

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 106

HON. RAYMOND CHOATE, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

CHARLES MANSON,

Defendant.

134

No. A-267861

REPORTERS' DAILY TRANSCRIPT

Monday, August 16, 1971

VOLUME 34APPEARANCES:

For the People:

JOSEPH P. BUSCH, JR., District Attorney

BY: ANTHONY MANZELLA,

Deputy District Attorney

For Defendant Manson: IRVING A. KANAREK, Esq.

HEARING : ARGUMENT ON
EDITING MARY BRUNNER'S TESTIMONY
AT BEAUSOLEIL TRIAL

COPY

MARY LOU BRIANDI, C.S.R.
ROGER K. WILLIAMS, C.S.R.
Official Court Reporters

LOS ANGELES, CALIFORNIA, MONDAY, AUGUST 16, 1971 2:51 P.M.

THE COURT: The record will show Mr. Kanarek and Mr. Manzella to be present. Before the Court this afternoon is the question of the admissibility of the testimony of the witness Mary Brunner in the case of People vs. Robert Kenneth Beausoleil.

The Court has read the sections of the transcript of that case which the People intend to offer -- and which the People do offer -- and the People offer to present the testimony not only by way of impeachment, but for substantive evidence.

The Court has previously heard argument in respect to it, but Mr. Kanarek had asked for an opportunity to argue again, after having presented a written brief. And the Court will permit that.

MR. KANAREK: Thank you, your Honor.

THE COURT: The People are the moving party, so I will hear from Mr. Manzella first.

MR. KANAREK: Certainly. Does your Honor prefer that I use the microphone?

THE COURT: No, I can hear you.

MR. KANAREK: Okay.

THE COURT: I don't think that this (indicating) is on today.

THE BAILIFF: Do you want them on, sir?

THE COURT: No, that's all right, unless someone needs

1 it.

2 MR. KANAREK: No.

3 THE COURT: All right. I hear one air conditioner
4 going in the back there.

5 MR. MANZELLA: Your Honor, I've already -- I have made
6 the points I want to make in connection with the motion.

7 The one -- I've just thought of one point I didn't
8 make.

9 With regard to Section 1291, the prior testimony
10 exception to the hearsay rule, the People are not offering
11 the testimony under Section 1291. We are not relying on
12 Section 1291 or the prior testimony exception to the hearsay
13 rule as a basis for the admissibility of the testimony of
14 Mary Brunner at the Robert Beausoleil trial, for two
15 reasons:

16 One, is -- she was available as a witness;

17 And two, Mr. Manson was not a party to the trial
18 of People vs. Robert Beausoleil, so we are not relying on
19 Section 1291 or the prior testimony exception to the hearsay
20 rule.

21 Rather, we are relying on Section 1235 and Section
22 770 of the Evidence Code, and California vs. Green, in that
23 her testimony at the Robert Beausoleil trial amounts to a
24 prior inconsistent statement; and, under Section 1235,
25 Section 770 and California vs. Green, it's admissible as
26 prior inconsistent statements, for both its impeachment value,
27 and as substantive evidence, if the jury wishes to consider
28 it as evidence.

1 MR. KANAREK: May I be heard, your Honor?

2 THE COURT: Yes.

3 MR. KANAREK: Well, your Honor, if we step back and
4 take sort of a bird's eye view of this proceeding, the utter
5 illegality of it, I think, is paramount -- is apparent.

AA-1 6 If we look here, here we have a situation where,
7 if this were allowed to take place, the prosecution, having
8 multitudes -- multitudinous statements from a multitude of
9 sources, could step back -- as they're attempting to do
10 in this case -- and just ask questions of a witness, as
11 they did in this case, without getting into the specifics
12 of any particular transcript, proceeding, or whatever, and
13 stop -- as they did in this case -- and then make use of some
14 unknown statement or proceeding, to the disadvantage of the
15 litigant -- to the disadvantage, in this case, of Charles
16 Manson.

17 In other words, what they can do is, by this
18 technique -- whether you call it -- one calls it clever or
19 otherwise -- they just stop asking questions at a certain
20 point, and then bootstrap themselves into allowing this
21 testimony in.

22 It's in -- it's -- it is just -- it is just
23 illegal, is the best way of saying it, without getting
24 finer about it. There's no question, it's not only a
25 violation of the Evidence Code, but it's a violation of due
26 process and equal protection and the Sixth Amendment right
27 to confront that the defendant has.

28 And with regard to Section 1291, when Mr. -- when

1 Mr. Manzella says he is not relying on 1291, the applicability
2 of 1291 is manifest, when we look at the provisions of it.

3 For instance, 1291, Subsection B -- paren b --
4 then Subsubsection (1), the -- the context is as follows:

5 "The admissibility of former testimony under
6 this section is subject to the same limitations and
7 objections as though the declarant were testifying
8 at the hearing, except that former testimony offered
9 under this section is not subject to:

10 "Objections to the form of the question which
11 were not made at the time the former testimony was
12 given."

13 Clearly, the implication there is that the
14 particular litigant be represented by counsel, so that his
15 counsel could make objections and preserve the record as
16 to the form of the question; and then on -- and then the
17 second is:

18 "Objections based on competency or privilege
19 which did not exist at the time the former testimony
20 was given."

21 Now, I'm not dwelling on Subsection (2), except
22 in -- in passing; and we -- that has to do with Mary Brunner's
23 taking of the -- of her privilege.

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1 But really, it's Subsection 1 that we are
2 speaking about. We -- we have a right to be present at those
3 proceedings; we have a right to make an objection to what is
4 going on in those proceedings.

5 If they're going to be used in this trial, and
6 we weren't present at those proceedings, it's -- I mean,
7 it's just abundantly clear that 1291 applies.

8 Now, I think in -- may I see the Green case?

9 MR. MANZELLA: Certainly.

10 MR. KANAREK: Thank you. Now, I think -- and I know
11 your Honor has -- and rightfully so, has given a great deal
12 of attention to People vs. Green, which is 3 Cal. 3rd 981.
13 And your Honor, of course, is interested in that last bit
14 there at page 90 -- no, 990 -- I think.

15 And topic 7 is most important, because there the
16 California Supreme Court, after the Green case has come back,
17 states: "Whether or not a witness is actually cross-
18 examined, the fact the defendant has an adequate opportunity
19 to carry out such an inquiry satisfies the confrontation
20 clause."

21 Well, there is no opportunity here. If you read
22 the Green opinion, it is clear that in the Green opinion,
23 the lawyer who represented Mr. Green at the preliminary
24 hearing and all other proceedings was the same lawyer that
25 represented Mr. Green at the trial.

26 So there -- so we don't have the problem that
27 we have in this case, where the declarant was in a trial
28 where the present defendant was not present as a litigant,

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1 was not a party to the action; and the present defendant was
2 not represented by counsel.

3 And the viewpoint and the motivation of that
4 testimony was, in fact, to use the vernacular, quote, "dump
5 it on Mr. Manson," end quote. Because Mr. Beausoleil's lawyer
6 was there to do what he could on behalf of Mr. Beausoleil,
7 not on behalf of Mr. Manson -- which is apparent; there's no
8 question about that.

9 So what we have is a situation where the defendant,
10 by the trick of the prosecution, of stopping the questioning,
11 is depriving the defendant of examination. As your Honor so
12 accurately analyzed at the bench, what can a lawyer do when
13 the prosecution witness is making exculpatory statements?

14 Your Honor indicated that this -- that counsel
15 for Mr. Manson did the proper thing, when these exculpatory
16 statements are there.

17 Just because -- just because of the fact that
18 the prosecution wishes a certain type of testimony in doesn't
19 mean that the defendant, even if he knew -- even if he knew
20 all of the material concerning Mary Brunner's testimony, he --
21 it's incumbent upon him not to destroy the exculpation that
22 has occurred by virtue of her testimony.

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1 The prosecution has her there. If they wish,
2 they can bring this material out.

3 As a matter of fact, in the context of the
4 proceedings, it is clear in Volume 30, I believe, that the
5 prosecution knew full well what they were about to do. They
6 knew, evidently, that they were going to attempt to get this
7 information before the jury without our opportunity to
8 explain, without our opportunity to -- to have -- without
9 Mr. Manson's right that any inconsistencies and any kind of
10 differences be brought out by comparing the statements in
11 the particular transcript or previous material that Mr.
12 Manzella is referring to.

13 Now, Mary Brunner testified in Judge Parker's
14 court. The Court can take judicial notice. She testified
15 in Judge Keene's court at the motion for a new trial of
16 Robert Beausoleil. She testified at the Grand Jury. There
17 has been two Beausoleil trials. I mean, I can't read Mr.
18 Manzella's mind and know -- and plus the fact of the investiga-
19 tive capacity of the District Attorney's office, they may
20 have -- they may have documents stacked seven feet high
21 concerning what Mary Brunner is going to say. And, so
22 obviously, there is no opportunity. And if you weigh the
23 equities of it, apart from just ordinary fair play, dictates
24 that the prosecution cannot -- it cannot do this. But we
25 don't need the -- we don't need to resort to equity in a
26 vacuum. The Code is clear. The Code is clear that this
27 cannot be done.

28 Now, furthermore, 770 and 1235 make it obvious.

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1 770 makes it clear that this testimony cannot
2 come in unless the witness be -- the witness has not been
3 excused from giving further testimony in the action.

4 Well, Mary Brunner hasn't been ordered back to
5 this courtroom. Mary Brunner is not unavailable. There's
6 been no showing of due diligence on the part of the prosecu-
7 tion to get Mary Brunner to this courtroom.

8 Assuming arguendo that this is a point, which we
9 contend that it isn't, but just for the sake of argument --
10 just for the sake of argument, the prosecution has to show --
11 has to show that Mary Brunner is not available and can't come
12 here to testify. The prosecution can't produce her. They
13 can't do, as this proceeding indicates. They asked that she
14 not be excused from participation in this trial. So the
15 prosecution cannot blow hot and blow cold.

16 It is clear that we have a right that these
17 inconsistencies be brought out. But first we have -- we have
18 a right to know the subject matter we're dealing with. We
19 have a right to know the material. We have a right to know
20 what it is, where it is that she has been inconsistent. Not
21 just inconsistent in a vacuum. We have a right to know what
22 questions, where it is.

23 She said what, what, what, what, what.

24 So that we can then, before the jury, bring out
25 and discuss and question and probe as to why there is any
26 inconsistency, if there is any.

27 And I think it is clear -- the Green case itself
28 has the word "opportunity" in italics, and refers to Pointer
vs. Texas.

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1 We haven't had any such opportunity. And the law
2 doesn't contemplate the supporting theory of justice and this
3 type of procedure is certainly not with us.

4 We -- the law is -- the statute is here to
5 protect litigants, defendants in criminal cases from the
6 prosecution arbitrarily stopping, not asking any more questions,
7 and then saying we have this inconsistency and, therefore, we
8 can start reading stuff to the jury.

9 I mean, it is clear from what he's underlined
10 here that there are no -- there was no bringing this matter
11 to her attention and saying, "Did you testify thus and so?"

12 And 770, the notes to it, talk about inconsistency,
13 talk about that this is -- this is within the contemplation
14 of 770.

15 And so it is clear hearsay, which is not
16 admissible, and, actually, what they would have to do, what
17 they must do, your Honor -- this is so gross that when they
18 bring Mary Brunner back here, they have to ask this Court
19 to exercise its discretion to allow her to testify further.
20 It is our view that they would have to make a motion and ask
21 the Court for permission to reopen even as to Mary Brunner,
22 because, under the present state of the law, if they say that
23 Mary Brunner is hostile and this and that and the other thing
24 they speak of, they have to prove she's hostile. They just
25 can't do it by the aroma the People create against Mr. Manson.

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1 Just because Mary Brunner is against the
2 defendant, that immediately this woman is hostile to the
3 prosecution. There's no showing in this record that this
4 woman is hostile to the prosecution, absolutely nothing in
5 the record to show that. And we -- it is clear that they
6 would have to make a motion to reopen. And Mr. Manzella
7 deliberately -- deliberately did what he did and stopped at
8 the time he did, knowing full well -- we would assume, as
9 a lawyer in the District Attorney's office -- knowing full
10 well the interplay of the statutes between themselves, among
11 themselves and, also, the interplay with the constitutional
12 provisions. There's no question but what this material,
13 your Honor, cannot be read to the jury.

14 THE COURT: All right.

15 MR. MANZELLA: May I be heard briefly in response?

16 THE COURT: Good argument, Mr. Kanarek.

17 MR. MANZELLA: In the first place, your Honor, Section
18 770 of the Evidence Code does not set forth the constitutional
19 requirement that a prior inconsistent statement cannot be
20 introduced unless either the witness has a chance to explain
21 the statement or the witness has not been excused from giving
22 further testimony. That's not a constitutional requirement,
23 because it is set forth in Section 770 itself. There is an
24 exception: If the interest of justice otherwise requires.
25 And that's the way the section starts out, "Unless the
26 interest of justice otherwise requires."

27 Now, that phrase is explained in the comment of
28 Section 770, Section 770, where the Law Revision Commission

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1 says that:

2 "Where the interests of justice require it,
3 the court may permit extrinsic evidence of an
4 inconsistent statement..." that would be analogous of
5 Mary Brunner's testimony at the Beausoleil trial;
6 "...to be admitted even though the witness has been
7 excused and has had no opportunity to explain or
8 deny the statement."

9 I point that out just to show that the require-
10 ments of Section 770 are not constitutional in nature,
11 because there is an exception to those requirements built
12 right into 770.

13 And the Law Revision Commission in that Comment
14 goes on to give one example where -- at least, one example
15 of what they are talking about.

16 Now, neither California vs. Green, nor Section
17 770, require a witness to affirm his prior inconsistent
18 statement as is.

19 Section 770 in the Comment says that:

20 "Section 770 will permit more effective cross-
21 examination and impeachment of several collusive
22 witnesses, since there need be no disclosure of
23 prior inconsistency before all such witnesses
24 have been examined."

25 Now, Mary Brunner -- of course, in this case
26 we're got one witness, Mary Brunner. But by definition,
27 more or less, in this Comment to Section 770, what they
28 mean is that if you have a number of witnesses with prior

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1 inconsistent statements, you don't have to alert anyone of
2 those witnesses to the fact that you've got a prior inconsis-
3 tent statement until they've all testified, and then you can
4 hit them with extrinsic evidence of the prior inconsistent state-
5 ment.

6 That's consistent with California vs. Green, where
7 Green says, and I'm just quoting that portion of Green I am
8 relying on, "If the witness admits the prior statement is his,
9 or if there is other evidence to show the statement is his,
10 the danger of faulty reproduction is negligible and the jury
11 can be confident that it has before it two conflicting
12 statements by the same witness."

13 All that means is you've got to prove the statement
14 you're introducing, the prior statement is the statement of
15 the witness. And we've done that by proving through the
16 testimony of Miss Lois Johnson and the certification of the
17 transcript. We've proved the statement that this testimony
18 is the testimony of Mary Brunner.

19 Now, finally -- rather, I have two more points
20 to make.

21 The next point is that on page 4779 of our
22 transcript, I asked Miss Brunner if the questions I asked of
23 her were the same as the questions asked at the Beausoleil
24 trial, and she said:

25 "Yes, some of them are similar."

26 I believe that put Mr. Kanarek on notice, if
27 nothing else did, that I was questioning her with regard to
28 her testimony before in the Beausoleil trial.

1b fls.

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1 On page 4784 of our transcript, the Court asked
2 me if I was going to introduce her testimony at the Robert
3 Beausoleil trial, and I said, "Yes, your Honor."

4 And if nothing else, that put Mr. Kanarek on
5 notice that I was concerned and was questioning with regard
6 to her testimony before the jury in the Robert Beausoleil
7 case.

8 And finally, Mr. Kanarek, himself, apparently in
9 argument, has conceded that Mary Brunner is not unavailable.
10 And that's my whole point, Mary Brunner is not unavailable.
11 She was not unavailable. She did submit to cross-examination.
12 She never took the Fifth Amendment privilege in cross-
13 examination against Mr. Kanarek, and that, therefore, the
14 requirements of Section 1235, Section 770 of the Evidence
15 Code in California vs. Green have all been met. And I'm
16 not relying on Section 1291 at all.

17 MR. KANAREK: Your Honor, it is not a question of his
18 not relying on 1291. The point is, 1291 is in the law.
19 And if 1291 dictates this be excluded, then it is excluded.

20 The fact of the matter is, that he has the witness
21 on the stand. He is the one -- he is the one who stated that
22 she -- asked that she not be excused. It is clear in the
23 record Mr. Manzella asked that this witness not be excused.
24 She's a prosecution witness. I can show your Honor that
25 or does your Honor recall that, that he is the one that
26 asked that she not be excused?

27 MR. MANZELLA: I'll stipulate to that.

28 THE COURT: I think the record is clear as to that.

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1 MR. KANAREK: And your Honor understands that. And so
2 that is the vice of what the People have done here. They
3 can't -- they can't bring before the jury on substance or even
4 on impeachment the several statements of Mary Brunner. She
5 made -- I mean, just conceptually, your Honor, she may have
6 made a statement in Buffalo, New York, or anywhere, and because
7 Mr. Manzella has such a statement where Mr. Manson wasn't
8 present, wasn't represented by counsel, and the whole tenor
9 of the proceedings were to foist it upon Mr. Manson, the
10 non-present individual -- I mean, it is just -- it is manifest
11 that these statements cannot go in.

12 MR. MANZELLA: Your Honor, since it is my motion, may
13 I take the opportunity to be heard last?

14 THE COURT: Yes, you may.

15 MR. MANZELLA: In Section 769 of the Evidence Code, it
16 sets forth explicitly what I have been saying by way of
17 California vs. Green in Section 770.

18 In Section 769 it states:

19 "In examining a witness concerning a statement
20 or other conduct by him that is inconsistent with
21 any part of his testimony at the hearing, it is not
22 necessary to disclose to him any information concern-
23 ing the statement or other conduct."

24 MR. KANAREK: Your Honor, if I may respond?

25 You can't take these -- these sections and not
26 integrate them. You can't just look -- take a section like
27 this and not look at it in perspective.

28 What Mr. Manzella reads there is true as far as

1b-3

1 it goes, but we still have the constitutional guarantees.

2 We still have the defendant being allowed to have
3 all of the material that a particular witness is going to be
4 responsible for, as far as the jury is concerned, all of this
5 takes place before the jury. And the whole philosophy of this
6 type of law here, is that the defendant has full opportunity.
7 Clearly Mr. Manson didn't have full opportunity by what the
8 District Attorney has done in this case, as far as Mary Brunner
9 is concerned, at least.

