit that they don't apply to Bruce Davis,
17 because Bruce Davis isn't guilty of anything in connection
18 with Gary Hinman, or in connection with Donald Jerome Shea.

19 But they sure do apply to Ella Jo Bailey, because
20 you still have to make the determination as to whether or
21 not she was an accomplice. The Court is leaving that up to
22 you, that decision, based on the law that it will give you
23 and the facts as you determine them.

24 And if in fact they sought to rob Gary Hinman,
25 the law is that one is liable for all of the foreseeable
26 consequences of that plan to rob someone. So that they don't
27 have to conspire to murder him -- although it's charged in
28 Count II that there was such a conspiracy -- and I think by

12a-2

1 Ella Bailey's own statements, she knew it and was part of it.

2 But assume she tries to exculpate herself of
3 that aspect of it -- as she has on the witness stand here,
4 when called by the People. Assume she does.

5 Assume she acknowledges only -- as we'll read in
6 a little bit more -- that she may have had something to do
7 with setting the wheels in motion for attempting to get
8 properties from him, by legitimate or illegitimate means.

9 If she knew that illegitimate means were going
10 to be used to attempt to get property from Gary Hinman,
11 if she knew, in fact, that an attempt was going to be made
12 to take personal property from the person or presence of Gary
13 Hinman, by force or fear, then she knew that they were going
14 to attempt to rob him, because, as the Court will read to you,
15 that's the definition of robbery.

16 And if then she knew that they were going to
17 attempt to rob Gary Hinman, then robbery is one of those
18 felony murders where the Court says, "You are, in effect,
19 presumed to know that death may result, because it is one of
20 those crimes where they -- with a foreseeability of death or
21 serious bodily injury involved, in a robbery."

22 And if you are presumed to know that, in law,
23 then if it does happen, you are guilty of the murder, of the
24 injury that occurs, even though you may not have intended,
25 even -- as the People said in the course of their voir dire
26 of you -- though it may have been totally accidental.

27 And you know, from the injuries inflicted in this
28 case, that it couldn't have been totally accidental. It was

12a-3

1 planned. And Ella Bailey knew about the plans. And the
2 reason she didn't want to go, and the reason she let somebody
3 else do the dirty work for her, and the reason she let Sadie
4 Atkins go in her place, is that she knew what was going to
5 happen, because she had been part and parcel of the plan.

6 She's guilty of murder, even though she may not
7 have wanted the murder to happen. She knew that it was
8 likely to happen.

9 All of this evidence, you have of her guilt.
10 And Bruce Davis stands accused. Bruce Davis stands accused.
11 It's a topsy-turvy world.

12 Even giving credence to all of the testimony that
13 she testified to -- and I don't give it credence -- but
14 even giving it credence, he never said a word at this meeting
15 where she fingered Gary Hinman.

16 He didn't wipe down the bus. He didn't hide the
17 bus. He didn't attempt to dispose of the spoils of the crime.

18 Who did? She did? But she's got this little
19 white paper (indicating) wrapped in a blue back, three pages.
20 That's her ticket to freedom -- not quite. Not quite her
21 ticket to freedom. Because the prosecution dangles this over
22 her head (indicating) and says, "When you testify the way
23 we want you to testify, when you have done that, and done it
24 three times, then we'll give you your ticket to freedom."

25 So, is she going to do that? She has.

26 THE COURT: Let's take five minutes.

27 During the recess, you are admonished not to
28 converse amongst yourselves nor with anyone else, nor permit

1 anyone to converse with you on any subject connected with
2 the matter, nor to form or express any opinion on it until
3 it is finally submitted to you.

4 I expect to go for another hour, until about
5 4:15. But take about five minutes now. And loosen up a
6 little. Move around.

12b fls.7

(Short recess.)

12b-1

1 THE COURT: All right. The defendant is present with
2 his counsel, and all the jurors are in their places.

3 You may begin.

4 MR. DENNY: Thank you, your Honor.

5 Apropos of our last bit of conversation on whether
6 or not an accomplice, particularly one who's promised immunity,
7 just might be inclined to give the officers what they're looking
8 for, I quote to you this, again from my cross examination of
9 Ella Bailey. And this is at Page 3548, Line 1.

