

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 104

HON. CHARLES H. OLDER, JUDGE

COPY

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

vs.

CHARLES MANSON, SUSAN ATKINS,
LESLIE VAN HOUTEN, PATRICIA KRENWINKEL,
Defendants.

150

No. A253156

REPORTERS' DAILY TRANSCRIPT
Thursday, November 19, 1970

APPEARANCES:

For the People:	VINCENT T. BUGLIOSI, DONALD A. MUSICH, STEPHEN RUSSELL KAY, DEPUTY DISTRICT ATTORNEYS
For Deft. Manson:	I. A. KANAREK, Esq.
For Deft. Atkins:	DAYE SHINN, Esq.
For Deft. Van Houten:	RONALD HUGHES, Esq.
For Deft. Krenwinkel:	PAUL FITZGERALD, Esq.

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JOSEPH B. HOLLOMBE, CSR.,
MURRAY MEHLMAN, CSR.,
Official Reporters

1 LOS ANGELES, CALIFORNIA, THURSDAY, NOVEMBER 19, 1970

2 9:12 o'clock a.m.

3 - - - -

4 (The following proceedings were had in open
5 court, all defendants and counsel being present; the
6 members of the jury not being present:)

7 THE COURT: All parties and counsel are present.
8 The jury is not present.

9 This is the time set for hearing on motion
10 to quash the subpoenas.

11 I understand Mr. Moore is present from the
12 County Counsel's office.

13 MR. MOORE: That's right, your Honor.

14 THE COURT: Do you wish to be heard, Mr. Moore?

15 MR. MOORE: Yes, I do, your Honor.

16 THE COURT: Perhaps one of you gentlemen can let
17 Mr. Moore have a part of the table.

18 MR. MOORE: I am Ray R. Moore, representing the
19 moving parties, Judges Dell, Keene and Parker.

20 We hereby request that the motion before the
21 Court be considered separately for each moving party, and
22 with that request I move to quash service of subpoenas
23 previously served on the previously mentioned judges.

24 This motion is based on the declarations of
25 the three judges filed in court on November 16th.

26 Each counsel for the defense has received a

1 copy of this motion together with points and authorities
2 in support thereof.

3 The Court will note the judges' declarations
4 state that he or she has no knowledge of the matters at
5 issue, in the matter of People vs. Charles Manson, other
6 than those matters which are part of the Superior Court
7 records.

8 We therefore maintain that to allow said
9 subpoenas to be effected would serve no purpose, and it
10 might be noted that there has been no showing to refute
11 the statements or declarations of the three judges, nor
12 has there been an offer of proof to show that any material
13 or relevant testimony would be elicited from these judges.

14 We further urge that not only would there
15 be no relevant matters brought to the Court, but a
16 disservice to the orderly pursuit of justice would be done
17 by allowing the subpoena of these judges to stand.

18 First, it would require that the judges leave
19 their benches on what appears to be a fruitless fishing
20 expedition, thereby disrupting the court calendar which is
21 already severely congested.

22 Second, absent of showing of relevant and
23 material testimony to be obtained from the judges, it would
24 appear there would be nothing to be gained by their
25 testimony other than granting a license to dilatory
26 parties in extending an already long and delayed trial.

Further, it would do nothing but vex, harass
and annoy the judges in question for carrying out a merely
perfunctory duty of signing various orders.

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1 Third, it would have a chilling effect upon the
2 exercise of judicial discretion in granting motions of
3 this nature. Judges should not be made to appear in a
4 collateral matter to explain the reasonings behind their
5 granting or not granting various requests, motions and
6 orders. This is a proper matter for appeal.

7 At this point, I would also like to call the
8 Court's attention to the case previously cited to the Court
9 of People vs. Rhone, wherein the prosecutor of a criminal
10 action successfully moved to quash the service of subpoena
11 on the Chief of Police on the basis of a declaration from
12 that officer wherein he stated that he had no knowledge or
13 relevant facts that would concern that case.

14 The key facts in our case are much the same.
15 The judges have stated, pursuant to their declarations,
16 that they know nothing other than what is a part of the
17 Superior Court record.

18 Therefore, I respectfully request that the motion
19 to quash service of the subpoena on Judges Dell, Parker and
20 Keene be quashed.

21 THE COURT: Do you wish to be heard, Mr. Shinn?

22 MR. SHINN: Yes, your Honor.

23 In response to counsel's argument, we are not
24 bringing these judges in for a fishing expedition, your
25 Honor.

26 I have here -- by the way, I have read the two

1 cases that he cited, the Rhone case and the Finn case.

2 I believe in the Rhone case there was a
3 reversal in that case and the defendant subpoenaed the
4 former judge that heard the case.

5 I believe, under that situation, the defendants
6 were merely, I think, just bringing in the judge to try to
7 impeach the witnesses in the second trial.

8 Now, I have read the Finn case. In the Finn
9 case, this is a case where a defendant was arrested for,
10 I believe, a traffic violation, and there the defendants
11 subpoenaed the Chief of Police, and the Chief of Police,
12 in that case, had no knowledge of the arrest.

13 Therefore, I can understand, in that case,
14 why the Judge quashed the subpoena.

15 Now, in this case, we have a situation where
16 the four judges signed a so-called request for removal of
17 a prisoner.

18 Now, this type of document is not a common
19 type of document that the judges would automatically sign.

20 Here we have a situation where a person is
21 charged with seven counts of murder, with the possible
22 death penalty sentence, and the affidavits that the
23 various people signed, I feel, are inadequate, and I am very,
24 very sure, in my mind, that before the judges signed this
25 order, that they must have had a prior conversation
26 regarding why they wanted to take the defendant to his
office.

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1 Now, the question in my mind would be:

2 What could Mr. Caballero do at his office that
3 he could not do at the Women's Jail?

4 The basis of my subpoenaing these judges is
5 that I feel that they must have had some prior conversation.
6 The judges must have asked Mr. Caballero why he wanted to
7 bring Susan Atkins to his office.

8 If we look at the whole picture, the main
9 reason for Mr. Caballero bringing Susan Atkins to his
10 office was to get her story, which was later released and
11 sold.

12 Now, I believe a person in that frame of
13 mind would say anything to a judge to convince the judge
14 to sign this order so that he may take Susan Atkins to his
15 office to take down her story.

16 Now, I believe the files will reflect that
17 Mr. Caballero and Mr. Paul Caruso had a prior contract.
18 I think the release date of the story was December the 14th,
19 for Susan Atkins' story to be released, and he had a
20 deadline to meet.

21 He took Susan Atkins to his office, I believe,
22 on December the 4th, 1969, and he taped for two hours Miss
23 Atkins' story, and then later allowed Mr. Bugliosi to talk
24 to Miss Atkins concerning her testimony at the Grand Jury
25 hearing.

26 Now, I believe the gag order was issued by

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1 Judge Keene on December the 10th, and this story was
2 released, I believe, on December the 18th. And Mr.
3 Caballero was not brought in for contempt at all.

4 So, I feel that behind the scenes here there
5 was a conspiracy, and I feel that there must have been some
6 conversations with the judge before the judge signed the
7 removal order.

8 Now, if I were to file an exact, word for
9 word, request at the present time with this Court to remove
10 Miss Atkins to my office, I doubt very much if this court
11 would sign the order without me giving the Court a detailed
12 explanation as to why I wanted Miss Atkins at my office.

13 So, I feel, your Honor, that these judges
14 do have information, as set forth in my declaration.

15 They may have information regarding whether or
16 not Miss Atkins actually stabbed Sharon Tate. Because I
17 feel that if the judge knew that Miss Atkins actually
18 stabbed Sharon Tate, I doubt very much, in my mind, that
19 the judge would have signed these orders.

20 I feel that we have a right to call any
21 witness for the defense, and I don't think judges are
22 immune to subpoenas, your Honor.

23 I will submit it on that basis.

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1 MR. KANAREK: Your Honor, if I may make a point.

2 I also think it is very vital in connection
3 with the matter of subornation of perjury by the District
4 Attorney to obtain the Grand Jury indictment.

5 As your Honor knows, the Grand Jury indict-
6 ment shows that Tex Watson killed Sharon Tate, that Susan
7 Atkins did not.

8 The Grand Jury indictment shows that what is
9 before this Court is diametrically opposed to what actually
10 occurred.

11 The Grand Jury testimony is clear that Susan
12 Atkins did not kill Sharon Tate. She said something entirely
13 different. She said that Mr. Watson killed Sharon Tate.

14 There is no question about it, that the
15 District Attorney of Los Angeles County had the --

16 THE COURT: What has this to do with the subpoenas,
17 Mr. Kanarek?

18 MR. KANAREK: It means that the judges here may
19 well have relevant information.

20 THE COURT: Do you have any knowledge of it?

21 MR. KANAREK: No. I say I believe. I believe along
22 with Mr. Shinn.

23 THE COURT: All right.

24 MR. KANAREK: And furthermore, I would like to
25 point out that the District Attorney of Los Angeles County
26 did not present to the Grand Jury Roni Howard's statement

1 and Virginia Graham's statement that they put in in this
2 case.

3 THE COURT: I have heard enough of your argument,
4 Mr. Kanarek. It hasn't the slightest relevance to the
5 point under consideration.

6 Do you wish to respond, sir?

7 MR. MOORE: Yes, I do.

8 In response to Mr. Shinn's statements, it
9 would appear that the nature of the signing of a request
10 for removal is a perfunctory duty performed by judges
11 almost routinely. It is not a highly unique and specialized
12 type of proceeding as Mr. Shinn would make it appear.

13 In light of this, your Honor, we would ask
14 for an offer of proof as to who requested the judges to
15 sign it, what evidence he bases his conclusions on that
16 there was conversation, and on what ground the motion
17 would be made to have this order signed.

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1 Further, it would appear that in light of the
2 discourse on proceedings in Mr. Caballero's office, the
3 appropriate party to be questioned about this is Mr.
4 Caballero, not three judges who are not in attendance at
5 this conversation.

6 We would submit on that.

7 MR. SHINN: May I respond to counsel briefly, your
8 Honor?

9 THE COURT: You have had your argument, Mr. Shinn.

10 MR. SHINN: I just want to respond to his last
11 argument, your Honor.

12 THE COURT: That won't be necessary. There isn't
13 the slightest showing in your motion, in your papers in
14 opposition, Mr. Shinn, of any relevancy, materiality or
15 necessity for the witnesses subpoenaed.

16 The motions to quash are granted as to each
17 of the subpoenas.

18 MR. SHINN: Will your Honor take into consideration,
19 your Honor, a case which was recently reversed by the
20 District Court of Appeal --

21 THE COURT: The Court has ruled, Mr. Shinn.

22 MR. MOORE: Thank you, your Honor.

23 THE COURT: Anything further, gentlemen, before we
24 resume with the trial?

25 MR. FITZGERALD: Yes, we have 1118 motions, your
26 Honor.

1 THE COURT: Very well.

2 MR. FITZGERALD: May I remain seated?

3 THE COURT: Yes, you may proceed, Mr. Fitzgerald.

4 MR. FITZGERALD: I am going to present this motion on
5 behalf of Patricia Krenwinkel, your Honor.

6 On the other hand, or in addition, I am going
7 to discuss certain facets of the law that other defendants
8 respectfully wish to join in.

9 Formally, on behalf of Patricia Krenwinkel, I
10 will move under Section 1118 for the Court to dismiss
11 individually and collectively Counts I through VIII of the
12 Indictment.

13 Penal Code Section 1118.1 provides in part:

14 "The Court shall order the entry of a
15 judgment of acquittal of one or more of the
16 offenses charged in the accusatory pleading
17 if the evidence then before the Court is
18 insufficient to sustain a conviction of such
19 offense or offenses on appeal."

20 Now, in People vs. Odom, a 1970 case, your
21 Honor, at 3 Cal. 3d 559, at Page 565, the Supreme Court of
22 California stated the purpose of Section 1118.1 was to
23 "insure speedy acquittals of criminal charges which are
24 not supported by substantial evidence."

25 Other cases, including People vs. Hillary,
26 62 Cal. 2d 692, at Pages 702 and 703, and People vs.

1 Cloud, a 1969 case, 1 Cal. Ap. 3d 593 at Page 598 also
2 states that there must be substantial evidence:

3 "The test on appeal is whether there
4 is substantial evidence to support the
5 conclusion of the trier of fact."

6 In People vs. Bassett, 69 Cal. 2d, Page 122
7 at Page 139, and People vs. Riley, 5 Cal. Ap. 3d 768 at
8 Page 772, the Court held:

9 "To support a conviction evidence must
10 be substantial, i.e., evidence that reasonably
11 inspired confidence and is of solid value."

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Now, Webster's New Twentieth Century Dictionary, Unabridged, Second Edition, 1960, defines the word substantial as follows:

"(a) having strong substance; strong; stout; solid.

"(b) of considerable worth or value; vital; important.

"(c) of considerable size or amount."

And synonyms for substantial are: essential, fundamental, formidable, plentiful, large, superabundant, solid and vast.

I submit that the evidence against Patricia Krenwinkel relating to Counts I through V of the indictment is not substantial. The evidence against her in connection with those counts, that is, the so-called Tate homicides, is decidedly unsubstantial, tenuous and extremely weak.

"There is no evidence in the record in connection with Counts V and VI of the indictment--" strike that -- that should be VI and VII of the indictment, the La Bianca homicides.

"There is also no evidence with respect to Count VIII of the indictment, the conspiracy count.

"There is no direct or indirect evidence that Patricia Krenwinkel entered into an agreement with one or more of the other co-defendants to commit the crimes charged."

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1 In ascertaining the sufficiency and substantiality
2 of the evidence, I believe it is necessary to determine the
3 legal status of Linda Kasabian who, I think, we can refer to
4 as the chief prosecution witness.

5 The record amply demonstrates that if the
6 testimony of Linda Kasabian is to be believed, she is
7 clearly an accomplice.

8 Penal Code Section 1111 defines an accomplice
9 as:

10 "One who is liable to be prosecuted for the
11 identical offense charged against the defendant on
12 trial."

13 At the instigation of the District Attorney,
14 the Grand Jury of Los Angeles County returned an indictment
15 against Linda Kasabian, charging her with seven counts of
16 murder and one count of conspiracy to commit murder.

17 "The offenses charged against Linda Kasabian
18 were identical with the charges filed against the
19 defendant. Not only was Linda Kasabian liable for
20 prosecution for seven counts of murder and one
21 count of conspiracy to commit murder, she was
22 actually prosecuted."

23 She was arraigned, entered a plea of not
24 guilty, and her counsel on her behalf argued a motion to
25 dismiss the indictment. That motion to dismiss the
26 indictment for legal insufficiency was successfully resisted

1 by the District Attorney.

2 Her motions to dismiss having been denied, and
3 her motions for change of venue having been denied, her case
4 was set down for trial.

5 The duty of the District Attorney is not to
6 secure convictions, nor is it his duty to prosecute. The
7 duty of the District Attorney is to see that justice is
8 done. At no time prior to the trial of these defendants
9 did the prosecution move to dismiss the charges against
10 Linda Kasabian.

11 It was not until well into her testimony that
12 the prosecution granted her immunity.

13 The immunity was immunity from prosecution
14 for the identical offenses charged against the other
15 defendants. Certainly, if there were insufficient evidence
16 against Linda Kasabian, or Linda Kasabian was not liable
17 for prosecution, this statutory immunity would not have been
18 necessary.

19 The grant of immunity by the prosecution is
20 a direct admission by them that Linda Kasabian is an
21 accomplice.

22 Kasabian meets all the other criteria of an
23 accomplice. To be an accomplice, the person must have
24 knowingly and with criminal intent aided, promoted,
25 encouraged, or instigated by act or advice, the commission
26 of such offense.

1 In other words, in order to be an accomplice,
2 one must either be a direct participant or an aider and
3 abettor.
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1 I submit that Linda Kasabian was directly
2 liable as a direct participant in felony murder. According
3 to her testimony, her intent was to creepy crawl at an
4 unknown destination.

5 She testified in substance that the creepy crawl
6 was to enter the residence of persons during the nighttime
7 with the intent to commit theft.

8 She also indicated that on occasions previous
9 to August 8, 1969, she had in fact creepy crawled private
10 residences in the San Fernando-Encino Valley area.

11 Entry into a private residence during the
12 nighttime with the intent to commit theft is a first-
13 degree burglary, and burglary is one of the specifically
14 enumerated felonies in the California Felony-Murder
15 Statute, Penal Code Section 189.

16 In Volume 31, Page 5042, in questioning by
17 Mr. Bugliosi the record indicates as follows:

18 "Q By Mr. Bugliosi (to Linda Kasabian)
19 You testified you did not know what was going to
20 happen that night. Did you have any idea what
21 was going to happen?

22 "A Yes. I thought we were going to
23 go on a creepy crawl mission.

24 "Q A creepy crawl mission?

25 "A Yes.

26 "Q What is a creepy crawling mission?

1 "A A creepy crawl mission is
2 where you creepy crawl into people's houses
3 and you take things which actually belonged to
4 you in the beginning, because it actually
5 belongs to everyone."

6 Again, in Volume 38 at Page 5984 and Page 5985
7 she admitted her intent to commit burglary.

8 On that creepy crawl mission at the Tate
9 residence arms or armaments were taken along.

10 In Volume 31, Page 5048, in questioning
11 again by Mr. Bugliosi;

12 "Q Were there any knives or guns
13 in the car, Linda?

14 "A Yes, there was.

15 "Q How many knives and how many guns?

16 "A There were three knives and one
17 gun.

18 "Q Where was the gun in the car?

19 "A It was in the glove compartment.

20 "Q What about the three knives-

21 "A They were on the front seat."

22 During the ride to select the victim, Kasabian
23 was the custodian of the weapons and actually held them
24 in her lap.

25 That is indicated in Volume 31, Page 5055:

26 "Q Linda, going back, as you were

1 "driving, did Tex tell you to do anything with
2 these knives and the gun?

3 "A Yes, he did, he told me wrap them
4 in a piece of clothing, which was my skirt, and
5 if we ever got stopped or anything to throw them
6 out the window."

7 She further testified that she in fact did
8 wrap the three knives and the gun in her skirt.

9 By assisting in the care and custody of the
10 weapons, she was obviously aiding in the commission of the
11 offenses about to be committed. She was obviously on
12 notice that the weapons were not to be used for any legal
13 purpose because Tex had previously advised her to dispose
14 of the weapons in the event they were stopped by the police.

15 Also possession of the weapons by her is
16 circumstantial evidence of her intent or knowledge to use
17 them. Quite probably she felt that the knives were to be
18 used in the event they met with any resistance on the part
19 of occupants of the home to be burglarized.

20 To take money or other items of value from
21 the person or immediate presence of someone else is
22 robbery.

23 To be armed at the time of the commission of
24 such an offense and to use such a weapon is robbery in the
25 first degree, which is an additional specified felony in
26 the California Felony-Murder Statute.

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1 She further aided and assisted in the
2 commission of burglary or robbery, if not murder by acting
3 as a lookout or scout in the rear portion of the house.

4 At this point she obviously knew what was
5 occurring because, according to her testimony, she had
6 witnessed Tex Watson shoot Steven Parent.

7 After her stint at the rear of the house pursu-
8 ant to directions from Tex, she went to and remained at the
9 car. At no time did she attempt to prevent the commission
10 of these offenses by sounding an alarm while the offenses
11 were still in progress, although she clearly had the
12 opportunity to do so.

13 As testimony has indicated, in order to get to
14 the car she had to walk by several residences. Indeed,
15 she did not abandon the escapade or the other participants,
16 although she clearly had the opportunity to do so.

17 She again further aided in concealing the
18 offenses and in expediting and facilitating the escape of
19 the other participants and their disposal of instrumentali-
20 ties of the offenses.

21 In Volume 32, Page 5125, she indicates she held
22 the driver's wheel as Tex took off and changed his
23 clothing.

24 She threw the bloody clothing in a bundle over
25 the side of the hill.

26 "I threw the first knife out, which landed

1 "in the bushes, and within a few seconds
2 I threw the second knife out, which bounced
3 off the curb, and I could see it sort of
4 lying in the road."

5 Additionally she testified she may have thrown
6 out the gun, but she did not remember. She further aided
7 and assisted by ordering gasoline at the gasoline station,
8 Volume 32, Page 5152.

9 She then actually became the driver of the
10 getaway car, Volume 32, Page 5153.

11 She drove from the vicinity of the offenses to
12 the Spahn Ranch, a distance of at least ten miles.
13 Upon her arrival at the Spahn Ranch she assisted in disposing
14 and obliterating blood spots that appeared on the
15 automobile in still a further attempt to conceal evidence
16 of the crime.

17 The next day she most certainly and definitely
18 had knowledge of the events that were to transpire on
19 Waverly Drive. After she was told to get her driver's
20 license, which certainly ought to have indicated to her
21 a repeat performance of the preceding night, she was
22 told directly.

23 Volume 32, Page 5200:

24 "He said we were going to go out again
25 tonight. Last night was too messy and that he was going
26 to show us how to do it."

1 At this point she is obviously a direct
2 participant in what was about to transpire. Her cooperation
3 was obtained without apparent reluctance or complaint.

4 She assisted or aided in the commission of the
5 offense by disposing of the fruits of a robbery, to-wit,
6 the wallet she says she placed in the gas station.

7 Incidentally, before that wallet was disposed
8 of, she took money from it, which is theft.

9 She then directs the group to an address near
10 the beach, the existence of which is known only to her.
11 She directs the group to that location apparently for the
12 purposes of murder.

13 She further makes no attempt whatsoever at any
14 time to report the matter to appropriate authorities
15 although she had abundant opportunities to do so.

16 Had she reported the matter to the police,
17 that would arguably indicate a consciousness of innocence.

18 Under the circumstances, her failure to report
19 the matter can be considered only as strong circumstantial
20 evidence of consciousness of guilt.

21 She was actually within the very Hall of
22 Justice and did not report it.

23 Further, she actually had a police officer on
24 the telephone at a time subsequent to the offenses and at
25 a time when she was safe from any reprisal, Yet she failed
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1 to report the matter.

