

39

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 52

HON. JOSEPH L. CALL, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,)

Plaintiff,)

v.)

NO. A 267861

STEVEN GROGAN,)

Defendant.)

REPORTERS' DAILY TRANSCRIPT

FRIDAY, AUGUST 27, 1971

APPEARANCES:

(See Volume 1)

*MOTION
FOR MISTRIAL*

VOLUME 39:

Pages 5088 - 5195 incl.

Reported by:

VERNON W. KISSEE, C.S.R.

-and-

GEORGE WEBER, C.S.R.

Official Reporters

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 LOS ANGELES, CALIFORNIA, FRIDAY, AUGUST 27, 1971

2 10:50 A.M.

3
4 (The following proceedings were had
5 in chambers:)

6 THE COURT: Now, we are in chambers. This is a sequence
7 to our discussions of some length that were held probably
8 during -- at least during the closing portions of yesterday's
9 proceedings.

10 Defendant is here. Counsel are here. Sheriff
11 and clerk and reporter.

12 It is now 10 minutes of 11 o'clock here on Friday
13 the 27th of August 1971.

14 I arrived here in this court approximately, give
15 or take a few minutes, 8 o'clock this morning. I think that
16 is a fair statement. I have had no breakfast -- which has
17 nothing to do with it.

18 I have been here consistently and constantly at
19 my desk -- 8, 9 -- that is two hours and 45 minutes, reading
20 and rereading the transcript of yesterday's proceedings, which
21 you can visualize and see before me.

22 I have made numerous notes which I am going to --
23 because I think there should be a statement of reaction I have
24 up to this point in this case in this transcript, I have
25 called for a copy so I wouldn't mutilate the original.

26 It is my opinion that the record transcript is
27 replete, which I will indicate in a moment, with examination
28 of a highly inflammable nature that will not withstand a

1 conviction in the appellate court if the People convicted the
2 defendant of murder. I don't think it would stand for a
3 minute, and I'm going to give my reasons for it. So that I
4 won't just be talking on conclusions, I'll give factual
5 matters in a minute.

6 I have not decided as yet, but I fully understand
7 that the transcript shows -- correct me if I am wrong --
8 that there is a motion by defendant and counsel for a mistrial
9 based on the inflammability, or the inflammatory statements
10 that have been propounded or forwarded by the prosecution
11 counsel in this case. Is that substantially correctly stated?

12 MR. WEEDMAN: Your Honor is right, sir.

13 THE COURT: That for the moment is submitted.

14 Now, I want to analyze this with you. I want to
15 analyze this with you.

16 Let's go back to the first page. I recognize,
17 when I say that, that we are dealing basically, or at least
18 the motions were made, or motion made, substantially at the
19 time of the cross examination of Brenda, portions of which
20 appear in the transcript of August 26th.

21 MR. KATZ: May I get my transcript so I can follow you?

22 THE COURT: Sure you can. Absolutely. I want you to.
23 You can follow me, too.

24 (Brief pause.)

25 THE COURT: Now, we start in here, and I'll show you
26 what I'm very disturbed about.

27 I want to state at the very start, because of
28 what I am pointing out in this transcript, I will adhere to

1 my original statement that we have made right through this
2 case, statements. The breakdown I'm going to make of this
3 has no reference to, nor is it intended as, a discouraging
4 or demeaning reference to any counsel in this case or to the
5 district attorney if I rule against him. I have said that
6 Mr. Katz, as well as Mr. Weedman, are highly ethical counsel.
7 I stand in back of it a thousand percent. Because I don't
8 agree with what one or the other has done doesn't change my
9 feeling respecting either counsel. Both counsel I consider
10 to be highly ethical and well-learned and well-versed in the
11 law. It is a matter of a difference of opinion that I am
12 proceeding on.

13 I want to get that clear because it may -- the
14 contrary inference might be drawn by someone, and that is
15 not so at all.

3-1

1 Both counsel are diligent counsel and attorneys.
2 I want to make it very clear at least that is my profound
3 thinking in the matter.

4 Now, let's go over here in this transcript. Page
5 4976 we started with the testimony of Donald Costa for the
6 defense, called by Mr. Weedman.

7 We will skip through that.

8 Page 4980, Nancy Pitman, known as Brenda, was put
9 on the stand. Now, the direct examination, as indicated in
10 the transcript was relatively short.

11 Page 4981 defense counsel directs questions
12 directed to Steve Grogan:

13 "Do you know Grogan?

14 "Yes."

15 Now, this is Brenda talking.

16 "When did you meet Grogan?

17 "1968.

18 "Pardon me?

19 "1968."

20 Next page, 4982 -- I am skipping through here,
21 granted. I am just trying to get to the points that I have in
22 mind.

23 "What did he do down there?"

24 That is not a direct quote.

25 "Do you know Ruby Pearl?

26 "Yes."

27 Brenda says, "Yes."

28 Now, she says she knows Pearl and she knows Grogan.

1 "Do you know Lynn Fromme?

2 "Yes."

3 That is three people. She is known as Squeaky.

4 "Yes."

5 "Do you know Shea?

6 "Yes."

7 That is on 4983.

8 I may forget to give the pages as we go through.

9 But I am turning the pages as I go, and counsel have
10 transcripts to follow.

11 "When did you meet Shea?"

12 Brenda says, "I met him probably late '68."

13 "What was Shea doing?"

14 Then she tells what he was doing.

15 Following page:

16 "Recall the date of August 16th, 1969?

17 "Yes. Raid."

18 I may not exactly quote this.

19 "Uh-huh. We had a raid at the ranch," is the
20 exact wording.

21 "What were the circumstances under
22 which you met Nikki Shea?

23 "I was in the house, sitting talking
24 to George. Shorty came in with his wife."

25 Then there is a conversation related.

26 "Was anything said by Shea to you
27 about Nikki?"

28 Now, this is direct examination. This is on page

1 4985.

2 "No. He was talking to George. He
3 introduced his wife to George. The wife
4 sat down.

5 "Who else was present in the house
6 at that time?

7 "Gypsy, I believe. Yeah, it was
8 Gypsy.

9 "Where was Lynn Fromme, otherwise
10 known as Squeeky?

11 "Well, she was kind of all over."

12 Then it goes into sitting in the chair.

13 "Had Nikki been sitting in a parti-
14 cular chair?

15 "No."

16 The question at the bottom of page 4985:

17 "Where did Nikki sit, if she did sit
18 at the location when you were there at the
19 Spahn Ranch and meeting her for the first
20 time?

21 "A She sat in a chair" --
22 this is on 4986 --

23 "at the kitchen table...."

24 I may cut out portions, I repeat. Segments. I
25 may never get through all of it.

26 I just want to hit the spots here.

27 "...then she moved into like an easy
28 chair..."

1 "Did anyone in your presence say
2 anything at all in connection with the fact
3 that Nikki or Magdalene had been sitting in
4 a particular chair?

5 "A No."

6 Bottom of page 4986:

7 "Did Ruby Pearl ever express any kind
8 of opinion or attitude to you with respect to...
9 Nikki Shea?

10 "Yeah. She did. She was -- Shorty
11 came into the house one day, and she showed
12 her --"

13 "Excuse me...."

14 Page 4987:

15 "He had a wedding picture with him."

16 Cutting down to the bottom:

17 "...he pointed to one" --
18 this is the wedding picture --

19 "...she just went 'No. No, how could
20 you?'"

21 In other words, that is part of the direct
22 examination. Basically goes to -- for whatever import it may
23 have respecting the sitting of Nikki in a chair, and I presume
24 it embodies some rebuttal to the People's direct testimony
25 that there was conversation or actions somewhat to the contrary
26 respecting Nikki sitting in a chair according to testimony of
27 some of the witnesses.

28 Now, let's keep going here. Here we are.

1 Now, the dishes. This is the bottom of page 4987:

2 "Was there a time at the ranch when
3 some dishes were mentioned or discussed
4 between you and any of the other persons
5 whom you have already named, including Ruby
6 Pearl?

7 "Yes. One morning I had some dishes
8 on the table. I set up three places to eat
9 breakfast with George.

10 "Squeeky and I and George ate breakfast
11 together usually. And they came in and I had
12 the dishes on the table.

13 "I am sorry, Brenda, who came in?

14 "Pearl.

15 "And she asked me" --

16 this is Brenda --

17 "why I had the dishes, you know, why I had
18 Shorty's dishes on the table.

19 "And I told her, 'We are going to
20 eat breakfast.'

21 "And what she didn't know was that
22 Shorty had given me permission to use these
23 dishes."

#4
1 MR. KATZ: That was stricken, your Honor. That state-
2 ment was stricken.

3 THE COURT: Well, I understand that.

4 Now, that is the end of that page. Yes, I agree.
5 I'm not too disturbed about that.

6 Then, there is more discussion on dishes.

7 "MR. WEEDMAN: Q Did you have a dis-
8 cussion beyond that with Pearl about the dishes?"

9 This is on page 4989.

10 "A I told her we were going to use them
11 for breakfast -- there were no dishes in the
12 house -- and she left, she" -- that is Pearl --
13 "went down to the corral, and then we ate
14 breakfast."

15 Page 4990:

16 "Q Did you say anything else to her in
17 that connection as to why you were using those
18 dishes?

19 "A That we didn't have any other dishes
20 in the house."

21 There is more testimony respecting dishes. Line
22 21 on page 4990:

23 "We had no dishes . . . and so Shorty
24 told me to go ahead and use the dishes he had
25 in a box under the table."

26 Now we go over to page 4991:

27 "Q Do you know a young man by the
28 name of Paul Watkins?"

1 That is page 4991, direct examination.

2 "A Yes.

3 "Q Where did you meet him?

4 "A In Topanga Canyon. '68.

5 "Q Did there come a time when Paul
6 Watkins had been living at the Spahn Ranch?

7 "A He left a lot of times. In fact,
8 he wasn't really there very much..

9 "Q Did there come a time when he
10 appeared at Spahn Ranch and stayed for just a
11 very short time, perhaps one or two hours, and
12 then left?

13 "A Several times."

14 Now, line 25, page 4991:

15 "Q Do you recall such a time when my
16 client, Mr. Grogan, was present with you,"
17 Brenda, "and Paul Watkins?

18 "A Yes.

19 "Q Approximately when was that, Brenda?"

20 That is the bottom of page 4991.

21 This is on page 4992:

22 "A Paul had come into town for a draft
23 physical --

24 "Q About when was that, Brenda, as
25 nearly as you can recall?

26 "A September.

27 "Q Of what year?

28 "A '69, I believe."

1 Line 13, page 4992:

2 "Q Was there some discussion between
3 yourself and Paul Watkins at this time and my
4 client, Mr. Grogan?

5 "A Yes. Paul was explaining to us
6 about his draft physical, and he was talking
7 about how Paul Crockett had taught him how to
8 mock up cancer in his lungs," and so forth.

9 "Q Go on. Did he say anything else?

10 "A Then he went on to talk about how
11 he was talking to a psychiatrist,"
12 and then he relates how he talked to the psychiatrist.

13 Page 4993. He stated he had occasional homo-
14 sexual tendencies.

15 Now, page 4994. Now we are getting into the --
16 I'm disturbed at this point. This is the basis of some of
17 my thinking. He goes into the conversation here, Mr. Weedman,
18 line 1:

19 "Q Did Mr. Watkins" --

20 Now he is talking to Brenda on the stand.

21 "Q Did Mr. Watkins tell you at that
22 time whether he had passed the army induction
23 physical or not?

24 "A I don't know if he knew or not."

25 Now, this is line 6:

26 "Q Now, during this time" -- that is
27 approximately August 31st of '69 from his prior
28 statement that the conversation was two weeks

1 after the raid -- "during this time or at any
2 other time, Brenda, when you were present with
3 Paul Watkins and Mr. Grogan, did you hear a
4 conversation of any kind whatsoever between Paul
5 Watkins and my client, Steve Grogan, relative to
6 Shorty Shea?"

7 The answer is, "No."

8 "Q Did you ever hear my client in effect
9 confess the murder of Shorty Shea to young Paul
10 Watkins?

11 "A No.

12 "Q Did there come a time, Brenda,
13 following this conversation when you went to the
14 desert -- and by that I mean to the Barker-Myers
15 Ranch -- or not?

16 "A Yes. Not prior, but after that.

17 "Q After that time?

18 "A Yes. I had been in the desert
19 before, quite a while before."

20 Now, dropping down, line 25:

21 "Q When you left Spahn Ranch to go to
22 the desert, was Charles Manson at the Spahn
23 Ranch?

24 "A No.

25 "Q How about my client, was he at Spahn
26 Ranch?

27 "A Yes."

28

4A

1 Now I'm on page 4995 at the top:

2 "Q Did he leave Spahn Ranch before you
3 left Spahn Ranch? I'm referring to my client.

4 "A About the same time. He was going
5 up to Salinas Valley.

6 "Q Approximately when was it then that
7 Steve Grogan left the Spahn Ranch, to your personal
8 knowledge?

9 "A Sometime late in September."

10 Now, at that point, on direct examination, the
11 conversation, as I read the transcript, was given, or related,
12 according to Brenda, starting on line 6 on page 4994.

13 Now, respecting questions asked about horses,

14 "A Well, I used to keep count of them every
15 week." Also donkeys.

16 Now, line 6, page 4996:

17 "Q Do you know a young girl by the
18 name of Barbara Hoyt?

19 "A Yes.

20 "Q And was she staying at the ranch at
21 any time? By that I mean at the Spahn Ranch?

