

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.

150

No. A-267861

REPORTERS' DAILY TRANSCRIPT

Monday, September 27, 1971

VOLUME 50APPEARANCES:

For the People:

JOSEPH P. BUSCH, JR., District Attorney
BY: ANTHONY MANZELLA,
Deputy District Attorney

For Defendant Manson: IRVING A. KANAREK, Esq.

DEFENSE: HOYT
BINDER (Miriam)
WHITELEY

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I N D E XDEFENDANT'S WITNESSES: DIRECT CROSS REDIRECT RECROSS

HOYT, Barbara 7719
 7769

BINDER, Miriam 7735

WHITELEY, Paul J. 7775

E X H I B I T SDEFENDANT'S: FOR IDENTIFICATION IN EVIDENCE

I - Certificate of Registry
 of Marriage 7734

1 LOS ANGELES, CALIFORNIA, MONDAY, SEPTEMBER 27, 1971 10:03 AM

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4 THE COURT: Good morning, ladies and gentlemen.

5 (Murmurs of "Good morning, your Honor," from the
6 members of the jury.)

7 THE COURT: Good to see you all. I hope you enjoyed
8 your long weekend.

9 I see that everyone is present. The record may
10 so show. All the jurors and alternates are present. Mr.
11 Kanarek is present.

12 (Whereupon the following proceedings were had
13 at the bench among Court and counsel and the
14 defendant, outside the hearing of the jury:)

15 THE COURT: That's all right. I'm going to assume
16 that Mr. Manson is going to conduct himself --

17 THE DEFENDANT: You shouldn't assume that.

18 THE COURT: Do you believe that you -- just a minute,
19 until counsel get here.

20 (Continuing) -- that you will not be able to
21 restrain yourself then, today?

22 THE DEFENDANT: Your Honor, it's my position that I
23 have the right to put on a defense.

24 THE COURT: The Court anticipates motions from your
25 counsel this morning.

26 THE DEFENDANT: It's not my counsel.

27 THE COURT: And thereafter, would anticipate that the
28 defense may proceed.

1 THE DEFENDANT: It's not my counsel.

2 THE COURT: Now, I am -- I brought you out here now to
3 allow you to state to me whether or not you will or will not
4 be quiet today.

5 THE DEFENDANT: This is not my counsel.

6 THE COURT: The Court does not wish you again to
7 interrupt the proceedings.

8 THE DEFENDANT: (Indicating.) You see what I'm doing?
9 I'm washing my hands. It's my turn to wash my hands.

10 Now, it's like -- I can do the best I can do
11 for you.

12 If you'll accept setting on yourself, there
13 ain't nothing I can do. You know, like I am screaming at the
14 top of my voice.

15 THE COURT: Mr. Manson, will you be quiet now?

16 THE DEFENDANT: No, I won't be quiet.

17 THE COURT: All right. Then you will have to remain
18 in the retaining cell.

19 THE DEFENDANT: Okay.

20 (Whereupon, the following proceedings were had
21 in open court, within the presence and hearing of the
22 jury:)

23 THE COURT: Mr. Manzella?

24 MR. MANZELLA: Yes, your Honor.

25 THE COURT: Anything further from the People?

26 MR. MANZELLA: No, your Honor. Subject to the --

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

28 MR. MANZELLA: Subject to the --

1 MR. KANAREK: Well, your Honor, may we approach the
2 bench, before counsel makes the next statement?

3 THE COURT: Yes, you may.
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(Whereupon the following proceedings were had at the bench among Court and counsel, outside the hearing of the jury:)

MR. KANAREK: Yes, your Honor. We will oppose any reopening on the part of the People for any purpose whatsoever. I don't know -- what counsel has in mind, but I oppose any -- he either rests now or he doesn't.

And I oppose any kind of "subject to" or anything like that.

THE COURT: Mr. Manzella?

MR. MANZELLA: Yes, your Honor. As I've indicated last week, the People had one witness that they wished to call, that they were unable to contact. And that the People would like to rest at this time, subject to reopening to call that one witness.

The witness' testimony is not lengthy, but I would like to call that witness --

THE COURT: And what does it concern?

MR. MANZELLA: It concerns a conversation with Mr. Manson had at Spahn Ranch, in late August of 1969, in which the witness asked Mr. Manson if he had seen Shorty Shea, and Mr. Manson replied that Shea got a job offer in San Francisco, which was better than the job offer that he got from Frank Retz; and that Manson gave him some money to go to San Francisco, and that Shea left and went to San Francisco.

MR. KANAREK: Your Honor cannot --

THE COURT: I'll allow you to make your motion at a

1 later time, and if -- I will not state to you at this time
2 whether I will permit you to reopen, but --

3 MR. KANAREK: Well, I want to --

4 THE COURT: -- but you may simply at this time rest,
5 and state that you rest.

6 And if you have such a motion at a later time,
7 why, I'll allow you to make it.

8 MR. KANAREK: I would like to state this.

9 THE COURT: You needn't be heard.

10 MR. KANAREK: Based on the -- it's a due process point,
11 as outlined in People vs. Carter, and I would like to make it
12 emphatically known that we --

13 THE COURT: The Court doesn't believe it's necessary
14 for you to make any statement at this time.

15 (Whereupon the following proceedings were had
16 in open court, within the presence and hearing of the
17 jury:)

18 THE COURT: Mr. Manzella?

19 MR. MANZELLA: Yes, your Honor. The People have no
20 further evidence to present, other than that already discussed,
21 and the People rest.

22 THE COURT: The People rest at this time?

23 MR. MANZELLA: Yes, your Honor.

24 THE COURT: Do you have -- you have offered into
25 evidence all of the items heretofore marked for identifica-
26 tion. The Court has received all of such items except 16,
27 39 and 40, 49, 66, 69, 79, 84. All the other items heretofore
28 marked for identification, except those I have specifically

1 named --

2 MR. KANAREK: Your Honor --

3 THE COURT: -- as being excluded, are received.

4 MR. KANAREK: Your Honor, I think your Honor -- I am sure
5 inadvertently -- has, in connection with some of the items --
6 it's not quite the way your Honor indicated.

7 I wonder if -- could we approach the bench?

8 THE COURT: Yes, you may.

9 (Whereupon, the following proceedings were had
10 at the bench among Court and counsel, outside the
11 hearing of the jury:)

12 THE COURT: Yes, I did at one time exclude 39 and 40.
13 You asked that they be received, and I did receive them.

14 Is that what you mean?

15 MR. KANAREK: No, your Honor. I am talking about the
16 clothing. I don't think that that demarcation has been made,
17 as the clothing which was identified and the clothing that was
18 not identified.

19 Your Honor was going to strike -- or remove --

20 THE COURT: If you recall, I asked that both of you --
21 that both of you take a hand in eliminating those things.
22 And if you need it, I will assist you in connection with it.

23 But some of them have been identified; some of the
24 items have been identified in photographs and visually.

25 And it will be up to both of you to determine
26 which of the items of clothing are to be excluded from the
27 trunks -- from the footlockers.

28 MR. MANZELLA: Yes, your Honor.

1 THE COURT: So let's do that today.

2 MR. KANAREK: Well, with that provision. I mean, I just
3 didn't want the record to reveal that we were agreeing to all
4 of that clothing going in.

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1 THE COURT: All right. Well, those items that are left,
2 we'll simply exclude from the footlockers.

3 MR. KANAREK: Yes, that's what I mean. It's our posi-
4 tion that -- thank you.

5 (Whereupon, the following proceedings were had
6 in open court, within the presence and hearing of the
7 jury:)

8 THE COURT: The Court stated that 39 and 40 for identifi-
9 cation had been excluded. The Court does retract that. Those
10 two items are admitted into evidence.

11 Additionally, there are certain items of clothing
12 in the footlockers, 65-F and -G, which items of clothing have
13 been excluded by the Court. I think that does clarify it.

14 The People rest.

15 Mr. Kanarek?

16 MR. KANAREK: Yes, your Honor. I think your Honor
17 wishes that these other proceedings take place outside the
18 presence of the jury.

19 THE COURT: What other proceedings?

20 MR. KANAREK: Well, does your Honor wish me to -- I
21 would like to enunciate --

22 THE COURT: At this time, do you wish to --

23 MR. KANAREK: May we do that at the bench, your Honor?

24 THE COURT: Yes.

25 (Whereupon the following proceedings were had
26 at the bench among Court and counsel, outside the
27 hearing of the jury:)

28 MR. KANAREK: Here, we have a --

1 THE COURT: You still have in mind making a motion under
2 1118?

3 MR. KANAREK: Oh, yes. I have it all prepared, that's
4 right.

5 THE COURT: Very well.

6 MR. KANAREK: The point is this, though. I do make a
7 motion to sequester the jury, for this reason. As your Honor
8 knows --

9 THE COURT: Sequester the jury, what?

10 MR. KANAREK: Sequester the jury, for this reason.

11 As your Honor knows, 1118.1 contemplates that the
12 Court sit as a juror. The language of it -- of 1118.1, the
13 Court is not -- it's not just a matter of whether or not
14 there's a corpus delicti or a prima facie case or something
15 like that. I'm sure your Honor is very familiar with that
16 language, which says that the Court must decide whether a
17 jury would find the defendant not guilty, based on the present
18 posture of the evidence.

19 Now, with Mr. -- with the press in the audience,
20 I have every reason to believe that, in the unlikely event
21 that your Honor denies the motion, that that will be put in
22 the paper, that your Honor is deciding this motion.

23 And since that really is a very important point --
24 that is, that your Honor is sitting, trying to decide what
25 the jury should do -- that that invades Mr. Manson's right
26 to a fair trial.

27 And the only way you can do that, to prevent that,
28 is to sequester the jury; or, in the alternative -- and/or;

1 I should put it that way, because we have already asked that
2 the jury be sequestered -- that your Honor order that -- that
3 no one in the courtroom repeat, out of the courtroom, anything
4 that occurs; that it not be allowed to be printed in any
5 newspaper, or disseminated to the public, --

6 THE COURT: Well --

7 MR. KANAREK: -- because I feel that there is little
8 likelihood that this jury is not in fact getting this
9 information.

10 THE COURT: The Court denies both motions. The Court
11 believes that the jurors will follow the Court's admonition;
12 that they will not see or read anything from the media
13 concerning the trial.

14 MR. KANAREK: Well, then --

15 THE COURT: And the Court would deny the motions.

16 The Court believes that the press should have
17 access to this trial.

18 MR. KANAREK: Well, they should not --

19 THE COURT: An open and public trial.

20 MR. KANAREK: They should not disseminate it; that's
21 our point, your Honor. To disseminate it denies Mr. Manson
22 a fair trial, due process and equal protection, under the
23 14th Amendment of the United States Constitution, and under
24 California due process.

25 That's our position.

26 THE COURT: Very well. The Court denies each motion.
27 The Court would excuse the jury now, if you wish to make your
28 argument.

1 MR. KANAREK: Yes, your Honor. Thank you.

2 (Whereupon, the following proceedings were had
3 in open court, within the presence and hearing of the
4 jury:)

5 THE COURT: Ladies and gentlemen, the Court will excuse
6 you now until a quarter of 11:00; approximately a half hour.

7 You may return at that time. During the recess,
8 remember the same admonition pertains: You are not to discuss
9 this amongst yourselves nor with anyone else, nor permit
10 anyone to discuss it with you, nor are you to form or express
11 any opinion on it until it is finally submitted to you.

12 I'll see you back here in half an hour.

13 (Whereupon, the jury exited the courtroom,
14 and the following proceedings were had:)

15 THE COURT: Since the jury isn't present, the Court
16 would permit Mr. Manson to be out in the courtroom.

As fls. 17 THE BAILIFF: Yes, sir.

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1 (Whereupon, the defendant was ushered into the
2 courtroom.)

3 THE COURT: Mr. Manson, the Court will permit you to be
4 in the courtroom, since the jury are not present.

5 However, the Court would ask that you not
6 interrupt the proceedings.

7 Mr. Kanarek?

8 MR. KANAREK: Yes, your Honor.

9 (Pause in the proceedings while a discussion off
10 the record ensued at the counsel table between Mr. Kanarek and
11 the bailiff.)

12 MR. KANAREK: Yes, your Honor. I will -- first of all,
13 your Honor, I do ask your Honor -- well, I'll cover each count
14 separately.

15 Your Honor, first, I'll cover the alleged murder
16 count concerning Gary Hinman. Now, in that count, your Honor,
17 as your Honor well knows, there is no evidence to connect
18 Mr. Manson to the events at the Hinman home, absent testimony
19 of people who would be accomplices.

20 There's no question about it, that the -- the only
21 testimony purportedly linking Mr. Manson with the Hinman event
22 is the testimony of accomplices; and included in that would be
23 conduct and physical items of evidence which are predicated
24 upon testimony of accomplices.

25 Now, if we begin, we find -- first of all, we
26 find that Mr. Manson has been alleged to have associated with
27 people who are people that he was supposedly living with at
28 the ranch.

1 Now, these people are people that --that is, the
2 people that the prosecution has chosen are people that they
3 chose more or less arbitrarily; that is, they chose a certain --
4 a certain group of people to file charges on.

5 They chose not to file charges on Ella Jo Bailey;
6 they chose not to file charges on other individuals as well.

7 But that does not mean that the people involved,
8 as far as testimony concerning Mr. Manson is concerned, that
9 they're not accomplices.

10 To be an accomplice does not require that
11 someone actually be indicted -- although there's a code
12 section that defines an accomplice as a co-defendant, in the
13 same -- in the same Information or Indictment, but it is not
14 -- it is not necessary that the accomplice in fact be indicted,
15 if the person is de facto an accomplice; that is, that the
16 prosecution cannot get around the rule concerning accomplices,
17 by merely failing to indict a particular person, or failing to
18 bring a particular person before the Court.

19 And if we look -- if we look at all of the
20 evidence -- if we look, for instance, around Page 4120, we have
21 a very critical portion of the evidence which is not tied up.

22 Now, I'll get to that in another -- in another
23 context; namely, the conspiracy context. But we have -- and
24 it's around Page 4120 -- testimony about this girl with the
25 British accent, who made the statement concerning Mr. Hinman
26 being in Colorado and all of that.

27 The only way -- we, of course, objected to these
28 statements, on the grounds of no foundation and all of that;

1 that is, the -- there -- you just can't put on a telephone
2 conversation and saddle Mr. Manson with that telephone conver-
3 sation, unless, somehow, Mr. Manson is connected with it.

4 And this is the very reason for the exclusionary
5 rules, is that the jury not be allowed to go haywire when there
6 is no foundation. And there is absolutely nothing to show
7 that that conversation had anything to do with Mr. Manson, or
8 even anybody that Mr. Manson knew.

9 The only way -- the only way that that conversation
10 can be used is via the accomplice route; namely, Mary Brunner,
11 who is clearly an accomplice.

12 Now, it's most interesting to note -- it's most
13 interesting to note, in -- I wonder if I could have the Court
14 file, your Honor?

15 Thank you.

16 The first one?

17 (Whereupon, a discussion off the record ensued
18 at the bench between the Court and the clerk.)

