

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.

152

No. A253156

REPORTERS' DAILY TRANSCRIPT

Monday, November 30, 1970

December 2, 4, 7, 8, 15, 16, 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.

VOLUME 152

PAGES 18,270 to 18,465

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

A 1 LOS ANGELES, CALIFORNIA, MONDAY, NOVEMBER 30, 1970

2 10:06 o'clock a.m.

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4 (The following proceedings occur in chambers.
5 All counsel save and except Mr. Ronald Hughes present.
6 Defendants not present.)

7 THE COURT: The record will show all counsel are
8 present except Mr. Hughes.

9 I understand from talking with counsel informally
10 that no one has heard anything of him this morning or knows of
11 his whereabouts.

12 If I am mistaken, please so indicate.

13 The Clerk has also indicated that no message
14 has been received from Mr. Hughes this morning.

15 MR. BUGLIOSI: I heard him over the radio this
16 morning on the way coming to work.

17 THE COURT: You heard him on the radio?

18 MR. BUGLIOSI: Yes.

19 I don't know when the interview was granted,
20 but this morning about 8:15 he was on the radio.

21 THE COURT: On what station?

22 MR. BUGLIOSI: I don't know.

23 THE COURT: Was he being interviewed?

24 MR. BUGLIOSI: He was being interviewed.

25 THE COURT: By whom?

26 MR. BUGLIOSI: By a reporter.

1 I didn't hear it too well. I was being driven
2 into work. They were talking something about the Court
3 interfering with the relationship between -- I think he was
4 referring to the defendants taking the witness stand, or
5 something like that.

6 It was almost incoherent.

7 THE COURT: Well, as I indicated to you gentlemen,
8 informally we can proceed to discuss some of the requested
9 instructions from both sides until Mr. Hughes gets here,
10 so that we don't waste any time.

11 I don't see any necessity of having our
12 discussions on the record. Eventually the Court's rulings
13 as to which instructions will be given or not given, and
14 your objections and arguments with respect thereto, will
15 be on the record, of course; but our informal discussion
16 does not need to be on the record.

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1 MR. KANAREK: Your Honor, I have a fundamental
2 point that I would like to be on the record, and that is
3 this:

4 I have done a lot of thinking and reading over
5 of these transcripts, and there was a glaring inequity,
6 your Honor, in connection with the language that was
7 written, allegedly, at these homes.

8 Now, Mr. Manson -- your Honor has given
9 instructions that the Helter Skelter conversations, all of
10 that -- without belaboring it, I am sure your Honor knows
11 what I am referring to --

12 THE COURT: I don't know what you are talking
13 about, Mr. Kanarek.

14 MR. KANAREK: His conversation with people like
15 Mr. Jacobson, Dianne Lake, and so forth, these conversations
16 were admitted only as against Mr. Manson.

17 Now, we have, at the Tate home, and we have,
18 at the La Bianca home, these words that were written upon
19 the refrigerator door, and so forth.

20 Now, these have nothing to do -- that is, the
21 human body itself -- if a letter were found in there, that
22 letter could not be used against Mr. Manson. And it is my
23 position, your Honor, that we are entitled to an instruction
24 that none of those words -- there is no showing that
25 Mr. Manson wrote those words down. There is no showing
26 that Mr. Manson's handwriting is connected with those words.
As a matter of fact, there is no showing of any of the

1 defendants' handwriting being connected with those words.
2 Therefore, your Honor, we are entitled to an instruction
3 that none of those words, "Rise," "Helter Skelter," "Politi-
4 cal Pig," none of those words that were allegedly written
5 in blood can be used against Mr. Manson.

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1 I urge the Court to consider that very
2 seriously because there is nothing to show what the
3 source of that language was.

4 It is far removed from the physical body.

5 THE COURT: Well, if you have some special instruc-
6 tion you wish given, Mr. Kanarek, I will be glad to consider
7 it.

8 MR. KANAREK: I wonder what the Court's thinking is
9 on that, and I would like counsel -- because I don't wish
10 to --

11 THE COURT: Thinking as to what?

12 MR. KANAREK: As to that general principle.

13 In other words, we of course objected to this
14 throughout the trial.

15 THE COURT: Well, it is a physical fact, if believed;
16 the words were written and they are just as much in the
17 evidence as, say, a piece of rope or a knife or anything
18 else that was found at the scene.

19 MR. KANAREK: Well, yes, your Honor, but it is more
20 than just -- you see, it is more than just a physical
21 body passing away.

22 This is removed from the physical body and
23 this is in the nature -- this is in the nature of something
24 or other to show motive or something like that, and the
25 point is there is no connection of those words with Mr.
26 Manson.

1 THE COURT: I'm sure you will argue that to the jury,
2 Mr. Kanarek.

3 MR. KANAREK: Your Honor, for instance, allowed
4 instructions that when Mr. Manson --

5 THE COURT: I have not allowed anything yet.

6 MR. KANAREK: I am speaking of admonishment to the
7 jury.

8 Your Honor admonished the jury that these words
9 Mr. Manson allegedly uttered would be used against Mr.
10 Manson alone.

11 But these words actually at the scene, not being
12 connected up to Mr. Manson, cannot be used against him, your
13 Honor.

14 MR. BUGLIOSI: Your Honor, if he can make an argument
15 like that right now, I am worried. We are going to be here
16 three or four days, because this is an unbelievable argu-
17 ment.

18 THE COURT: All right, Mr. Kanarek, if you have a
19 requested instruction you wish to offer to the Court, of
20 course now is the time. This is what we are here for.

21 MR. KANAREK: Yes, your Honor. I will.

22 THE COURT: All right, let's start.

23 As I say, there is no point in having all of
24 this informal discussion on the record. We will make our
25 record after we have decided something. So we will go off
26 the record at this time.

LOS ANGELES, CALIFORNIA, MONDAY, NOVEMBER 30, 1970

1:45 P.M.

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(The following proceedings occur in chambers.
All counsel but Mr. Hughes present. Defendants absent.)

THE COURT: We are back on the record, gentlemen.

I have received requested instructions from
both Mr. Fitzgerald, which purport to be requested
instructions on behalf of all of the defendants, and I have
also received the People's requested instructions.

Among the instructions requested by Mr.
Fitzgerald on behalf of the defendants are CALJIC 2.60 and
CALJIC 2.61.

These are also requested by the People.

I understand from our discussion, Mr. Kanarek,
that you now wish to object.

MR. KANAREK: Yes.

THE COURT: To the Court's giving either of those
instructions.

MR. KANAREK: Yes, your Honor.

I might say this just briefly. Mr. Fitzgerald's
-- the instructions, your Honor stated, are on behalf of
all of the defendants. You might say that is an advised
comment because there are some -- he recognizes and I
recognize -- there are some differences of opinion because
of some inherent conflict between his client and my client.
So, all of these are not offered on behalf of Mr. Manson.

1 But specifically, to answer your question,
2 it is my request that CALJIC 2.60 and 2.61 not be given.

3 THE COURT: Very well,

4 MR. FITZGERALD: And it is my request, your Honor,
5 that they be given.

6 THE COURT: As I have indicated to you, in a case of
7 this kind, where you have multiple defendants and multiple
8 defense counsel, and there is a disagreement as to the
9 desirability of giving these instructions among defense
10 counsel, I am not going to give the instructions.

11 However, I do not think that counsel who wish
12 the instruction should be precluded from arguing to the
13 jury that a defendant has no -- well, that he has a
14 constitutional right not to testify.

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1 And I think further that the defense counsel
2 could refer in his argument to the other matters contained
3 within those instructions, the only difference being
4 that here the Court will not be giving the instructions
5 and not be placing an official character or designation on
6 the instructions.

7 It will simply be a matter of argument by
8 counsel.

9 MR. KANAREK: Of course I cannot contemplate what
10 counsel will argue, but out of an abundance of caution I
11 would make a motion to sever.

12 There is no reason why Mr. Manson's case could
13 not be decided by the jury separate and apart from the other
14 defendants.

15 THE COURT: I see nothing objectionable myself in
16 my giving that instruction. It merely states the law.
17 I don't see how the defendant can possibly be harmed by
18 giving the instruction, but in view of the fact I am not
19 going to give it, he certainly won't be harmed by the Court.

20 If the other defendants mention the principle
21 involved in argument, I don't see how any defendant is harmed
22 by that.

23 MR. KANAREK: Yes, your Honor. Just for the record
24 may I have a ruling on the motion to sever, your Honor?

25 THE COURT: The motion is denied. I see no reason
26 to sever.

(Whereupon the following proceedings were off
the record:)

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1 THE COURT: Back on the record.

2 Gentlemen, I understand that Mr. Fitzgerald, in
3 addition to your other requested instructions, you now
4 wish to request on behalf of the defendants CALJIC 2.82,
5 which is the instruction regarding hypothetical questions.

6 MR. FITZGERALD: Yes, I do, your Honor.

7 As a matter of fact, it is in there. I did
8 submit it.

9 THE COURT: All right.

10 MR. FITZGERALD: It is at the back. It is a CALJIC
11 type instruction.

12 THE COURT: Yes.

13 282 will be given.

14 (Off the record.)

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1 (The following proceedings were had in the
2 chambers of the court out of the hearing of the jury and
3 the defendants, all counsel being present with the
4 exception of Mr. Hughes.)

5 THE COURT: All counsel are present except Mr.
6 Hughes.

7 Has anyone received any word from Mr. Hughes?

8 (No response.)

9 MR. KAY: I understand from Mr. Kendall of the Los
10 Angeles Times that he checked with the Ventura Sheriff's
11 Department and they tended to discount the fact that Mr.
12 Hughes was in Sespe Hot Springs, at least that is the
13 information he implied to me last night.

14 He said they had been flying people out of
15 there all day yesterday, and Mr. Hughes was not one of
16 the people. They were bringing them out by helicopter.
17 They had no word he was there.

18 THE COURT: I tried to call Sespe Hot Springs last
19 night but the Phone Company did not have any listing for
20 it.

21 The only thing I could find was Sespe Land and
22 Water Company and they did not answer the phone.

23 So the Clerk is going to try to call the
24 Sespe Land and Water Company this morning to see if they
25 know anything about the Sespe Hot Springs.

26 If anyone has any information about him or

1 obtains any I would appreciate getting it because it may
2 be possible for us to have a Sheriff's helicopter pick him
3 up if we know where he is.

4 MR. FITZGERALD: Right.

5 THE COURT: But in the absence of some definite
6 location there isn't much point in sending a helicopter
7 up there just to fly around the area.

8 MR. KAY: Mr. Kendall also went to Mr. Hughes' home
9 yesterday afternoon. He said it was in complete disarray
10 and his mattress, which he sleeps on, which was on the
11 garage floor, was completely soaking wet from the rain.

12 THE COURT: Who is this, John Kendall of the Times?

13 MR. KAY: Yes, the Los Angeles Times.

14 THE COURT: All right, then, let's proceed in his
15 absence.

16 (Off the record discussion.)
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THE COURT: The Clerk has indicated that he has some information regarding his efforts to contact Mr. Hughes. Will you state what you have been able to find out.

THE CLERK: First I contacted Rancho Sespe, as indicated by you.

They referred me to the Filmore Police Department.

The Filmore Police Department referred me to the Sheriff's Department.

I talked to the Watch Commander of the Sheriff's Department who indicated that he had information that Mr. Hughes was in the Ross Valley area.

Yesterday the helicopter flew 17 people out. Ten people hiked out. But they had not had any personal contact in any way with Mr. Hughes whatsoever and they have no information other than what I have indicated.

THE COURT: All right, thank you, Mr. Darrow.

Now we will go off the record again.

(Off the record.)

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1 (The following proceedings occur in chambers.
2 All counsel, save and except Mr. Hughes, present. Defendants
3 absent.)

4 THE COURT: The record will show all counsel are
5 present except Mr. Hughes.

6 Has anyone heard any word concerning Mr. Hughes?
7 The Court has heard nothing.

8 MR. FITZGERALD: No, your Honor; I might say that I am
9 beginning to become concerned, and I am actually becoming
10 worried about him.

11 By and large, he kept in relatively close
12 contact with me. He would call me every weekend, frequently
13 at nights; and because he didn't have secretarial service,
14 my secretary did his legal work for him; and frequently, if
15 there were problems in connection with the instructions and
16 problems in connection with legal documents and motions,
17 I assisted him in preparation, and my secretary actually
18 prepared them for Hughes.

19 I haven't heard from him and I am concerned.

20 THE COURT: As I indicated yesterday, the Clerk did
21 get an anonymous phone call from somebody saying he was up at
22 Bespe Hot Springs; and I understand that you got some kind of
23 a message.

24 MR. FITZGERALD: I did.

25 My secretary, unfortunately, became ill with the
26 flu about 10:00 o'clock in the morning. But the answering

1 service received a call at 1:33 yesterday afternoon,
2 indicating that a man who identified himself as Ronald Hughes
3 -- and the answering service, although they have heard
4 Hughes' voice on a number of occasions, was unable to
5 state whether it was Hughes or not -- they said it sounded
6 like a young voice, approximately 21 years of age. They
7 said it, 50-50, could have been Hughes, and it could not
8 have been Hughes -- anyway, this person who identified him-
9 self as Ronald Hughes said that he was marooned in the
10 Sespe Hot Springs area of Ventura County, and was going to
11 remain there until the police allowed them to leave when the
12 roads were open.

13 And that is the only information I have. He has
14 not attempted to call back the answering service or my
15 office or my home, and I have absolutely no further infor-
16 mation.

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1 I can assure the Court that in the past Hughes
2 has on the weekend gone to the Sespe Hot Springs area in
3 Ventura County, and he has gone there frequently. So it
4 did not strike me as unusual when the answering service
5 received a call that Hughes was in this area of Ventura
6 County because he frequently goes there, although I had no
7 knowledge that he was going there last weekend and of course
8 in light of the rain it might even be inappropriate to go to
9 that location, and the last time I heard from him was --
10 I originally said Saturday morning at 10:00 o'clock, but
11 now I'm not sure, it could have been either Friday morning
12 at 10:00 o'clock or Saturday morning at 10:00 o'clock,
13 and he appeared to be calling locally and he talked to me
14 actually about a number of things.

15 He talked to me about the preparation of jury
16 instructions in regard to Dianne Lake being an accomplice.

17 He discussed that briefly. He also discussed
18 with me certain ideas in connection with the preparation of
19 certain other instructions.

20 It appeared to me from the telephone call that
21 he was obviously involved in the legal issues surrounding
22 jury instructions.

23 I had absolutely no indication that he was not
24 going to be here and I am sure he planned on being here,
25 so I am surprised and worried.

26 THE COURT: There is not much point in issuing a body

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1 attachment unless something is done about it.

2 MR. FITZGERALD: I am worried now that maybe he is
3 stranded some place; maybe he needs help or assistance
4 or medical assistance or something.

5 MR. BUGLIOSI: The second point I was going to men-
6 tion, contemporaneous with the body attachment I would ask
7 the Court to appoint another attorney conditionally.

8 Now, I am fearful the Court might decide to
9 grant a mistrial as to Miss Van Houten.

10 Appoint another attorney right now, a competent
11 attorney, which obviously is hard to come by, but if the
12 Court knows of any, appoint a competent attorney to start
13 working right now on reviewing the transcripts and possibly
14 a week and a half or two from now he might be able to
15 give an argument.

16 Now, that is a long time from now, but the
17 alternative is for the County to have to prosecute Leslie
18 Van Houten all over again.

19 I think a --

20 THE COURT: Of course there is another alternative
21 that should be considered, whether or not it is a real
22 alternative or not is something else, that is whether or
23 not one of the present counsel could take over.

24 MR. BUGLIOSI: I haven't thought about that. That is
25 excellent.

26 THE COURT: Mr. Fitzgerald indicated he helped Mr.

1 Hughes and prepared some of his papers, and I'm sure Mr.
2 Hughes received advice from all of the present defense
3 counsel. There couldn't be any question about that, in
4 view of his lack of experience he had to get it from
5 somewhere and you gentlemen helped him out.

6 That is something to think about. I'm about
7 ready to make a request of the Sheriff to send a helicopter
8 up there to see if they can find him.

9 If they do go I'm going to have them go armed
10 with a warrant so there won't be any question of whether or
11 not they have the authority to bring him back if necessary.
12 I have no reason to think it would be necessary.

13 The only reason I have not done it earlier
14 is because I have not been able to pinpoint where he is.

15 Having a helicopter fly around the mountains
16 is not very profitable if they don't know where they are
17 going.

18 MR. KAY: Did you get in contact with that Sespe
19 Water and Power Plant, or whatever it was you were going
20 to call?

21 THE COURT: The Clerk called --

22 MR. KANAREK: If I may, your Honor, I think there
23 is an aspect of his physical security.

24 I am reminded I think, yesterday, a woman and
25 her daughter perished in the flood waters.

26 THE COURT: The Sheriff in Ventura County has been

1 making rescues in the area. They know there are people
2 there. Unless he wandered off by himself he is probably
3 with some group the presence of whom is known, even though
4 they may not be able to identify these specific individuals
5 in the group.

6 If he wandered off by himself, that is some-
7 thing else.

8 MR. MUSICH: Do you know of anybody who knows where
9 he has gone up there in the past?

10 MR. FITZGERALD: Yes.

11 MR. MUSICH: Where the sheriffs could look or begin
12 looking?

13 THE COURT: Does anyone know where it is on the map?

14 MR. FITZGERALD: I know approximately where it is on
15 the map.

16 Also there is the man who drives Hughes to
17 work every morning; he was here in the courtroom this
18 morning and I understand he is around in the vicinity,
19 a fellow by the name of Mike Green who actually has gone
20 with Hughes on previous occasions up to the Hot Springs
21 area.

22 I know the approximate location. I believe it
23 is Highway 33; if I look at a map I can show you.

24 You take a relatively main highway from Ojai,
25 California; it's about, oh, eight or ten miles up from
26 Ojai, and what I mean by "up" is you go up a grade, an

1 elevation, an approximately eight miles or so down the
2 road to get off the road and you traverse a small stream,
3 and then it's a dirt road for, I am told, about 12 to 18
4 miles, sort of in the bush, and it is back in there that
5 the springs are located.

6 MR. BUGLIOSI: Are these hot springs?

7 MR. FITZGERALD: Pardon me?

8 MR. BUGLIOSI: What type of springs are they?

9 MR. FITZGERALD: They are natural hot springs. I
10 am told that they flow naturally on hard rock pools.

11 I know the road is difficult to traverse.
12 The reason I never went in is because the undercarriage
13 of my car is too low.

14 You don't need a four-wheel drive but you
15 should have a pickup truck or an older car with some
16 distance between the ground and the car.

17 MR. MUSICH: That would be sufficient for a Sheriff's
18 helicopter to search that area if he has not already looked
19 there.

20 MR. FITZGERALD: I would be happy to talk to the
21 Sheriff to give him all the information I have.

22 MR. BUGLIOSI: I would much prefer to have the Court
23 have Mr. Fitzgerald or one of the other attorneys do it.
24 I think that is an excellent idea.

25 But if they decide three or four days from now
26 they don't want to do it, we are losing, let's say, three

1 or four days in which some attorney could be looking at the
2 transcript.

3 I am just wondering if the Court could interrogate
4 Mr. Fitzgerald now, whether he would be willing to do it;
5 otherwise I think the best alternative is to appoint an
6 attorney as opposed to granting a mistrial.

7 MR. FITZGERALD: Could we go off the record for a
8 while?

9 THE COURT: Yes.

10 (OFF the record discussion.)
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1 THE COURT: Back on the record.

2 Gentleman, I am in the process of making
3 arrangements to have the Sheriff send a helicopter up to
4 the area in which Mr. Hughes is believed to be, and in order
5 to give the Sheriff the authority to bring him back, if such
6 is necessary, I want, at this time, to order that a body
7 attachment be issued for Mr. Hughes, and no bail will be
8 set.

9 (Off the record.)

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1 THE COURT: On the record.

2 MR. FITZGERALD: I would request that CALJIC
3 Instruction 8.30 entitled Unpremeditated Murder of the
4 Second Degree be given to the jury.

5 THE COURT: Do you join?

6 MR. SHINN: Join, your Honor.

7 MR. KANAREK: Join, your Honor.

8 (Off the record.)
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1 LOS ANGELES, CALIFORNIA, WEDNESDAY, DECEMBER 2, 1970

2 9:20 A.M.

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4 THE COURT: The record will show all counsel are
5 present except Mr. Hughes.

6 I have received no word from or about Mr. Hughes.
7 Have any of counsel received any information?

8 MR. FITZGERALD: No, your Honor.

9 MR. KANAREK: No, your Honor.

10 MR. SHINN: No, your Honor.

11 MR. KANAREK: I have no information concerning
12 Mr. Hughes, your Honor.

13 I make a motion for a mistrial and/or a
14 severance in the alternative.

15 I think we can go ahead and instruct and try the
16 case independent of Leslie Van Houten.

17 MR. FITZGERALD: I will not join in that motion at this
18 time.

19 THE COURT: I think it is premature also.

20 Yesterday I requested the Sheriff to send a
21 helicopter to the area, Sespe Hot Springs.

22 As you know, I ordered a body attachment issued
23 for Mr. Hughes, a copy of which the Deputy Sheriffs in the
24 helicopter would have with them.

25 They were unable to get off this morning
26 because of the weather. They are prepared to leave as soon as

1 the weather improves. They will report to the Court as soon
2 as they return from their flight and report what they were
3 able to find out.

4 In the meantime we will continue with our
5 discussion of the instructions. We still have a considerable
6 number of them to cover, and we will hope that Mr. Hughes
7 shows up.

8 All right, we will go off the record at this
9 time.

10 (Off the record.)
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1 THE COURT: We will go back on the record.

2 I understand, Mr. Fitzgerald, that you received
3 some information by telephone regarding Mr. Hughes.

4 MR. FITZGERALD: Yes, your Honor, a Mr. Larry Dyer
5 called my office this morning.

6 My office contacted me just a few moments ago,
7 approximately 11:40. I talked on the phone with a Larry
8 Dyer.

9 He indicated to me that he was a close personal
10 acquaintance of Ronald Hughes and that he resides -- Dyer
11 resides at 550 East Ellis Street in Inglewood, California.
12 His phone number is 677-4903.

13 He said that on Wednesday, last Wednesday
14 evening, Thanksgiving eve, that Ronald called him and asked
15 him, Larry Dyer, to accompany Hughes to the Sespe Hot
16 Springs area of Ventura County. He says that he has been
17 to the Sespe Hot Springs area with Hughes on several
18 occasions, and that Ron goes almost every weekend.

19 He said, however, that he declined because he
20 has a wife who is nine-months pregnant and about due to
21 deliver at any moment.

22 He says that he is, however -- he, Dyer, -- is
23 personally convinced that Hughes is in the Sespe Hot Springs
24 area, and he bases that contention on the fact that he
25 talked to a next-door neighbor of Hughes, and the next-door
26 neighbor told Dyer that Hughes said, "I am going to Sespe

1 Hot Springs for the weekend," and he said goodbye to him.

2 He said he would be back late Sunday afternoon.

3 THE COURT: Did he say when he left for Sespe?

4 MR. FITZGERALD: No, he did not say when he left for
5 Sespe, and that seems to be sort of somewhat in dispute.

6 He says that he is checking -- he feels there are
7 only about three or four people who would have taken Hughes
8 to Sespe. He says that Hughes, as I indicated to this Court
9 earlier, does not drive his car up there because his car can-
10 not make it.

11 Dyer is in the process of checking with three or
12 four people who might possibly have taken Hughes up there,
13 and he wants to see if they are back.

