

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.

165

No. A253156

REPORTERS' DAILY TRANSCRIPT

Monday, January 11, 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, Dsq.
PAUL FITZGERALD, Esq.

For Deft. Krenwinkel:

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

1 LOS ANGELES, CALIFORNIA, MONDAY, JANUARY 11, 1971

2 9:36 o'clock a.m.

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

8 THE COURT: All counsel are present.

9 We have three motions on the calendar.
10 I don't see any difficulty with respect to the motion
11 Mr. Fitzgerald filed on behalf of his client, a motion
12 for a dental examination which I will grant. She
13 apparently needs some dental care.

14 The motion for mistrial on the ground of
15 denial of a public trial I want to put over about a
16 week. I want the County Counsel to look at the motion
17 papers and possibly file a declaration.

18 MR. FITZGERALD: Fine, as long as you need; there
19 is no problem.

20 THE COURT: And the third motion which was the
21 motion for mistrial based on the Court's ruling during
22 final argument can be heard today as far as I am concerned.

23 Now, Mr. Keith called me last night regarding
24 argument today, and felt that because of a personal matter
25 he might not be able to argue today.

26 Are you prepared to indicate, Mr. Keith?

1 MR. KEITH: Yes, I think I should put it on the
2 record.

3 My 18-year-old daughter had major emergency
4 surgery yesterday afternoon. She fortunately is going to
5 live, but I was in a total state of collapse last night
6 along with the rest of my family, and I did call Judge
7 Older and requested that he recess the matter today so
8 I could get back on my feet, and Judge Older very kindly
9 indicated he would.

10 I will state for the record now that just one
11 day is all I ask.

2 fls.

2-1

1 THE COURT: All right.

2 Unless there is something else after we hear
3 the one motion, we will recess until tomorrow morning at
4 the usual time, 9:00 o'clock, at which time you may
5 commence your argument.

6 Is there anything else?

7 MR. BUGLIOSI: In fairness to Mr. Keith, I would
8 like to discuss briefly this instruction on mere presence.

9 I think it is better to do it now than
10 tomorrow morning.

11 MR. KEITH: That is fine.

12 MR. BUGLIOSI: Because if the Judge rules in our
13 favor, this will kind of hurt you during argument.

14 If he rules in our favor, you will have a whole
15 day to revise your argument.

16 THE COURT: Is there a proposed instruction? I
17 haven't received it if there is.

18 MR. BUGLIOSI: Here is basically the way it looks.

19 It is kind of hard to read. There is my
20 writing and there is Mr. Keith's writing.

21 It is an instruction on mere presence.

22 At 2:00 o'clock Sunday morning, it just dawned
23 on me, and I am convinced that I am right, maybe I am the
24 only one that is convinced, but that instruction cannot
25 be given or should not be given.

26 There is no evidence to support it.

1 It is a dangerous instruction because it is very
2 confusing in view of vicarious liability.

3 The only evidence in the record is Linda
4 Kasabian saying that Leslie Van Houten was in the group of
5 three people who went to the La Bianca residence.

6 Now, mere presence isn't applicable to a
7 situation where a defendant deliberately goes with killers
8 to the scene of a crime.

9 And even Leslie Van Houten's statement to
10 Dianne Lake is that she stabbed Rosemary La Bianca and she
11 wiped off the fingerprints.

12 So, the only evidence negates mere presence.
13 Mere presence isn't this type of a situation.

14 That type of instruction is confusing and would
15 befuddle the jury. It is not applicable and there is not
16 a speck of evidence to support it.

17 I think Mr. Keith can argue it. He can argue
18 it. He can say: How do we know Leslie Van Houten did
19 anything? Maybe she just went there, and if she didn't
20 go there with any criminal intent, she is not an aider and
21 abettor and not a co-conspirator.

22 But for an instruction on mere presence, there
23 has to be a speck of evidence that you can draw the
24 inference that she just found herself at the scene and
25 didn't do anything.

26 The only thing we have is Linda's testimony and

1 Leslie's confession to Dianne Lake where she says she
2 stabbed Rosemary La Bianca and wiped off fingerprints.

3 MR. KEITH: I intend to argue, number one, she
4 wasn't a co-conspirator because she wasn't aware of the
5 purposes of the trip.

6 MR. BUGLIOSI: All right.

7 MR. KEITH: And assuming Linda Kasabian^{is} believed,
8 I also intend to argue that stabbing someone after they are
9 dead -- and the evidence shows, and I can draw that
10 inference from the Coroner's testimony that Rosemary La
11 Bianca was stabbed in the buttocks after she was dead --
12 assuming you believe Dianne Lake, I can argue that wiping
13 off fingerprints wasn't aiding and abetting. It happened
14 after the commission of a crime, and anything that happened
15 after that is --

2a fls.

