

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.

166

No. A253156

REPORTERS' DAILY TRANSCRIPT

Tuesday, January 12, 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 HUGHES, Esq.~~
MAXWELL KEITH, Esq.
For Deft. Krenwinkel: PAUL FITZGERALD, Esq.

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

LOS ANGELES, CALIFORNIA, TUESDAY, JANUARY 12, 1971

9:23 A.M.

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

THE COURT: All counsel are present. It is twenty-three after, Mr. Shinn. Did you have some problems?

MR. SHINN: Your Honor, I got stuck behind stalled cars on the Hollywood Freeway and I had a hell of a time getting around them.

THE COURT: All right.

Yesterday I indicated to Mr. Fitzgerald I would permit him to reopen for the limited purpose of reading or stating the excerpts from the court opinion that he had apparently intended to during the course of his argument, when an objection was made by the People and the Court sustained it.

Is that still your intention, Mr. Fitzgerald?

MR. FITZGERALD: Yes. I was going to ask the Court's guidance. I think it was very fair of you to reopen; I will listen to whatever suggestions anybody has.

THE COURT: From what you said I assumed that you had intended to read an excerpt from some opinion to the jury.

MR. FITZGERALD: Right, that is correct, in connection

with the accomplice rules.

I have it and it is very short; it should not take more than about 30 seconds.

THE COURT: And I thought I would simply preface it by telling the jury that during the course of your argument you had been stopped by reason of an objection which the Court sustained, and that on further reflection I believe that you should have been permitted to read that excerpt.

I am going to let you do that now so you can complete your argument in the way you intended to complete it.

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1 MR. BUGLIOSI: Mr. Kay and Mr. Musich have something
2 to say, your Honor.

3 THE COURT: Very well.

4 MR. KAY: We would ask the Court to read, before
5 Mr. Fitzgerald does, what Mr. Fitzgerald has to read to
6 determine if it is in conflict with the instructions that
7 are being given. If it isn't, there will be no objection,
8 but if it is?

9 MR. FITZGERALD: No objection to that.

10 (Mr. Fitzgerald hands a document to the Court.)

11 MR. FITZGERALD: That is right out of the motion that
12 I filed.

13 MR. KAY: That would be all, just that one paragraph?

14 MR. FITZGERALD: That is all.

15 THE COURT: Actually, you did read this, didn't you?

16 MR. FITZGERALD: No. I didn't finish it, that is all.

17 THE COURT: Let me get my copy of the transcript.
18 Maybe you didn't finish it. I don't know.

19 MR. FITZGERALD: My understanding was that I didn't
20 finish it.

21 It is Page nineteen thousand eight --

22 I don't have my volume of the transcript with me.

23 MR. BUGLIOSI: You read the whole thing. You read
24 the whole thing, Paul.

25 MR. FITZGERALD: Can I see your transcript?

26 MR. BUGLIOSI: You got every word in, even down to the

period.

1 MR. FITZGERALD: Can I compare it here with my motion?

2 I stand corrected.

3 THE COURT: All right. It appears on Page 19,342,
4 Lines 7 through 13, that you did, in fact, read all of the
5 statement that you just showed me this morning that you
6 intended to read.

7 So, I take it from that that that takes care of
8 the matter.

9 MR. FITZGERALD: It does, and I apologize to the Court.

10 It certainly wasn't my intention to mislead the
11 Court.

12 THE COURT: No; I understand.

13 MR. FITZGERALD: Inasmuch as it was stated in toto to
14 the jury, there is no necessity, and I am perfectly willing
15 to say so, for me to re-read it.

16 I wonder, the only lingering doubt I have in my
17 mind, your Honor, is whether or not there was an objection
18 and it was sustained, and the only lingering doubt I have is
19 as to whether or not the jury attaches any significance to
20 that?

21 They weren't admonished to disregard what I said
22 but, of course --

23 THE COURT: That's right. Because as far as you went,
24 I didn't think that it was improper.

25 MR. BUGLIOSI: Then you said another word, Paul, and I
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1 thought you were going to keep on, and that is when I objected.
2 You said "his."

3 THE COURT: The objection was sustained, but there was
4 no admonition.

5 MR. FITZGERALD: Right.

6 Of course, they are fairly sophisticated people,
7 and they have been with us a long time, and they have heard
8 an awful lot of objections and they have heard an awful lot
9 of them sustained, and I guess they know what that means.

10 MR. BUGLIOSI: I would ask that it not be raised again,
11 your Honor. It places undue emphasis on it.

12 I am not a hundred per cent convinced that, really,
13 it is proper to read from an opinion.
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1 THE COURT: Actually, the objection was not to
2 what was said but the fact that you were going on to
3 read from something.

4 MR. FITZGERALD: That I was reading.

5 THE COURT: So I don't think they understood.
6 There was nothing to indicate that what you had said
7 was improper or that the objection was being sustained
8 on that ground. It was just that you were reading from
9 something, and you didn't indicate what it was, and
10 the People made an objection which was sustained to any
11 further reading.

12 I don't think anything further needs to be
13 done.

14 Now, I have a requested special jury instruc-
15 tion from Mr. Keith.

16 MR. KEITH: Yes, your Honor.

17 THE COURT: What is the next number, Mr. Darrow.

18 THE CLERK: I think the last number was 126, but
19 did you mark some subsequent to that, Judge, that you
20 have in your possession?

21 THE COURT: Yes.

22 There is a 127 and a 128 that was submitted
23 by Mr. Keith.

24 THE CLERK: This would be 129.

25 THE COURT: This would be 129.

26 MR. KEITH: Very well.

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1 This requested instruction, your Honor, is
2 offered in place of a previous instruction that I
3 requested be given, and that instruction is before you and
4 it is numbered 127.

5 I will move to withdraw that requested
6 instruction.

7 THE COURT: Very well.

8 MR. KEITH: And in place and instead of instruction
9 127, offer 129.

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10 129 is an expansion of 127.
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1 THE COURT: What about 128?

2 MR. KEITH: No, I am not going to withdraw 128.

3 MR. BUGLIOSI: Same objection, your Honor. He is
4 still talking about mere presence, the same identical --

5 MR. KEITH: I will submit the matter. We have argued
6 it at some length.

7 MR. BUGLIOSI: All right.

8 MR. KANAREK: I would like to join in this request for
9 a special jury instruction, your Honor.

10 The jury can infer that Dianne Lake; they can remove
11 her testimony, and then you have mere presence. That is as
12 to Leslie Van Houten.

13 Leslie Van Houten is merely present. If they delete
14 Dianne Lake's testimony --

15 THE COURT: Mr. Kanarek, ^{if} you wait a minute, I have not
16 read the instruction yet. I cannot read while you are
17 arguing.

18 MR. KANAREK: I apologize, your Honor.

19 THE COURT: All right.

20 Well --

21 MR. BUGLIOSI: Same objection, your Honor. As
22 Mr. Keith said, we argued this in depth yesterday. It is
23 the same instruction.

24 MR. KANAREK: Just a small point if I may, your Honor.

25 The point is, if we excise Dianne Lake, for
26 instance --

MR. BUGLIOSI: Oh, if we excise a witness' statement!

Please, let's get on with the argument.

1 MR. KANAREK: Your Honor, may I invoke the protection of
2 the Court? If we -- if I may use the expression, the
3 English word, excise, without Mr. Bugliosi climbing on my
4 back --

5 THE COURT: I see your point.

6 MR. KANAREK: The point is there is mere presence, and
7 to use the prosecution's own mere speck -- you are entitled
8 to your instruction on any theory of the case -- and Mr.
9 Keith, for all I know, may want to argue that mere presence
10 -- and Dianne Lake is not to be believed -- or something,
11 and then you cannot consider that testimony, then you have
12 mere presence.

13 MR. BUGLIOSI: What about Linda Kasabian's testimony;
14 that does not make Leslie Van Houten merely present. They
15 went to the scene of the crime.

16 MR. KANAREK: All that Linda Kasabian's testimony
17 shows concerning Leslie Van Houten is that she was there,
18 period.

19 She does not show anything about Leslie Van Houten
20 except mere presence.

21 MR. KEITH: If they don't believe Dianne Lake, I
22 don't have any worries, because I don't think Leslie
23 Van Houten is going to be convicted.

24 MR. BUGLIOSI: As a matter of law she shouldn't be
25 if there is no corroboration.
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1 MR. KANAREK: Well, it's very unusual for Mr. Bugliosi
2 to agree, and he is agreeing because he does not want this
3 instruction in there, to deprive the defendants of a fair
4 trial.

5 Mere presence, regardless of what we say in this
6 case, the jury could neglect or reject Dianne Lake, and then
7 you would have mere presence, even assuming that Linda
8 Kasabian --

9 THE COURT: All right, I have your argument in mind.

10 MR. BUGLIOSI: In a robbery case, you can say the victim,
11 the teller, if you reject the teller's testimony, there is
12 mere presence.

13 THE COURT: I am going to refuse 128. That is the
14 accessory instruction. I don't think that has any
15 application whatsoever.

16 MR. KEITH: May I respectfully dissent from your
17 Honor's opinion without going any further?

18 THE COURT: All right. Now, as to 129, that is the
19 mere presence instruction.

20 Are all of the defendants requesting this
21 instruction?

22 MR. FITZGERALD: Yes.

23 MR. SHINN: Yes.

24 MR. KANAREK: Yes.

25 THE COURT: I am inclined to give this one.

26 MR. BUGLIOSI: That is not what the Court ruled

1 yesterday; I know the Court did not rule --

2 THE COURT: I have not seen this instruction until
3 this morning.

4 MR. BUGLIOSI: This is the same thing we were talking
5 about yesterday, mere presence. There is no evidence.

6 THE COURT: I understand. If there is no evidence, the
7 jury won't, like in many other cases, have anything to apply
8 to it; it won't be applicable.

9 MR. BUGLIOSI: Doesn't the instruction have to be
10 predicated on the evidence?

11 THE COURT: It is a correct statement of the law.

12 MR. BUGLIOSI: What about A and B, robbing a bank
13 under that theory, you can say if the jury doesn't believe
14 the victim's, the teller's testimony, then the robbers
15 won't be present at the bank.

16 This mere presence is in regard to a specific
17 situation where someone is found caught at a scene and they
18 are just there and they are not doing anything and they are
19 not co-conspirators; they are not doing anything.

20 When someone goes to the scene of a crime and
21 actually confesses to stabbing and wiping out fingerprints,
22 and you give an instruction like this, that just confuses
23 everyone.

24 Even by the statement of Dianne lake, she says she
25 was stabbing and wiping off fingerprints. If we say we dis-
26 believe Dianne Lake and Linda Kasabian, you would have to

1 give the mere presence instruction in every case. "Let's
2 overlook and disregard the testimony of the victims."

3 MR. KANAREK: That is improper argument to the Court,
4 Mr. Bugliosi.

5 MR. BUGLIOSI: If there was conflicting testimony in
6 this case, let's say someone testified that Leslie Van Houten
7 was just caught unexpectedly at the scene of the crime.

8 MR. KEITH: I may well argue that.

9 MR. BUGLIOSI: I agree you can argue that, but to have
10 an instruction there has to be some evidence that she was
11 merely present, and there is no evidence that she was
12 merely present.

13 MR. KEITH: I can draw inferences from what occurred.

14 MR. BUGLIOSI: Of course you can argue, but when the
15 Court gives an instruction on it, to my knowledge it has to
16 be predicated on some evidence.

17 I always thought that; I always thought that
18 was the law.

19 MR. KEITH: I always thought inferences were in a
20 sense evidence.

21 MR. BUGLIOSI: You can argue inference, but when you
22 give an instruction there has to be some evidence to support
23 it.

24 An inference is not evidence. There is just no
25 evidence that she was merely present.

26 MR. KANAREK: Linda Kasabian said she was merely

1 present, Mr. Bugliosi, and Dianne Lake is a girl who at that
2 time had a drug-induced psychosis by two of your witnesses.

3 MR. KEITH: I am not concerned with Dianne Lake's
4 mental state.

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1 MR. BUGLIOSI: As far as I know in that case mere
2 presence should be given in every single case there is,
3 if we disbelieve the testimony of the victims, then the
4 defendant was only present.

5 THE COURT: I look at it somewhat differently, Mr.
6 Bugliosi, as not being a mere presence instruction in the
7 sense that it is suggesting that there was mere presence;
8 but it is simply in explanation of the aiding and abetting
9 rule.

10 MR. FITZGERALD: Exactly.

11 MR. BUGLIOSI: It is an exception to the aiding and
12 abetting rule where there is evidence to support it.

13 THE COURT: No.

14 MR. KEITH: I can argue she did not aid and abet;
15 that stabbing -- I have been through this.

16 MR. BUGLIOSI: You don't even have to be at the
17 scene; you can be playing badminton --

18 MR. KEITH: I put that in there at your request.

19 THE COURT: This instruction says, it starts out
20 by saying that mere presence is not enough, but the next
21 sentence goes on to say that such evidence may be
22 considered along with other evidence in determining guilt
23 or innocence.

24 To me that is merely an explanation of the
25 aiding and abetting rule.

26 MR. BUGLIOSI: In my mind it is no explanation at all.

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This is an exception to aiding and abetting where there is some evidence to support it and I ask the defense attorneys, where is there one particle of evidence to show she was only present at the scene of the crime.

MR. FITZGERALD: Any time you predicate liability on aiding and abetting, the mere presence instruction is a proper instruction.

MR. BUGLIOSI: I have tried over 100 juries, where mere presence was never given in any case I have ever been on.

MR. FITZGERALD: I have tried 67 cases where it's been given.

MR. BUGLIOSI: I don't believe you.

MR. FITZGERALD: I don't believe you either.

MR. BUGLIOSI: I'm telling you I don't believe you.

MR. FITZGERALD: I don't believe you either.

THE COURT: All right, gentlemen, let's stop the colloquy.

MR. BUGLIOSI: This instruction is completely improper because there is no evidence to support it, No. 1. No. 2, it's very very confusing, especially when the aiding and abetting instructions themselves say you don't have to be present at the scene.

The very aiding and abetting instructions the Court is going to give the jury, are going to say you don't have to be present at the scene, and then to come

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1 around and say "Well, if you are present it doesn't mean
2 anything" --

3 MR. KEITH: It doesn't say that.

4 THE COURT: I don't think you are even reading the
5 instruction, Mr. Bugliosi.

6 MR. BUGLIOSI: I read the whole thing. This came out
7 of the Durham --

8 THE COURT: I understand that, but I think you are
9 looking at it in a different light. In fact I can see
10 aspects of it that are considerably helpful to the prosecu-
11 tion. I think it is a matter of the way you read it.

12 MR. BUGLIOSI: It is an exception to the aiding and
13 abetting rule.

14 THE COURT: You seem to have a tunnel vision on that
15 particular point. It says a good deal more than that. It
16 does not suggest to anybody that there was mere presence.
17 To me it is simply an explanation of the general rule of
18 aiding and abetting.

19 We have many instructions that are not predicated
20 on evidence. It isn't simply because they state a rule
21 of law with an explanation attached to it, or as part of
22 the instruction so the jury can understand what the rule
23 is.

24 MR. BUGLIOSI: The instruction on vicarious liability
25 for crimes committed after the conspiracy, there is no
26 evidence of that in this case, and the Court said "I'm not

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1 going to give that instruction; there is no evidence --"

2 THE COURT: For example, if the jury were to believe
3 that Leslie Van Houten was present, and stabbed a dead
4 body, as she said, I think this instruction would be
5 helpful. Otherwise the jury might have some question as
6 to whether or not she really participated in a crime.

7 MR. BUGLIOSI: This instruction here says mere
8 presence is not enough.

9 THE COURT: Look at the next paragraph.

10 However, mere presence of a person at the scene
11 of a crime if it is for the purpose of assisting in its
12 commission, where such person shares the criminal intent,
13 is sufficient to establish aiding and abetting.

14 The latter paragraph I think definitely aids
15 the prosecution theory, namely, that any of the defendants
16 could be guilty of aiding and abetting or of conspiracy.

17 The two are not the same.

18 MR. BUGLIOSI: This is an extremely dangerous instruc-
19 tion, especially in view of the fact that we are predicating
20 liability against Mr. Manson and Susan Atkins on vicarious
21 liability; that they don't even have to be present at the
22 scene of the crime and they are still guilty.

23 And then an instruction like this comes along
24 and says that even if you are present at the scene of
25 the crime, if you are not doing anything -- of course there
26 is this other paragraph in there.

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1 I think it is a dangerous instruction, your
2 Honor, and it is not in CALJIC. That does not mean it is
3 invalid because it is not in CALJIC, but I think the
4 significance of the fact that it is not in CALJIC is to
5 illustrate that it is a far out instruction; that it is
6 an extremely far out instruction to cover a situation where
7 the District Attorney's Office actually improperly charges
8 someone with a crime improperly.

9 Someone is caught at the scene of the crime
10 and the District Attorney comes along and says "Well, we
11 are going to nail you anyway."

12 And this instruction protects that type of
13 individual.

14 But normally we don't prosecute people who are
15 just present at the scene of a crime.

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1 MR. KEITH: Well, you did this time.

2 MR. BUGLIOSI: Well, not according to what your client
3 told Dianne Lake.

4 Mere presence, your Honor, is not even mentioned,
5 I don't think, in Witkin, I don't think it is even mentioned
6 in --

7 THE COURT: Well, suppose that, then, -- we have two
8 aiding and abetting instructions --

9 MR. BUGLIOSI: Right.

10 THE COURT: -- suppose a sentence were added to the
11 second aiding and abetting instruction, which now reads:
12 A person aids and abets in the commission of a crime if he
13 aids, encourages and promotes, et cetera. Suppose a sentence
14 were added to that instruction to the effect that it is
15 not necessary for a person to be present at the scene of
16 a crime to aid and abet in its commission.

17 MR. BUGLIOSI: Or whether present or not.

18 THE COURT: Doesn't that answer your objection to this
19 requested instruction?

20 MR. BUGLIOSI: No, because this is saying you don't
21 even have to be present and you can be an aider and abettor,
22 and this one comes along and says even if you are present
23 and you are standing there and not doing anything.

24 THE COURT: It is just an explanation of the rule.
25 The mere presence, as the other instruction indicates, is
26 not enough. It also requires criminal intent.

1 It is just another facet of the same rule, as I
2 read it.

3 In other words, I think all of your objections are
4 covered in the two aiding and abetting instructions.

5 MR. BUGLIOSI: I don't think so.

6 It is going to necessitate a long argument on my
7 part.

8 It is an extremely confusing instruction. It is
9 not in CALJIC, it is not in Witkin, it is not in Perkins,
10 it is not in Fricke. It is a far-out situation.

11 MR. KANAREK: And it is not in Pilgrims' Progress either.

12 MR. BUGLIOSI: I know what mere presence is. I teach
13 law. It deals with someone caught on the scene.

14 As a classical example, A and B are walking down
15 the street and they confront C. B, on the spur of the moment,
16 commits a crime on C, robs or stabs him to death. A is
17 merely present at the scene of the crime. He has no duty to
18 intervene and stop B.

19 To cover a situation like this where the very
20 person who wants to invoke mere presence tells Dianne Lake
21 that she is stabbing someone at the scene and wiping out
22 fingerprints?

23 MR. KANAREK: You can argue that. You can argue that.

24 In these various chamber discussions you have
25 said --

26 MR. BUGLIOSI: Just a moment. Mr. Keith is the one

1 offering this instruction.

2 MR. KANAREK: I am, too.

3 MR. BUGLIOSI: You are?

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1 MR. KANAREK: Yes.