14 He said that the road is bad under ordinary
15 conditions, and when it rains or gets wet it becomes very
16 bad.

17 He says that it is a remote area and that if
18 Hughes walked out he could be anywhere in a 50-mile area.

19 He says it is difficult to determine where he
20 would be. He states there are a number of caves in the
21 area for shelter.

22 He said there is also a number of cabins and
23 there are some abandoned farms in the area.

24 He says there are people who do live in the area,
25 but he says that the mere fact that 17 people have been
26 evacuated and none of them have seen Hughes is not impressive

1 in his eyes because he says that Hughes could be anywhere.

2 Buthe strongly urges that Hughes is not alone;
3 that he is with somebody in the area, because he did not go
4 up alone; that he if he went up he went up with somebody.

5 That is the extent of the conversation I had
6 with him.

7 I told him I would keep in touch with him,
8 and he told me he would keep in touch with the Court if he
9 found any new information.

10 And I might add that he appears to me to be a
11 reasonably intelligent, a reasonably trustworthy person.

12 As far as I am concerned, he is telling the
13 truth.

14 THE COURT: Is he the person who customarily drives
15 Mr. Hughes to work?

16 MR. FITZGERALD: No, that is another fellow by the
17 name of Mike Green.

18 THE COURT: Thank you, Mr. Fitzgerald.

19 Let's go off the record again for a minute.

20 (Whereupon, there was an off-the-record
21 discussion after which the following proceedings were had.)

22 THE COURT: Let's go back on the record for a moment
23 just so it's clear.

24 Gentlemen, may I have your attention for a
25 moment?

26 I understand from our discussion off the
record that counsel have no objection to my informing

1 the jury at their hotel that the reason for the delay in
2 the proceedings is the fact that Mr. Hughes is missing and
3 we do not know where he is, and that the only information we
4 have seems to indicate that he may very well be marooned in
5 the area of Saspe Hot Springs in Ventura County.

6 That efforts are being made to locate him and
7 to bring him out if he needs help, and that the trial will
8 resume just as soon as he has been brought back and the
9 necessary matters have been taken care of.

10 Is that a correct statement?

11 MR. FITZGERALD: It is.

12 MR. KANAREK: It is.

13 MR. SHINN: Yes.

14 MR. FITZGERALD: And that all substantial efforts are
15 being made.

16 THE COURT: That's right, that all efforts are being
17 made within reason to locate him, including the dispatching
18 of a Sheriff's helicopter to that area to search and find
19 him if possible.

20 I understand further that counsel agree that
21 the Court need not have a reporter present to record the
22 Court's remarks to the jury.

23 But I have agreed when I return I will state in
24 substance for the record what I told the jury.

25 MR. FITZGERALD: Correct.

26 THE COURT: Is that agreeable?

MR. KANAREK: It is.

1 MR. SHINN: It is.

2 MR. FITZGERALD: That is agreeable.

3 MR. KANAREK: I have not heard from the prosecution.
4 I have not heard them say it is agreeable, your Honor.

5 MR. BUGLIOSI: Well, off the record --

6 MR. KANAREK: Why off the record?

7 MR. BUGLIOSI: I want to make a comment about you.

8 THE COURT: Is that agreeable, Mr. Bugliosi?

9 MR. BUGLIOSI: That is agreeable.

10 THE COURT: We are off the record now.

11 (Recess.)

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LOS ANGELES, CALIFORNIA, THURSDAY, DECEMBER 3, 1970

9:20 o'clock a.m.

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(The following proceedings were had in the chambers of the court out of the presence of the defendants and the jury, all counsel with the exception of Mr. Hughes being present;)

THE COURT: The record will show all counsel are present except Mr. Hughes.

I have not heard any word regarding his whereabouts.

The Sheriff's Department indicated to me last night that one James Forer had informed the Sheriff's Department that he was the one who accompanied Mr. Hughes to the Sespe area last Friday along with some young lady whose name is undisclosed, in -- I believe the car belonged to the young lady.

Mr. Forer was flown out, I believe, on Saturday, but, according to what he told the Sheriff's Department, as related to me, Mr. Hughes said he wanted to stay.

The Sheriff's helicopter crew was unable yesterday to locate Mr. Hughes or anyone who had seen him. However, I was also informed that the Ventura Sheriff's Department had talked to somebody in the -- I think in Piru, California, who said that a storekeeper there had informed them that Mr. Hughes was in the store on Monday,

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1 buying supplies and was with, I believe he said, two hippie
2 types.

3 The Sheriff's helicopter team is going back
4 into the area again today to try to locate Mr. Hughes.
5 That is all the news I have at the moment.

6 I am asking that the female defendants be
7 brought over here this morning because I want to talk to
8 Miss Van Houten, in the company of other counsel of course,
9 regarding this matter. I think the time has come when I
10 will have to do something about it.

2 fls.

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1 MR. FITZGERALD: Your Honor, I had, last night,
2 received some information, and again this morning I
3 received some information from a television newscaster,
4 Mr. Stan Atkinson, who I asked to be present this morning,
5 who personally flew in a helicopter to the Sespe Springs
6 area, and I would like him to talk to your Honor, either
7 on the record or off the record, this morning as to
8 certain observations he made in the area as to the conditions
9 of the area, and so on and so forth, and the result of his
10 investigation.

11 I have asked that he not make that information
12 public until it is related to you.

13 He is out in the hallway, and I wonder if your
14 Honor would consent to hear him?

15 THE COURT: Yes, I'd be delighted to have him come
16 in.

17 But before we get to that, I did go to the
18 Ambassador Hotel late yesterday afternoon, as I indicated
19 to all of you that I would, for the purpose of informing
20 the jury as to the reason why there was a delay in the
21 trial.

22 They were all gathered in the recreation room
23 there, and I stated in substance to them that the reason
24 for the delay in resuming the trial was because of Mr.
25 Hughes' absence. That we had reason to believe that he was
26 in the Sespe Hot Springs area, and that the Sheriff was

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1 conducting a search for him.

2 We thought there was a possibility that he was
3 marooned because of weather conditions and road conditions
4 in the area. That the search was going to continue. And as
5 soon as he returned, we would resume the trial.

6 All right. Do you wish to bring Mr. Atkinson
7 on?

8 MR. FITZGERALD: Please.

9 (Mr. Fitzgerald leaves the court's chambers
10 and returns with Mr. Atkinson.)

11 MR. FITZGERALD: This is Mr. Atkinson, your Honor.

12 MR. ATKINSON: Good morning, Judge. How are you?

13 THE COURT: Good morning. How are you.

14 Mr. Fitzgerald said that you had some informa-
15 tion regarding Mr. Hughes?

16 MR. ATKINSON: I can't claim to be an expert on the
17 lay of the entire valley after yesterday's trip up there,
18 but we did look --

19 THE COURT: First, would you identify yourself.

20 MR. ATKINSON: Yes. Stan Atkinson, reporter for
21 NBC News at Channel 4.

22 MR. FITZGERALD: And yesterday, it is my understanding,
23 Mr. Atkinson, that you proceeded to the Sespe Hot Springs
24 area in Ventura County by way of helicopter.

25 Could you explain that to the Judge?

26 MR. ATKINSON: Right.

1 NBC rented a helicopter, and the sound crew and
2 a cameraman and I flew directly to the area of the Sespe
3 Hot Springs.

4 We made low passes over much of the southern
5 end of the valley itself in the area of Cottrick Flat and
6 somewhat north of that as well.

7 We landed in the area of the hot springs and
8 we got out and looked around.

9 We covered the hot springs and we went down to
10 a campsite which is about a half a mile down the road
11 from the springs themselves.

12 There were two cars there, abandoned cars.

13 THE COURT: What kind were they?

14 MR. ATKINSON: Well, they bear no relevance, because
15 about a half hour after we had been there the Sheriff's
16 helicopter arrived with Sergeant Hendrix from L.A. and
17 Sergeant Lindgren from Ventura.

18 Lindgren identified the cars as belonging to two
19 campers he had evacuated on Monday. He said the same was
20 the case of two cars which were down at the turn-off where
21 the Sespe Valley Road ends and it turns off up into what
22 is called the Hot Springs Canyon where the hot springs
23 themselves are located.

24 So, the cars, the four cars, bear no relevance
25 to anything. They are cars that have been left behind by
26 people evacuated on Monday.

1 The thing that concerns me, and I feel some
2 concern now about Mr. Hughes' well being, we heard about
3 the rains and that the road was washed out and the like,
4 but the ground is firm. It rained three-quarters of an
5 inch Tuesday night. We were there yesterday, Wednesday,
6 but the ground was still firm, not muddy.

7 The consistency of the soil up there is like a
8 shale. It is a light shale. The river is not high -- the
9 creek is not high. That I know from experience that I have
10 had up there years ago as a camper. It gets high during
11 the spring and during the first rains, but it is still a
12 creek the day after the rain has stopped and the water has
13 run off.

14 So, it seems to me that if Mr. Hughes is in
15 any way physically able, he would have no problem at all
16 walking out of that valley or walking to a nearby cabin.

17 THE COURT: Where would he walk to?

18 MR. ATKINSON: To a nearby cabin, perhaps, for shelter.

19 The Sheriff's Office say they have checked the
20 cabins and the obvious places one would go for shelter and
21 there is nobody there. They talked to one woman who had
22 been in the valley throughout the week. She had not seen
23 anyone resembling Hughes. The people they had talked to,
24 you know, had made no mention of anyone wandering around
25 as though lost.
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1 It seems to me that Mr. Hughes is:

2 (a) either possibly injured and cannot move
3 from his present location, or not there, or, as the Sheriffs
4 seem to suspect, might be in a cave.

5 They say that there has been a rumor over the
6 past year that some hippies have established a commune in a
7 cave. It is possible that Ron might have found such a
8 place during his previous visits up there; the rains came and
9 he might have gone there. Perhaps for some reason he has
10 not left there.

11 That does not ring true with me either. I
12 don't see him sacrificing himself over a rain storm,
13 especially if he was physically able to get out of that
14 Valley, and I don't think the Valley itself would prevent
15 him, certainly, from getting out into clear and open space
16 which most of that Valley is because, as you know probably,
17 it is not wooded. Most of it is open and can be seen by
18 helicopter, helicopters which now have searched that Valley
19 for two days and today are working on it for the third day.

20 THE COURT: Well, thanks very much, Mr. Atkinson, I
21 appreciate your information.

22 THE WITNESS: My pleasure.

23 MR. FITZGERALD: Before he leaves, I might add that
24 Mr. Atkinson is in a sense an acquaintance of Mr. Hughes.
25 It is more than simply a professional inquiry on his part.

26 MR. ATKINSON: I have got to know Ron through the

1 course of the trial. I will discount the fact that he might
2 have fled the realities of facing argument.

3 I talked to somebody last night who said he
4 spent two hours talking with Ron at Lum's in the village
5 where Ron and a lot of other young people hang out. This was
6 Thursday night.

7 He said Ron was up, he was excited. His attitude
8 was positive, optimistic.

9 THE COURT: Where is this?

10 MR. ATKINSON: Lum's, a hot dog and hamburger place.

11 THE COURT: That was Thursday?

12 MR. ATKINSON: This was Thursday night, and he said
13 he spent a couple of hours talking with Ron.

14 I asked him was he up or down. He said he was
15 very up. He was looking forward to it.

16 In other words, there was no sense of despondency
17 or fear to the approaching final phases of the trial.

18 THE COURT: Well, the search goes on.

19 MR. ATKINSON: Yes.

20 THE COURT: Thanks very much.

21 MR. ATKINSON: I hope it turns something up.

22 (Mr. Atkinson leaves the chambers of the Court.)

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

25 (No response.)

26 THE COURT: We will go off the record.

(Off the record discussion.)

(Defendant Van Houten enters the court's chambers.)

THE COURT: Sit down, Miss Van Houten.

The record will show that all counsel are present, except Mr. Hughes; and Miss Leslie Van Houten is present at the request of the Court.

The reason that I asked you to come in, Miss Van Houten, is so that I can explain to you the present status of the case, and particularly with respect to your counsel, Mr. Hughes.

We adjourned a week ago Monday for the purpose of permitting counsel to prepare jury instructions and their final argument, and we were to resume on Monday, last Monday, November 30th.

We did resume here in chambers, that is, the Court along with all the counsel, except Mr. Hughes.

No one knew where Mr. Hughes was, and he still has not appeared.

There has been an indication that he went to the area of a place called Sespe Hot Springs up in the mountains sometime last week, probably on Friday, and that he may still be up there.

However, a search has been made both by the Ventura Sheriff's Department and also by the Los Angeles Sheriff's Department, both on the ground and by helicopter,

1 and so far we don't have any information as to his where-
2 abouts.

3 The search will, however, continue.

4 In the meantime, since the Court has no knowledge
5 as to Mr. Hughes' whereabouts, or when or if he will return,
6 I think that it is necessary for me to take some action
7 with respect to your particular case so that the trial may
8 continue.

9 Now, this is a case where you have the right to
10 separate counsel, and if you do not have counsel of your own,
11 the Court will appoint counsel for you at no expense to
12 yourself.

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1 What I propose to do is, rather than to have a
2 substitution of counsel, since Mr. Hughes may reappear at
3 any moment, and I would assume you would want him to stay
4 in the case if he does, rather than that would be to
5 associate with him some competent attorney who could
6 immediately begin to prepare with respect to making the
7 final argument, and any request for special jury instruc-
8 tions, and for any penalty phase of the trial if there is a
9 penalty phase.

10 If Mr. Hughes returns, both counsel could argue
11 the case if that was felt to be desirable by them, and they
12 could collaborate on any further representation as far as
13 you are concerned.

14 I have discussed this earlier with counsel when
15 you were not here, just to give them my preliminary thoughts,
16 and I understand that Mr. Fitzgerald and Mr. Shinn have
17 discussed these matters with you.

18 Is that right?

19 DEFENDANT VAN HOUTEN: Yes.

20 THE COURT: Do you have any expression of opinion you
21 care to make at this time?

22 DEFENDANT VAN HOUTEN: I would not want another man
23 brought in.

24 THE COURT: Well, you see, Miss Van Houten, it is
25 not a question of just waiting indefinitely. We have other
26 defendants, for one thing, who have the right to have the

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trial concluded.

Also the People of the State of California have the right to have the trial concluded.

Now, if another attorney is brought into the case I would anticipate that it is going to take some time for him to become prepared, and I will have to give him that time.

DEFENDANT VAN HOUTEN: I won't speak with the man in any way; I won't speak with the man. I will refuse his visits and everything. I will not speak to the man.

THE COURT: You are not qualified to competently represent yourself.

DEFENDANT VAN HOUTEN: Could I represent myself with the assistance of Paul and Irving?

THE COURT: I already made a finding, Miss Van Houten, that you are not competent to represent yourself, so counsel will have to be appointed for you unless you have counsel of your own.

DEFENDANT VAN HOUTEN: Myself.

THE COURT: Now, it may well be that during this next week, or whatever period of time is required by the new counsel to prepare himself, and I really don't know at the moment how much time would be a reasonable amount of time to do so, but I would certainly think at least a week, that Mr. Hughes will return, in which case the problem will resolve itself.

1 In other words, I am not proposing that we
2 proceed today or tomorrow with final argument in the
3 absence of Mr. Hughes or anything like that.

4 What I am saying is I am considering appointing
5 someone to associate into the case with Mr. Hughes at this
6 time so preparations can begin, so if he does not return
7 by the time the preparations are complete, then we can
8 proceed with the trial.

9 I would strongly recommend that you do cooperate
10 with whoever is appointed, since it is to your own best
11 interest, and if Mr. Hughes returns, of course, he is your
12 attorney and, as I say, the problem resolves itself.

13 DEFENDANT VAN HOUTEN: So you are not asking me;
14 you are just telling me, right?

15 THE COURT: I'm telling you what my thinking is at
16 the moment, Miss Van Houten, and I am asking for any
17 expression of opinion you may care to give on the subject.

18 DEFENDANT VANHOUTEN: The only opinion that I have is
19 that I don't want another man.

20 It is just nothing but a bunch of more trouble,
21 really, a bunch of more confusion.

22 He has no idea of what happened in this court-
23 room; he did not see one witness on the stand, and seeing
24 and reading are two different things completely. And I
25 have seen it.

26 I feel I am very capable. Maybe like I don't--

1 say, if an argument were to come, I would discuss with Paul
2 how far could I go into a certain part before I would cross
3 over.

4 THE COURT: I beg your pardon?

5 DEFENDANT VANHCUTEN: Before I would like to enter
6 into somewhere where I'm not supposed to go because of the
7 law, he could help me that way.

8 But I could argue for myself better than anyone
9 ever could, especially a man who is just going to walk in
10 and read thousands of pages of nothing, you know, words,
11 because he did not see anything that went through the person's
12 telling what they said.

13 THE COURT: Well, of course it is more than a matter
14 of just argument that is important. He would have to
15 prepare himself for that, but it is also a question of
16 advising you, of advising the Court of any instructions he
17 might want, or objections he might want to make to an
18 instruction which of course you would totally be incompetent
19 to do.

20 It would also be a matter of representing you
21 in any penalty trial if there is a penalty trial.

22 DEFENDANT VAN HOUTEN: How could someone better decide
23 if I was to live or die than to have me talk to them instead
24 of having me sit as a piece of plastic, you know, over in
25 the corner, instead of having a man who does not even know
26 me -- for what -- three weeks -- tell them? He doesn't know

me either.

1 THE COURT: He would come to know you and all about
2 you and the background and so forth.

3 DEFENDANT VAN HOUTEN: My background? That has nothing
4 to do with where I am at this present moment.

5 THE COURT: Well, I had not given any consideration
6 to it before you mentioned the subject, but it may well be
7 that you should be permitted in a case such as this, if
8 another attorney in fact has to argue the case, to make an
9 argument on your own behalf or a statement on your own
10 behalf.

11 I will give that consideration, if you decide
12 that is what you want to do.

6 fls.

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1 I am not saying, at this point, that I would
2 consent to such a procedure. I am saying that I would
3 certainly consider it if you, at the time, make such a
4 request.

5 But unless there is something else, Miss
6 Van Houten, I feel compelled to bring someone else in to
7 associate with Mr. Hughes at this time for the purposes
8 that I have indicated.

9 I certainly hope, along with you, that Mr. Hughes
10 returns.

11 DEFENDANT VAN HOUTEN: I do, too. I am wondering
12 where he is.

13 THE COURT: But I have to take steps at this time with
14 the possibility in mind that he may not return in time to
15 be able to continue his representation.

16 So, I will attempt to obtain a competent
17 attorney for you at this time, and then after I have had a
18 chance to talk to him as to timing, we will have a proceeding
19 in open court in which I will appoint him to associate into
20 the case along with Mr. Hughes for the purpose of
21 representing you, as I have indicated.

22 Is there anything else that you would like to say?

23 MISS VAN HOUTEN: Just that I don't want him. But
24 like if it is in your hands -- and I know it is in your hands
25 -- so, if you give him to me, then I have got to take him.

26 But I don't know. I am tired. I am really
tired.

1 THE COURT: I can say what the possibilities are. I
2 want the record to be very clear on that.

3 If Mr. Hughes returns, of course, he is your
4 counsel and there is no reason why he can't continue to
5 represent you.

6 If you have counsel of your own choice, you have
7 a right to that counsel. Otherwise --

8 DEFENDANT VAN HOUTEN: You know, I don't have any
9 counsel of my own choice except for myself.

10 THE COURT: I have indicated that I previously, within
11 the last several weeks, found you to be incompetent to
12 represent yourself, and the reasons therefor; and I see no
13 reason to change that now. Nothing has happened in the
14 meantime that would cause me to change my opinion in that
15 regard.

16 So, then, I will take steps to find a competent
17 attorney to represent you by appointment from the Court.

18 DEFENDANT VAN HOUTEN: It won't be any of the ones
19 I have fired, will it?

20 THE COURT: No.

21 I mentioned that I did have someone in mind to
22 Mr. Fitzgerald. I don't know whether he mentioned the name
23 to you or not.

24 DEFENDANT VAN HOUTEN: No.

25 THE COURT: I am going to call him and see if he is
26 available.

1 I know personally, because he has been in this
2 court before, that he is a highly competent lawyer in
3 criminal matters and in capital cases.

4 If he is unwilling or unable, then I will have
5 to try to find someone else who is equally competent.

6 All right, then, if there is nothing else, I will
7 ask that Miss Van Houten be taken back upstairs.

8 (The defendant Van Houten leaves the Court's
9 chambers.)

10 THE COURT: Did you have something you wanted to say?

11 MR. FITZGERALD: No.

12 Could we be excused temporarily?

13 THE COURT: Yes.

14 (Off the record.)
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1 LOS ANGELES, CALIFORNIA, THURSDAY, DECEMBER 3, 1970

2 1:50 P.M.

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4 (The following proceedings were had in open
5 court in the absence of the jury, all defendants being
6 present; all counsel with the exception of Mr. Hughes are
7 present.)

8 THE COURT: All parties and counsel are present
9 except Mr. Ronald Hughes; and also present is Mr. Maxwell
10 Keith, attorney-at-law.

11 This morning we had a conference in chambers
12 during which Miss Van Houten was present along with all
13 counsel except Mr. Hughes; the subject of the conference, as
14 you recall, was Mr. Hughes' absence and disappearance.

15 At the close of that session, after discussing
16 the various alternatives and possibilities, the Court
17 indicated to Miss Van Houten that it proposed to appoint a
18 co-counsel for her, to represent her during the remainder of
19 the trial.

20 Is there anything further before I proceed?

21 I might say also, I just received word from the
22 Sheriff's Department that they have apparently located a
23 Volkswagen in the area of Sespe Hot Springs which appears to
24 be the one in which Mr. Hughes went to that area, because of
25 the fact that they had found in that automobile the transcripts
26 of the trial -- at least some of it -- and the car had been

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1 stranded and abandoned because it was apparently mired down.

2 Those transcripts will be brought back to court.

3 DEFENDANT MANSON: Your Honor, may I be heard?

4 THE COURT: On what subject, sir?

5 DEFENDANT MANSON: On the subject of the defense.

6 We would like to offer a defense, very much so.

7 THE COURT: I have heard nothing from your counsel on
8 that.

9 DEFENDANT MANSON: Those are not my counsel. I have
10 tried to suggest and imply that as much as possible. We
11 have not conferred with these attorneys.

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1 THE COURT: We are going to take up another matter
2 right now, Mr. Manson.

3 As I have indicated, I am going to appoint
4 Mr. Maxwell Keith, subject to his acceptance, as co-counsel
5 for the defendant Leslie Van Houten.

6 Mr. Keith, are you willing to accept such
7 appointment?

8 MR. KEITH: Yes. Yes, I am, your Honor.

9 THE COURT: Very well.

10 The Court appoints Mr. Keith as co-counsel for
11 Miss Van Houten under the provisions of Penal Code Section
12 987.2.

13 DEFENDANT VAN HOUTEN: Your Honor, I wish to be heard
14 that I don't accept this man as my counsel, as I told you
15 before.

16 THE COURT: Yes, you indicated that this morning,
17 Miss Van Houten. The record so indicates.

18 DEFENDANT VAN HOUTEN: And I also wish to testify.

19 DEFENDANT MANSON: What does it take? What does it
20 take?

21 THE COURT: Sit down, sir.

22 DEFENDANT MANSON: For this Court to --

23 THE COURT: Sit down, Mr. Manson, or I will have you
24 seated.

25 DEFENDANT MANSON: Force me again?

26 DEFENDANT KRENWINKEL: Your Honor, we wish to put on a

1 defense, but these attorneys here are not our counsel, nor
2 have they been.

