

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

DEPARTMENT NO. 106

HON. RAYMOND CHOATE, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

-vs-

BRUCE MCGREGOR DAVIS,
Defendant.

252

NO. A-267861

REPORTERS' DAILY TRANSCRIPT

Monday, February 28, 1972

VOLUME 52APPEARANCES:

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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I N D E X

	<u>PAGE</u>
PEOPLE'S CLOSING ARGUMENT (Continued)	8155
DEFENDANT'S RE-OPENING ARGUMENT	8271
PEOPLE'S RE-OPENING OF CLOSING ARGUMENT	8273

E X H I B I T SCOURT'S SPECIAL EXHIBITS:FOR IDENTIFICATION

5 - teletypes and other documents

8154

1-1

LOS ANGELES, CALIFORNIA, MONDAY, FEBRUARY 28, 1972 8:50 AM

- - -

(Whereupon the following proceedings were
had in the chambers of the court out of the hearing
of the jury:)

THE COURT: Well, the record will show that we're in
chambers and Mr. Manzella and Mr. Denny are here. And the
Court had agreed to permit the People to present further
evidence on its motion to reopen the presentation of evidence,
and the Court has been discussing with both counsel here
what has occurred since the declaring of a recess on Friday
afternoon. And the Court has learned that Mr. Bill Vance is
not yet in custody, apparently, and that Mr. Denny has gone
back to wherever the place was --

MR. DENNY: McFall.

THE COURT: Want to tell the Court just what you did
back there?

MR. DENNY: Yes. I took the 1:00 o'clock TWA flight
back to Kansas City. Got there about 6:00 o'clock in the
morning. Got a rental car.

THE COURT: You left at 1:00 o'clock on Saturday
morning?

MR. DENNY: 1:00 o'clock Saturday morning. Got back
to Kansas at 6:00 their time. Got a rental car. Drove up
to McFall. Got there about 8:00 o'clock in the morning.
Went to the Phillips 66 Station and talked to Betty -- I
think it is Popomell, Poponell -- P-o-p-a-w-e-l-l, I think,

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1 to try to locate Mr. Vance. And she indicated where his
2 home was, right down a dirt road, as most of them are in
3 the town.

4 I went there. Was greeted by about three dogs
5 and nipped on the heel by one.

6 THE COURT: Dogs are generally a pretty reliable judge
7 of character.

8 Go ahead.

9 MR. DENNY: Warmly greeted and licked on the face by
10 the two others.

11 THE COURT: That's a majority.

12 MR. DENNY: Two out of three ain't bad.

13 And entered the house, which was about a three-
14 room shack. Noticed a bunch of equipment in the main room,
15 crib and a double bed and a pot-bellied stove.

16 THE COURT: This is the place where he's supposed to
17 live, is that right?

18 MR. DENNY: Yes.

19 THE COURT: What is it, a private home, a family
20 boarding house, --

21 MR. DENNY: No, a single-family residence. A shack
22 on --

23 THE COURT: Somebody let you in?

24 MR. DENNY: No, no. The door was open. A screen door
25 and another door. I knocked, called in and just pushed the
26 door on open, looking around for someone, thinking maybe
27 somebody might be hiding in there. No one was. The place
28 was deserted. And I noticed about, found nobody home,

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1 left the note on the pot-bellied stove and left another note
2 in the refrigerator in case somehow that note got torn off
3 or misplaced or something, indicating that it was urgent --
4 both notes said essentially the same thing, "Urgent I speak
5 to you concerning Bruce Davis. Please call collect at the
6 following two phone numbers." Gave them my home phone and
7 my office phone. And I think in each case I think I said,
8 "Want to speak to you before Whiteley and Gleason arrive on
9 Sunday." And signed my name to it. And then, I went back
10 to the Phillips 66 place and again spoke with Mrs. Popawell
11 and others who were there trying to determine where Bill
12 Vance -- or as they call him there -- Bill Cole might be.

13 THE COURT: You never did find him, never saw him?

14 MR. DENNY: No. I searched a number of places where
15 they indicated he might be and stayed as late as I could,
16 until about --

17 THE COURT: Which was --

18 MR. DENNY: -- about 12:00 o'clock, and then had to
19 drive back at high speed to Kansas City to catch the 2:00
20 o'clock plane back so I could be here by 6:00.

21 THE COURT: What have you learned, Mr. Manzella?

22 MR. MANZELLA: Sergeant Whiteley arrived there on
23 Sunday morning and he found a note or two notes at the house
24 and a note at the gas station, which is the only gas station
25 in town.

26 MR. DENNY: That was my note also.

27 MR. MANZELLA: In at least one of the notes, said
28 "I must talk to you before Whiteley and Gleason do." That's

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1 in sum and substance -- "I must talk to you before Whiteley
2 and Gleason" or "Whiteley and Guenther," I don't remember
3 which.

4 MR. DENNY: Gleason.

5 MR. MANZELLA: Sergeant Whiteley said that the house --
6 that there were clothes there, and, you know, other pieces --
7 other things there. There was a tape recorder there and a
8 few other things there. And it seemed to him at that time
9 when he talked to me on Sunday that Vance had -- hadn't left.
10 In other words, it appeared to him that Vance hadn't left
11 yet, hadn't gone permanently.

12 THE COURT: Just left the house temporarily?

13 MR. MANZELLA: He checked around. The Sheriff had
14 been driving him around. The Sheriff for the County has
15 been driving Whiteley and Gleason around. And he talked
16 to the Sheriff and the townspeople, who have been very
17 cooperative, and they had information that he was -- that
18 he had gone on a short trip away from the town to deliver some
19 wood or take a -- drive to Kansas City, something like that.
20 And then, Whiteley called me this morning and told me that
21 the landlord had received a note from Vance saying, "Sell
22 all my stuff in payment on the rent, I'm not coming back."
23 And that's all. That's about all the information I have.

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1 THE COURT: You do have some information as to where he
2 can be found? Do you think there is a possibility that he
3 might be found this afternoon or this morning?

4 MR. MANZELLA: Right, I think so. Sergeant Whiteley
5 is flying back this afternoon. In other words, he'll be --

6 THE COURT: Flying back from there?

7 MR. MANZELLA: From there. He'll be leaving there,
8 which would be our time 3:00 o'clock this afternoon, he'll
9 be leaving. He's going to call me from the airport.

10 In other words, he's going to spend today trying
11 to follow up the leads he has on Vance's location.

12 THE COURT: He'll be calling you between 2:00 and 3:00,
13 then?

14 MR. MANZELLA: Right. And he's going to call me. And
15 he's going to spend today following up those leads, but he's
16 leaving on that plane. If he doesn't find him by this after-
17 noon, that will be it. He will just fly back in.

18 MR. DENNY: Two things I would like to add.

19 One, the information I was finally left with,
20 after I had gone to all the various places where he was
21 supposed to be carrying corn or cutting wood, everybody
22 figured -- since someone had seen him driving east the night
23 of Friday, just this past Friday, that he'd probably be
24 going with his wife -- they don't call her his wife -- Linda,
25 down to Kansas City.

26 The second thing is, although it has not been in
27 the record, we have been discussing it previously, and Mr.
28 Manzella seems to feel that he may have taken off because of

1 some warning that I had given by virtue of the notes.

2 One, it appears from the notes still being there
3 that he never even did return.

4 Two, from the letter that he sent to the landlord,
5 and the landlord's name is Hahn, H-a-h-n, or H-a-n-n, I
6 think -- apparently left -- if such a note were mailed. He
7 left before I ever got there, since the note would have had
8 to have been mailed sometime Saturday. And I didn't see
9 him all Saturday. And I called yesterday, Sunday, which would
10 have been about 1:00 o'clock their time back there and talked
11 with this Betty Popawell and she had not seen him yet.

12 THE COURT: At the gas station you mean?

13 MR. DENNY: Yes.

14 And, thirdly, I don't think that the People can
15 really object too strenuously to my having gone back and
16 attempting to see him and complain because of anything I did
17 he may have taken off when they have had the information
18 since at least Friday, and from what I understand from Mr.
19 Gleason, before that, Wednesday or Thursday, through Sheriff
20 Rainey back there in Gentry County as to the identity of
21 Bill Cole. All they had to do was arrest him and take him
22 into custody.

23 THE COURT: It seems to me with a warrant outstanding
24 that should have been the course.

25 MR. MANZELLA: The reason the warrant wasn't served
26 was because they had to identify Cole as Bill Vance subject
27 to the warrant. And at that time --

28 THE COURT: On Friday afternoon we knew --

1 MR. MANZELLA: No, it wasn't until Friday afternoon --

2 THE COURT: That's what I meant.

3 MR. MANZELLA: -- that Sheriff Rainey of Gentry County
4 had the description, the full physical description of Vance,
5 including tattoos and unusual markings, and went out there
6 and talked to Vance and confirmed the description.

7 (Whereupon, Mr. Kay entered chambers.)

8 MR. KAY: Good morning, Judge.

9 MR. DENNY: They certainly could have arrested him at
10 that time.

11 THE COURT: It seems to me -- I thought that perhaps
12 after hearing this on Friday, that Sheriff Rainey had given
13 Sergeant Whiteley sufficient identification that led
14 Sergeant Whiteley to believe that this was Bill Vance --
15 that the next step would be an arrest of Bill Vance.

16 MR. DENNY: I should --

17 MR. MANZELLA: Well, at that point we didn't have --
18 Sheriff Rainey wasn't sure that it was Bill Vance. In other
19 words, he still hadn't received the information with regard
20 to the physical description, the tattoos and the markings.
21 And it wasn't until Friday that he talked to Vance. And --

22 MR. DENNY: Well, at that time he should have arrested
23 him. He had the full information and he made a phone call
24 back to Bill Gleason confirming that it was Bill Vance, that
25 the physical descriptions checked out.

26 MR. MANZELLA: I don't think that is the important
27 thing.
28

1 MR. DENNY: I certainly do.

2 THE COURT: As a part of diligence, I think as a part
3 of the show of diligence, and it is important to the Court
4 in determining whether or not the defense was at fault in
5 causing Vance to run, as he is apparently doing now.

6 MR. DENNY: It would seem to me, if in fact as indicated
7 here, the Sheriff went out and talked to him Friday in order
8 to get that description, that Bill Vance may well have
9 figured Friday, "Something's off with the Sheriff coming
10 up here," and that's what caused him to run.

11 MR. MANZELLA: No, that's not true. Sheriff Rainey --
12 he is the Sheriff and the only Sheriff in the County, and
13 he knows everybody, including Vance. And it is not unusual
14 for him to talk to Vance. It is not that -- everybody knows
15 the Sheriff in the community. And it is not unusual for the
16 Sheriff, you know, to go by there.

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1 MR. DENNY: Tony, you say that's not so, but you don't
2 know.

3 MR. MANZELLA: The Sheriff has talked to him a number of
4 times.

5 THE COURT: Well, we don't know what was said. Of course,
6 if the Sheriff began to inquire about tattoos and markings --

7 MR. MANZELLA: No, the Sheriff didn't indicate -- the
8 Sheriff said he went about -- he talked to Vance the way he usu-
9 ally does when he goes through the community. You know, he
10 didn't indicate that there was an investigation and that people
11 were coming out to talk to him or anything like that.

12 THE COURT: He certainly would be foolish if he did,

13 MR. MANZELLA: In other words, he didn't do anything other
14 than what he normally does when he goes through that community
15 and stops and talks to people.

16 MR. DENNY: Well, Vance got wind of it apparently some-
17 how.

18 MR. KAY: Somehow.

19 THE COURT: And it certainly would tip him off that he
20 could expect two callers from California and he might very well
21 suspect who they are --

22 MR. MANZELLA: Well, he knows who Whiteley and Gleason
23 are. They've both talked to him --

24 THE COURT: -- from Mr. Denny's note.

25 MR. MANZELLA: -- back two years ago.

26 THE COURT: But if he left beforehand, it was certainly
27 not Mr. Denny's fault.

28 However, I will, in view of what you have told me,

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1 and in view of your request, which I don't think you put on the
2 record. You want to leave this motion open until you've had
3 contact with Sergeant Whiteley who was supposed to call you
4 between 2:00 and 3:00 o'clock?

5 MR. MANZELLA: Yes, your Honor.

6 THE COURT: And I will allow you to leave it open. And
7 you may submit anything you may have now on further diligence,
8 anything further to show diligence.

9 MR. MANZELLA: Right.

10 THE COURT: The Court realizes from the many references
11 to Bill Vance that he could be important to either the defense
12 or to the People.

13 MR. MANZELLA: That's right.

14 THE COURT: And I think in fairness to both sides,
15 probably we should find out what could be expected, if we have
16 any leads at 3:00 o'clock. We'll just leave that -- the
17 question open.

18 Any objection?

19 MR. DENNY: No, your Honor, no objection.

20 MR. MANZELLA: Your Honor, other than filing these
21 papers, then, we won't argue anything until we hear from
22 Sergeant Whiteley.

23 THE COURT: Yes, sir, I would prefer that you do it that
24 way.

25 MR. MANZELLA: All right.

26 THE COURT: I had planned, as I may have told you, to
27 leave tomorrow morning. If I do permit the re-opening, I'll
28 simply continue the matter for a week's time --

1b-3

1 MR. MANZELLA: All right.

2 THE COURT: -- to allow the People to bring Vance out
3 here, if he will waive extradition.

4 If he does not, well, then, it would be my
5 intention, a week hence, to instruct them, instruct the jury
6 and send them out with the case.

7 MR. DENNY: Your Honor, I would assume that we'd instruct
8 them today.

9 THE COURT: Could do that.

10 MR. DENNY: If there's no word on Vance.

11 THE COURT: Oh, if there's no word on Vance, we'll
12 instruct them today and send them out for deliberation. I'll
13 be gone for a week, but Judge Dell or Keene could be called in
14 to supervise any reading back or to take the verdict.

15 MR. MANZELLA: Your Honor, if we don't --

16 THE COURT: In respect to reading back -- off the record.

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

18 THE COURT: On the record.

19 MR. MANZELLA: Joyce tells me the teletypes and other
20 documents I submitted Friday was People's Special Exhibit 4.

21 THE CLERK: Court's Special Exhibit 4.

22 MR. MANZELLA: Court's Special Exhibit 4. And I've got
23 about fifteen teletypes, documents, requests for information
24 which were referred to by Deputy Gleason in his testimony on
25 Friday, including his notes of some of the contacts that he
26 talked about on Friday.

27 Can they be marked Court's Special Exhibit 4 with
28 the other exhibit?

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1 THE COURT: Yes, they may be so marked.

2 MR. DENNY: Can they be marked Special Exhibit 5 to keep
3 them separate, these from the other ones?

4 THE COURT: Any objection?

5 MR. MANZELLA: No objection.

6 THE COURT: So ordered, then. Change it from 4 to 5,
7 instead of 4.

8 Did you hear the plan of operations? I don't know
9 whether you came in when we were talking or not, and that is to
10 allow it to go ahead, just as if the motion had not been made,
11 and then at 2:00 or 3:00 o'clock, by that time, Tony could know
12 from Whiteley what the situation is.

13 MR. KAY: Okay.

14 THE COURT: Whether or not the People are going to persist
15 in the motion.

16 MR. KAY: I'm ready to go ahead.

17 THE COURT: All right, I'll be another ten minutes, I
18 suppose, on that calendar.

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

21 THE COURT: All right, case of People versus Davis. Let's
22 get the jury in and begin.

23 All right, the record will show that Mr. Davis is
24 present with Mr. Denny. Mr. Kay and Mr. Manzella for the People,

25 Good morning, ladies and gentlemen.

26 (Whereupon, there were murmurs of "Good morning,
27 your Honor," heard throughout the jury.)

28 You may proceed, Mr. Kay.

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1 MR. KAY: Hope you all had a nice weekend. I was hoping
2 to finish about 3:00 o'clock this afternoon, but we got an
3 hour's late start this morning. So I might go a little later.
4 I hate to argue to you late in the afternoon. I know even
5 though it is now Monday instead of Friday afternoon, it is
6 probably hard for you to pay close attention in the afternoon.

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1 Well, now, when we left off Friday night, we were
2 talking about how Shorty Shea met his death.

3 Well, what happened to Shorty?

4 Charles Manson and Bruce Davis told everyone of
5 us in this courtroom what happened to Shorty Shea on that
6 fateful night in August, 1969.

7 This is Barbara Hoyt's testimony of the conversa-
8 tion she overheard at the Meyers Ranch dinner in the first --
9 the end of the first week in September of 1969. This is Manson
10 talking. Manson, "We told Shorty that we wanted to show him
11 something and we took him for a ride in a dune buggy.

12 "And then, he said, they took him for a ride,
13 they hit him in the head with a pipe, I think he said.
14 I think he said lead, but I'm not sure if he said lead.

15 "And then, they started stabbing him, and
16 stabbing him and stabbing him, and then he said
17 he was real hard to kill until they brought him to
18 now."

19 And remember, Barbara at least tried to tell you
20 what bringing someone to now means in the Family. Basically,
21 by her testimony, it means that the person has no other
22 thoughts in his head except kind of a present reality. He
23 just realizes and only realizes what's happening right at
24 the particular moment. Okay.

25 "Shorty said, after they started stabbing him,
26 Charlie said Shorty asked, 'Why, Charlie, why?' And
27 Charlie said, 'Why? This is why, and I stabbed him
28 again.' And Charlie said, 'Yeah, when we brought him

1c-2

1 "to now, Clem cut his head off.' Bruce said,

2 'That was far out.'

3 Well, Bruce also said to Alan Springer in
4 November of 1969, that not only was Shorty's head cut off,
5 but his arms and his legs. His head, his arms and his
6 legs. And that he was buried somewhere on the ranch.
7 Unfortunately, Mr. Davis, in his confession to Al Springer,
8 didn't say which ranch. He just said "buried at the ranch."
9 And, of course, we know there are many ranches involved here
10 with the Manson Family.

11 Ladies and gentlemen, it is unbelievable the
12 savagery, the viciousness that was exhibited by certain
13 members of the Manson Family in July and August of 1969.

14 "Clem cut his head off, and his arms and his
15 legs were cut off."

16 It is unbelievable, except you know that it
17 happened. You know who we're dealing with.

18 (Whereupon, Mr. Kay made a pointing motion
19 towards the defendant.)

20 Now, in this trial, Mr. Denny was so concerned
21 about his inability to do anything to Barbara Hoyt on cross-
22 examination that he resorted to calling her names during
23 his argument. Said she was a smark-aleck and that she
24 committed perjury with the concurrence of the prosecution.

25 Well, the problem is, -- Mr. Denny's problem is,
26 is that she was such an honest witness and she was so open
27 and forthright on both direct and cross-examination, and
28 she's never made an inconsistent statement about any of her

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1 testimony, never.

2 Well, the problem was, because she was so honest
3 and open, that Mr. Denny couldn't get around her testimony
4 other than calling her names during his argument.

5 Barbara Hoyt was not a smart-aleck. She was just
6 firm, and like Mel Walker, had the gumption not to put up with
7 Mr. Denny's threatening tactics on cross-examination. And she
8 certainly did not commit perjury in any way, shape or form.
9 Why in the world should she? If anyone had a reason not
10 even to testify, it would be Barbara Hoyt. After all, it is
11 in evidence that her life has been threatened and her family's
12 life has been threatened for testifying against the Family
13 and there has not been any showing in this case that she has
14 any axe to grind with Bruce Davis, none whatsoever. What
15 does she have against Bruce Davis?

16 There is just absolutely no evidence that she
17 committed perjury. And why isn't there any evidence, because
18 she didn't commit perjury.

19 As you have seen from Mr. Denny's argument, an
20 attorney can say just about anything he wants to in final
21 argument, no matter how fanciful and untrue it may be. Don't
22 you think if Barbara Hoyt was committing perjury about this
23 statement, she certainly could have done a better job than
24 what she said? She could have said, "Well, Bruce said that
25 he stabbed him and he cut his head off."

26 She didn't say that.

27 Why didn't she say that? Because Mr. Davis didn't
28 say that in that Meyers conversation, and Barbara Hoyt just

1 testified to what she remembered Bruce Davis saying in that
2 conversation.

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1 Now, Mr. Denny's final attempt to throw dirt on
2 Barbara Hoyt, which is a suggestion that he must have pulled
3 out of thin air, that Barbara Hoyt was trying to protect
4 Danny DeCarlo. What could be further from the truth. The
5 most damaging testimony given in the trial against Danny
6 was given by her when she related the discussion between
7 Manson and DeCarlo about the body -- obviously referring to
8 Shorty's body -- whether you use lye or lime, and that DeCarlo
9 said lime would preserve it and lye would get rid of it. And
10 Manson said, "Where could I get some lye?"

11 And Mr. Denny talks about the truth. For shame.

12 What about the fact that Shorty's body has never
13 been found? Well, Mr. Davis would like nothing better than
14 to walk out of this courtroom, escaping punishment for the
15 Shea murder because of the fact that he and other members
16 of the Family have been successful in hiding Shorty's body.

17 But you, ladies and gentlemen, and the law of the
18 State of California, stand in his way. The law, in all its
19 wisdom, envisioned the murderers who would be clever enough
20 to hide the remains of their victim in order to beat the rap.
21 To prevent these murderers from walking scot-free, the law
22 does not require that the prosecution produce the body.
23 We only have to show by circumstantial evidence that the
24 victim is dead, and that his death was caused by criminal
25 means. A legal burden which we have met in this case beyond
26 any reasonable doubt.

27 Now, if Shorty was murdered, you say, why haven't
28 we found the body? Well, I'm going to ask you for a moment to

1 think back to the Gary Hinman murder.

2 Now, the only way we could prove that Gary
3 Hinman's body was at 964 Old Topanga Canyon Road was through
4 circumstantial evidence. Gary Hinman's body was unrecognizable.
5 And, remember, his body was found only five days after he was
6 murdered in his own home.

7 Let's see what was testified to by certain
8 witnesses regarding the condition of Gary Hinman's body.

9 This is Mike Erwin. "It was really decomposed
10 and almost unidentifiable."

11 Remember, he said, "Halfway up the stairs he
12 heard very evident buzzing of flies and a very heavy stench."

13 Deputy Piet, in describing Gary Hinman's body,
14 said, "His head was half covered with a pillow; his face was
15 decomposed, black, and with maggots on and about the face."

16 And Sergeant Whiteley said, "The body was badly
17 decomposed. There was a great amount of flies and maggots
18 and beetles on the body."

19 Dr. Katsuyama said, "The body was in a relatively
20 advanced state of decomposition. It was bloated, distended
21 with gas, discolored. The breaks in the skin, where the skin
22 would be slipping off the remains, the main portion of the
23 body. The areas of discoloration ranged from red to a black.

24 "There were also signs of extensive marbling
25 and putrefaction and extensive infestation by
26 insect larva."

27 This, ladies and gentlemen, remember, is a
28 description of a body that was in a house for only five days.

1 Well, we know that Shorty's body was not left in
2 any house. We know it was rapidly disintegrated by the use
3 of lye. Probably after it was buried.

4 How do we know this? Volume 36, page 5517.

5 Now, I forgot to tell you on Friday, the reason
6 I give you the volume and page number sometimes, is because
7 when you are in the jury room, if there is any disagreement
8 as to what the testimony might be, you can always have the
9 testimony read back the way it appears in the transcript.

10 So, you know, maybe if there's a conflict between
11 two jurors, did that witness say that or this -- so that's
12 why I am giving you the volume and page number. If you want
13 something, you know, how to go generally directly to that.

14 Okay, this is Barbara Hoyt relating the conversa-
15 tion down by the creek the day after she heard the screams.

16 "Q Would you please relate to the ladies
17 and gentlemen of the jury the conversation that you
18 overheard in the creek area between Mr. Manson and
19 Mr. DeCarlo, on the day after you heard the screams?