10 THE COURT: Well, the Court thanks you gentlemen for
11 your argument and for your points and authorities which the
12 Court has read. It is a unique factual situation, the Court
13 believes, and the Court has been unable to find a factual
14 circumstance in the cases similar to the one that's presented
15 to the Court at this time.

16 But it does seem to me that the case of California
17 vs. Green and People vs. Green, the 3 Cal. 3rd 981 citation
18 is controlling, together with the Code Sections 770 and 1235.

19 It is clear to the Court that Mary Brunner was
20 not unavailable as a witness. That the best concession that
21 the defendant could have received would be a denial of her
22 former testimony. And the defendant has that denial in the
23 form of the explanation which she had the opportunity to make,
24 and chose to make, is saying that she lied when she testified
25 before concerning the death of Mr. Hinman and the circumstances
26 surrounding that death.

27 The Court believes that the testimony would be
28 admissible.

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1 MR. KANAREK: Your Honor, may I --

2 THE COURT: I'm not sure at this time, after having
3 looked at it again, that the admissibility would be in any
4 way limited. But the Court would adhere to its previous
5 ruling and will limit it to some extent, unless there is
6 objection from the defendant and the defendant should like
7 to have the entire testimony in.

8 MR. KANAREK: No, your Honor.

9 My first motion is that this be put aside until
10 the prosecution can, at the very minimum, show due diligence
11 in trying to locate Mary Brunner. This is done not only
12 based on the Evidence Code, but based upon -- uh, based upon,
13 uh, -- there is a recent case of People vs. Rodriguez.

14 Is your Honor familiar with that --

15 THE COURT: No, the Court is not familiar with that
16 holding.

2 fls.

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1 MR. KANAREK: Well, this is a case stated -- well, it's
2 in -- in fact, today's Appellate Report in the Daily Journal.

3 THE COURT: What was the holding in the Rodriguez case?
4 What was the factual situation?

5 MR. KANAREK: Well, they speak of -- the judgment was
6 affirmed; but they speak of the necessity -- he -- they speak
7 of the necessity of using due diligence --

8 THE COURT: To procure a witness?

9 MR. KANAREK: Yes. And in -- in connection with --

10 THE COURT: This is a situation of -- perhaps I have
11 read the Rodriguez case. Is that a situation where the Court
12 found that ten days to two weeks was a satisfactory period of
13 time for the service of a subpoena, and the production of a
14 defense witness? And refused to allow the defendant further
15 time to produce a witness?

16 MR. KANAREK: No, your Honor. I think that this --
17 I don't recall that in this. I think -- this is primarily --
18 the essence of the witness not appearing here is that the
19 witness was purportedly afraid. That was the implication of
20 the due diligence testimony.

21 I have it right here, for your Honor to consider
22 it.

23 THE COURT: Very well.

24 MR. KANAREK: It's at page 16 of the Appellate Report
25 dated August 16, 1971, of the Los Angeles Daily Journal.

26 And I think --

27 THE COURT: Well, now, Mary Brunner has appeared here
28 for direct and cross-examination. The Court ordered her back.

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1 True, it was at the request of the People, but the Court,
2 believing that either one of you might wish to call her back
3 and present further testimony, did therefore order her to
4 return.

5 I think the record should show that she has not
6 been in court any day since the Court ordered the bench
7 warrant for her.

8 MR. KANAREK: In that case -- well, I'll wait until
9 your Honor finishes reading it. Yes, sir.

10 (Pause in the proceedings while the Court perused
11 the cited case.)

12 THE COURT: Well, this was a case -- that is, People vs.
13 Rodriguez -- wherein the People sought to present testimony
14 and did present testimony of a witness which had been given
15 at a preliminary hearing; and there was a contention advanced
16 by the defendant that the prosecution failed to produce
17 substantial evidence of due diligence, before reading the
18 absent witness's testimony, and admitting it -- or, asked
19 it to be admitted under 1291.

20 MR. KANAREK: Yes, your Honor. And ours is an a
21 fortiori situation, because in the case that is before your
22 Honor, the Rodriguez case, this gentleman, Hemotoff -- or --
23 it's a name that --

24 THE COURT: You are speaking of the Rodriguez case?

25 MR. KANAREK: Yes.

26 THE COURT: And the man named Homotoff was the witness
27 who had testified at the preliminary hearing.

28 MR. KANAREK: Right. And that the defendant, of course,

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1 was before the Court at the preliminary hearing; he was
2 represented by counsel. And 1291 is the applicable section.

3 And that's why our case is a fortiori, because --
4 because there, the man had -- had his attorney; the defendant
5 had his attorney at the preliminary hearing.

6 And so here, where Mr. Manson wasn't even represented
7 in the Beausoleil trial, and the issues revolved around Mr.
8 Beausoleil, and -- and his lawyer was there to do what he could
9 for Mr. Beausoleil, it -- it seems clear that -- that the
10 minimum that must be done here is that this be postponed;
11 the minimum that can be done here is that this be postponed;
12 that this be postponed, and that the People show some kind of
13 due diligence in trying to obtain Mary Brunner.

14 At the very minimum, this must be done under the
15 14th Amendment, due process and equal protection, the 6th
16 Amendment, right to confront, as well as the Evidence Code
17 and the California Constitution.

18 THE COURT: Well, the Court doesn't believe that the
19 situation is analogous at all. In the case of Homotoff,
20 the subpoena had been issued; but Homotoff was actively
21 avoiding being served with the subpoena by hiding from the
22 process server.

23 And the Court believes that -- that, while it's
24 the same in that respect, I think Mary Brunner is avoiding.
25 I think Miss Brunner is avoiding the Court for reasons of her
26 own -- I don't know what they are, but --

27 MR. KANAREK: Well, but -- you see, that's conjecture,
28 your Honor.

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1 THE COURT: -- but the Court can infer -- can suppose
2 from her failure to appear that that is the case.

3 MR. KANAREK: But of course --

4 THE COURT: But there's a bench warrant out for her
5 arrest.

6 MR. KANAREK: But there could be permanent damage to
7 Mr. Manson by allowing this reading to take place at this
8 time. There's no necessity for it to take place. They're --
9 the People as well, we suggest to the Court, must show a
10 minimum of some due diligence in trying to locate Mary Brunner.

11 THE COURT: Well, what's more important is that Mary
12 Brunner has already testified on direct and cross-examination,
13 unlike the case that you -- the case of the witness Homotoff,
14 which you've spoken of.

2a fls.

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1 MR. KANAREK: Right. But the reason this case is
2 a fortiori is because, in that case, the Defendant Rodriguez
3 had counsel and was represented, of course, at the preliminary
4 hearing. And the issues -- the issues were such -- were such
5 -- that he was before the Court when the testimony of Homotoff
6 took place.

7 Mr. Manson was not before the Court when the
8 Beauscleil testimony took place; and Mr. Manzella wants the
9 questions -- he's going to ask certain questions taken out
10 of context, which are -- it's dangerous; it -- it -- in the
11 sense that it -- in fact, it's our contention it in fact
12 denies Mr. Manson a fair trial.

13 If you look at how Mr. Manzella has chosen those
14 questions, it's clear that there are -- that there are
15 subjects there that he's only halfway approaching, --

16 MR. MANZELLA: I would be glad to -- I'm sorry. I
17 thought you were through.

18 MR. KANAREK: -- by his choice of questions.

19 MR. MANZELLA: I would be glad to read all of her
20 testimony.

21 MR. KANAREK: Well, that's -- that kindness will be --

22 THE COURT: The Court sees no reason at this time in
23 changing its decision. If I have any -- if I have any
24 further thoughts on it which would alter it, the Court will
25 let you know tomorrow morning. But --

26 MR. KANAREK: Well --

27 THE COURT: It appears to me to be admissible.

28 MR. KANAREK: Well, then, your Honor, we -- we would

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1 like to go over the questions and --

2 THE COURT: All right. Let's go over the questions.

3 MR. KANAREK: And it's our -- it's our contention we
4 have a right to object to these questions.

5 Certainly, if she were on the witness stand,
6 because they are offering them on the substance, we would be
7 entitled -- we would be entitled to -- to --

8 THE COURT: Do the People wish to be heard in that
9 respect?

10 MR. MANZELLA: With respect to what, your Honor?

11 THE COURT: As to whether or not Mr. Kanarek has the
12 right to raise objections to the questions as they're read?

13 MR. MANZELLA: Yes. I think he has the right to raise
14 objections to questions.

15 I would rather it be done beforehand, but I don't
16 see why this really should be treated any differently than
17 anything else.

18 I mean, if the Court's agreeable, we could go
19 over it beforehand. But actually, it would probably save
20 some time if we -- if he just objected as I was reading the
21 questions.

22 MR. KANAREK: I would rather -- this is the point.
23 We do not.

24 MR. MANZELLA: Because probably he would object any way,
25 at the time I was reading them to the jury.

26 THE COURT: I don't know that that's true. He -- I
27 think that if he were to raise his objections at this time,
28 that that would be sufficient, if we were to go over them at

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1 this moment.

2 MR. MANZELLA: All right.

3 MR. KANAREK: Very well. If we may, your Honor, go
4 over them?

5 THE COURT: Yes.

6 MR. KANAREK: I guess we begin at 1393; is that correct,
7 your Honor?

8 THE COURT: That's as good a date as any.

9 (Laughter.)

10 THE COURT: Here is the transcript of --

11 MR. KANAREK: I have a copy, your Honor.

12 THE COURT: -- of the testimony at the trial of People
13 vs. Beausoleil.

14 I have handed that transcript to you. Do you --

15 MR. MANZELLA: Do you need it?

16 THE COURT: No; I'll simply hear you as you go through
17 it.

18 MR. KANAREK: May I sit down, your Honor?

19 THE COURT: Surely. Surely. Neither of you need stand
20 to address the Court while we are doing this informally.

21 MR. MANZELLA: Now, since we are going to proceed with
22 the questions and the objections thereto -- and we may as
23 well keep this on the record --

24 MR. KANAREK: Yes, your Honor, thank you.

25 MR. MANZELLA: All right. All of these questions are
26 questions that were asked of Miss Brunner at the trial of
27 Robert Beausoleil; and all the answers were the answers he
28 gave to those questions.

2a-4

1 MR. KANAREK: Well, first of all, then, since he is
2 reading from the transcript, it is our belief, as to Miss
3 Davis, your Honor, that the foundation has not been made.

4 THE COURT: As to Miss Davis?

5 MR. KANAREK: Yes. I don't believe that her -- that
6 her jurat or her --

7 THE COURT: You are talking about a reporter?

8 MR. KANAREK: Yes.

9 That's not -- I don't believe the full foundation
10 as to the people who purportedly -- all we have is the
11 testimony of Miss Johnson, who testified that she took some
12 of this material, but she did not specify what material she
13 took; and there's no showing, foundation-wise, as to --
14 the certification does not substantiate where she took
15 certain material and other people took other material; and
16 the foundation -- it's our position that the foundation is
17 not there from an authentication standpoint.

18 That is only for the court reporter to say.

19 MR. MANZELLA: Well, the certification -- have you
20 finished?

21 MR. KANAREK: Yes.

22 MR. MANZELLA: The certification certainly covers the
23 pages in question; and that was brought out at the hearing we
24 had on the certification.

25 MR. KANAREK: Well, she said --

26 MR. MANZELLA: The certification of Miss Johnson.

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2b fls.

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1 MR. KANAREK: Yeah, but she qualified it by saying she
2 did not know what she took and what other people took.

3 THE COURT: Well, the Court believes that the foundation
4 is satisfactory.

5 MR. KANAREK: Our position --

6 THE COURT: You might begin with the --

7 MR. MANZELLA: "Q I want to call your
8 attention to the last part of July, 1969, and ask
9 you whether or not you went to the house of Gary
10 Hinman?"

11 MR. KANAREK: And --

12 MR. MANZELLA: "A. Yeah." Y-e-a-h.

13 MR. KANAREK: Our position is that that question, your
14 Honor, would be ambiguous as to time; and we would --

15 THE COURT: The Court would overrule that.

16 MR. MANZELLA: "Q --"

17 THE COURT: The Court believes it's sufficiently detailed
18 as to time.

19 MR. KANAREK: Since -- may we have it that -- as to all
20 of these questions, your Honor, we are objecting on relevancy
21 and materiality, and improper foundation?

22 THE COURT: Very well.

23 MR. KANAREK: In any of -- may the record so reflect?

24 THE COURT: Yes.

25 MR. KANAREK: And may our previous arguments, points
26 and authorities, be deemed to be as to all of these questions?

27 THE COURT: Yes. The Court so deems it and takes it, that
28 you do have the standing objection.

1 MR. KANAREK: Thank you.

2 MR. MANZELLA: "Q And did you in fact go in
3 the latter part of July to Mr. Hinman's house --"

4 MR. KANAREK: Wait. You missed --

5 MR. MANZELLA: "-- with Mr. Beausoleil?"

6 MR. KANAREK: Wait. I think you missed something.

7 MR. MANZELLA: I am reading the questions now that I want
8 to read to the jury.

9 MR. KANAREK: All right. Would you tell me where it is?
10 You have underlined here. 9 --

11 MR. MANZELLA: Oh, I'm sorry. Right. Page 1393, Line
12 22.

13 "Q --"

14 MR. KANAREK: So what you have just read is Lines 5
15 through 8 at 1393? Would you state that in the record,
16 Mr. Manzella?

17 MR. MANZELLA: I just did.

18 MR. KANAREK: All right.

19 MR. MANZELLA: Page 1393, Line 22.

20 "Q And did you in fact go in the latter
21 part of July to Mr. Hinman's house with Mr. Beausoleil?

22 "A. Yes."

23 MR. KANAREK: Well, I would ask that that be -- ask that
24 that be -- I would object to that, your Honor, on the grounds
25 that it's ambiguous as to time; and furthermore, it was asked
26 and answered in what Mr. Manzella read previously.

27 That's exactly what he asked in the previous
28 question.

1 THE COURT: Mr. Manzella?

2 MR. MANZELLA: Well, the previous question asked Mary
3 Brunner whether she went to the house of Gary Hinman.

4 This question is asking her whether she went there
5 with Robert Beausoleil.

6 THE COURT: Yes. The objection is overruled.

7 MR. MANZELLA: Page 1393, Line 25.

8 "Q Did you go there with anybody else?

9 "A With Sadie."

10 MR. KANAREK: Well --

11 THE COURT: Go ahead.

12 MR. KANAREK: -- it -- yes, your Honor.

13 Of course, we have our --

14 THE COURT: You don't have to make your standing
15 objection.

16 MR. KANAREK: Yes, I understand. I understand. I am
17 speaking in terms of the relevancy and materiality and the
18 fact --

19 THE COURT: Well, you've already made that.

20 MR. KANAREK: Yes.

21 THE COURT: Unless the Court specifically states to the
22 contrary, the Court will be overruling -- the Court will
23 overrule the objections.

24 MR. KANAREK: And may we have, as part of the continuing
25 objection, also that the prejudicial value outweighs the
26 probative value, your Honor?

27 THE COURT: All right. You may be deemed to have that
28 standing objection also.

1 MR. KANAREK: Thank you.

2 MR. MANZELLA: Page 1394, Line 1.

3 THE COURT: "Q And does she -- is she also
4 known as Susan Atkins?

5 "A Yeah." Y-e-a-h.

6 Line 3. "Q And did somebody drive you
7 there?

8 "A Yeah. Bruce."

9 Line 5. "Q And do you remember what day
10 of the week it was, Miss Brunner?

11 "A Friday."

12 Line 10.

13 "Q And approximately what time was it that
14 you arrived at Mr. Hinman's house?

15 "A Sometime around midnight."

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1 Line 13. "Q And did Mr. Davis stay or
2 leave at that time?

3 "A He never went to the house."

4 MR. KANAREK: Now, your Honor, I ask that that
5 answer, the answer, "He never went to the house," I ask that
6 that be stricken as not -- as a statement that is an ambiguity.

7 Does it mean that he never went to the house when
8 he arrived there in the car? That is, he didn't get out? Or
9 did he stop off on the way without even approaching near the
10 house? It's --

11 THE COURT: I don't think it's ambiguous. She just said
12 that he was never there. The objection's overruled. -- or,
13 the motion is denied.

14 MR. MANZELLA: Now, the next question and answer is on
15 Line 21.

16 "Q Would you continue with the story?

17 "A --"

18 MR. KANAREK: Then I will object. Clearly, that's out of
19 context, because the jury, listening to that, would have heard
20 the previous question and answer; and the Court can take
21 judicial notice of the transcript.

22 I assume that there will be deposited with the Court
23 -- and I do make the motion that there be deposited with the
24 Court -- a complete transcript of Mary Brunner's testimony,
25 to go along as a record, as an exhibit in this case.

26 That's -- I hope the Court will grant that motion.
27 And obviously, we need that as a permanent record in this case.

28 I have been furnished a Xerox copy, and I think it's

1 necessary that that go along with this case as a permanent
2 record.

3 THE COURT: Is there any possibility of --

4 MR. MANZELLA: I can make the Xerox copy of the same
5 material I made for Mr. Kanarek, your Honor.

6 THE COURT: Yes. The objection, however, seems to be
7 somewhat well taken. It does seem to be out of context.

8 MR. MANZELLA: It is, your Honor. I skipped -- I've
9 skipped roughly three and a half pages of questions and answers, --

10 MR. KANAREK: Well, your Honor --

11 MR. MANZELLA: -- which I felt might be objectionable.
12 And I just left them out.

13 THE COURT: Well --

14 MR. MANZELLA: But I'll--

15 THE COURT: I don't know whether we have made this clear
16 on the record. The Court has indicated that, because of the
17 nature of the direct examination, that it would cause the
18 People to more or less follow the pattern of the direct -- I
19 suppose that would be the best way to describe it -- in setting
20 out the contradictory statements Mary Brunner is alleged to
21 have made in the Beausoleil case.

22 But rather than taking the -- rather than taking the
23 entire Beausoleil transcript -- or rather, the entire testimony
24 in the transcript of Mary Brunner, because not all of that
25 testimony of Mary Brunner was covered on the direct
26 examination by the People, nor on the cross-examination by the
27 defendant -- that that's the reason why the Court is asking you
28 to proceed as you are doing.

