

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.

164

No. A253156

REPORTERS' DAILY TRANSCRIPT

Friday, January 8, 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:	RONALD K. RICHES, Esq. MAXWELL KEITH, Esq.
For Deft. Krenwinkel:	PAUL FITZGERALD, Esq.

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

1-1

LOS ANGELES, CALIFORNIA, FRIDAY, JANUARY 8, 1971

9:06 o'clock a.m.

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(The following proceedings were had in open court in the presence and hearing of all the jurors, all counsel with the exception of Mr. Hughes 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.

Good morning, ladies and gentlemen.

Mr. Darrow has returned; perhaps his return will help somewhat.

We were speaking last night about alibi. That word, alibi, has some sort of a romantic tone to it. We hear about it all the time.

Actually, without that word, getting to the substance of what it means, the principle is that historically when someone was not present at a crime, that this was a complete defense, and then, speaking of motivation of the prosecution -- whatever that might be worth, by putting in a conspiracy count, this undermines the principle that a person not being present where something occurs is not responsible for what occurs there.

MR. BUGLIOSI: That is a misstatement of the law, your Honor.

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MR. KANAREK: I have not finished, your Honor; I have not finished.

THE COURT: Don't attempt to instruct the jury on the law, Mr. Kanarek.

MR. KANAREK: I am not attempting to. As a matter of fact, your Honor is not giving an alibi instruction. I am not attempting at all, I am merely alluding --

THE COURT: Don't misstate the law.

MR. KANAREK: I am not. I haven't finished. Before I uttered a word, practically, Mr. Bugliosi was standing up.

THE COURT: You are attempting apparently to instruct the jury on the law of alibi.

MR. KANAREK: No, your Honor.

THE COURT: Don't do it, sir.

2 fls.

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1 MR. KANAREK: There is no question that what we
2 are doing is not -- we are discussing the law and the
3 various principles of law and how they may mesh with
4 each other.

5 What we are saying is, there is another
6 principle of aiding and abetting.

7 Aiding and abetting also requires criminal
8 intent. There has to be criminal malice and criminal
9 intent.

10 So the jury is the one, the jury decides
11 whether or not there is any criminal knowledge and
12 criminal intent, whether it be conspiracy or whether it
13 be aiding and abetting.

14 And we think that the weakness of what the
15 prosecution has suggested here is implicit in the fact
16 that they have injected this conspiracy charge. That
17 they, as far as these seven counts of murder are concerned,
18 they cannot rely upon the seven counts of murder by them-
19 selves, because even though the Court will instruct us on
20 aiding and abetting, the prosecution still has filed its
21 conspiracy charge.

22 So, again, the motivation and the reason for
23 it is significant because there is no case. The evidence
24 clearly shows that Mr. Manson is not guilty of anything.
25 And so they bring in this conspiracy charge.

26 Now, in this regard, I would like to, if I

1 may, suggest some language for the consideration of all
2 of us.

3 "May it please the Court, the
4 conspiracy here charged and specified and the
5 acts alleged to have been committed in pursuance
6 thereof and with the intent laid, constitute a
7 crime the atrocity of which has sent a shudder
8 through the civilized world.

9 "All that was agreed upon and attempted
10 by the alleged incitors and instigators of this
11 crime constitute a combination of atrocities
12 with scarcely a parallel in the annals of the
13 human race."

14 MR. BUGLIOSI: I am objecting to this, your Honor.
15 I don't know what he is reading.

16 MR. KANAREK: May I continue, your Honor?

17 THE COURT: The objection is overruled.

18 MR. KANAREK: Ladies and gentlemen, what I have
19 just read to you is an argument that was made, the
20 beginning of an argument that was made, and I think it is,
21 in substance, the argument that has been made in this
22 court, it is an argument that was made by John A. Bingham
23 who was a special judge advocate after Abraham Lincoln
24 was assassinated, and we probably all remember it,
25 we remember the name of Mary Eugenia Serrat, who was
26 charged with conspiracy.

1 This gentleman started off his address with
2 words that are the words that we have read. This was
3 done in 1865. And this argument was an argument that
4 began an argument the result of which, that is, the entire
5 trial, caused this lady, Mary Eugenia Serrat, to be
6 convicted of conspiracy.

7 As we all know, she ran a boarding house
8 in Washington, D.C. She was alleged to be a conspirator.

9 The circumstantial evidence of that conspiracy
10 was the fact that the lady happened to be on the wrong side
11 of the Civil War. She had Southern sympathies.

12 The prosecution in that case brought in all
13 kinds of circumstantial evidence to show that she was
14 guilty of conspiracy.

15 She was convicted of conspiracy. Historians
16 and legal scholars, almost from the time she was executed,
17 to today all agree that she was guilty of nothing.

3 fls.

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1 She was guilty of nothing except that she was --
2 she was part and parcel of a situation that -- that was part
3 of the times.

4 The war between the states had just ended,
5 Abraham Lincoln had just been killed and scapegoats were
6 necessary.

7 This crime had been called the crime of this
8 century, and many people argue that in the last century the
9 killing of Abraham Lincoln, that was the crime of that
10 century, and it is documented, we can if we wish -- if we
11 wish we can read the history of that case, and the comparison
12 is dangerously fascinating, dangerously fascinating how that
13 lady, how that lady was found guilty of conspiracy.

14 She wasn't -- she wasn't at the Ford Theatre
15 where Abraham Lincoln was shot on that day, I think it's in
16 April of '65, on a Friday. She was not there, but she was
17 found guilty of conspiracy, and the circumstantial evidence
18 was their Southern sympathies.

19 No alibi defense was available for her because
20 she was a conspirator, and so she was found guilty.

21 There was a man, one Lou Weichman, a man who
22 was at the boarding house who was a friend of hers, and the
23 other people at the boarding house, a person who was strange-
24 ly analogous to the position of Linda Kasabian in this case,
25 I am sure we remember the story of that trial.

26 He testified because he was in the boarding house,

1 he was in the boarding house, he was threatened explicitly
2 and implicitly, and his testimony was given and death
3 resulted, death sentences resulted.

4 And, as I say, the analogy, the analogy is
5 strangely -- strangely significant because the prosecution
6 -- the prosecution in this case, we can put ourselves back
7 to the time after the Civil War when Abraham Lincoln was
8 shot and the great love -- the great love that Abraham Lincoln
9 engendered in people created an atmosphere where we have to
10 solve this crime, like the police officers in this case,
11 not going out and letting the chips drop where they may,
12 they are going out to prove first, as happened in the case
13 of Mary Serrat, they had already decided that Mary Serrat
14 was guilty of conspiracy to commit murder to kill Abraham
15 Lincoln, and so they went in and they filled up the gap.

16 The gap was that they did not have any evidence,
17 so they substituted matters for evidence. They substituted
18 hysteria. They substituted coerced witnesses. They
19 substituted people who had some kind of a stake in testifying,
20 and they got the result they wanted, and the result that they
21 wanted is a blot on our history and will be a blot on our
22 history forever.

23 Now, in this case -- in this case the pressure is
24 similar. Of course, it is not the killing of a president,
25 but there are seven murders here which have engulfed the
26 world because of the horrendous publicity, and so we have the

1 crime of the century.

2 We have the pressure to get a result.

3 Does this have any significance?

4 Does the fact that law enforcement is out there and
5 doing what they are doing in the way they did, does that have
6 any significance?

7 We have been in this trial -- we have been in
8 this trial now for some months. We don't know -- we could
9 make some estimate, I don't know what the financial expendi-
10 tures are in connection with this trial.

11 The prosecution would have us propose to go on to
12 a penalty phase which may take many, many thousands or whatever
13 it may be, hundreds of thousands more dollars.

14 We have the pressures -- the pressures put upon
15 us that are most unusual. They are pressures -- they are
16 pressures that defy comparison with any other case.

17 So these are circumstances -- these are
18 circumstances that we must consider in deciding this case.

19 As perhaps we have mentioned before, certainly the
20 case against Mr. Manson is circumstantial; the prosecution
21 not even alleging that he was present. So if two reasonable
22 inferences^{can}/be made, one pointing to guilt and one pointing to
23 innocence, we know what the result is, the law says that that
24 equals not guilty.

25 Now, if at the same time that we can bring in a
26 verdict that our conscience indicates is the correct verdict,

1 and at the same time show the world that despite -- despite
2 all the pressures and the horrendous publicity that a person
3 in this country and in this state can get a fair trial and
4 can be exonerated when the evidence shows he is not guilty,
5 what would be more beautiful, what could be greater than to
6 get this message across to the rest of the world, when our
7 way of life is being attacked everywhere, on every continent
8 we are being given a hard time.

9 If we can discharge our responsibility and do
10 what the law says and at the same time create around the
11 world an attitude towards this country and the administration
12 of justice in this country, it seems an opportunity that we
13 should not let slip by just -- just because there are
14 horrendous pressures to get a guilty verdict at any cost.

15 And we suggest that what the prosecution has done
16 in this case in connection with the way they have framed the
17 charges shows the weakness of the case because the alibi,
18 and this is not just an alibi wherein, you know, in the
19 classical alibi case, the prosecution alleges that the person
20 did it.

21 So the word really doesn't have the connotation
22 that it does in many cases.

23 The prosecution doesn't even allege that Mr. Manson
24 was present, and the prosecution's evidence, if we may,
25 the prosecution's evidence speaks eloquently.

26 We have here People's Exhibit 9.

1 Look at that knot. Could one person -- could
2 one person have tied up Leno La Bianca? You have seen
3 Mr. Manson, could one person have tied up Leno La Bianca with
4 Mrs. La Bianca in the house like that?

5 This we will have in the jury room. There is a
6 little blood in this picture but it's not -- it is not the
7 kind of pictures that some of the others are.

8 Look at that knot, those of us who may have had
9 some experience in the service in connection with the tying
10 of knots, look at that and consider the size of Mr. La Bianca.

11 We have other pictures, there will be other
12 pictures of Mr. La Bianca.

13 Mr. La Bianca, we suggest, was a man about the
14 size of Officer Gutierrez, certainly in that range.

15 Could Mr. Manson have done this by himself?
16 Could he have tied up -- could he have tied up this gentleman
17 all by himself while Mrs. La Bianca was there?

18 The record clearly shows she was not tied up,
19 the telephones were not out, the guns were present.

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1 And so, I think that we could go on, which we are
2 not going to do, we are not going to read directly from the
3 record, in connection with Linda Kasabian's drug involvement.

4 This goes to her credibility. There is no
5 question about it.

6 We understand, I am sure, all of Linda Kasabian's,
7 all of her propensities towards the taking of drugs.

8 We suggest that there is great probability of these
9 nights, of these nights, whether she was there or whether she
10 wasn't there, that it was one of those times, one of those
11 many thousands of times, that she has smoked marijuana.

12 And marijuana is an hallucinatory drug. Marijuana,
13 LSD, whatever.

14 Do we believe that she was free of any influence
15 of drugs? Because that goes to her credibility.

16 Another aspect that is significant -- and this is,
17 we think, circumstantial evidence that shows the fact that
18 Linda Kasabian was, when she was in there tying up, helping
19 Tex Watson tie up Mr. La Bianca, she was committing murder,
20 and she has told us she has not committed any murders.

21 But she is more specific. She is more specific.
22 Even though the rest of the world knew about what happened
23 at the La Bianca home, Linda says -- and even though we have
24 alluded to it before, we think that the words of the tran-
25 script here are especially important, because we believe that
26 Linda Kasabian was in that house helping Tex Watson tie up

1 Mr. La Bianca -- we think her thong, the thong that she says
2 she doesn't know what happened to it -- Page 6503 of the
3 transcript, Volume 44:

4 "Now, you later came to learn that the people
5 in the house next door to Harold True had passed
6 away; is that right?

7 "Yes.

8 "Pardon?

9 "Yes.

10 "When did you learn that the people who
11 lived next door to Harold True had passed away?

12 "I believe I learned it when I was in
13 Florida.

14 "You learned it when you were in Florida?

15 "Yes.

16 "The day after, the second night you went
17 back to the Spahn Ranch; is that right?

18 "Yes.

19 "And all that day you heard nothing about
20 anyone having passed away in the house next door
21 to Harold True?

22 "No, I didn't hear anything."

23 Now, if there was a conspiracy, if what this
24 -- if this had taken place, would the people be talking
25 about it? Would there be some conversation about it?

26 This is evidence in connection with Linda's
credibility, if nothing else.

1 "The next day you heard nothing about --
2 no one discussed anything about the people in
3 the house next door to Harold True passing away;
4 right?"

5 And this is Linda Kasabian saying:

6 "And it wasn't until sometime in October
7 of 1969" -- there is a "A" here. I guess the reporter
8 -- this seems to be an answer, but actually there is a
9 clerical mistake on the reporter's part at Line 5 on Page 6504.

10 The "A" that is there is obviously not a part of
11 the answer.
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1 Let me read that again, and I will say it with
2 precision for the record, because you don't have the benefit
3 of the transcript.

4 I represent, on the record, this is a clerical
5 error on the part of the transcribers that typed up the
6 transcript.

7 "Q The next day you heard nothing
8 about -- no one discussed anything about the
9 people in the house next door to Harold True
10 passing away; right?"

11 Then this Line 5⁴ has a "A" here, which is
12 obviously an error.

13 "And it wasn't until sometime in October
14 of 1969 that you found out that anyone next door
15 to Harold True had passed away; is that correct --

16 "Yes."

17 That is her answer at Line 8.

18 Do we believe that? The propensities of people
19 being what they are, do we believe that this is possible?

20 After what happened the night before the second
21 night, Linda Kasabian is saying that no one spoke about it.
22 No one spoke about it.

23 "A. Yes.

24 "Q -- Mrs. Kasabian?

25 "A. Yes.

26 "I see.

1 "Now, did you do anything in connection
2 with the person at Venice, the person in that
3 wrong apartment, when you found out about the
4 killing in the apartment or the house next door
5 to Harold True?

6 "Did you tell anybody that that person or
7 persons, whoever it might be in the wrong apart-
8 ment, were in danger of death?

9 "No."

10 Now, for whatever that might be worth, that is
11 also in the record.

12 Now, then, we take the transcript and we go to
13 Page 6607 in Volume 45.

14 The question is -- the question was asked of
15 Linda Kasabian -- and this has to do with Linda Kasabian is
16 coming back to Los Angeles in connection with retrieving her
17 daughter from the juvenile court.

18 The question at Line 17:

19 "When you came back to Los Angeles, Mrs.
20 Kasabian, to get your daughter, you knew that
21 you were involved in seven killings, is that
22 correct?

23 "Yes, I guess so."

24 Now, that means, that means that she knew of
25 seven killings when she came back to Los Angeles.

26 By her testimony, she didn't get to Miami until

1 after she had been back in New Mexico having come to
2 California. We all remember about the matters involving the
3 child.

4 So, clearly, Linda Kasabian is not telling the
5 truth because she says she didn't know about the La Blancas
6 passing away until she read about it in Miami.

4b

4b 1 And there is a definite reason that she is imposing
2 this block in her mind, this self-imposed block, this desire
3 not to talk about it, this desire not to say it, and this
4 actual overt lack of telling the truth that she did in this
5 courtroom.