20 "A Charlie Manson asked Danny DeCarlo if
21 lye or lime would get rid of the body, and Danny said
22 that lye would get rid of it, and lime would preserve
23 it.

24 "And then Charlie asked Danny where he
25 could get some lye."

26 Ladies and gentlemen, only God, Bruce Davis,
27 Charles Manson, Steve Grogan, and maybe some other members
28 of the Manson Family know where Shorty's body is. And I'm

1 sure that God is not at all happy by being included in that
2 group. I'm sure with lye poured on it, there is probably
3 next to nothing left of Shorty's body, even if these three
4 young people showed us where it was buried. I'm sure there
5 would be little, if anything left.

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1 Have we proven that Bruce Davis participated in the
2 vicious murder of Don Shea? The answer to that is yes, we have,
3 beyond any reasonable doubt.

4 Now, before you can consider admissions made by
5 Mr. Davis, the law requires that the People introduce some
6 evidence, however slight, to show that the crime has been
7 committed by someone.

8 In this case, I am sure we have established to
9 everyone's satisfaction that Don Shea was murdered. Once we
10 have established that, which is known as the body of the crime
11 or corpus delicti -- corpus delicti doesn't refer to the victim,
12 it refers to the elements of the crime, the body of the crime.
13 But once we have established that, you can consider admissions
14 made by a defendant to determine if he is connected to the crime.

15 An example of this is, say, that I was walking down
16 the street out in front of the Hall of Justice late at night and
17 somebody came up behind me and put their arm around me and put
18 a gun in my throat and said, "Hand me your wallet and don't
19 turn around. And don't look at me." Say the person disguised
20 his voice or something. And I reached around and pulled out my
21 wallet. And the person said, "Now, don't turn around." And,
22 you know, "Don't turn around for ten minutes," or something.
23 And the person left. So I would never see who the person was.
24 It was an armed robbery. They took my wallet and they pointed
25 a gun at my throat.

26 And then, say, maybe two weeks later, the person
27 that robbed me confessed.

28 Well, all we have to do is establish that there was

1 a crime committed before we can use the statements. Now, we
2 have established the crime by my testimony, there was a gun in
3 my throat and the person took my wallet by making me in fear.

4 And then, using the person's confession, you put
5 the two together, and you can find out who the person was that
6 robbed me.

7 So once we have proven that a crime has been
8 committed by anyone, just proving that the crime has been
9 committed, we can then use statements of the defendant in the
10 form of admissions and confessions to show that he was, in fact,
11 involved in the commission of the offense.

12 Let me read a couple of instructions.

13 "No person may be convicted of a criminal offense
14 unless there is some proof of each element of the crime in-
15 dependent of any confession or admission made by him outside
16 of this trial.

17 "The identity of the person who is alleged to have
18 committed a crime is not an element of the crime."

19 That's what I just got finished telling you in the
20 example. In other words, in that robbery example I gave you,
21 I didn't know who the identity of the person who did it was
22 until somebody confessed to it.

23 So, "The identity of the person who is alleged to
24 have committed a crime is not an element of the crime nor is the
25 degree of the crime. Such identity or degree of the crime may
26 be established by an admission or confession."

27 Now, once you are satisfied that there is some proof
28 as to the fact that Don Shea was murdered, and murdered by

1 criminal means, then, when you consider the confessions, there's
2 another instruction that applies.

3 "It says that, "If you are satisfied that there
4 exists some proof of each element of the crime, then, you may
5 consider any confession or admission to augment that proof."

6 In other words, you can use it to augment the
7 proof that there was a murder and so on, if in your judgment
8 it has that effect and you find such confession or admission to
9 be true.

10 Now, Mr. Denny asked, "How can we contend there was
11 a conspiracy to conceal Shorty's murder when it was blabbed to
12 everyone?"

13 Well, we've never contended there was a conspiracy
14 to keep Shorty's murder, the knowledge of Shorty's murder away
15 from the other members of the Manson Family or other people who
16 were certainly unfriendly to law enforcement, like I'm sure
17 they felt Al Springer was, being a member of the outlaw
18 motorcycle gang.

19 And again, I'd ask you to look -- we talked about
20 this briefly on Friday -- look at the comparison between the
21 type of things they told a non-Family member, a law-abiding
22 citizen. Like Manson's statement to John Swartz, trying to
23 tell him, "Well, gee, I gave Shorty a tip on a job in San
24 Francisco and I gave him some money and he went up to San
25 Francisco."

26 And then, Grogan's statement with Davis's assent
27 to Juan Flynn, "But if anyone asks you about Shorty, you tell
28 them that he went to San Francisco."

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So, certainly there was such a conspiracy to
hide Shorty's murder and to lead people to believe that he went
up to San Francisco so that they wouldn't be too suspicious.

1 All right, let's look at Bruce Davis's four state-
2 ments in this trial.

3 Okay, we have four different, independent
4 people relating statements by Bruce Davis, three of which
5 certainly have no motive to come into this courtroom and lie
6 about what Mr. Davis said. Barbara Hoyt, Juan Flynn and Paul
7 Watkins.

8 Mr. Springer, who is the only person that would have
9 a motive to lie, because his case has been dismissed, couldn't
10 possibly have made up such a story. It is too fantastic. And
11 besides that, it is corroborated by the other evidence in this
12 case, that we know. And we'll go into Mr. Springer's
13 statement in detail and show that.

14 Also, importantly, the four statements are all
15 consistent with each other.

16 Now, these statements are oral. In other words,
17 they weren't written down. But can't you just imagine Mr. Davis
18 making the statements if these people were sitting there with
19 a note pad and writing it down and say, "Now, Bruce, would you
20 like to sign your name to what you just said so we can give it
21 to the police?"

22 Now, three of these statements are short, so that
23 there would be no difficulty in remembering it by the people
24 that overheard it. And the only long statement, the one
25 that Springer got, he went to the police within a couple of
26 days after he got it, and Mr. Denny has submitted in his
27 argument that Mr. Springer has been completely consistent
28 with what he said Mr. Davis said since the beginning.

1 Now, these statements were all made under
2 circumstances which you would expect them to be made, when
3 Mr. Davis was among his own element.

4 Okay, the first statement was overheard by
5 Barbara Hoyt. Now, Barbara was seated -- if you remember that
6 Mr. Flynn drew two diagrams. The other one is a big one which
7 you can see in the jury room. And he showed where the people
8 were seated around the dinner table at Meyers Ranch. And
9 remember, he said he was seated over here (indicating) to the
10 left side. And he said that the girls were right in this
11 area here (indicating).

12 Now, you know -- and he drew that in on the
13 other diagram. You notice the girls being in that area there
14 (indicating), that Barbara Hoyt would have a direct line of
15 vision to Mr. Davis, who is the "B" right here (indicating).
16 And they were so close to the table that she just wouldn't
17 have any trouble making him out.

18 Of course, Barbara has no problem hearing at all.
19 So they were very close to the table and Barbara would have had
20 a direct line of vision to Mr. Davis there, where he was
21 sitting.

22 This is Exhibit 106-A, if you want to look at
23 that when you get back in the jury room.

24 We had an accident this morning and some water
25 was spilled and some of these exhibits that I am using are a
26 little hard from the water.

27 Now, you remember that Barbara related this -- the
28 statement, and then Mr. Denny brought up in his argument about

1 Juan Flynn.

2 Well, remember, I asked Mr. Flynn for the conversa-
3 tion and Mr. Denny objected, and I think that you ladies and
4 gentlemen know darn well that if there was any inconsistencies
5 between Mr. Flynn and Miss Hoyt --

6 MR. DENNY: Well, your Honor, I would object strenuously
7 to this type of argument.

8 THE COURT: Sustained.

9 MR. DENNY: I think Counsel should be admonished.

10 THE COURT: Sustained. The Court will strike Mr. Kay's
11 last remark.

12 MR. KAY: You know what Mr. Denny brought up in his
13 argument, and I think you can reason that out in the jury
14 room.

15 Now, in Barbara's statement, which I want to go
16 over again here, the fact that I wanted to read a portion of it
17 again.

18 "We told --" this is Manson talking.

19 "We told Shorty that we wanted to show him some-
20 thing and we took him for a ride in a dune buggy."

21 Notice he uses "we," not "I," Charlie Manson.

22 And then, he said, "They took him for a ride."

23 And obviously they said "we," but she's relating
24 that they said "they."

25 "And they hit him in the head with a pipe, I
26 think he said. I think he said lead, but I'm not sure if he
27 said lead.

28 "And then, they started stabbing him, and stabbing

1 him, and stabbing him, and then he said he was real hard to
2 kill until they brought him to now."

3 Obviously in Manson's conversations, he's not
4 admitting he was alone. And this goes to corroborate Ruby
5 Pearl, the fact that Ruby Pearl said she saw four who she saw
6 fanning out after Shorty on the boardwalk.

7 Now, this conversation was obviously directed toward
8 Juan Flynn as they brag about the murder because everyone else
9 at that table we know knew about the murder: Bruce Davis, Tex
10 Watson, Charles Manson that was talking and Danny DeCarlo knew
11 about the murder. Juan Flynn was the only other one at the
12 table.

13 Now, Barbara is a very honest witness. Almost two
14 and a half years has passed since she heard the conversation.
15 And she remembers that Davis was very happy during the conversa-
16 tion, but she can't remember whether Davis smiled or not. And
17 she told you that on direct. That wasn't brought out by Mr.
18 Denny on cross examination.

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1 She said, "Well, I can't remember. I remember
2 he was happy. I think he smiled, but I can't be sure that
3 he smiled."

4 Now, she can't remember all the exact points
5 which Mr. Davis said, "Yeah," although she does remember he
6 said "Yeah" on one particular occasion which we'll get into.

7 The very important thing, however, that she does
8 remember about the conversation, was that Manson said, "When
9 we brought him to now, Clem cut his head off," to which Davis
10 replied, "Yeah, that was far out."

11 Now, knowing what Barbara Hoyt knew up to that
12 point, about the conversation after she served Shorty's
13 dinner, when she overheard it between Brenda and Squeaky,
14 that Shorty was going to be taken care of, and then hearing
15 the screams, and then down at the creek the next day hearing
16 about the lye or lime conversation, you can imagine that
17 this -- hearing that Shorty got his head cut off would be --
18 and Mr. Davis affirming it, would be a great shock to
19 Barbara. I mean, Barbara was so scared at hearing the
20 screams that she got down on the floor and covered on the
21 floor for the rest of the night, sleeping.

22 And I'm sure that as much as she wants to forget
23 what was said at this conversation and the whole incidences,
24 the screams and the lye or lime conversation, that she'll
25 never be able to do that. How could she, especially after
26 hearing those blood-curdling screams?

27 How could she forget a conversation like this,
28 where it was said that Shorty got his head cut off and Davis'

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1 saying, "Yeah, that was far out."

2 All right, getting back to what Mr. Davis said.
3 The only reasonable inference to draw from that statement,
4 "Yeah, that was far out," was that Mr. Davis was present
5 when Clem cut Shorty's head off.

6 If Mr. Davis said, "Yeah, that must have been
7 something" or "You guys really gave it to him," or "Just
8 far out," well, okay, that might be something else. But he
9 said, "Yeah, that was far out."

10 Now, how else could that be interpreted, other
11 than the fact that he was present.

12 And, of course, again that corroborates Ruby
13 Pearl, because Ruby Pearl said Mr. Davis was one of those
14 that she saw run across the parking lot area, hurriedly go
15 across after Barbara -- after Shorty.

16 Now, Barbara testified that in the Manson Family
17 "far out" meant that it happened and that it was fun or
18 groovy. Sickening. Sickening.

19 And, also, the fact that Mr. Davis appeared to
20 be happy during this conversation, gives you some idea about
21 the man we're dealing with. Not the fellow that's been
22 dressed up and on such good behavior for you during this
23 trial, but the fellow that, after having participated in the
24 murder of Gary Hinman, willingly participated in the murder
25 of Shorty Shea. And then, when they were bragging about it,
26 when Manson was bragging about it at the Meyers Ranch dinner,
27 he gloated about it, too.

28 "Yeah, that was far out." Yeah, and that he was

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1 happy.

2 Now, during this conversation at Meyers Ranch,
3 at one point Manson said, "We were stabbing him, and stabbing
4 him," to which Davis said, "Yeah."

5 Well, that's a sign of obvious agreement,
6 "Yeah, yeah, that's what we were doing."

7 The most reasonable interpretation of that
8 statement is the fact that Davis not only was present, but
9 that he participated in the murder of Shea. This is uncon-
10 tradicted. This statement is uncontradicted. There's
11 nothing in the evidence which would lead you to contradict
12 that.

13 Let me say this, however, that based on that
14 one response alone, I wouldn't ask you to convict Bruce
15 Davis of the Shea murder, but the main point to remember is
16 that you can't take the one statement alone. You have to
17 take all the statements Atogether. You have to take Davis'
18 two palm prints on Shorty's abandoned footlocker, and you
19 have to take all the other evidence together. You can't look
20 at one piece of evidence alone, as I hope I explained to you
21 on Friday. Whenever you look at something, look at it in the
22 broad picture.

23 And I say, when you take the statement in its
24 proper context, viewing all the other evidence, you come to
25 the inescapable conclusion that Mr. Davis participated in
26 Mr. Shea's murder.

27 All right, let's look at the very next statement
28 that's in evidence. That's Paul Watkins' statement about

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1 when he and Vance were walking down Goler Wash and Paul
2 wasn't paying particular attention to what was said, but he
3 does remember Davis telling Vance, "That's why we killed
4 Shorty." Well, "we" includes "I."

5 "That's why we killed Shorty."

6 Remember, again, you have to take this statement
7 in context with all the other evidence and all the other
8 statements.

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"That's why we killed Shorty."

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1 I'll tell you, we're going to get to another
2 "we" in his statement to Mr. Springer, when he says, "That's
3 why we killed Shorty," words to that effect, using "we" again.
4 Obviously, he's including himself.

5 Mr. Watkins has never been inconsistent on this.
6 No inconsistent statements. He hasn't been impeached at all.

7 Now, Mr. Denny showed that he took drugs and
8 things like that. But don't you think that if that had any
9 effect on his ability to remember his statement, that drug
10 experts would have been called by Mr. Denny to show what
11 effect that would have on a person's memory?

12 Okay, the next statement was testified to by
13 Juan Flynn. Remember, they were driving down from the Barker-
14 Meyers Ranch area to Los Angeles, to Spahn Ranch, and they
15 had dropped Paul Watkins off and they were continuing on
16 their trip to Los Angeles. Okay.

17 Grogan told Juan -- and Juan said that this was
18 in a commanding voice, commanding voice that Grogan told him.

19 "If anyone asks you about Shorty, you tell
20 them that he went to San Francisco."

21 Which statement brought Mr. Davis up from the
22 back seat. And he said to Juan, "Yeah, yeah, you know."
23 Like, if you don't, you'll end up like Shorty.

24 Obviously it was a plan among those who murdered
25 Shorty to try to lead others to believe that Shorty went to
26 San Francisco to work so people wouldn't get too suspicious
27 by his disappearance. Davis participated in the statement to
28 Juan Flynn, which I contend was an indirect threat. He

1 reinforced Grogan's command to Juan, letting him know that he
2 would have both of them to deal with if he didn't tell people
3 that Shorty was going up to San Francisco.

4 Grogan, "You tell them that he went to San
5 Francisco."

6 Davis, "Yeah, you know."

7 Well, Juan knew all right. That's why he slept
8 with a shotgun by his side when he was up at the Barker
9 Ranch because he knew Mr. Davis and Mr. Manson only too well.
10 Okay.

11 Alan Springer.

12 Now, Mr. Denny makes a great deal of the fact
13 that law enforcement has assisted Al Springer in his various
14 scrapes with the law in his valuable assistance in the Tate-
15 La Bianca case and the Hinman-Shea murders. Let me say this,
16 the assistance that law enforcement has given to Mr. Springer
17 is but a mere pittance, a mere pittance as compared to what
18 Mr. Springer has done for this community in the prosecution of
19 these three cases. Besides that, if we didn't have some
20 benefits to offer him, do you really think Mr. Springer would
21 have any reason to stay around L. A. and help law enforcement,
22 being a snitch, with the obvious threat that entails to his
23 life.

24 Now, Mr. Springer is a former member of the
25 Straight Satans, an outlaw motorcycle gang. You can
26 certainly assume he is no friend of law enforcement so,
27 obviously, we had to offer him some inducement to cooperate
28 in the investigation and prosecution of the Tate-La Bianca

1 case and Hinman and Shea murders. He did what Sergeant
2 Whiteley could never do. Mr. Springer was too valuable to
3 get away. Here was an independent non-Family member who had
4 the confidence of certain members of the Manson Family, and
5 why shouldn't he have had their confidence? I'm sure they
6 looked at him and said, "Well, here is a member of an outlaw
7 motorcycle gang." I mean, "If anybody hates the pigs as much
8 as we do, I'm sure it is him. He probably hates them more."

9 Well, that's how he got Bruce Davis to confide
10 in him. Can't you just picture Sergeant Whiteley going in on
11 that conversation with Mr. Davis in November of '69 and say,
12 "Well, hi, Bruce, what's up? Got anything to say about
13 Danny DeCarlo testifying and what you did to Shorty?" Uh-huh.
14 Mr. Springer could do that.

15 Now, you might not like Mr. Springer's way of
16 life any more than I do, but I'll tell you something, when
17 that man was on the witness stand, he was telling you the
18 absolute truth. And I'll bet you this, if you had to choose
19 one person to put your trust in, among Charles Manson, Bruce
20 Davis, Tex Watson, Steve Grogan, Robert Beausoleil, Susan
21 Atkins, Mary Brunner and Alan Springer, you would all pick
22 Alan Springer.

23 There's no question that Mr. Springer has his
24 troubles with the law, but he is not a murderer, something
25 we can't say about Bruce Davis and the others I've just
26 mentioned.

27 And don't you think if Mr. Davis really didn't
28 confess to Alan Springer in the way that he said that he did,

1 that other witnesses that were present during that confession
2 would have been called in to deny it?

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1 Remember, a fellow named Mark Ross was there and
2 two girls, probably two Family girls. Don't you think somebody
3 would have been called in to deny it if Mr. Davis didn't
4 confess in the manner that Mr. Springer said he did?

5 Mr. Springer has been completely consistent in
6 regards to what Bruce Davis told him right from the very start.
7 And remember he went in to the police within a couple of days
8 after hearing the statement from Mr. Davis.

9 Let's look at the statement a minute as testified
10 to in court by Mr. Springer.

11 Remember, he went to the place where Davis was.
12 It was a couple of houses down from the Straight Satans
13 headquarters on Clubhouse Drive in Venice, a place where
14 Mr. Davis and some other people were staying.

15 He said Davis showed him a copy of the Santa
16 Monica Evening Outlook, an article regarding Danny DeCarlo
17 testifying at the Beausoleil trial. Springer, leading into the
18 conversation said he didn't like the idea of Danny testifying.

19 Well, of course, we know that's not true because
20 he's the one that got Danny to go into the police. But he was
21 just jiving with Mr. Davis to see what they were going to do
22 to Danny.

23 Okay. Davis replied, "Yes, we'll have to do some-
24 thing about that."

25 And Springer, Springer said, Springer told them
26 "That that would be kind of hard to do because Danny was a bike
27 brother."

28 Davis said they got ways of taking care of snitches

1 and that they have already taken care of one.

2 Well, snitchers. They got ways of taking care of
3 snitchers.

4 Remember back to Barbara Hoyt's testimony about the
5 conversation and these dinner time conversations that happened
6 in the back house before Shorty got murdered, after they got
7 out of -- after the Family got out of jail, after the August
8 16th raid, about how Manson would call Shorty a snitcher and
9 say that he caused the Spahn Ranch raid.

10 Okay. Next, Davis said, "Well, we cut his arms,
11 legs and head off and buried him on the ranch." Mr. Davis is
12 including himself in the murder of Shorty Shea.

13 Okay, Davis said that "The guy was a snitch and
14 he drank so much --" remember, there's testimony about Shorty
15 that he drank, and that he drank so much that they were afraid
16 that he was going to go to the police with information. That's
17 why they murdered him.

18 Well, again, we don't know what Shorty found out.
19 We don't know what the information was, but that's why they
20 murdered him.

21 Mark Ross said -- Mark said, "You mean Shorty?"
22 Davis said, "Yeah."

23 So right from the beginning, Alan Springer has
24 truthfully related what Mr. Davis told him about how he,
25 Mr. Davis, and the others got rid of Shorty and how they took
26 care of snitchers. Snitchers like Mr. Springer is now.

27 And one wonders why we have to make deals with
28 Mr. Springer to testify against the Family.

1 And one wonders why Juan Flynn slept with a shotgun
2 by his side up at the Barker-Meyers Ranches.

3 And one wonders why D.A. Burt Katz had to promise
4 not to ask Barbara Hoyt too many questions after she and her
5 family had been threatened with death, and after something had
6 been done to her in Hawaii which caused her to be in fear for
7 her life.

8 The Family! The Family, certainly and justifiably
9 one of the most feared organization of murderers that has ever
10 existed in our country.

11 Let's talk about Mr. Davis's palm prints on those
12 footlockers.

13 Ladies and gentlemen, there is no innocent
14 explanation for how those palm prints got there.

15 Now, you heard Mr. Denny in his argument saying,
16 "Well, gee, Bruce must have been working on a dune buggy and
17 put his hands on them accidentally."

18 Did you ever hear any testimony like that in this
19 trial? Did you ever hear testimony from even one witness that
20 one witness touched Shorty's lockers? Did you hear that? I
21 certainly didn't hear any such testimony.

22 But we know, ladies and gentlemen, we know that
23 at least one person touched those footlockers, and that was
24 Shorty Shea. He lived out of them. But where is Shorty's
25 fingerprints or palm prints?

26 Deputy Chamousis testified that when he dusted
27 both of those lockers, both of the footlockers, that the only
28 two prints on there were two palm prints of Mr. Davis.

1 What does that show? Well, that shows, ladies
2 and gentlemen, that those trunks were wiped down after
3 Mr. Davis and the others had rummaged through them to see if
4 there was anything of value. And that's probably where they
5 got Shorty's pawn -- gun, pawn slips. Why aren't Shorty's
6 fingerprints there? And if other people touched them, why
7 aren't their prints there? The only two palm prints are
8 Mr. Davis's palm prints.

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1 Now, let's talk about that a minute. These are
2 the two latent prints that were recovered, People's 112 and
3 People's 85.

4 Now, I direct your attention to this line that
5 goes across the two prints here (indicating). You remember
6 that Deputy Chamousis testified -- and this is -- this
7 picture, People's 61-I is in evidence. And this is the way
8 the trunk looked like when they were recovered from the car.
9 This is the position of the trunks.

10 You remember that Deputy Chamousis testified
11 that those lines were most likely caused by the lid there,
12 where the -- let me get the trunk here.

13 (Whereupon, Mr. Kay exited the courtroom,
14 returning shortly, and the following proceedings
15 were had:)

16 MR. KAY: All right, that they were most likely caused
17 by the lid, where the lid joins the side of the trunk.

18 Now, if you will see, the way that that trunk
19 is positioned in the car, it is just like we have it here.
20 This is the trunk. Now, I suggest to you that the way those
21 palm prints got here, it is very obvious when the trunk,
22 this trunk was put in first, you can see how neatly it
23 rests and everything. This trunk was put in secondly, and
24 it rested on the top here, and then Mr. Davis carelessly
25 pushed it in the trunk. The trunk of the car. And that's
26 how those palm prints got there.

27 Think about that when you get back into the
28 jury room.

1 Look at this picture. This is a very important
2 picture, People's 61-I. And think about those two palm
3 prints and their position and how these footlockers are in
4 the trunk. You can't come to any other reasonable conclusion
5 about how those palm prints got there.