19 THE COURT: The filing cabinet is temporarily blocked
20 off, Mr. Kanarek.

21 MR. KANAREK: I wanted -- I needed the Court files.

22 THE COURT: Well, what was your reference here? You
23 were speaking of the -- of Mary Brunner.

24 MR. KANAREK: Yes, your Honor.

25 THE COURT: That the Maintenance Department is doing
26 some work in that anteroom, --

27 MR. KANAREK: Very well.

28 THE COURT: -- and they have blocked off the filing

1 cabinet, temporarily.

2 MR. KANAREK I -- by way of illustration, I wanted to
3 quote the exact language in --

4 THE COURT: Incidentally, you indicated to me that your
5 argument would take about a half hour, and I excused the jury,
6 but for only a half hour.

7 MR. KANAREK: Yes, your Honor. I --

8 THE COURT: I am sure you are calculating that.

9 Go ahead.

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1 MR. KANAREK: Well, I am -- I will try to -- it --
2 maybe, by way of stipulation, we can -- we can deem that each
3 and every conversation has been objected to. In other words,
4 I have gone through; and if we can --

5 THE COURT: Well, the record speaks for itself.

6 MR. KANAREK: Well, you see, I am adverting -- well,
7 I am -- I am addressing the Court now to a -- something
8 different than the continuity of --

9 THE COURT: Will you get to it? What are you talking
10 about?

11 MR. KANAREK: Well, your Honor, I wanted the Court file.

12 THE COURT: You are talking about an accomplice.

13 MR. KANAREK: Your Honor is mentioning a half hour, and
14 I am trying to tell the Court that I am -- in order to
15 cooperate with the Court, and the Court's request for a half
16 hour, I was suggesting that we reach a stipulation, that I had
17 made the motion at this time for -- as to each and every
18 conversation, act and bit of conduct, attributable to alleged
19 co-conspirators, and others --

20 THE DEFENDANT: I've tried to communicate with him for
21 two years.

22 MR. KANAREK: -- so that we would have a stipulation
23 that I made a motion to strike all of those, on the basis
24 that they're not connected up, your Honor.

25 THE COURT: Well, just go ahead with your argument.

26 MR. KANAREK: Very well. I was answering the Court.
27 Your Honor mentioned a half hour; that's all.

28 THE COURT: Well, you were referring to Mary Brunner as

1 an accomplice.

2 MR. KANAREK: Yes. Now, the file --

3 THE COURT: And then you began to talk about the record.

4 MR. KANAREK: Yes. I wanted to talk about --

5 THE COURT: I mean, began to talk about the file.

6 MR. KANAREK: Yes. I wanted to pinpoint to the Court,
7 so that I am sure the Court would agree with me, that Mary
8 Brunner is an accomplice. And yet Mary Brunner is not named
9 in this indictment.

10 THE COURT: Well, now, the Court agrees with your
11 premise. And you've spent considerable time announcing it to
12 the Court, that a person need not be filed against by way of
13 Information or Indictment, in order to be an accomplice.

14 MR. KANAREK: That's correct.

15 THE COURT: All right.

16 MR. KANAREK: All right.

17 THE COURT: I agree, that's correct. Now, let's get on
18 with it.

19 MR. KANAREK: Now, the fact of the matter is that your
20 Honor then must view the evidence against Mr. Manson as a jury
21 would view it, in view of the language of the -- of 1118;
22 and clearly, as -- if you -- if you take the instructions
23 concerning accomplice, that -- all of the cautionary instruc-
24 tions that are involved in connection with the accomplice,
25 it is clear that a jury would find Mr. Manson not guilty of
26 murder, in connection with -- in connection with the Gary
27 Hinman matter.

28 THE COURT: 1118 says that in a case tried before a

1 jury, the Court, on motion of the defendant -- or on its own
2 motion -- at the close of the evidence on either side, before
3 the case is submitted to the jury for decision, shall order
4 the entry of a judgment of acquittal of one or more of the
5 offenses charged in the accusatory pleading, if the evidence
6 then before the Court is insufficient to sustain a conviction of
7 such offense or offenses on appeal.

8 All right. Go ahead.

9 MR. KANAREK: Yes. And so therefore, it -- there is
10 clearly not enough evidence to sustain a conviction against
11 Mr. Manson. The Court -- the Court would -- on appeal would
12 look at it as a jury would look at it, and then determine that
13 there is not sufficient evidence to convict him.

14 Because if you take away everything that's
15 dependent upon the accomplice, and all of the accomplice -- all
16 of the accomplices involved, there just isn't enough evidence
17 to convict Mr. Manson.

18 The interesting point, the one interesting point,
19 is involved with the alleged statement that Mr. Manson made
20 to Sergeant Whiteley. There is nothing in this record --
21 there is nothing in this record to show anything concerning
22 murder, even if you accept that statement. All it is is an
23 assault. If you accept that, it doesn't show any murder.

24 The prosecution evidence clearly shows that,
25 whatever injury occurred by virtue of -- of that particular act,
26 the cutting of Mr. Hinman's cheek would certainly not consti-
27 tute murder.

28 The most that it would constitute would be an

1 assault. And that's something for us to consider.

2 An assault is sometimes either GBI, or assault with
3 a deadly weapon; but certainly, not murder. The prosecution
4 has failed to show even the time of death.

5 The prosecution -- Mr. -- Dr. Katsuyama testified
6 he was told by the police officers when Mr. Hinman died.

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1 Mr. Manson's conduct in connection with the automo-
2 bile is clearly -- it's clearly conduct that does not indicate
3 that he was after Mr. Hinman for his money or for anything else.

4 Mr. Manson, according to the prosecution's own
5 evidence, gave away the automobile. He didn't even try to
6 sell it; didn't try to get any money out of it at all.

7 Clearly, the prosecution's theory about Mr.
8 Manson wanting to have something to do with getting money from
9 Mr. Hinman is -- is erroneous. It's without any -- it's --
10 it's just lacking any substance.

11 Furthermore, when we look at -- I mean, proceeding
12 on to the conspiracy count, there is nothing in the evidence
13 to show any kind of conspiracy on the part of Mr. Manson or
14 anyone else, to rob Gary Hinman.

15 If we go through the record and strike all of
16 these conversations that have no connection with Mr. Manson
17 whatsoever, everything that occurred at the house there,
18 between Mary Brunner, allegedly, and Susan Atkins and Gary
19 Hinman and Bobby Beausoleil, Mr. Manson had nothing to do
20 with that.

21 And there is no connecting Mr. Manson with any
22 of that, absent some kind of a showing that Mr. Manson had
23 knowledge of this, or condoned it, or wished it.

24 So there is no showing of any conspiracy. Now,
25 I would at this time -- I would at this time, in the interests
26 of dispatch, solicit the -- well, I'll find out.

27 (Pause in the proceedings while a discussion
28 off the record ensued at the counsel table between

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1 Mr. Kanarek and Mr. Manzella.)

2 MR. KANAREK: Well, your Honor, in the interests of
3 dispatch, I have asked the District Attorney to stipulate
4 that these many conversations that have been alluded to be
5 deemed -- that it be deemed that I made a motion, as to each
6 of them, on the basis of no foundation, and on the basis that
7 the law of conspiracy has not been met, in connecting these
8 conversations up to Mr. Manson.

9 All right. I would welcome then, in order not
10 to have to go through --

11 THE COURT: Well, the record speaks for itself.

12 As I have said, the Court recalls that -- I
13 can't recall each specific objection, but the Court recalls
14 that you did raise objections to most of the conversations,
15 if not all.

16 MR. KANAREK: Very well, then, your Honor.

17 THE COURT: I do have some --

18 MR. KANAREK: The point is --

19 THE COURT: I do have some notes in respect to that,
20 that point.

21 Go ahead.

22 MR. KANAREK: Yes, your Honor. Since a conspiracy
23 contemplates an illicit agreement or arrangement between the
24 people involved, a conversation or series of conversations
25 or conduct must be used in order to find a conspiracy.

26 Now, if you -- you must first prove a conspiracy,
27 before you can use -- that is, there must be a corpus
28 delicti of conspiracy, before you can use the statements of a

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1 defendant to find him guilty of conspiracy.

2 In other words, the law of corpus delicti applies
3 to conspiracy, just as well as it does to murder. And there
4 is no corpus delicti of conspiracy in this record, to show
5 any kind of arrangement to commit robbery concerning Gary
6 Hirman.

7 Now, the count of conspiracy is just not
8 substantiated by the evidence. You have to -- as I say, you
9 have to first show a conspiracy. Where is the conspiracy?

10 All that we have concerning the conspiracy is an
11 alleged bit of evidence by Ella Jo Bailey, a person who has
12 been granted concessions and been granted immunity from
13 prosecution in another state -- the State of Washington.

14 And without -- without that testimony, there is
15 nothing to show any kind of conspiracy. And that testimony,
16 there's nothing to show any conspiracy.

17 The law of accomplice applies to conspiracy,
18 just as well as to any other crime. And the -- the only thing
19 we have are statements of a -- of a group of alleged
20 accomplices.

21 That's all we have concerning conspiracy, as far
22 as Mr. Manson is concerned. And furthermore, we have no
23 statements of Mr. Manson, to connect up Mr. Manson to any
24 crime of conspiracy.

25 The prosecution's own witness, Mary Brunner,
26 testified that Bobby Beausoleil sent her -- sent her to the
27 home.

28 She says that Bobby Beausoleil sent her. She

1 doesn't say -- she doesn't say that Mr. Manson sent her;

2 She says Bobby Beausoleil sent her. I mean,
3 there just isn't anything to show any conspiracy or any
4 agreement on the part of -- in connection with anything Mr.
Af file. 5 Manson did, to rob or murder Gary Hinman.

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1 Going on to the Shea case, there is, first of all,
2 nothing to even show that Mr. Shea is not alive at the present
3 time. Mr. Shea was an itinerant person. There -- there's no
4 corpus delicti concerning Mr. Shea.

5 And without -- without belaboring it, it is
6 clear that Mr. Shea was a person who wandered back and forth
7 across the country, and -- and had many occupations. The
8 record shows that he even has a wife -- had a wife that the
9 prosecution, for some reason or another, didn't bring before
10 this Court. We had to bring it up during cross-examination
11 of witnesses.

12 He has a daughter; he has a daughter that the
13 prosecution chose not to bring before this Court, that we
14 had to bring by way of -- bring up by way of cross-examination
15 of witnesses.

16 So that there's no showing that Mr. -- that Mr.
17 Shea has passed away or is not living.

18 Assuming that you get over that hurdle, there's
19 no showing that Mr. Manson had anything to do with the killing
20 of Shorty Shea. There's nothing in the record, except state-
21 ments by Brooks Poston and Paul Watkins, attributed to Mr.
22 Manson.

23 These are -- these are people that are -- that
24 are -- that have been heavy drug users. The record is clear
25 that Mr. Poston was out of it for weeks at a time.

1. Fls.

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1 Mr. Watkins was a person who was a very, very
2 avid drug user. So there's nothing to connect Mr. Manson with
3 the alleged Shea murder.

4 Again, we would ask that all of the statements
5 and all of this conduct that has nothing to do with Mr.
6 Manson, that's irrelevant and immaterial, -- for instance, the
7 arrests on the 10th up at Barker Ranch. What have they got to
8 do with Mr. Manson? All of this action on the part of the
9 People that the Court has allowed in the record, where Mr.
10 Manson wasn't even present. Clearly, there's nothing to show
11 that Mr. Manson had anything to do with the murder of Shorty
12 Shea. I mean, it is just so obvious that it defies description.

13 So it is our request, your Honor, that your
14 Honor enter a judgment of not guilty as to each and every one
15 of the counts.

16 THE COURT: The People.

17 MR. MANZELLA: Your Honor, the Court has already read
18 1118.1 as it applies to the standard to be used by the Court.
19 I wanted to make it clear that the People's position is that
20 the Court does not look at the evidence as the jury looks at
21 the evidence, but rather the Court looks at the evidence to
22 determine whether, as a matter of law, the evidence is
23 sufficient to sustain a conviction on appeal; that's decidedly
24 not the way the jury would look at the evidence. Their test
25 is beyond a reasonable doubt, and that is not the test that is
26 applied to the Court on an 1118.1 motion.

27 My second point is that I disagree that the only
28 testimony supporting Mr. Manson's responsibility for the

1 Hinman murder is the testimony of an accomplice. Ella Jo
2 Bailey is not an accomplice. She did not participate in the
3 killing of Gary Hinman and, in fact, she refused to go to the
4 Hinman home when Charles Manson told her to go to the Hinman
5 home. Her testimony concerned admissions made by Mr. Manson
6 the day after Beausoleil, Brunner and Atkins returned to
7 Spahn Ranch, and since she was not an accomplice, the testimony
8 with regard to Mr. Manson's admissions corroborates the
9 testimony of Mary Brunner, who the People concede is an
10 accomplice.

11 Furthermore, we have the testimony of Sergeant
12 Paul Whiteley, who is also not an accomplice. He testified to
13 admissions made by Charles Manson.

14 And, finally, the disposition or the exercise of
15 dominion and control of Mr. Manson over Gary Hinman's property.

16 Now, the law requires only slight corroboration of
17 the accomplice's testimony.

18 Now, conceding that Mary Brunner's testimony was
19 that of an accomplice, the admissions of Mr. Manson made to
20 Ella Jo Bailey, the admissions made to Sergeant Whiteley and
21 his handling of the disposition and exercise and dominion and
22 control over Hinman's property after Hinman was killed, satis-
23 fies the slight corroboration requirements which is necessary.

24 The third point with regard to the testimony of
25 a conspiracy, the evidence establishes that prior to the
26 killing of Hinman Mr. Manson made statements at the Devil's
27 Canyon campsite with regard to obtaining money from
28 persons.

1 Second, he made statements to Ella Jo Bailey
2 telling her to go to the Hinman residence.

3 Thirdly, he had a meeting with Robert Beausoleil
4 at the ranch prior to the time Beausoleil, Brunner, and Atkins
5 left to go to Hinman's home.

6 Fourthly, Charles Manson made a trip to Hinman's
7 home with Bruce Davis in order to force Hinman's cooperation.

8 Fifth, Mr. Manson attacked Mr. Hinman at Hinman's
9 home sometime during the three-day period that Hinman was
10 kept a prisoner in his home.

11 And, finally, for the purposes of this motion,
12 Mr. Manson's exercise of dominion and control over Hinman's
13 personal property, which was obtained after Hinman was killed;
14 all of those things, Mr. Manson's statements and his partici-
15 pation with the other persons involved in the killing of
16 Gary Hinman would be sufficient to sustain a conviction on
17 appeal, conviction of the conspiracy count and Count II of the
18 Indictment.

19 Finally, with regard to the Shea killing, the
20 evidence by comparison with other no-body cases, is sufficient
21 for the jury to find that Hinman is dead; that is, the evidence
22 with regard to the corpus delicti.

23 The law requires before an admission may be
24 introduced, the law requires that there be a prima facie
25 evidence of the corpus delicti. Once there is prima facie
26 evidence of the corpus delicti, then the Court is correct in
27 allowing admissions of the defendant to go before the jury.

28 Now, once the admissions go before the jury, then,

1 the jury may consider those admissions along with all the other
2 evidence in the case to determine whether the elements of the
3 crime had been proved.