2 And you have always said "A mere speck of
3 evidence," and all that.

4 MR. BUGLIOSI: Where is your speck of evidence?

5 MR. KANAREK: The speck is -- there is more than a
6 speck.

7 Linda Kasabian has stated that she was asleep
8 part of the time, and part of the time she may have heard
9 and part of the time she may not have heard.

10 As to Leslie Van Houten, for instance, she has
11 stated that Leslie Van Houten, if you take Linda Kasabian's
12 testimony, Leslie Van Houten is nothing but just physically
13 present. And as for that matter, so is Susan Atkins merely
14 present, if you forget about some of the way-out arguments
15 that you have made.

16 MR. BUGLIOSI: The two aiding and abetting instruc-
17 tions that the Court is going to give, Mr. Keith can argue
18 those. He can say there has to be criminal intent and
19 there has to be knowledge, and he can say in this case,
20 if you disbelieve Dianne Lake, my client was only at the
21 scene of the crime and didn't do anything and, ergo,
22 she is not an aider and abettor.

23 MR. KANAREK: By the same reasoning, you can argue
24 that it doesn't apply.

25 THE COURT: I don't like the term "mere" presence.
26 I think the word "mere" is suggestive of something that

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1 doesn't belong there.

2 MR. KEITH: I will agree to strike "mere."

3 THE COURT: If that is taken out, what about Mr.
4 Bugliosi's statement, Mr. Keith?

5 Isn't the balance of what you are trying to
6 cover in that requested instruction contained in the
7 two aiding and abetting instructions? And if not, what is
8 missing?

9 In other words, this instruction emphasizes
10 the word "mere."

11 MR. KEITH: I am really not too happy with the word
12 "mere" but it was in the instruction.

13 THE COURT: I think, at best, the instruction is
14 merely explanatory. It is another way of saying what has
15 already been said in the other two instructions. But
16 is there any necessity to say it again?

17 MR. KANAREK: Yes, your Honor.

18 MR. BUGLIOSI: The reason that --

19 THE COURT: One at a time.

20 MR. KEITH: I intend to argue to the jury, unless I
21 am, of course, stopped, that if she were just there, without
22 criminal intent, even if she had knowledge of what was
23 going on, that she was caught in a trap, so to speak.

24 MR. BUGLIOSI: Right; and she is not an aider and
25 abettor.

26 MR. KEITH: And she is not an aider and abettor.

1 MR. BUGLIOSI: I agree.

2 MR. KEITH: And even though she may have stabbed
3 someone after someone was dead, that is not a crime
4 for which she is charged.

5 THE COURT: That is what the first one says: Who
6 either directly and actively commits the act constituting
7 the events and who knowingly and with criminal intent.

8 In other words, it is in the conjunctive.

9 MR. BUGLIOSI: You can argue, looking at that
10 instruction, that your client is not guilty of aiding
11 and abetting. But when you come up with a particularized
12 instruction on mere presence, there has got to be some
13 evidence.
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1 MR. KANAREK: There is some particularity about
2 intimidation of the witness as to Mr. Manson. It is a
3 violation of the 14th Amendment rights and due process for
4 your Honor not to give this instruction.

5 THE COURT: I don't even understand what you are
6 talking about.

7 MR. KANAREK: Well, your Honor, just being present is
8 not --

9 THE COURT: What does this have to do with the other
10 instruction about Mr. Manson?

11 MR. KANAREK: He is making improper argument to the
12 Court. He talks about particularizing. Well, Mr. Manson
13 has been particularized in connection with the so-called
14 movement of his hand while Linda Kasabian was on the witness
15 stand. He has been particularized.

16 THE COURT: That is incorrect. There is no such
17 instruction that I intend to give.

18 MR. KANAREK: It says "such as intimidation of a wit-
19 ness."

20 THE COURT: Naturally, in order to cover that situation,
21 it has to be made sufficiently definite so the jury knows
22 what you are talking about, that is, the principle involved,
23 but the specific situation has not been pinpointed.

24 MR. KANAREK: Well, then, instead of "mere presence,"
25 your Honor, only being present, or something like that.

26 THE COURT: I am going to refuse requested instruction

1 129. I think it is fully covered in the other aiding and
2 abetting instructions, and there is no argument that I can
3 see or that I have been directed to by counsel that could
4 not be made under the existing instructions just as well
5 as could be made under the requested instruction.

6 MR. KEITH: Very well, your Honor.

7 THE COURT: All right, gentlemen. I think it is time to
8 resume.

9 So you will be commencing first, then.

10 Mr. Fitzgerald will not.

11 MR. BUGLIOSI: The Court is not going to give any
12 instructions about accessory after the fact?

13 THE COURT: That instruction is refused.

14 MR. BUGLIOSI: Thank you.

15 (Whereupon, the following proceedings occur in
16 open court. All jurors present. All counsel present.
17 Defendants absent.)

18 THE COURT: All counsel and jurors are present.

19 You may commence your argument, Mr. Keith.

20 MR. KEITH: Thank you, your Honor.

21 May it please the Court, all of learned counsel --
22 I embrace you all, figuratively, not literally -- ladies
23 and gentlemen.

24 Linda Van Houten is not guilty of the offenses
25 charged against her.

26 I mean, I hope to show you this, and I am

1 convinced I am going to be able to show you this. Even if
2 you believe Linda Kasabian and Dianne Lake, the two chief
3 witnesses who involve Miss Van Houten, I feel that, after
4 our analysis of this case, after our talk together, you
5 will be with me regarding her innocence.

6 Now, I am not going to shout, and I am not going
7 to wave my arms, I am not going to raise the flag, and I am
8 not going to use purple prose.

9 What we are going to do together, ladies and
10 gentlemen, is to analyze the evidence involving Miss
11 Van Houten carefully and diligently. We are going to draw
12 inferences, we are going to make deductions, just like
13 Sherlock Holmes. This is what we are going to become before
14 I get through here.

4c-1

1 We are going to make extensive use of certain
2 instructions that will be given you by the Court concerning
3 the applicable law in this case, particularly the law of
4 circumstantial evidence, and how you are to view circum-
5 stantial evidence, which is most important and most signi-
6 ficant in connection with determining Miss Van Houten's
7 guilt or innocence.

8 Now, before getting underway, and at the outset,
9 I want to tell you that I am here before you with very
10 mixed emotions. I am proud -- as you know, I have been
11 appointed by the Court to represent Miss Van Houten -- and
12 that makes me very proud. But, nonetheless, I am very
13 much an interloper.

14 This is Ronald Hughes' case. Unfortunately I
15 never had the pleasure of meeting him. But he has been
16 with you, he was with you here for many months, and I am
17 sure he is still with you here in spirit.

18 I don't know what the Court has told you about
19 his tragic disappearance, but I am sure you will agree with
20 me, and with everybody else with whom I talked, that he did
21 not deliberately disappear.

22 This is his case, ladies and gentlemen, and don't
23 you forget it.

24 I just hope that what I am going to say to you
25 today will be what he would have said if he were here.

26 There is another misgiving that I have about being

1 here, and that is that you have been here all these months
2 during this trial, sharing many experiences with other
3 counsel, and although probably none of you have ever spoken
4 to them other than, perhaps, a cursory "good morning" or
5 "good evening" there must have arisen between you and other
6 counsel a sort of a bond, a communion, if you will, a
7 rapport, an identity, that I can't share because I came on
8 the scene just a few weeks ago.

9 And I fear, I know it would be something sub-
10 conscious, but the subconscious within us is often very
11 strong, and realizing that I have the responsibility of a
12 human life -- and such a responsibility is never easy, it is
13 nerve-racking, it is anxiety-producing, as I am sure you
14 realize -- I fear that perhaps subconsciously you may listen
15 to me with less attentiveness and less receptiveness than
16 you might with other counsel simply because you have shared
17 with them this many months' experience of this arduous
18 trial.

19 I wouldn't blame you if you have that reaction.
20 I hope you don't. It is subconscious.

21 I am going to do the very best I can, and I must
22 exhort you, and I ask you to fight with me for Miss
23 Van Houten, because I believe, on the strength of this
24 record, that she does not deserve to be convicted of the
25 charges against her.
26

4d
1 Incidentally, I might tell you, or I should tell
2 you, that I am not going to be very long. I am sure you
3 will be happy to hear that.

4 I am not going to be very long because the
5 evidence involving Miss Van Houten, at best, I say, is
6 modest; and modest is using a conservative term.

7 I am handicapped also, ladies and gentlemen, in
8 another respect. I never saw one witness, as you know.
9 And the witnesses in this case, I understand, were perhaps
10 unusual, to say the least.

11 Naturally, as you have heard from other counsel,
12 their credibility is very much in issue in this case. It
13 is crucial. Particularly in the case of Leslie Van Houten.

14 As you will be instructed, and as you have heard
15 from other counsel, the appearance of the witness on the
16 stand is important, is an important consideration in
17 evaluating credibility. Their demeanor, the manner in
18 which a witness testifies, how they look, how they react.

19 This is something that the cold record doesn't
20 reflect and, therefore, I can't give you my impressions
21 of the flesh-and-blood appearance of the witnesses,
22 particularly Linda Kasabian and Dianne Lake, because I am
23 going to restrict my talk to them alone because as I read
24 this record, they are the only witnesses that have anything
25 to say about Miss Van Houten.

26 So, since I have not seen those two young ladies,

1 you are going to have to help me, and I beg that you do so.
2 You help me in determining how they testified, their
3 demeanor, their appearance.

4 Now, I will give you a little outline, the
5 beginning of the chapter headings, so that you will be able
6 to follow me, perhaps, more easily.

7 First, the first chapter, I am going to talk about
8 Mrs. Kasabian and Miss Lake. Not nearly as extensively as
9 other counsel, simply because their testimony and their
10 credibility has been discussed and rediscussed and redis-
11 cussed, and I see no great need for me to further read all
12 of their testimony or analyze it in great depth, all of it.

13 I am, though, going to analyze with you, very
14 closely, I hope, their testimony as it relates to Dianne
15 Lake -- excuse me -- Miss Van Houten. And that isn't exten-
16 sive.

17 Chapter 2, I am going to discuss with you about
18 what I call the robot theory of murder espoused by the
19 prosecution. I am going to discuss the robot theory of
20 murder in conjunction with the law of first and second
21 degree murder and, incidentally, conspiracy.

22 And then we are going to talk -- Chapter 3 this
23 will be -- I am going to talk to you about the elements of
24 conspiracy in the abstract, but in some depth, because it is
25 a complex, complicated concept. It is not easy for
26 legal scholars to understand. Even the justices of Supreme

48
1 Courts struggled with the doctrine for many, many years.

2 And then I am going to talk to you -- this
3 will be Chapter 4 -- about the testimony of Dianne Lake
4 and Linda Kasabian.

5 I am not going to talk about their credibility
6 in Chapter 4. In Chapter 1 we are going to talk about
7 credibility.

8 So, when we are analyzing the testimony of
9 Dianne Lake and Linda Kasabian as it involves Miss Van
10 Houten, we are all going to assume, just for the sake
11 of argument, that what they said was basically true.
12 But there will be many exceptions to that, I can assure
13 you, because we are going to analyze their testimony from
14 the record in the light of the law of conspiracy that I
15 would have previously discussed with you, and we are going
16 to discuss it in particularity in the light of the law of
17 circumstantial evidence, and how circumstantial evidence
18 should be viewed by you, and we are going to draw inferences
19 from the testimony of those two young ladies, we are
20 going to make deductions, and we are going to determine,
21 as a result of this analysis, whether reasonable inferences
22 can be drawn from their testimony pointing toward the
23 innocence of Miss Van Houten.

24 Now, next, I am going to discuss with you --
25 and I made separate chapter headings of this -- we are
26 going to discuss with you the law of aiding and abetting,

1 and apply its principles to the testimony of Dianne Lake.

2 Then, the next chapter, Chapter 6, I was going
3 to discuss the corroboration. In other words, does Dianne
4 Lake's testimony corroborate the testimony of Linda
5 Kasabian insofar as it may concern Leslie Van Houten?

6 If we find it doesn't, if we find it is
7 insufficient, then I submit to you, that Miss Van Houten
8 must be acquitted. She has to be, virtually, as a matter
9 of law.

10 But rather than make separate chapter headings
11 out of the subject of corroboration and the subject of
12 aiding and abetting, I will probably interweave the two
13 problems because they are closely connected and it is
14 difficult to separate these two issues without being
15 terribly redundant.

5 fls.

1 Then I shall recapitulate briefly.

2 Then I am going to conclude with a talk about
3 another famous conspiracy case that was tried, oh, some
4 10 or 12 years ago and received almost equal if not more
5 notoriety than this case.

6 I am going to read in my final conclusion a
7 paragraph or two from that decision which I believe
8 contains ringing language, language none of us should ever
9 forget.

10 Now, Linda Kasabian -- I did not see her, as
11 you know -- I have read her testimony.

12 As you know by now, his Honor is going to tell
13 you that Linda Kasabian is an accomplice as a matter of
14 law, and he is also going to tell you that you must view
15 her testimony with distrust because she is an accomplice.

16 Mr. Fitzgerald read to you language from a
17 Supreme Court decision of this state which you may have
18 forgotten because he read it to you some time ago. Since
19 then you have been hearing over a solid week of argument
20 from Mr. Kanarek.

21 So I think it bears re-reading. The name of the
22 case I am reading from is People vs. Wallin, W-a-l-l-i-n;
23 it is contained in Volume 32, California 2d, Page 803,
24 and I am reading at Page 808.

25 Before reading, as you know, the testimony of an
26 accomplice has to be corroborated. We will discuss that

1 later, but this is just a parenthetical statement so you will
2 understand this excerpt with greater clarity. I am reading:

3 "The statutory requirement of corroboration
4 is based primarily on the fact that experience has
5 shown that the evidence of an accomplice should be
6 viewed with care, caution and suspicion, because
7 it comes from a tainted source, and is often given
8 in the hope or expectation of leniency or immunity."

9 Of course, that is just what Linda Kasabian got,
10 immunity.

11 So I ask you very sincerely, ladies and gentlemen,
12 to bear that quotation in mind throughout your deliberations
13 in this case.

14 That is a decision of the Supreme Court of this
15 State, it is not me and it is not my brethren.

16 We all know that Miss Kasabian is a willing
17 victim of drug abuse. We know of her sexual promiscuity.

18 But I am really not so concerned with those two
19 areas of her experience as I am with her character.

20 Although certainly drug abuse and sexual
21 promiscuity have a bearing on her character, and I also
22 believe that drug abuse has a bearing on her credibility in
23 the sense that I am at a loss to understand how anybody
24 who has taken all of the narcotics and all of the dangerous
25 drugs she has can be expected to have the ability to perceive,
26 the memory and ability to articulate from the witness stand

1 what she saw and heard and what she remembered, even
2 remotely as effectively as someone who has not partaken,
3 as Mr. Kanarek puts it, of these mind-changing drugs.

4 I read the testimony of the two psychiatrists who
5 appeared in this case. They seem to think that the effects
6 of LSD when taken in heavy amounts are transitory.

7 I wonder, ladies and gentlemen. We know of our
8 own experience there are too many people who have completely
9 gone around the bend, if you will, from excessive experiences
10 with hallucinogenics.

11 Yet here she is, this State star witness in this
12 case.

13 But apart from her use of drugs, which has been
14 hammered away at in this case by other counsel, I am almost
15 more concerned with her character as a person.

16 The drug abuse shows weakness. But there is also
17 something else -- and so does the sexual promiscuity --
18 but there is something else more sinister that I got from
19 the record about this little girl's character.

20 I can infer from the record and I wonder if you
21 don't already infer it from the record that Miss Kasabian
22 is a kind of a sinister person in a way.

23 She always seems to land on her feet, no matter
24 what she does, and she never has been above, from what I
25 gleaned from this record, practicing fraud, deception,
26 burglary, theft, in order to get what she wants, and she does

1 it.

2 Look at this case, charged with all of these
3 counts of murder and conspiracy, and she is free, at liberty,
4 home wherever she lives, doing whatever she wants to do.

5 She told you during her testimony that she was a
6 little girl lost in the forest trying to find her way out.

7 Now, as I have noted, this girl seems to get what
8 she wants, and if she was a little girl lost in the forest,
9 I can only paraphrase Sir Winston Churchill as "some
10 forest."

11 I suggest to you that that statement --

12 (A juror indicates he cannot hear.)

13 THE COURT: I think some of the jurors are having
14 difficulty.

15 MR. KEITH: Excuse me, I thought I was speaking louder.
16 As long as Mr. Hollombe doesn't raise his hand I feel I am
17 speaking loudly enough. I have got a stuffy nose.

18 THE COURT: There is a microphone near to you.

19 MR. KEITH: I suggest to you ladies and gentlemen --
20 thank you for raising your hand, sir -- I suggest to you,
21 ladies and gentlemen, that her characterization of herself
22 as a little girl lost in the forest was a falsehood, and a
23 deliberate falsehood. That is not Linda Kasabian.

24 And I suggest to you, ladies and gentlemen, that
25 if she attempted by her demeanor on the witness stand, and
26 I don't know this for sure because I did not see her, well,

1 I kind of inferred from the record I read, if she attempted
2 from the witness stand to lend the impression to you that
3 she was just a little girl lost in the woods trying to find
4 her way out, that this was a facade, and that she was
5 committing a fraud on you as jurors and triers of the fact
6 in this case.

5a

5a-1

1 Because, if I ever read about anybody who was
2 not a little girl lost in the woods, it is Linda Kasabian.
3 I find her, from a reading of the record -- oh, she may
4 have been under the domination of someone else for a period
5 of time, at Spahn Ranch, but I found her from a reading of
6 this record wily, opportunistic and frightfully resilient.
7 She bounces back every time, no matter what she does.

8 And when we speak of Miss Kasabian's credibility,
9 we speak of course also of her testifying here, which she
10 did, in expectation of immunity which she received at some
11 time during the course of this trial.

12 I read you what the Supreme Court has to say
13 about a witness who testifies from expectation of immunity
14 and, further, I think it brings into play probably the
15 strongest of human motives, of human drives, self-preserva-
16 tion, ladies and gentlemen, there is no stronger human
17 drive.

18 I don't think I need expound upon self-preserva-
19 tion, what it can do to us.

20 It can turn timid men into heroes in wartime
21 and often has.

22 It can change physically weak men into strong
23 men in times of crises.

24 Self-preservation can turn law abiding citizens
25 into thieves, we know this.

26 Self-preservation can turn honest people into

5a-2

1 liars.

2 Ladies and gentlemen, judging from Linda's
3 character, Mrs. Kasabian's character, as I formed it from
4 this record because, as I believe it to be, and I trust
5 you believe it to be the same, she has ample capacity in
6 her character to deceive, and coupled with that capacity,
7 ladies and gentlemen, I suggest to you she was driven by
8 the very strongest of human motives to deceive, and that
9 is what I have discussed, self-preservation.

10 Now, Mr. Fitzgerald told you, and I'm going to
11 repeat it, you will be instructed that if you find a
12 witness has been deliberately false as to his or her
13 testimony as to one material part, you are entitled under
14 the law to disbelieve all her testimony.

15 I want you to remember this not only now while
16 I am talking to you, but, and while Mr. Bugliosi is talking
17 to you, because as you know he has another opportunity to
18 speak, and I would like you to remember that rule of law
19 throughout your deliberations when you are evaluating the
20 credibility of Miss Kasabian.

21 And I made mention of this because if you think
22 that she falsely characterized herself on the witness stand,
23 then I feel you ought to disbelieve her entire testimony.

