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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

STEVE GROGAN,)

Defendant.)

REPORTERS' DAILY TRANSCRIPT

WEDNESDAY, AUGUST 25, 1971

DEFENSE WITS

APPEARANCES

(See Volume 1)

VOLUME 37:

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1 PEOPLE v. STEVE GROGAN
2 NO. A 267861

VOLUME 37 - Pgs. 4866 - 4973 incl.
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5 I N D E X

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7 DEFENDANT'S WITNESSES

DIRECT

CROSS

8 PEARL, Ruby

4935

4940

9 SAUNCOKE, Lee

4942

4944

LOS ANGELES, CALIFORNIA, WEDNESDAY, AUGUST 25, 1971

9:40 A.M.

(The following proceedings were had
in chambers:)

THE COURT: We have got a lot of problems.

First of all we are in chambers. Defendant is
here. Both counsel are here. The sheriff and the clerk and the
reporter.

Now, we have got a number of serious problems.
They are all different one from the other.

Let's take up this one first. The one with our
juror No. 3, I believe.

MR. KATZ: Mrs. Lampel.

THE CLERK: No. 4.

THE COURT: The lady we recessed for.

MR. WEEDMAN: Juror No. 5, I believe.

THE CLERK: No. 4.

MR. WEEDMAN: Is it 4?

THE CLERK: Yes, sir.

MR. WEEDMAN: Okay.

THE COURT: She advised Frank that this operation
disclosed either a terminal or a serious malignancy of a cancer,
in the ear or the brain or head. He has to go to the hospital
once a day.

Am I correct on that?

THE CLERK: Yes, sir, your Honor.

THE COURT: For cobalt treatments, which is a temporary,
expedient situation. And she wants to take him down there.

1 which is probably a very fair request.

2 I would be inclined to say that it is such an
3 emergency as the code contemplates that the court could excuse
4 the juror for good cause and select one of the alternates to
5 go in.

20-1

1 MR. WEEDMAN: May I confer with my client, your Honor, in
2 that connection?

3 THE COURT: Yes. Take your time.

4 MR. WEEDMAN: Can we do that right now?

5 THE COURT: Yes. You can go outside, if you want to talk
6 to him.

7 MR. WEEDMAN: Yes; may we for a moment?

8 THE COURT: Yes.

9 (Brief recess.)

10 MR. WEEDMAN: Your Honor, after conferring with my client,
11 it is agreeable with my client, and I join in this, that Mrs.
12 Lampel may be excused and alternate juror No. 1 be substituted.

13 THE COURT: You stipulate, or --

14 MR. WEEDMAN: Yes, your Honor.

15 THE COURT: Then you have no objection?

16 MR. WEEDMAN: No objection.

17 THE COURT: Do the People have any objection?

18 MR. KATZ: No, we have no objection to Mrs. Lampel being
19 excused.

20 THE COURT: I think then -- I don't see any purpose,
21 unless counsel want to, to bring her in here and interrogate
22 her further on the matter. I don't think it would serve
23 anything. But if you want to --

24 MR. KATZ: No, your Honor. I think the record is clear.

25 MR. WEEDMAN: You can express our hope that her husband
26 survives.

27 THE COURT: Frank, bring her to the door, and I'll tell
28 her. What is her name?

THE CLERK: Mrs. Lampel -- L-a-m-p-e-l.

1 THE COURT: All right.

2 (Brief recess, following which
3 Mrs. Lampel was ushered into the
4 chambers.)

5 THE COURT: How do you do, Mrs. Lampel.

6 Mr. Hogan, the clerk, advised me of your statement
7 respecting the results and the consequences of the operation
8 procedure that your husband had at the hospital and that he
9 needs cobalt treatment every day, and that you want to take
10 him down to the hospital.

11 MRS. LAMPEL: Yes.

12 THE COURT: Counsel and the defendant are -- there is no
13 objection, and I'm exercising the authority I have to excuse
14 you, and on behalf of everybody I thank you for your services,
15 and we will select one of the alternates to take your place.
16 Thank you very much.

17 MR. KATZ: We wish Mrs. Lampel, both counsel and I, the
18 very best.

19 MR. WEEDMAN: Yes.

20 (Mrs. Lampel left the court's chambers.)

21 THE COURT: Now, the next problem is, I believe Frank said
22 the defendant's father was sick. Is that right, Mr. Weedman?

23 MR. WEEDMAN: Yes, your Honor. I am informed by my
24 client this morning that he learned only last night that his
25 father has suffered a coronary and is presently in the
26 Intensive Care Unit at the Veterans Hospital.

27 THE COURT: Yes.

28 MR. WEEDMAN: And that he may not live.

1 Mr. Grogan is quite upset about this, and we would
2 hope that we could have a brief delay in the proceedings here
3 to enable him to -- and I will help him in any way I can --
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1 THE COURT: He wanted to go see the father.

2 MR. WEEDMAN: Yes. I think he would certainly want to do
3 that, your Honor.

4 THE COURT: What are their visiting hours? What time do
5 they permit there?

6 MR. WEEDMAN: Well, I don't know, your Honor. And I
7 just learned this, of course, a few minutes ago.

8 THE COURT: First of all, any objection by the People?

9 MR. KATZ: To a brief delay, there would be no objection.
10 But certainly I am not in position to suggest --

11 THE COURT: I would be inclined to grant permission under
12 proper custody for the defendant to go down to see his father.
13 If I can work out a time schedule in here I will order it. I
14 don't want to delay the trial.

15 MR. WEEDMAN: What I would like to do, your Honor, is
16 have a few minutes to call the hospital and verify where he is.

17 THE DEFENDANT: I have got all that information in my
18 briefcase. Do you want me to give it to you now?

19 MR. WEEDMAN: All right. In a few minutes.

20 And I want to find out what times would be
21 available.

22 THE COURT: They may have various times.

23 MR. WEEDMAN: It will take a while for the order to issue
24 and for the sheriff's department to provide some transportation
25 and security.

26 THE COURT: There would have to be adequate security.

27 MR. WEEDMAN: Yes, indeed.

28 MR. KATZ: Your Honor, I am only speaking as a friend of

1 the court because I don't think I have any official position
2 here in this regard. But I don't see how the sheriff's office
3 can be required to take a maximum security prisoner to the
4 Veterans Administration Hospital. I think it would be exacting
5 almost an impossible burden on the sheriff's office, and I
6 think we should inquire of the sheriff's office whether this
7 is an unusual procedure; whether they are used to affording
8 that kind of security necessary to safely transport Mr. Grogan
9 to the Veterans Administration Hospital to see his father.

10 MR. WEEDMAN: Perhaps I am imposing too great a burden
11 upon the sheriff's office.

12 THE COURT: I would be inclined to grant the request.
13 I would ask that you make inquiry first. Pinpoint this.

14 MR. WEEDMAN: I am going to try and speak to the attending
15 physician.

16 THE COURT: I would like to know how critical it is,
17 how serious it is. If it is a kind of life and death matter.
18 What are the various times --

19 MR. WEEDMAN: That's right, your Honor.

20 THE COURT: -- he could be sent down, and report back to
21 me.

22 MR. WEEDMAN: Yes, I will, your Honor.

23 Perhaps we could do that right now.

24 THE COURT: All right.

25 Now, the next question, may I ask who do you now
26 expect to call?

27 MR. WEEDMAN: Your Honor, I had expected today to call
28 Lynn Fromme, Nancy Pitman, Ruby Pearl, and perhaps Sgt. Whiteley.

THE COURT: Now, wait. Let me try it again.

1 Pearl. Who else?

2 MR. WEEDMAN: Yes, your Honor. Nancy Pitman. Also known
3 as Brenda McCann.

4 THE COURT: Is she in custody?

5 MR. WEEDMAN: No, she is not.

6 THE COURT: All right.

7 MR. WEEDMAN: Lynn Fromme. She is also known as Squeaky.

8 THE COURT: Squeaky. She is now in custody, isn't she?

9 MR. WEEDMAN: No, she is not, your Honor.

10 THE COURT: No.

11 MR. WEEDMAN: And -- let's see, who else did I say?

12 Those two girls and Ruby and perhaps Sgt. Whiteley
13 today.

14 THE COURT: Sergeant?

15 MR. WEEDMAN: Yes, your Honor. For a few questions.

16 THE COURT: Now --

17 MR. WEEDMAN: Also I had some difficulty subpoenaing
18 Marian Binder, but Frank informs me she has called the court
19 and she will come in if somebody comes out and picks her up.

20 THE COURT: She is not in custody at all?

21 MR. WEEDMAN: No, she is the wife of Jerry Binder who
22 testified.

23 No custody witnesses, your Honor.

24 THE COURT: Now, I will require -- first of all I am going
25 to back up on the men that I issue subpoenas for under 1330
26 of the Penal Code.

27 That section provides, and the cases construing it--
28 People against Marseilar, 70 Cal. 89 which has been followed --
apparently a key case -- been followed right down the line,

1 right through Chessman 1950 in 35 Cal.2d at 455, that the
2 court -- now, I didn't require this of the defendant. I could
3 have required it -- that the general affidavit is not that it
4 is simply the statement "John Jones is needed as a defendant
5 witness" -- is not of itself sufficient if the court desires
6 further statement.

7 The court states that the trial judge is entitled
8 to an affidavit or sworn statement of what was sought to be
9 proved by the witness or witnesses -- we can call it a foreign
10 subpoena or out-of-county subpoena -- or that their testimony
11 would be material to defendant.

12 In other words, there has to be a statement of
13 facts as to what John Smith will testify to. And that such
14 matters as he will testify to are material.

15 Now, in the absence of that the trial judge could
16 refuse to issue the subpoena and bring in the out-of-county
17 witness.

18 Now, I didn't require that. I have issued your
19 subpoenas, so that is not of an immediate stumbling block.

20 But I will require in chambers, with of course the
21 defendant here, a detailed statement as to what particularly
22 the men that are in custody will -- are expected to testify
23 to, because if I don't think the testimony is material to the
24 defense I will so rule on the offer of proof.

25 That is number one.
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Now, let me back up. On these three girls, they are what you call members of the clan, or the family, is that correct, Mr. Weedman?

MR. WEEDMAN: Yes, your Honor. That is Lynn Fromme and Nancy Pitman.

THE COURT: They are not in custody?

MR. WEEDMAN: No, your Honor.

THE COURT: I have asked you this, but I'm repeating.

MR. WEEDMAN: No, they are not in custody.

THE COURT: They were at the Spahn Ranch at the time of this alleged occurrence?

MR. WEEDMAN: Yes, your Honor.

THE COURT: Well, we will wait till we get them here for that situation to develop for the moment.

On the men in custody, before I bring them in here, I will request an offer of proof and pass on the materiality of these men. There is a very serious situation that presents itself. Some of these, from the testimony in the case, apparently -- I don't know -- but they are not members of the clan, and as to what extent that testimony may be of value, I'm not passing on it until I have a statement, but it would appear to present serious doubts.

Now, I can do that in chambers without bringing them into the courtroom. If I decide that they are material witnesses, you can bring them in. If not, I'll rule right here in chambers.

MR. WEEDMAN: Have they been brought to Los Angeles yet? Do you know?

4-2

1 THE COURT: As far as I know, they have. I have done
2 nothing to stop it. Now there is no issue as to that.

3 MR. WEEDMAN: What I would like to do, then, your Honor,
4 is interview them in the county jail. My only information
5 about these witnesses is second-hand, obviously, since I have
6 had no opportunity to go up north.

7 THE COURT: I know that. The law sets up on this -- I
8 can put this retroactively, I'm confident, and I would so hold,
9 that I can require a statement under oath respecting -- that is
10 what the code says, that is what the cases hold, the cases
11 hold that -- respecting the materiality, the factual materiality,
12 not conclusional, but factual materiality, of what these men
13 are expected to testify to, and if it doesn't appear material,
14 I will surely sustain objection to taking the testimony in any
15 way whatsoever. I mean, I want to tell you that at this time.

16 Now, you may talk to them in the jail. I think you
17 should, because you are not in a position to give facts.

18 MR. WEEDMAN: That's right.

19 THE COURT: You are not in a position to represent to the
20 court -- that is one thing.

21 MR. WEEDMAN: I am, in a way, but it is all hearsay.

22 THE COURT: You can talk to them. I think you should.

23 That is one thing.

24 Now, there is another thing that I should tell you,
25 and I don't know what you are going to do. I don't know whether
26 you anticipated subpoenaing in, attempting to call Manson, who
27 is a co-defendant, but in another court, or Davis. But I will
28 act summarily in that matter. As a matter of judicial knowledge,

1 I recognize -- and the pleadings are before me -- that Davis
2 and Manson are co-defendants in the alleged murder of Shorty
3 Shea. Davis is not being tried at this moment. Manson is in
4 the middle of a trial, part of the trial, on pleas of not
5 guilty.

6 Under the Fifth Amendment to the Federal Constitu-
7 tion and under Article I, Section 13, of the State Constitution,
8 as you counsel know, neither of these men may be solicited or
9 interrogated for the purpose of testifying against themselves.
10 Now, those statements, they are a protective clause for those
11 defendants, Manson and Davis, protective in that nature, and
12 they are further than that, it is an injunction on the trial
13 court, for instance myself, as an individual or as a judge to
14 bring these men in here and instruct them to be sworn and to be
15 interrogated.

16 I think it is my personal feeling that to even
17 bring them in here and attempt to put them on the stand -- I'm
18 not trying to outguess you or judge your mind. I don't know
19 what your mind will be, but I should express myself so you can
20 consult with your client accordingly -- to bring either of these
21 two men in here and attempt to put them on the stand even for
22 the purpose of asking them "Do you want to testify to this or
23 don't you?" would be against the injunctive prohibitions of the
24 Constitution, would impugn or impinge on their constitutional
25 rights.

26 They are now on trial. The effect would be the
27 same as if they were tried right in this case, which they are,
28 in effect, except that they split the judges. One of the

1 defendants, for instance, you, Grogan, would call Manson and
2 say, "Take the stand. I want you to testify here." It is the
3 same situation as calling the defendant on the stand and he has
4 entered a plea of not guilty.

5 That is sufficient for me. I won't take him on the
6 stand. I wouldn't ask him if he wants to testify. If he does
7 say, "Yes, I'll testify," it wouldn't make any difference. I
8 wouldn't take his testimony.

9 MR. WEEDMAN: Your Honor, I don't see how the court could
10 prohibit us from calling a material witness in this case. It
11 would be denying due process.

12 THE COURT: I'll take an offer of proof from you and rule
13 on your offer of proof, but I take judicial knowledge -- that
14 is the reason I say this -- I take judicial knowledge that
15 Charles Manson, whom you desire to call, is on trial and the
16 People are demanding a capital penalty against him. He is in
17 the middle of a trial. Pleas of not guilty have been entered.

18 4a

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1 I would make a statement now, based on the
2 protective clauses of both the State and Federal Constitutions,
3 that it is impossible to call him, and I would not call him,
4 and you can assign, of course, any error you desire.

5 MR. KATZ: Your Honor, we would like to be heard on that,
6 just with respect to that.

7 THE COURT: Go ahead.

8 MR. KATZ: I think insofar as it concerns the defendant's
9 right to call any witnesses, and I underscore the next word,
10 any witness who is material, that is, to the defense, with
11 reference to that right of the defendant, which is an
12 uncompromising right which enures to his benefit, he has, under
13 the due process clause of the Federal and State Constitutions,
14 he has that absolute right to call any witness who is material.
15 The only issue is as to whether or not he can force another
16 person to give testimony which will incriminate himself.

