DISTRICT ATTORNEY

SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff-Respondent, vs. CHARLES MANSON, SUSAN ATKINS, LESLIE VAN HOUTEN AND PATRICIA KRENWINKEL, Defendants-Appellants.	NO. 1005

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

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1 If a person who is an accomplice testifies
2 for the prosecution, you will be instructed by the Judge
3 at the conclusion of the case, and before you begin
4 to deliberate, as to the weight and value that you must
5 assign to the testimony of an accomplice?
6 A Yes, sir.
7 Q Now, will you follow that instruction?
8 A Yes, I will.
9 Q Will you follow that instruction irrespective
10 of your particular attitude toward that rule of law?
11 A Yes, I would.
12 Q And even if you feel it is an overly strict
13 rule of law, will you nonetheless apply it?
14 A Yes, I would.
15 Q If his Honor says to you that a defendant
16 may not be convicted of any crime no matter how minor,
17 much less a crime of murder, on the uncorroborated
18 testimony of an accomplice, will you then refuse to convict
19 and will you then acquit Leslie Van Houten if there
20 has not been independent and credible, that is, credible
21 to your thinking, credible corroborating evidence that
22 relates to Leslie Van Houten or to any other person?
23 A I will acquit.
24 MR. REINER: Thank you very much.
25 Will you pass the microphone to Mr. Nelson
26 to your left?

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1 MR. DOMINGUEZ: Thank you.

2

3 VOIR DIRE EXAMINATION OF MR.FREDDIE L. NELSON

4 BY MR. REINER:

5 Q Mr. Nelson, once again I must apologize

6 for being redundant and repeating questions I asked

7 other jurors, but you do understand it is essential?

8 A Yes, I do.

9 Q Now, you will presume, will you not, that

10 Leslie Van Houten is innocent?

11 A Yes.

12 Q You will do that without any reservations

13 whatsoever?

14 A Yes, I do.

15 Q You will not say that you have read and

16 heard this and that with respect to perhaps other

17 defendants in this case that suggested that perhaps

18 some or all defendants are guilty?

19 A I would treat her as a defendant entirely

20 separate of the others.

21 Q So you do appreciate that the evidence

22 that you hear in this case, if it should happen that you

23 are a juror on this case, must be carefully scrutinized

24 and carefully analyzed to see whether you should assign

25 it to Leslie Van Houten or to assign it to one of the

26 other defendants?

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1 A Yes, sir.

2 Q And the fact that Leslie Van Houten is so
3 closely and intimately associated with all three other
4 defendants, and of the very close relationship that is
5 described accurately as a family relationship, you would
6 not let that and that alone cause you to convict Leslie
7 Van Houten if the evidence that comes is not assignable
8 to her, but is assignable perhaps to some other persons?

9 A No, I won't.

10 Q Now, these killings were especially grotesque.
11 Would you allow the very grotesqueness of
12 these killings to overwhelm your judgment in this case?

13 A No, sir.

14 Q Notwithstanding that the killings were
15 grotesque, if you felt that only a minimal amount of
16 evidence was presented against Leslie Van Houten, an
17 insufficient amount to persuade you beyond all reasonable
18 doubt, you would nonetheless acquit her?

19 A Yes, I would, yes, sir.

20 Q It would not make any difference to you --
21 would it make any difference to you whatsoever, any
22 difference at all, if you should believe or begin to
23 believe in your own mind from observing the conduct of
24 Leslie Van Houten through the course of this trial that
25 she wants to be convicted, even if she may not be guilty?

26 A No, sir, my basis for guilt or innocence will

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be based on the evidence presented in the case.

Q If it should appear to you because of the very close relationship between Leslie Van Houten and the other defendants that she would want to be convicted with them even if there isn't evidence to persuade you beyond a reasonable doubt, would you nonetheless go against, in effect, her wishes and acquit her?

A I would go ahead and acquit her, yes, I would.

MR. REINER: Thank you very much.

Would you pass the microphone behind you to

7a. Mr. Tubick.

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VOIR DIRE EXAMINATION OF HERMAN C. TUBICK

BY MR. REINER:

Q Mr. Tubick, will you presume that Leslie Van Houten, as she sits here now, is innocent?

A Yes, sir.

Q Mr. Tubick, you have indicated earlier in chambers that in the course of your work at the mortuary you had from time to time occasion to overhear other people discussing this particular case, and persons associated with it, is that true?

A Yes, sir.

Q These conversations that you overheard were just a casual sort between persons over the last few months with regard to these proceedings, and those matters that had occurred from time to time, as you say, is that correct?

A Yes, sir.

Q These are not conversations that you personally participated in, were they?

A No, sir.

Q Now, as I recall you did not recall very much of what was said other than the fact that these defendants, or some of these defendants, perhaps the more prominent of these defendants, were mentioned in those conversations, is that true?

A Yes, sir.

Q Now, if during the course of this trial your

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memory should be refreshed, as undoubtedly it will be, and you would from time to time recall snatches of conversation that you overheard from members of the general public, over these last few months, you would not allow anything you heard whatever it was, you would not allow that to affect your judgment in any way, would you?

A No, sir.

MR. KANAREK: Your Honor, may we approach the bench?

THE COURT: Does it have anything to do with the present examination?

MR. KANAREK: Yes, your Honor.

THE COURT: Very well.

(The following proceedings were had at the bench out of the hearing of the jury, all counsel being present:)

MR. KANAREK: Your Honor, I thought the ground rules were that we were not to discuss the publicity aspect of this, so there won't be any chain reaction among these jurors.

MR. REINER: If I may respond to that, as I understood the reason --

THE COURT: One at a time. I don't care who speaks, but one at a time.

MR. REINER: If I may respond to that, your Honor:

As I understood the reason for the Court taking

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jurors into chambers one at a time, it was to prevent exposure to the other prospective jurors with regard to substantive matters they may have heard or been exposed to.

The Court will note in my examination of this witness I indicated that he did not recall the substance of the conversations, and I did not inquire into the substance.

THE COURT: Yes, I don't see anything improper about this.

He has a perfect right to go into anything that may affect the prospective juror's state of mind regarding bias.

He is not going into the specific conversations, as he did in chambers, as all counsel did in chambers, the details of publicity or whatever other things had been learned by the prospective jurors through exposure to publicity.

He is simply inquiring into whether or not whatever it was would affect the juror's ability to be fair and impartial.

MR. KANAREK: That may be true with this particular witness, but I visualize there is a possibility --

Of course I don't know what Mr. Reiner, what is on Mr. Reiner's mind, but if he goes into publicity aspects with some of these other jurors, there would be a broader field.

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THE COURT: Well, Mr. Kanarek, the in-chambers voir dire examination on publicity of other matters was with the stipulation of all counsel.

If any counsel wants to pursue these matters in open court, I am not going to stop them from doing it, if it is otherwise proper.

I assume that by agreement, you had all agreed it was for the best interests of both sides not to pursue these matters.

MR. KANAREK: Yes, your Honor.

THE COURT: But if someone insists he wants to do it in open court, I am not going to prevent him from doing it if the question is otherwise proper.

MR. KANAREK: It would be our feeling, your Honor, it would violate the spirit -- in other words --

THE COURT: Well, he hasn't so far, so let's wait until something happens.

MR. KANAREK: All right.

(The following proceedings were had in open court in the presence and hearing of all the prospective jurors:)

MR. REINER: Your Honor, I do not recall whether the last question was answered.

THE COURT: Read the last question and answer, please.

(Whereupon, the reporter reads the record.)

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Q BY MR. REINER: Mr. Tubick, if it should appear to you that Leslie Van Houten, irrespective of her innocence, wishes to be convicted if any member of the Family is convicted, would you nonetheless acquit her if the evidence was insufficient to convict her beyond a reasonable doubt or to persuade beyond all reasonable doubt?

A Yes, sir.

Q You would not then allow Leslie Van Houten's desire to stand or fall with her Family to affect your judgment as to whether she shall be convicted or acquitted, would you?

A No, sir.

B

Q Your judgment as to whether she should be acquitted will depend upon the evidence that you hear in this case and upon nothing else?

A Yes, sir.

Q On that you are absolutely certain?

A Yes, sir.

Q And you will give us your most solemn promise that you will do everything that is consciously within your power to discipline yourself to render a judgment in such manner?

A Yes, sir.

Q If it should happen that there is a witness in this case testifying for the prosecution who is an

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accomplice to these killings, you will then receive an instruction of law from the Judge with respect to how you are to treat the testimony of an accomplice.

Will you follow that instruction?

A Yes, sir.

Q If you like it or not, whether you agree with it or not, whether you feel that it is too strict, you will nonetheless follow that instruction?

A Yes, sir.

Q You understand that it is your duty and your responsibility to follow those instructions of law given to you by the Judge?

A Yes, sir.

Q And if an accomplice does testify in this case, the Court will instruct you that you are required as a matter of law to acquit the defendant, notwithstanding any testimony from the accomplice, unless there is credible and totally independent corroborating testimony or evidence.

Do you understand that?

A Yes, sir.

Q And you would follow that instruction?

A Yes, sir.

Q And you understand that when we speak of independent and credible, that is credible to your thinking, corroborating evidence, we are talking now about corroborating evidence that relates to Leslie Van Houten, not

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corroborating evidence that may or may not relate to any other person or persons?

A Yes, sir.

MR. REINER: Thank you very much.

Would you pass the microphone, please, to Mr. Reynolds.

VOIR DIRE EXAMINATION OF LAWRENCE REYNOLDS

BY MR. REINER:

Q Mr. Reynolds, you did previously indicate, did you not, in chambers, that it was your opinion coming into this case that any person who had been charged with a crime, irrespective of who they were, or irrespective of what the crime was, created in your mind a suspicion they probably were guilty.

Is that true?

A That is basically correct.

Q Do you still hold that view?

A Yes, in all honesty I do.

MR. REINER: I have no further questions.

We will pass for cause.

THE COURT: Mr. Shinn.

MR. SHINN: Thank you, your Honor.

MR. KANAREK: Your Honor, may I have the last question and answer read back?

THE COURT: Read the record, Mr. Reporter.

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(Whereupon, the reporter reads the record as follows:

"Q Mr. Reynolds, you did previously indicate, did you not, in chambers, that it was your opinion coming into this case that any person who had been charged with a crime, irrespective of who they were, or irrespective of what the crime was, created in your mind a suspicion they probably were guilty.

"Is that true?

"A That is basically correct.

"Q Do you still hold that view?

"A Yes, in all honesty I do.")

MR. KANAREK: Your Honor, I must request to approach the bench, your Honor.

THE COURT: Let's wait until you have an opportunity to voir dire this particular group, Mr. Kanarek, and then we will give you an opportunity to make any challenges that you wish to make.

MR. REINER: May I address the Court?

With respect to Mr. Reynolds, of course we previously entered a challenge for cause.

I indicated I passed the jury for cause. Of course that does not apply to Mr. Reynolds. I challenge him on the grounds of actual bias.

MR. FITZGERALD: Join in the challenge for cause.

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MR. SHINN: Join in the challenge for cause.

MR. KANAREK: I join, your Honor, but rather than enunciating anything in the presence of the other jurors, I would welcome an approach to the bench.

MR. STOVITZ: We ask your Honor to hold the challenge under advisement until the prosecution has a chance to voir dire this juror.

THE COURT: All right.

Very well, you may proceed, Mr. Shinn.

MR. SHINN: Thank you, your Honor.

VOIR DIRE EXAMINATION OF MR. HERMAN R. STOKES

BY MR. SHINN:

Q Mr. Stokes, I will start with you because you are No. 1.

Now, I believe Mr. Fitzgerald had discussed with you presumption of innocence, burden of proof, and I believe he also discussed with you reasonable doubt.

Do you recall the discussions you had with Mr. Fitzgerald?

A Yes.

Q In other words, I believe you stated that if you had any doubts as to the defendants' guilt or innocence that you would bring in a verdict of not guilty.

MR. STOVITZ: No, your Honor, that is not what the juror said.

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He said if he had any reasonable doubts.

That is what the juror said.

THE COURT: Is there an objection?

MR. STOVITZ: Objection, your Honor.

MR. SHINN: Your Honor, I am just stating it in a general form, your Honor, I don't know the exact words.

THE COURT: Let's not characterize what someone else said, Mr. Shinn. You can put the question directly.

MR. SHINN: Thank you, your Honor.

Q BY MR. SHINN: Now, Mr. Stokes, in the event that after all the evidence is in, and you have -- you are in a position where you feel that the defendant may be guilty, and may not be guilty.

Now, when you get in a position like that, what would your verdict be, not guilty or guilty?

A If I had a reasonable doubt I would say not guilty.

Q Now, also we discussed with you the presumption of innocence. Do you recall that discussion?

A Yes.

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Q And he stated that a defendant in a criminal case is protected by this presumption of innocence?

A Yes.

Q Do you recall that discussion?

A Yes, I do.

Q And will you remember these words all through the trial, reasonable doubt and presumption of innocence?

A Yes, I will.

Q Now, during the course of trial you may be called upon to decide whether or not a confession or admission was made voluntarily or involuntarily.

Do you know what a confession is, or an admission?

A Not exactly.

Q Well --

A Yes, I understand -- yes, I understand.

Q The Judge will give you an exact definition of a confession or an admission in his instructions?

A That's right.

Q Now, if you are called upon to decide whether a confession or admission was made voluntarily or involuntarily --

MR. STOVITZ: Your Honor, before the juror answers this question may counsel and I and other counsel approach the bench on this issue.

THE COURT: Very well.

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2, 1 (The following proceedings were had at
2 the bench out of the hearing of the prospective
3 jurors;)
4 MR. STOVITZ: Unless I have been totally misinformed
5 as to our New Evidence Code, I feel that under the New
6 Evidence Code this issue is solely for the Court, and is
7 not given to the jury anymore.
8 THE COURT: All right, let's go back and read the
9 last question.
10 (Whereupon the reporter reads the record
11 as follows:
12 "Q Now, during the course of trial you
13 may be called upon to decide whether or not a
14 confession or admission was made voluntarily
15 or involuntarily.
16 "Do you know what a confession is, or an
17 admission?
18 "A Not exactly.
19 "Q Well --
20 "A Yes, I understand -- yes, I understand.
21 "Q The Judge will give you an exact
22 definition of a confession or an admission
23 in his instructions?
24 "A That's right.
25 "Q Now, if you are called upon to decide
26 whether a confession or admission was made

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2. voluntarily or involuntarily --")

THE COURT: Well, the Evidence Code provides that the question of admissibility, of determination of the preliminary fact, is to be made solely by the Court.

But when the admission or confession is admitted into evidence, then the jury may consider that and the circumstances surrounding it in determining whether in fact it was made.

MR. STOVITZ: That's right, the jury may determine whether that confession is true or not.

THE COURT: Yes.

MR. STOVITZ: And in considering the truth, they can look to all of the circumstances, how that confession was obtained, but it is not like it was under the old law.

THE COURT: That's right.

MR. STOVITZ: Under the old law the jury could discount a confession if they felt the confession was involuntary, whereas today they can only discount the confession if they feel the confession is not true.

If I may, with the permission of the Court, since we are close to the 11 o'clock recess, I can get the exact jury instructions out, just furnished by CALJIC.

THE COURT: Your statement is not correct, Mr. Stovitz.

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4.

If the confession or admission is admitted, the jury may consider whatever the evidence shows concerning that.

MR. STOVITZ: Yes.

THE COURT: But the question is no longer one of admissibility, but simply of credibility and whether or not it happened.

MR. STOVITZ: Perhaps we are both saying the same thing in different tones.

THE COURT: Or how it happened.

MR. STOVITZ: If Counsel would defer this questioning until I can get the jury instructions on this point.

THE COURT: What is your objection?

MR. STOVITZ: My objection is that once the Court makes a determination that the confession satisfies Miranda, and is free and voluntary, that the jury does not have the right under the present Evidence Code to discount that confession on the basis that it was not free and voluntary.

They may look to the surrounding circumstances, how the confession was obtained, to determine whether that confession was true or not, but they cannot say --

THE COURT: This is the sort of thing I don't want to get involved in a voir dire examination.

Now, I would suggest that you keep your questions more general in that regard, Mr. Shinn, and not

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65. 1 try to get into the specifics.

2 MR. SHINN: I don't know how to make it more

3 general, your Honor.

4 MR. STOVITZ: If counsel will just defer for

5 five minutes we will have our recess at 11 o'clock, I

6 will bring him the jury instructions and I will bring

7 your Honor the jury instructions.

8 THE COURT: You don't have to bring me the jury

9 instructions, I am familiar with them.

10 MR. SHINN: Your Honor, I have a right to --

11 THE COURT: You don't have a right to indoctrinate

12 them, Mr. Shinn. If you want to ask them whether they

13 will follow the Court's instructions in regard to the

14 confessions and admissions, of course you have a right to

15 do that.

16 MR. SHINN: I think they do generally have the right

17 to tell whether or not they are voluntary or not

18 voluntarily given.

19 MR. STOVITZ: Submitted, your Honor.

20 THE COURT: All right, we will take our recess

21 at this time.

22 MR. SHINN: All right.

23 (The following proceedings were had in

24 open court in the presence and hearing of

25 the prospective jurors:)

26 THE COURT: Ladies and gentlemen, the Court will

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6. recess for 15 minutes.

Do not converse among yourselves or with anyone else on any subject relating to the case, nor form or express any opinion regarding the case until it is finally submitted to those of you who are selected as trial jurors.

15 minutes, please.

8. (Recess.)

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THE COURT: All parties and counsel are present in court. The prospective jurors are in the jury box.

You may proceed, Mr. Shinn.

MR. SHINN: Your Honor, some of the people in the back of the room cannot hear if I use this microphone. I believe it bounces against the wall and comes right back at me here.

So, your Honor, now I won't use the microphone, and if they can't hear me, your Honor, they will put their hands up.

THE COURT: Very well.

MR. STOVITZ: With the permission of the Court, may I approach the bench and give you back your Honor's Code?

THE COURT: Yes.

CONTINUED VOIR DIRE EXAMINATION OF MR. HERMAN R. STOKES

BY MR. SHINN:

Q Mr. Stokes, I believe just before the recess I was talking about confessions and admissions.

Do you recall that, Mr. Stokes?

A Yes.

Q And during the course of the trial, Mr. Stokes, you may be called upon to decide whether or not this confession or admission was made voluntarily or involuntarily.

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THE COURT: No, that is not the case, Mr. Shinn. That is not a proper question or statement.

MR. SHINN: I beg your pardon?

THE COURT: That is not a correct statement of the law.

Let's go to the next question.

MR. SHINN: Q Now, regarding this confession or admission, you may be called upon to determine under what circumstances it was made.

Do you believe that a confession necessarily reflects what really happened?

MR. STOVITZ: That is objected to as asking the juror to prejudge the evidence.

THE COURT: The objection is sustained.

MR. SHINN: Your Honor, may I be heard? May I approach the bench?

THE COURT: There is no need for argument on that, sir.

MR. SHINN: Q Mr. Stokes, do you feel that psychological pressures may cause an innocent man to confess?

A It is possible.

Q In other words, without physical pressures, but psychological pressures, and under certain circumstances, a person may confess just as a result of the pressures?

MR. STOVITZ: That is objected to, your Honor, as being

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1 improper voir dire examination.

2 THE COURT: Sustained.

3 Q BY MR. SHINN: Mr. Stokes, do you think there

4 is such a thing as mental coercion?

5 MR. STOVITZ: That is objected to, your Honor, as

6 being improper voir dire examination.

7 THE COURT: Sustained.

8 Q BY MR. SHINN: Now, Mr. Stokes, considering a

9 person's confession or admission, will you take into

10 consideration the fact that he was alone and he was in

11 custody and that maybe he was frightened at the time he

12 made the statements?

13 MR. STOVITZ: That is objected to as being improper

14 voir dire, your Honor.

15 THE COURT: Sustained.

16 MR. SHINN: May I approach the bench, your Honor?

17 THE COURT: Not in regard to these objections.

18 Let's proceed.

19 Q BY MR. SHINN: Will you also consider the

20 person's age, his background, his mental capacity

21 regarding the confession?

22 A I would consider it, yes.

23 Q And will you take into consideration the

24 police's motives in obtaining this statement from the

25 person?

26 MR. STOVITZ: That is objected to as being improper

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voir dire examination, your Honor.

THE COURT: Sustained.

MR. SHINN: I am through with Mr. Stokes, your Honor.

VOIR DIRE EXAMINATION OF LAWRENCE REYNOLDS

BY MR. SHINN:

Q Mr. Reynolds, you heard me put the questions to Mr. Stokes?

A Yes, I did.

Q The questions that were not objected to?

A Yes.

Q And if I asked you the same questions, Mr. Reynolds, would your answers be substantially the same?

A Basically, yes.

MR. SHINN: In the interest of time, I will now address the rest of the jurors that I have not yet questioned.

If I asked the rest of the jurors the same questions that I asked Mr. Stokes, the ones that were not objected to, would your answers be exactly the same?

(The jurors nods in the affirmative.)

MR. SHINN: Nothing further, your Honor.

THE COURT: Do you pass for cause?

MR. SHINN: Pass for cause, your Honor.

THE COURT: Mr. Kanarek?

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MR. KANAREK: Yes, your Honor.

Ladies and gentlemen of the jury, prospective jurors --

Your Honor, the bailiff tells me, I gather, that there is difficulty in the back of the room hearing.

THE COURT: I think you should attempt to use the microphone, Mr. Kanarek.

MR. KANAREK: Very well, your Honor.

Testing.

I will start with Mrs. Gordon.

VOIR DIRE EXAMINATION OF SONIA Y. GORDON

BY MR. KANAREK:

Q Now, Mrs. Gordon, you recognize that you are here to judge?

A Yes.

Q Now, would you judge a man by the way you think or would you judge a man by the way he thinks?

A In this case, by the evidence.

Q Well, but you recognize that in judging this case you will be judging the way a man thinks?

Are we in agreement that this is -- you are only going to use the evidence to guide you, perhaps, in judging the way a man thinks?

Do you recognize that?

A Yes.

Q Are you saying yes because you feel it is the

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1 thing to say?

2 A No. I recognize by the way a man thinks.

3 Q Correct. Now --

4 THE COURT: I don't understand the question.

5 Accordingly, I don't understand the answer.

6 Will you rephrase it?

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1 MR. KANAREK: Certainly, your Honor.

2 Q When you said, Mrs. Gordon, that you will
3 judge a man by the way he thinks, what did you mean by
4 that?

5 A Well, I don't know. Well, you have to take
6 the way that one thinks and the way that you interpret
7 it, I guess.

8 Q Are you saying that before you could decide
9 whether anyone has done wrong you have to know what went
10 on in his mind, the way he thinks; is that correct?

11 MR. STOVITZ: That is objected to, your Honor,
12 as improper voir dire examination.

13 THE COURT: Sustained.

14 MR. KANAREK: Q. Well, certainly you recognize,
15 Mrs. Gordon, that you are not on trial here?

16 A Right.

17 Q And a part of what will be brought out before
18 you will be evidence, or whatever you might want to
19 call it, to try to show the way someone thought in
20 connection with alleged things that they supposedly
21 did; correct?

22 A Right.

23 Q And in order to judge whether someone did
24 wrong or not, you will decide whether they did wrong or
25 not by what they thought?

26 Are we in agreement?

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THE COURT: The question is ambiguous, Mr. Kanarek.

Rephrase it.

MR. KANAREK: Certainly, your Honor.

Q Now, Mrs. Gordon, do you have any children?

A Four.

Q Now, if a child accidentally knocks over a jar of jelly, that child would not be guilty of doing anything wrong as far as you are concerned; right?

A It might be, depending on my mood. If I warned him not to touch the jelly and he did, then I might punish him.

Q I see.

But if what he did was an accident, in other words, he did not think, he did not do anything on purpose, let's put it that way --

A All right.

Q -- if he didn't do anything on purpose, you certainly wouldn't punish him whether he be a child or a defendant in this case if he didn't think and do wrong as a result of thinking?

MR. STOVITZ: I don't understand the question and I am going to object to it, your Honor. It is improper voir dire.

THE COURT: The objection is sustained. The question is ambiguous.

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3. Q BY MR. KANAREK: Are we in agreement, Mrs. Gordon, that in our society, in the English-speaking world that we have, that you and I are a part of and that the defendants are a part of, that in this English-speaking world we do not punish people because of things that are done by accident, or in which they have no knowledge or thought?

A I can't really answer that because I think it depends on what is done.

Q Are we in agreement that what is done must be done on purpose; right?

A Well, I have had a car accident and I have suffered from it and it was done accidentally.

Q Right.

Now, let's take your car accident, that example.

In that car accident, Mrs. Gordon, was anyone hurt?

A Not real bad.

Q But someone was hurt?

A Yes.

Q And are we communicating that there is a difference between an accident, someone getting hurt by accident, and someone getting hurt on purpose?

A Yes, there is a difference between those two.

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4. 1 Q Yet someone, as far as the person getting
2 hurt, that person is just as hurt?
3 A Right.
4 Q Whether it was on purpose or by accident;
5 right?
6 A Right.
7 Q Now, in this case, the fact that some people VB-
8 passed away, the fact that they passed away doesn't mean 17-
9 that you are going to find anyone responsible for the 25
10 passing away unless they thought, unless their thinking
11 processes made them do something on purpose.
12 Do you get what I am driving at?
13 A Yes. But the only ones that knows about
14 what the person is thinking is the one that is doing the
15 thinking.
16 Q Right. I couldn't agree more on that.
17 Now, in order -- if, in this case -- if, in
18 this case matters are brought before you wherein there is
19 no showing that, let us say, Mr. Manson -- there is no
20 showing that Mr. Manson did any thinking or had anything
21 to do with the passing away of these people, and you
22 judge that, you decide that he did not, now is your
23 state of mind such that you could and would render a
24 verdict in favor of Mr. Manson?
25 A If it was not proven that he was guilty,
26 then he would be innocent.

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Q And is it your state of mind that in determining this you will evaluate the thinking process of Mr. Manson?

A If that is part of the evidence, yes.

Q And if there is no evidence to show any thinking process on the part of Mr. Manson of anything, of doing anything wrong, you would, I gather, unhesitatingly bring in a result in accordance with that?

A Right.

Q Now, may I ask you this.

Let's say that you were judging someone -- let's pick a country, Afghanistan.

Are you familiar with the customs of Afghanistan?

A I don't know where it is.

Q I don't either, but it just came to my mind. I have heard of it.

Now, would you say that it would be difficult for you to evaluate the thinking processes of someone who grew up in Afghanistan?

A Yes, if they thought different than me.

Q Right.

So, to determine whether the person, whether the person did wrong who came from Afghanistan, you would have to know -- you would have to be able to evaluate the customs, the thought processes, the background

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of this person and evaluate it from the standpoint of the Afghanistan culture as opposed to evaluating it from your culture?

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MR. STOVITZ: That is objected to as being improper voir dire, your Honor.

THE COURT: The objection is sustained.

Q BY MR. KANAREK: Well, to bring you closer to home, Mrs. Gordon --

A To put my feet in his shoes?

Q Yes, or really put yourself in his skull.

You would have to place -- when we are judges, and we are judging the thinking processes of people, we have to in fact place ourselves in their skull, so to speak, in their mind, to find out the way they are thinking.

Now, do you feel that --

Well, for instance, may I ask you this:

Do you feel that there is someone or some -- well, let me withdraw that.

Let me ask Mrs. Mesmer.

VOIR DIRE EXAMINATION OF MISS MARIE M. MESMER

BY MR. KANAREK:

Q Is that Miss Mesmer?

A Yes.

Q I am sorry.

A That's all right.

Q You are not going to hold that social faux pas against anyone in this case?

A No, not at all.

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9-2

Q Now, Miss Mesmer, directing your attention to the judging of people.

You recognize that as a juror you are in fact the judge?

A Yes, I do.

Q Now, as you look at your thinking processes, Miss Mesmer, do you feel that you have the capacity to know when you have been wrong, that is, when you felt wrong?

A Well, that is a little ambiguous because I may think I was right, but I could still be wrong. I mean, I may think I'm wrong and someone else says that I'm right.

I mean, I don't follow your question.

Q Well, what I mean is, do you feel that your particular approach, your particular attitude or analysis concerning a set of facts is infallible?

A No, I don't think I can be infallible, no.

Q Then do you feel that judging people is a difficult process?

A Yes, definitely.

Q And are you in agreement with the principle, generally, in the English-speaking world, that we judge people based upon whether or not -- especially in criminal law -- as to whether or not what they do is done on purpose, the way they think.

MR. STOVITZ: Your Honor, that is ambiguous as to

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what they do or what they think, that is ambiguous.

I object to the question.

THE COURT: Objection sustained.

Miss Mesmer, you may be instructed by the Court that as to the crimes alleged to have been committed in this case, certain specific mental states are essential elements of those crimes, as to each of the defendants.

If you are so instructed will you follow that instruction?

MISS MESMER: Yes, I will.

THE COURT: All right.

Q BY MR. KANAREK: May I ask you, Miss Mesmer, do you think -- have you heard the term "malice aforethought"?

A Yes.

Q Now, malice, and aforethought; those two words together mean that someone in advance determined to do wrong.

That is probably a shorthand way of saying it.

A Yes.

Q Now, in judging whether someone in advance had intended to do wrong, you realize that you must then evaluate the thought processes of the person that is before you for judgment.

A Yes, yes, I think so.

Q Now, directing your attention to someone whose

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1 way of life might be different from yours, do you think
2 that it would be difficult -- I can use that same
3 example -- to judge someone who came from a culture of,
4 let's say, Afghanistan?
5 MR. STOVITZ: Objected to, your Honor, as improper
6 voir dire.
7 THE COURT: Sustained.
8 Q BY MR. KANAREK: Now, Miss Mesmer, may I ask
9 you in what area did you come to learn what you know, so
10 to speak?
11 Where did you grow up?
12 A Back East, New York State.
13 Q And in your background have you had occasion
14 to ever do any work where you had to sit in judgment on
15 people, where you had to think about whether someone did
16 right or wrong?
17 A Well, I haven't had occasion to sit in judgment,
18 but it is a good part of living to be in judgment of
19 whether a person is doing right or wrong.
20 I mean, if you are talking specifically about a
21 particular kind of work where I have sat in judgment, then
22 my answer is no.
23 Q Well, in any avocation, or have you been a part
24 of any group where it was up to you to decide whether some-
25 one, let's say, was discharged, removed from doing certain
26 chores or a certain job?

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A No, I have not been in that capacity.

MR. KANAREK: May I ask any of the prospective jurors that are in the box, has any one of you ever had to sit in a situation where you had to determine the way people thought, whether they did right or wrong in connection with anything in life?

(A show of hands.)

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9a.

VOIR DIRE EXAMINATION OF LAWRENCE REYNOLDS

BY MR. KANAREK:

Q Mr. Reynolds?

A In pertaining to employment.

Q In pertaining to employment?

A Yes.

Q Would you pick up the microphone, sir? Thank you.

Would you tell us what experience you had in judging people?

A Well, mainly with the evaluation reports as to the competence of the person involved and the type of work.

In other words, whether they are competent, if they are doing the job proper, whether they are not doing the job properly, because of incompetence or because they just don't want to.

Q I see, so you had the occasion there to evaluate the way they thought, when you say whether they didn't want to, in other words, they had the capacity perhaps but they just did not want to do what should be done?

A I would not say so much "thought" but more evaluate their actions.

Q I see. Now, how recently, Mr. Reynolds, have you engaged in this act of judicial function?

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A I am in my capacity senior photographer at the museum; I have four employees underneath me.

Q From time to time do you evaluate them as people and photographers and so forth?

A Yes, biannually.

Q You render your report to someone?

A Yes, to the head of the department.

Q I see. Now, in judging your judgment, so to speak, would you tell us what you have, if any, in judging people?

A Well, people are hard to judge, that is very correct, but it is hard to decide their mental state, whether it's problems on the job or problems they have at home, that they are bringing to the job, that is causing them to fall down, or it is just that they don't want the job and they don't really care about the work.

So consequently they are doing the job improperly.

In other words, they are not really wanting to ask to resign, but they would rather be fired.

They don't want to quit; they would rather be fired.

We have to determine this, there is a lot of factors involved.

Q It is quite complicated?

A Yes, it is.

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1 Q Sometimes you are not sure that you are
2 making the right judgment?
3 A That is very correct.
4 Q May I ask you, where did you learn what you
5 know, so to speak, Mr. Reynolds?
6 A In Southern California.
7 Q And recognizing the seriousness of what we
8 are all here for, would you mind telling us your background,
9 that is, your educational background?
10 A Well, I got my AA Degree at Compton Junior
11 College; my BPA Degree in Long Beach State.
12 I am presently working on my Master's
13 Degree at UCLA.
14 Q Have you had any experience in the behavioral
15 sciences; have you had any psychology or anything like
16 that wherein you learned how the thinking process of
17 people happens to take place?
18 A Yes, psychology is part of the required
19 curriculum.
20 Q I see, and have you had that type of work?
21 A Yes, we did have it, behavioral psychology.
22 Q And would you say, are we in agreement that,
23 in judging people -- I will withdraw that.
24 Are we in agreement, that judging people is
25 a difficult job?
26 A Yes.

