

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.

173

No. A253156

REPORTERS' DAILY TRANSCRIPT

Friday, January 29, 1971

APPEARANCES:

For the People:

VINCENT T. BUGLIOSI,  
DONALD A. MUSICH,  
STEPHEN RUSSELL KAY,  
DEPUTY DISTRICT ATTORNEYS

For Deft. Manson:

I. A. KANAREK, Esq.

For Deft. Atkins:

DAYE SHINN, Esq.

For Deft. Van Houten:

~~RONALD J. HUGHES, Esq.~~

For Deft. Krenwinkel:

MAXWELL KEITH, Esq.  
PAUL FITZGERALD, Esq.

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MURRAY MEHLMAN, CSR.,  
Official Reporters

7-1

LOS ANGELES, CALIFORNIA, FRIDAY, JANUARY 29, 1971

1:54 o'clock p.m.

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

THE COURT: All counsel are present. Who wants to be heard?

MR. BUGLIOSI: I think the prosecution should just make a brief offer of proof first, as a starting point.

THE COURT: Yes, I think that is appropriate.

MR. BUGLIOSI: We intend to offer evidence, your Honor, that Gary Hinman's body was found in a deceased condition, of course, on July 31st, I believe, 1969, and the autopsy was conducted August 1st.

There were five wounds on the body, two of which were stab wounds, another one was a slash, and two wounds to the top of the head either from a blunt instrument or from a knife.

And this witness here, the first witness was going to testify, Michael Erwin, to discovering the body and calling the Sheriff's Office.

The Hinman murder is kind of a complicated murder involving pink slips and money, et cetera. We did not intend to go into that.

1           The only evidence we were going to offer  
2     connecting Susan Atkins with the corpus delicti was a  
3     statement she made to Roni Howard in late October or early  
4     November of 1969 at the same time she told Roni Howard about  
5     the Tate murders, in which he said that she was being  
6     charged with a murder, and she showed Roni Howard the  
7     document.

8           It was a complaint. She already had been  
9     arraigned and the name, Gary Hinman, was on the document.

10          And she said she had a co-defendant by the  
11     name of Bobby, and it turns out Bobby Beausoleil was a  
12     co-defendant of hers.

13          And she told Roni Howard that the police had  
14     everything mixed up; that they thought she, Susan, was  
15     the one that held Gary Hinman down and Bobby stabbed Gary.

16          "Actually, how could I have done that?

17          Bobby held Gary down and I stabbed Gary."

18          And Roni said "Where did you stab Gary?"

19          Roni doesn't recall, but it was either the  
20     chest or the stomach.

8 fls.

8-1

1 It turns out that Hinman does have two stab  
2 wounds on his chest.

3 There are no Aranda problems. No defendant  
4 is implicated. Although there is one statement in there  
5 to the effect that Hirman was murdered because he wouldn't  
6 give us his money, or something like that, and from that  
7 you could infer that she was talking about the Family.

8 But other than that, there is no reference to  
9 any co-defendant.

10 So, I don't see any Aranda or Bruton problems.

11 THE COURT: Well, of course, that hasn't really been  
12 ascertained yet.

13 MR. BUGLIOSI: Right.

14 So that is basically it, your Honor. We are  
15 just going to put on the discovery of the body, the  
16 description of the scene of the murder, the testimony of  
17 Dr. Katsuyama, the Coroner, and then Roni Howard to the  
18 confession. That is about it.

19 THE COURT: Does any defense counsel wish to be  
20 heard?

21 MR. KEITH: I might offer this comment. But there  
22 has been considerable evidence in the guilt phase of the  
23 trial indicating that the Family, the girls, didn't do  
24 anything except on Mr. Manson's orders, practically down  
25 to brushing their teeth -- assuming they did brush their  
26 teeth -- and therefore, it could be inferred that if

1 Susan Atkins killed Hinman, it was probably done on the  
2 orders of Manson, even though the evidence was strictly  
3 limited to Susan Atkins.

4 That is the only comment I have.

5 MR. KAY: Of course, your Honor, what Mr. Keith is  
6 saying now -- of course, he wasn't present in our Bruton  
7 and Aranda discussions earlier -- but I think he is bringing  
8 up the same problem that either Mr. Shinn or Mr. Kanarek  
9 brought up of the other evidence, and I think that your  
10 Honor made a real good point at the time, saying that just  
11 because there is other evidence introduced by the prosecu-  
12 tion that ties the defendants into a crime doesn't violate  
13 Bruton and Aranda or the confession.

14 And I think the same thing would apply to the  
15 Hinman case here. Just because the prosecution has intro-  
16 duced evidence that these defendants acted together, we  
17 are not introducing it as to the Hinman case, we are just  
18 introducing it as to Susan Atkins. Charles Manson's name  
19 won't be mentioned, and the other two girls' names won't  
20 be mentioned at all.

21 MR. KEITH: I am well aware of that.

22 THE COURT: Of course, the comment that I made with  
23 respect to the earlier Bruton-Aranda problem is <sup>NOT</sup> something  
24 that I thought of out of my head. I was simply stating  
25 what the law is.

26 Does anyone else wish to be heard on this

Hinman matter?

MR. FITZGERALD: Yes, if the Court please.

Ordinarily, at a penalty phase of the trial, the prosecution is entitled to prove up other offenses. Whether those offenses are related to the trait or character involved in the instant prosecution or not, they are entitled to prove them up if they can prove them up beyond a reasonable doubt.

The problem here is really a peculiar and very distinctive one, and that is that this is unlike many multiple defendant trials. Here there has been a conspiracy charged, and the defendants have actually been convicted of conspiracy.

They have been convicted of conspiring, convicted of agreeing and confederating and acting one with another in terms of killing people. A conspiracy to commit murder.

Now, in a sense, Mr. Kanarek frequently almost attempted to demur to the pleadings during the guilt portion of the trial, and Mr. Kanarek very certainly, and a great number of other attorneys, objected to various items of evidence throughout the guilt portion of the trial on the basis that it was beyond the scope of the pleadings and, therefore, immaterial.

