

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 104

HON. CHARLES H. OLDER, JUDGE

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff,

vs.

CHARLES MANSON, SUSAN ATKINS,  
LESLIE VAN HOUTEN, PATRICIA KRENWINKEL,

Defendants.

121

No. A253156

REPORTERS' DAILY TRANSCRIPT

Friday, October 9, 1970

A. M. SESSION

APPEARANCES:

For the People:

DONALD A. MUSICH,  
STEPHEN RUSSELL KAY,

and  
VINCENT T. BUGLIOSI,  
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.

VOLUME 121

PAGES 13368 to 13452

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

COPY

I N D E X

COURT'S SPECIAL EXHIBITS:

FOR IDENTIFICATION

6 - (Collectively) Statement of  
Virginia Graham dated 11/26/69  
Statement of Virginia Graham  
dated 10/5/70

Notes of Mr. Bugliosi of  
interview with Virginia Graham

13387

7 - Notes of Mr. Bugliosi re conver-  
sation with Roni Howard

13425

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LOS ANGELES, CALIFORNIA, FRIDAY, OCTOBER 9, 1970

9:10 A.M.

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

THE COURT: The record will show all counsel are present.

MR. FITZGERALD: If the Court please, your Honor, I have a copy of the Los Angeles Herald Examiner dated Friday, October 9, 1970. It contains a headline:

"Liz, Sinatra on Slay List -- Tate Witness.

"Ghastly Tortures Planned For Stars."

And then in what is called in journalistic trade "a reverse," it says, "Exclusive."

And it is allegedly written by William Farr, Herald Examiner and copyrighted 1970 by the Los Angeles Herald Examiner.

It covers approximately half of the front page including two photographs, a photograph of Virginia Graham and her attorney, Robert Steinberg; also a photograph of Roni Howard.

The story is continued on Page A, Column 1.

The gist of the story is that the defendants, all of them, had planned to kill Elizabeth Taylor, Richard Burton, Tom Jones, Steven McQueen and Frank Sinatra, and

1 Frank Sinatra, and also torture them before their deaths.

2 I am now handing it to the Court.

3 (Newspaper handed to the Court by  
4 Mr. Fitzgerald.)  
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1 THE COURT: I received word last night that the  
2 Herald Examiner was going to publish the story today,  
3 and I ordered that the windows on the bus of the jury be  
4 blacked out today so that they would not inadvertently see  
5 any headlines as they were being transported to and from  
6 the hotel.

7 I will also remind the jury today of their  
8 duty, which, of course, they are reminded of daily, but I  
9 think with particular reference to the weekends.

10 Several things occur to me. First, if anyone  
11 ever had any doubts about whether or not the jury should be  
12 sequestered, I assume that they have long since departed.

13 Secondly, if anyone ever had any doubt about  
14 the necessity for a publicity order, I would assume those  
15 doubts have long since departed.

16 And third, it is apparent that notwithstanding  
17 both the sequestration of the jury and a publicity order,  
18 it is possible for unscrupulous persons to thwart or at  
19 least attempt to thwart the purpose and intent of those  
20 arrangements.

21 Now, in thinking over what happened during the  
22 last couple of days with respect to this Virginia Graham  
23 statement, I am unable to conceive of any way in which this  
24 newspaper could have obtained her unedited statement except  
25 either directly or indirectly through one of the attorneys  
26 in this case.

1 MR. FITZGERALD: Or through a personal interview  
2 with Virginia Graham herself.

3 As a matter of fact, we have been talking among  
4 ourselves, the prosecutors and the defense counsel, and we  
5 think that is a very distinct possibility.

6 We are not foreclosing, in addition, them  
7 obtaining directly from some attorney in this case the  
8 statement as well, your Honor.

9 THE COURT: Well, that is true. That is a possibility.

10 MR. BUGLIOSI: I think he said he had, in fact,  
11 spoken to her. I think he said that he spoke to her.

12 MR. FITZGERALD: Yes, he said that he spoke to her.

13 Also, Mr. Shinn has some information that I  
14 think is very interesting.

15 MR. SHINN: Yes.

16 I have information, your Honor, that Virginia  
17 Graham's husband was trying to peddle the story in  
18 Hollywood a couple of months ago to a producer, or two or  
19 three weeks ago, and I talked to Wesley Russell, one of the  
20 attorneys that I believe represented --

21 MR. KAY: Representing Roni Howard.

22 MR. SHINN: -- and I asked him: "Did you ever hear  
23 about this story?"

24 And he said, "No."

25 I asked him: "Did she ever mention any movie  
26 story?" And he said, "No."

1 THE COURT: Who said that?

2 MR. SHINN: Wesley Russell. He used to represent  
3 Shelly Nadell. I think he represented her when she broke  
4 the case.

5 MR. FITZGERALD: Roni Howard and Virginia Graham are  
6 close friends of one another.

7 THE COURT: It is unfortunate. As you know, I tried  
8 to stop it yesterday by a plea to Mr. Farr and his newspaper.

9 The Herald Examiner has proved the case for  
10 publicity orders far beyond anything any court could say  
11 by their conduct.

12 It is irresponsible journalism magnified to the  
13 point of absolute irresponsibility, as far as I am concerned.

14 MR. SHINN: Why don't we bring Virginia Graham in  
15 here and ask her, your Honor? I am sure we would get some  
16 information from her.

17 MR. KANAREK: I would do this, your Honor: I think  
18 that we have a right that that be suppressed for use in  
19 the trial.

20 MR. BUGLIOSI: We don't intend to use it anyway.

21 MR. KANAREK: I think all of Virginia Graham's --  
22 we are going to ask for a mistrial, and we are going to  
23 ask your Honor to voir dire the jury upon this, and not just  
24 an instantaneous voir dire, but I would think later on,  
25 because I know your Honor doesn't believe these conjugal  
26 visits, or by other means, would get through to the jury, but

1 we believe otherwise, and I think a remedy, if your Honor  
2 doesn't grant the motion for mistrial and/or a motion for  
3 voir dire in reverse order -- first, the voir dire -- it  
4 would seem like a remedy would be to order Virginia Graham's  
5 testimony not be used in this case.

6 THE COURT: Anything else before we get on to the  
7 subject we were with yesterday when we adjourned?

8 MR. FITZGERALD: Could we mark that as a special  
9 exhibit, another Court's Exhibit, just the front portion of  
10 the paper?

11 MR. KANAREK: The first two pages.  
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1 THE COURT: For what reason?

2 MR. KANAREK: As a Court's Exhibit.

3 MR. FITZGERALD: I think in support of the motion,  
4 and perhaps we should set out the motion for the record:

5 All of us feel that it is incumbent upon us to  
6 move for a mistrial and -- before we move for a mistrial  
7 to ask your Honor to voir dire the jury to determine if they  
8 have come in contact with it.

9 We get various and conflicting reports from the  
10 hotel.

11 By and large, the Sheriffs will not talk to us  
12 about the manner in which the jury is sequestered and the  
13 procedures in sequestration, where they go on the weekends  
14 and what they do.

15 So we are totally without information in  
16 connection with the validity --

17 THE COURT: Will you kindly settle down, Mr. Shinn, so  
18 we can get on with this conference.

19 MR. SHINN: I'm sorry.

20 MR. FITZGERALD: -- so we are really in the dark as  
21 to the procedures and the actual validity of the sequestra-  
22 tion.

23 THE COURT: I want it that way. I don't want every  
24 move the jury makes known.

25 MR. FITZGERALD: But I am saying that we have no --

26 THE COURT: There is no reason why you should know.

1 MR. FITZGERALD: I will say I have received numerous  
2 reports from various citizens that have told me that they  
3 have seen jurors unescorted in the vicinity -- I reported  
4 back to them I have no personal knowledge but it is my  
5 understanding there were plain clothes officers with them.

6 I have had people report to me they have seen  
7 jurors in the coffee shop at the Ambassador Hotel next to  
8 display racks of newspapers containing headlines in connection  
9 with this case.

10 I have no way of verifying that information  
11 unless we can actually voir dire the jury in terms of what  
12 they have seen and what they have heard.

13 Now, we found out in terms of the President  
14 Nixon headline that two of the jurors had indeed seen the  
15 headlines before it was ever displayed in court by  
16 Mr. Manson.

17 THE COURT: I think one.

18 MR. FITZGERALD: I think Mrs. Hines also indicated  
19 she walked by newsstands from time to time.

20 MR. BUGLIOSI: One admitted it from the bus.

21 THE COURT: Of course I don't know what rumors you  
22 may hear. All I know is what happens with the jury.

23 I know how they are sequestered. I know how  
24 they are supervised. None of them are left alone. They do  
25 not take walks by themselves.

26 They are diverted around newsstands.

1 Every time I have heard something to the contrary  
2 and checked the story out I found the story was totally  
3 inaccurate, and what might have appeared to be so to some  
4 observer, whether interested or disinterested observer, turn  
5 out to be false.

6 MR. FITZGERALD: I have no reason to doubt your word,  
7 but as the attorney for one of the defendants I have no  
8 independent information and I cannot in good conscience  
9 accept the Sheriff's word for it in the respect that they are  
10 an adversary in this case.

11 THE COURT: Accept their word for what?  
12 You are not under any compulsion to accept anyone's word for  
13 anything.  
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1 MR. FITZGERALD: But your Honor is making a  
2 declaration of fact.

3 THE COURT: That's right, I have first-hand know-  
4 ledge of it.

5 MR. FITZGERALD: But your Honor is saying they  
6 have not come into contact with the newspaper, and I don't  
7 know that they have, and unfortunately I cannot accept  
8 your representation, and it has nothing to do with you  
9 personally.

10 THE COURT: I don't care whether you accept it or  
11 not, I'm telling you how they are sequestered.

12 I am satisfied they are not coming into  
13 contact with newsstands. I am satisfied that the jury is  
14 observing its oath, and is performing its duties.

15 I am not going to voir dire the jury every  
16 day just because someone comes up with wild rumor unsupported  
17 by any facts.

18 MR. KANAREK: Well, your Honor, Mr. Farr himself has  
19 stated that he has seen the jury --

20 THE COURT: I don't care what Mr. Farr has stated  
21 and that is one of the stories I checked out personally.  
22 It turns out to be false.

23 MR. KANAREK: He says he stated that since then  
24 it's true, your Honor.

25 THE COURT: He just doesn't know. He just  
26 doesn't know what the facts are.

3a-2

1                   You can say all you like, Mr. Kanarek, it just  
2 does not happen to be true.

3           MR. FITZGERALD: We are in a bad spot. We don't  
4 know whom to believe.

5           THE COURT: I don't care whom you believe, Mr.  
6 Fitzgerald.

7           MR. FITZGERALD: I want this record to be clear that  
8 we are, A, prohibited from questioning the jury.

9                   B, we are prohibited from questioning the  
10 people that actually have charge of the jury, so as an  
11 officer of this court I cannot make any representation  
12 that the sequestration is valid.