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1 MR. BUGLIOSI: I know you can argue these things, but
2 an instruction on mere presence should be given when the
3 evidence in a case indicates that someone found themselves
4 at a scene and didn't do anything to stop it, they just
5 stayed there and observed.

6 We have a situation here where your client
7 went to these murders with Tex Watson and Charles Manson.
8 She stabbed one of the persons and wiped off fingerprints.

9 MR. KEITH: I can argue the same thing that you
10 argued during the trial on behalf of Linda Kasabian, that on
11 the first night she didn't know what was going on, she
12 thought she was going on a creepy-crawly mission, and she
13 found herself involved in murder. You argued very vociferously
14 that that didn't make her an accomplice.

15 MR. BUGLIOSI: But the fact is that we have testimony
16 on that. Linda's testimony.

17 Leslie didn't testify.

18 MR. KEITH: There is direct evidence. But I can
19 draw inferences. That is circumstantial evidence.

20 MR. BUGLIOSI: Secondly, the mission of murder was
21 known on the second night on starting out.

22 Manson said "You were too messy the
23 night before. I will show you how to do it."

24 MR. KEITH: What does that mean to Leslie? She
25 wasn't there the night before.

26 MR. BUGLIOSI: They stopped at a church in Pasadena

1 and he was going to go into the church and kill a minister.
2 There is the sportscar incident where he said: I am going
3 to kill the guy.

4 The point is that the instruction is a confus-
5 ing and dangerous instruction, expecially in view of the
6 fact that we are alleging conspiracy in this case.

7 There is just no evidence that she merely
8 went there.

9 THE COURT: What was Linda Kasabian's testimony as
10 to what Mr. Manson said when he came back out of the La
11 Bianca house?

12 MR. KAY: "Don't let them know you are going to
13 kill them."

14 MR. BUGLIOSI: "I have got two people tied up.
15 Don't cause fear and panic in them. Don't tell them that
16 you are going to kill them."

17 MR. KEITH: On that point, if the Court please,
18 I am obviously going to argue that the jury has a reasonable
19 doubt that that was ever said because Linda Kasabian
20 prefaced both statements with: I think he said "Don't
21 cause fear and panic in the two people in the house,"
22 and I am not positive, it is just ringing in my head,
23 but I think he said, "Don't let them know you are going
24 to kill them."

25 Now, if Linda Kasabian isn't positive that
26 Manson said that, why should the jury be positive?

1 That is my argument.

2 MR. BUGLIOSI: Well, even if you argue that she went
3 there for the purposes of burglary, the mere presence, again,
4 would not be applicable.

5 MR. KEITH: I am not going to argue she went there
6 for the purpose of burglary. I am going to argue that she
7 didn't know what she was going there for.

8 MR. BUGLIOSI: I think he can argue the case, your
9 Honor, but to dignify it with an instruction?

10 MR. KEITH: He is drawing my whole argument out of
11 me in advance.

12 MR. KAY: He is smart.

13 MR. BUGLIOSI: The instruction on mere presence
14 means what it says: She was merely there.

15 Your client wasn't merely there. She was
16 stabbing one of the victims and wiping off the fingerprints.

17 MR. KEITH: I am going to argue she was merely
18 there. I am going to argue Rosemary was dead, and it is
19 not murder.

20 MR. BUGLIOSI: That is a bad instruction, your
21 Honor, because it is confusing to the jury, especially in
22 view of the instruction on conspiracy which says that the
23 defendant doesn't have to be present at the scene.

24 In fact, the instruction on aiding and abetting says
25 the defendant doesn't have to be present at the scene.

MR. KEITH: Everybody knows that.

MR. BUGLIOSI: You can be present at the scene and still not be guilty. It is extremely befuddling and confusing to lay people.

MR. KEITH: You just don't want an instruction that is consistent with the theory in my defense, that's all. I am entitled to it.

THE COURT: It is no defense, though. What is the defense? That is the point here.

MR. KEITH: She was not an aider and abettor, if she was not a conspirator, therefore she is not guilty.

I don't know why that is not a defense.

THE COURT: It is a defense in the sense that you contend she is not guilty.

MR. KEITH: It is not like an alibi.

THE COURT: It is not a question of having one witness testify one way and another witness testifying another. If Leslie Van Houten testified she did not know what she was doing when she went in there; that she did not hear Mr. Manson say anything, and she went in just because the others were going in, or words to that effect, then you might have a mere presence situation. I agree with Mr. Bugliosi.

