

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 104

HON. CHARLES H. OLDER, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

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

Defendants.

46

No. A253156

COPY

REPORTERS' DAILY TRANSCRIPT

Friday, August 7, 1970

P. M. SESSION

APPEARANCES:

For the People:	AARON H. STOVITZ and VINCENT T. BUGLIOSI, 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.
For Linda Kasabian:	GARY FLEISCHMAN, Esq. RONALD L. GOLDMAN, Esq.

VOLUME 46

PAGES 6652 to 6724

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

I N D E X

PLAINTIFF'S WITNESSES:

KASABIAN, Linda

CROSS

6693 (K)

1 LOS ANGELES, CALIFORNIA, FRIDAY, AUGUST 7, 1970

2 2:00 o'clock p.m.

3 - - - - -

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

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

9 I have asked you to come in chambers with
10 regard to our juror Mr. Vitzelio whom I propose to call in
11 to ask a few more questions, regarding his request to be
12 excused, and to give counsel an opportunity to ask any
13 questions, and then we will proceed from there.

14 Will you call in Mr. Vitzelio, please.

15 (Walter Vitzelio enters the chambers of the
16 court.)

17 THE COURT: Sit down, Mr. Vitzelio.

18 I received your letter from the bailiff this
19 morning and I wanted to have you come back in to make sure
20 that you had a chance to express yourself on the matters
21 set forth in the letter, and also to inquire as to your
22 present state of mind and physical condition.

23 How is your health, sir?

24 MR. VITZELIO: Well, I am having trouble with my
25 stomach. I suppose you know that.

26 I went to the doctor the other night over to

1 the General Hospital and --

2 THE COURT: Keep your voice up, please.

3 THE WITNESS: (Indicating.) (Witness indicates
4 dentures.)

5 MR. VITZELIO: That is the reason I can't. I have
6 no gum raise. When I talk loud my teeth come out.

7 I went to the General Hospital. The way they
8 talked, they talked like they were going to pass a G.I.
9 on me, but they didn't, so I come back Tuesday night and
10 I think I had a glass of milk Tuesday night or something.
11 We came back late, after 8:00 o'clock.

12 Last night I didn't even go down to eat.
13
14
15
16
17
18
19
20
21
22
23
24
25
26

18 fls.

18-1

1 THE COURT: Were you feeling badly?

2 MR. VITZELIO: Yes.

3 If I eat -- in the morning I ate breakfast.
4 Wednesday morning I ate breakfast. Then I started to get a
5 belly ache.

6 So, then at noon, Wednesday, I got a turkey
7 sandwich and I ate half of it, and a glass of milk.

8 Wednesday night I didn't eat at all. I didn't
9 even go down when we went to lunch.

10 Yesterday morning I ate breakfast, and at noon
11 yesterday I just had a glass of milk.

12 Last night I didn't even go down at all again.

13 At night especially.

14 THE COURT: Because of the way you are feeling?

15 MR. VITZELIO: On account of my stomach. As soon as
16 I don't eat right, I get a belly ache. My stomach starts
17 to kick up.

18 What I am concerned with mostly is not myself
19 but my wife. She is there herself, absolutely alone. She
20 has got no transportation. If someone would tear the house
21 down, nobody would be there. She is all by herself.

22 She is supposed to come down Sunday, and a
23 party in Pasadena will bring her, but the party can't stay.
24 She is going to bring me some checks that I have to sign.

25 THE COURT: Now, in your letter to me this morning
26 you requested that you be excused from further jury duty.

1 Are you still of the same mind?

2 MR. VITZELIO: Yes, I am. On account of my wife.
3 I know she is going to be a nervous wreck. She is scared
4 to death.

5 THE COURT: Is that because of your concern for your
6 wife?

7 MR. VITZELIO: Myself, too.

8 You see, around home you get out in the sun.
9 You see, I have arthritis. See my fingers how they are
10 doubled up? My elbow, too.

11 If I get out in the sun every day and get a lot
12 of juices, fine. But here, like I tried to get papaya,
13 and they don't have papaya.

14 THE COURT: Are you sleeping well?

15 MR. VITZELIO: No.

16 Not from 1:00 o'clock on. My nerves. I am
17 worried about my wife.

18 THE COURT: Are you making the request on the basis
19 of both your own physical condition and your wife's?

20 MR. VITZELIO: Yes, that's right.

21 My teeth, too. On my teeth here I got a spot
22 now, on these plates. They are just rubbing.

23 When I am home, I fix them myself. I got a
24 dental burr. I put it in a drill press and grind it out
25 and with sandpaper I rub it off.

26 THE COURT: Does anyone wish to ask Mr. Vitzelio any
question?

18a-1

1 MR. FITZGERALD: Yes, if I might, sir.

2 What do you think would happen if you were
3 asked to continue as a juror?

4 MR. VITZELIO: I wouldn't want to.

5 In what way? What do you mean?

6 MR. FITZGERALD: Well, in regard to your mental frame
7 of mind?

8 MR. VITZELIO: I would be worrying all the time about
9 my wife. She is alone. She has got emphysema. She is
10 really sick.

11 I tell you what you do. You call up her
12 doctor and see what he says.

13 MR. FITZGERALD: We don't doubt that. I am simply
14 asking you what do you think will happen? What is your
15 frame of mind? Would it influence you?

16 MR. VITZELIO: Influence me in regard to the trial
17 as to which side I would vote for?

18 MR. FITZGERALD: Is it going to influence you in
19 any way?

20 MR. VITZELIO: No, it wouldn't influence me in any
21 way.

22 MR. FITZGERALD: Both the prosecution and the
23 defense are going to ask you to pay very close and
24 careful attention to the evidence in this case.

25 MR. VITZELIO: That's right.

26 MR. FITZGERALD: Is it going to influence you?

18a-2

1 MR. VITZELIO: No, it wouldn't influence me a bit.

2 Now, you take the other day --

3 MR. FITZGERALD: What is your problem then?

4 MR. VITZELIO: My problem? My health. I can't eat.
5 I have been missing all my meals and everything else.
6 I have got arthritis and everything else.

7 The way I am going now here, why, for the
8 time being, I'm not used to -- take my legs. I am start-
9 ing to get cramps now sitting there.

10 I got a cramp here the other day. I thought
11 I was going to have to stand up. You just recessed the
12 court in time. You had a recess or I would have had to
13 stand up.

14 THE COURT: Doesn't all of this have some effect
15 on your ability to concentrate on the testimony?

16 MR. FITZGERALD: Exactly?

17 MR. VITZELIO: That's right. I got a cramp. It
18 came right here. I don't know if you noticed it. I was
19 trying to stretch my legs and I didn't want to stand up.
20 Then you said we would have a recess for ten or fifteen
21 minutes.

22 THE COURT: Do you find these things are distracting
23 you from carefully listening to the testimony?

24 MR. VITZELIO: Sure. What I am afraid of here,
25 I am laying awake nights worrying about my wife. Today
26 I was up from 1:00 o'clock.

18a-3

1 The other night here I got up. I went to
2 bed at 12:30 and I laid there until 2:00 o'clock. I
3 looked at the clock and it was 2:00 o'clock. Then I fell
4 asleep. 3:30 I woke up. I laid there until 4:00. I
5 couldn't sleep no more. So I got up and went to the
6 recreation room and I stayed there until a quarter to
7 5:00.

8 I came back in. I had the clock set for 6:00
9 o'clock. I got an hour and 15 minutes sleep.

10 So, I had about two hours or so before that.

11 I just can't do it.

12 MR. SHINN: Your Honor, may I ask a couple of
13 questions?

18b Fla.

18B-1

1 MR. SHINN: These conditions that you are complaining
2 about now, did you have them before the trial started?

3 MR. VITZELIO: Yes, I had them, sure.

4 MR. SHINN: I mean, these conditions?

5 MR. VITZELIO: Yes, I had trouble with my stomach,
6 but I was watching it.

7 I don't drink at all, and I was drinking a lot
8 of juices and things like that and everything, and it was
9 going all right.

10 If I knew then that we were going to be eating
11 at 8:00 o'clock and going the way we are going, I would
12 have never been on the trial.

13 I am sorry, but I have got to tell you the
14 truth. I would rather be on some other cases where I
15 wouldn't be sequestered.

16 I like to be on jury duty. I wouldn't care if
17 I was sequestered four or five days for a jury. That would
18 be all right. I wouldn't mind that.

19 It is on account of the wife and myself.

20 MR. SHINN: Before that, at the time when you were
21 picked as a juror, we asked you questions and the Judge
22 asked you questions --

23 MR. VITZELIO: That's right.

24 MR. SHINN: -- and you thought there was nothing --

25 MR. VITZELIO: That's right. I was in good enough
26 health. I didn't have no trouble at all, you might say,

1 but I was living differently than I am now. I would go
2 and have juices, and one thing and another, and I was going
3 to bed early.