17 Now, if Mr. Manson -- and this is a big "if;"
18 frankly, I don't believe Mr. Manson would be willing to waive
19 his privileges against self-incrimination -- but assuming that
20 he gave an unqualified answer to the court, namely, that he
21 would give up any rights that he had regarding his privilege
22 against self-incrimination, then the court would be duty bound
23 to permit Mr. Manson to testify if his testimony is otherwise
24 material.

25 THE COURT: I disagree with you.

26 MR. KATZ: Your Honor, we don't want reversible error.

27 THE COURT: You're going to get it in this case and you
28 will get it on the case on trial, two reversible errors. You

1 have to pull a man out that is being tried for murder with a
2 capital offense and bring him over here and interrogate him.

3 MR. KATZ: First of all, we don't know whether Mr.
4 Weedman is going to call Mr. Manson, and we don't know --

5 THE COURT: Both counsel have a good chance to assign
6 error. That is what I'm going to say. I'm not going to put
7 Manson on this stand with him on trial before a jury with the
8 People demanding capital punishment of Manson.

9 MR. KATZ: Excuse me, your Honor. Under 405 of the
10 Evidence Code, your Honor must make a preliminary fact
11 determination, and this is outside of the presence of the
12 jury, as to whether or not Mr. Manson, having full realization
13 of the consequences of his waiver of the privilege against
14 self-incrimination, nevertheless desires to personally waive
15 that privilege against self-incrimination and testify as to
16 material facts concerning this trial.

17 THE COURT: That is inconsistent. It is an inconsistent
18 finding.

19 MR. KATZ: No, it is not. If he wishes to testify in this
20 trial, regardless of what he has done in Department 106, he has
21 that right and Mr. Grogan has the right under the due process
22 clause of the Fourteenth Amendment and the Fifth Amendment to
23 the Federal Constitution to have that testimony, that material
24 testimony, brought before the trier of fact.

25 Now, I don't believe, frankly, that Mr. Manson will
26 waive that privilege. But the court would be duty bound,
27 outside of the presence of the jury, to make that preliminary
28 fact determination as to whether or not there is a free and

1 voluntary waiver of his right against self-incrimination.

2 THE COURT: You don't have to go that far. He has already
3 indicated that he is not confessing to anything, desires no
4 interrogation, entered a plea of not guilty. He is in the
5 middle of a trial on this charge.

6 MR. KATZ: I appreciate the inconsistency of the position
7 which he has taken in 106 and may take in Department 52 here.
8 But Mr. Grogan does have the right, outside of the presence of
9 the jury, to have Mr. Manson tell you, the judge, and say to
10 you, in effect, "Judge Call, I have decided to give up my right
11 against self-incrimination and I have material testimony to
12 give and I will testify," and Mr. Grogan has a right to call
13 Mr. Manson, he has the right to call Bruce Davis, even though
14 they have entered in other courts pleas of not guilty.

15 MR. NEEDMAN: Let me say --

16 MR. KATZ: It would be reversible error.

17 THE COURT: Yes, it would.

18 Let me put it to you this way: supposing instead of
19 Manson being tried before Judge Choate he was being tried right
20 in this courtroom, Department 52, and he is sitting next to
21 Grogan. He has already entered a plea of not guilty. "I'm
22 not guilty to anything here. You prove your case. I want a
23 jury trial." We are in the middle of a jury trial.

24 MR. KATZ: Yes, your Honor.

25 THE COURT: All right.

26 Now, out of a clear blue sky Grogan says, which is
27 the situation here, "I'm calling Manson as my witness. I'm
28 calling Manson as my witness." And Manson is there with

1 counsel. In the meantime, Manson hasn't entered a plea of
2 guilty to the charges that he is being charged with. His
3 statement is already an affirmative, "I'm not guilty."

4 MR. KATZ: But that is different.

5 THE COURT: "I plead not guilty."

6 Is it your position that the defendant can call
7 him right in open court and say, "I want you as my witness,"
8 in the face of a not guilty plea out there in the middle of a
9 trial?

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1 MR. KATZ: Your Honor, in answer to your specific
2 question, the answer is obviously no, he could not in open
3 court in front of the jury.

4 THE COURT: All right. Put the jury in the jury room..

5 MR. KATZ: Well now, out of the presence of the jury he
6 can say, "Your Honor, for the record I wish to call Mr. Manson.
7 Mr. Manson has advised me that he is willing to give up his
8 privilege against self-incrimination for this purpose. I am
9 now asking your Honor to make that foundational fact determina-
10 tion under 405 of the Evidence Code."

11 At which time Mr. Manson takes the stand and he is
12 asked whether or not the representation is true and whether
13 or not he will fully and knowingly give up his rights against
14 self-incrimination.

15 This fact is determined outside the presence of
16 the jury. If your Honor then makes that determination that
17 there is a free and voluntary waiver of his rights against
18 self-incrimination then despite the protestations of Mr.
19 Kanarek or his present counsel, he has the right to testify.

20 And there is a California Supreme Court case that
21 came down recently, one or two years ago, which said that
22 despite the protestations of counsel and the advice to the
23 contrary a defendant has the absolute and constitutional right
24 to testify in his case and there is no question about it that
25 Manson would have the right if he desires.

26 THE COURT: Where is your case?

27 MR. KATZ: Your Honor, I can get that case for you in 15
28 minutes if you want it.

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1 THE COURT: Now, it is my opinion that your questions
2 are answered by Manson's pleading not guilty and demanding a
3 trial, and that any further interrogations is equivalent to
4 taking confession from a man that is arrested for a crime by
5 an officer and without giving his Miranda rights the man is
6 pounding him with a situation "You are guilty of this, aren't
7 you? You are guilty of this, aren't you?"

8 The man says, "No. I pleaded not guilty. I want
9 a trial."

10 "But you are guilty of this, aren't you?"

11 That is the same situation you have right here.

12 MR. KATZ: No, this isn't it, your Honor. May I show you
13 the difference.

14 All you are doing under 405 of the Evidence Code
15 is introduce testimony which is obviously outside the presence
16 of the jury to establish whether or not Mr. Manson, understand-
17 ing the consequences that attach to his giving of a free
18 and voluntary waiver of his rights against self-incrimination,
19 decides to testify.

20 THE COURT: Well, the first --

21 MR. KATZ: As to material facts.

22 THE COURT: Let me show you the inconsistency of your
23 position. Suppose he says, "Yes, I want to testify. I
24 killed Shea."

25 Suppose Manson gets on the stand there and says --
26 maybe Kanarek will say "Don't do that. I advise you not to."

27 Manson says, "I don't care what you say, Kanarek.
28 I'm going to testify."

1 "I killed Shea. I killed Shea."

2 Manson says, "I killed Shea."

3 Now, you have an irreconcilable as well as
4 ridiculous position of taking a man in the middle of trial in
5 which he is being tried for the killing, the murder of Shea,
6 taking him out of that courtroom, bringing him into a -- say
7 an outside or foreign court, as far as he is concerned,
8 attempting to put him under oath.

9 He may not want to be sworn, I don't know.

10 And then starting to ask him, "Do you want to
11 testify in this case? You don't have to if you don't want to.
12 The defendant wants to know if you killed Shea or not."

13 MR. KATZ: Well now, you are putting the cart before the
14 horse. You don't ask that kind of question.

15 THE COURT: All right. He denied that. The court doesn't
16 have to make a fool out of itself. He already said that.

17 MR. KATZ: I can give you a case right in point. It
18 happened less than a year ago.

19 This situation was more ridiculous, as you refer
20 to it.

21 I agree with you in the sense that certainly it is
22 inconsistent with respect to the positions that witness-
23 defendants would take.

24 But in the Tate-La Bianca case this is precisely
25 what happened: in the defense portion of the Tate-La Bianca
26 case Leslie Van Houten, who was a co-defendant in the case with
27 Charles Manson; Patricia Krenwinkel and Susan Atkins, all of
28 whom were co-defendants in the Manson case involving the Tate

1 and La Bianca murders indicated in open court outside the
2 presence of the jury that they wanted to testify.

3 Each of their respective attorneys told Judge Older
4 that under no circumstances would they permit their clients to
5 testify, and indeed they would refuse to ask them any questions
6 whatsoever because they were contributing to what they regarded
7 as reversible error.

8 THE COURT: That is the case that was just tried.

9 MR. KATZ: This is the Tate-La Bianca case.

10 THE COURT: That is on appeal, isn't it?

11 MR. KATZ: Judge Older, having read California Supreme
12 Court cases which hold the defendant has an absolute and
13 constitutional right to testify in his own behalf in his own
14 trial regardless of the advice given by counsel to the
15 contrary, followed those line of cases and made an independent
16 determination outside of the presence of the jury that the
17 girls, despite the protestations of counsel and despite the
18 advice to the contrary, did in fact wish to testify in their
19 own behalf.

20 THE COURT: This is in the very trial in which they are
21 being tried along with Manson.

22 MR. KATZ: You gave me the hypothetical situation where
23 Manson was a co-defendant in this case.

24 THE COURT: All right.

25 MR. KATZ: And I am answering that.

26 THE COURT: All right.

5a-1

1 MR. KATZ: Now, the judge made a determination that he
2 would permit each of the defendants, Susan Atkins, Patricia
3 Krenwinkel and Leslie Van Houten, to testify despite their
4 counsels' advice to the contrary because they indicated they
5 wanted to testify, even though they would be waiving their
6 rights against self-incrimination.

7 What happened in that case was this: that they
8 refused to reaffirm their right, their willingness and desire
9 to testify and withdrew their request to testify. Accordingly
10 they never, in fact, testified.

11 THE COURT: That is one of your problems you have got
12 these hazardous changes of mind. You can put a person on the
13 stand there, and one minute he says, "Yes, I killed him." The
14 next minute he gets out the door and says, "No, I didn't kill
15 him."

16 That is one of the situations that arises in a
17 position like this, aside from the fact it is an attempt to
18 put the defendant charged with a capital offense on the stand
19 here.

20 I disagree with your position.

21 MR. KATZ: I will present some authority to your Honor.

22 THE COURT: You are going to have to have pretty good
23 authority. I won't change my mind on this. I am convinced
24 there is an absolute prohibition against Manson testifying in
25 this case while he has got a not guilty and being tried on a
26 capital offense before Judge Choate.

27 For him to come in here and say, "In Choate I am
28 pleading not guilty."

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2 That is what he says. Telling Judge Choate "I am
not guilty. Prove me guilty."

3 Comes over here half a block away and he says, "Yes,
4 I killed Shea."

5 Goes back to Choate and says, "Not guilty."

6 MR. KATZ: Your Honor, you are assuming for a moment that
7 Mr. Manson is going to come over here and testify that he
8 killed Shea, for example, and that Grogan had nothing to do
9 with it. We don't know if that is what the nature of the
10 testimony will be concerning Mr. Manson at all. We don't know
11 whether he will just testify that, for example, Clem was not --

12 THE COURT: If it isn't material it has no business. If
13 it is material it goes right to the charge. There is the
14 situation.

15 MR. KATZ: No, your Honor. In other words, if he is asked
16 limited questions concerning the membership of the family and
17 perhaps whether or not Clem was a member of the family and
18 maybe peripherally associated with the family, that raises one
19 set of issues that doesn't necessarily involve the issue of
20 whether or not Mr. Manson together with Mr. Grogan killed
21 Mr. Shea.

22 THE COURT: Well, it does, under your theory of conspiracy.

23 MR. KATZ: Well, I agree with your Honor's analysis.

24 THE COURT: That is the very thing that you are basing
25 your lawsuit on here.

26 MR. KATZ: That is true.

27 THE COURT: That is what I am disturbed about. Any
28 questions of Manson incriminate him right here.

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2 MR. KATZ: Well, the point is it is not for us to make the
3 determination whether or not it incriminates him. The only
4 issue is whether or not Mr. Manson wants to freely and
5 voluntarily waive his privilege against self-incrimination.

6 We are discussing something that is moot at this
7 point.

8 THE COURT: I don't think he can freely and voluntarily
9 waive it as long as he has got a plea of not guilty. You
10 can't have a free and voluntary waiver.

11 MR. KATZ: I will show you the case on that.

12 THE COURT: With all due respect to Judge Older and his
13 conclusions, he could be correct as far as I know.

14 But I will make my own determination. And I think
15 it isn't sound thinking to take a man that is pleading not
16 guilty over here and interrogate him on who killed Shorty Shea.

17 MR. KATZ: We are discussing something that doesn't exist
18 at this point.

19 THE COURT: You are going to have to show me something
20 in black and white which the Supreme Court authorized or
21 justified such procedure. If not I am standing right on that
22 ruling.

23 The reason I am jumping the horse on this, I want
24 to advise counsel because that is the way I am going to rule,
25 and the People may be in the position -- of course an acquittal
26 cuts you out -- but there is your record.

27 I will give it to you when the time comes, a
28 proper, further statement on it. If this isn't clear, I will
make it very clear.

5a-4

1 MR. KATZ: Well, your Honor, I think there shouldn't be
2 any reference to a ruling because there is nothing before the
3 court at this time.

4 THE COURT: I know it, but I am simply apprising you of
5 my thinking in the matter. You can govern yourselves with
6 whatever precautions you want to take.

7 Grogan may say, "I want him here."

8 I know what I would say if I was counsel in the
9 matter.

10 You have got a kind of co-counsel here.

11 If I was Grogan -- and another thing, if I was in
12 Grogan's position, or if I was deciding on^{the} matter, I wouldn't--
13 my personal feeling is that you would hurt yourself more than
14 help yourself bringing -- this is tried before a jury so I
15 could state this analysis here -- I think that -- and I have
16 no objection to obviously anything I say being typed down --
17 but from a standpoint of a sound judgment, this is another
18 angle entirely.

19 If I were the defendant I would hesitate very much
20 before I would even attempt to put Manson or any of those folks
21 to whom subpoenas have gone out as very dangerous to defense
22 of Grogan. If I was Grogan or if I was Grogan's counsel I
23 would say, "No, I won't do that."

24 Because you are going to hurt yourself in front of
25 the jury. You are bound to have a bad impression in front of
26 the jury. They are going to decide the case. I don't do it.

27 I only pass and read the law to them. But another
28 thing too that is sound in Grogan's favor -- that you are going

.. 1 to hurt and just crucify, if I were to pass on the offer of
2 proof here and decide it is germane -- call these men in,
3 in tight security, and there is any attempt at demonstration
4 or interrogation of some of these men -- first of all, here
5 is sound thinking, Mr. Grogan: let me tell you something you
6 may want to think over.

7 You may just throw it out. That is your business.

8 The People have a hard case to prove against you.
9 They have to show Shorty Shea is a dead man. Don't ever forget
10 it.

11 Now, they put on testimony here.

12 You see, I can talk this way because I am not the
13 judge deciding the facts.

14 THE DEFENDANT: The jury does.

5b

5b-1

1 THE COURT: I am out of it just like you are. I only
2 rule on the law.

3 Now, I can tell you what I think. I can do this
4 in the presence of both your counsel. The People have a hard
5 job, a hard duty, not job -- a hard duty in their job or their
6 position to establish you guilty. They have to prove you
7 guilty beyond a reasonable doubt, to a moral certainty.