1 I realize that it is difficult; but it is something
2 that precedes that question which was objected to?

3 MR. KANAREK: I would welcome the Court looking at my
4 copy.

5 THE COURT: Well, perhaps Mr. Manzella --

6 MR. MANZELLA: There are a number of questions and answers,
7 your Honor. I -- the last answer I've read was on Page 1394.
8 The question I just read is now on Page 1396. That's skipping
9 some two pages. And there is --

10 THE COURT: All right. I'll overrule the objection.

11 MR. KANAREK: Well, your Honor, we also have a right to
12 object to a narrative. We have a -- the Code provides, we do
13 not have to accept, "Would you continue with the story?" That is
14 a conclusion. The use of the word "story", it assumes facts
15 not in evidence, your Honor. It's a --

16 THE COURT: All right. Let me see the transcript.

17 MR. MANZELLA: The answer is: "So Sadie and I went up
18 and talked to Mary." That's the answer.

19 MR. KANAREK: That is so out of context, your Honor,
20 that --

21 MR. MANZELLA: Well, I felt that the other questions,
22 your Honor, would be objectionable -- or possibly objectionable,
23 if they were asked of a witness in the trial.

24 In other words, if they were asked by me of a wit-
25 ness at the trial, that an objection to those questions might
26 be well taken; and that's why I've left them out.

27 MR. KANAREK: Then by counsel's statement, you can't
28 ask, at 1396, Lines 21 and 22, because the -- the witness, when

1 he -- he was asked, "Would you continue with the story?"
2 she had been allowed to testify to material that is clearly
3 not -- this is not what the jury would think it was, if you
4 allow, your Honor, Lines 21 and 22 to go in.

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1 THE COURT: Well, it is quite possible that this effort
2 at editing is superfluous. Miss Brunner having stated what she
3 did state on direct and cross, has offered her explanation of
4 her testimony at the Beausoleil trial. And since the defendant
5 did have a right to cross-examine, and all the other points
6 having been covered which have previously been discussed
7 concerning that testimony, that the fact is, the entire thing
8 might be admissible. But I'm going to overrule the objection
9 and let the answer come in.

10 MR. KANAREK: So your Honor is allowing in --

11 THE COURT: If that question on Page 20 -- excuse me,
12 1396, and it is Line 21, "Would you continue with the story?"

13 MR. KANAREK: And Mr. Manzella, I guess, is only offering
14 Line 22?

15 MR. MANZELLA: That's right, your Honor. I believe that
16 the rest of that was objectionable.

17 MR. KANAREK: I agree it is objectionable, but --
18 "and some time Sadie, I guess, signalled Bobby, and he came up."

19 THE COURT: Yes, unless you wish that in --

20 MR. KANAREK: No, I don't wish that in.

21 THE COURT: All right.

22 You may go on.

23 MR. MANZELLA: Well, Page 1397, Line 16.

24 "Q I see. Did Sadie leave the kitchen
25 and go to some other room?

26 "A Yeah."

27 MR. KANAREK: Well, I'll object in addition to the
28 continuing objections, to that being leading and suggestive,

1 out of context. In other words, the form of the question, your
2 Honor, and assuming facts not in evidence that Sadie was ever
3 in the kitchen. The question clearly assumes facts not in
4 evidence.

5 THE COURT: It does seem to be leading, and it does have
6 that objection. Can it be eliminated?

7 The Court would sustain the objection.

8 MR. MANZELLA: All right.

9 THE COURT: Go ahead.

10 MR. MANZELLA: Your Honor, then, I would ask that -- then,
11 I would ask that that question be rephrased and that it be
12 asked this way:

13 "Q Did Sadie go to some other room?

14 "A Yeah."

15 And then, the questions would continue.

16 "What room was that?

17 "A The living room.

18 "Q And shortly after that did somebody
19 else arrive at the house?

20 "A Bobby came up."

21 MR. KANAREK: That's clearly a violation of due process,
22 your Honor, and equal protection, and right to confront under
23 the Sixth Amendment, which is all guaranteed by the Fourteenth.
24 You can't frame a new question. There is no case that I know of
25 that allows that, for the prosecution to change the wording.

26 In the Aranda-Bruton type situation, you can excise
27 if you don't lose meaning, but you can't change --

28 THE COURT: The Court thinks that's correct.

1 MR. MANZELLA: Your Honor, -- all right, I don't care that
2 much about it, but I don't see why you can't change the
3 questions. We're introducing these prior statements of Mrs.
4 Brunner, not the prior question of Mr. Katz. If I have to change
5 a question to satisfy Mr. Kanarek, if it doesn't change the
6 sense of the answer given by Mrs. Brunner, it seems to me it
7 would be permissible. We're not interested in Mr. Katz's
8 question. We're interested in Miss Brunner's answers.

9 THE COURT: The meaning of the question --

10 MR. MANZELLA: Doesn't change the sense of the question
11 and it leaves the answer the same, and it doesn't change the
12 answer in any way. It seems to be all right. All we're
13 interested in is Mrs. Brunner's statement and not Mr. Katz's
14 question.

15 MR. KANAREK: Does your Honor require argument on that?

16 THE COURT: No, I don't think so.

17 What's the question that you now wish to put --

18 MR. MANZELLA: All right, the question I wish to put --
19 I'm looking for something else. Excuse me a minute, your
20 Honor.

21 THE COURT: Very well.

22 MR. MANZELLA: All right.

23 "Q And shortly after that, did somebody
24 else arrive at the house?

25 "A Bobby came up.

26 "Q And tell us what happened."

27 MR. KANAREK: Well, are you --

28 MR. MANZELLA: "A And then we talked for a

1 "while --" --

2 MR. KANAREK: Are you going ahead now?

3 MR. MANZELLA: Right.

4 MR. KANAREK: Then, I'll object to this. I gather
5 1397, Line 21, "And shortly after that, did somebody else arrive
6 at the house?" -- I'll object to that question as being
7 ambiguous, assuming facts not in evidence, and I object to the
8 form, your Honor. The -- it is out of context. It misinforms
9 the jury, clearly. Your Honor has sustained the objection to
10 the previous question. Clearly you just can't do that in the
11 courtroom.

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1 THE COURT: All right, part of the problem is the
2 editing that the Court has ordered of the testimony.

3 MR. MANZELLA: Your Honor, if I may point out, the last
4 answer read before that question is, "So, Sadie and I went up
5 and talked to Gary. . ."

6 And this question is: "And shortly after
7 that, did somebody else arrive at the house?"

8 The answer is: "Bobby came up." That seems to
9 be confusing or misleading.

10 MR. KANAREK: Well, it may not -- you can synthesize
11 a detective story and you can do all kinds of things by --

12 THE COURT: Excuse me, let me see the transcript.

13 (Whereupon, Mr. Manzella approached the bench and
14 handed the Judge the transcript.)

15 (Pause.)

16 THE COURT: All right, in order to make sense of it, and
17 to remove the objectionable nature of the question, I think it
18 could be rephrased to say: "Did Bobby come up?"

19 MR. KANAREK: Well, now --

20 THE COURT: The question that's referred to --

21 MR. KANAREK: We will object to that as a fundamental
22 violation, your Honor. The law does not contemplate any such
23 creation. As your Honor well knows, there's even a jury
24 instruction to the effect that the jury is supposed to consider
25 the question only as it gives meaning to the answer. We cannot
26 construct questions. We can't -- it is -- I mean, it is so
27 axiomatic.

28 MR. MANZELLA: There is nothing axiomatic --

1 MR. KANAREK: We can't --

2 MR. MANZELLA: Oh, I thought you were finished with
3 your objection.

4 MR. KANAREK: We do most strenuously object to any
5 recreation of words which were not uttered. And it is a funda-
6 mental denial of due process under the Fourteenth Amendment.
7 The Evidence Code doesn't contemplate it.

8 THE COURT: The Court will permit you, instead of
9 offering that question, to read that entire page. The Court
10 has read it, and has read it --

11 MR. KANAREK: Beginning from where?

12 THE COURT: Near the top of the page in respect to what
13 signal was arranged in order to get Bobby Beausoleil up to the
14 house.

15 The Court remembers Miss Brunner's testimony here,
16 ad she has denied the presence of Susan Atkins at the house.
17 She has denied the presence of Bobby Beausoleil at the house.
18 And -- on direct examination.

19 MR. KANAREK: Well, it is hearsay.

20 THE COURT: And I think it gives sufficient --

21 MR. KANAREK: Well, your Honor, it is hearsay.

22 THE COURT: It gives sufficient background to allow this
23 testimony in without offering that question as I've referred to
24 it.

25 MR. MANZELLA: Your Honor, if the Court please, I would
26 like to begin with the question on Line 16 of Page 1397,
27 "Did Sadie leave the kitchen and go to some other room?"
28 If the Court will permit me to do that?

1 THE COURT: All right, the Court --

2 MR. MANZELLA: Line 16, Page 1397.

3 MR. KANAREK: Where is that, your Honor?

4 MR. MANZELLA: Line 16, Page 1397.

5 THE COURT: All right, the Court will permit you to do
6 that.

7 MR. MANZELLA: "A Yeah."

8 MR. KANAREK: Where are we?

9 MR. MANZELLA: "Q" -- Line 19.

10 "What room was that?

11 "A The living room.

12 "Q" --

13 MR. KANAREK: Just a minute, where are we beginning, your
14 Honor?

15 THE COURT: All right, that question Mr. Manzella referred
16 to --

17 MR. MANZELLA: Right there (indicating).

18 THE COURT: Of course, the record does not show, insofar
19 as what is being read to the jury is concerned, that Miss
20 Brunner -- or Susan Atkins, rather, ever arrived at the kitchen.
21 But it is clear from the former testimony that Miss Atkins went
22 from the kitchen to the living room. The Court will permit that.

23 MR. KANAREK: In other words, your Honor is -- what are
24 the exact words?

25 MR. MANZELLA: I'm reading them, Mr. Kanarek.

26 "Q" -- Line 21, Page 1397 --

27 MR. KANAREK: Wait a minute, you're going too fast.

28 Line 16, 1397, are you going to read anything on 1397

1 before Line 16?

2 MR. MANZELLA: No.

3 MR. KANAREK: I see, you're going to use the words --
4 I see.

5 MR. MANZELLA: I'm going to use the question:

6 "Did Sadie leave the kitchen and go to some
7 other room?"

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1 MR. KANAREK: We will object on the grounds it is assuming
2 facts not in evidence, out of context.

3 THE COURT: The Court is going to admit the entire
4 transcript into evidence at your suggestion.

5 MR. KANAREK: Not my suggestion, your Honor.

6 THE COURT: Well, you just asked the Court that the
7 transcript be admitted, but not for the jury's -- you didn't
8 ask that it be admitted for the jury's perusal, of course, and
9 the Court is not going to permit that. That is, that the
10 jury see the entire transcript. But it is clear from reading
11 all of the transcript that it does not assume -- the question
12 does not assume a fact not in evidence.

13 MR. KANAREK: Well, no, your Honor, the point is, as it
14 goes before the jury --

15 THE COURT: As it is edited.

16 MR. KANAREK: Yes, and that's what's improper.

17 THE COURT: All right.

18 MR. MANZELLA: Line 21, 1397 --

19 MR. KANAREK: What is the Court's ruling, in other words,
20 at Page 1397? He's going to begin with Line 16, is that
21 correct?

22 THE COURT: No, the Court thinks that after having
23 attempted this now in the last half hour, that probably the
24 Court is incorrect in any event in causing it to be edited.
25 I think the People have a right to have all the testimony in.
26 But, nevertheless, we'll still have to proceed in much the same
27 way, starting at the beginning, so that you will have an
28 opportunity to object to each question that comes along. I

1 changed my ruling. The entire Mary Brunner transcript can
2 come in.

3 MR. KANAREK: Well, your Honor, I don't want to have to
4 object in the presence of the jury.

5 THE COURT: Let's do it now.

6 MR. KANAREK: Right.

7 THE COURT: Start at the beginning.

8 MR. MANZELLA: Your Honor, it is my position, unless
9 Mr. Kanarek asks that other parts come in, that I can decide
10 certain questions are objectionable and not read them.

11 In other words, for example -- the signal --
12 Miss Brunner was asked if she saw it, after the testimony is
13 already in about the signal, Miss Brunner is then asked by
14 Mr. Katz if she saw it, and she says no. It is sort of my
15 position that I wouldn't even bother reading those questions.

16 THE COURT: That would have to go out, in any event, if
17 there was an objection to it, which I'm sure Mr. Kanarek would
18 make.

19 MR. KANAREK: Which pinpoints the vice of the whole
20 procedure, your Honor.

21 THE COURT: Well --

22 MR. KANAREK: I understand.

23 MR. MANZELLA: Shall I continue from where I left off?

24 THE COURT: I'm not sure where we are at this point.
25 The Court's ruling would be that all of it may come in.

26 Now, you may choose from -- where you wish to start
27 up again, except that it should make sense.

28 MR. MANZELLA: All right.

1 THE COURT: Mr. Kanarek's point is well taken in that
2 respect.

3 MR. MANZELLA: I understand that.

4 THE COURT: To begin with a phrase such as one of those
5 questions began with, it obviously was picking up about a
6 question previously, and didn't make sense to have that phrase
7 in there.

8 MR. MANZELLA: All right.

9 Line 21, Page 1397, "Q And shortly after
10 that, did somebody else arrive at the house?

11 "A Bobby came up.

12 "Q" --

13 THE COURT: Well, now, you still have "and shortly
14 after" what?

15 MR. MANZELLA: Well, "Did Sadie leave --"

16 I've already read the question, "Did Sadie
17 leave the kitchen and go to some other room?

18 "A Yeah,

19 "Q What room was that?

20 "A The living room."

21 MR. KANAREK: I've objected --

22 MR. MANZELLA: "Q And shortly after that, did
23 somebody else arrive at the house?"

24 MR. KANAREK: That's what I am objecting to. It is
25 assuming facts not in evidence.

26 "Q Did Sadie leave the kitchen and go to
27 some other room?"

28 MR. MANZELLA: Well --

1 THE COURT: And you put Sadie in the kitchen? I have
2 forgotten.

3 MR. MANZELLA: Well, I looked, your Honor. I don't think
4 I can put Sadie in the kitchen. I think Mr. Katz just assumed
5 she was in the kitchen.

6 THE COURT: So that actually his question would be
7 objectionable even if it would be read fully in context.

8 MR. MANZELLA: Right. Miss Brunner says she didn't
9 see the signal because she didn't get out of the kitchen.

10 And the next question by Mr. Katz is: "I see.

11 Did Sadie leave the kitchen and go to some

12 other room?"

13 Again, what my position is, it is the statement
14 of Mrs. Brunner we're interested in. And if Sadie -- if her
15 testimony is Sadie left the kitchen and went to some other room,
16 it doesn't matter whether the question assumes facts not in
17 evidence, the way I am reading it to the jury, because her
18 testimony at the Beausoleil trial was that Sadie left the
19 kitchen and went into some other room. It really doesn't
20 matter if it looks like it assumes a fact not in evidence at
21 this trial when I'm reading it, because that is the sense of
22 her question.

23 MR. KANAREK: Well, your Honor, I am just astounded.

24 THE COURT: Excuse me, what is the next thing after --

25 MR. MANZELLA: After leaving the kitchen?

26 THE COURT: Yes.

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3c-1

1 MR. MANZELLA: The answer is "Yeah."

2 "Q What room was that?

3 "A The living room.

4 "Q And shortly after that, did somebody
5 else arrive at the house?

6 "A Bobby came up.

7 "Q And tell us what happened?"

8 THE COURT: All right, the Court would permit you to
9 strike "and shortly after that."

10 MR. MANZELLA: All right.

11 MR. KANAREK: Well, we do object, your Honor.

12 THE COURT: All right.

13 MR. KANAREK: On the foundation that --

14 THE COURT: This is not offered under 1291, as you've
15 said before, it is a statement of Mary Brunner. It is not
16 offered as former testimony, and although it is former
17 testimony, the Court believes that to alter it in this way
18 without altering the sense of the answer -- what am I
19 referring to, the one question?

20 "And shortly after that --" it begins.

21 MR. MANZELLA: "And shortly after that, did somebody
22 else arrive at the house?"

23 THE COURT: All I'm striking is "And shortly after
24 that." I'll permit the --

25 MR. KANAREK: Well, we do object.

26 MR. MANZELLA: "Answer" at line --

27 MR. KANAREK: We do object on the basis it is out of
28 context that it is -- it is a Sixth Amendment right, right to--

3c-2

1 under due process and equal protection. I know of no case
2 anywhere that allows the prosecution to fabricate questions
3 that weren't even asked of the non-testifying declarant,
4 your Honor. I just can't believe it. That this can -- that
5 this is being allowed. But -- if they don't have it, they
6 don't have it.

7 THE COURT: This is the second time I've come to this
8 point.

9 MR. MANZELLA: Yes, your Honor.

10 THE COURT: I think Mr. Kanarek is correct. If we're
11 going to regard it as former testimony, even though it is
12 admissible under 1235 and 770, I think it has to make sense.

13 MR. MANZELLA: Then, I can leave -- read the "and
14 shortly after that, did somebody else arrive at the house?"

15 "A Bobby came up."

16 I mean, I don't see what the objection is to
17 that question.

18 THE COURT: All right, the Court will allow it to stand
19 as is.

20 MR. MANZELLA: "Question." Line 24, page 1397, "And
21 tell us what happened."

22 MR. KANAREK: I will object to that, your Honor.

23 THE COURT: That it is narrative.

24 MR. KANAREK: On the basis it is narrative.

25 THE COURT: As calling for narrative.

26 MR. KANAREK: That's right, the Code specifically
27 provides one can object to a narrative question, and I'm
28 sure your Honor agrees with me that's in the Evidence Code.

3c-3

1 THE COURT: All right, the Court will overrule the
2 objection.

3 MR. MANZELLA: "Answer: And then we talked for a
4 while, and then Bobby asked Gary for some money,
5 and Gary said he didn't have any, and Bobby said
6 we weren't kidding, and then he pulled out the gun,
7 and then there was a fight."

8 MR. KANAREK: Well, I ask that all of that be stricken
9 on the grounds of hearsay. And when they use the term "We,"
10 it is obviously -- the statement is ambiguous. Does it
11 include Mr. Manson when he says "We weren't kidding"? And --

12 THE COURT: The objection is overruled.

13 Do you wish to be heard on it, Mr. Manzella, for
14 the record?

15 MR. MANZELLA: No, your Honor.

16 "Question" page 1398, line 3, "Mr. Beausoleil had a
17 gun; is that correct?