6 Because five and two is seven, clearly, and these
7 people had passed away, and she knew it.

8 And that is because she was personally involved.
9 That is because she was personally involved.

10 Maybe in the Tate residence she took the knife
11 and led the people around, or something like that. We don't
12 know. We know her knife was found inside of that house.
13 And she may not have actually engaged in any physical stabbing
14 herself in the Tate home. Her knife does not have blood on
15 it.

16 But at the La Bianca home, Linda Kasabian was
17 personally involved. At the La Bianca home, Linda Kasabian
18 tied up Mr. La Bianca, and Linda Kasabian doesn't want to
19 remember; doesn't even know about the La Bianca killings
20 until she gets to Miami, she says.

21 But her testimony shows that this is not so,
22 because she knew about -- she says:

23 "Yes, I guess so" -- she knew about seven killings
24 when she came back to Los Angeles in connection with obtaining
25 her child.

26 Page 6478 of the transcript, Volume 44.

1 It is clear that Linda Kasabian wasn't -- it
2 wasn't until the springtime, these many, many months, and
3 this is why we think that the transcript has great signifi-
4 cance.

5 "And do you know what kind of a gas station
6 it is?

7 "Yes.

8 "What kind of a gas station is it?

9 "Standard."

10 This is at Page 6478 in Volume 44.

11 "And directing your attention to this gas
12 station, between the time -- between the time
13 of your arrest and today have you been to the
14 gas station?

15 "Yes.

16 "And when did you go to that gas station?

17 "In the springtime sometime, I'm not sure
18 of the day or the month. It was after I had
19 the baby.

20 "Well, can you tell us what month it is?

21 "Yes, I believe it was about a week or so
22 after I had the baby, yeah.

23 "And directing your attention to the gas
24 station, did you go to that gas station in the
25 presence of any other people since you have been
26 arrested?

1 "Yes.

2 "And in the presence of what individuals
3 did you go to the gas station?

4 "There were two police officers, I don't
5 remember their names, a woman and a man, and
6 there was Mr. Bugliosi, and I believe Mr. Gutierrez
7 was there and Mr. Patchett, and my attorney,
8 Mr. Fleischman.

9 "I think that is all.

10 "And you opened up the top of the toilet
11 bowl and, lo and behold, there was the wallet?

12 "No.

13 "Is that right?

14 "No."

4c-1

1 Now, why do they wait until April in connec-
2 tion with this matter concerning the wallet?

3 Does that have any significance? Does that
4 have any significance?

5 Here we have a situation in which we have
6 Linda Kasabian, in the presence of all those people,
7 all those people are present.

8 Linda Kasabian has spoken of immunity and
9 all of that with everyone that has to do with law enforce-
10 ment, and she is taken to the gas station, and she says
11 this is the gas station, and she agrees with them that
12 this is the gas station.

13 MR. BUGLIOSI: I don't know what he is saying, your
14 Honor, but he can't get away with remarks like that.

15 That is false testimony. He is testifying.

16 MR. KANAREK: Well, your Honor --

17 MR. BUGLIOSI: He says we took her out there and
18 told her something.

19 MR. KANAREK: Your Honor, we suggest this is what
20 happened.

21 MR. BUGLIOSI: You are not suggesting. You are
22 making a statement of it.

23 THE COURT: The objection is sustained.

24 The jury is admonished to disregard Mr.
25 Kanarek's last statement.

26 MR. KANAREK: Ladies and gentlemen of the jury, we

4c-2

1 heard the testimony in this courtroom. We know -- we
2 are saying that -- and when we say that we are saying that,
3 we are saying that this is not in the record, we are not
4 saying that these are the exact words in the record, and
5 we know it, and this is an attempt on the part of the
6 prosecution to color and to make it look like I am saying
7 something that I am not.

8 We know that I am not. I read the record
9 here.

10 We are entitled to make inferences from the
11 record in connection with this case, and the inference
12 that we make is that Linda Kasabian was told that that is
13 where the wallet is, and that is the inference that we
14 make, and we believe that it is a correct inference.

15 She is taken into a gas station. The only
16 thing that we have in evidence by way of a picture in
17 connection with that gas station is the tank itself.

18 We are saying on the record right here that
19 in connection with the prosecution's interrogation of
20 Linda Kasabian that they had pictures of the men's rest-
21 room which they didn't offer into evidence. We say that.

22 MR. BUGLIOSI: I object, your Honor.

23 MR. KANAREK: We infer that, and I will say how
24 we can infer it.

25 THE COURT: The objection is sustained.

26 You are going beyond the record, Mr. Kanarek.

4c-3

1 The jury is admonished to disregard that
2 last statement.

3 MR. KANAREK: Well, if I may have a moment, your
4 Honor.

5 We suggest this is, in fact, what happened,
6 and the way we can do it is this way:

7 We have a Standard station here, which is
8 People's 66.

9 The Standard station on this picture, ladies
10 and gentlemen, on this picture, we clearly see two rest-
11 rooms in the Standard station.

12 You can't read the words "Men" or "Women,"
13 but clearly there are two rest-rooms there; and we
14 certainly know, in our experience, there are two rest-
15 rooms in a gas station of this type.

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1 We know that Mr. Bugliosi interrogated Linda
2 Kasabian with other pictures of the rest-room. That is
3 in the record. With other rest-room pictures.

4 We say on the record, with the court reporter
5 taking it down, that we may infer that those other pictures
6 are, in fact, pictures of the men's rest-room. We are
7 saying that with the court reporter taking it down.

8 MR. BUGLIOSI: This is completely improper, your
9 Honor.

10 May we approach the bench?

11 THE COURT: It is speculation, and it is not in
12 the record, Mr. Kanarek, and you are not permitted to make
13 that statement.

14 MR. KANAREK: I can make that inference, your
15 Honor.

16 THE COURT: It is not an inference.

17 It has to be based on some evidence in this
18 case.

19 MR. KANAREK: Then I will state what the evidence is.

20 THE COURT: The objection is sustained and the jury
21 is admonished to disregard that statement.

22 Confine your argument to the evidence in
23 this case.

24 MR. KANAREK: Well, I shall. I shall.

25 This is evidence in the case, ladies and
26 gentlemen of the jury.

4d-2

1 We know that the prosecution interrogated
2 Linda Kasabian in connection with pictures of the rest-
3 room other than People's 70, which merely shows the tank,
4 which merely shows the tank inside the rest-room.

5 We know that the prosecution interrogated
6 with those other pictures.

7 We know that the rest-room -- that the Standard
8 station has two rest-rooms.

9 We argue and we ask that the inference be
10 made that the reason that the prosecution didn't offer
11 those pictures into evidence is because, in fact, they
12 are of the men's room.

13 MR. BUGLIOSI: It was his objection, your Honor,
14 during the trial that kept those pictures out.

15 I would like to approach the bench on this.

16 He continually goes beyond the record. He
17 is making false statements.

18 May we approach the bench?

19 MR. KANAREK: Mr. Bugliosi is saying something that
20 is not true.

21 MR. BUGLIOSI: May we approach the bench?

22 THE COURT: Yes, you may approach the bench.

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

26 MR. BUGLIOSI: It was his objection on the

4d-3

1 grounds of no foundation that those pictures were kept out.

2 And there is nothing on those pictures that
3 says it was the men's rest-room.

4 He is making a vicious statement in front of
5 the jury that he knows is false.

6 MR. KANAREK: Then let's get the record.

7 THE COURT: What do you mean by "let's get the
8 record"?

9 MR. KANAREK: Let's get the record and see.

10 THE COURT: If there is some part of the record that
11 you want to refer to, refer to it.

12 MR. KANAREK: No, your Honor. He is making a statement
13 that is untrue.

14 THE COURT: You are doing the same thing that you
15 have done repeatedly in the course of your argument, and
16 that is going beyond the record.

17 MR. KANAREK: I can make an inference, your Honor.

18 THE COURT: You may not make an inference that is a
19 representation of fact which is not disclosed by this
20 record. You may not make that kind of an inference,
21 which is not an inference at all, but simply a bald
22 misrepresentation.

23 MR. KANAREK: Well, your Honor --

24 THE COURT: Let's not prolong this.

25 The objection is sustained.

26 I caution you again, sir. All you are doing

4d-4

1 is hurting your own case when you make these kinds of
2 statements.

3 MR. KANAREK: Then I say that we are being denied
4 a fair trial.

5 MR. BUGLIOSI: I think the jury may believe some of
6 these preposterous lies.
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1 MR. KANAREK: I ask to refer to the record.

2 THE COURT: Point it out in the record.

3 MR. KANAREK: He is the one making the objection.

4 THE COURT: You are the one that made the misrepresentation.
5

6 MR. KANAREK: No, it is not a misrepresentation.

7 THE COURT: Point out to me in the record where you
8 contend you are right.

9 MR. BUGLIOSI: Those pictures were kept out because
10 there was no foundation.

11 Nowhere does it say "Men's rest-room."

12 THE COURT: I don't want to hear any more argument.

13 MR. KANAREK: That is in the record.

14 THE COURT: If you want to refer to some point in
15 the record, you are free to do so.

16 MR. KANAREK: Let's get the questioning of Linda
17 Kasabian. Let's take that record. I would like to look
18 at it and show you.

19 THE COURT: What does Linda Kasabian have to do with
20 it?

21 MR. KANAREK: He interrogated her using these
22 pictures.

23 THE COURT: Now we are getting off into something
24 else.

25 MR. BUGLIOSI: He is telling the jury these are
26 other pictures of the men's rest-room. They do not say

1 "Men's rest-room."

2 MR. KANAREK: They are the men's rest-room and Mr.
3 Bugliosi knows it.

4 THE COURT: Now you are switching again. You are
5 as slippery as an eel.

6 MR. KANAREK: It is in the record.

7 THE COURT: The objection is sustained.

8 I don't want to hear any more about it.

9 (Whereupon all counsel return to their
10 respective places at counsel table and the following
11 proceedings occur in open court within the presence and
12 hearing of the jury:)

13 THE COURT: The objection is sustained, ladies and
14 gentlemen.

15 Let's proceed, Mr. Kanarek.

16 MR. KANAREK: Ladies and gentlemen, if we may,
17 I think we all recall that Linda Kasabian had -- when
18 Mr. Bugliosi and the prosecution was interrogating Linda
19 Kasabian, he interrogated and showed to Linda Kasabian
20 pictures. There is no question about it.

21 We have here People's 67, which is a Standard
22 station.

23 We have here People's 70, which is the tank
24 that purports to be the tank of a -- pardon me, I'm
25 sorry -- the tank of a toilet. It shows the tank of a
26 toilet.

1 We have here another picture, People's 66,
2 which is of the Standard station.

3 I think we will recall, and if there is any
4 question about it the Court will certainly read it to us,
5 that in connection with -- in connection with the interroga-
6 tion of Linda Kasabian, there was used pictures that are
7 pictures other than the pictures that we have here,
8 and more specifically, the inside of a rest-room type
9 pictures, if you want to put it that way, other than
10 People's 70, other than People's 70.

11 We say that the inference could be made,
12 we say that the inference could be made that those pictures
13 are pictures which involve the rest-room that Linda
14 Kasabian was never in.

15 And the reason we say that is this. The
16 prosecution wasn't limited, wasn't limited, to Linda
17 Kasabian in connection with this wallet matter. The
18 prosecution wasn't limited at all.

19 There was Police Officer -- well, at least
20 one police officer who came to the scene when the wallet
21 was purportedly found on December the 10th, 1969, which
22 is two days after December the 8th, 1969, when the Grand
23 Jury indictment came out, we have the people that we have
24 just spoken of, we have Mr. Bugliosi, Mr. Gutierrez, Mr.
25 Patchett and Mr. Fleischman. Those people.

26 "And in the presence of what individuals

1 "did you go to the gas station?"

2 Those are the people that she went to the gas
3 station with.

4 Now, we would all agree that People's 70 is
5 the inside of a rest-room.

6 So, Linda Kasabian had to go inside of a
7 rest-room in order to accomplish something as far as this
8 trip is concerned.

9 All we are given, for some strange reason,
10 all we are given is the tank, the picture of the tank.

5 fls.

5-1

1 We are not given the surroundings of this tank,
2 we are not given --

3 MR. BUGLIOSI: Your Honor, this is improper argument,
4 he knows that.

5 THE COURT: What is improper about it?

6 MR. BUGLIOSI: There were other photographs of the
7 interior of that restroom which he objected to and that is
8 why they are not in evidence.

9 He is making misrepresentations to this jury.

10 MR. KANAREK: Then I ask to be sworn.

11 MR. BUGLIOSI: Let's look at those photographs then.

12 MR. KANAREK: I ask to be sworn then, your Honor.

13 THE COURT: The objection is sustained. The jury is
14 admonished to disregard Mr. Kanarek's remarks.

15 Get on with it, Mr. Kanarek.

16 MR. KANAREK: Mr. --

17 THE COURT: I don't want to hear any more argument
18 from you, sir.

19 Continue your argument to the jury.

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

22 THE COURT: No necessity for that. We already
23 discussed it.

24 MR. KANAREK: Then may^I/be sworn, your Honor?
25 He has accused --

26 THE COURT: Proceed with your argument if you have any

1 argument, Mr. Kanarek.

2 MR. KANAREK: We may put it this way, this picture
3 of this tank does not show the whole restroom, and we say
4 that the reason -- the reason that this does not show the
5 whole restroom is because of the fact that a connection with
6 the interrogation of Linda Kasabian, Men's restroom pictures
7 were used.

8 This is what we asked to be inferred.

9 Now, what I am saying is, what I am saying, those
10 of us that are on the jury are the ones to decide fact
11 questions. We say that when we look for instance, we look
12 at the great documentation of the stab wounds.

13 There is great documentation, great precision is
14 made in connection with the passing away of the seven
15 people that passed away; great detail in that part of the
16 case is made.

17 We get to other parts of the case, and it fritters
18 out into nothingness, because although there is plenty of
19 photographic capacity, there is plenty of photographic
20 capacity to take pictures, that we have here People's 67 and
21 People's 66, there was likewise photographic capacity to take
22 the insides of this restroom and show -- show us the rest of
23 this restroom, and show us -- show us maybe the other rest-
24 room, whatever restroom this may be.

25 The fact of the matter is that that kind of
26 documentation was not made, and we suggest that the reason

1 that that documentation was not made is because this
2 matter concerning the wallet, forgive the expression, smells.

3 We have stated that before; it may be that is
4 an indelicate word, but it does. It does, ladies and
5 gentlemen, because of what we have spoken of before.

6 There has got to be a reason why in the crime of
7 the century there isn't the detail in connection with this
8 restroom.

9 And the reason that there isn't this detail in
10 connection with this restroom and the adjacent restroom,
11 and all of that, is because of the fact that Linda Kasabian
12 was taken there in the presence of these law enforcement
13 officers after having been briefed about it, and then she
14 says this is the place where she -- this is the place --
15 this is where Linda testified she placed the wallet.