We objected, and Mr. Kanarek vociferously objected, to any evidence coming in before the 8th through the 10th of August in terms of a conspiracy, or after the 10th of August.

1           We took the position that the prosecution had  
2           alleged that a conspiracy existed between the 8th and the  
3           10th.

4           Your Honor took a somewhat different position  
5           that a conspiracy could have been in existence for some  
6           period of time and that, really, all the prosecution was  
7           doing by way of that pleading was alleging that at least a  
8           conspiracy existed between the 8th and the 10th.

9           This offense that they are now attempting to  
10          prove up against Susan Atkins solely takes place approxi-  
11          mately two weeks before the time they allege that at least  
12          this conspiracy was in existence. And the point of all this  
13          is that this is an unusual situation where the defendants  
14          have already been convicted of acting one with another,  
15          and the jury will have an extremely difficult task of segre-  
16          gating this evidence as to Susan Atkins only.

17          That is point number one. They will have a very  
18          difficult time trying to segregate it because the whole  
19          tenor of the prosecution's case has been that they acted as  
20          a unit.

21          I am not suggesting that the prosecution cannot  
22          introduce any evidence in the penalty phase against one  
23          defendant and not against another. I am suggesting, though,  
24          that when as the result of a conspiracy to commit murder  
25          prosecution they enter into a penalty phase, that they  
26          ought to be limited to that sort of evidence that is



1 peculiarly individual to the particular defendant.

2 For example, the prosecution has some evidence  
3 that three or four years previously Susan Atkins alone made  
4 certain statements to certain law enforcement officials in  
5 the State of Oregon and engaged in certain criminal acts in  
6 the State of Oregon.

7 I would concede, arguendo, for the purpose of this  
8 colloquy, that that is proper because it relates to her as  
9 a separate and distinct individual, an individual distinct  
10 and separate from this body, this unit, this conspiracy.



1 Point 2: Point 2 is that someone else has already  
2 been convicted of the very murder they intend to prove up  
3 here.

4 In the Superior Court case of People versus  
5 Robert Kenneth Beausoleil a verdict was returned convicting  
6 the defendant Robert Beausoleil of murder in the first  
7 degree, and the penalty was assessed at death.

8 That was the Superior Court case in reference to  
9 which your Honor admitted evidence this morning.

10 Now, the jury is entitled --

11 THE COURT: Say that again; I did not understand that  
12 last remark.

13 MR. FITZGERALD: The prosecution marked for  
14 identification this morning a photograph as an exhibit in  
15 reference to a Superior Court case.

16 THE COURT: All right.

17 MR. FITZGERALD: That is the case in which Mr. Beausoleil  
18 was convicted of the murder of Gary Hinman.

19 THE COURT: Yes, all right.

20 MR. FITZGERALD: Robert Beausoleil was a so-called  
21 Manson Family member; he resided at the Spahn Ranch during  
22 the summer months of 1969.

23 The jury will be instructed --

24 THE COURT: And there is evidence of that in this  
25 case.

26 MR. FITZGERALD: And there is evidence of that in this

1 case.

2 In order to use this murder -- to use the evidence  
3 of this murder against Susan Atkins, the jury is going to  
4 be instructed they must find so beyond a reasonable doubt,  
5 which puts Mr. Shinn in the peculiar position, and Mr.  
6 Shinn has indicated to me that if the prosecution wishes to  
7 go ahead with Hinman, he will bring down Mr. Beausoleil  
8 from death row to testify as to his implication.

9 In other words, it almost forces us to put on a  
10 defense to it. That is point two.

11 Point three is simply that -- well, I wanted to  
12 state it as succinctly as possible -- that -- well, maybe  
13 I'd better stop with just two points.

14 THE COURT: Well, the gist of your argument, as I  
15 understand it, is that where multiple defendants have been  
16 charged and convicted in the guilt phase of a conspiracy to  
17 commit murder, the proving of an additional crime or  
18 homicide, probably homicide, or murder, during the penalty  
19 phase which occurred during the period of the conspiracy,  
20 even though it was committed by one and not any of the  
21 other defendants, carries the risk of misleading the jury  
22 into believing that all of them are involved.

23 MR. FITZGERALD: Yes, thank you. That is very well  
24 said.

25 THE COURT: Well, anyone else?

26 MR. FITZGERALD: The third point was that this case is

1 pending against Susan Atkins now, and it is also pending  
2 against Charles Manson and one Bruce Davis, it is my  
3 understanding, which involves certain constitutional  
4 problems.

5 I don't think we can be entirely unaware of the  
6 fact that this case is being reported widely and extensively,  
7 and obviously may result in the deprivation in a subsequent  
8 trial for Miss Atkins and the other parties involved, and  
9 in that respect you cannot eliminate the fact that although  
10 it is being introduced in this penalty phase only for  
11 Atkins, the offenses are -- the offense itself, in a  
12 separate and distinct case, is being charged against Manson,  
13 pending in Los Angeles Superior Court.

14 MR. KAY: I don't see the relevancy.

15 THE COURT: There would be additional problems if the  
16 jury were not sequestered, of course.

17 MR. FITZGERALD: I am not talking about this jury being  
18 sequestered; I am talking about trying to pick a fair jury  
19 when Atkins and Manson come to trial on Hinman.

20 THE COURT: Someone else is going to have to worry  
21 about the Hinman case. I am concerned with this one.

22 There would be other problems if this jury were  
23 not sequestered because of the publicity given to the fact  
24 that since this trial commenced both Manson and Atkins have  
25 been indicted in the Hinman case.

26 MR. FITZGERALD: Correct.

1 MR. BUGLIOSI: I would like to ask Mr. Fitzgerald a  
2 question, and if he can give me a good answer, it does not  
3 mean I stipulated to the issue at all.

4 Why isn't the Hinman case peculiar to Susan  
5 alone?

6 You said we can offer evidence only peculiar to  
7 the particular defendant. Why isn't the Hinman case  
8 peculiar to Susan alone?