18 "A Right.

19 "Q When did you first see that gun that
20 evening?

21 "A After we got out of the car.

22 "Q Out of the car that Bruce was driving?

23 "A Uh-huh.

24 "Q And what was he carrying it in?

25 "A He had it in the holster.

26 "Q Did something happen to that holster
27 before entering the house?

28 "A He asked me to carry it, and I carried the

3c-4

1 "gun, and I put the holster in my purse."

2 MR. KANAREK: Well, your Honor, I ask that that be
3 stricken, that last answer, as not being responsive to the
4 question. And it is a statement of hearsay.

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1 THE COURT: The motion is denied. It would be
2 admissible as the statement of a co-conspirator. It is in
3 the course --

4 MR. KANAREK: She's not a co-conspirator. She is not
5 alleged to be a co-conspirator.

6 THE COURT: Well, Beausoleil --

7 MR. KANAREK: It is just her conduct. That's why what
8 she's doing is irrelevant -- one of the reasons she's
9 irrelevant and immaterial and her statements are hearsay.
10 She is not alleged to be a co-conspirator. Never has been.
11 She's not in this indictment as a co-conspirator.

12 THE COURT: She doesn't have to be if she is shown to be
13 a part of the conspiracy as the Court understands the law.

14 Go ahead.

15 MR. MANZELLA: Page 1399, line 10:

16 "Was Mr. Beausoleil carrying any other
17 kind of weapon?

18 "A His knife.

19 "Q And where --" --

20 MR. KANAREK: Just a minute, that's ambiguous as to time,
21 your Honor, and it is out of context.

22 THE COURT: Overruled.

23 MR. MANZELLA: "Q And where was he carrying that?

24 "A In his belt.

25 "Q Was it contained in any type of --

26 "A In a sheath.

27 "Q In a sheath?

28 "Will you describe the sheath to us?

"A It was just a leather sheath."

4 fls.

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1 MR. KANAREK: Well, I ask that that question, "Was it
2 contained in any type of --", that that be stricken, on the
3 grounds that the statement is -- it is -- in the form of the
4 question, it's not a question, clearly, and there's no
5 foundation there for any answer.

6 THE COURT: Overruled. It's clear what it called for.

7 MR. MANZELLA: Yes. Line 25, Page 1399.

8 "Q Can you tell us immediately what
9 happened following Mr. Beauroleil pulling the gun
10 on Mr. Hinman?

11 "A They had a fight.

12 "Q And can you describe the fight to us?

13 "A Gary was pushing at Bobby, and Bobby
14 was hitting Gary with the gun."

15 MR. KANAREK: Then I would ask that that be stricken.
16 The question calls for a yes or no answer. The answer is not
17 responsive.

18 "Can you -- can you describe the fight to us?"

19 That could be -- if -- if we are having a hearing
20 in court, we would ask that that be -- that that question, as we
21 say --

22 THE COURT: I'll overrule it.

23 She did describe it, sufficiently responsive to
24 the question, so the Court believes it should remain in.

25 MR. MANZELLA: "Q Did you see what part of the body
26 that Gary was being struck with the gun?"

27 MR. KANAREK: Now, that's assuming facts not in evidence,
28 because it states previously merely that Gary was pushing at

1 Bobby, and Bobby was hitting Gary with the gun.

2 THE COURT: The objection will be overruled.

3 MR. MANZELLA: "A In the head."

4 MR. KANAREK: And again, that question calls for a yes
5 or no answer. "Did you see what part of the body?" That which
6 is at Lines 19 and 20, your Honor.

7 THE COURT: Well, it's responsive. The objection will be
8 overruled.

9 MR. MANZELLA: Line 15. "Was Mr. Hinman hit more than
10 once over the head?"

11 "A Yeah." Y-e-a-h.

12 Line 22, same page, 1400.

13 "As a result of being hit over the head with
14 the gun, did you notice anything unusual about
15 Mr. Hinman's head?"

16 "A His head was cut in several places.

17 "Q Was he bleeding?

18 "A Yeah.

19 "Q All right. And where did this struggle
20 take place? What part of the house?

21 "A Kitchen.

22 "Q And where were you --" Strike that
23 question.

24 MR. KANAREK: Well, that's out of context, your Honor, --

25 MR. MANZELLA: "Q And were you --"

26 MR. KANAREK: -- in connection with the previous
27 language.

28 THE COURT: Let's see.

1 MR. KANAREK: At 1401.

2 THE COURT: Start back there with the question before
3 that.

4 MR. MANZELLA: Page 1401, Line 7.

5 "Q And where did this struggle take place?
6 What part of the house?

7 "A Kitchen.

8 "Q And were you in the kitchen at that
9 time?

10 "A Yeah."

11 MR. KANAREK: Well --

12 MR. MANZELLA: "Q Where was Sadie?

13 "A In the kitchen."

14 MR. KANAREK: You haven't shown the Court -- I am --

15 MR. MANZELLA: Where? What are you talking about?

16 MR. KANAREK: At lines 7 and 8.

17 "Where did the struggle take place? What part
18 of the house?"

19 That is out of context, Mr. Manzella, because there
20 is a previous question.

21 MR. MANZELLA: All right. Do you want the --

22 MR. KANAREK: Oh, I'm not asking for --

23 MR. MANZELLA: All right. Line 2, Page 1401.

24 "Q And would you continue with the story?
25 In other words, what happened after you observed the
26 cuts on the head of Mr. Hinman during this struggle?

27 "A Well, then it stopped.

28 "Q All right. And where did this struggle

"take place? What part of the house?

"A Kitchen.

"Q And were you in the kitchen at that time?

"A Yeah."

MR. KANAREK: Now, that's ambiguous as to -- your Honor, as to time, in the context of there being more than one struggle.

Line 10 is -- is clearly ambiguous, as to what time are we talking about, when he says "that time."

MR. MANZELLA: They were talking about the struggle, your Honor, --

MR. KANAREK: Not --

THE COURT: It seems to me --

MR. MANZELLA: -- up to that point. And this is what the question referred to.

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1 THE COURT: It seems to me to be responsive.

2 MR. KANAREK: It's ambiguous, though.

3 THE COURT: No, it's not ambiguous. Overruled.

4 MR. MANZELLA: "Q Where was Sadie?

5 "A In the kitchen.

6 "Q All right. And after the fight
7 stopped, what was said or done by any of the persons
8 in the house?"

9 MR. KANAREK: Well, I would object to that, your Honor,
10 as compound.

11 THE COURT: The next question is what?

12 MR. MANZELLA: "Q And after the fight stopped,
13 what was said or done by any of the persons in the
14 house?"

15 The answer is: "Bobby asked me to clean Gary
16 up, and then I started to do that, and then he gave
17 Sadie the gun and then he went in the living room."

18 MR. KANAREK: That question, your Honor, we would object
19 to --

20 THE COURT: "What was said or done?" Was that the
21 question?

22 MR. MANZELLA: The question is: "And after the fight
23 stopped, what was said or done by any persons in the
24 house?"

25 MR. KANAREK: In effect, it is a request for a
26 narrative, --

27 THE COURT: The objection is overruled.

28 MR. KANAREK: -- in addition to the other objections, your

1 Honor.

2 MR. MANZELLA: "Q And what did Sadie do with
3 the gun?

4 "A She held it on Gary, but he took it
5 away from her."

6 Line 3, Page 1402.

7 "Q And what happened -- where was
8 Mr. Beausoleil at this time?

9 "A In the living room.

10 "Q Did he return to the kitchen?

11 "A Yeah. Sadie said something about
12 Gary getting the gun, and Bobby came back to the
13 kitchen.

14 "Q What is the next thing that was said
15 or done?

16 "A We had another fight."

17 MR. KANAREK: Well, just a minute. You skipped a couple
18 of lines there; is that right?

19 MR. MANZELLA: Right.

20 MR. KANAREK: Would you do that again, Mr. Manzella?

21 I'm sorry, your Honor. He skipped --

22 MR. MANZELLA: All right. Well, let me say, first, may
23 I inquire, your Honor, if Mr. Kanarek -- does he want me to
24 read the questions to the jury, or does he want me to read them
25 now, just so he can object to them?

26 Because if I don't read a question, that means that
27 I think it might be objectionable; and therefore, I am not
28 going to read it to the jury.

1 MR. KANAREK: Well, Mr. Manzella -- what you are doing
2 now is reading questions that are going to -- that purportedly
3 you wish to read to the jury; isn't that what we are doing?

4 MR. MANZELLA: Right. So if I leave out a question and
5 answer, that means that I am not going to read it to the jury.

6 THE COURT: Yes. You'll have the --

7 MR. KANAREK: Right. I just got confused at that point.
8 I lost the continuity.

9 THE COURT: Yes, he simply lost it. I think we all
10 understand it.

11 MR. MANZELLA: Oh. Okay.

12 THE COURT: That this is going to be read without
13 objection to the jury; because the objections will be lodged now.

14 MR. KANAREK: Right. Correct, your Honor.

15 MR. MANZELLA: Very well.

16 MR. KANAREK: Now, where -- would you begin at Page 1402
17 again, the top column, Mr. Manzella?

18 MR. MANZELLA: Okay. Well, I will begin at Page 1401,
19 Line 22.

20 "Q Were there any words that passed
21 between Gary Hinman and Sadie at the time she was
22 holding the gun?

23 "A Yeah. He asked her to quit being
24 like this and, you know, give him the gun and
25 quit it.

26 "Q And did Sadie say or do anything?

27 "A She just sort of backed off, and then
28 he reached out and took the gun away from her.

1 "Q. And what happened -- where was
2 Mr. Beausoleil at this time?

3 "A. In the living room."

4 Skipping the question at Line 6 and the answer at
5 Line 8.

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1 At Line 9: "All right. Did he return to
2 the kitchen?

3 "A Yeah. Sadie said something about
4 Gary getting the gun and Bobby came back to the
5 kitchen."

6 Line 12: "Q What's the next thing that
7 was said or done?

8 "A We had another fight.

9 "Q Now, this is a second fight?

10 "A Yeah.

11 "Q And during that fight, what happened?

12 "A Just -- we fought over, you know,
13 fought to get the gun back and Bobby wound up with
14 it."

15 MR. KANAREK: Well, your Honor, the word I -- I object
16 to the use of the word "we" as being an ambiguous statement, as
17 to who she's referring to.

18 THE COURT: Overruled.

19 MR. KANAREK: Now, where -- where did you finish,
20 Mr. --

21 MR. MANZELLA: Line 18, Page 1402.

22 "Q All right. In other words, Bobby got
23 the gun again?

24 "A Yeah.

25 "Q And this occurred in the kitchen?

26 "A Yeah.

27 "Q Now, during one of these two struggles
28 that you have described in the kitchen, did a gun

1 "discharge?"

2 At line 5, Page 1403: "Yeah."

3 "Q During which struggle?

4 "A During the first one, I guess."

5 MR. KANAREK: Well, then, I ask that that be stricken,
6 as strictly a statement of conjecture, "I guess."

7 "During the first one, I guess."

8 THE COURT: That sounds reasonable.

9 MR. KANAREK: All right.

10 MR. MANZELLA: Line 8, Page 1403.

11 "Q And did you see where the bullet had
12 travelled?

13 "A Yeah.

14 "Q And can you describe it to us, where
15 it had struck the various surfaces?

16 "A It hit a drawer, a kitchen drawer, and
17 then it went under the sink."

18 MR. KANAREK: Well, your Honor, I would ask that that
19 portion -- where that question, "And can you describe it to us,
20 where it had struck the various surfaces?" It's assuming facts
21 not in evidence, that it had struck more than one surface.

22 THE COURT: Mr. Manzella?

23 MR. MANZELLA: Your Honor, the testimony up to this point
24 has been that the struggle took place in the kitchen; that
25 Bobby Beausoleil had the gun in his hand, and that Mary
26 Brunner saw where the bullet had traveled.

27 It would seem to me that it would be not really
28 assuming facts not in evidence, to say that it must have struck

1 something in the room.

2 MR. KANAREK: Not necessarily. There could have been an
3 open window.

4 MR. MANZELLA: It could have gone out an open window,
5 that's true, --

6 MR. KANAREK: Well --

7 MR. MANZELLA: -- but I don't think that the objection to
8 that question is of such magnitude that it shouldn't be allowed
9 in, --

10 MR. KANAREK: Well --

11 MR. MANZELLA: -- because it -- it does nothing to
12 destroy the sense of her -- of Mary Brunner's prior inconsis-
13 tent statement; that is, that it hit a drawer, a kitchen drawer,
14 and then it went under the sink.

15 MR. KANAREK: Well, your Honor, that is so conclusionary
16 on her part, with a bullet --

17 MR. MANZELLA: She said she saw it, your Honor.

18 MR. KANAREK: Well, how could she --

19 MR. MANZELLA: She was asked if she saw where the bullet
20 traveled, and she said, "Yeah."

21 MR. KANAREK: Well, that would be incredible of belief,
22 in any event; but furthermore, the Code does allow that, as a
23 basis for objection, and I --

24 THE COURT: Well, she obviously couldn't have seen it
25 in flight; but she might have seen the ricochet of the bullet.

26 MR. KANAREK: Well, right. But that's assuming facts not
27 in evidence, clearly.

28 THE COURT: I am going to overrule it.

1 MR. MANZELLA: "Q And to the best of your
2 recollection, this discharge of the weapon
3 occurred during the first struggle where Mr. Hinman
4 was hit over the head with a gun?

5 "A Yeah."

6 MR. KANAREK: Object to that as a statement of
7 conjecture, a request for conjecture. She's previously said,
8 "I guess."

4c

THE COURT: Would you read it again? I'm sorry.

MR. MANZELLA: Yes, your Honor.

"Q And to the best of your recollection, this discharge of the weapon occurred during the first struggle where Mr. Hinman was hit over the head with a gun?

"A Yeah."

THE COURT: Overruled.

MR. MANZELLA: (Reading.)

"Q And was anybody struck by the bullet?"

MR. KANAREK: That's calling for a conclusion, your Honor. She can only speak as to herself. Now, Mr. Hinman was there, supposedly, wounded. How could she tell whether anyone was struck, except as a conclusion?

MR. MANZELLA: No. 1, she saw where the bullet had traveled, your Honor.

MR. KANAREK: Well --

MR. MANZELLA: That's one thing.

THE COURT: I think that that is something that someone being present could ascertain.

The objection will be overruled.

What was her answer?

MR. MANZELLA: Her answer was: "No."

All right. The question on line 4, page 1404:

"Q What is the next thing that was said or done?"

MR. KANAREK: Well, that is ambiguous as to time, your Honor.

4c-2

1 MR. MANZELLA: All right. I'll read the entire
2 question. Line 1, page 1404.

3 "Q All right. Now, you told us about this
4 second struggle wherein Mr. Beausoleil came from the
5 living room to the kitchen and got the gun from Mr.
6 Hinman.

7 "What is the next thing that was said
8 or done?"

9 MR. KANAREK: It's ambiguous, your Honor.

10 THE COURT: Overruled.

11 MR. KANAREK: It's assuming facts not in evidence.

12 MR. MANZELLA: (Reading.)

13 "A Then we heard somebody coming up the
14 steps."

15 MR. KANAREK: That is clearly not responsive.

16 "What was the next thing that was said
17 or done?"

18 And the answer is:

19 "Then we heard somebody coming up the
20 steps."

21 That is not saying, and that is not doing.

22 MR. MANZELLA: It certainly is. It's hearing, your
23 Honor.

24 THE COURT: Well, it is hearing.

25 MR. KANAREK: It says: "What was -- what was the
26 next thing that was said or done?"

27 "We heard somebody --" how can she tell?
28 She can't say that anyone else heard.

4c-3

1 THE COURT: Can you skip that question?

2 MR. MANZELLA: Yes, your Honor.

3 THE COURT: And still make it tie in with the rest,
4 so it has some continuity?

5 MR. MANZELLA: Yes, your Honor, I believe so.

6 (Pause in the proceedings.)

7 MR. MANZELLA: Well, the question on line 17, page 1404.

8 "Q Now, can you describe what happened?"

9 THE COURT: Are you marking off now what you will
10 eliminate?

11 MR. MANZELLA: Yes, your Honor.

12 "Q Now, can you describe what happened?"

13 MR. KANAREK: That's out of context.

14 MR. MANZELLA: "You said you heard --" would you let
15 me finish, Mr. Kanarek?

16 MR. KANAREK: Oh, I'm sorry. I'm trying to get the
17 Court --

18 MR. MANZELLA: It's very hard for Mr. Williams to take
19 down my questions and answers, just as I'm reading them,
20 without you interrupting all the time.

21 MR. KANAREK: Well, Mr. Williams is capable of taking
22 care of himself, your Honor.

23 THE COURT: Gentlemen, if you will address yourselves
24 to the Court? We can do without the colloquy between counsel.

25 Go ahead with that last question you started on.

26 MR. MANZELLA: Line 17. (Reading.)

27 "Q Now, can you describe what happened?

28 What is the next thing that happened?"

4c-4

1 MR. KANAREK: No, you left some words out.

2 MR. MANZELLA: Right. I left some words out.

3 "A Sadie went right into the living room
4 to --"

5 MR. KANAREK: Now, you left some words out of the
6 question.

7 MR. MANZELLA: That's right. That's not a question,
8 Mr. Kansrek. Read it.

9 MR. KANAREK: I -- I'm sorry, your Honor. I apologize.
10 It's -- well, because it's so suggestive --

11 THE COURT: This is rather informal, but will you stop
12 arguing between yourselves?

4d fls.

4d-1

1 MR. MANZELLA: I apologize, your Honor.

2 THE COURT: What's the problem?

3 MR. KANAREK: The problem is exactly what the question
4 says.

5 THE COURT: What does the question say?

6 MR. KANAREK: The question says this, your Honor.

7 "Q Now, can you describe what happened?
8 You said you heard some footsteps. What is the
9 next thing that happened?"

10 MR. MANZELLA: I left out --

11 MR. KANAREK: And that -- I object, because, first of
12 all, this is -- this is not -- this is not -- is assuming
13 facts that are not in evidence.

14 You Honor struck the previous reference to
15 somebody coming up the steps, and it's assuming facts not in
16 evidence.

17 MR. MANZELLA: That's exactly --

18 MR. KANAREK: And it's ambiguous.

19 MR. MANZELLA: That's exactly why --

20 MR. KANAREK: And it's out of context, and it's not
21 Mr. Manson's fault that -- that he wasn't present at that trial.