3 THE COURT: Sit down, Miss Krenwinkel, and we will
4 take that up in a minute.

5 DEFENDANT MANSON: Am I supposed to fight you now?

6 THE COURT: Sit down, sir.

7 DEFENDANT KRENWINKEL: Your Honor, to have all these
8 different changes of lawyers --

9 THE COURT: We will take that matter up later.
10 Now, sit down or I will have you seated or removed from the
11 courtroom.

12 DEFENDANT MANSON: Remove me from the courtroom and
13 you can try the whole thing yourself.

14 THE COURT: The bailiff will seat you, Mr. Manson.

15 Sit down, Miss Krenwinkel. You will be given a
16 chance to be heard.

17 DEFENDANT MANSON: We keep trying, and we will keep
18 trying.

19 THE COURT: I am asking the clerk to prepare a copy of
20 the publicity order for you, Mr. Keith, as amended. And
21 also he has prepared an index to the transcript, which will
22 assist you in locating testimony of the various witnesses in
23 the transcript. That will be given to you also.

24 I will ask you to immediately commence to
25 prepare your case and to advise the Court as soon as you are
26 reasonably able to do so as to your estimate of how much

1 time will be required.

2 I am also going to ask all counsel to give you
3 whatever assistance they can in your preparation.

4 DEFENDANT MANSON: He has 18,000 pages of transcript
5 to read. It is impossible for him to achieve that much in
6 such a short time; and, your Honor, as we all know, no one
7 knows anything about this case but the defendants. Not even
8 the attorneys or the District Attorney or even the Judge
9 understands it.

10 THE COURT: All right, Mr. Manson, you have had your
11 opportunity to make a speech.

12 Now, if you have some kind of a motion to make,
13 I will hear it.

14 DEFENDANT MANSON: I would like to make a motion.

15 THE COURT: All right.

16 DEFENDANT MANSON: To relieve Mr. Kanarek as my
17 counsel and proceed, in assistance with these three young
18 ladies, to prepare and defend ourselves from that witness
19 stand.

20 THE COURT: You have made that motion on numerous
21 occasions and it has been denied, and it is denied again
22 now.

23 DEFENDANT KRENWINKEL: We are trying to give you a
24 defense. This is what you have asked us for.

25 DEFENDANT MANSON: You don't want a defense.

26 DEFENDANT KRENWINKEL: You don't want a defense.

1 It is only us that can present a defense.
2 We are the only ones that have the necessary communication to
3 be able to do this.

4 Our lawyers do not understand this, nor do they
5 want to. They are caught up in all these books and rules.
6 They won't listen to us.

7 We know your rules. We have sat and listened.

8 You have all of us here and you try to make it
9 out to be some conspiracy, and yet we are so ignorant that
10 we can't defend ourselves, you know, that we can't communicate
11 between ourselves.

12 But we can. We can present a beautiful defense
13 in this courtroom, and we will follow your procedures and
14 do what it takes to present it.

15 But you are cutting our throats not to let us
16 get up and defend ourselves, because we are the only ones
17 that can do this, and we are asking you to please reopen the
18 defense and let us all go pro per and be able to work
19 together and put on a defense in your courtroom.

20 DEFENDANT ATKINS: Your Honor, the counsel we have
21 -- that none of us accept as our counsel--rested their
22 case because we have not conferred with them, they don't know
23 any defense. We are the only ones who know how to
24 adequately represent ourselves and put on a defense for
25 ourselves.

26 We are the only ones who know the truth about

1 our defense, and if you deny us this, then your justice
2 falls.

3 DEFENDANT MANSON: You know that.

4 THE COURT: Well, I don't know what you are saying at
5 the moment.

6 Are you requesting that you again be permitted
7 to represent yourselves? Is that the nature of this
8 motion?

9 DEFENDANT KRENWINKEL: Yes.

10 DEFENDANT VAN HOUTEN: Who else can fight for a person
11 but himself?

12 THE COURT: If that is your motion, it is denied.

13 DEFENDANT ATKINS: When I requested to take the stand,
14 my own attorney assumed that I was going to give up and give
15 a confession.

16 I didn't say anything about confessing. I
17 explained that to you in chambers.

18 Mr. Bugliosi assumed and the press assumed I
19 was going to give a confession.

20 I never said anything about a confession to
21 anyone, what I was going to testify to.

22 You blocked my testimony in front of the jury.
23 I want to put on my defense. It is my life, it is
24 Patricia Krenwinkel's life, and —

25 THE COURT: Are you saying now that you want to
26 testify in front of the jury?

1 DEFENDANT ATKINS: I am saying that I want to put
2 on a defense and ask questions, and have my co-defendant
3 ask questions of me, and anyone else that I would like to
4 bring in here to testify in behalf of my defense.

5 My counsel doesn't know the questions to ask,
6 Mr. Bugliosi doesn't know the questions to ask, you don't
7 know the questions to ask. My co-defendants and myself are
8 the only ones that know the questions.

9-1

1 DEFENDANT MANSON: We have 21 witnesses.

2 DEFENDANT ATKINS: We have 21 witnesses.

3 THE COURT: Apparently you are asking again, as you
4 asked many times before, to represent yourself, and that
5 motion is denied.

6 DEFENDANT ATKINS: We have 21 witnesses that are
7 willing to get up and testify in behalf of our defense.
8 How much plainer can I make it to you, your Honor?

9 Mr. Shinn has no idea what this case is about.
10 I have not talked to him about this case. Our communications
11 is nil.

12 THE COURT: I denied the motion to represent yourselves.

13 DEFENDANT VAN HOUTEN: I would like to put forward a
14 motion to reopen our defense.

15 THE COURT: You want to testify, is that it?

16 DEFENDANT VAN HOUTEN: Yes, I would like to testify,
17 but I would like to reopen the defense.

18 THE COURT: Are you asking to testify in front of the
19 jury?

20 DEFENDANT MANSON: Her testimony is not adequate.
21 Your Honor knows that.

22 DEFENDANT VAN HOUTEN: In other words, you know, like
23 your Honor, the last thing you did was to say that I
24 testify in front of Bugliosi and he will give his edited
25 version in front of the jury.

26 Now, where is that at?

9-2

1 THE COURT: I'm asking you whether you want to
2 testify before the jury without any questions whatever, as
3 I previously indicated.

4 DEFENDANT VAN HOUTEN: I wish to reopen the defense
5 with a defense to follow.

6 THE COURT: That is another version of your motion
7 to represent yourself, as I understand it.

8 DEFENDANT VAN HOUTEN: That is a new motion coming
9 from this mouth.

10 THE COURT: What is the motion?

11 DEFENDANT VAN HOUTEN: To reopen the defense is what
12 the new motion is.

13 THE COURT: Well, that apparently means, as you keep
14 explaining to me, that you want to represent yourself and
15 that I will not permit.

16 DEFENDANT MANSON: Your Honor, do you think it might
17 be possible to obtain an attorney that will do and ask the
18 questions we tell him to ask rather than tell us how we
19 should --

20 THE COURT: Well, I want to further inform counsel
21 that the trial will adjourn from day to day until Mr. Keith
22 has adequately prepared himself and is ready to proceed.

23 So far as other counsel are concerned, that is,
24 other than Mr. Keith, we will continue to meet every day at
25 9:00 a.m. until further notice.

26 I do want to see all counsel in chambers,

9-3

1 including Mr. Keith, as soon as this session is concluded.

2 Is there anything else?

3 DEFENDANT MANSON: And if you people cannot see what
4 is going on, you'd better open your eyes.

5 THE COURT: Anything further, gentlemen?

6 All right, this session will adjourn into
7 chambers. As I have indicated we will meet at 9:00 a.m.
8 tomorrow morning.

9 (The following proceedings were had in the
10 chambers of the court, all counsel with the exception of
11 Mr. Hughes being present, Mr. Keith also being present,
12 the meeting being held out of the presence of the jury and
13 the defendants.)

14 THE COURT: The record will show all counsel are
15 present except Mr. Hughes; and Mr. Maxwell Keith, who has
16 just been appointed co-counsel for Miss Van Houten, is
17 present.

18 I asked you all to come in so that any of those
19 of you who have not yet met Mr. Keith can meet him now, and
20 also to see if there is anything we can do to help him
21 prepare.

22 MR. KEITH: I know everybody here but Mr. Shinn.

23 THE COURT: Chief Garvey said they would bring in
24 those copies of the transcript found in the Volkswagen
25 found near Gespe.

26 I don't know whether it is all of the transcript

1 or parts of it. I would not think it is all of it.

2 He mentioned he had been in contact with Mr.
3 Hughes' part-time runner, one Michael Green.

4 Is that the correct name?

5 MR. FITZGERALD: Correct.

6 THE COURT: I was thinking perhaps^{if}/Mr. Green has
7 access to the balance of the transcripts in Mr. Hughes'
8 possession he could be prevailed upon to bring them down
9 here so that Mr. Keith can use them.

10 Do any of you know of his whereabouts?

11 MR. SHINN: He is downstairs, your Honor, Michael
12 Green is downstairs. I just talked to him.

13 THE COURT: Well, would it be a burden if you spoke
14 to him and asked him about the transcripts for Mr. Keith.

15 MR. SHINN: It is no burden, your Honor. Should I
16 go down now and get him before he leaves?

17 THE COURT: It might be a good idea.

18 (Mr. Shinn leaves the chambers of the court
19 and the following proceedings were had in his absence.)

20 THE COURT: Now, are all of the exhibits available
21 here in the courtroom for Mr. Keith's inspection?

22 MR. KEITH: I have a calendar problem or two.

23 Tomorrow I have to be, because of such short
24 notice, I have to be in Independence, California, for a
25 hearing. That will be short.

26 THE COURT: Would you mind going by way of Sespe?

1 MR. KEITH: I have been to that courthouse thousands
2 of times, but I did not know I passed Sespe on the way.

3 Other than that I can make arrangements to continue
4 everything else.

5 THE COURT: Well, then, is that just a one-day matter?

6 MR. KEITH: It is an order to show cause. It won't
7 take the morning.

8 I'm going up there tonight.

9 THE COURT: If you are unable to get the copies of
10 the transcript, I have a complete set right here in chambers
11 and I will authorize the Clerk to loan you copies from my
12 set.

13 I would appreciate if you can get copies else-
14 where, but if that is the only remaining source, you are
15 welcome to use them.

16 I just want to make sure I get them back.

17 MR. KEITH: Would it be appropriate to advise the
18 Court Monday as to the length of time it will take me?

19 I will do my best --

20 THE COURT: Surely.

21 MR. KEITH: -- to be prepared as soon as possible.

22 (Mr. Shinn and Mr. Michael Green enter the
23 chambers of the court.)

24 MR. SHINN: This is Michael Green, your Honor.

25 THE COURT: Mr. Green, I understand that you have
26 been acting as a runner or part-time runner for Mr. Hughes?

1 MR. GREEN: Yes, sir.

2 THE COURT: I take it you have no knowledge of his
3 whereabouts at this time.

4 MR. GREEN: No, I had dinner with Mr. Hughes a week ago
5 Friday. At that time he mentioned the possibility of going
6 to Sespe.

7 He asked me if I would like to accompany him.

8 I declined at that time, and I have not seen him
9 since that day.

10 THE COURT: Well, the Sheriff has informed me that
11 they have located a Volkswagen in Sespe Hot Springs area
12 and found some transcripts of this case in that car, which
13 would indicate that is the car he went up there with.

14 MR. GREEN: A black Volkswagen?

15 THE COURT: He did not give me the color. It was a
16 Volkswagen.

17 It occurred to me you might possibly have
18 in your possession or access to the remaining copies of
19 the transcript.

20 MR. GREEN: The remaining copies of those transcripts?

21 THE COURT: Yes.

22 MR. GREEN: Oh, yes, well, I can pretty much round
23 up all of them.

24 THE COURT: Well, I don't think you were present in
25 court a few minutes ago, but I have appointed as co-counsel
26 for Miss Van Houten Mr. Maxwell Keith here.

1 MR. GREEN: I see, yes.

2 THE COURT: It will be necessary for him of course to
3 prepare. If you could get those copies to him --

4 MR. KEITH: I will give you my card.

5 THE COURT: -- it would be greatly appreciated.

6 MR. GREEN: Okay.

7 THE COURT: I think perhaps it would be better if I
8 let you two work out the details.

9 MR. GREEN: Okay, I can round them up this afternoon
10 and they can be at Hughes' place this afternoon if someone
11 can come over there.

12 I don't know -- have the ones that were at
13 Hughes' house been removed?

14 THE COURT: Not to my knowledge.

15 MR. GREEN: All of the copies I have access to are
16 either in my car or at his house, so I can meet him there
17 at a given time this afternoon and turn them all over to
18 him at that time, unless I am violating some law by going
19 into Mr. Hughes' house, which I assume I am not.

20 THE COURT: I cannot advise you as to whether you
21 are; I don't know what your arrangements are with Mr. Hughes.

22 MR. KEITH: I will get together with Mr. Green and
23 make some mutually satisfactory arrangement.

24 THE COURT: I don't have anything else so far as you
25 are concerned, Mr. Keith. You are free to go unless someone
26 else has something they want to talk about.

1 I certainly would urge defense counsel to help
2 Mr. Keith in any way they can to orient himself in the case.

3 MR. KEITH: I understand that, let's say take Monday,
4 for instance, that counsel could be here?

5 THE COURT: Yes, we are going to meet every day at
6 9:00 o'clock.

7 We still have some work to do on instructions.

8 MR. KEITH: That includes me, I assume.

9 THE COURT: I don't think it is necessary for you to
10 be here.

11 Sooner or later of course you are going to have
12 to be in on the question of instructions, but I think that
13 is premature.

14 MR. KEITH: The only reason I made the point, I am
15 going to have to continue a case in Culver City Monday
16 morning. I could not be here at 9:00.

17 THE COURT: I would say at least until sometime later
18 next week there would be no point in your being at these
19 sessions on instructions.

20 You won't know enough about the case at that
21 point until you are prepared to be able to make an intelli-
22 gent request or an objection.

23 It might, however, be a good idea, Mr. Keith,
24 if you would stay in telephone contact with the Clerk
25 every day.

26 MR. KEITH: I am not going any place except to

1 Independence tomorrow.

2 THE COURT: Very well. If you want to leave now you
3 are free to do so, or if you want to confer with Mr. Green.

4 And you are welcome to stay if you want to stay.
5 We are going to talk again about the instructions.

6 MR. KEITH: I would like to stay if I could.

7 THE COURT: Do you want to make arrangements with him
8 for meeting at Mr. Hughes' house?

9 MR. KEITH: Yes, your Honor.

10 (Whereupon Mr. Keith and Mr. Green leave the
11 room.)

12 THE COURT: I think we might as well go off the
13 record.

14 (Off the record discussion during which time
10 fls. 15 Mr. Keith re-enters the chambers of the court.)
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10-1

1 (Mr. Michael Greene enters the Court's
2 chambers.)

3 THE COURT: All counsel are present except Mr. Hughes.
4 Mr. Michael Green is also present.

5 Did you have something you wanted to tell the
6 Court, Mr. Greene?

7 MR. GREENE: Yes.

8 I was considering the remarks you made to me
9 before about not being able to give me authorization, and
10 that bothered me, and I don't know whether I really should
11 enter into there without some kind of authorization.

12 THE COURT: I can't give you any authorization,
13 Mr. Greene. I have no authority.

14 MR. GREENE: If I knew what Mr. Hughes' state of mind
15 was, I would be more, you know, inclined --

16 THE COURT: I thought perhaps you had some arrangement
17 with Mr. Hughes whereby you had access to them.

18 MR. GREENE: I have been there a couple of times when
19 he was not there, and I haven't felt free to enter the
20 residence.

21 THE COURT: I can't advise you as to that. If you
22 have any misgivings about it, you will have to resolve it
23 by yourself.

24 MR. GREENE: I have some copies in my possession, and
25 I will turn them over to the clerk tomorrow morning.

26 THE COURT: That will be helpful, certainly.

1 MR. GREENE: The ones in the home will be another
2 problem.

3 THE COURT: Do you know how many you have and how
4 many are in the --

5 MR. GREENE: I believe I have five or six.

6 The other ones are either in the front house
7 or in the back house where Mr. Hughes lives.

8 THE COURT: Some of them are in a Volkswagen up at
9 Sespe Hot Springs.

10 MR. GREENE: Yes.

11 So, it looks like they are divided.

12 THE COURT: According to the Sheriff.

13 Well, if you will furnish us with what you can,
14 we will see that Mr. Keith somehow gets the rest of them,
15 either from the Court or counsel.

16 MR. FITZGERALD: From my experience with Mr. Hughes,
17 Mr. Hughes has his office in his house, and I told Mr.
18 Greene publicly, and sort of in the presence of witnesses,
19 that I didn't like this idea of going into a lawyer's
20 office to get a copy of the transcript.

21 If it is a crucial matter, let's order a copy
22 of the transcript and let the County pay for it.

23 THE COURT: I don't think there is any necessity for
24 it. There are enough copies around so that Mr. Keith can
25 get one.

26 He can have the Court's copy.

1 MR. FITZGERALD: I will cooperate with Mr. Keith.

2 MR. KEITH: I wonder if I can borrow --

3 MR. FITZGERALD: Sure.

4 THE COURT: What is that, Mr. Keith?

5 MR. KEITH: I was about to request the Court, if the
6 Court would permit me to use some of your transcripts over
7 the weekend, because I won't be able to get ahold of
8 Mr. Hughes'.

9 THE COURT: Certainly. Just check them out through
10 the clerk.

11 I will ask the clerk to keep a record as to
12 which volumes you have.

13 You can have any volumes you like, or all of
14 them.

15 THE CLERK: You can't carry them all at once.

16 THE COURT: Thank you, Mr. Greene. I appreciate your
17 coming in.

18 MR. GREENE: You are welcome.

19 THE COURT: Then you will bring down the ones that
20 you have in your possession tomorrow?

21 MR. GREENE: Yes, sometime in the a.m. hours.

22 THE COURT: Thank you.

23 (Mr. Greene leaves the Court's chambers.)

24 (Off the record.)
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LOS ANGELES, CALIFORNIA, FRIDAY, DECEMBER 4, 1970

9:00 A.M.

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THE COURT: The record will show all counsel are here except Mr. Hughes and Mr. Keith.

I received from the Sheriff's Department this morning 14 volumes of the trial transcript that were found in the Volkswagen in Sespe Hot Springs bearing Mr. Hughes' name on the cover, and those will be turned over to Mr. Keith for his use.

Anything else, gentlemen, before we continue discussing the instructions?

All right, we will go off the record.

(Off the record discussion.)

1-1

LOS ANGELES, CALIFORNIA, MONDAY, DECEMBER 7, 1970

9:59 o'clock a.m.

- - - -

(The following proceedings occur in chambers.
All counsel except Mr. Hughes and Mr. Keith are present.
Defendants not present.)

THE COURT: All counsel are present except Mr.
Hughes and Mr. Keith.

I take it no one has heard any word from
Mr. Hughes? If that is not correct, kindly indicate
otherwise.

Mr. Keith indicated that he had a case in
Culver City this morning, so he was excused.

MR. KAY: Your Honor, these are the two instruc-
tions that I said I would save for the end. Your Honor
wanted me to type these up separately, you will remember,
when we were discussing the instructions.

THE COURT: Are they numbered?

MR. KAY: I didn't remember what our last number
was, so I haven't numbered them.

This one would be the People's next in
order, Special, and then this is the one that the Court
wanted typed up. So, I imagine this would be a Court's
numbered instruction.

MR. MUSICH: 17, wasn't it?

MR. KAY: I thought 19.

1 MR. MUSICH: That was the retyped one.

2 MR. KANAREK: This is not the instruction that your
3 Honor indicated, if I may. Does your Honor wish us to
4 speak to these instructions?

5 THE COURT: You might as well.

6 (Off the record.)

7 MR. FITZGERALD: I don't know if this is the
8 appropriate time, but at the point we conclude, and we
9 three lawyers and our three respective defendants are
10 ready to proceed, we want to make a motion to proceed,
11 and make a motion to sever; and in the event, your Honor
12 denies the motion, we want to make a motion for a mistrial.

13 So, whenever the appropriate time is, we
14 want to oppose, generally, any further continuance. We
15 want to proceed with our respective clients in front of
16 the jury as soon as is possible.

17 MR. KANAREK: I join in those comments of Mr.
18 Fitzgerald.

19 MR. FITZGERALD: Whenever you want to hear the
20 motion.

21 THE COURT: Mr. Keith was to let me know today
22 sometime how much time he thinks he will need. So,
23 there is no point in making your motion until we know
24 how much of a continuance will be required.

25 MR. KANAREK: Our position is that regardless of
26 what Mr. Keith states, under People vs. Martin, the

1 right to effective counsel of one defendant, it is our
2 position, may be alleged on behalf of other defendants.
3 That is, even though there is no "standing" in a classical
4 sense.

5 Mr. Keith has not seen any of these witnesses;
6 someone like Juan Flynn or Linda Kasabian. Mr. Keith is
7 a very fine lawyer, and I wouldn't do what Mr. Bugliosi
8 did against me, but --

9 THE COURT: What are you doing, arguing his case
10 now?

11 Let Mr. Keith make his own argument.

12 MR. KANAREK: I am saying --

13 MR. BUGLIOSI: What did I do against you?

14 MR. KANAREK: What I am saying, in connection with
15 the argument that Mr. Keith would make to the jury, not
16 having seen these witnesses in flesh and blood in the
17 courtroom would fetter our case.

18 THE COURT: What do you mean by "our case"?
19 Each defendant is separately represented.

20 MR. KANAREK: Yes. But there is the intertwining,
21 your Honor, of the defense, and there is no telling what
22 Mr. Keith --

23 THE COURT: Tell me about this intertwining that
24 you are talking about.

25 MR. KANAREK: Just by the very nature of it being
26 a joint trial. We verbalize --

1 THE COURT: What is the defense; what is the inter-
2 twining that you are talking about?

3 MR. KANAREK: The fact that the defendants are
4 on trial together. There is a certain intangible effect
5 before that jury, your Honor. Especially in view of the
6 fact that Mr. Keith --

7 THE COURT: Each defendant is separately represented.

8 I don't really understand what you are
9 talking about, Mr. Kanarek. Let's not prolong it. You
10 will have a chance to make your motion.

2 fls.

2-1

1 MR. KANAREK: Well, for your Honor's consideration,
2 I will say this --

3 THE COURT: Don't make your motion in piecemeal.
4 You will have a chance to make it. Let's wait to see
5 what Mr. Keith says, how much time Mr. Keith wants.
6 Then you can make your motion.

7 MR. KANAREK: Very well.

8 MR. SHINN: I think that what Mr. Kanarek is
9 saying is that maybe Mr. Keith will want to reopen.
10 That is one of his main concerns.

11 THE COURT: Well, let's not speculate on that.

12 All right. Now, I understand that you
13 gentlemen wanted to talk about the ground rules for
14 final argument.

15 MR. BUGLIOSI: Right. I have several things I
16 would like to discuss.

17 THE COURT: I don't see any necessity of having
18 all this on the record.

19 MR. KANAREK: I would like it on the record.

20 THE COURT: I would not.

21 If we make any rules pertaining to it which
22 will be binding on counsel, then it will go on the record.

23 MR. KANAREK: Your Honor is the one to rule.

24 My motion is that it be on the record.

25 THE COURT: All right.

26 (Off the record.)

1 (Mr. Maxwell Keith enters the court's
2 chambers.)