8 That is in your favor, if you can put it that way.
9 That is your right.

10 That is their duty and your cloth of protection.
11 They have to show that Shea is a dead man. Don't ever forget
12 that.

13 Now, they have put on evidence that in my mind
14 creates a prima facie showing. That means there is a prima
15 facie showing so that they can put on statements or declara-
16 tions and put it over to the jury. But the jury has to find.
17 The jury has to find Shea is dead.

18 They have got to prove all the material averments
19 of the charge. That is, that you killed Shea.

20 And to do that they have to show Shea is dead. The
21 cloak of protection passes over you. They have got to show that
22 to a moral certainty. That jury has got to say Shea is dead.

23 Now, when you bring in people here you have got
24 that protection around you. You bring in witnesses that
25 unfortunately have got themselves in trouble, that are either
26 on a death row or in maximum security, or that have escaped, or
27 that have unfortunately acquired a bad reputation, antisocial
28 reputation, and you put those witnesses -- and I won't -- I am

1 going to keep them in restraint.

2 Como has jumped the gun on them at least three
3 times and was just caught holding up a gun shop. Those kind
4 of folks are put in there, you are destroying the mantle you
5 have of protection the law has woven around you.

6 Don't forget this. Don't forget that.

7 I am not trying to tell your counsel. You have got
8 a very sharp counsel. I don't mean the word "sharp", he is a
9 good counsel. He is an honest lawyer.

10 I am not trying to tell him as he understand this,
11 but I am talking to you.

12 You destroy and undermine the mantle of protection
13 woven around you by putting these people on the stand here.
14 They have got to come in under security. You put them before
15 the jury, you swear them, if they will be sworn. Some of them
16 may say, "I won't swear. I lost my power."

17 I say, "You can't testify."

18 I am not talking about the materiality. You don't
19 know what these fellows are going to say in front of the jury.

20 They may say that "Okay. I will be sworn," and
21 maybe when they get in there they will start to demonstrate in
22 front of the jury of 12 men and women. You are undermining
23 your own case when you do that. The protection you have got.
24 You are not helping yourself.

25 If you get on that stand, if you want to, this is
26 you and your counsel talking, and telling your side of the
27 case, fine. You do that. Fine. I'm not going into that.

28 You have witnesses here that say Shorty Shea was

1 some other place. Fine. Tell the jury that. That is within
2 your protection. That is what you are talking about, your
3 protection.

4 And if you have -- for instance, this witness here
5 that came on the stand here that indicated -- I don't know, it
6 is Mr. Weedman or somebody that he heard Manson say he, Manson,
7 killed Shea, you are entitled to that testimony from that
8 witness. That is stronger than Manson ever being near this
9 courtroom, to have a third party come in here without demonstra-
10 tion and say, "Manson told me that. Yes, I told the grand
11 jury Manson said he killed Shea."

12 I mean that is strengthening testimony, but if you
13 attempt to put these people on, assuming I allow it --

14 THE DEFENDANT: Which ones?

15 THE COURT: Well, I have got -- I have issued subpoenas
16 I believe, I took it from the clerk, Sheppard -- Frank -- where
17 is Frank? I don't want to misquote it.

18 Harp, Sheppard, Phillips, Davis, Houston, Taylor --

19 MR. WEEDMAN: On who?

20 THE COURT: Did I issue on that or not?

21 MR. WEEDMAN: Which one, your Honor?

22 I am sorry.

23 THE COURT: Sheppard, Phillips -- did I issue subpoenas,
24 I thought you told them -- Sheppard, Harp, Phillips --

25 THE CLERK: Sheppard, Houston -- and who was the other,
26 Davis?

27 MR. WEEDMAN: Yes.

28 THE COURT: These are possible men who are in custody

1 here on other cases then.

2 MR. WEEDMAN: Those men were brought down. I think one
3 from Folsom and two from San Quentin, I believe.

4 THE COURT: Whatever, those are cases, any one of those,
5 or Como -- you mentioned, I believe, Como was brought up in
6 the transcript --

7 MR. WEEDMAN: I fought a removal order for Como.

8 THE COURT: Any of those men that you may or may not, I
9 don't know. You may not want to bring them in, you may or may
10 not. That is your business.

11 But I say that to bring them in here will only hurt
12 you.

13 THE DEFENDANT: Well --

14 THE COURT: You see --

15 THE DEFENDANT: How could I do it then if -- you see,
16 certain people have seen him after the date allegedly he had
17 been killed.

18 Now, how could -- how could I tell the jury that?
19 Well, I have witnesses--

20 THE COURT: Of course I can't act as your lawyer. I am
21 giving you facts. I am just giving you observations.

22 THE DEFENDANT: I am just telling you what is in my head.

23 THE COURT: All right.

24 I am giving you observations. You want to be very
25 sure any one of these fellows whom you subpoena -- you may want
26 to subpoena them, or you may have, take the stand here and
27 testify they saw Shorty after the alleged death -- you want to
28 be very sure they are going to testify to that. That is one

1 thing they will do, come in and take the oath and testify to
2 that.

3 That is one thing you want to be very sure. But
4 you want to be sure also -- these are matters to discuss with
5 your counsel -- that the effect of bringing some of these
6 folks in here handcuffed and put on the stand there testifying
7 to certain facts, it has an affect on any jury.

8 You want to be sure that the effect, any testimony
9 that they may give here, is not offset by the fact these men
10 are on the stand.

11 These are things you have to decide. I am not
12 telling you anything what to do. I am pointing out the effect
13 it could have.

14 You are screened with a certain amount of protec-
15 tion there. And you unravel that protection unless you are
16 cautious on your witnesses. You see?

1 THE DEFENDANT: I know what you're saying.

2 THE COURT: Do you see what I'm trying to tell you?

3 THE DEFENDANT: Yes. But they allege the fact that we
4 are prejudiced against black people. I subpoenaed these men
5 down as to my state of mind toward them, because I was in jail
6 with them for a lengthy period. They can testify to my state
7 of mind toward the black race.

8 I have a few people who are outside; they can
9 testify to this, too. Now, it would appear from what you are
10 saying that it would seem better that I take people that are
11 outside, that are not in jail?

12 THE COURT: I'm not telling you what to do. It is for
13 you to decide on this.

14 THE DEFENDANT: I know. If I bring them in, in hand-
15 cuffs --

16 THE COURT: These are your decisions.

17 THE DEFENDANT: -- unless their testimony would outweigh
18 their appearance in handcuffs --

19 THE COURT: These are your decisions. I'm not trying to
20 tell you. I do have a right to pass on what is called the
21 materiality, to require a statement that "this man would
22 testify so and so," right down the line. Then I would pass on
23 the materiality, whether it is material to this lawsuit.

24 That is a different situation. The other is a
25 practical matter. Is it good sense or not? That is your
26 decision.

27 THE DEFENDANT: I'm in an awkward position here --

28 THE COURT: Well, I'm just pointing it out to you.

1 Your lawyer will tell you the same thing.

2 THE DEFENDANT: I think what I'm trying to do is bring
3 out the fact that these charges that they allege against me
4 are false, and the only way --

5 THE COURT: You can tell the jury that. You can take
6 the stand, you're free to speak to the jury. There is nobody
7 telling you that.

8 THE DEFENDANT: That is just one person's word. I'm
9 saying this, the D.A. has called 30 witnesses --

10 THE COURT: You're entitled to that. I'm simply point-
11 ing out, first of all, that on a statement, I will inquire,
12 and must inquire, as to the materiality of the witness' testi-
13 mony. I can rule on that. And if it appears it is material,
14 then you are entitled to have the witness in here. If it
15 would appear that it is not material to the case, then I have
16 a right to refuse to call the witness. That is on some of
17 these people.

18 The others, on Manson, that is a serious question.
19 But I would rule as a matter of fact, as I have indicated to
20 the district attorney here --

21 THE DEFENDANT: Yes.

22 THE COURT: -- I feel that I have an absolute right to
23 rule on that. The man has pleaded not guilty and is fighting
24 for his innocence before Judge Choate. I have stated myself
25 clearly. Unless I find law to the contrary, I have no right
26 to bring him here and put him here on the stand and say, "Did
27 you kill Shorty Shea?"

28 Do you see what I mean? That is the position I

1 made to the D.A. That is what he takes exception to. But,
2 that is another situation.

3 Another thing you want to be careful about, you
4 want to think over twice, is whether Manson will help you on
5 the stand. These are psychological things. These are things
6 that you want to turn over in your mind and say to yourself,
7 "If the judge lets Manson go on that stand, is it good judgment
8 or not?"

9 That assumes I would let him go on. I stated my
10 position, that Manson is clothed with protection on this
11 matter, the same as you are. Nobody can call you. Suppose
12 Manson called you today over there before Judge Choate and said,
13 "Mr. Grogan, did you kill Shorty Shea?" and you are over here
14 in this court trying to prove your innocence. That is what I
15 am --

16 THE DEFENDANT: I can see that.

17 THE COURT: That is what I am trying to tell you. I say
18 the right doesn't exist with the plea of not guilty in and in
19 the middle of trial.

20 THE DEFENDANT: It is contradictory to the issues.

21 THE COURT: That's right. Just imagine you being called
22 over there and somebody throws that at you.

23 Anyway, you think it over. These are your
24 decisions, and you have a good lawyer here.

25 THE DEFENDANT: I'm trying to decide --

26 THE COURT: You have good counsel, but it is a matter
27 of thinking.

28 THE DEFENDANT: What would you think would be best --

1 You can't make a decision -- but I have some black people on
2 the outside that I can call as to my state of mind which are
3 pretty close to me. Now, if I was to call those two people
4 rather than the three in the penitentiary --

5 THE COURT: Well, you talk it over. I would rather you
6 wouldn't ask me the questions, but you talk to Mr. Weedman
7 about it. You talk to him carefully about it and then see
8 what the next step is. I wouldn't decide it at this time.
9 You talk to him.

10 THE DEFENDANT: My mind is kind of turned over because
11 of what happened to my father. It's hard to keep my mind on
12 the case here.

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1 THE COURT: You talk with Mr. Weedman about it. At the
2 proper time I'll give it a review.

3 Now, where are we?

4 MR. WEEDMAN: I would like an opportunity to check with
5 the hospital, number one.

6 THE COURT: All right. That is one thing. Let's get
7 that settled.

8 MR. WEEDMAN: Number two, your Honor, even though we
9 had three court days, I worked straight through the weekend
10 on this case and have utilized those three court days, and
11 I'm a little behind on my witnesses, particularly Miriam
12 Binder. I have issued subpoenas for her last week. I have
13 spoken with her on the telephone.

14 THE COURT: Did we call her on direct?

15 MR. WEEDMAN: No.

16 MR. KATZ: Excuse me. I have subpoenaed Mrs. Binder, but
17 she said that she had an accident and begged me not to call
18 her, and as a result of her protestations --

19 THE COURT: Well, there are some witnesses we have no
20 particular hassle on.

21 MR. WEEDMAN: That's right, your Honor. I want an
22 opportunity to speak with her briefly before I put her on the
23 stand.

24 THE COURT: I think you should talk to these people,
25 because I will require a statement, as the law permits, for
26 me to rule on it.

27 MR. WEEDMAN: I want to talk to Ruby Pearl for a minute.

28 THE COURT: That's all right.

6A2

1 MR. WEEDMAN: I intend to call her only relative to my
2 client remaining at Spahn Ranch during 1970, what she knows
3 about that.

4 THE COURT: Can't we get her testimony and let her go on
5 her way?

6 MR. WEEDMAN: Surely.

7 THE COURT: Let's do that.

8 MR. WEEDMAN: I think that is a good idea.

9 THE COURT: Then you are going to talk to the hospital,
10 and I will let the defendant, under proper security, go, but
11 advise me first as to the date.

12 MR. WEEDMAN: Let me find out first.

13 THE COURT: All right.

14 MR. WEEDMAN: Finally, your Honor, before I call any
15 witnesses I respectfully want to make a motion under
16 Section 1118.1.

17 THE COURT: Directed verdict?

18 MR. WEEDMAN: Yes, your Honor.

19 THE COURT: Judgment for defendant?

20 MR. WEEDMAN: Judgment for acquittal.

21 THE COURT: Well, you can make that right now. Go ahead.
22 Have you considered that as made now?

23 MR. WEEDMAN: No, your Honor.

24 THE COURT: Go ahead.

25 MR. WEEDMAN: I would like an opportunity to argue it.
26 I want to get my case so I can review the evidence a little
27 bit.

28 THE COURT: Go right ahead.

6A3

1 MR. KATZ: Perhaps we can take a five-minute recess.

2 THE COURT: Let's take a five-minute recess. Go ahead.

3 MR. WEEDMAN: It will take a little while.

4 THE COURT: We'll take a short recess.

5 (Recess.)

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(The following proceedings were had in
the court's chambers.)

THE COURT: I just want to say, we will get the alternate
in there now.

How about your next witness?

MR. WEEDMAN: Your Honor, I would like to argue the
1118.1.

THE COURT: I beg your pardon. I forgot about that.

MR. WEEDMAN: This is going to take a while.

THE COURT: Then let's get the alternate first in here.

MR. WEEDMAN: Then I thought the jury could be excused,
perhaps.

THE COURT: Until 2:00 o'clock?

MR. WEEDMAN: Well, it will take me probably a half hour
to argue the thing. I have quite a few points to cover.

THE COURT: Let's put the jury over to 2:00 o'clock and
then go to your other matter.

MR. WEEDMAN: All right.

(The following proceedings were had in
open court, outside the presence of the
jury.)

THE COURT: Now, gentlemen, we will proceed in People
against Grogan.

The defendant is here, both counsel are here,
defendant and People.

Now, first, bring in the jury, if you will, that
we have.

(The following proceedings were had

1 in the presence and hearing of the jury.)

2 THE COURT: Now, at this time we have all of our regular
3 jurors, with the exception of juror No. 4. We have all three
4 alternates.

5 Now, ladies and gentlemen of the jury, one of the
6 situations that has arisen is the unfortunate fact that our
7 juror No. 4, her husband, who went to the hospital, is in a
8 very sick condition, necessitating certain treatments, and
9 the juror is needed to help him to the hospital and back every
10 day for treatment.

11 Now, I'm giving you that as a background. I have
12 considered that to be one of the emergencies that may exist
13 to excuse that lady, and all counsel and the defendant have
14 voiced no objection to me exercising that power.

15 Therefore, I have advised that juror -- what is
16 her name, Frank?

17 MR. KATZ: Mrs. Lampel.

18 THE CLERK: Mrs. Rose Lampel.

19 THE COURT: I have advised her that she is excused from
20 further proceedings in this case because of this serious
21 emergency.

22 Now, gentlemen, I believe, number one -- we take
23 number one alternate?

24 MR. KATZ: Yes, your Honor.

25 THE COURT: -- and put her in the position of No. 4.

26 Now, No. 1, what is her name?

27 THE CLERK: No. 1 alternate juror is Mrs. Gertrude
28 Stafford.

1 THE COURT: I am now appointing you, or drafting you
2 and placing you in as the new No. 4 juror.

3 Now, lady, at the time that you were selected I
4 read to you and all of the jurors what the law said about an
5 alternate being made a regular, full-fledged juror. Do you
6 remember that?

