

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.

144

No. A253156

REPORTERS' DAILY TRANSCRIPT  
Friday, November 6, 1970

APPEARANCES:

For the People:	VINCENT T. BUGLIOSI, DONALD A. MUSICH, STEPHEN RUSSELL KAY, DEPUTY DISTRICT ATTORNEYS
For Deft. Manson:	I. A. KANAREK, Esq.
For Deft. Atkins:	DAYE SHINN, Esq.
For Deft. Van Houten:	RONALD HUGHES, Esq.
For Deft. Krenwinkel:	PAUL FITZGERALD, Esq.

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

1 LOS ANGELES, CALIFORNIA, FRIDAY, NOVEMBER 6, 1970

2 9:25 o'clock a.m.

3  
4 (The following proceedings were had in the  
5 chambers of the court, outside the presence and hearing  
6 of the jury and the defendants, all counsel being present:)

7 THE COURT: We have a juror who is ill, Mrs.  
8 McKenzie, Juror No. 1.

9 She does not appear to be very seriously ill,  
10 but she was taken to the County Hospital last night just  
11 for examination, because she had, according to the bailiff,  
12 passed out upstairs just before they left the building  
13 yesterday afternoon to go back to the hotel.

14 She seems to be all right, but they kept her  
15 most of the night, I guess, examining her.

16 Now she apparently is quite tired, so I told  
17 the bailiff to let her rest for another hour and then call  
18 me and see what the situation is.

19 I don't anticipate she is going to have to be  
20 replaced because, according to the report that I got, all  
21 of the tests run by the doctor were negative.

22 He thought it was something that would not  
23 disable her in any way. That is what we are waiting for.

24 In the meantime the reason I asked you to come  
25 in was to find out if anybody had any objection to my  
26 reading the Grand Jury transcript of the witness Dianne

1 Lake's testimony so that I can place in context the matter  
2 that came up yesterday.

3 MR. KANAREK: No objection.

4 MR. BUGLIOSI: No objection.

5 MR. FITZGERALD: I want to think for a moment.

6 (Pause.)

7 I don't have any objection.

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1 MR. KANAREK: No objection.

2 MR. SHINN: No objection.

3 MR. HUGHES: No objection.

4 THE COURT: All right.

5 Does somebody have a copy?

6 MR. BUGLIOSI: I don't have mine with me.

7 MR. FITZGERALD: You can use my copy.

8 MR. HUGHES: Your Honor, I have an extracted version  
9 of just that testimony.

10 MR. FITZGERALD: A photocopy?

11 MR. HUGHES: It is legible.

12 (Mr. Hughes leaves the chambers and then  
13 returns.)

14 MR. KANAREK: I would like to suggest, if I may,  
15 your Honor, that your Honor read all of the Grand Jury  
16 transcript, and all counsel will stipulate, because I think  
17 it is going to be relevant in other portions of these  
18 proceedings, your Honor.

19 THE COURT: I am not anxious to take on the task of  
20 reading anything I don't have to since there is quite an  
21 abundance of things that I do have to keep up with, Mr.  
22 Kanarek.

23 MR. KANAREK: I don't know if other counsel will  
24 agree, but I am willing, more than willing, in fact, I  
25 advocate the Court reading all the Grand Jury transcripts  
26 because of matters that we are going to take up.

1 MR. SHINN: No objections, your Honor.

2 MR. KANAREK: Doesn't the Court have its copy?

3 THE COURT: I don't believe I have ever had a copy of  
4 the Grand Jury transcript.

5 MR. KANAREK: I mean, I think the Clerk has the  
6 original.

7 THE COURT: I am sure it is somewhere, but I don't  
8 know.

9 MR. HUGHES: Just for the record, I do not have a  
10 copy of the Grand Jury transcript. Mr. Reiner never  
11 furnished me a copy of it. He said he lost it.

12 (A document is handed to the Court.)

13 THE COURT: This is her complete testimony before  
14 the Grand Jury?

15 MR. FITZGERALD: Yes, complete. It was very short,  
16 six or seven pages in length.

17 THE COURT: I just thought it might help if I read  
18 it over so that if you gentlemen started arguing one thing  
19 or another, I would know what you are talking about.

20 MR. FITZGERALD: Right.

21 THE COURT: In the meantime, we are just waiting word  
22 from the bailiff as to Mrs. McKenzie.

23 MR. BUGLIOSI: Mr. Vaughan wasn't here. He has a  
24 very important civil matter, which I was just telling  
25 everyone takes precedence over this case.