3 THE COURT: First of all, Mr. Keith is now present.

4 I understand from our conference off the
5 record, in response to my question to counsel as to whether
6 or not anyone would have any objection to the Court inform-
7 ing the jury that Mr. Keith has now indicated that he
8 would be ready to go on December 16th, if there would be
9 any objection to the Court so informing the jury, and
10 also informing the jury that Mr. Hughes is still missing
11 and that the Court has appointed Mr. Keith as co-counsel
12 for Miss Van Houten, I understand from our conversation
13 that none of you object to the Court taking such steps.

14 If that is not correct, would you please now
15 indicate to the contrary.

16 MR. KANAREK: There is just one point. All of us
17 are making motions opposing a continuance, or mistrial.

18 THE COURT: It has nothing to do with that.

19 MR. KANAREK: Because it would be academic as to
20 these defendants if your Honor granted the motion to
21 sever, if your Honor granted a motion for mistrial,
22 it would be completely academic.

23 THE COURT: Does anybody have any objection to
24 the Court talking to the jury along the lines that I have
25 indicated?

26 MR. FITZGERALD: No.

1 MR. SHINN: No.

2 MR. KAY: No.

3 THE COURT: Do you, Mr. Kanarek?

4 MR. KANAREK: No, I don't, subject to our motion.

5 It would be academic if your Honor grants
6 our motion. But if your Honor doesn't grant the motions,
7 then I have no, as I have stated before, even though I
8 disagree with this Court, I have no qualms of conscience
9 about the integrity of this Court.

10 THE COURT: Mr. Kanarek, I don't want a speech. All
11 I want to know is if you have any objection to my speaking
12 to the jury and informing them that we would be ready to
13 proceed on December the 16th, one way or another, and the
14 fact that Mr. Hughes is still missing and that Mr. Keith has
15 been appointed as co-counsel.

16 Do you have any objection at all?

17 MR. KANAREK: Let me put it this way: I would like
18 the rulings on our motions for mistrial, and then if your
19 Honor so rules, I would have no objection.

20 THE COURT: Obviously, if I denied the motion for
21 a continuance, there would be no point in telling the
22 jury.

23 MR. KANAREK: That is the point I wish to make.

24 THE COURT: We are going around in circles.

25 MR. KANAREK: I have no objection, subject to
26 what I have just stated. Absolutely none.

1 MR. KAY: Initially, your Honor, the prosecution
2 would ask that you inquire of the jury whether or not
3 they know Mr. Keith or have been represented by him,
4 and whether that fact would be in favor of him or against
5 him.

6 MR. KEITH: Thank you. I should have mentioned
7 that.

8 MR. BUGLIOSI: That is a good point.

9 MR. KEITH: I thought about it and forgot it.

10 MR. KANAREK: Then, out of an abundance of caution,
11 we should have a reporter present.

12 MR. KAY: We will rely on what the Court tells
13 us.

14 MR. KANAREK: I know, but if the Court wants to
15 take notes, there is no harm in having the reporter there.

16 I would certainly waive any appearance if
17 the Court made such inquiry, as I say, subject to the
18 previous statements made.

19 There may be some responses, because Mr.
20 Keith is well known in this community and has been
21 associated with lawyers who are well known in this
22 community, and there may be people on the jury, or
23 alternates, who have heard of Mr. Keith. In fact, there
24 is a great probability of that.

3fls.

3-1

1 THE COURT: What^{if} they have heard about him?
2 I don't know of any rule that requires a lawyer to be
3 totally anonymous.

4 MR. KANAREK: Yes, that is correct, your Honor.

5 I suppose your Honor would then convey it
6 to us and we would discuss it further as to the voir
7 dire aspect.

8 THE COURT: I certainly will. If any of them
9 indicate that they know Mr. Keith, I will let you know
10 immediately.

11 Anything further, gentlemen, along the
12 lines of argument?

13 MR. BUGLIOSI: I have got a couple of other points,
14 if the Court wants to give some preliminary views; but
15 if the Court doesn't want to give some preliminary views--
16 Does the Court want this on the record?

17 THE COURT: I don't think so.

18 MR. FITZGERALD: Shall we object to the continu-
19 ance at this point?

20 MR. BUGLIOSI: I think it can be done at this
21 time.

22 THE COURT: All right.

23 MR. FITZGERALD: All of us, the three defense
24 attorneys, myself, Mr. Kanarek and Mr. Shinn, wish to
25 object to any continuance of the proceeding, and we
26 would ask to proceed in front of the jury forthwith,

1 or as soon thereafter as is practicable.

2 We want to vigorously resist any continuance.

3 In talking it over among ourselves, we feel
4 that the continuance is going to be of substantial length.
5 The Court has indicated that it is going to continue the
6 case until December the 16th. But we, Mr. Kanarek, Mr.
7 Shinn and I, feel that there are 18,000 pages of transcript,
8 there are 400 exhibits, there are 1200 discovery documents,
9 and it may be necessary for Mr. Keith to engage in some
10 investigation, it may be necessary for Mr. Keith to pursue
11 certain defenses that were not pursued, and then, of
12 course, it may be that Mr. Keith will never be ready at
13 all. Mr. Keith may come to the conclusion that it is
14 impossible for him to adequately represent his client with-
15 out having been contemporaneously confronted with the
16 witnesses who testified against her.

17 We feel that the continuance, even a short
18 continuance to December the 16th, is going to require that
19 the jury be sequestered over the Christmas holidays, and
20 we think that will inure to our detriment. We think that
21 that will harm the defendants.

22 We feel that if the Court granted a mistrial
23 as to the Defendant Leslie Van Houten and proceeded with
24 the three remaining defendants, that the only legitimate
25 interest -- well, perhaps I should say that if the Court
26 granted a mistrial as to Leslie Van Houten and proceeded

1 with her at some other time and place, the only thing that
2 would be lost would be money.

3 Throughout this case, I think, people have
4 made a great deal about how much this case costs, the
5 per diem costs, and the cost of lawyers, the cost with
6 lawyers being late, and so on and so forth. I think that
7 it is necessary to remind ourselves that we are not here
8 to talk about taxpayers' dollars. Furthermore, I doubt
9 if it is going to cost the taxpayers any more money to
10 proceed against Leslie Van Houten separately, inasmuch as
11 there is a remaining defendant who has not yet been tried.

12 So the record may be clear, not only are
13 we resisting the continuance, but we would ask, if it is
14 necessary to do so, that it be deemed that we are asking to
15 be severed. That is to say, Patricia Krenwinkel and
16 Charles Manson and Susan Atkins are asking to be severed
17 from Leslie Van Houten in order that they might proceed
18 contemporaneously at this time.

19 I might also indicate to the Court that we
20 have discussed the matter with our clients, and if the
21 Court concedes that a time waiver is necessary in order
22 to continue this case, the defendants will not personally
23 join in any time waiver and consent that this matter be
24 continued.

25 MR. KANAREK: I would like to join in Mr.
26 Fitzgerald's comments, and I would like to allege specifically

1 the right to effective counsel as guaranteed by the
2 Sixth Amendment of the United States Constitution, which
3 is incorporated into the Due Process clause of the
4 Fourteenth.

5 I would like to allege that there is a denial
6 of a fair trial as incorporated into the Due Process
7 clause of the Fourteenth Amendment of the United States
8 Constitution.

9 I would like to allege that under People vs.
10 Martin, and again I would like to reiterate -- Mr. Keith
11 and I, in fact, are personal friends, and it has nothing
12 to do with Mr. Keith personally; if it was any lawyer
13 in the world -- the impossible task of absorbing 18,000
14 pages of transcript, absorbing the proceedings that has
15 gone on before that jury, without having the live
16 flesh and blood witnesses, that is, not having been in
17 the courtroom with the live flesh and blood witnesses,
18 and all that has occurred, is beyond human capacity for
19 any lawyer to absorb and to discharge his duty.

4 fls.

4-1

1 Furthermore, I would like to ask the
2 Court to consider the fact that in this particular case
3 there is this Christmas aspect of the case.

4 I would like the Court to consider the fact
5 that the Christmas holidays are coming up.

6 I would like, also, the Court to consider
7 the facts of Cooper vs. the Superior Court wherein the
8 California Supreme Court makes the point that there are
9 certain critical times in a trial when judicial decisions
10 which are made are of very much greater importance than
11 at other times; and especially with the jury now waiting
12 for final argument, I suggest that this is one of those
13 very critical times, and that the Court cannot allow this
14 case to be delayed as far as the defendants Manson, Atkins
15 and Krenwinkel are concerned.

16 I would like again, under People vs. Martin,
17 although there is technically no "standing," I would like
18 to incorporate in this argument the case of People vs.
19 Crovedi.

20 People vs. Crovedi stands for the proposition
21 that a lawyer must be prepared. Again, this is without
22 the slightest bit of reflection on Mr. Keith. But/^{it}is just
23 impossible for a lawyer, it is our position, to become
24 prepared as to this record in view of the fact that we do
25 have the wealth of material that must be absorbed not
26 only by way of transcript, but by way of pleadings, studying

1 of the exhibits, studying of all the matters that came up in
2 discovery.

3 I do join in Mr. Fitzgerald's statement, your
4 Honor, and I think in not just a theoretical sense, but in
5 a very practical sense, I think we lose respect for our
6 law if we allow ourselves to disobey our own law.

7 I know in speaking to other lawyers in the
8 interim, for instance -- maybe it is not a very
9 persuasive argument -- no lawyer can understand how it
10 would be possible for Mr. Keith, or any lawyer, to
11 become prepared in this case in such a short period of time
12 where the stakes are so high as they are in this case.

13 I would ask your Honor to be able to
14 proceed forthwith with the remaining defendants.

15 MR. KEITH: I would like to make it quite clear
16 that by accepting this appointment and by agreeing to do
17 my best to be able to go forward on the 16th, I don't
18 want to waive any of Miss Van Houten's rights to the
19 effective assistance of counsel. I think the record should
20 show that in the event that it might become an appealable
21 issue.

22 I find merit in both what Mr. Fitzgerald
23 and Mr. Kanarek say about myself never being confronted
24 with the witnesses and having the opportunity to cross-
25 examine them and to observe their demeanor on the witness
26 stand.

1 I know this is an important aspect in any
2 trial, whether the stakes are high or whether the stakes
3 are a \$250 fine in the event of a conviction.

4 It is difficult for me to express, at this
5 time, whether I will ever be able to do an effective job,
6 just for the reason expressed by counsel. But I will,
7 nevertheless, do my best.

8 THE COURT: Do the People wish to be heard?

9 MR. BUGLIOSI: No. I have nothing to say.

10 THE COURT: First of all, the 18,000 pages of the
11 transcript, of course, is not an accurate figure as to the
12 portions that cover the evidence-taking phase of the trial.
13 That also includes all of the jury voir dire that went on
14 for five weeks, and many other things which wouldn't have
15 any direct application to your final argument.

16 Many of the exhibits -- in fact, most of the
17 exhibits -- are photographs, so that you don't have to
18 analyze documents concerning the legal meaning, as you might
19 find in a contract. Many of them are simply photographs
20 of locations and illustrations of various parts of the
21 testimony.

22 My personal feeling is that there is no
23 reason why a lawyer cannot adequately prepare to argue.

24 Of course, it is done every day in the
25 appellate courts. Counsel take over on appeal and prepare
26 brilliant cases on appeal from transcripts of trials that

1 they have never attended.

2 Also, we have here three counsel who have been
3 through the entire trial and have had the opportunity of
4 seeing all of the witnesses, and those same witnesses, of
5 course, were witnesses against Leslie Van Houten. Not all
6 of them, but some of them. Those that did testify as to
7 anything involving her were the same witnesses that testi-
8 fied as to matters involving the other defendants.

9 So, to that extent, the argument is not being
10 made in the blind; and any argument of counsel for the other
11 defendants with respect to the credibility of those witnesses
12 would inure, of course, to the benefit of Miss Van Houten,
13 apart from any argument Mr. Keith might make.

5 fls.

5-1

1 I do, however, want Mr. Keith to be
2 satisfied that he is ready before he proceeds. That
3 certainly is a must, as I have indicated to him before,
4 and I indicate to him now.

5 As far as the length of the continuance is
6 concerned, we were still considering defense jury instruc-
7 tions last Friday. So, today would have been the first
8 day -- as a matter of fact, I have been handed some
9 instructions this morning, two People's instructions --
10 so, the case would not have been ready to argue, in any
11 event, before today, at the very earliest.

12 So, if Mr. Keith is ready on the 16th,
13 what we have amounts to a continuance between the 7th
14 of December, today, and the 16th of December, which would
15 be a matter of what?

16 MR. BUGLIOSI: Seven court days.

17 THE COURT: Nine days counting the weekend. Which
18 I don't think is unreasonable under the circumstances.

19 I have not heard anyone mention any prejudice
20 to any of the defendants by reason of a nine-day delay,
21 and I certainly can see none myself, apart from the fact
22 that they are in custody.

23 But in view of the length of this proceeding
24 and the various matters that have come up, I can't see
25 that another nine days is seriously going to prejudice
26 any defendant.

1 MR. KANAREK: Your Honor, it isn't just a matter of
2 nine days.

3 My motion to sever, and if that is not
4 granted, the motion for a mistrial, is not predicated solely
5 upon the delay, although I do believe that the delay, at
6 this critical point, is very deadly and fatal. It has
7 also to do with physical incapacity. Mr. Keith agrees that
8 we are all flesh and blood, and for Mr. Keith to be able
9 to absorb --

10 THE COURT: Why are you worrying about Mr. Keith?
11 Mr. Keith is perfectly competent to worry about himself.

12 MR. KANAREK: I know. But because of the fact that
13 it is just not possible to absorb the material, your Honor.

14 THE COURT: If I didn't think it were possible,
15 I wouldn't have appointed Mr. Keith.

16 MR. KANAREK: May we have rulings on the motions,
17 your Honor?

18 THE COURT: Yes.

19 MR. KEITH: I might say, if I find, in good conscience,
20 it is not possible to prepare properly, I, myself, will make
21 a motion for a mistrial on her behalf.

22 THE COURT: I would assume that you would.

23 The motions will be denied, gentlemen.

24 MR. SHINN: Your Honor, if Mr. Keith, on the 16th,
25 decides to put on a defense, there will still be more
26 delays involved, your Honor.

1 THE COURT: Well, let's not anticipate, Mr. Shinn.

2 MR. SHINN: But we want to anticipate every possibility,
3 your Honor.

4 THE COURT: Let's wait and see what happens on the
5 16th.

6 Of course, if the defendants had testified,
7 as they said they wanted to, the trial would have been
8 considerably longer, too.

9 MR. FITZGERALD: They didn't testify because you felt
10 they didn't want to testify. You made a ruling that they
11 didn't.

12 THE COURT: That they what?

13 MR. FITZGERALD: We can't say now that they did.

14 THE COURT: I am saying that they indicated at one
15 time that they wanted to testify, and had they testified,
16 of course, the trial would have been considerably longer
17 by reason of that.

18 MR. FITZGERALD: Or if we would have put on a
19 defense, it would have been considerably longer.

20 But as I put on the record, one of the
21 reasons -- not the sole reason, by any stretch of the
22 imagination, but one of the reasons -- was an all-out
23 attempt to get this jury to reach a verdict on guilt
24 before Christmas.

25 We are going to lose that, and I think that
26 has very practical significance.

1 THE COURT: I think you are overrating Christmas.

2 The jury was well aware when they first came
3 into the case that it could conceivably go beyond Christ-
4 mas. They were aware of that.
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1 MR. FITZGERALD: We talked about six months as a
2 maximum. June 15th, with a maximum of six months, would
3 have gotten them out by December 15th.

4 THE COURT: Of course, they were aware of the fact
5 that nobody could really tell.

6 MR. FITZGERALD: That is correct.

7 THE COURT: Furthermore, I haven't decided yet
8 whether I am going to keep them sequestered over the
9 Christmas holidays.

10 MR. KANAREK: Your Honor, I would like to make this
11 point. As far as our decision to rest, the decision to
12 rest made among all four counsel was a decision that was
13 predicated upon the complete failure of the prosecution
14 to have a case.

15 This was really a primary consideration that --

16 THE COURT: Save this for the jury.

17 MR. KANAREK: No. The reason that I am saying this
18 is because I want the Court to be informed.

19 I want to respond just a little bit to Mr.
20 Fitzgerald's statements about this Christmas matter.

21 THE COURT: I have already ruled on the motion.

22 MR. FITZGERALD: I only said that it was one reason
23 out of many.

24 THE COURT: You have asked me to rule on the motion
25 and I have ruled, and I don't want to hear any more argu-
26 ments now.

1 MR. KANAREK: Just one point, if I may.

2 THE COURT: It won't be necessary, unless you are
3 making a new motion of some kind.

4 There is no point in arguing after I have
5 ruled. And I ruled at your request.

6 MR. KANAREK: Yes, your Honor.

7 THE COURT: All right.

8 MR. KANAREK: I agree.

9 THE COURT: Anything further, gentlemen?

10 MR. BUGLIOSI: As I say, I have a couple of other
11 points.

12 THE COURT: Let's go ahead. We will go off the
13 record.

14 MR. KANAREK: May I ask this, your Honor?
15 What are your orders as far as returning to this courtroom,
16 then, are concerned?

17 THE COURT: I think that is something we should
18 discuss off the record first and then we can go back on
19 the record.

20 MR. KANAREK: Very well.

21 (Off the record discussion.)

22 THE COURT: Back on the record for just a minute,
23 gentlemen.

24 We appear to have concluded our off the
25 record conference about a number of different things,
26 including instructions, argument, procedures, and so forth.

1 Incidentally, were you present, Mr. Keith,
2 when I asked counsel if they had any objection to my
3 telling the jury when we were going to resume and why
4 the delay?

5 MR. KEITH: Yes, I was here.

6 THE COURT: All right.

7 I will do that. I am not sure whether I
8 will do it today or not, but I will do it this week.

9 Again, counsel, I would like to have each
10 counsel report in by telephone to the Clerk every morning
11 sometime between 9:00 and 9:30.

12 In case something develops where it will be
13 necessary for us to get together, I want to emphasize that
14 we are not recessing until December 16th, we are simply
15 adjourning from day to day between now and then, and you
16 can report in by telephone. But it is possible that Mr.
17 Hughes may suddenly reappear, in which case I would have
18 to get all counsel together in a hurry, and I want you to
19 consider it just as if the trial were going on, but just
20 have time to yourselves, but not to get involved in other
21 cases so that you would not be ready to proceed in this
22 case if it became necessary.

23 MR. KAY: Your Honor, in order that the prosecutors
24 don't have to make three separate phone calls, we will
25 have one of us report to the courtroom each morning,
26 and that person will be responsible for getting the other

1 persons, if necessary.

2 THE COURT: That will be agreeable.

3 MR. BUGLIOSI: Any time I am not present, the
4 others will carry on.

5 THE COURT: I expect each counsel to report by
6 telephone between 9:00 and 9:30, and to return to this
7 court for our conference regarding the final jury instruc-
8 tion and any other matters on December 15th at 1:45.

9 Again, Mr. Keith, if you need anything, if
10 you need copies of the transcripts or anything, all you
11 have to do is ask for them.

12 MR. KEITH: I would be interested in the psychiatric
13 reports regarding Leslie Van Houten.

14 I understand they are sealed, your Honor.

15 THE CLERK: They are either a Court's Special Exhibit
16 or in the file.

17 THE COURT: Let's go off the record a minute.

18 (Off the record.)

19 (Whereupon at 11:45 the court adjourned.)
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1 LOS ANGELES, CALIFORNIA, TUESDAY, DECEMBER 8, 1970

2 3:00 o'clock p.m.

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4 (The following proceedings were had at the
5 Ambassador Hotel, all of the jurors including the
6 alternates being present, the Court being present,
7 in the absence of the defendants and all counsel.)

8 THE COURT: Good afternoon, ladies and gentlemen.

9 I again have talked to the attorneys before
10 coming out here and they are in complete agreement that
11 I should come out and tell you the present status of
12 things.

13 The reason why you have not been called back
14 is because Mr. Hughes is still missing, and the search
15 has continued for him in the area of Sespe Hot Springs,
16 as I indicated to you last time I was here.

17 The car in which he went up to that area was
18 found with some of his things in it, so we have only
19 conjecture; but it could very well be that he was caught
20 in one of those flash floods in the area.

21 In any event, the search continues.

22 But because of the fact that we are not getting
23 any information, on Friday I appointed a co-counsel to
24 represent Miss Van Houten in the event that Mr. Hughes
25 did not return. His name is Maxwell S. Keith. He is
26 46 years old. The reason I tell you that is to ask you

1 next if any of you should happen to know him or be
2 acquainted with him or know about him.

3 Do any of you know Mr. Maxwell Keith?

4 (All jurors indicate in the negative.)

5 All right. He has been appointed and he has
6 commenced his preparations, and yesterday he was in
7 chambers along with the other attorneys, and indicated
8 that he would be ready to proceed next Wednesday, that
9 is, a week from tomorrow, December 16th; and so far as
10 I know that is when we will resume.

11 In the meantime if Mr. Hughes returns, of
12 course he still is one of the attorneys of record.
13 If he does not return then Mr. Keith will carry on.

14 Now, in view of this delay, it appears fairly
15 certain that you will be sequestered over the Christmas
16 holidays, and I have given this a great deal of thought
17 and considered all of the problems, many of which you
18 are not aware of, and I have concluded that it will be
19 necessary for the jury to be sequestered over the
20 holidays.

21 However, in all probability we will not
22 work either the 23rd or the 24th, so that you will have
23 an opportunity to finish up any shopping that you want
24 to do, being escorted by the bailiffs, which I know is
25 not very convenient for anybody, but it is the best
26 that we can do.

1 Plans are also being made to make your holidays
2 as pleasant as possible. The Sheriff's personnel have some
3 tentative plans in mind, and they will do their best to make
4 it as pleasant as possible for you and your families.

5 I regret very much that you have to sit around,
6 first, and, secondly, that you have to be sequestered over
7 the holiday, but there just doesn't seem to be any reason-
8 able alternative.

9 That is all I have to say.

10 I am a willing target for any reasonable
11 questions that you have, bearing in mind I can only answer
12 some questions and not others, and I will have to be the
13 judge of what I can answer.

14 Mr. Dunn?

15 MR. DUNN: Well, up to now it seems there is a
16 little problem. Any time anybody has any other children
17 here that are under 16, specifically, there seems to be
18 a lot of restrictions.

19 Are these restrictions going to also upheld
20 during anything special during the holiday season?

21 THE COURT: I am not sure I know what restrictions
22 you are talking about.

23 THE JUROR: Many times if there is some kind of an
24 outing we cannot take our children, if you have any under
25 16 as I do, and so does Bob Douglas, we have been told
26 that the County cannot be responsible and therefore they

1 cannot come on any of these things, and I would hate to
2 think that anything that is planned would exclude my two
3 children that are under 16 during the holidays.

4 THE COURT: The plans I was referring to were not
5 plans for outside trips but plans right here in the hotel,
6 and certainly I would anticipate you should be able to have
7 your children present regardless of the age.

8 I see no reason why that should not be the case,
9 so there will be no restrictions, to answer your question
10 directly, there will be no restrictions as to the age of
11 the children visiting you during the Christmas holidays.

12 JUROR ZAMORA: Judge Older, after the Christmas
13 holidays do you anticipate that we may return to court that
14 week?

15 THE COURT: Yes, I am anticipating that we would
16 resume the following Monday which would be the 28th.
17 Christmas is on a Friday, and we have an intervening two
18 days of weekend.