But here you don't have anything like that. The only evidence indicates it was not a mere presence situation.

I agree you don't have to believe it, but the fact

1 that you don't have to believe it does not bring into play
2 a requirement that the instruction be given.

3 MR. KEITH: That is true if Linda Kasabian and Dianne
4 Lake aren't believed, then that is the end of the case, as
5 far as that goes.

6 But these instructions were drawn under the
7 assumption, arguendo of course, that Dianne Lake and Linda
8 Kasabian might be believed. They could well be believed,
9 and if they are believed I've got to come up with a theory
10 as to why Leslie Van Houten is not guilty.

11 THE COURT: Your theory certainly is legitimate, and
12 your argument based on that theory is still legitimate.

13 MR. KEITH: I am still going to proffer that
14 instruction. If your Honor refuses it, that is your
15 prerogative, and if your Honor lets me argue along those
16 lines briefly, I will leap at the chance, but I think I can
17 draw inferences that, from a lack of evidence, if you want --

18 MR. BUGLIOSI: From a lack of evidence?

19 MR. KEITH: Sure.

20 MR. BUGLIOSI: You've got Linda's testimony and
21 Leslie Van Houten's, your own client's statement, she
22 stabbed ^{off} and wiped/fingerprints at the scene, and you can
23 say she was just present, an interested observer with a
24 pair of binoculars looking down at what was happening?

25 MR. KEITH: Sure.

26 MR. BUGLIOSI: I think you can argue that, but to have

1 an instruction, it has to be predicated on some item of
2 evidence, and there is no item of evidence showing she was
3 just there.

4 MR. KEITH: There is evidence to show she was there;
5 there is the evidence of Dianne Lake.

6 MR. BUGLIOSI: But not just there.

7 MR. KEITH: But if the statements attributed to
8 Miss Van Houten, testified to by Dianne Lake, show something
9 else than murder or aiding and abetting -- I feel I am
10 going to argue it.

11 MR. BUGLIOSI: I think you can argue it. I think it is
12 a valid argument on your part. I agree you can argue it,
13 but just because you can argue it does not mean that you
14 are entitled to an instruction supporting it.

15 You can argue anything you want.

16 MR. KEITH: If I argue she was just there hiding in the
17 closet, the hiding in the closet argument, and you get up and
18 say there is no evidence of that, and that is not the law --

19 MR. BUGLIOSI: Which I have to say there is no evidence
20 she was in the closet, of course.

21 MR. KEITH: I can infer that.

22 MR. BUGLIOSI: Sure. You can write your own scenario.
23 Your predecessor wrote a scenario.

24 MR. KEITH: You mean Mr. Hughes or Mr. Kanarek?

25 MR. BUGLIOSI: Mr. Kanarek, I'm sorry.

26 MR. KANAREK: May I just ask this question, Mr.

1 Bugliosi, what if the jury does not believe Dianne Lake,
2 say they believe she is incompetent and they believe
3 Linda Kasabian?

4 Then you have your speck of evidence because if
5 they believe Linda Kasabian, then she is merely present.
6 They can say "Dianne Lake -- we cannot believe anything
7 she says."

8 MR. BUGLIOSI: That is a bootstrap argument, Irving,
9 I have never seen anyone that can pick themselves up. Have
10 you ever seen anyone doing that?

11 MR. KANAREK: Dianne Lake can well be disbelieved about
12 everything. The only thing that is left is Linda Kasabian,
13 and mere presence and, as you said, that is the speck of
14 evidence.

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1 THE COURT: I don't understand, Mr. Kanarek, what you
2 mean about Linda Kasabian and mere presence.

3 MR. KANAREK: I am saying Linda Kasabian's testimony,
4 let's say --

5 THE COURT: It is more than mere presence.

6 MR. KANAREK: Not as to Leslie Van Houten.

7 MR. KAY: Sure, she had a change of clothing, dark
8 clothing.

9 THE COURT: She testified ^{to} Mr. Manson's statement when
10 he came back out of the house.

11 MR. KANAREK: That doesn't mean Leslie Van Houten
12 has to be anything except merely present. She doesn't put
13 Leslie Van Houten even in the house. She left the scene,
14 supposedly.

15 Actually I believe Linda Kasabian is lying,
16 but she said she left the scene, so she merely, at most,
17 it is less than mere presence.

18 She puts Leslie Van Houten outside on the
19 sidewalk.

20 Now, if Dianne Lake -- let's say that we
21 existed --

22 THE COURT: The point is, the evidence showed if
23 she was in the house she was there with some knowledge of
24 what was going on.