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Q Are we in agreement that many times when we make judgment we don't really know that what we have done is correct?

A That may be true part of the time, but I would say in the majority of the times the actions of the person dictate whether you are right or wrong.

I mean, it is plain to see what they are doing or their reason behind their actions.

Q But you have indicated previously that you have to take into account many times factors that you are really not completely familiar with, factors like you have indicated, their home, there may be matters taking place in areas outside of your immediate view?

A Correct, and that is why we bring them in for an interview before we make any type of judgment in their case, to find out if there are outside factors causing the problem, and if there is anything we can do about them.

Q I see, thank you.

May I ask, is there anyone else on the panel who has either fraternal work, or any type of work in which he has had occasion to judge the way people think?

VOIR DIRE OF MISS ROSE PAHN

BY MR. KANAREK:

Q Yes, Miss Pahn?

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1 A It's Pahn.

2 Q Am I pronouncing your name right?

3 A Pahn.

4 Q Phonetically?

5 A Pahn.

6 Q P-a --

7 A -- h-n.

8 Q P-a-h-n. That is the way it is spelt?

9 A Yes.

10 Q Thank you. Would you tell us what experiences

11 you have had?

12 A Well, with employees. I was in charge of

13 a number of girls at times, building up from one to

14 maybe 30, and sometimes having two crews in a day, because

15 it was fund-raising, and we would have what you call a

16 campaign.

17 And some girls you have to be able to judge

18 whether they are just the happy-go-lucky type, or whether

19 they are just playing off and don't want to work, and

20 that sort of thing.

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Q Is that in the recent past, or has that been --

A Well, that was some time ago.

But I also was in charge of the stenographic work in the Engineering Bureau of the Public Utilities in the last position that I left.

Q And in that capacity you had to judge people?

A Yes, judge their attitudes and their responsiveness to their responsibility.

Q What is your feeling about your ability to judge people? Would you say that this is a difficult job?

A Yes.

Q Judging your fellow creature?

A Yes, because many factors enter into their behavior, as the other juror indicated.

Q Now, may I ask you, where did you learn what you know, so to speak?

A I have lived here almost 50 years, and before that Chicago.

Q If I may pry, would you tell us how far, what your education was?

A High school education and then just extra courses from time to time.

Q I see, and what type of work were these extra courses?

A Psychology, rapid reading and keeping up my speed in shorthand.

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Q I see.

A Things like that.

Q Now, do you feel, Miss Pahn, do you feel that it would be difficult to judge someone whose way of life was different from yours?

A Yes.

Q And recognizing that it would be difficult to judge the way of life of someone that was different from yours, would you tell us how would you propose to judge such a person yourself?

THE COURT: I am going to sustain my own objection to that, Mr. Kanarek.

That is irrelevant to any inquiry before the Court.

Let's proceed.

Q BY MR. KANAREK: Miss Pahn, do you feel that, looking at yourself, do you feel that your state of mind in connection with judging your fellow man is such that you, in approaching this case, that you could judge a person in a different way of life from yours where the charge is as serious as the charge that is made in this case?

A I cannot conceive why the judgment should be different for, say, an American or for a European.

Q I see.

A The crime would still be the same.

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Q Pardon?

A The crime would still be the same.

Q Yes, but are we in agreement that you recognize before there can be what you call a crime, which would be the same, there would have to be a thinking process; there would have to be this malice, malice aforethought that we have spoken of, shown, and that must be something that is down deep in the mind of the person you are judging.

You must find that malice aforethought down deep in his or her mind.

A I can only judge by the evidence, not by his thinking.

I would not be able to read their thoughts or behavioral processes as far as making him work that way, of a stranger like that.

His way of life is entirely different.

Q So therefore it is a fair statement that there would be some difficulty in evaluating the thought processes of a person who has a different way of life than you have?

A I said that before.

MR. STOVITZ: Objected to as being improper voir dire examination, your Honor.

THE COURT: Sustained.

Q BY MR. KANAREK: Miss Pahn, do you feel that there are some things that are of such a nature that it

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would be impossible for you to make judgment?

A Well, I am only going to judge on evidence, so then I will have something to go on.

Q And if there isn't -- well, let me withdraw that.

I mean, I gather that we are in agreement that there are some things that you feel would be incapable of judgment by you, is that true?

MR. STOVITZ: That is objected to as being compound, ambiguous, unintelligible, your Honor --

THE COURT: -- and confusing.

Sustained.

MR. KANAREK: Now, may I ask Mr. Dominguez some questions, he indicated that he has had experiences in life which involved judging processes.

MR. DOMINGUEZ: Yes, I have, for my employees where I work.

VOIR DIRE EXAMINATION OF MR. PEDRO R. DOMINGUEZ

BY MR. KANAREK:

Q What is the nature of the type of judging that you do, or are you presently doing it at the present time?

A Yes, I am.

I have similar problems that the other gentlemen had in respect to judging people's condition in

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1 their work.

2 My job is also to evaluate their, oh, how they
3 handle their job, their efficiency, and how well they know
4 the codes and all this with respect to the design job we
5 do.

6 Q And would you tell us something about your
7 experiences in that type of work?

8 A Experiences in what?

9 Q In this judging process.

10 A Well, we have deadlines to meet in any given
11 contract, and we do expect so much out of each man on the
12 job, workwise, we have to meet manpower deadlines, distri-
13 bution of power, communications, lighting instrumentation.

14 We have a certain time limit to perform each,
15 and some of the men just don't cut the mustard, and we
16 have to find out why.

17 We have interviews with them to find out what
18 is holding them up; why they cannot meet the deadline
19 they are given, and sometimes they have problems at home.

20 Some of those are language problems.

21 We have a lot of foreign people working with us,
22 so we have to gather all this together before we can take
23 any action on any one person, and we do this two or three
24 times, sometimes, within the course of a contract.

25 And sometimes some of the men just, even
26 after repeated interviews, they just cannot cut the mustard

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1 on the job.

2 We have to either replace them in a lower

3 category or sometimes they get out of line; they are dis-

4 missed.

5 The action of dismissal is not mine. It is

6 simply an evaluation of the job.

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Q And looking at yourself, how do you feel you are as a person who judges in situations that you have shown us, that you have spoken of?

A Will you rephrase that?

Q Do you enjoy doing this, this judging type of work?

A Enjoy it?

Q Yes.

A No, I can't say that I enjoy it. It is not easy.

Management, in respect to the judging of people, is -- well, I don't like to hurt people too much when it comes to judgment. There are too many things involved.

I don't enjoy it, no. I have to do the job, and sometimes I do ask for a responsibility job.

Q And as you approach this case, Mr. Dominguez -- I am not now asking you to discuss anything about it, what you may have heard about it, of course, before coming to this courtroom, but would you say that judging, as in this case, is a task which is, from what you know about it so far, is a difficult job to do?

A Let me say that the decision is heavy.

Q Pardon?

A Let me say that the decision to make, whether it be acquittal or guilty, on my part, it weighs quite a bit. I have to make sure that the evidence presented has to

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be a positive proof of my decision.

I do not find it really difficult to make but I have to make sure that the evidence will prove to me without a doubt in the outcome of the decision that I make.

MR. KANAREK: Thank you, Mr. Dominguez.

Is there anyone else that has had any experiences in life, anyone in the box presently, where there has been any requirement of determining whether people did right or wrong in any decision in life?

(No response from the prospective jurors.)

MR. KANAREK: Then may I ask Mr. Stokes?

MR. DOMINGUEZ: Thank you very much.

MR. KANAREK: Yes. Thank you, Mr. Dominguez.

VOIR DIRE EXAMINATION OF HERMAN R. STOKES

BY MR. KANAREK:

Q Mr. Stokes, if I may put you on the spot, where did you learn what you know, so to speak?

A I was born in Houston, Texas, and I spent most of my life in Los Angeles.

Q I see.

In connection with education, would you let us know how far in school you went, and so forth?

A Three years of college.

Q In any particular field of activity? Did you take any courses where there was psychology or anything

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1 like that?

2 A Yes, I took psychology, and I majored in

3 accounting, minored in business administration.

4 Q Now, evidently, from your lack of response,

5 I gather that there has been no -- you haven't had any

6 experiences in life where you have had to judge your fellow

7 man?

8 A None other than my children.

9 Q Now, you have had, on occasion, to judge your

10 children as to whether, in fact, if something occurred,

11 whether they knowingly did the act or whether they did it

12 accidentally, or maybe even somebody else did it; right?

13 A Yes.

14 Q Now, would you say that it would be more

15 difficult for you to judge someone else's children whose

16 habits, environment, background, were foreign to you than

17 it would be to judge your own children?

18 A It is not difficult for me to judge according

19 to evidence.

20 Q You feel that it would be just as easy for you

21 to be able to judge children with whom you had no contact,

22 they are not growing up in your own home, as would be your

23 own children?

24 A I find that people basically are the same all

25 over.

26 Q I see.

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1 Do you feel that people do undergo change,
2 that there is a difference, say, from day to day, year to
3 year, in what people might do in a given set of circum-
4 stances?
5 A Yes. Yes, I do.
6 Q And as you approach this case, Mr. Stokes,
7 would you judge Mr. Manson by the way you think or would
8 you judge Mr. Manson by his thought processes in connection
9 with determining whether Mr. Manson did right or wrong?
10 A I would have to project myself into the time
11 this happened, and if I felt that he was thinking a certain
12 way, I would decide that way.
13 Q In other words --
14 A His mind is different now than it was then.
15 Q Pardon me?
16 A A person's mind changes, like you said, and at
17 the time something happens he is thinking differently.
18 So, I would have to determine how he thinks at the time this
19 thing happened.
20 Q Then we are in agreement that what you would be
21 doing is you will be judging the way Mr. Manson thought, if
22 I may put it that way, at the time that certain events
23 occurred?
24 A Yes, that is what I would do, yes.
25 Q What, Mr. Stokes, if you couldn't understand
26 Mr. Manson's thoughts and opinions, or you couldn't under-
stand how they were formed. Do you think you could judge

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him if you couldn't understand his way of life?

THE COURT: I don't understand that question, Mr. Kanarek.

MR. KANAREK: Very well, your Honor.

THE COURT: We will take the noon recess at this time, ladies and gentlemen, until 2:00 p.m. this afternoon.

I will see counsel in chambers at 1:50, that is, ten minutes to 2:00.

Do not converse among yourselves or with anyone else on any subject relating to the case nor form or express any opinion regarding the case until it is finally submitted to those of you who are selected.

MR. KANAREK: Your Honor, I was depending upon the full two hours at noon. I have to, perhaps, leave the downtown area.

THE COURT: Very well.

MR. KANAREK: May it still be 2:00 o'clock?

THE COURT: Very well, 2:00 o'clock.

(Whereupon, at 12:00 o'clock the court was in recess to reconvene at 2:00 p.m., same day.)

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LOS ANGELES, CALIFORNIA, FRIDAY, JUNE 26, 1970

2:00 P.M.

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(The following proceedings were had in the chambers of the Court out of the hearing and presence of the prospective jurors, all counsel being present; no defendants were present:)

MR. FITZGERALD: Are the defendants coming in?

THE COURT: No, I just want to talk to you about procedure.

The record will show all counsel are present.

I wanted to give each of you a copy of the order that I made, augmenting the original order regarding publicity.

(Whereupon, each counsel is handed a copy.)

MR. FITZGERALD: May the record indicate I have received such?

THE COURT: All right, all counsel have been furnished a copy of the Court's order of June 26th, entitled "Order Augmenting Order Re Publicity."

In addition to the original order of December 10, 1969, which I refer to in the opening paragraph of this latest order, there is another order regarding publicity concerning witnesses.

Are you all aware of that order?

MR. FITZGERALD: I have a problem in that regard:

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The original publicity order, your Honor, states that any witness that is subpoenaed on behalf of the prosecution or the defense shall be served with a copy of the publicity order.

I would like to make a request that your clerk make available to defense counsel several copies of the publicity order so that we may comply with it by attaching a copy to all of the subpoenas that we have issued.

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MR. STOVITZ: In order to clarify that point, I believe Judge Keene issued the two-page publicity order which --

THE COURT: That is the one that I am referring to now.

MR. STOVITZ: -- is a lot easier to read, in which it pertains only to witnesses; because the original publicity order dealt with other things that the prosecution or defense could do as exceptions.

THE COURT: The two-page order that Mr. Stovitz just referred to is dated January 6th, 1970, it is entitled Order re Publicity for Witnesses, and it is a copy of this order that is to be served along with the subpoena to any witness.

MR. FITZGERALD: Can we obtain copies of those, several copies, your Honor? I will need probably --

THE COURT: I don't have any copies.

MR. FITZGERALD: -- fifty or sixty of them.

THE CLERK: I can give each one copies and they can proceed from there on their own.

THE COURT: I presume they have all received copies originally of these orders.

MR. FITZGERALD: My problem is that I have to obtain copies of them to serve on the witnesses that I intend to subpoena, your Honor.

THE COURT: Is there any reason why you can't

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reproduce them?

MR. FITZGERALD: Well, I am already angry with the Court because you are forcing me at tremendous personal expense to myself to reproduce portions of the Beausoleil transcript in regard to the testimony of Danny DeCarlo's testimony and Mary Brunner's testimony.

THE COURT: I don't understand your statement.

MR. FITZGERALD: I made a motion that the transcript of Danny DeCarlo and Mary Brunner be prepared, and you denied me that motion and said that I should do it at my own expense.

I don't think that I am required to do it at my own expense, your Honor. I mean, I am in a precarious economic position as it is. I have had to take money out of my own pocket to photograph these materials in regard to discovery. I am just not prepared to take any more monies from my personal savings.

THE COURT: You are not a Public Defender and you are not appointed by the Court.

MR. FITZGERALD: If the Court expects me to serve a notice on a witness, I think the Court ought to provide me with a notice or ought to provide the Sheriff's Civil Division with the notice.

THE COURT: How many do you anticipate requiring? How many copies of this order?

MR. FITZGERALD: Probably 25 or 30, to be on the safe side.

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3, 1 MR. SHINN: 25 or 30?

2 MR. FITZGERALD: Yes.

3 THE COURT: Are you all going to need the same

4 amount or would there be a duplication?

5 MR. REINER: A duplication in many respects,

6 although not in all respects.

7 THE COURT: Would 30 copies be enough for all

8 defendants?

9 MR. FITZGERALD: I will settle for that, your

10 Honor. Thank you.

11 MR. KANAREK: I don't think it would be.

12 THE COURT: Do you need some additional?

13 MR. KANAREK: That is my guess.

14 THE COURT: Well, how many?

15 MR. KANAREK: I'd say it could be 25, your Honor.

16 I am speaking for myself and Mr. Shinn here.

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THE COURT: Then I will order 55 copies of this two-page order of January 6 prepared. 30 copies to go to Mr. Fitzgerald and 25 copies to Mr. Kanarek.

If any of you other counsel for the defendants require any from time to time, just let the clerk know and he will have additional copies produced.

MR. KANAREK: I think we could have an understanding that Mr. Shinn would use mine.

THE CLERK: If you will give me a day's notice, Judge, I can give them whatever they want.

THE COURT: I think we should have a supply on hand because they might want to get subpoenas out rapidly in some cases. Let's have them prepared.

THE CLERK: Yes, sir.

MR. KANAREK: Would that include, your Honor, the augmented portion?

THE COURT: No, that doesn't apply to witnesses. That only applies to the in-chambers and out-of-the-presence-of-the-jury proceedings.

MR. KANAREK: Very well.

MR. REINER: Your Honor, I would like to discuss this order.

In reading it, your Honor, I think it goes a little further than perhaps the Court intended it to go.

Apparently, from my reading of the order, this prevents any disclosure of anything that goes on in

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chambers, without stating the purpose for non-disclosure.

Certainly it should be controlled, your Honor, but I might indicate to this Court that I have disclosed any number of things that occurred privately in chambers, and I certainly intend to continue doing so, with attorneys, colleagues of mine, District Attorneys, or persons who I am acquainted with, in effect picking their brains. There are just so many people with whom I have discussed this case for all sorts of professional reasons.

I certainly don't feel, your Honor, that my activities should be so circumscribed that I couldn't discuss this case with any person.

Now, I certainly don't mean by that, your Honor, that I should sit around and talk for two hours to a reporter about the case, but there are a number of people, an indeterminate number of people, that I have talked to, and certainly I will continue to discuss this case with them to obtain views and information.

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THE COURT: Well --

MR. REINER: These are not reporters, and these are not people who would publicly disseminate it.

They would not talk about it greatly. Obviously some of them would be talking about it to their friends.

THE COURT: What specifically are you talking about?

MR. REINER: Anything that takes place, for example, just taking anything out of the past that we have had discussions from time to time in chambers on evidence, or matters of law or conduct of the defendants, or conduct of attorneys.

Anything that takes place during the course of this trial I have probably from time to time discussed with any number of persons, mostly attorneys.

THE COURT: I know that; that is the reason I made the order.

MR. REINER: Well, wait a minute, when the Court says he knows that.

I am not talking now about members of the media directly or indirectly.

I am talking about attorneys, primarily, but not always just attorneys.

MR. STOVITZ: I can give you an example if I may interrupt counsel.

Assume for a moment that we have a question

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1 concerning the introduction of evidence relating to an
2 alleged admission by one of the defendants, and we make
3 an offer of proof.
4 Your Honor rules.
5 Now, as your Honor knows we go down to our
6 office and discuss with our immediate superior and our
7 Appellate Division that order that was made here, but
8 we intend to serve this order, augmenting order of
9 publicity, upon our office.
10 Our office becomes cognizant of that order.
11 Service upon one deputy in the office constitutes service
12 on the entire office. All the members of our office
13 will respect this new order augmenting publicity.
14 Counsel says suppose he talked to Grant
15 Cooper about it, or some other legal giant in the field,
16 and wants to get his opinion on it.
17 Now --
18 MR. REINER: I office with Grant so it is possible
19 I will from time to time be discussing it with Grant,
20 but in addition to discussing it with Grant I have other
21 attorneys of somewhat lesser stature.
22 MR. STOVITZ: Of what?
23 MR. REINER: My wife, who is an attorney.
24 Very seriously, there are so many aspects
25 of this case, the conduct of the defendants, statements
26 made by the defendants, in some cases even a confidential

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1 communication, but that would be rare; that would be
2 a matter, the confidential communication would be honored
3 because I would talk about it only with a close
4 associate.
5 Because I cannot conceive, let me put it
6 in these broad terms, I cannot conceive of any aspect
7 of these proceedings, no matter how transigently they
8 touch on these proceedings, that I cannot discuss with
9 another attorney for professional reasons so long as
10 it is not done for any reason for the purporse of
11 public dissemination.
12 Beyond that I don't believe the Court has
13 authority to curtail. I don't think the Court really
14 wants to. I don't think there is any real interest in
15 this Court in wanting to curtail such activities.
16 THE COURT: Well, I don't really understand what
17 you are talking about, Mr. Reiner.
18 You are making general statements about all
19 kinds of people that you may disclose these things to.
20 That is the precise purpose of the order, is to prevent
21 such disclosure to people who have no authorized legal or
22 proper interest in the proceedings.
23 You may want to tell your wife, but what
24 possible interest does she have in the proceedings other
25 than mere curiosity?
26 MR. REINER: I thought I made myself much clearer

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1 than that.

2 For example, yesterday two of the defendants,
3 or yesterday one of the defendants and the day before
4 that another defendant said certain things privately
5 with respect to their concern about questions to be
6 asked on voir dire.

7 I might very well want to talk to another
8 lawyer and get his thinking on the subject.

9 THE COURT: Yes, you might want to.

10 MR. REINER: Is this Court suggesting I may not?
11 I find that incredible.

12 THE COURT: I don't find it incredible at all.
13 The purpose of the publicity order is to avoid the
14 dissemination of this testimony and statements and
15 evidence and facts and arguments, and so forth, that
16 take place out of the presence of the jury so that they
17 will not be influenced by it.

18 MR. REINER: But that goes to public dissemination.

19 THE COURT: If you disseminate it to someone
20 not directly interested in these proceedings, then
21 you are disseminating it to the public.

22 MR. REINER: I think if I am trying to seek the
23 advice of another attorney, I think I may.

24 THE COURT: You are not precluded from seeking
25 advice from anybody.

26 MR. REINER: In seeking such advice I would inform

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1 them of the facts that are involved and get their
2 opinion.
3 THE COURT: All right.
4 MR. REINER: May it be cleared up?
5 THE COURT: I don't really think there is any
6 conflict at all between what you are saying and the order.
7 Now, we have one other matter, gentlemen --
8 two other matters, actually.
9 We have the request of a prospective juror,
10 Mrs. Yvonne Stewart, requesting that she be excused Monday,
11 June 29th. She has to attend to some matters pertaining
12 to her sister.
13 She will return on Tuesday.
14 Would counsel care to stipulate?
15 MR. SHINN: Is she in the box?
16 THE COURT: No, she is not in the box.
17 Are you willing to stipulate she may be
18 excused on Monday?
19 MR. KANAREK: So stipulate.
20 MR. SHINN: So stipulate.
21 MR. FITZGERALD: I would just as soon she would be
22 excused permanently.
23 MR. STOVITZ: I would think so.
24 MR. FITZGERALD: The problem is we ask questions of
25 prospective jurors. We expect the people in the audience
26 would be attentive; she may not be here for one day.

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I think we could obviate a lot of problems if we all stipulated she would be removed from the panel altogether.

MR. STOVITZ: I would so stipulated, your Honor.

THE COURT: Do all counsel stipulate to excusing her permanently?

MR. KANAREK: Certainly, your Honor, so stipulated.

MR. SHINN: So stipulated.

MR. REINER: So stipulated.

THE COURT: All right then, she will be excused altogether.

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Now I will be ready to rule on the People's motion to vacate the order of June 10th, denying the People's motion for a hearing on the appearance of Mr. Kanarek as attorney of record for Defendant Manson, and I will also be ready to hear any argument to determine the motion to dismiss.

Is Monday morning agreeable to counsel?

That would be early Monday morning, at 9:00 o'clock.

MR. KANAREK: Your Honor, I was working on that, it takes a certain amount of my time in connection with this motion that the People have filed once again against me, your Honor; there is a certain amount of time involved.

But I guess I will just have to work with it and be ready.

THE COURT: Do you want additional time?

MR. KANAREK: Well, your Honor, I have reviewed the cases, I think, that were cited, and I don't believe the motion is meritorious.

I can distinguish each one of those cases.

THE COURT: Do you intend to argue, Mr. Stovitz?

MR. STOVITZ: No, your Honor, it will be a 15-second presentation.

THE COURT: In that case I am ready to rule right now, because I have read all of your citations.

MR. STOVITZ: If your Honor wants to advance the

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1 previous hearing date from Monday until today, we have no
2 objection.
3 Have you any objection, Mr. Kanarek?
4 MR. KANAREK: No, I have no objection.
5 MR. STOVITZ: May I then present the argument that I
6 have?
7 It is unfortunate that Mr. Manson is not here
8 because I think that the reason for this is --
9 THE COURT: On that point, if we are going to hear it
10 now, do you waive the appearance of Mr. Manson?
11 MR. KANAREK: Yes, your Honor.
12 THE COURT: Do each of you waive the appearance of
13 your respective clients for the purpose of this motion,
14 which involves only Mr. Kanarek?
15 MR. FITZGERALD: So stipulate.
16 MR. REINER: So stipulate.
17 MR. SHINN: So stipulated.
18 THE COURT: All right. Go ahead, Mr. Stovitz.
19 MR. STOVITZ: We have filed this motion, your Honor,
20 and of course it was heard with Mr. Manson present
21 originally, and then he was removed.
22 Now, I take it that Mr. Kanarek will relate to
23 Mr. Manson the fact that we filed this additional motion.
24 We would like to have the defendant know the
25 type of man he has employed, so that in the future if he
26 was to raise this point on appeal, that he was represented

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13z3

1 by an attorney that was working against him, and an attorney
2 that was working against the administration of justice,
3 that he would be forewarned.
4 THE COURT: Well, there is nothing in your present
5 motion to vacate the previous order that would enlighten
6 him beyond what you have already had in your previous
7 motion papers.
8 MR. STOVITZ: That is correct. But he, of course,
9 Mr. Manson, was removed during the argument on that previous
10 motion and he was not present during all of the proceedings.
11 But we would like to state to the Court that
12 this motion, although it appears to be novel, is made with
13 a great deal of thought on the matter.
14 We feel that as officers of this court, that we
15 are working for the administration of justice.
16 We feel that when a case is reversed, such as
17 the Davis case, that was reversed due to quote "the change
18 of heart of Mr. Lee Zeman, the attorney."
19 The prosecution bore the burden of retrying
20 that case; the Court bore the burden of retrying the case.
21 If this case were to be reversed due to the
22 actions of Mr. Kanarek, the prosecution would bear the
23 burden of retrying the case; the court would bear the
24 burden of retrying the case.
25 We would like to have the Court forewarned;
26 we would like to have the defendant forewarned so that he

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1 knows the attorney he has hired to represent him.

2 THE COURT: Well, I have read your points and

3 authorities.

4 The authorities cited by you are all cases

5 which, whatever the particular problem was, in no case

6 was it the problem before the Court now. All occurred in

7 the action in which the --

8 MR. STOVITZ: -- the attorney was of record.

9 THE COURT: In which the attorney was of record, and

10 which he was asked, and sometimes the court ordered him

11 removed from the case.

12 As distinguished from this case where the Court

13 is being asked to in effect disapprove a substitution of

14 attorneys based on what Mr. Kanarek may or may not have

15 done in some other proceeding wholly unrelated to this

16 case.

17 So the cases are really not in point.

18 There is no authority that I am aware of for

19 doing what you are asking the Court to do in this case,

20 namely, to find that, on the basis of an evidentiary hearing

21 or otherwise, that because Mr. Kanarek conducted himself in

22 some manner in some other case, he therefore should be

23 prohibited from being substituted in as attorney of record

24 for the defendant in this case.

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As I indicated on the record, I think the simple answer to that kind of a motion, the only answer, is that if Mr. Kanarek misbehaved himself in some other case, he should have been disciplined in that case, or disciplinary proceedings should have been filed against him with the State Bar, or both; and then depending upon the outcome of that, he is either still a qualified attorney under the laws of the State of California or he isn't. If he is, this Court has no statutory or other authority to prohibit his being substituted in as an attorney of record for a party.

And certainly to attempt to set the matter down for an evidentiary hearing on what his conduct has been in other proceedings in the past would simply be an exercise in utter futility. Not only would it go on forever, ostensibly, but I don't know how you could prove it. I don't know how you could get in evidence to prove it.

In any event, regardless of what came out of such an evidentiary hearing, the Court would have no power to grant the motion in any event.

And accordingly, the motion will be denied.

But I want the record to be perfectly clear that the reason that the Court is denying the motion is not because of any belief on my part that I lack the authority or cannot exercise my discretion or have refused to exercise my discretion to set it down for an evidentiary

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1 hearing. I think I have the right and the power to set it
2 down for an evidentiary hearing.
3 I simply am exercising my discretion not to
4 do so for the reasons stated because I think it would be
5 utterly futile.
END
6 Now, is there anything else in that regard?
7 MR. STOVITZ: In connection with the motion to dis-
8 miss being heard on Monday, will the concurrent motion in
9 re contempt of myself be heard concurrently, subsequently,
10 or has your Honor decided that?
11 THE COURT: No, that I have not decided.
12 At one time, my recollection is, one or the
13 other of defense counsel had asked for some time to play
14 some tapes to the Court sometime in the future as the basis
15 of part of their arguments. So, nothing further has been
16 done so far as I am concerned. I have been waiting for the
17 convenience of counsel for whatever they want to do in
18 completing their showing in that regard.
19 If there is no intention to go forward with
20 that, then I will consider the matter closed and take it
21 under submission for decision.
22 MR. REINER: Well, I don't recall, perhaps it just
23 slipped my mind, that counsel was going to listen to the
24 tapes with the Court.
25 MR. STOVITZ: Mr. Kanarek wanted to listen to the
26 tapes with the Court to make sure that there was no

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tampering with the tape or destruction of the tapes, and I believe that Mr. Kanarek stated that he would supply a tape recorder that would play a recording at a normal speed.

THE COURT: As I explained to all of you, the Court has no tape recorder. The tapes are simply tapes until they are played by someone, or transcripts are furnished.

MR. SHINN: How about Monday afternoon? I will bring a tape recorder.

THE COURT: I don't want to do it during our normal court hours. I want to do it early in the morning.

MR. STOVITZ: It takes an hour and a half.

THE COURT: I would like to do it at 9:00 o'clock, and if we couldn't finish it in one day, then we will continue it over to the next day and play the balance the next day.

MR. KANAREK: I am agreeable with that.

MR. SHINN: Monday afternoon?

THE COURT: No. I am saying that I would prefer to do it in the morning, Mr. Shinn, so that we don't interrupt our normal court hours.

MR. SHINN: Then we will have to get here about 7:00 o'clock in the morning, your Honor; 7:00, 8:00, 9:00.

THE COURT: You can play it starting at 9:00 o'clock. I have relatively few calendar matters now. If we don't finish it in one day, we can carry it over and play the rest of it the next day.

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MR. SHINN: All right, your Honor. I will bring the tape recorder in.

THE COURT: Any day you like.

MR. SHINN: I will bring it Monday.

THE CLERK: Monday we have about five probation matters and two or three calendar matters.

THE COURT: It will take several days, then, to play it.

MR. SHINN: I will bring the tape recorder on Monday morning.

THE COURT: At your convenience.

Is it agreeable with all counsel that the Court hear and determine the motion to dismiss on behalf of the defendants on Monday?

MR. FITZGERALD: Yes.

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14a.

THE COURT: Do you all intend to argue or is the matter submitted, or how do you propose to proceed?

MR. FITZGERALD: As I indicated previously, your Honor, there will be a very short argument.

May I inquire of other counsel if they intend to argue?

MR. KANAREK: I would like to make a short argument, your Honor.

MR. REINER: I don't.

MR. SHINN: I will submit it.

THE COURT: Very well.

This may cut into the time for playing of our tapes but, in any event, when it is decided, we can take up the other matters.

MR. KANAREK: Prior to that, your Honor, I would invite the Court's attention to what I think is a very subtle point, and I will make it very brief right now and ask the Court to consider this, maybe, at the Court's leisure over the weekend.

We have here, your Honor, the subtle point of the conspiracy, this "Manson Family" type of thing that has permeated this community, that makes the conspiracy charge almost impossible to defend because no matter what else, by the clever placement of that propaganda in the community, there is this idea of a "family" a conspiracy.

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2. I mean, your Honor that----

THE COURT: Mr. Kanarek, please save your argument until Monday. Would you?

MR. KANAREK: Yes, certainly, but that is something that I would like to pinpoint in the Court's mind so that you might be thinking about it.

THE COURT: The other thing is that you started your voir dire examination shortly before noon, Mr. Kanarek, and your questions seem to be getting far afield from proper voir dire examination.

The jurors are not here to judge moral issues, as your questions would seem to imply.

They are judges of the facts and of the effect and value of the evidence, and their function is to determine the issue of guilt based upon the evidence and in accordance with the Court's instructions.

I found many of your questions difficult, if not impossible, to understand but, in any event, those that I could understand seemed to be getting far afield of any legitimate purpose of voir dire examination.

So, I would ask you to bear this in mind and remember now that we have had the benefit of three defense counsel asking questions on voir dire, and between the three of them they have covered the subject rather exhaustively.

I am not saying that there is no room left

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3. for anyone else, but let's not be merely repetitious.

Again, the function of voir dire examination is to determine if there is any basis for a challenge for cause, not for the exercise of a peremptory challenge.

Let's refrain from indoctrination and instruction on law.

I have permitted counsel to go into some of the instructions. Mr. Reiner has done that at some length.

Where that is done, I consider it very dangerous, particularly where you start to paraphrase the instructions or the law.

It can be done in such a way that you are using the instruction or the law as an illustration rather than any effort to instruct or indoctrinate, and I think that is perfectly legitimate; but any effort to make a juror state an answer which, in effect, is prejudging an issue is improper.

MR. SHINN: Your Honor, along those lines, may I ask why you objected to my questions regarding the confession?

THE COURT: Because the law is, Mr. Shinn, under Evidence Code Section 405, that a confession, the admissibility of a confession, that is the voluntariness or lack of it, is a matter for the Court to decide only.

This is a change in the law, as you undoubtedly

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4. 1 know.