2 She also admitted making false statements to
3 people concerning her implication in the offenses.

4 She told the social worker assigned to her
5 child Tanya that she was not even within the State of
6 California on the dates the offenses were committed.

7 She even admitted making untrue statements to
8 her attorney in connection with the case. These false
9 statements can obviously be considered as consciousness of
10 guilt.

11 In essence and in substance the record clearly
12 indicates that Linda Kasabian, if believed, was in fact
13 an accomplice.

14 Now, the law in California and elsewhere is
15 clear that a conviction cannot be had upon the testimony of
16 an accomplice unless it is corroborated by such other
17 evidence as shall tend to connect the defendant with the
18 commission of the offense.

19 The rationale for the rule requiring
20 corroboration by an accomplice is contained in People vs.
21 Comstock, 147 Cal. Ap. 2d 287, People vs. Wallen, 32 Cal.
22 2d 803 and People vs. Coffee, 161 Cal. 443.

23 The statutory requirement of corroboration is
24 based primarily upon the fact that experience has shown
25 that evidence of an accomplice should be treated with care,
26 caution and suspicion because it comes from a tainted

1 source and is often given in hope or expectation of
2 immunity or leniency.

3 The California Supreme Court, in a number of
4 cases, has held that the testimony of an accomplice is
5 not entitled to the same credit as an ordinary witness.
6 The standard California Jury instruction on the issue is
7 No. 3.18, which in part states the testimony of an
8 accomplice ought to be viewed with distrust.

9 The sufficiency of corroboration required for
10 conviction is discussed in the recent case of People vs.
11 Lohman, a 1970 case, 6 Cal. Ap. 3d 760 at Page 765:

12 Under Penal Code Section 1111, evidence is
13 not sufficient corroborating evidence if it merely shows
14 association with the actual criminals or if it only casts
15 grave suspicion on the defendant, or if it fails to
16 connect the defendant with the crime itself."

17 People vs. Rheingold, 87 Cal. Ap. 2d 382 at
18 Page 393 set for the required character of corroborating
19 evidence as follows:

20 "First, the corroboration is not
21 sufficient if it requires interpretation and
22 direction to be furnished by the accomplice's
23 testimony to give it value.

24 "Second, the corroborative evidence to be
25 sufficient and of the required substantial
26 value must tend directly and immediately to

"the defendant with the offense.

"And third, the corroborative
it
evidence is insufficient where/merely casts
a grave suspicion upon the accused."

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1 The test applied in determining whether the
2 corroboration is sufficient is to eliminate the evidence of
3 the accomplice and then examine the evidence of the other
4 witnesses with the view to ascertaining if there be
5 inculpatory evidence -- evidence tending to connect the
6 defendant with the offense. If there is, the accomplice is
7 corroborated; if there is no inculpatory evidence, there is
8 no corroboration, though the accomplice may be corroborated
9 in regard to any number of facts sworn to by him.

10 California Jury Instruction No. 3.12 is to
11 similar effect.

12 "In determining whether an accomplice has
13 been corroborated, you must first assume the
14 testimony of the accomplice has been removed from
15 the case. You must then determine whether there is
16 any remaining evidence which tends to connect the
17 defendant with the commission of the offense. If
18 there is not such independent evidence which tends
19 to connect the defendant with the commission of the
20 offense, the testimony of the accomplice is not
21 corroborated."

22 All the independent evidence inculcating
23 Patricia Krenwinkel is not such as to connect her with the
24 commission of the offenses. All the independent evidence
25 linking Krenwinkel to the commission of the offenses
26 requires direction and interpretation from the testimony of

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1 the accomplice Linda Kasabian.

2 There is no independent evidence which,
3 unassisted by the testimony of Kasabian, connects Krenwinkel
4 with the crimes.

5 There has been testimony that a fingerprint
6 of Patricia Krenwinkel was found within the Cielo Drive
7 home. This fact, if it be a fact, does not inculcate or
8 incriminate Patricia Krenwinkel in any respect. There is no
9 date on the fingerprint. There is no time on the finger-
10 print. It may have been there one hour when found, it may
11 have been there ten hours when found, it may have been there
12 a hundred and eighty hours when found.

13 Winifred Chapman testified that on Tuesday,
14 August 5, 1969, she washed the door in the vicinity of the
15 area where the fingerprint was found.

16 Assuming her testimony to be accurate,
17 Patricia Krenwinkel's fingerprint could have been placed
18 on the door any time prior to the evening of August 8th,
19 1969, and any time subsequent to Tuesday, August 5, 1969.

20 At best, the presence of a fingerprint at
21 that location demonstrates only that at some time Patricia
22 Krenwinkel was within the house.

23 Actually, it may not even prove that inasmuch
24 as the door opens out and someone outside could touch the
25 inside portion of the door extended out without actually
26 being present within the house. There is absolutely nothing

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1 in the record to demonstrate that her fingerprint was placed
2 on that door contemporaneously with the commission of the
3 offenses.

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1 There has been no evidence indicating that
2 Patricia Krenwinkel didn't know any of the victims in the
3 case. Further, there has been no evidence that Patricia
4 Krenwinkel isn't related by blood or marriage to any of
5 the victims.

6 It is entirely possible that Patricia Kren-
7 winkel was on the premises legally sometime before the
8 commission of the offenses.

9 In People vs. Case, a 1964 case, at 61 Cal.
10 2d 373, the Court stated:

11 "The existence of Defendant's fingerprints
12 in an automobile which was used in the commission
13 of the crime and which belonged to the defendant's
14 relatives and to which he had access was held
15 insufficient to corroborate the accomplice's
16 testimony.

17 "The Court held the corroborating evidence
18 must not only connect the defendant to the crime,
19 but must do so without aid or direction of the
20 testimony of the accomplice whose testimony is
21 to be corroborated.

22 "At best, the Court pointed out, the finger-
23 print merely placed the defendant in the car
24 sometime prior to the crime the car was discovered."

25 Dianne Lake testified that Patricia Krenwinkel
26 had a conversation with her, in which Krenwinkel allegedly

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1 stated that she dragged Abigail Folger from the bedroom to
2 the living room.

3 Assuming the truth of that statement, it has
4 no meaning without and in the absence of the testimony of
5 the accomplice. The statement standing alone is not
6 incriminating.

7 When did Patricia Krenwinkel drag Abigail
8 Folger from the bedroom to the living room? Was it
9 Thanksgiving Day, 1968? Was it two days before the offenses
10 were committed? Was it 15 days before the offenses were
11 committed? What were the circumstances of Patricia
12 Krenwinkel dragging Abigail Folger from the bedroom to the
13 living room? Was it jest? Was it with malice aforethought?

14 One cannot tell without replacing the testimony
15 of the accomplice to lend direction or aid.

16 Other testimony has tended to connect
17 Patricia Krenwinkel with Charles Manson, Leslie Van Houten
18 and Susan Atkins. But this connection with the other co-
19 defendants is obviously insufficient.

20 In People vs. Rheingold, 87 Cal. App. 2d 382
21 at pages 399 and 400, the Court stated:

22 "There can be no question that it is
23 insufficient corroboration merely to connect a
24 defendant with the accomplice or other persons
25 participating in the crime, but evidence
26 independent of the testimony of the accomplice must

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4b fls.

"tend to connect a defendant with a crime
itself and not simply with its perpetrators. It
is not with the thief but the connection must be
had but with the commission of the crime itself."

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1 I submit that the evidence in the record is
2 clearly insufficient to connect Patricia Krenwinkel with the
3 commission of the offenses alleged in Counts I through V
4 of the indictment.

5 With respect to Counts VI and VII, the
6 La Bianca homicides, there is a total lack of evidence
7 in absence of the testimony of Linda Kasabian connecting
8 Patricia Krenwinkel with the evidence of the offenses.

9 There is no independent evidence whatsoever
10 connecting Patricia Krenwinkel with the commission of
11 those offenses.

12 There was certainly no eyewitness that saw
13 Patricia Krenwinkel kill Leno or Rosemary La Bianca.

14 There has been introduced into evidence no
15 admissions or confessions of Patricia Krenwinkel connecting
16 her to those offenses.

17 The record is totally devoid of assistance
18 in answering the important questions in connection with
19 the death of Rosemary and Leno La Bianca.

20 Was Patricia Krenwinkel inside the house at
21 the time Leno and/or Rosemary La Bianca met their death?
22 If so, what evidence is there of that.

23 Did Patricia Krenwinkel have a knife with
24 her? If so, there is no evidence of that fact.

25 Did Patricia Krenwinkel stab Leno La Bianca?
26 If so, where is the evidence of that fact? Did Patricia

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1 Krenwinkel stab Rosemary La Bianca? If so, where is the
2 evidence of that fact?

3 Did Patricia Krenwinkel assist in any way in
4 these two homicides? If so, where is the evidence of that?

5 Where in the record is there any evidence
6 connecting Patricia Krenwinkel with the deaths of Rosemary
7 and Leno La Bianca. If so, where is the evidence?

8 Did Patricia Krenwinkel puncture Leno La Bianca's
9 abdomen with a fork? If so, where is the evidence of that
10 occurrence?

11 The District Court of Appeal recently in
12 People vs. Reilly, a 1970 case at 5 Cal. App. 3rd 768 at
13 page 772 said:

14 "Evidence cannot be considered substantial
15 which leaves unresolved the many conflicting
16 possibilities present as to the time of the killing,
17 the circumstances and the mode of the killing, the
18 provocation therefor, and the identity of the killer."

19 Such a situation obviously exists here. There
20 is no evidence whatsoever, much less substantial evidence,
21 that Patricia Krenwinkel was responsible, directly or
22 indirectly, for the death of Leno or Rosemary La Bianca.

23 With respect to Count VIII of the indictment,
24 there are similar problems.

25 California Jury Instruction 931 defines a
26 conspiracy as an agreement or understanding between two or

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4c fls.

1 more persons that they will commit an unlawful act, that is,
2 that they will combine together to accomplish by united
3 action a criminal or unlawful purpose.
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1 Where is the evidence in this case that
2 Patricia Krenwinkel conspired with Leslie Van Houten to kill
3 Steven Parent?

4 Where is the evidence that Patricia Krenwinkel
5 conspired with Susan Atkins to kill Leno La Bianca?

6 What murders did the defendants conspire to
7 commit? What murders? All the murders charged in the
8 indictment? Some of the murders charged in the indictment?

9 It is alleged in the indictment that all the
10 defendants did willfully, unlawfully and feloniously and
11 knowingly, conspire, combine, confederate and agree
12 together with other persons whose true identity is unknown
13 to commit the crime of murder, a violation of Section 187,
14 Penal Code of California, a felony.

15 Did they combine together to commit a single
16 crime of murder, murder in the singular as is alleged in
17 the indictment?

18 What evidence is there of a confederation
19 between Patricia Krenwinkel and Charles Manson to kill
20 Thomas John Sebring?

21 Is the state of the law such that if offenses
22 are committed by two or more persons, there must necessarily
23 be a conspiracy? Even without any evidence of the conspiracy?

24 I submit that the evidence against Patricia
25 Krenwinkel is woefully inadequate and insubstantial. She
26 should be acquitted as to all counts of the indictment.

1 THE COURT: Mr. Shinn?

2 MR. SHINN: Yes, your Honor.

3 I want to further incorporate the arguments
4 of Mr. Fitzgerald as to his motion, your Honor.

5 In addition to that, your Honor, as to
6 Susan Atkins, in Counts -- I believe it is VI, VII and
7 VIII, there is no substantial evidence whatsoever that
8 Susan Atkins was involved, directly or indirectly, with
9 the La Bianca homicides or the conspiracy.

10 The only evidence, I believe, presented by
11 the prosecution was that she was, Miss Atkins was, in
12 the automobile when they went to the La Bianca residence,
13 and that there was also another person named Steve Grogan
14 who was also in the automobile. And that person was not
15 even indicted.

16 This would seem to indicate that the evidence
17 regarding the La Biancas, in Counts VI and VII, is
18 insufficient.

19 Now, as to Counts I to V, the only evidence
20 presented against Miss Atkins was the testimony of Linda
21 Kasabian, who testified that she saw Miss Atkins run in
22 and out of the Tate residence.

23 She did not testify as to whether or not
24 Miss Atkins had a knife in her hand or whether or not she
25 was chasing anyone, nor did she testify that she saw Miss
26 Atkins actually stabbing or killing any persons at the

Tate residence.

4D-1 1 The other evidence presented against
2 Miss Atkins was the testimony of Roni Howard and Virginia
3 Graham.

4 These witnesses testified that Miss Atkins
5 actually told these witnesses that Miss Atkins actually
6 stabbed Sharon Tate.

7 Now, I believe these two witnesses both had,
8 I believe, two prior felony convictions, and that as soon
9 as they testified, they were immediately released.

10 Also, we have the testimony of Barbara Hoyt,
11 who testified that she heard Miss Atkins say that Sharon
12 Tate was the last to die.

13 I believe, under cross-examination, she was
14 asked whether or not she heard the entire conversation
15 Miss Atkins had with this other person, and Miss Hoyt
16 testified that the only portion of the conversation she
17 heard was that Susan Atkins stated that Sharon Tate
18 was the last to die.

19 Now, Susan Atkins could have been stating to
20 this other person, "I heard that Sharon Tate was the last
21 to die."

22 Or she could have said, "Someone told me that
23 Sharon Tate was the last to die."

24 So, that portion of the evidence regarding
25 Barbara Hoyt's testimony stating that Susan Atkins stated
26 that Sharon Tate was the last to die, I believe is very

1 weak evidence.

2 If you look at the entire picture, the evidence
3 against Susan Atkins, it could be said that there is no
4 substantial evidence against Miss Atkins.

5 Therefore, I feel that she should be acquitted
6 on all charges.

7 Thank you.

8 THE COURT: Mr. Kanarek.

9 MR. KANAREK: Your Honor, I would incorporate by
10 reference Mr. Fitzgerald's statements in connection with
11 my argument. So, I won't repeat them.

12 But I would also like your Honor to take into
13 consideration the fact that the statute says that the
14 Court must look at this as if it were on appeal, meaning a
15 different test than that which the law used to be as to
16 an advisory verdict.

17 Therefore, at this time, your Honor, I make a
18 motion that the Court voir dire the jury to determine
19 what the jurors have heard, if anything, in connection with
20 this case; what they have come to know by any means what-
21 soever, either by way of conjugal visits, or by what they
22 may have heard or seen, as I say, by any means whatsoever.

23 I make that motion, your Honor, because the
24 statute says that the Court must --

25 THE COURT: Are you making a motion for a judgment
26 of acquittal, Mr. Kanarek?

MR. KANAREK: Yes.

THE COURT: Kindly address your arguments to that motion.

MR. KANAREK: I am in pursuit of that motion, because the Court says that the Court must analyze it as if the case were on appeal.

I make a motion that the Court voir dire the jury first so I can then have the Court determine that aspect of it as if the Court were looking at it as an appellate court.

May I have a ruling on that motion?

THE COURT: Denied.

1 MR. KANAREK: Then, your Honor, I would ask the
2 Court to consider the situation as to Mr. Manson.

3 I would like the Court to consider, first, at
4 Page 6526.

5 This has to do with Linda Kasabian, your
6 Honor, in connection -- unless your Honor feels that he needs
7 no further argument as to her being an accomplice.

8 But I would like your Honor to consider, if
9 your Honor will, Page 6525.

10 "Q After you knew that this person
11 had passed away -- well, let me withdraw that
12 and ask you.

13 "When, as far as your mind is
14 concerned, did you first feel that the person
15 that was in this picture had passed away?

16 "THE WITNESS: Would you repeat that?

17 "MR. KANAREK: May that be read, sir?

18 "THE COURT: Read the question.

19 "THE WITNESS: The moment he was shot."
20 referring to Mr. Parent.

21 "Q At that point you felt that he was
22 dead?

23 "A Yes.

24 "Q Is that right?

25 "A Yes.

26 "Q All right.

1 "You then went around to the back of
2 the house?

3 "A. Yes.

4 "Q. After that had occurred?

5 "A. Yes."

6 And then further on, at the bottom of Page
7 626:

8 "Q. Now, you say, Mrs. Kasabian, that
9 you saw a man at the door, Mrs. Kasabian, who
10 was injured?

11 "A. Yes.

12 "Q. Is that true?

13 "A. Yes.

14 "Q. And that person appeared to you
15 to be bleeding?

16 "A. Yes.

17 "Q. Did you, Mrs. Kasabian, render
18 any first-aid for that person?"

19 After some colloquy between counsel:

20 "THE WITNESS: No, I did not.

21 "Q. And is there some reason,
22 Mrs. Kasabian, that you didn't render first-aid
23 for that person?

24 "A. I don't know.

25 "Q. You don't know?

26 "A. No."

1 Then, further, ⁶⁵⁹¹your Honor, I would like your
2 Honor to consider Page / at Line 11.

3 "Q Well, you are telling us,
4 Mrs. Kasabian, that when you heard the
5 noises coming from the house, you were
6 thinking that your friends were in danger;
7 right?

8 "A No. I did not think it was them.

9 "Q You felt that somebody else was
10 in danger?

11 "A Yes.

12 "Q And why did you think that some-
13 body else was in danger and your friends were
14 not?

15 "A I just felt they were killing
16 these people because they killed that guy in
17 the car."

4f-1

1 And at page 6592:

2 "Q You just said they were killing
3 these people the way they killed the guy in
4 the car?

5 "A I made a mistake. I am sorry.

6 "Q What way did you make a mistake?

7 "A By using the word 'they.'

8 "Q I see.

9 "And what did you mean to say instead
10 of 'they'?

11 "A That Tex killed the man in the car.

12 "Q Well, after Tex killed the man in the
13 car, you had been to the back of the house; right?

14 "THE WITNESS: Yes."

15 Then the next question, your Honor, page
16 6592, line 15:

17 "Q And your intent, after you knew that
18 the man in the car had been killed was to enter that
19 house and steal?"

20 And after some colloquy, the Court overruled
21 the objection, and the witness said:

22 "Yes."

23 I would like also to have your Honor consider,
24 of course, that Mr. Manson isn't even alleged to be present
25 in connection with the Tate matters, the matters at the
26 Tate house.

4f-2

1 As to the matters at the La Bianca house,
2 Linda Kasabian's testimony is that Mr. Manson was there for
3 some four minutes, according to her, in the house.

4 Furthermore, your Honor, Linda Kasabian
5 testified that she and Mr. Manson went to the beach area.

6 She says that she did not hear of these
7 matters until sometime when she was in Florida, later on,
8 like I think in October of 1969.

9 If she didn't hear of those murders, there is
10 no reason for Mr. Manson to even have heard or known of those
11 murders.

12 Furthermore, your Honor, another point. I
13 think Mr. Fitzgerald covered it inferentially, but not
14 explicitly.

15 That is that the TV that she said she saw --
16 she said she saw TV the following day -- that is offered
17 for your Honor's consideration on the matter of her being
18 an accomplice as a matter of law.

19 As far as the conspiracy goes, your Honor,
20 there is simply no putting of the heads together. There
21 is nothing here whatsoever, nothing to connect Mr. Manson
22 with any kind of a conspiracy.

23 As your Honor well knows, I am sure, from
24 reading the legal literature, when the District Attorney
25 doesn't have a case against anybody, he throws in a
26 conspiracy count.

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4g fls.

1 You see, the vice of this is that the
2 District Attorney has got the power to structure a case
3 procedurally. They have the power to structure a case by
4 way of the fact that they go to the Grand Jury, they have
5 all of these powers of persuasion with the Grand Jury,
6 especially in an emotional type of a case such as this.

3
1 I think, also, your Honor should take into
2 consideration the conduct of the District Attorney before
3 the Grand Jury.

4 The District Attorney, at the time that they
5 put on Susan Atkins, where Susan Atkins said that Tex
6 Watson killed Sharon Tate, they had the statements of
7 Roni Graham and Virginia Howard. They didn't
8 give those statements to the Grand Jury so that the Grand
9 Jury would see the difference, so that the Grand Jury
10 would be able to weigh --

11 THE COURT: Confine yourself to the motion,
12 Mr. Kanarek.

13 MR. KANAREK: I am, your Honor.

14 As your Honor knows, the law is that the Court
15 must view everything that has occurred in connection with
16 the case as if the Court were an appellate court.

17 I believe these are matters that the Court
18 should consider, because if the District Attorney of
19 Los Angeles County has procured an indictment by subor-
20 nation of perjury, wilful misconduct, conspiracy to obtain
21 money by way of publication with the Los Angeles Times,
22 and other people, then this is certainly for the Court to
23 consider, because these are matters on appeal that a court
24 would consider.

25 I think there is no question, your Honor, but
26 as to all counts, the first five, the two at the La Blancas,

1 and the conspiracy count, that there is no question, if we
2 look at it in a detached, analytical, scientific way,
3 there is no doubt but what we are obliged, and I move the
4 Court to dismiss all the counts as to Mr. Manson, your
5 Honor.

6 THE COURT: Mr. Hughes?

7 MR. HUGHES: May I remain seated during my argument,
8 your Honor?

9 THE COURT: You may.

10 MR. HUGHES: Your Honor, I would move under Section
11 1118.1 that your Honor would dismiss, individually and
12 collectively, all of the counts against Leslie Van Houten.

13 It is clear through the evidence that there is
14 nothing linking Leslie Van Houten to any offense which was
15 committed as charged in the indictment.

16 Now, the most that we have is Linda Kasabian
17 placing her -- even if we put in the testimony of an
18 accomplice, we have Linda Kasabian putting her outside of
19 a house next to the La Blancas, and without any direction
20 whatsoever. This, supposedly, sometimes near the time of
21 the offense.

22 Considering Linda Kasabian as an accomplice,
23 and looking at what we have from that point, we have
24 Dianne Lake, whose testimony certainly seemed unreliable
25 to the point, I believe, that the Court could rule
26 that it was unreliable, having Leslie telling her that she

4h-1

stabbed a dead body.