10 "Q BY MR. DENNY: Well, has someone
11 helped you to refresh your recollection, since
12 May 15th and 16th, 1970?

13 "A Yes. I suppose every time that I have
14 been asked to think about it again, it has refreshed
15 my memory about it.

16 "Q And who has asked you to think about it
17 again?

18 "A Each of the People that you've mentioned
19 before.

20 "Q Sergeant Whiteley, Deputy Guenther,
21 Deputy D. A. Burton Katz?

22 "A Yes.

23 "Q And they ask you to remember a little
24 bit more and a little bit more, and you oblige; is
25 that right?

26 "A I remember what I can; that's all.

27 "Q What they want you to; isn't that right?

28 "A I suppose I do try to remember what they

1 "ask, yes."

2 "I suppose I do try to remember what they ask, yes."

3 I suppose she does. Oh, how she does! And how
4 successful she is.

5 And, ladies and gentlemen, this gets into a rather
6 interesting area, because it becomes more pertinent in the
7 Shea case. Now, there are ways and ways of conducting inter-
8 views. They have done research on this, to determine how best
9 to get information from someone -- that is, their own informa-
10 tion; how to keep the interviewer from inserting into the
11 interview his information or his point of view.

12 And the best way -- the fairest way -- is simply
13 to ask someone to relate what happened. "Tell us what you
14 remember." And the person says what they remember.

15 Then, you get to a situation where it's not
16 quite as good, because you get the interviewer beginning to put
17 in, apparently, some of his information, and questioning the
18 interviewee, "Well, do you remember if such and such happened?"

19 "Well, do you remember if such and such happened?"

20 "Well, do you remember if there was anything on
21 this subject?"

22 Well, you see, there's a -- a bit of a suggestion
23 begun there.

24 And finally, you get the situation where you get the
25 interviewer saying, "Well, did he say so and so?"

26 "Well, did it happen this way?"

27 And if someone, in the position of Ella Bailey,
28 knows that the D. A. is interested in getting that particular

1 evidence, that it did happen "this way," all she has to say is,
2 "Oh, yes. Yes, it happened that way, the way you said.

3 "Uh -- what way was that, again? Would you tell
4 me, so I can remember?"

5 And they tell her and she remembers.

6 Now, we'll get into that subject when we start
7 talking about Barbara Hoyt and Paul Watkins. But remember --
8 remember it in relationship to Ella Bailey.

9 Well, let's go to a little bit more about the
10 type of information she gave the officers. You see, when she
11 testifies before you, she is not supposed to testify to hear-
12 say, except insofar as it's permitted under certain rules of
13 evidence.

14 She is not supposed to testify as to what other
15 people told her. She's supposed to testify only as to what she
16 saw, heard, or was immediately present at, or somehow got the
17 information through her own sensing devices, of her five senses;
18 not what somebody else told her.

19 But for some reason, Mr. Manzella, on redirect
20 examination, asked her:

21 "Miss Bailey, in May and September of 1970, when
22 you were interviewed by Sergeant Whiteley, did he ask you to
23 tell him only those things you had seen or heard --" let me
24 stop right there.

25 Something very peculiar was going on at this point.
26 Something very peculiar. I had just, I feel -- and I'll take
27 the liberty of saying -- I had just impeached the hell out of
28 her by the use of these statements that Sergeant Whiteley had

1 taken on May 15 and 16. And we had been referring to them
2 as the statements of May 15 and 16.
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1 And then all of a sudden, the prosecutor starts
2 talking about Whiteley's having interviewed her in May and
3 September of 1970. And it happens several times here, when
4 he's questioning her about conversations with Mr. Whiteley
5 in September of 1970.

6 And I thought that they were going to call Mr.
7 Whiteley to the stand and somehow try to explain the incon-
8 sistencies between these notes and her testimony, by some
9 reference to some other meeting and interview that Mr.
10 Whiteley had had with her in September of 1970.

11 But no such testimony was ever forthcoming. I
12 don't know whether you all picked up on it, or whether it
13 caused you any concern. I am still puzzled by it, because
14 the prosecution never resolved that.