13           THE COURT: Well, I can.

14           MR. FITZGERALD: All right.

15           THE COURT: If you have any evidence to the contrary  
16 you are free to present it.

17           MR. FITZGERALD: But the point is I am foreclosed  
18 from getting any evidence.

19           THE COURT: If the only evidence you are going to  
20 get comes from the bailiff, you are certainly not going to  
21 get anything. You keep telling me about all of these  
22 unidentified observers who see the jury.

23                   Get some declarations. Bring them in.

24           MR. FITZGERALD: All right.

25           THE COURT: Let's check out these stories.

26           MR. FITZGERALD: All right.

3a-3

1 THE COURT: I will investigate it. You will find  
2 out that each and everyone of them is totally untrue.

3 MR. FITZGERALD: But if you are going to investigate  
4 it in camera where we are not present, and we don't have  
5 the opportunity to cross-examine these people --

6 THE COURT: You know who they are. I don't know  
7 who you are talking about. Go out and cross-examine them  
8 all you like.

9 MR. FITZGERALD: All right.

10 MR. BUGLIOSI: Your Honor, with respect to the  
11 defendants being away from the courtroom, Mr. Kay has  
12 suggested that we place a deputy with them who would be  
13 prepared to testify at any particular time that they are  
14 up there.

15 THE COURT: There is a deputy with them at all times.  
16 They are never left alone.

17 MR. KAY: Is there a deputy with Mr. Manson?

18 THE COURT: Certainly.

19 MR. KAY: Inside the lockup?

20 THE COURT: All he has to do is knock on the  
21 door. He is not ten feet from the counsel table. There  
22 is an open window and he can hear the proceedings. I  
23 believe there is a deputy in there apparently.

24 There is a deputy with the female defendants.

25 MR. BUGLIOSI: To preclude his coming forward  
26 at a later time and saying he cannot hear --

1 THE COURT: Counsel can see him at any time.  
2 There cannot be the slightest possibility of misunderstanding  
3 as to what the procedures are.

4 If he is anxious to return, all he has to do  
5 is indicate it in any manner whatever, and he will be  
6 brought back in.

7 All right, gentlemen, let's get on with the  
8 statement of Roni Howard.

9 MR. KANAREK: Would your Honor rule on the motion  
10 to voir dire, as to the article that is in the Herald-  
11 Examiner today?

12 I will ask your Honor to voir dire each of  
13 the jurors.

14 THE COURT: That motion will be denied.

15 The windows of the bus have been blacked out  
16 so they cannot see anyway -- assuming they could see any-  
17 thing even if the windows were not blacked out, which is  
18 extremely unlikely.

19 MR. KANAREK: May I make a motion for a mistrial,  
20 your Honor?

21 MR. HUGHES: Join the motion.

22 MR. FITZGERALD: Join.

23 MR. KANAREK: Because of this article in the Herald-  
24 Examiner.

25 THE COURT: The motion will be denied.

26 MR. KANAREK: It is very gigantic headlines, as

1 well as on the front and second page it refers to  
2 emasculation; it just has the most horrible ingredients  
3 in it, your Honor.

4 MR. SHINN: Join in that motion.

5 THE COURT: I still want the record to reflect  
6 that it is my personal opinion that this material was  
7 furnished either directly or indirectly by one of the  
8 attorneys in this case.

9 If <sup>any</sup> of you have any knowledge of it I strongly  
10 urge you to come forth, and tell the Court what you know  
11 about it.

12 MR. KANAREK: Well, you see, your Honor, I think --

13 THE COURT: We don't have to have a lot of conver-  
14 sation now, Mr. Kanarek. If you know something and want  
15 to tell it, you may. Otherwise let's get on to something  
16 else.

3b fls.

3B-1

1 MR. KANAREK: We have the power, your Honor, why not  
2 interrogate Virginia Graham?

3 THE COURT: That has nothing to do with what I am  
4 saying.

5 MR. KANAREK: It may turn out that she gave the  
6 interview that counsel is alluding to.

7 MR. HUGHES: Yesterday afternoon, your Honor, I had  
8 occasion to talk with Bill Farr privately for a few moments  
9 and I asked him if he would confidentially tell me,  
10 confidentially waive 1970.

11 He wouldn't. However, he did make allusions  
12 to this, that he had, number one, an independent source.

13 Number two, that he had interviewed Virginia  
14 Graham anyway and;

15 Number three, that he had gotten somehow this  
16 through the Xeroxing of it by one that was being  
17 Xeroxed at the time it was being Xeroxed.

18 THE COURT: I could not hear you the last time.

19 MR. HUGHES: That he got this somehow through the  
20 Xeroxing, at the time it was being Xeroxed.

21 He said words to the effect that people should  
22 be careful with whom and how they Xerox things.

23 Those are very vague references, but that is the  
24 totality of my knowledge which is as of last night.

25 THE COURT: Well, unless someone has something else  
26 to say on the subject, all of the motions are denied.

1 Just so there won't be the slightest mis-  
2 understanding, I am going to make an order right now that  
3 no newspapers are to be brought into the courtroom, I don't  
4 care in what form, whether they are in your briefcase, your  
5 back pocket or held open, no newspapers, period, are to be  
6 brought into this courtroom without prior permission from  
7 the Court.

8 Does anyone have any question about that?

9 MR. KANAREK: I have some Daily Journals in my brief-  
10 case at this time, your Honor. What is your Honor's  
11 position on the Daily Journal?

12 THE COURT: I said all newspapers.

13 MR. KANAREK: Very well, your Honor.

14 THE COURT: Is there anybody who did not understand  
15 that order?

16 MR. KANAREK: No, your Honor. Your Honor, is that  
17 being marked as a Court's Exhibit? (Referring to the  
18 Herald Examiner).

19 THE COURT: I don't see any reason to mark it.

20 MR. KANAREK: Your Honor, we want it in the file.

21 MR. FITZGERALD: May I have it back and I will attach  
22 it to a declaration.

23 THE COURT: All right.

24 (Mr. Fitzgerald hands the newspaper to the  
25 bailiff.)

26 THE COURT: Don't take that newspaper in the court-

1 room, Mr. Murray. I don't care what you do with it but it  
2 is not to go into the courtroom. It is not to be taken by  
3 anyone.

4 MR. BUGLIOSI: I have been informed by Mr. Musich, your  
5 Honor, that this edited statement of Roni Howard's is in  
6 fact an edited statement. He got a complete statement  
7 and from that he edited it.

8 Is that right, Mr. Musich?

9 MR. MUSICH: Yes.

10 THE COURT: Now, going back to the statement of  
11 Virginia Graham -- let's go off the record for a moment.

12 (Whereupon, off the record Mr. Kanarek requests  
13 that all matters be put on the record.)

14 THE COURT: All right, we will put it all on the  
15 record. I don't want to hear any more from you, keep  
16 quiet.

17 MR. KANAREK: I am trying to offer an argument to the  
18 Court.

19 THE COURT: I don't want to hear any more from you  
20 on that subject, Mr. Kanarek.

21 MR. KANAREK: Yes, your Honor.

22 THE COURT: You are being obstructive and disruptive,  
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4-1

1 THE COURT: All right.

2 Now, on page 4, the first question has  
3 been stricken.

4 There needs to be some kind of transition  
5 statement because this document is going to be considered.

6 MR. BUGLIOSI: I am not going to be using this  
7 document, of course, in my questions and answers.

8 THE COURT: Well, I am, as I told you numerous  
9 times over the past week.

10 MR. BUGLIOSI: Okay.

11 Well, going back to page 3.

12 Did she tell you whether or not she took the  
13 man to the living room?

14 Yes, she did.

15 Well, we can just eliminate that question.

16 THE COURT: Then you have to eliminate the answer.

17 MR. BUGLIOSI: No.

18 THE COURT: As it now stands, the answer is sitting  
19 by itself with no question.

20 MR. BUGLIOSI: The answer will be eliminated.  
21 The bottom of page 3.

22 THE COURT: I am talking about the first question  
23 and the answer on page 4.

24 MR. BUGLIOSI: Here is the way I would suggest it.  
25 Page 3.

26 Now, did Susan Atkins tell you whether or not

1 she took Sharon and the man into the living room?

2 Yes, she did.

3 The next question: What happened in the  
4 living room?

5 The answer --

6 THE COURT: Just a moment, on the question.

7 Not whether she took them into the living  
8 room, but whether they went into the living room.

9 MR. BUGLIOSI: Right.

10 Did Susan tell you whether or not Sharon and  
11 the man entered the living room?

12 Yes, she said they did.

13 And the next question is: What happened in  
14 the living room?

15 And then you get into: She said the other  
16 man ran past her and she stabbed this man four or five  
17 times.

18 I think that is the transition that the Court  
19 is concerned about.

20 Is that correct, your Honor?

21 THE COURT: Yes.

22 Now, as to Virginia Graham, there will be  
23 marked as special exhibits the blue backed statement of  
24 Virginia Graham, which is a transcript of tape No. 33351;  
25 the recorded interview of Virginia Graham on November 26th,  
26 1969; the so-called complete statement of Virginia Graham

1 taken by Mr. Kay on Monday, October 5, 1970; the notes of  
2 Mr. Bugliosi of his interview with Virginia Graham; and  
3 the short -- the complete statement that was referred to  
4 yesterday of Virginia Graham, also taken on Monday,  
5 October 5, 1970, by Mr. Kay, which is the one we have been  
6 editing.

7 All of those will be marked as a special  
8 exhibit No. 6, collectively.

9 MR. HUGHES: I would ask your Honor to reconsider  
10 on page 7, beginning at line 15, the questions regarding the  
11 La Bianca murders and the question of whether that does  
12 not inextricably tie the other defendants into those  
13 murders through Susan Atkins' statements to Virginia  
14 Graham, inasmuch as Linda Kasabian has already stated that  
15 Susan Atkins was not present at those murders, that she  
16 went with her.

17 I believe that the inclusion of the La Bianca  
18 murders in that statement ties in all of the other  
19 defendants both in the Tate murders and in the La Bianca  
20 murders through hearsay testimony of Susan Atkins.

4a-a

1 THE COURT: There is nothing in the statement itself.

2 MR. HUGHES: It ties it in by the way that she is  
3 supplying -- basically, she is assuming the identity of all  
4 the defendants when she nods her head affirmatively.

5 The question is: I asked her about the two  
6 people the following evening, the murders the following  
7 evening -- meaning the La Bianca murders -- and she said  
8 to me: You mean the people in the Los Feliz District?

9 And I said to her, "Yes," and I asked her if she  
10 did that.

11 And she looked at me and smiled and she winked  
12 her eye and said, "What do you think?" And nodded her head  
13 in an affirmative manner.

14 I believe, your Honor, that coupled with the  
15 state of the testimony to this point, it draws an unmis-  
16 takable conclusion that she is copping out for the group,  
17 that she is copping out for all the other defendants.

18 THE COURT: That is not what the statement says.

19 She is asked if she did that. She is  
20 answering that question.

21 There is no reference in any way, direct or  
22 indirect, to anyone else.

23 MR. SHINN: May I say, your Honor, that this whole  
24 answer is not in the original, your Honor, the original  
25 interview.

