

SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff-Respondent,

vs.

No. 2004CHARLES MANSON, SUSAN ATKINS, LESLIE
VAN HOUTEN AND PATRICIA KRENWINKEL,

Defendants-Appellants.

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

HON. CHARLES H. OLDER, JUDGE PRESIDING

REPORTER S TRANSCRIPT ON APPEAL

APPEARANCES

For Plaintiff-Respondent:	THE STATE ATTORNEY GENERAL 600 State Building Los Angeles, California 90012
For Defendant-Appellant Charles Manson:	IRVING KANAREK, Esq.
For Defendant-Appellant Susan Atkins:	DAYE SHINN, Esq.
For Defendant-Appellant Leslie Van Houten:	LESLIE VAN HOUTEN In Propria Persona
For Defendant-Appellant Patricia Krenwinkel:	PATRICIA KRENWINKEL In Propria Persona

PT VOLUME 4

Pages 795 to 884
1076
^J. Hollombe, CSR
Murray Mehlman, CSR
Official Reporters
211 West Temple Street
Los Angeles, California 90012

LOS ANGELES, CALIFORNIA, WEDNESDAY, JUNE 10, 1970, 11:15 A.M.

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THE COURT: This is case Number Five on the calendar, Number A-258,361. People versus Charles Manson and Susan Denise Atkins. The record will show both defendants are present; that all counsel are present.

MR. KANAREK: Your Honor, I filed some Points and Authorities.

THE COURT: Yes, I read them.

THE CLERK: He just filed another document.

THE COURT: This morning?

MR. KANAREK: Yes, your Honor. I do make a motion, your Honor, to exclude any purported witnesses or any witnesses that in any attorney's mind may be a witness.

THE COURT: For the record, the motion that is now under consideration by the Court is the defendant Manson's motion to substitute Mr. Kanarek for Mr. Walton.

The people have also filed a Request for an Evidentiary Hearing with regard to this motion, and you have apparently just filed, Mr. Kanarek, a motion to strike the People's motion.

Is that the purport of that?

MR. KANAREK: Yes, your Honor. I am ordering a transcript of the proceedings before Judge Dell. The Court Reporter's name is Dolores Kimble. She will have for us,

1 I hope very shortly, a copy of the Court Reporter's notes,
2 and in connection with that it is our position, as we
3 indicated to Judge Dell, that there's absolutely no basis
4 whatsoever for this motion, this purported motion.

5 Furthermore, it did not even comport with the
6 most rudimentary requirements as to Points and Authorities.

7 THE COURT: Before we get into that, Mr. Kanarek, are
8 both defendants present. Is Miss Atkins present?

9 MR. REINER: Yes, your Honor.

10 MISS CUNNINGHAM: Nancy Cunningham appearing for
11 Richard Walter, your Honor.

12 MR. REINER: Ira Reiner appearing for Daye Shinn who
13 is unable to appear today.

14 MR. KANAREK: Judge Dell stated that Mr. Walton need
15 not be here but Nancy Cunningham is always welcome as far as
16 I am concerned, just as the record will be clear. Judge
17 Dell stated Mr. Walton need not appear at these proceed-
18 ings.

19 MISS CUNNINGHAM: I checked, your Honor, and I believe
20 he requested somebody from the office to stay.

21 THE COURT: Yes.

22 Go ahead, Mr. Kanarek.

23 MR. STOVITZ: I believe the record should also show,
24 your Honor, Miss Van Houten is here and Miss Krenwinkel
25 also.

26 THE COURT: Well, this motion, Mr. Stovitz, is in the

1 other case.

2 MR. STOVITZ: Yes, I realize that.

3 MR. KANAREK: The Notice of Motion, your Honor, I
4 think -- the Notice of Request is fatally deficient in
5 that there are no Points and Authorities. There is nothing
6 set forth by way of affidavit. It is a very cavalier-type
7 of proceeding that the District Attorney is attempting.

8 I am reminded of the story that I think we have
9 all heard, we have heard it at banquets where lawyers and
10 judges congregate, "If you don't have the facts you pound
11 the law; if you don't have the law you pound the facts; if
12 you don't have either you pound the lawyers."

13 That is what this is, your Honor. This is
14 merely an attempt on the part of the District Attorney to
15 pound the lawyer

16 We are ready to go to trial in the Tate case on
17 June 15th.

18 We also, at this time, your Honor, make the
19 motion that all of these proceedings be transferred over to
20 the Attorney General of the State of California. There has
21 been enough circus in connection with these serious
22 matters.

23 The District Attorney's Office of Los Angeles
24 County has played with peoples' lives long enough for the
25 personal gain of particular deputies and personnel of that
26 office.

1 I have the Government Code --

2 MR. STOVITZ: Your Honor, may we stick to the point
3 so we have a hearing one way or the other on this thing?
4 I think counsel did relate a true anecdote, "If you don't
5 have the facts and the law on your side you pound on the
6 attorneys."

7 Mr. Kanarek has been pounding on the attorneys.

8 THE COURT: Mr. Stovitz, I don't know if he is on
9 the point or not until I hear what he has to say.

10 MR. KANAREK: Your Honor, Smith vs. Superior Court --
11 I'm sure your Honor is familiar with that case, in 65 Cal.
12 2d, makes it very clear that the only way that an attorney
13 can be disbarred is by State Bar taking certain proceedings.
14 The State Bar Act so provides; or the Supreme Court of
15 California, and/or the Supreme Court of California, and
16 there is a very good reason for that, your Honor, in that
17 judges and attorneys should not fight it out in terms of
18 representation.

19 Every one of us, when any one of us has any kind
20 of litigation, it is part of our way of life that one should
21 be able to choose a lawyer, a lawyer of one's own choice;
22 that is basic to our fabric, our way of life. And the
23 District Attorney of this County, for some reason, has
24 chosen to make me some kind of a target in this case, and I
25 think that the District Attorney's Office has forfeited the
26 right, or whichever way we want to term it, they have

1 violated their duties, your Honor, so that if we are to
2 avoid the circus, then I suggest that the Attorney General
3 in the State of California be invited to prosecute these
4 matters, and then we will perhaps have dignity in this
5 Court.

6 Your Honor recently had a trial before him in
7 which the Attorney General prosecuted the case --

8 THE COURT: The only thing before the Court at the
9 moment, Mr. Kanarek, is Mr. Manson's motion to have you
10 substituted.

11 MR. KANAREK: Well, your Honor, as I say, the record
12 will reveal that Mr. Manson has stated in court as well as
13 by way of the document before the Court, mandamus lies.
14 The Points and Authorities that are attached to our Motion
15 to Substitute In makes it clear that mandamus lies for the
16 entry of the lawyer of the choice of the defendant.

17 That being the case, I mean I can wax poetic
18 here a little bit, Chandler vs. Freitag, United States
19 Supreme Court case, Smith vs. Superior Court, C.C.P. 284,
20 even Subsection 2, gives no place whatsoever --

21 MR. MANSON: Does he have a right to push us around?
22 I am not causing any disturbance.

23 You hold your men and keep them from forcing a
24 disturbance.

25 THE COURT: You will face the Court when you are
26 sitting in this courtroom, sir. If you have anything to

1 say you will say it through your counsel.

2 Let's proceed, Mr. Kanarek.

3 MR. KANAREK: Yes, your Honor.

4 THE COURT: Mr. Kanarek, I think you should advise
5 Mr. Manson if he does not comply with the Court order to
6 sit down and face the Court I will have him removed from the
7 courtroom.

8 MR. KANAREK: Yes, your Honor.

9 THE COURT: Do you wish to confer with Mr. Manson?

10 MR. KANAREK: May I state this, your Honor --

11 THE COURT: Let the record show at the moment
12 Mr. Manson is standing up with his back to the Court.

13 MR. KANAREK: Yes, your Honor. May I state this to
14 the Court:

15 I have spoken to Mr. Manson concerning this.

16 It is my belief, as we indicated in Judge Lucas'
17 court yesterday, looking at Illinois vs. Allen --

18 THE COURT: I don't want an argument on the law,
19 Mr. Kanarek.

20 Just inform Mr. Manson immediately if he does not
21 comply with the Court's order he will be removed.

22 MR. KANAREK: He hears the Court's words. These are
23 his wishes, your Honor.

24 THE COURT: Do you wish to confer with him before we
25 go further?

26 DEFENDANT MANSON: Your Honor, if you cannot recognize

1 me, can you expect me to recognize you?

2 THE COURT: All right, remove Mr. Manson from the
3 courtroom.

4 Mr. Manson will be permitted to return to the
5 courtroom when he is willing to affirm through his counsel
6 that he is ready to comply with the Court's order and main-
7 tain dignity and decorum while he is in the courtroom.

8 MR. KANAREK: May I allege on behalf of Mr. Manson,
9 your Honor, his right to effective counsel which is
10 guaranteed by the Sixth Amendment, by way of due process
11 clause of the Fourteenth Amendment.

12 Illinois vs. Allen does not contemplate this
13 kind of procedure on the part of the Court. He has not
14 been disruptive; he merely changed the relationship of his
15 body with respect to the Court.

16 I think if you balance his right when he is
17 charged with murder, his right to be present against the
18 encroachment upon the dignity of the court, I think the
19 balance is in favor of his being present, your Honor.

20 THE COURT: The record will show that Mr. Manson has
21 been placed in our lookout immediately adjoining the court-
22 room. There is a speaker provided so he will be able to
23 hear the proceedings in the courtroom while he is in the
24 lookout.

25 MR. KANAREK: Yes, your Honor.

26 THE COURT: Go ahead.

1 MR. KANAREK: We ask, however, that his physical
2 presence be here notwithstanding the fact of the speaker.
3 It is our position, your Honor, that the right
4 to effective counsel means the right to have colloquy, the
5 right to have discussion during the pendency, while the
6 proceedings are going on and all of that.
7 This is guaranteed to him by the California
8 Constitution as well as the Federal Constitution.
9 THE COURT: You will be permitted to confer with
10 Mr. Manson during all the recesses and after court hours,
11 and he will be permitted to return to the courtroom when he
12 is willing to affirm to you that he is ready to comply with
13 the Court's order.
14 Go ahead with your other argument.
15 MR. KANAREK. Yes, your Honor.
16 To be very brief, as I say, I would like to
17 introduce, if I may, your Honor's own card.
18 I have a blank here; I understand your Honor has
19 sent this out, and it is entitled -- well, at the top it
20 says, "Re: People vs. Motion Set For Hearing," and it states,
21 "Defendant's counsel shall file and serve Points and
22 Authorities including a statement of facts, points relied
23 on and the citation of authorities no later than noon the
24 day preceding the hearing, Superior Court Department 104,
25 Clerk."
26 May I file this as an exhibit in connection with

1 whatever these proceedings may be at this time?

2 THE COURT: You may, if you like.

3 MR. KANAREK: It is our position, your Honor, that
4 they have not procedurally followed even the most radi-
5 mentary qualifications in connection with this motion.

6 THE COURT: Mr. Kanarek, the Bailiff informs me that
7 if you will speak through the microphone then Mr. Manson
8 will be able to hear you through the speaker on the floor of
9 the adjoining room.

10 MR. KANAREK: Yes, your Honor. I have alluded to the
11 points in summary.

12 If your Honor wishes to take the time I can
13 read directly from Smith vs. The Superior Court.

14 THE COURT: No, that is not necessary. I am familiar
15 with the case.

16 MR. KANAREK: If your Honor wishes, I can proceed
17 further. I can go into this, assuming arguendo, your
18 Honor, that this offer of proof were a declaration, which
19 it is not, it is a nullity, it is bare conclusions.

20 They say --

21 MR. BUGLIOSI: Let me interrupt for just one second.

22 As I understand, this is a People's motion to
23 have the Court vacate the Court's other ruling.

24 THE COURT: No, that is not true, Mr. Bugliosi, the
25 motion before the Court now is Mr. Manson's motion to
26 substitute Mr. Kanarek.

1 I will hear from the People on your request in
2 an evidentiary hearing as soon as I have heard from
3 Mr. Kanarek.

4 MR. BUGLIOSI: I see.

5 MR. KANAREK: I don't want to belabor it, your Honor,
6 but looking at this purported document, it is called Offer
7 of Proof.

8 It says:

9 "At the hearing on June 10, 1970, the People
10 intend to offer all documentary evidence that
11 Mr. Kanarek in his representation of various
12 defendants in previous cases, has consistently" --

13 "Now, there is the first conclusion --

14 "-- and deliberately" --

15 That is a conclusion.

16 "-- engaged in extremely dilatory obstructionist
17 tactics" --

18 Both of those words are conclusionary --
19 "obstructionist" -- strictly conclusionary -- "tactics,
20 calculated" --

21 Conclusionary.

22 "-- and designed to prolong the respective trials
23 interminably, and thereby thwart the proper
24 administration of justice to all parties concerned,
25 and to effect prejudicial and reversible error at
26 the trial proceedings."

1 All of this is conclusionary. Supposedly they
2 have delved into my state of mind and have come up with
3 these conclusions which, if it were a declaration, your
4 Honor, it could be stricken and would be stricken because,
5 as your Honor well knows, affidavits must be positive; they
6 must be on oath or affirmation, and they must be -- they
7 cannot be just conclusionary. They must state things that
8 are ultimate facts.

9 They are no ultimate facts here.

10 Furthermore, speaking of dilatory, the reason
11 the District Attorney is doing this is because they want
12 Mr. Watson here from Texas, and they are begging for time.

13 They talk about a speedy trial, and they want
14 to go to trial, but they don't, because the Courts of Texas
15 have not seen fit to release Mr. Watson, Mr. Bugliosi and
16 Mr. Stovitz and perhaps others have dreamt up this procedure
17 to delay these proceedings.