16 For what it might be worth, for what it might
17 be worth, this is the posture of the evidence. It is a
18 situation which tells us that there is some purpose in
19 not closing in on it and documenting a very, very important
20 matter, because this wallet is a wallet that was supposedly
21 taken from the La Bianca home, and we know what Linda
22 Kasabian told us happened in connection with that wallet.

23 And when this is done, somebody is putting us on.
24 Somebody is putting us on, and if there is any question,
25 if there is any question about the interrogation as to whether
26 any other pictures were used, I am sure that Judge Older will

1 read back to us every bit of that testimony.

2 Now, as we go forward I think we see the reason
3 why the prosecution has not documented the restroom the way
4 perhaps it could be documented. We asked them the next
5 question at Page 6480:

6 "Q Mrs. Kasabian, directing your
7 attention to that particular gas station, when
8 you came in there the wallet wasn't there?

9 "A No.

10 "Q And before you went in there you
11 had told somebody about where the wallet was?

12 "A Yes.

13 "Q Now, how long before you went to the
14 gas station or were taken to the gas station did
15 you describe the wallet to anyone after you were
16 arrested?

17 "A I didn't catch all of your question."

18 The question was reread.

19 "THE WITNESS: I believe I described it
20 to my attorney.

21 "Q And then when was it that you
22 described it to your attorney?

23 "A I'm not sure at which meeting.

24 There were a number of meetings that they
25 came to talk to me. It was near the beginning
26 when I first got to jail."

1 That would be in December or certainly -- yes,
2 in December of 1969:

3 "Q And which attorney was it that
4 you described it to or was it both?

5 "A It could have been both.

6 "Q And in what month did you describe
7 the location of the wallet?"

8 Looking at that question:

9 "Q And in what month did you describe
10 the location of the wallet?

11 "A Location of the wallet?

12 "Q Yes.

13 "A You mean in the toilet tank?

14 "Q Yes.

15 "A I don't know. I just know it was
16 near the beginning when I first got to jail.

17 "Q And when did you first come to
18 Los Angeles from New Hampshire?

19 "A The first part of December.

20 "Q How soon after you came to
21 Los Angeles did you describe it?

22 "A I don't know, not very long after.

23 "Q How many weeks?

24 "A I don't know.

25 "Q Was it two weeks, a month?

26 "A I don't know, Mr. Kanarek.

"Q You don't remember that time?

1 "A. No."

2 So there is some evidence that we can
3 use in connection with deciding this case.

4 We suggest that matters pertaining to the wallet
5 are matters that are just unbelievable.

6 The police officer who supposedly came to that
7 gas station is not brought to this courtroom. You don't have
8 to go to Alabama to get him, and you don't have to -- you
9 don't have to go to Albama to get Mr. Fleischman either.

10 So, for what it may be worth, we feel that what
11 has occurred in connection with this testimony has some
12 significance.

13 Now, we have a --

14 Now, literally, when we go through this
15 transcript in connection with Linda Kasabian, we have
16 tried to pick the highlights of testimony wherein she has
17 been less than candid, wherein she has stated -- stated --
18 made statements which we think indicate a lack of truthfulness
19 on her part.

20 It so permeates her testimony that there are just
21 -- there is just a succession of highlights.

22 When we say highlights we are talking about, to
23 use the word, jillions, just -- the way sometimes we use
24 that word.

25 There are so many highlights, and there are so
26 many -- there are so many instances of Linda Kasabian's

1 lack of candor, and testifying to matters affecting her
2 credibility, that there is difficulty in determining which
3 are the highlights, and there is one aspect of it, Page
4 7,121, Volume 51, by Mr. Kanarek:

5 "Q Mrs. Kasabian, did you go into the
6 truck the day after you saw Tex, and take anything
7 out of that truck?

8 "A Yes, I did.

9 "Q What did you take out of the truck?

10 "A I took some money and a knife."

11 Now, remember this is after she has testified --
12 this is way up at Page 7,122, this is after Linda Kasabian
13 has testified concerning what she took from the truck and
14 her motivations for going to the Spahn Ranch, which on direct
15 examination was vastly different than on cross-examination:

16 "Q What did you take out of the truck?

17 "A I took some money and a knife.

18 "Q And how much money did you take out
19 of the truck, Mrs. Kasabian?

20 "A About \$5,000.

21 "Q And your state of mind was such that
22 you knew that that money belonged to whom?

23 "A At that time I believe that it belonged
24 to everybody."

5a-1

1 Now, we have Linda Kasabian who has her -- she
2 has been to the Spahn Ranch one day.

3 There may be sort of in connection with what
4 the people at the Spahn Ranch talk about, and which
5 happens, I gather in commune life from time to time, is
6 that everything belongs to everybody.

7 So Linda Kasabian, is she being candid with
8 us, because the test of credibility is candor, straight-
9 forwardness.

10 Now, when she says that at the time I believe
11 that it belonged to everybody, she is trying to convey to
12 us that in the time she met Gypsy, she says, the day
13 before, in that short period of time she had adopted what
14 she wants us to believe is the philosophy of the people
15 who lived at Spahn Ranch, namely that everything that they
16 had, like testimony concerning dune buggies and everything
17 else, that everything belongs to everybody.

18 And so she is telling us -- is she telling us
19 the truth in the answer to that question:

20 "And your state of mind was such that you knew
21 that that money belonged to whom?

22 "A At that time? I believe it belonged
23 to everybody."

24 Is that a true statement? Did Linda Kasabian,
25 when she took that money out of the truck, did Linda
26 Kasabian believe that that money belonged to everybody?

5a-2

1 We suggest that she did not.

2 We suggest that her state of mind is a fact,
3 just like the desk there in front of the bench. The fact
4 that desk is in front of the bench, that is a fact.

5 Her state of mind is a fact, and she is
6 enunciated to us a fact, as a fact, when in fact, we know
7 this is untrue.

8 "At that time I believed that it
9 belonged to everybody."

10 "Q Mrs. Kasabian, before you ever saw
11 Gypsy or came out to the Spahn Ranch you knew
12 of the existence of that \$5,000, right?

13 "A Yes." -- and again we must look at it
14 in the context, in the context of this, this is after some
15 days where she had the opportunity earlier to tell us
16 about what she took from the truck, and did not mention
17 anything about this:

18 "Q And you know that \$5,000 belonged to
19 Charles Melton, is that correct?

20 "A Well, it belonged to him but it was
21 for all of us.

22 "Q Well, that \$5,000, your state of mind
23 told you was \$5,000 that Mr. Melton had received
24 from an inheritance, is that correct?

25 "A Yes.

26 "Q And you knew that that money was in

5a-3

1 "the truck, is that correct?

2 "A Yes.

3 "Q You stole that money before you ever
4 saw Mr. Manson, is that correct?

5 "A Yes."

6 And so she tells us once again, once again,
7 when Linda Kasabian is in a corner and has no other alterna-
8 tive, then she tells us the obvious.

9 She tells us the truth at that point.

10 "Q Mrs. Kasabian, the time -- the very
11 first time that you saw Mr. Manson" --

12 I will go back and start again.

13 "Q Mrs. Kasabian, the time, the very
14 first time you saw Mr. Manson, your motive and
15 your intent and your purpose was to go and ask
16 Manson to take you into the hills and hide you
17 because you were afraid of the wrath of your
18 husband and Mr. Melton because of the money you
19 took, is that correct?

20 "A I don't know if I asked him to hide
21 me."

22 That is her answer to that question.

23 "Q You were present in Mr. Manson's
24 presence after you had taken this money, this
25 \$5,000, correct?

26 "A Yes.

5a-4

1 "Q And your purpose and your intent of
2 being in Mr. Manson's presence was to try to get
3 yourself hidden from Mr. Melton and your husband,
4 is that correct?

5 "A I guess so. I'm not really sure."

6 At lines 6 to 7 she states:

7 "I don't know if I asked him to hide
8 me."

9 Line 15 she says:

10 "I guess so, I'm not really sure."

11 Line 16:

12 "You are not sure?"

13 "A I am not sure if I asked him to hide
14 me."

15 "Q My question is as to your state of
16 mind, Mrs. Kasabian, your thinking, your purpose?

17 "Your purpose was that you wanted to
18 be somewhere where your husband and Mr. Melton
19 couldn't get at you, right?

20 "A I guess so."

21 And if we take ourself out of this
22 courtroom, take ourselves out of the occurrences
23 of this courtroom and try to put ourselves into
24 the human situation that is involved there, there
25 is no trial going on, Linda Kasabian meets a boy
26 that she likes, Mr. Watson, she knows she has

5a-5

1 \$5,000, she wants to give this \$5,000 to Mr. Watson, so what
2 does she do? She comes back over to the Spahn Ranch, and
3 naturally when that money is gone, who do Mr. Melton and
4 Mr. Kasabian think has the money? Obviously they think
5 Linda Kasabian does because Linda Kasabian is no longer in
6 the vicinity of the truck and no longer in the Topanga
7 Canyon area.

8 So if take ourselves and transpose ourselves
9 into that human situation, and if we consider the
10 relationship of the people, we suggest that there is some
11 probability that Linda Kasabian went to that ranch not
12 because of Mr. Manson and what a fantastic man he was,
13 supposedly and all of that.

14 She went to the ranch for the reason that
15 Linda Kasabian has motivated herself throughout her life-
16 time, because at a particular time and place it was very
17 very good and convenient for Linda Kasabian to do what
18 Linda Kasabian wants to do.

19 We see that throughout. We see that throughout
20 the case, that Linda Kasabian gets what Linda Kasabian
21 wants.

22 She has managed to do this throughout these
23 many years since she has left home.

24 And so there is no question, it would seem
25 like, that Linda Kasabian is going to the ranch for
26 the purpose of hiding out. This is her purpose:

1 "Q Your purpose was that you wanted to
2 be somewhere where your husband and Mr. Melton
3 couldn't get at you, right?

4 "A I guess so.

5 "Q When you say you guess so, you mean
6 yes, don't you? You know so?

7 "A I am not sure. I really don't know.

8 "Q What is unclear in your mind about
9 that? Why do you tell us that you don't know?

10 "A If I went there to hide?

11 "Q Yes.

12 "A I don't understand."

13 Now, we then come to the next question, and
14 we think that the panorama of these proceedings is such that
15 we can make another inference.

16 Her next question, and then we go into her
17 being a witch, and about drugs, what drugs did to her,
18 and so forth.

19 We suggest, and the jury of course, the jury
20 decides whether any of these suggestions have any merit.

21 We remember Dr. Skrdla and Dr. Deering
22 testifying -- testifying that Dianne Lake had a drug-
23 induced psychosis, and we remember, we remember the
24 testimony of Dr. Deering about Dianne Lake.

25 They took a case history; they took a case
26 history of Dianne Lake. They didn't see Dianne Lake; they

1 didn't see her when she actually -- when she actually
2 was in this drug-induced psychosis type of state.

3 They saw her many months later, actually, just
4 prior to the time of coming here to testify in connection
5 with matters pertaining to whether she could take the
6 witness stand and testify.

7 So they took these histories of all of the
8 people involved, and they came to the conclusion that
9 Dianne Lake had a drug-induced psychosis.

10 What we suggest is that certainly when we
11 get into the witch story of Linda Kasabian, when we
12 understand that she thought she was a witch, when she was--
13 during this period of time, we suggest there is great
14 probability that Linda Kasabian was, in the throes of
15 a drug-induced psychosis.

16 THE COURT: We will take our recess at this time,
17 Mr. Kanarek.

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

21 The court will recess for 15 minutes.

22 (Recess.)
23
24
25
26

5b fls,

5b-1

1 THE COURT: All counsel and jurors are present.

2 You may continue, Mr. Kanarek.

3 MR. KANAREK: Certainly. I think we would agree
4 that Linda Kasabian had a fantastic drug intake.

5 Certainly we have -- we can make the inference
6 that because of the stab wounds that are involved in
7 connection with these people, we can certainly infer what
8 we have alluded to before, that these wounds being so
9 many are of a very personal nature, and I think we can,
10 taking the testimony of Dr. Skrdla and Dr. Deering, which
11 is in this record, we can certainly feel that there is
12 great probability that Linda Kasabian had a drug-induced
13 psychosis during these periods of time.

14 And the reason we say that, the reason we say
15 that is from the evidence, from the evidence which we
16 can have read back.

17 She thought she was a witch.

18 For instance, I mean these -- without -- and
19 going into detail what Linda Kasabian stated, any of it
20 can be read back to us. But there is such a volume of
21 it, it's like an ocean, it's like a mountain, it's there.

22 And we remember all of her statements,

23 And she did say she was Yana the Witch. She
24 stated -- she stated the types of things, the types of
25 questions, and she answered the types of questions in such
26 a way that it could almost be like one of the doctors taking

1 a case history.

2 Now, these doctors evidently in connection with
3 this type of diagnosis that was made by Dr. Skrdla and
4 Dr. Deering, these doctors make their diagnoses based upon
5 case histories, and the fact that Linda Kasabian didn't
6 end up in a hospital or something of that type, that is
7 coincidental because Dianne Lake ended up in Patton after
8 she was arrested.

9 Dianne Lake became a subject of conservator-
10 ship, and we have seen and heard about, in this courtroom,
11 in this connection with the events which occurred at or
12 about the time she was arrested.

13 And the doctors, when they examined her,
14 Dianne Lake, as we certainly -- certainly anyone of us
15 would say, when she was on that witness stand that she --
16 that she made a good appearance, and what words she
17 uttered were words that -- at least they were one right
18 after the other.

19 They seemed to have a certain amount of
20 cohesion to them.

21 But that does not mean that the doctors did
22 not say she had a drug-induced psychosis some months
23 before. It would be during the summer of 1969. And
24 really, what we are interested in, of course we are
25 interested in the credibility of a witness as he or she
26 sits on the witness stand, but aren't we also interested

1 in the ability of that witness to perceive matters at the
2 very times that we are speaking of?

3 Now, for what it may be worth, for what it
4 may be worth there are two aspects of Linda Kasabian's
5 intake that are significant.

6 One is the nature of these wounds, the nature
7 of these wounds.

8 It appears to be like we said, a very personal
9 type of wound, and we could certainly infer that the
10 people or persons who inflicted those wounds were under
11 the influence of some drug, some narcotic, some chemical
12 in their body, driving them to do what they did.

13 Is this unreasonable? Is this unreasonable
14 in the context of these proceedings?

15 Is this unreasonable in the context of the
16 type of drugs and chemicals that Linda Kasabian has taken
17 into her body continuously for many years, and she says
18 she took it only once during the time she was at Spahn
19 Ranch.

20 She smoked marijuana thousands of times, but
21 in connection with LSD only once.

22 This is the circumstance, and the circumstance
23 is that if she took it, if she took it all of those years
24 before, and she had this course of conduct, there is no
25 reason why she would not have that course of conduct
26 during the month or so that she says she was at the Spahn

1 Ranch.

2 And it is very reasonable to assume that these
3 wounds were inflicted by drug-crazed individuals and by
4 drug-crazed people, and they are very personal.

5 And certainly Mr. Manson, the prosecution states,
6 wasn't even present -- the prosecution states that he wasn't
7 even present during the time that any of these events took
8 place.

