

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT NO. 106

HON. RAYMOND CHOATE, JUDGE

4
5 THE PEOPLE OF THE STATE OF CALIFORNIA,
6 Plaintiff,

7 vs.

8 CHARLES MANSON,

9 Defendant.

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No. A-267861REPORTERS' DAILY TRANSCRIPT

Monday, December 13, 1971

VOLUME 79

SENTENCING

APPEARANCES:

For the People:

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

For Defendant Manson: IRVING A. KANAREK, Esq.

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I N D E X

<u>DEFENDANT'S WITNESSES:</u>	<u>THE COURT</u>	<u>DIRECT</u>	<u>CROSS</u>
KUCZERA, Robert		11,021	
RICO, Emilio Jesus	11,029	11,033	
GARCIA, Benny	11,087	11,078	

E X H I B I T S

<u>DEFENDANT'S: On motion for new trial:</u>	<u>In Evidence</u>
A - Declaration	11,081
B - Declaration	11,081

A-1

1 LOS ANGELES, CALIFORNIA, MONDAY, DECEMBER 13, 1971 10:28 A.M.

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3
4 THE COURT: The case of People vs. Manson?

5 MR. KANAREK: Yes, your Honor.

6 THE COURT: This was heretofore set for December 20th,
7 and pursuant to stipulation, the matter is advanced to this
8 date.

9 MR. KANAREK: Yes, at the request of the Court.

10 THE COURT: Thank you.

11 MR. KANAREK: Yes, for the convenience of the Court.

12 MR. MANZELLA: That's correct, your Honor.

13 THE COURT: And also, do the People waive notice of
14 motion for new trial?

15 MR. MANZELLA: So waived.

16 THE COURT: And the defendant has indicated likewise,
17 that you wished to make his motion for a new trial this
18 morning?

19 MR. KANAREK: Yes, your Honor. I have affidavits,
20 your Honor, which I would like to file.

21 And in this regard, these affidavits show that
22 the jurors -- that there were jurors who engaged in
23 physical combat during the course of the trial -- during
24 the course of the deliberations, and --

25 THE COURT: Engaged in physical combat?

26 MR. KANAREK: That's right. And Mr. Rico -- Mr. Rico
27 is here (indicating). I have his affidavit. And the
28 affidavit of Mr. Garcia also, concerning this.

1 Now, Mr. Garcia is working. Mr. Rico is here,
2 and I have told Mr. Garcia--he works at the Post Office, at
3 the Terminal Annex area. And he is available on call.

4 I would like to file these two affidavits --
5 pardon me -- these two subpoenas, if I may, subpoenaing Mr.
6 Rico and Mr. Garcia to the courtroom.

7 There's also -- we have also information that
8 notwithstanding the Court's admonition, the Tate-La Bianca
9 case was discussed at the Sheraton Hotel; that the people at
10 the Sheraton Hotel, the jurors stated, "Well, Mr. Manson
11 already received eight death verdicts, so it wouldn't make
12 any difference to have received another one --" or two, or
13 three, or 10, perhaps. I mean, that kind of thinking.

14 I have here the original affidavits of Mr. Rico
15 and Mr. Garcia, for the Court's consideration.

16 THE COURT: You are filing those affidavits?

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

18 (Pause in the proceedings while a discussion
19 off the record ensued at the counsel table between
20 Mr. Kanarek and Mr. Manzella.)

21 MR. KANAREK; Well, then, your Honor, I ask to be
22 sworn, because of the case of Weathers vs. Kaiser Foundation
23 Hospitals.

24 Since we're all here, there's no jury present,
25 my request is of the prosecution that they stipulation that
26 Mr. Manson and I did not know of this misconduct.

27 Because Weathers vs. Kaiser Foundation, 5 Cal.
28 3rd 98, would seem to indicate that there must not be any

1 knowledge on the part of counsel or the defendant about any
2 misconduct of the jury.

3 And I am sure that Mr. Manson didn't know. He's
4 up there in the -- he's up there guarded continuously by some
5 five or six deputies in -- in a detention where you have to
6 go through about six locked doors to even see him.

7 And he's up there without any contact with the
8 outside world. And I am sure he didn't know.

9 Now, I am asking the prosecution to stipulate,
10 but they won't stipulate, so I ask to be sworn.

11 Mr. Rico is here for examination, if anybody
12 wishes to ask him any questions on his affidavit. He's
13 here.

14 As I say, Mr. Garcia is available. And if the
15 prosecution wishes him, disputes anything about his affidavit,
16 we would make him available by just calling up the Post
17 Office.

18 But there was physical -- well, I mean, the
19 affidavit speaks for itself.

20 And in view of the fact that we asked for a
21 hearing and had claimed -- and alleged to the Court that it
22 was a forced verdict, before the jury verdict was taken.

23 At page 9461 of the transcript, in Volume 65,
24 before the jury was -- the evidence -- before the verdicts
25 were taken, I said to the Court, "And so I make a motion
26 for a mistrial. Furthermore, on the basis that after this
27 extended period of time, whatever this verdict is, it's
28 a forced verdict. It is not a free and willing verdict of

1 the jurors. I make a motion for a mistrial."

2 THE COURT: The Court recalls your motion.

3 MR. KANAREK: Yes, your Honor. And so in view of that,
4 and these affidavits, I ask to be sworn at this time, so that
5 I can testify under oath that I did not know of what went
6 on at the Sheraton Hotel.

7 And I did not know -- and it seems obvious that
8 this is true. But the prosecution won't stipulate to it. I
9 ask to be sworn.

10 THE COURT: That you did not know --

11 MR. KANAREK: Of the facts alleged in these two affidavits.

12 THE COURT: -- of the contents of the affidavits --
13 the events that are set out in the affidavits of Mr. Garcia
14 and Mr. Rico?

15 MR. KANAREK: That's correct.

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1 MR. MANZELLA: Your Honor, the People --

2 THE COURT: The Court will -- pardon?

3 MR. MANZELLA: The People would be willing to stipulate
4 that Mr. Kanarek be deemed to have been called, sworn and
5 so testified.

6 MR. KANAREK: And Mr. Manson also? Obviously, Mr. Manson is
7 in the dungeon up there, and he doesn't know of these events.

8 MR. MANZELLA: We will stipulate that if Manson were
9 called, sworn and testified, he would so testify.

10 THE COURT: The Court accepts the stipulation.

11 MR. KANAREK: Very well.

12 THE COURT: There's no way that the defendant or his
13 counsel could have known anything that is related in these
14 affidavits of Garcia and Rico.

15 What do you wish to offer in addition to these
16 affidavits?

17 MR. KANAREK: In addition, I would like to call
18 Mr. Kuczera, if I may, your Honor. Because he was in charge
19 of the jury. And I would like to --

20 THE COURT: On what point?

21 MR. KANAREK: On the point of the -- of the fight that
22 occurred between Mr. Hunt, the jury foreman, and Mr. Rico.
23 Because Mr. Hunt was going around the Sheriff and saying,
24 "We must find him guilty."

25 THE COURT: What is the point of -- of introducing
26 evidence in respect to the fight?

27 MR. KANAREK: Because, your Honor, under Penal Code 1181,
28 Subsection -- when -- I think it's Subsection 4, when the

Ab-2

1 jury -- one of the grounds for the motion for new trial, which
2 we are urging, is when the jury has been guilty of any mis-
3 conduct, by which a fair and due consideration of the case has
4 been presented -- and manifestly, if jurors are discussing,
5 supposedly -- or, going into matters pertaining to the guilt
6 or innocence of the defendant, and it results in physical
7 combat, our courts don't contemplate that as being equated with
8 deliberations.

9 And I want to -- and so I am calling Mr. Kuczera.
10 I haven't spoken to Mr. Kuczera about this before. I don't
11 know what he knows.

12 But I am calling him to the witness stand to find
13 out what he does know, if anything, concerning this matter.

14 THE COURT: All right. Mr. Kuczera?

15 THE BAILIFF: Yes, sir.

16 THE CLERK: You do solemnly swear that the testimony you
17 may give in the cause now pending before this Court shall be
18 the truth, the whole truth, and nothing but the truth, so help
19 you God?

20 THE WITNESS: I do.

21
22 ROBERT KUCZERA,
23 having been called as a witness by and on behalf of the
24 defendant, was duly sworn and testified as follows:

25 THE WITNESS: It's Robert Kuczera; K-u-c-z-e-r-a.

26
27 DIRECT EXAMINATION

28 BY MR. KANAREK:

AB-2

1 Q Yes. Now, Mr. Kuczera, during the time that the --
2 what we call the Shea-Hinman case, that the jury was at the
3 Sheraton, were you in charge of them? Or did you have something
4 to do with their -- with their -- I hate to say "custody," but
5 their -- in connection with taking care of them?

6 A Yes, sir.

7 Q And during this period of time, did it come to your
8 attention that there was a dispute between Mr. Hunt and Mr. Rico?

9 MR. MANZELLA: Objection, your Honor. It calls for
10 hearsay.

11 MR. KANAREK: Well, I am asking --

12 MR. MANZELLA: Under the case of People versus Spelio,
13 S-p-e-l-i-o, at 6 Cal Ap 3rd 685.

14 THE COURT: Sustained.

15 Did you observe any conflict, physical conflict,
16 Mr. Kuczera, between Mr. Hunt and Mr. Rico?

17 THE WITNESS: No, sir, I did not.

18 Q BY MR. KANAREK: Did anyone tell you about any kind
19 of physical conflict between Mr. Rico and Mr. Hunt?

20 MR. MANZELLA: Objection, your Honor. It calls for
21 hearsay.

22 MR. KANAREK: Your Honor, before your Honor rules, I
23 offer it not for the truth of the matter asserted, but to show
24 the states of mind of the jurors.

25 THE COURT: The objection is sustained.

26 MR. KANAREK: Because in --

27 THE COURT: It's sustained.

28 MR. KANAREK: It's offered on state of mind, your Honor.

ab-4

1 THE COURT: The objection is sustained.

2 Q BY MR. KANAREK: Mr. Kuczera, outside of yourself,
3 what other bailiffs were present at the Sheraton Hotel in the --
4 taking care of the jury? I am speaking now of the time prior
5 to the purported rendering -- supposed rendering of verdicts
6 in the guilt or innocence phase.

7 A As bailiff of record, there was Deputy Carlton,
8 Deputy Medina.

9 Q Deputy --

10 A Carlton.

11 Q Carlton. And Medina.

12 And directing your attention to -- you are speaking
13 now -- again, just to pinpoint it, this is prior to the time
14 of the rendition of supposed verdicts in the guilt or innocence
15 phase; is that right?

16 A No, sir. During the guilt or innocence phase,
17 I was the primary officer with the jury. I was with them
18 all the time.

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1 Q Well, then, maybe I didn't make my question clear.
2 I'm sorry.

3 I am saying: Up until the time -- let's put it
4 this way.

5 From the time that the case was submitted to the
6 jury, after argument and the Court read the instructions,
7 until the time that the jury came in with their supposed
8 verdicts in the guilt or innocence phase, who were the
9 people that had charge of the jury?

10 A I was the primary officer in charge of the jury.

11 Q And when you say "primary," Mr. Kuczera, were
12 there any other deputy sheriffs or any other personnel of
13 the County or any other people who had charge of the jury?

14 A I was the bailiff of record. I had an assistant.

15 Q Who was that, Mr. Kuczera?

16 A It varied from day to day.

17 Q Can you give us -- can you name who those people
18 were?

19 A Deputy Stevens, Deputy Carlton, Deputy Medina,
20 Deputy Wyatt.

21 Q And what about -- were there any female deputies
22 in connection with the female jurors?

23 A Yes, sir.

24 Deputy Ore.

25 Q Ann Ore?

26 A Yes.

27 Q Now -- and would you say that these people were
28 at the hotel more or less continuously during this period

Ab-2

1 of time?

2 MR. MANZELLA: Objection. That's vague and ambiguous,
3 your Honor.

4 THE COURT: Sustained.

5 Q BY MR. KANAREK: Were they there continuously --
6 the people that you've mentioned, other than yourself --
7 during the period of time from the time that the case was
8 submitted to the jury until the time that the supposed
9 verdicts came in on the guilt or innocence phase?

10 A No, they were not.

11 Q I see. You were the only one there continuously?

12 A Yes, sir.

13 Q Can you tell us on what days what deputies were
14 present, including yourself, in this period that we have
15 been speaking of?

16 A I don't have my listing with me, sir. I believe
17 there's a copy available, though.

18 Q Where is that?

19 A It would be listed in the office files.

20 Q Right next door here (indicating)?

21 A I think it is, yes, sir.

22 Q Now, is it a fair statement, Mr. Kuczera, that --
23 well, I'll withdraw that and ask you:

24 Did you see Mr. Hunt with a black eye or black
25 eyes during the time, between the time that the case was
26 submitted to the jury, and at the time that the jury came in
27 with the supposed verdicts?

28 A No, sir.

1 Q Did you see Mr. Hunt wearing dark glasses during
2 this period of time?

3 MR. MANZELLA: Objection. That doesn't appear to be
4 relevant.

5 MR. KANAREK: Circumstantial evidence, in view of the
6 affidavits that Mr. Hunt had a black eye or black eyes,
7 your Honor.