22 "A Yes.

23 "Q Were you at Spahn Ranch immediately
24 following the August 16, 1969, raid on Spahn
25 Ranch?

26 "A Right after it?

27 "Q Yes.

28 "A Yes."

1 Then there are questions -- I will read it.

2 "Q Did you remain there continuously,
3 let's say, until the 1st of September, or not?"

4 That would be '69.

5 "A Yes.

6 "Q At any time, Brenda, during that
7 period of time did you hear anything that sounded
8 like screaming during the late night hours or
9 very early morning hours? And if so, what was
10 that?"

11 Then there is somewhat of an evasive answer. But,
12 anyway, that isn't the point. That isn't my concern.

13 "A One thing about the ranch -- and
14 it's a very noisy place," lots of animals, and
15 so forth.

16 I'll turn to page 4997.

17 "And there is donkeys . . . but I never
18 heard any human scream."

19 I believe that I struck that.

20 "Q Did anyone else around there ever
21 say anything to you about hearing a man screaming
22 at night?

23 "MR. KATZ: Objection.

24 "THE WITNESS: No.

25 "MR. KATZ: Calling for hearsay. Excuse
26 me. Move to strike. Calls for hearsay."

27 "Objection is well-taken. Strike it."

28 Now, the next question down here on line 19,

1. page 4997:

2. "Q Brenda, yesterday did you have
3. occasion to talk with Ruby Pearl?

4. "A Yeah. I spoke with her out in the
5. hallway."

6. And then there is a discussion about the dishes.

7. Now, that is the end of the direct examination, as
8. near as I can find, in substance, on page 4998, by Mr. Weedman
9. of Brenda. Am I correct in that? I have been unable to find
10. anything further in this transcript respecting Brenda on
11. direct.

12. Now, cross examination, and here's where some of
13. my disturbance comes in. This starts on 4998.

14. This isn't altogether directed to just one -- I'm
15. not attempting to single out any one at this juncture, any
16. one question, but it is the cumulative number of questions
17. that flow through this transcript, and probably others in the
18. trial, but I'm not going into that.

19. "Q Miss Pitman, did you tell Mr. Weedman
20. all of the truth when he asked you what other names
21. you are known by?

22. "A I have gone by other names."

23. Page 4999:

24. "MR. WEEDMAN: Excuse me for interrupting,
25. your Honor. I have a witness here," and then there
26. is a discussion.

27. The question of materiality was suggested by the
28. court.

1 Turning the page, a discussion about the inter-
2 vening witness. We turn over here, and "There is no objection."

3 Now, the witness comes in on page 5003. The
4 witness is sworn, Miriam Binder.

5 "Q" by Mr. Weedman -- "Do you know Donald Shea?"

6 She describes in her testimony that she is a
7 friend of the family, and a question to Mrs. Binder:

8 "Q Did you ever have a discussion with
9 Mr. Shea about his wife?

10 "A Several."

11 Then he goes into the discussion.

12 "Q What did Donald say to you on this
13 occasion, August 19, 1969, about his relationship
14 with Nikki?

15 "A He was very upset about it."

16 Then there is related the fact that he found a
17 note, line 19, page 5007, in his room.

18 Next page, 5008, line 25:

19 "A Well, he said that she had left him
20 and that he was worried because she" -- that is
21 the wife, Nikki -- "feared for his life."

5 fls

5-1

1 THE COURT: Page 5009.

2 "Well, she said that a man that she
3 used to go with wanted her" --

4 that is Nikki --

5 "to go back with him, and" --
6 the man --

7 "pointed a gun" --

8 at the man --

9 "that isn't in the testimony, but this is what
10 she said."

11 That's the witness' statement.

12 Now, cross-examination of Mrs. Binder, picks up
13 cross on 5012, questions of Mr. Katz that he didn't subpoena
14 her, I don't think particularly are material one way or the
15 other for my point. It carries no weight.

16 Now, cross on 5012 -- questions on page 5015,
17 cross, line 28:

18 "Incidentally, did you ever see Donald
19 with a set of guns, a matched set of guns?

20 "I saw some guns . . . pearl-handled
21 guns."

22 "Showing you 9-A and 9-B for identifi-
23 cation, I want you to look at these guns . . .
24 ever seen them before?"

25 I don't think -- I don't know how prejudicial it
26 is. But I don't think it is a material part of cross-
27 examination.

28 I am merely pointing it out as we go through here.

1 I don't think it is so vital the court has to be too disturbed.
2 But I don't think it is a proper part of cross-examination of
3 this woman.

4 Now, here is where some of the problems come in.
5 Page 5017, on these guns, that I don't think are material to
6 start with on cross.

7 If it stopped there it wouldn't be so much, I guess.
8 But we go over here into 5017, a continuation on the guns.
9 Now, here is the witness on the stand, line 1:

10 "Did you ever testify concerning the
11 guns that are before you that Shorty said,
12 'They are beautiful; there are no other guns
13 like that. Shorty seemed proud of them'?

14 "A Not these same guns."

15 Now, that's immaterial to my mind. No place there,
16 whether she did or didn't say it is not germane. It isn't
17 cross. It isn't within the proper scope in my opinion of
18 cross.

19 Again, as I go through here, any of these isolated
20 points that at this time may seem very small, there is an
21 accumulation of other questions that disturb me very greatly
22 as I go through here.

23 Line 5:

24 "A Not these same guns.

25 "MR. WEEDMAN: Excuse me.

26 "May I ask what counsel is getting at. . ."

27 Then there is an argument.

28 Now, line 10:

1 "Q BY MR. KATZ: Mrs. Binder, I
2 am going to ask you to start reading on page
3 189, start at line 2, where it says, 'Now,
4 with respect to the guns Don had, had you
5 ever seen him with a matched set of guns?'
6 Would you read that page to yourself and then
7 read the next page, 190.

8 "Have you read your testimony?

9 "A Yes.

10 "Q Now, Mrs. Binder, isn't it true
11 that you don't know very much about guns?"

12 You see, you've got a witness on the stand at that
13 juncture where it starts to be serious. She hasn't even gone
14 into the question of guns. No point is made of it by the
15 defense counsel on his direct examination.

16 It is not a proper cross. It is incidental. It
17 is collateral, but immaterial, even at this point from this
18 witness, whether she saw guns or she didn't see guns.

19 Now, and the damaging part comes in this that now
20 the counsel is impeaching, attempting to impeach in one
21 fashion or another -- and it is legitimate, I don't mean to
22 give the wrong inference from it -- he is now telling the
23 people, the jury in this case, "Well, at the grand jury
24 hearing you testified so and so."

25 It is immaterial. Totally immaterial if it is
26 impeachment of any kind to any issue in this case. That is
27 my feeling at this point.

28 Now, then this discussion continues. There is the

1 damage of it in my opinion.

2 "Have you read your testimony?"

3 I am continuing now on page 5017, line 15:

4 "Have you read your testimony?"

5 "A Yes.

6 "Q Now, Mrs. Binder, isn't it true
7 that you don't know very much about guns?

8 "A That is correct.

9 "Q Isn't it also true that you
10 didn't particularly like Don displaying the
11 guns in the presence of your children?"

12 Totally immaterial to this man's trial for murder.

13 "Isn't that true?

14 "That is true.

5a

5A

1 "Q You didn't pay much attention to the guns
2 and their physical appearance?

3 "That's true.

4 At line 27:

5 "Q I take it that you wouldn't be able
6 to give us an independent description of the guns
7 that Don had in your house, is that right?

8 "A I couldn't."

9 Totally immaterial.

10 Now I am on page 5018.

11 "Is that correct?

12 "A That's correct.

13 Line 5:

14 "Q However, the guns that he did have,
15 what was his attitude toward the guns?"

16 It is immaterial and it is prejudicial right at
17 that point.

18 "MR. WEEDMAN:" -- then objection comes in.

19 "Seems to me this is not material
20 from this witness.

21 "It's not proper cross. It wasn't
22 touched on in direct."

23 Then this argument.

24 MR. KATZ: Excuse me, your Honor. On 5018 Mr. Weedman
25 indicates he has no objection.

26 THE COURT: Wait till I make my statement, counsel. I
27 have got a lot to say here.

28 Well, I have indicated it is not proper cross.

1 I rule on the ultimate, I rule on admissibility whether counsel
2 objects or not. But I am not going to go into that. You can
3 draw your own conclusions from it.

4 Now, turning the page, now, these questions have
5 resulted in discussion here on page 5018 on guns before this
6 jury in which the defendant is charged with murder of Shea.

7 Questions are directed to the witness respecting
8 whether Shea had or didn't have, or the description, whether
9 she remembers conversations or statements respecting the guns
10 of Shea.

11 I can't see how it will materially affect -- prove
12 or disprove any issue here.

13 That is number one. It has a very prejudicial
14 effect on the jury trying the defendant in this case.

15 Now:

16 "How do you characterize your relationship
17 with Don?

18 "Exceptionally good friends."

19 That's fine. Now, let's see.

20 Now, here, redirect examination. That's on
21 page 5020. Now:

22 "BY MR. WEEDMAN: Can you tell us whether or
23 not your husband gave Mr. Shea a sum of money with
24 which to purchase two pearl-handled guns?"

25 There is testimony on that.

26 Line 27:

27 "Be careful, you will fall down, be careful
28 of the step."

1. Recess -- no, no recess.

2. Now, proceed here on page 5022. Nancy Pitman
3. resumed the stand.

4. "You have been sworn. Sit down."

5. Now, cross examination resumed by Mr. Katz.

6. This is where we were cut out on the start here,
7. by the other witness interloping in here.

8. "Miss Pitman, what other names do you go by?"

9. "Brenda McKay, Cydette Perrell."

10. "Q Any other names?

11. "A Not that I recall.

12. "Q How about Nancy Laura Moss?

13. "A Yes. Yes, I have. That's a long time
14. ago.

15. "Q How about Nancy L. McCann?

16. "A No. I don't remember going by that."

17. Question on page -- line 7 of 5023:

18. "On April 19, of '69, do you recall using the
19. name Nancy L. McCann?

20. "Your Honor, I don't think it is material."

21. And I make a statement, "I don't know if it is material."

22. In any event:

23. "THE COURT: All right. Ask your questions."

24. Line 23.

25. Then the objection again by Mr. Weedman, line 23
26. on 5023, or at least a statement:

27. "I don't know about being 'permitted' to do
28. anything, your Honor. I must say if it is impeachment,

1 clearly it is, I suppose, permissible.

2 "THE COURT: You can ask the question,
3 Mr. Katz."

4 Now we go to line 28 on page 5023:

5 "Do you recall using the name Nancy L.
6 McCann?"

7 Now we are on top of 5024:

8 "A No, I don't.

9 "And isn't it a fact that you are --
10 strike that. Had you ever used the name Penelope
11 Tracy?

12 "A Yes.

13 "And Penelope Rose Miller?

14 "A No. I don't remember using that.

15 "Q All right. Isn't it a fact that your
16 true name is Mrs. Grant?

17 "No. I'm divorced.

18 "Q Oh, you are divorced?

19 "A Yes.

20 "Q Did you marry Mark Roland Grant?

21 "A Yes."

5 B

5B-1

1 Now, some of those questions are probably
2 permissible but the continuation in there with the witness on
3 the stand respecting personal problems or difficulties, that
4 I think goes far beyond -- not necessarily reversible or
5 prejudicial by itself, as to what name she may or may not have
6 been using.

7 "Did you marry Grant?

8 "MR. WEEDMAN: Excuse me. I guess
9 it is all right, but these are really
10 irrelevant matters."

11 Then it goes, Mr. Katz, "It's foundational. We
12 are getting into an issue of bias and prejudice. I will be
13 right there."

14 "MR. WEEDMAN: I will withdraw the
15 objection.

16 "Q BY MR. KATZ: This Mark Roland
17 Grant" --

18 Now, I am on line 23, page 5024:

19 "This Mark Roland Grant is really
20 Bruce McGregor Davis, isn't that right?

21 "A No.

22 "Q It is not Bruce McGregor
23 Davis?

24 "A --"

25 On line 27, page 5024:

26 "A No, it is not.

27 "Q On April 20, 1970, you married
28 a person whose name was given as Mark Roland

1 Grant in Las Vegas, is that right?

2 "A Yes.

3 "Q As a matter of fact, you
4 married Bruce McGregor Davis, isn't that
5 right?

6 "A No, I did not.

7 "Q Oh, you did not?

8 "And Clem was present, wasn't
9 he, during the marriage?

10 "A Yeah. I believe so.

11 "Q And Gypsy, or Cathy Share, as
12 you know her?

13 "A Yes.

14 "She was present also?

15 "Yes.

16 "Q Sometimes you are referred to
17 as Mrs. Davis, aren't you?

18 "A No. I have not except by the
19 police department.

20 "Q Showing you People's 32-R for
21 identification, do you recognize that person?

22 "Yes.

23 "Q Who was that?

24 "A Bruce Davis.

25 "Q Also known as Jack Paul McMillan,
26 is that right?

27 "A I don't know."

28 Now, right up at that point, right up to there the

1 examination has pulled away into collateral issues, matters
2 that impeach the defendant's case in a sense of being
3 prejudicial to the defendant's case. It is an attack on the
4 witness.

5 If the witness is asked a few questions: What is
6 your name? Have you given aliases? Probably is permissible.
7 But now it goes into a long attack on immaterial matters but
8 highly prejudicial to the jury respecting her past history:

9 "Were you married to this man?"

