

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.

163
No. A-267861REPORTERS' DAILY TRANSCRIPT

Wednesday, October 20, 1971

VOLUME 63APPEARANCES:

For the People:

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

For Defendant Manson: IRVING A. KANAREK, Esq.

COPY

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

1 LOS ANGELES, CALIFORNIA, WEDNESDAY, OCTOBER 20, 1971 9:34 A.M.

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4 MR. KANAREK: Your Honor, may I address the Court,
5 briefly?

6 THE COURT: Yes.

7 MR. KANAREK: Your Honor, before your Honor calls the
8 jury, because of certain events that allegedly occurred, would
9 your Honor not have the jury come into the courtroom?

10 THE COURT: I'll hear from you in regard to that, as
11 soon as I call the balance of the calendar.

12 (Proceedings had on unrelated matters.)

13 THE COURT: All right. The case of People vs. Manson?

14 Mr. Schweitzer, would you tell Mr. Kanarek I am
15 ready to hear him now?

16 MR. SCHWEITZER: Yes, your Honor.

17 (Whereupon Mr. Kanarek entered the courtroom,
18 and the following proceedings were had:)

19 MR. KANAREK: Your Honor, in connection with certain --
20 I have been told that a person named Kenneth Como has
21 allegedly escaped from the County Jail, and that the friends
22 of Mr. Manson are in custody -- or somewhere -- or cornered,
23 or something like that; and that Mr. Como is in the Hollywood
24 Hills.

25 I make a motion for an evidentiary hearing. I
26 allege it, without being able to prove it, that at this
27 particular time, this was deliberately allowed to take place,
28 or accomplished by --

1 THE COURT: The escape?

2 MR. KANAREK: Yes. I am -- now, this is my motion:
3 That we have an evidentiary hearing. It is my -- and I say
4 "alleged" without being able to prove it.

5 But it is incredible of belief, with the
6 surveillance --

7 THE COURT: I agree with you.

8 MR. KANAREK: -- with the surveillance that is going
9 on, and I know that there are some holy cows, that there are
10 some -- some things that we just can't believe that -- that
11 certain things could occur.

12 But at this point in history, at this time and
13 this juncture in this case, for this to occur, it is
14 incredible of belief.

15 THE COURT: Let me see whether I understand your
16 theory of -- you are asking for an evidentiary hearing, --

17 MR. KANAREK: That's right.

18 THE COURT: -- and the evidentiary hearing that you are
19 asking for is based upon your belief that Mr. Kenneth Como --

20 MR. KANAREK: Who is allegedly a Family --

21 THE COURT: -- who has nothing to do with this case, so
22 far as --

23 MR. KANAREK: Who is allegedly a Family member,
24 according to the press.

25 THE COURT: Who alleges that?

26 MR. KANAREK: The press.

27 THE COURT: I see.

28 MR. KANAREK: The press. And also, he was arrested in --

1 in the alleged gun shootout, the alleged robbery in Hawthorne.

2 THE COURT: Your theory is that he was allowed to
3 escape from the County Jail; is that correct?

4 MR. KANAREK: That is correct, that he was allowed to,
5 in order to generate publicity against Mr. Manson at this
6 particular time.

7 I cannot believe --

8 THE COURT: Can you explain why, if he were allowed to
9 escape, that he had to go down a rope from the 13th floor
10 to the 8th floor and kick in a window of a courtroom?

11 MR. KANAREK: Because that makes it look good, your
12 Honor.

13 Now, your Honor-- your Honor -- your Honor may --
14 your Honor may -- may --

15 THE COURT: Well, that's only what I heard in the
16 newspaper.

17 MR. KANAREK: Well -- all right. But what I'm saying is,
18 at this particular time, at this particular time for this to
19 happen, with the surveillance that is upon these girls
20 outside of the courthouse, the only way that we can tell
21 whether there's been a violation of the 14th Amendment and
22 due process, by way of state action -- and equal protection --
23 is by having an evidentiary hearing and having this put on
24 the record, and having a hearing before your Honor on --
25 under oath.

26 Because I believe -- I say without being able to
27 prove it, of course, that --

28 THE COURT: Mr. Kanarek --

1 MR. KANAREK: -- that we subpoena witnesses -- may I
2 finish?

3 THE COURT: No, you may not.

4 MR. KANAREK: That we subpoena witnesses, because this
5 is --

6 THE COURT: Mr. Kanarek --

7 MR. KANAREK: -- because this is done to influence
8 this jury. That's what it's done for, deliberately, to
9 influence some kind of -- to try and convey to this jury Mr.
10 Manson's supposed all powerful influence.

11 THE COURT: Mr. Kanarek --
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1 MR. KANAREK: And furthermore, I make a motion to
2 sequester --

3 THE COURT: Mr. Kanarek, your remarks are ridiculous;
4 your motion is frivolous, and delaying -- it's simply a
5 delaying tactic.

6 It's not worth the Court's consideration whatever.

7 MR. KANAREK: Then I make a motion --

8 THE COURT: The motion is denied.

9 MR. KANAREK: I make a motion to sequester the jury.
10 This -- this community will be inundated, inundated with
11 publicity that Mr. Manson, by sitting in his cell, sending
12 out waves of some kind of unknown origin, has the power to
13 have a man like Mr. Como escape from jail, and have the girls
14 out there -- who are under constant surveillance -- run off
15 somewhere with him.

16 And they're doing all of this so that this -- this
17 jury will be influenced, and their minds will be captured.

18 I alleged it, without being able to prove it.
19 And the proof would be by -- under oath, if we get the jail
20 personnel here and have them testify under oath as to what has
21 been accomplished.

22 I cannot believe that with that kind of surveil-
23 lance on a man like Mr. Como, that he could get a hacksaw
24 and all of that --

25 THE COURT: Mr. Kanarek, you have stated your grounds,
26 and the Court denies your motion for an evidentiary hearing.
27 It's a ridiculous motion, in the Court's opinion.

28 The Court, however, will ask the jurors what

1 they may have heard, and will inquire as to whether or not
2 what they have heard may have, in any way, prejudiced them
3 against Mr. Manson.

4 MR. KANAREK: I ask --

5 THE COURT: And the motion to sequester will be taken
6 under consideration in that respect.

7 (Proceedings had on an unrelated matter.)

8 THE COURT: Mr. Kanarek and Mr. Manzella?

9 MR. KANAREK: Yes, your Honor.

10 THE COURT: If you can approach the bench right here?

11 MR. KANAREK: I have certain jury instructions that I
12 would like to make the point. Your Honor can deem them
13 denied, if your Honor -- although I --

14 THE COURT: All right. Come on up here for just a
15 minute, would you, please?

16 MR. KANAREK: Although I do wish the instructions, of
17 course.

18 THE COURT: Oh. Do you have them?

19 MR. KANAREK: Yes.

20 THE COURT: All right. Let me see them.

21 MR. KANAREK: They're CALJIC instructions, your Honor.

22 THE COURT: Well, I do intend -- I do intend to give
23 an instruction concerning extortion. I permitted you
24 yesterday to argue extortion.

25 But I do not intend to give a murder second
26 degree instruction, based upon -- this will be off the
27 record.

28 (Whereupon, a discussion off the record ensued

1 at the bench among Court and counsel, during which
2 time members of the jury commenced to enter the
3 courtroom.)

4 THE COURT: Excuse me, ladies and gentlemen. We will
5 just remain in recess for just a few minutes. Would you
6 mind waiting outside?

7 (Whereupon a further discussion off the record
8 ensued at the bench among Court and counsel:)

9 THE COURT: All right. Off the record.

10 MR. KANAREK: Your Honor, in connection with my request
11 for conspiracy second degree murder -- a second degree felony
12 murder, my theory that the felony is -- as far as the evidence
13 goes in this case -- it could be extortion; and then it could
14 be false imprisonment, and this is -- this is my theory, which
15 I believe is correct.

16 THE COURT: You believe that it -- that false imprison-
17 ment is a crime which is inherently dangerous to human life?

18 MR. KANAREK: Well -- well, no; but the felony form of
19 false imprisonment, as enunciated by the Code, where false
20 imprisonment is defined as --

21 THE COURT: It's one of those felonies which is
22 inherently dangerous to human life; and therefore, I should
23 give a felony murder second instruction, based on that crime?

24 MR. KANAREK: Yes, your Honor. Because patently, the
25 felony aspect of false imprisonment says: "Depriving a
26 person of his personal liberty, with threat of force or use
27 of force," as opposed to the misdemeanor aspect, where you
28 just deprive a person of his personal liberty, and there

1 isn't that threat of force or -- or use of force which is
2 contemplated by our law.

3 So therefore, this evidence clearly sustains the
4 proposition that it could be -- that it could be an extortion
5 second degree felony type murder; and it could be a false
6 imprisonment second degree felony type murder; and it also
7 could be a conspiracy to commit extortion, and a conspiracy
8 to commit robbery -- pardon me -- false imprisonment.

9 It's clearly within the ambit of this evidence.

10 Now, the fact that they have not alleged it,
11 the fact that they have alleged only the conspiracy to
12 commit robbery, and the conspiracy to commit -- as their
13 -- of course, their conspiracy count is the conspiracy to
14 commit robbery and murder, but that doesn't deprive us --
15 in fact, it's a -- it's a violation of due process, under
16 the 14th Amendment, for us not to have these other matters
17 before the jury, because -- because of the doctrine of
18 lesser and included.

19 It's our --

20 THE COURT: Well, the Court is -- is not willing to
21 give --

22 MR. KANAREK: As well as other reasons.

23 THE COURT: -- those instructions for the reasons you
24 suggest. However, the Court did permit you to argue that
25 this was not a robbery but an extortion.

26 The classic extortion, of course, in the Court's
27 opinion, would not be a felony which would be inherently
28 dangerous to human life. The criteria of immediacy of the

1 harm would be -- and that criterion, I think, distinguishes
2 robbery from extortion.

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MR. KANAREK: Well, your Honor, the --

THE COURT: I think that it would not warrant a murder second, a felony murder second instruction.

As to your request for lesser included offenses of aggravated assault, and simple assault, the Court, I think, has already indicated on the record that it would not give such instructions.

You may submit them, so that it's clear on the record what you have submitted.

MR. MANZELLA: Your Honor, did the Court indicate that it was or it was not going to give an extortion instruction?

THE COURT: I am going to give an extortion instruction, and I will distinguish extortion from robbery, as I have discussed with both of you off of the record.

Here's your volume of CALJIC.

MR. KANAREK: Yes, your Honor.

THE COURT: Thank you.

All right. Let's have each one of the jurors come in individually.

THE BAILIFF: Yes, sir.

THE COURT: Well, bring them in as a group. I'm sorry.

THE BAILIFF: Yes, sir.

(Whereupon, members of the jury entered the courtroom, and the following proceedings were had:)

THE COURT: All right. The record will show that, in the case of People versus Manson, that the jurors and alternates are all present.

Good morning, ladies and gentlemen.

1 (Whereupon, murmurs of "Good morning, your
2 Honor" were heard from members of the jury:)

3 THE COURT: There has been some publicity about which
4 the Court feels it must ask you, and I'll just ask you gener-
5 ally whether, since we adjourned yesterday evening, any of you
6 have heard, seen or read anything whatever about Mr. Manson,
7 without stating what it is that you may have heard, seen or
8 read.

9 Would you please raise your hands, if you have?
10 If you have heard anything whatever about Mr. Manson?

11 I see only one -- two -- three responses. That
12 would be Mrs. Banks, Mr. Rico and Mr. Thompson.

13 All right. Then, would the rest of you retire
14 out to the hallway again? And I'll question those three
15 jurors out of your presence.

16 I suppose we should have -- let's have ladies
17 go first, shall we, Mr. Rico and Mr. Thompson?

18 All right. The record will show that all jurors
19 have left, with the exception of Mrs. Banks.

20 Mrs. Banks, what have you heard, seen or read
21 since the Court adjourned yesterday afternoon?

22 ALTERNATE JUROR NO. 1: Well, nothing that I have read;
23 only what I was told, without any names or anything being
24 mentioned, that there had been an escape from the 13th
25 floor of this building, and I was told this by my neighbor.

26 THE COURT: Was there any connection at all with
27 Mr. Manson mentioned?

28 ALTERNATE JUROR NO. 1: No, she -- she just told me --

1 when I was getting in the car this morning to come to work --
2 for me to be careful.

3 THE COURT: Oh, I see. That there had been an escape,
4 and that you should be careful?

5 ALTERNATE JUROR NO. 1: Yes. And I just assumed that
6 what she was telling me possibly had -- you know, some bearing.

7 THE COURT: Because of your association with this case?

8 ALTERNATE JUROR NO. 1: Yes.

9 THE COURT: Well, did she mention the word "Manson,"
10 or the name "Manson"?

11 ALTERNATE JUROR NO. 1: No, she didn't. No.

12 THE COURT: She didn't?

13 ALTERNATE JUROR NO. 1: No. No name. And this was just
14 my assumption, --

15 THE COURT: I see.

16 ALTERNATE JUROR NO. 1: -- by her -- you know, her
17 reaction.

18 THE COURT: I see.

19 ALTERNATE JUROR NO. 1: And she just told me, you know,
20 that information. And I just assumed that this is what it was.

21 THE COURT: Would this information -- or, would this
22 conversation that you have heard in any way raise any prejudice
23 in your mind, any bias or prejudice in your mind against
24 Mr. Manson?

25 ALTERNATE JUROR NO. 1: Well, no. Because I don't know
26 whether or not it's true or not.

27 THE COURT: Do you think that you still could be fair
28 and impartial in determining the issues that would be presented

1 to you?

2 ALTERNATE JUROR NO. 1: Oh, yes, definitely.

3 THE COURT: Thank you. Then --

4 ALTERNATE JUROR NO. 1: Thank you.

5 THE COURT: -- would you send Mr. Rico in, then, please?

6 Good morning, Mr. Rico.

7 What did you hear, see or read in connection with --

8 JUROR NO. 10: Over the radio, we heard -- I heard that
9 one of the members of the Manson Family had escaped from jail,
10 and they were -- he was still at large, or something like
11 that.

12 That's all I heard.

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1 THE COURT: You heard it on the way to the courtroom
2 this morning?

3 JUROR NO. 10: Uh -- no; I was warming my car up in the
4 driveway, and I heard it then.

5 THE COURT: That's all you heard?

6 JUROR NO. 10: That's all I heard,

7 THE COURT: You don't know any names?

8 JUROR NO. 10: Uh -- sounded like a Krenchle or Crenshaw
9 or something like that. I didn't catch the whole name.

10 THE COURT: Let me ask you: Would this information
11 that you've heard over the radio in any way influence your
12 judgment in this case?

13 JUROR NO. 10: No, no.

14 THE COURT: Would it raise any bias or prejudice
15 against Mr. Manson?

16 JUROR NO. 10: No.

17 THE COURT: Would it cause you to be in any way unfair
18 or biased toward him in making any decision that you might be
19 called upon to make in this case?