4 I didn't have no trouble with my wife, and she
5 got sick since then.

6 Now, the other day, when this newspaper deal
7 come up, which you asked me about if I could give a fair
8 trial to Mr. Manson, I said yes. I wanted to get out, the
9 way I was feeling, but if I would have said no, I couldn't
10 give you a fair trial, you probably would have excused me,
11 wouldn't you, if I insisted on it? But I felt that possi-
12 bly maybe it would be a mistrial, and I didn't want to see
13 the State go through all the trouble because of a mistrial.
14 So I said what I did. I didn't want to get out that
15 way.

19-1 1

Q Well, you told the truth?

2

A That's right, I wouldn't go --

3

4

Q Even though your physical complaints were such as to make you want to be excused?

5

6

A I could have said "I can't give them a trial," and you would have said "You're excused,"

7

8

But I didn't want to go that far, that is the way I felt about it.

9

10

THE COURT: We appreciate your frankness, Mr. Vitzelio, in telling us what is on your mind.

11

12

Any further questions?

13

MR. SHINN: No questions.

14

MR. KANAREK: No questions.

15

MR. FITZGERALD: No questions.

16

17

18

MR. HUGHES: No questions.

MR. STOVITZ: Is your Honor going to request that the juror, if he is excused, not discuss anything that has gone on at the trial?

19

20

21

22

THE COURT: Yes.

I don't know at the moment, Mr. Vitzelio, what disposition is going to be made. I want to talk to the attorneys after you leave the room.

23

24

But if you are excused, will you refrain from discussing --

25

26

MR. VITZELIO: Yes, sir.

THE COURT: -- with anyone what has been said in

19-2

1 chambers?

2 MR. VITZELIO: I won't say anything.

3 THE COURT: Or your conversations with the other
4 jurors while you have been on the jury.

5 MR. VITZELIO: No, I won't say nothing.

6 THE COURT: Then I will ask you to go back to the
7 jury room, Mr. Vitzelio for the time being.

8 MR. VITZELIO: I thank you.

9 (Mr. Vitzelio leaves the chambers of the
10 court.)

11 MR. FITZGERALD: Before the noon recess today I
12 indicated to the Court and other counsel there would likely
13 be a stipulation on the part of the defendants.

14 The District Attorneys pointed out to me that
15 there would likely be a requirement that the defendants
16 join in any stipulation.

17 Since then we have discussed it among ourselves,
18 that is, the attorneys themselves and the defendants
19 themselves, and certainly we have no intent to mislead
20 the court or other counsel, but there will not be a
21 stipulation.

22 We won't argue the matter, but there won't
23 be a stipulation as to him being excused.

24 MR. STOVITZ: So we understand, Mr. Fitzgerald,
25 would you require that the Court appoint a doctor to
26 examine Mr. Vitzelio to determine whether or not Mr. Vitzelio

1 can continue physically and mentally, or would you waive
2 such examination in lieu of Mr. Vitzelio's representation?

3 THE COURT: Well, we are not going to appoint a
4 doctor.

5 As a matter of fact I did see a doctor's report
6 of Mr. Vitzelio that was given to me, I believe, by the
7 bailiff the other day, or Captain Alley, or somebody, that
8 they obtained from the General Hospital. I think I
9 referred to it in chambers when I asked you gentlemen in
10 the other day while I was talking to you gentlemen about
11 this matter, in which the doctor described belladonna and
12 phenobarbital; that was the combination, and the other
13 consisted of a prescribed antacid and other kinds of
14 medicine for his abdominal pain.

15 So there is no question about it that he has
16 been suffering and it appears clear to the Court now that
17 this is preying on his mind as well as his physical
18 distress, coupled with his concern for his wife, and he
19 falls within the express terms of the statute, which
20 provide that when a juror requests to be excused, if it
21 appears to the Court that there is sufficient cause to
22 warrant it, he may be excused and replaced with an
23 alternate juror.

24 That is what I propose to do.

25 I think that he has lost his ability to
26 concentrate.

1 He is distracted by his problems, and what I
2 have heard from the bailiffs, it would appear to me that
3 he is beginning to create a problem with the other jurors
4 because of his constant complaining.

5 The bailiff mentioned some incidents to you
6 before noon the other day where he yelled out on the
7 balcony at night to the jurors who were passing below,
8 this was from a sixth story window.

9 I think it is clear from his testimony here,
10 in chambers, that he is not a hypochondriac -- well, he
11 is not a hypochondriac in the sense he does not have
12 anything physically wrong with him, because he apparently
13 does.

14 He apparently has a number of things which in
15 his mind appear to be wrong with him, whether or not that
16 is true I don't know.

17 In any event, I find that there is good cause
18 to excuse him.

19a fls.

19A

1 MR. KANAREK: Before your Honor rules, your Honor, may
2 I just make a motion, a very brief one?

3 THE COURT: Yes.

4 MR. KANAREK: The motion is, and --

5 THE COURT: Make it brief.

6 MR. KANAREK: Yes, the motion is, your Honor, that
7 your Honor appoint a physician to determine --

8 All of us here are not -- none of us purport to
9 be experts, therefore we would make the motion that your
10 Honor appoint doctors and then have your Honor make the
11 ruling predicated upon medical testimony.

12 THE COURT: I am not going to do that, Mr. Kanarek,
13 for two reasons:

14 First of all, he has been examined, and
15 doctors have prescribed medicine for him.

16 The second reason is that the nature of his
17 complaints are such that the doctors may very well not find
18 anything organically wrong with him, or any objective
19 findings.

20 It is sufficient that he thinks he is ill,
21 and it is decreasing his effectiveness, and it obviously
22 is, coupled with his concern for his wife.

23 MR. KANAREK: I was thinking of psychiatrists, your
24 Honor.

25 THE COURT: He was able to convince the doctors at
26 the General Hospital that he required prescriptions, and

not just a placebo, but, as I have indicated, two different kinds of prescribed medicines which he has been taking.

So I do find that there is sufficient cause to excuse him upon his request and I will do so in open court, and I will then request the clerk to draw by lot from the names of all of the alternate jurors a new regular juror to replace Mr. Vitzelio, after which the new juror will be given the regular juror's oath.

Anything further, gentlemen?

MR. SHINN: For the record, on behalf of Miss Atkins I would object to the Court's position on the grounds that there is insufficient evidence to indicate that this juror is not capable of proceeding with his duties as a juror.

THE COURT: Very well.

MR. KANAREK: I will join on behalf of Mr. Manson.

THE COURT: Very well.

MR. FITZGERALD: I have a matter that I would like the Court to hear me about -- is Mr. Bugliosi present?

MR. BUGLIOSI: Yes.

MR. FITZGERALD: Yes, he is.

-- that I would prefer to handle in open court outside the presence of the jury, that I would very earnestly ask, strenuously urge, the Court to hear.

I think there has been some misconduct on the part of an officer of the court, to-wit, one Gary Fleischman.

a3

1 We would like to present to the Court, and this
2 is an extraordinary matter that deals with the
3 suppression of evidence and the preventing of the defense
4 from subpoenaing certain witnesses on behalf of the
5 defense.

6 THE COURT: Do you wish to take it up at this time?

7 MR. FITZGERALD: I would prefer not to take it up in
8 chambers. I would just as soon take it up in open court.

9 And I might point out in this regard that your
10 Honor has been subject to a certain amount of pressure --

11 THE COURT: When you say open court, you don't mean
12 in front of the jury?

13 MR. FITZGERALD: No, I mean outside the presence of
14 the jury in open court.

15 Although I might point out that the Court has
16 been certainly subject to a certain amount of pressure from
17 the general public, and counsel in this case have been
18 subject to an immense amount of pressure to hold whatever
19 proceedings is infinitely possible to be held in open court,
20 in open court.

21 And I think it ought to be held in open court.

22 MR. BUGLIOSI: Can Mr. Fitzgerald just indicate the
23 general nature of the matter?

24 THE COURT: First of all, is it something -- I don't
25 want to take up trial time. We start our trial at 9:45
26 in the morning.

.9a4

1 MR. FITZGERALD: All right.

2 THE COURT: We have from 9:00 o'clock or earlier, on,
3 a good deal of time that could be used for motions and
4 other collateral matters, and I prefer to use that time
5 rather than take our normal trial time.

6 MR. HUGHES: I think this matter has such urgency now
7 in the matter of time that we may be able to thwart the
8 misconduct that has already taken place; we may be able to
9 remedy it if we bring it up at this time.

10 MR. FITZGERALD: If it is a question of raising it in
11 chambers or raising it in the court at a later time, I will
12 raise it now in chambers.

13 THE COURT: I am not going to force you to do that,
14 Mr. Fitzgerald.

15 MR. KAMAREK: We can do it in open court.

16 THE COURT: If it is urgent we will do it in open
17 court. The People are asking for some kind of a clue.

.9B

18
19
20
21
22
23
24
25
26

19b-1

MR. BUGLIOSI: Some type of clue.

MR. FITZGERALD: Well, Mr. Kanarek particularly has been attacked for attempting to impeach Linda Kasabian by way of statements made by her to a certain person who was a hitchhiker between Los Angeles and Taos, New Mexico, sometime in August or September of 1969.

I personally went to a considerable sacrifice to deliberately entice this individual to enter the State of California so that he could be served with process.

That person was seen by Gary Fleischman during the noon hour and has decided to depart the State of California.