26 THE COURT: I got him out of one court appearance,

1 but he didn't mention that.

2 MR. HUGHES: I want to apologize to the Court for  
3 coming in late due to traffic conditions.

4 MR. SHINN: Are we going to be excused, then, your  
5 Honor, for about an hour?

6 MR. BUGLIOSI: The only thing is, if Vaughan shows  
7 up soon, we can resolve that matter before Mrs. McKenzie  
8 gets here.

9 Is that right?

10 THE COURT: Yes. I certainly don't want to waste  
11 any time.

12 He was supposed to be here by now, wasn't he?

13 MR. BUGLIOSI: Right.

14 We should immediately resolve this issue.

15 I have been told that he spoke to Dianne last  
16 night.

17 MR. SHINN: Where? In his office?

18 THE COURT: I think you had better stay close by,  
19 gentlemen.

20 MR. HUGHES: Thank you.

21 MR. SHINN: I wanted to go back to my office.

22 MR. BUGLIOSI: Your office?

23 MR. SHINN: Yes.

24 (Recess.)

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1 (The following proceedings were had in the  
2 chambers of the Court out of the hearing of the jury and  
3 the defendants, all counsel being present.)

4 THE COURT: Good morning.

5 MR. VAUGHAN: Judge, I apologize, and Judge Alexander  
6 said if he had known I was over here he would not have  
7 done what he did.

8 The matter was actually set on Monday's  
9 calendar. He was going to take off next week. He called  
10 my office to have me come in. He did not get on the bench  
11 until 9:20.

12 THE COURT: The record will show all counsel are  
13 present; Mr. George Vaughan is also present, the attorney  
14 appointed by the Court for Dianne Lake.

15 MR. VAUGHAN: May the record show, your Honor, that  
16 Miss Dianne Lake accompanied by her guardian or conservator  
17 came to my office at 7:00 o'clock last night; that the  
18 guardian or conservator waited in my reception room; that  
19 I had a two-hour conference with her lasting from approxi-  
20 mately 7:10 until about 9:05 last night.

21 I am convinced and satisfied that Miss Lake  
22 is well aware of her constitutional rights.

23 I discussed with Miss Lake the possibility  
24 that there could be state charges brought.

25 I discussed with her the possibility that  
26 there might even be federal charges brought, growing out

1 of the activities while she was a part of, I guess I can  
2 call it, the Manson plan.

3 She is aware of these facts, these possibili-  
4 ties, and even though I advised her that where there was a  
5 case that was as complicated and as involved as this  
6 case is, with all of the ramifications, perhaps it might  
7 be best for her not to give up her constitutional rights,  
8 she said that she felt that the truth would protect her  
9 and that she had no reason to be afraid that anything  
10 bad would happen to her -- I was trying to quote her --  
11 anything bad would happen to her, and she wanted to  
12 testify.

13 I can say to this Court that I have no reason  
14 to believe that she is not aware of her constitutional  
15 rights and the possibilities.

16 THE COURT: All right.

17 MR. KANAREK: May I just inquire, did you tell her  
18 about the death penalty aspect of perjury in this case?

19 MR. BUGLIOSI: It does not apply to a 17-year-old  
20 under the statute, Section 190 Subdivision 1.

21 MR. VAUGHAN: You took the words out of my mouth.  
22 I was going to say "No, because it doesn't apply to  
23 a juvenile."

24 You must keep in mind, Mr. Kanarek, first my  
25 basic opinion is, as a juvenile at 16, anything she did  
26 whether federal or state would be handled by juvenile



1 courts, to start with.

2 In the second instance, whatever she has done  
3 or said that could constitute perjury, she did it already  
4 and the District Attorney was aware of it, and before she  
5 did it on direct examination, and I don't believe that  
6 there can be a valid prosecution based upon it.

7 Now, my only concern yesterday was that there  
8 might be other ramifications that I was not aware of from  
9 the transcript and from what you gentlemen had said that  
10 the young lady might be subject to pressures, and I thought  
11 she ought to have the opportunity to be in quiet, uncharged  
12 circumstances, and to think about it overnight, and this  
13 was accomplished.

14 And I am satisfied that after all I went  
15 through with her for two hours, her guardian was not  
16 present, she was not subject to any pressures at all, and  
17 she said she became so relaxed -- I have a picture of  
18 Monterey which covers my whole wall -- she became so  
19 relaxed, she said "I am almost going asleep looking at  
20 this picture."

21 I know she was not under any tension.

22 I said "All right, you go home, sleep tonight,  
23 think about it. If you change your mind tomorrow let me  
24 know."