6 The trunks have been rummaged through, and then
7 they'd been wiped down for fingerprints. And then, Mr. Davis
8 carelessly pushed this one into the trunk of the car.

9 Now, when did the car get there? Well, we know
10 that by circumstantial evidence.

11 Remember that we've discussed the probable time
12 of Shorty's death which would have been August 28, between
13 11:00 or 12:00, or the early morning hours of August 29th.

14 Well, you remember that Lance Victor went to
15 Spahn's Ranch on Friday, which would have been that Friday,
16 the 29th, with the \$30 to give to Shorty. And when he went
17 there, Shorty's car wasn't there.

18 Well, the way that Shorty's car looked when they
19 recovered it, it looked like it had been sitting there for a
20 long time. It was dusty, dirty, and the battery was dead
21 and all those magazines in the trunk with the latest date
22 being August of '69. The evidence certainly is that after
23 Shorty was murdered that his car was driven by this old
24 Manson Family hang-out on Gresham Street and disposed of
25 there, probably in the early morning hours of August 29th.

26 Now, these palm prints, again, you have to take
27 in conjunction with the four statements. You have to look
28 at them all together. And when you look at them all together,

1 I mean, what other conclusion can you come to that's reasonable
2 other than the fact that Bruce Davis participated in the murder
3 of Donald Jerome Shorty Shea. There is no other reasonable
4 conclusion.

5 Now, Mr. Denny did something interesting here.
6 He showed you -- remember that Deputy Chamousis couldn't
7 identify Bruce Davis. So we had to use this photograph,
8 because obviously Mr. Davis looks a lot different now than he
9 did when Deputy Chamousis rolled his prints in December of
10 '70. So it is under -- it is understandable. And if you
11 remember that when Deputy Chamousis was trying to ID Mr. Davis,
12 you know, "What did he look like then?" That Mr. Denny
13 wouldn't cross-examine him for a long time on it?

14 "Well, what color hair did this man have? What
15 color were his eyes?"

16 He spent a long time on it.

17 But now he says, he gets up and puts this picture
18 in front of you and says, "Well, they're trying to prejudice
19 you."

20 Well, we're certainly not trying to prejudice you
21 with the picture. That's the way Mr. Davis looked at the time.
22 I'm sure all you people have seen pictures of the Manson Family.

23 I am trying to think -- I'm wondering when Mr.
24 Denny did that, I wonder what he had in his mind. And then,
25 it came to me, that that picture per se isn't so prejudicial
26 to Mr. Davis. What it is prejudicial to, it is prejudicial
27 to Mr. Denny. Why, because it shows what's been obvious.
28 That obviously he's dressed Mr. Davis up and has him on his

1 best behavior for you people during the course of the trial.
2 That's what it shows. That's what it is prejudicial to.

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1 That's all the picture was used by us for was just
2 to show that Deputy Chamousis recognized this person whose
3 prints he rolled. And obviously it doesn't look like him now.
4 He doesn't have the X on his forehead, he has a different
5 haircut and the beard has been shaved off.

6 Remember back to the jury selection process that
7 Mr. Davis had a beard, and then all of a sudden, the day we
8 started trial, the beard was shaved. And now he's been clean-
9 cut and quiet and well-mannered over there.

10 Okay, let's talk about first degree murder for a
11 moment now, the way it pertains to this case. And I'm talking
12 about the Shea case.

13 Now, I have some charts here which don't state the
14 instructions verbatim, but I'm trying to explain to you what
15 willful, deliberate, premeditated murder of the first degree
16 is, and you'll get all of your law from Judge Choate, and I'm
17 sure you're not going to find anything that conflicts with
18 that. But, if you do, you'll follow Judge Choate's instructions
19 not mine.

20 And this willful -- when we get into talking about
21 the Hinman murder, we're talking about a felony murder, murder
22 committed in the course of robbery. Well, this doesn't apply
23 to that. This type of murder applies to the Shea case. So
24 when you get into the jury room, try not to get the two kinds
25 of murder confused.

26 is willful, deliberate, premeditated murder of
27 the first degree. And the other is known as felony murder,
28 murder committed in the course of certain felonies, one of which

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1 is robbery.

2 Okay, what is murder? Murder is the unlawful
3 killing of a human being with malice aforethought.

4 Okay. So the problem, you knew everything until
5 we get to malice aforethought. So what is malice aforethought?

6 Okay. Malice may be either express or implied.
7 In this case, we're only dealing with express malice, so I
8 have "Express Malice" here.

9 Malice is express when the defendant displays an
10 intention to kill his victim.

11 Well, did the -- did Mr. Davis and Mr. Manson and
12 Mr. Grogan, did they -- and maybe Mr. DeCarlo and Mr. Watson --
13 did they express an intention to kill Shorty Shea? Well,
14 there's no question about that, that the concert of action,
15 the joint action surrounding him, after scurrying across the
16 parking lot, they took him for a ride, and then someone hit him
17 over the head with a pipe and they were all armed and
18 participated in stabbing him. Obviously, they didn't intend
19 to take Shorty for a picnic at this late hour of night. They
20 knew what they were going to do. They were going to kill him.
21 And the way they did it, the stabbing and cutting off his head
22 and his arms and legs, clearly they intended to kill him.

23 Okay. The mental state constituting malice
24 aforethought does not require any ill will or hatred of the
25 person killed. It doesn't require it. Of course, here we
26 have it. Obviously the Manson Family greatly hated Shorty
27 Shea.

28 "Aforethought." The intent to kill must proceed

1 rather than follow the act of killing. Well, obviously it had
2 here. We have the concert of action, the taking of Shorty for
3 a ride, and then hitting him over the head. Obviously they all
4 knew what they intended to do, and they did just that.

5 Okay, what is deliberate, premeditated murder of
6 the first degree? All murder which is perpetrated by any kind
7 of willful, deliberate and premeditated killing, with malice
8 aforethought -- and we've already decided what malice afore-
9 thought is -- is murder of the first degree.

10 Okay. So let's define some of these words.

11 "Willful"; what does "willful" mean? It implies
12 simply a purpose or willingness to commit the act.

13 Well, certainly all of those, including Mr. Davis,
14 who participated in the murder of Shorty Shea, were more than
15 willing to do it. More than willing.

16 "Deliberate and premeditated." Now, those are
17 two terms that are really hard to differentiate, so I'll read
18 them both together, and then we'll talk about them.

19 "Deliberate" implies thought and calculation on the
20 part of the defendant. Remember, as Mr. Manzella told you in
21 his opening argument that the duration of time is not a crucial
22 factor. In other words, a person can deliberate and premeditate
23 in a very short period of time. The question is not how long
24 it took him, but just whether they did that or not.

25 "Premeditated" means considered beforehand. So
26 if you find that the killing was preceded and accompanied by
27 a clear, deliberate intent on the part of the defendant or
28 defendants to kill, which was the result of deliberation and

1 premeditation, it is murder of the first degree.

2 Well, certainly the circumstances of this murder,
3 the concert of action, them getting Shorty and telling them
4 they had something to show him at that late hour of night,
5 taking him for a ride, hitting him over the head with a pipe,
6 stabbing him and disemboweling him, whatever -- I don't know
7 if they did that, but they cut his arms and head off, certainly
8 shows that there was deliberation and premeditation.

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1 They clearly intended to kill him, to get rid of
2 him, to prevent him from informing to the police. There was
3 a cold, calculated decision on the part of Mr. Davis, along
4 with the others who participated, to murder the man who they
5 felt was responsible for the raid and who they thought was
6 informing to the police and going to join forces with Frank
7 Retz to throw them off Spahn Ranch before they were ready to
8 go. And, of course, they certainly knew the consequences of
9 their act, the murder. The proof of that is that they
10 destroyed Shorty's body, and then told several people that he
11 had gotten a job up in San Francisco.

12 Okay, you will be instructed, in part, that all
13 persons concerned in the commission of a crime who either
14 directly and actively commit the act constituting the offense
15 or who knowingly and with criminal intent aid and abet its
16 commission are regarded by the law as principals in the crime
17 thus committed and are equally guilty thereof.

18 So if you determine that Bruce Davis participated
19 in the murder of Shorty Shea, it is murder of the first
20 degree.

21 Okay, we're going to move on to the Hinman
22 murder now.

23 THE COURT: Let's take ten minutes.

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

1-L-2

(Morning recess.)

THE COURT: The record will show the defendant is present with his counsel. All the jurors are in the box.

You may proceed.

MR. KAY: Thank you, your Honor.

Okay, let's talk about the Hinman murder.

I can't believe at this point that there would be any doubt in any of your minds that Mr. Hinman was murdered in the course of a robbery and that certain members of the Manson Family conspired together to obtain Gary Hinman's supposed money and property by any force necessary, including murder. The evidence of a robbery-murder is just overwhelming in this case. Let's look at some of them.

Glenn Krell, who was the last civilized human being to ever seen Gary Hinman alive, last saw him on Friday, July 25, 1969, between 7:00 and 7:30 p.m.

Now, you remember that Mr. Krell was negotiating to buy Gary Hinman's VW microbus and that he was supposed to take possession of it the next week. In other words, the week after that Friday, the 25th, when he last saw him. But where does this bus end up?

Ella Bailey sees it being driven by Mary Brunner and Susan Atkins on Spahn Ranch by the back house in the early morning of July 28th, 1969. She sees that it is hot-wired, which is confirmed by Mark Arneson, although Arneson says that it is hot-wired but it has the key in the ignition, also.

And Ella was asked to help Mary Brunner wipe off the fingerprints, which she did, and they hid the VW

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1 microbus in the eucalyptus grove. Let's look at what Ella
2 said about Mary and Sadie when they came back there. This
3 is Volume 21, page 3088. This is what she said to Mary
4 Brunner.

5 "Can you tell us how the conduct and
6 behavior of Miss Brunner appeared to you on that
7 occasion; this is Sunday evening," or the early morning
8 hours of the 28th, "when she arrived at the back house
9 in Gary Hinman's bus?

10 "A Yes, she was really nervous. She was
11 very quiet except for what she had to say and she
12 was white. She had no color in her face. She held
13 her head down most of the time she spoke to me."

14 And this is what she said about Susan Atkins.

15 "Now, directing your attention to Miss
16 Atkins. Had you had occasion during the years,
17 since the fall of 1967, during the time that you had
18 lived with her, to observe her conduct and her behavior?

19 "A Yes.

20 "Q Would you describe her behavior to us when
21 she arrived that evening, Sunday evening," or early
22 Monday morning, "in the Volkswagen microbus?

23 "A Yes, she was excited."

24 "She was excited."

25 "She was sad and held her face down. Held her
26 head down."

27 Okay, where is it next seen?

28 Then, on July 30, 1969, Fireman Mel Walker sees

1 Gary Hinman's VW microbus on Spahn Ranch. But it is not in the
2 eucalyptus grove. It has been moved to another area somewhat
3 near the eucalyptus grove which Fireman Walker marked on the
4 big aerial photograph, 93.

5 Okay, then, after July 30, 1969, but at least a
6 week before August 9, 1969, which would make it sometime
7 between the 30th of July, 1969, and probably the second of
8 August, 1969, Mark Arneson came back to Spahn's Ranch to
9 visit.

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1 He thought that Manson was made at him for leaving
2 the Family. And you know something, he was right. Manson
3 proceeded to give him a hot VW microbus and give him a phony
4 story about Hinman being a Black Panther and if the police
5 stopped you, to say that you got the VW microbus from a Black
6 Panther. And, obviously, if Mr. Arneson had given that story
7 to the police, he would have been arrested for Gary Hinman's
8 murder, which is exactly what Mr. Manson wanted, to get even
9 with him for leaving the Family.

10 You remember it was Mr. Arneson's testimony, after
11 he decided to accept, after being shown by all people, Mr. Manson
12 and Beausoleil, that Manson sent one of the girls after the pink
13 slip for the bus.

14 Now, the pink slip shows that in the course of the
15 robbery that Gary Hinman was forced to sign his VW microbus over
16 to the Family, because it is on the back of the pink slip,
17 Mr. Hinman signed his name. And we know that he wouldn't have
18 done this voluntarily because he was negotiating with Glenn
19 Krell and Glenn Krell was supposed to take possession of it the
20 next week.

21 Now, the Fiat station wagon, in which Glenn Krell
22 and Gary Hinman rode on July 25, 1969. They rode to downtown
23 Los Angeles to get Gary's passport for a trip he was going to
24 make to Japan. And when they rode down here, and they rode back
25 to the music school, they rode in Gary's Fiat station wagon.
26 So the last time that the Fiat was seen, was when Mr. Krell
27 saw Gary Hinman leave the music school sometime between 7:00
28 and 7:30 on the 25th.

1 Where do we next see the Fiat station wagon?

2 Well, Deputy Grap sees it parked in front of the
3 boardwalk in front of Spahn's Ranch in the early morning hours
4 of July 28, 1969.

5 We next encounter it when Mark Arneson comes to
6 the ranch and when he goes to the back house to examine the VW
7 microbus. Remember that he's driven back there in the Fiat
8 station wagon by Robert Beausoleil.

9 Now, Manson was also trying to unload the Fiat
10 station wagon on Mr. Arneson, but remember Mark said that by
11 the time he inquired that -- about it, that Beausoleil had
12 already left. He had already left to meet his fate up in
13 San Luis Obispo on August 6th, 1969, when he was arrested by
14 Officer Humphrey of the California Highway Patrol.

15 Now, when Officer Humphrey arrested Beausoleil, he
16 asked him if he had the pink slip to the car. And Beausoleil
17 said yes, and turned it over to him.

18 Now, this pink slip shows something very interest-
19 ing, shows beyond any doubt that Mr. Hinman was robbed and
20 murdered, because not only did they force him to sign the pink
21 slip "Gary Alan Hinman," but they forced him to back-date the
22 pink slip "7-18-69," which would be July 18, 1969. So
23 Mr. Hinman was forced to back-date the pink slip. Obviously,
24 so that his murderers could say, "Well, gee, we got that Fiat
25 station wagon from him on the 18th. That was before he got
26 murdered. We didn't have anything to do with that murder."

27 MR. DENNY: Your Honor, again, I hate to interrupt
28 Counsel. I think not only does that assume a fact not in

1 evidence, it assumes a fact that is contrary to the evidence.
2 There was evidence as to who back-dated that.

3 MR. KAY: Your Honor, I'm going to object to Mr. Denny
4 arguing --

5 THE COURT: All right, ladies and gentlemen, as I've said
6 to you -- the objection is overruled.

7 As I've said to you, this argument is based upon
8 counsel's view of the facts and it will ultimately be your
9 judgment and not counsel's as to what the facts are.

10 MR. KAY: Thank you.

11 If there's any question about the evidence, this is
12 People's 34, and you all can look at the exhibits in the jury
13 room and you can see for yourself that the Flat pink slip
14 has been back-dated to 7-18-69.

15 Okay. The final fruits of the robbery was the
16 \$27.64 that Ella Bailey saw and counted by her own admission in
17 Mary Brunner's or Susan Atkins's purse that was on the front
18 seat of Gary Hinman's VW bus when those two girls drove it
19 back on July 28, 1969.

20 So, ladies and gentlemen, we know by witnesses that
21 had absolutely nothing to do with the murder of Gary Hinman:
22 Glenn Krell, Deputy Grap, Fireman Mel Walker, Mark Arneson,
23 and Officer Humphrey, people who had absolutely nothing to do
24 with the murder of Gary Hinman, that we know by their testimony
25 and by the physical evidence, the pink slips, the condition of
26 Gary Hinman's home, the fact that when Gary Hinman's body was
27 found that there was no money in his wallet and his wallet was
28 protruding out of his back pocket, that we know from all of this

1 independent evidence, the physical evidence and the people who
2 had nothing to do with the murder that Gary Hinman was robbed,
3 and murdered in the course of that robbery.
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1 Now, the question then becomes, which members of the
2 Manson Family conspired to and did either aid and abet or
3 actually murder Gary Hinman?

4 Well, the topic of the need to get money was a
5 very persistent topic among the members of the Manson Family.
6 And well it should have been, because none of them had any
7 apparent visible means of support.

8 You remember that even way back in the Gresham
9 Street house that this was a common topic of conversation;
10 "How can we get -- how can we get money? Who can we get that
11 has money?"

12 Now, by the -- but in the spring and early summer
13 of '69, Manson had made plans to go back to the desert when
14 the necessary equipment and finances were obtained. Obviously,
15 when Manson made a decision to do something, that was the
16 decision of the Family, because he was the unquestioned leader
17 of the Family.

18 Now, we know that Manson knew Gary Hinman at least
19 since the summer of '68. And we know from the testimony of
20 Mark Arneson that Manson, even back in the summer of '68,
21 believed that Mr. Hinman was a person that had a substantial
22 amount of money. That's what he told Mr. Arneson.

23 Now, again, at the Gresham Street house, between
24 January and March, 1969 -- and, of course, the Gresham Street
25 house -- remember, this is the place near which -- within a
26 stone's throw of which Shorty Shea's car was found abandoned
27 in December of '69. But at the Gresham Street house between
28 January and March of '69, the whole Family, as a group,

1-N-2

1 discussed their need for money and what each person could do
2 to get transportation and supplies to get money to go to the
3 desert.

4 Bruce Davis was an integral part of this. It is
5 shown by the testimony he wanted to go to the desert as badly
6 as anyone. He and Tex Watson were the ones in charge of
7 getting the dune buggies ready. And Davis was the main
8 welder. Davis worked on the dune buggies daily and sometimes
9 at night.

10 Okay. The week before Gary Hinman was murdered,
11 we have the Family, or, at least, a great part of the Family
12 out at this Devil's Canyon campsite. During one of the
13 evening meetings, when most of the Family was gathered at
14 the campfire, Manson, according to Ella Jo Bailey, said the
15 following at page 3011:

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

20 Now, Ella's response at page 3012, on direct
21 examination, was:

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

24 "A Yes.

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

27 "A I mentioned Gary Hinman."

28 Ella testified to that on direct examination, not

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1 cross-examination. She has never -- I repeat, "never" -- and
2 the evidence at this trial substantiates that, that she has
3 never denied that she was the one that mentioned Gary Hinman's
4 name from the time she talked to Sergeant Whiteley on May 15,
5 1970. She has never denied that. If she wanted to hide this
6 fact, she could have done that easily. You don't think any
7 of the participants in this murder would have challenged her
8 on it. She admitted it. She was the one that brought up
9 Gary Hinman's name.

10 Mr. Denny, of course, knows that she has never
11 denied that, so what does he do? He tries to get you to
12 believe that the Judge, Judge Choate in the Manson trial was
13 the first one to bring out that she brought up the name of
14 Gary Hinman. But let's look at the question that Judge Choate
15 asked and the answer, and see if that's what, in fact, happened.

16 At Volume 21, page 3192.

17 "THE COURT: The question was concerning Gary
18 Hinman, what was said concerning Gary Hinman? Do
19 you remember? -- what do you remember of the conver-
20 sation?

21 "It was stated that he owned his house
22 in Topanga Canyon.

23 "THE COURT: Now, who stated that?

24 "Myself."

25 That's what the Court brought out. That's
26 different than saying, "Well, who was the one that first
27 mentioned the name Gary Hinman?" That wasn't what the Court
28 brought out. The Court brought out, well, who was the one

1 that mentioned who owned Gary Hinman's house? And she
2 answered "Myself." She has never denied Gary Hinman's
3 name.

4 It is the job of the witness to respond to the
5 questions as they're asked. And that's exactly what she was
6 doing. And she hasn't denied she brought up Gary Hinman's
7 name.

8 She even states at page 3649 of this trial, she
9 feels in part responsible for Gary's death since she was the
10 one that mentioned his name at the campfire.

11 Well, she might feel morally responsible for
12 Gary Hinman's death, but let's talk about her legal
13 responsibility.

14 Ella Jo Bailey is guilty of being an accessory
15 to the murder of Gary Hinman, but she is not guilty of being
16 an accomplice in the Hinman murder, and I'll tell you why.
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1 All Ella Jo Bailey did before Hinman was murdered,
2 was mention his name as someone who had money, stocks and bonds.
3 And at that conversation, it was suggested that Hinman be
4 approached and that he might willingly give his money to the
5 Family and perhaps come with the Family.

6 Remember that Ella said that she didn't think
7 that -- well, she testified earlier that she had gone out before
8 to try and approach Hinman to get him to join the Family, but
9 that he wouldn't come. But remember this time was the first
10 time that the male members of the Family were going to go and
11 try -- any male member of the Family was going to go and try
12 and persuade him to come with the Family. And she felt, and
13 she said this in her testimony, she felt that Gary was kind of
14 an effeminate kind of man and she didn't think he would resist
15 when a male member of the Family approached him. That he would
16 come with the Family.

17 Now, that's it. That's all she did at that first
18 conversation. There wasn't any talk about robbery or murder,
19 not even by Charles Manson.

20 Now, other people's names were mentioned, as she
21 said, as people having -- possibly having money. And that had
22 been the constant topic of conversation, even way back as far
23 as the Gresham Street house, how could the Family get money,
24 did the people know who had money. Ella Bailey had no way of
25 knowing at the time she brought up Gary Hinman's name that
26 Manson was going to mark him for murder. Ella Jo Bailey
27 didn't mark Gary Hinman for murder. It was Charles Manson that
28 marked Gary Hinman for murder. Ella Jo Bailey never, and I

1 repeat, never suggested that anyone rob, murder or exercise
2 any force, whatsoever, against Gary Hinman. There is no
3 testimony as to that in this trial, none whatsoever.

4 As a matter of fact, when she found out what was
5 going to happen, after hearing Manson at a later conversation
6 talk about it, she told Bill Vance that she was scared and she
7 didn't want to have any part of it. And she never did have any
8 part of it. She didn't want to have any part in murder and
9 robbery.

10 She said that the later conversation, when there
11 was talk about murder and robbery by Manson, that she didn't
12 even participate in that conversation.

13 Now, her testimony at this trial, and the Manson
14 trial, and the Mary Brunner Grand Jury proceedings, has been
15 consistent on that point. And if you have any doubt on it,
16 you can have the testimony read back. The three times where
17 she's testified under oath, her testimony has been consistent
18 that there were two conversations and that she took no part in
19 talking about robbery and murder.

20 Now, I don't care whether you like Ella Jo
21 Bailey or not, but one thing I want you to remember when you
22 get back into the jury room. When she realized what was going
23 to happen to Gary Hinman, she refused to have any part in
24 Manson's plan. That fact is undisputed.

25 Bruce Davis, on the other hand, when he realized
26 what was going to happen, willingly went along and participated
27 in the robbery which ended in a subsequent murder. There is
28 no question that Bruce Davis's actions are morally and legally

1 the more reprehensible.

2 When Ella Jo Bailey found out that the Manson
3 Family had turned to murder for a way of life, she got out.
4 Not because she was guilty of the Hinman murder, but because
5 she just didn't want to have any part of murder as a way of
6 life. And she left Monday, July 28th, and has never been with
7 the Manson Family since. That is undisputed.

8 Now, Mr. Denny, in spite of himself, let you know
9 during his argument that in spite of all Ella Jo Bailey's
10 inconsistencies to Sergeant Whiteley, that he believes that
11 Ella Jo Bailey is essentially telling the truth. What? How
12 can I say that? Didn't Mr. Denny say she was a perjurer, a
13 liar, and we should throw all of her testimony out?

14 Oh, yes, yes, he did say that. But he also told
15 us that he would stipulate that Mr. Hinman was robbed and
16 murdered. That there was a conspiracy to rob and murder Gary
17 Hinman and that Atkins and Brunner were part of that. And
18 that Manson was part of it. And Ella Jo Bailey was an
19 accomplice of these people.