2 MR. SHINN: Yes.

3 THE COURT: It used to be that the Court first would
4 make a preliminary determination and then the jury would
5 have another or second crack at it.

6 The law has been changed since the Evidence
7 Code was enacted. 405 provides that the Court alone
8 determines the question of the voluntariness of the
9 confession.

10 So, when you ask the jurors, the prospective
11 jurors, whether they would be willing to determine the
12 voluntariness of the confession, it is simply improper.
13 That issue is not going to be before them.

14 MR. SHINN: But then I later changed my question
15 and asked: "Do you think that a confession necessarily
16 reflects." Because the juror has the duty of determining
17 whether or not the statements made were true or untrue.

14b. 18

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4-B

THE COURT: Absolutely. Yes. Perhaps I misunderstood your question.

MR. SHINN: Then I asked the other question: Do you think psychological pressures may cause an innocent man to confess. And that goes right to the issue of whether or not the statements are true or not.

MR. STOVITZ: I think the record would speak for itself, Counsel.

THE COURT: I believe so.

I don't recall now the specific questions as to which I sustained objections, Mr. Shinn, but I do recall that one about whether they would be willing to consider whether or not the confession was voluntary.

MR. SHINN: That was in the beginning, your Honor. Then he objected to it. Then I stayed away from it.

MR. STOVITZ: And I stayed away from objecting.

THE COURT: Let's resume.

MR. STOVITZ: Your Honor, before we resume, Mr. Younger has issued a statement which I would like to read for the record.

MR. FITZGERALD: I will object. Let's do this in open court.

MR. STOVITZ: If we do it in open court, it will be on the Court's suggestion. I have no objection to making it in open court.

"Statement of Evelle J. Younger, District

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"Attorney. June 26, 1970.

"I have this date specifically instructed Aaron Stovitz and Vincent Bugliosi, the Deputy District Attorneys handling the prosecution in the trial of People vs. Charles Manson, et al., that they are not to participate in any further discussions or negotiations in connection with this case where a transcript of such discussions or negotiations is sealed' or otherwise kept secret from media representatives or other citizens who have a legitimate interest therein.

"One of the recent developments in the handling of cases of notoriety involves the taking of a portion of the proceedings in the chambers of the judge presiding at the trial. From time to time certain of these proceedings that occur in that fashion are ordered by the Judge not to be released to the public.

"It is my opinion that the sealing of such proceedings violates the constitutional and statutory requirements of a public trial. It is doubly important that such information be made available to the public in this case because of the 'gag order' which has been made with reference to any comments that participants in the case might make to the public

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1 "independent of the court proceedings.
2 "In giving these instructions to the
3 Deputy District Attorneys involved in this
4 case, I am in no way indicating that anything
5 improper occurs in chambers. I recognize that
6 some proceedings in connection with the trial
7 must necessarily occur outside of the presence
8 of the jury; and the trial judge, in con-
9 ducting such hearings, is acting properly.
10 When such proceedings take place in chambers,
11 it is not necessary that all actual or
12 prospective jurors be removed from the court-
13 room; and time and money is saved thereby.
14 It is the 'sealing' and/or refusal to release
15 the transcript that disturbs me; and the
16 District Attorney's Office must respectfully
17 refuse to be involved in any such secret
18 discussions."
19 THE COURT: Then what would the purpose of the
20 proceedings outside the presence of the jury be, Mr. Stovitz,
21 if counsel then turned around and immediately made a public
22 disclosure of what occurred so that the prospective jurors
23 would then read second-hand what occurred out of their
24 presence?
25 MR. STOVITZ: We had not in mind any actual arguments
26 on the law, but if there were orders made in this chambers

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today such as the new order that the Court has issued about not discussing with the press what occurs in chambers, we feel that the press should know about this new order so that in the event that they ask us questions and we say "no comment," they do not get the impression that we are hiding anything.

If your Honor was to make an order affecting the suppression of a statement by a witness for any reason whatever that your Honor sees fit to make that order, that is a matter that would affect the community at large, and that court order should be available to the public.

Now, the news media are interested in this case, and although I disagree with counsel that the trial is being conducted for the news media, I feel that the news media does disseminate the information gathered not only through our community but throughout the rest of the United States.

THE COURT: Well, of course, the purpose of the Court's various orders regarding publicity is to insure a fair trial for both sides. That is the only purpose.

The chambers proceedings have all been pursuant to stipulation of all counsel.

If any counsel refused to stipulate to hearing any matter in chambers, all he has to do is say so and we will conduct all of the proceedings in open court.

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14c.

MR. FITZGERALD: I do object. I do not agree that these matters in regard to publicity should be handled in chambers, and I do not agree to any conversations.

The only thing I stipulated to was that Mr. Kanarek's motion could be heard in chambers.

I did not stipulate. I think the public has the right to hear this.

MR. STOVITZ: I felt --

THE COURT: I am not sure I understand what you are referring to now, Mr. Fitzgerald.

MR. FITZGERALD: The discussion we are presently having, your Honor. As I said at the outset, when Mr. Stovitz brought this matter up, I said that I would prefer that these matters be held in open court so that the Press would know where we stand as attorneys.

THE COURT: I don't think there is any purpose to be served by reading Mr. Younger's announcement to the public at large in this case. If he wants to make an announcement, let him call a Press conference. I am not going to let him use this court as a sounding board.

MR. STOVITZ: This is why I took it up in chambers. But I did want you to know the position of Mr. Bugliosi and myself, which is similar to Mr. Fitzgerald's position, that we would prefer to have all those matters that could be handled in open court handled in open court. We hope that the jury could be excused so that whatever is

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for public consumption can be given to the public without the aura of any secret sessions.

THE COURT: Very well, gentlemen. All you have to do is so indicate and we will not have any hearings in chambers, except those which may involve arguments on strictly the points coming up during the course of the voir dire examination, which are ordinarily held at the bench, and if that is not reasonable, then they can be held in chambers.

But from now on, if that is the position of any counsel, everything will be held in open court.

I thought that was perfectly clear from the outset. It was done only by stipulation of all counsel.

Is there anything further?

MR. REINER: Yes, there is, your Honor.

With respect to the publicity order, the augmenting of the order re publicity, I think if I put this specific example to the Court, I might then understand how far the Court's order goes.

THE COURT: Apparently there aren't going to be any more of these proceedings, Mr. Reiner.

MR. FITZGERALD: Let's handle this in open court, Mr. Reiner.

MR. REINER: Very well.

Well, no. As to this matter, I would prefer to handle this outside the presence of the jury, at least

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as I pose the question, unless we are going to clear the court of all prospective jurors.

The purpose of this is only to clear up the order. If there be no objection to further discussions at this time?

Is there any further objection?

MR. FITZGERALD: No.

MR. REINER: We had voir dire examination in chambers, at which time questions were asked and answers were given by prospective jury members as to the impact of the pretrial publicity upon those prospective jurors.

Now, your Honor, may I take the transcript of those particular voir dire examinations and sit down with some attorney who is not at all connected with this case and let him read it and then discuss the questions and answers given by these prospective jurors and get his thinking as to whether a challenge was properly denied or improperly denied, or whether, in his judgment, based upon his trial experience, he would think that perhaps a peremptory challenge should be exercised in the event that a challenge for cause was denied.

In other words, your Honor, seeking the advice of other members of the bar. Would there be anything in your Honor's order that would preclude me doing this?

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4, 1 THE COURT: I think it could be done without, for
2 example, disclosing the identity of the particular
3 juror.
4 MR. REINER: Perhaps it could and perhaps it
5 couldn't, your Honor.
6 THE COURT: I think it can be done on a hypothetical
7 basis, which would accomplish the same purpose.
8 You are not interested in disclosing to anybody
9 the name of any particular juror.
10 MR. REINER: No, your Honor, but as a practical
11 matter, the way it is done, I might turn over the
12 transcript to an attorney and let him read it and consider
13 it and think about it, and then discuss it with him.
14 This, I might indicate, I have done where
15 I have handed the transcript to an attorney and he has
16 read it and then I have discussed with him
17 his judgment as to whether a challenge for cause would
18 lie, and in the event that it wouldn't, what was his
19 attitude with respect to whether perhaps a peremptory
20 challenge should be spent on that juror, or perhaps not,
21 what his judgment was.
22 That is really what I am getting at.
23 I am terribly concerned, if I cannot discuss
24 everything that occurs in this trial in chambers and
15. 25 outside, with other attorneys.
26

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15-1

THE COURT: Perhaps the words "for public dissemination" if added into the order would clear it up.

MR. REINER: Very well. Okay.

THE COURT: I have no objection -- but again I would caution you that a good deal of discretion would have to be used.

In other words, the careless disclosing of these things, where the risk is high --

MR. REINER: Believe me, I won't sit down with a reporter and try to get his opinion.

THE COURT: You have the original order, I can change this by interlineation.

MR. SHINN: What?

MR. STOVITZ: Line 25, right after the words "making any statement."

MR. REINER: Or "disclose for public dissemination."

THE COURT: Line 26 --

MR. REINER: -- as well.

MR. KANAREK: Where is your Honor putting the words?

THE COURT: I haven't yet.

MR. KANAREK: Oh, I see.

MR. REINER: Following the word "disclose" on Line 25 and following the word "disclosure" on Line 26, the words "for public dissemination" would seem to cover it.

THE COURT: I think it has to come after the word "statement" on Line 25, and after the word "statement" on

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1 Line 26, "for public dissemination."

2 MR. KANAREK: After the word "statement" in Line 26

3 also, your Honor.

4 THE COURT: Yes.

5 MR. REINER: Actually, as a practical matter it would

6 have to go in after the word "statement," after the word

7 "disclose" on Line 25, and then after the word "disclosure"

8 and after the word "statement" on 26.

9 THE COURT: I think that takes care of it.

10 MR. REINER: Very well.

11 One other matter --

12 THE COURT: Just one moment please. All right,

13 anything else? Will you all correct your copies accordingly.

14 (All indicate in the affirmative.)

15 MR. REINER: May we indicate to the media that an

16 order augmenting the order re publicity has been issued

17 by the Court, and indicate the contents, or are we reduced

18 to no comment?

19 THE COURT: Unless I am mistaken, the media have

20 already announced it.

21 MR. STOVITZ: "Judge tightens up on gag order."

22 THE COURT: Yes.

23 MR. REINER: One further matter, will this apply

24 after the jury has become sworn and they are sequestered,

25 if sequestered?

26 There would not seem to be a need for it at that

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time.

THE COURT: I don't know, we can take it up at that time.

It may well be that it will have to be changed or modified during the course of the trial; I don't know at this time.

(The following proceedings were had in open court in the presence and hearing of all of the prospective jurors, all of the defendants and their counsel being present; the Deputies District Attorney being present.

THE COURT: All parties and counsel are before the Court.

The prospective jurors are in the jury box.

You may proceed, Mr. Kanarek.

MR. KANAREK: Your Honor, before I do that, I have a motion to make pursuant to Penal Code Section 688.

Penal Code Section 688, your Honor, states that no person charged with a public offense may be subjected before conviction to any more restraint than is necessary for his detention to answer the charge.

Mr. Manson is very actively engaged in his defense, your Honor, and Mr. Manson --

They have taken away Mr. Manson's right to a pencil, to paper.

They have taken his papers away from him, your Honor, as of last night, most coincidentally with his case

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coming to trial.

THE COURT: Who is "they"?

MR. KANAREK: The Sheriff.

And Mr. Manson is entitled to the protection of Penal Code Section 688.

I know that this is a fact. Mr. Manson represents it to me and I believe him.

THE COURT: Are you talking about anything that has been done in this court, Mr. Kanarek, or in the jail?

MR. KANAREK: It's done by the Sheriff. I would move for an evidentiary hearing in connection with that, or else have your Honor order he be allowed -- he has been engaged in a very -- I don't have to --

THE COURT: Does he have pencil and paper now?

MR. KANAREK: Yes, your Honor, but in after hours it is very valuable and important in this case.

He is the defendant, and the Sheriff has taken away from him the use of these materials in his place of confinement.

THE COURT: I will inquire into it. The reason may well be that there is some reason I am not aware of.

MR. KANAREK: Whatever the reason is, your Honor, we would want it by way of evidence in this court.

We could not accept any kind of explanation why a man could not be given his basic pencil and paper with which --

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THE COURT: He does have a pencil now, does he?

MR. KANAREK: Right now, yes.

THE COURT: He has a piece of paper and pad.

MR. KANAREK: Now, yes.

THE COURT: Then let's proceed.

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MR. KANAREK: Also, your Honor, I make another motion which is really to implement the previous motion that the Attorney General of the State of California be invited to participate; that your Honor ask him to analyze what has happened in connection with this case, your Honor.

We have that motion before the Court. We would ask your Honor at some time convenient to the Court to go into that in greater detail because we have reason to believe --

THE COURT: You have what motion before the Court?

MR. KANAREK: We have before the Court presently a motion, your Honor has not ruled upon, where we have asked the Court to invite the Attorney General --

MR. BUGLIOSI: Your Honor, this is a matter that should not be heard in front of the jury, your Honor.

This is a matter that involves legal issues, and I ask the Court to have this matter either heard in chambers or else heard here in open court, but outside the presence of the jury.

THE COURT: I will ask you to put your motion in writing, Mr. Kanarek, and support it with points and authorities.

MR. KANAREK: I shall. Thank you, your Honor.

At this time I have no further questions to ask at this point.

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THE COURT: Very well.

MR. KANAREK: Thank you very much.

THE COURT: Mr. Bugliosi.

MR. BUGLIOSI: Your Honor, defense counsel, ladies and gentlemen of the jury.

Your Honor, may I address one very general question to those prospective jurors now seated in the spectators' section of the courtroom.

THE COURT: Very well.

MR. BUGLIOSI: Ladies and gentlemen, when I ask questions of those jurors who at present are seated in the jury box, I would appreciate it if you would mentally ask yourselves the same question so if and when you are later seated in the jury box I won't have to ask every question all over again.

Do you all promise me to do that?

(All nod in the affirmative.)

MR. BUGLIOSI: Can you all hear me?

ALL PROSPECTIVE JURORS: Yes.

MR. BUGLIOSI: I would like to state one point at the very outset, ladies and gentlemen, just in the event this point is not clear in any of your minds.

If the jury which is eventually picked to sit on this case returns a verdict of first degree murder for these defendants, it is the intention of the prosecution to ask the jury during the penalty phase ~~for~~

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for the death penalty for all of the defendants.

Incidentally, another defendant who ~~was~~ is charged with these murders, Charles Watson, as some of you already know, is presently in Texas.

He is not in the State of California's jurisdiction.

If and when he is returned to California he will have to be of course tried for these seven murders, either by himself or jointly.

I would like to ask you some questions at this time about the death penalty for the purpose of ascertaining your state of mind with respect to it.

In the interest of time I am going to ask many of my questions of you collectively.

However, if my question pertains to you individually, I would appreciate it if you would raise your hand so that I will have an opportunity to question you individually on the matter.

Incidentally, if I ask a question which does not specifically pinpoint your problem but which suggests something or touches upon a subject that you think I ought to know about, I ~~will~~ would also expect you to raise your hand so that I will have an opportunity to question you further about the matter.

Do you all promise to do that?

(All respond in the affirmative.)

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MR. BUGLIOSI: I would like to make one initial observation before I commence my questioning, and that is this:

Although it may seem difficult now to raise your hand and speak out--obviously ~~there~~ this is a crowded courtroom, most, if not all of the people in the courtroom, you may not know personally; you may feel somewhat hesitant about raising your hand and speaking out--

I think it would be much more difficult later on in the jury room to express your views on the death penalty for the first time when your co-jurors know that either the defense counsel, Mr. Stovitz or I, or the Court, asked you a question about the death penalty which should have prompted you to raise your hand and speak out.

~~Of~~ And of course it would be a violation of your oath not to speak out at the present time.

So when I ask you questions about the death penalty, please don't hesitate to raise your hand and speak out.

Now is the time to do it, not later on in the jury room.

His Honor clearly went over this area, but because of its importance and because you folks of course are not lawyers, I would like to go over it again for emphasis just to clarify any points or any problems that

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may for some reason still exist in your mind.

You all realize that if one or more of these defendants are convicted of first degree murder, there will follow a second trial called the penalty trial, and during that penalty phase you will also be the jury; you all realize that?

(The jurors indicate in the affirmative.)

MR. BUGLIOSI: You realize further that it is only during the second trial, that is, the penalty trial, that you will be permitted to pass on the question of life imprisonment as opposed to the death penalty.

You all realize that.

You understand further that if during the first trial these defendants are found not guilty, or if they are found guilty of some degree of criminal homicide lesser than first degree murder, such as second degree murder, the question of the death penalty will never arise ~~rise~~.

Do you understand that?

(All jurors indicate in the affirmative.)

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MR. BUGLIOSI: Do you understand further that during the first trial, [redacted] the first trial being the guilt trial, [redacted] that is, the trial where you are to determine the guilt or innocence of these defendants, you

[redacted] will not be permitted to consider or discuss the question of the death penalty during your deliberations.

Do you understand that?

Are you all willing to do that during the first trial, that is, not let the question of the death penalty enter into your deliberations?

Will you all promise me that?

(All indicate in the affirmative.)

MR. BUGLIOSI: Ladies and gentlemen of the jury, neither his Honor nor the defense counsel nor Mr. Stovitz or myself can tell you what is or what is not a proper case for the imposition of the death penalty for the simple reason --

MR. KANAREK: Your Honor, the word "proper," I must --

THE COURT: Are you making an objection, Mr. Kanarek?

MR. KANAREK: Yes, your Honor.

THE COURT: Stand up when you are making your objection.

MR. KANAREK: Yes, your Honor. I object to that use, if your Honor wishes I would like to approach the bench on

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it.

MR. STOVITZ: May we hear counsel's question before your Honor considers the objection?

MR. FITZGERALD: I will interpose another objection on the same grounds.

It is improper voir dire.

It uses the term "proper case" which has been held by the California Supreme Court to be improper.

VB 17-27

THE COURT: I don't think you heard the context in which Mr. Bugliosi was making the statement.

I understand him to be saying just the opposite.

Let's hear what he has to say and then you can make your objection.

MR. BUGLIOSI: Neither his Honor nor defense counsel nor myself can tell you what is or what is not a proper case for the imposition of the death penalty, for the simple reason that there is no legal definition of what is or what is not a proper case.

The law says that it is within the absolute discretion of the jury to decide what is and what is not a proper case for the imposition of the death penalty.

There simply are no guidelines or standards for you to follow.

Do you understand that?

(All indicate in the affirmative.)

MR. BUGLIOSI: To state it another way, the state of

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the law as it presently exists leaves it up to each of the juror's individual decision to determine whether or not the circumstances are sufficiently aggravated in his own mind to warrant the imposition of the death penalty.

Do you all understand that?

(All indicate in the affirmative.)

MR. BUGLIOSI: I want to make it abundantly clear at this time that the law states no preference for the death penalty over life imprisonment, or for life imprisonment over the death penalty.

Do you all understand that?

(All indicate in the affirmative.)

MR. BUGLIOSI: I will start off with you, Mr. Stokes, you are the lead-off man, it seems.

VOIR DIRE EXAMINATION OF HERMAN R. STOKES

BY MR. BUGLIOSI:

Q Mr. Stokes, do you belong to or contribute to or support any organization which has as its objective or one of its objectives the abolition or suspension of the death penalty in the State of California?

A No.

Q Do you feel, Mr. Stokes, that the religious doctrines of any church that you may belong to would prevent you from voting for a verdict of death?

A No.

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Q Mr. Stokes, are you opposed to the death penalty?

A No.

Q Are you in favor of retaining the death penalty in the State of California, or would you rather see some other form of punishment --

MR. REINER: To which we will object, your Honor, as exceeding the Court's directive that all questions be related to challenges for cause.

This would go to a matter covered by a peremptory challenge.

MR. BUGLIOSI: This is speculation on Mr. Reiner's part as to the purpose of my questioning, your Honor.

MR. REINER: May we be heard at the bench, your Honor, on a matter of some importance?

THE COURT: I am going to sustain the objection.

MR. REINER: Thank you.

Q BY MR. BUGLIOSI: Mr. Stokes, you indicated you are not opposed to the death penalty, is that correct?

A Yes, sir.

Q Now, some people, Mr. Stokes, have no objection to the death penalty but they simply do not want to sit on a jury where the death penalty is involved, and vote for a verdict of death.

In other words, they want to let George do it.

They don't want to do it themselves.

Certainly no one can criticize them for that.

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It is not an enjoyable task. It is not easy for any juror to come back into a courtroom and in effect by his verdict tell a defendant that he must die.

With that thought in mind, Mr. Stokes, let me ask you this question:

If after hearing all of the evidence in this case and considering all of the circumstances you thought that this was a proper case for the imposition of the death penalty, would you personally have the courage, and would you personally be willing to vote for a verdict of death?

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15c.

MR. REINER: Excuse me, your Honor, to which we also object on the same ground previously stated.

It exceeds the Court's directive that the question be limited to a challenge for cause and not a peremptory challenge.

THE COURT: Overruled. You may answer.

MR. FITZGERALD: Also we interpose an objection to the use of the term "proper case," your Honor.

THE COURT: Mr. Bugliosi has already made that clear, as the Court did earlier.

Ladies and gentlemen, the term "proper case" is a misnomer.

There is no such thing as a proper case, because our law leaves it to the absolute discretion of the jury to determine what is a proper case if the case gets to the second phase or the penalty phase.

You all understand that?

(The jurors indicate in the affirmative.)

THE COURT: There is no objective standard by which you will decide whether the case is one in which the death penalty should be imposed or not.

It is up to the individual discretion of each of you to determine that for yourself.

MR. BUGLIOSI: Mr. Stokes, you may answer the question.

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1 MR. STOKES: Yes.

2 Q BY MR. BUGLIOSI: Mr. Stokes, you will notice
3 that three of the defendants in this case are women:
4 Susan Atkins, Patricia Krenwinkel and
5 Leslie Van Houten.
6 Are you of such a frame of mind, Mr. Stokes,
7 that you could not under any circumstances vote for a
8 verdict of death for a female?
9 A No.
10 Q You are not of that frame of mind?
11 A No, I am not.
12 Q You can conceive of circumstances where you
13 would be willing to vote for a verdict of death against
14 a female, is that correct?
15 A Yes, if she was guilty, I would vote
16 according to the law.
17 Q As the Court indicated, the law does not
18 tell you, Mr. Stokes, or direct you to vote for a verdict
19 of death.
20 It is up to your absolute discretion.
21 A I said if I feel that she is guilty, a
22 woman is guilty, shall I say, I would vote for the death
23 penalty.
24 Q You will also note --
25 THE COURT: Excuse me, Mr. Bugliosi.
26 I am not sure you understand yet from your

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answer, Mr. Stokes.

No one is asking you at this time to commit yourself. That is the last thing that anybody wants you to do now.

We simply want to know whether the fact that a defendant is a woman would automatically cause you to refuse to impose the death penalty, simply because she is a woman?

MR. STOKES: I wouldn't refuse, but I would not like it either, so --

THE COURT: Would you base your decision then on the evidence?

MR. STOKES: I would base my decision on the evidence.

THE COURT: You have not now made up your mind simply because one or more of the defendants are women that under no circumstances could you vote for the death penalty?

MR. STOKES: No, I haven't.

THE COURT: All right, go ahead, Mr. Bugliosi.

Q BY MR. BUGLIOSI: I suppose you also note that the same three defendants, Susan Atkins, Patricia Krenwinkel and Leslie Van Houten, although they are adults, make no mistake about that, are young adults.

Are you of such a frame of mind that you could not under any circumstances vote for the death penalty for these three defendants solely because of their

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1 age?

2 A No.

3 Q Mr. Stokes, are you of such a frame of mind

4 that you would not under any circumstances vote for the

5 death penalty against a particular defendant unless the

6 evidence at the trial showed that this particular

7 defendant himself personally killed a fellow human

8 being?

9 MR. REINER: To which we object, your Honor, exceeding

10 the Court's directive that the questions be limited to

11 matters relating to challenges for cause and not

12 peremptory challenges.

13 As long as a juror indicates he is not

14 unalterably opposed to the death penalty, then counsel

15 may not make inquiries as to a person's predeliction

16 toward it in a particular case, to determine whether he

17 wants to exercise a peremptory challenge.

18 MR. BUGLIOSI: Your Honor, I believe there is very

19 ample authority for this type of question.

20 THE COURT: I don't need to hear argument. I believe

21 the question is a proper one. Overruled.

22 Q BY MR. BUGLIOSI: Do you understand the

23 question, Mr. Stokes?

24 A Rephrase it, please.

25 Q Rephrase it? You did not understand my

26 question?

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A No, I forgot it.

Q Restate it then?

A Restate it.

Q Are you of such a frame of mind, Mr. Stokes, that you would not under any circumstances vote for the death penalty for a particular defendant unless the evidence at the trial showed that this particular defendant himself personally killed a fellow human being?

A No.

Q You are not of that frame of mind?

A No, I am not.

Q In other words, you can conceive of circumstances wherein you would be willing to vote for the death penalty for a particular defendant even though he himself did not do the actual killing, is that correct?

A Yes.

Q Mr. Stokes, to your knowledge is any member of your family, or very close friend or relative, opposed to the death penalty?

A No.

MR. BUGLIOSI: Pass the microphone, sir, to the next juror.

15b.

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15D

VOIR DIRE EXAMINATION OF LAWRENCE REYNOLDS

BY MR. BUGLIOSI:

Q Mr. Reynolds?

A Yes.

Q Do you believe or do you belong to any organization which has as one of its objectives or its sole objective the abolition or suspension of the death penalty in the State of California?

A No, sir, I don't.

Q Do you feel that the religious doctrines of any church that you may belong to would prevent you from voting for the death penalty?

A No, sir.

Q Are you opposed to the death penalty?

A No, sir, I am not.

Q If after hearing all of the evidence in this case, Mr. Reynolds, and considering all of the circumstances, you felt that this was a proper case for the imposition of the death penalty, would you personally have the courage and would you personally be willing to vote for a verdict of death?

A I would.

Q With respect to these three female defendants, Mr. Reynolds, are you of such a frame of mind that you could not under any circumstances vote for the death penalty against them simply because they are female?

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A No, it wouldn't make any difference, male or female.

Q How about the fact that they are young adults, would you automatically vote against the death penalty for them simply because they are young adults?

A No, because they are adults, whether they are young or old.

Q Are you of such a frame of mind, Mr. Reynolds, that you would not under any circumstances vote for the death penalty against a particular defendant unless the testimony showed that he, himself, killed a fellow human being?

A Could you rephrase that just a little differently because I am not familiar with the law, as an accomplice or a party to it.

Q I will get into that later on, sir. Now I am referring to the death penalty, and there actually is no law to direct you one way or the other on whether to impose the death penalty verdict upon a particular defendant.

It is up to your complete unbridled discretion.

However, did you understand my question?

A Not completely.

Q All right, let me state it another way:

Can you conceive of any circumstance wherein you would be willing to vote for a verdict of death against

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1 a particular defendant even though the evidence showed
2 that this particular defendant did not himself do any
3 actual killing?
4 A Yes.
5 Q To your knowledge, Mr. Reynolds, is any member
6 of your family or any close friend or relative opposed to
7 the death penalty?
8 A Not to my knowledge.
9 MR. REINER: Your Honor, excuse me, I move to strike
10 the answer for the purpose of interposing an objection to
11 the question.
12 Once again it goes beyond the Court's
13 restrictions that the questions are to be limited to the
14 challenge for cause as opposed to peremptory.
15 If a member of a person's family or an
16 acquaintance of a prospective juror is opposed would
17 relate perhaps to influences upon his judgment, but those
18 are matters that go to peremptory challenges as opposed
19 to challenges for cause.
20 MR. BUGLIOSI: May I briefly be heard on that, your
21 Honor, or has the Court already made up its mind?
22 THE COURT: Go ahead, Mr. Bugliosi.
23 MR. BUGLIOSI: Let us assume hypothetically, your
24 Honor, that a spouse of a particular --
25 MR. KANAREK: Let us assume at the bench, your
26 Honor, if we are going to assume.

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THE COURT: I think that is an appropriate request, if you want to argue, Mr. Bugliosi, let's come to the bench.

MR. BUGLIOSI: Yes, your Honor.

(The following proceedings were had at the bench out of the hearing of the prospective jury:)

MR. BUGLIOSI: Let's assume, hypothetically, your Honor, that the spouse of a particular juror is vehemently opposed to the death penalty. I think that is within the perimeters of reason, to believe that this particular juror might feel very uncomfortable voting for a verdict of death if he or she realized that they were going to have to face their spouse at the close of the trial.

I think since we are probing a particular juror's state of mind, I think it is a proper area.

I think it goes to actual bias; in other words, they may not be able to be completely impartial on all of the issues in the case.

Moreover, I would think that we almost --

THE COURT: What you are doing is getting into the realm of examination to determine the desirability of exercising a peremptory challenge, which is the basis for the objection.

Actually, you know the Court can foreclose voir dire after getting the answers to the Witherspoon questions.

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1 I am letting you go beyond that, just as I
2 let defense counsel go beyond that and into the area of at
3 least using some of the instructions as illustrations.
4 I think this question is simply beyond the
5 challenge for cause area, and it is objectionable.
6 MR. BUGLIOSI: It could go to this issue, however,
7 your Honor:
8 Sometimes I think, as the Court stated and
9 very perceptibly so, back in chambers, sometimes a human
10 being will say something which does not adequately
11 reflect what is on his mind.
12 THE COURT: Put the question to him. What difference
13 does it make if his wife is against the death penalty?
14 What you are concerned about is whether he is
15 going to be.
16 MR. BUGLIOSI: Right, but this is kind of foundational
17 for the issue. They may not have thought about it before.
18 Once they think about it they might come out
19 and say, "Yes, I have not thought about it. Now, I think
20 about it, I would rather not sit as a juror on this case."
21 THE COURT: Ask him the question.
22 I am going to sustain the objection. I feel
23 you can accomplish every legitimate purpose without the
24 necessity of getting into that.
25 Keep your questions direct at challenges for
26 cause.

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(The following proceedings were had in open court in the presence and hearing of the prospective jurors:)

MR. BUGLIOSI: Thank you, sir. Would you please pass the microphone to Mr. McBride.

VOIR DIRE EXAMINATION OF WILLIAM T. McBRIDE, II

BY MR. BUGLIOSI:

Q Mr. McBride, do you belong or contribute to or support any organization which has as one of its objectives the abolition or suspension of the death penalty in the State of California?

A No.

Q Do you feel the religious doctrines of any church you may belong to would prevent you from voting for the verdict of death?

A No.

Q I take it you are not opposed to the death penalty, is that correct?

A That's correct.

Q After hearing all of the evidence in the case, Mr. McBride, and considering all of the circumstances, if you felt this was a proper case for the imposition of the death penalty, would you personally have the courage and would you personally be willing to vote for a verdict of death?

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A Yes, if I felt it was proper.

Q With respect to the fact that three of the defendants are females, are you of such a frame of mind that you could not under any circumstances vote for the death penalty for a female defendant?

A No.

Q You are not of that frame of mind?

A No.

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Q With respect to these three particular defendants, the three females are adults but young adults. Are you of such a frame of mind that you could not, under any circumstances, vote the death penalty for them simply and solely because of their age, Mr. McBride?

A No, sir.

Q No?

A No.

Q Are you of such a frame of mind, Mr. McBride, that you would not, under any circumstances, vote for the death penalty against a particular defendant unless the evidence at the trial showed that he, himself, killed a fellow human being, sir?

A Could I ask you to rephrase that?

Q All right.

Mr. McBride, can you conceive of any circumstances wherein you would be willing to vote for a verdict of death against a particular defendant even though the evidence showed that he, himself, did not do any actual killing?

A Yes, it is conceivable.

MR. BUGLIOSI: Thank you, Mr. McBride. Will you please pass the microphone to Miss Pahn.

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VOIR DIRE EXAMINATION OF ROSE PAHN

BY MR. BUGLIOSI:

Q Miss Pahn, do you feel that the religious doctrines of any church that you belong to would prevent you from voting for the death penalty?

A Frankly, I just learned this in the past year. I took a course on the Talmud. I didn't mention that, I forgot to. Where I learned that the Fathers said -- against the death penalty.

However, I felt, and feel, that it is the law of the State, and we are living here, and we are instructed to be good citizens wherever we live, Jews, I mean, and so I feel that until the life imprisonment term carries with it, shall I say -- until the life imprisonment sentence carries with it the teeth of no parole, I would be willing to vote the death penalty.

Q Thank you for your candor, Mrs. Pahn.

A Yes.

MR. KANAREK: Your Honor, may we approach the bench?

THE COURT: Just a moment, Mr. Kanarek.

Miss Pahn, I am not sure that I understood your last answer.