26 MR. BUGLIOSI: Yes, it is.

1 MR. SHINN: It is not.

2 It doesn't mention the Los Feliz District and  
3 it doesn't mention the La Blancas.

4 THE COURT: That has nothing to do with whether it is  
5 admissible.

6 MR. BUGLIOSI: It is definitely in here.

7 MR. SHINN: But we are supposed to delete from the  
8 original, your Honor, and there is more added information  
9 here.

10 THE COURT: Anything else, gentlemen?

11 MR. KANAREK: Yes.

12 Furthermore, since the evidence shows that the  
13 tying up came out in Linda Kasabian's testimony in connection  
14 with the La Bianca matters, your Honor, it shows clearly that  
15 this statement -- and if you take Linda Kasabian talking  
16 about being asleep, and all of that -- I think it is clear  
17 that this means -- this is the link -- I think even your  
18 Honor has used that language before -- this is the link --

19 THE COURT: What is the link?

20 MR. KANAREK: The link. If she was inactive and  
21 these things occurred, and she is saying, in effect, that  
22 she was there, it means that it corroborates Linda Kasabian  
23 as to all defendants by her being there, your Honor;  
24 because clearly this little lady couldn't have done  
25 everything that the prosecution has depicted that occurred  
26 at the La Bianca home.

1 So, your Honor, we are winking at --

2 THE COURT: It is not possible for one person to kill  
3 two people?

4 MR. KANAREK: What I am saying is, your Honor: Not in  
5 view of the evidence that the prosecution has put before  
6 the Court. The evidence shows all of these.

7 I mean, it is impossible. You look at  
8 Mr. La Bianca and you look at Mrs. La Bianca, and you look  
9 at the events that occurred.

10 THE COURT: We have covered this before.

11 The mere fact that the crime was committed by  
12 more than one person, of course, does not make the  
13 statement inadmissible.

14 MR. KANAREK: No, your Honor.

15 THE COURT: There is nothing in this statement that  
16 in any way implicates any co-defendant.

17 MR. KANAREK: But I refer your Honor to the language  
18 in Aranda where, in the Aranda case, if there is any  
19 linking -- although they don't use the word "linking,"  
20 I don't believe, in those several sentences which I am  
21 referring to, which I think I read yesterday -- even though  
22 that word "linking" isn't used, there is no question, your  
23 Honor, they say if the non-declarant is injured by the  
24 statement, then it can't be used.

25 Now, this clearly injures the non-declarant  
26 because of the fact these people are flesh-and-blood jurors  
who know that Susan Atkins could 't have done all of this.

1 And, furthermore, the prosecution's own testimony  
2 is indicative, via Linda Kasabian, as to what Susan Atkins'  
3 activities were, which would make it impossible for her  
4 to have done these things, if you believe Linda Kasabian.

5 It is the kind of thing which is of such a  
6 nature there is no question that it must be deleted.

7 THE COURT: These are all generalities. Point to me,  
8 if you can -- this is what I am interested in -- anything  
9 in that statement that implicates any co-defendant.

10 MR. KANAREK: The circumstances, your Honor. That is  
11 what it does.

12 THE COURT: What circumstances? Let's be  
13 specific.

14 MR. KANAREK: The circumstances are all of the  
15 evidence that the prosecution has put in in connection with  
16 the La Bianca matters.

17 The very fact that Linda Kasabian takes this  
18 lady away from the scene.

19 THE COURT: What, in effect, you are saying is,  
20 Mr. Kanarek, that once a Bruton-Aranda statement comes in,  
21 the prosecution then can't put on any evidence to prove the  
22 guilt of a co-defendant if more than one person committed  
23 the crime.

24 That is not the case at all.

25 MR. KANAREK: At this point, your Honor is not being  
26 specific, your Honor is being general.

1 I am saying that if you look at the contacts,  
2 the mosaic of the prosecution, your Honor --

3 THE COURT: Stop talking in terms of similes and  
4 metaphors, and talk about something specific.

5 MR. HUGHES: I will talk about something specific,  
6 your Honor.

7 Four lines from the bottom, on Page 7:

8 "I asked her if she did that."

9 It is my belief that if you cross-examined  
10 and interrogated Virginia Graham, she would say that she  
11 meant "we," the group.

12 This makes very dangerous water for counsel to  
13 cross-examine on.

4c-1

1 THE COURT: This is, as Mr. Kay has told us, the  
2 exact words of Virginia Graham. This is not an edited  
3 version.

4 MR. KAY: That is correct.

5 MR. HUGHES: This is the exact words at a point  
6 when she was told to couch these things in just what Susan  
7 Atkins said she did, and I propose to the Court that after a  
8 year of mulling these things over in her head, that she has  
9 gotten them confused.

10 THE COURT: Is there any reference in the original  
11 statement of Virginia Graham to this?

12 MR. BUGLIOSI: I think there is.

13 MR. SHINN: Page 51 is the only reference she makes.

14 MR. KAY: I think Mr. Hughes is confusing what the  
15 statement was.

16 Virginia Graham was told by me to say the  
17 exact words that Susan said. And that is what Susan said  
18 to her that she did.

19 THE COURT: Of course, her statement, on page 51  
20 of the original, indicates -- page 51 of the transcript of  
21 Virginia Graham's statement in November of 1969, on page 51,  
22 line 7 -- she said: And she said to me, yes, you know,  
23 those other two.

24 And I said: Yes. You did that too?

25 And she just smiled at me, and she said  
26 (unintelligible), but anyway, she indicated to me that either

4c-2

1 she or her best friends had something to do with that also.  
2 In other words, that this was all kind of a planned thing,  
3 you know, to go around and do all these people in.

4 So, in view of that statement, I don't think  
5 that you can put in that statement in her testimony of  
6 Monday, October the 5th. The problem will be on cross-  
7 examination.

8 MR. BUGLIOSI: What is this, your Honor? You don't  
9 think what?

10 THE COURT: I don't think you can go into her  
11 statement regarding the La Blancas because of her state-  
12 ment in the original transcript.

13 MR. KAY: The problem is, your Honor, it is  
14 unintelligible.

15 THE COURT: It is the portion following that word  
16 "unintelligible" in parentheses that I am referring to where  
17 it says: But anyway she indicated to me that either she  
18 or her best of friends had something to do with that.

19 Now, if I were representing Miss Atkins,  
20 I would surely want to go in to that on cross-examination.

21 I wouldn't want -- and I can understand  
22 Mr. Shinn's position -- to let that come in, that later  
23 statement, saying that she did it, or the implication  
24 being that she did it alone, when her earlier answer  
25 indicates that she may not have done it at all. She said  
26 either she or some of her friends.

1 MR. BUGLIOSI: I realize these notes are rather  
2 shabby, your Honor, but I am going to try to dignify them,  
3 if I can.

4 Perhaps I should call this the statement she  
5 made to me and have it typed up. But I don't see how we  
6 can overlook her statement to me.

7 These are my original notes.

8 Witness Susan said --  
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4d fls.

4D-1

1 MR. SHINN: May we have the date of those notes,  
2 for the record?

3 MR. BUGLIOSI: I don't have it down here, but I think  
4 it was in March of 1970, and I know it was at Corona.

5 The witness said Susan Atkins said: "You know,  
6 the other two people, the following night."

7 The witness said: "Yes. You mean the La Blancas  
8 in the Los Feliz area?"

9 The witness asked Susan if she was involved in  
10 those, and Susan looked at her and smiled and winked one  
11 eye, and said: "What do you think?"

12 The witness did not question her on the La Bianca  
13 murders because the witness had had enough for the night.  
14 And the witness believed her.

15 THE COURT: I agree, you can't overlook anything she  
16 said when you have the Aranda and the Bruton problem, because  
17 you have to look beyond the mere testimony on direct to  
18 what the testimony would be on cross-examination.

19 MR. BUGLIOSI: It is not implicating the co-defendant.  
20 In either statement she is stating her responsibility for  
21 it.

22 THE COURT: That is not the point. It is not here  
23 a question of implication, it is a question of whether her  
24 own attorney wants to bring it out on cross-examination in  
25 mitigation.

26 MR. BUGLIOSI: I think we can bring Virginia Graham

1 in here and ask her about this.

2 THE COURT: It doesn't make any difference. She  
3 already said this.

4 MR. BUGLIOSI: There is some stuff that is unintelli-  
5 gible, according to the record.

6 What page is that, your Honor?

7 THE COURT: 51, Line 7.

8 MR. SHINN: Before I forget, your Honor, could we have  
9 the tapes so we could listen to the tapes?

10 I filed a declaration. We never got the tapes.

11 MR. BUGLIOSI: Your Honor, we have to take the time  
12 here. This is our only evidence against Susan Atkins on the  
13 La Bianca matters.

14 THE COURT: That has nothing to do with it.

15 MR. BUGLIOSI: But the importance of the evidence is  
16 relevant.

17 Page 11. It also talks about these two other  
18 people.

19 Then she said, about those two other people  
20 that were killed shortly thereafter, you know, the couple,  
21 she said, you know, the other two.

22 I said: Yes. I said, "Was that you?" and she  
23 just smiled.

24 There is another place in this transcript.

25 MR. SHINN: There is no place else.

26 MR. BUGLIOSI: I just don't see how we can leave out

1 a confession like that.

2 She made a fair statement to me when I spoke to  
3 her on March the 7th.

4 MR. MUSICH: Cross-examination in that area, however,  
5 your Honor, doesn't really implicate or focus on the co-  
6 defendants.

7 THE COURT: It would if they get into that statement  
8 on Page 51. It certainly will.

4e-1

1 MR. BUGLIOSI: Mr. Shinn could ask her: Did she  
2 say that she herself committed the murders? And she can  
3 say: No, she didn't.

4 MR. SHINN: I don't think the Aranda rule says  
5 that my cross-examination has to be restricted. The Aranda  
6 rule doesn't hold that.

7 MR. BUGLIOSI: Then go into what she said here.

8 THE COURT: It will be restricted to the scope of  
9 the direct, Mr. Shinn, I will tell you that. You are not  
10 going to romp at your own pleasure over all the things  
11 that have been deleted from the statements.

12 MR. SHINN: No, your Honor.

13 THE COURT: I hope you don't have any ideas about  
14 that.

15 MR. HUGHES: But he would have the ability to  
16 call her back.

17 MR. SHINN: It will be within the rules of cross-  
18 examination, your Honor, but I won't be restricted to a  
19 certain narrow alley.

20 THE COURT: You will be restricted to anything on  
21 direct.

22 MR. HUGHES: And Mr. Shinn would have the power to  
23 call her back when he puts on the Susan Atkins' case.

24 MR. BUGLIOSI: We have no objection to him cross-  
25 examining her on this portion of her statement with  
26 Neilson. But to keep out her confession on the La Bianca

4e-2

1 murders, really, if the Court is going to hold that Linda  
2 is an accomplice -- the Court hasn't said that, but if the  
3 Court holds that Linda is an accomplice -- we have to  
4 corroborate her testimony, and this is the only evidence  
5 that we have on the La Bianca matter.

6 So, your Honor, what we are talking about is  
7 an eleven eighteen being granted to Susan Atkins with  
8 respect to the La Bianca murders, if the Court keeps this  
9 out.