15 I still don't know why they were questioning her
16 on that line, but it's in the record.

17 Anyway, there's an objection, but it's supposed
18 to go to her state of mind, so it's admissible.

19 "THE WITNESS: --" in response to the question --

20 "Now, Miss Bailey, in May and September of
21 1970, when you were interviewed by Sergeant Whiteley, did he
22 ask you to tell him only those things you had seen or heard?

23 "THE WITNESS: No. I told him a lot that had
24 happened on that Saturday, a lot of the things that I had
25 heard about then and at other times.

26 "Q And when you say things that you had heard
27 about, are you referring to things that you had heard
28 from members of the Manson Family; is that correct?

12c-2

1 "A Yes."

2 Where does her testimony, that to which she was
3 a percipient witness, stop? And hearsay testimony, that she's
4 received from unknown -- and perhaps highly unreliable --
5 sources begin?

6 It's the same type of thing: "Heard that they
7 left." She didn't see them leave. She heard from some other
8 source that they left.

9 And that was very much the type of thing that
10 was reported in Sergeant Whiteley's notes, from second-hand
11 or third-hand or fourth-hand sources, she "heard that they
12 left."

13 And yet, she came up here and testified, bald-
14 facedly, flat-out -- sweetness, innocence -- that she saw
15 them leave and was standing here (indicating).

16 Let's go on.

17 Now, there's a series of questions in these last
18 two volumes, questions and answers. Page 3590, starting at
19 line 15:

20 "Q BY MR. MANZELLA: You were asked by Mr.
21 Denny whether you thought that Gary Hinman would come
22 with the Family. Why did you think that Gary Hinman
23 would come with the Family?

24 "A Because he was a rather effeminate man.
25 I didn't think he'd pose any problem to any of the
26 men in our Family."

27 That's a sort of interesting answer.

28 "He would come with the Family."

12c-3

"Why did you think he would come?"

"Well, I didn't think he would pose any
opposition to any of the men in our Family."

Were they going to strong-arm him? Was Bobby
Beausoleil going to strong-arm him to come in with the
Family? Is that what she has reference to?

Well, let's go a little bit further and see,
onto my final cross-examination of her.

13 fls.

13-1

1 On page 3649:

2 "Q You had never any fear of standing trial
3 for the murder and conspiracy to rob and murder Gary
4 Hinman?

5 "A Well, I felt -- you know, I felt in part
6 responsible, since I had mentioned his name. But I
7 didn't -- I didn't feel that I should stand trial
8 for it, no."

9 Now, whoever does?

10 Going on, 3653.

11 "Q" -- Starting at line 18 -- "You knew what
12 Charlie was going to do when those people left in
13 that car going to Gary Hinman's house, didn't you?

14 "A I thought Gary Hinman would come, you
15 know, with the Family. But I did believe that if
16 he didn't choose to, that he might be killed,
17 yes.

18 "Q And it was for that reason that you
19 didn't want to go, and you told Bill Vance that
20 you didn't want to go; is that right?

21 "A That's right.

22 "Q Because it had been brought up at
23 that Devil's Canyon camp meeting if he didn't
24 turn over the money, he was to be killed, is that
25 right?

26 "A Not at that Devil's Canyon camp meeting
27 that you are talking about, no.

28 "Q You didn't have any chance to warn him?

1 "A No.

2 "Q Now, you stated that nobody disobeyed
3 Charlie. Remember that on redirect yesterday afternoon?

4 "A It wasn't common to disobey him, that's
5 right.

6 "Q Well, Bill Vance did, didn't he?

7 "A Yes.

8 "Q And Danny DeCarlo did, didn't he?

9 "A Yes.

10 "Q And you've indicated that Bill Vance
11 was kind of a loner?

12 "A Yes, he was."

13 Which leads into my next series of quotes.

14 That's sort of interesting, too. She knew. She knew.

15 And finally, on the fifth day of examination,
16 I had finally gotten that far in getting the truth out of
17 her.

18 Before I get to the Vance-DeCarlo bit, just one
19 more thing.

20 And, you know, it is funny, as I read over these
21 transcripts, you forget. You forget. And this is why I am
22 reading them to you. You forget what the testimony has been
23 from these witnesses. And I read this over, and I started.

24 Listen, starting at 3674, line 5.

25 "But you still knew him best of all the
26 members of the Family, is that right?"

27 MR. MANZELLA: There is an objection and it is withdrawn.

28 "Q This is what Charlie told you, at any rate?