8 THE COURT: The objection is overruled.

9 You may answer.

10 THE WITNESS: To my recollection, Mr. Hunt always
11 wore dark glasses.

12 Q BY MR. KANAREK: I see. And directing your
13 attention to the time when Mr. -- when you saw Mr. Rico,
14 during this period of time, did you see Mr. Rico wearing
15 dark glasses?

16 A Mr. Rico also wore dark glasses very often in
17 court and otherwise, sir.

18 Q All right. Did you see any black eye or black
19 eyes upon Mr. Rico --

20 A No, sir, I did not.

21 Q -- during this period of time?

22 A No, sir.

23 Q Did you have occasion, while you were taking
24 care of -- in charge of the jury there, did you have
25 occasion to discuss with anyone at the hotel any dispute
26 between Mr. Hunt and Mr. Rico?

27 MR. MANZELLA: Objection, --

28 THE WITNESS: No, sir.

1 MR. MANZELLA: -- your Honor. It calls for hearsay.

2 THE COURT: The objection is sustained.

3 Q Now, would you tell us -- you spent the nights
4 there too? You slept there, too, is that correct, --

5 A Yes, sir.

6 Q -- Mr. Kuczera?

7 Now, how far away was it from where you stayed,
8 as to where the rest of the jurors stayed?

9 A I was right at the -- one end of the hall, sir;
10 and the jurors' rooms extended westward from my room.

11 Q And were the jurors given a complete floor at
12 the Sheraton Hotel?

13 A At one point, we had a complete floor, sir.
14 And then we condensed our rooms. We had a -- we had empty
15 rooms between us, and we moved them all down.

16 Q Do you mean at one time, during the guilt or
17 innocence phase, there was a complete floor devoted to the
18 jury?

19 A Yes, sir.

20 Q That is, no one else was -- no customer that
21 walked in the door was given a room on that floor; is that
22 correct?

23 A That's correct, sir.

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1 THE COURT: Anything further, Mr. Kanarek?

2 MR. KANAREK: Yes, your Honor.

3 THE COURT: On what point?

4 MR. KANAREK: On this point.

5 THE COURT: What point?

6 MR. KANAREK: This point concerning the fight, your
7 Honor.

8 THE COURT: All right. Will you get right to it?

9 MR. KANAREK: Well, I'm trying to, your Honor.

10 THE COURT: I'll give you ten questions to get to it,
11 and then I'll stop it. And then we'll get Mr. Rico on the
12 stand, if this is what you wish.

13 Let's get on with it.

14 Q. BY MR. KANAREK: Mr. Kuczera, can you -- would you
15 obtain for me your listing of the people that were at the
16 hotel -- the Deputy Sheriffs that were at the hotel during the
17 guilt or innocence phase?

18 A If I can find it, sir, yes, sir.

19 Q Would you, in this interim?

20 A Yes, sir.

21 MR. KANAREK: Thank you.

22 THE COURT: Anything further?

23 MR. KANAREK: Not at this time, your Honor.

24 THE COURT: Step down -- unless the People have anything.

25 Do the People have anything else?

26 MR. MANZELLA: No questions. Thank you.

27 THE COURT: You may step down, Mr. Kuczera.

28 (Pause in the proceedings while a discussion off

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1 the record ensued at the counsel table between Mr. Kanarek and
2 Mr. Kuczera, the last witness.)

3 THE COURT: Mr. Rico?

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

5 You do solemnly swear that the testimony you
6 may give in the cause now pending before this Court shall be
7 the truth, the whole truth, and nothing but the truth, so help
8 you God?

9 THE WITNESS: I do.

10
11 EMILIO JESUS RICO

12 having been called as a witness by and on behalf of the
13 defendant, was duly sworn and testified as follows:

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

15 Please state your full name.

16 THE WITNESS: My name is Emilio Jesus Rico.

17
18 EXAMINATION

19 BY THE COURT:

20 Q Mr. Rico, was there a fight between you and
21 Mr. Hunt, the foreman of this jury, at some time during the
22 jury's deliberations?

23 A Yes, there was.

24 Q When did that occur? During the --

25 A I believe it was --

26 Q During the deliberations on the guilt phase, or --

27 A No.

28 Q -- in the penalty phase?

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1 A No. It was right after the guilt phase.

2 Q You mean when you were deliberating about penalty?

3 A Yes, sir.

4 Well, not deliberating about penalty. It was --
5 the penalty part of the trial was being tried.

6 THE COURT: Mr. Kuczera, will you turn the microphone
7 up a bit?

8 THE BAILIFF: Yes, sir.

9 Q BY THE COURT: This was after the --

10 A After the guilt -- after the guilt and innocence.

11 Q After the guilt phase?

12 A Yes, sir.

13 Q And this was after the jury had brought back its
14 verdict of guilty?

15 A Yes.

16 Q And then this was before you entered into delibera-
17 tions concerning the penalty phase?

18 A Yes, sir.

19 Q Did you receive some injuries?

20 A No -- other than a -- a little scratch in my fore-
21 head (indicating); that was about all.

22 Q Were you intimidated, physically, by Mr. Hunt, to
23 the point that it affected your vote on the guilt phase?

24 MR. MANZELLA: Your Honor, excuse me. I respectfully
25 object to the Court's question. Under the cases of People
26 versus Hutchinson, at 71 Cal 2nd 372, the Hutchinson case says
27 that the -- that Section 1150 of the Evidence Code prevents --
28 and I quote -- "Prevents one juror from upsetting a verdict of

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1 the whole jury by impugning his own or his fellow jurors'
2 mental processes or the reasons for assent or dissent.

3 "The only improper influences that may be proved
4 under Section 1150, to impeach a verdict, therefore, are those
5 open to sight, hearing, and the other senses, and thus subject
6 to corroboration."

7 The cases which have followed Hutchinson contain
8 language essentially the same as that in Hutchinson.

9 For example, the case of Putensen, P-u-t-e-n-s-e-n,
10 versus Clay Adams, Incorporated, at 12 Cal Ap 3rd, Page 1062,
11 a 1970 case, says that a verdict -- and I quote -- "A verdict
12 may not be impeached by affidavits, whose effect is to prove
13 the subjective reasoning processes of the juror, which can
14 neither -- which can be neither corroborated nor disproved."

15 I submit that the testimony with regard to a
16 fist fight is admissible, because it's open to sight, hearing
17 and the other senses, and thus subject to corroboration, in
18 the language of Hutchinson; but that the effect of any conduct
19 upon the jurors' reasoning processes, or his mental attitude
20 towards the verdict, or towards the litigation, is not
21 admissible.

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1 MR. MANZELLA: Section 1150 of the Evidence Code says
2 that -- Section 1150, Subdivision (a) -- there are two
3 sentences: The first sentence admits evidence of "conduct,
4 conditions, or events occurring, either within or without
5 the jury room"

6 The second sentence of Subdivision (a), Section
7 1150, says that:

8 "No evidence," and I quote: "No
9 evidence is admissible to show the effect of
10 such statements."

11 I would like to repeat that:

12 "No evidence is admissible to show
13 the effect of such statement, conduct, condition
14 or event upon a juror either in influencing him
15 to assent to or dissent from the verdict or
16 concerning the mental processes by which it was
17 determined."

18 THE COURT: All right, I'll sustain your objection to
19 the Court's question.

20 MR. KANAREK: Well, your Honor, we would object. We
21 would ask that the Court's question be allowed to be
22 answered in view of Weathers vs. Kaiser Foundation Hospital.

23 BY THE COURT:

24 Q Mr. Rico, this altercation between you and Mr.
25 Hunt occurred after the jury had come back and the verdict
26 of guilty of murder of first degree had been recorded on
27 three counts, is that right?

28 A Right.

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1 Q Before that time was there any physical assault
2 by you or by Mr. Hunt, one upon the other?

3 A No.

4 THE COURT: All right, either counsel.

5
6 EXAMINATION

7 BY MR. KANAREK:

8 Q Now, Mr. Rico, directing your attention to the
9 Tate-La Bianca case.

10 Was that case discussed by the jurors at a
11 time when they were at the Sheraton Hotel?

12 A I believe they did.

13 Q That was before the guilt or innocence -- before
14 the verdicts of guilt came in; is that correct?

15 A Right.

16 Q And they -- did you --

17 Well, let me show you your affidavit.

18 Your Honor, may I approach the witness?

19 Thank you, your Honor.

20 I show you this affidavit, Mr. Rico, and ask
21 you if that's your signature, sir?

22 A Yes, it is.

23 Q And did you read over this affidavit before you
24 signed it?

25 A Yes.

26 Q And are the matters that are set forth in that
27 affidavit correct?

28 A Yes.

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1 Q And while you were at the Sheraton Hotel, after
2 the Court submitted the case to you, and at a time when you
3 were not in this courthouse, in the deliberation room, people
4 on the jury were discussing the Tate-La Bianca case; is that
5 correct?

6 A Uh, only one occasion. The other time that they
7 talked about it was right upstairs in the deliberation room.

8 Q All right. Will you tell us what was said?

9 A Oh, it was like, uh, "I don't see why you can't
10 find him guilty. You know, the man is already -- you know,
11 he's a murderer. He's already been found guilty of eight
12 different -- other counts. Now, how is it that you can't --"

13 THE COURT: Who said that, Mr. Rico?

14 THE WITNESS: Uh, I don't know. It was one of the
15 jurors.

16 THE COURT: Did anybody reply?

17 THE WITNESS: Yes, I -- I replied to them.

18 THE COURT: What did you say?

19 MR. RICO: I told them that didn't enter into what
20 I was thinking about. We were supposed to be only trying
21 him for this murder that was presented to us, and regardless
22 of what happened before or what we thought of him, that
23 that wasn't supposed to enter into it, into our delibera-
24 tions.

25 THE COURT: Was there any reply to what you said?

26 THE WITNESS: Yes. One of the other jurors told the
27 rest of them that I wasn't on -- "Rico didn't do nothing
28 wrong. He's not supposed to be third-degreed. Now, let

1 him make up his mind and let's us tell him what sold us on
2 guilt and maybe we can convince him."

3 THE COURT: But there was no further discussion after
4 you said you were not supposed to discuss Tate-La Bianca,
5 there was no further discussion?

6 THE WITNESS: Not at that time, your Honor.

7 THE COURT: And then, you stated that there was an
8 incident that occurred at the hotel?

9 THE WITNESS: Yes, I --

10 THE COURT: Was it an expression of futility of trying
11 this case after -- after conviction in another case or how
12 did it come about?

13 THE WITNESS: Oh, it was something --

14 THE DEFENDANT: Why did you cut his thought off when
15 he was explaining it?

16 THE COURT: Would you tell us -- Mr. Manson.

17 THE DEFENDANT: Why did you cut his thought off?

18 THE COURT: You will have to be quiet.

19 THE DEFENDANT: That's what you have been doing up
20 there, is cutting his thought off. No one knows but
21 what you will let him see.

22 THE COURT: Take him out.

23 (Whereupon, the defendant was escorted by the
24 bailiff to the holding tank, and the following
25 proceedings were had:)

26 THE WITNESS: It was, oh, like, uh, saying that don't
27 hang the -- I was hanging the jury up and it was an
28 implication like some people that never had -- never been in

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a hotel before, something like this.

1 And they're enjoying it. That's why they're
2 holding it up. And that's why this is, and we all know that the
3 man has already been found guilty of so many murders in the
4 LaBianca -- he was guilty of that, so I can't see the point of
5 you holding --

6 THE COURT: This was in the course of the deliberations
7 or did somebody approach you and say this?

8 THE WITNESS: This was in the hotel, when everybody
9 was sitting around talking and this came up.

10 THE COURT: This was a conversation between you and
11 somebody else?

12 THE WITNESS: Uh, it was about three or four of us in the
13 room there, and we were talking.

14 THE COURT: Who said that?

15 THE WITNESS: Uh, I believe this was Mr. Nieves.

16 THE COURT: Mr. who?

17 THE WITNESS: Mr. Nieves.

18 THE COURT: At that point the jury was 11 to 1, with you
19 as a holdout?

20 THE WITNESS: Yes.

21 THE COURT: Did that have any effect on you?

22 MR. MANZELLA: Objection, your Honor, on the same grounds
23 previously stated.

24 THE COURT: All right, I'll sustain the objection from
25 both counsel.

26 All right, anything further?

27 MR. KANAREK: Uh, yes, your Honor. I am not objecting
28 to that question, by the way. Mr. --

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1 THE COURT: I'll sustain --

2 MR. KANAREK: -- Mr. Manzella is objecting, not me.

3 THE COURT: I'll sustain Mr. Manzella's objection.

4 BY MR. KANAREK:

5 Q Now, at the time, you recall a time, Mr. Rico, when
6 Mr. Hunt, at the Sheraton Hotel, made a statement or statements
7 to the effect that "we know he is guilty," that is before the
8 guilt or innocence phase had been decided?

9 A I believe that statement was made up in the
10 deliberation room, where I heard that.

11 Q And --

12 A One of the other jurors -- I believe it was
13 Mrs. -- she was No. 1 juror. She's the one that said, "Don't be
14 saying, 'we.' You are supposed to have your own opinion, as I
15 believe he's guilty. Don't say that 'we.' You are the fore-
16 man. You shouldn't use that type of language that 'we' know
17 he's guilty."

18 Q Did you have some type of conversation with
19 Mr. Hunt to the effect that there shouldn't be any delibera-
20 tions at the Sheraton Hotel, that they shouldn't discuss the
21 case?