25 MR. KANAREK: But she never puts her in the house.
26 All she does is put her outside.

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1 Leslie Van Houten may have seen a guy and
2 wandered off to Los Feliz Boulevard.

3 He can certainly argue Leslie Van Houten is
4 merely present.

5 THE COURT: He may argue it, yes.

6 MR. KANAREK: He is entitled to a jury instruction
7 on it.

8 THE COURT: There is no evidence to indicate it.
9 In fact, the evidence indicates just the opposite.

10 MR. KANAREK: Let's say you don't have Dianne Lake --

11 MR. KEITH: If you don't have Dianne Lake, you don't
12 have any case to begin with. I wouldn't even bother.

13 She is the only one that corroborates --

14 MR. KANAREK: Let's say Dianne Lake is not to be
15 believed.

16 MR. KEITH: If they don't believe Dianne Lake,
17 Miss Van Houten will be acquitted, I can assure you of that.
18 That is the only evidence connecting her with the crime.
19 You see, the thing is, the problem is if I start discussing
20 some law, and the jury is not going to be instructed as
21 to the law that I am discussing, then Mr. Bugliosi is
22 going to violently object.

23 Supposing, I say, and this has reference to
24 the second instruction I offered, that once the crime is
25 completed, anything Leslie does is like wiping off finger-
26 prints, and is not part of the criminal act, is not part

3a-3

1 of the crime of murder. All she is is an accessory after
2 the fact; then I have to tell them what that is.

3 MR. BUGLIOSI: I will have to object on the grounds
4 it is a misstatement of the law.

5 MR. KEITH: Not necessarily.

6 MR. BUGLIOSI: There are cases in California which
7 say that an attorney has the right, if the Judge permits
8 the attorney, to argue the law, assuming that he does not
9 misstate the law.

10 MR. KEITH: I won't misstate the law of accessory
11 after the fact, I can assure you.

12 What you are saying is that I cannot argue
13 that -- that wiping off fingerprints is not an attempt to
14 conceal the crime.

15 MR. BUGLIOSI: Accessory after the fact does not come
16 into play unless the crime has already been committed.

17 If they are still at the scene, that is part
18 of the res gestae.

19 There is an abundant authority for that, even
20 immediate escape is part of the res gestae.

21 MR. KEITH: Read People vs. Wallin, in that case a
22 lady murdered her little child, and the landlord helps the
23 mother bury the child in the yard.

24 MR. KAY: Was the landlord present during the
25 murder?

26 MR. KEITH: Yes.

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1 MR. BUGLIOSI: He observed the murder?

2 MR. KEITH: That is not clear, but at any rate he
3 knew what happened, and the only witness against him, and
4 the trial is very interesting, in the trial against the
5 landlord who was charged with accessory after the fact,
6 Penal Code 32, the only witness against him was the
7 murderess, the mother who testified that the landlord,
8 Wallin, helped her bury the body.

9 And the Court reversed it on the grounds that
10 the murderess was an accomplice to the accessory after the
11 fact.

12 And the Court said in that case, as soon as
13 that child was murdered or dead, that was the end of it,
14 and the next thing that happened, burying the body, was
15 not part of the res gestae; and the Court made this fellow
16 the accessory after the fact, and unfortunately the only
17 witness they had against him was the accomplice.

18 MR. BUGLIOSI: There is Hornbook law, hundreds of
19 cases, as to the proposition that immediate escape is part
20 of the res gestae.

21 This is not escape. She is doing it at the
22 scene; she went there; she was not a resident of the place
23 like the Wallin situation, somebody living there comes upon
24 a crime already committed and helps to conceal it.

25 Leslie went there; she had no right to go to
26 the La Bianca residence. What is her purpose in going there?

1 MR. KEITH: That still doesn't mean she cannot try
2 and conceal the identity of the perpetrators after it is
3 all over and her liability will be different.

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1 THE COURT: So far the only instruction I have
2 been presented with along these lines is Mr. Keith's, or the
3 two instructions which were numbered the other day, and you
4 gentlemen were going to redraft something.

5 MR. BUGLIOSI: Right, I agree.

6 MR. KEITH: I gave it to him.

7 MR. BUGLIOSI: My position now, your Honor, is I
8 vigorously oppose the instruction on mere presence, the
9 basis for our opposition is that there is no evidence upon
10 which that instruction could be predicated, even from the
11 lips of the very person who wants to invoke mere
12 presence, i.e., Leslie Van Houten. She said she stabbed and
13 wiped fingerprints off the scene. The very person who wants
14 to invoke mere presence says, "I wasn't merely present."