19 My thinking at the moment at least is I see
20 no reason why it should be changed, why we won't get back
21 to work on the 28th and keep going until the matter is
22 completed.

23 JUROR ZAMORA: Could you tell us more or less when it
24 will be finished?

25 THE COURT: That is hard to say, Mr. Zamora. I
26 really cannot do any more than speculate because I don't

1 know exactly what is going to happen.

2 Mr. Keith, of course, is coming in new, and I
3 told him I did not want him to start until he is satisfied
4 that he is prepared to start, because he has a big job
5 to do, and his estimate to me yesterday was that he would
6 be ready to start on the 16th.

7 Now, precisely what that means as far as he
8 is concerned, I don't think even he knows now, but if the
9 arguments start at that time I don't know exactly how long
10 the arguments will last and when they are completed, then
11 the Court instructs the jury, and then the jury retires
12 for its deliberations and nobody knows how long that takes.

13 So, we are in that respect in an area of
14 speculation.

2 fls.

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1 JUROR ZAMORA: Would you say it would be three months?

2 THE COURT: I wouldn't think so.

3 JUROR ZAMORA: You said three and a half to five
4 months and now we are on the fifth month, and with all these
5 delays we were not anticipating, nobody knew about it, so
6 I have been speculating, I thought maybe at the end of
7 January.

8 THE COURT: It's been a little over four months now.

9 JUROR ZAMORA: It will be five next week as of the
10 beginning of the trial.

11 THE COURT: Yes, that's right, the trial started on
12 June 15th and the jury was -- the 12 were sequestered as
13 I recall around the 20th -- the 15th of July, and then the
14 alternates about ten days later, a week later.

15 JUROR ZAMORA: Probably the middle of February most
16 likely, somewhere around there?

17 THE COURT: Again I can only speculate, and my
18 speculation would not be worth any more than yours, so
19 I won't even speculate.

20 I certainly would not think it would be as long
21 as you mentioned.

22 JUROR HINES: When you said everything will resume on
23 the 16th, does that mean we will be going into court on
24 that day?

25 THE COURT: As far as I know. Now, it may be that
26 Mr. Keith will request a slight additional time, I don't

1 know.

2 He has told me yesterday, as I said, he thinks
3 he will be ready on the 16th. He sounded fairly confident
4 when he said it.

5 JUROR ZAMORA: Is it spelled K-c-i-t-h?

6 THE COURT: K-e-i-t-h, Maxwell S. Keith. He is an
7 experienced lawyer and has been in the criminal field for
8 a number of years and I appointed him because I had confi-
9 dence in his ability.

10 JUROR MC KENZIE: If Mr. Hughes is found in the mean-
11 time, is it possible we can go back before then?

12 THE COURT: Yes, surely, although I suppose if he is
13 found he will require some time, too.

14 Again, this is speculation. I am hopeful we
15 will be able to start on the 16th, which is a week from
16 tomorrow.

17 JUROR MC KENZIE: Is it possible at this point to
18 tell how long it will take to instruct the jury?

19 THE COURT: I would say roughly about an hour and a
20 half.

21 JUROR MC KENZIE: Thank you.

22 JUROR BAER: If we are fast learners?

23 THE COURT: I am talking now just about the length
24 of time it takes me to read the jury instructions. It may
25 not even be that long.

26 JUROR MESMER: How soon after the deliberation and

1 the verdict -- how soon after does the penalty phase follow?

2 THE COURT: There is no set time, but usually quite
3 soon.

4 JUROR MESMER: Quite soon?

5 THE COURT: Anywhere from the same day to a few days.
6 That really depends more on the attorneys and the complexity
7 of the matter, and so forth. It usually follows fairly
8 quickly.

9 Thank you very much again for your attention.
10 I can assure you everyone is concerned about your welfare
11 and well being. I don't want you to feel like you are out
12 here in Siberia and everybody has forgotten about you,
13 because that is not the case.

14 The moment we can start again we will, I can
15 assure you of that. Nobody is going on any vacations.

16 I hope you did not take me seriously the other
17 day when I was saying I was in Las Vegas. I was replying
18 in jest to Mr. Dunn.

19 I got to thinking you might have taken me
20 seriously.

21 Thank you again for your attention.

22 JUROR BAER: Judge Older, I would like to say just
23 on my own behalf I think we do owe you gratitude for all
24 of the things you have done for us in trying to put us in
25 a good spot.

26 THE COURT: You don't owe me anything. That is my

1 job and I'm glad to do it. I just want to see that
2 everything goes along as smoothly as possible so the case
3 will be terminated in due course.
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1 LOS ANGELES, CALIFORNIA, TUESDAY, DECEMBER 15, 1970

2 1:50 o'clock p.m.

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4 (The following proceedings were had in the
5 chambers of the court, all counsel with the exception of
6 Mr. Hughes being present, the defendants and the members
7 of the jury not being present.)

8 THE COURT: The record will show all counsel
9 are present except Mr. Ronald Hughes.

10 I have heard nothing from any source regarding
11 his whereabouts. I have no idea where Mr. Hughes is.

12 Before we start I want to give to each counsel
13 a set of the proposed jury instructions. There have been
14 some minor alterations in them since these were put
15 together. We will go through them and I will show you
16 what the alterations are.

17 MR. FITZGERALD: If the Court please, while we are
18 on the record and before we get to the jury instructions I
19 have a matter of utmost urgency I would like to bring to
20 the attention of the Court.

21 THE COURT: Very well.

22 MR. FITZGERALD: I haven't yet had an opportunity
23 to put it in writing though I will, if necessary.

24 The last three editions of the Los Angeles
25 Times, the last three daily editions of the Los Angeles
26 Times as well as the last three editions of the Herald-

1 Examiner have contained extensive articles and coverage of
2 a Grand Jury proceeding that is taking place apparently
3 now in Los Angeles County, wherein Charles Manson and
4 certain other members of the so-called Manson Family are
5 to be indicted on an additional homicide.

6 In the body of the article there are ostensible
7 confessions of Mr. Manson as well as information implicating
8 other members of the group.

9 The dissemination of this information is
10 extremely prejudicial, not only to Mr. Manson, but to
11 the other defendants, as well as, inasmuch as it is alleged
12 they confederated and conspired with one another, I want
13 the record to reflect that we brought this to the Court's
14 attention at the earliest available opportunity, this being
15 the first time we have officially met.

16 I would ask for an order of the Court that
17 Joseph Busch, the District Attorney of Los Angeles County,
18 be ordered to cease and desist from disseminating any
19 information whatever in connection with secret Grand Jury
20 proceedings in regard to Manson or any of the other members
21 of the Manson Family or, in the alternative, to limit it
22 to Manson and the persons here on trial.

23 I feel that the defendants who are indicted by
24 Grand Juries are unable to appear in person, and they are
25 unable to appear by counsel and cross-examine witnesses.

26 Grand Jury proceedings are supposed to be

1 secret, yet there is an extensive coverage of these secret
2 Grand Jury proceedings. Obviously that information could
3 only have come from the Office of the District Attorney or
4 the various police agencies involved, and by the time
5 these defendants get arraigned on these indictments, and
6 we get a publicity order, it is too late; the damage is
7 done.

8 So I would like to move for some kind of a
9 restraining order or an injunction against the District
10 Attorney and his agents, the various police agencies,
11 or for some sort of publicity order that will protect
12 these defendants prior to any appearance in court.

13 At the present time of course they have not
14 been formally indicted and they have not appeared on any
15 bench warrants as a result thereof.

16 MR. KAY: I don't know if this Court would have
17 jurisdiction to give such an order.

18 THE COURT: Well, there already is a publicity order
19 in this case, of course, which would cover any publicity
20 relating to the defendants in this case.

21 But if you have some knowledge that the source
22 of information is the District Attorney's office, I think
23 you should put it in the form of a declaration and file it.

24 I have no such knowledge. I have seen the
25 articles in the newspapers, talking about a Grand Jury
26 proceeding which I don't even know whether it started at

1 the time the article was written. It sounded to me, and I
2 read it quickly, as if they were talking about some Grand
3 Jury hearing which was going to take place, and the news-
4 paper reporter was speculating as to what he thought was
5 going to occur at that hearing.

6 That is the way I understood it.

7 You are talking now about an article in the
8 Times under the by-line of John Kendall who has been
9 attendant during this trial throughout the trial.

10 Of course, he, as I recall -- I may be mistaken--
11 but he probably was here and heard the testimony of whoever
12 it was that mentioned the so-called statement of Mr. Manson
13 about Shorty.

14 MR. FITZGERALD: That is entirely possible.

15 THE COURT: So he could write that article out of his
16 head, without having any additional information from anybody.

17 MR. FITZGERALD: Right, but the article does contain
18 a number of factual references to names and identities of
19 witnesses and resumes of evidence, and I don't have any
20 direct evidence that a particular member of the staff of
21 the Los Angeles County District Attorney releases informa-
22 tion, but certainly it would not hurt anything to order
23 them not to or to order the police agency involved through
24 the District Attorney not to release any of this informa-
25 tion.

26 MR. KANAREK: I think it is too late, your Honor,

1 because I already heard on the radio Mr. Busch being inter-
2 viewed concerning this Grand Jury investigation.

3 I heard it myself --

4 MR. KAY: All he said was that Burt Katz was assigned
5 to put it on. I heard the same interview.

6 MR. KANAREK: And he spoke about matters which of
7 course I did not memorize but I would --

8 I think as a lawyer, your Honor has the power
9 to order him to this court.

10 I do make the motion that he be ordered to
11 this court to testify under oath as to what he said. I
12 could not give a declaration with any accuracy.

13 THE COURT: If you have any information, Mr. Kanarek,
14 other than speculation, you not only have the right, but
15 it would be your duty to put it in the form of a declara-
16 tion and inform the Court as to what your knowledge is.

17 As I view the matter now we have a publicity
18 order in this case. If anyone is violating it I certainly
19 want to know it.

20 Our jury is sequestered, so far as I know they
21 know nothing about what is going on in this case. Now,
22 if you are talking about the prejudice to a defendant in
23 some other case, then this is not the court to take that
24 matter up.

25 MR. KANAREK: It is prejudicial to the defendants
26 in this case, your Honor, because it directly -- it is --

1 These are statements that impugn the integrity
2 of the Defendant Manson.

3 THE COURT: It would be prejudicial only if the
4 jury knew about it, and they don't.

5 MR. KANAREK: But what I mean is, it is most
6 interesting that at this time the District Attorney has
7 chosen to leak, if I may put it that way -- I would say
8 it is a deliberate intent to sabotage a fair trial as
9 far as Mr. Manson is concerned.

10 The District Attorney has deliberately, I
11 would say, with malice aforethought, allowed this investi-
12 gation to take place.

13 THE COURT: Put all this in a declaration if you
14 have some knowledge of it, Mr. Kanarek. Anyone can
15 speculate; that does not advance the cause any.

16 MR. KANAREK: Right, your Honor, we have sophisticated
17 people in the District Attorney's office. When they conduct
18 an investigation of this type at this point, and allow this
19 information to come out, we have lots of jury instructions
20 on circumstantial evidence.

21 I think the Court can take notice and can look
22 at the circumstances.

23 THE COURT: All right, I have told you what my
24 position is, gentlemen. I am not going to make additional
25 orders.

26 I think the present orders, as far as publicity

1 is concerned in this case, are sufficient to protect the
2 defendant in this case.

3 If there is any violation I should like to
4 have it brought to my attention.

5 MR. KANAREK: May I be sworn as to what I heard
6 Mr. Busch state, your Honor?

7 THE COURT: Put it in a declaration, Mr. Kanarek.

8 If you want to institute contempt proceedings,
9 in accordance with the provisions of the Code of Civil
10 Procedure, if you think he is violating the publicity
11 order, you have a perfect right and, as I say, a duty to
12 do so.

13 Let's stop talking about it. If you want to
14 do something about it, do it.

15 MR. KANAREK: Well, yes, but I beseech the Court
16 because contempt is an inadequate remedy, your Honor --

17 Say your Honor does find him in contempt --

18 THE COURT: If what you say is true, and if somehow
19 this jury has been prejudiced, I would agree with you that
20 it might very well be case.

21 There is no such evidence that that is the
22 case however.

23 One other thing, gentlemen, before we get to
24 the jury instructions, I have a letter here from a
25 Dr. Thomas M. Spencer, M.D., in Long Beach, regarding the
26 wife of one of our jurors, Larry D. Sheely.

1 I have the letter here, if you want to look at
2 it at your leisure. The substance of it is that his wife
3 is having some physical problems.

4 The diagnosis is severe nervous tension
5 hysteria, with uncontrollable anxiety, et cetera, et
6 cetera.

7 X-rays, gastrointestinal tests, reveal no
8 abnormalities, yet the patient remains in severe pain and
9 distress.

10 Anyway, the gist of the letter is he feels that
11 Mr. Sheely should be excused from jury service because he
12 is needed at home, as a result of his wife's condition.

13 Now, Mr. Sheely has not communicated with the
14 Court and has made no such request, and I have not talked
15 to him about this letter which came in several days ago.

16 But I think that I should talk with him tomorrow
17 when he comes in just to find out if he is making any such
18 request, and what his thinking is on the subject.

19 I wanted to let you know I did have this letter,
20 which you may read this afternoon if you care to.

21 MR. BUGLIOSI: I would request when the Court
22 solicits that from Mr. Sheely, I request the Court
23 wait for him to do so.

24 THE COURT: Maybe he thinks he has done it through
25 this doctor.

26 I would just like to know what his state of

1 mind is. I think he should know about this letter,
2 for one thing, if he doesn't already know.

3 Now, so much for that subject.

4 Mr. Keith, are you going to be ready to
5 proceed with argument tomorrow?

6 MR. KEITH: I would respectfully request for a
7 continuance to Monday. I will be unequivocally ready.

8 I just have not completed all of the reading
9 yet. I realize the problem with the jury being sequestered,
10 but I think out of fairness to Miss Van Houten that I
11 should ask until Monday.

12 I cannot represent to the Court I am prepared,
13 or I will be prepared by tomorrow. I'm sorry, I hoped that
14 I would be, but a multitude of problems have intervened,
15 not that I have not been diligent, but I have had to put
16 aside other matters, and in so doing, that takes time.

17 I had to appear in other courts for continu-
18 ances, and the like.

19 I have also been doing quite a bit of research
20 at the County Law Library of various matters.

21 I just simply don't believe it would be fair
22 to me or the Defendant Van Houten to proceed tomorrow, and
23 I wish I had set Monday as the date in the first place.

24 But I would respectfully request that the
25 matter go over until Monday.

26 Then there will be no question about my being

1 ready to proceed, and again I respect the position of
2 the jury in this case.

3 THE COURT: Well, as I indicated to counsel, the
4 last time we met, I was going to talk to the jury and I
5 did.

6 I informed them that you had been appointed
7 in the case. I asked them if any of them knew you.
8 They did not.

9 And I informed them again that Mr. Hughes was
10 still missing; we didn't know whether he was going to be
11 found or not, and that I had appointed you as co-counsel
12 for Miss Van Houten, and you had indicated that you
13 probably would be ready to proceed tomorrow.

14 So that was all explained to them.

15 I also told them that they would be sequestered
16 over the Christmas holidays, because, in the first place,
17 I did not want to keep them in doubt right up until the
18 last minute, and then have to disappoint them when it was
19 perfectly obvious we were not going to be able to complete
20 the trial before Christmas, and I think the risk of letting
21 them go home at any time before the trial is concluded
22 is just too great for, among other reasons, the matters
23 that Mr. Fitzgerald and Mr. Kanarek brought up today.

24 The newspapers are still printing things which
25 we don't want the jury to see.

26 I am just afraid that because of the lagging

1 interest of the media in the trial, because of the delays
2 occasioned by Mr. Hughes' absence, that they might try to
3 whip up interest in the newspapers or on the radio or
4 television at or about the time of final argument or
5 submission to the jury by reprinting and rehashing many
6 of the things that have happened in the trial which have
7 been kept from the jury, inadmissible matters.

8 I think the risk is just too great, so I
9 concluded I would keep them sequestered and I told them so,
10 and they accepted it very well, I thought.

11 I think they probably decided in their own
12 minds that that was going to happen anyway.

13 We are arranging some little parties for them
14 for the holidays in an effort to make their burden as
15 light as possible, and I think in view of what Mr. Keith
16 has said now that we also ought to discuss when the Court
17 should recess for the Christmas weekend.

18 To refresh your recollection, Christmas is on
19 a Friday. I think that the jurors should have at least
20 one day and possibly two days before that so that they can
21 get the bailiff-personnel to go out and do shopping for
22 them and whatever errands and other personal details they
23 want to have handled.

24 But I see no reason why we could not resume
25 again on Monday the 28th.

26 Does anybody have any thoughts along those

1 lines?

2 MR. KANAREK: Yes, your Honor, this is a personal
3 matter.

4 My mother is elderly and she lives in
5 Seattle. On the weekend, that weekend which is the 27th,
6 my nephew has a certain religious event taking place and
7 she would like for me to be there the evening, that is,
8 through that weekend and the Sunday night.

9 Now, in order to get an airplane out of
10 Seattle, and be here by 9:45 in the morning, I would have
11 to miss an event that is sort of near and dear to her
12 heart for that Sunday evening.

13 What I am saying is I am asking the Court if
14 your Honor could allow this case to reconvene on the
15 afternoon of the Monday following, and that would be the
16 28th.

17 THE COURT: Monday afternoon?

18 MR. KANAREK: Yes, instead of Monday morning, because
19 that way -- or go to the 29th if your Honor would allow
20 that, because that way I could attend that event in
21 Seattle without any chance of being late to court.

22 THE COURT: What about the beginning of the Christmas
23 recess?

24 MR. KANAREK: Your Honor indicated a couple of
25 days before; that would encompass that.

26 In other words, as far as this personal matter

1 that I am concerned with --

2 THE COURT: I think they certainly should have the
3 24th off at the very least, as well as Christmas Day.

4 MR. KANAREK: If your Honor allowed all of the 28th,
5 as far as this personal matter of mine is concerned, it
6 would be most helpful.

7 THE COURT: I don't know, Mr. Kanarek, whether or
8 not I can justify it on a personal basis.

9 I had to, of course, continue the matter for
10 reasons beyond everyone's control, but putting it on a
11 personal basis, then there is no limit to the reasons.

12 MR. BUGLIOSI: What time is this event in Seattle?

13 MR. KANAREK: It is in the evening of the 27th,
14 that is, the entire evening of the 27th.

15 MR. BUGLIOSI: You don't mean throughout the whole
16 night though?

17 MR. KANAREK: It starts in the evening.

18 THE COURT: I know as a fact that they have planes
19 that come down here between 10:00 and 12:00 Sunday night,
20 it's a three-hour flight.

21 MR. KANAREK: Right, your Honor.

22 What I'm saying is, that event probably will
23 not be over until midnight.

24 THE COURT: Well --

25 MR. KANAREK: I don't think I have asked for -- I
26 don't think in this long trial, I don't recall having --

1 THE COURT: I don't think that has to be decided
2 right now, Mr. Kanarek.

3 MR. KANAREK: Very well.

4 THE COURT: I just wanted to generally give you my
5 thoughts on the Christmas holidays as far as the jury is
6 concerned.

7 Now, Mr. Keith, are you anticipating any
8 reopening, or do you anticipate you will go ahead with
9 the argument?

10 MR. KEITH: I will go ahead with the argument.

11 MR. FITZGERALD: We want to object to any proposed
12 continuance on the part of Mr. Keith.

13 As we indicated the last time we met, the
14 defendants Manson, Krenwinkel and Atkins are of the
15 position that they ought to proceed forthwith.

16 We will submit and incorporate by reference
17 our remarks at the time of the initial continuance in
18 order to allow Mr. Keith to review materials.

19 MR. KEITH: I would like to say this, if the Court
20 please, I do intend to make a motion for a mistrial on
21 behalf of Miss Van Houten, alone, for reasons which will
22 become clear when I make the motion, and I would like to
23 do it, may the Court please, I would prefer to do it in
24 open court with Miss Van Houten present.

25 I would be willing to go forward with that
26 motion tomorrow.

1 I understand the defendants were not called
2 out today.

3 THE COURT: How long do you anticipate the motion
4 would take?

5 MR. KEITH: Oh, I would argue a half hour.

6 THE COURT: Well, then, I think I would rather wait
7 until the day we resume and we will just take that up
8 as the first order of business.

9 MR. KEITH: That is satisfactory, but I wanted to
10 advise the Court in advance.

11 I might say this, the substance of my motion,
12 though I am not making it now, has nothing to do with the
13 total impossibility of not -- I am not making that as
14 a ground -- of reading 18,000 pages and examining exhibits
15 and instructions, and so forth.

16 It has to do basically with my inability to
17 observe the witnesses on the stand and argue their
18 demeanor and the manner in which they testified.

19 That is going to be the basis of my motion.
20 I would prefer to do it in open court.

21 THE COURT: Well, now, when you tell me that you are
22 going to be ready on Monday, I assume --

23 MR. KEITH: In the event that the motion is denied.

24 THE COURT: I understand that, but as I indicated
25 to you at the outset, I wanted you to be satisfied in
26 your own mind that you are ready to proceed.

1 You cannot cure something that cannot be
2 cured, I realize --

3 MR. KEITH: I appreciate that.

4 THE COURT: -- you were not present during the trial
5 and we cannot help that, and I realize it to the extent
6 that your motion is based on that fact, nothing can be
7 done about it.

8 I am not asking you to concede that you are
9 waiving anything by proceeding.

10 But apart from that I assume when you say you
11 will be ready to go Monday, that you believe in your own
12 mind you will be as ready as you will ever be.

13 MR. KEITH: That is correct, your Honor.

14 THE COURT: Well, does anybody else wish to be
15 heard on Mr. Keith's request?

16 MR. BUGLIOSI: Could you make that motion this
17 afternoon?

18 THE COURT: The defendant is not here.

19 MR. BUGLIOSI: Oh.

20 THE COURT: That is why I suggested putting it off
21 until the day we resume; otherwise we have a problem of
22 logistics.

23 The female defendants are at Sybil Brand
24 Institute in East Los Angeles. Mr. Manson is in the
25 Hall of Justice.

26 MR. KEITH: This would also give me more time to

1 research the basics of my motion. I have not exhaustively
2 researched the problem. I regret to say I have found no
3 authority one way or the other. I don't know there are
4 any.

5 I am well satisfied there are none in the State
6 of California, where this problem is raised before; but
7 there may be authorities in other jurisdictions.

8 I don't represent to the Court that my research
9 has been exhaustive to date.

10 THE COURT: Well, I think your request is reasonable
11 under the circumstances. That raises another question.
12 I have given the jury instructions to you today, and this
13 is the first time you have seen the proposed jury instruc-
14 tions. Do you anticipate making any request for special
15 instructions of your own?

16 MR. KEITH: I may. It is rather doubtful, but I may
17 after we go over these.

18 I don't foresee that would impede argument.
19 I imagine argument will be going on for a couple of weeks
20 or so, and if there are any special instructions that I
21 would wish to offer, I would do my best to have them
22 before the Court by Monday.

23 THE COURT: All right. Well, then, we will adjourn
24 after today until Monday morning at 9:00 o'clock, at which
25 time your motion will be heard, and, depending on the
26 outcome of that, counsel should be prepared to commence

1 argument thereafter.

2 MR. KAY: What about the recess?

3 MR. BUGLIOSI: I would like to finish my opening
4 argument in three days. I will certainly try. Monday,
5 Tuesday and Wednesday.