20 Well, think about that a minute. How do we know?
21 How do we know that Manson, Brunner and Atkins are even
22 involved at all in the murder of Gary Hinman, other than from
23 the testimony of Ella Jo Bailey? How do we know that at all?
24 If you took her testimony away, how would you know that Manson,
25 Brunner and Atkins are even in the slightest involved in this.
26 You wouldn't. There's nothing, absolutely nothing besides her
27 testimony.

28 So what, in effect, Mr. Denny is saying, is, well,

1 believe her to the effect that all of these other people are
2 involved: Brunner, and Atkins, and Manson, Beausoleil -- of
3 course, we know independent of her testimony because of the
4 fingerprints and being arrested up in San Luis Obispo with
5 Gary's VW station wagon. But as to Manson, Brunner and
6 Atkins, believe her as to those people, but not my client.
7 Don't believe her as to my client, my little Brucie over here.
8 Don't believe her as to that.

9 Well, why not? Why not? Don't you think that if
10 she can get the defense attorney to, in his argument -- by his
11 argument, to believe her to the effect that these other people
12 were involved, why shouldn't you believe her as to the effect
13 that Mr. Davis was involved?

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1 Now, Mr. Manzella and I have never said that
2 there weren't inconsistencies in her testimony from the
3 statement she made to Sergeant Whiteley. Obviously, we
4 believe that Sergeant Whiteley is telling the truth. There's
5 no question about that. But, remember, it has been almost
6 two years since Ella Jo Bailey made those statements. And
7 she's had a lot more time to reflect on what really did
8 happen on the weekend that Gary Hinman was murdered.

9 And let me say this, that her testimony under
10 oath, when she's sworn to tell the truth in the Grand Jury,
11 the Brunner Grand Jury proceeding, this trial, and in the
12 Manson case, has been consistent. Those aren't where the
13 inconsistencies are. The inconsistencies are mainly what?
14 They're mainly statements to Sergeant Whiteley.

15 And, also, remember that Ella was one of the
16 original Manson girls. And I suggest to you that the longer
17 that she has been away from Manson and the influences of
18 the Family, that I would suggest to you the more credible
19 her testimony would be.

20 And remember this, that Ella Jo Bailey's testimony
21 hasn't been refuted. You know, all the people that were
22 around at the different things that she said that happened.
23 You haven't seen one of those witnesses on the stand to
24 say that Bruce Davis was doing other than what Ella Jo
25 Bailey said he was doing during the weekend of the Hinman
26 murder.

27 Now, Ella Jo Bailey is not a bright girl and
28 she doesn't have a strong personality. Mr. Denny had a field

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1 day with her on cross-examination. There's no question that
2 he made her look bad on the witness stand. But then that's
3 Mr. Denny's style. You've seen how he's cross-examined any
4 witness that had anything bad to say about Mr. Davis, goes
5 after him like gang-busters. A strong willed witness, of
6 course, can usually take care of Mr. Denny, as did Barbara
7 Hoyt and Fireman Mel Walker. The more intimidating Mr.
8 Denny got with them, the clearer and the better their answers
9 got.

10 So just consider that when you're again weighing
11 Ella Jo Bailey's testimony.

12 Let me read an instruction to you here.

13 This is Instruction 3.10.

14 "An accomplice is one who is liable
15 to be prosecuted for the identical offense charged
16 against the defendant on trial.

17 "To be an accomplice, the person must
18 have knowingly and with criminal intent aided,
19 promoted, encouraged, or instigated by act or
20 advice, or by act and advice, the commission of
21 such offense."

22 Ella Jo Bailey didn't instigate the robbery or
23 murder of Gary Hinman. She mentioned Hinman's name as a
24 person that had money.

25 When she mentioned the name, there had been no
26 talk about robbery and murder. The talk about robbery and
27 murder was after she mentioned the name.

28 The key words in this instruction are "knowingly

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1 and with criminal intent." And I suggest when you read the
2 instruction back in the jury room that you have to determine
3 that at the time she mentioned Gary Hinman's name, at that
4 time did she have knowledge of what was going to happen and
5 did she mention his name with criminal intent? I suggest
6 that the evidence is against that.

7 There's no question, again, that she was the one
8 that mentioned Gary Hinman's name. That she brought it up.
9 But at the time she did, she had no way of knowing that Manson
10 was going to mark Hinman for robbery, and if Gary wouldn't
11 cooperate, then, subsequently murder.

12 In this regard, let me read another instruction
13 to you, 3.14.

14 "Merely assenting to or aiding or assisting
15 in the commission of a crime without guilty knowledge or
16 intent is not criminal, and a person so assenting to,
17 or aiding, or assisting in, the commission of a crime
18 without guilty knowledge or intent in respect thereto,
19 is not an accomplice in the commission of such crime."

20 Okay. Ella Jo Bailey is, however, an accessory
21 to the murder.

22 What is an accessory?

23 Well, a person who is only an accessory to the
24 murder is not an accomplice to that murder. Basically, an
25 accessory is one who, knowing that a crime has been committed,
26 affirmatively aids those who committed the crime to escape
27 detection.

28 Well, there's no question that Ella Jo Bailey did

1-P-4

1 that when Susan Atkins and Mary Brunner drove that VW micro-
2 bus back by the back house on Monday morning, July 28th,
3 the early morning hours. Ella knew that there had been a
4 robbery and she found out that Hinman was murdered and still
5 she proceeded to help Mary Brunner wipe the fingerprints off
6 of the bus. She admitted that to you on direct. I mean,
7 there's no question about that.

1-Q fls.

1-Q-1

1 She's admitted to you that she mentioned Gary
2 Hinman's name;

3 That she counted the money;

4 That she wiped down the bus;

5 That there was talk about going up to -- driving
6 the bus up to Santa Barbara; and

7 That when the police came in the early morning
8 hours, Deputy Grap and the others, that she ran because she
9 thought that they were -- that they had found out about the
10 Hinman murder. She didn't hide any of this from you.

11 Now, the important distinction between an
12 accomplice and an accessory is that basically the testimony
13 of an accomplice must be corroborated by other evidence,
14 however slight. But the testimony of an accessory can be
15 treated like the testimony of any other witness.

16 And let me once again say to you that there is
17 no evidence in this case that Ella Jo Bailey is an accomplice
18 rather than an accessory to the Hinman murder.

19 Okay.

20 Now, what happened on Friday, July 25, 1969?

21 Well, the plan for robbery and murder of Hinman
22 had already been formulated. That it was just left for
23 Charles Manson to decide who the participants were going to be,
24 which one of his trusty ghouls he was going to send to devour
25 poor Mr. Hinman.

26 Ella Jo Bailey wanted no part of these plans.
27 She did not go anywhere near ~~Chaye~~Hinman's house on the
28 weekend of the murder. That fact is undisputed.

1 But who did go to Gary Hinman's house? Susan
2 Atkins, Charles Manson, Mary Brunner, Robert Beausoleil
3 and Bruce Davis. There you have it, ladies and gentlemen,
4 a modern-day murderers' row.

5 Now, a short time after Ella Jo Bailey and Bill
6 Vance had been confronted by Manson when he wanted Ella Jo
7 to go with Beausoleil to the Hinman house, she saw Manson,
8 Davis and Beausoleil in the parking lot area.

9 She also saw Beausoleil's Mexican knife and a
10 gun which appeared to be Bruce Davis' 9 millimeter Radom.

11 You will remember that Beausoleil's knife was
12 recovered, hidden in the tire well of Gary Hinman's Fiat when
13 Beausoleil was arrested on August 6th, 1969, in San Francisco.

14 And Dr. Katsuyama testified that the dimensions
15 of that knife were such that they were consistent with making
16 the fatal wounds in Gary Hinman's chest.

17 And also, Mr. Davis' 9 millimeter Radom, which we
18 have shown which he purchased under the phony name of Jack
19 Paul McMillian, and which he has admitted that he held on
20 Gary Hinman during the course of the robbery, was found in the
21 snow up in Crestline, California, in March, 1970. Kind of
22 sounds like somebody was trying to get rid of it.

23 Now, if there's any doubt in your minds that a
24 conspiracy existed at this point, on July 25, 1969, I'm sure
25 that that was dispelled when Ella Jo Bailey conversed with
26 Susan Atkins and Mary Brunner.

27 At page 3070, this is what Mary Brunner said:

28 "She told me that she had been asked to

1 "get on creepy-crawler clothes; and she told me she
2 was looking for a pair of gloves to wear, because she
3 was going to Gary Hinman's."

4 Well, what are "creepy-crawler clothes"?

5 Well, we were told those were dark clothing
6 which certain members of the Manson Family would wear when
7 they were going to pull capers.

8 Why did Mary Brunner want a pair of gloves?
9 Because, obviously, she knew what was going to happen. And
10 she didn't want to leave her fingerprints around. Unfortu-
11 nately, for this group of conspirators, Mr. Beausoleil was
12 careless and left his palm prints on the side of the door
13 jamb or paneling there which Deputy Flois White found.

14 I think it is fair to infer from the evidence,
15 because none of the other defendants' prints were found, that
16 probably Mary Brunner was not the only one wearing gloves.

17 What did Susan Atkins say at that time?

18 "She told me that she was going to Gary
19 Hinman's with Bobby Beausoleil."

20 Now, again, the facts, the facts that Ella Bailey
21 has related on this are unchallenged. There has been no
22 evidence produced by the defense to show that the facts were
23 otherwise.

24 Why? Because there was no such contradictory
25 evidence.

26 Don't you think that as nit picking as Mr. Denny
27 has been in this trial, if there was some evidence to show
28 that Ella Jo Bailey was lying about what happened, essentially

1 what happened on this weekend, that he would have delighted
2 in calling other witnesses to point out the fact to you
3 ladies and gentlemen that she was lying? But he hasn't,
4 because there is no such contradictory evidence.

5 Now, within an hour after she had the conversation
6 with Sadie and Mary, Ella observed Johnny Swartz' car being
7 driven past the corral area. And the car passed within ten
8 to fifteen feet of her. Ella saw Mary, Sadie and Bobby in
9 the car, along with a male that was driving whom she couldn't
10 see.

11 Now, ladies and gentlemen, do you think if Ella
12 Jo Bailey was lying, she just couldn't as easily have said,
13 "I saw Bruce Davis driving that car"? And if she was testi-
14 fying just to please us, don't you think that would have
15 pleased us, to identify Bruce Davis as the driver in the car?
16 But she didn't do that. She said she couldn't see the driver.
17 She couldn't recognize the driver. She didn't know if it
18 was Bruce Davis or who it was.

1R fls.

1R-1

1 She was just relating what she saw as she
2 remembered it. And she didn't make up anything. It would have
3 been very easy on that point to make up and say, "I saw
4 Bruce Davis driving the car." But she didn't do that.

5 Was Bruce Davis driving the car? Well, there is
6 an inference that he did, because Ella did see the car come
7 back about 45 minutes after she saw it leave, and at that time
8 she did see Bruce near the car. But whether Bruce Davis did
9 drive Mary, Sadie and Bobby over to Gary Hinman's home is not
10 crucial to his guilt. Why? Because from his own lips he's
11 told us he's guilty of first degree murder.

12 How do we know what happened at Gary Hinman's
13 house during the murder?

14 We know because Bruce Davis and Susan Atkins have
15 told us.

16 Remember, Susan Atkins said that Bobby Beausoleil
17 was the one that stabbed Gary Hinman to death. That was
18 related by Ella Jo Bailey.

19 Would this be a good time to recess, your Honor,
20 because the next area is going to be kind of --

21 THE COURT: All right, if you wish. We'll recess until
22 1:30, ladies and gentlemen. During the recess you are advised
23 not to converse amongst yourselves, nor with anyone else, nor
24 permit anyone to converse with you on any subject connected
25 with the matter, nor form or express any opinion on it until
26 it is finally submitted to you.

27 See you at 1:30.

28 (Whereupon, the noon recess was taken at 11:53
29 A. M., to reconvene at 1:30 P. M. of the same day.)

EXX 2-1

LOS ANGELES, CALIFORNIA, MONDAY, FEBRUARY 28, 1972, 1:30 P. M.

THE COURT: The record will show the jurors to be all present.

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

THE COURT: All right, in the case of the People versus Davis, the record will show the jurors are all present.

There you are, Mr. Jeffery.

This isn't the most ideal setup in this small courtroom, but I rather like it. The acoustics are better than a larger courtroom, even though I can't see half of you half the time because of the large blackboard.

The defendant is present with his counsel.

Mr. Manzella and Mr. Kay for the People.

You may proceed.

MR. KAY: Thank you, your Honor.

Well, when I start an argument, I never know exactly how long it is going to last. But over lunch I determined that I probably only have, at most, an hour left. So you can be relieved. I'm not going to put you to sleep this afternoon, or at least for not more than an hour.

Now, we discussed, I think just as we left, the fact that Susan Atkins told Ella Jo Bailey that Robert Beausoleil was the one that stabbed Gary Hinman to death.

Well, what did Bruce tell her?

I'm going to read Mr. Davis's statement to Ella Jo Bailey, and then I'm going to come back to it in a while and

2-2

1 I'm going to discuss it in more detail.

2 It is found in Volume 21, at Pages 3114 through
3 3116. Okay, this is what Mr. Davis told Ella Jo Bailey on
4 Monday, August 28th.

5 "He said that when he and Charlie had gotten to
6 the Hinman house that Mary and Bob and Susan had already
7 gotten the gun back from Gary. That they had "rustled"
8 with him to get it and that the gun handle had been
9 broken when Gary was struck over the head with the
10 gun.

11 "He told me that Charlie and Gary got into a
12 violent, heated talk and that Charlie told him that
13 if he didn't quiet down he would make him quiet
14 down.

15 "And he told me that while Charlie sliced
16 Gary open from his left ear down to his chin, that
17 he held the gun on Gary Hinman.

18 "And he said that afterwards, Gary lost a lot
19 of blood and appeared to lose consciousness at times.
20 That the girls cleaned him up and he was put back in
21 bed and he seemed to rest rather quietly. And at one
22 time he asked for his prayer beads and he was given
23 them. And that the last thing he did was chant,"

24 Now, we're going to get into this in detail for
25 a minute, and I'm going to try to show you all the different
26 points of corroboration by other evidence in this case.

27 But I submit that these pages, where Mr. Davis's
28 statement is -- actually it is on 3115 and 3116 -- that those

2-3

1 feel Mr. Davis's fate.

2 Now, why did they do that? Well, because no
3 matter how much Mr. Denny jumps up and down and yells and
4 screams about Ella Jo Bailey, Ella Jo Bailey has never, never,
5 from the very first, been inconsistent on what Bruce Davis told
6 her. She has been 100 per cent consistent on this statement.

7 And why shouldn't she be? I mean, it is something
8 you don't forget about when a person tells you that he has
9 murdered another person, especially someone you know.

10 And, of course, Ella didn't have to use her poor
11 eyesight to listen to Mr. Davis confessing to his role. But
12 think about this.

13 Now, if Ella Jo Bailey was lying, don't you think
14 that this statement made by Ella Jo Bailey to her way of
15 thinking is like saying, "Well, Bruce was there, but he didn't
16 have anything to do with it?" I mean, do you think she really
17 knew about the law of felony murder which would make Mr. Davis
18 guilty of first degree murder? All she said in the statement
19 that Bruce told her was that Bruce was holding the gun. She
20 never said in that statement anywhere that Mr. Davis even laid
21 a hand on Mr. Hinman. Don't you think if she was lying she
22 would have said Bruce said that he slashed Mr. Hinman with the
23 sword.

24 How do we know that Manson slashed Hinman, other
25 than by Ella Jo Bailey's testimony.

26 Or that he -- that Bruce Davis stabbed Gary Hinman?

27 Or that he, with his own gun, clotted Gary Hinman
28 over the head?

1 But all she said was Davis told her that he held the
2 gun on Hinman. This makes him guilty, by participating in the
3 robbery, under the law of felony murder, which we'll get to.

4 But do you really think that Ella Jo Bailey, when
5 she first talked to Sergeant Whiteley and talked to you in
6 court really knew and understood what felony murder was and by
7 Bruce holding the gun on Gary Hinman during the course of the
8 robbery that he would be guilty? Think about that back in the
9 jury room.

10 Mr. Denny also brought out from Ella Jo Bailey,
11 very importantly, I think, that the Family members don't lie
12 to each other. And this is very important when you consider
13 Mr. Davis's statement to Ella Jo Bailey.

2a fol

2a-1

1 Now, it is obvious in retrospect that Manson and
2 the other Family members trusted Ella Jo Bailey a little
3 too much. But they had no way of knowing at the time, two
4 years hence, that she would be testifying for the prosecution.

5 Remember, Manson wanted to send her to Hinman's
6 house. And Atkins confessed to her about Beausoleil's -- that
7 Beausoleil was the one that stabbed Hinman to death. And
8 Brunner got Ella Jo Bailey to help her wipe the fingerprints
9 off the VW microbus. And then, of course, Davis made a
10 statement to her. Okay, let's look -- let's look at this
11 statement in detail.

12 Let me get a drink of water, though.

13 Okay. To start out:

14 "He said that when Charlie -- when he
15 and Charlie had gotten to the Hinman house --" well,
16 remember that Ella Bailey, in her statement to Whiteley,
17 in the Whiteley notes said that she heard they left. And
18 remember Whiteley said, in answer to a question by Mr. Denny,
19 "Well, they left twice," obviously, I think, that she was
20 referring to the time when Manson and Davis left. That they
21 left twice.

22 Okay. So we know that Charlie and Bruce went
23 to Hinman's house together. Okay.

24 So, "He said that when he and Charlie had gotten
25 to the Hinman house that Mary and Bob and Susan had already
26 gotten the gun back from Gary."

27 You remember from Mr. Katz' testimony that the gun
28 refers to the Radom, People's -- People's 30.

2a-2

1 "That they had 'russled' with him to get
2 it and that the gun handle had been broken when Gary
3 was scruck over the head with the gun."

4 Well, "That they had 'russled' with him."

5 Well, the kitchen shows that there was a russle.

6 Now, Mr. Denny said, well, in his home, in the
7 kitchen, they put the chairs down so his little 16-year-old
8 daughter can't get it. Well, isn't that silly in this case?
9 I mean, maybe I should send Sergeant Whiteley over to his
10 house to see if he has a decomposed body in his living room.
11 But here you have the decomposed body in the living room and
12 you go into the kitchen -- you'll see the pictures in the
13 jury room. I think that that's a little bit out, in this case,
14 to think that that's why the kitchen was so messed up.

15 Okay.

16 "And that the gun handle had been broken
17 when Gary was struck over the head with the gun."

18 Well, you know the condition of People's 30 now.
19 That the gun handles on People's 30, the Radom, had been
20 broken. So that's corroborated. And then when Gary was
21 struck over the head with a gun -- well, remember Dr.
22 Katsuyama's testimony was that the two wounds to the back
23 of the head -- he called them disruptions -- and he said that
24 in his opinion that they were not stab wounds, but that they
25 were caused by a blunt instrument.

26 Okay.

27 "He told me that Charlie and Gary got
28 into a violent, heated talk and that Charlie told

2q-3

1 "him that if he didn't quiet down he would make him
2 quiet down.

3 "And he told me that while Charlie sliced Gary
4 open from his left ear down to his chin, that he held
5 the gun on Gary Hinman."

6 Now, let's look at that.

7 You remember that Dr. Brill testified that with
8 the type of wound inflicted on Gary Hinman, that the patient
9 could bleed profusely, even massively for a period of time
10 up to one hour.

11 So, when Mr. Davis said that Manson cut him from
12 the ear down to the chin, I suggest that when he did cut him,
13 that the amount of blood would have probably covered that
14 area and would have made it look, since Manson slashed the
15 sword across the face, would have made it look like the cut
16 was from the ear down to the chin.

17 Because, obviously, there would have been a lot
18 of bleeding.

19 Okay. And "that he held the gun on Gary Hinman."
20 Meaning Mr. Davis.

21 "And he said that afterwards Gary lost
22 a lot of blood --" well, of course, that's corroborated
23 by Dr. Brill's testimony that I just mentioned, that the
24 person with that type of wound would lose a lot of blood.

25 "and he appeared to lose consciousness
26 at times. That the girls cleaned him up and he was
27 put back in bed."

28 Well, you remember where he was in the living

2a-4

1 room, that he had a pillow and a blanket there. And it was
2 made as kind of a bed. It wasn't a real bed, like you have
3 a bedroom, but it was a kind of a bed-type situation there.

4 "-- and he seemed to rest rather quietly. And
5 at one time he asked for his prayer beads --" well,
6 you remember that next to this little makeshift bed in the
7 photographs are a picture of Hinman's prayer beads right near
8 his hands.

2b fls.

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2b-1

1 "-- and he was given them." He was
2 given the prayer beads. "And that the last thing he did
3 was chant."

4 Well, you remember Joan Farley, one of the first
5 witnesses that testified that if a person of the Nichiren
6 Shoshu faith was dying, that's what they want to do, they
7 want their prayer beads and they'd want to chant.

8 Okay. Why the struggle between -- that took
9 place before Manson and Davis got there?

10 Well, obviously because Gary wouldn't cooperate
11 and voluntarily turn over his money and join the Family.

12 Now, evidently what happened is that one of the
13 three, either Brunner, Atkins or Beausoleil had -- had pulled
14 the gun on Gary and somehow he managed to get it away from
15 them. But they had this -- they 'russled' with him and got
16 it back and clouted him over the head at that point.

17 And then, Manson and Davis came after that.

18 And, of course, you remember that it was part of
19 this conspiracy that if Hinman wouldn't cooperate and volun-
20 tarily give over his money and property and come with the Family
21 that he would be murdered.

22 Now, the blood spots in the kitchen are obviously
23 Gary Hinman's, the ones that go down the cabinet.

24 Remember, Mr. Denny spent so much time out here
25 with his leg of lamb and said, "Gee, couldn't it have been
26 caused by somebody hitting a leg of lamb in his hands?"

27 Well, Mr. Denny even admitted in his argument that
28 it was Gary Hinman's blood in the kitchen because what he said

2b-2 1 was he was attacking Mr. Turney for not performing a blood
2 test, for typing the blood, whether it was animal or human.
3 And he said, "Well, Dr. Katsuyama did it." It was -- you
4 remember Dr. Katsuyama typed the blood in the body, or, at
5 least, the Coroner's Office, under Dr. Katsuyama's direction,
6 did that and Mr. Denny said, "Well, why didn't Turney do it,
7 it was the same blood?"

8 Well, obviously it is the same blood. Obviously
9 it is Mr. Hinman's blood in the kitchen and all the surround-
10 ing circumstances lead you inescapably to that conclusion,
11 which Mr. Denny admitted in his argument.

12 Gary Hinman obviously wasn't the push-over that
13 these members of the Manson Family thought that he was. But,
14 unfortunately, he was greatly outnumbered by the time that
15 Manson and Davis got there. He was outnumbered 5 to 1. And,
16 of course, at that point, brave old Bruce Davis was holding
17 a gun on him so he wouldn't fight back when Manson was trying
18 to persuade him to hand over his money or cooperate and slashed
19 him with his sword.

20 Of course, Manson was so proud of his sword
21 and what he had done, and you remember the next day that
22 Ella Jo Bailey testified that she saw him in the saloon there
23 at Spahn Ranch and he was swinging his sword around.

24 Now, I submit to you that if you believe that Mr.
25 Davis made the statement to Ella Jo Bailey, and there's no
26 reason not to, that you must convict Mr. Davis for the murder
27 of Gary Hinman.

28 And once you are satisfied that -- again, with

2b-3

1 the instructions I read you earlier this morning -- once you
2 are satisfied that the prosecution has offered some proof
3 that Gary Hinman was murdered, and, obviously, the condition
4 of the body with the stab wounds is some proof that he was
5 murdered -- it is more than some proof, it is absolute
6 proof that he was murdered -- and the elements of the
7 conspiracy in Count II, apart from Mr. Davis' confession, then,
8 you can consider the confession to tie Mr. Davis into the
9 murder and conspiracy and establish his guilt beyond a
10 reasonable doubt.