20 JUROR NO. 10: I don't believe so, no.

21 THE COURT: When you say, "I don't believe so," --

22 JUROR NO. 10: I'm pretty sure it wouldn't.

23 THE COURT: Are you certain?

24 JUROR NO. 10: Yes, sir.

25 THE COURT: That's all you heard?

26 JUROR NO. 10: That's all I heard.

27 THE COURT: Thank you, Mr. Rico.

28 JUROR NO. 10: Okay. Thank you.

1 THE COURT: Good morning, Mr. Thompson.

2 What have you seen, heard or read concerning
3 Mr. Manson?

4 JUROR NO. 8: My wife got excited this morning, and she
5 ran in the house, and she said somebody had broken out of
6 jail, and part of the -- that was part of Manson; and she
7 said, "It just came out; it just came out on the news."

8 So I said I didn't want to hear any more of it.

9 THE COURT: That's all you heard, just what she said.

10 JUROR NO. 8: Yes. Just what she said. She told me to
11 be careful, because --

12 THE COURT: Are you frightened?

13 JUROR NO. 8 : No, sir.

14 THE COURT: Do you think that this information that
15 your wife imparted to you would in any way affect your judg-
16 ment --

17 JUROR NO. 8: No, sir.

18 THE COURT: -- in respect to Mr. Manson?

19 JUROR NO. 8: No, sir.

20 THE COURT: Could you still be fair and impartial in
21 determining any issues that you might be called upon to
22 determine --

23 JUROR NO. 8: Yes, sir.

24 THE COURT: -- in this case?

25 JUROR NO. 8: Yes, sir.

26 THE COURT: You could. Allright. Thank you, Mr.
27 Thompson.

28 JUROR NO. 8: All right.

1 THE COURT: You can go over to seat number 8 now.

2 (Whereupon, the other members of the jury entered
3 the courtroom, and the following proceedings were had:)

4 THE COURT: Would you gentlemen approach the bench?

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

8 THE COURT: Mr. Kanarek, you have -- we were supposed to
9 start at 9:30. It's taken a half hour. We will give you a
10 little extra time, if you want it.

11 MR. KANAREK: I probably will go over into the afternoon,
12 your Honor.

13 THE COURT: Well, you may not. You may be able to
14 conclude. Do your best to try to conclude in the two
15 hours that you have remaining.

16 MR. KANAREK: Well, I will try my best, your Honor.
17 But it isn't a matter of time. What I am saying is, this --

18 THE COURT: But the most I will give you will be the
19 time that we have utilized this morning, a half hour. So you
20 have two and a half hours to conclude.

21 MR. KANAREK: Well --

22 THE COURT: And you have been given -- I told you
23 Friday that this would be the case.

24 MR. KANAREK: Well, I understand that. What I am saying
25 is -- and this is what I allege, that this -- this intense
26 focus on just a few minutes or just a half hour, in connection
27 with a case of this type, where the prosecution has spent un-
28 told court hours, untold numbers of court hours -- and also

1 untold -- the elapsed time that they have -- they've caused
2 this case to endure -- is incredible.

3 And as I said, I allege it's a violation of due
4 process, equal protection under the Fourteenth Amendment,
5 the right to effective counsel under the Sixth Amendment,
6 for your Honor to -- to make the difference between a half hour
7 and 45 minutes or an hour at this time, it is absolutely
8 patently arbitrary.

9 It's -- and it's an abuse of discretion.

10 THE COURT: Well, the record should show that the jury,
11 during the last three days, has been nodding in the box; that
12 it is obviously difficult for them to keep awake, and to be
13 attentive to your argument; that your argument is punctuated
14 by long pauses, during which you are examining the transcript
15 while you are standing in front of the jury, to find what
16 portions of the transcript -- apparently it's for that purpose
17 -- to find what portion of the transcript you wish to read.

18 MR. KANAREK: That's just absolutely not so, your Honor.

19 THE COURT: Well, this is the Court's observation.

20 MR. KANAREK: Well, the Court --

21 THE COURT: And the Court observes that -- that the jury
22 has been extremely unattentive, and that this is a matter
23 which, I think, should have been noted by you, and it should
24 be part of the considerations that you have in planning to
25 terminate, to cover and terminate your argument.
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1 MR. KANAREK: Well, first of all, if I may say this?
2 The geography of the courtroom is such that my place at the
3 counsel table is at a place that is far removed from the jury.

4 Mr. Manzella is directly close to the jury; and
5 so therefore, it is not necessary for him, when he addresses
6 the jury, to move as far as I have to to get his papers.

7 In fact, his papers are right immediately
8 adjacent to the jury, --

9 THE COURT: Well --

10 MR. KANAREK: -- so there's a geographical --

11 THE COURT: -- the Court finds that that has no bearing
12 on --

13 MR. KANAREK: It has. It has a lot of --

14 THE COURT: -- on this issue as to how long you should
15 take --

16 MR. KANAREK: No. But I mean --

17 THE COURT: -- in presenting an argument.

18 And as a matter of fact, most of the time that
19 you have been arguing has been spent right at the jury box
20 rail. Now, this morning --

21 MR. KANAREK: That's the point. That's the point.

22 THE COURT: Now, this morning, just -- you may continue
23 your argument, and try to terminate by 12:00.

24 MR. KANAREK: I will try to.

25 THE COURT: I'll give you some extra time, because of
26 the time that we have consumed this morning.

27 MR. KANAREK: It's not a matter of extra time. It's
28 a matter of -- I have --

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THE COURT: Then I would anticipate --

MR. KANAREK: It's a matter of -- that I have the time necessary to do the job properly. And your Honor's gratuitous statements are simply just that.

THE COURT: All right. Let's proceed.

MR. KANAREK: And the fact that --

THE COURT: Go to the counsel table now, and let's --

MR. KANAREK: Your Honor is not allowing me to make the record?

THE COURT: Yes, I think that you have made your record abundantly clear, that you object to the Court's terminating your argument at -- today, at any time.

MR. KANAREK: No, I -- your Honor is not even listening. What I'm saying is, your Honor's statements about the jury --

THE COURT: How much more time do you wish, Mr. Kanarek?

MR. KANAREK: I am not talking about that now, your Honor.

I'm talking about your Honor's statement about the jury, and the statements that don't have anything to do with time per se. Your Honor's statements are simply not so.

The fact of the matter is --

THE COURT: Well --

MR. KANAREK: -- that I have a geographical problem. I have -- there are many transcripts; and this is not entertainment. This is -- a lawsuit of this type is not entertainment. It's hard work, and -- and the jurors are analogous to judges or lawyers --

THE COURT: All right.

Ad-3

1 MR. KANAREK: And they --

2 THE COURT: The Court has heard enough from you now,
3 Mr. Kanarek.

4 The Court finds, in respect to your request to
5 sequester the jury, that the news of the escape of Kenneth
6 Como, whom you say it has been reported is a friend of Mr.
7 Manson, is known only to three jurors; and the Court's
8 findings are in respect to those three jurors, that they --
9 the news reports they heard, or the comments they have heard
10 from other people, will not affect their judgment in any way
11 in deciding any issue in this case;

12 That those jurors can be fair and impartial.

13 MR. KANAREK: Well, it's the --

14 THE COURT: And the motion to sequester is denied.

15 MR. KANAREK: Then I make a motion for a mistrial, and
16 ask your Honor to admonish the jury --

17 THE COURT: The motion for a mistrial --

18 MR. KANAREK: -- in connection with this publicity that
19 is concerning Mr. Como, and the future --

20 THE COURT: The motion for mistrial --

21 MR. KANAREK: -- and the future publicity concerning
22 that; and mere admonishment not sufficing, I ask for a
23 mistrial.

24 I don't believe that without sequestration, that
25 this jury -- and I believe this is the horns of a dilemma
26 kind of thing, and I think that, on balance, because of the
27 factors involved, that I must --

28 THE COURT: Excuse me just a minute, Mr. Kanarek.

Ad-4

1 The motion for a mistrial is denied.

2 The Court may sequester the jury once it has
3 begun to deliberate; and will inform them that it intends to
4 do so.

5 But at this time, the Court will admonish the
6 jury in respect to this news of Mr. Como's alleged escape.

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7 All right. Let's proceed.
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1 MR. MANZELLA: Your Honor, is your Honor going to
2 inquire of the defendant if he is -- would refrain from
3 disruption of the court, so he could sit in?

4 THE COURT: Yes. The Court -- did you wish to do that,
5 Mr. Kanarek, please?

6 (Whereupon a discussion off the record ensued
7 at the screen in the detention room door between Mr.
8 Kanarek and the defendant.)

9 MR. KANAREK: Mr. Manson says he can't make that
10 representation.

11 THE COURT: All right. You may proceed with your
12 argument, Mr. Kanarek.

13 Mr. Manson may remain in the retaining cell.

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

17 THE DEFENDANT: (From within the detention room,
18 through the screen of the door:)

19 How can you blame me for some people escaping?
20 I'm sitting in the jail. How can you blame me?

21 THE COURT: Mr. Manson, you will have to remain quiet,
22 or the sound will be cut off from the retaining tank.

23 You may proceed, Mr. Kanarek.

24 MR. KANAREK: Yes.

25 Good morning, your Honor, ladies and gentlemen
26 of the jury, and Mr. Manzella.

27 We were talking about the jury instructions that
28 will be -- that will be used when you are discussing the

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1 case, and I am not going to -- I am not going to go over
2 every instruction, of course, but remember that, in order
3 for this to be felony murder, that they have to prove
4 robbery.

5 The only -- in other words, the Court is going
6 to give us an instruction on extortion; and because of that
7 particular instruction being very important, I will dwell
8 upon that, that particular instruction, in detail, and then
9 go back to that proximate cause. Extortion is like this:

10 "Every person who obtains property from
11 another, with the latter's consent, which consent has
12 been induced by the former, by a wrongful use of force
13 or fear, is guilty of the crime of extortion."

14 So, in other words, again, like we were speaking
15 of yesterday, this type of consent is a consent which takes
16 places not in a contractual sense -- that is, if someone
17 comes over and makes you sign over something, you can go to
18 court and get it back, in a civil case. That --

19 But we are here dealing with a criminal matter.
20 And the consent that they're speaking of there is where the
21 person actually does it, where he consents, where he --
22 where he signs the paper, as purportedly they say Gary Hinman
23 did.

24 But that -- if something takes place, if someone
25 passes away as a result of that kind of activity, that is
26 not first degree felony murder; it is no felony murder at
27 all, in connection with the instructions the Court's going
28 to give us.

Ac-3

1 In other words -- in other words, if -- just for
2 the sake of argument -- if you find that, as to the conspiracy
3 count, there's a conspiracy to commit extortion, and murder --
4 just for the sake of argument -- that would be a not guilty;
5 because they have alleged robbery and murder as part of what
6 the conspiracy is.

7 If you find false imprisonment to be there,
8 instead of robbery, then there is no -- it has to be not
9 guilty on the conspiracy count.

10 Now, it is interesting to compare the language of
11 -- now, the Court's going to give us that extortion instruc-
12 tion. You are actually going to have that in the jury room.

13 Now, in -- in connection with robbery, robbery
14 is the "taking of personal property of any value, in the
15 possession of another, from his person or immediate presence
16 and against his will, accomplished by means of force or fear,
17 and with the specific intent permanently to deprive the
18 owner of his property."

19 You'll notice, in the definition for robbery --
20 which will be with us in the jury room -- there is no mention
21 of consent.

22 Now, if we take these two -- these -- let's just
23 write down the word "consent," and then the word "extortion"
24 -- I'm sorry about my handwriting here, and my spelling --
25 and "no consent," "robbery."

26 Now, the prosecution will undoubtedly argue --
27 and when -- when we no longer are speaking to you, after
28 we've finished in this -- what we are talking about, we never

Ae-4

1 get an opportunity to come back and talk to you again, after
2 the prosecution does.

3 So what we would beg is that -- is that you
4 consider yourself sort of to be a lawyer for Mr. Manson, and
5 -- "What argument would you make?"

6 In other words, as the prosecution talks, what
7 would you say if -- if you were arguing on his behalf? Because
8 we do not get a chance to talk to you again.

9 So, in connection with this consent aspect, they're
10 going to argue, "Well, when someone comes up and sticks a gun
11 in someone's stomach or something, and they turn over their
12 money, that's consent."

Af fls.

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Well, but they -- that might be; that might be.
But if they allege robbery, they have to prove robbery.

Now, they might -- they might, in a case where
someone -- where someone comes up close to someone, and puts
a gun in their ribs, they might charge them with extortion.

But you see, the charge is brought by the District
Attorney. The District Attorney determines --

MR. MANZELLA: Excuse me, your Honor.

MR. KANAREK: -- what the charge is.

MR. MANZELLA: May we approach the bench?

THE COURT: Yes, you may.

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

MR. MANZELLA: Your Honor, this is a Grand Jury indictment, not an information. And I think Mr. Kanarek's remarks, that the District Attorney brought the charges, are not proper, since this is a Grand Jury indictment.

MR. KANAREK: That's not so. That is not so, because the -- the District Attorney asks for the indictment. I can show it to you, right in the preface to the Grand Jury.

The Grand Jury is made up of lay people, and the District Attorney tells them what he wants. And I'll show it to you, right in the transcript.

MR. MANZELLA: I am saying that Mr. Kanarek's remarks are improper, that the District Attorney brought the charges, in the sense that the indictment is brought by the Grand Jury.

MR. KANAREK: Upon the request of the District Attorney.

1 They're not lawyers. They --

2 THE COURT: All right.

3 MR. KANAREK: -- bring -- if -- they indict on the
4 crimes that you ask for.

5 It's in the preface -- in fact, when the Grand
6 Jury is convened, the District Attorney in the Grand Jury
7 hearing, he says, "Ladies and gentlemen, we are now going
8 to ask you, based upon what you are going to hear, for
9 certain -- for certain charges to be filed."

10 And the District Attorney tells the Grand Jury
11 what they want. Clearly, the District Attorney --

12 THE COURT: I think Mr. Kanarek was simply arguing,
13 generally, when he was commenting. He wasn't -- I think, if
14 you look at his words, he wasn't examining this particular
15 instance -- although, of course, the inference is that --
16 his inference is that --

17 MR. MANZELLA: I have no objection to general comments.

18 THE COURT: Yes.

19 MR. MANZELLA: But I thought he was saying specifically
20 that the District Attorney brought these charges.

21 And, of course, that's not true. It's a Grand
22 Jury indictment.

23 THE COURT: Well, that could be made clear. You can
24 make that clear to the jury.

25 Proceed.

26 MR. KANAREK: Well, your Honor --

27 (Whereupon, the following proceedings were had
28 in open court, within the presence and hearing of the

1 jury:)

2 MR. KANAREK: So that whether there is consent or not
3 depends on what the charge is. You don't talk about consent
4 if the charge is robbery -- unless they allege extortion,
5 also.

6 But they haven't alleged extortion. And when --
7 when we are conducting this case, we are here conducting it
8 in a court of law, in accordance with the rules that are
9 set out.

10 And so therefore -- therefore, if someone comes
11 into a liquor store and, let's say that someone is kept
12 for a period of time, they could allege extortion; and
13 many times, they do. Certain times, they allege extortion.
14 They can allege extortion and robbery.

15 What the charge is, what actually the charge is,
16 depends upon -- depends upon the District Attorney. Now,
17 the way that these things come about, of course, in this
18 particular case, by way of Grand Jury indictment, the Grand
19 Jury sits in a room, and the District Attorney comes in
20 and says, "Ladies and gentlemen of the Grand Jury, we are
21 asking that you indict people on this charge and that charge
22 and that charge.

