

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 104

HON. CHARLES H. OLDER, JUDGE

COPY

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

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

Defendants.

159

No. A253156

REPORTERS' DAILY TRANSCRIPT
Thursday, December 31, 1970

APPEARANCES:

For the People:

VINCENT T. BUGLIOSI,
DONALD A. MUSICH,
STEPHEN RUSSELL KAY,
DEPUTY DISTRICT ATTORNEYS

For Deft. Manson:

I. A. KANAREK, Esq.

For Deft. Atkins:

DAYE SHINN, Esq.

For Deft. Van Houten:

~~RONALD HUGHES, Esq.~~

For Deft. Krenwinkel:

MAXWELL KEITH, Esq.
PAUL FITZGERALD, Esq.

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

1 LOS ANGELES, CALIFORNIA, THURSDAY, DECEMBER 31, 1970

2 9:02 A.M.

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4 (The following proceedings were had in the
5 chambers of the court, out of the presence and hearing of
6 the jury and the defendants, all counsel with the exception
7 of Mr. Hughes being present:)

8 THE COURT: All counsel are present. I understand
9 from the clerk that, Mr. Kanarek, you have a motion to
10 make.

11 MR. KANAREK: Yes, your Honor, I have a motion to
12 make.

13 I move, your Honor, in view of your Honor's
14 comments of yesterday that we have an evidentiary hearing
15 under the --

16 We are entitled to an evidentiary hearing under
17 the equal protection clause of the Fourteenth Amendment
18 and the due process clause under the Fourteenth Amendment,
19 and under the Civil Rights statutes.

20 THE COURT: State what your motion is first.

21 MR. KANAREK: That is my motion. I can only say
22 one word at a time, your Honor.

23 THE COURT: That's right, and the words that you can
24 state, Mr. Kanarek, are the words of your motion so I can
25 tell what you are talking about.

26 MR. KANAREK: I am moving for a motion under those

1 provisions of law, your Honor.

2 THE COURT: I still don't know what you are talking
3 about.

4 MR. KANAREK: I cannot utter it until I utter it.

5 THE COURT: Go ahead.

6 MR. KANAREK: The point is that your Honor has
7 yesterday made some statement to me concerning the time
8 involved in this final argument.

9 I would like to point out to the Court that
10 Mr. Manson is entitled to the right of effective counsel.

11 The District Attorney has made -- what they
12 have done in connection with the Grand Jury -- so that
13 my work ... could not be devoted completely to this case.

14 I had every reason to believe that there was
15 going to be a motion to consolidate the so-called Shea
16 case, which was separate, and the Hinman case, which was
17 separate. There was a motion to consolidate made by the
18 District Attorney's Office in connection with that.

19 We allege that this is done with malice,
20 with deliberate intent to sabotage this trial that is
21 before your Honor for a couple of reasons.

22 One, to impose deliberately an added burden
23 upon me in connection with my representation of Mr.
24 Manson in the Hinman case.

25 The other is to let loose into this
26 community prejudicial publicity so that that jury will

1 somehow or other get that information.

2 And I ask for an evidentiary hearing in
3 connection with these matters.

4 I ask that your Honor voir dire the jury.
5 This is another motion, that your Honor voir dire the jury
6 in connection with matters that occurred yesterday in
7 Department 100.

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1 If your Honor will not voir dire the jury in
2 connection with the matters that occurred in Department 100
3 and other matters pertaining to publicity releases by the
4 District Attorney's Office pertaining to this case, and
5 the release of publicity in various and sundry ways, then
6 I must and do move for a mistrial, your Honor.

7 MR. SHINN: Join in the motion, your Honor.

8 THE COURT: The motions will be denied.

9 As I have stated on countless other occasions,
10 Mr. Kanarek, when you have made similar motions to voir
11 dire the jury, the reason that the jury is sequestered, the
12 principal reason, is to insulate them from the possibility
13 of being exposed to any prejudicial matter.

14 So, there is no need to voir dire them.

15 Anything else, gentlemen, before we proceed?

16 MR. BUGLIOSI: Just one brief point, your Honor,
17 concerning Mr. Keith's argument.

18 I think Mr. Kay has something to say about
19 diminished capacity.

20 MR. KAY: Yes.

21 Before he argues, your Honor, I think we should
22 resolve that instruction.

23 I don't think he should get up and argue
24 diminished capacity when your Honor isn't going to instruct
25 on it.

26 MR. KEITH: I didn't plan to incorporate those

1 proposed instructions in my argument because there has been
2 no --

3 MR. KAY: Evidence?

4 MR. KEITH: No, I am not saying that.

5 There has been no decision made on whether
6 those instructions will be given.

7 MR. KAY: Okay.

8 MR. KEITH: I will certainly argue the effect of the
9 mindless robot on the nature of the crime.

10 MR. KAY: I don't care about that.

11 MR. KEITH: I fully intend to do that.

12 THE COURT: I think the instruction should be
13 settled before any attorney is required to argue.

14 MR. FITZGERALD: We would like the record to reflect
15 that it is offered on behalf of all the defendants as well
16 as Mr. Keith's client, Leslie Van Houten.

17 MR. KEITH: I offered diminished capacity,
18 voluntary and involuntary manslaughter.

19 The manslaughter instructions are slightly
20 modified. I took out the words "or intoxication" and
21 substituted "or any other cause," because, concededly,
22 there is no evidence of intoxication in this case.

23 I certainly feel there is evidence of
24 diminished capacity or Mr. Bugliosi wouldn't have argued
25 as vociferously as he did and the manner in which he
26 did that these people were robots and zombies, and I think

1 it is more than just a figure of speech or a clever phrase.

2 I think the evidence shows --

3 MR. BUGLIOSI: Let me say this, Max.

4 Of course, my argument is not evidence. You
5 can't use my argument as evidence.

6 MR. KEITH: No, but you argue from the evidence.

7 MR. BUGLIOSI: My argument about their being robots
8 and zombies is not evidence.

9 Obviously, I will tell the jury what I meant
10 by that. But, in any event, I think the instruction has
11 to be predicated on evidence, and I don't think there has
12 been any evidence of diminished capacity.
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2a 1 MR. KANAREK: May I inquire through the Court what
2 he did mean by that, your Honor?

3 MR. KAY: You will find out.

4 MR. BUGLIOSI: You will find out when I give my
5 closing argument.

6 THE COURT: What he meant by what?

7 MR. KANAREK: Your Honor, he has said "zombies and
8 automotons." We have no opportunity to come back after
9 Mr. Bugliosi supposedly explains.

10 Now, supposedly argument is made based upon
11 inferences that can be made based upon things that
12 happened in the courtroom and based upon matters that are
13 pertinent to the case, and he must be arguing some kind of
14 inference, otherwise your Honor should strike all that.

15 MR. KEITH: We didn't object to it, you see.
16 We didn't object to his arguing that way for a darned good
17 reason, which your Honor undoubtedly now perceives.

18 MR. BUGLIOSI: What reason would there be to object
19 to it? What legal ground would you have to object to my
20 calling them robots and zombies?

21 MR. KEITH: I could have objected to it.

22 MR. BUGLIOSI: Just to make a verbal sound in court?

23 MR. KEITH: I could have objected that it was mis-
24 conduct because it was derogatory, and I didn't. I
25 accepted the argument.

26 You used the term presumably because there was

1 evidence from which the jury could infer that they were
2 mindless robots.

3 If there is evidence from which the jury can
4 so infer, and bearing in mind that a mindless robot can't
5 make a decision, can't form an intent, you push a button and
6 the robot walks off, that indicates diminished capacity.
7 Sure. It indicates they weren't acting under their own
8 free will but under the influence of somebody else.

9 Don't laugh, Vince. You made the argument, I
10 didn't. I am serious about it.

11 MR. BUGLIOSI: I know you are.

12 MR. KEITH: We might as well settle the instruction
13 because I may well want to argue that in order to have
14 malice aforethought you have to have an intent, or at
15 least an intent to kill. An intent is a decision-making
16 process, and if you are a robot, you can't make a decision;
17 therefore, you can't form an intent.

18 So, I might well argue that.

19 MR. BUGLIOSI: I think it would be a good argument
20 on your part that Leslie did stab people but she didn't
21 intend to kill them. I don't quarrel with that argument.

22 MR. KEITH: I am dumb but I am not that dumb.

23 THE COURT: Argument is one thing, instruction is
24 something else.

25 I don't know what Mr. Bugliosi meant. To me,
26 it appeared to be typical of many things that lawyers say

1 in argument; a figure of speech.

2 MR. KEITH: I don't choose to regard it that way,
3 your Honor.

4 THE COURT: That is your privilege, but in viewing
5 whether or not an instruction should be given, I have to
6 be guided by the evidence, not by what the attorney says
7 during the course of the argument.
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1 MR. FITZGERALD: Is your Honor ruling there is no
2 evidence in this record of diminished capacity?

3 THE COURT: Well, I haven't made such a ruling
4 specifically, but if you contend otherwise I would
5 certainly like to hear your contentions.

6 MR. FITZGERALD: You are refusing the instruction on
7 diminished capacity?

8 THE COURT: Well, my present thinking is there is no
9 evidence to support any instruction like that.

10 MR. KEITH: That instruction says "mental illness,
11 mental defect, or any other cause."

12 Concededly, no psychiatrist has gotten up on
13 a stand and said that the defendant had diminished capacity
14 and was incompetent to form the intent for malice afore-
15 thought, whatever that may be.

16 But I don't have to have a psychiatrist --

17 THE COURT: No, but you have to have some evidence.
18 You have to have something more than mere speculation,
19 otherwise under your theory a diminished capacity instruc-
20 tion would be mandatory in every case regardless of the
21 evidence.

22 MR. KAY: You are pointing out what Mr. Bugliosi
23 says, but you forget that Mr. Fitzgerald told the jury how
24 intelligent all these girls were.

25 MR. FITZGERALD: Your Honor is giving felony murder
26 instructions. That is a matter which is simply gross

1 speculation. I consider it to be reversible error.

2 You are giving it on the basis the prosecution
3 made an argument where he said there was no felony murder
4 and the evidence indicated there was no felony murder
5 because there was no burglary or robbery.

6 If you are going to give those instructions, it
7 seems to me that rationale implies obviously we ought to
8 have diminished capacity.

9 THE COURT: Certainly there is evidence of a felony.

10 MR. BUGLIOSI: The \$70.

11 THE COURT: Linda Kasabian testified she was going
12 out on a burglary.

13 MR. BUGLIOSI: Right, and the \$70 that was taken
14 by Tex Watson.

15 THE COURT: Now, whether or not the other defendants
16 had that specific intent, of course, is another matter, but
17 one of the principals in the offense, and the one that
18 testified, said that she had it.

19 She is an accomplice as a matter of law. There
20 is evidence to support a felony murder instruction, no
21 question about that in my mind.

22 But diminished capacity is something else.

23 MR. KEITH: It seems to me, your Honor, it cuts
24 both ways. Mr. Bugliosi argues in effect, at least the
25 way I understood the argument, that there was no felony
26 murder.

1 MR. KAY: That's argument.

2 THE COURT: He can concentrate on a premeditated
3 and deliberate first-degree murder if he wants to.
4 He is not required to argue felony murder if he does not
5 want to.

6 MR. KEITH: Well, I would be hard put to argue that
7 the jury consider that there was no malice aforethought
8 here unless your Honor gave a manslaughter instruction
9 based on diminished capacity, although it seems to me I
10 would be entitled to do so if Mr. Bugliosi is entitled to
11 argue mindless robots, because of the intent element
12 required.

13 THE COURT: In order to give a diminished capacity
14 instruction, I would have to see some substantial evidence
15 of diminished capacity. I have seen no evidence of that
16 whatever.

17 The fact that one person may dominate another,
18 as the People have argued and as the testimony seems to
19 indicate --

20 MR. KEITH: Domination to the point of substituting
21 his mind for theirs, which it seems to ^{me to} be evidence of
22 diminished capacity.

23 THE COURT: I see no evidence of that.

24 MR. KEITH: That is exactly the way it was argued,
25 they are zombies because they no longer have any free will,
26 any free choice.

1 THE COURT: The evidence does not support that,
2 regardless of what Mr. Bugliosi's argument said.

3 I am not swayed any more by Mr. Bugliosi's
4 argument than I am by the exaggerations by counsel in any
5 case.

6 You can argue whatever you like within reason
7 and within the limitations of the rules of argument, but
8 that does not change the evidence.

9 MR. FITZGERALD: Well, the appellate forum might
10 be a more appropriate forum, but obviously the law is
11 not that you need substantial evidence for diminished
12 capacity instruction.

13 I mean, I think I have a duty to inform you of
14 that as an officer of the court.

15 THE COURT: I have to see some evidence of it,
16 Mr. Fitzgerald.

17 MR. FITZGERALD: You made the statement there has
18 to be substantial evidence.

19 THE COURT: I don't mean it in the sense that it has
20 to be substantial to the degree that it would support a
21 finding beyond a reasonable doubt. That is not what I was
22 referring to at all. I don't want you to take it as
23 meaning that.

24 But I have to see some evidence of it. There
25 is none.

26 If you disagree with that statement, point out

1 to me right now what you think is evidence of diminished
2 capacity.

3 MR. FITZGERALD: The entire tenor of the prosecution's
4 case.

5 THE COURT: Are you talking now about argument?

6 MR. FITZGERALD: No, no, no, no, no, no.

7 THE COURT: I am not asking what they contend. I
8 want to know what the evidence says that you contend shows
9 diminished capacity.

10 MR. FITZGERALD: I take it the prosecution's
11 argument is based on reasonable inferences from the
12 evidence. If it is not based on reasonable inferences from
13 the evidence, it is a useless exercise in oratory.

14 MR. MUSICH: You should argue or rebut it, but you
15 don't ask a Court's instruction based on something the
16 prosecution argued; therefore there must be evidence of it
17 and therefore you want your instruction. That is unbeliev-
18 able.

19 MR. KEITH: It is not unbelievable, Mr. Musich, I
20 cannot argue manslaughter unless he gives the instruction.

21 MR. MUSICH: That has nothing to do with whether an
22 instruction should be given or not.

23 MR. KEITH: And I feel I should be able to argue it
24 because it is important in this case.
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1 MR. FITZGERALD: The prosecution's argument in their
2 entire case is that Charles Manson was not present at the
3 scene of these crimes nor did he actually physically
4 participate in Counts I through V in the indictment.

5 He actually ordered other people to commit the
6 offenses. Not only that -- he conspired, combined and
7 confederated with the other defendants in order to perpetrate
8 the offenses.

9 Your Honor allowed in evidence to show Manson's
10 relationship to the other defendants, and Manson's control,
11 and Manson's power over the other defendants, and that
12 obviously indicates some sort of reduced capacity on the
13 part of the persons who are ordered to commit the offenses.

14 If such is not the case, perhaps in order to
15 protect our record adequately, we should go back to the
16 transcripts and make motions to strike the testimony that
17 was admitted to show the relationship between the parties,
18 and to show power, if any, that Manson had over his girls.

19 For example, your Honor allowed into evidence
20 testimony of Terry Melcher that the defendants in processional
21 fashion followed Manson; that they at the appropriate time
22 followed his suggestions by accompanying him in his music--
23 as just an example.

24 There were several witnesses who testified as
25 to the orders Manson gave people; how Manson got people
26 together in the morning and gave them instructions; that

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1 no one disobeyed Mr. Manson's orders.

2 Your Honor allowed into evidence several
3 instances of questions by Mr. Bugliosi where he asked
4 people if they in fact ever heard anybody, or ever saw
5 anybody disobey Mr. Manson, et cetera, et cetera, et
6 cetera, which clearly indicates, and I think the whole
7 tenor of the prosecution's case is that Manson had some
8 power over these people; that he actually exercised their
9 intellectual functions, and that they in fact were
10 mechanical extensions of himself.

11 THE COURT: Well, you can argue it any way you like.
12 I see no evidence whatever of diminished capacity in the
13 legal sense in this case.

14 MR. FITZGERALD: Unless it hurts, why not give it?
15 These defendants are on trial for their lives. Could it
16 possibly hurt anything to give the instructions?

17 MR. BUGLIOSI: It could confuse the jury. It is a
18 very complex area.

19 I don't know who understands diminished
20 capacity. I certainly don't and I read all the cases
21 that --

22 MR. KEITH: There are adequate instructions on the
23 subject.

24 MR. BUGLIOSI: There are?

25 MR. KEITH: One CALJIC instruction, 8.77 sets it
26 out.

3a-3

1 MR. BUGLIOSI: I don't think the Supreme Court has
2 the vaguest notion themselves what is diminished capacity.

3 MR. FITZGERALD: If there is no evidence, obviously
4 the jury is not going to find second degree murder.

5 THE COURT: You are getting a second degree murder
6 instruction.

7 MR. FITZGERALD: Not based on diminished capacity,
8 nor are we getting a manslaughter instruction based on
9 diminished capacity.

10 If there is no evidence, why does anyone need
11 to worry.

12 THE COURT: You can use that argument to its illogical
13 extreme, you can start at the beginning of CALJIC and go
14 to the end, there is no harm.

15 MR. KEITH: If your Honor is going to permit me to
16 argue that these girls or anyone of them were under such
17 domination by Manson that they did not have the capacity
18 to form an intent, based on their own free will or free
19 choice or decision, that effectively their decision-making
20 powers have been destroyed by Manson -- if I could argue
21 that, sort of an extension of Mr. Bugliosi's argument --

22 THE COURT: I don't see why you cannot argue that.
23 You can argue they did not have specific intent; I think
24 you are entitled to argue why they did not have it.

3b fls.

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1 MR. KEITH: I think I am, too, and I intend to.
2 But then I ought to be backed up by a little law. Where
3 does that leave the jury? Suppose the jury believes me.

4 THE COURT: There are a number of different instruc-
5 tions in here telling the jury what kind of specific intent
6 is required.

7 There is no problem there; you've got plenty
8 of law.

9 For that reason, or for the reasons I have
10 enunciated, there simply is no evidence of diminished
11 capacity in the legal sense. I am not going to give the
12 instruction.

13 I want to give these requested instructions
14 some numbers, to follow the numbers of the other requested
15 instructions so the record will be perfectly clear.

16 Would you get the file, Mr. Darrow?

17 (The Clerk leaves the chambers of the court.)

18 Now, while we are waiting for the Clerk to
19 return, I have changed two instructions. Do you have your
20 instructions here?

21 MR. KANAREK: May I get it?

22 MR. KEITH: Mine are out in the courtroom.

23 THE COURT: Well, we might as well discuss it right
24 now.

25 (Whereupon the attorneys leave the chambers
26 of the court and return.)

3b-2

1 THE COURT: I am numbering your requests for additional
2 instructions starting with No. CALJIC 8.7, as Defendants'
3 requested instruction 120, just so we maintain a sequence,
4 Mr. Keith.

5 MR. KEITH: Yes, your Honor.

6 THE COURT: For the record, so that when I make a
7 ruling on it it will be designated --

8 MR. KEITH: I understand.

9 THE COURT: -- that request contains a request for
10 three different instructions, CALJIC 8.77, CALJIC 8.41 as
11 modified, and CALJIC 8.48 as modified.

12 And I am going to refuse each of those instruc-
13 tions. They will be designated respectively Defendants'
14 requested instructions 120, 121 and 122, and I have marked
15 those on the face of the request.

16 MR. FITZGERALD: May the record again reflect --

17 THE COURT: Just a moment. I'm sorry, I misstated
18 myself.

19 These should be requested instructions 121, 122 and
20 123. Strike the 120 I mentioned before. There already is
21 a requested 120.

22 Then Mr. Keith also made a request for a
23 special instruction which will be numbered 124, and that
24 is the request that relates to --

25 MR. KEITH: That relates to the prosecution being
26 bound by exculpatory statements of one of the defendants.

1 May the Court please, I also requested 6.22;
2 it is already in the instructions. I apologize; it was
3 tucked away behind the conspiracy instructions so I did
4 not notice it.

5 THE COURT: All right.

6 MR. KEITH: You can cross that out.

7 THE COURT: I won't cross it out but 6.22 is being
8 given.

9 MR. KEITH: And the citations to the special instruc-
10 tion, I apologize, are after the request for 6.22. Those
11 citations were part of special instruction request.

12 THE COURT: I don't quite understand this one about
13 Miss Van Houten.

14 Why should the Court instruct that the jury has
15 to believe anything?

16 The fact that she told a witness that she,
17 Van Houten, stabbed someone who was dead, why is the jury
18 required to believe that?

19 MR. KEITH: The point is that they should be --

20 THE COURT: Why should you want the jury to believe
21 that she said it?

22 MR. KEITH: That is not the point. The point is not
23 whether or not she said it, but if they believed she said
24 it, then they cannot also believe that she stabbed somebody
25 while they were still alive, a living human being.