22 MR. MANZELLA: Your Honor, that's exactly why I left
23 the statement out of the question.

24 Now, Mr. Kanarek just read it so that he could
25 object to it.

26 THE COURT: All right. The Court will strike it. It is
27 a statement, not a question.

28 MR. MANZELLA: That's right. And this is why I left it

4d-2

1 out.

2 MR. KANAREK: Well, your Honor --

3 MR. MANZELLA: Now, the question on line 17:

4 "Q Now, can you describe what happened?
5 What is the next thing that happened?"

6 MR. KANAREK: Well, just a minute.

7 MR. MANZELLA: (Reading.)

8 "A Sadie --"

9 MR. KANAREK: All right. Go ahead. Go ahead.

10 MR. MANZELLA: (Reading.)

11 "A Sadie went right into the living room
12 to see who it was. And Bobby and Gary and I went
13 to the door, and Charlie and Bruce came in."

14 MR. KANAREK: All right. I ask that the -- first of
15 all --

16 THE COURT: "--to see who it was"?

17 MR. KANAREK: Yes, right.

18 THE COURT: All right. That will be stricken. Scratch
19 that out in your transcript.

20 MR. MANZELLA: Right.

21 MR. KANAREK: And I object to the question, because
22 of the taking out of words which were actually uttered; that
23 is, it's -- it's an editing which is improper.

24 THE COURT: The objection is overruled.

25 MR. MANZELLA: So the answer is:

26 "A And Bobby and Gary and I went to the door,
27 and Charlie and Bruce came in.

28 "Q And by 'Charlie,' who do you mean?

4d-3

1 "A Charles Manson.

2 "Q And by 'Bruce,' who do you mean?

3 "A Bruce Davis."

4 Line 1, page 1405.

5 "Q And what is the next thing that you
6 observed, or was done in your presence?"

7 MR. KANAREK: That's compound, your Honor.

8 THE COURT: Overruled.

9 MR. KANAREK: And it's ambiguous as to --

10 MR. MANZELLA: (Reading.)

11 "A Then there was a -- there was a sort
12 of a -- just a rush fight and -- way into the
13 living room."

14 MR. KANAREK: I ask that that be stricken, what a
15 "rush" fight is. That can be anybody's -- I mean, it's just
16 conjecture. It's a statement which is so ambiguous that no
17 one can understand what it means.

18 MR. MANZELLA: It's not conjecture, your Honor. She was
19 asked what was done in her presence, not to speculate as to
20 what may have been outside her presence.

21 MR. KANAREK: But a "rush" fight --

22 THE COURT: Well, the witness apparently knew what a
23 rush fight was. The objection is overruled.

24 MR. MANZELLA: (Reading.)

25 "Q Well, now, before there was a rush fight
26 in the living room, was there any conversation
27 between Mr. Hinman and Mr. Manson?

28 "A Everything just happened right at once."

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MR. KANAREK: Then I ask that that be stricken as not responsive to the question.

THE COURT: Sustained.

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1 MR. MANZELLA: (Reading.)

2 "Q. Can you just tell us in your own words
3 what happened?

4 "A They came in and it was just -- you know,
5 everything -- they just -- just wound up in the
6 living room pushing, you know."

7 MR. KANAREK: Your Honor, I ask that that statement be
8 stricken on the grounds that it's -- it's been -- it's not
9 responsive to the question.

10 The question merely solicits, "Can you just tell
11 us in your own words what happened?"

12 And the answer is "Yes" or "No." It's obvious
13 she can't. So the answer should have been, "No."

14 And that question, the answer is not responsive,
15 along with the other vices.

16 THE COURT: Overruled.

17 MR. MANZELLA: (Reading.)

18 "Q Now, when you say Mr. Manson came into
19 the house, did he have anything with him?

20 "A He had a sword.

21 "Q Was this a long sword or a short sword
22 or what?

23 "A Fairly short.

24 "Q And did Mr. Davis have any weapon with
25 him?

26 "A He might have had a knife."

27 MR. KANAREK: I would ask that that --

28 MR. MANZELLA: Your Honor, I've struck that question

4e-2

1 and answer.

2 THE COURT: All right.

3 MR. MANZELLA: All right.

4 Line 26, page 1405. (Reading.)

5 "Q Okay. And then you say that a struggle
6 occurred in the living room?

7 "A Uhm-hmm."

8 MR. KANAREK: Wait. That's not so. The answer is
9 u-h-m dash h-m-m.

10 And I contend that that's un -- it has no --
11 it lacks meaning.

12 MR. MANZELLA: Your Honor --

13 MR. KANAREK: We don't know how that "Uhm-hmm" or
14 whatever it is, just what that --

15 THE COURT: It's "Uhm-hmm."

16 MR. KANAREK: Well, your Honor --

17 MR. MANZELLA: Your Honor, if I could be heard just
18 briefly? The next question and answer clears the whole thing
19 up.

20 THE COURT: All right.

21 Do you want to strike the "Uhm-hmm"?

22 MR. MANZELLA: Fine.

23 "Q And is that -- your answer is yes?

24 "A Yeah."

25 MR. KANAREK: That's leading and suggestive, all of
26 that.

27 MR. MANZELLA: In other words, she says that her answer
28 was "Yes" to that question.

4e-3

1 THE COURT: All right. The Court will allow you to
2 keep the "Uhm-hmm" in there, then, that question and answer.

3 MR. MANZELLA: (Reading.)

4 "Q And, Miss Brunner, where were you during
5 a portion of the struggle?

6 "A In the kitchen."

7 MR. KANAREK: Well, that's ambiguous, as to what portion--

8 MR. MANZELLA: All right. I'll strike it.

9 THE COURT: If you wish to strike it, you may. But it
10 seems to me to refer to the struggle that she's talking about.

11 MR. MANZELLA: All right. I'll leave it in, then.

12 MR. KANAREK: Well, your Honor, it's our objection
13 that --

14 THE COURT: Yes, I know. It will be overruled.

15 MR. MANZELLA: (Reading.)

16 "Q And what is the next thing that you
17 remember seeing or doing?"

18 MR. KANAREK: That's ambiguous as to time, your Honor.

19 THE COURT: Overruled.

20 MR. MANZELLA: (Reading.)

21 "A Charlie came out to the kitchen with his
22 finger out and asked me to bandage it up."

23 MR. KANAREK: And I ask that that "And asked me to
24 bandage it up," that that be stricken on the grounds of
25 hearsay.

26 THE COURT: Overruled.

4f fls.

4f-1

1 MR. MANZELLA: All right, your Honor. I have skipped
2 over to line 21 of page 1407.

3 "Q All right. What is the next thing you
4 remember happening, Miss Brunner, after you bandaged
5 Mr. Manson's thumb -- or finger; excuse me.

6 "A When I was doing that, Sadie was bandaging
7 Gary's ear. And they went into the living room, and
8 Charlie and Gary talked for a while."

9 MR. KANAREK: Well, your Honor, that is not responsive
10 to the question, that part, "When I was doing that, Sadie
11 was bandaging Gary's ear." Because the solicitation in the
12 question is, "What is the next thing you remember happening,
13 Miss Brunner, after you bandaged Mr. Manson's thumb -- or
14 finger; excuse me."

15 And so the question asks for what happened next,
16 what happened afterwards; and she says, "When I was doing
17 that, Sadie was bandaging Gary's ear."

18 That's not responsive to the question. The
19 question, as I say, was for what happened afterwards.

20 "And they went into the living room,
21 and Charlie and Gary talked for a while."

22 That also --

23 THE COURT: Overruled. I think it's sufficiently
24 responsive.

25 MR. MANZELLA: The question on --

26 MR. KANAREK: Well, it's our position that --

27 MR. MANZELLA: The question on line 4, page 1408:

28 "Q Did Mr. Hinman, up to that point, ever

4f-2

1 "ask any of you persons to leave the house?"

2 MR. KANAREK: That is ambiguous as to time.

3 THE COURT: Overruled.

4 MR. MANZELLA: (Reading.)

5 "A He asked Sadie and Bobby and I to leave.

6 "Q Did he ask it more than once?

7 "A Yeah.

8 "Q Do you remember his words, Miss Brunner?

9 "A He asked us to go and just forget about
10 the whole thing.

11 "Q And I take it you didn't go; is that
12 correct?

13 "A That's right.

14 "Q All right. Now, you say that Sadie
15 bandaged Gary's ear. Did you later --"

16 MR. KANAREK: Well, just a minute, your Honor.

17 MR. MANZELLA: -- "later see Mr. Hinman's ear?"

18 MR. KANAREK: This question --

19 MR. MANZELLA: (Reading.)

20 "A The next day."

21 MR. KANAREK: --is ambiguous, in that the use of the
22 word "you" can be either singular or plural, and you can't
23 tell from that question whether it means directed to Miss
24 Brunner individually or the group collectively.

25 THE COURT: Overruled.

26 MR. MANZELLA: (Reading.)

27 "A The next day."

28 MR. KANAREK: Well, let me see. Just a minute.

4f-3

(Pause in the proceedings.)

MR. MANZELLA: Well --

MR. KANAREK: Well, we object to the question as -- as --
well, I --

THE COURT: What is the question again?

MR. MANZELLA: Well, your Honor, the question is:

"Q All right. Now, you say that Sadie
bandaged Gary's ear. Did you later see Mr. Hirman's
ear?

"A The next day."

MR. KANAREK: Of course, our position is that that --
that reference to Sadie bandaging Gary's ear shouldn't be
in there, but your Honor has ruled differently on the preceding
question.

It's our position that that --

THE COURT: Well, it is a statement, not a question.
I'll strike that statement, --

MR. MANZELLA: All right.

MR. KANAREK: The part now that --

THE COURT: The part of the question that was a statement.

MR. KANAREK: Very well. Thank you, your Honor.

MR. MANZELLA: (Reading.)

"A The next day."

"Q And can you describe the condition of his
ear and face?

"A He had -- his ear was cut in two, and he
had a cut running down his cheek.

4g fls.

4g-1

1 "Q Do you remember which side of the
2 face?

3 "A I think it was the left side."

4 MR. KANAREK: Well, that, your Honor, if I may -- well,
5 all right; I will withdraw --

6 THE COURT: "I think it was the left side" is probably
7 acceptable as being a best -- the best testimony of a witness,
8 generally speaking.

9 Is that what you are referring to?

10 MR. KANAREK: Yes, your Honor. But --

11 THE COURT: The objection will be overruled.

12 MR. MANZELLA: "Q All right. And how long did
13 Mr. Manson and Mr. Davis stay in the house?

14 "A I don't really know. It was -- it was
15 still dark when they left. But I don't know how many,
16 like hours or what."

17 MR. KANAREK: Now, that is -- you see, there's no
18 reference to any previous light, your Honor; and so that
19 statement of hers is -- is just not --

20 THE COURT: All right.

21 MR. MANZELLA: The next three questions make that clear,
22 your Honor.

23 THE COURT: Very well. Let's hear them.

24 MR. MANZELLA: "Q Now, as I understand it, you
25 came there near midnight on Friday in the latter part
26 of July; is that right?

27 "A Uhm-hmm."

28 Again, it's that u-h-m hyphen h-m-m, your Honor.

1 MR. KANAREK: Your Honor, it's leading and suggestive; and
2 not only that, the -- the purported answer is not recognizable
3 in the English language as being -- as meaning anything, even
4 by slang.

5 THE COURT: Well, is it clarified later? Go ahead.

6 MR. MANZELLA: It certainly is.

7 THE COURT: "Q And Mr. Manson appeared
8 when it was dark, that same evening, or the early
9 morning hours; is that correct?

10 "A Yeah."

11 MR. KANAREK: Leading and suggestive. That is clearly a
12 leading and suggestive question.

13 MR. MANZELLA: Your Honor, could you instruct Mr. Kanarek
14 just to wait until I finish reading the question or the answer,
15 so that we could get the whole thing out?

16 THE COURT: All right. The Court would permit those
17 last three questions to come in. I think that, taken all
18 together, they're explanatory of each other.

19 MR. KANAREK: Does your Honor prefer that I enunciate the
20 objection after the answers? I'll be glad to do that. I
21 thought that you wanted me to enunciate the objection before the
22 answer.

23 THE COURT: Yes, you are doing all right. Don't interrupt,
24 however. Don't interrupt the question.

25 Go ahead.

26 MR. MANZELLA: "Q And he left before it got
27 light; is that correct?"

28 MR. KANAREK: Leading and suggestive.

1 THE COURT: Overruled.

2 MR. MANZELLA: "A Right.

3 "Q And did he leave with Mr. Davis?

4 "A Yeah."

5 THE COURT: The one previously, the form of it does
6 seem to be leading and suggestive.

7 "And he left" is more or less a statement by
8 Mr. Katz.

9 I'll strike it.

10 MR. MANZELLA: All right.

11 THE COURT: I'll strike the question and answer.

12 MR. MANZELLA: "Q And did he leave with Mr. Davis?

13 "A Yeah.

14 "Q And can you tell us in what vehicles
15 they left in?"

16 MR. KANAREK: That's assuming facts not in evidence,
17 that there's more than one vehicle; and -- and that they left
18 in vehicles at all, your Honor.

19 MR. MANZELLA: It's clarified by the question, your
20 Honor.

21 THE COURT: Overruled.

22 MR. KANAREK: Well --

23 THE COURT: By the answer, do you mean?

24 MR. MANZELLA: By the answer.

25 MR. KANAREK: Yeah.

26 MR. MANZELLA: "A I don't know what they came
27 in. But when they left, they took the Fiat with
28 them."

1 MR. KANAREK: Well, I object to the -- I object to the
2 question, as well as the answer, as not being -- not
3 responsive even. It isn't what they came in, it's what they
4 left in, was what the question solicited.

5 MR. MANZELLA: And this is what the answer was:
6 "But when they left, they took the Fiat with them."

7 Is the objection overruled, your Honor, or --

8 She was asked, "And can you tell us in what
9 vehicles they left?"

10 She threw in, gratuitously, "I don't know
11 what they came in." But then she did answer the
12 question by saying: "But when they left, they took the Fiat
13 with them."

14 I could strike that first portion of the answer, if
15 you'd like.

5
1 MR. KANAREK: But the question assumes facts not in
2 evidence that they left in vehicles or a vehicle. The fact --

3 MR. MANZELLA: But, your Honor, the answer clarifies
4 that the fact -- the fact becomes in evidence when the question
5 is answered by saying, "When they left, they took the Fiat
6 with them."

7 THE COURT: Well --

8 MR. KANAREK: Hardly.

9 THE COURT: The Court, if we are ruling in response to an
10 objection made at the time of trial, might sustain the objection.

11 MR. MANZELLA: I agree. But I'm saying in this situation,
12 again, we're not interested in Katz's questions, we're
13 interested in Miss Brunner's.

14 MR. KANAREK: Mr. Manzella has a strange theory that you
15 can somehow or other dignify this unreal procedure by --

16 THE COURT: The purpose of this --

17 MR. MANZELLA: I don't even know what he is talking
18 about, your Honor.

19 THE COURT: I can't say I am aware of what Mr. Kanarek is
20 talking about either.

21 MR. KANAREK: But what I am saying --

22 THE COURT: What I would say, what we are doing is
23 eliminating any gross ambiguities, any unfairness, from the
24 statement that might come from some misconstruction. But I
25 can't say that it is coming in under 1291 and, therefore,
26 would be subject to the same objections that it would be if
27 it were a question asked at the time of trial, as long as it
28 is a fair response, fair and ascertainable response to a question

1 which made sense, the Court would think it would be admissible.

2 MR. KANAREK: Then, that's a fundamental denial of due
3 process under the Fourteenth Amendment, because in our system
4 of jurisprudence questions, as the jury instruction
5 indicates, are to lend meaning to the answer. And for
6 Mr. Manzella to say we're only asking about Mary Brunner's --

7 THE COURT: Suppose this were a question-and-answer
8 session given to a -- in a statement to a police officer or a
9 District Attorney's investigator?

10 MR. KANAREK: It has to have the fundamental --

11 THE COURT: Certainly.

12 MR. KANAREK: If they don't ask --

13 THE COURT: Certainly under the case of People vs. Green,
14 as a prior inconsistent statement, it would be admissible
15 whether it was by way of direct or cross-examination that she
16 made the statement or whether it was a statement that she made
17 to a policeman on the street.

18 MR. KANAREK: But, your Honor, if the prosecution
19 transcript, whether it be police report or testimony, if it
20 doesn't have the fundamental correctness as far as our law of
21 evidence is concerned, it just can't go in. That's just one
22 of the facts of life. You can't bootstrap yourself and take
23 erroneous, improper questions and put them in a police report
24 and by the devise of 1235 and 770, get them into evidence.
25 This would be unthinkable, because there would be a premium on
26 asking improper and prejudicial questions. And certainly the
27 law doesn't contemplate that.

28 THE COURT: Well, the Court doesn't construe this

1 particular exchange that we are talking about as being unfair
2 or prejudicial or grossly improper.

3 The question, although it might have been
4 objectionable --

5 MR. KANAREK: Due process certainly does not allow --
6 we allege the process does not allow improper questions to
7 come in because of the fact that Mary Brunner is not here in
8 court or whatever the reason may be that -- upon whatever basis
9 the District Attorney is advocating this transcript.

10 We still have our fundamental law in the Evidence
11 Code and that has to be comported with as to each question.
12 That's our view. And that's our advocacy to the Court.

13 THE COURT: The Court will overrule the objection.
14 The question and the answer taken together make sense, and
15 they're not unfair.

16 MR. MANZELLA: "Q" -- Line 4, Page 1410 -- "All
17 right."

18 MR. KANAREK: Just a minute, what was your -- oh, you're
19 skipping.

20 MR. MANZELLA: Line 4, Page 1410, "Q" --

21 MR. KANAREK: Well, then, I -- just if I may have a
22 moment, your Honor.

23 THE COURT: Now, if there's anything that you wish to
24 have or have added here, the Court will hear from you,
25 Mr. Kanarek, or from you, Mr. Manzella.

26 MR. KANAREK: In other words, the last question was at
27 1409. That is the reference was to the Fiat, is that correct?

28 MR. MANZELLA: Fiat, correct.

1 MR. KANAREK: And then, you're going from --

2 MR. MANZELLA: No, I am not.

3 Oh, I skipped some questions on 1409, Line 22.

4 "Q. And were there any keys taken from the house?"