23 "And therefore, we will now proceed, and we will
24 give you evidence," and so forth. Of course, there's --
25 there's no one in there for the defendant at that time,
26 which is why a lot of people are unhappy with the Grand Jury
27 system, because the defendant -- the defendant has no
28 representation there, and they put out anything that they

1 wish to put out in front of the Grand Jury.

2 And the Grand Jury is not picked like you ladies
3 and gentlemen are picked, by way of the voters registration
4 list. The Grand Jury is made up of hand-picked -- it's sort
5 of a hand-picked group.

6 The way it comes about is that each Judge -- each
7 Judge selects a few people that he likes, that he knows, and
8 they all go into the hopper, and then out of that a certain
9 number are picked for the Grand Jury.

10 So it is not -- it is not -- it doesn't stem from
Ag fls. 11 the People, the way you people do.

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SG 1 Because it doesn't come -- it doesn't come by
2 chance, by the voters' registration; and this is something to
3 think about, whether this charge would ever have been brought,
4 would ever have been brought at all, if people that sat on
5 the Grand Jury were people that were just the -- the individu-
6 als who voted and had their names chosen at random.

7 So, unless there is proved to be a robbery, there
8 is nothing to talk about on the conspiracy count.

9 And furthermore, there --

10 THE COURT: Excuse me, ladies and gentlemen.

11 The Court is going to instruct you as to the law
12 on this case, including the crimes of conspiracy, robbery and
13 extortion; and you are to take the law as the Court shall give
14 it to you in the instructions.

15 You may proceed.

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

17 Then furthermore, if I might write down the
18 words "Specific Intent"? There has to be -- there has to be
19 the specific intent shown on the part of Mr. Manson to commit
20 robbery.

21 Now, we are talking about the felony murder.
22 There has to be the -- the intent on his part to do what they
23 say robbery is. That is wholly lacking here; that is wholly
24 lacking here. But assume, for the sake of argument, that it
25 is -- just for the sake of argument -- then we come to the
26 point of proximate cause.

27 Because, in connection with proximate cause,
28 the Court will instruct us that unless -- just, for instance,

1 this particular paragraph in the instruction is important.

2 "The proximate cause of a death is a cause
3 which, in natural and continuous sequence, pro-
4 duces the death, and without which the death would
5 not have occurred."

6 And again, that -- all of this has to be proved
7 beyond a reasonable doubt and to a moral certainty.

8 We know, taking the prosecution viewpoint of the
9 evidence -- for the sake of argument -- that they say that
10 Bobby Beausoleil put the knife in Mr. Hinman's heart. And
11 this was -- how many hours was it after Mr. Manson was
12 allegedly there?

13 So the proximate cause, the thing that caused
14 Mr. Hinman to die, was not a robbery; it was Mr. -- Mr.
15 Beausoleil doing what he did.

16 And so, when we discuss proximate cause, we must
17 -- we must take into consideration this time period, this
18 time period; because Mr. Manson is not charged with robbery.
19 They haven't brought a robbery charge.

20 They brought -- they've brought a -- maybe we can
21 diagram that a little bit. They've brought, one, the Gary
22 Hinman murder -- allegedly;

23 Two, the conspiracy to rob and murder;

24 And three, the alleged Shea murder.

25 Those are the only charges that are brought.

26 So that recognizing that specific intent is necessary, you
27 have to show the -- the intent on Mr. Manson's part to rob
28 and murder Gary Hinman. That is preposterous, from this

1 evidence.

2 We are talking about evidence, forgetting any
3 other factor, forgetting -- forgetting the fact that Mr.
4 Manson is just one of a group of people there on the ranch.

5 There's just no specific intent. There's no
6 showing from their own evidence that Mr. Manson desired
7 Gary Hinman to die.

8 As a matter of fact, if you take their evidence,
9 again for the sake of argument, when you slice somebody on
10 the cheek, and you cut their ear (indicating), you don't
11 intend to kill them.

12 Whatever -- whatever inferences you want to make
13 from that, that sounds like extortion -- assuming -- in other
14 words, taking their evidence at face value, it's an attempt
15 to try and get money or something from the person.

16 But they haven't alleged that.

17 And so there -- there being that difference
18 between extortion and robbery, that must be -- that must be
19 not guilty.

20 Now, getting to the specific intent as far as Mr. Shea is
21 concerned, first of all -- and I know the Court will do it,
22 if you make that request of him; he'll have it read to you --
23 but we haven't, except maybe very briefly, read the testimony
24 of Beverly Russell. But you can have it read, word for word.

25 I did it the other night. I just sat there and
26 read it, and it just -- it just -- it just jumps at you
27 from the page. There's no question but what Mr. Shea was
28 alive at least as of April, March, February of 1970. And

Mr. Shea is alive right now.

Ah-1

1 Now, we can't -- we can't prove that. How can we
2 prove that, with Mr. Shea's habits and all of that?

3 But for the sake of argument, for the sake of
4 argument, getting to the point of specific intent to kill,
5 is there any specific intent here shown on Mr. Manson's
6 part? That he wants Mr. Shea to be dead?

7 They're going to say -- they're going to say,
8 when they speak to you, they're going to say about these
9 alleged statements that Mr. Poston testified to, that Mr.
10 Watkins testified to -- well, they -- those statements fall
11 in the same category as the screams that Barbara Hoyt
12 supposedly heard.

13 I don't think any of us, when we think about it,
14 can believe that testimony about the screams of Shorty Shea
15 being recognized and all of that. So there is no specific
16 intent shown on the part of Mr. Manson to cause Mr. Shea
17 to die.

18 It just -- it's just not there.

19 Now, if we can speak briefly about second degree
20 murder. Second degree murder is where there isn't what we --
21 what we call -- what we spoke of yesterday, the willful and
22 premeditated thinking that goes on. That willfulness, that
23 premeditation, where you sit and you plan.

24 But where there is the intent to kill, the intent
25 to kill without this premeditation, but there is still this --
26 this hatred or this malice or whatever.

27 And the Court will instruct you on second degree
28 murder. But basically, that is the kind of thing it is.

Ah-2

1 Then, the Court is also going to instruct you on
2 voluntary manslaughter. Now, voluntary manslaughter is the
3 kind of thing -- well, for instance --

4 THE DEFENDANT: (From within the detention room door,
5 through the screen:)

6 Why don't you instruct them on not guilty?

7 MR. KANAREK: It's the kind of thing that --

8 THE DEFENDANT: (From within the detention room door,
9 through the screen:)

10 All he's doing is giving you more suggestion.
11 It's all negative.

12 MR. KANAREK: It's where someone does an act that is
13 dangerous, wherein there isn't this intent to kill.

14 For instance -- for instance, a situation where
15 somebody may take a firearm, let's say, and really not want to
16 -- really not intend to kill anyone, but he or she fires it
17 in a -- in a manner where they should know that there is a
18 danger to human life.

19 That's the kind of thing that voluntary manslaughter
20 is, where you know that what you are doing -- what you are
21 doing is liable to hurt somebody.

22 Now, for instance, it doesn't apply in this case
23 specifically, but the driving of an automobile -- I mean,
24 let's say for instance, somebody drives an automobile on the
25 wrong side of the street, just -- just as a lark; and he
26 doesn't really intend to kill anybody, but someone is killed.

27 It's an act that is -- that is sort of inherently
28 dangerous to human life that is done, and we call that

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1 voluntary manslaughter.

2 But again, that act -- that act must be the
3 proximate cause, the thing that causes the death. And as far
4 as -- well, there -- there just -- it defies the imagination,
5 because nothing that Mr. Manson allegedly has done caused the
6 death of Mr. Hinman -- even assuming, for the sake of argu-
7 ment -- even assuming that Mr. Manson did this cutting.

8 The death of Gary Hinman -- there's no way that
9 -- that we can get around it -- is by what Mr. Beausoleil
10 did, if we accept what the prosecution said.

11 And again, it's interesting to note, it's
12 interesting to note that in the opening statement, we will
13 all recall that the prosecution told us that the alleged
14 cutting that they attribute to Mr. Manson -- and which we
15 think -- which we think, in connection with the knife being
16 broken, and Mr. Springer and all of that, and Mr. DeCarlo --
17 there are -- there are viewpoints of that which are not --
18 which are not consistent with what the prosecution would have
19 us believe.

20 And no matter which way you slice it, when they
21 started this case, they told us -- they told us that what was
22 done to Mr. Hinman's face, to his cheek and his ear, was
23 not enough to cause death.

24 Dr. Katsuyama testified here, and he testified
25 about the wound in the heart, and he testified concerning
26 this -- this wound to the ear and the cheek.

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1 But the important thing is, we have still the
2 reasonable doubt that we have to put on top of all of this.
3 And even though Dr. Katsuyama tells us that this is a severe
4 wound and all of that, looking at the prosecution evidence,
5 from the standpoint most favorable to the prosecution, it's
6 certainly not proved beyond a reasonable doubt and to a moral
7 certainty that what was done to Mr. Hinman's cheek and ear had
8 anything to do with his death.

9 Because we know -- we know from just plain old
10 common sense that a stab wound in the heart (indicating)
11 causes death right now.

12 And the Coroner tells us there was such a stab
13 wound in the heart. So that is what the proximate cause of
14 Mr. -- of Mr. Hinman's death actually is, is that stab wound
15 in the heart.

16 Now, the Court is going to give us an instruction,
17 where the Court is going to say that if a man is not present
18 when a crime is committed, this means that we should find
19 him not guilty.

20 And then the Court will qualify that. The Court
21 will tell us: "Except if he's a person who aided and abetted
22 or did something to cause that crime to occur."

23 Now, the -- the -- the point that we should focus
24 on in that regard is this: Every human act that is done in
25 connection with a panorama of events -- such as we have por-
26 trayed in this courtroom -- is not done with criminal intent.
27 In other words -- in other words, this aiding and abetting,
28 this doing of what is wrong, has to be done with guilty

1 knowledge. It has to be done with criminal intent.

2 Just for instance, let's say -- let's say that
3 a Western Union boy -- or, a Parcel Post boy; that's more
4 applicable -- delivers a package of heroin somewhere; that's
5 been put through Parcel Post.

6 Well, if there isn't the criminal knowledge, if
7 there isn't the intent on the part of the boy who's delivering
8 this, obviously, there is no crime. There has to be guilty
9 knowledge and guilty intent.

10 So -- and the Court is going to tell us not being
11 present is a defense to a crime. So, as we look at these
12 various charges that have been made against Mr. Manson --
13 the alleged murder of Gary Hinman -- is there -- now, we know
14 for sure, we know for sure that Mr. Manson was not present. --
15 Even if we take their evidence, assuming for the sake of
16 argument -- we know he wasn't present when Mr. Hinman was
17 murdered.

18 So that would be a complete defense to Count I.
19 And he is entitled to -- he is entitled to this not guilty
20 verdict, which is "not proven."
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1 They don't prove that beyond a reasonable
2 doubt, to a moral certainty, then, that means not guilty.

3 Now, I'm sure the prosecution is going to argue
4 that the Gary Hinman events, even though Manson wasn't there,
5 he aided and abetted. He aided and abetted.

6 But what was in Mr. Manson's mind? If you take
7 their -- you take their evidence at its face value, take
8 Ella Jo Bailey at face value, it was not murder. There was no
9 specific intent to murder on the part of Mr. Manson, in any
10 event.

11 So only -- the only aiding and abetting that
12 Mr. Manson did was in terms of, again, looking at their
13 evidence -- extortion -- was in terms of getting money, as they
14 put it, getting money for certain purposes, which is negated
15 by the fact that Mr. Arneson was allegedly given, as we know,
16 part of the -- what was supposedly taken from Mr. Hinman, that
17 automobile.

18 So there is no -- there is no aiding and abetting
19 with criminal intent for robbery or for murder.

20 And, again, looking at the aspect of conspiracy, if
21 a man is not present in connection with a conspiracy, he's not
22 guilty.

23 But, again, the same principle applies, and I'm
24 sure that they will argue that what Mr. Manson did, he aided
25 and abetted. But these -- these principles of law have a way
26 of interacting with each other and, once again, we come to
27 whether or not he had the intent, the specific intent, to
28 rob and murder in such a conspiracy. It is just not there.

1 There's no question about that he had no specific intent.
2 And the specific intent didn't grow greater and become more
3 valid by their waiting until, uh, uh, December of 1970 to
4 actually cause this indictment to be brought.

5 And in the Shea murder, which is a misnomer, in
6 any event, because there's no showing that Mr. Shea is not
7 alive, when we look at Ruby Pearl's testimony, they say on
8 this particular night, on this particular night certain
9 people -- she says Tex Watson, Bruce Davis, Mr. Grogan and
10 Charles Manson, and then she says Bill Vance on one occasion,
11 and then she tries to hide Bill Vance from her testimony, and
12 all of that, and we've heard of all that. If Mr. Manson
13 wasn't part of that group, then he -- that's their whole
14 approach on the Shea case, is this surrounding on that one
15 incident.

16 If there's a reasonable doubt that Mr. Shea was
17 present at the time when Mr. Manson was said to be there,
18 then, that equals not guilty because of the instructions the
19 Court is going to give us.

20 So the Court's also going to tell us that merely
21 being in a group of people where some people do wrong is not
22 the kind of fact that means that someone can be found guilty.
23 There has to be the criminal intent. Just the evidence of
24 associating, where one person who is charged in the courtroom
25 with doing certain things is with a group of people that
26 they may think did wrong, one or more of them, does not mean
27 that that mere association is equated to guilt. The Court is
28 going to instruct us to that effect. We've spoken of the --

1 of the matter of admission, where a person -- where a person
2 makes an alleged oral admission or oral confession, and --
3 how the Court is going to instruct us that that must be viewed
4 with caution. We've gone over that -- in fact, a lot of what
5 we've spoken of is -- relates to that. It is not a very
6 long jury instruction. It is very short.

7 The statement is that any alleged confession and
8 admission that is oral, must be viewed with caution because of
9 the many things that we've spoken of that I am sure that we
10 agree that this is -- this is true, just trying to relate,
11 trying to relate a conversation, as far as accuracy goes, is
12 -- the nature of it is such that you just cannot, cannot
13 escape, even if you are trying, even if you want to be
14 accurate, you can't state what was uttered.

15 And then, when you take what these people want to
16 do, when they have a certain interest, even financial, in
17 connection with what happens to Mr. Manson, you have a situa-
18 tion that -- that that means that those alleged statements
19 are suspect. And that all goes -- goes into the hopper when
20 you consider reasonable doubt.

21 Excuse me just a moment.

22 (Whereupon, Mr. Kanarek conferred with the clerk.)

23 MR. KANAREK: Now, here we have a picture. This is a
24 picture of Mr. Davis. And this picture -- this picture is
25 just that, just that, a picture.

26 In other words, -- in other words, in connection
27 with -- in connection with a whole -- really, the evidence
28 against -- if Mr. Manson is so weak, the evidence against

1 Mr. Manson is so weak that the only thing they can do is build
2 it up by pictures.

3 This is a picture of Bruce Davis. Okay. Now,
4 what if this picture wasn't there? What -- when you think
5 about it -- we can talk about relevancy and materiality in
6 this courtroom, supposedly evidence is offered because it is
7 relevant and material.