26 THE COURT: Why did you single out that particular

1 piece of testimony from all the other testimony in the
2 case? Why should the jury be instructed that they must
3 believe?

4 MR. FITZGERALD: Why did the Supreme Court decide
5 the Estrada case the way they decided it? That is the
6 law. Estrada is the law.

7 MR. BUGLIOSI: Estrada is a District Court of
8 Appeal case and Estrada is not a conspiracy case, so it
9 makes a big difference.

4 fls.

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1 MR. FITZGERALD: Limited to the murder counts.

2 MR. BUGLIOSI: Okay. But the point is --

3 THE COURT: In the first place, how does Defendant
4 Van Houten know whether the body was dead or alive?

5 MR. KAY: That's right.

6 MR. KEITH: That is the point.

7 The prosecution introduced that statement.
8 Now, if they believe Dianne Lake, then I feel, under the
9 state of the evidence, in other words, if they believe
10 that Leslie Van Houten made that statement, then they
11 should not be in a position to say that Miss Van Houten
12 stabbed anybody while they were still alive, because this
13 was a statement introduced by the prosecution, and to me,
14 it is a built-in defense.

15 That is no crime. It may be a crime, but it
16 certainly is not murder.

17 MR. BUGLIOSI: There is still aiding and abetting
18 and conspiracy.

19 MR. KEITH: I understand that.

20 MR. BUGLIOSI: So, even if Rosemary was already dead,
21 if your client is an aider and abettor and co-conspirator,
22 she would still be guilty of first-degree murder, wouldn't
23 she?

24 MR. KEITH: That is true.

25 I have some things to say about that, too.

26 MR. BUGLIOSI: The "closet" argument?

1 MR. KEITH: I have a lot of arguments.

2 MR. KAY: We don't even know for sure that she
3 stabbed Rosemary. Maybe it was Leno.

4 MR. SHINN: Is the prosecution saying that on the
5 record?

6 MR. KEITH: The only thing you know that you have
7 evidence about what Miss Van Houten did inside the house --
8 evidence; I don't say it is necessarily credible evidence --
9 is that she stabbed somebody after they were dead.

10 I don't want the jury, if they believe that
11 Leslie Van Houten made that statement, I don't want the jury
12 to be able to say: Well, how does she know whether the lady
13 was dead or not, or whether one of the people was dead?

14 The prosecution is bound. They should be stuck
15 with that.

16 The jury shouldn't be able to find, if they
17 believe Dianne Lake's statement -- or testimony, I should
18 say -- the jury should not be in a position to find that
19 she stabbed anybody that was alive.

20 MR. BUGLIOSI: I query Estrada. Estrada is an old
21 case, I think 1926.

22 MR. KEITH: It has been followed.

23 MR. BUGLIOSI: It is a DCA case.

24 MR. KEITH: It has been followed.

25 It is usually followed in self-defense cases.
26 This would be a little unique, I must concede, but neverthe-
less, there is a line of cases that holds when you

1 introduce an exculpatory statement that, in effect,
2 establishes a defense, without any other evidence, that is
3 it.

4 MR. BUGLIOSI: That statement is not exculpatory, it
5 is inculpatory.

6 She is saying she is an aider and abettor.
7 She is saying she is at the scene.
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1 MR. KEITH: I take issue with whether killing some-
2 body after they are dead is aiding and abetting in the
3 committing of a murder.

4 MR. BUGLIOSI: She was there in the middle of the
5 night. Whether she is murdering or not --

6 THE COURT: It could hardly be more inculpatory, in
7 my opinion.

8 The fact that she says the body was dead
9 couldn't possibly help her at all.

10 How could it help her? Let's assume the body
11 was dead. How could that help her?

12 She is admitting being present, using a weapon
13 in conjunction with whoever else was there at the time and
14 place that the murders were committed.

15 MR. KEITH: There isn't any evidence that she was
16 there wielding a weapon until after somebody is already
17 dead.

18 THE COURT: Of course there is evidence. That is
19 precisely the point. There is a great deal of evidence.

20 There is the evidence of Linda Kasabian that
21 she was there.

22 MR. KEITH: I am going to offer another instruction
23 too -- I haven't had it typed yet -- about the mere
24 presence at the scene of a crime.

25 MR. BUGLIOSI: Yes. A lot of people think the mere
26 presence at the scene -- that is the rule of aiding and

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1 abetting.

2 MR. KANAREK: May I see those, your Honor?

3 THE COURT: See what?

4 MR. KANAREK: The two instructions?

5 THE COURT: You say you have some additional instruc-
6 tions?

7 MR. KEITH: Yes.

8 I have got them written up on a piece of paper
9 here in longhand.

10 THE COURT: How soon will you be able to submit those?

11 I think we should have all the instructions
12 as soon as possible.

13 MR. KEITH: My secretary is not here today, so I
14 won't be able to get it to you until Monday.

15 THE COURT: Fine.

16 As I say, I think we should settle the instruc-
17 tions as soon as possible for the benefit of all counsel
18 who are arguing or who have not yet argued.

19 There is you, and of course Mr. Kanarek is
20 still arguing, and the people may have rebuttal.

21 I just can't see any theory under which this
22 requested instruction 124 could or should be given,
23 Mr. Keith, and I am going to refuse that.

24 MR. KEITH: Very well.

25 MR. KANAREK: Your Honor, I would like to join in
26 that instruction of Mr. Keith and I would like to make

1 argument to the Court also in connection with the
2 manslaughter instructions, which I join in on.

3 In connection with that, I invite your Honor's
4 attention to the bizarre nature of the killings.

5 Now, if you take the prosecution's theory at
6 its face value, it would appear that Mr. Manson -- Mr.
7 Manson -- has ordered people mutilated. That is, he
8 ordered not just the killing, but he has ordered the
9 horrendous results that Dr. Noguchi has presented to us
10 and that the pictures purportedly present to us.

11 Now, a specific intent, if these people went
12 out there not just to kill but to do what Mr. Bugliosi
13 said, that is, to chop people up that way, that is equivalent
14 to dismemberment. That is equivalent to Mr. Manson himself --

15 THE COURT: That would be a felony murder too,
16 wouldn't it?

17 MR. KANAREK: Pardon?

18 THE COURT: That would be a felony murder too,
19 wouldn't it?

20 MR. KANAREK: No. It could be a manslaughter, your
21 Honor. Yes.

22 THE COURT: Felony murder mayhem?

23 MR. KANAREK: No mayhem intended. Killing is
24 intended, your Honor. There is no intent just to --
25 mayhem involves just -- it is a situation wherein someone
26 is allowed to live but their nose or ear or something or

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1 other is cut off.

2 MR. BUGLIOSI: You mean, the defendant gets credit
3 if the victim dies, then it goes from first to manslaughter?

4 MR. KANAREK: I think we are all in agreement that
5 the California cases certainly hold that if there is even
6 the slightest bit of evidence, the slightest bit of
7 evidence upon which an instruction can be based, that that
8 instruction must be given. And Mr. Bugliosi, I think this
9 record reveals, -- I think we were on the record when he
10 talked about all he needs is a speck of circumstantial
11 evidence; just give him a few specks and he can expand it
12 into a conviction.

13 THE COURT: We are getting off the point, Mr. Kanarek.

14 MR. KANAREK: No, your Honor, I don't think so,
15 because the bizarre nature of this, from the very fact --

16 THE COURT: I have already ruled on these requested
17 instructions. There was argument and I have ruled. So,
18 there is no point in opening up the argument all over
19 again.

20 MR. KANAREK: Well, I join in on the manslaughter
21 instructions.

22 May I see those so I can enunciate the exact
23 numbers for the record, your Honor?

24 MR. KEITH: 121, 122 and 123.

25 MR. KANAREK: Thank you.

26 THE COURT: I indicated to counsel that I made some
changes.

1 If you will look on Page 8 of the instructions
2 that I gave to you.

3 A modification to CALJIC 206. This was pointed
4 out by the prosecution, and I think it is a good change.

5 In effect, what has been done is to add, after
6 the words "consciousness of guilt" on Line 4, adding the
7 words "of the particular defendant that attempted to
8 suppress said evidence."

9 MR. FITZGERALD: I will object to the addition.

10 I will also request, because there is no
11 evidence in this record to demonstrate that Patricia
12 Krenwinkel intimidated any witness or attempted to suppress
13 any evidence, that the instruction be made not applicable
14 to her, and that the jury be so instructed.

15 I am asking that this instruction be limited
16 to the person or persons against whom there is any evidence
17 in the record that they suppressed evidence.

18 THE COURT: That is precisely what the change says.

19 MR. FITZGERALD: Yes. But I want to be very clear
20 that I am asking your Honor -- I want to be very clear --
21 there is no evidence in this record whatsoever that
22 Patricia Krenwinkel attempted to intimidate a witness or
23 suppress any evidence, and I am asking that this instruction
24 be made not applicable to her by name to the jury.

25 That is to say, that this instruction be
26 limited by name to the defendant or defendants to whom

1 there is evidence in the record that they suppressed or
2 intimidated.

3 MR. KEITH: I will join in that.

4 MR. BUGLIOSI: Of course, we have Patricia Krenwinkel's
5 statement that she made to Linda Kasabian at the ranch,
6 "You had to open your big mouth."

7 It is not a classical intimidation of a witness
8 situation.

9 MR. FITZGERALD: She wasn't a witness.

10 MR. BUGLIOSI: Yes.

11 MR. KANAREK: May the words "such as by the intima-
12 tion of a witness," because that is a fact question for
13 the jury to decide, if your Honor is going to pinpoint
14 Mr. Manson -- inferentially, certainly that is what this
15 is done for -- whether or not there is any intimidation or
16 not is really a fact question for the jury to decide.

17 That is a conclusion which the prosecution
18 would make us believe. I would ask that your Honor strike
19 "such as by the intimidation" and let the jury decide.

20 Let the jury, the triers of fact, decide whether
21 there is any suppression.

22 If your Honor is going to add those words that
23 your Honor is suggesting, then --

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1 THE COURT: Well, I think in view of Mr. Fitzgerald's
2 comments, perhaps the prosecution should redraft this
3 instruction so that it pertains only to Mr. Manson, and
4 you might set forth the specific circumstances so that it
5 is pinpointed, much along the lines of the Krenwinkel
6 instruction regarding Krenwinkel's refusal to make hand-
7 writing specimens.

8 In other words, if they find that it occurred,
9 then they might consider it in such and such a way, and
10 pinpoint it as to a particular defendant.

11 MR. KANAREK: Your Honor, I will object to that on
12 the grounds of due process and equal protection.

13 Why should Mr. Manson be singled out?
14 Patricia Krenwinkel suppressed evidence by way of --

15 THE COURT: He is singled out because the only
16 evidence in the case that pertains to suppression relates
17 to him. That is why.

18 MR. KANAREK: What about Patricia Krenwinkel making --

19 THE COURT: There is a special instruction covering
20 that.

21 MR. KANAREK: Yes. However, this particular instruc-
22 tion, your Honor, this particular instruction would cover
23 the --

24 THE COURT: You are objecting now before we have the
25 instruction, Mr. Kanarek.

26 MR. KANAREK: I am making argument.

1 THE COURT: You will have a chance to object after
2 we see what the redrafted instruction is.

3 Now, there is another change, and that would be
4 on Page 77.

5 CALJIC 17.43. The second sentence is changed
6 to read:

7 "If you return a verdict of guilty of
8 murder in the first degree as to any particular
9 count or a verdict of guilty of conspiracy to
10 commit murder as alleged in Count VIII, then
11 the matter of penalty or punishment as to those
12 counts will be considered and determined in a
13 separate proceeding."

14 MR. KANAREK: Could your Honor say that again?
15 We had difficulty locating that instruction.

16 THE COURT: The second sentence is changed to read --
17 well, let's just read it back.

18 (The record was read by the reporter.)

19 THE COURT: Any comment?

20 MR. KEITH: No.

21 THE COURT: Any comment?

22 MR. KANAREK: I am sorry. No.

23 MR. KEITH: No, not on my part.

24 THE COURT: Then the People will redraft, if they
25 want such an instruction, CALJIC 206 as I have indicated,
26 and we can take that matter up at a later time.

1 All right.

2 Anything else before we resume?

3 MR. BUGLIOSI: No.

4 THE COURT: All right.

5 (The following proceedings occur in open
6 court. The jury is all present. All counsel except
7 Mr. Hughes present. Defendants absent.)

8 THE COURT: All counsel and jurors are present.

9 You may continue your argument, Mr. Kanarek.

10 MR. KANAREK: Thank you, your Honor.

11 Good morning, ladies and gentlemen.

12 I would like, before I go ahead in connection
13 with this matter of conspiracy, just to discuss for a
14 very, very few moments the mechanical aspect of this court-
15 room.

16 Whatever you try to do in terms of preparing
17 an argument, you have mechanical difficulties.

18 This is not by way of any apologies, just by
19 way of explanation.
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1 The prosecution sits over here. They, through-
2 out the trial, according to our procedures, sit here, and
3 there are certain mechanical difficulties, and if there was
4 anything about that that is significant, then we as jurors
5 should take that into account, whatever that might be.

6 But also, we don't have the resources that
7 the District Attorney has.

8 Mr. Bugliosi was very efficient. Mr. Bugliosi
9 had someone here, someone from the District Attorney's
10 office who was able to coordinate his presentation.
11 And for whatever that might be worth, we don't have those
12 facilities.

13 Now, in the matter of conspiracy, and in
14 everything that we are speaking of, everything that we are
15 saying here, we wish to appeal to your intellect, not
16 to your emotions, just your thinking processes.

17 This is the reason that we try to pick jurors,
18 and in a community like this, in a community like Los
19 Angeles, we have the luxury of being able to pick people
20 who don't know the litigants and don't know any of the
21 lawyers.

22 You take a county like Tulare County or Trinity
23 County or Alpine County, those small communities, they can
24 never get a juror that doesn't know the litigants, by
25 the very nature of the population being so small.

26 So, we have the added benefit of objectivity

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1 here in Los Angeles County because we can get jurors who
2 don't know the litigants.

3 And this conspiracy -- there are some who
4 would demean the jury instructions who would say that the
5 case is decided upon what a good public speaker a lawyer
6 may be or how his personality may be, this or that or the
7 other thing, but what we are asking here is that we do
8 use the jury instructions, because we have every reason to
9 hope that in using those jury instructions we will be
10 judicial.

11 That is the law. That is what we are here for.

12 So, the law of conspiracy is a little bit
13 unusual; it is interesting, actually, when you stop to
14 think about it, as Mr. Fitzgerald has pointed out about
15 a contract, that is true, a conspiracy is an allegation of
16 a criminal contract, and it is a criminal contract where
17 specific intent is required.

18 There is just as much specific intent required
19 for conspiracy as there is for murder.

20 Now, we have here a situation where there is
21 no question the prosecution believes -- they may not have
22 enunciated it -- but they believe that Mr. Watson is a
23 homicidal maniac, a murderer -- there is no question about
24 that -- but for their purposes in this courtroom, they
25 want him to be a puppydog, they want him to be a lackey of
26 Mr. Manson.

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1 Now, the law -- before you can have a
2 conspiracy you must have the agreement that we have spoken
3 of, and in order to have an agreement there must be, there
4 must be words uttered -- there must be a distinct 100
5 per cent specific intent to commit murder on two nights --
6 two nights!

7 You will get a jury instruction which mentions
8 August the 8th through August the 10th.

9 Now, the prosecution, you see, the prosecution,
10 Mr. Bugliosi, is going to argue to you, which he hasn't
11 in his opening statement, he is going to argue to you
12 that you can never find -- very rarely can we present a
13 criminal conspiracy where the people are actually listened
14 to, that is, they sit around a table and they discuss
15 what various schemes they are going to do; they talk about
16 it.

17 And his point is going to be that criminal
18 conspiracy by the very nature of it, you don't get this
19 kind of evidence where people actually sit around and you
20 get someone who listens to that kind of evidence.

21 But you do, you do, if there is a criminal
22 conspiracy -- Mr. De Carlo was convicted of smuggling, or
23 something, as he put it, I think it was marijuana,
24 across the border, which would be a federal charge.

25 Now, if somebody conspired to smuggle marijuana,
26 and there was a ring that was working to smuggle marijuana,

1 and one of the people who was part of that ring becomes a
2 person who became a witness; that person would utter --
3 he would come to the witness stand and be able to utter
4 what happened in connection with the conspiracy.

5 The person would say, "Well, we decided that
6 there would be this person, that we buy the marijuana
7 from; there is going to be this person somewhere near
8 El Paso that is going to help us get it across border at
9 Juarez, and then we are going to do this and" -- and so
10 forth and so on.

11 Now, there you would be able to have a
12 conspiracy proof by a participant, and actually he could
13 relate the words of the conspiracy, that person being
14 given immunity, the case being dismissed against that
15 person.

16 Now, in this case, in this case even though
17 because of the number of charges, there is a tendency for
18 us to broad-brush, and forget that we have seven counts of
19 murder, one as to Abigail Folger.

20 There is one as to Steven Parent.

21 There is one as to Sharon Tate Polanski.

22 There is one as to Volityck Frykowski.

23 There is one as to John Thomas Sebring.

24 There is one as to Leno La Bianca and there is
25 one as to Rosemary La Bianca.

26 And then we have Count VIII, which is the

1 allegation of the conspiracy.

2 Now, if this were a single count --

3 (Whereupon, there is an interruption of the
4 proceedings.)

5 (The following proceedings were had at the
6 bench, the Court, the bailiff and the court reporter only
7 being present:)

8 THE COURT: I want the record to reflect this woman
9 walked into the courtroom, and from the back of the court-
10 room said in a loud tone of voice which I was able to hear
11 from the bench, some 45 feet away:

12 "I came here to defend my brother."

13 Then she made some other remarks on the way up
14 to the railing, where she was stopped by the bailiffs,
15 and said something else to the effect that, "I came here
16 to defend my Christian brother," and, "It is written in
17 the Bible," or words to that effect, and then she was
18 taken out.

19 She appeared to me to be under the influence
20 of something, although she was not weeping visibly, but her
21 demeanor and the look on her face and the more or less
22 glazed look in her eyes indicated to me that she was under
23 the influence of something.

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

26 MR. FITZGERALD: May we approach the bench?

1 MR. KANAREK: May we approach the bench?

2 THE COURT: Very well.

3 (The following proceedings were had at the
4 bench out of the hearing of the jury, all counsel and the
5 Court being present:)

6 MR. FITZGERALD: First, I would like to inquire, if
7 I might, as to whether the remarks of the interloper, that
8 perhaps the court reporter has.

9 THE COURT REPORTER: I couldn't hear it.

10 THE COURT: I heard what she said and I indicated to
11 the reporter what my recollection was of what she said when
12 she walked into the courtroom.

13 She was tearing something, I don't know, a
14 pad or papers or something, and I could hear her from the
15 back, and she said, "I came here to defend my brother," or
16 "my Christian brother."

17 And then she walked up the aisle and toward the
18 railing and she was finally stopped by the bailiffs, and she
19 said substantially the same thing again, and she added
20 something, "It's written in the Bible," or words to that
21 effect.

22 And then she was escorted out again, and she
23 said something as she walked out of the door, I think it
24 was again substantially the same thing that she said before,
25 or a portion of it.

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1 MR. KEITH: It sounded to me like "I came to defend
2 my Christian principles," as she was walking out of the
3 door.

4 THE COURT: She appeared to me to be under the
5 influence of something, although she did not appear to be
6 weaving physically, the look on her face and the glazed
7 look in her eyes indicated to me she was under the influence
8 of something.

9 MR. SHINN: I can inform the Court I know this girl,
10 your Honor, her name is Nancy Davis.

11 She has called me many times to visit Charlie,
12 and she has been in court before many times, your Honor,
13 and I have no connection with this matter this morning,
14 your Honor.

15 MR. KANAREK: Your Honor, what I would move for is
16 an evidentiary hearing -- I'm sure your Honor -- and I have
17 no doubt your Honor has attempted to faithfully put forth
18 on the record what he heard.

19 I have no way of knowing myself, although I
20 heard some of the words, I think the only way we can get on
21 that record what actually was said, so the Court can make
22 a finding of fact as to what it was, or what words were
23 uttered, would be to take immediate testimony by the
24 people here, and I move that the people be removed --

25 THE COURT: What is the point of that?

26 MR. KANAREK: So we will know what words were uttered.

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1 THE COURT: I heard what was uttered. I just told
2 you.

3 MR. KANAREK: That is my motion.

4 THE COURT: If I missed one or two words, it doesn't
5 change anything.

6 MR. KANAREK: That is my motion, your Honor.

7 THE COURT: What possible purpose would that serve?

8 MR. KANAREK: So we can have on record --

9 THE COURT: You heard it. If you disagree with
10 what I said, be free to indicate on the record what you
11 thought she said.