10 Three times she is asked that same question:

11 "Were you married to this man under one name?" The answer is

12 "No."

13 "Oh, you were not?"

14 And now there is an assumptive question.

15 "Q Oh, you were not?"

16 Then it adds before she answers it:

17 "Clem was present during the marriage?

18 "Yeah, I believe so."

19 No, there is no answer. The only answer we have
20 in the whole transcript here, she says, --

21 "As a matter of fact you married Bruce
22 Davis?"

23 My position at that very time there in conjunction
24 with other questions is it is a prejudicial situation because
25 it doesn't make any real difference. It doesn't prove or
26 disprove anything in my opinion, and it isn't a part of the
27 case that should properly be produced as against the defendant
28 in this case.

1 The witness is on trial on this -- you are trying
2 the witness here for a lot of things she has done. Whether
3 she has married a man or not, I don't care. I don't try the
4 facts. I don't know what the jury thinks.

5 They may have serious questions. It is putting
6 the witness on the stand on trial here instead of the defendant.

7 I am listening to the testimony as a judge and so
8 is the jury respecting prior marriages of this party. Who
9 was present, although the answer is no.

10 You have referred to Mr. Davis:

11 "No, except for the police department."

12 Now, you bring in the police department. Unless
13 you have convictions of felony, why, you put in matters that
14 are highly prejudicial to the defendant for one thing, or in
15 any other case.

6

6-1

1 Now, this is just some of the matters that
2 disturb me as I go through here.

3 "Q Who is that?

4 "A That's Bruce Davis."

5 I'm going through here. This is line 21, page
6 5025.

7 "Q Also known as Jack Paul McMillan,
8 is that right?

9 "A I don't know that."

10 Now then, the objection comes in:

11 "Excuse me, your Honor." --

12 Well, a serious objection made by Mr. Weedman.

13 Turning the page here, 5026, by Mr. Katz. Now,
14 a question about the Manson family. Very disturbing. A part
15 of the culmination of questions that correlate right into the
16 ultimate problem the court has got to face.

17 Now I'm on page 5026. This is line 5.

18 "MR. KATZ: Q You have been a member
19 of the so-called -- I will say the 'so-called'
20 Manson family because the news media has
21 referred to you people as such -- since 1968;
22 is that right?"

23 Now, this is the first time "news media," that I
24 know of, has been injected in here. It refers to the Manson
25 family of this girl. A segment of the question, I think, would
26 be permissible. The injection of "news media" is highly
27 inflammatory when the news media is publishing the fact that
28 Manson is over here charged in another court with killing

1 Shorty Shea, another man's trial is coming up, Davis is coming
2 up in a few months, and the news media has harassed, chewed
3 over, the Manson family since this horrible murder. I don't
4 discredit that; it is a terrible thing. It has been gone over
5 and over.

6 Now, the words "news media" has no place at all in
7 this case charging this man with murder, to constantly refer
8 to what the news media said, because you immediately incite
9 the jury. The minute you talk about the news media -- and I
10 think you refer to it six times, six times that the reference
11 is made to news media.

12 Now, the question again:

13 "You have been a member of the so-called
14 Manson family."

15 That is the question. Now, the "news media," there
16 is no place in the question.

17 "You have been a member of the Manson
18 family?"

19 "A Yes."

20 I have a notation, page 5034. I will turn to page
21 5034.

22 I better take it up in sequence.

23 The answer is "Yes."

24 "Q You first met Charles Manson
25 and some of the girls in Topanga Canyon in
26 1968, is that right?

27 "A Yes.

28 "Q That was after you left home,

1 is that right?

2 "A Yes.

3 "Q As I believe you said before,
4 you joined them forever."

5 I don't know. It is immaterial. If she says I'm
6 a member of the Manson family, period. That is the Manson
7 family. It's argumentative. It's immaterial if you're
8 forever in the Manson family or not.

9 "You are a member of the Manson family?

10 "A Yes."

11 The People's case is not that this is a forever
12 organization. The People's position, very crudely and briefly,
13 is that the Manson family is a conspiracy of people, and in
14 this particular event there was a conspiracy to unlawfully
15 cause the death of Shorty Shea, a murder. That is the Manson
16 family in operation as far as this case is concerned, and no
17 further -- a conspiracy.

18 The words "Manson family" are thrown in there
19 gratuitously. It is and has been referred to in the case, but
20 she has said, "Yes, I'm a member of the Manson family." She
21 says that, "Yes." That is an answer to the question.

22 Now, here's where the trouble comes.

23 "You joined them."

24 It's immaterial, totally immaterial, whether she
25 joined them forever or didn't.

26 "Q Were you a member at the time
27 of this conspiracy?"

28 If we assume there is a conspiracy.

1 "A Yes."

2 That has materiality. The others are -- the
3 other shouldn't be in a question, and are prejudicial, as it
4 will appear from here on out.

5 She says,

6 "I don't remember ever saying that
7 to you."

8 I don't know of anyplace in this transcript where
9 she does say that. I don't know. I will be glad to have it
10 pointed out, but I don't know of any place in here where she
11 ever did say that.

12 MR. KATZ: Say what? I didn't catch that.

6a

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

6a-1

1 THE COURT: Now, wait till I get through here.

2 That is the question before the jury. The damage
3 is done. To what extent it may or may not be done is right
4 there.

5 "Q You said before you joined them
6 forever.

7 "A I don't remember saying that
8 to you.

9 "Q Well, not to me specifically,
10 but do you recall ever telling anybody that
11 you had joined the family forever?"

12 Highly immaterial. What difference does it make?
13 She can tell them anything. It is immaterial to this case.

14 That is in there. That shouldn't be there, in my
15 opinion.

16 There is an objection:

17 "MR. WEEDMAN: Excuse me, your Honor.

18 That's not a proper question to ask,"
19 and then there is argument.

20 "MR. KATZ: Aside from Mr. Weedman's
21 grammar, it is relevant to bias and prejudice
22 with respect to her affiliation with a group
23 of people."

24 I don't think whether she joined them forever or for
25 20 minutes particularly affects her bias or prejudice. She
26 said she was a member of the Manson family at the time of this
27 incident. I don't think "forever" adds one way or another to
28 the situation, as I will indicate in just a moment in further

1 testimony here.

2 Now we are on the top of page 5027, line 4:

3 "The defendant" --

4 this is Mr. Katz --

5 "has been shown by evidence to be a substantial
6 member of that family."

7 That's all right. There's no issue there.

8 Now we go on here. The question was withdrawn.

9 Over here on page 5029. Now we are back on this
10 question "forever."

11 Question on line 1, page 5029. I think this is
12 immaterial. I'm saying it because it my reasoning here.

13 "Q Would you say it is fair to say
14 now that you have stayed with the family
15 forever?"

16 It is immaterial.

17 "Would that be a fair statement?

18 By 'family' you know who I am referring to."

19 Then there is a dissertation on the ethics or the
20 ultimate of the so-called family.

21 "We are together right now."

22 No place in this case.

23 "Q But isn't it fair to say that
24 you stayed forever with the family?"

25 Proper question.

26 "A" --

27 and here's your argument; this is the damage of what happened
28 to these questions. "What is your definition of 'forever'?"

1 Here's the hassle now. The witness is, in effect,
2 on trial.

3 "Q Well, I'm just trying to quote
4 you."

5 Here's your hassle. "' I stayed forever.' What
6 did you mean by that?"

7 That is Mr. Katz.

8 "Let me give you a frame of reference.
9 It is not fair and I'm going to withdraw the
10 question.

11 "Do you recall that when you first met
12 Charles Manson and some of the people in Topanga
13 Canyon in 1968, the same day you left home, one
14 of the girls said, 'You can stay here if you
15 would like to, you know,' and you replied, 'And
16 so I did and I stayed forever.' Do you recall
17 those words?"

18 Immaterial. It isn't either going to prove or
19 disprove, and it can't establish bias or prejudice other than
20 what may have been established and would appear from direct
21 questions that I believe I suggested, or, in any event, were
22 directly asked and appear in a few minutes. There is your
23 bias or prejudice, if you have any. These are collateral,
24 prejudicial matters.

25 "'So I did and I stayed forever.'"

26 There's your hassle. It is hassling before the
27 jury, too.

28 Line 17:

1 "A Yes. That was in reference to
2 having stayed there then up to the time that
3 I said that. I believe that was my testimony
4 at another trial.

5 "Q Yes. And is it a fact that you
6 stayed, using those words, with the family
7 forever and you are together to this date?

8 "A Yes.

9 "Q All right. And with respect to
10 the defendant, is he" --

11 Grogan --

12 "a member of the so-called Manson family, Mr.
13 Grogan?

14 "A The 'so-called Manson family'
15 are your words."

16 There is a hassling going on here.

17 "Q Yes. I understand that, Brenda.
18 That is why" --

19 Now, at the top of page 5030 --

20 "That is why I used 'so-called'
21 advisedly."

22 That is in quotes.

23 "Whatever family unit you want to
24 call it, is he a member of that family unit,
25 the structure?

26 "A I don't live in your thought.
27 In other words, whether I could say yes or
28 no, it doesn't mean anything, because we are

1 together right now, and that's all there is
2 to it.

3 "Q All right. Brenda, is Charlie" --
4 that is Charlie Manson --

5 "together in your thought, too, Charlie Manson?"
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6a6

1 Now, there are problems. There is this Manson,
2 convicted of fiendish murders, sentenced to capital punishment,
3 now on trial with this very -- here's the trouble now coming
4 that bothers me -- right now as a co-defendant, would be tried
5 in either this court or 106 -- Davis moved for severance of
6 the trial, which was proper and was granted -- and that is one
7 of the reasons, that is the reason for severance, basically,
8 to get Manson out of the picture here and not to have to try
9 the case with Manson.

10 Now, here is put in here to this jury that is
11 passing on this man,

12 "Brenda, is Charlie together in your
13 thoughts?"

14 Now, what difference -- ". . . is Charlie together
15 in your thoughts, too, Charlie Manson?"

16 Then, Mr. Weedman: "Objection."

17 Then, there is discussion. Then there is more
18 discussion on the Manson family.

19 Now we are over on page 5031. I don't know
20 whether it is proper. I have consistently made that statement
21 because I, in my own mind, have tried not to curtail cross
22 examination. I thought I did a fair job of not curtailing it.
23 I appreciate Mr. Katz feels otherwise, but I thought so.

24 Here again:

25 "THE COURT: I don't know whether it is
26 proper cross, whether it goes into the elements
27 of the direct examination. That is what I am
28 concerned about.

6B

1 "MR. KATZ: Your Honor, the witness' bias
2 and interest . . . "

3 Well, I'm going to -- you're not going to show
4 bias and interest by many of these questions. They are preju-
5 dicial and don't go necessarily at all to bias and interest,
6 in my opinion.

7 Now, then there is argument between counsel. Then
8 I have some comments, line 17, page 5031. How are you going
9 to show bias? And then there is more discussion.

10 "I don't like to argue in front of
11 the jury. Where is your bias or prejudice?"

12 And more discussion.

13 Now, let's go over to page 5033, line 1:

14 "MR. KATZ: I would like to rephrase the
15 question. The thought is lost, anyway.

16 "THE COURT: Rephrase it.

17 "Q BY MR. KATZ: Let's start out with
18 the defendant here. You know him by 'Clem,' don't
19 you?

20 "A Yes.

21 "Q You regard him as a brother, don't
22 you?

23 "A Yes."

24 And these are proper questions. I have no issue
25 on these at all.

26 "Q As a father?

27 "A As a father, as my son.

28 "Q And as your son, too, is that right?

1 "A Sure.

2 "Q And you love him very much, don't you?

3 "A Yes."

4 That is what I was referring to as part of the
5 examination. Those are proper questions. Those show lack of
6 prejudice or bias or what-have-you, and very definitely go to
7 the position of bias and prejudice. That is why I am saying,
8 if you've got bias and prejudice, there it is. But not by
9 these other incidental questions that attack, in effect --
10 seriously attack -- the witness on immaterial matters by
11 indirection and can only be prejudicial. That is my feeling
12 at that point.

13 I still am only pointing it as incidental to the
14 ultimate point that disturbs me.

15 Now, line 22, page 5033:

16 "THE COURT: I'll take an answer to the last
17 question.

18 "Q You love Charlie Manson, is that
19 correct?"

20 The question was read.

21 "A Yes, that is correct," she loved him.

22 All right. Now, 5034, by Mr. Katz:

23 "The same is true of Bruce Davis, is that
24 right?

25 "A Yes."

26 THE COURT: That's all right. That is a good question,
27 if it shows a feeling of bias or prejudice or affection for
28 the grouping, for the conspiracy, for the people there,

1 whatever you want to call it, that's all right.

2 "Q The same is true of Tex Watson?

3 "A Yes."

4 "MR. WEEDMAN: Oh, your Honor, for heaven's
5 sake. Tex Watson is being tried right across the
6 hall.

7 "THE COURT: I will sustain objection to the
8 last question."

9 Now, down to line 17, page 5034:

10 "Q Now, going back to this time when you
11 joined this group of people" --

12 Now, we are still on cross -- "have you later
13 attached an appellation to it, a name to the group,
14 such as 'The Family'?"

15
16
17 7 fls

#7

1 You see, this is taken up again, although "family
2 forever" was the first direction of the inquiry.

3 "A No. We never put any name on anything."

4 I don't think it is material. The basic materi-
5 ality is whether the group of people up here got together, not
6 the nature of the people. It isn't the name, "What do you
7 call it? Are you 'The Family'? Family man? Are you in there
8 forever?"

