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## SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 52

HON. JOSEPH L. CALL, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA, )

Plaintiff, )

v. )

No. A 267861

STEVEN GROGAN, )

Defendant. )

REPORTERS' DAILY TRANSCRIPT

Wednesday, July 14, 1971

APPEARANCES OF COUNSEL:

(See Volume I)

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VERNON W. KISSEE, C.S.R.  
HAROLD E. COOK, C.S.R.  
Official Reporters

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1 LOS ANGELES, CALIFORNIA, WEDNESDAY, JULY 14, 1971

2 9:45 A.M.

3  
4 THE COURT: All right. Now, let's proceed.

5 People against Grogan. Defendant is here.  
6 Defendant's counsel is here. People's counsel is here.

7 The jurors, those sworn in, the alternates, are  
8 also here.

9 And I believe Mr. Weedman you were voir diring  
10 the juror, were you not?

11 MR. WEEDMAN: Yes, I was. Thank you, your Honor.

12 THE COURT: You go right ahead.

13 MR. WEEDMAN: If I might have just a moment.

14  
15 JOHN SWEDEN, JR.

16 BY MR. WEEDMAN:

17 Q Mr. Sweden, I think we really just about concluded,  
18 at least with my questioning of you.

19 But will you appreciate that both sides are  
20 interested in your really not being a partisan here. I don't  
21 want you to be a partisan for the People, that is obvious.

22 A Right.

23 Q Nor do the People want you to be a partisan for  
24 the defendant. So that really only leaves you one position.  
25 I am sure you understand that, and that is to be somewhere in  
26 the middle.

27 A Correct.

28 THE COURT: Pardon me. I am sorry. I am not trying to  
disrupt you.

1 MR. WEEDMAN: Excuse me, your Honor,

2 (Short pause.)

3 THE COURT: Excuse me. I won't bother you again.

4 Q BY MR. WEEDMAN: So if you are selected to  
5 deliberate with the members of the jury who are already in the  
6 box, do you feel that you would be able to hold this middle  
7 position? Do you think that you will be able to go through the  
8 entire trial and not be a partisan for one side or for the  
9 other?

2 10 A I could.

Tke 2

Q And in that connection do you feel, Mr. Sweden, that you will be able to withstand the various onslaughts, of course, that may really bombard you during the course of this trial; for example, statements by counsel, arguments by counsel, opening statement by counsel, none of those things, of course, being evidence in the case, will you be able to view all of those things in their proper context and not suddenly say, "Oh, so that's what this case is all about," and in some capricious way suddenly abandon your middle position and make up your mind in that fashion.

Will you avoid doing all of that?

A Yes, I would.

Q And particularly will you wait until you hear all of the evidence in this case, bearing in mind that the prosecution puts his case on first and that this case may last -- that is, the prosecution's case may last for several weeks and you are really not going to hear from the defendant at all during that time.

Will you obviously wait until you hear our side of the case?

A Yes, I would.

Q And with respect to evidence that comes from witnesses, will you not be -- will you not be the kind of juror that believes everything that he is told without any critical examination of it?

A No.

Q All right.

1           You understand that during the course of the  
2 trial it is not only the duty and the obligation of counsel  
3 but often it is the pleasure of counsel to cross-examine  
4 witnesses; and will you particularly not begin to accept  
5 testimony until you have heard cross-examination?

6           A     Correct.

7           Q     And will you particularly bear both with me and  
8 Mr. Katz when we are cross-examining a witness; for example,  
9 I am sure that you will not expect some kind of Perry Mason  
10 kind of technique where the witness suddenly breaks down and  
11 says, "Oh, you have got me, I have been lying all this time"?

12          A     No, I wouldn't.

13          Q     In other words you, I am sure, appreciate that  
14 cross-examination, for the benefit of the jury, really, cross-  
15 examination, if it is going to have any effect upon the direct  
16 testimony is going to be a much more subtle matter than that  
17 and it is going to call for some subtle appraisal by the jury;  
18 and I am sure you appreciate that, Mr. Sweden.

19          A     Yes.

20          Q     And again, during cross-examination will you main-  
21 tain this sort of middle position, this kind of neutral  
22 position that the jury is really obligated to maintain?

23          A     Yes, I would.

24          Q     Okay.

25                Very often counsel feel the jury is just waiting  
26 for cross-examination but that if cross-examination is not  
27 somehow spectacular or dramatic, as I have suggested, then  
28 we suspect that some jurors just blindly accept

1 everything that is said on direct examination.

2 I take it you wouldn't do that?

3 In other words, I take it, Mr. Sweden, that you,  
4 in maintaining your middle ground are always going to be  
5 critical --

6 A Yes, I would.

7 Q -- of testimony in this case, irrespective of  
8 from where it comes or from whom it comes, whether they be  
9 prosecution witnesses or defense witnesses.

10 A Correct.

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1 Q I believe we touched on this point, but if not I  
2 would like to. If we have, I would like to mention it again.

3 That is with respect to the volume of evidence  
4 here. I am sure you appreciate that this being a circumstan-  
5 tial evidence case, that where direct evidence, for example,  
6 a person says, "Yes, I saw Mr. A cross the street" -- after all  
7 one witness can prove that up. But if we are going to prove  
8 that up circumstantially it may take 25 witnesses.

9 Will you appreciate that the People are going to  
10 have a great many more witnesses than the defendant in this  
11 case and particularly will you not abandon your middle ground  
12 and say -- and by the way, Mr. Sweden, some of these questions  
13 may strike you as a little silly, but I feel compelled to put  
14 them in the form of a question so at least we can explore these  
15 areas with you.

16 Will you not in such a case, obviously, say, "Well,  
17 the People produced 10 times as many witnesses or 20 times as  
18 many witnesses as the defendant, and therefore the People  
19 certainly have by a preponderance of witnesses proven the case."  
20 I am sure you are not going to do that.

21 A No.

22 Q As a matter of fact, to test that out, Mr. Sweden,  
23 let's suppose that the People produce a 104 witnesses in this  
24 case and the defendant doesn't produce any. As a matter of  
25 fact, let's suppose the defendant doesn't even testify, but  
26 after a careful consideration of all of the evidence and main-  
27 taining your center position, your objective position, your  
28 third party position, if after all that you are not satisfied

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1 that the People have proven their case to a moral certainty and  
2 beyond a reasonable doubt, I take it you are going to acquit  
3 my client?