22 A Hmmm, I can't recall.

23 Q Now, directing your attention to Mr. Manson's not
24 taking the witness stand.

25 Did the jurors discuss this?

26 A Yes.

27 Q And what -- would you tell me what occurred in that
28 regard?

1 A Well, there was a statement made, "If the man -- if
2 a man is not guilty of this, why didn't he take the stand on
3 his own behalf."

4 Q And did you then point out to them the Court's
5 instructions about Mr. Manson's --

6 A Yes.

7 Q -- allegedly not taking the witness stand?

8 A Yes.

9 Q What did you say?

10 A We went through that, the Court's instructions
11 and I showed them where it said there it is not supposed to
12 sway you in any way. It is not even supposed to come up, not
13 supposed to be discussed why he did not take the witness stand.

14 Q And what happened at that point?

15 A Oh, well, then, they would -- well, it stopped that
16 part of that, that talking.

17 THE COURT: Stopped what?

18 THE WITNESS: Stopped them from saying that, if he was
19 innocent why didn't he take the stand.

20 Q BY MR. KANAREK: And --

21 THE COURT: What you did was read the Court's instruc-
22 tion concerning the failure of the defendant to testify?

23 THE WITNESS: Yes, yes.

24 THE COURT: You read it aloud to the other jurors?

25 THE WITNESS: I showed it to them. We passed it around,
26 where it said it is a constitutional right he don't have to
27 take the stand and it's not supposed to go one way or the
28 other, guilt or innocence, by --

1 THE COURT: When did that occur, during the deliberations
2 on the guilt phase?

3 THE WITNESS: Yes.

4 Q BY MR. KANAREK: Now, directing --

5 THE COURT: Go ahead.

6 MR. KANAREK: Yes, yes.

7 Q Now, directing your attention, Mr. Rico, to the
8 time that -- I'll withdraw that.

9 Did you at some time approach Mr. Kuczera and tell
10 Mr. Kuczera that you wanted to change your vote concerning
11 the charges against Mr. Manson?

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1 MR. MANZELLA: Objection, your Honor, it calls for
2 hearsay.

3 MR. KANAREK: It is outside the scope --

4 THE COURT: Sustained.

5 MR. KANAREK: Well, it is not offered for the truth,
6 it is offered for the fact he made the utterance.

7 MR. MANZELLA: If it is offered on state of mind, I
8 would cite Hutchison and Spelio and other cases citing
9 Hutchison.

10 THE COURT: Sustained. Both counsel and the Court
11 have discussed this previously in chambers and have talked
12 about the law in connection with the point.

13 MR. KANAREK: Yes, your Honor.

14 THE COURT: The Court thinks the objection is well
15 taken.

16 MR. KANAREK: Yes, we asked for a hearing before the
17 verdict came in, and so we're denied due process and equal
18 protection under the 14th Amendment, in that if your Honor
19 had allowed the hearing before the purported verdicts were
20 read, these matters would have come out and your Honor
21 might well have declared a mistrial.

22 In view of the fact that we asked for the
23 hearing, that it was our belief that after 12 elapsed days,
24 that what was happening was a forced verdict. Your Honor
25 denying that. We have a right to this testimony, because
26 all we have in the record are just Mr. Kuczera's statements
27 to the Court as to what he remembered and your Honor did
28 not act on it that day. Your Honor put it in the record

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1 the next day.

2 THE COURT: The Court --

3 MR. KANAREK: So we are in --

4 THE COURT: The Court heard your argument in connec-
5 tion with that motion previously, and your statement they
6 deliberated for 12 days; is that correct?

7 MR. KANAREK: I said the elapsed time was 12 days,
8 your Honor.

9 THE COURT: Yes, that is correct.

10 MR. KANAREK: I did not say they were in deliberations
11 for 12 times 24 hours.

12 THE COURT: Let's clarify the record, then. They
13 were in deliberation approximately six days, five and a half
14 days or something of that nature, rather than 12 days.
15 Although the elapsed time that they were sequestered, it
16 is true, was closer to 12 days. I don't know what it was
17 exactly at this time.

18 MR. KANAREK: Well, your Honor, in fact doesn't know
19 the time they deliberated because that is not -- that's just
20 as much hearsay than anything else. Your Honor certainly --
21 that's evidence that's not being given under oath as to how
22 many hours they deliberated. Your Honor is willing to take
23 that --

24 THE COURT: The Court notes that from the discussions
25 that it had with the bailiff who was in charge of the jury --

26 MR. KANAREK: What I mean is, that's all hearsay,
27 too, your Honor.

28 THE COURT: Well, the Court and counsel discussed this

1 point in chambers and it has been raised before by you, and
2 you argued extensively on it.

3 MR. KANAREK: We ask --

4 THE COURT: Go on.

5 Now, do you wish to discuss this any further
6 with Mr. Rico?

7 MR. KANAREK: I --

8 THE COURT: Let's move along.

9 Q BY MR. KANAREK: Well, did you have a conversa-
10 tion with Mr. Kuczera concerning your vote as to the charges
11 against Mr. Manson?

12 MR. MANZELLA: Objection on the same grounds previously
13 stated.

14 MR. KANAREK: I'm laying a foundation.

15 MR. MANZELLA: It is the same question.

16 THE COURT: Sustained.

17 MR. KANAREK: But the offer of proof would be that
18 this gentleman did have a conversation with Mr. Kuczera.
19 He told Mr. Kuczera that he wants to change his vote
20 concerning the charges and that your Honor denied a hearing.
21 I mean, that's not part of the offer of proof, but the offer
22 of proof would be that he so told Mr. Kuczera and that your
23 Honor did not act upon that and allow us to speak with
24 Mr. --

25 THE COURT: Yes, what occurred?

26 MR. KANAREK: Mr. Rico at that time --

27 THE COURT: What occurred, of course, Mr. Kuczera conveyed
28 something of that -- something of the conversation that he

1 had with Mr. Rico to the Court. The Court informed counsel
2 and there was a discussion in chambers and you made motions
3 similar to the ones you've just made. The Court denied the
4 motion. The objection is sustained. I believe the law is
5 clear on that point.

6 At that time the -- that the information came to
7 the Court, the verdicts of guilty had been recorded and the
8 Court and counsel discussed this at length. And I think
9 that you are aware of the law in respect to it, too, Mr.
10 Kanarek.

11 MR. KANAREK: No, but under this -- under this
12 Weathers vs. Kaiser Foundation Hospital case, your Honor,
13 actually this jury was still sequestered. The jury was
14 intact. It was an ongoing trial in the penalty phase and
15 we could have had a hearing and determined from all of the
16 people at the time it was fresh in their minds exactly
17 what happened. And because Mr. Garcia's declaration
18 indicates that this fight occurred prior to the guilt or innocence
19 phase.
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1 THE COURT: Well, Mr. Rico was the man that was involved
2 in the fight.

3 MR. KANAREK: Well, I understand, but people have a way of
4 just not remembering exactly. And it is a denial of due
5 process not to take this evidence when it is fresh, as it was,
6 and it is interesting that Mr. Garcia's declaration indicates
7 contrary, indicates that it was during the guilt or innocence
8 phase.

9 THE COURT: Mr. Garcia here?

10 MR. KANAREK: No, he isn't, your Honor. But I will --
11 he's on call, because he's at the Terminal Annex. I wonder
12 if we can take a recess at this time?

13 THE COURT: Not at this time. Go ahead with Mr. Rico.

14 Q BY MR. KANAREK: Mr. Rico, directing your attention
15 to these conversations about the Tate-LaBianca cases and the
16 fact, supposedly, that Mr. Manson had, as you put it in your
17 declaration eight death Counts.

18 Would you tell me how many people discussed these
19 matters on the jury?

20 A Oh, well, I say at the hotel there was maybe three
21 or four people in the room at the time, and when we're up in the
22 deliberation room, well, it was the jury intact.

23 Q I see.

24 And the three or four people in the -- that were in
25 the room when you discussed -- when the Tate-LaBianca case and
26 Mr. Manson's supposed eight death sentences was discussed, what
27 was said? Would you tell us what was said?

28 A Uh, it was like I stated earlier, it was, "I can't

1 see why you can't come to a guilt verdict because the man is
2 already, you know, he's a known killer."

3 Q He was what?

4 A "He's a known killer. He's been convicted of eight
5 Counts of murder already. So how is it that you can't find him
6 guilty on one other Count? Why do you think he wasn't capable
7 of committing this murder?"

8 There was -- a passing statement like that. It
9 was no discussion, like we sat down and discussed the case, we
10 got into it. It was just a statement.

11 Q I see.

12 And would you tell us who were the people that were
13 in the room at that time, Mr. Rico?

14 A I think it was Mr. Garcia at one time, I think he
15 was there. Mr. Nieves. And I can't be sure who the other ones
16 were.

17 Q There were others there, though?

18 A I believe there was.

19 Q And this was before the -- before the results in
20 the so-called guilt or innocence phase; is that correct? That's
21 when these conversations --

22 A Yes.

23 Q -- on the Tate-LaBianca case occurred; is that
24 correct?

25 A Yes.

26 MR. KANAREK: Well, your Honor, I wonder if we can have
27 a recess at this time. Mr. Kuczera --

28 THE COURT: Are you through with Mr. Rico? Are you

1 finished so we can let him go?

2 MR. KANAREK: I can't let him go at this time, your Honor.

3 THE COURT: Well, then, continue.

4 MR. KANAREK: I need some information that I do not have
5 in front of me at this instant, your Honor.

6 THE COURT: Mr. Rico, are you off of work today?

7 THE WITNESS: Yes.

8 THE COURT: In order to come here?

9 THE WITNESS: Yes.

10 THE COURT: Well, the Court is going to release him.

11 MR. KANAREK: Well, we accommodated the Court. This was
12 set for the 20th of this month.

13 THE COURT: I realize that.

14 MR. KANAREK: All right. I wish -- I'm asking the Court
15 for the accommodation to get something to use in connection with
16 interrogating the gentleman.

17 THE COURT: About what?

18 MR. KANAREK: About the deputies that were present at the
19 time certain events occurred.

20 THE COURT: What events?

21 MR. KANAREK: The events concerning which we have been
22 speaking this morning, your Honor.

23 THE COURT: What deputies were present, if any, or were
24 there any at the time that the physical encounter occurred?
25 Do you know?

26 THE WITNESS: I don't know by -- I know -- I believe
27 Ann Ore was there, but I don't believe Mr. Ku- -- Bob, I
28 don't think he was there at that time.

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THE COURT: Kuczera?

THE WITNESS: Kuczera.

1 THE COURT: Was there anyone present with you and
2 Mr. Hunt when that occurred?

3 THE WITNESS: No.

4 THE COURT: Do you know a deputy named -- Medina?

5 THE BAILIFF: Yes.

6 THE WITNESS: Yes, I know Medina.

7 THE COURT: And Chick?

8 THE WITNESS: Chick, yes.

9 Q BY MR. KANAREK: Do you remember whether or not they
10 were on duty that night?

11 A I -- I --

12 Q Pardon?

13 A I don't remember if they were or not.

14 THE COURT: Mr. Kanarek, anything more? Let's let him
15 go, if we can.

16 MR. KANAREK: Well -- yes, your Honor. But I would
17 like -- may I have that list, that I think your Honor has, that
18 I haven't been furnished? Is that what your Honor is reading
19 from?

20 THE COURT: Well, I haven't. It's not a list. It's an
21 indication from Mr. Kuczera that Deputy Medina and Deputy
22 Chick were on duty at the time that this might have occurred,
23 between the -- when it occurred, between the guilt and penalty
24 phases; that is, when this fist fight occurred.

25 Those were the deputies who were on duty at that
26 time, between the guilt and penalty phase, Medina and Chick.

27 MR. KANAREK: Well --

28 THE COURT: Now, why do you need Mr. Rico on the stand

1 any further?

2 MR. KANAREK: Well, your Honor, I -- very well. Because
3 I -- I wanted to ask him concerning these people, so that we can
4 get evidence of probative value to present to the --

5 THE COURT: Well, I would be equally interested, if you
6 have any questions; but otherwise, let him go.

7 MR. KANAREK: Well, your Honor, I have --

8 THE COURT: Mr. Rico, in your declaration, you say, "I
9 believed and now believe that Charles Manson is not guilty of
10 the charges made against him. I was pressured into voting
11 guilty."

12 Would you tell us upon what you base that statement?

13 MR. MANZELLA: Objection, your Honor. Under the cases
14 previously cited, and under the case of People versus Stevenson,
15 at 4 Cal Ap 3rd 443, which states that -- "In which case
16 affidavits of two jurors were submitted that they felt pressure
17 to reach a verdict, and that they were not convinced of
18 defendant's guilt," the Court in Stevenson held that those
19 affidavits were not admissible to impeach the verdict, because
20 "they showed only the mental processes of the respective jurors
21 and the subjective considerations which influenced their
22 verdicts."