1 "I'll withdraw the question.

2 "This is what Charlie told you when he
3 told you to go and visit him, said you go because
4 you know him best, is that right?

5 "A That's pretty much what he said."

6 Eureka! Finally, the notes of Paul Whiteley are
7 corroborated by her testimony here on Tuesday, January 18,
8 a week after she had started testifying. Finally, because
9 look at those notes, the notes which on the first, second and
10 third day of cross-examination said were all either lies or
11 misquotes.

12 Page 11 of the notes, back to Hinman, "Charlie
13 said Ella knows Gary best and he likes her. Mary, you go
14 with her and Bobby, you, too."

15 And, now, finally, on the next to last day of
16 cross-examination:

17 "This is what Charlie told you when he
18 told you to go and visit him, said you go because you
19 know him best, is that right?

20 "A That's pretty much what he said."

21 "That's pretty much what he said." And he
22 said it at that meeting, at the Devil's Canyon campground on
23 the night of which the whole plan, the whole scheme was
24 evolved, the night on which Ella Bailey was part and parcel,
25 the moving force, if you will, the instigator, the one who
26 advised, encouraged, promoted the robbery and the eventual
27 death of her ex-suitor, Gary Hinman.

13a-1

1 Talked about DeCarlo and Bill Vance, that they
2 were loners.

3 Well, again, this goes back to Monday, Page 3495.

4 "Q And DeCarlo was drunk a good deal of the
5 time, wasn't he?

6 "A No, I don't really think you could say
7 that.

8 "Q Well, you did say that to Officer Whiteley
9 and Deputy Guenther and Deputy District Attorney Katz,
10 on May 15th, didn't you?

11 "A That Danny DeCarlo was drunk a lot on the
12 ranch?

13 "Q Yes.

14 "A No, I didn't say that.

15 "Q Did you tell them that he didn't take
16 orders very much from Charlie?

17 "A

18 There is a pause in a parenthesis here.

19 "I'm not sure, but that would be kind of
20 true.

21 "Q He didn't take orders very much from
22 Charlie, did he?

23 "A No.

24 "Q And neither did Bill Vance, did he?

25 "A No.

26 "Q They were kind of loners, weren't
27 they?

28 "A Yes."

13a-2

1 Not very relevant in connection with the Hinman
2 murder, and so she wasn't really prepared to testify. She
3 hadn't been prepared quite enough on that score, the same as on
4 the Danny -- on the Alan Springer issue, where she gave us some
5 very vital information that we would not have otherwise had.

6 But these two, Danny DeCarlo, Bill Vance, the two
7 loners, consider this when we get into the Shea Count. And
8 consider, if you will, who the chief witnesses are for the
9 prosecution in the Hinman and the Shea Counts, two females,
10 Ella Jo Bailey, the admitted girlfriend of Bill Vance, the
11 gal who literally shacked up in this little shack, six-by-
12 eight or eight-by-ten, just big enough for a bed and a mattress
13 with Bill Vance, and then left and then headed back East with
14 him. Ella Bailey and Bill Vance and Barbara Hoyt and Danny
15 DeCarlo. Because as we'll give into it, when we talk about
16 Barbara Hoyt, when she finally left the Barker and Meyers
17 Ranch, walked this 26 miles or whatever it was and came down
18 to the city with Sherry Cooper, where did she go and with whom
19 did she stay? Danny DeCarlo. What a foursome that is. What
20 a neat little bridge group they'd make. Bill Vance, Danny
21 DeCarlo, Barbara Hoyt and Ella Jo Bailey. Think about it as
22 we get into the Shea case.

23 Well, there's more here. I just note that I had
24 something about the conversation with Sergeant Whiteley on
25 September 23, 1970. We never have found out about that. But,
26 then, interestingly, on Tuesday, January 18, the prosecution
27 took Ella Bailey back on redirect examination. Actually, it
28 was re-redirect examination, because they'd had her on redirect

1 examination on the Monday before. And the prosecution was
2 hurting. The prosecution was hurting bad because you jurors
3 had been shown by the cross examination from Paul Whiteley's
4 notes that Ella Bailey's testimony now and those notes were
5 wholly, totally and completely inconsistent. So the
6 prosecution had to do something. They had to try to rehabilitate
7 her.