4 A Correct.

5 Q That will be true if the people produced a thousand  
6 witnesses, isn't that so?

7 A Right.

8 MR. WEEDMAN: All right.

9 Mr. Sweden, thank you, sir, very much.

10 Pass for cause.

11 MR. SWEDEN: Your Honor, I spoke with my employer --

12 THE COURT: Well now, wait just a minute, please. Let's  
13 wait a minute.

14 Do you want to interrogate on this?

15 MR. WEEDMAN: Yes.

16 THE COURT: All right.

17 Q BY MR. WEEDMAN: Mr. Sweden, tell us what you  
18 learned about this business of a possible financial hardship  
19 to you?

20 A He told me that I could stay on the case for the  
21 duration of the time without any hardship on his part. He  
22 would continue paying my salary.

23 Q That is fine. In other words, this possible  
24 personal hardship is not going to occur?

25 A No.

26 MR. WEEDMAN: Well, we are delighted.

27 Thank you, Mr. Sweden.

28 THE COURT: Thank you. I wasn't trying to be rude to you.

1 but it is better that the interrogation come through the  
2 counsel than you and I carry on across the bench. Sometimes  
3 I do it, but there are special reasons for it. It is better  
4 to do it that way.

5 MR. SWEDEN: Thank you, your Honor.

6 THE COURT: Thank you very much.

7 Go ahead.

8 MR. KATZ: Yes, thank you, your Honor.

9 Q Mr. Sweden, let me assure you and the rest of the  
10 jurors at the outset I do not intend to call a thousand  
11 witnesses or indeed a hundred witnesses.

12 Mr. Weedman was bringing up -- and if your Honor  
13 will please excuse my back once more.

14 THE COURT: All right.

15 MR. KATZ: Thank you.

16 Q Mr. Weedman was bringing up the fact that you are  
17 to accept everything without critical evaluation that unfolds  
18 from the witness stand.

19 In other words, if a witness gets up there and says  
20 that X is X, your job doesn't end with hearing that testimony.  
21 You have to evaluate that testimony in the light of the other  
22 objective evidence presented in this case and also evaluate the  
23 manner in which the witness testifies, his demeanor, his motive  
24 for testifying.

25 You will do that, won't you?

26 A Yes, I will.

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1 Q And for example if the defendant takes the  
2 stand and says, "I didn't kill Shorty Shea" you realize your  
3 job goes much further than merely accepting that statement as  
4 fact . You must evaluate his testimony in the light of all of  
5 the evidence in this case; is that correct?

6 A Correct.

7 Q If you believe, for example, that statement is false  
8 when you compare it with the other evidence in this case and  
9 the evidence in this case creates in your mind an abiding  
10 conviction to a moral certainty, I take it you would be willing  
11 to vote guilty; correct?

12 A Correct.

13 Q Now, Mr. Weedman, I am sure, wasn't attempting to  
14 be facetious when he was referring to the Perry Mason Show.  
15 Did you ever watch that show?

16 A Occasionally.

17 Q So did I. I noticed Hamilton Burger, who is the  
18 prosecutor, lost every case. Indeed I never saw him win any  
19 case.

20 In that connection you won't require me to conform  
21 to the high standards of Hamilton Burger in prosecuting this  
22 case; is that correct?

23 A No.

24 Q What we are saying is I don't mean that facetiously,  
25 we are not trying to entertain here. We hope you won't be  
26 bored, we hope you will give us your undivided attention in  
27 connection with the evaluation of the evidence in this case.  
28 We are not here to entertain.

1           The other shows you have, The Defenders, a wonder-  
2 ful show, the Perry Mason Show, are designed to entertain,  
3 is that correct?

4           A       Correct.

5           Q       I take it in this case you won't require either  
6 Mr. Weedman or myself to entertain you but rather will require  
7 us to do the best job in representing our respective sides?

8           A       That is right.

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1 Q Now, Mr. Sweden, you have heard the discussion we  
2 have had in your presence concerning circumstantial evidence,  
3 have you not?

4 A Yes, I have.

5 Q And did you have any quarrel with the law in this  
6 state which permits a man to be convicted of murder in the first  
7 degree based wholly on circumstantial evidence?

8 A No, I don't.

9 Q And did you hear his Honor state at the outset that  
10 the People will not present a body in this case; that is, any  
11 part of the body by way of photographic evidence, the body,  
12 itself, or any eyewitness to the killing or any eyewitness to  
13 having observed the body in death.

14 Do you understand that?

15 A Yes, sir.

16 Q Now, the law contemplates that the People may prove  
17 this case wholly upon circumstantial evidence; you understand  
18 that?

19 A Yes, I do.

20 Q Is it fair to say that if you had a state of mind  
21 as you sit here now that, well, "I just don't like circumstan-  
22 tial evidence, I don't care what the law says about it, I am not  
23 going to follow the law of circumstantial evidence," you realize  
24 we couldn't get a fair trial; isn't that right?

25 A Yes.

26 Q We hadn't given any example of circumstantial  
27 evidence since you were called in the last panel.

28 But let me briefly give an example of how we apply

1 it in our everyday lives. For example, you have a friend who  
2 is coming over to visit you and he drives a Mercury Cougar and  
3 you are inside the house and a car pulls up in the driveway and  
4 you hear the engine being turned off but you don't see the car  
5 and you don't see who is driving the car.

6 You open your door and at that precise moment your  
7 friend is getting out of the Mercury Cougar from the driver's  
8 side; there is no other person around; you conclude, without  
9 having seen your friend drive the car, that he drove the car  
10 over; isn't that right?

11 A Correct.

12 Q Now, the facts proven to you are that there is a  
13 Mercury Cougar, he is getting out of the car, you just heard  
14 it pull up and there is no one else around.

15 Isn't it reasonable to assume, then, or draw an  
16 inference that your friend just drove to your house?

17 A Correct.

18 Q I take it then that you apply circumstantial  
19 evidence in your everyday life; isn't that correct?

20 A Yes, I do.

21 Q And I take it you are not afraid to draw, then,  
22 inferences from facts that are proven to you; is that correct?

23 A Right.

24 Q And if you believed, based on the circumstantial  
25 evidence in the case, that the People have proven the crime of  
26 first degree murder beyond a reasonable doubt and to a moral  
27 certainty, would you, nevertheless, hesitate to vote for guilty  
28 solely because we had failed to produce a body or an eyewitness

1 to the killing?