8 We have a whole stack of pictures that -- that
9 the jury is going to consider.

10 What does it add by having a picture of the
11 person? It is just -- maybe it is a small point. Does it
12 mean that if we didn't have this picture there would be some-
13 thing lacking? Does it add anything by being there?

14 These pieces of evidence that -- that we're going
15 to consider in the courtroom, if we take each one of them and
16 say what does that have to do with Charles Manson, you lay
17 these things out, lay them out on the table, go over them one
18 by one -- I tried to do that with the list of exhibits,
19 and rather than take up the time of -- of doing that, I'm say-
20 ing -- sort of imposing on you, saying when you're in the
21 jury room you should do it, but really take each one of these
22 pictures and try to relate it to Charles Manson. Take any
23 of this physical evidence and try to relate it to Charles
24 Manson. There's nothing there. There's nothing that
25 connects Mr. Manson with any of these events except that --
26 that sword. Take the sword, and that thing -- that's broken
27 up in two parts. And that's about it.

28 As far as its physical evidence goes, what they

1 are relying on is what I think we've called the Manson mania.
2 They are relying -- they are relying upon this projected image
3 into the community. They state things. The prosecution
4 stages events so that Mr. Manson will look -- will have a bad
5 image. And this is just as they stage these statements from
6 the witness stand. They stage events that happen outside of
7 this courtroom. The timing of certain events that occur in
8 connection with Mr. Manson are very strange, and very unusual.
9 They make -- they make circumstantial evidence for Mr. Manson's
10 innocence.

11 You know, in a Communist or a Fascist or a
12 dictatorship country, when they want to get somebody,
13 they stage events for the public. They stage events so that
14 the public will be -- become aroused against a certain person.
15 And then, they come in and destroy the person that they have
16 made the public mad at. They do that. We know that histori-
17 cally. We know that this is done. And in connection with
18 Mr. Manson, it is being done as of this date, and yesterday,
19 and the day before. The planning that goes on in connection
20 with him.

21 If you look at some of these events, if you look
22 at some of these events, they cannot take place, they cannot
23 take place except with the connivance -- except with law
24 enforcement and the people in authority allowing these events
25 to take place to get out there, and that way try to influence
26 all of us.

27 And so when we look at the evidence, when we look
28 at the evidence in this case and try to connect it to Charles

1 Manson, it is just not connectable.

2 If --

3 Your Honor, may we take the recess at this time?

4 THE COURT: Yes, we can take a recess now.

5 MR. KANAREK: Thank you, your Honor.

6 THE COURT: We'll recess, ladies and gentlemen. During
7 the recess you are obliged not to converse amongst yourselves,
8 nor with anyone else, nor permit anyone to converse with you
9 on any subject connected with this matter, nor are you to form
10 or express any opinion on the matter until it is finally
11 submitted to you.

12 About ten or fifteen minutes.

13 (Morning recess.)
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1 THE COURT: All jurors are present.

2 You may continue.

3 MR. KANAREK: Thank you, your Honor.

4 Your Honor, may I proceed?

5 THE COURT: Yes.

6 MR. KANAREK: Now, an interesting exhibit is People's
7 62.

8 Now, I'm sure all of us have read who-done-its
9 and all of that, and mystery stories.

10 Now, here is a -- and this, of course, would
11 pertain to our thinking concerning Shorty Shea.

12 Here are a set of keys. They take them and they
13 throw them at us and they tell us that these are the keys
14 that were found in the car, the car that was found -- that
15 was found at the Gresham Street home. There are one, two,
16 three, four, five keys here.

17 Now, we are not told anything about any investiga-
18 tion in connection with these keys.

19 Now, is that a small point or is it not a small
20 point? When you consider that Mr. Manson was in custody, in
21 jail, when this car was allegedly taken by the authorities in
22 December of 1969. It would seem like -- it would seem like
23 as a part of the investigation we should be told what these
24 keys pertain to.

25 Now, I would assume that one of these, just from,
26 just from -- I'm sure with all of our knowledge in connection
27 with automobiles -- of this type, this one, this brownish one,
28 is probably the ignition. We could make that guess. The one

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1 with the figure on it might be, because it is round, that
2 might be the trunk key. That's usually the way it goes if --
3 if this is, indeed, a car key.

4 Then, we have -- we have other keys here which
5 appear to be mailbox keys.

6 Now, where is the connection?

7 First of all, looking at it from the standpoint
8 of Mr. Manson being the defendant, where is the connection
9 between -- let's just say this key and Mr. Manson? Evidence
10 is supposed to be offered because it is relevant and it is
11 material. That's the most fundamental ground for allowing
12 evidence in, is that it has to have something to do with what
13 we're talking about.

14 Now, in that regard, let me put down -- I'm
15 scared to lift this now. Can't tell what might be underneath
16 it. But "direct" and "circumstantial evidence" are the two
17 types that we've heard about. And if we -- if we approach
18 our task here, and think in terms of everything that's come
19 before us, what is it that we use in connection with the case?
20 We're supposed to use the evidence, and it is supposed to
21 have relevancy and materiality.

22 Now, this key -- and this kind of evidence just
23 might acquit Charles Manson out of hand. This key might lead
24 us to something which will show us and actually make it
25 possible for Mr. Shea to walk into this courtroom. We don't
26 know. We don't know, obviously, all of the dealings that
27 Mr. Shea has engaged in. We know of one divorce that he
28 speaks of at the time when he is getting married, and I think

1 it is 1959. He speaks already then of having been divorced.

2 Now, so we have to look at this evidence not just
3 as a matter of Mr. Manson in terms of his guilt or innocence,
4 but we have to look at it in view of the prosecution fostering,
5 they tell us, an investigation.

6 Now, if you have an investigation in a case where
7 they wish to let us infer from what they did by sending those
8 -- those letters to the various parts of the United States
9 and I don't know where else he was talking of, but they want
10 us to infer, they want us to make the deduction, in other
11 words, circumstantial evidence, that Mr. Shea is not alive,
12 but they hang no evidence, whatsoever, on this key. They
13 don't tell us what they did with it, if anything. They
14 don't tell us what they did with the rest of these keys, if
15 anything.

16 And so, this lack of investigation, where it might
17 lead you to something, they don't even tell us. They don't
18 even tell us if this key has anything to do -- looks to be a
19 mailbox key. It is not an ordinary key in a sense -- well,
20 I guess it is ordinary and not ordinary. I suppose we've all
21 seen mailbox keys of this type. The fact that there are
22 people here in that type of work and they can probably tell
23 us whether or not we're correct, whether or not this is a
24 mailbox key.

25 But the fact is, if you put a couple of detectives
26 out somewhere in the apartment house area of the San Fernando
27 Valley, you wouldn't have to go too far if Mr. Shea is living
28 in that area. You wouldn't have to go too far to find the

1 exact mailbox or one such mailbox that this key would, in
2 fact, open. Why don't they send fliers out on that?

3 In other words, I imagine -- I imagine that this
4 key, having a number on it P-197, and then having a -- having
5 the name Western Lock Company, Milwaukee, I think it is, U.S.A.,
6 that we could go to the people who manufactured this key, and
7 we could find out where in these United States or elsewhere
8 is the key with this number.

9 So -- now, it might be sold to a contractor, and
10 then from that contractor we might be able to, then, -- by
11 going into his list and his inventory, and his paper work,
12 we might be able to find out where this key belongs. And
13 there may be -- there may be many places -- let's say that
14 lots of people have, I'm sure, a key 197, P-197 -- I mean,
15 this is a key which may be, certainly, a key that may fit
16 more than one mailbox in the whole world.

17 But, we would then have the mailboxes that it
18 does fit.

19 And, then, we could, if we're really interested
20 in investigating, if we're really interested in finding out,
21 we could take and get a number, a number of places, and then
22 do something about it. That's an investigation. That's what
23 you call an investigation.

24 In fact, that's what we think people in this kind
25 of work would do.

26 And then, if you zero in on it and you check this
27 other -- now, this appears to be a mailbox key, too, this
28 little silvery one.

1 Uh, and, -- I don't know, this one that says --
2 I guess PBURG, Pittsburgh something, Virginia, U.S.A.,
3 Long Lock Company, with a "T-46," that might be someone's
4 locker at work.

5 It wouldn't take -- it wouldn't take an awful
6 lot, considering what has been done as far as Mr. Manson's
7 concerned, to find out, or maybe it has been found out.
8 Maybe it has been found out and we are not told about it.

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1 Does this kind of thing raise a suspicion in our
2 mind? Does it raise a suspicion that all is not well when
3 such obvious -- such obvious pieces of evidence are not
4 followed through?

5 And if you sit and sort of think about it, there
6 are various possibilities that would enable -- that would
7 enable somebody to give us a human relationship to these
8 keys. But we are not told that.

9 This -- and when you consider the automobile,
10 consider the automobile, consider all of those -- the foot-
11 lockers, the material that's in the automobile, consider that
12 Mr. Manson was in jail, consider that some of that clothing is
13 not identified, if we go through the transcript -- and we're
14 not going to do that -- but actually if someone on the jury
15 wants to do it, I'm sure the Court will be glad to do anything,
16 anything that anybody wants done in that regard, but if you
17 do go through it, you will find that there are pieces of
18 clothing in those footlockers that are not -- have not been
19 connected even tenuously with Mr. Shea. Even -- even by the
20 lady that he was married to a very short time, even by Mr.
21 Binder. There are pieces of -- of clothing in there that are
22 there and it is supposed to be relevant and material in
23 connection with proving something against Mr. Manson.

24 What is it? And that brings us to an in-depth
25 consideration of direct and circumstantial evidence.

26 Now, we've spoken previously about that, that
27 there are two reasonable interpretations. If there are two
28 reasonable interpretations, we must take the interpretation

1 that points to the defendant's innocence, of circumstantial
2 evidence, when you can consider it both ways.

3 Now, the Court -- there is also a principle of
4 law, --

5 And, your Honor, may we approach the bench for a
6 moment? I want to find out for sure something.

7 THE COURT: Yes, you may.

8 MR. KANAREK: Thank you.

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

12 MR. KANAREK: Is your Honor going to give that circum-
13 stantial evidence instruction about -- my notes do not --
14 do not enlighten me with accuracy as to whether your Honor is
15 going to give that instruction about when the People's case
16 is made out completely or primarily on circumstantial evidence?
17 The one that says where there's two -- when the People's case
18 is chiefly made out. Is that --

19 THE COURT: Are you looking at 2.01? 2.01.

20 MR. KANAREK: 2.01.

21 THE COURT: Yes.

22 MR. KANAREK: Well, it seemed to me that we spoke of
23 that instruction where the People's case is made chiefly or
24 primarily on circumstantial evidence. That one is the one I
25 am thinking of.

26 THE COURT: That was in CALJIC 2. It has been replaced
27 by 2.01, and 2.01 I think is essentially the same thing
28 you're talking about, each link in a chain of circumstances.

1 MR. KANAREK: Well, I was thinking of that language
2 where the People's case is made out primarily on circum-
3 stantial evidence.

4 THE COURT: Well, 2.01, you see, does state you are
5 not permitted to find the defendant guilty of a crime charged
6 against him based on circumstantial evidence. Essentially the
7 same thing.

8 MR. KANAREK: Yeah, but I mean, I don't want to use
9 that language that your Honor isn't giving. But it seemed to
10 me we spoke of it, but I can't find it in my notes.

11 THE COURT: 2.01.

12 MR. KANAREK: Seems to me your Honor was talking about
13 using --

14 THE COURT: I think you requested that before, and I
15 told you I'd be giving 2.01.

16 MR. KANAREK: I see. Thank you. Thank you.

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

19 MR. KANAREK: The Court is going to instruct us on
20 circumstantial evidence, the actual instruction, and I won't
21 -- I won't read the entire instruction, but circumstantial
22 evidence includes not just objects or like somebody giving
23 testimony -- for instance, the -- the -- the testimony
24 concerning, uh, uh, concerning the automobiles that was
25 given, that was given by, let's say, the man from Calabasas.
26 That's circumstantial evidence.

27 Now, the -- the point about circumstantial evi-
28 dence is that you cannot limit circumstantial evidence as to

1 what happens in the words themselves or in the objects them-
2 selves that are in evidence. Circumstantial evidence includes
3 also relationships of people that we've spoken of.

4 In other words -- in other words, for instance,
5 the relationship, the relationship of Bill Vance to these
6 proceedings is circumstantial evidence. How -- what effect it
7 has, how it is to be used, is up to the jury to decide.

8 But remembering the underlying principle, that if there are
9 two reasonable interpretations, if possible, we must adopt
10 that interpretation that points to the defendant's innocence.
11 This is the law.

12 Now, Bill Vance and his place in these proceedings
13 is -- it is so immense, as is the place of Danny De Carlo in
14 these proceedings that that circumstantial evidence alone is
15 enough to find Mr. Manson not guilty of everything that is
16 charged here. And this is the reason for that.

17 And the reason for that is: There is a tendency
18 on all of our parts to think of evidence only in terms of
19 -- and especially circumstantial evidence. There's a tendency,
20 maybe, to think of it in terms of only the prosecution view-
21 point.

22 But circumstantial evidence can be used and, in
23 fact, the jury instructions, when we look at them, obviously,
24 they include using circumstantial evidence in a positive way
25 to acquit.

26 And by that, I mean, we see in the instruction the
27 statement that if there are two reasonable interpretations we
28 should only -- we should adopt the one that favors the

1 defendant.

2 And so that makes us think of circumstantial
3 evidence, maybe. It is possible that we might think of it only
4 in terms of it -- from a prosecution viewpoint, but that's
5 not so.

6 The -- the circumstantial evidence of, like we say,
7 Bill Vance and Danny De Carlo, people like that, Linda
8 Kasabian, Tex Watson, the circumstances are probably more
9 powerful and more important than the many thousands of words
10 that we've heard.

11 Remembering that Mr. Watson and Linda Kasabian and
12 the events of the 8th, 9th, and 10th, in the Tate-La Bianca
13 case, are together in connection with those events, that is
14 a circumstance -- that is a circumstance that fits into the
15 pattern of this case. Because Ruby Pearl, Ruby Pearl says that
16 she saw Mr. Watson and Mr. Grogan and Mr. Davis and Mr.
17 Manson and Bill Vance. What if she's mistaken, as we've
18 said about Mr. -- about Mr. Manson, and she's not mistaken
19 about Mr. Watson. Well, that's circumstantial evidence that
20 leads to -- to an obvious conclusion as far as this case is
21 concerned, because of that instruction the Court is going to
22 give us about somebody not being present.

23 Can we rely upon Ruby Pearl to the extent, to
24 the extent that we can say for sure, beyond a reasonable
25 doubt, as to that particular event? Can we say for sure
26 beyond a reasonable doubt that Mr. Manson was present?

27 The fact that Tex Watson's name was only mentioned
28 sparingly, the fact that the prosecution structures it so that

1 Tex Watson's name is mentioned only sparingly, should not,
2 should not allow us to forget that Tex Watson was present.
3 Linda Kasabian was present.