Do you mean that the way our present law is that if this case should get to the penalty phase, which presupposes that there has been one or more verdicts of

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murder in the first degree, that you would then automatically vote for the death penalty, or would you consider the evidence before making up your mind as to what the penalty should be?

MISS PAHN: Yes, that's right.

THE COURT: Well, now, the law of this State --

MISS PAHN: First degree. I was thinking of first degree.

THE COURT: I am concerned with your statement about life imprisonment without possibility of parole, if I understood what you said correctly.

MISS PAHN: Yes.

THE COURT: You will be instructed, Miss Pahn, if the case gets to that point, regarding the nature of a life sentence in this State; but are you saying that if there is a possibility of parole after a sentence of life imprisonment, that that would cause you automatically to vote for the death penalty in every case?

MISS PAHN: Well, it wouldn't be automatic, but I feel where we vote where we have considered the evidence and you vote for the full punishment, if that is the way to put it, then I think, as I said, I would be willing to vote for the death penalty.

THE COURT: I understood that you would be willing to; but what I am trying to find out is would you automatically vote for it in every case?

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6-4

MISS PAHN: It wouldn't be automatic, I don't think.

MR. STOVITZ: I think what happened, your Honor, is that your Honor did not hear the first remarks that the juror made in answer to the first questions asked of her.

THE COURT: I heard the remarks. That is why I am asking the questions.

MR. STOVITZ: Before this portion came up, your Honor, the juror expressed some opposition to the death penalty, and then answered it the way that she did.

THE COURT: I heard all the remarks, Mr. Stovitz.

Is your state of mind, Mrs. Pahn, such that you have made up your mind at this time that if this case goes into a penalty phase and you are then faced with the choice of life imprisonment or death, that you will automatically vote for death?

MISS PAHN: No.

I hadn't thought of it, as you put it, automatically. I haven't thought of it that way.

THE COURT: What is the answer to my question?

MISS PAHN: I was going to vote according to the evidence. The penalty would have to suit the crime, according to the evidence, as I see it.

You see, if one or the other would be the ultimate punishment, I would choose, I would have to choose the death penalty; but it may not be. I may not consider that.

16a

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16a.

THE COURT: Are you prepared to wait and hear all of the evidence in the case and then decide, Miss Pahn?

MISS PAHN: Yes, sir.

THE COURT: And are you prepared to vote either way depending on what the evidence is and how you make up your own mind?

MISS PAHN: Yes.

THE COURT: All right, go ahead.

MR. BUGLIOSI: Q. I take it, Miss Pahn, that you are not opposed to the death penalty; is that correct?

A (Pause).

Q Or maybe you are?

A I would prefer that there wouldn't be a death penalty, but since it is the law to mete certain -- to mete out certain punishment, I think I can accept it.

I have a reason for that. Shall I qualify that?

MR. BUGLIOSI: Yes. Please elaborate.

A My reason for being against the death penalty, although I feel that certainly someone who has taken a life, they deserve it, is that there is always that one chance in many cases -- I am not discussing this case -- where there is a chance of finding out that that person was not the guilty one.

That is the only reason, the finality of it.

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16a2.

Q Thank you.

Even in view of that particular state of mind that you have just expressed, Miss Pahn, -- and I appreciate your candor again -- if after hearing all of the evidence in this case, considering all of the circumstances, you felt that this was a proper case for the imposition of the death penalty, would you have the courage and would you be willing to vote for a verdict of death?

MR. REINER: To which we will object, your Honor, to the use of the term "proper case" in the context of this question as opposed to the way Mr. Bugliosi used it.

There is an implication that there does exist some sort of proper case which, of course, the Court indicated there is no such thing.

THE COURT: Overruled.

I think the question is clear. Do you understand it?

MISS PAHN: Yes.

THE COURT: You understand that the discretion is solely yours to vote one way or the other, do you not?

MISS PAHN: I do.

THE COURT: Do you have the question in mind?

THE WITNESS: No question on that.

THE COURT: Would you re-ask the question, Mr.

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3.

Bugliosi?

MR. BUGLIOSI: Would you read the question, Mr. Reporter?

Would your Honor direct the court reporter to read the question, please?

THE COURT: Yes.

(Whereupon the record was read by the reporter.)

MISS PAHN: The answer is yes.

MR. BUGLIOSI: Q. The answer is yes, ma'am?

A Yes.

Q Again, with respect to the fact that three of the defendants are women, are you of such a frame of mind that you could not, under any circumstances, vote the death penalty for them simply because they are female, ma'am?

A No.

Q You are not of that frame of mind?

A No.

Q With respect to their age, Miss Pahn, are you of such a frame of mind that you could not, under any circumstances, vote for the death penalty for them solely because of their age?

MR. REINER: Your Honor, we will object to that question.

That is a perfectly appropriate consideration

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4.

for a jury during the penalty phase, your Honor, and even if the juror were to respond that because of the tender years of a particular defendant they wouldn't vote for the death penalty, they could not be disqualified for cause under Witherspoon, although with other facts and circumstances they would vote the death penalty.

Therefore, this question exceeds the Court's directive that questions go to a challenge for cause and not relate to peremptory challenges.

THE COURT: Overruled.

You may answer.

MR. BUGLIOSI: You may answer the question.

MISS PAHN: I would not withhold my -- will you rephrase it? I will be glad to answer it.

MR. BUGLIOSI: All right.

We have had quite a few objections here. I guess my questions aren't satisfying the defense.

MR. REINER: Excuse me, your Honor.

We will move to strike counsel's last remark as not a question posed to a juror.

THE COURT: Overruled. Let's proceed.

16b.

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16b.

MR. BUGLIOSI: Again, Miss Pahn, referring to the fact that three of the defendants, the three female defendants, are young adults, are you of such a frame of mind that you could not, under any circumstances, vote for the death penalty for them solely because of their age?

A No.

Q Miss Pahn, are you of such a frame of mind that you could not, under any circumstances, vote for the death penalty against a particular defendant unless the evidence at the trial showed that this particular defendant himself personally killed a fellow human being?

A (Pause.)

Q Do you understand the question?

A I understand.

He is supposed to be definitely involved, certainly.

Q That, of course --

A That I will have to decide.

Q You will have to wait for the evidence to decide that?

A Yes, sir.

Q My question is, Miss Pahn:

Would you require that a particular defendant, against whom you voted for the death penalty, himself

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2. actually killed a fellow human being?

A Well, it is conceivable that it is possible that I would.

Q That you would require this? Or perhaps you don't understand my question.

A Require it?

Q Can you conceive of any circumstances, Miss Pahn, in which you would be willing to vote for the death penalty for a particular defendant even though the evidence showed that this particular defendant did not himself kill a fellow human being?

A Yes, I could.

MR. BUGLIOSI: Thank you, Miss Pahn.

Will you pass the microphone to Mr. Dominguez?

VOIR DIRE EXAMINATION OF MR. PEDRO R. DOMINGUEZ

BY MR. BUGLIOSI:

Q Mr. Dominguez, do you feel that the religious doctrines of any church that you may belong to, sir, would prevent you from voting for a verdict of death?

A No.

Q Are you opposed to the death penalty, sir?

A No, I am not.

Q After hearing all the evidence in this case, Mr. Dominguez, considering all of the circumstances, if you felt that this was a proper case for the imposition of

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1 the death penalty, Mr. Dominguez, would you personally
2 have the courage and would you personally be willing to
3 vote for a verdict of death?
4 A Yes, I could.
5 Q With respect to the fact that the three
6 younger defendants are females, Mr. Dominguez, are you
7 of such a frame of mind that you could not, under
8 any circumstances, vote for the death penalty against them
9 solely because they are women, sir?
10 A I am not in that frame of mind at all.
11 Q You are not?
12 A No.
13 Q What about the age issue?
14 A Not at all.
15 Q Are you of such a frame of mind, Mr. Dominguez,
16 that you would not, under any circumstances, vote the
17 death penalty against a particular defendant unless the
18 evidence at the trial showed that he himself killed a
19 fellow human being?
20 A Can you slow down on that question again?
21 Q All right.
22 A It seems to be loaded.
23 Q I will rephrase it also.
24 A Thank you.
25 THE COURT: Mr. Bugliosi, I think the question may
26 be confusing to lay people who are not familiar with the

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1 law.

2 The question presupposes that the jury already
3 found this particular defendant --- whoever it might be --
4 and this is purely a hypothetical case -- the question
5 presupposes that the person has already been found guilty
6 of murder in the first degree.

7 Do you understand that, Mr. Dominguez?

8 MR. DOMINGUEZ: Yes, I do.

9 THE COURT: Now, it is not necessary at this point
10 that you understand all of the law that may be involved
11 in having reached that determination.

12 Do you understand what I am saying, sir?

13 MR. DOMINGUEZ: Yes, I do.

14 THE COURT: Now, Mr. Bugliosi is asking you with
15 respect to the second phase.

16 After this hypothetical defendant has been
17 found guilty of murder in the first degree, whether or
18 not you would be willing to vote for the death penalty,
19 even though the evidence had shown during the guilt
20 trial that he was not personally involved in the killing.

21 Do you understand, Mr. Dominguez?

22 MR. DOMINGUEZ: Yes.

23 Yes, I would be willing to vote.

24 MR. BUGLIOSI: Let me address this one statement to
25 all of you folks.

26 All of these questions that I am asking now

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are presupposing that we are in the penalty phase and that you are going to pass on the issue of life imprisonment or death.

In other words, that the particular defendant has already been convicted of first degree murder as his Honor brought out.

Thank you, Mr. Dominguez.

Would you pass the microphone to Mr. Nelson.

16c.

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16-C-1

VOIR DIRE EXAMINATION OF FREDDIE L. NELSON

BY MR. BUGLIOSI:

Q Mr. Nelson, do you feel that the religious doctrines of any church that you may belong to prevent you from voting for a verdict of death, sir?

A No, sir.

Q Do you belong to any organization which has as its objective or one of its objectives the abolition or suspension of the death penalty?

A No, I don't.

Q Are you opposed to the death penalty?

A No, I am not opposed to the death penalty.

Q After hearing all the evidence in this case, Mr. Nelson, and considering all of the circumstances you felt that this was a proper case for the imposition of the death penalty, would you personally have the courage and would you personally be willing to vote for a verdict of death?

A Yes, I would.

Q With respect to the fact that three of the defendants are females, Mr. Nelson, would that cause you automatically to vote against the death penalty for these three particular defendants?

A No, it would not.

Q What about the age question?

A No, it would not.

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Q Can you conceive of any circumstances, Mr. Nelson, wherein you would be willing to vote for a death penalty against a particular defendant even though the evidence showed that he did not do any actual killing?

A Yes, I would.

Q What is the answer?

A Yes, I would be able to vote for the death penalty, even though the evidence showed that he did not do any actual killing.

MR. BUGLIOSI: Thank you, sir.

Would you pass the microphone down? I believe it would be to Mr. Rios.

VOIR DIRE EXAMINATION OF FRANK J. RIOS

BY MR. BUGLIOSI:

Q Mr. Rios, do you belong to or contribute to or support any organization which has as its objective or one of its objectives the suspension or abolition of the death penalty in the State of California?

A No, sir, I don't.

Q Do you feel that the religious doctrines of any church that you may belong to would prevent you or hinder you from voting for the death penalty, Mr. Rios?

A No.

Q Are you opposed to the death penalty?

A No, sir.

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Q After hearing all of the evidence in this case, Mr. Rios -- and I am asking each of you this question because it is an independent problem or issue that you are going to have to be dealing with perhaps four or five months from now, so I have to ask each and every one of you this question; of course it takes time, but I feel it is necessary -- after hearing all of the evidence in this case, Mr. Rios, and considering all the circumstances, you felt that this was a proper case for the imposition of the death penalty, would you personally have the courage and be willing to vote for a verdict of death?

A Yes, I would.

Q Can you conceive of any circumstances, Mr. Rios, wherein you would be willing to vote for the death penalty against a female defendant?

A I would.

Q What about the age question, Mr. Rios?

A It wouldn't make any difference to me.

Q Can you conceive of any circumstances, Mr. Rios, under which you would be willing to vote for a verdict of death for a particular defendant even though the evidence showed that he did not himself actually commit any killing?

A Yes.

MR. BUGLIOSI: Thank you, Mr. Rios.

Please pass the microphone to Miss Mesmer.

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VOIR DIRE EXAMINATION OF MARIE M. MESMER

BY MR. BUGLIOSI:

Q Miss Mesmer --

A Yes.

Q -- do you feel that the religious doctrines of any church that you may belong to would prevent you from voting for a verdict of death?

A No, I do not.

Q Are you opposed to the death penalty?

A No, I am not.

Q After hearing all of the evidence in this case, Miss Mesmer, and considering all of the circumstances, you felt that this was a proper case for the imposition of the death penalty, would you personally have the courage and would you personally be willing to vote for a verdict of death?

A Yes.

Q With respect to the fact that three of the defendants are female, Miss Mesmer, can you conceive of any circumstances under which you would be willing to vote for the death penalty for a female defendant?

A No.

Q You cannot?

A I cannot conceive of any.

Q In other words, Miss Mesmer, your frame of mind is such --

A In other words, it doesn't make any difference

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whether it is a man or a woman.

16d. Q It doesn't make any difference, is that correct?

A No, it does not.

Q Very well.

What about the age question, Miss Mesmer?

A I feel the same way. It does not make any difference.

Q Can you conceive of any circumstances, Miss Mesmer, under which you would be willing to vote for a death penalty for a particular defendant even though he himself did not kill a fellow human being?

A I would vote for the death penalty.

Q Under those circumstances?

A Under those circumstances.

MR. BUGLIOSI: Thank you, Miss Mesmer.

Would you please pass the microphone to Mr. Frondorf.

VOIR DIRE EXAMINATION OF VICTOR L. FRONDORF

BY MR. BUGLIOSI:

Q Mr. Frondorf, do you belong to or contribute to or support any organization which has as its objective or one of its objectives the abolition or suspension of the death penalty in the State of California, sir?

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1 A No.

2 Q Do you feel that the religious doctrines of
3 any church that you may belong to, Mr. Frondorf, would
4 prevent you from voting for a verdict of death?

5 A No.

6 Q Are you opposed to the death penalty, sir?

7 A No.

8 Q After hearing all of the evidence in this
9 case, Mr. Frondorf, and considering all of the circumstances,
10 you felt that this was a proper case for the imposition of
11 the death penalty, would you personally have the courage
12 and be willing to vote for a verdict of death?

13 A Yes.

14 Q Are you of such a frame of mind, Mr.
15 Frondorf, that you could not, under any circumstances,
16 vote for the death penalty for a female defendant?

17 A No.

18 Q And what about the age question, sir?

19 A It has nothing to do with it.

20 Q Are you of such a frame of mind, Mr. Frondorf,
21 that you would not, under any circumstances, vote for
22 the death penalty against a particular defendant
23 unless the evidence showed that he himself killed
24 a fellow human being?

25 A I would still vote for the death penalty.

26 MR. BUGLIOSI: Thank you.

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1 Please pass the microphone, sir.

2

3 VOIR DIRE EXAMINATION OF ELZIE K. BLACK

4 BY MR. BUGLIOSI:

5 Q Mr. Black, do you feel that religious doctrines

6 of any church that you may belong to would prevent you

7 from voting for a verdict of death?

8 A No.

9 Q Are you opposed to the death penalty, sir?

10 A No.

11 Q After hearing all of the evidence, Mr. Black,

12 and considering all of the circumstances in this case,

13 sir, you felt that this was a proper case for the imposition

14 of the death penalty, would you personally have the courage

15 and would you be willing to vote for a verdict of death?

16 A I would.

17 Q Can you conceive of circumstances, sir,

18 wherein you would be willing to vote for a verdict of death

19 against a female defendant?

20 A Yes.

21 Q What about the age,question, Mr. Black?

22 A It would have no bearing.

23 Q No bearing?

24 A No.

25 Q Could you vote for the death penalty, sir,

26 against a particular defendant even though the evidence

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showed that he himself did not kill a fellow human being?

A I could.

MR. BUGLIOSI: Please pass the microphone, sir.

VOIR DIRE EXAMINATION OF HERMAN C. TUBICK

BY MR. BUGLIOSI:

Q Mr. Tubick?

A Yes.

Q Do you feel that the religious doctrines of any church that you may belong to would prevent you from voting for a verdict of death?

A No, sir.

Q Are you opposed to the death penalty, Mr. Tubick?

A No, sir.

Q After hearing all the evidence in this case, Mr. Tubick, and considering all of the circumstances, you felt that this was a proper case for the imposition of the death penalty, would you personally have the courage and would you personally be willing to vote for a verdict of death, sir?

A Yes, sir.

Q Could you vote for the death penalty, sir, against a female defendant?

A Yes.

Q Could you vote for the death penalty against

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1 these three particular defendants even though they are
2 young adults? I am referring to three females, Mr.
3 Tubick?
4 A No, sir.
5 Q What?
6 A No, it doesn't matter to me whether they are
7 male or female, sir.
8 Q Thank you.
9 Mr. Tubick, are you of such a frame of mind
10 that you would not, under any circumstances, vote for
11 the death penalty against a particular defendant unless
12 the evidence showed he himself killed a particular human
13 being?
14 A Yes.
15 Q You are not of that frame of mind?
16 A No, I am not of that frame of mind.
17 MR. BUGLIOSI: Thank you.
18 Now, I would like to ask you folks some
19 questions not about the death penalty, but about some of
20 the other issues with which you are going to be intimately
21 confronted during this trial.
22 Before I do, I would like to ask just a few questions
23 of you, some questions that arose in my mind when defense
24 counsel were questioning you.
25 16E.
26

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16-E-1

VOIR DIRE EXAMINATION OF ROSE PAHN

BY MR. BUGLIOSI:

Q Miss Pahn, have you ever been married, ma'am?

A No.

Q I believe you stated that you had some friends or relatives, or both, who were attorneys; is that correct, ma'am?

A Correct.

Q Would you please tell me their names?

A A. J. Sherwood, and his son, Arthur.

Q Are they in Los Angeles?

A Well, yes. Los Angeles, Beverly Hills -- or Beverly Hills. He works out in Beverly Hills.

Q All right.

A Out of Beverly Hills.

Q What relation is Mr. Sherwood and his son to you, Miss Pahn?

A They would be third cousins.

Q Mr. Sherwood and his son, ma'am, do they practice civil law or criminal law, or both, or what?

A I think it is mostly civil. I haven't heard of any criminal. In fact, I haven't discussed any cases with them.

Q Any other relatives or friends?

A Yes. Samuel Rosenthal and his son.

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.6e2

Q What is Mr. Rosenthal's relation to you?

A He is a second cousin.

Q A second cousin?

A Yes.

Q Is he in Los Angeles?

A He is also in Beverly Hills.

Q Does he practice civil law or criminal law, or both?

A I haven't any knowledge of criminal law. I know he has handled some other matters for some people.

Q Do you see Mr. Rosenthal fairly frequently, Miss Pahn?

A No. I don't see any of these people very frequently, as I indicated before, but I do occasionally; and I saw all of them last Sunday at a wedding. One of those type of things.

Q Any other friends or relatives?

A Yes, there are two others. There are six altogether.

Q Six altogether?

A Yes.

Q All of whom are attorneys?

A Attorneys, yes.

Q Could I have their names, Miss Pahn?

A Sheldon Ziff. I think he works in the Valley. No, he works for the State now, I think.

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Q The State of California?

A Yes.

Q What particular office?

A (Pause.)

Q If you know.

A I couldn't tell you.

Q How do you spell his last name?

A Z-i-f-f.

Q Do you know whether he is practicing criminal law or civil law, or both?

A I couldn't tell you.

Q What is Mr. Ziff's relation to you?

A A fourth cousin -- a third or fourth cousin. There is a half a step -- it is one of these one-step-removed businesses.

Q You have quite a family of attorneys.

A And the other one, the last one, is Lou Eglash.

Q E-g--

A --l-a-s-h.

Q Where does Mr. Eglash practice law?

A I don't even recall now where his office is. I think it is in the Los Angeles area.

Q Los Angeles area?

A Yes.

Q What relation is Mr. Eglash to you?

A He is also a fourth cousin; a third or fourth

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cousin?

Q Do you see Mr. Eglash frequently, Miss Pahn?

A No.

Q No?

A No.

Q What type of law does he practice, do you know?

A No.

MR. BUGLIOSI: Thank you.

VOIR DIRE EXAMINATION OF VICTOR L. FRONDORF

BY MR. BUGLIOSI:

Q Mr. Frondorf, I believe you stated that you did not have any children; is that correct, sir?

A I have a daughter that is 40 years old.

Q I am sorry.

A But I wouldn't consider her children in that case.

Q Hardly.

Does your daughter live here in Los Angeles, sir?

A In Santa Fe Springs.

F

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16-F-1

Q Is she married?

A Yes.

MR. BUGLIOSI: Thank you, Mr. Frondorf.

VOIR DIRE EXAMINATION OF MARIE M. MESMER

BY MR. BUGLIOSI:

Q Miss Mesmer, have you ever been married, ma'am?

A Yes. I am divorced. I have legally resumed my maiden name.

Q Do you have any children, ma'am?

A No, I do not.

Q I believe you stated a few days ago, ma'am, and I may not have heard you correctly, but you said something to the effect that you do not have an affinity for the press.

Is that what you said?

A Well, that question was answered -- I mean, I answered it that way not meaning in the true sense of the word that I didn't care for the press. I simply meant that I had no relationship, or I have been removed from the association. That is what I meant.

Q I wasn't clear on what you meant, Miss Mesmer.

A That is what I meant.

Q You were not saying that you are against them, or anything like that?

A No. I simply have been removed from the

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.3f2

1 association.

2 MR. BUGLIOSI: Thank you, ma'am.

3 Your Honor, at this time I would ask defense

4 counsel, pursuant to my previous request, to furnish the

5 prosecution with a list of defense witnesses so I can ask

6 the prospective jurors whether they have any knowledge of

7 any of the defense witnesses.

8 THE COURT: I will not require that, Mr. Bugliosi.

9 They are not required to furnish it or to respond to your

10 question, and particularly not in open court.

11 MR. BUGLIOSI: May we approach the bench on that,

12 your Honor?

13 I think the prosecution --

14 THE COURT: Let's not argue it now. If you want to

15 approach the bench, you may do so.

16 MR. BUGLIOSI: Thank you.

17 (Whereupon, all counsel approach the bench

18 and the following proceedings occur at the bench outside

19 of the hearing of the prospective jurors:)

20 MR. BUGLIOSI: Your Honor, I feel that since we are

21 entitled to a fair trial also, they may have a particular

22 defense witness that a particular juror knows very

23 intimately.

24 It might be far-fetched, but, then, again, it

25 is possible. We are talking about a four-months' trial.

26 I would hate to find out later on that a particular juror

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hangs up on the case because they are related in some fashion to one of the defendants or one of their witnesses, or something like that.

It seems to me, your Honor, that we are entitled to that information.

THE COURT: Do the defendants care to disclose the names of their witnesses to the prosecution?

MR. FITZGERALD: On behalf of Defendant Patricia Krenwinkel, I would respectfully refuse to present to the prosecution at this time the names of our prospective defense witnesses.

MR. REINER: On behalf of Defendant Leslie Van Houten, I, as well, respectfully refuse to disclose the names of the prospective defense witnesses.

MR. KANAREK: On behalf of Mr. Manson, I, also, refuse to disclose them.

THE COURT: Mr. Shinn?

MR. SHINN: Yes. On behalf of my client, I,also, refuse, your Honor.

THE COURT: I will not require them to disclose the names of the witnesses.

MR. KANAREK: Your Honor, I have two requests at this time.

Your Honor, in order to expedite the matter, I have not objected to the use of the word "proper," but may there be deemed in the record an objection to each and

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every question that Mr. Bugliosi has asked wherein he has used the word --

THE COURT: Now, you are going to have to make your objection at the time, Mr. Kanarek.

The term has been sufficiently explained in its context to the jurors. I don't think there is the slightest confusion in their minds about it. They have been instructed a number of times that they have the absolute discretion to make the determination on the penalty.

MR. KANAREK: Your Honor, also --

THE COURT: There is no confusion in their mind. There is no basis for that at this time.

MR. KANAREK: Out of an abundance of precaution, I think the record will reveal that as to Mrs. Gordon, we did not make a challenge for cause.

I just wanted to make that, your Honor.

We challenged everyone for cause but I don't think as to her we did. So, I would like to make that record as to her also, a challenge for cause.

I mean when we were in chambers, your Honor. My study of the transcript indicates that Mrs. Gordon -- I believe it was our intent to -- Mr. Fitzgerald may correct me if I am wrong, but it was his intent and my intent and Mr. Shinn's intent, and I believe Mr. Reiner's intent, to object, because of the exposure to publicity aspect, of actual bias.

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I don't believe that the record shows that objection having been enunciated.

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THE COURT: I don't recall whether it does or not, Mr. Kanarek.

MR. KANAREK: Anyway, I do make that challenge for cause, your Honor.

THE COURT: On the basis of publicity?

MR. KANAREK: The publicity aspect, your Honor. In connection with that.

MR. STOVITZ: That is the lady that said she didn't read the Glendale paper.

THE COURT: Yes, I recall who she is, but I didn't recall whether the challenge was interposed as to her or not.

MR. KANAREK: No, your Honor. My scrutiny of the record indicates that as to each and every one it has been, I believe, except as to her.

THE COURT: The challenge for cause as to Miss Gordon on the basis of pretrial publicity will be deemed to have been made on behalf of all defendants, unless anyone indicates they don't want to join.

MR. REINER: I didn't hear the Court's last remarks?

THE COURT: Unless you indicate that you don't want to join in that challenge,

MR. REINER: Which challenge?

(Mr. Fitzgerald and Mr. Reiner confer.)

MR. REINER: Very well.

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THE COURT: Now, Mr. Reynolds has made equivocal statements, and the defendants have interposed a challenge for cause as to Mr. Reynolds which the Court has not yet ruled on. That is the challenge that was made in open court.

I don't know whether you intend to go into any more voir dire with Mr. Reynolds or not?

MR. BUGLIOSI: Not on the death penalty, but on the other issues.

THE COURT: He has stated that by virtue of the fact that the defendants have been arrested and charged with a crime that he feels a certain suspicion that they might be guilty. Not necessarily these defendants, but any defendant in any criminal case.

He has also stated, unequivocally, in my opinion, on various occasions, that he would give to the defendants the benefit of the presumption of innocence, which would appear to be inconsistent positions, but not necessarily so, because of the difficulties I have mentioned in the past of not always being able to articulate exactly what you think.

But certainly as the record now stands, he has taken an equivocal position and I think this has to be cleared up one way or the other so that I can rule on the challenge for cause.

I am just wondering whether you intend to go

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1 into that or whether I should go into it myself.

2 MR. BUGLIOSI: I could go into it, but I don't

3 think I could ask him, really, any questions that Mr.

4 Stovitz and I didn't ask in chambers.

5 He promises that he will base his verdicts

6 solely on the evidence in the court, and I can't think

7 of any questions to ask of him at this time.

8 MR. FITZGERALD: Mr. Bugliosi, if I might

9 interrupt.

10 We challenged this juror in open court, and

11 Mr. Stovitz indicated and asked the Court to hold its

12 ruling in abeyance to allow the prosecution to examine

13 this particular prospective juror in regard to cause.

14 THE COURT: That is correct.

15 MR. FITZGERALD: I think the Judge is simply asking

16 whether you intend to do that or not.

17 THE COURT: That's right.

18 MR. BUGLIOSI: I think it might be advisable for

19 me to do it then.

20 I will just ask a few more questions, your

21 Honor.

22 THE COURT: I could ask more questions myself, but

23 I wanted to raise the issue so that you don't inadvertently

24 overlook it.

25 MR. KANAREK: Your Honor, Mr. Manson asks the

26 Court for a recess.

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THE COURT: I think in view of the hour -- we have gone about an hour and a half -- I will adjourn at four today instead of four-fifteen, which will give us ten minutes more.

I think some of the jurors are getting a little restless.

MR. REINER: I would wish to get a clarification of a previous ruling by the Court.

Previously the question was posed by Mr. Bugliosi with respect to whether a juror would refuse to impose the death penalty upon a defendant of tender years, such as some of the female defendants.

I objected to the question on the grounds that even if a juror would not impose the death penalty upon a defendant of tender years, that this person would not be automatically -- could not be automatically excused from the jury; that they would not be subject to a challenge for cause.

The objection was overruled.

Now, I am not certain in my own mind whether the Court overruled the objection because the Court believes that an affirmative answer to that question would have disqualified the juror for cause or whether the Court was simply allowing Mr. Bugliosi to go somewhat beyond its original directive that his questions be solely on the matter of cause.

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1 THE COURT: What is the question?

2 MR. REINER: Did the Court, in overruling the
3 objection, mean to indicate that a juror who would in other
4 cases impose the death penalty but would not impose the
5 death penalty ever upon a defendant of tender years, could
6 be successfully challenged for cause by the prosecution,
7 or did the Court simply indicate that it was relaxing
8 its earlier restriction?

9 THE COURT: I think it might very well go to the
10 question of cause if he would automatically refuse to
11 impose it because the defendant is of tender years or
12 because of a particular situation.

13 MR. REINER: All right.

14 We would, of course, object to that.

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MR. REINER: Rather, I would say we would dispute that interpretation of the law. It is our belief that a juror, of course, may consider the tender years of a defendant, and let's say a juror would impose the death penalty in what they consider to be an appropriate situation for a person who was not of tender years, they would never do it for a person who was in their teens.

This person, of course, would obviously be challenged with a peremptory challenge by the People.

I don't think that person could successfully be challenged for cause. I think to be successfully challenged for cause --

THE COURT: I don't think that question is now before the Court.

All right, gentlemen.

MR. BUGLIOSI: I have a few more questions, your Honor, of Mr. Reynolds, then, at this point.

The Court has denied the prosecution's request for the identity of the defense witness.

THE COURT: Yes.

MR. STOVITZ: Out of an abundance of caution, one of the newsmen askad me for Exhibit B, if Defendants' Exhibit B was open for their perusal.

I told them to checkwith the clerk.

They told me that the clerk did not want to check with your Honor.

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THE COURT: It is not open.

(The following proceedings were had in open court in the presence and hearing of the prospective jurors.)

CONTINUED VOIR DIRE EXAMINATION OF LAWRENCE REYNOLDS

BY MR. BUGLIOSI:

Q Mr. Reynolds, just going back to you for one brief moment on the issue of the death penalty.

You indicated, sir, you had a suspicion in your mind that these defendants are guilty because they have been charged for these crimes, is that correct, sir?

A Yes, there is a small amount of doubt as to their innocence, yes.

Q Now, if you are selected as a juror on this case, Mr. Reynolds, would you be willing -- could you promise the Court that you will base your verdict in this case solely on the evidence that comes from that witness stand under oath, and not be influenced by anything you have read or heard outside of court?

A Yes, to the best of my ability.

Q Do you feel that this suspicion that you presently have will in any way influence you in your verdict to the prejudice of these defendants?

A I cannot really say. I mean, I cannot project myself, say, into a period four months from now if

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it takes that long, and how I would feel then.

Q I realize, sir, you cannot possibly make a categorical statement, but what is your present belief.

Do you believe that you can give these defendants a fair trial and not be influenced by the present suspicion that you have?

A Possibly, yes.

Q Is it more likely than not that you would be able to base your verdict solely on the evidence that comes from that witness stand?

A Yes, I would say so.

Q Are you confident that you can do that?

A Fairly confident, yes.

Q You realize that at the start of a criminal trial all defendants are presumed to be innocent.

You understand that?

A Yes.

Q Would you give all of these defendants that presumption of innocence?

A Yes, to the best of my ability.

Q Do you have any particular reason for believing, or having a suspicion of the guilt of these defendants that you possibly would not have for other defendants in other cases?

(No response.)

Is there any particular reason that distinguishes

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these defendants from other defendants?

A Not really a particular reason, no.

Q Just the mere fact that they were arrested and charged with these crimes?

A Yes.

Q Do you believe where there is smoke there is fire, is that correct, sir?

A To a small point, yes.

MR. BUGLIOSI: I have no further questions of Mr. Reynolds on that limited issue, your Honor.

MR. REINER: We would once again renew our challenge for cause.

THE COURT: Are you passing for cause or are you going to continue, Mr. Bugliosi?

MR. BUGLIOSI: I am passing for cause as to Mr. Reynolds, at least, on the death penalty issue, your Honor.

THE COURT: I take it you have not completed your voir dire examination?

MR. BUGLIOSI: No, your Honor.

As you know, ladies and gentlemen, Count number VIII --

THE COURT: Before you go ahead, Mr. Bugliosi, let me ask Mr. Reynolds some questions.

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VOIR DIRE EXAMINATION OF LAWRENCE REYNOLDS

BY THE COURT:

Q Mr. Reynolds, I find it difficult to reconcile your statements that you have a small amount of doubt pertaining to the innocence of the defendants because of the fact that they have been arrested and charged with these offenses, and your statement that you are willing to give the defendants the benefit of the presumption of innocence.