8 And you can see the course of what happened, be-
9 cause then an attempt to get your jurors confused, and this is
10 confusion, and this is obfuscation. That's supposed to be the
11 trademark of defense attorneys. But that is what occurred.

12 Now, you remember that before the Grand Jury of
13 the County of Los Angeles, on September 13, she had testified
14 that there were two conversations. One, the Devil's Canyon
15 campground; and one, at the dump area on Spahn Ranch. And
16 those were the only two conversations in which Gary Hinman was
17 mentioned.

18 In this case she testified all the way up to this
19 point, all the way up to here, that there were two conversa-
20 tions.

21 But now the water's become muddied.

22 Starting at Page 3716.

23 "Q Now, after the first conversation at the
24 campsite in Devil's Canyon, earlier that week, did
25 the Family continue to remain at Devil's Canyon for
26 a few days thereafter, before they returned to
27 Spahn Ranch?

28 "A Yes.

13b fol

13b-1

1 "Q During those few days, while the Family
2 was at Devil's Canyon and before the Family returned
3 to Spahn Ranch, were there any further conversations
4 at which you were present about bringing money to the
5 Family?

6 "A Yes.

7 "Q Now, in those conversations, was anything
8 said -- said about how the money would be brought to
9 the Family, if these people refused to come to the
10 Family?"

11 There is an objection and a new question.

12 "Q Did Mr. Manson, Charles Manson, say
13 anything about these people that had been mentioned
14 during the prior conversation about which you've
15 already testified?"

16 Well, there is an answer and it is stricken.

17 New question by Mr. Manzella.

18 "Q Now, during these latter conversations in
19 Devil's Canyon, before the Family returned to Spahn
20 Ranch, was there any specific reference to what would
21 be done to Gary Hinman if he refused to return -- or,
22 strike that.

23 "-- if he refused to come with the Family
24 and bring his money with the Family?

25 "A No."

26 Going over to page 3718.

27 All right.

28 "Q Miss Bailey, in these conversations

13b-2

1 "during the following days while the Family was
2 still at Devil's Canyon, but before they returned
3 to Spahn Ranch, did Charles Manson speak to the
4 members of the Family at the campsite?

5 "A Yes.

6 "Q And do you recall whether this was on
7 one occasion or more than one occasion? Was it on
8 several occasions, after that first conversation
9 about which you've already testified?

10 "A Yes. There were a lot of conversations
11 in Devil's Canyon.

12 "Q Now, do you recall the people who were
13 present at these later conversations?

14 "A No. It would vary at different times
15 of the day.

16 "Q All right. Were there any conversations
17 in the evening? That is, at about the same time
18 that you had had that conversation -- had that first
19 conversation?

20 "A I really don't recall.

21 "Q Was there any conversation with substan-
22 tially the same people -- that is, the same people
23 that were present at the first conversation -- were
24 present at a later conversation? In other words,
25 when the -- when almost the whole Family was present
26 at a conversation?

27 "A No, not that I recall."

28 All right, then, we go over, after some colloquy

1 by the Court to redirect examination.

2 "Q Miss Bailey, I just have about five
3 questions, five more questions to ask you.

4 "During your examination by Mr. Denny he
5 read a portion of your testimony before the Grand Jury.
6 And I wanted to read that to you now and direct your
7 attention to it and ask you some questions about it.

8 "I'm quoting from your testimony as it
9 was read to you by Mr. Denny."

10 And he starts quoting from the Grand Jury.

11 "Q Was there any discussion of the
12 manner of obtaining money from Gary Hinman?
13 Was that discussed in these two conversations
14 that you mentioned?

15 "A Yes. First of all, it was
16 suggested that perhaps he just be approached
17 and he might willingly give his money to the
18 Family and perhaps come with it.'

19 "MR. DENNY: 'With us.'

20 "MR. MANZELLA: I'm reading it as Mr. Denny
21 read it to you, and it says 'perhaps come with it.'

22 "Q" -- then he's continuing to quote
23 from the Grand Jury transcript.

24 -- "Who was it, if you know, who
25 made that particular suggestion?

26 "A Well, I know Charles Manson
27 mentioned it.

28 "Q Was that at the first conversation?