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1 And so when we -- when we think of these chains
2 of circumstances, their presence at the Spahn Ranch is of
3 some significance if those of us on the jury believe that it is.
4 If -- and we think that -- that there is some merit in
5 considering the presence of a person like Tex Watson, because
6 no matter what the prosecution may argue to us, no matter what
7 they say, there's not one bit of evidence with all of the
8 supposed things that were going on at that Spahn Ranch.
9 There's not a scintilla of evidence that Mr. Manson ran away
10 or did anything in connection with flight or anything like
11 that. Notwithstanding -- and that is the incredible aspect of
12 the circumstances as far as Mr. Manson is concerned, that alone
13 certainly is part of the paramount significance.

14 We know that on the 8th, 9th and 10th these
15 Tate-La Bianca events occurred. Mr. Manson is at the Spahn
16 Ranch and he's still at the Spahn Ranch.

17 Mr. Hinman -- Mr. Hinman, the events surrounding
18 him, occur and Mr. Manson's at the Spahn Ranch.

19 The events surrounding Mr. Shea, they tell us,
20 those events occur, and then if the argument is made to us
21 that Mr. Manson ran away to the desert or something like that,
22 we have to look at that human conduct on the part of
23 Mr. Manson in view of what his thinking was. Was Mr. Manson,
24 when he left, when he left that Spahn Ranch area, was he
25 leaving because he was running away or was he leaving because
26 of the incessant -- the day-by-day pressure upon him of what
27 these people were doing by way of arrests and other kinds of
28 harassment. A man gets arrested on August 16th. On August

1 16th he gets arrested and he is -- no charges are brought.

2 On August 24th he's arrested and no charges are
3 brought. That is, he stays in custody on some several days
4 on each occasion.

5 The police officers being there time after time
6 after time.

7 Does that mean -- does that mean that Mr. Manson,
8 when he left that area, was leaving because of the fact that
9 he was running away from something?

10 Now, that is when we take that body of evidence
11 and apply the law of circumstantial evidence there.

12 Now, what do we have? We have two possible
13 inferences.

14 One -- and then, if we break it down and see,
15 are both inferences reasonable?

16 One inference is that Mr. Manson ran off to the
17 desert because of -- what they have set out in this courtroom
18 as far as the charges are concerned.

19 Is that reasonable?

20 Well, that -- that is not even reasonable. And
21 the reason it is not reasonable is because of the fact that
22 he -- how much can a human being take? How many of us, how
23 many of us, having -- having especially the background that
24 we know Mr. Manson has, from -- from having these many years
25 that he has been in custody and all of that, arrest, arrest,
26 arrest, time after time after time, what is the reasonable
27 interpretation?

28 Well, it is reasonable to interpret that the reason

1 that he went -- that he went was because -- was because of
2 the fact that he had this constant pressure on him.

3 Now, if we -- if we take and we combine with that
4 the evidence concerning the dates, now, what we're talking
5 about is all circumstantial evidence. If we take these dates
6 and integrate these dates with Mr. Manson's going to the desert,
7 going up there, it makes his -- his going up there even more
8 reasonable and underlines and emphasizes the fact that what
9 he was doing when he went up there was consistent with
10 absolutely complete innocence because these dates show --
11 these dates show that Danny De Carlo, Danny De Carlo was --
12 was -- was selling the guns. You saw about that in October.
13 You saw from the evidence that on September 3, September 3
14 Mr. De Carlo is supposedly at the pawnshop. You see the
15 signature of Shorty Shea, Donald Shea on that People's 57.
16 So it means -- it means that at a time when we know for sure,
17 we have a reason to infer -- when I say "know for sure,"
18 when I say "know for sure," I'm speaking now of -- as we
19 look at this evidence, which is the pawnshop evidence, that
20 that was September 3.

21 So what is our conclusion? Our conclusion is
22 that this circumstantial evidence, just this very little bit
23 of it, just this very little bit of it shows that the -- that
24 the inference that we must make is that what Mr. Manson did
25 was reasonable.

26 Now, how -- I'm trying to -- I'm trying to, in
27 my mind, think of what the arguments would be, what the
28 arguments would be on the other side.

1 And it is hard to think of the arguments on the
2 other side because these theories of arrest are clear. They
3 are there. They are the kind of thing that would make anybody
4 move or anybody leave an area where they are getting this
5 kind of treatment day in and day out. Like, you know, one
6 police officer was there hundreds of times. This kind of
7 circumstantial evidence in the background. It is the kind of
8 evidence that is not -- it just doesn't -- you know, it is
9 like Barbara Hoyt saying, "I heard a scream."

10 Now, that -- that, at first blush, sounds so --
11 the word "scream," and all of that. But if you look at the
12 surrounding circumstances, the Court is going to instruct us
13 that what's really important is the convincing force of the
14 evidence. And what's really important, are the surrounding
15 circumstances which are more important than the statement,
16 "I heard a scream," and that kind of thing.

17 Now, as far as Mr. Manson is concerned, as far as
18 Mr. Manson is concerned, we also have to look at the community.
19 That community -- now, the San Fernando Valley is a bedroom
20 community, it is called. People, -- you know, the people
21 that -- that want to live way out and take the freeway to come
22 in every day, uh, they're the type of people that want to live
23 out there, and they -- they, I'm sure that they think that
24 they are just, uh, not the kind of people that want this kind
25 of activity on the Spahn Ranch.

26 And so with this sexual -- with this sexual thing
27 going with girls, going in and out of that Spahn Ranch area,
28 and staying there, and young girls and all of that, I am sure

1 -- I am sure that many, many people were very unhappy with these
2 activities where young girls are going in and living in this
3 communal atmosphere with these people, these somewhat mature
4 men.
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1 Well, charge Mr. Manson with statutory rape.

2 Charge him with something, something that he might be guilty
3 of. But don't make up -- don't make up these kinds of
4 charges because of the fact -- because of the fact that the
5 community out there wants their pound of flesh.

6 Charge the man -- charge the man with what he
7 may be guilty of, and all the other men may be guilty of,
8 and these women -- a woman could be guilty, also. Ruby Pearl.
9 For instance, Ruby Pearl, she can be guilty of aiding and
10 abetting the delinquency of these young girls. George Spahn.
11 Mr. Spahn, a gentleman even of his years, by allowing and
12 fostering and -- and -- and -- and with knowledge that these
13 people are doing these things, he can be -- could be charged
14 with aiding and abetting statutory -- it is called statutory
15 rape. We know it is not a forceable type of thing. Any
16 intercourse with a girl under the age of consent is a crime.

17 So what do they do? What do they do? They focus
18 -- they focus this police activity on Mr. Manson. I am sure
19 -- I am sure that -- that the people there -- that the people
20 there that were on the ranch there, engaged in -- in this
21 sexual activity. But that's, I suppose, a fair inference.

22 And so these are some of the circumstances that
23 surround this prosecution. Because -- because of the fact
24 that for some reason or other, for some reason or other Mr. --
25 the attention became focused upon Mr. Manson.

26 That's what we're speaking now, does it have --
27 does it have any significance? Does it make sense?

28 Well, that area, that area being a very conservative

1 area, very, very conservative, they think that they don't want
2 this kind of thing going on. I can just see the -- I can
3 just see the pressure that is brought to bear.

4 And so we have, as a result, this kind of a
5 prosecution.

6 Now, looking at another circumstance, in connec-
7 tion with the matters pertaining to Gary Hinman, we know --
8 we know that there were automobiles that were supposedly --
9 that were supposedly taken from Gary Hinman's house.

10 Now, Mr. Manson -- we know from here, supposedly,
11 that Mr. Manson transferred an automobile to Mr. Arneson.

12 Well, why not charge the man with what he's guilty
13 of, if that is true? Why not charge him -- why stretch it?
14 Why look for an excuse to charge a man with these crimes that
15 -- that are brought before us? Why not charge him with
16 receiving stolen property? Why not let it drop the way it is.
17 If he knows that that automobile or has reason to know --
18 which might not even be the case, even as far as that goes,
19 because of the pink slip situation -- with all of those
20 people milling around that Spahn Ranch, and all of these
21 people going off and doing what he or she wishes to do --
22 Mr. Manson has this automobile, why not charge him with that?
23 Why not charge him with it? But that's -- you see, from
24 Mr. Manson, that would be -- from some people's idea, that
25 would be -- charge Mr. Manson with Grand Theft Auto, that
26 would be preposterous. You've got to charge him with murder.
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1 And as a matter of fact -- as a matter of fact,
2 Mr. Arneson is guilty of receiving stolen property, when he
3 takes that auto deal which he -- which he -- from what he
4 tells us here -- is in fact what he did.

5 Are all of these surrounding circumstances of
6 any significance? Are they of any significance in deciding
7 this case?

8 Because what we have -- what we have is a -- is
9 a very -- is a very large number of people at that ranch.
10 Now, I know it's -- I know it's repetitious to say that,
11 but it is -- if we try to think about -- about those people,
12 and all of these -- what is commonly called the hippie type
13 of people living there, these way-out people coming from all
14 over to live there, does that mean that Mr. Manson is
15 responsible for these -- these are the things -- these are
16 the things that -- that become important, because of the
17 fact that there is -- there just is nothing here by way of
18 evidence; there's nothing here by way of evidence.

19 Now, we know -- we know that -- that the Court
20 will probably tell us that the bringing of a charge, the
21 bringing of a charge is not evidence; the fact that an
22 indictment is brought is not evidence. And that's verbalized;
23 that's said.

24 But especially in the case of a person like
25 Charles Manson, what they're relying on is for that particular
26 statement to be more or less said, but not really believed.
27 In other words, the bringing of a charge, the -- the very
28 nature of it is intended, in the case of this particular

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1 defendant, to capture -- to capture our minds and our
2 thinking.

3 (Pause in the proceedings.)

4 Now, somebody may -- somebody may say that what
5 I am going to say now is that it's -- well, I don't know
6 what some of them might say. But the fact is, it's been
7 injected into this case.

8 It hasn't been injected by Charles Manson. There
9 may be -- and I am sure there are -- I am sure that there are
10 many of us that are on this jury that are religious people,
11 and I am sure that there are many of us that are on this jury
12 that love our religion, that love our background, love our
13 heritage.

14 And we may resent -- we may resent some kind of
15 an equation between Charles Manson and Jesus Christ. But
16 Charles Manson didn't do that.

17 You heard from that witness stand the police
18 officer state that the rumor at the Inyo County Station was
19 that Charles Manson was Jesus Christ. We also heard -- we
20 also heard Mr. Pursell tell us that at no time did Charles
21 Manson say he was Jesus Christ.

22 Now, this is the circumstance in connection with
23 this case that is of some significance, because -- they
24 booked him as Charles Manson, also known as Jesus Christ.
25 And the man said, "I never heard Charles Manson say that."

26 The fact is that, obviously, this kind of a
27 thing, this -- in the eyes of many, many -- maybe millions
28 of people -- this is a presumptuous act. This is an act --

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1 this is an act -- this is an act of the kind that would
2 insult many people.

3 THE COURT: Ladies and gentlemen, we'll recess now
4 until 2:00 o'clock.

5 Because of the Court's delay this morning in
6 starting, in conducting the proceedings that the Court did
7 go through this morning, I am going to allow Mr. Kanarek
8 further time in which to conclude his argument.

9 The Court anticipates that, upon the close of
10 Mr. Kanarek's argument, Mr. -- that it will recess.

11 You will hear Mr. Manzella tomorrow morning, in
12 his closing argument. And then the Court will instruct you.

13 As I told you at the beginning of this case, it --
14 it would probably be the intention of the Court to sequester
15 you during your deliberations. And it is my intention to do
16 so.

17 I will instruct you, then, tomorrow -- this is
18 what I anticipate will happen -- in the afternoon; and then
19 the Court will require that you be sequestered in a hotel
20 here in Los Angeles.

21 There was some discussion about a hotel in Palm
22 Springs or Lake Tahoe, but --

23 (Laughter from the members of the jury.)

24 THE COURT: -- but I am afraid you are going to have to
25 be satisfied with the accommodations that we can find here.

26 But I wanted to tell you that, so that you could
27 make some plans.

28 All right. During the recess, now, until 2:00

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1 o'clock, you are admonished that you are not to converse
2 amongst yourselves nor with anyone else, nor permit anyone
3 to converse with you on any subject connected with this
4 matter, nor to form or express any opinion on the matter
5 until it is finally submitted to you.

6 For the next 24 hours, just to be safe, if you
7 would, from any contamination by publicity or news items,
8 the Court requests and orders that you take affirmative
9 steps not to look at any newspaper or listen to any radio
10 or television broadcast.

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1 That's asking quite a bit of you, but I believe
2 that you can do it. I've noted your attitude when you have
3 been asked, during the course of these many weeks, and I am
4 firmly convinced that you are dedicated to following my order,
5 and I do so order you, in view of the Court's determination
6 that that is necessary during the next 24 hours.

7 All right. I'll see you all at 2:00 o'clock.

8 (Whereupon, the members of the jury exited the
9 courtroom, and the following proceedings were had:)

10 THE COURT: I have been informed -- the record should
11 show that the escapee, Kenneth Como, has been captured.

12 The record should show that the jurors have left
13 the courtroom. The jurors left the room before I began to
14 speak about this.

15 The escapee, the escaper, rather, Kenneth Como --
16 Como? Was that his name?

17 MR. MANZELLA: Como.

18 THE COURT: (Continuing) -- has been captured in
19 Hollywood.

20 MR. KANAREK: But I am also informed, your Honor, that
21 these -- that --

22 THE COURT: I anticipate that the -- any news concerning
23 that matter will probably diminish to such an extent, in the
24 next 24 hours, that the jurors would not be exposed to it.

25 By that time, they will be sequestered. And
26 during the sequestration, the Court's intention is that they
27 not have access to newspaper, radio or television.

28 MR. KANAREK: Well, the -- my information is, with --

1 and I -- which -- which may be correct --

2 THE COURT: Yes?

3 MR. KANAREK: -- is that the friends of Mr. Manson are
4 in custody; some friends -- the female friends, I believe,
5 Lynn Fromme --

6 THE COURT: I have no knowledge of that.

7 MR. KANAREK: Well, I have been --

8 THE COURT: But the Court's order, just given to the
9 jury --

10 MR. KANAREK: Pardon?

11 THE COURT: -- should take care of that.

12 MR. KANAREK: Pardon?

13 THE COURT: The Court's order, just given to the jury,
14 should take care of that, if there is any publicity in
15 connection with that.

16 Mr. Kanarek, how long do you anticipate you will
17 take to close now?

18 MR. KANAREK: Oh, not long, your Honor. I suppose --
19 certainly, I think --

20 THE COURT: Within an hour?

21 MR. KANAREK: I think under an hour, your Honor.

22 THE COURT: Good. I'll see you at 2:00 o'clock.

23 MR. KANAREK: Thank you, your Honor.

24 (Whereupon, at 12:04 p.m., an adjournment was
25 taken in this matter until 2:00 p.m. of the same day.)
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1 LOS ANGELES, CALIFORNIA, WEDNESDAY, OCTOBER 20, 1971 2:07 P.M.

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4

THE COURT: All the jurors are present, the record may show.

6

Mr. Kanarek, you may proceed.

7

MR. KANAREK: Yes, thank you.

8

I wonder if we could approach the bench, your

9

Honor?