18 Furthermore, they also know, have reason to
19 believe, that Linda Kasabian is insane. They don't wish to
20 proceed to trial. They want to go back and try --

21 THE COURT: We don't have to get into that,
22 Mr. Kanarek.

23 I think you stated your objections. Now, let's
24 hear from the People --

25 Just a moment, Mr. Stovitz, I notice that it's
26 just a couple of minutes to 12:00. There has been a meeting

1 of all the Superior Court Judges called until 2:00 o'clock.
 2 I must attend it, so I think I will recess at this time
 3 until 2:00 P.M.

4 2:00 o'clock, then, all counsel are ordered to
 5 return.

6 (Whereupon, proceedings in the above-entitled
 7 matter were continued to 2:00 P.M., this same date.)

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LOS ANGELES, CALIFORNIA, WEDNESDAY, JUNE 10, 1970, 2:09 P.M.

--008--

THE COURT: Number Five on the calendar, People versus Charles Manson and Susan Denise Atkins, Case Number A-258,361.

Mr. Kanarek, has your client Mr. Manson affirmed to you his willingness to come back into the courtroom and conform to the Court's orders regarding his decorum while in the courtroom?

MR. KANAREK: No, your Honor, but Mr. Manson tells me he has difficulty hearing these proceedings.

THE COURT: We will have the sound checked by our communications department as soon as they are able to. The Bailiff tells me that it is audible in there.

If you will speak through the microphone, counsel, that will make a big difference.

MR. KANAREK: Certainly, your Honor.

THE COURT: Now, returning to Mr. Manson's motion to substitute Mr. Kanarek for Mr. Walton, and the People's motion for an evidentiary hearing, do you wish to be heard on that, Mr. Bugliosi, and Mr. Stovitz?

MR. BUGLIOSI: Yes, your Honor.

Your Honor, this is a motion by the People to vacate the Court's earlier ruling permitting Mr. Kanarek to substitute in for the prior attorney,

1 THE COURT: This is not that motion, sir. This is the
2 other case.

3 MR. BUGLIOSI: It is a joint motion, your Honor.

4 THE COURT: I understand that. We will take one case
5 at a time.

6 I take it the grounds are the same in both
7 motions.

8 MR. BUGLIOSI: The grounds are the same.

9 It will be a motion by the People to vacate the
10 Court's earlier ruling, permitting Mr. Kanarek to substitute
11 in as Mr. Manson's attorney of record in the Tate-La Bianca
12 trial.

13 MR. KANAREK: I don't want to interrupt counsel, but
14 as your Honor indicated there is just a single motion before
15 the Court at this time, not on the Tate-La Bianca.

16 THE COURT: Go ahead, Mr. Bugliosi.

17 MR. BUGLIOSI: Also to deny Mr. Kanarek's motion to
18 substitute in as Mr. Manson's attorney of record in the
19 Hinman trial; this is a joint motion by the prosecution, your
20 Honor.

21 MR. KANAREK: Your Honor, may we have some definition
22 here?

23 Mr. Katz filed a motion in the Hinman matter.
24 As I understand it the only matter that the Court has called
25 is the Hinman matter, wherein Susan Atkins and Mr. Manson are
26 purportedly defendants as the result of the purported

1 Grand Jury indictment, and Mr. Katz is the gentleman who
2 filed that in Judge Dell's Court.

3 Now, Mr. Bugliosi is standing up and he is
4 trying to sort of by osmosis or something, turn it into a
5 motion as to both cases.

6 Your Honor has made the point --

7 THE COURT: I said it before and I will say it once
8 more, I am hearing the motion in the Hinman case now. We
9 will hear the other motion as soon as this one has finished.

10 MR. BUGLIOSI: Your Honor --

11 THE COURT: Are you arguing for Mr. Katz?

12 MR. BUGLIOSI: Yes, your Honor, I am arguing for
13 Mr. Katz and I am also arguing on the Tate-La Bianca trial
14 in the interests of expeditionness.

15 THE COURT: The arguments are going to be the same for
16 both?

17 MR. BUGLIOSI: Yes, sir.

18 THE COURT: The ruling will be separate, Mr. Kanarek.
19 You may sit down.

20 MR. KANAREK: Yes, your Honor.

21 MR. BUGLIOSI: Mr. Kanarek, permit me the courtesy of
22 addressing the Court as I permitted you that courtesy,

23 THE COURT: There will be no colloquy between counsel,
24 and don't address each other.

25 MR. BUGLIOSI: Repeating for the third time, so the
26 record is clear, your Honor, this is a motion by the People

1 to vacate the Court's earlier ruling permitting Mr. Kanarek
2 to substitute in as Mr. Hanson's attorney of record on the
3 Tate-La Bianca trial.

4 THE COURT: Apparently you don't understand what I say
5 when I say it, Mr. Bugliosi.

6 I will say it now for the fourth time.

7 I am going to rule on the motion of the Minnan
8 case first. Direct yourself to that; then we will take up
9 the other matter

10 MR. BUGLIOSI: I want to argue these jointly, your
11 Honor, because the same issues of law are involved.

12 THE COURT: That's right, and I will rule on them one
13 at a time. The Minnan case will be first so let's go.

14 MR. BUGLIOSI: We realize this is a rather unique
15 motion, perhaps unprecedented, but we feel under the circum-
16 stances of this case, and in view of Mr. Kanarek's well-
17 earned reputation as a professional obstructionist in a
18 court of law, your Honor, the motion is well-taken.

19 We also realize it is too premature for us to
20 ask the Court at this time to make a ruling.

21 What we seek today is an evidentiary hearing on
22 the matter which can be scheduled a week or so from this
23 date.

24 As an offer of proof at this time, your Honor,
25 at the evidentiary hearing we intend to offer documentary
26 evidence, trial transcripts, the oral testimony of judges,

1 prosecutors and jurors who have had extensive contact with
2 Mr. Kanarek, to show that literally from the moment
3 Mr. Kanarek sets foot into a court of law until the moment
4 he departs for the day, he dedicates himself with almost a
5 fanatical zeal to obstructing the due administration of
6 justice.

7 He does this by constantly making frivolous,
8 incompetent motions, by making frivolous, incompetent
9 objections, by saying in 5,000 words what could just as
10 aptly be said in five words; by appearing in court day after
11 day late, and by many other techniques, your Honor, which
12 are calculated and designed to frustrate the orderly
13 process of the trial.

14 Among the judges who will testify for the
15 prosecution, your Honor, in support of our motion are the
16 following --

17 MR. KANAREK: Your Honor, I must at this time --
18 I do object on the ground, your Honor, so the record will
19 be clear, I object on the ground there is no jurisdiction.
20 There is no basis in law for --

21 THE COURT: Mr. Kanarek, now you were given an
22 opportunity to make your argument this morning. Mr.
23 Bugliosi is making his now. You will have an opportunity
24 to answer. Sit down, sir.

25 MR. BUGLIOSI: Again, your Honor, among the judges who
26 will testify for the prosecution in support of our motion if

1 the Court does grant an evidentiary hearing, are the
2 following --

3 MR. KANAREK: May I state this:

4 I don't want to interrupt, your Honor, but I
5 just want the record to be clear that it would be our
6 position that any judge who so testified --

7 THE COURT: You are interrupting, Mr. Kanarek.

8 MR. KANAREK: I understand, your Honor, but I don't
9 believe that a judge is qualified.

10 THE COURT: If you don't sit down, Mr. Kanarek, I'm
11 going to take some steps to have you seated. Now, sit down.

12 MR. BUGLIOSI: Among the judges will be the following,
13 your Honor:

14 Charles Hughes, Presiding Judge of the Municipal
15 Court; Irwin J. Meeren, Judge of the Municipal Court;
16 James Harvey Brown, Judge of the Municipal Court;
17 Lester Olson, Judge of the Superior Court;
18 Raymond Roberts, Judge of the Superior Court; Judge John
19 Loomis, of the Superior Court; and Andrew Bauk, of the
20 United States District Court.

21 Also Commissioner Patrick McCormick.

22 Among the prosecutors who will testify are the
23 following, and this is not exclusive; we intend to have
24 many more judges and prosecutors if the Judge does grant us
25 an evidentiary hearing.

26 Joe Busch, Deputy District Attorney;

1 Paul Halpin, Deputy District Attorney; Richard D. Huffman,
2 Deputy Attorney General.

3 Among the jurors who sat on juries in which
4 Mr. Kanarek was defense attorney of record, Karl Raquene --
5 we intend to secure other jurors who sat on cases in which
6 Mr. Kanarek was the attorney of record for the defense.

7 The judges and the prosecutors, your Honor,
8 will testify, and this is the offer of proof, that, number
9 one, Mr. Kanarek is an obstructionist who dedicates himself
10 to thwarting the due administration of justice. ✓

11 Number two, he is an incompetent lawyer, and
12 because of his incompetence whoever he represents does not
13 secure a fair trial. Of course, the judges and the prosecu- ✓
14 tors will give specific examples of Mr. Kanarek's obstruc-
15 tion and incompetence from which they form their opinion.

16 At the conclusion of the evidentiary hearing,
17 assuming we prove everything we set out to prove, we would
18 ask the Court to remove Mr. Kanarek as Mr. Manson's attorney
19 of record in the Tate-La Bianpa trial and also to deny his
20 motion to substitute in as the attorney of record on the
21 Hinman trial.

22 The grounds would be:

23 Number one: He is an obstructionist.

24 Number two: Because he is incompetent he cannot
25 adequately represent Mr. Manson in a case of this magnitude
26 and complexity.

1 With respect to Mr. Kanarek's dilatory, obstruc-
2 tionist tactics, Mr. Kanarek recently finished a simple,
3 petty theft case, People vs. Goodman, a case that normally
4 would take a few hours or perhaps a day of trial,
5 Mr. Kanarek, by his incredible dilatory tactics, tied up a
6 court of law for three months.

7 His client, incidentally --

8 THE COURT: Is this an offer of proof or argument?

9 MR. BUGLIOSI: This is an offer of proof.

10 THE COURT: By whom do you intend to prove that?

11 MR. BUGLIOSI: We intend to call witnesses to testify
12 to that, your Honor.

13 THE COURT: Whom do you intend to call?

14 MR. BUGLIOSI: The prosecutor; also the judge, your
15 Honor.

16 THE COURT: Who was the Judge?

17 MR. BUGLIOSI: Judge Loomis; the prosecutor was
18 Sydney Trapp.

19 THE COURT: Did Judge Loomis tell you he would so
20 testify?

21 MR. STOVITZ: Judge Loomis told me this morning he has
22 notes of the specific acts of Mr. Kanarek which caused this
23 delay, your Honor.

24 MR. BUGLIOSI: In that petty theft case the defendant
25 stole, allegedly, \$101. It was estimated that the cost to the
26 County was \$130,212 in trying that case. The victim of the

1 theft lost \$100.

2 Los Angeles County, because of Mr. Kanarek,
3 lost \$130,000.

4 In the case of People vs. Smith and Powell,
5 involving the murder of a Los Angeles Police Officer,
6 Mr. Kanarek represented Mr. Smith at the retrial.
7 Mr. Kanarek was appointed attorney of record on that case
8 on September 1st, 1967.

9 On January 23rd, 1968, nearly four months later,
10 after interminable pretrial motions, Judge Alarcon relieved
11 Mr. Kanarek as attorney of record on the ground of
12 incompetency.

13 Mr. Kanarek appealed, and the California Supreme
14 Court held there was insufficient record before it upon which
15 to rule Mr. Kanarek was incompetent, and hence they re-
16 instated him as attorney of record on May 13, 1968.

17 The Supreme Court did not hold that Mr. Kanarek
18 was competent. The Supreme Court held there was insufficient
19 record upon which to form the conclusion of incompetency.

20 Between May 13, 1968 --

21 THE COURT: I don't think that was the holding in that
22 case, Mr. Bugliosi.

23 What the Supreme Court said was, the trial
24 court has no statutory, inherent power to remove an attorney
25 for incompetency.

26 MR. BUGLIOSI: I stand corrected, your Honor.

Between May 13, 1968, and February 3rd, 1969, a period of eight and a half months, your Honor, Mr. Kanarek again tied up the Court with an endless blizzard of pre-trial motions. Seventy-seven court days were consumed solely on pretrial motions.

Finally, on February 3rd, 1969, the selection of a jury commenced.

Two months later, on April 1st, 1969, after 41 solid days of attempting to pick a jury, a jury still had not been selected, and Mr. Kanarek's own client, Mr. Smith, fired him in disgust.

On the Smith and Powell case, your Honor, this was one murder victim and two defendants. Of course in the Tate-La Bianca and Hinman cases we are talking about eight victims, six defendants in the Tate-La Bianca case, three defendants in the Hinman trial.

As I indicated, Mr. Kanarek was appointed as attorney of record on September 1st, 1967, on the Smith-Powell case, one and a half years later because of Mr. Kanarek's incredible obstructionist tactics a jury had not yet been picked, not one single witness had been called to the witness stand.

In the case of People vs. Bronson, your Honor, 263 Cal.App. 3d, 131, a case tried in 1968, the trial judge, Superior Court Judge Raymond Roberts, made these statements on the record to Mr. Kanarek:

1 "Your tenacity is exceeded only by your
2 stupidity.

3 "You have stated it to the point of
4 ad nauseam. The important thing now is whether
5 or not you are going to be cited to the State
6 Bar. You cannot be as stupid as you sound; no
7 one can be that stupid.

8 "You are guilty of colossal rudeness. I
9 am doing my best to see that Mr. Bronson gets a
10 fair trial in spite of you. I have never seen
11 such obviously stupid, ill-advised questions of a
12 witness. Are you paid by the word or by the hour
13 that you can consume the Court's time?