5 MR. KANAREK: And now, I'll object to that, your Honor.

6 The question is ambiguous and calls for a conclusion. No
7 foundation. It is hearsay. There's no showing that this
8 woman was percipient -- when they say: "And were there any
9 keys taken from the house?" And on top of it all, it is
10 leading and suggestive.

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1 THE COURT: Overruled.

2 MR. KANAREK: Now, would you -- do you want that answer
3 in, Mr. Manzella?

4 THE COURT: What was the answer?

5 MR. MANZELLA: "A. Yeah, Gary's keys."

6 MR. KANAREK: Well, that's straight conclusion, your
7 Honor. There's no showing that she can make that conclusion.
8 There's nothing in the record.

9 MR. MANZELLA: I'll strike it, the question and answer.

10 THE COURT: All right, I think it is properly stricken.

11 MR. MANZELLA: "Q." -- Line 26, "And to that point
12 had any pink slips been signed by Mr. Hinman when
13 Mr. Manson and Mr. Davis took the Fiat?"

14 MR. KANAREK: Just a minute, I must object to that.

15 MR. MANZELLA: I withdraw the question and answer.

16 "Q." -- Line 4, Page 1410.

17 "Now, what happened during the early morning
18 hours of Saturday? Did somebody go to sleep?"

19 MR. KANAREK: It is compound and, furthermore, your
20 Honor, it is leading and suggestion.

21 MR. MANZELLA: All right, I'll leave off the last
22 question, "Did somebody go to sleep?" There were two questions
23 asked.

24 "Q. Now, what happened during the early
25 morning hours of Saturday?

26 "A. Yeah. We all went to sleep at one
27 point or another."

28 MR. KANAREK: That's the vice of a leading and

1 suggestive question. She stated that because the word "sleep"
2 was mentioned and --

3 THE COURT: All right, I'll sustain the objection.

4 MR. MANZELLA: Your Honor, if I might say this, again,
5 I think the point is we're interested in Mary Brunner's
6 statement and not Mr. Katz's questions. Now, if she said they
7 all went to sleep at one time or another during the early
8 morning hours of Saturday, it really doesn't make any
9 difference what the question was, whether it was leading and
10 suggestive or not.

11 In other words, I'm trying to think of an example
12 where a witness, say, at a traffic accident -- the witness --
13 the owner and driver of a car testifies at a trial, says,
14 "I wasn't responsible for the accident. I didn't go through the
15 red light," or something like that.

16 But at the scene of the accident, when he stumbles
17 out of his car at the scene of the accident, a passerby
18 comes by and says, "What's your name?" The driver says, --
19 the defendant in that case -- says, "My gosh, I went through
20 that light. I didn't mean to hit her. I'm sorry."

21 That's not only an admission against interest but
22 a prior inconsistent statement. What difference did it make
23 what the question was that brought about the answer?

24 MR. KANAREK: The big difference --

25 MR. MANZELLA: As long as the answer makes sense. In
26 other words, as long as the question and answer relate to
27 each other and it makes sense, and it doesn't destroy the
28 sense of the answer so that really the statement is really

1 something other than what it is. And I submit in this case,
2 asking what happened in the early morning hours of Saturday,
3 did somebody go to sleep, and her answer, "We all went to sleep
4 at one point or another," gives the whole sense of her statement.
5 That is, sometime during the early morning hours of Saturday
6 they all went to sleep.

7 MR. KANAREK: But, your Honor, the answer is in response
8 to the --

9 THE COURT: I think I'll sustain the objection.

10 MR. MANZELLA: All right, I'll strike it. I'll withdraw
11 it.

12 Line 2, Page 1411 -- Line 2, Page 1411:

13 "Q Did anybody stay up that night to
14 watch Gary?"

15 MR. KANAREK: That calls for a conclusion, your Honor.

16 THE COURT: Overruled.

17 MR. KANAREK: It is ambiguous and --

18 MR. MANZELLA: "A. Somebody was awake all night
19 long."

20 MR. KANAREK: I ask that be stricken as a conclusion on
21 her part. How could she be both awake and asleep, and how
22 could she know if somebody was awake all night long if she was
23 sleeping?

24 THE COURT: Overruled.

25 MR. MANZELLA: "Q" -- Line 3, Page 1412:

26 "Q And did anything unusual happen, say,
27 in the morning, during the daylight hours on
28 Saturday?

1 "A Nothing much happened all day
2 Saturday."

3 MR. KANAREK: Well, that's not responsive. The
4 answer is either -- it solicits a yes or no, and I ask it be
5 stricken on that ground.

6 THE COURT: It is a form of no. The objection is over-
7 ruled.

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1 MR. MANZELLA: (Reading.)

2 "Q" Page 1413, "And what was the condition of
3 Mr. Himman?"

4 MR. KANAREK: That's ambiguous as to time.

5 THE COURT: I assume she's talking about Saturday
6 morning. Overruled.

7 MR. MANZELLA: (Reading.)

8 "A He had that cut on his face, but other
9 than that he was pretty good.

10 "Q But his ear had been severed; is that
11 right?"

12 MR. KANAREK: That is leading and suggestive and it
13 furthermore solicits a conclusion and is ambiguous, because
14 the word "sever" may be different -- have a different meaning
15 to different individuals. "Severed."

16 I don't mean to belabor it, your Honor, but I'm
17 sure your Honor --

18 THE COURT: Overruled.

19 MR. MANZELLA: (Reading.)

20 "A Right.

21 "Q And he had those head injuries; is that
22 correct?"

23 MR. KANAREK: That's ambiguous as to the word "those,"
24 your Honor, and it is leading and suggestive.

25 THE COURT: Sustained.

26 MR. MANZELLA: (Reading.)

27 "Q And what did Mr. Himman do or say?
28 MR. KANAREK: Ambiguous as to time and it is also

5b-2

1 ambiguous as to -- in its request for conduct or language.

2 THE COURT: Overruled.

3 MR. MANZELLA: (Reading.)

4 "A He just laid there most of the day, you
5 know, slept quite a bit and talked once in a while."

6 MR. KANAREK: Ask that be stricken, your Honor.

7 THE COURT: Overruled.

8 MR. KANAREK: On the grounds it is not responsive to
9 the question.

10 MR. MANZELLA: (Reading.)

11 "Q And was there any further request by Mr.
12 Hirman to leave the house?

13 "A He went to the ..." --

14 MR. KANAREK: Now, that is assuming facts not in
15 evidence. I don't recall there being any prior request that
16 he leave the house.

17 MR. MANZELLA: There was, your Honor.

18 MR. KANAREK: I don't remember that. I'm --

19 THE COURT: The question was, was there any request
20 that Mr. Hirman leave the house?

21 MR. KANAREK: The question: "Was there any further
22 request by Mr. Hirman," and I don't recall the record
23 revealing at this point any prior request.

24 MR. MANZELLA: All right, "Q", line 4, page 1408,

25 "Did Mr. Hirman, up to that point, ever
26 ask any of you persons to leave the house?

27 "A He asked Sadie and Bobby and I to leave."

28 MR. KANAREK: Well --

5b-3

1 MR. MANZELLA: (Reading.)

2 "Q Did he ask it more than once?

3 "A Yeah."

4 MR. KANAREK: Well, that's ambiguous, then, as to
5 whether Mr. Hinman is asking that he leave the house or
6 other people leave the house, and the question is patently
7 ambiguous.

8 THE COURT: That seems to be true.

9 MR. MANZELLA: Let me read the answer.

10 "He went to the door once and it was
11 locked, and then he came back and we all went and
12 laid down."

13 THE COURT: I'll sustain the objection.

14 MR. MANZELLA: All right.

15 "Q And you say Mr. Hinman went to the door.
16 Did somebody stop him from going through the door?"

17 THE COURT: She would not have said that if that was
18 stricken previously, "Did he --" --

19 MR. MANZELLA: She didn't say that. That was a question
20 Mr. Katz asked. What she said was "The door was locked and
21 we all heard him going and we all ran toward the door and he
22 just went back in the living room." That's what she said.

23 THE COURT: All right, I'll strike all of that. Go on
24 to some other --

25 MR. MANZELLA: (Reading.)

26 "Q Did you stay Saturday night?

27 "A Yeah, right."

28 MR. KANAREK: Where are you?

5b-4

MR. MANZELLA: Page 1414. Page 1414, lines 13 and 14.

"Q" Line 21, "Did you again sleep Saturday night at Mr. Hinman's house?"

"A" Yeah.

"Q" And did Mr. Hinman sleep there, too?

"A" Yeah.

"Q" What was done about food?

"A" I think there was enough through Saturday.

5c fls.

I think Sadie went to the store Sunday."

5c-1

1 MR. KANAREK: And I ask that last question and answer
2 be stricken, your Honor, as to what was done about food. It
3 is a statement of conjecture. It is not a statement of
4 any -- there's no positive tone in the statement.

5 MR. MANZELLA: But, again, your Honor, the question tells
6 or relates to food and gives meaning to the question, if we
7 care about the meaning of the question. But the statement
8 says what was done about food.

9 MR. KANAREK: But the answer doesn't say what was done
10 about food, and it is merely her state of mind.

11 THE COURT: Well, it is certainly an ambiguous question.

12 MR. MANZELLA: It certainly is, your Honor.

13 THE COURT: But coupling it with the answer, it does
14 make sense. The Court will leave it in.

15 MR. MANZELLA: Line 2, page 1416:

16 "Q Incidentally, during this period of time,
17 were any phone calls received at the house?"

18 MR. KANAREK: That calls -- there's no foundation,
19 your Honor. It is ambiguous.

20 THE COURT: What is the response?

21 MR. MANZELLA: "Yeah, a few; not too many. I don't
22 know, two or three, maybe."

23 THE COURT: The Court overrules the objection.

24 MR. MANZELLA: (Reading.)

25 "Q Who answered the phone?

26 "A I answered it once, and Sadie did the
27 other times.

28 "Q And was there anything unusual about her

5c-2

1 "voice when Sadie answered the phone?"

2 MR. KANAREK: I'll object to that, your Honor, on the
3 grounds it solicits a conclusion.

4 THE COURT: Overruled.

5 MR. MANZELLA: (Reading.)

6 "A Some time she used an English accent.

7 "Q And did you hear what she said when she
8 was talking on the phone?"

9 MR. KANAREK: What?

10 MR. MANZELLA: "-- when she was talking on the phone?"

11 MR. KANAREK: Well, if I may, as to that, as to the
12 English accent, the answer was where "some time she used an
13 English accent," that statement in the context of these
14 proceedings is -- it is so indefinite, your Honor, that it
15 has no -- it is a statement of conjecture.

16 THE COURT: It seems fair to the Court. She's obviously
17 referring to the telephone call and the answer is in response
18 to the telephone call.

19 MR. KANAREK: Does that mean she used an English accent
20 throughout one phone call or during an entire phone call or
21 what? I mean, the statement -- you don't know what it means
22 when she says "some time she used an English accent."

23 THE COURT: The Court will permit it to remain.

24 MR. MANZELLA: (Reading.)

25 "Q And did you hear what she said when she
26 was talking on the phone?

27 "A" --

28 MR. KANAREK: That's ambiguous as to time. According

5c-3

1 to her, Sadie answered the phone the other times. It is a
2 compound -- it is asking for a lump statement as to --

3 THE COURT: Overruled.

4 MR. MANZELLA: (Reading.)

5 "A Said Gary had gone to Colorado because
6 one of his parents was sick and that he had said that
7 she could stay at the house but she wasn't to have
8 anybody else over."

9 MR. KANAREK: I object on the grounds of hearsay,
10 improper foundation.

11 THE COURT: Overruled.

12 MR. KANAREK: And, also, ambiguous as to time.

13 THE COURT: Overruled.

14 MR. MANZELLA: Now, your Honor, I've skipped over to
15 line 26, page 1417.

16 "Q Did anybody look for property and things
17 of value in Mr. Hinman's house?"

18 MR. KANAREK: Now, that is calling for a conclusion.

19 MR. MANZELLA: That objection was made and overruled.
20 That objection was made to that question and overruled in
21 the trial transcript. The answer came after the objection
22 was overruled.

23 THE COURT: What was the answer?

24 MR. MANZELLA: "We looked in the living room."

25 MR. KANAREK: And who is "we," your Honor? Does it
26 include Mr. Manson? And it is very prejudicial.

27 THE COURT: What is the next question?

28 MR. MANZELLA: (Reading.)

5c-4

"And where did you look in the living room?"

THE COURT: Go ahead.

MR. MANZELLA: (Reading.)

"A There is a tin box there.

"Q Did you find anything in the tin box?

"A About 20 bucks and the pink slips to
the car."

MR. KANAREK: Your Honor, I ask all of this be
stricken on the grounds we don't know whether -- the
ambiguity is very vital as far as Mr. Manson, because was he
present when this occurred or was he not present? And so
this ambiguity is not just trivia. It is very important.
And when she says "we," who is being included there?

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1 MR. MANZELLA: Your Honor, I don't understand that
2 argument at all, so it is hard to respond to it. Mr. Manson
3 wasn't at the house at the time, so I don't understand what
4 the argument has to do with Mr. Manson. It may be ambiguous
5 as to whether it includes Beausoleil, Brunner and Atkins, but
6 it --

7 MR. KANAREK: Not so.

8 MR. MANZELLA: But it is not ambiguous as to Mr. Manson
9 because we've already established Mr. Manson has left the
10 house.

11 MR. KANAREK: Well, no, your Honor, because that is
12 certainly not so. At the bottom of page 1417, Mr. Katz
13 states "Did anybody look for property and things of value
14 in Mr. Hinman's house?"

15 That is ambiguous as to time. Was Mr. Manson
16 there at the house at that time or not? That's very critical
17 in connection with Mr. Manson's position before this court.

18 THE COURT: Did the answers clarify --

19 MR. MANZELLA: I think they do, because as you go on
20 you get to the point where she was asked:

21 "And was this after or before he had been
22 slashed across the face and had the injuries to his
23 head?

24 "A This was sometime Saturday or Sunday.

25 "Q So, this would have been after he sustained
26 those injuries?

27 "A Yeah."

28 MR. KANAREK: Well --

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1 THE COURT: And the other parts of the testimony
2 explains that Mr. Manson left?

3 MR. MANZELLA: That's right.

4 THE COURT: After having -- he wasn't there Saturday
5 and Sunday?

6 MR. MANZELLA: Right.

7 MR. KANAREK: Well, your Honor, I don't know how Mr.
8 Manzella can make that interpretation.

9 MR. MANZELLA: Well, that's what the evidence -- you
10 know, that's what it says.

11 MR. KANAREK: No, it has to do with signing the pink
12 slips, Mr. Manzella. It has nothing to do -- how can you
13 misrepresent to the Court? It has nothing to do, whatsoever --

14 THE COURT: Gentlemen, confine yourself --

15 MR. KANAREK: Well, I apologize, your Honor, but I
16 would welcome your Honor's looking at this at this point.

17 MR. MANZELLA: Well, I'm going to read these, Mr. Kanarek.

18 MR. KANAREK: Well, hopefully, the Court will sustain
19 the objection.

20 MR. MANZELLA: I'm saying, I'm going to read them now.

21 MR. KANAREK: Begin at page 1417 at the bottom.

22 MR. MANZELLA: No, I will not. I will begin where I
23 left off.

24 MR. KANAREK: Well, at this point --

25 THE COURT: We'll come back to your objection. From
26 line 26, page 1417?

27 MR. KANAREK: Yes, your Honor.

28 THE COURT: Where are you now, Mr. Manzella?

1 MR. MANZELLA: The last question I read, your Honor,
2 was: "Did you find anything in the tin box?"

3 "A About 20 bucks and the pink slips to the
4 car.

5 "Q Now, with reference to pink slips, how
6 many pink slips did you find?

7 "A Two pink slips and two white slips or
8 something like that.

9 "Q And was there anything done with the pink
10 slips and the white slips?

11 "A Gary signed them.

12 "Q And how did it come to pass that Gary
13 Hinman signed the pink slips?

14 "A Bobby asked him to.

15 "Q And did Gary sign it?

16 "A Yeah.

17 "Q And was this after or before he had been
18 slashed across the face and had the injuries to his
19 head?

20 "A This was sometime Saturday or Sunday.

21 "Q So, this would have been after he
22 sustained those injuries?"

23 MR. KANAREK: That's leading and suggestive, your Honor.
24 Clearly leading and suggestive.

25 MR. MANZELLA: The point is, your Honor, Bobby Beausoleil
26 asked Mr. Hinman to sign the pink slips after he was slashed
27 across the face and had the injuries to his head. The
28 reference is clear at this time Mr. Manson has left the house

1 and he's not included.

2 MR. KANAREK: Your Honor, that is not so, because the --

3 THE COURT: How would you interpret it from everything
4 it says?

5 MR. KANAREK: And it says, well -- "Was it after or
6 before." And looking at the bottom of page 1418, "And was
7 this after or before he had been slashed across the face
8 and had the injuries to his head?"

9 "A This was sometime Saturday or Sunday."

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1 Now, clearly, in the context of these -- I'm
2 sure Mr. Manzella is going to argue that Mr. Manson was there
3 on Saturday. He's going to argue that. And this was sometime
4 Saturday or Sunday.

5 And so then this next question:

6 "So, this would have been after he
7 sustained those injuries?"

8 It is leading and suggestive and the previous
9 question is ambiguous. And it isn't tied down. And it is
10 not -- I mean, it is patent --

11 THE COURT: Looking at the pattern of the objections
12 and considering how the answers came in, the Court believes
13 that the objection should be overruled. The Court overrules
14 the objection to the entire line and allows them in.

15 MR. KANAREK: Where is the last you read from, Mr.
16 Manzella?

17 MR. MANZELLA: Line 4, page 1419.

18 All right, down to line 24, page 1419.

19 "Q Was there a call made any time during the
20 day on Sunday to the Spahn Ranch from Mr. Hinman's
21 house?"

22 MR. KANAREK: Your Honor, that's hearsay. That
23 solicits a conclusion. There's no foundation that she was
24 present. It is calling --

25 THE COURT: Go ahead.

26 MR. KANAREK: Yes.

27 THE COURT: Go ahead and state your objection.

28 MR. KANAREK: Well, plus the others, your Honor. It

1 is -- there's no showing that --

2 THE COURT: What does she respond to that?

3 MR. MANZELLA: She said:

4 "A During the evening.

5 "Q During the evening.

6 "And who made that call?

7 "A Bobby."