7 MRS. STAFFORD: Yes, I do.

8 THE COURT: Do you remember everything that I said,
9 roughly, that you now occupy the position -- if you were
10 called, you would occupy the position of a full-fledged juror?

11 MRS. STAFFORD: Yes.

12 THE COURT: You understand that?

13 MRS. STAFFORD: Yes, I do.

14 THE COURT: Right now you are no longer an alternate.
15 You are a full-fledged juror and you will vote upon the
16 questions that are put to the jury at the proper time. Do you
17 understand that?

18 MRS. STAFFORD: Yes, I do.

19 THE COURT: And all of the things that I said to these
20 other folks and to you as an alternate, you must remember,
21 remain in full force and effect. You are not to discuss this
22 case with anybody. You are not to come to any opinion or
23 conclusion until it is turned over to you for your decision.
24 You are to keep an open mind. You are to remain free from
25 prejudice. You are a juror, you are a judge in this case.
26 Do you understand that?

27 MRS. STAFFORD: Yes, I do.

28 THE COURT: And I repeat, you are a full-fledged juror

1 now. You are one of the 12 basic jurors, or the jurors, that
2 will decide the case. Do you understand that?

3 MRS. STAFFORD: Yes, I understand.

4 THE COURT: You are no longer an alternate.

5 MRS. STAFFORD: Yes.

6 THE COURT: I think that covers it roughly.

7 Now, there are other matters that we have to
8 discuss before we can get any further along. It is eleven
9 minutes after eleven. I think, because of further procedural
10 matters that the court must discuss with counsel, I will
11 excuse the jurors until 2:00 o'clock this afternoon. There
12 is no need to hold you idle, but I need you. But I will excuse
13 you until 2:00 o'clock.

14 Do not discuss the case or come to any opinion or
15 conclusion, and we will proceed at 2:00 o'clock with the jury.

16 In the meantime, I will take up these other
17 matters.

18 Thank you, ladies and gentlemen,

19 (The jury was excused.)
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(The following proceedings were had
in open court outside the presence
of the jury:)

THE COURT: Now, counsel, do you want to step in chambers?

MR. WEEDMAN: I wonder if we could argue it out here? It
might be a little more convenient.

THE COURT: I would prefer to go into chambers because I
may want access to some of the books.

MR. WEEDMAN: All right.

THE COURT: Well, we will proceed in open court.

Now, you desire to make a motion or request --
I'm speaking to the defendant's counsel -- under 1118.1 of the
Penal Code, is that correct?

MR. WEEDMAN: That is correct, your Honor.

THE COURT: While I have on prior occasions read this
section a number of times, I just reread it so that it is fresh
in my mind. Now, go ahead.

MR. WEEDMAN: Thank you, your Honor.

Your Honor, I have had an opportunity of going back
and reading all of the daily transcripts that were prepared in
connection with the testimony in this case, as well as having
had the opportunity of reading the court's rulings with
respect to various objections that were made to evidence, and
particularly to those areas involving the corpus delicti, not
only for homicide, murder, but also for conspiracy, and without
quoting precise passages, your Honor, I gathered from your
Honor's remarks that some of the rulings that you made with
respect to corpus delicti were open to further argument and

1 further consideration.

2 It is with that in mind, and out of an abundance of
3 caution, that I feel that an 1118.1 is appropriate here.

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1 THE COURT: Yes.

2 MR. WEEDMAN: Obviously, if you Honor continues to rule
3 that there was in fact a corpus delicti established for murder,
4 and there was a corpus delicti established for conspiracy,
5 then the 1118.1 obviously will not lie.

6 The test, as I understand it, is whether or not
7 there is sufficient evidence as a matter of law that your Honor
8 at this point is not to be concerned with reasonable doubt but
9 merely with the question have the People produced sufficient
10 evidence as a matter of law to sustain a conviction.

11 THE COURT: That is the way I would read it. Let's just
12 stop again.

13 MR. WEEDMAN: Yes, your Honor.

14 THE COURT: Without trying to interrupt you.

15 Your code section uses the words "The court shall
16 enter a judgment of acquittal" -- I am dissecting it -- "if
17 the evidence" -- this is a direct quote -- "if the evidence
18 then before the court is insufficient to sustain a conviction
19 of such offense or offenses on appeal."

20 It is silent with respect to whether the evidence
21 should sustain a conviction of the offense to a moral
22 certainty and beyond a reasonable doubt or sustain an offense
23 as viewed from a prima facie case. It's silent in the code
24 section.

25 Do you follow my meaning? It doesn't say --

26 MR. WEEDMAN: Well, it is --

27 THE COURT: Well, one is less than the other.

28 MR. WEEDMAN: It is specifically silent, yes, your Honor.

1 I don't know if by inference, if it however does not pass upon
2 those questions.

3 THE COURT: It uses the word "sustain a conviction of
4 such offense or offenses."

5 I again say -- go ahead. I am not ruling on this
6 point. I am pointing out the code section doesn't say -- it
7 says "sustain a conviction."

8 Doesn't say "sustain a conviction by reason of
9 a preponderance of the evidence favoring the People or sustain-
10 ing the conviction or sustain a conviction to a moral certainty
11 beyond a reasonable doubt."

12 The qualifications or the magnum or amount of the
13 evidence is insufficient. I would imagine I would feel that
14 what the code section is directed to is a prima facie showing
15 but it doesn't say this.

16 MR. KATZ: Your Honor, I would be willing to stipulate
17 with counsel on behalf of the People that the test that the
18 court must pass upon is whether or not there is sufficient
19 evidence in the record from which the jury can make a finding
20 beyond a reasonable doubt and to a moral certainty of the truth
21 of the charge.

22 THE COURT: The trial court must be satisfied to that
23 point.

24 MR. KATZ: No, the trial court need not be satisfied to
25 that point.

26 THE COURT: That is what I say.

27 MR. KATZ: This is not the same thing as we are saying.
28 In the record there has to be sufficient evidence from which the

1 jury --

2 THE COURT: Yes --

3 MR. KATZ: -- which is the trier of fact can be satisfied
4 beyond a reasonable doubt and to a moral certainty of the
5 truth of the charge.

6 THE COURT: On this I have to say yes or no to your
7 question.

8 MR. KATZ: Yes.

9 THE COURT: That is your point.

10 MR. KATZ: Yes, but if the evidence as it is, if believed
11 by the jury is sufficient in weight --

12 THE COURT: I don't know what they will believe. I have
13 to pass on the quantum of that evidence under this motion.

14 MR. KATZ: That is correct.

15 THE COURT: Do I pass on it to a moral certainty and
16 beyond a reasonable doubt or to a prima facie showing?

17 MR. KATZ: It is not either or, your Honor. The way your
18 Honor is wording it.

19 What I am suggesting is this, and Mr. Weedman can
20 correct me if I am wrong --

21 THE COURT: Well, let the defendant go ahead.

22 MR. KATZ: All right. I am sorry.

23 THE COURT: You proceed with your statement and then we
24 will go ahead.

25 MR. WEEDMAN: Thank you, your Honor.

26 If I may just review perhaps the evidence in terms
27 of the witnesses who testified, your Honor, and I hope that I
28 do not omit any substantial portion of such testimony.

1 Elizabeth Shea testified that she was the mother
2 of Shorty Shea. That he was born on a certain date. That she
3 heard from him usually twice a year and that she had not heard
4 from him since the early part, as I recall, of 1969.

5 That is all she testified to, it seems to me, as
6 far as a corpus delicti in this case goes.

7 Sandra Harmon testified that she had been married
8 to Mr. Shea but that she was divorced from him in 1965. She
9 had not seen him in the interim nor had Mr. Shea seen his
10 three children of that marriage in the intervening time.

11 I don't believe that her testimony, quite frankly,
12 helps us at all with respect to corpus delicti. She hadn't
13 seen the man in a number of years.

14 The thrust, I believe, of the prosecution's case
15 has been that Mr. Shea was not only a cowboy but that he was
16 also a stuntman. A man who was working in the movies. A
17 man who was looking forward to continued employment, although
18 sporadic, in films.

19 All of the evidence, it seems to me, flies in the
20 face of this position. We learned -- and it was such to my
21 surprise, quite frankly, as we moved through witnesses such
22 as Jim Babcock, Lance Victor, Bob Bickston, Jerry Binder,
23 Arch Hall -- that Mr. Shea was really a drifter.

24 This was the term that Arch Hall used in his
25 testimony. That Mr. Shea had no constant or steady employment.
26 It appears from the record that the longest period for which
27 he ever held a job was about a month.

28 And so far as being a movie stuntman, is just

1 simply a misappellation. He had worked very briefly in 1969
2 in the beginning of the year for just a few days. He had
3 worked the beginning of 1968, as I recall, for a very few days.
4 And he had worked in 1967, I believe, for a very few days,
5 involved in motion pictures.

6 I don't think it would be fair to describe him,
7 therefore, utilizing some of the tests that we find in the
8 Scott cases, as a man with a steady mode of life. He was
9 indeed -- and I think it is fair to say this, your Honor --
10 a drifter, as he was characterized by Archibald Hall. He was
11 the producer of "What's Up Front," and these other films.

12 And he had not in fact worked with Mr. Shea for
13 some four or five years, as far as movies were concerned.

14 The point is, your Honor, that there is nothing in
15 the record that suggests that there was any kind of regular
16 lifestyle that was interrupted. All we have, your Honor, is
17 the fact that Mr. Shea was not seen by these witnesses at least
18 after a period between approximately August 19th and September
19 the 1st of 1969.

20 Mr. Shea's automobile we learned was not paid for
21 by him. It was not registered to him.

22 Sgt. Whiteley testified that he could not and did
23 not form any opinion with respect to how long the automobile
24 had been near the Gresham Street address.

25 We know that the brakes on that car were
26 inoperative. We know that Mr. Shea had told others that he
27 couldn't drive the car because of the condition of the brakes.

28 And the present state of the record is, your Honor,

1 that Miss Saunooke lived very close to the area where the
2 vehicle was found, and that she was a long-time friend, and
3 according to Mr. Shea indeed a relative of Mr. Shea's. It was
4 nothing unusual, it seems to me, under the circumstances that
5 Mr. Shea's "not paid for, not registered automobile" would be
6 found near an area which he had frequented many times in the
7 past.

8 The car was inoperative. It is as reasonable to
9 conclude that Mr. Shea drove that automobile there and couldn't
10 get it any further, as it is to assume that that car was
11 driven there by someone else as part of a homicide.

12 Magdalene Shea testified that there was a suitcase
13 missing. And she didn't see it here in the courtroom, and she
14 had never seen it after August the 16th. And this was a
15 suitcase in which Mr. Shea carried clothing.

16 It is a very reasonable inference, your Honor, that
17 Mr. Shea left and used that missing suitcase to carry his
18 clothing in. It has never been seen again. It has never been
19 recovered or any portion of it.

20 Lance Victor testified that Mr. Shea told him that
21 he was going to Vallejo to work in the salt mines. And this
22 was in the latter part of August of 1969.

23 Now, Mr. Shea had worked in the salt mines before.
24 As a matter of fact he apparently convinced Mr. Victor that
25 that is where he was going to go, because Mr. Victor came back
26 a few days later on a Friday, he believes, with \$30 to give
27 Mr. Shea so that Mr. Shea could go.
28

8-1

1 There is no reason to believe, your Honor, under
2 the circumstances, as far as this record is concerned, that
3 Mr. Shea did not in fact at least head for Vallejo. His
4 statement of intention to go is evidence that he went. That
5 is what the law provides. It need not be accepted, but I'm
6 talking about the state of the record as it exists now.

7 That certainly flies in the face of any purported
8 conspiracy. Certainly it flies in the face of a homicide.

9 The fact, in other words, your Honor, that he is
10 not seen at Spahn Ranch doesn't add anything to the corpus
11 delicti when we know that he expressed an intention to go to
12 Vallejo because he needed money, and we know that certainly
13 this man didn't travel first class. He might have hitchhiked.
14 He was a man who lived in a very low economic level of life.
15 He could very easily have headed for Vallejo or parts unknown.

16 One of the thrusts of the People's case was that
17 Mr. Shea returned from Las Vegas with his wife, Nikki -- that
18 is, he returned to Los Angeles, as the record indicates, to
19 look for her. That was according to Mr. Binder, and that he
20 also returned because he was waiting to go to Phoenix to appear
21 in a Bob Bickston movie. Well, we know that no movie was ever
22 made. We know there were repeated delays and that there was
23 never any indication whatever that Mr. Shea went to Phoenix
24 or intended at any particular time to go to Phoenix other than
25 just in the ephemeral distant future.

26 In other words, your Honor, in view of the Scott
27 case, there was no interruption of this man's life pattern.
28 His pattern throughout all of the testimony we have heard is the

1 same, a drifter.

2 No body was found. No parts of a body. No blood.
3 No area around, let's say, Spahn Ranch that appeared to have
4 been the scene of a homicide. No body found near Barker Ranch.
5 No body found near Myers Ranch, as I understand the testimony.

6 A great deal has been made with respect to the guns
7 that Mr. Shea had. Well, those guns were not all that precious
8 to Mr. Shea, and this is in the record. He has pawned them
9 on numerous occasions, and when a man is desperate for money,
10 it is quite reasonable to assume that he transferred those
11 pawn tickets to another for valuable consideration hoping,
12 perhaps, that he might have been able to redeem them himself
13 in due course.

14 It seems to me that we are entitled to reasonable
15 assumptions in this matter as opposed to unreasonable assump-
16 tions. Now, I don't know if your Honor looked at those guns,
17 inside the cylinders, or not, but they are filled with black
18 powder residue, and one of the witnesses, who is -- I believe
19 that was Mr. Bickston -- one of the witnesses is now acting as
20 a gunsmith and I think is qualified as such, he examined those
21 guns and he was of the opinion that the residue was indeed that
22 of black powder and that black powder is used in blank
23 cartridges.

24 Now, I mention this only because it flies in the
25 face of the People's theory that Mr. Shea cleaned these guns
26 and took good care of them. Those guns are filthy inside.
27 For a man who supposedly loved these guns so much that he would
28 never sell them, he kept very, very poor care of them indeed,

1 your Honor.

2 The fact that these guns have turned up in a gun
3 shop where, by the way, they only brought \$75 and they were
4 pawned for, I believe, twenty-five and \$20, respectively --
5 they were pawned for \$45 and brought only \$75 in a sale. How
6 valuable were they? They just simply were not so valuable to
7 this man that he wouldn't utilize them to get some money to
8 get out of town.

9 As far as a conspiracy, your Honor, the corpus
10 delicti for conspiracy, it would have to be found in those
11 facts that I have recited. We have got to find -- oh, yes,
12 prima facie evidence I understand -- but we've got to find
13 some evidence, circumstantial or otherwise, that Mr. Shea is
14 not only dead, which I submit has not been shown by the
15 People's evidence, but we have to show that he met his death
16 by unlawful means.

17 He was a violent man. We know that. We know from
18 testimony that he was not known to back down from a fight.
19 We know that he had been in fights before. He may very well,
20 if indeed we could say from the record, which I will not
21 concede, but for the sake of argument if we concede that there
22 is a prima facie showing that he is dead, there is all kinds
23 of evidence that counters the fact that he met his death by
24 unlawful means.