12 MR. KANAREK: I'm sure -- as I say, I don't doubt
13 your Honor's integrity, but there is even a jury instruc-
14 tion that people see the same event --

15 THE COURT: What has this to do with that?

16 MR. KANAREK: I would like to have it on the record,
17 your Honor.

18 Your Honor is the one to rule.

19 THE COURT: Well, as usual you are not making very
20 much sense, Mr. Kanarek.

21 MR. KANAREK: Your Honor certainly is not saying
22 that he is infallible, the only percipient person here,
23 and the deputies that were there --

24 THE COURT: We are not going to prolong this.

25 MR. KANAREK: Your Honor is the one to rule. I am
26 suggesting -- I make the motion --

1 THE COURT: I am ruling, Mr. Kanarek. Your motion
2 is denied, whatever it was.

3 MR. KANAREK: Then I would ask your Honor to voir
4 dire the jury as to what effect this may have on them.

5 THE COURT: They are going to be instructed to
6 disregard the remarks of this woman, whoever she is.

7 I am also going to have her examined to see
8 if she is under the influence of any narcotics.

9 MR. BUGLIOSI: She got too far up here, I'm very
10 surprised that the courtroom security would permit her
11 to get as far as she did, and then they were very gentle
12 with her.

13 THE COURT: There is no reason for them to be
14 rough, but I agree she got too far.

15 MR. BUGLIOSI: She was talking from the very
16 beginning, and got up to the rail there.

17 THE COURT: She was not threatening any violence or
18 anything like that.

19 MR. MUSICH: Is the Court contemplating contempt?

20 THE COURT: I want to have her examined to find out
21 whether she was under the influence of anything.

22 Yes, I am contemplating contempt.

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

25 THE COURT: Ladies and gentlemen, with respect
26 to this incident that just occurred, this woman coming

1 into the courtroom and making some remarks, I admonish you
2 to disregard entirely these remarks.

3 She has no connection whatever with this case.
4 I am simply telling you to pay no attention to it whatsoever.

5 All right, we will proceed, Mr. Kanarek, with
6 the argument.

7 MR. KANAREK: And so the prosecution had a person
8 here who was an alleged co-conspirator, or person who the
9 indictment claimed was guilty of these seven murders
10 and the conspiracy count.

11 The prosecution in the case -- let us say that
12 there was just one murder and that is why we are on this
13 jury. We really have our work cut out for us, we have --

14 I mean, well, we can think of cases that are
15 internationally known where a single person, where a
16 single person has passed away, and when just one, just
17 one homicide, the case becomes quite involved, and it
18 demeans these people that have passed away not to analyze
19 each case separately.

20 The prosecution has not -- just for the
21 purposes of getting a result that they want -- has broad-
22 brushed so much in this case.

23 For instance, because Jay Sebring is inside
24 the house, he says, and because Linda Kasabian chooses
25 to tell you she was not inside the house, Mr. Bugliosi
26 in his summation lumped these people together not as human

1 beings, but he lumped them together as some kind of -- some
2 kind of inanimate type of matter.

3 He did not discuss these passings away indi-
4 vidually at all because Mr. Bugliosi had a certain result
5 that he wants.

6 He knows -- he knows that -- he knows this
7 doctrine of reasonable doubt, and from his standpoint,
8 from the result that he wants in this case it is necessary
9 to broad-brush.

10 Because, if you pinpoint, if you pinpoint we
11 must, as to -- for instance, for instance Jay Sebring.
12 How can we in a court of law tell how Mr. Sebring passed
13 away as far as criminal culpability is concerned?

14 The case of Mr. Sebring is just as much a
15 charge as the case of Abigail Folger.

16 So there is Linda Kasabian here, a co-conspirator,
17 an alleged co-conspirator who states under oath that on the
18 first night, when she was there, she had no knowledge that
19 killings were going to take place.

20 She states on the second night when she was
21 not there, that is when she knew that the killings were
22 going to take place.

23 So the psychological effect of that type
24 of programming, that type of discussion with a witness,
25 time after time after time, by prosecution personnel,
26 creates a situation to take -- to take the moral pressure

1 off of Linda Kasabian, so that when we are in the jury
2 room debating, discussing, exchanging ideas, that Linda
3 Kasabian will be -- will be sort of like Mr. Magoo.

4 We have all seen the cartoon of Mr. Magoo.
5 He creates all kinds of havoc, but Mr. Magoo always --
6 he goes over the bridge and he ends up -- and he is 100
7 percent okay, and he's got all sorts of devastation in
8 his wake.

9 We have seen that cartoon, and this is the
5b, fls 10 situation with Linda Kasabian.

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1 We have Linda Kasabian here creating all of
2 this havoc. We believe that certain -- certain things are
3 sort of obvious, but nevertheless Linda Kasabian must be
4 thought of as something less than a criminal.

5 Now, Linda Kasabian says she had no knowledge
6 there was going to be any killing -- any killing on the
7 first night.

8 Yet the Court is going to instruct you that
9 she is an accomplice as a matter of law, and she is an
10 accomplice as a matter of law as to each and every count
11 in this indictment.

12 Now, in order to prove a conspiracy, as we said,
13 first we must have the conspiracy, so we have -- and it is
14 an interesting kind of problem, if it did not involve this
15 kind of a tragedy, it is an interesting thing to think
16 about, and try to analyze.

17 Because, you see, in order to prove the
18 conspiracy you have to prove this agreement. Then after
19 you have proved -- let's say -- let us assume for the sake
20 of argument, and we suggest there is no showing of any
21 conspiracy here at all, but let's assume for the sake of
22 argument there is a showing of a conspiracy.

23 After that conspiracy comes into existence,
24 then we must use the same declarations, the same statements
25 to try to see whether there is any criminal intent,
26 criminal knowledge on the part of these defendants.

1 In other words, there is a two-stage process.

2 The first stage is, is there a conspiracy?

3 We suggest that no matter which way you slice
4 this, there cannot be a conspiracy shown.

5 Now, Mr. Bugliosi, Mr. Bugliosi has done much
6 to get conversation into this record before us all. He has
7 Paul Watkins; he has Bruce Posten; he has Juan Flynn; he
8 has other witnesses who have -- Gregg Jakobson -- he has
9 various witnesses come to us here and testify.

10 But the interesting thing about their
11 testimony is, the interesting thing about their testimony
12 is that each of those witnesses adds to what they said.

13 Judge Older has instructed^{us} those statements
14 are to be used only against the person who purportedly --
15 who purportedly made the utterances, as to what they said.

16 They mean Mr. Manson.

17 Now, therefore, you cannot use those statements
18 of Mr. Manson, the alleged statements of Mr. Manson to
19 prove a conspiracy, to prove a conspiracy, itself.

20 First of all, the conspiracy is alleged to
21 have occurred between the 8th and the 10th. That is the
22 criminal culpability that is being judged here.

23 The prosecution has alleged between the 8th and
24 the 10th, not one whit of evidence except from Linda
25 Kasabian -- except from Linda Kasabian, even as to the
26 helter skelter, the black-white war situation that

1 Mr. Bugliosi has spoken of, not one word in connection
2 with that is before us.

3 Now, Mr. Bugliosi -- he is going to argue to
4 you -- he is going to argue to you that Mr. Manson's
5 statements are circumstantial evidence, but let's not let
6 that fool us.

7 The only circumstantial evidence that those
8 statements can be used for is Mr. Manson's alleged intent.

9 In other words -- in other words, Mr. Bugliosi
10 is telling us that Mr. Manson's motive, that he started
11 off with some singular motive, and then it developed into
12 a secondary motive, and then it developed into a tertiary,
13 and so forth.

14 In other words, the motive is a little bit
15 obscure at this point as to what it is as far as the
16 prosecution's viewpoint is concerned.

17 But keeping in mind that those purported
18 utterances of Mr. Manson cannot be used against any other
19 defendant, it is clear -- it is clear that you cannot use
20 those utterances to prove the conspiracy because in order
21 to conspire you need more than one person.

22 I think we are all in agreement that you
23 cannot conspire with yourself. The law does not recognize
24 any such animal.

25 So if we, instead of broad brushing it, if we
26 look at it in accordance with the Court's instructions,

1 it is clear -- it is clear that none of Mr. Manson's state-
2 ments can be used to prove the conspiracy.

3 MR. BUGLIOSI: That is not the law.

4 THE COURT: The jury will take the law from the
5 instructions as given to them by the Court at the close of
6 the case.

7 Go ahead, Mr. Kanarek.

8 MR. KANAREK: We certainly subscribe to the Court's
9 remarks that as to the detailed law you will have that in
10 the jury room.

11 But keeping in mind that we are -- we are in a
12 court of law where subjective intent is necessary. In the
13 United States of America, we don't commit people unless
14 they have the intent to do wrong, and so, in order to prove
15 anyone guilty of conspiracy, in order for anyone to have a
16 statement made and used against him in connection with a
17 conspiracy, it has to be done with criminal intent, and
18 it has to be done in connection with the time that is charged
19 in the indictment.

20 Now, the circumstantial evidence that
21 Mr. Bugliosi is speaking of has to do with, he has told us,
22 this has to do with Mr. Manson's motive, Mr. Manson's
23 intent.

24 Now, the interesting thing about the
25 statements that Mr. Manson allegedly made, the interesting
26 thing about all of those statements is that if we back off

1 a little bit we find if we think of the places that we
2 have been, and some of the outrageous discussions, I mean
3 especially -- especially like you take, say, in philosophy
4 courses or where people sit and the human mind is allowed
5 to discuss ideas back and forth, all kinds of things are
6 uttered.

7 And Mr. Manson -- Mr. Manson being outspoken,
8 let us say he is outspoken, and he has certain ideas --
9 certain convictions.

10 Now, if Mr. Manson has these convictions,
11 can we in the United States of America take those convic-
12 tions, whatever Mr. Manson's convictions are concerning
13 religion, philosophy, ethics, mores, can we take those ideas
14 and turn them into crime?

15 I think back, and Mr. Watkins, in his testimony,
16 spoke of the romance. He said something, that there was
17 some kind of discussion between him and Mr. Manson of the
18 early Christians, during the time -- and I think we will
19 all remember in school how we studied during the time of
20 Augustine, the first three centuries of the Christian era,
21 how the early Christians were mistreated.

22 And a funny thing about it, in the catacombs,
23 under Rome, there was communal living going on.

24 Augustine said all you have to do is abandon
25 your ideas and we will accept you.

26 Abandon your ideas!

1 They conducted mock trials; they had their
2 certain type of due process. They had a mock trial in
3 ancient Rome for the Christians that did not shape up.

4 They had mock trials -- they had their mock
5 trials and then they brought them out into the Coliseum
6 to be eaten by lions.

7 They would have their trial and they would be
8 found guilty of some kind of crime against whoever happened
9 to be prosecuting them or who did not like their ideas,
10 and off they go into the Coliseum to be -- to be -- to be
11 part of the entertainment, the bread and circuses that we
12 have all heard about.

13 And the circus that this trial is is equivalent
14 to that of ancient Rome.

15 Look at the people here and the press, why should
16 this be -- why should this -- why should this trial have
17 this kind of interest? Who is fostering this kind of
18 interest?

19 The defendants are locked up; they have no
20 way of fostering the kind of interest that you people
21 have to be sequestered.

22 The fact of the matter is that this is being
23 turned into some kind of a money-making scheme.

5c
1 The toothpaste that is being sold, the Wheaties
2 that are being sold on this trial, the press, they get paid.
3 TV people get paid.

4 And can we imagine the economy -- can we
5 imagine the dollars that have been made on this trial, the
6 circus that has been fostered in a criminal court in the
7 United States of America?

8 So what we have to think about in determining
9 this case is, what is the motivation? What is the motiva-
10 tion in connection with this case as far as Mr. Manson is
11 concerned?

12 And certainly -- certainly his statements,
13 there is nothing here on those two days concerning
14 Helter Skelter, the black-white war or whatever.

15 Susan Atkins, what is there to show any
16 conspiracy on the part of Susan Atkins?

17 The Court has instructed you that in connection
18 with the alleged statements of Susan Atkins, they are to be
19 used against Susan Atkins alone.

20 In studying this transcript try to find some
21 places where Susan Atkins said something, and outside of
22 Linda Kasabian's statements as to what Susan Atkins said,
23 there is nothing there.

24 There is just nothing there from Susan Atkins
25 as to any conspiracy.

26 Look at Patricia Krenwinkel. Where is there

1 anything in the record, and we are in agreement that each
2 person should be entitled to the individual analysis of
3 each juror.

4 What words of Patricia Krenwinkel, in
5 connection of the conspiracy, are before us? Are there any?
6 I mean, we went through that transcript, that some 19,000
7 pages of transcript, and we cannot find it.

8 Now, to say that the position we have here is
9 not that of an advocate would be less than candid. Of
10 course I am here in connection with a certain viewpoint, and
11 I tried to find, I tried to find something to attribute
12 to Patricia Krenwinkel. I could not find it.

13 I made a little chart so that I could come here
14 and argue to you as to something or other concerning this
15 matter of conspiracy, because the prosecution has this
16 conspiracy in here, we suggest, as we have stated, to
17 befuddle, to confuse.

18 There is no need for that.

19 Now, let's pass up Mr. Watson for a moment.
20 We have spoken of Mr. Manson. Now we come to a very
21 interesting point, if I may, excuse me for just a moment.

22 (Mr. Kanarek picks up the trial transcript.)

23 The lady that can tell us all about this case,
24 it would seem like, from time immemorial, the female has
25 because of the attraction that she has as far as men are
26 concerned, the female has an ability in certain -- we all

1 know that -- that in the intimacy of the man-woman
2 relationship, things are uttered, statements are made,
3 intimacies are revealed beyond what normally occurs, and
4 we have Stephanie Schram.

5 Now, Stephanie Schram, I think we can certainly
6 argue, we can certainly consider, as to these two critical
7 days, as to these two critical days, lived with Mr. Manson.

8 She was intimate with Mr. Manson. She was with
9 him practically day and night.

10 Now, we have in mind the extended conversations
11 that Mr. Bugliosi and the prosecution have had with Linda
12 Kasabian, but let's look at the direct testimony of
13 Stephanie Schram.

14 She is called as a prosecution witness, and
15 Mr. Bugliosi -- this is at Page 15,187, Volume 135.

16 Mr. Bugliosi is examining. He says:

17 "Q How old are you, Stephanie?

18 "A 18.

19 "Q You live with your parents?

20 "A Yes.

21 "Q Do you recall that I interviewed
22 you at your home several months ago?

23 "A Uh-huh."

24 "THE COURT: Is that yes?

25 "THE WITNESS: Yes.

26 "MR. BUGLIOSI; Q Directing your

1 "attention to the defendant Charles Manson,
2 do you know him?

3 "A. Yes.

4 "Q And when did you first meet
5 Mr. Manson?

6 "A I met him on the morning of Monday,
7 August 3rd.

8 "Q 1969?

9 "A. Yes.

10 "Q Where were you at that time?

11 "A I believe I was down from Big Sur.

12 "Q That is in Northern California?

13 "A. Yes.

14 "Q How did you happen to meet Mr. Manson?

15 "A I was with a friend of mine in the
16 gas station and I got out to go to the restroom,
17 and I just saw him there.

18 "Q You started talking to each other?

19 "A. Yes. We started talking to each
20 other, and he asked me if I wanted to come with
21 him to see Big Sur for a few days."

22 This is by the prosecution's own witness, at a
23 time that is preceding the actual two days, but very close.

24 "Q And you decided to go with him?

25 "A. Yes.

26 "Q And you left your friend?

1 "A Yes.

2 "Q And eventually you came back to
3 Los Angeles with Mr. Manson?

4 "A Yes.

5 "Q And started living with him and the
6 Family at Spahn Ranch?

7 "A Yes.

8 "Q And you became a member of the
9 Family there?

10 "A Uh-huh.

11 "THE COURT: Does that mean yes?

12 "THE WITNESS: Yes."

13 Then the next question is significant.

14 Mr. Bugliosi says:

15 "Q Did you ever go to the Death Valley
16 area with Mr. Manson?

17 "A Yes.

18 "Q When did you go there?

19 "A Oh, I think it was late August,
20 early September.

21 "Q 1969?

22 "A '69, yes."

23 Now, keeping in mind that the prosecution has
24 the burden to prove their case beyond a reasonable doubt,
25 to a moral certainty, and all of that which we have spoken
26 of, the Judge -- we were talking about circumstantial

1 evidence -- the judge of Mr. Bugliosi's questioning from
2 "You became a member" -- which is the very time we are
3 speaking of here in this courtroom.

4 And his next question is:

5 "Q Did you ever go to the Death
6 Valley area with Mr. Manson?"

7 Skipping that entire period of time. I think
8 we can say it is circumstantial evidence of something.

6-1

1 Now, Mr. Bugliosi, the prosecution, is here
2 to prove a case, and where better would they have a
3 source than Stephanie Schramm?

4 We have Linda Kasabian at great length,
5 Linda Kasabian who was, I think there is no question
6 about it, she had formed an alliance with Mr. Watson,
7 not with Mr. Manson. We have this chance to find out, and
8 Mr. Bugliosi doesn't ask.

9 Q Did you ever go to the Death Valley
10 area with Mr. Manson?

11 "Yes.

12 "When did you go there?

13 "Oh, I think it was late August, early
14 September.

15 "1969?

16 "1969, yes.

17 "And you went there with Mr. Manson?

18 "Yes.

19 "With anyone else?

20 "Yes. A girl named Little Patti and
21 a guy named Clem.

22 "Clem Tufts?

23 "Yes."

24 Mr. Tufts, as we know, and Mr. Grogan,
25 is along with Linda Kasabian, she says, on that second
26 night.

6-2

1 "Q And where did you go in Death Valley?

2 "I don't really know. We were just
3 kind of in valleys and stuff, until we went to a
4 place called the Barker Ranch for a while.

5 "How long did you stay up there in the
6 Death Valley area with Mr. Manson and the Family?

7 "I guess for about three or four weeks.
8 Maybe longer.

9 "Between the time that you arrived in
10 the Death Valley area and the time that you left,
11 did you always stay at Barker Ranch?

12 "No. We were just in different valleys
13 and, you know, just living on the land in sleeping
14 bags and things.

15 "And you would travel from one place
16 to another?

17 "Yes.

18 "You would hike?

19 "Yes. Hike and carry everything with
20 us.

21 "And would you decide when to move
22 from one place to another?

23 "Well, we stayed in a place a little
24 while and then Charlie said that we should move
25 we should go some place else.

26 "So, Charlie would decide to go from

6-3

1 "one place to another?

2 "Yes.

3 "And everyone would get up and go?

4 "Yes."

5 Now, we then go over to page 15,209.

6 There was some legal arguments in connection
7 with the question, and so forth, that took place in this
8 courtroom.

9 "Q BY MR. BUGLIOSI: You met Mr. Manson
10 on August the 3rd, 1969?

11 "A Yes.

12 "Q Near Big Sur?

13 "A Yes.

14 "And you did go to Big Sur with him?

15 "Yes.

16 "How long did you stay at Big Sur?

17 "About three days.

18 "And then, from Big Sur, where did you
19 go with Mr. Manson?

20 "We went down to the Spahn Ranch for
21 a little while, just for about a day and part of,
22 you know, the beginning of the night, and then we
23 left there to go down to San Diego, but we only
24 went a few blocks and decided that we wouldn't
25 leave for San Diego until the morning, and we spent
26 that night in the truck, the milk truck.

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"Then you went to San Diego?

"Yes.

"To visit your sister?

"Yes. To get some clothes and things from her, so I could move back up to the ranch.

"And then you returned to Spahn Ranch with Mr. Manson from San Diego?

"A Yes.

"What day did you arrive back at Spahn Ranch?

"I think it was the 8th of August.

"About what time?

"Probably about 1:00 o'clock --

"In the afternoon?

A 2:00 o'clock. Yes.

"And how long did you stay at Spahn Ranch? Strike that.

"You left for the Death Valley area in late August or early September?

"Yes."

6a fls.

6a-1

1 Now, Mr. Bugliosi asks the next logical ques-
2 tion, and then he strikes it. And then he goes on, after
3 putting her in Spahn Ranch at the most critical time in
4 these proceedings, a lady who is not an accomplice,
5 a lady who is not charged with any criminal culpability --
6 I shouldn't say a little girl, a young lady -- whatever
7 his viewpoint is, he skips, and in the very same sentence
8 he goes from Spahn Ranch, and strikes that, and goes to
9 Death Valley.

10 "You left for the Death Valley area
11 in late August or early September?

12 "Yes.

13 "Between August the 8th and when you
14 left for the Death Valley area, were you at Spahn
15 Ranch during the entire period of time?"

16 You notice, he previously had just asked how
17 long did you stay at Spahn Ranch.

18 Then he modified that and says: Between
19 August the 8th and when you left for the Death Valley
20 area, were you at Spahn Ranch during the entire period of
21 time?