2 A No.

3 Q I take it, then, you would not require the People  
4 to produce a body or an eyewitness to the killing or, indeed,  
5 an eyewitness to having observed the body in death so long as  
6 we met our burden of proof in law, which is proof beyond a  
7 reasonable doubt and to a moral certainty; is that correct?

8 A Correct.

9 MR. WEEDMAN: Excuse me, your Honor; I will object to the  
10 form of the question simply because Mr. Katz has constantly  
11 reiterated "the body," "the killing"; these are only alleged  
12 matters and I think to permit counsel to talk about "the body"--

13 MR. KATZ: I don't mind saying "alleged."

14 MR. WEEDMAN: We'd appreciate that very much.

15 MR. KATZ: Certainly; thank you.

16 THE COURT: All right.

17 Q BY MR. KATZ: We realize at this point there is no  
18 evidence of any killing or, indeed, there is no evidence in  
19 this case at all; is that right?

20 A Right.

21 Q So, certainly Mr. Weedman is correct, I should  
22 have prefaced by saying "the alleged body" and "the alleged  
23 killing" and, I believe, "the alleged witness who may have  
24 observed the alleged body in death."

25 In any event, you understand what I am talking  
26 about; is that right?

27 A Yes, I do.

28 Q And I don't want to make the same mistake that

1 Mr. Nixon did sometime ago.

2 Now, going on to this issue of capital punishment,  
3 have you given some thought to capital punishment before being  
4 called for jury duty?

5 A Yes, I have.

6 Q Have you read any literature concerning capital  
7 punishment?

8 A Not a lot.

9 Q But I take it, as a thinking individual, you have  
10 thought about the pros and cons of capital punishment; is that  
11 correct, sir?

12 A Yes, I have.

13 Q And can you tell us whether or not, without giving  
14 us your reasons therefor, whether you are opposed to capital  
15 punishment, in general?

16 A Well, if the crime is severe enough that it warrants  
17 capital punishment, I feel that it should be used.

18 Q All right.

19 Now, Mr. Sweden, I take it you are not saying that  
20 you would automatically vote, for example, the death penalty  
21 upon the return of a first degree murder verdict, without  
22 regard to the evidence; is that correct?

23 A Correct.  
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1           Q       In other words, you would not automatically vote  
2 for life imprisonment upon the return of a first degree murder  
3 verdict without regard to the evidence; is that right?

4           A       Correct.

5           Q       You would certainly want to know all of the  
6 evidence in this case, the moral culpability of the defendant,  
7 his involvement, how he felt during the alleged commission  
8 of the offense and his background and history, et cetera; is  
9 that right?

10          A       Correct.

11          Q       Now, you distinguish between two situations, the  
12 situation A being, "I believe that capital punishment is  
13 appropriate under some circumstances"; and situation B being  
14 that, "I am called upon, myself, to personally participate in  
15 the death penalty verdict."

16                 Do you recognize the distinction between those two  
17 situations?

18          A       Yes, I do.

19          Q       All right.

20                 And in the latter situation you, yourself, are  
21 personally involved in making a decision as to whether or not  
22 another human being shall live or die; is that correct?

23          A       Correct.

24          Q       I assume you believe that that would be a very  
25 grave and serious responsibility; is that right?

26          A       Yes, it would.

27          Q       Are you willing to accept that kind of responsibility  
28 if selected as a juror?

1 A Yes, I am.

2 Q All right.

3 And have you asked yourself whether or not you,  
4 yourself, could personally vote for the death penalty if in  
5 your heart and your mind and your conscience you believed the  
6 evidence warranted it?

7 A Yes, I would.

8 Q And you realize that in that connection there can  
9 be no return of a death penalty verdict unless 12 jurors  
10 unanimously join in that vote?

11 You appreciate that?

12 A Yes.

13 Q And so to make it absolutely clear, if 11 persons  
14 vote for death and you abstained and voted for life, there  
15 could be no death penalty; isn't that right?

16 A Correct.

17 Q So it stands to reason that you are sitting as a  
18 jury of one; isn't that right?

19 A Right.

20 Q So you would, therefore, have to accept the full  
21 brunt of the responsibility of sending Mr. Grogan to his death  
22 if you vote for the death penalty; is that right?

23 A Right.

24 Q Do you think that you would be able to live with  
25 that judgment for the rest of your life if that judgment was  
26 consistent with your sole and absolute discretion?

27 A I think so.

28 Q And you are up to accepting that kind of

1 responsibility if selected as a juror in this case; is that  
2 right?

3 A Yes, I am.

4 Q Now, there is an area that I'd like to discuss  
5 with you at this point and it refers to one of sympathy.

6 With respect to the guilt or innocence phase, his  
7 Honor will instruct you that your verdict is not to be  
8 influenced in any way by any sympathy you may have for the  
9 defendant or any passion or prejudice against the defendant.

10 If so instructed would you unhesitatingly follow  
11 that instruction?

12 A Yes, I would.

13 Q You understand that whether or not Mr. Grogan is  
14 19 years old or 25 or 40 or 50 or 70, he is to be treated  
15 equally under the law; is that correct?

16 A Correct.

17 Q I take it you accept the proposition that if  
18 Mr. Grogan is shown by proper proof -- that is, proof beyond  
19 a reasonable doubt and to a moral certainty -- to have  
20 committed murder in the first degree, you will vote that  
21 verdict, despite his youthful appearance; is that correct?

22 A Correct.

23 Q I take it you would not in any manner, shape or  
24 form, compromise your verdict in the guilt phase solely and in  
25 order to avoid the difficult position of having to determine  
26 whether or not another human should live or die, in the penalty  
27 phase; is that correct?

28 A Right.

1           Q       What I am saying is this, you would realize, for  
2       example, in the guilt phase of the trial that, "If I vote for  
3       first degree murder, my gosh, I am having to then go into the  
4       penalty phase and make a decision whether or not somebody is  
5       going to live or die."