24 Dianne Lake, ladies and gentlemen, the case
25 against Leslie Van Houten is spread thin, it rests, if at
26 all, very very precariously, solely on the testimony of this

5a-3

1 little girl, as we see later in our discussion.

2 This is it, ladies and gentlemen!

3 Without Dianne Lake I submit to you the prosecu-
4 tion has no case against Leslie Van Houten because, as you
5 now know, even if you believed Linda Kasabian you cannot
6 convict anybody of anything on the strength of her testimony
7 alone. It has to be corroborated, and the only so-called
8 corroborating evidence of Linda Kasabian's testimony against
9 Leslie Van Houten is contained in the testimony of Dianne
10 Lake.

11 As I told you at the outset, we are going to
12 discuss corroboration later, but I am telling you now that
13 is the prosecution's case.

14 Dianne Lake! Who is she, ladies and gentlemen?
15 She has been discussed at length earlier in these proceed-
16 ings by other counsel during their arguments.

17 We know who she is. She is a drug addict.
18 In late 1969 she was adjudicated by the Superior Court
19 of the County of Inyo -- this is after a judicial proceeding,
20 ladies and gentlemen -- as a gravely disabled person, and
21 that does not mean physically disabled; that is mentally,
22 gravely disabled.

23 She was committed, as you know, to a State
24 Mental Institution.

25 She was diagnosed there by presumably competent
26 personnel as a schizophrenic.

5a-4

1 We know she did not tell the truth to the Grand
2 Jury of this County when she was under oath. She was told
3 before the Grand Jury of this County that she would not be
4 prosecuted for perjury.

5 To me the very worst thing of all, she was told
6 by Sergeant Gutierrez, before her testimony before the
7 Grand Jury -- I may be mistaken, I believe it was before the
8 Grand Jury -- she was told she'd better come up with some
9 answers or else.

10 This is a mentally ill 16 or 17-year-old girl,
11 ladies and gentlemen, and this is the girl on the testimony
12 of which the case against Leslie Van Houten stands or falls!

13 I shouldn't have put it in that way because I
14 am going to show you that even if you happen to believe this
15 little girl, the case against Leslie Van Houten still falls.

16 But that is the prosecution's spot.

17 Something else too, ladies and gentlemen, as
18 you remember from the testimony, and this is important,
19 as you remember from the testimony, Leslie Van Houten is
20 supposed to have made certain statements to Dianne Lake,
21 oh, at Willow Springs or Barker Ranch, I cannot remember
22 which, which statements Mr. Bugliosi has characterized as
23 a confession.

24 I respectfully dissent from Mr. Bugliosi's
25 opinion as to what these statements were.

26 In my opinion they were no more a confession than

1 the man in the moon, but we will go into that later.

2 But what I am getting at is this:

3 You will be instructed by the Court that any
4 evidence of oral admissions or oral confessions from another,
5 related by someone on this witness stand, ought to be viewed
6 by you with caution.

7 And this is a general rule of law, ladies and
8 gentlemen, this is not limited to somebody who has been the
9 victim of drug abuse, somebody who has been mentally ill,
10 somebody who has been threatened.

11 This applies even to a police officer who gets
12 on the stand and purportedly relates an oral admission or
13 confession.

14 There is nothing mysterious or sinister about
15 the reason for this rule of law, ladies and gentlemen, it
16 is simply that a matter of common experience, most of us
17 cannot remember what somebody said to us yesterday or the
18 day before or ten minutes ago and relate it accurately.

19 And yet an oral admission or an oral confession
20 is obviously damaging to the person on trial, and here is
21 somebody on the witness stand getting up and relating some-
22 thing damaging or allegedly damaging that may have been said
23 a year ago.

ib fls.

1 And since it is a matter of common experience, and
2 nobody remember what anybody said from day to day,
3 practically, thus the rationale of an instruction of this
4 rule of law that you should view that kind of testimony
5 with caution.

6 So the prosecution in this case, ladies and
7 gentlemen, is going to ask you in their closing argument,
8 in effect -- in effect, -- the prosecution is going to
9 ask you to convict Miss Van Houten of two counts of murder
10 and a count of conspiracy to commit murder, on the basis of
11 the testimony of Dianne Lake alone.

12 A 16 or 17-year-old girl who has been threatened,
13 who has committed -- I wouldn't say perjury -- but who has
14 lied under oath, who has been adjudicated mentally ill,
15 and a very fundamental part of whose testimony should be
16 viewed by you with caution.

17 To me, and I trust to you ladies and gentlemen,
18 a conviction based on her testimony is indefensible.
19 It is frightening. Don't do it!

20 We are going to leave Dianne Lake; we will be back
21 to her, but not in the same context.

22 We are going to talk for a few minutes about
23 what I have called in my chapter heading "The Robot" --
24 robot theory of murder, as advanced by the prosecution.

25 I am going to tell you in a little bit why they
26 advanced that proposition.

1 But first I am going to read to you the law as
2 will be later given to you by His Honor on deliberate and
3 premeditated murder.

4 I am going to read it because it is important
5 when you listen to me in discussing Mr. Bugliosi's robot
6 theory:

7 "All murder which is perpetrated by any
8 kind of wilful, deliberate and predmeditated
9 killing with malice aforethought is murder of
10 the first degree.

11 "The word 'deliberate' means formed or
12 arrived at or determined upon as a result of
13 careful thought and --"

14 And I think you understand now what I am getting
15 at. Going on:

16 "And weighing of considerations for and
17 against the proposed course of action. The word
18 'premeditated' means considered beforehand.

19 "If you find that the killing was preceded
20 and accompanied by a clear, deliberate intent on
21 the part of the defendant to kill, which was a
22 result of deliberation and premeditation, so
23 that it must have been formed upon pre-existing
24 reflection and not under a sudden heat of passion
25 or other condition precluding the idea of
26 deliberation" -- remember this, other conditions, not

1 just heat of passion, but other conditions precluding the
2 idea of deliberation --

3 "It is murder of the first degree.

4 "The law does not undertake to measure
5 in units of time the length of the period during
6 which the thought must be pondered before it can
7 ripen into an intent to kill which is truly
8 deliberate and premeditated. The time will
9 vary with different individuals and under
10 varying circumstances. The true test is not
11 the duration of time but rather the extent of the
12 reflection. A cold, calculated judgment and
13 decision may be arrived at in a short period
14 of time, but a mere unconsidered and rash impulse,
15 even though it include an attempt to kill, is not
16 such deliberation and premeditation as will fix
17 an unlawful killing as murder of the first degree.

18 "To constitute a deliberate and premeditated
19 killing, the slayer must weigh and consider the
20 question of killing and the reasons for and
21 against a choice" -- remember that --

22 "And, having in mind the consequences, he
23 decides and does kill."

24 Having in mind the consequences, mind you, he
25 decides to and does kill.

26 While I am at it, I am going to read the

1 instruction of murder in the second degree.

2 "Murder in the second degree is the unlawful
3 killing of a human being with malice aforethought. When
4 there is manifest an intention, unlawful, to kill a human
5 being but the evidence is insufficient to establish de-
6 liberation and premeditation."

7 I think the key words are where there is
8 manifest an intention, unlawful, to kill.

9 Now, the prosecution has repeatedly characterized
10 the female defendants in this case and Mr. Watson as robots,
11 zombies, automatons --

12 I think automatons is wrong. I'm quite sure it is
13 automatons, with all due respect.

14 On one occasion he characterized the female
15 defendants and Mr. Watson as mindless -- mindless robots.

16 Now, he is not doing this, ladies and gentlemen,
17 just to turn a clever phrase or to embellish his argument,
18 or as a figure of speech.

19 He's got something in mind. He is a very
20 brilliant man, Mr. Bugliosi, and he's always got something
21 in mind. He's always got a purpose; he doesn't do this out
22 of hand.

23 I don't have to tell you what robots and zombies
24 are; they are mindless; they don't have any minds; they
25 cannot think; they cannot take alternatives; they cannot
26 make decisions; they have no opinions; they can only

1 follow directions.

2 And of course the prosecution has alleged
3 vigorously that it is Mr. Manson who is the button pusher;
4 he is directing all of the robots.

5 I don't know about Mr. Manson, but I will tell you
6 why I think, and I can infer this, that the robot theory
7 of murder was advanced by Mr. Bugliosi.

8 I would suggest to you, ladies and gentlemen,
9 that the concept of young girls with no discernible motive
10 whatsoever, killing people they have never even seen before
11 or heard of, is such enormity that it is impossible for any
12 of us to believe and accept, so the only way he is going to
13 get you to believe these female defendants and Mr. Watson
14 were engaged in wrongdoing, is to try and convince you
15 that they were under the total domination of somebody
16 else; that they had no mind left, their minds were totally
17 controlled by another person.

18 In other words, I don't think any of us can
19 believe that this could have happened if it did happen.

20 From this record, ladies and gentlemen, and from
21 all the reams of testimony you have heard about the
22 domination over the Family, and I guess there must be
23 something to it, certainly Mr. Bugliosi wouldn't have
24 harped upon it if he did not think there was something
25 to it, and I told you why.

26 And I get this from this record: I think the

1 relationship, according to the prosecution between Manson
2 and the Family, and Watson and the three female defendants
3 in particular, is far deeper than, say, father to daughter
4 and employer-employee, captain and pilot.

5 There is something very mystical, almost occult,
6 about it.

7 And again, I am not using words to hear myself
8 talk, because there are some illustrations in this record of
9 that very thing.

10 This record discloses over and over again that
11 all of these girls at the ranch believed Manson was God,
12 really believed it!

13 The record discloses that the girls obeyed his
14 commands without any conscious questioning at all; that
15 no one ever interrupted him. He is the only one that ever
16 had any opinions on any subject.

17 Either Mr. Bugliosi said or the record said, and
18 I'm not sure which, on August 8th the climate at the ranch
19 was such that no girl would disobey any instructions of
20 Manson.

21 This is what Mr. Bugliosi inferred from that
22 record, or it may have been actually testimony in the
23 record. It doesn't make any difference.

24 Leslie Van Houten told Danny De Carlo, Manson
25 knew all and saw all and was God.

26 Danny De Carlo says Tex Watson never gave an

1 opinion on anything; that he went around with a blank
2 stare.

3 But Linda Kasabian testifies that up to a certain
4 point she thought Manson was God.

5 And the most striking example of mind control of
6 all was the testimony that Susan Atkins was told by
7 Manson to go to Brazil to get a coconut, and she started out
8 of the door!

9 If you believe the prosecution theory, and that
10 is it, ladies and gentlemen, these female defendants and
11 Watson were extensions of Mr. Manson as if they were his
12 additional arms and legs.

13 Now, if this is so, ladies and gentlemen, and it
14 may well appear to you to be so from the evidence, these
15 female defendants just cannot be convicted; they cannot be
16 guilty of premeditated murder as I told you about.

17 For that matter they cannot be guilty of conspiracy
18 to commit murder.

5c

5c-1

1 First degree murder and conspiracy to commit
2 murder are thinking man's crimes. You've got to think;
3 you've got to weigh; you've got to decide; you've got to
4 plan.

5 You've got to be aware of the consequences,
6 the alternative; you have to sit down and talk about it and
7 make up your mind.

8 These people did not have any minds to make up,
9 according to Mr. Bugliosi.

10 As a matter of fact, ladies and gentlemen, I
11 very seriously doubt from this record that these girls here
12 before you, even had the mental capacity to harbor afore-
13 thought, which, as you know, is an element of first and
14 second degree murder.

15 If you don't have malice aforethought, you are
16 not guilty of murder.

17 Now, malice aforethought has been described,
18 at least in connection with killing somebody, has been
19 described as having the specific intent to kill them.

20 As Mr. Bugliosi pointed out, such intent can
21 often be inferred from the circumstances of the killing,
22 and that is the way he argued.

23 Look at this, anybody that did all these things
24 had to have malice aforethought because it's obviously
25 anybody who did this intended to kill the victims.

26 But intent takes thought. When you have an

5c-2

1 intent to do something you decide to do it.

2 I don't know whether any of these defendants,
3 these female defendants, if they are automatons, can form
4 a specific intent to do anything, much less kill somebody.

5 Now, somebody had that intent -- somebody had
6 it.

7 And is it so far-fetched, ladies and gentlemen,
8 to determine, to find that there was something very much in
9 the nature of a transferred intent in this case?

10 And mind you, I am just carrying on Mr. Bugliosi's
11 own thoughts about the robot theory of murder.

12 Certainly we can all understand that someone
13 who was extremely intoxicated from drugs or alcohol might
14 be unable to form an intent to kill somebody even though
15 they do it.

16 And we can all understand and agree that someone
17 who is extremely mentally ill may be robbed of his or her
18 capacity to form an intent to kill even though they do it.

19 And the reason people in such a state cannot
20 form an intent to kill is their decision making power is
21 inoperative; they are robbed of it.

22 It doesn't work any more. They are too drunk
23 to know what they are doing. They are too mentally sick
24 to know what they are doing. They cannot form an intent.

25 Then why can't that same rationale, ladies and
26 gentlemen, be applied to this case?

5c-3

1 I am not suggesting that the evidence does not
2 seem to support it; that the female defendants were drunk
3 or heavily under the influence of drugs, although it could
4 be.

5 I am not suggesting necessarily they were so
6 mentally ill that they could not understand and appreciate
7 what they were doing, could not form an intent to kill,
8 could not have malice aforethought.

9 But I do suggest, bearing all of the circum-
10 stances in mind and bearing in mind Mr. Bugliosi's argument,
11 that each of the minds of these girls and Mr. Watson were
12 totally controlled by someone else.

13 So not only did they not have the capacity to
14 premeditate, they did not even have the capacity to form
15 an intent to kill somebody, assuming they did kill anybody.

16 It sounds like a horror show, doesn't it,
17 where you have the mad scientist and his assistant, Igor,
18 exchanging brains between people.

19 But this is not science fiction, ladies and
20 gentlemen, this is real life, and this is something that
21 according to the prosecution happened, and if it did
22 happen -- and this is not the first time, it has happened
23 down through history -- Rasputin comes to mind off-hand,
24 I'm sure there are many many other examples not recorded
25 by history.

26 If this happens, bearing in mind the possibility

5c-4

1 of drug abuse, bearing in mind the possibility of mental
2 illness and bearing very much in mind not only the
3 probability but the certainty of mind control, absolute,
4 these girls are not guilty of anything. They can't be.
5 They did not have the requisite intent. Any crime has to
6 be accompanied by a criminal intent. If you don't have
7 it within yourself, you cannot form that intent, you are
8 not guilty.

9 This is his argument. This is his baby, Mr.
10 Bugliosi's.

11 And if you are intrigued with his argument, if
12 you accept it, if you adopt it, then you must acquit the
13 female defendants, no question about it.

14 I am not through with this concept -- I thought
15 I was, but there are some constructions that I think you
16 ought to consider.

17 THE COURT: Mr. Keith, we will take our recess at
18 this time.

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

22 The court will recess for 15 minutes.

23 (Recess.)
24
25
26

6 fls.

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1 THE COURT: All counsel and jurors are present.

2 You may continue, Mr. Keith.

3 MR. KEITH: Thank you, your Honor.

4 I am still on the same subject that we were
5 discussing at the time of the recess.

6 In connection therewith, I am going to read
7 to you two more basic principles of law concerning the
8 manner in which you must view circumstantial evidence,
9 because I feel that these instructions are germane to the
10 issue of the robot theory of murder.

11 I am reading:

12 "The specific intent with which an act
13 is done may be manifested by the circumstances
14 surrounding its commission, but you may not find a
15 defendant guilty of a willful, deliberate,
16 premeditated murder of the first degree unless the
17 proved circumstances not only are consistent with
18 the hypothesis that he had the specific intent to
19 kill a human being with malice aforethought which
20 was the result of deliberation and premeditation
21 as those terms are defined elsewhere in these
22 instructions, but are irreconcilable with any other
23 rational conclusion."

24 Now, isn't it rational, ladies and gentlemen,
25 to conclude that these homicides, if they were committed
26 by any of these female defendants, were done as a result of

6-2

1 their minds being substituted with the mind of somebody
2 else? With their minds being so dominated by somebody
3 else's that they were robots, just as Mr. Bugliosi says?
4 That they were Zombies?

5 I am going on with this instruction:

6 "Also, if the evidence as to such
7 specific intent is susceptible of two reasonable
8 interpretations, one of which points to the
9 existence thereof and the other to the absence
10 thereof, you must adopt that interpretation which
11 points to its absence.

12 "If, on the other hand, one interpreta-
13 tion of the evidence as to such specific intent
14 appears to you to be reasonable and the other inter-
15 pretation to be unreasonable, it would be your duty
16 to accept the reasonable interpretation and to reject
17 the unreasonable."

18 Now, ladies and gentlemen, if there are two
19 interpretations of the evidence -- I am not reading now --
20 one pointing to innocence of first degree murder and the
21 other to guilt, then, according to the basic principles
22 of criminal jurisprudence, you must accept that instruction
23 which points to innocence of first degree murder.

24 And that is what I have been arguing right here;
25 That the female defendants didn't have the capacity to
26 premeditate, to deliberate, as those terms have been defined,

1 because of a mental disability, in effect, caused by someone
2 else. Then you must adopt that construction of the evidence,
3 even though you might find a reasonable interpretation of
4 the evidence pointing to their guilt -- one interpretation
5 innocence, one interpretation guilt -- you are duty bound
6 to only accept the interpretation pointing to innocence
7 and adopt that interpretation when you are viewing circum-
8 stantial evidence.

9 And this case is based primarily on circumstantial
10 evidence, ladies and gentlemen.

6a fls.11

6a-1

1 So, if you find that it is reasonable for these
2 female defendants not to have formed an intent to kill,
3 not to have deliberated, not to have premeditated -- with
4 their own minds, mind you, not somebody else's mind but
5 their own minds -- you have got to acquit.

6 And the exact same thing applies to the circum-
7 stantial evidence instruction concerning second-degree
8 murder.

9 If there are two reasonable interpretations, you
10 have got to adopt the reasonable interpretation pointing to
11 innocence.

12 In other words, if you find it is reasonable that
13 these girls couldn't form a specific intent to kill because
14 they were mindless, couldn't possibly decide to kill
15 anybody, no matter what short a span of time it might
16 take to form some intent, they were disabled from doing so,
17 because they weren't operating under their own minds,
18 you can't find them guilty of second-degree murder, assuming
19 you believe that this is a reasonable interpretation of the
20 evidence. And it is a reasonable interpretation because
21 Mr. Bugliosi advanced this very argument, and he is not
22 going to argue something to you that isn't reasonable, ladies
23 and gentlemen.

24 Now we are going on into^a discussion of conspiracy.

25 Now, conspiracy has been described by a legal
26 scholar as the most dangerous toy in the prosecution's

1 nursery. And believe me, it is.

2 You might be interested to know that the concept
3 of conspiracy was developed, and I will give you one guess,
4 it was the Star Chamber, ladies and gentlemen. That is
5 where the doctrine arose, back in the 17th Century.

6 I even know the name of the case, but it is
7 immaterial.

8 The law of conspiracy has been criticized by legal
9 scholars and even Supreme Court justices.

10 It is not a simple doctrine. It is complex.
11 It requires, as you will find out, more than one intent.
12 It requires two intents.

13 Now, Mr. Bugliosi gave you an example. He tried
14 to make the concept easy for you to understand, and he tried
15 to tell you how it was proven by circumstantial evidence,
16 because seldom do you find direct evidence of a conspiracy,
17 unless one of the conspirators actually testifies, and
18 then you don't necessarily have sufficient proof.