9 The basic premise of the People's case is, is
10 there a conspiracy of a number of people to commit a public
11 crime, or a crime, and in this instance, the death of Shorty
12 Shea?

13 This is the only reason that the family, if you
14 want to call it that, comes in at all. The name, it is im-
15 material, such as the family. It is interrogating the witness
16 on matters that aren't material, in my opinion.

17 "A No. We never put any name on anything.

18 "Q I understand you haven't, but do you
19 recognize" --

20 Now, here is this press business again:

21 "Do you recognize that when I or the press"--

22 Now, the press, there is the bad part of pushing
23 the press -- hasn't got anything -- that is why we have censor-
24 ship when it comes to the press -- in that position I have
25 always backed up the district attorney's office. There
26 shouldn't be any of these injunctions or prohibitions on the
27 limitation of the right of free speech or what counsel want
28 to say.

1 I have never granted it, and I have a very serious
2 mind on the position of the D.A.'s office that it is correct,
3 there should be no injunctions. But that doesn't mean I
4 advocate constant references to the press in the trial with
5 the defendant and twelve jurors.

6 "I understand you haven't. You recognize
7 when I or the press or someone refers to 'The
8 Family' they are referring to the same group of
9 people that you and I are discussing."

10 Now, it doesn't make any difference what she recognizes.

11 "Do you recognize?"

12 The questions are, what are the facts? What hap-
13 pened? What was said between the principals here, basically?

14 Now, this answer: We now go into a long discussion
15 on the family again.

16 The answer of this witness:

17 "The family grows every day. Every day the
18 family gets bigger.

19 "Q Tell us in '68, '69, who were the
20 members of the family. So you and I will understand
21 and have a common ground on which to launch a
22 discussion."

23 That is an improper question. The answer is im-
24 proper, basically. Have a discussion on the Manson family.
25 It is highly prejudicial.

26 The question is, was there a conspiracy?

27 You see, this wasn't gone into on direct.

28 Here is my problem. Mr. Weedman directed his

1 questions to a conversation with this witness, with three
2 people present. Under the girl's testimony, and what was
3 said, or was anything said about --

4 That was the substance, that was the basic gist
5 of it.

6 Now, here is a discussion going on of the merits
7 or demerits, or at least the question is asked of the Manson
8 family:

9 "Who were members of the family so we can
10 have a common ground on which to lodge a discussion?"

11 I say it is highly prejudicial at that point
12 right there.

13 Here the objection comes in by Mr. Weedman.

14 "MR. KATZ: The witness has indicated that
15 she doesn't recognize any group of individuals to
16 be a family."

17 It doesn't make any difference what she recognizes
18 or what she says is a family or friend or what she told you,
19 at least four of them are very dear friends of hers, and she
20 recognizes them as father and mother. Those are principals
21 in the situation. What difference does it make? It is
22 prejudicial to keep throwing this in.

23 "The witness indicated she didn't recognize
24 any group of individuals to be a family. So when
25 I refer to the family, it has no meaning to her
26 or has no significance. I may be talking about
27 Neil Armstrong on the moon or some astronauts
28 or some other person. I don't know."

1 "Suppose you reframe your question."

2 Now, then, down here:

3 "All right, I will withdraw the question."

4 This is line 16, 5035.

5 "Redirect your question."

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

7a-1

Line 20:

"Q BY MR. KATZ: Let's see who you
recognize. . . ."

Now, I have a serious question whether it is at
all proper cross-examination, at all. Who she recognizes.

Matters as to who was at the conversation that she
testified to on direct, are obviously clearly admissible. She
hasn't testified on direct that she necessarily was a member
of the family, but she has testified she went there and did
live at Spahn Ranch.

The question as to "Who did you live with?" would
be material.

"Who was there at the time? What did you hear
said between these people, if anything, about the commission
of a crime?" Could be permissible.

But here this branches way out on all sorts of
people, and some of them have bad reputations. Some of them
have been bandied around in the newspapers with question marks
after them.

So that you have got a jury trying the defendant,
and now you are going into some of these people who have no --
not a proper part of cross and prejudicial. There is not a
direct answer to any of the direct of what the defendant asked
the witness.

For instance:

"Who do you recognize?"

I think that's immaterial. Now, unless it is
directed to some one of the parties who have been the subject

1 of the direct examination, it isn't a proper cross.

2 The effect is to put this girl on as a direct
3 witness. You get into conclusional matters here at that.

4 "Who do you recognize? I show you

5 No. 32-M. Who is that?

6 "That is Clem.

7 "Is he a part of this group of people
8 that you lived with in 1968, 1969 and 1970?

9 "Yes."

10 She has testified to that, though. That is
11 testified to. It is covered. She said she loved him back
12 here. So it's a repeat of testimony.

13 "And 32-AA, who is that?

14 "A Bo.

15 "Is that Barbara Rosenberg, is that
16 right?

17 "A I know her by Bo."

18 This is on page 5036.

19 "MR. WEEDMAN: Your Honor, forgive me,
20 but I don't think that Barbara Rosenberg is
21 on trial here. . . ."

22 "THE COURT: Go ahead."

23 Then Mr. Katz -- there is an argument, more
24 discussion about what is meant by "the witness says she doesn't
25 know what I mean by the family."

26 There is more discussion on this. This is our
27 third or fourth page at least of discussion on the family,
28 one way or the other. With the witness on the stand, the jury

1 in the box.

2 Now, line 18:

3 "BY MR. KATZ: . . .Did she live with
4 this family unit?"

5 "Ask the question," I said.

6 "A On and off. . .

7 "Q All right."

8 Page 5036:

9 "Showing you 32-BB. Who is that?

10 "A Diane.

11 "Q That is Snake?

12 "A Yes.

13 "Q Is that Diane Bluestein?

14 "A Yes.

15 "Q She also lived for a period of
16 time with the family unit?"

17 I don't know of her being brought into any of the
18 conversation anyplace, any of the entire trial, do I remember
19 the name of Bluestein being injected in the matter, by the
20 way.

21 MR. KATZ: She definitely has, your Honor. There is no
22 question, and I can prove it to you.

23 THE COURT: All right. All right.

24 Now, we will turn over to page 5037:

25 "Q From now on I'm just going to
26 refer to the unit as 'the family.'

27 "With reference to 32-0, who
28 is that?

1 "A Paul Watkins.

2 "Q Did he live with the family
3 for a period of time?

4 "A Yes."

5 Then there was further statements.

6 "Danny De Carlo. Patty. Dave Hannon.
7 Sadie."

8 This is cross-examination now.

9 "Bobby Beausoleil.

10 "Also known as Cupid?"

11 Now then comes objection. Continued line of
12 questioning.

13 And then there is argument between counsel.

14 Then this is Mr. Katz talking on page 5039, line 3:

15 "Your Honor, I think we are entitled
16 to show that there is a close, cohesive unit
17 which has been referred to at least by the
18 news media. . ."

19 There is the news media again. Trying the paper, the objection
20 right there. The news media has no place in the case any way
21 you figure it.

22 ". . .as the Manson family."

23 The questions should be directed to the individuals
24 in the so-called family that are accused or have a material part
25 in the alleged murder. There can be members, and there are
26 members of the family that aren't necessarily all active
27 participants. It does no good, but can only be prejudicial
28 to show numerous pictures in the presence of the jury in direct

1 testimony respecting the family.

2 The question is what did certain individuals do?
3 What did they say? What was their pattern or mode of operation
4 to commit a public offense or a crime? And particularly, to
5 wit, the killing of Shea.

6 Now, anything directed -- that's highly material.
7 But this is drifting away from it, and the only effect it can
8 have by running into all these family members is to prejudice
9 the jury. That's the ultimate effect of it in my opinion.

10 Now, then Mr. Katz:

11 "This witness, though she will not
12 accept the appellation is a member . . ."

13 All right. She said she was a member. Before,
14 she testified she is a member.

15 You have had four pages now, she said she was a
16 member. So she did. She may not accept that statement of
17 Mr. Katz. She did accept, back here, as indicated by the
18 transcript, said, "Yes, I am a member of the family."

19 "THE COURT: Objection sustained."

20 Now, we have argument.

21 Turning the page, going over here to 5040. Now,
22 here are some problems. Discussion.

23 "THE COURT: I will sustain the objection.

24 "Sustained.

25 "Q BY MR. KATZ: Brenda, you understand
26 at this time that Mr. Grogan is on trial for his
27 life, don't you?

28 "A Yes.

1 "Q You understand the significance
2 of your testimony, don't you?"

3 These are argumentative questions. I have a
4 serious matter whether they should be asked. Totally
5 immaterial.

6 "You understand the significance of
7 your testimony?"

8 The question isn't what she understands. The
9 question is "Are you telling the truth or not as you are sworn
10 to tell it?" That's the basic premise.

11 It isn't whether she understands -- has no
12 materiality at all. She may have a great materiality. It
13 isn't what she thinks about it, it is either "Are you telling
14 the truth or not?"

15 But the question is:

16 "Do you understand the significance
17 of your testimony, don't you?"

18 "A Yes.

19 "You understand . . . if the jury believes
20 you they might acquit the defendant . . ."

21 Well, that is highly prejudicial. You are going
22 into the mind of the jury. They might or might not. They
23 might not at all.

24 Nobody knows what the jury will do.

25 "If the jury believes you they might
26 acquit the defendant, isn't that right?"

27 It is a prejudicial question. Speculating on what
28 the jury might do with the witness that's on the stand.

1 "A They should."

2 Now, there is your argument that starts from these
3 kinds of questions.

4 "Q Isn't that right?

5 "A Yes.

6 "Q Can you answer my question?

7 "All right.

8 "I move to strike the nonresponsive
9 answer 'They should.'

10 "THE COURT: It may go out."

11 I struck it out.

12 Now, here is the question again, line 20, page

13 5040:

14 "Is it fair to say that the so-called
15 members of the Manson family, you love all of
16 them" --

17 MR. KATZ: Excuse me, your Honor. You misread it.

7b

87B

1 THE COURT: All right.

2 "Is it fair to say that the so-called
3 members of the family" --

4 MR. KATZ: That is right. Not "Manson family."

5 THE COURT: Oh, I will stand corrected.

6 ". . . you love all of them; they are all
7 your brothers and your sisters and your father
8 and your sons; isn't that right?"

9 Now, that has been asked and answered. That has
10 been covered carefully.

11 She named -- she named them, and I believe if the
12 question wasn't specifically asked, I think she did say we
13 are all -- then enumerated them.

14 MR. KATZ: No, she didn't enumerate them, your Honor.

15 THE COURT: Well, she enumerated at least a number and
16 said that they were fathers or brothers or sisters.

17 And so that any bias or prejudice is clearly shown
18 there.

19 I have a notation, "5033."

20 Let's back up and see what it said.

21 MR. KATZ: Yes, your Honor. You interrupted me and said
22 if there are any further pictures --

23 THE COURT: Just a minute, please. I'm not going to
24 start a discussion at this time.

25 5033, the court -- I am backing up, line 3:

26 "THE COURT: Rephrase it.

27 "BY MR. KATZ: Let's start out with the
28 defendant here. You know him by Clem, don't you?

1 "A Yes."

2 And his description.

3 "You love Manson?"

4 And then there is objection.

5 "Tex Watson, is that the same?"

6 "A Yes.

7 "Bruce Davis?"

8 "A Yes."

9 So she enumerates her position here time and again.
10 At least this is an illustration of it, of her deep affiliation
11 with the family or with these members, you want to call it the
12 family.

13 She has said once it was the family. It has been
14 established.

15 Now, that is the point I am trying to make at that
16 point.

17 Now, coming back over here to line 20, page 5040.

18 Now, there is a discussion.

19 "A Mr. Katz, I love you. You are trying
20 to kill us.

21 "MR. KATZ: ". . . move to strike it out."

22 That is stricken out.

23 Now I want to finish my statement.

24 Now, page 5042:

25 ". . . with respect to Clem, . . . you would
26 do anything you could, you would lay down your life
27 for Clem; . . . isn't that right?

28 "A Yes."

1 Now, here are problems. Here are more problems.

2 No, the question about Clem is perfectly all right.
3 There is no issue on it.

4 "As a matter of fact, Brenda, with respect to
5 the so-called establishment and society as we know it," --
6 Objectionable question, but that isn't the point
7 I am worried about:

8 --"you have x'd yourself out from society,
9 haven't you?"

10 That is a prejudicial and immaterial question.

11 MR. KATZ: Excuse me, your Honor. Are you going to keep
12 the jury, or let them go? It is after 12.

13 THE COURT: You are right. Everybody is upset.

14 Let's go over to 2 o'clock, gentlemen.

15 Am I authorized to tell the jury not to discuss
16 the case or come to any opinion or conclusion?

17 Make that admonition, will you, Sheriff, under my
18 order.

19 Tell them to return promptly at 2 o'clock.

20 THE BAILIFF: Yes, sir.

21 THE COURT: Let's go over to 2 o'clock, then.

22 MR. WEEDMAN: Thank you, your Honor.

23 MR. KATZ: Thank you.

24 THE COURT: Thank you.

25 (At 12:05 p.m., adjournment was taken until
26 2 p.m. of the same day.)

7C-1

LOS ANGELES, CALIFORNIA, FRIDAY, AUGUST 27, 1971

2:05 P.M.

(The following proceedings were had
in chambers:)

THE COURT: Now, gentlemen, let's go ahead here. Start
back again.