9 Now, directing our attention -- let's direct
10 our attention first to some comments of Dr. Deering.

11 For instance, at page 17,619:

12 "Q And can you think of what effect this
13 would have upon the words that she uttered from the
14 witness stand? What effect would this have upon
15 the workings of her mind, generally, the flashback?"

16 Let's go back one question:

17 "Q No, we don't all respond the same way,
18 I will certainly agree to that.

19 "But is it medically possible for a
20 person who had the kind of exposure to LSD that
21 Dianne Lake had to have that LSD, the intake of
22 LSD, that she has consumed, affect her when she
23 is on the witness stand?

24 "A It is possible."

25 So certainly what we are saying, that certainly
26 the doctor would make the same kind of answers in connection

1 with Linda Kasabian:

2 "Q And can you think of what effect
3 this would have upon the words that she uttered
4 from the witness stand? What effect would this
5 have upon the workings of her mind, generally,
6 the flashback?

7 "A As I mentioned before, it is a sensory
8 sort of thing, a sensation sort of phenomenon,
9 seeing things, hearing things, feeling things,
10 smelling things.

11 "Q And so, it is possible for someone to
12 have this kind of feeling and not let the person
13 around or the people around him or her know that
14 they are having it?

15 "A Yes, just as it is possible for a
16 schizophrenic to hear voices and people around
17 are not aware of them."

18 And we will recall that Linda Kasabian testified,
19 I'm sure that we will recall she testified for instance in
20 connection with the part of her body felt detached from her--
21 where she was, actually physically.

22 In her mind she thought her body was detached.
23 She thought, without going into all of that, we certainly
24 remember what Linda Kasabian said about what effect these
25 things had on her mind, on her thinking.

26 Well, what does that mean in this context?

1 The doctors say that some of these things can
2 affect the person actually while they are on the witness
3 stand, and it would be -- it would not be observable to us.

4 In other words, a person -- the purport, we
5 suggest of what we are alluding to here, and if somebody
6 else thinks differently, certainly the record is here and
7 we may have -- there may be differences of opinion about
8 this, but we think that this record does show that this
9 intake of drugs has the effect, has the effect of -- has
10 the effect -- it affects the credibility of the person
11 as he or she sits on the witness stand.

12 With what Linda Kasabian has taken into her
13 body, this is certainly a factor that we must consider in
14 connection with credibility.

15 We would probably do that anyway, if we did
16 not have the benefit in this record of Dr. Deering and Dr.
17 Skrdla.

18 So we have the effect of credibility as the
19 person is on the witness stand, and then we have the added
20 effect of the perceptive ability of the person at the time
21 that the alleged events are occurring, the two days, the
22 time at the ranch, the time that Linda Kasabian -- the times
23 that Linda Kasabian has testified to.

24 For instance, this next question:

25 "Q So, while Dianne Lake was on this witness
26 stand, Doctor, it would be possible for her to be

1 "having some kind of reaction due to LSD intake that
2 she had, and it wouldn't be conveyed to us, right?

3 "A It is possible."

4 And then, now:

5 "Q You spoke with Miss Lake for about an
6 hour and fifty minutes, is that correct, Doctor?

7 "A Yes."

8 Now, he spoke -- we spoke -- maybe it's practicing
9 medicine without a license, I don't know, but we spoke in
10 this courtroom, all of us heard a lot more than an hour and
11 fifty minutes concerning Linda Kasabian.

12 We got a case history in her regard, as far as
13 she was concerned that was much more extensive than that
14 which Dr. Deering got from Dianne Lake.

6 fls.

6-1

1 And so, for whatever that may be worth, here
2 the doctor, based upon this hour and fifty minutes, has
3 told us, no question, after studying the records and
4 speaking to her, that she had what he called a drug-
5 induced psychosis back at some earlier time.

6 Then he also told us that there is a difference
7 between a neurosis and a psychosis.

8 Dr. Skrdla also discussed various matters
9 involving the workings of the human mind.

10 So, for what it may be worth, there is no
11 question but what this is a factor to be considered, not
12 only in connection with these actual crimes alleged, but
13 also in connection with credibility.

14 And the interesting thing is that since the
15 Court is going to tell us that Linda Kasabian is an
16 accomplice as a matter of law -- as a matter of law --
17 it means that Linda Kasabian is deemed to be a person
18 who has done certain things that we know about in this
19 courtroom. She has been a participant in certain things
20 that we know about in this courtroom.

21 Now, the prosecution in this case is going to --
22 I mean, we think this is a possibility -- speak to us
23 again. That is an actuality. But the possibility is that
24 in connection with this matter of drugs, as to Linda
25 Kasabian, the prosecution may have some words to say.

26 And it would seem like that what we might --

1 what we would ask and request is that when we are listening
2 to the prosecution, that each of us be sort of a committee
3 of one to see what answers or what points with Mr. Shinn
4 or Mr. Fitzgerald or Mr. Keith or myself, perhaps, what
5 points would we raise to counter? Because we don't have
6 another opportunity to speak after the prosecution speaks.

7 And if we could think of the prosecution's
8 comments in that regard, it might be helpful to come to
9 some kind of a realization as to the worth or the merits
10 of whatever the prosecution may be saying.

11 At page 17,623.

12 "Now, did Miss Lake tell you, Doctor,
13 that she, sometime during the summer of 1969, was
14 living at Spahn Ranch?

15 "Yes."

16 Now, that could be Linda Kasabian talking.

17 "And did she tell you that at some time
18 during the summer of 1969 she relocated and lived
19 elsewhere?

20 "Yes."

21 Now, in Dianne Lake's case, Dianne Lake went
22 to the desert. In Linda Kasabian's case, she fled the
23 State of California after participating in seven murders.

24 Now, again looking to see if there is any kind
25 of similarity. Page 17,624.

26 "Did you ask her about her taking of

1 "LSD?

2 "A Yes.

3 "Q What did she tell you concerning
4 the taking of LSD during the year 1969?

5 "Well, she said, as to the use of
6 all the drugs, the marijuana, the LSD, that at times
7 they were used fairly heavily and at times they weren't
8 used at all; that as I recall, she said she had only
9 taken the drugs a few times in the month of September
10 and October of 1969."

6a fls.

6a-1

1 And there we have a strange parallel. Dianne
2 Lake, who the record reveals is a very suggestible girl,
3 takes a very small amount of drugs, she says, at times
4 that are important to what goes on in this courtroom.
5 Similarly, Linda Kasabian, another prosecution witness,
6 says she only took LSD once during times when she was
7 present, supposedly, at times that are important in this
8 courtroom.

9 "THE WITNESS: You asked about the ranch.
10 It was a place called the canyon. I believe that
11 is where they were staying.

12 "In the summer of 1969?

13 "Yes.

14 "Does it say what canyon?

15 "No. Just the canyon.

16 "She said she was living there in the
17 canyon?

18 "Yes.

19 "I don't see where I made the notes.

20 "Well, here is the use of drugs. I
21 am sorry.

22 "Marijuana made me laugh. I could
23 smell better and see better."

24 And I am sure that we will recall that Linda
25 Kasabian stated that under LSD she had God-realization.
26 She stated this was one of the effects.

1 Well, what does that mean? What does that
2 mean in connection with the credibility of Linda Kasabian?

3 She testified as to many things that she
4 allegedly saw and that she allegedly thought of while
5 she was under the influence of LSD and while she was
6 under the influence of marijuana.

7 "Just answer that question, if you
8 would, Doctor.

9 "I don't see where it is here.

10 "However, I think that is what she told
11 me, that she had only used it a couple of times
12 during that time.

13 "You told us that she told you she had
14 used it several times?

15 "Yes.

16 "During that period of time that you
17 said was September and October; is that right?

18 "A Yes."

19 Then the next question:

20 "Now, do you have an opinion, Doctor,
21 as to whether or not it is possible for a person
22 who ingests LSD for a long period of time to have,
23 as a result of that ingestion of LSD, delusions?

24 "I think it unlikely, except when under
25 the influence of drugs, unless one is schizophrenic
26 to start out with."

1 "Except when under the influence of
2 drugs." Delusions.

3 Now, what does that mean?

4 A delusion, I think we will agree, is where
5 the mind perceives facts that don't exist.

6 For instance, when someone steps out of a 13-
7 story -- at the 13-story level, and thinks that they are
8 just stepping off of a curb. They are under a delusion,
9 and they get killed, because their mind tells them that
10 a certain set of facts that is there are facts consistent
11 with stepping off the curb, when, in fact, it is 13 stories
12 up, and they perish.

6b fls. 12

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6b-1

1 Now, the people -- we can certainly feel there
2 is some probability that the nature of these deaths is
3 such that drugs were involved, that drugs were involved,
4 and if drugs were involved, there is some probability that
5 the people who had ingested those drugs were under the
6 influence of some kind of a false delusion. For whatever
7 that may be worth.

8 But this is what the doctor tells us. And this
9 principle certainly applies to Linda Kasabian when we
10 consider the drug-oriented life that she has led.

11 "Well, would you explain that, Doctor?

12 "Well, people turn to drugs because of
13 anxieties, inner problems; and certainly severe
14 mental illness is a cause of great discomfort to
15 people.

16 "I think that people who are basically
17 schizophrenic or schizoid do turn to drugs often,
18 and I think this often does uncover a basic underlying
19 schizophrenia.

20 "But I think the delusional part, if
21 one had it, would be schizophrenic and not due to
22 LSD.

23 "Does the literature that you have studied,
24 Doctor, reflect that under the influence of LSD a
25 person, a subject, may lose touch with reality such
26 that they may assume certain things to be factual

1 "under the influence of LSD when, in fact, those
2 facts don't exist?

3 "Yes. I think this is a sensory thing.
4 Visions, hallucinations, are unreal, but to the
5 person under the influence of the drug, they may
6 seem very real."

7 So, what it boils down to is that there is
8 great probability, there is great probability that on these
9 nights, and other nights, that Linda Kasabian was under the
10 influence of drugs, and while under the influence of drugs
11 Linda Kasabian did whatever she did.

12 And so, not only is there this as more than a
13 possibility, we urge, but actually a probability, and there
14 is also the fact of her inability to perceive, her inability
15 to react, the delusional nature of whatever was going on
16 in her mind.

17 And these are matters which are in the record
18 here, and which I am sure that Judge Older would have
19 read back to us if any of us have any question concerning
20 whether or not these matters are as we are relating them.

21 "They may."

22 I am sorry. Referring to the last question.

23 "They may." That is the answer.

24 "They may."

25 Let's get the question again so that we get
26 the context.

1 "And a person may act on a certain set
2 of facts which the person thinks is, in reality,
3 occurring, based upon what their particular mind
4 may see while under the influence of LSD?

5 "A They may.

6 "One might kiss a vision, for example.
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6c fls.

6c-1

1 And this is Dr. Deering speaking.

2 "Q And one might step out of a window of
3 some height, thinking it was just one step to the
4 ground; is that correct?

5 "Yes.

6 "Does this phenomenon also occur by way
7 of flashback, the same effect?

8 "It can.

9 "Now, Doctor, as you sit there on the
10 witness stand, can you tell us --

11 "First of all, let me withdraw that
12 and ask you another question.

13 "Do you have an opinion, Doctor, or
14 do you have enough information, have you been
15 given enough scientific information, enough
16 scientific data, so that you can have an opinion
17 as to whether or not Dianne Lake was psychotic in
18 August, September, October, November and December
19 of 1969?

20 "Continuously psychotic?

21 "Psychotic?"

22 This is the question:

23 "Psychotic?

24 "A I have said she was."

25 In other words, based upon, and we all
26 remember, certainly, the gist of what occurred in connection

1 with Dianne Lake, we all remember that -- and Dr. Deering
2 says she was psychotic.

3 Now, a psychosis, as the doctors have told us,
4 is a major mental disturbance. And that is what the
5 trial is all about, the testimony from the witness stand.
6 We have 19,000 -- 20,000 -- pages of it.

7 And so, when we integrate this factor into what
8 we have to consider here, we must come to the conclusion,
9 when we have our principles of reasonable doubt, burden of
10 proof, and all of that, we must come to a conclusion that
11 certainly, certainly, these are matters to be considered.
12 These are matters which are of great significance in
13 connection with the credibility of these witnesses.

14 Now, the prosecution is going to say, is going
15 to tell us, the prosecution is going to tell us and they
16 are going to emphasize that in connection with the
17 corroboration of an accomplice, that that corroboration need
18 only be slight.

19 The word "slight" is in there.

20 Now, what is slight?

21 And I am sure that the prosecution, although
22 they didn't talk about the law in their first address to
23 you, there is some probability that they will discuss the
24 law in their closing argument because some of these matters
25 have come up. So, they are going to argue that only slight
26 evidence is necessary to corroborate a witness who is an

1 accomplice.

2 Of course, everything else comes into play.
3 The fact that the witness, that there is this aspect of
4 corroboration, that doesn't mean that we forget everything
5 about credibility and everything that we have discussed.

6 As a matter of fact, it makes the credibility
7 factor more and more intense as far as a deficit, from
8 the prosecution's viewpoint, as far as the prosecution's
9 viewpoint in this case is concerned.

6d fls.

6d-1

1 Because if -- let's say someone had no mental
2 problems, had no drug intake, had nothing, just a plain
3 old witness as far as drug intake and schizophrenia, or
4 whatever it might be. Let's say that is never brought up
5 in the trial. Let's say that that happens. Then the
6 rule of corroboration as to a witness such as that is
7 something that has more significance, because the only
8 thing you have to worry about is in connection with the
9 witness being an accomplice. That is all you have to
10 worry about because there is no mental problem in the
11 hypothetical case we have spoken of.

12 But in this case, not only do we have the
13 fact that the person is an accomplice as a matter of law,
14 we have the added credibility factors that we have spoken
15 of.

16 So, these are matters that probably should be
17 given some consideration in view of the fact that the
18 prosecution has the burden to prove a defendant guilty
19 beyond a reasonable doubt and to a moral certainty.

20 And there are some grave questions here that
21 involve not only the witness Linda Kasabian, but other
22 witnesses.

23 Now, the prosecution is going to say, they
24 are going to emphasize and they are going to harp on the
25 fact that the corroboration has to be slight.

26 Well, what is slight in the context of a

1 particular case is up to the jury to decide.

2 What is slight in connection with a person who
3 has no mental problem, a person who has no credibility
4 problems, other than being an accomplice, that is one
5 thing. But it is something completely different as to
6 what is slight, we think, when you have a witness like
7 Linda Kasabian, because of the factors of the matters
8 that we have spoken of.

9 Now, Linda Kasabian has told us, she gives
10 these fantastic statements which defy -- defy -- reason.

11 At page 6934:

12 "Directing your attention to the time
13 that you say you were in an automobile and you
14 heard conversation concerning killing -- is that
15 correct?

16 "Yes.

17 "On the second night.

18 "Now, at that time, Mrs. Kasabian, had
19 you forgotten about the events of the previous
20 night?

21 "I am not sure. I don't remember think-
22 ing about them."

23 Now, remember, Linda Kasabian tells us that
24 she was at the Tate residence. She tells us that she knew
25 all about everything from TV. She tells us that she was
26 there and she saw it all. And she tells us she doesn't

1 remember thinking about what had occurred on the previous
2 night.

