

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.

163

No. A253156

REPORTERS' DAILY TRANSCRIPT

Thursday, January 7, 1971

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:

~~DONALD HUGHES, Esq.~~
MAXWELL KEITH, Esq.

For Deft. Krenwinkel:

PAUL FITZGERALD, Esq.

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

LOS ANGELES, CALIFORNIA, THURSDAY, JANUARY 7, 1970

9:18 A.M.

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(The following proceedings were had in the chambers of the Court out of the hearing of the jury, all counsel with the exception of Mr. Hughes being present:)

THE COURT: All counsel are present.

I understand you wanted to address the Court, Mr. Kanarek.

MR. KANAREK: Yes, your Honor, I just want to know what your Honor's intentions are because as I said I don't think that I will be finished by today.

I have excised many matters that I was going to go into.

The jury does not take the transcript into the jury room with them.

THE COURT: You say you don't think you will be finished today?

MR. KANAREK: No, your Honor. I just want to know what your Honor's intentions are.

Is it your Honor's intention to cut me off regardless of that?

MR. BUGLIOSI: If I may interpose an observation before the Court rules:

Yesterday morning the Court indicated that perhaps Mr. Kanarek was attempting to deliberately go to the point

1 where you have to cut him off, so he would have an issue on
2 appeal.

3 And I think his conduct yesterday clearly
4 demonstrated that. The Court has given him a certain number
5 of days to finish and told him to organize his final argument
6 and make it more concise.

7 And yesterday afternoon, with that in mind, he
8 went back over the same material, the same identical
9 material, and I think that clearly shows, your Honor, that he
10 is making a deliberate effort to force the Court to cut him
11 off so that he will have an issue on appeal.

12 You just don't do things that he did yesterday
13 afternoon when you are really trying to expedite an argument.

14 MR. KANAREK: Well, your Honor --

15 THE COURT: Well, all right --

16 MR. KANAREK: I don't want to get into any colloquy,
17 but that is ridiculous.

18 THE COURT: I was there; I saw it. I don't have to be
19 told by somebody else what I heard and saw. That is not the
20 point.

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1 MR. KANAREK: We have many issues on appeal, Mr.
2 Bugliosi.

3 THE COURT: Your statement this morning, Mr. Kanarek,
4 is somewhat -- well, I don't quite understand it.

5 Do you mean that you might be finished today?

6 MR. KANAREK: No, your Honor, I can't be finished
7 today with the matters that I have to cover, with what we
8 have to cover.

9 Right now there are some 20,000 pages of
10 transcript.

11 THE COURT: Well, now, let's be realistic, Mr. Kanarek.
12 You talk about 20,000 pages of transcript. Five weeks of
13 that is jury selection; hundreds and hundreds of pages
14 consist of arguments on various motions, many of which you
15 made and argued; the actual evidence-taking in this case
16 commenced on July 24th and was concluded in the middle of
17 November, about four months.

18 So, let's not exaggerate.

19 MR. KANAREK: Well, your Honor, I am not exaggerating.
20 I am telling your Honor --

21 THE COURT: The actual transcript of testimony is
22 considerably less than 20,000 pages.

23 MR. KANAREK: Well, your Honor, if we balance the
24 right to a fair trial with the --

25 THE COURT: Let's get down to the point, Mr. Kanarek.

26 Now, what are you asking?

1 MR. KANAREK: I am asking the Court if the Court
2 intends arbitrarily to cut me off at the end of the day, at
3 4:30 today, if I am not finished, your Honor is going to say,
4 "That is it."

5 That is what I want to know, because --

6 THE COURT: Are you asking for a specific time?

7 MR. KANAREK: No, your Honor.

8 THE COURT: What are you asking?

9 MR. KANAREK: I want to know the Court's intention.

10 It is my belief that this quibbling about a few
11 hours and a day and so forth, in the posture of what the
12 prosecution has done in this case --

13 THE COURT: I want to know what your intentions are.

14 MR. KANAREK: My intentions are to argue the case
15 until I feel that I have done what I should do.

16 That is what my intention is, your Honor.

17 THE COURT: Let's point out another thing, Mr. Kanarek.

18 In most cases you don't have a daily transcript,
19 so there is no possibility that you can go back and retry
20 the case by reading all the testimony to the jury. You
21 would either summarize out of your memory or from your notes,
22 and that is all you would do, and then you would argue the
23 inferences from there.

24 Now, the fact that you have a daily transcript
25 doesn't mean you have a right to go back and retry the case
26 by reading all the testimony back to the jury, which is what

1 you apparently think you have the right to do.

2 MR. KANAREK: Most respectfully, that is not so. Your
3 Honor is oversimplifying it.

4 THE COURT: Now, I am not oversimplifying it.

5 MR. KANAREK: There are certain issues --

6 THE COURT: Just a minute.

7 For example, there have been numerous instances
8 in the past five days during the course of your argument
9 where it would have been a perfectly simple matter to
10 summarize the testimony of the witness, even reading portions
11 of it to pinpoint particular places, but instead you haven't
12 done that, you have gone back and read the whole thing, the
13 relevant would be irrelevant and the material would be
14 immaterial, and you haven't accomplished anything by doing
15 that except to waste a lot of time.

16 MR. KANAREK: Your Honor is certainly entitled to his
17 opinion, but it is my position that the summarization does
18 not put into focus the issues that we are speaking of here.
19 It doesn't put into focus where a word here and there shows
20 a witness is lying.

21 A lawyer is someone who is an advocate, and when
22 you read from that so-called bare transcript, you get a lot
23 more than you get by just going through the ritual and
24 supposedly looking very dramatic and synopsisizing.

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1 This is not the purpose. And the fact that in
2 other cases we don't have a transcript is most regrettable.
3 It means that people are denied fair trials because of the
4 ridiculous provision or lack of provision for the jury to
5 get the material into the jury room with them.

6 They have these exhibits that are horrendous,
7 they have these exhibits that are inflammatory, and they
8 can't connect it up without the testimony, and it is our
9 belief that this is much more important.

10 THE COURT: They have the testimony.

11 MR. KANAREK: Pardon?

12 THE COURT: They have been getting the testimony now
13 ever since the trial started.

14 MR. KANAREK: Yes, your Honor, but I would hope that
15 your Honor would --

16 THE COURT: The idea that they are entitled to hear
17 all the testimony all over again in argument is absurd.

18 MR. KANAREK: Certainly your Honor doesn't mean that I
19 have read all the testimony, because I haven't. I have deleted

20 I will go over the transcript, and I believe that
21 this approach is significant and important because of the fact
22 that the jurors, there are certain words in there that show
23 that Linda Kasabian is an unmitigated liar.

24 THE COURT: All right, save that for the jury,
25 Mr. Kanarek.

26 MR. KANAREK: You can only do that by looking at the
exact words and getting the before and the after.

1 THE COURT: Well, you are abusing your right to argue
2 just like you have abused practically every other right that
3 you have in this case from time to time.

4 The other day, when I asked you what your estimate
5 was, you said two days, and then when I told you I was going
6 to hold you to it, you immediately changed it.

7 You don't have any estimate at all; is that
8 right?

9 MR. KANAREK: Your Honor, I would say to the Court that
10 sometime tomorrow -- I have gone through it and spent all
11 last night --

12 THE COURT: Sometime tomorrow what?

13 MR. KANAREK: That I will finish.

14 THE COURT: All right.

15 Then I will give you until sometime tomorrow.

16 MR. KANAREK: This is the point, your Honor --

17 THE COURT: Don't weasel on me, Mr. Kanarek.

18 MR. KANAREK: It is not a matter of weaseling, your
19 Honor.

20 THE COURT: You made the statement and I accept it.
21 I will grant your request, until sometime tomorrow.

22 MR. KANAREK: All right.

23 Now, the point is this: I was up all night in
24 my --

25 THE COURT: Mr. Kanarek --

26 MR. KANAREK: I am giving the Court the background.

1 THE COURT: I am giving you what you are asking for.
2 You can't take yes for an answer.
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1 THE COURT: There is a point, Mr. Kanarek, at which
2 an argument no longer is an argument; it becomes a fillibuster.

3 MR. KANAREK: I understand.

4 THE COURT: Yours is reaching that point.

5 But you have told me now your estimate, and I
6 have agreed to that, so I am not going to cut you off; I am
7 going to let you finish sometime tomorrow, just as you have
8 requested.

9 MR. KANAREK: I beg the Court to remember this, how-
10 ever, at no time in these proceedings has the Court in
11 connection with the People's ridiculous trivia and minutia,
12 the Court never said -- they were allowed to go on month
13 after month and put on evidence.

14 I don't believe there was once in this record
15 where the Court said, "Well, Mr. Bugliosi, have we had
16 about enough?"

17 THE COURT: Yes, there have been times.

18 MR. KANAREK: Only in connection with specific witnesses
19 wherein a specific instance he has belabored a specific
20 point.

21 But as far as in toto --

22 THE COURT: Mr. Kanarek, I don't know what their case
23 is until I hear it. The prosecution is under no obligation
24 and, believe me, they don't tell the Court what their case
25 is going to be before they put it on.

26 I have no way of knowing what is coming next.

1 MR. KANAREK: I repeat, I am not indicating anything
2 about the integrity of the Court at all, I am not saying the
3 Court is colluding with the District Attorney.

4 THE COURT: We are talking about argument. Now we are
5 getting into something else.

6 All right, now, do you have the last number of
7 the requested jury instructions, Mr. Darrow?

8 THE CLERK: 124, your Honor.

9 THE COURT: Then I will mark your two instructions
10 125 and 126, Mr. Kanarek.

11 MR. KAY: Which is which?

12 THE COURT: 125 is the one that starts out, "You are
13 instructed that the supposed corroboration of an accomplice"

14 MR. KAY: Thank you.

15 THE COURT: 126 --

16 MR. KAY: -- is the other one.

17 THE COURT: -- is the other one which starts out:

18 "You are instructed that the purported statement
19 of Charles Manson attributed to him by Juan
20 Flynn" -- et cetera.

21 MR. KANAREK: Your Honor, if I may, in connection with
22 Mr. -- is your Honor finished?

23 THE COURT: No, I am not finished.

24 MR. KANAREK: Oh, I'm sorry. I'm sorry.

25 THE COURT: Well, I think 125 is confusing. It is
26 ambiguous, and there is a strong likelihood that it could

1 confuse and mislead the jury.

2 It will be refused.

3 As to 126, I think this is a question where the
4 Court will simply be taking away from the jury that which the
5 jury must decide.

6 MR. KANAREK: Your Honor, then that is denying
7 Mr. Manson a fair trial.

8 THE COURT: Also, as Mr. Bugliosi pointed out yesterday,
9 it would have overtones which I think could be, conceivably,
10 detrimental and harmful to the other defendants.

11 MR. KANAREK: Then may I ask the Court, will the Court
12 give an instruction wherein we state what a confession must
13 do, that a confession must --

14 THE COURT: There is an instruction defining a
15 confession.

16 MR. KANAREK: That instruction is incomplete.

17 It does not state that a confession must confess
18 to all of the elements of the crime; it must show the pre-
19 meditation and it must show --

20 THE COURT: I am refusing 126.

21 Now, if you care to draft another one along the
22 lines you are talking about I will certainly consider it,
23 Mr. Kanarek.

24 MR. KANAREK: Very well.

25 THE COURT: As I have told all counsel, they are
26 free to submit instructions right up to the end because I

1 realize sometimes upon further reflection you may want to
2 submit additional instruction.

3 I don't see the point of having an arbitrary cut-
4 off day.

5 As to Mr. Keith's requested instruction, I think --
6 is this intended to be two separate requests, Mr. Keith,
7 this one on the first page and then one running over on the
8 second page?

9 MR. KEITH: Yes, your Honor, two separate instructions.

10 I'm sorry.

11 THE COURT: Then I will number the first one 127 and
12 the second one will be 128.

13 MR. BUGLIOSI: I have some observations to make again.

14 THE COURT: All right, just a minute.

15 In People vs. Durham, 170 Cal. 2d at 181, the
16 Court talks about -- well, actually refers to People vs.
17 Villa.

18 And it states the Villa case set forth the
19 following principles relevant to the case before us, and then
20 reads this statement as follows:

21 "To be an abettor the accused must have
22 instigated or advised the commission of the
23 crime, or have been present for the purpose of
24 assisting at its commission. He must share the
25 criminal intent with which the crime was committed.

26 "While mere presence alone at the scene of the

1 "crime is not sufficient to make the accused a
2 participant, and while he is not necessarily
3 guilty if he does not attempt to prevent this
4 crime through fear, such factors may be circum-
5 stances that can be considered by the jury with
6 the other evidence, in passing on his guilt or
7 innocence.

8 "One may aid or abet in the commission of
9 a crime without having previously entered into a
10 conspiracy to commit it. Moreover, the aider and
11 abettor in a proper case is not only guilty of the
12 particular crime that to his knowledge his con-
13 federates are contemplating committing, but he
14 is also liable for the natural and reasonable or
15 probable consequences of any act that he knowingly
16 aided or encouraged.

17 "Whether the act committed was the natural
18 and probable consequence of the act encouraged,
19 and the extent of the defendant's knowledge,
20 are questions of fact for the jury."

21 Now, this statement --

22 MR. KEITH: I wouldn't mind substituting that.

23 THE COURT: It seems to me that is more complete.

24 MR. KEITH: That is all right. Unfortunately I did
25 not run across that case.

26 THE COURT: Your request in 127 I don't think is

1 incorrect, but it just seems to be hanging out in left field.

2 MR. KEITH: Just as long as I have something in there
3 about mere presence, as it is going to be part of my argument,
4 part of my theory of defense.

5 MR. BUGLIOSI: The mere presence rule is an exception
6 to the aiding and abetting rule.

7 All mere presence cases are where there is no
8 conspiracy.

9 MR. KEITH: I am going to argue she is not a conspirator,
10 too, based on certain inferences.

11 THE COURT: Well, in the Durham case the prosecution
12 proceeded on two different theories, one was a conspiracy.

13 MR. BUGLIOSI: Conspiracy was not charged in Durham.
14 They went on the conspiracy theory but I don't think a
15 conspiracy was charged.

16 MR. KEITH: You know, it doesn't have to be charged.

17 MR. BUGLIOSI: No, I agree with that, but if the Court
18 is going to give this instruction, I think for clarity the
19 Court would have to add that this instruction only pertains
20 to aiding and abetting, and has no relevancy to conspiracy
21 because mere presence is enough for conspiracy.

22 As I told the jury, a defendant can be playing
23 badmitton in another state and still be guilty under the
24 conspiracy instruction.

25 MR. KEITH: I agree with that, if she were a
26 conspirator she could be asleep on a couch somewhere and still

1 be guilty.

2 MR. BUGLIOSI: It has to be clearly articulated for
3 the jury that this instruction pertains only to the aiding
4 and abetting rule. It has no application to the conspiracy
5 rule.

6 Given to the jury in a bare fashion like this,
7 it would be a simple thing for the jury to apply this to
8 conspiracy also.

9 I would ask the Court to add, mere presence at
10 the scene of the crime is enough if the very purpose of the
11 presence is ^{to} help out if and when needed.

12 That is what Hymer says in so many words, and that
13 is what Durham says, the way it stands now it is a very
14 dangerous instruction.

15 THE COURT: Is it possible for you and Mr. Keith to
16 get together and agree on a requested instruction along these
17 lines?

18 MR. BUGLIOSI: Yes.

19 MR. KEITH: I certainly would agree that presence at
20 the scene does not negate the possibility.

21 THE COURT: As to the second part, 128, the
22 defendants requested instruction 128.

23 How does that apply to the evidence in this case?

24 MR. KEITH: My theory is, your Honor, my theory is
25 this: I hate to expose my argument in advance, but I am put
26 to it.

1 Miss Van Houten told Dianne Lake, allegedly,
2 "I wiped some fingerprints off after I stabbed this lady,
3 and I also took some food out of the ice box, and did this
4 and that."

5 Now, I'm going to argue that wiping fingerprints
6 off, assuming that is what she did, for the sake of argument,
7 is not aiding and abetting but in effect is concealing the
8 identity of the perpetrators, and that act if believed by
9 the jury does not make her an aider and abettor but makes
10 her an accessory after the fact.

11 Because it was something that was done not to aid
12 and abet the commission of the crime, but to conceal the
13 identity of the perpetrators, and that makes her an accessory,
14 not an aider and abettor.

15 MR. KAY: She, herself, was one of the perpetrators.

16 MR. KEITH: I am saying she was not a perpetrator. I
17 am entitled to argue that.

18 MR. KAY: If you accept that statement of Dianne Lake,
19 why don't you accept the other part, she stabbed one of the
20 victims?

21 MR. KEITH: That is nothing, that is desecrating a dead
22 body. I will plead to that.

23 MR. BUGLIOSI: When the crime has been completed,
24 including the res gestae.

25 Under his theory, if there is a robbery and one
26 of the robbers shoots the victim for the purpose that the

1 victim not identify him in court --

2 MR. KEITH: That is an oversimplification.

3 MR. BUGLIOSI: That is what you are saying, the purpose
4 of the killing is to avoid being identified at a later time.

5 MR. KEITH: I want to rebut anything you say about
6 wiping off fingerprints, as reflecting aiding and abetting.

7 I am saying it is not. I am saying when she did
8 that the crime was over, it was done. It is not aiding and
9 abetting the commission of the crime.

10 MR. BUGLIOSI: The res gestae, whatever that means --

11 MR. KEITH: These people were dead when she wiped off
12 the fingerprints. That is not going to aid and abet the
13 commission. It is going to conceal the identity.

14 THE COURT: The felony was not complete at that point
15 even though the victims might be dead.

16 They are still there; she was effecting an escape
17 along with everyone else.

18 MR. KEITH: I don't believe an escape is part of the
19 offense. The conspiracy is terminated when the bodies were
20 stone cold.

21 THE COURT: It certainly would be under a felony
22 murder theory.

23 MR. KEITH: I grant you I have read cases where escape
24 and robbery -- in robbery cases, escape is still part of, as
25 he calls it, the res gestae part of the crime.

26 MR. BUGLIOSI: In fact, the res gestae in a felony

1 murder is not as conclusive as when the conspiracy ends,
2 the conspiracy goes way beyond the res gestae.

3 MR. FITZGERALD: There is no evidence of a felony murder.

4 MR. BUGLIOSI: There is evidence of burglary.

5 MR. FITZGERALD: There is none in this case.

6 MR. KEITH: Part of the theory of my defense, however
7 untenable Mr. Bugliosi thinks it is, is that the act of
8 wiping off fingerprints after the killings does not make her
9 an aider and abettor in the commission of the offenses. It
10 makes her an accessory. That is why I put forth that
11 instruction in aid of my theory of the case.

12 MR. BUGLIOSI: That is incorrect, your Honor, I
13 will ask the Court not to consider that instruction.

14 MR. KEITH: It is not incorrect under my theory.

15 THE COURT: Well, there certainly is evidence of a
16 felony murder if the jury believes Linda Kasabian.

17 MR. KEITH: I never got the impression from Mr.
18 Bugliosi's excellent summation that he had any thought this
19 was a felony murder.

20 MR. KAY: That is his argument about Dianne Lake's
21 testimony.

22 THE COURT: It is my recollection that the defendants
23 requested the felony murder instructions.

24 MR. KAY: What about Dianne Lake's testimony as to
25 Van Houten bringing the money home?

26 MR. KEITH: We don't know where the \$8 came from, she

1 could have robbed the hitchhikers for all we know.

2 MR. KAY: Mr. La Bianca collected foreign coins --

3 MR. KEITH: There is no evidence of foreign coins.

4 Canadian coins -- I go up to Canada all the time, put me in
5 the box.

6 MR. KANAREK: Your Honor, it is about 9:45 now.

7 THE COURT: We came in here at your request.

8 MR. KANAREK: Yes, your Honor, I agree, we originally
9 came in at my request.

10 That encompassed just a very few minutes, your
11 Honor.

12 MR. KEITH: I apologize for taking up so much time,
13 Mr. Kanarek, but this is important to me.

14 THE COURT: Are you saying, Mr. Fitzgerald, you don't
15 want the felony murder instruction?

16 MR. FITZGERALD: Certainly.

17 THE COURT: You object to it?

18 MR. FITZGERALD: Yes.

19 MR. KEITH: Sure we do.

20 MR. FITZGERALD: Sure we do.

21 MR. KEITH: Even after I came in the case, I think we
22 objected on more than one occasion, even after I came in.

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1 MR. FITZGERALD: I think we have an excellent
2 posture on appeal. We have got substantial verbatim
3 quotes of the prosecution that there is no evidence of
4 felony murder.

5 THE COURT: The prosecution doesn't manufacture
6 evidence by arguing.

7 We have the testimony of the accomplice in
8 this case that the purpose of the mission was burglary,
9 creepy-crawling.