4 In the case of People vs. McMonigle, and that's
5 spelled M-c capital M-o-n-i-g-l-e, a 29 Cal. 2d 730, at Page 738,
6 the Court -- the California Supreme Court said, "It is apparent
7 from this review of the cases that the general trend of author-
8 ity has been to hold that upon prima facie proof of the corpus
9 delicti, the extrajudicial statements, admissions or confessions
10 of the accused may be admitted in evidence, and having been so
11 properly admitted, they may, with the other evidence, be
12 considered by the jury in its determination of whether or not
13 all the elements of the crime and the connection therewith
14 of the accused has been established to a moral certainty and
15 beyond all reasonable doubt."

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1a 1 McMonigle was cited with approval in People vs.
2 Duncan, 51 Cal. 2d 523, at Page 528, in which the California
3 Supreme Court said, "Once prima facie proof of a corpus delicti
4 is made, the extrajudicial statements, admissions and
5 confessions of a defendant may be considered in determining
6 whether all the elements of the crime have been established."

7 The District Court of Appeals, in 1969, cited the
8 Duncan case with approval at 274 Cal. Ap. 2d 905 at Page 910,
9 in which the Court quoted the paragraph I've quoted from Duncan,
10 and cited Duncan with approval.

11 So that the evidence of those people who knew
12 Donald Shea socially, in business and otherwise, establishes
13 or satisfies the requirement that as a matter of law the jury's
14 finding that Shea was dead could be sustained on appeal.

15 The Court, however, admitted the admissions of
16 Mr. Manson upon prima facie showing of the corpus delicti,
17 and now that those admissions have been admitted, they may be
18 considered by all the other evidence in the case by the jury
19 in determining whether a homicide was committed and, if so,
20 what was the degree of the homicide and who was responsible
21 for that homicide.

22 So that based upon all the evidence which is before
23 the jury at this time, it seems that there is sufficient evidence
24 for the jury to convict and sustain that conviction upon an
25 appeal.

26 MR. KANAREK: Yes, your Honor.

27 THE COURT: Moving party.

28 MR. KANAREK: It is our view that this code section may

1 say sustained on appeal. I know that that section has not been
2 interpreted, and there's very little interpretation of it
3 because it is a relatively new section.

4 The purpose -- the purpose of the section is to
5 avoid the necessity of having to go forward and put on a defense,
6 if the Court feels, citing as an appellate court, that there is
7 no need to proceed. And it is our view that the Court has
8 the obligation to take this case away from the jury and enter
9 judgments of not guilty on behalf of Mr. Manson as to each of
10 these counts because of the failure of proof by the People.

11 Now, when Mr. Manzella says that Ella Jo Bailey
12 is not an accomplice, it defies the very theory of the
13 prosecution.

14 The thing that they have hung on Mr. Manson's
15 back for a couple of years now, is this "Family" thing. This
16 "Family." They can't have it both ways.

17 In one breath they -- they -- they contribute
18 to Mr. Manson the control over all of these people and every-
19 body is together, and it is all just one unit, and they can't
20 take Ella Jo Bailey out of that unit, your Honor, for the
21 purpose of trying to make her not an accomplice when he says
22 she is not an accomplice. As a matter of law, she is an
23 accomplice by virtue of their constantly bringing up this
24 Family bit time after time after time.

25 And it is not for Mr. Manzella to say she's not
26 an accomplice. It is our position that she will be an
27 accomplice, that she is an accomplice, and -- and in the un-
28 likely event your Honor doesn't grant these motions, we're

1 entitled to an instruction that she's an accomplice. She has to
2 be an accomplice. By virtue of their proof, by virtue of their
3 bringing in -- for instance, why would they bring in the
4 October 10th raid when Mr. Manson wasn't even present at Barker
5 Ranch, to try to get across that everybody is one, and everybody
6 is working together, and Ella Jo Bailey is just as much a part
7 of that package as Mr. Manson, Mary Brunner, Bobby Beausoleil,
8 Bruce Davis, from the prosecution viewpoint, and so it is a
9 question to be determined as to whether or not she's an
10 accomplice. And it is our position that she is an accomplice.

11 When counsel says that you can use it, and he
12 quotes the Duncan case which I'm sure your Honor will agree
13 was not a no-body case -- in the Duncan case there was
14 definitely a -- there was definitely a -- a -- uh, there was
15 no evidence about that the lady died. You still have to prove
16 the corpus delicti independent of the purported statements of
17 the defendant.

18 Now, this Court has permitted over objection
19 statements attributed to Mr. Manson before there was any
20 showing of any corpus delicti.

21 Your Honor allowed that order of proof to become
22 sort of the fact of life of this case. But that still
23 doesn't --

24 THE COURT: Yes, the Court doesn't -- did permit in,
25 in both counts, that is all the three counts, certain state-
26 ments, purportedly admissions of the defendant, to come in,
27 altering the order of proof as the Court believes it has a
28 right to do.

1 MR. KANAREK: Well, but you see, it is our belief that
2 this is an abuse of discretion because it -- it gets blurred
3 in the jury's mind. And by your Honor allowing that to take
4 place --

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1 THE COURT: Of course, it is rare, isn't it, in a
2 conspiracy case, that that doesn't occur?

3 MR. KANAREK: Pardon?

4 THE COURT: It is rare, in a conspiracy case, that
5 that doesn't occur?

6 MR. KANAREK: Well, you see, your Honor, a statement
7 can have a double purpose. A statement can be used to
8 prove a conspiracy, but it -- and it can be used, if it is a
9 statement of a defendant, to tie the defendant to the
10 conspiracy.

11 In other words, it has --

12 THE COURT: That's what I mean, basically.

13 MR. KANAREK: But the point is, in this case -- in
14 this case, in connection with the substantive counts -- well,
15 the Shea case, for instance, there's no conspiracy alleged
16 in the Shea case. It is a violation of due process and equal
17 protection.

18 And the notice of the prosecution to go on any
19 kind of conspiracy theory, as far as Shea is concerned, and
20 we do so allege a man has a right to know what the charges
21 are against him, and you can't go trying to prove something
22 by virtue of a conspiracy when there is no conspiracy
23 alleged. You have a right to prepare and defend on a
24 conspiracy theory, if that's the prosecution theory. But
25 they have not alleged a conspiracy as to the Shea case. And
26 so there is -- there is no corpus delicti. There is nothing
27 to show -- there is nothing to show that Mr. Shea has passed
28 away.

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1 And so I think counsel's quotation from the
2 Duncan case is not -- I mean, it just has no pertinency
3 here in this particular case because it is so important.

4 That's the reason historically that the corpus
5 delicti rule came into being, is so somebody would not be
6 convicted when there is no body. There has to first be --
7 there has to be a crime proved -- whether it is murder,
8 conspiracy or sitting on the sidewalk, you still have to have
9 the corpus delicti of the crime and that just doesn't exist.

10 THE COURT: Thank you, gentlemen.

11 The Court finds that there is sufficient evidence,
12 direct and circumstantial, to warrant a denial of a motion
13 under Section 1118.1 on all three counts, and the Court,
14 accordingly, denies the motion.

15 Do you wish a short recess, about ten minutes?

16 MR. KANAREK: Very well, your Honor.

17 THE COURT: In ten minutes let's have the jury present
18 and let's proceed.

19 Are you ready to proceed?

20 MR. KANAREK: Yes, your Honor.

21 (Morning recess.)

22 THE COURT: The record may show the jury and alternates
23 are all present. Mr. Kanarek for the defendant, and Mr.
24 Manzella for the People.

25 Mr. Kanarek, do you wish to make an opening
26 statement?

27 MR. KANAREK: No, your Honor.

28 THE COURT: Call your first witness.

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1 MR. KANAREK: The first witness is a tape, your Honor,
2 that we have.

3 THE COURT: All right, in regard to the tape, do you
4 gentlemen wish to approach the bench?

5 MR. KANAREK: Yes.

6 (Whereupon, the following proceedings were had
7 at the bench among Court and counsel, outside the
8 hearing of the jury:)

9 THE COURT: All right, what you seek to do at this time
10 is to play a tape of --

11 MR. KANAREK: Mark --

12 THE COURT: What person?

13 MR. KANAREK: Mark Arneson, your Honor.

14 THE COURT: Mark Arneson.

15 And is the foundation stipulated to in respect
16 to the tape?

17 MR. MANZELLA: That it is Mark Arneson, yes, your Honor.

18 MR. KANAREK: Yes.

19 THE COURT: And we can announce that it is stipulated
20 that Mark Arneson is the person that was talking on the tape?

21 Is it a soliloquy or --

22 MR. KANAREK: No, it is a question and answer --

23 THE COURT: Question and answer?

24 MR. KANAREK: Question and answer between -- there's a
25 certain portion between Mr. Guenther and a person named
26 Palmer.

27 THE COURT: Mr. Guenther is a detective?

28 MR. KANAREK: And Palmer is also law enforcement.

1b-4

1 THE COURT: All right. Palmer.

2 MR. KANAREK: Is also a --

3 THE COURT: All right, can we play --

4 MR. KANAREK: There's a very short portion that I told --

5 MR. MANZELLA: Well, I would object to the conversa-
6 tion between Guenther and Palmer. They weren't witnesses in
7 the case.

8 MR. KANAREK: No, it is Guenther and Arneson. Guenther
9 and Palmer were there at the time.

10 MR. MANZELLA: All right.

11 THE COURT: I understood Mr. Kanarek to mean that
12 Arneson is speaking in each case in response to questions by
13 either Guenther --

14 MR. KANAREK: Right.

15 THE COURT: -- or Palmer.

16 MR. KANAREK: Right.

17 THE COURT: Is that right?

18 On what date did that take place?

19 MR. KANAREK: 3-13-70. March 13, 1970.

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THE COURT: Where?

MR. KANAREK: Where it was? It was some law enforcement--

THE COURT: You needn't -- you're not concerned about where it was?

As to March 13, 1970 --

MR. KANAREK: It was in a police facility.

THE COURT: If you don't know the gist of the --

MR. KANAREK: Well, it was a police facility.

MR. MANZELLA: I don't know where it was.

MR. KANAREK: Well, Mr. Whiteley is here, he knows.

THE COURT: It is unimportant?

MR. MANZELLA: To me, it is.

MR. KANAREK: Well, yes, it was a police facility.

THE COURT: Find out where it is if you want the background.

MR. KANAREK: All right.

Well, Mr. Whiteley said he'd be here in -- to assist in playing --

MR. MANZELLA: I think Sergeant Whiteley thought your first witness was going to be Barbara Hoyt and Sergeant Whiteley went down to the Grogan trial in Department 107 for a few minutes at Mr. Katz' request.

MR. KANAREK: Oh, well, I'll call Barbara Hoyt.

THE COURT: Where is Barbara Hoyt?

MR. MANZELLA: I believe she's in the bailiff's office.

THE COURT: Don't you wish to proceed with --

MR. KANAREK: Well, he's not here to play the tape.

THE COURT: All right.

1 MR. KANAREK: Also, your Honor asked that they obtain
2 Barbara Hoyt's mother and Mr. Manzella tells me he has not
3 done this.

4 MR. MANZELLA: That is correct, your Honor.

5 THE COURT: What was the problem? Were you unable to?

6 MR. MANZELLA: No, your Honor, I just refused to get
7 Barbara Hoyt's mother for Mr. Kanarek.

8 THE COURT: Well --

9 MR. MANZELLA: The reason is --

10 THE COURT: The Court didn't order --

11 MR. MANZELLA: The subpoena process is available to
12 Mr. Kanarek.

13 Secondly, these witnesses, persons who are not
14 witnesses for us, are not required to appear for Mr. Kanarek
15 on my phone call without subpoena.

16 And, thirdly, that I will be glad to cooperate
17 with Mr. Kanarek in getting in witnesses who have testified,
18 who I called as my witnesses because I am prepared to --
19 strike that -- because we have the facilities and the previous
20 contact with them to make it easy for myself and my investi-
21 gators to get them in. But that I don't want to be in a
22 position of having to be an investigator for Mr. Kanarek.

23 MR. KANAREK: That is hardly the point.

24 MR. MANZELLA: I've got Barbara Hoyt in. But I have not
25 asked Mrs. Hoyt to appear.

26 THE COURT: Do you want to proceed --

27 MR. KANAREK: It is hardly the point.

28 THE COURT: -- as to the --

1 MR. KANAREK: There is a Manson syndrome, and it is not
2 just like going down and subpoenaing a witness, your Honor.

3 THE COURT: Do you have Mrs. Hoyt's present address?

4 MR. KANAREK: I believe it is the same as Barbara's.

5 THE COURT: All right.

6 MR. MANZELLA: That's right.

7 THE COURT: You'll have to subpoena her.

8 MR. KANAREK: Well, all right, your Honor.

9 The point is, as I say, I will -- I know what it
10 is, after the District Attorney has brainwashed the said
11 people, your Honor, that's why your Honor asked Mr. Manzella --
12 this is hardly an ordinary situation with this synthetic
13 fear that everyone has of Mr. Manson.

14 THE COURT: Don't interpret what the Court did in
15 asking Mr. Manzella to supply you with this information
16 concerning Mrs. Hoyt's whereabouts as conceding that your
17 view of this is correct.

18 MR. KANAREK: We've continually asked under Smith vs.
19 Illinois to get addresses --

20 THE COURT: To what?

21 MR. KANAREK: Under Smith vs. Illinois.

22 THE COURT: To what?

23 MR. KANAREK: To get addresses.

24 MR. MANZELLA: Mrs. Hoyt is available, your Honor. I
25 know she is. And she lives with Barbara.

26 MR. KANAREK: If she is, all right. As I say --

27 THE COURT: Well, get your subpoena out and the Court
28 will direct the Sheriff's Department to serve her.

1 MR.MANZELLA: Your Honor, if I may make an observation,
2 unless Mr. Kanarek has called Mrs. Hoyt to come down voluntar-
3 ily, I'm not so sure she would not respond to a phone call
4 to Mr. Kanarek unless he has already tried it.

5 THE COURT: Have you tried it?

6 MR. KANAREK: No, I haven't.

7 THE COURT: All right, let's proceed, then.

8 MR. KANAREK: All right.

9 (Whereupon, the following proceedings were had
10 in open court within the presence and hearing of the
11 jury:)

12 THE COURT: At this time you wish to defer the playing
13 of the tape?

14 MR. KANAREK: Yes, to the convenience of the prosecution,
15 because I understand the person who played the tape is not
16 present, the person to play it is not here.

17 THE COURT: All right, your witness, then, your next
18 witness?

19 MR. KANAREK: Yes, Barbara Hoyt, your Honor.

20 THE COURT: Would you come forward, Miss Hoyt.

21 THE CLERK: Swear her again?

22 THE COURT: She is sworn.

23 You are still under oath.

24 State your name for the record.

25 THE WITNESS: Barbara Hoyt.

26
27 BARBARA HOYT,
28 called as a witness by and on behalf of the defense, having

1 been previously duly sworn, resumed the stand and testified
2 as follows:

3
4 DIRECT EXAMINATION

5 BY MR. KANAREK:

6 Q Miss Hoyt, do you have your contact lenses on
7 at this point?

8 A Yes.

9 Q Is that right?

10 And directing your attention to the time when the
11 people from the ranch, in the summer of 1969, went to the
12 desert, were you at the Spahn Ranch at that time?