3 Is that reasonable? Can we believe, can we use
4 the testimony of a witness, whatever her thinking and motiva-
5 tion may be, who could forget the type of thing that we have
6 spent six months here talking about?

7 If she couldn't think about it, couldn't remember
8 it in the space of a few hours -- this is what she says --
9 if this is so, is that significant in determining her
10 credibility?

11 "That is, you don't remember, on the
12 second night, thinking about the events of the
13 previous night?

14 "Right.

15 "Is that correct?

16 "Yes."

6e fls.

6e-1

1 Now, there was some colloquy then at page
2 6935.

3 "Having in mind, Mrs. Kasabian -- you
4 say you left the Spahn Ranch on this night, and
5 you went to Pasadena, you say.

6 "Now, when you left the Spahn Ranch on
7 the night that you went to Pasadena, did you have
8 in mind, as you left the ranch, what had occurred
9 the previous night?

10 "Yes, I think I did."

11 On the previous page she tells us that she
12 didn't -- "That is, you don't remember on the second night
13 thinking about the events of the previous night?"

14 And she said "Yes" at page 6934.

15 At page 6935, she says, "Yes, I think I did."

16 Does this kind of testimony, is there any
17 significance to it in determining the credibility of Linda
18 Kasabian?

19 These are the questions, these are some
20 of the questions that we have to answer in connection with
21 determining her credibility.

22 Now, there is in Linda Kasabian's testimony,
23 there is in Linda Kasabian's testimony and throughout her
24 testimony, a certain, I don't know what the best way is
25 to describe it, but there is a certain what we have spoken
26 of as identification with the prosecution.

1 Now, here, we have here some physical evidence,
2 we think, which is something that we should talk about
3 briefly.

4 Here we have this People's Exhibit 70. Pardon
5 me. People's Exhibit 241. This is the thong.

6 And we have here, these are the wires that we
7 all have heard testimony about concerning the La Blancas.

8 Now, there is the fact of these exhibits, the
9 presence of these exhibits, which again, we think, we
10 should be aware and careful about in connection with the
11 rule on corroboration, because these are powerful exhibits.
12 That is, they are emotional exhibits.

13 And when we realize the damage to human beings
14 that have occurred because of these exhibits, we may,
15 all of us being flesh and blood people, we may view them
16 with a perspective that is different than what our
17 intellect tells us is the approach that we should take.

18 Because there is nothing, nothing, nothing
19 to connect these exhibits with Mr. Manson.

20 There is nothing to connect him with these
21 exhibits because there is this law of corroboration, and
22 in view of what we have spoken about up here, it is an
23 important protection, it protects all of us, all of us,
24 from inflammatory evidence.

25 Because these pieces of evidence, being the
26 evidence showing and having been connected with the

1 physical appearance of Mr. and Mrs. La Bianca, and there
2 being no question that these are the results of criminal
3 agency, there is nothing to connect them to Mr. Manson.

4 The fact of the matter is that we can't even
5 add them to our chart because there is nothing whatsoever
6 except for the thongs which are in evidence.

7 These thongs are in evidence. And when we look
8 at what the prosecution has done here to torture, to torture
9 an equation as to these thongs, we realize that Mr. Manson
10 is a person who had no connection with it.

11 Because the thongs that they have introduced
12 into evidence here are no different, are no different than
13 the thongs that we see all around us in the streets of Los
14 Angeles.

15 And this isn't just idle chatter.

16 Linda Kasabian's thong is not here.

17 This is Linda Kasabian's thong, the thong that
18 bound Mr. La Bianca, the missing Linda Kasabian thong.
19 This is what it is.

20 Now, the prosecution would have us believe
21 otherwise. But the fact of the matter is that the appearance
22 -- take those thongs when you are in the jury room and try
23 to make your eye a microscope and look at the cross section,
24 look at the cross section, and see whether or not, whether
25 or not, the prosecution could have run a biopsy, so to speak,
26 a microscopic study.

And maybe they did.

7-1

1 So, when we are deciding this case, this
2 particular exhibit, this particular exhibit, No. 241, is
3 an exhibit which has been -- because the Coroner has to
4 remove the exhibit from the body in order to perform what-
5 ever work he has to perform, this exhibit is the exhibit,
6 People's Exhibit 9; this was there.

7 And when we are discussing this in the jury
8 room, thinking of the size of Mr. La Bianca and Mrs. La
9 Bianca being present in the house unbound, no part of her
10 is bound.

11 Could Mr. Manson have done this?

12 And again, there is not a reasonable inference.
13 The law of circumstantial evidence says if there is a
14 reasonable inference, one direction, and another reasonable
15 inference the other direction, we must take that which we
16 declare to be innocence.

17 But in this case it's not even reasonable.

18 The prosecution -- the prosecution reaching for
19 a result that they want in this case is epitomized in these
20 two exhibits, People's 241 and People's 9.

21 Come to think about these wires, Mr. Watson
22 is supposed to be a man who operates dune buggies, works
23 on dune buggies.

24 You might think about the cutting of this wire.
25 Is that a professional job? Is that done by somebody --
26 People's No. 239 -- is that done by somebody who works

1 around wires, who works around dune buggies, works around
2 generators and all of the wires that come off of the
3 electrical system that connects the electrical system of
4 an automobile to other parts of the automobile, with the
5 lights, and whatever?

6 This is the factor to be considered.

7 This is Exhibit 228.

8 Was this done by someone -- was this done by
9 someone who is sophisticated in connection with automobiles
10 and the fixings of automobiles and the fixings of electrical
11 systems?

12 We know from the prosecution's evidence, from
13 people who are not accomplices, that Mr. Manson is a person
14 who is a talker. Evidently he is not very mechanically
15 minded. He talks a lot..

16 Now, we get into a -- I suppose all of us at
17 some time or other, all of us at some time or other have
18 some kind of a moral obligation in connection with Vietnam.

19 Now, in what we are speaking of now, we do not--
20 we do not accept -- we do not accept the statement that Mr.
21 Flynn supposedly said that Mr. Manson said.

22 First of all, first of all we feel that that
23 tape recording, purported tape recording purporting --
24 purporting to substantiate Mr. Flynn -- the whole subject
25 matter surrounding that -- the whole atmosphere surround-
26 ing that speaks of fraud, over-reaching.

1 It speaks of an attempt to create an artificial
2 -- an artificial rehabilitation of a witness because we
3 must remember we are dealing -- we are dealing with people
4 who are sophisticated. They know the law.

5 I am speaking now of law enforcement and the
6 prosecutors.

7 It is like the case of Mary Eugenia Serrat.
8 The conspiracy, the guilt is decided in advance, and then
9 we have to fill in the gaps.

10 And so in connection with this purported tape
11 recording that was presented here, the context of these
12 proceedings, we can certainly assume that this is a
13 staged type of authentication.

14 But over and above that, over and above that,
15 because we don't have any opportunity to speak to you
16 again, after the prosecution speaks, I suppose all of us
17 have some kind of a moral feeling about Vietnam, whatever
18 it may be, and the prosecution is going to say, "Well,
19 the defense spoke of this and therefore -- therefore, well"--

20 I'm sure that we don't have to get into
21 specifics of it, but the general tenor is going to be,
22 "Well, why will we speak about -- why will we speak about
23 this statement if we don't believe it happened?"

24 Well, because in these discussions we feel that
25 we should discuss matters, and we can discuss matters without
26 the necessity of authenticating or believing or saying that

1 something happened.

2 But just for the sake of argument, kind of
3 discussing, we owe it to you after six months of incarceration
4 tion that the jury has been in, I think we have the duty to
5 speak candidly.

6 It is a very unique group of people that will
7 devote themselves to this kind of work for this kind of
8 time and for this kind of pay.

9 So I think that we have an obligation to speak,
10 and the fact is, and I'm sure we all have the moral obligation
11 to talk about the Vietnam War.

12 And again, this purported statement as to Mr.
13 Manson, this purported statement about responsible for
14 the killings, kind of thing.

15 Let's look -- let's look at the tape recording
16 itself.

17 On page 12,679, we think --

18 "VOICE: All right now, did you ever hear him
19 say anything about the Tate killing or anything like
20 that?"

21 That is the voice on the tape, and of course
22 this is not -- this is not a tape of Mr. Manson, we all
23 agree, this is the tape supposedly of Mr. Flynn.

24 And again, Mr. Flynn, although we don't -- we
25 don't feel that Mr. Flynn, for whatever his reasons may
26 be, he is not the type of witness that Mr. Jakobson was.

1 Mr. Flynn was right on the scene. I mean, Mr.
2 Flynn during this period of time was right there at the
3 ranch, if there was any kind of a conspiracy, if we have
4 spoken about how he went to jail and he attributed that
5 to Mr. Manson and all of that, but then, in connection with
6 this question:

7 "All right, now, did you ever hear him
8 say anything about the Tate killing or anything like
9 that?

10 "Well, sort of, you know. He never
11 mentioned anything to me about it, you see, but I
12 know at one time I came in the kitchen, you know,
13 I was doing some heavy work outside."

14 And we heard all of what was said on this tape,
15 and the Court will allow us to listen to it, actually hear
16 the voices.

17 But the thing that is significant here is the
18 time.

19 Page 12,680:

20 "Well, I can't recall too well whether
21 it was before or after the raid, you know."

22 This is what the tape says.

23 Now, whatever, this statement at this time that
24 this tape is made speaks of -- he doesn't know whether it
25 is before or after the raid.

26 Now, this tape was purportedly made in December

1 of 1969, which was prior to the time that Mr. Manson,
2 that Mr. Manson -- it was prior to the time that Mr. Manson
3 and everyone came to this court, and prior to the time that
4 the court proceedings started, and prior to the time
5 obviously that Juan Flynn testified in this courtroom.
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1 Now, Juan Flynn at the time that he testified
2 in the courtroom concerning this, and when he was here
3 he stated, he made this statement occur very close to the
4 time of the incidents.

5 In fact, he makes the statements, as we have
6 spoken of them, he makes the statements a couple of days,
7 which would be before the 16th, because if these events
8 happened on the 8th through the 10th, when he is in court
9 testifying of talks about a couple of days afterwards
10 that he heard this.

11 When he says what he purportedly said on the
12 tape, he says he doesn't know whether it's before or after
13 the raid.

14 So after the raid would be after June, or
15 after August 16th, which would be -- which would be of
16 course a lot more than just a couple or a few days after
17 the date involved.

18 Now, again, looking at the reasonableness, and
19 forgetting -- forgetting what we allege, what we state is
20 synthetic evidence because -- because of all the matters
21 surrounding my being called to come down there and be Mr.
22 Flynn's attorney.

23 MR. BUGLIOSI: That is a misstatement, your Honor,
24 there is no evidence on that.

25 MR. KANAREK: It is a fair inference, your Honor.

26 THE COURT: The objection is sustained. The jury

1 is admonished to disregard that statement.

2 MR. KANAREK: The inference, we suggest, can be made,
3 the inference can be made certainly that in connection with
4 Mr. Flynn, Mr. Flynn said that he wanted to get into jail.
5 Then after he wants to get into jail, he gets out of jail.

6 And Mr. Flynn did not ask to remain in jail.

7 These are circumstances that we can consider in
8 this case.

9 Supposedly he wanted to go to jail. We think --
10 we think that this wanting to go to jail was synthetic,
11 synthetic; that it was calculated to attempt somehow or
12 other to get me in connection with Mr. Flynn.

13 That is a circumstance. We can consider that or
14 we can reject that.

15 The fact of the matter is that the prosecution
16 in connection with -- for instance -- having Mr. Flynn,
17 asking Mr. Flynn certain questions about my telling him not
18 to say anything.

19 Well, in connection -- not to discuss it and
20 so forth -- this is what lawyers do in connection with just--
21 this is part and parcel of legal advice that lawyers give
22 people throughout the Western world every day of the week.

23 The prosecution tried to get the implication,
24 but they did not pursue it, if we will remember.

25 The prosecution let it drop, let it die after
26 the statement was made and Mr. Kanarek told him not to say

1 anything.

2 But the prosecution did not pursue it as to what
3 case Mr. Kanarek told him not to say anything.

4 The prosecution did not pursue it as to whether
5 Mr. Kanarek told him not to say anything in connection with
6 the Tate-La Bianca case or whether Mr. Kanarek told him not
7 to say anything in connection with the matter he was purportedly
8 in jail for.

9 And if there was any kind of impropriety, it is
10 a cinch that it would have been laid out here in spades.

11 And so we can reasonably infer that this is
12 especially, in view of the intensity of the prosecution and
13 law enforcement in these proceedings, this was a matter
14 which was laid out here. It was the kind of situation which
15 was created, and the architects of it were law enforcement
16 and the prosecution.

17 Mr. Flynn asks to go to jail, and without any
18 reluctance Mr. Flynn leaves jail.

19 So his fear, his great fear is a synthetic fear.
20 Those are the circumstances. Those are much more important,
21 those circumstances, we suggest, are much more important
22 than the words uttered.

23 The same way that the circumstances are much
24 more important than the words that were purportedly uttered
25 on this tape.

26 First of all, the Court is going to instruct

1 us that an oral admission or a purported oral confession must
2 be viewed with caution.

3 This is what the Court is going to instruct us.

4 And there is a real reason for it because of
5 this kind -- this kind of charade, this kind of practice
6 that the District Attorney and the prosecution have done in
7 this case in connection with Mr. Flynn, that purported
8 admission and confessions must be viewed with caution.

9 And of course when people speak about killings,
10 in the context of our life today, we are responsible for
11 those killings or these killings, and all of that, and the
12 inability of a person, the inability of a person to be a
13 phonograph, the inability of the other person to be a tape
14 recorder, because this is not a tape recorder of Mr. Manson.
15 This is a purported tape recording of Mr. Flynn.

16 And the repetition, and so forth, when Mr. Flynn
17 has this antagonism towards Mr. Manson, the fact of the matter
18 is that what is said here, what is purported to be said here
19 are words that we have to look at.

20 We are not suggesting that we not consider it,
21 but we say that after considering it, after looking at all
22 of the circumstances and all of the motivations of the
23 prosecution in this case, all of what the prosecution has
24 done in terms of, for instance, Dianne Lake, we only have
25 the iceberg, the small iceberg out of the water that we have
26 spoken of, whether there was a recording about the crime of

1 the century, the gas chamber and so forth.

2 These are the kinds of circumstances that we
3 must consider exist in connection with these purported
4 statements that attributed to Mr. Manson.

5 The fact of the matter is -- the fact of the
6 matter is that Mr. Flynn --

7 Mr. Flynn, if this had occurred, if this had
8 occurred to anyone of us, what would we have done in the
9 circumstances? What would we have done if we had heard these
10 words, even though Mr. Flynn was not Mr. Jakobson, like we
11 said, he may not have all of the attributes of Mr. Jakobson
12 or the attributes of Mr. Jakobson.

13 The fact remains that if this kind of statement
14 had been made by Mr. Manson, Mr. Flynn would have done
15 something about it long before, long before the discussion
16 that he supposedly had with Officer Steuber.