25 I spoke to her, and she said "I want to  
26 testify, Mr. Vaughan. I understand everything you said

1 to me. I want to testify."

2 I am satisfied she knows her constitutional  
3 rights. She is testifying because she wants to, despite  
4 her constitutional rights, and that is it.

5 THE COURT: All right. Well, we are still waiting  
6 to hear from the bailiff who is with the jury, one of  
7 the bailiffs with the jury, to find out whether Mrs.  
8 McKenzie is able to go on. I want you gentlemen to know  
9 as soon as I hear. I expect to hear from him within the  
10 next half hour at least.

11 MR. VAUGHAN: Your Honor, will my services be  
12 required any more? If not --

13 THE COURT: If you are satisfied, Mr. Vaughan, that  
14 you don't need to be present while Miss Lake is testifying,  
15 I think that is a decision you have to make.

16 Based on what you said I don't see why your  
17 presence is necessary, but that is a decision you have to  
18 make.

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1 MR. VAUGHAN: I frankly don't believe that my  
2 presence is required. If something should develop, and  
3 I cannot -- after having read the exhibits that the Court  
4 was kind enough to let me take home, after having gone  
5 over the transcript of the last several days, I have looked  
6 at things that the District Attorney has suggested, and  
7 all defense counsel have suggested -- I cannot see, frankly  
8 speaking, anything that would require my presence.

9 If something should develop I will be in Judge  
10 Bennett's courtroom.

11 He is aware of the situation here. Judge  
12 Bennett said if you should need me you can call me.

13 THE COURT: What department is that?

14 MR. VAUGHAN: That is over in Department 28 or 26.

15 THE COURT: It's Department 26. All right.

16 MR. KANAREK: Your Honor, may I ask Mr. Vaughan a  
17 few questions?

18 THE COURT: For what purpose?

19 MR. KANAREK: Well, your Honor --

20 THE COURT: He is not being examined.

21 MR. KANAREK: I understand that.

22 THE COURT: You ask your questions informally of  
23 Mr. Vaughan outside of the chambers. I'm not going to ask  
24 Mr. Vaughan to be examined by any counsel.

25 MR. KANAREK: Maybe your Honor would care to ask,  
26 if your Honor doesn't wish to, I would just like the

1 subject matter suggested.

2 I would be interested to know what her state  
3 of mind is as to what the District Attorney has told her  
4 concerning her being prosecuted.

5 THE COURT: I think that is beyond the scope of this  
6 proceeding, Mr. Kanarek.

7 If you want to talk to Mr. Vaughan out in the  
8 hall and he wants to talk to you, that is something you can  
9 arrange between yourself. His answer would obviously be  
10 a conclusion in any event.

11 MR. VAUGHAN: I will say this, I won't discuss that  
12 because I think that is privileged information.

13 THE COURT: All right, gentlemen, I will let you know  
14 as soon as I hear something about the jury.

15 MR. SHINN: Now we have some time, your Honor,  
16 would your Honor reconsider on the motion to suppress  
17 whether we can have an evidentiary hearing, your Honor?

18 I believe your Honor denied it without an  
19 evidentiary hearing yesterday.

20 The question of the Miranda -- because I believe  
21 we have a right to have an evidentiary hearing to determine  
22 whether or not --

23 MR. BUGLIOSI: Can Mr. Vaughan be excused?

24 THE COURT: Yes.

25 MR. VAUGHAN: Thank you very much.

26 THE COURT: Thank you.

1 I understand what you are asking for, Mr.  
2 Shinn, is to reopen the motion to suppress with respect to  
3 statements that Dianne Lake made to police officers or  
4 investigators last year.

5 MR. SHINN: Yes.

6 THE COURT: Or even the first part of this year,  
7 whenever they were made.

8 As we discussed yesterday, of course those  
9 statements are not being offered.

10 What is being offered is her testimony from the  
11 stand now.

12 MR. SHINN: Yes, I understand that, your Honor.

13 THE COURT: Those statements were being considered  
14 only in connection with the Bruton-Aranda problems to  
15 determine whether or not effective deletion could be made.

16 MR. SHINN: That is not the point, your Honor. The  
17 point is initially when Sergeant Gutierrez spoke to Dianne  
18 Lake at that time, she was a suspect, one of the suspects,  
19 and the conversation transcribed would seem to indicate,  
20 your Honor, that Gutierrez was trying his best to elicit  
21 incriminating information from her at that time, and the  
22 methods he used -- the Miranda states any time you start  
23 to focus on a person as a suspect, you must give this  
24 warning.