8 MR. KANAREK: That's a conclusion on her part, your
9 Honor. It is hearsay. There's nothing in this record --

10 THE COURT: Go ahead with the reading of it.

11 MR. KANAREK: Pardon?

12 MR. MANZELLA: All right.

13 MR. KANAREK: What's that?

14 THE COURT: I'll hold the ruling for just a minute.

15 MR. MANZELLA: All right.

16 "Q And did he tell you what the nature of
17 the call was?"

18 MR. KANAREK: That solicits a conclusion, your Honor,
19 and hearsay.

20 MR. MANZELLA: "No. He said later that we were going
21 to kill that night."

22 "Q Did he say who he was going to kill?

23 "A Gary."

24 MR. KANAREK: Your Honor --

25 THE COURT: All right, the Court will strike that about
26 the phone call.

27 MR. MANZELLA: Your Honor, I think the part about the
28 phone call with the -- I never intended to read the part

1 about the phone call with the -- I never intended to read
2 the part about the statements. I think with regard to the
3 phone call, she can testify to that, because she was present
4 at the time the phone call was made.

5 MR. KANAREK: There's no showing in this regard such was
6 the case. They merely solicited a conclusion from her, your
7 Honor.

8 MR. MANZELLA: She was asked -- she was in the house
9 with the other persons and she was asked "Was there a call
10 made at any time during the day on Sunday to the Spahn Ranch
11 from Mr. Hinman's house?"

12 She said: "During the evening." That is on
13 Sunday.

14 "And who made that call?"

15 She answers: "Bobby."

16 And she says that he didn't tell her about the
17 call. All he said was that later he was going to kill that
18 night.

19 "And did he tell you what the nature of
20 the call was?"

21 The answer is, "No."

22 MR. KANAREK: Your Honor, it is clear --

23 MR. MANZELLA: She was present when the call was made.
24 She didn't find out about it from Bobby Beausoleil. She was
25 present when the call was made because when she was asked
26 "And did he tell you what the nature of the call was?" She
27 said, "No. He said later that we were going to kill that
28 night."

1 I'm not offering the statement of Bobby Beausoleil.
2 I'm offering it to point out the fact she knows a call was
3 made and Bobby Beausoleil made it. The foundation is there.

4 THE COURT: It is certainly a very nebulous type of
5 response on the part of the witness, and I think that whole
6 thing should be stricken. It doesn't make sense, really.

7 MR. MANZELLA: Well, your Honor, I think it makes sense
8 in that she was present when a telephone call was made.

9 THE COURT: I -- well, I can't discern that's true,
10 that statement that she heard the call.

11 MR. MANZELLA: Yes.

12 THE COURT: And her response is that he didn't tell
13 her what the call was about, and he did later make some
14 comments.

15 MR. MANZELLA: Right.

16 THE COURT: Which would lead you, perhaps, to infer that
17 maybe there were some instructions from somebody to go ahead
18 and kill Himman.

19 MR. MANZELLA: But my point --

20 THE COURT: That's what makes it appear to me to be
21 unfair.

22 MR. MANZELLA: Your Honor, all I'm asking for is the
23 telephone call. I'm not asking for Bobby Beausoleil's
24 statements. All I'm asking is that the testimony come in
25 with regard to the fact that Bobby made a telephone call.
26 I'm not asking that the conversation they had later about --
27 she obviously relates it to the telephone call, but my point
28 is I am relating it to the foundation about her -- about Bobby

1 making the telephone call. I agree -- I'm not going to read
2 the question and answer with regard to the conversation with
3 Bobby, about their going to kill that night, but I think it
4 does lay the foundation for the fact that her testimony
5 about Bobby made a telephone call that evening -- I'm just
6 using the other as a foundation.

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1 THE COURT: Well, point out to me the strongest part of
2 it, which would indicate that.

3 MR. MANZELLA: Well, her answer was -- the question was:
4 "Was a call made from Hinman's house?"

5 She says: "During the evening."

6 "Q During the evening. And who made
7 that call?

8 "A Bobby."

9 And the next question is: "And did he tell
10 you what the nature of the call was?"

11 And she says: "No. He said later that we
12 were going to kill that night."

13 The point being that at the -- it seems that she
14 relates what she and Bobby talked about later that night, after
15 the telephone call; but that -- it certainly seems obvious
16 from her answer, "No, he didn't tell me about the call, but he
17 did say later we were going to kill that night."

18 She knew he made the call, but didn't know what it
19 was about until later when they talked about it.

20 MR. KANAREK: There's no such showing in the record.

21 MR. MANZELLA: I'm not saying that it's testified to
22 that way. I am saying that's the inference you draw from what
23 the testimony was, that she was present when Bobby made a
24 call, but that she didn't know anything about it until later,
25 when he said, "We are going to kill tonight."

26 MR. KANAREK: Your Honor, such a --

27 THE COURT: Go on to something else.

28 MR. MANZELLA: Okay.

1 MR. KANAREK: Your Honor, your Honor is striking all
2 that?

3 THE COURT: Well, the Court -- yes, I think that should be
4 stricken.

5 MR. MANZELLA: The next thing is, we get to Sunday, your
6 Honor, and there's a -- well, I start with Line 4, Page 1423.

7 "Q Now, what's the next thing that happened
8 after dinner?

9 "A Then I was doing --"

10 MR. KANAREK: Well, that's ambiguous as to time, as to
11 what date we are talking about, your Honor.

12 MR. MANZELLA: Well, it's not really ambiguous, but it
13 sure leaves a hell of a lot out of -- I'm sorry; it leaves a
14 lot of the questions and answers out.

15 But I thought that most of the -- the rest of the
16 questions and answers, your Honor, were objectionable. That's
17 why I didn't include them.

18 THE COURT: Well, can you pick it up on that page?

19 MR. MANZELLA: All right. I think so.

20 (Pause in the proceedings while Mr. Manzella
21 perused the transcript.)

22 MR. MANZELLA: All right, your Honor. I could do this:

23 "Q Now, --" this is on Page 1419, Line 12.

24 "Q Now, would you continue telling us what
25 happened on Sunday at Mr. Hinman's house?

26 "A When?

27 "Q Let me ask you this: --"

28 MR. KANAREK: Just a minute.

1 MR. MANZELLA: -- "Did you have breakfast at
2 Mr. Hinman's house?

3 "A Yeah."

4 MR. KANAREK: Are you talking about Line 14 -- Page 1419?

5 MR. MANZELLA: Yeah.

6 MR. KANAREK: Where's that?

7 MR. MANZELLA: On Line 12. All right.

8 "Did you have breakfast at Mr. Hinman's
9 house?

10 "A Yeah."

11 MR. KANAREK: Well, your Honor, I can't understand.
12 He has skipped, and now is he going back and asking for that to
13 be in, or what? Or are you just reading --

14 THE COURT: He is asking that Line 12, on Page 1419 --

15 MR. KANAREK: Well, I'll object. "Would you continue
16 telling us what happened on Sunday at Mr. Hinman's
17 house?" That's calling for a narrative.

18 THE COURT: Overruled.

19 MR. KANAREK: And then she answers, "When?"

20 THE COURT: Overruled.

21 MR. MANZELLA: I am trying to put the questions together
22 that get the next question I want to read into context.

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1 MR. KANAREK: Well, I do -- I do object to this
2 editorializing, if your Honor please.

3 MR. MANZELLA: It's not editorializing, Mr. Kanarek.
4 These are questions and answers in the transcript.

5 "Q Now, did you have some dinner there?

6 "A Yeah.

7 "Q Now, had somebody gone out --"

8 MR. KANAREK: Where are you?

9 MR. MANZELLA: Page 1421, Lines 5 and 6.

10 MR. KANAREK: Just a minute.

11 MR. MANZELLA: Through Line 12.

12 "Q And who cooked dinner?

13 "A I did."

14 MR. KANAREK: That's ambiguous, your Honor. "Now, did
15 you have some dinner there?" It's ambiguous as to time.

16 MR. MANZELLA: No, it isn't. Your Honor, with the
17 rest of the questions, it's right in context. It makes it
18 flow along nicely.

19 THE COURT: I'll overrule it.

20 MR. MANZELLA: "Q And who cooked dinner?

21 "A I did."

22 MR. KANAREK: Well, that's ambiguous as to time.

23 MR. MANZELLA: "Q And did you eat there?

24 "A Yeah."

25 MR. KANAREK: That's ambiguous as to time.

26 THE COURT: Overruled.

27 MR. MANZELLA: On Line 4, Page 1423.

28 "Q Now, what's the next thing that

1 "happened after dinner?"

2 MR. KANAREK: Well, that's ambiguous as to time.

3 THE COURT: Overruled.

4 MR. MANZELLA: "A. Then I was doing the dishes,
5 and Sadie was in the bathroom, and then we both heard
6 this noise in the living room and we ran in and
7 Gary had been stabbed."

8 MR. KANAREK: Well, I'll object to her stating what --
9 what Sadie heard.

10 MR. MANZELLA: "Q. And who was --"

11 MR. KANAREK: Just a minute. I will object. I ask that
12 that answer be stricken, your Honor.

13 THE COURT: Well, hold on just a minute.

14 MR. MANZELLA: May I read the rest of the questions and
15 answers?

16 THE COURT: All right.

17 MR. MANZELLA: "Q. And who was near Gary at that
18 time?

19 "A. Bobby.

20 "Q. And did Bobby have an object in his
21 hand?

22 "A. His knife."

23 This is now Line 22:

24 "Q. And how did you know that Mr. Hinman
25 had been stabbed when you rushed into the living
26 room?

27 "A. He was bleeding from the chest."

28 MR. KANAREK: Then I ask that that be stricken on the

1 grounds of a conclusion.

2 THE COURT: I'll leave it all in. It appears to be a
3 fair and understandable account.

4 MR. MANZELLA: Line 8, Page 1424.

5 "Q And what's the next thing that
6 happened?

7 "A We started cleaning the house."

8 MR. KANAREK: That's ambiguous as to time, your Honor,
9 that question.

10 THE COURT: Overruled.

11 MR. MANZELLA: "Q When you say 'cleaning the
12 house,' what did you do in that connection?

13 "A Wiped fingerprints off and gathered up
14 all the stuff together.

15 "Q And what did you use to clean the house
16 of fingerprints?

17 "A Dishcloths and wash rags.

18 "Q And who was doing this?

19 "A Sadie and I."

20 Line 3, Page 1426.

21 "Q Now, did Mr. Hinman ever chant in
22 your presence?

23 "A Yeah, quite a bit the whole weekend."

24 MR. MANZELLA: Your Honor, I would like to go back to
25 Line 25, Page 1423, after Miss Brunner answered, "He was
26 bleeding from the chest."

27 "Q What was the next thing that was said
28 or done?

1 "A He got up and went in the bathroom.

2 "Q By 'he,' who do you mean?

3 "A Gary."

4 MR. KANAREK: I don't see --

5 MR. MANZELLA: "Q And did he walk unassisted
6 to the bathroom?

7 "A Yeah.

8 "Q And how did he appear to you to be?

9 "A Like maybe in shock or something.

10 "Q And what's the next thing that ---"

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1 MR. KANAREK: Well, your Honor, I ask that all of that
2 statement, "Like maybe in shock or something," that that --

3 THE COURT: All right. That will go out.

4 MR. MANZELLA: All right. Line 25, Page 1424.

5 "Q You mentioned about cleaning the garbage
6 up. What did you have reference to?

7 "A A lot of bandages and also the kitchen
8 garbage from the last couple of days.

9 "Q And what was Mr. Hinman doing at that
10 time?

11 "A He went back in the living room and
12 laid down."

13 Line 3, Page 1426.

14 "Q Now, did Mr. Hinman ever chant in your
15 presence?

16 "A Yeah, quite a bit the whole weekend.

17 "Q And when he returned from the bathroom
18 to the living room area, did he chant?

19 "A Yeah.

20 "Q Did somebody ask him to chant?"

21 MR. KANAREK: No. "Did anybody --"

22 MR. MANZELLA: Yes. "Did anybody ask him to chant?"

23 "A Bobby asked him to chant sometime,

24 "Q And how was he laying on the floor?
25 Was he on his back or was he on his stomach?

26 "A On his back.

27 "Q And what is the next thing that
28 happened after you cleaned up the house?

1 "A Well, by then, Gary sort of, like,
2 went into a coma or something. Went -- you know,
3 he wasn't -- he was just laying there breathing,
4 but he had his eyes shut.

5 "And Bobby called the ranch to see if anybody
6 was there with a car --"

7 MR. KANAREK: Now, your Honor --

8 MR. MANZELLA: Your Honor, may I finish the answer first?

9 MR. KANAREK: Well -- very well, your Honor.

10 MR. MANZELLA: I mean, I am into it now. I would like
11 to finish it.

12 THE COURT: Very well.

13 MR. MANZELLA: "And Bobby called the ranch to see
14 if anybody was there with a car that could come get
15 us, but there wasn't.

16 "So he took everything, and Sadie and I went
17 out into the tree room and then -- then Bobby came
18 out and said, 'It's all over. Let's go.'"

19 MR. KANAREK: Your Honor, I ask that all of that be
20 stricken on the grounds that it's a narrative. It states --
21 it's a statement; there's improper foundation for it. There's
22 -- about Bobby calling the ranch, that's hearsay; and it --
23 there's no showing that this woman was percipient to the
24 matters that are set forth in that answer.

25 MR. MANZELLA: Your Honor, she's percipient to all of
26 the material that went on in the house for the entire weekend.

27 MR. KANAREK: Not necessarily. That is not --

28 MR. MANZELLA: And there's no reason to doubt that she's

SEE P. 5501

1 a percipient witness to what she testified to.

2 MR. KANAREK: Well, there's no --

3 MR. MANZELLA: She hasn't testified to anything that she
4 didn't see.

5 MR. KANAREK: That's -- that is not established by this
6 record, your Honor.

7 THE COURT: Not clearly established by all of her
8 testimony, I would agree with you, Mr. Kanarek. But the Court
9 will overrule your objection and allow that last answer to
10 come in.

11 MR. MANZELLA: Line 7, Page 1427.

12 "Q When Bobby came out, was the door closed
13 behind him?

14 "A Yeah, he shut it behind him."

15 MR. KANAREK: Just a minute. That is not -- you didn't
16 read that right, Mr. Manzella.

17 MR. MANZELLA: My eyes are getting blurry.

18 "Q When Bobby came out, was the door
19 closed?

20 "A Yeah, he shut it behind him."

21 MR. KANAREK: Now, that's ambiguous as to time, your
22 Honor, --

23 THE COURT: Overruled,

24 MR. KANAREK: -- when he came out from where?

25 MR. MANZELLA: "Q Now, did anything happen
26 which caused somebody to go back into the house?"

27 MR. KANAREK: Calling for a conclusion, your Honor.

28 THE COURT: Well, it does. What is the answer?

1 MR. MANZELLA: "Gary started breathing real loud.

2 "Q And do you know what caused him to
3 start breathing real loud?"

4 I'll strike that.

5 "A Gary started breathing real loud."

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1 Question, Line 16 --

2 Well, your Honor said that that's a conclusion.

3 THE COURT: Well, let's go on, however, and see if
4 there's --

5 MR. MANZELLA: Right.

6 "Q What happened after that?"

7 Wait a minute. Strike that. Line 16, Page 1428.

8 "Q Well, can you describe the breathing to
9 us?

10 "A. It was just a loud raspy breathing."

11 MR. KANAREK: Well, your Honor, that --

12 MR. MANZELLA: She certainly can -- she's just saying
13 what she heard, your Honor; that's all.

14 MR. KANAREK: Your Honor, that is not -- there's no
15 showing in this record that this woman was percipient to this
16 breathing episode. It's just not in the record.

17 THE COURT: Well, what--

18 MR. MANZELLA: As your Honor knows, she's asked if she
19 can describe it, and she's asked what happened.

20 THE COURT: That last question, gentlemen, is not
21 objectionable. The Court believes that she could describe the
22 breathing, as loud and rasping.

23 Go ahead.

24 MR. MANZELLA: "Q What happened after that?"

25 "A. Bobby went back in through the kitchen
26 window.

27 "Q And was that kitchen window locked or
28 what?

1 "A No, it just swings open.

2 "Q Is there any reason why he did not go

3 back through the door?"

4 MR. KANAREK: Solicits a conclusion.

5 MR. MANZELLA: Well, that's true.

6 I wouldn't want to adopt any of these questions as

7 my own.

8 THE COURT: Well, the --

9 MR. MANZELLA: I'll strike the question. It is

10 conclusionary.

11 I don't know why he asked the question that way.

12 He could have asked: "Was the door locked?"

13 MR. KANAREK: Well, he asked if there was any --

14 THE COURT: Very well. Regarding this as coming under

15 1291, and strictly as former testimony, I would say that I

16 would have to sustain the objection.

17 MR. MANZELLA: Yes.

18 THE COURT: But I think again that we must look at it

19 to determine whether or not the questions are sensible, or

20 whether they're so ambiguous that the jury couldn't get a fair

21 meaning from the answer, standing together with the question.

22 I will permit the answer to -- the question and

23 answer to remain in, beginning at that point where, "Did

24 something cause somebody to go back in?"

25 MR. MANZELLA: All right.

26 THE COURT: Certainly, that was a question which called

27 for a conclusion, but I will permit that question to go in.

28 MR. MANZELLA: All right.

(Pause in the proceedings.)

THE COURT: Now, where do you go from there? There was a point at which you started to talk about the question as being conclusionary, and you didn't know why they were asked --

MR. MANZELLA: That was the question, your Honor.

"Is there any reason why he did not go back through the door?"

You know, I thought -- you know -- I -- the questions have been asked that way, you know, and I -- I think it would have been easier for me now if he'd asked the questions a little bit differently then.

All right. I am now on Page -- at Line 7, Page 1429.

MR. KANAREK: Very well. Then that's stricken as a conclusion; is that correct, your Honor?

THE COURT: What are you talking about, when you say "That's it"?

MR. KANAREK: "Is there any reason why he did not go back through the door?"

Counsel has conceded that's asking for a conclusion.

THE COURT: Yes. And the Court sees it as being a bad question, but I am going to permit it in, together with the answer that follows.

MR. KANAREK: Your Honor -- then what -- what your Honor passed over temporarily, at Page 1427, that question, "Now, did anybody -- did anything happen which caused somebody to go back into the house?" which is at Line 9 --

THE COURT: Well, that's the one I meant.