22 "A No."

23 What he is trying to do is tippy-toe, I guess.
24 What he is trying to do, he is trying to create the illusion
25 that she wasn't at the Spahn Ranch all the time, but he
26 tried to create this illusion without asking the question that

1 should be asked.

2 Mr. Bugliosi, after soliciting this answer:

3 "No. I went to live with my parents
4 for a while," then the next question:

5 "For how long?

6 "I think about two weeks.

7 "Do you know Mary Brunner?"

8 This is at page 15,212, Volume 135 of the
9 transcript.

10 "Do you know Mary Brunner?

11 "I only met her once, but I, you know--

12 "When did you meet her?

13 "When I first came back to Spahn Ranch
14 from being in San Diego.

15 "On the date of August the 8th?

16 "Yes. Right after I got to the ranch,
17 her and another girl went -- took the truck and
18 went shopping.

19 "So I only met her for a few minutes."

20 And then Mr. Bugliosi "I have no further
21 questions of this witness, your Honor."

22 And then the Court says:

23 "Cross-examination, Mr. Fitzgerald?"

24 And Mr. Fitzgerald says, "Thank you, your
25 Honor."

26 We will go into further examination of Stephanie

1 Schramm, but there we have the prosecution -- there is no
2 evidence in this world that Stephanie Schramm was anything
3 except friendly toward the prosecution. She had the same
4 phalanx of Deputy District Attorneys and Los Angeles police
5 officers between her and defense counsel when we tried to
6 talk to her right in this courtroom.

7 I am sure some of us who are on the jury
8 saw that.

9 MR. BUGLIOSI: This is not evidence; and on top of
10 it, it is wrong and it is a lie, your Honor.

6b fls.

6b-1

1 MR. KANAREK: I ask for an evidentiary hearing.

2 MR. FITZGERALD: Wait a minute.

3 THE COURT: I don't need to hear from you,

4 Mr. Fitzgerald.

5 MR. KANAREK: I ask for an evidentiary hearing.

6 THE COURT: Just a moment.

7 Your remarks are improper, and I admonish the
8 jury to disregard them.

9 MR. KANAREK: Whose remarks?

10 THE COURT: Yours.

11 MR. KANAREK: Mr. Bugliosi called me a liar in the
12 presence of the jury.

13 THE COURT: Continue with your argument.

14 MR. KANAREK: May I approach the bench then, your
15 Honor?

16 THE COURT: Not at this time.

17 Confine your argument --

18 MR. KANAREK: May I make a motion for an evidentiary
19 hearing, your Honor?

20 THE COURT: Not at this time.

21 MR. KANAREK: Under oath?

22 THE COURT: Proceed.

23 MR. KANAREK: Mr. Fitzgerald -- the reason that I
24 read all of Stephanie Schram's direct testimony, the
25 reason I did that was to focus attention, and Mr. Bugliosi,
26 in his response, will be able to -- we have the transcripts
here, he will be able to read to you and discuss with you

1 whatever he wishes to say -- but the reason that I did that
2 is to show whatever it has.

3 We suggest to you: Does it have any signifi-
4 cance?

5 We think it does have some significance in this
6 case what Stephanie Schram could have told us, from the
7 prosecution's viewpoint even, but perhaps Linda Kasabian
8 would be impeached even further.

9 Perhaps Linda Kasabian would be shown to be
10 something less than candid.

11 And so, Mr. Bugliosi and the prosecution have
12 questioned her the way they did.

13 Mr. Fitzgerald -- I am referring now to -- well,
14 let me begin at Page 15,218, Line 20, which will be in
15 the transcript for Mr. Bugliosi's convenience when he tries
16 to make his argument to you.

17 THE COURT: We will take our morning recess at this
18 time.

19 Ladies and gentlemen, do not converse with
20 anyone or form or express any opinion regarding the case
21 until it is finally submitted to you.

22 The Court will recess for 15 minutes.

23 (Recess.)

24 THE COURT: All counsel and jurors are present.

25 You may continue.

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

1 may all counsel approach the bench?

2 MR. KEITH: Yes, we would like to join in that.

3 THE COURT: Very well.

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

7 MR. KANAREK: All counsel wish to cite Mr. Bugliosi
8 for misconduct, your Honor.

9 I make a motion that your Honor admonish the
10 jury that his statement in open court, I think saying,
11 "It was a lie," or calling me a liar, or whatever that
12 language was --

13 THE COURT: I didn't hear anything like that.

14 MR. KANAREK: He said, "It was a lie."

15 Yes, your Honor.

16 I would ask him if that is correct.

17 THE COURT: I didn't hear it if it was said.

18 MR. KANAREK: All counsel will agree, everyone,
19 it was heard throughout the courtroom. The press heard it
20 and I am sure the jury heard it. No question about it.

21 THE COURT: There is a very big question as to who
22 heard it, Mr. Kanarek.

23 Go ahead with your motion.

24 MR. KANAREK: My motion is that, if necessary, if
25 your Honor wishes, I will be sworn on it. Mr. Bugliosi
26 did say words to that effect, and my motion is that he be

1 cited for misconduct and the jury be admonished not to
2 consider it for any purpose, and mere admonishment not
3 sufficing, because case law -- it is very clear that this
4 kind of conduct on the part of the prosecutor who is a
5 quasi-judicial officer -- the cases make that point, that
6 the District Attorney is a quasi judicial officer carrying
7 the dignity and prestige of officialdom, so to speak --
8 I make a motion for mistrial.

9 MR. FITZGERALD: Join.

10 MR. SHINN: Join.

11 MR. KEITH: Join on behalf of Miss Van Houten.

6c

6c-1

1 MR. KANAREK: If your Honor wishes the record, I am
2 sure the reporter caught it.

3 MR. KEITH: I heard Mr. Bugliosi from where I was
4 sitting say "That is a lie," and if I heard it I am sure
5 the jurors heard it.

6 THE COURT: If he said it, it is certainly improper,
7 and I will admonish the jury to disregard his comments,
8 as well as your comments regarding matters outside of the
9 record, Mr. Kanarek.

10 The motion for a mistrial will be denied.

11 Do you wish to be heard, Mr. Bugliosi?

12 MR. BUGLIOSI: Only insofar as what I said.

13 I did state, and there is such a thing as
14 inviting error, and his statement was an inflammatory
15 statement that, basically, I was standing between him and
16 Stephanie Schramm, preventing him from seeing her.

17 I said: No. 1, there is no evidence of this;
18 and that statement is a lie.

19 I did not refer to Mr. Kanarek as a liar.

20 My statement was a perfectly proper statement.

21 He can't get up and accuse me of vicious
22 things like that?

23 He is accusing me actually of crimes.

24 THE COURT: Just so the record will be clear, there
25 is no question in my mind, Mr. Kanarek, that this was
26 a deliberate statement by you about matters that are not

1 part of the record of this case.

2 Now, this is not the first time that you have
3 done it. I hope it will be the last.

4 MR. KANAREK: Your Honor, when you say "record in
5 this case," the fact of the matter is --

6 THE COURT: We don't need a lot of argument about
7 that. You heard what I said. You don't have to agree
8 with it, but that is my opinion, it was done deliberately
9 and not with any inadvertence.

10 MR. KANAREK: That which happens in the view of the
11 jury, your Honor, certainly Mr. Bugliosi has made much of
12 matters that have happened in view of the jury --

13 THE COURT: I don't know what you are talking about.

14 MR. KANAREK: Well --

15 THE COURT: We don't need to go into it.

16 I am going to admonish the jury to disregard
17 the remarks of both counsel.

18 If Mr. Bugliosi said what he said he said,
19 it was improper, there is no question about it.

20 His version is different than yours. In any
21 event, I will admonish all counsel, if you make an objection
22 during argument, don't start out by making statements like
23 that. That is no way to make an objection.

24 You have a right to make an objection if you
25 feel something improper is occurring, but don't start out
26 your objection by accusing someone else of telling a lie.

1 That is no objection at all.

2 MR. BUGLIOSI: I apologize to the Court about that.

3 THE COURT: You all know better, or should.

4 All right, let's proceed.

5 (Whereupon all counsel return to their
6 respective places at the counsel table and the
7 following proceedings occurred in open court
8 within the presence and hearing of the jury:)

9 THE COURT: Ladies and gentlemen, just before the
10 recess there was a colloquy between Mr. Bugliosi and Mr.
11 Kanarek, and also the Court made some remarks and I
12 admonished you at that time to disregard Mr. Kanarek's
13 remarks.

14 I want to admonish you to disregard the
15 statements of both counsel with respect to this colloquy.

16 These are matters that have nothing to do
17 with the evidence in this case and should not be considered
18 by you for any purpose. Just simply disregard them.

19 We will proceed with the argument, Mr. Kanarek.

20 MR. KANAREK: Yes, your Honor.

21 I believe we were discussing testimony of
22 Stephanie Schramm.

23 At page 15,219.

24 I believe this was still by Mr. Fitzgerald.
25 I may be in error on that.

26 Mr. Fitzgerald is questioning at 15219.

6d-1

He asks:

"Q Something unusual occurred to you at the Spahn Ranch and you were taken away by some people, were you not?"

Well, going back to 15,218.

"Well, when you were on the witness stand today, are you relying on your memory today or are you relying on the memory you had three or four months ago, or what?"

"Just on my memory right now.

"Could you be mistaken one day --

"I don't think so.

"Then you can, of course, tell us where you were on the 11th, right?"

"I was still at the ranch on the 11th.

"When did you leave the ranch?"

"I don't know.

"Something unusual occurred to you at the Spahn Ranch and you were taken away by some people, were you not?"

And there Mr. Fitzgerald is referring to the August 16th raid.

"You can answer that yes or no.

"Yes.

"You know what I am referring to.

"When we were all busted?"

1 "No -- all right, were you arrested on
2 the ranch on the 16th?

3 "I guess it was the 16th, I don't know
4 the date.

5 "Do you know where you were on the 15th
6 of August?

7 "A. No.

8 "Do you know where you were on the 16th?

9 "No. That is because when I started living
10 with the Family, dates were not as important
11 as they were before.

12 "On the evening of August the 8th, 1969
13 you would have been at the Spahn Ranch, then,
14 right?

15 "Yes.

16 "Where was Charlie that night?"

17 That is Mr. Fitzgerald's question.

18 "A. He was with me.

19 "Where was Charlie the next night, the
20 9th?

21 "I don't remember.

22 "Were you released after you were
23 arrested?

24 "A. Yes.

25 "Q. You were arrested twice at the
26 ranch, weren't you?

1 "Yes.

2 "When was the second time?

3 "I don't know the date.

4 "All right, one time you got arrested,
5 you got arrested with a lot of people, right?

6 "Right.

7 "The other time there were not a lot of
8 people, were there?

9 "No."

10 Then Mr. Bugliosi -- then I asked some
11 questions, Page 15,228.

12 "Q Miss Schram, is it true that as far
13 as these dates go, August 7, 8, or whatever
14 that date is, you don't remember that particular
15 date, is that correct?

16 "I remember them pretty good, like until
17 maybe a few days after I got to the ranch, and
18 then I started forgetting the dates.

19 "Then your knowledge of particular dates
20 is not firm in your mind right now, while you
21 were on the witness stand, is that correct?

22 "After I got to the ranch, then they
23 started blurring out, but before that they
24 were pretty definite."

6e-I

1 Then Mr. Bugliosi, by now on redirect examina-
2 tion:

3 "Now, after August the 8th you say you
4 went to Devil's Canyon?

5 "Yes.

6 "Were you with Charlie 24 hours a day
7 from then on?

8 "No, I was with him most of the day but
9 not all the time.

10 "There would be periods when you were
11 not with him?

12 "Yes.

13 "And that he would leave your presence?

14 "Yes.

15 "And you wouldn't know where he was?

16 "Yeah, I didn't know where he was going.

17 "And he did that many times during the
18 period you were in Devil's Canyon?

19 "A few times, yes.

20 "Do you remember what days he left
21 for an hour or two or half a day?

22 "No, I don't remember.

23 "Do you remember everything that Mr.
24 Manson did on the date August 9, 1969?

25 "Well, as close as I can remember he
26 took me down to Devil's Canyon and we spent the day

1 "there, and when it got dark he left and he came,
2 back either sometime during the night or early
3 in the morning.

4 "So on August the 9th he left when
5 it got dark, is that correct?

6 "Yes.

7 "You don't know where he went?

8 "No.

9 "And then he came back when?

10 "Either during the night or in the
11 morning because I was asleep.

12 "But you saw him in the morning?

13 "Yes.

14 "Your memory of this period is fairly
15 hazy, you say?

16 "Yes."

17 Now, the important thing to consider there is
18 the sequence of the questioning.

19 The important thing is that Mr. Bugliosi has
20 a witness that he has brought to us, a witness that, if
21 the intensity of attention -- or maybe there was that
22 intensity, we don't know -- but if there was the intensity
23 of attention given to Stephanie Schramm as there was given
24 to Linda Kasabian, we might have some testimony in this
25 courtroom which might be such that we might just all get
26 up and go home.

1 Of course, some people don't want that to
2 occur.

3 So, for whatever it may be worth, there is the
4 testimony of Stephanie Schramm, and the sequence of the
5 questioning, we think, may have some significance as to the
6 circumstances and where Mr. Manson was in connection with
7 these times.

8 Also, it is significant because they have
9 alleged these two days as the day that all of this conspiring
10 went on, and here is a girl --

11 MR. BUGLIOSI: I object to that. That is a misstate-
12 ment of the law, your Honor.

13 MR. KANAREK: Well, your Honor, if I may.

14 Excuse me just a moment.

15 MR. BUGLIOSI: The prosecution alleges that the
16 conspiracy was in existence during those two days, not
17 that it was born during those two days, your Honor.

18 MR. KANAREK: Your Honor, if Mr. Bugliosi wishes
19 to make argument in the presence of the jury, he is more
20 than welcome, your Honor.

21 If he wishes to make a debate --

22 THE COURT: Let's proceed with the argument, Mr.
23 Kanarek.

24 MR. KANAREK: I will find it for you, ladies and
25 gentlemen. I will locate it later, hopefully.

6f-1

1 Now, again, I think we can get an insight
2 into the law in connection with Leslie Van Houten.

3 We all remember during this trial how Leslie --
4 certainly Vince, even the prosecution doesn't allege, not-
5 withstanding the fact that Leslie Van Houten was at the
6 ranch during the entire period of time that we are speaking
7 of here, notwithstanding that, it is clear that in every-
8 thing that has happened here before us that Leslie Van
9 Houten is not charged with conspiracy as to the prior
10 events, as to the Tate matters.

11 In other words, here the prosecution has
12 alleged a conspiracy. They have taken Leslie Van Houten
13 and they have said that what happens, certain events
14 concerning Leslie Van Houten should not be considered by
15 you for any purpose. For any purpose.

16 And when we recognize that we have a conspiracy
17 charge here and that Leslie Van Houten is not charged
18 with anything in connection with this conspiracy, period,
19 nothing in connection with this conspiracy, up until,
20 I suppose, the 9th, the evening of the 9th and the morning
21 of the 10th, now, it is very interesting because Leslie
22 Van Houten was living at the ranch.

23 And I think if we get the focus of that
24 fact in mind, certainly Mr. Manson is entitled to what
25 any other defendant is entitled to, and what any defendant
26 is entitled to is a fair trial.

1 And yet Leslie Van Houten is, we are told
2 by stipulation after stipulation, which has occurred in
3 this courtroom, and when there is a stipulation we are
4 told that this is the way it is, that even when we are on
5 the jury we must accept that as something that is, and
6 we are all aware that as to Leslie Van Houten, the prose-
7 cution is not alleging anything prior to August the 9th.
8 They don't even allege she was part of a conspiracy.

9 Now, in the name of reason, in the name of
10 logic, except for the fact that the vigilantes are out to
11 get Mr. Manson, so to speak, except for the fact, what
12 difference is there between Leslie Van Houten and
13 Charles Manson?

14 They both lived at the ranch. They both were
15 there for periods of time that the evidence here shows
16 covers a period of time long before and long after the
17 9th.

18 And going one step further, it becomes even in
19 greater focus. What is the difference between Leslie
20 Van Houten and Patricia Krenwinkel as to the conspiracy?

21 These people were living together intimately,
22 intimately, the prosecution would have us believe, although
23 in one breath they have people who tell us that the Spahn
24 Ranch was sort of a Grand Central Station for people who
25 were discarded by their parents, garbage people, so to speak,
26 as they have been termed, people that some parts of our

1 society don't want for one reason or another, and
2 Mr. Fitzgerald made the point of the numbers of people,
3 the numbers of people that went through this ranch, and
4 we have testimony that there is no great requirement --
5 the so-called membership requirements are not only not
6 great, they just didn't exist -- so except for these
7 defendants being focused upon, the constant day-by-day
8 attention is focused on these defendants, but really,
9 these defendants are part of a very large amorphous group
10 of people, there is no question about that, and so, as
11 between Leslie Van Houten and Patricia Krenwinkel, there
12 is no distinction. It is an artificial distinction.

13 The point being, the point being, that unless
14 there is criminal knowledge -- this is really what we are
15 talking about here; and this is by way of example;
16 and Mr. Keith represents Leslie Van Houten, and he will,
17 I am sure, have some things to tell you -- but we think
18 that this example is something that we can think about
19 because it emphasizes the fact that the law requires
20 criminal knowledge.

7-1

1 It requires criminal intent. It requires
2 specific intent to do wrong.

3 And the prosecution is telling us that Leslie
4 Van Houten in some way has no culpability, no responsibility.

5 And we agree. We agree. Leslie Van Houten
6 has no culpability because there is no conspiracy shown
7 here.

8 This is a distinction without a difference. It
9 is a -- it is less than a legal nicety. It is a zero;
10 it is a nothing. And so, the point is, Leslie Van Houten --
11 remember now, we are now speaking -- we are now speaking
12 of the times, the times before these events occurred,
13 not as to the purported statements, because again the
14 Court has ordered us that -- has told us -- instructed us
15 that we, as to Leslie Van Houten for instance, whatever
16 statement she has purportedly made, those statements must
17 be used only against Leslie Van Houten. The Court has
18 said that.

19 So the same goes in reverse as to Mr. Manson.
20 We cannot use Mr. Manson's statements, the ones that the
21 Court has spoken of, against anyone, anyone except the
22 declarant, the person who purportedly made the statement,
23 remembering again that that is just evidence, like we have
24 spoken of, evidence does not equal a fact. Evidence is
25 merely evidence and it is only when the jury decides that
26 something is a fact, that it has the dignity of being a

7-2

1 fact.

2 Otherwise it is just evidence and does not
3 have that dignity.

4 So what Leslie Van Houten said cannot be
5 used against Mr. Manson.

6 Patricia Krenwinkel, whatever Patricia Kren-
7 winkel, and certainly whatever she did in this courtroom,
8 I mean, I'm referring to the -- let me withdraw that.

9 What the Court told you about the fingerprint,
10 what the Court told you -- well, let me withdraw that.
11 Let me just state Patricia Krenwinkel's conduct has been
12 focused -- upon her alleged conduct -- only the jury can
13 decide whether that conduct has any significance, but
14 that conduct can be used only against Patricia Krenwinkel,
15 if the jury so decides.

16 As to Susan Atkins, the same applies, whatever
17 Susan Atkins says cannot be used against Mr. Manson,
18 and whatever -- whatever Linda Kasabian has said that --
19 those utterances, when she has told us, all those statements
20 have to be analyzed, based upon the principles of law that
21 we have discussed.

22 Now, we come to a very interesting point,
23 and that is that really the heart of this conspiracy,
24 or really one of the primary pieces of evidence in this
25 conspiracy, I guess, would be where Linda Kasabian says
26 Charlie told her to go out and do whatever Tex says.

1 And yet, if I may, I would refer -- I will
2 refer to Linda Kasabian's own handwriting -- Linda Kasabian--

3 Now, remember this, now, this will be equivalent
4 to the time we are talking about when the smugglers or the
5 conspirators are all together in the circle.

6 Now, Linda Kasabian, Mr. Bugliosi has said,
7 she is the star witness.

8 This is now August the 8th, 1969, in the
9 evening hours, and she testified from the witness stand that
10 Mr. Manson told her to go out and do what Tex told her to
11 do.

12 We will talk about that as to whether or not
13 that has any criminal culpability or responsibility to it.

14 But even that statement of Linda Kasabian's,
15 even that statement of Linda Kasabian's is untrue by her
16 own handwriting, and I am referring now to -- and I am
17 adding something that would have occurred at the time when
18 supposedly the conspiracy is in full blast. This is at
19 page 6775 of Volume 47 of the transcript where I asked the
20 Court, I said:

21 "Your Honor, may I approach the witness?

22 "THE COURT: You may."