6                   Do you understand that?

7           A       Yes.

8           Q       Some jurors, we have found from past experience,  
9       try and allow this consideration to influence them in voting  
10      the proper verdict in the guilt phase.

11                  Do you understand that?

12          A       Correct.

13          Q       So that it would be wrong for you to vote a lesser  
14      verdict, say, second degree murder or an acquittal, if the  
15      evidence in your mind created an abiding conviction to a moral  
16      certainty of murder in the first degree.

17                  Do you understand that?

18          A       Right.

19          Q       What you are telling me, Mr. Sweden, is that you  
20      would not allow these kinds of extraneous factors to influence  
21      your fair and impartial determination of the evidence in the  
22      guilt or innocence phase; is that right?

23          A       Correct.

24          Q       Is there any reason you can think of why you could  
25      not give both sides a fair trial?

26          A       None whatsoever.

27          Q       If you were the prosecutor in this case would you  
28      be willing to have 12 jurors of your same frame of mind sit

1 in judgment on all of the issues in this case?

2 A Yes, I would.

3 Q And the same would hold true for the defendant; is  
4 that right?

5 A Right.

6 MR. KATZ: Thank you, sir.

7 Pass for cause.

8 THE COURT: Very well.

9 MR. KATZ: Accept the alternates.

10 THE COURT: Very well.

11 Shall we swear the jurors?

12 MR. KATZ: Yes, your Honor.

13 MR. NEEDMAN: Yes, your Honor.

14 THE COURT: Very well.

15 You will now swear the alternates.

16 (The three alternates were sworn by  
17 the clerk.)

18 THE COURT: Now, let's see, first we can excuse the other  
19 folks in the back of the room, let them go back, and we'll see  
20 where we are.

21 Before we go further, I have some statements to  
22 make, and I will talk to you gentlemen.

23 MR. KATZ: Certainly, your Honor.

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1 THE COURT: Now, first of all I want to talk to you  
2 alternate jurors who have just been given the oath.

3 Mr. Clerk, you administered properly the same  
4 oath to the alternates that you did to the regular jurors,  
5 that is correct, isn't it?

6 THE CLERK: Yes, sir.

7 THE COURT: That is what the code says.

8 THE CLERK: It is. Yes, sir.

9 THE COURT: All right.

10 Now, first of all, so that you three alternates  
11 will know just where your position or standing is in this case,  
12 I am going to read to you the code section on the powers and  
13 the duties and the obligations of alternates. It is covered  
14 by section -- basically Section 1089 of our Penal Code.

15 And the clerk has sworn you now to act in the  
16 capacity, you are alternate jurors.

17 The code says -- I am going to read it word for  
18 word, so much as applies to our case and to you:

19 "Such alternate jurors" -- that is you three --  
20 "must be drawn from the same source and in  
21 the same manner and have the same qualifica-  
22 tions as the jurors already sworn."

23 That's the 12 jurors here.

24 "And be subject to the same examination  
25 and challenges."

26 Now, I cut out only what is not pertinent.

27 "Such alternate jurors shall be seated  
28 so as to have equal power and facilities for

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1 seeing and hearing the proceedings in the  
2 case."

3 So that is, so far we have got you right where you  
4 are there. That would remain your seats. If any of you can't  
5 hear all the proceedings, see everything that goes on, just  
6 tell me.

7 Please just say, "Listen, I can't see what's  
8 happening. I want to get a better view of the proceedings."

9 If there is anything that comes up that prevents  
10 any one of you from seeing everything that takes place --  
11 I think you can, but if there is any question don't hesitate  
12 to tell me.

13 Now, I will proceed. Check right back with the  
14 code on you here.

15 "They shall take the same oath as the  
16 jurors already selected."

17 That has been given to you.

18 "They must attend at all times upon  
19 the trial of the cause in company with the  
20 other jurors. For failure to do so they  
21 are liable to be punished for contempt."

22 Now, what I am trying to get over is the point  
23 that you must see and hear everything that is said in the  
24 trial of this action. And the court -- this court cannot  
25 start to proceed, we cannot operate court and take testimony --  
26 I am spelling it out -- until every one of you folks are  
27 seated there. Just like we can't proceed until the lawyers  
28 are there, until the defendant is here. And until every one

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1 of the 12 jurors are here.

2 So you must be right here ready to proceed.

3 I will proceed further:

4 "The alternates shall obey the orders  
5 of and be bound by the orders of the court.  
6 Upon each adjournment of the court if the  
7 regular jurors are ordered to be kept in the  
8 custody of the sheriff during the trial of  
9 the cause the alternate jurors shall also be  
10 kept in confinement with the other jurors."

11 Now, right at this point I want to say to all of  
12 you I do not anticipate during the trial of this case putting  
13 anyone under the control or the custody of the sheriff. In  
14 other words, keeping you, to spell it out, keeping you here  
15 and not letting you go home to your home at night. I don't  
16 anticipate that at all.

17 The power is there, but I don't want you to worry  
18 about anything you don't have to worry about. And unless  
19 something unusual happened -- and I know of no reason for it --  
20 you will go back and forth from your homes just as you always  
21 have been under the orders of the court not to discuss the  
22 case with anybody or come to any conclusion or opinion.

23 Now, we will proceed:

24 "Upon the final submission of the case  
25 to the jury such alternate jurors shall be  
26 kept in the custody of the sheriff and shall  
27 not be discharged until the original jurors  
28 are discharged."

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And again I will say that any ultimate keeping of jurors under the custody of the sheriff while the jury is making a decision guilty or not guilty, as an illustration, is up to me. And I won't keep -- I am leaving my mind open, but I won't keep anybody under the lock and key of the sheriff unless I am convinced it would absolutely have to be done. I know of no reason for it.

Now, we come a little more to the alternates again.

"If at any time, whether before" -- that means generally during the trial of the case --

"or after the final submission of the case to the jury" -- that means generally the jury is sent to the jury room by the judge, by the court and told, "Now, here are your instructions. I have given them to you. You decide the case."

Now, "If at any such time or during the trial a juror dies or becomes ill or upon other good cause" -- that the judge, the court passes on as being most substantial cause, real cause then --

"and the juror is unable to function as a juror" -- then the judge may excuse that juror and one of the alternates -- the code uses "the court may order the juror to be discharged" -- or excused.