10 It is very relevant, important. If the  
11 People are living in Fat City, they can say: Well, we  
12 will forget about it, we will be generous about it.  
13 But we have to strenuously resist this because this is our  
14 sole piece of evidence.

15 THE COURT: I understand your position, Mr. Bugliosi.  
16 I don't make the law. All I do is apply it.

17 MR. BUGLIOSI: I agree. But I see no infirmity  
18 in this particular statement right here.

19 THE COURT: I do.

20 MR. BUGLIOSI: She told me this. She told Mr. Kay  
21 that. The fact that the language --

22 THE COURT: It isn't that she said it at some other  
23 time, it is that she said it in here.

24 The fact that she said it here indicates an  
25 equivocation on her part as to whether or not she was the  
26 sole or whether or not she was involved at all.

1 Now, Mr. Shian would have a right to go into  
2 that on cross-examination. He doesn't have to sit there  
3 and let the prosecution hang a statement on his client's  
4 neck that makes her the sole perpetrator of the La Bianca  
5 murders.

6 MR. BUGLIOSI: Why can't he go into it with her?

7 THE COURT: Well, he can, but the minute he does,  
8 the rest of the statement will come out in which she  
9 implicates her best friends.

10 We all know who her best friends are.

11 MR. BUGLIOSI: She indicated to me that either she  
12 or her best of friends had something to do with that also.

13 THE COURT: It is in the alternative.

14 MR. BUGLIOSI: I suggest that we bring Virginia  
15 Graham in here.

5 fls.

5-1  
1 THE COURT: That won't have anything to do with it.  
2 That won't have anything to do with it. No matter what  
3 she said at this point.

4 Here you have a statement that is at the best  
5 equivocal, being made according to Virginia Graham by  
6 Susan Atkins.

7 One side of that statement indicates that she  
8 didn't do it; the other side indicates that she might have  
9 done it.

10 Now, that is a problem. It is unfortunate but  
11 that is the problem.

12 MR. BUGLIOSI: What about the Boggs case, I think the  
13 Court has it on his desk, didn't they have the same problem  
14 in Boggs, and they held this is not a violation of Aranda,  
15 to exclude reference to those people?

16 THE COURT: But in Boggs, as I recall it, there was a  
17 confession by the defendant of first-degree murder.

18 The implication was also as to one or more  
19 co-defendants. I don't recall the facts precisely.

20 Here you have an equivocal statement as to  
21 whether she was involved at all.

22 MR. KAY: Your Honor, what about this, what if on  
23 cross-examination, if we deleted the word "best friends,"  
24 and asked her on cross-examination did she indicate that  
25 she did it or that somebody else might have done it, like  
26 that, and then she can be cross-examined on that statement

1 with just "best friends" deleted.

2 MR. BUGLIOSI: The answer could be no, that she did  
3 not indicate whether she did it or whether someone else did  
4 it. She did not indicate.

5 And then the defense can argue, well, she didn't

6 MR. KAY: "Didn't you say in your original statement  
7 that she said -- you remember it was either she said she did  
8 it or maybe somebody else did it?" And we can impeach her  
9 on that.

10 But cross out the "best friend" part of it,  
11 delete that part of it.

12 MR. HUGHES: Then if she said someone else did it,  
13 why are we talking about it today, your Honor?

14 THE COURT: That's right, unless there is an  
15 admission or confession here.

16 MR. BUGLIOSI: That is an admission, your Honor.

17 THE COURT: She did not to a lot of other things, too.

18 MR. BUGLIOSI: Even if it is equivocal, your Honor,  
19 it is certainly an admission, not a confession, but it is an  
20 admission.

21 THE COURT: To the extent it is an admission, then  
22 you have the problem on cross-examination --

23 MR. KAY: Except I am saying on cross-examination  
24 couldn't we alleviate the problem of Aranda by crossing out  
25 "best friends," and just putting in "others."

26 This would mainly go to impeaching Virginia  
Graham about what her memory was at the time:

1 "Wasn't your memory around the 26th of  
2 October that maybe she said some others might  
3 have done it, but not referring to who the  
4 others were?"

5 The fact that they were her best friends.

6 MR. BUGLIOSI: Mr. Shinn does not have the right by  
7 his cross-examination to implicate the defendants.

8 MR. SHINN: What do you mean, I don't have the right?  
9 I can put Susan Atkins on the stand.

10 Let's assume I put Susan Atkins on the stand.

11 MR. BUGLIOSI: Then she can implicate them, if she  
12 wants.

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MR. KAY: That is something altogether different.

MR. BUGLIOSI: I say your questions on cross-examination, you don't have the right to implicate your co-defendants.

MR. SHINN: Wait a minute. Virginia Graham and Roni Howard are going to testify that Susan said I did this and I did that. Presuming I put Susan Atkins on the stand and she testifies like Virginia Graham, I did this and I did that, okay.

Now, then, I can impeach her with this statement to Roni Howard back in '69 which I have a right to impeach her, right? I can impeach any witness I want now, correct?

This all comes in, then.

MR. BUGLIOSI: You say after your client testifies you can impeach her?

MR. SHINN: I can impeach her.

MR. BUGLIOSI: Your client?

MR. SHINN: What is wrong with that? Under the Evidence Code I can impeach any witness.

MR. BUGLIOSI: You don't want to impeach your own client?

MR. SHINN: If it is beneficial to her I can impeach her.

MR. BUGLIOSI: Here is the point, your Honor, on direct examination the Court has ordered the prosecution,

5a-2

1 and properly so, to delete not just words but sentences  
2 and paragraphs, and I agree.

3 As Mr. Kay has suggested, on cross-examination  
4 why can't the Court order the defense attorney to delete  
5 "best of friends," and just refer to perhaps "someone else"?

6 MR. KAY: Just "others."

7 MR. BUGLIOSI: I don't know why best of friends  
8 cannot be taken out. We have deleted quite a bit in our  
9 direct examination, entire questions and answers, sentences,  
10 clauses.

11 MR. SHINN: We are not supposed to distort original  
12 statements, your Honor.

13 MR. BUGLIOSI: That is not distorting anything to  
14 your client's prejudice.

15 THE COURT: Of course there is something more than  
16 that, too, in other words, that this was all kind of a  
17 planned thing, you know, to go around and do all these  
18 people in.

19 MR. BUGLIOSI: But, your Honor, that is not  
20 exculpatory of Susan Atkins. If something is exculpatory,  
21 then we are concerned about keeping it out.

22 I agree there is a problem, we keep out  
23 exculpatory matters.

24 This "all kind of a planned thing," that  
25 is not exculpatory to Susan Atkins, that is extremely  
26 inculpatory. Keeping that out is not going to harm Mr.

5a-3

1 Shinn's client.

2 The defense is concerned, and rightfully so,  
3 about keeping exculpatory things out. But they have no  
4 right to complain about keeping inculpatory things out.

5 MR. KANAREK: That is another way of saying  
6 Helter Skelter, your Honor, when they say "a planned  
7 thing."

8 MR. BUGLIOSI: Right, and we are saying we won't  
9 bring it into evidence.

10 MR. KANAREK: Then that damns all the other  
11 defendants.

12 MR. BUGLIOSI: We are not going to bring it into  
13 evidence on direct or cross.

14 MR. KANAREK: But the point of the matter is, this  
15 is part and parcel of the complete statement.

16 MR. BUGLIOSI: I know, but you have no right to  
17 bring in damaging things to all defendants, and on appeal  
18 say there was error.

19 MR. HUGHES: I think Mr. Shinn is going to want  
20 to bring this in and rightly so, if he ever introduces  
21 diminished capacity for Susan Atkins, to show she was  
22 under, you know, some hypnotic trance.

23 MR. BUGLIOSI: He can bring that in in some other  
24 fashion, by putting her on the stand or putting on  
25 psychiatrists on the stand.

26 MR. HUGHES: But this bolsters his theory, if he

5a-4

1 does that, but it downs my client at the same time.

2 MR. BUGLIOSI: How does it bolster the theory,  
3 to change the best of friends to either "she" or "someone  
4 else"? How does that bolster his theory?

5 MR. HUGHES: That it was a continuing plot and her  
6 best friends did it, you know.

7 MR. KANAREK: Because Aranda applies to deletions,  
8 Mr. Bugliosi, it does not allow for changes.

9 It does not allow us in chambers to put  
10 words in people's mouths that did not occur. That does  
11 not take place in our courtrooms.

12 MR. HUGHES: Here she is clearly talking about  
13 someone else's culpability.

14 MR. BUGLIOSI: It can still come out that way,  
15 but should we be forced to --

16 it  
17 MR. HUGHES: But/is clear who that someone else  
18 is.

19 MR. BUGLIOSI: -- why should we be forced to say  
20 who the other people were, that they were her best friends?  
21 Why should that be forced to come in the record? That does  
22 not help you.

23 MR. HUGHES: It sure hurts me.

24 MR. BUGLIOSI: It does not help your client.

25 MR. HUGHES: It sure hurts me if those things  
26 come in.

MR. BUGLIOSI: If the words "best of friends"

5a-5

1 come in, that hurts your client, right.

2 MR. HUGHES: I think it is clear who her friends  
3 are and who she has knowledge of, and you tied her up  
4 in this group at the Spahn Ranch.

5 It is clear if she knows anything about those  
6 murders, she knows about them through Spahn Ranch and her  
7 best friends and the other defendants.

5b fls.

5a-1  
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1 MR. BUGLIOSI: We will keep out "best of friends,"  
2 while this was an equivocal statement, maybe she didn't  
3 do it, maybe she said someone else did it.

4 There is an infirmity in the statement, but  
5 certainly it is an admission. She is claiming knowledge,  
6 and we can argue it one way and they can argue it the other  
7 way, your Honor. It is susceptible to two inferences, but  
8 just to keep it out --

9 MR. SHINN: Furthermore, your Honor, I think the  
10 statement on Page 51 of this taped transcript of November 26,  
11 1969, your Honor, does not mention at all the names. It  
12 just says, "Yeah," you know, about the other two --

13 MR. BUGLIOSI: That goes toward impeachment, Mr.  
14 Shinn, you can impeach her on that.

15 MR. SHINN: On your short form you mention Los Feliz,  
16 and you mention La Bianca.

17 MR. BUGLIOSI: This is what she told me, March of  
18 1970.

19 MR. SHINN: I am speaking of the original statement  
20 back in '69.

21 MR. KAY: That has nothing to do with it.

22 MR. HUGHES: That is not the thrust of my argument.  
23 I think the Court is fully aware of what the thrust of my  
24 argument is.

25 MR. BUGLIOSI: The thrust of your argument is you  
26 feel that Shinn should be forced -- should be allowed to

1 examine her as to the best of friends, which is nothing  
2 more than hurting your client.

3 MR. HUGHES: At the point you left this in, and it  
4 only shows she had some -- the whole problem is, it is  
5 second-hand knowledge, no matter whether it is best of  
6 friends, she is saying, "Either I was involved or somebody  
7 else was."

8 And that is terribly equivocal, and the somebody  
9 else has been identified at least in this one transcription  
10 from November 26, I believe it is as being best of friends.