9 My position is, even if it were not peculiar to  
10 her alone we are still entitled to produce it.

11 Why do you feel this case is not peculiar to her,  
12 because of the stab wounds?

13 MR. FITZGERALD: No, because I think there is a  
14 close proximity in time.

15 MR. BUGLIOSI: Of course we had the case we just put on  
16 right now which is even closer.

17 MR. FITZGERALD: That is what I am talking about.

18 MR. BUGLIOSI: I am talking about Bernard Crowe.

19 MR. FITZGERALD: But there was a situation where it  
20 appeared to be clear that Manson was acting independently.

21 MR. BUGLIOSI: No, there he is involved with a mean  
22 killer in the Tate-La Bianca murder, Tex Watson, here, and  
23 in the Hinman case.

24 THE COURT: Tex Watson is not being tried in this case.

25 MR. BUGLIOSI: He was a co-conspirator on the Tate-  
26

1 La Bianca case. This case against Susan Atkins, your Honor,  
2 is just offered against her alone and the Court --

3 MR. KAY: As a matter of fact that is why we are  
4 offering it, to show she does act independently of Charles  
5 Manson, and on top of that we are offering this incident up  
6 in Oregon before she even knew Charlie or the Family, to  
7 show she is an independent thinker.

8 That is the whole purport of our evidence against  
9 her in the penalty trial.

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1 MR. KEITH: The fact of the matter is she was not  
2 really acting independently of Manson, assuming your  
3 evidence in the Hinman case is true.

4 MR. BUGLIOSI: She certainly was up in Oregon.

5 MR. KEITH: That may be.

6 THE COURT: Of course we have to look at it from the  
7 standpoint of the jury, not from what we know or what you  
8 know. You probably know many things I don't know. But we  
9 have to look at it from the standpoint of the jury.

10 As I see it, the prosecution has been successful  
11 so far, they have proved everything. Maybe they have proved  
12 too much for the purpose of the present discussion.

13 They proved a conspiracy to commit murder of  
14 which she was a member, and the other defendants were  
15 members which, as I pointed out this morning, they could  
16 easily believe, if it didn't come to fruition, prior to  
17 the Hinman case, it certainly was in the gestation period,  
18 and they could have believed that it actually did come into  
19 some kind of fruition before.

20 And then you have another murder which has  
21 all the earmarks of a Tate-La Bianca murder from the  
22 standpoint of wounds.

23 MR. BUGLIOSI: There were stab --

24 THE COURT: Just a minute. There were five wounds?

25 MR. BUGLIOSI: Two stab wounds to the chest, one  
26 slashing wound here, to the left ear, starting with the

9a-2

1 lower left cheek; two wounds on the top of the head which  
2 are either stab wounds or caused by a blunt instrument.

3 MR. FITZGERALD: And there is writing in blood on  
4 the wall. That is a very very important point.

5 MR. BUGLIOSI: It isn't necessary we have to offer  
6 that.

7 MR. FITZGERALD: You have it in the photographs I have  
8 seen, that you intend to introduce.

9 MR. BUGLIOSI: Right, right -- no, it is part of a  
10 cardboard.

11 THE COURT: Let me finish and then I will listen to  
12 you.

13 It is another one of those murders that seems  
14 highly unlikely that it was committed by one small girl.

15 MR. KAY: We are going to put on evidence that  
16 Bobby Beausoleil was with her too.

17 THE COURT: But that isn't going to help a bit.  
18 If anything, that makes it worse because this jury knows  
19 that Robert Beausoleil was a member of the Family.

20 MR. BUGLIOSI: True.

21 MR. FITZGERALD: And Beausoleil testified under oath  
22 in his defense at his trial that Manson did it, and if we  
23 bring him down to testify it is going to be dumped -- it is  
24 an unfortunate term -- on Manson.

25 Beausoleil testified under oath, and I think  
26 these gentlemen will agree, in his defense.



9a-3

1 MR. KAY: He would not testify against Manson --

2 THE COURT: It appears to me that the evidence with  
3 regard to the Atkins participation in the Hinman case is  
4 such that the jury almost unavoidably and inescapably must  
5 arrive at the conclusion that it was a Family murder.

6 The only way you can prove it was not a Family  
7 murder, and I don't know if you can prove it was or  
8 not, is to produce Beausoleil, which instead of solving  
9 the problem would make it worse, because he was a member  
10 of the Family.

11 In other words, I am trying to show that none  
12 of these defendants participated with Atkins <sup>at</sup> in the murder.  
13 You are showing that some other members of the Family did  
14 it which doesn't solve anything.

15 MR. KAY: Throughout this whole trial, don't we  
16 presume that the jury follows the admonishments of the  
17 Court?

18 We have limited the evidence so many times.

19 THE COURT: Our court has said that is true in the  
20 Bruton-Aranda situation, but here we don't have a Bruton-  
21 Aranda situation like we have in the guilt phase. Here the  
22 conspiracy is an established fact, established by this  
23 very jury.

24 MR. KAY: As to the Tate-La Bianca crimes.

25 THE COURT: Well, that's right, because that is all  
26 they were passing on.

9a-4

1 MR. KAY: That's right.

2 THE COURT: But the fact of the conspiracy remains.

3 MR. KAY: As to the Tate-La Bianca crimes.

4 THE COURT: A conspiracy as to this particular period  
5 in which they were members of the conspiracy.

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1 MR. BUGLIOSI: I don't want to sound like I'm talking  
2 out of both sides of my mouth with respect to the conspiracy  
3 argument.

4 MR. FITZGERALD: Please do.

5 MR. BUGLIOSI: But my position, I analogize this  
6 conspiracy to the Stevens case I gave the court, the  
7 evidence went three years back.

8 *Debra's* I forget the language they used in Stevens,  
9 ten girls on the tree, or some doggone thing like that.

10 In any event the conspiracy was forming over  
11 a long period of time, but we never put on any evidence,  
12 and I have no evidence that the conspiracy to commit murder  
13 was formed any earlier than on August 8th, 1969, although  
14 the formation of the conspiracy probably took place over  
15 a two-year period by way of his domination over the Family.