We are back in chambers. In fact I haven't left
here. Which doesn't make any difference one way or the other.

It is now 5 after 2, and we recessed two or three
minutes after 12.

Now, I am going to proceed. I don't have too far
to go here.

We are in chambers. Defendant, district attorney,
defense counsel, reporter and sheriff and clerk.

Now, I am going to continue. We had gotten to a
point in yesterday's transcript about page 5042 in my
analysis. I want to back up a page because this is very
pertinent questions, rulings in this case at this point.

Maybe possibly repeating myself, but I am not
doing it intentionally.

Page 5042, line 4 -- this is repetitious, but it
is a repeat of questions in substance asked and answered:

"With respect to Clem, a person whom
you love, you would do anything you could. . ."
-- and other statements there --

"isn't that right?"

"Yes."

There is nothing bad about that except that it is a repetitious statement and it simply might be a packet of a whole. As an incident it wouldn't be anything more than a repetitious statement, to go on and ask a question.

8-1

1 Now, I'm disturbed.

2 Again, line 8:

3 "As a matter of fact, Brenda, with
4 respect to the so-called establishment and
5 society as we know it, you have x'd yourself
6 out from society, haven't you?"

7 That is prejudicial error. As an isolated state-
8 ment it might be corrected by telling the jury it has nothing
9 to do with the case. That is my opinion. I would so advise
10 the jury. Probably should have. But it is part of the packet.

11 So, for the purpose of this statement, it doesn't
12 make any particular difference -- for the purpose of my state-
13 ment here -- other than as an isolated incident. It is a
14 serious question because it is an attack of some fashion on
15 the witness, as will appear hereafter.

16 "You have x'd yourself out of society."

17 It is a discrediting comment. A person has a right
18 to X themselves out of society if they want to. A lot of
19 people don't want to co-mingle with the world. They want to
20 live by themselves. It is a common practice of millions of
21 people to isolate themselves, live as isolated individuals,
22 with very little, if any, co-mingling. It doesn't mean they
23 are some kind of fools or idiots. But the inference here is
24 bad, particularly coupled, as it is, --

25 Here's Mr. Weedman's statement:

26 "Your Honor, for heaven's sakes."

27 Well, then, we will pass that.

28 Now, we pass along. I'll cut out most of the

1 arguing and try to get to the point.

2 Page 5043, line 6:

3 "The question is whether or not this
4 witness" --

5 that is, Brenda --

6 "is willing to follow and acknowledge the
7 accepted rules of society as we define them."

8 I defy that statement. That isn't a question. It
9 is not a proper question to the witness.

10 MR. KATZ: It wasn't a question. It was a statement to
11 you.

12 THE COURT: Wait a minute. I'm reading the question.

13 MR. KATZ: No. It was a statement to you.

14 THE COURT: The question is whether or not this witness --
15 I'm reading --

16 MR. KATZ: That is not a question.

17 THE COURT: I'm reading what is in this transcript, and
18 I don't want to be interrupted. I'm reading right in here.
19 I'm reading your statement, what you said.

20 MR. KATZ: Yes, that is correct.

21 THE COURT: "MR. KATZ: " -- I'm reading --

22 MR. KATZ: That's right.

23 THE COURT: Don't interrupt me now. I'm going to finish
24 this. I'm reading it.

25 "The question is whether or not this
26 witness is willing to follow and acknowledge
27 the accepted rules of society as we define
28 them, and I refer to establishment."

1 It is either a question or it is your position,
2 one of the two, or I don't know what it is. If it isn't one
3 of the two, maybe it is your position. Let's say it is. My
4 statement at this time respecting error is that that statement
5 coming from the People is an inflammatory statement, because
6 what this witness thinks about whether she does or doesn't
7 follow or acknowledge or accept rules of society doesn't
8 necessarily or at all impugn her integrity. That is for the
9 jury to decide. They may think she is the biggest liar in
10 the world, but this doesn't impugn or make questionable or
11 credible the truth or veracity of a witness.

12 We might as well say, as an illustration, here's
13 a nudist. There are thousands of those folks all over the
14 state and other states. And nudist colonies are pretty much
15 common, or at least they are not uncommon. People live as a
16 nudist. I wouldn't want any part of it, but that doesn't mean
17 they are all liars.

18 You can't take and say -- and that is why -- I'm
19 not trying to argue, but I'm trying to show you the impression
20 that is left on the jury because she may want to live in an
21 isolated capacity. I therefore say that it is very prejudicial.

22 Then, the further statement -- this is by Mr. Katz:

23 "Now, this witness has x'd herself out.

24 "MR. WEEDMAN:" --

25 and then there is a comment and argument.

26 "THE COURT: I think it is immaterial.

27 "MR. KATZ: Let me attack from another
28 approach.

1 "THE COURT: All right."

2 Now, this is a question, line 18, same page, 5043:

3 "Q BY MR. KATZ: Isn't it a fact,

4 Miss Pitman" --

5 that is Brenda --

6 "that you do not believe in the daily living
7 rules that society has laid down for the
8 citizens?"

9-1

1 Now, that is highly prejudicial. It is conclu-
2 sional. It is impossible to answer.

3 And an answer does not prove or disprove anything
4 before the judge or the jury. Her answer can be "Yes, I
5 certainly do. I don't like your religion. I have my own
6 religion. I am a Catholic, you are a Hebrew. Or I am a Hebrew,
7 you are a Protestant. Or I am a Unitarian, and you are so and
8 so."

9 That doesn't prove or disprove anything. It can
10 only have a prejudicial effect on the jury that is deciding
11 whether this man is going to be convicted of murder or not.
12 And highly, highly causative and prejudicial.

13 Now, these are some of my thinking. Now, we will
14 pass along here.

15 I wasn't so pronounced in court. I tried to
16 temper it off as best I could. I said, "I think it is
17 immaterial." I do think it is immaterial. I didn't go on and
18 postulate any further than I thought I had to.

19 Now, I will proceed.

20 "THE COURT: All right.

21 "Q BY MR. KATZ: Isn't it a fact" --

22 Now, right down here, Mr. Weedman --

23 "I will reframe it."

24 That's right.

25 "BY MR. KATZ:" --

26 Line 24.

27 "All right.

28 "THE COURT: Reframe it.

1 "Q BY MR. KATZ: Miss Pitman, with
2 reference to the laws that society define as
3 criminal acts, for example, and what have you,
4 isn't it a fact that you do not recognize them,
5 and if in the event in your own feeling, your
6 own belief that you believe they are wrong, you
7 will violate them; isn't that right?"

8 Still that goes to what personally she would do or
9 doesn't do. It doesn't go -- it goes to her personal feelings
10 or beliefs. Doesn't go to credibility. Whether she is telling
11 the truth in this case or not. It is going right off into
12 another path.

13 It is a trial of the witness on her beliefs or her
14 disbeliefs, her feelings, her social thinking, her religious
15 aspects of life and everything but the defendant.

16 Now then the question, or the objection by the
17 court:

18 "I think it is immaterial. . . . This
19 woman is not on trial."

20 Now, here is what disturbs me. Page 5044, line 16.

21 "Q - BY MR. KATZ: Miss Pitman, there
22 is a law against perjury."

23 Well, it is argumentative.

24 "Do you believe in following that law,
25 or would you violate it?"

26 She is sworn to tell the truth. It is arguing and
27 arguing with the witness. It is for the jury to determine that.
28 She is sworn to tell the truth, and that is an answer to that

1 question.

2 "MR. WEEDMAN:" --

3 Then there is an objection and argument.

4 Now we turn over, gentlemen, to 5046. This I am
5 very disturbed about. The questions and answers respecting
6 the procedure or the policy of the clan or family, whatever
7 you want to call it, respecting their procedure. Their policies.

8 What do they do? What are their principles?

9 Now, that appears on 5046, line 2.

10 "MR. KATZ: I can show that this witness,
11 for example" --

12 This must have been after -- yes, I said make an offer. So
13 this actually, this was in chambers. Didn't go before the
14 jury.

15 Actually isn't -- it didn't, but part of it did
16 get into the jury, I believe. I will go through it.

17 ". . . Brenda McCann; that the defendant" --

18 "I can show that this witness. . . Brenda
19 McCann; that the defendant, Steve Grogan; that
20 Leslie Van Houten; that Charles Manson; that
21 Patricia Krenwinkel; and that Susan Atkins;
22 that Squeaky, also known as Lynn Fromme; that
23 Sandy Good; that Ruth Morehouse, and many of
24 the family members carved into their foreheads
25 with razors or burned into their foreheads an
26 X, which symbolized the fact that they were
27 X-ing themselves out from society, and that
28 they did not accept society's mores, nor the

1 rules, nor would they abide by them. That
2 they would subscribe to their own philo-
3 sophic tenets."

4 Well, they have got an absolute right to do that.
5 I don't know of any rule they would violate if they want to
6 live by themselves in seclusion in caves or whatever else.

7 The question is, is the witness telling the truth
8 under oath? Is this man guilty of murder?

9 Can't be tried on whether these people like to
10 live in caves and X themselves out. What their beliefs are.
11 Whether they believe in God or not. Whatever you want to put
12 before them.

13 It doesn't establish any fact in my opinion as to
14 any issue. It is certainly not a cross-examination.

15 If asked on direct it wouldn't be germane in my
16 opinion to this lawsuit in any way, and would not prove
17 whether the defendant is guilty or not guilty of killing
18 Shorty Shea, the murder of Shorty Shea.

9a

9A

1 Now, the next question, next problem here. I can't
2 cover the whole transcript.

3 MR. KATZ: I had answered that specific question.

4 THE COURT: High points.

5 Now, wait a minute. I have to do it my way.

6 Then there is discussion. We are in chambers.

7 Discussion.

8 This didn't get to the jury at that point.

9 Discussion. Discussion.

10 Turn over to "Take the stand." Here we are,
11 page 5051. Nancy Pitman.

12 That's Brenda on the stand.

13 Now, this is a continuation. Mr. Katz is examining.

14 Now, this testimony that I relate here could only
15 be inflammatory. It doesn't prove, in my mind, it neither
16 proves nor disproves an issue before this case, before this
17 jury.

18 And that is this testimony here, 5052, line 2:

19 "You presently live with Squeaky and Sandra Good,
20 is that right?

21 "A Yes.

22 "Where do you live?

23 "On the corner of Temple and Broadway.

24 "That is right here outside the Hall
25 of Justice?

26 "A Yes.

27 "Up to a week ago you were living also
28 with Gypsy and Mary Brunner, is that right?"

1 Well, it doesn't prove anything. The girl, as a
2 matter of actual fact, she can live any place she wants to.
3 It doesn't prove or disprove anything.

4 It has the inference she has already told us many
5 times that she is a -- these folks are her companions. They
6 lived at the Spahn Ranch. They are close. They are brother
7 and sister, father and son, what have you.

8 She has told us that. She has a right to live with
9 them.

10 Now, if they commit a crime, that is another thing.
11 I am not arguing that at all.

12 If they want to pitch a tent up there, they have
13 got a right to do it. The only inference you get from the
14 question is a bad inference to this jury that is trying this
15 man for murder. It can only hurt the defendant.

16 What answer has he got to it?

17 "Do you live at Temple and Broadway?

18 "Yes."

19 So what? The only inference is an adverse infer-
20 ence.

21 "MR. WEEDMAN: ". . . I don't think that is
22 material . . .

23 "THE COURT: It has been covered . . ."

24 Well, anyway, now, let's go along. There is a
25 conversation at the bottom of page 5052, line 21:

26 ". . . you believe you had a conversation
27 with Pearl concerning some dishes, is that right?

28 "A Yes. I know I had a conversation

1 with Pearl.

2 "Q Oh, you do?

3 "A Yes.

4 "Q No doubt in your mind?

5 "A No doubt in my mind."

6 Page 5053:

7 "Q Do you know when that conversation
8 took place?

9 "A I believe it was after the raid, the
10 August raid."

11 Now, I have very much of a question, a problem
12 here, on the following testimony:

13 "Do you have any problem remembering
14 past events?"

15 I think in this kind of a case it is immaterial.
16 The question can be asked clearly, "Is there any question in
17 God's world whatever about this conversation or not?"

18 Now, that is germane. Now, you go into past events
19 and ask whether you remember it or not.

20 And the question is whether you remember the event
21 they are talking about, not whether you remember something
22 else. A lot of people may never want to think of something
23 else.

24 But it is immaterial. Do you remember past events?

25 This is a young woman here. Not an old, senile
26 person. She is probably not a girl, but a young woman.

27 "Do you have any problem remembering past events,
28 Brenda?

1 with Pearl.

2 "Q Oh, you do?

3 "A Yes.

4 "Q No doubt in your mind?

5 "A No doubt in my mind."

6 Page 5053:

7 "Q Do you know when that conversation
8 took place?

9 "A I believe it was after the raid, the
10 August raid."

11 Now, I have very much of a question, a problem
12 here, on the following testimony:

13 "Do you have any problem remembering
14 past events?"

15 I think in this kind of a case it is immaterial.
16 The question can be asked clearly, "Is there any question in
17 God's world whatever about this conversation or not?"

18 Now, that is germane. Now, you go into past events
19 and ask whether you remember it or not.

20 And the question is whether you remember the event
21 they are talking about, not whether you remember something
22 else. A lot of people may never want to think of something
23 else.

24 But it is immaterial. Do you remember past events?

25 This is a young woman here. Not an old, senile
26 person. She is probably not a girl, but a young woman.

27 "Do you have any problem remembering past events,
28 Brenda?