11 Now, if you take out the best of friends, then  
12 it becomes some strangers, supposedly, to this case that she  
13 only has knowledge about and --

14 MR. BUGLIOSI: That only goes toward the weight, and  
15 that is a good argument for the defense to make.

16 They can make argument, but she makes a statement,  
17 even if in the disjunctive, if she says "I or someone else,"  
18 that is certainly an admission.

19 MR. KANAREK: And also this took place when  
20 Mr. Bugliosi was programming her for this very matter  
21 at a time when he knew Linda Kasabian was going to be his  
22 witness in March of '70.

23 MR. BUGLIOSI: I did not give her those words,  
24 Mr. Kanarek.

25 MR. HUGHES: I don't want to subscribe to those  
26 remarks.

1 MR. KANAREK: That is why we have to have an evidentiary  
2 hearing in order to determine it.

3 THE COURT: Mr. Kanarek, you are not even making  
4 sense.

5 MR. BUGLIOSI: Changing "best of friends" to "someone  
6 else," your Honor, is not distorting it at all.

7 The distortion is in favor of the declarant and  
8 the co-defendants, so I don't think the defense has standing  
9 to complain.

10 The distortion is helpful to Susan Atkins, and  
11 it is also helpful to the co-defendants.

12 Changing "best of friends" to "someone else."

13 MR. KANAREK: Not in the context of the prosecution's  
14 testimony about what she was doing. It means it was done,  
15 only since she was not personally involved in doing it, it  
16 was done only by agreement, by acting in concert, by  
17 planning.

18 MR. KAY: That is other evidence.

19 MR. BUGLIOSI: As the Court said, we can put on  
20 other evidence.

21 As the Court said, we can put on other evidence  
22 connecting these people with the corpus.

23 MR. KANAREK: But the point is you cannot use this  
24 to damn Mr. Manson. The only way this could be --

25 MR. BUGLIOSI: I am not saying it is Mr. Manson.

26 MR. KANAREK: No, but I am saying it is the only way,

1 if you take Linda Kasabian's testimony, the only way  
2 Susan Atkins played a part in these murders would be by  
3 being part of a group, and you know it, Mr. Bugliosi, you  
4 did not even allege Susan Atkins' participation.

5 MR. BUGLIOSI: If she said "me and my friends," then  
6 the inference would be her friends, referring to Manson  
7 and Katie --

8 THE COURT: Gentlemen, we have discussed this; I am  
9 sure the discussions can go on endlessly, hour after hour.

10 I have to make a decision and I am going to  
11 make it. It is going to have to come out. It is too  
12 dangerous, and the possibility of implication of co-  
13 defendants is too great on cross-examination, even though  
14 on the direct testimony there would not be any implication.

15 That would be on Page 7 of the short statement,  
16 starting with the question, did you have any conversation  
17 with Susan Atkins regarding the La Bianca murders," down  
18 to and including the last answer on that page.

19 And then over on Page 8, the next to the last  
20 question, "Did you have any conversations with Susan Atkins  
21 concerning the La Bianca murders," strike out "La Bianca."

22 MR. BUGLIOSI: I am not going to mention La Bianca  
23 in any of my questions. I will have to change a lot of my  
24 questions here.

25 THE COURT: All right, now, let's go to the statement  
26 of Roni Howard.

1 Does anyone have any comments regarding this  
2 statement?  
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1 MR. SHINN: Yes.

2 THE COURT: I am looking at the so-called edited  
3 statement of Roni Howard.

4 MR. SHINN: The page and a half, your Honor, just  
5 the small one?

6 THE COURT: The one entitled "Edited Statement of  
7 Roni Howard."

8 Mr. Murray and Mr. Scuben, I want to be  
9 sure that there aren't any newspapers in this courtroom.  
10 None are to be brought in, and if there are any out there  
11 now, would you please collect them and have them removed.

12 MR. KANAREK: Your Honor, I have a newspaper  
13 cache in the Sheriff's Office which is down the hall,  
14 and I keep newspapers -- I have kept newspapers there.

15 I wonder may I leave the courtroom through  
16 your Honor's door --

17 THE COURT: Yes, you may when we recess.

18 MR. KANAREK: Thank you.

19 THE COURT: Does anyone have any comments about  
20 the Roni Howard statements?

21 MR. SHINN: Yes, your Honor, about three-quarters  
22 of the way down.

23 "I told her 'I got no feelings for you,  
24 bitch, you are going to die,' and I proceeded to stab  
25 her."

26 Now, I don't see that anywheres --

5c-2

1 MR. BUGLIOSI: You are reading from the edited  
2 statement now.

3 MR. SHINN: Yes, the edited statement. The only  
4 page I've got -- look at page 17 --

5 THE COURT: Look at the top of page 3, the bottom  
6 of page 2 and the top of page 3 of the complete statement.

7 MR. SHINN: Page 3, your Honor?

8 THE COURT: That is what I said.

9 MR. SHINN: Of the original statement?

10 THE COURT: Let's get with it, Mr. Shinn.

11 MR. SHINN: I don't know, there are three forms,  
12 your Honor. I am kind of mixed up. I am not doing this on  
13 purpose, your Honor.

14 THE COURT: If you listen to what I say you wouldn't  
15 have any problem.

16 I said the complete statement of Roni Howard,  
17 that is the title of it. You have been given a copy of  
18 that.

19 MR. SHINN: I was referring to the other one.

20 Well, your Honor, I don't have a date on the  
21 statement that you are referring to, your Honor, what is  
22 the date on this statement?

23 MR. MUSICH: Saturday, October 3rd, I believe it is.

24 MR. SHINN: 1970?

25 MR. MUSICH: Yes.

26 THE COURT: In any event, at the bottom of page 2

5c-3

1 and the top of page 3 of that statement she talks about  
2 stabbing Sharon Tate, in answer to your previous objection.

3 MR. SHINN: Well, yes, but on November 25th, 1969,  
4 statement, your Honor, it does not say that she actually  
5 stabbed Sharon Tate.

6 THE COURT: That may be true.

7 MR. SHINN: That is why I am objecting, your Honor.

8 THE COURT: That is not a ground for objection.

9 MR. KANAREK: May I join in that?

10 MR. BUGLIOSI: Page 17 of the statement, page 17  
11 of the original statement.

12 THE COURT: We are concerned with all of the conver-  
13 sations this witness recalls with Susan Atkins, the  
14 totality; from that totality the Court must determine  
15 whether or not effective deletions can be made.

16 The fact that something may be said at one  
17 time and not another is not controlling.

18 MR. KANAREK: Of course it is our position that  
19 it being said purportedly in --

20 THE COURT: Anything else, Mr. Shinn or anyone  
21 else?

22 MR. SHINN: Okay now, your Honor, down at the  
23 bottom of the page, your Honor, "What about the Tate  
24 place, did anyone scream?"

25 And the answer, "Yes, the first time I  
26 stabbed Sharon Tate it felt so good, she screamed," and

1 so forth.

2 And the top of the next page, page 2,  
3 "I kept stabbing her until she stopped screaming."

4 I don't see that in the original either,  
5 your Honor.

6 THE COURT: In the original? What are you talking  
7 about?

8 MR. SHINN: I am speaking about November 25th,  
9 1969, the November 25th, 1969, statement, she made  
10 originally.

11 THE COURT: But you are not saying she never made  
12 that statement?

13 MR. SHINN: I am saying I cannot find it.

14 If you are going to refer to all these other  
15 subsequent statements made by Roni Howard --

16 THE COURT: I told you, what is important, Mr.  
17 Shinn, is the totality of all of the statements the  
18 witness made concerning the conversation. That is what  
19 the Court has to consider.

20 MR. SHINN: Well, I will object to that, your  
21 Honor, I will say all these statements, the only statements  
22 we should consider in deletion is the original statement  
23 of November 25th, 1969, your Honor.

24 MR. KANAREK: I join in that.

25 THE COURT: You all have said that a number of  
26 times. It won't be necessary to keep repeating it.

1 The point is whether it was said at all.

2 If you are claiming it was not said at all,  
3 that is something else.

4 MR. KANAREK: Well, we have extrajudicial --

5 THE COURT: Well, have you looked through the  
6 document entitled "The Complete Statement of Roni Howard"  
7 to find out whether it is in there? Where is it, gentlemen?  
8 Let's get some help from the prosecution. I am not going  
9 to do your work for you.

10 MR. MUSICH: On the complete statement, it is on the  
11 second conversation, it would be --

12 THE COURT: What page?

13 MR. MUSICH: It would be page 5.

14 THE COURT: Do you have that statement, Mr. Shinn?

15 MR. SHINN: Yes, your Honor.

5d fls., 15

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1 THE COURT: All right, look in the middle of the  
2 page, you will find the statement by this witness pertaining  
3 to that conversation.

4 All right, anything else?

5 MR. KANAREK: Yes, your Honor, I think it behooves  
6 us to look at the Grand Jury transcript because in the  
7 Grand Jury transcript, your Honor, it is State action --  
8 we have the prosecution advocating statements --

9 THE COURT: We are talking about Roni Howard now.  
10 She is going to be the witness.

11 MR. KANAREK: I understand.

12 THE COURT: And it is her testimony that will be  
13 subject to cross-examination.

14 MR. KANAREK: I understand.

15 THE COURT: All right.

16 MR. KANAREK: However, we have the unique situation  
17 that the indictment that brought this all about occurred  
18 with Susan Atkins herself before the Grand Jury wherein  
19 she did not make these statements under oath.

20 What I mean is, the prosecution is advocating  
21 language, is advocating certain matters taking place by  
22 this second-hand statement of Roni Howard that they did  
23 not advocate --

24 THE COURT: I think we are just wasting time now.

25 MR. KANAREK: Very well, your Honor.

26 MR. BUGLIOSI: On page 14 of the original transcript,

5d-2

1 your Honor, I would like to include that in my questioning,  
2 where it talks about:

3 "I will make those psychiatrists  
4 think I'm crazy; I want to make them think I'm  
5 insane."

6 THE COURT: Roni Howard's statement?

7 MR. BUGLIOSI: Yes, your Honor, page 14. I would  
8 like to include that, this paragraph right here (indicating).

9 MR. SHINN: Are you taking this from the 1969  
10 statement?

11 MR. BUGLIOSI: This is the original statement,  
12 1969, the blue backed one.

13 MR. SHINN: November 25th?

14 MR. BUGLIOSI: Yes.

15 THE COURT: Do you want to add that to the edited  
16 statement of Roni Howard?

17 MR. BUGLIOSI: Yes.

18 THE COURT: Now, anything else on the statement of  
19 Roni Howard?

20 MR. KANAREK: Yes. Are we going to be allowed to  
21 use the Grand Jury transcript to impeach Susan Atkins?

22 MR. MUSICH: If she testifies.

23 THE COURT: You cannot impeach this witness Roni  
24 Howard by Susan Atkins' testimony before the Grand Jury.

25 MR. KANAREK: We don't know whether Susan Atkins  
26 is going to take the witness stand.

5d-3

1 THE COURT: I don't know either.

2 Maybe Mr. Shinn doesn't know.

3 MR. SHINN: Your Honor, I think Mr. Kanarek has a  
4 very good point there, your Honor.

5 THE COURT: Which point.

6 MR. SHINN: I believe that the hearsay could be  
7 impeached, your Honor, with other evidence, without her  
8 taking the stand under the new Evidence Code, your Honor.