10 MR. FITZGERALD: That where the adversary concedes
11 there is no evidence?

12 MR. BUGLIOSI: I argued about the \$70 that Tex
13 Watson took, and I mentioned the wallet that was taken,
14 and I mentioned that Leslie had some money.

15 MR. KAY: And he also argued about the felony
16 murder instruction in his argument.

17 MR. FITZGERALD: Well, if he can't remember his
18 arguments, I would be happy to extract it and put it into
19 a motion, but his argument clearly indicates that there is
20 no felony murder.

21 THE COURT: He only wants to rely on the first
22 degree murder theory -- to emphasize it, I should say.

23 MR. KEITH: Mr. Bugliosi emphasized that the removal
24 of the property was strictly an afterthought.

25 THE COURT: That is an argument.

26 MR. FITZGERALD: As an officer of the court, is he

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1 coming in here and saying there isn't any felony murder,
2 and then in front of the jury saying that there is?

3 That is duplicitous.

4 THE COURT: I don't care what Mr. Bugliosi says in
5 his argument about it. The evidence indicates to me that
6 it could be both, either or both, felony murder and first
7 degree premeditated. Either one the evidence will support
8 if the evidence is believed. If the evidence is believed.

9 MR. FITZGERALD: I didn't expect to convince you,
10 your Honor. I gave that up sometime ago. But I want the
11 record to be clear that we are objecting to the instruc-
12 tion. That is all.

13 THE COURT: I just wanted to be sure.

14 MR. KEITH: From what I heard, then, I think an
15 accessory after-the-fact instruction is proper because I
16 am intending to argue that wiping off fingerprints isn't
17 aiding and abetting.

18 I would like to argue that.

19 MR. MUSICH: You can argue that.

20 THE COURT: I will consider that further before
21 making a ruling.

22 Will you and Mr. Bugliosi see if you can
23 agree on a modification of 127?

24 MR. KEITH: I will try.

25 It looks like we will have a little time.

26 THE COURT: Anything further?

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MR. KANAREK: Yes.

I just want to put on the record, about the comment of Mr. Keith, I don't wish to keep Mr. Keith from stating anything, I just merely stated the time so the record would reflect. I wanted to have the record accurately reflect.

I did not wish to interfere with Mr. Keith doing whatever he thinks he has to do in connection with arguing to the Court.

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1 MR. KEITH: I apologize, Mr. Kanarek. I thought you
2 were trying to cut me off.

3 MR. KANAREK: That is not the case.

4 I just wanted to make the record reveal an
5 accurate time.

6 MR. KAY: Your Honor, the People have the further
7 instruction that the People submitted that your Honor
8 asked us to redo after Mr. Fitzgerald's objection.

9 Do you want to take that up at a later time?

10 THE COURT: I am still thinking about that one too.

11 MR. KAY: Very well.

12 THE COURT: I am not sure that that would be
13 appropriate.

14 I am still thinking about it.

15 MR. KANAREK: In other words, your Honor may not
16 give that instruction?

17 THE COURT: No. I think the instruction has to be
18 given in some form.

19 I am just talking about the form in which they
20 redrafted it.

21 This is the one about the suppression.

22 MR. KANAREK: Yes, your Honor. Because it certainly
23 pinpoints. We have asked for this instruction about Mr.
24 Flynn's --

25 THE COURT: I was impressed with Mr. Fitzgerald's
26 comments initially, and that is why I asked you to redraft

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1 it, but I have some question as to whether or not it
2 should be pinpointed.

3 I think -- at least my thinking at the moment
4 -- it is probably like any other instruction, that the
5 jury will apply it if it is applicable, and they won't
6 apply it if it isn't.

7 In that way it doesn't pinpoint or single out
8 any particular piece of evidence or any particular defendants.

9 MR. KAY: We just did it in that manner because the
10 Court asked us to.

11 THE COURT: I know.

12 I will continue to think about it.

13 MR. KEITH: Can I have the Durham citation?

14 THE COURT: 70 Cal. 2d 171.

15 MR. BUGLIOSI: Hymer is 118 Cal. App. 2d.

16 MR. KEITH: Thanks.

17 (Whereupon the following proceedings
18 occur in open court. All jurors present. All counsel
19 except Mr. Hughes present. Defendants absent.)

20 THE COURT: All counsel and jurors are present.

21 You may continue, Mr. Kanarek.

22 MR. KANAREK: Thank you, your Honor.

23 Good morning, ladies and gentlemen.

24 This somewhat extended discussion that we
25 are having reminds me of the story they tell about Mark
26 Twain where Mark Twain was at a church and the preacher
wanted some funds for a new building.

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1 The preacher kept talking and talking, and
2 when he started talking, he said: Well, I will give them
3 \$10.

4 And the preacher kept talking, and he said:
5 Well -- as he kept talking; he said --well, I will give
6 him \$5.

7 And he kept talking further, the preacher kept
8 talking and talking so much, that when he got done, Mark
9 Twain said: He stole fifty cents when they passed the
10 hat around.

4b fls. 11

4b-1

1 Now, I realize that there is that possibility
2 in this kind of an extended discussion, and there is that
3 kind of result that can possibly flow from this. But
4 what do you do? I mean, what do you do when the transcript
5 doesn't go in the jury room?

6 I don't know. You can only do what you can
7 do.

8 So, with that thinking in mind, we have some
9 ideas here that can only be, I think -- maybe erroneously --
10 I think can only be expounded by looking at the details of
11 the transcript, because we certainly don't wish to speak
12 any longer than necessary.

13 I have gone through -- I took all these
14 transcripts home again last night and went over them, and
15 I have eliminated, really, great chunks of things that we
16 wanted to speak about in great detail because we believe
17 that the transcript is the evidence.

18 One thing that sort of overrides in your
19 discussion here is the fact that Linda Kasabian, when she
20 left the ranch, do we honestly believe that Linda Kasabian
21 left the ranch because she was scared about Tanya?

22 Or do we believe that Linda Kasabian left
23 the ranch because she was fleeing from seven murders?

24 This is the question. This is a very big
25 question. Because again, it goes to whether or not we
26 are all being put on here by what Linda Kasabian has told

1 us.

2 Remembering this reasonable doubt that we
3 have spoken of, reasonable doubt is something like
4 running a heat, running a heat in a track race, in a
5 track meet.

6 We know that certain people, unless they make
7 the original, unless they make the original qualifications,
8 the trial heats, if you don't make the trial heat, you
9 don't get into the finals.

10 And that is what reasonable doubt is.

11 If the prosecution doesn't make the original,
12 if they don't make the trial heat, there is no necessity
13 to put on a defense, there is no necessity to put on any
14 evidence, because that is our law.

15 The burden is for them to prove beyond a
16 reasonable doubt and to a moral certainty. And when we
17 have Linda Kasabian as the primary advocate -- let's put
18 it that way -- of the prosecution, do we have a problem
19 in credibility?

20 There is no question but we do.

21 Now, we have spoken about where Linda Kasabian,
22 at page 5447 -- and again, the words seem so significant --
23 the prosecution asks:

24 "Why did you want the car this second
25 day?

26 "THE WITNESS: I wanted it to escape.

1 "Did you tell Mr. Hannum you wanted his car
2 to escape?

3 "THE WITNESS: No, I did not.

4 "Did you tell Bruce Davis that you wanted
5 to escape?

6 "No, I did not.

7 "Did you then get Mr. Hannum's car?

8 "Yes, I did.

9 "Do you know what type of car it was?

10 "Volvo."

11 Now, Linda Kasabian is telling us, and we
12 could go into detail, which we are not going to do, trying
13 to delete as much as we can of reading the transcript,
14 but is that believable?

15 Do we believe that Linda Kasabian, in her mind,
16 wanted to escape in the context that the prosecution is
17 telling us?

18 4c fls.
19
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4c-1

1 She is not getting on that witness stand and
2 saying: Well, I wanted to escape from seven counts of
3 murder.

4 She is saying: I wanted to escape; I wanted to
5 escape the ranch atmosphere because something was going to
6 happen to me. I wanted to escape because of the fact that
7 I might be harmed; I, Linda, would be harmed; after the 8th,
8 9th or 10th, around the 12th, or whatever it was, of August,
9 1969.

10 Can we believe that?

11 Well, of course we can't. We can't.

12 When we are studying these pictures, and when we
13 believe there is no question that Linda Kasabian, as we will
14 portray later on, we believe Linda Kasabian was in that house
15 with Tex Watson, Linda Kasabian, her thong, something
16 happened to the thong Linda Kasabian had, and we believe
17 the thong that tied up Mr. La Bianca was a thong of Linda
18 Kasabian's, and Linda Kasabian assisted Mr. Watson in
19 whatever Mr. Watson did in connection with Mr. La Bianca.

20 And in this context, in connection with everything
21 that we see in this courtroom, Linda Kasabian tells us from the
22 witness stand that she wanted to escape the ranch, and she tells
23 us, she is telling us that she didn't flee from these charges
24 of murder.

25 So, the question is, if she is not being candid
26 with us in something that is so elemental, so elemental, the

1 prosecution wants to find something in connection with
2 Mr. Manson going to the Barker Ranch after the harrassment
3 that Mr. Manson and the People at the ranch had in the
4 August 16th raid and all of that, Mr. Bugliosi wants us to
5 believe that was flight at that point, that that meant, that
6 meant that they were going up there for the reasons Mr.
7 Bugliosi suggests, well, if we take that principle of law,
8 was Linda Kasabian fleeing from seven counts of murder?

9 Well, there is no question she was.

10 And if she can get on that witness stand and tell
11 things that are less than candid, to say the least, time after
12 time after time in this courtroom, and try to convey to us
13 that when she went away from that ranch it wasn't because of
14 the murders, it was because she was afraid of Mr. Manson,
15 that is preposterous we suggest. We suggest that the
16 detail is preposterous.

17 Now, the prosecution has gone all the way, and
18 we are going to try to cut it down as much as possible.

19 The prosecution has gone to Alabama to bring a
20 man here to testify because one of the defendants pulled
21 her hat a certain way. All the way to Alabama.

22 Yet the prosecution doesn't bring to us the two
23 young boys, the two young boys that Linda Kasabian allegedly
24 ran off with on that day.

25 They don't bring those to us -- they are right
26 within a stone's throw of the Spahn Ranch, supposedly --

1 because they don't exist. Because Linda Kasabian met
2 Mr. Watson when she left the Spahn Ranch that day.

3 She didn't meet those two young boys. She went
4 somewhere with Mr. Watson. And we think this is a fair
5 inference because Mr. Watson was not arrested on the 16th in
6 the raid.

4d

4d-1

1 This is a fair inference in connection with
2 what Linda Kasabian has done in this case. There is no
3 question about the money, and so forth.

4 So, it would appear that this is, in fact,
5 this is, in fact, what happened when she left the ranch.

6 Because where are the young boys?

7 We can certainly rest assured, with the
8 investigation and all of that, that those boys would be
9 here.

10 They aren't here.

11 Where are the credit cards, the supposedly
12 good credit cards that these young boys would have that
13 Linda Kasabian has told us about?

14 Now, again, at the bottom of page 5449.

15 "Well, the day before I picked up two
16 young hitchhikers, and I told them basically about
17 my plan, that I was" -- I -- "was escaping from
18 this place" -- meaning that she was in danger at
19 the Spahn Ranch.

20 This must be, this has to be an untruth.

21 This has to be a lie.

22 It cannot be true.

23 "I had to get my daughter, and they had credit
24 cards which were legal."

25 These young boys that are hitchhiking have
26 credit cards that were legal.

1 "They were their own credit cards and
2 they were going to pay for the gas if I gave them a
3 ride to New Mexico.

4 "So I told them I would pick them up
5 the next day, which I did."

6 Now, credit cards go to oil companies, I
7 would assume, or whatever, whatever credit card it was.

8 Now, those records are kept. Those credit
9 cards would be in this courtroom if that wasn't sheer
10 absolute fabrication, just made up out of whole cloth.

11 Now, another matter is in connection with Joe
12 Sage.

13 When we consider again that the prosecution
14 brought someone to this courtroom all the way, far across
15 the United States, to testify to how one of the defendants
16 wore her hat, why didn't the prosecution bring Mr. Sage
17 to this courtroom to in some way even just substantiate
18 that Linda Kasabian was anywhere around Joe Sage?

19 There has got to be a reason.

20 There has got to be a reason.

21 And the reason is because this would be evidence
22 that when it came out before us we would, as we have stated
23 before, we would all want to get up and walk out of the
24 courtroom, and that would be the end of the prosecution's
25 viewpoint.

26 I think Mr. Fitzgerald went into this but, in

1 any event, when Linda Kasabian is at some other place,
2 she phones, she phones the Spahn Ranch.

3 Where are the telephone calls?

4 With the investigative capacity that is avail-
5 able to the District Attorney's office, if those things,
6 in fact, occurred, we would have, we would have here these
7 pieces of paper, we would have walk in here the Telephone
8 Company representatives, because we know that long distance
9 calls like that become permanent records. We know that.

5 fls.

5-1
1 Those calls would be documented if any such thing
2 occurred. There would be something here that we could put
3 our fingers on, instead of the fact that we don't get any of
4 these items.

5 The fact of the matter is that in connection with
6 Linda Kasabian the statements that she makes as statements
7 that are -- are -- they are made by her without any attempt
8 to substantiate them on the part of the prosecution in any --
9 in any particular, in any particular.

10 The fact that Linda Kasabian spoke on these
11 occasions at the Spahn Ranch; the fact that she had, she
12 says, a certain relationship with people there in New Mexico,
13 all of this is so easy to substantiate.

14 There is no reason in the world why some of that
15 could not be substantiated, if it in fact did occur.

16 For instance, at Page 5459, where she states that
17 she met with Mr. Fleischman, and "I told him that my child
18 was in custody.

19 "He asked me why I left, and I told him
20 I went to find my husband."

21 Now, when Linda Kasabian gets on the witness
22 stand and testifies concerning conversations with
23 Mr. Fleischman, we would have reason -- you see, the attorney-
24 client privilege is a privilege that belongs to the client;
25 it does not belong to the lawyer.

26 The person who is represented is the one, and there

1 is reason in that, the lawyer has no right, there is no
2 reason in the world why a lawyer should be protected by an
3 attorney-client privilege.

4 The law, very wisely, says the privilege belongs
5 to the person who is being represented.

6 Now, she testifies as to what she told
7 Mr. Fleischman:

8 "And I met with Fleischman and I told him
9 that my child was in custody.

10 "He asked me why I left, and I told him
11 I want to find my husband.

12 "I sort of evaded the truth. I couldn't
13 come right out and tell him that I knew about
14 these things. I didn't know him and I was very
15 much afraid, and I was just more concerned with
16 getting my child back.

17 "So he told me, you know, okay, I will get
18 your child.

19 "And I flew back to Taos."

20 Now, Mr. Fleischman, since she spoke, since she
21 spoke from the witness stand, and the prosecution well knows
22 this that there is no privilege at that point because the
23 privilege, once it becomes a matter of public record, or
24 once the privilege is violated, or the privilege is
25 abrogated or the privilege is negated, whichever way we want
26 to term it, then the lawyer takes the witness stand and can

1 testify.

2 There is no legal -- there is no legal
3 responsibility because the person being represented can
4 then, by that means, give up the privilege.

5 The prosecution knows this, but why didn't
6 Mr. Fleischman take the stand? Why didn't they call
7 Mr. Fleischman in this regard?

8 MR. BUGLIOSI: This is improper argument, your Honor.

9 THE COURT: The objection is sustained.
10 The jury is admonished to disregard that statement.

11 MR. KANAREK: What is improper in what I stated, your
12 Honor?

13 THE COURT: You are going outside of the record.

14 MR. KANAREK: Well, we can infer, if I may put it this
15 way, we saw Mr. Fleischman in this courtroom, we can infer --
16 we can infer from what we have stated here that Mr.
17 Fleischman is available as a witness and we know -- we know
18 this is true with the attorney-client privilege, that the
19 privilege belongs to the person who is being represented, not
20 the lawyer.

21 When the privilege is spoken of, when matters
22 concerning -- when privileged matters are spoken of, then
23 the privilege no longer exists.

24 I don't see the prosecution objecting to that
25 statement.

26 MR. BUGLIOSI: It is a misstatement of the law, and

1 again it is outside the record, your Honor. Same objection.

2 MR. KANAREK: Your Honor, we suggest it is not a mis-
3 statement of the law.

4 THE COURT: It is outside of the record,
5 Mr. Kanarek. The objection is sustained.

6 MR. KANAREK: I am saying in inference, your Honor.

7 THE COURT: Proceed with your argument.

8 MR. KANAREK: What we are saying is the inference can
9 be made certainly, it is not outside this record, that
10 Mr. Fleischman was available to testify.

11 There isn't a particle of reason.

12 What more could Linda Kasabian get? She has
13 been given immunity to seven counts of murder and a
14 conspiracy, what could Mr. Fleischman testify to that could
15 hurt her?

16 But it might shed some light on the reason why we
17 are in this courtroom. There is no way, no way that any-
18 thing Mr. Fleischman said could hurt that girl, not one bit.

19 She has her child. Knowing everything that she
20 has done, she is an accomplice as a matter of law, there is
21 just nothing, period, except for the fact that the prosecution
22 wishes to suppress.

23 They don't wish Mr. Fleischman on that witness
24 stand. That is the reason that Mr. Fleischman was not called,
25 because Mr. Fleischman might, being on the witness stand,
26 being subject to being questioned, might say things that would

1 again Mitigate in favor of a viewpoint that the prosecution
2 does not have in this case.

3 Without reading the record, we will try to make it
4 as expeditious as possible, we have an internal inconsistency.

5 Maybe standing alone it doesn't mean much,
6 but it sure fits into the brick wall that we are talking
7 about in this case.

8 Why -- why does Linda Kasabian speak to Bruce
9 Davis concerning credit cards, if these little boys, these
10 little boys have what she called legal credit cards?

11 There has got to be a reason. There has got to be
12 a reason.

13 Because Linda Kasabian is not being candid with
14 us in connection with leaving that ranch; because when
15 Linda Kasabian left that ranch and met Mr. Watson, this would
16 not be consistent with what she wants to portray for us in
17 this courtroom.

18 Here we have, on Page 5570, we have the relation-
19 ship, the heart of this relationship:

20 "Q BY MR. FITZGERALD: What sort of
21 activity did you engage in during the day, July
22 the 5th?

23 "A Well, first I will have to explain to
24 you the night of July the 4th.

25 "Q You may do so.

26 "A Okay.

1 "I met Tex, and Tex took me into a dark
2 shed, shack, whatever you want to call it, and
3 he made love to me, which was an experience
4 that I had never had before.

5 "Q You had never had sexual intercourse
6 before?

7 "A No. I am saying that the experience
8 I had in making love with Tex was a total
9 experience, it was different.

10 "Q In what respect?

11 "A That my hands were clinched when it
12 was all over and I had absolutely no willpower to
13 open my own hands, and I was very much afraid,
14 I didn't understand it.

15 "And I questioned Gypsy about it later and
16 she told me it was my ego that was dying.

17 "Tex asked me where I had come from and
18 where I was going, and I told him that I was on
19 my way to South America, and we had all this
20 money, and we were going to do these things.

21 "Q You had all what money?

22 "A We had some money that Charlie
23 Melton had inherited."

5a-1

1 So again we have a circumstance, we have a
2 circumstance of a girl caring for a boy, and this feeling,
3 this man-woman feeling is a feeling that is the same, I
4 suppose, at the Spahn Ranch or anywhere else.

5 Well, I was going to read a couple of pages but
6 I won't.

7 "Q What was your purpose" -- page 5581 --

8 "What was your purpose in seeing your
9 husband Robert Kasabian, meeting him?

10 "A Well, I remember when I came back from
11 the East I brought back a small pouch of acid, and
12 I had given it to him and he buried it, and I was
13 going to take it back to the ranch, so I remember
14 he dug that up and gave it to me.

15 "Q Did you also go there to secure more
16 belongings to take to the ranch?

17 "A Yes.

18 "Q Was that when you picked up the kitchen
19 knife and took it to the ranch?

20 "A Yes."

21 And in this interrogation with Mr. Fitzgerald,
22 there is no mention of the \$5,000; there is no mention by
23 Linda Kasabian of that until much later in her cross-
24 examination.

25 Now, maybe --maybe this kind of testimony has
26 some significance. Page 5637, Mr. Fitzgerald still

1 interrogating Linda Kasabian:

2 "Q Didn't you think it was strange or
3 unusual that somebody would give you some knives
4 to wrap up?

5 "A Well, the explanation from Tex was
6 if we got stopped to throw them out of the window,
7 and I just did what he said.

8 "Q Stopped by the police?

9 "A Yes.

10 "Q Didn't that indicate to you that there
11 was probably some illegal purpose for those knives?"