Now, I don't know what sort of crime that is, stabbing a dead body, if it is to be believed.

And I don't know which count, if it were to be believed that the body were alive, I don't know which count it would go to. Count VI or VII?

As a matter of fact, it was never said that it was even a person's body.

So, I don't see any possible crime in that statement that she stabbed a dead body.

As far as other statements, that she said she wiped off prints, ate something, took something, hitchhiked back, that there was a boat there; these may indicate that she knew the killers or was nearby, or saw them, or had some dealings with them after some events took place; but I do not believe that it shows any consciousness of guilt or any involvement in the murders.

Now, according to People vs. Estrada, the People are stuck by the inculpatory statement that they have introduced.

They have introduced a statement that she stabbed a dead body.

I don't know of that being any crime.

They can't blow hot and cold on that statement and say: Well, the body must have been alive and, therefore, there was some involvement of Leslie.

As far as any other witnesses, we have

4h-2

1 Barbara Hoyt reporting some incidents similar to a back
2 house incident, during which a man came in and Leslie
3 apparently, she said, hid under some sheets.

4 This was similar to what Dianne had said,
5 although there were vast discrepancies between the actual
6 facts alleged by both girls.

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1 Also it should be pointed out that during
2 that testimony of Dianne Lake, she has made some statements
3 about items being burnt and credit cards being burnt and
4 a rope being burnt and coins being counted.

5 There is actually a showing by the People
6 that nothing was missing from the La Bianca house.

7 Frank Strothers testified he went back to
8 the house some four days after the offenses, and that
9 nothing was missing there, so actually there is a great
10 deal to show that this back house incident, if it indeed
11 occurred, was something completely unrelated to any
12 offenses.

13 There is no showing that Leslie had charge
14 of any weapons.

15 There is no showing that Leslie had any
16 weapons.

17 There is no showing that she is in any way
18 connected with any conspiracy.

19 There is no showing that she had any know-
20 ledge at any time, or joined with any other defendants in
21 any manner to effectuate anyone's death.

22 And also there is no showing that Leslie was
23 present at the events as they occurred.

24 There is no testimony showing what indeed
25 happened at the La Bianca house, and for that reason
26 these counts should be dismissed against Leslie Van Houten.

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Also, your Honor, possibly in support of the idea that a dead body was stabbed later, which again I say is not a crime, Dr. Katsuyama actually indicated that there were some wounds which were of a post-mortem nature on one of the victims.

For those reasons, your Honor, I ask that you dismiss individually and collectively all of the counts against Leslie Van Houten.

THE COURT: The court will recess for 15 minutes.

5a fls. 10

(Recess.)

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1 THE COURT: All parties and counsel are present.
2 The jury is not present.

3 Do you care to argue, Mr. Bugliosì?

4 MR. BUGLIOSI: Yes, your Honor, very briefly.

5 For defense counsel, your Honor, to stand up
6 in front of this court and tell the Court that the People
7 offered no evidence against their clients is actually
8 unbelievable.

9 I can understand their making this argument to
10 12 people chosen from this community, but I think they
11 would almost be embarrassed to make this to a judge, this
12 type of a frivolous argument.

13 Certainly no one is ever going to accuse these
14 defense attorneys of being modest. If anyone ever does I
15 can assure them I will come very speedily to their defense.

16 On the other hand, your Honor, maybe they do
17 believe what they said. I think there is some cause for
18 concern for all of them if they really do believe what
19 they said to the Court.

20 On the other hand, maybe for the past 19 weeks
21 they were wearing earplugs and were blindfolded --

22 MR. HUGHES: Your Honor, this is improper argument
23 to the Court.

24 MR. BUGLIOSI: There just absolutely is no question,
25 your Honor, of the very strong, powerful case the prosecu-
26 tion has offered against all four defendants in this case.

1 As the Court knows, the language under 1118,
2 Subdivision 1, of the Penal Code provides in part:

3 "If the evidence then before the Court
4 is insufficient to sustain a conviction of
5 such offense or offenses on appeal," --

6 Then and only then should the Court grant a
7 motion for acquittal.

8 The test the People have to satisfy, your Honor,
9 under Section 1118.1 of the Penal Code is not to prove
10 these defendants guilty beyond a reasonable doubt. The
11 Court knows that and defense knows that.

12 We only have to prove that we offered any
13 substantial evidence from which an inference of guilt can
14 be drawn, i.e., the same test that prevails on appeal.
15 No court has yet interpreted Section 1118, Subdivision 1 of
16 the Penal Code.

17 The case of People vs. Odom, 3 Cal. Ap. 3d 559
18 concerns 1118.1, but it does not interpret the language of
19 Section 1118, Sub. 1.

20 Therefore, in looking for an interpretation on
21 1118.1, one almost has to look at its predecessor, Section
22 1118.

23 There were many cases interpreting Section
24 1118, and these cases are illuminating.

25 I cite to the Court People vs. Wescott, 99 Cal.
26 Ap. 2d 711.

1 The Court said that to justify an instruction
2 directing a verdict of acquittal in criminal prosecutions
3 the evidence must be insufficient as a matter of law.

4 The original 1118 section was analogous to a
5 directed verdict in a civil case.

6 The Court, as the Court knows, would instruct
7 the jury to return a judgment of acquittal.

8 The Westcott case goes on and says that where
9 there is evidence -- the Court doesn't even say substantial,
10 it says, "Where there is evidence from which an inference of
11 guilt is justified, a criminal prosecution should not be
12 taken from the jury merely because an inference of inno-
13 cence might also be drawn therefrom."

14 People vs. Saucedo, 199 Cal. Ap. 2d 47, the
15 Court said that a defense motion for an instruction that the
16 defendant should be acquitted for insufficiency of evidence
17 may properly be denied if the evidence is sufficient to
18 sustain a conviction on appeal.

19 Now, when is the evidence sufficient to sustain
20 a conviction on appeal? That is where there is substantial
21 evidence from which an inference of guilt can be drawn.

22 As Mr. Witkin says on Page 669 in his book of
23 criminal procedure:

24 "It is extremely rare that appellate courts
25 in either a civil or criminal case will reverse
26 for insufficiency of evidence alone."

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1 In other words, if the court upstairs in
2 looking at the trial transcript reaches the conclusion
3 that the trial jury predicated their verdict on speculation,
4 conjecture, on mere suspicion, then and only then will the
5 appellate court reverse the trial verdict.

6 Likewise, since the same test applies under
7 1118 subdivision 1, the test on appeal, likewise of the
8 prosecution in this case had only offered speculation,
9 conjecture and mere suspicion, then the Court would be
10 justified in granting the 1118 motion.

11 But the record is clear, your Honor, that we
12 offered very strong, solid substantial evidence connecting
13 each of these defendants with the corpus delicti of the
14 counts in which they are charged in the Grand Jury indict-
15 ment.

16 The present state of the record is such that
17 not only have we therefore satisfied our burden under
18 1118.1 of the Penal Code, which is a very limited burden,
19 under the very language of the statute, but we have already
20 at this stage of the proceedings proven the guilt of these
21 defendants beyond a reasonable doubt, and I believe this
22 is very obvious to the Court.

23 Therefore, I don't believe that now is the
24 time for me to attempt to make any persuasive argument
25 concerning the evidence in this case.

26 Moreover, strictly from the standpoint of

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1 trial tactics I don't think it is advisable for me to
2 verbalize the arguments I intended to make to the jury,
3 one or two months from now.

4 However, just for the record, your Honor,
5 lest the Court entertain even the slightest notion of the
6 efficacy and validity of the defense motions, I would like
7 to very briefly address myself to some of the evidence in
8 this case.

9 No. 1, at this stage of the trial Linda
10 Kasabian's testimony is totally and wholly uncontradicted.
11 I am confident that at the very end of this trial it is
12 also going to be uncontradicted but, as Mr. Kanarek says,
13 that is sliding off the point.

14 At this stage of the proceedings her testimony
15 is totally uncontradicted.

16 If the Court rules that she is not an
17 accomplice, then of course the People could satisfy an
18 1118.1 motion on her testimony alone.

19 In fact, a jury could convict these defendants
20 on her testimony alone if the Court rules that she is not
21 an accomplice.

22 The Court has not yet verbalized or articulated
23 whether it believes that Linda Kasabian is an accomplice.
24 I personally don't know, and I think the Court is of the
25 same frame of mind or the Court has indicated likewise.

26 I don't know whether now is the time for the

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1 Court to make that determination. I don't think the Court
2 has to make that determination at this point.

3 But in the event that the Court in ruling on
4 this 1118 motion is going to consider whether or not Linda
5 Kasabian is an accomplice, then I would like to address
6 myself at this point very briefly to whether Linda was an
7 accomplice on the La Bianca murders.

8 I am not stipulating for one moment that
9 Linda was an accomplice on the Tate murders, but I am
10 aware of the conference in chambers in which the issue of
11 felony murder came up.

12 Felony murder, however, does not apply to
13 the second night, the night of the La Bianca murders.

14 So in any event I am just going to address
15 myself at this point to whether Linda was an accomplice in
16 the La Bianca murders.

17 As the Court knows, a conspiracy is an agree-
18 ment. It is an agreement between two or more persons to
19 commit a crime, followed by an overt act to carry out the
20 object of the conspiracy.

21 So one of the elements, one of the essential
22 elements of conspiracy is an agreement.

23 Was Linda a party to the criminal agreement
24 on the night of the La Bianca murders? I maintain that
25 she was not.

26 The word agreement connotes a voluntary

enterprise.

If coercion, either express or implied is employed, there simply is no agreement. That is also true under the civil law contracts.

Linda testifies, your Honor, and, as I say and keep repeating at this stage of the proceedings, her testimony has not been contradicted.

She testified that on the night of the La Bianca murders she did not want to go along with Charles Manson and the other defendants. She said she went out of fear.

That is in the record.

Inasmuch as she had just seen five murders the previous night and had knowledge that Mr. Manson was very very capable of ordering her killing, she hardly was in a position to tell Mr. Manson to go jump in the lake, and she did not want to go along that night. That is just not common sense.

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1 So she testified she went out of fear and she
2 did not want to accompany Mr. Manson on this particular
3 night.

4 Because Linda went out of fear vis-a-vis going
5 along voluntarily, one can hardly say she was a party to
6 the criminal agreement on the night of the La Bianca
7 murder.

8 If she was not a party to that agreement, she is
9 not a co-conspirator. Therefore, vicarious liability does
10 not apply.

11 In addition thereto, we are confronted with
12 the issue of what is an accomplice.

13 Now, Mr. Fitzgerald said that if one is
14 indicted with a crime, ergo that makes a party an accom-
15 plice.

16 That simply is not the law. I will give the
17 Court three cases -- I can give the Court 30 cases -- but
18 I give the Court three cases which hold just because you are
19 indicted or held to answer does not make you an accomplice
20 as a matter of law.

21 People vs. Acosta, 115 Cal. Ap. 103.

22 People vs. Kosta, 14 Cal. Ap. 696 and

23 People vs. Clark, 116 Cal. Ap. 2d 219.

24 These three cases hold, as many, many other
25 cases in California do hold, that simply because a person
26 has been indicted or held to answer, this does not make that

1 party an accomplice as a matter of law.

2 The language we have to be concerned about is
3 the second paragraph in CALJIC 3.10.

4 That language says that to be an
5 accomplice one must have knowingly and with criminal
6 intent aided, promoted, encouraged, instigated by act or
7 advice or by act and advice the commission of the offense
8 charged against the defendants on trial.

9 So we have two basic elements which are
10 required in order for a defendant to be an accomplice:

11 Knowledge, number one.

12 Number two, criminal intent.

13 We discussed knowledge first and then
14 criminal intent, and I am just addressing myself now to the
15 issue of whether Linda was an accomplice on the night of
16 the La Bianca murders.

17 Concerning the issue of knowledge, with
18 respect to the night of the La Bianca murders, obviously
19 this night as opposed to the previous night Linda had
20 knowledge that the mission was going to be murder.

21 She did not have that knowledge the previous
22 night but she had knowledge the second night that the
23 mission was going to be murder.

24 Why? Because Mr. Manson told her and the
25 others that Tex and the other people had been a little too
26 messy the night before, and this time he was going to show

1 them how to do it.

2 Since Linda had knowledge that the previous
3 night five people had been murdered, she certainly knew on
4 the night of the La Bianca murders, and she admitted on the
5 witness stand, the mission was going to be murder, so she
6 had knowledge.

7 What about the second element, criminal intent?
8 In this case the intent to kill?

9 Now, we cannot just cavalierly fall back on the
10 felony-murder rule with respect to the second night. If
11 we could rely on the felony-murder rule the second night,
12 then, of course, the Court could or the law could engage in
13 a fiction and convert by way of a surgical operation, as it
14 were, the intent to commit the underlying felony into an
15 intent to kill, thereby inferring malice aforethought.

16 No defendant could ever be convicted of any
17 degree murder unless there is malice aforethought.

18 The Court and the law can engage in that
19 fiction if the felony-murder rule applies, but there is no
20 evidence in the record that on the night of the La Bianca
21 murders Linda Kasabian intended to rob or burglarize
22 anyone.

23 So we are not dealing with felony murder.

24 The criminal intent requirement of the law of
25 accomplices has to be satisfied, if at all, only if
26 Linda Kasabian had an intent to kill, an intent to kill!

1 To determine what Linda's state of mind was on
2 the night of the La Blanca murders, of course, we can
3 look to circumstantial evidence, that is the only way we
4 determine anyone's intent to do anything.

5 We can look to her entire conduct that night,
6 and from that conduct draw inferences as to what was on her
7 mind.
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1 Not only didn't Linda want to go along on
2 the night of the La Bianca murders, your Honor, her
3 conduct in Venice clearly and unequivocally shows that
4 she did not have an intent to kill on the night of the La
5 Bianca murders.

6 As she told Charlie, as they were going to
7 Venice, she said "Charlie, I'm not you, I cannot kill any-
8 body."

9 Not only did she tell Mr. Manson that, but
10 she deliberately knocked on the wrong door at that Venice
11 apartment, thereby preventing another murder.

12 I think we can assume that willing conspirators,
13 willing members of the conspiracy obviously want to help
14 carry out the object of the conspiracy, as alleged in
15 Counts No. VIII of the indictment, the object of the
16 conspiracy on the night of August 10th, 1969, was murder.

17 Linda showed by her conduct in Venice that
18 she was out to frustrate and prevent the object of the
19 conspiracy from being carried out, not to help it.

20 If she wanted to help it she would have knocked
21 on the right door, on Nader's door, but she deliberately
22 knocked on the wrong door.

23 To hold that she is a co-conspirator and
24 accomplice in view of that conduct on her part, which is
25 uncontradicted at this point, is simply antithetical to the
26 evidence and just flies straight in the teeth of the

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1 evidence.

2 Linda's state of mind on the night of the
3 La Bianca murders, your Honor, was not that of a killer.
4 If it had been we very well could have been prosecuting
5 these defendants for eight murders, not just seven murders.

6 Referring to the murder of Solomon Nader,
7 assuming he was in the apartment that night.

8 I think her conduct clearly shows no intent
9 to kill on the night of the La Bianca murders.

10 Therefore, your Honor, she is not an accomplice.
11 She is not a co-conspirator on that night, and the Court
12 could hold, and I think should hold that as to the La Bianca
13 murders the prosecution has satisfied their burden of proof
14 under Section 1118.1.

15 In fact, as I indicated, a jury could convict
16 these defendants solely on Linda's testimony with respect
17 to the La Bianca murders.

18 As I have indicated, I don't want to argue
19 the evidence against these defendants in depth at this point,
20 but very briefly let me just touch upon some of the evidence.

21 Against Charles Manson, apart from Linda's
22 testimony, and the testimony with respect to the .22
23 caliber revolver and the rope and the enormous amount of
24 evidence showing Mr. Manson's Helter Skelter philosophy,
25 and motive, which irresistibly led him to order these
26 seven savage murders, apart from that testimony, apart from

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1 the testimony showing his complete and total domination
2 and control over the Family, including these defendants,
3 from which we can draw the unavoidable conclusion and
4 inference that on the two nights in question he was also
5 dominating and controlling them and directing everything
6 that they did, apart from all of that evidence and much
7 other evidence that I am not even going to go into at the
8 present time.

9 Charles Manson confessed to these murders.

10 Juan Flynn testified that Manson placed
11 a knife at his throat and said "Don't you know I am the
12 one who is doing all of these killings?"

13 DEFENDANT MANSON: In Vietnam.

14 MR. BUGLIOSI: I don't think you ever were there,
15 were you, Charlie?

16 Juan was, not you.

17 MR. KANAREK: May I object to counsel's colloquy?

18 THE COURT: Let's proceed.

19 MR. BUGLIOSI: We know Manson was not only referring
20 to the Tate murders, your Honor, but to the La Bianca
21 murders.

22 DEFENDANT MANSON: You don't know what Mr. Manson
23 was referring to, that Mr. Manson was referring to any-
24 thing.

25 THE COURT: Mr. Manson, if you don't stop I will
26 have you removed.

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1 MR. BUGLIOSI: We know he was referring to the
2 Tate and La Bianca murders because Flynn testified Manson
3 made this confession several days before the August 16th
4 raid, but two or three days after -- two or three days
5 after he observed Mr. Manson drive off one night in John
6 Swartz's car with Tex and Clem and Sadie and Katie and
7 Leslie and Linda, which undoubtedly was the night of the
8 La Bianca murders.

9 Mr. Manson made that statement two or three
10 days after Mr. Flynn's observations, so we know that when
11 Mr. Manson made this confession, he was not just talking
12 about the Tate murders; he was also talking about the La
13 Bianca murders.

14 With respect to Defendant Susan Atkins, your
15 Honor, not only do we have Linda's testimony, but Susan
16 Atkins confessed to three individuals as to her involvement
17 in the Tate murders.

18 She made a very incriminating statement, not
19 a confession, but an incriminating statement to a fourth
20 person, Rosanna Walker, with respect to the La Bianca
21 murders.

22 Linda Kasabian's testimony directly implicates
23 Susan Atkins in the La Bianca murders as a co-conspirator,
24 an aider and abettor.

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1 Also when Susan Atkins wrote in her letter
2 to Roni Howard in mid-December, 1969:

3 "I did not admit to being in the second
4 house because I was not in the second house,"
5 that by far, your Honor, is the most persuasive inference
6 she was involved in the La Bianca murders.

7 The statement "I wasn't in the second house"
8 in no way implies she had nothing to do with the La Bianca
9 murders. To the contrary, it very strongly implies she
10 was involved in the La Bianca murders.

11 She is merely saying she did not go inside
12 the residence.

13 We never claimed she did anyway. She is not
14 saying she is not involved in those murders.

15 Also on the night -- most likely the night
16 of the La Bianca murders -- Susan Atkins told Juan Flynn,
17 she said "We are going to get some f-u-c-k-i-n-g pigs."

18 Juan also testified after Susan said this
19 he observed her get into John Swartz's car with Mr. Manson
20 and Tex and Clem and Katie and Leslie and Linda, and drive
21 off.

22 This undoubtedly was the night of the La
23 Bianca murders.

24 With respect to Patricia Krenwinkel, and I
25 am just touching on the evidence, your Honor, there is an
26 enormous amount of evidence which I simply am not going to

1 go into now, I am just touching on the high water marks,
2 as it were.

3 With respect to Patricia Krenwinkel, as to
4 the Tate murders, not only do we have Linda's testimony,
5 we have of course her fingerprints found at the scene,
6 and when your fingerprints are found at the scene, as
7 Mr. Fitzgerald knows, that is the beginning and end of
8 the ball game for the particular defendant.

9 As to the La Bianca murders, Linda Kasabian's
10 testimony directly connects Miss Krenwinkel with these
11 murders.

12 Linda testified that it was Tex, Leslie and
13 Patricia who got out of the car the night of the La
14 Bianca murders in front of the La Bianca residence.

15 And of course, your Honor, her refusal to
16 print the words, "Death to pigs," "Rise," and "Helter
17 Skelter," the same words printed on the wall in the La
18 Bianca residence surely shows a consciousness of guilt,
19 and this consciousness of guilt is circumstantial evidence
20 of her complicity in the La Bianca murders.

21 Of course with respect to Leslie Van Houten,
22 besides Linda Kasabian's testimony which directly impli-
23 cates her in the La Bianca murders, we have the fact that
24 Leslie made a very strong admission to Dianne Lake, and
25 we also have the back house incident in which Dianne Lake
26 and also Barbara Hoyt testified to essentially the same

1 thing.

2 As I previously stated, your Honor, the People's
3 burden under Section 1118 subdivision 1 of the Penal Code is
4 a very limited burden, not only have we satisfied that
5 burden but at this precise point in time we actually proved
6 the guilt beyond any reasonable doubt.

7 There is absolutely no question, your Honor,
8 that the defense motions under Section 1118, subdivision 1,
9 are totally devoid of merit and substance, and should be
10 summarily denied.

11 Thank you, your Honor.

12 THE COURT: Do you wish to reply, Mr. Fitzgerald?

13 MR. FITZGERALD: No, I will apologize to Mr. Bugliosi
14 for making the motion and taking up his time.

15 THE COURT: Mr. Shinn?

16 MR. SHINN: No, your Honor.

17 THE COURT: All right, Mr. Kanarek.

18 MR. KANAREK: The District Attorney, in connection
19 with Linda Kasabian, it occurs to me is making this kind of
20 argument:

21 Linda Kasabian's out there shooting a bullet
22 off, and as the bullet is in the air she says "I don't
23 intend to do it. I don't intend to do it." She says,
24 "I love -- I am doing these things only because I am forced
25 to," and I think your Honor and I would agree that it is the
26 intent to do the act that counts, not the subjective statement

1 that "I don't wish the results of my act to occur."

2 And when the bullet is flying, your Honor,
3 Linda Kasabian cannot say "I don't intend to do any harm,"
4 and that is what the District Attorney is arguing.