23 Then:

24 "MR. KANAREK: Q Mrs. Kasabian, I show
25 you a piece of paper that appears to be handwritten.
26 It appears to be a copy of a handwritten page.

1 "Does that appear to be your writing?

2 "A Yes.

3 "Q Would you look at the first three
4 lines at the top of that page.

5 "Did you write those lines?

6 "A Yes.

7 "Q Did you write those lines since you have
8 been in custody?

9 "A Yes.

10 "Q And as you recall, this was a big --
11 this was a sheaf of papers that I had. I think we
12 all remember that:

13 "Did you write those lines since you
14 have been in custody?

15 "A Yes.

16 "Q Did you write:

17 "I have looked back and remember all
18 that I have written, and I can't rightly recall any
19 specific orders given to Tex by Charlie?"

20 That was the question. I will read it again
21 just for emphasis:

22 "Did you write:

23 "I have looked back and remember all
24 that I have written, and I can't rightly recall any
25 specific orders given to Tex by Charlie?"

26 "A Yes.

1 "Q Did you write that?

2 "A Yes, I did."

3 Now, there we have again -- this is the heart
4 of the prosecution's case.

5 Tex Watson, according to the prosecution, is
6 a Zombie, an automaton, he is a person who is a puppydog who
7 -- he is a robot, something I think like a mechanical man
8 that does the bidding of the person who creates him, who
9 makes the mechanical man.

a fls.

7a-1

1 And here we have Linda Kasabian writing,
2 "I have looked back and remember all that I have written
3 and I cannot rightfully recall any specific orders given
4 to Tex by Charlie," -- in her own handwriting.

5 So what we have to do is consider that, and
6 when we are debating this in the jury room, we can discuss
7 whether or not -- whether or not this written material
8 by her own very hand, really tells the whole story in this
9 case.

10 Because Linda Kasabian, Linda Kasabian -- and
11 you will remember that it was not until cross-examination
12 that we even were given these papers. We had not the
13 benefit -- defense counsel did not have the benefit of
14 those papers.

15 MR. BUGLIOSI: That is a misstatement, your Honor,
16 and I object to that, a misstatement.

17 THE COURT: What portion, Mr. Bugliosi?

18 MR. BUGLIOSI: There is no evidence at all that the
19 defense never had access to that letter, your Honor, and
20 that is what he is telling the jury, your Honor; that
21 is a blatant misstatement.

22 MR. KANAREK: I would welcome taking a statement
23 before the jury. Let's take sworn evidence before the
24 jury on this, I ask to be sworn, your Honor, I would be
25 glad to tell the jury every detail under oath.

26 I will be more than glad to.

1 THE COURT: I don't know what you are talking about,
2 Mr. Kanarek. Let's proceed with the argument.

3 The jury heard the evidence.

4 MR. KANAREK: And so -- and so it comes to pass that
5 in these papers, which were written, Linda Kasabian makes
6 this statement.

7 I don't think there is any question, I don't
8 think there is any question but what Tex Watson -- Tex
9 Watson was a man that Linda Kasabian thought a lot about;
10 that she was emotionally involved with and a person that --
11 that Linda Kasabian wanted to protect.

12 And perhaps unconsciously, perhaps uncon-
13 sciously, in part, because of the affection she had for
14 him, perhaps still has for him.

15 Now, again what we suggest is that the
16 specific transcript, the specific transcript, the words
17 that are written down, are sometimes so significant
18 compared to perhaps our memory of what may have occurred,
19 Mr. Bugliosi at Page 5422, Volume 34:

20 "Q Did you get up earlier than
21 usual?"

22 Let's see:

23 "Q Now, you were all up at the
24 waterfall, the entire Family you say, but
25 Mr. Manson was not there?

26 "A I don't think Squeaky was there

1 "either. She usually stayed with George.

2 "Q Was this the second day after
3 these killings?"

4 And as to that question the Court sustained the
5 objection.

6 Then Mr. Bugliosi:

7 "Q Did you have dinner then up at
8 the waterfall?

9 "A Yes, we did.

10 "Q You ate the pizza?

11 "A Yes.

12 "Q What is the next thing that
13 happened?

14 "A Eventually everybody fell asleep.

15 "Q Where did you sleep?

16 "A On the ground. There was a
17 campsite set up and there were sleeping bags,
18 and we slept on the ground in the sleeping
19 bags, and got up fairly early, maybe before
20 sunrise.

21 "Q You did?

22 "A Yes, I did.

23 "Q BY MR. BUGLIOSI: Did you get
24 up earlier than usual?

25 "A I don't know.

26 "Q What happened after you arose that

1 "morning?"

2 And then:

3 "THE WITNESS: A few other people got
4 up. I remember there was Leslie and Tex, and
5 that guy that used to help Tex with his dune
6 buggy, and Larry. Maybe there were more, I
7 can't remember.

8 "I think Little Patti was there.

9 "Anyway, we got into this man's car that
10 helps Tex with the dune buggy.

11 "MR. BUGLIOSI: I have here a photograph
12 of a female Caucasian. May it be marked
13 People's 84 for identification?

14 "THE COURT: It may be so marked.

15 "Q BY MR. BUGLIOSI: I show you
16 People's 84 for identification. Do you know
17 who is shown in that photograph?

18 "A Yes, Little Patti.

19 "Q What is the --

20 "THE COURT: What was the name?

21 "THE WITNESS: Little Patti.

22 "Q BY MR. BUGLIOSI: What is the next
23 thing that happened?

24 "A We got into this man's car. I know
25 it was a Volkswagen, everybody was sitting on top
26 of each other, and we drove back to the ranch.

1 "I went into the trailer and I got
2 dressed, you know, straight, you know, a
3 similar dress (indicating)."

4 And I gather she indicated the kind of
5 clothes she had on here in court.

6 "-- with nylons and shoes, and fixed my
7 hair, and put makeup on, and I went into the
8 parachute room because Charlie was asleep with
9 Stephanie, and I told him goodbye."

10 Now, remember, this is at a time when Linda
11 Kasabian is taking certain action.

12 Then she changes -- in the middle she realizes
13 that she has made a butch. She realizes that she did not
14 want to be on that witness stand at that time saying good-
15 bye because she supposedly was running away and she
16 realized that Mr. Manson is not the person that she would
17 be saying goodbye to in the context of what she is trying
18 to tell us in this courtroom, because she then changes the
19 goodbye and she says:

20 "And I told them goodbye."

21 And then she says:

22 "Actually, I went into that room to get
23 a bag that I had stashed with diapers, and
24 I remember there was some candy and pens and
25 things."
26

7b
1 In other words, she changed for us; it clicked
2 in her mind that she should not be saying goodbye to Mr.
3 Manson. She is supposed to be escaping, and you don't say
4 goodbye to your captor because your captor does not let you
5 go.

6 And here, in this record, is the heart of
7 Linda Kasabian's trickiness, her lack of candor, her being
8 on the prosecution's side and doing the prosecution's work.

9 She changes her mind in the middle of a
10 sentence. She did not go in there to say goodbye,
11 she changed it.

12 Mr. Bugliosi asked the question at the top of
13 the next page, 5423:

14 "Q Now, when you said goodbye, were
15 you referring to going into town to see Mary
16 again?"

17 Here is Mr. Bugliosi recognizing that she should
18 not have said goodbye.

19 That was the wrong time to say goodbye.

20 "Q What I am referring to, Linda,
21 is were you trying to -- I am concerned about
22 your state of mind -- were you trying to convey
23 to Charlie that you were going into town to see
24 Mary and Bobby Beausoleil and Sandra?"

25 And the Court sustained the objection as
26 leading and suggestive.

1 So what we have there is a circumstance. It
2 happened in this courtroom, and so we can consider that
3 circumstance in connection with the posture of the entire
4 case.

5 "Q BY MR. BUGLIOSI: When you said
6 goodbye to Mr. Manson, what were you trying to
7 convey to him?"

8 And that was sustained-- the Court sustained
9 the objection to that on the basis of what we -- certain
10 legal objections that were made to the Court.

11 But again it is a circumstance. It shows --
12 it shows that Mr. Bugliosi was appreciative of the fact
13 that Linda Kasabian had uttered words which, there is no
14 question about it, stamped her as trying to deceive us on
15 a very, very critical point.

16 Then we adjourned.

17 So in connection with anything that counsel
18 may state, anything that I may state, anything that
19 Mr. Bugliosi may state, we have the record here, and even
20 though there are 19,000 pages of transcript, if there is
21 any question that we have as to what actually occurred,
22 when we are on the jury, all we have to do is press the
23 buzzer, and I am sure Judge Older will have read for us
24 anything that we want, anything to refresh our recollection.

25 Because, for some reason the law does not
26 allow the testimony to go to the jury room.

1 And we can see from that colloquy there how
2 words that are uttered -- if it weren't for the magic of
3 the court reporters, that they would be gone forever.

4 And so there is no question, no question that
5 Linda Kasabian was not afraid of Mr. Manson.

6 Linda Kasabian -- Linda Kasabian was afraid of
7 getting caught for murder. That is what Linda Kasabian was
8 afraid of.

9 And that deceit on her part Mr. Fitzgerald has
10 pointed out, and I think Mr. Shinn, maybe even Mr. Bugliosi,
11 that a witness who is willfully false -- willfully false,
12 intending to deceive in any portion of their testimony --
13 anyone who is willfully false cannot be trusted.

14 And so we have the power to reject all testimony,
15 everything, regardless of the law of accomplice, and
16 regardless of the law of corroboration, of any witness who
17 is willfully false.

18 And Linda Kasabian, Linda Kasabian has been,
19 shall we say, less than candid, to put it mildly.

20 Now, Mr. Bugliosi is going to argue to you
21 that a conspiracy can be proved circumstantially.

22 He is going to say -- he is going to say -- now
23 I believe he will say it. He did not say it in his opening
24 statement -- his opening closing statement, because
25 Mr. Bugliosi has the opportunity of speaking with you
26 again.

1 But he is going to say you can prove a
2 conspiracy by circumstantial evidence.

3 In other words, he probably might give you some
4 example about some people going into some particular area,
5 leaving that area together and then going out and doing
6 something wrong.

7 He is going to say that circumstantial
8 evidence can be used to prove a conspiracy.

7c-1

Sort of a pantomime, whatever was done, no words uttered, something like Charlie Chaplin, that if you believe it, if it's reasonable, it's more reasonable to believe a certain set of facts to exist, that you should use this circumstantial evidence to prove that wrong was intended at the time that these people were together.

Well, what that means is that circumstantial evidence is necessary when you don't have an accomplice.

Sure, if the police go out -- the police go out -- and they arrest people, three or four people who have done wrong of some type, and then those three or four people are prosecuted, no one comes to the Court, no one is given immunity, no one is -- no one has the case dismissed against them.

Then the prosecution can come along and prove their conspiracy by circumstantial evidence.

I think it all depends -- all of us, even though we are on that side of the counsel table, still love this country, love the State of California, love the County of Los Angeles, we are no different than anyone else, and we don't want to see certain events which may be some people tried to indicate -- tried to impose their ideas about.

But anyway, in a case like this there is a legal necessity, we can see that, we agree there is a legal necessity to be able to prove conspiracy by way of

7c-2

1 circumstantial evidence.

2 But when you have an accomplice who is given
3 immunity on seven counts of murder and conspiracy to
4 commit murder, an accomplice who is at the scene, an
5 accomplice who was supposedly in the automobile, an
6 accomplice who goes out and is intimate with all of these
7 people, all of these people in July and -- that is, from
8 July 4th Linda Kasabian tells us she runs off with Mr.
9 Hannum's automobile.

10 Linda Kasabian was accepted. There is not
11 one bit of evidence in this record that Linda Kasabian was
12 not on an intimate basis with everyone at that ranch, and
13 I'm not speaking just of men, I'm not speaking sexually.
14 I am speaking that she was a personal friendly day in and
15 day out basis as Mr. Fitzgerald has pointed out.

16 This girl was used to commune living.

17 Maybe some of us who had never lived in a
18 commune before, or something like that, might be a little,
19 you know, taken aback, or we would be a little bashful or
20 maybe we would be -- it would be strange to us.

21 But Linda Kasabian, the Spahn Ranch was the
22 same thing as Haight-Asbury revisited.

8 fls.

8-1

1 It was just one of a jillion communes that
2 Linda Kasabian lived in. And if we look at it realistically,
3 if we look at it in terms as best we can, it is hard some-
4 times to put ourselves in the position, which is really
5 what we have to do, we have to put ourselves back there at
6 the Spahn Ranch, and recognizing the informalities, and
7 recognizing the relationships of these people, there is no
8 reason in the world, no reason in the world, why Linda
9 Kasabian would not be intimate as to everything that was
10 happening there.

11 Now, Linda Kasabian was intimate with every-
12 thing that was happening there. So why must we do as the
13 prosecution says: Stretch, stretch, contort, torture,
14 torture a conspiracy out of this situation that is here
15 by circumstantial evidence?

16 What reason is there?

17 Was there any reason that Tex Watson wouldn't
18 let Linda Kasabian know everything that is going on?

19 Is there any reason that Linda Kasabian
20 didn't know everything that Mr. Manson was doing?

21 Is there any reason that Linda Kasabian
22 wouldn't know everything that Susan Atkins, Patricia
23 Krenwinkel and Leslie Van Houten were doing?

24 Is there any reason in the world why,
25 at the time these events were supposedly taking place,
26 any reason why Linda Kasabian would be left out?

8-2

1 Is there any reason? Can you think of any?

2 In preparing for final discussion with you,
3 you try -- you see, we only have one chance to speak out.
4 So, what we try to do is try to foresee what the prosecution
5 will tell you the next time that they have the opportunity
6 to speak with you. So, we try, it is a matter of trying to
7 lay it out on the table, so to speak, because this is our
8 only opportunity. This is our only opportunity. We do not
9 have a chance to rejoin. So we try to think, we go through
10 the transcript and try to think what will the prosecution,
11 how will they answer this argument?

12 We have done this, and we can't think of any
13 reason why Linda Kasabian would not be intimate as to
14 everything that went on at the ranch in connection with
15 these matters.

16 Now, we might say, we might say -- you know,
17 Mr. Manson is supposed to be the kingpin, he is supposed to
18 be the dominating powerful force. But look at all the
19 people that are at the ranch.

8a fls. 20

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8a-1

1 You have heard of Squeaky and you have heard of
2 Sandy, you have heard of Quish, you have heard of Stephanie
3 Schramm, you have heard of all the people that Mr. Fitzgerald
4 mentioned.

5 Why would these people be picked to go out and
6 do it? Why was Linda Kasabian? Why was Linda Kasabian
7 part of this alleged group?

8 Why was she? Because she was an intimate of
9 Tex Watson. That is why she was a part of this group.

10 Mr. Manson had nothing to do with Linda
11 Kasabian. He had some kind of a relationship with her
12 a month earlier. But Linda Kasabian was here, she was
13 here in these events, if we take the prosecution's
14 viewpoint, she was in these events because of Tex Watson.
15 She was in these events because she and Tex Watson were
16 boy friend and girl friend.

17 Because there were people at that ranch,
18 if you are going to go out and do what the prosecution
19 would have us believe occurred, you would pick, supposedly,
20 the old pros at the ranch, if you were Mr. Manson going to
21 do this.

22 But the point of the matter is that whatever
23 Tex Watson did, Tex Watson did because he wanted to do it.
24 And whatever Tex Watson did in connection with Linda
25 Kasabian is because Tex Watson and Linda Kasabian were
26 just like that.

1 Now, if there is some reason why this is
2 not so, if there is some reason why this is not so, then
3 certainly when we are in the jury room, I mean, I am sure
4 that that will be discussed among us.

5 THE COURT: It is 12:00 o'clock, Mr. Kanarek.

6 We will take the noon recess at this time.

7 Ladies and gentlemen, do not converse with
8 anyone or form or express any opinion regarding the case
9 until it is finally submitted to you.

10 The Court will recess until 1:45.

11 (Noon recess.)
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9 fls.

LOS ANGELES, CALIFORNIA, THURSDAY, DECEMBER 31, 1970

1:53 P.M.

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(The following proceedings were had in open court, in the presence and hearing of the jury, all counsel being present with the exception of Mr. Hughes; the defendants not being physically present:)

THE COURT: All counsel and jurors are present. You may continue, Mr. Kanarek.

MR. KANAREK: Thank you, your Honor.

Ladies and gentlemen of the jury, I did a little homework in connection with something that we spoke of yesterday. We spoke about this man I remembered reading about; he was the head of a country, I think I stated, who was very soft spoken, very quiet type of person.

My homework reveals that the man was not quite the head of a country. He is the head of the Palestinian Liberation Front, a guerilla group that was involved with the TWA hijacking that we all remember that occurred earlier this year, and his name is Yaasser Arafat, Y-a-a-s-s-e-r, A-r-a-f-a-t, and I believe there is an article in Life magazine indicating that this man is very, very soft-spoken, hardly does any talking at all, and yet here he is, he is the head of a guerilla outfit that has created quite a lot of havoc in the world.

Mr. Bugliosi would have us believe, the

1 prosecution would have us believe that based upon the
2 evidence that has been presented to us in this courtroom
3 that Mr. Watson, as the prosecution says, is a puppy dog;
4 he is a lackey; he is a robot; he is an automaton; he is a
5 dune buggy fixer, and he is a person without any thinking
6 capacity on his own.

7 It makes me think of another person from
8 Texas who was awfully soft-spoken, I think we all recall
9 that incident, I think it was at the University of Texas
10 where the man killed 15 people some years ago. I'm sure
11 all of us remember that.

12 He stood in the tower, I think it was in Austin,
13 Texas at the University of Texas. He was very soft-
14 spoken; no one had had any trouble with him whatsoever.

15 One day he got in that tower and he killed 15
16 people with a rifle, or maybe more than one rifle.

10-1

1 So, I think that we are in agreement that
2 certainly there is nothing whatsoever in this record,
3 or even no inference can be made, that Mr. Watson was
4 anybody's lackey and that Mr. Watson was anybody's robot.

5 Mr. Watson did what he did based upon his own
6 specific intent, his own desire.

7 And Linda Kasabian was, as we have stated,
8 a very, very good friend of his, to say the least. I
9 did some other homework in connection with what we have
10 spoken of about the conspiracy, and this is what the
11 Court will state about the date.

12 I believe Judge Older will instruct you -- it
13 is called CALJIC 6.23 --

14 "In Count VIII, the defendants are
15 charged with conspiracy to commit murder in
16 violation of Sections 182.1 and 187 Penal Code
17 of California, a felony, as follows:

18 "That on or about the 8th through the
19 10th day of August, 1969, at and in the County of
20 Los Angeles, State of California, Charles Manson,
21 Charles Watson, Patricia Krenwinkel, Susan Atkins,
22 Linda Kasabian, Leslie Sangston, whose true name
23 is Leslie Van Houten, the said defendants did
24 willfully, unlawfully, feloniously and knowingly
25 conspire, combine, confederate and agree together
26 to commit the crime of murder, a violation of

1 "Section 187 of the Penal Code, a felony."

2 It alleges the following were overt acts,
3 and then it sets forth four purported overt acts,
4 all of which -- let's see -- August the 8th -- two of which
5 are August the 8th, and the other two are August the 10th.

6 That has to do with the conspiracy charge.

7 Well, the English language is there for us
8 to administer in the jury room, and I offer it for what
9 it may be worth.

10 I will get back to this diagram.

11 There are different ways that we could discuss
12 -- obviously, different individuals may have a different
13 idea of how do you take 19,000 pages of transcript, how
14 do you look good in doing that?

15 You can look good, you can, I suppose you
16 could, well, I could discuss each witness one by one.

17 Well, you could do that, and it might
18 superficially appear to be a very complete discussion:
19 This witness and that witness and that witness.

20 But really, what we are trying to decide,
21 what we are here for, what we are concerned with, is not
22 just an abstract discussion, it is: How does everything
23 fit into the whole picture? And we may have different
24 ideas of how to do it.

25 Now, it seems to me that we can consider that
26 since these people were alleged to have combined and

1 confederated and done all the things that they are alleged
2 to have done, that this conspiracy approach, and I have
3 tried to just, at this point in the discussion, tried to
4 integrate various matters and see how it works, how
5 these bits and pieces of evidence come together, because,
6 really, when we get down to it, as far as Mr. Manson is
7 concerned, Mr. Manson not being present, not being present
8 even according to the prosecution's viewpoint, at any time
9 when anyone passed away, it is important because the heart
10 really, of the prosecution's approach against Mr. Manson
11 is conspiratorial.

10a fls. 11

10a-1 1 So, as we were saying, we tried to bring into
2 the discussion matters that are pertinent in connection
3 with the matter as it concerns Mr. Manson.