23 MR. KANAREK: Well, your Honor, then I -- I ask that
24 that question be answered, because of the -- of -- of certain
25 conduct of the foreman; and whatever occurred --

26 THE COURT: And because of the fist fight?

27 MR. KANAREK: No.

28 THE COURT: Well, what conduct?

1 MR. KANAREK: Well, what I am saying --

2 THE COURT: How did that change -- how did that change
3 the factual circumstances, the background, --

4 MR. KANAREK: I --

5 THE COURT: -- as set forth in Stevenson?

6 MR. KANAREK: Well, because, your Honor, there may be
7 a factual setup that is admissible.

8 For instance -- for instance, if somebody pointed
9 a gun at Mr. Rico -- and taking an absurd -- or maybe not
10 absurd, when it involves Charles Manson -- but if someone took a
11 gun and pointed it at him during the deliberations and said,
12 "I'm going to get you if you don't vote guilty. I am going to
13 get you when this trial is over."

14 Then -- then that fact, for instance, if it were
15 that kind of a fact, would certainly be admissible, Stevenson
16 notwithstanding.

17 So what I'm saying is -- I'm asking Mr. Rico to
18 state the factual basis upon which that statement is made.

19 How do we know, without listening? Because it's
20 my view of the situation that the foreman took over this jury --

21 THE COURT: Do the People have anything?

22 MR. MANZELLA: Well --

23 MR. KANAREK: And because he was the --

24 MR. MANZELLA: Well, what Mr. Kanarek has said makes no
25 sense whatsoever. He has got no evidence to show that there
26 was any misconduct on the part of the jurors.

27 What might be considered misconduct, I have made
28 no objection to. The fact that Manson's not taking the stand

1 was discussed, and the fact that the Tate-LaBianca convictions
2 were discussed -- and of course, they weren't really discussed,
3 but rather, statements were made, and then Mr. Rico correctly
4 pointed out to those jurors that those items were not to be
5 discussed.

6 The only other thing to which I have made no
7 objection was the fist fight. Mr. Rico has just said that
8 occurred after the verdicts came in.

9 Now, Mr. Kanarek is just fishing for anything he
10 can get a hold of. He has got no offer of proof to make. He
11 has got no evidence.

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1 He went out and took two affidavits, one from
2 Mr. Rico and one from Mr. Garcia. There's nothing in the
3 affidavits to justify a fishing expedition.

4 The cases I've cited, Hutchison, Stevenson,
5 Spelio -- and I can cite about ten more cases -- are all
6 against Mr. Kanarek. He has got no grounds for his
7 question or for any of the things he has done here so far
8 this morning.

9 MR. KANAREK: That's not so, your Honor.

10 THE COURT: The objection is sustained.

11 MR. KANAREK: Well, what I am saying is --

12 THE COURT: I know what you're saying. The objection
13 is sustained.

14 MR. KANAREK: Well, how do we know? A threat --

15 THE COURT: The law is clear.

16 MR. KANAREK: -- or use of force, it doesn't have to
17 be that a knife is stuck into you, your Honor.

18 THE COURT: Do you have an offer of proof?

19 MR. KANAREK: Well, no. The man is not here.

20 THE COURT: Are you giving the Court an offer of proof
21 to the effect that there was a physical threat with a gun?

22 MR. KANAREK: The Court is the trier of fact -- no,
23 I'm not saying there was a physical threat with a gun. I
24 am saying the Court is the trier of fact.

25 But in that jury room, Mr. -- the foreman was
26 using the -- first of all, he is a big man; he's using
27 the threat and power of his foremanship, beyond that which
28 the law intended; and in accordance with other matters,

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1 as far as -- as far as Mr. Rico is concerned.

2 And all I am asking for is the truth.

3 THE COURT: And you are contending that Mr. Rico was
4 frightened; is that right?

5 MR. KANAREK: No, I'm not.

6 THE COURT: Is that what your offer of proof is?

7 MR. KANAREK: No, I'm not saying that. I do not know
8 what to -- to contend.

9 THE COURT: That's clear.

10 MR. KANAREK: Well, that is correct. How do I know
11 what to contend, in view of the fact it's not my thinking?
12 Mr. -- Mr. Rico wanted this Court to -- to -- at a certain
13 time, he approached this Court concerning matters. We asked
14 for a hearing.

15 In view of the fact that your Honor did not grant
16 us a hearing, at the time when it would have been fresh in
17 everybody's mind, we are now doing the best that we can at
18 this motion for new trial.

19 THE COURT: The objection is sustained.

20 MR. KANAREK: Well, my -- well, then, my offer of proof,
21 as far as I can get it, in connection with talking to Mr.
22 Rico, would be this: That there was -- that there was
23 illegal pressures in the jury room upon --

24 THE COURT: Illegal pressures?

25 MR. KANAREK: That's right.

26 THE COURT: What do you mean by that?

27 MR. KANAREK: Well, that's what I am trying to elicit.
28 I want Mr. Rico to portray the picture, in the jury room,

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1 and at the Sheraton Hotel.

2 That clearly is outside the ambit of -- of legality,
3 when they go into matters out -- at the Sheraton Hotel.

4 And I am asking him to portray it for your Honor
5 by him telling you exactly what happened, how the foreman --

6 THE COURT: The objection is --

7 MR. KANAREK: -- carried on at the hotel, telling
8 people what he told them concerning --

9 THE COURT: The objection is sustained to the question.

10 MR. KANAREK: And the way the foreman acted, physically.

11 THE COURT: Ask your next question.

12 MR. KANAREK: Well, your Honor, I -- I -- I don't have
13 any questions further at this time.

14 THE COURT: All right. Mr. Rico, you are excused.

15 MR. KANAREK: Well, he is being excused over my
16 objection, your Honor.

17 THE COURT: I understand that.

18 You are excused.

19 MR. KANAREK: But he is not ordered to leave?

20 THE COURT: No. You are not ordered to leave. You
21 may stay, Mr. Rico, if you like.

22 Do you have another witness?

23 MR. KANAREK: I would like to have a recess at this
24 time, your Honor, if I may.

25 THE COURT: All right. We'll take a short recess.

26 The court's in recess.

27 (Proceedings had on unrelated matters.)

28 (Short recess.)

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1 THE COURT: Case of People versus Manson.

2 Mr. Kanarek, you may proceed on the motion for new
3 trial.

4 MR. KANAREK: Yes, your Honor.

5 May it be deemed I have enunciated all the grounds
6 under 1181 of the Penal Code?

7 THE COURT: Yes.

8 MR. KANAREK: As a basis for the motion for new trial.

9 THE COURT: Yes.

10 So stipulated?

11 MR. MANZELLA: So stipulated.

12 THE COURT: That you have spelled out the statutory
13 grounds.

14 MR. KANAREK: Yes, your Honor.

15 MR. MANZELLA: So stipulated.

16 MR. KANAREK: Your Honor, I would like to re-emphasize
17 to the Court that we had the colloquy in which your Honor
18 asked me -- I don't exactly -- I forget the exact words. I
19 said I didn't know what to contend.

20 The point I wish to raise is, my contentions have
21 to be predicated upon evidence, upon factual matters to the
22 Court. And that is why I believe the Court is committing error
23 in not allowing Mr. Rico to give the details of what happened.
24 Not only because it affects Mr. Rico --

25 THE COURT: The Court is not --

26 MR. KANAREK: -- but because it affects -- in other
27 words, he is a percipient --

28 THE COURT: The Court is not keeping Mr. Rico from

1 giving the details. But you are well aware that what went on
2 in Mr. Rico's mind that led to the finding of guilty by
3 Mr. Rico is something that cannot be presented in this motion
4 for a new trial, according to the cases.

5 MR. KANAREK: He can state objectively, your Honor, what
6 has occurred.

7 THE COURT: Well, he --

8 MR. KANAREK: And upon what --

9 THE COURT: He did.

10 MR. KANAREK: Well, I believe that he has been foreclosed
11 from stating what he has observed and what it would be
12 percipient to.

13 THE COURT: He has stated there was a fight between him
14 and the foreman after the verdict came in between the time of
15 the verdict and the guilt phase and the -- and the penalty
16 phase.

17 MR. KANAREK: It is our belief that he may state to the
18 Court that --

19 THE COURT: That he may --

20 MR. KANAREK: -- the facts upon which he bases that
21 statement that he was pressured, because those facts may well
22 be facts that are not the kind that he cannot testify to.

23 The only way we can tell is by having him testify.
24 And then, the Court can then shift that which is permissible
25 from that which is not permissible. Because certainly anything
26 that occurred that he is percipient to, the Court may well find
27 to be relevant material.

28 THE COURT: Anything by way of -- anything further by

1 way of evidence?

2 MR. KANAREK: Oh, yes, your Honor.

3 THE COURT: All right, let's move along, if you will.

4 MR. KANAREK: I would like the Court to take judicial
5 notice in this proceedings -- well, maybe we can shorten it this
6 way.

7 May it be deemed that all of the matters, everything
8 that has occurred in this case is before the Court in the motion
9 for new trial? May that be deemed to be --

10 THE COURT: I don't understand it.

11 MR. KANAREK: Well, what I am saying is, your Honor, for
12 instance, at the time -- I don't think we have to call the
13 court reporter for this, but at the time --

14 THE COURT: Well, so far as the court record is concerned,
15 the Court can take judicial knowledge of its records in the
16 case.

17 MR. KANAREK: Very well.

18 THE COURT: And the record, of course, speaks for itself.

19 MR. KANAREK: Well, except as your Honor knows, there
20 was one place there where there was no court reporter, when
21 matters were read back to the jury.

22 THE COURT: Oh, you're speaking of the incidents where
23 there was no court reporter for the court reporter? When the
24 court reporter, who was assigned, was reading the testimony
25 back to the jury?

26 MR. KANAREK: That's correct. But there was -- I'm
27 not quarreling with what was in the record already, but I am
28 quarreling with the fact that what occurred, the colloquy that

1 occurred between Mr. Hunt and the Court and counsel, that
2 colloquy was not in the record. And your Honor will agree that
3 the Court -- there was no court reporter present to take down
4 that colloquy.

5 THE COURT: That's true, but it was inconsequential.

6 MR. KANAREK: Well --

7 THE COURT: And it concerned the record and --

8 MR. KANAREK: I think it did --

9 THE COURT: There was nothing improper in connection with
10 it, and the record was made clear when it was read back.

11 MR. KANAREK: Well, the point was, your Honor, that Ruby
12 Pearl's testimony was not completely enunciated the way the
13 foreman initially asked that it be read. He stopped it. He
14 stopped the reading. The reading was stopped voluntarily and
15 gratuitously on his part. That's what I am saying.

16 THE COURT: Well, he indicated that the part that the jury
17 wanted to hear was covered, and no one on the jury raised any
18 protest or did I receive any word to the contrary. There's
19 nothing unusual in that.

20 What other point did you wish to raise?

21 MR. KANAREK: Another --

22 THE COURT: You indicated that you wish to present further
23 evidence.
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1 MR. KANAREK: Well, I do. But the witness is not
2 here, your Honor. The witness --

3 THE COURT: Who is the witness?

4 MR. KANAREK: Mr. Garcia. But I have got other points
5 that I wish to raise to the Court.

6 THE COURT: All right. Now, first, how about evidence?
7 Do you have anyone other than Mr. Garcia whom you wish
8 to present?

9 MR. KANAREK: I may, after Mr. Garcia is on the
10 witness stand, your Honor.

11 THE COURT: I expect you to conclude this today,
12 you understand.

13 MR. KANAREK: Yes, I understand.

14 THE COURT: All right.

15 MR. KANAREK: I understand. But, I repeat, we are --
16 your Honor asked us to advance this to this date, even
17 though it was to the -- it was for the 20th, when it was
18 supposed to take place.

19 But I would ask your Honor, next, to consider a
20 legal point, if I may.

21 THE COURT: What do you intend to establish with Benny
22 Garcia? The time of the first fight between Hunt and --
23 Mr. Hunt and Mr. Rico?

24 MR. KANAREK: Among other things, yes, your Honor.

25 THE COURT: And most of the other things which are
26 related in his declaration would, if they're offered as --
27 if they're an offer of proof, or if they constitute an
28 offer of proof, would probably not be acceptable.

2-2

1 But the Court would certainly be interested in
2 when the fist fight occurred. Perhaps we should hear Mr.
3 Garcia on that point.

4 He is not clear in his affidavit as to when it
5 occurred. You state that you believe, from what he said --
6 or what he states in the affidavit -- or declaration; it's
7 properly called a declaration -- that the fist fight
8 developed between Hunt and Rico during the deliberations
9 on the question of guilt or innocence.

10 But it's not that clear in his declarations. He
11 simply states a fist fight developed.

12 The Court will hear from him in respect to that.
13 All right.

14 What is your other point?

15 MR. KANAREK: My point is, your Honor -- and if your
16 Honor will look at the file -- and I can represent to the
17 Court that on September 15th, 1971, the District Attorney
18 unilaterally -- of course -- caused an indictment to be
19 rendered against Mary Brunner.

20 Now, at the time that that indictment was
21 rendered against Mary Brunner -- which was for perjury
22 and the murder of Gary Hinman -- at that time, the People
23 were still putting on their case, in -- as far as the --
24 their proof was concerned. And they had not yet rested.

25 Now, I would ask the Court to take judicial
26 notice of the fact that that was September 15th, 1971.
27 By that unilateral act, the Defendant Manson was deprived --
28 as a result of State action, was deprived of evidence of

2-3
1 the use of Mary Brunner at the guilt or innocence phase of
2 the trial, because --

3 THE COURT: How did that deprive the defendant of the
4 use of her testimony?

5 MR. KANAREK: Well, because she then became a -- an
6 active defendant.

7 THE COURT: She was always a defendant, wasn't she?

8 MR. KANAREK: No, no. She was not -- not -- not if you
9 view what occurred in Judge Keene's court, at the motion for
10 a new trial, in the Bobby Beausoleil case.