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1 MR. HUGHES: Your Honor, interestingly enough I
2 found nowhere in the record any corroboration of the idea
3 that Linda Kasabian went the first night or the second
4 night under duress or any threat.

5 The prosecution was certainly free on all
6 points to show that, and I believe the net uncorroborated
7 statement which tries to exculpate her, you know, for what-
8 ever reason, even after she received immunity, is totally
9 devoid of merit.

10 MR. BUGLIOSI: That statement is in the record, your
11 Honor, about her going out of fear and not wanting to go
12 along.

13 MR. HUGHES: It is completely uncorroborated.

14 THE COURT: What was your remark, Mr. Hughes?

15 MR. HUGHES: I said that statement of hers was
16 completely uncorroborated, the idea that we have to look to
17 see if she is an accomplice, certainly -- once she is
18 charged and once it is ascertained she is an accomplice to
19 the point that Mr. Kanarek brought out on his cross-
20 examination of her, and also to the extent that the
21 District Attorney has successfully resisted all of these
22 motions to take her statement alone without corroboration,
23 that she was going under duress, I believe we cannot do this.

24 We are forced to look for something else to
25 substantiate that statement. The record is completely
26 devoid of any corroboration of that statement that she went

1 out of duress and fear.

2 THE COURT: I have considered all of your arguments,
3 gentlemen, and the record to date. For the purpose of these
4 motions for judgment of acquittal the Court has considered
5 Linda Kasabian to be an accomplice, without making a
6 specific finding to that effect.

7 Each of the motions for judgment of acquittal
8 is denied.

9 Are you ready to proceed with the defense?

10 MR. FITZGERALD: Yes, your Honor.

11 There will be no opening statements, however
12 we are ready to proceed.

13 THE COURT: With the jury present?

14 MR. FITZGERALD: With the jury present, your Honor.

15 THE COURT: You may bring in the jury.

16 (The following proceedings were had in open
17 court in the presence and hearing of the jury, all defen-
18 dants and all counsel being present:)

19 THE COURT: The record will show all parties, counsel
20 and jurors are present.

21 Mr. Bugliosi, do the People rest?

22 MR. BUGLIOSI: Yes, your Honor, the People rest.

23 THE COURT: Very well.

24 Mr. Fitzgerald, you may call your first
25 witness.

26 MR. FITZGERALD: Thank you, your Honor.

1 Subject to the admission of the defendants'
2 exhibits into evidence, the defendants and each of them
3 rest.

4 HUGHES: Join, your Honor, I rest on behalf of
5 Leslie Van Houten.

6 MR. SHINN: I rest on behalf of Susan Atkins.

7 MR. KANAREK: Rest on behalf of Charles Manson.

8 DEFENDANT KRENWINKEL: Your Honor, I wish to testify,
9 and also my two sisters would like to testify and put on
10 our defense.

11 MR. BUGLIOSI: May we approach the bench, your Honor,
12 this should be outside the presence of the jury.

13 DEFENDANT ATKINS: This should be in the presence of
14 the jury.

15 THE COURT: Counsel may approach the bench.

16 DEFENDANT ATKINS: I would like to have also the
17 defendants approach the bench because this is my defense.

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

20 MR. FITZGERALD: I might say, your Honor, we have
21 carefully discussed it and considered it among ourselves,
22 I'm referring to Mr. Kanarek, Mr. Shinn, Mr. Hughes and I,
23 and we feel that it is to the best interests of the
24 defendants that we should rest.

25 The defendants have indicated the desire to
26 testify, but certainly against my better judgment.

1 MR. BUGLIOSI: I think that if this happens, there
2 is almost a reversible error per se on appeal.

3 Their clients are being charged with seven
4 counts of murder, and they are not putting on any defense.

5 Of course, the Court cannot force them to put
6 on a defense, obviously, but I find it unbelievable that
7 they would do something like this, and I think we should go
8 back into chambers and discuss this thoroughly, and make
9 it abundantly clear on the record that they really feel it
10 is the best thing for them to do.

11 If it is a strategic measure to insure
12 reversible error on appeal, we simply cannot let them do
13 it.

14 THE COURT: I agree that the matter cannot be taken
15 up here at the bench. I will have to recess and we will
16 go back into chambers.

17 I want the defendants present in chambers
18 during this conference, however.

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1 MR. HUGHES: Could we dismiss the jury, your Honor?
2 We wish to do it in open court.

3 MR. KANAREK: We wish it in open court. We refuse
4 to and do not wish to do this in chambers, and I rest.

5 Mr. Bugliosi, first of all, has no standing,
6 he is doing this because he is writing a book --

7 THE COURT: What do you mean he has no standing?

8 MR. KANAREK: Mr. Bugliosi has written books on
9 other cases --

10 THE COURT: Mr. Kanarek, I don't want to hear this.

11 MR. FITZGERALD: I would say that every time we
12 go into chambers the defendants think it is with our
13 connivance, and we are trying to hide something.

14 THE COURT: As I said, I seriously question whether
15 this is something you want aired in front of the press.

16 However, if you insist on it, that is where it
17 will be.

18 MR. BUGLIOSI: Even if they insist, your Honor, the
19 Court has the power to bring this back into chambers with
20 the defendants present.

21 The defendants can be present.

22 But on such a major issue like this, the more
23 relaxed the atmosphere the better. It is too stiff out
24 here.

25 THE COURT: I am inclined to agree with you, Mr.
26 Bugliosi. I can see nothing to be served by airing this

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1 matter in front of the press, and the spectators in the
2 courtroom.

3 MR. HUGHES: Your Honor, I would not waive my
4 defendant's right to a public trial at this stage of the
5 proceedings.

6 MR. KANAREK: The same, I will not waive it either,
7 your Honor.

8 MR. SHINN: Is the Court ordering the defense
9 counsel and defendants into the chambers, your Honor?

10 THE COURT: Certainly.

11 MR. KANAREK: May the record reflect I agree with
12 Mr. Hughes, I am not waiving my right to a public trial,
13 and I ask that it be done in open court.

14 There is no reason at all why it cannot be
15 done in open court in front of everyone.

16 Everything else has been done in front of
17 everyone.

18 Mr. Manson has been accused of rape in front
19 of everyone. I see no reason --

20 THE COURT: I find it a little unusual for you to
21 make such an argument, Mr. Kanarek, in view of your continual
22 protests about the exposure of the jury to publicity of the
23 trial.

24 MR. KANAREK: Well, I do not believe --

25 There is nothing about this that is any
26 different. I don't think there is anything about this that

1 is any different than any other procedure.

2 THE COURT: This is strictly matters of law that the
3 Court must consider and rule on.

4 I will make all of the rulings in open court
5 if that is what you want, and we can have our discussion
6 in chambers.

7 MR. KANAREK: Well, your Honor, then I object to
8 it --

9 I do not waive my position based on the
10 Fourteenth Amendment of the United States Constitution
11 and California law.

12 We are entitled to a public trial.

13 MR. SHINN: I join in the objection.

14 MR. KANAREK: Your Honor is doing this in violation
15 of a public trial and I do object.

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

18 THE COURT: We are going to recess, ladies and
19 gentlemen, I have some matters I want to take up with
20 counsel and the defendants in chambers, so I would ask
21 the bailiffs to escort you back upstairs until we have
22 concluded those matters.

23 (Recess.)

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1 (The following proceedings occur in
2 chambers. All counsel and defendants present.)

3 THE COURT: The record will show all parties and
4 counsel are present.

5 Mr. Fitzgerald, I was a little surprised by
6 the manner in which the defendants rested.

7 If you knew that the defendants were going to
8 stand up and say that they wanted to testify, why didn't
9 you let that fact be known to the Court before you rested?

10 MR. FITZGERALD: I didn't know that the defendants
11 were going to stand up and ask to testify.

12 We did discuss it, myself, Mr. Shinn, and
13 Mr. Hughes, this morning with Patricia Krenwinkel,
14 Leslie Van Houten, and Susan Atkins, and at the conclusion
15 of a meeting we had last night, we both left with the
16 parting thought, both sides, the attorneys and the
17 defendants, left with the parting thought that we would
18 both consider our positions that we had taken vis-a-vis
19 the strategic and legal aspects of the defense.

20 Mr. Hughes, Mr. Shinn and myself came in this
21 morning, and prior to actually appearing in court we
22 discussed it among ourselves, and we told the three female
23 defendants that, in our best judgment, we were going to
24 rest our case.

25 THE COURT: I understand this was following a joint
26 conference of all of the defendants and all counsel?

1 MR. FITZGERALD: That is correct.

2 It was conducted, actually, right here in the
3 Hall of Justice last night between the hours of 7:00 and
4 9:00. Although this is not the only time we have dis-
5 cussed the nature and extent and character of the defense.
6 We have actually beendiscussing it with our clients and
7 among ourselves and among the defendants jointly for
8 several weeks now, and there have been differences of
9 opinion that have been aired on both sides.

10 THE COURT: Well, from what I have seen so far of the
11 trial, I would suspect, although I don't have any first-
12 hand knowledge of it, that there are various witnesses
13 who could be called in support of any one defendant's
14 position.

15 Now, I am not talking about credibility
16 or degree of persuasion that might result from calling
17 those witnesses, but certainly some rebuttal of some kind
18 or some defense of some kind could be put on.

19 DEFENDANT KRENWINKEL: I am my only witness.

20 MR. FITZGERALD: Should be put on?

21 THE COURT: Could be put on.

22 I have heard, for example, although I have no
23 knowledge of it, that there were a number of people who
24 confessed to these crimes during the pretrial period.

25 There are other members of the Family,
26 undoubtedly, who could be subpoenaed to testify.

1 DEFENDANT VAN HOUTEN: Subpoena your wife. She is a
2 member of your family.

3 DEFENDANT KRENWINKEL: No one knows better than I
4 what my testimony is.

5 THE COURT: Just a moment.

6 There are witnesses who have already testified,
7 who could be recalled, for example, for various things.

8 These things have all occurred to me as I have
9 sat watching and listening to the trial.

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1 So, when you say you are resting, I assume
2 that you have in mind all of these things, and that any
3 decision to rest is made as a tactical trial decision
4 and not from ignorance of what to do.

5 MR. FITZGERALD: Please, it is certainly not based
6 on ignorance.

7 I have tried a number of cases, and I believe
8 I am capable of calling witnesses on direct testimony, and
9 so on and so forth.

10 It was based on all the information at my
11 disposal.

12 It wasn't a decision I made for all the
13 attorneys either. Each of the attorneys themselves, with
14 respect to their individual clients, also made the decision.

15 THE COURT: The point that I am making is that the
16 decision was made as a matter of strategy and tactics, not
17 because you don't think there isn't any evidence that could
18 be put on which conceivably could help the defendants'
19 case.

20 MR. FITZGERALD: I am aware that there is evidence
21 that could be put on that would conceivably help the
22 defendants' case, yes, your Honor.

23 THE COURT: And your decision is made as a matter
24 of trial strategy and tactics; is that right?

25 DEFENDANT MANSON: What are you programming him to?

26 Do you want him to stand up so you can chop

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1 his head off again?

2 MR. FITZGERALD: I don't know if I want to adopt
3 those two words, "tactics" and "strategy."

4 Under all the circumstances. And I think that
5 I am prohibited from explaining all the circumstances
6 attending my decision because of applicable provisions of
7 the Business and Professions Code in regard to confidential
8 communications with my client, et cetera.

9 Certainly, tactics and strategy was one area
10 that was taken into consideration in making the decision.

11 THE COURT: What about you, Mr. Shinn?

12 MR. SHINN: Your Honor, the way this trial has been
13 going, I feel, your Honor, that it is very difficult for
14 the defense to put on a defense.

15 For example, this morning I had three judges
16 subpoenaed, and I think out of all the witnesses that were
17 subpoenaed, they were the only three that there was a
18 motion made to quash the subpoena.

19 I think the Court in this case should have
20 waited until the time I put the judges on the stand to see
21 whether or not they had anything relevant to testify to to
22 help the defendants.

23 THE COURT: You are avoiding the question, Mr. Shinn.

24 MR. SHINN: That is an example.

25 THE COURT: What I want to know, is, are you making
26 this decision to rest as a matter of trial strategy and

1 tactics?

2 MR. SHINN: Yes. I would join in Mr. Fitzgerald's
3 statements, your Honor.
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1 THE COURT: And this is your own decision with
2 respect to your client?

3 MR. SHINN: Yes. We all discussed this together.

4 THE COURT: What about you, Mr. Kanarek?

5 I assume you are acting independently and
6 have arrived at your own decision and conclusion with
7 respect to these matters?

8 MR. KANAREK: That is correct, your Honor.

9 THE COURT: What about you, Mr. Hughes?

10 MR. HUGHES: I feel it strange being put these
11 questions to.

12 I think the position is clear. When we rest,
13 we rest.

14 THE COURT: It is far from clear.

15 I want to know why you are resting.

16 MR. HUGHES: I don't think the Court should inquire
17 into that.

18 THE COURT: Well, I do.

19 MR. HUGHES: Well, I would refuse to answer those
20 questions as to why.

21 THE COURT: You don't have to tell me the specific
22 reasoning that you want to.

23 I want to know whether you are doing it out of
24 ignorance or whether you are doing it out of trial
25 strategy and tactics.

26 MR. HUGHES: I don't think I have to adopt some

1 language of your Honor.

2 DEFENDANT MANSON: He is inadequate.

3 THE COURT: You have participated in the conferences
4 of defense counsel, have you not?

5 MR. HUGHES: Yes, I have.

6 THE COURT: Gentlemen, if it is humanly possible,
7 I will see that this trial is not reversed because of
8 deliberate attempts by defense counsel to sabotage it.

9 DEFENDANT VAN HOUTEN: Man, that is in your head.

10 MR. FITZGERALD: I resent that.

11 THE COURT: From the answers that I am getting from
12 Mr. Hughes and Mr. Shinn, I feel that it is very appro-
13 priate.

14 MR. FITZGERALD: Ethically, as a responsible attorney
15 and member of the Bar and officer of this court, I think
16 that based on the information at my disposal, this is,
17 indeed, the best I can do for my client.

18 I am very sincere and I am very honest. I am not
19 trying to trick this court. I am not trying to hoodwink
20 this court.

21 THE COURT: You have given me a straight answer.

22 That is the reason you are resting, Mr.
23 Hughes? Do you adopt what Mr. Fitzgerald just said?

24 MR. HUGHES: Your Honor, I don't know what your
25 Honor is trying to build out of this on appeal either.

26 THE COURT: I want to know what your reason is.

1 I want to know what you are doing here.

2 DEFENDANT MANSON: His reasoning belongs to his
3 parents. They gave it to him, just as yours comes from
4 your wife.

5 THE COURT: Do you adopt Mr. Fitzgerald's statements?

6 MR. HUGHES: Need I?

7 THE COURT: You are obviously trying to be cute,
8 Mr. Hughes.

9 MR. HUGHES: No.

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1 THE COURT: It is perfectly plain to the Court.

2 MR. HUGHES: I don't think I am.

3 THE COURT: I am entitled to a straight answer from
4 you.

5 MR. HUGHES: A straight answer is that I have rested.

6 I have thought about it; I have thought about
7 it a great deal, about resting in this case.

8 Your question is:

9 Is that an independent judgment on my part?

10 Yes.

11 THE COURT: Do you adopt Mr. Fitzgerald's statement?

12 MR. KANAREK: I don't adopt Mr. Fitzgerald's
13 statement, and I would like to make this point.

14 THE COURT: All right.

15 MR. KANAREK: I agree with Mr. Hughes, and I say
16 this with respect to the Court.

17 I respect the Court, I try to respect the
18 Court, even though your Honor today wouldn't allow me to
19 look at the Court's copy of No. 133.

20 I asked the bailiff and the Clerk to get 133.

21 THE COURT: Get to the point.

22 MR. KANAREK: Volume 133 of your Honor's transcript.

23 THE COURT: Get to the point or else remain quiet,
24 Mr. Kanarek.

25 MR. KANAREK: I want to point out that I respected
26 this Court, I lean over backwards to try to respect the

6c-2

1 Court, and I think your Honor will agree with me on that.
2 I hope your Honor will.

3 Even though we may disagree, I respect the
4 Court.

5 THE COURT: Are you going to get to the point?

6 MR. KANAREK: Yes.

7 THE COURT: Now is the time.

8 MR. KANAREK: Your Honor's interrogation is violative
9 of Cooper vs. the Superior Court and the Sixth Amendment
10 right to effective counsel.

11 That is why we have an independent bar. There
12 are some things the Court cannot inquire into.

13 THE COURT: This isn't one of them.

14 MR. KANAREK: Obviously, your Honor, I have made --

15 THE COURT: Before I allow these defendants to rest
16 and you gentlemen to continue as counsel, I want some
17 straight answers to some straight questions, and that is
18 the reason for this interrogation.

19 MR. KANAREK: I unequivocally rest, your Honor, and
20 it is an independent judgment, as I have made in other
21 cases.

22 Mr. Fitzgerald made it in a case of People vs.
23 Broughton, where there was fingerprint evidence, and his
24 client was acquitted.

25 THE COURT: I am not saying that you don't have the
26 right to rest. This is not uncommon. Defendants frequently

rest without putting on a defense.

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MR. KANAREK: Yes.

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1 THE COURT: The thing that I want to find out from
2 you gentlemen is that you are doing this knowingly and
3 intelligently, and there has been adequate investigation
4 and preparation so that you can make a decision such as
5 this knowingly and intelligently.

6 MR. KANAREK: Yes, your Honor.

7 THE COURT: Do you believe that that is the case?

8 MR. HUGHES: I believe --

9 MR. KANAREK: May I finish?

10 I believe, down deep in my heart, and I say
11 this to the Court, I don't believe there is a case
12 against Mr. Manson, a legitimate case.

13 I believe, your Honor, that this was done for
14 publicity.

15 I am responding to your Honor.

16 I think that if this case had not been pub-
17 licized, they wouldn't even have filed on Mr. Manson.

18 I believe that he is a victim of Mr. Younger's
19 what has now been a successful attempt to become Attorney
20 General.

21 The publicity, I believe, in this --

22 THE COURT: All right, Mr. Kanarek.

23 MR. KANAREK: I sincerely believe that Mr. Manson is
24 innocent,

25 DEFENDANT MANSON: He knows that. That has nothing
26 to do with it.

1 MR. KANAREK: I believe, your Honor, that there is
2 no case against him.

3 DEFENDANT MANSON: It still has nothing to do with
4 it.

5 THE COURT: You have conducted an investigation in
6 connection with this case, have you not?

7 MR. KANAREK: Yes.

8 THE COURT: I have observed that from your cross-
9 examination, for example, which frequently has been
10 extensive and in depth and shows a thorough preparation
11 insofar as the background of these witnesses are concerned.
12 You certainly weren't cross-examining off-the-cuff.

13 I don't think any of you were. I could detect
14 from the questions that you asked, from the objections that
15 you made, from your conferences at the bench, that, as far
16 as I could see, an extensive investigation had been made
17 pretrial and during the course of the trial with respect
18 to these matters, with respect to the particular witnesses
19 that testified, with respect to documentary evidence, and
20 so forth.

21 Isn't that the case?

22 MR. HUGHES: Your Honor, in that regard, I think
23 that all counsel have, from the very inception of this case,
24 felt hamstrung by the rulings of the Superior Court in
25 regard to giving us funds to hire investigators, and the
26 investigators that we have had, have been flunkies and

1 dilettantes, and people who sought to get some television
2 time, to get their face on television out in the hall,
3 and I think that the investigation has been very shabby in
4 this case, to be quite honest, if you want honesty.

5 Now, if you want something else, you know, I
6 will be happy to subscribe to anything you want to say,
7 but if we are going to be honest, let's be honest.

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1 DEFENDANT MANSON: Let's don't do that. For goodness
2 sake, let's don't play with honesty.

3 THE COURT: Do you agree with that, Mr. Fitzgerald?

4 MR. FITZGERALD: I can only speak for myself.

5 During the course of the case and during its
6 preparation, I issued perhaps 40 subpoena duces tecums,
7 and the Superior Court file will reflect that.

8 I also issued about 60 subpoenas for the
9 personal attendance of witnesses, and I talked to many of
10 these people.

11 I will say that I did a lot of investigation
12 myself.

13 THE COURT: In other words, you are not now asking
14 for additional time for investigation?

15 MR. FITZGERALD: I am not, no, your Honor.

16 THE COURT: I take it that none of you are, since
17 none of you have made such a request.

18 Then we come to the second question, and that
19 is the statements by the defendants in open court.

20 I didn't hear Mr. Manson say anything this
21 morning.

22 Did you want to testify too?

23 DEFENDANT MANSON: What I said the last time we
24 talked?

25 THE COURT: I am saying that I didn't hear you say
26 this morning, in open court, that you wanted to testify.

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Do you want to testify?

DEFENDANT MANSON: I would like to defend myself and prepare my own case and present my own case.

THE COURT: If you are asking to represent yourself in propria persona, the Court has ruled on that many times.

What I am asking you now is do you want to testify?

DEFENDANT MANSON: What I say from the witness stand would not be valid in anyone's mind.

THE COURT: In other words, you are not making such request as the female defendants?

DEFENDANT MANSON: I am making the request that I have always made, that I came in and made the first day I was arrested, you know. Like nobody can speak for me except me.

THE COURT: All right.

Now, Miss Atkins, did I understand you correctly, did you want to testify in your own behalf?

DEFENDANT ATKINS: Yes, I do want to testify.

THE COURT: Notwithstanding your counsel's statement to the Court and in front of the jury that he has rested your case?

DEFENDANT ATKINS: That is correct.

THE COURT: And what about you, Miss Krenwinkel?

DEFENDANT KRENWINKEL: Yes, I wish to testify also.

THE COURT: Notwithstanding your counsel's statement

1 that he has rested?