I am referring to the Yana the Witch story that appeared in the Long Beach Press Independent Telegram, and I would like Mr. Fleischman to be interrogated by the Court in that regard.

We had attempted to ask questions of impeachment in good faith, intending to produce the person to whom the declarant made the statements.

MR. STOVITZ: We have no knowledge of this, your Honor, and whether your Honor sees fit to do this in open court outside the presence of the jury, or in chambers, whatever your Honor sees fit, we have no knowledge of it.

MR. KANAREK: We wish to do it in open court.

THE COURT: What is it you wish to do in open court?

MR. KANAREK: We wish to make motions, your Honor.

19b-2

1 MR. FITZGERALD: We wish to ask the good graces
2 of the Court to ask Mr. Fleischman the present whereabouts
3 and location of one James Breckenridge who is a percipient
4 witness to certain matters testified to by Linda Kasabian,
5 whom he talked to during the noon hour.

6 We are informed and believe, and on such informa-
7 tion and belief allege, that James Breckenridge was a
8 hitchhiker that was picked up by Linda Kasabian in a late
9 model Volvo automobile traveling from Los Angeles,
10 California, to Taos, New Mexico, in August or September of
11 1969, and that he made certain statements to her -- she
12 made certain statements to him concerning the events that
13 took place on August 8th and 9th, 1969.

14 That person was here in court this morning and
15 saw Mr. Fleischman over the noon hour, and we have been
16 informed by certain members of the press that that person
17 has left the State of California as a result of a conver-
18 sation with Mr. Fleischman.

19 MR. BUGLIOSI: Well, I agree, your Honor, this is a
20 very urgent matter and very important to the defense,
21 and I think it should be handled as quickly as possible.

22 But I don't see why it has to be handled
23 in front of the press.

24 MR. STOVITZ: The only reason it has to be handled
25 in front of the press is so Mr. Fitzgerald can go out
26 and make a statement in front of the TV cameras about that

1 That is the reason why.

2 THE COURT: Well, gentlemen, I don't think that is
3 a fair statement, Mr. Stovitz.

4 MR. FITZGERALD: Let's handle the whole trial in
5 chambers, Mr. Stovitz.

6 MR. STOVITZ: No, I think we should handle the
7 whole trial in the courtroom.

8 THE COURT: The publicity order is still in effect.
9 If testimony is expected or desired of Mr. Breckenridge,
10 then the testimony concerning him would come squarely
11 within the publicity order, when I say regarding him I
12 mean regarding his expected testimony, if there is to be
13 any, so I think that covers the situation so far as you
14 mentioned, Mr. Stovitz.

15 Mr. Fitzgerald is as aware of the order as
16 all other counsel.

17 MR. STOVITZ: Maybe your Honor does have the
18 benefit of reading the Free Press, perhaps your Honor
19 does not take the time to read the Free Press.

20 THE COURT: I must confess I am not a regular
21 reader.

22 MR. STOVITZ: In the Free Press there are articles
23 in there that are alleged to come from communist spies,
24 and I assure you Mr. Bugliosi and I do not talk to the
25 free press, your Honor.

26 MR. FITZGERALD: If there is any question about it

1 I have the interest of these defendants paramount in my
2 mind.

3 If there is any question about my motives or
4 my integrity I will stipulate the matter can be handled
5 in chambers. I am only interested in securing the attendance
6 of a witness. I am about willing to suggest that upon
7 suggestion of the prosecution Mr. Fleischman suggested to
8 this witness that he not be available for service.

9 MR. STOVITZ: I accuse Mr. Fitzgerald of latent
10 untruths.

11 MR. FITZGERALD: Let's handle it in chambers.

12 THE COURT: One at a time.

13 MR. BUGLIOSI: I can represent that the first time
14 I had heard about this guy being in court, the first time
15 is now when you spoke about it.

16 MR. STOVITZ: I can testify under oath that is a
17 fact as far as I am concerned.

18 MR. BUGLIOSI: I am surprised he is here. He is
19 crucial to the defendants. I think it should be handled
20 with the utmost urgency for the sake of the defendants.

21 This is the first time I heard he was in
22 the courtroom. I did not know the man's name. I did not
23 know he was here.

24 I did not know he spoke to Mr. Fleischman,
25 if you are implying I spoke to Gary about it you are 100
26 percent wrong. I am sure Aaron is in the same boat I am in.

1 THE COURT: What do you want to do, Mr. Fitzgerald,
2 just tell me what you want to do.

3 MR. FITZGERALD: I would like to have you interrogate--

4 THE COURT: I don't think that is appropriate, I know
5 nothing about it; there is nothing before me; there is
6 nothing in the way of an affidavit --

19c fls.

SC-1
1 MR. STOVITZ: May I suggest that Mr. Fleischman be
2 called in before he has an opportunity to be contaminated
3 by Mr. Bugliosi or myself.

4 THE COURT: The simple solution would seem to be to
5 invite him in now. Perhaps he is willing to tell you every-
6 thing he knows.

7 MR. FITZGERALD: Let's invite him in here now.

8 MR. KANAREK: The problem is this, your Honor has
9 made the rule that which happens in chambers cannot be
10 released.

11 Now, the prosecution has used the radio in
12 order to garner witnesses.

13 I, myself, have heard on radio their request
14 for a certain person to come forward.

15 Now if -- I don't mind --

16 THE COURT: That does not come within the publicity
17 order, if you want to go on the radio and ask for
18 Mr. Breckenridge, you may do so.

19 MR. KANAREK: Very well. My purpose is not to
20 embarrass anyone. The point is I just want to make sure
21 we can broadcast for Mr. Breckenridge.

22 THE COURT: Of course.

23 MR. KANAREK: Without violating the publicity order.

24 THE COURT: Absolutely.

25 MR. HUGHES: We are in a better position if the
26 press is not aware there is an issue here.

2
1 MR. BUGLIOSI: The problem is, spouses of the jurors
2 reading it in the newspapers and visiting the jurors on
3 the weekends.

4 I understand that came out in the Herald
5 yesterday, there was a headline about new Tate evidence
6 concerning a confession.

7 I don't know how they found out about it but
8 they did.

9 THE COURT: Will you ask Mr. Fleischman to come in?
10 It cannot do any harm. If you want to take some further
11 action you can make your request.

12 MR. FITZGERALD: Please.

13 (Mr. Fleischman and Mr. Goldman enter the
14 courtroom.)

15 THE COURT: You may sit there if you will.

16 MR. HUGHES: Your Honor, I am informed that the
17 gentleman from whom I borrowed this coat wants his coat
18 back.

19 What is your Honor's pleasure?

20 THE COURT: You are going to have to wear a coat
21 while you are in this court, Mr. Hughes.
22
23
24
25
26

0-1

1 THE CLERK: You can't refuse to give the man his
2 property back, Counsel.

3 THE COURT: That is a matter that we will let
4 Mr. Hughes worry about. All I am concerned about is
5 getting on with the trial.

6 The record will show, first of all, that counsel
7 and the parties are present; Mr. Goldman and Mr. Fleischman
8 are also present.

9 I have asked you to come in in connection with a
10 matter that was raised by Mr. Fitzgerald because we thought
11 perhaps it could be cleared up right now without the necessity
12 of taking it up in open court or going any further.

13 Mr. Fitzgerald, why don't you state what is on
14 your mind?

15 MR. FITZGERALD: Yes, sir.

16 Inasmuch as you are an attorney-at-law,
17 perhaps in the interests of expediency and time, I might
18 just briefly state what information has come to my attention.

19 It is such that there was one James Breckenridge,
20 who was present in Los Angeles County and actually present
21 in this courtroom this morning, who purported to be a
22 percipient witness to certain statements made by Linda
23 Kasabian during an automobile ride, a hitchhiking tour, if
24 it can be referred to as such, between Los Angeles,
25 California, and Taos, New Mexico, during the months of
26 August and September, 1969.

J-2

1 It is my information, Mr. Fleischman, that
2 the identity of this person and the fact that he was in
3 court was brought to your attention, and that you had a
4 conversation with this person.

5 That subsequent to your conversation he left
6 the immediate vicinity of the courtroom and informed you
7 that he was leaving the State of California and would,
8 therefore, not be available for the service of process on
9 behalf of the defendants.

10 Now, I understand that what I have alleged
11 involved some compound facts. I wonder if you would waive
12 any evidentiary objections and simply state what you know
13 in that regard.

14 MR. FLEISCHMAN: I will indeed.

15 He came up to me. He told me generally who he
16 was and he asked me what he should do.

17 I said, "That is up to you." And that was
18 the conversation.

19 I spoke with him outside. I had nothing more
20 nor less to say than that.

21 Where he has gone and who he is, in the sense
22 of where he lives, I don't know.

23 I had no further conversation with him other
24 than that. I said, "Sir, that is entirely up to you,"
25 and that was the conversation. It was very brief.

26 THE COURT: Did you notice, Mr. Fleischman, when you

1 came in, whether he was in the courtroom now, by any chance?

2 MR. FLEISCHMAN: He is not here now as far as I can
3 tell, and I had no further conversation with him other than
4 that. It was very brief.