14 "You are the most obstructionist man I have
15 ever met."

16 Elsewhere on the record, your Honor, Judge
17 Roberts told Mr. Kanarek:

18 "I warned you when this case started, I took
19 you into chambers and on the record I said, 'Mr.
20 Kanarek, your reputation has gone before you,' I
21 said to you, 'I'm going to warn you now as to the
22 way I am going to operate this trial,' and I said,
23 'The first time I'm going to warn you; the second
24 time I'm going to warn you in front of your client;
25 the third time I'm going to warn you in front of the
26 jury.'"

1 At another time, when the jury was not present,
2 Judge Roberts told Mr. Kanarek,

3 "All right, your reputation before you is
4 just what I have stated: That you take interminable
5 lengths of time in cross-examining on the most
6 minute, unimportant details; you ramble back and
7 forth with no chronology of events, to just totally
8 confuse everybody in the courtroom, to the utter
9 frustration of the jury, the witness and the
10 Judge."

11 Mr. Kanarek's client was convicted on that case.
12 On appeal Mr. Kanarek sought a reversal on the grounds that
13 the Judge made prejudicial comments to him in front of the
14 jury.

15 The Appellate Court affirmed the conviction.

16 The Appellate Court said:

17 "In determining appellant's contention regard-
18 ing the remarks it is necessary, of course, to con-
19 sider the circumstances under which the remarks were
20 made. This opinion would be prolonged unduly if
21 circumstances as to each remark were related in de-
22 tail. It may be stated generally that counsel for
23 defendant made many unnecessary objections to ques-
24 tions, engaged in unduly extended cross-examination,
25 repeated questions (in substance) as to which objec-
26 tions had been sustained, and repeatedly made

1 arguments after the Court had made rulings and after
2 the Court had directed him not to argue after the
3 rulings.

4 "Under the circumstances herein the remarks of
5 the Judge did not constitute a basis for reversing
6 the judgment."

7 In the case of People vs. Millard, Mr. Kanarek
8 represented the defendant.

9 These are the remarks of Judge Brown who, inci-
10 dentally, will also testify at the evidentiary hearing if the
11 Court grants us that, these are the remarks he made to the
12 jury at the end of the case. From the trial transcript:

13 "This trial, I am happy to inform you, is
14 not a typical trial, nor does it represent the
15 kind of proceeding that occurs in this courthouse
16 on even an occasional basis. It is rare, for-
17 tunately. This trial should have taken a maximum
18 of one day, whereas, in fact, it took five days,
19 including the preliminary proceedings. It would have
20 taken one full day more had the Court not been as
21 arbitrary as it was in respect to countless objec-
22 tions raised by defense counsel which were wholly
23 without merit, and I trust you will not be required
24 to ever sit through a performance such as this again,
25 and I'm hopeful that I never shall.

26 "The real victim in this case is the defendant,

1 irrespective of the outcome, the defendant should
2 not be required to go through an ordeal of this kind
3 regardless of whether he is guilty of the offense
4 charged.

5 "Other victims of a case conducted in this
6 fashion are the taxpayers, you and I, and all the
7 rest of the People, including the defendant, in this
8 County and this State.

9 "The cost of maintaining a jury courtroom for
10 each court day is substantial. In this case I am
11 convinced the outcome after one day of trial would
12 have not been more prejudicial to the defendant than
13 the outcome you have just announced.

14 "In conclusion, may I say you have been most
15 patient and I wish to thank you on behalf of myself
16 and the entire Municipal Court for your willingness
17 to serve in our jury system."

18 After the jury left the courtroom the Court
19 stated:

20 "Mr. Kanarek, I would suggest you affidavit me
21 in the future, and if you don't I shall certainly affidavit
22 you."

23 Your Honor, these four cases that I mentioned
24 are not exclusive instances of Mr. Kanarek's dilatory and
25 obstructionist tactics; they are merely illustrative.

26 Every single, solitary case this man sits on,

1 your Honor, takes 15 or 20 times longer than it would with
2 the average defense attorney trying the case.

3 Now, if it took Mr. Kanarek three months to try
4 a petty theft case, how long would it take it him to try one
5 of the biggest, perhaps one of the most complex murder cases
6 in history, your Honor? Five years? Ten years?

7 Although this sounds laughable, your Honor, and
8 ludicrous to the uninitiated, those who have been exposed to
9 Mr. Kanarek find it a fearsome reality.

10 If the trial did take several years, your Honor,
11 obviously it would cost the County of Los Angeles several
12 million dollars, an enormous expense. Should the citizens
13 of Los Angeles be victimized and forced to sustain this
14 monumental expense?

15 If I may be so presumptuous, your Honor, I would
16 assume there are several questions right now in the Court's
17 mind as to whether or not to grant an evidentiary hearing.
18 I don't know all the questions the Court has in its mind,
19 but I would assume that among the questions the Court has in
20 its mind are these four --

21 THE COURT: Let me give you the first question,
22 Mr. Bugliosi:

23 Do you have any citation of authority?

24 MR. BUGLIOSI: I intend to go into that, your Honor.

25 THE COURT: I would like to hear it.

26 MR. BUGLIOSI: May I present this in an orderly

1 fashion?

2 THE COURT: Very well.

3 MR. BUGLIOSI: The first question is, assuming, ar-
4 guendo that Mr. Kanarek is in fact an obstructionist. Does
5 this violate his duties as a lawyer?

6 Number two, assuming that his conduct in court
7 does violate his duties, his responsibilities, his obligations
8 as a lawyer, is a defendant's right to counsel under the
9 Sixth Amendment to the United States Constitution, and
10 Article One, Section Thirteen of the California Constitu-
11 tion, is it an unlimited, absolutely unqualified right?

12 And I suggest that is the most important question
13 the Court is probably concerned with.

14 Even assuming that a defendant's right to coun-
15 sel of his choice is not an absolute right, and even assum-
16 ing that the People take evidentiary hearing proving every-
17 thing they seek to prove, do the People have standing to
18 contest Mr. Manson's choice of counsel in Mr. Kanarek?

19 Finally, even assuming that the prosecution does
20 have standing, does this Court have the power to remove
21 Mr. Kanarek as Mr. Manson's attorney of record?

22 I will address myself to each question, your
23 Honor:

24 With respect to whether Mr. Kanarek's obstruc-
25 tionist conduct, if proven to be true, at the evidentiary
26 hearing, is a violation of his duties and responsibilities.

1 As a lawyer, I submit, your Honor, that it is.

2 On Page 251 of Cal.Jur. 2nd, the author
3 states:

4 "Action of an attorney whereby he conscious-
5 ly attempts to pervert or obstruct justice con-
6 stitutes professional misconduct."

7 A defense attorney, your Honor, is an officer
8 of the Court. Among the many cases that so hold this are
9 Chula vs. Superior Court, 109 Cal.Ap. 2nd 24; Flores vs.
10 Lawton, 187 Cal Ap. 2nd, 657 at 673.

11 Geover vs. Superior Court, 55 Cal. 2nd 381.

12 As the court said in Chula vs. Superior Court:

13 "Defense counsel, however zealous in his
14 client's behalf, has, as an officer of the Court,
15 a paramount obligation to the due and orderly
16 administration of justice, and at all times should
17 maintain a respectful attitude toward the Court."

18 Certainly, your Honor, Mr. Kanarek's obstruc-
19 tionist's tactics do violate that paramount obligation.

20 Also the Twenty-first Canon of Ethics of the
21 American Bar Association provides this:

22 "It is the duty of the lawyer not only to
23 his client, but also to the Courts and to the public
24 to be punctual in attendance, and to be concise and
25 direct in the trial and disposition of causes."

26 I submit, your Honor, if there is one case, if

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there is one word in any dictionary that least fits
Mr. Kanarek's conduct in court, it is the word "concise."

As I have indicated, we do intend to also
offer witnesses to testify to Mr. Kanarek's total lack of
punctuality in a court of law.

Number two, and I think this is the heart of
the matter, though the third and fourth questions certainly
are important, is a defendant's right to counsel of his
choice, admittedly a sacred right.

I will be the first one to admit that. Is it
an unlimited, unqualified, absolute right, one that can be
used for any purpose at all, however ignoble?

We submit it is not, your Honor.

Two cases which I think clearly hold that there
are limitations upon a defendant's right to counsel of his
choice, two cases which hold that it is not an absolute
right are People vs. Whinnery, 55 Cal.Ap. 2nd 794, and
People vs. Shaw, 46 Cal.Ap. 2nd 773.

In both Whinnery and Shaw, your Honor, on the
date set for trial, after several continuances in both
cases, the defendant sought to have a new attorney come in
and substitute in as his attorney of record.

In both cases the new attorney said that he
could not substitute in unless the Court granted a con-
tinuance which would give him ample time to prepare the
case.

1 In both cases the trial judge did not grant a
2 continuance and did not permit the substitution, i.e., the
3 Court refused to permit the defendant to have counsel of
4 his choice.

5 Nevertheless, the Appellate Court affirmed the
6 convictions.

7 As the Court said in the Snow case:

8 "Courts have at all times been zealous in
9 guarding the right of a person accused of crime
10 to have the aid of counsel to defend him. Such
11 zeal has also been manifested by the People of
12 this State, as well as the Legislature, the
13 former of whom have caused this fundamental right
14 to be made a part of the Constitution of California,
15 while the latter has inserted it in the Penal
16 Code. Each case, however, must be judged by the
17 particular facts therein presented.

18 "To hold that a defendant charged with crime
19 has an absolute right to counsel of his own selec-
20 tion, with unlimited right to insist upon con-
21 tinuances of his trial, would be subversive of the
22 prompt administration and execution of the laws --
23 upon which depends largely their effectiveness. It
24 is at once apparent that the Trial Court must in
25 the nature of things have some control over such
26 matters, to the end that judicial business may be

1 dispatched in an orderly manner; and if it has any
2 discretion it is apparent to us that such discretion
3 was not abused in this particular instance."

4 Now, admittedly, your Honor, the factual
5 situation in Whinnery and Shaw is not the same as is
6 presently confronting the Court, but I submit it is a
7 distinction without substance.

8 In fact, the situation at bar is infinitely
9 more aggravated than the Whinnery and Shaw cases, yet the
10 Appellate Courts in the State of California held in both of
11 these cases they approved the Trial Judge denying the
12 defendant counsel of his own choice.

13 This case, your Honor, is a fortiori to those
14 two cases.

15 In this case, your Honor, the defendant Manson
16 has pled not guilty to eight murders, seven in the Tate-
17 La Bianca murders and the one Hinman murder.

18 This means he is denying his guilt, and it
19 necessarily follows that he wants the trial jury to find
20 him not guilty.

21 If he wanted them to find him guilty, he would
22 have pled guilty. But he wants a not guilty verdict.

23 Yet despite this, Mr. Manson on May 19, 1970,
24 after Judge Dell refused to let him represent himself, made
25 this statement to Judge Dell in chambers on the record, and
26 he is talking about Mr. Kanarek now, this is Mr. Manson:

1 "I don't wish to hire this man as my lawyer,
2 but you leave me no alternative. I understand
3 what I am doing, believe me. I understand what
4 I am doing. This is the worst man in town I
5 could pick, and you are pushing him on me."

6 Mr. Manson stated on the record that Mr. Kanarek
7 was the worst attorney in town in his opinion.

8 Now, since Mr. Manson, your Honor, has pled not
9 guilty to these eight murders, and since he wants the trial
10 jury to find him not guilty, why does he pick in his own
11 estimation, your Honor, the worst attorney in town? Is the
12 worst attorney in town the one that is most likely to secure
13 a not guilty verdict for him?

14 Obviously not.

15 And just as obviously, Mr. Manson's motive, your
16 Honor, in hiring Mr. Kanarek, is to frustrate and paralyze
17 the due and proper administration of justice. He wants to
18 transform this trial into a carnival, and he is not going to
19 get by with it. We submit that he cannot use the right to
20 counsel of his choice in such an ignoble fashion. It cannot
21 be used for that purpose; it was never intended to be used
22 for that purpose, your Honor.

23 Mr. Manson hired Mr. Kanarek out of spite for our
24 judicial system, your Honor, in not permitting him to repre-
25 sent himself.

26 Mr. Manson, in effect, has said simply, "If I

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can't represent myself, then I am going to get Irving Kanarek."

His words to Judge Dell cannot be reasonably interpreted in any other way. In fact, your Honor, Judge Dell, after hearing this unbelievable remark by Mr. Hanson, made this statement:

"I appreciate that, Mr. Hanson, but, unfortunately, I am not going to be black-mailed. The Courts are not going to be black-mailed."

THE COURT: Do you suppose there is any question, Mr. Bugliosi, that Mr. Hanson may not be totally qualified to evaluate the attorneys in this County?

MR. BUGLIOSI: What I am seeking to do, your Honor, is look at Mr. Hanson's words, and from his words form a conclusion as to what his state of mind was.

The position of the People is that a defendant cannot prostitute the right to counsel of one's choice; he can only use it for certain purposes, not to paralyze the due administration of justice.

With respect to Mr. Hanson hiring Mr. Kanarek out of spite, and it is very, very obvious from Mr. Hanson's own words, I turn to Rule 13 of the Rules of Professional Conduct of the California State Bar:

"A member of the State Bar shall not accept employment to defend a case solely out of spite, or

1 solely for the purpose of harassing or delaying,
2 nor shall he take or prosecute an appeal merely
3 to delay, or for any other reason except in good
4 faith."