6 THE COURT: I think probably we should through
7 Wednesday, and then recess until the following week.

8 Let's plan on that then. We will resume
9 next Monday the 21st, go through the 23rd and recess
10 until the following Monday.

11 I won't rule on Mr. Kanarek's request at
12 this time. I want to give it some further thought.

13 I believe, Mr. Kanarek, I know those flights
14 run because I have been on that flight, and if you want
15 to check the schedules in the meantime, I know Western
16 has several flights, and also United from Seattle to
17 Los Angeles.

18 MR. KANAREK: Yes, I will follow the Court's
19 suggestion. I will make a detailed check.

20 Presently I think Air West -- there are some
21 new -- some airlines that fly to Seattle that did not
22 used to.

23 I will make a detailed check, your Honor.

24 THE COURT: All right.

25 MR. FITZGERALD: I have a point. Mr. Bugliosi,
26 I want you to listen.

1. Apparently I am going to open the arguments
2. for the defendants if we follow the order we have in
3. terms of voir dire and cross examination.

4. I anticipate I will argue one day. I would
5. not like that argument split, a portion of before a long
6. delay and the other half of it later, if the Court please.

7. If Bugliosi should finish -- he says he thinks
8. he can complete his argument in three days, but in the
9. event he completes his argument and there is time left
10. on the 23rd, I would respectfully request that I not be
11. forced to argue the balance of Wednesday the 23rd, which
12. would in fact put a portion of my argument on the 23rd
13. and a portion after.

14. THE COURT: I think that is a reasonable request,
15. Mr. Fitzgerald, I won't ask you to do that.

16. If Mr. Bugliosi finishes early on the 23rd
17. we will just recess until the 28th.

18. MR. FITZGERALD: Thank you.

19. MR. KAY: May the prosecution use Mr. Hughes' copy
20. of the instructions, because we really need two copies?

21. THE COURT: Yes.

22. MR. KAY: Thank you.

23. THE COURT: Let's informally go through the
24. proposed jury instructions and I will show you what
25. alterations have been made in my copy, which have not
26. been made in yours, and then we can go back on the

1 record and you can make whatever requested objections you
2 care to.

3 We will go off the record at this time.

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end
2 fls.

1 (A recess having been taken, the following
2 proceedings were had in the chambers of the Court, all
3 counsel with the exception of Mr. Hughes are present, the
4 defendants and members of the jury not being present.)

5 THE COURT: All counsel are present, except, of course,
6 Mr. Hughes.

7 Before we get on to the instructions, gentlemen,
8 I think it might be wise for me to go out again and tell the
9 jury that we plan to resume next Monday, because they are
10 expecting to resume tomorrow, and since they have been
11 there now a week and a half without coming back in court,
12 I think they are entitled to an explanation as to what is
13 going on, as to what the chronology of the events will be
14 from here on out.

15 Does anybody have any objection to my informing
16 them that the trial will resume next Monday according to
17 our present plan?

18 I also want to tell them that we plan to go
19 Monday through next Wednesday and then recess until the
20 following Monday.

21 Other than that I have nothing else to tell them.

22 MR. KANAREK: I have no objections to the Court --

23 THE COURT: I will have the reporter along,
24 Mr. Kanarek, as I did the last time.

25 MR. KANAREK: No, your Honor, I think it also protects
26 the Court.

I mean, it is just a way of keeping --

1 THE COURT: The reporter will be there so we don't --

2 MR. KANAREK: It is no problem, your Honor. As I
3 said before, I may disagree with this Court and do
4 perhaps still disagree with this Court, but I have no doubt
5 about this Court's integrity; but it is a matter of keeping
6 the record.

7 The human mind is not a tape recorder.

8 THE COURT: All right. I hear no objections, so I
9 will inform the jury.

10 Now, that may raise the problem -- I don't
11 intend to say anything to Mr. Sheely with regard to this
12 letter while I am out there, but it is just possible that he
13 may want to say something to me, and I think we should
14 anticipate that problem.

15 I don't see any objection to listening to what
16 he has to say. If he makes a request to be excused then I
17 think probably what I should do is to have him brought down
18 here tomorrow.

19 Will you all be available tomorrow, if need be?
20 I will ask you to call in between 9:00 and 9:30 as you
21 have been doing.

22 I think we'd better continue to do that each day
23 because I have no way of knowing whether Mr. Hughes may
24 suddenly reappear, whether we have a problem with a juror,
25 or what.
26

1 If you will call in, then, tomorrow morning, and
2 if he does bring the subject up, I will listen to what he
3 has to say without giving him any kind of an answer, and
4 then, depending on what it is, I may just have to bring
5 him down here and he can explain in the presence of all
6 counsel what he has on his mind and what request, if any, he
7 is making.

8 All right, you have each been given a copy of the
9 proposed jury instructions in the form and in the order which
10 the Court now proposes to give them.

11 I have also been provided earlier with the
12 defendants' requested instructions, which we discussed at
13 length last week, many of which have been withdrawn, a number
14 of which I intend to give, and a number of which I do not
15 propose to give, and I think at this time what I will do is
16 to go through those, one by one, and indicate on the record
17 what the disposition is going to be.

18 Starting with the first one, CALJIC 1.10, that
19 will be given as modified, to delete the words "or a
20 corporation."

21 Would it assist you if I read the title of these
22 instructions to orient you as to what I am talking about?

23 MR. KEITH: I've got it. CALJIC 2.00.

24 THE COURT: When I say 200 that is 2.00. These all
25 have a numeral and a decimal point.

26 CALJIC 2.00 will be given as requested.

CALJIC 2.01 will be given.

1 MR. KANAREK: It would help if your Honor would
2 refer to the page number in the --

3 THE COURT: I am not looking at mine. I am looking at
4 your requested instructions which were given to me, all
5 bound together. I am going through those one by one.

6 MR. KANAREK: What your Honor is saying, in other
7 words, when your Honor says it will be given, it is part of
8 the grouping that your Honor has supplied counsel.

9 THE COURT: That's right.

10 MR. FITZGERALD: Do you want us to object at this time
11 if we intend to?

12 THE COURT: Yes, I think you should. So far the
13 first three that I have mentioned are going to be given.

14 MR. FITZGERALD: We don't have any objection to those,
15 but we do object to 2.01.

16 We object specifically to the entire third
17 paragraph thereof.

18 MR. KANAREK: Yes.

19 THE COURT: The third paragraph?

20 MR. FITZGERALD: Yes, the third paragraph of the
21 instruction.

22 THE COURT: All right.

23 MR. KANAREK: And we would -- there is the language --

24 Does your Honor have the old CALJIC handy?

25 THE COURT: No, that was taken away --
26

1 MR. KANAREK: Oh.

2 THE COURT: -- this last week.

3 MR. KANAREK: Well, I have it.

4 MR. FITZGERALD: We argued it before.

5 MR. KANAREK: The language I ask is that language --

6 THE COURT: I am going to indicate -- let's start
7 all over again, gentlemen, I don't think you understand what
8 I said.

9 I am going now through the defendants' requested
10 jury instructions, each one, one by one, and indicate what
11 the disposition has been, if it's been withdrawn, what it
12 will be if it is going to be given or denied.

13 So you don't have to discuss the language. The
14 language is whatever you have requested, and that will be
15 filed. It will be part of the file.

16 MR. KANAREK: But I think that some of them --

17 THE COURT: That is what we spent last week doing,
18 Mr. Kanarek, going over the language.

19 All we are doing now is making the record on
20 what we have already done.

21 MR. KANAREK: May I look over your Honor's shoulder?
22 Very well.

23 THE COURT: Mr. Fitzgerald has a copy of the entire
24 instructions, and you are sitting right next to him.

25 MR. FITZGERALD: He has his own copy.

26 MR. KANAREK: Yes, but there are others. What I am

1 saying, there are some others.

2 THE COURT: I don't know what you mean by "others."

3 MR. KANAREK: Others than the ones that your Honor
4 has before him. I believe there were --

5 THE COURT: Anything that I have been given is in
6 this stack. that I am now going through.

7 MR. KANAREK: I see.

8 THE COURT: Including all of yours, all of Mr. Shinn's,
9 all of them.

10 They have all been numbered, all the special
11 instructions.

12 All right. 2.01 we have covered.

13 2.20 you withdrew. It will be given, however,
14 as indicated in my proposed instructions.

15 Then you had a CALJIC 2.20 modified which will
16 not be given. That will be refused.

17 The next is 2.21. That will be given as
18 requested.

19 MR. KANAREK: Your Honor, if your Honor will bear with
20 me; if your Honor will go back to 2.01 just a moment.

21 THE COURT: 2.01.

22 MR. KANAREK: Yes. I found what I was looking for.

23 THE COURT: You requested 2.01. Is it CALJIC 2.01?
24 The one I am giving is a modified form as prepared by the
25 People, and has a third paragraph.

26 MR. FITZGERALD: To which I objected on your behalf,

Mr. Kanarek.

1 MR. KANAREK: Right, but I am asking in addition that
2 after the word "interpretation," I am asking that these
3 words be -- that the period be changed to a comma, and
4 that these words be added:

5 "Bearing in mind, however, that even if
6 the reasonable deduction points to the defendants'
7 guilt, the entire proof must carry the convincing
8 force required by law to support a verdict of
9 guilty."

10 Now, that language has been used classically
11 for many years.

12 In other words, you talk about the reasonable,
13 and they are supposed to reject the unreasonable and
14 accept the reasonable.

15 But that is not the whole ball of wax, and this
16 is the exact language. I have copied the exact language
17 from previous instructions that have been used wherein the
18 jury is admonished that they must bear in mind that even if
19 this particular reasonable deduction points to the defen-
20 dants' guilt, the entire proof must carry the convincing
21 force required by law to support a verdict of guilty.

22 It is my belief that your Honor's not putting in
23 what I have requested here, that that is reversible error
24 in the circumstantial evidence instruction.

25 THE COURT: All right. I think the point is adequately
26

1 covered by other instructions, including 2.90 which is the
2 burden of proof-reasonable doubt instruction.

3 All right, the next one is CALJIC 2.22. That
4 will be given as modified, the modification being striking
5 of the second sentence, because of the fact that this is a
6 case where corroboration is required, that is, corroboration
7 of the accomplice's testimony is required.

8 So the second sentence is not applicable.

9 The next is 2.23. That will be given as
10 requested.

11 MR. KANAREK: May the record reflect that I am in
12 accordance with your Honor's deletion as to that second
13 sentence that your Honor did delete.

14 MR. FITZGERALD: I am also.

15 THE COURT: I assume that you are, unless I hear an
16 objection.

17 MR. KANAREK: Very well. Superficially it may appear
18 different because of what your Honor has before you in that
19 jury instruction.

20 I mean, as your Honor has it, it may appear-- it
21 would appear that that second sentence is requested.

22 Am I not correct?

23 THE COURT: No, it is stricken. I may have been the
24 one that crossed out the second sentence --

25 MR. KANAREK: Right. In any event this will make it
26 clear.

1 THE COURT: It looks like my strike-out here, I don't
2 recall. But in the form in which it will be given the
3 second sentence will be deleted.

4 MR. KANAREK: That is what we are requesting.

5 MR. FITZGERALD: Right.

6 THE COURT: 2.23 will be given as requested.

7 2.51, motive, will be given as requested.

8 2.60 will be given as requested.

9 MR. KANAREK: Now, that I am not requesting, your
10 Honor, 2.60 I am not requesting. In fact, I am asking that
11 it not be given.

12 THE COURT: The remaining defendants, I understand
13 from our conversation the other day, are requesting both
14 2.60 and 2.61.

15 MR. FITZGERALD: Yes.

16 MR. SHINN: Yes.

17 MR. KEITH: I will join in that request, both as to
18 2.60 and 2.61.

19 THE COURT: We have three counsel requesting
20 2.60 and 2.61. Mr. Kanarek is objecting.

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

22 THE COURT: I indicated to you before, and I indicate
23 now that both of those instructions will be given.

24 MR. KANAREK: Just so I may make the record on it, may
25 I urge -- I do urge that the giving of those instructions
26 is violative of Griffin vs. California.

1 It is violative of the due process that is
2 guaranteed by the Fourteenth Amendment, which incorporates
3 the Fifth Amendment right, that one not incriminate oneself.

4 And I believe that is my position, that giving
5 2.60 and 2.61 is violative of the principles set out in
6 Griffin.

7 THE COURT: CALJIC 2.70, that is the admission and
8 confession defined instruction, will be given as requested.

9 CALJIC 2.71 will be refused for the reason that
10 the substance of that instruction is contained in 2.70.

11 CALJIC 2.72 will be given as modified. The
12 modification consists of the striking of the bracketed
13 portions in the second and third lines from the bottom.

14 CALJIC 2.80 will be given as requested.

15 2.81 will be given as requested.

16 3.00 will be given as requested.

17 3.01 will be given as requested.

18 3.10 was withdrawn.

19 3.11 will be given as requested.

20 Go back to 3.10 for a minute. For the record,
21 Mr. Fitzgerald, you did withdraw 3.10, is that correct, on
22 behalf of all of the defendants?

23 MR. FITZGERALD: I believe I did, yes, and I prepared
24 a special instruction covering the same material which is
25 going to be refused.

26 Yes, I withdrew on behalf of all defendants.

1 THE COURT: All right. 3.11 will be given as requested.

2 3.12 will be given as modified.

3 MR. FITZGERALD: And the defendants, all of them,
4 will object to the modifications.

5 THE COURT: Very well.

6 3.13 will be refused because it appears to be in-
7 applicable.

8 MR. KANAREK: Your Honor is speaking about 3.13?

9 THE COURT: Yes.

10 MR. KEITH: Could we possibly go back to 3.12 for a
11 moment? I was not here when it was decided there would be a
12 modification, and I cannot tell without taking too much of
13 the Court's time what the modification consisted of.

14 THE COURT: Go ahead.

15 MR. KEITH: I have CALJIC --

16 THE COURT: Well, you have the proposed instruction.

17 MR. KEITH: I have 3.12/1 on Page 34.

18 I do not have the proposed instruction offered
19 by the defendants.

20 THE COURT: They offered CALJIC 3.12 without
21 modification. The one that the Court proposes to give is
22 the one that --

23 MR. KEITH: It is on Page 34.

24 THE COURT: It is modified on Page 34 of the
25 proposed instructions.

26 MR. KEITH: I had both in front of me. I was just

1 wondering in the interest of time if you can point out the
2 nature of the modification.

3 THE COURT: I believe the modification which is in the
4 second paragraph --

5 MR. KANAREK: Your Honor, I have a question and that
6 is, is the substance of 3.10 being given at all anywhere?
7 Because I believe we do want 3.10 given.

8 THE COURT: Well, it is not necessary in view of --

9 MR. KANAREK: The definition of an accomplice I don't
10 think is in the instructions.

11 MR. BUGLIOSI: I think the Court decided that inasmuch
12 as Linda Kasabian is an accomplice, the Court was not going
13 to give that instruction, since the Court made that
14 determination.

15 MR. KANAREK: Not so; the definition of what an
16 accomplice is, your Honor, is most important, and I think
17 the way this slipped through, if I may conjecture, and I
18 certainly could be wrong about it, I believe that your
19 Honor rejected Mr. Fitzgerald's sort of "dash one" version
20 of this and then did not supplant it or replace it with
21 an accomplice instruction.

22 MR. BUGLIOSI: Read the note, 3.10. It says "this
23 instruction is unnecessary if witness is an accomplice as a
24 matter of law," which the Court has ruled.

25 MR. KANAREK: First of all, that is a gratuitous
26 statement.

1 It is my belief that we talked about an
2 accomplice. Mr. Bugliosi on voir dire went into great
3 length that the jury was going to be told by the Court as
4 to what an accomplice is.

5 I think, so there will be no confusion in the
6 jury's mind, I think a fair trial --

7 THE COURT: That was in the context that they would
8 have to make a determination as to whether or not Linda
9 Kasabian was an accomplice.

10 But since that determination has been taken away
11 from them and made by the Court, you have a different
12 situation.

13 Let me see that.

14 (Book handed to Court.)

15 MR. KANAREK: Yes, your Honor, but I believe now it
16 is just hanging there. It is like a word that is very
17 important and undefined.

18 We are entitled to have that defined the same
19 way they are entitled to have murder defined.

20 THE COURT: CALJIC indicates otherwise in the footnote.

21 MR. KANAREK: How will the jury know what an accom-
22 plice is, your Honor?

23 THE COURT: They will know Linda Kasabian is one.

24 MR. KANAREK: I will move that CALJIC 3.10, which
25 defines an accomplice, be given to the jury.

26 THE COURT: That was withdrawn last week.

Now, is that still your position, Mr. Fitzgerald?

1 MR. FITZGERALD: Yes, because I am convinced my
2 record is adequately protected because of the special
3 instruction I have submitted.

4 MR. KANAREK: I am not just interested in a record,
5 your Honor.

6 THE COURT: State your objection, Mr. Kanarek.

7 MR. KANAREK: My request is that CALJIC 3.10, an
8 accomplice, that mere definition of it, that it be given
9 because we have spoken much, both here and elsewhere in
10 court about the jury not being confused.

11 The word "accomplice" has been used time and
12 time again on voir dire and throughout this trial.

13 Now, it is denying a fair trial to Mr. Manson,
14 and due process under the Fourteenth Amendment, for your
15 Honor not to tell the jury what in fact an accomplice is,
16 so they will have that in their mind, in their thinking
17 when they go through these deliberations.

18 Otherwise, the word is there and what harm can
19 there possibly be?

20 There is plenty of harm in confusing them and not
21 defining it for them.

22 THE COURT: All right.

23 MR. KANAREK: I ask that 3.10 be given, your Honor.

24 THE COURT: I have already indicated it was withdrawn,
25 Mr. Kanarek, and I am not going to give it.

26 You have made your objection.

1 MR. KANAREK: Very well,

2 THE COURT: It doesn't make it any better by
3 repeating it.

4 MR. KANAREK: I don't believe 3.01 was ever withdrawn
5 by me, but if it was --

6 MR. FITZGERALD: You just offered it.

7 THE COURT: 3.11 will be given as requested.

8 3.12 will be given as modified.

9 3.13, as indicated previously, has been
10 refused.

11 3.18 will be given as requested.

12 MR. FITZGERALD: No, you are going to give it as
13 modified and we will object to the modifications.

14 You are going to strike the first four words,
15 "It is the law."

16 THE COURT: All right.

17 MR. FITZGERALD: We are requesting that, your Honor,
18 and we will object to your Honor's modification.

19 Specifically, we will object to your Honor
20 deleting the first four words of the instruction, "It is
21 the law."

22 THE COURT: All right.

23 6.15 will be given as requested.

24 6.20 will be given as requested.

25 6.21 is refused.

26 6.22 will be given as modified. That is on

Page 72.

The modification consists of changing the first part to read:

"As to Count VIII of the indictment each defendant in this case is individually entitled to," et cetera, et cetera.

8.70 will be given as requested.

8.71 will be given as requested.

17.40 will be given as requested.

Now we come to the special requested instructions by the defendants.

Number 1 was withdrawn.

MR. FITZGERALD: My records indicate, your Honor, that it was not withdrawn and that you refused it.

THE COURT: The sheet that I have here that was submitted, Mr. Fitzgerald, shows that a check mark was put by me after the "refused."

It was then stricken out and another check mark was put in after "withdrawn."

So, apparently you had a change of mind. You can change it again if you like.

MR. FITZGERALD: Yes, I would like to, and submit it.

MR. MUSICH: Are you sure you are talking about the same instruction?

MR. FITZGERALD: I am talking about Defendants' Special 1.

1 THE COURT: You are asking that the prior consistent
2 statement be limited to credibility.

3 MR. FITZGERALD: Yes. Later on we are asking, we are
4 taking an inconsistent position which I am aware of.

5 THE COURT: All right. I will be refused, then,
6 rather than withdrawn.

7 MR. KANAREK: Join in that.

8 THE COURT: Under the authority of California vs.
9 Green.

10 No. 2 was withdrawn.

11 MR. FITZGERALD: Yes.

12 THE COURT: No. 3 will be given as requested.

13 No. 4 was withdrawn.

14 MR. KANAREK: Wait -- 3, I believe, your Honor, I
15 objected to 3.

16 Yes, I am objecting to 3, your Honor.

17 THE COURT: All right, but it is still requested by
18 the other defendants, is that right?

19 MR. SHINN: Yes, your Honor.

20 MR. FITZGERALD: Yes, your Honor.

21 (Mr. Keith gives no expression.)

22 THE COURT: It will be given as requested.

23 3 will be given as requested. Mr. Kanarek
24 objects, is that right?

25 MR. KANAREK: Because I believe it unduly pinpoints
26 -- yes, I do object to 3.

1 THE COURT: 4 was withdrawn.

2 MR. FITZGERALD: Yes.

3 THE COURT: 5 was withdrawn.

4 MR. FITZGERALD: Yes.

5 THE COURT: 6 was withdrawn.

6 MR. FITZGERALD: Yes.

7 THE COURT: 7 was withdrawn.

8 MR. FITZGERALD: Yes.

9 THE COURT: 8 was withdrawn.

10 MR. FITZGERALD: Yes.

11 THE COURT: 9 was withdrawn.

12 MR. FITZGERALD: Yes.

13 THE COURT: 10 was withdrawn.

14 MR. FITZGERALD: Yes.

15 THE COURT: 11 was withdrawn.

16 MR. FITZGERALD: Yes.

17 THE COURT: 12 was withdrawn.

18 MR. FITZGERALD: Yes.

19 THE COURT: 13 was withdrawn.

20 MR. FITZGERALD: Yes.

21 THE COURT: 14 was withdrawn.

22 MR. FITZGERALD: Yes.

23 THE COURT: 15 was withdrawn.

24 MR. FITZGERALD: Yes.

25 THE COURT: 16 --

26 MR. FITZGERALD: My records indicate they were withdrawn all the way up to 54, your Honor.

1 THE COURT: All right, then, all of the specially
2 requested instructions from and including 16 to and
3 including 53 will be withdrawn.

4 MR. FITZGERALD: Correct.

5 MR. KANAREK: Correct.

6 THE COURT: 54 is refused.

7 55 is refused.

8 56 is refused.

9 57 is refused.

10 58 was withdrawn.

11 MR. FITZGERALD: Correct.

12 THE COURT: 59 was withdrawn.

13 MR. FITZGERALD: Correct.

14 THE COURT: 60, I don't think we --

15 MR. FITZGERALD: You are going to give it, your Honor.
16 It is in your set of instructions.

17 THE COURT: Yes, it is.

18 MR. FITZGERALD: I cannot recall if you modified it
19 or not.

20 THE COURT: I don't believe I did. Do you wish it
21 modified?

22 MR. FITZGERALD: No.

23 THE COURT: I have a question in my mind, Mr.
24 Fitzgerald, when I was reading this, as to what was meant
25 by the words "if necessary."

26 Are those necessary words? Why wouldn't it be

1 sufficient without those two words?

2 MR. FITZGERALD: The jury may feel it was not
3 relevant in terms of her state of mind. That is why I put
4 the words in, "if necessary."

5 I mean, if they consider it at all, they may
6 only consider it as to her state of mind, but they may choose
7 not to consider it at all.

8 THE COURT: All right. It will be given as requested.

9 61 was withdrawn.