17 And we also must recall Mr. Flynn's motivation,
18 Mr. Flynn's motivation, his trying to get Mr. Manson.

7b fls.

7b- 1

1 For instance, when he said from the witness
2 stand here, he says that he did not tell it to the police
3 officers, he says, because he wanted to bring it here,
4 right here, meaning that he wanted to -- that he was
5 hardly Dr. Noguchi or Dr. Katsuyama, as far as being an
6 objective witness was concerned.

7 He wanted to bring it right here to the
8 courtroom, he says.

9 And the fact of the matter is that Mr. Flynn
10 is motivated in connection with what he says in this
11 courtroom.

12 Can we believe what is said here? Was there
13 any reason for Mr. Flynn to be motivated when he uttered
14 these statements that he supposedly uttered to Mr. Steuber.

15 These are some of the factors that we have to
16 consider. We have to consider the fact that he was
17 getting paid money.

18 He was getting paid by these literary people.
19 All of these go to determining whether or not -- whether
20 or not these purported statements have any significance.

21 Then on top of it all, and it makes an
22 interesting problem in logic, in applying the law to the
23 fact, is this a confession?

24 When somebody says, as we have spoken of, when
25 somebody says they are responsible for killing, is it a
26 confession?

1 Is that a confession? Because in order to be
2 a confession it has to stand on its own feet. It must be
3 a statement that where the declarant, the person saying it,
4 the defendant, if you will, makes statements that include
5 all of the aspects of the crime.

6 There must be premeditation. There must be --
7 to be first degree murder, we all agree it has to be
8 premeditated.

9 There must be ascertained people.

10 There must be malice aforethought even though
11 the prosecution tells us aforethought is an ancient word,
12 that it is an ancient word, and we should not use it any
13 more.

14 But the Court is going to make it part of our
15 instructions.

16 There has to be malice aforethought.

17 And so certainly a statement that "I am responsi-
18 ble for the killings" just as a nice, logical problem,
19 segregate that statement, take it away from this case,
20 just look at it.

21 Because a confession -- we know what a con-
22 fession is. A confession is where somebody says that
23 "I did this and I did this and I did this and I did that
24 and I thought about it and then I went out and I bought the
25 gun and I went and did this, that and the other thing and
26 I went over there and I did this, and I did that."

1 It gives the details; that is a confession.

2 Now, I am sure the prosecution is going to
3 argue that this is a confession.

4 But we suggest as a nice little problem in
5 logic, after applying the law to the evidence, that this
6 is not a confession, even taking it for the purpose of
7 argument at its face value.

8 It is significant in this tape, I read this
9 over, and I don't see anything in this about the venereal
10 disease, for instance. Well, maybe that is not an important
11 point.

12 Mr. Flynn would have us believe the venereal
13 disease aspect of things of quite important to him.

14 Page 12,681:

15 "VOICE: He wanted you to go down there to
16 the creek and make love to the girls there, okay?

17 "VOICE: Yes."

18 No statement about the venereal disease that
19 he was afraid he was going to get, and he won't do it and
20 all of that.

21 What does that mean? We don't know. This is
22 a factor to be considered.

23 Mr. Flynn in this courtroom evidently made
24 statements which are statements that indicate supposedly
25 his state of mind in connection with the people at the
26 Spahn Ranch.

1 Is that a factor that is significant?

2 People that are part and parcel -- officers
3 that were with Officer Steuber and people that have taken--
4 there are people who have taken a place, and taken the
5 witness stand in this case, Brooks Poston, Paul Watkins.

6 They were, again, they were people who could
7 have been brought to this courtroom to authenticate what-
8 ever Mr. Flynn had stated, whatever Mr. Flynn had stated
9 in the presence of Mr. Manson.

10 May we suggest this, why would this statement
11 be made once by Mr. Manson? Is there some kind of a
12 hidden activity there?

13 These people were as close as could be. These
14 people were as close as people could be, out there at the
15 Spahn Ranch, the area was small.

16 So the question that we have to decide is,
17 looking at all of the circumstances, looking at the law,
18 looking at what the prosecution has done in connection with
19 Mr. Flynn and what they have done in connection with me
20 personally as to Mr. Flynn, can we say that these circum-
21 stances are such that there is any veracity in what is
22 supposed to be the statements of Mr. Manson?

23 Now, you will remember undoubtedly that during
24 the course of this trial the Court -- we have spoken of
25 previously -- the Court has made, and we repeat it by way
26 of emphasis -- the Court has made admonitions that this

1 language be used only against Mr. Manson; that this is
2 supposedly circumstantial evidence, the prosecution is going
3 to argue circumstantial evidence of a conspiracy.

4 Now, we feel that with the volume of words that
5 the prosecution has put in in connection with Helter Skelter
6 and all of that, the prosecution will probably, when they
7 speak with you, argue concerning this circumstantial evidence
8 of the conspiracy.

9 Now, they may go into the transcript and show
10 certain points.

11 Again we draw what we think is an analogy in
12 connection with what happened about a century ago in
13 connection with the death of Abraham Lincoln.

14 That lady -- the circumstantial evidence was her
15 feelings towards the South.

16 Here we have Mr. Manson's -- Mr. Manson's feelings
17 towards Helter Skelter, towards the Beatles and all of that,
18 that is supposedly the circumstances that prove that there
19 was a conspiracy.

20 Now, this is going to be a question that I am
21 sure the prosecution is going to advocate, and it is a
22 question that we have to think about.

8 fls.

55-1
1 And what we suggest is that focus be made upon
2 criminal intent. Because the Court is going to give us
3 several instructions on criminal intent.

4 And the instructions on criminal intent are going
5 to say that there must be a concurrence of act and intent.

6 In other words, you can't bootstrap, you can't
7 bootstrap intent.

8 You can't go back and turn something into criminal
9 intent if there was no criminal intent. They both must concur
10 at the same time.

11 For instance, if someone goes into a store, into
12 a supermarket, and let's say that the person puts in his
13 pocket a package of gum. And let's say that we are convinced,
14 as the triers of fact, as 12 judges -- 16 judges -- 17 judges
15 -- let's say that we are convinced as the triers of fact
16 that when the person took this gum there was no criminal
17 intent, it was done inadvertently. This is very, very
18 possible. Without thinking about stealing it.

19 Now, then, then the person leaves the supermarket
20 and doesn't pay, doesn't pay for the gum. Didn't know he had
21 it in his pocket.

22 At some time later on this person realizes he has
23 got the gum in his pocket.

24 Now, that gum doesn't belong to him, but now he has
25 the knowledge and the intent. And at that point, maybe
26 out in the parking lot or driving down Crenshaw Boulevard, or

1 wherever it may be, he then realizes he has got the gun,

2 At that point, when he exercises the dominion
3 and control over the gun, with knowledge of its presence,
4 at that instant he has committed the theft. Because it is
5 the personal property of another and he has an obligation
6 not to take the personal property of another.

7 But there was no criminal intent when he did the
8 act back in the supermarket.

9 Now, by the same token here, there was no criminal
10 intent as to what Mr. Manson stated in 1967, 1968, 1969,
11 or at any time, in connection with Helter Skelter or any of
12 that. There is no showing of any criminal intent.

13 And the fact of the matter is that the prosecution
14 well knows that there is no criminal intent in the statements
15 that Mr. Manson has made.

16 If there was going to be any kind of criminal
17 conspiracy in connection with those words uttered, we would
18 have Brooks Posten, Paul Watkins, Charles Manson, Juan
19 Flynn, we would have those people at the same time talking
20 about it. That is what we would have if there was a
21 conspiracy.

22 But you don't have a conspiracy unless you have
23 people discussing the criminal objective in their mind.
24 And the object of this conspiracy is what is set out in the
25 indictment.

26 The object of this conspiracy is murder. This is

1 what the prosecution has alleged.

2 The prosecution hasn't alleged in any of their
3 overt acts -- and those will be in the jury room with you;
4 all of that will be in the jury room -- there is no allega-
5 tion -- you know what are the overt acts that they allege:
6 somebody walking in somewhere, like the Tate residence or the
7 La Biance residence. Those are the overt acts they are
8 relying on.

9 If there were any overt acts in connection with
10 Helter Skelter, why don't they allege that panel? Why
11 don't they allege some language involving Helter Skelter or
12 the Beatles, or that Mr. Manson bought the Beatles record
13 with the idea of Helter Skelter, starting a race war?

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1 They don't allege the overt acts that have any--
2 thing to do with what words they have uttered in this court-
3 room.

4 The overt acts are trivia.

5 The overt acts involve matters that have nothing
6 remotely connected with Helter Skelter or with anything
7 that has to do with matters that the prosecution has dwelt
8 on at great length.

9 There is nothing in this record to show that when
10 Mr. Manson discussed his philosophy of life, there is nothing
11 to show any criminal intent on the part of Mr. Manson.

12 When Mr. Manson discussed how children should be
13 raised, there is nothing there whatsoever to show any
14 criminal intent on the part of Mr. Manson.

15 When Mr. Manson discussed about girls being on the
16 streets, and this and that, as far as their -- whatever
17 their sexual activities may have been, there is no showing
18 of any criminal intent on the part of Mr. Manson.

19 And so, what we have to do is, in analyzing this
20 evidence, try to find some criminal intent.

21 And when you do it, when you take these tran-
22 scripts home and go through them and try to find -- we take
23 them home, because we know that Mr. Bugliosi, we know the
24 prosecution, in their final summation, is going to bring up
25 points involving this case, hopefully, so we try to find out
26 what is down there that they might conceivably argue, because

1 during the opening argument, as we have alluded to before,
2 the prosecution did not mention anything about the law, did
3 not apply any of the evidence to the law, so what we are
4 trying to do, we have to play -- we have to do a little
5 guessing here.

6 We have tried to guess. We have tried to go
7 through the transcript with a microscope and a fine-tooth
8 comb, to try to find any criminal intent on the part of
9 Mr. Manson in connection with the utterances that are
10 attributed to him, and it is not -- it is not -- there.
11 It is just not there.

12 We wouldn't be saying it now, because when we
13 finish, then we would no longer have the power to address
14 you, and if there were any criminal intent there, we would
15 try to lay it out on the table, because the only way that
16 we can come to a proper resolution of this is by discussing
17 it backwards and forwards. And we suggest that it just isn't
18 there.

19 We have gone over Brooks Posten, we have gone
20 over Paul Watkins. Now, I know this will probably relieve
21 us, but we are not going to read in detail from Mr. Posten
22 and Mr. Watkins' testimony, but we have been through it, and
23 if we are wrong, if we are wrong, I am sure the prosecution
24 will inform us in their final argument to you that we are
25 wrong. But we could find nothing.

26 It was the same kind, it was the same kind of

1 language that Mr. Jakobson told us about, as far as Brooks
2 Posten and Mr. Vathins were concerned.

3 THE COURT: Will counsel approach the bench, please?

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

7 THE COURT: Are you about to conclude your argument,
8 Mr. Kanarek?

9 MR. KANAREK: No, your Honor.

10 THE COURT: You will conclude today.

11 MR. KANAREK: Pardon?

12 THE COURT: I say, you will conclude today, in
13 accordance with your representation to the Court yesterday?

14 MR. KANAREK: But, your Honor --

15 THE COURT: No buts about it.

16 MR. KANAREK: I understand the Court's order, but I
17 want to make the record.

18 THE COURT: There is no record to be made.

19 MR. KANAREK: Your Honor, we believe there is a record
20 to be made.

21 It is our belief and we do allege that it is a
22 violation of due process, in this sense of the word --

23 THE COURT: You represented to the Court yesterday
24 that you could not finish yesterday, that you would complete
25 your argument today.

26 MR. KANAREK: I know.

1 THE COURT: And in accordance with your representation,
2 I granted you the extra day.

3 Now, I am telling you that I expect you to con-
4 clude your argument today.

5 MR. KANAREK: Right; but --

6 THE COURT: Three days ago you said you would
7 conclude it in three days.

8 MR. KANAREK: I understand.

9 I am saying that in our position in the context
10 of this --

11 THE COURT: Make it brief, because we are about to
12 recess for lunch.

13 MR. KANAREK: It is a violation of due process, of
14 the 14th Amendment, and equal protection for the Court to
15 impose the order that the Court has in this regard. And we
16 are, of course, following the Court's order, we are doing
17 it because we do not wish to be cut off --

18 THE COURT: You have made your point.

19 We are going to recess at this time.

20 MR. KANAREK: Thank you, your Honor.

21 (Whereupon, all counsel return to their
22 respective places at counsel table and the following
23 proceedings occur in open court within the presence and
24 hearing of the jury.)

25 THE COURT: We will recess at this time, ladies and
26 gentlemen.

1 Do not converse with anyone or form or express
2 any opinion regarding the case until it is finally sub-
3 mitted to you.

4 The Court will recess until 1:45.

5 (Whereupon, at 12:00 p.m. the Court was in
6 recess.)
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LOS ANGELES, CALIFORNIA, FRIDAY, JANUARY 8, 1971

1:55 P.M.

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THE COURT: All counsel and jurors are present.

You may continue, Mr. Kanarek.

MR. KANAREK: Thank you, your Honor.

Mr. Fitzgerald, when he spoke to us, told us what an accomplice is but it is such an important part of this case that probably it bears repetition.

An accomplice is one who is liable to be prosecuted for the identical offense charged against the defendant on trial.

Linda Kasabian was a defendant in this very case.

To be an accomplice the person must have knowingly and with criminal intent aided, promoted, encouraged or instigated by act or advice or by act and advice the commission of such offense.

Must have knowingly and with criminal intent aided, promoted, encouraged or instigated.

And so the Court is telling us that those words are equated to Linda Kasabian in this case.

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

MR. KANAREK: Well, your Honor, this is CALJIC.

THE COURT: Just a minute, if you want to discuss the matter come to the bench.

10
1 (Whereupon, all counsel approach the bench and
2 the following proceedings occur at the bench outside of
3 the hearing of the jury:)

4 MR. BUGLIOSI: Your Honor, you indicated back in cham-
5 bers that you weren't going to tell the jury or instruct
6 them on the law of accomplice.

7 He certainly doesn't have that right, if you
8 are not going to do it.

9 THE COURT: You mean as to the definition?

10 MR. BUGLIOSI: Yes.

11 Because I think the attorneys, under the law,
12 with the Court's indulgence, can discuss the law that the
13 Court is going to give and try to apply it to the facts,
14 as long as they don't misstate the law.

15 But here he is giving law that the Court is not
16 going to give.

17 What he is trying to do --

18 THE COURT: I know what he is trying to do. He is
19 trying to indoctrinate the jury as to the basis or the reason
20 she was found to be an accomplice when, as a matter of
21 fact, it could have been for one or more than one reason.

22 I know exactly what he is trying to do.

23 MR. BUGLIOSI: Yes, right. And it is extremely harm-
24 ful to the prosecution.

25 THE COURT: The only reason that the jury is informed
26 that she is an accomplice as a matter of law is on the

1 question of corroboration.

2 The reason that the Court arrived at that
3 conclusion is immaterial so far as the jury is concerned.
4 That is, the reason that the Court arrived at the
5 conclusion that she is an accomplice as a matter of law.
6 That is a finding that the Court makes, and that brings
7 into play the corroboration rule automatically without any
8 finding by the jury as to whether or not she is an accom-
9 plice.