10

THE COURT: Yes, you may.

11

(Whereupon, the following proceedings were had

12

at the bench among Court and counsel, outside the

13

hearing of the jury:)

14

MR. KANAREK: Yes, your Honor. Of course, now, I gather your Honor is not going to give that proposed instruction distinguishing extortion from robbery? I think -- I mean, is that true, your Honor is not going to give that?

18

THE COURT: No, the Court is going to distinguish --

19

MR. KANAREK: Well, then, the point is, we have CALJIC instructions which do the distinguishing. I have to see what it is, otherwise Mr. Manson is denied the right to effective counsel.

23

THE COURT: The Court has already showed you the instruction.

25

MR. KANAREK: Yes, your Honor, but it is in a --

26

THE COURT: It is substantially -- it is -- would you get CALJIC 3rd for me? It is on the desk.

27

28

It is substantially the instruction that gives --

3-2

1 MR. MANZELLA: 14.74?

2 THE COURT: 14.74, yes. It is --

3 MR. KANAREK: Pardon?

4 THE COURT: Just a minute, I'll show you the instruc-
5 tion book.

6 It should be noted, too, that the revised Penal
7 Code has -- that the committee working on a suggested revised
8 Penal Code recommended that the immediacy of the harm or
9 the threat as set out in that case of People vs. Anderson
10 distinguishes robbery from extortion.

11 MR. KANAREK: Yeah, but all it does is confuse the
12 jury. You give the CALJIC instructions -- but for your Honor
13 to bring these two together in one instruction, denies Mr.
14 Manson a fair trial and --

15 THE COURT: Very well, you've made your record.

16 MR. KANAREK: -- due process and equal protection under
17 the 14th Amendment. I don't know what the exact language is
18 your Honor is giving.

19 THE COURT: Do you wish me to read it?

20 MR. KANAREK: I can't read it.

21 THE COURT: Can you read it?

22 MR. KANAREK: It is in the form -- it is obviously a
23 very much rough draft form that your Honor has --

24 THE COURT: We have, as you all recall, discussed this
25 before. You left at noon.

26 MR. KANAREK: Your Honor has previously indicated that
27 he was not going to give any instructions on extortion,
28 and this morning your Honor said you were going to give

3-3

1 extortion. It wasn't until --

2 THE COURT: Excuse me just a moment.

3 Before you began your argument this morning the
4 Court told you that it would give instructions on extortion.

5 MR. KANAREK: But --

6 THE COURT: The Court would not give instructions on
7 extortion as a lesser included offense. The Court would not
8 give instructions on extortion as the basis for murder
9 second, felony murder second.

10 MR. KANAREK: But the point is, your Honor --

11 THE COURT: Now, the Court told you that.

12 MR. KANAREK: Yes, but what we are talking about now is
13 a different instruction, wherein your Honor has in very rough
14 draft form -- where your Honor has stricken out certain words.
15 I can't even read it.

16 THE COURT: What is your problem?

17 MR. KANAREK: My problem is I don't know the exact
18 words your Honor is going to give.

19 THE COURT: The Court intends to state to the jury:

20 "Extortion differs from robbery in that while
21 in each crime property may be obtained by force or fear,
22 in the crime of robbery the immediacy of harm or fear
23 of harm is evident and leaves the victim no choice but
24 to allow the taking of his property against his will.

25 "In extortion the reason to part from
26 property is obtained from a victim who consents with
27 the understanding that he will be thereby saved from
28 some personal calamity or injury by turning his

3-4

14.74?

1 "property over as a lesser of two unpleasant
2 alternatives notwithstanding that he may mentally
3 protest the circumstances which control the choice."

4 This essentially uses 14.74 in explaining
5 consent.

6 MR. KANAREK: Well, your Honor, then, what your Honor
7 essentially -- then, I move for a continuance so I can study
8 what your Honor has all of a sudden cavalierly stated
9 something right at the end of argument when your Honor has
10 previously stated he was not going to give extortion.

11 THE COURT: How much of a continuance do you want?

12 MR. KANAREK: Tomorrow morning.

13 THE COURT: That will give you time to study this
14 instruction, then?

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

16 THE COURT: All right, and you were not informed of
17 this, then, at 12:00 o'clock?

18 MR. KANAREK: No, your Honor indicated --

19 THE COURT: You were not informed of this at 12:00
20 o'clock?

21 MR. KANAREK: No, I was not informed by the Court
22 that your Honor was thinking about giving that. As a matter
23 of fact --

24 THE COURT: As a matter of fact, Mr. Kanarek --

25 MR. KANAREK: If your Honor will allow me to finish.

26 THE COURT: The truth is, Mr. Kanarek --

27 MR. KANAREK: May I finish?

28 THE COURT: You may not.

3-5

1 MR. KANAREK: Your Honor --

2 THE COURT: You may not finish.

3 This instruction was handed to both you and
4 Mr. Manzella, and in your presence Mr. Manzella read it and
5 said it appeared to him to be satisfactory. And you took
6 it in your hand -- I don't know whether you read it or not,
7 but you took it in your hand.

8 MR. KANAREK: On the contrary, Mr. Manzella indicated
9 that he did not think that it was necessary or that he
10 wanted it. And you can ask Mr. Manzella. He indicated --
11 he indicated that he was going to think about it over the --

12 THE COURT: In any event --

13 MR. KANAREK: -- over the noon recess.

14 THE COURT: Mr. Kanarek.

15 MR. KANAREK: Yes.

16 THE COURT: You were informed that the Court would
17 explain, would give an instruction on extortion and explain
18 the difference of extortion and robbery -- two days ago you
19 were informed of that.

20 MR. KANAREK: No, your Honor.

21 THE COURT: Yes.

22 MR. KANAREK: The Court -- the Court said he was not
23 going to give any extortion instruction.

24 THE COURT: I'm not going to allow you any further
25 continuance.

26 MR. KANAREK: Then, your Honor, the language that is
27 in that --

28 THE COURT: You have the right on appeal to differ

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1 with me. You have the right now to differ with me.

2 MR. KANAREK: But under People vs. Crovedi, you have a
3 right to prepare, and this is in a very rough -- I ask that
4 that be marked for identification at this time, your Honor's
5 rough draft scratches.

6 THE COURT: It will be -- it will be --

7 MR. KANAREK: I ask that particular paper be marked
8 for identification at this time.

9 THE COURT: The motion is denied. The instruction
10 which I have just read to you will be part of the instruc-
11 tions.

12 MR. KANAREK: But what I am saying is --

13 THE COURT: I read it from the paper.

14 MR. KANAREK: I know, but what I am saying is since
15 it is not a CALJIC instruction, it is where your Honor has
16 taken language and done what your Honor --

17 THE COURT: Let's begin, Mr. Kanarek.

18 MR. KANAREK: Well, the point is I cannot do --

19 THE COURT: Well, be silent now, Mr. Kanarek, except
20 for your expressions to the jury.

21 Begin.

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

25 MR. KANAREK: Ladies and gentlemen, we were speaking
26 previously about the injection of Diety or Jesus Christ,
27 Jesus Christ into these matters pertaining to Mr. Manson.
28 And -- and we -- the evidence is clear that Mr. Manson had

3-7

4 fls.

1 nothing to do with the enveloping of him by all of this --
2 all of this propaganda and all of this -- this religious
3 identification with him. It was a rumor that started in
4 the Inyo County Sheriff's Department and has -- and has just
5 expanded, and expanded, and expanded.
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1 Now, -- but whatever -- whatever Mr. Manson may
2 be, and whatever events -- whatever he has done in this court-
3 room and in connection with making statements and all of that,
4 that's just a reaction by him to this -- I imagine any one of
5 us would have this reaction, of being in a confined area,
6 wanting to let people know that a particular -- a particular
7 viewpoint that has been propagated in the community is just
8 not so.

9 But he has no press agent to do this. He has no
10 ability to call a press conference and let people know what
11 his reaction and his response is to the various things that
12 have been stated about him.

13 And so, as we -- we, as we've seen, we've seen
14 his -- his striking out verbally, to try and combat the
15 pressure that's upon him, due to the propaganda.

16 This entire City of Los Angeles, and the State of
17 California -- and even the United States -- is so -- is so --
18 is so sensitive that if -- if Mr. Manson comes to court with
19 a different hairdo, that makes -- that makes headlines.

20 For this kind of a focus upon a defendant, and
21 this kind of -- this kind of pressure that a defendant is
22 under, these are some of the circumstances that become part
23 of this trial, whether we want them to be a part of this trial
24 or not.

25 It's -- it's difficult to convey -- it's diffi-
26 cult to convey how -- how this man -- how this man feels.
27 You just can't do it. It's impossible to put ourselves in
28 the position that he's in, through no fault of his own.

1 Now, I don't know -- I don't know what effect --
2 I don't know what effect this kind of conduct on his part will
3 have, in your judgment of this case; but is Mr. Manson acting
4 unreasonably in the circumstances?

5 Is he -- is he doing something deliberately,
6 to disrupt these proceedings? Is he doing something that --
7 that's on purpose, that he has created, to disrupt these
8 proceedings?

9 Or have -- or is it the way we've suggested, that
10 what has happened on the outside, apart from him, has put
11 this pressure upon him? And therefore, he makes the
12 statements of disruption?

13 This is, I suppose, a circumstance in connection
14 with this case. And why do -- why do we go through a trial
15 of this type with these burdens? Why are these burdens here,
16 in view of the fact that Mr. Manson has been locked up since
17 October the 12th, 1969?

18 Why are those burdens on this trial? Are they here
19 because of him? Or are they here through no fault of his own?
20 And I beg you, in your deliberations, to just consider whether
21 or not what we're saying is in fact the way it is.

22 We have every reason to believe that Mr. Manson is
23 a person with the very minimum amount of education -- maybe
24 not past the second grade or something like that, in view of
25 the great number of years that he has been in custody.

26 We can infer from the testimony of Mr. Barrett --
27 we can infer from that testimony that he has been in custody
28 from childhood in these United States; and so, a person with

1 that kind of background, especially, could we expect restraint?

2 Can we expect restraint from him, when this kind of
3 -- when these kinds of -- excuse me -- when these kind of
4 events occur? And it's -- it's probably some of the circum-
5 stances that we should consider.

6 Now, Mr. Manson, before -- as far as this trial is
7 concerned, has -- well, there's a vacant seat. It's almost
8 symbolic. It's almost symbolic, the fact that he's back there
9 in the lockup, as we judge his case.

10 It's almost symbolic, because of the fact that he
11 is the creature of this society. He is the creature, and he's
12 the defendant, because this society wants a scape goat; this
13 society wants Mr. Manson's scalp, so that this society can
14 then go home and say, "We've done what we should," and have
15 a feeling -- a feeling of completion.

16 Will Bill Vance -- will Bill Vance ever be
17 indicted, for these events concerning Gary Hinman? And
18 Mr. Shea?

19 Will Tex Watson be indicted for these events
20 concerning Mr. Hinman and Mr. Shea?

21 Will Linda Kasabian ever be indicted for these
22 events concerning Mr. Hinman and Mr. Shea?

4a-1

1 What they want -- what they want is for Mr. Manson
2 to be convicted, and then the matter will be forever completed
3 in the public's mind.

4 You create the image that Mr. Manson is the big --
5 the big dracula, the big monster; and so, after you get the
6 monster, you don't need anybody else, because the public's
7 mind is politically satisfied.

8 We know -- we know that Bill Vance should -- shall
9 we say -- at least be looked into. We know, from all of this
10 evidence -- and the evidence that isn't here -- that Danny
11 De Carlo should at least be looked into in connection with
12 these events.

13 But whatever criminal responsibility those people
14 have, if any, will never be looked into; will never be looked
15 into, because Mr. Manson will be the scalp that these people
16 want.

17 His is the scalp that they want, for reasons --
18 for reasons of politics.

19 Mr. Busch is running for District Attorney again --
20 or, he's just been appointed, and now he's going to run for a
21 full term.

22 And he will be able to say -- he will be able to
23 use this case as the District Attorney before him did, to
24 become elected Attorney General of the State of California,
25 and use this case for political reasons.

26 Are we prepared at this time in history to allow
27 criminal justice to be used for those purposes? We know
28 there's no case here. Everybody in this courtroom knows

1 there's no case here against Mr. Manson.

2 The fact of the matter is, if you forget that the
3 defendant is Charles Manson, and just call him Mr. XYZ or
4 Mr. ABC and put him in the middle of this evidence, you
5 wouldn't even indict him.

6 In April -- in December of 1970, with all of the
7 hysteria and all of the madness and all of the lynch attitude
8 concerning Mr. Manson, do you think any Grand Jury that's under
9 the thumb of the District Attorney -- not picked like we are
10 in this jury at random, but picked by judges, the individuals
11 who go into the hopper -- you think there's any Grand Jury that
12 would not have indicted Mr. Manson for any crime that you
13 want to name?

14 There's an old saying that a certain judge in Texas,
15 who heard about due process of law, and a certain defendant
16 in that community -- a certain defendant was accused of a
17 certain crime.

18 And this judge had heard about due process of law.
19 And the feeling in the community, in the State of Texas,
20 against this particular defendant was such that -- that he was
21 about lynched.

22 And this judge heard about due process of law.
23 So he told the jury, he said, "I want you to go out and debate
24 fair and square for four hours, before you bring in a guilty
25 verdict. And give the man his due process of law."

26 Now, that's -- that's the kind of due process that
27 you get when you bring evidence to a Grand Jury, with the
28 community in the state of mind that it was concerning

1 Mr. Manson in December -- in December of 1970.

2 That was the District Attorney indicting Mr. Manson.
3 The people on that Grand Jury were the rubber stamp of the
4 District Attorney.

5 Now, let's pray to God that there -- that a jury
6 picked at random, from the voters' registration, does not
7 become any such thing in this case. Because this jury has the
8 power -- this jury has the power to set this country straight,
9 that there shouldn't be this kind of an administration of
10 justice.

11 If I should talk -- if I should talk to witnesses
12 the way these police officers talk to witnesses, I would be
13 indicted for subornation of perjury. I'd be indicted for
14 sponsoring false testimony.

15 Do you think I could tell a witness -- I could
16 tell a witness, "That's not the way it happened. You didn't
17 get that automobile -- you didn't get that automobile in June;
18 you got that automobile in July."

19 If the District Attorney heard about that, I would
20 do -- I would be indicted for suborning perjury, for
21 preparing false evidence.

22 That is just one of -- one little bit of what's
23 happened in this case, in connection with testimony; and we
24 know it.

25 The conduct -- the conduct of the People in
26 connection with -- with staging this trial is reprehensible.

27 It's the kind of thing -- it's the kind of thing
28 that we have -- we have -- we should have more from our public

1 officials than that kind of conduct. If you don't have the
2 case, you don't manufacture the case.

3 And when you make those kinds of statements to
4 witnesses, you are manufacturing evidence.

5 Now, in this -- in this trial, we remember that --
6 during the beginning phases of this trial, when we were on
7 voir dire, there was a discussion of the racial aspects
8 concerning Mr. Manson.

9 Now, they didn't bring into this trial any racial
10 aspect in connection with Mr. Manson, because they know that
11 the prisons would have emptied themselves with people to
12 come here and testify on behalf of Mr. Manson, if they dared
13 to bring anything out, supposedly, about Mr. Manson's anti-
14 black, anti-Negro, anti-Mexican, anti-Latin, anti-whatever --
15 anti- -- uh -- whatever it may be.