5 MR. FITZGERALD: Did he say anything to you? What did
6 he say in terms of identifying himself?

JA

20a-1

1 MR. FLEISCHMAN: I chatted with him a bit. He went
2 to Harvard College, as I did; he said in Adams House. I
3 told him I was in Dunster.

4 We chatted about that, and that was the size
5 of it.

6 MR. FITZGERALD: Did he indicate that he was one
7 James Breckenridge?

8 MR. FLEISCHMAN: The name rings a bell because I went
9 to high school with a man named James Breckenridge.

10 I think that is what he said.

11 MR. FITZGERALD: Did he say he was the man that
12 traveled with Linda Kasabian from Los Angeles, or portions
13 of the trip from Los Angeles, to Taos, New Mexico?

14 MR. FLEISCHMAN: He didn't identify himself as to
15 how he knew her.

16 He told me that he was a man that had been
17 at Harvard College and said something to the Crimson about
18 her.

19 MR. FITZGERALD: Did he indicate and did you under-
20 stand that he was indicating that he had participated in
21 the article entitled Yana the Witch which appeared in the
22 Harvard Crimson, a Harvard newspaper at Harvard College?

23 MR. FLEISCHMAN: I didn't discuss it with him.

24 He did tell me that he was going to Harvard.
25 I had no further discussion except to say, "It is up to
26 you what you do."

1 MR. FITZGERALD: Did he indicate to you that he was
2 in the courtroom this morning and had seen Linda Kasabian?

3 MR. FLEISCHMAN: Yes.

4 MR. FITZGERALD: And did he indicate that that was
5 the person with whom he had driven or ridden from Los
6 Angeles to Taos, New Mexico?

7 MR. FLEISCHMAN: He simply said to me that he knew
8 Linda, and I didn't discuss it further with him.

9 He asked me what he should do?

10 And I said, "It is up to you."

11 MR. FITZGERALD: What he should do about what?

12 MR. FLEISCHMAN: With regard to staying here.

13 And I said, "It is entirely up to you, do as
14 you please."

15 MR. FITZGERALD: Didn't he indicate that he had some
16 connection with Linda in some form?

17 MR. FLEISCHMAN: He said he knew Linda. I didn't
18 discuss it with him. I didn't have time at that time.

19 MR. FITZGERALD: Actually, you took him down to the
20 seventh floor where you had an approximate five-minute
21 conversation with him; is that correct?

22 MR. FLEISCHMAN: No. As a matter of fact, I talked
23 to him outside the building when I was looking for my car,
24 very briefly outside in front of the building. We took
25 the elevator.

26 MR. FITZGERALD: Did he make some statements to you

1 about some cross-examination by Mr. Kanarek of Linda
2 Kasabian?

3 MR. FLEISCHMAN: I don't have any recollection of
4 it.

5 I don't think we even discussed what happened
6 in court.

7 MR. FITZGERALD: Did he apprise you that he was
8 not a resident of the State of California?

9 MR. FLEISCHMAN: He indicated to me that he was
10 unhappy with the cross-examination. Very briefly, he
11 said, "This is disgusting."

12 That may very well be the reason that he left.
13 I don't know. He looked unhappy.

14 I said, "Look, I am not going to tell you what
15 to do, it is up to you."

16 And that was the size of it.

20b fls16

40B-1

1 THE COURT: Is he presently going to Harvard, did you
2 say?

3 MR. FLEISCHMAN: He told me he was out of school but
4 he is going back next semester; and he also said he was
5 from Dallas, Texas.

6 MR. FITZGERALD: Did somebody refer you to him?

7 MR. FLEISCHMAN: A newspaper reporter walked up to
8 me and said --

9 MR. FITZGERALD: Mary Weicwinder?

10 MR. FLEISCHMAN: Yes. She said, "This is Jim
11 Breckenridge."

12 MR. FITZGERALD: Did you know her as a person who
13 had written an article entitled "Yana, The Witch"?

14 MR. FLEISCHMAN: I did not. I didn't connect the name
15 with the article.

16 MR. FITZGERALD: Didn't you think it was pretty
17 peculiar that somebody walked up to you and said they knew
18 Linda and asked you whether they should stay around?

19 MR. FLEISCHMAN: I didn't have any opinion on it
20 whatsoever.

21 MR. FITZGERALD: Bearing in mind your responsibilities
22 as an officer of the court, have you told us everything
23 that you know about this matter that might be helpful to
24 us in our capacity as defense attorneys?

25 MR. FLEISCHMAN: Indeed I have, sir.

26 MR. SHINN: I have a few questions, your Honor.

1 Just a few, a very few.

2 THE COURT: Bear in mind that Mr. Fleischman is not
3 testifying.

4 MR. SHINN: Yes, I will bear in mind he is not a
5 witness.

6 THE COURT: He is not testifying under oath. He
7 hasn't been called by anyone. I asked him to come in
8 informally, and I felt that perhaps the matter could be
9 cleared up.

10 MR. FLEISCHMAN: I will be glad to.

11 MR. SHINN: Could you describe his appearance for
12 us?

13 MR. FLEISCHMAN: He is about six-foot two and I
14 think he has blonde hair. I can't remember whether his
15 hair was long or short, but I think it was longer than
16 mine was when I was at Harvard.

17 MR. SHINN: Approximately how old would you think he
18 was?

19 MR. FLEISCHMAN: 19 or 20.

20 MR. SHINN: Was he sitting in the courtroom when you
21 first saw him?

22 MR. FLEISCHMAN: Yes. I didn't know who he was.

23 MR. SHINN: He was in the courtroom?

24 MR. FLEISCHMAN: I didn't notice him.

25 MR. SHINN: You didn't see him in the courtroom?

26 MR. FLEISCHMAN: He told me he was sitting in the
courtroom.

~~MR. SHINN: Did he tell you whether he was sitting~~

in the front row, the back row, or where?

1 MR. FLEISCHMAN: I didn't ask him.

2 MR. BUGLIOSI: Did he tell you how he got a seat?

3 MR. FLEISCHMAN: That I was interested in.

4 MR. SHINN: Yes, did he tell you how he got a seat?

5 MR. FLEISCHMAN: No.

6 MR. BUGLIOSI: Did Linda see him, as far as you know?

7 MR. FLEISCHMAN: I can't recall.

8 MR. BUGLIOSI: Gary, have you told this to either
9 Aaron or me?

10 MR. FLEISCHMAN: No.

11 MR. STOVITZ: Have we seen you during the lunch
12 hour?

13 MR. FLEISCHMAN: No.
14
15
16
17
18
19
20
21
22
23
24
25
26

20c-1

1 MR. STOVITZ: Have we talked to you on the telephone
2 during the lunch hour?

3 MR. FLEISCHMAN: Indeed not.

4 MR. STOVITZ: Mr. Goldman, did you talk to us during
5 the lunch hour?

6 MR. GOLDMAN: Not this lunch hour.

7 MR. STOVITZ: Have you seen us during the lunch hour?

8 MR. GOLDMAN: No.

9 MR. BUGLIOSI: Did you send any vibrations to us
10 during this lunch hour?

11 MR. FLEISCHMAN: In my judgment, the guy left because
12 he was irritated with the cross-examination. I don't know.

13 THE COURT: Anything further, gentlemen?

14 All right. Let's go back to court and we will
15 take --

16 MR. KANAREK: May we inquire from Mr. Frediani who
17 obtained a seat for him?

18 MR. STOVITZ: I would think it would be easier to
19 do that outside. The bailiff knows everybody's seat.

20 THE COURT: Yes. Can you do that, Mr. Murray?
21 Find out if Mr. Breckenridge -- what is the first name?

22 MR. FLEISCHMAN: James, I think it was.

23 THE COURT: James Breckenridge, find out if he had
24 a reserved seat, or find out if he came in on the public's
25 seats.

26 Put a note on the bench as soon as you have

20c-2

1 the information so I can give it to counsel.

2 THE BAILIFF: Yes, sir.

3 THE COURT: We will go back into court and take care
4 of Mr. Vitzelio's matter first and then resume the cross-
5 examination.

6 While we are here, Mr. Kanarek, do you have
7 any kind of estimate? I don't intend to hold you to it.

8 MR. KANAREK: I have tried to follow --

9 THE COURT: Let's not prolong it. Do you have an
10 estimate or don't you?

11 MR. KANAREK: No, I don't have any estimate. No,
12 I don't, your Honor.

13 I want to be candid with the Court because, you
14 see, this Breckenridge matter, I have not gone into the
15 Yana the Witch article the way I would have because of
16 this foundational aspect, trying to be in good faith with
17 the Court, and there is material in here that would lay
18 the foundation with Linda Kasabian.

19 If this man Breckenridge is going to be avail-
20 able, I feel free now to go ahead and lay this foundation
21 because this is the first that his name has been stated
22 to me. I never knew his name until these proceedings
23 right today.

24 So, therefore, I am going to go ahead, and
25 I want to inform Mr. Bugliosi that I feel free now, because
26 there is a way of getting him here by way of a certificate

1 where the Court -- I don't have to belabor it -- so I
2 feel free to lay the foundation by asking these questions.