12 Now, the witness Linda Kasabian then answers:

13 "I don't know."

14 So the question is, when she uttered the words
15 "I don't know," was she being candid with us? Was she
16 telling the truth? Is that a circumstance -- the utterance
17 of those words, is that a circumstance of candor in the
18 context of what we are talking about here? Of course she
19 knew.

20 Mr. Fitzgerald:

21 "Q Didn't that indicate to you that there
22 was probably some illegal purpose for these knives?"

23 And she answers "I don't know."

24 It's got to be untrue. It's got to be untrue.

25 Of course she knew. Now, if she said yes,
26 or if in answering these questions there was some kind of

1 a revealing to us of honesty, that would be one thing.

2 Of course this is what we have to decide in
3 the jury room. There is no question that the girl is not
4 telling the truth to us at that point.

5 Now, under further questioning I believe by
6 Mr. Fitzgerald, now, at page 5682, actually 5681:

7 "Q Did Mr. Bugliosi show you some photographs
8 before you went to the Tate residence?

9 "A No, I don't think so.

10 "Q Did you have any conversation with
11 Mr. Bugliosi on the way to the Tate residence?

12 "A No, I don't recall.

13 "Q Did he tell you why you were going to the
14 Tate residence?

15 "A He may have but I don't recall.

16 "Q Do you remember if you engaged in any
17 conversation with him at all from the jail out to
18 the Tate house?

19 "A Yeah, at one point I remembered the
20 sports car incident and I believe I told it to him.

21 "Q As you were driving along --"

22 The word is along although the transcript has
23 alone, I'm sure the word should be along:

24 "Q As you were driving along you had a
25 flash?

26 "A Yes.

1 "Q Was that the extent of the conversation
2 you had from the jail to Beverly Hills?

3 "A I guess so, I can't remember. I'm sure
4 they must have questioned me but I cannot remember
5 if they did or what they said."

6 Now, can we believe that? Here she is, this
7 is many months afterwards, this would be sometime undoubtedly
8 in the first part of 1970, and she is giving us these kinds
9 of answers in connection with law enforcement interrogation,
10 because she senses her position and her place in these
11 premises, and so it is a circumstance which shows that
12 Linda Kasabian, that Linda Kasabian in these proceedings
13 is an advocate rather than a witness giving his testimony,
14 giving us the kind of testimony that we have alluded to
15 before -- Dr. Katsuyama and Dr. Noguchi.

16 There is a credibility which is in issue here
17 which is a matter that is so vital, because the prosecution
18 has refused to bring us the people.

19 Look at the people that came in contact with
20 Linda Kasabian after she left the Spahn Ranch. The
21 prosecution hasnot brought those people here, and there has
22 got to be a reason, because if those people were here,
23 perhaps this discussion that we are having would be less
24 likely, maybe.

25 There wouldn't be any necessity to go into
26 these matters because : there would be people here that

1 would show us what in fact Linda Kasabian did and said,
2 and it wouldn't jive with the prosecution's viewpoint in
3 this case.

4 Now, again, for instance at page 5702, we
5 think it shows the workings of this girl's mind, for
6 instance Mr. Fitzgerald said:

7 "Q During the month of October, 1969, did
8 you call any police agency anywhere in the country
9 where you might happen to be and tell them the
10 truth?

11 "A No, I did not.

12 "Q Did you do it during November of 1969?

13 "A No.

14 "Q You only did it after you were arrested,
15 isn't that correct?

16 "A No, I turned myself in to be arrested."

5b f;s

5b-1

1 Now, in the context of what we have seen in this
2 courtroom, did Linda Kasabian, when she was in a small town
3 in the northeast part of the United States, and she knows
4 that the police are looking for her in connection with these
5 matters, is that a truthful answer? Is she being candid with
6 us when she answers to this question:

7 "Q You only did it after you were
8 arrested, isn't that correct?"

9 And she answers, "No, I turned myself in to
10 be arrested."

11 In other words, she is telling us, she is telling
12 us that she had an alternative when she turned herself in to
13 be arrested. Did she have an alternative? Did she have an
14 alternative back in December of 1969?

15 There was no alternative for Linda Kasabian at
16 that point.

17 Milburn -- I think that is the name of the
18 place, certainly is the kind of place where the focus is
19 on her, and in a place like that she had no alternative but
20 she is trying to convey to us, she is trying to convey to us
21 that she did have an alternative.

22 Linda Kasabian had, I think we will all recall
23 that during her testimony she used this expression, "in a
24 state of shock."

25 In other words, she is using those words, she is
26 saying that she was in a state of shock as to certain events
that took place.

1 Well, if she was in a state of shock -- you see,
2 I think we can agree, that there are a couple of possibilities
3 there.

4 If she is in a state of shock, then her testimony
5 is valueless because she is not in a position where she can
6 perceive.

7 Her five senses are not operating and she cannot
8 tell what was going on if she was in a state of shock. That
9 is one possibility.

10 The other possibility is that she is telling us
11 she is in a state of shock in order to undercut, in order
12 to turn, to arbitrarily make a minimum of her involvement
13 with what went on on these two nights.

14 That is a Hobson's choice because no matter which
15 way you look at that state of shock situation, the fact is
16 that her testimony cannot be relied upon and we wish to
17 emphasize that we are not here --our purpose, I'm sure all
18 counsel agree -- our purpose here is not to -- is not to
19 -- to make Linda Kasabian look bad just for the sake of
20 making her look bad.

21 The purpose here is to try and see whether or not
22 what she is telling us can be used to sustain the prosecution's
23 viewpoint in this case. That is what we are here for.

24 The same goes with Juan Flynn and the same goes
25 with Dianne Lake and the same goes with any witness.

26 We are not here for the purpose of -- for the

1 purpose which maybe some people in the prosecution want to
2 convey, that we are here for some purpose just to make a
3 particular witness feel bad.

4 That is not so. We tell you from the bottom of
5 our hearts that that is not so. We are not here for such
6 purpose.

7 The only way you can -- the only way you can
8 discuss this matter is by looking at the words on the paper
9 and talking about it.

10 Page 5854:

11 "Q When it was handed to you, were you
12 still in a state of shock?

13 "A Yes.

14 "Q When you threw it out, were you still
15 in a state of shock?

16 "A Yes."

17 Are those true statements?

18 "Q When you threw it out, were you
19 still in a state of shock?

20 "A Yes.

21 "Q When you threw out the weapons,
22 were you in a state of shock?

23 "A Yes. The whole two nights, and
24 thereafter."

25 The whole two nights and thereafter!

26 Now, Mr. Bugliosi, the prosecution, has spoken

1 about robots, and Mr. Bugliosi has spoken about automations.

2 Can we believe that -- do we believe when later
3 on in this transcript, when later on in this transcript
4 Linda Kasabian says, she says that everything she did she
5 did freely and voluntarily?

6 Is that consistent with being in a state of
7 shock the whole two nights and thereafter?

8 THE COURT: We will take our recess at this time,
9 Mr. Kanarek.

10 Ladies and gentlemen, do not converse with anyone
11 or form or express an opinion regarding the case until it is
12 finally submitted to you.

13 The Court will recess for 15 minutes.

14 (Recess.)

6-1

1 THE COURT: All counsel and jurors are present,

2 Will counsel approach the bench, please?

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

6 THE COURT: It is my understanding that Mr. Manson and
7 possibly Miss Atkins are due in Department 100 at 11:15 this
8 morning.

9 MR. SHINN: Yes, your Honor.

10 THE COURT: I beg your pardon?

11 MR. SHINN: Yes, your Honor.

12 THE COURT: So, we will have to recess at that time in
13 order to permit them to appear there, and then resume this
14 afternoon at the usual time.

15 I just wanted to mention that.

16 MR. KANAREK: Yes, your Honor.

17 It is just possible that I may have to finish up
18 Monday morning.

19 THE COURT: No. You are going to finish tomorrow,
20 Mr. Kanarek.

21 Let's proceed.

22 MR. KANAREK: Well, your Honor, if I may, then, we
23 would ask that we not start arguing, and we come back this
24 afternoon, because it is already 11:00 o'clock, if that is
25 what your Honor is saying.

26 THE COURT: Let's proceed.

1 It is not 11:00 o'clock, it is five minutes to
2 11:00.

3 (Whereupon, all counsel return to their
4 respective places at counsel table and the following
5 proceedings occur in open court within the presence and
6 hearing of the jury:)

7 THE COURT: You may continue your argument, Mr. Kanarek.

8 MR. KANAREK: Ladies and gentlemen, through forces
9 beyond my control, we are going to adjourn at 11:15 today.

10 MR. BUGLIOSI: Not for the whole day. Just for the
11 morning.

12 MR. KANAREK: Yes. That is, until the afternoon session.

13 I would like to state also, ladies and gentlemen,
14 that although this morning, when we went into chambers,
15 a few minutes of that chambers time was because of something
16 that I took up with the Court, and that entire delay, we
17 can represent to you, was not because of anything that we did,
18 for what it may be worth, because we know, we understand,
19 that you, sitting where you are, I think that certainly we
20 should explain these kinds of matters for whatever it may be
21 worth.

22 Now, we may be going beyond the record here.
23 I tried to find this reference in the transcript and I
24 couldn't.

25 The way we may be going beyond the record is in
26 this regard: There is a girl sitting on a rock in People's

1 Exhibit 260, and this girl, we feel, is Stephanie Schram.

2 We couldn't determine in the transcript if she
3 were pinpointed or not in this People's 260, which is a
4 picture of the August 16th raid.

5 And what we would like to do -- this girl on the
6 rock, we do believe, is Stephanie Schram.

7 Now, even though she wasn't -- even though she
8 was not identified, perhaps, on this picture, while we
9 were in court, I think we can use our powers of observation,
10 and when she was in court, I think we can allude to it in
11 that way and suggest that the girl on the rock is Stephanie
12 Schram.

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1 And this is significant because we have a person
2 that we have alluded to before who is a prosecution witness,
3 a person who was on the scene continuously, we have reason to
4 believe, such that she was arrested on August the 16th
5 along with the other people that were arrested.

6 And I think that this is significant in terms of
7 what the prosecution could bring to us, remembering that
8 they have this trial heat approach, that the burden is
9 upon them to prove a defendant guilty beyond a reasonable
10 doubt and to a moral certainty.

11 Now, the reasons that we are discussing -- what
12 we have tried to do is integrate the transcript, the evidence,
13 rather than too much of what you might call just straight
14 argument, integrate different portions of this evidence
15 together.

16 We think that there is some significance. For
17 instance, in People's 90, which we have seen, which shows
18 Mr. La Bianca with his hands tied behind his back.

19 We suggest that Linda Kasabian -- and we will,
20 I hope, get to that -- we will see that Linda Kasabian has
21 professed not to hear about what happened at the La Bianca
22 home until sometime in the Fall of 1969.

23 She says to us from the witness stand, purportedly
24 under oath, under penalty of perjury, and we have spoken
25 about that, there is no restraint upon this lady as far as
26 the penalty of perjury goes, because the propensities of

1 people being what they are, the same prosecution would have
2 to be prosecuting her for perjury that is advocating her
3 evidence.

4 MR. BUGLIOSI: This is improper argument, your Honor.

5 MR. KANAREK: We consider that most proper, and it is
6 most correct.

7 The District Attorney of Los Angeles County would
8 have to prosecute this lady for perjury, and this is a correct
9 and true statement.

10 MR. BUGLIOSI: That is not a correct statement either.
11 The Attorney General --

12 THE COURT: Keep it within the confines of the
13 record, Mr. Kanarek.

14 Proceed with the argument.

15 The objection is sustained.

16 MR. KANAREK: We certainly can infer -- we know as
17 a matter of fact, that Linda Kasabian was offered by the
18 prosecution, and we can infer that the prosecution, that the
19 District Attorney's Office prosecutes crimes other than
20 187 P.C., other than murder, that they prosecute crimes,
21 other crimes, that are alleged, that are set out in the Penal
22 Code.

23 We have here the picture of Mr. La Bianca. We
24 believe that Linda Kasabian has this lapse of memory
25 concerning the two people that passed away in the La Bianca
26 home. We believe that she has this lapse of memory because

1 she was in that home, because the thong that she no longer
2 has may well be the thong that is the thong, the rubber --
3 the leather lace, or whatever we want to term it, that is
4 binding Mr. La Bianca's wrists.

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1 Do we believe Linda Kasabian when she says that
2 she did not know of the passing away of the people in the
3 La Bianca home until sometime in the fall of 1969?

4 That is a circumstance that we can consider in
5 connection with this case, whether or not she knew about
6 those events.

7 Another circumstance that we think -- remember
8 Mr. Shinn's statement about how he was affected when he
9 tells us about the incident that involved him, I think,
10 and a harmonica, something like that, when he was a young
11 boy?

12 That was a harmonica. And we remember, and we
13 think that this is correct, that what Mr. Shinn told us --
14 well, we don't have to belabor it, but we remember the inci-
15 dent he told us -- then we have Linda Kasabian telling us --

16 Question at the bottom of Page 5857 --

17 "So you slept from sometime while it was
18 dark until about noon? Is that a fair statement?

19 "A Yes.

20 WQ Did you have any difficulty sleeping?

21 "I guess not."

22 Well, that is something for us to consider.

23 That is something for us to consider.

24 Can someone go out and participate in these kinds
25 of events and then go home and go to sleep?

26 This has something to do with the person. This

1 has something to do with the state of mind of the person.

2 Does it have any significance?

3 That is one of the matters that we have to decide.

4 A statement at Page 5873.

5 "Q When you decided to leave, was it
6 your state of mind that you were going to leave
7 your child with a band of murderers?

8 "Well, I knew she was with -- I knew Tanya
9 was with Brenda, and I didn't consider Brenda a
10 murderer.

11 "I don't know, just something with myself
12 told me it was okay, she would be all right."

7-1

1 Well, let's look at those words, the words that
2 were uttered.

3 Instead of telling us, instead of telling us what-
4 ever -- whatever Linda Kasabian's involvement, instead of
5 telling us, "I was apprehensive for my physical well-being,
6 no one likes to be in jail, nobody likes to be prosecuted
7 for murder," instead of being candid with us that she left
8 in order to save her skin, we might have some credibility
9 from her, if she would say that, because that we feel could
10 be the truth.

11 But instead, instead she uses her little baby,
12 some kind of a feeling about Tanya, and so forth.

13 Is she telling us the truth when she makes answer
14 to that question the way she did?

15 We suggest that she was not telling us the truth.

16 When she left she left because she was scared;
17 she was scared because she did not want to go to the gas
18 chamber.

19 She was scared because she did not want to go to
20 jail. That is the reason she left.

21 There is no question about it, does any one of us
22 feel that this -- that there is any other reason why Linda
23 left? That is the reason that she left. There is no
24 question about it.

25 And then, then when we top that, when we top that
26 with the immunity that she has been given, can we believe

1 her? Can we believe what she says, in view of her lack of
2 candor in connection with questions?

3 This transcript is permeated with these kinds of
4 answers to these kinds of questions.

5 And another aspect of it, I don't know if any of
6 us have had the unhappy obligation or the unhappy experience
7 of having to visit people in jail.

8 Well, we can infer when people are visited in jail
9 that you have to fill out a slip of paper, present it, and
10 then you put the person's name and booking number, and so
11 forth, on the piece of paper, and that becomes part of the
12 permanent jail records.

13 In fact, in this court we had jail records
14 brought to the courtroom to show certain jail procedures.

15 We can infer that if --

16 MR. BUGLIOSI: He made a misstatement, he said these
17 were permanent jail records when someone visits someone.
18 There is no evidence as to that that came from that witness
19 stand.

20 THE COURT: The objection is sustained.

21 MR. KANAREK: Your Honor, I don't understand!

22 THE COURT: The jury is admonished to disregard that.

23 Proceed with the argument.

24 MR. KANAREK: Your Honor, is Mr. Bugliosi saying these
25 are not permanent jail records?

26 THE COURT: He is saying it is not a matter of record

1 in this case.

2 MR. KANAREK: I want to follow the Court's orders, your
3 Honor, I really don't understand --

4 Well, ladies and gentlemen of the jury, the fact
5 of the matter is we had brought before us, we had brought
6 before us jail records, and we wish to follow the Court's
7 order.

8 We will say -- the word "permanent" -- there was
9 no indication that -- the records that they brought here were
10 records that went back to the same time period that we are
11 talking about.

12 They brought their jail records here to show that
13 certain things had occurred.

14 Now, is it unreasonable to infer that when
15 Linda Kasabian went to the -- this very building, or when
16 she went to the Sybil Brand Institute, isn't it reasonable
17 to infer that those jail records would still be in existence?
18 They cover the same period of time, August of 1969, con-
19 cerning the very same period of time that we are speaking of.

20 We can rest assured that the prosecution, that
21 the prosecution would have before us the records to show
22 that Linda Kasabian made these alleged trips to the center
23 of the City of Los Angeles, and went in and filled out slips
24 because jail security -- we know jail security requires that
25 everybody who comes into the jail area -- we know you put down
26 your name, your number, your telephone number, your address,

1 who you want to see, booking number and all of that.

2 We can certainly infer that those records exist,
3 if they were ever executed by Linda Kasabian, and if those
4 records are not here we can certainly infer that Linda
5 Kasabian's protestations to the contrary, that such things
6 that she testified to did not occur.

7 If that is unreasonable, then we say reject what
8 we have said.

9 But if those records existed, it is our belief
10 that they would be here.

11 Furthermore, we have -- we have the aspect which
12 is set out in the transcript around Page 5880: We have the
13 aspect wherein Linda Kasabian is making money.

14 Now, there is nothing wrong with making money;
15 there is nothing wrong with it, but it is a factor to go
16 to her credibility.

17 It goes to her motivation the same way it goes to
18 Juan Flynn's motivation.

19 These are the items that we evaluate.

20 Does she have -- does she have a financial axe
21 to grind in connection with these proceedings?

22 Is there some reason to believe -- is there some
23 reason to believe that in her mind there is an association of
24 dollars with this proceeding?

25 We feel that this is reasonable.

26 She has this feeling toward her children. She
has a husband who is apart from her.

1 And so these funds are probably funds that she
2 is looking forward to. This affects her credibility, we
3 suggest, and getting this money is important to her.

4 Even though Linda Kasabian -- maybe she might feel
5 that way about one defense attorney, she might feel that way
6 about me, but she felt that way about all the defense
7 attorneys, Mr. Hughes, Mr. Fitzgerald, Mr. Shinn.

8 We, none of us were to be trusted. We could not
9 speak to her.

10 But a lady named Joan Didion was accommodated to
11 go into the County Jail by law enforcement.

7a

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1 MR. BUGLIOSI: There is no evidence of that, your
2 Honor.

3 MR. KANAREK: Well, how would she get in?

4 THE COURT: Just a moment, Mr. Kanarek. Approach
5 the bench.

6 (The following proceedings were had at the
7 bench out of the hearing of the jury:)

8 THE COURT: Mr. Kanarek, you are doing the same
9 old thing again, you are stating things that are not
10 matters of record in this case, and for your information
11 you cannot draw an inference out of a vacuum.

12 You are talking about drawing inferences.
13 They have to be based on evidence in this case.

14 MR. KANAREK: May I respond to the Court?

15 THE COURT: Yes.

16 MR. KANAREK: The response is this, your Honor:

17 With the security that was around Linda
18 Kasabian, that this jury knows about, it is obvious that
19 law enforcement had to allow her in, she is inside the
20 County Jail.

21 THE COURT: That is not a matter of this record.

22 MR. KANAREK: How else would it be --

23 MR. BUGLIOSI: The Family visited her, we have no
24 control over that.

25 THE COURT: I'm going to admonish the jury, if
26 you don't stop this, I'm going to do it in the presence of

7a-2

1 the jury, I'm going to admonish you to stop it and I'm
2 going to admonish them to disregard the matters outside
3 the record.

4 Now, I am warning you, Mr. Kanarek, stop it.

5 MR. KANAREK: Your Honor, it is inside the record.
6 May I get the transcript I am alluding to?

7 THE COURT: What are you talking about?

8 MR. KANAREK: I want to show/^{it}to the Court.

9 THE COURT: Show me what?

10 MR. KANAREK: Joan Didion being accommodated inside
11 the County Jail by law enforcement.

12 May I get the record?

13 THE COURT: Don't waste the Court's time with that
14 kind of statement.

15 MR. KANAREK: May I show this to the Court.

16 THE COURT: Mr. Kanarek, don't play dumb with me.

17 MR. KANAREK: I am not playing dumb at all, your
18 Honor.

19 THE COURT: The fact of the visit is not the point
20 at all. It is your conclusion that you draw from it,
21 your so-called inference.