5 THE COURT: That spite is referring to the attorneys,
6 not to the defendant's.

7 MR. BUGLIOSI: Yes, your Honor, but I imagine in
8 Mr. Hanson's constant contact with Mr. Kanarek, I think
9 there is a mutual spite situation. I think it would be
10 reasonable for me to say that Mr. Kanarek has never wanted
11 or intended to be a friend of the District Attorney's Office,
12 and if I am not mistaken I would say that Mr. Kanarek is
13 probably dry-washing his hands right now for the opportunity
14 to get on this trial and prolong it interminably.

15 The right to counsel, your Honor, is not, in my
16 humble opinion, an unlimited, unqualified, absolute right.

17 All rights in our society, by definition, have
18 to be exercised within the permissible margins and perimeters
19 of good conscience and good faith.

20 A right, perhaps more fundamental than the right
21 of counsel of one's choice, is a right of an accused person
22 to be present in trial at his trial and confront the wit-
23 nesses who testify against him.

24 This is fundamental to our system. A person
25 charged with a crime has a right to be present at his trial,
26 certainly. Yet the United States Supreme Court in a recent

1 case, Illinois vs. Allen, 90 Supreme Court, 1957, held that
2 even that right was not an unlimited, absolute right.

3 THE COURT: That is why Mr. Nanson is not with us at
4 the moment.

5 MR. BUGLIOSI: That is right, your Honor, that is
6 right. I think the Court recognizes, then, by analogy, that
7 certain rights are not unlimited.

8 Now, in the Allen case the Court probably knows
9 the trial judge removed the defendant Allen from the court-
10 room while the trial was still in progress, because of
11 defendant Allen's unruly and disruptive conduct.

12 He was convicted of armed robbery, eventually.
13 He took the case up to the Court of Appeals. One of his
14 grounds for appeal was his removal from the courtroom during
15 the course of the trial violated due process of law and
16 violated the Sixth Amendment of the United States Constitu-
17 tion.

18 The Federal Court of Appeals agreed with
19 Mr. Allen, and they held that the right to be present at the
20 trial and confront witnesses is an absolute right, irrespec-
21 tive of the defendant's conduct.

22 But on a Writ of Certiorari, your Honor, the
23 United States Supreme Court held that even a defendant's
24 right to be present at the trial is not an absolute right
25 and can be taken away from him if he engages in disruptive
26 conduct.

1 The United States Supreme Court overruled the
2 District Court, or the Court of Appeals, on that point.

3 In the Allen case the Court approvingly cited
4 this language of Justice Cardozo who, speaking for the
5 Court in Snyder vs. Massachusetts, 291 U.S. 97, 106, said:

6 "No doubt the privilege of personally con-
7 fronting witnesses may be lost by consent or at
8 times even by misconduct."

9 In the Allen case, your Honor, after examining
10 the trial transcript and taking notice of the defendant's
11 unruly, disruptive conduct, the Court stated this at Page
12 1062:

13 "Under these circumstances we hold that Allen
14 lost his right guaranteed by the Sixth and Fourteenth
15 Amendments to be present throughout his trial.

16 "It would degrade our country and our judicial
17 system to permit our courts to be bullied, insulted,
18 and humiliated to have their orderly progress thwarted
19 and obstructed by defendants brought before them
20 charged with crimes."

21 Justice Brannon, in a concurring opinion, asked
22 this question, your Honor:

23 "The question is one of broad public policy,
24 whether an accused person, placed upon trial for
25 crime and protected by all the safeguards with which
26 the humanity of our present criminal law sedulously

1 surrounds him, can with impunity defy the processes
2 of that law, paralyze the proceedings of courts and
3 juries, and turn them into a solemn farce."

4 And Justice Brannon said,

5 "Certainly a defendant cannot do that."

6 By analogy, your Honor, there is nothing wrong
7 with analogy in the law, it is the heartblood of the law,
8 if the United States Supreme Court has just held, your
9 Honor, Illinois vs. Allen, that a defendant's right to be
10 present at his trial and confront witnesses against him is
11 not an absolute right if he engages in unruly and disruptive
12 conduct, then I submit, your Honor, that a defendant's right
13 to counsel, if it is flagrantly abused, as it is in this
14 case, likewise is not an absolute right and it, too, can be
15 circumscribed.

16 THE COURT: There has been no abuse of anything in
17 this case, Mr. Bugliosi, you are talking about other cases.

18 MR. BUGLIOSI: Yes, your Honor, but I think the Court
19 should have this frame of mind:

20 This is Mr. Kanarek's MO, his modus operandi.
21 He has been doing this for years. Our judicial system does
22 not have to wait until it is hurt before it retaliates. Our
23 judicial system can take prophylactic measures, as it were,
24 to insure that the harm does not occur in the first instance.

25 To believe that Mr. Kanarek would jettison his
26 prior demeanor and, in the Tate-La Bianca case, act like the

1 average defense attorney, your Honor, is just not too
2 believable.

3 Repeating, your Honor, no right in our society
4 is absolute and unlimited. A right far more sacred than
5 the right to counsel of one's choice, and the right of an
6 accused to be present in court at his trial and face the
7 witnesses against him is freedom of speech, the first
8 Amendment of the United States Constitution. The day an
9 American citizen cannot get up on a soap box or orange crate
10 in a public park and call the President of the United
11 States a fool is the day this nation ceases to be a great
12 nation; yet, even this beautiful right, this great right,
13 this precious right we all take for granted, is not an
14 unlimited, absolute right.

15 As Justice Holmes perceptively observed in
16 Schenck vs. United States, 249 U.S., 43:

17 "Freedom of speech does not give a person the
18 right to shout 'Fire' in a crowded theater, and
19 thereby cause panic."

20 Why can't one do this? For the simple reason
21 to do this would be a flagrant abuse of freedom of speech,
22 and thereby injuriously impinge on the rights of others.

23 That brings us to the next question, your Honor:

24 Assuming, assuming that a defendant's right to
25 counsel of his choice is not an unlimited, absolute right,
26 do the People have standing to contest Mr. Manson's choice

1 of counsel?

2 We have standing, your Honor, only if the
3 flagrant abuse of Mr. Manson's choice of counsel would
4 impinge upon the rights of the People.

5 Of course that begs the question. Do the
6 People have any rights, any rights to protect, any rights
7 to safeguard? Can the People immunize themselves, as it
8 were, against the violation of those rights?

9 Now, although the overwhelming emphasis is in-
10 variably placed, your Honor, on the defendant's right to a
11 fair and speedy trial, the prosecution in this case, the
12 People of the State of California, believe it or not, they
13 are also entitled to a fair and a speedy trial.

14 And I submit, your Honor, this will be impossible
15 if Mr. Kanarek represents Mr. Manson.

16 With respect to the People's right to a fair
17 trial, your Honor, the Court in the case of People vs.
18 Beasley, 5 Cal.App. 3rd, Page 617 at Page 630, a 1970 case,
19 made this statement:

20 "An observation seems appropriate at this
21 point: The People of the State of California,
22 represented by the District Attorney, are a
23 party plaintiff in this and all criminal actions.
24 They, the People, are entitled to the same judicial
25 impartiality and fairness as any other litigant in
26 our courts."

1 In the case of State Bar of California vs.
2 Superior Court, 207 Cal. 323 at Page 330 and 331, the
3 Court said this:

4 "It is a matter of public history and
5 general knowledge that the profession and
6 practice of the law embraces in its membership
7 probably the largest and certainly the most
8 influential body of individuals, having a definite
9 and common objective, of any similar professional
10 association of citizens of this or of any other
11 of the commonwealth of our common country.

12 "This body of our citizenry known to the
13 laws of this State as 'attorneys and counselors
14 at law,' form an integral and indispensable unit
15 in our system of administering justice which has
16 come down to us under the name of Anglo-Saxon
17 Jurisprudence, and without the constant presence
18 and contacts of which courts could not function nor
19 the orderly administration of justice go on.

20 "Attorneys and counselors at law have long
21 been known as 'officers of the court,' and as such
22 they have for centuries been required to undergo
23 certain courses of preparation and to assume certain
24 solemn obligations relative to their training,
25 character and conduct as such; and these not only
26 with respect to their relation to the courts, but

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also with regard to their relation to the public
at large.

"Thus it is that the profession and practice
of the law, while in a limited sense a matter of
private choice and concern insofar as it relates to
its emoluments, is essentially and more largely a
matter of public interest and concern, not only from
the viewpoint of its relation to the administration
of civil and criminal law, but also from that of
the contacts of its membership with the constituent
membership of society at large, whose interest it is
to be safeguarded against the ignorances or evil
dispositions of those who may be masquerading be-
neath the cloak of the legal and supposedly learned
and upright profession."

Are we also entitled to a speedy trial? Yes,
your Honor, the People are entitled to a speedy trial.

The legislative intent as exemplified, clearly
exemplified, in Section 1050 of the California Penal Code
says this:

"The welfare of the People of the State of
California requires that all proceedings in criminal
cases shall be set for trial and heard and determined
at the earliest possible time, and it shall be the
duty of all courts and judicial officers and of all
prosecuting attorneys to expedite such proceedings to

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the greatest degree that is consistent with the
ends of justice."

People vs. Whinnery, I already gave to the
Court, cited Section 1050 for the proposition that the
prosecution's right to a speedy trial cannot be thwarted
by defendant's dilatory tactics.

I submit this, your Honor, that there is no
possible, conceivable way that the People of the State of
California can get a speedy trial if Mr. Kanarek represents
Mr. Manson.

Getting a speedy trial with Mr. Kanarek, your
Honor, is as impossible as jumping away from one's own
shadow, and it just cannot be done.

Now when we talk about the People's right to a
fair and speedy trial, we are talking in the last analysis
about the administration of justice.

Now, what is justice? Justice, your Honor, is
the rendering of that which is due. Eight people have been
savagely, viciously murdered in this case. Mr. Manson is
charged with all eight murders. The Los Angeles County
Grand Jury indicted him for all eight murders.

The People are entitled to that which is due
them, to-wit, if Mr. Manson is guilty, that he be convicted
and sentenced at the earliest possible time consistent and
compatible with the ends of justice.

This is the administration, your Honor, of

1 Justice. Justice cannot be administered, your Honor, with
2 an attorney who will most likely prolong this case for
3 several years to the inevitable, enormous inconvenience and
4 harassment of witnesses for the prosecution who have to
5 remain on call indefinitely, cannot even leave the State,
6 whose memories, necessarily, fade and become dusty and rusty
7 with the passage of time.

8 By way of footnote, your Honor, although Section
9 182 P.C., the conspiracy statute, has never been applied to
10 this type of situation, and I don't suppose it ever will be,
11 and I'm not proposing that it should be, the obstruction of
12 justice is so serious a matter that the California Legisla-
13 ture has made it a felony.

14 Section 182, Subdivision 5, reads:

15 "A conspiracy occurs if two or more persons
16 conspire to pervert or obstruct justice."

17 Not only can't the People receive a fair trial,
18 your Honor, if Mr. Kanarek represents Mr. Manson, but
19 Mr. Manson, himself, cannot receive a fair trial if
20 Mr. Kanarek represents him. I say this because Mr. Kanarek
21 by his incredible courtroom demeanor, demeanor that has to
22 be seen to be believed, and by his incompetency, antagonized
23 the jury to the detriment and the prejudice of his own
24 client.

25 We intend to call jurors at the evidentiary
26 hearing who will testify that on cases in which they sat as

1 a juror Mr. Kanarek's demeanor insured to the detriment of
2 his own client in the particular case in which they sat as
3 jurors.

4 As Judge Roberts told Mr. Kanarek in the case
5 of People vs. Bronson, Bronson being the defendant,
6 Mr. Kanarek's client, "I am doing my best, Mr. Kanarek, to
7 see that Mr. Bronson gets a fair trial in spite of you."

8 Your Honor, the Court and the prosecution both
9 have the duty to insure, do everything possible to insure
10 that a defendant receives a fair trial.

11 Because of Mr. Kanarek's obstructionist tactics,
12 which antagonize the jury, because of his incompetence,
13 Mr. Manson will not be able to receive a fair trial if he is
14 represented by Mr. Kanarek.

15 Moreover, your Honor, we should not forget this,
16 Mr. Manson's co-defendants in this case, they are also
17 entitled to a fair trial, and it is not unreasonable to
18 believe that the prejudice sustained by Mr. Manson in being
19 represented by Mr. Kanarek will flow over, as it were, to
20 the prejudice of Mr. Manson's co-defendants.

21 The fourth and final question is whether or not
22 this Court has the power to remove Mr. Kanarek as attorney
23 of record on the Tate-La Bianca case and to refuse his
24 substitution in on the Hinman case.

25 Admittedly, your Honor, this is a case of first
26 impression perhaps in the entire nation, but I would remind

1 the Court that by definition, every rule of law, every
2 judicial holding has at some point in time had its birth,
3 and at the expense of sounding flowery, no point of law
4 appeared for the first time as fully ripened fruit on the
5 tree of jurisprudence.

6 In my opinion, your Honor, this case, this
7 situation is so aggravated that it literally cries out for
8 the Court to take a pioneer stand.

9 The Court can find some solace, there is
10 precious little solace to be had in a case like this, but
11 the Court can find some solace in the fact that it will not
12 be bound by stare decisis, in that there is no compelling
13 authority directly in point one way or the other.

14 However, as I have indicated, California
15 Appellate Courts in the cases of Whinnery and Shaw have
16 recognized the power of the trial judge to circumscribe and
17 establish reasonable limitations upon the defendant's
18 counsel of his choice.

19 I think the Court's ruling if favorable to the
20 prosecution in this case would be a logical and reasonable
21 expansion of the rationale of Whinnery and Shaw.

22 And by analogy, your Honor, the United States
23 Supreme Court again in the Allen case has recognized the
24 power of a trial judge to take away a defendant's right to
25 be present at his trial, and confront the witnesses against
26 him, where that defendant engages in unruly, disruptive

conduct.