19 But he told you about A and B robbing a bank.
20 They came in together and they had guns and they both held
21 up the teller, and they both left together.

22 And obviously, from that example, A and B were
23 conspirators, because they were acting in concert, in
24 unison.

25 And it appears that way on the surface, doesn't
26 it?

1 But it isn't necessarily so,

2 Let's suppose that A, in this example, was an
3 idiot. Let's suppose A is a lunatic. Let's suppose he is
4 a mental defective. Let's suppose he is so drunk he
5 doesn't know what he is doing, or so full of drugs he doesn't
6 know what he is doing.

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1 The gist of a conspiracy is an agreement. Under
2 such conditions, A may not be able to agree to anything.
3 He might not even know his own name.

4 Let's suppose A is unconscious. You can commit
5 a crime when you are unconscious, except it is a complete
6 defense.

7 Let's suppose A is hypnotized, not acting under
8 his own will power. Let's suppose A is a mindless robot.

9 Now, let's suppose A is coerced into robbing
10 the bank with B. That is a defense.

11 In other words, B says to A: If you don't
12 rob this bank with me, I am going to kill your wife and
13 children.

14 That is a defense. Sure, he agrees, but he
15 agrees under duress. Such an agreement isn't an agreement.

16 If we were talking about civil law, it would
17 be unenforceable.

18 Now, under the conditions that I have outlined,
19 A isn't a conspirator because he was never capable and
20 never did enter into an agreement freely and voluntarily.

21 As Mr. Fitzgerald pointed out, the very gist
22 of a conspiracy is the agreement. You have to agree. And
23 when you agree to something, you intend to agree to it.

24 And when you agree to a criminal conspiracy,
25 you not only enter into an agreement, but you agree to
26 carry out its objects, its terms, conditions, purposes.

1 As we will see in this discussion, it takes
2 two intents to be a conspirator. You not only have to
3 agree or intend to -- excuse me -- to intend to agree,
4 and do agree.

5 And the conspiracy to commit first degree
6 murder, you have to enter into an agreement intentionally
7 with the requisite intent to commit first degree murder
8 by premeditation and deliberation.

9 There are a lot of hurdles to overcome before
10 you can be a conspirator to commit first degree murder.

11 Now, obviously, to be a co-conspirator, you
12 must be aware of the nature of the project, the object of
13 the conspiracy to be accomplished, and having such knowledge,
14 you must intend to agree, and you agree.

15 And you agree to do what? To participate in
16 the carrying out of the ultimate object of the conspiracy.

17 I suggest to you, ladies and gentlemen, that
18 a mindless robot would be hard put to enter into a
19 conspiracy of any kind, particularly a conspiracy to
20 commit premeditated murder.

21 Now, I am going to give you some examples.
22 We are going to use A and B.

23 You probably won't want to invite them to
24 Christmas dinner either, along with Mr. DeCarlo, because
25 they are not going to be very nice people, but I am going
26 to show you that they aren't conspirators.

1 Now, A and B -- let's say A and B get on a
2 bus by mistake, and in the bus there are 12 members of
3 the Mafia and they are on their way to murder a rival
4 gang.

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1 And they do so. They rub out the rival gang
2 right before A and B's minds.

3 I say "minds," I have got "minds" on the brain.
4 Right in front of their eyes.

5 And A and B applaud because they don't like this
6 rival gang either. They are a bad bunch.

7 But A and B are not conspirators even though they
8 are there and even though they liked what they saw, because
9 they had no knowledge of what was going to happen.
10 They didn't enter into an agreement. They were along for
11 the ride by mistake.

12 Now, we can even assume that A and B, during
13 the bus ride, overhear some conversation and they find out
14 what is going on. They have knowledge of what is intended
15 by the Mafia gang.

16 They are still not conspirators because they
17 didn't enter into any agreement to participate in the
18 joint venture, even though they know about it, they see it
19 happen, and they approve of it.

20 I will go still further.

21 Let's suppose A and B, after the rival gang is
22 rubbed out in front of their eyes, wipe off some finger-
23 prints.

24 We are using the same hypothesis that we used
25 before.

26 They find out about it, they like what they saw,
they clap their hands. They never entered into any agreement,

1 though, to participate in this joint venture of wiping out
2 the rival gang.

3 And suppose, after the killings, A and B wipe off
4 some fingerprints.

5 They are not conspirators. They never agreed to
6 participate in these killings.

7 Let's suppose A and B, after the rival gang is
8 all dead, pump a couple of shots into the dead bodies.

9 They are not conspirators either. They didn't
10 enter into any agreement.

11 Because the people were already dead, they didn't
12 kill anybody or aid in killing anybody.

13 Here are some other examples.

14 A, B and C agree to commit a burglary, but B and
15 C, unbeknownst to A, agree to commit murder. They all go out
16 together, A, B and C, and lo and behold, B and C, with no
17 help and no knowledge from A, commit the murder.

18 A is not liable for the murder, even though he is
19 there, because he never entered into any agreement to help
20 commit it, and he never did commit it. He didn't participate
21 Lack of an agreement.
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1 What I am getting at, what I am trying to
2 strive to convince you of, is the absolute necessity for
3 an agreement. It is the sine qua non of a conspiracy.
4 Without it, you don't have one.

5 I know you don't have to -- I am well aware
6 that the prosecution does not have to prove a conspiracy
7 necessarily by words of agreement. It can be proven --
8 I am not saying proven beyond a reasonable doubt -- but
9 he could still prove a prima facie case, as it is called,
10 by showing conduct and activity from which you can infer
11 a conspiracy.

12 We will go into that later. I am giving you
13 some examples to stress the agreement and the intent
14 aspect of a conspiracy.

15 Now, getting back to these examples. We will
16 go back to A, B and C again.

17 You see, we have A, B and C agreeing to commit
18 a burglary, and B and C agreeing to commit murder, but A
19 doesn't know about it.

20 Let's suppose that at some time in the course
21 of the events, A finds out what B and C intend to do.
22 He has knowledge, and he doesn't do anything to stop it,
23 but he doesn't participate either in the commission of the
24 murder.

25 Now, he knows about it. He doesn't do anything
26 to stop it. But I submit, he is still not a co-conspirator in

1 the crime of murder because he didn't enter into an
2 agreement by words, conduct or otherwise.

3 All he was was present. That is not enough to
4 make a conspirator.

5 As the Court will instruct you, mere associa-
6 tion with co-conspirators isn't sufficient, as a matter of
7 law, to render an individual libel for the object of the
8 conspiracy.

9 And the purpose of that instruction is obvious.
10 We don't have guilt by association in this country. You
11 have to prove it beyond a reasonable doubt.

12 Now, it has been written by a famous legal
13 scholar, his name is Harno, H-a-r-n-o, he wrote the textbook
14 on criminal law, at least when I went to law school, and
15 this is an excerpt from a law review article contained in
16 89 University of Pennsylvania Law Review. The page number
17 escapes me. But he says this, Mr. Harno:

18 "To prove a conspiracy" -- I am quoting
19 now -- "To prove a conspiracy, it must be shown
20 that the accused had knowledge of it. But mere
21 knowledge or even the approval of an unlawful
22 design are not of themselves sufficient."

23 This is what I have been getting at in these
24 examples.

25 "The evidence must establish that there
26 was a unity of intent on the part of two or more

"persons to accomplish the ends charged."

1 Knowledge and approval, association, even all
2 three, aren't enough. You have to show an agreement,
3 an intent to unite in a common object.

4 Here is an actual case that was quoted in that
5 law review article, or discussed, I should say. It is
6 an older case.

7 This is the way it goes:

8 A, who had a grievance against C, told B that
9 he would whip C if someone would pay his fine.

10 They were always whipping people a hundred years
11 ago instead of beating them up.

12 B -- listen to this -- I will start over.

13 A, who had a grievance against C, told B if he
14 would whip C, someone would pay his fine, that is, B's
15 fine.

16 B told A he didn't want anybody to pay his fine,
17 that he, B, had a grievance against C and would whip him
18 at the first opportunity.

19 B then whipped C.

20 A did not assist B, but after the assault, A
21 expressed his approval.

22 The Court said there was no conspiracy because
23 there wasn't any agreement, and went on to say that mere
24 knowledge, acquiescence or approval of an act without
25 cooperation or agreement, or agreement to cooperate, is
26 not enough to constitute the crime of conspiracy.

1 Just as I have been saying.

2 Well, that is enough of the law of conspiracy.
3 I just want to leave you with the thought that this is not
4 an easy crime to prove, particularly beyond the reasonable
5 doubt.

6 Now, ladies and gentlemen, we are going to go
7 into the testimony of Linda Kasabian as it refers to and
8 mentions Leslie Van Houten, and we are going to analyze
9 it -- and it is not very long, so don't worry -- in the light
10 of what we know now about the law of conspiracy, and also
11 in the light of the basic circumstantial evidence instruction.

12 I have read to you a couple, two, circumstantial
13 evidence instructions -- one, I believe -- but this is the
14 basic one, when we analyze Mrs. Kasabian's testimony in the
15 light of the law of conspiracy and in the light of this
16 instruction that I am about to read to you, which is all
17 important.

18 I don't know whether I have already said so, but
19 it is just as important as the law of reasonable doubt.

20 Don't think I am conceding that what Mrs. Kasabian
21 said is so, or that you should believe it. We are only
22 assuming, arguendo, for the sake of argument, that what
23 she said might be true.

24 And when we discuss her testimony as it relates to
25 Leslie Van Houten -- and others, for that matter -- we
26 are going to be drawing inferences and we are going to be

6f-1
making deductions, just like Sherlock Holmes.

1 Now, here is this basic principle of criminal
2 law. I am reading.

3 "You are not permitted to find a defendant
4 guilty of any crime charged against him based on
5 circumstantial evidence unless the proved circumstances
6 are not only consistent with the theory that the
7 defendant is guilty of the crime, but cannot be
8 reconciled with any other rational conclusion."

9 Now, you have heard that before. This is a
10 different one. Going on.

11 "And each fact which is essential to
12 complete a set of circumstances necessary to
13 establish the defendant's guilt has been proved
14 beyond a reasonable doubt.

15 "Also, if the evidence as to any
16 particular count is susceptible of two reasonable
17 interpretations, one of which points to a defendant's
18 guilt and the other to his innocence, it is your
19 duty to adopt that interpretation which points to
20 his innocence and rejects the other which points to
21 his guilt."

22 We discussed that heretofore. But that
23 paragraph which I have just read cannot be emphasized
24 too much, and I am sure you will hear it again from me,
25 and, of course, you are going to hear it from his Honor.

26 Going on:

6f-2

1 "You will notice that the second paragraph
2 of this instruction applies only when both of the
3 interpretations appear to you to be reasonable. If,
4 on the other hand, one of the interpretations appears
5 to be reasonable and the other to be unreasonable,
6 it would be your duty to adopt the reasonable
7 interpretation and to reject the unreasonable
8 interpretation."

9 Now, I am going to try to show you, to the best
10 of my ability, ladies and gentlemen, that any interpretation,
11 after analyzing Linda Kasabian's testimony pointing toward
12 guilt, is unreasonable. But even if it were reasonable,
13 if there is an interpretation or an inference pointing to
14 innocence, you still have got to reject the guilty interpreta-
15 tion and it is your duty to accept the innocent interpretation.

16 Here is another -- I am going to read another
17 sentence over again in this instruction. It is in the
18 first paragraph.

19 "And each fact which is essential to
20 complete a set of circumstances necessary to
21 establish the defendant's guilt has been proved
22 beyond a reasonable doubt."

23 We are going to talk about that, too, that
24 sentence, which is also very significant.

25 Now, for the sake of convenience -- you heard me
26 talk about a set of circumstances -- for the sake of

1 convenience, and perhaps somewhat arbitrarily, I envision
2 four sets of circumstances in this case as it applies to
3 Miss Van Houten.

4 6g fls.
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1 The first set of circumstances -- and I will call
2 this Scene 1 -- is what happened in the bunk house on the
3 second night, August 9th.

4 That is the bunk house scene.

5 Now, the second scene, which I will call Scene 2,
6 is this tortuous car ride throughout Los Angeles County with
7 the seven people in the old Ford.

8 Scene 3 is the scene outside the La Bianca home on
9 Waverly Drive where Manson is supposed to have gone in
10 the La Bianca house and tied some people up. We will talk
11 about that, too.

12 And the fourth scene, if you can call it a scene,
13 revolves around the testimony of Dianne Lake as it concerns
14 Miss Van Houten.

15 Now, within each of these sets of circumstances
16 are a variety of facts. I am not saying admitted facts.
17 Don't misunderstand me. But to me, in this particular
18 context, a fact can be a word, it can be a reaction to a
19 word, it can be a lack of a word that should be there that
20 isn't, it can be conduct, it can be reaction to an event
21 or a particular act, it could be a lack of reaction or lack
22 of conduct where you might expect somebody to do something
23 and they don't.

24 That is a fact -- at least by my interpretation --
25 from which we can draw an inference. It may be a fact which
26 is essential to complete a set of circumstances necessary to

1 establish guilt. And if each fact isn't proved beyond a
2 reasonable doubt, then you must acquit.

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1 We go to the evidence.

2 This is Linda Kasabian's direct testimony,
3 testimony on direct examination, we will start at Page
4 5197 of Volume 32 of the daily transcript, Line 4. This is
5 August 9th;

6 "Then Charlie came in and called Katie and
7 Leslie and myself aside and told us to go get
8 a change of clothes and meet him in the bunk
9 house, which we did."

10 Who did? It doesn't say.

11 "Q Did he give you any specific
12 instructions in addition to that?

13 "A Yes. He told me to get my driver's
14 license."

15 This is Mr. Manson telling Linda Kasabian to get
16 her driver's license.

17 Page 5198:

18 "Q So this is Mr. Manson, then, telling
19 you, Katie and Leslie Van Houten, to get a change
20 of clothing and meet him in the bunk house.

21 "A Yes.

22 "Q Did you in fact get a change of
23 clothing and get your driver's license?

24 "A Yes, I did.

25 "Q And then you went to the bunk house?

26 "A Yes."

1 Now, she doesn't say anything else -- she doesn't
2 say anything about anybody else getting a change of
3 clothing, just Linda Kasabian got a change of clothing.

4 Remember something, Leslie Van Houten, it is
5 undisputed, was not present the night before, and for
6 all we know, from this record, never knew anything about
7 what happened the night before.

8 You have to bear that in mind, of course.

9 All right, I will go on at Line 9:

10 "Q And then you went to the bunk house.

11 "A Yes.

12 "Q When you arrived at the -- strike that.

13 "When you say the bunk house, are you
14 referring to the bunk room, the one that you
15 pointed out on this map where Danny De Carlo was?

16 "A Yes.

17 "Q So bunk room and bunk house are inter-
18 changeable in your mind?

19 "A No, it's the same room."

20 And then at Line 23:

21 "Q After you arrived at the bunk house
22 was anyone else there?

23 "A Yes, Clem and Charlie and Sadie and
24 Tex and I know I, myself, was there, and I don't
25 know if -- I don't remember if I walked with
26 somebody there or not or if I went by myself, but

1 "eventually we were all there."

2 Who is "we"?

3 That is the first question. This is what I am
4 talking about, these facts that create a set of circumstances,
5 did they prove them beyond a reasonable doubt?

6 According to this answer, Leslie was not even
7 there.

8 She does say, "Eventually we all were there."

9 What does "eventually" mean, sooner or later?
10 It's just as reasonable to infer that it was later as far
11 as Leslie Van Houten is concerned, as sooner.

12 It is a reasonable inference from this testimony
13 that we have already seen that Miss Van Houten did not
14 hear anything of the ensuing conversation.

15 We will go on.

16 "Q Do you recall how everyone was
17 dressed?"

18 That is a question.

19 "Would you repeat that, Mrs. Kasabian,
20 who was present inside the bunk house?"

21 There is some colloquy. Let me start again.
22 I confused you.

23 "Question" -- at Line 15:

24 "Who was present inside the bunk house?"

25 "A Well, I cannot remember the exact
26 faces that were there at the moment I walked in,

1 "but eventually" --

2 Again this word "eventually", and I am not nit-
3 picking, ladies and gentlemen, this is serious --

4 "But eventually we were all there which
5 was myself, Charlie, Leslie, Katie, Sadie, Tex
6 and Clem."

7 When did Leslie get there? It doesn't say.
8 Eventually she did.

9 Now, going on:

10 "Q Did Mr. Manson say anything to you and
11 the others, once you were all together in the
12 bunk house?

13 "A Yes, he did.

14 "Q What did he say?

15 "A He said we were going to go out
16 again tonight. Last night was too messy, and
17 that he was going to show us how to do it."

18 What does that mean, ladies and gentlemen, to
19 somebody who was not around the night before? Assuming
20 Manson said this.

21 Number one, we don't even know if Miss Van Houten
22 heard that, if she did not get there until eventually,
23 whatever that means.

24 And, secondly, does that show that she entered
25 into a conspiracy then to murder somebody?

26 Can't we infer that even if she heard that remark,

1 even if she heard it, she would not understand what it
2 meant?

3 Bearing in mind she was not present the night
4 before and bearing in mind from this record she did not
5 know anything about what happened the night before.

6 Going on:

7 "Q Did anyone say anything when
8 Mr. Manson said this?

9 "A Not at the moment.

10 "Q Did Tex say anything inside the bunk house?

11 "A At one point he said that we needed
12 better weapons; the weapons we took last night
13 were not effective; they weren't good enough."

14 Well, number one, who heard him say that?
15 Linda did. Linda Kasabian, apparently, if he said it.
16 I will go into that.

17 But where is the evidence that Leslie Van Houten
18 or anybody else in the bunk house heard him say that?

19 And furthermore, I don't believe he ever said it,
20 and I will tell you why.

21 7a

7a-1

1 Who was Watson? How has he been characterized?
2 The man with the blank stare; he never voices an opinion;
3 he never has anything to say, only follows orders.

4 To him Manson is supposed to be God. What is
5 he doing at this point? He is criticizing his God. He
6 is telling him, he is saying "God, you gave us lousy weapons
7 last night."

8 Do you think Watson said that? Of course he
9 didn't.

10 Certainly, this is an important statement. Each
11 fact -- that is a fact -- each fact was essential to
12 complete the set of circumstances. It must be proved
13 beyond a reasonable doubt.

14 Don't you have a reasonable doubt, ladies and
15 gentlemen, that Watson said that? He is the man that
16 doesn't say anything.

17 Going on;

18 "Q Did you see any knives or guns inside
19 the bunkhouse?

20 "A Yes, I did.

21 "Q What did you see?

22 "A I saw two long swords, that is all I
23 recall.

24 "Q Do you recall whether any of the persons
25 in the bunkhouse picked up any of these swords?

26 "A No, I didn't see anybody.

7a-2

1 "Q Did you eventually all leave the bunk-
2 house?

3 "A Yes.

4 "Q Did you leave as a group?"

5 Well, that question was withdrawn by Mr.

6 Bugliosi:

7 "Q Did you all leave the bunkhouse at
8 approximately the same time?

9 "A Yes.

10 "Q Where did you all go from there?

11 "A We went to the car.

12 "Q What car did you go to?

13 "A The same car we took the night before,
14 Johnny Swartz' car." And so on.

15 That is the end of the bunkhouse scene, ladies
16 and gentlemen, as I have termed it, and that is the set
17 of circumstances, and it's an important scene in this case.