22 Let's get on with the argument --

23 While you are here, gentlemen, the defendants
24 are not required in Department 100 this morning.

25 Apparently they are going to take it at some
26 other time so you can continue argument until noon.

7a-3

1 MR. KANAREK: Would you tell the jury there has been
2 a change of plans?

3 THE COURT: They will know it when you keep going
4 and we don't recess.

5 MR. KANAREK: I would ask your Honor to inform them.

6 THE COURT: Proceed with your argument.

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

9 MR. KANAREK: Ladies and gentlemen, we feel that we
10 should explain to you that we said we were going to
11 adjourn here at 11:15, we were so informed by the Court
12 earlier that we would adjourn at 11:15.

13 The Court now informs us that we will not
14 adjourn at 11:15 and that we are to proceed.

15 I feel I should tell you this, I should state
16 this, because this is what happened. We were just informed
17 that we were not going to be adjourned the way we thought
18 we would.

19 So that there would be -- and this is one of
20 the reasons, these kinds of differences between counsel,
21 differences of opinion as to whether something is in the
22 record or not, that is why we feel the record -- the record
23 is so important in this case.

24 Let us read from the record in connection
25 with the subject matter of the lady who was writing,
26 doing something with Linda Kasabian wherein Linda Kasabian

7a-4

1 is making dollars.

2 Page 5880 -- 5879, really:

3 "Q Are you writing a book about your
4 life?

5 "A Am I writing a book?

6 "Q Are you writing a book about your
7 life?

8 "A No, I am not.

9 "Q Are you participating in someone else's
10 writing a book about your life?

11 "A Yes."

12 There we have a witness who is very very
13 technical in her answers when she wants to be.

14 She knows the distinction on that witness
15 stand between her not writing the book, but somebody else
16 is, so that if the question -- if the next question had
17 not been asked:

18 "Are you participating in someone
19 else's writing a book about your life," we would
20 be left with the impression that there was no book being
21 written about her life.

22 And so she says "Yes" to that second question,
23 then.

24 "Q Who is that?

25 "A Joan Didion.

26 "Q In connection with the preparation of

7a-5

1 "that book have you talked with Joan Didion on
2 numerous occasions?

3 "A Yeah, about three times.

4 "Q Just three times?

5 "A I don't count the visits. I would say
6 three times, maybe more, maybe less.

7 "Q And did she see you at the Los Angeles
8 County Jail?

9 "A Yes.

10 "Q Did she see you in a particular area
11 of the jail?

12 "A In the infirmary.

13 "Q The three times that she saw you did
14 she see you in the infirmary each time?

15 "A Yes.

16 "Q And she has not seen you outside of
17 the times she saw you in the infirmary?

18 "A Yes, she has.

19 "Q Where did she see you?

20 "A She was here one day in court.

21 "Q In court?

22 "A Yes.

23 "Q Did she talk to you in court?

24 "A No, in one of the little rooms.

25 "Q Did the sheriffs bring her in to talk
26 to you?

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"A Yes.

"Q Is she a reporter also from Life magazine?

"A I don't know about that.

"Q You don't know her background or anything or by whom she is employed?

"A Yes, I think she does do something for life.

"Q Are you to receive some money from the sale of this book, Mrs. Kasabian?

"A Yes.

"Q How much are you to receive?

"A I have no idea.

"Q Have you been promised a certain amount of money in connection with the sale of your book?

"A Yes.

"Q How much have you been promised?

"A 25 percent of whatever comes in.

"Q Is that influencing your testimony here today?

"A No.

"Q Or any other day?

"A No.

"Q Have you made statements to -- is Miss Didion or Mrs. Didion?

"A Well, she is married, but I guess she

7a-7

1 "goes under Miss Didion, I believe, I'm not sure.

2 "Q Have you told Miss Didion about the
3 facts and circumstances of this case?

4 "A No, we never even discussed the case.

5 "Q Is there some reason for that?

6 "A The book isn't really about the case.

7 "Q What is the book about?

8 "A About me.

9 "Q Is it your background and history?

10 "A Yes, my travels.

11 "Q Is it about your life?

12 "A Yes.

13 "Q Did you have conversations with Mrs.
14 Didion in respect to drugs you have used in the
15 past?

16 "A Possibly."

17 "Possibly." Linda Kasabian says to that
18 question:

19 "Q Did you talk to her about narcotics
20 you had used in the past?

21 "A Possibly."

22 Linda Kasabian says "Possibly."

23 "Q You have no recollection of that, is
24 that correct?

25 "A I do not remember specifically telling
26 her I dropped acid on a certain day, not anything

7a-8

1 "like that.

2 "Q Was Miss Didion interested in your whole
3 background and history?

4 "A Yes.

5 "Q Did it appear that she was interested
6 in your whole background and history?

7 "A Yes, she seemed to be.

8 "Q Did you tell her about your narcotic
9 and drug involvement?

10 "A Possibly, yes.

11 "Q Do you recall making it a point to hide
12 it from her?

13 "A No.

14 "Q Were these interviews that you had with
15 Miss Didion tape recorded, to your knowledge?

16 "A No.

17 "Q Were they stenographically reported?

18 "A What is that?

19 "Q Did you have a stenographer like the
20 gentleman seated before you?

21 "A No.

22 "Q Was there a stenographer present taking
23 shorthand notes?

24 "A No.

25 "Q Is it your understanding that upon the
26 publication of your book you will be 'famous'?

1 "A I don't care. I don't care if I am
2 famous or not. It doesn't matter.

3 "Q The purpose of the book is to secure
4 money, isn't that right?

5 "A Actually my purpose for the book is
6 so that maybe younger people can relate to me
7 and see that this road I went down is not the way,
8 and they will go another way.

9 "That is my purpose.

10 "Q They will profit from the mistakes
11 you have made in the past, is that right?

12 "A Yes."

13 And then Mr. Fitzgerald: "I have no further
14 questions."

7b fls.

7b 1 So we have a situation where Miss or Mrs. Joan
2 Didion, whatever the reason may be, is visiting Linda
3 Kasabian in the infirmary, not in the visiting room, not in --
4 and she has had her baby, obviously, already when she had
5 spoken to Mrs. Didion.

6 And she doesn't speak to Mrs. Didion in the
7 attorney room, she speaks to her in the infirmary.

8 Does this have any significance? Does it have
9 any meaning?

10 Is law enforcement giving her a little bit of some
11 kind of -- some kind of a privilege there? This is a
12 factor that we can talk about, that we can decide, we can
13 make our inferences.

14 We can make our inferences when, knowing the
15 security in this courtroom, that she, during the trial, she
16 is taken to a special room by law enforcement in order to
17 speak with Mrs. Didion.

18 The question is, what do these things indicate?

19 They indicate that this lady, when she speaks
20 from the witness stand is identifying herself with the
21 prosecution. When she talks she is talking as an advocate;
22 she is speaking -- she is speaking on behalf of a proposition
23 rather than dropping evidence in our laps in the neutral
24 way that Dr. Katsuyama and Dr. Noguchi dropped what they did
25 in our laps for analysis.

26 She is not doing that. What she is telling us

1 is -- what she tells us, what she tells us with each question
2 that she answers, she has in the back of her mind the
3 prosecution's viewpoint.

4 Now, directing our attention to Page 5939 of the
5 transcript, she states at the bottom of Page 5938 where she
6 is being spoken to by Mr. Shinn;

7 "Q Now, besides talking to Mr. Bugliosi
8 did you talk with police officers, with detectives?

9 "A Yes.

10 "Q After you arrived in Los Angeles?

11 "A Can you put it more specifically?

12 "Q Okay, when you arrived in Los Angeles
13 you were at Sybil Brand, right?

14 "A Right.

15 "Q Did Detectives or the police come to
16 talk to you?

17 "A Yes.

18 "Q Which one was that, Gutierrez?

19 "A Yes, he came.

20 "Q This gentleman here?

21 "A Yes.

22 "Q How many times did you talk to him?

23 "A I didn't count the visits.

24 "Q Was it more than five times?

25 "A No, he never came all these times.

26 "Q Did his partner come?

1 "A He has come with his partner
2 usually.

3 "Q Is that his partner right here,
4 sitting at counsel table?

5 "A I believe I spoke to him once.

6 "MR. STOVITZ: May the record indicate he
7 is indicating Mr. Calkins."

8 Now, we have every reason to believe that if
9 Officer Gutierrez, when he had spoken to Dianne Lake,
10 threatened Dianne Lake with what we know occurred there, where
11 he told Dianne Lake about the crime of the century, about
12 how "We want to get a certain person," meaning Mr. Manson,
13 how he spoke about the gas chamber notwithstanding Dianne
14 Lake was of such tender years that she couldn't go to the
15 gas chamber under any circumstances in California.

16 We have Linda Kasabian who could go to the gas
17 chamber, and we have every reason to believe that Officer
18 Gutierrez -- what reason do we have to believe otherwise,
19 that Officer Gutierrez would not speak to her in those tones
20 or, for even stronger reasons, because of her position in
21 this case.

22 This is a matter that affects her credibility.

23 This is a matter, when you are sitting on that
24 witness stand and you are testifying and you see a man
25 sitting in front of you who has spoken to you about the gas
26 chamber, who has spoken to you concerning the crime of the

1 century, who has spoken to you concerning Mr. Manson as the
2 object of this entire proceedings, does this affect the
3 credibility of the witness?

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1 This is something that we have to consider.
2 We suggest -- we suggest that it does affect the credibility
3 of Linda Kasabian; that it affects her credibility in a
4 most drastic and dramatic manner, for her to have these
5 types of conversations, these types of conversations and,
6 interestingly enough, interestingly enough we don't have--
7 we don't have any recordings of what Linda Kasabian said
8 to Officer Gutierrez or what Officer Gutierrez said to
9 Linda Kasabian.

10 So we don't have available to us -- we don't
11 have available so that we can look at the words uttered
12 between them, to see whether or not these words would have
13 any effect on her credibility.

14 We think it is a reasonable suggestion in the
15 context of what happened with Dianne Lake, we think it
16 is most reasonable to believe that what occurred is what
17 we have indicated occurred.

18 We cannot say it; it is an inference, but
19 we feel that it is a legitimate inference in view of the
20 other testimony that has been in this case.

21 Now, speaking of the candor, discussing the
22 candor or lack of it, of Linda Kasabian, at page 6263 --
23 well, let's start at the top of page 6263:

24 "Q All right, then what is the reason
25 that you left your husband?

26 "A He didn't really want me any more.

7c-2

1 "This all happened at once, on this one particular
2 day.

3 "Q On the same day what all happened at
4 once?

5 "A He just didn't want me around, and I
6 wanted to leave, and Gypsy was there and she was
7 my way out.

8 "Q So Gypsy, from your state of mind,
9 you were using Gypsy as a way out of what?

10 "A Somewhere else to go. I wasn't wanted
11 here and I wasn't happy in this place, so she gave
12 me another place to go."

13 And because of whatever her motivations were,
14 she took, as we know, \$5,000 of somebody else's money from
15 the truck.

16 "Q So, it was because you decided that
17 you wanted to leave of your own free will you
18 decided that you wanted to leave your husband and
19 go with Gypsy?

20 "A Because he didn't want me any more,
21 yes.

22 "Q And that is the reason you left?

23 "A Yes.

24 "Q And there was no other reason, was there?

25 "A No."

26 So that here she says this is the reason she

1 wanted to leave, and previously we know she said because
2 there was a beautiful man at the Spahn Ranch.

3 Because she has been programmed by the
4 prosecution who wanted to zero in on Mr. Manson, because
5 they wanted to zero in on Mr. Manson when she is on that
6 witness stand testifying, she is testifying in tune with
7 what the prosecution's theme is.

8 Here she says no, she says:

9 "And there was no other reason, was
10 there?"

11 And she says no.

12 Does this go to her credibility? Because we
13 are now speaking of her motive and her intent, we are
14 speaking of her state of mind.

15 This is a factor which we think should come
16 into play in deciding whether we can believe her or whether
17 we cannot believe her:

18 "Q So when you went to the Spahn Ranch
19 to live, you went because you decided to go?

20 "A Because I wasn't wanted, yes.

21 "Q And when you left the Spahn Ranch --
22 pardon me -- when you left living with your husband
23 what did you take with you?

24 "Would you tell us all the items that
25 you took with you when you left living with your
26 husband?

1 "A I took a Mexican bag, which is made out
2 of straw, different colors, and I believe I packed
3 diapers and Tanya's clothing, and I had a green
4 dress, a long green dress.

5 "Do you want to know what I was wearing,
6 or just what I put in the bag?

7 "Q Tell us everything you took, whether
8 you were wearing it or however.

9 "A I had on a blue cut-off denim skirt
10 and a white shirt that I had made.

11 "I took a pair of moccasins.

12 "Oh, I took a Mexican blanket, sort of
13 like a saddle blanket, for Tanya.

14 "Oh, I took a green, I don't know what
15 you call it, it is a camouflage -- we used to use
16 it for a sheet on our bed -- it is a camouflage
17 piece of cloth.

18 "That is about all I remember."

19 Now, the question is -- the question is --
20 she doesn't mention the \$5,000. Now, the prosecution is
21 going to tell us, undoubtedly, that she didn't mention
22 the \$5,000 because she says that she did not take the
23 \$5,000 that day. She took the \$5,000 the next day after
24 she had spoken with Mr. Watson and made love with Mr.
25 Watson, then she had some conversation with Mr. Watson
26 and then she took the \$5,000.

8-1
1 Now, the question is, again, that is for us to
2 decide.

3 She has gone into great detail as to these
4 matters.

5 Was the \$5,000 in Linda Kasabian's mind when she
6 answered that question? Was she being completely candid
7 with us when she didn't mention the \$5,000 and she didn't
8 mention the LSD?

9 The next question was:

10 "And some LSD?

11 "Oh, yes, right.

12 "No, not that day.

13 "Not that day?

14 "No."

15 Now, then, another aspect of Linda Kasabian's
16 testimony, at Page -- the previous was Volume 41, at or
17 about, if I didn't mention the page, around Page 6263.
18 The next is in Volume 42, back to Page 6282.

19 "Now, directing your attention, Mrs. Kasabian,
20 to conversations that you had in connection with
21 getting Tanya.

22 "Did you have a conversation with a Mr.
23 Armand Kroeger, K-r-o-e-g-e-r, a social worker
24 of the North Dependency Investigation Unit, in
25 connection with your obtaining Tanya?

26 "I don't remember his name.

1 "Q You are not good at remembering
2 names either; right?

3 "The name sounds familiar.

4 "Pardon?

5 "The name sounds familiar, but I don't
6 know if that is his name.

7 "Now, did you tell Mr. Kroeger that 'On the
8 6th or 7th of August I left Tanya with Mary
9 Brunner and went to Arizona to meet my husband'?

10 "Did you make that statement to Mr. Kroeger?

11 "I notice you are squinting your eyes.

12 "I am trying to think.

13 "Would you read that again?

14 "Yes.

15 "Did you tell Mr. Kroeger that 'On the
16 6th or 7th of August I left Tanya with Mary
17 Brunner and went to Arizona to meet my husband'?

18 "Yes, I think I did.

19 "And so, when you stated that, you knew that
20 that was an untruth?

21 "Yes. That is obvious.

22 "And you deliberately told this untruth; is
23 that correct?

24 "Yes.

25 "And you deliberately told that untruth
26 because you knew, Mrs. Kasabian, that you had

1 "committed murders; is that correct?"

2 And this is an answer that we think has some
3 significance in these proceedings:

4 "No. I have never committed murder."

5 Now, the Court is instructing us; the Court
6 is instructing us that Linda Kasabian is an accomplice as a
7 matter of law. As a matter of law she is an accomplice.

8 I have it on a different chart. Remember, we have
9 eight separate crimes that are alleged here.

10 She is an accomplice, and she says, 'No, I have
11 never committed murder.'

12 Then: "You haven't committed any murder?"

13 "No."

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8a-1

1 What that means is that through the constant and
2 repeated questioning and requestioning by law enforcement
3 and by prosecution, that this girl believes her own press
4 agents.

5 And this is the danger, we suggest, this is the
6 danger in accepting any credibility from this witness.

7 She does not believe she has committed any murder.

8 Question at Page 6284:

9 "Did you think that you committed murder
10 when you were at the Tate residence?

11 "No.

12 "Pardon?

13 "No.

14 "And directing your attention, then -- you
15 remember now you specifically picked out those
16 two dates to tell Mr. Kroeger?

17 "No. I don't remember those dates.

18 "You don't remember those dates?

19 "No.

20 "Well, did you tell Mr. Kroeger that 'On the
21 6th or 7th of August I left Tanya with Mary
22 Brunner and went to Arizona to meet my husband'?

23 "The last part sounds right, but I don't
24 know about the dates.

25 "The dates you don't know?

26 "No."

1 Just previously, at Page 6283, when we asked
2 her:

3 "Q Did you tell Mr. Kroeger that
4 'On the 6th or 7th of August I left Tanya with
5 Mary Brunner and went to Arizona to meet my
6 husband'?

7 "Yes, I think I did."

8 So, the questions that we have to resolve revolve
9 around can we believe Linda Kasabian, because the only time
10 that Linda Kasabian tells us the truth is when she is
11 zeroed in on, when there is absolutely no alternative,
12 when she has no other way to go. Then she tells us what is
13 the obvious.

14 She says, "That is obvious." Because it is
15 written down, and she knows there is no way of squeezing out
16 of it, there is no way of squirming out of it.
17 That is when Linda Kasabian tells us the truth.

18 So, there we have the question of credibility.
19 There we have the question that we must consider as to
20 whether what she is telling us, what she is telling us, can
21 be believed.

22 Now, the prosecution has not furnished us with
23 any of the original statements that Linda Kasabian made
24 except, as we recall, in the middle of the trial.

25 MR. BUGLIOSI: Your Honor, he is talking outside the
26 evidence and he is misstating the evidence. This is not

1 correct.

2 MR. KANAREK: Your Honor, I submit it is.

3 THE COURT: I don't want any argument in open court.

4 MR. BUGLIOSI: Then may we approach the bench?

5 THE COURT: If you want to discuss it, come to the
6 bench.

7 (Whereupon, all counsel approach the bench and
8 the following proceedings occur at the bench outside the
9 hearing of the jury:)

10 MR. BUGLIOSI: He is making one vicious comment after
11 another. He is implying subornation of perjury.

12 MR. KANAREK: Would your Honor ask him to lower his
13 voice?

14 THE COURT: He is talking lower than you are at the
15 moment, Mr. Kanarek.

16 MR. BUGLIOSI: He is saying we never furnished him
17 with a statement. There is no evidence of that in the
18 record. He says in the middle of the trial.

8b

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8b-1

1 THE COURT: Are you claiming that is a matter of
2 record before this jury?

3 MR. KANAREK: Your Honor --

4 THE COURT: Answer the question.

5 MR. KANAREK: Your Honor, if I may explain?

6 THE COURT: I don't want an explanation, Mr. Kanarek,
7 I want you to answer my question.

8 MR. KANAREK: There are some questions that can't
9 be answered. I don't believe that that question can be
10 answered yes or no.

11 THE COURT: The objection is sustained.

12 I am going to admonish the jury to disregard
13 your statement, Mr. Kanarek. And if you do it again, I
14 am going to admonish them again.

15 You only hurt yourself when you do this.

16 Let's proceed.

17 MR. KANAREK: Well, your Honor --

18 THE COURT: Let's proceed.

19 (Whereupon all counsel return to their
20 respective places at counsel table and the following
21 proceedings occur in open court within the presence and
22 hearing of the jury:)

23 THE COURT: The objection is sustained, ladies and
24 gentlemen. The last remark of Mr. Kanarek will be
25 disregarded.

26 You may proceed, Mr. Kanarek.

3b-2

1 MR. KANAREK: We all recall, we certainly recall,
2 during the time that Linda Kasabian was on the witness
3 stand, it came to pass, if we can use those words, that
4 there was a writing, and in that writing, we have gone
5 into it, in this discussion we have gone into what Linda
6 Kasabian said concerning that she couldn't rightly recall
7 that Mr. Manson had ever told Mr. Watson to do anything.

8 Words to that effect. I don't have it
9 memorized, that particular passage which was in her
10 handwriting.

11 But we know that this came up during the cross-
12 examination of Linda Kasabian.

13 Now, at page 6334.

14 "Q And are you afraid now that" --

15 Oh, yes. Just one point.

16 Why did Linda Kasabian pick August the 6th
17 and August the 7th when she goes to Los Angeles to that
18 Juvenile Court matter?

19 She picks August 6th and August the 7th very
20 cleverly because these events, as we have come to know,
21 took place on August the 8th through August the 10th.

22 And so we have a conspiring, conniving type
23 of mind.

24 She is alleged to be a co-conspirator in these
25 proceedings. And if there is anyone, if there is anyone --
26 who could pinpoint the reason for the lack of credibility of

1 Linda Kasabian, upon any basis, it has to be the basis
2 of the choice of those two dates, August the 6th and 7th,
3 instead of whatever it was, in order to deceive.