9 THE COURT: What section are you referring to?

10 MR. SHINN: I don't have the whole section here,  
11 your Honor, but I do have -- your Honor, in this short  
12 form I don't have it, but I do have it at my office,  
13 where they say hearsay declarant could be impeached.

14 THE COURT: What would the impeachment consist of?

15 MR. SHINN: By other documents where the hearsay  
16 declarant made prior statements.

17 THE COURT: Roni Howard is not going to testify  
18 to what Susan Atkins said before the Grand Jury.  
19 She is testifying to a private conversation.

20 MR. SHINN: She is going to testify to what Susan  
21 Atkins told her. There may be a prior inconsistent  
22 statement made by Susan Atkins, like the Grand Jury  
23 transcript, which we can introduce to impeach her statement.

24 It is under the new Evidence Code.

25 I will bring the section back this afternoon.  
26 Do you want it? Maybe your Honor has that book here, your

B, 423

1 Honor.

2 THE COURT: I have the book. I am trying to find  
3 out what you are talking about.

4 MR. SHINN: Your Honor, may I borrow this book  
5 here, your Honor, I will use it in this room.

6 THE COURT: No books are to leave this courtroom.

7 MR. BUGLIOSI: Your Honor, may I ask the Court  
8 a question?

9 THE COURT: Just a moment. Well, let's get on,  
10 gentlemen.

11 MR. BUGLIOSI: I am trying to ascertain whether we  
12 should bring Virginia Graham here right now.

13 Are we going to start with the testimony  
14 or will there be other motions?

15 MR. SHINN: I have a motion to suppress.

16 MR. BUGLIOSI: What is that going to entail? Are  
17 you going to call any witnesses?

18 MR. SHINN: I have these two police officers  
19 subpoenaed. Either one of them, I don't care, you have  
20 the burden. I don't.

21 MR. BUGLIOSI: Burden to what? I don't understand  
22 what you mean. You are making a motion to suppress;  
23 don't you have to come forward?

24 MR. SHINN: No, you have the burden.

25 MR. BUGLIOSI: You have to come forward if you  
26 make a motion to suppress.

1 THE COURT: Gentlemen, let's get one thing at a  
2 time. Let's all sit down and finish with the Roni Howard  
3 statement.

4 All right, does anybody else have anything to  
5 say about that statement?

6 (No response.)

7 All right, then, the edited statement, I  
8 think effective deletions can be made of that statement.  
9 You indicated you wanted to add?

10 MR. BUGLIOSI: Yes, on page 14.

11 THE COURT: Page 14 of the transcript of the Roni  
12 Howard statement made on November 25th?

13 MR. BUGLIOSI: About where Susan allegedly told  
14 Roni Howard that she will make psychiatrists think she is  
15 crazy, so she is not worried about any problems.

5e fls.

5E-1

1 THE COURT: All right, now, the statement of Roni  
2 Howard in the blue back, which is a transcript, reported  
3 November 25, 1969, the so-called "complete statement,"  
4 taken by Mr. Musich on what date?

5 MR. MUSICH: October 3, 1970.

6 THE COURT: I am going to mark it on my copy on top,  
7 October 3, 1970.

8 And the so-called edited statement of Roni  
9 Howard, and the notes of Mr. Bugliosi with regard to his  
10 conversation.

11 MR. BUGLIOSI: I put March, '70 for those notes.

12 THE COURT: I want to finish what I'm saying first.

13 The notes of Mr. Bugliosi with respect to his  
14 conversation with Roni Howard, all of those documents, I  
15 guess, referred to will be marked collectively as People's  
16 Special Exhibit 7.

17 THE CLERK: Does that possibly include No. 5?

18 THE COURT: I don't know what you are talking about,  
19 Mr. Darrow.

20 THE CLERK: The Court has a special exhibit marked  
21 No. 5 which was a statement of Roni Howard. Is that  
22 included?

23 THE COURT: I don't know. In any event what I just  
24 said goes. This will be Special Exhibit 7.

25 What about your motion to suppress, Mr. Shinn?

26 MR. SHINN: Yes, your Honor.

1 THE COURT: Wasn't that heard the other day?

2 MR. SHINN: No, that was just impressions of what  
3 she told different officers, that is all.

4 THE COURT: That was a motion to suppress.

5 MR. SHINN: That was a special hearing by Mr. Kanarek  
6 to find out what other persons were talked to in law  
7 enforcement agencies.

8 THE COURT: What is the nature of your motion now?

9 MR. SHINN: Motion to suppress, your Honor.

10 THE COURT: Based on what?

11 Tell me something.

12 MR. SHINN: I say the admissions and confessions  
13 were received illegally, your Honor.

14 THE COURT: Based on what ground?

15 MR. SHINN: Miranda, Escobedo, no warning given to  
16 Susan Atkins, your Honor.

17 THE COURT: By whom? Which conversations are you  
18 talking about, Mr. Shinn?

19 MR. SHINN: All of the conversations she had with  
20 Roni Howard and Virginia Graham in the jail, your Honor.

21 MR. MUSICH: These are cell mates, private citizens,  
22 there is no requirement for Miranda. It only applies to  
23 police officers.

24 MR. SHINN: We don't know if she was an agent for the  
25 police, if Mr. Bugliosi wants to submit it I will submit it,  
26 too, your Honor.

1 MR. BUGLIOSI: I will submit the matter. There is no  
2 evidence she is. I submit it.

3 THE COURT: Both sides rest on the motion?

4 MR. SHINN: May I have a stipulation with Mr. Bugliosi,  
5 your Honor?

6 MR. BUGLIOSI: What is the stipulation?

7 MR. SHINN: Will you stipulate that, I think it was  
8 Roni Howard talked to two peace officers before she talked  
9 to Patchett and McGann, right?

10 MR. BUGLIOSI: I will stipulate to that.

11 MR. SHINN: Los Angeles Police Department.

12 MR. BUGLIOSI: Right.

13 MR. SHINN: And that she talked to Sergeant Patchett  
14 and McGann twice. Will you stipulate to that?

15 MR. BUGLIOSI: I think she testified to that, hadn't  
16 she? I am aware of this one statement here, November 25th.

17 I don't have any other tape-recorded conversations.

18 MR. SHINN: And you will also stipulate that before  
19 she talked to these officers she talked to her parole  
20 agent.

21 MR. BUGLIOSI: I don't know that. Has she testified  
22 to it?

23 MR. SHINN: Yes, she --

24 MR. BUGLIOSI: There is no problem then, if she said  
25 she testified to it.

26 I am trying to figure out should I bring  
Virginia Graham down immediately?

1 THE COURT: Do you have anything further?

2 MR. SHINN: Not on Roni Howard.

3 On Virginia Graham will you stipulate she  
4 talked to the parole officer before she talked to the  
5 police officers up at Corona?

6 MR. BUGLIOSI: I don't know that she spoke to her.  
7 I know she spoke to her counsellor.

8 MR. SHINN: And parole officer, too.

9 MR. BUGLIOSI: Did she testify to it? If she  
10 testified to it you don't need a stipulation. If she did not  
11 testify to it I am not aware, so I cannot enter a stipulation.

12 I am not aware she spoke to a parole officer.

13 MR. SHINN: My position is she talked to these  
14 parole officers --

15 THE COURT: I am not interested in your position,  
16 Mr. Shinn, unless you can support it with something.

17 MR. SHINN: That is my argument now.

18 THE COURT: You have rested on the motion?

19 MR. BUGLIOSI: Yes.

20 MR. SHINN: My argument is she talked to the parole  
21 officer. I am talking about Roni Howard, that she has  
22 talked to the police officers prior to talking to Sergeant  
23 McGann and Sergeant Patchett, at the time they took the tape  
24 recordings, I think it was November 26th -- and October 5th  
25 -- 1969 in jail.

26 And I believe the District Attorney has the

1 burden of proof beyond a reasonable doubt showing that  
2 they were not agents of the police.

3 We can imply that since she had talked to  
4 police officers before she talked to Sergeant Patchett and  
5 Sergeant McGann, that she was an agent of the police, your  
6 Honor.

7 MR. KANAREK: May I join in the motion, your Honor,  
8 of Mr. Shinn?

9 THE COURT: Anything else?

10 MR. BUGLIOSI: Submit the matter.

11 MR. SHINN: Virginia Graham, your Honor, I believe  
12 she testified to talking to a parole agent before she  
13 talked to the police, and gave her testimony on tape.

14 So I believe since the parole agent is an  
15 arm of the government in this State, that we can imply that  
16 the parole agent told Virginia Graham to take notes, and  
17 then when the police come to give the information to the  
18 police, your Honor.

19 MR. KANAREK: I join in Mr. Shinn's motion.

20 THE COURT: There is no evidence to support any of  
21 those contentions.

22 There is no evidence that either Roni Howard  
23 or Virginia Graham were acting for or on behalf of anyone  
24 other than themselves.

25 MR. SHINN: Your Honor, may I say this?

26 THE COURT: Just a moment.

1 MR. SHINN: I'm sorry.

2 THE COURT: -- when they had a conversation with  
3 Miss Atkins.

4 The motions to suppress will be denied.

5 MR. SHINN: May I say one last thing, your Honor,  
6 on behalf of my argument?

7 THE COURT: I have already ruled. You said you  
8 rested.

9 MR. SHINN: May I open for a short statement, your  
10 Honor?

11 THE COURT: All right.

12 MR. SHINN: Your Honor, I believe People vs. Davis,  
13 66 Cal. 2d, 175, states that the burden is on the  
14 District Attorney to prove beyond a reasonable doubt that  
15 a confession or an admission meets the constitutional  
16 requirements for admission in evidence, your Honor.

17 THE COURT: Now are you finished, Mr. Shinn?

18 MR. SHINN: Yes, your Honor.

19 THE COURT: Same ruling. The motions are denied.

20 All right, now, what is the next --

21 MR. BUGLIOSI: That is my question.

22 We can get Virginia Graham down here in 20  
23 minutes.

24 How long are we going to continue, and how many  
25 more motions are there going to be?

26 MR. FITZGERALD: I have a motion to make in open

1 court.

2 MR. BUGLIOSI: That is a motion for severance, is that  
3 correct?

4 MR. FITZGERALD: Right.

5 MR. BUGLIOSI: After that motion is going to be  
6 resolved, are we then prepared to put Virginia Graham on  
7 the stand to testify?

8 If so, I will bring her down right now.

9 THE COURT: I would certainly think so.

10 I want to caution counsel and particularly you,  
11 Mr. Kanarek, I don't want the testimony of these witnesses  
12 disrupted in the manner in which it has been in the past by  
13 multiple objections on the same point, by interruptions of  
14 either the questions or the answers, or any other  
15 method,

16 You are entitled to make all motions and  
17 objections as an attorney that you deem necessary or  
18 desirable, but you are not entitled to disrupt the testimony  
19 of these witnesses.