11 Okay, let's talk for a minute about the experts
12 which Mr. Denny had such fun talking about during his argument.

13 Now, Mr. Denny says that Flo White is a dangerous
14 man. That he tried to tailor his testimony to the prosecution's
15 needs regarding the time that Beausoleil's print could have
16 lasted in the house. And that Ella Jo Bailey testified that
17 Beausoleil lived there, obviously indicating that the print
18 could have been there a long time.

19 Well, let's look at the truth of Mr. Denny -- says
20 he's so rigorously guarding and trying to bring out.

21 Volume 22, at page 3255. This is Mr. Denny
22 questioning Ella Jo Bailey.

23 "Q All right. By the way, during your
24 visits to and from the Hinman home, were you ever
25 aware of the fact that Bobby Beausoleil was staying
26 there, living there for a period of time?

27 "A No."

28 The truth. Wrong again, Mr. Denny.

1 Ladies and gentlemen, Flo White was not lying or
2 tailoring his testimony to fit the needs of the prosecution.
3 You remember, if this was so essential to the prosecution,
4 why didn't Mr. Manzella or I even ask him about it on direct
5 examination? Mr. Denny was the one that brought it out on
6 cross-examination.

7 Well, let's see what Mr. White had to say at
8 Volume 26 -- unfortunately, I didn't get these in order. I
9 apologize. Okay, Volume 26, pages 3895 and 3896. This is
10 Mr. White's testimony on cross-examination of Mr. Denny.

2c fls.

2c-1

1 "Now, sir, in the course of your experience --
2 of eight years in the Fingerprint Unit, have you been
3 able to determine how long that print might have been
4 on that door sill?"

5 He's talking about Beausoleil's print.

6 "A No, sir. There is no way to determine
7 how old a print is,

8 "Q Well, are there maximum and minimum
9 parameters or are there maximum parameters?

10 "A There are maximum under certain
11 conditions. And this is why you can't tell the
12 age of the print.

13 "Q Well, let's say under the most ideal
14 conditions, under the most ideal conditions, how long
15 would a print on the surface that you recovered this
16 latent print in 24 from, how long could that have been
17 there before you recovered it?

18 "A This being a true latent, it very likely
19 wouldn't have been there more than ten days or two
20 weeks.

21 "Q Ten days or two weeks.

22 "A Not more than that, under the most
23 ideal of conditions.

24 "Q Well, when you say this being a true
25 latent, what do you mean?

26 "A Purely perspiration."

27 Now, remember that, "purely perspiration."

28 3898. I'm going to go on. And 3900.

2c-2

1 "Q --" this is by Mr. Denny.

2 "You've said that under ideal conditions,
3 the maximum ideal conditions, from a true latent
4 print, that it will not last more than ten days to
5 two weeks at the maximum; is that right?

6 "A That's if it is a true latent, yes,
7 sir.

8 "Q All right. And is this based on your
9 experience or based on your reading in the field or --

10 "A Based on experience.

11 "Q Well, have you done any reading in the
12 field that corroborates your experience?

13 "A Only commenting from one to another,
14 on different burglaries, crime scenes, et cetera;
15 all of these, where we normally search for latents,
16 and the amount of time lapse from the time it's
17 reported until the time we respond."

18 So, in other words, Flo White is talking about a
19 particular type of print, which he calls a true latent, which
20 is purely perspiration.

21 Now, if you remember, I think this can be
22 differentiated from the type of print that Deputy Chamousis
23 was testifying about, because he was talking about something
24 other than perspiration in it, oil from the face or the hair or
25 maybe the surface was oily or had some type of other substance
26 on it.

27 Now, look at the comparison between the latent
28 print.

1 Now, this is -- this is Mr. Davis's latent print,
2 a blowup of it that was found on the footlocker. Now, look
3 how -- the clearness and detailed.

4 And here is a blowup of Mr. Beausoleil's print
5 that was found in the house. You can see how it appears to
6 already be disintegrated.

7 So what Mr. White was talking about was different
8 from what Deputy Chamousis was talking about.

9 Deputy White was talking about what he calls a true
10 latent print, which is purely perspiration.

11 Now, Dr. Katsuyama. Mr. Denny starts out in his
12 argument and says, "Well, let's assume that Dr. Katsuyama is
13 a doctor."

14 Well, that's the testimony. Do you think that if
15 Dr. Katsuyama wasn't a doctor that Mr. Denny would wait until
16 argument to try and throw dirt on him? Obviously, Dr. Katsuyama
17 is a doctor. He's the number two man in the Coroner's Office.
18 He's the Chief Deputy Coroner of Los Angeles County. Just
19 trying to spread some more ink around.

20 Now, what Dr. Katsuyama testified, the wound to
21 Gary Hinman's -- the left side of the face -- was possibly
22 fatal if it wasn't cared for or if the bleeding wasn't stopped.
23 And that's essentially what Dr. Brill testified to.

24 Look at Dr. Brill's testimony of Volume 45, Page
25 7207. This is the man that Mr. Denny wanted to get in for his
26 positive opinion. This is the question by Mr. Denny on direct.

27 "All right. And in -- in such a period of
28 time, in your experience, is the bleeding that would

1 "be produced from a wound of that kind -- even assuming an
2 hour's worth of bleeding -- sufficient to cause a man to die?

3 "A I don't think so."

4 It is right there, Page 7207. His real positive
5 opinion.

6 Now, Mr. Denny stated in his argument that they're
7 trying to prove that People's 31, the bullet, the evidence
8 bullet taken out of the wall in the Hinman house was fired from
9 People's 30, Mr. Davis's Radom. That's not true.

2d fol

2d-1

1 Mr. Davis did not tell us whether or not People's
2 31 did, in fact, come from his Radom on the weekend of the
3 Hinman murder. But, obviously, ladies and gentlemen, when
4 a bullet is found in the wall of a house of a man that's been
5 murdered and robbed, we can't ignore that bullet.

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

8 THE COURT: Yes, you may.

9 MR. DENNY: With the reporter.

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

13 MR. DENNY: Your Honor, Mr. Kay has been skirting the
14 fine line of this, and he's gone over it at this point.
15 And I would like the reporter to read back the last two
16 sentences for the Court.

17 THE COURT: Yes, would you do that, please.

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

20 "Now, Mr. Denny stated in his argument
21 that they're trying to prove that People's 31, the
22 bullet, the evidence bullet taken out of the wall
23 in the Hinman house was fired from People's 30,
24 Mr. Davis' Radom. That's not true.

25 "Mr. Davis did not tell us whether
26 or not People's 31 did, in fact, come from his
27 Radom on the weekend of the Hinman murder. But,
28 obviously, ladies and gentlemen, when a bullet

1 "is found in the all of a house of a man that's
2 been murdered and robbed, we can't ignore that
3 bullet.")

4 THE COURT: Can we --

5 MR. KAY: I was referring to the confession to Ella
6 Jo Bailey. I'm referring to Ella Jo Bailey's testimony.
7 I'll make that clear. I think it is obvious that I am
8 talking about the confession that Mr. Davis made to Ella
9 Jo Bailey.

10 THE COURT: You have not been talking about the
11 confession with reference to this particular statement.

12 MR. KAY: I'll make it clear, if there is any doubt.

13 MR. DENNY: As I say, he's been coming extremely close
14 to the line in this sort of argument, "Well, there has been
15 no defense testimony in rebuttal of this, there has been no
16 defense witnesses."

17 MR. KAY: I can do that under the law.

18 MR. DENNY: Et cetera.

19 And I haven't objected until this, and this is a
20 very clear, plain violation of the Griffin law, if there ever
21 was one. And I'm not going to move for a mistrial, although
22 I think it would be grounds for a mistrial.

23 But I would ask the Court at this time to caution
24 Mr. Kay to keep from attempting to even get close to the line
25 in this area, because he's come far too close already and
26 has gone over it now.

27 MR. KAY: I can make that --

28 THE COURT: The Court will say that I have listened

1 with some trepidations as you began your sentences several
2 times, lest you might go over the line and commit a violation
3 of the rules set out in Griffin. And it is possible that the
4 jury could misinterpret what you have said, and it is quite
5 likely that they will unless you clarify it.

6 MR. MANZELLA: Your Honor, I don't think they would
7 misinterpret it, even though I know Mr. Kay will clear it
8 up. He was talking about --

9 MR. KAY: I can clarify it.

10 MR. MANZELLA: In my argument, I made it clear when
11 evidence was uncontradicted, that we were not speaking about
12 Mr. Davis' failure to testify and I referred to the instruc-
13 tions.

14 THE COURT: The Court remembers that you did that, and
15 the Court believes that is a good course to take for a
16 prosecutor whenever a defendant has filed to testify.

17 MR. KAY: Your Honor, rather than striking it, why
18 don't I just say, "When I say Mr. Davis didn't tell us, I'm
19 referring to the statement of Ella Jo Bailey." I'll just
20 have to go over it again.

21 THE COURT: I'll strike it and you will have to go over
22 it again and explain what you meant.

23 MR. KAY: Well, I'd rather just explain it, Judge,
24 if it is all right with you. I mean, I think I can explain
25 it, if you think --

26 THE COURT: I don't want to take any chances that you
27 will not. I don't think it is a -- would be grounds for a
28 mistrial, but I think the jurors understand --

1 MR. DENNY: Your Honor, let me state my position, your
2 Honor, at this point.

3 I do not feel at this point that it will do
4 anything but emphasize it for Mr. Kay to say anything further
5 about the subject. I have simply asked to approach the bench
6 at this time to have the Court warn Mr. Kay to quit coming
7 as close to the line as he has come and to quit the chance
8 of real prejudicial error here. And I would prefer at this
9 point that he say nothing more on the subject and just let
10 it drop rather than emphasize it.

11 And I would ask the Court not to make any --

12 THE COURT: Not to strike it?

13 MR. DENNY: Not to strike it and not to do anything
14 further about it. I think if we just let it stop at this
15 point -- it is the course of conduct that I am objecting to
16 and any similar references of a similar kind.

17 MR. KAY: For the record, I intend to say, "When he
18 hadn't told us, I'm referring in the statement of Ella Jo
19 Bailey."

20 THE COURT: I think that would be proper.

21 MR. KAY: Okay. And then, I'll just go on from there.

22 THE COURT: All right.

23 MR. KAY: Okay.

24 (Whereupon, the following proceedings were had
25 in open court within the presence and hearing of the
26 jury:)
27
28

2e-1

1 MR. KAY: Let me say, least there be any confusion when
2 I say "Mr. Davis didn't tell us whether or not the bullet was
3 fired from his gun," I'm referring that in the statement of
4 Ella Jo Bailey that he didn't tell us that the bullet was fired
5 from that gun, his gun.

6 Okay. Mr. Davis in this confession told us that
7 the gun was there during the robbery of Gary Hinman and that
8 he held it on Gary Hinman when Manson slashed his ear.

9 What we did try to prove, is that the bullet found
10 in the wall of Gary Hinman's kitchen is not inconsistent with
11 the facts related to us by Mr. Davis to Ella Jo Bailey.

12 Obviously, if there was something like a .22
13 bullet in the wall or a .45 caliber slug in the wall that would
14 be inconsistent. So we can't ignore the fact that the
15 bullet's in the wall. And we've shown that it is not
16 inconsistent.

17 Now, whether or not that bullet came from
18 Mr. Davis's gun, we don't know, because in his statement to
19 Ella Jo Bailey he didn't say anything about the gun being
20 fired or if it was fired, who fired it.

21 But certainly there's nothing inconsistent about
22 that bullet. Both Sergeant Christansen and Mr. Johnson
23 stated that that evidence bullet could have been fired from
24 Mr. Davis's Radom.

25 Now, Mr. Denny, on the other hand, has been trying
26 to prove that People's 31 was not fired -- People's 31 being
27 the evidence bullet -- was not fired from People's 30, the
28 Radom.

2e-2

1 But in trying to prove this, I submit that he
2 tried to greatly mislead you jurors.

3 Now, remember that both Sergeant Christansen and
4 Mr. Johnson testified that there was nothing about People's 31
5 that would allow them to exclude it as having been fired from
6 People's 30. People's 30 being the Radom. They said that
7 after comparing it with People's 99, the undersized test-fired
8 bullet.

9 So what does Mr. Denny do? Well, he says, "Well,
10 how come, since People's 31, the evidence bullet, People's 99,
11 the undersized test-fired bullet, are both undersized bullets
12 and since the barrel of the Radom would get more worn with
13 use, why does People's 99, which was fired in -- the test-fired
14 bullet which was test fired in March, 1970, have more land and
15 groove markings on it than People's 31?"

16 Well, is that the truth, the whole truth and nothing
17 but the truth?

18 Well, what Mr. Denny left out -- I'm going to get
19 People's 31 and People's 99.

20 You see, he was trying to give you the impression
21 that they're the same size. But you can see that People's 99,
22 the test-fired bullet is smaller than People's 31, the evidence
23 bullet. So even though they're both undersized, they're
24 different sizes, and that's obviously why the test-fired bullet
25 has more markings on it.

26 The truth, the whole truth and nothing but the
27 truth.

28 Let me just take a moment to put these back.

2e-3

1 I think that we discussed it, and when you jurors
2 get the exhibits, they're going to put some different color
3 markings on the bullet so you can take them out and look at
4 them if you want to. We'll know what the colors are, so we
5 can get them back into the proper exhibit.

6 Now, Mr. Denny was so concerned about that 9-
7 millimeter bullet, the evidence bullet, People's 31, that he
8 tried to spread his ink all around it. And in the process, he
9 tried to pull a fraud on you ladies and gentlemen.

10 What fraud? The photomicrographs. Number one,
11 ballistic photomicrographs -- you can tell by the testimony of
12 Sergeant Christansen -- are not used by the Sheriff's
13 Department. And as you can tell from the testimony of
14 Mr. Johnson, he doesn't use them because he says they're
15 misleading. And Sergeant Christansen, obviously, his opinion
16 was that they were worthless. In the field of ballistics,
17 photomicrographs are rarely used. They might be used in other
18 fields, but in ballistics they are not. Obviously no one in
19 Sheriff's ballistics is not proficient in taking photomicro-
20 graphs. Christansen stated he had received no training in
21 taking photomicrographs and he had received just a half-
22 hearted instruction one day from the people that sold the
23 Sheriff their microscope.

24 Also, the Sheriffs don't have the proper equipment
25 to take photomicrographs. You've heard Mr. Matlovsky testify
26 about the intricate camera and stuff he had to take them.
27 Well, the Sheriffs obviously don't have anything like that.

28 Also, at no time did Sergeant Christansen in any

1 way, shape or form state that he based his opinion on the
2 photomicrographs.

3 Now, Mr. Denny has argued that Sergeant Christansen
4 was trying to create something out of the photomicrographs and
5 that he committed perjury about them.

6 Well, this is simply ridiculous. What the truth
7 is, is that Sergeant Christansen paid so little attention to
8 them he didn't even remember how many he had taken of the
9 bullet and the fact some of them were duplicates. He didn't
10 remember which side the test-fired bullet and which side the
11 exhibit bullet was placed in the microscope. Mr. Denny was the
12 one that asked for these photomicrographs. Sergeant Christansen
13 didn't produce them to create testimony, far from it.

2f fol

2f-1

1 You might say that Sergeant Christansen is
2 negligent and maybe he is negligent as far as the photomicro-
3 graphs, but obviously he didn't give a hoot and base his
4 opinion on that. He told you all that on direct examination.

5 And also, that Mr. Denny says, "Well, obviously he
6 was trying to lie because of the numbers placed on the
7 negative."

8 Well, at page 4769 and 4770, he told you that he
9 wasn't the one that did that. That Sergeant Warner was the
10 amateur photographer. He was the one that marked them. He
11 didn't pay any attention to these things. He didn't give a
12 hoot about them. He wasn't trying to create anything.

13 Even Mr. Matlovsky said that the person that was
14 trying to take the photomicrographs was the one that was
15 trying to do a good job and get the most detail, most in the
16 photomicrographs. Obviously, Sergeant Christansen was
17 persistent in taking them. And we never tried to say that
18 he was and he never tried to say that he was.

19 Now, remember, again, that Mr. Denny was the one
20 that requested the photomicrographs. And he told you in his
21 argument that he's an ex-prosecutor and he's obviously been
22 a defense attorney around for a while.

23 Do you really think that he knew or that he
24 didn't know that the Sheriffs weren't proficient in taking
25 photomicrographs and that the likelihood was that if they
26 took them they'd goof up because they didn't know how to
27 take them and that they didn't know what they were talking
28 about once they took them? Did Mr. Denny really think that

2f-2

1 the photomicrographs were relevant and they would go to a
2 material issue in this case or did he just try and darken the
3 water and create another issue which, obviously, Sergeant
4 Christansen would goof up on?

5 Well, the answer to that came from Mr. Denny's
6 very first defense witness, Mr. Matlovsky.

7 Now, Mr. Matlovsky testified that he has taken
8 over 25,000 photomicrographs. He's obviously an expert in
9 his field. He said by his own testimony he's probably the
10 best man in the area.

11 Well, don't you think if there was anything
12 relevant that Mr. Denny was interested in proving, other
13 than to create some other issue not relevant to the case and
14 darken the water, that he would have had Mr. Matlovsky take
15 these pictures in the first place, an independent man not
16 connected with law enforcement? That he would have them
17 take these good photomicrographs? Well, obviously he would.

18 And what happens when Mr. Denny finally has this
19 expert -- this expert, Mr. Matlovsky, take the photographs?
20 They're not even comparison photomicrographs.

21 Remember all this time he's spending with
22 Sergeant Christansen about the comparison photomicrographs,
23 about how one bullet looks to another. So what happens when
24 he has an expert take them? He knows he is going to do a
25 good job. He has them take it of the evidence bullet, not
26 even comparison photomicrographs. I say that absolutely
27 exposes Mr. Denny. And the fact that he was just trying to
28 spread some ink.

1 Now, Mr. Denny said that he was fighting to get
2 the truth. I say that he was fighting to create confusion.
3 If he was fighting to get the truth, what was the truth that
4 the defense brought out from the photomicrographs? That the
5 bullet wasn't fired? That the evidence bullet, People's 31
6 wasn't fired from the Radom?

7 No, because, remember both Christansen and Mr.
8 Johnson testified that it was their opinion that it could
9 have been fired right from the start. So, obviously, I can't
10 see how it can be any more obvious to you ladies and gentle-
11 men as it is to me what Mr. Denny's purpose was by using
12 those photomicrographs.

13 You can get it -- I'll stop. I get a chance to
14 get a drink of water.

15 Okay, let's talk about the law a minute on --
16 well, more than a minute. Let's talk about the law on the
17 Hinman murder and on the conspiracy.

18 Okay, from the evidence that we have already
19 discussed, it is obviously clear that it was the purpose of
20 those that participated in the Hinman murder and the
21 conspiracy to first get Gary Hinman to voluntarily turn over
22 his money, his supposed money and property and join the
23 Family. Or just turn over the money and not join the Family.
24 But turn over the money and property. That was the main
25 thing. And then, if he didn't, to get the money by force
26 and to murder him.

27 And, it is also clear from the evidence, that
28 Hinman did not cooperate. That he put up a struggle as brave

1 as he could against the insurmountable odds against him.

2 Okay, what is robbery?

3 Now, remember, that they didn't get very much
4 from Gary Hinman, although I guess you could say that the
5 stationwagon and the microbus is a lot. They only got
6 \$27.46 in cash. But remember from the talk at Devil's Canyon,
7 they thought he had an awful lot more, talking about stocks
8 and bonds and that he owned his own house and that his
9 parents must be rich or something.

2g fls.

2g-1

1 Okay, what is robbery? Robbery is the taking of
2 personal property of any value in the possession of another
3 from the person or immediate presence, and against his will,
4 accomplished by means of force or fear and with the specific
5 intent to permanently deprive the owner of his property.

6 Well, obviously Mr. Hinman was robbed. There's
7 no question about that. Mr. Denny doesn't even dispute that.

8 Now, with that in mind, we come to what's known as
9 the first degree felony murder instruction. This instruction
10 says that the unlawful killing of a human being, whether
11 intentional, unintentional, or accidental, which occurs as a
12 result of the commission or attempt to commit the crime of
13 robbery, and where there was, in the mind of the perpetrator,
14 the specific intent to commit such crime, it is murder of the
15 first degree. The specific intent to commit robbery and the
16 commission or attempt to commit such crime must be prove beyond
17 a reasonable doubt.

18 Okay. So how does this apply?

19 Didn't I just tell you a while ago that Susan
20 Atkins said that Bobby Beausoleil was the one that stabbed
21 Gary Hinman to death. So how would that make Davis and Manson
22 and Atkins and Brunner also guilty of first degree murder,
23 as they are.

24 Well, we have some other instructions that apply to
25 this.

26 Principals defined: All persons concerned in the
27 commission of a crime who either directly and actively commit
28 the act constituting the offense or who knowingly and with

2g-2

1 criminal intent aid and abet in its commission, or whether
2 present or not, who advise and encourage its commission, are
3 regarded by the law as principals in the crime thus committed
4 and are equally guilty thereof.

5 And aiding and abetting defined: A person aids
6 and abets the commission of a crime if he knowingly and with
7 criminal intent aids, promotes and encourages, instigates by
8 act or advice, or by act and advice, the commission of such
9 crime.

10 Well, let's talk about Bruce Davis and how these
11 two instructions apply to him.

12 And, remember, in the jury selection process, all
13 of you said to Mr. Manzella and myself that you had no quarrel
14 with the law of aiding and abetting and you would follow that
15 law as given in the instructions by Judge Choate, as you would
16 follow all other points of law given by him.

17 In the instructions -- well, in the crime of felony
18 murder, what is the important crime? Is it robbery or murder?

19 Well, the crime that's important in felony murder,
20 and to Bruce Davis's guilt here, is robbery, not the murder.
21 As strange as it seems, the legal concept of murder just kind
22 of tags along with the robbery. And this is obviously done
23 because the law wants to dissuade people from committing
24 robberies.

25 So they're saying, well, if you commit a robbery
26 and somebody is murdered in the course of that robbery, even if
27 it is unintentional or accidental, you are guilty of first
28 degree murder.

2g-3

1 Well, here, obviously the murder wasn't unintentional
2 or accidental. But, in other words, the law of felony murder is
3 saying that whether or not the defendant actually participated
4 in the murder is of little importance. For if -- you see, if
5 the defendant participated in the robbery, and as a result of
6 the commission of the robbery or attempt to commit the robbery
7 the victim was killed, the defendant is guilty of first degree
8 murder.

9 So the crucial question in this case becomes
10 whether or not Bruce Davis aided and abetted in the robbery of
11 Gary Hinman. For if he did aid and abet in the robbery of Gary
12 Hinman, he is guilty of first degree murder, because obviously
13 Mr. Hinman was murdered in the course of that robbery.

14 Let's apply the principal instruction of aiding and
15 abetting to Bruce Davis.

16 All persons concerned in the commission of the
17 robbery of Gary Hinman, who either directly and actively
18 commit the robbery, or who knowingly and with criminal intent
19 aided and abetted in its commission, are regarded by the law as
20 principals of the crime thus committed and are equally guilty
21 thereof.

22 Going to aiding and abetting.

23 Bruce Davis is guilty of aiding and abetting the
24 robbery of Gary Hinman if he knowingly and with criminal intent
25 aids, promotes, encourages or instigates by act -- and "act"
26 is the important thing here as far as Bruce Davis is concerned
27 -- by act or advice or by act and advice the commission of such
28 crime.

1 Now, the most important instruction as far as
2 Mr. Davis is concerned on the Hinman murder is 8.27. That's
3 an important number for you to remember.

4 Now, the whole instruction looks like this
5 (indicating), but when you get them in the jury room, the top
6 part is going to be off. But in the court on here it will have
7 an 8.27.