2 DEFENDANT KRENWINKEL: Right.

3 THE COURT: What about you, Miss Van Houten?

4 DEFENDANT VAN HOUTEN: Yes, I wish to testify.

5 DEFENDANT MANSON: There are about another 15
6 people that would like a chance to testify also.

7 THE COURT: Who are they?

8 DEFENDANT MANSON: The rest of the people that you
9 call the Family.

10 You know, like your Honor, respectfully,
11 as much as you give me is as much as I try to give back.

12 You can't rise above the attorney's questions.

13 It is like when I was on the stand before
14 explaining my grievances in the County Jail in yes and no
15 answers.

16 The judge knows, as well as I do, that is
17 your courtroom and these boys work for you. You know,
18 they are in your thought. You are sitting on your thoughts.

6f fls.

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1 THE COURT: Let's get on to another matter.

2 Mr. Fitzgerald, your client, Miss Krenwinkel,
3 has said that she desires to testify.

4 I think she has a constitutional right to
5 testify, notwithstanding any advice to the contrary and the
6 fact that you say you have rested.

7 Are you prepared to examine her if she
8 testifies?

9 MR. FITZGERALD: Let me answer that question this
10 way. I have read what I think is the applicable authority,
11 People vs. Robles and People vs. Blye.

12 I can give you the citation of those.

13 THE COURT: Let me have the citations.

14 MR. FITZGERALD: People vs. Robles is a 1970 case in
15 2 Cal. 3d at Page 211 or 212, your Honor.

16 That is the most recent case. That is the
17 California Supreme Court case.

18 THE COURT: And what was the other one? Blye?

19 MR. FITZGERALD: The other one is People vs. Blye.

20 THE COURT: B-l-i-g-h?

21 MR. FITZGERALD: B-l-y-e.

22 I have the 43 California Reporter.

23 MR. HUGHES: 233 Cal. Ap. 2d 143. It is a 1965 case.

24 MR. FITZGERALD: Here is the problem.

25 In Blye, the court said that it didn't amount
26 to a substantial imposition for the Court to force or

1 order counsel to examine his client, even though his client
2 took the stand over his objection.

3 They went on to say, I think, that counsel is
4 frequently put in that position anyway.

5 Essentially, they say that trial counsel has
6 to be flexible.

7 THE COURT: Are there any United States Supreme
8 Court decisions on this particular point?

9 MR. FITZGERALD: Not that I know of.

10 THE COURT: I don't recall any offhand, but I
11 certainly would like to see them if you have them.

12 MR. FITZGERALD: Not that I know of.

13 Now, if I am ordered to ask her questions,
14 I will ask her questions. I will examine her.

15 I don't prefer to, I don't wish to, I don't
16 want to, but I will.

17 It is against my better judgment.

18 THE COURT: How much time would you need?

19 MR. FITZGERALD: I don't need any time.

20 THE COURT: All right.

21 MR. FITZGERALD: As a matter of fact, I am well
22 aware of the substance and outline of her testimony,
23 and that is one of the reasons I made the decision to
24 rest.

25 I am familiar with the content and scope of
26 Patricia Krenwinkel's testimony and, actually, I am

1 capable of asking her the questions.

2 I prefer not to, but I will if I am ordered to.

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1 DEFENDANT KRENWINKEL: Your Honor, between Miss
2 Atkins and Miss Van Houten and myself, we have already,
3 between us three, have what you would call the defense,
4 you know, that we would put on.

5 Miss Atkins would take the stand first, and
6 then myself, and then Miss Van Houten.

7 We will write down some of the questions that
8 we can imagine that we would have them ask, and then, if
9 you would like, you know, we would request it, one of the
10 lawyers to read it for us, and I guess that would work out
11 all right.

12 THE COURT: I would suggest that as to any specific
13 questions you wished asked, that you write them out and give
14 them to your counsel.

15 DEFENDANT KRENWINKEL: That is now what we are doing.

16 MR. SHINN: I would suggest this, your Honor, to
17 be on the safe side.

18 If the Court is going to let the defendants
19 testify in their own behalf --

20 DEFENDANT MANSON: You better let me do this for
21 you, that is what you better do.

22 MR. SHINN: For that portion, I would suggest that
23 the Court let them go pro per. Let them represent them-
24 selves for that portion only.

25 THE COURT: No, I will not do that, Mr. Shinn.

26 MR. SHINN: We feel that they should not take the

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1 stand, your Honor. They may jeopardize their own lives,
2 your Honor, jeopardize the case.

3 MR. HUGHES: In that regard, I would like to make
4 a motion to associate Leslie Van Houten in as counsel,
5 and in that regard I would incorporate, by reference,
6 the previous motions that Mr. Manson and Patricia Krenwinkel
7 made in that regard in this case.

8 In the alternative, if that is denied, I would
9 ask that Leslie Van Houten be allowed to go pro per, without
10 counsel.

11 THE COURT: That motion will be denied.

12 MR. HUGHES: Is that as to both aspects of that
13 motion, your Honor?

14 THE COURT: What was the first one?

15 That she be associated?

16 MR. HUGHES: That I associate her in as counsel.

17 THE COURT: That motion is denied.

18 MR. HUGHES: And the second part was that I be
19 relieved and that she be allowed to go pro per.

20 THE COURT: She hasn't made that motion.

21 DEFENDANT VANHOUTEN: I put forth the motion to
22 be pro per.

23 THE COURT: The motion will be denied.

24 The Court finds that you are not able to
25 represent yourself.

26 DEFENDANT MANSON: Like little ducks.

1 THE COURT: Mr. Fitzgerald, have you and the
2 other counsel considered the possibility of diminished
3 capacity defenses in this case?

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4 MR. FITZGERALD: We have, your Honor.
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1 THE COURT: I take it, you have considered the
2 possibility of not guilty by reason of insanity pleas?

3 MR. FITZGERALD: We have, yes.

4 DEFENDANT VAN HOUTEN: You are the one that is nuts.

5 THE COURT: Do the People have anything?

6 MR. BUGLIOSI: Of course, I am shocked.

7 Although this has been mentioned before by the
8 defendants that they might not do it, I just find it
9 unbelievable that they would do something like this.

10 I agree with the Court, there are things that
11 they could put on in their defense, and I think they should.

12 DEFENDANT MANSON: Put on where?

13 This is your courtroom, Mister. We have got
14 nothing to say.

15 MR. BUGLIOSI: You can take the stand and testify.

16 DEFENDANT MANSON: Testify to what? To his questions?

17 All you can get are his questions. Everything
18 is implied in the questions.

19 MR. BUGLIOSI: Why don't you write the questions down.

20 DEFENDANT MANSON: It doesn't work that way.

21 I have written down questions for these people,
22 and they get to one question and they don't understand the
23 second, and they throw it down.

24 Am I the one that is incompetent?

25 THE COURT: We have now arrived at a different phase
26 of the trial.

1 If you wish to testify and if you wish your
2 counsel to ask you specific questions, all you have to do
3 is write those questions out so he may ask them in your
4 own words, if that is what you want.

5 DEFENDANT MANSON: It hasn't worked up to this point.

6 THE COURT: I want the record to be perfectly clear
7 that you have the right to take the stand if you want
8 to.

9 DEFENDANT MANSON: I have the right to take the
10 stand subject to what?

11 Can I say anything I wish to say on the stand?

12 THE COURT: You will have to testify in accordance
13 with the rules. Your attorney may ask you questions which
14 you want him to ask.

15 DEFENDANT MANSON: And those rules come from you?

16 THE COURT: You are subject to the same rules of
17 evidence as any other witness.

18 DEFENDANT MANSON: That is the reason that I wanted
19 to work within your rules and not to try to overdo your
20 rules or go over your head, because I am coming in way over
21 your head, brother.

22 Brother, look at yourself.

23 THE COURT: So, if you want to testify, you write
24 out the questions.

25 DEFENDANT MANSON: It is your reflection.

26 THE COURT: And let Mr. Kanarek ask them of you.

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DEFENDANT MANSON: Wake up.

MR. SHINN: Your Honor, don't you think there is a danger there, your Honor, your suggesting to the defendants that they write their own questions?

There may be a danger there.

THE COURT: I am not saying that they have to do that. But if he wants specific questions asked, that is the way it can be done.

MR. BUGLIOSI: They are being charged with seven counts of murder, and it is incredible that they are not going to put on a defense.

I am very worried about the appeal in this case.

THE COURT: We have three attorneys here that have been in the criminal law field for a considerable time and have tried many, many cases.

Mr. Fitzgerald, it is my understanding, was in a very high, responsible position in the Public Defender's Office before he resigned last year, I think it was. Wasn't it, Mr. Fitzgerald?

MR. FITZGERALD: Yes.

THE COURT: He has an extremely good reputation among judges and lawyers, and he is considered by everyone that I know that knows anything about the criminal law field to be highly competent.

Mr. Kanarek has long experience in the criminal law field, not only at the trial level, but he

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1 has had cases taken up on appeal and had good results.

2 Mr. Shinn, I know from personal experience
3 when I was in Department 115, tried cases in that department.
4 I know he has been in the criminal law field for a consider-
5 able amount of time.

6 Mr. Hughes I knew nothing about before he
7 came into this case, but he has had the benefit of the
8 experience and the counsel of other counsel to the
9 extent that his own abilities needed any assistance.

10 MR. HUGHES: I have never tried a case, your Honor.

11 THE COURT: Well, everybody has to try a case the
12 first time.

13 MR. HUGHES: That is true.

14 DEFENDANT MANSON: I will agree with that.

15 THE COURT: You might not have been able to ade-
16 quately handle the case if you were the only counsel, but
17 you were one of four, and the other three are experts.
18 So, it is an entirely different situation.

19 DEFENDANT MANSON: Your Honor, I am not really a
20 bad guy. You know that.

21 I am not trying to get at anything but the
22 truth.

23 It is your truth, isn't it?

24 THE COURT: Now, do you have any --

25 DEFENDANT MANSON: Or is it?

26 THE COURT: -- idea as to how much time the

1 defense would take, assuming three or all four of the
2 defendants take the stand to testify?

3 MR. FITZGERALD: Five to seven court days at the
4 most.

5 That is anticipating reasonable cross-
6 examination.

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6J 1 THE COURT: All right.

2 How long would it take the defendants to prepare?

3 MR. FITZGERALD: I think they are, in essence,
4 prepared.

5 In talking with them and discussing problems
6 about whether they should take the stand or not, one of the
7 problems that has come up frequently -- and Manson has
8 mentioned it -- is the problem of questions.

9 If the defendants are allowed some leeway by
10 the Court in terms of testifying in a narrative form to a
11 certain extent, I think they are prepared to proceed at this
12 time.

13 If, however, we are going to follow very, very
14 strict rules of form, it may take them a little time to
15 prepare exact questions.

16 THE COURT: I am willing to relax the rules to the
17 degree necessary to permit a defendant to answer relevant
18 questions in connection with his defense.

19 On the other hand, we are not going to turn
20 this into a circus and permit them to roam at will on
21 irrelevant and immaterial matters and turn this into a kind
22 of forum for espousing philosophies or feelings whatsoever.

23 DEFENDANT KRENWINKEL: May I ask you a question?

24 MR. FITZGERALD: I would say that, in discussing it
25 with the defendants, their testimony is germane.

26 THE COURT: Very well.

1 DEFENDANT MANSON: I even got a haircut and got a suit,
2 and I'd rather take a beating than wear a suit.

3 THE COURT: All I would say is this to the
4 defendants:

5 This is more than a game. I don't have to
6 remind you what the charges are and what the possible
7 penalties are if you are convicted.

8 I hope that you will treat it as more than a
9 game.

10 I hope you will again consider your counsel's
11 advice before you make the final decision as to whether or
12 not you do want to testify.

13 You are looking at attorneys who collectively
14 have a good number of years of experience in this field
15 and your best interests at heart, and when they advise you,
16 I am sure they are doing it in good faith because they
17 believe it is best for you.

18 So, before you ignore that and do something to
19 the contrary, I suggest that you give it long and hard
20 thought.

21 DEFENDANT ATKINS: Your Honor, is my life relevant
22 to this case?

23 THE COURT: I don't know what that means.

24 DEFENDANT VAN HOUTEN: Your Honor, like I have talked
25 with the other two women in this case. In other words,
26 each of us would like to testify, and our attorneys have

1 told us they don't -- you know, they want to rest.

2 All right. So we came up to that wall, and we
3 said, "Then what do we do?"

4 And they said, "Well, you know, I advise you
5 not to."

6 In other words, we have been informed of this
7 before.

8 THE COURT: All right.

9 DEFENDANT VAN HOUTEN: But the thing is, Sadie has
10 got to go first.

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1 THE COURT: You can go in whatever order you like.
2 That is unimportant.

3 DEFENDANT VAN HOUTEN: Okay.

4 MR. SHINN: How will we work the mechanics of this,
5 your Honor?

6 THE COURT: I can't hear you?

7 MR. SHINN: How are we going to work the mechanics
8 of this? We have rested now.

9 THE COURT: Obviously, you will be reopening.

10 One other thing I want to tell the defendants,
11 and I am sure counsel have already told them, but I want
12 it to be perfectly clear.

13 Mr. Manson, and each of the defendants, you
14 know, when you take the stand to testify, it is one thing
15 to answer questions from your counsel or questions or your
16 own which your counsel is asking you; but when that is
17 over, the People have the right to cross-examine you, and
18 that is a vastly different thing, to submit yourself to
19 cross-examination.

20 So, you should give careful consideration to
21 this.

22 DEFENDANT MANSON: We have. We have incorporated
23 into our vocabulary the proper words to use.

24 THE COURT: Well, it isn't a game, Mr. Manson.

25 DEFENDANT MANSON: I thought the whole thing was
26 a game, brother.

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1 THE COURT: You are not going to turn this into
2 some sort of a circus. If you think that is what is going
3 to happen, you are mistaken.

4 When you step on the stand and testify,
5 everything you testify to is going to be subject to cross-
6 examination.

7 DEFENDANT MANSON: And ridicule. I understand that.

8 MR. SHINN: Your Honor, if that is the Court's
9 position, your Honor, Miss Atkins is ready to take the
10 stand immediately.

11 She informs me, your Honor, that she wants
12 to get on the stand first, and she is ready.

13 THE COURT: Are you prepared to examine her?

14 MR. SHINN: She has the questions, your Honor.

15 You said to read the questions?

16 THE COURT: I am going to order you to read the
17 questions.

18 MR. SHINN: Yes. If the Court orders me, I will
19 conduct the direct examination.

20 She has the questions already.

21 MR. BUGLIOSI: I think the Court should give the
22 defense a couple of days.

23 For her to take the stand immediately -- I
24 mean, if they are going to take the stand without prior
25 witnesses, I think they should have several days to
26 prepare themselves.

1 THE COURT: I asked them how much time they
2 needed, and they indicated they didn't need any time,
3 that they have thought it over for some time.

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1 MR. HUGHES: I would say this is a ploy of Mr.
2 Bugliosi to gain time.

3 MR. BUGLIOSI: I am ready right now, baby. I have
4 several pages of cross on every one of them.

5 MR. HUGHES: We are, too.

6 MR. BUGLIOSI: When I make statements, they are not
7 always self-serving statements. Sometimes I have an
8 interest in the individuals.

9 That may be hard for you to believe, Mr.
10 Hughes.

11 THE COURT: Well, it is a quarter to 12:00.

12 I think the defendants should again have an
13 opportunity to confer with their counsel together without
14 anyone else being present, so that they can sit down and
15 again discuss what has been said here in chambers before
16 anything else is done.

17 If they desire to do so, I will certainly
18 permit them to do so.

19 MR. FITZGERALD: Could we meet between 1:45 and
20 quarter after 2:00? That would be a half hour.

21 THE COURT: Yes. Certainly.

22 You can meet during the noon hour, if you
23 like.

24 I realize that represents a problem of
25 logistics in moving people around.

26 If that isn't practical, you can meet at 1:45.

1 MR. FITZGERALD: Yes. If we can meet from 1:45 to
2 2:15, that will be very helpful, your Honor.

3 THE COURT: Where do you want to meet?

4 MR. SHINN: Upstairs in the jury room.

5 MR. FITZGERALD: The lock-up here is the best place
6 of all.

7 THE COURT: At 1:45 all defendants and all counsel
8 will meet in the lock-up, and then you will inform the
9 Clerk when you have concluded that conference.

10 I think we probably better resume back in
11 chambers again and find out if there are any other matters
12 to be taken up before we proceed.

13 DEFENDANT MANSON: Your Honor?

14 THE COURT: Yes, Mr. Manson?

15 DEFENDANT MANSON: Have you looked at the picture
16 that this courtroom has projected into the social conscious-
17 ness now?

18 Have you been on that picture? Have you been on
19 that thought?

20 Look at that thought. It must be cleaned up,
21 and it can be cleaned up, because it is not the truth. It
22 is far from the truth.

23 THE COURT: Anything else, gentlemen, before we
24 recess?

25 We will recess until 1:45.

26 The jury is recessed until 1:45. We will

1 resume at that time following the conference between
2 defendants and their counsel.

3 (Whereupon, at 11:51 a.m. the court was in
4 recess.)

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1 LOS ANGELES, CALIFORNIA, THURSDAY, NOVEMBER 19, 1970

2 2:12 o'clock p.m.

3 - - - - -

4 (The following proceedings were had in the
5 chambers of the court outside the hearing of the jury,
6 all defendants and all counsel being present:)

7 THE COURT: The record will show all defendants
8 and all counsel are present.

9 MR. HUGHES: May I inquire, is there some reason
10 that this is being conducted in chambers, your Honor?

11 THE COURT: Yes, because I asked the Clerk to have
12 you come in.

13 Have you had a chance to confer further,
14 Mr. Fitzgerald, with your clients?

15 MR. FITZGERALD: Yes.

16 There is no change in position. The attorneys
17 are still of the opinion the case on behalf of the defendants
18 should be rested.

19 The defendants individually and I am referring
20 to Leslie Van Houten, Patricia Krenwinkel and Susan Atkins,
21 are still adamant; they wish to take the stand and testify
22 in their own behalf.

23 THE COURT: What about Mr. Manson?

24 MR. KANAREK: Well, your Honor --

25 DEFENDANT MANSON: I'm certainly willing.

26 MR. KANAREK: I think your Honor's question

1 invades the right to counsel, the attorney-client privilege.

2 DEFENDANT MANSON: You rested already.

3 MR. KANAREK: Yes, your Honor, I have, unequivocally.

4 THE COURT: I don't understand what you're talking
5 about, Mr. Kanarek.

6 All I asked is, is Mr. Manson asking to
7 testify?

8 DEFENDANT MANSON: No.

9 THE COURT: All right.

10 All right, now, as to those defendants who
11 indicated that they do wish to testify, notwithstanding--

12 DEFENDANT MANSON: That is, not at this time
13 anyway.

14 THE COURT: -- counsel's advice to the contrary,
15 I want to advise them, although I am sure their attorneys
16 must have advised them beforehand:

17 First, they have a constitutional privilege
18 against self-incrimination. That means you do not have
19 to testify as to anything which may incriminate you and
20 secondly, you have a constitutional right, a statutory
21 right in California not to be called to the witness stand
22 at all.

23 In other words, you cannot be compelled to
24 testify, and I want the record to be perfectly clear that
25 each of you understands that.

26 Do you have any question about that, each
of the defendants?

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1 Now, as to this morning, Miss Van Houten, as I
2 understood the record, made a motion to substitute, or
3 rather, a motion to relieve her attorney and to proceed in
4 propria persona, which means to proceed as your own attorney.

5 Is that right, Miss Van Houten?

6 DEFENDANT VAN HOUTEN: Yes, it is, your Honor.

7 THE COURT: Is that what you want to do?

8 DEFENDANT VAN HOUTEN: Yes.

9 THE COURT: Well, in reconsidering that, I want to
10 ask you some questions.

11 I am going to ask the questions/ of you
12 directly without any assistance from your counsel. If
13 there is no objection, I will ask them in here. Otherwise,
14 they will be asked in open court.

15 I hear no objections.

16 MR. KANAREK: I would like all proceedings in open
17 court.

18 THE COURT: You are not involved in these
19 proceedings, Mr. Kanarek.

20 There has been no request from Miss Van Houten
21 or her counsel to proceed in open court.

22 MR. SHINN: Your Honor --

23 THE COURT: Don't interrupt me, Mr. Shinn. Sit down.

24 MR. SHINN: I am sorry, your Honor.

25 MR. HUGHES: I would prefer all proceedings in open
26 court.

1 THE COURT: Very well. It will be in open court,
2 then.

3 Now, I take it that none of the defendants are
4 requesting any additional time; that you are now ready to
5 proceed with your defense; is that right?

6 MR. SHINN: That is correct.

7 MR. KANAREK: Under People vs. Crovedi, your Honor,
8 because of the unique circumstances, I believe I have an
9 obligation to ask for a continuance.

10 THE COURT: Mr. Manson hasn't asked to testify,
11 Mr. Kanarek.

12 MR. KANAREK: I understand that.

13 DEFENDANT MANSON: I am asking to defend myself,
14 yes, whatever that takes. I am asking to defend myself.

15 THE COURT: If you are asking for a continuance, I
16 want to hear your reasons.

17 MR. KANAREK: Yes, your Honor.

18 I believe your Honor himself stated that there
19 aren't any Supreme Court cases on this subject.

20 I think under People vs. Crovedi and the
21 doctrine of a fair trial and due process under the
22 Fourteenth Amendment, this most unusual and unique situation
23 is such that it is a situation that must be prepared for
24 because, obviously, the defendants Krenwinkel, Atkins and
25 Van Houten, are really very, very important witnesses,
26 and it is my belief, your Honor, that research would

1 indicate that we do not have to crucify ourselves upon
2 People vs. Robles.

3 I don't believe what someone may think that
4 language states explicitly is the law of our country.

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1 THE COURT: If Mr. Manson doesn't care to testify, he
2 doesn't have to.