1 "The date, but I can remember incidents
2 that happened. But as for the exact date, no.

3 "Q Don't you forget what happens just
4 a week ago?

5 "A No."

10 fls

#10

These are argumentative questions.

"A No.

"Q You don't?

"A I can remember back as far as I want to.

"Q Didn't you testify in another trial that 'I forget what happened a week ago, even'?"

Here's your argument again. This is not germane to this lawsuit. And again you get into prejudicial matters.

"Didn't you testify in another trial that 'I forget what happened a week ago, even'?"

That is the quote.

Then Mr. Weedman speaks, and then "Withdrawn."

"Q BY MR. KATZ: As a matter of fact, to be fair to you, let me give you the full statement: 'I'm not too good at remembering time. I go from day to day, and then I forget what happened a week ago, even.' Isn't that what you said in the past?

"A I may have.

"Q All right. Is that true, Brenda?

"A Well, I'm sure it was true then.

"Q I see. Do you know when you made that statement?

"A No.

"Q Well, is your memory better today than it was, for example, in the first part of 1971?

"A Yes, I would say it was.

1 "Why is that, Brenda?"

2 These are argumentative questions. The question
3 is, was that conversation you are talking about, is that true
4 or not? Do you remember? Yes or no?

5 The questions have drifted way onto numerous,
6 numerous other problems that aren't before this jury.

7 "MR. WEEDMAN: Your Honor, counsel is arguing with
8 the witness.

9 "THE COURT: Objection sustained."

10 And then there is a question by Mr. Katz, line 7,
11 page 5054, after argument between counsel and the court:

12 "MR. KATZ: Your Honor, this witness has
13 testified that she has recall of an alleged
14 conversation between herself and Pearl, which we
15 know does not exist from the evidence."

16 There is a highly prejudicial statement. Whether
17 it existed or not is for the jury to determine, not as a
18 statement from counsel. We don't know anything. I'm sure I
19 don't know as the judge. What the jury wants to decide is
20 another thing. She testified there was such a conversation.

21 Then:

22 "THE COURT: You are arguing with her."

23 I'm going to step through here, over to page 5056.

24 Well, there is some trouble, some problem here.

25 I don't think it makes much difference one way or the other.

26 "Q Now, Brenda, you see Mr. Weedman over
27 here, this good-looking gentleman at the counsel
28 table?

1 "MR. WEEDMAN: I wish you wouldn't say that,
2 your Honor."

3 It is not a proper statement in a murder trial,
4 for one thing, but I don't know as it prejudiced the jury one
5 way or the other. But it is just one of the problems here.
6 The court disregards. It just increases the situation.

7 Now, let's go over to page 5058. Now, here's
8 Brenda talking again, continuing to talk, questions and answers
9 on the dish incident.

10 "I talked to other attorneys before there was
11 even an attorney on this case."

12 It was a question of how long she had been talking
13 to Mr. Weedman about the case. That appears at the bottom of
14 page 5057.

15 "You are telling us that you did not mention
16 this dish incident until two weeks ago to Mr. Weedman?

17 "A Two or three weeks ago, yes.

18 "Q And Mr. Weedman is the first gentleman
19 or lady, or what-have-you that you told concerning
20 the dish incident that allegedly occurred in August
21 of 1969, is that correct?

22 "A No.

23 "Q Who else did you tell?

24 "I talked to other attorneys before there was
25 even an attorney on this case.

26 Now, this bothers me very much. Some of these
27 matters, I will note again, are incidental, nothing probably
28 improper, more than what happens in lawsuits, and could be

1 cured by the judge advising the jury to disregard it. But most
2 of these questions are very germane. Now, serious problems
3 here. Page 5058. It starts with the question at line 18:

4 "You say now as you read it in the paper
5 two or three weeks ago, you now, in 1971, in
6 August of 1971, have total recall of the conver-
7 sation which occurred in August of 1969; is that
8 right?

9 "That's right.

10 "Q Incidentally, in August of 1969 were
11 you using drugs?

12 "A Smoking some weed."

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
10A fls

10A
1 That is probably a proper question. It is limited
2 to August of '69.

3 "Q Were you using drugs?

4 "A Smoking some weed."

5 You've got an answer there. You're using drugs,
6 smoking some weed. Whatever connotation -- did it affect you?
7 Yes or no? Yes, it did. I don't remember anything.

8 There is where, in my opinion, the direction should
9 go of the examination, but it drifts this way:

10 "A Smoking some weed.

11 "Q Were you?

12 "A Yes."

13 "A Smoking some weed.

14 "Q Were you?

15 "A Yes.

16 "Q How about acid; were you using acid?

17 "I don't remember.

18 "Q Oh. You have used acid before, haven't
19 you, Brenda?"

20 Here's your damage. She answers the question.
21 You asked the question, "Were you using acid?" that is, during
22 August of '69.

23 "A I don't remember."

24 The question is answered. Now, here's the damage:

25 "Q You have used acid before, haven't
26 you?"

27 Now, that is a damaging statement, a damaging
28 statement. It may be a very bad thing. Maybe she has used it

1 for a long time. Maybe she is addicted. Maybe she is caught,
2 she can't get off of it. I don't know. God help her. But
3 whether she is or she isn't, the only thing that would be
4 germane to this man's trial for murder would be for using drugs
5 or acid in August, because that is the critical month. That
6 is an important question.

7 "Q But you have been using acid before,
8 haven't you?"

9 The only thing you can do there is to prejudice
10 the jury against this girl, this witness.

11 Now, she says:

12 "A Yes. I have used it before."

13 There is damage there.

14 And then:

15 "Q How many times do you think you have
16 used acid?"

17 That is not a proper question. It is a prejudicial
18 question, definitely.

19 "A I don't know. I never counted them."

20 The question is asked and answered. More question:

21 "Q Well, can you give us a rough approxi-
22 mation?"

23 This is highly damaging. What has this got to do--
24 I ask the question to myself -- with this man's innocence or
25 guilt, whether she has used or not. She has testified during
26 the approximate time of August.

27 Now, here's your damage:

28 "Q Can you give us a rough approximation?"

1 "A Approximately 25 times; 25 or 30 times.

2 "Q All right. And do you know whether
3 or not in August, 1969, you were using acid?"

4 Now, that is a proper question, in my opinion, but
5 not all the rest of it. She speaks of the weed. It is a
6 proper question.

7 "A No, I don't remember."

8 That is the answer.

9 "Q In other words, you have no recollection
10 whether you were using it or you were not; is that
11 correct?

12 "A That's right.

13 "Q By acid you mean LSD, is that right?

14 "A Yep."

15 Question on line 18:

16 "Q You were also using other hallucino-
17 genic drugs, weren't you, at that time?

18 "A No.

19 "Q Have you ever used any other hallucino-
20 genic drugs?

21 "A I have smoked some weed, hash.

22 "Q Weed is marijuana?

23 "A Yes.

24 "Q And hashish?

25 "A Yes. Same thing.

26 "Q And taken acid."

27 There is a repeat. There is taking testimony twice on
28 this girl. A great portion of it is prejudicial, at least in

1 my opinion, that relates to any period of time not during the
2 month of August.

3 "Q And taken acid. How about mescaline?

4 "I don't think I have ever had that."

5 Top of page 5060:

6 "We have had it, you know, it's been -- I have
7 seen people with it, but I have never taken any of
8 that myself.

9 "Any other drugs, such as peyote?

10 "No."

11 You see, this constant -- she said "No" way back
12 here on page 5059.

13 "Were you also using other" -- I will use the simple
14 word -- "hallucinating drugs at that time?

15 "A No."

16 There is an answer.

17 "Have you smoked other hallucinogenic drugs?"

18 She answered the question, "Hashish." That is weed,
19 that is marijuana. She answered that on the page before.

20 The constant re-pressing and pounding at this
21 witness with questions that are not germane, not proper cross,
22 not during the month of discussion, they have been asked and
23 answered. There is the damage in this thing -- pounding this
24 into the jury. It puts this girl on trial, puts her on trial.
25 She may be in all kinds of trouble, but that doesn't help the
26 defendant or hurt him one way or the other except to create
27 prejudice in the minds of the jury.

28 And more:

1 "Have you taken any other kinds of narcotics,
2 so-called uppers or downers?"

3 That isn't material. It can't possibly affect any
4 issue in this case, in my opinion.

5 "A When I was about 16 or 15 years old,
6 I took some uppers."

7 That is some years ago.

10B
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10b-1

1 "Q And by uppers, you mean
2 amphetamines?

3 "A I'm not sure.

4 "Q They kind of pep you up, is
5 that it?

6 "A Yeah.

7 "Q So, in any event, you have
8 clear recall as you sit here now, in August
9 of 1971, that Ruby Pearl made certain
10 statements to you, and you made certain
11 statements to Ruby; is that correct?

12 "Yes."

13 No problem about that question.

14 Now, here I'm disturbed. Here we go in this con-
15 versation with Watkins. It starts, as near as I can make it
16 out -- that is on the cross, or the basic questions, concerning
17 it are on page 5062, line 9:

18 "And when you saw Mr. Watkins," --
19 question to Brenda --

20 "When you saw Mr. Watkins when he came
21 down apparently after having his draft physical,
22 you were there with Clem; is that right?

23 "A Everybody was there. We were on
24 the boardwalk, and everybody was around.

25 "Q As a matter of fact, Brenda, there
26 were only three people that were engaged in a
27 conversation near the rock?

28 "A That's right.

1 "Q In front of the Longhorn Saloon,
2 isn't that right?

3 "A That's right."

4 Now, here on page 5063, this is cross:

5 "Tell me who those three people were.

6 "That was Clem and I and Paul Watkins,
7 and occasionally Squeaky.

8 "I want you to tell us in your own
9 words, tell us the conversation, all of the
10 conversation that happened."

11 Now, there is a proper question, certainly a proper
12 question asking for a full conversation, everything. "What
13 did you say? What was said?"

14 "Paul was in town for the draft. He
15 was explaining to us about how Paul Crockett
16 had taught him to mock up cancer in his lung
17 so that when an X-ray was made of his lung
18 it would appear to have a big black spot in
19 his lung."

20 And then she talks about psychology; that he
21 mentioned a psychiatrist. I'm not reading it. He told the
22 psychiatrist certain things.

23 And she says on line 21:

24 "That was basically the whole conver-
25 sation.

26 "Q Is that based upon your present
27 memory, is that all you recall of the conver-
28 sation?"

1 And she says, "Yes."

2 "Q Is that all you recall of the
3 conversation?

4 "A Yes.

5 "Were you smoking pot at that time?

6 "No."

7 Now, there is a highly inflammable question,
8 because she has denied it already. Unless the district attorney
9 is in possession of positive evidence that this girl is
10 smoking pot at that time, the question is highly improper,
11 particularly in view of the fact that it has been asked and
12 answered once before.

13 MR. KATZ: I was, your Honor. I had that information by
14 Watkins, your Honor.

15 THE COURT: All right.

16 The answer is "No."

17 "Was Clem smoking pot at that time?

18 "No.

19 "How about Watkins?

20 "No.

21 "Q All right. Weren't you talking" --

22 Now we are on page 5064.

23 "Weren't you talking about Frank Retz,

24 Brenda?

25 "No."

26 Now, I question right at this juncture, as I did
27 yesterday, particularly in this type of a lawsuit and under the
28 basic rules that are set out in the Dr. Finch case and I

1 believe it is Hamilton, and two or three others, those cases
2 refer to the extent of examination with respect to witnesses
3 on the questions of state of mind. But the inference -- and
4 many citations in those cases -- and the Finch case goes to
5 great depth on the question of asking questions of witnesses,
6 no matter what the ultimate purpose is, where the direct
7 answer and inflection from the question, or the question
8 itself, are so damaging to the jury that you simply can't
9 overcome it, the defendant can't overcome it, no matter what
10 he does, no matter what the answer is.

11 Now, for instance, she says "No," to this.

12 "Weren't you talking about Frank Retz,
13 Brenda?

14 "No. I don't remember talking about
15 Frank Retz.

16 "You don't? Weren't you talking with
17 Clem about trying to kill Frank Retz?"

18 Now, there you are.

19 "A No.

20 "You were not?

21 "No."

22 Now, right at that point, that is where we stopped
23 the court at that time. Now, she has answered the question,
24 "No."

25 I don't think, in my mind -- I'm fairly familiar
26 with your code section that a conversation partially gone into
27 may be explored by opposing counsel on cross-examination, but
28 it is not without limitations. I would adhere and do adhere

1 fully to the proposition, number one, you have two problems
2 here: to what extent can you cross-examine this girl when she
3 said "No, I have had no further conversation with him," and
4 then to throw or put at the witness, "Well, you talked about
5 killing -- weren't you talking with Clem, the defendant, about
6 trying to kill Frank Retz?"

7 "No."

8 God knows what effect at that point you have had in
9 the jury's mind. You have a man charged with murder, killing
10 Shorty Shea, and you have this girl denying any further
11 conversation, and then a question is posed, "Well, you were
12 talking with Clem about killing Frank Retz, weren't you?"

13 You can't overcome it. The man is just dead at
14 that point in the minds of those jurors. I don't think any
15 amount of admonition, particularly with other particulars I
16 will point out in a minute, could positively cure the damage
17 in the jurors' minds.