10 But for you to go behind that and try to tell the
11 jury what reason the Court based its conclusion on I
12 don't think is proper.

13 MR. KUNAREK: I am not saying that.

14 If I may say, this is by way of argument.

15 This is not different than any other argument.

16 The word "accomplice" is not sitting there in a
17 vacuum. It is a word which we have a right to define, just
18 like we have a right to define "house" or "courthouse"
19 or "man" or "dog" or anything.

20 THE COURT: But you went beyond that. You said --
21 I forget exactly what the words were -- but you were pur-
22 porting to tell the jury my thought process in arriving at
23 that conclusion.

24 MR. KUNAREK: That is not so.

25 MR. BUGLIOSI: Right.

26 I was looking at the jury, and they were taking

1 some very heavy notes on that.

2 In fact, he was telling the jury that the Court
3 believes that Linda lied on the witness stand.

4 MR. KANAREK: No.

5 MR. BUGLIOSI: By implication he is telling them that.

6 THE COURT: What are you trying to do, Mr. Kanarek?
7 What are you trying to do? Let's get to the point.

8 MR. KANAREK: I am trying to make argument without
9 being interrupted.

10 I might say, it is a violation of our right to a
11 fair trial, equal protection of the law.

12 THE COURT: Mr. Bugliosi has a right to make an
13 objection, just as you made objection to his argument.

14 MR. KANAREK: Mr. Fitzgerald read this exact definition
15 when he was arguing. It is a violation of equal protection
16 when I am not --

17 THE COURT: He didn't say what you said.

18 MR. KANAREK: He said --

19 THE COURT: Don't tell me what he said. And I know
20 what you said.

21 You have gone beyond what he said considerably.

22 MR. KANAREK: Mr. Fitzgerald is here, your Honor, you
23 can ask him.

24 My recollection is that he used the same jury
25 instruction.

26 MR. BUGLIOSI: Your Honor, this matter is so serious

that --

1 THE COURT: Incidentally, there is an error in your
2 declaration.

3 MR. FITZGERALD: What is the error?

4 THE COURT: The error is obvious.

5 MR. FITZGERALD: I talked to the reporter and the
6 reporter informs me of the same thing, but I learned that
7 after the document was executed.

8 Furthermore, it wasn't brought to my attention
9 that it was incorrect by anybody, including the Court.

10 THE COURT: Are you telling me, Mr. Fitzgerald,
11 that you really believe that I said that, the statement in
12 your declaration?

13 MR. FITZGERALD: Yes.

14 THE COURT: I don't believe that.

15 MR. FITZGERALD: Well, when I quote to you what you
16 said yesterday to Mr. Kanarek, I can make it abundantly
17 clear that you told counsel that they could not argue the
18 law.

19 MR. BUGLIOSI: You have to look at it in context,
20 because they were misstating the law.

21 MR. FITZGERALD: But that is irrelevant, actually.

22 The reason that you know it is wrong is that I
23 checked with the court reporter.

24 THE COURT: The reason that I know it's wrong?
25 Don't be ridiculous.
26

1 MR. FITZGERALD: I told the court reporter, and the
2 court reporter went in and told you.

3 THE COURT: Mr. Fitzgerald, your statement is absurd.
4 I know what I said. I don't have to check with the court
5 reporter to know what I said.

6 As a matter of fact, I have said to the contrary
7 a dozen times during the course of the arguments, and you
8 know it.

11
1 MR. FITZGERALD: I don't know.

2 THE COURT: Then you tell me you think I really said
3 that? I just don't believe it, Mr. Fitzgerald.

4 MR. BUGLIOSI: Anyway this matter is so serious,
5 it goes to the very heart of Linda Kasabian's credibility.

6 He is implying that you reached the determination
7 that Linda lied on that witness stand and I would ask the
8 Court to instruct the jury to disregard his entire last
9 statements about this.

10 Very, very serious, I saw five or six jurors
11 write down what he was saying.

12 THE COURT: I don't want this to go on all afternoon,
13 Mr. Kanarek. You are making what you know to be improper
14 statements in front of this jury.

15 MR. KANAREK: This is not so, your Honor.

16 THE COURT: All right, I am going to sustain the
17 objection. You know what instructions I am going to give
18 with regard to accomplices and corroboration.

19 You can relate those instructions to the evidence
20 in the case as I have told you you could on a number of
21 occasions, and I have told all counsel that a number of
22 times during the course of the argument. There cannot be
23 any misunderstanding as to what I have said.

24 I don't think it is proper for an attorney to
25 attempt to paraphrase an instruction when he does so in-
26 accurately and incompletely.

1 I don't think what you are trying to do now,
2 in effect implying to the jury that I made a finding that
3 she is not credible, or I made a finding of anything but the
4 bare fact she is an accomplice as a matter of law.

5 Those findings, if they are to be made, are to
6 be made by the jury, the finding that you are implying that
7 I made.

8 MR. BUGLIOSI: Will the Court please instruct the
9 jury then to disregard his remarks about Linda?

10 THE COURT: All right, well -- read what was said.

11 (Whereupon, the reporter read the record.)

12 MR. BUGLIOSI: He is telling the jury --

13 THE COURT: That is not a necessarily correct
14 definition of an accomplice. It is incomplete in the first
15 place; it is misleading.

16 In any event, Mr. Kanarek, what is it you are
17 trying to get at? They have been told that Linda Kasabian
18 is an accomplice as a matter of law. That is for the purpose
19 of corroboration.

20 There is no point -- what is the point of trying
21 to define what an accomplice is?

22 MR. KANAREK: Well, your Honor --

23 THE COURT: The instructions that they were to be
24 given fully cover the points they are required to know.

25 MR. KANAREK: If I may answer in response to that.

26 on the basis of equal protection of the law

1 under the Fourteenth Amendment, Mr. Bugliosi has stated and
2 I believe it is on the record that as far as final argu-
3 ments go your mind should have the wings of a bird, and you
4 should be able to --

5 THE COURT: Oh, Mr. Kanarek --

6 MR. KANAREK: Yes, and your Honor is being very
7 technical.

8 THE COURT: That is the kind of argument I would
9 expect from a first-year law student. Let's get to the point.

10 What is it you are trying to say?

11 MR. KANAREK: What I am saying is, your Honor, is
12 interfering with our final argument with these very point-
13 less objections by Mr. Bugliosi.

14 Your Honor's sustaining them is a violation of
15 equal protection.

16 THE COURT: Apparently you are not going to answer my
17 question. I will sustain the objection and we will go on
18 to something else.

19 What he said is so ambiguous, I don't know what
20 it means.

21 MR. BUGLIOSI: He says the Court is equating this to
22 Linda Kasabian's testimony.

23 THE COURT: No --

24 MR. BUGLIOSI: That is the language she used, that the
25 Court is equating this language to Linda Kasabian's
26 testimony.

1 THE COURT: Read that part.

2 (Whereupon, the reporter again reads the
3 record.)

4 THE COURT: What words is he referring to?

5 MR. BUGLIOSI: "With knowledge and criminal intent"
6 and all that.

7 He read the instruction on accomplice, which the
8 Court is not even going to give, and then he goes on to
9 say that the Court is telling us these words apply to
10 Linda Kasabian's testimony, meaning that the Court has made
11 a determination that Linda had all of these things, know-
12 ledge, criminal intent, even though the prosecution has said
13 she did not have knowledge, for instance, on the first night,
14 that the Court does not believe the prosecution, that the
15 Court has found her to be an accomplice and, in effect, the
16 Court believed that Linda lied on the witness stand.

17 THE COURT: How am I going to admonish them?

18 MR. BUGLIOSI: That the Court just admonish the jury
19 to disregard the last remarks of Mr. Kanarek.

20 MR. KANAREK: I object to that.

21 THE COURT: You want to continue your argument,
22 Mr. Kanarek; I'm going to sustain the objection. I am going
23 to admonish the jury to disregard your last remarks.

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

26 THE COURT: The objection is sustained. The jury is

1 admonished to disregard Mr. Kanarek's last remarks, to
2 which the objection was interposed.

3 You may continue, Mr. Kanarek.

4 MR. KANAREK: May we state this, ladies and gentlemen
5 of the jury, we have been in this courtroom and we heard
6 what is going on.

7 We represent to you that Mr. Fitzgerald read those
8 words to you, the same words were read to you by Mr.
9 Fitzgerald, and there was no objection and there was nothing
10 that we just had --

11 THE COURT: That is incorrect, Mr. Kanarek.

12 MR. KANAREK: Mr. Fitzgerald just read --

13 THE COURT: That statement is not so. Let's get on,
14 sir.

15 MR. KANAREK: May I say this, ladies and gentlemen,
16 once again the jurors decide the facts in this case, decide
17 the case.

18 The jurors decide the case. We say if we are
19 incorrect, and those of us, then, those of us on the jury
20 decide it.

21 We say that Mr. Fitzgerald enunciated what I
22 have read off of this paper.

23 THE COURT: Mr. Kanarek, perhaps I misunderstand you.
24 So the jury will not be confused, Mr. Fitzgerald did not
25 state to the jury that portion as to which the objection was
26 sustained.

1 MR. KANAREK: I am saying, your Honor, that what I
2 read off of this paper Mr. Fitzgerald -- and Mr. Fitzgerald
3 confirmed it to me -- he just told me he did.

4 THE COURT: The jury will take my remarks for what
5 they are. I don't know what Mr. Kanarek is saying, but if
6 it is contrary to that, you will disregard it.

7 MR. KANAREK: In any event, Mr. Fitzgerald reconfirmed
8 it.

9 In any event, ladies and gentlemen --

10 THE COURT: It is immaterial whether Mr. Fitzgerald
11 confirmed it, reconfirmed it, or did not confirm it at all,
12 Mr. Kanarek.

13 Let's not belabor the point. I sustained an
14 objection to certain remarks. That objection was a good
15 objection and the jury was admonished to disregard the
16 remark as to which the objection was sustained.

17 Now proceed with your argument.

18 MR. KANAREK: We all remember, I'm sure, this picture,
19 but I don't believe -- I don't believe those of us on the
20 jury have seen these pictures yet, although they have been
21 alluded to.

22 These are pictures of the saloon and what is
23 called the Rock City Cafe, concerning which there was
24 testimony.

25 And we think that here is a very, very poignant
26 example of why it is desirable to consider the evidence,

1 because this panel that has helter skelter on it, this
2 panel is in the place, according to the prosecution testi-
3 mony, where Mr. Flynn lived, in Volume 114, at Page 12,826,
4 actually it begins earlier.

5 And this is People's 261 for identification, and
6 there is interrogation made at Page 12,824, and I believe
7 this interrogation is of Officer Gutierrez, and at Page
8 12,824:

9 "Q Do you know if anyone was living
10 in the trailer at the time that you went out there
11 on November the 25th, 1969?

12 "A Yes, sir, the person that I spoke
13 to.

14 "Q Who is that?

15 "A Mr. Juan Flynn.

16 "Q Was he living there with anyone
17 else?

18 "A I don't know, sir. I didn't ask
19 him.

20 "Q I didn't see anybody in the trailer."

21 And then:

22 "Q I show you People's 261 for
23 identification. Do you know what that photograph
24 depicts?

25 "A Yes, sir.

26 "Q What is that?

1 "A This photograph depicts a
2 picture of a cabinet door with some various
3 writing.

4 "Q Where was this cabinet door?

5 "A This cabinet door was inside
6 that trailer.

7 "Q The trailer that you just mentioned?

8 "A That I just mentioned.

9 "And it was in the kitchen. It was a
10 cabinet door.

11 "Q You saw this writing here that is
12 on this photograph, you saw the writing on the
13 cabinet door?

14 "A Yes, sir.

15 "Q Inside the trailer?

16 "A Yes, sir.

17 "Q On November 25, 1969.

18 "A That is correct, sir.

19 "Q You didn't take this photograph?

20 "A No, sir, I did not.

21 "Q Does this photograph appear to
22 be an accurate and fair representation of the
23 way the cabinet door looked on November the
24 25th, 1969?

25 "A Identical, sir."

12-1

1 So, we have Juan Flynn, having the heart of the
2 People's case right in his own living quarters.

3 The People make much of this Helter Skelter.
4 They have brought this issue into the case. They have
5 brought Juan Flynn into the case. And so, for whatever
6 that may be worth, for whatever that may be worth, this
7 panel is where Juan Flynn is living. And on these two days,
8 the ^{two} /days that we are speaking about, there is nothing from
9 Juan Flynn concerning Helter Skelter or anything that is
10 supposed to go to the heart of the conspiracy.

11 We are in a court of law where we have jury
12 instructions that denominate the 8th through the 10th,
13 as they do, as we will have in the jury room, and for what
14 it may be worth, if you look at this door, the Helter
15 Skelter door, and if you look at the Long Horn Saloon and
16 the Rock City Cafe, not only was there nothing about this
17 that was covert, nothing about it where anybody tried to
18 make a big deal about hiding it, we can reasonably infer
19 that maybe it had something to do with some attempt at a
20 night club or some attempt at some kind of entertainment,
21 or whatever it may be, of these kids at this Spahn Ranch,
22 and we know that there is place that says "Donations For
23 Helter Skelter," and various -- we know that that is in
24 evidence.

25 So, for whatever it may be worth, we feel that
26 we can make this kind of inference that this had something

1 to do with people coming up there, whatever, in connection
2 with some kind of entertainment, whatever went on at the
3 Spahn Ranch.

4 And this being right in the area, right in the
5 area, Juan Flynn lived right in this area, that is
6 depicted by these pictures. So, for whatever that might be
7 worth, it certainly appears that this Helter Skelter coming
8 down, and all of that, is a figment of the prosecution's
9 imagination as far as any kind of a conspiracy and any kind
10 of a black-white war, and anything that we have heard about
11 in this courtroom.

12 Now, the prosecutor in this case has built, they
13 have built a thought on assumptions, statements, consider-
14 ations based upon what one person said, what another person
15 said, and so forth and so on.

16 They have used possibilities, insinuating,
17 insinuating possibilities that this could have happened or
18 that could have happened.

19 The favorite words that they use are words that
20 require assumptions to be made, inference upon inference
21 upon inference, in order to project the particular viewpoint
22 that they wish us to have.

23 We are supposed to be in this courtroom for
24 matters that do not involve myths. We are supposed to be
25 in this courtroom on matters that involve something that is
26 solid, something that is concrete, something that isn't, in

1 fact just a myth or a figment of a particular prosecutor's
2 imagination.

3 The conspiracy and all of that is something that
4 is dreamt up, is thought about, at the time that they
5 decide they are going to get Mr. Manson, as witness the way
6 that the prosecution and the way that law enforcement has
7 done what they did in this case.

8 There is no question about it, they had a pre-
9 conceived notion, a preconceived idea, based upon Mr. Manson's
10 appearance, and also because of, perhaps, what some of us
11 might deem improper activities going on at the Spahn Ranch.

12a

12-a 1 We have testimony that Mr. Manson, on the one
2 hand Mr. Manson is a deity; they have, on the one hand,
3 tried to portray Mr. Manson as the Savior, as Jesus Christ,
4 and on the other hand he is the devil and he is a killer
5 and has the power to turn people into robots, into automaton.