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"The first conversation?

"A Yes.

"Q Was that after his name had been first brought up as a person who had money?

"A Yes.

"Q Was there some subsequent conversation about getting money from him in some other way?

"A Yes.

"Q Was that conversation strictly about Mr. Hinman or were there other names mentioned?

"A There were other names mentioned.

13c fls.

13c-1

1 "Q You told us about a continuation of
2 some other conversation?

3 "A Yes.

4 "Q Was this still in Devil's Canyon?

5 "A Yes.'

6 "That's the end of the portion that I am
7 quoting." Says Mr. Manzella.

8 And then, he continues.

9 "Now, I want to ask you, what did you mean
10 by 'subsequent conversation'?

11 "A That after that first night, I
12 mentioned Gary Hinman's name, there were a few
13 days before we went back to the ranch, and there
14 was further discussion on those following days as
15 to how, uh -- how it would be handled if he didn't
16 willingly come with the Family. How anyone, with
17 no specific name mentioned.

18 "Q And were these statements made by
19 Mr. Manson?

20 "A Yes.

21 "Q During the subsequent conversations?

22 "A Yes.

23 "Q Was it during the subsequent conversa-
24 tions that killing and kidnaping was mentioned by
25 Mr. Manson?

26 "A Yes.

27 "Q Was any specific -- strike that.

28 "Did Mr. Manson say that any specific

13c-2

1 "person would be killed or kidnaped at the subsequent
2 conversations?

3 "A No.

4 "Q Now, when did you first become aware in
5 your own mind that Mr. Hinman was the person that
6 Mr. Manson wanted to get money from?

7 "A Not until Friday the 25th of July.

8 "Q Was that at a conversation that you
9 have already told us about?

10 "A Yes, when Charles Manson came down,
11 when I was with Bill Vance at the dump area."

12 Now, I might point out to you that the area where
13 I stopped, when I started reading this from Page 3716, and then
14 I said there's some colloquy with the Court, you see before the
15 colloquy before the Court she wasn't giving the right answers.
16 Before the colloquy with the Court, she kept saying:

17 "Now, during these later conversations in Devil's
18 Canyon before the Family returned to Spahn Ranch, was there any
19 specific reference what would be done to Gary Hinman if he
20 refused to return -- or strike that.

21 " -- if he refused to come with the Family and
22 bring his money with the Family?

23 "A No.

24 "Do you recall whether there were several conversa-
25 tions other than the first conversation?"

26 She says, "Yes, there were lots of conversations."
27 But she doesn't get into the conversations. And then, there's
28 colloquy with the Court. And then, there's a recess.

13c-3

1 "THE COURT: We're in recess until 2:00 o'clock.

2 "(Whereupon, at 12:07 P. M. an adjournment was
3 taken.)"

4 And then, strangely enough, after the lunch hour
5 we come up with this story that there were other conversations,
6 other conversations. Not just two conversations. Two
7 conversations that she had testified to before the Grand Jury,
8 on two conversations that the notes of Paul Whiteley referred
9 to.

10 And then, on the final day, Tuesday, January 18,
11 1972, after she had been subjected to, I hopefully admit,
12 rather rigorous cross examination, for the first time you get
13 this cock-and-bull story coming out on re-redirect after the
14 lunch break, "Oh, no, there were more than those two conversa-
15 tions." Think about it.

16 At this point I think it is pertinent to bring
17 up an instruction that you are going to get as follows:

18 "If you should find that evidence was willfully
19 suppressed in order to prevent its being presented in this
20 trial, you may consider such suppression in determining what
21 inferences to draw from the evidence or facts in the case. And
22 where weaker and weaker evidence is offered, when it appears
23 that stronger and more satisfactory was within the power of the
24 witness, the evidence produced should be viewed with distrust."

25 Now, you're not going to get a specific instruction
26 on this, but it is nevertheless proper for me to argue it to
27 you and I do hearby argue it to you, because I've said as much
28 in other parts of my argument, and I've said as much that we

1 would show in our opening statement, "Perjured testimony,
2 testimony fabricated by the witnesses to fit the needs of the
3 prosecution."