18 And is there anything in that scene that would
19 lead you to believe that at that time Miss Van Houten
20 agreed to enter into a conspiracy to commit first degree
21 murder after all of the instructions I have read to you
22 about that subject?

23 There is absolutely no showing in that scene
24 that Miss Van Houten agreed to do anything except by her
25 conduct again in the car.

26 Cannot we infer from that scene -- cannot we

7a-3

1 draw a reasonable inference that Miss Van Houten did not
2 at that juncture enter into any conspiracy to commit murder?

3 No. 1, we don't even know whether she heard any
4 of these purported statements.

5 No. 2, perhaps the most ominous of the
6 statements, that I seriously doubt was ever made, and I
7 suggest that you should have not only a reasonable doubt
8 that it was made, but you should reject it, I suggest,
9 ladies and gentlemen, it would be unreasonable to infer
10 from the bunkhouse scene that we have just discussed that
11 Miss Van Houten agreed to do anything other than to get
12 in the car.

13 Remember the examples I gave to you. This does
14 not show knowledge; it doesn't show approval; it doesn't
15 show anything as far as she is concerned.

16 Now we go to the car ride scene. Here we go,
17 we are on our way, page 5211, Volume 33:

18 "Q Did you see any knives or guns or any-
19 thing inside the car?

20 "A No, not at first.

21 "Q Did you at any time while you were inside
22 the car see any knives or a gun?

23 "A Yes.

24 "Q When?

25 "A Later in the journey there were two
26 knives under the seat?

7a-4

1 "Q Two knives?

2 "A Yes.

3 "Q Pardon?

4 "A Yes, two knives under the seat."

5 Well, we know, according to this evidence that
6 Miss Van Houten got in the back seat.

7 Here were two knives under the front seat, so
8 it's reasonable to infer if there were two knives that she
9 did not see them because there is no evidence that she had
10 any knowledge of them; that anybody told her about any
11 weapons being in the car.

12 Now, on page 5234 of the transcript, Linda
13 Kasabian testified that she had no idea that she was going --
14 that there was going to be any killing on the first night;
15 that she had thought she was going on a creepy-crawly mission,
16 and on the second night she knew what was going to happen,
17 she says.

18 Linda Kasabian thought on the first night she
19 was going on a creepy-crawly mission. It would appear to
20 me even more apparent from the evidence that Leslie Van
21 Houten had the same state of mind.

22 If you happen to believe Linda Kasabian's
23 professed lack of knowledge as to what was going to happen
24 on the first night, I'm sure you can believe Leslie Van
25 Houten had even less knowledge as to what was going to
26 happen on the second night. There is no evidence anyone

7b Fls. 1

told her anything about what was going to happen.

2 Now, we are driving a car. Mr. Manson alone, he
3 is the only one that gave the directions. The people in
4 the back -- throughout this whole car ride up to the
5 La Bianca home, the people in the back seat never said a
6 word the entire time, according to this record.

7 Manson gave all the directions.

8 On Page 5247 they stop at a small one-story
9 house.

10 The houses were sort of close together. There
11 was a small lot in front of it. This is a small one-story
12 house. It appears to be in the middle-class area of the
13 town and the home was not old-fashioned; it wasn't modern.

14 The home was apparently in Pasadena some place.
15 Mr. Manson got out. They drove around the block.

16 Then Mr. Manson got back in the car. This was
17 the first stop at a small one-story house.

18 We have no idea what was in the mind of Mr.
19 Manson when he got out if he did get out, if he was
20 there at all.

21 But I doubt if he were there, and if he did get
22 out, that he had murder on his mind or homicide because he
23 is supposed to be the man who has such a vendetta against
24 rich people, the establishment.

25 Do you really believe he is going to stop in
26 front of a small one-story middle-class house in Pasadena

1 to try and kill somebody?

2 He is not interested, according to the prosecution,
3 in killing people of moderate means. He's only interested
4 in killing rich people, if you believe this, members of
5 the establishment.

6 There is nothing in this record to show what his
7 purpose was in getting out, nothing in the record to
8 show whether if he had a purpose he conveyed it to anyone
9 else in the car.

10 So they drove off -- no, they don't drive off,
11 excuse me. He gets back in the car and they see a man and
12 a woman, and they look at the man and the woman.

13 And Manson says on Page 5250 of the transcript,
14 Manson is supposed to have said -- here are the exact words:

15 "He said something like the man is too
16 big, and he told me to drive on."

17 Now, you can't draw any inferences from that
18 that will convince you beyond a reasonable doubt of
19 Leslie Van Houten's guilt.

20 There is no showing, number one, she even
21 heard it.

22 There is no showing, number two, with all this
23 inference, that she knew what the reference, if any, was.

24 THE COURT: Mr. Keith, it's 12:00 o'clock. Will
25 counsel approach the bench, please, before we recess?

26 (The following proceedings were had at the

1 bench out of the hearing of the jury:)

2 THE COURT: I was concerned with one statement you
3 made at the outset of your argument, Mr. Keith, you said
4 in substance that Linda Kasabian and Dianne Lake were the
5 only witnesses against Leslie Van Houten.

6 MR. KEITH: Oh, yes, Barbara Hoyt testified to her
7 hiding under the bed sheet, yes, I discounted that.

8 THE COURT: That is a perfectly legitimate argument.
9 I wanted to make sure you did it with knowledge and not in
10 ignorance.

11 MR. KEITH: I know Barbara Hoyt had her hiding under
12 the sheet.

13 MR. BUGLIOSI: Do you have any idea how much longer
14 you are going to be?

15 MR. KEITH: It looks like I'm going the rest of the
16 day.

17 MR. BUGLIOSI: I would like to start tomorrow, if
18 possible, if he finishes that late.

19 THE COURT: He has indicated he is going for most of
20 the day.

21 MR. BUGLIOSI: You will?

22 MR. KEITH: Yes, so don't worry about it.

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

25 THE COURT: Ladies and gentlemen, do not converse
26 with anyone or form or express any opinion regarding

1 the case until it is finally submitted to you.

2 The Court will recess until 1:45.

3 (Whereupon, a recess was taken to reconvene at
4 1:45 p.m., same day.)

8-1

LOS ANGELES, CALIFORNIA, TUESDAY, JANUARY 12, 1971

2:01 o'clock p.m.

- - - - -

(The following proceedings occur in open court.
All jurors present. All counsel present. Defendants
absent.)

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

THE COURT: All counsel and jurors are present.

Yes, Mr. Kanarek?

MR. KANAREK: Your Honor, I would like to apologize
to the Court, the jury, counsel and co-counsel.

I was at the telephone in the hallway, your
Honor. I am sorry.

THE COURT: You may continue your argument, Mr. Keith.

MR. KEITH: Thank you, your Honor.

Ladies and gentlemen, at the recess we were
discussing Linda Kasabian's testimony describing this rather
unusual, to say the least, automobile ride all over Los
Angeles County, seemingly without purpose.

I wasn't discussing it without purpose, but the
car ride seems to be without purpose.

And we had gotten to the point where the automomobile had parked in front of a middle class house, according to Miss Kasabian, and Mrs. Kasabian drove around the block while Manson was out of the car.

Now, the purpose, again, in analyzing the

8-2

1 testimony of Mrs. Kasabian in this area is so that we can
2 draw certain inferences from her testimony to determine
3 whether these inferences point towards the innocence of
4 Miss Van Houten or towards her guilt, or both.

5 And again, I re-emphasize, if the facts developed
6 during this testimony point toward innocence, even if you can
7 draw a reasonable inference that they point toward guilt,
8 you still have to adopt the inference that points towards
9 innocence, assuming it is reasonable.

10 And I am suggesting to you that there is nothing
11 that we have unearthed in this transcript so far as it
12 relates to Miss Van Houten from which you cannot reasonably
13 draw a deduction pointing towards innocence.

14 There is no evidence as yet from which we can
15 infer an agreement on the part of Miss Van Houten to
16 conspire to commit murder in the first degree by premedita-
17 tion and deliberation.

9 fls.

9-1

1 We have not even found out anything yet from
2 this transcript whereby we can infer that she even knew
3 what was going on or what was planned or what was intended,
4 if anything was.

5 We were on page 5250, Volume 33 of the
6 transcript, where Mrs. Kasabian is saying:

7 "He said something like 'The man is too
8 big,' and told me to drive on."

9 That is approximately where we left off, and
10 then she goes on to say on that same page:

11 "Charlie told us that when he had walked
12 up to the house" --

13 This is the small house in the allegedly
14 middle-class neighborhood, and I have already told you I
15 wonder if you should not have a reasonable doubt that that
16 ever happened because according to all the evidence produced
17 by Mr. Bugliosi, Mr. Manson is not interested in middle-
18 class people; he is interested in people of means, people
19 who are members of the establishment.

20 Why on earth would he bother there with somebody
21 who lived in a small house who obviously would not have the
22 means of some other person who might live in a big house.

23 But at any rate:

24 "Charlie told us when he walked up to
25 the house and looked into the window that he saw
26 pictures of children; that he couldn't do it."

1 Couldn't do what? It doesn't say that he
2 couldn't go in. But he said later on that we should not
3 let children stop us for the sake of the children of the
4 future.

5 Well, who did he say that to? When did he say
6 it? When was later on? Did Miss Van Houten hear that?
7 What inference did she draw from a statement like that,
8 assuming she heard it, what was her reaction to that
9 statement if she did hear it?

10 We don't know.

11 We are left in the dark. That is why I say
12 this evidence is insufficient for an inference pointing
13 towards guilt so far.

14 Then we go on with the trip, and the next
15 thing, I think, of any significance, which occurs at page
16 5253 of the transcript where they stop, the group stopped
17 in front of -- according to Mrs. Kasabian -- a modern
18 expensive type home. She saw no people.

19 Here is what she says:

20 "It was a big house. I don't know if it was
21 two-story or not. It was sort of an A-frame at the
22 top of a hill."

23 She is shown a photograph which she identifies
24 and she says that she is pretty sure this is the house in
25 front of which she stopped.

26 And at page 5255 of the transcript, line 20:

1 "Did Manson say anything while you were
2 parked in front of that house?"

3 And Mr. Bugliosi is referring to the modern
4 expensive type house.

5 And the answer is:

6 "He just said that the houses were too
7 close together."

8 "Q What happened next?"

9 "A We drove off."

10 Now, would you think that that happened, that
11 that might be the sort of place Manson might be interested
12 in entering, but he didn't -- either they were too close
13 together, because there were no people around?

14 So can you believe beyond a reasonable doubt
15 that that incident occurred?

16 Now, when I'm talking to you I am continuously,
17 as you probably realize, referring to the basic circumstan-
18 tial evidence instruction and I am going to bore you to
19 death talking about it, but it is totally essential, each
20 fact which is essential to complete a set of circumstances
21 necessary to establish the defendants' guilt has to be
22 proved beyond a reasonable doubt.

23 So we are discussing these facts as testified
24 to by Mrs. Kasabian not only on the issue of the inferences
25 you can draw from her testimony, but also whether each
26 of these incidents to which she has had reference has been

1 established beyond a reasonable doubt in your mind.

2 And when we are discussing reasonable doubt,
3 naturally, we talk about logic and reason just as we do
4 in discussing the other part of that instruction concerning
5 reasonable inferences.

6 Now, the next thing that happened on this trip
7 is when they stopped at a church somewhere in Pasadena or
8 San Marino.

9 And Linda Kasabian says he was going to go
10 in, this is page 5256 of the transcript, line 26:

11 "He was going to go in" -- referring
12 to Mr. Manson -- "and find a minister or preacher
13 or priest or whoever was in there.

14 "And he got out of the car, walked to
15 the door, came back and said the doors were locked."

16 Now, there is nothing in that evidence from
17 which we could draw an adverse inference against Miss Van
18 Houten.

19 We don't know what Mr. Manson's purpose in going
20 to find a minister was, from this record, and if you can
21 draw a -- or if you want to draw a sinister inference from
22 going to find a preacher, I suggest that you would be
23 erroneous because here is Manson who was supposed to think
24 he is God going to try and kill a minister who is also a
25 man of God.

26 That doesn't make sense.

1 I suggest that you should view that testimony
2 and disregard it as having a reasonable doubt to its
3 truth, and also you can view it in the context of this
4 state of Miss Van Houten, as adding nothing to show that
10 fls. 5 she was a conspirator.

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1 And the next incident of any importance, as I
2 read the record, is the incident following the small white
3 sports car, which occurs on Page 5270 of the transcript and
4 then continues on Page 5273, -74 and -75.

5 According to Mrs. Kasabian, Manson had planned
6 to kill whoever was driving the small white sports car.

7 So, I ask you: Don't you have a reasonable doubt
8 as to whether that incident actually occurred?

9 And remember again, Mr. Manson is supposed to be
10 interested in fomenting a black-white race war by killing
11 members of the establishment, killing rich people.

12 Now, who drives small white sport cars? In all
13 probability, it isn't somebody that can be placed in that
14 category. Think about it.

15 As a matter of fact, we don't even know from
16 this record whether it was a Negro or not driving this
17 sports car. Why would Mr. Manson want to kill somebody
18 who, in all probability -- and we don't know for sure, but
19 that is a reasonable inference -- who, in all probability,
20 wasn't rich, wasn't a member of the establishment?

21 I suggest there is a reasonable doubt, ladies
22 and gentlemen, as to whether that incident actually
23 occurred.

24 And going farther, / ^{does} that evidence, if
25 believed, concerning the white sports car, does that
26 evidence indicate to you that at that time Miss Van Houten

1 had joined a conspiracy? Is that evidence sufficient?

2 We don't even know whether she heard what Manson
3 said to Mrs. Kasabian, if Manson said anything. She was in
4 the back seat.

5 We don't know, we don't have any idea, because
6 there is no evidence as to what her reaction was to that
7 incident, assuming it took place for the sake of argument.
8 All we know is that she was there.

9 Now, we know from my previous discussion on that
10 subject that to join a conspiracy one not only has to have
11 knowledge but intent, and two intents at that, the intent
12 to agree and the intent to carry out the object of the
13 conspiracy.

14 So far, I suggest to you, that this evidence is
15 insufficient even to supply knowledge, to provide Miss
16 Van Houten knowledge with the purpose and object of any
17 conspiracy, if any there was, much less to show she
18 actually entered into any agreement for the purpose of
19 carrying out some nefarious plot.

20 I am very sincere in advising you that I would
21 look upon that incident as described by Mrs. Kasabian with
22 caution because it doesn't fit in with the Manson theories,
23 the Manson philosophy, if you will, as espoused by Mr.
24 Bugliosi, and as shown by numerous witness from the wit-
25 ness stand.

26 Now, ladies and gentlemen, that is the end of the

1 second scene, the car ride. Because then we get outside of
2 Harold True's house.

3 And now we are going into the third scene of this
4 set of circumstances. This is the third set of circumstances.
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10a.

10a-1

1 I am being arbitrary. You can say the entire
2 panorama of evidence is one set of circumstances. I am
3 just doing this for convenience sake. Here it is at 2:00
4 a.m. in the morning, approximately, and Manson gets out of
5 the car, according to Mrs. Kasabian, and goes next door.

6 I don't have to read this. I will synopsise this
7 as quickly as I can, because it has been gone into at
8 length by Mr. Kanarek.

9 Mr. Bugliosi said 2:00 a.m. in the morning, that
10 is only when the hobgoblins are out.

11 I can't help thinking that he hasn't met my
12 teen-age daughters. It is early for a lot of people these
13 days.

14 At any rate, he returns in several minutes, and
15 here we get to the very significant part of the case.

16 Excuse me. I missed something.

17 Every one remained in the car when Manson got
18 out. He put something in his pants that Mrs. Kasabian
19 didn't know what it was. He disappeared up the walkway
20 leading to Harold True's house.

21 That is at Page 5281.

22 Then he returned in a very few minutes, about as
23 much time as it took to smoke a part of or most of a
24 cigarette.

25 And then at Page 5288:

26 "What happened after Mr. Manson returned

1 "car?

2 "A He called Leslie and Katie and
3 Tex out of the car.

4 "Clem jumped in the back seat with Sadie,
5 and I pushed over on the passenger's side, and
6 I heard bits and pieces of the conversation that
7 he had with Tex and Katie."

8 Now, this is interesting. She is saying she
9 overheard a conversation that Manson had with Tex and Katie.

10 I suggest to you that the omission of Leslie
11 is significant.

12 "What did you hear him say?

13 "I heard him say that there was a man and
14 a woman up in the house and he tied their hands,
15 and he told them not to be afraid, he wasn't
16 going to hurt them."

17 Then Mr. Bugliosi very smartly fills in
18 the gap, the omission.

19 "Did he give any instructions to Tex, Katie
20 and Leslie Van Houten? Did he give them any
21 instructions at all?"

22 An objection to that question was sustained.

23 Then Mr. Bugliosi goes on.

24 "Did he say anything else to Leslie, Katie
25 and Tex?"

26 Now, Mrs. Kasabian, in an answer that I previously

1 referred to, had Mr. Manson talking only to Tex and Katie.

2 I am not so sure that was an oversight.

3 We can certainly infer from that answer that Leslie was
4 not part of the conversation, and that Mr. Bugliosi picked
5 up the omission by including it in a question that he
6 poses a short time after that answer.

10b

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10b-1

1 Now, Mrs. Kasabian continues.

2 "At one point he instructed them, for Leslie
3 and Tex to hitchhike back to the ranch" -- I am
4 reading now -- "and for Katie to go to the waterfall."

5 This is at page 5289.

6 Well, I find it exceedingly difficult to accept
7 that Mr. Manson, or anybody else, if they are bent on murder
8 and instructing people to commit murder, that they are
9 going to be instructed to hitchhike on the streets at night.

10 I don't care what Mr. Bugliosi says about 2:00
11 a.m. There are plenty of people out at night in this
12 County and in that area.

13 And it seems to me highly unlikely, highly
14 unreasonable, for persons to be instructed to hitchhike
15 after having killed somebody, particularly in the manner
16 that the La Blancas were killed, because if they are going
17 to hitchhike back in the wide open spaces and stand on
18 street corners, they are going to have blood all over their
19 clothes, in all probabilities, and this is not reasonable.

20 The instruction itself falls of its own weight
21 simply because this is not something -- this isn't an
22 instruction, an order, that anybody would give in the
23 context in which it was given.

24 Hitchhiking? When you may well be covered
25 with blood? This is madness, ladies and gentlemen, it
26 is insane, and I suggest you have a reasonable doubt that

10b-2

1 that language was ever given or ever spoken.

2 Now, another interesting point occurred to me.

3 Mr. Manson is supposed to have returned from
4 the La Bianca house and told these people that he had two
5 people tied up in the house.

6 Now, we know from the evidence that there was
7 only one person tied up in the house. At least that is what
8 I got from the record. If I am misstating it, I don't mean
9 to, but that is what I glean from the record and from the
10 exhibits. Only one person was tied up, Mr. La Bianca.

11 Now, why, then, if only one person was tied up,
12 did Mr. Manson say there were two people tied up?

13 I suggest to you that if Manson went in the
14 house, if he ever did, if he went in there and if he had
15 seen Mrs. La Bianca in the house, he would have tied her
16 up.

11 fls.

11-1

1 The inference I draw is that Manson only saw
2 one person in the house and only tied up one person. I
3 don't know how he did it, if he did it, because that's a
4 very complicated knot.

5 I don't know how he did anything like that alone;
6 I cannot understand it, without causing a commotion.
7 That in itself is not logical.

8 But what I'm getting at is I don't believe
9 from the evidence that Mr. Manson said, "There are two
10 people in the house and I've got them both tied up."