Moreover, your Honor, I cite to the Court two canons of judicial ethics from the California Rules of Court:

Canon Number 13 -- nothing, your Honor, is on all four points with anything, not even Siamese twins. I am arguing by analogy.

I am trying to give the Court some rationale upon which to base its rule, at least to grant us an evidentiary hearing.

A Judge may properly intervene during the trial of a case where this appears reasonably necessary in order to expedite proceedings for clarification of any point, or to prevent injustice. He should remember that while primarily it is the function and right of attorneys to present the case of their respective clients, it is the ultimate function of the Judge to see that no party appearing before him suffers an injustice which he can prevent.

Now, this is the California Rules of Court, and they are talking prospectively now. They are not talking about a situation where the damage has already been done and how to undo the damage. They are talking about preventing injustice to one of the parties to the lawsuit.

The People of the State of California are the plaintiffs in this lawsuit.

Canon Number 13 goes on to say:

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"Litigants, witnesses and attorneys alike are entitled to have a court function as a court of justice in fact, as well as in theory."

Canon Number 2:

"Courts exist to promote justice, and thus to serve the public interest. Their administration should be speedy and careful. Every Judge should at all times be alert in his rulings and in the conduct of the business of the court so far as he can to make useful to litigants and to the community. He should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts, instead of the courts for the litigants."

Your Honor, to speculate on what an Appellate Court is going to do in the future is a rather unprofitable undertaking. However, I am reasonably confident, I am not making any misrepresentations to the Court, there would be no way I can be positive, but I am reasonably confident that under the particular unique, aggravated facts and circumstances of this case, this Court has the discretionary power to remove Mr. Kanarek as Mr. Hanson's attorney of record on the Tate-La Bianca case, and to prevent his coming in on the Hman case, and I sincerely believe, your Honor, that if the Court would do this, the Courts upstairs, the Appellate Courts, would affirm and uphold his Honor's

1 action.

2 Of course, whether or not the Court elects to
3 exercise this power is within the discretion of the Court.

4 That is what we are here for; that is what it's
5 all about.

6 In closing, your Honor, the defendant's right
7 to counsel is guaranteed by the Sixth Amendment. It is a
8 sacred right, and the District Attorney's Office has never
9 before sought to tamper, as it were, with that right, but
10 here we have a very flagrant, gross abuse of that right,
11 your Honor, by Mr. Hanson's securing the services of
12 Mr. Kanarek.

13 The District Attorney's Office, representing the
14 People of the State of California, strongly believe that our
15 interference with the right of counsel of one's choice is
16 justified and warranted by the facts and circumstances of
17 this case.

18 Your Honor, the Tate-La Bianca trial is one of
19 the biggest cases in American criminal history. It has been
20 the story on Page One not only here in California and
21 throughout the country, but even in Europe.

22 Not only the eyes of the nation, your Honor, the
23 eyes of the world are going to be focused on the entire
24 trial proceedings. Let's not make a travesty out of our
25 system of justice. Let's not be ridiculed by the world, and
26 I submit, your Honor, that if Mr. Kanarek represents

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1 Mr. Manson we are going to make a travesty out of our system
2 of justice and we are going to be ridiculed by the world.

3 On behalf of the District Attorney's Office,
4 your Honor, I respectfully request that the Court schedule
5 an evidentiary hearing permitting us to put on evidence
6 proving beyond a reasonable doubt that if Mr. Kanarek repre-
7 sents Mr. Manson this will thwart and paralyze the due and
8 proper administration of justice.

9 Mr. Manson has openly stated on the record that
10 in his opinion Mr. Kanarek is the worst attorney in town.

11 From Mr. Manson's own lips, your Honor, a blind
12 man, a blind man could see that Mr. Manson hired Mr. Kanarek
13 for the express purpose of converting this trial into a
14 hopeless quagmire and to a burlesque of justice.

15 The right of counsel, your Honor, does not give
16 Mr. Manson the right to do this. This Court should not
17 permit Mr. Manson to do that which the framers of the Sixth
18 Amendment could not possibly have intended. There is no
19 way they could have intended that.

20 Eight people, I repeat, were savagely and
21 brutally murdered. The People of the State of California,
22 your Honor, want justice. The People of the State of
23 California are entitled to justice. Justice should not be
24 denied them, your Honor, merely to protect the flagrant
25 perversion and abuse of one's right to counsel.

26 Thank you, very much, your Honor.

1 THE COURT: The Court will recess for fifteen
2 minutes.

3 (Recess.)

4 (The following proceedings were had in open
5 court in the presence and hearing of defendants Atkins,
6 Van Houten and Brenwinkel, the defendant Manson being in
7 the hold, all counsel, with the exception of Mr. Shinn,
8 being present:)

9 THE COURT: Mr. Kanarek, has Mr. Manson affirmed to
10 you yet his willingness to come back into the courtroom and
11 conform to the Court's orders regarding his decorum and
12 conduct?

13 MR. KANAREK: May I respond to the Court in this
14 manner, your Honor, this may disabuse Mr. Bugliosi of his
15 fondest wish, but this is a direct quote from Mr. Manson.

16 Mr. Manson said that Mr. Kanarek was the worst
17 lawyer he could get --

18 THE COURT. Just a moment, sir, answer my question.

19 MR. KANAREK: I am going to tell your Honor exactly
20 what --

21 THE COURT Has he affirmed his desire to come into the
22 courtroom --

23 MR. KANAREK: I want to point out to the Court, he
24 meant I was the worst lawyer for the prosecution, not for
25 any other purpose.

26 I invite the Court to have him out in the

1 courtroom. He asked me to ask you to let him tell that to
2 Mr. Bugliosi.

3 THE COURT: I am not concerned with that, sir. Is he
4 willing to come back and conform to the Court's order as to
5 his conduct?

6 MR. KANAREK: That I cannot represent.

7 THE COURT: Then you may proceed.

8 MR. KANAREK: I think in his precious right to counsel,
9 Mr. Manson -- I will ask the Court -- certainly he will not
10 have his back on the Court when he answers your Honor's
11 question, and in regard to this matter, Mr. Bugliosi has
12 made these disparaging remarks concerning me, it is most
13 important, I believe, and I would welcome the Court to
14 ask Mr. Manson, when he said the worst lawyer in town, he
15 meant it was the worst from the prosecution's viewpoint.
16 He thought I could do the best job as a lawyer for him.

17 So Mr. Bugliosi making much of that, I would ask
18 your Honor to allow Mr. Manson to be interrogated by your
19 Honor in this regard.

20 THE COURT: No, I will not permit that, sir.

21 Go ahead with your argument.

22 MR. KANAREK: Very well, your Honor.

23 Mr. Manson also asked me to state a quote, as he
24 views it, from Alexander Hamilton who said to Thomas
25 Jefferson, "I have the right to nothing that another man
26 has the right to take away."

1 Mr. Manson also wants me to state to the Court,
2 "Does this Court have the right to take my rights away?
3 The Court itself" --

4 THE COURT: Mr. Kanarek, do you intend to make an
5 argument in answer to Mr. Bugliosi, or shall we go on
6 to something else?

7 MR. KANAREK: Mr. Manson's argument --

8 THE COURT: I want your argument or none.

9 MR. KANAREK: Very well, your Honor.

10 It has -- very well.

11 First of all, your Honor, Mr. -- I don't know
12 Mr. Bugliosi's idea of an obstructionist, but again, your
13 Honor, really, this is a conclusion, one man's obstruc-
14 tionist might be another man's lawyer, your Honor, and the
15 fact is that Mr. Bugliosi, he, making these many remarks
16 concerning me, concerning my alleged obstructionism, has
17 in fact offered to the Court nothing but conclusions.

18 Now, I have some detail here. It comes to my
19 mind that Mr. Bugliosi is making these remarks because he
20 has no case.

21 This afternoon at lunch I heard over the radio
22 where the Los Angeles Police Department was advertising for
23 witnesses in the La Bianca murder. They are pleading for
24 witnesses.

25 Mr. Bugliosi is stalling for time, your Honor,
26 he is stalling. He is being dilatory; he is being, if I may,

1 an obstructionist.

2 We are ready to go to trial on Monday, the date
3 that your Honor said. I have arranged my affairs so I can
4 go to trial. But Mr. Bugliosi doesn't want that, your
5 Honor. Mr. Bugliosi wants a delay, and so he has filed
6 this particular purported motion with the Court.

7 Mr. Bugliosi has in his address to the Court,
8 I tried to make some notes here, I cannot state it, your
9 Honor -- I don't know exactly how to state it, but I have
10 the greatest respect for our judicial system, your Honor,
11 for our way of life.

12 But that does not mean, your Honor, that I must
13 when it comes to a court, that I must agree with everything
14 that a court does.

15 As a matter of fact, I don't know if
16 Mr. Bugliosi did his homework or not, but when he cites
17 Cooper vs. The Superior Court, I find a case where even
18 Judges don't agree. Judge Dawson found Grant Cooper in
19 contempt.

20 The Court of Appeals, the particular branch of
21 the Court of Appeals that ruled on it, unanimously affirmed
22 that contempt.

23 The California Supreme Court unanimously, I
24 believe, in any event I'm sure it was a majority and I
25 believe it was unanimous, reversed the Court of Appeals and
26 purged Grant Cooper of that contempt.

1 So when you say obstructionism, when that jury
 2 was in the box, and it was in Department 103 right next
 3 door to your Honor, when that jury was in the box, Judge
 4 Dawson when he was interrogating that jury at that particu-
 5 lar time and trying to capture their mind, the Supreme
 6 Court of California said he was without jurisdiction, your
 7 Honor, he was without jurisdiction to speak to that jury at
 8 that time because they had had the Finch case for a few
 9 weeks, and, therefore, he was trying to impose his will
 10 upon that jury, and he found Mr. Cooper in contempt.

11 And Mr. Cooper kept talking and talking and
 12 talking.

13 And I suppose Mr. Bugliosi would find that to be
 14 obstructionism, and the Court of Appeals agreed with Judge
 15 Dawson, but the Supreme Court of California did not agree.

16 So we have in our adversary system, we had just
 17 that, a fight, one side versus the other side, and when you
 18 have a fight sometimes blood flows.

19 And the point of the matter is that the prosecu-
 20 tion, the reason that we should not be arguing this matter
 21 is because, as I'm sure your Honor agrees, in reading
 22 Smith vs. The Superior Court, it is for other governmental
 23 agencies.

24 If I am a no-goodnik, there is the State Bar of
 25 California, there's the California Supreme Court.

26 But rightfully the trial court judge should not,

1 should not decide in advance what attorney should represent
2 a man.

3 I am not saying this out of any depreciation of
4 Mr. Hughes. I am speaking of the record here.

5 Now Mr. Hughes -- the prosecution -- Mr. Hughes
6 is a friend of mine, and I will go into some detail further
7 on in my argument.

8 Mr. Hughes came before the Court. Mr. Hughes
9 had not tried a case, the record so reveals. He had not
10 tried any case, but did Mr. Bugliosi get up and protest the
11 defendant from an attorney who had not tried a case?

12 No, Mr. Bugliosi is there to get a conviction
13 at any price. He did not say, "Well, let's have an evi-
14 dentiary hearing. Let's see, maybe the lawyer who just
15 passed the bar, maybe he should not handle this case."

16 That is not what Mr. Bugliosi or Mr. Stovitz
17 said. They were very content to go along in connection with
18 this case, (and now that we have filed papers wherein we are
19 challenging the sanity of Linda Kasabian, perhaps their only
20 purported witness; now that we have asked for a 1538.5; now
21 that we have made other motions in connection with the case,
22 the District Attorney is unhappy and they have turned upon
23 me in a personal way.

24 I don't want to belabor it, but, your Honor, we
25 are in an area wherein the Court does not have jurisdiction,
26 and rightfully so. A litigant should be able to choose his

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or her own lawyer.

In Smith vs. Superior Court, and in the Chula case and other cases that counsel cites, the Court is not without power. If I don't do what the Court says, the Court has the Bailiff, or two Bailiffs here, and if any lawyer does not do what the Court says the Court has ample power, bringing in these judges in a latter day sort of way, in a latter day sort of way, is attempting to put witnesses on. All they could testify to would be their subjective conclusions.

The record -- why don't they bring in the detailed transcript, and let's go over it as legal scholars. Why don't they take it to the State Bar of California, any particular transcript?

But he wants to broad-brush it. He talks about this petty theft case, and that petty theft case; the man was a lifetime parolee.

The District Attorney of Los Angeles County, a different Deputy from Mr. Bugliosi, wanted a conviction at any price, so they filed a petty theft with a prior.

They could have filed just petty theft, but they didn't; they wanted those priors before the jury, and we can go into an entire, maybe a six months' course concerning the legal issue in that case rather than broad-brushing it the way Mr. Bugliosi would have us do, and I would welcome it.

1 I would make a motion that the Court order
2 the transcript in that case, have it brought before the
3 State Bar where the jurisdiction lies, or the Supreme
4 Court of the State of California where the jurisdiction
5 lies, and let's look at it word for word, and see where
6 there has been any dilatory tactics.

7 In that case the District Attorney wanted a
8 witness that was in Europe, and that is the reason I was
9 trying to object to the judges, because even though I may
10 disagree with judges, I certainly respect them.

11 Judge Hughes was the judge in that case, the
12 Judge Hughes Mr. Bugliosi was referring to. He was sitting
13 as Judge Pro Tem in the Superior Court, and speaking of
14 dilatory tactics the judge granted a month's continuance,
15 so that the District Attorney's witness could return from
16 Europe, and then when the witness came the witness had
17 nothing to offer. He didn't even remember the defendant.

18 The witness was a gentleman who had purportedly
19 been the man's lawyer in 1958, and he came and he did not
20 remember him.