6 This is beyond belief.

7 I believe Mr. Manson is really made of -- I
8 suppose his temperature is 98.6 like all of ours, he has
9 normal blood pressure, he has normal this and normal that.
10 They have tried to portray Mr. Manson as a kind of person
11 that can pull strings in the human mind. Because they wish
12 a certain viewpoint to prevail.

13 They have presented, they have tried to
14 substitute some kind of a fantasy for proof.

15 The so-called conspiracy and all of that, all
16 of that conspiracy, all of that is the figment of the
17 imagination.

18 There is no showing of any conspiracy here.
19 There is no showing of any criminal intent.

20 Now, as far as some of these matters are
21 concerned, we have, for instance, felony murder. We have
22 felony murder that the Court is going to instruct us on.

23 Mr. Manson was with Stephanie Schram.

24 We can get away from all of the Helter Skelter
25 and we can get away from all of the philosophy of life, all
26 of that, we can remove ourselves from that, and the nitty-

1 gritty of it was that Mr. Manson was with Stephanie Schram,
2 a prosecution witness that the prosecution could have asked,
3 in detail, as to Mr. Manson's activities on the days in
4 question.

5 The prosecution chose not to do that.

6 The prosecution, furthermore, in this case is
7 coming to us in connection with some -- they will probably --
8 we can only foresee it, because of certain jury instructions
9 that we believe will be given, that they are going to argue
10 some kind of a felony-murder theory.

11 Now, we all know that the law of felony-murder
12 is that if there is an intent, if there is a desire on the
13 part of someone when they enter a dwelling to commit a
14 petty theft or commit a felony, then, at the instant that
15 someone goes through that door, they have committed the
16 particular crime we call burglary, for instance. A burglary
17 is committed the instant the entry of the door is -- the
18 instant that takes place.

19 For instance, if someone decides to hold up a bank
20 and they have a note in their pocket that says, "Give me
21 all your 20's." They go through the door, and while they
22 are standing in line, they change their mind. They are
23 still guilty of burglary, because the instant they went
24 through the door they had that intent. That is burglary.

25 Now, if during that process someone passes away,
26 dies, because of what happens, this is called felony murder,

1 because in the process of these events a person passed away.
2 The law says this should be deemed felony murder.

3 It is a type of constructive intent. But the
4 person has to intend to commit the burglary or the felony, or
5 whatever, when someone goes through that door.

12b

12b-1

1 And the same goes for robbery, and whatever the
2 particular offense.

3 The Court is going to give us the details of it.
4 But the fact of the matter is that Mr. Manson had no criminal
5 intent in connection with these matters.

6 Mr. Manson, and the evidence clearly shows,
7 Mr. Manson had ideas that involved his emotions. It involved
8 Stephanie Schram.

9 Now, that is, as we have said, we believe this is
10 nitty-gritty type of evidence. She was there. She was at
11 the raid. She was there with Mr. Manson at those times
12 that we have spoken of.

13 And so, when the prosecution argues the felony-
14 murder theory to us, if we would think in terms of some of
15 the arguments that possibly co-counsel or myself might
16 make, this might be helpful in resolving what we have to
17 resolve, because as we have said, we can't speak further.

18 Now, where we speak of, all of us, I suppose,
19 have at times made statements to the effect, all of us,
20 to the effect that we or I am responsible for the killings in
21 Viet-Nam; without belaboring it, I am sure that all of us
22 at some time or other have made that kind of statement.

23 Now, when we look at the people at Spahn Ranch,
24 whether we agree with those people or not, the fact of the
25 matter is they are acutely aware of what is going on in
26 the world.

1 Mr. Flynn was very, very much, as far as his
2 personality and his very being is concerned, he was very
3 much influenced by what happened in Viet-Nam.

4 We remember that from his testimony here. He
5 wouldn't even discuss it. He wouldn't even discuss it.

6 And so, we suggest that any kind of conversation
7 that occurred at Spahn Ranch in which anyone was involved
8 with this kind of language, "I am responsible for the
9 killings," and all of that, where we have two or three
10 words, so to speak, maybe a sentence or two that comes at
11 us in the courtroom here, it appears to have a quality and
12 it might appear to have superficially an importance that is
13 absolutely beyond any kind of real significance, because we
14 have all made those statements.

15 I have made that statement that I feel responsi-
16 ble for the killings in Viet-Nam, and we read columnists,
17 we hear it over the radio, over TV, how there are great
18 numbers, perhaps millions of people in the United States,
19 who feel responsible for the killings. And you take someone
20 like Juan Flynn taking a statement of this type and put
21 him in an atmosphere, whatever atmosphere in connection with
22 whatever it may have been, with journalists and what-not,
23 this type of statement is a statement that is the kind of
24 statement that we have the very, very important and proper
25 rule on circumstantial evidence, that if there are two
26 reasonable interpretations concerning evidence, that we must

1 use that interpretation which seems reasonable.

2 The fact of the matter is that in connection with
3 that statement we have all of the other infirmities.

4 The Court is going to instruct us about oral
5 admissions and oral confessions. And in no stretch of the
6 imagination is it a confession to anything. If it ever was
7 uttered, it was nothing more than a mere statement in
8 passing.

9 And the fact that the prosecution focuses upon it
10 indicates, indicates, the nothingness of the evidence in
11 this case.

12 Because, as we say, if there was a conspiracy or
13 anything like that, there would be conspiratorial evidence
14 before us.

15 Now, we have a situation in connection with the
16 people at the Spahn Ranch.

17 Now, we have said -- it is regrettable that these
18 children -- we may, I suppose -- we have heard this certainly
19 right here in this courtroom about these children going out
20 and going on garbage runs.

21 In fact, these children are, regrettably,
22 regrettably, are somehow or other, for some reason or other,
23 not part of the main stream of American life.

24 Now, whether any of us are responsible for that
25 or not, the fact is that they have rejected the main stream
26 of our life. They have decided, for whatever their reasons

1 may be, to do certain things.

2 They are living on garbage literally. Literally.
3 This isn't just a statement being made in a vacuum. We know
4 this is true.

5 These children are rejected by their parents.
6 These children have been rejected by society, for whatever
7 the reasons may be, whether we are at fault or whether they
8 are at fault. The fact of the matter is that these types
9 of individuals exist in our society.

10 And what it boils down to, what it boils down to,
11 and I suppose what this case boils down to, is that through
12 the machinations of what has been done in this case, we
13 have this unbelievable confrontation, this unbelievable
14 confrontation between groups of our society.

15 We have the confrontations on the campuses,
16 we have the confrontations on the streets, we have confron-
17 tations.

18 We have had enough confrontations. We have had
19 enough confrontations. And the way to avoid confrontation
20 and the way to avoid going on and on and on with this
21 particular approach to a solution, the criminal court is no
22 place, is no place to carry out these types of confrontations.
23 These types of confrontations should be carried out in the
24 halls of our legislatures, these confrontations should be
25 carried out in classrooms where they are discussed.

26 They should not be carried out where someone

1 is made a target the way Mr. Manson has been made a target.
2 Because that is what this litigation is.

3 Why do we have this intense interest? Do we
4 have any idea how many dollars per month are spent on this
5 side of the courtroom?
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1 It's incredible. Just think of the salaries
2 alone that must be spent in order to -- in order to -- in
3 order to have just the personnel here.

4 This particular confrontation is going on and on
5 and on. This jury, all of us in this courtroom have the
6 power to end that confrontation, and the way to end that
7 confrontation is with a result that the evidence dictates,
8 and that is to find Mr. Manson not guilty on all of these
9 charges.

10 Thank you very much for the attention you have
11 given me.

12 THE COURT: Are you ready to proceed, Mr. Keith?

13 MR. KEITH: May we have a brief recess?

14 THE COURT: All right.

15 We will take a recess at this time, ladies and
16 gentlemen. Do not converse with anyone or form or express
17 any opinion regarding the case until it is finally submitted
18 to you.

19 The Court will recess for 15 minutes.

20 (Whereupon, there was a recess after which the
21 following proceedings were had in the chambers of the Court
22 out of the hearing of the jury, all counsel with the excep-
23 tion of Mr. Hughes being present.)

24 THE COURT: All counsel are present.

25 Did someone want to speak to me?

26 MR. KEITH: Yes, your Honor, yes, your Honor. I
would respectfully request that I be permitted to start

Monday morning when the jury is fresh. I have two reasons for making this request.

One, my argument is going to be less than a day and I prefer not to have to break it up over the weekend.

Secondly, with all deference to Mr. Kanarek, I think the jury has been pretty well inundated in the past week --

THE COURT: Seven days.

MR. KEITH: -- seven days with his argument, and I can infer or will infer that they probably won't care to listen to any further argument this afternoon, and they might not be too receptive to what I have to say.

MR. BUGLIOSI: Even next week there is going to be that problem for me.

THE COURT: Well, we don't need to prolong it.

Does anyone have any objection to recessing now?

MR. BUGLIOSI: No objection.

MR. FITZGERALD: No objection.

MR. KANAREK: No objection.

MR. SHINN: No objection.

THE COURT: It is now five minutes to 3:00. At the most you would get in an hour, perhaps a little bit over an hour.

So we will adjourn until Monday.

Now, Mr. Fitzgerald has filed two motions that have been noticed for 9:00 o'clock on Monday, so I assume

1 counsel will want to argue on behalf of the motions or are
2 you submitting them, or what?

3 MR. FITZGERALD: I don't anticipate much argument at
4 all.

5 THE COURT: You have a right to argue. I am not
6 suggesting that you don't.

7 MR. FITZGERALD: I will submit it.

8 THE COURT: Well, I think perhaps I should call the
9 motions as long as they have been noticed for 9:00 o'clock,
10 I will call them.

11 In the meantime if you decide you want to argue,
12 fine.

13 If you decide you don't want to argue you can say
14 so.

15 MR. FITZGERALD: All right, fine.

16 THE COURT: And that will be all right, too.

17 As you know, I am having arraignments set in this
18 court every day, I think every day, so far this week every
19 day.

20 They are set for 9:00, but I try to get the word
21 around that I want them here at 8:45.

22 So we have started just a few minutes late, some
23 of these dates, because attorneys get here later and
24 defendants are not here.

25 So there is always that possibility that we might
26 not start exactly at 9:00 o'clock. I am trying to make sure

1 that we do.

2 If it is the attorneys tardiness that results in
3 any delay or is going to result in any delay, where I know
4 that he knows the matter was set earlier, as it was this
5 morning, I just trail it over to the next day rather than
6 delay the start of this trial.

7 I bear in mind what you said the other day,
8 Mr. Fitzgerald, that you and the other defense counsel are
9 anxious to expedite the matters, and I think this case
10 clearly should take preference over other matters, including
11 arraignments.

12 Now, you say less than a day, Mr. Keith.

13 MR. KEITH: Yes, your Honor.

14 THE COURT: What about your estimate, Mr. Bugliosi?

15 MR. BUGLIOSI: Between two and three days. I think I
16 can probably get it done in two days if I get two full days.

17 THE COURT: That takes us through Wednesday.

18 MR. BUGLIOSI: If he goes through late Monday I would
19 like to put it over to Tuesday morning. It depends on when
20 he finishes.

21 THE COURT: Then it appears that the jury will be
22 ready for instruction the latter part of the week.

23 Are there going to be any other requested
24 instructions?

25 MR. KEITH: Mr. Bugliosi and I have been working on
26 that mere presence instruction.

1 THE COURT: That is a matter you can take up Monday
morning.

2 MR. KEITH: I gave him my draft.

3 MR. BUGLIOSI: It was a very fair draft, I have to say.

4 THE COURT: It seems to me People vs. Durham seems to
5 be a fairly safe statement.

6 MR. KEITH: I virtually flourishly copied it.

7 THE COURT: I think it is fair to both sides, it is a
8 complete statement as far as I can see.

9 MR. BUGLIOSI: The only problem is it tends to focus
10 on aiding and abetting. There has to be some addendum for
11 that instruction to let the jury know this only pertains to
12 aiding and abetting and has no applicability to the
13 conspiracy instructions.

14 otherwise, they may just say, "This is it."

15 THE COURT: As a matter of fact, there is a statement
16 in the Durham part, I don't know if it was in Mr. Keith's
17 requested instruction, but there is a statement in the
18 Durham opinion that it is possible for a person to be an
19 aider and abettor without ever having joined the conspiracy.

20 MR. KEITH: I put that in the redraft. I also even
21 said you don't have to be present at the scene of the crime
22 to be a conspirator. I thought that covered it.

23 THE COURT: I am reading from it now, it says one may
24 aid or abet in the commission of a crime without having
25 previously entered into a conspiracy to commit it.
26

1 MR. BUGLIOSI: I can't quarrel with that. I certainly
2 can't quarrel with that. But it just doesn't -- it just
3 is not clear that that paragraph, that the Court just
4 read, conveys what I am trying to convey.

5 THE COURT: I think I understand what you mean.
6 What you are saying, you want the jury to understand the
7 two separate theories of liability.

8 MR. BUGLIOSI: Right, right. And that paragraph --

9 THE COURT: Why didn't you say so? I don't see any
10 objection to saying that.

11 MR. BUGLIOSI: That paragraph, although it is a true
12 statement, might cause the jury to believe that that is the
13 instruction, right there, and even though conspiracy is
14 involved, they are still bound by that instruction, so if
15 we can just add another paragraph saying this instruction
16 only pertains to the theory of aiding and abetting,
17 it has no applicability to the instructions on conspiracy
18 which you have received earlier.

19 MR. KEITH: Well, that is all right me, because you
20 are practically saying --

21 Let me put it this way:

22 Presence at the scene can be considered on the
23 issue of whether you are a conspirator. Conspirator or not,
24 it is ^{not} enough to make one a co-conspirator, but it is
25 evidence that can be considered.

26 I've got that. Mere presence is not enough, but

1 it certainly may be considered along with other evidence.
2 But I gave you the draft.

3 MR. BUGLIOSI: Yes.

4 MR. KEITH: Don't lose it.

5 MR. BUGLIOSI: No, I've got it somewhere. I put it
6 in my briefcase.

7 THE COURT: Where is the jury now, Mr. Murray?

8 THE BAILIFF: They are in the jury room now, your
9 Honor.

10 THE COURT: There is no necessity to bring them down.
11 They have been admonished and we haven't done anything
12 since they have been admonished.

13 THE BAILIFF: They are in a real good mood now.

14 THE COURT: Is it agreeable, gentlemen, we adjourn
15 right here in chambers until Monday morning at 9:00 o'clock.

16 MR. FITZGERALD: Yes.

17 THE COURT: Without bringing the jury back in, they
18 have been admonished.

19 MR. FITZGERALD: Yes.

20 MR. KANAREK: So stipulated.

21 MR. SHINN: So stipulated.

22 MR. KEITH: So stipulated.

23 THE COURT: We will adjourn then until Monday morning
24 at 9:00 a.m.

25 (Whereupon, a recess was taken to reconvene Monday,
26 January 11, 1971 at 9:00 a.m.)