Do you find that inconsistent?

A No, because I said yes to the best of my ability.

I would do my best to give them the presumption of innocence.

Q Don't you think by reason of this suspicion you lean a little towards the side of the prosecution rather than being entirely neutral and impartial at the outset?

A I really could not say.

Let me make one statement:

I realize it's taking up a lot of time, but if I were on trial I would not want a juror in my frame of mind sitting in the jury panel, because there is a small amount of doubt.

THE COURT: All right, sir. Well, I appreciate your frankness.

Will counsel approach the bench, please.

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17a.

(The following proceedings were had at the bench out of the hearing of the prospective jurors.)

THE COURT: How much longer do you have, Mr. Bugliosi?

MR. BUGLIOSI: I probably have another half hour, your Honor on the guilt phase, circumstantial evidence, conspiracy, reasonable doubt.

It should not be too long.

THE COURT: All right, well, I am going to sustain the challenge as to Mr. Reynolds. He is obvious equivocal.

The last statement was the clencher.

If he would not be willing to be tried by a person in his frame of mind --

MR. BUGLIOSI: No objection to that, your Honor.

I am wondering if you are going to sustain the challenge at this point and have someone sit in his place, or it might be advisable to have me complete my voir dire?

THE COURT: Yes, I think it would be better if we let Mr. Bugliosi complete his voir dire as to this group.

I wanted to indicate now I am going to sustain the challenge for cause as to Mr. Reynolds.

But in view of the fact it is now four o'clock we will adjourn now.

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As to counsel we will adjourn until 9 o'clock on Monday morning.

As to the jurors it will be 9:45.

MR. REINER: The Court indicates he is going to sustain the challenge. Is the Court going to make it known now?

THE COURT: I don't want to make it known because he may not come back.

MR. FITZGERALD: There is one small motion we want to make; we can make it up here.

We actually chose to make it outside the presence of the jury.

It is simply a motion to allow the defense counsel in this case to bring a tape recorder into the jail to tape selective interviews with the defendants.

I can give you our reasons for that.

THE COURT: You don't have to give me any reasons. I see no objection to that.

Do you want to be heard on that?

MR. BUGLIOSI: No objection.

THE COURT: The request is granted.

MR. KANAREK: Your Honor, in order to implement that I would ask your Honor to issue a minute orderand have the Sheriff take it with him when he takes the defendants back into custody.

THE COURT: We will take it up afterward.

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In fact, if you do not object, we can go into chambers.

It will take a few minutes for the jurors to go out.

(The following proceedings were had in open court in the presence and hearing of the prospective jurors.)

THE COURT: Ladies and gentlemen, we are going to adjourn at this time until 9:45 on Monday morning.

Do not converse among yourselves or with anyone else on any subject connected with the case; nor form or express any opinion regarding the case until it is finally submitted to those of you who are selected as trial jurors.

9:45 on Monday.

(The following proceedings were had in the chambers of the Court, in the absence of the jury and the defendants, all counsel being present.)

THE COURT: The record will show all counsel are present in chambers.

MR. STOVITZ: The only reason I asked to make a statement, I know our office does not represent the Sheriff's Office.

But the Sheriffs asked me that on all of these special privileges that are being give, to make the

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1 Court order so precise that it would be for the particular
2 purpose, because other prisoners would want the same
3 privileges.
4 So if your Honor is going to allow counsel
5 to use a tape recorder in interviewing the defendants,
6 indicate that counsel must take the tape recorder back
7 with them, or make the order specific enough so that the
8 Sheriff's Office will not be accused of, "Well, you
9 did it in this case; now you've got to do it in this
10 case."
11 MR. SHINN: It is understood we will take the
12 tape recorders back.
13 At Sybil Brand the Captain told me I can
14 bring the tape recorder. I give him one or two days
15 notice and I can take the tape recorders out again.
16 But in the men's jail they have a different
17 rule.
18 THE COURT: I don't know what security problem
19 might be created by such an order.
20 I am willing to make the order. But I am
21 also not willing to interfere with the Sheriff's running
22 the County Jail.
23 If he requires these recorders be inspected
24 as he may very well do, or if he requires some other
25 reasonable arrangements to implement the order, I am not
26 going to interfere with that.

17b.

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MR. STOVITZ: Before your Honor makes the order, would your Honor ask the bailiff to check with the two jail facilities and find out how they want the order written so they know exactly what to do.

MR. FITZGERALD: There's already been two previous orders in this case in connection with the attorneys in the Superior Court file approved by other judges in Superior Court.

One order allowed Marvin Part, attorney for Leslie Van Houten at that time, to bring a tape recorder into the court.

The court order referred to Richard Caballero. There may also be an order for Mr. Fleischman in the court file.

We are not talking about giving the recorders to the inmates to allow them to go back into the jail or anything, obviously, your Honor; we will comply and comport with all the rules and regulations of the jail.

MR. SHINN: We are not going to touch them. We will hold the microphone where they can speak into it, that's all, not reach over.

MR. STOVITZ: Our position is, if a shorthand reporter may come in and act as a secretary for a lawyer, I don't see why not a tape recorder.

I am merely voicing the statements of the jail commander that the order of the court should be made

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specific so they can comply with it, and not have to answer to other defendants.

THE COURT: The order will be that each counsel will be permitted to bring a tape recorder into the jail for the purpose of recording statements of his client-defendant in this case.

MR. STOVITZ: May it be a battery-operated tape recorder, your Honor, because that also -- electricity is not available. So it is a battery-operated tape recorder.

MR. FITZGERALD: Your representation of the Sheriff and the County is admirable, Mr. Stovitz.

THE COURT: The tape recorder is to be removed and taken out with the attorney when he leaves.

MR. SHINN: This applies to all the jails, new county, old county, and Sybil Brand.

THE COURT: As I say, I don't know what the security problems are, Mr. Shinn. It may be in some one of these particular institutions that these facilities cannot be made available. I don't know.

I don't anticipate you will have any problem.

MR. KANAREK: Is your Honor going to activate the investigation about Mr. Manson being, I think, thrown in the hole?

THE COURT: What is your understanding of what occurred, Mr. Kanarek?

MR. KANAREK: I really don't know.

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THE COURT: If it is a matter of disciplinary action because he misbehaved himself, I am not going to interfere with that. He is not entitled to any special privileges.

If it is an arbitrary action by the Sheriff, taking away something to which he is entitled, that is another matter.

MR. KANAREK: Your Honor, what I'm saying is this -- well, let's put it this way:

He has a right to defend himself, whatever their rules may be.

THE COURT: I know what his rights are. What I want to know is what happened.

MR. KANAREK: I could not say that. As I say, we made a motion for an evidentiary hearing, rather than have that --

THE COURT: I will ask Mr. Murray to inquire, and on Monday morning he will give me whatever facts he has.

It may well be by that time the problem will have solved itself.

MR. KANAREK: I think they generally do it for a certain number of days.

THE COURT: This is what I want to find out. I don't have any facts at the moment.

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

THE COURT: You are making a bald statement.

MR. KANAREK: But he is in the hole, and he does not

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have the use of paper and pencil and whatever he needs.

THE COURT: This may very well be one of the conditions of that disciplinary action.

MR. KANAREK: It is unconstitutional, your Honor. I don't care what he has done, wherever he is he can have paper and pencil.

You cannot be punitive in denying him a fair trial.

You may be punitive and make him -- I don't know -- be in a certain place perhaps.

THE COURT: Let's get the facts, Mr. Kanarek, and we will get them from Mr. Murray and see what the situation is.

MR. KANAREK: The point is we would like for him to have these over the weekend, because this is important.

THE COURT: It is now almost a quarter after 4:00. There is no way I can get the information that fast.

MR. KANAREK: Very well, your Honor.

We hope it will be rectified. Thank you. Have a good weekend, your Honor.

THE COURT: Thank you.

(Whereupon, an adjournment was taken at 4:15 p.m., to reconvene at 9:00 a.m., Monday, June 29, 1970.)

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LOS ANGELES, CALIFORNIA, MONDAY, JUNE 29, 1970

9:45 A.M.

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(The following proceedings were had in the chambers of the court, out of the presence and hearing of the prospective jurors and the defendants; Mr. Bugliosi, Mr. Fitzgerald, Mr. Reiner, Mr. Shinn and Mr. Kanarek being present.)

THE COURT: The record will show all counsel are present in the chambers of the court except Mr. Stovitz.

I just want to find out whether you want this motion heard in chambers or out in the open court or what.

I am talking now about the motion to dismiss.

MR. BUGLIOSI: I would like to have it in chambers, your Honor, but the District Attorney has ordered Mr. Stovitz and me not to participate in chambers discussions unless the transcript is made available to the press.

THE COURT: I am interested in the philosophy of the District Attorney on that point.

What would be the point of having proceedings out of the presence of the jury if the transcript of the proceedings were to be made immediately available to the press so the same prospective jurors could read about it second-hand in the newspapers?

MR. BUGLIOSI: May this be off the record?

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THE COURT: No. You were the one who made the statement. I am asking for an explanation of it. It is something apparently I don't understand.

MR. BUGLIOSI: I would have to speak to Mr. Younger.

THE COURT: I take it you then have no explanation for that policy.

MR. BUGLIOSI: Well, let me say this --

THE COURT: You don't have to answer, Mr. Bugliosi, I understand your position, but it would seem to me it would be highly inconsistent to ask for a proceedings out of the presence of the prospective jurors and then turn around and make the transcript of those proceedings available to the press.

Not only are they going to hear it, but they are going to hear it second-hand and possibly inaccurately.

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MR. BUGLIOSI: At the time of trial, of course, if the jury is sequestered, then they would not be permitted to read the newspaper accounts of what took place in chambers.

I understand the Court is concerned about right now where the jury does go home and, presumably, does read the newspapers.

THE COURT: Whatever the reasons, if you desire to have the motion heard in open court, that is where it will be heard. All I want to know now is what is your desire.

As I have indicated to you in the past, all of these proceedings in chambers have been done upon the stipulation of all counsel, and unless all counsel are willing to stipulate, we won't have any proceedings in chambers.

MR. BUGLIOSI: I would prefer to have it in chambers, your Honor, and then have the transcript of this particular hearing be made available to the press.

THE COURT: Well, I am not going to change my order regarding the transcripts. So I take it, then, that you want it in open court; is that right?

MR. BUGLIOSI: Yes.

THE COURT: Now, one other point before we go out.

Presumably you will be finishing up with

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your initial voir dire to the present 12 jurors in the box.

MR. BUGLIOSI: Yes.

THE COURT: And as I have already indicated to you, I intend to sustain the challenge to Mr. Reynolds for cause, which means, of course, that we will call another prospective juror from the panel, and I wanted to ask you -- all of you -- what your desire is with respect to the voir dire examination regarding publicity and the death penalty questions and hardship with respect to any new jurors coming into the jury box from now on.

Do you want any portions of thatvoir dire to be in chambers or do you want it all to be in the courtroom?

MR. FITZGERALD: I would request that the voir dire in respect to publicity be handled in chambers, and I made that motion earlier in this trial, and your Honor agreed that your Honor was inclined to do that sua sponti.

THE COURT: I wouldn't do it without the stipulation of all counsel.

I understood you to say the other day that from now on you wanted everything in open court and nothing in chambers, which is perfectly all right, if that is the way you want it.

MR. FITZGERALD: Perhaps I was unclear.

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1 I am not in favor of conducting any
2 in-chambers that can reasonably be handled in open court.
3 THE COURT: Neither am I.
4 MR. FITZGERALD: As to the matter of publicity,
5 however, that presents a tremendous area of possible
6 prejudice.
7 If we have a juror in the box and we ask
8 that juror what he has heard or read in connection with
9 the case, he may infect the entire prospective jury
10 panel by spuming out some inflammatory prejudicial trial
11 material that he has been exposed to, and if we are
12 forced, I think, to question these jurors in regard to
13 publicity in open court, that is going to necessarily
14 restrict the voir dire examination.
15 I have no criticism of the Court and I
16 have no criticism of fellow counsel for agreeing to have
17 the matter of publicity gone into in chambers. I think
18 that is a perfectly proper thing.
19 Also, I think it is the only sensible
20 procedure under the circumstances, and I would ask the
21 Court to continue that procedure.
22 Now, in regard to matters of hardship,
23 we originally came in chambers and discussed those
2a fls. 24 matters of hardship at the request of Mr. Stovitz.
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We all agreed and we all stipulated that this might be done in chambers, but it was originally Mr. Stovitz's request.

Mr. Stovitz was of the persuasion that if prospective jurors mentioned hardship in open court, that the rest of the prospective jurors on the panel would parrot the reason that a particular juror gave, and it was for that reason -- and that seemed sensible to me at the time -- it was for that reason that I agreed, as did the other defense counsel, to allow the matter of hardship to be discussed in chambers.

My position at the present time is that I do not object to that, if it is agreeable with the rest of the attorneys.

I would be adamant, of course, in regard to the publicity, but with regard to the hardship and with regard to the death penalty, I have an open mind about it. It can be handled in open court or it can be handled in chambers.

THE COURT: Well, how do the rest of defense counsel feel about this matter, before I ask Mr. Bugliosi.

MR. REINER: My position is that I think the publicity matter certainly should be held in chambers.

With respect to the death penalty and the hardship, that may be held in chambers or in open court, I have no preference one way or the other.

THE COURT: Mr. Shinn?

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MR. SHINN: I have no preference and I move to follow Mr. Fitzgerald's suggestion.

THE COURT: Mr. Kanarek?

MR. KANAREK: Yes, your Honor.

Over the weekend I read -- I am sure you are familiar with Justice Fleming's decision on a case up in Ventura County where the court --

THE COURT: About the proceedings out of the --

MR. KANAREK: Where the Court kept the entire matter --

THE COURT: I don't recall the name of the case but I recall the case, and I did read the opinion at the time where certain, I guess the public at large was excluded from all or a portion of the trial.

MR. KANAREK: Right.

Now, your Honor, I believe the Court has the power to exercise discretion as to certain portions of the trial in sealing its own records.

My God, if we can do this in law and motion over in Department 63, we certainly can do it --

THE COURT: That point doesn't bother me, Mr. Kanarek, because in most trials we don't even have a transcript. So, the idea that the transcript has to be made available to the press is absurd.

But what I wanted to know now is whether you want to have any of the voir dire examination of the prospective jurors in chambers, as we have done up until

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now.

MR. KANAREK: I would welcome as much as possible in chambers for this reason, your Honor. We are interested, I would think, in getting judicially-minded jurors. We are not interested in having jurors feed to other jurors their various attitudes.

Now, I would have all of it in camera. In other words, if that were theoretically possible, and it is, it is to a terrific extent, because we are interested in getting fair and impartial jurors.

And I would ask the Court, I think if the Court balances -- I have here, your Honor, the paper of Saturday, June 27, where there is a big headline in the Herald Examiner. It says "Secret Tate Sessions Ire Younger."

I wonder if I might offer this in evidence on behalf of Mr. Manson, in connection with my request that the Court make the balance -- and I don't think, it seems to me that the District Attorney has some unusual interest in the public knowing -- and I am all for the public knowing what is going on -- but to balance, at this stage of the proceedings, the balance weighs in favor of the defendants not getting a fair trial, and the public is not interested in the details of the particular juror's hardship or the particular juror's attitude about the death penalty, or what the particular juror has seen.

THE COURT: To shorten this for the moment, Mr. Kanarek,

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I take it that you do desire to have the voir dire examination in respect to hardship and publicity in chambers?

MR. KANAREK: And the death penalty.

I don't wish to impede --

THE COURT: What is the People's position?

MR. BUGLIOSI: If the transcript in chambers would not be available to the press, it is our position that we would like to have it in open court.

THE COURT: Suppose there were no transcript at all?

MR. BUGLIOSI: There would almost have to be a transcript of the voir dire.

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THE COURT: It doesn't have to be a daily.

MR. BUGLIOSI: It would not have to be a daily.

THE COURT: It would be reported obviously, but it does not have to be a daily transcript.

I am not suggesting I am going to do that, but I am just trying to show you the inconsistency of your position.

MR. BUGLIOSI: Submit the matter.

THE COURT: There is no such thing as submitting it. You will either stipulate or we will be out in open court; it's just that simple.

MR. BUGLIOSI: We will not stipulate, your Honor.

THE COURT: All right.

MR. FITZGERALD: If I might be heard just very briefly.

I think the Court has inherent power to conduct at least a portion of the voir dire examination in chambers, particularly a portion of the voir dire examination that deals with the prospective jurors' possible exposure to pretrial publicity.

This is not, as your Honor is well aware, the ordinary case; this is an extraordinary case where there has been an extraordinary amount of publicity, where several Judges of the Superior Court have taken judicial knowledge of the extraordinary character of the publicity.

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Judge Malcolm Lucas referred to the publicity as pervasive; he referred to the publicity as being as great as any case that has ever been conducted in Los Angeles County or, for that matter, in the United States.

They referred to the publicity as being of pandemic proportions.

He referred to it as being the topic of discussion in European newspapers as well as newspapers throughout --

THE COURT: I am aware of that, Mr. Fitzgerald.

I am not certain, however, that I have the power to conduct any of the voir dire outside of the court without the stipulation of counsel.

Now, if each of the defendants and their counsel were to, irrespective of what the District Attorney has said, were to consent to such a proceeding, and requested and waived any rights or any objections they might have to such a proceeding, that would be one thing.

But just to tell me that I have the power to do it is not going to be enough. I can tell you that unless you can show me some authority which I have not been able to find --

MR. FITZGERALD: On behalf of Patricia Krenwinkel I would then specifically request that your Honor

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conduct the portion of the voir dire examination which deals with exposure to pretrial publicity in chambers outside the presence of the public.

THE COURT: Do all of you agree with that?

MR. KANAREK: That far, I will say yes.

MR. SHINN: Yes.

MR. REINER: So stipulated.

THE COURT: I won't accept that at this point, but when we are through with other matters, I will bring all parties, including the defendants and counsel, into chambers.

Then if they are specifically willing to consent to such procedure and waive any objections to it, we can proceed at that time.

But I just wanted to get an expression of opinion at this time.

Now, as to the motion to dismiss, then, we will go back into court.

Do you intend to argue the motion?

MR. FITZGERALD: Yes, your Honor.

THE COURT: All right.

MR. SHINN: May we take up another matter now, your Honor.

THE COURT: Yes, I might say before we go to the other matter:

I find the position of the District Attorney

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1 incredible, absolutely incredible.

2 It is so obviously inconsistent with the

3 position of a government officer in the role of a

4 prosecutor.

5 I have searched my mind for the reasons or

6 motives behind the position, and it doesn't take much

7 of a search to suggest some rather unworthy motives

8 for it.

9 But I am not going to attribute anything

10 to anybody. All I can say is that I find it incredible.

11 Now, Mr. Shinn.

12 MR. SHINN: Yes, your Honor, I think the order --

13 I think the Judge stated that we can take

14 a tape recorder up to the jail as long as we don't leave

3a fls. 15 it there.

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THE COURT: With respect to that motion, I am going to hold that in abeyance until I have had a chance to speak with Inspector Welch; he is coming in tomorrow morning with one of the other inspectors, I cannot remember his name now.

And I was unaware, I might say, I was also very disturbed when I found out over the weekend that there had been prior orders denying requests for tape recorders, which I was not aware of.

MR. FITZGERALD: One, and that was a motion by Mr. Manson in pro per.

THE COURT: There were two; I have them right here.

MR. SHINN: That motion, your Honor, was a motion to allow Mr. Manson to have a tape recorder while he was in pro per status, your Honor.

THE COURT: That was one of them.

MR. SHINN: Yes.

THE COURT: Another one was to allow an investigator to take a tape recorder --

MR. SHINN: Mr. Stovitz said he had no objections to an investigator --

THE COURT: I am not interested in what Mr. Stovitz has objection to.

What I want counsel to do is have enough professional responsibility to tell the Court of a previous denial of a motion on the same subject.

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MR. FITZGERALD: It was not our intention to mislead the Court.

THE COURT: There was a subject involving tape recorders, investigators and the parties. I think the subject was sufficiently related that I be advised.

I suggest each of you take a look at Section 1008 of the Code of Civil Procedure also.

MR. KANAREK: I would like to state to the Court I did not know the previous motions were made.

THE COURT: I understand one of them went all the way up to the State Supreme Court.

MR. SHINN: That was a different situation. Mr. Manson, in pro per status, wanted to take a tape recorder into jail instead of a typewriter.

In this situation we would take it right into jail and right back out again.

The Attorney General in opposition to that motion suggested there was a question of security, your Honor, that was all.

THE COURT: That is all!

MR. FITZGERALD: I just did not feel -- I would have brought to the Court's attention -- I just did not feel it had anything to do with this situation at all, as Mr. Shinn pointed out, it was a different problem altogether, and there had been two previous orders in the Court's file, I believe it was with respect to attorney Caballero and

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1 Attorney Part in regard to taking recorders into the jail.
2 I mean, certainly if the Court was misled I
3 apologize. It was not our intention to mislead the Court.
4 THE COURT: Well, all right. In the future, though,
5 let me remind you when you make a motion or a request that
6 has previously been ruled on by the Court, that you have a
7 professional duty to inform the Court of that fact.
8 MR. KANAREK: Would your Honor refer me to that part
9 of the record as to those motions, because I was not aware
10 of it until just this instant, right here in chambers,
11 that such motions were made by or on behalf of Mr. Manson,
12 your Honor.
13 THE COURT: I don't want to dwell on it now.
14 MR. KANAREK: Very well, your Honor.
15 THE COURT: But I will give you the references, and
16 you can get the copies of the minute order and examine the
17 file, by getting the file from the clerk.
18 On January 14th, 1970 Judge Dell took under
19 submission Defendant Manson's request for a tape recorder.
20 MR. KANAREK: 1-14-70?
21 THE COURT: Yes.
22 On January -- the same day, apparently there
23 was another minute order, on the same day. Judge Dell
24 denied the defendant's request for a tape recorder.
25 And on February 3rd, 1970, Judge Dell denied
26 Defendant Manson's request for an investigator -- for

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1 permission for an investigator to take a tape recorder into
2 the jail.
3 MR. SHINN: And, your Honor, the record should also
4 state that all these proceedings were while Mr. Manson was
5 in pro per status. There is a big difference.
6 THE COURT: Now, anything further, gentlemen?
7 MR. REINER: Yes, your Honor, there are a few matters
8 I want to bring up.
9 First of all, with respect to the Court's
10 indication that due to prior orders regarding the use of
11 tape recorders -- I don't if I joined in the request Friday
12 for permission to bring the tape recorder; I don't believe
13 I did for the reason I had standing permission up to the
14 present to bring in a tape recorder to Sybil Brand
15 Institute, where Leslie Van Houten is presently incarcerated.
16 I have on some occasions brought a tape recorder
17 in, not to tape anything, but to play tapes for her, and I
18 have done so with the permission of the officials at that
19 facility.
20 THE COURT: Was this pursuant to some court order?
21 MR. REINER: No, this was not pursuant to a court
22 order, though I understand, though I do not have personal
23 knowledge of the fact, that there is, I believe, a court
24 order allowing the attorney in this case who previously
25 represented Leslie Van Houten to take a tape recorder into
26 Sybil Brand.

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1 In connection with that, I assume though there
2 was a change of counsel, that the order was continued.
3 So I just went on and took a tape recorder into
4 Sybil Brand from time to time, always notifying the
5 personnel there in advance and receiving their permission.
6 I assume that still exists, though I have not
7 in some time taken a tape recorder in there.
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THE COURT: All right. I am going to discuss the whole matter with Inspector Welch and this other inspector tomorrow morning, and see what problems, if any, there are.

MR. REINER: If I may finish the few minutes I have noted here.

With regard to the publicity order the Court has issued, I would like for my own purposes to clarify my obligation to the Court with respect to that.

If I am informed in advance that a prospective witness that I propose to call intends to make a statement for public dissemination, of matters that would make the declarant -- that would constitute a violation of the publicity order by the declarant, do I have an obligation to inform this Court of the prospective violation that may occur with respect to a witness I propose to call?

THE COURT: The order requires that a copy of the order be served with a subpoena.

MR. REINER: Yes, I appreciate that.

THE COURT: When that has been done, unless you have some questions as to whether or not the witness read the order --

MR. REINER: What I am referring to, your Honor --

THE COURT: Make sure he is informed.

MR. REINER: The Court indicated Friday if we

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1 were aware that a witness of ours proposed to make
2 certain statements for public dissemination, we should
3 take some affirmative steps to prevent it.
4 THE COURT: I think I was referring to your client,
5 not witnesses.
6 The obligation is there. I don't think
7 you can be expected to be accountable for actions of
8 witnesses over which you have no control.
9 But if the control simply is one of
10 informing the witness, I think you have that obligation.
11 The order imposes that obligation with
12 the subpoena served.
13 MR. REINER: Notwithstanding the order and the
14 witness is aware of the order, if the witness indicates
15 that they intend to go ahead and issue a statement for
16 public dissemination, would I have an obligation?
17 THE COURT: Why would a witness? I don't under-
18 stand.
19 MR. REINER: I really cannot answer why, but
20 witnesses do such things.
21 THE COURT: They announce they are going to make
22 a statement for public dissemination?
23 MR. REINER: For example, if a witness were to
24 tell me that he intended to say and do certain things
25 which, say, for argument, would be violative of the
26 Court's publicity order, and I inform the witness that

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he is surely aware of the fact that such conduct was in violation of the publicity order, have I discharged my duty at that point or should I at that time inform the Court of the prospective violation?

THE COURT: I think under those circumstances you should inform the Court of the prospective violation.

I don't understand your factual situation as you suggested, but if that in fact occurs, I think you have a clear duty to advise the Court beforehand.

MR. REINER: Leslie Van Houten was brought into court this morning wearing jail clothes, without a bra and slip.

I am informed by her the reason for this is there was a clothing exchange, I believe yesterday, where her mother brought a dress for her to wear, a slip and bra, and the like, and picked up the wrong clothes, apparently. The clothes were the wrong size.

Miss Van Houten wanted to hem the clothes.

The clothes were taken from her and she was told they would be hemmed sometime today perhaps.

She was sent to court dressed in a very unattractive manner. I am terribly concerned with her appearance.

Not only are the jail clothes extremely unattractive, but the absence of a bra; there are female members of the jury who might take offense to it.

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They are very close to Sybil Brand, only five minutes, perhaps a phone call to the Institute would have the clothes brought over here in a matter of moments, and perhaps we can finish arguing the motion to dismiss.

I certainly would not wish to see her in the presence of the jury dressed as she is dressed.

THE COURT: Do I understand that the reason she does not have her own clothes is because she refused to wear them?

MR. REINER: It wasn't a matter of her refusing. It was a matter of her attempting at 5:00 o'clock this morning to hem her dress, a privilege she always had.

THE COURT: What does that have to do with her bra?

MR. REINER: That was taken from her because that was in the exchange. That is all at the Sybil Brand Institute.

THE COURT: We are not going to delay the trial while she gets a bra which she already had.

MR. STOVITZ: The argument on dismissal will be outside of the presence of the jury?

THE COURT: It will.

MR. BUGLIOSI: I would like to be heard on that, I would also request it be back in chambers.

THE COURT: What?

MR. BUGLIOSI: The motion for dismissal, because I can hear it now:

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1 Each defense counsel is going to get up and
2 take further pot-shots at Aaron Stovitz.
3 It's already ad nauseam.
4 There is an obscure article which no one has
5 read, and it is blown completely out of proportion, and my
6 position, your Honor, is that if we have it back in
7 chambers and make it available to the press, the press
8 might get it two days from now. By that time it is not
9 going to be hot news. Otherwise if it is in open court
10 they will pick up all these words.
11 THE COURT: Mr. Bugliosi, I don't understand you, are
12 you now changing your mind?
13 MR. BUGLIOSI: No, I would like to have these things
14 back in chambers but with the transcript made available
4 fls. 15 to the press on this issue.
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THE COURT: The transcript is not going to be made available to the press.

Now, do you still want it in chambers?

MR. BUGLIOSI: They are going to hear everything that Mr. Fitzgerald is going to say anyway in open court.

THE COURT: The reason it is going to be heard is because you are not going to have it heard in chambers. That is the reason.

It is within your power to have it heard in chambers.

MR. BUGLIOSI: I would like to find out from Mr. Fitzgerald what his interest is in having the press hear his remarks now as opposed to two days from now on reading the transcript. I would like to find out what his particular interest is.

THE COURT: They are not going to read the transcript, Mr. Bugliosi. You don't seem to understand.

MR. BUGLIOSI: I understand; but if the Court is willing to let the press hear the remarks now, why would it not be willing --

THE COURT: I don't like to do it, but I am not going to hear the motion in chambers unless all parties and counsel consent to it.

MR. BUGLIOSI: The point I am trying to make, your Honor, is that if the Court is going to let the press hear the remarks now, why would the Court be unwilling to let

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them read about the remarks in a transcript?

THE COURT: I refuse to entertain the question in that form.

The reason why it is happening is because the District Attorney's office is taking -- I will state it charitably and call it -- a peculiar view.

MR. STOVITZ: So we understand, your Honor. The jury will be excluded and it will be in open court?

THE COURT: The prospective jurors will be excluded from the argument on the motions, certainly.

MR. KANAREK: Your Honor, I have just one small point. That is in connection with the tape recorder.

Mr. Manson has no objection, your Honor, to whatever tape recorder we bring in that it be opened up and looked at completely before they are ever brought in.

THE COURT: That, I am sure, will be done whether he objected to it or not.

MR. KANAREK: Very well.

THE COURT: I am holding the order regarding the tape recorder in abeyance until I have had a chance to review it.

MR. REINER: One final matter, your Honor.

I told you that I was due in Federal Court across the street at 2:00 p.m. today on a sentencing matter. I don't know how long it will take. I don't expect that it will take very long, your Honor, but I may be five minutes or so --

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THE COURT: Isn't that something that could have been handled by somebody else?

MR. REINER: No, your Honor. It is a sentencing matter and I do have an obligation to appear.

It has been on the calendar a rather lengthy time, your Honor.

THE COURT: Will you ask for priority?

MR. REINER: Yes. And I don't expect that it will take too long, but I must be there, your Honor.

MR. SHINN: One more matter, your Honor.

Mr. Kanarek and I have to make an appearance in Department 100, Judge Dell, at 1:30. That is regarding Mary Brunner --

THE COURT: In Department 100?

MR. SHINN: 100. It is on the Hinman matter.

He ordered us to be there at 1:30. So we may be a little late.

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MR. STOVITZ: Why don't we set this matter over until 2:30 this afternoon, your Honor, and then go until 12:30 this morning?

THE COURT: Well, I think we will keep our regular hours, gentlemen, and just get back as soon as you can.

Mr. Bailiff, we are going to hear the motion to dismiss, so we will need all defendants, but keep the prospective jurors out of the courtroom.

(Brief recess.)

(The following proceedings occurred in chambers, the defendants and all counsel being present.)

THE COURT: The record will show that all of the defendants and all counsel are present.

In spite of what I said a few minutes ago, gentlemen, about holding this hearing on the motion to dismiss in open court, I have decided that if the defendants and their counsel are willing to have the matter held in chambers and they ask the Court to do so and are willing to waive any objections to having the matter heard in chambers, that I will have it heard here rather than in open court, notwithstanding the District Attorney's refusal to stipulate to having the matter heard in chambers, for the reason that if it is held out in open court, the media, of course, will hear everything that is said by counsel. It will be, in all probability, published in the newspapers, and prospective jurors who, of course, would not

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be present in court to hear the argument, would then read about them in the newspapers second-hand.

Since this could possibly be prejudicial to the defendants, I don't want to risk that if they are willing to have the matter heard here in chambers.

Do you wish to respond, Mr. Fitzgerald?

MR. FITZGERALD: Yes, your Honor.

On behalf of Patricia Krenwinkel, we would request that the matter be held in open court. We will not consent to the matter being conducted in chambers.

MR. REINER: Your Honor, on behalf of the defendant Leslie Van Houten, I am not sure, at this point, whether I intend to argue, but if I do argue the matter, it is not my intention to argue on any matters that would relate to the substance of the article rather than the propriety of the interview itself.

However, I don't see how anything that would be said could possibly prejudice the defendants.

For that reason, your Honor, I could not see any reason or do not see any reason why it would be necessary for me to request that the session be held in chambers, and I would ask that it be held in open court.

THE COURT: Mr. Shinn?

MR. SHINN: Yes, your Honor.

On behalf of Susan Atkins, your Honor, we will join in with Mr. Fitzgerald.

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THE COURT: Mr. Kanarek?

MR. KANAREK: Yes. I will join with Mr. Fitzgerald, your Honor.

THE COURT: All right, gentlemen, then we will go back into open court and hear the motion out of the presence of the prospective jurors.