21 Now, they could have made a transatlantic call
22 and found out something about this, but they didn't. They
23 delayed the trial a whole month.

24 What I am pointing out, your Honor, in the
25 adversary system we have these situations occur, and to ask
26 this Court to sit in judgment of an attorney wherein

1 Mr. Bugliosi, I guess it's another Freudian slip on the
2 prosecution's part, he says he wants to prove me guilty
3 beyond a reasonable doubt.

4 I mean, I would gather I am another defendant
5 in this case.

6 So what I'm saying, your Honor, as I say, there
7 are extensive notes here. I would like to state a little
8 anecdote, if I may, a true story in connection with that,
9 and the story is I was in Judge Grillo's court, and
10 Judge Grillo indicated that we should go to the bench, and
11 Judge Grillo in these proceedings, in these proceedings we
12 were speaking at the bench, and Judge Grillo has quite a
13 husky voice and his voice carries, and in connection with
14 these proceedings I asked the Judge as politely as I could
15 to lower his voice because the reason we were at the bench
16 was so the jury could not hear what was going on.

17 But the Judge spoke loudly, and I asked him,
18 and he indicated that I was ordering a Judge to do some-
19 thing.

20 Well, the record is there clear to see. After
21 the case had been concluded, and as a matter of fact the
22 case against the defendant was dismissed, the Judge found me
23 in contempt of Court on seven counts of contempt, one of
24 them being that I ordered him to lower his voice.

25 It so happens that Mr. Hughes was in the court-
26 room, and Mr. Hughes in connection with that matter

1 offered a sworn declaration prior to the time that the
2 transcript came out, he, Mr. Hughes, was sitting in the
3 audience, and Mr. Hughes heard what the Judge said, and so
4 there was reason behind my asking the Judge to lower his
5 voice.

6 Mr. Hughes offered his declaration in that
7 regard, as I say, before the transcript came out.

8 Judge Orillo would not grant me any bail, he
9 would grant me no stay of execution; he wouldn't grant me
10 a lawyer.

11 He refused to grant me a lawyer, and so I went
12 off to jail with the defendant. The defendant went free
13 and I went to jail.

14 THE COURT: That is the risk of being an attorney,
15 Mr. Kanarek.

16 MR. KANAREK: That's correct, your Honor.

17 And, furthermore, Mr. Fred Kilbride of the local
18 Bar who is an ex Public Defender came to my rescue. He went
19 to the Court of appeal and got a writ, and I got out after
20 several hours and there was a hearing before Judge White of
21 Department 70, and Judge White dismissed all seven counts of
22 the contempt.

23 And, so, your Honor, what I am saying is, I am
24 citing these instances. I am doing this to point out to the
25 Court that, again, we have the adversary system, and rather
26 than belabor it, your Honor, I believe that there is, and I

say it with the greatest respect for the Court, there is no jurisdiction in the court to have such a hearing; this is not the forum for it, your Honor, and we would ask your Honor to grant our motion to strike the pleading for the procedural reasons stated and on the basis that there is no basis for it in law.

THE COURT: Well, Mr. Kanarek, I couldn't agree with you more. The People's request for an evidentiary hearing is not only unprecedented but it is wholly unsupported by any citation of authority.

To deny a motion for a substitution in the Hinman case and to vacate the substitution in this case would be beyond the Court's statutory and inherent powers under the Supreme Court's decision in Smith vs. The Superior Court.

If an attorney is guilty of misconduct or unprofessional or unethical conduct in some other proceeding, then the place to remedy that is either in that proceeding or by appropriate State Bar proceedings or by both, and this Court will not lend itself to be a forum to litigate the alleged misconduct of an attorney in another proceeding as the basis for denying a substitution of attorneys.

The People's request for an evidentiary hearing in the Hinman case is denied.

The motion to substitute Mr. Kanarek is granted, and Mr. Walton is relieved as attorney of record.

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In the Tate-La Bianca case the People's motion to vacate the substitution is denied.

We will take up next the motion on behalf of Miss Van Houten.

Is that the proper pronunciation?

MR. REINER: Van Houten, your Honor.

THE COURT: We will take up the request for discovery in that regard.

MR. STOVITZ: Before we go on with that, may we have a record of these proceedings transcribed?

THE COURT: All the proceedings will be transcribed throughout the trial.

MR. STOVITZ: Thank you very much.

THE COURT: All counsel will receive a copy of the transcript.

Do you wish to be heard on your motion, Mr. Reiner?

MR. REINER: Your Honor, perhaps it would be better if the People would indicate specifically what matters they will resist rather than argue individually each of the fifteen items I have requested.

THE COURT: Whatever the result is, if you reach an agreement it will have to be in some intelligent form. I don't understand what you mean by some of these requests, starting with Paragraph 1-A, how do you discover and inspect a copy of an oral statement?

1 MR. REINER: Oral statements made by witnesses to the
2 prosecution which they have notes of.

3 THE COURT: What you want to read are the written
4 statements, or any memoranda of the conversation.

5 MR. REINER: That is correct, and some statements
6 in which the memoranda had been destroyed, where there has
7 been an oral statement, notes have been taken and destroyed
8 by the officers; a statement was made and we want such
9 oral statement.

10 THE COURT: Do the People wish to respond to the
11 request in Paragraph 1-A?

12 MR. BUGLIOSI: It says, "All oral statements made by
13 any of the defendants to any person."

14 Apparently if Mr. Manson then spoke to someone
15 in a camp somewhere are we supposed to ascertain what he
16 told that person and tell Mr. Reiner? I really don't know
17 what he is seeking here.

18 THE COURT: Apparently he is seeking any written
19 statements or any oral statements which have been reduced
20 to writing by the District Attorney's Office, or any of the
21 investigators in the case, and any notes or memoranda of
22 any conversation.

23 MR. BUGLIOSI: We have turned over all conversations,
24 your Honor, that have been reduced to writing. We have
25 also turned over several tape-recorded conversations.

26 There are no other statements, either tapes that

1 we have reduced to writing, which we have in our possession
2 which we have not turned over to the defense.

3 MR. REINER: As a practical matter all statements
4 gathered by the District Attorney or investigative agency
5 reporting for the District Attorney, obviously will be
6 reduced to writing if not by the person making the statement,
7 certainly by the investigator.

8 But what we are specifically asking for is all
9 statements within the knowledge of the District Attorney
10 from any source. If they have knowledge of a statement,
11 then we are asking for that statement.

12 The example posed by Mr. Bugliosi of the state-
13 ment made by Mr. Hanson to some third person, if the
14 District Attorney is aware of such statement we would want
15 to have that statement given to us, as an example.

16 THE COURT: I imagine if they were aware of it they
17 would have a copy of it to come within your request.

18 MR. REINER: I assume so.

19 THE COURT: I take it, then, so far as the People are
20 concerned, they already complied with the request in 1-A.

21 MR. BUGLIOSI: Yes, your Honor.

22 THE COURT: Insofar as it has been described by
23 Mr. Reiner here today.

24 How about 1-B?

25 MR. BUGLIOSI: 1-B, your Honor, I spoke to Susan
26 Atkins on 12-4-69 in Mr. Caballero's office. That was not

1 tape-recorded.

2 I am told by Mr. Caballero that the conversa-
3 tion he and Mr. Caruso had with Susan Atkins on December
4 1st, 1969, was tape-recorded. The District Attorney's
5 Office does not have that tape, so I believe Mr. Reiner
6 would have to contact Mr. Caballero.

7 MR. REINER: I am sure the Court understands this is
8 a discovery motion of matters within the knowledge of the
9 District Attorney. If the District Attorney does not have
10 knowledge of the statement made on the 1st, of course they
11 could not respond.

12 At this point I am asking only for those
13 matters of which they have knowledge.

14 Now, as to the statements made on December 4th,
15 if they are recorded, of course we would want a transcrip-
16 tion of the tape-recording, if available, or the tape-
17 recording itself.

18 These statements were not recorded, and notes
19 were taken, then we would want the sum and substance to
20 the extent the District Attorney has the sum and substance
21 of these statements.

22 MR. BUGLIOSI: I interviewed Susan Atkins for about
23 three and a half hours, your Honor, I took 30 pages of
24 handwritten notes. Those notes were utilized the following
25 morning at the Grand Jury, so Mr. Reiner, if he reads the
26 Grand Jury transcript, will find the sum and substance of

1 my conversation with Susan Atkins.

2 THE COURT: I don't think that quite answers the
3 request, sir.

4 Statements that she gave to you may not be the
5 same statements she gave to the Grand Jury.

6 MR. BUGLIOSI: Essentially they are. I will make
7 that representation to the Court.

8 I don't have those notes any more.

9 THE COURT: That is for someone else to decide as to
10 whether or not they are. You don't have the notes?

11 MR. BUGLIOSI: No, your Honor.

12 THE COURT: They have been destroyed?

13 MR. BUGLIOSI: I don't know what I did with them. I
14 took 30 pages of notes; I have not been able to find them.
15 I imagine I threw them away.

16 THE COURT: Until you are able to state otherwise I
17 will order you to turn over to Mr. Reiner any notes of any
18 conversations that you have had with Miss Atkins.

19 MR. REINER: Your Honor, with respect to 1-B, again,
20 although Mr. Bugliosi may have destroyed the notes he took,
21 clearly the interview that occurred covered matters that were
22 not covered in the Grand Jury, invariably in an interview
23 this will take place.

24 Some of the matters they feel perhaps are not
25 admissible; other matters perhaps they do not want to
26 represent to the Grand Jury.

1 THE COURT: All notes, not just notes of the conver-
2 sation, but also what was related to the Grand Jury.

3 MR. REINER: In the event Mr. Bugliosi is not able
4 to find the notes I took at that time, surely he would be
5 able to recall from memory matters that perhaps did not
6 appear before the Grand Jury. What we want here is a
7 complete, definitive statement of her statement on the
8 4th, if it is possible, if the notes are available, we
9 would want to see them. If a tape-recording, we want to
10 listen to it. If neither exists, the best recollection
11 Mr. Bugliosi has.

12 MR. BUGLIOSI: I can say this, that I do remember
13 substantially what Susan Atkins told me on the night of
14 December 4th, and I can say that her testimony before the
15 Grand Jury was in very substantial accordance with these
16 30 pages of notes.

17 I will be very glad to sit down with Mr. Reiner
18 and relate everything Susan Atkins told me, and I remember
19 just about everything.

20 MR. REINER: Well, that would be acceptable.

21 So we have a ruling by the Court that we are
22 entitled to the request in 1-B?

23 THE COURT I have already ruled that you are entitled
24 to all of Mr. Bugliosi's notes of his conversations with
25 Miss Atkins. Apparently he has agreed to give you a
26 summary. Is that right, Mr. Bugliosi?

1 MR. BUGLIOSI: Yes, your Honor.

2 THE COURT: In case he is unable to find the notes,
3 when can this be done, Mr. Bugliosi?

4 MR. BUGLIOSI: I will look for them again, your
5 Honor. I have tubs and tubs of documents and notes on this
6 case.

7 THE COURT I want a fixed date as to when you will
8 provide either the notes or the summary.

9 MR. BUGLIOSI: I would say tomorrow. I will look
10 for the notes tonight. I don't believe I have them. If
11 I don't have them I will meet with Mr. Keiner tomorrow;
12 I will sit down with him for a couple of hours and relate
13 in detail what Susan Atkins told me.

14 THE COURT: You may well be in this court most of
15 tomorrow.

16 MR. BUGLIOSI: Friday.

17 THE COURT: All right. No later than Friday, June
18 12th. That will be the order.

19 What about 2-A, Mr. Bugliosi?

20 MR. BUGLIOSI: I believe we have already complied with
21 2-A, your Honor, names of the witnesses whom we propose to
22 call. I gave Mr. Fitzgerald a list of witnesses whom we
23 propose to call, and every statement that we have by them
24 was turned over to the defendants.

25 I realize the continuing order of discovery;
26 every time we come into possession of new documents, new

1 evidence, we make copies of them and turn them over to
2 the defense.

3 THE COURT: Is it your position the People have
4 complied with the request in 2-A?

5 MR. BUGLIOSI: Yes, your Honor.

6 THE COURT: Are you satisfied, Mr. Reiner?

7 MR. REINER: I do have a list of witnesses, your
8 Honor.

9 I will accept the People's representation that
10 this is the list as of this time of the witnesses.

11 MR. BUGLIOSI: I have to say, your Honor, this is not
12 a complete list. There are four additional witnesses that
13 we have subpoenaed subsequent to the preparation of this
14 list. I will give Mr. Reiner these four witnesses at the
15 conclusion of today's hearing.

16 THE COURT: What about Item 3, Mr. Bugliosi?

17 MR. BUGLIOSI: Item 3 starts going into the area of
18 dead-end investigations, and I think -- they have already
19 been resolved by the Court for Mr. Fitzgerald, and I guess
20 that would be equally applicable to all defense attorneys;
21 they can look at these dead-end investigations when
22 enumerable witnesses were interviewed by the Los Angeles
23 Police Department, whom we do not intend to call to trial,
24 because their testimony would not be germane.

25 However, I think the Court has ruled that the
26 defense is not entitled to reproduce these interviews.

1 leading to dead-ends. They can inspect these statements
2 at their leisure.

3 As far as the statements of any witness whom
4 we intend to call at the trial, the People have already
5 complied with that, your Honor. We have turned over all
6 statements to the defense, of all witnesses who have been
7 scheduled to be called at the trial.

8 THE COURT: Very well, then, with the understanding
9 that Mr. Reiner will be permitted to inspect any statements
10 of witnesses whom the People do not intend to call, it is
11 the Court's further understanding that except for those the
12 People have otherwise complied with that request. The
13 request will be denied.