3 THE COURT: It appears that there is such a man.

4 MR. BUGLIOSI: We have never questioned that, your
5 Honor.

6 MR. FITZGERALD: And I represented to the Court in
7 the Wednesday P.M. Session of this court that I was making
8 every effort to bring this man within the State of Cali-
9 fornia and subpoena him as a witness, and it was in good
10 faith that we were attempting to lay the foundation for
11 impeachment of Linda Kasabian.

20d fls.

20-D-1

1 MR. STOVITZ: May I be excused for about eight
2 minutes to see if I can get a jacket for Mr. Hughes?

3 THE COURT: Yes.

4 MR. BUGLIOSI: So far as we know, this man has the
5 characteristics of being rather evanescent. He appears for
6 one second and says a couple of things and then vanishes.
7 He is almost a shadowy individual.

8 THE COURT: Yes. He apparently has some point of
9 contact, Harvard University.

10 MR. BUGLIOSI: Assuming he is legitimate.

11 THE COURT: Some kind of an address in Dallas.

12 MR. BUGLIOSI: Assuming he is legitimate, your Honor,
13 and this is an assumption which I am not going to make.

14 THE COURT: I believe that Mr. Kanarek should be
15 permitted to -- what do you expect to do, inquire into the
16 conversations that she had with this man?

17 MR. KANAREK: That's right, your Honor.

18 THE COURT: As to what she said to him?

19 MR. KANAREK: Statements that she made, right.
20 We can lay the foundation for impeachment.

21 MR. BUGLIOSI: Your Honor, if she says, "No, I
22 didn't make the statement" --

23 MR. KANAREK: Then we will get Mr. Breckenridge.

24 MR. BUGLIOSI: They don't know where he is.

25 MR. KANAREK: We don't have the resources of the
26 District Attorney's office but --

2002

1 THE COURT: Let's not get into that.

2 MR. BUGLIOSI: Give us all the leads you want and
3 I will assure you that I will make available to you the
4 District Attorney's Bureau of Investigation and the
5 Sheriff's Department's Bureau.

6 Give me the leads.

7 MR. KANAREK: Let's go into court and ask.

8 MR. FITZGERALD: That is good enough for me.

9 MR. BUGLIOSI: But it should be prior to this
10 cross-examination.

11 MR. FITZGERALD: I might point out to the Court, and
12 I am sure Mr. Bugliosi will agree, that the statements
13 contained, or the statements we purport were made by
14 Linda Kasabian to James Breckenridge are in line with and
15 in context with the evidence in this case. That is to say,
16 that we expect that Linda Kasabian made certain statements
17 concerning her character as a "witch," that she made
18 certain statements about "piggies," and she made certain
19 statements about persons who were members of the establish-
20 ment in California, that she made certain statements about
21 a group of people she was living with in Chatsworth,
22 California, et cetera.

23 It would appear from the examination of the
24 context of the material that it is relevant and germane
25 to the issues here.

26 MR. BUGLIOSI: The other side of the coin is that she

1 informed me that she is going to answer that she was telling
2 this evanescent individual, she was telling him what
3 Mr. Manson and the other people in the Family told her, and
4 these were not her words.

5 In other words, it appears that she is going
6 to deny this.

7 In other words, who is going to refute the
8 denial?

9 MR. FITZGERALD: In other words, she admits that she
10 had a conversation with such a man?

20E

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

20e-1

1 MR. BUGLIOSI: There is no question about that.

2 MR. FITZGERALD: All right.

3 MR. BUGLIOSI: There is no question about it.

4 MR. FITZGERALD: Then we are obviously doing it in
5 good faith.

6 MR. BUGLIOSI: I am not saying you are not doing it
7 in good faith. I am saying that she said she was so
8 shocked by all these weird things she was told at Spahn
9 Ranch that --

10 THE COURT: That is a matter of redirect, if it gets
11 to that point.

12 MR. BUGLIOSI: The point that I am saying, she is
13 going to deny saying she believed these things.

14 She is telling this man what they told her.

15 MR. KANAREK: The record reveals she said she was
16 a witch, and she told him she was a witch.

17 THE COURT: Let's not try the case in here.

18 Are you ready to proceed?

19 MR. HUGHES: I believe so.

20 THE CLERK: Mr. Stovitz is going to go and try to
21 get Mr. Hughes a jacket.

22 THE COURT: We won't delay the trial pending that.

23 (Whereupon the following proceedings occur in
24 open court, all counsel, defendants and jurors present:)

25 THE COURT: All parties, counsel and jurors are
26 present.

20e-2

1 Mr. Vitzelio, one of our regular jurors, has
2 requested the Court to excuse him from further jury
3 service for personal reasons, and after conferring with
4 Mr. Vitzelio in chambers along with all the parties and
5 counsel, I have concluded that there is good cause for
6 granting his request, and he will be excused from further
7 jury service.

8 I want to thank you, Mr. Vitzelio, for your
9 service thus far. I know it has been a sacrifice for you
10 and I do thank you.

11 You are now excused, sir.

12 The Clerk will draw the name of a new regular
13 juror by lot from the names of all of the alternate jurors.

14 THE CLERK: Larry D. Sheely.

15 THE COURT: Mr. Sheely, will you please take Mr.
16 Vitzelio's seat, and the Clerk will administer the oath
17 to Mr. Sheely as a regular juror.

18 THE CLERK: Will you stand and raise your right hand.

19 You do solemnly swear that you will well and
20 truly try the cause now pending before this court and a
21 true verdict render therein according to the evidence and
22 the instructions of the Court, so help you God?

23 MR. SHEELY: I do.

24 THE COURT: Mr. Kanarek, you may proceed with your
25 cross-examination.

26 MR. KANAREK: Thank you, your Honor.

(Linda Kasabian resumes the stand.)

CROSS-EXAMINATION (Continued)

BY MR. KANAREK:

Q Mrs. Kasabian, did you see the tall man that you hitchhiked with in New Mexico in this courtroom this morning?

A I wasn't sure that it was him until on my lunch hour. I questioned if it was him, and I found out it was.

Q Whom did you question?

A My attorney.

Q And what did your attorney tell you?

MR. BUGLIOSI: This calls for hearsay.

MR. KANAREK: Your Honor, this goes to state of mind.

MR. BUGLIOSI: What the attorney told her is certainly hearsay.

MR. KANAREK: It is not hearsay.

MR. FLEISCHMAN: Privileged.

MR. KANAREK: And it is not privileged either, your Honor, in the context of these proceedings.

THE COURT: The objection is sustained.

BY MR. KANAREK:

Q Did you have a conversation with your attorney concerning this person that you saw or think you saw this morning in this courtroom that was in New Mexico with you?

1 MR. STOVITZ: I object to the question, your Honor,
2 as being ambiguous.

3 She said she saw a person here in the courtroom.
4 She says she thinks it is the same person. The way the
5 question is asked, it is ambiguous.

6 MR. HUGHES: The answer is in.

7 MR. GOLDMAN: We also object on the ground of
8 privilege.

9 THE COURT: Sustained.

10 MR. KANAREK: May we approach the bench, your Honor?

11 THE COURT: It is not necessary, Mr. Kanarek. We
12 have gone over this.

13 Let's proceed.

14 MR. KANAREK: Not in this connection, your Honor.
15 However, I will proceed.

20 of file.

P-1

1 Q BY MR. KANAREK: Mrs. Kasabian, the man that
2 you saw in this courtroom, would you tell us about where he
3 was sitting?

4 A I believe it was chair No. 77, or the one in
5 the front of it. I can't really see.

6 Q The one in front of 77?

7 A Yes.

8 Q 77, from where you are, is in which row?

9 A I guess it is the second row. It is hard to
10 tell.

11 Q He was sitting in about No. 77, is that right?

12 A He was in the first row, so I believe it was
13 that seat.

14 Q Now, as you were testifying, you knew that there
15 was an order excluding witnesses from the courtroom, is
16 that correct?

17 MR. BUGLIOSI: This is argumentative, your Honor.
18 It also calls for a legal conclusion.

19 THE COURT: Sustained.

20 MR. KANAREK: Q Did you know that there was an
21 order excluding witnesses from the court?

22 MR. BUGLIOSI: Same objection.

23 THE COURT: Sustained.

24 MR. KANAREK: Q Was there any sign of
25 recognition made by you to this person in the courtroom?

26 A No.

20F2

1 Q There was no communication by any movement of
2 the face or any portion of the body as far as anything that
3 you have observed?

4 A Well, I looked at him and I said to myself,
5 "I think I know you," but I couldn't quite place his face.

6 Q I see.

7 Did he make any kind of a motion to you?

8 A No.

9 Q And did you tell your attorney about this
10 during the noon hour?

11 MR. GOLDMAN: Objection, your Honor.

12 MR. STOVITZ: It calls for hearsay, your Honor.

13 THE COURT: I didn't hear the question. Read the
14 question.

15 (The question was read by the reporter.)

16 THE COURT: Sustained.

17 MR. KANAREK: Q Did you have a conversation
18 with Mr. Fleischman during the noon hour?

19 MR. GOLDMAN: Objection on privilege, your Honor.

20 MR. KANAREK: The fact of conversation, your Honor,
21 is not privileged.

22 MR. BUGLIOSI: Then what is the relevance?

23 I object on the ground that it is irrelevant,
24 then, your Honor.

25 THE COURT: Overruled. You may answer.

26 THE WITNESS: Yes.

MR. KANAREK: Q Was that Mr. Fleischman?