25 He apparently was an aggressive man and he was a
26 big man, five eleven, over 200 pounds. And from all that,
27 your Honor, we are going to have to find a corpus delicti
28 not only for the fact that he is dead, but for the fact that

1 he was murdered, and then we are going to have to go beyond
2 that, from those facts, and determine that people conspired
3 to kill him. I submit, your Honor, it just isn't there in the
4 record.

8a

1 Mr. Katz was very candid with counsel and with the
2 court during numerous arguments in pointing out that they had
3 a difficult case to prove. Well, indeed they have.

4 Now, it is obvious, your Honor, that if there is
5 not a prima facie showing that he is dead, if there is not a
6 prima facie showing that someone murdered him, if there is not
7 a prima facie showing that persons conspired together to murder
8 him, then all of the statements that were received in evidence
9 are just simply inadmissible and may not be used to bolster
10 the theory that he is dead, that he was murdered, and that he
11 was the subject of a conspiracy to murder him.

12 I submit, your Honor, that the record just simply
13 is devoid of sufficient evidence as a matter of law to show
14 the corpus delicti for murder, for conspiracy.

15 We can look for a moment at the quality, if you
16 will, of the statements. You recall that it was Barbara Hoyt
17 who testified that she was just standing there, and Charles
18 Manson said to Danny De Carlo, "We had to kill Shorty. He was
19 cut into nine pieces and the girls buried his body under some
20 leaves. Do you use lye or lime to get rid of the body?"

21 I submit in that connection, your Honor, as far
22 as permitting that statement to come in as part of a conspiracy,
23 that it was Barbara Hoyt that went on to say that Charles
24 Manson and other members of the Manson family left that very
25 day, left Spahn Ranch. It is ridiculous, it seems to me, to
26 assume that following that conversation, allegedly overheard
27 by her, that Charles Manson and others went out and secured
28 lye and dissolved the body. It might take weeks or months to

1 even approach that. Certainly the bones would be around
2 some place, your Honor. It wasn't done; therefore, it could
3 not properly be considered as part of a statement in and of a
4 conspiracy.

5 If this is true, then of course it eliminates the
6 testimony of Paul Watkins, of Brooks Poston, and of Paul
7 Crockett. The testimony of Lee Saunooke is just inherently
8 improbable in any event. I certainly wouldn't want to give a
9 murder case to a jury based on that kind of evidence.

10 We know that Barbara Hoyt was a girl who hitchhiked
11 across the country in company with another girl. She lived
12 with a variety of men on the way. She had used drugs, includ-
13 ing LSD. We know that Paul Watkins had used LSD, by his own
14 testimony here, thirty or forty times. We know Brooks Poston
15 had used LSD, by his testimony here, twenty or thirty times.
16 These are the kind of witnesses that are coming in with these
17 statements.

18 Well, I'm taking the position, your Honor, that
19 there just simply was not enough evidence as to permit those
20 statements to come in as a matter of law, and that therefore
21 the 1118.1 motion, I believe, your Honor, is well taken and
22 should be granted in this case. The People just don't have
23 enough evidence to give this case to this jury or to make us
24 go forward with the defense.

25 I might add in that connection, your Honor, on
26 the equity side, apparently virtually all of the evidence that
27 has been adduced by the People was known to the People by
28 October of 1969, and yet my client was not arrested until

1 December of 1970. Now, we heard from Mr. Katz as to why that
2 was so. The fact remains we have been placed in an untenable
3 position with respect to securing witnesses in this case, your
4 Honor. That is on the equity side, certainly. It seems to
5 me that it should have substantial bearing on the question of
6 corpus delicti. We can't just say as a matter of law that
7 merely because a man has not been seen by certain people who
8 testified here, that he is deceased, and we can't say that
9 merely because he has not been seen, that he was murdered,
10 and we cannot say that merely because he was not seen by any
11 of these witnesses since August of 1969 that persons conspired
12 to murder him.

13 I submit, your Honor, that the posture of this
14 case is such that that is all we have in evidence.

15 You recall that Ruby Pearl testified that Shorty
16 Shea left these dishes with her and she testified that he
17 said, "Take care of these until I get back," an inference
18 that he was, in fact, leaving Spahn Ranch. That, coupled, it
19 seems to me, with Lance Victor's very, very certain testimony
20 that Sheatold him that he was going up to Vallejo, certainly,
21 it seems to me, flies in the face of the prosecution's theory
22 that there was a murder here.

23 There certainly is no competent, substantial
24 evidence to make even a prima facie showing either of murder
25 or even of the death, indeed, and surely not of any conspiracy.

26 He couldn't possibly have been waiting for a
27 Bickston picture. There was no Bickston picture.

28 Ruby Pearl said that she saw men around Mr. Shea

1 at 11:00 o'clock at night. It is pitch-dark, and she tells
2 us she can look out the window and look back and see all of
3 this. I don't think we have to accept that testimony when we
4 know the circumstances under which she apparently, or allegedly
5 saw this situation, your Honor. She obviously couldn't see.
6 This is the same Ruby Pearl that had difficulty seeing in
7 this very courtroom. She couldn't see the exhibits up on the
8 board.

9 fls

#9

1 The interesting thing is that Frank Retz testified
2 that he had a conversation with Shorty on the telephone one
3 morning. That Shorty said that he was going to come over
4 within a half an hour or so and talk to him about a job.

5 He never showed up. The inference is that he
6 didn't want that job, not that he wanted the job, but they
7 didn't want a job.

8 The character of Shea must have been well-known to
9 George Spahn. His character as a drifter. It is incredible
10 that the People can proceed on a theory that he was going to
11 be a reliable night watchman for Frank Retz and that, there-
12 fore, he was murdered for that reason by the Manson family,
13 because they wanted to stay on the ranch.

14 The fact of the matter is, your Honor, that the
15 Manson family left the ranch freely, voluntarily, and of their
16 own volition. Why would they murder a man so they could stay
17 on the ranch when they left the ranch? Manifesting a firm
18 desire not to stay on the ranch.

19 There is no motive, your Honor, there is no motive.
20 And to say that they killed Shorty Shea or that my client
21 killed Shorty Shea because he was married to a black woman
22 is nonsense. Nothing in the record that shows that.

23 There is no statement by anybody, "You married a
24 black woman. We are going to kill you."

25 That is what the prosecutor dreamed up, looking
26 for motives.

27 Now, you don't have to have a motive in a murder
28 case. I am not insisting that one is necessary.

9-2

1 The absence of a motive, it seems to me, your
2 Honor, is something which should be considered in this case
3 with respect to corpus delicti. If there was a motive for the
4 death of a person, then that is evidence which I think may be
5 received as part of a corpus delicti.

6 There is no proper motive shown in this case for
7 the death of Shorty Shea. None whatever.

8 He said he was going to Vallejo. A suitcase in
9 which he kept his clothes is missing. Presumably he took it
10 with him.

11 He didn't drive the automobile for a number of
12 reasons. Not the least of which was the fact that it wasn't
13 paid for. It wasn't registered to him. The brakes were in-
14 operative.

15 And also it needed an idler arm. I am not sure
16 what an idler arm is, but it may have something to do with
17 the operation of the engine. It is in the record, at least.
18 The idler had to be replaced.

19 That car couldn't run or couldn't work in any
20 event. He told Ruby Pearl to keep the dishes until "I get
21 back," indicating to me that he was going to go some place,
22 not that he was murdered.

23 And, your Honor, I think the most amazing thing
24 that supports our position that there is no corpus delicti is
25 the fact that over 2000 man-hours were spent searching for
26 his body. They used bulldozers, they used pumping devices,
27 They searched all along the creek, apparently, near Spahn's
28 Ranch. They didn't find a thing.

1 You know if a man has been murdered, stabbed, and
2 his head has been cut off, there is going to be a puddle of
3 blood six feet across. They did not find any bloody clothing.
4 They didn't find any bloody knives. They didn't find a single
5 thing to support the People's theory in this case except to
6 come in here with four witnesses, Crockett, Poston and Watkins,
7 whose unity in this matter is highly suspicious, at least,
8 and then they bring in Lee Saunooke, who testifies that in a
9 smoke-filled room she hears my client say, "Yeah, we stabbed
10 Shorty while Charlie was jacking him off."

11 What kind of nonsense is that? That assumes that
12 a man being murdered has an erection. It's absolute nonsense.

13 But my point, your Honor, is simply that we should
14 not permit even those dubious statements to come into evidence
15 for this jury to consider because the People simply have not
16 met the burden, a difficult burden, of establishing that there
17 was a death, that it was murder, and that it was caused as a
18 result of an agreement, implied or otherwise, between two or
19 more persons.

20 THE COURT: Do you desire to reply, Mr. Katz, before I
21 rule?

22 MR. KATZ: Just very briefly, your Honor.

23 THE COURT: All right.

24 Go ahead.

25 MR. KATZ: I don't intend to go into any of the evidence,
26 rather to make an observation.

27 It's quite obvious from your Honor's rulings
28 during the course of the presentation of the People's case in

1 chief that you determined out of the presence of the jury that
2 there was prima facie evidence of a conspiracy and prima facie
3 evidence of the corpus delicti of homicide. Accordingly, you
4 admitted evidence such as admissions and confessions of the
5 defendant and statements made by co-conspirators in the
6 furtherance of the object and design of the conspiracy to
7 murder Shorty Shea.

8 The law is crystal-clear that once prima facie
9 evidence is established of the corpus delicti of homicide,
10 other evidence such as confessions may be introduced to forti-
11 fy the corpus delicti and to create in the jurors' minds an
12 abiding conviction to a moral certainty of the truth of the
13 charge.

14 Now, with respect to your Honor's burden under
15 1118.1, you need only determine that the evidence that is
16 introduced before the jury, if believed by the jury, is
17 sufficient to sustain a conviction, which means to support
18 proof beyond a reasonable doubt and to a moral certainty.

19 Your Honor need not make that determination on
20 your own accord.

9A

9a-1

1 And let me illustrate it very briefly -- and this
2 is the last observation I have to make -- distinguish two
3 situations, a confession comes in because there is slight or
4 prima facie evidence of the corpus delicti.

5 Now, your Honor may not believe that confession.
6 If you were the trier of fact in a court trial, you may not
7 believe that confession.

8 But it is not for you to determine what weight, if
9 any, the jury will give to that confession. You know that as
10 a matter of law if the jury believes a confession that in and
11 of itself is sufficient to convict the defendant and sustain
12 a conviction. That is all you need determine.

13 Your Honor has admitted into evidence three
14 confessions of the defendant after a prima facie showing of the
15 corpus delicti of murder and conspiracy. Accordingly it must
16 be established a fortiori that there is now sufficient proof
17 to sustain a conviction if the jury accepts the evidence.

18 I will submit it, your Honor.

19 THE COURT: Well, I will give you a ruling. It is not
20 necessary really to comment on the code section, but I will
21 because it is disturbing the way the legislature has written
22 it.

23 This section went in the statutes here in 1967.
24 If it were to read something like this: "After the People have
25 rested if the People have established a case by the preponder-
26 ance of the evidence" -- or rather reword it, "If there is a
27 prima facie showing" -- what I want to say -- really ahead of
28 myself -- "if there is a prima facie showing by the People of

1 guilt, a motion for acquittal by the defendant under this
2 section must be denied."

3 Now, you have got a clear-cut procedure. That
4 leaves everything else up to the jury. Right up to the jury.
5 They can accept it or reject it. They can pass on the
6 magnitude, they can say "This is a prima facie showing, but
7 we think this is a heavy showing."

8 The court simply passes on the prima facie nature.
9 "There is a prima facie showing of evidence. Motion for
10 acquittal is denied."

11 Everything else is up to the jury. They will
12 decide how much import, how much weight and how much strength
13 to put on that testimony.

14 But this code section -- I don't know authored it--
15 is further than that. Goes further.

16 And here is what it says. It says "After the
17 People rest on motion of the defendant the court" -- now, I am
18 quoting this right from the section -- "shall order the entry
19 of a judgment of acquittal if the evidence" -- now, there is
20 the evidence -- "before the court is insufficient to sustain
21 a conviction of the offense charged."

22 Now, the moment you put up to the trial judge,
23 right as we are here, and tell me as a court -- the defendant
24 is asking me the question now, or they are stating to me right
25 now "Is this evidence sufficient or insufficient to sustain a
26 conviction of murder?" That is what they are saying.

27 Now, I am pulling this right out of the code
28 section. I have to decide it. There is nothing there -- I

1 have to decide the question, to say "The evidence is sufficient
2 to sustain a conviction of murder."

3 I have to say in effect "I believe beyond a
4 reasonable doubt and to a moral certainty right now, I believe
5 it. This evidence is sufficient to sustain a judgment of
6 conviction" because this is what your code section says.

7 And if that isn't what it means then it ought to be
8 put in there what it means. It doesn't say that -- it is
9 quite -- it is ambiguous for an important section like that
10 to be written in such an ambiguous manner.

11 That is why there should be a standard set. If the
12 testimony is prima facie, denied. If the testimony is not
13 prima facie, the motion should be granted.

14 If it is not prima facie it meets prima facie
15 showing, if it is a prima facie showing then the motion should
16 be denied. If it isn't, it should be granted. Motion granted.

17 Now, that is the way the code section should read.
18 But it throws on me the question if the evidence before the
19 court is insufficient to sustain a conviction. Now, at that
20 point I am a juror. I am the judge, I am trying this case.
21 If I rule against the People at this point the People have no
22 jury. And if I rule against the defendant at this point the
23 defendant has no jury.

24 That is why the jury should make that determination.
25 But it throws it on the court.

26 Again "If the evidence before the court is
27 insufficient to sustain a conviction" -- there it is.

28 And I have got to pass on it.

1 Any construction you want to put on it, I have got
2 to say right now is the evidence insufficient to sustain a
3 conviction?

4 Now, I can give you my opinion, if that is what the
5 code section -- that is my opinion. I could give you an
6 opinion right now.

7 If I am going to read the minds of the jurors and
8 say "What would the jury think of this evidence?" and I am
9 being asked to read the minds of the jury, I don't know what
10 that jury thinks or doesn't think of the evidence.

11 So in either way it blocks a jury trial for either
12 the People or the defendant at that point if I pass on the
13 weight of that evidence.

14 I am pulling the code section to pieces -- "Is the
15 evidence in this case sufficient or insufficient to sustain a
16 conviction?"

17 So I have to say "I believe to a moral certainty
18 and beyond a reasonable doubt the evidence is sufficient to
19 sustain a conviction or is insufficient to sustain a conviction"
20 under the reading of this section. You can't get any other way
21 from it. And to do that I either have to give my own personal
22 thinking, which pulls away from the jury, you have no jury
23 trial, either party -- or I have to read the minds of that jury
24 and say, "Well, I think they are going to conclude thus or thus."

#10

1 You can't get it any other way under reading the
2 code section.

3 Now, enough for that.

4 On the balance of the -- it's a serious question--
5 on the balance of the People's case there is no question, no
6 question, serious positions are presented in the argument.
7 I'm not putting strength on the weight. I'm saying serious
8 positions are advanced by the defendant. The inability, or
9 the fact that there is no body established, no physical, no
10 direct testimony -- I'm not saying that there's not an infer-
11 ence, I'm not talking about that. I'm saying nobody has been
12 on the stand that can testify, "I saw Shorty Shea dead. I saw
13 the body dead." It isn't here. And no matter how hard you
14 think he may or may not be dead, there is no testimony to that
15 effect, and the People must rely, and maybe properly so --
16 but I must debate the case; I'm called on to debate -- I'm
17 not debating it, but discussing my ruling in the matter. The
18 appellate court is entitled to know what I think, too, or the
19 code section wouldn't be here.