4 And again, that is a matter that we have to
5 decide in determining Linda Kasabian's credibility as
6 to whether Linda Kasabian tells the truth only when she
7 is zeroed in on, or does she tell the truth otherwise?

8 "And are you afraid now that if you
9 don't testify right you won't walk out of this
10 courtroom a free woman? Are you afraid of that?"

11 That is at page 6334 of Volume 42.

12 "Not really. I have sort of accepted
13 it if it doesn't happen."

14 There is a question that we have to decide.
15 Is that a truthful answer? Do we believe, do we believe
16 Linda Kasabian when she says that?

8c fls.

8c-1

"You have accepted it?

"Yes.

"What do you mean by that?

"If it doesn't happen, I have accepted it,
if I don't go out or if I do.

"You are sort of blase about it?

"I am indifferent about it."

Did we believe that? Can we believe that
Linda Kasabian was indifferent about her personal welfare
in connection with these court proceedings?

This is a matter that we suggest is not true,
that she was concerned about her personal well-being.

"You are indifferent?

"Yes.

"You don't care?

"Yes.

"Is that right?

"I do care, yes, I do, but it doesn't matter.

"Well, do you care or does it not matter?

Which way is it, Mrs. Kasabian?

"Well, it would be nice to walk out of here,
yes, it would, but it doesn't matter.

"Then it doesn't matter now; is that right?

"Yes.

"You don't care one way or the other?

"Yes."

1 Let's see where the robots are. Even taking the
2 prosecution's language, if we may, the prosecution's language,
3 because in this passage Linda Kasabian says that Tex hyp-
4 notized her.

5 She doesn't say that Mr. Manson hypnotized her,
6 and whether we call it hypnosis or whether we call it
7 chemistry between Linda Kasabian and Tex Watson, whatever we
8 call it, this is what she testified to at Page 6350 -- the
9 bottom of Page 6349.

10 "So then are you telling us you were not
11 in a state of shock; you were merely observing
12 something and there was something that was unusual,
13 is that right?

14 "That is what I considered the state of
15 shock.

16 "That is what you consider a state of shock?

17 "Yes.

18 "So therefore you remember very clearly
19 exactly what happened?

20 "Yes.

21 "Is that correct?

22 "Yes.

23 "And you remember very clearly that you
24 went around the back of the house looking for
25 openings in the doors or openings in the windows?

26 "Yes.

1 "And what was your state of mind as to
2 what the purpose of the openings of the doors
3 or windows was?"

4 Pardon me. I will start again.

5 "And what was your state of mind as to what
6 the purpose of the openings of the doors or
7 windows was?"

8 "What was the reason you were looking for
9 them?"

10 "Tex told me to do it.

11 "Well, had Tex hypnotized you?"

12 "No.

13 "Were you under the influence of any
14 drug?"

15 "No.

16 "You were doing what you wanted to do
17 freely and voluntarily, right?"

18 "I guess so."

19 Now, she says that she -- she verbalizes that
20 Tex has not hypnotized her. She tells us that she considered
21 that she was in a state of shock. She tells us that she
22 did what Tex told her to do.

23 Well, if she is in a state of shock and she does
24 what Tex tells her to do, we have -- we certainly -- it is
25 certainly not unreasonable to make the next step and say that
26 she was doing what Tex told her to do.

8d-1

1 She says Tex had not hypnotized her. She
2 says that what she was doing:

3 "You were doing what you wanted to do
4 freely and voluntarily; is that right?

5 "I guess so."

6 These are bits of evidence which we must
7 consider in determining her credibility.

8 We must determine whether or not Linda
9 Kasabian is telling us the truth. That is really what we
10 are trying to determine.

11 And the question is, from this statement,
12 it is entirely inconsistent, in the space of just a few
13 words, so to speak, just a page or so.

14 She says she was in a state of shock, and then
15 she says:

16 "You were doing what you wanted to do
17 freely and voluntarily; right?

18 "I guess so."

19 Well, part of credibility, the judge will
20 instruct us that part of credibility involves the witness's
21 ability to convey to us facts which supposedly occur,
22 and they don't become facts until we raise the evidence in
23 the jury to the dignity of a fact.

24 Because she says certain things, that is
25 evidence, but it doesn't become fact, it doesn't become
26 fact until we decide that it is indeed fact.

8d-2

1 And if she tells us in the space of a page,
2 of what amounts to a page in this transcript, that at the
3 same instant that she is in a state of shock she is also
4 operating freely and voluntarily, we have a dilemma,
5 because we suggest that these two are not consistent.

6 It is written down. It is in the transcript.
7 If there is any portion of it, any portion of it, that
8 must be read back, I am sure that Judge Older would
9 accommodate us and read any portion back that we want.

10 THE COURT: We will recess at this time.

11 Ladies and gentlemen, do not converse with
12 anyone ~~or form~~ or express any opinion regarding the case
13 until it is finally submitted to you.

14 The court will recess until 1:45 this
15 afternoon.

16 (Whereupon at 11:59 o'clock a.m. the court
17 was in recess.)
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LOS ANGELES, CALIFORNIA, THURSDAY, JANUARY 7, 1970

1:45 P.M.

---O---

(The following proceedings were had in open court, all counsel with the exception of Mr. Hughes being present, all members of the jury being present, 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.

We are all together, but Mr. Darrow being ill is home for the afternoon, so we have a clerk who is just a little bit unfamiliar with the exhibits, so we are going to try to work around it.

Mr. Darrow will be back tomorrow morning, hopefully -- I am sure that he will be.

I think that you all remember, I think that we all remember this exhibit which shows helter skelter on People's 261 and, for what it may be worth here, helter skelter -- well, first of all, it's obvious that this, from the prosecution's viewpoint -- there were many, many people who observed this picture of a panel on a door; this was at the Spahn Ranch; this was no secret.

We have helter skelter, spelled, it appears to be h-e-l-t-e-r, s-k-e-l-t-e-r, on this exhibit, which is People's 206.

1 So that actually, for whatever that is worth,
2 there is that kind of difference between that which was
3 at the Spahn Ranch and that which was found on the premises
4 of the La Bianca home.

5 Now, I am sure we all remember Mr. De Carlo.
6 What the clerk is looking for now, and I'm sure she will
7 locate it, is an exhibit that is in evidence which shows
8 that Mr. De Carlo was charged with certain offenses in the
9 Superior Court, offenses which the District Attorney saw fit
10 to dismiss as to Mr. De Carlo.

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1 So, we know that there are various factors
2 that affect credibility. Some of the factors are,
3 some of the factors are, benefit.

4 If someone gets a benefit, then, naturally,
5 this has some effect upon the person's credibility, if
6 the jury decides that it does have some effect.

7 Now, in the case of Mr. DeCarlo, we have a
8 situation where he not only received benefits -- now, I
9 am talking about his credibility -- he not only received
10 benefits, but looking at his credibility, we have the
11 effect of his ability to perceive.

12 He had a fantastic consumption of beer,
13 although I think it is fair to state in the evidence that
14 Mr. DeCarlo also partook of hard liquor.

15 Mr. DeCarlo was there at the ranch during the
16 entire period. Here is another witness, another witness.
17 He even went up north. Here is another witness who could
18 have given us some insight, supposedly, as to the two
19 critical days in question.

20 But the prosecution again elicited statements
21 such that the Court made the order that those statements
22 concerning the black-white relationship and those statements
23 about Helter Skelter, and all of that, are statements which
24 are limited to Mr. Manson only.

25 Again, those statements -- there are no
26 statements elicited in connection with the two critical

1 days.

2 These are not statements that are offered on
3 behalf of a criminal conspiracy because, again, the
4 statements of Mr. DeCarlo are statements that can be
5 used for criminal complicity only if they are uttered with
6 criminal intent.

7 And since they are uttered at a time when
8 even the prosecution doesn't allege there was any conspiracy--

9 MR. BUGLIOSI: Your Honor, that is a misstatement of
10 the law.

11 He is continually misstating the law on this.

12 Now, this is not the law, your Honor.

13 MR. KANAREK: Well, your Honor --

14 THE COURT: I will ask you, Mr. Kanarek, not to
15 attempt to paraphrase the instructions.

16 As I have said several times before during the
17 course of argument to the jury, the jury is to take their
18 law as applicable to this case from the instructions that
19 the Court will give you at the close of the argument,
20 and the only reason counsel are permitted to refer to the
21 instructions is to relate them to the evidence in the case.

22 But we get into difficulties, Mr. Kanarek,
23 when you attempt to paraphrase them.

24 I don't mean to be critical of you, it is
25 easy to do, but unless you have the precise language of
26 the instruction, often it tends to be incomplete or

1 inaccurate.

2 MR. KANAREK: I would be glad, your Honor, I am
3 trying to save time, I would be glad to read.--

4 THE COURT: I am not suggesting that you read any
5 instructions, because I don't permit counsel to do that.

10a fls.

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10a-1

1 MR. KANAREK: Well, then, I am asking for guidance
2 from the Court.

3 THE COURT: Then continue with your argument.

4 MR. KANAREK: Very well, your Honor.

5 Forget conspiracy, if we may. We are going to be
6 instructed that there must be, first, a showing that a crime
7 has occurred.

8 If it is petty theft, or if it is robbery, or
9 whatever, there must first be a crime.

10 I will try to save time. If there isn't the
11 crime of conspiracy, if a conspiracy doesn't exist, then,
12 of course, there is nothing to talk about on the 8th count.

13 Now, the crime of conspiracy, no matter how much
14 some people would try to befuddle us about it, the crime of
15 conspiracy falls within the same rules as any crime.
16 To be guilty of it, you have to have criminal knowledge, you
17 have to have criminal intent.

18 And since conspiracies are motivated and move
19 around with the people themselves, because of the nature of
20 a conspiracy, it being an alleged criminal agreement,
21 I think that we would agree that you have to have criminal
22 knowledge and you have to have criminal intent.

23 If someone stands on a street corner and makes
24 certain statements and those statements are made without
25 any concert, without any design, they are just statements
26 that are made. Obviously, those statements do not, cannot,

1 they do not show a criminal conspiracy and they cannot be
2 used to show any criminal intent, unless there is the
3 concerted action that the law requires, unless that is
4 proved.

5 So, when Mr. Manson, when Mr. Manson allegedly
6 uttered his statements that Danny De Carlo said that
7 Mr. Manson made, they were not made with any criminal intent,
8 they were made in conversations, the types of conversations
9 that we have discussed previously in connection with other
10 witnesses.

11 So, what we suggest is that if Mr. De Carlo, if
12 Mr. De Carlo, who was the keeper of the guns, had any know-
13 ledge, despite, even if he wasn't -- his sobriety, according
14 to the evidence, it is clear that the man was, as he put it,
15 smashed, he was smashed all the time; but he makes a
16 difference between being smashed and being drunk, as we
17 recall; he says he drank a certain amount of beer every day --
18 so, the prosecution's own evidence indicates clearly that
19 Danny De Carlo, if he were present, and because of his
20 intimacy with these people, if there had been anything
21 going on on the 9th and the 10th, and so forth, -- the 8th,
22 9th and 10th -- as to Mr. Manson, any remote -- anything
23 that had even the slightest trivial relationship to these
24 events of the 8th, 9th and 10th, we would have heard about
25 it Mr. De Carlo.

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11-1

1 The prosecution would have elicited it.

2 So we must view with caution these statements that are
3 attributed to Mr. Manson.

4 What do they stand for? First of all, they are to
5 be used against Mr. Manson only, so clearly they cannot be
6 used to prove any conspiracy.

7 The prosecution is going to argue, is going to
8 argue that they are circumstantial evidence of some kind to
9 prove a conspiracy.

10 In other words -- in other words, the prosecution
11 is going to try to convince us that these statements, even
12 though the law is clear, even though the law makes it
13 abundantly clear that there must be criminal intent, there
14 must be the putting of the heads together in connection
15 with conspiracy, you have to do it with the intent to carry
16 out a criminal objective.

17 That is why we have overt acts that are pled.
18 There must be some intent, and the overt act -- for instance,
19 they have pled overt acts where somebody walks into the
20 Tate residence.

21 Well, that overt act is an overt act in furtherance
22 of the conspiracy.

23 By the same token, the words that are uttered
24 must be uttered in connection with a criminal conspiracy.
25 There must be the intent to do that.

26 And Mr. De Carlo -- Mr. De Carlo would have been

1 a very very good witness, no reason to think he wasn't
2 there if Mr. Manson and he and anyone else had spoken on
3 these days concerning what we are here about.

4 We have got to remember that just because --
5 just because the prosecution says that Helter Skelter,
6 and all of this, has this great significance, we are
7 not duty bound to accept that. We may consider it. We
8 may give it -- we may think about it -- it is here before
9 us.

10 A good portion of this transcript is related
11 to it; there is a lot of words there, but when you get
12 to the heart of it, to the nitty-gritty of it, where is
13 there any showing of any criminal intent on the part of
14 Mr. Manson in connection with those words, that refer to
15 Helter Skelter, except the gratuitous statements made by
16 Linda Kasabian after she had spoken at great length with
17 prosecution people.

18 So, this is a circumstance. That picture that
19 we saw this morning showing Stephanie Schram, that picture
20 had Juan Flynn in it.

21 There is not even any showing concerning Juan
22 Flynn as to Helter Skelter or anything of that type, so
23 it's this is something that we have to consider in
24 evaluating this case.

25 And Mr. DeCarlo made it very clear that --
26 and this is around pages 10,598 through pages -- on through

1 10,621, he made it abundantly clear that people came and
2 went at the ranch.

3 There was great fluidity; the door was open to
4 anyone that came along, and so, as far as this Helter
5 Skelter is concerned, as far as the conversation was
6 concerned at the ranch there, obviously the panel was
7 there; this Helter Skelter panel was there, and it was
8 available -- it was available to be seen by anyone that
9 was there.

10 And the interesting thing, for instance at
11 page 10,653:

12 "Q Mr. DeCarlo, you testified previously
13 as to Mr. Manson's philosophy in regard to Negroes,
14 is that right?

15 "A Yeah.

16 "Q And is it your opinion that as the
17 result of these conversations with Mr. Manson it
18 appeared to you that he was racially prejudiced?"

19 The answer was:

20 "We felt about the same.

21 "Q And how did you feel about Negroes in
22 America?

23 "A About the same.

24 "Q The same as what?

25 "A The same as Charlie.

26 "Q Well, what were your opinions?

1 "A I don't think they should fool around
2 with white girls."

3 Now somebody -- these are delicate subjects,
4 supposedly, to discuss, but we can only discuss them by
5 discussing them.

6 Again we feel that if this was this kind of
7 topic of conversation, this type of material was discussed,
8 the fact that Mr. Watson obviously is from Texas, does
9 that have any significance here in connection with this?

10 If Mr. DeCarlo felt this way about it, we
11 can certainly agree that Mr. Watson may have felt the
12 same way as Mr. DeCarlo.

13 Now, the prosecution has injected -- has
14 injected these matters; they are before us, and it is
15 a subject that is delicate, but I should not hesitate --
16 we should not decline to discuss it because it is
17 delicate.

18 At page 10,654, Mr. De Carlo is asked:

19 "Q Were you afraid of blacks during the
20 period of time you resided at the Spahn Ranch?

21 "A No."

22 Now we have a significant statement at the
23 bottom of page 10,654, and again as to this witness also
24 it is interesting -- it is interesting.

25 If there was anyone who could focus in
26 similarly to Mr. Jakobson as to what was going on, if what

1 the prosecution would have us believe actually went on,
2 if what was going on as they actually would have us
3 believe it, Danny DeCarlo, he was right there; he was right
4 in the middle of it, right when these things were going on.
5 He was in the raid. He got bloodied up in the raid. We
6 all remember that.

11a fls.

11a-1

1 And it is interesting, whatever it may be
2 worth, to note Mr. DeCarlo at the bottom of page 10,654:

3 "Q You had conversations with Mr. Manson
4 in regard to Helter Skelter, correct?

5 "A I did not have.

6 "Q You never had any conversations with
7 him in regard to Helter Skelter?

8 "A Other than hearing him use the word.
9 I did not ask him what it meant.

10 "Q So you were totally ignorant as to
11 what it meant?

12 "A I did not know what it meant at first,
13 no. I never heard of the word.

14 "Q And you never did learn from Mr.
15 Manson, right?

16 "A No, no, I picked it up as I went along.

17 "Q From somebody else?

18 "A Well, just from listening to the way
19 they used it.

20 "Q Who is they?

21 "A Oh, the Family, everybody.

22 "Q But not Mr. Manson?

23 "A No.

24 "Q He never told you about Helter Skelter?

25 "A You mean the definition of the word?

26 "Q The definition of the word?

1 "A No, he never did,"

2 And thank God for Mr. DeCarlo's welfare,
3 he spelt it right at page 10,655, evidently:

4 "Q Incidentally, in the form you were
5 using it, how was it spelled?"

6 He starts off:

7 "A H-a-" --

8 And then he says H-e-l-t-e-r S-k-e-l-t-e-r.
9 It is in the transcript, H-e-l-t-e-r S-k-e-l-t-e-r.

10 So Mr. DeCarlo says that everybody at the ranch
11 spoke about -- he used these words, it is there, it is like
12 Fifth and Main Street, or anywhere else, somebody has put
13 up this plaque, and there is no connection shown between
14 this plaque and Mr. Manson.

15 Certainly there is nothing whatsoever to show
16 that Mr. Manson had any personal relationship with this
17 plaque.

18 And the interesting thing is, if we are going
19 to have a black and white war, we would think that the man
20 who is the keeper of the guns, we would think that Danny
21 DeCarlo, as we look back, if there was going to be some
22 kind of a black and white war, you would think the gunsmith
23 would be on it.

24 Mr. DeCarlo loved guns; Mr. DeCarlo brought
25 guns to the ranch.

26 Mr. Manson, Mr. DeCarlo states, did not want

1 guns there. Mr. DeCarlo brought the guns there.

2 As we look back at it, what would be the
3 smart thing to do? What would be the smart thing to do,
4 if we were going to plan a black and white war and we
5 were going to have all of this confrontation?

6 It would seem like Mr. DeCarlo would certainly
7 be a part of it. He would be in there. He would be in
8 there on the planning.

9 Mr. DeCarlo even made his own bullets, from
10 testimony that we have in this courtroom.

11 And so, for whatever it may be worth, we
12 have Mr. DeCarlo telling us these things.

13 Mr. DeCarlo says, as far as the dune buggy
14 goes, on page 10,673:

15 "Q Now, you previously testified there
16 was a dune buggy that belonged to Mr. Manson,
17 correct?

18 "A Yeah.

19 "Q I thought, thought, that your testimony
20 was that nothing belonged to a particular individual?

21 "A Yeah, that's true.

22 "Q Did that dune buggy that you testified
23 belonged to Mr. Manson belong to anybody else who
24 wanted to use it?

25 "A Yeah, anybody could use it.

26 "Q Did you ever see anybody else use it?

"A Yeah."

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2 So, if we may as a piece of advocacy here,
3 at this point, it would seem to me that we can take it,
4 just to pinpoint the issue, you notice we originally said
5 about the corroboration chart, and we said that the
6 sword and the piece of sword would be sort of a beginning
7 point. We think as a matter of advocacy, maybe some
8 people won't agree, but we think that under no conditions
9 could that sword and the piece of sword be used to
10 corroborate Linda Kasabian.

11 And the prosecution's own testimony shows
12 very clearly that that dune buggy, the very dune buggy
13 that we are speaking about, is a dune buggy that many
14 people -- many people operate.

15 Danny DeCarlo, the prosecution witness,
16 this is what he says for whatever that might be worth.
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12 fls.

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1 Page 10,844. Page 10,844. We have some
2 comments by Mr. DeCarlo concerning what Linda Kasabian
3 told him about her knife.

4 After testifying that Mr. Manson --

5 "Now, Mr. Manson did not clean the
6 guns at the ranch, did he?

7 "No,

8 "Leslie Van Houten did not clean the
9 guns at the ranch, did she?

10 "She might have helped me.

11 "But pretty much, by and large, those
12 guns were under your control, weren't they?

13 "Yeah.

14 "Do you recall earlier today and
15 yesterday identifying a Buck knife?

16 "Yeah.

17 "Did Linda ever tell you that Buck
18 knife was hers?

19 "Yeah.

20 "Didn't she in fact tell you that she
21 would not go anywhere without that Buck knife?

22 "Yeah."

23 Linda Kasabian had been from commune to
24 commune. She had that Buck knife on her. She carried that
25 Buck knife with her, evidently, for some extended period
26 of time, and that Buck knife is the Buck knife that is

1 found in the chair -- the picture that we have all seen --
2 inside the Tate residence, Linda Kasabian's Buck knife.