15 THE COURT: I am inclined to agree.

16 MR. KEITH: I drew those two instructions on the theory
17 that Dianne Lake might well be believed. I am not talking
18 about a situation where Dianne Lake is not going to be
19 believed.

20 MR. BUGLIOSI: You can argue it, like the Judge says,
21 argue it to the hilt.

22 MR. KEITH: Well, I will, but if I start saying --

23 MR. BUGLIOSI: I won't object.

24 MR. KEITH: -- Leslie Van Houten is not an aider and
25 abettor, even if you believed she wiped some fingerprints off,
26 then you are going to scream and yell.

1 MR. BUGLIOSI: No, I'm not too sure I will object to
2 that; although I might.

3 I think you can argue just about anything.

4 MR. KAY: Irving did.

5 MR. BUGLIOSI: I don't think you can say, "His Honor
6 will instruct you --"

7 MR. FITZGERALD: What are you going to argue, Mr. Kay?

8 MR. KEITH: I would just as soon not suffer the indig-
9 nity of having Mr. Bugliosi jump to his feet and say I am
10 misstating the law, not facts, -- the law.

11 MR. BUGLIOSI: I think you can argue if she did not go
12 there with criminal intent and if she did not help out she
13 is not an aider or abettor, or co-conspirator, or "providing,"
14 or some type of word like that.

15 But if you are going to admit she did all these
16 things --

17 MR. KEITH: I am going to say, "Assuming that she did
18 these things, what is her liability?" Sure.

19 MR. BUGLIOSI: I think you would be misstating the law,
20 Max, if you said, "Assuming she stabbed and wiped off the
21 fingerprints, she is still not an aider and abettor," I
22 think that would be a misstatement of the law.

23 MR. KEITH: I don't think it is.

24 THE COURT: Of course, I don't see that in that
25 respect it is any different from any other fact the jury has
26 to determine.

1 You can argue one way; you can argue the other
2 way. In the end they have to determine whether or not
3 it is a fact established by the evidence, in fact, if what
4 Leslie did, assuming she did it, amounts to the aiding and
5 abetting, a term used in the instructions.

6 MR. KEITH: That is my point. Is killing somebody after
7 they are already dead -- does that show that she is an
8 aider and abettor in the crime of the murder?

9 THE COURT: I think you can argue that.

10 MR. KEITH: I think I can, too, this wiping off of the
11 fingerprints --

12 THE COURT: I don't think it is proper to say as a matter
13 of law it isn't.

14 MR. KEITH: I cannot say that?

15 THE COURT: But you can say the jury can determine that.

16 MR. KEITH: I can say, "Here is the law, here is what
17 she did," and I can suggest to you that that is not aiding
18 and abetting.

19 If I come across the body that is already dead
20 and pump a couple of holes in it, I'm not killing anybody.

21 MR. BUGLIOSI: Not only that, but if you fire the first
22 round, and the person is just about to die, and someone
23 else comes along and stabs that person and the person dies
24 immediately, even then you are not guilty of murder, even
25 if you dealt a fatal blow, you are still not guilty of
26 murder.

1 There are cases on that, if someone intervenes
2 before your fatal blow results in death, and stabs somebody
3 to death, you are not guilty of murder.

4 MR. KEITH: That is an interesting theory. I never
5 heard of that one. I have heard a lot of them.

6 MR. BUGLIOSI: I have got some cases on that -- defense
7 cases.

8 THE COURT: Well, as I say, the only instruction I
9 have received so far is the one Mr. Keith submitted the other
10 day, which has been numbered and which I have not yet
11 ruled on, but I will rule on it before you start argument.

12 MR. KEITH: Let me do this, where is that piece of
13 paper?

14 (Document handed to Mr. Keith.)

15 re-
16 MR. KEITH: Let me/draft it. I will redraft this first
17 one, the mere presence one, more in the language of the
18 Durham case, and submit that.

19 MR. BUGLIOSI: That is the Durham case you have there.

20 MR. KEITH: More or less, yes.

21 MR. BUGLIOSI: I am objecting to that.

22 MR. KEITH: You cannot submit something on scratch
23 paper.

24 MR. BUGLIOSI: I know that.

25 MR. KANAREK: Does your Honor have the complete package of
26 jury instructions? Do you have them physically? Could I
have a look at them for a moment, your Honor?

1 THE COURT: Don't you have your set?

2 MR. KANAREK: Yes, I would just like to look at a
3 couple to make sure the ones I have conform properly.

4 THE COURT: Why don't you take your set and you can
5 tell me any one that you want to compare and I will compare
6 it with you.