20 The People have evidence that meets the require-
21 ments of the law -- there is your prima facie showing again --
22 from which inferences may be drawn respecting the fact that
23 Shea can be dead, is dead, or might be dead. There are also
24 before the court conclusions or factual statements from which
25 the inference can come, the conclusion may come that he was
26 killed by or deceased by criminal means.

27 The strength is up to the jury. How much
28 magnitude can the jury give that? How much? How much? What

1 I would give to it or not is not what the jury may give. That
2 is where you have a jury trial. That is the bad part of the
3 section.

4 There are inferences in here and there are conclu-
5 sionary situations from which inferences may be drawn that
6 Shea could be disposed of by criminal means. Now, some of it
7 is based on hearsay statements that are pulled in by testimony
8 respecting a common purpose or conspiracy to commit a crime,
9 what one member of the conspiracy said, another member said,
10 and there is also direct testimony that Grogan said he killed
11 Shorty Shea.

12 We still don't have a body there. We saw no body.
13 But the strength of that is for the jury. The strength of it
14 is for the jury.

15 Despite what I think to be a very poor drafting
16 of that section, 1118.1, poorly worded and poorly drafted,
17 I think that the testimony is sufficient to justify the case
18 going to the jury. I think the testimony is there that
19 justifies the jury in drawing such opinions as they may.
20 Now, I think the question of strength that is going to be given
21 to that testimony is a matter of argument of the defendant or
22 the People, to the jury. "What do you think of this? What
23 inference can you draw? What do you think you should draw
24 from this? Here's a man -- the complaint wasn't returned for
25 so many" -- the defendant pointed this out -- "for so many
26 months after the death of Shea."

27 These are matters to argue to the jury, the
28 strength of the admissions of the defendant to the witnesses

1 that testified, the strength of the admissions of matters of
2 the alleged conspiracy, those are matters to be argued to the
3 jury.

4 I think the testimony is there, but I will say
5 there are serious questions posed, serious questions posed,
6 obstacles posed, basically due to the inability to establish
7 the physical direct testimony of the death of Shea and by
8 criminal means -- direct, visual observations, basically, the
9 body. If somebody on the stand testified he saw Shea dead,
10 many of these problems would disappear. But I do think the
11 testimony is there.

12 Now, that is my analysis at this time. I think
13 probably the intended requirements -- I will put it, the
14 intended requirements of Section 1118.1 have been met by the
15 People, and I would deny the motion.

16 Motion denied.

17 MR. WEEDMAN: Thank you, your Honor.

18 THE COURT: Very well. We'll go over to 2:00 o'clock,
19 gentlemen.

20 (Adjournment taken to 2:00 p.m. of the
21 same day, Wednesday, August 25, 1971.)
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11-1

1 LOS ANGELES, CALIFORNIA, WEDNESDAY, AUGUST 25, 1971

2 2:15 P.M.

3
4 THE COURT: All right, gentlemen.

5 Now, we will proceed in People against Grogan.
6 Defendant is here. Defendant's counsel is here. People's
7 counsel is here.

8 You can bring in the jury if you will, Sheriff,
9 please.

10 (The following proceedings were had
11 in open court in the presence of the
12 jury:)

13 THE COURT: Now we have all of our regular jurors plus
14 the two alternates.

15 If you will bring in your next witness.

16 MR. WEEDMAN: Yes. Thank you.

17 We would like to call Ruby Pearl, if we may, your
18 Honor.

19 THE COURT: Thank you. All right.

20
21 RUBY PEARL,
22 called as a witness by the defendant, having been previously
23 sworn, testified as follows:

24 THE COURT: Now you were sworn. So you need not be
25 resworn.

26 State your name to the court reporter and the clerk,
27 please.

28 THE WITNESS: My name is Ruby Pearl.

1 THE CLERK: Thank you.

2 THE COURT: All right.

3 And you sit down, please, right here. Pull up
4 your chair and talk right in this telephone here.

5 All of the jurors and counsel, defendant must hear
6 you. Pull that right around. That's it.

7 All right.

8 You can go right ahead.

9 MR. WEEDMAN: Thank you, your Honor.

10
11 INDEX DIRECT EXAMINATION

12 BY MR. WEEDMAN:

13 Q Mrs. Pearl, do you recall during your testimony
14 earlier in the trial discussing two incidents at the ranch when
15 some of the girls were present, the first of which was a time
16 when there was some dishes being used by some of the girls,
17 some of the people there, and that surprised you; and the other
18 time is following the Magdalene Shea's visit and her having
19 sat in a particular chair there; do you have both of those --

20 A Yeah, I remember.

21 Q -- incidents in mind?

22 Okay. I wanted to ask you again, Mrs. Pearl,
23 assuming that you may have had some time to think back again
24 about those incidents, I want to ask you again if you are
25 certain that the girl known as Squeaky, otherwise Lynn Fromme,
26 said anything to you relative to those -- first of all to the
27 dishes?

28 Can you tell us whether or not Squeaky did in fact

1 say something to you?

2 A Well, they were all there. If one spoke -- could
3 have been one or the other, but they were there.

4 And I was surprised. And it was no big incident.
5 I just was surprised to see the dishes out, and maybe one
6 answered, maybe the other one answered.

7 But they were there, and they remarked that they
8 would put them back.

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1 Q Now, when you indicated maybe one answered, maybe
2 the other answered, would you tell us who you mean by that?

3 A I was talking to Squeaky and I thought she answered
4 me.

5 Q But you think it may have been someone else now?

6 A I really don't think it was.

7 Q Well, do you recall for sure that Squeaky was
8 actually present during the dishes episode?

9 A Yes, I know she was there.

10 Q When you say you think she was there, what do you
11 mean by that?

12 A I know she was there.

13 Q With respect to this incident where Nikki sat in
14 a particular chair, which one of the girls made a comment about
15 that?

16 A Well, I know Kathie Gillies was there and Gypsy
17 and Lynn and Sandy was there, and someone made the remark,
18 though it could have been any of them, but they all made the
19 gesture, and Lynn usually spoke up, was the one that says,
20 "Don't sit in the chair."

21 Q Did you feel that because it was Lynn, otherwise
22 known as Squeaky, that spoke up much of the time, that it was
23 Squeaky who spoke up on the occasion of Nikki having sat in
24 that chair?

25 A Yes.

26 Q But apart from that kind of deduction on your part,
27 do you have a specific recollection that it was in fact Squeaky
28 who made some comment about "Don't anyone sit in that chair"?

1 A Well, I usually directed most of my comments to
2 Squeaky. I hardly ever ordered any of them around, but if
3 there was some big case, it was usually Squeaky to take the
4 consequences.

5 Q Okay. Now, do you recall, Mrs. Pearl, that you and
6 I were discussing this matter a few minutes ago out in the
7 corridor?

8 A Yes.

9 Q Do you remember what you told me outside relative
10 to your recollection?

11 A Yes. I said it could have been any that spoke up
12 because in my gesture, I was picking up the dishes, and they
13 mulled around so easily, it could have been one said this and
14 one said that. But nevertheless, they were all there and they
15 had the same thoughts.

16 Q But, in any event, to be fair about it -- and we
17 are going back quite a long time --

18 A Yes.

19 Q -- would it be fair to say that you really do not
20 now remember precisely who it was that spoke up relative to,
21 first of all, the dishes?

22 A Well, in my memory, it was Lynn.

23 Q Pardon?

24 A In my memory it was Lynn.

25 Q Is that quite what you told me a few moments ago?

26 A Yes, because I have been thinking, and usually I
27 don't make mistakes on that because to me at that time it
28 didn't make any difference who it was.

1 Q Do you recall having a conversation earlier today
2 with Brenda McCann?

3 A Yes.

4 Q Do you recall what you told Brenda in that regard?

5 A Yes.

6 Q What did you say?

7 A I told her the same thing. I said if it was you,
8 you would know if it was, but if it was Lynn, but I was
9 talking to all of them. She said it was her that said it.

10 Q Would it be fair to say then that you are not sure,
11 or are you sure?

12 A I was sure, but she said it was her that said it,
13 and --

14 Q Does that tend to refresh your memory at all?

15 A It didn't change my memory.

16 Q With respect to this statement, "He won't,"
17 which wasn't finished, do you remember that about the dishes?
18 Do you recall now who made that statement?

19 A I still say that was Lynn that made that statement.

20 Q I don't want to belabor the point, Mrs. Pearl, but
21 are you really certain that Lynn Fromme was present, first of
22 all, at that incident involving the dishes?

23 A Yes.

24 Q And secondly, are you certain that she was present
25 during this conversation relative to the chair?

26 A Yes, I think she was there.

27 Q You think she was there?

28 A I say she was there.

1 MR. WEEDMAN: She was there. All right, Mrs. Pearl.
2 Thank you.

3 That's all I have.

4
5 CROSS-EXAMINATION

6 BY MR. KATZ:

7 Q Mrs. Pearl, I'm over here.

8 A All right.

9 Q I have just a couple of questions.

10 You said that Brenda McCann apparently talked with
11 you today, is that right?

12 A She came and sat down on the bench over in the
13 hall before lunch.

14 Q Was this this morning?

15 A Yes.

16 Q This is the Brenda McCann that is also known as
17 Nancy Pitman, is that right?

18 A Yes.

19 Q You discussed the case with her?

20 A She said -- she sat down beside me --

21 Q Pearl, how was it that you started talking about the
22 case with Brenda McCann?

23 A She sat down and she said, "Why did you lie?"

24 I said, "About what?"

25 And she said, "You said Lynn said this and that,"
26 and she said, "I said it."

27 I said, "Well, maybe you did."
28

13

1 Q That was the sum and substance?

2 A That is all, yeah, that is all that was said.

3 Q Let me finish.

4 Was that the sum and substance of the conversation
5 you had with Brenda McCann this morning?

6 A Yes.

7 Q Incidentally, did you invite that conversation,
8 or did she just come up and start talking to you?

9 A No. She just came and said that.

10 Q Did she talk to you about anything else relative
11 to this case?

12 A No.

13 MR. KATZ: Thank you. I have no further questions.

14 THE COURT: Is that all, gentlemen?

15 MR. WEEDMAN: I have nothing further. Thank you.

16 I would like to call Lee Saunooke, please.

17 THE COURT: That is all. Thank you.

18 THE WITNESS: Thank you.

19 MR. WEEDMAN: Your Honor, Mrs. Pearl is certainly free
20 to leave. We thank her for coming down.

21 THE COURT: Do you want her available, or are you through
22 with her?

23 MR. WEEDMAN: Well, I think technically we will ask that
24 she be available, but I do not anticipate literally calling
25 her, your Honor.

26 THE COURT: Did you hear what counsel said? I don't
27 want to misinterpret.

28 Probably he will not need you any more, but he

1 would like to have you available in the case of some
2 uncertainty.

3 So please consider yourself on call but in all
4 probability you will not be needed.

5 Is that about your point, Mr. Weedman?

6 MP. WEEDMAN: Yes, it is, your Honor.

7 THE COURT: All right. Thank you, lady, very much.

8 THE WITNESS: All right.

9
10 LEE SAUNOOKE,

11 called on behalf of the defendant, having been previously
12 sworn, testified as follows:

13 THE COURT: Now, you were sworn. Will you please state
14 your name to the clerk and the reporter.

15 THE WITNESS: Lee Saunooke.

16 THE CLERK: Thank you.

17 THE COURT: Thank you.

18 Did you get it?

19 THE CLERK: I did, sir. Yes.

20 THE COURT: All right, talk right in the microphone there.

21
22 DIRECT EXAMINATION

23 BY MR. WEEDMAN:

24 Q Miss Saunooke, this was an area which I certainly
25 could have gone into had I realized the significance of it
26 earlier. And I particularly want to express our appreciation
27 to you for coming back.

28 My question relates to this person whom you

1 identified as Rocky Todd. Apparently this was a man that was
2 at your home when you returned during the early morning hours
3 in March 1970 and overheard my client admit killing Shorty
4 Shea and so on.

5 You recall your testimony in that respect?

6 A Yes, sir.

7 Q Okay. Would you tell us, please, approximately
8 how old Mr. Todd is?

9 A Oh, 17 or 18.

10 Q And do you know who his mother is?

11 A Yes. She is called Ann Goodman.

12 Q Do you know where she is employed?

13 A Yes. At the Fountain of Youth.

14 Q Where is that located?

15 A Box Canyon.

16 Q How far is that from the Spahn Ranch, just to pin
17 it down?

18 A Well, if you was going across country, probably,
19 you know, a half a mile, you know, once -- as a crow would
20 fly.

21 Q Finally, can you give us any further physical
22 description of Mr. Todd, perhaps with respect to his approxi-
23 mate height and weight and build and general appearance.

24 A Oh, he is not as tall as me.

25 Q How tall are you?

26 A Five-eight.

27 Q Okay.

28 A And he is probably maybe five-six, maybe he is

1 five-seven. But I know he is not as tall as I am.

2 He has got sandy-to-brown hair, and he did wear
3 it kind of cropped off.

4 Q Do you recall any peculiarities with respect to
5 his teeth?

6 A Seem he has got buckteeth or gap-teeth. But I
7 don't really remember.

8 Q Okay. You haven't by any chance seen any photo-
9 graphs of him in connection with your conferences with the
10 district attorney or with any of the police agencies, have
11 you?

12 A No.

13 Q All right.

14 Are there any particular -- just again by way of
15 description, any particular abnormalities in his appearance?
16 Any scars that you recall or any difficulty in walking,
17 anything of that nature?

18 A Not that I can think of.

19 MR. WEEDMAN: Thank you for coming. Nothing further.

20
21 CROSS EXAMINATION

22 BY MR. KATZ:

23 Q Just one question. You said Fountain of Youth.
24 Did you mean Fountain of the World?

25 A Yes.

26 MR. KATZ: Thank you. No further questions.

27 THE COURT: Is that all?

28 That is all. Thank you.

1 Now, do you want this lady on technical call,
2 Mr. Weedman?

3 Don't go away, lady, until I get a check on this.

4 THE WITNESS: I'm sorry.

5 THE COURT: Do you want this lady on technical call?

6 MR. WEEDMAN: Yes, technically I would. Yes. Thank
7 you.

8 THE COURT: I would ask you and say by way of explana-
9 tion you probably will not be needed again, but there is a
10 possibility you could be called back. You consider that,
11 please.

12 THE WITNESS: Yes, sir.

13 THE COURT: Thank you for your time.

14 MR. WEEDMAN: Your Honor, I had intended to call
15 Sergeant Whiteley at this time, and I guess we got our wires
16 crossed a little bit, because I had assumed he would be here.
17 We discussed it this morning.

18 He has a great many responsibilities in connection
19 with other cases. Apparently he is tending to those.

20 I also expect to call Brenda McCann.

21 THE COURT: Are you expecting him right away?

22 MR. WEEDMAN: Officer Gleason just indicated to me they
23 have a call in for him.

24 THE COURT: Do you want to take a recess now?

25 MR. WEEDMAN: I guess we will just have to recess for a
26 few minutes until we get one or the other of the witnesses,
27 your Honor.