3 "When did Linda tell you, if you
4 remember that she would not go anywhere without
5 that Buck knife?

6 "I don't know.

7 "Was it the month of July, last year?

8 "Maybe the very last part of July.

9 "Could it have been in August that
10 Linda told you that she would not go anywhere
11 without her Buck knife?

12 "It's possible.

13 "Isn't it true, Danny, -- can I call
14 you Danny?

15 "Sure."

16 Now, that is the testimony by Danny DeCarlo,
17 for what it may be worth.

18 Danny DeCarlo testified about Linda Kasabian's
19 state of mind towards this knife.

20 Page 10,672 of the transcript. 10,672.

21 Let's see. This is the testimony by Danny
22 DeCarlo.

23 "Were you ever there when Manson was
24 gone by himself or with some other people for
25 two or three days at a time?

26 "Yeah.

1 "Did things go on at the ranch in his
2 absence?

3 "Yeah.

4 "Was there an area of Chatsworth
5 frequented by people who used to stay at the
6 Spahn Ranch from time to time called Devil's Canyon?

7 "Yes.

8 "How far was that from the Spahn Ranch?

9 "A couple of miles.

10 "And how long would it take you to
11 traverse that couple of miles if you were walking?

12 "Maybe a half hour or so.

13 "Are there any roads to take from
14 Spahn Ranch to Devil's Canyon?

15 "Yeah.

16 "Were those standard asphalt roads?

17 "No, they were dirt."

18 Now, the only way that we can get the purport,
19 the impact, if any, in this particular bit of testimony,
20 for instance, is from the exact words, because it is one
21 thing for a lawyer to summarize, it is one thing for a
22 lawyer to synopsise, and it is something else to actually
23 get the record.

24 The record tells the story. The record is,
25 really, the heart of the case, we suggest, more than
26 the exhibits, because with the foundation of this record,

1 the exhibits, I think we all agree, would be meaningless,
2 because the only significance, the only significance to
3 the exhibits is by way of oral testimony.

4 The same way that the only significance to a
5 question is the meaning that is given the question, is
6 given the answer by the question.

12a fls.7

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1 And so we have, on top of that, the jury
2 instruction that the Court is going to give us concerning
3 credibility of witnesses.

4 I know we have used that word again and again
5 and again, but the Court is going to instruct us concern-
6 ing credibility of witnesses. The Court is going to
7 instruct us that even assuming that we had -- even assuming
8 that we had the benefit of this transcript in the jury
9 room, the Court is telling us that having the bare written
10 word isn't the full story. Having the bare written word
11 is only part of the story. Because we have to see the
12 demeanor of the witnesses, we have to see them, we have
13 to hear them, we have to get the sequence of events.

14 And so, what we suggest is that the very
15 basic beginning ought to be this transcript.

16 And that is why, if there is any question as
17 to what actually the words were that were uttered, what
18 they were, what was said, we think that the transcript is
19 the best evidence of what the words were that were heard
20 in this courtroom.

21 Then page 10,676.

22 "Did you actually hear Manson ever
23 say that he hated blacks or Negroes?

24 "Yeah.

25 "When was that?

26 "Sometime in -- I don't know when, while

1 I was there.

2 "Just one big blur?

3 "Because we never had no clocks or
4 calendars up there, so, hell, I didn't know what
5 time it was.

6 "It got dark, light, dark, and that
7 was it.

8 "We never listened to a radio; we
9 had no calendar, so one day went along like the
10 next day.

11 "I did not know if it was Monday,
12 Wednesday, or Friday, so --"

13 Now, the prosecution is probably -- the prose-
14 cution has already said -- the prosecution is going to try
15 to say, because of the fact that this testimony, this
16 testimony makes it look like Mr. Manson has a certain
17 attitude towards black people, that this means that Mr.
18 Manson was responsible for these events.

19 This is evidence which the prosecution is
20 pointing out to us by way of this testimony.

21 Like Mr. DeCarlo says here in answer to that
22 question:

23 "One big blur?"

24 There is absolutely no showing whatsoever --
25 and remember, remember, what we are trying to do here in
26 our discussion is meet these matters and discuss them --

1 we are trying our best not to walk away from issues.

2 You come to this part of the transcript, and the easiest
3 thing to do is just forget it and try to bypass it or
4 something.

5 We think that the best way to resolve what
6 is all of these scurrilous matters that have been brought
7 into this courtroom is by meeting them headon.

8 And there is no showing, no showing whatsoever
9 of anything occurring of this type in the days that we are
10 talking about, the two days that have been alleged here.

11 And if all of the people that have made
12 slurring remarks concerning black people, if all of those
13 people were counted, how many would there be? How many
14 alive in this world today would there be?

15 So the prosecution is praying on our
16 prejudices, praying on conflicts that are conflicts that
17 we are living with today, hoping, hoping, that we will
18 make some kind of a decision in this courtroom that someone,
19 somewhere, wants.

20 Because clearly, clearly, the evidence shows
21 that Mr. Manson, as far as these days are concerned,
22 made no statements, he made nothing by way of conspiracy;
23 he, according to what we have here, he was uttering his
24 feelings concerning the relationships. Primarily, he
25 had some feeling about females of the Caucasian race
26 having close relations with men of the black race.

1 That is not a topic which is undiscussed. I
2 mean, that topic is discussed, it is discussed throughout
3 this nation each and every day.

12b fls.

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1 And so, for whatever it may be worth, we have
2 that testimony.

3 Page 10,674.

4 "Mr. DeCarlo, is it not true from your
5 discussions with Mr. Manson, that Mr. Manson indicated
6 to you that he actually loved the black people?

7 "Yeah, there was one time he said that."

8 For whatever that means.

9 This is interesting again because when we
10 have a witness on the witness stand, we have to evaluate--
11 in evaluating his testimony, we get into such matters as
12 racial matters and racial discussions.

13 Is it possible for anyone of us, is it
14 possible for Danny DeCarlo, drunk or sober, to testify
15 and not make his own thinking a part of the words that
16 are uttered?

17 Supposedly he is saying something. Remember,
18 there is no tape recorder, no nothing of what was actually
19 uttered by Mr. Manson.

20 The fact of the matter is that Mr. Manson's
21 words are not -- that is, as they come from his mouth --
22 are not related by Danny DeCarlo by way of any tape or
23 anything like that. So, there is a certain coloring that
24 is given to the testimony by virtue of Mr. DeCarlo's own
25 feelings, whatever they may be.

26 And in connection with testimony, none of us,

1 really, wish to have, perhaps, some of the feelings that
2 we have. Some of these feelings are feelings that we have
3 had for sometime, for whatever the reasons may be.

4 Danny DeCarlo doesn't want to have these
5 feelings maybe. He sort of feels that he shouldn't, as
6 appears from his testimony. But we think it is there.
7 It seems to come out.

8 Page 10,679, Volume 90.

9 "It's actually you that hate the
10 blacks, isn't that right, Mr. DeCarlo, isn't
11 that true?

12 "No.

13 "Not true?

14 "No.

15 "You love blacks?

16 "I don't love them and I don't hate
17 them."

18 Now, that answer, we can take that answer
19 and we can think what does it really mean? And probably
20 some of us will have one feeling and some of us will have
21 another feeling.

22 Question at page 10,679, after that:

23 "I don't love them and I don't hate them.

24 "You previously testified that your
25 understanding was that Manson hated blacks, and
26 he felt the same as you did, right?

1 "Right.

2 "You don't hate blacks?

3 "I don't love them and I don't really
4 hate them.

5 "Some thing that they do I don't
6 like. I am sure the feelings are mutual."

7 Now, from that, it would appear that Mr.
8 DeCarlo had certain feelings.

9 Can we, for whatever it may be worth, can
10 we say that in this particular type of subject matter, can
11 we say that Mr. DeCarlo's own feelings are not a part of
12 this testimony?

13 This is a question which we think is a
14 legitimate question.

15 Page 10,869.

16 "Were there many ropes at the horse
17 ranch?"

18 Going back:

19 "Now, Spahn Ranch is a horse ranch;
20 Is that correct?

21 "Yes.

22 "Were there many ropes at that horse
23 ranch?

24 "Yes.

25 "Did Randy Starr have a rope similar
26 to that rope?

1 "I don't know.

2 "You have seen Randy Starr use rope,
3 haven't you?

4 "Yes.

5 "Now, this hundred and fifty feet of
6 rope, wasn't it used for general work and left in
7 a place where everyone at the ranch who needed a
8 rope could have access to it?

9 "Yes."

10 At the bottom of page 10,870:

11 "Could you have taken any of those
12 items and done what you wished to with them?

13 "Yes."

14 So, the rope which has played such a big part
15 in this trial was a rope wherein everyone there had access
16 to it, and it wasn't a rope which was privy to Mr. Manson.

13 fls.

13-1

Now, at page 10,912:

"Q You had a conversation with either the District Attorney's office or the Police Department regarding your testimony in this case, do you recall that time?

"A I don't know what you mean.

"Q Well, did anyone have a conversation with you concerning your testimony in this case?

"A Yeah.

"Q When was the first conversation?

"A Last year.

"Q Was it before December 5th and December 8th?

"A I don't know.

"Q Or was it sometime in December?

"A Yeah.

"Q And at that time you had some felony charges pending against you, is that right, Mr. DeCarlo?

"A No, not then I didn't.

"Q You did have a receiving stolen goods charge against you at that time in December of 1969?

"A I don't know.

" Why don't you look in the record?

I don't know."

1 Now, then, there was a recess and after the
2 recess Mr. DeCarlo states this:

3 "Q Mr. DeCarlo, do you remember the
4 charge I asked you about?

5 "A Yeah.

6 "Q Do you recall the charge now?

7 "A Yeah.

8 "Q What charge was that?

9 "A Grand theft of an engine."

10 Now, we have an exhibit -- anyway we have an
11 exhibit and this exhibit will show -- this will show some
12 charges that Mr. DeCarlo had, what effect that has, what--
13 how that should affect the utility of Mr. DeCarlo's
14 testimony, that is what we have to decide and evaluate in
15 this testimony, in evaluating his credibility.

16 So that we have the problem -- we have the
17 problem not only of his actually having been convicted of,
18 I think, a couple of felonies, we have -- which is an
19 independent basis of attacking credibility, but we also
20 have the problem involved as to the benefits that Mr.
21 DeCarlo has obtained.

22 And remember, remember that with -- with a
23 benefit such as that there are lots of -- already lots of
24 feelings, lots of emotions involved.

25 Can we visualize what it may mean to someone
26 to be relieved of the liability of going to the State

1 Prison, relieved of the criminal liability of felony
2 charges?

3 Can we say that this does not have -- are
4 these just words, meaningless words when we talk about
5 credibility, or if we dig deep in that person's mind,
6 does it mean that the things that he says from that witness
7 stand are colored because of benefits that he has obtained?

8 This is something, this is something that we
9 have to consider in evaluating the testimony of Mr. DeCarlo.
10 At page 10,922, and this is something sort of interesting,
11 it adds a little bit of flavor to it:

12 "Q Not only, Mr. DeCarlo, do you not
13 remember who you spoke to, but is it a fair
14 statement that you don't know what you discussed
15 with any particular person on any particular day?
16 Is that a fair statement?

17 "A No, I know.

18 "Q Pardon?

19 "A Yes, I remember.

20 "Q You remember?

21 "A Yes.

22 "Q All right.

23 "Will you tell us the days that you
24 remember speaking on any particular subject?

25 "THE WITNESS: Well, one night Gypsy got
26 mad at me because I wouldn't take my boots off when

1 "I made love to her."

2 Now, we are in a trial where there are seven
3 counts of murder and a count of conspiracy, and when we
4 ask a question like that, Mr. DeCarlo comes up with this
5 answer.

6 Does that answer have any significance?

7 He answers further on:

8 "THE WITNESS: Well, I remember things like
9 that.

10 "Q That is all you remember really? All
11 you really remember that is pinpointed in your
12 mind at that ranch has to do with sex, right?

13 "A Well, you are asking me days.

14 "Q Yes.

15 "A If I remember days.

16 "Q Yes.

17 "A On a certain day or night.

18 "Q Right.

19 "The only things that are really pinpointed
20 in your mind that you really remember is that you
21 had a lot of sex, right?

22 "A (Pause.)

23 "Q Right, Mr. DeCarlo?

24 "A Yes. Well, even some of that I can't
25 remember."

26 So it would seem like, that in discussing the

1 credibility of Mr. DeCarlo, that we would have to take
2 into account these types of statements that he is making.

3 Now, in connection with some of the exhibits
4 that we have here:

5 Now, in connection with Mr. DeCarlo's
6 testimony we have, and this is in evidence, which we have --
7 which we will have in the jury room, there is this
8 information, grand theft in the Superior Court, DA No.
9 8058069, and in this there are several different counts.

10 There are three counts. There is a Municipal
11 Court file here, attached to a Superior Court file, which
12 means that Mr. DeCarlo was bound over to the Superior
13 Court for felony trial.

14 This, whatever this may be worth, whatever
15 this may be worth, this is the type of benefit that Mr.
16 DeCarlo received in connection with his testimony in this
17 case.

18 MR. BUGLIOSI: That is a misstatement, your Honor.
19 Mr. Kanarek knows it.

20 MR. KANAREK: That is not.

21 THE COURT: Approach the bench.
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13a fls.

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(The following proceedings were had at the bench out of the hearing of the jury:)

MR. BUGLIOSI: He knows very well, your Honor, that was unrelated to this case.

We discussed it back in chambers.

We discussed it at the time it was introduced, and he still deliberately makes statements like that.

It's incredible how he can do it, day in and day out.

THE COURT: I want to hear from Mr. Kanarek.

MR. KANAREK: Yes, your Honor.

THE COURT: Don't evade the question.

MR. KANAREK: Yes.

THE COURT: Are you contending that the record shows that Mr. De Carlo received some benefit, immunity, or dismissal from this charge from the prosecution in this case?

Just answer that question.

MR. KANAREK: No --

THE COURT: Then why are you referring to it?

MR. KANAREK: In connection with his testimony in this case, we never contended he is a defendant. That is a spurious issue.

THE COURT: I want to know what you are claiming is your justification for mentioning what you mentioned to this jury.

MR. KANAREK: Because his testimony in this case, part

1 and parcel of this argument with law enforcement, these
2 charges have been dismissed; he has a running relation with
3 law enforcement in connection with Mr. Manson.

4 THE COURT: Where is that in the record in this case,
5 not the fact of the charge, the fact of the benefit.

6 MR. KANAREK: Mr. Shinn interrogated him. May I get
7 the transcript and show your Honor?

8 THE COURT: Yes, that is what I want to see.

9 Read the statement that was objected to, Mr.
10 Reporter.

11 (Whereupon, the reporter reads the record as
12 follows:

13 "Which means that Mr. De Carlo was bound
14 over to the Superior Court for felony trial.

15 "This, whatever this man be worth, whatever
16 this may be worth, this is the type of benefit
17 that Mr. De Carlo received in connection with
18 his testimony in this case."

19 THE COURT: Of course, the statement is ambiguous in
20 the first place. I don't know what "this is the type of
21 benefit" -- I don't know what Mr. Kanarek means by that.
22 It certainly implies he is talking about a felony charge.

23 MR. BUGLIOSI: That is the context in which it came up.

24 THE COURT: He says this is the type of benefit.
25 I don't know what he means by that. I know what he means
26 and you know what he means, I don't know whether the jury

1 knows what he means.

2 MR. BUGLIOSI: To expedite it, your Honor, I will
3 withdraw the objection.

4 THE COURT: Well, all right, but refreshment of
5 recollection -- I don't recall any evidence that the case
6 was dismissed --

7 MR. BUGLIOSI: Absolutely not.

8 THE COURT: -- in which Mr. De Carlo was involved as
9 a result of any testimony in this case.

10 MR. KEITH: Can't you draw an inference it might have
11 been?

12 MR. FITZGERALD: De Carlo testified --

13 THE COURT: Do you have something to add?

14 MR. FITZGERALD: Yes.

15 THE COURT: Let's hear it.

16 MR. FITZGERALD: De Carlo was asked directly about
17 this, and De Carlo denied it.

18 What appears in the record is the denial by
19 De Carlo, but I am not going to get involved in what the
20 truth of the matter is.

21 THE COURT: I am not talking about the truth of the
22 matter, I am talking about representation of facts that
23 were supposed to be testified to in this case.

24 MR. FITZGERALD: De Carlo denied they were dismissed.

25 THE COURT: That is not the point at all, Mr. Kanarek
26 makes a statement that appears to be a representation of

1 fact that there was some benefit that is shown of record in
2 this case. That is a misstatement of the record and that is
3 improper argument.

4 If he wants to say Mr. De Carlo was lying, fine,
5 go ahead and say it, that is a perfectly legitimate argument.
6 That is all right.

7 MR. BUGLIOSI: Of course, that implies he has
8 personal knowledge. I see the Court's point, but he says
9 when he said that he is lying, that is almost saying, "I know
10 something else that you folks don't know about."

11 THE COURT: I am not saying he should say that baldly,
12 but he can argue the witness is lying the same as he can
13 argue any other witness was lying.

14 MR. BUGLIOSI: Right.

15 MR. FITZGERALD: That was the evidentiary import of
16 the document I attempted to have received into evidence, and
17 it was actually received in evidence until your Honor
18 rescinded your ruling at the objection of Mr. Kanarek,
19 and removed that aspect of the exhibit.

20 The exhibit contained a District Attorney
21 recommendation that the charges against De Carlo ought to be
22 dismissed for his testimony in the case of People vs.
23 Beausoleil.

24 MR. BUGLIOSI: Now Mr. Fitzgerald claims that charges
25 were dismissed because of Beausoleil and Tate.

26 Now, I don't know if he has personal information

1 on it. I, myself, make a representation to the Court that I
2 am not aware that there was any joint situation.

3 Now, maybe there was; I don't know about it.

4 THE COURT: I am not concerned whether you are aware
5 of it or not. That is not the point.

6 The point is, what is the evidence in this record
7 and what is the legitimate argument based on this record?

8 MR. BUGLIOSI: There is no evidence in this record
9 that those charges were dismissed and returned for
10 testimony in this case.

11 MR. KANAREK: We are not arguing that. We are not saying
12 he was a defendant in this case.

13 THE COURT: Now, Mr. Kanarek, when you make a statement
14 that this is one of the benefits that Mr. De Carlo received
15 for participating in this case, or whatever you said --

16 MR. KANAREK: This is a fair inference, your Honor.

17 THE COURT: You don't state them as inferences. You
18 don't state it that way at all. You state it as a
19 representation of fact, as evidence in this case, and it is
20 not evidence.

21 If Mr. Kanarek wants to argue to the jury that
22 Mr. De Carlo is not to be believed when he says he did not
23 receive any benefits, that is perfectly legitimate argument.

24 There is no argument there.

25 When you state something is of record in this
26 case, in effect this is what you did, and it isn't, that is

1 not proper argument.

2 All right, you are withdrawing the objection?

3 MR. BUGLIOSI: Yes, for the sake of --

4 THE COURT: So let's get on with something else.

5 MR. BUGLIOSI: -- expedition.

6 MR. KANAREK: Would your Honor state that the
7 objection has been withdrawn?

8 THE COURT: No, I am not going to say that.

9 MR. KANAREK: Thank you.

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

12 THE COURT: We will take our afternoon recess at this
13 time, ladies and gentlemen, do not converse with anyone or
14 form or express any opinion regarding the case until it is
15 finally submitted to you.

16 The Court will recess for 15 minutes.

17 (Recess.)
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1 THE COURT: All counsel and jurors are present.

2 MR. BUGLIOSI: May we approach the bench, your
3 Honor?

4 THE COURT: Yes, you may.

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

8 MR. BUGLIOSI: I apologize to the Court for this
9 negligence on my part, but I thought that the exhibit --
10 I hadn't looked at it when it came up here -- I thought
11 that although we had removed certain articles, I thought
12 it mentioned the dismissal in the Beausoleil case and
13 the date, but there is no mention there of People vs.
14 Beausoleil.

15 So, I would respectfully ask the Court to
16 reconsider whether to admonish the jury to disregard Mr.
17 Kanarek's statement.

18 THE COURT: You withdraw your objection?

19 MR. BUGLIOSI: Right.

20 I wonder if the Court would reconsider my
21 objection?

22 I really can't argue now forcefully to the
23 jury, because Beausoleil is not mentioned there, and there
24 is no date of dismissal mentioned.

25 THE COURT: I am not clear. What is it that you
26 want me to do?

14-2

1 You are not objecting?

2 MR. BUGLIOSI: Yes, I am objecting. I am changing
3 it. I am asking the Court to reconsider my objection.

4 I am reinstating my objection and asking the
5 Court to admonish the jury to disregard Mr. Kanarek's
6 statement, because looking at the exhibit, there is little
7 that I can argue to support my position.