16 He finally got them to the point where they  
17 would murder at his command.

18 We did not put on any evidence, nor did I have  
19 any evidence that on some date before August 8th --

20 Well, that is not entirely true either.

21 THE COURT: You put on a great mass of evidence  
22 about events occurring before August 8th.

23 True, you did not prove any homicide before  
24 August 8th. But now you want to do that.

25 MR. BUGLIOSI: My position was that the formation of  
26 the conspiracy was taking place far before August 8th over

9b-2

1 a one or two-year period, but the actual decision to  
2 murder, the evidence shows, actually took place on August  
3 the 8th.

4 THE COURT: Well, I am convinced that this would be  
5 a mistake; that there is a very strong likelihood that the  
6 jury could not help but be misled into believing that all  
7 of these defendants or some of them -- and since they don't  
8 know which, probably all, were involved in the Hinman  
9 killing.

10 MR. KAY: Would the Court's position be changed at  
11 all if we attempted to prove the Hinman case against both  
12 Manson and Atkins, if we added Manson in our proof.

13 THE COURT: That still leaves two other defendants.

14 MR. BUGLIOSI: It seems to me, and I would not  
15 ordinarily give this argument away but now that I am on  
16 the ropes I have to give it away, it doesn't make any  
17 difference.

18 But it seems to me a good argument for the  
19 others, especially for someone like Manson, is that --  
20 here Kanarek can argue:

21 "Here there is no evidence that Manson was  
22 involved in this at all. If there were, the People would  
23 have offered it. Here we have Susan Atkins committing the  
24 murder by herself. She said she did not do it on the  
25 night of the Tate murders all by herself."

26 I think that is an argument.

1 THE COURT: I am not unmindful either of the fact that  
2 the writing in blood in the Hinman --

3 MR. BUGLIOSI: We won't have to put that on.

4 THE COURT: Maybe they want it to come on, maybe  
5 they would bring it out on cross-examination.

6 MR. BUGLIOSI: How could they want that to come on.

7 THE COURT: Maybe Mr. Shinn would want to do that to  
8 take some of the burden off of his client.

9 MR. BUGLIOSI: His client is the one who confessed.

10 THE COURT: I know, but she could not be stabbing and  
11 writing at the same time.

12 MR. BUGLIOSI: It was after the stabbing.

13 THE COURT: Maybe one of the other defendants was  
14 doing the writing. Maybe Mr. Keith's client -- maybe Miss  
15 Krenwinkel, who had a little trouble with handwriting in  
16 the guilt phase of this case.

17 MR. SHINN: Hinman is 200 pounds.

18 MR. BUGLIOSI: You can argue she is not as bad as  
19 Susan. Here is another event completely unrelated to the  
20 Tate-La Bianca murders, Leslie Van Houten -- it is better  
10 fls. 21 for her, it separates her from Atkins and Krenwinkel.

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1 MR. KEITH: You notice I didn't say anything about  
2 Leslie Van Houten. I was talking about Manson. He is the  
3 one that gives the orders.

4 MR. BUGLIOSI: I really think it gives them good  
5 arguments.

6 MR. KANAREK: Your Honor, I have only one comment  
7 to make to Mr. Bugliosi.

8 MR. FITZGERALD: Wait a minute.

9 Maybe you will agree not to argue then?

10 MR. KANAREK: My comment to Mr. Bugliosi is: Beware  
11 of Italians bearing gifts.

12 MR. BUGLIOSI: Very good, Irving. Very good.

13 THE COURT: My belief is, gentlemen, that this  
14 evidence must be excluded. I think it would be highly  
15 prejudicial to the other co-defendants.

16 MR. BUGLIOSI: Assuming, arguendo, that it is  
17 prejudicial to the co-defendants. Does that automatically  
18 exclude it, your Honor, on legal grounds?

19 MR. KAY: There appears to be no authority in this  
20 area, your Honor.

21 THE COURT: Well, it is really the same problem as  
22 if Susan Atkins got up and testified -- rather, Roni Howard  
23 got up and testified that she, Susan Atkins, Leslie,  
24 Patricia and Manson all went out and killed Gary Hirman.

25 MR. BUGLIOSI: Of course, the Aranda case has never  
26 been extended to the penalty phase. I don't know.

1 THE COURT: I am certain the same principle would  
2 apply.

3 MR. BUGLIOSI: Has it been extended to the penalty  
4 phase?

5 THE COURT: Certainly the same principle applies.

6 MR. BUGLIOSI: I don't know, query, whether it does  
7 apply.

8 I know at the time of People vs. Milton and  
9 Floyd, and People vs. Cromwell --

10 THE COURT: It may not have been extended, but the  
11 principle is applicable I am sure.

12 MR. BUGLIOSI: But there you are talking about  
13 guilt in Aranda.

14 THE COURT: Here you are talking about the difference  
15 between life and death.

16 MR. FITZGERALD: Right.

17 And you are talking about the same standard.  
18 You must prove it beyond a reasonable doubt, and the  
19 Supreme Court says that the competency standards applies  
20 in terms of evidence, it must be material and relevant.  
21 Certainly the rules apply as to best evidence, et cetera.

22 No doubt about that.

23 I can't cite any case that has applied it,  
24 but it seems to me that all the same principles apply.

25 MR. KAY: What if the Court gives the jury the  
26 specific admonishment pointing out that they cannot consider



1 that Mr. Manson was in any way involved in the Hinman  
2 murder, they could not consider that at all. Maybe make  
3 a strong admonishment, pointing out the problem area,  
4 and say: No, you can't speculate as to that, you can't  
5 consider it.

6 THE COURT: I think that our Supreme Court says that  
7 the jury can't perform those mental gymnastics in the  
8 guilt phase. Here, a fortiorari, after they have already  
9 found them guilty and found a conspiracy, I don't see how  
10 they can go through those mental gymnastics.

11 And of course, as to whether or not the  
12 prosecution needs it, all I can say is that if you are  
13 unable to persuade a jury after seven murders of these  
14 types that the death penalty is appropriate, I don't think  
15 it would make any difference whether you had seven or  
16 seventeen.

17 MR. FITZGERALD: Particularly as to Susan Atkins.

18 MR. BUGLIOSI: There are some peculiar problems with  
19 these murders, and you won't hear it from me but from the  
20 defense attorneys when they argue about the desire by the  
21 prosecution to put on this other murder. I am sure that  
22 the four defense attorneys will make many cogent arguments.