And then the court instructs the clerk to draw the name of an alternate, one of you three, who shall then take the place in the jury box of the regular juror discharged. That is all clear to you? In other words, "Mrs. Smith," or "Mrs. Jones, you go over there." Your name is drawn from the

5a-2

1 box as one of the three alternates, and then if that same  
2 unfortunate situation occurs, another alternate would be  
3 placed in by drawing from the box.

4 And if such is the case then an alternate takes  
5 the place of a regular juror, the alternate then is subject  
6 also to the same rules and regulations as though he had been  
7 selected as one of the original jurors. In other words,  
8 you step right in there and take over just as though you had  
9 started from scratch as an original juror.

10 Is that all clear to you? And you vote on the  
11 questions, all the questions that come to the jury, you vote  
12 upon.

13 Now, basically, that pretty well brings you up to  
14 date or covers, is a better way, your duties and responsibili-  
15 ties in the trial of this case.

16 You have very serious responsibilities. And the  
17 regular jurors have very serious responsibilities in the  
18 acting as a juror in this case.

19 And they, as I have said many times -- you folks,  
20 all of you, you simply take over a great deal of the powers  
21 or the duties or the rights that I would have as a judge.  
22 I move right over to you, just like I would say, "Here they  
23 are, you take them." They are your duties and rights basically,  
24 the finding on the facts in the case.

25 As a judge, with the jury in operation, the trial  
26 by jury, the judge -- and I know I have said this and I am  
27 sorry I have to repeat it -- but as we go along repetition  
28 is necessary. The jury decides all of the facts in the case.

5a-3

1 I do not pass on the facts. And you are the judges. You are  
2 the judges of the facts in this case.

3 I am out, if I can put it bluntly. I am out. I  
4 am not in the fact-finding side of the trial of this lawsuit  
5 at all. The jury is the judge of all of the facts. The  
6 credibility, the honesty, the integrity, the lack of honesty,  
7 the lack of integrity of any witness. Any witness. Any factual  
8 matter. Any matter of fact. Matter of truth. Matter of lack  
9 of truth.

10 All of those matters are for the jurors and the  
11 jury to decide in this case. It is your responsibility and your  
12 duty. And I have no rights nor do I possibly claim any in the  
13 question of facts. It isn't mine. It is yours.

14 Now, a great deal of this I have covered. Before  
15 I forget it, may I again have a stipulation, or do you want  
16 me to reread the charges of the indictment that I have read  
17 to the jurors a number of times? I am glad to reread them to  
18 the alternates and also the regular jurors, although I think  
19 we had a stipulation on them.

20 Do you want to reread that?

21 MR. WEEDMAN: Your Honor, I would appreciate your reading  
22 the charge.

23 THE COURT: The charge?

24 MR. WEEDMAN: The charge, yes, your Honor.

25 THE COURT: All right. I will do it.

26 Now, again I am going to reread the charge that  
27 has been filed --

28 MR. WEEDMAN: Excuse me, your Honor. I wonder if we might

5a -4

1 approach the bench in that connection for just one moment.

2 THE COURT: Surely.

3 MR. WEEDMAN: I would appreciate the opportunity.

4 THE COURT: Do you want the reporter?

5 MR. WEEDMAN: Not necessary, your Honor.

6 THE COURT: All right. Better come in here.

7 (Conference in chambers with both  
8 counsel and the defendant present,  
9 not reported.)

10 (The following proceedings were had  
11 in open court:)

12 THE COURT: Now, I am going to read to you the -- I will  
13 call it the word complaint, but it is technically called  
14 the indictment in which this crime is charged against the  
15 defendant. It reads as follows:

16 "The said Steve Grogan" -- that is the defendant --  
17 "is accused by the Grand Jury of the County  
18 of Los Angeles, State of California, by this  
19 indictment of the crime of murder in violation  
20 of Section 187 Penal Code of California, a  
21 felony, committed prior to the finding" -- that means  
22 the rendering of the indictment -- "and as follows:  
23 That between the 16th day of August, 1969 and  
24 the 1st day of September, 1969, at and in the  
25 County of Los Angeles, State of California,  
26 the said defendant Steve Grogan did wilfully,  
27 unlawfully and feloniously and with malice  
28 aforethought murder Donald Jerome (Shorty)

5a-5

1           Shea," S-h-e-a, "a human being."

2           Now, that is the charge and upon that charge  
3 as I said many times and I just have to repeat as I go along,  
4 the jury must make a finding, ultimately, when the case is  
5 all tried, you go to the jury room -- of guilty or not guilty  
6 and then I have many, many times laid out the subsequent  
7 procedure.

8           The jury finds the defendant in the jury room  
9 after the entire case is tried, the jury says not guilty,  
10 that concludes everything at that point. No further proceedings  
11 of any case. The case is concluded.

6

The 6

1 The jury makes the finding of guilty as charged;  
2 then they set the degree. The degree is second degree, the  
3 case is concluded as far as further jury proceedings are  
4 concerned.

5 The jury makes a finding of first degree, the  
6 penalty hearing is held, and at the conclusion of the penalty  
7 hearing the jury sets the hearing, as I have heretofore  
8 indicated so many times.

9 Now, procedurally, that brings us up, again to  
10 that status of the case.

11 Now, as I have indicated, there is lots of, I  
12 guess, work to do, lots of testimony to take, procedure to be  
13 had, and I would ask all of you folks again -- and I have no  
14 complaints in the matter, simply repeating it -- make every  
15 effort to be here at 9:30, if you will, so we may proceed  
16 sharp at 9:30 because, as you see, we can't move until  
17 everybody is here. It is just kind of dead time until you  
18 are all here and counsel and defendant, everybody must be  
19 here.

20 Now, as has been indicated, there will be a number  
21 of witnesses called. I do not know who is going to be called,  
22 it isn't my business, I don't decide on the facts; I don't  
23 know who is going to be called, I honestly don't know. I  
24 could go so far as to say that I don't have the slightest  
25 idea who they are going to call, the People or the defendant.  
26 It wouldn't make any difference, anyway, because you are the  
27 judge of the facts. You are the judge of the facts.