3 MR. KANAREK: What I am saying, your Honor, is that
4 under People vs. Crovedi, -- well, I believe there are
5 matters that should be gone into --

6 THE COURT: This is the time.

7 MR. KANAREK: What I am saying is, your Honor, that
8 I believe that preparation should be made for this by way
9 of --

10 THE COURT: Give me some idea of what you are
11 talking about, Mr. Kanarek.

12 MR. KANAREK: What I am talking about, I believe
13 that under People vs. Martin -- and I think Mr. Fitzgerald
14 has argument before the Court on it and I will defer to
15 him on this particular point --

16 THE COURT: He hasn't asked for any time.

17 MR. KANAREK: Well, I am asking for time.

18 Very well, then I will go ahead.

19 The point is that I believe that even though a
20 person is not himself involved in a particular
21 constitutional right, under People vs. Martin, even though
22 you don't have "standing," you can still allege that
23 violation to the Court for the Court to consider, and I
24 think that there impinges certain effects from what these
25 defendants are going to do. If they are going to, in
26 effect and actually, be their own lawyers, this changes the

1 complexion of the case.

2 THE COURT: They are not going to be their own
3 lawyers.

4 MR. KANAREK: I think the Court is in error in
5 allowing the procedure that the Court is going to allow.

6 THE COURT: Mr. Kanarek, you seem to have difficulty
7 staying with the point.

8 You said you wanted some time. I want to
9 hear your reasons.

10 MR. KANAREK: The reason is to prepare points and
11 authorities.

12 THE COURT: For what purpose?

13 MR. KANAREK: To show that the Court is proceeding
14 wrongly.

15 The Court is incorrect in allowing these
16 defendants to take the witness stand.

17 I think it is clear that the right to take the
18 witness stand is not the only right involved. There is
19 also the right of effective counsel, and the right of
20 effective counsel is not there when questions are propounded
21 by the defendants.

22 Certainly your Honor would not order what an
23 attorney should do in any other witness' case. Therefore,
24 a fortiori, your Honor shouldn't dictate what questions
25 should be allowed when the defendant herself is involved.

26 THE COURT: I have no intention of dictating what

1 questions will be allowed.

2 MR. KANAREK: If your Honor is ordering the
3 attorneys to ask questions, your Honor is, in effect,
4 ordering what questions the defendant wishes.

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1 And I think that research should be done on
2 this and points and authorities should be submitted to the
3 Court before your Honor allows this to take place before
4 the jury.

5 There are, I think, fundamental due process
6 requirements that People vs. Crovedi -- I think -- stands
7 for the proposition that there should be some preparation
8 for this.

9 THE COURT: If that was a motion for a continuance,
10 it is denied.

11 MR. KANAREK: Yes, it was, your Honor.

12 THE COURT: Anyone else wish to be heard before we
13 go back into open court?

14 MR. SHINN: Yes, your Honor.

15 I believe the case of People vs. Martin that
16 Mr. Kanarek cited, I believe that case deals with the issue
17 of the Fourth Amendment, your Honor, not the Fifth Amendment,
18 and I am going to oppose a continuance.

19 And I talked to Miss Atkins and she is ready to
20 go ahead this afternoon, your Honor.

21 THE COURT: All right.

22 MR. HUGHES: Your Honor, will the defendants, if they
23 do call themselves as witnesses, will they have the right
24 then to call other witnesses on their own behalf?

25 THE COURT: Well, so far as this Court is concerned
26 the defendants rested --

1 MR. HUGHES: Well --

2 THE COURT: Just a moment.

3 -- the only exception to that is the
4 defendant's own statements. That is in the case of
5 Leslie Van Houten, Patricia Krenwinkel and Susan Atkins;
6 and I have not yet been able to get an intelligible response
7 from Mr. Manson as to whether or not he wants to testify.

8 But the only exceptions so far are the state-
9 ments by these female defendants that they wish to testify.

10 The Court will permit the defense to reopen
11 for that purpose.

12 So far as other witnesses are concerned, the
13 case is in control of the defendants' counsel, except for
14 that limited purpose of letting the defendants testify.

15 MR. HUGHES: I think it is clear that among
16 Mr. Shinn and Mr. Fitzgerald and myself that we are making
17 no request to reopen, none whatsoever, and that this is a
18 decision of the Court; that we have rested and that
19 should be perfectly clear on the record.

20 THE COURT: Fine. Then there will be no other
21 witnesses called other than the defendants themselves.

22 MR. HUGHES: What I am asking your Honor is, since
23 these defendants are asking for the right to call witnesses
24 on their own behalf --

25 THE COURT: I have not heard anyone make such a
26 request yet, but if it is made --

1 MR. HUGHES: They asked to call themselves, then they
2 are in effect calling themselves.

3 Will they have the right to call additional
4 witnesses?

5 THE COURT: They will not.

6 MR. HUGHES: Would Miss Van Houten have the right to
7 call Mr. Manson?

8 THE COURT: No.

9 MR. SHINN: Might I be heard again, your Honor --
10 briefly?

11 THE COURT: Yes.

12 MR. SHINN: If your Honor is going to allow these
13 defendants to testify, your Honor, I believe Aranda and
14 Bruton may be involved.

15 I would suggest they testify out of the
16 presence of the jury first to see what they are going to
17 say, your Honor.

18 THE COURT: There is no Bruton and Aranda problem
19 when the defendant takes the stand.

20 MR. BUGLIOSI: Can I impeach any of these defendants
21 on prior statements they made out of the court implicating
22 other defendants if it is inconsistent with statements
23 they make?

24 I wonder if Aranda applies to that type of
25 situation?

26 I don't know if there is any case directly in

1 point on that.

2 MR. KAY: It seems once the defendant took the stand
3 you get away from the Bruton and Aranda problem and the
4 defendant would be subject to cross-examination.

5 THE COURT: The question is raised as to statements
6 he made outside of court.

7 MR. KAY: That's right. He can explain those state-
8 ments on the stand or deny them.

9 THE COURT: So far as the inconsistency applies only
10 to himself.

11 Mr. Bugliosi is posing questions as to statements
12 which may implicate co-defendants.

13 I don't know what the answer to that is.

14 MR. BUGLIOSI: That is something we are going to
15 have to research. I am relatively sure there will be
16 areas I would like to cross-examine the girls on.

17 I don't know if there is a case directly in
18 point on that.

19 THE COURT: Well, that is something you can research
20 ^{we} and/will have to meet the problem when it arises, if it
21 arises.

22 Anything else, gentlemen, before we go back
23 into court?

24 (No response.)

25 Very well.

26 (The following proceedings were had in open

1 court outside the presence of the jury, all defendants and
2 all counsel being present.

3 THE COURT: All defendants and counsel are present.
4 The jury is not present.

5 It is my understanding, Miss Van Houten, that
6 you wish to dismiss your counsel and proceed as your own
7 attorney for the balance of the trial.

8 Is that correct?

9 DEFENDANT VAN HOUTEN: Yes, it is, your Honor.

10 THE COURT: In that connection I want to ask you
11 some questions:

12 What is your age, Miss Van Houten?

13 DEFENDANT VAN HOUTEN: At the present time I am 21.

14 THE COURT: What has your formal education been?

15 DEFENDANT VAN HOUTEN: I completed high school and
16 took one year of business college and I am a certified
17 legal secretary.

18 THE COURT: What do you mean, "a certified legal
19 secretary"?

20 DEFENDANT VAN HOUTEN: Well, I got a certificate.

21 I completed the course, and passed examinations
22 and got my certificate.

23 THE COURT: Where did you attend college?

24 DEFENDANT VAN HOUTEN: Sawyers Business College,
25 Business School in Long Beach on Pine Street.

26 THE COURT: Have you had any legal education?

1 DEFENDANT VAN HOUTEN: No, I have not.

2 THE COURT: Have you ever been employed?

3 DEFENDANT VAN HOUTEN: Once I had a job.

4 THE COURT: Where was that?

5 DEFENDANT VAN HOUTEN: It was in Monrovia, my home
6 town, after school I helped make model trains.

7 THE COURT: Has any court ever permitted you to
8 represent yourself in a criminal case?

9 DEFENDANT VAN HOUTEN: Not a criminal case.

10 THE COURT: Now, I want you to tell me what the
11 charges are against you in this case.

12 DEFENDANT VAN HOUTEN: I have two counts of 187 P.C.,
13 which is first-degree murder and I have one count of 182 P.C.,
14 which is conspiracy to commit murder.

15 THE COURT: What are the elements of murder in the
16 first degree?

17 DEFENDANT VAN HOUTEN: I believe it reads malice
18 aforethought, wilfully take someone else's life.

19 THE COURT: What are the elements of conspiracy?

20 DEFENDANT VAN HOUTEN: Together with one or more
21 other people and plot the murder and the taking of
22 another's life.

23 THE COURT: What are the statutory included offenses
24 to murder?

25 DEFENDANT VAN HOUTEN: What is the statutory-
26 included offenses -- first degree, second, manslaughter,

1 involuntary, voluntary.

2 THE COURT: What is second-degree murder?

3 DEFENDANT VAN HOUTEN: It must be without malice
4 aforethought.

5 THE COURT: What is voluntary manslaughter?

6 DEFENDANT VAN HOUTEN: Where you choose to take the
7 person's life, but the circumstances surrounding it was,
8 it was on a reactionary basis.

9 THE COURT: What are the legal defenses to murder?

10 DEFENDANT VAN HOUTEN: Legal defenses? Insanity,
11 not guilty, guilty, self defense.

10-1

1 THE COURT: What is hearsay, Miss Van Houten?

2 DEFENDANT VAN HOUTEN: Hearsay is when someone
3 else forms an opinion of what happened and they tell it
4 to another person and it comes out of the other person's
5 mouth, when they never spoke to the originator of the
6 conversation.

7 THE COURT: What is the hearsay rule?

8 DEFENDANT VAN HOUTEN: It cannot be held against
9 you unless it has backing.

10 THE COURT: What are the exceptions to the hear-
11 say rule?

12 DEFENDANT VAN HOUTEN: Conspiracy.

13 THE COURT: Tell me what jury instructions are
14 and what purpose they serve?

15 DEFENDANT VAN HOUTEN: Jury instructions are when
16 you inform the jury how to act according to a situation,
17 so the jury can keep their minds running on the same thought
18 towards a certain incident that happens during the trial.

19 THE COURT: Who prepares jury instructions?

20 DEFENDANT VAN HOUTEN: I believe the Court.

21 THE COURT: Do you know what a limiting instruc-
22 tion is?

23 DEFENDANT VAN HOUTEN: It tells the jury how far
24 they can go on a certain point.

25 THE COURT: What is the purpose of a limiting
26 instruction to the jury?

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1 DEFENDANT VAN HOUTEN: So the jury, on making
2 their judgments, stays within the rules of the court,
3 the laws of the land.

4 THE COURT: Has anything occurred thus far in
5 this trial which would give rise to a limiting instruc-
6 tion of the jury?

7 DEFENDANT VAN HOUTEN: I believe Linda Kasabian's
8 testimony.

9 THE COURT: What are the possible punishments
10 for the offenses of which you have been charged in this
11 case?

12 DEFENDANT VAN HOUTEN: Life or death.

13 THE COURT: Who makes the determination?

14 DEFENDANT VAN HOUTEN: I believe the final deter-
15 mination rests upon you.

16 THE COURT: What sort of things can a defendant
17 do during the penalty phase of a first degree murder
18 trial in order to mitigate the punishment, the possible
19 punishment? What kind of things can be proved?

20 DEFENDANT VAN HOUTEN: You try to show the jury
21 what you are and be as real as you can.

22 THE COURT: What kinds of motions could or
23 should a defendant make before sentencing?

24 DEFENDANT VAN HOUTEN: A motion for a retrial.

25 THE COURT: Anything else?

26 DEFENDANT VAN HOUTEN: I can't think of any right

10-3

1 now.

2 THE COURT: Anything else you wish to offer in
3 behalf of your motion?

4 MISS VAN HOUTEN: I would like to be able to
5 defend myself at the time I am up on the stand and be able
6 to question the other co-defendants as they approach the
7 stand.

8 That is what I would like to do.

9 THE COURT: Anything else?

10 DEFENDANT VAN HOUTEN: And call a few of my own
11 witnesses.

12 THE COURT: Well, I am asking you now if there is
13 anything else you wish to tell the Court in behalf of your
14 motion?

15 DEFENDANT VAN HOUTEN: I feel I am qualified.

16 THE COURT: Why do you feel you are qualified?

17 DEFENDANT VANHOUTEN: Because I know myself, and
18 I know what I want to say, and I know what questions I want
19 to ask myself.

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1 THE COURT: You can write those questions out,
2 can't you, and have your attorney ask them of you?

3 DEFENDANT VAN HOUTEN: They don't come out the
4 same.

5 THE COURT: You do know how to write?

6 DEFENDANT VAN HOUTEN: I know how to write.

7 THE COURT: Anything else you wish to offer?

8 DEFENDANT VAN HOUTEN: I feel that if I could
9 question myself and my co-defendants, that the understanding
10 could be better understood. The things that I might want
11 to say, I think I could express better.

12 THE COURT: Anything further?

13 DEFENDANT VAN HOUTEN: No.

14 THE COURT: Well, the Court finds you incompetent
15 to represent yourself in this case, Miss Van Houten, and
16 your motion to dismiss your attorney and represent yourself
17 in propria persona is denied.

18 Is there anything further, gentlemen, before
19 we proceed with the trial?

20 MR. HUGHES: Yes, your Honor.

21 Inasmuch as you have found Miss Van Houten
22 incompetent to represent herself in pro per, I would reask
23 that I be allowed to associate her in as co-counsel, so
24 basically, she would be going pro per with counsel.

25 She could make the factual decisions and she
26 would have the protection of counsel to make the legal

10-5

1 arguments and legal decisions, your Honor.

2 I ask that. That should be a fundamental
3 right clearly defined within the Sixth Amendment right to
4 effective counsel, that one should be allowed to -- if this
5 Court is going to say this defendant can make the judgments
6 to place herself on the stand, your Honor, then I believe
7 this Court should also be able to say that this defendant
8 is competent to either represent herself or to represent
9 herself with counsel where she can actively participate
10 in all of the decisions, and not just in some that the
11 Court feels she should be allowed to participate in.

12 I think, perhaps, we have the Court on the
13 horns of a dilemma at this point. I hope we do.

14 THE COURT: I am sure you do, Mr. Hughes, but you
15 do not, in fact, and the motion to associate Miss Van
16 Houten with you is denied.

17 MR. HUGHES: Then, your Honor, I make the motion
18 that inasmuch as she has been found incompetent, that she
19 not be allowed to take the stand. That this is against
20 my wishes, it is against my advice.

21 THE COURT: One doesn't necessarily follow from
22 the other.

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10b fls.

10b-1

1 MR. KANAREK: Your Honor, I do have a motion.

2 Your Honor, I make a motion to sever Mr.
3 Manson, and I ask that the jury be instructed as to Mr.
4 Manson, and that we have argument as to Mr. Manson.

5 We have rested unqualifiedly, without quali-
6 fication we have rested, and therefore, we are ready to go
7 to the jury.

8 I make the motion for severance in that sense,
9 that this jury now can hear the case against Mr. Manson
10 standing on its own two feet in legal fashion without
11 any kind of complication or illegality that will ensue
12 by these three female defendants taking the stand.

13 I do make the motion.

14 I think that there is no question but what
15 the Court has the power, and I think a fundamental right
16 to a fair trial demands that we have that severance,
17 so that there isn't brought before the jury matters which
18 are illegal, for numerous reasons which I don't wish to
19 belabor, some of which your Honor, I am sure, is aware of,
20 that we brought up in chambers.

21 For instance, there are certain Bruton-Aranda
22 problems which will not be there if we have a severance
23 and have the case go to the jury as ^{to} Mr. Manson standing,
24 as I say, on its own two feet.

25 I make that motion, I make that request,
26 and that is my request.

10b-2

1 THE COURT: The motion is denied.

2 MR. KANAREK: Then I make a motion for a mistrial,
3 your Honor, on the ground that any kind of result would be
4 just capricious, would be a violation of due process under
5 the Fourteenth Amendment.

6 THE COURT: That motion is denied.

7 Anything further, gentlemen, before we call
8 back the jury?

9 Bring in the jury.

11 fls.

11-1

1 (The following proceedings were had in open
2 court in the presence and hearing of the jury, all defen-
3 dants and all counsel being present:)

4 THE COURT: The record will show all defendants, all
5 counsel and jurors are present.

6 The defendants may proceed with their defense.

7 MR. SHINN: Your Honor, I believe we rested, your
8 Honor.

9 THE COURT: Yes, and the defendants indicated, that
10 is the three female defendants indicated they wished to
11 testify.

12 In which order do you wish to examine,
13 Counsel?

14 MR. SHINN: I also indicated I objected to this
15 type of proceeding and I advised my client not to take the
16 stand and testify, your Honor, and if she is going to
17 testify, take the stand, your Honor, it is going to be
18 over my objections, your Honor.

19 THE COURT: Yes, I understand that.

20 Do you wish to testify, Miss Atkins?

21 DEFENDANT ATKINS: Yes, I would.

22 THE COURT: All right.

23 Do counsel wish to have Miss Atkins testify
24 first?

25 MR. SHINN: Are you addressing me, your Honor?

26 THE COURT: I am addressing all defense counsel.

1 MR. SHINN: Your Honor, I don't think we have a stand
2 in this matter. We have no preference, your Honor.

3 DEFENDANT ATKINS: Your Honor, it is a decision
4 between my co-defendants and myself that I take the stand
5 first.

6 THE COURT: Very well, you may take the stand.

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

9 THE COURT: Swear the witness.

10 THE CLERK: Raise your right hand.

11 MR. HUGHES: I object to the swearing of this
12 witness on the grounds it's not timely.

13 THE COURT: That will require a little
14 explanation.

15 What is that supposed to mean?

16 MR. HUGHES: The case has been rested and it is too
17 late to call a witness.

18 THE COURT: The objection is overruled.

19 MR. HUGHES: Yes, sir.

20 MR. KANAREK: Your Honor, that is why I would like
21 to approach the bench, if I may, your Honor, and make some
22 points outside of the presence of the jury.

23 THE COURT: You have had considerable lengthy
24 proceedings outside the presence of the jury, Mr. Kanarek.
25 You have been given the opportunity to make all the
26 objections and motions you care to.

Now we are going to proceed.

MR. KANAREK: May I just enunciate the Sixth Amendment's right to confront, predicated on the due process right of the Fourteenth Amendment, in re Hill, 85 Cal. Reporter.

66 Cal. 2d, People vs. Massey, and also some Federal cases, which is why we asked the Court -- one of the reasons we asked the Court for a continuance in accordance with People vs. Crovedi so we can prepare points and authorities.

THE COURT: There is no point in making this motion all over again.

MR. FITZGERALD: I object to the use of the plural pronoun "we" also.

THE COURT: Very well, swear the witness.

THE CLERK: Would you please repeat after me:

I do solemnly swear --

THE WITNESS: I do solemnly swear --

THE CLERK: -- that the testimony I may give --

THE WITNESS: -- that the testimony I may give --

THE CLERK: -- in the cause now pending --

THE WITNESS: -- in the cause now pending --

THE CLERK: -- before this Court --

THE WITNESS: -- before this Court --

THE CLERK: Shall be the truth --

THE WITNESS: -- shall be the truth --

1 THE CLERK: -- the whole truth --

2 THE WITNESS: -- the whole truth --

3 THE CLERK: -- and nothing but the truth --

4 THE WITNESS: -- and nothing but the truth --

5 THE CLERK:--so help me God.

6 THE WITNESS: -- so help me God.

7 THE CLERK: Would you be seated, please.

8 Would you please state and spell your name.

9 THE WITNESS; Susan Denice Atkins, S-u-s-a-n,
10 D-e-n-i-c-e, A-t-k-i-n-s.

11 I am also known as Sadie Mae Glutz, S-a-d-i-e,
12 M-a-e, capital G-l-u-t-z.

13 And I would prefer to be called Sadie.

14 THE COURT: You may proceed, Mr. Shinn.

15 MR. SHINN: Your Honor, I have no questions of this
16 witness, your Honor.

17 THE COURT: I order you to ask questions of this
18 witness, sir.

19 MR. SHINN: Your Honor, I don't know what questions to
20 ask this witness, your Honor.

21 The only questions I have here in front of me is
22 the questions that she has written for me to ask her, your
23 Honor, and I don't feel that these questions would do
24 her any justice, your Honor, it will incriminate her.

25 I have a duty to my client not to let her
26 incriminate herself on the stand, your Honor. I refuse to

1 ask any questions.

2 THE COURT: Miss Atkins, have you given your
3 counsel certain questions you wish him to ask you?

4 DEFENDANT ATKINS: Yes, I did.

5 THE COURT: I order you to ask the questions.

6 MR. SHINN: I refuse to ask the questions, your
7 Honor. I feel that these questions will incriminate her,
8 your Honor, and I have a certain amount of duty towards
9 Miss Atkins as my client.

10 THE COURT: You refuse to obey the Court's order to
11 ask the questions?

12 MR. SHINN: I refuse to ask her these questions that
13 she asked me to ask her, your Honor.

14 THE COURT: You have the questions in front of you?

15 MR. SHINN: Yes, your Honor, I am going to refuse to
16 ask her any questions, your Honor.

17 THE COURT: All right. Will counsel approach the
18 bench?

19 MR. SHINN: Yes, your Honor.

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

22 THE COURT: It is becoming perfectly clear that this
23 entire maneuver by the defendants is simply one to confuse
24 the jury, create error; in effect -- well, not in effect,
25 in reality to wreck the trial so far as the defendants are
26 concerned, so if there is a conviction in the case you

1 won't have the record on appeal.

2 I do not intend to permit this to happen.

3 I will give you one more chance, Mr. Shinn, to
4 obey the Court's order to interrogate your client in
5 accordance with her wishes and that, sir, is your duty as
6 an attorney.

7 If you read People vs. Robles you will see that
8 is the case.

11a

11a-1

1 MR. SHINN: May I say something?

2 I have read those questions over, your Honor,
3 and some of those questions will incriminate her and the
4 other defendants, your Honor.