14 I don't understand what your request in Item
15 4 is, Mr. Reiner.

16 MR. REINER Well, if I may expand on that, your
17 Honor.

18 Pursuant to Brady vs. Maryland, controlling in
19 this matter, the Supreme Court has held that this matter of
20 due process with respect to needing anything that would be
21 helpful in the area of guilt or innocence or penalty, what
22 we asked for in 4 are those matters that the Court will
23 instruct the trier of fact, the jury, on what they may con-
24 sider when they try to determine the credibility of wit-
25 nesses, that is, the ability of witnesses to perceive, the
26 character of each witness for honesty or veracity and their

opposites, and so forth.

Now, the purpose of that is this, if a witness testifies to a fact which is material, and the jury is to consider it, if it is known to the District Attorney that there are certain defects of character with respect to that witness that would bear upon the veracity of that witness, of course that would be relevant, and we would be permitted to introduce it.

That, of course, would bear upon the question of guilt or innocence, because it goes to the credibility of a witness.

We would be entitled to such information.

Now, if the District Attorney has, in fact, knowledge of any such items listed in 4-A through F, then we would be entitled to it, for example, prior conviction of a felony. If they have knowledge that the witness has been previously convicted of a felony, this, of course, would be available to use for purposes of impeachment.

I have taken this from the CALJIC Instructions.

THE COURT: Who is Diane Lake?

MR. REINE: Diane Lake is a witness the People propose to call, and I specifically, with respect to Diane Lake, though I indicated I did not intend to limit the request to Diane Lake, I would wish to know anything within the knowledge of the District Attorney relating to her capacity as

1 a witness, that is, her ability to perceive, recollect and
2 relate anything to which she is percipient.

3 All of those things, of course, would be
4 relevant as to the credibility and the weight to be given
5 to her testimony.

6 THE COURT: Aren't you in just as good a position
7 to ascertain that as the People?

8 MR. REINEF: Not necessarily, your Honor. We will
9 attempt to ascertain that and perhaps we will obtain all
10 the information and perhaps not.

11 What we are asking for here is anything the
12 District Attorneys has.

13 If it simply duplicates what we have, of course
14 there is no difficulty. If, perhaps, it goes beyond what we
15 have, I believe we are entitled to that.

16 I might indicate that we are informed that she
17 has been an inmate at a mental institution for some period
18 of time, specifically what her status at the time was I am
19 not aware of, but given that caveat, I think we are entitled
20 to the information.

21 THE COURT: Do you wish to respond?

22 MR. STOVINE: With respect to the ability to perceive,
23 remember, and recollect, we cannot prejudge her credibility
24 in that respect.

25 We have no tests that were performed on her
26 with respect to her mental examination. If we sought to

1 obtain that, the doctor at the hospital told us because of
2 the new act we could not obtain that except by Court
3 order.

4 If the prosecution could obtain it by Court
5 order, I take it the defense could obtain it by Court order.

6 We have not seen the doctors' reports nor do
7 we have any doctors' reports for any other tests.

8 We have made available to counsel two reels
9 of tape that were taken during her interview together with
10 a condensation signed by the witness of her recollection of
11 the night in question.

12 Counsel has that available to him any time he
13 wants to listen to that, and he can form his own opinions
14 from listening to that.

15 MR. REINER: So that it be clear, I am not asking for
16 a subjective evaluation by the District Attorney's Office as
17 to her capacity as a witness; I am asking for objective
18 facts, if they have any, within their knowledge that would
19 relate to her capacity.

20 Now, if they have --

21 THE COURT: Medical reports, is that what you mean?

22 MR. REINER: That would perhaps bear upon it.

23 THE COURT: You will have to tell me, Mr. Reiner.
24 I cannot plumb the depths of your mind.

25 If I am going to rule on the request, and then
26 you make a request to follow up, that the People have failed

1 to comply with it, I have to know what you are talking
2 about.

3 MR. REINER: Perhaps I can indicate this as an
4 example: It is not meant to apply specifically to
5 Diane Lake, but if, for example, the District Attorney in
6 interviewing the witness or some other person has received
7 information that perhaps Diane Lake had on a certain
8 number of occasions taken LSD, just for example, this
9 perhaps would bear on her ability to recollect and relate
10 that which he has been percipient and perceived as well.
11 If they had such information I think we would be entitled
12 to it, irrespective of whether we, ourselves, have such
13 information.

14 THE COURT: They already agreed to give you statements,
15 or let you inspect statements of witnesses, including those
16 not to be called as witnesses.

17 If there is anything in those statements that
18 you can use in this regard, I suppose that is up to you.
19 Otherwise I don't see how the Court could ever know whether
20 this request was complied with, it is so vague and ambiguous.

21 MR. REINER: Well, other than indicating that she is
22 presently in a mental institution, and any medical records
23 they have that we are not privy to, I would like to see
24 those reports.

25 MR. STOVITS: If we have them we will make them
26 available. We don't have any of them at this time.

1 THE COURT: To the extent that any medical reports
2 exist for any of these witnesses that are in the possession
3 of the People, the Court will order copies turned over to
4 Mr. Reiner.

5 MR. REINER: Thank you.

6 THE COURT: What about any evidence of prior
7 convictions?

8 MR. STOVITZ: If we have any proof of prior convic-
9 tions, your Honor, we will furnish them to counsel.

10 We have furnished them as to the witnesses that
11 we know of, but we cannot very well ask a witness whether
12 they have been convicted of a felony, and then go out and
13 look it up.

14 We just don't work that way, but counsel has
15 the same facilities available as we have. He can check
16 the names of the witnesses.

17 THE COURT: The order will also cover any documentary
18 evidence the People have with respect to any prior convic-
19 tions.

20 MR. REINER: O' witnesses.

21 MR. STOVITZ: Yes, your Honor. Now, Number 5 --

22 MR. REINER: Excuse me. If I might interrupt, may
23 we have a ruling on 4-D, your Honor.

24 THE COURT: What does it mean?

25 MR. REINER: Well, what I have said is that the re-
26 quest for any information that they have regarding the

1 existence or non-existence of bias, interest or motive of
2 a witness.

3 THE COURT: That is something you are going to have
4 to determine, and, ultimately, the jury.

5 MR. MILLER: Your Honor, I went on further to say,
6 I'm referring specifically here to any inducements that
7 have been offered presently or prospectively to a specific
8 witness, Linda Kasabian, any inducement given to Linda
9 Kasabian, prospectively or actually would bear on her
10 bias.

11 The District Attorney being privy to this,
12 they are the only ones who can inform us whether they
13 made any representation, any arrangements, whether finalized
14 or not, and it is a matter, of course, which bears on the
15 credibility of a witness.

16 Under Brady vs. Maryland we are entitled to
17 that.

18 MR. PROVINE: Until the defense attorney is barred
19 from cross-examination, your Honor, I think that this
20 request is superfluous.

21 If and when she becomes a witness, the defense
22 can ask her questions that are commonly asked by defense
23 attorneys, and get the answers.

24 If there is any statement whatsoever, or any
25 understanding whatsoever between her and our office, or
26 between her attorney and our office, we will make that

1 available at that time.

2 At this time, your Honor, we only hope that
3 she is a witness. We do not have the knowledge that her
4 attorney told to her, and we just hope that she is a
5 witness.

6 If she becomes a witness, counsel can ask her
7 whatever questions he desires.

8 MR. REINER: Of course cross-examination is always
9 available to counsel, but the question is whether matters
10 that go to the bias, motive or interest of a witness --

11 THE COURT: I think the request is too vague and
12 ambiguous, Mr. Reiner. I will deny it at this time without
13 prejudice to renew it if and when Miss Kasabian testifies.

14 MR. REINER: Thank you.

15 THE COURT: What about Item 5?

16 MR. STOVITZ: I can't see how we can furnish evidence
17 of the defendant's character traits. We don't know right
18 now whether or not we are going to put those character
19 traits in issue.

20 It would be completely subjective as to whether
21 or not we have such evidence.

22 Again we offer to counsel every single inter-
23 view sheet that we have of every witness that has been
24 interviewed; he can draw those inferences as to whether or
25 not they go into the defendant's character or those traits
26 that would be involved in the commission of crimes.

1 THE COURT: Did you have anything specific in mind,
2 Mr. Reiner?

3 MR. REINER: Your Honor, if, in fact, we have or
4 will be offered every interview sheet of every witness,
5 of course beyond that, everything else, it is really
6 unnecessary in a discovery motion.

7 We are attempting to be specific with some of
8 these items.

9 When we refer to evidence relating to character
10 traits involved in the crime charged, I think Mr. Stevitz
11 understands what we are getting at.

12 If you are talking about a crime of murder, you
13 are talking about violence, character traits of violence.

14 Now, if during the course of the investigation
15 it was found certain witnesses have a prior history of
16 violence, and there is testimony to the effect that that
17 witness does not possess such character traits, then, of
18 course, the People will -- if they have such information
19 available, we are entitled to it; if they don't have that
20 information available I think we are entitled to know that
21 as well.

22 THE COURT: You are entitled to know what they know,
23 perhaps, but not what they don't know.

24 MR. REINER: By saying what they don't know, a state-
25 ment that they do not have any information, negative
26 information with respect to that.

1 THE COURT: It appears to the Court that the request
2 in Item 5 is already covered and would be contained within
3 the statements of the various witnesses that the People
4 have already agreed to give you, and to that extent it
5 will be denied.

6 MR. STOVITZ: Number 6, your Honor, I cannot under-
7 stand that, either.

8 We do not intend to offer proof of crimes
9 other than what the witness' sheets show. Counsel knows
10 that. I cannot be required to furnish a trial brief to
11 counsel so that he can understand each witnesses testimony
12 as they come upon the scene. All we can do is say to the
13 Court we will endeavor to prove the defendant's guilt of
14 the crime charged. If in proving that guilt we have to
15 show that, say, some forgery occurred of a credit card or
16 something like that, counsel is well aware of that by
17 reading the witness' sheets.

18 MR. REIMER: Your Honor, that is specifically what
19 we are talking about when we refer here to other crimes in
20 number 6, we are talking to what is referred to in short-
21 hand as NO.

22 Now, if the People intend to offer evidence of
23 NO crimes during their case in chief, and not in rebuttal,
24 in order to prove some relevant point, we are entitled in
25 advance to know what crimes they are going to prove up and
26 how they propose to prove them.

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THE COURT: Isn't this already covered in the prior request?

MR. REINER: It may be and it may not be. This is not necessarily going to come from interviews with witnesses. It is something that comes from information available to the police, of certain crimes that have been committed.

I think we are entitled to this if in fact we already have the information from some prior request, and of course, if so, it is of no consequence, if for one reason or another it doesn't come up in a prior request for witnesses' statements, we would be entitled to this request.

MR. STOVITZ: I just don't understand number 6. Perhaps what he has in mind might be --

THE COURT: I don't understand it, either, and I am not going to grant any request I don't understand.

The petition will be denied.

MR. REINER: Your Honor, if I might indicate this here would be a specific example:

It was indicated in prior conversations with Mr. Stovitz that they had contemplated the possibility of putting on evidence in the Hinman murder in order to show the identity of certain perpetrators. That is an MO crime.

Although I am aware of the alleged Hinman murder and others, a massive amount of information with respect to

1 that, until and unless we are put on notice that they in-
2 tend to present that in their case in chief, in order to
3 show the identity of certain perpetrators, we obviously
4 then would not spend the time and go through the action
5 of examining all of the information in re the Minnahan
6 murder.

7 THE COURT: If you have a list of witnesses and all
8 of their statements, I think you have everything that you
9 are entitled to along that line.

10 Number 6 will be denied.

11 What about Number 7? It is vague and ambiguous.
12 I don't know what it means, Mr. Heiner.

13 MR. HEINER: Again, Y, your Honor, is lifted from a
14 CALJIC Instruction which the Court will give to the jury.

15 THE COURT: I recognize that, but what does it mean
16 in the discovery?

17 MR. HEINER: When I asked for evidence that would tend
18 to show motive or bias of a particular witness, or lack of
19 motive, I have obviously asked for information we don't have
20 and the District Attorney may or may not have. If, in fact,
21 they do not have it, simply by indicating they have no
22 information that bears on the motive of a particular witness
23 to testify, then we would not receive that information.

24 If they do have information such as financial
25 interest or whatever, then we would be entitled to that
26 information.

1 MR. STOVITZ: I don't read 7 at all like that. I
 2 read 7 to show motive or lack of motive of the defendants.
 3 The jury will be instructed, I'm sure, that we don't have
 4 to prove motive, and if counsel would read these witnesses'
 5 statements, he can draw his own conclusions as to whether
 6 or not there is or is not a motive.

7 We would have to be interpreting the defendants'
 8 point of view in a case.

9 THE COURT Number 7 will be denied. It is vague
 10 and ambiguous.

11 MR. STOVITZ: With respect to revealing whether or not
 12 an informer was involved, there is a great question in my
 13 mind: When does a person become an informer and when does
 14 he become a witness?

15 We have revealed the names of every witness
 16 that we have. Whether or not there is somebody that gives
 17 us information who is not going to be a witness, I guess
 18 if that is what he calls an informer, he can discover this
 19 from the interview sheet. There are many people interviewed
 20 by the police who have given information who will not be
 21 called as witnesses. I guess they can be classified as
 22 informants.

23 THE COURT Number 8, it appears, has been covered by
 24 the prior orders covering the witnesses' statements, and to
 25 that extent it will be denied.

26 MR. REINER: Excuse me, your Honor. The statements

1 given by witnesses who will testify would not necessarily
2 reveal the existence of an informer who will not be called
3 as a witness, the name of which the People wish to pro-
4 test.