7 MR. KANAREK: Out of an abundance of caution, your
8 Honor --

9 THE COURT: I don't want to let them out of my
10 possession now, the ones that I have determined to give,
11 some of them have some modifications on them. I don't
12 want to let them out of my possession now. If you want to
13 compare your copies, you have a complete set.

14 MR. KANAREK: That is correct, theoretically.

15 THE COURT: What do you mean theoretically? I gave
16 every counsel a complete set of instructions. Now, if you
17 have done something with them, I don't know anything about
18 that.

19 MR. KANAREK: If while we are talking about it I can
20 give them right back to the Court, if I may.

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1 THE COURT: I am not going to give you my set, Mr.
2 Kanarek.

3 Now, if you have any particular ones that you
4 would like to inquire about, I will tell you precisely
5 how it reads.

6 MR. KANAREK: Well, I have quite a few.

7 THE COURT: Perhaps you ought to compare it with some
8 of your co-counsel first.

9 MR. KEITH: While we are speaking of the instructions,
10 it seems to me -- and I will check it with CALJIC -- on
11 page 7 of the instructions, CALJIC 2.01, there is a word
12 that is wrong.

13 I want to take a look at it.

14 THE COURT: 2.01?

15 MR. KEITH: Yes.

16 Maybe it has already been corrected.

17 It is wrong. The next to the last line of
18 the first paragraph:

19 "Necessary to establish" -- my instruc-
20 tion reads -- "that defendant's guilt has been proved."

21 Does yours read that way, your Honor?

22 THE COURT: Yes, it does read that way.

23 MR. KEITH: It should be "the."

24 Here it is. It doesn't make any sense "that"
25 instead of "the."

26 THE COURT: Well, I think it makes sense because here

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1 you are referring to multiple defendants, and the instruc-
2 tion refers to circumstantial evidence against a particular
3 defendant.

4 When it says "that" defendant, it means the
5 defendant that is referred to in the first sentence.

6 "You are not permitted to find a defendant."
7 That is what "that" refers to.

8 MR. KEITH: "Each fact which is essential to complete
9 a set of circumstances necessary to establish" --

10 THE COURT: "that defendant's guilt."

11 "That defendant" being the one that you are
12 talking about.

13 MR. KEITH: Gee, I don't know.

14 I thought the instruction meant --

15 THE COURT: You start out talking about: You are
16 not permitted to find a defendant guilty of any crime
17 based on circumstantial evidence. Then in the last sentence
18 you are saying: Unless --

19 MR. KEITH: "Complete a set of circumstances necessary
20 to establish the defendant's guilt has been proved beyond
21 a reasonable doubt."

22 THE COURT: If there were only one defendant, that
23 would be correct, but where there is more than one
24 defendant and you are referring to a particular defendant,
25 it is the one that you are talking about in the first sentence,
26 the first line.

4-3

1 MR. KEITH: I read it: "the set of circumstances"
2 -- or rather: "Each fact essential to complete a set of
3 circumstances has been proved beyond a reasonable doubt."
4 That language has always been obscure to me anyway.

5 Maybe your Honor is right.

6 MR. BUGLIOSI: A chain of circumstances. I will
7 have something to say about that.

8 The Judge will instruct: A set of circumstances.

9 THE COURT: Well, in a case of multiple defendants,
10 it is a proper wording.

11 MR. KANAREK: May I make a point, your Honor?

12 THE COURT: Sure.

4a fls.

4a-1

1 MR. KANAREK: One instruction that I have some -- it
2 may be lack of knowledge about -- is 8, instruction 8,
3 which has to do with the so-called suppression of evidence.

4 I believe I was arguing, your Honor, and I
5 didn't get a copy of the prosecution's latest request,
6 which the Court, I don't believe, has ruled on yet.

7 THE COURT: No. I'm still thinking about that.

8 The more I think about it, the more I think
9 I will not give that requested instruction which they
10 redrafted at my suggestion.

11 MR. KAY: In other words, you will leave it like it
12 is?

13 THE COURT: Yes.

14 MR. KAY: We don't have any objection either way.

15 THE COURT: It is just a general instruction without
16 naming or pinpointing any particular defendant.

17 MR. KANAREK: No. 8: That a defendant attempted to
18 suppress evidence, such as by intimidation of a witness.

19 That pinpoints Mr. Manson, your Honor.

20 Your Honor has refused our instruction concern-
21 ing, for instance, the alleged confession to Juan Flynn.
22 And this certainly pinpoints Mr. Manson, the intimidation
23 of a witness.