23 THE COURT: We all know what the evidence is. The  
24 jury heard it.

10a fls.

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1 MR. BUGLIOSI: I am talking about the arguments with  
2 respect to death as opposed to life for the defendants.  
3 I am sure they will make arguments.

4 THE COURT: I am sure they will. It is their job.

5 MR. BUGLIOSI: From which the inference can be drawn  
6 why the prosecution has a desire to put on this extra murder  
7 against Susan Atkins.

8 MR. FITZGERALD: Wait a minute. We are not going to get  
9 into that and say they haven't proved any other murders.

10 THE COURT: That they have another murder but they  
11 failed to prove it?

12 MR. FITZGERALD: Exactly.

13 MR. BUGLIOSI: I am talking about the relation  
14 between Manson and the three girls. I am sure there will  
15 be arguments made, you know, by the defense.

16 MR. KAY: At least by Mr. Keith.

17 MR. FITZGERALD: I can't help but agree with the Judge  
18 that the facts are such that it presents -- I hope not  
19 insurmountable problems -- but tremendous problems in terms  
20 of argument about life and death, and I think you are  
21 splitting hairs.

22 Frankly, if this jury has found them guilty of  
23 seven counts of murder, I would like to ignore those facts  
24 and talk about life in general and death in general, in  
25 the abstract, rather than particularize it, because I  
26 don't think this is the type of record that you can seize

1 on isolated examples of charity and love.

2 MR. KAY: We are worried about Keith.

3 MR. KEITH: Why don't you stipulate to life imprison-  
4 ment then?

5 THE COURT: A jury, after hearing evidence of other  
6 crimes, after hearing about seven murders, perhaps would  
7 think that the prosecution itself isn't convinced, so you  
8 are piling it on.

9 MR. BUGLIOSI: We have thought about it. We are deep  
10 thinkers over in the D.A.'s office. In fact, I thought  
11 about the same comment you have made, I thought about the  
12 same things you did, but on balance -- and there are many  
13 considerations -- but on balance, we thought it would be  
14 advisable to put on other murders against other defendants  
15 other than Manson.

16 We have evidence, if we wanted to, we could put on  
17 -- at least we could try to put on, subject to the Court's  
18 ruling -- we could put on the Hinman murder against Manson,  
19 and the Shea murder against Manson, and we deliberately, on  
20 balance, decided not to even offer that.

21 THE COURT: As I indicated, I think there is a grave  
22 danger here that if you put on the Hinman murder as to any-  
23 one, under the circumstances of this case, the jury may  
24 very well impose the death penalty on other co-defendants,  
25 taking that crime into consideration against them, notwith-  
26 standing the instructions by the Court.

1 Not that they would deliberately eliminate, --  
2 not that they would deliberately disobey the Court's  
3 instructions or ignore them, but simply because the circum-  
4 stances of that crime are so closely connected in character  
5 and type, time, location, modus operandi, apparent modus  
6 operandi, with the others, and it may be mistaken for the  
7 work of the same group.

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1 MR. FITZGERALD: I might ask where in a sense does  
2 that leave us in terms of time?

3 We wanted to talk with your Honor.

4 In the event your Honor -- I take it your  
5 Honor has ruled, or is anticipating ruling that this  
6 evidence is inadmissible, in which case I think it would  
7 dramatically shorten the prosecution's case.

8 THE COURT: I haven't exactly ruled yet, but sometimes  
9 I find it desirable to state my thoughts so the attorneys  
10 can argue further, and if they have any further arguments,  
11 to attempt to persuade me.

12 MR. KAY: If your Honor does rule against the  
13 prosecution, our next witness is available on Monday. He  
14 is coming down from Oregon. So, we couldn't proceed this  
15 afternoon.

16 THE COURT: Unless there is something else, I will  
17 make a ruling.

18 MR. BUGLIOSI: I can't think of any other arguments.  
19 We are blind white on arguments.

20 Can you think of any arguments?

21 MR. FITZGERALD: That was not an appropriate analogy.

22 MR. KAY: Also, your Honor, that would probably  
23 be our last witness on the penalty phase.

24 In other words, we just have one more witness,  
25 and I would imagine that it wouldn't take more than, say,  
26 an hour.

1 MR. SHINN: Who is the witness? Maybe we can  
2 stipulate?

3 THE COURT: I will make a ruling.

4 Was there an objection to the admission of  
5 the evidence?

6 MR. KAY: By Kanarek.

7 THE COURT: Regarding the Hinzman killing?

8 If that is what it was, I will sustain the  
9 objection.

10 If there was a motion to exclude it, I will  
11 grant the motion.

12 Do the defendants know the nature of this  
13 last witness of yours?

14 MR. KAY: Yes. It was in Susan Atkin's book on  
15 the Killing of Sharon Tate.

16 MR. SHINN: In the book?

17 Maybe if you can tell me about it, I can  
18 stipulate.

19 MR. BUGLIOSI: No. We don't know ourselves all the  
20 details.

21 He will be down here Monday.

22 It is not in the book.

23 It is in the book, of course, that she was up  
24 in Oregon doing certain unlawful things.

25 THE COURT: I hope it is something more than  
26 smoking one marijuana cigarette.

1 MR. BUGLIOSI: No. It involved a gun. Kind of a  
2 gun moll situation.

3 THE COURT: In any event, you won't be ready to  
4 proceed until Monday morning?

5 MR. BUGLIOSI: Right. Because we just assumed that  
6 we would be putting on Hinman this afternoon.

7 MR. MUSICH: His flight probably won't arrive until  
8 10:20, 10:30 in the morning on Monday.

9 MR. BUGLIOSI: We will call him and get him down  
10 here earlier.

11 MR. FITZGERALD: Then it is likely that you may  
12 finish Monday afternoon?

13 MR. BUGLIOSI: Yes. Very short. One witness.  
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1 MR. FITZGERALD: We would like to impose on the Court.