10 MR. FITZGERALD: Correct.

11 THE COURT: 62 was withdrawn.

12 MR. FITZGERALD: Yes, correct.

13 THE COURT: 63 was withdrawn.

14 MR. FITZGERALD: Correct.

15 THE COURT: 64 was withdrawn.

16 MR. FITZGERALD: Correct.

17 THE COURT: 65 will be given as modified.

18 The last paragraph was modified to read, "You are
19 hereby instructed that you may consider such evidence only
20 in determining the state of mind of Linda Kacabian at the
21 time Gypsy allegedly made such statement, and for no other
22 purpose."

23 MR. BUGLIOSI: "A girl named Gypsy."

24 THE COURT: It is Gypsy. The first paragraph indicates
25 Gypsy.

26 MR. BUGLIOSI: Oh.

1 THE COURT: 65 will be given as modified.

2 MR. KANAREK: Your Honor, as to 64, what is the
3 language of that first sentence?

4 MR. FITZGERALD: You withdrew it.

5 MR. KANAREK: 64 is withdrawn?

6 MR. FITZGERALD: Yes.

7 THE COURT: Yes.

8 66 was withdrawn.

9 67 was withdrawn.

10 MR. FITZGERALD: Correct.

11 THE COURT: 68 was withdrawn.

12 MR. FITZGERALD: Correct.

13 THE COURT: 69 was withdrawn.

14 MR. FITZGERALD: Correct.

15 THE COURT: 70 was withdrawn.

16 MR. FITZGERALD: Correct.

17 THE COURT: 71 was withdrawn.

18 MR. FITZGERALD: Correct.

19 THE COURT: 72 was withdrawn.

20 MR. FITZGERALD: Correct.

21 THE COURT: 73 is refused.

22 MR. FITZGERALD: Yes.

23 THE COURT: 74 is refused.

24 75 is refused.

25 76 is refused.

26 77 is refused.

1 78 is refused.

2 79 is refused.

3 80 is refused.

4 81 is refused.

5 82 is refused.

6 83 is refused.

7 84 is refused.

8 85 is refused.

9 85-A is refused.

10 86 is refused.

11 MR. KANAREK: 85-A!

12 THE COURT: 87 is refused.

13 88 is refused.

14 89 is refused.

15 CALJIC 2.02 --

16 MR. FITZGERALD: You indicated to us off the record
17 that you were going to refuse 2.02 and replace your own,
18 replace it with your own 2.02.

19 THE COURT: Yes. Actually I should say it is going to
20 be given as modified.

21 There are actually three modified forms of 2.02
22 in my proposed instructions, so I will mark it "Given as
23 modified."

24 MR. KANAREK: As to 89, that is only given as to
25 Daniel De Carlo. That is refused, but I would like to show
26 it as having been requested as to Virginia Graham and

1 Roni Howard as well.

2 THE COURT: What does that mean?

3 MR. KANAREK: Pardon?

4 THE COURT: I don't understand that statement you just
5 made.

6 MR. KANAREK: Well, I think as your Honor has it,
7 89 only mentions Danny De Carlo.

8 THE COURT: That is what was submitted to me, Mr.
9 Kanarek. I don't change your requested instructions.

10 MR. KANAREK: Right. Well --

11 THE COURT: If you requested Virginia Graham, it is
12 here. If you didn't, it is not here.

13 MR. FITZGERALD: Just a minute, your Honor, you refused
14 them; I submitted them later.

15 Virginia Castro and Roni Howard. I've got them
16 right here, if you like.

17 THE COURT: Let's see if they are already here. If
18 they are not I will take them.

19 MR. FITZGERALD: All right.

20 THE COURT: All right, 2.82 will be given as requested.

21 MR. FITZGERALD: The next is 2.90 modified.

22 THE COURT: That is refused.

23 Then you have a second CALJIC 2.90 modified.

24 MR. FITZGERALD: Yes.

25 THE COURT: That is also refused.

26 CALJIC 3.16 modified will be given as requested.

1 CALJIC 3.31 modified is refused. That is covered
2 by other instructions which more clearly and adequately
3 cover the point involved, since this does not differentiate
4 between first and second degree murder.

5 You have a 3.31.

6 MR. FITZGERALD: Withdrawn.

7 THE COURT: CALJIC 3.31 modified which was withdrawn.

8 MR. FITZGERALD: Correct.

9 THE COURT: CALJIC 3.34 is refused, and it is being
10 given in its entirety.

11 This actually is a modified form that you have
12 here. It deletes the last paragraph. I am giving the
13 entire 3.34.

14 MR. KEITH: Does the 3.34 requested by counsel for the
15 defendant delete the second paragraph?

16 MR. FITZGERALD: Yes.

17 MR. KEITH: I would join in that very vigorously.

18 THE COURT: Join in what?

19 MR. KEITH: Join with co-counsel for the defendants in
20 requesting the deletion of the second paragraph.

21 THE COURT: On what theory?

22 MR. KEITH: You must assume the defendant was of sound
23 mind. I question whether that is a fair instruction in the
24 event I tender at a later date a diminished capacity man-
25 slaughter.

26 THE COURT: Well, maybe at that time it won't be,

1 but you tender such an instruction and if it is given, then
2 that would be the time to request that this be modified,
3 that this present 3.34 be modified.

4 MR. KEITH: We will cross that bridge when we come to
5 it.

6 THE COURT: All right.

7 6.10 is refused.

8 Actually it is being given. I think I probably
9 should indicate it will be given as modified, rather than
10 refused.

11 6.13 was withdrawn.

12 MR. FITZGERALD: Correct.

13 THE COURT: 6.16 was withdrawn.

14 MR. FITZGERALD: Correct.

15 THE COURT: 6.17 was withdrawn.

16 MR. FITZGERALD: Correct.

17 THE COURT: 6.18 was withdrawn.

18 MR. FITZGERALD: Correct.

19 THE COURT: 6.23, modified, was withdrawn.

20 MR. FITZGERALD: Correct.

21 MR. KANAREK: 6.21 -- I am asking for 6.21, your
22 Honor.

23 MR. FITZGERALD: I think that is being given.

24 THE COURT: I may be giving it, Mr. Kanarek, I don't
25 recall offhand. I will have to look.

26 I am discussing requested instructions.

1 MR. KAY: No, it is not being given.

2 MR. MUSICH: It is liability after determination of
3 conspiracy.

4 MR. KAY: Maybe it is.

5 THE COURT: 6.23 modified was withdrawn.

6 17.00 is refused -- actually it is being given as
7 modified.

8 MR. FITZGERALD: We object to the modification, how-
9 ever.

10 THE COURT: What is the basis for your objection?

11 MR. FITZGERALD: We prefer that our submitted copy be
12 given as it stands.

13 You have the ball now.

14 THE COURT: If that is your objection we will pass on
15 to your next one.

16 17.01 is refused.

17 MR. FITZGERALD: That was 17.01 as modified. I put in
18 Patricia Krenwinkel's name.

19 THE COURT: As modified.

20 MR. FITZGERALD: Yes, is refused?

21 THE COURT: Yes.

22 17.11 is refused. Actually it is being given as
23 modified.

24 MR. KAY: Yes, that will be given in the 800 series.

25 THE COURT: 17.11 is refused. It is covered in the
26 800 series.

17.01 is refused.

No. 90 is refused.

MR. KANAREK: No. 90?

THE COURT: This is special requested instruction 90

on behalf of the defendants. It is refused.

91 is refused.

92 is refused.

93 is refused.

94 is refused.

95 is refused.

96 is refused.

97 is refused.

98 is refused.

99 was withdrawn.

MR. FITZGERALD: My records indicate refused.

MR. SHINN: Yes, it was withdrawn, Your Honor.

THE COURT: Withdrawn?

MR. SHINN: Yes, Your Honor.

MR. FITZGERALD: Join.

MR. KANAREK: Join.

THE COURT: 100 is refused.

101 is refused.

102 is refused.

103 is refused.

104 is refused.

105 is refused.

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1 106 is refused.

2 107 is refused.

3 108 is refused.

4 109 -- I don't have a mark on that.

5 MR. KAY: They were all refused.

6 THE COURT: What do your notes indicate on 109?

7 MR. KAY: All of Mr. Kanarek's and Mr. Shinn's
8 instructions.

9 MR. FITZGERALD: My notes indicate that your Honor
10 indicated you were going to tentatively refuse it.

11 I have "refused" on my copy.

12 MR. KAY: Our notes indicate the same thing.

13 THE COURT: 109 is refused.

14 MR. KANAREK: Is your Honor refusing 109?

15 MR. SHINN: Yes.

16 THE COURT: 110 is refused.

17 111 is refused.

18 112 is refused.

19 113 is refused.

20 114 is refused.

21 115 is refused.

22 116 is refused.

23 117 is refused.

24 118 is refused.

25 119 is refused.

26 120 is refused.

1 Now, the People have handed me a copy of a
2 proposed instruction, CALJIC No. 272, with modifications.

3 Have you all received a copy of that?

4 MR. KEITH: Before discussing the special instructions
5 proposed by the People, may I join with the other defen-
6 dants and their counsel in requesting the special
7 instructions by such defendants that were refused by the
8 Court?

9 Does the Court understand me?

10 In other words, Leslie Van Houten joins in the
11 request for all the instructions that were refused, not
12 talking about the ones withdrawn.

13 THE COURT: All right.

14 MR. KANAREK: Your Honor, here is a fair statement in
15 connection with this session here today, that Mr. Fitzgerald,
16 when he spoke, unless we have indicated a different of
17 opinion with him, that he is speaking on behalf of me as
18 to these matters pertaining to instructions in this session
19 here today.

20 MR. FITZGERALD: That was the understanding.

21 MR. KEITH: I only said what I said because I don't
22 think I was here.

23 THE COURT: You have all been sitting here. You have
24 all heard what has been said.

25 Now, if any of you have anything to state at this
26 time, to clarify the record, to make any further objections or

1 comments, you are free to do so.

2 MR. KANAREK: What about 6.21, your Honor?

3 THE COURT: Hasn't that been covered?

4 MR. MUSICH: Let me interrupt Mr. Kanarek.

5 I don't know if we went through the original
6 instructions the Court gives, this large pack.

7 THE COURT: No, we have not.

8 MR. MUSICH: We have not gone through those on the
9 record.

10 THE COURT: We went through off the record to conform
11 your copies to my copies of proposed instructions, but I
12 have not yet indicated on the record what instructions I
13 propose to give, which I am going to do as soon as we com-
14 plete this present discussion.

15 MR. KANAREK: Yes, your Honor.

16 Now, 6.21 -- am I clear your Honor is refusing
17 6.21:

18 "No act or declaration of a conspirator that
19 is committed or made after the conspiracy has
20 been terminated is binding upon his co-conspirators,
21 and they are not criminally liable for any such
22 act"?

23 Is your Honor refusing that?

24 MR. MUSICH: That was not submitted.

25 MR. KANAREK: You don't have to submit as far as
26 CALJIC is concerned.

1 THE COURT: You have to make a request.

2 MR. KANAREK: I request 6.21.

3 MR. BUGLIOSI: This is the one we discussed, your
4 Honor, and the Court rejected it. It was discussed for five
5 or ten minutes, as I recall.

6 MR. KANAREK: 6.21 I am requesting. I cannot believe
7 that the Court would refuse 6.21. It is clearly the law.

8 MR. BUGLIOSI: That is the one where we had the
9 discussion of the distribution of the proceeds, and the
10 escape, and things like that.

11 It is only applicable in that type of situation.
12 The Court denied it.

13 THE COURT: I remember the discussion. It is un-
14 questionably the law; it does not have any application in
15 this case.

16 MR. KANAREK: Your Honor, what about -- like we say,
17 what about everything that happened at the Barker Ranch?

18 All of this, the conspiracy is over. There is a
19 wealth of testimony, that is, as far as the number of words
20 are concerned that Mr. Bugliosi has offered concerning
21 events that happened after the conspiracy was completed.

22 MR. BUGLIOSI: The jury is already instructed that the
23 act has to further the object of the conspiracy before it
24 applies to the co-defendants.

25 They are already instructed in other areas.

26 MR. SHINN: Why are you objecting to this one then?

1 MR. KEITH: I am more concerned about the incident of
2 the actor in Venice.

3 When I read the transcript, it seems to me that
4 your Honor instructed the jury that that particular event
5 should be admissible against Leslie Van Houten.

6 MR. FITZGERALD: Or Patricia Krenwinkel. That is
7 correct, the Court did so instruct the jury.

8 I remember it very vividly. We chose not to
9 submit an instruction.

10 THE COURT: I am not saying I did not; I recall that
11 I did, yes.

12 Nothing is being changed about that now.

13 MR. FITZGERALD: I can explain the situation to you,
14 Mr. Keith, off the record. I will talk to you about it
15 later.

16 If you want to submit it, go ahead and submit it.

17 MR. KANAREK: Is your Honor taking a position as to
18 these CALJIC instructions where we ask for CALJIC
19 instructions and don't actually submit a physical piece of
20 paper, is your Honor taking the position that those
21 instructions are not submitted?

22 THE COURT: No.

23 MR. KANAREK: The whole purpose of CALJIC is just to
24 tell the Court the number.

25 THE COURT: Where have you told me the number?

26 MR. KANAREK: Pardon?

1 THE COURT: I don't know what you are talking about,
2 Mr. Kanarek.

3 MR. KANAREK: I am asking for CALJIC 6.21.

4 MR. FITZGERALD: Join.

5 MR. SHINN: Join.

6 MR. BUGLIOSI: It has already been asked for and
7 denied.

8 THE COURT: Mr. Kanarek --

9 MR. KANAREK: Yes.

10 THE COURT: -- the normal way to request an instruction
11 is to give a written request for an instruction. If you want
12 a CALJIC instruction you designate a request for CALJIC
13 number so and so. You don't just make it informally orally.

14 If you do that, you run the risk of not having
15 any record on it.

16 MR. KANAREK: You see, of course, we asked that all of
17 the discussion that we had, which your Honor deemed to be
18 informal and off the record, that was, of course, over
19 objections.

20 We asked that all of these discussions take place
21 on the record because of the mechanical aspect.

22 THE COURT: If you did so ask, the record will show it.
23 I don't recall that you asked that. I don't recall hearing
24 any objection from anybody.

25 MR. KAY: Your Honor, that instruction, 6.21, was
26 submitted by the People and it was rejected by the Court.

1 We did submit it and the Court rejected it, deeming
2 that it was not proper.

3 THE COURT: Who has my CALJIC?

4 MR. KEITH: I have been looking at it.

5 MR. KAY: I think Mr. Bugliosi's arguments were very
6 appropriate.

7 THE COURT: Let's get the record straight now.

8 Is someone requesting CALJIC 6.21?

9 MR. KANAREK: Yes, your Honor.

10 THE COURT: Who is that someone?

11 MR. FITZGERALD: We all are, your Honor.

12 MR. SHINN: We all are, your Honor.

13 THE COURT: All of the defendants.

14 Are the People opposed to it?

15 MR. BUGLIOSI: Yes.

16 THE COURT: Why?

17 MR. BUGLIOSI: This instruction covers the situation
18 where, particularly where a crime has been committed after
19 the conspiracy is terminated, and the prosecution is trying
20 to make the co-conspirators guilty of that crime, even
21 though the conspiracy has already been completed, and the
22 law is, once the conspiracy is completed each former co-
23 conspirator acts on his own.

24 CALJIC even refers to Witkin, Section 125.

25 If you look at Section 125 in Witkin, they talk
26 about this very thing, when the conspiracy is ended, the

1 act of one cannot be made the basis of the criminal
2 liability of another.

3 We are not trying to imput any criminal liability
4 to any co-conspirators in this case after the conspiracy
5 ended, so that instruction just is not applicable.

6 MR. KANAREK: Your Honor, that is sophistry. I mean,
7 Mr. Bugliosi has offered volumes of evidence after the so-
8 called second night.

9 Now, he has offered it in connection with the
10 conspiracy.

11 MR. KEITH: There may be a difference of opinion as to
12 when the conspiracy ended, assuming there was one.

13 MR. KANAREK: The conspiracy ended -- there is no
14 question, according to the indictment, it ended on the
15 second night.

16 THE COURT: What about declarations?

17 MR. BUGLIOSI: The declarations are covered by other
18 instructions.

19 If the particular defendant confesses, the jury
20 can only, of course, consider that confession against the
21 declarant, not against the co-conspirator.

22 MR. KANAREK: Your Honor, we have in this record events
23 which happened at Barker Ranch; for instance, after the time
24 of the conspiracy, after the conspiracy is over.

25 Now, again we have spoken about making things
26 clear for the jury.

1 Now, there is no question, there cannot be any
2 harm. All it does is make it clear that that is the law.
3 Otherwise, the jury is going to be confused.

4 MR. BUGLIOSI: The conduct of these defendants up at
5 Barker Ranch can be used as circumstantial evidence against
6 all of them, that they were involved in a conspiracy, but
7 it cannot be used to impute criminal responsibility.

8 In other words, we cannot say that --

9 MR. KANAREK: That is double talk, Mr. Bugliosi, if I
10 ever heard it.

11 MR. BUGLIOSI: We are not trying to say when Manson
12 was creeping up on Juan Flynn at the Barker Ranch, this is
13 an attempted murder, therefore convict Leslie Van Houten of
14 attempted murder also.

15 If we were, that instruction would be applicable.

16 We are trying to convict her of crimes committed
17 by her co-conspirators, but certainly the conduct at the
18 Barker Ranch can be used against all of them as circumstantial
19 evidence that they were part of a conspiracy.

20 MR. KANAREK: That is double talk.

21 MR. BUGLIOSI: That instruction is a different type of
22 situation where someone commits a separate and independent
23 crime, and we are trying to bring former co-conspirators in-
24 to this other crime, that is what that instruction refers to.

25 MR. KANAREK: Mr. Bugliosi, it is up to the jury to
26 decide what the instruction refers to that talks about

1 criminal liability.

2 Evidence is either relevant or it is not relevant.

3 Now, all of the stuff that you put on after the
4 second night has got some relevance.

5 MR. BUGLIOSI: To the crimes that we are charging.

6 MR. KANAREK: And that instruction talks about
7 criminal liability.

8 THE COURT: I think I was right the first time in
9 refusing the instruction. I don't believe it has any
10 application here.

11 I think what you are talking about, Mr. Kanarek,
12 has been adequately covered by other conspiracy instructions.

13 6.21 is refused.

14 Now, is there anything else before we get on --
15 we will go through the proposed instructions and I will state
16 for the record what proposed instructions I intend to give,
17 and then we still have the matter of the additional requested
18 instruction, No. 2.42, with modification submitted by the
19 People.

20 MR. KANAREK: May the record reflect, then, your
21 Honor, that unless specifically excepted to by me, that all
22 of the instructions that have been submitted on behalf of the
23 defendants are submitted on behalf of Mr. Manson, the ones
24 that you have refused, that all of the refused ones even
25 though I did not speak up at each refusal, as I say, unless
26 specifically some exception is made, I am advocating all of

1 those that you refused that are offered on behalf of the
2 defendants, because, you see, on the instructions there is
3 no showing --

4 Are you satisfied you made your record now,
5 Mr. Kanarek?

6 MR. KANAREK: As to that point, yes, your Honor.

7 THE COURT: All right.

8 MR. KANAREK: Because the defendants are not separately
9 stated on those jury instructions requests.

10 THE COURT: All right.

11 Now, do you want to consider the People's
12 requested instruction No. 2.72 with modification?

13 MR. KEITH: I would object on behalf of Van Houten to
14 the use of the word "murder."

15 I object to the whole instruction, particularly
16 to the constant use of that particular word.

17 I think to make it at all appropriate it should
18 say there are two elements to the class of crimes generally
19 known as homicide.

20 MR. FITZGERALD: You have already given, your Honor,
21 2.72 unmodified as requested by the defendants.

22 I think this in addition to the remarks of
23 Mr. Keith, which I would like to incorporate, it is redun-
24 dant.

25 MR. KAY: We are offering this in place of that.

26 MR. KANAREK: If I might say this, if we are on the

1 record as to this argument, we have been denied equal
2 protection of the law in that all of the previous argument
3 in connection with these jury instructions which we asked
4 to be on the record, the Court insisted that we go off the
5 record and it's --

6 THE COURT: Do you want to go off the record, is that
7 what you are asking?

8 MR. KANAREK: No, I don't really want to go off the
9 record. I just want to emphasize the point that part of the
10 problem is in the Court's previous ruling of forcing us to
11 go off the record.

12 THE COURT: It isn't what we say about it, Mr. Kanarek,
13 it is what the Court does about it.

14 MR. KANAREK: I think part of it has to do with the
15 argument.

16 THE COURT: The reason we were off the record last
17 week was because I could see no reason to burden the record
18 with four or five days informal conversation.

19 The reason we are on the record today is so you
20 can make a record with respect to the Court's rulings on each
21 instruction that will be given, and each instruction that
22 has been requested.

23 MR. KANAREK: Yes, but you see, this is improper in
24 the context of what we have done here for the prosecution
25 to bring in 2.72 with modifications at this point. It is
26 improper at this point. We have decided previously --

1 THE COURT: Well, you just requested 6.21.

2 MR. KANAREK: I agree, your Honor, but my records
3 reflect that at the time of our informal discussions I
4 brought up that subject, and that was one of the things that
5 I was to bring up when we were on the record.

6 THE COURT: I am not foreclosing any counsel,
7 Mr. Kanarek, from submitting additional requested
8 instructions at any time right up until the last moment when
9 the Court instructs.

10 MR. KANAREK: Very well, your Honor.

11 MR. KEITH: Thank you.

12 MR. KANAREK: Very well, then, if I can just make some
13 comments.

14 This is certainly not the law:

15 "The proof of each element of the crime
16 of murder need not be proven beyond a reasonable
17 doubt. Slight evidence of each element will
18 suffice."

19 That is not the law.

20 THE COURT: Well, I don't like this instruction for
21 various reasons. I think it is confusing, ambiguous.

22 MR. KEITH: "to prove that the murders in this case
23 have been committed."

24 You are telling the jury there have been
25 murders committed. That is the whole idea of this
26 instruction.

1 MR. BUGLIOSI: Does the Court find this ambiguous to
2 prove that the murders or homicides -- we then change it to
3 homicides -- to prove that the homicides in this case have
4 been committed --

5 THE COURT: I think it is all covered in 2.72.

6 MR. BUGLIOSI: I am not saying it is not. I am saying
7 2.72 is ambiguous.

8 This says here, "To prove that the crimes in this
9 case have been committed it is not necessary to prove who
10 committed them."

11 To me that is much clearer than the way 2.72 reads
12 right now.

13 THE COURT: It says "the identity" --

14 MR. BUGLIOSI: -- "is not an element of the crime."

15 The identity of the perpetrator is not an element
16 of the crime. It is legalese for law students, but not for
17 12 people --

18 THE COURT: I don't like that one, Mr. Bugliosi, I
19 think it is confusing and misleading.

20 MR. KANAREK: You have a showmanistic attitude,
21 Mr. Bugliosi, towards the jurors.

22 THE COURT: Are you ready to go through the Court's
23 proposed instructions, gentlemen?

24 The Court proposes to give the following
25 instructions:

26 CALJIC 1.00.

CALJIC 1.01.

1.02.

1.10 as modified.

MR. KAY: I take it if there is any objection, your Honor would want to hear from counsel now.

THE COURT: Yes.

2.01.

MR. FITZGERALD: Object to the third paragraph thereof.

THE COURT: This is 2.01 with modifications.

MR. FITZGERALD: Yes.

THE COURT: All right.

MR. KEITH: Join.

MR. KANAREK: Join and request -- what I think I previously put on the record, your Honor, that there should be the statement bearing in mind, however, that even if the reasonable deduction points to the defendant's guilt, the entire proof must carry the convincing force required by law to support a verdict of guilty.