8 Now, what does 8.27 say?

9 It says, "If a human being is killed by any one
10 of several persons engaged in the perpetration of or attempt
11 to perpetrate the crime of robbery, all persons who either
12 directly and actively commit the act constituting such crime,
13 or who knowingly and with criminal intent aid and abet in the
14 commission, or whether present or not, who advise and
15 encourage its commission, are guilty of murder in the first
16 degree, whether the killing is intentional, unintentional or
17 accidental."
18
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2h-1

1 Well, there's no question that under the facts
2 of this case that Bruce Davis both directly and actively
3 participated in the robbery of Gary Hinman, and also aided
4 and abetted.

5 He directly and actively participated in the
6 robbery by holding his gun on Gary Hinman while Manson had
7 the argument with him or the heated discussion, as Bruce
8 said, and slashed him with the sword in the course of the
9 robbery.

10 He encouraged the robbery by going there, knowing
11 what was going to happen. The fact that all five of these
12 people that you see on that exhibit board there went there
13 the same time. They gave, in numbers, their restraint, kind
14 of. They gave psychological courage to one another by
15 being there.

16 And he also aided and encouraged in the commission
17 of the robbery, again, by holding the gun on Gary Hinman during
18 the course of the robbery when Manson was obviously trying to
19 get Hinman to turn over his property or else.

20 And, of course, Hinman got "the or else" anyway.
21 He -- after Manson had slashed his ear and he was taken into
22 the bed, that's probably the point at which he signed over
23 his two automobiles.

24 But, of course, they thought -- they thought that
25 he had a lot more than that. They thought he was holding out
26 on them. That's why they murdered him, because, remember,
27 they thought that he had a lot more than what they got, two
28 vehicles and \$24.60. And the way they were talking back at

2h-2

1 Devil's Canyon, you would think that Hinman was some kind
2 of a millionaire. I'm sure they expected that and didn't
3 get it.

4 And so Hinman got it instead.

5 Obviously, when Davis and Manson arrived on the
6 scene, Gary wasn't being cooperative at all. So Davis and
7 Manson were there to tell him in no uncertain terms to
8 cooperate or else. Davis held the gun on him to make sure that
9 he wouldn't -- you know, no false moves or anything. And
10 then, Manson had the argument with him and got mad at him and
11 slashed him on the side of the face.

12 Another very important instruction, not as
13 important as 8.27, because that's -- that's a very, very
14 important instruction. But another important one is 8.26.
15 That states if a human being is killed by any one of several
16 people jointly engaged at the time of such killing in the
17 perpetration of or intent to perpetrate the crime of robbery,
18 and if the killing is done in furtherance of a common design
19 and agreement to commit such crime, or is an ordinary
20 and probably result of the pursuit of that design and agree-
21 ment, all such persons so jointly engaged are guilty of murder
22 of the first degree, whether the killing is intentional,
23 unintentional, or accidental.

24 Well, obviously the five people that you see
25 there: Atkins, Manson, Brunner, Beausoleil and Davis, were
26 jointly engaged in robbing Gary Hinman. And, of course,
27 the killing -- remember, that was talked about. And if
28 Hinman didn't cooperate and turn over the money, that that

1 was the course that the robbery was going to take.

2 Now, remember, ladies and gentlemen, once you
3 decide that Gary Hinman was murdered in the course of a
4 robbery, that murder automatically becomes murder of the
5 first degree. And, in effect, the law takes your discretion
6 away. It says "all murders committed in the course of a
7 robbery are automatically first degree murders."

8 They're not second degree murders or manslaughters.
9 They're automatically first degree murders, and they're only
10 murders of the first degree.

11 Okay, let's talk briefly about the second count
12 of the indictment, the conspiracy to rob and murder Gary
13 Hinman. I say let's talk briefly about it, and you see I
14 don't have too much left here, because 100 percent of what I
15 have said about the first count, the murder of Gary Hinman
16 applies to the second count, conspiracy to commit murder,
17 because I've been talking about conspiracy that existed all
18 the time. And the facts, the same facts apply.

19 Now, what is a conspiracy? Basically, it is an
20 agreement between two or more persons to commit a crime.

21 Now, does the prosecution have to show an express
22 agreement? Let me read an instruction to you.

23 This is an instruction 6.12, conspiracy, "Proof
24 of express agreement not necessary."

25 It is not necessary in proving a conspiracy to
26 show a meeting of the alleged conspirators or the
27 making of an express formal agreement. The formation
28 and existence of a conspiracy may be inferred from all

1 ' the circumstances tending to show the common
2 intent and may be proved in the same way as any
3 other fact may be proved either by direct testimony
4 of the fact or by circumstantial evidence or both
5 direct and circumstantial evidence.

6 Well, I say that the clearest proof of the
7 conspiracy in this case is the fact that all five of those
8 lovely young people were at Gary Hinman's house at the same
9 time with the same purpose in mind. I mean, is there any
10 other rational explanation for why all five of those people
11 were there at the same time? And that some of them were
12 around, and that they all had the same intent. Obviously,
13 it shows beyond any doubt, the existence of the conspiracy.

21 fls.

21-1

22

1 Also, the fact that Mary Brunner was looking for
2 gloves before she left, shows that she knew that she didn't
3 want to leave her fingerprints there.

4 Again, the fact that some of the participants
5 were armed.

6 And the fact that all of them went there with the
7 same intent, shows that they accepted the conspiracy, that they
8 acted on Manson's directions and that they accepted his intent
9 and his plan.

10 Now, the overt act in the conspiracy states that
11 "On or about July 25, 1969, the said defendants Bruce McGregor
12 Davis and Susan Atkins and Robert Beausoleil did travel to the
13 vicinity of 964 Old Topanga Road, Malibu, in the County of
14 Los Angeles."

15 Well, you'll notice that nowhere in that overt act,
16 number one, does it say that they traveled there together. It
17 says they traveled there on or about July 25, 1969. On or about
18 July 25, 1969, I submit, would cover the whole period of the
19 Hinman murder.

20 MR. DENNY: Well, again, your Honor -- excuse me, your
21 Honor, I hate to interrupt again. I think that's a misstatement
22 of law, as a matter of law. I think the Court should so
23 admonish counsel and advise the jury.

24 THE COURT: Would you read that to me?

25 If you would like, you may approach the bench.

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

1 (Whereupon, the record was read by the
2 reporter as follows:

3 Now, the overt act in the conspiracy states that "On
4 or about July 25, 1969, the said defendants Bruce McGregor
5 Davis and Susan Atkins and Robert Beausoleil did travel to the
6 vicinity of 964 Old Topanga Road, Malibu, in the County of
7 Los Angeles."

8 Well, you'll notice that nowhere in that overt act,
9 number one, does it say that they traveled there together. It
10 says they traveled there on or about July 25, 1969. On or about
11 July 25, 1969, I submit, would cover the whole period of the
12 Hinman murder.)

13 MR. DENNY: Now, the statement doesn't allege there that
14 they traveled there together.

15 MR. KAY: I think that's a matter of interpretation.

16 MR. DENNY: I think it is a matter of law that we've
17 discussed in a motion here and the Court has already made a
18 finding, I believe, that the allegation as it is stated in the
19 conjunctive that they all traveled there.

20 MR. KAY: The Court may know such finding.

21 MR. DENNY: Well --

22 THE COURT: I stated it was in the conjunctive that they
23 did all travel there but I didn't say they all traveled there
24 together. And I don't think it says that, does it?

25 MR. KAY: No, it doesn't.

26 You want me to get a copy of it?

27 THE COURT: If you, and you, and you are alleged to
28 travel to a certain place on a certain date, each one of you,

1 in order to -- in order to have complied with the requisite
2 proof, if it is sought to be proved in the conjunctive, would
3 have had to travel there, but not together, necessarily; is that
4 what you mean?

5 MR. DENNY: Yes, that's exactly what I mean.

6 THE COURT: I don't think that's what it means. Let me
7 read it.

8 (Reading.)

9 THE COURT: It doesn't say that they traveled together.

10 MR. DENNY: Well, it doesn't, but my recollection of our
11 whole argument on the 1118.1 motion, the fact -- the Court
12 certainly made an implied finding, I felt, at the time, that by
13 the fact that they had stated that Susan Denise Atkins, Robert
14 Beausoleil and Bruce McGregor Davis had traveled there, that
15 they were required to show that they had done so together, in
16 that if they have, for instance, only stated that Robert
17 Beausoleil and Susan Atkins had traveled there, this, they could
18 argue, they have done.

19 MR. KAY: Uh-huh.

20 MR. DENNY: And that is, the evidence showed by Ella
21 Bailey's testimony they did drive away from there together,
22 presumably with the statement by either Susan Atkins or Mary
23 Brunner, that they were going to Gary Hinman's house, to show
24 that. But the idea being --

25 THE COURT: Well, if I conveyed that to you, I was
26 probably wrong. But I don't recall having --

27 MR. KAY: No, you made no such finding.

28 THE COURT: -- having that point in mind, though. I

1 think in order to prove overt act number one, I think they are
2 going to have to show that those persons, all of those persons,
3 all three of them did travel to 964 Old Topanga Canyon Road,
4 but I don't think it has to be shown that they traveled
5 together in one automobile.

6 MR. DENNY: Your Honor, that was the whole distinguishing
7 factor between overt act number one and overt act number --

8 MR. KAY: No.

9 MR. DENNY: -- either number two or number three.

10 MR. KAY: Huh-uh.

11 MR. DENNY: Yes. Overt act number two you kicked out
12 because there was no showing other than by the statement of
13 the defendant that he had entered the house with Charles Manson.

14 Now, in that case there is no showing other than
15 the statement of Bruce McGregor Davis that he had entered the
16 house. It is the same thing. If the People are going to be
17 consistent. The only way the People got that evidence in,
18 was your finding that there was, at least a version that you
19 could get from the testimony of Ella Bailey, from their
20 leaving and from a fourth person leaving in the car that that
21 fourth person was Bruce Davis.

22 MR. KAY: That's because that's all we argued at that
23 point because we didn't want to let you know what we were
24 going to argue in closing argument. But certainly the judge
25 made no finding on that.

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1 MR. DENNY: Your Honor, I submit that your finding on
2 overt act number two, denying the People of the use of that
3 overt act because the only evidence they had was the statement
4 of Davis should then apply to overt act number one, if the
5 People are now relying on the statement of Davis to show to the
6 testimony of Ella Bailey that he admitted going there with
7 Charles Manson. If that's what they are relying on, and
8 that's what they are arguing to this jury, then, that overt
9 act should be stricken.

10 MR. KAY: Huh-uh.

11 MR. DENNY: Absolutely. They've either got to fish
12 or cut bait. They can't talk out of both sides of their mouth
13 one way to you on an 1118 motion and another way to the jury,
14 relying now --

15 THE COURT: I don't see your point. The only way -- if
16 you draw the analogy between overt act number one and overt
17 act number two, the Court struck overt act number two because
18 there was no separate proof.

19 MR. DENNY: No evidence independent of the statement,
20 right.

21 THE COURT: That's right.

22 MR. DENNY: All right. Now, they're attempting to prove
23 overt act number one only by his statement.

24 THE COURT: What do you have to say to that?

25 MR. KAY: We're not trying to prove it by his statement.

26 MR. DENNY: How are you trying to prove it, then, when
27 you say you submit that it doesn't have to show that they went
28 there together and it can mean he went there any time? The

1 only evidence you've got of his going there any time is through
2 the evidence of Ella Bailey, when he says he told her on Monday
3 when he went there with Charles Manson.

4 MR. KAY: No, I don't --

5 MR. DENNY: That's the only other evidence.

6 MR. KAY: We've already argued this, and the Court didn't
7 make any specific finding on the language. And that -- and I
8 think that obviously the jury is going to be properly instructed.
9 They have to find it apart from the confession. We have state-
10 ments of Ella Jo Bailey, "She said she heard they left."
11 Whiteley said "They left. They left twice." We have the --
12 the jury might decide that the bullet in the Hinman wall was
13 fired from Davis's gun and that shows that he did drive there.

14 THE COURT: Well, such allegations does have to strictly
15 be construed and interpreted, but even a strict application
16 would not foreclose the instruction that you suggest.

17 MR. DENNY: Your Honor --

18 THE COURT: The Court would deny --

19 MR. DENNY: Well, let me just say before we go -- well,
20 your Honor, even a strict instruction might not, but then
21 they're relying solely on the statement. If they're relying
22 solely on the statement, it should be stricken.

23 THE COURT: The Court does not believe they are totally
24 relying on the statement. The Court believes there are
25 inferences from the evidence which could be argued to establish
26 that Bruce Davis did arrive at the house. Not necessarily with --

27 MR. DENNY: There are no other inferences.

28 THE COURT: Well, the Court sees some and Mr. Kay has

1 pointed out one or two here just in response to the Court's
2 question. And, consequently, I think it would be a matter for
3 the jury to determine as to whether or not Mr. Davis ever did
4 arrive at the house. I think the application of overt act number
5 one, as it is alleged, whether or not it is proven, is a matter
6 for the jury to determine.

7 MR. DENNY: Well, he's mentioned two things -- when he
8 says Whiteley said something, that's not true, your Honor.

9 THE COURT: All right.

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

12 MR. KAY: Okay. Now, once you have decided that there was
13 a conspiracy to rob and murder Gary Hinman and that Bruce Davis
14 was a member of that criminal conspiracy, a very, very important
15 legal concept comes into play which makes Mr. Davis just as
16 guilty of first degree murder even apart from the concepts we've
17 already talked about. And this legal concept is called joint
18 responsibility.

19 I'm going to read another instruction to you. I'm
20 reading a few to you, but the judge is going to read all of them
21 to you, so you'll hear them again.

22 This is instruction number 6.11, called joint
23 responsibility.

24 Each member of a criminal conspiracy is liable for
25 each act and bound by each declaration of every other member of
26 the conspiracy if said act or said declaration is in furtherance
27 of the object of the conspiracy.

28 The act of one conspirator pursuant to or in

1 furtherance of the common design of the conspiracy is the act
2 of all co-conspirators.

3 Now, that's very important. We're going to talk a
4 little about that.

5 The act of one conspirator pursuant to or in
6 furtherance of the common design of the conspiracy is the act
7 of all conspirators. Every conspirator is legally responsible
8 for an act of a co-conspirator. That follows as one of the
9 probable and natural consequences of the object of the
10 conspiracy, even though it was not intended as a part of the
11 original plan and even though he was not present at the time
12 of the commission of such act.

13 Now, under this -- well, what does this mean?
14 Under this joint responsibility instruction it means that
15 Bruce Davis, if you determine that he is a member of this
16 conspiracy, he is bounded as if he, himself, did, number one,
17 the hitting of Gary Hinman over the head with the gun; number
18 two, Manson slashing Hinman on the left side of the face;
19 three, the forcing of Hinman to sign over his two vehicles and
20 the taking of the money; and four, Beausoleil stabbing Hinman
21 to death.

22 I submit to you that under that instruction you
23 have to look at the evidence as if Bruce Davis did each of
24 these acts himself because as that instruction says, the
25 act of one conspirator, pursuant to and in furtherance of the
26 common design of the conspiracy -- and here robbery was the
27 common design, and if he didn't cooperate and turn over all
28 the money that they thought he had, that he would be murdered --

1 that he would be murdered, so what -- all these other, the
2 four other members did binds Bruce Davis just as his holding
3 the gun on Hinman binds the other four.

4 They're just as responsible for his act as he is
5 for theirs.

6 And, of course, it certainly can't be denied that
7 the natural consequence of the particular conspiracy we have
8 here was the murder of Gary Hinman.

9 Gary Alan Hinman.

10 (Whereupon, Mr. Kay exhibited a photograph to the
11 jury.)

12 Donald Jerome Shea.

13 (Whereupon, Mr. Kay exhibited a photograph to
14 the jury.)

15 Ladies and gentlemen, in the name of their tortured
16 souls, I ask you for justice. The final decision is up to you.
17 Will your verdicts be a victory for justice or a victory for
18 Bruce Davis?

19 Thank you very much.

20 MR. DENNY: Your Honor, may we approach the bench a
21 moment?

22 THE COURT: Ladies and gentlemen, you may have fifteen
23 minutes now, and we'll conduct some business outside of your
24 presence. And so will you remain outside of the courtroom
25 until the bailiff calls you.

26 Mr. Kuczera will call you in about fifteen minutes.

27 During the recess you are admonished not to
28 converse amongst yourselves, nor with anyone else, nor allow

1 anyone else to converse with you on any subject connected with
2 this matter, nor are you to form or express any opinion on it
3 until it is finally submitted to you.

4 (Afternoon recess.)
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1 THE COURT: The record may show the defendant is
2 present with his counsel. The jurors are not present.

3 I'll hear from the defendant as to any objection
4 he may have, that he wants to put on the record.

5 MR. DENNY: Your Honor, I would like to put on the
6 record simply that the instructions that have been submitted
7 by me and withdrawn after the Court had worked over the
8 instruction, in connection with Count III of the indictment,
9 the Court has permitted you to hear the purported statement
10 of Charles Manson to Danny DeCarlo related by witness
11 Barbara Hoyt and the alleged statement of Charles Manson to
12 witness John Swartz --

13 Actually, it is misspelled here. It should be
14 just S-w-a-r-t-z. Can I strike the "c-h" there? It is
15 spelled S-c-h-w-a-r-t-z.

16 THE COURT: Yes. Would you correct it, please.

17 MR. DENNY: Anyway, that particular instruction has a
18 check "Requested by the defendant" and I have requested it
19 after the Court has worked diligently to put it in the form
20 that it is, only because I felt it was necessary to have
21 some instruction to the jury, the Court having permitted
22 the evidence which I strongly objected to. So I want the
23 record simply to reflect that I would not have to have had
24 this instruction but for the Court's prior ruling.

25 THE COURT: But for the Court's prior ruling permitting
26 the statements to come in.

27 MR. DENNY: Yes.

28 THE COURT: Very well. People.

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1 MR. DENNY: Otherwise, I think the Court has refused to
2 give some of the ones that I have proffered.

3 THE COURT: Yes.

4 MR. DENNY: But that will simply show in the record.

5 THE COURT: That will show in the record. Mrs. Holt
6 has those in her hand which you have offered and which I
7 have refused.

8 MR. DENNY: I would request, your Honor, that the
9 People's argument here in the form of their charts and other
10 things be removed from before the jury during the instruction
11 of the jury.

12 THE COURT: Is there one down below me here?

13 MR. DENNY: There are several, yes.

14 THE COURT: Yes, they should be -- just reverse them
15 so the jury is not able to read them.

16 People.

17 MR. KAY: I'm just about finished, your Honor. They
18 seem to all be in order so far.

19 MR. DENNY: Well, your Honor, if Mr. Kay is still
20 looking, I would like at this time to move to reopen my
21 argument to reply to that portion of Mr. Kay's argument which
22 he acknowledged was a sort of sandbag of the defense in this
23 case. That is on --

24 THE COURT: Well, how long would you wish to argue?

25 MR. DENNY: Just about three minutes.

26 THE COURT: All right. And then, the People close.

27 MR. DENNY: If they wish to, that's fine. On that
28 particular point.

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1 THE COURT: All right.

2 MR. DENNY: I feel we have been sandbagged there.

3 THE COURT: The Court will permit that.

4 MR. KAY: Your Honor, the People are allowed their
5 closing argument. I don't think this is -- I mean, we have
6 the final argument. I don't see why Mr. Denny should be given
7 the final argument.

8 THE COURT: Well, he won't be. You'll be able to
9 reply to it.

10 MR. KAY: I've had no chance to prepare a response.

11 MR. DENNY: I've had no chance to prepare my rebuttal
12 either.

13 THE COURT: It is true, you took a view of it which
14 could be applied, reading it strictly. Mr. Denny didn't
15 take that view and it is possible that he might have been
16 misled by something the Court said in its prior rulings on --
17 regarding overt act No. 2 and the elimination thereof. And
18 so --

19 MR. KAY: I don't see, when the Court didn't make any
20 ruling on that -- I don't see how he could be misled.

21 MR. DENNY: Well, I was misled, just as Mr. Kay said --
22 when he said, "Well, we don't have to tell you what we are
23 going to proceed on when we were up at the bench."

24 MR. KAY: Well --

25 THE COURT: I'll let you argue to it, if you wish.

26 MR. DENNY: Thank you, your Honor.

27 MR. KAY: Is it just going to be on this one point?

28 THE COURT: On the one point, yes.

MR. DENNY: That's all.

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1 MR. MANZELLA: Your Honor, I want to be heard on the
2 motion to reopen before the jury comes back in. Do you want
3 to take it now or --

4 THE COURT: Yes, we'll take it now.

5 MR. MANZELLA: All right. I've spoken to the Sheriff
6 of Gentry County, Missouri, who has been very helpful and
7 cooperative. He tells me that he and Sergeant Whiteley and
8 Deputy Gleason and the Sheriff of Kansas City and his
9 deputies spent today searching Kansas City for Bill Cole,
10 also known as Bill Vance, and were unable to locate him.
11 And that Sergeant Whiteley and Deputy Gleason are now on
12 their way back to Los Angeles.

13 Sheriff Rainey tells me that the -- Mr. Denny
14 was in Gentry County, as I think the record already shows,
15 on Saturday, Saturday morning, this past Saturday.

3a fls.

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1 That several notes were left indicating that the
2 Sheriff's deputies Whiteley and Gleason would be there and
3 wanted to talk to Bill Cole.

4 And Sheriff Rainey tells me that the landlord of
5 the place where Cole was living received a letter today from
6 Bill Vance saying that he knew something like this would
7 happen, that he's sorry, but he's not coming back and the
8 landlord can sell his furniture to pay any rent that he
9 owes. That letter was postmarked Kansas City and it was
10 postmarked yesterday, Sunday.

11 It would appear that the diligence of Mr. Denny
12 has effectively resulted in us losing the opportunity for
13 us to hear what Mr. Cole and Mr. Vance had to say about this
14 case, what he knew about the case. And for that reason, the
15 People are unable to locate Bill Vance. And we'll withdraw
16 our motion to reopen the case.

17 MR. DENNY: Your Honor, I just would like to have the
18 record reflect that my diligence I feel is no greater than
19 that of the People should have been. I sought to have the
20 transcript by today of the proceedings yesterday -- on
21 Friday, but I think the Court was well aware of them, that
22 Deputy Gleason knew before he testified that the person in
23 McFall, Missouri, known as Bill Cole there to the Sheriff
24 of Gentry County, was from communications that he had just
25 shortly had with Sheriff Rainey in Gentry County, the Bill
26 Vance for whom they were looking. And I have gone through
27 the Court's special exhibits 4 and 5, and they reflect that
28 at least as of February of 1970 there was an outstanding

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Dyer Act

1 LAPD warrant for Bill Vance under the name of William Van
2 Sickel with all of his aliases, for forgery, from LAPD.
3 And also the FBI was looking for him for possible Dyer
4 Act violations.

5 Now, your Honor, I made it quite clear on
6 Friday's hearing that if, in fact, the People knew at the
7 time of that hearing that the Bill Vance that they were
8 looking for was there, that they should have taken him into
9 custody forthwith at that time and the defense as well as the
10 People would have had an opportunity to question him. I
11 went back there in good faith to attempt to question him,
12 and I left notes with my name on them. I didn't hide one
13 thing. And as the Court well knows, when I returned,
14 by happenstance, I met the Court at the airport and I
15 disclosed to the Court that I had been back there and had
16 been looking for him and had, in fact, left notes to have
17 him call me. So there's been nothing underhanded or shady
18 or anything like that at all, but on the contrary, wide
19 open about my efforts to locate Mr. Vance.

20 And I think the People have only themselves to
21 blame for the disappearance of that witness when, having
22 the information on Friday that he was the Bill Vance they
23 were looking for, they didn't have Sheriff Rainey arrest
24 him forthwith on the LAPD warrant which has been outstanding
25 for over a year and a half.