4 Now, we have discussed: Is this a conspiracy?

5 We spoke concerning what is necessary to prove
6 a conspiracy.

7 Then the second part here: Is Mr. Manson a
8 conspirator?

9 And the same could be done for any defendant.

10 In the puzzle that we spoke of previously, we
11 have to use the same evidence, the same evidence to -- if
12 I may withdraw that for a moment,

13 The nature of a court proceeding, the nature of
14 the way we do it here in the United States, in Southern
15 California, we take witnesses from the witness stand.
16 They utter. They give testimony.

17 It is done in a way that may be for the
18 convenience of the witness, and the law doesn't require
19 any particular order as far as you receiving the information
20 that you use.

21 You are sort of like a computer in a sense,
22 and you get this information and you take this information,
23 and you then -- and that is why the task in a case of this
24 complexity is a task that can -- it isn't an easy task --
25 because you get the information not necessarily in the
26 order of its importance, you get the information not

1 necessarily in any connection as to any of the particular
2 charges, you get the information more or less in gross.

3 You are given information. The Court decides
4 what information you should get. Then you receive it, you
5 sit here, you are attentive and certainly trying to absorb
6 everything that happens.

11Q1 1 Then you have to -- when you use it, you have
2 to arrange it in a way that fits in in connection with the
3 issues that you have to resolve.

4 And information may be important on more than
5 one issue, or it may be relevant material on more than one
6 issue.

7 So I think it would be logical if we could
8 say, first, before we decide about anyone's criminal
9 culpability as to the conspiracy, is there a conspiracy?

10 You use that information to determine whether
11 there is a conspiracy. The Court will give you certain
12 instructions concerning conspiracy, declarations and all
13 of that.

14 But then you have a very complicated task,
15 because the Court also -- the Court isn't just giving a
16 set of instructions on conspiracy; the Court gives
17 instructions in connection with credibility of witnesses.

18 The Court gives instructions, limiting
19 instructions, indicating that certain material shall be
20 used only as to a particular defendant and not to be used
21 for any other purpose against any other defendant, and so
22 on.

23 In deciding the case, you have to integrate
24 the information that is received here in court in
25 connection with the instructions.

26 Now, there are some who would say that the way

1 to do it, what should be done is to use some kind of a
2 personality approach, that is, just talk nicely and try to
3 have a certain viewpoint come about by being a nice guy.

4 Well, I think we are all agreed that that is
5 not the way to do it.

6 I think that we are agreed that the way to do
7 it is to do it in some -- in a methodical manner.

8 Now, after you decide -- of course now, we
9 feel that there is no conspiracy here. We feel that -- we
10 are all agreed that because the District Attorney has
11 brought certain charges, that doesn't mean -- we are all
12 agreed that is not evidence, and cannot be used for any
13 purpose as evidence.

14 But we must go ahead and discuss, say, assume
15 there is a conspiracy because I am sure the prosecution is
16 going to argue to you in the final address to you that
17 there is a conspiracy.

18 So then a given statement, a given statement,
19 for instance, Linda Kasabian's statement that Mr. Manson
20 supposedly told her to do what Tex told her to do.

21 Now, that statement, just for that statement,
22 just for the sake of argument, for the sake of discussion,
23 assume there is a conspiracy.

24 Now, going from that point on we then have to
25 look at the statement a second time.

26 Now, the Court is going to give us an

1 instruction that says words to this effect, that if a
2 witness from the witness stand made a prior inconsistent
3 statement, that that statement can be used not only to
4 impeach the witness but also, if you believe it, if you
5 believe that ^{the} posture of the evidence is such, you can use
6 it to prove the truth of the facts asserted in the statement.

7 The Court is going to give you an instruction
8 something to that effect.

9 For instance -- for instance Mr. Bugliosi is
10 going to make argument, I'm sure, concerning Mr. Flynn.
11 He is going to try to make use of this principle of law.

12 What we are now talking about is the dual
13 use, this is just a for-instance, a dual use of a bit of
14 evidence.

15 Now, if a witness takes the witness stand and
16 testifies that certain facts are, let's say, X, Y, Z, and
17 then later on there is evidence that the witness on a
18 previous occasion said that it's A, B, C.

19 On a previous occasion the witness says it is
20 A, B, C; on the witness stand he says it is X, Y, Z.

21 The Court is going to instruct you that you
22 can use -- well, let me backtrack for a moment.

23 We all agree, I think, there is no question,
24 we all would agree that this is generally an appeal to
25 what we call impeachment. That means it goes to the
26 credibility of the witness.

1 When we speak of the credibility of the
2 witness, what we are speaking of is: Is this witness to
3 be believed as to anything that he or she says, and if a
4 person says X,Y,Z on one occasion, and A,B,C on another
5 occasion, we can say, well, that means a person is not a
6 truth teller.

7 He is not the kind of person we can believe.
8 We are speaking now in general about his credibility.

9 The Court is going to instruct us in effect
10 that notwithstanding and apart from the aspect of
11 credibility, this prior inconsistent statement, as it is
12 called, can be used -- if we have not decided whether the
13 person is credible or not credible, for that purpose we
14 use the statement, for that purpose, just to decide it.

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1 After that we then go into the aspect of
2 proving something.

3 Let's say that our purpose is to prove whether
4 somebody crossed the river. On one occasion, let's say the
5 man says he crossed the river; we then show on a previous
6 occasion this man said he did not cross the river.

7 We can see that that statement can be used
8 to impeach the man, say that the man is not a truth teller.

9 We also, the Court is going to in effect
10 instruct us, we also can use that latter statement if we
11 so desire, if we take that posture of the evidence, that
12 it should so be used, we use that statement to prove
13 whatever this person that we are speaking of, we can use
14 it to prove that he did not cross the river.

15 I am sure we are agreed there are two
16 different issues.

17 One is a person's credibility who is on the
18 witness stand.

19 The other is using the information to determine
20 a fact question, the very fact question that may be before
21 us.

22 So the Court is going to instruct us that
23 this prior inconsistent statement, if so offered, can be
24 used to prove the truth of the fact asserted on the prior
25 occasion.

26 Now, as to Linda Kasabian for instance.

1 Now, Linda Kasabian, we can come to the
2 conclusion based on this principle of law that the Court
3 is going to instruct; that based upon her own handwriting,
4 because of what we spoke about this morning, we can come
5 to the conclusion in connection with a very central matter
6 in this case, did Mr. Manson ever give Mr. Watson any
7 instructions, Linda Kasabian at a time prior to the time
8 she took the witness stand in writing, in her own hand-
9 writing said she cannot rightly recall.

10 The exact words -- I read them this morning --
11 she cannot rightly recall as to whether Mr. Manson ever
12 instructed Mr. Watson, gave him any instructions what to
13 do.

14 Even from this morning I cannot remember
15 word for word, even though those words are pretty important,
16 I still cannot remember them without looking at the transcript;
17 and so the same thing I'm sure when we are in the jury room
18 we will have the same kinds of difficulty.

19 So because of the same principle of law that
20 Judge Older is giving us, we can come to the conclusion
21 that the heart of this case, the very heart of this case
22 is whether Mr. Manson ever gave Mr. Watson any instructions.

23 Now, that is up to you to decide. The jury
24 is the one to decide that.

25 Now, in connection -- but that does not mean
26 that we forget the other principles of law. Linda

1 Kasabian being an accomplice, the matter of corroboration,
2 all of these other matters, all of these matters are
3 on the debit side, if we could put it that way, in connec-
4 tion with Linda Kasabian, as far as her testimony or the
5 purported evidence that she gave having any value or
6 merit.

7 It is on the debit side, her being an
8 accomplice, the necessity to corroborate, prior inconsistent
9 statement, the various drugs that she has taken, all of
10 these things are on the debit side. You can make a list
11 to see what is on the credit side, if there is anything.

12 Now, Mr. Bugliosi -- Mr. Bugliosi will make
13 much of the fact concerning Mr. Flynn. That is what we
14 wish to speak about now.

15 Now, in connection with this conspiracy, in
16 connection with this problem as to whether Mr. Manson is
17 a conspirator, and I can just stand up here and just
18 exhort and say Mr. Manson is not a conspirator, but I think
19 if we look at the reasoning behind it, I think it is even
20 stronger than the exhortation.

21 We have spoken about the corpus delicti
22 instruction that the Court is going to give you.

23 The Court is going to instruct that before
24 a statement can be used there must be first shown the
25 corpus delicti. There must be a showing of the
26 conspiracy.

1 Now, Mr. Bugliosi is going to make much of the
2 fact that Mr. Flynn supposedly put something on a tape
3 recording.

4 You, we all, remember the statement that
5 supposedly Mr. Manson made. Here is Mr. Flynn -- I don't
6 know -- eight feet seventeen inches, or so; Mr. Manson,
7 whatever he is, that is another factor to consider in
8 connection with it, as to whether Mr. Manson -- as to
9 whether Mr. Manson could physically do any such thing.

10 Juan Flynn looks like -- he is a stunt man;
11 he jumps over fences; he is a very capable person physically.

12 That is another aspect that we have to consider.

13 But we remember when Mr. Flynn supposedly had
14 this relationship, this encounter with Mr. Manson at the
15 Spahn Ranch.

16 Mr. Manson took the knife, supposedly, and
17 said to him "Who do you think is doing all these killings,"
18 or something to that effect.

19 And we remember that we interrogated -- we
20 interrogated concerning that, we interrogated Mr. Flynn
21 concerning that.

22 And, as we know, as we know, we can infer;
23 we can infer that the prosecution in connection with that
24 tape recording type of evidence, that they deliberately
25 suppressed that evidence from the defense.

26 MR. BUGLIOSI: I object, your Honor, there is no

1 evidence of that. That is a vicious statement.

2 THE COURT: Objection sustained.

3 MR. KANAREK: Your Honor, if I may --

4 THE COURT: I don't care to hear from you, Mr.
5 Kanarek, on that. The objection is sustained.

6 The jury is admonished to disregard that
7 statement.

8 MR. KANAREK: Your Honor, then I would like to make
9 argument at the bench on this.

10 THE COURT: Not at this time. You may at the
11 recess.

12 MR. KANAREK: We can certainly infer -- you can
13 infer from what has happened in this courtroom concerning
14 documents, that in advance attorneys are furnished with
15 statements.

16 I am saying this on the record, as a member
17 of the State Bar of California, the reporter is taking down
18 every word that I am uttering, we can certainly infer that--
19 we can infer that a request was made for every statement
20 made by witnesses to law enforcement officers in this case,
21 especially of all cases, the case of the crime of the
22 century!

2 fls.

12-1

1 And so, we can make certain inferences. We
2 can make certain inferences.

3 Again, we have circumstances wherein we are
4 dealing with sophisticated people. The District Attorney's
5 office is a political office. The District Attorney runs
6 for public office. And the District Attorney has a
7 tendency to cater, to cater to, sometimes, the things that
8 perhaps that office shouldn't cater to, and there is a
9 tendency on the part of the District Attorney's office,
10 in a circus kind of case such as this, to do things that
11 are not according to Hoyle, that are reprehensible.

12 And in this connection, in this connection,
13 we can certainly infer that counsel -- that we tried to
14 get all of the statements --

15 MR. BUGLIOSI: Same objection, your Honor.

16 MR. KANAREK: This is certainly a legitimate
17 inference --

18 MR. BUGLIOSI: It is not, your Honor.

19 MR. KANAREK: -- from what occurred in this court-
20 room.

21 THE COURT: The objection is sustained.

22 Will counsel approach the bench?

23 (Whereupon all counsel approach the bench
24 and the following proceedings occur at the bench outside
25 of the hearing of the jury.

26 THE COURT: Mr. Kanarek --

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

2 THE COURT: You may be heard when I tell you you
3 may be heard.

4 MR. KANAREK: Very well, your Honor.

5 THE COURT: I called you to the bench to tell you
6 something. Now listen.

7 You cannot possibly help your case by doing
8 what you are trying to do. In fact, you are going to hurt
9 it if you persist.

10 MR. KANAREK: Well, your Honor.

11 THE COURT: There are many legitimate things that
12 you can argue. Stay within the confines of the record in
13 this case.

14 MR. KANAREK: Well, I am, your Honor, I am.

15 This is the point --

16 THE COURT: Just a moment.

17 MR. KANAREK: Yes, your Honor.

18 THE COURT: What do you mean by "this circus kind of
19 case"? What kind of a remark is that?

20 MR. KANAREK: Your Honor, I am --

21 THE COURT: What do you mean by that?

22 MR. KANAREK: I am referring to the fact of what the
23 District Attorney has done in this case, your Honor.

24 THE COURT: That isn't what you said.

25 You used that expression several times today
26 and I don't like it because it infers there is some infirmity

1 in these proceedings.

2 MR. KANAREK: There is.

3 THE COURT: Well, state it. I want to hear it right
4 now.

5 MR. KANAREK: The infirmity, your Honor, is that we
6 are dealing with a flesh and blood jury, 12 jurors here.

7 As much as we would like, that jury, your
8 Honor, in Department 104 --

9 THE COURT: Stay with the case.

10 MR. KANAREK: I am trying to make argument.

11 THE COURT: What do you mean by that statement -- you
12 used it several times today -- about this circus type of
13 case"?

14 MR. KANAREK: Your Honor, they talk about the crime
15 of the century.

16 THE COURT: You are the one that has used that
17 expression.

18 MR. KANAREK: Mr. Gutierrez, your Honor --

19 THE COURT: You obviously don't have it.

20 MR. KANAREK: Yes, I do.

21 THE COURT: Well, start.

22 MR. KANAREK: You won't allow me.

23 THE COURT: What did you mean by circus kind of
24 case"?

25 MR. KANAREK: What I mean is the complete surroundings.

26 For instance, what happened with that girl this

1 morning.

2 THE COURT: She is a friend of the defense, according
3 to Mr. Shinn.
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12a fls.

1 MR. KANAREK: Well, your Honor, whatever it may be.
2 It is objectively imposed.

3 I am not impugning your Honor's integrity.

4 THE COURT: I think it is the kind of a statement
5 that a responsible ethical attorney doesn't make in argument
6 to a jury.

7 MR. KANAREK: That is true.

8 THE COURT: Let's get off that subject.

9 I am not going to allow you to argue on matters
10 outside this record.

11 MR. KANAREK: If your Honor will permit me, I suggest
12 it is in the record.

13 THE COURT: If you force me to stop you and sustain
14 objections, you will only injure your case.

15 MR. KANAREK: I am not trying to force the Court.
16 I would hope to convince you, if you would allow me to
17 argue.

18 THE COURT: There is nothing to be heard. That is
19 clear.

20 The question remaining is what you intend
21 to do about it.

22 MR. KANAREK: Your Honor, my intent and desire at
23 all times is to obey the Court's orders.

24 THE COURT: Then confine your argument to the
25 evidence in this case.

26 MR. KANAREK: I am, your Honor. The point is, my

1 purpose is always to convince the Court when I believe the
2 Court is not ruling properly, and I do it as respectfully
3 as possible, but the point is that I certainly believe it
4 is within the ambit of the evidence in this case. There is
5 no question about it.

6 THE COURT: There is no evidence in this case that
7 anybody has suppressed anything.

8 MR. KANAREK: Well, your Honor, just on the basis
9 of equal protection of the law and the Fourteenth Amendment.
10 Your Honor is giving a jury instruction on suppression of
11 the evidence as to the defendants.

12 THE COURT: That is evidence in this case.

13 MR. KANAREK: But the point is that our Appellate
14 Courts hold that if there is a basis in the record for a
15 certain proposition, that we can argue it.

16 Mr. Bugliosi, I think, on this point --

17 THE COURT: There is no basis in the record for that
18 proposition you are trying to raise. That is the point.

19 MR. KANAREK: Yes, there is.

20 THE COURT: You understand what I am saying. We
21 don't need to prolong this.

22 Confine your argument to the facts in the
23 record in this case, the evidence of record.

24 MR. KANAREK: Yes, your Honor.

25 I'd just like to point out just one thing on
26 equal protection of the law, if I may.

1 THE COURT: You may draw any comparison and similarity,
2 and so forth. You are not being restricted in your argument
3 in any way, Mr. Kanarek, except that you are going to be
4 restricted, so far as arguing evidence, to the evidence in
5 this case.

6 MR. KANAREK: Yes.

7 THE COURT: Let's get on with it.

8 (Whereupon all counsel return to their
9 respective places at counsel table and the following
10 proceedings occur in open court within the presence and
11 hearing of the jury:)

12 MR. KANAREK: We can certainly make certain inferences.

13 Now, we will remember that Mr. Flynn was
14 arrested, and the purport of what he told us in this
15 courtroom was that he wanted to get arrested. The implica-
16 tion being that he was under some kind of threat.

17 Remember the notes? I think the notes came
18 up about that same time in Mr. Flynn's testimony. He
19 wanted to get arrested because, supposedly, he was in
20 danger.

12b fls.

12b-1

1 I believe Mr. Bugliosi -- and on the record
2 it will reveal; I don't have it right this instant, but I
3 will get it -- Mr. Bugliosi stated something about: Did
4 you want to get arrested? Or were you arrested after you
5 spoke with me and Officer Sartuche on a certain day?

6 In other words, Mr. Flynn is asking to be
7 arrested. A very unusual procedure, to say the least.

8 The implication from that testimony, the
9 clear implication is so that he won't be under some kind of
10 a threat.

11 So, immediately when Mr. Flynn gets into jail,
12 there is a request, and Mr. Flynn then gets out of jail,
13 and somehow or other I become his attorney.

14 Somehow or other -- we have to stick to the
15 record, so let's stick to the record -- why was I, of all
16 persons, contacted in connection with Mr. Flynn?

17 MR. BUGLIOSI: There is no evidence that he was
18 contacted, your Honor.

19 MR. KANAREK: Well, your Honor, I suggest then that
20 we read the record.

21 THE COURT: What part of the record are you referring
22 to, Mr. Kanarek?

23 MR. KANAREK: I am referring to Mr. Flynn's testimony.

24 If I may? It is in 111, your Honor, Volume
25 111, at page 12,586. Further redirect examination by
26 Mr. Bugliosi.

1 "Q Mr. Flynn, this arrest on August the
2 18th, 1970, did that take place after you spoke to
3 Sergeant Sartuche and myself?

4 "A Yes.

5 "You had already spoken to us, and you
6 were arrested that same day; is that correct?

7 "Yes.

8 "What were you arrested for?

9 "For drinking a beer out in the desert.

10 "And you requested that you be arrested
11 for that; is that correct?

12 "Yes. I felt that I needed it."

13 Now, let's talk about that for a couple of
14 seconds.

15 Did he need it to sober up? Did he need it
16 to become part of an alcoholic rehabilitation program?
17 Or did he need it, he is telling us, or he would have us
18 believe, that he need it because he wanted some kind of
19 protection?

20 Well, we on the jury, in the context of Mr.
21 Flynn's testimony and the notes that are in the record
22 at or about this point in the proceedings, which we also
23 can go into, we, when we are in the jury room, we decide
24 this, we talk about it.

25 "Yes, I felt that I needed it.

26 "Where is the Fountain of the World, Juan?

1 "In Box Canyon.

2 "How far is that from Spahn Ranch?"

3 Now, Mr. Bugliosi didn't pursue as to why
4 Mr. Flynn needed it. And the implication was left wherever
5 it was. He goes into Box Canyon.

6 "Where is the Fountain of the World,

7 Juan?

8 "In Box Canyon.

9 "How far is that from Spahn Ranch?

10 "Five miles; something like that.

11 "You testified in court as to some
12 of the words in these threat notes that you
13 received, or these notes that you received."

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15 12c fls.
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1 Mr. Bugliosi, immediately after, after getting
2 the answer "Yes, I felt that I needed it," goes into
3 questioning Mr. Flynn concerning notes, threat notes.

4 Well, in the context of these proceedings, I
5 think it is pretty clear what Mr. Bugliosi is getting at
6 when he brings in that this man wants to go to jail, a
7 very unusual circumstance under any circumstances, and then
8 brings in about the threats.

9 The idea is that this is where Mr. Flynn wants
10 to repose.

11 "You testified in court as to some of
12 the words in these threat notes that you received,
13 or these notes that you received.

14 "Did you study those notes rather
15 carefully?

16 "Yes.

17 Is that why you remember the words?

18 "Yes.

19 "You have also heard Mr. Manson sing
20 songs out at Spahn Ranch; is that correct?

21 "Yes.

22 "And you recognize that some of the
23 words in these notes were words that you had heard
24 him sing before?

25 "Not him, himself, but I heard at the
26 ranch.

1 "Sung by whom?

2 "By members of the Family."

3 You see, Mr. Manson is in jail now. Mr. Manson
4 is in durance vile of a type that is -- it is obvious that
5 Mr. Manson is not outside of the Hall of Justice. But the
6 Family is. And in the context of the threats of the notes,
7 the implication is that Mr. Manson and the Family are doing
8 something in connection with Mr. Flynn.

9 I mean, there is no question. I think we
10 would all be in agreement that this is the purport of what
11 is being said here.