That should be added, your Honor, and I really believe that should be added to the end of your Honor's instruction.

THE COURT: All right.

The next is 2.06.

MR. FITZGERALD: Object.

It was our contention and it is our contention that there wasn't sufficient evidence in the record to

1 justify the giving of this instruction on suppression of
2 evidence.

3 MR. KEITH: May I ask, was this instruction presumably
4 presented by the People? I ask for my own edification what
5 evidence they have reference to.

6 MR. KAY: Mr. Gutierrez testified he observed
7 Mr. Manson make a slitting motion on his throat when Linda
8 Kasabian was on the stand while she was looking at him, and
9 he was looking at her.

10 MR. KEITH: Is that what this has specific reference to?

11 MR. KAY: One of the things.

12 MR. KEITH: I will join in the objection, your Honor.

13 MR. SHINN: I will join.

14 MR. KANAREK: Join in the objection.

15 THE COURT: The next is special instruction regarding
16 handwriting exemplars with respect to Patricia Krenwinkel.

17 MR. FITZGERALD: There will be an objection to that
18 instruction, and rather than have this appear several
19 times in the record, I would like to incorporate by
20 reference the objections I made to the initial court order
21 instructing Patricia Krenwinkel to execute the exemplars.

22 At that time I objected on the basis of the
23 Fourth, Fifth, and Sixth Amendments to the United States
24 Constitution, essentially that:

25 (a) it forced her to incriminate herself and

26 (b) that it deprived her of the effective right
to counsel if the prosecution was allowed to comment on

1 her refusal to execute the exemplars after she had been
2 advised by her attorney not to do so.

3 MR. KANAREK: I object to it, your Honor, on the basis
4 I think it is unfair.

5 I think we have standing to object because of the
6 fact she is an alleged co-conspirator.

7 THE COURT: Page 9 of the proposed instructions.

8 MR. BUGLIOSI: Are you ruling on these objections now?

9 THE COURT: Well, I am going to rule at the end.

10 The next is 2.07.

11 2.09.

12 People's Special 19 relating to tape recorded
13 statement of Juan Flynn.

14 MR. KANAREK: Yes, your Honor.

15 MR. KAY: The People object to the form the Court has
16 put it in now. We ask instead of the limited purpose only
17 that it be spelled out to the jury exactly what the Court
18 said; that they only consider it as to his credibility.

19 MR. FITZGERALD: Do you want to withdraw this?

20 MR. KAY: We did not offer this. We offered another
21 one.

22 This is the Court's modification of our
23 instruction.

24 MR. KANAREK: I object to it being given at all, your
25 Honor.

26 THE COURT: Next is special 3, that is regarding Juan

1 Flynn, requested by the defendants.

2 Next is special 65.

3 MR. KANAREK: That is the one I objected to being
4 given at all, Special 3.

5 THE COURT: Special 65 is the defendants', regarding
6 Linda Kasabian and a statement allegedly made by Gypsy.

7 The next is Special 60, regarding a statement of
8 Linda Kasabian regarding two young hitchhikers on or about
9 August 12th and 15th.

10 That should have a year after it, August 12th,
11 and 15th, 1969, isn't it?

12 MR. BUGLIOSI: Isn't the defense talking about the
13 statement she made to a man named Breckenridge?
14 He was not one of the two young hitchhikers. He was a
15 third person.

16 Isn't that correct? I think you are concerned
17 about the statement she made to Breckenridge.

18 He is not one of the two whom she picked up here
19 in Los Angeles and took off with.

20 So for your own benefit, shouldn't you change
21 this to Mr. Breckenridge, by name? I don't care if you want
22 to leave it this way, but I don't think this is what you
23 are really concerned with.

24 THE COURT: I hear no response, so let's go on to the
25 next one.

26 MR. KANAREK: I suppose what we could do --

1 THE COURT: If you find this is not what you want,
2 then indicate later on to the Court what correction you want,
3 or whether you want to withdraw it or what you want to do.

4 But I hear no response now so we will pass up the
5 next one, that is 2.11.

6 MR. FITZGERALD: We object to that, your Honor, it is
7 inconsistent with the special instruction the defendants wish
8 to submit -- oh, I gave you the wrong one, excuse me.

9 I introduced an instruction during our informal
10 conference meeting, your Honor, based on an Evidence Code
11 section that provides that a jury may consider the fact that
12 the side of the case having the ability to put on special
13 evidence --

14 Why don't we just pass this matter and I will
15 submit the instruction at a later date?

16 THE COURT: All right.

17 Next is 2.20.

18 MR. FITZGERALD: We object. We submitted a special
19 2.20, your Honor, that was the same in all respects except
20 that it indicated that one of the things the jury could
21 consider in determining credibility is the grant of immunity.

22 THE COURT: Next is 2.21.

23 MR. KANAREK: Join, yes.

24 THE COURT: Next is 2.22 as modified.

25 Next is 2.23.

26 The next is 2.51.

1 The next is 2.70 as modified.

2 The next is 2.72 as modified.

3 MR. KANAREK: I would object to 2.70 being given at
4 all, and 2.72.

5 THE COURT: All right.

6 The next is 2.80.

7 The next is 2.81.

8 The next is 2.82.

9 The next is 2.90.

10 MR. FITZGERALD: We object to 2.90 in this form. We
11 had submitted an instruction on presumption of innocence and
12 reasonable doubt. We actually submitted four instructions.

13 MR. KANAREK: Join.

14 THE COURT: The next is People's special number 20.

15 MR. FITZGERALD: We object to that, your Honor. We had
16 a very lengthy discussion about the effect of California vs.
17 Green.

18 THE COURT: Yes.

19 MR. KANAREK: Join with Mr. Fitzgerald.

20 THE COURT: The next is 2.60.

21 The next is 2.61.

22 MR. KANAREK: I object to 2.60.

23 MR. FITZGERALD: Mr. Kanarek is only interposing an
24 objection to 2.60, and Mr. Kanarek is interposing an
25 objection to the following instruction, 2.61.

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

1 THE COURT: Next is CALJIC 3.00.

2 Next is CALJIC 3.01.

3 Next is CALJIC 3.11.

4 Next is CALJIC 3.12 as modified.

5 MR. FITZGERALD: We object to 3.12, your Honor, and
6 in particular to the modifications that were made.

7 MR. KANAREK: Join.

8 THE COURT: The next is CALJIC 3.16 as modified.

9 The next is CALJIC 3.18.

10 MR. FITZGERALD: We object to the deletion of the
11 first four words in the instruction, your Honor.

12 MR. KANAREK: Join in that.

13 THE COURT: All right, the deletion was made because
14 the instruction seems to emphasize in some vague, undefined
15 manner by adding those words what the other instructions do
16 not do, and yet they all have the force of law as far as
17 the jury is concerned. That is the reason the words were
18 deleted.

19 The next is People's special number 6.

20 MR. FITZGERALD: We object to that with vigor.

21 MR. KEITH: Great vigor, I hope.

22 MR. KANAREK: Join.

23 MR. FITZGERALD: We had a lengthy discussion infor-
24 mally about this instruction in which Mr. Kanarek held forth
25 for an hour and 15 minutes, objecting to this particular
26 instruction about the corroborative evidence need only be

1 slight.

2 THE COURT: ery well.

3 The next is --

4 MR. KEITH: Also there is nothing in there that says
5 that the jury does not have to believe the corroborative
6 evidence.

7 It seems to say, to me, Linda Kasabian is
8 corroborated even though they don't believe the corroborating
9 evidence.

10 There is a prior instruction that makes it quite
11 clear.

12 MR. BUGLIOSI: There is a prior instruction.

13 MR. KEITH: It makes quite clear that the alleged
14 corroborating evidence has to be believed before it
15 corroborates anybody, but this instruction does not say
16 that.

17 MR. BUGLIOSI: Obviously they have to believe it.

18 MR. KEITH: Nothing is obvious to a jury.

19 MR. BUGLIOSI: If they don't believe it; if they think
20 it is a lie, certainly it doesn't have any weight.

21 3.12 says the evidence has to be believed.

22 MR. KEITH: This instruction should at least conform
23 to 3 -- well --

24 MR. KANAREK: Sometimes --

25 THE COURT: The next one I don't seem to have a number
26 on, Page 38.

1 MR. KAY: Special instruction number 7, People's number
2 7.

3 MR. FITZGERALD: We object to that one, your Honor.

4 THE COURT: The next is CALJIC 8.10.

5 The next is CALJIC 8.11.

6 MR. KANAREK: Your Honor, to go back to number 7,
7 that is going to be sliced off as far as the jury is con-
8 cerned.

9 THE COURT: All of it? The top comes off of one of
10 them.

11 MR. FITZGERALD: The defendants object to CALJIC
12 instruction 8.11 insofar as it allows the jury to consider
13 the theory of felony murder.

14 We have contended there is not substantial evi-
15 dence of the commission of a felony in the perpetration of
16 either the so-called La Bianca homicide or the so-called Tate
17 homicide.

18 THE COURT: All right. Next is CALJIC 8.20.

19 Next is CALJIC 8.21.

20 MR. FITZGERALD: We object to that because it is a
21 felony murder theory, your Honor.

22 THE COURT: The next is CALJIC 14.50.

23 MR. FITZGERALD: We object on the grounds that it
24 implies a theory of felony murder.

25 THE COURT: The next is CALJIC 9.10.

26 MR. FITZGERALD: We object to that on the same ground,

1 felony murder theory.

2 THE COURT: The next is CALJIC 8.27.

3 MR. FITZGERALD: Same objection.

4 THE COURT: The next is special instruction Number 18,
5 People's special.

6 MR. KAY: That is correct.

7 MR. FITZGERALD: We object to that, and your Honor,
8 I'm sure, will recall the discussion we had.

9 The last sentence of the instruction reads:

10 "The jury need not be unanimous as to which of
11 those two types of murder a finding of murder in
12 the first degree is based upon."

13 Mr. Kanarek as well as other counsel strenuously
14 urged the Court that the jury be instructed that they be
15 unanimous as to the theory upon which the first degree
16 murder is based, or the second degree murder is based.

17 THE COURT: Yes, I recall the discussion.

18 The next is CALJIC 8.30, modified by striking the
19 word "also."

20 The next is CALJIC 3.31 as modified.

21 The next is CALJIC number 2.02 with modifications.

22 MR. FITZGERALD: We object. We submitted our own
23 2.02 with modifications.

24 MR. KANAREK: Yes, and at the end of 2.02, your Honor,
25 I join in the objection to it but I believe even as offered,
26 I move even as offered that there should be added to the end

1 of the last paragraph after "unreasonable," the period
2 should become a comma and it should state "bearing in mind,
3 however, even if the reasonable deduction points to the
4 defendants' guilt, the entire proof must carry the convincing
5 force required by law to support a verdict of guilty."

6 The next is 2.02 as modified.

7 MR. FITZGERALD: Object, we submitted our own.

8 THE COURT: This is a second 2.02.

9 MR. FITZGERALD: Yes.

10 THE COURT: And the next is a third 2.02 as modified.

11 MR. FITZGERALD: Object. We submitted our own.

12 THE COURT: The next is 8.70.

13 The next is 8.71.

14 The next is 8.74 as modified.

15 MR. KANAREK: I am sorry, your Honor, the same, going
16 back to 2.02 --

17 THE COURT: Do you want to make the same objection?

18 MR. KANAREK: That's right, about the bearing in mind,
19 and so forth, which I have enunciated.

20 THE COURT: All right.

21 MR. KANAREK: Which I have enunciated previously.

22 THE COURT: The next is 3.34.

23 MR. FITZGERALD: All of the defendants would object.

24 We would incorporate by reference Mr. Keith's
25 remarks of a few minutes ago to the last paragraph of the
26 instruction, if the defendants were of sound mind.

THE COURT: Next is CALJIC 6.10.

The next is CALJIC 6.11.

MR. FITZGERALD: We object to that on constitutional grounds, your Honor.

We concede that is the state of the present law.

MR. RAY: What is the constitutional ground?

MR. FITZGERALD: That the law of conspiracy in California is unconstitutional. It violates the Fifth and Fourteenth Amendments to the United States Constitution in that it deprives the defendant of due process of law.

THE COURT: The next is CALJIC 6.12.

The next is CALJIC 6.13.

The next is CALJIC 6.15.

MR. FITZGERALD: We object to that on the same constitutional due process grounds, your Honor.

THE COURT: The next is CALJIC 6.60.

The next is CALJIC 6.17.

The next is CALJIC 6.18.

The next is CALJIC 6.19.

MR. FITZGERALD: We object to that on constitutional grounds of due process.

THE COURT: The next is CALJIC 6.20.

The next is CALJIC 6.23 as modified.

The next is 3.31 as modified.

The next is CALJIC 3.02 as modified.

MR. KIMBLE: At the end of 3.02, the bearing in mind language, "bearing in mind, however, even if the reasonable

1 deduction points," and so forth, which I have enunciated
2 previously, I would ask that that be at the end of
3 Paragraph 2.

4 THE COURT: The next is CALJIC 3.34.

5 MR. FITZGERALD: We object to the last paragraph.

6 MR. KEITH: Object to the last paragraph.

7 THE COURT: Next is CALJIC 17.00.

8 The next is --

9 MR. FITZGERALD: I object to 17.00.

10 I submitted an instruction without a number that
11 I will check and bring to your attention later on.

12 MR. KAY: AS to No. 69, Page No. 69, 3.34, Mr. Bugliosi
13 pointed out that the last word in the instruction should be
14 "indictment," not "information."

15 MR. FITZGERALD: Page 69, 3.34.

16 MR. KAY: Right.

17 THE COURT: There is an earlier 3.34, after murder,
18 which will have to be changed also.

19 CALJIC 17.02 is the next one.

20 The next is CALJIC 6.22 as modified.

21 The next is CALJIC 17.30.

22 The next is CALJIC 17.31.

23 The next is CALJIC 17.40.

24 MR. FITZGERALD: We object. We submitted an instruc-
25 tion that covers the scope of deliberation.

26 THE COURT: Next is CALJIC 17.41.

1 MR. FITZGERALD: We object to that. We also submitted
2 an instruction on this area of jury deliberation.

3 THE COURT: The next is CALJIC 17.43 as modified, and
4 the last is CALJIC 17.50.

5 MR. KAY: I take it your Honor has decided not to give
6 17.49. That is the one we had the mathematician here, and
7 counted up all of the possible verdicts.

8 17.49, you decided not to give that one.

9 THE COURT: I don't know which one that is at the moment.
10 Except as otherwise indicated all of the objections are
11 overruled.

12 All right, gentlemen, let's wind this up.

13 MR. KANAREK: I was just going to say, your Honor, in
14 connection with certain instructions that your Honor was going
15 to give relating to the crime of conspiracy, I would like
16 to have the record reflect that instructions -- it is my
17 belief that instruction 1.03, instruction 1.04, instruction
18 1.05, instruction 1.06, instruction 1.07, instruction 1.08,
19 instruction 1.09, 1.10, 1.11, 1.12 --

20 THE COURT: If you are going to say they should be
21 given, of course that is implicit in the fact you requested
22 them.

23 MR. KANAREK: Yes, your Honor, if I may just finish.

24 1.13, 1.14, 1.15 --

25 Those instructions be given in addition to the
26 instructions that your Honor is giving in relation to the

1 crime of conspiracy.

2 That is, I can't -- it is one thing to object to
3 an instruction -- I cannot object in toto to the instructions
4 your Honor is giving, I cannot in good conscience object to
5 them in toto.

6 But I believe in order that the jury be
7 instructed properly, what your Honor is instructing in
8 connection with the law of conspiracy, in order to make a
9 fair trial out of it, your Honor must also instruct in
10 connection - give the instructions that I have just enunciated
11 along with the instructions that your Honor is giving.

12 THE COURT: All right.

13 MR. KANAREK: It is one thing to make a blanket
14 objection and just say I object.

15 I think what your Honor is giving has value and
16 utility if integrated with the ones I have just asked for.

17 THE COURT: I think we are just spinning around in a
18 circle, Mr. Kanarek.

19 You requested certain instructions. I indicated
20 to you those instructions would be given or not given, or
21 withdrawn, whatever the case may be.

22 The record clearly indicates all that. We
23 don't have to go through it again.

24 MR. KANAREK: Except on appeal someone may say, "You
25 didn't object to the conspiracy instructions the Court has
26 given."

1 THE COURT: You may if you like. Go ahead and object.

2 MR. KAMARAK: The point is I cannot. I think those
3 instructions, integrated with the ones I have asked for,
4 would be a fair instruction sent up to the jury.

5 THE COURT: I think we all understand what you are
6 saying, Mr. Kamarak.

7 Anything else?

8 MR. KAMARAK: I would solicit the Court to consider --
9 if I may point it out --

10 THE COURT: Let's wind it up. You tell me what you
11 want.

12 MR. KAMARAK: It is an instruction concerning the
13 state of the evidence.

14 THE COURT: I have already ruled on it.

15 MR. KAMARAK: I would like to convince the Court --

16 THE COURT: We are just going around in circles.

17 MR. KAMARAK: It is my belief, your Honor, as far as
18 the law concerning the state of the evidence is concerned,
19 that the Court by focusing on the defendant as a witness is
20 denying the defendant a fair trial.

21 That is, the law is clear that a defendant can
22 rest and rely on the state of the evidence.

23 THE COURT: You are talking about 2.60 and 2.61.

24 MR. KAMARAK: No, I am talking about the instruction
25 I offered the Court wherein, instead of pinpointing the
26 defendant, the instruction relates what I believe is the law

1 that the defendant can rely on, the state of the evidence.

2 THE COURT: We spent a week discussing these instruc-
3 tions now, Mr. Kanarek, there is no point in going over it
4 all again.

5 MR. KANAREK: It is just this one point which I think
6 is a major point. I can pinpoint the instruction, if I may,
7 to the Court, the one ^{of} which I am speaking.

8 THE COURT: I recall the instruction.

9 MR. KANAREK: It seems to me this would then
10 eliminate the Griffin problem because your Honor would then
11 instruct the jury that the defendant has a right to rely
12 on the state of the evidence, and then whether he takes the
13 witness stand or not really is not of too much importance.

14 What is important is he has a right to rely on
15 the state of the evidence.

16 We offered an instruction to that effect to the
17 Court.

18 THE COURT: Anything else?

19 (No response.)

20 All right, then the matter now stands as follows,
21 gentlemen:

22 Counsel will call in between 9:00 and 9:30 each
23 morning. We will in fact adjourn from day to day. We will
24 resume the next morning at 9:00 o'clock with Mr. Keith's
25 motion first. Depending on the outcome of it, counsel will
26 be prepared to proceed with argument immediately thereafter.

1 We will continue through Wednesday, if necessary,
2 with the understanding if the People complete their argument
3 before the close of court on Wednesday, that we will recess
4 when the People do complete their argument, unless they
5 should complete their argument so far in advance of Wednesday
6 afternoon that the defendants would be able to complete
7 their argument without having to split it.

8 If they do not, we will recess at the close of
9 the People's argument until Monday, the 28th of December,
10 when the arguments will resume.

11 I have Mr. Kanarek's request in mind. I
12 suggest, Mr. Kanarek, you check the airline schedules and
13 work out some kind of flight arrangement that will enable
14 you to get back on Monday morning, because under the circum-
15 stances I would not be justified in continuing this case
16 any longer for purely personal reasons of counsel,
17 particularly in view of the fact also that the defendants
18 have objected to any continuance for the purpose of Mr.
19 Keith's to prepare.

20 MR. KANAREK: I feel we had the obligation to make the
21 objection which was enunciated by Mr. Fitzgerald.

22 THE COURT: That objection has been made and overruled.

23 MR. KANAREK: Yes, your Honor. I join in
24 Mr. Fitzgerald's statements in this session, unless I
25 excepted to his statements.

26 THE COURT: Whatever that means.

1 MR. KANAREK: Unless I have excepted to his statements,
2 I joined with his statements at this session.

3 THE COURT: All right, gentlemen.

4 (Whereupon, at 5:00 p.m. an adjournment was
5 taken to reconvene Monday, December 21, 1970 at 9:00 a.m.)
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LOS ANGELES, CALIFORNIA, WEDNESDAY, DECEMBER 16, 1970

10:30 o'clock a.m.

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THE COURT: I wanted to come down and bring you up to date on what the situation is as far as the trial is concerned because the last time I was here I told you that we expected to resume today.

I met with the lawyers yesterday, and Mr. Keith has asked for three more additional days. In other words, he wants the rest of this week, and then he said that he will be prepared to proceed on Monday.

So, we will proceed on Monday.

Mr. Hughes has not been found and there is no information as to his whereabouts. So, Mr. Keith will be prepared to represent Miss Van Houten on Monday, and barring anything else, that is when we will resume.

Now, the arguments will proceed, then, from Monday through Wednesday, and we will recess at that time, so you will have the 24th off and, of course, Christmas, which is a Friday, and then we will resume again on the following Monday, the 28th.

That is all I have to report. Thank you very much.

JUROR BAER: Judge, is there anything that we should do or that could be done about our notes or summarizing, or is it too early to do something of that

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1 sort?

2 THE COURT: You, of course, cannot talk to each
3 other at this time.

4 JUROR BAER: No. I mean, strictly on our own.

5 THE COURT: You can't do that until the case is
6 finally submitted to you.

7 Again, I do want to remind you, although I am
8 sure it is not necessary, of the admonition: Do not
9 converse with anyone and, of course, with each other,
10 and also, with any other persons, family members, and so
11 forth, and do not permit them to talk to you about anything
12 connected with the case.

13 To answer your question, Mr. Baer, I don't
14 suppose it makes any difference what you do with your own
15 notes. They are yours, and if you want to review them
16 and organize them, why, I think you are perfectly free to
17 do so, as long as you don't discuss them with anybody
18 else.

19 JUROR BAER: Thank you.

20 JUROR ZAMORA: Would you be kind enough to repeat the
21 dates we are going back?

22 THE COURT: Yes. We will go back next Monday --
23 that is the 21st -- and then we will continue to next
24 Wednesday, that is the 23rd.

25 JUROR ZAMORA: That means just three days?

26 THE COURT: Three days.

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1 JUROR ZAMORA: I see.

2 THE COURT: Then you will be off on the 24th.

3 I thought that you might have some personal
4 things that you might want the bailiffs to do some
5 shopping for you or something, and that is the reason that
6 we are taking the 24th off.

7 And usually the Hall of Justice is quite
8 in a state of confusion on the day before Christmas
9 because the various offices down there, the District
10 Attorney and the Public Defender and the various other
11 offices, usually have some kind of Christmas parties
12 scheduled for the afternoon or noon, and as a result,
13 it is usually a waste of time to try to get any business
14 done on the 24th.

15 So, we will take the 24th off, and Christmas,
16 and then start again on the following Monday, the 28th.

17 JUROR ZAMORA: Yes.

18 JUROR MESMER: I have a question, Judge, and I
19 can withdraw it if I am out of order.

20 I don't understand the law, and really I am
21 not supposed to know the law, but I am wondering what
22 phase of the case we are in.

23 In other words, when we left, the defense
24 rested.

25 Now, since we have a new counsel -- well,
26 that is my question -- how are we going to proceed? Or

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shall I wait and find out on Monday?

THE COURT: So far as I know, we will proceed with argument, although I, of course, couldn't rule out the possibility that one or more counsel will make some kind of a motion. But as far as I know, we will be proceeding with argument on Monday.

I would imagine there may be some preliminary matters to take up the first thing Monday morning, but I would think by 10:00 o'clock we will probably be able to resume with arguments.

Thank you very much.

(Adjournment.)