24 And those words I will object to on the grounds
25 of equal protection of the law under the Fourteenth
26 Amendment, and due process.

1 There is no necessity to pinpoint Mr. Manson.

2 THE COURT: You have made all these objections before.
3 There is no use going through it all again.

4 We are talking about the proposed modification.

5 MR. KANAREK: There is nothing to cover it.

6 "By the intimidation of a witness" pinpoints
7 Mr. Manson.

8 Really, that is unfair. The jury may not
9 consider that to be suppression.

10 THE COURT: Certainly. That is exactly right. They
11 may not.

12 MR. KANAREK: Well, what I am saying, your Honor,
13 if the words "such as by the intimidation of a witness"
14 go in there, that certainly pinpoints Mr. Manson, because
15 the only thing in this trial concerning the intimidation of
16 a witness is Officer Gutierrez's statement concerning the
17 movement across the face or upper body of Mr. Manson.

18 And that unduly pinpoints Mr. Manson.

19 Now, there is no necessity for that.

20 They can argue it. He can argue that. There
21 is no necessity to dignify it by having the words "such as
22 by the intimidation of a witness" in there.

23 Mr. Bugliosi can argue that is intimidation.

24 THE COURT: Do you wish to be heard on this, Mr.
25 Bugliosi?

26 This is page eight.

1 MR. BUGLIOSI: Yes. I have it here, your Honor.

2 I think this is a proper instruction, your
3 Honor.

4 THE COURT: Well, Mr. Kanarek is saying that he thinks
5 the phrase "such as by the intimidation of a witness"
6 should be deleted.

7 MR. KAY: Are you looking at the new one or the
8 old one?

9 THE COURT: The old one.

10 MR. BUGLIOSI: This one right here?

11 MR. KAY: Yes.

b fls.

4b-1

1 MR. BUGLIOSI: I think "intimidation of a witness"
2 should be in there, otherwise it is just too broad a state-
3 ment.

4 Mr. Kanarek could have argued that that was not
5 intimidation, and I can argue that that did constitute
6 intimidation. It is a question of fact, I would say, for
7 the jury. But "intimidation of a witness," of course,
8 is one way to suppress evidence. There are other ways, but
9 this is one way, and the jury should be told that that is
10 one way to suppress evidence, by intimidating the witness.

11 Now, whether or not Manson did that in this case
12 is a question of fact for the jury.

13 I think they should be told that intimidation of
14 a witness is suppression of evidence.

15 MR. KANAREK: You can tell them that in argument.

16 You have objected jillions of times, so to speak,
17 in this record that it can be done by argument.

18 Now, this pinpoints Mr. Manson "such as by the
19 intimidation of a witness."

20 MR. BUGLIOSI: It doesn't mention Manson, it doesn't
21 mention Kasabian, and it doesn't mention a slashing of the
22 throat motion. This is just intimidation of a witness.

23 MR. KANAREK: Obviously, since it has only happened
24 in this courtroom concerning Mr. Manson, it obviously pin-
25 points it. It says "Mr. Manson" with those words "such as
26 by the intimidation of a witness" because of the evidence.

1 MR. BUGLIOSI: They can consider this to be your state-
2 ment to Juan Flynn. I am not going to argue it. I will
3 mention it, but I am not going to argue it.

4 MR. KANAREK: The point is that you can argue all of
5 that, but it shouldn't go into the jury room, because there
6 is no point to it. There is no necessity for it.

7 THE COURT: I think I am going to leave it as it is.
8 I think it is a perfectly proper instruction.

9 Anything further?

10 All right. Let's go back into court now.

11 MR. KANAREK: Then, your Honor, I would ask this
12 assistance of the Court. We have attempted to find ^{where} Officer
13 Gutierrez testified to this in the record, several of us,
14 including the court reporters and the clerk, and it appears
15 to be unannotated in the record as to where it is.

16 We would ask the prosecution then to inform us
17 where it is in the record, Officer Gutierrez's statement.

18 You see, the indexing doesn't seem to cover it.

19 THE COURT: Ask them. I don't know offhand.

20 Is there any reason why you can't ask them?

21 MR. KANAREK: Counsel, Mr. Bugliosi, where is that in
22 the record?

23 MR. BUGLIOSI: I have it at home, and Mr. Kay has it.

24 I will have it for you tomorrow. I have a complete
25 summary at home.

26 MR. KANAREK: Do you represent that you will tell me in

the morning?