MR. STOVITZ: While we are here, your Honor, to save time coming back and forth, would your Honor also inquire of the defendantsand their attorneys as to whether or not they would want to have the questioning of the jurors on publicity outside of the presence of the press and of the jurors, here in chambers or open court?

I have in mind the fact that probably we will start exercising peremptories today, and there will probably be the need of questioning jurors.

THE COURT: I don't know whether counsel have had an opportunity since we discussed it in chambers to confer with their clients. They probably have not had such an opportunity.

So, I think I will defer that until after the motion to dismiss, and then the defense counsel may discuss that matter with their clients before we ask them to stipulate to it and waive any objections.

MR. KANAREK: Hopefully, your Honor will grant the motion and that will be academic.

THE COURT: All right. Let's proceed back to open

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court, gentlemen, for the arguments on the motion.

(The following proceedings were had in open court, all defendants and all counsel being present, all prospective jurors being removed from the courtroom.)

THE COURT: People against Charles Manson, Susan Atkins, Patricia Krenwinkel and Leslie Van Houten.

All parties and counsel are before the Court.

This proceedings is being held out of the presence of the prospective jurors.

This is the time set for hearing on the defendant's motion to dismiss.

Do you wish to argue, Mr. Fitzgerald?

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1 MR. FITZGERALD: Yes, I do, your Honor.

2 Originally there was filed with the Court
3 a Notice of Motion to Dismiss, a declaration and memorandum
4 of points and authorities in support thereof.

5 In addition, your Honor, there was attached
6 to that Notice of Motion to Dismiss two exhibits.

7 In addition, there was filed with the Court
8 an additional declaration in support of Motion to Dismiss
9 which was executed on June 22nd.

10 In connection with the additional declaration
11 in support of the Motion, there was filed two additional
12 exhibits; Exhibit 3, which was a catalogue of pretrial
13 publicity heretofore received by the Los Angeles Superior
14 Court in support of a motion to change venue, and Exhibit 4
15 which contained photocopies of newspaper articles from
16 the Los Angeles Times from the date of March 7th through
17 and including June 17th, 1970.

18 Those exhibits were attached to the additional
19 declaration in support of the Motion in order that the
20 Court would not consider this matter to dismiss, that is
21 to say, the Rolling Stone matter to dismiss, in any sort
22 of a vacuum.

23 It is our position that the conduct engaged
24 in by the prosecutorial authorities is one of a continuing
25 nature, and we think that only examined in the framework
26 of massive pretrial prejudicial publicity can an accurate

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1 analysis be made.

2 And if I might just review some basic facts.

3 As these exhibits indicate, there was exten-
4 sive pretrial publicity in connection with this case.
5 Particularly prejudicial were those aspects of the
6 publicity on or about December 1st and 2nd of 1969, which
7 was the date of a news conference held by the Chief of
8 Police of the City of Los Angeles, Chief Davis.

9 At that news conference, Chief Davis indicated
10 that the Tate-La Bianca case had been solved and that
11 certain persons had been arrested in connection therewith.

12 The persons that he announced that were
13 arrested were these defendants.

14 There was in attendance, according to the
15 media reports of that news conference, representatives of
16 the Los Angeles County District Attorney's Office.

17 We are, however, unable, and we cannot
18 represent to the Court, that the Office of the Los Angeles
19 County District Attorney had anything to do with the
20 news conference by Chief Davis.

21 We are not contending that it was at the
22 instigation of the District Attorney's Office. However,
23 I think that within the confines of this case, certainly,
24 the Police Department of the City of Los Angeles are agents
25 of the prosecution.

26 At that news conference and at the conclusion

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of that news conference, the Mayor of the City of Los Angeles, Sam Yorty, congratulated Chief Davis for his outstanding work in solving the case and arresting these defendants.

Now, almost contemporaneously thereto, and simultaneously, there appeared in the popular press certain extraordinarily prejudicial publicity.

I am referring specifically to -- for example, I am referring specifically to an article in the Los Angeles Times the day after the news conference, which would be December the 2nd, wherein the Los Angeles Times revealed that Mr. Manson had a five-page rap sheet or previous record of criminal convictions.

That obviously could have only come from the police officials and/or the Office of the District Attorney of Los Angeles County.

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A review of that publicity will also reveal that the police and/or the prosecutor released to the press police photographs, mug shot photographs, information in connection with confidential witness statements and information contained in confidential police reports.

We are unable to represent also to the Court that that was done at the instigation of or at the behest of the Los Angeles County District Attorney's Office. We can't represent that to the Court. I think there is a strong inference that the prosecutors in this case had a great deal to do with that early release of prejudicial pretrial information. And were it simply matters dealing with mug shots and photographs, et cetera, that would be one thing.

However, the release of information continued. The release of information by the police or by the District Attorney's office included information concerning not only the past records of Mr. Manson and the other defendants in the case, but it contained accusatory information concerning other crimes, car thefts, forgery of credit cards, pimping, use of narcotics and dangerous drugs, et cetera, et cetera.

In addition, agents of the police or agents of the prosecution released to the press information concerning other homicides in which the defendants were suspects.

For example, there appeared in the Los Angeles Times on December the 2nd, an article, the headline of

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which is as follows: "Savage Mystic Cult Blamed For Five Tate Murders, Six Others."

Another sample headline that appeared in the Long Beach Press Telegram: "Religious Cult Involved. At least nine members of what police describe as a wolf pack gang of cut-throat killers have been involved in the bloody slaying of actress Sharon Tate and possibly ten others."

The headlines go on. On December the 16th, 1969, the Los Angeles Times published a headline: "Police Seek Tate Case Tie To Unsolved Killings. State Furnishes List of Murders Similar to Seven Slayings Here."

The article went on to point out that a list of uncleared murder cases in California was sent to Detective Lieutenant Robert Helger of the Los Angeles Police Department with the possibility that the group of individuals implicated in the Tate case were responsible for the other unsolved killings up and down the State of California.

Additionally, there was information in the Los Angeles Times on December 10th, 11th and 12th, samples of which are as follows:

"Ranch Searched For Possible Victim of Manson Family Homicide. Movie stuntman had argued with cult leader then vanished in August."

"Manson Group Linked to Possible Ninth Death. Tate Probe Hints Death of 11 More."

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We cannot represent to the Court and we are unable to represent to the Court that the prosecutors directly released that information to thepress, nor are we able to represent to the Court that the prosecutors were derelict in their duty in attempting to prevent the Police Department from releasing such information.

Furthermore, and I think one of the items that was vastly prejudicial to these defendants, was the violation of a prosecution witness, a then prosecution witness, Susan Denise Atkins, in the publication of her accusatory statements and her so-called confession.

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The Reardon report analysis of pretrial publicity opined that a confession is perhaps the most incriminating kind of information that can be disseminated, and seems likely to remain impressed on the mind of the reader, if a prospective juror hears a confession he cannot cast it out of his mind. A fair trial can easily be jeopardized or destroyed by the release prior to trial of a confession or admission, or of the prior record of a defendant, or material concerning the defendants' bad character.

With such in mind, the prosecution allowed apparently, although I am unable to represent that they did so to the Court, allowed their witness to publish under the title "Exclusive Details of Susan Atkins' Story of Two Nights of Murder" in the Los Angeles Times, a Sunday edition, on December 14th, the circulation of which was 1,308,711, her statement of the offense.

That story, as I previously stated, may be described as a confession as well as an accusatory statement.

There were numerous items contained within the story that would be inadmissible as evidence, inadmissible hearsay, opinions, conclusions and speculations, statements that were irrelevant, and material that was obviously prejudicial.

We are unable to represent that was done at

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1 the instigation of or with the authority of the Los
2 Angeles County District Attorney's Office.
3 That is not the case, however, with the
4 publication, the Rolling Stone.
5 We have documentary proof beyond any doubt
6 whatsoever that Mr. Stovitz, a State agent, and a State
7 agent of the Los Angeles County District Attorney's Office,
8 did disseminate to the public the information that is
9 contained as an exhibit before your Honor.
10 I think that is absolutely clear. I think
11 that the Los Angeles County District Attorney's Office
12 has engaged in a pattern of conduct, and this is just one
13 aspect of it, I think the materials we have previously
14 presented to the Court indicate that the Rolling Stone is
15 simply the only time they have been caught, not the only
16 time they have released information with the effect of
17 depriving these defendants of a fair trial.
18 Perhaps it is better to deal with it in
19 a euphemistic sort of way.
20 I think what the prosecution did was, they
21 attempted to garner public opinion and public support
22 behind them, because they felt they had certain difficulties
23 with the trial of this action.
24 So they agreed to release information to the
25 press that would garner public opinion behind them.
26 With that public opinion behind them they

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would likely have an easy time convicting these defendants.

Now, I am not going to belabor the facts. I am not going to belabor what is contained in the Rolling Stone. I think the material contained in the Rolling Stone violates every single sentence and every single paragraph and every single item in the order, with regard to pretrial publicity that was promulgated by the Court, in order to protect these defendants, and I assume it was promulgated, reasonably so, so that if for example the prosecution released some of this information that was prohibited, it would have the effect of depriving the defendants of a fair trial.

But I would like to pass for a moment into some of the legal aspects of the motion to dismiss.

A fair trial in a fair tribunal is a basic requirement of due process. Whenever a court finds that publicity has interfered with the right to a fair trial, the defendant has been deprived of due process of law.

Now, that is easy to state, but the problem your Honor has is, how does the court go about determining whether these defendants have been accorded a fair trial, or, stated another way, how does your Honor determine whether these defendants have been deprived in advance of a fair trial.

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Until recently the majority view expounded by the Supreme Court of the United States, and most appellate courts, was that prejudice must be clearly shown before a case reaches due process proportions.

This standard was set forth in Stroble vs. California, and in Irvin vs. Dowd, where a detailed examination of the facts was made in order to determine whether prejudice resulted to the defendant from news coverage.

However, in Rideau vs. Louisiana, the Supreme Court of the United States adopted a somewhat different approach.

The defendant in that case was arrested for robbery, kidnapping and murder; he was subjected to a film interview, and the record was silent, and the Court so held that the record was silent, as to whose instigation the film was made.

During this film segment the defendant admitted the crimes.

The film was televised on several occasions throughout the community where the crime occurred.

At the trial the motion for change of venue was denied. The defendant was convicted.

The Supreme Court stated that although the record did not show who initiated the interview, it obviously was done with the active cooperation of law enforcement officers.

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It was a denial of due process of law to refuse to change venue after repeated exposure to the film by the community.

The Court concluded that this publicity was a subtle but no less real deprivation of due process.

In 1965 in Turner vs. Louisiana, two deputy sheriffs testified as to confessions made to them by the defendant.

The two deputies were also in charge of the jury sitting on the case, and associated with jurors continuously for three days of trial.

A mistrial was sought. A voir dire examination of the two sheriffs disclosed that they had not discussed the case at all with the jury. The defendant was subsequently convicted.

The Supreme Court of the United States reversed, holding, "The potentialities of what went on outside of the courtroom during the three days of trial, may" -- and "may" is italicized -- "may well have made those courtroom proceedings little more than a hollow formality."

In the case of Billie Sol Estes vs. Texas, the Supreme Court held and adopted the most recent test:

"In most cases involving claims of due process deprivations, we require a showing of identifiable prejudice to the accused.

"Nevertheless, at times a procedure employed by

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the State involves such a probability that prejudice will result, that it is deemed inherently lacking in due process."

And in the case of Sheppard vs. Maxwell the United States Supreme Court held that due process requires that an accused receive a fair trial by an impartial jury free from any outside influences.

Given the pervasiveness of modern communications, and the difficulty of effacing prejudicial publicity from the minds of jurors, the trial courts must take strong measures to insure that the balance is never weighed against the accused.

I think in this situation the State, by Mr. Stovitz, has involved themself in a procedure that the probability is that prejudice will result.

I think that as a result thereof these defendants have been deprived of a fair trial, and if they have been deprived in advance of a fair trial, I think the only alternative for the Court is to dismiss the case.

THE COURT: Are you arguing for all of the defendants on this motion, Mr. Fitzgerald?

MR. FITZGERALD: Yes, I was, your Honor, on behalf of each of the other defendants.

May my remarks be for them as well as for my client, Miss Krenwinkel?

MR. KANAREK: Your Honor, I want to incorporate Mr. Fitzgerald's remarks, if I may, but I have a little

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1 further which I would like to go into.

2 THE COURT: Very well, Mr. Kanarek.

3 MR. KANAREK: I will incorporate by reference as

4 fully and completely set forth on behalf of Mr. Manson,

5 Mr. Fitzgerald's remarks.

6 And I would like then to call Mr. Bugliosi as

7 a witness, your Honor.

8 THE COURT: We are not going to take any evidence on

9 the motion.

10 MR. KANAREK: May I make an offer of proof, your

11 Honor?

12 THE COURT: Very well.

13 MR. KANAREK: The offer of proof --

14 MR. BUGLIOSI: Your Honor, again this man, with a

15 history of diarrhea of the mouth --

16 THE COURT: If you have an objection, Mr. Bugliosi,

17 state it.

18 MR. BUGLIOSI: My objection, your Honor, is that this

19 be made at the bench, your Honor, whatever the offer of

20 proof is. Only he knows what it is.

21 THE COURT: All right, you may approach the bench.

22 (The following proceedings were had at the

23 bench with only all counsel present.)

24 MR. KANAREK: May I be excused just a minute to get

25 a paper?

26 THE COURT: Yes.

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(Mr. Kanarek leaves and returns.)

MR. KANAREK: The offer of proof would be, your Honor, that Mr. Bugliosi -- will you please, Mr. Bugliosi, step back? He is deliberately --

MR. BUGLIOSI: I am trying to hear what you are saying, Mr. Kanarek.

MR. KANAREK: -- that Mr. Bugliosi, your Honor, has offered to the mass media by way of the newspapers, radio, and TV, statements concerning me, that he has deliberately publicly instituted statements such as what I am reading now from the June 27th, 1970 Herald Examiner, and I am reading now from Page A-2:

> "Bugliosi previously stated that Kanarek's ouster was being sought because he 'is incompetent and a professional obstructionist, dedicated to frustrating the proper administration of justice.'"

And then there is before that a statement, that Chief Deputy District Attorney Joseph Busch said that the effort to remove Kanarek from the case will now be taken to the Supreme Court.

This publicity, your Honor, is again a subtle attempt, because the prosecution has no case against Mr. Manson, is an attempt to prejudice the eyes of the jury.

MR. STOVITZ: What question does counsel want to ask Mr. Bugliosi from the witness stand?

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1 That is what the offer of proof was for.

2 MR. BUGLIOSI: This article is quoting statements I
3 made in open court. These are not out-of-court statements
4 which I made.

5 MR. KANAREK: May I finish my offer of proof?

6 If Mr. Bugliosi took the witness stand and told
7 the truth, he would testify that he has so stated to the
8 mass media, as I say, to the newspapers, radio and
9 television.

10 That is my offer of proof; that if he told the
11 truth he would admit having made these statements concerning
12 me.

13 MR. STOVITZ: We submit that has nothing to do with
14 the motion before the Court. The offer of proof should be
15 disallowed, your Honor.

16 MR. BUGLIOSI: Your Honor, that quotation here from
17 the paper is a quotation from the transcript of a state-
18 ment I made in open court.

19 This is not a statement that was made to the
20 mass media.

21 MR. KANAREK: Your Honor, this is the substance of
22 what Mr. Bugliosi stated over and over again to the mass
23 media.

24 The offer of proof is, that if he were asked
25 whether he made this statement and these types of statement
26 to the mass media, that if he told the truth he would have to

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1 state yes, and the point is that it is publicity, not only,
2 your Honor, in connection with the substance of the
3 substantive offense itself, it is publicity also as
4 directed as against counsel.
5 This is within the purview of what we call
6 publicity.
7 In other words, an attempt to demean the cause
8 of the defendant before the public.
9 THE COURT: Now you are arguing rather than stating
10 an offer of proof.
11 Do you have any objection to the offer of
12 proof?
13 MR. STOVITZ: We object to the offer of proof. It is
14 not pertinent to the motion to dismiss.
15 THE COURT: The objection is sustained.
16 Do you have any further argument, Mr. Kanarek?
17 MR. KANAREK: Yes, your Honor.
18 THE COURT: All right.
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(The following proceedings were had in open court, all counsel and defendants being present:)

MR. KANAREK: Your Honor, I would like to then, if I may, call Mr. Manson as a witness.

THE COURT: We are not going to take any evidence, Mr. Kanarek.

MR. KANAREK: Then may I make the offer of proof as to that? May I do that, your Honor?

THE COURT: Very well, you may make your offer of proof.

MR. KANAREK: The offer of proof is this, your Honor:

When we speak of publicity, the actual testimony of Mr. Manson would be that he has been denied access to the mass media; that he has been denied the right to speak to the press, to get his, whatever his responses might be, to this horrendous publicity that has been generated by the prosecution and law enforcement.

That is in substance what his testimony would be.

His testimony would be that witnesses on his behalf have been run out of the State of California, the County of Los Angeles, the surrounding area, because of the publicity, because of the threat of law enforcement by the use of this publicity.

He would so testify under oath, if your

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Honor would allow him to.

MR. STOVITZ: I object to the offer of proof, your Honor, as not being pertinent to the motion.

THE COURT: The objection is sustained.

Do you have any further argument, Mr. Kanarek?

MR. KANAREK: Yes, your Honor, the argument is this:

In connection with -- would your Honor set aside his suspension of the offer of proof for just a moment so I can make argument on that.

THE COURT: Well, you made your offer. Do you want to augment your offer?

MR. KANAREK: Not augment the offer, but make argument as to why it is relevant and material.

THE COURT: I sustain the objection. Let's go on, Mr. Kanarek.

MR. KANAREK: Very well, your Honor.

We have, your Honor, in this case, as far as Mr. Manson is concerned, and referring to Mr. Fitzgerald's argument, we have here from the very beginning the prosecution realizes they have no case against Mr. Manson.

There is nothing there whatsoever, so what do they do? They set up this synthetic matter of the Manson Family, quote "Family" end quote.

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The idea being conspiracy. In other words, not only in the State of California and the County of Los Angeles, but throughout the world, your Honor, there is this concept of the "Family".

This is a clever device, a very clever device, which makes the conspiracy Count, specially, indefensible. Undefensible, I'm sorry.

You cannot defend that charge because no matter who the jurors are, the conspiracy is already there because we have this family type of arrangement that has permeated anyone who is alive today, almost anyone in the world.

They think of the Manson Family, and therefore this itself is enough to deny Mr. Manson a fair trial.

Referring to Mr. Manson as a hippy cult leader.

In other words, a conspiracy -- the conspiracy is there, and because of the fact that a co-conspirator is reponsible for all of the acts of the people involved in the conspiracy, the result is a foregone conclusion.

And this is probably the most subtle and the most clever aspect of what the prosecution has done.

The District Attorney's Office -- the District Attorney's Office has a public relations man,

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1 a Mr. Litman, whose function is to make these releases
2 to the press, and so the District Attorney's Office is
3 set up, your Honor --
4 THE COURT: Now, just a moment, Mr. Kanarek, you
5 are now arguing things that are not on the record before
6 the Court.
7 Confine yourself to the record before the
8 Court on this motion.
9 MR. KANAREK: Well, then, may I make that offer
10 of proof, that there is a -- in the District Attorney's
11 Office, there is a public relations, a Bureau of Public
12 Relations section.
13 THE COURT: Well, your showing should have been
14 filed with this court sometime ago. This is the time
15 set for argument.
16 You are introducing additional evidence and
17 offers of proof. I let you make several offers.
18 MR. KANAREK: Well, very well, your Honor.
19 Absent then, this; setting aside the
20 consideration, even of Mr. Litman, it is our position
21 that there has been objectively imposed on this trial,
22 even assuming just for the sake of argument that the
23 District Attorney's Office had nothing to do with it,
24 with this publicity, which of course is not the case,
25 there is no question but what objectively imposed upon
26 the minds of the prospective jurors is this horrendous

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publicity.

The jurors as they come to court already know just about everything there is to know concerning this case.

As Mr. Fitzgerald so ably pointed out, if there is a reasonable chance that this publicity is going to interfere with a fair trial, the Court must make a finding of due process, and dismiss the case.

Now, we are dealing in the District Attorney's Office with very sophisticated people.

We are dealing with people who know the law; people who have deliberately set out on a pattern of conduct which pattern of conduct is to get a conviction at any price.

It would seem like, for instance, when we consider the language that is set out in the Billie Sol Estes case, the language that is set out in the Stroble case and in the Stroble case it is most significant that in that case there was a 6 to 3 decision and the matter was not even brought up until after the case had been in the trial court.

It was not until the appellate level that the publicity matter was raised, and even then the United States Supreme Court decision was 6 to 3, and that was back in about 1952.

Presently the standard is more relaxed,

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that is, there is a lesser amount of proof necessary for the Court to be able to make a finding in violation of due process, and the only alternative in this case is to have a trial, have the result which will be with people who have already had their minds permeated by the prosecution's viewpoint, and then go up on appeal, and all of that which takes place.

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Meanwhile, the defendant languishes in jail. It would seem like, your Honor, that in view of the fact the defendant has done nothing in connection with this publicity, nothing whatsoever to cause the problem, in view of the fact that the People have caused this problem, your Honor, it would seem like if their position has any strength to it or any merit to it, that they should have the burden of sustaining this case in the trial court, and I think that there is no question but what there is plenty of evidence before your Honor whereby your Honor can dismiss this case.

And if they have any kind of position, let them come forward with it at this point. I welcome an answer from the prosecution. It is interesting to see what they are going to say; what they are going to say in connection with this case as far as the motion to dismiss is concerned.

I would ask your Honor to consider what they are saying, whether they are merely saying, well, these are very horrible crimes that have been alleged, so no matter what we've done, we just cannot let these defendants get away with it.

That kind of philosophy on their part.

So I invite your Honor to consider what they are going to say before we respond. I don't think there is anything they can say that will possibly make

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it incumbent upon this Court to do anything except dismiss the case.

Thank you, your Honor.

THE COURT: Mr. Bugliosi.

MR. SHINN: May I say something on behalf of Susan Atkins, your Honor?

THE COURT: Yes.

MR. SHINN: I believe, your Honor, the motion to dismiss should be granted as to Susan Atkins, your Honor, on the basis that her confession was published in the Times, I believe December 14th, and this was the result of two violations of her constitutional rights, your Honor.

The first violation was ineffective counsel -- the Sixth Amendment.

The second violation is that she did not intelligently waive her constitutional right to remain silent, your Honor.

I think all parties concerned, in regard to her confession, I believe judicial process was abused to obtain her confession, your Honor.

I set forth all these details, I believe, in my 995 motion where she was taken by court order, I believe Judge Keene signed the court order, to have her removed from Sybil Brand jail to Mr. Caballero's office, her former attorney.

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1 And I believe at that point there was a
2 member of the District Attorney's Office present and
3 between, I believe, all of the parties concerned, she
4 was influenced or persuaded to give up her constitutional
5 right, your Honor, and in cooperation with her own
6 attorney and with a member of the District Attorney's
7 Office influenced her to make statements which I believe
8 were in question and answer form, which was the same
9 questions and answers later asked at the Grand Jury
10 hearing, your Honor.
11 This resulted in her confession, and this
12 in turn was published in the Los Angeles Times on December
13 14th.
14 Now, there was a gag order, I believe, put
15 out by Judge Keene on December 10th, and her attorney
16 Mr. Caballero was fully aware of this gag order. Yet,
17 this was released on December 14th in the Times newspaper,
18 I believe in book form.
19 Judge Keene took no action regarding the
20 violation of the gag law.
21 In other words, there was no effort on the
22 part of the judicial system to protect the Defendant
23 Susan Atkins regarding her constitutional rights, your
24 Honor.
25 As Mr. Fitzgerald pointed out, any time
26 someone releases a confession, the Court should at that

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1 time either dismiss the case or continue the matter until
2 the time when the publicity dies down.
3 Now, I think the guideline set forth is
4 the Shepard case, also adopted by the ABA, if the publicity
5 has prejudiced the defendants in a criminal case, they set
6 forth different remedies which the Court can take into
7 consideration.
8 I think some of the remedies they set forth
9 was either a continuance until the time the publicity dies
10 down, or either grant a change of venue, or even consider
11 waiving the jury and bringing in a Judge from another
12 County who would not be influenced by the political and
13 social pressures of the community.
14 Also use the remedy of trying to bring in
5e fls. 15 a jury from another County that has not read the publicity.
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So those are a solution set forth I believe, or the remedies suggested in the Sheppard case and also by the ABA, which was set forth by Judge Reardon.

Therefore, on the basis of all this, your Honor, I feel, your Honor, that the Court should at least make a minimum effort to give these defendants a fair trial, your Honor.

The way we are proceeding now it is just a hollow hope that we may get a jury that is impartial and give these defendants a fair trial.

THE COURT: Mr. Bugliosi.

MR. BUGLIOSI: Yes, your Honor, I just want to very briefly respond.

THE COURT: Respond standing up, sir.

MR. BUGLIOSI: I find Mr. Fitzgerald's, Mr. Kanarek's and Mr. Shinn's accusations, your Honor, to be not only almost unbelievable, but totally unbelievable.

I might add if the prosecution were seeking to garner public support for our case, as Mr. Fitzgerald nakedly declared, we would not be telling our story in an article in The Rolling Stone, your Honor, an obscure underground newspaper that virtually no one had ever heard of.

That is, until Mr. Fitzgerald seized upon the article in an unbridled fashion and focused the public spotlight on it.

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I might remind the Court that thus far not one prospective juror has ever read the article or even heard of The Rolling Stone publication -- I take that back -- there was one juror, but he said the only time he had heard of it was within the past week or two, that is, after Mr. Fitzgerald brought it to the attention of the world.

We don't need, your Honor, to prove our case in the media. We intend to prove our case in open court by competent evidence from that witness stand, under oath.

The defense, your Honor, claimed that they want to avoid prejudicial pretrial publicity, and I say, your Honor, Mr. Stovitz and I both say, that by bringing this previously obscure article to everyone's attention they have encouraged and promoted that which they are allegedly, and I underline the word, allegedly, seeking to eliminate.

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Your Honor, this defense motion to dismiss was ill conceived --

THE COURT: Mr. Bugliosi, you are a little too close to the microphone.

MR. BUGLIOSI: This defense motion was ill conceived, your Honor. It has led a rather shabby existence, and I suggest that it be kindly executed and buried in a judicial morgue; i.e., the People respectfully request that the Court summarily deny the defense motion to dismiss.

MR. SHINN: May I be heard further, your Honor, very shortly, in response to Mr. Bugliosi's statement that he just made?

THE COURT: Yes, I understand, but let's take it in order.

Do you care to respond, Mr. Fitzgerald?

MR. FITZGERALD: No.

THE COURT: Mr. Reiner?

MR. REINER: Yes, your Honor, I would wish to respond very briefly to Mr. Bugliosi.

I would wish to address myself to the impact of the statements that have been attributed to Mr. Stovitz that were published in the Rolling Stone article.

Of course, in a case, as here, that attracts wide public attention, the assertions and the

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1 speculations of the media can and have, of course, in this
2 case, been prejudicial; however, we are not dealing here
3 with the mere assertions of the media. We are dealing
4 with the assertions of a public official charged with the
5 responsibility of prosecuting this case; and the distinc-
6 tion between the assertions of the media and the assertions
7 of the District Attorney's Office is not merely a distinc-
8 tion or a difference in degree but it becomes a difference
9 in kind.
10 We have, with assertions of the District
11 Attorney's Office, what amounts to something that takes
12 on the color of an official version.
13 And if I might note, just to put this in
14 proper context, if a prosecutor were, during the course
15 of argument, merely to assert to the jury that he
16 believed in the truthfulness of a particular witness,
17 that that would then be sufficient grounds for a mistrial,
18 simply because the courts have held, uniformly, that a
19 prosecutor may not put the weight and force and effect
20 of his office behind the truthfulness and the credibility
21 and believability of certain witnesses.
22 Here we have matters that could not be done
23 in open court being done by releasing this to the media.
24 So that is why we take the position that the impact of
25 assertions from a public official charged with responsi-
26 bility for the prosecution is substantially different than

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the mere -- and I use the word "mere" carefully -- the mere assertions or speculations that would come from the media.

Thank you.

THE COURT: Mr. Kanarek?

MR. KANAREK: Yes, your Honor, just briefly.

I would ask your Honor to take notice of what is already in the record in connection with the District Attorney's position as far as publicity goes, that there is this position that the District Attorney has taken that these things must be made known to the public, that the public has this right to know in connection with matters that are going on in court.

We believe that circumstantial evidence sometimes is a lot stronger than direct evidence, so to speak; and the circumstances here appear to be that the District Attorney's Office is tuned in, from the publicity standpoint, on "letting the public know."

And pontificating in that regard, they then go ahead and win their case, they get those jurors to make up their minds before they ever come to this courtroom.

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That is why I ask your Honor in advance to consider what would the prosecution have to answer? Instead of making an answer, they are calling names, they are making conclusionary statements, they are making sarcastic statements, "Bury it; send it to the morgue," or something like that, whatever Mr. Bugliosi said.

However, evidently they are very confident of winning this motion. It seems to me that we have to, and I think your Honor will agree, that the quantum of proof in a motion of this type is the civil quantum of proof. The mere preponderance of evidence dictates this. We don't have to prove this motion beyond a reasonable doubt to a moral certainty. All we have to do is prove it by the mere preponderance.

The People haven't offered anything in rebuttal, your Honor. They are depending -- I hope, your Honor, I hope that their dependence is misplaced -- they are depending upon -- I don't know what -- that the Court will rule in their favor with nothing, no exhibits, no evidence, nothing by way of cases, nothing except for the fact that they want to get up and say, "We want your Honor to rule in our favor."

The fact is clear that the prejudice is there. The prejudice as to Mr. Manson is before you right now. This trial can become just a mere charade when those jurors have heard and seen what they have heard and seen.

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The jurors have heard people in the community speak concerning this case in the most unusual places, as your Honor knows from hearing the voir dire, in the most unusual places these matters have been spoken of, and we ask your Honor to let the chips drop where they may and dismiss this case.

The District Attorney may have some remedy if your Honor dismissed.

Mr. Bugliosi is smiling a sarcastic smile at me as I say that, but I believe, your Honor, that we will have greater respect for the law, that this community and the United States of America will have greater respect for the law and for law and order and the Constitution -- this is a strict constructionist argument -- the Constitution indicates that the defendant is entitled to a fair trial. Well, let's strictly construe it and allow him to have a fair trial.

Can he have it in this atmosphere? It is impossible. Our cases say that, therefore, the case must be dismissed. And let's see what the District Attorney can do after your Honor does that. They are not without some remedy. They have avenues of approach.

And I think this will imbue all of us with a greater respect for the processes of the law.

Thank you, your Honor.

MR. SHINN: Your Honor, one short statement.

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1 Your Honor, I believe in a case like this
2 there is utter confusion as to the issues here, and I
3 believe that the Court should at least, the least you can
4 do, your Honor, I think, is give us an evidentiary hearing
5 so that we can bring in witnesses, so that we can bring in
6 additional information regarding this publicity and the
7 effect on the defendants.
8 That is one of the remedies set forth in the
9 guidelines used in the Sheppard case and the ABA adoption,
10 your Honor.
11 I think we should have an evidentiary hearing.
12 The evidentiary hearing won't take more than, say, about
13 two or three hours. Because all we have here now is just
14 conversation between the District Attorney's Office and
15 the defendants. At least we filed exhibits, which I don't
16 think that the District Attorney has.
17 So, I feel that the minimum effort made by the
18 Court should at least give us an evidentiary hearing.
19 We can't just say, well, the publicity is too
20 wide and everybody knows about this case, and just forget
21 it that way. I feel if we do have an evidentiary hearing
22 then the Court will be more aware of what the publicity has
23 done and the impact of the publicity on this case.
24 Submit it.
25 MR. STOVITZ: Submit it, your Honor.
26 THE COURT: I have considered all of your motion

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papers and your exhibits, I have also considered it in connection with the other papers that have been filed in this case and the other motions, and in addition, during the past two weeks, the examination of the prospective jurors in chambers as having a bearing on this, and I find no basis upon which the defendants' motion should be granted and, accordingly, the motion to dismiss is denied.

We will take a recess for ten minutes and then resume with the examination of the jury.

(Recess.)

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(The following proceedings were had in open court, all defendants and all counsel being present, the prospective jurors being in the courtroom:)

THE COURT: All parties and counsel are before the Court. The prospective jurors are in the jury box.

You may proceed, Mr. Bugliosi.

MR. BUGLIOSI: Thank you.

Friday, ladies and gentlemen, we just finished questions and answers on the death penalty. I was about to commence my questions on other issues with which you are going to be intimately involved during this trial.