13d fol
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13d-1

1 And if you find that, and if you find that that
2 has happened in this case, and if you find that this witness,
3 Ella Jo Bailey did exactly that, not in this one instance,
4 but time and time again, and I submit you should do what
5 any, conscientious juror would do, and say I will be no part,
6 no part of the use of that testimony. I will not lend
7 myself to that type of prosecution. I will not besmirch
8 my hands with that rank, odorous, stenching type of
9 testimony. And I don't think any of you will.

10 Now, I did make a list of defense witnesses,
11 so I had to show you the list that I made. But we've gone
12 over just about all their testimony here. We don't need
13 to review that of Dr. Brill.

14 Deputy Gleason, we don't need to review.

15 Harry Johnson, the People initially called.
16 They took him on direct examination. But as indicated to
17 you, he was neither a People's witness nor a defense
18 witness.

19 So I included him in our list.

20 Deputy District Attorney Burton Katz, who we
21 called for several pieces of information, but in this
22 particular case simply for that portion of the testimony
23 of Ella Bailey in which he had been present on February 18
24 and taken the statements from her that she did not see Bruce
25 Davis with any gun.

26 Lloyd Matlovsky we've talked about.

27 And Sergeant Paul Whiteley we've talked about
28 and talked about and talked about. And if I seem to be a

13d-2

1 fan of Paul Whiteley, I am not currying favor with Paul
2 Whiteley or the Sheriff's Department or anyone else. I am
3 simply attempting to present to you what I think is a view
4 of the evidence and a view of the witnesses.

5 All right.

6 Now, ladies and gentlemen, let's get to the
7 Hinman case -- I mean, to the Shea case.

8 Again, the prosecution witnesses here, essentially
9 disinterested civilian witnesses.

10 Delma Baker, the gun shop owner who bought the
11 guns, Shorty's guns.

12 From whom? From Richard Alan Smith.

13 Who?

14 Danny DeCarlo.

15 Who?

16 Friend of Barbara Hoyt.

17 Who?

18 Compatriot of Bill Vance and Ella Jo Bailey.

19 Who? The one who redeemed Shorty's guns on
20 September 2nd and 3rd of 1969, Tuesday and Wednesday.

21 We'll talk about that a little bit later.

22 Richard Barber, the young man who recovered the
23 suitcase.

24 Now, let's talk about that suitcase just a minute,
25 and let me get it, if I may.

26 (Whereupon, Mr. Denny left the courtroom,
27 returning shortly, and the following proceedings
28 were had:)

1 THE COURT: Mr. Denny, in about ten minutes we'll close
2 for the day.

3 MR. DENNY: Yes, your Honor.

4 I open this poor, battered valise, only to show
5 you the contents as they appear now with these shirts quite
6 prominent on top.

7 And how many shirts do we have: One, two, three,
8 four, five, six, seven. Remove them and you see ledgers,
9 checks, a bit for a brace and bit, an electric cord.

10 I'll pick those up in a minute.

11 Strange, very strange.

12 What was the testimony of Paul Whiteley?

13 What was the testimony of Officer Kamidoi?

14 Officer Kamidoi -- who called him? Not the
15 prosecution, the defense. And why? Because Officer Kamidoi
16 and his partner, Officer Brown, had gotten that suitcase up
17 in Inyo County, had transported it down and had made an
18 inventory. And you will see the inventory, because it is
19 in evidence. And if ever there was a complete, full,
20 particular inventory of every miniscule saying in a couple of
21 containers, this is it.

22 It contains, among other things, references to
23 "Item 24, envelope, white, containing Blue Chip Stamps and
24 cash register tapes. Tapes dated October 3 with the name
25 'Dale's', amount \$21.32. Another from Continental Markets,
26 receipt dated October 3, 1969."

14 fls.

1214-1

1 October 3rd. Did you hear Mr. Manzella argue to
2 you that Bill Vance and Danny DeCarlo went up to the Barker-
3 Meyers Ranch area after Danny Decarlo had come down and redeemed
4 the guns? And that the suitcases were found there on the road
5 between Ballarat and Goler Wash?

6 And that therefore, it's to be presumed that they
7 stashed or threw those items, the trunk -- or, that is, the
8 suitcase and the attache case -- away at that time?

9 That might fit in neatly with the People's theory,
10 if that were the whole truth. And if the evidence hadn't been
11 tampered with, when it was in the hands of the prosecutor --
12 and I'm not talking about these two gentlemen, either.