11 I don't know what he said, but he could not have
12 said that.

13 If he had known there were two people in the
14 house, maybe he would have tied them both up, so we
15 reach the conclusion, the deduction that he only saw one
16 person in the house and only tied up one person, so we
17 go from that deduction to the next deduction that he
18 didn't say what he was purported to say because he couldn't
19 have; it did not happen that way.

20 And there is another one that occurred to me:
21 Can any of you understand or draw any logical inference or
22 reason as to why Mr. Manson would have gone in that house
23 alone in the first place?

24 From the evidence that is in this record he
25 did not know who was living in there; nobody did. Nobody
26 in that group did.

1 As far as he knew it could have been a house full
2 of professional football players and they would have torn
3 that little fellow limb from limb; how could he possibly
4 have taken the chance of going into this house alone?
5 Something is amiss with this evidence.

6 No, I'm not trying to be funny, actually, there
7 could have been somebody waiting for him there with a shot-
8 gun, a house full -- oh, any -- anything you can think of
9 could have well have been possible. He did not know who
10 was living there.

11 And he goes in there and blithely ties somebody
12 up with a very complicated knot, as you will see from the
13 pictures -- you already have.

14 Something is amiss, ladies and gentlemen.

15 But if he had a weapon -- and I don't know he did,
16 in order to tie that knot I'm sure it would require two
17 hands, and any weapon he used he would have to put down,
18 and at that time you would think that Mr. La Bianca, who
19 was a bigger man than Mr. Manson, could have just done all
20 kinds of interesting things with him.

21 But no, there is no evidence in this record of a
22 struggle, which is unusual. It is most curious, and I
23 don't understand why.

24 I know Mr. Bugliosi gave you an explanation that
25 he bemused these people, but that in itself does not seem
26 reasonable.

1 Remember what I said about self-preservation
2 earlier, you are going to fight if you feel your life is
3 in danger, and these people didn't. It is very awry,
4 very curious, ladies and gentlemen.

5 Now, I am going to continue on with the scene
6 outside of the La Bianca residence, and we get to the
7 nitty-gritty, the very, very significant details.

8 "Mr. BUGLIOSI: Did he say anything to
9 them?"

10 I don't know whether he means Tex and Katie, or
11 Leslie and Tex and Katie:

12 "Did he say anything to them about killing?"

13 "THE WITNESS:" -- Mrs. Kasabian -- "I'm not
14 positive, but it keeps ringing in my head that
15 he said, 'Don't let them know that you are going
16 to kill them.'"

17 Well, that is a built-in reasonable doubt,
18 ladies and gentlemen.

19 Remember, each fact essential to complete a set
20 of circumstances has to be proven beyond a reasonable doubt
21 before we can convict anybody.

22 It is obvious that this is a very important
23 sentence that Mr. Manson is reported to be speaking, and if
24 Linda Kasabian is not sure Mr. Manson said this, how could
25 we be sure?

26 We weren't there; we should be even less sure.

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That is a built-in reasonable doubt.

This is an important fact.

There is another statement:

"MR. BUGLIOSI:" -- this is on Page 5293:

"Q Did Mr. Manson say anything to Tex,
Katie and Leslie about fear or panic?"

Again Mr. Bugliosi supplied the omission,
because Mrs. Kasabian started out by saying he was only
talking to Tex and Katie, and now Mr. Bugliosi has got
Leslie in the picture, as any good lawyer should.

The answer is: "Yes, I think I heard him
say not to cause fear and panic in these people."

11a

11a-1

1 Again, I think -- if she is not sure, how could
2 we be sure? We weren't there. You've got to be convinced
3 beyond a reasonable doubt and to a moral certainty that
4 that was said.

5 And again, the reasonable doubt is built in.

6 "I think I heard."

7 You've got to, ladies and gentlemen, I sincerely
8 suggest to you, and submit to you, discount that purported
9 statement by Manson, if for no other reason, simply because
10 the witnesses herself is not sure it was said, and the same
11 applies to the other statement about "Don't let them know
12 you are going to kill them."

13 Now, after that purported statement was made,
14 Linda and Mr. Manson and the rest of the troupe in the car
15 is supposed to have driven off, driven away, and anything
16 else that happened during the rest of the automobile journey
17 does not apply, it has no relevance to Miss Van Houten, as *Crow*
18 you already know, I'm sure, so I won't discuss it. *Went*
after

19 But up to this point, and we have covered three
20 scenes now, the bunkhouse scene, the car ride scene and the
21 scene outside the La Blanca residence, can you say beyond a
22 reasonable doubt that Miss Van Houten was a member of a
23 conspiracy to commit first degree murder, knowing what we
24 know about what it takes to be a conspirator, what evidence
25 has to be produced to show that somebody is a member of
26 a conspiracy to commit first degree murder by premeditation and

11a-2

1 deliberation?

2 I suggest to you, ladies and gentlemen, that it
3 is reasonable, eminently reasonable to draw the inference
4 that she did not even have knowledge --

5 She might have had an inkling, I don't care,
6 find that if you want -- but she did not even have knowledge
7 of what was planned if, assuming some dark deed was planned.

8 From this record how can you legitimately draw
9 a reasonable inference pointing to guilt, even?

10 She said nothing -- this is Miss Van Houten --
11 she did nothing; she was along for the ride, that is all
12 we really know so far.

13 She may or may not have heard some comments.
14 She may, on the part of Linda -- on the part of Linda Kasabian
15 and Mr. Manson.

16 She may have witnessed certain conduct on the
17 part of Mr. Manson, but does that evidence in and of itself
18 convince you that she joined a conspiracy to commit first
19 degree murder?

20 Remember what I said about first degree murder
21 by premeditation, it is a thinking man's crime. You have to
22 weigh the pros and cons all the way, I'm not going to go
23 through all that again. You remember it.

24 But I want you all to ask yourselves, is the
25 evidence at this point even barely sufficient to establish
26 her as a conspirator, as a co-conspirator?

11a-3

1 There is nothing here to show she agreed to do
2 anything, and, what's more, there is nothing here to show
3 she had knowledge of what is going on and knowledge alone
4 is not enough; you have to agree and agree and agree to
5 commit murder.

6 And if you are going to infer from this evidence
7 that she was a member of a conspiracy, I am afraid you are
8 going to have to do it by speculation and, as you well know,
9 the law does not permit you or I, and you are the judges,
10 it doesn't make any difference what I think really, you are
11 the judges.

12 The law does not permit you to speculate.

13 Mr. Fitzgerald covered that phase of your duties
14 very beautifully.

15 Now, I have not discussing aiding and abetting
16 yet, although I am about to, in connection with Dianne Lake's
17 testimony, and I haven't done so simply because I feel that--
18 and this applies to anybody, I will put it in the abstract --
19 if you are a conspirator, if you really and truly are a
20 conspirator, you also are an aider and abettor automatically,
21 and I think that Mr. Bugliosi would agree with me, because
22 if you are a conspirator you plan to commit a crime, you
23 agree to commit it, you may instigate it, you encourage it,
24 the same sort of principle applies to aiding and abetting.

25 You can be an aider and abettor even though
26 you are not there. You have to instigate the crime or

1 encourage it or do something to facilitate its commission.

2 And if you are an aider and abettor at this
3 stage, you are also a conspirator and vice versa.

4 So I deliberately left those principles out of
5 my discussion, and only concern myself with the law of
6 conspiracy as applied to the facts in this case.

7 Now we arrive at Dianne Lake's testimony.

8 As I have said before, and I think it bears
9 repeating, the prosecution's case rests largely on her
10 testimony.

11 If you don't believe her, under the law, I
12 submit to you, the law of this state, there is no case
13 against Miss Van Houten, and she must be acquitted.

14 But I cannot let things rest there. I have to --
15 I feel I have to go into Dianne Lake's testimony concerning
16 Miss Van Houten because you might -- you just might -- I
17 hope you don't -- but you just might believe her testimony
18 regarding Miss Van Houten or parts of her testimony.

19 And in going over Miss Lake's testimony we will
20 try to use the same analysis that we used for Linda Kasabian's.

21 What inferences can we draw from that testimony?
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23
24
25
26

11ab fls.

11b-1

1 If we can draw reasonable inferences pointing
2 towards innocence, then you must adopt that construction of
3 Dianne Lake's testimony, even though you might draw a
4 reasonable inference pointing toward guilt.

5 You must be getting sick of this broken record,
6 but again I submit that rule of law, that principle of law
7 cannot be overemphasized, it cannot be repeated enough.

8 Now, Dianne Lake has Leslie Van Houten telling
9 Dianne Lake, "Don't let that man see me or let him in
10 because he has just given me a ride from Griffith Park."

11 I am paraphrasing to some extent.

12 Then Miss Van Houten is supposed to have hid
13 under a sheet.

14 Now, what inferences can we draw from that
15 testimony? Can we not draw an inference, ladies and
16 gentlemen, a reasonable inference that she did -- assuming
17 this is true, assuming this is what was said and what
18 happened, and please don't misunderstand me, I am not
19 conceding this is what was said or what happened, but for
20 the sake of argument only, assuming that happened, what
21 inferences can we draw? Is it not reasonable to infer that
22 the reason Leslie Van Houten -- she is a very pretty girl,
23 as you know -- hid under the sheet and did not want to let
24 the man see her is because she feared for her own safety --
25 perfectly reasonable, she did not like the guy that gave
26 her a ride back from Griffith Park.

1 She thought she might get assaulted or something.

2 It is more reasonable to draw that conclusion
3 from this incident than to give that incident a sinister
4 meaning.

5 And even if you want to give it a sinister
6 connotation, if you can also infer reasonably that there is
7 an innocent interpretation that she did not want to be
8 involved with this man, then you have to reject any
9 sinister interpretation you may wish to draw in that
10 incident.

11 Here we go, Page 16,722. Some time later, not
12 at the Spahn Ranch, but up at the Barker Ranch or Willow
13 Springs, this is at Page 16,722 of the transcript,
14 Miss Van Houten is supposed to have told Dianne Lake that
15 she stabbed someone that was already dead, and that she
16 then wiped fingerprints off of things that were not even
17 touched.

18 And she also is supposed to have said at first
19 she did not want to do it, but the more that she did it
20 the more fun it was.

21 Now, this is not very nice; it isn't very
22 pleasant, if it were said at all.

23 It's macabre, it's gruesome.

24 But we are not convicting anybody because they
25 did something that might to you appear or to anybody else
26 appear revolting. We are here to determine whether

1 Miss Van Houten is guilty of murder or conspiracy to
2 commit murder.

3 We are not here to convict the young lady because
4 she did something that is repugnant.

5 To us now, this is the testimony, ladies and
6 gentlemen, incidentally, that you must view with caution,
7 or ought to view with caution.

12-1

1 Mr. Bugliosi calls it a confession. It is not
2 a confession. I contend it is not even an admission of
3 guilt.

4 As repugnant to you as you may feel this is, no-
5 body in this world can be guilty of murder or conspiracy to
6 commit murder who stabs somebody after they are already
7 dead. That is it.

8 I call this the "killing somebody after they are
9 already dead theory of murder" advanced by Mr. Bugliosi.
10 You can't do it.

11 We are going to discuss this evidence a little
12 later to determine whether it is corroborative of Linda
13 Kasabian's testimony. But I am telling you right now that
14 that testimony, even if you think it might corroborate
15 Linda Kasabian, is insufficient to convict anybody of first
16 degree murder, second degree murder, or conspiracy to
17 commit murder.

18 And I think I am going to convince you, I hope
19 to -- I am never that overconfident -- I hope to be able to
20 convince you later on that that testimony cannot, by any
21 stretch of logic, standing alone, convict Leslie Van Houten
22 of conspiracy, simply because it is not corroborative of
23 Linda Kasabian's testimony which, in and of itself, as far
24 as I am concerned, doesn't show Miss Van Houten to be a
25 conspirator.

26 I am going on with Dianne Lake's testimony.

12-2

1 She is supposed to have told -- Leslie is
2 supposed to have told Dianne Lake that she hitchhiked
3 back, and that there was a boat there, and that the
4 incident from where she hitchhiked took place somewhere
5 around Griffith Park.

6 And then, for some reason, Leslie Van Houten
7 was dropped by Mr. Bugliosi.

8 And later in the proceedings, on redirect
9 examination, Mr. Bugliosi asked Dianne Lake whether Leslie
10 Van Houten brought something back with her on this occasion
11 that she hitchhiked.

12 And Dianne Lake testified that she came back
13 with some coins, a few of them Canadian coins, a purse,
14 a blouse and credit cards. And that she burned a piece of
15 rope, the purse, the blouse, the credit cards. She even
16 burned her own clothes. That the coins were made up
17 primarily of nickels, dimes and quarters.

18 And that Leslie said they weren't stolen.

19 Now, perhaps we are to infer, or Mr. Bugliosi
20 wants us to infer, that these articles, the rope, the purse,
21 the blouse and the credit cards, came from the La Bianca
22 residence.

23 But I remember very clearly, ladies and gentle-
24 men, his telling you there was no proof of this. It is
25 right in my notes.

26 Now, if Mr. Bugliosi is going to tell you there

1 is no proof that any of those articles came from the La
2 Bianca residence, then don't we all have a reasonable
3 doubt that they came from there?

4 I think merely posing the question gives us
5 the answer.

6 Of course we have a reasonable doubt, if there
7 is no proof.

8 Proof is the name of the game.

9 As a matter of fact, the credit cards, if
10 any there were, couldn't have come from the La Bianca
11 residence, and I will tell you why.

12 If any credit cards had been missing from the
13 La Bianca residence, from either Mrs. La Bianca's effects
14 or Mr. La Bianca's effects, you would have heard about it.

15 It wouldn't be hard to prove. All you have to
16 do is bring in the son-in-law -- not the son-in-law, the
17 stepson -- or business associate to testify that he had,
18 Mr. La Bianca, had had this credit card and that credit card,
19 and a search of the residence disclosed they were all
20 missing.

21 In fact, you could bring in a creditor for that
22 matter, saying: Yes, I sent in a statement every month
23 to Mr. La Bianca for a Diners' Club card and, lo and behold,
24 you can't find the credit card. So, we could infer that
25 the credit card that Leslie Van Houten supposedly stole was
26 from that residence.

12a-1

1 Therefore, we can infer that any credit cards
2 that may have been burned by Miss Van Houten didn't come
3 from that residence, or else you would have heard about it.

4 In other words, we can draw an inference, a
5 reasonable inference, pointing toward innocence with respect
6 to that incident, if it ever occurred, the burning of a
7 rope, a blouse, credit cards and her own clothing, that
8 this was another time, another place, it had nothing to do
9 with the La Bianca homicides.

10 Incidentally, it turned out, upon cross-examination
11 by Mr. Hughes -- he did an excellent job with Dianne Lake --
12 I think I ought to read some of it briefly, if I can
13 find it.

14 Mr. Hughes, on Page 17,177, Volume 146 of the
15 transcript, is talking to, questioning, cross-examining,
16 if you will, Dianne Lake about her memory, and whether or
17 not Sandra Goode was with Dianne Lake on the occasion when
18 Miss Van Houten is supposed to have burned these articles.

19 "Q Where was Sandy?

20 "She might not have been there."

21 Apparently, in previous testimony, Dianne Lake
22 said Sandy had been there.

23 This is the time that she went out to spend the
24 money, the \$5 or the \$8.

25 "Where was Little Patti?

26 "In the middle."

1 And then Mr. Hughes asked:

2 "So, you were having problems with your memory;
3 is that correct?

4 "I guess so.

5 "And things that you sometimes think are
6 pretty clear from a year ago are not actually
7 too clear if you think about them; is that
8 correct?

9 "Some things.

10 "And just as you are unsure now whether
11 Sandy Goode or Little Patti or Bruce Davis
12 was along on this trip, isn't it true that
13 many other things that happened last year in the
14 summer are also unclear?

15 "Yes."

16 This shows, ladies and gentlemen, that young
17 Miss Lake's memory, by her own admission, isn't too clear.
18 And this is the girl that you have got to believe in order
19 to even think about convicting Leslie Van Houten.

20 And on further cross-examination by Mr. Hughes,
21 when discussing this purse that Leslie Van Houten is
22 supposed to have brought back with her, when, we don't
23 know. But I can assure you it wasn't after the La Bianca
24 homicide.

25 Question by Mr. Hughes at Page 17205.

26 "Do you recall now telling him 'also she

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"'she with her a purse with change'?"

"I may have.

"Well, which way is it, Dianne? Was it
a purse or was it a plastic bag? Do you remem-
ber?"

"It was a plastic sack.

"Was it like a Baggie?"

"I think so.

"Could it have been a plastic purse?"

"No."

12b

12b-1

1 So, all this was was a plastic baggie. It
2 wasn't any purse at all.

3 Yet, initially, Dianne Lake testifies that Miss
4 Van Houten brought back with her a purse. Which turns out,
5 after cross-examination, to be a plastic baggie.

6 Some difference.

7 She also told Mr. Hughes, in answer to some of
8 his questions:

9 "Q And is it possible that you are mistaken
10 as to some of the things you testified to here yester-
11 day and today?"

12 The witness's answer on line 18 at page 17,218:

13 "It is possible.

14 "Q" -- BY MR. HUGHES: -- "Is it possible that
15 you are mistaken as to certain things that you have
16 been testifying to yesterday and today? Is that
17 your answer?

18 "Yes."

19 This is the girl from whose testimony you are
20 supposed to convict Miss Van Houten. And she says it is
21 possible that she may have been mistaken about things to
22 which she testified, and about things that may have happened
23 in the summer of 1969. And you are supposed to convict
24 somebody of murder and conspiracy on the strength of that
25 frail testimony.

26 She also said, in response to Mr. Hughes'

1 questioning -- and the point of reference is the conversa-
2 tions that Leslie Van Houten is supposed to have had with
3 her, or the conversation --

4 "Q Do you remember those conversations
5 better now than you did in September, a year ago?

6 "A I don't know.

7 "Do you remember those conversations
8 better now than when they actually took place?

9 "At what point did your memory start
10 getting better for those conversations, Dianne?

11 "When I was in the hospital."

12 And then Mr. Hughes goes on to ask her:

13 "Was something wrong with your memory
14 before you went to the hospital?

15 "No.

16 "Did you have shock treatments?

17 "No.

18 "Were you given some sort of memory-
19 improvement drug?

20 "A No.

21 "Did somebody do something to improve
22 your memory while you were in the hospital?

23 "No.

24 "Yet, somehow in the hospital your memory
25 got better; is that what you are telling us?

26 "It got clearer.

1 "Was your memory fogged up for some
2 reason?

3 "Yes."

4 I fail to understand, ladies and gentlemen,
5 how somebody's memory can improve with the passage of time.

6 Perhaps it can. I am not excluding the possi-
7 bility. But is it a reasonable inference to be drawn that
8 Dianne Lake's memory got better with time? Particularly
9 when she was in the mental hospital?

10 I mean, if you don't remember something at
11 one point in time, how do you suddenly remember it at some
12 later point in time without the use of some kind of drugs
13 like sodium pentothal? And Miss Lake testified she didn't
14 receive any drugs in the hospital for the purpose of
15 inducing return of her memory.

16 This is the girl, ladies and gentlemen, upon
17 which the prosecution's case rests against Leslie Van Houten,
18 and we are going to go into why.

19 THE COURT: We will take our recess at this time, Mr.
20 Keith.

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

24 The court will recess for 15 minutes.

25 (Recess.)
26

13-1

1 THE COURT: All counsel and jurors are present.

2 You may continue, Mr. Keith.

3 MR. KEITH: Thank you, your Honor.

4 I am going to talk with you ladies and gentlemen,
5 having gone over with you the testimony of Dianne Lake
6 as it concerned Miss Van Houten, about other subjects,
7 both very important.