5 I'm not going to do this, your Honor.

6 MR. BUGLIOSI: Does Robles say, your Honor -- and
7 I apologize for being negligent -- does Robles say an
8 attorney has to ask questions when he knows the answers
9 will incriminate his client?

10 Does Robles say that?

11 THE COURT: I am not convinced, of course, that
12 that is the case.

13 Do you have any objection to showing the
14 questions to me?

15 MR. SHINN: If Miss Atkins does not object I don't
16 object. They are her questions, your Honor.

17 THE COURT: Confer with her, then.

18 MR. BUGLIOSI: There might be a question if Robles
19 goes that far, I don't know. I'm sorry I did not read it.

20 (Whereupon there was an off the record
21 discussion between Mr. Fitzgerald, Mr. Shinn, Mr. Hughes
22 and Defendant Atkins out of the hearing of the court
23 reporter.)

24 THE COURT: Well, what did you find out?

25 MR. SHINN: Well, she stated that she wanted to
26 talk to you first, your Honor.

11a-2

1 THE COURT: She wanted to talk to me?

2 MR. SHINN: Yes.

3 MR. BUGLIOSI: In the presence of other people or
4 alone?

5 MR. SHINN: It doesn't make any difference.

6 MR. BUGLIOSI: I think this should go back to
7 chambers again.

8 MR. FITZGERALD: I will state off the record what
9 she wants to say. But I won't state it on the record.

10 THE COURT: All right, let's go off the record.

11 (Off the record discussion between counsel
12 and the Court, after which the following proceedings were
13 had on the record at the bench out of the hearing of the
14 jury:)

15 THE COURT: What did Miss Atkins say to you about
16 my suggestion that I be permitted to look at the questions
17 she has given to you to ask her?

18 MR. SHINN: She said she wanted to talk to you about
19 it first, and then she added that regardless of the ques-
20 tions I give you, she is going to incriminate herself on
21 the stand, your Honor.

22 I believe Mr. Paul Fitzgerald was there
23 when she said that.

24 THE COURT: Do you have any objection to my
25 talking to her with the reporter without counsel present?

26 MR. SHINN: I have no objection.

11a-3

1 MR. KANAREK: I must enunciate an objection --

2 THE COURT: I mean in response to her request.

3 MR. SHINN: Yes, your Honor, I have no objection.

4 MR. KANAREK: I believe the defendant has a right
5 to be present at every stage of the proceeding, especially
6 in view of the fact -- in view of the fact -- in view of
7 the fact that this particular defendant has testified
8 previously before the Grand Jury.

9 I think it would be a fundamental denial
10 of due process.

11 THE COURT: We will go back into chambers. We
12 will have all of the defendants present.

13 If she wants to say something, she may.

14 MR. KANAREK: I move your Honor dismiss this jury
15 from the box and all be done in open court.

16 I think there are a multitude of reasons
17 this should be done in open court outside the presence of
18 the jury.

19 I don't believe it should be done in
20 chambers and I object to everything except that that be
21 done in open court.

22 MR. HUGHES: Join in that motion.

23 MR. KANAREK: We are entitled to a public trial
24 in all aspects.

25 I am asking for a public trial which is
26 guaranteed by the due process clause of the Fourteenth

11a-4

1 Amendment.

2 Your Honor, we can do this in open court, the
3 way our courts are held.

4 There is no necessity for this to be done
5 in chambers.

6 MR. BUGLIOSI: I find Mr. Kanarek's position
7 incredible because she is apt to conceivably implicate his
8 client.

9 You would not want the world press to hear
10 that, would you?

11 MR. KANAREK: It's already happened, it is in the
12 Los Angeles Times article, Five to Die.

13 There is nothing that this --

14 THE COURT: We are not going to take any evidence in
15 chambers, Mr. Kanarek.

16 All we are doing is conferring on a matter of
17 procedure.

18 MR. KANAREK: I will object to anything except in
19 open court. We have a right; we have a duty.

20 THE COURT: Any evidence will be taken and any
21 rulings will be made in open court.

22 MR. KANAREK: I ask that the entire matter be
23 handled in open court. We are entitled to a public trial
24 and that is part of the trial.

25 MR. HUGHES: I ask that all proceedings be in open
26 court, your Honor.

1 THE COURT: We are going back in chambers, gentle-
2 men, to confer.

3 MR. HUGHES: Are we ordered back into chambers, your
4 Honor?

5 THE COURT: You are.

6 MR. HUGHES: Very well.

7 (The following proceedings were had in open
8 court in the presence and hearing of the jury:)

9 THE COURT: Ladies and gentlemen, we are going to
10 take a recess at this time.

11 I hope that will not be a long recess, but
12 I'm going to ask the bailiffs to escort you back upstairs.

13 Please remember not to converse with anyone
14 or form or express any opinion regarding the case until it
15 is finally submitted to you.

16 We will resume as soon as the matters have
17 been disposed of.

18 (Recess.)

12 fls.

-1

1 (The following proceedings occur in
2 chambers. All counsel and defendants present.)

3 THE COURT: The record will show all defendants and
4 counsel are present:

5 First, I want to read to you a portion of the
6 opinion in People vs. Robles, 2 Cal. 3d 205, starting on
7 Page 214, headnote 5a and also 5b.

8 "Robles insisted on testifying in
9 his own defense over his attorney's objections.
10 Counsel, on appeal, now contends that the trial
11 court erred in allowing Robles to testify.

12 "The contention is without merit.
13 Although, as counsel properly notes, an
14 attorney representing a criminal defendant has
15 the power to control the court proceedings,
16 that power may not be exercised to deprive
17 a defendant of certain fundamental rights."

18 I am leaving out the citations.

19 "We are satisfied that the right to
20 testify in one's own behalf is of such funda-
21 mental importance that a defendant who timely
22 demands to take the stand, contrary to the
23 advice given by his counsel, has the right
24 to give an exposition of his defense before a
25 jury.

26 "The defendant's insistence upon

1 "testifying may, in the final analysis, be
2 harmful to his case, but the right is of such
3 importance that every defendant should have it
4 in a criminal case.

5 "Although, normally, the decision whether
6 a defendant should testify is within the
7 competence of the trial attorney, where, as
8 here, a defendant insists that he wants to
9 testify, he cannot be deprived of that oppor-
10 tunity. The fact that an indigent defendant
11 and an appointed counsel disagree as to
12 whether the former should testify does not
13 necessarily mean that the attorney should be
14 discharged, although it is a factor to be
15 considered in connection with a motion for
16 substitution.

17 "Requiring an attorney, against his
18 better judgment, to examine his client places
19 no unfair burden on the attorney. An attorney
20 is always faced with the burden of developing
21 his trial strategy in the light of what
22 evidence is available and presented in court.

23 "Nor is a defendant ordinarily prejudiced
24 when he is represented by an attorney who
25 believes, contrary to the defendant, that the
26 latter should not testify.

1 "On the other hand, in a few cases,
2 the disagreement as to whether a defendant
3 should testify may signal a breakdown in the
4 attorney-client relationship of such magnitude
5 as to jeopardize the defendant's right to the
6 effective assistance of counsel.

7 "In the instant case, the defendant was
8 permitted to testify. One of his attorneys ably
9 participated in the examination, and his attor-
10 neys ably represented him during the guilt
11 trial, notwithstanding the disagreement."
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1 MR. HUGHES: May I point out to the Court that in
2 the Robles case, this was granted after a hearing under
3 Penal Code Section 1368.

4 THE COURT: Yes, I am familiar with that.

5 MR. HUGHES: And I am certain, if we looked into the
6 Robles case more, we would probably find it is not on all
7 fours with this case. Probably there would be a lot of
8 ways that we could differentiate it,

9 This is a brand new problem to us here today,
10 one that we have not anticipated for any great length of time.

11 MR. BUGLIOSI: The Robles case says: "Even though
12 the testimony might ultimately be harmful to the defendants."
13 The implication is that it is not known at the time, in
14 advance.

15 Here, where we know in advance, apparently,
16 that she is going to incriminate herself, I wonder if she
17 has a right to do that in a capital case.

18 I think in a capital case a defendant cannot
19 plead guilty without the consent of counsel.

20 Is that right, under the statute?

21 MR. SHINN: Correct.

22 MR. BUGLIOSI: She cannot plead guilty without the
23 consent of counsel, as opposed to a non-capital case.

24 There would be an analogy here. I don't
25 know what she is going to do, but if she confesses on the
26 stand, that is tantamount to a plea of guilty.

1 Was Robles a murder case, your Honor?

2 THE COURT: Well, it was a capital case.

3 MR. BUGLIOSI: It was a capital case?

4 THE COURT: Yes, it was.

5 Assault with a deadly weapon by a life
6 prisoner.

7 And also, as I recall, in Robles the victim
8 did die. So, it was murder.

9 MR. BUGLIOSI: There is a question of whether that
10 statement by the Court is dictum.

11 Was the defendant's testimony in the Robles
12 case incriminatory of the defendant?

13 THE COURT: He was convicted both of an assault with
14 a deadly weapon as a life prisoner and first degree murder.

15 MR. BUGLIOSI: If his testimony was not, in fact,
16 incriminatory, then that statement by the Court might be
17 considered to be dictum.

18 In other words, the Court is saying that
19 even if it is incriminatory, they still have a right to
20 do it. Which is different from a situation where the
21 defendant has taken the stand in a case and has incriminated
22 himself, it has gone up on appeal, and the Court has said
23 it doesn't make any difference.

24 THE COURT: I am not acquainted with any authority
25 that says the defendant can't take the stand and incriminate
26 himself if he wants to, are you?

1 MR. BUGLIOSI: Well, in the abstract, your Honor,
2 no.

12b fls.

3 But here we have her attorney and, of course,
4 the right to effective counsel exists.
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1 THE COURT: They don't always do it intentionally,
2 certainly, but they often do it with full knowledge of the
3 risk involved.

4 MR. BUGLIOSI: Right.

5 We start off with the proposition that a
6 defendant has a right to represent himself. But the courts
7 have said that we can take away this right if he is
8 incompetent.

9 He would not be incompetent if he could secure
10 a not-guilty verdict.

11 The implication is that if he represents him-
12 self, he might very well be convicted; whereas, if he had
13 competent attorneys, there is a chance of a not-guilty
14 verdict.

15 THE COURT: Well, there are other questions that I
16 want to resolve before we get into the ramifications of
17 that.

18 First, Miss Atkins, I understand you have
19 written out and given to your counsel certain questions,
20 which your counsel now states that he refuses to ask you
21 on the grounds that the questions and the answers would
22 incriminate you.

23 Now, I have no idea whether this is, in fact,
24 true.

25 Do you have any objection to showing to the
26 Court -- not the prosecution, but just to the Court -- those

1 questions?

2 I am not asking you to do it, and you don't
3 have to do it. I am simply asking you if you have any
4 objections to doing it, and if you want to.

5 DEFENDANT ATKINS: I object to nothing.

6 My questions lay a foundation for truth.

7 Now, if the truth, in your eyes or in the
8 prosecutor's eyes or in the jury's eyes, is going to
9 incriminate me, then that is what I am going to do in
10 speaking the truth.

11 I have sat here for six months and watched
12 this Court play and toy with the truth. I see no other
13 way of bringing the truth out than by me getting up on the
14 stand and speaking the truth.

15 Everything that has been said, everything
16 that has been said that I have said has been taken so
17 far out of context that I would like to put it back into
18 context with the truth.

19 THE COURT: You realize that by doing that you may
20 very well convince the jury that you are guilty, not
21 innocent?

22 DEFENDANT ATKINS: Guilty?

23 THE COURT: Do you understand that that may be a
24 consequence of your taking the stand to testify?

25 DEFENDANT ATKINS: Does the truth constitute guilt?

26 THE COURT: I don't know.

1 DEFENDANT MANSON: She doesn't know what guilty means.

2 THE COURT: I don't know. It may.

3 DEFENDANT ATKINS: All I am here to do is to speak my
4 truth, what I know to be true.

5 THE COURT: Yes. But your counsel doesn't want to
6 ask you these questions because he is afraid that by asking
7 you the questions and by your giving the answers, you will
8 convict yourself.

9 Do you understand that?

10 DEFENDANT ATKINS: I understand this.

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1 THE COURT: And do you want to do that, notwith-
2 standing the risk of convicting yourself by your own
3 testimony?

4 DEFENDANT ATKINS: I want to tell the truth.
5 That is all I am here for. That is what I have been
6 waiting for for six months. To tell the truth.

7 THE COURT: You understand the risk that I am
8 talking about?

9 DEFENDANT ATKINS: Yes.

10 THE COURT: Do you understand that if you testify,
11 it isn't just a question of what you say in response to
12 your counsel's questions, but the People also have the
13 right to cross-examine you, and they will have the right
14 to show inconsistencies in your testimony with things that
15 you may have said at some earlier time, and there are
16 a number of other ways in which an attorney may cross-
17 examine a witness to impeach his credibility, and the
18 net result of all that, Miss Atkins, may be that you,
19 in effect, by your own testimony on the stand, will convince
20 the jury that you are guilty.

21 DEFENDANT ATKINS: If you allow me to speak the
22 truth, I can put back into context everything that has been
23 said about me, said that I have said, and show you the truth.

24 THE COURT: I understand what you are saying, but
25 do you understand what I am saying?

26 DEFENDANT ATKINS: Yes.

1 I see where you are coming from and I under-
2 stand the thought that you are traveling on, and I under-
3 stand the thought that the District Attorney is traveling
4 on, and I understand my thought.

5 All I want to do is show you my thought.

6 DEFENDANT MANSON: Father, that is your child talk-
7 ing to you.

8 DEFENDANT ATKINS: And you can stop my words.

9 THE COURT: Just a moment.

10 Knowing what I have now told you, is it still
11 your desire to take the stand and testify, knowing that
12 what you say may incriminate you?

13 DEFENDANT ATKINS: Yes.

14 THE COURT: And may, in the end, be the testimony
15 or the evidence which the jury relies upon to convict you?

16 DEFENDANT ATKINS: Yes.

17 The conviction lies in the minds of the
18 people that react to my truth.

19 I am not convicted in my own mind.

20 THE COURT: Now, knowing that your attorney has
21 said that he will disobey the Court's order for him to
22 examine you on the questions that you have given to him,
23 do you, nevertheless, still want to testify?

24 DEFENDANT ATKINS: Yes.

25 I would like to be able to get on that
26 witness stand and say what I have to say, if it takes just

1 one question to open it up, and be able to talk and tell
2 you my truth.

3 I am not going to go off on some far-out
4 trip. I am just here to tell you my truth.

5 I understand that the Court has a certain --

6 THE COURT: I don't understand what you mean by
7 your truth.

8 Are you talking about facts concerning the
9 alleged offenses?

10 DEFENDANT ATKINS: Facts. The way it happened,
11 The way I saw it happen. The truth about what I am here
12 for. The truth about the charges against me.

13 THE COURT: When you talk in terms of the way you
14 saw it happen -- by which you mean the offenses you are
15 charged with?

16 DEFENDANT ATKINS: Yes.

12d f1s.

12D-1

1 THE COURT: You are subjecting yourself to the
2 extreme risk of convicting yourself out of your own mouth.

3 Do you understand that?

4 MISS ATKINS: I understand this.

5 I understand your law.

6 THE COURT: You understand that you don't have to
7 do this?

8 DEFENDANT ATKINS: Yes.

9 THE COURT: That you have a constitutional right not
10 to testify?

11 DEFENDANT ATKINS: Yes. I understand this.

12 I also understand if I do not speak, then the
13 minds inside the people of the jury will never know the
14 truth, and they will probably convict me on a foundation
15 built on lies that are not true.

16 If they are going to take my truth and convict
17 me on my truth, let them convict me on the truth.

18 I do not wish to be convicted on a pack of
19 lies taken out of context and just scattered every which
20 way. Because, Mr. Bugliosi, your foundation is just
21 crumbling. I have watched it crumble. You have been a
22 sly, sneaky fox.

23 MR. BUGLIOSI: Why do you want to put it back together
24 forme, Susie, if it is crumbling? You should be happy.
25 You can get back to Barker Ranch if it is crumbling.

26 Why do you want to take the stand to help me?

1 DEFENDANT ATKINS: Because I have brothers and
2 sisters on the street, I have brothers and sisters in jail,
3 and I love myself, and I love my truth. I live for my
4 truth. I am my truth.

5 Months and months and months ago, I was
6 caught between two realities, and I just went with the
7 reality that was strongest at the time, and taken into a
8 lie.

9 And it is your lie. You have built this whole
10 case on your lie. All I did was tell you what you wanted to
11 hear.

12 THE COURT: All right. Let's get back to something
13 else here for a moment now.

14 You have heard Mr. Shinn say that he is not
15 going to ask you the questions.

16 What do you propose to do about that?

17 DEFENDANT ATKINS: I can only go as far as my lawyer
18 will go, it appears, unless you give me the opportunity to
19 speak my truth up on that witness stand in a narrative
20 form, not in a story book fantasy land.

21 Facts, cold hard facts, truth. That is
22 what this courtroom is for. That is what I am here for.
23 That is what you have my life on trial for.

12e

1 THE COURT: Well, what about it, Mr. Shinn?

2 MR. SHINN: Well, at this time, your Honor, in view
3 of Miss Atkins' statement, I make a motion to be relieved
4 as counsel, your Honor.

5 I am not going to put her on the stand and
6 have her convict herself, your Honor.

7 MR. FITZGERALD: I think, although I don't want to
8 interrupt, I think we might as well go ahead and handle all
9 three of the defendants at once, because we are all of the
10 same mind, your Honor.

11 THE COURT: I agree.

12 MR. FITZGERALD: I would like to underscore the fact
13 that I would very respectfully refuse to obey the Court's
14 order in regard to Patricia Krenwinkel because I have like
15 information, as does Mr. Hughes in regard to Leslie
16 Van Houten.

17 It is a terribly embarrassing situation for us
18 as attorneys to get into, but we feel that even in spite of
19 People vs. Robles, that we have got an overriding duty to
20 our client, and very respectfully, the Court's order, we
21 feel is illegal, and we feel that it is our duty to resist
22 the order, even in the face of --

23 THE COURT: Illegal in what respect?

24 MR. FITZGERALD: I believe it is a case of People
25 vs. Kor. It involved a Los Angeles attorney.

26 It said that if counsel believes that an order

1 is illegal or improper, he has got a duty to resist it to
2 the end, even if it means going to jail.

3 I don't want to go to jail, Judge, but it looks
4 like I am going to have to.

5 THE COURT: I don't want to send anybody to jail,
6 Mr. Fitzgerald. That isn't the point. And I respect any
7 attorney's willingness to stand up before a court and pro-
8 tect his client's interest notwithstanding the consequence.

9 But here we have a magnitude beyond that.
10 Here we have not just the attorney's rights, but the
11 client's rights.

12 MR. FITZGERALD: Correct.

13 DEFENDANT MANSON: Your Honor, may I speak?

14 THE COURT: Just a moment, Mr. Manson.

15 First, before I ask you or Mr. Hughes or
16 Mr. Kanarek any questions, I want to hear from your clients.

17 Miss Van Houten, did you hear everything that I
18 said to Miss Atkins?

19 DEFENDANT VAN HOUTEN: Yes.

20 THE COURT: What is your feeling about it?

21 Do you want to take the stand, knowing everything
22 that I said, and knowing that you may very well convict
23 yourself with your own testimony if you do so?
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1 MR. HUGHES: Your Honor, I will object at this
2 point to my client being questioned by the Court on the
3 basis that this questioning may actually incriminate her
4 right here in this room.

5 THE COURT: The jury is not present, Mr. Hughes.

6 MR. HUGHES: These statements are to be used
7 against her by Mr. Bugliosi.

8 THE COURT: I am going to ask her these questions,
9 if she is telling me she wants to testify. That is what
10 I am asking her now.

11 Do you want to testify?

12 DEFENDANT VAN HOUTEN: Yes, I do.

13 THE COURT: Knowing everything that I have said to
14 Miss Atkins and appreciating the consequences of what I
15 have said and realizing that your taking the stand may
16 very well be the thing that convinces the jury you are
17 guilty.

18 Knowing all of that, you still want to
19 testify?

20 DEFENDANT VAN HOUTEN: Yes.

21 THE COURT: And in the event your counsel refuses
22 to ask you questions -- incidentally, have you written
23 out any questions for your counsel to ask you?

24 DEFENDANT VAN HOUTEN: I have them in my mind,
25 but I haven't put them down on paper yet.

26 THE COURT: You have certain questions you want him

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1 to ask you?

2 DEFENDANT VAN HOUTEN: Yes.

3 THE COURT: Then you want him to interrogate you
4 further, that is, in accordance with his own feelings,
5 analysis of the case?

6 DEFENDANT VAN HOUTEN: Yeah, yeah.

7 THE COURT: And suppose he refuses to do so?

8 DEFENDANT VAN HOUTEN: Then I would ask the Court
9 can I get up and say what I want to say in regards to
10 Leslie Van Houten.

11 THE COURT: All right, now.

12 Miss Krenwinkel, have you heard everything that
13 I have said to Miss Atkins and Miss Van Houten?

14 DEFENDANT KRENWINKEL: Yes.

15 THE COURT: Knowing everything that I have said,
16 having heard everything that has been said, do you appreci-
17 ate the consequences of testifying?

18 DEFENDANT KRENWINKEL: Yes.

19 THE COURT: You understand that you may be convicting
20 yourself if you do so?

21 DEFENDANT KRENWINKEL: Yes, I do.

22 THE COURT: It is still your desire to testify?

23 DEFENDANT KRENWINKEL: Yes.

24 THE COURT: If your counsel refuses to examine you
25 in accordance with your wishes, then what do you propose
26 to do?

13-3

1 DEFENDANT KRENWINKEL: I should ask the Court to
2 be allowed to speak my truth, to be able to tell my truth
3 the way it is, you know, with no strange pictures or anything
4 like that.

5 I would like to be able just to tell my truth,
6 and it would be fact.

7 THE COURT: Now, when you say tell your truth, are
8 you talking about --

9 You don't have to tell me the specific facts--
10 but I'm trying to narrow it down to what you are talking
11 about, the subject matter you are talking about.