16 Because Mr. Manson has grown up in an environment
17 where that would be refuted, with witness after witness after
18 witness.

19 But that doesn't prevent them from spreading it
20 in the community, so that people get some wrong idea concerning
21 Mr. Manson.

22 They didn't -- they didn't do that. They didn't
23 bring out this evidence. And the reason they didn't is
24 because they know, the people, if that became a major issue
25 in this trial, the people that would come here to testify on
26 his behalf.

5-1

1 Can you imagine a -- because a person --

2 MR. MANZELLA: Your Honor -- excuse me, Mr. Kanarek,
3 may we approach the bench?

4 THE COURT: Yes, you may.

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

8 THE COURT: Would you read me the last couple of
9 sentences?

10 (Whereupon, the record was read by the
11 reporter as follows:

12 "But that doesn't prevent them from
13 spreading it in the community, so that people
14 get some wrong idea concerning Mr. Manson. They
15 didn't -- they didn't do that. They didn't
16 bring out this evidence. And the reason they
17 didn't, because they know, the people, if that
18 became a major issue in this trial, the people
19 that would come here to testify on his behalf.")

20 I think Mary Lou has one more sentence.

21 MR. MANZELLA: My objection, since it is not in evidence,
22 and Mr. Kanarek by his own argument admits it is not in
23 evidence, I do not believe it is proper for him to argue
24 it. And the reasons for bringing it out --

25 THE COURT: It is not proper.

26 MR. KANAREK: No, it isn't -- your Honor --

27 THE COURT: Or reason to suggest --

28 MR. KANAREK: The Black Panthers did it. There was

5-2

1 that evidence.

2 THE COURT: Well, you may discuss that directly.

3 MR. KANAREK: Well, the point is, your Honor is fore-
4 closing me on that is denying Mr. Manson --

5 THE COURT: Foreclosing you on what?

6 MR. KANAREK: Well, the -- in going into the discussion
7 that I am now embarking upon.

8 THE COURT: And what discussion do you want to embark
9 upon?

10 MR. KANAREK: Exactly what this indicates.

11 THE COURT: Explain it to me. What is -- what's the
12 gist of what you want to discuss?

13 MR. KANAREK: The gist of what I wish to discuss is that
14 there is a phony issue --

15 THE COURT: What is a phony issue?

16 MR. KANAREK: This idea about Mr. Manson's racial
17 attitudes. It isn't the number of words that's been uttered --
18 they put that in connection with Shorty Shea, wherein the
19 implication is --

20 THE COURT: Well, you may discuss that directly. It
21 does appear to the Court as though you're going outside the
22 evidence in stating what you did state. I may be construing
23 it differently. Having in mind what you have said now, you
24 may adhere to the argument which you suggest that you are
25 going to follow.

26 MR. KANAREK: I don't know --

27 THE COURT: Can you read this? This is -- I've
28 recopied that. We didn't have time --

5-3

1 MR. KANAREK: I think -- can we take a recess to study
2 this?

3 THE COURT: Why do you want a recess?

4 MR. KANAREK: Well, ten or fifteen minutes.

5 THE COURT: This is the -- this is the instruction
6 that the Court is going to give.

7 MR. KANAREK: All right.

8 THE COURT: On the difference between extortion and
9 robbery. And the Court, of course, is going to give those
10 other instructions which you requested concerning extortion.

11 MR. KANAREK: I did not request any comparison. I did
12 not request any comparison.

13 THE COURT: You don't wish the Court to point up the
14 difference then between extortion and robbery as the Court
15 sees it?

16 MR. KANAREK: Yes, I believe that is unfair. Let the
17 jury take the language of the statutes --

18 THE COURT: I see.

19 MR. KANAREK: -- as they have in connection with many
20 other matters. It focuses upon -- and have the Court inject
21 itself into this difference or alleged difference. There's
22 no necessity -- it confuses the jury. And all it does it
23 make the jury -- make the jury think that the Court is taking
24 sides.

25 THE COURT: No, not at all.

26 MR. KANAREK: Well, well, I --

27 THE COURT: I can't see --

28 MR. KANAREK: There's no necessity --

5-4

1 THE COURT: I can't see how you would believe that
2 the instruction that I offer is in any way partisan.

3 MR. KANAREK: Well, because of the very nature of the
4 comparison. When your Honor is comparing it -- one of the
5 bases that your Honor brought out when we had --

6 THE COURT: Isn't that what the defense is doing, asking
7 the jury to distinguish between robbery and extortion?

8 MR. KANAREK: Yes, but if your Honor will allow me to
9 finish.

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1 One of the bases your Honor rejected one of
2 my instructions is they were argumentative. If there ever
3 was an argumentative instruction, where your Honor gratuitously
4 has compared robbery and extortion. Your Honor rejected out
5 of hand -- rejected some of my instructions on that bases,
6 and this is clearly out of the ballpark, argumentative.

7 THE COURT: The Court believes this is not argumenta-
8 tive.

9 MR. KANAREK: When you are doing the comparison --

10 THE COURT: It is not argumentative.

11 MR. KANAREK: Why not compare first degree and second
12 degree?

13 THE COURT: I think we have.

14 MR. KANAREK: But the point is, what I am saying is,
15 your Honor has not taken --

16 THE COURT: Now, excuse me just a minute, Mr. Kanarek.
17 I am not going to discuss this at length with you. You stated
18 that you didn't have an opportunity at noon to look at what --

19 MR. KANAREK: That's not so.

20 THE COURT: That's not so?

21 MR. KANAREK: That's not so. I had an opportunity,
22 but Mr. Manzella indicated that he was going to think about it
23 over the noon hour. Ask him if that's not what he said.
24 So it wasn't decided at the noon hour, your Honor, and he's
25 right here at the bench.

26 THE COURT: Now, do you wish time to look at this?

27 MR. KANAREK: Yes, I would. Yes, I do.

28 THE COURT: All right, when you're ready, then the

5-6

1 Court will give you a few minutes to examine it.

2 MR. KANAREK: Well, if I say, I -- I -- I might need --
3 I don't know, 15, 20 minutes. It is a very important
4 instruction.

5 As a matter of fact, the Court has focused upon
6 a very big --

7 THE COURT: The Court has not focused at all upon it.

8 The Court believes that the defense has and you
9 have, and the Court does not see it as an important instruc-
10 tion. However, the Court will give you some time to look
11 at it, about the time you suggest.

12 Did you --

13 THE CLERK: No.

14 THE COURT: All right, now --

15 MR. KANAREK: Why not just give extortion?

16 THE COURT: Why not just give the extortion?

17 MR. KANAREK: Why not give extortion and robbery and let
18 the jury --

19 THE COURT: Because the Court believes --

20 MR. KANAREK: They're not asking --

21 THE COURT: The jury is not?

22 MR. KANAREK: Obviously they haven't even gotten the
23 case yet, and they --

24 THE COURT: That's correct. But the Court believes
25 that in order to clarify it, it will be necessary to give
26 this instruction.

27 All right, now, you may argue along the lines
28 that you have suggested you will argue.

5-7

1 MR. KANAREK: You know, I don't -- I can't argue this
2 instruction.

3 THE COURT: I'm speaking now about your argument you
4 made, or were in the course of making just before we approached
5 the bench here.

6 MR. KANAREK: Well, may the record reflect your Honor is
7 giving me another rough draft --

8 THE COURT: Yes, Mr. Kanarek, we'll have it typed for
9 you. Mr. Kanarek, we'll have it typed for you.

10 MR. KANAREK: Your Honor, I'm not complaining about the
11 rough draft.

12 THE COURT: Would you have this --

13 MR. KANAREK: This one is legible. The other one
14 wasn't.

15 THE COURT: I don't understand you, Mr. Kanarek.

16 MR. KANAREK: Well, your Honor won't let me make the
17 record.

18 THE COURT: About what?

19 MR. KANAREK: Well --

20 THE COURT: All right, I'll give you five minutes.
21 You may orate on this record for --

22 MR. KANAREK: It is not a matter of orating, as your
23 Honor knows --

24 THE COURT: All right.

25 MR. KANAREK: -- as the other instruction -- the other
26 form -- your Honor scratched out -- you couldn't read it.
27 It was hard. You couldn't tell what it meant because of the
28 fact your Honor was working on it and it was a working rough

5-8

1 draft. This is a written rough draft which is very legible,
2 and I'm not asking that it be typed now.

3 THE COURT: All right.

4 MR. KANAREK: That's my point, your Honor.

5 THE COURT: You didn't understand it when it was read
6 to you?

7 MR. KANAREK: Pardon?

8 THE COURT: You didn't understand it when it was read
9 to you?

10 MR. KANAREK: Yes, your Honor, but I can't grasp it
11 instantly. I have a right to study it over.

12 THE COURT: Mr. Kanarek, you are very nearly impossible,
13 but as I've said to you, I'll give you the time to read it
14 over, and I'll have a secretary type it so that you may read
15 it.

16 Now, you may proceed with your argument in the
17 form in which you were -- strike that.

18 You may proceed with your argument, but along the
19 lines that you suggest you will.

20 MR. KANAREK: Well, your Honor --

21 THE COURT: Please adhere to the evidence.

22 MR. KANAREK: All right.

23 If I may, your Honor --

24 THE COURT: You may not.

25 MR. KANAREK: I want to make --

26 THE COURT: I don't wish to hear from you further.

27 MR. KANAREK: All right.

28 (Whereupon, the following proceedings were had in

5-9

1 open court within the presence and hearing of the
2 jury:)

3 THE COURT: Go ahead, Mr. Kanarek.

4 MR. KANAREK: Yes, sir.

5 THE COURT: Proceed.

6 MR. KANAREK: Yes, your Honor.

7 Well, your Honor, may we have a short recess at
8 this time?

9 THE COURT: All right, the Court will grant you a short
10 recess.

11 MR. KANAREK: Thank you, your Honor.

12 THE COURT: During the recess you are admonished,
13 ladies and gentlemen, not to converse amongst yourselves,
14 nor with anyone else, nor permit anyone to converse with you
15 on any subject connected with this matter, nor are you to
16 form or express any opinion on the matter until it is
17 finally submitted to you.

18 Approximately ten minutes.

19 MR. KANAREK: Your Honor, approximately, if I may, ten
20 or fifteen.

21 THE COURT: All right.

22 (Afternoon recess.)
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1 THE COURT: The jury is not present. The Court has
2 given you a typewritten copy of the instruction that he
3 intends to give with respect to extortion, other than those
4 which you asked for from CALJIC 3d.

5 MR. KANAREK: Yes, your Honor. Now --

6 THE COURT: And you have had an opportunity to look at
7 it. The Court would observe that it's nothing that has not
8 been mentioned between the Court and counsel -- both counsel --
9 in the course of discussing this matter.

10 MR. KANAREK: Yeah. Has the Court --

11 THE COURT: Nothing that has not been mentioned in
12 argument and in citations given to the Court by counsel.

13 MR. KANAREK: Has the Court read People vs. Peck, 43 --

14 THE COURT: Yes.

15 MR. KANAREK: -- Cal. Ap. 6387

16 THE COURT: The Court's familiar with that.

17 MR. KANAREK: And People versus --

18 THE COURT: As a matter of fact, in the --

19 MR. KANAREK: As well as People --

20 THE COURT: -- Fricke-Alarcon text, Peck is cited, and
21 much in the same language that -- much of the same language as
22 14.74, as set out in CALJIC 3rd, in talking about consent.

23 MR. KANAREK: Yes. Now, if I may have -- may I have
24 the Penal Code for just a moment, your Honor?

25 THE COURT: Well, go ahead.

26 MR. KANAREK: Well, I want to point out something from
27 the --

28 THE COURT: Just proceed.

1 MR. KANAREK: I want to point out something from the
2 statute itself, if I may.

3 THE COURT: I'll get it, Mr. Kanarek.

4 MR. KANAREK: Now, I can't make a representation to the
5 Court, because I have not -- I have not looked at the statute
6 before 1939. I didn't think that -- I thought that I would be
7 able to use the statute as it is there.

8 It is my belief, however, -- it is my belief
9 that the statute that was in play at the time of the Peck
10 case and the Anderson case was not the language of 518 as it
11 presently is in the Penal Code.

12 Now, whether that's a different -- a salient,
13 important fact or not, I cannot represent off the top of my
14 head. I had no idea, until just -- just today, actually,
15 as your -- the record will reveal -- that your Honor was going
16 to give this instruction.

17 And I would like the opportunity to research that
18 point, because --

19 THE COURT: What point?

20 MR. KANAREK: Well, the point is as to whether or not my
21 argument is buttressed by whatever the statute was at that
22 time, in -- in terms of -- of actual language.

23 I can't represent to the Court that such is the
24 case. But when your Honor, eo instante, comes up with this
25 and says that you are going to give --

26 THE COURT: Eo instante? Since --

27 MR. KANAREK: Meaning instantly.

28 THE COURT: -- yesterday morning?

1 MR. KANAREK: No, no, no, your Honor.

2 THE COURT: Well, you began to argue this question. --

3 MR. KANAREK: I argued this question days ago.

4 THE COURT: -- on extortion, --

5 MR. KANAREK: Days ago.

6 THE COURT: -- right? Isn't that correct?

7 MR. KANAREK: Yes.

8 THE COURT: Well --

9 MR. KANAREK: But your Honor indicated that it wasn't
10 until actually this morning, if I am correct, that your Honor
11 decided he was going to -- decided he was going to give
12 Extortion.

13 THE COURT: And did we not discuss the difference between
14 robbery and extortion?

15 MR. KANAREK: Well, yes. But what I am --

16 THE COURT: Days ago?

17 MR. KANAREK: Well, right. But then your Honor --
18 I advocated it. Your Honor denied it. Now, your Honor has
19 granted it -- and I thank your Honor for that -- but what I am --
20 what I can't agree to --

21 THE COURT: You just don't agree with the instruction
22 that I have presented there?

23 MR. KANAREK: Well, no, your Honor. It's argumentative.

24 What I am saying is this: As a matter of this
25 trial, what your Honor is doing is -- and your Honor has
26 previously made the point you don't want argumentative
27 instructions.

28 Well, why put in -- they have Extortion; they have

1 Robbery. Give the CALJIC version.

2 Why should your Honor tell them extortion differs
3 from robbery? That invades our right to a fair trial. Maybe
4 somebody on that -- on the jury -- maybe someone on the jury
5 will take that language -- it's English -- and -- and
6 interpret it one way.

7 But they get the feeling that the Court is
8 injecting itself, when your Honor puts in this argumentative
9 instruction. Maybe somebody will not agree that it differs
10 in this respect.

11 And what I am saying is -- what I am saying is --
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1 THE COURT: If the jury, in the view of -- in the jury's
2 view of the evidence, determines that there was no robbery,
3 as the Court has defined it, well, then, of course, there
4 can't be a robbery murder first.

5 MR. KANAREK: Well --

6 THE COURT: If they should determine that it's an
7 extortion, as you have suggested, -- they should find it to be
8 extortion -- then there cannot be a finding in respect to that
9 count, and that there is a felony murder first.