OF3

1 A Yes.

2 Q Did you have a conversation with Mr. Goldman
3 during the noon hour?

4 A Yes.

5 Q During the noon hour, did you speak to
6 Mr. Bugliosi?

7 A No.

8 Q Or Mr. Stovitz?

9 A No.

10 Q Did you speak to any law enforcement officers
11 during the noon hour?

12 MR. STOVITZ: other than the transportation officers,
13 Counsel?

14 I am objecting to the question as ambiguous,
15 your Honor. There are transportation officers that are law
16 enforcement officers, and I believe that she speaks to them.

17 THE COURT: She may say so if she did.

18 MR. KANAREK: Presumably she will be questioned on
19 redirect.

20 THE COURT: The objection is overruled. You may answer.

21 THE WITNESS: Yes, I have spoken to the transportation
22 officers, the officers that are with me all day.

23 MR. KANAREK: Q You spoke to them during the
24 noon hour?

25 A Yes.

26 Q Now, you say that money has ever meant anything

1 to you; is that right, Mrs. Kasabian?

2 A I always usually managed without it somehow.

3 Q You never have been concerned too much about
4 having money or not?

5 A No.

6 Q Is that right?

7 A Right.

8 Q And you can get along without it?

9 A Yes.

10 Q Right?

11 A Yes.

12 Q And you don't go out of your way to get money?

13 A No.

14 Q Is that right?

15 A Right.

16 Q Then would you tell us, Mrs. Kasabian, why, on
17 the day prior to the date you were arrested, you made
18 application for welfare in Milford, New Hampshire?

19 MR. STOVITZ: Objected to, your Honor, as immaterial
20 and irrelevant, and assuming a fact not in evidence.

21 THE COURT: Just one moment, Mr. Stovitz.

22 Read the question, please.

23 (Whereupon, the question was read by the
24 reporter.)
25
26

20g-1

1 THE COURT: What was the objection?

2 MR. STOVITZ: Immaterial and irrelevant, and assumes
3 a fact not in evidence, your Honor.

4 THE COURT: On the latter ground, the objection will
5 be sustained.

6 MR. KANAREK: Q Mrs. Kasabian, did you, on the
7 day before you were arrested, the day before you knew that
8 anyone was seeking you in the State of New Hampshire or
9 anywhere in connection with this case, did you seek welfare?
10 Did you go out and try to get some welfare?

11 A I don't know if it was the day before, but I
12 did go out looking for welfare, yes.

13 Q You wanted the welfare because you wanted the
14 money that the welfare brought you?

15 A Yes.

16 Q Correct?

17 A Yes.

18 Q Now, Mrs. Kasabian, would you tell me why it
19 is that you don't trust Mr. Fitzgerald to talk to you?

20 A I spoke to him yesterday, and just the way he
21 spoke, the things that he said made me distrust him.

22 Q I see.

23 What did he say that made you distrust him?

24 MR. STOVITZ: That is objected to as calling for
25 hearsay.

26 THE COURT: Sustained.

20g-2

1 MR. KANAREK: Well, your Honor, it is not offered
2 for the truth of anything asserted. It is offered for the
3 effect on her state of mind.

4 THE COURT: It is also irrelevant.

5 MR. KANAREK: Well, your Honor, I think -- very well.

6 May I have just a moment, your Honor?

7 THE COURT: Yes.

8 (Mr. Kanarek and Mr. Fitzgerald confer.)

9 MR. KANAREK: Q Did you say, Mrs. Kasabian, that
10 Mr. Fitzgerald is the evillest one of all, that he was a
11 devil?

12 A No, I did not.

13 Q You didn't make that statement?

14 A No.

15 Q Then would you tell us, Mrs. Kasabian, what
16 was your conversation with Mr. Fitzgerald?

17 MR. STOVITZ: That is objected to as outside the
18 scope of direct examination, and being immaterial and
19 irrelevant.

20 MR. KANAREK: Your Honor, it is offered on the issue
21 of bias and prejudice, your Honor, in that one of the
22 grounds for impeachment is to show --

23 THE COURT: I don't have to hear the argument,
24 Mr. Kanarek. I am familiar with it.

25 The objection is sustained.
26

1 BY MR. KANAREK:

2 Q Well, then, Mrs. Kasabian, would you tell us
3 why it is that you don't trust Mr. Shinn?

4 A I was just told by my attorneys not to speak
5 to any of them.

6 MR. KANAREK: I see.

7 Q Now, that is the real reason, isn't it, Mrs.
8 Kasabian?

9 A Yes.

10 Q Your lawyers told you not to talk to anybody?

11 A Yes.

12 Q Right?

13 A Yes.

14 Q Except them, or the prosecution; is that
15 right?

16 A Well, he told me not to talk to you because you
17 can't be trusted.

18 Q I can't be trusted; right?

19 A Yes.

20 Q Mr. Hughes can't be trusted?

21 A Right.

22 Q But Mr. Bugliosi can be trusted; right?

23 A I guess so.

24 Q That is what your lawyer told you; right?

25 A Yes.

26 MR. KANAREK: Then, your Honor, I would like to

6702

1 approach the bench to make a motion.

2 THE COURT: Very well.

3 (Whereupon all counsel approach the bench and
4 the following proceedings occur at the bench outside of
5 the hearing of the hearing of the jury:)

6 MR. KANAREK: Your Honor, this is clearly a suppression
7 of evidence within the contemplation of the Due Process
8 clause of the 14th Amendment, both under California and
9 Federal law.

10 You cannot deprive a person in a capital case,
11 or in any case, of the power to speak with a witness,
12 especially in the context of these proceedings.

20h fls.

JH-1

1 THE COURT: Neither can you force a witness to
2 testify or to talk to anyone if she doesn't want to.

3 MR. KANAREK: But, your Honor, we have put in here
4 -- we have state action here by way of this immunity.

5 THE COURT: State action?

6 MR. KANAREK: State action, because of negotiations --

7 THE COURT: We don't have to go through all that
8 again.

9 MR. KANAREK: Your Honor, then I make a motion that
10 all of this witness' testimony -- a motion to strike all
11 the testimony of this particular witness; or in the
12 alternative, your Honor, I make a motion that we be
13 allowed to take her deposition out of the presence of the
14 jurors.

15 MR. STOVITZ: What do you think you have been doing
16 for nine days?

17 MR. FITZGERALD: Well, I think the point is this:
18 The only constitutionally-permissible procedure would be
19 for this witness to take the witness stand, be asked
20 questions, and then to assert her privilege against self-
21 incrimination, whereupon the prosecution would offer her
22 immunity, and she would testify.

23 With the situation we have here now, she has a
24 dual status, that of a witness and that of a defendant.

25 Now, your Honor may be sustaining objections
26 because your Honor is concerned not only about the

20H2

1 attorney-client privilege but concerned about certain
2 incriminatory statements she may have made to her counsel,
3 and I think that is the thrust of Mr. Kanarek's objection.

4 If her status was clear --

5 THE COURT: That isn't the reason that I sustained
6 the objection. I sustained the objection where the privilege
7 has been asserted because of the privilege.

8 She has already made incriminatory statements
9 from the witness stand. I don't see how she can
10 incriminate herself any more than she has. That isn't
11 the reason I sustained the objection.

12 MR. BUGLIOSI: Your Honor, all witnesses, whether a
13 defendant or not, are entitled to have a lawyer present
14 them. The purpose of having a lawyer is to give legal
15 advice.

16 Her lawyer apparently has advised her not to
17 talk to these people. I find no suppression of evidence or
18 anything in that.

19 THE COURT: That is perfectly true. But there is
20 also something to what Mr. Kanarek and Mr. Fitzgerald said
21 with respect to Mrs. Kasabian, who has a rather anomalous
22 position in the case by virtue of her being a defendant and
23 also the chief prosecution witness, or apparently the chief
24 prosecution witness, at least so far, with a promise,
25 apparently, if not of immunity, at least a recommendation
26 for immunity; and in all probability, whether the Court

1 would grant her immunity or not, she would have it as a
2 matter of law if you ever tried to use her testimony in
3 this case against her.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

21-1

1 That is a thought off the top of my head.

2 MR. STOVITZ: This case, People vs. Schwartz, holds
3 that we cannot prosecute her.

4 THE COURT: I strongly doubt anyone could ever use
5 those statements against her.

6 MR. BUGLIOSI: No matter what hat she is wearing,
7 your Honor, whether as a defendant or a witness who is
8 not a defendant, no matter what hat, she is entitled to
9 a lawyer, and the lawyer can give her advice, and it is
10 perfectly proper advice irrespective of what hat she is
11 wearing, or if she is wearing two hats I think the same
12 rule applies. She is a witness.

13 MR. STOVITZ: And when counsel say they did not have
14 an opportunity to question her, yes, they did not have an
15 opportunity to go up and say to Linda "When is the last
16 time you had a normal menstrual period."