26 THE COURT: Of course, it is unfortunate --

27 MR. MANZELLA: I would like to reply to that briefly.

28 THE COURT: Well, it is unfortunate that if your visit

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1 to Missouri did cause him to leave, that that had happened.
2 I'm not sure from the way it has been related that it was
3 your appearance there in Missouri that did cause Mr. Vance
4 to leave, because he could possibly have gotten wind of the
5 interest of the law enforcement authorities in him through
6 some other means.

7 MR. DENNY: Through the law enforcement people who
8 came to see him in the form of Sheriff Rainey.

9 MR. MANZELLA: The way he got wind of it, your Honor,
10 was through the note left by Mr. Denny. And I dare say
11 when Mr. Denny told your Honor that he had been to Missouri,
12 he didn't tell you that he had left Whiteley and Gleason's
13 name on the note which was completely irrelevant to his
14 purpose in wanting to see Mr. Vance. There was no reason
15 for Mr. Denny to leave on that note -- for him saying,
16 "I must speak to you before Whiteley and Gleason get here.
17 Whiteley and Gleason -- knowing that Bill Vance knows who
18 Whiteley and Gleason are, having been interviewed by them
19 back in 1969.

20 THE COURT: You have information that Mr. Vance did
21 get one of those notes?

22 MR. MANZELLA: All I have, your Honor, is the contents
23 of the letter that he sent to the landlord which was post-
24 marked Sunday the day after Mr. Denny left those notes,
25 and it was postmarked "Kansas City," and in which he said
26 in sum and substance to the landlord he knew that the
27 sheriffs were looking for him and he had expected something
28 like that to happen.

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1 THE COURT: Well, in any event, at this point the
2 People are withdrawing the motion?

3 MR. MANZELLA: That is correct, your Honor.

4 THE COURT: All right. Have you finished with the
5 instructions now?

6 MR. KAY: Yes. I gave them to Mrs. Holt.

7 THE COURT: Do you have anything to add or any remarks
8 that you wish to make?

9 MR. KAY: No.

10 THE COURT: Let's get the jury in and the Court will
11 instruct them.

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1 Oh, incidentally, gentlemen, each side has
2 indicated to me that they did not want an instruction in
3 regard to the approximate cause, so I have not, therefore, as
4 a result of a request by both sides that I not give that
5 instruction, I'm not giving it to them.

6 MR. DENNY: That is correct on behalf of the defense,
7 your Honor.

8 MR. KAY: That is correct, your Honor.

9 THE COURT: And as to lesser included offenses, there
10 has been a specific request on the part of the defendant that
11 those not be given.

12 MR. DENNY: That is correct also, your Honor.

13 Your Honor, you are going to permit the additional
14 argument?

15 THE COURT: Yes.

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

18 THE COURT: All right, the record will show Mr. Davis to
19 be present with his counsel and all the jurors are present.

20 I'm going to permit -- it is rather unusual --
21 but I'm going to permit the defendant to re-open argument for
22 three minutes only and the People to reply for three minutes
23 only on a point which was raised in Mr. Kay's closing argument.

24 The Court does not wish by reason of doing this
25 to indicate to you that the Court is in any way emphasizing
26 the point which these gentlemen will be discussing.

27 MR. DENNY: Thank you, your Honor.

28 Ladies and gentlemen, I was somewhat surprised,

RE-OPEN
DENNY

1 appalled, bewildered and amazed to hear Mr. Kay tell you that
2 in regard to overt act number one, the only act which is left
3 to them to support their conspiracy charge, because it is
4 phrased in the form that "On or about July 25th, 1969, the said
5 defendants, Davis, Atkins and Beausoleil did travel to the
6 vicinity of 964 Old Topanga Canyon Road," you might assume for
7 the sake of their argument that this meant if all three of
8 them got there any time on or about July 25th. And "on or
9 about" doesn't necessarily mean the date itself. It could
10 be one day or several days on either side. So that you could
11 have the overt act proved if you found that Bruce Davis arrived
12 there any time. And that Susan Atkins and Robert Beausoleil
13 were also there any time.

14 Well, it is hard enough to get the People to put
15 in writing their conspiracy charge, as I told you before. They
16 didn't do it in the Shea case for their own reasons. They've
17 done it here and it must be sort of in the words of the
18 vernacular, the legal vernacular, at least construed strictly
19 against the pleader. They're the ones that plead it. They
20 can plead it any way they want to. And they have pled this
21 specific overt act. That doesn't mean as you read it, like
22 any intelligent person, and like the pleader pled it, that if
23 they got there any time. It means, essentially -- and they
24 were going to try to prove to you that all three of them
25 went there together on the 25th of July, 1969.

26 Now, lastly, you cannot prove that overt act
27 by any statement purportedly made by the defendant to Ella
28 Bailey.

1 Now, you're not going to receive an instruction on
2 this, but I am not misleading you as to the law. You're not
3 going to receive an instruction because up until Mr. Kay's
4 argument, it didn't even seem to be a relevant point. The only
5 point that the People relied on was supposedly the fact that
6 Bruce Davis was that fourth person in the car driving to the
7 Beausoleil house on the night of July 25th, just as they pled,
8 but which they were not able to prove. But under the law, you
9 cannot find that he was there at any time by virtue of a
10 statement made to him. You must find it by independent
11 evidence. And there's none, other than the statement purportedly
12 made to him -- to Ella Jo Bailey by him.

13 So I've been given this opportunity to clear that up.
14 I was taken by surprise. I think the Court was taken by surprise.
15 If not -- you will not receive an instruction, but I have not
16 misled you I think as to the law and I thank you for the
17 opportunity and I thank the Court for the opportunity to clear
18 this up. Thank you.

KAY 19 MR. KAY: I might reply briefly that the Court was not
20 surprised and the Court said that on the record. And, of
21 course, the reason the Court wasn't surprised, because if you
22 took what Mr. Denny just said, it doesn't make sense, because
23 obviously where is Mary Brunner? If we were talking about the
24 fact that they all went together at once, there's no dispute
25 that Mary Brunner was in that car when they all traveled
26 together. But you don't see her name in overt act number one
27 and, obviously, if we were talking about all of them going
28 together, she would be included in that because there's just

1 absolutely no dispute. Mr. Denny doesn't even dispute that
2 as she went along, so if what she was saying is so, Mary
3 Brunner's name, I submit, would be in overt act number one and
4 it isn't. Thank you very much.
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1 THE COURT: Ladies and gentlemen of the jury:

2 It now becomes my duty to instruct you on the law
3 involved in this case, and it is your duty as jurors to follow
4 the law as it applies to this case and as I state it to you.

5 You need not take notes, as I give these instruc-
6 tions on the law to you, because I will make these instructions
7 available to you in the jury room.

8 As jurors it is your exclusive duty to decide all
9 questions of fact submitted to you and for that purpose to
10 determine the effect and value of the evidence. In performing
11 this duty you must not be influenced by pity for a defendant or
12 by passion or prejudice against him. You must not be biased
13 against a defendant because he has been arrested for this
14 offense, or because a charge has been filed against him, or
15 because he has been brought to trial. None of these facts is
16 evidence of his guilt and you must not infer or speculate from
17 any or all of them that he is more likely to be guilty than
18 innocent.

19 In determining whether the defendant is guilty or
20 not guilty, you must be governed solely by the evidence
21 received in this trial and the law as stated to you by the
22 Court. You must not be governed by mere sentiment, conjecture,
23 sympathy, compassion, prejudice, public opinion or public
24 feeling. Both the People and the defendant have a right to
25 expect that you will conscientiously consider and weigh the
26 evidence and apply the law of the case, and that you will reach
27 a just verdict regardless of what the consequences of such a
28 verdict may be.

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1 Now, if in these instructions the Court repeats any
2 rule, direction or idea, or states the same in varying ways,
3 no emphasis is intended and you must not draw any inference
4 therefrom. You are not to single out any certain sentence or
5 any individual point or instruction and ignore the others. You
6 are to consider all the instructions as a whole and are to
7 regard each in the light of all the others.

8 The order in which the instructions are given has
9 no significance as to their relative importance.

10 From time to time there has been colloquy between
11 counsel or colloquy or argument between Court and counsel which
12 remarks were not referring to a stipulation regarding evidence.
13 You are instructed that you are not to allow such exchanges to
14 enter into your judgment in any way.

15 You must not consider as evidence any statement of
16 counsel made during the trial; however, if counsel for the
17 parties have stipulated to any fact, or any fact has been
18 admitted by counsel, you will regard that fact as being
19 conclusively proved as to the party or parties making the
20 stipulation or admission.

21 A "stipulation," is an agreement between attorneys
22 as to matters relating to the trial.

23 As to any question to which an objection was
24 sustained, you must not speculate as to what the answer might
25 have been or as to the reason for the objection.

26 You must never speculate to be true any insinua-
27 tion suggested by a question asked a witness. A question is not
28 evidence and may be considered only if it supplies meaning to

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1 the answer.

2 You must not consider for any purpose any offer
3 of evidence that was rejected, or any evidence that was
4 stricken out by the Court; such matter is to be treated as
5 though you had never heard it.

6 The masculine form as used in these instructions
7 applies equally to a female person.

8 Certain evidence was admitted for a limited
9 purpose during the course of this trial.

10 At the time this evidence was admitted you were
11 admonished that it could not be considered by you for any
12 purpose other than the limited purpose for which it was
13 admitted.

14 You are again instructed that you must not
15 consider such evidence for any purpose except the limited
16 purpose for which it was admitted.

17 Every person who testifies under oath is a witness.
18 You are the sole and exclusive judges of the credibility of
19 the witnesses who have testified in this case.

20 In determining the credibility of a witness you
21 may consider any matter that has a tendency in reason to
22 prove or disprove the truthfulness of his testimony, including
23 but not limited to the following:

24 His demeanor while testifying and the manner in
25 which he testifies;

26 The character of his testimony;

27 The extent of his capacity to perceive, to
28 recollect, or to communicate any matter about which he testifies;

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1 The extent of his opportunity to perceive any
2 matter about which he testifies;

3 His character for honesty or veracity or their
4 opposites;

5 The existence or nonexistence of a bias, interest
6 or other motive;

7 A statement previously made by him that is consis-
8 tent with his testimony;

9 A statement made by him that is inconsistent with
10 any part of his testimony;

11 The existence or nonexistence of any fact testified
12 to by him;

13 His attitude toward the action in which he
14 testifies or towards the giving of testimony;

15 His admission of untruthfulness;

16 His prior conviction of a felony.

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1 The fact that a witness had been convicted of
2 a felony, if such be a fact, may be considered by you only
3 for the purpose of determining the credibility of that
4 witness. The fact of such a conviction does not necessarily
5 destroy or impair the witness' credibility. It is one of
6 the circumstances that you may take into consideration in
7 weighing the testimony of such a witness.

8 A witness willfully false in one material part
9 of his testimony is to be distrusted in others. You may
10 reject the whole testimony of a witness who willfully has
11 testified falsely as to a material point, unless, from all
12 the evidence, you shall believe the probability of truth
13 favors his testimony in other particulars.

14 However, discrepancies in the witness' testimony
15 or between his testimony and that of others, if there were
16 any, do not necessarily mean that the witness should be
17 discredited. Failure of recollection is a common experience;
18 and innocent misrecollection is not uncommon. It is a fact,
19 also, that two persons witnessing an incident or a trans-
20 action often will see or hear it differently. Whether a
21 discrepancy pertains to a fact of importance or only to a
22 trivial detail should be considered in weighing significance.

23 You are not bound to decide in conformity with
24 the testimony of a number of witnesses, which does not
25 produce conviction in your mind, as against the testimony
26 of a lesser number or other evidence, which appeals to your
27 mind with more convincing force. Testimony which you believe
28 given by one witness is sufficient for the proof of any fact.

4a-2

1 This does not mean that you are at liberty to
2 disregard the testimony of the greater number of witnesses
3 merely from caprice or prejudice, or from a desire to favor
4 one side as against the other. What it does mean, is that you
5 are not to decide an issue by the simple process of counting
6 the number of witnesses who have testified on the opposing
7 sides. It means that the final test is not in the relative
8 number of witnesses on the respective sides, but it is in
9 the relative convincing force of the evidence.

10 In this case testimony given by a witness at a
11 prior proceeding has been read to you from the Reporters'
12 Transcript of that proceeding. You are to consider such
13 testimony in the same light and in accordance with the same
14 rules which you have been given as to testimony of witnesses
15 who have testified here in court.

16 A statement made by a defendant other than at his
17 trial may be either an admission or a confession.

18 An admission is a statement by a defendant, which
19 by itself is not sufficient to warrant an inference of guilt,
20 but which tends to prove guilt when considered with the rest
21 of the evidence.

22 A confession is a statement by a defendant which
23 discloses his intentional participation in the criminal act
24 for which he is on trial and which discloses his guilt of
25 that crime.

26 You are the exclusive judges as to whether an
27 admission or a confession was made by the defendant and if the
28 statement is true in whole or in part. If you should find

4a-3

1 that such statement is entirely untrue, you must reject it.
2 If you find it is true in part, you may consider that part
3 which you find to be true.

4 Evidence of an oral admission or an oral confession
5 of the defendant ought to be viewed with caution.

6 No person may be convicted of a criminal offense
7 unless there is some proof of each element of the crime
8 independent of any confession or admission made by him
9 outside of this trial.

10 The identity of the person who is alleged to
11 have committed a crime is not an element of the crime nor
12 is the degree of the crime. Such identity or degree of the
13 crime may be established by an admission or confession.

14 If you are first satisfied that there exists some
15 proof of each element of the crime, independent of a confession
16 or admission, then you may consider evidence, which you believe,
17 of any such confession or admission to augment such proof,
18 if in your judgment, it has that effect.

19 Nevertheless, before you may ultimately find a
20 defendant guilty of a charge based upon circumstantial evidence,
21 you must find that the circumstances are consistent with guilt
22 and cannot be reconciled with any other reasonable conclusion,
23 and that all facts in a set of circumstances necessary to
24 establish guilt are proved beyond a reasonable doubt.

25 The flight of a person immediately after the
26 commission of a crime, or after he is accused of a crime that
27 has been committed, is not sufficient in itself to establish
28 his guilt, but is a fact, which, if proved, may be considered

4a-4

4b fls.

1 by you in the light of all other proved facts in deciding
2 the question of his guilt or innocence. Whether there was
3 flight and the weight to which such circumstance is entitled
4 are matters for the jury to determine.
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4b-1

1 Motive is not an element of the crime charged and
2 need not be shown. However, you may consider motive or lack of
3 motive as the circumstance in this case. Presence of motive may
4 tend to establish guilt. Absence of motive may tend to
5 establish innocence. You will therefore give its presence or
6 absence, as the case may be, the weight to which you find it to
7 be entitled.

8 Evidence that on some former occasion a witness
9 made a statement or statements that were consistent or in-
10 consistent with his testimony in this trial may be considered
11 by you as evidence of the truth of the facts as stated by the
12 witness on such former occasion. However, you are not bound
13 to accept such statement or statements to be truthful in whole
14 or in part, but you should give to them the weight to which
15 you would find them to be entitled.

16 Neither side is required to call as witnesses all
17 persons who may have been present at any of the events
18 disclosed by the evidence or who may appear to have some knowl-
19 edge of the events, or to produce all objects or documents
20 mentioned or suggested by the evidence.

21 A person is qualified to testify as an expert if
22 he has special knowledge, skill, experience, training or
23 education sufficient to qualify him as an expert on the subject
24 of which his testimony relates.

25 Duly qualified experts may give their opinions on
26 questions in controversy at a trial. To assist you in
27 deciding such questions, you may consider the opinion with the
28 reasons given for it, if any, by the expert who gives the

4b-2

1 opinion. You may also consider the qualifications and
2 credibility of the expert.

3 In resolving any conflict that may exist in the
4 testimony of expert witnesses, you should weigh the opinion of
5 one expert against that of another. In doing this, you should
6 consider the relative qualifications and credibility of the
7 expert witnesses, as well as the reasons for each opinion and
8 the facts and other matters upon which it was based.

9 You are not bound to accept an expert opinion as
10 conclusive, but should give to it the weight to which you find
11 it to be entitled. You may disregard any such opinion if you
12 find it to be unreasonable.

13 In determining the weight to be given to an opinion
14 expressed by any witness who did not testify as an expert
15 witness, you should consider his credibility, the extent of his
16 opportunity to perceive the matters upon which his opinion is
17 based and reasons, if any, given for it. You are not required
18 to accept such an opinion but should give it the weight, if
19 any, to which you find it entitled.

20 In examining an expert witness, counsel may
21 propound to him a type of question known in the law as a hypo-
22 thetical question. By such a question the witness is asked to
23 assume to be true a hypothetical state of facts, and to give
24 an opinion based on that assumption.

25 In permitting such a question, the Court does not
26 rule, and does not necessarily find that all the assumed facts
27 have been proved. It only determines that those assumed facts
28 are within the probable or possible range of the evidence. It

4b-3

1 is for you, the jury, to find from all the evidence whether or
2 not the facts assumed in a hypothetical question have been
3 proved, and if you should find that any assumption in such a
4 question has not been proved, you are to determine the effect
5 of that failure of proof on the value and weight of the expert
6 opinion based on the assumption.

7 If you should find that evidence was willfully
8 suppressed in order to prevent its being presented in this
9 trial, you may consider such suppression in determining what
10 inferences to draw from the evidence or facts in the case.

11 And where weaker and less satisfactory evidence is
12 offered when it appears that stronger and more satisfactory
13 was within the power of the witness, the evidence produced
14 should be viewed with distrust.

15 An accomplice is one who is liable to be
16 prosecuted for the identical offense charged against the
17 defendant on trial.

18 To be an accomplice, the person must have knowingly
19 and with criminal intent aided, promoted, encouraged, or
20 instigated by act or advice, or by act and advice, the
21 commission of such offense.

22 It is the law that the testimony of an accomplice
23 ought to be viewed with distrust. This does not mean that
24 you may arbitrarily disregard such testimony, but you should
25 give to it the weight to which you find it to be entitled after
26 examining it with care and caution and in the light of all the
27 evidence in the case.

28 A conviction cannot be had upon the testimony of

4b-4

1 an accomplice unless it is corroborated by such other evidence
2 that shall tend to connect the defendant with the commission of
3 the offense.

4 The corroboration of the testimony of an accomplice
5 required by law may not be supplied by the testimony of any or
6 all of his accomplices, but must come from other evidence.

4c fol

4c-1

1 Corroborative evidence is evidence whether
2 circumstantial or direct of some act or fact related to the
3 offense which, if believed, by itself and without any aid,
4 interpretation or direction from the testimony of the
5 accomplice, tends to connect the defendant with the commission
6 of the offense charged.

7 However, it is not necessary that the corroborative
8 evidence be sufficient in itself to establish every element
9 of the offense charged or that it corroborate every fact to
10 which the accomplice testifies.

11 In determining whether an accomplice has been
12 corroborated, you must first assume the testimony of the
13 accomplice has been removed from the case. You must then
14 determine whether there is any remaining evidence which
15 tends to connect the defendant with the commission of the
16 offense.

17 If there is not such independent evidence which
18 tends to connect the defendant with the commission of the
19 offense, the testimony of the accomplice is not corroborated.

20 If there is such independent evidence which you
21 believe, then the testimony of the accomplice is corroborated.

22 Merely assenting to or aiding or assisting in the
23 commission of a crime without guilty knowledge or intent is
24 not criminal, and a person so assenting to, or aiding, or
25 assisting in, the commission of a crime without guilty
26 knowledge or intent in respect thereto, is not an accomplice
27 in the commission of such crime.

28 Every person who, after a felony has been

4c-2

1 committed, harbors, conceals or aids a principal in such
2 felony, with the intent that said principal may avoid or
3 escape from arrest, trial, conviction or punishment, having
4 knowledge that said principal has committed such felony or
5 has been charged with such felony or convicted thereof, is
6 an accessory to such felony.

7 An accessory to a felony is not, solely by reason
8 of being an accessory, an accomplice in the commission of
9 that felony.

10 In Count II the defendants, Bruce McGregor Davis,
11 Charles Manson and Susan Denise Atkins, are charged with
12 conspiracy to commit murder and robbery in violation of
13 Sections 182.1, 187, and 211, of the Penal Code of California,
14 a felony, as follows:

15 That on or about the 25th through the
16 28th day of July, 1969, at and in the County of
17 Los Angeles, State of California, the said defendants,
18 Bruce McGregor Davis, Charles Manson, and Susan Denise
19 Atkins, did willfully, unlawfully and feloniously and
20 knowingly conspire, combine, confederate and agree
21 together and with other persons whose true identity
22 is unknown to commit the crime of murder, a violation
23 of Section 187, Penal Code of California, a felony
24 and of robbery, a violation of Section 211, Penal
25 Code of California, a felony.

26 It is alleged that the following were overt acts
27 which were committed in this state by one or more of the
28 defendants for the purpose of furthering the object of the

4c-3

1 conspiracy:

2 The Court has stricken overt act No. 2 and overt
3 act No. 3. Remaining is overt No. 1, which alleges:

4 That on or about July 25th, 1969, the
5 said defendants, Bruce McGregor Davis and Susan
6 Denise Atkins and Robert Beausoleil did travel to
7 the vicinity of 964 Old Topanga Canyon Road, Malibu,
8 in the County of Los Angeles.

9 The defendants are also charged with the
10 commission of the following public offenses:

11 In Count I they are charged as follows:

12 That on or about the 27th day of July,
13 1969, at and in the County of Los Angeles, State of
14 California, the said defendants, Bruce McGregor
15 Davis, Charles Manson, and Susan Denise Atkins
16 did willfully, unlawfully and feloniously and with
17 malice aforethought murder Gary Alan Hinman, a
18 human being.

19 Count III alleges:

20 That between the 16th day of August,
21 1969, and the first day of September, 1969, at
22 and in the County of Los Angeles, State of California,
23 the said defendants, Bruce McGregor Davis, Charles
24 Manson and Steve Grogan, did willfully, unlawfully,
25 and feloniously and with malice aforethought murder
26 Donald Jerome (Shorty) Shea, a human being.

27 When, as in this case, it is alleged in Counts I
28 and II that the crime charged was committed 'on or about' a

4c-4

4d fls.

1 certain date, if the jury finds that the crime was committed
2 it is not necessary that the proof show that it was committed
3 on that precise date; it is sufficient if the proof shows that
4 the crime was committed on or about that date.

4d-1

1 The prosecution has elected to reply on the acts
2 testified to have occurred between August 16, 1969 and September
3 1, 1969, as constituting the offense charged against the
4 defendant in Count III of the indictment, the alleged Shorty
5 Shea murder.

6 You must not find the defendant guilty of the offense
7 so charged against him unless you find that he committed such
8 offense within that particular time, regardless of your belief
9 as to the commission of the offense by the defendant or some
10 other person or persons at some other time.

11 A defendant in a criminal action is presumed to be
12 innocent until the contrary is proved, and in case of a reason-
13 able doubt whether his guilt is satisfactorily shown, he is
14 entitled to an acquittal. This presumption places upon the
15 State the burden of proving him guilty beyond a reasonable
16 doubt. Reasonable doubt is defined as follows: It is not a
17 mere possible doubt; because everything relating to human
18 affairs, and depending on moral evidence, is open to some
19 possible or imaginary doubt. It is that state of the case
20 which, after the entire comparison and consideration of all of
21 the evidence, leaves the minds of the jurors in that condition
22 that they cannot say they feel an abiding conviction, to a
23 moral certainty, of the truth of the charge.

24 The testimony of a witness, a writing, a material
25 object, or anything presented to the senses offered to prove the
26 existence or nonexistence is either direct or circumstantial
27 evidence.