13 A When they went to the desert?

14 Q Yes.

15 A Yes.

16 Q And you went to the desert, too?

17 A Yes.

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1 Q And at the time that you went to the desert,
2 were there police automobiles in the immediate vicinity?

3 A Of the ranch?

4 Q Yes.

5 A Yes.

6 Q And there were three or four or five police
7 automobiles that were located -- well, you tell us.

8 A Well, they were --

9 Q Where were they located?

10 A The ranch was below, and then with the police
11 cars, and we were up and saw the police cars below watching
12 the ranch, and we watched the police cars watching the ranch.

13 Q And the police automobiles were located at a
14 place that was on a road immediately adjacent to the ranch,
15 is that right, right near the ranch?

16 A Uh, I don't think I noticed.

17 (Whereupon, from within the holding tank the
18 Defendant Manson made an inaudible comment.)

19 THE COURT: Mr. Manson, now, you'll have to be quiet.

20 THE DEFENDANT: (From within the holding tank.) This
21 is not my defense.

22 THE COURT: Do not interrupt these proceedings or the
23 door will have to be closed.

24 THE DEFENDANT: You wonder why your penitentiaries
25 is raising hell, because we're not getting no justice and
26 we're going to keep on raising hell until we get some justice.
27 That lawyer belongs to the Judge. He does what the Judge
28 says for him to do.

1 (Whereupon, the little door to the holding tank
2 was closed by the bailiff, and the following proceedings
3 were had:)

4 THE COURT: Was there a question pending?

5 (Whereupon, the last answer was read by the
6 reporter as follows:

7 "A Uh, I don't think I noticed.")

8 THE COURT: Go ahead, Mr. Kanarek.

9 Q BY MR. KANAREK: And were -- would you tell us
10 about how many police officers were in these automobiles when
11 the cars -- the automobiles left the ranch, Spahn Ranch, for
12 the desert?

13 A I don't know.

14 Q Well, give us your best estimate of how many
15 automobiles were there?

16 A I think there were three -- there were three --
17 there were a few of them, three or four, I think.

18 Q And about how many police officers in each
19 automobile?

20 A I didn't look.

21 (Whereupon, there was a loud crash against the
22 holding tank door.)

23 Q BY MR. KANAREK: And would you tell us at what
24 time of the day or night it was?

25 A It was either late afternoon or evening. It was
26 early evening.

27 Q Now, would you tell us, Miss Hoyt, after you
28 left the ranch for -- I'll withdraw that.

1 How many automobiles did the people go out of
2 the ranch in?

3 A Uh, there was a truck and the car we were in.

4 Q And would you -- you say there was a truck and
5 the car you were in?

6 A Yes.

7 Q And how many people were in the truck?

8 A Uh, Danny and Bruce and Tex. Three, I think.

9 Q How many people were in the automobile?

10 A Uh, me and Oulah and Sherry and Kitty and Brenda
11 and Charlie.

12 Q And this automobile proceeded out of the Spahn
13 Ranch onto some main road and -- these two automobiles
14 proceeded out of the Spahn Ranch onto some main road, and
15 then ultimately into the Barker-Meyers Ranch area; is that
16 correct?

17 A Yes.

18 Q And was it your experience that the police were
19 around the ranch every day?

20 A Yes.

21 Q Police officers with pencils and tablets and
22 guns and automobiles were there every day, right?

23 A Well, I didn't notice like the pencils and
24 tablets or anything like that, because I didn't stay around
25 long when they came.

26 Q But these police officers that you are speaking
27 of, were there in uniform, right?

28 A Yeah, they came all the time.

1 Q And they were -- they were all around the ranch
2 at all times, right?

3 A Well, I don't know if they were all around the
4 ranch. I just saw a couple of police cars in that place.

5 Q On the road?

6 A Uh, I didn't notice if they were right on the
7 road.

8 Uh, you know, those pull out things on a road,
9 like it was flat. They were just parked there.

10 (Whereupon, Mr. Kanarek conferred with Mr.
11 Manzella at the counsel table, outside the hearing
12 of the jury.)

13 MR. MANZELLA: May I have a moment, your Honor?

14 THE COURT: Yes, you may.

15 (Whereupon, Mr. Manzella and Mr. Kanarek left
16 the courtroom and went into the antechambers of the
17 courtroom.)

2 fls.

1 (Whereupon, a discussion off the record ensued
2 at the bench between the Court and Mr. Kanarek.)

3 THE COURT: We will be in recess for a few minutes,
4 ladies and gentlemen. During the recess, you are admonished
5 not to converse amongst yourselves nor with anyone else, nor
6 permit anyone to converse with you on any subject connected
7 with the matter, nor are you to form or express any opinion on
8 the matter until it is finally submitted to you.

9 You may just remain in place. It will just be a
10 few minutes.

11 (Short recess.)

12 THE COURT: Miss Hoyt, will you step down for a minute?
13 You may stay in the courtroom, in the back there, beyond the
14 rail.

15 MR. KANAREK: Well, your Honor, could she be outside the
16 courtroom, while this other evidence is presented?

17 THE COURT: All right. Very well. Wherever you were
18 before, will you return there, then, Miss Hoyt? And we'll call
19 you back to testify at a later time, possibly this afternoon.

20 All right. Now, you wish to proceed with that
21 tape that you mentioned, Mr. Kanarek?

22 MR. KANAREK: Yes, your Honor. Yes.

23 MR. MANZELLA: Your Honor, it's going to take Sergeant
24 Whiteley a few minutes to set up the tape.

25 THE COURT: How long will it take to play?

26 MR. KANAREK: Oh, very briefly, after it's set up.
27 It's just a few moments of tape, is all, your Honor.

28 THE COURT: All right. Ladies and gentlemen, we'll just

1 continue this recess for another -- what, ten minutes?

2 MR. MANZELLA: Yes, your Honor,

3 MR. KANAREK: Your Honor, perhaps your Honor could
4 inform the jury that, due to the construction, we are having
5 these problems of --

6 THE COURT: You need about five or ten minutes,
7 Sergeant Whiteley?

8 SERGEANT WHITELEY: Yes, sir.

9 THE COURT: Five or ten minutes. And you may be
10 excused. You may stay in place or move around, whichever you
11 wish.

12 (Recess.)

13 MR. KANAREK: Yes, your Honor.

14 THE COURT: It's now seven to 12:00. Is there any point
15 in --

16 MR. KANAREK: Yes, your Honor. We have just a very short
17 portion, which -- which will take probably less than a minute.

18 THE COURT: All right.

19 MR. KANAREK: And then we can --

20 THE COURT: All right. The record will show that all of
21 the jurors and alternates are present, in the case of People
22 against Mr. Manson. Mr. Kanarek is present for the defendant,
23 and Mr. Manzella for the People.

24 MR. KANAREK: Yes, your Honor. This is --

25 THE COURT: May it be stipulated --

26 MR. KANAREK: Yes. Would your Honor state the
27 stipulation?

28 THE COURT: It has been stipulated by and between

1 Mr. Manzella and Mr. Kanarek, ladies and gentlemen, that there
2 is on this tape which is about to be played the voice of
3 Mark Arneson, who was a witness for the People in this case;
4 that Mr. Arneson held a conversation with Mr. Guenther and
5 Mr. Palmer on March 13th of 1970; that that conversation was
6 taped;

7 That the tape that is about to be played -- or the
8 portions of the tape that are about to be played -- accurately
9 reflect the conversation that took place at that time.

10 MR. KANAREK: Yes, your Honor.

11 MR. MANZELLA: So stipulated.

12 MR. KANAREK: Mr. Guenther and Mr. Palmer --

13 THE COURT: So stipulated?

14 MR. KANAREK: Yes.

15 (Continuing) -- are police officers; and the
16 voices that will be heard are in fact Mr. Guenther and
17 Mr. Arneson.

18 THE COURT: So stipulated?

19 MR. MANZELLA: So stipulated, your Honor.

20 THE COURT: All right. Will you identify, then,
21 gentlemen, the voice of Arneson?

22 MR. KANAREK: The person asking the question that is
23 going to be asked is the police officer, --

24 THE COURT: All right.

25 MR. KANAREK: -- Guenther; and the answerer is Mr.
26 Arneson.

27 THE COURT: That sufficiently identifies it?

28 MR. KANAREK: Yes. The context will -- will explain it-
self, your Honor.

1 THE COURT: Very well. Then, Sergeant Whiteley, would
2 you play that tape for Mr. Kanarek?

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1 (Whereupon, the tape recording was played as
2 follows:)

3 "Q Do you know any other names he's
4 known by?"

5 MR. KANAREK: Well, your Honor, that is not --

6 SERGEANT WHITELEY: It's coming now.

7 (Whereupon, the tape was played as follows:)

8 (Unintelligible.)

9 "Q Okay. Can you tell me when you
10 got the bus? Can you remember the date that you
11 got the bus?

12 "A Uh -- see, what happens --

13 "Q Well, think about that.

14 "A (Unintelligible.)"

15 THE COURT: All right. That's it? Were any of you
16 able to understand -- were there any of you who did not under-
17 stand that tape?

18 I can see five or six hands.

19 Perhaps, Mr. Kuczera, we could turn all the air
20 conditioners off.

21 THE BAILIFF: Yes, sir.

22 THE COURT: And we could boost the sound a bit, and
23 perhaps that will do it, so that we can understand it. It
24 was not understandable to me, either, ladies and gentlemen.

25 (Whereupon, the tape was played as follows:)

26 "A (Unintelligible.)

27 "Q Let's go back to that. Do you
28 remember when Charlie gave you the bus?

"A (Unintelligible.)

1 "Q All right. Will you describe
2 the bus to me that Charlie gave to you?

3 "A Uh -- red, with a --"

4 MR. KANAREK: Well, your Honor, that is not the
5 question we want. It's further on. It's wherein he asks the
6 question as to when Mr. Arneson obtained the bus. That's the
7 question. Not the description.

8 (Whereupon, the tape was played as follows:)

9 "Q Do you know any of the names he's
10 known by?

11 "A Uh -- (unintelligible.)

12 "Q Okay. Can you tell me when you
13 got the bus? Can you -- can you remember a date
14 that you got the bus?

15 "A Uh -- June -- June -- see, what
16 happened --

17 "Q Well, think about that again.

18 "A It was sometime in June. I can't
19 remember the date. I remember my birthday's June
20 24th.

21 "Q Are you saying June, now, or July?

22 "A My birthday is June 24 th --

23 "Q All right.

24 "A And -- oh, I think I got the bus
25 before my birthday."

26 MR. KANAREK: Would your Honor inquire whether the jury
27 was able to hear that?

28 THE COURT: Yes. Ladies and gentlemen, were you able

1 to hear that now?

2 (The members of the jury indicating affirmatively.)

3 THE COURT: Yes. They all nodded affirmatively, that
4 they were able to hear the portion played.

5 MR. KANAREK: Thank you, your Honor.

6 THE COURT: And Mr. Williams, were you able to take it?

7 THE REPORTER: Yes, sir.

8 THE COURT: Thank you.

9 Now, is there anything further that the
10 defendant wishes to offer at this time?

11 MR. KANAREK: Well, not since it's the noon hour. We
12 have the --

13 THE COURT: All right. We'll recess until 2:00 o'clock,
14 ladies and gentlemen. I think that perhaps -- well, there are
15 other matters that have to be called at that time.

16 So, ladies and gentlemen, the Court admonishes
17 you that you are not to converse amongst yourselves, nor
18 permit anyone else to converse with you on any subject
19 connected with this matter, nor are you to form or express
20 any opinion on the matter until it is finally submitted to you.

21 See you at 2:00 o'clock.

22 (Whereupon, at 11:59, an adjournment was taken
23 until 2:00 o'clock p.m. of the same day.)
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1 LOS ANGELES, CALIFORNIA, MONDAY, SEPTEMBER 27, 1971 2:13 P.M.

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4 THE COURT: Are you gentlemen ready to proceed?

5 MR. KANAREK: Yes, your Honor.

6 Your Honor --

7 (Proceedings had on an unrelated matter.)

8 THE COURT: All right. In the case of People vs.
9 Manson, the record will show that the jurors are all present,
10 and Mr. Kanarek for the defendant, Mr. Manzella for the
11 People.

12 Mr. Kanarek?

13 MR. KANAREK: Yes, your Honor. We have another tape --
14 well, actually, part of the same tape -- of Mr. Arneson,
15 which is going to be played. And this is the statement of
16 Officer Guenther, speaking to Mr. Arneson.

17 THE COURT: Is this part of the same conversation on
18 March 13th, gentlemen?

19 MR. KANAREK: Yes, it is, your Honor.

20 THE COURT: So stipulated?

21 MR. MANZELLA: So stipulated, your Honor.

22 THE COURT: Very well.

23 MR. KANAREK: I think, if the air conditioners are
24 turned off, we can --

25 THE COURT: Yes, it helped last time. We'll see what
26 we can do this time.

27 (Pause in the proceedings.)

28 THE COURT: All right. You may proceed, Sergeant --

1 do you wish Sergeant Whiteley to play the tape?

2 MR. KANAREK: Yes, your Honor.

3 THE COURT: Very well.

4 (Whereupon, the tape was played as follows:)

5 "The other guy -- (unintelligible) --
6 car kind of -- (unintelligible) -- and -- (unintelli-
7 gible) -- here's a good jack --"

8 MR. KANAREK: Now, I'm ready to play. If you'll just
9 back up?

10 (Whereupon, the tape was played as follows:)

11 "(Unintelligible) -- but I'll tell you
12 that you got the car at the end of July, or the
13 first part of August.

14 "A Is that right?

15 "Q Yeah."

16 MR. KANAREK: That's the end, your Honor. The -- your
17 Honor, may we approach the bench for a moment?

18 THE COURT: Could you run through it once more? I'm
19 not sure everybody heard it.

20 Is there anyone who did not understand?

21 MR. KANAREK: It's supposed to begin --

22 THE COURT: You're with me, if you didn't understand
23 it, because I had the same problem.

24 MR. KANAREK: Would your Honor inquire, did the jury --

25 THE COURT: No, some of them have already indicated --
26 three or four of them indicated that they did not understand.

27 (Whereupon the tape was played as follows:)

28 "(Unintelligible) Now, while --"

1 MR. KANAREK: Now, right at that point, stop.

2 Just bring it back just a little bit to the word
3 "Now."

4 (Whereupon the tape was played as follows:

5 "Q Now, I'm going to tell you -- and you'll
6 just have to believe -- (unintelligible) -- it's been
7 a long time back, I know, but I'll tell you that you
8 got the car at the end of July or the first part of
9 August.

10 "A Is that right?

11 "Q Yeah."

12 MR. KANAREK: That's the end. All right.

13 THE COURT: Very well.

14 MR. KANAREK: Your Honor, may that, beginning with the
15 word "Now," be read to the jury by Mr. Williams, in case
16 perhaps someone was not able to catch it?