28 THE COURT: All right. Let's take a short recess at

1 this time. Do not discuss the case or come to any opinion or
2 conclusion. Thank you.

3 MR. WEEDMAN: Thank you, your Honor.

4 (Recess.)

14 fls

#14

(The following proceedings were had in open court, outside the presence of the jury.)

THE COURT: Back in open court.

People against Grogan. Both counsel are here.

Mr. Weedman, are you having trouble getting your witness in?

MR. WEEDMAN: Yes, your Honor.

THE COURT: What is the problem now?

MR. WEEDMAN: I had hoped to call Sgt. Whiteläy, and Sgt. Whiteley has truly apparently a lot of other places to be and apparently he didn't understand that he had to be here this afternoon.

THE COURT: I see.

MR. WEEDMAN: He is an extraordinarily reliable person, so the fact that he is not here doesn't mean anything.

THE COURT: You can get him in by tomorrow morning. Let's get him in --

MR. WEEDMAN: I certainly believe so.

MR. KATZ: I would hope so.

MR. WEEDMAN: He is going on vacation in a very few days.

THE COURT: Let's get him here.

MR. WEEDMAN: He is going to have to testify.

THE COURT: We will take him the first thing tomorrow morning, and if you have other problems with these witnesses -- I guess there are a lot of procedural matters that you will have to handle, so I would just as soon give you the time.

1 MR. WEEDMAN: I appreciate it, your Honor. I utilized
2 the time since your Honor left the bench to make arrangements
3 for Miriam Binder to be here.

4 THE COURT: I know you are conscientious. I don't think
5 there is any time lost. Let's go over to 9:30 tomorrow.

6 MR. WEEDMAN: Very well, your Honor.

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1 MR. KATZ: Your Honor, may we have an understanding from
2 counsel assuming Sgt. Whiteley for some reason beyond his
3 control is unavailable tomorrow -- because I am in no position
4 to represent that he is available -- will Mr. Weedman be able
5 to proceed with other witnesses?

6 MR. WEEDMAN: Yes, I will. Brenda McCann definitely
7 will testify tomorrow, God willing. Lynn Fromme will testify
8 tomorrow.

9 THE COURT: Fine.

10 MR. WEEDMAN: Marian Binder, so far as I know, will be
11 here tomorrow afternoon.

12 THE COURT: All right.

13 MR. WEEDMAN: We are still making an effort to get ahold
14 of Ray Parrott. When the marshal was there to serve him, he
15 wasn't there, but he spoke with his wife. And we hope to get
16 him in.

17 THE COURT: I am sure you are diligent.

18 On that basis, we will go over to tomorrow
19 morning.

20 Bring in the jury so I can tell them, Sheriff,
21 please.

22 THE BAILIFF: Yes, sir.

23 (The following proceedings were had
24 in open court in the presence of the
25 jury.)

26 THE COURT: Now we have all of our regular jurors here
27 plus our two alternates.

28 Ladies and gentlemen, we will go over till

1 tomorrow morning at 9:30 and we will be ready with several --
2 one or two, or anyway, witnesses tomorrow morning at 9:30.

3 I will ask you if you will, as you have been,
4 kindly return promptly. Do not discuss this case or any part
5 of the case or come to any opinion or conclusion respecting
6 the case.

7 Thank you very much.

15A

15A

(The following proceedings were had
in chambers.)

THE COURT: Now we are in chambers here. Sit down,
gentlemen.

Defendant and counsel are here. Go ahead,
Mr. Weedman.

MR. WEEDMAN: Your Honor, this is in connection with my
client's earlier request that he be permitted to visit his
father in the hospital.

THE COURT: Right.

MR. WEEDMAN: I called the Veterans Hospital, the
Sepulveda Veterans Hospital. I spoke with the supervising
nurse, Mrs. Anderson. I can obviously only report what she
told me.

She told me Mr. Grogan was indeed a patient there.
He was admitted a few days ago with a heart attack. That he
is no longer in the intensive care ward. He has been moved
to a conventional -- to an ordinary ward.

His doctor is Dr. Weinstein. I requested that
Mrs. Anderson speak with the doctor in the event that I could
not reach him, and my second telephone call to Mrs. Anderson
she reported that she had in fact talked with the attending
physician, Dr. Weinstein. That the doctor told her that
Mr. Grogan was not in critical condition.

THE COURT: I see. Well, I appreciate your call.

I don't think the court has the -- I could probably
authorize the defendant to see his father under those condi-
tions.

1 I will say, frankly, if it develops that the father
2 is revisited by any heart attack or serious situation and I
3 am advised to that effect, I would let him go out and see his
4 father. I wouldn't hold it as a block.

5 I don't think the grounds are adequate at this
6 time. I would make that ruling, but I won't hold it off. If
7 anything further happens, I am open to reconsidering the
8 situation.

9 MR. WEEDMAN: We appreciate that very much. Of course,
10 I informed Mr. Grogan as to what I had learned on the phone,
11 and Mr. Grogan nonetheless wanted me to request that he be
12 permitted to visit.

13 THE COURT: Well, I am glad you did. I won't hold him
14 from his father if it appears it is a critical condition.
15 I will let him go out. I will send him out.

16 MR. WEEDMAN: We will call the hospital each day, then,
17 and keep advised of that.

18 THE COURT: If the father's condition appears contrary
19 to what you tell me and there is a dangerous physical condition
20 which arises, I will see that he gets there. I can assure
21 you of that. And I can assure Mr. Grogan of that.

22 MR. WEEDMAN: Thank you, your Honor.

23 THE COURT: I might say as long as you are here, I am
24 convinced -- I know you have your problems with these witnesses--
25 on my suggested ruling on Manson, I am more convinced than
26 ever that my diagnosis of the matter is correct.

27 Now, I have given some research on the subject
28 here. The case probably both counsel could read is the

1 Sanchez, a relative late case in 1969.

2 I haven't been able to Shepardize anything
3 further than that. People against Sanchez.

4 But the court consistently points out that the
5 statements which in this case would be Manson -- first of all,
6 if Manson is called it could only be used on the basis of
7 assisting the defendant. Any assistance to the defendant is--
8 he can't assist the defendant unless in some fashion there is
9 some kind of discussion of the alleged conspiracy, matters
10 upon which he is facing the trial. Delving into the factual
11 matters that he is confronted with in his plea of not guilty
12 which the People are demanding capital punishment for, or
13 some kind of confession, "I, Manson, committed this crime.
14 Grogan had nothing to do with it." Something of that nature.

15 Now, anything of that nature, as the court points
16 out here --

17 MR. WEEDMAN: May I inquire the name of that case, your
18 Honor?

19 THE COURT: Well, I will give you People against Sanchez,
20 70 Cal. 2d --

21 MR. WEEDMAN: Oh, the Robles case, your Honor, I think
22 would be very much more in point.

23 MR. KATZ: In point, yes.

24 MR. WEEDMAN: That is, I believe, at 3 Cal. 3rd. I have
25 the exact citation, if I may be excused for one moment, your
26 Honor.

27 MR. KATZ: I can get it, Chuck.

28 MR. WEEDMAN: Your Honor, may I be excused for one

1 minute?

2 THE COURT: Sure.

3 MR. WEEDMAN: I will get that Robles citation.

4 (Short pause.)

5 MR. WEEDMAN: 2 Cal. 3rd, sorry. This is the case that
6 Mr. Katz, I am sure, had reference to, and hopefully I also
7 generally had reference to earlier this morning, your Honor
8 (handing).

9 THE COURT: Thank you. That is Robles.

10 All right.

16 fls

16-1

1 I will read it. I may say this, though: I don't
2 see anything right on that point in Robles. But I'll read it
3 more carefully.

4 MR. WEEDMAN: It is point No. 5; footnote No. 5.

5 THE COURT: 5? All right.

6 MR. WEEDMAN: Or No. 5 heading.

7 THE COURT: There is no 5, but let me check the opinion
8 itself. 3A, 5A, then I'll look at 5A.

9 Well, I think the fact is a correct statement of
10 law, but when you analyze that with your statement of
11 principle here in Sanchez -- here's your statement. I'm
12 just pulling it out of context in Sanchez. Take page 572,
13 point 4.

14 "If the individual's will was over-
15 borne" --

16 that is a quote -- "or" -- and here is what disturbs me --

17 "--if his confession is not the product
18 of a rational intellect and a free will, his
19 confession or statement in court is inadmis-
20 sible because it is coerced. These standards
21 are applicable whether a confession is a product
22 of physical intimidation or psychological pressure."

23 I'm dropping down to point 5.

24 "In determining whether the defendant's
25 confession or his admissions respecting the
26 charges is a product of a rational intellect and
27 a free will, the totality of the circumstances
28 surrounding the confession must be taken into

1 account."

2 That is the point I'm making all the time. Now,
3 in the case we have here, Manson is a co-defendant with Grogan
4 as well as Davis. They are both of them charged with murdering
5 Shorty Shea, or all three of them. You have a situation where
6 Manson, his counsel, has entered a plea of not guilty. The
7 case has been in trial for some time. You have a situation
8 where the transcript will show -- I'll stand for correction,
9 but I venture to say that I am stating facts -- that Manson
10 has jumped up in court at least two or three times and made the
11 statement "I'm guilty," or very close to it, and "I want the
12 jury to know I'm guilty."

13 There is your free expression, if you can call it
14 that. There is this man now who we are talking about bringing
15 over here. Now, one of the judges apparently has refused it.
16 I would have refused it if I had been in 106, any such statement
17 as that, turn around and kick his counsel in the seat -- I
18 don't know if that was at the time he offered "I'm guilty,"
19 but there is the hysterical, ungrounded conduct of Manson.
20 God knows what it's going to do to the jury. That is his
21 business. I have no fight with that.

22 But there is the psychological disturbance, mental
23 disturbance, that is going on in the man that has entered a
24 plea of not guilty and is facing capital punishment, and I come
25 now, I'm coercing, I'm sending the sheriff to bring that man
26 out of his trial in court, bring him over here for harassment.
27 I'm probably crudely stating it, but Manson is being harassed
28 and would be harassed by me, for instance, saying, "Raise your

1 right hand and be sworn," and the clerk administers the oath,
2 the defendant gets on the stand, and then is interrogated with
3 the jury out of the courtroom, "Do you understand? You need
4 not testify respecting any matters that may incriminate you,"
5 and go on through the procedure. "Now, do you want to testify
6 or don't you?"

7 Now, they take a statement from Manson, who has
8 yelled in court three times, "I'm guilty." The judge has
9 refused it. The trial is proceeding in a criminal matter.
10 He's saying, "Yes, I'm saying I know what I'm doing. I want to
11 plead guilty here."

12 I say it can't be done properly. I say it is
13 reversible error in this case. I say it would be -- of course,
14 the People can't appeal -- it is reversible error. It either,
15 you might say, would be reversible error or it would be a
16 blockage in some fashion to the 106 trial. It would be
17 jeopardy of every kind for the court to permit it. It would
18 be a travesty on justice, and it would be, it would be -- in
19 short, it would be a travesty of every kind to bring him over
20 here to go through all of that type of formalism and chicanery
21 to arrive at a conclusion that is very evident to the court at
22 this time.

16a

1 Now, the court here in Sanchez goes on to say:

2 "The rule has long been settled where the
3 defendant is subject to threats, violence, or
4 improper influences."

5 Now, I don't say anybody is threatening him. I'm
6 not saying that, or threatening to be struck or hit, but "or
7 other influences" is that he has already said three times in
8 open court he wants to plead guilty, and that's it. Now, the
9 judge has said "No." He is brought over here again and asked
10 in an entirely separate trial, independent of where he is
11 fighting for his acquittal, "Do you want to discuss this case
12 in open court and answer these questions respecting what
13 can and probably is incriminating matter, what happened, what
14 was done, what was said? Do you want to do that or not?"
15 After all of that background.

16 The court states:

17 "Where the defendant makes incriminating
18 statements in such a coercive atmosphere" --

19 it defines that as the gist of the situation -- that if there
20 is a coercive atmosphere or if there is any situation where
21 there is the question of the product of a rational mind and a
22 free will, or where there is any psychological pressure that is
23 introduced in any fashion, why, it isn't a free and voluntary
24 confession within the meaning of Miranda, and the statements
25 and admissions are inadmissible.

26 That is the reason -- I'm giving you a detailed
27 statement. I thought I made it rather clear this morning, but
28 I don't think there is any question that if the people were

1 to permit him to testify -- of course, if he testified, if
2 the defendant is acquitted -- I put that "if," because it may
3 go the reverse way. I don't know. He may say, "No, I didn't
4 have anything to do with it. Grogan did it." I don't know.
5 This is the hazard of the witness. That is neither here nor
6 there. If Grogan would be acquitted, for instance, you still
7 have a situation where this court has, in effect, put him on
8 the stand, permitted interrogation to go on, "Do you want to
9 testify?" After he has already entered pleas of not guilty
10 to the very self-same offense that he is charged with in 106
11 in which Grogan is, pulled him out of his trial and jury
12 there, brought him over here to re-interrogate.

13 I say that is an inconsistency that can't possibly
14 be justified, in my mind. The background of it is shown by
15 the proceedings as of this time. You don't have to go any
16 further and create a carnival and go ahead and ask him the
17 same thing that is before the court.

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1 And besides that I think it is highly dangerous.
2 Highly dangerous to pull him out of another court where he is
3 on trial defending himself for life, pulling him over here for
4 reinterrogation.

5 I say under the law I not only don't have the
6 right but I think it is reversible error to attempt to bring
7 him over here to ask him questions that are answered already.
8 Already answered by the fact he has answered them. The pleas
9 of not guilty, the pleading is right in. They are in this
10 court now. They are before me. He is a party defendant.

11 The trial is severed. He is in the middle of his
12 trial on the charge of murder.

13 And it is not only highly dangerous but I just
14 don't think the court has the right to do it.

15 Now, that is my feeling. I am just venturing that
16 again to you gentlemen. But I will renote any exceptions you
17 have if you decide you want to call him.

18 MR. WEEDMAN: Well, your Honor, I think inasmuch as your
19 Honor has spent a good deal of time in thinking about this
20 matter and permitting both counsel to know fully your thoughts
21 in the matter, I think in order to formalize this entire thing
22 at this time I will at this time respectfully request that
23 Charles Manson be removed from Department 106 at an appropriate
24 time but during the course of my client's defense in order that
25 Charles Manson may testify for the defendant.

26 THE COURT: What do you expect to prove by his testimony?

27 MR. WEEDMAN: Well --

28 THE COURT: In the nature of an offer of proof?

1 MR. WEEDMAN: May I answer that in just a moment, your
2 Honor.

3 THE COURT: Yes, surely.

4 MR. WEEDMAN: And I at this time will state as Mr.
5 Grogan's attorney of record that Charles Manson is a necessary
6 and material witness. And I do so state under penalty of
7 perjury, if I may be permitted to do that orally at this time
8 rather than being sworn, your Honor.

9 I have, your Honor, in response to your Honor's
10 question, I have probably spoken with Charles Manson together
11 with my client, that is in joint conferences, together with
12 Bruce Davis, together -- going back even as far as joint
13 conferences at which even Susan Atkins was present. These
14 are all a matter of record in the county jail.