8 So, I would ask the dignity of the Court's
9 admonition to the jury to disregard Mr. Kanarek's statement.

10 MR. KANAREK: Your Honor, the statement that I made
11 was a very general statement.

12 THE COURT: I still think Mr. Kanarek's statement was
13 ambiguous. To me it meant one thing; what it meant to the
14 jury, I have no idea. I would think that it probably
15 meant the same thing.

16 I think we should just pass the matter at this
17 time.

18 If you want to argue, if Mr. Kanarek wants to
19 argue that Mr. DeCarlo is not to be believed, that is a
20 perfectly legitimate argument.

21 If you want to argue that there is no evidence
22 in this record, or rather, that Mr. DeCarlo testified that
23 he received nothing, and there is no evidence to the
24 contrary, that is legitimate argument.

25 MR. BUGLIOSI: Right.

26 THE COURT: Why not leave it at that?

1 MR. BUGLIOSI: I think Mr. Kanarek can draw
2 inferences, but I think the inferences should be drawn
3 by him after the Court tells the jury to disregard the
4 last statement, that is, that this is the thing that he
5 got out of testifying in this case.

6 He made a somewhat positive assertion, and
7 that assertion was not predicated on any evidence in this
8 case.

9 If the Court sustains the objection, then
10 Mr. Kanarek can thereafter say: Well, he can infer that.

11 I say, the reason that I withdrew the objec-
12 tion, I thought that during my summation I was going to
13 have something to base my statement on. But looking at
14 those statements there, it doesn't mention Beausoleil
15 and it doesn't mention the date of the dismissal.

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THE COURT: I will sustain the objection.

I suggest that we get on to something else.

MR. BUGLIOSI: All right.

MR. KANAREK: Your Honor is going to admonish the jury?

THE COURT: I am not going to admonish the jury. I am just going to sustain the objection.

MR. BUGLIOSI: Thank you.

(Whereupon, all counsel return to their respective places at counsel table and the following proceedings occur in open court within the presence and hearing of the jury:)

THE COURT: You may proceed, Mr. Kanarek.

MR. KANAREK: Thank you, your Honor.

MR. BUGLIOSI: Is the Court going to make a ruling on the last objection?

THE COURT: The objection is sustained.

MR. BUGLIOSI: Thank you.

MR. KANAREK: Ladies and gentlemen, we have in evidence Defendants' Exhibit V.

We suggest that it is a legitimate inference that Mr. De Carlo received benefits from the District Attorney's Office concerning this charge, this series of charges, whatever it is.

The jury will be the ones to decide whether that inference is legitimate inference or not.

We think that the language that was read directly

1 from the transcript sustains that inference.

2 Now, we come to a very interesting portion, what
3 we think is an interesting portion of this case, and that is
4 this raid.

5 Thinking in terms of a military operation, which
6 this was, the August 16th raid, and considering the vast
7 interest that Spahn Ranch had in law enforcement, we come
8 to a possibility here -- which, of course, we have no evi-
9 dence on, but we think it is a legitimate consideration --
10 we remember, and even though it isn't D Day or anything like
11 that, it wasn't an operation by the Armed Forces, we remember
12 that there was, that these people, the law enforcement
13 people, they rendezvoused around 4:00 in the morning, they
14 had aircraft cover, albeit it was a helicopter, they had
15 submachine guns, they had automatic rifles, they had, I
16 don't know, maybe 40 to 100 -- I forget the exact number now
17 -- of law enforcement personnel.

18 They had had extensive contact with the Spahn
19 Ranch prior to this. And having some extensive interest in
20 Mr. Manson, it would seem like, knowing just the ABC's of
21 law enforcement, we certainly -- we don't suggest that
22 we are any experts in law enforcement, but just from what
23 we know, just general -- it would seem like that the
24 Sheriff and other law enforcement agencies had planted at the
25 Spahn Ranch informers.
26

14b-1

1 We believe that this is a legitimate considera-
2 tion.

3 Certainly, before General Eisenhower invaded
4 France in the Second World War, there were operatives,
5 there were spies that were sent over.

6 And we think that it is legitimate to consider
7 that law enforcement had people dressed up in a particular
8 way, in a manner that would be equivalent to the type of
9 dress, the general appearance of people who lived at the
10 Spahn Ranch.

11 We think that before they went in there on
12 August the 16th, 1969, and because of the fluidity of
13 people coming in and going out, and the great probability
14 of this interest in law enforcement, that there were
15 undoubtedly people living at the Spahn Ranch who were
16 police officers.

17 Just like in a narcotics case, or any case,
18 law enforcement has people who appear to play the part.

19 And so, we are not saying that this is
20 explicit in this evidence, but we are saying that it is
21 implicit in this evidence, that throughout the period
22 of this conspiracy there were informers at the Spahn
23 Ranch/^{who}were actually police officers.

24 And this certainly would be in keeping with
25 the kind of operation that took place on August the 16th,
26 1969, because we have a canteen set up, we have -- as we

1 look at these pictures, as we look at these pictures,
2 we see -- there are even Los Angeles police officers
3 present -- we are now referring to, oh, exhibits like,
4 for instance, well, Defendants' Exhibit VV, which appears
5 to be a helicopter.

6 These are all in evidence.

7 We have a picture here of Mr. Flynn,

15: fls.

8 Exhibit ZZ.
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1 On the very day -- the very date of the conspiracy,
2 we certainly feel that there were police officers actually
3 on the premises.

4 Mr. Manson at that time -- at that time was very
5 much -- very much an object of police scrutiny.

6 Furthermore, on August 16th which is some seven
7 days after -- after August the 9th, this panel, this Helter
8 Skelter panel was at the Spahn Ranch, was visible to all
9 of law enforcement and there was nothing -- there was
10 nothing about that, even in the posture of what the publicity
11 was, in connection with the La Blancas --

12 So these are circumstances we may consider in
13 connection with Mr. Manson.

14 These are circumstances that have some signifi-
15 cance because we all remember -- we all remember the details
16 of it.

17 We are not going to go into it here, all of the
18 testimony by Officer Gleason, and others concerning that
19 raid.

20 But then we have that raid, and we have Mr.
21 Manson after that raid going to -- going up to the Death
22 Valley area and, as we know, Mr. Manson was the only one
23 who gave his right name when arrests were made in the general
24 area of the Barker and Meyers' Ranches.

25 So the question is -- the question is, what
26 significance is it? What significance is it?

It is beyond belief that there would not have

1 been police officers right at the Spahn Ranch during the very
2 period of time that we are speaking of.

3 I don't know what this operation cost the County
4 of Los Angeles, the numbers of police officers and so forth
5 involved, but for what it may be worth we suggest that as
6 a possibility, in fact a probability.

7 Now, Volume 97 -- well, before we get to Volume 97,
8 96, I think 96 is significant, Page 11,170, because it shows
9 that we all know that Dianne Lake testified at the Grand Jury,
10 what she said.

11 We know what she testified in this courtroom.

12 And in that context we have the prosecution
13 evidence from Mr. Ralph Marshall -- Ralph Marshall.

14 And Mr. Ralph Marshall testified, referring to
15 Sandy Good and Sandy Pugh -- whichever way you want to call it,
16 at Page 11,170:

17 "Q Did you book them on August the
18 8th?"

19 I am trying to make it as short as possible.
20 "Them" includes another person named Mary Brunner.

21 "I did.

22 "Q What time of day?

23 "A Close to 5:00 o'clock in the afternoon.

24 "Q Were they then transported down to
25 Sybil Brand Institute in East Los Angeles?

26 "THE WITNESS: Yes, they were.

1 "MR. BUGLIOSI: Q On that same date,
2 August the 8th, 1969?

3 "A Yes."

4 Then at Page 11,000 -- well, that is the actual
5 evidence that is before us.

6 Now, it means -- it means that the girl -- that
7 Dianne Lake testified -- testified she went to dinner with on
8 the night -- on the date following the second night --

9 We all recall her saying that some of this money
10 that Leslie Van Houten brought back was used by her, one of
11 the people she went out to eat with was Sardy Goode.

12 Well, the prosecution's evidence in this case,
13 the evidence, whether it's permanent records or impermanent
14 records, but the records of the Sheriff's Department clearly
15 show that Sandy Goode was in custody on -- at the time, on
16 the 9th, when supposedly Dianne Lake says, when she says
17 that she went to dinner on the proceeds of some moneys that
18 Leslie Van Houten brought to the ranch.

19 There we have the most suggestible of people,
20 Dianne Lake. She is suggestible, according to the medical
21 evidence, independent of the prosecution, independent of law
22 enforcement.

23 The doctors, as we will recall, from her medical
24 reports, at Patton State Hospital, according to the testimony
25 of Dr. Skrdla and Dr. Deering, we have no question about the
26 suggestibility of Dianne Lake.

1 Having that suggestibility in mind, we have to --
2 we have to think in terms of the actual impossibility for
3 Sandy Goode to go to dinner with her on the night that we
4 know was the night after the second night.

5 So again there is a question -- there is a
6 question as to whether or not Dianne Lake is relating to us
7 information that we can make use of in deciding this case.

8 Another witness -- another witness who was at the
9 ranch and was in a position -- we think that it is signifi-
10 cant that as far as these two days are concerned, that the
11 prosecution has not brought in people who substantiate some
12 of the contentions of the prosecution.

13 Barbara Hoyt is a witness, Page 11,249 -- first
14 of all Barbara Hoyt -- Barbara Hoyt is a witness who could
15 have testified to oral conversations.

16 I mean, she could have -- I mean there is some
17 question about her eyesight, I am sure we would all agree
18 to that from what happened in the courtroom in connection
19 with her lack of ability to see without glasses; that
20 that was a very, very profound lack.

21 And she said that she did not have her glasses
22 from sometime in April to sometime past the period of time
23 that we are concerned with in this courtroom.

24 I think she said that she did not get her
25 glasses actually until what would have been some months
26 after August the 8th and August the 9th.

If I am wrong about that, we certainly can have that
read back.

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1 But in any event, she made it quite clear,
2 she said that there was nothing inadequate about her
3 hearing ability.

4 Now here -- here we think is the vice
5 of the type of questioning that the prosecution indulged
6 in in connection with Barbara Hoyt, the same type of
7 leading and suggestive -- leading and suggestive interroga-
8 tion.

9 11,248, by Mr. Bugliosi:

10 "Q And the back house is a quarter to a
11 half mile behind the ranch?

12 "A Yes.

13 "Q Would Mr. Manson normally be present
14 at dinnertime?

15 "A Yes.

16 "Q Did Mr. Manson ever talk to the Family
17 at dinnertime?

18 "A Yes.

19 "Q During these talks did he ever mention
20 anything about Helter Skelter?"

21 Now, in the context of what we have
22 spoken about here, is the prosecuting attorney once again,
23 is he testifying or is the witness testifying?

24 The answer is yes.

25 Is that leading and suggestive? Did the
26 question suggest the answer? The next question:

15a-2

1 "Q During these talks did he ever mention
2 anything about Helter Skelter?

3 "A Yes."

4 That question was asked twice.

5 "Q Did he talk about Helter Skelter
6 frequently?

7 "A Yes."

8 We have a dichotomy in the transcript between
9 Mr. DeCarlo -- Mr. DeCarlo says for whatever his testimony
10 is worth, he says that Mr. Manson used the words, Helter
11 Skelter, but he did not talk about it.

12 He just heard Mr. Manson use the words, he
13 says, Mr. DeCarlo.

14 Here Barbara Hoyt says, she is saying something
15 different:

16 "Q What did he say at dinnertime to the
17 Family about Helter Skelter?"

18 And once again:

19 "THE COURT: All right. The jury is admon-
20 ished to consider the testimony of this witness only
21 in relation to Mr. Manson and not in regard to
22 any other of the defendants."

23 Once again, you cannot have a conspiracy unless
24 you have at least two people, and there is not a bit of
25 testimony, not a bit of testimony concerning Helter Skelter,
26 the prosecution approached this conspiracy, the black-white

15a-3

1 war, as to Leslie Van Houten, as to Patricia Krenwinkel,
2 as to Susan Atkins. Now, we either respect our law or we
3 don't, and we think that the principle of law that a
4 conspiracy must be proved by conspiratorial conduct on
5 the part of the defendants -- this is just axiomatic.
6 It is basic.

7 Now, the prosecution is going to tell us,
8 it's going to tell us that this conduct does not have to
9 be -- it does not have to be words; that conspiracy can
10 be proved by circumstantial evidence.

11 Well, maybe the prosecution will give us
12 some example about people going into a bank, or people
13 doing this and that at the bank, no words are uttered and
14 the people leave, and so forth. They go to a hideaway
15 or whatever it may be.

16 But the difference -- the difference in this
17 case, and the sample of the bank, is again, as we have
18 spoken of previously, there is no showing.

19 There is no showing except for the accomplice,
20 Linda Kasabian, who makes some statements about Mr. Manson,
21 and no -- even Linda Kasabian makes no statements about
22 the other people in connection with this alleged
23 conspiracy.

24 We have in these other people ample, like
25 Stephanie Schram, as we suggested, other people, Barbara
26 Hoyt, ample opportunity -- ample opportunity if such

15a-4

1 occurred on these two days.

2 But there is nothing there. There is nothing
3 there.

4 How many inferences do we have to make in
5 order to -- in order to come up with the viewpoint that
6 the prosecution wants in this case?

7 And so the Court admonishes us not to consider
8 anything that Barbara Hoyt says -- the jury is admonished
9 to consider the testimony of this witness only in relation
10 to Mr. Manson and not in regards to any other of the
11 defendants.

12 Then Mr. Bugliosi says:

13 "Very well. Did Mr. Manson talk
14 about Helter Skelter frequently with the Family
15 at dinnertime?"

16 Essentially the same question for a third
17 time.

18 "Q Do you remember the exact dates that
19 he spoke about Helter Skelter to the Family?

20 "A No.

21 "Q Was it within the period that you
22 lived at Spahn Ranch?

23 "A Yes.

24 "Q Between April and September of 1969?

25 "A Yes."

26 Then at 12,252, the question -- and again we

1 are thinking in terms of reasonable doubt, the burden of
2 proof, all of the principles of law that the court is
3 going to give us:

4 "Q Do you remember any specific conversa-
5 tions that Mr. Manson had with the Family in
6 which he mentioned or talked about Helter Skelter?

7 "A What?

8 "Q Not a particular date, but do you
9 remember Mr. Manson talking about Helter Skelter
10 to the Family, Barbara?

11 "A Yes.

12 "Q You particularly remember his mentioning
13 the term Helter Skelter, is that correct?"

14 I don't think she has mentioned it yet,
15 and the prosecution has mentioned it some six or seven or
16 eight or whatever number of times we have read here.

17 "A Yes.

18 "Q But you don't remember the exact date
19 the he spoke to the Family about Helter Skelter?

20 "A Everybody talked about it all the time."

21 Now:

22 "Q Right. I am referring now to Mr.
23 Manson talking to the Family at night about Helter
24 Skelter.

25 "Do you remember what he said to the
26 Family at night about Helter Skelter on any

1 "particular occasion?"

2 "A That it was coming down fast."

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4 15b fls.

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1 Now, look at these exhibits that we have seen
2 before, look at it, here it is on the panel, "Helter Skelter
3 is coming down fast."

4 There it is, right in the panel that was at
5 Spahn Ranch, and this was the panel that there has been --
6 that there has been some testimony about, and so this is
7 what Barbara Hoyt says:

8 "Q What did Mr. Manson say about Helter
9 Skelter to the Family during these evening
10 discussions, Barbara?

11 "THE WITNESS: He said the blacks would rise
12 up against the whites and everybody would die.

13 "Q Did he say everyone would die with
14 the exception of certain people?

15 "A Yes."

16 Guess whose these people are:

17 "Q BY MR. BUGLIOSI: With the exception
18 of what people?

19 "A Us.

20 "Q When you say 'us,' you are referring
21 to the Family?

22 "A Yes.

23 "Q Did he say anything else about
24 Helter Skelter?

25 "A He said he would like to see it come
26 down.

"Q He said he would like to see Helter

1 "Skelter come down?

2 "Did he say he wanted to see Helter Skelter
3 come down?"

4 That is asked again.

5 "A Yes..

6 "Q Did he say anything else about Helter
7 Skelter?

8 "(Pause.)

9 "Q Do you remember his saying anything
10 else about Helter Skelter?" another pause.

11 Then Barbara Hoyt doesn't say anything and the
12 prosecutor then asks:

13 "Q Did he say anything about wanting to
14 show the blacks how to do it?

15 "A Yes.

16 "Q What did he say about that?

17 "A That he would like to show them how
18 to do it."

19 Now, then, the prosecution places Barbara Hoyt
20 right at the Spahn Ranch the day after the passing away of
21 Sharon Tate and the people at the Tate mansion:

22 "Q You have heard about the so-called
23 Tate murders, have you not, Barbara?

24 "When was the first time that you heard about
25 the Tate murders?

26 "A The day after.

1 "Q The day after the murders? You
2 have to answer out loud, Barbara.

3 "A The day after the murders.

4 "Q And how did you hear about the Tate
5 murders at that time?

6 "A On TV.

7 "Q Were you out at the Spahn Ranch at
8 the time?

9 "A Yes.

10 "Q And you heard about the Tate murders
11 over television?

12 "A Yes.

13 "Q And where was the television set
14 located?

15 "A In Johnny Swartz's trailer.

16 "Q Were you inside the trailer?

17 "A Yes.

18 "Q Was the news on?

19 "A No, I was watching something else.

20 "Q Do you know what you were watching?

21 "A I forget."

22 Now, then, he asked:

23 "Q How did it happen that you watched
24 the news about the Tate murders over television?

25 "A Sadie wanted to watch the news.

26 "Q Did Sadie come into the trailer?

1 "A Yes.

2 "Q When you say Sadie, are you referring
3 to Susan Atkins?

4 "A Yes."

5 And so forth and so on, wherein Barbara Hoyt
6 testifies, makes a showing that Barbara Hoyt was supposedly,
7 supposedly at the Spahn Ranch on the day, and presumably the
8 day after, and yet we don't find anything that Barbara Hoyt
9 says when we look at this transcript, anything concerning
10 Mr. Manson.

11 And the reason we don't is because Mr. Manson is
12 tied up with Stephanie Schram. This is the reason that we
13 don't find anything here Barbara Hoyt said concerning
14 Mr. Manson.

15 If there was anybody -- if there was anybody that
16 could connect Mr. Manson with these defendants on these two
17 days, it could be Barbara Hoyt conceivably.

18 So the question is, what is the significance of
19 Barbara Hoyt not being queried concerning Mr. Manson doing
20 anything?

21 She is queried about the Helter Skelter, and we
22 hear that in court.

23 But there is nothing that shows that Barbara Hoyt
24 -- nothing shows that Barbara Hoyt -- there is not a bit
25 of evidence.

26 Now, with the intimacy, and so forth, those

1 people living in the quarters, we have seen the pictures, we
2 have seen how close those quarters are at the Spahn Ranch.

3 If there was this kind of conspiracy, superimposed
4 with police action, if there was any such animal, wouldn't
5 Barbara Hoyt know about it, and wouldn't it be here?
6 Wouldn't the prosecution have it before us?

7 Once again we have to -- at Page 11,430, we have a
8 question that involves Barbara Hoyt wherein she is asked:

9 "Q On these different occasions when
10 you talked to these representatives from law
11 enforcement, did you tell them the same things
12 you testified to here today?

13 "A Some things.

14 "Q Some things you did not testify to,
15 is that right?

16 "A No, some things I did not tell them.

17 "Q Did they ask you to tell them the com-
18 plete truth?

19 "A Yes.

20 "Q Did you tell them the complete truth?

21 "A Well, when she first came I did not
22 remember everything until later, so I guess I did.

23 "Q Is your memory better today for events
24 that took place in the summer months of 1969 than
25 it was in October or November or December of 1969?

26 "A Yes.

1 "Q Is that frequently the case
2 with you, Miss Hoyt, in terms of your memory,
3 that it becomes better as time goes on?

4 "A I don't know.

5 "Q Well, you have tried to recall
6 other things in the past not related to this
7 case, haven't you?

8 "A Yes.

9 "Q And has it been your experience that
10 things become more vivid in your memory as time
11 goes on?

12 "A I have not really noticed.

13 "Q But it is true with the events that
14 you testified to here today?

15 "A Yes.

16 "Q And I take it you have also talked to
17 Mr. Bugliosi, one of the prosecutors in this case,
18 about the events you testified to.

19 "A Yes.

20 "Q And you talked to him, I take it, on
21 more than one occasion, have you not?

22 "A Yes.

23 "Q You talked to him on several occasions?

24 "A Yes.

25 "Q Do you know how many?

26 "A No.

1 "Q Do you know when those conversations
2 took place, the dates or the times?

3 "A No.