17 THE COURT: Is there anyone who did not understand the
18 tape as it came out the second time?

19 JUROR NO. 11: Very clearly.

20 JUROR NO. 5: I didn't.

21 THE COURT: Very well. Mr. Wilson didn't. So let's
22 play it once more.

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(Whereupon, the tape was played as follows:

"Q Now, while you are up now, now, I am going to tell you -- and you'll just have to believe that what I tell you is true -- it's been a long time back for you, I know, but I'll tell you that you got the car at the end of July or the first part of August.

"A Is that right?

"Q Yeah."

JUROR NO. 5: I heard it that time.

THE COURT: I think everyone now on the jury heard it and understood it; is that correct?

It not, we'll play it again.

(No negative responses.)

THE COURT: Everyone indicates that he or she has heard it.

MR. KANAREK: Yes, your Honor.

Next order of proof, your Honor, is: I have a Certificate of Registry of Marriage. It's a certified copy from the Recorder of Los Angeles County, showing the marriage of one Donald Jerome Shea to one Phyllis Arline Gaston, on May the 15th, 1959, your Honor. May this be -- I -- may this be marked for identification at this time?

I've shown it to Mr. Manzella.

THE COURT: What is the defendant's next in order?

THE CLERK: I.

THE COURT: It will be marked as Defendant's I for identification.

1 (Whereupon, a discussion off the record ensued
2 at the counsel table between Mr. Kanarek and Sergeant
3 Whiteley.)

4 MR. KANAREK: Your Honor, out of order, I would like to
5 put on Miriam Binder. We have another tape to be heard from,
6 but the lady has requested that -- and I believe it's
7 agreeable; she's here in the hallway -- that she be put on
8 first. She has been subpoenaed.

9 THE COURT: You may bring her in.

10 MR. KANAREK: Thank you.

11 THE CLERK: Would you raise your right hand, please?

12 You do solemnly swear the testimony you may give
13 in the cause now pending before this Court shall be the truth,
14 the whole truth, and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16
17 MIRIAM BINDER,
18 called as a witness by and on behalf of the defendant, having
19 been sworn, was examined and testified as follows:

20 THE CLERK: Please take the stand and be seated.

21 THE BAILIFF: Just state and spell your name, please.

22 THE WITNESS: Miriam Binder.

23 THE CLERK: Would you spell it, please?

24 THE WITNESS: M-i-r-i-a-m; B-i-n-d-e-r.

25
26 DIRECT EXAMINATION

27 BY MR. KANAREK:

28 Q Are you the wife, presently, of Jerry Binder?

1 A That's right.

2 Q Is it true that you are living separate and apart,
3 however, from Mr. Binder?

4 A That's true.

5 Q You live on -- in the area near Sunset and
6 Gardner in Los Angeles?

7 A Correct.

8 Q And is it true, Mrs. Binder, that you and your
9 husband separated before July 1, 1969?

10 A Yes.

11 Q Is that true?

12 A That's true.

13 Q Is it true, Mrs. Binder, that on or about -- I'll
14 withdraw that.

15 Directing your attention to the time after August
16 16, 1969, did you have a conversation with Donald Jerome Shea,
17 otherwise known as Shorty Shea?

18 A Yes.

19 Q And in that conversation, were there statements
20 made by Donald Shea that he was afraid of his wife's boy friend?

21 MR. MANZELLA: Objection, your Honor. The question is
22 leading.

23 THE COURT: Sustained.

24 Q BY MR. KANAREK: Did you, Mrs. Binder, discuss
25 with Mr. Shea any fear that he had of being killed by a boy
26 friend of his wife --

27 A No.

28 MR. MANZELLA: Objection, your Honor.

1 THE COURT: Is there an objection?

2 MR. MANZELLA: Yes, there was an objection, your Honor.
3 I -- I don't know if the witness answered the question or not.

4 THE WITNESS: I said: No.

5 MR. MANZELLA: There is an objection, however.

6 THE COURT: All right. The -- I think I did hear the
7 answer before the objection came in.

8 The objection is overruled.

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1 Q BY MR. KANAREK: Did you have a conversation with
2 Mr. Shea in which you discussed a boy friend of his wife Niki?

3 MR. MANZELLA: Objection, your Honor, it is not relevant
4 and it is leading.

5 MR. KANAREK: It is most relevant to show the state of
6 mind of Mr. Shea, your Honor.

7 THE COURT: It is leading, Mr. Kanarek. Objection
8 sustained.

9 Q BY MR. KANAREK: Did you have a conversation with
10 Mr. Shea wherein the boy friend of Mr. Shea was discussed?

11 MR. MANZELLA: Objection, your Honor, it is leading and
12 it calls for a conclusion or an opinion on the part of the
13 witness.

14 MR. KANAREK: But on equal protection of the law,
15 your Honor, in view --

16 THE COURT: Just a minute, Mr. Kanarek. Would you wait
17 until I have ruled on it? If I wish to hear argument I'll
18 tell you to come to the bench.

19 MR. KANAREK: Yes, your Honor.

20 THE COURT: The objection is overruled.

21 THE WITNESS: Would you state the question again,
22 please?

23 MR. KANAREK: I would ask that it be read, your Honor.

24 THE COURT: Yes, read the question.

25 (Whereupon, the record was read by the reporter
26 as follows:)

27 "Q BY MR. KANAREK: Did you have a conversation
28 with Mr. Shea wherein the boy friend of Mr. Shea was

1 "discussed?")

2 MR. MANZELLA: Objection, your Honor, on the grounds it
3 is not relevant and that it is leading.

4 THE COURT: Overruled, you may answer.

5 THE WITNESS: Uh, it is not very clear-cut to me, the
6 question.

7 Q BY MR. KANAREK: The question is not clear-cut
8 to you?

9 A No.

10 Q Do you know -- do you understand the word "dis-
11 cussed"?

12 A Umm, yes.

13 Q Would you tell me in what way it is not clear, and
14 I'll try to reframe it.

15 THE COURT: You needn't answer that. Just reframe it.

16 Q BY MR. KANAREK: Well, you had a discussion with
17 Mr. Shea --

18 THE COURT: Stop right there.

19 Did you have a discussion with Mr. Shea on that
20 date?

21 THE WITNESS: Yes, yes.

22 THE COURT: All right.

23 Q BY MR. KANAREK: In that discussion was the boy
24 friend of Niki mentioned?

25 A Yes.

26 MR. MANZELLA: Object --

27 Q BY MR. KANAREK: And what did Donald Shea say
28 concerning that boy friend?

1 MR. MANZELLA: Objection, your Honor, on the grounds
2 it is not relevant.

3 MR. KANAREK: It shows his state of mind, your Honor.

4 THE COURT: Just a minute, Mr. Kanarek.

5 MR. KANAREK: I'm sorry, your Honor.

6 THE COURT: You may approach the bench and I'll hear
7 argument at the bench.

8 (Whereupon, the following proceedings were had
9 at the bench among Court and counsel, outside the
10 hearing of the jury:)

11 THE COURT: Okay, what's the basis of your objection?

12 MR. MANZELLA: My objection is on the grounds that if
13 the testimony is being offered for the truth of the matter
14 asserted, No. 1, it is hearsay and, No. 2, it is not relevant
15 and should be excluded under a series of cases that I'll cite
16 to the Court.

17 The second ground for my objection is that if
18 it is being offered for state of mind, the testimony will be
19 that Shea said that his wife said that he'd better get out
20 of there because her ex-boy friend or former boy friend was
21 going to kill Shea. That testimony is not admissible under
22 the state of mind exception to the hearsay rule because Shea's
23 fear, if any, is not in issue in this case.

24 If fear is, -- fear was in issue, then, I would
25 have been permitted to put on the statements that Shea made
26 to other people about his fear of Charles Manson. I have not
27 been able to put on those statements because his fear is not
28 in issue.

1 THE COURT: Isn't his fear in issue in this way, if he
2 were afraid, then he'd be less likely to stay within the
3 area? You have indicated that he would be unlikely to stay
4 in the area because of his connections with the movie industry,
5 because of ties, friendships that he had in the area and the
6 contacts that he had here with people whom he kept in touch
7 with?

8 MR. MANZELLA: Well --

9 THE COURT: Now, isn't this admissible to show that he
10 was in fear and that, therefore, he might be inclined to leave?

11 MR. MANZELLA: There are several answers.

12 The first is that I have not shown that Mr. Shea
13 would tend to stay in the Los Angeles area because of these
14 people.

15 For example, he was prepared to go to Phoenix,
16 Arizona, to make a television picture.

17 My evidence has been introduced to show that he
18 would remain in contact with these people.

19 He has also gone to Massachusetts to visit his
20 mother almost every year.

21 So my evidence is not -- my contention is not that
22 he would remain in the Los Angeles area, but that he would
23 contact these people with whom he has remained in contact with,
24 these people that he has contacted all over the country, not
25 only here, but in Arizona and Massachusetts.

26 So that my second is, fear is itself, is not
27 in issue, and under the Merkouris doctrine statements of fear
28 were permitted to prove the acts of the defendant.

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1 In other words, if a person was in fear, if the
2 victim made statements that he was in fear, then that evidence
3 could be used to prove that there was some basis for his fear,
4 some basis, in fact, for his fear and that, therefore, the
5 person that he feared was likely to have been responsible for
6 his death.

7 The *Merkouris* doctrine was overruled by Section
8 1250 of the Evidence Code, in that specifically it states that
9 statements of fear on the part of the victim introduced
10 through a third party, that is by hearsay, are admissible if
11 the fear itself is in issue and the situations in which fear
12 is in issue most clearly is in self-defense situations where
13 the defense is self-defense. In this case the only reason the
14 testimony has been offered is to show that there is a
15 possibility some third person is responsible for Shea's death.
16 And the cases that I am prepared to cite to the Court clearly
17 hold that there's got to be more evidence than that to permit
18 that evidence to be introduced before the jury.

19 THE COURT: Well, in this note under Section 1250 of
20 the Evidence Code, regarding the *Merkouris* case, 52 Cal. 2d
21 672, the Court permitted the statements relating threats by the
22 defendant to show the victim's mental state.

23 In other words, to prove the truth of the matters
24 stated in those statements.

25 MR. MANZELLA: That's correct.

26 THE COURT: And we're not interested in this instance in
27 proving the truth of the matters, but we're inquiring as to
28 whether or not Mr. Shea had any fear.

1 Shea, this witness, is about to relate that he
2 did entertain some fear as to one of these persons, is that
3 correct?

4 MR. MANZELLA: No, that's not correct. The testimony
5 will be that Shea told her that his wife told him that -- Niki
6 Shea told him that her boy friend may be or was out to kill
7 Shea. There's no statements of fear from Shea himself to this
8 witness, but, rather, Shea related to this witness statements
9 that Shea's wife related to him with regard to her ex-boy friend
10 was out to get Shea. There are no statements by Shea to this
11 witness that he was in fear.

12 THE COURT: Well, is there any statement from him
13 indicating any concern over it at all?

14 Mr. Kanarek, do you anticipate that --

15 MR. KANAREK: Well, this witness is less than
16 cooperative, your Honor. She's a prosecution --

17 THE COURT: You've talked with her?

18 MR. KANAREK: I've talked with her, but --

19 THE COURT: And you have her written statements?

20 MR. KANAREK: I have a purported discovery --

21 THE COURT: A written statement?

22 MR. KANAREK: Well, it is not her written statement,
23 it is someone's synopsis of --

24 THE COURT: Of her written statement?

25 MR. KANAREK: It is not question and answer.

26 THE COURT: All right, what do you purport to receive
27 from her from the witness stand? Simply what Mr. --

28 MR. KANAREK: Well, I can --

1 THE COURT: -- what Mr. Manzella said?

2 MR. KANAREK: I can't make a representation to the
3 Court because of the witness' -- she's just being -- she's a
4 prosecution-oriented witness.

5 THE COURT: Mr. Kanarek --

6 MR. KANAREK: What I am saying, I can only represent to
7 the Court the discovery that has been given to me, which we
8 allege is a failure of due process and we allege it is a
9 denial of a fair trial. It is not a question and answer, it
10 is just a synopsis. And Mr. Manzella is telling the Court
11 what the synopsis says. The piece of paper I have says it the
12 way Mr. Manzella says it.

13 What I am saying is, she is obviously a prosecution-
14 oriented witness, so I can't make a representation to -- I'm
15 not going to tell the Court something is such when it isn't.

16 I have reason to believe that I -- that -- the only
17 subject matter I have reason to believe is what's written down
18 on a paper.

19 THE COURT: That's about all I am asking you.

20 MR. KANAREK: Mr. Manzella is telling -- is -- what he
21 is saying at this point is -- does reflect what the discovery
22 is. I will show you -- I got the paper, but it is not
23 question and answer, and that's the vice of this type of
24 discovery, in that it is someone's -- in the Sheriff's
25 Department -- synopsis of it, so I would make a motion for an
26 evidentiary hearing outside the presence of the jury wherein
27 we would find out what the question and answer would be outside
28 the presence of the jury, when they furnish discovery in this

1 way.

2 THE COURT: I think that I misunderstood what was said
3 in the first instance, but if there was some expression of
4 fear on his part, then, it might be a legitimate inference
5 that because of that fear he might possibly leave the area or
6 leave town.

7 But simply because a threat has been made to him,
8 would not carry enough weight, in my opinion, to raise the
9 inference that he was afraid and that, therefore, he left.
10 And I would agree, otherwise it would be inadmissible.

11 MR. KANAREK: Well, I contend it is admissible.

12 THE COURT: In what way?

13 MR. KANAREK: The inference -- you --

14 THE COURT: What inference?

15 MR. KANAREK: You don't need --

16 THE COURT: That inference --

17 MR. KANAREK: You can certainly believe --

18 THE COURT: -- can be taken from such testimony?

19 MR. KANAREK: Well, if I tell X who was a -- well,
20 without getting too algebraic about it, if Mr. -- if Mr. A --

21 THE COURT: Yes, use -- use --

22 MR. KANAREK: Using these exact parts, if Mr. -- if
23 Mr. --

24 THE COURT: Mr. Shea.

25 MR. KANAREK: -- if Mr. Shea hears something about
26 someone going to kill him --

27 THE COURT: If Mr. Shea hears a boy friend is going to
28 kill him --

1 MR. KANAREK: If Mr. Shea hears that his wife's boy
2 friend is going to kill him, you don't have the words per se,
3 but the inference is that regardless of the verbalization.
4 You can deduce that kind of fear from such verbalizing --

5 MR. MANZELLA: Well, I contend, of course, that that's
6 not true. The state of mind exception to the hearsay rule is
7 designed to permit expressions of state of mind on the part of
8 victims where their fear is in issue. In this case you don't
9 have an expression of fear on the part of Shea. All you have is
10 Shea relating what somebody else told him about yet what some-
11 body else is going to do, and it is not a statement of Shea's
12 state of mind. And that on that very elementary level, it is
13 not admissible because it is not what it is purported to be,
14 that is, a statement of fear. It is not a statement of fear
15 on the part of Shea.

16 MR. KANAREK: Then, what I would urge, is the jury be
17 excused and that we take -- have an evidentiary hearing out-
18 side the presence of the jury, of this woman, because what I
19 allege-- classically, this is the way the prosecution gives us
20 the statements, is in essay form, where somebody synthesizes
21 and, so therefore, I view this of such importance that I do
22 make a motion that we have an evidentiary hearing.