17 But they had full discovery; they have eight
18 or nine handwritten notes; they even went back and
19 investigated that she had an application for welfare in
20 New Hampshire.

21 They have got, even, secret Social Service
22 reports. Those Social Service reports are secret and
23 cannot be subpoenaed without an order of the court. They
24 got those.

25 They had full discovery from the very beginning
26 of this case.

1 Mrs. Chapman won't talk to the defendants'
2 attorneys and she won't even talk to us unless she feels
3 right.

4 THE COURT: Mr. Kanarek, while I understand what you are
5 saying, I am at a loss to understand, for example, the
6 necessity for a deposition.

7 If the witness is not willing to tell the truth
8 under oath from the witness stand, what makes you think you
9 are going to get anything out of her when she is not testi-
10 fying under oath?

11 MR. KANAREK: If I may attempt to explain to the
12 Court what my position is.

13 THE COURT: If she lies on the witness stand she
14 jeopardizes her immunity.

15 MR. KANAREK: No, your Honor, the point is, the
16 thrust of People vs. Walter and other cases is that her
17 state of mind, when she is granted immunity, is that it is
18 firm in her mind that she has the immunity, and not being
19 granted the immunity poisons her testimony because she
20 knows she is beholden to the prosecution.

21 It is her state of mind that is significant.

22 Whenever you get to a close question, let's
23 say, how she should answer it, she is going to answer
24 in a way that is going to be favorable to the prosecution.

25 People vs. Walter sets it out so beautifully.

26 In fact, in People vs. Walter there was a

1 conspiracy and it is remarkably analogous to this case
2 and therefore it is incumbent, in so many words, in the
3 Walter case, the prosecution must grant the immunity at
4 the earliest possible time so that her testimony is not
5 colored by the thought of reward.

6 And that is exactly what she is doing here.

7 Furthermore, if I may finish it, we have a
8 denial of due process in that Mr. -- and I say this with --
9 Mr. Bugliosi is going to say I am accusing him of
10 suborning perjury.

11 Mr. Bugliosi is an advocate. It is not for
12 me to accuse him of suborning perjury.

13 I am merely stating facts. The fact is Mr.
14 Bugliosi in many many interviews with him, it is my
15 position, it is a fundamental denial of due process for
16 Mr. Bugliosi to interview her and not record every word
17 she has uttered, that is, stenographically and/or in a
18 recording machine, because when Mr. Bugliosi was inter-
19 viewing her he was -- let us give Mr. Bugliosi every
20 benefit of the doubt, he was programming her.

21a fls.

21-A-1

1 MR. STOVITZ: There is no regulation that we have to
2 use a recording device, in Civil Service.

3 MR. KANAREK: I make a motion the prosecution give
4 her immunity at this time.

5 THE COURT: I think she has already achieved her
6 immunity.

7 MR. KANAREK: Let her know it.

8 THE COURT: I would have no objection to take her
9 into chambers and tell her that.

10 MR. KANAREK: I ask the jury be excused and do it in
11 open court.

12 THE COURT: I have no hesitation to tell her I will
13 grant her immunity if she asks for immunity.

14 MR. FITZGERALD: Her status is crucial.

15 THE COURT: Wait a minute, the prosecutors have
16 stepped away for a moment.

17 MR. STOVITZ: Your Honor stated that if we present a
18 petition for immunity to your Honor your Honor would sign
19 the petition for immunity, because in effect she has been
20 granted immunity by the District Attorney's office, making
21 the representation or the agreement with her attorney for
22 immunity.

23 THE COURT: I did not quite follow your statement.

24 MR. STOVITZ: We have prepared immunity papers.

25 THE COURT: Yes.

26 MR. STOVITZ: We were going to ask a Superior Court

a2
1 to sign the order granting her immunity.

2 Your Honor could do it under Section 1099, if
3 your Honor were required.

4 THE COURT: I would be willing to do it on condition
5 that I first have an opportunity, I would like counsel to
6 assist me in researching questions as to whether or not she
7 has not already achieved immunity as a matter of law.

8 I believe she has.

9 MR. STOVITZ: I have the brief filed in Judge Parker's
10 court on the Mary Brunner case on writ of habeas corpus.

11 It has the latest cases on it, according to the
12 reasoning of Judge Parker Miss Brunner had received
13 immunity by the promise of immunity by the District
14 Attorney's office.

15 People vs. Schwartz, a 201 Cal. case, states
16 when a District Attorney's office makes an agreement with a
17 witness for conditional immunity, if that witness does not
18 fulfill the conditions the office not only cannot use the
19 statement against that witness, but cannot prosecute that
20 witness.

21 I have those cases, your Honor, and there is a
22 much more recent case. I think it is in 3 Cal. 3rd, which
23 I also have.

24 THE COURT: Isn't there a United States Supreme
25 Court case on this point?

26 MR. STOVITZ: Yes, your Honor, it might be a Circuit

21a3

1 Court of Appeals, but I have those cases.

2 THE COURT: How long will all this take?

3 MR. STOVITZ: It will take me one minute to get the
4 brief from my case, and it will take me about five minutes
5 to go down to my desk, get the petition, and we can do it
6 right now.

7 THE COURT: All right, we will take a recess then.

8 We will take a recess now and then resume when
9 we are ready.

10 MR. HUGHES: It is 82 in the courtroom. I checked
11 the thermometer.

12 MR. BUGLIOSI: Can this be handled in the chambers,
13 the immunity bit?

14 THE COURT: I want to read the briefs first.

15 MR. BUGLIOSI: Yes.

16 THE COURT: I want to make sure I understand
17 precisely what the law is on this point before I proceed.

18 MR. BUGLIOSI: The full discussion about the law?

19 THE COURT: Yes.

20 MR. BUGLIOSI: Can that be handled in chambers?

21 THE COURT: Yes.

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

24 THE COURT: Ladies and gentlemen, do not converse
25 with anyone, nor form or express an opinion regarding the
26 case until it is finally submitted to you.

1 The Court will take a recess now for approxi-
2 mately 15 minutes.

3 (Recess.)
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

21b-1

(The following proceedings were had in the chambers of the court out of the presence of the jury and the defendants, all counsel being present:)

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

First, gentlemen, the bailiff has handed me a little note here regarding Mr. Breckenridge, and his seating in the courtroom this morning, and apparently, after talking with Mr. Frediani, the criminal court coordinator, he had learned from Mr. Frediani that Mr. Breckenridge was seated in seat No. 88 and he believes, although he apparently does not clearly remember, that it was at the request of an attorney.

He does not know whether it was Mrs. Kasabian's attorney or someone else.

MR. STOVITZ: It was not at the request of the People, your Honor, I can't get my own wife into the courtroom.

MR. KANAREK: Then I would ask that we have an evidentiary hearing under oath, because this is most important.

MR. FITZGERALD: I just might inquire --

THE COURT: We know he was here. He already talked to Mr. Fleischman.

MR. HUGHES: No. 88 is the first row behind the rail.

THE COURT: Yes.

1 MR. STOVITZ: Right behind the glass enclosure
2 there, the wire behind the glass.

3 THE COURT: That is a seat, as I recall, reserved
4 by the Citizen News.

5 Apparently when they don't show up by a
6 certain time those seats are made available to either
7 the general public or, if they have special requests of
8 some kind, by Frediani, they can accommodate somebody.

9 Now, on the immunity matter I have your
10 agreement here -- of course this agreement does not
11 really fit now.

12 MR. STOVITZ: Well, it does not fit in the sense
13 that she has not refused to testify.

14 THE COURT: That's right.

15 MR. STOVITZ: However, the form of the petition,
16 your Honor, is one that is commonly used when a witness
17 is called to the witness stand and then states that she
18 did not want to testify, and then the Court has her
19 sign a waiver of her hearing, go ahead and sign it.

20 However, it would still apply as far as
21 Mr. Watson is concerned, and if necessary we would make
22 the technical point that the Watson case is still pending
23 and this would grant her immunity in this case as well
24 as the Watson case and therefore she would be, to use
25 the defendant's language, a free agent, and thereby be
26 amenable to the oath more likely than she would be than

1 if she did not have this piece of paper signed by the
2 Court.

3 I feel that it is sufficient under the circum-
4 stances.

5 Your Honor could also avail himself under
6 Section 1099 of the Penal Code which states any time
7 prior to the People resting a party defendant may be called
8 to testify, and then the Court may dismiss the case against
9 that party defendant so that she may be a witness for either
10 side.

11 So no particular position is necessary under
12 Section 1099 of the Penal Code, but I would submit that this
13 1324 is sufficient as far as the order is concerned, and the
14 waiver is not necessary here, but it would be the order.

15 The order of the Court would be sufficient.

16 THE COURT: Assuming that I were willing to sign the
17 immunity agreement as to this case, how could I sign it
18 for Watson?

19 MR. STOVITZ: Because it is not immunity as to this
20 case, it is immunity as to this witness.

21 In other words, Linda Kasabian is the one
22 that is requesting the immunity.

23 We petition the Court to say she is a necessary
24 witness in the case.

25 THE COURT: That's right, she could not be prosecuted
26 in any case.

1 MR. STOVITZ: That's right, and it says "After
2 complying with this order the above-named witness shall
3 not be prosecuted or subjected to penalty or forfeiture
4 for or on account of any question which in accordance to
5 this order the witness was required to answer or produce."