20 MR. KANAREK: Your Honor, I would like to respond to  
21 that.

22 I am not, and I would welcome going over with  
23 the Court --

24 THE COURT: I am not going to rehash past history.

25 I simply want to make sure that you understand  
26 my position.

MR. KANAREK: Yes, I understand your position, your

1 Honor, and may I state that many times, many times  
2 questions on -- I would ask your Honor to ask the District  
3 Attorney to ask proper questions because I think --

4 THE COURT: That is not what I am talking about.  
5 If he asks improper questions, then I assure you you have  
6 the right to object or to have an answer stricken, and I  
7 have never told you anything to the contrary.

8 That is not what we are talking about now--

9 MR. KANAREK: Because when he continues to ask  
10 improper questions --

11 THE COURT: Then you continue to object.

12 That is not what we are talking about, Mr.  
13 Kanarek.

14 MR. KANAREK: Then I am the one who is supposedly  
15 doing the obstructing.

16 THE COURT: Don't twist what I am saying around.  
17 That has nothing to do with it. I am talking about your  
18 interruptions.

19 MR. KANAREK: Many times questions are objectionable  
20 on more than one ground and I am trying to convince the  
21 Court -- I am not making multiple --

22 THE COURT: That is not what I am talking about,  
23 Mr. Kanarek, and you know it, I have said what I said,  
24 and you know what I mean.

25 MR. KANAREK: As far as interruptions go, I don't  
26 want to interrupt for the sake of interrupting, but I

1 think Cooper vs. United States indicates there are situations  
2 that are so pregnant with the possibility of error that a  
3 lawyer has an obligation to interrupt, so I think your  
4 Honor's blanket order --

5 THE COURT: I am not making a blanket order. I am  
6 just telling you the way this examination is going to be  
7 conducted, and what I don't want from you specifically.

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1 MR. KANAREK: Yes, your Honor, and may it be deemed,  
2 your Honor as to all of -- that as to both of the State  
3 edited statements, so-called, and both -- and the testimony  
4 of Roni Howard and Virginia Graham, may it be deemed that  
5 it is our objection that there is improper foundation, and  
6 there should be an evidentiary hearing as to -- and that  
7 all of the people, the Deputies District Attorney, Kay,  
8 Musich and Bugliosi should be called and sworn as to what  
9 they did in connection with these two witnesses.

10 We ask for an evidentiary hearing where Roni  
11 Howard and Virginia Graham would testify outside the presence  
12 of the jury, and your Honor would then take that statement  
13 and we would then ask that that statement be read to the  
14 jury in the presence of each of the witnesses.

15 MR. SHINN: I join that motion.

16 THE COURT: You have made that motion before, Mr.  
17 Kanarek. It is denied.

18 MR. SHINN: Shall we make the objections now in  
19 chambers, your Honor?

20 THE COURT: To the testimony?

21 MR. SHINN: No, to the deleted form now, objections.

22 I thought the Court said you want to make all  
23 the objections in chambers.

24 THE COURT: I assume you will object if you care  
25 to as you go along. I am not foreclosing anybody's rights  
26 to objection.

5f-2

1 I was talking to Mr. Kanarek about interruption  
2 and disruption.

3 MR. SHINN: I thought you said to withhold all my  
4 objections until we get it all deleted.

5 THE COURT: Yes, if you want to make some objections  
6 for the record, please do.

7 MR. SHINN: Yes, I want to make some objections  
8 for the record.

9 The first objection I want to make is that  
10 the deleted form here distorts the original statement of  
11 Susan Atkins to Roni Howard and Virginia Graham.

12 I think that the deletion means not to  
13 prejudice the declarant.

14 I believe that the way the deletion has been  
15 made it prejudices Miss Atkins and focuses the weight of  
16 the crime on Miss Atkins.

17 The way the deletions have been made, it  
18 may force Miss Atkins to take the stand. The original  
19 statements given to Virginia Graham and Roni Howard indicate  
20 that it was a group activity, and the way that we have it  
21 deleted now it makes it a single activity.

22 Since the Court has used subsequent statements  
23 of Roni Howard and Virginia Graham, I feel that it was  
24 very difficult to separate what Roni Howard and Virginia  
25 Graham heard subsequent to the time she talked to Susan  
26 Atkins, and I feel that the way the Court and the District

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1 Attorneys went about this deletion form, I think it is  
2 going to restrict my cross-examination of the witnesses.

3 I do object on the grounds the deletion was  
4 not made from the original statement of November 25th  
5 and November 26th, of Virginia Graham and Roni Howard.

6 That is all I have, your Honor.

7 MR. BUGLIOSI: Submit the matter.

8 THE COURT: I will overrule the objections.

9 One other thing, gentlemen, now, as you know  
10 we have been engaged in considering these statements of  
11 these witnesses, and in the review of the statements for the  
12 purpose of determining whether or not effective deletions  
13 can be made now, for most all of yesterday, an hour and  
14 a half today and, as I recall, sometime before yesterday,  
15 so there has been a considerable amount of time spent on  
16 this.

17 You are all aware of the reasons for it.  
18 You are all aware of the care that has been taken in  
19 attempting to obtain an edited or deleted statement that  
20 does not incriminate any of the co-defendants, and is not  
21 unfair to the declarant.

22 I am not asking you to agree to it. I under-  
23 stand your objections, and so forth.

24 But you are aware of the efforts that have  
25 been made and the reasons for those efforts, so when the  
26 time comes for cross-examination I am going to have to

1 necessarily limit the cross-examination quite rigidly  
2 to the scope of the direct examination.

3 I want you to be aware of that, and of the  
4 danger to your own clients if you attempt to get off into  
5 collateral matters.

6 MR. HUGHES: It is because of this very problem,  
7 your Honor, that yesterday off the record I said just  
8 that we depose these witnesses and then edit the statements.

9 And I would move that that is how we proceed.

10 THE COURT: Well, as long as counsel are aware of  
11 it.

12 MR. HUGHES: And have the deposition then read  
13 to the jury, the edited deposition.

14 MR. SHINN: The cases I read that involve the  
15 Aranda rule, your Honor, the Court must consider the  
16 risk which here is very substantial, your Honor.

17 THE COURT: I have considered the risk, Mr. Shinn,  
18 and I don't believe there is any risk unless counsel  
19 stray off into areas in which they don't have any right  
20 to go.

21 That is why I am telling you that I do  
22 intend to hold the cross-examination within the scope of  
23 the direct examination.

24 MR. KANAREK: May I state then, your Honor, I  
25 believe that inherent in what your Honor is saying,  
26 there is a denial of due process under the Fourteenth

1 Amendment and the right to cross-examination and the right  
2 to confront and the right for effective counsel because  
3 of the process purportedly gone through here.

4 THE COURT: Well, you are all familiar with the  
5 cases; I know you are because you cited them to me many  
6 times.

7 I am familiar with them. You know the  
8 procedures that have been followed in the various cases  
9 in which the courts have upheld the use of deleted state-  
10 ments of co-defendants, and I am simply calling your  
11 attention to those things.

12 MR. KANAREK: Yes, your Honor.

13 THE COURT: I am not trying to make any new law.

14 MR. KANAREK: No, I'm sure your Honor and I are  
15 in honest disagreement.

16 I don't believe that what occurred was fair,  
17 but it is an honest disagreement. I'm sure, your Honor.

18 THE COURT: All right, gentlemen, let's take a  
19 recess --

20 MR. KANAREK: With the material we had to deal  
21 with, I don't think what resulted is fair.

22 THE COURT: We will take a 15-minute recess; then  
23 we will resume.

24 (Recess.)  
25  
26

5-1  
1 MR. FITZGERALD: I have a motion outside the presence  
2 of the jury in open court.

3 I have to make it in the presence of my client.

4 THE COURT: I am not foreclosing you that.

5 MR. KAY: Your Honor, Virginia Graham will be here at  
6 11:00 o'clock, and then Mr. Bugliosi will need to spend some  
7 time with her to make sure she understands what portions  
8 will be deleted.

9 MR. BUGLIOSI: There have been several changes since  
10 I last spoke to her yesterday and I have got to sit down  
11 and speak to her.

12 THE COURT: How long?

13 MR. BUGLIOSI: About a half hour.

14 THE COURT: Before you are ready to go, let the  
15 clerk know. Then we will bring the defendants down and  
16 hear Mr. Fitzgerald's motion out of the presence of the  
17 jury.

18 MR. BUGLIOSI: We can hear his motion right now.

19 THE COURT: We are going to take a recess.

20 MR. BUGLIOSI: I mean, after the recess, we can hear  
21 his motion.

22 THE COURT: You will have to talk to Miss Graham.

23 MR. BUGLIOSI: She isn't here now.

24 THE COURT: She will be. It is fifteen to 11:00.

25 Don't forget what I said about the newspapers,  
26 gentlemen.

1 (Recess.)

2 (The following proceedings occur in open court.)

3 All counsel present. Defendants and jury absent.)

4 THE COURT: All counsel are present. The jury is  
5 not present.

6 Counsel, have the defendants indicated their  
7 desire to return to the courtroom and conduct themselves  
8 in accordance with the Court's instructions?

9 MR. FITZGERALD: They have indicated no desire to  
10 return. As a matter of fact, they have indicated a  
11 contrary desire, to remain in their present place.

12 THE COURT: Are you now speaking for all counsel,  
13 Mr. Fitzgerald?

14 MR. FITZGERALD: For all of them, your Honor.

15 THE COURT: I understand you have a motion to make,  
16 Mr. Fitzgerald?

17 MR. FITZGERALD: Yes, your Honor.

18 The motion I am about to make, I am going to  
19 make on behalf of defendant Patricia Krenwinkel, your  
20 Honor, but Mr. Hughes, on behalf<sup>of</sup>/Leslie Van Houten, is  
21 going to join in the motion, and Mr. Kanarek, on behalf of  
22 Charles Manson, is going to join in the motion, and  
23 Mr. Shinn is joining in the motion on behalf of Susan  
24 Atkins, but his motion, as we will see, is the reverse of  
25 this motion.

26 The motion I have, I request that your Honor not

1 allow Virginia Graham and Roni Howard to testify as to  
2 any admission or confession of Susan Atkins as contained  
3 in the so-called edited statement of those two witnesses  
4 that have heretofore been marked as Court's Special Exhibit  
5 No. 7.

6 In the alternative, I would ask that your Honor  
7 sever Patricia Krenwinkel and Charles Manson and Leslie  
8 Van Houten from the trial of Susan Atkins.

9 And if that severance requires a mistrial,  
10 I would offer to stipulate that such a mistrial is the  
11 result of legal necessity. In other words, we would waive  
12 jeopardy.

13 And the reasons are as follows:

14 Number one. We feel that we are unable to  
15 sufficiently and adequately edit the statements so as to  
16 remove direct or indirect references to the co-defendants,  
17 Patricia Krenwinkel, Leslie Van Houten, and Charles Manson.