13 But if there are tapes dated October 3rd, 1969,
14 that gives the lie to that theory -- if there are tapes.

15 But there are no longer tapes. They're gone.
16 Thank God for L.A.P.D. record keeping, where there is an
17 official record of the inventory, made out by a competent
18 officer who, though it may not have been his job to go up and
19 get this, who, though he may have gotten it as an adjunct
20 to another function that he had at that time, nevertheless did
21 the job of a good officer and did what any good officer would
22 do; and that is: Make out the report and make it out
23 properly.

24 Now, you have in evidence -- and again, amazing,
25 when you go over the evidence, when you go over the transcripts,
26 when you go over the physical evidence -- pictures, five
27 photographs, in People's 65.

28 Now, I don't know why they put those into evidence,

1 when they had the evidence here, but I sure am glad they did.
2 Because if you look at 65-B and 65-C, you see the contents of
3 the suitcase as it -- as I submit was the condition at about
4 the time that Officer Kamidoi made his inventory, looking like
5 this (indicating) as I open it. No shirts. No shirts.

6 There's the bit, there's the books and ledgers that
7 appear on People's 65-B and C. But no shirts.

8 Now, did they simply take those shirts away, so you
9 could better see the contents of the ledgers and all? Well,
10 then, look at 65-D and 65-E, the contents of the trunks.
11 The contents of the trunks are strewn all over, numbered,
12 itemized.

13 And you may be sure, ladies and gentlemen, if the
14 shirts had been in that blue-gray suitcase, that they would
15 have been draped over the top and the sides, just as the
16 clothing is in these two pictures.

17 Now, again, the testimony of Sergeant Whiteley,
18 he took the trunks, and he took the suitcase, and he took them
19 to Burt Katz's office, and they were there all together for
20 a period of a couple of weeks.

21 Now, ladies and gentlemen, I'm going to ask you to
22 rely on a little circumstantial evidence on behalf of the
23 defense here. The prosecution has relied on it and wants you
24 to convict a man, find him guilty of murder, on circumstantial
25 evidence.

26 I want you to look at these pictures carefully,
27 look at the floor, and look at the ceiling -- not the ceiling,
28 but the wall -- and see the kind of material on the floor and

1 the wall. A marble floor, terrazzo -- I'm sorry. A marble
2 wall and terrazzo-type floor.

3 And as you walk out of the door of the court today,
4 just probably about fifteen seconds from now, look at the
5 marble walls and the terrazzo floors.

6 Those pictures were taken in this building, I
7 submit -- although there's no evidence to that effect -- and I
8 submit that they were taken outside Burt Katz's office.

9 And I submit that sometime between the time that
10 Officer Kamidoi made his inventory and the time that these
11 containers, the footlockers and the suitcase, got into evidence,
12 the prosecution in whose possession those items were did a
13 little shifting about, so that some tapes from Dale's Market and
14 the other market mentioned disappeared; and some shirts that
15 were never in this suitcase -- with the laundry tag "DeCarlo" --
16 were found in this suitcase.

17 THE COURT: All right. We will recess --

18 MR. DENNY: Think about it.

19 THE COURT: -- until tomorrow morning at 9:15. 9:15, if
20 you would. And perhaps we can get an early start.

21 We'll give it a real good try again tomorrow.

22 The calendar doesn't look too bad. So, with a little luck,
23 we'll start rather early, then.

24 Remember the admonition I must give you, and that is
25 to the effect that you are not to converse amongst yourselves
26 nor with anyone else, nor permit anyone to converse with you
27 on any subject connected with the matter, nor to form nor
28 express any opinion on it until it is finally submitted to you.

1 Good night. And see you at 9:15 tomorrow morning.

2 And incidentally, ladies and gentlemen, the time
3 table is about the same. We expect to conclude argument on
4 Monday. The Court will instruct you on Monday. And I anticipate
5 that I'll release you to go home on Monday.

6 You'll come back on Tuesday and begin your
7 deliberations. I'll talk to you about that tomorrow.

8 (Whereupon, at 4:17 P. M., an adjournment was
9 taken in this matter until 9:15 A. M. of the following
10 morning, Friday, February 25, 1972.)
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