12 Now, page 12,588.

13 "Has Mr. Kanarek approached you several
14 times outside this court and spoken to you, Mr.
15 Flynn?

16 "Yes.

17 "On any occasion, did he tell you not
18 to say anything to anyone?

19 "Yes.

20 "MR. BUGLIOSI: No further questions."

21 Now, the implication from that is -- there
22 is no mention by Mr. Bugliosi at that time about -- let's
23 see now -- that is the extent. It begins at 12,586 and
24 ends at 12,588.

25 The recross -- pardon me -- the further
26 redirect by Mr. Bugliosi. He leaves it that way so that

1 the purport of it would be that I am telling Mr. Flynn not
2 to discuss, not to talk about this case. That is clearly the
3 purport of what he wishes us on the jury to think.

4 Then, on the recross examination by Mr.
5 Kanarek.

6 "Q Now, Mr. Flynn, would you tell the jury
7 all of the circumstances when you say that I said
8 that you shouldn't say anything to anyone?

9 "A Well, after I requested to be arrested,
10 you see, I called some people, that I know and I
11 told them where I was, you see. Then I spent two,
12 three days in jail. And these people asked me,
13 you know, if I wanted out, you know. I told them
14 where I was.

15 "THE COURT: Mr. Flynn, I don't think you
16 are answering the question that Mr. Kanarek asked
17 you.

18 "Would you reframe the question, Mr.
19 Kanarek?

20 "MR. KANAREK: May it be read, your Honor,
21 so that there is no question? It is the same
22 question.

23 "THE COURT: All right. Go back and read the
24 question.

25 "Listen to the question, Mr. Flynn.

26 "THE WITNESS: Yes."

12d-1

"(The question was read by the reporter.)

"THE WITNESS: Okay.

"I will say it like this. When I walked outside, Mr. Kanarek bailed me out of jail, you see, and then I walked outside, and I said, 'Oh, it is you?'

"And Mr. Kanarek says, 'Yes,' you know.

"So he says, 'What happened to you?'

"So I related -- I told him that, you know, I was in jail for drinking a beer, you see.

"Then, he says, 'Have you had anything to eat,' you know?

"'No,' I says to him. I says, 'I haven't had anything to eat because I was in -- how do you call them places -- the hole, the tank, all day, you see.' And I told him that I wanted something to eat.

"So, he offered to buy me something to eat.

"And in the meantime, he told me that I shouldn't worry, you know, and I shouldn't -- you know, I shouldn't worry, you know, and that he would have some of the girls to come down and pick me up.

"Then we went and had some food, you know, and on this, he said that I shouldn't talk to anyone. In this period of conversation, he told

1 "me not to talk to anyone, you see.

2 "This is all Mr. Kanarek said: 'Don't
3 talk to anyone,' you see.

4 "Then he says: 'The girls are coming,'
5 you know.

6 "So I told him, 'No. I am going somewhere
7 else,' you see.

8 "So, I had Mr. Kanarek drop me off in
9 this place, this remote place.

10 "And he says, 'Call me in the morning,'
11 you know, and he gave me a card, you know.

12 "And I said that I would, but I didn't.

13 "And that was the relation of the conver-
14 sation, you know.

15 "MR. KANAREK: Q Did I tell you not to
16 talk to anyone concerning the case that you came out
17 of jail on?

18 "A The only thing that you said to me,
19 you know, in repetition, you know, at various times
20 of the conversations that we had, was, 'Don't talk
21 to anyone; don't talk to anyone.'

22 "Q And we discussed the case in Barstow
23 involving why you were in jail here in Los Angeles;
24 is that right?

25 "Well, I don't know if I talked about
26 Barstow, you know. I don't remember."

1 Now, Mr. Flynn was arrested -- this puts me in
2 a situation that Mr. Bugliosi and the prosecution are
3 trying to, by that "no further questions," after asking about
4 soliciting the answer that I told him not to discuss or
5 not to say anything, this puts me in a position that I am
6 supposedly telling him not to talk about the Tate-La
7 Bianca case, remembering that Mr. Bugliosi first asked him
8 concerning this way back there, and the implication is that
9 I spoke to him in the hallway, and the implication is,
10 you not having any further information at that time, the
11 implication being that I told him not to discuss anything
12 concerning this case.

12 e fls. 13

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1 The question at the top of page 12,591:

2 "And we discussed the case in Barstow
3 involving why you were in jail here in Los Angeles;
4 is that right?

5 "Well, I don't know if I talked about
6 Barstow, you know. I don't remember."

7 Now, I can only leave that to your analysis
8 and your conclusion.

9 When an attorney is called concerning the
10 very matter that he was in jail for, it is a matter to
11 decide whether or not he doesn't remember.

12 Now, is that the kind of situation where Mr.
13 Flynn really doesn't remember?

14 That goes on the issue of impeachment, on
15 credibility. It is something for us to consider. It is
16 certainly not anything for a lawyer to decide. It is for
17 those of us who are on the jury to decide as to whether or
18 not it indicates anything.

19 A lack of candor.

20 Mr. Flynn wants us to believe, as he testifies
21 from the court, from the witness stand, he wants to get
22 the prosecution's viewpoint.

23 Talk about robots and automatons. If there
24 ever was a robot or an automaton of the prosecution, it
25 is Mr. Flynn.

26 Mr. Flynn obtained money in connection with

1 these matters, we know that. He obtained money in connec-
2 tion with the statements that he made to certain individuals
3 who were creating literature, if we can dignify it by calling
4 it literature, concerning certain matters involving this
5 case, and he wants to get a viewpoint from an unbiased
6 witness.

13 fls.

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1 Is he the same kind of witness as Dr. Katsuyama
2 and Dr. Noguchi, or is he editing as he goes along and
3 telling us what he wants us to know? Which way is it?

4 By the same token, Linda Kasabian, she is no
5 longer on welfare I presume; I would presume that she is
6 partaking of the money that she spoke of in this courtroom
7 in connection with her place in these proceedings.

8 So those are a couple of factors that go to
9 credibility. I don't know if I talked about Barstow:

10 "Q You don't remember telling me why you
11 were arrested?

12 "A Yes, I think I told you.

13 "Q And it involved a traffic, a drinking
14 matter in Barstow, is that right?

15 "Drinking of beer, right, yes.

16 "Q And I told you not to discuss it with
17 anyone, is that correct?

18 "A Well, you said that too, yes."

19 In other words, he is now saying that -- the
20 implication being that I told Mr. Flynn not to discuss this
21 case -- this case.

22 Well, I think it is a fair inference that
23 Mr. Flynn was wired for sound when he spoke to me.

24 I think we can infer that if I had done anything
25 improper with Mr. Flynn that we would have heard about it
26 in this courtroom.

1 I think that it is a fair inference to make
2 that Mr. Flynn -- I have no way of proving it -- that in
3 the context of this case, the crime of the century as Mr.
4 Gutierrez indicated it was, that when he walked out of that
5 police station, I think we can fairly assume that he was
6 loaded with some kind of electronic apparatus.

7 And now, in the context of these proceedings,
8 we offer this;

9 We have no way of proving it, but the question
10 is, is this a little unusual for someone to want to go to
11 jail, supposedly for this particular reason and then -- and
12 then he gets out and this is under the auspices of the
13 prosecution and the Los Angeles Police Department.

14 Then Mr. Bugliosi calls Mr. Dave Steuber, as
15 we recall, the California Highway Patrolman, and he called
16 Mr. Steuber, and this is what the prosecution is going to
17 ask us in this case.

18 The prosecution is going to invoke, is going
19 to suggest the same principle of law that we spoke of in
20 connection with Linda Kasabian.

21 The prosecution is going to say, he's going to
22 say that the prior consistent statement of Mr. Flynn,
23 supposedly that he made to Officer Steuber on December 19th:

24 "Q When did you speak to Mr. Flynn in
25 Shoshone?

26 "A On December 19th, 1969.

1 "Q Where did you speak to him in Shoshone?

2 "A In a house he was sharing with two
3 other occupants.

4 "Q Who was present at that time in addition
5 to yourself and Mr. Flynn?"

6 Here we have a bevy of people, Paul Crockett,
7 Paul Watkins, Brooks Poston, and at one phase of the
8 conversation Deputy Don Ward, Inyo County Sheriff's Office.

9 Now, Paul Watkins and Brooks Poston were in
10 this courtroom. They were actually called as witnesses
11 in this case.

12 Mr. Bugliosi, I am sure, the prosecution is
13 going to suggest, and this principle of law, is going to
14 advocate that this prior consistent statement of Mr. Flynn's
15 shows that Mr. Flynn really is telling us the way it is,
16 the prior consistent statement which was made on December
17 19th, 1969.

18 Now, what we have to do then, in connection
19 with evaluating it, on this side of that mahogany rail
20 (indicating), we are advocates; on your side, that is
21 where the judging takes places.

22 Does it strike you -- does it strike you in
23 the context of these proceedings, everything that has
24 occurred, does it strike you that that is a little too
25 pat? Here we have Officer Gutierrez, we have the entire--
26 I don't know -- great numbers of people in that part of

1 California involved with Mr. Manson and involved in connec-
2 tion with this case.

3 Remember, this is December 19th, 1969. The
4 Grand Jury indictment released so the public knew about it,
5 if they did not before it was released, they knew about it
6 on December the 8th, 1969, and, we are told, you all
7 remember that, we are told that the police officers, the
8 prosecution people, in connection with this tape recording
9 of Mr. Flynn, this alleged tape recording of Mr. Flynn, that
10 it was overlooked.

11 MR. BUGLIOSI: I object, your Honor, there is no
12 evidence of this. He is arguing outside the record.

13 MR. KANAREK: Why, your Honor, I submit, your Honor,
14 I would welcome -- may we approach the bench?

15 THE COURT: Yes, you may.

16 (The following proceedings were had at the
17 bench out of the hearing of the jury:)

18 THE COURT: Read the last statement of Mr. Kanarek's.

19 (Whereupon the reporter reads the record.)

20 THE COURT: Where were you told that, Mr. Kanarek,
21 where is that in the record? Give me a citation. Who
22 said it? What witness said that?

23 MR. KANAREK: What I am saying, your Honor --

24 THE COURT: No, answer my question. I want a
25 direct answer.

26 Where is it in the record?

1 MR. KANAREK: He stated --

2 THE COURT: Who?

3 MR. KANAREK: Mr. Steuber stated that he was only
4 working, he was only working on that other matter; that
5 he was primarily interested only in that matter in Inyo
6 County; that he was not interested in the Tate-La Bianca
7 matter.

8 THE COURT: That does not say what you said?

9 MR. KANAREK: The clear inference is that this
10 evidence was overlooked by the District Attorney. Mr.
11 Bugliosi has argued; he stated to this Court, your Honor,
12 that you can use the flight of fancy, as he put it, in
13 final argument.

14 This is far from flight of fancy. The clear
15 implication of the inference is that this was --

16 THE COURT: You said "We are told." That is a
17 direct misstatement.

18 You are not arguing in inference, you are making
19 a statement of fact.

20 The statement is incorrect.

21 MR. KANAREK: Your Honor, the inference, when we
22 are using the English language, this is an inference,
23 certainly.

24 THE COURT: I understand the English language
25 somewhat differently from the way you do, Mr. Kanarek.
26 I understood you to be make a representation of fact. My

1 recollection is there is no such fact on the record.

2 MR. KANAREK: Your Honor's interpretation that we
3 are told --

4 THE COURT: All right, we are not going to prolong
5 this.

6 MR. KANAREK: What I'm saying, your Honor, I say
7 this is a violation of equal protection of the law in
8 final argument under the Fourteenth Amendment.

9 THE COURT: You may argue any inference you care to
10 whether it is logical or illogical, but when you make
11 misrepresentations as to what the record says I am going
12 to do something about it.

13 MR. KANAREK: Mr. Steuber said he was working only
14 on --

15 THE COURT: I am going to sustain the objection for
16 the reason I have indicated.

13a fls. 16

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

THE COURT: You may continue.

MR. KANAREK: Thank you, your Honor.

I think that we can infer, we can make inferences, in fact that is what circumstantial evidence is all about really. We make inferences.

This police officer, Mr. Steuber testified to the effect that he was primarily working on another matter. He was not working on the case that we were -- that we were -- that we are in this courtroom for.

Well, this is the circumstance. Certainly we can consider this in the jury room, and we can have other than what is read in final argument read back to us if we wish in the jury room.

But the question is, with the focus that has been on this case, the Grand Jury indictment of December 8th, 1969, can we reasonably infer that the people, the law enforcement people in Shoshone, California were concerned with any event or anything in Shoshone, California?

Can we infer that?

We know; we know from the record in this case how soon the defendants were taken to Los Angeles County.

We know from the records in this case, we know from the record in this case the prosecution's own evidence concerning Linda Kasabian and her return to Los

1 Angeles, can we accept that? Do we accept that, that the
2 law enforcement people around Shoshone, California were
3 conducting an investigation that was separate and apart
4 and had nothing to do with this case?

5 If that were so, why was Mr. Flynn even
6 interrogated concerning the Tate-La Bianca case.

7 We know, we have heard the tape recording and
8 we have before us the officer telling us -- and from the
9 purported tape recording we hear language concerning the
10 Tate-La Bianca case.

11 And we have -- and we have, with Officer
12 Steuber at the time this takes place, the people that we
13 have talked about, and Mr. Bugliosi in his questioning of
14 Mr. Steuber:

15 "Q What is your occupation, sir?

16 "A State traffic officer, California
17 Highway Patrol, 1382 East Olive, Fresno, California.

18 "Q You are not one of the investigating
19 officers in the Tate-La Bianca murders, are you?

20 "A I am not.

21 "Q Do you know Juan Flynn?

22 A I do.

23 "Q Have you ever had a conversation with
24 Juan Flynn?

25 "A I have."

26 Now, the prosecution viewpoint in connection

1 with this is that the implication of Mr. Bugliosi's question
2 is that this, what happened up there, was unknown to the
3 people in Los Angeles County.

4 Now, this is the reason, I think we can infer
5 that Mr. Bugliosi asked that question.

6 He asked the question of the police officer.

7 And why would he ask that question? Because
8 he wants to have that, he wants to have something that
9 occurred at supposedly -- and supposedly -- that supposedly
10 was unknown to the prosecution in this case, because he
11 wants this to support Mr. Flynn in connection with the
12 alleged statement that Mr. Manson allegedly made to Mr.
13 Flynn.

14 So the question is, is this indeed a fact?
15 Is this indeed a fact? Can we believe that in this of
16 all cases that law enforcement, the prosecution, of Los
17 Angeles County, was not aware of everything that was done
18 there?

19 The people were there. The people were
20 arrested; we have it in this trial where everybody gave
21 a false name except Mr. Manson.

22 Mr. Manson, you will recall, in that bit of
23 testimony when he was arrested way up there in the desert,
24 the name that he gave was Charles Manson.

25 The other people did not give their correct
26 names.

1 THE COURT: We will take our recess at this time,
2 Mr. Kanarek.

3 Ladies and gentlemen, do not converse with
4 anyone or form or express any opinion regarding the case
5 until it is finally submitted to you.

6 The court will recess for 15 minutes.

7 (Recess.)
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1 THE COURT: All counsel and jurors are present.

2 You may continue, Mr. Kanarek.

3 MR. KANAREK: Thank you, your Honor.

4 Now, if I may, this is still Officer Steuber,
5 Page 12,608, Volume 111.

6 Mr. Bugliosi asking Mr. Steuber:

7 "Q How long was the conversation
8 you had with Mr. Flynn?

9 "A I don't recall the exact length
10 of that conversation. There was a series of
11 conversations during the day with each of the
12 witnesses as I interviewed them and I started,
13 perhaps at 1:30, 12:00 o'clock in the evening,
14 and it didn't conclude until somewhere around
15 10:00 or 11:00 that night."

16 Now again, this is the circumstance wherein
17 we can evaluate -- is it reasonable to expect -- is it
18 reasonable to expect that an investigation of that
19 duration, that number of hours, had nothing to do with what
20 we are in this very courtroom about?

21 "Q Was your conversation with Mr.
22 Flynn tape recorded?

23 "A Yes, a good portion of it was.

24 "Q Did you bring that tape recording
25 to court with you today?

26 "A Yes, I did.

1 "Q After the conversation at any
2 time did you play the tape recording?

3 "A I have played just a small part
4 of this tape within the last two days. It's
5 the only time.

6 "Q All right. With respect to that
7 small part of the tape, did it appear to
8 accurately record the conversation that you
9 engaged in with Mr. Flynn?"

10 There was an objection which was overruled.

11 "All right, with respect to that small
12 part of the tape, did it appear to accurately
13 record the conversation that you engaged in
14 with Mr. Flynn?

15 "A Will you repeat the question,
16 please?

17 "Q When you played the tape, did you
18 determine that it fully and accurately reported
19 the conversation that you recall having with
20 Mr. Flynn?

21 "A It did.

22 "Q Was anything added or deleted, to
23 your knowledge, in that tape?

24 "A No, it was not.

25 "Q And do you have that tape with
26 you in court today?

b3

1 "A I do."

2 Now, the significant part that we suggest be
3 considered in this respect is after the conversation,
4 "At any time did you play the tape recording?"

5 Referring to Officer Steuber.

6 Officer Steuber indicated to us, I believe,
7 that he was a California Highway Patrolman, and Officer
8 Steuber -- and this question is pregnant with the thought
9 that other people -- there is no question but what other
10 people had this tape and used this tape in connection with
11 this investigation.

12 So this question by Mr. Bugliosi of the
13 prosecution:

14 "Q After the conversation at any time
15 did you play the tape recording?"

16 Officer Steuber says, "I played just a
17 small part in the last two days." That is the
18 only time."

19 So certainly, certainly the way we know from
20 this courtroom, we saw Officer Gutierrez, and Officer Calkins
21 and Officer Sartucci and Officer -- oh, Mr. Gallindo, those
22 gentlemen are in plain clothes. They are gentlemen who are
23 detectives.

24 And officer Steuber takes this information, and
25 certainly what happens with it is that it is turned over to
26 the investigating officers, as was done in this case.

3b4

1 I mean, we certainly can make that inference.
2 It certainly is not an unreasonable inference to make.

3 Ten hours -- 12:00 o'clock in the morning,
4 and did not conclude until somewhere around 10:00 or 11:00
5 that night:

6 "Q Do you have that tape with you in
7 court today?

8 "A I do.

9 "Q In the conversation that you had
10 with Mr. Flynn did he mention any knife incident
11 at the Spahn Ranch with Charles Manson?"

12 My objection was overruled, and that particular
13 question I don't believe was actually answered.

14 Then we took the noon recess, and Mr. Bugliosi
15 said that, well, that this particular portion we will play
16 in the courtroom after the noon recess.

17 It will take a minute.

18 So what we have is Officer Stauber taking these
19 numbers of hours of conversation, and the question that we
20 have before us, in connection with the veracity of these
21 proceedings, is it reasonable?

22 Do we believe -- do we believe that the
23 prosecution in this case did not have those tapes?

24 Now, if I may, Volume 112, Page 12,677.

25 "BY MR. BUGLIOSI:

26 "Q Just going back a little bit,

p5

1 "Mr. Steuber, this conversation that you say
2 was on December 19, 1969 in Shoshone, California?

3 "A That is correct.

4 "Q Between yourself and one Juan Flynn?

5 "A That is correct.

6 "Q And the conversation was tape
7 recorded?

8 "A That is correct.

9 "Q You say there was a portion in the
10 tape-recorded conversation that pertained to a
11 knife incident between Mr. Flynn and Mr. Manson,
12 is that correct?

13 "A That is correct.

14 "Q And you have the tape recorder and
15 the tape with you in court here today?

16 "A That is correct.

17 "Q And you have already played the tape?

18 "A Yes, I have.

19 "Q And you find it to be an accurate
20 reproduction of your conversation?

21 "A It is.

22 "Q And nothing has been added or
23 deleted?

24 "A No, sir.

25 "Q And you recognize your voice on the
26 tape?

1 "A Yes, I do.

2 "Q You recognize Mr. Flynn's voice
3 on the tape?

4 "A I do.

5 "Q All right, sir. Would you please
6 play the particular portion of the tape per-
7 taining to the knife incident. Play that
8 portion for the Judge and the jury.

9 "You might increase the volume on the
10 recorder as high as you can."

11 Then they played this conversation:

12 "VOICE: They mentioned it a couple of
13 times (unintelligible.)

14 "VOICE: All right. Now, did you ever
15 hear him say anything about the Tate killing
16 or anything like that?"

17 "This is officer Steuber, and the prosecution
18 is telling us, is telling us these ten hours, these ten
19 hours of tape recording that was made in connection with
20 this case or that was made by officer Steuber was not in
21 connection with this case.

3c-

1 "VOICE: Well, sort of, you know.