23 THE COURT: I'll grant you a short recess and ask you --
24 ask her to talk to you, talk to both of you, and see --

25 MR. KANAREK: May we have the evidentiary hearing? I
26 don't think -- the woman is so prosecution-oriented --

27 THE COURT: The Court is not going to provide that kind
28 of discovery, but would allow you to talk to her in view of

1 your statement you didn't have an opportunity to talk to her,
2 in the presence of Mr. Manzella.

3 Mr. Manzella, you may ask her what she would
4 reply, and if it is more or less as you have stated it would
5 be, I can't see any point in permitting the question.

6 (Whereupon, the following proceedings were had in
7 open court within the presence and hearing of the jury:)

8 THE COURT: All right, ladies and gentlemen, we'll recess
9 for just five minutes.

10 You may, if you would, -- would you leave the
11 courtroom now, during that period?

12 Would you stay on the witness stand?

13 THE WITNESS: Yes.

14 THE COURT: And during the recess, you are admonished
15 that you are not to converse amongst yourselves, nor with
16 anyone else, nor permit anyone to converse with you on any
17 subject connected with this matter, nor are you to form or
18 express any opinion on it until it is finally submitted to you.

19 We'll take ten, and perhaps we can go a little
20 longer this afternoon.

21 (Afternoon recess.)
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1 THE COURT: All right. The record will show that the
2 jurors are all present; that Mr. Kanarek's present, and Mr.
3 Manzella.

4 You may proceed.

5 MR. MANZELLA: May we approach the bench, your Honor?

6 THE COURT: Yes, you may.

7 (Whereupon, the following proceedings were had
8 at the bench among Court and counsel, outside the
9 hearing of the jurors:)

10 MR. KANAREK: Your Honor, --

11 THE COURT: Was she -- what was the conversation?

12 MR. KANAREK: This is what she said. She says that
13 she would testify that Niki said that -- that Donald Shea
14 said that Niki went back to the apartment -- pardon me. I'll
15 start over again.

16 That she would testify that Donald Shea would
17 testify -- told her that he, Donald Shea, went back to the
18 apartment on Wilcox and found a note written by Niki saying she
19 feared for David's -- for Donald's life; that she, Niki,
20 feared for Donald's life, and that's why she, Niki, was leaving
21 him, Donald Shea.

22 Niki said she had a boy friend that came for her,
23 and she had to leave. That's what she would testify to.

24 Now, as far as the -- it's my belief that, by his
25 relating that statement, that this is a statement -- by him,
26 in fact, of his fear.

27 THE COURT: I don't see it. Do the People --

28 MR. MANZELLA: Your Honor, --

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1 THE COURT: Do the People concede that this --

2 MR. MANZELLA: No. It's my position that not only is it
3 not a statement of fear on the part of Donald Shea, but it's
4 clearly a statement of fear made to him on the part of some-
5 body else, whose state of mind is totally irrelevant to this
6 case. That is, the state of mind of Niki Shea.

7 It's totally irrelevant to this case. Donald Shea
8 did not make an expression of fear in this conversation.

9 THE COURT: Conceivably -- I think that I would have to
10 sustain the objection. I can't see the basis on which it
11 could be admissible.

12 Do you have any others to suggest?

13 MR. KANAREK: Well -- well, your Honor, it's -- it's --
14 it's clearly within the purview of the type of statements that
15 your Honor has been allowing in, on state of mind.

16 THE COURT: The Court has permitted a number of types of
17 evidence to come in, to show Mr. Shea's state of mind, in
18 respect to whether or not he intended to pursue a movie career;

19 The Court has allowed the People to show some of
20 his conduct to show by the inferences that arise therefrom
21 that he would be likely to stay in the area, and would not be
22 inclined to absent himself without notifying somebody;

23 But I don't think that you have here an inference
24 that -- any proper inference that he was afraid and might leave
25 as a result of what was said to him by his then wife.

26 And that's -- that basically is your contention,
27 isn't it?

28 MR. KANAREK: Well, uh --

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1 THE COURT: That it shows fear, and state of mind on
2 his part which would cause him to leave the area?

3 MR. KANAREK: It's a circumstance that -- under due
4 process and equal protection, that --

5 THE COURT: Is that basically it?

6 MR. KANAREK: Well, I don't know what you mean by
7 "basically." It is certainly -- certainly --

8 THE COURT: You are offering it for what purpose?

9 MR. KANAREK: Well, I am offering it to show his state
10 of mind.

11 THE COURT: Concerning what?

12 MR. KANAREK: Concerning his fear.

13 THE COURT: Fear?

14 MR. KANAREK: Among other things. It shows a general
15 atmosphere surrounding him and Niki.

16 THE COURT: If you were to offer it to show the atmosphere
17 surrounding him and Niki -- that is, if you were to offer it to
18 show that Niki said, "I am leaving because there has been a
19 threat against you," then it's offered to prove the truth of
20 what was said, isn't it? And it's second party-third party
21 hearsay, really; isn't that right?

22 MR. KANAREK: (No response.)

23 THE COURT: I can't see that it's admissible. I'll
24 sustain the objection.
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1 (Whereupon, the following proceedings were had in
2 open court, within the presence and hearing of the jury:)

3 BY MR. KANAREK:

4 Q Miss Binder -- Mrs. Binder; I'm sorry -- did
5 Mr. Shea tell you that he went to the apartment on Wilcox, at a
6 time when Niki was not there?

7 A Correct.

8 Q And did he say that he found a note written by
9 Niki?

10 A Yes.

11 Q Did he say what date that was, that that occurred?

12 A Oh, that must have been the day that he took me to
13 the ear doctor; about August the 19th -- no, I think before that
14 time. Maybe a little bit.

15 THE COURT: Sometime in August?

16 THE WITNESS: The earlier part of August.

17 THE COURT: Of 1969?

18 THE WITNESS: Yes.

19 Q BY MR. KANAREK: And Mrs. Binder, did Donald state
20 that in this note, Niki said --

21 MR. MANZELLA: Your Honor --

22 Q BY MR. KANAREK: -- she was leaving --

23 MR. MANZELLA: Your Honor, excuse me.

24 Q BY MR. KANAREK: -- Donald?

25 MR. MANZELLA: Excuse me, your Honor. The Court has
26 already ruled on this.

27 MR. KANAREK: No, not at all, your Honor. This is offered
28 on -- this is not the issue that we were discussing at the

1 bench. This is -- this goes to the state of mind of Donald
2 Shea, on the very subject matter that counsel has elicited
3 testimony from, as other --

4 THE COURT: Just a moment. Would you restate your
5 question?

6 And again, let me ask you: Not to argue unless
7 I ask you to approach the bench.

8 MR. KANAREK: Yes, your Honor.

9 Well, may that question be read?
10 I think it's -- I think it's a proper question, your Honor.

11 THE COURT: All right. Would you read it, Mr. Williams?
12 Read it to the witness.

13 (Whereupon, the record was read by the reporter
14 as follows:

15 "Q And Mrs. Binder, did Donald state
16 that in this note, Niki said. . . , she was leaving
17 . . . Donald?")

18 THE REPORTER: There were certain interruptions in the
19 middle of the question by objections, your Honor, but I think
20 that's it.

21 THE COURT: All right. Would you restate the question?

22 MR. MANZELLA: Your Honor, my objection is that the
23 question is leading, as it's phrased by Mr. Kanarek; and that
24 it's also been ruled on by the Court.

25 MR. KANAREK: Well, I am trying to -- I am trying to --

26 THE COURT: Just a moment, Counsel. Please don't argue.

27 MR. KANAREK: Then may we approach the bench, your Honor?

28 THE COURT: You may ask your question --

1 MR. KANAREK: Yes. Thank you.

2 THE COURT: -- as you started to ask it.

3 MR. KANAREK: Thank you.

4 Q Did Donald tell you, Mrs. Binder, that the note
5 that Niki wrote stated that she was -- that she, Niki, was
6 leaving Donald, Donald Shea?

7 MR. MANZELLA: Objection, your Honor, on the grounds
8 previously stated: that the question is leading, and that the
9 question has already been ruled on by the Court.

10 MR. KANAREK: Then may I approach the bench, your Honor?

11 THE COURT: No, --

12 THE WITNESS: (Unintelligible statement.)

13 THE COURT: No, you may not.

14 MR. KANAREK: I didn't hear what the lady said, your
15 Honor,

16 THE COURT: Neither did I. Because I wished to overrule
17 the objection.

18 You may answer.

19 MR. KANAREK: Your Honor, may whatever she said -- I
20 would like to know whatever she said. Perhaps some people on
21 the jury heard it, and some didn't.

22 THE COURT: Did any of the jurors hear what she said?

23 (No affirmative response.)

24 THE COURT: They have all indicated negatively.

25 MR. KANAREK: And the Court did not hear?

26 THE COURT: No.

27 MR. KANAREK: Well, I would welcome all the jurors
28 hearing it, if your Honor so desires.

1 THE COURT: It need not be repeated.

2 I did not hear, and none of the jurors heard it.

3 MR. KANAREK: Very well, your Honor.

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1 THE COURT: You may answer the question.

2 Do you wish it read to you?

3 THE WITNESS: I wish it read to me, yes.

4 (Whereupon, the record was read by the reporter
5 as follows:

6 "Q Did Donald tell you, Mrs.

7 Binder, that the note that Niki wrote
8 stated that she was -- that she, Niki, was
9 leaving Donald, Donald Shea?")

10 THE WITNESS: Yes.

11 Q BY MR. KANAREK: And Mrs. Binder, did Niki -- did
12 Donald state that the note stated that a boy friend of Niki's
13 came for her --

14 THE COURT: Just a moment, Mr. Kanarek. The Court
15 will interrupt you at this point.

16 MR. KANAREK: Well, then, I would like to approach the
17 bench, your Honor.

18 THE COURT: Yes, you may.

19 (Whereupon, the following proceedings were had
20 at the bench, among Court and counsel, outside the hearing of
21 the jury:)

22 MR. KANAREK: Your Honor, this -- this is direct
23 defense of the prosecution's -- one of the main prosecution --

24 THE COURT: Aren't you arguing the same point now?

25 MR. KANAREK: No, your Honor. I am not talking about
26 fear now at all.

27 THE COURT: What are you talking about?

28 MR. KANAREK: This has to do with -- this directly

1 rebutals --

2 THE COURT: I asked you at the bench whether there was
3 any other reason for having the conversation in, and you said,
4 "No."

5 MR. KANAREK: Well, I have not --

6 THE COURT: In effect, except that you --

7 MR. KANAREK: No. I'm not talking about -- I'm not
8 talking about fear.

9 THE COURT: Excuse me just a minute.

10 MR. KANAREK: I'm sorry.

11 THE COURT: Why is the conversation admissible?

12 MR. KANAREK: Well, your Honor --

13 THE COURT: On what grounds?

14 MR. KANAREK: -- this facet of it is admissible, because
15 it directly rebuts the state of mind inference that your
16 Honor allowed in, that Donald Shea was leaving Niki.

17 This is state of mind evidence to show that Niki
18 was leaving Donald Shea. It's got nothing to do with fear.

19 I am not asking anything about -- I am not asking
20 anything about Donald Shea being afraid of the boy friend,

21 Your Honor noticed, I have skirted that com-
22 pletely. But it directly rebuts the state of mind that he --
23 in other words, the present posture of the People's evidence
24 is that Donald Shea was leaving her.

25 We have a right to introduce --

26 THE COURT: You mean by that that it's a prior
27 contradictory statement of Mrs. Shea?

28 MR. KANAREK: It goes to the state of mind --

1 THE COURT: Is that it?

2 MR. KANAREK: No. No, actually, it's evidence showing
3 the state of mind of Donald Shea, not being what the People say
4 it is. Instead of Donald Shea leaving her, she left him.

5 Now, we have a right to get that statement by
6 evidence in, in view of the fact that the People's big point
7 is that Donald Shea left her.

8 This is state of mind evidence to show that
9 Donald -- that she left Donald Shea. It's got nothing to do
10 with fear.

11 THE COURT: The People?

12 MR. MANZELLA: The People's position is that it's
13 not admissible for these reasons: In the first place,
14 Mr. Kanarek is now bringing in all the parts of the statement
15 that the Court has already ruled that he couldn't get in.

16 His question included reference to the boy friend.
17 Now, Mr. Kanarek has already brought out that part of the
18 statement in which Donald Shea says to this witness that
19 Niki left a note saying she was leaving him.

20 Mr. Kanarek has already brought that out. The
21 beginning of the question just asked -- the one on which the
22 Court interrupted him -- began, I think, with reference to
23 Niki's boy friend.

24 And that has absolutely nothing whatsoever to do
25 with what Mr. Kanarek is talking about. He is merely trying to
26 get in --

27 MR. KANAREK: No, that isn't true.

28 MR. MANZELLA: -- the statement with regard to fear on

1 the part of Niki Shea, that the Court already ruled not admissi-
2 ble.

3 MR. KANAREK: No. No, not at all.

4 MR. MANZELLA: And it's perfectly clear that's what he's
5 trying to do.

6 MR. KANAREK: No, a person can leave a man without
7 going --

8 THE COURT: Just a minute.

9 MR. KANAREK: I'm sorry.

10 THE COURT: Is it admissible for any reason?

11 MR. MANZELLA: It's not admissible for any reason, your
12 Honor.

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1 THE COURT: Is it admissible to rebut what she has
2 said on direct?

3 MR. MANZELLA: No, your Honor, it's not. Because this
4 isn't a prior inconsistent statement of Niki Shea. It's hear-
5 say as to her. Niki Shea didn't tell this witness that she
6 left Donald a note saying that she was leaving him. Donald
7 Shea told this witness that Niki left a note.

8 This is being offered for the truth of the matter, --

9 MR. KANAREK: No.

10 MR. MANZELLA: And it's hearsay.

11 MR. KANAREK: No, it's not being offered for the truth.
12 It's offered for state of mind.

13 MR. MANZELLA: Of course, it is.

14 MR. KANAREK: Because Donald Shea need not ever have
15 known whether or not Niki in fact left with her boy friend.
16 It's offered not for state of mind, strictly; it's offered to
17 prove -- pardon me. It's not offered for the truth of the
18 matter asserted; it's clearly state of mind, your Honor.

19 MR. MANZELLA: There's no showing --

20 THE COURT: Whose state of mind?

21 MR. KANAREK: Donald Shea's state of mind. It's clearly
22 his state of mind which would be affected.

23 And we are not offering it for an in-fact showing.

24 MR. MANZELLA: Mr. Kanarek already got in that portion
25 of the statement which says that Donald --

26 THE COURT: Yes, I realize that.

27 MR. MANZELLA: All right.

28 THE COURT: And you knew very well that I had ruled on

1 it, Mr. Kanarek.

2 MR. KANAREK: Well, not from a -- not from a fear stand-
3 point. I am skirting the fear completely, your Honor. I am
4 not mentioning anything --

5 THE COURT: Well, you were given the opportunity to say
6 why you wanted it in, before.

7 MR. KANAREK: You spoke of fear, your Honor.

8 THE COURT: Yes, I know I did.

9 MR. KANAREK: I'm not talking about fear now.

10 THE COURT: I agree with your viewpoint, that this is --
11 this is a situation wherein you have Mr. Shea attributing a
12 statement to Mrs. Shea in this conversation.