8 One is aiding and abetting, and the second
9 subject, and I am going to interweave the two subjects,
10 because they are somewhat related, since they rest largely
11 on the testimony of Dianne Lake, they overlap.

12 Now, we know basically what Dianne Lake had
13 to say about Leslie, that she stabbed somebody after they
14 were dead; she then wiped off some fingerprints, and
15 that she burnt some rope, et cetera.

16 She hid under a sheet or blanket, Dianne Lake
17 was not quite sure which, as I recall her testimony.

18 And of course Barbara Hoyt testified that
19 Miss Van Houten hid under a blanket or sheet, whichever.

20 We are facing the question what does that
21 evidence really prove to us?

22 Does that evidence in connection with all the
23 other evidence in the case show that Miss Van Houten was
24 either a conspirator, or aider and abettor, and does it
25 corroborate legally, does it legally corroborate the
26 testimony of Mrs. Kasabian?

1 Now, as Mr. Fitzgerald eloquently told you, when
2 we were discussing corroboration, we have to remove from
3 the evidence, remove from the case the testimony of the
4 accomplice, Mrs. Kasabian. We cannot consider it and we
5 can only consider the purported corroborating evidence
6 alone and see if that evidence tends to connect Miss
7 Van Houten in this instance with the commission of the
8 crimes charged against her.

9 This is true in connection with any of the
10 defendants.

11 Let's say for the sake of argument that there is
12 evidence relating to Mr. Manson that is corroborative of
13 Linda Kasabian's testimony concerning him. That doesn't
14 mean that that testimony is corroborative of all the
15 remaining defendants, and I hope you understand what I
16 mean.

17 Each defendant -- there must be corroborating
18 evidence against each defendant, not just one.

19 Now, let's talk about conspiracy for a moment.
20 Does the evidence of Dianne Lake tend to corroborate --
21 excuse me -- that is a misstatement -- tend to connect
22 Miss Van Houten with the commission of the crime of
23 conspiracy to commit murder?

24 Now remember, ladies and gentlemen, the gist of
25 the conspiracy is an agreement, an agreement to commit a
26 crime.

1 In this case the agreement to commit the
2 crime of first degree murder by premeditation and by
3 deliberation.

4 It should not take as much time to reach the
5 conclusion that the testimony of Dianne Lake does not
6 show that Miss Van Houten agreed with anybody to do anything.

7 The evidence is she stabbed somebody after they
8 were dead, and she wiped off some fingerprints.

9 This cannot possibly connect her with -- it
10 cannot even tend to connect her -- even tend to connect her,
11 and that is the rule; even tend to connect Miss Van Houten
12 with the commission of the crime of conspiracy.

13 The conspiracy is made. You are guilty of the
14 crime of conspiracy once you agree to joint the conspiracy,
15 once you enter into the agreement plus commit an overt
16 act and, as you know, the overt act does not have to be an
17 unlawful act. It is merely an act in furtherance of the
18 ultimate object of the conspiracy.

19 In this case it is alleged they took a drive in a
20 car, and wound up on Waverly Drive at the La Bianca resi-
21 dence.

22 That is not an unlawful act.

23 ^{it}
But/is enough for an overt act.

24 The point I want to get across, ladies and
25 gentlemen, once you agree to commit an unlawful act, and
26 once you do some act, even though lawful, in furtherance

1 of the object of the conspiracy, you are a conspirator;
2 you are liable unless you abandon the conspiracy, and that
3 gets into another complex legal subject.

4 But you can readily see, ladies and gentlemen,
5 that the words attributed by Dianne Lake to Miss Van Houten
6 are not enough to show that she agreed to commit murder,
7 or agreed to commit any unlawful act.

14-1

1 "I did this, I did that."

2 That doesn't import an agreement.

3 So, I suggest to you, ladies and gentlemen,
4 that not under any theory can Miss Van Houten be convicted
5 of conspiracy to commit murder, simply because Linda Kasabian's
6 testimony isn't corroborated on that subject.

7 Now, this is not to say that the testimony of
8 Linda Kasabian shows that Miss Van Houten was a co-conspirator.

9 As far as I am concerned, and I hope you are
10 concerned, her testimony, too, Linda Kasabian's testimony,
11 doesn't show an agreement on the part of Leslie Van Houten
12 to enter into a conspiracy to commit murder.

13 But I am telling you, even if it did, even if
14 it did so show, even if you believe that her testimony
15 beyond a reasonable doubt proved that Leslie was a co-
16 conspirator, you have got to acquit her of the conspiracy
17 charge. You have to because there is no corroboration of
18 Miss Kasabian's testimony tending to show that Leslie was
19 a conspirator.

20 And I am not going to say anything more about
21 that.

22 Now, we have got another problem. Does it tend
23 to show, does it tend to connect Leslie Van Houten -- this
24 is Dianne Lake's testimony now -- does it tend to connect
25 her with the crime of murder as a principal?

26 And it must tend to connect her with the commission

1 of the crime of murder as a principal.

2 When we talk about principals to the commission
3 of a crime, we are talking about aiders and abettors, people
4 that instigate the crime or encourage it or help out in some
5 way for the purpose of facilitating its fruition.

6 I contend that this evidence does not show that
7 Miss Van Houten aided and abetted anyone in the commission of
8 a crime.

9 We are talking about the crimes with which
10 these people are charged, murder, premeditated first degree
11 murder.

12 At best, it shows, if you want to believe
13 Dianne Lake, at best, it shows she was there.

14 At best, it shows that she did something after
15 the commission of these homicides that wasn't very nice.

16 And at best, it shows that she wiped some
17 fingerprints off after the commission of these homicides,
18 which does not make her an aider and abettor.

19 And I am going to tell you why.

20 The crime is already over with. The people are
21 already dead.

22 And when you wipe some fingerprints off, that
23 doesn't facilitate the commission of the crime, ladies and
24 gentlemen. That isn't aiding and abetting.

25 What it simply means is that Leslie Van Houten,
26 if you are going to believe Dianne Lake, tried to conceal the

1 identity of the perpetrator. And that isn't aiding and
2 abetting. That is something else again.

3 So, I suggest to you -- I know Mr. Bugliosi
4 is going to get up and tell you she is a knife-wielding
5 harridan that roared in there. We don't even know that
6 she went in there with any weapon, incidentally. There is
7 no evidence that she went in there with a weapon. I am
8 talking about the La Bianca house.

9 You see, he is laughing at me. I knew he would.

10 Laugh all you want. I may have the last laugh.

14a fls.

14a-1

1 I want you to analyze this evidence. Believe it
2 for the purpose of your analysis. Determine, think about
3 it.

4 Don't use a broad brush, as Mr. Kanarek has said
5 on many occasions. Think about each item of evidence.
6 Decide whether that evidence of Dianne Lake corroborates
7 Linda Kasabian.

8 Does it tend to connect her, Leslie Van Houten,
9 with the commission? "With the commission," those are
10 the key words, of a crime.

11 If it doesn't -- and I suggest to you it doesn't
12 because these crimes, if any there were, were already over
13 and done with -- there are a lot of ways you can be an
14 aider and abettor to a crime, whether it be murder or
15 any other public offense without actually physically taking
16 part in it.

17 Now, I am going to tell you, and I am not
18 scared to tell you, that wiping off fingerprints after the
19 commission of a homicide is a crime if it is done for the
20 purpose of helping the perpetrator of the crime escape
21 detection, escape arrest, escape punishment, and escape
22 conviction. But it is not murder. It is not aiding and
23 abetting a murder. It is something else again.

24 I am going to try to illustrate what I have
25 said with a Supreme Court case, the same Supreme Court
26 case that I have quoted from previously this morning,

the case of People vs. Wallin, W-a-l-l-i-n.

MR. BUGLIOSI: May we approach the bench, your Honor?

If he is going to start reading from some case, that is certainly improper.

I don't know what he is going to read; I have no idea, but I suggest we approach the bench.

MR. KEITH: No objection to approaching the bench.

THE COURT: All right.

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

MR. BUGLIOSI: I don't think, your Honor, that he can start bringing in these cases with factual situations.

THE COURT: I don't know. Let's find out what he wants to do first.

MR. KEITH: In this Wallin case, I discussed this briefly with you. This is the case where --

MR. BUGLIOSI: Max, I think you are talking too loudly.

MR. KEITH: Excuse me?

MR. BUGLIOSI: I think you are talking a little too loud.

MR. KEITH: This is a case where the tenant in an apartment house murdered her little daughter who was spastic, and the landlord helped bury the body, and the landlord was being charged with being an accessory after the fact.

1 The murderess' name was a Mrs. Paz.

2 THE COURT: Are you planning to read from the opinion?

3 MR. KEITH: Yes, I was going to tell them about the
4 facts in the case and then I was going to say the Supreme
5 Court said the murder was completed as soon as the child
6 was killed, and no subsequent acts on the part of Mrs.
7 Paz or any other person were required to be shown in order
8 to establish the elements of that offense, murder.

9 That is the only sentence I was going to read.

10 MR. BUGLIOSI: Your Honor, that is not the law.
11 He cannot just take cases like that. I can bring in ten
12 cases now showing that three years after the body was
13 found the conspiracy was still in existence, and the res
14 gestae --

15 THE COURT: His theory is something else, as a matter
16 of argument he doesn't have to accept the conspiracy theory.
17 He can argue whatever she did she did after the crime was
18 complete.

19 You can argue to the contrary, as you have.

20 MR. KEITH: I did want to read from that sentence, in
21 order to illustrate my argument, and give it more
22 convincing force.

23 THE COURT: He can analogize the facts of that case
24 to the facts of this case if he wants to.

25 Of course, you don't have to accept it either
26 and I'm sure you won't.

1 MR. BUGLIOSI: Is it possible to do this, your Honor?
2 I am unaware of it.

3 THE COURT: What difference does it make if he is using
4 a hypothetical example or the facts of some other case?

5 MR. BUGLIOSI: Because I don't even talk about the
6 facts of other cases --

7 THE COURT: In analogy and illustration you can.

8 MR. BUGLIOSI: I think you can give hypothetical cases
9 and give your own opinion on it, but to insert into this
10 trial what some other court held in a different case is
11 just --

12 MR. KEITH: This is not just some other court, it's
13 the Supreme Court of California.

14 MR. BUGLIOSI: The Supreme Court is not the law of
15 this state, that once a body is dead that is the end of the
16 murder.

17 Now, it is not the law, and Judge Older will not
18 instruct the jury to that effect, that once a body is
19 dead, automatically that is the end of the murder.

20 THE COURT: It would be improper to argue it unless
21 the case you are talking about is identical to this case,
22 and therefore the same law applies.

23 MR. KEITH: I am not going into that because you are
24 not instructing on accessory-after-the-fact.

25 THE COURT: I think by way of analogy to a factual
26 situation that sometimes so far as bringing up a portion of

1 the opinion by way of explanation of a particular rule of
2 law -- I think it would be improper to say that here is a
3 case that controls our case.

4 MR. KEITH: I wasn't going to put it in that manner.

5 MR. MUSICH: The same rules apply, reading from any
6 article, as rules of law, whether he is going into areas of
7 law or into argument, the fact that he is reading from a
8 Supreme Court case will give it the dignity of that
9 particular statement of the Supreme Court justices, by
10 inuendo and by impressing on the jury a fact of law which
11 is not applicable to this case.

12 THE COURT: I understand him to say that what he
13 intends to do is argue that the facts of that case are
14 analogous to the facts of this case, is that correct, or
15 am I incorrect?

16 MR. KEITH: I was going a little farther than that,
17 I must say. I was going to say here is the Supreme Court
18 saying the murder was complete as soon as the child was
19 killed, and no subsequent acts on the part of Mrs. Paz or
20 any other person were required to be shown in order to
21 establish the elements of that offense.

22 Then I am going to say, "You see, ladies and
23 gentlemen, here is the Supreme Court saying the murder is
24 all over."

25 THE COURT: We are not talking about an instruction
26 now, we are talking about analogizing one situation to

1 another.

2 MR. MUSICH: You are using an analogy regarding a
3 legal principle of law.

4 THE COURT: The facts of this case are vastly differ-
5 ent from what he is stating, and you can argue that.

6 MR. BUGLIOSI: He is bringing in a statement here
7 that once the body was dead the murder was completed. He
8 is bringing in a fact statement of law.

9 I don't think you are going to instruct the
10 jury that once the bodies are dead the murders are over
11 with.

12 THE COURT: I think we are wasting time, I think you
13 can analogize the factual situation there, you can argue
14 what the evidence shows. The jury may believe you, I
15 don't know. Mr. Bugliosi certainly will argue something
16 different.

17 MR. MUSICH: It might be raising issues that will
18 require additional instructions from the Court.

19 THE COURT: You are not stating that the rule of law
20 in that case is a rule of law in this case?

21 MR. KEITH: I don't intend to.

22 THE COURT: I think we are all talking about the same
23 thing.

24 MR. BUGLIOSI: I think it's highly improper.

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

1 THE COURT: You may continue, Mr. Keith.

2 MR. KEITH: Thank you, your Honor.

3 Just as we went to the bench I was going to make
4 an analogy from a Supreme Court case that I just cited
5 and which I read from earlier in that case.

6 In that case, ladies and gentlemen, a mother
7 murdered her four-year-old spastic daughter and after the
8 little girl had died, this chap Wallin who was the defendant,
9 helped to bury the body of the little girl and he was
10 prosecuted.

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1 The question really is whether he aided and
2 abetted the murder or whether he committed some other crime.

3 Remember, he buried the body or assisted in
4 burying the body and he knew what had happened, he knew that
5 the mother had killed her little daughter because she was
6 a spastic and wasn't going to get any better.

7 And the Supreme Court of our state said this --
8 I won't go into what happened and what the decision was,
9 but I would like to in support of my argument, that Miss
10 Van Houten was not an aider and abettor, and that therefore
11 the testimony of Dianne Lake does not corroborate, does not
12 tend to connect Miss Van Houten with the commission of any
13 crime, I would like to support what I tell you so you don't
14 think I am arguing Keith's theory of the law.

15 This statement, the Court said at page 807:

16 "The murder was completed as soon as the
17 child was killed. The murder was completed as soon
18 as the child was killed, and no subsequent acts on
19 the part of Mrs. Paz," that was the mother of the
20 child that killed her daughter, "or any other person,"
21 referring to Wallin, the defendant who buried the
22 body, "were required to be shown in order to establish
23 the elements of that offense."

24 That is the offense of murder. That is what I'm
25 telling you here. The homicides in the La Bianca home were
26 completed when Mr. and Mrs. La Bianca died, and no further

15a-2

1 acts on the part of Leslie Van Houten could have aided and
2 abetted the commission of those two offenses, the killings of
3 Mr. and Mrs. La Bianca, from the evidence that we have
4 heard in this case.

5 And I beg you ladies and gentlemen, don't
6 speculate. There is a hiatus between the testimony of
7 Mrs. Kasabian and what Leslie Van Houten is supposed to have
8 told Mrs. Kasabian.

9 Linda Kasabian leaves Leslie outside the car,
10 the 1959 Ford, outside the La Bianca residence, and the next
11 thing we know about Leslie's participation, if any, is that
12 she is stabbing somebody after they are dead, and wiping
13 fingerprints off.

14 Now, the question before you is whether that
15 evidence, if believed, is sufficient to corroborate the
16 testimony of Linda Kasabian.

17 Now, we have already discussed, and I hope we
18 are agreeing, that it certainly does not show that she
19 conspired to do anything; that Leslie conspired to do anything,
20 because it doesn't even purport to show there is any agreement.

21 But we are concerned with aiding and abetting.

22 To be an aider and abettor you don't have to
23 agree. You don't have to be a conspirator.

24 I think if you are a conspirator you are also
25 an aider and abettor, but the converse is not necessarily so.

26 You can aid and abet without being a conspirator,

15a-3

1 and I will give you an example of that, an A, B, C -- I
2 won't give you an A, B, C, I'll make it more personal, it's
3 more fun that way. ✓

4 Mr. Bugliosi has planned to murder Mr. Kanarek,
5 sitting there. ✓

6 At any rate now, he's got this murder down, I
7 mean, to the last ounce, the last minutiae of preparation,
8 and here he is, he's in the process of murdering Mr. Kanarek.

9 And something goes awry , and along comes Mr.
10 Keith, and Mr. Bugliosi says "Hey, Max, I'm having trouble
11 here with Mr. Kanarek, help me out."

12 So I go up and I help Mr. Bugliosi out, and we
13 succeed in killing Mr. Kanarek.

14 Now, Mr. Bugliosi is guilty of first degree
15 murder by premeditation, but I am not guilty of first
16 degree murder by premeditation even though I aided and
17 abetted Mr. Bugliosi, because I don't have the requisite --
18 I did not premeditate; I came along and did it on the spur
19 of the moment at Mr. Bugliosi's request.

20 To be an aider and abettor you have to have
21 knowledge and you have to have criminal intent, but it
22 doesn't necessarily -- and this would have to be exactly the
23 same criminal intent that the actual perpetrator had, as
24 you can see by my illustration.

25 But remember, to be an aider and abettor you
26 must have knowledge, and you must have criminal intent.

1 You don't have to be a conspirator.

2 But I repeat, to be an aider and abettor you
3 have got to do something to aid and abet the commission of
4 a crime. After it's all over and done with, if you do
5 something to facilitate the escape of the perpetrator, then
6 I suggest to you you are not an aider and abetter.

15b fls.

15b-1

1 Particularly in this situation, in this case.
2 Now, I will be happy to tell you, and give you other
3 examples I think we can all agree on would be aiding and
4 abetting.

5 Let's suppose A, knowing what was going to happen
6 and with criminal intent, supplies B, the murderer, with a
7 weapon, but A never comes within a thousand miles of the
8 actual homicide. A is an aider and abettor, probably a
9 conspirator, too, he is at least an aider and abettor, he
10 supplies the weapon with knowledge and criminal intent.

11 Let's suppose A is a lookout; B is in somewhere
12 trying to kill somebody, trying to kill C, and A is outside
13 making sure that nobody interrupts B killing C.

14 He is an aider and abettor. He is facilitating;
15 he is helping out in the commission of the crime.

16 You can be an aider and abettor by words alone,
17 exhorting the words of a crime, "Go, team, go, hit 'em
18 again," without picking up a weapon or without touching
19 anybody.

20 Or you can even be an aider and abettor if you
21 lend your moral support to the criminal act, assuming you
22 have knowledge, and have criminal intent.

23 I am always assuming that in my example.

24 I would like to place in these terms, aiding and
25 abetting in these terms, if you aid and abet -- let me use
26 A, B and C again.

1 A aids and abets B in the commission of a crime,
2 if he does something affirmative to make B's job easier,
3 that is the way I like to put it.

4 But if you are just standing around doing nothing,
5 that doesn't make B's job any easier.

6 If you are standing there, urging B on, say,
7 stand there doing that (indicating), that gives him moral
8 support, that may be supplies additional courage, and that
9 is all right, I will accept that.

10 But when you are just present doing nothing,
11 and that is all we know here that Leslie Van Houten was
12 doing, that doesn't make anybody's job easier to kill any-
13 body, and we can't speculate, we have to draw these inferences
14 from the evidence. Now, all we know about Leslie Van
15 Houten, assuming you want to believe Dianne Lake, a former
16 mental patient, is that she stabbed somebody after they
17 were dead.