28 But, it is obvious there will be some time

1 elements involved with a number of witnesses that will be  
2 called. You can't call all witnesses in one day, it takes  
3 time, so you must expect that there will be a number of  
4 witnesses that will be called and it will take time; and  
5 one thing that supersedes or is the foundation to all of  
6 that statement is this: that as you hear the various witnesses  
7 testify you must still -- and regardless of how many witnesses  
8 you hear talk or testify for one side or the other -- you  
9 must keep your mind open. That is so important.

10 It may be a hard order or injunction from the  
11 court to say that, to listen to witnesses testify and don't  
12 make up your mind. I am not saying all of that.

13 I am saying, don't make up your mind; that's  
14 very important, because you make up your mind, you hear some  
15 witnesses testify and you make up your mind, you are, in  
16 effect, prejudging the case. You must keep your mind open.

17 You must wait until all of the witnesses testify  
18 and you mustn't make up your mind. You can make a mental  
19 note of the testimony, but don't freeze your mind.

20 The defendant has his side of the case and you  
21 must not take issue, you mustn't take sides. As counsel have  
22 said to you, and I believe I did once or twice during the  
23 picking of the jury, you put it on both sides; if you were  
24 the People or the defendant, either way, you want to put it.  
25 You wouldn't want to have somebody in the jury box listen  
26 to one or two witnesses and make up his mind.

27 Let's say you were the defendant, as an illustration --  
28 make up his mind when he hears one or two witnesses without

1 listening to all the testimony -- put yourself as defendant  
2 or put yourself as the plaintiff, either way you want to do  
3 it, I am not trying to pick out the defendant or the plaintiff --  
4 either way, somebody suffers, somebody doesn't get a fair  
5 trial, that's a better way of putting it; somebody doesn't  
6 get a trial, either the People or the defendant is not going  
7 to have a trial here, a jury trial, if you make up your mind  
8 before you listen to all of the testimony and all of the  
9 proceedings in the case. You must keep your minds open.

6a

6a-1

1 Now, I said many times, it is true some testimony  
2 may carry great weight. Well, fine, put it down in the back  
3 of your head, write it down on a piece of paper, but don't  
4 crystallize on it. Put it in the back there, get all the  
5 testimony in the case before you make up your mind in the  
6 matter.

7 Now, it is highly important, again I admonish you,  
8 you must not, folks -- this is very important -- you mustn't  
9 discuss this case with anybody, you just must remember that.

10 That is the reason, one of the basic reasons why  
11 in the past, in many cases, the court is given the power to  
12 take the jury in and lock them up.

13 I am not going to scare you; I am not going to do  
14 it; I have no intention of doing it. I'd rather put it that  
15 way -- lock them up and keep them during trial and they can't  
16 talk to other people, they can't get information from outside  
17 sources and they can't look at a radio and get information, or  
18 a neighbor ringing up and, "Hello, what happened today?" None  
19 of those sources.

20 Remember, you have a very serious position. You  
21 are a judge; you are a superior court judge, a judicious officer,  
22 in effect, certainly, so far as the facts are concerned.

23 You are a judge and you have very serious  
24 responsibilities, and you mustn't talk about the case; go home  
25 and say, "Well, today we had so and so on the stand," and talk  
26 about it. You mustn't do that.

27 You are going to find a moment -- just as an  
28 illustration -- you talk about witnesses who testified and what

6a-2 1 the facts are, and it may be done very innocuously, very  
2 innocently; before you know it you are freezing your mind;  
3 before you know it you are taking sides.

4 You say, "I wonder, this is proven, that is proven,  
5 or the other," instead of keeping your mind open, you  
6 crystallize your mind; you get in an argument with somebody  
7 and you are taking issues, you are taking sides.

8 You might as well be for the lawyer out there, for  
9 the People, or the lawyer for the defendant, either way; so  
10 that's just one of the many reasons you mustn't get into  
11 discussions. You mustn't talk about the case. Keep your minds  
12 open. Don't allow people to talk to you.

13 That is another problem, they come up, say, "What  
14 happened?" Something like that. I just tell them, say, "Listen,  
15 I can't talk about the case. I have taken an oath to try this  
16 case. I am a judge in the case. I decide the guilty or not  
17 guilty aspects, I can't talk to you about this case; don't  
18 talk to me about it, please."

19 And I would ask you, too, that if there is anything  
20 that arises by way of notoriety -- I don't know what it may be--  
21 accounts in the newspaper or anything on the television or  
22 radio or not, I would ask you, as an injunction or order,  
23 please abstain, keep away from the matter, because it leads to  
24 discussions, hearing somebody on the radio or somebody comments,  
25 "This happened; that happened." You are the juror in the  
26 matter and if you listen to these side comments, these discus-  
27 sions, before you know it you are freezing your mind one way  
28 or the other.

6a-3

1 That is one of the problems you have when I let  
2 you go home at night and come back and forth. You must, on  
3 the other hand, obey the orders of the court and you mustn't  
4 discuss these matters, pick up items and read it and say, "By  
5 golly, I guess that's right."

6 You are the judge and what is right or not is from  
7 the evidence from the witness stand and not from the radio or  
8 television stand or not somebody you meet in the hallway or  
9 on the street car or bus, I should say.

6b

6b-1

1           You must keep your minds open and refrain from  
2 picking up any comments from any matter other than that  
3 established in court, because you remember this courtroom is  
4 where the trial is.

5           This isn't a curbstome, this is a serious situation  
6 and your opinions must not be influenced by what is called  
7 commonly curbstome discussions or what somebody else tells you  
8 in the grocery store or church or anyplace else. That's why  
9 you mustn't talk about it.

10          Once you get pulled into a conversation you're in  
11 trouble; the moment you get into a conversation you are in  
12 trouble, you can't miss getting in trouble. The moment you  
13 say, "Yes, two or three witnesses" --

14               "Who were they?"

15               "I don't know, a young man, old man, this man,  
16 that man."

17               "What did they say?"

18          There you are; now you are a partisan, you are  
19 getting partisan, you are talking, your mind is getting frozen  
20 automatically. You have got to keep it open, so you must not  
21 discuss the case with anybody.

22          So, please refrain from any discussion you may  
23 hear or comments over the air or in writing in the papers,  
24 abstain from them entirely.

25          Now, I have indicated a number of times the hours  
26 of court are from 9:30 to 12, 2 o'clock to 4. I would like to  
27 operate on the hours 2 to 4. There are problems, however, on  
28 that. I will stay with our schedule if I can.