10 MR. KANAREK: But it doesn't state the law right, your
11 Honor.

12 THE COURT: Very well. Well, the Court realizes that
13 reasonable minds will differ.

14 MR. KANAREK: But, your Honor -- your Honor has stated
15 here that "extortion differs from robbery in that while, in
16 each crime, property may be obtained by force or fear, in
17 the crime of robbery, the immediacy of harm or fear of harm
18 is evident and leaves the victim no choice but to allow the
19 taking of his property against his will."

20 If you read 211 of the Penal Code, that's not so.
21 It only talks about immediate presence. It doesn't talk
22 about the time element, which your Honor has gratuitously
23 injected.

24 211 says:

25 "A robbery is the felonious taking of
26 personal property in the possession of another from
27 his person or immediate presence, and against his
28 will, accomplished by means of force or fear."

1 There's nothing in that Code section that mentions
2 anything about the aspect of time.

3 And so clearly, your Honor's instruction just does
4 not conform to what the law is. Because your Honor, as I've--

5 THE COURT: Very well.

6 I think you've made your record clear now.
7 Anything further?

8 MR. KANAREK: Well, I object to that -- I object to the --
9 I object to the use of this instruction.

10 THE COURT: All right. I have gathered that.

11 MR. KANAREK: Well, I'm trying to convince the Court,
12 and I -- I believe that it's -- and I suggest, in the
13 context of this case, it's prejudicial; it's prejudicial
14 error for your Honor to --

15 THE COURT: You've drawn the distinction, yourself,
16 between robbery and extortion, --

17 MR. KANAREK: That's right.

18 THE COURT: -- and you have instructed the jury on the
19 law of the matter in your own way.

20 MR. KANAREK: But your Honor has --

21 THE COURT: And the Court believes that it's necessary,
22 in order to avoid confusion on the jury's part, to draw such
23 distinction.

24 The Court does not believe in the first place
25 that it's an extremely important point, depending upon the
26 view that the jury may take of the evidence, but -- well,
27 what else do you have to say?

28 MR. KANAREK: Well, the point is, it is extremely

1 important because Mr. Manzella, I am certain, is going to make
2 use of this, is going to make use of this instruction, to try
3 and convince the jury -- and how do we know --

4 THE COURT: Well, you may make use of the instruction
5 to try to convince the jury of your viewpoint.

6 MR. KANAREK: Well, I know. But it's erroneous. There's
7 nothing in 211 -- what I am saying is this: 211 does not
8 require --

9 THE COURT: Do you have something that you wish to
10 offer, that -- at this time?

11 MR. KANAREK: Yes, your Honor.

12 I would offer -- I would suggest the CALJIC
13 instruction on consent; and they use the exact language in
14 -- to constitute extortion -- there's, for instance,
15 14.73, which is -- which is not argumentative; and there's
16 14.74, which is not argumentative.

17 And let the jury decide whether or not it applies
18 or it doesn't apply and all of that. But when your Honor
19 pinpoints that difference --

20 THE COURT: The Court will read 14.72 and 14.73 to the
21 jury, if --

22 MR. KANAREK: Well -- well, yes. But what I'm saying is,
23 when you say that this differs from robbery --

24 THE COURT: And 14.74 is largely embodied in what I
25 have included there.

26 MR. KANAREK: You can have a robbery without the
27 necessity of the immediacy of harm or fear of harm. 211
28 could be violated, your Honor, without any necessity of

1 immediacy of harm or fear. I could -- I could -- I could --
2 I mean, without any -- I could visualize a million hypotheti-
3 cal situations where this is the case.

4 THE COURT: Mr. Manzella, do you have anything at this
5 time? Any comment?

6 MR. MANZELLA: Yes, your Honor. It's the People's
7 position -- still the People's position that no instructions
8 at all on extortion should be given.

9 However, since the Court granted Mr. Kanarek's
10 request to give the instruction defining extortion, I believe
11 that the instruction the Court has drafted, distinguishing
12 extortion and robbery, would be helpful to the jury, and
13 that it should be given, so long as the -- the instruction
14 defining extortion is going to be given.

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1 MR. KANAREK: Well, I --

2 THE COURT: All right. Let's have the jury in. And you
3 can conclude, then, Mr. Kanarek.

4 MR. KANAREK: Well, your Honor, I do object to this
5 instruction.

6 THE COURT: I somehow or other divine that that's true.

7 MR. KANAREK: Well, I understand. But I think that this --

8 (Whereupon, the members of the jury entered the
9 courtroom, and the following proceedings were had:)

10 THE COURT: All right. The record will show that all of
11 the jurors are present.

12 You may begin now, Mr. Kanarek. You may conclude.

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

14 Ladies and gentlemen: The -- I think we can say
15 that -- well, in any event, the -- because of a certain
16 matter, which I have to go into now, the sequence of events
17 that we had planned is not necessarily the sequence that --
18 that we shall follow.

19 Let me -- let me preface this by -- by discussing
20 for a moment the Court -- the jury instructions the Court gives
21 us.

22 The Court's going to say that what jury instructions
23 the Court -- that the jury chooses to use is up to -- is up to
24 the jury. In other words, because the jury is instructed on a
25 certain proposition of law does not mean that necessarily the
26 proposition has any application.

27 For instance, we feel that -- that felony murder,
28 in this case, this robbery situation that -- that we've spoken

1 of -- we have to discuss it, but we feel that there is -- that
2 it has no application; there's no specific intent on the part
3 of Mr. Manson for robbery or murder -- or conspiracy or any of
4 that.

5 So, the jury instructions in that regard are in-
6 applicable. This is what -- this is what we suggest.

7 Now, the Court, in addition to the instruction
8 concerning extortion, that we have spoken of previously,
9 and in addition to the definition of robbery -- and now, it --
10 because of these on-going events, so to speak, or on-going
11 changes, we have to point up that the Court, in addition to
12 that extortion instruction, is going to say that "Robbery is
13 the taking of personal property of any value in the possession
14 of another, from his person or immediate presence, and against
15 his will, accomplished by means of force or fear, and with
16 the specific intent permanently to permanently to deprive the
17 owner of his property."

18 That's one jury instruction.

19 The definition of extortion also is a jury
20 instruction that we spoke of, that we know that we are going to
21 be using in analyzing this case.

22 Now -- and we know that extortion is defined as
23 the taking of property by force or fear, with the consent of
24 the person who is allegedly the one that the property was
25 taken from.

26 And remember that it's up to the jury to decide
27 what these words mean. We all ^{here} speak the English language,
28 and we all know the meanings of the words that are being used.

1 The Court is going to give an additional instruc-
2 tion, not just those two, and amongst all the rest --
3 "Extortion differs from robbery, in that while in each crime,
4 property may be obtained by force or fear, in the crime of
5 robbery, the immediacy of harm or fear of harm is evident and
6 leaves the victim no choice but to allow the taking of the
7 property against his will."

8 That's a somewhat -- that is language the Court's
9 going to -- is going to give to the jury, to be used in the
10 jury room, for whatever purpose, if any, the jury thinks it has
11 application.

12 And then the -- there's a second paragraph in that
13 instruction:

14 "In extortion, the agreement or consent to
15 part with property is obtained from a victim who
16 consents, with the understanding that he will
17 thereby be saved from some personal calamity or
18 injury, by turning his property over, as the
19 lesser of two unpleasant alternatives, notwith-
20 standing that he may mentally protest against the
21 circumstances which compel the choice."

22 Now, the propositions that are set out here are
23 propositions which the jury can use or not use, depending on
24 whether we feel that these propositions have application to
25 this particular case.

26 We feel that we don't have to lose our common
27 sense when we enter the jury room -- and this applies to what
28 we, in our daily lives, think of in terms of certain words in

1 the English language.

2 Now, it's our feeling that the situation there at
3 the Gary Hinman home, taken from the prosecution viewpoint, is
4 a situation where extortion is in fact what is reflected by
5 this evidence.

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1 Assuming, for sake of argument, that that is --
2 that is the situation, as we've said, why would -- if we think
3 about it, and it's an interesting thing to turn over in our
4 minds -- why would the law talk about -- remember, now, we
5 are talking about criminal law.

6 Why would the law talk about extortion in terms of
7 consent? Of a person who obtains property from another with
8 the latter's consent?

9 Why would the law use the word "consent," if it
10 didn't mean it in the context of the criminal type of conduct?
11 Because our reason tells us that -- that whether it's extortion
12 or robbery, or whatever, if it's obtained by criminal means,
13 it wouldn't stand up in a civil case -- in a civil court.

14 The signature of Gary Hinman in a civil court
15 would never stand up, as far as those automobiles are
16 concerned, as far as the Department of Motor Vehicles is
17 concerned, or as far as any third party is concerned.

18 It just wouldn't stand up. I -- our common sense
19 tells us that.

20 So the word "consent," as used in the context of
21 these instructions, must have only a criminal context, only a
22 criminal basis, only -- it has application only in terms of
23 the criminal law.

24 And so therefore, since extortion and robbery are
25 defined differently, and the word "consent" is not used in
26 the definition of robbery, we have to think of it in terms
27 of superficial consent, in terms of what a man may appear to
28 do, when he is under the pressure of threat or force.

1 And clearly, when a man signs his name to a docu-
2 ment, in that context, he is, quote, consenting, end quote.
3 And he's -- if you assume that, if you assume that hypothesis,
4 he is being extorted; he is not being robbed. This is what
5 we think.

6 The definition of extortion --and it may be that
7 when it comes into the jury room, the heading "Extortion" will
8 not be there; that is, in the sense of there being a sort of a
9 -- like in capital letters, "Extortion," and then the
10 definition.

11 But that's what we are talking about. In the case
12 of robbery -- in fact, all of these instructions will not
13 have any particular definition or heading. The language
14 themselves -- the words, that's what the jury has before it.

15 So, for what it might be worth, for what it -- oh,
16 excuse me.

17 Thank you.

18 For what it might be worth, whether a particular --
19 whether a particular jury instruction has application or not is
20 for the jury to determine, from the particular facts involved.

21 And we think that -- that it should be -- that
22 there is merit in our position that what happened there at the
23 Gary Hinman home was -- if you look at it from their standpoint
24 -- an extortionate situation; a situation where -- look it --
25 Supposedly, they were going over there to get money from
26 Gary Hinman -- that is, if you believe Ella Jo Bailey.

27 But why -- why -- why is this so important, all of
28 a sudden? This is important because, if it's extortion, if

1 it's extortion, then as far as -- as far as the alleged
2 murder, the conspiracy to rob and murder and all of that, it
3 just doesn't apply.

4 And should a -- should a man's guilt or innocence
5 hinge upon a technical type of approach such as that, when
6 the District Attorney is the one who makes the charge?
7 When the District Attorney is the one who decides that -- what
8 is brought before us is the charge of robbery and murder?

9 And there is a reason. There's a reason. And
10 the reason is: Because this makes it -- if it's robbery,
11 which doesn't even exist here -- this makes it first-degree
12 felony murder. Robbery makes it first-degree felony murder.

13 And the situation which -- in which actually there
14 is extortion is not a first-degree felony murder situation.
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1 And there's a public policy reason for that. The
2 reason is that robbery is a -- a more severe type of crime
3 than is extortion. Extortion is not -- does not carry with
4 it the ingredients that make it a first degree felony murder.
5 So these are some of the considerations. These are some of
6 the considerations that are involved in analyzing the evidence
7 in this case.

8 I want to say in closing, I know that everyone
9 is anxious to get home and all of that. I want to thank --
10 it's been -- even though we've had -- there are differences
11 of opinion in the courtroom between counsel, and between the
12 Court and counsel, I think the lesson that we can learn from
13 this case is that if we allow the ultimate exercise of power
14 to be in the people who make up the jury lists, then we
15 don't have -- then we don't have too much to be afraid of.

16 There is -- there is, in this regard, a jury
17 instruction that the result must reflect the individual
18 opinion of each juror. And in -- and that means that there --
19 as to each of these charges, there being three charges, the
20 simple arithmetic tells us, tells us what the numbers of
21 decisions are. And these -- and these are individual
22 decisions. These are individual decisions. And remember
23 the -- remember the boy who saved Holland by putting his
24 finger in the dike?

25 Well, the fact of the matter is, that in this
26 case, in this case there may be a verdict one way, there may
27 be a verdict another way or there may be no verdict. The
28 relevance -- the relevance -- the relevant test is not whether

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1 or not there's a verdict. Remember that the California
2 Supreme Court has seven people on it and they split 4 to 3.

3 The United States Supreme Court has nine people
4 on it and they split 5 to 4.

5 What I'm talking about is that the results
6 should reflect the individual opinion of each juror.
7 The results should reflect -- should reflect that opinion.
8 And as long as that opinion is an opinion that you feel is
9 one that is fair and honest, then just for the sake of
10 unanimity, it should not be given up. The -- the evidence
11 in this case, as far as Charles Manson is concerned, is so
12 woefully inadequate that it -- it scares a lot of people to
13 think that it is even brought to a courtroom. Because,
14 you see, once you get the process going, that's why this
15 due process is so important, once you get the ball rolling,
16 you get miscarriages of justice many times because of
17 influences and pressures that are not immediately obvious
18 in a courtroom.

19 That littleman back there, that little man back
20 there -- and it matters not what race we are, whether we are
21 black, whether we are Mexican or Latin or white, -- his
22 welfare is our welfare. Because anyone of us or anyone
23 that's near and dear to us could be exactly where he is.
24 Anyone of us. Anyone of us who -- who has the misfortune
25 in tender years to be mistreated. So that in later years,
26 when something happens, one has a record, one has a prison
27 record, one becomes an easy prey for this type of prosecution.
28 And those of us who have been fortunate enough not to have

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1 that kind of a background should, in viewing this case, thank
2 God that we have not had the problems in life that Charles
3 Manson has.

4 Thank you very much.

5 THE COURT: Ladies and gentlemen, we'll convene tomorrow
6 morning at 9:30. You are admonished here that during this
7 recess you are obliged not to converse amongst yourselves,
8 nor with anyone else, nor permit anyone to converse with you
9 on any subject connected with this matter, nor are you to form
10 or express any opinion on the matter until it is finally
11 submitted to you.

12 Again, let me reemphasize to you that you are not,
13 during the next 24 hours, to expose yourself to any of the news
14 media for fear that there may be something mentioned in
15 connection with Mr. Manson or this case. And if you will
16 abide by that order, well, then, I'm sure we'll have no
17 problems in connection with it.

18 Remember that tomorrow you should make some
19 arrangements when you come to bring -- bring some clothing
20 and bring other articles that you will need to stay overnight,
21 to stay overnight in a hotel. The Court would anticipate
22 that you would work on Saturday, and if you and your foreman
23 determine that -- that you determine that you want, you may
24 work on Sunday, although the Court would anticipate that you
25 would not. While you have to stay together on Sunday, that
26 you couldn't separate, that you would be -- that you would be
27 able to be off on Sunday, that is, to be away from the case
28 on Sunday and not have to deliberate. That's entirely up

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1 to you, however.

2 Good night. See you tomorrow morning at 9:30.

3 (Whereupon, at 3:40 o'clock p.m. an adjournment
4 was taken until the following day, Thursday,
5 October 21, 1971, at 9:30 o'clock a.m.)
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