11-1

1 The answer is "No, you were not."

2 Now, there are two problems there. You don't just
3 have one problem. It isn't just a problem -- it isn't just
4 a problem of asking Brenda in effect, "Brenda, you have told
5 us that there was no further conversation. Now, I want to
6 ask you something else. Didn't you tell -- weren't you talking
7 about Frank Retz, Brenda? No. Weren't you talking with Clem
8 about trying to kill Frank Retz?"

9 Now, there is your question. The answer to the
10 basic question is, "No, I wasn't talking to him."

11 I don't think that that is a proper question as a
12 matter of law. She has answered the question. It is not a
13 proper cross-examination in any event, in a capital case where
14 the man in this particular case, Clem Grogan, is spoken of as
15 being a party -- in effect you are saying "Weren't you, Brenda,
16 and the defendant in this case talking about killing Frank
17 Retz?"

18 She says, "No." But if it were -- it's incidental.
19 It is incidental to this lawsuit. It can't prove or disprove
20 one iota of the People's case, whether they were or they
21 weren't talking about killing Frank Retz.

22 It can't prove anything in this case. And it is
23 so inflammatory in the minds of that jury to have them go in
24 there and say, "Why, the fellow, the defendant here, sure he
25 killed Shorty Shea. He is even talking with Brenda about
26 killing another man."

27 You can't offset that kind of testimony.

28 Now, if your feeling is -- if your answer is "Well,"

1 if you say "I can prove by" --

2 MR. KATZ: Paul Watkins.

3 THE COURT: "I can prove by Paul Watkins that Mr. Watkins
4 told the grand jury or testified that this witness made a
5 different statement to the grand jury, she told the grand jury
6 she did talk with Clem and they agreed to kill Retz" -- now,
7 let's take that.

8 Now, that is distinct from your cross-examination
9 to this girl. You run right into difficulties on that. Right
10 smack into difficulties on that.

11 That it is an impeachment, it is an incidental
12 impeachment to the basic issues in this case of murder. It
13 will not prove or disprove in my opinion, it would put an issue
14 up to the jury "Did she say that or didn't she say that?"

15 And if the jury believes she did say it you haven't
16 proven this man guilty or innocent or anything else. It's
17 getting and injecting side issues into this case that are only
18 prejudicial and highly inflammatory.

19 I would rule it out. I wouldn't allow such
20 testimony to be given in this murder trial against this man.
21 A statement of Paul Watkins that he heard Brenda say that she
22 and Clem were going to kill Frank Retz.

23 It is entirely foreign to this lawsuit. It isn't
24 germane to it. It is so highly prejudicial that it could only
25 result in inflaming the minds of these jurors to in my opinion
26 such an extent that they couldn't possibly overcome it.

27 Now, that's my feeling, and that's what I would do
28 if I were called on to rule on the testimony of Paul Watkins.

1 Now, on page 5042 there is another devastating
2 interrogation that is very serious. I am backing up now.

3 That is a matter I have talked about. It is very
4 serious.

5 That is the constant interrogation of Brenda by
6 the People in which there is a -- I misstated the page here,
7 5034, backing up. This is devastating. Line 5 -- Mr. Katz --
8 no, strike that.

9 Here we are. I reversed the figures. 5024. This
10 right here is such prejudicial error that I would feel that of
11 itself is entitled to a mistrial right here.

12 Here are the questions that disturb me terribly:
13 Here we are, 5024, line 3:

14 "Q And isn't it a fact that you are" --
15 This is Mr. Katz --

16 "strike that.

17 "Have you ever used the name
18 Penelope R. Tracy?

19 "A Yes.

20 "And Penelope Rose Miller?

21 "No, I don't remember using that.

22 "Q All right."

23 And here is a problem, that starts about --

24 "Isn't it a fact that your true name
25 is Mrs. Grant?

26 "A No. I am divorced."

27 That is a fair enough question.

28 "Oh, you are divorced?

1 "A Yes."

2 Now, line 13:

3 "Did you marry a Mark Roland Grant?"

4 "Yes."

5 "MR. WEEDMAN: Excuse me, your Honor,

6 I guess it is all right . . ."

7 Then there is an objection or statement by Mr.
8 Katz. Then Mr. Weedman "Withdraw the objection."

9 Now, a new question on line 23:

10 "MR. KATZ: This Mark Roland Grant. . ."

11 Here is the -- here you have got it --

12 "This Mark Roland Grant is really Bruce
13 McGregor Davis, isn't that right?"

14 "No."

15 Now, here are your problems. Bruce McGregor Davis
16 is the co-defendant in this case charged with killing Shea,
17 along with Clem.

18 The question is asked of the witness: "Are you
19 the wife? Are you the wife; this Mark Roland Grant that she
20 says 'I married', this Mark Roland Grant really is Bruce
21 McGregor Davis, isn't that right?"

22 The answer is "No."

23 There is a very -- unless there is some truth to
24 that, it is the most inflammatory thing that can be asked
25 because Davis is the defendant in this very murder case, and
26 if that is true, the D.A. insisting it is, by repetitious
27 questioning, it makes the witness the wife of the co-defendant
28 in this case.

1 That is highly important, and it is just -- it is
2 the most detrimental thing I can think of to ask the witness
3 "Well, but it is true that the man you married here, Grant,
4 is Davis;" and Davis is a co-defendant in this charge with
5 murder, and "You are the wife of that man; isn't that true?"

6 On the witness stand that is what you are asking,
7 and she says, "No."

8 MR. KATZ: You are assuming we don't have proof to the
9 contrary.

10 THE COURT: Wait a minute.

11 "No.

12 "It is not Bruce McGregor Davis?

13 "No, it is not."

14 That is the defendant.

15 "No, it is not.

16 "On April 20, 1970 you married a person
17 whose name was given as Mark Roland Grant" --
18 that is a different person --

19 "in Las Vegas, . . .; is that right?

20 "Yes.

21 "And as a matter of fact you married
22 Bruce McGregor Davis, isn't that right?"

23 Now, you are pounding on the defendant in this
24 murder case.

25 "No, I did not."

26 In the meantime the jury is taking this all in.

27 "No, I did not."

28 Those are matters that if they are true you should

1 be fully prepared to prove them by way of impeachment.

2 If those are true statements, before such highly
3 inflammatory statements are made they should be ready to be
4 proved when you rebuttal your case.

11a

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

11A

1 Now, and "Clem was present, wasn't he?" Now, you
2 are still pounding this in front of the jury:

3 "During the marriage ceremony?

4 "Yeah."

5 But that is the marriage to Grant she is talking
6 about.

7 "And Gypsy, or Cathy Share, as you know her?

8 "Yes. . . ."

9 That is inflammatory. It is just devastating. It
10 is so inflammatory.

11 Now, my summation:

12 Then of course we come to this final matter here
13 where the questions are asked.

14 I better quote them so I won't misstate it.

15 I did -- back on page 5064, line 3:

16 "All right.

17 "Weren't you talking" -- this is a question of
18 Brenda.

19 "Weren't you talking about Frank Retz,
20 Brenda?

21 "No. I don't remember talking about Frank
22 Retz.

23 "You don't? Weren't you talking with Clem
24 about trying to kill Frank Retz?

25 "No.

26 "You were not?

27 "No."

28 Now, then, that's summed up by the demand for a

1 mistrial by defendants, defendant and counsel.

2 "MR. WEEDMAN: Your Honor, I will respectfully
3 move for a mistrial at this time on the ground that
4 counsel has introduced evidence of another crime
5 not connected in any way to the present alleged
6 murder and such evidence clearly is inadmissible,
7 and I think there is no way now of salvaging this
8 now as far as this jury is concerned. . . ."

9 Then there was considerable discussion in chambers that in my
10 opinion I have answered. Maybe not to the satisfaction of
11 counsel but to my satisfaction.

12 It is my summation, gentlemen.

13 Make a note of this. It is my summation, gentle-
14 men, that the interrogation or questions propounded by the
15 prosecution I have just indicated, asking the witness if she
16 were talking -- the words, quoting:

17 "Were you talking about Frank Retz, Brenda?

18 "A No. I don't remember talking about
19 Frank Retz.

20 "Q You don't? Weren't you talking with
21 Clem" -- there I put defendant -- "about trying to
22 kill Frank Retz?

23 "A No.

24 "You were not?

25 "No."

26 Now, it is my opinion, and it is not -- whether
27 I am right or wrong, it is not a hurried opinion; it is a
28 very considered opinion, a very considered opinion that that

1 question to the jury, even though it is answered "No" consti-
2 tutes a highly prejudicial error. It is testimony that in my
3 opinion should, even if Watkins were to testify at a future
4 time, attempt to give the balance of the conversation to this
5 girl, it would be highly prejudicial. I wouldn't allow it
6 in this case.

7 It is highly prejudicial in a murder case in which
8 Clem is on trial for the murder of Shorty Shea, not for the
9 murder of Frank Retz, but Shorty Shea.

10 Highly inflammable and prejudicial. Shouldn't
11 under any guise be admitted in evidence. Overshadows every-
12 thing. Demand that a man pay the supreme price, capital
13 punishment, and inject conversations like this in, it is just
14 deadly. There is no question, come back and find the defend-
15 ant guilty, you can't wipe this out of their mind. That is
16 one thing. That is one thing.

17 The other thing that is devastating is the
18 continued interrogation of this girl, "If you married -- the
19 marriage of a man named Grant is the same fellow that is
20 Davis that is under indictment and arrested as a codefendant
21 for the murder of Shorty Shea?"

22 Those are devastating. The answers are "No."

23 Unless the People could back it up, you could
24 stop right there because you don't need to go any further than
25 ask this girl if she is the wife of the codefendant Davis.

26 You don't have to go any further. The case is
27 over, almost.

28 So it is my opinion that on the grounds stated by

1 defendant and counsel as well as these other summations of
2 what I think, of highly inflammable questions, highly
3 inflammable, that they have created -- they can't help but
4 create such a prejudice in the minds of these jurors that
5 no amount of admonition or ruling or striking of testimony
6 pointed out by the Supreme Court in the Finch case, can
7 correct the minds of the jurors in this matter.

8 That is my final summation.

9 I do grant the motion for the mistrial. I will
10 advise the jury in open court the court has and is, or has--
11 I will advise the jury, has granted a motion by defendant
12 for mistrial.

13 The motion is granted individually and upon the
14 grounds stated by defendant, defendants. And it is also
15 a summation of what I have indicated now since -- since --
16 well, a quarter of -- some two and a half hours in chambers,
17 and very carefully in the transcript of these proceedings
18 in chambers in detail, with the court's comments by reference
19 to page and number with my various observations as to why I
20 think the motion is well granted -- well taken.

12 fls

1 I have made these observations at great length.
2 It is now 3:00 o'clock and we started, at least I did, at
3 8:00 o'clock on this, and I have very cautiously gone through
4 the entire transcript of yesterday's proceedings in meticulous
5 detail -- notations, clips, pencil notations, comments of my
6 own in the transcript that I have before me.

7 I do that for a specific reason, because the case
8 is a serious case. It is a critical case. It is a capital
9 case. The People are asking for the death penalty. It is
10 a matter the court should deal with with extreme caution and
11 care and not in a hurried fashion, and I certainly haven't
12 attempted, as far as I know I haven't hurried anybody. I have
13 taken great time and tedious effort in the selection of a jury
14 and the trial of the case. I made some rulings because I
15 think they were right. There is a lot of expensive time
16 involved. That is the reason I have taken a long time on the
17 review of this transcript and these comments in chambers, all
18 of which fully appear in the reporters' transcript.

19 I think the ruling of the court is well-taken.
20 That is my opinion. That is my opinion. Obviously I would
21 think that way or I wouldn't make the ruling. I think the
22 ruling is well-taken, and the motion for mistrial is granted.

23 MR. KATZ: I want the record to show, if you don't
24 mind --

25 THE COURT: I want to finish talking. Just a moment.
26 One minute.

27 So I will grant the mistrial motion, and also
28 I will advise the jury that a mistrial has been granted,

1 thank the jurors.

2 Now, that gets us to that point. I will transfer
3 the case -- I don't see any reason why this can't be done
4 now -- I will transfer the case back to 106.

5 MR. KATZ: Department 100.

6 THE COURT: What?

7 MR. KATZ: Department 100 handles the serious murder
8 cases.

9 THE COURT: I don't think so any more.

10 MR. KATZ: No, just for the murder cases. The murder
11 cases and the 209 kidnappings --

12 THE COURT: Is that a rule of the court?

13 MR. KATZ: Yes.

14 THE COURT: You show it to me.

15 MR. KATZ: That is my understanding.

16 THE COURT: I won't send it there until you show it to
17 me. I don't mean to be facetious about it; that isn't my
18 understanding at all. If you are right, then I'm wrong,
19 but I don't so understand it.

20 Frank, do you want to check on the phone?

21 THE CLERK: Yes.

22 THE COURT: If counsel is right, that is where it goes.
23 I could be wrong. These rules are changed all the time,
24 and it's hard to keep up with them.

25 MR. KATZ: Your Honor, with respect to the motion for
26 mistrial, I am not arguing it, so we don't have to worry
27 about that. I want the record to be clear that it is over
28 the vigorous opposition of the People and it is based on the

1 motion of the defendant. I don't want any issue of jeopardy
2 attaching whatsoever. Mr. Weedman moved for the mistrial,
3 and your Honor has diligently acted upon the defense motion.

4 I can only say with due respect to the court I
5 think your whole ruling is fallacious and I think that your
6 reasoning is made out of whole cloth, and I won't even
7 dignify it with any further response.