11 THE COURT: Wasn't the agreement between Mrs. Brunner
12 and her counsel -- as he stated to us in chambers, during the
13 course of this trial -- that if Mary Brunner would testify in
14 the Bobby Beausoleil case, testify in the Manson case,
15 testify in any other prosecution involving the death of Mr.
16 Hinman, that she would thereby earn immunity? Wasn't that
17 the agreement?

18 MR. KANAREK: Right. But --

19 THE COURT: Wasn't that the agreement?

20 MR. KANAREK: Right. But imposed in the middle is a
21 prosecution for murder and perjury, which deprives the
22 Defendant Manson, as a result of the State action, of her
23 testimony during the guilt or innocence phase.

24 She becomes unavailable, because they -- they
25 deign to determine what is true and what is untrue, because
26 of her -- what she said from the witness stand, when they
27 called her during their case in the -- in this case, in
28 the instant case, they determined that they were going to

2-4

1 deprive the Defendant Manson of her testimony.

2 And so what do they do? Most maliciously --

3 THE COURT: Oh, that's ridiculous.

4 MR. KANAREK: -- they went ahead and indicted her in
5 the middle of this case.

2a fls.

2a-1

1 THE COURT: That's a ridiculous argument. Mary
2 Brunner took the witness stand, testified that she was not
3 present at Old Topanga Road at the home of Gary Hinman,
4 and insisted that she was not present -- and didn't know
5 anything about it, as a matter of fact -- and that was in
6 her direct examination.

7 She went that far, and then refused to testify.
8 You took her on cross examination, and she did not -- and
9 she did not insist on her Fifth Amendment privileges at
10 that time on cross-examination. She simply exculpated
11 Mr. Manson in the course of most of your questioning, and
12 reiterated what she read -- or what she had stated on direct,
13 and never once took the Fifth Amendment.

14 MR. KANAREK: No.

15 THE COURT: So therefore, her former testimony was
16 admissible -- that is, by her former testimony, the former
17 testimony she gave in the case of People vs. Beausoleil,
18 wherein she had testified that Mr. Manson had come in and
19 hit Mr. Hinman -- or, cut Mr. Hinman's ear off, the lower
20 part of his ear off.

21 So, that was used under Section 1235.

22 Now, how do you see State action in that? What
23 are you --

24 MR. KANAREK: I am saying State action in that after
25 they put her on in their part of the case, they deprive us
26 of her testimony, during the defense, by virtue of indicting
27 her, so that Mr. Weitzman and her phalanx of attorneys, of
28 court-appointed attorneys, that she's afforded --

2a-2

1 THE COURT: Do you mean thereafter, by reason of her--
2 by reason of her refusal to testify here, the State
3 thereupon filed against her and precluded you from using
4 her testimony; is that correct? Is that what you mean?

5 MR. KANAREK: Well, precluded us from having her in
6 front of the jury, where they could -- where they could see
7 exactly what her demeanor -- and all that classically and
8 historically is supposed to take place in the presence of a
9 jury --

10 THE COURT: But her last statement before the jury --
11 her last statement before the jury was that she was not
12 present during the time of the Gary Hinman killing.

13 Now, if that were true, Mr. Kanarek, how could
14 she possibly give any assistance to Mr. Manson?

15 MR. KANAREK: Well --

16 THE COURT: The only other story that she related
17 causes -- would cause anyone to believe that Mr. Manson had
18 chopped off Mr. Hinman's ear.

19 MR. KANAREK: That's what credibility is, your Honor.
20 The credibility must be judged by the jury from the witness
21 being on the witness stand. And it's -- just because she
22 regurgitates or makes certain statements --

23 THE COURT: The jury had a --

24 MR. KANAREK: -- doesn't mean that the jury is going
25 to believe it. Obviously, the jury in this case believed--
26 or, a good portion of them purported to believe -- that
27 that which Mr. Manzella read, which occurred purportedly
28 at the first Bob -- at the Bobby Beausoleil trial --

1 THE COURT: And they had an opportunity to observe
2 her on the witness stand for a good period of time.

3 MR. KANAREK: But not -- not at a time when she could
4 be asked the questions directly. The only -- the --
5 Mr. Manzella had her on the witness stand, and instead of
6 asking her the precise questions there before the jury,
7 from the Bobby Beausoleil trial, he lets her go, and then
8 reads to the jury a naked transcript, where you -- you just
9 -- all you do is just read the words, and there's no way
10 for that jury to determine what her demeanor was, what her
11 composure was and what her attitude was when she was
12 testifying.

13 THE COURT: Of course, the defendant had an opportunity,
14 too, to inquire about that.

15 MR. KANAREK: As your Honor says, she purported to
16 exculpate Mr. Manson.

17 THE COURT: So you got from her the best that you
18 could possibly hope for, --

19 MR. KANAREK: No, we didn't.

20 THE COURT: As far as Mr. Manson was concerned, didn't
21 you?

22 MR. KANAREK: No, we didn't. What we got was a denial
23 of due process by the District Attorney.

24 I don't have the power -- if I want to get rid
25 of a witness, I can't go in -- go in and indict somebody and
26 get them out of the courtroom, and then start reading what
27 they said at some other hearing.

28 THE COURT: That's a ridiculous --

1 MR. KANAREK: The District Attorney indicts people, and
2 that way removes them from the proceeding, so that we then
3 have no use for them.

4 THE COURT: That's a ridiculous argument. Now, what is
5 your next point?
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2b fls.

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1 MR. KANAREK: I shouldn't say "we have no use for them."
2 We can't use them.

3 Well, that's the point. It's my --

4 THE COURT: All right. Let's hear another point. You
5 said you had several legal points.

6 MR. KANAREK: Well, that's -- we are denied -- it's a
7 suppression of evidence --

8 THE COURT: Now, the Court has heard that now. The Court
9 has heard about that point. Let's get on to another point.

10 MR. KANAREK: Well, it's -- actually, it involves
11 Mary Brunner.

12 THE COURT: On the same point?

13 MR. KANAREK: Different point.

14 THE COURT: All right.

15 MR. KANAREK: That the District Attorney, again by state
16 action, unbelievably granting Mary Brunner immunity from per-
17 jury -- I mean, how much can be tolerated by -- by the actions
18 of that law office, your Honor? That's just a -- they're --
19 they're just lawyers like anyone else.

20 THE COURT: I can't say I follow you.

21 MR. KANAREK: Pardon?

22 THE COURT: I can't say I follow you.

23 MR. KANAREK: Well, Mr. Leavy purported, as your Honor
24 well knows, to grant her immunity from perjury in the motion for
25 a new trial.

26 THE COURT: I read that. And I don't concur with you at
27 all. That's not what Leavy said at all.

28 You well know how difficult it is to prove perjury.

2b-2

1 And this is an off-hand comment by somebody who stated that he
2 -- in effect, that it was -- that he was not prepared to
3 prosecute her for perjury at that time.

4 MR. KANAREK: He said that the District Attorney's Office
5 was not going to prosecute Mary Brunner for perjury.

6 THE COURT: That's no grant of immunity.

7 MR. KANAREK: Well -- well, your Honor, on an estoppel
8 kind of theory -- in fact, in Judge Parker's court, in connec-
9 tion with these kinds of matters, there was a writ of habeas
10 corpus granted as to Mary Brunner.

11 THE COURT: This was -- now, what you are referring to was
12 an incident in Judge Keene's court, wherein Mr. Levy made such
13 a statement. But that doesn't amount to a contract or an
14 agreement not to prosecute her for perjury.

15 MR. KANAREK: Well, then, may I ask your Honor --

16 THE COURT: Again, it's a ridiculous argument.

17 MR. KANAREK: The very -- the entire -- and this is why
18 we've asked for a hearing. The entire machinations concerning
19 Mary Brunner --

20 THE COURT: There are no machinations; that occurred in
21 open court. And Mr. Leavy made the statement in response, I
22 think, to the Court's question, to Judge Keene's question.

23 Now, what other argument -- what other legal
24 argument do you have?

25 MR. KANAREK: Well, that point -- well, it's further
26 along the lines of Mary Brunner.

27 THE COURT: The Court doesn't wish to hear any other
28 point in respect to the two that you've covered -- any other

1 argument in respect to the two points you've covered now regard-
2 ing Mary Brunner.

3 Do you have something else? I don't want to
4 preclude you from putting it on the record, if you have some
5 legal argument.

6 MR. KANAREK: Well, yes, your Honor. The point is,
7 they never have granted her judicial immunity. They've never
8 come to court and --

9 THE COURT: Will you get away from that point now? I
10 know what you are arguing. And the Court has heard from you
11 before in respect to it.

12 Go ahead.

13 MR. KANAREK: Well, it's our position, then, that this --
14 the entire process involving Mary Brunner is a denial of due
15 process and equal protection to Mr. Manson, in that it deprives
16 him of a fair trial, because the District Attorney can dangle
17 her and play with her like a yo-yo, back and forth, three
18 Counts -- three separate charges of murder, dismiss a couple,
19 file again -- all of this means that we don't have a witness
20 that -- you just don't know whether it's --

21 THE COURT: All right. I see your point.

22 Now, do you have anything further?

23 MR. KANAREK: Yes, your Honor. Another point is that
24 during -- and under Cooper versus the Superior Court, the
25 California Supreme Court states --

26 THE COURT: The Court's familiar with the Cooper case.
27 What is your point?

28 MR. KANAREK: The point is, they state that certain

2b-4

1 things that happen at certain times in the proceedings are
2 very, very detrimental, where they might not be reversible or
3 something like that, if they happened at another time.

2c fol

2c-1

1 Now, during the time that the jury was deliberat-
2 ing, and the time when the jury was asked -- when the jury
3 asked for certain testimony to be read back, your Honor, over
4 my objection -- and over my request otherwise -- read to the
5 -- allowed to be read to the jury all of the colloquy,
6 including the colloquy concerning Mr. Manzella's objections,
7 my objections, the Court's rulings.

8 In other words, it's our belief that the Court,
9 through that action, the jury was misled into believing that
10 a court ruling that matters should be -- should not be
11 considered was meaningless, because when the matters were
12 read back to them -- I'm speaking now of the testimony of
13 Dr. Katsuyama, when that was read to them, and your Honor
14 allowed matters which your Honor did not allow into evidence
15 -- and all of that colloquy to go before them.

16 Now, if a Court allows the jury, during delibera-
17 tions, to listen to all of that, after the Court has told
18 them, "Don't consider matters that I've ordered stricken,"
19 and then when they come back into the courtroom and want
20 matters read to them, the Court reads to them everything,
21 including that which was stricken, and all of the colloquy,
22 it's -- it's my allegation that that's a denial of due
23 process, and an abuse of discretion by the Court; a denial of
24 due process and equal protection under the 14th Amendment,
25 and a denial of a fair trial.

26 THE COURT: The Court does not see anything improper
27 in the --

28 MR. KANAREK: How would the jury --

2c-2

1 THE COURT: -- in the reading back of the testimony.

2 MR. KANAREK: Well, how would the jury know --

3 THE COURT: And the jury heard the entire proceeding
4 as it transpired in front of them.

5 MR. KANAREK: How would they know what to eliminate
6 and what not to eliminate when at that time, your Honor
7 even read to them matters which I think your Honor ordered
8 excluded?

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1 THE COURT: I think it was clear to them and the Court
2 gave them the proper admonitions and the admonitions were of
3 record.

4 All right, what else, now? Get on to your next
5 point.

6 MR. KANAREK: Well, my next point, your Honor, and I
7 would like to emphasize this to the Court, I know the Court
8 itself has stated that everyone on that jury knew that
9 Mr. Manson had seven death sentences, been convicted of
10 conspiracy --

11 THE COURT: Well, the Court may not have stated that,
12 but the Court knew, knows that most of the jurors, if not all
13 of the jurors, knew about the Tate-LaBianca trial. I think
14 that was established in the course of the voir dire examination.
15 That it was general knowledge about the prosecution of
16 Mr. Manson and the Tate-LaBianca trial. I'm not sure that all
17 of them knew the result of that trial, but they knew generally
18 that there was a conviction of murder. Some of them believed
19 that there had been a sentence of life imprisonment, some of
20 them believed that there had been a death sentence. Generally
21 they knew about it, yes.

22 MR. KANAREK: It is a fair statement they all knew the
23 result as to Mr. Manson.

24 THE COURT: It is a fair statement that they knew he had
25 been convicted of murder, multiple murders.

26 MR. KANAREK: Multiple murders.

27 THE COURT: Yes.

28 MR. KANAREK: And in view, your Honor, of the obvious --

1 well, how shall I put it?

2 In view of the lack of speed with which the jury
3 returned, there was some -- obviously some fundamental questions
4 that were bothering the jurors. And if you take into account
5 the fact that they know that he's already convicted of multiple
6 murders, there's no question but what he was denied a fair
7 trial. There's no question but what -- I mean, we can sentence
8 him and just go on our merry way, but I think that we -- what
9 we do is, we demean our administration of justice to allow this
10 man to be sentenced for first degree murder when everybody on
11 the jury knows that he was supposedly convicted of multiple
12 murders.