28 Direct evidence means evidence that directly proves

4d-2

1 a fact, without an inference, and which in itself, if true,
2 conclusively establishes that fact.

3 Circumstantial evidence means evidence that proves
4 a fact from which an inference of the existence of another fact
5 may be drawn.

6 An inference is a deduction of fact that may log-
7 ically and reasonably be drawn from another fact or group
8 of facts established by the evidence.

9 It is not necessary that facts be proved by direct
10 evidence. They may be proved also by circumstantial evidence
11 or by a combination of direct evidence and circumstantial
12 evidence. Both direct evidence and circumstantial evidence are
13 acceptable as a means of proof. Neither is entitled to any
14 greater weight than the other.

15 You are not permitted to find the defendant guilty of
16 any crime charged against him based on circumstantial evidence
17 unless the proved circumstances are not only consistent with
18 the theory that the defendant is guilty of the crime, but
19 cannot be reconciled with any other rational conclusion and
20 each fact which is essential to complete a set of circum-
21 stances necessary to establish the defendant's guilt has been
22 proved beyond a reasonable doubt.

23 Also, if the evidence as to any particular Count
24 is susceptible of two reasonable interpretations, one of which
25 points to the defendant's guilt and the other to his innocence,
26 it is your duty to adopt that interpretation which points to
27 the defendant's innocence, and reject the other which points
28 to his guilt.

4d-3

1 All persons concerned in the commission of a crime
2 who either directly and actively commit the act constituting
3 the offense or who knowingly and with criminal intent aid and
4 abet in its commission or, whether present or not, who advise
5 and encourage its commission, are regarded by the law as
6 principals in the crime thus committed and are equally guilty
7 thereof.

8 A person aids and abets the commission of a crime
9 if he knowingly and with criminal intent aids, promotes,
10 encourages or instigates by act or advice, or by act and advice,
11 the commission of such crime.

12 One who has knowingly and with criminal intent
13 aided and abetted the commission of a crime may terminate his
14 liability and end his responsibility for the crime by notifying
15 the other party or parties of whom he has knowledge of his
16 intention to withdraw from the commission of the crime and by
17 doing everything in his power to prevent its commission. If
18 notice to the other party or parties is impossible or
19 impracticable he may end his responsibility by doing everything
20 in his power to prevent the commission of the contemplated
21 crime.

22 A conspiracy is an agreement between two or more
23 persons to commit the public offense of murder and robbery and
24 with the specific intent to commit such offenses, followed by
25 an overt act committed in this state by one or more of the
26 parties for the purpose of accomplishing the object of the
27 agreement. Conspiracy is a crime.

28 In order to find a defendant guilty of conspiracy,

4d-4

1 in addition to proof of the unlawful agreement, there must be
2 proof of the commission of at least one of the overt acts
3 alleged in the indictment. And there's only one alleged,
4 as you know, ladies and gentlemen.

5 It is not necessary to the guilt of any particular
6 defendant that he himself committed the overt act, if he
7 was one of the conspirators when such an act was committed.

8 The term "overt act" means any step taken or act
9 committed by one or more of the conspirators which goes beyond
10 mere planning or agreement to commit a public offense and which
11 step or act is done in furtherance of the accomplishment of the
12 object of the conspiracy.

13 To be an "overt act," the steps taken or act
14 committed need not, in and of itself, constitute the crime or
15 even an attempt to commit the crime which is the ultimate object
16 of the conspiracy. Nor is it required that such step or act,
17 in and of itself, be a criminal or an unlawful act.

18 Each member of a criminal conspiracy is liable
19 for each act and bound by each declaration of every other
20 member of the conspiracy if that act or said declaration is
21 in furtherance of the object of the conspiracy.
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4e fol

4e-1

1 The act of one conspirator pursuant to or in
2 furtherance of the common design of the conspiracy is the act
3 of all conspirators. Every conspirator is legally responsible
4 for an act of the co-conspirator that follows as one of the
5 probable and actual consequences of the object of the conspiracy
6 even though it was not intended as a part of the original plan
7 and even though he was not present at the time of the commission
8 of such act.

9 It is not necessary in proving a conspiracy to
10 show a meeting of the alleged conspirators or the making of
11 an express or formal agreement. The formation and existence
12 of a conspiracy may be inferred from all circumstances
13 tending to show the common intent and may be proved in the
14 same way as any other fact may be proved, either by direct
15 testimony of the fact or by circumstantial evidence, or by
16 both direct and circumstantial evidence.

17 Evidence that a person who is in the company of
18 or associated with one or more other persons who are alleged
19 and have been proven to have been members of a conspiracy is
20 not, in itself, sufficient to prove that such person was a
21 member of the alleged conspiracy.

22 Every person who joins a criminal conspiracy after
23 its formation and who adopts its purposes and objects, is
24 liable for and bound by the acts and declarations of other
25 members of the conspiracy done and made during the time that
26 he is a member and in pursuance and furtherance of the
27 conspiracy.

28 A person who joins a conspiracy after its

4e-2

1 formation is not liable or bound by the acts of the co-
2 conspirators or for any crime committed by the co-conspirators
3 before such person joins and becomes a member of the conspiracy.

4 Evidence of any acts or declarations of other
5 conspirators prior to the time such person becomes a member
6 of the conspiracy may be considered by you in determining
7 the nature, objectives and purposes of the conspiracy, but
8 for no other purpose.

9 Any member of the conspiracy may withdraw from
10 and cease to be a party to the conspiracy, but his liability
11 for the acts of his co-conspirators continues until the
12 effective withdrawal, until he effectively withdraws from the
13 conspiracy.

14 In order to effectively withdraw from a conspiracy,
15 there must be an affirmative and bona fide rejection or
16 repudiation of the conspiracy which must be communicated
17 to the other conspirators of whom he has knowledge.

18 If a member of a conspiracy has effectively with-
19 drawn from the conspiracy he is not thereafter liable for
20 any act of the co-conspirators committed subsequent to his
21 withdrawal from the conspiracy, but he is not relieved of
22 responsibility for the acts of his co-conspirators committed
23 while he was a member.

24 Evidence of the commission of an act which
25 furthered the purpose of an alleged conspiracy is not, in
26 itself, sufficient to prove that the person committing the
27 act was a member of such a conspiracy.

28 No act or declaration of a conspirator that is

4e-3

1 committed or made after the conspiracy has been terminated
2 is binding upon his co-conspirators, and they are not
3 criminally liable for any such act.

4 Any evidence of a statement made by one alleged
5 conspirator other than at this trial shall not be considered
6 by you as against another alleged conspirator unless you
7 shall first determine from other independent evidence that
8 at the time the statement was made a conspiracy to commit a
9 crime existed and unless you shall further determine that the
10 statement was made while the person making the statement was
11 participating in the conspiracy and before or during the time
12 the person against whom it was offered was participating in
13 the conspiracy and, finally, that such statement was made in
14 furtherance of the objective of the conspiracy.

15 The word "statement" as used in this instruction
16 includes any oral or written verbal expression or the non-
17 verbal conduct of a person intended by him as a substitute
18 for oral or written verbal expression.

19 In connection with Count III of the indictment,
20 the Court has permitted you to hear the purported statement
21 of Charles Manson to Danny DeCarlo related by witness
22 Barbara Hoyt and the alleged statement of Charles Manson
23 to witness John Swartz, referring to the alleged disposition
24 of the body and concealment of the alleged death of Donald
25 Shea, respectively.

26 The fact that the Court has permitted you to
27 hear such alleged statements of Mr. Manson does not thereby
28 mean that you may use the statements of Mr. Manson against Mr.

4e-4

1 Davis. Whether you do utilize such statements is a matter
2 for you to decide basing your judgment upon the evidence.
3 But you shall not consider any such statement of Mr. Manson
4 or in any way use it against Mr. Davis, and you are in fact
5 directed to strike any such statement of Mr. Manson from
6 your deliberations, even though you may believe that Mr.
7 Manson did make such statement, unless you shall first
8 determine that there exists other evidence, which you believe,
9 which is wholly independent of the statement, and which
10 independent evidence establishes all of the following:

11 One. That there was a conspiracy not just to
12 murder Donald Shea, but to murder Donald Shea and to conceal
13 the crime and dispose of his body; and

14 Two. That the said conspiracy to murder and
15 conceal the crime and dispose of the body was, at the time
16 that Charles Manson made the statement, still in existence;
17 and

18 Three. That Bruce Davis was, before or at the
19 time the statement was made, participating in the conspiracy
20 to murder and conceal the crime and dispose of the body; and

21 Four. That the statement was made in furtherance
22 of the objective of the conspiracy to conceal the crime and
23 dispose of the body.

4f fls.

4f-1

1 In the crime charged in Count II of the indictment,
2 there must exist a union or joint operation of act or
3 conduct and a certain specific intent.

4 In the crime of conspiracy to commit murder and
5 robbery, there must exist in the mind of the perpetrators
6 the specific intent to kill and permanently deprive the
7 victim of some personal property, kill the victim and to
8 permanently deprive him of some personal property, and
9 unless such combined specific intent so exists that crime
10 is not committed.

11 The intent with which an act is done is shown
12 by the circumstances attending the act, the manner in which
13 it is done, the means used, and the soundness of mind and
14 discretion of the person committing the act.

15 For the purposes of the case on trial, you must
16 assume that the defendant was of sound mind at the time of
17 his alleged conduct which, it is charged, constituted the
18 crimes described in the indictment.

19 The specific intent with which an act is done
20 may be manifested by the circumstances surrounding its
21 commission. But you may not find any defendant guilty of
22 the offense charged in Count I based upon the unlawful
23 killing of a human being occurring as the result of the
24 commission or attempt to commit the crime of robbery, as
25 distinguished from willful, deliberate and premeditated
26 murder of the first degree as that type of murder is
27 defined elsewhere in these instructions, unless the proved
28 circumstances not only are consistent with the hypothesis

4f-2

1 that he had the specific intent to steal, take and carry
2 away the personal property of another of any value with the
3 specific intent to deprive the owner permanently of his
4 property, but are irreconcilable with any other rational
5 conclusion.

6 You may not find the defendant guilty of the
7 offense charged in Count II unless the proved circumstances
8 are not only consistent with the hypothesis that he had the
9 specific intent to murder and rob but are irreconcilable with
10 any other rational conclusion.

11 Also, the evidence as to such specific intent
12 is susceptible of two reasonable interpretations, one of which
13 points to the existence thereof and the other to the absence
14 thereof, you must adopt that interpretation which points to
15 its absence. If, on the other hand, one interpretation of the
16 evidence as to such specific intent appears to you to be
17 reasonable and the other interpretation to be unreasonable,
18 it would be your duty to accept the reasonable interpretation
19 and to reject the unreasonable.

20 Criminal homicide consists of two essential
21 elements: One, proof of the death of the alleged deceased,
22 and, two, proof that the death was caused by a criminal
23 agency. Both elements may be proved by direct evidence alone
24 or by circumstantial evidence alone, or by a combination of
25 both.

26 Recovery or production of the body of the alleged
27 deceased is not an essential element of criminal homicide.
28 The absence of the body of the alleged deceased, however, is

4f-3

1 a matter which you may consider in determining whether the
2 homicide alleged in Count III was committed.

3 Murder is the unlawful killing of a human being,
4 with malice aforethought.

5 "Malice" may be either express or implied.

6 Malice is express when there is manifested an
7 intention unlawfully to kill a human being.

8 Malice is implied when the killing results from
9 an act involving a high degree of probability that it will
10 result in death, which act is done for a base, anti-social
11 purpose and with a wanton disregard for human life or when
12 the killing is a direct causal result of the perpetration or
13 the attempt to perpetrate a felony inherently dangerous to
14 human life.

15 The mental state constituting malice aforethought
16 does not necessarily require any ill will or hatred of the
17 person killed.

18 "Aforethought" does not imply deliberation or
19 the lapse of considerable time. It only means that the
20 required mental statement precede rather than follow the act.

21 All murder which is perpetrated by any kind of
22 willful, deliberate and premeditated killing with malice
23 aforethought is murder of the first degree.

24 The word "deliberate" means formed or arrived at
25 or determined upon as a result of careful thought and weigh-
26 ing of considerations for and against the proposed course of
27 action. The word "premeditated" means considered beforehand.

28 If you find that the killing was preceded and

4f-4

1 accompanied by a clear, deliberate intent on the part of the
2 defendant to kill, which was the result of deliberation and
3 premeditation, so that it must have been formed upon pre-
4 existing reflection and not under a sudden heat of passion
5 or other condition precluding the idea of deliberation, it is
6 murder of the first degree.

7 The law does not undertake to measure in units of
8 time the length of the period during which the thought must
9 be pondered before it can ripen into an intent to kill which
10 is truly deliberate and premeditated. The time will vary
11 with different individuals and under varying circumstances.
12 The true test is not the duration of time, but rather the
13 extent of the reflection. A cold, calculated judgment and
14 decision may be arrived at in a short period of time, but
15 a mere unconsidered and rash impulse, even though it
16 include an intent to kill, is not such deliberation and
17 premeditation as will fix an unlawful killing as murder of
18 the first degree. To constitute a deliberate and premedi-
19 tated killing, the slayer must weigh and consider the question
20 of killing and the reasons for and against such a choice
21 and, having in mind the consequences, he decides to and does
22 kill.

23 The unlawful killing of a human being, whether
24 intentional, unintentional or accidental, which occurs as
25 a result of the commission of or attempt to commit the crime
26 of robbery, and where there was in the mind of the perpetrator
27 the specific intent to commit such crime, is murder of the
28 first degree.

4g fls.

4g-1

1 The specific intent to commit robbery and the
2 commission or attempt to commit such crime must be proved
3 beyond a reasonable doubt.

4 If a human being is killed by any one of several
5 people jointly engaged at the time of such killing in the
6 perpetration of, or attempt to perpetrate, the crime of
7 robbery, and if the killing is done in the furtherance of a
8 common design and agreement to commit such crime or is an
9 ordinary and probable result of the pursuit of that design
10 and agreement, all such persons so jointly engaged are guilty
11 of murder of the first degree, whether the killing is inten-
12 tional, unintentional, or accidental.

13 If a human being is killed by -- strike that.

14 Robbery is the taking of personal property of
15 any value in the possession of another, from his person or
16 immediate presence, and against his will, accomplished by
17 means of force or fear and with the specific intent
18 permanently to deprive the owner of his property.

19 It is the constitutional right of a defendant in
20 a criminal trial that he may not be compelled to testify.
21 Thus the decision as to whether he should testify is left to
22 the defendant, acting with the advice and assistance of his
23 attorney. You must not draw any inference of guilt from the
24 fact that he does not testify, nor should this fact be
25 discussed by you or enter into your deliberations in any way.

26 In deciding whether or not to testify, the
27 defendant may choose to rely on the state of the evidence
28 and upon the failure, if any, of the People to prove every

4g-2

1 essential element of the charge against him, and no lack of
2 testimony on the defendant's part will supply a failure of
3 proof by the People so as to support a finding against him
4 on any such essential element.

5 MR. KAY: Your Honor, excuse me a moment. May we
6 approach the bench on the record?

7 THE COURT: Yes.

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

11 THE COURT: We can go off the record a minute.

12 (Whereupon, a discussion was had off the record
13 among Court and counsel at the bench.)

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

17 THE COURT: If a human being is killed by any one of
18 several persons engaged in the perpetration of, or attempt
19 to perpetrate, the crime of robbery, all persons who either
20 directly and actively commit the act constituting such crime
21 or who knowingly and with criminal intent aid and abet in
22 its commission or, whether present or not, who advise and
23 encourage its commission, are guilty of murder of the first
24 degree, whether the killing is intentional, unintentional or
25 accidental.

26 Each count charges a separate and distinct
27 offense. You must decide each count separately on the
28 evidence and the law applicable to it, uninfluenced by your

4g-3

1 decision as to any other count. The defendant may be
2 convicted or acquitted on all -- by any or all -- strike
3 that.

4 The defendant may be convicted or acquitted on
5 any or all of the offenses charged. Your finding as to each
6 count must be stated in a separate verdict.

7 I have not intended by anything I have said or
8 done, or by any questions that I may have asked, to intimate
9 or suggest that you should find to be the facts on any ques-
10 tions submitted to you, or that I believe or disbelieve any
11 witness.

12 If anything I have done or said has seemed to
13 so indicate, you will disregard it and form your own opinion.

14 You have been instructed as to all the rules of
15 law that may be necessary for you to reach a verdict.
16 Whether some of the instructions will apply will depend upon
17 your determination of the facts. You will disregard any
18 instruction which applies to a state of facts which you
19 determine does not exist. You must not conclude from the
20 fact that an instruction has been given that the Court is
21 expressing any opinion as to the facts.

22 Both the People and the defendant are entitled
23 to the individual opinion of each juror.

24 It is the duty of each of you to consider the
25 evidence for the purpose of arriving at a verdict if you
26 can do so. Each of you must decide the case for yourself,
27 but should do so only after a discussion of the evidence and
28 instructions with the other jurors.

4g-4

1 You should not hesitate to change an opinion if
2 you are convinced it is erroneous. However, you should not
3 be influenced to decide any question in a particular way
4 because a majority of the jurors, or any of them, favor
5 such a decision.

6 The attitude and conduct of jurors at the
7 beginning of the deliberations are matters of considerable
8 importance. It is rarely productive of good for a juror at
9 the outset to make an emphatic expression of his opinion on
10 the case or to state how he intends to vote. When one does
11 that at the beginning, his sense of pride may be aroused,
12 and he may hesitate to change his position even if shown
13 that it is wrong. Remember that you are not partisans or
14 advocates in this matter, but you are judges.

15 In your deliberations the subject of penalty or
16 punishment is not to be discussed or considered by you.
17 That is a matter which must not in any way affect your
18 verdict.

19 In this case, ladies and gentlemen, there are two
20 possible verdicts as to each count. These various possible
21 verdicts are set forth in the forms of verdict which you
22 will receive. Only one of the possible verdicts may be
23 returned by you as to any particular count. If you all have
24 agreed upon one verdict as to a particular count, the
25 corresponding form is the only verdict form to be signed as
26 to that count. The other forms are to be left unsigned.

27 Gentlemen, will you approach the bench?
28

4h fls.

4h-1

1 MR. DENNY: With the reporter?

2 THE COURT: Yes.

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

6 THE COURT: We spent considerable time in the voir dire
7 concerning the death penalty, and I'm sure it has entered the
8 jurors' minds, as it has entered ours, what we intend to do in
9 connection with it.

10 Of course, as things stand in the law now, I would
11 suppose that we would not be going ahead with any penalty
12 phase, even if they should come back with a murder first degree.

13 MR. KAY: So, in other words, the Court would prevent us
14 from going ahead with the penalty phase?

15 THE COURT: It would be the Court's decision to simply,
16 if they come back with a finding of guilty of murder of the
17 first degree, I would set it down for sentence three weeks
18 hence.

19 MR. DENNY: Well --

20 THE COURT: And I was wondering whether any of you have
21 any suggestion as to whether or not anything should be said to
22 the jurors? I was simply going to leave it as it is, stating
23 the penalty should not enter their minds.

24 MR. KAY: I think that's sufficient.

25 MR. MANZELLA: I think so.

26 MR. DENNY: I agree. It hasn't been broached at this
27 point, and anything said now would be too much.

28 THE COURT: All right.

4h-2

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

3 THE COURT: Very well, ladies and gentlemen, the Court is
4 at the end of these instructions, and you should now retire,
5 although I won't require you to do it tonight. I think
6 arrangements have been made to sequester you for the night, and
7 since it is so late, you need not proceed immediately to begin
8 your deliberations, but tomorrow morning, you shall retire to a
9 jury deliberation room, select one of your number to act as
10 foreman, who will preside over your deliberations. In order to
11 reach a verdict, all twelve jurors must agree to the decision.
12 As soon as all of you have agreed upon a verdict, you shall have
13 it dated and signed by your foreman and then shall return with
14 it to this room.

15 Mr. Bailiff.

16 Swear the bailiff.

17 THE CLERK: You do solemnly swear that you will take
18 charge of the jury and keep them together unless otherwise
19 instructed by the Court; that you will not speak to them your-
20 self nor allow anyone else to speak to them upon matters connected
21 with this case, unless otherwise instructed by the Court, and
22 when they have agreed upon a verdict you will return them into
23 court.

24 And, further, that you will take charge of the
25 alternate jurors and keep them apart from the jury while they
26 are deliberating on the cause unless otherwise instructed by the
27 Court, so help you God?

28 THE BAILIFF: I do.

4h-3

1 THE COURT: All right, ladies and gentlemen, Mr. Kuczera
2 will have you in his charge during the time you are in
3 deliberations. I'll be leaving Los Angeles County tomorrow
4 morning for a week. I'll be back next Tuesday. You may still
5 be in deliberation. If you are not, let me convey to you any
6 heartfelt thanks for your sitting so patiently and cheerfully
7 during all of these weeks. I think that you are a cut above most
8 jurors I have seen, all of you, and I certainly appreciate, and
9 I know I'm extending the appreciation of other judges, and of
10 this Court, too, in saying that the duty of jurors, as you served
11 it, is very much appreciated.

12 As you heard from one of the attorneys, if you wish
13 to have evidence read back, you may have it read back by
14 notifying Mr. Kuczera. Some other judge will be here to preside
15 over the reading back of any testimony that you may wish to
16 hear, if indeed you do wish to hear any testimony. You may not
17 wish to. I notice that you took -- most of you were taking
18 notes during all of the trial.

19 All right, good night.

20 (Whereupon, the jury retired at 4:36 P. M., and
21 the following proceedings were had:)

22 THE COURT: The record may show that I have talked with
23 Mr. Craven who has asked permission to leave Saturday morning,
24 should the jury be deliberating on Saturday morning next, in
25 order to go to Bakersfield to a funeral of, I think, his wife's
26 relatives, a rather close relative in the family. I have told
27 him that it is quite possible that it could be arranged and that
28 I would let the bailiff know. So I'll let Mr. Kuczera know that

4h-4 1 the Court has talked it over with counsel and both counsel --
2 all counsel agree that Mr. Craven could be released for that
3 Saturday morning.

4 MR. KAY: So stipulated.

5 MR. DENNY: Yes, it is stipulated.

6 Your Honor, one thing, I know the Court is
7 particular in this matter, and I don't know who may be handling
8 any communications from the jury in the Court's absence, but I
9 would strongly request if there are any communications at all,
10 that counsel on both sides be notified of them. I have,
11 myself, recently been involved through an attorney in our
12 office with some communications that went on between a judge
13 and the bailiff and the jury verbally and some in writing and
14 neither counsel was advised and it created what it appears to
15 have been a reversible error situation which need not have
16 occurred in a very long and hard fought case. And I think it
17 does get to be a very touchy situation in such communications.

18 THE COURT: Mr. Kuczera, you may tell Mr. Craven that
19 counsel and the Court have agreed that if he wishes to, he
20 may separate from the group on Saturday morning. That means,
21 of course, that the jury would not be deliberating during his
22 absence. They would not begin deliberation until he returned,
23 so that he could go to Bakersfield. He may not want to,
24 because he may wish to stay with the group.

25 (Whereupon, the Court conferred with the bailiff
26 up at the bench, which was not reported.)

27 THE COURT: The Sheriff's Office could arrange
28 transportation, but I believe it would be best that the

4h-5

1 Sheriff's Office not do so for the juror.

2 MR. KAY: May I --

3 THE COURT: Either Judge Dell or Judge Keene -- I'll
4 be talking to either one or both of them. I think they're
5 both free. So that whoever is not busy will handle it for me.

6 MR. KAY: Have a nice vacation, your Honor.

7 MR. DENNY: Yes.

8 THE COURT: Thank you, gentlemen. See you a week
9 hence, Tuesday.

10 (Whereupon, at 4:40 P. M. an adjournment was
11 taken in this matter.)
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