1 We have difficulty -- some courts, many courts  
2 operate on the schedule of 1:30 to 4 o'clock, which is very  
3 commendable, so what I say is not in criticism.

4 We have some difficulty with -- undoubtedly we will  
5 have difficulty operating on the schedule of 1:30 to 4 rather  
6 than 2 o'clock to 4 for this reason: this big building here is  
7 a county courthouse, it is not what you might call the criminal  
8 courts, although this is a full-fledged criminal court and is  
9 used to try many, many, many criminal cases over here.

10 Basically all criminal cases are tried in the Hall  
11 of Justice at Temple and Broadway; and you say, "Why did the  
12 case come over here?" It is only a matter of mechanics.

13 Well, simply, the problems are so many and so great  
14 and there are so much, let's put it, volume of business, that  
15 only so many cases can be handled by so many judges in so many  
16 courtrooms; and when the pressure gets so great that there is  
17 no place to put a criminal case for trial -- you have got to  
18 be tried in 60 days after filing of the indictment -- the case  
19 has to come out and has to go to some courtroom. So, therefore,  
20 there are always -- there are one, two or three, four of the  
21 civil courts that do civil work, generally, that are more or  
22 less open to the overflow. Now, it isn't the word "overflow"  
23 is right -- to the "pressure of business" so as to get the cases  
24 out they come over here to these civil courts -- and I might  
25 say, incidentally, that only the pressure of business, litigation  
26 of trial, has been so much that I probably in the last year  
27 or two have been trying for two civil cases I'd try then I'd  
28 have a third, at least a third of the cases, maybe 40 percent

1 of the cases that have been tried here in the last two or three  
2 years -- at least two years -- have been all criminal cases;  
3 and that's no different than any of these other cases that  
4 are going on. They come over here because they have to and  
5 they are entitled to a courtroom for immediate trial.

6 So, that's why they sometimes flow into what  
7 ordinarily goes in as a civil case. That's why we are trying  
8 it right here.

6c

Tke 6c

1 I have drifted again. My point is this, that to  
2 start at 1:30 instead of 2 the district attorney's offices  
3 are over in the Hall of Justice, defense counsel has,  
4 obviously, has his office and there are some matters that do  
5 need attention.

6 The district attorney, he has kind of a calendar  
7 of his own of certain cases, although he is dedicated,  
8 regimented to this case until it is tried. There is, neverthe-  
9 less, a certain amount of business that must be tried, and  
10 so when he comes -- or, defense counsel comes from his office  
11 to here or the district attorney from his office to here,  
12 it isn't like going down the elevator for one flight of  
13 stairs in the criminal court building at the Hall of Justice,  
14 right in the courthouse. It isn't a question of taking three  
15 minutes or five minutes in walking to an office in the  
16 courthouse. He has got to walk clear over here to this  
17 courtroom.

18 So I think it is better that I allow that latitude  
19 of 30 minutes instead of making the hours 1:30 to 4, that I  
20 allow the latitude in there of 2 o'clock to 4, although the  
21 time is needed, I am aware of it, for trial. The time is  
22 needed, but I think I will try to stand by the schedule of  
23 2 to 4 rather than by 1:30 to 4, at least until we see how  
24 the practical aspects of it work out.

25 Therefore, after that long talk I have given you,  
26 the hours of court will be from 2 to 4 instead of 1:30 to 4  
27 until I advise you to the contrary.

28 Now, one or two matters that I think I covered

6c-2 1 previously -- oh, yes, the People's counsel, the deputy  
2 district attorney and the defense counsel, each of them have  
3 a right to make, before they open their case, what is called  
4 an opening statement.

5 Now, I may be a little ahead of the picture, but  
6 I want to at least clear it in your mind -- I may repeat it  
7 later on -- an opening statement, let's say, by the People,  
8 Mr. Katz were to get up, or if I tell him, "Go ahead and put  
9 on your case, Mr. Katz," I say that now, he may say "Your  
10 Honor, I want to make an opening statement to the jury."

11 Now, an opening statement is a statement -- we'll  
12 take the People to start with -- by Mr. Katz, in which he'll  
13 say to you something like this, "We expect to prove the  
14 defendant guilty of this crime, and in doing so we expect" --  
15 notice, "I am using "expect" -- "we expect to prove to you  
16 that such and such and that this and this took place; and  
17 we expect to show this; and we expect to show this; and we  
18 expect to show this; and we expect to show this to prove the  
19 defendant guilty to a moral certainty and beyond a reasonable  
20 doubt."

21 In other words, it is an outline. It is just like  
22 the preface to an article or a book where the author makes  
23 a little preface to you, "Well, in this book the subjects I  
24 am covering are such and such."

25 It is a guide; it is used as a guide, probably,  
26 basically a guide, to advise the jury as to what he is about  
27 to do, what testimony he expects to produce to establish his  
28 side of the case.

1 He is talking about his side of the case and  
2 what he expects to show to you either by pictures or what is  
3 called physical evidence, or by testimony that flows from the  
4 witness stand; so that as he puts on his case you will have  
5 some idea of what he is trying to do.

6 Otherwise, you are in the dark and if he doesn't  
7 tell you what he expects to do you won't have much of an idea  
8 as to what he is trying to prove; so it is an outline.

7-1  
1 Now, what he tells you is not evidence. This is  
2 the big thing. His statement is not evidence at all. It is  
3 just an advisory guide.

4 "I expect to do this, I expect to do this, I  
5 expect to do this."

6 Whether the testimony that is produced is true or  
7 false or good or bad or convincing or not is for you to  
8 decide. He is simply -- and his statement to you is not an  
9 argument. He is not arguing this case. Get that clear.

10 The argument of a lawyer comes later when the case  
11 is tried. He will argue his case. He will say, "John Smith  
12 said so and so. Mrs. Jones said so and so. We have established  
13 so and so."

14 That is his argument. That comes at a later time.

15 But in what is called his opening statement it is  
16 a statement of expectancy. Some courts have called it a  
17 statement of expectancy.

18 It is a statement of what he says, it is a state-  
19 ment of what he expects to do to prove his case. So remember,  
20 he is not testifying, he is not stipulating, he is not arguing,  
21 he is simply -- it is simply an inference or a guide of what  
22 he expects to do to prove his case.