I would like to remind you once again to continue as you have been, answering the questions very freely.

I might add that even though some of my questions easily lend themselves to a yes or no answer, please don't feel so restricted.

I would welcome, in fact I would encourage, you to elaborate on or qualify a particular yes or no answer.

Count number VIII of the Grand Jury Indictment, as you probably know by now, charges these defendants with the crime of conspiracy to commit murder.

At the conclusion of the evidence in this case, but before you deliberate, his Honor is going to instruct you on the law applicable to the case.

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Among other things, his Honor will instruct you to the effect -- and these will not be his exact words -- he will instruct you to the effect that a conspiracy is an agreement --

MR. SHINN: Your Honor, we object.

MR. KANAREK: Your Honor, I don't believe it is proper to go into what the instructions are at this time.

MR. STOVITZ: I suggest that counsel listen to the question and then you will see what the purpose of the question is.

MR. BUGLIOSI: This is all examination going to --

THE COURT: I will permit the examination for the purpose of illustration only.

MR. BUGLIOSI: Yes. It will be for the purpose of illustration, your Honor. I have to lay a foundation.

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THE COURT: The jury is admonished that the law will be given to you by the Court in the form of the Court's instructions during and after the trial, and that will be the only source of instruction on the law.

You are being asked by counsel just to determine your state of mind on the question of whether or not you have any actual or implied bias.

Go ahead.

MR. BUGLIOSI: His Honor will instruct you to the effect that a conspiracy is an agreement between two or more persons to commit a crime followed by an overt act to carry

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out the object of the conspiracy.

His Honor will further instruct you to the effect -- and again, these are not his words -- that once a conspiracy is formed, all conspirators are criminally responsible for the crimes committed by the co-conspirators if these crimes were committed to further the object of the conspiracy.

MR. KANAREK: Your Honor.

THE COURT: Do you have an objection?

MR. KANAREK: Yes.

THE COURT: What is it?

MR. KANAREK: This is pre-instructions.

THE COURT: I have already ruled on this point, Mr. Kanarek. Your objection is overruled.

MR. BUGLIOSI: For example, ladies and gentlemen, let's assume that parties A, B and C conspire to commit a robbery. However, only B and C actually commit the robbery. A, being a co-conspirator, is equally guilty of that robbery even though he, himself, did not commit the robbery.

With that thought in mind, I would like to ask each of you this question, and I will start out with you again, Mr. Stokes. You are always the lead-off man.

VOIR DIRE EXAMINATION OF HERMAN R. STOKES

BY MR. BUGLIOSI:

Q Mr. Stokes, do you understand this rule of

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1 conspiracy which makes a conspirator responsible for and
2 guilty of the crime committed by co-conspirators?
3 A Yes.
4 MR. KANAREK: Your Honor, I must object on the ground
5 that how can he understand? Your Honor has indicated that
6 he is not going to instruct until the end of the trial.
7 THE COURT: I think the objection is a good one,
8 Mr. Bugliosi.
9 It is one thing to use the statement for
10 illustration. It is another thing to ask the prospective
11 juror whether he understands that to be the law.
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MR. BUGLIOSI: Your Honor, I believe that statement, in all deference to the Court, was a correct statement of the law, and that it is foundational for the further question that assuming he understands it, is he willing to follow the Court's instruction on this rule of law.

It is difficult to ask a juror, your Honor, whether he will follow a particular instruction or rule of law when he does not understand it.

So, this is strictly foundational, your Honor.

THE COURT: You have laid the foundation. Now, let's get to the voir dire.

MR. BUGLIOSI: This is the voir dire, your Honor. I want to know if the jury understands this rule of law.

THE COURT: Sustain the objection, Mr. Bugliosi. Let's proceed.

MR. BUGLIOSI: May we approach the bench, your Honor?

THE COURT: No.

MR. BUGLIOSI: Your Honor, the People are relying on a conspiracy theory in this case. May we approach the bench for an in depth discussion?

THE COURT: You have had my expression of opinion on the subject. Now, let's proceed, Mr. Bugliosi.

MR. BUGLIOSI: Q Mr. Stokes, do you disagree with this rule of law?

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MR. SHINN: Same objection, your Honor.

MR. KANAREK: Join, your Honor.

THE COURT: No rule of law has been stated as such, Mr. Bugliosi. That is precisely the point. You have made statements, which I assume were for the purpose of illustration.

MR. BUGLIOSI: Yes.

THE COURT: Setting forth to the jury a possible theory in a general form.

MR. BUGLIOSI: Yes.

THE COURT: For the purpose of asking whether or not he will follow the instructions along those lines generally.

Do you understand, Mr. Stokes, that this has not been an attempt to instruct you as to what the law is, but these statements are merely for the purpose of illustration to find out if there is something about the general nature of these statements that would prevent you from following the Court's instructions on the law when they are given to you.

Do you understand?

MR. STOKES: Yes.

THE COURT: All right.

MR. BUGLIOSI: Q Assuming that the Court instructs you to the effect which I have just indicated to you, Mr. Stokes. Do you disagree with that type of instruction or that rule of law?

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MR. KANAREK: Same objection, your Honor.

THE COURT: Overruled.

MR. STOKES: No, I don't.

MR. BUGLIOSI: Q Will you promise to unhesitatingly follow the Court's instruction on this rule of law if you find it applicable to the facts in this case?

A I will.

MR. BUGLIOSI: Mr. Reynolds, do you disagree with the rule of law that I have indicated?

MR. REYNOLDS: No, I don't.

MR. BUGLIOSI: Do you promise to follow this rule of law if you find it applicable to the facts in this case, sir?

MR. REYNOLDS: Yes, if it is applicable.

MR. BUGLIOSI: Mr. McBride, do you disagree in any fashion with the rule of law that I have indicated?

MR. McBRIDE: No, I don't.

BY MR. BUGLIOSI:

Q Do you promise to unhesitatingly follow the Court's instructions on this rule of law if you find it applicable to the facts in this case?

A Yes.

MR. BUGLIOSI: Miss Pahn, do you disagree at all with this rule of law that I have indicated?

MISS PAHN: No.

MR. BUGLIOSI: Do you promise to unhesitatingly

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follow the Court's instructions on this rule of law if you find that it applies to the facts of this case?

MISS PAHN: I will.

MR. BUGLIOSI: Mr. Dominguez, do you disagree in any fashion whatsoever with the rule of law that I have indicated?

MR. DOMINGUEZ: No, I don't.

MR. BUGLIOSI: Do you promise to follow the Court's instructions on this rule of law if you find it applies to the facts in this case?

MR. DOMINGUEZ: Yes, I do.

MR. BUGLIOSI: Mr. Nelson, do you disagree in any fashion whatsoever with the rule of law that I have indicated?

MR. NELSON: No, I don't.

MR. BUGLIOSI: Do you promise to follow the Court's instruction on that rule of law if you find that it applies to the facts of this case?

6d fls. MR. NELSON: Yes, I will.

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MR. BUGLIOSI: Mr. Rios, do you disagree in any sense whatsoever, sir, with the rule of law that I have indicated?

MR. RIOS: No, sir, I don't.

MR. BUGLIOSI: Will you promise to follow the Court's instructions on this rule of law if you find that it applies to the facts in this case?

MR. RIOS: Yes, sir.

MR. BUGLIOSI: Miss Mesmer, do you disagree with this rule of law in any fashion?

MISS MESMER: No, I do not.

MR. BUGLIOSI: Do you promise to unhesitatingly follow the Court's instructions on this rule of law if you find it applicable to the facts in this case, ma'am?

MISS MESMER: Yes, I do.

MR. BUGLIOSI: Mrs. Gordon, do you disagree in any fashion, ma'am, with this rule of law that I have indicated?

MRS. GORDON: No, I don't.

MR. BUGLIOSI: Do you promise to follow the Court's instruction on this rule of law, ma'am, if you find it applicable to the facts in this case?

MRS. GORDON: Yes.

MR. BUGLIOSI: Mr. Frondorf, do you disagree in any fashion whatsoever, sir, with the rule of law that I have indicated?

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MR. FRONDORF: No, I don't.

THE COURT: Will you promise to unhesitatingly follow the Court's instruction on that rule of law, Mr. Frondorf, if you find that it applies to the facts in this case?

MR. FRONDORF: Yes, I will.

MR. BUGLIOSI: Mr. Black, do you disagree, sir, in any fashion whatsoever with the rule of law that I have indicated?

MR. BLACK: No, I don't.

MR. BUGLIOSI: Pardon? I'm sorry, I can't hear you.

Do you disagree with that rule of law, sir?

MR. BLACK: No, I don't.

MR. BUGLIOSI: Do you promise to follow the Court's instructions on that rule of law if you find it applicable to the facts in this case?

MR. BLACK: Yes, I will.

MR. BUGLIOSI: Mr. Tubick, do you disagree in any fashion whatsoever, sir, with that rule of law that I have indicated?

MR. TUBICK: No.

MR. BUGLIOSI: Do you promise to unhesitatingly follow the Court's instruction on that rule of law if you find it applicable to the facts in this case?

MR. TUBICK: Yes, sir.

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MR. BUGLIOSI: Do all of you recall Mr. Reiner stating that -- I believe it was on Thursday or perhaps Friday -- that the Court will instruct you to the effect that you can't convict a defendant upon the uncorroborated testimony of an accomplice.

Do you recall his telling you that?

Now, if his Honor instructs you that to constitute an accomplice to a crime one has to knowingly and with criminal intent aid by some act or advise the commission of the crime, will you follow that instruction?

Assuming that a witness for the prosecution, ladies and gentlemen, is deemed to be an accomplice -- and I am not stipulating for one moment, but let's just assume that a witness for the prosecution is deemed to be an accomplice -- if the Court instructs you that only slight evidence is necessary to corroborate the testimony of the accomplice, will you follow the Court's instruction on that?

Have any of you or any member of your family or any relative, or perhaps a close friend, ever been charged with or accused in any fashion whatever of the crimes of murder or conspiracy to commit murder?

A close friend or relative?

Have any of you ever worked for the Public Defender's Office here in Los Angeles? Or elsewhere?

Have any of you ever worked for a criminal

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defense attorney?

Do any of you have a close friend or relative who presently is or has been a criminal defense attorney?

Have any of you ever met or spoken to or been represented by or associated in any fashion whatsoever with the following attorneys: Charles Holopeter? Richard Walton? Marvin Part? Ronald Hughes? Carl Ransom? Leon Salter. Donald Barnett? Richard Caballero? Luke McKissick. Ellen Steinberg. Gary Fleischman? Ronald Goldman.

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Do any of you have any association whatsoever with any one of those attorneys?

You have heard the court, ladies and gentlemen, and defense counsel say that the prosecution has the burden of proving the guilt of these defendants beyond a reasonable doubt. Do you recall the Court and defense counsel telling you that?

Would any of you require any burden of the prosecution over and beyond that which the law requires?

Am I correct in assuming, then, ladies and gentlemen, that you will require that we prove the guilt of these defendants simply beyond a reasonable doubt? Am I correct in assuming that?

You all understand, ladies and gentlemen, that in a criminal trial, whether the defendant is being charged with murder or assault and battery, drunk driving, burglary, whatever the crime happens to be, the prosecution has the same identical burden of proof, to prove the defendants' guilt beyond a reasonable doubt, not beyond all doubt but beyond a reasonable doubt.

Do you all understand that?

Do you understand that our burden of proof is no greater in a murder case than it would be, for instance, in a drunk driving case? Do you all understand that?

Now, because the prosecution in this case is

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1 going to ask you to return verdicts of first-degree murder
2 against these defendants, do any of you feel that we should
3 have a greater burden of proof than we would have if we were
4 prosecuting these defendants for some other crime such as
5 burglary?
6 Do you all understand my question?
7 Are any of you of such a frame of mind that
8 before you would be willing to return verdicts of first-
9 degree murder you would require of the prosecution not only
10 that we remove all reasonable doubts of the defendants'
11 guilt from your mind but you would require that we remove
12 all doubt?
13 Are any of you of that frame of mind?
14 Do you all realize, ladies and gentlemen, that
15 although a defendant at the start of a criminal trial is
16 presumed to be innocent, this presumption of innocence only
17 lasts until his guilt has been proven beyond a reasonable
18 doubt?
19 Do you understand that?
20 Do you understand, further, that once his guilt
21 is proven beyond a reasonable doubt, the presumption of
22 innocence has been rebutted and, therefore, it no longer
23 exists?
24 Do you all understand that?
25 Without asking you to prejudge any of the
26 evidence in this case, the prosecution intends to rely in

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1 part upon circumstantial evidence as well as, of course,
2 direct evidence.
3 His Honor will instruct you that the crimes
4 of murder and conspiracy to commit murder can be proven by
5 circumstantial evidence.
6 His Honor will further instruct you to the
7 effect that the law shows no preference for direct
8 evidence over circumstantial evidence or, for that matter,
9 circumstantial evidence over direct evidence as a means of
10 proof.
11 Now, before asking you whether you are opposed
12 in any fashion whatsoever to sitting as a juror on a case
13 where the People rely in part on circumstantial evidence,
14 let me briefly indicate to you the distinction between
15 direct and circumstantial evidence so that you will be
16 better equipped to answer the question.
17 Direct evidence, ladies and gentlemen, is
18 evidence that proves a fact in issue without the necessity
19 of drawing any inferences.
20 Circumstantial evidence, on the other hand, is
21 evidence which tends to prove a fact in issue by proving
22 another fact.
23 Let me give you an example, a brief example,
24 that is commonly given to jurors to illustrate the
25 distinction between these two types of evidence.
26 Let's assume, if you will, that all of the

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oatmeal cookies have been taken from a cookie jar in the kitchen of Mrs. Jones. Five minutes later Mrs. Jones discovers her only child, Johnnie, five-year old Johnnie, eating the cookies in the living room.

Now, the ultimate issue is, who took the cookies? Mrs. Jones' observing Johnnie eating the cookies in the living room is a fact in and of itself, but it is circumstantial evidence of the ultimate fact that it may have been Johnnie who took the cookies.

Now, if Mrs. Jones had actually observed Johnnie reach into the cookie jar and remove the cookies and take them into the living room, of course, this would be direct evidence as opposed to circumstantial evidence.

With that brief legal background in mind -- and in the nature of things, of course, it has to be brief -- you can't conduct a law class here -- are any of you opposed in any fashion whatsoever to sitting as a juror on a case where the People rely, in part, on circumstantial evidence?

In the trial of these defendants, ladies and gentlemen, the prosecution will not offer eye witness testimony on all of the murders. Are any of you of such a frame of mind that you would not, under any circumstances, convict any defendant of murder unless the prosecution offered eye witnesses to the murder?

Are any of you of that frame of mind?

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Again, as I have indicated throughout, don't hesitate to speak up. Raise your hand and speak up.

Now is the time to do it, of course, not later on.

Are any of you of such a frame of mind that you would not convict any defendant of murder unless the prosecution offered a particular type of evidence against that particular defendant, such as a confession or fingerprint?

Are any of you of that frame of mind?

Do you all understand that question?

At the end of this case, but before you retire to the jury room, as you know, his Honor is going to instruct you on the law applicable to this case.

If the law given to you by the Court is different from what you thought the law was, or different from what you think the law should be, will you nevertheless set aside your own personal beliefs and follow your oath, and follow the instructions given to you by the Court?

Will you all promise me that?

Do you all understand that as jurors, ladies and gentlemen, you will be the sole and exclusive judges of the credibility of the witnesses, that is, whether a particular witness is telling the truth or not?

Do you all understand that?

You arenot going to get any help on that. It is

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up to you to decide whether a particular witness is telling the truth or not.

Do you understand further that in determining credibility you have the right to take into consideration such factors as the witness' demeanor on the witness stand; the witness' manner of testifying; a witness' interest in the outcome of the case, or any bias or prejudice he or she may have against either the defense or the prosecution.

Do you all understand that?

You can take these factors into consideration.

Mr. Fitzgerald, in his questioning, told you that you should not give any more weight to the testimony of a police officer than any other witness. Do you recall his saying words to that effect? To that general effect, yes.

You all understand that what Mr. Fitzgerald meant by that -- if I may be so presumptuous -- is that he did not want you to give any extra weight to the testimony of a police officer just because of the officer's occupation and profession.

Do you all understand that?

In other words, ladies and gentlemen, you have to look at each witness and examine that witness personally and individually by observing his demeanor on the stand, his testimony, and form your opinion as to whether

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the person is telling the truth or not.

You understand further that after you have done that, after you have listened to the witness' testimony, it is perfectly permissible and [redacted] normal and to be expected that you will sometimes give more weight to the testimony of one witness than you would to the testimony of another witness.

Do you all understand that?

For instance, after a police officer testifies, you might decide to give his testimony more weight or less weight or the same weight as the testimony of some other witness on that particular issue.

Do you all understand that?

Incidentally, ladies and gentlemen, the evidence in this trial may indicate that a man named Steve ~~Rogan~~ Brogan, also known as Clem Tufts, was allegedly with these defendants on the night of the La Bianca murders.

Do you all realize that the reason why Mr. ~~Rogan~~ Brogan is not presently on trial with these defendants should be of no concern to you during your deliberations?

MR. KANAREK: Your Honor, we submit this is improper voir dire examination.

MR. BUGLIOSI: May we approach the bench on this, your Honor?

THE COURT: You are getting into collateral matters, Mr. Bugliosi.

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MR. BUGLIOSI: It is really not a collateral matter, your Honor.

We would very much appreciate discussing this at the bench.

THE COURT: All right.

A (The following proceedings were had at the bench, all of the counsel being present:)

MR. BUGLIOSI: The point is, your Honor, I think this is a standard question which I have personally used in nearly every trial where a particular individual who participated in the crime, such as robbery, is not present at the counsel table.

The jury should be told that when they hear evidence of this other party involved in a crime, they are not to be concerned with that; there might be a multitude of reasons why this particular party is not at the table.

This should not concern them during their deliberations.

Now, if they are not told that, they are apt to say, "Wait a while" --

THE COURT: Not quite so loudly.

MR. BUGLIOSI: I'm sorry.

If the jury is not told that in advance, they have to go back to the jury room and say, "Now, gee whiz, here is another guy who supposedly was with the defendants. How come he is not" --

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THE COURT: But I think the objection to your question is that you are getting too specific, alleging things which may or may not be shown by the evidence.

MR. BUGLIOSI: In other words, mentioning the La Bianca murders?

THE COURT: Put it in general form.

MR. BUGLIOSI: I must mention his name, of course.

THE COURT: I don't think you have to mention that. It doesn't make any difference who he is. The principle is the same.

MR. BUGLIOSI: That is true, but his name, I will make the representation to the Court, will be mentioned.

THE COURT: Then you are getting into evidentiary matters which I see no necessity for.

The inquiry is proper if kept in general terms.

MR. BUGLIOSI: All right, thank you very much.

MR. REINER: I don't agree with Mr. Bugliosi's view that the jury may not consider any reason why Mr. Grogan is not a defendant in this case.

By way of example, the jury undoubtedly will be considering why Miss Kasabian is not seated here at counsel table, in evaluating her testimony.

If it should occur that the prosecution does call Mr. Grogan, obviously we would go into such matters to determine his credibility.

THE COURT: I don't understand what you are saying.

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1 What has that to do with what we are talking about?

2 MR. REINER: Then it would make Mr. Bugliosi's

3 statement incorrect, if Mr. Grogan is called by the

4 prosecution and testifies for them, we should then show

5 the reason he is not a defendant in this case is because

6 some sort of deal, perhaps, was made with him that would

7 relate to his credibility.

8 THE COURT: All of this may be true. What has that

9 to do with what we are talking about?

10 MR. REINER: Mr. Bugliosi told the jury they may not

11 consider the reasons he is not a defendant in this case.

12 I say they may under certain circumstances.

13 THE COURT: Mr. Bugliosi is not instructing the jury

14 what they can do or cannot do.

15 He is trying to ascertain their frame of mind.

16 He has not asked that question yet.

17 MR. REINER: I believe that was his last question.

18 MR. BUGLIOSI: If they realize the reason why he is

19 not charged with this crime should not be a part of their

20 deliberation.

21 If he becomes a witness, that is a different

22 story. But if he is not a witness, I think it is very

23 important that the jury be told that why a certain defendant

24 is not at the table is something they should not consider

25 back in the jury room during their deliberations.

26 This is a very standard type of situation, I

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can represent to the Court.

THE COURT: I think it should be kept on very general terms.

MR. BUGLIOSI: I will, I will; thank you, your Honor.

THE COURT: It is now 12:00 o'clock, gentlemen, how much more are you going to have?

MR. BUGLIOSI: About five more minutes, probably not even that, three or four minutes.

THE COURT: I was wondering if you could conclude in three or four minutes, I would be inclined to let you go ahead, because then I could exclude Mr. Reynolds, instead of having him come back this afternoon.

I don't want to rush you. On the other hand I don't want to go to 12:30 either.

MR. BUGLIOSI: No, no, I swear -- I only have three more pages and they are very brief.

THE COURT: Three pages! I think we'd better put it over. I have to go to a meeting.

MR. BUGLIOSI: Okay.

(The following proceedings were had in open court in the presence and hearing of all the prospective jurors:)

THE COURT: Court will adjourn until 2:00 p.m.

Ladies and gentlemen, do not converse among yourselves or with anyone else on any subject relating to the case, nor form or express any opinion regarding the case

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until it is finally submitted to those of you who are selected as trial jurors.

I regret we were late starting this morning, but we had some preliminary matters which took a good deal longer than I had anticipated.

2:00 p.m., please.

(Whereupon, a recess was taken to reconvene at 2:00 p.m., same day.)

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LOS ANGELES, CALIFORNIA, MONDAY, JUNE 29, 1970

3:55 P.M.

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(The following proceedings occurred in chambers, all counsel save and except Mr. Stovitz being present; the defendants not being present:)

THE COURT: The record will show all counsel are present except Mr. Stovitz.

(Mr. Stovitz enters chambers.)

THE COURT: Now Mr. Stovitz is present.

Gentlemen, it is now five minutes to 4:00. I think we are entitled to some kind of an explanation, Mr. Reiner.

MR. REINER: Yes, your Honor.

Today, as I indicated earlier to the Court, I was scheduled to appear in Federal Judge Hauk's court on a sentencing matter.

This matter had been set for sentencing for quite some time. Initially it was set for sentence in January, February, March, the early part of the year. At the time this particular date was set, that went back to early May, as I recall the date, when this particular date was set.

We went over there -- or I went over there -- at a quarter to 2:00 and the Court was not open.

Just shortly after 2:00, the Court opened but the Court did not take the bench until approximately 2:30.

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1 We had requested priority and we were waiting to
2 go on.
3 Then the U.S. Attorney who was assigned to the
4 case was not present, and the U.S. Attorney who was present
5 was unfamiliar with the file. In fact, the file was
6 not in the courtroom.
7 So, he had to ask leave of court to leave the
8 courtroom and go to his office to see if he could locate the
9 file.
10 He did, and it was while he was gone was when I
11 called the court here, I believe it was approximately a
12 quarter to 3:00, and indicated what had happened.
13 Shortly after I called the Court, the U.S.
14 Attorney returned to the Court with the file, and the
15 matter was called.
16 A certain problem arose, and the Judge asked us
17 to place a phone call to a certain Colonel O'Brien, who was
18 involved in the sentencing matters for the Court's
19 consideration.
20 I asked the Court if it would be possible to
21 have the matter set over for perhaps a day or two or three
22 to some date where it could be handled at perhaps some
23 early evening hour, or lunch hour, or some such thing, so
24 that I would not hold up the attorneys and so forth, that I
25 was involved in a trial across the street involving a number
26 of lawyers and multiple defendants, and he said, no, that he

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1 wanted to conclude the matter today, and he refused to put
2 that matter over for a day or two.
3 So, we then placed a phone call, which delayed
4 the proceedings another 15 minutes, perhaps, and then
5 returned to the courtroom, and when we returned to the
6 courtroom, the Court was involved in another matter on the
7 calendar which occupied another 15 minutes before it was
8 concluded.
9 At the conclusion of that matter, we were next
10 called, we then argued, and at the conclusion of the argu-
11 ment I returned immediately here back to this court, which
12 took perhaps less than five minutes after the proceedings
13 had terminated across the street.
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THE COURT: This was a sentencing?

MR. REINER: This was a sentencing.

THE COURT: Well, unfortunately we have wasted the entire afternoon.

All right, I don't think there is much point in resuming on the voir dire at this time. The jury has been sitting around here all day waiting for something to happen.

We did manage to get in about a half hour this morning.

MR. REINER: If I might just indicate this, the reason that I felt it was so terribly important that I make the appearance and not attempt to have another attorney appear for me was this:

Last time I appeared before Judge Hauk, Judge Hauk indicated that it was his intention to sentence the defendant to the Federal Penitentiary.

I felt there were strong and compelling reasons why he should be given probation.

I felt I could not delegate that to another counsel. For that reason I felt it was essential to appear.

I did argue for the defendant and I was successful in persuading the Court that the defendant should be given straight probation, and he was given probation, and not given any jail time at all, which would

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1 indicate that would be the type of case where I don't
2 think counsel could have asked another attorney to
3 appear in his behalf.
4 THE COURT: I do ask counsel if you have
5 appearances in some other court that requires your
6 personal presence, rather than some other attorney,
7 I think this could be avoided by checking a day or so
8 ahead of time to find out whether the other side is
9 going to be ready in fact, and avoid the problem of
10 getting locked into some other court where you cannot
11 get out within a reasonable time, and then find out
12 the other side isn't ready, or some other problems
13 come up that you knew nothing about.
14 MR. KANAREK: Just coincidentally, I have a
15 similar problem. I would welcome, your Honor --
16 the Judge involved is Judge Moore of the Municipal
17 Court.
18 I would welcome -- I think Judge Moore
19 would possibly cooperate in hearing that at 1:00
20 o'clock tomorrow. I believe it is set at 1:30. I
21 believe a simple phone call from your Honor to Judge
22 Moore would allow it to be heard at 1:00 o'clock.
23 I would welcome it.
24 THE COURT: What type of matter is it?
25 MR. KANAREK: It is a sentencing, your Honor.
26 MR. STOVITZ: A misdemeanor sentencing?

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1 MR. KAMAREK: Yes, your Honor, it involves someone
2 that is on parole.
3 THE COURT: I am not going to call Judge Moore.
4 I see no reason why you could not request
5 priority. Where is this court?
6 MR. KAMAREK: In the New Courthouse, Division
7 26.
8 I already made one trip over there, and he
9 had the Roosevelt High School disturbances going before
10 him and he was engaged in contemplation of a Judge doing
11 this, asking that it be made earlier.
12 I made one trip over there to ask for that,
13 and he was in this conference, and by the time he was out
14 of that conference I would have been late to court here.
15 I did that in the morning. I was over there
16 early, and so if your Honor could, as I say, I would
17 welcome your Honor's calling.
18 THE COURT: I am not going to call. I think it
19 would be an imposition asking him to start at 1:00
20 o'clock.
21 In any event I think you can ask for
22 priority and I'm sure he would give that consideration so
23 that you could get back over here promptly.
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MR. KANAREK: If your Honor is going to adjourn immediately I will call and then maybe go over there if I may.

I think he may still be in session. May I use your Honor's phone right now?

THE COURT: In just a moment. We will adjourn. I just have one other thing I want to bring up.

MR. KANAREK: Very well, your Honor.

THE COURT: Someone, I don't remember now who, handed me a memorandum which apparently was obtained out in the courtroom sometime today from the District Attorney's Office for the press, radio, and TV, is the way it is addressed.

"Subject: Press Conference Regarding the Tate-La Bianca Case

"Date: June 29, 1970," which reads as follows:

"District Attorney Evelle J. Younger will conduct a press conference on Tuesday, June 30, at 10:30 a.m. in his office, Room 600, Hall of Justice.

"He will discuss the refusal of the Judge hearing the case to hold a hearing on the competency of Manson's counsel.

"Coverage is invited.

"For further information, contact Jerry Littman," and then it gives a phone number.

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I trust, Mr. Stovitz, the District Attorney will permit this trial to go on during the morning session.

MR. STOVITZ: Oh, yes, we won't be at that conference.

THE COURT: That is all right with Mr. Younger?

MR. STOVITZ: Yes, your Honor, it is just that I think --

THE COURT: I am being facetious, so you don't have to spend much time answering that.

I don't suppose it will come as a surprise to you to learn that I wonder at the necessity of the District Attorney holding a press conference to discuss the Court's ruling in a pending case.

But if you would like to suggest some reason for it I would be delighted to hear it.

MR. STOVITZ: I think the press conference will not deal with your Honor's ruling.

THE COURT: That is what this memorandum says is the subject of the press conference.

MR. STOVITZ: It will actually deal with why we are seeking this extraordinary writ.

THE COURT: You mean you are taking it to the newspapers now that the Court has denied the motion.

MR. STOVITZ: We are taking it to the higher court.

THE COURT: What is the reason for the press conference?

MR. STOVITZ: That I will have to ask Mr. Younger.

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I don't know the reason for the press conference.

THE COURT: It is clearly obvious why the press conference, so the question is purely rhetorical.

The point I want to make is that I hope Mr. Younger is acquainted with our publicity order in this case.

MR. STOVITZ: He is.

THE COURT: Including the augmentation thereto, and I consider that the publicity order extends to him personally as well as anybody else in the District Attorney's office.

MR. STOVITZ: He understands that, your Honor.

THE COURT: I will be reading with some degree of interest the results of this press conference.

That is all I have.

If there is nothing further let's go back into court and I'll adjourn at this time.

MR. KANAREK: Your Honor, may I make the motion that your Honor order the District Attorney not to conduct the press conference? I do make that motion.

THE COURT: Well, I'm not going to do that.

I don't suppose I have the power to forbid him to hold a press conference -- certainly not in advance -- unless he has indicated that he is going to do something clearly directly contrary to the Court's order, which he has not so indicated.

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While I seriously question the wisdom and the motives for such a conference, I think he has a right to hold one.

MR. KANAREK: May I ask, your Honor, and I do make the motion, that that piece of paper be marked as an exhibit?

THE COURT: These memorandums apparently have been handed out indiscriminately to all members of the media, Mr. Kanarek, I am sure you will find one lying in the hall.

MR. KANAREK: I make the motion, if I may, that just that one go along with the record in this case as a special exhibit.

THE COURT: I don't see any necessity for it at this time.

This is simply an announcement, nothing has happened yet. I don't know what is going to come out of the conference, if anything.

Anything further, gentlemen?

All right, then is there any reason why we cannot start promptly, aside from any calendar problems I have, tomorrow morning at 9:45?

MR. STOVITZ: No, your Honor, it's agreeable.

THE COURT: Very well, we will go back into court then.

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One other thing. I want the record to be clear. The record is clear but I am not entirely clear in my own mind.

We discussed this morning holding portions of the voir dire examination in chambers. Now, I understand that all of the defendants' counsel are in agreement and are requesting that the Court hold that portion of the voir dire examination as to prospective jurors pertaining to pretrial publicity in chambers.

What is the District Attorney's position on that?

MR. STOVITZ: I have not consulted with Mr. Younger on that. I will this afternoon. And I will tell him that my own personal feeling is that it expedites matters to discuss those matters in chambers rather than excusing the entire jury panel from the courtroom, because there is no other adjacent court that the jury panel can go to; that it is an inconvenience to keep the jurors somewhere else.

I will let him know my views on that.

MR. FITZGERALD: Maybe we ought to get Mr. Younger to try this case. Certainly, if these Deputy District Attorneys don't have the authority to proceed with the case, maybe we shouldn't proceed with the case with them.

It is as absurd as me saying that I have got to check with my superior, I have got to go back to

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1 my office and talk with my senior partner or something.

2 If we need Mr. Younger here for our stipula-

3 tions, maybe we ought to get Mr. Younger here.

4 MR. STOVITZ: I don't think that is necessary.

5 THE COURT: I don't think that the alternative you

6 mentioned is the problem, Mr. Stovitz. It isn't a question

7 of whether we hold it out of the presence of the jury in

8 chambers or in the courtroom. It is either going to be in

9 chambers out of the presence of the prospective jury or

10 it is going to be in open court in front of all the prospec-

11 tive jury.

12 MR. STOVITZ: You see, that is the point. To give

13 the jurors a free expression so that they can come out and

14 say, yes, I have I read the statement of Susan Atkins;

15 yes, I have read the statements of so and so; yes, my

16 mind is prejudiced; no, my mind is not prejudiced.

17 That is the objective to the issue by

18 questioning them in chambers, and I think that by and large

19 that objective has been achieved by the informality of the

20 chambers session; and it also gives other jurors an

21 opportunity to let the Court know about other personal

22 matters that they would not like to let be known in front

23 of a mass audience.

24 So, I personally favor the in-chambers

25 questioning of the jury concerning publicity.