4 "Q Do you remember who was present at
5 the time you had conversations with Mr. Bugliosi,
6 one of the prosecutors?

7 "A Most of the people.

8 "Q Pardon me?

9 "A Most of the time, yeah.

10 "Q Most of the time you recall who was
11 present at the time you had the conversations
12 with Mr. Bugliosi, right?

13 "A Yes.

14 "Q Who was present the last time?

15 "A Stovitz, and then there were some
16 other people in there, I don't know them.

17 "Q What about the first time?

18 "A Two sergeants, and there was a fat
19 lady in there, and I think somebody else.

20 "Q When you had conversations with
21 Mr. Bugliosi in connection with the events you
22 testified to, had he asked you questions?

23 "A Yes.

24 "Q Have the conversations you had with
25 him about those events taken the form of questions
26 and answers?

1 "A Sometimes.

2 "Q And have they been different on
3 other occasions?

4 "A Yes.

5 "Q Have they been conversations on
6 other occasions?

7 "A Yes.

8 "Q Have you found that in your
9 discussions, or your conversations with Mr.
10 Bugliosi that questions by him have refreshed
11 your recollection as to events that took place
12 in the summer months of 1969?

13 "A No.

14 "Q Have you been shown photographs of
15 the Spahn Ranch by members of law enforcement?

16 "A Yes.

17 "Q Have you also been shown photographs
18 of persons who were members of the so-called
19 Family?

20 "A Yes.

21 "Q Has looking at any of those photographs
22 refreshed your recollection as to the events that
23 had happened during the summer months of 1969?

24 "A Not about anything I said here.

25 "Q Do you recall the date it was that
26 you left the area of the Spahn Ranch and went up

1 "north to Barker and Meyers' Ranch?

2 "A. The day?

3 "Q. The date.

4 "A. No.

5 "Q. Do you remember the date you were
6 arrested at the Spahn Ranch?

7 "A. The 16th.

8 "Q. Is there some reason why you remember
9 the date of the 16th?

10 "A. They told us the date of the 16th.

11 "Q. Was that the first day in August
12 that you knew the date?

13 "A. Yes.

14 "Q. Do you recall any precise dates during
15 the month of July, 1969?

16 "A. The day they landed on the moon.

17 "Q. The day of the Apollo moon landing?

18 "A. Yes.

19 "Q. What day of the week was that?

20 "A. That was either the 28th or the 20th.

21 "Q. Either the 28th or the 20th?

22 "A. Yeah, of July."
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15c-1

1 Now, the question in connection with Barbara
2 Hoyt is not really so much what she said, it's so much,
3 really, what she was not asked.

4 Why wasn't Barbara Hoyt -- why wasn't
5 Barbara Hoyt interrogated concerning Stephanie Schram,
6 Mr. Manson, remembering that the prosecution has the burden
7 of proving -- the prosecution has the burden of proving
8 that Mr. Manson is guilty?

9 Is there some reason? Is there some reason
10 that Barbara Hoyt was not asked these questions? She is
11 asked only the prejudicial type of material like Helter
12 Skelter and the type of thing that so many other witnesses
13 have been asked.

14 She is glad -- Mr. Bugliosi, I don't think in
15 this transcript, there is any place where Barbara Hoyt
16 actually utters the words "Helter Skelter."

17 The prosecution -- the prosecution -- the
18 prosecutor himself actually speaks about Helter Skelter,
19 actually uses the words.

20 Now, we remember where Barbara Hoyt stated the
21 most incredible, most incredible of events, where she went
22 to, I think it's a state in the Middle West, Kansas, some
23 state, and she claims that she was looking for someone,
24 she was looking for a person and she claims that she went
25 all the way across the country looking for this person,
26 and she did not know his name.

15c-2

1 She said that she went up and down the
2 street of, I think it's Kansas City, and she indicated
3 that she looked for him by just wandering up and down
4 the streets. This is what she told us.

5 In listening to that testimony, it is at page
6 11,512 -- no, that is another transcript, I will have to
7 locate it.

8 But in that -- and I think that particular
9 language shows clearly that Barbara Hoyt, that Barbara
10 Hoyt, we think, was trying to somehow or other -- was
11 trying to hide the name of that person.

12 I think that we will recall that that person
13 was a person that she was very very close to and yet it is
14 a person that she says she doesn't know the last name.

15 So the question is whether or not we can
16 believe Barbara Hoyt when she makes a statement that
17 she went all the way across the country to look for
18 somebody, and what do you know, she gets to the city where
19 they are, she doesn't know exactly where she looked, she
20 doesn't know where they were.

21 All she knows is that she went there.

22 Now, Barbara Hoyt also testified concerning
23 events up at the Barker Ranch.

24 Now, everything that is uttered, everything--
25 all the statements that are made after a conspiracy is
26 over, after the time of the conspiracy has passed, those

15c-3

1 statements the Court will instruct us as statements that
2 cannot be used to prove the conspiracy, and the reason
3 that they cannot be used to prove the conspiracy is the
4 same reason that statements that are made prior to the
5 conspiracy are statements that cannot be used.

6 Now, that is because of the fact --

7 MR. BUGLIOSI: Excuse me, is the Court going to give
8 that instruction? I don't believe that is a proper statement
9 of the Court's instruction in this case.

16 fls.

16-1

1 MR. KANAREK: Certainly, your Honor, after the
2 conspiracy is over, the time is over, then the --

3 THE COURT: I don't think that is what he is saying.
4 I don't think that is what he means.

5 MR. KANAREK: Pardon?

6 THE COURT: I don't think that is what he is
7 referring to.

8 I think he is asking whether or not that
9 instruction is going to be given at all.

10 Is that what you are saying?

11 MR. BUGLIOSI: Yes.

12 THE COURT: Do you wish to approach the bench and
13 discuss the matter?

14 MR. BUGLIOSI: Yes.

15 (Whereupon all counsel approach the bench and
16 the following proceedings occur at the bench outside
17 of the hearing of the jury:)

18 THE COURT: If I understand what Mr. Bugliosi says,
19 he is raising the question as to whether that instruction
20 is going to be given.

21 He wasn't criticizing your statement other
22 than to question whether or not that instruction is going
23 to be given at all.

24 MR. BUGLIOSI: I think the Court said he was not
25 going to give that instruction. I think twice the Court
26 ruled.

1 MR. KANAREK: We asked for it.

2 THE COURT: Let's be sure we are talking about the
3 same thing.

4 Which instruction are you referring to, Mr.
5 Bugliosi?

6 MR. BUGLIOSI: I think the defense offered the
7 instruction that statements made up at Spahn Ranch --

8 MR. KAY: Barker Ranch.

9 MR. BUGLIOSI: Sorry. Barker Ranch.

10 THE COURT: The special instruction or a general
11 instruction?

12 MR. BUGLIOSI: A special instruction. That statements
13 made at the Barker Ranch after the murders could not be
14 used against co-conspirators to prove the conspiracy.

15 MR. KAY: The Court did refuse that instruction.

16 MR. BUGLIOSI: The Court refused it on two
17 occasions.

18 THE COURT: You all have copies of the instructions
19 that I propose to give, except the most recently submitted
20 instructions that I haven't ruled on yet.

21 You all have the instructions that the Court
22 proposes to give, so there shouldn't be any question about
23 it.

24 I am still not sure. The one that Mr.
25 Bugliosi is talking about, I am sure is not going to be
26 given. If you are talking about some other instruction,

1 you can enlighten me.

2 MR. KANAREK: Your Honor is giving instructions that
3 the only statements that can be used are those that
4 purportedly take place during the time of the conspiracy.

5 This is certainly encompassed in that
6 instruction.

7 THE COURT: As I say, you have all the conspiracy
8 instructions.

9 There shouldn't be any question about it.

10 You know what I propose to give, do you not?

11 MR. KANAREK: Yes.

12 And I think this is good argument. After the
13 conspiracy is over, any statements that are made after
14 the conspiracy is over cannot be used to prove the
15 conspiracy.

16 THE COURT: I think each of you are talking about
17 a different instruction.

18 You are talking about the termination of a
19 conspiracy, and he is talking about something else.
20 He is talking about one of your special requested
21 instructions.

22 MR. KANAREK: But that instruction certainly should
23 be -- I know that I asked for it, and your Honor said it
24 was encompassed in another instruction.

25 THE COURT: I can't recall all of our conversation,
26 Mr. Kanarek.

1 MR. BUGLIOSI: The point is that statement made up
2 at Barker Ranch, your Honor, can be used as circumstantial
3 evidence of the conspiracy.

4 He is telling the jury, in fact, that you are
5 going to instruct them that they can't be used, and I
6 certainly think they can.

7 There are cases on that, that the conduct
8 subsequent -- one case is -- I can't think of it; a
9 98 Cal. App. 2d case -- people vs. Griffin, I think,

10 People vs. Griffin says that the conduct
11 subsequent --

12 THE COURT: Can be used as circumstantial evidence
13 of the existence of the conspiracy, past or present.

14 MR. BUGLIOSI: Right.

15 THE COURT: I think what he is talking about is a
16 statement made by a co-conspirator after the termination of
17 the conspiracy cannot be used against --

18 MR. BUGLIOSI: He didn't say that.

19 He said they can't be used to prove a
20 conspiracy.

21 THE COURT: Yes. But I think that is what he was
22 referring to.

23 Is that right?

24 MR. KANAREK: After the conspiracy is terminated.

25 16a fls.
26

.6a-1

1 THE COURT: You can't use a statement of a co-conspirator
2 against another co-conspirator?

3 MR. KANAREK: Right.

4 THE COURT: There is no argument about that.

5 MR. KANAREK: That is what I am saying.

6 MR. BUGLIOSI: That is not what you said.

7 THE COURT: That is not what you said in your argument.
8 That is the reason that Mr. Bugliosi said what he did.

9 MR. BUGLIOSI: The conversation at the Barker Ranch is
10 very, very relevant to the conspiracy. We put in a lot of
11 evidence on it, and I would like to argue it to the jury.

12 THE COURT: All right. I think we all understand each
13 other.

14 (Whereupon, all counsel return to their respective
15 places at counsel table and the following proceedings occur
16 in open court within the presence and hearing of the jury:)

17 MR. KANAREK: One good thing about the pause, I found
18 Volume 99.

19 I don't know whether that is good or bad.

20 Anyway, I think that we are all in agreement,
21 and we will be instructed, that as far as proving criminal
22 culpability, after a conspiracy has finished, the statements
23 or the time -- this is even assuming there is one -- after
24 that has occurred, after the termination is over, no
25 declaration or statement of an alleged co-conspirator can be
26 used against one of the other alleged co-conspirators.

1 And I think we would all agree that up at the Barker
2 Ranch, whatever happened, whatever happened after August the
3 10th, certainly, the purpose of these, what the prosecution
4 has alleged on these two days, is all over.

5 In any event, while we have got this Volume 99,
6 let's look at it. Page 11,511.

7 "Now, directing your attention to -- you
8 say you were telling us about a man named Dave,
9 do you remember Dave?

10 "Yes.

11 "Now, you went across-country to see Dave,
12 is that right?

13 "Yes.

14 "And you went to some town in Missouri to
15 visit Dave?

16 "He was not there.

17 "What town in Missouri did you go looking
18 for Dave?

19 "Kansas City.

20 "Would you tell us his address or the address
21 wherein you sought him?

22 "I did not see him.

23 "I said where you sought him, where you
24 looked for him, Miss Hoyt.

25 "The address where I looked for him?

26 "Yes.

1 "There wasn't any address.

2 "Well, did you just wander around the
3 streets of Kansas City looking for him?

4 "Something like that.

5 "Well, did you know Dave during the entire
6 time you were at the Spahn Ranch?

7 "I knew him.

8 "And that was from March or from April or
9 from some time in '69 beginning in what month,
10 Miss Hoyt?

11 "April.

12 "From April of '69 until sometime in September
13 of '69, is that right?

14 "Yes.

15 "And all this time you knew Dave, right?

16 "Well, I knew him but that does not mean he
17 was there."

18 Now, why would she say that, "Well, I knew him but
19 that does not mean he was there"?

20

21

22

23

24

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26

16h-1

1 Does Barbara Hoyt know something about these two
2 days that she is not telling us?

3 We don't know that, but there it is for whatever it
4 may be worth.

5 "Where was Dave living?

6 "I don't know.

7 "Well, where did you see Dave?

8 "At the ranch.

9 "Did you see Dave anywhere else than at the
10 ranch?

11 "We went to the beach.

12 "Pardon?

13 "We went to the beach.

14 "Did you see him elsewhere than at the
15 beach and the ranch?

16 "No.

17 "Is it a fair statement" --

18 Well, that was sustained.

19 "You had come to the Spahn Ranch earlier
20 than May?

21 "Yes.

22 "And is that where you met Dave, at the
23 Spahn Ranch, rather?

24 "At the Gresham Street house.

25 "Did you and Dave then leave the Gresham
26 Street house together and go to the Spahn Ranch?

1 "We all left.

2 "When you say 'We all left,' did that
3 include you and Dave?

4 "Yes.

5 "At the time that you went to jail, was
6 Dave still at the Spahn Ranch?

7 "Yes."

8 Now, in connection with that testimony, she says,
9 "Now, at some time you say in May, you left and went to
10 Kansas City?

11 "No. I got arrested."

12 We don't wish to convey that this means the
13 August the 16th arrest.

14 "No. I got arrested.

15 "You got arrested?

16 "Yes.

17 "And did you and Dave get arrested together?

18 "No.

19 "How long were you in jail?

20 "A couple of weeks.

21 "At the time that you went to jail, was
22 Dave still at the Spahn Ranch?

23 "Yes.

24 "When you got out of jail, Dave wasn't
25 there any more; right?

26 "Right.

1 "Now, you then formed the intent and desire
2 to see Dave at that point; is that right?

3 "Yes.

4 "And so you decided to go to Kansas City to
5 look for him; is that right?"

6 We don't wish to convey and we are not saying
7 that this was the August 16th raid; but it shows that --
8 maybe it doesn't mean anything -- but it shows that this girl
9 -- for instance, this question here and the answer, that
10 strikes me -- at Page 11,519 -- "When is the last time you
11 saw Dave, Miss Hoyt?

12 "Before the murders.

13 "Pardon?

14 "Before the -- he left before those murders
15 happened."

16 She is volunteering that kind of information.

17 Maybe it has no significance, but the fact of
18 the matter is that there were a lot of people up there at
19 that ranch that were not Mr. Manson, and when Barbara Hoyt
20 testifies, Barbara Hoyt is testifying in connection with
21 this Dave, and whatever it may, it certainly sounds like she
22 is trying to protect him from something or other. She has a
23 defensive statement to make when she isn't even asked the
24 question.

16c-1

1 Now, up at the Barker Ranch. We ask why
2 did the prosecution spend so much time, so much time, in
3 connection with the events after the 10th of August?
4 Why did they spend so much time in connection with all
5 of this conduct, all of these things, supposedly, in
6 connection with Mr. Flynn, in connection with Goler Wash,
7 in connection with Dianne Lake, in connection with
8 Stephanie Schram?

9 The fact of the matter is that the object,
10 supposedly, of these conspiracies has finished by the
11 time that these people are supposedly up there in the area
12 of Northern California.

13 The reason that the prosecution is doing that
14 is because the prosecution is going to harp upon this
15 circumstantial evidence of the conspiracy.

16 In other words, what they are going to ask
17 us to do is to take all of the wealth of these words,
18 the great numbers of words involved in the conduct up
19 there, and the prosecution is going to ask us to use
20 all of that to prove a conspiracy that occurred, what
21 they allege, on two days.

22 Now, once again, if they are -- and the only
23 statement, the only statement that the prosecution has
24 concerning Mr. Manson as to any of these events is that
25 statement of Mr. Flynn.

26 But putting that aside for the moment, if we

16c-2

1 look at everything else that they have put into evidence,
2 if we look at the testimony of Brooks Poston, if we look
3 at the testimony of Paul Watkins, those people were
4 intimate of Mr. Manson during all of these events that
5 we have spoken of, that we are supposedly to be in this
6 courtroom for. Wouldn't those people -- is there any
7 reason why those people wouldn't know about it if there
8 was a conspiracy?

9 Wouldn't Brooks Poston know about it? Wouldn't
10 Paul Watkins know about it?

11 There was no dispute between those people at
12 the time that these events took place.

13 But this testimony that we get, we have been
14 deluged, we have been inundated, with Mr. Manson's alleged
15 philosophy of life.

16 And so, what we have, what the prosecution is
17 doing, is they are substituting what we might call
18 character assassination, or something like that, in place
19 of proof.

20 If there was any conspiracy, wouldn't these
21 other people know about it? Wouldn't Mr. Watson?

22 We have a right to assume, Mr. Manson has a
23 desire for the company of people of the opposite sex.
24 Wouldn't Mr. Watkins know about -- wouldn't he know about
25 this conspiracy?

26 Is there any suggestion in any of the

1 testimony that on those two days that Mr. Manson was
2 covert, that Mr. Manson was in hiding, that these
3 particular people, that these particular people did anything
4 to hide themselves from the rest of the people at the ranch?

5 There is nothing to show any such attempt on
6 the part of any of these people.

7 These other people, these other people, they
8 could have been brought here to show that on these two
9 days, or thereabouts, that the so-called conspirators,
10 including Mr. Watson, went somewhere and talked this
11 thing over.

12 16d fls.

1 Mr. Grogan, Clem Tufts, is also alleged to be
2 part and parcel of these same events. He has been mentioned
3 by Linda Kasabian on the second night.

4 The question is: Are we going to allow the
5 prosecution to substitute, to substitute, all of this
6 testimony about Mr. Manson?

7 How much of it do we need? How much of it do we
8 need in order to show that Mr. Manson has a unique -- has
9 ideas concerning people that may be different than the ideas
10 that the rest of us have.

11 And so, the question is whether or not the
12 prosecution is doing this to deprive Mr. Manson of the most
13 historical of all defenses, the most historical of all
14 defenses.

15 In criminal law, it is called the alibi defense.
16 And in order to destroy that defense, the prosecution throws
17 in the conspiracy charge.

18 When the word "alibi" is used as an alibi, the
19 word has a somewhat poetic use in literature, in detective
20 stories and we allege that the reason that the conspiracy
21 charge is there is because the prosecution knows that an
22 absolute defense to murder or any other crime is if you are
23 not present.

24 So they deliberately, maliciously, with intent to
25 get a verdict at any cost, because they know, they know, that
26 absent the conspiracy charge there would be an instruction to

1 you to the effect that alibi is a complete defense --

2 MR. BUGLIOSI: That is a misstatement of the law,
3 your Honor.

4 MR. KANAREK: That is a correct statement of the law,
5 your Honor.

6 MR. BUGLIOSI: Conspiracy doesn't even have to be
7 charged. And there is also aiding and abetting.

8 MR. KANAREK: Then we ask them to withdraw the
9 conspiracy charge if that is his contention.

10 THE COURT: Mr. Kanarek, if you are arguing the law,
11 I will ask you to stop it, sir, and confine your argument to
12 the evidence in this case and the inferences that may be
13 drawn therefrom, and any analogies and other forms of
14 arguments you care to give.

15 But the Court will instruct the jury as to what the
16 law is.

17 Your statement was incorrect.

18 MR. KANAREK: Pardon?

19 THE COURT: Your statement of the law was incorrect.

20 MR. KANAREK: Your Honor, in the context of Linda Kasabian
21 being an accomplice, it is a correct statement.

22 THE COURT: I don't care to have you argue the matter
23 in front of the jury.

24 MR. KANAREK: Very well.

25 But the point that I wish to make is this, ladies
26 and gentlemen: Aiding and abetting has to be done with
criminal intent. You can't aid and abet without criminal

1 intent.

2 Linda Kasabian is an accomplice. Take away the
3 conspiracy charge, have just the aiding and abetting, which
4 is another basis the prosecution alleges here, and there would
5 be no proof of any aiding and abetting, and in fact, there is
6 no aiding and abetting, because Linda Kasabian is an
7 accomplice as a matter of law.

8 So, as a device, as a device to deprive a person
9 who the evidence shows is not guilty of these crimes, as a
10 device, as a device to deprive him of that, of the result
11 that the evidence dictates that he should get, they put in the
12 conspiracy charge.

13 MR. BUGLIOSI: There is no evidence of this.

14 It is also a misstatement of the law, your Honor.

15 There is absolutely no evidence of this.

16 MR. KANAREK: Your Honor, they allege --

17 THE COURT: All right, that will be enough.

18 That is Mr. Kanarek's argument.

19 We will adjourn at this time, ladies and
20 gentlemen.

21 Do not converse among yourselves nor with anyone
22 else on any subject related to this case nor form nor express
23 any opinion regarding the case until it is finally submitted
24 to you.

25 9:00 o'clock tomorrow morning.

26 (Whereupon, at 4:29 p.m. the court was in recess.)