13 If you can't get a fair trial, you don't try the
14 man or you wait until some time when he can get a fair trial.
15 But actually --

16 THE COURT: The Court believes he received a fair trial.

17 MR. KANAREK: Well --

18 THE COURT: The Court believes that the jurors followed
19 instructions and that they did not consider -- as a matter --
20 did not consider Mr. Manson's previous convictions.

21 As a matter of fact, the Court's observations were
22 that because of the prolonged voir dire, because of the
23 emphasis on these prior convictions, in your argument, in the
24 constant questioning of these jurors, that the point was
25 raised so many times that the jurors, I think, are inclined
26 to bend over backwards to forget about and to eliminate from
27 their minds the results of that previous trial in making the
28 decisions they had to make in this case.

1 MR. KANAREK: How can your Honor say that in view of
2 Mr. Rico's testimony?

3 THE COURT: How can you say it in view of the result?

4 MR. KANAREK: The result is a mere --

5 THE COURT: And in view of what Mr. Rico has said. It
6 appears to me as though the jurors, while one of them did make
7 that statement, if Mr. Rico is to be entirely believed, he was
8 corrected very quickly. And who can say once corrected that
9 they did not adhere to the Court's instructions?

10 MR. KANAREK: Who can say that it isn't the opposite,
11 your Honor.

12 In other words, if the jurors -- after all the
13 admonitions that you are not supposed to discuss the Tate-
14 LaBianca case and it isn't limited to one juror. If you read
15 Mr. Rico's testimony, it is several jurors, at least. After all
16 of that time, they go to the jury room and all they talk about
17 is Tate-LaBianca or if they talk about Tate-LaBianca, it is
18 clear that those people are using matters -- they're using the
19 convictions of Mr. Manson in Tate-LaBianca against him in this
20 case. I mean, I don't see how there can be any other --

21 THE COURT: The Court doesn't believe so.

22 MR. KANAREK: How there can be any other --

23 THE COURT: All right, what is your next point?

24 It is five after 12:00. We'll recess until 1:30.
25 We're in recess.

26 (Whereupon, the noon recess was taken at 12:05
27 P. M., to resume at 1:30 P. M. of the same day.)
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4-1
1 LOS ANGELES, CALIFORNIA, MONDAY, DECEMBER 13, 1971 1:44 PM
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4 THE COURT: All right, the case of People vs. Manson.

5 Mr. Kanarek?

6 (Whereupon, the following proceedings were had
7 at the bench among Court, counsel, and the defendant.)

8 THE COURT: Mr. Manson, the Court has no objection to
9 your being present. But you cannot speak out as you did
10 this morning. You can't disturb the proceedings.

11 Now, I would prefer that you be present, but if
12 you disturb the proceedings, you are going to have to leave,
13 as I told you.

14 THE DEFENDANT: Yeah. Let me say one thing. May I
15 say one thing --

16 THE COURT: Yes, you may.

17 THE DEFENDANT: -- for the record? This happened
18 before.

19 THE COURT: What happened before.

20 THE DEFENDANT: This same procedures that we have been
21 going through here, in these two courtrooms. And it seems--

22 THE COURT: Do you mean in Department 104?

23 THE DEFENDANT: Yeah. It's all one courtroom to me.
24 I don't understand a lot of the things that you understand.

25 THE COURT: Well --

26 THE DEFENDANT: It seems that that's all I am allowed
27 to do, is keep quiet.

28 THE COURT: Well --

4-2
1 THE DEFENDANT: Now, may I speak, please?

2 Actually, it's said that we couldn't put up a
3 better face than we've put up, because we have just give
4 everybody permission to do anything they want to do.

5 I mean, it's all legal.

6 THE COURT: Well --

7 THE DEFENDANT: If it's legal for you, it's legal for
8 everyone else, isn't it?

9 THE COURT: Well --

10 THE DEFENDANT: And if you take the rights away from
11 one, you take the rights away from all, sir.

12 THE COURT: I am sure you understand.

13 But you can be present. But don't disturb the
14 proceedings. If you have something to say, --

15 THE DEFENDANT: Well, I --

16 THE COURT: -- speak through your attorney.

17 THE DEFENDANT: Oh, come on! We know better than that.

18 You know, like --

19 THE COURT: Let's go in the motion for new trial.

20 THE DEFENDANT: I haven't even entered the courtroom
21 yet.

22 (To the bailiff:) May I go back in the lockup?

23 THE BAILIFF: Tell the Judge.

24 THE DEFENDANT: I already told him. I haven't
25 promised him nothing.

26 (Whereupon a discussion off the record ensued
27 at the bench between the Court and the bailiff.)

28 THE COURT: Do you have any reason why he should stay

4-3

1 back here?

2 MR. KANAREK: Pardon?

3 THE COURT: Well, the jury isn't present. As long as
4 he doesn't disturb the Court, I won't put him out. It's
5 less important now than it was in front of the jury.

6 (Whereupon, the following proceedings were
7 had in open court:)

8 THE COURT: All right. In the case of People vs.
9 Manson, the record will show the defendant is present.

10 Mr. Kanarek, you may proceed with your motion
11 for new trial.

12 MR. KANAREK: Yes, your Honor. Call Mr. Garcia.

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

14 Do you solemnly swear that the testimony you
15 are about to give in the cause now pending before this court,
16 shall be the truth, the whole truth, and nothing but the
17 truth, so help you God?

18 THE WITNESS: I do.

19
20 BENNY GARCIA,
21 called as a witness by and on behalf of the defendant,
22 having been first duly sworn, was examined and testified
23 as follows:

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

25 Would you state your name, sir?

26 THE WITNESS: Benny Garcia; B-e-n-n-y G-a-r-c-i-a.
27

28 DIRECT EXAMINATION

4-4

1 BY MR. KANAREK:

2 Q Mr. Garcia, directing your attention to the
3 time when you were at the Sheraton Hotel, at that time was
4 there some kind of a physical encounter between Mr. Rico
5 and Mr. Hunt?

6 A Yes, there was.

7 Q And when did this occur?

8 A Do you mean the date?

9 Q Yes. Would you -- not necessarily the exact
10 date, but when in the sequence of events?

11 A Oh, it was just during one of the nights when we
12 were locked up there and sitting around together.

13 Q And when was it in connection with the guilty --
14 guilt or innocence phase?

15 A Oh, I'd say about a week; about a week before
16 the -- the -- of the first phase.

17 Q In other words, a week before the supposed
18 guilty verdict occurred?

19 A Yes, that's right.

20 Q And would you tell us what happened?

21 A Well, this -- to me, this seemed to be something
22 personal between the two. I don't think it really had any-
23 thing to do with the case.

4a fls.

4a-1

1 MR. KANAREK: Your Honor, may that be stricken as a
2 conclusion on the part of the witness?

3 THE COURT: All right. I'll strike it.

4 Q BY MR. KANAREK: Would you tell us just what
5 you observed, Mr. Garcia?

6 A Well, we heard -- we heard some noise in the
7 recreation room, which was next to our room; and three or
8 four of us went in there.

9 And actually, the -- the fight had already
10 taken place. It was over, really.

11 Q And when you say "we," who would you say was
12 in your immediate vicinity, when this occurred, Mr. Garcia?

13 A Oh, just about all the jurors. We were all
14 together in one room there talking.

15 Q I see. And when you say all the jurors, do you
16 mean all of the regular jurors --

17 A Yes.

18 Q -- and the alternates?

19 A Yes.

20 Q Is that correct?

21 A That's right.

22 MR. KANAREK: Your Honor, may I approach the witness?

23 THE COURT: You may.

24 MR. KANAREK: May I have the Court's copy of the
25 declaration, of the original?

26 Thank you.

27 THE COURT: The Court will -- do you wish to have
28 those two declarations received as exhibits to your motion

1 for new trial?

2 MR. KANAREK: May I, your Honor?

3 THE COURT: Yes, they will be received as, I suppose,
4 A and B, --

5 MR. KANAREK: Thank you, your Honor.

6 THE COURT: -- on the motion for a new trial.

7 MR. KANAREK: Thank you, your Honor.

8 Q Mr. Garcia, I show you what appears to be a
9 declaration. It has your initials on the first page and
10 your signature on the second page.

11 Are the facts that are set forth there true and
12 correct?

13 A Uh --

14 THE COURT: Read it again, Mr. Garcia, if you wish.

15 THE WITNESS: May I?

16 THE COURT: Yes. Take your time.

17 (Pause in the proceedings while the witness
18 produced the document.)

19 THE WITNESS: Yes, except that I don't really believe
20 I ever heard him say, "We know he's guilty."

21 THE COURT: May I see that?

22 Q BY MR. KANAREK: You -- well, let me ask you
23 this, Mr. Garcia. Since knowing that you were going to come
24 to court and testify here today, have your supervisors told
25 you that if you testified, that you may receive disciplinary
26 action from the Post Office Department?

27 A I'd rather not say.

28 Q Well, I understand -- well -- and I understand

1 that, how you feel about your job, Mr. Rico -- Mr. Garcia.
2 But did you have some conversation when your superiors found
3 out that you were going to -- that you were subpoenaed to
4 come to court here today? Was there a conversation?

5 A Well, I had to tell them that I was coming.

6 Q Yes.

7 A And they knew why I was coming.

8 Q And they told you that -- they told you that you
9 might be subject to disciplinary action by coming to this
10 court? There was discussion concerning that; is that right?

11 A Uh -- do I have to answer, sir?

12 THE COURT: Yes.

13 THE WITNESS: Uh -- well, not in -- not in exactly those
14 words, but --

15 Q BY MR. KANAREK: Just tell us what was said.

16 A That -- well, one of them said, "The case is
17 over. You should stay out of it and avoid any more publicity."

18 Q And they were -- there was discussion about --

19 A Yes. But I don't remember exactly what it was.

20 Q And there was discussion concerning your job;
21 right?

22 A Well, a little, yeah.

23 Q By your supervisors at the Post Office; is that
24 right?

25 THE COURT: What did they say, Mr. Garcia?

26 THE WITNESS: They didn't --

27 THE COURT: Did they in any way tell you how to testify
28 here?

1 THE WITNESS: No, sir. No, sir.

2 THE COURT: Did they suggest to you that you should
3 testify in a certain direction or in a certain way?

4 THE WITNESS: No. No.

5 THE COURT: Did they suggest to you that if you
6 testified, your job might be in danger, or something of that
7 nature?

8 THE WITNESS: No, no. Not exactly.

9 THE COURT: Well, now, when you state --

10 Q BY MR. KANAREK: When you say "not exactly,"
11 would you tell us what you mean by that, Mr. Garcia? I
12 know it's -- it may be --

13 A Well, they didn't exactly come out and say my
14 job was in jeopardy. They just told me to avoid any more
15 publicity; that's all.

16 THE COURT: When you signed this declaration, it
17 stated -- it does state, "Mr. Hunt at a time when the jury
18 was at the Sheraton Universal Hotel went around to the
19 jurors stating, 'We know he is guilty.'"

20 Now, you stated that -- that at this time, you
21 actually don't recall that he said that?

22 THE WITNESS: That's right. I really don't remember
23 him saying that.

24 What we all objected to was that he kept saying
25 "we" whenever he stated anything, and -- and that was what
26 some of the discussions were about.

27 4b fls.
28

1 Q BY MR. KANAREK: He was actually speaking for
2 himself?

3 A Well, we were hoping he was. But he kept using the
4 word "we," and we told him not to use it.

5 Q Actually, what you heard was a commotion of some
6 type; you went into the next room, and you saw Mr. Rico and
7 Mr. Hunt after what you assumed to be a fight; is that about
8 it?

9 A That's correct.

10 Q What did you see when you went into the next room?

11 A They were -- well, like I say, the fight was over.
12 They were standing there looking at each other, and you could
13 tell there had been a fight.

14 Q How could you tell?

15 A Well, there -- there were some bruises on their
16 faces.

17 THE COURT: Anything further?

18 MR. KANAREK: Yes.

19 Q Now, remember, prior to signing this declaration,
20 you read it over at your leisure; right, Mr. --

21 A Yes, that's right.

22 Q -- Garcia? And you indicated that everything that
23 was set forth there was true; right?

24 A Yes.

25 Q And prior to reading over the words, "We know he's
26 guilty," in fact you stated that those were the words that
27 Mr. Hunt had used; is that correct?

28 A Well, I may have said -- I may have said that. But

4b-2

1 after thinking -- trying to really think about it, I'm not quite
2 sure that he really did say that.

3 Q And your -- now, there were conversations -- I'll
4 withdraw that.

5 Did you hear one or more of the jurors say that --
6 to Mr. Hunt, that there -- that there were not supposed to be
7 deliberations at the Sheraton Hotel?

8 A Yes, that was brought up.

9 Q Now, would you tell us, when did that occur?

10 A I don't exactly remember when.

11 Q Just to the best of your ability.

12 A But it was during -- oh, one of the nights, after
13 dinner, we were all together, and -- I forget what the --
14 what -- what brought it up, but someone did mention something
15 about the case, and I believe Mr. Rico's the one that said,
16 "We are not supposed to discuss it here."
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1 Q This was before the guilt?