26 In fact, as your Honor recalls, I was the

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one that asked to approach the bench and asked that the hardship question be inquired into in chambers because I felt that this also gave the jurors an opportunity to express their views personally.

Now, Mr. Younger undoubtedly thought that -- and I was not present at the time that he came up with this conclusion -- that too much of the trial was being conducted in chambers and not enough was being conducted for the public to know what is going on.

Mr. Younger undoubtedly heard that your Honor issued this new directive concerning matters that are in chambers on the record that could not be opened to the press or to the public, because the public has no way of knowing unless it is open to the press.

And Mr. Younger undoubtedly felt that would be like a closed-door trial.

Now, as far as the selection of the jury is concerned, it is our hope that we can expedite the matter as quickly as possible so that the trial can begin, and I think having it in chambers is the best way.

10a fls.

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THE COURT: All I want to know is are you going to stipulate to the voir dire in chambers or not?

MR. STOVITZ: At tomorrow's session, at a quarter to 10:00, I will tell your Honor exactly the way I feel.

MR. BUGLIOSI: Your Honor, I have a pretty serious point that I want to discuss on the vicarious liability.

Do you want to discuss it now or tomorrow?

THE COURT: About what?

MR. BUGLIOSI: The Court's ruling that I am not supposed to ask the jurors whether they understand the rule of law.

First, let me say that there is no question in my mind but I stated it correctly. I teach criminal law, so I know a little bit about conspiracy.

Secondly, Manson is charged with seven murders, and this is the theory that we hope to convict him under, vicarious liability.

Now, under 1073 -- I think Subdivision 1 or 2 -- of the Penal Code, we are entitled to jurors who are impartial. Both sides are entitled to that. The People are also.

Why should I assume -- why should I let my mind take leave of my body and assume that someone like Frank Rios has no doubt in his mind what vicarious liability means?

I mean, I have difficulty now and then teaching

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1 my law students. Why should I assume that there is no
2 chance in the world that Frank Rios would not be picked on
3 this jury and then five months from now finally understand
4 what vicarious liability means, and then he says, "Gee, I
5 don't like that rule." Why do I have to assume that?
6 If I am correctly stating the rule of law --
7 and I don't think there is any question that I am -- and if
8 I am asking the jurors whether they arewilling to follow that
9 rule of law, doesn't common sense dictate that I should be
10 able to ask them whether they understand what I am talking
11 about?
12 THE COURT: I already indicated in a general way that
13 in order to illustrate a question for the purpose of
14 inquiring as to a challenge for cause you may; but the thing
15 that I do object to is paraphrasing instructions.
16 In this case, as you know, the laws and the
17 instructions regarding conspiracy are quite involved.
18 You certainly did not give all of them, and I wouldn't
19 let you if you tried.
20 MR. BUGLIOSI: Right. I gave the basic one by which
21 we intend to convict Manson on seven counts of murder.
22 THE COURT: You did, ineffect, paraphrase one and
23 asked him if he understands the law of conspiracy.
24 MR. BUGLIOSI: No. I said: Do you understand this
25 rule of conspiracy which makes a conspirator criminally
26 responsible for the crimes of his co-conspirators.

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10a3

How can I assume that 12 lay people automatically understand that rule of law, just because I mentioned it to them once? How can I assume that?

I want the Court to realize this --

THE COURT: I understand your problem, Mr. Bugliosi, but what you are, in effect, doing is not inquiring as to a challenge for cause, but you are instructing and indoctrinating, and that is the part that I don't like.

MR. BUGLIOSI: Your Honor, as a lawyer and as an officer of this Court, I represent to the Court --

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THE COURT: There is another aspect of it, too, which I think involves a certain amount of -- and I don't think you are doing this intentionally necessarily, but I think the thrust of such a question is that, in effect, the juror is either prejudging or saying, "Yes," without understanding what you are saying.

MR. BUGLIOSI: Your Honor, what is to prevent Frank Rios from saying, "No, sir, I don't understand what you are saying," and then explaining, and if you are not satisfied that I am explaining it properly, then the Court can explain it to him. But what if we have a four or five-month trial and then Frank Rios -- and I am using him hypothetically -- hangs up the jury 11 to 1 because he doesn't believe in that rule of law.

THE COURT: You are not here to give an intelligence test. This is a voir dire examination. If you had any question of his intelligence, that would be something else.

MR. BUGLIOSI: I will pick any person out there, your Honor.

Why should we assume that they understand vicarious liability because I give one simple example?

Mr. Stovitz and I are representing the People of the State of California and we are entitled to impartial jurors under Section 1073, Subdivision 2, I believe it is.

A juror may state, may tell the Court, that he is going to follow the instructions of the Court, but human

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1 nature indicates that people are unconsciously swayed by
2 their sentiments, unconsciously, and if a particular juror
3 doesn't like this vicarious liability and says to himself,
4 "Wait a minute. Manson was back at the Spahn Ranch, and I
5 am not going to convict him for what someone else did," and he
6 hangs up the jury and we have to try this case all over
7 again, we will be in a bad spot.
8 The point that I wanted to make, your Honor,
9 if I am telling the jury the correct rule of law -- and if
10 I am not, I invite the Court to correct me -- if I am
11 telling the jury the correct rule of law, and there is no
12 doubt in my mind that I am, why can't I, as a foundational
13 question, ask them if they understand what I am talking
14 about? Because if they don't understand vicarious
15 liability --
16 THE COURT: Why don't you put it in the form that
17 "If the Court instructed you as follows, would you follow
18 such instruction?"
19 MR. BUGLIOSI: Your Honor, I can give you a case that
20 says that -- and I am sure the Court knows this, and I
21 am sure that every attorney here knows it -- just because a
22 particular juror says he will follow the rules of law does
23 not mean that he is going to do that. It does not mean
24 that.
25 I am very much concerned with --
26 THE COURT: There is no way to solve thatproblem.

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MR. BUGLIOSI: The way to solve it, your Honor, is to ask the people if they understand, and if they don't understand, we should clear it up here.

If not, your Honor, conceivably we can go through a five-month's trial and have a hung jury because someone doesn't like it.

1021, 1 or 2, and 1078 does, too, entitles us to do that, entitles us to reasonable examination, entitles the prosecution to go into this matter, and I would urgently ask the Court to permit us to.

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THE COURT: As a matter of fact, talking about using the examination, Mr. Bugliosi, I would say you have already gone considerably beyond what the Code entitles you to in 1078, and the cases so hold. So, the 1078 argument along those lines doesn't impress me.

MR. BUGLIOSI: The main defendant in this case, I think we can all agree, is Charles Manson, and we intend to convict him of seven counts of murder under vicarious liability, and I don't think the Court should require us to have 12 people who don't know what vicarious liability is all about.

THE COURT: What you are arguing about or taking exception with the Court about, Mr. Bugliosi, is not the principles involved in voir dire but simply the wording of a particular question that you asked.

Now, you have, in effect, actually asked Mr. Rios a number of questions -- Mr. Rios or Mr. Stokes, or whoever it was -- about whether he would follow the instructions regarding conspiracy.

But the particular question to which I sustained an objection was one which I felt that you were getting beyond that.

MR. BUGLIOSI: The question was, your Honor, and I have it written down here in my notes: Do you understand -- and maybe "understand" is a bad word; certainly I don't want to say "apprehend" or "comprehend," or

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1 whatever synonym I can use --

2 THE COURT: The objection is that when you ask him

3 if he understands the law of conspiracy, you have only

4 given him a fraction of the law of conspiracy.

5 MR. BUGLIOSI: No, your Honor. I have got it in my

6 notes and I am sure that it was picked up by the reporter.

7 I said: "Do you understand this rule of

8 conspiracy"-- this rule of conspiracy, not the law of

9 conspiracy. I don't understand the law of conspiracy my-

10 self completely and I teach conspiracy in an accredited

11 law school."

12 I said: "Do you understand this rule of

13 conspiracy which makes a conspirator criminally responsible

14 for the crimes of his co-conspirators.

15 That has to be an accurate statement of the law,

16 and I just want an answer on that one issue, because if

17 one of these jurors says, "I don't understand it," I want

18 to have that resolved right now because it is going to be

19 too late five months from now for some person to hang up a

20 jury because he thinks that Manson was back at Spahn

21 Ranch and he doesn't agree with the Court's ruling or

22 instruction and he is not going to follow it.

23 Then where do we go from there? This whole

24 ballgame has to be played all over again.

25 It is just a simple question, your Honor, and

26 if I am misstating the law I would ask the Court to correct

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me and tell me what words to use, and perhaps the Court can tell Mr. Rios, or whoever it is, what the law is, but please permit us to find out from each juror if they know what I am talking about before I ask them whether they are willing to follow what I am talking about.

I would certainly ask the Court to reconsider that, and I say this, your Honor: I have asked that question in other conspiracy cases. I asked it in the Milton and Floyd case, and there was no impropriety there so far as the California Supreme Court is concerned. They just affirmed that conviction. I asked that identical question in Milton and Floyd. I have asked it in other conspiracy cases. To me it is a standard question.

In all deference to the Court, to eliminate the possibility of a hung jury on something like this, I would urgently ask the Court to reconsider its position and permit me to ask it.

To save time, I won't even ask these jurors all over again, but I will ask subsequent jurors, if you will permit me to ask them if they understand this particular rule of conspiracy.

I think it is essential, your Honor. Well, I think I have stated my position and I will just ask the Court to reconsider that very limited point.

THE COURT: I will read the transcript again of today's proceedings when I receive it tomorrow morning and

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1 give it further consideration.

2 MR. BUGLIOSI: Thank you.

3 I may have been cut short on that, but I know
4 what I was going to say, I have it in my notes, and I think
5 I did get it out, but there was a quick objection.

6 THE COURT: Do you have the question there now?

7 MR. BUGLIOSI: I know exactly what it is. I have
8 it outside.

9 THE COURT: You can bring it to my attention in the
10 morning.

11 MR. BUGLIOSI: "Do you understand this rule of
12 conspiracy which makes a conspirator criminally responsible
13 for the crimes of his co-conspirator." I have it written
14 out.

15 THE COURT: The question contains only the conclusion,
16 it doesn't contain anything about what the law is.

17 MR. BUGLIOSI: "Do you understand this rule of
18 conspiracy?"

19 THE COURT: How can you understand? What you are
20 stating that is that one conspirator is liable with his
21 co-conspirators, but you don't give him anything. He
22 can't understand the basis on which that liability arises
23 because he hasn't been instructed on it.

24 MR. STOVITZ: Perhaps tomorrow, when counsel and your
25 Honor see the record in the case, we could bring this up
26 again, and if there is a way that we can correct the

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1 question, we will do that; but I think that Mr. Bugliosi's
2 point is very well taken because a juror always says they
3 will follow the law but they don't understand it sometimes.
4 MR. FITZGERALD: If you are going to do that, we
5 are entitled to equal time, obviously, and we are going in-
6 to this whole business of accomplice.
7 We stayed out of that area of accomplice.
8 MR. BUGLIOSI: Reiner went into it.
9 THE COURT: I allowed Mr. Reiner to go into it
10 at some length for the same reason that I am permitting
11 you to go into this.
12 It is difficult to know where to draw the line,
13 and I don't like to draw it arbitrarily on any attorneys
14 for either side.
15 MR. BUGLIOSI: I think the Court has been very fair
16 thus far on voir dire, I have absolutely no complaints,
17 but this issue goes to the very heart of our case against
18 the most important defendant.
19 THE COURT: All right. As I say, I will read it
20 again.
21 MR. BUGLIOSI: Thank you.
22 THE COURT: And we will take it up tomorrow morning.
23 All right, then, 9:45 tomorrow morning for all
24 counsel.
25 MR. KANAREK: Yes, sir.
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(The following proceedings were had in open court within the presence of all the prospective jurors, all defendants and their counsel being present.)

THE COURT: The parties and all counsel are before the Court.

Is there anything further, gentlemen?

MR. FITZGERALD: No, your Honor.

THE COURT: Very well, ladies and gentlemen.

I regret the delay today. Unfortunately one of the counsel this afternoon was involved in a proceeding in the Federal Court and was unable to get back in time for us to resume our examination.

We will adjourn at this time until 9:45 tomorrow morning.

Do not converse among yourselves or with anyone else on any subject relating to the case; nor form or express any opinion regarding the case until it is finally submitted to those of you who are selected as trial jurors.

9:45, please.

(Whereupon an adjournment was taken until the following day, Tuesday, June 30, 1970, at 9:45 o'clock a.m.)

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LOS ANGELES, CALIFORNIA, TUESDAY, JUNE 30, 1970 9:45 A.M.

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THE COURT: People vs. Charles Manson, Susan Atkins, Patricia Krenwinkel and Leslie Van Houten.

All parties and counsel are present.

The prospective jurors are in the jury box.

You may proceed, Mr. Bugliosi.

MR. BUGLIOSI: Thank you.

Ladies and gentlemen, when I left off yesterday I was mentioning that there may be evidence at this trial that some other person other than Linda Kasabian and Charles Watson was with these defendants during the alleged commission of the crimes for which they are presently standing trial.

If the evidence shows this, you all realize that the reason why this particular party, this other party is not present being tried with these defendants should be of no concern to you during your deliberations.

Do you all understand that?

There could be a multitude of reasons why this is so, none of which concern you. Do you all understand that?

I believe Mr. Fitzgerald asked you --

THE COURT: Just a moment, Miss Pahn is indicating she does not understand that.

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MISS PAHN: Aren't we to know the reason why?

MR. BUGLIOSI: No, ma'am, actually you should only have to concern yourself --

MR. REINER: Excuse me, may I ask Mr. Bugliosi to raise his voice? I cannot hear him as he approaches the jury.

THE COURT: You will have to speak up -- just a moment and we will get the microphone.

MISS PAHN: Maybe it's just unnecessary curiosity, but I wondered. I wanted to express my curiosity.

MR. BUGLIOSI: I apologize, Miss Pahn, to you for not noticing you. I saw a sea of affirmative nods and I did not catch your negative nod.

The only thing that the jury shouldbe concerned with in this case is whether or not the prosecution has proved the guilt of these defendants beyond a reasonable doubt.

The fact that some other person was allegedly involved in these crimes should not be of any concern to you during your deliberations, that is, the reason why this other party is not at the counsel table.

For instance, the party could have died; the party could have fled the jurisdiction; the party could have pled guilty; the party could have had a trial and have been found not guilty.

There could have been a multitude of reasons

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1 why this party is not at the counsel table, being tried,
2 but these are things that should not concern you during
3 your deliberations.
4 Do you understand that, ma'am?
2 fls. 5 MISS PAHN: Yes.
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Q Thank you.

I believe Mr. Fitzgerald, in his questioning, asked you folks not to consider the life style of these defendants against them in arriving at your verdict.

Now, do you all realize that if we offer evidence of the life style of these defendants and if that life style is relevant to any issue in this case, you definitely can consider evidence of life style together with all the other evidence in arriving at your verdict.

Do you understand that?

Any question about that?

MISS PAHN: Repeat that again, please.

THE COURT: I can't hear you, Miss Pahn.

MISS PAHN: I asked him to please repeat it.

MR. BUGLIOSI: Q I believe Mr. Fitzgerald --

THE COURT: Mr. Bugliosi, I think you are getting far afield from proper voir dire examination and into indoctrination. Please go to something else.

MR. BUGLIOSI: This is something that Mr. Fitzgerald raised, the issue of life style, your Honor.

THE COURT: Then it should have been objected to.

MR. BUGLIOSI: The Court is sustaining its own objection on that point?

THE COURT: Yes.

MR. BUGLIOSI: Q You all realize, ladies and gentlemen, that the prosecution in any case never has to

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prove the motive why any defendant committed a particular crime.

Do you all understand that?

We only have the burden of proving that they committed the crime beyond a reasonable doubt, not why they committed the crime. Their reasons we do not have to prove.

Do you understand that?

You understand further, however, that although we do not have the burden of proving motive, if we do offer evidence of motive, in other words, why these defendants committed these murders, you may consider evidence of motive as circumstantial evidence of their guilt.

Do you understand that?

THE COURT: Will counsel approach the bench, please?

(Whereupon, all counsel approached the bench and the following proceedings occurred at the bench outside of the hearing of the prospective jurors.)

THE COURT: Mr. Bugliosi, these questions are nothing more than indoctrination or instruction of the jury. They are not legitimate inquiry into the state of mind regarding actual or implied bias.

In the first place, when you start a question, "Do you understand this," and then proceed to state what your interpretation of the law is, that is not a legitimate voir dire inquiry either. That is simply an attempt to

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1 indoctrinate or instruct the jury.

2 MR. BUGLIOSI: I don't want the jury to think for

3 five months that we have the burden of proving why these people

4 did it. It is all under 1073, Subdivision 2, to find out

5 whether they have any --

6 THE COURT: Then your question should be phrased in

7 some form which tends to elicit any bias on their part.

8 You are not even asking questions, except you

9 are saying, "Do you understand this," and "Do you understand

10 that?"

11 MR. BUGLIOSI: I understand.

12 THE COURT: That doesn't elicit any bias on the part

13 of any juror or anything else. All it does is indoctrinate

14 them as to a fragment of the law relative to the case.

15 MR. BUGLIOSI: All right, your Honor.

16 THE COURT: If you want to couch the question in

17 the form of "If you are instructed" and in general terms,

18 whatever the point is you are trying to ask, "Will you

19 follow such an instruction," that is a legitimate inquiry.

20 MR. BUGLIOSI: All right. Thank you, your Honor.

21 (Whereupon, all counsel return to their

22 respective places at counsel table and the following

23 proceedings occurred in open court within the presence and

24 hearing of the prospective jury:)

25 MR. BUGLIOSI: If the Court instructs you, ladies

26 and gentlemen, that the prosecution does not have the burden

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1 of proving the motive behind why these defendants committed
2 these murders, will you all follow that instruction of law?
3 If the Court further instructs you, however,
4 that you may consider evidence of motive, that is, assuming
5 the prosecution offers that evidence of motive, if the
6 Court instructs you that you may consider this evidence of
7 motive in arriving at your verdict, will you all follow that
A 8 instruction by the Judge?
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Let's assume, ladies and gentlemen, that you are all selected as jurors on this case, and perhaps one of you finds that back in the jury room during your deliberations, your view is a minority view, that is, the other jurors are entertaining a view different from yours. I take it that none of you would be, shall we say, inflexible but, rather, you would listen very carefully to the views expressed by your co-jurors and if you found those views to be reasonable and persuasive, would you at least reconsider your position?

Do each of you understand that each time defense counsel asks you whether you would be willing to give their clients, the defendants, a fair trial, that the prosecution, the People of the State of California, are also entitled to a fair trial.

Do you understand that?

If you are selected as a juror on this case, do you all promise to give the People of the State of California a fair trial?

Is there any doubt in your mind about that, in any of your minds?

Can you think of any reason not already touched upon why you might not be able to give the People of the State of California a fair trial?

Can you think of any reason not already touched upon by his Honor, defence counsel or myself why

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you feel you should not sit as a juror on this case?

Any reason not already touched upon?

(Mr. Stokes and Mr. Reynolds raise their hands.)

MR. BUGLIOSI: Yes, Mr. Stokes. I will take you first, sir.

MR. STOKES: I have a family hardship that developed recently and I would not be able to serve for such a long time.

MR. BUGLIOSI: Would you care to articulate the hardship, sir?

MR. STOKES: Well, I have an asthmatic boy and, you know, he needs attention.

I had planned on my mother-in-law's help during summer, and what have you, and she tells me that she is not going to stay in town, she is going to leave.

MR. BUGLIOSI: Thank you, Mr. Stokes.

Will you pass the microphone to Mr. Reynolds.

Yes, sir, Mr. Reynolds?

MR. REYNOLDS: I think that the reason that I stated Friday, that there is some doubt as to the amount of innocence in my mind of the defendants.

3 fls.

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MR. BUGLIOSI: Thank you, Mr. Reynolds.

Apart from the inevitable hardship, I can only apologize to you for that, is there anything else at all about the nature of this case or the parties involved that causes you to be hesitant to sit as jurors on this case?

(No response.)

Thank you very much, ladies and gentlemen.

THE COURT: Will counsel approach the bench, please.

(The following proceedings were had at the bench out of the hearing of the prospective jurors, all counsel being present:)

THE COURT: Do counsel wish to stipulate to excuse Mr. Stokes?

MR. FITZGERALD: We do not at this time have a consensus of opinion, your Honor.

THE COURT: All right.

MR. FITZGERALD: There have been some problems that have come up. The defense attorneys would like to, if the Court please, re-think and re-evaluate their position in regard to stipulating to people with hardships.

I wonder if we just couldn't defer this maybe until after the recess, to defer the stipulation on Mr. Stokes until after the recess.

THE COURT: You don't have to stipulate at all

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if you don't want to.

MR. FITZGERALD: We want to be fair about it. In order to be fair about it we would just like an opportunity to confer, that is all.

THE COURT: There is no stipulation at this time then as to Mr. Stokes.

Now, do the defendants still assert their challenge for cause as to Mr.Reynolds?

MR. FITZGERALD: Yes.

MR. REINER: Yes.

MR. KANAREK: Yes.

MR. SHINN: Yes.

THE COURT: Then Mr. Reynolds will be excused for cause.

MR. KANAREK: If your Honor is going to do it in the presence of the courtroom, here, we would just request that your Honor allow Mr. Reynolds to be excused, without stating the reason, thank you.

THE COURT: Since we will be calling someone in the box to replace Mr. Reynolds, that raises the question of whether or not you want to conduct any of the portion of the voir dire in chambers as we have been doing.

I understand from the defendants' yesterday they wish to voir dire the prospective jurors on the pretrial publicity in chambers.

Is that still correct?

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MR. FITZGERALD: Yes.

MR. REINER: Yes.

MR. KANAREK: Yes.

MR. SHINN: Yes.

MR. STOVITZ: I have been asked to state to the Court that if the transcript is not to be made available to the press that we are not to participate in any sessions in chambers at all, whether to voir dire the jury or to discuss points of law, your Honor.

THE COURT: What does the transcript have to do with anything?

MR. STOVITZ: The transcript is a public record, your Honor, and this public record is open to the public.

THE COURT: That is absurd, but if that is your position we will proceed then.

MR. REINER: The defense, at least speaking on behalf of Leslie Van Houten, would urge the Court to hold the proceedings involving pretrial publicity in chambers, notwithstanding the People.

It is the defendants who are prejudiced, not the People.

It is our rights that are involved.

THE COURT: I think the People's position is absolutely absurd, and could very likely result in some prejudice to the defendants.

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1 Of course there is no way of knowing in
2 advance what any prospective juror is going to say.
3 I am going to conduct that portion of the
4 voir dire in chambers, regarding the pretrial publicity,
5 notwithstanding the People's refusal to stipulate to
6 it, providing that each of the defense counsel and each
7 of the defendants personally consent and waives any
8 objection to that procedure.
9 However, I will first inquire of the
10 prospective jurors regarding hardship in open court, and
11 also the Witherspoon questions regarding the death
12 penalty.
13 Providing we get past that point, then we
14 will go into chambers.
15 MR. BUGLIOSI: May I ask one question, your Honor:
16 Has the Court instructed the prospective
17 jurors not to read the newspapers or listen to the
18 radio or watch television?
19 I mean with respect to this case.
20 THE COURT: They have been instructed every recess
21 not to converse among themselves or with anyone else
22 on any subject related to the case nor to form or express
23 any opinion.
24 But they have not been specifically
25 instructed.
26 MR. BUGLIOSI: I am wondering now if the Court

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1 were to issue that order to the prospective jurors,
2 then releasing the transcript of the proceedings back
3 in chambers might not be that injurious, because we
4 would have to presume then that these prospective jurors
5 would go home and read --
6 THE COURT: I don't want to get into that now.
7 I have indicated my position, so we will proceed at
3a fls. 8 this time.
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(The following proceedings were had in open court in the presence and hearing of all the prospective jurors, the defendants and all counsel being present:)

THE COURT: Mr. Reynolds, you will be excused, and I wish to thank you very much for your services in this case to date.

Thank you, sir.

MR. REYNOLDS: Thank you, sir.

(Mr. Reynolds, Juror No. 2, leaves the courtroom.)

THE CLERK: Frank L. Fletcher, F-r-a-n-k, F-l-e-t-c-h-e-r.

(Whereupon, Frank L. Fletcher was seated in seat No. 2 in the jury box.)

VOIR DIRE EXAMINATION OF FRANK L. FLETCHER

BY THE COURT:

Q Have you heard and understood everything that has been said in court since you came into this case, Mr. Fletcher?

A Well, I have listened, but there probably would be some details that would have to be explained to me afterwards.

Q Well, if anything comes up during the voir dire examination or you wish to ask any questions about what has gone before, I am sure these questions can be answered for

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you.

Now, if you were selected as a trial juror in this case, Mr. Fletcher, would you be able to serve?

A Well --

Q Would you hold the microphone up, please?

A Well, I certainly think it would be a hardship for me, plus the fact I don't think that I would be able to serve on the jury with my viewpoint.

Q Without regard to your viewpoint at the moment, what is the nature of the hardship you refer to?

A Well, I have a home to maintain.

Q I cannot hear you, sir. If you will point the end of your microphone toward your mouth, we will hear you.

A I have a home to maintain is the main thing.

I think it is a seven-day job as far as I'm concerned.

Q Are you employed, sir?

A Yes, sir.

Q Where do you work?

A Oscar Mayer & Company.

MR. STOVITZ: I could not hear that, sir.

MR. FLETCHER: Oscar Mayer & Company.

Q BY THE COURT: Do you know what the company's policy is with respect to paying your compensation while you are on jury duty?

A Well, they do, I think -- they pay the

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1 difference between what we get in jury duty and our wages.

2 Now, I don't know exactly how long that would

3 pertain to, whether it would be the full length of time

4 or 30 days or what.

5 Q Do you have a family?

6 A Well, a wife, and a son that is coming in the

7 18th of next month that I have not seen for years.

8 Q How old is your son?

9 A 30. My son and two grandchildren.

10 Q Now, is there anything else that you wish to tell

11 the Court regarding your hardship?

12 A No, I think that pretty well covers the field.

13 Q Now, Mr. Fletcher, I am going to ask you the

14 same two questions regarding the death penalty that I asked

15 the other prospective jurors.

16 Do you entertain such conscientious opinions

17 regarding the death penalty that you would be unable to

18 make an impartial decision as to any defendant's guilt

19 regardless of the evidence developed during the trial?

20 A Well, as far as the death penalty, I am

21 opposed to the death penalty.

22 Q That was not the question, sir.

23 The question is, whether by reason of your

24 opinion you would be unable to make an impartial decision as

25 to guilt as to any defendant.

26 A No, sir, I think that I would be able to do that.

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Q Do you entertain such conscientious opinions regarding the death penalty that you would automatically refuse to impose it without regard to the evidence developed during the trial?

A Yes, sir, I think I would.

Q Is there any question in your mind about that?

A No.

Q You would automatically refuse to impose the death penalty?

A Yes, honestly I am against capital punishment.

I have followed it very closely, the pros and cons, and I cannot make myself follow the feeling in favor of the death penalty.

Q Well, that still is a somewhat equivocal answer to my question.

It is possible to be opposed in a general philosophical way to the death penalty and still be willing to keep an open mind and listen to the evidence in the case before making any decision as to penalty.

On the other hand, what I am trying to find out is whether or not you have made up your mind already, in effect, and would automatically refuse to impose the death penalty regardless of the evidence?

A Well, I think that actually I would be pretty narrow-minded.

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MR. STOVITZ: I cannot hear the juror.

THE COURT: Hold the microphone closer to your mouth, please.

MR. FLETCHER: I certainly would consider the evidence, but I honestly don't think that I could vote for the death penalty.

I think I am just opposed to it, regardless.

THE COURT: But you have some question in your mind, I take it, from your answer.

MR. FLETCHER: No, no questions on that.

BY THE COURT:

Q I beg your pardon?

A No questions on that.

Q Well, I don't think we are quite on the same frequency yet, Mr. Fletcher.

I understand that you have some opposition to the death penalty.

But my question is whether you have now made up your mind in advance and would automatically refuse to impose it regardless of the evidence in the case?

A Well, I have not made up my mind in advance, but I am certainly opposed to the death penalty in any shape or form, and doubly sure on circumstantial evidence that I am opposed to it.

Q Well, that is another matter. But I understand from your answer to my question regarding the death

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penalty that you say you have not made up your mind in advance, is that right?

A No, not pertaining to this case, as far as guilt or innocence.

Q Well, now, I'm not asking you about guilt. You answered that question.

I am asking you now about the imposition of the penalty, and your ability or inability to vote for it by reason of your conscientious objections or opinions.

I will ask you once more, have you made up your mind now so that you would automatically refuse to impose it regardless of the evidence?

A Yes, I think I would.

Q Well, does that mean yes without hesitation, without condition, without mental reservation or do you still have some question?

A No, I think I am still opposed to it and would vote against it regardless.

THE COURT: I did not hear that.

Would you read his answer, please, Mr. Reporter.

(Whereupon the reporter reads the answer as follows:

"A No, I think I am still opposed to it and would vote against it regardless.")

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THE COURT: That is your answer, you would vote against it regardless?

MR. FLETCHER: Yes, sir.

THE COURT: Do counsel wish to inquire?

Mr. Fitzgerald?

MR. FITZGERALD: No, your Honor.

THE COURT: Mr. Reiner?

MR. REINER: No, your Honor.

MR. STOVITZ: May I inquire, your Honor.

THE COURT: Yes.

VOIR DIRE EXAMINATION OF MR. FLETCHER

BY MR. STOVITZ:

Q Mr. Fletcher, can you hear me?

A Yes, sir.

Q We have a little difficulty hearing you, and I was just sitting right close to you, so for the benefit of the other persons would you speak into the microphone, please?

4 fls. A Yes, sir.

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Q Don't be afraid of it. It is like a telephone. It won't bite you.

Now, this conviction of yours about the death penalty, this is a long-standing one that you have had?

A Yes. For, oh, eight or ten years that I followed the pros and cons both ways, and I can't make myself accept it.

Q All right.

Now, is this part of your religious belief?

A No, it is not.

Q It is a philosophical belief of yours?

A Yes.

Q And this philosophical belief of yours is such that no matter what the circumstances, no matter what the evidence was, you would unconditionally vote against the death penalty; is that right?

A Yes, sir.

Q That is even if we had four eye witnesses seeing the crime committed; is that right?

A Yes, sir.

Q Could you conceive of any case whatsoever in which you would vote for the death penalty?

A No.

I have thought about that at different times, too, and I have heard of someone, some murders, that were very gruesome, and so forth, and a person's automatic

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1 feeling is to get revenge, but the more I have thought it
2 over, I still think, under those conditions, I still
3 wouldn't vote for it. I think it would be wrong for me to
4 take that point of view.
5 Q Then you couldn't accept the law in California;
6 is that right?
7 A Right.
8 MR. STOVITZ: We would respectfully request that the
9 juror be removed for cause, your Honor.
10 MR. KANAREK: May we approach the bench, your Honor?
11 MR. FITZGERALD: To which we will object.
12 With the totality of his remarks it could not
13 be said that his statements are unambiguous, and we would
14 object on the Witherspoon grounds.
15 MR. KANAREK: May we approach the bench?
16 THE COURT: Do you have something to add?
17 MR. KANAREK: Yes.
18 THE COURT: I don't think there is any necessity to
19 approach the bench.
20 Are you objecting to the challenge, Mr. Kanarek?
21 MR. KANAREK: Your Honor, on a different subject,
22 which I think would be better --
23 THE COURT: Let's stay with this subject forthe
24 time being.
25 MR. KANAREK: I meant in connection with a different
26 matter as to the juror's statements, your Honor.

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THE COURT: Well, I want to ask Mr. Fletcher some additional questions.

VOIR DIRE EXAMINATION

BY THE COURT:

Q You had an opportunity, Mr. Fletcher, to think about these specific questions that I have asked you now for a number of days, have you not?

A Yes, sir.

Q When did you come into this case? Was it last week?

A Last Tuesday afternoon.

Q And have you thought about these questions since then?

A Yes, sir, I have. I have listened to all of them.

Q You see, the purpose why I keep asking you these questions is because I am not trying to put words in your mouth but I want to be absolutely certain that you are saying what you mean, and that if you have any qualifications to what you are saying that you will tell me about them.

Do you understand?

A Yes, sir.

Q Sometimes we don't always say exactly what we mean or what we are thinking.

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I want to be absolutely certain that your present feeling is that -- well, let me state it another way.

I want to be absolutely certain that I understand what you are saying.

I have a point of the continued questioning. Now, the question that I put to you is put in a particular form because depending on the answer to that question, the law requires either that you be excused or that you are not to be excused and you may continue as a juror, depending on what else develops during the course of the examination.

So, I keep returning to the same question because it is put in that particular form for a particular reason.

Do you understand, sir?

A Yes, sir.

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