2 The Court made a reference some time ago, during  
3 that period of time when the defendants indicated a desire  
4 to testify over the objection of their counsel and they  
5 talked about the order of appearance, and your Honor opined  
6 that they could testify in an order convenient to them,  
7 and I don't know if it rises to the dignity of a motion,  
8 but we would ask to alter the chain of our presentation of  
9 the evidence.

10 Heretofore, it has been myself, and then it has  
11 been Mr. Shinn and Mr. Kanarek and Mr. Keith. And we  
12 would like to sort of change the order around, and Mr.  
13 Keith would proceed first, Mr. Shinn second, Kanarek third,  
14 and myself fourth.

15 If that is agreeable with the Court?

16 THE COURT: I certainly have no objection.

17 MR. FITZGERALD: So that we could plan.

18 THE COURT: You have the right to put on your defense  
19 in any order you want, as far as I am concerned.

20 MR. FITZGERALD: Just so we know, and we will be  
21 prepared to proceed Monday afternoon, or Tuesday morning,  
22 or whatever.

23 MR. BUGLIOSI: Right. But I think this would  
24 necessitate a one or two or three hours' conference in  
25 chambers on the scope of the defense. Otherwise we will  
26 have to be objecting and going up to the bench, because I

1 don't know what they are going to put on.

2 MR. FITZGERALD: I think I can solve some of those  
3 problems at the very outset.

4 Mr. Keith would be beginning. You wouldn't reach  
5 any of your problems at least until we get to Mr. Shinn.

6 MR. BUGLIOSI: Right.

7 MR. FITZGERALD: And probably not until you got to  
8 Kanarek or myself. And I think the big question you are  
9 concerned about is certain evidence that Mr. Shinn wants  
10 to introduce.

11 MR. BUGLIOSI: Right.

12 MR. FITZGERALD: And I think you want to talk about  
13 certain evidence that I want to introduce.

14 MR. BUGLIOSI: Right.

15 I certainly want to talk about evidence that he  
16 wants to introduce about statements that Susan made to me  
17 and at the Grand Jury. Apparently you subpoenaed Mr.  
18 Caballero and Mr. Caruso, and Aaron and me.

19 I haven't been subpoenaed. You don't need one.

20 MR. FITZGERALD: Maybe we can use this afternoon to  
21 discuss it, or we can discuss it Monday.

22 MR. BUGLIOSI: I think we should discuss the scope of  
23 the hearing because I don't think everything but the kitchen  
24 sink is admissible. I think it has to go towards the issue  
25 of mitigation.

26 MR. SHINN: And innocence.

1 MR. BUGLIOSI: Or innocence. Under People vs. Terry.

2 MR. SHINN: Right.

3 MR. FITZGERALD: I think actually there are three  
4 major classifications of evidence that are admissible in  
5 penalty. Evidence in aggravation, evidence in mitigation,  
6 and evidence as to the background and history of the  
7 defendants. Those are the three categories.

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2 MR. BUGLIOSI: Section 191 says background and  
3 history, but that doesn't mean what it says, because we  
4 certainly can't put on the background and history of  
5 the defendants other than the crimes they have committed.

6 MR. FITZGERALD: The defendants could put it on.

7 MR. BUGLIOSI: It would seem that you could, right.

8 MR. FITZGERALD: And I think it is apparent at this  
9 time that at least as to Defendants Patricia Krenwinkel,  
10 Leslie Van Houten and Susan Atkins, there will be evidence  
11 of background and history, likely to take the form of  
12 parents or other relatives, school acquaintances, teachers.

13 MR. BUGLIOSI: Right.

14 MR. FITZGERALD: That sort of traditional sort of  
15 thing, and I don't think you are worried about that.

16 MR. BUGLIOSI: No. But I am worried about the  
17 Susan Atkins' problem.

18 MR. SHINN: There is no problem.

19 MR. BUGLIOSI: The People's position is that anything  
20 that she told Aaron Stovitz or myself, or testified at  
21 the Grand Jury, is not admissible because we never intro-  
22 duced any evidence on it.

23 MR. FITZGERALD: Well, the Judge is in the dark  
24 and the Judge doesn't really know what we know, and maybe  
25 Mr. Shinn ought to make an offer of proof, or whatever.

26 MR. BUGLIOSI: I think so.

MR. SHINN: Well, your Honor, at this time am I forced

1 to make an offer of proof, your Honor?

2 THE COURT: Not as far as I am concerned.

3 MR. SHINN: Right.

4 THE COURT: This is a voluntary discussion. I am not  
5 compelling anybody to say anything.

6 MR. SHINN: Right.

7 The Court should rule at the time that I  
8 present the evidence. I am not supposed to divulge my  
9 defense at this time.

10 THE COURT: You are certainly not required to.

11 MR. SHINN: Thank you.

12 MR. BUGLIOSI: I was thinking from a time saving  
13 standpoint that we could discuss it now.

14 You know there is going to be an objection,  
15 and at that time we will have to discuss it.

16 MR. SHINN: I told you, on People vs. Terry and  
17 People vs. Hamilton, all the cases that say --

18 MR. BUGLIOSI: Why don't we talk about it now. You  
19 know what the issue is and I know what it is.

20 MR. SHINN: Well, at the time that we present it,  
21 let the Court rule at that time.

22 THE COURT: I would suggest this. Instead of arguing  
23 about whether or not it should be discussed now, why don't  
24 you, since you both seem to know what the issue is, prepare  
25 some authorities --

26 MR. SHINN: Yes. I will do that.

1 THE COURT: -- in the meantime, and we can discuss  
2 the matter at the time that the question arises. But in the  
3 meantime, if you can furnish me with some authorities?  
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1 MR. BUGLIOSI: You can be reviewing it.

2 MR. SHINN: I think there are authorities on the part  
3 of the defense.

4 MR. FITZGERALD: I have prepared some on a very  
5 limited issue.

6 MR. KAY: Could we get a copy?

7 MR. FITZGERALD: Sure.

8 MR. BUGLIOSI: The prosecution's position is that  
9 there is no authority.

10 MR. KEITH: No authority to do what?

11 MR. BUGLIOSI: To prepare a brief. There are no cases  
12 to cite.

13 MR. KEITH: On what issue? I am in the dark.

14 MR. BUGLIOSI: Mr. Shinn wants to put on evidence that  
15 when Susan Atkins spoke to me, and also when she testified  
16 at the Grand Jury, she did not testify that she stabbed any-  
17 one, and our position is that this is not admissible during  
18 the penalty trial.