2 A Yes.

3 Q The supposed guilt verdicts came in?

4 A That's correct.

5 Q And you heard Mr. Rico, -- you -- uh, now, you
6 heard --

7 Now, directing your attention to the time that the
8 fight occurred.

9 What words did you hear just prior to the time the
10 fight occurred?

11 A From who?

12 Q From Mr. Rico or Mr. Hunt.

13 A Oh, they were coming -- everybody -- everybody was
14 talking at the same time. I can't say what they -- if I heard
15 them say anything.

16 Q And in any event, Mr. Rico and Mr. Hunt left the
17 room, is that correct?

18 A That's correct.

19 Q And they had spoken to each other before leaving
20 the room?

21 A Yes, that's right.

22 Q And this was in the presence of all of the jurors
23 and all of the alternates, is that right, at the Sheraton
24 Hotel?

25 A Yes, that's right.

26 Q Before the supposed guilt verdict came in, is that
27 correct?

28 A That's right.

7-2

1 Q Now, directing your attention to the condition of
2 Mr. Rico and Mr. Hunt before, before this fight occurred.

3 Uh, were they without black eyes before the fight
4 occurred?

5 A Yes.

6 Q And immediately after they left the room or sometime
7 after they left the room, during this period before the guilt
8 or innocence phase was over, they -- you observed black eyes on
9 both of them?

10 A That's right.

11 Q And you observed that for some period of days
12 afterwards, they continued to wear dark glasses; is that
13 correct?

14 A Yes, they did.

15 Q Now -- thank you, Mr. Garcia.

16 THE WITNESS: Thank you.

17 MR. MANZELLA: I have no questions.

18
19 EXAMINATION

20 BY THE COURT:

21 Q Mr. Garcia, do you have some means by which you
22 place the time of this -- this occurrence?

23 A Uh, it was after dinner, I would say.

24 Q I mean, in relation to the penalty phase or the end
25 of the guilt phase?

26 A It was before the guilt phase.

27 Q Before the verdict?

28 A Of the guilt.

7-3

1 Q Before the verdict was returned to the courtroom?

2 A Yes.

3 Q That's what I mean.

4 Do you have some means of placing it?

5 A No definite means, but I would say roughly a week.

6 Q Had the jury -- had the case been given to the
7 jury?

8 A Yes, we were in deliberations then.

9 Q And you were in deliberations during the time that
10 the fight took place?

11 A Yes, that's correct. We were already sequestered
12 then.

13 Q The Court did cause you to be sequestered from the
14 time the case was first given to you until the return of the --
15 of your verdicts; is that correct?

16 A That is correct.

17 Q And then -- that is of your verdicts in the guilt
18 phase?

19 A Yes.

20 Q And then, there was the period of two or three
21 days, wasn't it, when you were --

22 A Yes, just before --

23 Q When you were --

24 A -- before Thanksgiving.

25 Q When you were sequestered, and then I let you go
26 for Thanksgiving; is that correct?

27 A Yes, that is correct.

28 Q Can you place it in relation to Thanksgiving some

1 way or another?

2 A Let me see.

3 This -- I can't really place it. But it -- the
4 closest I can come would be a week, at least, before the first
5 phase verdict came in.

6 Q Before the return of the verdict?

7 A Yes.

8 Q Do you know the deputies who were on duty that
9 night as bailiffs?

10 A No, I don't.

11 Q Do you remember -- did they come into that lounge
12 with you?

13 A No, they didn't hear a thing. They were guarding
14 the elevators.

15 Q How many jurors came in there with you?

16 A Just about all of them. The first ones that were
17 in there were myself and Mr. Nieves.

18 Q Did either of the participants say anything about
19 what the fight was about?

20 A No, because they stood there and looked at each
21 other for a couple of minutes and shook hands.

22 Q Nobody was declared the winner?

23 A I'd say it was a draw.

24 THE COURT: Thank you, Mr. Garcia.

25 THE WITNESS: Thank you, sir.

26 THE COURT: You are excused, Mr. Garcia.

27 THE WITNESS: Thank you.

28 MR. KANAREK: Thank you, Mr. Garcia.

7-5

1 THE COURT: Any further evidence? Any further evidence,
2 Mr. Kanarek?

3 MR. KANAREK: No, your Honor, but I have further
4 argument.

5 THE COURT: All right, the Court will hear it.

6 Excuse me, I must go to Department 100 to excuse
7 a jury there before I hear the balance of your argument. So,
8 I'll go right across to Department 100 and excuse that jury and
9 be right back.

10 We're in recess here for about five minutes.

11 (Short recess.)

7a fol

7a-1

1 THE COURT: Mr. Kanarek, you may proceed.

2 The record will show the defendant to be present.

3 MR. KANAREK: Yes, your Honor.

4 I would like to make the point, and your Honor
5 may perhaps deem that this has been argued, but I don't
6 believe that it has been explicitly argued, and that is, it
7 is my belief that we've been denied the right to cross
8 examine Mary Brunner after the Bobby Beausoleil matters went
9 into evidence, as they were read by Mr. Manzella, by virtue
10 of the -- of what the prosecution did in that case. And that
11 that fundamental denial to confront a very important witness
12 is a denial of due process under the 14th Amendment. The
13 14th Amendment presently picking up certainly at this stage
14 in history, all of the Bill of Rights, including the right
15 to confront, and the right to, uh, examine on specific
16 matters that were laid out in the -- supposedly by the
17 prosecution in the Bobby Beausoleil case.

18 It is our belief, your Honor, that your Honor --
19 respectfully, your Honor erred in not severing these cases,
20 the Shea case and the Hinman case, especially in view of the
21 horrendous publicity against Mr. Manson in the Tate-La Bianca
22 cases. Each of those cases being tried together, clearly
23 prejudiced Mr. Manson.

24 It is our belief that -- that actually an
25 important point is, in connection with -- we don't say this
26 out of any lack of respect for this Court, but if you trace
27 the history of this case, the matters that are being tried
28 here, you will find that we were denied due process when

7a-2

1 this case was transferred from Santa Monica. All of a
2 sudden, one day -- this case was set in Judge Rittenband's
3 court. All of a sudden, one day, without any notice, without
4 any -- without any showing of any type, it all of a sudden
5 showed up in the downtown courthouse, here at the Hall of
6 Justice. And we had no notice, which we're entitled to,
7 under due process and so forth, to argue against that purported
8 transfer of these matters to the downtown area.

9 That was a fundamental denial.

10 We were denied the right to have --

11 And at that time the Hinman case was separate
12 from the so-called Shea case.

13 And it is our belief that the Hinman case should
14 have been tried separately in Santa Monica, as was indicated
15 in motions that we made to this Court, and this record
16 reveals previously.

17 Furthermore, it is our belief that it is a
18 fundamental denial of due process and equal protection for
19 the District Attorney to have the carte blanche power, in
20 effect, to dismiss cases and go to the Grand Jury and get
21 new indictments purportedly, and so forth, the matters that
22 are set forth -- the procedures that are set forth in this
23 record.

24 For instance, the District Attorney, if they
25 wish, can see to it that a case is heard in the Central
26 District by the mere expedient, by bringing a Grand Jury
27 indictment. It is a loophole in the law that allows them
28 an additional naked power which they shouldn't have.

7a-3

1 Because -- because of the peculiarity of our local rules,
2 if a Grand Jury indictment is brought, it is heard in the
3 Central District. If you file an information -- if you file
4 a Complaint in Municipal Court, and have a preliminary
5 hearing, then, it is held in the area supposedly where the --
6 where the preliminary hearing is held. That is in the
7 Superior Court that services that same area.

8 This type of machination is an illegal use of
9 power by the District Attorney. It is an illegal -- the
10 law allows them to do this, to do the kinds of things that
11 we're indicating here; that is, choosing the place of trial
12 by this device, which is not based upon any merit, not
13 based upon any kind of reason except the desire to get a
14 conviction at any price. There is no question but what,
15 in the denial of the jury challenge, that Mr. Manson has
16 been denied due process.

17 Mr. Manson clearly comes from a class of people
18 who do not vote.

19 The way that the jurors are selected, using only
20 the voter's registration, means that anyone, whatever his
21 reason may be for not voting, is left off the jury lists.
22 And that, as this record reveals, there is approximately,
23 at least, some 25 percent of those who are eligible by
24 virtue of the Code to be jurors who are left out completely
25 when you use the voter's registration list.

26 And that is an invidious and arbitrary discrimi-
27 nation, which is a violation of the 14th Amendment, using
28 the jury lists without making sure that people who don't

7a-4

1 register to vote get represented somehow or other in the
2 jury lists.

3 And we -- based upon all of these matters, your
4 Honor, and other matters which we have -- which we raised
5 during the trial, we do ask the Court to grant the motion
6 for new trial.

7b fls.

7-b1

1 THE COURT: The People.

2 MR. MANZELLA: Your Honor, I would like to be heard just
3 briefly on the one point Mr. Kanarek made in regard to Mary
4 Brunner's testimony and Mr. Kanarek's claim that he was denied
5 the opportunity to cross examine her.

6 The other points covered in his argument, I believe,
7 have already been ruled on by this Court during the course of
8 trial. And Mr. Kanarek has presented no reason for the Court
9 to change its ruling on those other points.

10 With regard to Mary Brunner's testimony.

11 In the first place, Mr. Kanarek was granted the
12 opportunity and did take the opportunity to cross examine
13 Mary Brunner on August 10th, of 1971, when she was called by
14 the People to testify in this case, and she was given the
15 opportunity both on direct and on cross examination to explain
16 her -- the difference between her testimony here, at this trial
17 and her testimony at the Beausoleil trial.

18 As the Court has pointed out, the defense achieved
19 the best that they could have achieved out of cross examination
20 out of Mary Brunner, and that is that they denied everything
21 she testified to at the Beausoleil trial.

22 The second point is that the defense motion for new
23 trial, based on lack of opportunity to cross examine Mary
24 Brunner, I believe, is made in bad faith because although
25 Mary Brunner failed to appear pursuant to court order on August
26 11th, a warrant was issued for her arrest. Her testimony was
27 read by me on August 17, of 1971, and Mary Brunner was again in
28 custody on August 22nd, of 1971, when she was apprehended,

7b-2

1 committing a robbery at a surplus store in Hawthorne.

2 MR. KANAREK: Well, your Honor --

3 MR. MANZELLA: On September 7th, 1971, I advised
4 Mr. Kanarek here in court that Brunner was in custody. And I
5 advised Mr. Kanarek of her booking number.

6 Mr. Kanarek had five court days, from September
7 7th until Brunner was indicted on September 15th, in which to
8 call Brunner as a witness, if he, in truth and in fact, wanted
9 her for further cross examination.

10 He had five court days to do it from the time I
11 notified him prior to her indictment, assuming that he could
12 not have gotten her prior to that time.

13 Now, even after September 15th, when she was
14 indicted, the bad faith on the part of the defense is shown
15 by the fact that Mr. Kanarek never attempted to call Mary
16 Brunner, never did call her as a witness in this case during
17 the guilt phase of the trial, but waited until the penalty
18 phase to call her.

19 So that Mr. Kanarek not only did have the
20 opportunity to cross examine Mary Brunner, and did take it,
21 prior to the time I read her testimony, he also had the
22 opportunity and did not take it after I read her testimony.

23 THE COURT: Do you wish to reply, Mr. Kanarek?

24 MR. KANAREK: Yes, your Honor.

25 The structuring of five days in the context
26 where the prosecution is putting on their case, and then we
27 are supposed to bring Mary Brunner back for purported cross
28 examination, I mean it -- it -- the argument falls of its own

7b-3

1 weight.

2 The fact is that Mary Brunner, stating from the
3 witness stand that certain things occurred or didn't occur is
4 judged in this trial and these proceedings because,
5 supposedly, of her relationship with Mr. Manson.

6 And the -- this -- the statement that she
7 verbalized a certain set of circumstances from the witness
8 stand, and that this, therefore, meant that we had some kind
9 of opportunity to cross examine her, I mean, it is ridiculous.

10 When she takes the witness stand, and when your
11 Honor has stated this, -- stated this, I think, on the record,
12 and I'm sure your Honor will agree that he stated this on the
13 record, I'm sure it is on the record, that any lawyer would do
14 exactly what we did in this case. If she gets on the witness
15 stand and says that she was not there in 1969, there's no
16 way -- there's no need to cross examine her on those points.

17 And then, the District Attorney, deliberately
18 laying back and not examining her on the Bobby Beausoleil
19 evidence, per se, not taking the transcript, and then asking
20 her, "Well, how about these questions and answers specifically,"
21 but laying back until she's no longer in the courtroom, and
22 then under the auspicious application of California versus
23 Greene, reading the bare transcript to the jury, if that, in
24 the context of the closeness of this case, if that doesn't
25 deny Mr. Manson due process, I don't know what does.

26 Because this is clearly a trick by the prosecu-
27 tion -- I mean, to use -- to use the vernacular, "Big deal."
28 He waited five days before he indicted her. And in this five-

7b-A

7c fol

1 day period I'm supposed to know exactly what they are doing
2 while they put their heads together up there on the 5th and
3 6th floor, Mr. Levy and Mr. Katz and Mr. Bugliosi.
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7c-1

1 THE COURT: Do you think, Mr. Kanarek, you would have
2 had any more success with Miss Brunner than the prosecution
3 had in examining her after she made a statement --

4 MR. KANAREK: That's not the point.

5 THE COURT: -- made a statement from the witness stand
6 on direct when she was not present at the time that this
7 killing occurred?