8 THE COURT: The record will show that statement. The
9 ruling stands. Go ahead.

10 MR. WEEDMAN: Your Honor, in view of the court's
11 ruling, I wonder if I might confer with my client for a
12 couple moments before you discharge the jury.

13 THE COURT: You have questions of legal business?
14 You want to discuss future problems with your client?

15 MR. WEEDMAN: I would like to explain to him what
16 happened here right now, if I may.

17 THE COURT: All right.

18 MR. WEEDMAN: If I may be excused for about five
19 minutes.

20 THE COURT: That is your business. You are empowered
21 to continue with the trial of the matter, unless you have
22 other problems you want me to rule on. If not, it goes over
23 to 100. That is what I mean; you stay as counsel. That
24 is what I'm trying to say.

25 MR. WEEDMAN: My client, as he sits here now, your
26 Honor, doesn't quite understand this. After all, it is the
27 first time --

28 THE COURT: You talk to him.

1 MR. WEEDMAN: May I speak to him for a moment before
2 you discharge the jury?

3 THE COURT: Yes, go ahead.

4 I may take the jury first. Do you want to talk
5 to him first?

6 MR. WEEDMAN: May I talk to him right now?

7 THE COURT: Yes. Go ahead.

8 (The following proceedings were had in
9 open court:)

10 THE COURT: Now, gentlemen, let's proceed. I'm going
11 to proceed. We are in open court.

12 People against Grogan. Counsel are here,
13 the defendant is here.

14 You can bring in the jury, Sheriff.

15 (The following proceedings were had in
16 open court in the presence and hearing
17 of the jury.)

18 THE COURT: Now we have all of the jurors here.

19 Ladies and gentlemen --

20 MR. WEEDMAN: Your Honor, may I address the court just
21 briefly?

22 THE COURT: Yes.

23 MR. WEEDMAN: I wonder if we might -- forgive the
24 interruption -- I wonder if we might go into chambers just
25 very briefly?

26 THE COURT: Come right in. Step right in, if you will.

12a-1

(The following proceedings were
had in chambers:)

THE COURT: The court was on the bench. We are back in
chambers. The jury is in the jury box, as far as I know.

Go ahead, Mr. Weedman.

MR. WEEDMAN: Thank you, your Honor.

I have had the opportunity that I requested to
confer with my client in this matter, and what I am about to
say, I'm sure, does not do any more than express his concern
and his intentions in the matter.

My client has expressed to me generally, your
Honor, that it has been a long trial for him, that he is
frankly tired, that it has been a considerable strain on him.

I think I can fairly represent that Mr. Grogan
does not perhaps fully appreciate the nature of your Honor's
ruling in this matter, and my client has expressed to me a
feeling that some of these matters could be sufficiently cured
so as to insure him of a fair trial in this matter.

I do not share that feeling, and I have told Mr.
Grogan that, in my professional judgment, the motion for
mistrial was certainly more than properly granted and that in
my opinion the jury could never be adequately admonished to
disregard this evidence. But Mr. Grogan still, and he has only
had a very few minutes, indeed perhaps not more than three
minutes, to even think about this thing, Mr. Grogan, at least
in those three minutes' time does not share that opinion of
mine, and it may well be that your Honor would properly grant
a mistrial irrespective of what Mr. Grogan says in the matter,

1 but as an officer of this court and considering -- well, I
2 must consider my client's possible wishes in the matter, and
3 I regret that interruption at this time, but I wonder if your
4 Honor, in view of my remarks, we might have a very few more
5 minutes so I might discuss this with Mr. Grogan.

6 THE COURT: Yes. I'll give you a few more minutes.

7 I might say this comment: in my opinion, the
8 questions that have been asked, questions attempting to tie
9 up the witness, the wife of the co-defendant charged with the
10 murder of Shorty Shea, and questions concerning if the witness
11 had conversations with this defendant, Clem, about murdering
12 another man, are simply deadly and devastating. Just
13 devastating, in my opinion. I think it would be foolhardy
14 and foolish -- I think that is a bad way of saying it. It
15 would be useless to attempt to go any further.

16 I think that these are impressions and the results
17 that flow from the questions create such impression on the
18 minds of the jurors that the situation is hopeless. Come
19 back with a conviction, and these questions should not be in
20 the transcript, or the record.

21 As I have indicated at great length, they are
22 devastating. They are devastating. They can't help but
23 prejudice. You get a jury there of 12 people, and to ask the
24 witness, in substance, "You're the wife of a co-defendant,
25 Davis? You married him, didn't you"-- asked the question four
26 times, I think it is three or four times, in one fashion or
27 another, and the answer "No," it shouldn't be asked to start
28 with, shouldn't be asked to start with.

1 That is devastating. You are questioning the wife
2 of a co-defendant, who is the witness on the stand. It is so
3 highly prejudicial, and counsel says, "No, no, no, no, I'm
4 not," keeps pounding at that thing. Unless the People
5 absolutely know positively and can prove that, it is deadly
6 to ask that question.

7 That is one thing. Then the other question that
8 is deadly, "Did you and Clem get together and talk about
9 killing a third party?"

10 You can't get away from that. You can't get away.
11 Your jury is prejudiced. I'm telling you my opinion again. It
12 is deadly. It is just deadly.

13 I think that it has created an irreversible
14 prejudice in the minds of those folks. You should go out and
15 get a new jury on this and a new judge; let somebody else rule
16 on it. I'm out of it. I mean, in a new trial, they should
17 get somebody else in.

18 MR. WEEDMAN: In that connection, I still, of course,
19 would like to confer with Mr. Grogan briefly, but in that
20 connection I would like to be heard with respect to sending
21 this matter out. It may be that your Honor, just for one
22 reason or another, doesn't feel that you should continue in
23 this, but we have no objection to Honor continuing in this
24 trial, and I just state that for the record at this time.

25 THE COURT: That, of course, is another situation.

26 MR. WEEDMAN: I understand.

27 THE COURT: I must send -- you don't know where we go?

28 THE CLERK: Yes, sir. Department 100 said that Department

1 106 is dark at the present time --

2 THE COURT: Is that the court to send it to?

3 THE CLERK: If you would send it to Department 100 and
4 set it for September 2nd, 9 a.m.

5 THE COURT: 100 on September the 2nd?

6 THE CLERK: Yes, 9 a.m.

7 THE COURT: Well, let's let that take its place.

8 Do you want to talk to the defendant?

9 MR. WEEDMAN: Yes, just about five minutes.

10 THE COURT: Go right ahead.

11 THE DEFENDANT: Excuse me for a second.

12 THE COURT: You talk with your attorney.

13

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

13

1 (Short pause.)

2 (Following proceedings were had in
3 chambers outside the presence of the
4 jury.)

5 THE COURT: Now let's see where we are, gentlemen.

6 All right, now we are in chambers.

7 District attorney and clerk and defendant and both
8 counsel.

9 Go ahead, Mr. Weedman.

10 MR. WEEDMAN: Your Honor, because -- apparently because
11 of the tremendous investment in time and emotional energy as
12 well as physical energy, my client respectfully requests,
13 and I join in the request, that the matter, that is, the
14 discharge of the jury, be delayed until Monday morning to
15 permit my client to confer with me further with a view to
16 possibly withdrawing the motion for a mistrial.

17 THE COURT: Is that submitted?

18 You are making a motion to withdraw it?

19 MR. WEEDMAN: No.

20 THE COURT: No.

21 MR. WEEDMAN: No.

22 THE COURT: All right, give me the statement again.

23 MR. WEEDMAN: Yes, your Honor. My client and I
24 respectfully request that the matter go over until Monday
25 morning to permit us to confer further with a view to possibly
26 withdrawing the motion for mistrial.

27 THE COURT: Well, I am inclined to deny that. This is
28 a matter that I -- a precipitous matter. I have gone through

1 the matter.

2 I don't think the matter should be dragged along.
3 There should be a ruling on the matter. There is a very
4 proper motion made.

5 At great length I have reviewed it. At great
6 length I have reviewed it. I have discussed it and come
7 to certain opinions in the matter.

8 I do feel the matter is thoroughly considered
9 by the court. I feel that the -- as I have indicated so
10 many times, the questions are such that the effect of the
11 questions cannot be cured. That is just my personal feeling.

12 And therefore -- and I think the mind of the
13 jury is so thoroughly prejudiced you can't have a fair and
14 open-minded jury with these questions in before it.

15 No amount of admonition is going to disrupt or
16 clear the minds of the jurors in this matter.

17 I don't think you can do it. I don't think it
18 can be done.

19 Now, the motion is in here. Actually, the court
20 has ruled on the motion.

21 Where is your last statement I made in chambers,
22 Mr. Reporter? Read it, will you please. Who was in here?
23 If you will please.

24 THE COURT: I will have to get that.

25 (Short pause.)

26 THE COURT: Now, if you find it there, just before
27 we went on the bench. Read the last paragraph there, if
28 you will.

1 THE REPORTER: Well, I have Mr. Weedman asking to dis-
2 cuss the matter with Mr. Grogan here. Let me go back further.

3 THE COURT: Go ahead.

4 (Record read by the reporter as follows:

5 "I think the ruling of the court is
6 well-taken. That is my opinion" --)

7 THE COURT: No, it is before then.

8 THE REPORTER: All right, sir.

9 (The record was read back by the
10 reporter as follows:

11 "The motion is well-taken" --)

12 THE COURT: Now, before that a little.

13 (Short pause.)

14 fls

14

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

3 "I do grant the motion.")

4 THE COURT: Give me a little before that.

5 Mr. Weedman, will you listen? I don't mean to
6 disrupt you.

7 MR. WEEDMAN: No. Forgive me, your Honor.

8 (The record was read by the reporter
9 as follows:

10 "The case is over, almost, so it's my
11 opinion that on the grounds stated by defendant
12 and counsel, as well as these other summations
13 of what I think have been highly inflammable
14 questions, highly inflammable, that they have
15 created, they can't help but create such a
16 prejudice in the minds of these jurors that no
17 amount of admonition or ruling or striking of
18 testimony pointed out by the Supreme Court in
19 the Finch case can correct the minds of the
20 jurors in this matter. That is my final
21 summation.

22 "I do grant the motion for the mistrial.
23 I will advise the jury in open court. The
24 court has and is, or has -- I will advise the
25 jury, has granted a motion by defendant for mis-
26 trial. The motion is granted individually and
27 upon the grounds stated by defendant, and it
28 is also --"

1 THE COURT: That's enough. Make an X in case I have
2 to refer back.

3 I'm going to deny your motion in all respects,
4 Mr. Weedman. The ruling stands. I will advise the jury.

5 Let's go ahead.

6 MR. KATZ: Thank you, your Honor.

7 (The following proceedings were had in
8 open court.)

9 THE COURT: We are in open court again, gentlemen.

10 The defendant, Mr. Grogan, is here; counsel for
11 both parties are here.

12 Bring in the juror, would you, please, Sheriff?

13 (Following proceedings were had within
14 the presence and hearing of the jury:)

15 THE COURT: Now we have here all of our jurors, the
16 regular jurors plus the two alternates.

17 Now, ladies and gentlemen, I will not go into --
18 it isn't necessary to go into all of the matters that have
19 transpired during the day. Suffice to say that I have gone
20 through the transcript of the proceedings yesterday, which
21 I hold in front of you, and you can see, those are the
22 notations I made from a full reading from the hours of 8:00
23 o'clock to a quarter to 11, and from that time on, court and
24 counsel and defendant have been in chambers, minus the lunch=
25 hour, the court making a review page by page of this entire
26 transcript.

27 The defendant has moved for a mistrial in this
28 case upon the grounds stated. I won't restate them. I have

1 granted the motion for a mistrial, and in doing so, let me
2 state that, to sum it up in your minds, certain questions
3 in the opinion of the court, certain questions asked of
4 Brenda, and also as culminated in the defendant's motion for
5 a mistrial, in the opinion of the court are so inflammable
6 and prejudicial in the minds of the jury that the defendant
7 cannot have from this time or from here on out an impartial
8 trial.

9 The motion was granted in chambers. I'm stating
10 it to you.

11 Now I want to advise all jurors in this case,
12 every one of you, it has been a long -- up to this point --
13 this is the end of the trial in this court. This has been
14 a long and tedious time. We have been here since roughly,
15 I guess, June 22. At least that is when we started the
16 trial.

17 I want to thank everyone of you folks and you
18 alternates there for the long and enduring time, tedious
19 time and effort and energy that you have put into this
20 trial. I want to thank you.

21 You must remember you are doing really what a
22 real citizen should do, and should not shirk, and you haven't,
23 not any one of you, and I want to thank you for it.

24 I think that is about all I can say. I'm sure
25 you're all excused. Your time has long run out so I can
26 excuse you.

27 I think that about covers it. Let me think a
28 moment now, if I have covered everything I want to say to you.

1 Your minds are open to talk. This case is over.
2 I know of no reason that you can't talk to anybody you want
3 to if they ask you questions. You are not trying this case
4 any more. There is no injunction on what you can say or
5 can't say. I'm not telling you to talk or not to talk. The
6 world is yours. Let me put it that way. I have said
7 that because I have advised you constantly, day after day,
8 morning and night, "Don't talk about this case with anybody
9 or come to any opinion or conclusion." Those prohibitions
10 are dissolved. That is what I want to say to you.

11 I think that covers the matter.

12 I thank you all, and excuse you folks. Thank you,
13 every one of you.

14 Everyone of you, your time is up. All of your
15 time is up. Thank you, folks.

16 Court is in recess.

17
18 ---ooo---
19
20
21
22
23
24
25
26
27
28