12 DEFENDANT KRENWINKEL: Yes, why we are here.

13 THE COURT: Are you talking about the alleged offenses?

14 DEFENDANT KRENWINKEL: Yes.

15 THE COURT: You are going to get up and testify
16 concerning in one respect or another, concerning the alleged
17 offenses, is that what you are saying?

18 DEFENDANT KRENWINKEL: Yes, everything that we are
19 here for.

20 THE COURT: And would you also intend to mention
21 names of other people?

22 DEFENDANT KRENWINKEL: Mention names of other people?
23 This --

24 THE COURT: Who may have been present?

25 DEFENDANT KRENWINKEL: These offenses here have
26 been against me. I would talk for myself.

1 DEFENDANT MANSON: You see, this is why we cannot
2 testify, because we cannot snitch. We've got laws, too,
3 to live by, you know.

4 THE COURT: Just a minute, Mr. Manson, you will be
5 given an opportunity to talk.

6 Well, you realize, do you, Miss Krenwinkel,
7 and I'm talking also to the other two female defendants,
8 that it isn't quite that simple, because even though you
9 may only testify as to what you did, at a particular time and
10 place, the prosecution has the right to cross-examine
11 regarding those circumstances and to find out if anyone
12 else was present and who they were and what happened, and
13 the times and the places and all of the other means by
14 which --

15 DEFENDANT KRENWINKEL: They cannot testify against
16 us.

17 THE COURT: -- or the other means by which an
18 attorney can probe the testimony of a witness to test it
19 for credibility and for consistency, and so forth.

20 Do you understand that?

21 DEFENDANT KRENWINKEL: Yes.

22 THE COURT: So you may end up testifying to many
23 many things on cross-examination than you testified to on
24 direct.

25 Do you understand that?

26 Do you understand what I am saying?

1 DEFENDANT KRENWINKEL: Yes.

2 DEFENDANT VAN HOUTEN: Yes.

3 DEFENDANT ATKINS: Yes.

4 I see where you are coming from, and I also
5 see that I can only testify on direct to what I know I saw
6 and did.

7 THE COURT: Yes, what I'm saying --

8 DEFENDANT ATKINS: And when Mr. Bugliosi does his
9 cross-examination I can only answer to questions how I
10 see they are answered in truth.

11 THE COURT: That's right, and if you lie he may
12 very well show --

13 DEFENDANT KRENWINKEL: I don't know what a lie is.
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1 THE COURT: Just a moment, listen to me.

2 If you don't tell the truth on cross-
3 examination he may very well be able to prove that you are
4 lying, in which case you almost surely will be convicted.

5 On the other hand, if you tell the truth you
6 may just as easily and just as firmly incriminate yourself
7 so that you will be convicted.

8 Do you understand that?

9 DEFENDANT ATKINS: Yes.

10 THE COURT: Now, Mr. Manson, did you have something
11 you wanted to say?

12 MR. KANAREK: Well, your Honor, if I may just state
13 this:

14 It is my belief, your Honor --

15 THE COURT: I did not talk to you, Mr. Kanarek.
16 Mr. Manson said he wanted to address the Court.

17 MR. KANAREK: I understand.

18 THE COURT: Be quiet, Mr. Kanarek. I want to hear
19 if Mr. Manson has something to say to the Court; he has a
20 right to say it.

21 DEFENDANT MANSON: It's like taking four gallons of
22 water and trying to put it in a gallon bucket. You can't
23 get this case in this courtroom. I have known this the
24 first two or three days we walked in here and looked
25 around.

26 It's not no one's fault in particular, it's

1 just that certain things have the capacity to hold a
2 certain amount of things, and then you get beyond that
3 capacity, it's kind of stuffed.

4 THE COURT: I don't understand what you are saying.

5 DEFENDANT MANSON: Your Honor, in other words, there
6 is a lot involved. There is a philosophy involved that
7 does not exist.

8 There is a family that does not exist.

9 There is a family that you are a part of,
10 you know, that is the only family --

11 THE COURT: Just wait a moment.

12 Are you making a motion now?

13 DEFENDANT MANSON: Yes, your Honor.

14 THE COURT: Are you asking the Court for some
15 relief?

16 DEFENDANT MANSON: No, it isn't relief --

17 THE COURT: Well --

18 DEFENDANT MANSON: Yes, you could say it is relief.

19 THE COURT: You tell me what it is you want.

20 DEFENDANT MANSON: Words change, you know, like what
21 I'm trying to say to you is that I know the reality that
22 you are going into.

23 You are going into a whole new reality. You
24 are not going into the same reality that you live in out-
25 side. You are going into reality to where these people
26 have got to look at me. They see what I have been doing

1 and they try to keep what I am doing, you see what I'm saying.

2 In other words, they have picked up from my
3 imagination and my reality and found what they call their
4 reality, and they walk around in that.

5 THE COURT: Well, just a moment, Mr. Manson.

6 I haven't the faintest idea of what you are
7 talking about, but if you are asking the Court for some
8 relief, direct yourself to that.

9 DEFENDANT MANSON: I am trying to explain to you I
10 can question these people satisfactorily to your satis-
11 faction.

12 THE COURT: We have covered that many times before.

13 Now, you have yet to tell me and you don't
14 have to tell me, I just want to make sure I do not mis-
15 understand you.

16 So far as I have heard what you said, I do not
17 at this point understand your to have told me that you wish
18 to take the stand and testify.

19 Now, do you or do you not wish to testify?
20 You don't have to tell me one way or the other if you
21 don't like, but if you've made up your mind I want to know
22 what the decision is.

23 DEFENDANT MANSON: I'm waiting for yours. It is your
24 decision, you know, it's your court.

25 THE COURT: I still do not understand you to have
26 told me that you want to testify.

1 DEFENDANT MANSON: Your Honor, motion is more
2 louder than words. Look here, look at me, what I'm trying
3 to do is establish communication with you; what I tried to
4 do is establish communication with you. Words are simple;
5 they are childlike.

6 You say you cannot understand me. I am trying
7 to understand why you cannot understand me. I cannot under-
8 stand you, like I want to defend myself.

9 THE COURT: That is enough, Mr. Manson. We have
10 gone through this many times.

11 Well now, the next question in view of what
12 the female defendants have told me about their desire to
13 testify, notwithstanding knowing the consequences may be
14 a conviction, I want to know from counsel what each of you,
15 what you intend to do if your defendant insists on taking
16 the stand.

17 DEFENDANT MANSON: One of us is crazy, me or him.

18 MR. FITZGERALD: I am going to very respectfully
19 refuse to ask the questions she prepares for me.

20 She hasn't as of this moment prepared
21 questions, but she discussed with me the nature and sub-
22 stance of her testimony.

23 THE COURT: Of course you can ask the questions
24 without prepared questions, knowing what it is she wanted
25 you to ask.

26 MR. FITZGERALD: That is correct.

1 THE COURT: And the questions can be formulated in
2 whatever way you wanted to formulate them as a lawyer.

3 MR. FITZGERALD: That is correct.

4 THE COURT: And I would assume --

5 MR. FITZGERALD: They are essentially incriminatory
6 in nature and maybe I shouldn't beat around the bush and
7 just come right out and say it.

8 As far as I am concerned that would be sort of
9 to aid and abet a suicide to allow her -- to assist -- to
10 ask her questions.

11 THE COURT: What about you, Mr. Hughes?

12 MR. HUGHES: Indeed I feel in the same position,
13 your Honor.

14 THE COURT: You would refuse to ask the defendant
15 Leslie Van Houten any questions notwithstanding her insis-
16 tence upon taking the stand to testify?

17 MR. HUGHES: As I understand what her testimony
18 would be and as I understand what the questions would be,
19 that she would ask me to propound, I would.

20 THE COURT: Notwithstanding the Court's order to you
21 to examine her in accordance with her wishes?

22 MR. HUGHES: At the moment that would be my
23 intention, your Honor.

24 THE COURT: What about you, Mr. Shinn?

25 MR. SHINN: I haven't changed my position, your Honor,
26 because I don't feel --

1 THE COURT: I don't know what your position is.
2 That is what I want to find out.

3 MR. SHINN: Yes, your Honor, I am not going to ask
4 her any questions, your Honor, that is going to incriminate
5 her.

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1 THE COURT: All right, now, what about you, Mr.
2 Kanarek, as I say, I don't understand yet that Mr. Manson
3 has told me he wants to testify, so you don't have the same
4 problem.

5 MR. KANAREK: Yes, we have rested, your Honor.

6 DEFENDANT MANSON: It wouldn't do any good. You
7 couldn't have understood what I was talking about anyway, I
8 am so inadequate I can hardly speak.

9 MR. MUSICH: May I raise a point first:

10 If the defendants are allowed to testify
11 will counsel be allowed to cross-examine?

12 Will Mr. Kanarek or the other counsel cross-
13 examine?

14 THE COURT: I would think that would depend on
15 what the testimony is.

16 If it is adverse, certainly.

17 MR. MUSICH: Then the Court is going to allow Mr.
18 Kanarek to cross-examine?

19 THE COURT: Well, of course I have no idea --

20 MR. BUGLIOSI: We are not at that point yet.

21 THE COURT: I think we are getting ahead of our-
22 selves.

23 There may be no need to cross-examine.

24 There may be no right to cross-examine, depending on what
25 the testimony is.

26 I don't think it follows as night the day that

13b-2

1 he has the right to cross-examine regardless of what the
2 testimony is.

3 MR. MUSICH: Correct.

4 As far as the attorneys asking questions,
5 and of course what happened in front of the jury at this
6 point, it looks like, as the Court has indicated, it is
7 confusing, and it looks like the defendants are being
8 forced to testify.

9 THE COURT: Forced to testify!

10 MR. FITZGERALD: I think quite the contrary.

11 MR. MUSICH: That is, over the consent of their
12 attorneys.

13 THE COURT: Of course, whatever happened in open
14 court happened after considerable thinking on the part of
15 all of the defendants and their counsel, after lengthy and
16 extensive conferences both between counsel and the defendants,
17 and all of counsel and the Court.

18 So, I don't have any illusions about it.

19 Nothing accidental happened out there. It was
20 all very carefully planned, and I certainly have no intention
21 of letting what happened constitute the basis for a mistrial.

22 I think the law is perfectly clear that the
23 defendants have an absolute right to testify. The only
24 problem now is working out the procedure, if they insist
25 on testifying, as to representation.

26 MR. BUGLIOSI: I am not sure there is an absolute

13b-3

1 right to testify, but the Court has already made its
2 finding.

3 THE COURT: I think our Supreme Court has made
4 that finding, Mr. Bugliosi.

5 MR. BUGLIOSI: Even though it ultimately turns out
6 to be harmful, where it is known in advance, it is a little
7 different situation.

8 THE COURT: It is not known in advance. It is one
9 thing to be told that it is going to be incriminatory,
10 but I have no way of knowing that.

11 MR. BUGLIOSI: Let's say the Court does have
12 access to these questions.

13 THE COURT: This may all be part of the strategy,
14 as far as I'm concerned.

15 MR. BUGLIOSI: Right, but the Court is always the
16 one to determine whether testimony is self-incriminatory,
17 even if a person takes the Fifth, they are not automatically
18 entitled to take the Fifth on the stand.

19 THE COURT: But here you have a different situation,
20 the witness is not claiming a privilege. The witness wants
21 to testify.

22 The attorney is balking at it.

23 MR. BUGLIOSI: I am wondering what right prevails
24 here more, the right to take the stand or the right to
25 effective counsel.

26 The reason I say that is because if a person

13b-4

1 is incompetent to represent himself, the right which is
2 guaranteed to him in the Constitution to represent himself
3 is taken away.

4 It is taken away from him because apparently
5 the law feels if this party represents himself he is going
6 to be found to be guilty, and if he has effective counsel
7 there is a chance he won't be found guilty, so the law
8 takes away his right to represent himself.

9 And the analogy here --

10 THE COURT: I think the right to testify in a
11 criminal proceeding, particularly in a capital case, is
12 of such fundamental, all-overriding, paramount interest that
13 the -- that it supersedes any and all other rights, and if
14 the defendant is bent on testifying or convicting himself
15 or whatever he is bent on doing, and assuming he does it,
16 while he is competent to testify, I think he has the right
17 to do it.

18 I think that is what the cases mean.

19 MR. BUGLIOSI: Do you think this problem is serious
20 enough, of such magnitude, to allow the defense, if they are
21 of such a mind, to take a writ up to the Supreme Court?

22 THE COURT: I did not finish what I was about to say.

23 The only remaining problem in my mind is not
24 whether or not they have the right to testify but whether or
25 not the Court must relieve counsel for the defendants, at
26 least counsel for three of the defendants and permit them

1 to obtain new counsel, or appoint counsel for them.

2 MR. HUGHES: Then, your Honor, we get into the
3 problem, the Blye case propounds, and that is h_ow can you
4 one moment have supposedly competent counsel, as you so
5 nicely pointed out that apparently we are competent,
6 including Mr. Kanarek, and relieve him and appoint some
7 other apparently competent counsel who is going to give
8 diametrically opposite voice to a defendant.

9 THE COURT: What would you propose, Mr. Hughes, that
10 I put all of you in jail for contempt and let you languish
11 there until you change your mind?

12 MR. HUGHES: I am saying that Blye suggests you
13 are on the horns of a dilemma, your Honor.

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1 THE COURT: I am sure you tried to get me there.
2 of
3 I am convinced/that, Mr. Hughes, but I don't propose to
4 permit you to do so.

5 MR. HUGHES: I, sir, am only an observer. You are
6 on the horns of a dilemma and I don't relish the position
7 you are in.

8 DEFENDANT MANSON: I know how you feel.

9 MR. BUGLIOSI: You welcome it, but you don't envy it,
10 is that what you are saying, Mr. Hughes?

11 MR. HUGHES: I wouldn't go so far as to say that,
12 Mr. Bugliosi.

13 MR. FITZGERALD: Well, somebody else can examine
14 them. Maybe your Honor wants to examine them.

15 THE COURT: I have thought of that also, but I
16 don't think it is a situation where the Court should
17 inject itself in the examination of defendants.

18 DEFENDANT MANSON: Why don't you let me examine
19 them?

20 MR. KAY: Maybe a suggestion would be to have the
21 defendants --

22 (Off-the-record discussion between Mr. Kay
23 and Mr. Bugliosi.)

24 MR. HUGHES: Mr. Manson has made a suggestion that he
25 be allowed to examine them.

26 Our previous position has been, of course,
that it certainly --

1 We feel with a great deal of merit when he
2 makes these motions to go pro per, you know, other counsel
3 have consistently agreed with that, and it is only the
4 judges of the Superior Court who have not.

5 I mean, even Mr. Bugliosi has agreed
6 Mr. Manson is apparently a competent person.

7 I feel if the Court is interested in having
8 questions which will bring forth what these three female
9 defendants want to testify to, probably Mr. Manson is
10 better able to ask those questions than anyone.

11 But I am still -- that does not -- I don't
12 wish for those statements to relinquish at all my position
13 of Leslie Van Houten's testifying; it is completely against
14 my advice.

15 THE COURT: I want to say once again, gentlemen,
16 notwithstanding your concern for your clients, I don't
17 think that you have any legal right to refuse the Court's
18 order to examine your clients.

19 I think you in fact are on the horns of a
20 dilemma, and the law provides that in such a case the
21 attorney simply has to do the best that he can notwith-
22 standing the fact that he doesn't believe in it.

23 That is what People vs. Robles says, and in
24 that case what happened was, as the Court said, the
25 defendant was permitted to testify.

26 One of his attorneys ably participated in the

1 examination, and his attorneys ably represented him during
2 the guilt trial, notwithstanding the disagreement.

3 That is your duty, not to refuse to do it at
4 all.

5 MR. SHINN: But your Honor, we have a different
6 situation here, your Honor.

7 We have advised the Court that they are going
8 to go up on the stand and incriminate themselves, your
9 Honor.

10 THE COURT: Well, I don't see that changes anything.

11 MR. SHINN: I think so, your Honor, where the Court
12 is aware of the fact that they are going to get up and
13 confess, I don't think that the Robles case goes that
14 far, your Honor.

15 MR. BUGLIOSI: I think there is some merit to
16 Mr. Shinn's --

17 I have not heard anybody say anything about a
18 confession.

19 MR. SHINN: I advised the Court what my client told
20 me. I made the Court fully aware of what she is going to
21 do.

22 MR. HUGHES: I believe in the context of these
23 proceedings, if my client were to take the stand,
24 there may very well be a judicial confession.

25 I think we pointed out to the Court that in the
26 Robles case --

1 Your Honor just recently read the sections of it
2 to us, the demand of the defendant was a timely demand to
3 take the stand.

4 In this case the defense is contending, the
5 defense attorneys are contending that the demand is not
6 timely.

7 THE COURT: Well, I will reiterate again, I think if
8 you gentlemen continue in your refusal to examine your
9 clients that you are failing in your duty as attorneys, and
10 notwithstanding that you sincerely and honestly believe,
11 and I have no reason to doubt that you do believe that it
12 is inadvisable for your clients to take the stand.

13 But they now have been fully advised; they have
14 had a chance to think it over, and apparently their
15 insistence is a real one.

16 As a matter of fact Miss Atkins did take the
17 stand and was sworn. She was actually sitting in the
18 witness stand.

19 So, if necessary the Court can, of course,
20 dismiss counsel who refuse to examine their client, and
21 substitute additional counsel.

22 That process can continue until such time as
23 counsel who are willing to assume their duties under the
24 law were found to represent the client.

25 MR. SHINN: Then I would make a motion at this time to be
26 relieved as counsel, your Honor.

1 THE COURT: It isn't going to happen quite that
2 soon, Mr. Shinn.

3 It isn't going to be quite that easy, Mr. Shinn.

4 DEFENDANT ATKINS: Your Honor, if you take it upon
5 yourself to relieve the counsel that I have and appoint
6 another counsel, I would more than likely refuse to have
7 another counsel.

8 THE COURT: You wouldn't have anything to do about
9 that, Miss Atkins.

10 DEFENDANT MANSON: We will talk about the firing
11 squad.

12 MR. HUGHES: I think the Sixth Amendment guarantees
13 the right to effective counsel of his or her choice.

14 THE COURT: She can choose a counsel if she likes,
15 if in fact a substitution is going to be made.

16 MR. HUGHES: If you are to substitute present counsel
17 out and appoint one for a defendant where the defendant
18 does not --

19 THE COURT: If she has counsel who is available and
20 she wants to come in, that can be done if a substitution is
21 made.

13d-1

1 MR. HUGHES: I see this area is very weighty and
2 very fraught with problems that I don't believe the
3 Supreme Court in Blye or in Robles considered, your Honor.

4 I don't think that normally the law should
5 have this --

6 THE COURT: I want the record to be perfectly
7 clear that I have analyzed the situation very carefully.

8 I have had a chance to observe all of you
9 in action now for a long time, and I am convinced that
10 this little gambit, and I don't say that in a light manner,
11 but I think it is a gambit, was a carefully planned
12 maneuver, trial maneuver --

13 DEFENDANT MANSON: You would not call it inadequate,
14 would you?

15 THE COURT: -- to put the Court on the horns of
16 a dilemma.

17 As I say, I don't think the Court is on the
18 horns of a dilemma. I think there is a way out.

19 I think that way out may very well entail
20 at least three of the attorneys in this case failed miserably
21 in their attorney duties under the law as attorneys, but if
22 that is the only way out, I intend to take it.

23 But I want the record to be perfectly clear
24 that the way in which it happened this morning, and without
25 any warning, the four attorneys for the defendants stand
26 up in open court and announce that they rest, following

13d-2

1 which immediately three of the defendants rise in unison
2 and say that they want to testify.

3 It had all of the earmarks of a very well
4 rehearsed performance.

5 MR. BUGLIOSI: Just to lend a little fodder to the
6 Court's observation, I won't name the attorney, but I
7 asked one of the defense attorneys if they were going to put
8 on a defense, and the answer was yes.

9 I asked who the first witness was going to be
10 and I was given an answer.

11 That was this morning, so I think it was
12 rehearsed.

13 DEFENDANT VAN HOUTEN: It was none of your business
14 anyway who the first witness was.

15 THE COURT: Well, gentlemen, it is a quarter to
16 4:00. I am going to take as much time as I think necessary
17 to think about these problems before I make a decision one
18 way or the other, and I think I have all of your positions
19 in mind.

20 Let me state them once more for the record
21 so if I am incorrect in any particular you can correct me.

22 I understand that the defense, from talking
23 with each of them directly, insist on taking the stand
24 to testify, notwithstanding their counsels' advice to the
25 contrary, and notwithstanding the fact that they appreciate
26 that the consequences of such testifying will be their own

13d-3

convictions.

I also understand that counsel for each of these three defendants have indicated that they will refuse to comply with the Court's order to conduct an examination of their clients if they take the stand, and notwithstanding such statements by counsel the defendants still desire to take the stand and testify.

So it would appear that the problem narrows down to whether or not the Court can permit the defendants to testify without counsel or whether any counsel should be appointed, or the defendant should be permitted to obtain new counsel, as the case may be, or whether the examination should be conducted by the Court or some other means.

I have already indicated that I think in this kind of a case, in front of the jury, that the Court should not inject itself into the examination of the defendants.

I think, first of all, it would be in some respects detrimental to the defendants; in other respects detrimental to the People of the State of California.

In any event I think it is unseemly for the Court to be placed in the position of having to interrogate defendants in a capital case when it is known in advance that the testimony may very well be the testimony that sends them into a penalty phase.

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1 Now, if anything I have said is incorrect I
2 hope counsel will correct the record.

3 (No response.)

4 All right, we will adjourn then until tomorrow
5 and, as I have indicated, I'm going to take as much time
6 as I think is necessary to resolve the problem, hopefully
7 by tomorrow, but we will just have to wait and see.

8 We will adjourn until 9:00 o'clock tomorrow
9 morning.

10 (Evening recess.)

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