25 Now, Sergeant Gutierrez nowhere in that  
26 transcript gave her any type of warning.

1 MR. BUGLIOSI: Miranda is only applicable --

2 MR. SHINN: No, it's not.

3 MR. BUGLIOSI: -- if as a result of the violation  
4 of Miranda some fruits came therefrom.

5 MR. SHINN: You read it carefully. Miranda states  
6 at any time they start to focus on a person, and the  
7 officer starts talking, he doesn't know whether or not it  
8 is going to elicit incriminating evidence or not until he  
9 talks to her --

10 MR. BUGLIOSI: Assuming, arguendo, there is a violation  
11 of Miranda, we are not offering any incriminating statements.

12 MR. SHINN: In other words, you can badger any  
13 suspect if you don't feel like filing on him.

14 MR. BUGLIOSI: We cannot use anything gotten from  
15 that suspect. We cannot use it.

16 Nothing was secured as a result of this alleged  
17 violation of Miranda, so what are you seeking to suppress?

18 MR. SHINN: The Miranda rule states that when you  
19 question a suspect you must use lawful procedure.

20 MR. BUGLIOSI: All right.

21 MR. SHINN: That is the basis of Miranda, correct?

22 MR. BUGLIOSI: If you don't do it, you cannot use  
23 the statement you got.

24 MR. SHINN: If you don't do it you cannot use  
25 anything.

26 THE COURT: I understand your point, Mr. Shinn, and

1 I see no reason to change the prior ruling.

2 MR. SHINN: Then I asked Mr. Bugliosi yesterday if he  
3 would stipulate that Dianne Lake was never at any time given  
4 her constitutional rights and he would not stipulate.

5 Why don't you stipulate to that?

6 THE COURT: How could he stipulate to that when she  
7 testified on the record she was advised.

8 How could he stipulate to such a thing when  
9 the facts seem to indicate just exactly the opposite.

10 MR. KAY: You cannot stipulate to something that is  
11 not true.

12 THE COURT: All right, gentlemen, I will let you know  
13 as soon as I hear from the jury.

14 (Recess.)  
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(The following proceedings occur in chambers.  
All counsel present. Defendants absent.)

THE COURT: All counsel are present.

The bailiff informs me that Mrs. McKenzie is still not feeling well enough to come down this morning, and he is going to see again about noon or a little after noon if she can make it this afternoon.

So, I am going to recess until 1:45. Then we will see at that time whether or not she is able to make it this afternoon. Otherwise, we will have to go over until Monday.

MR. SHINN: Your Honor, do you want us to call in or be here?

THE COURT: Well, it is a little difficult to know exactly when he is going to know whether she could make it or not.

You could call about 1:15. I think that would be all right. As long as you can, then, get here, say, within a half hour.

MR. KANAREK: Okay, Mr. Darrow would know.

THE COURT: He will be calling from the hotel. The jury will be at the hotel. It takes them about a half hour to get here at least.

MR. HUGHES: Could we call at about 1:00?

THE COURT: You can call at any time. The point is I don't know if I will know then. I will be here at 1:15,



1 or the Clerk will.

2 THE CLERK: I will be here.

3 THE COURT: The bailiff has to go out with the jury  
4 for lunch. If she remains in her room, which she may or  
5 she may not, I don't know, one bailiff at least will be  
6 able to stay with her so it probably will be 1:15 before  
7 we know one way or the other.

8 So if you call in at 1:15, that will be  
9 satisfactory.

10 Anything else?

11 MR. BUGLIOSI: No -- mentioning the exemplar, as  
12 I understand the Court wants us to furnish the pages that  
13 it's on, and the Court will then tell the jury, inform the  
14 jury that she was ordered to write it.

15 THE COURT: Yes. I was concerned that when the jury  
16 is informed they be informed as to the precise order in  
17 which it was made.

18 MR. MUSICH: I just thought the Court had indicated  
19 a stipulation with Mr. Fitzgerald.

20 MR. BUGLIOSI: Mr. Fitzgerald and I have not been  
21 able to work out a stipulation.

22 MR. MUSICH: Volume 137, pages 15,682.

23 THE COURT: 137 --

24 MR. MUSICH: Page 15,682 through 15,687.

25 Volume 138, pages 16,000 through 16,003.

26 THE COURT: All right. If there is nothing more,

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gentlemen, you are all excused until this afternoon.

(Whereupon, the herein proceedings were  
adjourned until 1:45 o'clock p.m. of the  
same day.)