8 MR. KANAREK: That's not the point, if I may respect-
9 fully -- the point is, under Brady vs. Maryland, and People
10 vs. Kiihoa -- Brady vs. Maryland being a United States
11 Supreme Court case, and People vs. Kiihoa being a California
12 Supreme Court case discussing suppression of evidence --

13 THE COURT: We will never know the answer to that
14 because you didn't choose --

15 MR. KANAREK: Why --

16 THE COURT: You simply took advantage of what was
17 advantageous to you, eliciting from her testimony which
18 would exculpate your client.

19 MR. KANAREK: But, your Honor, the point is, Mr.
20 Manzella cannot have the use of these processes of the
21 court to wheel and deal the way they're doing with Mary
22 Brunner. It has to be wrong. If it isn't wrong, that they
23 can take a witness and, as we've said, use her like a yo-yo,
24 and bring words before the jury wherein she -- her credi-
25 bility is not tested, if that can be done, then, we might
26 just as well -- just read words into a computing machine
27 and add them up or something like that.

28 Because what he did in this case, she was on

7c-2

1 the witness stand. I don't know, he has millions of papers
2 in front of him. I don't know what papers or documents he's
3 going to use. And so then she says she wasn't there in
4 1969. He has her on the witness stand. That's state action.
5 He is a prosecutor, and the due process clause of the 14th
6 Amendment refers that no state shall deny a defendant life,
7 liberty or property without due process of law.

8 Now, the fact is that's state action. That's
9 suppression of evidence. That's clear. It is a trick.
10 Because he could have asked her how about what she said at
11 the Bobby Beausoleil trial. And then, she could have been
12 there before the jury and her credibility could have been
13 evaluated.

14 Now, the fact is that if, objectively imposed
15 on these proceedings, is some kind of a process that denies
16 Mr. Manson a fair trial, then the Court should grant a new
17 trial.

18 It is very interesting that the trial that's
19 coming up for Bruce Davis, her testimony won't be used at
20 all. She won't even be called by the prosecution in this
21 case. And under equal protection of the law, of the 14th
22 Amendment, that should be thought about by the Court.

23 Because I venture to say -- this is my prediction.
24 I don't know if it is true, if it will happen, but I bet
25 you -- might be willing to bet you all of the -- I won't
26 say tea in China, but -- it might be a double entendre of
27 that in some people's mind, but I would be willing to bet,
28 your Honor, if it would be legal, if I might, I would be

7c-3

1 willing to bet that Mary Brunner will not be called by the
2 prosecution.

3 THE COURT: How can you say that? She may change her
4 mind again.

5 MR. KANAREK: Well, no, she won't.

6 (Laughter.)

7 MR. KANAREK: The point is, your Honor, she won't,
8 because unless they dismiss the indictment -- if they
9 dismiss the September 15th indictment, then, she may testify,
10 if they grant her absolute immunity. But, you say, what they
11 are doing is, they use this immunity improperly. Because
12 they don't come to the court and get judicial immunity.
13 They have Mr. Whiteley and Mr. Guenther and Deputy District
14 Attorneys discuss immunity back and forth, so that they
15 just use it. They use it as a weapon, an illegal weapon.
16 It is clear.

17 What they should do, if they're going to grant
18 the person immunity, is they should bring them before the
19 court. If they exercise the privilege against self-incrimina-
20 tion, then the Court issues the order to show cause, and it is
21 waived, and the Court or whatever grants immunity, and that's
22 what the Code says on immunity. And they are clearly
23 violating due process when they use a witness the way they
24 did, just to get the words before the jury. That's exactly
25 what happened. Her demeanor at the Beausoleil wasn't
26 before this jury.

8 fls.

6-1

1 And I -- if I may --

2 THE COURT: Well, that's been -- it's been rather
3 thoroughly argued, before her testimony was put on, and after
4 her testimony was put on.

5 And you yourself pointed this out to the jury
6 during the penalty phase, in your argument. It's well
7 covered.

8 What else -- do you have anything further? I
9 don't mean to preclude you from --

10 MR. KANAREK: Well -- well, no, your Honor. I would
11 like to -- here, I would refer your Honor, if I may, to --
12 for instance, I am referring now from Mr. Witkin at page 571.
13 He quotes from the People vs. Hudson case, 137 Cal. App. 729
14 at 730 -- or 31 Pacific 423.

15 He states, in connection with prosecution
16 witnesses, "And where the prosecution's case was not strong,
17 evidence completely discrediting its principal witness
18 practically compels the granting of a new trial."

19 Now, at that point, they're discussing impeach-
20 ing evidence. They're discussing the effect of matters that
21 are brought up on the motion for new trial, and the --
22 it's just crystal clear, it's just crystal clear that Mary
23 Brunner, every time that we bring her to the witness stand,
24 they will bring in matters like -- after Judge Keene talks
25 to her in the Bobby Beausoleil motion for new trial.
26 We put her on the witness stand, and even assuming she --

27 THE COURT: Well, Mr. Kanarek, I think that point is
28 well covered.

6-2

Anything further?

MR. KANAREK: No, your Honor.

THE COURT: Does the defendant waive formal arraignment for judgment?

MR. KANAREK: No, your Honor. I make a motion in arrest of judgment.

THE COURT: All right. The motion in arrest of judgment is denied.

Now, are there any other motions -- is there any other legal cause why sentence should not now be pronounced at this time?

MR. KANAREK: Well -- no, no legal cause, your Honor.

THE COURT: Does he waive formal arraignment for judgment?

MR. KANAREK: Uh -- yes, your Honor.

THE COURT: The Court has read the Probation Officer's pre-sentence report in this matter.

Do you wish to be heard?

MR. KANAREK: Well, yes, your Honor.

THE COURT: Go ahead.

MR. KANAREK: I -- I -- I can't -- I think that it would be wonderful for -- for this community and this State and this nation, your Honor, at this point in history, for the Court to do what I think this record cries out for us to do; and that is -- that is, stay these proceedings concerning Mr. Manson.

This -- this trial, with Mary Brunner and what's happened with Mr. Rico -- and we've heard from Mr. Garcia

6-3

1 also -- it is clear, your Honor, that -- that no one should
2 be put in custody on this kind of a record, what's happened
3 to Mr. Manson.

4 I -- I don't know how else to -- how else to
5 put it before the Court. Your Honor re -- denied my motion
6 to arrest judgment out of hand, without even hearing it. But
7 I believe that --

8 THE COURT: I assumed it was based on the same grounds.

9 MR. KANAREK: Well, based upon the fundamental denial
10 of constitutional rights to this man. The most -- a denial
11 of the most fundamental rights, in connection with what has
12 happened here. A jury -- where else in history do you have
13 a jury where -- where -- where the -- the jurors know that
14 the man is -- has got seven death sentences -- or, as they
15 put it -- eight death counts against him?

16 And the motion in arrest of judgment lies not
17 only in the case of where a demurrer has been overruled,
18 but it also lies where there is a denial of fundamental
19 rights, in connection with the proceedings; and it's -- we
20 just ask your Honor -- we ask your Honor to arrest judgment
21 in this case.

22 THE COURT: The motion for a new trial is denied, and
23 the motion to arrest judgment is denied.

24 MR. MANZELLA: Your Honor, before the Court continues,
25 I don't know if the Court ruled on the question of -- I
26 think it was a -- the question raised by Mr. Kanarek with
27 regard to juror misconduct.

28 I suppose that's what the evidence submitted

6-4

1 through the affidavits and testimony of the two jurors went
2 to.

3 So I would ask the Court to rule on that,
4 either that the People -- the People would submit that
5 there was no juror misconduct; or that, in the alternative,
6 that if there was any shown by the testimony, that if there
7 was, that it was not such as to render a different verdict
8 reasonably probable upon a retrial.

6a fls.

6a-1

1 THE COURT: Well, it should be stated that the Court
2 has read the declarations which have been submitted by the
3 defendant. The Court finds that there was no misconduct which
4 affected the verdict.

5 The Court believes that the -- the defendant's
6 position is not well taken, legally or otherwise.

7 The Court finds that the fist fight that occurred
8 -- the physical encounter between Mr. Rico and Mr. Hunt --
9 took place after the return of the verdict and the recording
10 of the verdict, in each Count.

11 The Court believes that Mr. -- Mr. Rico was correct;
12 that it did occur -- the fist fight did occur after the jury
13 had returned with the verdicts of guilty of murder of the first
14 degree and guilty of conspiracy to commit murder.

15 MR. KANAREK: Well, your Honor, I must take -- I just
16 want the record to reflect, there's no basis for the Court
17 making that finding. Mr. Garcia was very, very emphatic that
18 it occurred prior to the guilt phase being decided.

19 THE COURT: The Court knows what the testimony was,
20 and the Court believes that Mr. Rico is correct. He was a
21 participant. And the Court observed both Mr. Rico and
22 Mr. Garcia testify.

23 Of the two, I am inclined to and do believe
24 Mr. Rico. The Court does not believe that that physical
25 encounter, in any event, affected the verdict.

26 MR. KANAREK: Well, it's our belief, your Honor, that this
27 was clearly a compromise verdict, wherein people compromise
28 their positions, clearly, with -- that some people on that

6a-2

1 undoubtedly on that jury gave up their position as far as not
2 guilty goes, in trade for a understanding of life.

3 I mean, it's clear -- I mean, it speaks it so
4 eloquently, as if they were right here, each one saying it,
5 that --

6 THE COURT: The Court finds no legal grounds for your
7 motion -- or for your contention. And therefore, the motion is
8 denied.

9 And the Court, having denied this motion for new
10 trial, your motion for arrest of judgment -- and I'll ask you
11 again, is there any legal cause now why sentence should not now
12 be pronounced?

13 MR. KANAREK: No, your Honor. Not --

14 THE COURT: As to Count I, the defendant is sentenced
15 to the state prison for the term of his life, as prescribed by
16 law;

17 As to Count II, he is sentenced to life imprison-
18 ment, as prescribed by law, life imprisonment in a state
19 prison.

20 The execution of that sentence is stayed until
21 the appeal is finally -- or, until the term is served, in the
22 first Count, at which time the execution shall become
23 permanent.

24 MR. KANAREK: Do you mean the stay?

25 THE COURT: The stay -- that's right. At which time, the
26 stay of execution will become permanent.

27 MR. KANAREK: Your Honor said "execution."

28 THE COURT: Thank you.

1 As to Count III, he is sentenced to life imprison-
2 ment, and the execution of that sentence is stayed until the
3 appeal is final or until the term in the first Count is served,
4 at which time the stay of execution shall become permanent.

5 MR. KANAREK: Well, your Honor, we are asking for the
6 sentences to run concurrently.

7 THE COURT: No. The Court --

8 MR. KANAREK: It's our motion that they run concurrently,
9 your Honor.

10 THE COURT: The Court is simply staying execution as to
11 Counts II and III; and at such time that, as the Court has
12 stated, that the appeal has become final, or the time of the
13 first term is served, at that time, the stay of execution shall
14 become permanent.

15 The defendant is committed to the Department of
16 Corrections, and the Sheriff is ordered to transport him to the
17 warden of the state prison at San Quentin.

18 Now, as to the Court's comments concerning
19 Mr. Manson to the Adult Authority, it would be the Court's
20 observations, from what it has read in the probation officer's
21 report, that there is nothing mystical or nothing hypnotic or
22 unusual about Mr. Manson. He's just a -- in the Court's opinion,
23 another whining, complaining delinquent, similar to the type
24 that comes through this court every week.

25 Looking at this record, I think your sympathy,
26 Mr. Kanarek, has been misplaced. You are a sympathetic man,
27 and you have argued strongly for him from time to time.

28 But he's -- from what I see, he's a small-time car

6a-4

6b fol

1 thief, a petty theft, a forgerer, with an aversion to work and
2 honest physical labor.

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1 He attracted, because he was older -- he was
2 con-wise -- some half-witted, emotionally sick misfits
3 and drifters. And we've seen them in this trial. And we've
4 seen them in the pretrial proceedings.

5 And because he was older and wiser, he knew that
6 he had to maintain something to attract them. He gave them
7 drugs -- or they found drugs, and he encouraged it. He
8 encouraged the use of drugs.

9 He gave them a sense of belonging, which perhaps
10 they didn't have before, of belonging to a group. And in
11 this communal living, he gave them something that they could
12 cling to.

13 And he might have been an influence for good,
14 because he was older than most of them, and more experienced
15 than most of them. Some of them were in their teens; some
16 of them were barely out of their teens.

17 But he wasn't. They picked the wrong man.
18 They picked a man who, in the Court's opinion, was
19 criminally oriented to start.

20 I would say, for the guidance of the Adult
21 Authority, that this man would be dangerous to any community
22 to which he would be released, and he should not, in the
23 course of his lifetime, be released from the State Prison.

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

25 THE COURT: You needn't.

26 MR. KANAREK: Well, I would like to -- if I may, your
27 Honor made certain comments, and I think -- I would like to
28 make this point.

6b-2

1 THE COURT: The court's in recess.

2 MR. KANAREK: I -- this -- this so-called Probation
3 Report -- may I make the point, your Honor?

4 THE COURT: No, you may not.

5 The court's in recess.

6 THE DEFENDANT: (While being led to the detention
7 room:) It was cut and dried, the day I was arrested.

8 (Whereupon, at 2:50 o'clock p.m. proceedings
9 in this matter were concluded.)
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