1 MR. BUGLIOSI: Yes.

2 MR. KANAREK: Because we have searched and we can't
3 find it in the indexing.

4 MR. KAY: I will give it to you outside, Kanarek.

5 MR. KANAREK: All right.
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4c-1

1 (The following proceedings occur in open
2 court. All counsel present. Jury absent. Defendants
3 absent.)

4 THE COURT: All counsel are present.

5 We have three motions on the calendar.

6 First is a request for a dental examination
7 for Patricia Krenwinkel.

8 That motion will be granted.

9 The second is a motion for mistrial on the
10 ground of a denial of a public trial, and as I indicated
11 to you, Mr. Fitzgerald, I would like to continue that for
12 one week until January 18th, at 9:00 a.m. for hearing.

13 Is there any objection to that?

14 MR. FITZGERALD: No objection, your Honor.

15 THE COURT: And the third motion is a motion for
16 a mistrial on the ground that counsel was improperly
17 restrained from arguing applicable provisions and principles
18 of law during final argument to the jury on December 28th,
19 1970.

20 In that connection, there was a transcribing
21 error in the transcript, as I think you have been advised.

22 On page 19,342, line 24, the second word is
23 "permit" rather than "forbid," and the reporter has
24 corrected the Court's copy, so that the sentence starts
25 out "I permit counsel on both sides to discuss the
26 instructions," et cetera.

1 Do you wish to be heard on your motion, Mr.
2 Fitzgerald?

3 MR. FITZGERALD: Just very briefly.

4 The court reporter did, on January the 8th,
5 indicate to me, upon inquiry, that his original notes
6 indicated that your Honor said "permit" rather than "forbid."

7 That, however, does not change the thrust
8 and the substance of the motion.

9 Very simply, the motion has two essential
10 characteristics. One, we are arguing that counsel had the
11 right to argue the law; and No. 2, counsel had the right
12 to read from something. And I suppose, putting those two
13 together, I am arguing that counsel has a right to argue
14 the law that is written down.

15 I think, as my declaration sets out, I was
16 quoting from three cases, People vs. Comstock, Wallen and
17 Robinson, and the materials I have set out there, a portion
18 of which are set out in the transcript, I think are clearly
19 the law.

20 Mr. Bugliosi objected on the ground that I
21 couldn't read from something, and the objection was sustained.

22 4d fls.
23
24
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4c-41

1 I think that, as I set out in the declaration,
2 my remarks concerning Linda Kasabian I felt were extremely
3 important because they went to her credibility. The Court
4 had already ruled that Linda Kasabian was an accomplice as
5 a matter of law, and your Honor had indicated that an
6 instruction was going to be given to the jury that her
7 testimony ought to be treated with distrust, and I simply
8 wanted to explain to the jury the rationale of that distrust
9 rule. And I contend that I was erroneously not permitted
10 to do so.

11 I have nothing further.

12 THE COURT: Do you wish to be heard?

13 MR. BUGLIOSI: Submit the matter.

14 THE COURT: I think you were correct, Mr. Fitzgerald.
15 I think you were erroneously precluded from reading that
16 particular statement, although I notice in the transcript
17 that you offered no explanation as to what it was you were
18 reading from.

19 In other words, you did not indicate it was an
20 opinion from any court case. Not that you are required to,
21 but the fact is that you didn't. And, of course, I did not
22 recognize it as being an opinion from any court case.

23 I take it that you intended to read an excerpt
24 from the opinion in whatever case this was; is that right?

25 MR. FITZGERALD: That is correct.

26 THE COURT: Well, do you still want to do it?

1 MR. FITZGERALD: Will you allow me to?

2 THE COURT: Yes. I would allow you to reopen your
3 argument for that limited purpose.

4 MR. FITZGERALD: Thank you very much.

5 THE COURT: All right.

6 If you will call my attention to it tomorrow
7 morning, I will let you do that before Mr. Keith starts.

8 MR. FITZGERALD: Thank you.

9 THE COURT: In view of the fact that I don't think
10 that any prejudice has resulted or certainly will result,
11 particularly after Mr. Fitzgerald is permitted to reopen
12 the argument for that limited purpose, I am going to deny his
13 motion for a mistrial on the grounds that he was improperly
14 restrained from arguing the law in his final argument.

15 As we know from our conference in chambers, we
16 are not going to continue today, but the trial will be
17 recessed until tomorrow morning.

18 Is there anything further before we recess?

19 MR. BUGLIOSI: Nothing further, your Honor.

20 THE COURT: Very well.

21 This case will be recessed, then, until 9:00
22 o'clock tomorrow morning.

23 (Whereupon, at 10:18 a.m. the Court was in
24 recess.)
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