6 This order is effective for this case or any
7 other case concerning this subject matter.

8 For instance if she applied falsely for aid
9 in New Hampshire she could be prosecuted there.

10 If she defrauded Joe Sage out of \$600 she could
11 be prosecuted in New Mexico.

12 But as far as the alleged events of August
13 8th and August 9th of 1969 she could not be prosecuted
14 for any of those events.

15 MR. SHINN: In the document does it state whether or
16 not as soon as immunity is granted she is to be released
17 immediately or after the trial? There is a danger there
18 in case we call her back.

21c fls. 19

20

21

22

23

24

25

26

27

21C-1

1 MR. STOVITZ: The document doesn't say anything
2 about her release. It merely says she won't be prosecuted.

3 We assure counsel and the Court in the event
4 she is required to return as a witness, number one, she and
5 her attorney have agreed to come back wherever she is.

6 Number two, we will use all of the processes
7 of our office and the Court to return her in the event she
8 refuses to come back.

9 MR. KANAREK: Your Honor, may I see a copy of these
10 matters?

11 (Copy handed to Mr. Kanarek.)

12 MR. KANAREK: Thank you.

13 THE COURT: While Mr. Kanarek is reading, it is not
14 clear from the cases I read so far whether if the Court
15 refused to grant immunity and the People attempted to
16 prosecute her, she would in fact have immunity as a matter
17 of law in any event, or whether simply the confession would
18 be involuntary as a matter of law and thus not admissible
19 in a subsequent proceeding.

20 There might be a difference as far as her
21 rights were concerned as to which ^{of} those theories is
22 applicable.

23 Those two forms of protection might not be
24 co-extensive.

25 At the moment I am not sure which theory
26 applies.

21C2

1 MR. STOVITZ: I think the reasoning of Judge Parker
2 was that so long as the witness fulfills her agreement that
3 the prosecuting agency, although we don't have a nolle
4 prosequi motion in California, they do in the Federal
5 Court, nevertheless the agreement by the prosecuting agency
6 that she will receive immunity is tantamount to an agree-
7 ment by the State that she will not be prosecuted, seeing
8 the State is the prosecuting agency; that she therefore
9 cannot be prosecuted and is entitled to be released under
10 a writ of habeas corpus.

11 Now, I cannot tell what is going to happen
12 in the future.

13 Frankly, I feel that she will be returned --
14 she will return if there is the necessity for rebuttal.
15 I feel that she will return if and when Watson returns to
16 the State of California, upon a mere telephone call.

17 She will not have to be subpoenaed by inter-
18 state compact.

19 I feel that she has been trustworthy; she has
20 answered not only the questions that are pertinent to this
21 case but everything pertaining to her life that was asked
22 on cross-examination, and our independent investigation,
23 your Honor, has proved to us that she is telling the truth
24 in all particulars.

25 THE COURT: Of course, if she fails to return or to
26 complete her examination the order would not be effective.

21c3

1 The order of immunity would not be effective.

2 MR. STOVITZ: That is something that the law review
3 writers are now considering, whether or not there is
4 conditional immunity.

5 I feel that the order of the Court granting
6 her immunity does give her immunity.

7 THE COURT: I am speaking of the last paragraph of
8 the proposed order.

9 It says, "After complying with this order the
10 above-named witness shall not be prosecuted or subjected
11 to penalty or forfeiture, et cetera."

12 In other words, if she is sworn, asserts her
13 privilege against self-incrimination, is thereafter granted
14 immunity and thereafter refuses to testify, the order
15 obviously is not effective.

16 MR. STOVITZ: That is one view of the textbook
17 writers.

18 Another view is the only power the Court has
19 is your Honor could institute contempt proceedings against
20 her for violating the court order by refusal to testify.

21 This is an unsettled area in California and this
22 is an area in which we are seeking legislation for
23 conditional immunity.

24 THE COURT: All right, then to get back to this case
25 what, if anything, are you proposing?

26 MR. STOVITZ: I am proposing upon the petition I

1C4

1 filed with the Court that the Court, after Linda Kasabian
2 signs the waiver for the hearing, that the Court does sign
3 the order granting Linda Kasabian immunity so the case may
4 be dismissed against her within the next day or so.

5 We will request the Superior Court to dismiss
6 the charge against her perhaps on Monday.

7 It requires the signature of Mr. Younger for the
8 dismissal request which I have prepared conjunctly with this
9 one.

10 THE COURT: I think the order would have to be re-
11 drafted to fit.

12 I am not going to sign the order in its present
13 form.

14 It is predicated on a situation which did not
15 occur here, namely that she was sworn, was asked a question,
16 asserted the privilege and then was granted immunity.

17 That did not occur in that sequence.

21D

21d-1

1 MR. STOVITZ: All right, your Honor.

2 THE COURT: Do the defendants wish to be heard? This
3 is what you asked for, Mr. Kanarek.

4 MR. KANAREK: Yes, your Honor.

5 THE COURT: Mr. Fitzgerald?

6 MR. FITZGERALD: That's correct.

7 MR. KANAREK: It comes a little late, your Honor.

8 THE COURT: Late, how?

9 You are in the middle of your cross-examination.

10 MR. KANAREK: I know, your Honor.

11 THE COURT: Well, how is it late? You made the
12 statement; I don't know what it means.

13 MR. KANAREK: Well, your Honor, I think this should
14 have been done at the beginning.

15 THE COURT: All right, assuming for the sake of
16 argument that's right. What prejudice has resulted?

17 MR. KANAREK: In People vs. Walter, your Honor.

18 THE COURT: What is that?

19 MR. KANAREK: Well, what I'm saying, your Honor,
20 that this witness's testimony is tainted.

21 You see, her testimony --

22 THE COURT: Let us assume for the moment that it
23 is tainted up until now.

24 MR. KANAREK: Yes.

25 THE COURT: And she is now granted immunity. Your
26 cross-examination may continue.

1 MR. KANAREK: That is true.

2 THE COURT: Now she is testifying untainted.

3 MR. KANAREK: Right.

4 MR. FITZGERALD: That is correct. I think what Mr.
5 Kanarek is trying to assert is the very human quality that
6 once somebody has taken a position, certainly when one has
7 taken a position publicly, it is a little difficult to
8 recant.

9 The defendants took the position that because
10 she was granted immunity, her testimony would have to
11 comport with what she felt the prosecution wanted to hear
12 in order to petition the Court for immunity.

13 Now, we have obviated that problem. The only
14 problem we face is the problem of her having given one
15 version or state of facts on the record, but as your Honor
16 pointed out --

17 THE COURT: I have a message here for Defendant
18 Manson's attorney, one Charles Watson is on the telephone
19 asking for him.

20 MR. STOVITZ: Stipulate it can be received in your
21 Honor's chambers.

22 MR. KANAREK: No.

23 THE COURT: Well, he is on hold on my telephone,
24 Mr. Kanarek.

25 MR. KANAREK: Well --

26 THE COURT: The call is for you.

1 MR. STOVITZ: Is it person to person or collect,
2 your Honor?

3 MR. KANAREK: May I take the call, your Honor?

4 THE COURT: Do you wish to take it here or in the
5 courtroom?

6 MR. KANAREK: I will take it in the courtroom.

7 MR. STOVITZ: You mean you are not to let us eavesdrop,
8 Irving?

9 (Whereupon Mr. Kanarek leaves the chambers and
10 finally returns.)

11 THE COURT: Is there anything else we can do today?

12 MR. FITZGERALD: No.

13 THE COURT: If you propose to offer the agreement I
14 suggest the order be retailored and perhaps the statement
15 of fact, the preamble, so it conforms to the facts of
16 this case.

17 I don't want to sign an order that obviously
18 does not fit the facts of this case.

19 MR. STOVITZ: We will have that at 9:00 o'clock
20 Monday morning.

21 THE COURT: All right, then we will adjourn until
22 9:45 Monday morning.

23 MR. BUGLIOSI: It seems to me there is something
24 left undone.

25 MR. KANAREK: Mr. Manson has mail, and Mr. Maupin,
26 the sheriff has it.

1 If your Honor would tell Mr. Maupin to turn
2 over this mail.

3 THE COURT: I ordered that all mail that comes in
4 the court to any defendant has to go through the jail
5 facility in order to preserve the security arrangements.
6 That is the only way it can be done.

7 Mr. Maupin has been so advised.

8 MR.KANAREK: After that happens will Mr. Maupin
9 turn it over to me?

10 THE COURT: He won't have it any more. It goes to
11 the jail.

12 MR. KANAREK: Then Mr. Manson doesn't get his mail,
13 your Honor.

14 THE COURT: If he doesn't get it you let me know and
15 I will find out why he didn't get it.

16 MR. KANAREK: Very well, your Honor. We asked on
17 other occasions that Mr. Manson would like to get his mail.

18 THE COURT: Anything else? Thank you.

19 (Whereupon an adjournment was taken until
20 Monday, August 10, 1970, at 9:45 o'clock a.m.)
21
22
23
24
25
26