18 Does that make whoever the perpetrator was, does
19 that make his job any easier? She did not help them;
20 the deed already was done.

21 And wiping off fingerprints did not help in any
22 way in the commission -- the commission, mind you, of the
23 homicide.

24 To be sure, to be sure it aids the perpetrator's
25 possibly in escaping detection, assuming that is what
26 happened.

1 But it does not make the perpetrator's job any
2 easier. It might make it harder, for all I know, instead
3 of exhorting someone to do the job you are running around
4 wiping fingerprints off, which doesn't do a thing, it's
5 not aiding and abetting, it doesn't lend any moral support.

6 And this is serious, I'm not trying to be abusing
7 or funny or facetious. To me this is a valid theory of
8 defense, and you are faced with a question of whether
9 that evidence plus any other evidence against or involving
10 Leslie Van Houten corroborates Linda Kasabian.

11 Now -- and there is some other evidence --
12 the burning of the rope, we have discussed that. That had
13 to be at some other time, some other occasion. It cannot
14 have anything to do with this.

15 There would have been evidence of the credit
16 cards -- these coins, either Mr. Bugliosi said there is no
17 proof that the coins came from the La Bianca coin collection,
18 in his argument, and Mr. Bugliosi will correct me if I am
19 wrong, but my recollection of the evidence was the coin
20 collection was not disarranged, or did not appear that any
21 coins were missing.

22 I am a little bit unclear in that area, but my
23 recollection of the testimony was, of course you are the
24 triers of the fact, you determine what the evidence is, the
25 La Bianca house was not ransacked; that the coin collection
26 did not appear to have been disarranged or any amount of

1 coins stolen --

2 And Canadian coins, my gosh, I go to Canada all
3 the time, there are lots of Canadian coins, I don't see what
4 that proves.

5 We have discussed hiding under the bed. That
6 doesn't prove anything. The reasonable inference you draw
7 there is you are hiding from some intruder.

15c

15c-1

1 But I told you we were going to discuss Dianne
2 Lake's testimony with relation to issues.

3 One, the corroboration issue which I have been
4 discussing and, secondly, what inferences we can draw from
5 Miss Lake's testimony.

6 Can we draw a reasonable inference pointing
7 towards innocence? If we can, that is the end of the game.

8 Even if you can draw a reasonable inference
9 pointing towards guilt, you have to accept the inference
10 that points to the innocence.

11 And it would appear to me, ladies and gentlemen,
12 that Dianne Lake's testimony, if you believe it -- and
13 remember, I am not conceding this is so, we are only
14 discussing this evidence assuming it to be so for the
15 purpose of argument, because I don't know what you are going
16 to believe in this case.

17 You are the judges of the facts. I don't know
18 what you are going to believe and I cannot take a chance.
19 I've got to meet these issues headon. We've got to talk
20 about it at its worst.

21 And the issue is, can you draw a reasonable
22 inference from Dianne Lake's testimony pointing to innocence?
23 We pretty well have got the answer as far as the conspiracy
24 is concerned. It does not show she did anything, that she
25 agreed to do anything.

26 As far as aiding and abetting is concerned, we

15c-2

1 can draw an inference, after my recent discussion with you,
2 that she did not aid and abet with criminal knowledge and
3 criminal intent, but she did something else not very pleasant,
4 but she did something else that did not aid and abet the
5 commission of these homicides.

6 You remember that excerpt from the case I read
7 to you, once the people are dead, that is it, anything that
8 happens after that may be other crimes, I cannot go into that
9 with you. I'm sure desecrating somebody that is dead is a
10 crime in this state, but she is not charged with that.

11 And incidentally, while I am on that rather
12 unpleasant subject, I want to allude before I forget to
13 the Coroner's testimony that the buttocks of Mrs. La Bianca
14 showed 13 stab wounds occurring after death.

15 How about that?

16 And I don't think any of those stab wounds could
17 have been fatal, if I understand this testimony correctly,
18 even if inflicted during life.

19 I am trying to convince you ladies and gentlemen
20 that any participation on behalf of Miss Van Houten was
21 not in aid of the commission of any homicide.

22 There is no evidence that she did one thing to
23 facilitate the homicide of the La Biancas, at the La Bianca
24 home.

25 There is no evidence in this record that she
26 urged anybody to kill anybody else.

1 There is no evidence that she encouraged anybody
2 to commit a crime. There is no evidence that she went into
3 the La Bianca residence, if she ever did, with a weapon.

4 There is no evidence she even knew there were
5 any weapons in the car; you remember they were under the
6 front seat and Leslie was in the back seat.

7 We are met, to be sure, with the statements
8 Manson is purported to have made outside of the La Bianca
9 residence which are sinister and ominous, but remember my
10 other discussion about each fact essential to complete a
11 set of circumstances to establish the defendants' guilt,
12 has to be proven beyond a reasonable doubt.

13 Please remember that Mrs. Kasabian prefaced
14 her testimony regarding these conversations with "I think,"
15 and "I'm not positive."

16 I submit to you, ladies and gentlemen, it is
17 very unfair to find that those conversations -- those
18 statements were made beyond a reasonable doubt and to a
19 moral certainty when the witness, herself, is unsure that
20 they were made.

21 But even if they were made, we don't know, even
22 if they were made, we don't know Leslie's reaction to them.
23 We don't know what her state of mind was.

24 We don't know whether she agreed to do anything.

25 We don't know whether she planned or did aid
26 and abet the homicides in any manner.

1 As a matter of fact, the reasonable inference is,
2 as we have been discussing, appear to the contrary, even
3 though she was there. Her state of mind was not to aid and
4 abet, not to facilitate the commission of any crimes, not
5 to make it easier to commit the crime, but possibly to do
6 something that would conceal the identity of the perpetrator
7 after it is all over, which is not murder.

15d.flis.

8 I submit to you it is not murder.
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15-D

1 The other evidence I find in the record
2 involving Leslie Van Houten was she was a member of the
3 Family.

4 What does that prove? There were a lot of
5 people who were members of the Family. That she was a con-
6 vert of Mr. Manson's. We discussed that and we discussed
7 the robot theory of murder and, for gosh sakes, don't
8 forget my argument in that connection.

9 It is just as important to me, and I hope it will
10 be to you, as other areas of my talk with you.

11 Oh, yes, she used some aliases, she called her-
12 self Leslie Owens on August 16th at the Spahn Ranch when
13 the Sheriff's deputies swarmed over the place.

14 She also called herself Luella Alexandria when
15 the gendarmes arrived at the Barker Ranch.

16 Juan Flynn, as a matter of fact, knew her as
17 Lulu, which appears to be or could well be a contraction of
18 Luella.

19 I don't see how that evidence could be sufficient
20 to -- obviously it was not sufficient to convict anybody of
21 anything, but even added to all the other evidence, you
22 can draw a reasonable inference pointing to innocence.
23 Just because you used different names, Mr. Fitzgerald
24 covered that subject very eloquently, I thought. They
25 were harrassed by the police from time to time.

26 They all used nicknames, and they were alleven

1 more important in effect changing their identities.

2 They left their families -- by leaving their families, I
3 mean their parents.

4 I suggest to you that these aliases, that all
5 these girls used, have little probative value, miniscule
6 probative value in this case.

7 Something I wanted to mention to you, it
8 affects the whole case and it is something I never could
9 really understand. It never made any sense to me, and it's
10 been alluded to by other counsel. I thought it interested
11 me enough to re-mention it, to reiterate it.

12 There was no money or things of any value,
13 any particular value, taken from either the residence of
14 Miss Tate or the La Bianca residence.

15 And Mr. Bugliosi argues that money was not
16 involved, if any property was taken it was an afterthought.

17 I never could understand why, if any of these
18 people were involved in these homicides, things of value
19 which were present on the premises were not taken.

20 And the reason I could never understand why is
21 this: It has been testified to, or was testified to more
22 than once, I believe, that at or about this time Mr. Manson
23 intended to move to the desert because Helter Skelter was
24 coming down.

25 We won't go into the reasons for moving to the
26 desert; we all know that. But the point is because he

1 planned to move to the desert he needed money, and supplies
2 to go to the desert.

3 At this very time nothing was taken from these
4 places. How do you square that with an inference pointing
5 towards guilt?

6 It is reasonable to infer because of what we
7 know about Manson's plans that Manson, if he were involved,
8 would have directed his people to steal everything they
9 could lay their hands on and carry it away.

10 Yet nothing was taken. Therefore, we make the
11 deduction that it was somebody other than these people who
12 were responsible.

13 This is one of the interesting areas of thought
14 that may be significant, and that I think you ought to
15 consider.

16 There are other things like Helter Skelter was
17 coming down so fast, and if they all believed it was,
18 what is the necessity of going out to kill people to
19 expedite it?

20 They didn't have to expedite it, according to
21 their theory it was coming down fast.

22 Why kill anybody to make it come down faster,
23 particularly when robbery or theft was not the motive?

24 There is a lot of things like that I think you ought
25 to consider, and I think these matters have been amply
26 gone into by my brother counsel.

1 And they really don't relate specifically to
2 Leslie's case. They do, they very much do, but not as
3 specifically as I have been analyzing the testimony against
4 her.

5 They are broader conceptions, in other words,
6 that you can consider, not only when you consider her
7 case but the case of all the defendants.

8 Now, getting back to the testimony of Dianne
9 Lake briefly.

10 I am almost through, you will be happy to
11 hear.

12 Mr. Bugliosi characterized her purported
13 statement to Dianne Lake about killing somebody after they
14 are dead, stabbing somebody after they are dead, and
15 wiping off fingerprints, as a confession. Now, I am going
16 to read to you what a confession is. His Honor will so
17 instruct you.

18 "A confession is a statement by a
19 defendant which discloses his intentional participa-
20 tion in the criminal act for which he is on trial
21 and which discloses his guilt of that crime."

22 Now, I have also discussed with you that
23 evidence of an oral admission or an oral confession of a
24 defendant ought to be viewed with caution, and I am glad
25 I have had an opportunity to reiterate that rule of law,
26 because any statement Leslie Van Houten is purported to

1 have made to Dianne Lake ought to be viewed by you with
2 caution, and we have discussed this, and I am just
3 re-emphasizing it.

4 But getting back to Mr. Bugliosi's contention
5 that what she is supposed to have told Dianne Lake is a
6 confession, I submit to you that it is not.

7 It is not a confession to intentionally participate
8 in the criminal act for which she is on trial.

9 It may be a confession to something else, but
10 it isn't a confession to murder. It isn't a confession to
11 conspiracy to commit murder.

12 I won't go into what it might be a confession of,
13 but it is not that, I tell you.

14 It is not even an admission.

15 Now, I am going to recapitulate briefly. And
16 this is the next to the last chapter of my argument.

17 I have lost track of chapter numbers. I have
18 got this listed as seven. It may be something else. It
19 may be six. But be that as it may, I entitled this chapter:
20 The Hurdles You Have to Overcome in Order to Convict Leslie
21 Van Houten.

22 And there are a great many of them, believe me.

23 It sounds to me like an impossible feat if you
24 are going to follow the evidence and follow the rules of
25 law which apply to the evidence.

26 First, you have to believe Linda Kasabian, and (C)

1 you already know that her testimony must be viewed with
2 distrust, or ought to be viewed with distrust, because she
3 is an accomplice as a matter of law.

4 Then, if you decide, after your deliberations
5 on her credibility, to believe Linda Kasabian as far as any
6 participation of Leslie Van Houten, then you have got to
7 believe Dianne Lake. (2)

8 And really, the basic evidence that Dianne
9 Lake offers against Leslie, Dianne Lake has already lied
10 to the Grand Jury -- and I am not going through all that --
11 but you have got to view these statements that Leslie is
12 supposed to make to Dianne Lake with caution -- but if,
13 after cogitating, you decide to believe Dianne Lake, decide
14 to believe that Miss Van Houten actually made the statements
15 that she is purported to have made to Dianne Lake, then
16 you have got to determine whether the testimony of Dianne (3)
17 Lake corroborates Linda Kasabian's testimony.
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16a-1

1 And as we have talked about practically ad
2 nauseam now, the corroboration must tend to connect Leslie
3 with the commission of the offenses with which she is
4 charged.

5 Mr. Bugliosi is going to tell you, because it
6 is the law, that the evidence of corroboration need not
7 be great, it need not carry the convincing force required
8 by law to convict, it need only be slight.

9 Well, we have already discussed, and I think we
10 must realize now, or I hope we realize, that even if you
11 want to believe Dianne Lake, the girl who was in a mental
12 institution, who was a victim, a willing victim, of drug
13 abuse and all the other things, her memory wasn't so good
14 for this area of time, even if you want to believe her,
15 her testimony standing alone is insufficient to corroborate
16 Linda Kasabian's testimony on the question of conspiracy.

17 It doesn't show or even tend to show or even
18 slightly tend to show Miss Van Houten joined in the
19 conspiracy.

20 Then you have got to determine whether it is
21 corroborative of Linda Kasabian's testimony on the issue
22 of aiding and abetting.

23 I have discussed that with you at length. And
24 it doesn't. I submit to you, it doesn't.

25 Then, here is the next hurdle you have got to
26 overcome.

1 Even if you find corroboration of Linda Kasabian
2 -- and I submit you should not on this evidence -- then you
3 have got to analyze both girls' testimony and any other
4 evidence in the case against Leslie Van Houten to determine
5 whether you can draw a reasonable inference from all the
6 evidence that we have discussed pointing towards innocence!

7 And even if you can draw a reasonable inference
8 from all the evidence concerning Leslie Van Houten pointing
9 toward guilt, if you can draw a reasonable inference
10 pointing towards innocence, that is it, you have got to
11 acquit.

12 Even though you find corroboration, even though
13 you believe Dianne Lake, believe Linda Kasabian, you still
14 have to further analyze that, and I mean analyze it,
15 and determine what inferences, what deductions you can make.

16 And if you deduce, if it is reasonable to
17 deduce that the evidence doesn't point towards Leslie being
18 a conspirator or an aider and abettor, or a murderer,
19 whatever you want, what she is charged with, then you have
20 to return a verdict of not guilty.

21 Then you have got another hurdle to overcome,
22 and that, of course, is the most basic principle of criminal
23 jurisprudence of all: Presumption of innocence and
24 beyond a reasonable doubt.

25 You still have to be convinced beyond a
26 reasonable doubt and to a moral certainty of the truth of

1 these charges.

2 After everything else is over and done with
3 and everything looks bad for my client, you still have to
4 be convinced beyond a reasonable doubt and to a moral
5 certainty. That is the next hurdle.

6 And if you are convinced beyond a reasonable
7 doubt, then you are going to have to convict her, I am
8 afraid. But I don't see how you can do it when you have to
9 go through all this analysis, all these drawing of inferences,
10 how you cannot help but acquit her.

16b fls.

16b-1

1 There are simply too many hurdles to overcome,
2 ladies and gentlemen; too little evidence to permit a finding
3 of guilt against Leslie Van Houten.

4 I am going to conclude. Here we go.

5 This case has been described, ladies and
6 gentlemen, as the crime of the century.

7 It is not. It is a bad case. My God, to
8 characterize it as the crime of the century is really
9 absurd when you consider two World Wars and the tragedy
10 that has befallen mankind in this century.

11 I am not saying that this isn't a very serious
12 or is not a horrendous matter, but to characterize this as
13 the crime of the century is untrue.

14 Don't do that, ladies and gentlemen.

15 What is going to happen is, if you think this
16 is the crime of the century -- I know you have been under
17 pressure, locked up in the hotel for month after month --
18 you are going to thrash out at somebody, you are going to
19 try to get them, you are going to try to convict them.
20 You are going to say to yourself that somebody ought to be
21 convicted, this is the crime of the century and I am
22 on the jury, and here are these people as defendants. I
23 have got to convict somebody.

24 I think you have got more courage, more
25 guts than that. You must have or you wouldn't be on this
26 jury.

1 But don't do it. Don't do it.

2 Consider the evidence and draw reasonable
3 inferences from it, and maintain your own individual
4 opinion, your own individual integrity.

5 Don't be swayed just because a majority may be
6 against you, may have a different viewpoint.

7 Discuss the case freely, of course, but don't
8 go into the majority, join the majority, just because they
9 are a majority.

10 I am sure you all promised to do this during
11 your voir dire examination, and I don't have to go into
12 it. But don't give up your opinions, if you are confident
13 that your opinion, that your judgment, that your conclusions,
14 that your findings of fact are correct.

15 Now, not too many years ago, back in the middle
16 or late fifties -- would this be a good stopping point,
17 may it please the Court?

18 I have got about ten minutes right at the very
19 end.

20 I will go on if the Court wants.

21 THE COURT: Go on and finish.

22 MR. KEITH: Some years ago -- and I am sure the
23 town is still there -- it was a place called Appalachian in
24 the State of New York, and lived in Appalachian a man
25 called Joseph Barbera.

26 In November of 1967, he gave a party, and there

1 were some 40 odd people there at the party. They all happened
2 to be males.

3 After the party, everyone of them was arrested
4 and charged with conspiracy, and it became a very notorious
5 case in this country.

6 Maybe some of you recall it. I am sure you do.

7 Simply because every single man at that party
8 was supposed to be a member of the Mafia and he was supposed
9 to be there at a summit meeting to decide what they were
10 going to do in the ensuing fiscal year, or whatever.

11 That was the assumption.

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1 They had a conspiracy trial, and everyone of
2 them was convicted.

3 This case had national notoriety. Everyone of
4 them was convicted for conspiracy to obstruct justice and
5 to commit perjury, and all types of crimes.

6 The case went up on appeal to the United States
7 Circuit Court, the court next to the Supreme Court,
8 federal jurisdiction, and the case was called United States
9 vs. Buffalino.

10 Why it isn't called the United States vs.
11 Barbera, I don't know.

12 Buffalino was one of the people at the party
13 and one of the people convicted.

14 I am not going to relate the facts of the case
15 that led to their conviction because they are not analogous
16 to this case at all, but I want to read to you, in closing,
17 the words of the chief Circuit Justice who wrote the
18 opinion in the United States vs. Buffalino. The citation
19 is 285 Federal 2d 408, and I am reading from page 419.

20 "The administration of our system of
21 criminal justice and our basic concepts of fair
22 dealing are centered on the requirement that in
23 each case we reach a result based solely on the
24 charges made in the particular indictment and upon
25 the evidence which appears on the record with regard
26 to those charges.

1 "Doubtless many of Barbera's visitors
2 are bad people, and it is surely a matter of public
3 concern that more is not known about their activities.
4 But bad as many of these alleged conspirators may be,
5 their conviction for a crime which the government
6 could not prove on inferences no more valid than
7 others equally supported by reason and experience
8 and on evidence which a jury could not properly
9 assess cannot be permitted to stand.

10 "Reversed and remanded with directions to
11 dismiss the conspiracy count of the indictment."

12 This ringing language, ladies and gentlemen,
13 tells you how to approach your task.

14 You decide this case, and I know you will,
15 on the charges, on the evidence in the record.

16 Don't speculate. You may not think some of
17 these defendants are very nice people. You might even
18 think they are bad people. But as the Chief Justice of
19 this Circuit Court says, don't convict them because you
20 may not agree with the manner in which they lived and
21 the manner in which they conduct themselves.

22 On the basis of this evidence, ladies and
23 gentlemen, I say to you: You must acquit Leslie Van Houten.

24 I thank you for your indulgence.

25 THE COURT: We will adjourn 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 submitted
3 to you.

4 The court will adjourn until 9:00 o'clock
5 tomorrow morning.

6 (Whereupon at 4:30 o'clock p.m. the court
7 was in recess.)
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