19 She probably had conversation with ten other  
20 people that she did not mention it to.

21 MR. SHINN: Maybe I will bring ten other people in as  
22 witnesses.

23 MR. BUGLIOSI: I don't think you can put on any  
24 negative testimony.

25 The point is that she did say that she  
26 stabbed Sharon to several people. The fact that she didn't



1 say it to other people, on that rationale you could bring  
2 in 500 witnesses.

3 MR. SHINN: No. Only the persons that actually dis-  
4 cussed the matter with her.

5 I am sure that we have a right to bring that  
6 evidence in.

7 MR. FITZGERALD: I think, to put it in a frame of  
8 reference that is easy to understand, the question is  
9 almost whether Susan Atkins is the trigger man or not.

10 Here I think I can put it in sort of a frame of  
11 reference where it can be understood.

12 What everybody is concerned about, particularly  
13 Mr. Shinn is, of all these deaths, everybody seems to focus  
14 on Mrs. Polanski or Sharon Tate, because she happened to be  
15 pregnant with an eight-month fetus child.

16 That is likely to become the brunt of the  
17 prosecution's argument in the penalty phase, that this  
18 girl, Susan Atkins, had such a disregard for life that she  
19 butchered or slaughtered -- or whatever sort of adjectives  
20 you want to use -- a pregnant woman.

21 Susan Atkins simply wants to show that she is  
22 not trying to collaterally attack her finding of guilt,  
23 she simply wants to show that she is not the trigger man,  
24 that she wasn't the actual stabber, and she can produce  
25 relevant and material and competent evidence in that regard.

26 MR. BUGLIOSI: Right.

1 MR. FITZGERALD: That at some time and place before,  
2 as a matter of fact, under oath, at a different time and  
3 place, she personally testified that she was not, in fact,  
4 the knife wielder, that she simply held the body.

5 MR. KAY: Then she filed an affidavit and said that she  
6 lied to the Grand Jury.

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1 MR. FITZGERALD: That she held the body, and Tex  
2 Watson, a young man, stabbed the body.

3 That is the evidentiary value and thrust of the  
4 testimony: that she, herself, was not the trigger man, not  
5 the knife-wielder. She may have aided and abetted, but that  
6 is all.

7 MR. BUGLIOSI: Right.

8 She can testify. She can say: I am not the one  
9 that stabbed her. But that she told me that, I don't think  
10 the Court should admit.

11 MR. FITZGERALD: Let's understand ourselves. Susan  
12 Atkins apparently intends to take the stand and testify  
13 herself. It is not going to be put on through a third  
14 person. It is not going to be put on through a Grand Jury  
15 transcript.

16 THE COURT: Is she going to admit participation?

17 MR. FITZGERALD: I will defer to Mr. Shinn.

18 MR. BUGLIOSI: It seems to me by doing that that you  
19 are eliminating perhaps the most valuable, or if not the  
20 most valuable, the most persuasive argument during penalty.  
21 You are aware of that. That if there is a speck, a micro-  
22 scopic speck, of doubt in the jury's mind, they shouldn't  
23 come back with the pill. And that is a good argument.  
24 But if you put that evidence on, it seems that that argument  
25 is no longer valid.

26 It seems that the Court, based on its ruling in

1 Hinman, should not permit him to do this, because it would  
2 inure to the detriment of Susan Atkins' co-defendants really.

3 MR. FITZGERALD: It is immaterial whether I personally  
4 agree with you.

5 MR. BUGLIOSI: No. I am just saying it almost seems  
6 that the Court should hold that it would inure to the  
7 detriment of the three co-defendants.

8 MR. FITZGERALD: He may feel that he is better off to  
9 show it. He may want to show: Look, she surely did  
10 participate in these offenses, but she didn't actually stab  
11 this girl, that a man stabbed this pregnant woman. Certainly  
12 she participated and held the body, but after all, it was  
13 the man that did the stabbing.

14 We may not agree with the reasonableness of that  
15 position, but I think, conceivably, reasonable people  
16 could differ about it.

17 MR. KANAREK: Your Honor, I have another problem, if  
18 I may.

19 MR. FITZGERALD: Conceivably.

20 MR. KANAREK: Previously we subpoenaed one Mr. Charles  
21 Black, or Charles Rich. He was sent back.

22 I don't know if your Honor is aware of that. We  
23 subpoenaed him. We weren't finished with him at all, and  
24 they sent him back. The jail sent him back. And we want  
25 him.

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1 THE COURT: I don't know what you are talking about,  
2 Mr. Kanarek.

3 MR. KANAREK: You signed an order for Charles Rich.

4 THE COURT: A prisoner?

5 MR. KANAREK: Yes, your Honor. He is in the State  
6 Prison system.

7 Your Honor signed an order, and he came here.  
8 And then the Sheriff has sent him back.

9 THE COURT: He is not going to be kept here indefi-  
10 nitely. He is a State Prison inmate.

11 MR. KANAREK: I know. But we haven't finished the  
12 trial.

13 THE COURT: Why did you have him brought down at the  
14 beginning of the trial if you didn't want him until the  
15 end?

16 MR. KANAREK: Your Honor, as things developed, we  
17 didn't need him.

18 The point is that we did have him down here  
19 and he was sent back.

20 THE COURT: I know nothing about that. I don't know  
21 anything about it, Mr. Kanarek. If I did something about  
22 it, I have no recollection of it.

23 MR. KANAREK: Well, then, what we are asking is that  
24 that be reactivated, your Honor.

25 THE COURT: Well, file a new request. I will have  
26 to act on the basis of a request under the Penal Code

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1 section.

2 MR. KANAREK: Yes.

3 They sent him back evidently.

4 THE COURT: As I say, I know nothing about it.

5 You will have to initiate the proceeding all  
6 over again.

7 MR. KEITH: We have an interesting problem, if  
8 Susan Atkins takes the stand and testifies that she  
9 participated, as to the scope of her cross-examination.