13 And I can't see that it would establish Mr. Shea's
14 state of mind. If it's offered for the truth of what's
15 uttered, it certainly was -- would be hearsay, without an
16 exception.

17 All right. I'll sustain the objection.

18 (Whereupon, the following proceedings were had
19 in open court, within the presence and hearing of the jury:)

20 (Pause in the proceedings.)

21 MR. KANAREK: May I have a moment, your Honor?

22 THE COURT: Yes.

23 (Further pause in the proceedings while Mr. Kanarek
24 conversed with the clerk.)

25 Q BY MR. KANAREK: Mrs. Binder, here are two
26 guns. Would you look at those guns? Or --

27 THE COURT: 53-A and -B.

28 MR. KANAREK: Yes, your Honor.

1 Q Would you tell us when, if at all, you -- no;
2 I'll withdraw that.

3 When did you first see those guns?

4 A I wouldn't know one gun from the other.

5 I don't remember seeing these guns.

6 Q Did you see Shorty Shea with these guns?

7 A No.

8 Q Pardon?

9 A No.

10 Q You never saw Shorty Shea with these guns?

11 A They don't look like any guns I -- I wouldn't know
12 one gun from another.

13 Q Do you see Mr. Whiteley, the gentleman seated
14 here in the beautiful beige or tan jacket?

15 A Yes, I do.

16 Q Did you tell Mr. Whiteley, on December 1, 1970
17 that you first saw those guns in Donald Shea's possession in
18 1968?

19 A Not those guns.

20 Q Did you tell Mr. Whiteley that you saw two matched
21 guns in Donald Shea's possession in 1968?

22 A Yes.

23 Q Well, would you look at those guns and -- would
24 you pick them up and maybe look at them?

25 A I won't touch them.

26 Q I see. You'd prefer not to?

27 A I prefer not to.

28 Q Very well. In what way do these guns differ

1 from the guns that you saw -- first saw in 1968 in the possession
2 of Donald Shea?

3 A They didn't have wooden handles; that's all I
4 remember.

5 THE COURT: They did or did not?

6 THE WITNESS: They did not have wooden handles.

7 Q BY MR. KANAREK: You have an aversion to guns;
8 is that right?

9 A That's correct.

10 Q And so is it a fair statement, Mrs. Binder, that
11 at no time did you touch the guns you saw with Donald Shea?

12 A I never touched any gun.

13 Q Now, if these guns -- you'll notice that these
14 guns are sort of marked up (indicating).

15 If these guns had been shiny and unmarked up --
16 if you can visualize that -- do you think that this coppery
17 color here (indicating) might have appeared to you to be metal?

18 A No.

19 Q You don't think so?

20 A No.

21 Q But in any event, the guns that you saw had shiny
22 handles; is that right?

23 A They were kind of pearl.

24 Q Pardon?

25 A Pearl handles.

26 Q They were pearl handles?

27 A Yes.

28 Q You mean that the guns that you saw were ivory

1 colored or white in this area (indicating)?

2 A Yes.

3 Q Well, then, were they -- to your thinking, is
4 ivory or white the same as metal?

5 A No, they were definitely not. I've never seen
6 these.

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1 Q Well, when you say you've never seen these, you
2 are limiting your observation to the handles?

3 A That's right.

4 Q And your -- your feeling is that if something is
5 pearl that it is metal, is that correct?

6 A That's right.

7 Q So when you say "metal," you meant pearl, pearl
8 handled?

9 A Correct.

10 Q Now, other than that, though, if I may -- if I may
11 just open and pull the gun back this way.

12 The rest of the gun looks the same, is that correct?

13 A I don't remember.

14 Q I see.

15 The guns that you saw, in any event, you first saw
16 in December of 1968?

17 A That's right.

18 Q Is that correct?

19 A That's right.

20 Q And before that you had never seen Shorty Shea
21 with any matched guns?

22 A No, I did not.

23 Q Is that correct?

24 A That's correct.

25 Q At the time that you spoke with Mr. Whiteley,
26 Mrs. Binder --

27 A Yes.

28 Q -- were the guns shown to you?

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A No.

Q No guns were shown to you?

A No.

Q At that time?

A No.

Q Except for the fact that you remember the guns, as you put it, pearl-handled, metal handles, are the guns, do they look to be about the same in size?

A (The witness shakes her head.)

Q Do they look the same in other respects?

A No.

Q What other respects do they not look the same, Mrs. Binder?

A I never took a look at the other ones to begin with. I just saw pearl-handled guns and --

Q If you would please just listen to my question and answer my question. I would try to rephrase it, if it is not clear.

Except for the handles, except for the grip part of the gun, is it a fair statement you paid no attention to the rest of the gun?

A I paid no attention to the rest of the gun.

Q So, then, my question is, outside of the handles, can you tell us whether the guns you saw looked like these guns?

I'm not asking you to forget about the handles.

A I couldn't tell.

Q You couldn't tell because you paid no attention

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1 to the rest of the gun? You only paid attention, you are
2 telling us -- or thought you paid attention to the handles?

3 A That's right.

4 Q What you recall is being -- but you said the
5 handles were shiny?

6 A Yes.

7 Q And that was in -- the first time you ever saw
8 the guns, though, whenever, was in December of 1968?

9 A That's right.

10 MR. KANAREK: Thank you.

11 THE COURT: Mr. Manzella.

12 MR. MANZELLA: No questions, thank you.

13 MR. KANAREK: Your Honor, we would ask that this witness
14 not be excused, and I'll approach the bench and explain why,
15 your Honor.

16 THE COURT: All right, you may approach.

17 (Whereupon, the following proceedings were
18 had at the bench among Court and counsel, outside
19 the hearing of the jury:)

20 (Whereupon, the witness conferred with the
21 Court outside the hearing of the jury, which was
22 not reported:)

23 THE COURT: She says she's ill and needs to leave.

24 MR. KANAREK: I know, I know, but by not excused, I mean
25 not excused --

26 MR. MANZELLA: From further testimony.

27 MR. KANAREK: I'm not asking that she stay here now, but
28 I contemplate -- in fact, I am going to ask that Magdalene

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1 Shea be brought here in view of this testimony concerning --
2 and then, I undoubtedly will need her testimony further, and
3 so I'm asking that she not be excused.

4 THE COURT: Keep your office apprized --

5 MR. KANAREK: Well, I ask that she be ordered back to
6 a date certain, like Friday.

7 THE COURT: Why Friday?

8 MR. KANAREK: Well, or Monday. All right, Monday.

9 Well --

10 THE COURT: I mean, why Monday? Why not tomorrow?

11 MR. KANAREK: Well, because I need Magdalene -- I have
12 other witnesses coming in tomorrow. But, as I said, I want
13 Magdalene Shea here.

14 THE COURT: How about Thursday? We'll order her back
15 for Thursday morning.

16 MR. KANAREK: Certainly, if that's your Honor's -- very
17 well, I wanted to ask the Court --

18 (Whereupon, the following proceedings were had
19 in open court within the presence and hearing of the
20 jury.)

21 THE COURT: You be back Thursday morning at 10:00
22 o'clock.

23 THE WITNESS: If my doctor allows me to. I missed two
24 doctor's appointments already.

25 (Whereupon, the Court's further comments were
26 inaudible to the reporter.)

27 THE REPORTER: I'm sorry, your Honor, I couldn't hear
28 you.

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1 THE COURT: I ordered her back for Thursday morning
2 at 10:00 o'clock.

3 MR. KANAREK: Oh, Mrs. Binder, just a minute.

4 (Whereupon, the following proceedings were had
5 at the bench among Court and counsel, outside the
6 hearing of the jury:)

7 MR. KANAREK: Oh, she has asked me to ask the Court
8 to reimburse her for taxi fare to come down here. I wonder
9 if your Honor would --

10 THE COURT: Submit an affidavit and the Court will look
11 at it and if it is reasonable, I will do that.

12 MR. KANAREK: Thank you.

13 Mrs. Binder.

14 (Whereupon, Mr. Kanarek conferred with Mrs.
15 Binder, outside the hearing of the jury, which was
16 not reported:)

17 THE COURT: Mr. Kanarek, call your next witness.
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1 MR. KANAREK: Yes, yes, your Honor. Yes, your Honor,
2 we now -- are we now --

3 We need Mr. Whiteley.

4 MR. MANZELLA: Your Honor, there's a witness that's
5 been here waiting quite some time. Barbara Hoyt.

6 THE COURT: Do you wish to go ahead with that?

7 MR. KANAREK: Very well, your Honor.

8 THE COURT: Barbara Hoyt, then.

9 MR. KANAREK: That's agreeable, your Honor.

10 Yes, your Honor, may Mrs. Binder be asked to
11 remain outside of the courtroom in view of the -- I know your
12 Honor has ordered --

13 THE COURT: If you wish.

14 MR. KANAREK: Yes.

15 THE COURT: Yes, I see that she's left the courtroom.

16 MR. KANAREK: All right, thank you.

17 THE COURT: All right, Miss Hoyt, come forward.

18 Thank you. Take the witness stand.

19 Lean forward and talk into the microphone.

20
21 BARBARA HOYT,
22 having been previously duly sworn, resumed the stand and
23 testified further as follows:

24
25 DIRECT EXAMINATION (Continued)

26 BY MR. KANAREK:

27 Q Now, Miss Hoyt, do you feel that if we went to
28 the Spahn Ranch and some people -- you turned your back on a

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1 group of people and the group of people screamed, that is
2 individuals screamed, do you feel that you could choose the
3 voice of the individual who screamed, assuming that these
4 were people that you knew?

5 A I think so.

6 MR. KANAREK: Then, I make the motion, your Honor, that
7 we go to the Spahn Ranch, have a group of people who are known
8 to Miss Hoyt, and have the area set out what she says, and see
9 -- let the jury determine whether this lady, this girl can
10 choose and decide and pick who is screaming.

11 THE COURT: The motion is denied.

12 MR. KANAREK: Well, then, your Honor, I make the motion
13 that we do that in the courtroom. That we pick -- that the
14 prosecution be allowed to choose the people that this girl
15 knows and allow them to scream with her back to them and I
16 maintain that she can't pick them out.

17 THE COURT: Your motion is to have the prosecution
18 select the screamers?

19 MR. KANAREK: That's right.

20 THE WITNESS: (Laughing.)

21 THE COURT: Miss Hoyt.

22 MR. KANAREK: That is correct.

23 THE COURT: How many screamers do you want?

24 MR. KANAREK: Three or four people, and have this girl,
25 with her -- facing the other way. People that she knows.
26 And I maintain -- well, we'll let the chips drop where they
27 may.

28 THE COURT: The motion is denied.

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1 MR. KANAREK: Then, may I approach the bench?

2 THE COURT: Yes, you may.

3 (Whereupon, the following proceedings were had
4 at the bench among Court and counsel, outside the
5 hearing of the jury:)

6 THE COURT: All right, the Court finds that such an
7 experiment either at the Spahn Ranch or here would not be
8 probative whatever, and that it would not in either case
9 approximate the circumstances which she described.

10 MR. KANAREK: Well, your Honor, if anything, it would be
11 conservative from the prosecution's standpoint. That is, that
12 they would be -- she would be alert, she would be awake, it
13 wouldn't be awakened up out of a sleep. And I think I -- we
14 have a right. It is a denial of a fair trial and due
15 process and equal protection for Mr. Manson for this not to
16 be done, because otherwise -- otherwise we are limited to her
17 subjective vituperative state of mind towards Mr. Manson.
18 She just says it is Shorty Shea. We have a right to show
19 that --

20 THE COURT: You've cross-examined her about that.

21 MR. KANAREK: But that's meaningless, though.

22 THE COURT: You've examined her at length, though,
23 about whether or not she had heard his voice previous to that
24 time and she says she heard him scream, and you've gone into
25 the conversations at length.

26 The Court denies your motion for the reasons
27 stated.

28 MR. KANAREK: Well, it denies us a fair trial, your

5a-4

1 Honor.

2 (Whereupon, the following proceedings were had
3 in open court within the presence and hearing of the
4 jury:)

5 THE COURT: You may continue your direct examination.

6 MR. KANAREK: In view of the Court's ruling, I have no
7 further questions of this witness, your Honor.

8 THE COURT: Mr. Manzella?

9 MR. MANZELLA: I have no questions, your Honor.

10 THE COURT: You may step down.

11 MR. KANAREK: But, your Honor, we ask that she not be
12 excused in view of the fact that, uh, that we -- there is
13 another witness that I am sure your Honor is aware of that we
14 are going to have here. I ask that she not be excused, but
15 the District Attorney will arrange for her to be here at her
16 convenience so that she's not inconvenienced.

17 THE COURT: Very well, Miss Hoyt, then, would you keep
18 in touch with Mr. Manzella in the event that the Court should
19 need you? The Court may be ordering you back here via
20 telephone.

21 THE WITNESS: Okay.

22 THE COURT: Or through the District Attorney's office
23 or to let you know that we are ordering you to be here.

24 MR. KANAREK: Thank you, Miss Hoyt.

25 THE COURT: You're excused for today.

26 MR. KANAREK: Your Honor, we now have a portion of a
27 tape of Ella Jo Bailey.

28 THE COURT: Do you have the -- gentlemen, do you wish to

5a-5

1 state --

2 MR. KANAREK: Yes, may we approach the bench?

3 THE COURT: -- the foundation? If you know it, you may
4 state it, Mr. Kanarek.

5 Do you gentlemen have a stipulation with respect
6 to the foundational background of this tape?

7 MR. MANZELLA: Yes, your Honor.

8 THE COURT: Do you wish to state it, Mr. Kanarek?

9 MR. KANAREK: Hopefully.

10 THE COURT: The Court will permit you to do that.

11 MR. KANAREK: Yes, your Honor.

12 THE COURT: The date, time and place and the people
13 involved.

6 fls.

6-1

1 MR. MANZELLA: Your Honor, the People would offer to
2 stipulate that the tape is a conversation in which the voice
3 of Ella Jo Bailey appears; and it was made during the course
4 of an interview held on May 15th of 1970 at Tacoma, Washington.

5 THE COURT: Very well. Is that agreeable to --

6 MR. KANAREK: Yes, your Honor. Thank you, yes.

7 (Whereupon, the tape was played at a very low
8 volume, making the voices on the tape either inaudible or
9 unintelligible, during which time discussions off the record
10 were had at the counsel table between Mr. Kanarek and Sergeant
11 Whiteley.)

12 THE COURT: Do you need more time, Mr. Kanarek?

13 MR. KANAREK: Well, yes, your Honor. Evidently.

14 THE COURT: All right. We'll take our -- it's twenty
15 of 4:00. Let's reassemble at ten minutes to 4:00.

16 Ladies and gentlemen, you are admonished not to
17 converse amongst yourselves during the recess, nor are you to
18 converse with anyone else on any subject connected with this
19 matter, nor are you to form or express an opinion on the
20 matter until it is finally submitted to you.

21 About ten minutes.

22 (Mid-afternoon recess.)