15 And Charles Manson has discussed a great deal of
16 this matter, certainly by bits and pieces, but nonetheless has
17 discussed the matter.

18 While it is true that this was presumably and was
19 indeed a joint conference between clients and counsel and
20 therefore such matters are certainly privileged, nonetheless
21 I feel that despite the privilege, that I can still properly
22 and ethically represent to the court that he is indeed a
23 material witness in this case.

24 One thing I would like to point out for the record,
25 your Honor, is that when Mr. Katz was permitted to introduce
26 on the theory of conspiracy, the testimony of Barbara Hoyt to
27 the effect that Charles Manson told Danny De Carlo quote we --
28 in effect -- "We killed Shorty. He was cut into nine pieces.

1 The girls buried his body under some leaves."

2 And then went on to ask Mr. De Carlo if lye or lime
3 would be better for disposing of the body. I think that we
4 are now obligated to at least make some attempt by way of
5 having Charles Manson as a witness to possibly deny that,
6 having made that statement.

7 I say "possibly" because I don't feel at this time
8 that inasmuch as Mr. Manson is represented by counsel, that
9 I should ethically go beyond that in my statement to the court.
10 I think if Mr. Kanarek were here and Mr. Manson were here --

11 THE COURT: Well, it is probably fair to say that your
12 testimony would go into matters with which the defendant
13 Manson is charged in this criminal indictment and also in which
14 the co-defendant Mr. Grogan is charged. Would go into matters
15 of what Grogan and Manson did or did not do respecting the
16 People's charge in which they are asking for convictions of
17 murder.

18 MR. WEEDMAN: There is no doubt about that.

19 THE COURT: No question about that. I am not trying to
20 pinpoint you or violate a confidence, but there is no question
21 about that, that that would have to come out in your testimony.

22 MR. WEEDMAN: That's right, your Honor.

23 THE COURT: Well, I don't feel -- I simply -- I will give
24 you plenty of an offer of proof. I just don't feel that I
25 either have the right to compel or to retake statements to
26 which he has already entered positive denials "I am not
27 guilty".

28 He is on trial. That he is fighting to avoid

1 maybe properly so, not arguing that -- a conviction and to
2 bring him over here is a clear harassment, annoyance, interrup-
3 tion of the trial that he is properly being tried for the
4 charges.

5 To bring him over here in a separate and distinct
6 court and attempt to interrogate him respecting matters that
7 go to his questions of guilt, to his connection with the
8 conspiracy so-called in connection with who killed Shorty Shea,
9 "What did you do in the matter? What did you say?" Those
10 all have to come out.

11 That is my feeling in the matter.

12 MR. WEEDMAN: Your Honor, I feel that we are under a
13 burden now to produce evidence which runs contrary to the
14 People's evidence. Bear in mind that my client is in the
15 unfortunate position now of not being able to testify himself
16 with respect to conversations between -- if any, between
17 Barbara Hoyt, Danny De Carlo and Charles Manson.

18 You see, my client was not present. That was one
19 of the dangers of course of admitting -- and I am sure your
20 Honor recognizes it -- that was one of the dangers of admit-
21 ting into evidence Barbara Hoyt's testimony.

22 THE COURT: A great deal of that runs under the theory of
23 conspiracy.

24 MR. WEEDMAN: I appreciate that, your Honor.

25 THE COURT: That's right.

26 MR. WEEDMAN: But it seems to me that my client will be
27 denied due process of law, clearly. I am not speaking about
28 Mr. Manson now.

1 THE COURT: No, I understand.

2 MR. NEEDMAN: I am talking about my client's rights, and
3 I am, at least for the time being, setting aside Mr. Manson's
4 rights, because I am not obligated at least as I sit here now
5 to even be concerned about Mr. Manson's rights. I am not a
6 law enforcement officer. I am not a prosecutor, hopefully.
7 I am only here to represent one person, and that is Mr. Grogan.

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1 THE COURT: Right. I am in somewhat of a different
2 situation because as a judge I have to see to the best of my
3 ability that the law is fairly, impartially, and properly
4 administered. My duty is to enforce the law as it is written
5 there on the books.

6 MR. WEEDMAN: Seems to me as what we have here when
7 I ask that Mr. Manson be brought here to testify, we have a
8 conflict of rights. I think that -- and I say this respec-
9 fully -- I think that your Honor -- and I must say I admire
10 the -- and I mean this sincerely, your Honor -- I admire
11 the fervor that I feel in your remarks about protecting a man's
12 basic rights.

13 And Lord knows that is the business that we are
14 all in around here.

15 THE COURT: Surely.

16 MR. WEEDMAN: But I, by the same token, must argue that
17 to deny us an opportunity of calling Mr. Manson is to deny
18 my client's very substantial rights in this case.

19 THE COURT: Well, you have got a point. I only feel that
20 the facts in this case come clearly within the Sanchez case
21 which indicates if there is such a psychological, a disturbance
22 a coercion that there hasn't been -- cannot be a waiver of
23 the rights.

24 MR. WEEDMAN: Well, your Honor -- excuse me.

25 THE COURT: Yes. Go ahead.

26 MR. WEEDMAN: Well, it occurs to me, your Honor, that
27 the dilemma could be solved in this fashion. Your Honor may
28 simply rule that anything that Charles Manson says here because

1 he is under subpoena here, you see, and he has to be here --

2 THE COURT: Yes.

3 MR. WEEDMAN: --- or at least he would be here pursuant
4 to my just-made motion that he be here -- that anything that
5 he says here could not be used against him, you see, in his
6 other trial.

7 THE COURT: Well, I wouldn't attempt that.

8 MR. WEEDMAN: That would protect Mr. Manson and still
9 permit my client --

10 THE COURT: I don't know whether I could do that.

11 MR. WEEDMAN: I am not suggesting that he done except
12 as a way to answer the court's objections.

13 THE COURT: Suppose Manson comes here, either the
14 defendant is -- if he testifies to anything vital in this
15 case, he is going to testify against himself, unless he
16 obviously maintains the position, "I am not guilty," and goes
17 on the stand and says "I am not guilty."

18 Then you have got three times of yelling out in
19 court there, "I am guilty." You have got such a disturbed
20 emotional mind that it is my opinion he can't properly waive
21 any rights if he wants to.

22 MR. WEEDMAN: But I am concerned about the jury in our
23 case because the jury is going to say, "Well, now, why didn't
24 Mr. Weedman call Charles Manson to deny having made those
25 statements," you see.

26 THE COURT: Well, I would simply say I could give
27 you a statement as a matter of law that I wouldn't hesitate
28 to give it as a matter of law. I have held that any testimony

1 of Mr. Manson cannot be taken in this action under the
2 constitution.

3 I mean I would give you a statement of law without
4 arguing the matter.

5 MR. WEEDMAN: Well, I feel that the jury should know
6 that we have moved --

7 THE DEFENDANT: Made an attempt.

8 MR. WEEDMAN: Moved formally for the production of
9 Charles Manson as a defendant's witness in this case, and that
10 that motion -- we had been denied that opportunity. In other
11 words I want the jury to at least understand that we have
12 made an effort to produce him, you see.

13 THE COURT: Well, you might be able to put it in this
14 fashion: Defendant has subpoenaed Charles Manson as a
15 witness in this case. As a matter of law, the court has
16 refused and ordered that the subpoena be stricken or recalled.
17 And Charles Manson is not to appear in this case.

18 Without getting into any argument one way or the
19 other. All they have to know is a matter of law. That is
20 all.

21 MR. WEEDMAN: Well, I of course suggest that really as
22 a kind of argumentum observum because --

23 THE COURT: Well, I am not trying to deny you any rights,
24 but I think that would be a proper statement as a matter of

25 MR. WEEDMAN: I don't want to concede that is
26 sufficient.

27 THE COURT: I understand. You don't want to give up
28 any rights to which you are entitled. You can make a more

1 full statement at a proper time. I only brought this up
2 again because I made the point this morning, and I feel
3 convinced in my mind that my indication of ruling is a proper
4 ruling.

5 And I just don't think that any admissions or
6 confessions or acknowledgments or statements under oath of
7 Manson in his trial respecting his dealings, transactions,
8 what went on, what didn't go on, where he is a codefendant in
9 this very case, but before another judge, should be taken or
10 are admissible. That is my feeling in the matter.

11 MR. WEEDMAN: If your Honor feels that Charles Manson
12 is not competent to waive his right against self-incrimination,
13 then I believe we should at least have Charles Manson here
14 so that he may be interrogated to that end. Otherwise, we
15 are just making an assumption.

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1 THE COURT: I don't know if I have to do that. You had
2 him already speaking up. You have a plea of not guilty and a
3 jury trial in progress with pleas of not guilty, and he is on
4 trial. You have got him jumping up in court three times saying,
5 "I am guilty of this offense."

6 You have got him coming back and retracting it. I
7 believe he retracted it in the transcript of one of those
8 cases.

9 MR. WEEDMAN: That is hearsay to our trial.

10 THE COURT: Well, that is true. If there is any question
11 I can just bring the other transcript here.

12 MR. WEEDMAN: Your Honor, Mr. Katz agrees with me that it
13 would be reversible error to decline to produce Charles Manson
14 as a defense witness in this case.

15 THE COURT: That is his opinion, and I respect his opinion
16 but I don't agree with it. I am not saying that disparagingly.

17 I think it is dangerous to bring Manson in here
18 and take testimony. I don't think I should properly do it. I
19 don't think I have the moral right. I may have the legal right
20 to send the sheriff over there and grab him by the coat and
21 bring him here, but the hazards and dangers of taking the man
22 on trial for life and going over again and saying, "Listen,
23 Mr. Manson, do you want to testify in this case? Anything you
24 say may be used against you. You are charged here with murder,
25 over here in 106, but nevertheless do you want to testify in
26 this case?"

27 I say that is facetious. It is a carnival
28 atmosphere. The facts are here before the court. And I have

1 got an adequate showing to go on.

2 MR. WEEDMAN: Of course Mr. Katz is a most capable and
3 conscientious prosecutor.

4 THE COURT: No question he is conscientious.

5 MR. WEEDMAN: He agrees with me, and I with him completely
6 that to prohibit my client from being able to call Charles
7 Manson is such a denial of due process that this case would
8 inevitably be reversed on appeal, and I don't want to induce
9 that kind of error in this trial.

10 THE COURT: Well, I won't grant the request. This is my
11 present feeling. I won't order Manson in here when he is being
12 charged, with his life at stake, and his not guilty plea. Any
13 attempt to forsake his stand of not guilty and start to testify
14 to everything would indicate and be the workings of an
15 irrational mind. He has already done it. He could very well
16 get on the stand and say, "Yes, sure." -- I don't know what he
17 would say but "I am mixed up in that. We had a conspiracy.
18 I told a lot of people I killed Shorty Shea. In fact I did
19 it. Grogan didn't do it."

20 I don't know what in the world he could testify to.
21 But anything he testifies to in this case is in my opinion a
22 coerced confession. I don't care whether he says "All right,
23 I am willing to go there and tell the truth."

24 He can go further. He can say "I tried to plead
25 guilty over in 106. They wouldn't do it. Now I got a chance
26 to plead guilty by these questions and answers. Now is a
27 chance for me to say what I want to say. I want to give a
28 detailed statement of everything that took place upon these
charges that they are trying to convict me in 106."

1 MR. WEEDMAN: But what if that tends to exonerate my
2 client?

3 THE COURT: You've got questions that I don't know. You
4 present lots of questions in there. I don't know. I'm simply
5 taking the position, I think, as outlined by the Supreme Court,
6 that if I think that his statements are the product of an
7 irrational mind, there hasn't been a free and voluntary
8 confession, the judge shouldn't take it, and that is my feel-
9 ing in the matter at this point.

10 MR. WEEDMAN: Would your Honor at least perhaps hear
11 further -- perhaps deny it without prejudice to --

12 THE COURT: Yes. I'll give you a final ruling. My mind
13 is open. But you are going to have to overcome the effect
14 of these decisions here.

15 MR. WEEDMAN: I think Mr. Katz would like to be heard
16 further in this connection.

17 THE COURT: I won't rule finally against you. I'll hold
18 my mind open on it. But I'm telling you how it impresses me.

19 MR. WEEDMAN: For the record, if you are going to deny
20 it, would you deny it now without prejudice to reopening?

21 THE COURT: Yes. I'll deny it now without prejudice.

22 I would like to have -- I better couple it with
23 a statement -- I would like to have more of a statement,
24 because the law does give me, as the court, the right to re-
25 quest counsel to make an offer of proof or statement, parti-
26 cularly in this kind of case, of what they expect Manson will
27 testify to.

28 MR. WEEDMAN: Your Honor, I am unfortunately bound with

1 respect to particulars, by a kind, at least, of attorney-
2 client privilege, inasmuch as these joint conferences were
3 set up --

4 THE COURT: I'm not trying to force you.

5 MR. WEEDMAN: -- only with each attorney acting in ef-
6 fect as the agent of the other for purposes of trial prepara-
7 tion.

8 THE COURT: I could very well hold, although I don't
9 want to rest on a technicality, that a failure to divulge a
10 bona fide or a proper offer of proof is sufficient ground for
11 the court to refuse the subpoenaing of the witness and
12 attempting to take the testimony.

13 You see, the testimony yourself that you expect
14 to show there again shows the hazard of attempting to get
15 Manson here, and very honestly so, because you are unable to
16 say "We expect Manson to testify so-and-so." Again, that is
17 all the more reason the court should reject the proposed
18 testimony because of the hazards that are attendant upon
19 bringing him over.

20 But I'm fully convinced of my basic proposition.
21 But I think for your own protection, because the appellate
22 court could say the trial court shouldn't bring him, anyway,
23 unless there is an offer of proof that Manson will testify to
24 certain very vital matters and there is an absence of such a
25 showing, Manson shouldn't be brought over for that reason, if
26 for no other reason, that may be a position, too, that could
27 be presented to an appellate court, a lack of showing of
28 materiality from your own statement that Manson's testimony

1 is material. Do you see?

2 MR. WEEDMAN: I can only represent, as I have, under
3 penalty of perjury, that he is a necessary and material wit-
4 ness in the case, and beyond that --

5 THE COURT: I'll give you a ruling, a denial, without
6 prejudice to your renewal.

7 I will say, however, that I would couple the
8 ruling of denial, in addition to the basic reasons I stated,
9 also on the ground that there should be an offer rather than
10 a conclusion.

11 I understand the problems you are presented with.
12 I think the trial judge is entitled to an offer, "We expect
13 to prove from John Smith such-and-such," so the judge can
14 rule on the materiality, irrespective of the other constitu-
15 tional questions that are presented.

16 I would attach that in my denial. If it is made,
17 I would consider it. I do think that the basic objection, the
18 basic grounds, constitutionally, that arise, are very
19 germane to the subject, and unless I could be convinced to
20 the contrary, I would feel they are very persuasive.

21 Let's go over to tomorrow, then, gentlemen.

22 9:30 in the morning.

23 MR. WEEDMAN: Yes.

24 THE COURT: All right. Thank you very much.

25 MR. WEEDMAN: Thank you, your Honor.

26 (Adjournment taken to 9:30 a.m.,

27 Thursday, August 26, 1971.)
28