18 Number two, we feel that the statement, as  
19 edited, will not withstand the cross-examination of counsel.  
20 Advertently or inadvertently, counsel will ask questions,  
21 the answers to which will involve, implicate or inculcate  
22 Patricia Krenwinkel, Leslie Van Houten, and Charles Manson,  
23 in violation of the hearsay rule, in violation of the  
24 Sixth Amendment of the United States Constitution, and  
25 applicable provisions of the California State Constitution,  
26 as well as People vs. Aranda at 63 Cal. 2d, Page 518, and

1 Bruton vs. the United States, contained in 391 United  
2 States Reports, 123, People vs. Matola, in 259 Cal. Ap. 2d,  
3 686, and People vs. Graham, contained in 71 Advance California  
4 Reports at Page 320.  
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1 Thirdly, we feel that the prosecution's  
2 insistence on a joint trial is not reasonably predicated  
3 upon the purpose and intent of the statute which grants  
4 the right to try the defendants jointly.

5 I am referring to Penal Code Section 1098.

6 In support of the motion, I would argue  
7 the following: That count VIII of the indictment alleges  
8 a conspiracy between and among the defendants, and alleges  
9 joint overt acts in furtherance of that conspiracy.

10 The People have alleged that the defendants  
11 acted in concert, and they have, so far, in this trial,  
12 attempted to prove that the defendants did, in fact, act  
13 in concert.

14 They have introduced evidence through Linda  
15 Kasabian, Danny DeCarlo, Johnny Swartz, Juan Flynn,  
16 Ruby Pearl, Barbara Hoyt, Rudolph Weber, David Hannum  
17 and William Gleason that the defendants resided in close  
18 contact with one another; that they ate together, sang  
19 together, talked together, walked together, slept  
20 together, traveled together and had sex together; that  
21 they lived together in sort of a commune; that they lived  
22 together as a family unit; that they lived together for  
23 a long period of time, and that they lived together at  
24 five separate and distinct locations.

25 It is extremely unlikely that the jury would  
26 think that the killings were not done together, once they

1 hear the statements; coupled with the fact that it would  
2 be inherently improbable for a young woman of Susan  
3 Atkins' age, height, weight and strength to kill,  
4 unassisted, the five decedents in the manner in which the  
5 prosecution purports the killings were effected.

6 For one person to kill five persons simul-  
7 taneously by a hundred and two stab wounds and three  
8 gunshot wounds is preposterous. The jury will obviously  
9 read between the lines of the statements and use the  
10 statements against the other defendants. The non-declarant  
11 defendants will then be deprived of a fair trial.

12 Additionally, these statements are not of  
13 extraordinary reliability. In fact, the reverse is true.  
14 These statements are so-called "jail-house" confessions.  
15 They are made to persons who were convicts, that the  
16 evidence will show had suffered prior felony convictions.  
17 Their credibility is, therefore, suspect.

18 Further, these are oral statements. So-  
19 called oral admissions or confessions are "to be treated  
20 with caution and the jury will be so instructed."

21 These statements, further, were not recorded  
22 nor were they stenographically reported so that they could  
23 be perpetuated with accuracy.

24 Furthermore, the sensational aspects of  
25 this case have caused persons to come forward with  
26 unreliable information. There is also a substantial reward

1 in this case, which provides a motive to fabricate.

2 For these reasons, I would ask the Court  
3 to exercise its discretion and disallow, or not allow,  
4 the introduction into evidence the statements of Virginia  
5 Graham and Roni Howard; and in the alternative, I would  
6 move for a severance.

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1           So important do we feel that the issue is,  
2           that we would be willing to waive jeopardy.

3           Thank you.

4           THE COURT: Mr. Bugliosi, do you wish to reply?

5           MR. BUGLIOSI: Very briefly.

6           Because of the law of discovery, the defense  
7           did receive information on what the People's case was going  
8           to be far in advance of trial.

9           If Mr. Fitzgerald and his co-counsel were  
10          really serious about this motion to sever, they could have  
11          made it prior to trial, and they could have pursued it  
12          vigorously.

13          To the contrary, Mr. Fitzgerald did make a  
14          motion to sever prior to the trial, but he quickly withdrew  
15          it.

16          I submit, your Honor, that the motion to sever  
17          at this point is about four months too late.

18          We will submit the matter.

19          MR. FITZGERALD: Very briefly, we did, in fact,  
20          counsel for the defendants did, in fact, prior to trial,  
21          make a motion for severance, and I think the record  
22          clearly and adequately speaks for itself.

23          We withdrew the motion, and there was a great  
24          deal of colloquy between counsel on both sides as to the  
25          effect of the various motions. We did withdraw the severance  
26          motion based on representations that there would be

1 adequate deletion.

2 At the time these statements were made, the  
3 defendants had, in fact, engaged in discovery. That  
4 discovery was a limited form, and in particular respect to  
5 these two prosecution witnesses, Roni Howard and  
6 Virginia Graham, it wasn't until the day before yesterday  
7 that we were provided with statements that are going to  
8 form the basis of this testimony.

9 We were provided with statements of Virginia  
10 Graham and Roni Howard prior to trial, but they didn't  
11 represent the statement in toto that are going to be used  
12 against these defendants, and I think, in short,  
13 upon reflection, once we rather than analyze the situation  
14 in a vacuum, once we got into the real life trial and were  
15 faced with the statement and we engaged in repeated chamber  
16 sessions in order to adequately delete and edit, we feel  
17 that an adequate editorial process is not possible.

18 MR. BUGLIOSI: I think the record reflects, your  
19 Honor, that all of these statements made out of court by  
20 Susan Atkins were put under a judicial microscope by the  
21 court and counsel on both sides, and everyone worked very  
22 consciously and carefully to delete all direct and indirect  
23 references to co-defendants.

24 Now, I am satisfied that the jury will only  
25 consider the testimony of Virginia Graham and Roni Howard  
26 as to Susan Atkins and will follow the Court's instructions

1 that they will not consider it with respect to Susan Atkins'  
2 co-defendants.

3 We will submit the matter.

4 MR. KANAREK: Your Honor, I join in Mr. Fitzgerald's  
5 statement.

6 I would just like to make it clear that I am  
7 saying this only because the appellate courts insist on  
8 the enunciation of constitutional rights.

9 It is our position that the Court proceeding  
10 ahead is a violation of due process under the Fourteenth  
11 Amendment, and the due process clause of the Fourteenth  
12 Amendment incorporates the Sixth Amendment right to  
13 effective counsel, the Sixth Amendment right to confront,  
14 and the right to a fair trial, your Honor.

15 I just wanted to make sure that is on the  
16 record.

17 We are alleging our constitutional rights at  
18 this point, your Honor.

7-1

1 THE COURT: Mr. Fitzgerald, I did not quite under-  
2 stand your initial statement about Mr. Hughes would take  
3 the opposite --

4 MR. FITZGERALD: Mr. Shinn.

5 THE COURT: -- Mr. Shinn.

6 MR. FITZGERALD: By and large my position with  
7 the Court is that in regard to my client Patricia Krenwinkel,  
8 Leslie Van Houten and Charles Manson, that they would not  
9 be able to receive a fair trial.

10 Mr. Shinn's position is obvious, he represents  
11 the declarants.

12 The other three represent the non-declarants.

13 I take it it is Mr. Shinn's position that  
14 the editing process also does an injustice to the declarant  
15 defendant.

16 THE COURT: Then as I understand the motion it is  
17 in the alternative, either to suppress the statements of  
18 these witnesses or to sever the three defendants.

19 MR. FITZGERALD: It is, your Honor.

20 MR. KANAREK: There is one other point, your  
21 Honor, in severing -- that does not mean we have to  
22 begin a new trial as to all defendants. Your Honor could  
23 sever Susan Atkins, and then we could proceed because of  
24 legal necessity. Your Honor could proceed with the three  
25 defendants separately without Susan Atkins.

26 So we can proceed with this trial without

1 your Honor having a new trial as to all defendants.

2 THE COURT: And I understand, Mr. Fitzgerald,  
3 that the basis for your motion is your belief that the  
4 statements of these witnesses cannot be effectively deleted  
5 so as not to deprive the defendants of their constitutional  
6 rights.

7 MR. FITZGERALD: Yes, and further, in the event  
8 it is successfully edited and there is no direct or  
9 indirect reference to the co-defendants on direct examina-  
10 tion, that the statement will not withstand cross-examina-  
11 tion by Mr. Shinn, the attorney for the declarant Susan  
12 Atkins.

13 THE COURT: As you know, we spent several days  
14 dealing with these problems and you have been invited by  
15 the Court on numerous occasions to express your views on  
16 this subject.

17 I do not recall that you indicated any  
18 specific portions of those statements that you felt either  
19 could not be effectively deleted or which would not with-  
20 stand cross-examination by one or more other counsel.

21 I invite you to do so now.

22 If you are holding anything back, now is the  
23 time.

24 MR. FITZGERALD: I am not.

25 I did participate in those discussions and,  
26 as a matter of fact, I suggested on numerous occasions to

1 the Court that certain deletions be made, and as a matter  
2 of fact the Court heeded my suggestions in at least three  
3 instances.

4 I pointed out however, I don't know if it  
5 was on the record or off the record, but I pointed out  
6 my acquiescence in the editorial process did not necessarily  
7 indicate I was adopting the process per se.

8 I think your Honor has done a conscientious  
9 and legitimate job.

10 I think all counsel have done a conscientious  
11 and legitimate job in attempting to delete all references  
12 to the co-defendant and as the edited version of the state-  
13 ment now stands, especially Exhibit 7, on its face there  
14 is no prejudice whatsoever to Patricia Krenwinkel and I am  
15 convinced of that.

16 However, I would like to point out that,  
17 No. 1, Mr. Bugliosi is not going to use that edited state-  
18 ment.

19 He is going to adopt suggestions and  
20 references that were made to that suggestion in terms of  
21 his examination of the witnesses.

22 I would say, secondly, that what happens on  
23 paper is not what is necessarily going to happen on this  
24 witness stand, and I have seen witnesses on hundreds of  
25 occasions, and I feel that it is personally unlikely that  
26 any witness is going to rigidly adhere to some sort of a

1 script.

2 But that is not to say that I in any way  
3 question the motivations of the Court or motivations of  
4 counsel. I think there was a conscientious, energetic sort  
5 of desire on the part of everybody concerned to edit the  
6 statement. I just don't feel under the circumstances it  
7 is humanly possible, dealing with these human beings.

8 THE COURT: Anything further?

9 MR. BUGLIOSI: Submit the matter.

10 MR. KANAREK: Yes, your Honor, just briefly.

11 I disagree with Mr. Fitzgerald on one point.

12 That is, that I don't believe the statements,  
13 plural, as edited, are fair.

14 I think inherently when these two witnesses  
15 take the witness stand, that deprives the defendant of a  
16 fair trial.

17 In other respects I agree with Mr. Fitzgerald  
18 about the statements, your Honor.

19 THE COURT: All right.

20 I am going to take the motions under submission  
21 during the noon recess.

22 We will recess at this time until 2:00 p.m.

23 (Whereupon the court stood in recess until  
24 2:00 o'clock p.m. of the same day.)  
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