7

7-1

1 MR. KANAREK: Yes, your Honor.

2 THE COURT: Yes.

3 The record will show that the jurors are all
4 present.

5 MR. KANAREK: Yes, your Honor. I'll call Officer
6 Whiteley at this time, and we'll have to pass because of the
7 condition of the tape recorder or --

8 THE COURT: All right.

9 MR. KANAREK: Or for mechanical reasons or whatever,
10 so we'll pass that subject, if we may, your Honor.

11 THE COURT: Very well.

12 MR. KANAREK: Call Officer Whiteley, your Honor.

13
14 PAUL J. WHITELEY,
15 called as a witness by and on behalf of the defense, having
16 been previously duly sworn, resumed the stand and testified
17 further as follows:

18
19 DIRECT EXAMINATION

20 BY MR. KANAREK:

21 Q Officer, you are the one who has -- you have
22 testified previously in these proceedings, is that correct?

23 A Yes.

24 Q Now, directing your attention, Officer, to the
25 two guns that have been spoken of so much in this courtroom.

26 And you had some fliers and things out that you
27 have told us about previously, right?

28 A Yes.

7-2

1 Q Does your investigation reveal that Mr. Shea
2 first purchased those guns in October, 1968?

3 A Yes.

4 Q And, Officer, in connection with your investiga-
5 tion, did your investigation include reading an interview
6 of Barbara Jean Hoyt by the Los Angeles Police Department
7 personnel, Sartuchi and Neilsen.

8 A Yes.

9 Q And did that interview reveal that Barbara Jean
10 Hoyt stated --

11 MR. MANZELLA: Your Honor, excuse me.

12 Q -- that the screams were from a male --

13 MR. MANZELLA: Your Honor, I'm going to object on the
14 grounds that it is obviously calling for hearsay. Sergeant
15 Whiteley wasn't present at the interview.

16 THE COURT: Sustained.

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

18 THE COURT: No, the objection is sustained.

19 MR. KANAREK: Your Honor is sustaining the objection,
20 then, may I make argument?

21 THE COURT: Yes, you may.

22 MR. KANAREK: All right.

23 (Whereupon, the following proceedings were had
24 at the bench among Court and counsel, outside the
25 hearing of the jury:)

26 MR. KANAREK: He has testified concerning his -- this
27 investigation, your Honor, and it would seem like this is a
28 flier in the sense to the Los Angeles Police Department.

1 In other words, he's sending out information to
2 all kinds of people, including the Los Angeles Police
3 Department.

4 THE COURT: So what is that --

5 MR. KANAREK: Well, therefore, he got back a reply
6 indicating that Barbara Jean Hoyt heard this -- a male --

7 THE COURT: From the sounds of it, the objection is
8 that it is hearsay --

9 MR. KANAREK: Well, that isn't the point. The point is,
10 your Honor is allowing the rankest kind of hearsay on the
11 negative -- your Honor is allowing the negative aspects of it,
12 that he received nothing concerning Mr. Shea.

13 Now, we have the information that he got from the
14 Los Angeles Police Department --

15 THE COURT: Concerning a statement by Barbara Hoyt?

16 MR. KANAREK: Yes, he got all kinds of statements by all
17 kinds of agencies.

18 THE COURT: I don't know, but it sounds like the
19 objection is well taken.

20 MR. KANAREK: It isn't a fact of hearsay, your Honor,
21 it is a matter of whether she uttered the statement or not.
22 It is a --

23 THE COURT: He wasn't percipient to it.

24 MR. KANAREK: Well, he -- he wasn't percipient to all
25 of the other things wherein he sent fliers and got information
26 of that negative nature that your Honor allowed in. Your
27 Honor allowed all of that in.

28 THE COURT: All right, the ruling will be the same.

1 (Whereupon, the following proceedings were had
2 in open court within the presence and hearing of the
3 jury:)

4 THE COURT: The Court sustains the objection.

5 Q BY MR. KANAREK: Officer, I show you a marriage
6 certificate which is Defendant's I for identification, and ask
7 you, have you ever seen that marriage certificate or a copy
8 of it before?

9 A This particular certificate, no, sir.
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8 fls.

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1 Q I'm not referring to this, in the sense that this
2 exact piece of paper.

3 But I'm asking for this -- in connection with the
4 -- certificate of registry of marriage, having the local
5 registrar's number 12322, and dated May 15th, 1959, did you
6 see that certificate of registry of marriage on any other
7 piece of paper, before this instant in time?

8 A No, sir.

9 Q Did you -- you have told us about -- well, that
10 might be argumentative. I'll rephrase it.

11 Did you search the Hall of Records for any
12 marriages of Donald Jerome Shea, right here at Temple and
13 Broadway, in Los Angeles, California?

14 A I was aware of this marriage.

15 MR. KANAREK: Well, your Honor, may that be stricken as
16 not responsive to my question? I am asking about --

17 THE COURT: Sustained.

18 MR. KANAREK: May I have an answer?

19 THE COURT: The motion is granted. It's stricken.
20 It's not responsive.

21 You may answer it.

22 THE WITNESS: No.

23 Q BY MR. KANAREK: And then, prior to this -- this
24 instant in time, or the time that you first saw this
25 particular exhibit that's Defendant's I, you had not seen
26 the Certificate of Registry of Marriage of Donald Jerome
27 Shea and one Phyllis Arlene Gaston, which occurred on May
28 the 15th, 1959; is that correct?

1 A No, I hadn't seen it until you showed it to me.

2 Q Now, directing your attention to the birth
3 certificate of Karen Arlene Shea --

4 (Whereupon a discussion off the record ensued
5 at the Clerk's desk between Mr. Kanarek and the Clerk,
6 following which the Clerk repaired to the antechambers,
7 returning shortly, whereupon the following proceedings
8 were had:)

9 Q BY MR. KANAREK: Officer Whiteley, I show you
10 Defendant's H for identification and ask you: Have you seen,
11 other than in this courtroom, the certificate of live birth
12 of Karen Arlene Shea, a little girl who purportedly was born
13 on November 10, 1959?

14 A No.

15 Q Now, at some time -- you've spoken with the lady
16 who is the mother of Donald Jerome Shea; is that correct?

17 A No, sir.

18 Q You've never spoken with her in your lifetime?

19 A Not personally.

20 Q Well, in connection with your work in this case,
21 did you have occasion to speak to Mrs. Shea over the telephone?

22 I'm speaking now of the mother of Donald Jerome
23 Shea.

24 A Oh, the mother?

25 Q Yes. That's what I'm speaking of.

26 A Oh, yes. Yes, I've spoken with her. I thought
27 you said "Phyllis."

28 Q No. I said: the mother of Donald Jerome Shea.

1 A Yes, I've spoken to her.

2 Q And that would be the grandmother of Karen Arlene
3 Shea; is that right?

4 A I wouldn't know that.

5 Q Well, directing your attention to Karen Arlene
6 Shea, that little girl, have you ever discussed that little
7 girl with the grandmother, Mrs. Shea?

8 A Yes, I have discussed the child with Elizabeth
9 Shea?

10 Q Did you discuss the child that we are speaking
11 of, Karen Arlene Shea, prior to the time that this girl's
12 name came up in these proceedings before Judge Choate?

13 A Yes.

14 Q And did you discuss Phyllis Shea? With the mother
15 of Donald Jerome Shea -- Elizabeth Shea -- prior to the time
16 that the name Phyllis Shea came up in these proceedings before
17 Judge Choate?

18 A Yes.

19 Q And then, was your state of mind concerning the
20 purported marriage of Magdalene or Niki Shea and Donald
21 Jerome Shea such that you believed that that marriage was a
22 nullity? And in fact not legal?

23 MR. MANZELLA: Your Honor, I'm going to object to that
24 on the grounds that it's calling for --

25 THE COURT: Sustained.

26 MR. KANAREK: Well, then, may we approach the bench,
27 your Honor?

28 THE COURT: No, you may not. The objection is sustained.

1 MR. KANAREK: Well, I would like to make argument in
2 connection with it, in view of other evidence that has come
3 in before --

4 THE COURT: It's incompetent, irrelevant and immaterial;
5 and calling for a conclusion.

6 The objection is sustained.

7 Q BY MR. KANAREK: Well, Officer, you have -- you
8 as the -- you are the chief investigating officer in this
9 case?

10 A Yes.

11 Q You brought before this court a girl, Magdalene
12 Shea, whom you knew was not the legal wife of Donald Jerome
13 Shea; is that correct?

14 MR. MANZELLA: Your Honor, I object to that on the
15 grounds that the evidence with regard to the relationship is
16 in, and Sergeant Whiteley cannot give his opinion.

17 MR. KANAREK: Then I would like to make argument to the
18 Court, your Honor, --

19 THE COURT: Sustained.

20 MR. KANAREK: -- because of the posture of the People's
21 evidence in this case.

22 THE COURT: The objection is sustained.

23 MR. KANAREK: Well, may I approach the bench, your
24 Honor?

25 THE COURT: No, you may not.

26 Q BY MR. KANAREK: Did you search the records of
27 the County of Los Angeles, to determine whether or not the
28 marriage of Magdalene or Niki Shea with Donald Jerome Shea

1 was a legal marriage?

9 fls. 2

A No, sir, I did not.

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Q And ---

MR. KANAREK: Well, your Honor, I would like to approach the bench, if I may, before I ask the next question, so that I can --

THE COURT: All right, you may approach the bench.

MR. KANAREK: Thank you.

(Whereupon, the following proceedings were had at the bench among Court and counsel, outside the hearing of the jury:)

MR. KANAREK: Your Honor, it is my position that since the People have made much about an investigation concerning Donald Jerome Shea --

THE COURT: You may ask him what he did to investigate it, but asking him questions in the form that you have been putting them is asking for legal conclusions which in some cases a lawyer might have a difficult time resolving.

MR. KANAREK: Well, it seems to me that we have a right to determine the state -- in other words, your Honor has allowed in evidence where Mr. Whiteley has been allowed to testify that he got back a bunch of negatives from -- so it is really not offered -- it is not offered for the truth of the matter asserted. It is offered to show state of mind.

THE COURT: You want to find out why he didn't investigate the marriage?

MR. KANAREK: No, no, I'm offering it to show -- I'm offering it to show his state of mind and the lack of the -- lack of the sincerity of the investigation. I'm not offering -- I'm not offering it for the truth of whether or not --

1 THE COURT: Well, ask him --

2 MR. KANAREK: Whether or not Shorty Shea was legally
3 married to one person or the other.

4 THE COURT: Well, that's what you are asking him.

5 MR. KANAREK: Well, no, but only to show -- only to show
6 the state of mind of the investigating officer to show that
7 that --

8 THE COURT: I think you can ask him another way. The
9 Court believes that an inquiry as to the extent of his
10 investigation is quite possibly relevant and material. Perhaps
11 better asked on cross-examination, but you may pursue it. But
12 the objection certainly is a valid one when you ask for a
13 legal conclusion.

14 All right.

15 (Whereupon, the following proceedings were had in
16 open court within the presence and hearing of the jury:)

17 Q BY MR. KANAREK: Officer, have you, in your
18 investigation, found that Phyllis Shea and Karen Arlene Shea
19 live in the vicinity of Napa, California?

20 A I know that they live up North somewhere, but I
21 can't remember exactly where it is off the top of my head.

22 Q Well, when you say "up north," by that do you mean
23 Northern California?

24 A I mean north of Los Angeles.

25 Q When you say "north," you mean north of
26 Los Angeles and south of Yreka?

27 A Yes.

28 Q So -- and can you pinpoint it with greater accuracy

1 for us as to the location?

2 A No, not off -- like I say, not off the top of my
3 head.

4 Q Well, do you have some notes with you concerning
5 this case that you can use to refresh your recollection?

6 A Not with me.

7 MR. KANAREK: Well, then, your Honor, may we -- it is
8 about 4:20. May we adjourn and have the officer bring those
9 tomorrow morning?

10 THE COURT: Do you have any other examination of
11 Officer Whiteley at this time?

12 MR. KANAREK: No, your Honor. I would like this --

13 THE COURT: You'll be able to conclude your examination,
14 then, upon the determination of what his notes --

15 MR. KANAREK: No. No, I'm not making that represen-
16 tation.

17 THE COURT: All right, well, then, why don't you proceed
18 with --

19 MR. KANAREK: Well, because of the continuity, your
20 Honor. Your Honor on occasion has allowed Mr. Manzella to
21 adjourn a few minutes early. I want the continuity under
22 equal protection of the law and the 14th Amendment.

23 THE COURT: Proceed with your examination.

24 Q BY MR. KANAREK: Officer Whiteley, in connection
25 with Mr. Shea, have you gone personally to the State of
26 Massachusetts?

27 A No, sir.

28 Q Has any representative of the Sheriff's Department

1 gone personally to the State of Massachusetts to your knowledge?

2 A No, sir.

3 Q Has any representative of the Los Angeles -- or
4 I'll ask you whether you have gone to Northern California in
5 connection with any interviews of Phyllis Shea?

6 A No, sir.

7 Q Have you gone to Northern California in
8 connection with any interviews of Karen Arlene Shea?

9 A No,

10 Q Has any law enforcement officer of the Sheriff's
11 Department of Los Angeles County gone to Northern California to
12 interview Phyllis Shea?

13 A No, sir.

14 Q Or has any law enforcement officer of
15 Los Angeles County gone to Northern California to interview
16 Karen Arlene Shea?

17 A No, sir.

18 MR. KANAREK: Well, then, your Honor, I would ask that
19 we have this information here.

20 THE COURT: The Court will recess now, ladies and
21 gentlemen, until 9:30 tomorrow morning.

22 The Court received a request this morning from --
23 the Court received a request this morning that we recess on
24 Wednesday to observe and permit the observance of a religious
25 holiday on that day, and in reference to this request, the
26 Court -- the Court will do that. I dislike wasting a day, but
27 it is a religious holiday of some importance to a segment of
28 our population and the Court is inclined to grant the request.

10-1

1 Accordingly, you can plan, on Wednesday, being
2 free.

3 The Court's estimate that the case might end
4 at the conclusion of this month will not be far off, I
5 think.

6 All right. I'll see you tomorrow morning,
7 then, at 9:30.

8 Remember the admonition that I have heretofore
9 given you. Don't discuss this case amongst yourselves, nor
10 with anyone else, nor permit anyone to discuss it with you;
11 nor are you to form or express any opinion on the matter
12 until the matter is finally submitted to you.

13 Let me caution you that in the next 24 hours,
14 since the People rested today -- since they formally rested,
15 there might be some news articles; there might be some
16 comments on the radio or television.

17 Perhaps you could minimize your reading of
18 newspapers and your watching of television or listening to
19 radio over the next 24 hours; and you will thereby not be
20 surprised by any statement that might be forthcoming from any
21 of the news media, particularly from television or radio.

22 The Court would remind you that you're -- it's
23 your solemn obligation as jurors to avoid hearing, seeing or
24 reading anything in connection with this case, or any other
25 case in which Mr. Manson might be involved.

26 Thank you. Good night. I'll see you tomorrow
27 morning at 9:30.

28 (Whereupon, at 4:27 o'clock p.m., an adjournment
was taken in this matter until 9:30 o'clock a.m. of the
following morning, Tuesday, September 28, 1971.)