1 MR. MANZELLA: Oh.

2 MR. KANAREK: "A Gary started breathing real
3 loud."

4 That is soliciting a conclusion, for somebody --

5 MR. MANZELLA: It is. It is, your Honor, but my point
6 still is that, under Section 1235, we are interested in Mary's
7 statements, that Gary started breathing real loud.

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1 MR. KANAREK: Your Honor, that --

2 MR. MANZELLA: And I think we need the question to make
3 some sense out of it.

4 MR. KANAREK: Well, your Honor, if it isn't there, it
5 isn't there. We still -- we are not to toss our law of
6 evidence into the ashcan, because the District Attorney chooses
7 not to question Mary Brunner properly in front of the jury.

8 And it's a denial of due process --

9 MR. MANZELLA: I would have --

10 MR. KANAREK: -- to Mr. Manson under the Fourteenth
11 Amendment, for this deviation. It's a procedural due process
12 that he's entitled to, the protection of the Evidence Code.

13 THE COURT: What is the question?

14 MR. MANZELLA: I don't know. Which one are we talking
15 about, your Honor?

16 THE COURT: "Did something cause somebody to go back in
17 the house?"

18 MR. MANZELLA: Yes, the question is:

19 "When Bobby came out, was the door closed?

20 "A Yeah, he shut it behind him.

21 "Q Now, did anything happen which caused
22 somebody to go back into the house?

23 "A Gary started breathing real loud."

24 MR. KANAREK: And that's --

25 MR. MANZELLA: Now, I think at most the question is
26 ambiguous, because she may have been going back into the house
27 because of somebody's breathing real loud, which would have
28 been proper. I think at most, it's ambiguous.

1 MR. KANAREK: But if the District Attorney can't ask a
2 proper question in the Bobby Beausoleil trial, there's no
3 reason why we have to use it here.

4 MR. MANZELLA: I resent being lumped with the fellow
5 who asked these questions at the Bobby Beausoleil trial.

6 THE COURT: Well, as the Court has said before, if this
7 were the statement of a police officer -- that is, if this were
8 statements given by the declarant as a result of questioning
9 by a police officer, sometimes the police officers' questions
10 are not couched in proper terms, nor are they questions which
11 would be proper, if they were uttered from a counsel table,
12 by able counsel.

13 And yet, it would be logical if such a statement
14 were to be allowed in -- permissible in evidence, under the
15 case of People vs. Green -- and, as I believe it would be,
16 then certainly this should be allowed, if it makes sense; and
17 if it's un-- not capable of being misconstrued by the jury
18 to the defendant's disadvantage.

19 MR. MANZELLA: Right.

20 MR. KANAREK: I must respectfully disagree with the
21 Court in its analysis. And if I may have a moment, your Honor?
22 The reason is -- People vs. Green is a case wherein there was
23 nothing about the California law of evidence per se.

24 It was a constitutional question. Obviously, it
25 had a federal question, or it wouldn't have been before the
26 United States Supreme Court. And there was nothing in that
27 case about police officer testimony, from police reports and
28 that kind of thing.

1 As your Honor knows, it involved a preliminary
2 hearing.

3 THE COURT: Yes.

4 MR. KANAREK: Involving lawyers and testimony in court.
5 And it's our belief that -- that 1235 and 770 -- and whatever
6 we are speaking of in connection with the Evidence Code -- does
7 not mean that we forget the rest of the Evidence Code;

8 And if it -- if a police report doesn't have the
9 fundamental characteristics that are necessary -- that is, in
10 its questions and answers -- then it just doesn't go in,
11 regardless. It has to have other attributes besides --
12 besides just being a police report.

13 1235 doesn't mean that it's a bushel basket, by
14 means of which all kinds of improper colloquy can then be
15 brought before the trier of fact and used to put a defendant
16 in the gas chamber.

17 THE COURT: Go ahead, Mr. Manzella.

18 MR. MANZELLA: Line 7, Page 1429.

19 "Q ---"

20 MR. KANAREK: Well, has your Honor ruled on --

21 THE COURT: Yes. The Court is going to permit that
22 series of questions and answers.

23 MR. KANAREK: At the top of Page 1427, that "Now, did
24 anything happen which caused somebody ---"

25 THE COURT: Yes.

26 MR. KANAREK: -- "somebody to go back into the house?"

27 And then that conclusionary question is --

28 THE COURT: Yes. The Court agrees that it is

1 conclusionary.

2 MR. MANZELLA: Yes. Line 7, Page 1429.

3 "Q And did you enter the house again?

4 "A Yeah.

5 "Q Did Sadie?

6 "A Yeah.

7 "Q And did you go into the living room?

8 "A Yeah.

9 "Q And who else was in the living room
10 besides yourself and Sadie?

11 "A Bobby and Gary.

12 "Q And where was Bobby in relation to
13 Gary?

14 "A Well, at some time I saw him put a
15 pillow over Gary's head, so that the breathing
16 wouldn't be so loud."
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1 MR. KANAREK: Well, your Honor, that -- that question
2 solicits a statement of positioning. It doesn't --

3 THE COURT: "So that the breathing wouldn't be so loud,"
4 I'll strike that.

5 MR. MANZELLA: It will be stricken, your Honor?

6 THE COURT: Yes.

7 MR. MANZELLA: Okay.

8 "Q And about this same time, were you
9 asked to do anything with the pillow?

10 "A Yeah. Then he was going to go in
11 the kitchen. And he asked me to hold the pillow."

12 MR. KANAREK: Well, that's a -- your Honor, that is
13 soliciting a conclusion. And it's also indefinite, as to --
14 it's ambiguous as to who was soliciting that something be done
15 with the pillow.

16 MR. MANZELLA: "Q Who asked you?

17 "A Bobby."

18 I am answering Mr. Kanarek's objection, your
19 Honor, just by reading the next question and answer.

20 MR. KANAREK: But that question is before, your Honor;
21 that is the vice of --

22 THE COURT: Would you read the question, the first
23 question that Mr. Kanarek is objecting to?

24 MR. MANZELLA: "Q And about this same time,
25 were you asked to do anything with the pillow?

26 "A Yeah. Then he was going to go in the
27 kitchen. And he asked me to hold the pillow."

28 MR. KANAREK: The only thing that can answer that

1 question is "yes" or "no," your Honor. And the rest of that
2 should be stricken as not responsive.

3 THE COURT: "Then he was going to go in the kitchen"
4 will be stricken, and I will leave the rest of it.

5 MR. KANAREK: "And he asked me to hold the pillow,"
6 your Honor is going to leave that?

7 THE COURT: Yes.

8 MR. MANZELLA: "Q And who asked you?

9 "A Bobby.

10 "Q And did you do so?

11 "A For a couple of minutes. And then --
12 or, for less; I don't know for how long. And then
13 he called me to come in the kitchen."

14 MR. KANAREK: Now, that answer, the answer -- I ask
15 that the answer be stricken. "And did you do so?" That can be
16 answered "yes" or "no."

17 THE COURT: I'll overrule the objection.

18 MR. MANZELLA: "Q Was Gary --"

19 MR. KANAREK: It's not responsive. That's my point.

20 THE COURT: I understood your point, Mr. Kanarek.

21 MR. MANZELLA: "Q Was Gary still breathing at
22 the time you had the pillow over his face?"

23 I'll strike that.

24 MR. KANAREK: No foundation.

25 MR. MANZELLA: I'll strike that.

26 Line 6: "Q And did you do something with
27 the pillow before you went into the kitchen?

28 "A Gave it to Sadie."

1 Now, okay. Going over to Page 1431, Line 2.

2 "Q All right. Now, how did you exit the
3 house?"

4 MR. KANAREK: Just a minute, I'm sorry. I didn't get
5 that. What page, now?

6 MR. MANZELLA: Line 2, Page 1431.

7 "Q All right. Now, how did you exit the
8 house?"

9 "A Out the tree room and down the front
10 steps."

11 Line 10. "Q All right. Did you have the
12 gun with you?"

13 "A Yeah,

14 "Q Who had the gun?"

15 "A I did.

16 "Q All right. And did you lock the house
17 again?"

18 "A Yeah, I imagine.

19 "Q All right. And did you use some form of
20 transportation to get from Mr. Hinman's house
21 to Spahn Ranch?"

22 "A Gary's Volkswagen."

23 MR. KANAREK: Well, I ask that that part about Gary's
24 Volkswagen, that that be stricken, your Honor. There's no
25 foundation to show that she knew that this was Gary's Volks-
26 wagen.

27 MR. MANZELLA: She had the pink slips at that point,
28 your Honor.

1 MR. KANAREK: But there's no showing that -- there's no --
2 I think the Volkswagen is the greatest --

3 THE COURT: What follows that?

4 MR. MANZELLA: "Q And can you describe that
5 Volkswagen for us?

6 "A It was red and white with an eagle on
7 the side."

8 That shows in the photographs that we have already
9 marked, the red and white VW with the eagle on the side.

10 "Q And how did they start the vehicle?"

11 THE COURT: Just one second.

12 MR. MANZELLA: Oh. I'm sorry.

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1 THE COURT: It is true that the statement that it is
2 Gary's Volkswagen -- it is her conclusion.

3 MR. MANZELLA: I can strike the name "Gary's," and just
4 say "Volkswagen."

5 MR. KANAREK: That's objectionable.

6 MR. MANZELLA: Of course, he'll object. We are entitled
7 to say a Volkswagen, because that's what she said. If he
8 doesn't want the word "Gary's" --

9 MR. KANAREK: We don't have to have the question at all.

10 THE COURT: The Court would prefer not editing what she
11 says.

12 MR. MANZELLA: The next question is:

13 "And can you describe that Volkswagen for
14 us?"

15 She says, "It was red and white with an eagle
16 on the side."

17 THE COURT: I think I'll sustain the objection unless you
18 can suggest some way that it can read properly without altering
19 her answer.

20 MR. MANZELLA: Your Honor, I don't -- I can strike
21 "Gary's," and put "a" in there, "a Volkswagen." If you
22 don't want to edit it, I don't see what is so important about
23 it saying "Gary's Volkswagen." I don't see what difference
24 it makes.

25 MR. KANAREK: I don't understand Mr. Manzella. I suppose
26 you could have a case and decide it over the cracker barrel.

27 Well, your Honor, I don't think Mr. Manzella has
28 a right to insult the Court and leave as he did, your Honor.

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1 THE COURT: Go ahead, Mr. Manzella.

2 MR. MANZELLA: Is Mr. Kanarek finished?

3 THE COURT: Yes.

4 MR. MANZELLA: Your Honor, it is my point she said she
5 left in a Volkswagen and the next question is:

6 "Can you describe that Volkswagen for us?"
7 And without her saying it is a Volkswagen, the rest of the
8 questions don't make any sense.

9 So my point is that I want to get in somehow that
10 she says one time it was a Volkswagen involved.

11 THE COURT: What follows?

12 MR. MANZELLA: "And can you describe that Volkswagen
13 for us?"

14 "A It was read and white with an eagle on
15 the side.

16 "Q And how did they start the vehicle?

17 "A Hot-wired it.

18 "Q Who hot-wired it?

19 "A Bobby and I."

20 MR. KANAREK: Your Honor, -- and may I -- if they don't
21 have the right question and answer, if it doesn't conform to
22 the law, it just can't be used, no matter how much Mr. Manzella
23 might like to have it used. This is the nature --

24 MR. MANZELLA: Your Honor, Mr. Kanarek keeps referring
25 to Section 1291, former testimony.

26 MR. KANAREK: I'm not referring to 1291. There are
27 other portions of that Evidence Code besides 1235 and 770.
28 We have admissibility based upon other factors.

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1 THE COURT: Where does the testimony go from there,
2 Mr. Manzella?

3 MR. MANZELLA: I skip over, your Honor, to page 1433,
4 line 20.

5 THE COURT: Is there any further reference to the
6 automobile?

7 MR. MANZELLA: Yes.

8 And I say, "And thereafter did you go back to
9 the Spahn Ranch in the Volkswagen microbus?" And,

10 "A Yes." And that's the last question.

11 MR. KANAREK: Well, from the bottom of 1431, your Honor,
12 I must -- I -- where is Mr. Manzella at this time, if I may
13 ask the Court, from the bottom of 1431, then where does he go?

14 THE COURT: What was the -- what were the questions that
15 preceded that last answer of Miss Brunner?

16 MR. MANZELLA: You mean the last answer I just read,
17 your Honor?

18 THE COURT: Yes.

19 MR. MANZELLA: About did you go back to the Spahn Ranch
20 in the microbus?

21 THE COURT: Yes.

22 MR. MANZELLA: All right, starting on 1431:

23 "Now, how did you exit the house?

24 "A Out the tree room and down the front
25 steps.

26 "Q Did you have the gun with you?

27 "A Yeah,

28 "Q And did you lock the house again?

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"A Yeah, I imagine.

"Q And did you use some form of transportation to get from Mr. Hinman's house to Spahn Ranch?

"A Gary's Volkswagen.

"Q And can you describe that Volkswagen for us?

"A It was red and white with an eagle on the side.

"Q And how did they start the vehicle?

"A Hot-wired it.

"Q Who hot-wired it?

"A Bobby and I.

"Q And thereafter did you go back to the Spahn Ranch in the Volkswagen microbus?"

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1 MR. KANAREK: That's leading and suggestive. The
2 previous colloquy he read, I wasn't objecting, because I
3 understand your Honor is getting the continuity; am I correct?

4 THE COURT: Yes, that's right.

5 MR. KANAREK: But this very last question is soliciting--
6 it is a leading and suggestive question.

7 "I see. And thereafter did you go back to the
8 Spahn Ranch in the Volkswagen microbus?

9 "A Yes."

10 That is clearly leading and suggestive.

11 MR. MANZELLA: It is also her statement, your Honor, she
12 did go back to the Spahn Ranch in the microbus. And under
13 Section 1235 we're entitled to have it come in.

14 THE COURT: The Court would permit that last statement
15 "Did you go--" in response to the -- in response to that
16 question.

17 However, what bothers the Court is her conclusion
18 that it was Gary's Volkswagen. The next question would not
19 make sense, however, would it?

20 MR. MANZELLA: Right.

21 THE COURT: And the Court believes that we cannot
22 engage in editing her statement.

23 MR. MANZELLA: Your Honor, it is my position she laid
24 a foundation for her conclusion that it was Gary's Volkswagen
25 when she described the Volkswagen for the jury in the Beausoleil
26 case, when she described the Volkswagen. And based on
27 all of the other testimony, that she was present at the
28 house, she knew Gary Hinman, the pink slips and so forth,

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1 that she lay the foundation for the conclusion it was Gary's
2 Volkswagen. That would be my position, your Honor, and that
3 therefore she could say the words "Gary" or the word "Gary's"
4 or that it was Gary's Volkswagen.

5 THE COURT: All right, the Court will permit it in.
6 We'll overrule the objection.

7 MR. MANZELLA: All right, that's all I have.

8 MR. KANAREK: Your Honor, I have a couple of points
9 that I would like to present to the Court.

10 THE COURT: All right.

11 MR. KANAREK: Mr. Manzella -- and I do this -- again,
12 it is a Hobson's choice kind of thing. I'm not advocating
13 this transcript, but Mr. Manzella has left out a couple of
14 places here, and in view of the Court allowing this in,
15 I have no alternative.

16 At page 1419 --

17 THE COURT: What line?

18 MR. KANAREK: Lines 5 and -- through 7.

19 THE COURT: What does it say?

20 MR. KANAREK: (Reading.)

21 "Q And did you look for any other things
22 of value in the house?

23 "A No, not really."

24 THE COURT: That was -- where would that fit in?

25 MR. KANAREK: That fits in after the pink slip.

26 In other words, they came across the pink slips,
27 and I can see why Mr. Manzella has deliberately not asked the
28 Court to do that, and that is part of the vice here. I don't

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1 want to appear to be authenticating anything that this lady
2 is doing in this Beausoleil proceeding, but it tends to show --

3 THE COURT: Very well, the Court will permit that to be
4 read, then, Mr. Manzella, those lines to be read along with
5 the other lines.

6 MR. KANAREK: Which the Court allowed the top of page
7 1419.

8 THE COURT: The top of page 1419.

9 MR. KANAREK: And also, your Honor, Mr. Manzella
10 significantly left out at page 1431 --

11 THE COURT: Well, don't argue. Just tell me what you
12 wish to add.

13 MR. KANAREK: Well, I say, it is a Hobson's choice.
14 I am on the horns of a dilemma, and in view of your Honor
15 allowing these matters in, I have no alternative.

16 THE COURT: Go ahead.

17 MR. KANAREK: He left out, at page 1431, lines 12 and
18 13, wherein he asked -- wherein the colloquy is at 10 and 11.

19 "Q All right. Did you have the gun with you?

20 "A Yeah.

21 "Q Who had the gun?

22 "A I did."

23 MR. MANZELLA: I read those, your Honor. I didn't leave
24 those out.

25 MR. KANAREK: I don't believe he did.

26 MR. MANZELLA: Your recollection is faulty.

27 MR. KANAREK: It is not underlined in the copy that
28 I have and Mr. Manzella supposedly underlined that which he

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1 is requesting --

2 MR. MANZELLA: That is irrelevant.

3 THE COURT: We will admit those lines in.

4 MR. KANAREK: Well, as I say -- that's it. I want to --
5 I mean, I want the record to reflect that I am asking for
6 those only because of the fact that the Court is allowing this
7 material in.

8 THE COURT: Yes, I understand that.

9 All right, gentlemen --
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1 MR. KANAREK: Your Honor, once again we would renew
2 our request that this not be read to the jury at this time
3 because Mary Brunner may be here. I understand that there
4 is a bench warrant --

5 THE COURT: Yes, there is a bench warrant --

6 MR. KANAREK: -- which has been released, is that correct?

7 THE COURT: Yes, it has been released. And if she shows
8 up, the Court would permit either or both of you to make a
9 motion to reopen, if you wish, in view of our discussion
10 in respect to this Beausoleil transcript.

11 So, if she appears -- well, I'll decide that when
12 and if she does as to whether or not I'll permit you to
13 reopen.

14 All right, 9:45. I believe I told the jury 9:40.

15 MR. MANZELLA: Your Honor, I thought it was 10:00
16 o'clock.

17 THE COURT: No, I believe it was 9:45, and I told the
18 jury to be here at 9:40. That's my recollection.

19 (Whereupon, at 5:45 o'clock p.m. an adjournment
20 was taken until the following day, Tuesday,
21 August 17, 1971, at 9:45 o'clock a.m.)
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