10 Can she be asked on cross-examination who else  
11 was there and what did they do and what happened on the  
12 next night?

13 THE COURT: Of course, the scope of cross-examination  
14 is always a problem, but if this were the guilt phase,  
15 one defendant can take the stand and testify regarding  
16 participation in the crime, even though he implicated  
17 his co-defendants.

18 Why would it be any different now?

19 MR. KEITH: I personally feel it is wide open, the  
20 cross-examination.

21 THE COURT: It might well be.

22 MR. FITZGERALD: Well, I don't want to fight those  
23 little battles. I want to fight the major one.

24 The major one is what if you put a defendant  
25 on the stand to testify to his background or history,  
26 and the first question by the prosecution is: How did it

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1 feel when you stabbed Abigail Folger to death?

2 MR. KEITH: I don't think there is any question  
3 that that is beyond the scope.

4 I did a lot of research last night on that  
5 problem.

6 THE COURT: I would agree to that.

7 A defendant can take the stand for a very  
8 limited purpose.

9 MR. KEITH: This is a little different. This is  
10 Susan Atkins testifying she was there and participated.

11 MR. BUGLIOSI: Mr. Shinn, you might be mindful of  
12 the fact --

13 THE COURT: I can't conceive how her testimony that  
14 she was there and participated, whether she held her hand  
15 or did the stabbing, could possibly help her.

16 You might give some serious thought to that.

17 MR. SHINN: With any other jury, I would say yes,  
18 but not with this jury.

19 THE COURT: What difference does it make who wielded  
20 the knife if they were all there participating?

21 MR. SHINN: Your Honor, according to the cases that  
22 I read in a survey made by the Stanford Law Review,  
23 percentagewise, they have found that the person that is  
24 the non-triggerman has a better chance getting life.

25 THE COURT: I am not concerned with what a law  
26 professor said. It is a human being's reaction to evidence.

1 MR. SHINN: This was the Law Review.

2 MR. MUSIGH: That may be in a robbery case, but not  
3 in a murder case.

4 MR. KAY: I think what he wanted to do is get  
5 Caballero and Caruso up here.

6 MR. BUGLIOSI: I want Mr. Shinn to be aware of a  
7 document that he apparently is not aware of.

8 MR. SHINN: You can bring that up in cross-examination.

9 MR. BUGLIOSI: You acted like you were not aware of  
10 it.

11 It was filed May 12th.

12 MR. SHINN: The one I filed?

13 MR. BUGLIOSI: I don't know who filed it. But Susan  
14 Atkins said she lied at the Grand Jury.

15 MR. SHINN: Well, you can bring that up at the  
16 cross-examination.

17 MR. BUGLIOSI: I am just wondering what your motiva-  
18 tion is.

19 THE COURT: We are not advancing the cause at this  
20 stage, gentlemen.

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22 Does anyone have anything else?  
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1 MR. KANAREK: Yes, your Honor, there is another  
2 person I want to get, a Mr. Shepard that your Honor  
3 previously turned down during the guilt or innocence phase.

4 We ask he be subpoenaed down.

5 THE COURT: Again, file your request, Mr. Kanarek,  
6 support it in the manner required by law.

7 MR. KANAREK: Right. But your Honor does this ex parte.  
8 We give it to the clerk and the clerk comes back and says  
9 the Court refuses it.

10 I want this opportunity which we don't have when  
11 we give it to the clerk.

12 THE COURT: Make as full a showing as you can then.

13 MR. KANAREK: These people will testify concerning  
14 Mr. Manson's reputation in custody and certain characteris-  
15 tics that he has, and that is why I want to underline this  
16 at this time, because when we give these to Mr. Darrow we  
17 certainly don't wish, especially in the penalty phase here,  
18 we don't wish your Honor to turn them down because we  
19 think they are most --

20 THE COURT: Then, as I say, make as full a showing as  
21 you can in your declaration so that I have something to go  
22 on other than bare conclusions.

23 I certainly have no intention to preclude you  
24 from bringing in any witness that has any relevant testimony  
25 on the subject of penalty.

26 But when you start subpoenaing State Prison

1 inmates, I want to be convinced they are witnesses to  
2 something that is relevant and not just giving them a free  
3 trip to Los Angeles from San Quentin.

4 Anything further.

5 MR. BUGLIOSI: No, your Honor, I am going to call this  
6 man to come here right now Sunday afternoon so we can  
7 start Monday at 9:00.

8 THE COURT: I see no necessity for reconvening in open  
9 court to adjourn for today.

10 The jury has not been brought down this afternoon  
11 yet. The defendants are not in court, are they yet?

12 MR. KAY: They were when we came in.

13 THE COURT: Were they in court?

14 MR. KAY: When we came in.

15 THE COURT: Is that agreeable with everyone that we  
16 adjourn here in chambers until Monday at 9:00 a.m.?

17 MR. FITZGERALD: We will stipulate your Honor need not  
18 give the jury an admonishment.

19 THE COURT: I don't even know if an admonishment is  
20 required in the death penalty phase. I have been giving it  
21 anyway. I don't know if any court has ever ruled on that  
22 or not, and I will continue to give it.

23 MR. FITZGERALD: You want us to be ready to proceed  
24 when?

25 THE COURT: Is anyone going to cross-examine except  
26 Mr. Shinn on this witness?

1 MR. FITZGERALD: No, I am not.

2 MR. KEITH: No.

3 MR. KAY: Maybe 10 minutes on direct.

4 THE COURT: I would say Monday afternoon.

5 MR. FITZGERALD: All right.

6 MR. SHINN: Tuesday morning?

7 THE COURT: Monday afternoon.

8 MR. KANAREK: Give us until Tuesday morning, your  
9 Honor.

10 MR. FITZGERALD: We can do it Monday afternoon.

11 THE COURT: All right, then, this court is now  
12 adjourned until Monday at 9:00 a.m.

13 (Whereupon, an adjournment was taken to  
14 reconvene Monday, February 1, 1971, at 9:00 a.m.)  
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