5 It is not an unusual circumstance in a case
6 where there is a witness and the People do not wish to
7 reveal the name of the informer. They claim the privilege
8 I think we are entitled to know if there is an informer,
9 and if they do claim the privilege.

10 THE COURT: It is denied at this time without
11 prejudice, sir, if and when it becomes more apparent, what
12 you are talking about, during the course of the trial.

13 THE PROSECUTOR: There have been no electronic
14 surveillances whatever, your Honor. We have no secret
15 tape-recordings or anything of that nature, if that is what
16 counsel means by "electronic tape-recordings."

17 There have been no telephone calls recorded or
18 anything of that nature. If there were, we would turn them
19 over, if your Honor wants to make that part of the order,
20 we have no objection, but --

21 THE COURT: The request in Item 9 is granted with the
22 understanding it is the representation of the People at this
23 time that none of such items exist, but if some are located
24 or discovered hereafter they will be furnished to the
25 defendant's counsel.

26 MR. STOVITZ: With respect to 10, again we will turn

1 over any tests we have. Right now none exists.

2 The only mental tests I know that have been
3 taken are sealed and confidential, that is of Mr. Reiner's
4 client. We do not have them. I don't know whether counsel
5 has them or not.

6 THE COURT. Very well, with that understanding Item
7 10 is granted.

8 Is that true of A and B?

9 MR. STOVITZ: B with respect to the polygraph examina-
10 tions. Again, this covers matters that are unavailable to
11 us.

12 The fact that polygraph examinations are not
13 admissible in court, we do not obtain them. They are in
14 the hands of the Police Department and they do deal with
15 so-called leads that the Police follow through on early
16 investigation.

17 The do not apply to any of these defendants
18 in this case, or any witnesses that we intend to call.
19 If we have any polygraph examinations of any witnesses we
20 intend to call, we will make those available to the
21 defense.

22 MR. REINER: Your Honor, what I'm specifically re-
23 ferring to here are polygraph examinations of witnesses
24 who may not be called, and I am not interested in the
25 evaluation of the graph by the polygraph operator.

26 I am interested in the questions and answers

posed during the course of the polygraph examination.

This is in the hands of the Police Department. They do have a tape-recording of the polygraph examination which is a matter of common practice. These are always tape-recorded.

We are referring here to two witnesses who had percipient knowledge to some of the events relating to the commission of the crime.

MR. STOVITZ: I will make a representation to the Court that we do not have any of these tape-recordings. If they are in the hands of the Police Department, then the Police Department should be served with this notice and they could then say whether or not these tape-recordings have been re-used.

It is a common practice when a witness is interviewed and that witness is no longer suspect or needed as a witness, that the tape-recordings are used again for other purposes.

It is no use to keep available tapes that can be re-used.

It is not like a piece of paper that you throw away in a wastepaper basket. We don't have them, your Honor.

MR. REIMER: Your Honor, if the Police have them it is not necessary for the defendant to subpoena the various police, Los Angeles Police Department Officers that may be

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1 involved. The District Attorney is a representative of the
2 People and he may do so.

3 THE COURT: The request in 10-3 is denied.

4 What about 10-07

5 MR. REIMER: May I have some clarification as to
6 whether we are entitled to that at all or whether the Court
7 is ruling on the basis if the People don't personally have
8 it in their possession, and it is in the possession instead
9 of the Police Department --

10 THE COURT: It is available to you if you care to
11 subpoena them, if such exists.

12 MR. STOVITZ: 10-0, your Honor, again we covered this
13 earlier, all mental tests and examinations of Diane Lake,
14 aka Bluestein.

15 Your Honor, again we covered this earlier.
16 All mental tests and examinations of Diane Lake are not
17 available to the People without specific Court order. We
18 have not sought the Court order. The defense can obtain
19 them equally as we can by applying for an appropriate Court
20 order.

21 THE COURT: 10-0 is denied.

22 I might say all of these denials are without
23 prejudice. You may renew them later when you are able to
24 be more specific.

25 What about Item 11?

26 MR. STOVITZ: I cannot answer that, your Honor.

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There are many, many items of physical evidence that are in the possession of the Police Department that we will be glad to have counsel come over and see. He already has seen the photographs. He already has seen the tangible objects that were introduced at the Grand Jury.

Whether or not it tends to prove guilt or innocence of the defendant is something we cannot determine.

If counsel would want to make it a point with us we will be glad to walk with him to the Police Property Division and show him the evidence we intend to introduce at the trial.

MR. WEINER: Your Honor, the request in 11 is broader than these documents which are going to be introduced at the trial, or have previously been introduced before the Grand Jury.

We are referring here to all books, documents, and the like, what have been gathered by the District Attorney's Office or an investigative agency.

THE COURT: That isn't what you say, sir, you said, "Tending to establish the guilt or innocence of the defendant."

Who is supposed to make that determination?

MR. WEINER: That is the problem posed by the Supreme Court in Brady vs. Maryland. Any evidence they have that tends to establish guilt or innocence, or would be relevant

1 in the penalty phase must be available.

2 The People are not in a position to make a
3 judgment, in all cases, to make a judgment -- in obvious
4 cases, of course, but in some more subtle situations they
5 would not be able to make a determination as to whether
6 certain information might tend to establish the innocence
7 of a defendant, unless they were privy to all the conver-
8 sations.

9 Brady vs. Maryland must be given its widest
10 application, in effect what the Supreme Court has said,
11 unless there is some reason --

12 THE COURT: I am familiar with that. Let's get down
13 to specifics.

14 You are making a request; I have to understand
15 it before I can grant or deny it.

16 You have not asked for anything in the
17 possession of any particular person. What exactly are
18 you talking about?

19 MR. REINER: Obviously I am referring only to those
20 matters within the knowledge of the District Attorney, if
21 it is physically in the possession of the Los Angeles
22 Police Department, but in the knowledge of the District
23 Attorney, then we are entitled to it, as well as if it were
24 in their possession. I am referring to books, documents,
25 and the like, gathered in the course of the investigation,
26 whether they intend to produce them or not.

1 So we may review them, to make our determination
2 as to whether some of the things they gathered might tend to
3 prove the innocence of the individual defendant.

4 The People are not entitled to make that judg-
5 ment. It is the People who must be specific as to what
6 they do not wish to reveal.

7 THE COURT: You have to be specific in the first
8 instance, sir, so they can be specific.

9 MR. REINER: Some of the California cases said that,
10 but Brady vs. Maryland, I am convinced, does overrule some
11 of the earlier cases.

12 THE COURT: We are not talking about the rule in
13 Brady; we are talking about the English language.

14 MR. STOVITZ: All I can say to counsel is we have
15 shown him every photograph taken of the premises.

16 If he wants to see them of the Hinman case,
17 we will make them available as well, if he sees in those
18 photographs any particular item of physical evidence that
19 he wants to see we will take him over to the Police Depart-
20 ment Property Division, or the Sheriff's Office Property
21 Division and show him that physical evidence.

22 If he thinks there are other things that are
23 not there, then I think he can come back to the Court and
24 say, "Wait a minute, I saw an American flag draped over
25 the couch and I did not see that American flag in the
26 Police Department; I want to see that American flag."

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1 THE COURT: Is all the physical evidence in one
2 location?

3 MR. STOVITZ: As to the Tate-La Bianca case they are
4 either in the Property Division, the Scientific Investiga-
5 tion Laboratory or the Property Division of the Police
6 Department.

7 THE COURT: Any reason Mr. Reiner cannot be shown all
8 of it?

9 MR. STOVITZ: Not at all. We have in our selection,
10 as I already said, "Okay, this is important; this is not."
11 The things that are not important they put in a different
12 room. If he wants to see what is in that other room, he
13 can see that, as well.

14 The thing is, we cannot dress up things that
15 have not been picked up by the Police. If there was a
16 stone that was bloodied and the Police did not pick up that
17 stone, we don't have it.

18 THE COURT: But you can show him whatever you do have?

19 MR. STOVITZ: Yes, your Honor.

20 THE COURT: Item 11 is granted with that understand-
21 ing, upon Mr. Reiner's reasonable request he will be shown
22 all of the physical evidence whether or not it is intended
23 to be offered by the People.

24 MR. STOVITZ: With respect to the scientific tests,
25 we have reports on all of those. We have furnished counsel
26 with the reports on those scientific tests.

1 THE COURT: That has been complied with.

2 MR. REINER: Yes, your Honor.

3 MR. STOVITZ: Yes, your Honor.

4 The same thing as to 13. The names of all
5 expert witnesses to be called. Their names are on the
6 scientific tests. The only witnesses who might be picked
7 up from the list of witnesses we have given counsel, I
8 am sure he, being experienced counsel, knows which ones
9 are the experts and which ones are not. I think we have
10 broken them down.

11 MR. REINER: The Court will note in the request we
12 also asked for a list of qualifications of the expert
13 witnesses so we may be informed of that prior to trial.

14 MR. STOVITZ: I am very sorry. We cannot furnish
15 that to counsel, but if he wants to call them up on the
16 telephone they will be glad to tell him how good they are.

17 THE COURT: You are referring now to what?

18 MR. STOVITZ: The qualifications of the experts.

19 MR. REINER: Those matters to be gone into on voir
20 dire prior to testimony.

21 THE COURT: You can find that out for yourself,
22 Mr. Reiner.

23 You are now talking about 14.

24 MR. REINER: Yes, your Honor. We are discussing 13.

25 MR. STOVITZ: 13. The names of all expert witnesses
26 consulted, whether or not they are to be called as

1 witnesses be revealed and all reports or statements pre-
2 pared or made by such experts.

3 I think, your Honor, that that would be an order
4 that we could not even comply with because, talking on this
5 case and discussing it, we discussed it with many expert
6 witnesses and many facets of the case.

7 As a witness gives us information it leads us
8 to another expert witness, and I cannot even recall all of
9 the expert witnesses I have talked to. I think that this
10 would be somewhat in violation of our work product and our
11 preparation of the case.

12 I don't think it is germane to the defendant's
13 right to discovery. We don't intend to call these wit-
14 nesses; we certainly many times have consulted with wit-
15 nesses with the express proviso they would not be called,
16 and they would not be bothered.

17 THE COURT: What about any statements or reports?

18 MR. STOVILL: If we have statements or reports we
19 will be glad to turn them over, but if we have talked to
20 an expert witness merely to gain some background informa-
21 tion, generally what we have just done is taken some notes,
22 and then we will be referred to another expert that has
23 been able to give us some further details.

24 THE COURT: Very well, then, the order will cover any
25 statements and reports of expert witnesses. Except as so
26 provided, the Request is denied.

1 MR. REINER: Your Honor, one of the issues with respect
2 to Item 14 other than those matters which are reduced to
3 statements delivered to the District Attorney, it is
4 occasionally a situation that will occur, that counsel,
5 the District Attorney, will seek out an opinion with
6 respect to, say, a blood type or a fingerprint, or
7 ballistic comparison, and the information will come back,
8 will be of a certain sort. They will then consult a
9 different expert and get a contradictory opinion. Perhaps
10 the second opinion is closer to the theory of their case
11 which is the one they would use.

12 THE COURT: Mr. Reiner, I already ordered the People
13 furnish all reports and statements of the experts, not
14 just experts they intend to call.

15 MR. REINER: That includes oral statements not reduced
16 to reports?

17 THE COURT: No.

18 MR. STOVITZ: 15, your Honor, I submit cannot be
19 complied with by our office in any respect.

20 THE COURT: That is too broad, vague and ambiguous.
21 It will be denied.

22 MR. REINER: Thank you.

23 THE COURT: Anything further before we adjourn,
24 gentlemen?

25 MR. STOVITZ: There is only one point, gentlemen;
26 I believe Mr. Rhinn filed a motion for continuance.

1 THE COURT: We will hear all of the proceedings that
2 have been filed but not today.

3 MR. STOVITZ: That motion will be heard tomorrow?

4 THE COURT: Yes.

5 MR. KANAREK: May I address the Court?

6 THE COURT: Yes.

7 MR. KANAREK: Based on Brady vs. Maryland, as well as
8 People vs. Milham, I would like to allege on behalf of
9 Mr. Hansen, your Honor, that there has been a denial of
10 due process of law by the destruction of the records that
11 Mr. Bugliesi has alluded to, and we would ask your Honor
12 for an evidentiary hearing.

13 THE COURT: Mr. Kanarek, let's save this until we
14 take up your discovery motion.

15 MR. KANAREK: Very well, your Honor.

16 THE COURT: We will adjourn until 10:00 A.M. tomorrow
17 morning.

18 (Whereupon, proceedings in the above-entitled
19 matter were continued to Thursday, June 11, 1970, at the
20 hour of 10:00 A.M.)

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LOS ANGELES, CALIFORNIA

THURSDAY, JUNE 11th, 1970

10:40 A.M.

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THE COURT: People vs. Charles Manson and Susan Atkins.

MR. REINER: I'm Reiner appearing for Susan Atkins specially today in the absence of Mr. Shinn.

THE COURT: Miss Atkins, is that agreeable with you?

(Defendant Atkins rises from her seat and turns her back on the Court.)

THE COURT: Mr. Reiner, I suggest you advise Miss Atkins if she does not sit down and face the Court she will be removed from the courtroom.

MR. REINER: Yes, your Honor. I previously advised Miss Atkins on that. Miss Atkins, would you please turn around.

DEFENDANT ATKINS: If your Honor doesn't respect Mr. Manson's rights, you need not respect mine. I have nothing further to state in this courtroom.

THE COURT: The bailiff will remove Miss Atkins from the courtroom.

MR. REINER: Your Honor, may I have one more word with her?

THE COURT: Mr. Fitzgerald, I suggest that you confer with your client also.

The record will show that all three of the defendants, Van Houten, Krenwinkel and Atkins, are now