23 Now, so far do you think you have got that clear  
24 what he -- the strength or the effect of his statement, when  
25 he makes an opening statement to you?

26 Now, without going through the same statement in  
27 detail, just like I have, the same situation would apply  
28 basically to Mr. Weedman, if, as and when he makes an opening

7-2

1 statement to you.

2 Now, the law says he can, but he has the right  
3 after Mr. Katz makes an opening statement, Mr. Weedman can get  
4 right up and say "I want to make my opening statement."

5 And he has a right to follow it right up. Or he  
6 may say to himself "I don't want to make my opening statement  
7 now. I just don't want to do that."

8 He is talking to himself: "I don't want to do it.  
9 I will hold up my opening statement until the People put on  
10 their case."

11 And then Mr. Weedman can say, "When I put on my  
12 case I will make my opening statement then. I don't want to  
13 put it on now."

14 He has that absolute right. That is up to him,  
15 I haven't anything to do with it. That is his right.

16 So I simply want to advise you that if he says,  
17 for instance, "Well, I would like to withhold my opening  
18 statement at this time," to the court, that is his business.  
19 It is his right. He may have good reasons for wanting not to  
20 make an opening statement at this time. So he has a perfect  
21 right to hold up an opening statement.

22 And maybe he doesn't want to give any opening  
23 statement. He has an absolute right. He can simply say, "I  
24 don't want to make an opening statement at all. I want to  
25 put on my testimony" or whatever he wants to do. He doesn't  
26 have to make an opening statement, and neither do the People.

27 The People don't have to make an opening statement,  
28 either. Generally they do, not invariably, but generally they

1 do. Not invariably, but generally they do. Generally defense  
2 counsel does, but it is entirely up to the lawyer whether that  
3 is the best procedure or not, whether he wants to make an  
4 opening statement or not.

5 He may have very good reasons he doesn't want to  
6 make an opening statement. That is his business. I just  
7 want to try to give you the whole panorama of the situation.

8 Now, let's see where we are. There are a number  
9 of things I had in mind to mention to you and some of them  
10 have slipped. Some of them I have covered. Most of them I  
11 have covered, I believe.

12 I believe I have covered most of the matters.

13 Now, I tell you, I am going to talk to counsel for  
14 two or three minutes. I will take a short recess. Do not  
15 discuss the case. We will proceed in just a few minutes. We  
16 are at recess. Thank you.

17 Do you want to step in, gentlemen.

18 MR. KATZ: Yes.

19 MR. WEEDMAN: Yes, your Honor.

20 THE COURT: Thank you.

21 (Conference in chambers with both  
22 counsel and the defendant present,  
23 not reported.)

24 (Recess.)  
25  
26  
27  
28

7a

1 THE COURT: Now, gentlemen, we have all jurors in court.  
2 We have here the defendant Steve Grogan. We have both counsel.

3 Now, ladies and gentlemen, we have been in chambers  
4 with counsel and defendant discussing some procedural matters,  
5 matters of trial, matters of possible testimony. That is as  
6 to the time, the place, the taking of the testimony, manners  
7 of testimony. All procedural.

8 And there are a great deal, a great number of  
9 matters and problems, serious problems of procedure and  
10 getting the witnesses here and some questions of study of  
11 statements of various witnesses that both counsel want to study.

12 They all have to do with the trial of this lawsuit.  
13 And it has been suggested, and I think very properly so,  
14 that now we have got our jury, we have been some time getting  
15 our jury here so again you can see some idea as to the  
16 magnitude, extent of the trial -- that both counsel for the  
17 People and defendant are entitled to some time, to some aid  
18 and get ready to move. It takes time, rather than start in  
19 with one witness and cast around like somebody falling off a  
20 boat, as to who comes on next.

21 The case should be regimented so they can move.  
22 I think it is very important for both sides.

23 It has been suggested, and I think it is proper,  
24 that we go over because of the unusual length, number, volume  
25 of witnesses and other problems that I just can't start to  
26 enumerate to you, we go over till Tuesday morning at 9:30  
27 to actually start the trial of this case.

28 I am convinced that it is important and necessary

7a-2

1 for counsel to have that time to get ready.

2 And that doesn't mean that either counsel for  
3 plaintiff or defendant have been careless at all. That is not  
4 so. They are both very diligent counsel, and they are very  
5 learned counsel, both of them. And they are diligent in  
6 their application of their time.

7 So don't let me get you on the wrong street by  
8 suggesting that. To formulate the procedural matters, some  
9 witnesses have to come from out of State. Now, just to give  
10 you an idea, times have to be arranged, schedules have to be  
11 arranged,

12 So there are serious problems that both counsel  
13 have before them. Both of them have serious problems to  
14 formulate our procedures.

15 I think it is justified that we go over till  
16 Tuesday morning. We will be all ready.

17 I have advised counsel that I will give this time.  
18 I will advise the jury to this effect. And they have advised  
19 me they will be ready to go at 9:30 Tuesday morning.

20 So you can figure we will go and start in trial  
21 then. Now, again, this business about talking to anybody.  
22 Keep in mind now you will have no jury work of any kind at all.  
23 You can go home or about your business in a few minutes, until  
24 next Tuesday.

25 In other words today, Wednesday, when I let you go,  
26 you are through. Tomorrow Thursday you are through. There  
27 is no jury work. Friday there is no jury work. Saturday and  
28 Sunday obviously there is no jury work.

Monday there is no jury work. But Tuesday we start taking testimony. Tuesday morning at 9:30.

So keep in mind obviously you are in this case. You know you are sworn. Don't go back to the jury assembly room. I am saying that because some of you are laymen. You don't know about that time element.

You are in this case. You are sworn in here and as far as we are concerned we are in trial right now, actually. We are starting. No witnesses have been sworn but you have been sworn and we are in operation right now, in the trial of this matter.

So do not go back to the jury assembly room at all. You can do anything you want to, but don't go back. And be here promptly on Tuesday morning and we will proceed.

Do not discuss the case or come to any opinion or conclusion. I will recess you until 9:30 Tuesday morning. Thank you very much, ladies and gentlemen.

(At 11:10 an adjournment was taken until  
9:30 a.m. on Tuesday, July 20, 1971.)