2 "He never mentioned anything to me
3 about it, you see, but I know at one time
4 I came in the kitchen, you know. I was doing
5 some heavy work outside, and after it was all
6 done, you know, they were sitting down on the
7 porch, just watching. There was a whole bunch
8 of them, you know. And after I got through,
9 I went in the kitchen and I fixed something and
10 I sat down. And there was some more girls in
11 there, you know.

12 "So he came in and he went like that, you
13 know.

14 "So everybody ran outside, you know, and
15 placed themselves outside.

16 "Then he was looking at me real funny.

17 "Then I started to get back down to where I
18 was eating.

19 "And then he grabbed me by the hair like
20 that, and he put a knife by my throat.

21 "He said, 'You son-of-a-Bitch, I am
22 going to kill you.'

23 "I said, 'Well, I can't do nothing about
24 that,' you know.

25 "And then he says, 'Don't you know I am
26 the one who is doing all the killings?' you know."

13c2

1 Are we talking about the Tate-La Bianca
2 situation or are we not?

3 The officer is clearly asking a question after
4 having asked that first question:

5 "VOICE: Well, I don't recall too well
6 whether it was before or after the raid, you
7 know.

8 "He says, 'Are you going to come with me
9 to the desert?'

10 "I says, 'Well, I'm not planning to do it.
11 I'm right here. Here is where I am doing my
12 work.'

13 "He says, 'I am going to kill you, you
14 son-of-a-Bitch.'

15 "And then he turned around and he gave me
16 the knife, you know, and I said, 'Well, I don't
17 have no use for that.'

18 "Then he says, 'Well, I'll kill you,'
19 you know.

20 "He was going through this emotional thing,
21 you know, act.

22 "And then he says, 'Well, if you are ready
23 to die, or if you are dead, I want you to go
24 down the creek and make love to my girls,' you
25 know.

26 "So I said, 'No,' you know, 'I'm not going

6C3

1 "to do nothing."

2 "And then, you know, I kept doing what
3 I was doing, and he stood there for a minute
4 and he turned around and I guess he walked out
5 or something.

6 "VOICE: He wanted you to go down there to
7 the creek and make love to the girls there,
8 okay.

9 "VOICE: Yes.

10 "VOICE: Now, he said he was the one that
11 was doing all the killings.

12 "VOICE: Yes.

13 "VOICE: Did you ask him what killings he
14 meant or anything?

15 "VOICE: No, no, I -- you know.

16 "VOICE: Were you a little afraid of him?

17 "VOICE: Well, I wasn't afraid of him, you
18 know, but if the man means what he talks about,
19 you know, I don't want to find out and put myself
20 in a spot.

21 "BY MR. BUGLIOSI:

22 "Q Is that it, sir?

23 "A That's correct.

24 "Q That particular portion about the
25 knife incident?

26 "A That's correct.

1 "Q And that was yourself talking to
2 Mr. Flynn?

3 "A Yes, sir.

4 "Q And this tape will be made
5 available for the defense to listen to in toto?

6 "MR. BUGLIOSI: I will withdraw the question.

7 "Q You just heard the conversation now,
8 yourself; is that right, sir?

9 "A That's correct.

10 "Q And you recall that the conversation
11 you heard on tape, was that the actual conver-
12 sation that took place at Shoshone, California
13 on December 19, 1969 between you and Mr. Juan
14 Flynn?

15 "A That is correct.

16 "MR. BUGLIOSI: Thank you. No further
17 questions.

18 "MR. FITZGERALD: No questions.

19 "THE COURT: Mr. Shinn?

20 "MR. SHINN: Yes, your Honor, I have a
21 few questions."

22 And then, by Mr. Shinn.

23 "Q Officer, when you talked to Mr.
24 Flynn, was he in custody?

25 "A No, he wasn't.

26 "Q How did you happen to meet him?

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1 "A I had interviewed other witnesses
2 in this case I was working and they had brought
3 Mr. Flynn's name into the case as a potential
4 witness.

5 "Q And how did you contact Mr. Flynn?

6 "A I went to Shoshone with the express
7 purpose of interviewing Crockett, Posten and
8 Watkins, and Mr. Flynn was there working in the
9 cafe at the time and was also available.

10 "MR. SHINN: I have nothing further, your
11 Honor.

12 "THE COURT: Mr. Kanarek.

13 "MR. KANAREK: I have no questions, your
14 Honor.

15 "MR. HUGHES: No questions, your Honor.

16 "MR. BUGLIOSI: Just one more question.

17 "BY MR. BUGLIOSI:

18 "Q You said you had been interviewing
19 witnesses in this case. You are not referring
20 to the Tate-La Bianca murder case, are you?"

21 After an objection which the Court overruled:

22 "You may answer.

23 "THE WITNESS: I was not investigating the
24 Tate-La Bianca. It was another situation per-
25 taining only to Inyo County.

26 "BY MR. BUGLIOSI:

"Q All right. Had nothing to do with

13c6

1 "these murders?

2 "A No."

3 Calling for a conclusion, your Honor -- over-
4 ruled.

5 "MR. KANAREK: Officer, at the time --
6 may I inquire, your Honor?"

7 After another statement the Court says, "You
8 may."

9 "MR. KANAREK:

10 "Q On December 19th, 1969, officer,
11 is it a fair statement that Mr. Manson was in
12 custody?"

13 Well, that was sustained.
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1 "Q BY MR. KANAREK: On December 19,
2 1969, you purported to interrogate Mr. Flynn
3 about the Tate-La Bianca murders; is that right?

4 "And other matters on the case I was
5 working on, sir.

6 "Well, officer, if I may -- is it a fair
7 statement, officer, that you spoke to Mr. Flynn
8 concerning the Tate-La Bianca murders?

9 "That is correct.

10 "So-called, right?

11 "Right.

12 "And so no matter what else you may have
13 interrogated him on, you were interrogating
14 concerning the very matters that we're in this
15 courtroom for; is that correct?

16 "That is also correct, sir.

17 "And so you were a law enforcement officer
18 on the California Highway Patrol?

19 "That's correct.

20 "What was your rank, officer?

21 "A traffic officer.

22 "And you were doing this at the instigation
23 of the District Attorney of Inyo County?

24 "This is correct.

25 "Mr. Fowles?

26 "Mr. Frank Fowles.

14-2

1 "How do you spell that, sir?

2 "F-o-w-l-e-s,

3 "And was your state of mind, officer,
4 such that you were attempting to get evidence
5 in connection with the very case that we're
6 here before Judge Older on?

7 "My primary concern was the case pending
8 in Inyo County, sir. This was of a secondary
9 nature."

10 Then an objection. An objection was sustained.
11 Another question and an objection was sustained.

12 "So, officer" -- that was sustained.

13 I believe that that ended the matter before the
14 jury.

15 So, we have a situation where this police
16 officer was out in the field, as any officer is.

17 If someone in San Francisco County or Alameda
18 County, or Sacramento County has a contact with law enforce-
19 ment there, I think that we would all agree that it is
20 standard practice to take the evidence where it is.

21 And over and above that, we have the situation
22 in this case where Mr. Fowles -- we all recall Mr. Fowles --
23 he is the gentleman who came to this courtroom and told us
24 all about Goler Wash, and he brought pictures, I believe,
25 that we will have in the jury room, as to the difficulty in
26 going up Goler Wash. Mr. Fowles, his position in that

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1 area is similar to the position of the District Attorney,
2 the prosecution, in this case is in our area.

3 So, it is just without question, it is without
4 question, that this information of this officer was
5 presented to the prosecution in this case as in any case.
6 So, this is what we have in connection with this.

7 Now, we then have before us, as a situation,
8 wherein what we are evaluating, what occurred here, you see,
9 we are not, we certainly can consider that the people who
10 are prosecuting this case are people who recognize that
11 in this case they are getting information from everywhere.

12 They sent fliers all over the country in
13 connection with the gun. We have seen the extensive
14 investigation as far as scientific evidence, as far as
15 everything that was done in this case. And there are cer-
16 tain things about this case that just -- they don't smell
17 right.

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1 Your sense of proportion tells you.

2 For instance, we have Benedict Canyon.

3 Benedict Canyon, I am sure all of us, we have seen the map,
4 we would agree that Benedict Canyon is not, is not, an
5 area such as, let's say, around Wilshire and Western where
6 there are, if there are any apartments left after building
7 all the big buildings down there, but in the residential
8 section down there there is just apartment after apartment
9 after apartment, house after house after house, if there
10 are any left, one right on top of each other.

11 The Benedict Canyon area is not that kind of
12 an area.

13 The Sharon Tate residence has been called an
14 estate. Looking at these pictures, we can certainly assume
15 that these houses are not crowded together.

16 The population density in the Benedict Canyon
17 area is certainly not what it is in other parts of our
18 County and City.

19 And yet Rudolf Weber, Rudolf Weber who was so
20 concerned, supposedly so concerned, about this matter when
21 it occurred, concerning the hosing off, washing, and all
22 that, and the lady even supposedly said, "My husband is a
23 deputy sheriff," when he wasn't because of this great
24 apprehension, Rudolf Weber doesn't, as far as the evidence
25 in this case is concerned, doesn't come forth until some
26 time, I believe, in December.

14a2
1 That is the time when Rudolf Weber comes forth,
2 and the license number is a number that he memorizes
3 because in the kind of work he does, he has the occasion
4 to memorize numbers.

5 Now, he was very concerned when it happened.
6 Is it reasonable for us to believe that with the density of
7 the interest in this case, not only by law enforcement but
8 by population in general and population around the address
9 on Cielo Drive, is it reasonable to believe that in the
10 canvass that was made, that Rudolf Weber, in that area,
11 with everything that we heard, didn't convey that infor-
12 mation?

13 This all goes into this thing that we call
14 reasonable doubt.

15 Is it reasonable? Is it reasonable to believe
16 that the police, that the canvass, that the search for
17 people and evidence -- they turned up this gentleman who
18 was from the girls' camp who heard this thing, supposedly,
19 what was it, a mile away -- yet Garretson didn't hear it,
20 they tell us -- yet Rudolf Weber had a license number that
21 he memorized, he says, and he came forward with it at some
22 period in time months later.

23 Does it smell right?

24 I mean, there is nothing that we can say about
25 it. We don't have any evidence of anyone behaving with
26 impropriety. But is it reasonable in the context of this

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1 case?

2 Is it reasonable to expect that Rudolf Weber
3 would not, in a very short period of time, have conveyed
4 that information to law enforcement people?

5 It is something that we should consider.

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14b-1

1 Again, now, going back again to our diagram,
2 the Court is going to give us these instructions on
3 conspiracy, and the Court is going to give us instructions
4 concerning declarations.

5 We get into a very nice question here, an
6 interesting question.

7 I have here at this point, if I may pass this,
8 this word "pig" that is written on the front door of the
9 Tate residence.

10 (Mr. Kanarek passed a photograph to the jury.)

11 MR. KANAREK: Here is another photograph also.

12 (Mr. Kanarek passes a photograph to the jury.)

13 MR. KANAREK: The Court is going to instruct that
14 in connection with conspiracy that acts or declarations of
15 co-conspirators may be used against people, may be used to
16 consider the case against people who are alleged co-
17 conspirators.

18 I don't want to belabor it by reading the whole
19 instruction. You will get that. It is part of a thick
20 package.

21 And then we come to a very nice question, an
22 interesting question, as to whether these words that are
23 written are these acts and declarations of co-conspirators.
24 Can they be used in deciding this case?

25 Now, in thinking about this, here we have the
26 word "pig" that is written on the front door of the Tate

4b2
1 residence.

2 Now, Linda Kasabian -- we think of circumstan-
3 tial evidence, we think of matters that we have spoken of
4 before both in our discussion here and in Mr. Bugliosi's
5 discussion, the discussion of co-counsel, and what we heard
6 from the witness stand, and the question is: Did Linda
7 Kasabian write this word "pig" at a time after she dropped
8 the knife, her knife inside the house?

9 Now, of course, Linda Kasabian tells us the
10 unbelievable -- it is unbelievable -- that in this whole
11 panorama of events which she says occurred, that when she
12 got to that point -- you remember the picture where the
13 blood is on the sidewalk -- when she got to that point, she
14 realized that Mr. Manson was no longer Jesus Christ, no
15 longer God.

16 She tells us that.

17 So, the question is as to whether -- we have
18 discussed this -- as to whether this is, in fact, true,
19 because of later things that she says that she did.

20 The question is, when Linda Kasabian went into
21 this house, and we realize that the knife, her knife, is
22 found in a chair, we remember the testimony, and in the
23 jury room we will have that, the question is, she was
24 the one, she says, that was the closest to this door.
25 Now, she tells us she never went into this house. She
26 tells us that she did certain things, which I am sure we

33
1 recall, about going down in connection with the car, and
2 all of that.

3 Now, the word "pig," the word "pig," was not
4 an unfamiliar word to Linda Kasabian.

5 Linda Kasabian, in her life, in communes, and
6 in whatever else her life consisted of, she tells us, and I
7 am sure we recall, she tells us this is no longer a part of
8 her vocabulary, the word "pig."

9 And as far as this particular time is concerned,
10 August the 8th, 1969, if we look at Linda Kasabian as she
11 was then, there would be no question that "pig" was part
12 of her vocabulary.

14c

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1 Is it unreasonable, putting aside her protes-
2 tations, all of the statements that she made, but looking
3 at the circumstances now, is it unreasonable to expect that
4 Linda Kasabian wrote this word "pig"?

5 Is it unreasonable to expect that Linda Kasabian
6 saw her boy friend, Tex Watson, mercilessly attack people
7 in this residence and that Linda Kasabian, because of some
8 kind of confrontation that she saw, where -- remembering
9 that at this time and place it isn't this courtroom, it
10 isn't the summer of 1970, it is August the 8th of 1969 --
11 at that time, in a moment of some kind of feeling for
12 Mr. Watson, or whatever -- whatever -- that she wrote the
13 word "pig" on this door?

14 We don't know that that is true. We can't say
15 with certainty that that is true, but it is not unreasonable,
16 we suggest. It is not unreasonable at all.

17 "Pig" was part of her vocabulary. There wasn't
18 any immunity from seven counts of murder. There wasn't
19 any dismissal as far as the conspiracy and the murder is
20 concerned in this case. It is not at all unreasonable.

21 She had creepy-crawled. She had creepy-crawled
22 on many, many occasions. She said that she had creepy-
23 crawled in the past, and whatever, we know that this was
24 part of her vocabulary.

25 THE COURT: Counsel, will you approach the bench,
26 please?

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1 MR. KANAREK: Yes, your Honor.

2 (Whereupon, all counsel approach the bench and
3 the following proceedings occur at the bench outside of the
4 presence of the jury:)

5 THE COURT: Gentlemen, I am going to adjourn at this
6 time and excuse the jury, and then I am going to take up
7 the matter of Nancy Davis regarding this incident that
8 occurred this morning, so I just wanted to let you know
9 that we are adjourning now as far as the jury portion is
10 concerned.

11 MR. KANAREK: Your Honor, may I request that this be
12 done in chambers?

13 May I request, from the publicity standpoint,
14 I make a motion first, it would be my request that --

15 THE COURT: No. She is entitled to have the matter
16 in open court, Mr. Kanarek.

17 MR. KANAREK: I think if we balance the equities,
18 your Honor. Whoever her attorney is, whoever is going to
19 represent her, would your Honor ask that it be done in
20 chambers, because it is my belief that --

21 THE COURT: I just said no, Mr. Kanarek. Do you
22 understand what that means?

23 MR. KANAREK: Yes. But I would like to make argument
24 to the Court.

25 (Whereupon, all counsel return to their
26 respective places at counsel table and the following

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

3 THE COURT: We are going to adjourn at this time,
4 ladies and gentlemen, until next Monday.

5 I want to join with counsel and all of the
6 court attaches, and everyone else, in wishing you a very
7 happy New Year.

8 Again, remember the admonition. Do not con-
9 verse with anyone or form or express any opinion regarding
10 the case until it is finally submitted to you.

11 We will adjourn at this time until 9:00 a.m.
12 on Monday, January 4th.

13 (Whereupon, the jury leaves the courtroom and
14 the following proceedings are had in open court: All
15 counsel present. The defendants absent.

16 Also present Miss Nancy Joan Davis.)
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1 THE COURT: The record will show that I have asked
2 that the young lady who appeared in this courtroom this
3 morning unannounced and during the course of Mr. Kanarek's
4 argument be brought into court now regarding that matter,
5 and she is present.

6 Will you state your name, please?

7 MISS DAVIS: Nancy Joan Davis.

8 THE COURT: Miss Davis, this morning at approxi-
9 mately 10:00 a.m. you entered this courtroom while the
10 trial was in progress and you walked to the front of the
11 court to the rail immediately upon entering the courtroom,
12 and while walking to and from the rail, you uttered in a
13 loud tone which was clearly audible to the Court and in
14 the immediate view of the presence of the Court, the jury,
15 counsel for the parties and the spectators in the courtroom,
16 substantially the following words:

17 "I came here to defend my brother. I came here
18 to defend my Christian brother, and it is written in the
19 Bible."

20 These words were repeated by you as you were
21 led out of the court by the Sheriff's deputies.

22 Your conduct was disorderly and a breach of
23 the peace and quiet of the courtroom amounting to a dis-
24 ruption of the orderly processes of the trial occurring in
25 the immediate presence and view of the Court, the jury,
26 counsel for both parties, and spectators, and during the

1 course of Mr. Kanarek's final argument to the jury.

2 Do you wish to be heard regarding this matter?

3 MISS DAVIS: If I may.

4 THE COURT: You may.

5 Stand up.

6 MISS DAVIS: I have prepared during the past three
7 months some papers which I hope very much you will look at.
8 I prepared them for you and I prepared them for the jury
9 also. But it will be up to you as to whether or not the
10 papers can be read to the jury.

11 When I walked into the courtroom, I said not
12 exactly what you thought I said, or I think probably the
13 reporters were closer and they heard what I said.

14 I said that I have come with a sword to defend
15 my brother, and my sword is non-violent, my sword are the
16 words that I speak, which are the words of God.

17 God is love and people who speak of love speak
18 through the holy spirit. That is love and that is God.

19 God's kingdom is not up there. God's kingdom
20 is coming to earth.

21 THE COURT: You didn't say all this this morning.

22 MISS DAVIS: Oh, I'm sorry. I didn't mean to be
23 carried away.

24 And then I said -- I am not sure that Charles is
25 a Christian. He believes in the principle of Christ.

26 THE COURT: I just want to know whether you wish to

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1 say anything with regard to this incident this morning.
2 I am not interested in your philosophy or your religion or
3 your beliefs about other matters. Just the incident that
4 occurred this morning.

5 MISS DAVIS: I say that the reason that I did what
6 I did is because I have been moved by God to do so.

7 I am very sorry. If I have to suffer conse-
8 quences for it, then I must suffer consequences. I only do
9 what wisdom and love tells me to do.

10 THE COURT: Mr. Shinn indicated to the Court at the
11 bench this morning that he knows you and that you have been
12 in this court many times, and I know that to be a fact.
13 During the course of this trial I have seen you here many
14 times.

15 I have seen you appear to waive or nod, or
16 waive and nod, in the direction of either defense counsel
17 or the defendants, or possibly both.

18 Do you have some connection with the defense in
19 this case?
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1 MISS DAVIS: I care about them. I care about every
2 one, including you. I care about --

3 THE COURT: That wasn't the question I asked you.

4 Do you have some connection with the
5 defense in this case?

6 MISS DAVIS: I certainly do. They are my friends,
7 and I try to communicate with them. I try to communicate.
8 There is a lack of communication in the world.

9 THE COURT: Anything else you wish to say?

10 MISS DAVIS: Only that I hope that you will review my
11 papers, and I hope that I can be a witness before this
12 jury with my papers that I have been working on very hard
13 for the last three months.

14 THE COURT: Did you have any conception of what you
15 were doing this morning when you entered this courtroom
16 during the process of the trial and during Mr. Kanarek's
17 final argument to the jury?

18 MISS DAVIS: I am a free, moral agent, I am sane,
19 and I profess to be somewhat intelligent. I believe I know
20 what I am doing, yes.

21 I don't believe that I am crazy.

22 THE COURT: Very well.

23 For this conduct, I judge you to be in direct
24 contempt of the Court and I sentence you to spend three days
25 in the County Jail.

26 Miss Davis will be remanded in accordance with

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1 the sentence.

2 MR. SHINN: May I address the Court, your Honor?

3 THE COURT: I beg your pardon?

4 MR. SHINN: May I address the Court?

5 THE COURT: Yes.

6 MR. SHINN: I believe Miss Davis should have an
7 attorney representing her.

8 THE COURT: This is a direct contempt and may be
9 punished summarily in accordance with the Code of Civil
10 Procedure.

11 This court now adjourns.

12 (Whereupon, at 4:10 p.m. the court was in
13 adjournment.)